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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

RIN 3206–AG96

Federal Employees Retirement System—Open Enrollment Act Implementation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Retirement System Open Enrollment Act of 1997. These regulations provide information about who may make open-enrollment-period elections and the procedures that employees must follow to elect Federal Employees Retirement System (FERS) coverage during the 1998 open enrollment period, and that agencies must follow in advising employees about such elections of FERS coverage and in processing such elections of FERS coverage.

DATES: Interim rules effective: June 18, 1998; comments must be received on or before August 17, 1998.

ADDRESSES: Send comments to Mary Ellen Wilson, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 642 of the Treasury and General Government Appropriations Act, 1998, Pub. L. 105–61, approved October 10, 1997, as amended by section 348 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105–66, approved October 27, 1997, is entitled the Federal Employees Retirement System (FERS) Open Enrollment Act of 1997. It requires OPM to issue regulations under which individuals who are employed by the Federal Government and covered by the Civil Service Retirement System (CSRS) as of January 1, 1998, may elect to become covered by FERS.

Subsection (c) of section 642 prescribes certain requirements for the regulations. Elections must be made during the period beginning on July 1, 1998, and ending on December 31, 1998. OPM must provide for notice of the right to make the election including information on a comparison of the benefits an individual would receive under CSRS or FERS. Treatment of such an election must be "similar to the applicable provisions of title III of the Federal Employees Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 599 *et seq.*)."

These regulations implement the FERS Open Enrollment Act of 1997 by clarifying who is eligible to make an election under the Act and by establishing the procedures for making such an election. They assign to employing agencies the obligation to provide statutorily-required notice and, if requested, additional information, including a comparison of benefits, to employees about their election rights. How the employing agencies provide that notice is generally up to them. In addition, the regulations provide for belated elections as a safety valve for instances in which the agency fails to provide the statutorily-required notice. If an agency denies a request to make a belated election, the agency is responsible for defending the denial, including the adequacy of its notice, before the Merit Systems Protection Board (MSPB).

Generally, an election of FERS coverage is effective on the first day of the pay period beginning after the date the election (and, in cases affected by the former spouse consent requirement, the required supporting documentation) is received by the employing office. This is required under section 301(c) of the FERS Act and is reflected in section 846.703 of these regulations. The regulation also provides that an election cannot be effective before the beginning of the open enrollment period on July 1, 1998. For employees whose pay period is monthly and thus begins on July 1, the election is effective on August 1, the first day of the next pay period.

An election to be covered by FERS can be revoked anytime before it has become effective. Thus, an employee who submits an election to be covered by FERS prior to July 1, 1998, may revoke an election anytime before the beginning of the first pay period beginning after July 1, 1998.

An employee who does not want to elect FERS coverage does not need to file a completed election form. Although the SF 3109 does provide a space for an affirmative election not to be covered by FERS, such an election has no legal effect. To emphasize this, the regulations specifically provide that an election not to become covered by FERS may be revoked at any time during the open enrollment period by filing a new election. Agencies have no obligation to maintain records of elections not to become covered by FERS.

The Act provides that an individual must have been employed by the Federal Government on January 1, 1998, to be eligible to make an open-enrollment election. Because this statutory language is similar to the language concerning who was eligible to participate in the 1987 open enrollment period, we have interpreted the phrase "employed by the Federal Government" to have the same meaning as it was given in the 1987 open enrollment period. Thus, anyone who (1) qualifies as an employee under section 2105 of title 5, United States Code, (2) is eligible for social security coverage, and (3) is not excluded from FERS coverage may be eligible to make an election as provided in section 846.711 of these regulations. This includes employees serving under appointments generally excluded from CSRS coverage but not excluded from FERS coverage, such as term appointments, as well as some individuals who are treated as Federal employees for retirement purposes, such as certain employees of the District of Columbia Courts. It also includes employees serving under appointments generally excluded under CSRS but who have CSRS coverage under section 831.201(b)(1) of Title 5, Code of Federal Regulations. Section 831.201(b)(1) provides that an employee serving in a position covered by CSRS (other than an alien whose duty station is in a foreign

country) retains CSRS coverage upon moving to employment in a position in an excluded category if the move occurs without a break in service (or after a separation of 3 days or less).

By statute, four groups of individuals who may be covered by CSRS are not eligible to participate in the open enrollment opportunity. These statutory exclusions are reflected in 846.712 and 846.713. Section 846.712(a) excludes individuals employed by the government of the District of Columbia except for certain groups of employees who are permitted to be covered by FERS because by statute they are treated as Federal employees for retirement purposes. The National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105–33, 111 Stat. 251, allows FERS coverage for non-judicial employees of the District of Columbia Courts and certain employees of the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee who meet the requirements of section 831.201(g) of Title 5, Code of Federal Regulations. The District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104–8, 109 Stat. 97, as amended, allows FERS coverage for employees of the District of Columbia Financial Responsibility and Management Assistance Authority who may make an election under section 831.204 of Title 5, Code of Federal Regulations.

Section 846.712(b) excludes Members of Congress. Members were eligible to participate in the 1987 open enrollment period; however, section 348 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105–66, approved October 27, 1997, expressly excludes Members of Congress from the class of individuals who can make an open-enrollment election.

Section 846.712(c) excludes individuals who are ineligible for social security coverage. The definition of "employee" for FERS in section 8401(11) of title 5, United States Code, permits only individuals who are eligible for social security coverage to elect FERS coverage.

Section 846.713 excludes individuals who are subject to the former spouse consent requirement under section 301(d) of the FERS Act unless they obtain the former spouse's consent or qualify for a waiver of the consent requirement. The methods of proving consent or qualifying for a waiver are discussed in connection with section 846.722, *infra*.

Section 846.721 establishes the actions that an eligible individual must take to elect FERS coverage. Elections must be documented by a completed SF 3109, the FERS Election of Coverage form, filed with the employing office. However, any signed writing timely filed with the employing office may be used as an election to establish the date of the election, and thus the effective date of FERS coverage, as long as the employing agency subsequently receives a completed SF 3109 to confirm such election. For example, if an employee on leave without pay or whose duty station is at a remote worksite, informs the agency by letter that he or she elects FERS coverage, the letter constitutes a valid election when confirmed with a completed SF 3109. The agency should have the employee complete an SF 3109 and should process the transfer of coverage effective at the beginning of the pay period after it received the letter.

Generally, the right to elect FERS may only be exercised personally by the employee. Section 846.721(b) provides the only exception. It allows the survivor of a deceased employee to sign and file the completed SF 3109 on behalf of a deceased employee as long as the employee had made an election, as described in section 846.721(b).

Section 301(d) of the FERS Act prohibits an election by an employee whose former spouse has filed with OPM certain court orders affecting the employee's retirement benefits. This restriction applied to elections during the 1987 open enrollment period and currently applies to all elections upon reemployment. We believe it would be consistent to apply such a restriction to elections during this open enrollment period. Accordingly, section 846.722 provides that the existing procedures applicable to the former spouse consent requirement generally apply to elections during the open enrollment period. In addition, the regulations provide for automatic approval of an extension of the time limit for election of FERS coverage until June 30, 1999, upon filing (before January 1, 1999) with the agency of a properly completed SF 3111, Request for Waiver, Extension or Search, requesting an extension.

Section 846.723 implements the requirement in section 642(c)(2) of the Act that OPM issue regulations to provide "notice and information to individuals who may make such an election, including information on a comparison of benefits an individual would receive from coverage under [CSRS] or [FERS]." Since comparisons of benefits are always unique to an individual employee, notice will be more effective if made by employing agencies directly. Accordingly, the regulations delegate to employing agencies responsibility to provide the required notice and information. Agencies may determine the exact form of the notice. *See* discussion of section 846.724(a) on belated elections and agency responsibility for defending the adequacy of its notice in any case in which it denies a request to make a belated election.

Unlike the 1987 open season, we are not requiring that agencies distribute paper copies of the FERS Transfer Handbook to each employee, but each eligible employee who does not receive a paper copy must have ready access to the Handbook. The Handbook is accessible on the OPM website at www.opm.gov/fers_election. The Handbook also will be distributed to agencies on a CD–ROM that mirrors the website.

The Handbook will be the primary tool employees will use in making their decisions. For most employees, reading the comparison of benefit provisions under the two systems and some of the scenarios contained in the Handbook will provide the information they need to make a decision.

A transfer model is available on the FERS Election Opportunities page (www.opm.gov/fers_election) of OPM's website and will be on the CD–ROM. This is a computer model that will allow employees to estimate their projected benefits under CSRS and FERS based on assumptions unique to each employee. As with the Handbook, it should be made available for use by all eligible employees. The revised computer model is a user-friendly, interactive, Windows®-based version that employees are able to use themselves to compare and contrast benefits under both systems. If the employing office cannot make the transfer model available to some employees, the agency is expected to make available an equivalent CSRS/FERS benefits estimate upon request.

While counseling employees who request it and assisting them in understanding how the systems affect their individual circumstances, agencies should emphasize that the final decision on which system the employee chooses is a personal one.

An agency decision that an employee is not eligible to elect FERS coverage or an agency's refusal to accept a belated election must be in writing and must notify the employee of the right to appeal the decision to MSPB and the 30-day time limit applicable to such

appeals. The employing agency is also responsible for defending such a coverage decision at MSPB. Each agency should keep such documentation that it considers appropriate for that purpose.

Since the statute expressly requires notice and, if requested, other information concerning the election including a comparison of benefits be provided to employees, the failure to provide these materials is a basis for tolling the time limit for making the election. *See e.g., Davies* v. *OPM*, 5 M.S.P.R. 199 (1981). Section 846.724 empowers agencies (subject to review by MSPB under section 846.725) to determine on a case-by-case basis whether they failed to provide sufficient information to justify acceptance of a belated election. The employing office may accept a belated election of FERS coverage without time limit if the employing office determines that the agency did not provide the notice required under section 846.723 in a timely manner, the agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner, or the employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit. A belated election of FERS coverage is effective on the first day of the pay period beginning after the employing office receives the completed SF 3109, the FERS Election of Coverage form. Neither agencies nor OPM has any statutory authority to approve a retroactive effective date for belated elections of FERS coverage.

Section 846.724 also continues the current rules concerning correction of administrative errors. Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with section 841.505 of Title 5, Code of Federal Regulations.

Section 846.725 establishes the procedures for appeal of decisions affecting elections of coverage under FERS. A person whose rights or interests concerning an election of FERS coverage are affected by the agency's final decision may request MSPB to review the decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of Title 5, Code of Federal Regulations.

Section 846.726 specifically delegates to agencies authority to act as OPM's agent for receipt of employee communications relating to elections of FERS coverage (i.e., any documents that employees are required by these regulations to file with OPM). Such documents are deemed received by OPM on the date that the employing office receives them. Such delegations are authorized under section 1104 of title 5, United States Code.

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that the regulation can be implemented in time to meet the statutory requirements of the Federal Employees Retirement System Open Enrollment Act of 1997. That statute requires the OPM to issue regulations under which individuals who are employed by the Federal Government and are covered by CSRS as of January 1, 1998 may elect to become covered by FERS. Such elections must be made between July 1, 1998 and December 31, 1998. This rule is being made effective in less than 30 days in order to establish timely election procedures and allow the regulation to be of maximum effectiveness and assistance for Federal agencies and employees considering their election options.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 846

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM amends 5 CFR part 846 as follows:

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTIONS OF COVERAGE

1. The heading of part 846 is revised to read as set forth above.

1a. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g) and Title III of Pub. L. 99–335, 100 Stat. 517; § 846.201(b) also issued under 5 U.S.C. 7701(b)(2) and section 153 of Pub. L. 104–134, 110 Stat. 1321; § 846.201(d) also issued under section 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335, 100 Stat. 517; § 846.726 also issued under 5 U.S.C. 1104; subpart G also issued under section 642 of Pub. L. 105–61, 111 Stat. 1272.

2. Subpart G is added to read as follows:

Subpart G—1998 Open Enrollment Elections

Sec.

846.701 Purpose and scope.
846.702 Definitions.
846.703 Effective date of FERS coverage.
846.704 Irrevocability of an election of FERS coverage.

Who May Elect

846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.
846.712 Statutory exclusions.
846.713 Former spouse consent requirement.

Election Procedures

846.721 Electing FERS coverage.
846.722 Former spouse's consent to an election of FERS coverage.
846.723 Agency responsibilities.
846.724 Belated elections and correction of administrative errors.
846.725 Appeal to the Merit Systems Protection Board.
846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.

Subpart G—1998 Open Enrollment Elections

§ 846.701 Purpose and scope.

This subpart contains OPM's regulations applicable to elections of FERS coverage during the 1998 open enrollment period, including—

(a) The requirements that an individual must satisfy to be eligible to make an election; and

(b) The procedures that—

(1) Employees must follow to make an election;

(2) Agencies must follow in advising employees about making an election and in processing employees' elections; and

(3) OPM will follow in cases subject to the former spouse consent requirement.

§ 846.702 Definitions.

In this subpart—

Election means an election of FERS coverage during the 1998 open enrollment period.

Former spouse consent requirement means the condition that must be satisfied under section 301(d) of the FERS Act for an employee with a former spouse to be eligible to elect FERS coverage.

Qualifying court order means a *court order acceptable for processing* as defined in § 838.103 of this chapter or a *qualifying court order* as defined in § 838.1003 of this chapter subject to the following conditions:

(1) If OPM has not received (as explained in § 838.131 of this chapter) a copy of the court order and identifying information required under § 838.221(b)(3), § 838.421(b)(3), § 838.721(b)(1)(iii), or § 838.1005(b)(3) of this chapter prior to the date on which the employing office receives the election to be covered by FERS, the court order is not a *qualifying court order*.

(2) If the former spouse loses entitlement to all CSRS benefits under the court order, the court order ceases to be a *qualifying court order*.

Social security coverage means coverage under the Old Age, Survivors, and Disability Insurance program under the Social Security Act.

1998 open enrollment period means July 1, 1998, through December 31, 1998.

§ 846.703 Effective date of FERS coverage.

An election under this subpart is effective on the later of—

(a) The first day of the pay period beginning after the date the election and any required supporting documentation is received by the employing office; or

(b) The first day of the pay period beginning after July 1, 1998.

§ 846.704 Irrevocability of an election of FERS coverage.

(a) An election to be covered by FERS becomes irrevocable on the date it becomes effective.

(b) If, during the 1998 open enrollment period, an employee files an election on an SF 3109 to remain covered by CSRS, the employee may revoke such an election by filing another election during the 1998 open enrollment period.

Who May Elect

§ 846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.

An employee who is not covered by FERS, and who was an employee on January 1, 1998, and who is not otherwise ineligible for FERS coverage (under subpart A of part 842 of this chapter or § 846.722) may elect FERS coverage during the 1998 open enrollment period.

§ 846.712 Statutory exclusions.

(a) *DC government employees.* An individual employed by the government of the District of Columbia is not eligible to make an election, except—

(1) Non-judicial employees of the District of Columbia Courts, District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105–33, 111 Stat. 251, who meet the conditions of § 831.201(g)(2), (3), and (4) of this chapter; and

(2) Employees of the District of Columbia Financial Responsibility and Management Assistance Authority under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104–8, 109 Stat. 97, as amended, who elected CSRS under § 831.201(g)(5) of this chapter.

(b) *Members of Congress.* A Member (as defined in section 2106 of title 5, United States Code) is not eligible to make an election.

(c) *Persons without social security eligibility.* An individual is not eligible to make an election if that individual is not eligible for social security coverage.

§ 846.713 Former spouse consent requirement.

An election of FERS coverage cannot become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under part 838 of this chapter.

Election Procedures

§ 846.721 Electing FERS coverage.

(a) To elect FERS coverage, an employee must submit a completed FERS Election of Coverage form (SF 3109) and any additional documentation that may be required under § 846.722 (relating to the former spouse consent requirement) to the employing office no later than the close of business on December 31, 1998.

(b) Any writing signed by the employee and filed with the employing office may be treated as an election for the purpose of establishing the date of the election of FERS coverage if the employee intends that document to be an election, but the employee (or, if the employee dies after filing the election but before completing the SF 3109, the survivor) must submit a completed SF 3109 to confirm any such election.

§ 846.722 Former spouse's consent to an election of FERS coverage.

(a) Employee actions. (1) If the employee is subject to a qualifying court order, the employee must submit to the employing office a completed—

(i) SF 3110, Former Spouse's Consent to FERS Election, to document the former spouse's consent to the FERS coverage; or

(ii) SF 3111, Request for Waiver, Extension, or Search, to request a waiver of the former spouse consent requirement or to request an extension of the time limit for obtaining a former spouse's consent or amendment of the court order.

(2) If the employee states on the SF 3109, the FERS Election of Coverage form, that he or she does not know whether he or she is subject to a qualifying court order, the employee must submit to the employing office a completed SF 3111, Request for Waiver, Extension, or Search, to request OPM to determine whether it has a qualifying court order relating to the employee.

(b) *OPM actions*—(1) *Waiver of former spouse consent requirement*—(i) *Grounds for waiver.* OPM's authority to approve a waiver of the former spouse consent requirement is limited to cases in which the former spouse's whereabouts cannot be determined or exceptional circumstances make requiring the former spouse's consent inappropriate.

(ii) *Whereabouts cannot be determined.* OPM will waive the former spouse consent requirement upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(A) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(B)(*1*) Affidavits by the employee and two other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the spouse; and

(*2*) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(iii) *Exceptional circumstances.* OPM will waive the former spouse consent requirement based on exceptional circumstances if the employee presents a judicial determination finding that—

(A) The case before the court involves a Federal employee who is in the process of electing FERS coverage and the former spouse of that employee;

(B) The former spouse has been given notice and an opportunity to be heard concerning this proceeding;

(C) The court has considered sections 301 and 302 of the FERS Act, Pub. L. 99–335, 100 Stat. 517, and this section as they relate to waiver of the former spouse consent requirement for an employee with a former spouse to elect FERS coverage; and

(D) The court finds that exceptional circumstances exist justifying waiver of the former spouse's consent.

(iv) *Approval of a waiver.* If OPM grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

(2) *Extension of the time limit to obtain a former spouse's consent*—(i) *First request.* If an employee who is ineligible to elect FERS coverage solely because of a qualifying court order files, prior to January 1, 1999, a completed SF 3111, Request for Waiver, Extension or Search, requesting an extension of the time limit to seek an amendment of a qualifying court order, OPM is deemed to have approved the extension through June 30, 1999.

(ii) *Second request.* OPM will grant one extension of the time limit to seek an amendment of a qualifying court order to an individual who has been granted an extension under paragraph (b)(2)(i) of this section if the individual—

(A) Files an application for the extension (SF 3109) with the employing office before July 1, 1999;

(B) Has initiated legal proceedings to secure the modification of the qualifying court order on file at OPM to satisfy the former spouse consent requirement;

(C) Demonstrates to OPM's satisfaction that the individual has exercised due diligence in seeking to obtain the modification; and

(D) If seeking an extension beyond December 31, 1999, demonstrates to OPM's satisfaction that a longer extension is necessary.

(iii) *Expiration date of a second extension.* An approved extension under paragraph (b)(2)(ii) of this section expires on December 31, 1999, unless OPM's decision letter states a later expiration date.

(3) *Search for a qualifying court order.* (i) When an employing office notifies OPM that it has received an employee's request for a determination of whether OPM has a qualifying court order on file, OPM will determine whether it has such an order.

(ii) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the employing office that it has no qualifying court order completes the employee's election of FERS coverage and the election becomes effective at the beginning of the first pay period after the employing office receives OPM's notification.

(iii) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing office that it has a qualifying court order and that an extension until June 30, 1999, has been granted.

§ 846.723 Agency responsibilities.

(a) The employing office must determine whether the employee is eligible to elect FERS coverage.

(b)(1) As close as practicable to the beginning of the open enrollment period, the employing office must provide each employee eligible to elect FERS coverage with notice of that employee's right to make an election.

(2) The employing office must provide each employee eligible to elect FERS coverage with a copy of or ready access to the FERS Transfer Handbook.

(c) An election received by an employing office before July 1, 1998, is deemed to have been received by the employing office on July 1, 1998.

(d) An agency decision that an employee is not eligible to elect FERS coverage or refusing to accept a belated election under § 846.724 must be in writing, must fully set forth the findings and conclusions of the agency, and must notify the employee of the right to appeal the decision under this section to the Merit Systems Protection Board, including all information required under the Board's regulations. See 5 CFR 1201.21.

§ 846.724 Belated elections and correction of administrative errors.

(a) *Belated elections.* The employing office may accept a belated election of FERS coverage if it determines that—

(1) The employing office did not provide adequate notice to the employee in a timely manner;

(2) The agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner; or

(3) The employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit.

(b) *Correction of administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

§ 846.725 Appeal to the Merit Systems Protection Board.

(a) A person whose rights or interests under this part are affected by an agency decision that an employee is not eligible to elect FERS coverage or an agency refusal to accept a belated election under § 846.724, or an OPM decision denying an extension or waiver under § 846.722, may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of this title.

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under this subpart. An agency decision must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

§ 846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.

The employing office is delegated authority to act as OPM's agent for the receipt of any documents that employees are required by this subpart to file with OPM. Such documents are deemed received by OPM on the date that the employing office receives them.

[FR Doc. 98–16264 Filed 6–17–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–98–004]

Revision of User Fees for 1998 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1998 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1997 user fee for this classification service was $1.40 per bale. This rule would reduce the fee for the 1998 crop to $1.30 per bale. The reduction in fees resulted from increased efficiency in classing operations. The fee is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: *Effective Date:* July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 27, 1998, (63 FR 14839). A 30 day comment period was provided for interested persons to respond to the proposed rule: No comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this rule on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 40,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services (the 1997 user fee for classification services was $1.40 per bale; the fee for the 1998 crop would be reduced to $1.30 per bale; the 1998 crop is estimated at 15,684,900 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1997 crop, 17,949,575 bales were classed out of 18,346,450 bales produced.

(4) Based on the average price paid to growers for cotton from the 1996 crop of 69.3 cents per pound, 500 pound bales of cotton are worth an average of $346.50 each. The proposed user fee for classification services, $1.30 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The changes will be made effective July 1, 1998, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.40 per bale during the 1997 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This final rule establishes the user fee charged to producers for HVI classification at $1.30 per bale during the 1998 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1997. Therefore, the 1998 producer's user fee for classification service is based on the 1997 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1997 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.08 per bale. A two percent, or four cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.08 would result in a 1998 base fee of $2.12 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1998 crop is estimated at 15,684,900 bales. The 1998 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1998 base fee of $2.12 per bale, resulting in a fee of $1.80 per bale.

With a fee of $1.80 per bale, the projected operating reserve would be 46.806 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.80 must be reduced by 50 cents per bale, to $1.30 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1998 season fee at $1.30 per bale.

Accordingly, § 28.909, paragraph (b) will be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents requesting classification data provided on computer punched cards will be charged a fee of 10 cents per card to reflect the costs of providing this service. Requests for punch card classification data represent only 2.6 percent of the total bales classed. This change will be reflected in § 28.910 (a). Growers or their designated agents receiving classification data by methods other than computer punched cards will continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 will remain at five cents per bale, and it will be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910 (b) for an owner receiving classification data from the central database will

remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be reduced from $1.40 per bale to $1.30 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

Finally, the authority citation for Subpart D of Part 28 was revised at 61 FR 19512. This action would correct that revision by specifying Subpart D rather than a reference to Part 28 in its entirety.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for part 28, subpart D, is revised to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.30 per bale.

* * * * *

3. In § 28.910, paragraph (a) is revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) (1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,

(ii) Computer tapes, or

(iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1), there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(3) Upon request, computer punch cards may be issued. The fee for this service shall be 10 cents per card.

* * * * *

4. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.30 per bale.

* * * * *

Dated: June 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–16376 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV97–997–1 FIR and FV97–998–1 FIR]

Peanuts Marketed in the United States; Relaxation of Handling Regulations

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with modifications, the provisions of an interim final rule (IFR) that relaxed for 1997 and subsequent crop peanuts, several provisions regulating the handling of domestically produced peanuts marketed in the United States. This finalization continues the IFR's improved efficiency and reduced program costs resulting in a similar reduction in assessments charged Agreement signer and non-signer handlers.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 (Agreement)(7 CFR part 998) and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The Agreement and the regulations issued thereunder and the non-signatory peanut handler regulations (7 CFR part 997) regulate the quality of domestically produced peanuts.

The Department is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Following explanation of each change to the Agreement's regulation, the corresponding change to the non-signatory handlers' regulation is discussed.

Incoming Regulations

Farmers Stock Storage and Handling Facilities

The Peanut Administrative Committee (Committee) recommended amending § 998.100 Incoming quality regulation for 1996 and subsequent crop peanuts by removing paragraph (g) *Farmers Stock Storage and Handling Facilities* which previously regulated the condition of such facilities and authorized Committee inspection. The Committee recommended the change to save approximately $450,000, by eliminating the positions of the seven fieldmen whose specified duties through the 1996 crop year included spending an estimated 60–65 percent of their time inspecting and approving such facilities. The vote was 17 "For" and 1 "Against", with the dissenting voter contending that the fieldmen were providing valuable services, their positions should not be eliminated, and that inspection and approval of such facilities by the Committee staff were important. Handlers contended they were already paying their own employees to do facilities inspections and the cost of such duplication of effort needed to be eliminated and the Department issued the change. Also, this cost-cutting has not adversely

affected quality since peanuts must still meet the Outgoing Quality Regulation.

Elimination of the regulatory provision has allowed the Committee to reduce its non-headquarters staff from seven to one compliance officer in each of the three production areas and reduce the current "fieldmen" staffing costs to zero. The compliance officers are conducting compliance audits of Agreement signers similar to AMS approved non-signer program compliance plan procedures, where AMS Compliance Staff auditors check non-signers' records. A revised 1997–98 compliance plan from the Committee includes these new procedures. AMS believes this will continue to assure compliance under the Agreement.

The non-signer regulation contains no similar requirements for inspection and approval of such facilities, so no change is needed to it.

Outgoing Regulations

The Committee unanimously recommended that § 998.200(a) be amended to provide that minimum grade requirements for lots of "splits" (the separated halves of peanut kernels) be modified to correspond with "United States Standards For Grades Of: (1) Cleaned Virginia Type Peanuts In The Shell; or (2) Shelled Runner Type Peanuts; or (3) Shelled Spanish Type Peanuts; or (4) Shelled Virginia Type Peanuts" (7 CFR part 51: Sections 51.1235–1242; 51.2710-2721; 51.2730–2741; and 51.2750–2763, respectively). The increase to 2.00 percent from the prior 1.50 percent for unshelled peanuts and damaged kernels was needed to provide consistency with the grade standards. Under the former regulation, a handler could have had a lot of peanuts which met U.S. Grade Standards for U.S. Splits, but failed to meet Agreement requirements for edible quality. It was initially expected that this change might reduce the number of lots needing remilling to meet outgoing quality requirements by less than 10 percent if it was an average year. But the 1997 crop has been stressed by drought conditions and the industry in virtually all peanut producing States has expressed having some problems with quality. Thus, this change is now expected to reduce handlers' need to remill by more than 10 percent during the 1997 crop year, saving an estimated $30 on each ton not needing to be remilled.

The only comment received concerning the IFR, filed by the Committee, dealt with § 998.200(a). The Committee urged that portions of Table 2 INDEMNIFIABLE GRADES, which had been removed by the IFR, be restored by adding them to the MAXIMUM LIMITATIONS table. The IFR modification inadvertently eliminated all nine of the INDEMNIFIABLE GRADE categories. The Committee said its intent was to cause all edible grade categories of peanuts to be eligible for indemnification, not to eliminate any grade categories. Three of the grade categories—Runner with splits, Virginia with splits, and Spanish and Valencia with splits—are not included in the U.S. grade standards for peanuts. "Runner with splits" exists under the American Peanut Shellers Association's specifications but not the other categories. Therefore, the three not included in the grade standards need to be restored, for convenient use by the peanut industry, since such peanuts still have a domestic market niche. Federal Government Commodity Procurement Program, Farm Service Agency's Commodity Operations Division and many commercial firms had used these grade categories in contract specifications to purchase such peanuts. Also, to be consistent with the other maximum tolerances in the "Unshelled peanuts and damaged kernels" column and the "Unshelled peanuts and damaged kernels and minor defects" column, the percentage tolerances for the three restored categories need to be relaxed to 1.50 percent from 1.25 and to 2.50 percent from 2.00, respectively. Therefore, the three "* * * with splits" type and grade categories and their relaxed tolerances need to be incorporated into the MAXIMUM LIMITATION table in § 998.200(a) and § 997.30(a). This simplifies grade requirements by having only one set of quality requirements for human consumption use. The Department agrees with the comment and includes the changes in this finalization of the IFR. This relaxation in tolerances will reduce the number of lots that need to be reconditioned to meet outgoing quality requirements. This will save signer handlers reconditioning and storage costs.

Similar changes are made to the corresponding § 997.30(a) of the non-signer regulation, with proportional savings on such handlers' much smaller volume.

The Committee unanimously recommended that § 998.200(h)(1) be amended to allow lots of peanuts which fail edible quality requirements, due to excessive fall through, to be custom blanched. However, such lots will have to be certified as meeting minimum "fall through" requirements after blanching. This finalization continues the elimination of the former requirement that prior to movement of such peanuts, handlers had to submit a form to the Committee and receive authorization for movement and blanching of each such lot.

Section 997.40(d) of the non-signer regulation currently does not require such handlers to submit a request to the Department and receive authorization for movement and blanching of each such lot. Therefore, no similar change to that provision is needed. However, this finalization continues the IFR's amendment which added "fall through" to the category of items allowed in the first and third sentences.

The Committee also unanimously recommended a further change to paragraph (h), specifically that subparagraphs (h)(1) and (h)(2) be further amended to provide that reject peanuts may be placed in suitable containers acceptable to the Committee. The current requirement specifies "bagged", which refers to the older standard-sized burlap bags, which hold approximately 110 pounds. It does not include the many newer and more efficient containers which are easier to handle such as tote bags, corrugated containers (including those with capacities of over a ton), Super Sacks, and other various company containers used by individual peanut product manufacturers. This finalization will continue the IFR's change which allowed handlers to use more efficient containers or those desired by their customers. For purposes of this provision, most any container that handlers use will be considered suitable.

Section 997.40(c) of the non-signer regulation previously provided for "in bulk or bags or other suitable containers." This finalization continues the IFR's change to make it consistent with the Agreement's amended regulation, by removing the words "in bulk or." The same applies to paragraphs (d) and (e) which were amended by removing the word "bagged" and replacing it with the words "placed in suitable containers."

The Committee also unanimously recommended that § 998.200 Outgoing quality regulation and § 998.300 Terms and conditions of indemnification * * * be amended to make all lots of edible quality peanuts indemnifiable, for freight reimbursement, when rejected on appeal after being certified "negative" as to aflatoxin. This finalization continues the IFR's changes to provisions specified in § 998.300, making product claim lots of edible quality peanuts also indemnifiable. This involves lots where a handler sustained a loss as a result of a buyer withholding

from human consumption any or all of the product made from a lot of peanuts which had been determined to be unwholesome due to aflatoxin after such lot had originally been certified "negative" as to aflatoxin. This change provided consistency by treating all edible quality peanuts equally, whether appeal claims or product claims. Although these changes have further reduced costs and promoted uniformity in the handling of indemnification of all edible quality peanuts, there is no way to accurately quantify how much these reductions have been, because the savings are different for each handler. However, the total savings are expected to be a minor fraction of the projected approximately $350,000 total 1997 crop indemnification costs.

The non-signer enabling legislation does not provide authority for indemnification. Therefore, no similar change was needed in the non-signer regulation.

The Committee further unanimously recommended that § 998.200(h)(3) be amended to provide that peanuts which have been certified as meeting minimum grade requirements specified in § 998.200(a)(1), but fail to meet requirements for aflatoxin, may be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. After roasting, such peanuts must be sampled and assayed for aflatoxin content but do not have to be re-sampled and analyzed for grade again. This simplified process was recommended by the Committee and issued in the IFR by the Department. Prior to the IFR, such blanched peanuts, after certification, were often returned to the blancher for additional heating. This finalization continues the IFR's favorable effects of not having to remove the blanched peanuts short of the complete roasting process for sampling and aflatoxin analysis, and then running them back through the blancher again. This added costs to the roasting process and usually caused additional, unintentional damage due to the extra handling of the kernels. Also, the roasting enhances the blanching efforts to eliminate aflatoxin, thus improving the wholesomeness, quality and value of such shelled peanuts. The savings involved in blanching and roasting in one step may often outweigh the approximately $40 per hour costs of having an inspector present during this process to maintain needed positive lot identification. Any residual peanuts, excluding skins and hearts, resulting from this roasting process, must be red tagged and disposed of to inedible peanut outlets. The same factors apply to § 997.40(d) of the non-signer regulation.

This finalization continues the IFR's provision that unchanged portions of the incoming and outgoing regulations that were in effect for 1996 and subsequent crop peanuts will remain in effect for 1997 and subsequent crop peanuts.

An interim final rule concerning this action was published in the **Federal Register** on January 16, 1998 (63 FR 2846). A 60-day comment period, which ended on March 17, 1998, was provided to allow interested persons to respond to the interim final rule. One comment was received during the comment period. That comment was discussed earlier in this document, as a part of the discussion of changes in the regulations.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 27 signatory and 30 non-signatory peanut handlers who are currently subject to regulations under the Agreement and non-signer program respectively and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signers, and most of the producers may be classified as small entities. This action will be favorable to the industry by tending to improve efficiency, reduce costs, and increase returns.

This finalization will continue the IFR's relaxations to handling regulations by simplifying requirements; thus, enabling handlers, both large and small, to cut costs and more efficiently handle their peanut supplies, without jeopardizing safeguard requirements in the current regulations.

The relaxations included:

1. The elimination of the requirement for inspection and approval of farmers stock storage and handling facilities has saved approximately $450,000 by eliminating the positions of the seven fieldmen, who had performed this activity through last crop year. Handlers contended they were already paying their own employees to do this and that the duplicate cost should be eliminated;

2. Relaxing the minimum grade requirements for "splits" to correspond with U.S. grade standards will likely reduce the number of lots which need to be remilled during the 1997 crop by 10 percent, due to stressed growing conditions in virtually all areas. This should result in significant reductions in handlers' costs;

3. Another IFR relaxation provided that all lots of edible quality peanuts, whether appeal claims or product claims, are eligible for Agreement signer handlers' indemnification benefits. Thus, such handlers with product claim lots are also eligible for reimbursement of most transportation expenses on such lots. Such additional reimbursement was not publicly quantified by the Committee, but is a minor portion of its projected $350,000 total 1997 crop indemnification costs;

4. The IFR's relaxed provision to allow lots which fail edible quality requirements, due to excessive fall through, to be custom blanched eliminates the previous requirement that handlers had to submit a form to the Committee and receive authorization for movement and blanching of each such lot. This relaxation has eliminated unnecessary paperwork and saved time for all affected handlers;

5. Relaxing the previous requirement that peanuts be "bagged" (i.e., placed only in older standard-size burlap bags holding approximately 110 pounds) by allowing the use of suitable containers, which permits use of the many newer and more efficient containers or those desired by handlers' customers; and

6. Another relaxation allowed peanuts which had been certified as meeting the minimum grade requirements, but failed to meet requirements for aflatoxin, to be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. This simplified process eliminated running such peanuts back through the blancher again for roasting, which doubled the processing costs and tended to lower the peanuts' quality and value by causing additional damage to

them. Such savings may outweigh the approximately $40 per hour expense of having an inspector present to maintain needed positive lot identification.

The IFR's relaxed requirements have significantly improved efficiency and enabled the Committee to cut in half its 1997 crop year administrative budget and assessment rate charged Agreement signer and non-signer handlers to finance their respective programs. The rate of assessment for the 1996 crop year was $0.70 per net ton of assessable peanuts. The rate for the 1997 crop year was reduced to $0.35 per net ton by an earlier rulemaking action, as published in the September 17, 1997, issue of the **Federal Register** (62 FR 48749). This lower rate saved regulated domestic handlers approximately $500,000 in administrative assessment costs which, to a great extent, was made possible by the IFR's relaxation actions.

The finalization continues the IFR's specifics of each change and why they tended to increase returns to handlers, which were covered in detail near the beginning of this rule under the discussion starting with "Incoming regulation." These IFR changes relaxed requirements on regulated domestic peanut handlers, improved their efficiency and cut costs, and benefitted the peanut industry, manufacturers, and consumers, while still assuring the quality of all peanuts in domestic human consumption markets.

As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. Consistent with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Committee unanimously recommended greatly reducing reporting and recordkeeping requirements on both large and small peanut handlers regulated under the Agreement. It has eliminated 20 of the 21 Committee forms previously approved by the Office of Management and Budget (OMB) that might accompany peanut shipments, to only require the use of the Form PAC–1. The PAC–1 is mailed to handlers on a monthly basis and is used to report receipts and acquisitions of farmers stock peanuts and to remit assessments. It is estimated that this has eliminated 95 percent (or about 2,291 hours and assuming $10 per hour, saving respondents nearly $23,000 in costs) of the previous estimated 2,417 hours of total reporting burden on Agreement signers, including small businesses, and a proportional reduction in non-signers' smaller reporting burdens. A notice of the proposed revision was published in the July 31, 1997, issue of the **Federal Register** (62 FR 41021). Sixty days were allowed for comments. One comment was received, from the American Peanut Shellers Association, supporting the reduced burdens. This information collection package was approved by the OMB under OMB Control No. 0581–0067.

In addition, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this finalization.

Further, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the April 29–30, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on the issues. The 18-member Committee is composed of an equal number of peanut handlers and producers, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Regulations, Indemnification and Quality Subcommittee and "New Concept" Subcommittee met on January 28, 1997, and discussed these issues in detail. On March 25, 1997, the Committee held an informational meeting to hear a presentation by the National Peanut Council's Peanut Industry Revitalization Project Steering Committee and discuss the issues and then take back to discuss with their industry peers, before voting on those issues at the April Committee meeting. The Committee's Administrative Budget Subcommittee also met March 25, 1997, to discuss budget recommendations. All of these meetings were public meetings and both large and small entities were able to participate and express their views.

An objective of the two domestic programs is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About half of the domestic commercial handlers, handling approximately 95 percent of the crop volume, have signed the Agreement. The other half are non-signatory handlers handling the remaining 5 percent of the domestic production.

Under these regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an administrative assessment levied on handlers in the respective programs.

The 18-member Committee, which is composed of an equal number of peanut producers and handlers, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one crop year to the next which begins July 1. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department evaluates Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Section 608b of the Act was amended in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. Section 608b was further amended in 1993 to impose similar requirements regarding administrative assessments. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Thus, the Committee's recommended changes to the Agreement signers' regulations, as finalized in this rule, also are finalized for the non-signers' regulations. This finalization of an IFR identifies the corresponding change to the non-signers' regulations for each change to the Agreement regulations.

According to the Committee, the domestic peanut industry has been undergoing a period of great change. The Committee bases its view, in part, on findings in a recent study entitled "United States Peanut Industry Revitalization Project" developed by the National Peanut Council and the Department's Agricultural Research Service (May 1996).

According to that study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because: (1) Per capita peanut consumption has steadily declined a total of 11 percent; (2) harvested acreage has declined 25 percent; (3) production has declined 30 percent and farm value dropped 29 percent; and (4) imports of peanuts and peanut products have increased from insignificant quantities to 48,736 raw farmer stock tons in 1995, and to 55,536 in 1996.

That study points to recent increases in the duty-free import quota for raw peanuts due to the North American

Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Under Section 22 import quota provisions, the volume of U.S. peanut imports had been limited to about 2.3 million pounds, in-shell basis, annually. Thus, imports have historically represented about one-tenth of 1 percent of U.S. food use of peanuts. Under NAFTA, Mexico has been granted a minimum access level for duty-free entry of peanuts of about 10 million pounds, in-shell basis. This level will increase about 3 percent annually through 2008, when quantitative limits will cease. Mexico's 1998 duty-free quota will total 8.4 million pounds. Under GATT, the 1997 quota was 86.8 million pounds, has increased to 96.8 million pounds (Argentina 81.3 & all other 15.5) in 1998, and can grow to about 125 million pounds in the year 2000.

The study also projects that farm production costs and revenue will be equal by the year 2000, as will handler costs and revenue, leaving no profit.

In addition, the modification of the Federal farm peanut poundage quota regulations implemented under the Agricultural Market Transition Act of 1996 (1996 Act) has resulted in the domestic industry undergoing significant changes scheduled to continue through the year 2002. The peanut support price has been reduced from $670 per ton in 1995 to $610 per ton through 2002. The USDA's Farm Service Agency final rule implementing the Act was published May 9, 1997, (62 FR 25433). That rule indicates that economic impacts of the 1996 Act include expected reductions in domestic peanut producers' revenue of $1.25 billion from 1996 through 2002. Quota lease holders could absorb a loss of about $40 million annually because of reduced leasing rates due to the lower peanut price support. Also, capitalized value of quotas could decline $200 to $300 million, thus reducing land values and the tax base of rural communities.

The Committee agrees that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry.

World supply and demand are less important for peanuts than most U.S. farm commodities. Much of the world peanut production is for non-food uses, although production for food use might increase a little if there were no U.S. import restrictions. Also, import quotas, though increased recently, still are set at relatively low levels.

Domestic peanut production in 1996 was approximately 3.66 billion pounds, with a farm value of slightly under $1 billion. The Department reports U.S. peanut production in 1997 totaled 3.54 billion pounds, down 3 percent from the 1996 crop. Harvested acreage for 1997 was 1.41 million acres, up 2 percent from 1996. USDA estimates that acreage will increase by 3 percent in 1998. The U.S. yield per harvested acre for 1997 averaged 2,507 pounds, down 146 pounds from 1996. The 1997 marketing year average price received by farmers for peanuts is 26.4 cents per pound, down 1.7 cents from 1996. The value of peanut production for the 1997 crop is reported as $932 million, down 9 percent from a year earlier.

Production is expected to gradually increase to the year 2002 because domestic food use is projected to rise about 1.5 percent annually. Imports are expected to remain at a relatively small percentage of total U.S. peanut use.

Estimated exports of 750 million pounds in Marketing Year (MY) 1997 are below the average for the prior 3 years, but are 11 percent more than a year earlier. Peanut oil prices are expected to average about 38 cents a pound of oil in MY 1997, 6 percent lower than MY 1996 as vegetable oil supplies return to more normal levels. Peanut meal prices for MY 1997 are expected to decline to $175 a ton, down 25 percent from MY 1996 because of larger soybean meal supplies.

The 28.5 cents per pound season average price of farmer stock peanuts for MY 1997 was the lowest price of the last two years and reflects the adjustment to the reduced quota support level and an unexpected change in the proportions of quota and additionals in 1997 production. Average prices to growers are expected to increase, but will remain below 1995 prices because of the lower quota price support level. The value of farm production is expected to gradually rise and surpass that of 1995 by 2000/01.

The IFR changes of the Agreement's Incoming and Outgoing regulations for 1997 and subsequent crop peanuts being finalized in this rule were recommended by the Committee at its April 29–30, 1997, public meeting.

Alternative Actions Considered

Although the Committee could have recommended no changes or less changes to the current regulations, it unanimously concluded that those were not satisfactory solutions. It believes that all possible simplification and cost-cutting should be done and that these regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. Newer, high technology milling and blanching equipment enable handlers to recondition failing peanut lots that could not have been economically reconditioned when the regulations were first promulgated. Therefore, it is no longer necessary to impose restrictions that hinder the efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, the Committee believes this finalization will tend to improve the returns to growers and handlers, while still maintaining consumer safeguard provisions in the current domestic regulations, because all peanuts intended for human consumption must still be inspected and certified acceptable for such use.

After review of the recommendations and comment of the Committee, the Department concurs that this finalization of the changes will tend to improve returns to the industry and be in the public interest. Expected benefits of the changes were covered in the previous discussion of each individual change.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) information collection requirements that are contained in this rule have been previously approved by the OMB and have been assigned OMB Nos. 0581–0067 (for Agreement signers) and 0581–0163 (for non-signers).

One comment concerning the IFR was received during the 60-day comment period. That comment was discussed earlier in this document, as a part of the discussion of changes in the regulations.

After consideration of all relevant material presented, including the Committee's recommendations and comment, and other information, it is found that finalizing the IFR with changes, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this final rule adopts with appropriate changes the provisions of the interim final rule; based upon a comment received, the provisions of the interim final rule have been modified; this rule relaxes several provisions of the regulations; and the end of the 1997–98 crop year is June 30, 1998.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published in the **Federal Register** at 63 FR 2846 on January 16, 1998, is adopted as a final rule with the following changes:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 997.30, in paragraph (a)(1), the "Maximum Limitations" table is revised to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

MAXIMUM LIMITATIONS

[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 15/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00% 17/64 inch round screen.	3.00% 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00% 17/64 inch round screen.	3.00% 15/64 × 1 inch slot screen.	4.00% Both screens.	.10	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00% 15/64 inch round screen.	2.00% 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Lots of "splits"							
Runner (not more than 4% sound round whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish & Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 15/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00%; Both screens.	.20	9.00

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PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 998.200, in paragraph (a)(1) the "Maximum Limitation" table is revised to read as follows:

§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.

* * * * *

MAXIMUM LIMITATIONS

[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	300%; 17/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00%	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.10	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 16/64 inch round screen.	2.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00

* * * * *

Dated: June 12, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–16269 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–71–AD; Amendment 39–10601; AD 98–13–13]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries Ltd. Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes. This amendment requires revising the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: July 23, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes was published in the **Federal Register** on April 9, 1998 (63 FR 17346). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power

levers below the flight idle stop while the airplane is in flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 Mitsubishi Model YS–11 and YS–11A series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600; or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–13 Mitsubishi Heavy Industries, Ltd. [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Amendment 39–10601. Docket 97–NM–71–AD.

Applicability: All Model YS–11 and YS–11A –200, –300, –500, and –600 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Warning: While the airplane is airborne, the LOW STOP lever (flight fine pitch stop) should not be placed in the GROUND position for any reason. Placing the LOW STOP lever in the GROUND position in flight may lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 23, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16054 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–25–AD; Amendment 39–10603; AD 98–13–15]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes, that requires repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. This amendment also requires installation of cupwashers under the vertical seams of the upper fairings. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority.

The actions specified by this AD are intended to prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

EFFECTIVE DATE: July 23, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes was published in the **Federal Register** on April 20, 1998 (63 FR 19427). That action proposed to require repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. That action also proposed to require installation of cupwashers under the vertical seams of the upper fairings.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 239 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $28,680, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–15 Dassault Aviation: Amendment 39–10603. Docket 98–NM–25–AD.

Applicability: All Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Chapter 53–50–0, dated May 1996, of Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997 (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes); or Chapter 53, Procedure 731–3 of Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996 (for Model Mystere-Falcon 200 series airplanes); as applicable.

(1) Perform an inspection to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the screws. If any discrepancy is found, prior to further flight, repair. If a repair is not specified in the applicable maintenance manual, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 6 months or 300 flight hours, whichever occurs first.

(2) Install cupwashers under the vertical seams of the upper fairings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–092–021(B), dated April 24, 1996; and 96–246–022(B), dated November 6, 1996.

(d) This amendment becomes effective on July 23, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16052 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–156–AD; Amendment 39–10600; AD 98–13–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. This action requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. This amendment is prompted by reports of loose and missing fasteners due to incorrect installation. The actions specified in this AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report from an operator indicating that, on a Boeing Model 737–400 series airplane, during rollout after landing, the captain's right rudder pedal moved to the full travel position when it was pushed. The pedal failed to return to its normal position after it was released even though the rudder remained at the neutral position. Consequently, the first officer used his rudder pedals to control the rudder and the nose wheel steering. Investigation revealed that the forward end of the pushrod on the right rudder pedal was not connected to the rudder pedal assembly. The nut and washer of the pushrod were found in the lower forward compartment. This airplane had accumulated 17,600 total flight hours and 7,900 total flight cycles. A second operator reported that a pilot felt a loose rudder pedal. Investigation revealed that the fastener connecting the pushrod to the rudder pedal assembly was loose.

In addition, on a Boeing Model 737–500 series airplane, a nut that connects the pushrod to the rudder pedal assembly was loose. This airplane had accumulated 3,012 total flight hours and 2,658 total flight cycles. Maintenance inspections of 130 in-service Boeing Model 737 series airplanes revealed four other loose fasteners.

The cause of the loose and missing nuts and bolts has been attributed to incorrect installation of the fasteners that connect the pushrods to the rudder pedal assemblies during manufacture. If the nut is not installed correctly, the bolt can fall out or may be able to move far enough to touch the opposite rudder pedal assembly. These conditions, if not corrected, could result in potential loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane.

The rudder pedal assemblies on certain Boeing Model 747, 757, 767, and 777 series airplanes are similar in design to those on the affected Model 737 series airplanes. Therefore, the rudder pedal assemblies on all of these models may have been installed incorrectly. Consequently, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, and 777–27A0029, all dated March 26, 1998. These alert service bulletins describe procedures for a one-time inspection to detect discrepancies of the fasteners (nuts, bolts, and washers) that connect the forward ends of the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. Corrective actions include tightening nuts and bolts to specified torque limits, installing missing fasteners, and replacing incorrectly installed fasteners with new fasteners.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This AD requires accomplishment of the actions specified in the alert service bulletins described previously. This AD also requires that operators report results of findings of discrepancies to the FAA and to Boeing.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–156–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–12 Boeing: Amendment 39–10600. Docket 98–NM–156–AD.

Applicability: Model 737, 747, 757, 767, and 777 series airplanes; as listed in Boeing Alert Service Bulletins 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, and 777–27A0029; all dated March 26, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect discrepancies of the fasteners that connect the forward ends of the pushrods to the rudder pedal assemblies; in accordance with Boeing Alert Service Bulletin 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, or 777–27A0029, all dated March 26, 1998, as applicable.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with the applicable alert service bulletin.

(b) Submit a report of inspection findings (discrepant findings only) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1161; and to the Boeing Commercial Airplane Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancy found, the airplane serial number, and the total number of landings and flight hours accumulated on the airplane. Discrepant findings include, but are not limited to, loose or missing fasteners, inadequately torqued fasteners, and fasteners incorrectly installed on the pedal assemblies or pushrod bearing surfaces. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with:

- Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998;
- Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998;
- Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998;
- Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998; or
- Boeing Alert Service Bulletin 777–27A0029, dated March 26, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–

2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 6, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16047 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 204, 318, 352a, and 383

Administrative Corrections

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document corrects administrative errors in Department of Defense's published in title 32 of the Code of Federal Regulations.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects

32 CFR Part 204

Accounting, Armed forces, Government property.

32 CFR Part 318

Privacy.

32 CFR Part 352a and 383

Organization and functions.

Under the authority of 10 U.S.C. 301, title 32 chapter I, amended as follows:

PART 204—[AMENDED]

1. The authority citation for 32 CFR part 204 continues to read as follows:

Authority: 31 U.S.C. 483a.

§§ 204.4, 204.6 and 204.8 [Amended]

2. Footnotes 2–4 in § 204.4(c)(1)(vii) though (ix) and footnotes 5 through 8 in § 204.6(a)(1), (a)(4) and (b)(1)(v) and footnote 9 in § 204.8

PART 318—[AMENDED]

1. The authority citation for 32 CFR part 318 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 218.9 [Amended]

2. Section 318.9 is amended by redesignating paragraph "(d)" as paragraph "(c)"

PART 352A—[AMENDED]

1. The authority citation for 32 CFR part 352a continues to read as follows:

Authority: 10 U.S.C. 113.

§ 352a.4 [Amended]

2. Section 352a.4 is amended by redesignating the second paragraph "(c)" as paragraph "(d)"

PART 383a—[AMENDED]

1. The authority citation for 32 CFR part 383a continues to read as follows:

Authority: 10 U.S.C. 136.

§ 238a.4 [Amended]

2. Section 383a.4 is amended by redesignating the second paragraph "(b)" as paragraph "(c)".

Dated: June 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16174 Filed 6–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–029]

Drawbridge Operating Regulation; Ouachita River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad vertical lift bridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998. This temporary deviation is issued to allow for the replacement of rail expansion joints on the vertical lift span.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad vertical lift span bridge across the Ouachita River near Riverton, Caldwell Parish, Louisiana has a vertical clearance of 7 feet above mean high water, elevation 71 feet Mean Sea Level, in the closed-to-navigation position and 57 feet in the open to navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Union Pacific Railroad requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing the rail expansion joints on the bridge. This work is essential for the continued safe operation of the vertical lift span.

This District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad vertical lift span bridge across the Ouachita River, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998.

Dated: June 10, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 98–16237 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Savannah 98–034]

RIN Savannah 98–034]

Safety Zone; Skull Creek, Hilton Head Island, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Skull Creek near Hudson's Seafood on Hilton Head Island, South Carolina for a fireworks display on July 4, 1998. The zone is needed to protect personnel and property associated with the storage, preparation, and lauchning of fireworks. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: These regulations are effective from 9 p.m. Eastern Daylight Time (EDT) to 10 p.m. on July 4, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG Burt Lahn, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The events requiring this regulation will be from 9 p.m. EDT to 10 p.m. on July 4, 1998. The town of Hilton Head Island has scheduled a fireworks display for the July 4th Celebration lasting approximately 1 hour.

The safety zone is for all waters around the fireworks barge on Skull Creek near Hudson's Seafood on Hilton Head Island, South Carolina and will encompass a 150 yard radius around the fireworks barge at an approximate position of 32°13'09" N, 80°45'10" W.

The Captain of the Port has restricted vessel operations in this safety zone. No persons or vessels will be allowed to enter or operate within this zone, except as may be authorized by the Captain of the Port, Savannah, Georgia. This regulation is issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of all of part 165.

In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 day after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect personnel and property involved, as information regarding the event was only recently received.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Cost Guard must consider whether this rule will have a significant economic impact of a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise quality as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have significant economic impact upon a substantial number of small entities because the regulations will be in effect in a limited area for approximately 1 hour.

Collection of Information

This rule contains no collection of information requirements under the Parperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this temporary rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.T07–034 is added to read as follows:

§ 165.T07–034 Safety Zone; Skull Creek, Hilton Head Island, SC.

(a) *Location:* The following area is a safety zone: All waters within a 150 yard radius around the fireworks barge at an approximate position of 32°13'09" N, 080°45'10" W. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The "representative of the Captain of the Port" is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be abroad either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) Coast Guard Group Charleston will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community to the safety zone and restriction imposed.

(c) *Effective dates.* This section is effective from 9 p.m. to 10 p.m. EDT on July 4, 1998.

Dated: June 1, 1998.

R.E. Seebald,

U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 98–16238 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6111–4]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for some of the information collections associated with National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA).

EFFECTIVE DATE: This final rule is effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Environmental Protection Agency, Office of Water, Permits Division (4203), 401 M. Street, SW, Washington, D.C. 20460, Phone: 202–260–6814.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to add an OMB control number to reflect the fact that EPA shifted the burden associated with specific regulatory provisions from one ICR to another. The affected regulations are codified at 40 Code of Federal Regulations (CFR) § 122.44(g) and (i). EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The recordkeeping and monitoring requirements associated with the storm water program were approved in 1992 in a revision to the Discharge Monitoring Report ICR (OMB No. 2040–0004). The burden for the specific storm water requirements found in 40 CFR sections 122.44(i) and (ii) was subsequently removed from OMB No. 2040–0004 and incorporated into the NPDES Compliance Assessment/Certification ICR (OMB No. 2040–0110) in 1996. The Discharge Monitoring Report ICR and the NPDES Compliance Assessment/Certification ICR were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 20, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 10, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for Part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by revising entry "122.44(g),(i)" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
. . . . .	
122.44(g), (i)	2040–0004, 2040–0170, 2040–0110
. . . . .	

[FR Doc. 98–16085 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA107–4066a; FRL–6111–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants Allegheny County, PA; Removal of Final Rule Pertaining to the Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule.

SUMMARY: On April 10, 1998, EPA published (63 FR 17683) approval of the municipal solid waste (MSW) landfill 111(d) plan submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County for the purpose of controlling landfill gas emissions from existing MSW landfills. Approval of the 111(d) plan would have established certain emission limitations for landfill gas emissions, including operating, reporting and recordkeeping requirements. The intended effect of the action was to implement enforceable emission reductions in MSW landfill gas, which contain volatile organic

compounds (VOCs), other organic compounds, methane, and hazardous air pollutants.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (63 FR 17683). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (63 FR 17683, April 10, 1998). The final rulemaking action would be withdrawn by publishing a document announcing withdrawal of this action.

Adverse comments were submitted to EPA within the prescribed comment period. Therefore, EPA is amending 40 CFR part 62, subpart NN, by removing the April 10, 1998 final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 566–2190 or by e-mail at topsale.james@epamail.gov.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: June 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§§ 62.9630—62.9632 [Removed]

2. The undesignated centerheading and §§ 62.9630 through 62.9632 are removed.

[FR Doc. 98–16254 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1644

Disclosure of Case Information

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a provision in the Legal Services Corporation's (LSC or Corporation) FY 1998 appropriations act which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases their attorneys file in court. The case information that is provided to the Corporation will be subject to disclosure under the Freedom of Information Act.

DATES: This rule is effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: This final rule is intended to implement Section 505 of the Corporation's FY 1998 appropriations act, which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases filed in court by attorneys employed by recipients. See Public Law 105–119, 111 Stat. 2440. The Corporation issued a program letter on December 9, 1997, providing recipients with guidance on compliance with Section 505 until such time as a rule could be promulgated by the Corporation. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to implement the case disclosure requirement. After deliberation, the Committee adopted a proposed rule that was published in the **Federal Register** for public comment. See 63 FR 8387 (Feb. 19, 1998).

The Corporation received 4 comments on the proposed rule. The comments agreed that, for the most part, the proposed rule accurately reflected legislative intent. For those provisions of the rule that the commenters believed went beyond the intent of Section 505, suggestions were made for changes. Several comments also asked for clarification on certain issues either in the commentary or the text of the final rule. The Committee met on April 5, 1998, to consider public comment. After making revisions to the proposed rule, the Committee recommended the rule as revised to the Board as a final rule. The Board adopted the rule as recommended by the Committee on April 6, 1998, for publication as a final rule in the **Federal Register**.

A section-by-section analysis and discussion of changes made from the proposed rule is provided below.

Section-by-Section Analysis

Section 1644.1 Purpose

The purpose section states that the rule is intended to ensure that recipients disclose certain required information to the public and to the Corporation on cases filed in court by their attorneys.

Section 1644.2 Definitions

The case disclosure provision requires that recipients disclose certain information, among which is the cause of action, for each case filed in court by their attorneys. To clarify this requirement, this final rule includes three definitions. Paragraph (a) of § 1644.2 defines to disclose the cause of action. The term means to provide a sufficient description of a particular case to indicate the principal nature of the case. Examples would include: breach of warranty, bankruptcy, divorce, domestic violence, petition to quiet title, action to recover property, and employment discrimination action.

Paragraph (b) clarifies the type of recipient subject to the case disclosure requirement. Recipient is defined as an entity that receives funds under Sec. 1006(a)(1)(A) of the LSC Act, 42 U.S.C. 2996e(a)(1)(A), that is, a basic field recipient which provides direct legal assistance to the poor. Although Section 505 does not specifically apply to subrecipients, as a matter of policy, the proposed rule extended the case disclosure requirement to subrecipients which provide direct legal representation to eligible clients.

The comments generally disagreed with this policy and urged the Corporation to exclude subrecipients from the reach of the requirement or, at least, limit the application of the requirement to activities under an LSC subgrant. In addition, comments pointed out that the interplay of the discussion of this issue in the preamble and the language in the rule itself created confusion as to whether the rule was intended to apply to all cases filed by subrecipients or only to cases filed by subrecipients that are funded under a subgrant.

The Board revised the definition of recipient and the applicability provisions in § 1644.3 [1] in order to clarify the intended application of the case disclosure requirement to subrecipients. It was the intent of the

[1] The section numbers for §§ 1644.3 and 1644.4 have been reversed from the proposed rule.

proposed rule to apply the requirement to cases funded under subgrants provided for the direct legal assistance to the poor, except for PAI subgrants. The language in the text and preamble, however, did not make this clear. The revised language better states the intent and also clarifies that the disclosure requirement does not apply to a subrecipient's non-LSC funded activities. This means that subrecipients are required to disclose information only for cases funded by their LSC subgrants. The final rule thus ensures that information will be available to the public regarding all cases filed by recipients and any cases filed by subrecipients that are funded under an LSC subgrant for the direct representation of eligible clients, except for PAI subgrants.

Paragraph (c) defines the term attorney, for the purposes of this part, to mean any attorney who is employed by a recipient. This would include attorneys employed as regular or contract employees, regardless of whether such attorneys are employed full-time or part-time. One comment asked for additional language in the definition that would clarify that attorney does not include any private attorney who, under the recipient's PAI program, receives compensation from a recipient under the terms of a contract or judicare arrangement, or who undertakes representation of eligible clients on a pro bono basis. Although the Board agreed with the substance of the comment, it did not revise the definition of attorney. Instead, it added § 1644.3(b) to the rule, which provides that the case disclosure requirement does not apply to private attorneys who provide legal assistance as part of a recipient's PAI activities.

Section 1644.3 Applicability

This section, which has been renumbered, clarifies the scope of the case disclosure requirement. Technical and clarifying revisions were made to this section by the Board, and language was added to clarify the applicability of this rule to subrecipients, as discussed under § 1644.2 above. Subparagraph (a)(1) clarifies that the disclosure requirement is limited to cases filed on behalf of plaintiffs and petitioners. This is consistent with the language of Section 505, which requires case information about "each case filed by its [a recipient's] attorneys." This language clearly applies to "each case" filed, not to individual filings in a particular case. Thus, the case disclosure requirement does not require updates on the status of cases for which information has already been filed. In addition, the language of Section 505 refers to cases filed by a recipient attorney. The general understanding of the meaning of filing a case is that it refers to the initiation of a case, such as the filing of a complaint by a plaintiff. Accordingly, disclosure is not required for submissions of pleadings such as an answer or a cross claim on behalf of a defendant in a case that was not initiated by a recipient.

Although the case disclosure requirement normally applies only to the original filing of a case, subparagraph (a)(2) applies the requirement when there is an appeal filed in court by a recipient, the recipient's client is the appellant, and the recipient was not the attorney of record in the case below. The Board revised this provision from the proposed rule to add the requirement that the case be one where the recipient's client is the appellant. This is consistent with § 1644.3(a)(1), which limits the case disclosure requirement to cases filed on behalf of plaintiffs or petitioners.

Subparagraph (a)(3) applies the requirement to a request for judicial review of an administrative action filed in a court of competent jurisdiction. The language of this provision was revised to state more accurately the situation covered by the provision.

Finally, paragraph (b) provides that this rule does not apply to cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614. PAI attorneys are not attorneys employed by recipients; rather, they are generally private attorneys with their own private practices who have been recruited by recipients to provide some legal assistance to eligible clients, either pro bono or on a compensated basis.

Section 1644.4 Case Disclosure Requirement

This section sets out the basic requirements of the case disclosure provision. Paragraph (a) provides that the disclosure requirement applies to each case filed in court by a recipient's attorneys. The preamble to the proposed rule explained that the disclosure requirement does not apply to cases filed by part-time attorneys outside of their employment with the recipient. One comment asked that this clarification be made explicit in the rule. The Board agreed and added language to § 1644.4(a) of the final rule that provides that the rule applies only to cases filed by recipient attorneys "on behalf of a client of the recipient." A similar revision was also made for § 1644.3(a)(1).

Name and address of parties: Subparagraphs 1644.4(a)(1) through (a)(4) list the information a recipient must disclose about applicable cases. First, the name and full address of each party to a case must be disclosed unless one of the two statutory protections discussed below applies. The term "full address" means an address sufficient to contact a party to the case by mail, such as a street address or post office box number with the city, State and zip code. This provision is not intended to require recipients to provide a name and address of a party when they have no knowledge of and cannot reasonably obtain such information. This could occur, for example, when the information is not a matter of public record, the party is not a client of the recipient, and the private attorney for that party refuses to provide the information. However, the recipient must make a reasonable effort to obtain the information.

Pursuant to Section 505, a name or address need not be disclosed if (1) the name or address is protected by an order or rule of court or by State or Federal law, or (2) the recipient's attorney reasonably believes that revealing the information would put the client of the recipient at risk of physical harm. These protections are consistent with the express legislative intent of the purpose and scope of the requirement. The legislative history indicates that Congress intends that the disclosure requirement apply to "the most basic information" about a case which is already public and on file in court records, but does not apply to information, for example, that would risk harm to a person or that is protected by the attorney-client privilege. See 143 Cong. Rec. H 8004–8008 (Sept. 26, 1997).

One comment from an LSC recipient stated that the program receives a grant through the Victims of Crime Act (VOCA), which only funds legal assistance to protect victims of violence. In the view of the recipient, virtually all cases handled under the VOCA grant are likely to come within the physical harm exemption. Accordingly, the recipient asked that the rule include a blanket exemption for cases filed under grants specifically targeted for domestic violence victims.

The Board did not adopt the recommendation. The remedy provided by statute allows individual attorneys to decide for particular cases whether the physical harm exemption applies. Although many of the clients served under the VOCA grant may indeed fall within the physical harm exemption, the Board was not convinced that

virtually all such clients do. Nor was the Board convinced that the burden of making individual judgments for each case is a substantial burden on recipients.

During public consideration of the rule, a question was raised about the rule's policy for protecting relatives of the client, whose physical safety would be put at risk by disclosure of the client's name and address. For example, if the children of the client rather than the client had been threatened with physical harm, could the rule's exemption from disclosing the name and address be applied to protect the children? The Board noted that the statute does not expressly provide protections for any person other than the client of the recipient, but also noted that it is clear from the legislative history of the requirement that Congress did not intend for the requirement to put anyone in harm's way. The Board did not revise the rule, but directed staff to provide guidance for situations where a family member of a client would be put at risk of physical harm. Accordingly, when a recipient's attorney determines that a relative of the client would be put at risk of physical harm by disclosure of the client's name and address, the recipient may withhold the information, but the attorney should keep a record of that determination. This policy is based on the reasonable presumption that if one family member is put at risk by revealing the client's name and address, then it is likely that the client and any other family member who could be found by revealing the information are also at risk. This is especially true in cases where the relative at risk is a child of the client. For other situations where it may not be clear whether the risk-of-harm exception applies, a recipient should consult the Corporation for guidance.

Cause of action: The case disclosure requirement also requires disclosure of the cause of action for any applicable case. This requirement is intended to provide the public and the Corporation with information regarding the nature or types of cases filed in court by legal services attorneys, so that there is a public awareness of how legal services funds are being expended.

Name and address of court/case number: Finally, the case disclosure provision requires disclosure of the name and full address of the court where a case is filed and the case number assigned to the case. *Full address* means an address sufficient to contact the court by U.S. mail.

Paragraph (b) of this section requires recipients to provide their case information to the Corporation in semiannual reports as specified by the Corporation. The Corporation will provide guidance to recipients on how and when to provide the information. This paragraph also clarifies that reports submitted to the Corporation are subject to public disclosure by the Corporation under the Freedom of Information Act (FOIA).

The disclosure requirement in this rule is separate from the FOIA and nothing in this rule is intended to suggest that LSC recipients are subject to the FOIA. They are not. (However, they are subject to other disclosure requirements applicable to recipients in 45 CFR part 1619.) The Corporation, on the other hand, is subject to the FOIA, and this rule requires the Corporation to treat the case information submitted to it by recipients as subject to disclosure under the FOIA.

Paragraph (c) provides that a recipient must make the case information described in paragraph (a) available in written form to any person who requests such information. This rule does not mandate how recipients must maintain the case information for disclosure to the public, except that it must be provided in written form. However maintained, the case information must be made available within a reasonable time after a request is made by any member of the public. Paragraph (c) also permits recipients to charge reasonable mailing and document copying fees.

Comments expressed confusion regarding exactly what information recipients are required to disclose and inquired whether requests would be limited to certain time frames or whether recipients must respond to requests for information in a form different from that maintained by a recipient. For example, a recipient may choose to maintain a list of every case filed after January 1, 1998, in the order in which the cases were filed. If a request asks only for cases dealing with domestic violence, the recipient is not required to prepare another list separating out domestic violence cases. The recipient is only required to provide the list it has compiled, and the requester would have to search the list to find the domestic violence cases. This does not mean that a recipient may not choose to provide the information in different formats; it is just not required to do so by this rule.

In regard to time frames, recipients must disclose the required case information when requested by a member of the public for all cases filed by their attorneys after January 1, 1998, whenever the request is made. This rule does not include any cut-off dates or other specifics on the manner of reporting or disclosing information in the rule. If the Corporation determines that information loses its value after a period of time, so that it does not need to be maintained by recipients, it will provide clear written guidance on the matter.

Another comment asked that disclosure be required only for cases filed after the effective date of this rule if the client refuses to permit disclosure, since the client may have had no prior information about the rule and could not have consented to disclosure as a condition of representation.

The Board did not agree. The Corporation issued a program letter to all recipients on December 9, 1997, clearly stating that the law would be in effect as of January 1, 1998, and that recipients must start implementation of the case disclosure requirements set out in the letter. The letter advised recipients to inform affected clients, prior to filing a lawsuit, of the possible disclosure of the information required by this law.

Section 1644.4(c) provides that a recipient must make its case information available in written form, upon request from any person. One comment asked for clarification as to whether the word *person* includes government agencies, departments or subdivisions, non-profit corporations, public corporations, foreign corporations, or a person outside a program's service area. The term is intended to be all inclusive and is not limited by geography, or by the fact that the requesting person is asking on behalf of an organization or government entity. The legislative history clearly indicates an intent to make the information public to any requester. This is consistent with the interpretation of the terms *person* and *public* in the FOIA. The Board requested that this interpretation be included in this preamble.

Section 1644.5 Recipient Policies and Procedures

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Such procedures could include information regarding how any person may be given access to or be provided with copies of a recipient's case disclosure information. The procedures could also set out the costs for copying or mailing such information.

List of Subjects in 45 CFR part 1644

Grant programs, Legal services, Reporting and recordkeeping.

For reasons set forth in the preamble, LSC amends Chapter XVI of Title 45 by adding part 1644 as follows:

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.
1644.1 Purpose.
1644.2 Definitions.
1644.3 Applicability.
1644.4 Case disclosure requirement.
1644.5 Recipient policies and procedures.

Authority: Pub. L. 105–119, 111 Stat. 2440, Sec. 505; Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

June 15, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–16243 Filed 6–17–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, 392, 395, 396, and 397

[FHWA Docket No. FHWA–97–2328; MC–97–3]

RIN 2125–AD72

Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule to remove, amend, and redesignate certain provisions of the Federal Motor Carrier Safety Regulations concerning financial responsibility; general applicability and definitions; accident recordkeeping requirements; qualifications of drivers; driving of commercial motor vehicles; hours of service of drivers; inspection, repair, and maintenance; and the transportation of hazardous materials. The agency considers many of these regulations to be obsolete, redundant, unnecessary, ineffective, or burdensome. Others are more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. This action is consistent with the FHWA's Zero Base Regulatory Review and the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

As part of its Zero Base Regulatory Review Program, the FHWA published a notice of proposed rulemaking in the **Federal Register** on January 27, 1997 (62 FR 3855) to request comment on an extensive list of changes proposed concerning Parts 387, 390, 391, 392, 395, 396, and 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency had implemented an earlier set of changes to the FMCSRs on November 23, 1994 (59 FR 60319) after receiving comments to a notice of proposed rulemaking published on January 10, 1994 (59 FR 1366). The agency had also published a final rule on July 28, 1995 (60 FR 38739) making technical corrections to keep the FMCSRs accurate and up to date.

Discussion of Comments

The FHWA extended the comment period for the NPRM on March 27, 1997 (62 FR 14662). Comments to the docket were accepted through May 12, 1997.

Comments were received from 55 organizations, companies, and individuals as follows:

Ten States (State of California Business, Transportation, and Housing Agency; Colorado Department of Public

Safety; State of Connecticut; Delaware Department of Public Safety; State of Idaho Transportation Department; State of Missouri Department of Revenue and Department of Economic Development; North Dakota Department of Transportation; Commonwealth of Pennsylvania; Vermont Department of Motor Vehicles; Wisconsin Department of Transportation); and one city (City of Littleton, Colorado);

Five power utilities operating commercial motor vehicles (Alabama Power, Duquesne Light Company, Houston Lighting and Power, Southern Company Services, Inc., Virginia Power);

Six manufacturers and distributors of explosives (Austin Powder Company, Viking Explosives and Supply, Inc., Dyno Nobel, Inc., the Ensign-Bickford Company, Maynes Explosives Company, Sierra Chemical Company);

Two professional associations of the explosives industry (Institute of Makers of Explosives, International Society of Explosives Engineers);

Four consumer and safety advocacy groups (Advocates for Highway and Auto Safety, Transportation Consumer Protection Council, Inc., New York Operation Lifesaver, Operation Lifesaver, Inc.);

Four freight railroads and commuter rail lines (CSX Transportation, Louisiana Railroads, Metra (Northeast Illinois Regional Commuter Railroad Corporation), Vermont Railroad/ Clarendon and Pittsford);

Nine transportation industry associations (American Bus Association (ABA), American Trucking Associations (ATA), Association of American Railroads (AAR), Association of Waste Hazardous Materials Transporters (AWHMT), Distribution and LTL Carriers Association, National Automobile Dealers Association (NADA), National School Transportation Association (NSTA), National Tank Truck Carriers, Inc. (NTTC), Petroleum Marketers Association of America (PMAA));

Four drivers' organizations, labor unions, and other professional organizations (Brotherhood of Locomotive Engineers, International Association of Fire Fighters, Owner-Operator Independent Drivers Association, United Transportation Union);

Three motor carriers (Air Products and Chemicals, Ameritech, Radian International);

Two firms providing services to motor carriers (Consolidated Safety Services, Inc., DAC Services);

Three government agencies and associations of government organizations (American Association of Motor Vehicle Administrators, National Road Transport Commission of Australia, National Transportation Safety Board); and

Two individuals (Hoy Richards, Richards and Associates; O. Bruce Bugg).

Section 387.5, Definitions [Transportation of Property]

Under the statutory authority provided by 49 U.S.C 31139, the Secretary of Transportation is required to set forth regulations to require minimum levels of financial responsibility for the transportation of property for compensation by motor vehicles in interstate commerce. The FHWA proposed to amend the definitions in § 387.5 to make clear that for-hire transportation—transportation for compensation—included transportation by contract, common, and exempt motor carriers of property.

The Transportation Consumer Protection Council (TCPC) noted that, although the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) eliminated the distinction between "common" and "contract" motor carriers, the terms still appear in proposed text of revised FMCSR sections. The TCPC also pointed out what it believed were errors in some citations.

The Owner-Operator Independent Drivers Association (OOIDA) supported the revision of the definition of "motor carrier" and suggested the elimination of the distinction between "motor common carrier" and "motor contract carrier."

The National Automobile Dealers Association (NADA) suggested that the preamble of the final rule include several examples of transportation involving a variety of facts and circumstances.

The Association of Waste Hazardous Materials Transporters (AWHMT) favored the proposed revision to eliminate what it viewed as obsolete definitions. Although the AWHMT agreed that transporters of hazardous materials should be subject to the financial responsibility provisions of part 387, it referenced a 1982 Interstate Commerce Commission (ICC) ruling that hazardous waste destined for disposal was not considered "property." The AWHMT recommended that the "property" definition in part 387 include "a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more in interstate or foreign commerce."

The OOIDA recommended eliminating the distinction between "exempt" and "non-exempt" commodities. The OOIDA holds that the economic regulations forming the basis for the definitions no longer exist at the Federal level. The OOIDA asserts that some States will not alter their regulations, and will continue to require duplicate registrations and separate insurance coverages until the definitions are changed through Federal regulation.

FHWA Response

The FHWA plans to address the definitional issue of for-hire motor carriers of property in detail in the context of future rulemakings addressing the commercial regulation of motor carriers. Responsibility for these regulations was transferred from the ICC to the DOT under the provisions of the ICC Termination Act of 1995.

The definition of "motor carrier" is revised to make it consistent with the definition as it appears in § 390.5. The terse definition proposed in the NPRM did not include the agents, officers and representatives of the motor carrier, nor its employees responsible for driver or vehicle safety.

As for the AWHMT's concern, the FHWA used the term "property" to differentiate between two types of transportation—non-passengers and passengers. The merits of using other terms, such as "goods" or "commodities" as a substitute for the "property" could be debated. However, the term "property" is of longstanding use and is clearly understood to imply non-passenger transportation. In this context, the term also includes transportation of refuse and hazardous materials waste.

Section 387.27(b)(4), Exceptions to Applicability [School Bus Transportation]

The American Bus Association (ABA) suggested using the term "for-hire carrier under contract" rather than "contract motor carrier" to be consistent with other definitions in part 387, § 387.27(b)(4). The ABA also recommended that the "extracurricular" trips envisioned in the proposal have some preponderant educational purpose to qualify for the exemption from the minimum financial responsibility requirements. The ABA expressed concern that school districts could contract to transport students to amusement parks or other non-educational destinations, without any insurance coverage for the passengers or the public.

FHWA Response

This revision adopted today is consistent with an interpretation issued on April 4, 1997 (62 FR 16370, at 16403) as part of the Regulatory Guidance for the Federal Motor Carrier Safety Regulations. It is also consistent with Congressional intent. In certain instances, motor carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act (49 U.S.C. 31138(e)(1)). Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387 (49 CFR 387.27(b)(1)). Therefore, school bus contractors are not subject to the Federal financial responsibility requirements for interstate trips such as sporting events and class trips, but they must comply with all other requirements of the FMCSRs. They would, however, be subject to State financial responsibility requirements.

In today's final rule, the term "contract motor carrier" replaces "motor carrier under contract." In all other respects, the final rule uses the language proposed in the NPRM.

Section 387.29, Definition, "For-Hire Carriage" [Passenger Transportation]

The FHWA proposed to amend this definition to codify regulatory guidance issued on November 17, 1993 (58 FR 60734) and slightly revised on April 4, 1997 (62 FR 16370, at 16406–16407). This guidance made clear the intent of the definition to cover transportation: (1) generally available to the public and (2) performed for a commercial purpose by a motor carrier who receives compensation for the transportation service.

The ABA believed there may be some confusion about the concept "generally available to the public." It pointed out that many bus service contracts might not in fact be available to the general public. An example of this would be a contract with a corporation to transport employees between the corporation's facilities. The ABA noted that the FHWA still issues permits for motor contract carriers of passengers. The ABA recommended that the term be defined to include motor contract carriage operations.

FHWA Response

The FHWA is adopting a more direct definition than that proposed in the NPRM: "For-hire motor carrier of passengers means a person engaged in the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property of another." This definition more clearly expresses the FHWA's intent to cover all types of for-hire passenger transportation, irrespective of the business relationship between the transportation provider and the customer. Because many motor carriers of passengers also transport the passengers' property (for example, their luggage), and, possibly, small packages not accompanying the passengers, the term "goods or property of another" is included in the definition.

Section 390.3(f)(2), Accident Register Requirement for Federal, State, and Local Government Agencies

The FHWA proposed removing the requirement that government agencies described in this section maintain an accident register for transportation activities involving interstate charter transportation of passengers.

The ABA opposed the proposal. It noted that, although governmental entities are not subject to FHWA compliance reviews, they are essentially unregulated from a safety standpoint (except for the commercial drivers license (CDL) and related controlled substance and alcohol testing regulations). The ABA argued that the FHWA will have no other means to obtain accident information about this segment of the charter service population. The ABA asserted that the minimal burden imposed on the public transit agencies is outweighed by the need to obtain this information to make informed decisions on regulatory policies. It added, "[A]s the Federal Transit Administration continues to purchase intercity buses for suburban commuter operations, which buses might also be used for charter operations, this lack of accident information could be magnified."

FHWA Response

The FHWA believes government agencies have a strong self-interest in maintaining safe operations. The fact that they are not subject to compliance reviews probably does not influence their recordkeeping practices concerning accidents. Furthermore, any accidents their vehicles are involved in are a matter of public record, and this information could be gathered readily if the need arises. Accordingly, paragraph 390.3(f)(2) is revised as proposed in the NPRM.

Section 390.5, Definitions

Accident

The FHWA attempted to clarify the meaning of the term "public road" in the definition of "accident." The term "public road" was defined to include privately owned roads accessible to the general public. The intent of the proposed change was to emphasize that the defining factor is the road's accessibility to the public, rather than its owner's identity.

Commenters addressing this issue were: the Austin Powder Company (letters from its Director of Safety and Compliance and another employee who is Chairman of the American National Standards Institute A10.7 Standard Committee), Institute of Makers of Explosives (IME), International Society of Explosives Engineers, Viking Explosives & Supply, Inc., Dyno Nobel, Inc., Maynes Explosives Company, Sierra Chemical Company (letters from three officials and a staff engineer), and the Ensign-Bickford Company.

The commenters were concerned that the proposed revision to the definition of "accident," and, in particular, the "public road" portion of the definition, could require many existing explosive storage facilities (magazines) to be closed, relocated, or have their storage capacities reduced. Several commenters noted that many of these magazines are currently accessed by private roads, or are located near private roads.

The associations, manufacturers, and users of explosives provided consistent commentary and background for their positions. The IME first developed a safety standard to provide protection from explosives storage sites in 1910. This was done at the request of the Bureau of Explosives (now part of the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF)). The standard has been revised and updated over the years and is currently published as IME Safety Library Publication No. 2, "The American Table of Distances." This table is incorporated into the regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.109), the ATF (27 CFR 55.11 and 55.218), State regulations, ANSI standards, National Fire Protection Association standards, Uniform Fire Code, U.S. Army Corps of Engineers, Building Officials and Code Administrators, Southern Building Code, and other national safety standards and codes. Most of the commenters on this issue stated they use ANSI Standard A10.7, "Commercial Explosives and Blasting Agents—Safety Requirements for Transportation Storage, Handling, and Use" to provide

minimum recommendations for locating explosive storage sites in reference to inhabited buildings, public highways, and passenger railways.

The definition of "highway" applicable to the American Table of Distances (29 CFR 1910.109(c)(1)(v), Table H–21) is "any public street, public alley, or public road." Commenters stated that the table has never been used to refer to "private" roads on construction sites, distribution sites, and the like. If the definition were to be changed to include "private" roads which may be accessible to the public, the commenters believed many existing explosive storage facilities (magazines), currently accessed by private roads, or located near private roads, may be forced to close or to significantly reduce their capacity due to quantity/distance restrictions. Several commenters expressed particular concern with a sentence in the preamble to the NPRM which stated: "Therefore, accessibility to the public, not the identity of the owner, is the major factor which determines whether a road or way is public." The IME noted:

> Explosive storage facilities on mining properties, quarrying operations, and construction projects are accessed by mine and construction roads or are located in proximity to such roads. These roads have never been considered "public roads" for purposes of determining quantity/distance separations even though the public may have access to such roads (it would be a physical impossibility to fence off the hundreds of square miles on such sites in order to restrict public accessibility). Although such roads are generally posted and/or barricaded, experience has shown that even fences and roving patrols cannot keep the "public" in four wheel drive vehicles, all terrain vehicles (ATVs), snowmobiles, etc. from traveling the roads, especially during hunting and fishing seasons.
>
> For over eighty years, the term "public road" has always been regarded by the explosives, blasting, mining, quarrying, and construction industries to mean a road that was constructed, financed, maintained, and controlled by some political subdivision.

Two commenters asked for clarification concerning the applicability of the proposed definition to accidents on private property. The National Automobile Dealers Association (NADA) asked the FHWA to clarify whether the definition would extend to accidents occurring on truck dealership properties. The State of Idaho Transportation Department wished clarification concerning parking lots, garages, and private roads around stadiums, shopping malls, and similar facilities.

FHWA Response

The FHWA has never intended to expand the definition of "public road" to encompass any roadway only remotely accessible to the public at large. The agency's intent was to codify an interpretation published in the April 4, 1997, Regulatory Guidance for the Federal Motor Carrier Safety Regulations (62 FR 16370, at 16408). That interpretation reads as follows:

Section 390.5 Definitions

* * * * *

Question 26: What is considered a "public road"?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

Many roads performing the identical access functions of "public roads" are, in fact, constructed, operated, and, sometimes, maintained by non-governmental entities. These entities include shopping center owners, commercial real estate developers, and homeowners associations. These roads are nearly always designed, constructed, marked, signed, and signaled in conformance with national, State, and local guidelines, regulations, and ordinances. In these times of scarce governmental resources, commercial and private enterprises are more often being required to provide the immediate access to their proposed land developments as a *quid pro quo* for obtaining a zoning approval and construction permit for a facility generating personal and vehicular travel on the surrounding roadway network. In addition, conformity with design and construction practices is usually a requirement for a local governmental entity to take over the maintenance of the completed facility.

Another term, "Open to public travel," found at 23 CFR 460, clearly expresses the FHWA's intent. The definition reads as follows:

Open to public travel means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

The FHWA believes the definition specifically addresses the IME's concern because it excludes road sections barricaded or posted.

Another issue is the nature of the storage of commercial explosives. Footnote 5 to the American Table of Distances reads as follows:

> This table applies only to the manufacture and permanent storage of commercial explosives. It is not applicable to the transportation of explosives, or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

The FHWA believes the IME's and other commenters' concerns about the potential necessity of relocating explosives magazines may extend beyond the application of the American Table of Distances. Many magazines, such as those used in the earthmoving stages of road construction projects, are temporary storage facilities.

The FHWA is substituting the term "road open to public travel" for the term "public road" in the definition of "accident." It is discussed in detail under the heading, "Highway," later in this document.

The NADA and the State of Idaho Transportation Department asked about accidents taking place on a truck dealership's property, parking lots, parking garages, and roads providing access to shopping malls, stadiums, and similar facilities. If the property is "open to public travel," a motor carrier would be required to record those accidents under § 390.15. In general, the FHWA considers the following *ungated* facilities to be open to public travel: Customer parking lots, garages and access roads to malls, stadiums, etc. On the other hand, *gated* parking lots, garages, etc., are not open to public travel. The customer parking areas of a truck dealership are open to the public, whereas areas of the dealership used to park or store new and used vehicles prior to sale generally are not.

Commercial Motor Vehicle

The FHWA proposed to revise the definition of commercial motor vehicle to provide consistent definitions of designed passenger capacity and transportation of hazardous materials in §§ 383.5 and 390.5. The FHWA received no comments on this element of the proposal.

The definition is, therefore, revised as proposed in the NPRM, with two minor changes. The first change deletes the modifying term "public" (as in "public highway") because the term "highway" is now defined and added to the definitions. The second change deletes the Code of Federal Regulations citation for the Hazardous Materials Regulations because the FHWA believes the motor

carriers subject to these regulations are well aware of the reference, and a cross-reference here is superfluous.

Several commenters addressed the issue of the weight threshold for commercial motor vehicles subject to the FMCSRs. Those comments appear under "Comments to FMCSR sections not addressed in the NPRM," later in this document.

Highway

Because of the concern generated by the FHWA's proposal to revise the use of the term "public road" in the definition of "accident," the FHWA is adding the term "highway" to the definitions of § 390.5. This definition builds upon the definition in Section 1–127 of the "Uniform Vehicle Code and Model Traffic Ordinance" (UVCMTO), 1992 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances in Evanston, Illinois, which reads as follows:

> § 1–127—Highway.—The entire width between the boundary lines of every way publicly maintained when any part thereof is *open to the use of the public* for purposes of vehicular travel (emphasis added).

The FHWA has modified this definition and added it to those proposed in the NPRM: *Highway* means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel," as defined at 23 CFR 460.2, will be incorporated in this definition.

The key difference between the Uniform Vehicle Code definition and the definition the FHWA is adopting is the public-use nature of the facility, rather than its ownership or maintenance.

Intermittent, Casual, or Occasional Driver

Section 391.63 contains a limited exemption from certain driver qualification requirements for an "intermittent, casual, or occasional driver." This term is defined in § 390.5 as a driver, who in any period of 7 consecutive days, is employed by more than a single motor carrier. Section 390.5 also defines a "regularly employed driver" as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace the term "intermittent, casual, or occasional driver" with the term "multiple-employer driver" to clarify both definitions.

Radian International LLC (Radian) is concerned that the proposed term "multi-employer driver" would drastically alter the meaning of the current definition and eliminate the relief from certain recordkeeping requirements it provides. Radian, an environmental engineering firm, occasionally requires its employees to drive a company-owned commercial motor vehicle (CMV) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds (4,545 kilograms) to test sites. It cited a letter of interpretation issued by the Office of Motor Carrier Standards on October 2, 1992, advising that its drivers were intermittent, casual, or occasional in this situation and that §§ 391.63 and 395.8(j)(2) of the FMCSRs would be applicable to Radian's situation.

FHWA Response

The FHWA has reassessed the 1992 letter of interpretation and now believes it was erroneous. A driver who is employed by a single motor carrier meets the definition of a regularly employed driver in § 390.5 even though he or she might drive a CMV only intermittently or occasionally. Radian provided no information at the time the interpretation was requested to support classification of its employees as anything other than "regularly employed drivers," unless they drive CMVs for other motor carriers during any period of 7 consecutive days. The fact that these employees may only occasionally drive CMVs as part of their assigned duties does not change this fact. No other commenter challenged the revision to the definition, and it is being adopted as proposed. The 1992 letter of interpretation is therefore overruled. The administrative adjustments Radian must make are not arduous. Potentially, they can provide Radian with additional assurance of the safe driving records of its employees.

The FHWA will delete the second sentence of the definition proposed in the NPRM, referencing the qualifications of these drivers. Under Subpart G, Limited Exemptions, §§ 391.63 and 391.65 provide clear guidance to the exemptions for multiple-employer drivers and drivers furnished by other motor carriers.

The term "single-employer driver" replaces the term "regularly-employed driver" as proposed in the NPRM.

Interstate Commerce

The FHWA proposed to revise the definition of interstate commerce to clarify that transportation within a single State is considered interstate commerce if this transportation continues a through movement originating outside the State, or has a destination outside the State.

The Advocates for Highway and Auto Safety (AHAS) stated its strong support of the proposal to clarify the definition. The NTTC advised the FHWA to coordinate with the Research and Special Programs Administration on jurisdictional questions of interstate/intrastate hazardous materials transportation, and particularly recommended that the FHWA review the comprehensive HM–223 and HM–200 rulemakings concerning operation of non-specification cargo tank motor vehicles.

The Distribution and LTL Carriers Association (LTL) recommended that paragraph (3) of the definition be revised to read: "Between two places in a State as part of trade, traffic, or transportation which has originated from outside the State or is destined by the shipper to go outside the State."

In a related comment, the AHAS requested the FHWA to address "commercial vehicle axle and gross weight limits for trucks operating wholly intrastate but engaging in transport that is interstate in character, hours of service requirements that diverge from the federal standards of 23 CFR Pt. 395 [sic], and States that establish overall length limits for trucks as viewed within the limitations and grandfathering provisions of 49 U.S.C. § 31111(b). We do not regard the interpretation of these and a number of other topics as obvious when certain intrastate commercial movements are denominated interstate." The AHAS did not explain how it defined "transport that is interstate in character."

FHWA Response

Although the LTL's suggested revision does not cover international movements, it is otherwise more concrete than the proposed definition. The agency therefore adopts a revised version of the LTL's suggested wording.

With respect to the NTTC's recommendation, the FHWA continues to work very closely with the RSPA on technical, jurisdictional, and programmatic issues related to all hazardous materials rulemaking actions.

The concerns of the AHAS about weights and dimensions of CMVs operating in interstate commerce are beyond the scope of this rulemaking, but we will forward them to the offices responsible for implementing the CMV size and weight regulations.

Principal Place of Business

The FHWA proposed to amend this definition to mean a single location where records required by parts 382, 387, 390, 391, 395, 396, and 397 of the FMCSRs will be made available for inspection within 48 hours after a request has been made by a special

agent or authorized representative of the FHWA. Because the definition is revised to accompany a new § 390.29, comments are summarized under the heading for that section.

Regularly Employed Driver

Section 390.5 defines a "regularly employed driver" as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace this term with "single employer driver" to make it more consistent with the intended meaning.

The FHWA received no comments on this item and it will be revised as proposed in the NPRM.

Section 390.29, Location of Records or Documents

The FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

In regulatory guidance issued on November 17, 1993 [58 FR 60734], the FHWA allowed inspection, repair, and maintenance records required under part 396 to be maintained at a location of the motor carrier's choice, but required the motor carrier to make them available within two business days upon the FHWA's request. The revised definition of the principal place of business, and the new § 390.29, extend these recordkeeping allowances and provisions to all records required under parts 382, 387, 390, 391, 395, 396, and 397. The change proposed will provide motor carriers with increased flexibility in complying with recordkeeping requirements of the FMCSRs.

Houston Lighting and Power Company (Houston L&P), Distribution and LTL Carriers Association, ABA, and the National Automobile Dealers Association (NADA) supported the proposed revision.

National Tank Truck Carriers, Inc., a trade association of motor carriers specializing in cargo tank transportation, requested that the FHWA codify regulations concerning the retention of "electronic" records.

FHWA Response

The definition of "Principal place of business" in § 390.5 is revised as proposed in the NPRM with one minor addition. The NPRM language at 62 FR 3866 inadvertently omitted the reference to part 397 in the proposed rule, although it was mentioned in the preamble. It is included in today's rule.

The new § 390.29 is added as proposed in the NPRM, but with the phrase "principal place of business" added to clarify that a motor carrier may maintain records or documents at a headquarters location.

The FHWA will address the specific issue of electronic recordkeeping and information transmission in separate future rulemakings on the subject of supporting documents and other types of records.

Section 391.11, Qualifications of Drivers

The heading for § 391.11 is changed from "Qualifications of drivers" to "General qualifications of drivers." Although this was not presented for comment in the NPRM, the FHWA believes there is good cause for this minor revision to the title of this section. The title more appropriately reflects the coverage of the section—basic qualifications, of a general nature, for CMV drivers.

Sections 391.11(b)(4) and (b)(5), Determining Proper Securement of Cargo

The FHWA proposed to delete these provisions from the driver qualifications section of the FMCSRs. The FHWA reasoned they were redundant because §§ 383.111(d) and 392.9(a) address the topic of a driver's knowledge and experience relating to proper securement of cargo.

Although no commenters addressed the proposal to delete these provisions, the FHWA has determined there is good cause to retain them because they pertain to the general qualifications of CMV drivers. An essential element of safe operations is a driver's ability to determine whether cargo is properly secured and to secure cargo himself/herself, and for motor carriers to assure themselves that their drivers have the necessary knowledge and skills to carry out these tasks. The paragraphs clearly complement the provisions of §§ 392.9 and 383.111(d).

The ability of a driver to determine the proper location, distribution, and securement is clearly a skill that is learned through instruction and experience. A driver might arrive at a new job without specific experience in handling a particular type of cargo, but be well qualified in other respects. The FHWA believes that skills and practice in safe cargo handling are more appropriately categorized as responsibilities, rather than "qualifications." For that reason, these requirements will be placed under a new heading, Responsibilities of drivers, § 391.13.

Section 391.11(b)(7), Jurisdiction Issuing a Commercial Motor Vehicle Operator's License

The State of Idaho Transportation Department (Idaho) requested the FHWA to consider specifying that the currently-valid operator's license be issued by the driver's State or jurisdiction of domicile, rather than "from one State or jurisdiction." Idaho reasoned this would be consistent with the definition of "State of domicile" used for the CDL in § 383.5 and the driver application procedures for transfer of a CDL in § 383.71(b).

FHWA Response

The FHWA acknowledges Idaho's comment concerning the desirability of consistent requirements for CMV drivers required to hold a CDL and CMV drivers required to hold an operator's license. The FHWA raised the issue of a driver's domicile in its 1990 NPRM concerning learner's permits for drivers seeking to obtain a CDL (55 FR 34478, August 22, 1990). The FHWA raised the issue of the domicile requirement in existing CDL regulations and their impact on drivers wishing to acquire commercial driver training in preparation for obtaining a CDL. The FHWA received a number of comments, filed under FHWA Docket Number MC–90–10 (now Department of Transportation Docket FHWA–97–2181). The issue of how best to deal with the definition of jurisdiction of licensure is still ongoing. The FHWA will address this issue in future rulemaking actions.

Because §§ 391.11(b)(4) and (b)(5) are redesignated as §§ 391.13(a) and (b), this paragraph is redesignated as (b)(5) and reads: "Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction."

Section 391.11(b)(10), Road Test

The FHWA proposed to delete all requirements related to the road test contained in subpart D, §§ 391.31 and 391.33. Therefore, this section, cross-referencing the road test provisions, was proposed to be deleted as well. The FHWA reasoned the road test requirement was redundant for driver applicants required to possess a CDL or who successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. Additional discussion may be found under the heading for Section 391.31 later in this document.

The FHWA has determined that it is in the best interests of safety to retain

§ 391.31 and to revise § 391.33. The background of the proposed change, the summary of docket comments, and the FHWA's response are detailed under the headings for §§ 391.31 and 391.33. This section is retained and redesignated as § 391.11(b)(8).

Section 391.11(b)(11), Application for Employment

The FHWA proposed to remove the section requiring a commercial motor vehicle driver to furnish the employing motor carrier with an application for employment in accordance with § 391.21. The agency reasoned that the completion and furnishing of an employment application are not driver qualification standards as such. However, they are necessary and important actions to evaluate the competence of applicants for CMV driver positions, and they are addressed in § 391.21.

The ATA opposed the removal of this provision. It stated, "Completion of an application for employment is fundamental to the process of selecting safe CMV drivers since the beginning of structured safety programming and was published as a trucking industry safety standard in 1939, 12 years before it was incorporated into the FMCSRs." The ATA believed the deletion of the paragraph would prevent motor carriers from gathering information to determine applicants' qualifications in accordance with § 391.21.

FHWA response

A driver's application for employment is not a "qualification" *per se*. The revised heading of § 391.11 as "General qualifications" clarifies the intent to include performance-oriented qualifications. An application for employment is simply a presentation of a document. The FHWA is not revising or removing § 391.21, Application for employment. As stated in the preamble to the NPRM, the action of removing § 391.11(b)(11) is not intended to affect the responsibility of CMV drivers to complete and furnish the motor carrier considering hiring them with employment applications containing certain information required by § 391.21.

Accordingly, § 391.11(b)(11) is removed as proposed in the NPRM.

Section 391.13, Responsibilities of Drivers

The FHWA proposed to delete §§ 391.11(b)(4) and (b)(5) concerning a CMV driver's knowledge and experience with methods and procedures for location, distribution, and securement of cargo. The FHWA has determined it is in the best interests of safety to retain those sections, as discussed above. A new § 391.13 will be added to the FMCSRs, and the provisions will be redesignated to appear under that heading.

Section 391.15(b), Disqualification for Loss of Driving Privileges

The FHWA proposed to redesignate § 392.42 as § 391.15(b)(2) and to title the paragraph "Loss of driving privileges." The provision requires a driver who receives a notice that his/her license, permit, or privilege to operate a CMV has been revoked, suspended, or withdrawn to notify the employing motor carrier before the end of the business day following the day the driver received the notice. The FHWA believed the notification requirement would be more appropriately included in § 391.15 because it specifically addresses the disqualification of drivers, rather than general requirements for safe driving.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. The FHWA sought information to determine if § 391.15(b) should be revised to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn. The FHWA received many comments on this speculative proposal. Because they were requested under the heading of § 392.42 in the NPRM, they are summarized under that heading in this preamble.

The State of Idaho recommended an additional revision to this section. Idaho recommended adding a CMV driver's refusal to undergo controlled substance testing as a disqualifying offense, noting that "Based on current regulations, a CDL driver cannot be disqualified for refusing to undergo a controlled substance test."

FHWA Response

The agency is revising § 391.15(b) as proposed in the NPRM. The section contains general provisions to require a driver notified that a temporary or permanent limitation has been placed on his/her CMV driving privilege to inform the employing motor carrier of this event.

Because of continuing discussions regarding how to treat loss-of-privilege from a jurisdiction other than the one that issued a license to a driver, the FHWA has determined it is appropriate to retain the current title "Disqualification for loss of driving privileges." Any proposals concerning loss-of-privilege actions imposed by the non-licensing jurisdiction will be addressed in a future rulemaking action.

The FHWA has determined it is not appropriate at this time to change the FMCSRs to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

As for Idaho's comments, the intent of the current § 392.42 is to require the driver to inform the motor carrier of notifications received from State or local licensing or law enforcement agencies. In the case of a controlled substance test administered by a police officer, a driver's refusal to test would be covered by the appropriate State or local laws, and the driver would be required to inform the motor carrier of any adverse license actions related to the event.

On the other hand, Idaho's belief that "a CDL driver cannot be disqualified for refusing a controlled substance test" is not entirely accurate. The disqualifying offenses under § 391.15(c)(2), which have not been proposed for revision here, include driving a CMV under the influence of a Schedule I drug or other substance identified in 21 CFR 1308 [Schedule of Controlled Substances]. If the driver refused to take a controlled-substance test under the provisions of 49 CFR part 382, the refusal generates the same consequences as a positive test. The statute (49 U.S.C. 31306) requires a motor carrier to test its drivers under certain circumstances under regulations promulgated by the FHWA. One of these circumstances is a driver's refusal to comply with the statute. If the driver does not comply, he or she must not operate a CMV, and the motor carrier must not permit or require the driver to do so until the provisions of §§ 382.503 and 382.309 have been met through Substance Abuse Professional (SAP) evaluation and the return-to-duty testing process. This means the driver must take an actual test to be allowed to resume driving duties in interstate commerce. In addition, the driver may be subject to his or her employer's policy actions.

In sum, controlled-substance and alcohol tests administered by an employer do not fall under State laws.

The employer is responsible for taking the appropriate actions in accordance with the FMCSRs and with company policy. The FHWA's regulations consider a driver's refusal to submit to testing a prohibited practice. If a driver refuses to undergo a test, the motor carrier must prohibit the driver from driving a CMV and must provide the driver with names, addresses, and telephone numbers of substance abuse professionals.

The FHWA also believes it is inappropriate to equate a driver's refusal to test or a positive test result under part 382 as equivalent to a criminal conviction for driving under the influence of a controlled substance. Criminal convictions of this nature are generally based upon a law enforcement officer's determination that probable cause existed to require a test and an arrest under his/her jurisdiction's policies. The criminal process also generally allows a driver more due process rights to contest the arrest and positive test result because the driver's license privilege is in jeopardy.

The FHWA is reviewing regulations and guidance concerning controlled-substance and alcohol tests administered by law-enforcement officials. The agency will address these issues in a separate rulemaking.

Section 391.25, Annual Review of Driving Record

The FHWA proposed to revise this section to replace the annual review of a driver's driving record with a specific requirement to make an inquiry to the appropriate agency of every State in which the driver held a CMV operator's license or permit during the time period.

DAC Services (DAC), a consumer reporting agency and a major provider of automated driver screening services, favored the proposed revision. However, DAC was concerned that the proposed language could be interpreted to prohibit third-party firms from obtaining records on behalf of motor carriers. DAC noted that the FHWA field staff occasionally question whether the information obtained through DAC can be used to satisfy a motor carrier's compliance with § 391.23, Investigation and inquiries. DAC recommended changing the proposed revision explicitly to recognize the role of third-party information services:

§ 391.25(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make, *or cause to be made by or through its agent,* an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

DAC also requested the FHWA add "or its agent on the motor carrier's behalf," before the words "shall make the following investigations and inquiries * * *" in § 391.23.

The Delaware Department of Public Safety favored the proposed change while noting that expanded direct communications between motor carriers and State agencies will likely increase its workload. Taking another point of view, Duquesne Light Company's Nuclear Power Division believed the current requirements are sufficient, and implementing the proposed rule change would place an additional administrative burden on companies.

FHWA Response

The FHWA is amending § 391.25 as proposed in the NPRM with a minor editorial change. The language will be edited to clarify the requirement for the motor carrier to maintain a copy of the responses from each State agency to the inquiry concerning drivers' records. The motor carrier must maintain these responses regardless of their content.

In response to DAC's comment, the definition of "motor carrier" in § 390.5 specifically includes the motor carriers agents, officers, and representatives. Since third-party firms providing reporting and other services to a motor carrier act as the motor carrier's agents, they are already included in the definition of those entities who are authorized to obtain records on behalf of motor carriers.

In response to the Duquesne Light Company's concern, the requirement to make inquiries with each jurisdiction where the driver held a CMV operator's license or permit during the past year is intended to consider the documented recordkeeping practices of licensing jurisdictions, some of which remove data on drivers' convictions for various reasons.

However, as the Delaware Department of Public Safety pointed out, there are well-founded concerns about the workload for both the motor carriers and the DMVs. The time and cost burdens associated with the annual review of driving records are discussed under the Paperwork Reduction Act section of the preamble to today's final rule.

Section 391.27, Record of Violations

The FHWA proposed to delete the provision that a motor carrier require its drivers, at least every 12 months, to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances (except those violations involving only parking), of which the driver has been convicted or has forfeited bond or collateral during that period. The FHWA reasoned that making these inquiries to State agencies would be a more effective way to gather this information because it would not rely on the driver's memory or veracity.

Air Products and Chemicals (Air Products) opposes the proposal to eliminate the requirement for motor carriers to require its drivers to furnish a list of traffic violations resulting in convictions. Air Products' experience has indicated that the information its outside service obtains from State sources is not always complete or timely—it lags behind the information drivers provide. Air Products maintains that States need to improve their collection and transmission of these data to make them sufficiently reliable to meet the company's needs. For the present, Air Products continues to check both State records and drivers' lists.

The ABA supported the proposal as a method of streamlining the process of inquiring into drivers' records.

The AHAS and the AAMVA both supported the proposal as a more objective method to gather information, as well as a way to corroborate information on violations reported by drivers. The AAMVA believed waiving the requirement for drivers to notify motor carriers is acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary.

The ATA forwarded concerns expressed by a motor carrier employing non-CDL CMV drivers. The motor carrier was concerned that, if § 391.27 were deleted, a motor carrier could not check information from a State motor vehicle record (MVR) against any information reported by its non-CDL drivers.

Vermont DMV Inspector R. Moore recommended making Commercial Drivers License Information System (CDLIS) inquiries in each State where a driver has driven during the preceding 12 months. This would provide a violation record on a national basis for each driver.

The ATA recommended allowing the motor carrier to require a driver to secure and submit an MVR annually. The ATA also recommend the FHWA accept evidence that a motor carrier has requested records from a State licensing agency as proof of compliance with the provision, even if the motor carrier has not received the State agency's response. The ATA maintains that privacy concerns have resulted in States developing elaborate procedures for

obtaining MVRs, and that delays are often encountered.

FHWA Response

The FHWA has determined it is in the best interest of safety to retain this section. The proposal to delete the provision was based on two assumptions which commenters have questioned. The first assumption was that State driver-licensing systems would be able to provide a comprehensive record of accidents and traffic violations involving interstate [non-CDL-holding] CMV drivers. The second assumption was that the State records would be far superior and more objective than the current practice of relying on a driver's memory. It appears that several serious limitations would prevent successful adoption of such a rule at this time.

Several commenters expressed reservations about the completeness and timeliness of States' operator license status information. They believe significant improvements must be made in the States' collection and transmission of this data before motor carriers should be asked to rely completely on it.

Relying completely on State information sources would also eliminate a cross-check between driver-provided information and information obtained from State MVRs. This would be especially problematic for non-CDL-licensed CMV drivers because there is no centralized information source similar to CDLIS, except for the National Driver Register Problem Driver Pointer System (NDR–PDPS) sponsored by the National Highway Traffic Safety Administration. This system focuses primarily upon adverse actions against a licensee, such as suspensions and revocations. One commenter also highlighted the administrative difficulty of gathering State MVR information on non-CDL drivers when the home States of the driver and the motor carrier are different. While this certainly can present a challenge for a motor carrier attempting to obtain the information on its own, the information is commonly available via third-party providers for a fee. However, there is no such service available to obtain NDR–PDPS information.

As the AAMVA noted, waiving the requirement for drivers to notify motor carriers might be acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary. The AAMVA noted that, as of mid-1997, no States had a mandatory program, and only two States had widespread voluntary programs, one of which was limited to intrastate drivers and motor carriers.

Requesting information from drivers serves another safety and business purpose. It is common practice for motor carriers to require drivers and driver-applicants to certify the correctness of information they provide. Falsification of information is often grounds for dismissal. Until the completeness and timeliness of State-based driver record information is substantially improved, it is important for motor carriers to obtain this information from both the driver and the State-based source to enable cross-verification of information.

The proposal to make an inquiry to each State where a driver has driven during the preceding 12 months would place an undue burden on drivers' employers and the State recordkeeping systems supporting the CDLIS. The FHWA plans to address improvements in the effectiveness of the CDLIS recordkeeping functions in a future rulemaking action.

The primary concern for both motor carriers and drivers is that a loss of driving privileges in a jurisdiction other than the one licensing a driver, is not always brought to the attention of the licensing jurisdiction. A common basis for a loss of driving privileges is the driver's failure to appear in court to respond to a traffic citation. Since "failure to appear" does not have a specific traffic violation associated with it, the licensing jurisdiction may choose not to post it on an MVR. This is a difficult and complex issue, and the FHWA expects to address it in a future NPRM.

The FHWA believes the ATA's first suggested revision could place the cost and time burden of obtaining information solely upon the driver. This is not the FHWA's intent. Furthermore, the regulation in its current form does not prohibit a motor carrier from requiring a driver to provide this information as a condition of employment: some motor carriers do, in fact, require their drivers to obtain their own MVRs.

The FHWA believes it is premature to accept the ATA's second recommendation, that evidence of an information request made to a State driver-licencing agency should constitute compliance with the section. This could encourage motor carriers to delay making these requests until they were compelled to, rather than integrating them into their normal safety-oversight practices. The agency is aware of recent significant changes in the reporting process made necessary by the Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721–2725) and the recent amendments to the Fair Credit Reporting Act (15 U.S.C. 1681–1681u). Both of these laws are generating numerous adjustments within licensing agencies and the business community. The FHWA will monitor this issue as it affects driver records and we encourage users of this information to inform the agency if there are continuing problems.

Section 391.31, Road Test, and Related Sections 391.11(b)(10), 391.51(c)(4), 391.51(d)(2), 391.61, 391.67(c), 391.68(c), 391.69, and 391.73

The FHWA proposed to remove all requirements related to the road test and equivalent of the road test, with the exception of the applicability to drivers who apply for a waiver of physical disqualification. The FHWA reasoned the test requirements were redundant for those driver-applicants required to hold a CDL or who had successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. The FHWA also highlighted beneficial outcomes of providing motor carriers more flexibility and reducing their recordkeeping burden.

The Houston Lighting and Power Company favored removing the requirement, contending that motor carriers are in the best position to determine whether a road test is needed for a non-CDL driver. The ABA also supported the proposal, noting "it is no longer meaningful for any driver that has a Commercial Driver's License."

The OOIDA opposed the proposal, contending that the key assumption is flawed: a CMV driver's possession of a CDL does not necessarily mean the driver is qualified to operate a CMV. The OOIDA's chief concern is that State-administered driving and skills tests are designed to assess a limited scope of performance. The OOIDA asserted that it is not uncommon for inexperienced drivers with little or no commercial driver training to pass skills tests administered by State personnel or State-authorized third-party testers, and that inadequate State budgets may have an adverse impact on both the thoroughness of the skills testing procedures and the qualifications of testing personnel. It quoted an "On Guard" bulletin issued by the FHWA in January 1997:

> A CDL does not indicate that the holder is a trained or experienced truck or bus driver . . . Title 49 CFR 391.11(b)(3), (Qualification of Drivers) requires that a driver be able, by reason of experience, training, or both, to safely operate the commercial motor vehicle he or she drives. This requirement is not met

by simply ascertaining that a prospective driver holds a CDL.

Air Products also opposed the proposal. The firm has found that many drivers holding CDLs do not possess the skills necessary to operate the company's vehicles safely. Air Products and the OOIDA shared the concern that some motor carriers, eager to reduce costs, would interpret the elimination of the FMCSR requirement for a road test as relieving them of all responsibility to test their drivers prior to hiring them.

FHWA Response

The FHWA has determined that it is in the best interest of safety to retain this section. It serves a useful purpose for both CDL and non-CDL drivers. Commenters noted that some CDL holders might not, or do not, possess the skills necessary to safely operate the vehicles the company plans to assign them to drive. This is a particular concern with drivers who hold endorsements for cargo tanks and operation of double and triple trailer combination vehicles, both of which are granted on the basis of written tests rather than road tests.

Section 391.33, Equivalent of Road Test

The FHWA proposed to delete this entire section as a requirement related to the road test proposed for deletion and discussed above. This section covers documents a driver may present, and a motor carrier may present, in place of, and as equivalent to, a road test required by § 391.31.

As part of its comment to the proposed deletion of §§ 391.31 and 391.33 (see above), the OOIDA requested removal of § 391.33(a)(1). That provision allows a driver to present and a motor carrier to accept a valid operator's license as equivalent to the road test required under § 391.31.

FHWA Response

As discussed in the previous section, the FHWA has determined that it is in the best interest of safety to retain the requirement for the road test, § 391.31. The agency has determined that a CDL, but not the double/triple trailer or cargo tank vehicle endorsements, may be considered as the equivalent of a road test. However, a non-CDL operator's license will no longer automatically be considered the equivalent of a road test. If a driver presents an operator's license (i.e., a State classified operator's license that is not a CDL), the motor carrier must make this determination in accordance with the existing provisions of § 391.33(c).

The provision in § 391.33(a)(1) currently allows a motor carrier to accept *a valid operator's license (emphasis added)* in place of and as equivalent to the road test required by § 391.31. The operator's license is different in many ways from the CDL. States' requirements for road tests required to obtain an operator's license vary considerably in their coverage and depth. On the other hand, the driving test required for CDL applicants contains a required series of activities and maneuvers for the driver to demonstrate basic vehicle control, safe driving, use of air brakes, and pre-trip vehicle inspection.

However, the CDL endorsements required to operate double/triple trailer combination CMVs and cargo tank CMVs are awarded based upon successfully passing a knowledge test. No States offer skills tests as a requirement for obtaining these endorsements. A motor carrier must still assess a driver's skill in operating these vehicles, using, at minimum, the maneuvers and operations required under § 391.31(c).

The FHWA will replace the words "valid operator's license" in § 391.33(a)(1) with the phrase "valid Commercial Driver's License, as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements".

Section 391.49(d)(5), Copy of Certificate of Road Test for Drivers Requesting Waiver of Certain Physical Defects

The FHWA received no comments on the proposal to revise this section. The section concerns a copy of a certificate issued pursuant to a driver's road test administered as part of the process of requesting a physical qualifications waiver for drivers with specific listed limb impairments, who are otherwise qualified to drive a CMV.

FHWA Response

The FHWA has decided to retain this section as it appears in the current FMCSRs, including retaining the existing cross-reference to § 391.31. The proposed revision would have deleted, among other things, the requirement for the driver to successfully demonstrate performance of a pretrip inspection.

Section 391.51, Driver Qualification Files

The FHWA proposed to remove § 391.51(b)(5) covering "any other matter which relates to the driver's qualification to drive a commercial motor vehicle safely." The FHWA noted that the rules in part 391 are minimum requirements, that motor carriers are allowed to maintain any document in a driver qualification file related to the driver's qualifications, and concluded that this section was unclear and unnecessary. The FHWA also proposed to remove paragraph (d), concerning files for intermittent, casual, or occasional drivers, and paragraph (e), concerning drivers employed by another motor carrier.

Inspector Moore of the Vermont DMV recommended retention of paragraph (b)(5) because he believed that it encompassed a variety of documentation making up an integral part of a driver qualification file, and that the motor carrier might not otherwise retain such documentation. Inspector Moore named some examples: The motor carrier's periodic inquiries to State DMVs concerning a driver's record [over and above those required by regulation]; copies of accident reports not otherwise required to be retained; correspondence concerning an individual's driving; correspondence concerning regulatory compliance received from industry, enforcement agencies, or the public; copies of safe driving awards; and copies of records of disciplinary action against the driver by the motor carrier.

The FHWA received no other comments concerning § 391.51.

FHWA Response

The FHWA believes most motor carriers retain all of this information and more as a normal business practice. Without a requirement to retain specific documents, there is a possibility some motor carriers might be more selective in their choice of records to be maintained and retained. The FHWA proposed to remove paragraph (b)(5) because it did not provide specific examples of what information the motor carrier would be required to retain. This might be remedied at some future time through regulatory interpretation. Accordingly, the section is revised as proposed in the NPRM, except that the provisions in the current regulations concerning the certificate of the driver's road test and the list or certificate relating to violations of traffic laws and ordinances are retained.

The FHWA is revising the other elements of § 391.51 as proposed in the NPRM.

Section 391.61, Drivers Who Were Regularly Employed Before January 1, 1971

The FHWA proposed to revise this section which covers limited exemptions from the part 391 driver qualification requirements for CMV drivers who were regularly employed before January 1, 1971. The agency proposed to delete the reference to the

road test, to change the term "regularly employed driver" to "single-employer driver," and to delete the redundant final sentence of the section. No commenters addressed this section. Except for retaining the reference to the road test, the FHWA is revising the section as proposed in the NPRM.

Section 391.63, Intermittent, Casual, or Occasional Drivers

The FHWA proposed to revise this section to replace the term "intermittent, casual, or occasional drivers" with "multi-employer drivers" (see comments and discussion under the heading, § 390.5 Definitions, earlier in this document), and to revise the list of actions a motor carrier is not required to perform with respect to these drivers.

Because the FHWA has determined it is not in the interest of safety to remove the requirement that a driver provide a record of violations or a certificate in accordance with § 391.27, the action will remain in the list of exemptions under § 391.63.

Section 391.65, Drivers Furnished by Other Motor Carriers

The FHWA proposed two revisions to this section which concerns the driver qualification file requirements for drivers furnished by other motor carriers. The first would require a motor carrier that obtains a driver's qualification certificate from his/her previous motor carrier employer to contact that motor carrier to verify the validity of the certificate. The second would replace the current requirement for a motor carrier to recall a qualification certificate if it learns the driver is no longer qualified under the regulations of part 391. The revised regulation would require the motor carrier to be responsible for the accuracy of the certificate, and make the certificate invalid if the driver left the employment of the issuing motor carrier or the driver was no longer qualified under part 391.

No comments were received on these proposed revisions. The FHWA incorporates them into the final rule.

Section 391.67, Farm Vehicle Drivers of Articulated Commercial Motor Vehicles

The FHWA proposed to revise this section, which covers certain exemptions from the part 391 driver qualification requirements provided to farm vehicle drivers of articulated CMVs. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. The FHWA also proposed to delete § 391.67(c) to conform to the proposed deletion of part 391, subpart D.

Because the FHWA has decided to retain § 391.11(b)(8) and subpart D, the reference will refer to redesignated §§ 391.11(b)(6) and 391.11(b)(8), and retain the references to subparts C, D, and F.

Section 391.68, Private Motor Carriers of Passengers (Nonbusiness)

The FHWA proposed to revise paragraph (a) of this section, concerning certain exemptions from the part 391 driver qualification requirements provided to CMV drivers of nonbusiness private motor carriers of passengers. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. Because the FHWA has determined that § 391.11(b)(8) will be retained and § 391.11(b)(10) and (b)(11) will be redesignated, the section cross-references the redesignated §§ 391.11(b)(6) and (b)(8). Private motor carriers of passengers (nonbusiness) continue to be exempt from the requirement relating to a driver's application for employment.

Since the NPRM was published, a technical amendment published July 11, 1997 (62 FR 37150) removed all requirements and references to part 391, subpart H, from parts 355 through 391 of the FMCSRs. This was necessary because the implementation of part 382 made part 391, subpart H, obsolete. The final rule will also reflect this change.

Section 391.69, Drivers Operating in Hawaii

This section provides a limited exemption from certain driver qualification requirements for drivers who have been regularly employed by motor carriers operating in the State of Hawaii for a continuous period beginning prior to April 1, 1975. The FHWA believed the exemption provided was redundant and proposed to remove it.

The FHWA received no comments on this item. Accordingly, it will be removed.

Section 391.71, Intrastate Drivers of Commercial Motor Vehicles Transporting Class 3 Combustible Liquids

The FHWA proposed to delete this section that deals with certain exceptions to the part 391 driver qualification requirements for intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids. The agency reasoned it had no authority to support application of parts 390 through 399 of the FMCSRs to a motor carrier or driver operating a CMV in intrastate commerce, whether or not the motor carrier has an interstate operation. However, the FHWA noted the requirements of parts 382, 383, and 387 would continue to apply.

The FHWA received two comments concerning the proposal to delete this section. Houston L&P favored the proposal and supported the FHWA's assertion that the Hazardous Material Regulations cover these vehicles and drivers. The AWHMT also favored the proposal, although it questioned the rationale described in the preamble to the NPRM.

FHWA Response

The FHWA removes and reserves this section as proposed in the NPRM.

The preamble to the NPRM explained in detail the FHWA's reason for proposing to delete the section (see 62 FR 3855, at 3859). The agency concluded that 49 CFR 177.804 was never intended to make the FMCSRs applicable to intrastate commerce. Section 177.804 requires motor carriers subject to part 177 to comply with 49 CFR parts 390–397 "to the extent those regulations apply." Its purpose was to make the civil penalty provisions of the Hazardous Materials Transportation Act applicable to hazardous materials carriers already subject to the FMCSRs. The assertion of jurisdiction over intrastate commerce in § 391.71, limited though it may be, is beyond the FHWA's authority. Section 391.71 is therefore being removed.

However, the Controlled Substances and Alcohol Use and Testing standards in 49 CFR part 382, and the CDL standards in 49 CFR part 383, apply to drivers and their employers who operate CMVs transporting hazardous materials in a quantity requiring placarding, in intrastate commerce. The financial responsibility requirements in part 387 still apply to motor carriers operating motor vehicles transporting certain types of hazardous materials, hazardous substances, and hazardous waste in certain types of containment systems, in intrastate commerce.

Section 391.73, Private Motor Carriers of Passengers (Business)

Because § 391.69 was proposed to be removed and § 391.71 was proposed to be removed and reserved, the FHWA proposed to redesignate this § 391.73 as § 391.69. This would place the section concerning provisions for private motor carriers of passengers (nonbusiness) directly after those for private motor carriers of passengers (business) in a more logical sequence in the FMCSRs.

The agency did not propose revisions to the scope or content of the section.

The FHWA received no comments on this proposal. The section will be redesignated as proposed in the NPRM.

Section 392.7, Equipment, Inspection, and Use; Section 392.8, Emergency Equipment, Inspection, and Use

The FHWA proposed to remove these sections. They cover the driver's responsibility to satisfy himself/herself that specified CMV parts, accessories, and emergency equipment are in good working order, and require the driver to use them when and as needed. The agency reasoned that they duplicated both § 396.13(a), which requires a driver to be satisfied the CMV is in safe operating condition before driving it, and the equipment requirements of part 393.

The FHWA received four comments concerning the proposal to remove these sections. Air Products recommended the specific language of § 392.7 be relocated to § 396.13(a), rather than being deleted. Air Products believes it is necessary for drivers to have instructions specifically identifying critical safety components. Inspector Moore of Vermont DMV expressed much the same concerns.

The ATA favored the proposal to remove the sections and to rely on the provisions in § 396.13 as an interim measure. However, the ATA was concerned that distributing "initial compliance" requirements among other sections of the FMCSRs may tend to diminish the importance of this issue in the minds of drivers: "We believe drivers tend to focus their attention on parts 392 and 395 which have an inherently greater impact on their actions." The ATA also believed that incorporating driver vehicle inspection report requirements in part 396 and moving the "pre-trip inspection" checklist from part 392 to part 396 could send drivers the unintended message that these activities, and the completion and submittal of records associated with them, were of lesser importance.

The AAMVA expressed much the same concern regarding instructions for drivers on precautions for unattended vehicles and driving under hazardous conditions.

FHWA Response

The FHWA is retaining these two sections. The agency agrees with the commenters that there is a need for drivers to have instructions specifically identifying critical safety components. Also, the FMCSRs provide a specific, prescriptive basis for motor carriers to develop their own policies and procedures.

Section 392.9, Safe Loading, Drivers of Trucks and Truck Tractors

The FHWA proposed to remove this section, covering requirements for a driver to assure the proper loading and securement of cargo prior to driving, inspecting the cargo and its securement within the first 25 miles, and reexamining the cargo and its securement at a change of duty status or after 3 hours or 150 miles of driving.

The FHWA received two comments on this section. Houston L&P favored the proposed removal. It asserted that each motor carrier has a responsibility to ensure all loads are properly distributed and secured. Removing this section would give motor carriers this flexibility.

Air Products agreed with the FHWA's explanation of the reason for eliminating the paragraph, but was concerned how motor carriers would develop policies and procedures without guidance currently provided in the FMCSRs. Air Products maintained that many motor carriers rely on the specific prescriptive nature of the FMCSRs. It recommended that the FHWA place a requirement in § 393.100 to emphasize the need for motor carriers to develop adequate cargo securement inspection procedures for their drivers to follow.

FHWA Response

The FHWA retains this section in the FMCSRs. Although the section appears highly prescriptive, it is supported by operational practices and by contemporary research, including the nearly-completed Load Securement Study sponsored by the Ontario Ministry of Transportation and Communications, Transport Canada, and the FHWA. The U.S. Department of Transportation published an advance notice of proposed rulemaking on October 17, 1996 (61 FR 54142) and established a public docket, FHWA–97–2289 (formerly FHWA Docket MC–96–41) on this subject. The Canadian Council of Motor Transport Administrators (CCMTA), one of the members of a drafting group developing a model set of cargo securement guidelines based upon the results of the research, has posted information on the Internet. Its website is *http://www.ab.org/ccmta/ccmta.html.*

Section 392.9(c), Safe Loading, Buses

The FHWA proposed redesignating § 392.9(c)(1) as § 392.62, deleting § 392.9(c)(2), and redesignating § 392.9(c)(3) as § 392.9(b). This redesignation was proposed to consolidate several requirements related to transportation of passengers in a single location in the regulations and to remove a redundant requirement. No commenters addressed this proposal.

The FHWA removes and redesignates the sections as proposed in the NPRM with one minor editorial change. The term "freight" in the current § 392.9(c)(3) embraces the term "express packages," so the phrase "or express" is deleted in the final rule.

Section 392.9b, Hearing Aid to Be Worn

The FHWA proposed to remove this section because it duplicates the information contained in the Medical Examiner's Certificate at § 391.45(g), "[Driver] qualified only when wearing a hearing aid."

The agency received no comments on this proposal. Accordingly, the section is removed as proposed.

Section 392.10(b)(1) and (3), Railroad Grade Crossings, Stopping Required

The provisions of § 392.10 require CMVs transporting passengers or hazardous materials requiring placarding to stop prior to crossing railroad tracks at grade, except in certain specified cases described in paragraphs (b)(1) through (b)(5). The FHWA proposed to add another exception, to permit these CMVs to cross without stopping at locations equipped with an active warning device (signal, gate, lights) when the device is not activated to warn drivers of the approach of an oncoming train.

The FHWA received 22 comments responding to this provision of the proposal. Four commenters favored the proposed revision.

The National Transportation Safety Board (NTSB) restated its 1981 Safety Recommendation H–81–77, the basis for the proposal. The NTSB recommendation stated:

> [T]he FHWA amend § 392.10, consistent with the Uniform Vehicle Code, to require trucks carrying bulk hazardous materials to stop at crossings with active warning devices only when the devices are activated to warn drivers of an approaching train. The Safety Board is not aware of any accident data nor has the Safety Board investigated any accident which suggests that the proposed revision would have an adverse impact on commercial vehicle or hazardous materials safety.

The ATA also favored revising the regulation. It pointed to considerations of disruption of the flow of traffic, as well as the potential of rear-end collisions and unsafe passing by other vehicles at the crossings. The ATA stated it had discussed the issue with

safety professionals from 4 major tank truck carriers [not named] at a meeting of the ATA's Safety Management Council, and that they supported the proposed regulatory revision. The ATA also recommended the FHWA urge States to amend their laws, noting that only 11 States provide relief from stops at active railroad crossings.

Mr. Hoy A. Richards, Principal, Richards & Associates and Senior Scientist, Texas Transportation Institute, also supported the proposal. He asserts stopped CMVs are a safety hazard unless pull-out lanes are provided; that State highway safety statistics (especially those from Texas, Illinois, and Oregon) "will show that there are twice as many no-train motor vehicle accidents as there are motor vehicle/train accidents." He also believes most drivers have no understanding of why CMVs stop at non-activated [dark] signals, although he stated he could not quote statistics. Mr. Richards did not cite reports nor provide references to the accident statistics he cited in his comments.

Mr. Richards also recommended several countermeasures based upon changes to traffic signs and signals, including use of a black-on-white crossbuck at all active highway-rail intersections and installation of a green traffic signal in all active devices. He also recommended engineering studies to determine whether standard highway traffic signal control devices could be installed at branch line and industrial grade crossings.

The State of Connecticut's DOT (Connecticut) noted that its State statutes require passenger and hazardous-materials-laden CMVs to stop before crossing any railroad tracks at grade. Connecticut said it has recently established a committee to study highway-rail crossing matters, including, among other things, the requirement for school buses to stop at all active crossings. Although it stated that no consensus had been reached on this issue, Connecticut said it would generally support the proposed revision, provided the FHWA addressed two issues. It requested the FHWA to address the definition of an "active warning device" and limit it to those grade crossings with standard railroad flashing lights and gates. It also recommended specific regulatory signage at exempt crossings used exclusively for industrial switching purposes.

The remainder of the commenters were strongly opposed to the proposal. These commenters were: the Association of Waste Hazardous Materials Transporters; Air Products and Chemicals, Inc.; the North Dakota DOT; the City of Littleton, Colorado, Fire Department; New York Operation Lifesaver; the Association of American Railroads; CSX Transportation; the American Association of Motor Vehicle Administrators; the United Transportation Union; the International Association of Fire Fighters; Louisiana Railroads; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Missouri Department of Economic Development; Operation Lifesaver, Inc.; Brotherhood of Locomotive Engineers; National School Transportation Association; and Vermont Railway/ Clarendon and Pittsford.

Commenters raised numerous concerns relating to the availability of current data to support the proposed regulatory revision, differentiation between active and passive grade crossings (availability and meaning of warning signals, habituation of CMV drivers to stop at one type of crossing but not another), reliability of the active warning devices, other drivers' expectations of tank vehicles and buses stopping at railroad grade crossings, and the use of a Federal standard as a foundation for States' motor carrier safety regulations and motor carriers' company policies. Some commenters also reflected upon their own and colleagues' experiences with near-misses and in dealing with the aftermath of rail-motor vehicle collisions. The following summaries are representative of these comments.

CSX Transportation noted "In nearly every case involving a collision between any motor vehicle and a train, the primary contributing factor is *failure to stop* on behalf of the motor vehicle."

Operation Lifesaver emphasized a need for contemporary research [T]o determine whether actions recommended [by the NTSB] 12 to 16 years ago are relevant or even advisable today from a safety perspective. Many highway-rail crossing safety issues have been addressed successfully during the past 16 years by federal, state, and local governments, and by private organizations, including Operation Lifesaver. In fact, highway-rail collisions nationwide have dropped from 8,500 in 1981 to 4,000 in 1995, a decrease of 53 percent. Given this marked safety improvement, the 1981 and 1985 recommendations may not reflect priority concerns in 1997.

Operation Lifesaver also criticized a 1985 FHWA study that recommended rescinding the CMV stopping requirement, although it also projected an increase in the number of hazardous materials-carrying CMVs, school buses, and passenger buses striking trains.

Louisiana Railroads stated that available data indicate approximately 50 percent of accidents occur at crossings where an active warning device is present, whether or not the device is activated.

The United Transportation Union commented:

> In 1995, there were 579 deaths at public highway crossings, and 1,888 injuries were sustained. During the first 11 months of 1996 (the latest figures available) there have been 3,214 accidents at public crossings involving motor vehicles, and resulting in 328 deaths and 1,234 injured. It is important to keep in mind that these tragedies occurred even when CMVs are required to stop at all crossings. To permit such vehicles to continue through crossings when there is no signal activation will create an even more hazardous situation than currently exists.

The Brotherhood of Locomotive Engineers commented:

> Locomotive Engineers are a unique party in this proceeding because we are usually the only witness to the real world at a highway rail crossing * * * Reckless behavior at the crossing is a sorry sight at best, a stupid and painful tragedy at worst. When the vehicle is one carrying hazardous material or passengers, the careless behavior at the crossing may literally destroy hundreds, perhaps thousands, of lives and wield tremendous economic damage. The consequences of a train collision with a large truck carrying hazardous materials or a bus carrying passengers could be so severe there seems little rational argument to support removing the extra measure of safety that is provided by stopping before crossing.

Several commenters pointed out the proposed change would negate many State statutes, and advised that the language of the proposed rule would not require a stop at an activated warning device.

FHWA Response

The FHWA has determined that it is in the best interest of highway safety to retain § 392.10 of the FMCSRs in its current format at this time.

The NTSB's Safety Recommendations, H–81–77 and H–89–36, if looked at together, propose that § 392.10 of the FMCSRs be amended by rescinding paragraph (b)(1) (exclusively for industrial switching) and revising the balance of the section. The FHWA's proposal would have revised the FMCSRs to require placarded hazardous materials laden CMVs, as well as passenger CMVs, to stop at only those railroad grade crossings equipped with active warning devices, and only when the devices are activated to warn drivers of an approaching train.

Data furnished by the Federal Railroad Administration that the FHWA forwarded to the NTSB show a constant and dramatic decrease in railroad grade crossing accidents involving

commercial motor vehicles during the past 10 years. While there is no data directly linking the FHWA's grade crossing regulations with this documented decline in grade crossing accidents, neither is there data to substantiate the hypothesis that changing § 392.10 of the FMCSRs to reflect the Board's recommendations is likely to result in a decline in grade crossing accidents. However, the trend information available substantiates the FHWA's experience that the current grade crossing requirements are warranted and, we believe, at least partially responsible for reducing the number of such accidents. We continue to be concerned that the recommendations, if implemented, would reduce the effectiveness of the current requirements and undo some of the progress that has been made in railroad grade crossing safety.

The text of § 11–702 of the UVCMTO, "Certain vehicles must stop at all railroad grade crossings," has not changed substantively since the NTSB issued its Safety Recommendations. Although paragraph (b) of § 11–702 indicates certain types of railroad grade crossings where vehicles would not be required to stop, paragraph (c) states that the State officials "shall adopt such regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section * * * [and] shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation." The footnotes to the 1979, 1987, and 1992 editions of the UVCMTO refer to § 392.10 of the FMCSRs.

No commenters favoring the proposed revision addressed motor carriers' proactive actions to prevent rear-end collisions. Many CMVs carrying hazardous-materials have a sign, "This vehicle stops at all RR crossings" placed on the rear of the vehicle so it is clearly visible to other motorists. The statement that drivers of other vehicles do not understand why CMVs stop at railroad crossings was contradicted by several commenters in favor of retaining the current regulation.

Finally, none of the commenters favoring the proposed change provided current data in support of their positions. Mr. Richards' comments did not specify whether the "no-train" accidents he cited were all accidents in those States, or only those at or near grade crossings.

Sections 392.13, Drawbridges, Slowing Down of Commercial Motor Vehicles; Section 392.14, Hazardous Conditions, Extreme Caution; Section 392.15, Required and Prohibited Use of Turn Signals

The FHWA proposed to delete these sections because they are currently, and more appropriately, enforced through State and local traffic laws. In addition, the FHWA concluded that the provisions of § 392.14 are fundamental safe driving practices and are probably incorporated into most motor carriers' policy manuals.

Air Products generally supported the proposal to remove and reserve the three sections. However, it was concerned about potential non-uniformity of various State requirements and recommended that the FHWA issue guidelines to the States to minimize conflicts.

The ATA supported removing § 392.15 (a) through (c), but not paragraphs (d) and (e). The ATA asserted the prohibitions are unique to the FMCSRs and provided some history. The "parking" use prohibition in § 392.15(d) was a response to the use of turn signals on one side of the CMV prior to the advent of four-way flashers. The "do pass" prohibition in § 392.15(e) was incorporated into the FMCSRs with the support of the trucking industry because of lawsuits against motor carriers whose drivers had given this signal to a following driver who was then struck by a third vehicle. The ATA recommended that the FHWA review State laws on these topics before making a decision on revoking the provisions.

The Pennsylvania DOT was concerned that removing § 392.15 would limit enforcement because State personnel who are not sworn police officers cannot enforce traffic laws. Inspector Moore of the Vermont DMV commented that the Vermont State statutes contain no provisions similar to § 392.14, and that Vermont traffic laws require use of turn signals only for vehicles traveling on limited-access highways.

FHWA Response

The FHWA believes State and local traffic laws and motor carriers' safe and prudent operating practices cover these situations. Therefore, the FHWA is removing and reserving §§ 392.13 and 392.15 as proposed in the NPRM. However, the FHWA has determined it is in the interest of highway safety to retain § 392.14. This section provides a specific basis for motor carriers to develop their own safety policies and procedures for operating a CMV when adverse environmental conditions limit visibility or reduce traction.

The FHWA included § 392.15(d) and (e) in the recodification of the FMCSRs on December 26, 1968 (33 FR 19700), a year after the motor carrier safety regulations of the former Interstate Commerce Commission had been transferred to the new Department of Transportation. A review of the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard (FMVSS) suggests that the uses of turn signals described in § 392.15(d) and (e) have been made obsolete by the availability of vehicle hazard warning signal flashers, commonly known as "four-ways." Table 1, Required Motor Vehicle Lighting Equipment Other than Headlamps (Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or more inches Overall Width) of FMVSS 108 (49 CFR 571.108) references Society of Automotive Engineers (SAE) Recommended Practice J945, issued in February 1966.

The use of vehicle hazard warning signals also is described in the UVCMTO § 12–215. The UVCMTO was revised in 1968 to permit vehicles to be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing. The same year, the UVCMTO also added a requirement that every bus, truck, truck-tractor, trailer semitrailer, or pole trailer 80 inches or more in overall width, or 30 feet for more in overall length be equipped with lamps meeting these requirements. Finally, paragraphs (f) and (g) of UVCMTO § 12–215 state:

> (f) The driver of any vehicle equipped with vehicular hazard warning lights may activate such lights whenever necessary to warn the operators of following vehicles that the signaling vehicle may itself constitute a traffic hazard.
>
> (g) The driver of a truck, bus, or truck tractor pulling a trailer or trailers, equipped with vehicular hazard warning lights may activate such lights when that vehicle is proceeding up a grade, or under other conditions requiring it to be operated at a speed less than the prevailing speed of traffic.

The FHWA believes these UVCMTO citations adequately address the concerns of the ATA and other commenters concerning the proper use of vehicular hazard warning lights.

In its current form, the section only considers potential hazards to passengers in the event a CMV is operated during adverse environmental conditions. The FHWA plans to address this issue as it relates in more general

terms to other highway users in a future rulemaking action.

Section 392.20, Unattended Commercial Motor Vehicles; Precautions

The FHWA proposed to remove the section prohibiting a commercial motor vehicle from being left unattended until the parking brake has been set and all reasonable precautions have been taken to prevent the vehicle from moving. The agency reasoned that State and local government authorities are in a better position to monitor and enforce regulations of this nature for commercial motor vehicles transporting non-hazardous materials (special regulations for HM-laden commercial motor vehicles are covered in part 397 of the FMCSRs). The FHWA received no comments, and the section is removed and reserved as proposed in the NPRM.

Section 392.22, Emergency Signals; Stopped Commercial Motor Vehicles

The FHWA proposed to revise paragraph (b) of this section, concerning the placement of warning devices in the event a CMV is stopped on the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops. The agency believes drivers often do not place warning devices at the locations or distances specified in the regulation because the instructions are not clear and because it is difficult for them to estimate distances by eye. The agency proposed to revise the section to make the language clearer and to include the number of paces as well as the required linear distances at which warning devices are to be placed.

The ATA provided the only comment on this section. It recommended listing the distances in paces first, as they were when this regulation was first promulgated by the ICC.

FHWA Response

The FHWA agrees with the ATA's recommendation to list the locations for placing warning devices in paces, followed by the approximate linear distances in meters and feet. The final rule describes the locations as "x paces (approximately y meters or z feet)" where x, y, and z are the appropriate dimensions in § 392.22(b)(1) (i), (ii), and (iii).

Section 392.25, Emergency Signals; Dangerous Cargoes

The FHWA proposed to delete this section prohibiting the use of flame-producing devices on CMVs carrying certain hazardous materials cargoes or fueled by compressed gas. The agency reasoned it was unnecessary to prohibit the use of flame-producing devices because § 393.95(g) of the FMCSRs prohibits those devices from being carried on a CMV transporting the same classes of placarded hazardous materials described in § 392.25.

Several commenters opposed removing this section. Mr. O. Bruce Bugg, a law enforcement officer with experience in CMV and HM safety, stated that it is not uncommon for CMV drivers to borrow warning devices from other drivers to replace or to supplement their own equipment. He said other drivers, highway department personnel, and police officers could supply flame-producing devices to CMV drivers transporting placarded "flammable" cargoes. The Pennsylvania DOT had a similar comment.

The AHAS and Inspector Moore of the Vermont DMV also opposed removing the requirement. They noted this section contains the only specific prohibition on the use of these flame-producing devices. The AHAS recommended merging the proscription against use of the devices with the proscription against carrying the devices at § 393.95(g). Mr. Bugg recommended the provision be combined with sections in parts 393 or 396.

FHWA Response

The FHWA is retaining this section, and is also changing the heading to "Flame producing devices" to make the intent more clear. As several commenters pointed out, someone else (perhaps even a law-enforcement official) could give a flame-producing device to a CMV driver, with potentially serious consequences.

The FHWA believes the "use" provisions of part 392, the "equipment" provisions of part 393, and the "inspection" provisions of part 396 of the FMCSRs need to be considered in their own contexts. Section 392.25 specifically prohibits use of these devices. On the other hand, § 393.95(g), codified in an FMCSR part that describes requirements for "equipment" rather than its use, specifically prohibits carrying these devices.

Section 392.42, Notification of License Revocation

The FHWA proposed to move the requirement for a driver to notify the employing motor carrier of a license revocation, which is currently addressed in § 392.42, to § 391.15(b)(2). The agency also proposed to change the title of paragraph (b) to "Loss of driving privileges." The change was proposed because the section addresses conditions relating to driver disqualification, rather than general safe driving provisions.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. These comments were to be considered to determine if the FHWA should further revise § 391.15(b) to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn.

The sole commenter favoring this speculative revision was Houston L&P. Houston L&P believed the MVR issued by a State licensing agency provides adequate means for obtaining information on convictions, disqualifications, license suspensions, revocations and cancellations as required under §§ 383.31(a) and 383.33. However, Houston L&P did not comment on whether these sections, applicable to CDL holders, provided comparable information for non-CDL CMV drivers.

All other commenters opposed the intent and direction of such a revision. The AAMVA, the States of Wisconsin, Delaware, Idaho, Missouri, Vermont, and Wisconsin, and one private motor carrier addressed this issue.

The AAMVA stated it would strongly oppose a requirement for DMVs to notify motor carriers of convictions or adverse licensing actions against motor carriers' employees' driving records. It noted that only a few Departments of Motor Vehicles (DMVs) have programs to notify motor carriers of any violations added to a driver's record. The AAMVA pointed out that California's statutory requirement and New York's voluntary program require motor carriers to pay participation fees. Finally, the AAMVA advised that these programs are costly to administer. Because employment turnover rates in the trucking industry are high, the single task of processing employer change notices requires significant resources.

Delaware, Idaho, Missouri (Department of Revenue), and Vermont stated they do not have a program in place to notify motor carriers when drivers lose their driving privilege. The Delaware DPS added it could not notify employers of CMV driver violations because it does not, nor does it propose to, maintain records of drivers' employers. This function would require a legislative change the Delaware DPS believes would be difficult or impossible to pass. The Delaware DPS stated it could not support a method

where the State would be held responsible or liable for this reporting. Delaware also identified many of the issues noted by the AAMVA concerning the significant difficulty in maintaining current basic information, such as a driver's address. Delaware was profoundly concerned that the transfer of these responsibilities to State agencies could take place without the Federal government adequately assessing the costs to the States. It cited "the anticipated transfer of medical qualification determinations" [the subject of an ongoing FHWA negotiated rulemaking] as an example of such a transfer.

The North Dakota Department of Transportation stated it would not be able to comply with a requirement that a State notify a driver's employer. North Dakota DOT noted many States do not keep records of drivers' employers, and many drivers do not work for the same motor carrier for any substantial length of time.

The Wisconsin Department of Transportation stated that it does not send a written notification to a motor carrier when a driver's privilege is withdrawn, and would oppose such a requirement. The State has a voluntary "Employer Notification Program" enabling them to receive notification of "hits" on an employee's record. The program requires the employer to keep the DMV informed when drivers leave the company or retire. Employers are charged a $20 annual base fee, a one-time fee of $2 per employed driver, and a fee of $3 per driver record abstract change generated by an accident, conviction, withdrawal from the program, or other event. During 1996, 1,012 employers received over 52,000 driver abstracts.

Air Products also strongly opposed the revision on the ground that each employee has a responsibility to report any issue negatively affecting his or her ability to perform job functions. Further, if a driver fails to report a license revocation, and that driver is involved in an accident while driving for the employing motor carrier, the motor carrier is still liable and responsible for the driver's actions. Air Products contends that "by exempting drivers from this requirement, a message is being sent to the drivers that it is acceptable to remain quiet."

The Delaware DPS' point of view was similar to that of Air Products—motor carriers are in the key position to review and assess the safety of the drivers they employ. Delaware DPS also commented that the FMCSRs might be amended to require at least an annual record check of the safest (i.e., violation-free) drivers and more frequent checks of the records of "problem" drivers.

FHWA Response

Section 392.42 is redesignated as § 391.15(b)(2) as proposed in the NPRM.

The issue of loss of driving privileges on the basis of citations from a driver's licensing State or a State or other jurisdiction other than the licensing State is a complex one. The FHWA will consider it in a future rulemaking action. The title of § 391.15(b) remains "Disqualification for loss of driving privileges."

No changes are made to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

Section 392.51, Reserve Fuel

The FHWA proposed to remove this section. The section prohibits carrying fuel for propulsion or operation of accessories except in a properly mounted fuel tank. The agency believed there was no sound reason to prohibit carrying small amounts of fuel under those circumstances while (by implication) allowing the practice if the fuel were to be used to power machinery transported on the CMV.

The FHWA received two comments. The AWHMT asked the FHWA to clarify the rationale for removing this regulation. It raised two concerns: (1) The definition of "small package;" and (2) how the carriage of small packages containing fuel would be made consistent with the Hazardous Materials Regulations (HMRs). Houston L&P supported the proposal, citing the "Materials of Trade" exceptions to the HMRs issued in January 1997.

FHWA Response

Just prior to the publication of the FHWA's NPRM, the Research and Special Programs Administration issued a final rule, on January 8, 1997 (62 FR 1208). The RSPA final rule, effective October 1, 1997, with a compliance date of October 1, 1998 (see 62 FR 49560, September 22, 1997), applies a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States and requires intrastate motor carriers and shippers to comply with the HMRs, with certain exceptions. One set of exceptions applies to "materials of trade."

The RSPA defines a "material of trade" as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle: (1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) for the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or (3) by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle. See 49 CFR 171.8. The exceptions codified at 49 CFR 173.6 cover materials and amounts, packaging, hazard communication, and aggregate gross weight provisions for the "materials of trade."

Several of these exceptions apply to fuels. Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR parts 171, 172, 173, and 178, or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106. For a Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons). A Division 2.1 material (flammable gas) in a cylinder is limited to a gross weight of 100 kg (220 pounds). The RSPA final rule states that the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

The FHWA provides references to the RSPA regulation in the FMCSRs. For ready reference, the gross weight limits of commonly-used fuels (gasoline, diesel, and flammable gases) and the packaging requirements for gasoline are restated in today's final rule.

Accordingly, the FHWA will revise § 392.51 to allow small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) to be carried as defined under "materials of trade," 49 CFR 171.8.

Section 392.52, Buses; Fueling

The FHWA proposed to remove the section prohibiting buses from being fueled in a closed building with passengers aboard. The agency reasoned that this is a rare occurrence, does not influence highway safety, and does not warrant a Federal prohibition. No comments were received on this proposal. Accordingly, the section is removed and reserved as proposed in the NPRM.

Section 392.68, Motive Power Not To Be Disengaged

The FHWA proposed to remove and reserve this section, which prohibits CMVs from being driven with the source of motive power disengaged from the driving wheels. The agency reasoned that this prohibition is more appropriately monitored and enforced by State and local officials. This prohibition is, in fact, contained in the Uniform Vehicle Code and Model Traffic Ordinance, § 11–1108, Coasting Prohibited:

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged.

The FHWA received no comments on the proposal to remove this section. It is removed and reserved as proposed in the NPRM.

Sections 395.1(g), Hours of Service of Drivers; Retention of Driver's Record of Duty Status

The FHWA proposed to remove § 395.1(g), Retention of driver's record of duty status. This section covered the divided record authority provisions for records of duty status. As described earlier in this document, the FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this section, and the final rule incorporates the proposed change.

Sections 395.1(h), (i), and (j), and (k); Sleeper Berths, State of Alaska, State of Hawaii, Travel time, Agricultural operations, Ground Water Well Drilling Operations, Construction Materials and Equipment, Utility Service Vehicles

Because the FHWA proposed to delete § 395.1(g), it proposed to redesignate the four paragraphs following it. The agency proposed no substantive changes and received no comments concerning the redesignations for these sections. However, the FHWA inadvertently neglected to propose to redesignate the last four paragraphs in the section, 395.1(l) through 395.1(o). The final rule implements the proposed redesignations as well as redesignating by technical amendment §§ 395.1(l) through 395.1(o) as §§ 395.1(k) through 395.1(n).

Section 395.2, Definitions, "On-duty Time"

The FHWA proposed to revise the definition by removing paragraph (2), inspection of equipment as required by §§ 392.7 and 392.8, because the agency had proposed to delete those sections. Although the FHWA has determined it is in the interest of safety to retain those sections (see discussion earlier in this document under those headings), the agency believes the proposed text, "all time inspecting, servicing, or conditioning any commercial motor vehicle at any time," includes the equipment, parts, and accessories described in §§ 392.7 and 392.8. The proposed language is therefore being adopted.

Paragraph (7) under the definition of on-duty time covers time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the FHWA and USDOT controlled substance and alcohol testing regulations. The paragraph refers to subpart H of part 391. After the NPRM was published, the regulations in subpart H of part 391 were removed because they have been superseded by part 382. The FHWA published a technical amendment describing this action on July 11, 1997 (62 FR 37150).

No commenters addressed the proposed revision of § 395.2. The FHWA has made several minor editorial changes (such as deleting the phrase "of this section") from the text proposed in the NPRM. The reference to subpart H is also removed as a technical amendment.

Section 395.8, Driver's Record of Duty Status

The FHWA proposed revising paragraph (k)(1) to reflect the proposal described earlier in this document to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed the provision as reflected in this section and it is revised as proposed.

Section 396.11(b), Driver Vehicle Inspection Report(s); Report Content

The proposed revision to this paragraph was editorial in nature ("vehicle" for "motor vehicle" and "report" for "vehicle inspection report"). The FHWA received no comments on the proposed revision, and the final rule incorporates the proposed changes.

Section 396.11(c), Corrective Action

The proposed revision to this paragraph made the language consistent with other parts of the FMCSRs ("prior to operating" replaced with "prior to requiring or permitting a driver to operate"). The FHWA received no comments, and this section is revised as proposed in the NPRM.

Sections 396.11(c)(1) Through (c)(3), 396.11(d), and 396.13(b), Concerning Driver Vehicle Inspection Report(s)

The FHWA proposed to remove § 396.11(c)(3), requiring a legible copy of the last driver vehicle inspection report (DVIR) to be carried on the power unit. Other paragraphs within the section would be revised to reflect this change. The agency believed the administrative burden of requiring the DVIR to be carried on the power unit outweighed its benefits. The NPRM stated that the presence or absence of a DVIR was not a factor in the decision to conduct a roadside inspection of a CMV and noted that failure to have the DVIR is not an out-of-service violation under the CVSA North American Out-of-Service Criteria. However, the FHWA emphasized that the proposed removal of the requirement was not intended to affect the driver's access to the DVIR and the requirement for the driver to review it before driving a CMV.

The FHWA received six comments concerning the proposal to delete these provisions. Two commenters favored the proposal, one suggested revisions to the proposed language, and three opposed it.

The ATA favored the proposal, but believed it was insufficient to "alleviate the burdens and costs of the remaining 'paper chase'." The ATA also recommended the FHWA remove the requirement that the motor carrier or its agent certify correction of the defects on the DVIR and require the next driver to sign it. It contended that a review of a motor carrier's work orders, generated in response to specific defects reported by drivers, would be a more useful way to ascertain whether maintenance practices are effective at keeping CMVs safe.

Houston L&P supported the proposal as promoting performance-oriented flexibility.

Consolidated Safety Services, Inc. (CSS), a nationwide occupational safety and health organization, offered comments concerning the text of the proposed revisions to § 396.11. CSS

interpreted the proposed language to imply there is only one copy of the DVIR. CSS maintains the industry practice has been to use a two-copy form (original and legible copy). CSS recommended minor changes to the proposed revision to clarify the requirement for a single copy of the DVIR as follows:

396.11(c)(1) Every motor carrier or its agent shall certify on *the original* driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

396.11(c)(2) Every motor carrier shall maintain the *original* driver vehicle inspection report and the certification of repairs, *and the certification of the driver's review*, for three months from the date the written report was prepared.

The Colorado Department of Public Safety (CDPS), the Pennsylvania DOT (PennDOT), and Inspector Moore of the Vermont DMV opposed the proposal. The CDPS and Inspector Moore asserted that a roadside inspector's review of a DVIR provides opportunities to determine a driver's knowledge of how to perform a vehicle inspection, to assess an example of a motor carrier's maintenance procedures, and to determine whether education, review, or enforcement actions are warranted.

The CDPS proposed that §§ 396.11 and 396.13 be combined into a single requirement. The requirements for pre- and post-trip inspections would be retained, but motor carriers would determine which one would be documented and the documentation filed.

The PennDOT also found inappropriate the FHWA's rationale for proposing to delete this section. The PennDOT noted that, if the out-of-service criteria were the only basis for a regulatory requirement, then many of the other existing regulations would need to be eliminated as well.

Inspector Moore of the Vermont DMV believed many motor carriers will probably continue to carry the DVIR in the vehicle because they find it convenient to do so.

FHWA Response

The FHWA is removing § 396.11(c)(3) and revising § 396.13(b) as proposed in the NPRM, and incorporating the modifications that CSS suggested. The FHWA continues to believe that the presence or absence of a DVIR in the power unit is not a primary factor in a decision to conduct a roadside inspection. The FHWA believes the concerns of the CDPS regarding documentation of the inspection are addressed because there is no change in the requirement to document the results of an inspection and certification of corrective action.

The FHWA is not removing the requirement for certification of corrective action, as the ATA had recommended be done. The ATA's recommendation of reviewing a work order would significantly increase the complexity and time required to determine how a reported CMV defect had been resolved. It would require a driver to contact maintenance personnel who might not be available when the driver was being dispatched. It would also require FHWA motor carrier safety specialists to examine and cross-check separate maintenance and operational records. The final rule otherwise adopts the changes proposed in the NPRM.

Section 397.19, Transportation of Hazardous Materials; Driving and Parking Rules; Instructions and Documents

The FHWA proposed to revise the text of this section to remove the reference to the motor carrier's principal place of business in paragraph (b) to reflect the proposal described earlier in this document. The effect of this change would be to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or another specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this provision and it is revised as proposed.

Comments on FMCSR Sections Not Addressed in the NPRM Definition of CMV

Houston L&P, Alabama Power, and Southern Company Services, Inc., believe a CMV should be defined to include vehicles of 26,001 or more pounds. The AAMVA and Ameritech Corporation (Ameritech) recommended the FHWA reconcile the weight definitions in parts 383 and 390 "so only one definition exists." Ameritech believed the FHWA should evaluate the current GVWR criteria for the CMV definitions, weigh the regulatory burden and return on safety performance, and assess the different points where States apply the intrastate CMV safety regulations. Ameritech also stated the FMCSRs should apply to "all applicable drivers * * * whether they operate a 12,000 pound utility truck or an 80,000 pound long-haul vehicle."

FHWA Response

The FHWA is currently addressing the issue of the application of the FMCSRs to different weight classes of CMVs, the motor carriers operating them, and their drivers, in several ongoing regulatory activities. Section 344 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) calls for a "Motor Carrier Regulatory Relief and Demonstration Project" to exempt CMVs and their drivers from elements of the FMCSRs for a 3-year pilot period (49 U.S.C. 31136(e)(2)). Applicant motor carriers must have an exemplary safety history to participate. The Secretary of Transportation will oversee safety through monitoring and reporting of safety-related data. A Notice of Final Determination for this project was published in the **Federal Register** on June 10, 1997 (62 FR 31655). The FHWA is accepting applications through June 30, 1998.

State Conformity With Interstate Regulations

The Pennsylvania DOT noted that its State Vehicle Code is automatically revised to conform to changes in the FMCSRs. It added that not all States have this provision, and incompatibilities between State and Federal regulations could arise.

FHWA Response

Several other States have brought similar concerns to the FHWA's attention from time to time. Because of differences in State laws and administrative procedures, the process to adopt FMCSR revisions into State regulations takes one of three paths. Twenty-four States adopt the FMCSRs by reference. Nineteen others adopt the FMCSRs into their State regulations following an administrative review process performed by executive-branch agencies (such as the State Department of Transportation). Nine States adopt changes after legislative review and process. One State adopts most changes through administrative process, but requires a legislative process for others. The FHWA's MCSAP provides a phase-in period of no longer than three years for States to revise their regulations to respond to revisions to the FMCSRs. Despite the variation in State adoption procedures and schedules, however, the MCSAP has produced a degree of national uniformity in commercial motor vehicle safety regulations never before achieved.

Enforcement Powers of Civilian State Motor Carrier Safety Personnel

The Pennsylvania DOT staffs its motor carrier safety programs with uniformed personnel from State and local police forces, as well as with civilian Public Utilities Commission and DOT inspectors. The Pennsylvania DOT advises the FHWA that its civilian officials, who are not sworn police officers, have limited enforcement powers. For example, they cannot enforce local traffic regulations concerning the use of turn signals, but they can cite a CMV driver under a State's version of 49 CFR 392.15, Required and prohibited use of turn signals.

FHWA Response

There are many more sworn officers in any given jurisdiction than there are civilian motor carrier safety officials. Although the Pennsylvania DOT may have to limit civilian inspectors to certain tasks, the FHWA believes there will be little, if any, negative impact from deleting § 392.15, as well as several other regulations adequately covered under State and local traffic laws.

Performance Oriented Compliance Criteria

Houston L&P suggested motor carriers with a satisfactory safety rating be relieved of certain regulatory requirements and be allowed to maintain "core records." These could include the Driver Qualification File (§ 391.51), Alcohol and Drug Testing (part 382, pre-employment drug testing, post-accident testing, random testing at a 25 percent rate for drugs and 10 percent rate for alcohol), and documents pertaining to financial responsibility requirements (part 387), Inspection, repair, and maintenance (part 396), and hazardous materials. Houston L&P believes that, if a motor carrier were assigned an "Unsatisfactory" safety rating, the motor carrier should be required to add hours of service (part 395) and increase the random testing rates to 50 percent for drugs and 25 percent for alcohol.

FHWA Response

The FHWA may consider these comments in future rulemaking actions as part of the Zero-Base Regulatory Reform Initiative.

Other Simplifications, Clarifications Requested

Alabama Power and Southern Company Services, Inc. believe the zero-base process must continue to address regulations they consider burdensome and of questionable value for safety: "Each section of the FMCSRs should be considered individually and impacted industries allowed to debate the requirements." They believe further simplification and clarification of some regulations is needed, including raising the threshold for FMCSR applicability to 26,000 pounds, requiring States to be more consistent regarding waivers and exemptions, and revising the hours-of-service regulations.

FHWA Response

The FHWA is currently addressing all of these issues. The agency is implementing a demonstration program required under Section 344 of the National Highway System Designation Act to exempt motor carriers operating vehicles with a GVWR of 10,001 to 26,000 pounds from certain regulations (61 FR 44385). The FHWA's MCSAP program activities and its consultative role in the CVSA continually address compatibility between State and federal determinations of applicability to motor carrier safety regulations. The FHWA has also initiated a rulemaking to revise the hours-of-service regulations (61 FR 57252, November 5, 1996).

Section 392.10(a), Railroad Grade Crossings; Stopping Required

The ATA recommended the FHWA delete this section's prohibition against shifting gears while crossing railroad tracks. The ATA contends that without this provision, CMVs would be able to negotiate grade crossings in shorter periods of time. The ATA based this conclusion upon results of a computer simulation performed by a major engine manufacturer (the ATA did not name the company). The simulation modeled crossing times for an 80,000 pound CMV consisting of a tractor powered by a 330-hp engine with 10-speed transmission towing a 53-foot semitrailer. For an upshift from third to fifth gear, times for crossing a single track were computed to be reduced from 13.6 to 9.9 seconds. For crossing a double track, the times were computed to be reduced from 14.8 to 10.6 seconds.

FHWA response

The FHWA appreciates this information. However, before a regulatory change can be considered, more analyses will be needed, similar to the work performed by the University of Michigan Transportation Research Institute for the FHWA in 1985 and reported in *Consequences of Mandatory Stops at Rail-Highway Crossings* (Report FHWA/RD–86/014). Those analyses should explore the influence of engine power ratings, longer trailer combinations including multiple trailers, multiple-track grade crossings, and different grades at the crossings.

Section 392.33, Obscured Lamps or Reflectors

The Colorado DPS suggested this section be removed because State law already requires that lamps be visible and §§ 396.3(a)(1) and 396.7 appear to cover this violation.

FHWA Response

The FHWA will consider this in a separate rulemaking as part of its Zero-Base Regulatory Reform initiative.

Section 393.70, Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations

Inspector Moore of the Vermont DMV requested the FHWA to revise the section to include a discussion of coupling device requirements for the towing of semitrailers not equipped with fifth wheel assemblies, such as those using pintle hook devices.

FHWA Response

The FHWA is addressing coupling devices and towing methods in a separate NPRM published April 14, 1997 (62 FR 18170). Among other things, the NPRM proposes revising §§ 393.70 and 393.71.

Section 395.1(e), 100 Air-Mile Radius Driver

This provision concerns the exemption from the requirements of § 395.8 for drivers who operate within a 100 air-mile radius of the drivers' normal work reporting location and return to the normal work reporting location and are released from work within 12 consecutive hours.

The Distribution and LTL Carriers Association (LTL) recommended the FHWA increase the 100 air-mile radius to 150 air-miles, or, alternatively, provide the exemption to drivers who report to and are released from a normal reporting location and who are on duty for 12 hours or less. The LTL also suggested linking the § 395.8 exemption to three of the five requirements in the current regulation: (1) the driver's on-duty status was 12 consecutive hours from start to finish of the shift; (2) the driver commences and concludes work at points where the motor carrier can verify the driver's on-duty status; and (3) the employer maintains accurate time records on shift starting time, completion time, and total hours on-duty. The LTL also raised the possibility of increasing the consecutive hours of the work shift in § 395.1(e)(2), but it did not specify a figure or range.

The LTL provided historical and operational perspectives to support its proposal. In 1980, the 100 air-mile exemption was increased from 50 air-miles. The same year, economic deregulation provided motor carriers the opportunity to expand their operations to meet customer needs. The LTL asserted that flexibility to meet those needs "may necessitate more routine operations beyond 100 miles from terminals." According to the LTL, other factors, such as the use of larger-capacity 28-foot doubles trailers for linehaul operations, improvements to road networks, and increased operational scope of terminals and warehouses in large metropolitan areas, make it possible for runs within a 150-mile radius to be performed safely and efficiently under the current 10-hour driving limit, and within 12 hours of the time a driver reports to work.

According to the LTL, approximately 24 percent of the employees of distribution and LTL motor carriers are local or shorthaul drivers. Based on that figure, extending the exemption could relieve some 100,000 drivers of the paperwork burden of records of duty status. The LTL noted that the States of Illinois, Maryland, and Texas already permit a 150-air-mile radius exemption for intrastate transportation under the MCSAP Tolerance Guidelines, but that the FHWA had determined Florida's 200 air-mile radius exemption did not conform to the Guidelines.

FHWA Response

The FHWA recognizes that some drivers operating outside the 100 air-mile radius might drive less than a driver operating within the 100 air-mile radius. This brings into question the value of a distance-based compliance "floor" for records of the type required under § 395.8. The FHWA will address the issue of distance- and time-based exemptions to § 395.8 in a future rulemaking.

Section 395.8(k), Retention of Driver's Record of Duty Status

The Department of California Highway Patrol (CHP) suggests that the FHWA define "supporting documents" using the text of the November 1993 Regulatory Guidance (58 FR 60734).

FHWA Response

As part of the Hazardous Materials Transportation Authorization Act of 1994 (Sec. 113, Pub.L. 103–311, 108 Stat. 1673, 1676), the Congress directed the Secretary of Transportation to prescribe regulations to improve compliance with the hours of service requirements, and to improve the effectiveness and efficiency of Federal and State officials reviewing such compliance. As part of that mandate, Congress directed the FHWA to specify the supporting documents that motor carriers must maintain. The FHWA is addressing this issue in a Notice of Proposed Rulemaking published April 20, 1998 (63 FR 19457). The docket number is FHWA–98–3706. Comments are requested by June 19, 1998.

Section 396.9(d), Inspection of Motor Vehicles in Operation; Motor Carrier Disposition

Section 396.9(d) requires correction of violations or defects noted in the report, and requires the motor carrier to certify those corrections within 15 days following receipt of the report. In his comments, Inspector Moore of the Vermont DMV contended that motor carriers interpret this to mean they have 15 days to correct the violation. Inspector Moore requested this statement be amended to advise motor carriers that "violations or defects identified on an inspection report, but which have not been designated as out-of-service violations, be repaired or corrected prior to use of the vehicle for any purpose other than the specific assignment it was engaged in at the time of the inspection."

FHWA Response

The FHWA believes the current language of the regulation adequately addresses this issue.

Other Comments

Virginia Power and the Petroleum Marketers Association of America stated that they supported all the proposed changes.

For ease of reference the following distribution table is provided:

Old section	New section
387.5	387.5.
For-hire carriage	Revised.
Motor carrier	Revised.
None	387.27(b)(4) [added].
387.29	387.29.
Motor common carrier	Removed.
Motor contract carrier	Removed.
For-hire carriage	Revised.
Motor carrier	Revised.
390.3(f)(2)	Revised.
390.5	390.5 definitions revised.
Accident	Revised.
Commercial motor vehicle.	Revised.
Highway	Added.
Intermittent, casual, or occasional driver..	Renamed: Multiple-employer driver.
Interstate commerce	Revised.
Principal place of business.	Revised.
Regularly employed driver.	Renamed: Single-employer driver.
None	390.29 added.
391.11	391.11 section heading revised.
391.11(b)(4), (b)(5)	Redesignated as 391.13(a),(b).
391.11(b)(6)	391.11(b)(4).
391.11(b)(7)	391.11(b)(5) and revised.
391.11(b)(8)	391.11(b)(6).
391.11(b)(9)	391.11(b)(7).
391.11(b)(10)	391.11(b)(8) and revised.
391.11(b)(11)	Removed.
None	391.13 added.
391.15(b)	391.15(b)(1) and (2).
391.25	Revised.
391.33(a)(1)	Revised.
391.51(a)	Revised.
391.51(b) introduction	Revised.
391.51(b)(1)	391.51(b)(7).
391.51(b)(2)	391.51(b)(8).
391.51(b)(3)	391.51(b)(5).
391.51(b)(4)	391.51(b)(6).
391.51(b)(5)	Removed.
391.51(c) introduction	Removed.
391.51(c)(1)	Removed.
391.51(c)(2)	391.51(b)(1).
391.51(c)(3)	391.51(b)(2).
391.51(c)(4)	391.51(b)(3).
None	391.51(b)(4).
391.51(d)	Removed.
391.51(e)	Removed.
391.51(f)	391.51(c).
391.51(g)	Removed.
391.51(h) intro	391.51(d) intro.
391.51(h)(1)	391.51(d)(4).
391.51(h)(2)	391.51(d)(2).
391.51(h)(3)	391.51(d)(3).
391.51(h)(4)	391.51(d)(5).
None	391.51(d)(1).
391.61	Revised.
391.63	Revised.
391.65(b) and (c)	Revised.
391.67	Revised.
391.68	Revised.
391.69 Drivers operating in Hawaii.	Removed.
391.71	Removed and reserved.
391.73	Redesignated as § 391.69 and revised.
392.9(c)	Redesignated as § 392.62 and revised.
392.9b	Removed.
392.13	Removed and reserved.
392.15	Removed and reserved.
392.20	Removed. and reserved.
392.22(b)(1)	Revised.
392.25	Revised section heading.
392.42	Redesignated as § 391.15(b)(2) and revised.
392.51	Revised.
392.52	Removed and reserved.

Old section	New section
392.68	Removed and reserved.
395.1(g)	Removed.
395.1(h)	Redesignated as § 395.1(g).
395.1(i)	Redesignated as § 395.1(h).
395.1(j)	Redesignated as § 395.1(i).
395.1(k)	Redesignated as § 395.1(j).
395.1(l)	Redesignated as § 395.1(k).
395.1(m)	Redesignated as § 395.1(l).
395.1(n)	Redesignated as § 395.1(m).
395.1(o)	Redesignated as § 395.1(n).
395.2:	395.2 definitions revised.
On-duty time	Revised.
395.8(k)(1)	Revised.
396.11(b)	Revised.
396.11(c)	Revised.
396.11(c)(1)	Revised.
396.11(c)(2)	Revised.
396.11(c)(3)	Removed.
396.11(d)	Revised.
396.13(b)	Revised.
397.19(b)	Revised.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. In addition, this regulatory action is not expected to cause an adverse effect on any sector of the economy. The regulations which are the subject of this rulemaking are obsolete, redundant, unnecessary, ineffective, burdensome, more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. Thus, the rulemaking actually lessens the burden imposed by regulations which are being removed, amended, or redesignated. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FMCSRs. In addition, the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes this rule will not have a significant economic impact on a substantial number of small entities.

For the most part, this rulemaking will reduce the burden of complying with the FMCSRs by making the regulations clearer and less repetitious. As a result, all entities which are subject to these regulations would benefit, regardless of size. Any benefits resulting from this action, however, would not be of sufficient magnitude to generate a significant economic impact on small entities that would require a full regulatory flexibility analysis to be performed.

This regulatory action will also facilitate compliance with the FMCSRs by removing certain regulations that are more appropriately addressed by company policy. This action will provide motor carriers with more flexibility in furthering the safety of their operations.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FHWA has determined that the changes in this rulemaking will not have an impact of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined this rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These changes to the FMCSRs will not preempt any State law or regulation and no additional costs or burdens will be imposed on the States. In fact, regulatory burdens will be reduced as a result of this rulemaking. In addition, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Although this rulemaking does not impose new information collection requirements, it will change existing information collections. These changes were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The final rule revises two elements and deletes one element within the existing information collections.

The first element is a recordkeeping requirement, Annual inquiry into drivers' driving records, included in the following information collection at § 391.51 OMB Control Number 2125–0065:

Title: Driver Qualification Files.

Affected Public: Approximately 405,000 motor carriers.

Abstract: Motor carriers are required to maintain a driver qualification file for each CMV driver to document that the driver meets the qualification standards to drive in interstate commerce.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: Based on an estimate of 5,500,000 interstate CMV drivers, and 405,000 motor carriers subject to the regulation, the initial employment applications impose an annual burden of 23,833 hours on drivers and 11,917 hour on motor carriers. Initial inquiry into drivers' records and investigations into employment records impose a burden of 178,750 hours. Annual inquiries into drivers' driving records impose an estimated annual burden of 398,750 hours. The recordkeeping requirements related to the list of certification of violations impose an estimated annual burden of 159,500 hours. The total estimated burden is 777,333 hours. The OMB has approved this information collection through October 31, 2000.

The second information collection revision involves the requirement that motor carriers who use a driver furnished by another motor carrier obtain information regarding the validity of the driver's qualification

certificate. This requirement is included in the following information collection required under § 391.63 and documented under OMB Control Number 2125–0081:

Title: Qualification Certificate.

Affected Public: Approximately 405,000 motor carriers.

Abstract: A motor carrier that employs a driver who is furnished by another motor carrier, is exempt from maintaining a driver qualification file for such driver, provided a qualification certificate is obtained from the furnishing motor carrier.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: The proposed information collection involving contacts to verify the validity of qualification certificates increases the total estimated annual burden of qualification certificates (approved by the OMB under control number 2125–0081) by 13,750 hours, from 13,750 total hours to 27,500 total hours. This information collection was approved by OMB through April 30, 2000.

The third information collection revision deletes the requirement codified at 49 CFR 396.11(c)(3) for a copy of the driver vehicle inspection report to be carried on the CMV's power unit. This will reduce the time burden by 4,661,468 hours for this item from the current 33,114,100 hours to 28,452,600 hours for the overall information collection. This information collection was approved by OMB through October 31, 2000. A discussion of this revision appears under the comments concerning part 396.

Title: Inspection, Repair, and Maintenance.

OMB Number: 2125–0037.

Abstract: Motor carriers must maintain, or cause to be maintained, records that document the inspection, repair, and maintenance activities performed on their owned or leased motor vehicles. There are no prescribed forms. The records are used by the FHWA and its representatives to verify motor carriers' compliance with the inspection, repair, and maintenance standards in part 396 of the FMCSRs.

Respondents: 405,000 motor carriers.

Estimated Total Annual Burden per Record: 3,848,000 hours for routine inspection, repair, and maintenance records; 32,271,702 hours for driver vehicle inspection reports; 145,431 hours for the motor carrier disposition; 87,333 hours for the periodic inspection; 9,330 hours for the records of inspector qualifications; and 10,361 hours for the evidence of brake inspector qualifications.

Revision to Information collection budget for this item: The FHWA has determined safety will not be adversely impacted if it removes the requirement for a copy of the driver vehicle inspection report to be carried on the CMV's power unit.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 387

Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Global positioning systems, Highway safety, Intelligent transportation systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Hazardous materials transportation, Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, subchapter B, parts 387, 390, 391, 392, 395, 396, and 397 as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

2. In § 387.5, the definitions *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.5 Definitions.

* * * * *

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

3. Section 387.27 is amended by removing "and" at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding "; and" in its place, and by adding paragraph (b)(4) to read as follows:

§ 387.27 Applicability.

* * * * *

(b) Exception. * * *

* * * * *

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

4. In § 387.29, the definitions of the terms *Motor common carrier* and *Motor contract carrier* are removed and the definitions of *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.29 Definitions.

* * * * * *

For-hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

* * * * *

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

6. Section 390.3 is amended by revising paragraph (f)(2) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

* * * * *

7. In § 390.5, the definition of the term *Accident* is revised; the term *Highway* is added; the term *Intermittent, casual, or occasional driver* is removed; the term *Multiple-employer driver* is added; the term *Regularly employed driver* is removed; the term *Single-employer driver* is added; and the terms *Commercial motor vehicle, Interstate commerce,* and *Principal place of business* are revised. All are placed in alphabetical order and read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

* * * * *

Commercial motor vehicle means any self-propelled or towed vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 4,537 kg (10,001 lb) or more; or

(2) Is designed to transport 16 or more passengers, including the driver; or

(3) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

* * * * *

Highway means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

* * * * *

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

* * * * *

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Highway Administration.

* * * * *

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

* * * * *

8. Section 390.29 is added to read as follows:

§ 390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Highway Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

PART 391—QUALIFICATIONS OF DRIVERS

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

10. Section 391.11 is amended by revising the section heading and by revising paragraph (b) to read as follows:

§ 391.11 General qualifications of drivers.

* * * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15; and

(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with § 391.33.

11. Section 391.13 is added to read as follows:

§ 391.13. Responsibilities of drivers.

In order to comply with the requirements of § 392.9(a) and § 393.9 of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

12. Section 391.15 is amended by revising paragraph (b) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(b) Disqualification for loss of driving privileges. (1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

* * * * *

13. Section 391.25 is revised to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping. (1) A copy of the response from each State agency to the inquiry required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

14. Section 391.33, paragraph (a)(1) is revised to read as follows:

§ 391.33 Equivalent of road test.

(a) * * *

(1) A valid Commercial Driver's License as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or

15. Section 391.51 is revised to read as follows:

§ 391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with § 391.21;

(2) A written record with respect to each past employer who was contacted and a copy of the response by each State agency, pursuant to § 391.23 involving investigation and inquiries;

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33;

(4) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(5) A note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(7) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle as required by § 391.43(f) or a legible photographic copy of the certificate; and

(8) A letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under § 391.49.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(1) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(4) The medical examiner's certificate of the driver's physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by § 391.43(f); and

(5) The letter issued under § 391.49 granting a waiver of a physical disqualification.

(Approved by the Office of Management and Budget under control number 2125–0065)

16. Section 391.61 is revised to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.33 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

17. Section 391.63 is revised to read as follows:

§ 391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in § 390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person;

(3) Perform the annual driving record inquiry required by § 391.25(a);

(4) Perform the annual review of the person's driving record required by § 391.25(b); or

(5) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

(Approved by the Office of Management and Budget under control number 2125–0081)

18. Section 391.65 is amended by revising paragraphs (b) and (c) to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

* * * * *

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for three years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no longer qualified under the rules in this part.

19. Section 391.67 is revised to read as follows:

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5 of this subchapter) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);

(c) Subpart D (relating to road tests); and

(d) Subpart F (relating to maintenance of files and records).

20. Section 391.68 is revised to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

§ 391.69 [Removed]

21. Section 391.69, Drivers operating in Hawaii, is removed.

§ 391.71 [Removed and Reserved]

22. Section 391.71 is removed and reserved.

§ 391.73 [Redesignated as § 391.69]

23. Section 391.73 is redesignated as new § 391.69 and revised to read as follows:

§ 391.69 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who was a single-employer driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

24. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

§ 392.9 [Amended]

25. Section 392.9(c) is redesignated as § 392.62 in subpart G and revised to read as follows:

§ 392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of § 393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

§ 392.9b [Removed]

26. Section 392.9b is removed.

§ 392.13 [Removed and Reserved]

27. Section 392.13 is removed and reserved.

§ 392.15 [Removed and Reserved]

28. Section 392.15 is removed and reserved.

§ 392.20 [Removed and Reserved]

29. Section 392.20 is removed and reserved.

30. Section 392.22 is amended by revising paragraph (b)(1) to read as follows:

§ 392.22 Emergency signals; stopped commercial motor vehicles.

* * * * *

(b) Placement of warning devices—

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by § 393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

* * * * *

31. Section 392.25 is amended by revising the section heading to read as follows:

§ 392.25 Flame producing devices.

* * * * *

§ 392.42 [Removed]

32. Section 392.42 is removed.

33. Section 392.51 is revised to read as follows:

§ 392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106.

(c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).

(d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).

(e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

§ 392.52 [Removed and Reserved]

34. Section 392.52 is removed and reserved.

§ 392.68 [Removed and Reserved]

35. Section 392.68 is removed and reserved.

PART 395—HOURS OF SERVICE OF DRIVERS

36. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

§ 395.1 [Amended]

37. Section 395.1 is amended by removing paragraph (g) and redesignating paragraphs (h) through (o) as paragraphs (g) through (n), respectively.

38. Section 395.2 is amended by revising the definition of *On duty time* to read as follows:

§ 395.2 Definitions.

* * * * *

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. *On duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time;*

(4) All time, other than *driving time,* in or upon any commercial motor vehicle except time spent resting in a *sleeper berth;*

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

* * * * *

39. Section 395.8 is amended by revising paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

40. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

41. Section 396.11 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) *Report content.* The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall

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so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) *Corrective action.* Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(d) *Exceptions.* The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

42. Section 396.13 is amended by revising paragraph (b) to read as follows:

§ 396.13 Driver inspection.

* * * * *

(b) Review the last driver vehicle inspection report; and

* * * * *

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

43. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

44. Section 397.19 is amended by revising paragraph (b) to read as follows:

§ 397.19 Instructions and documents.

* * * * *

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

* * * * *

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Proposed Rules

Federal Register
Vol. 63, No. 117
Thursday, June 18, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB76

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Management

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board (Board), proposes to amend the investment regulations to provide Farm Credit System (Farm Credit, FCS, or System) banks with a broader array of eligible investments. Under the proposed regulations, Farm Credit banks are expected to hold only high-quality and liquid investments to maintain a liquidity reserve, invest surplus funds, and manage interest rate risk. The proposal provides System banks with guidance on sound practices for managing risks associated with investment activities and grants System banks greater flexibility to manage risk on an institutional, portfolio, or individual instrument level. These amendments are also designed to better enable FCS banks to adjust to the rapid and continual changes in the financial markets.

DATES: Written comments should be received on or before August 17, 1998.

ADDRESSES: Comments may be submitted by email to FCA at "reg-comm@fca.gov." Comments may also be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to (703) 734–5784. Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

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or
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SUPPLEMENTARY INFORMATION:

I. Background

Petitions by System banks, various developments and innovations in the securities markets, and improvements in risk management technologies have all led the FCA to reexamine its investment management regulations in subpart E of part 615. The FCA aims to develop a regulatory framework that establishes certain fundamental practices each Farm Credit bank should follow to fully understand and effectively manage the risks inherent in its investment portfolio. Although non-agricultural investments are a relatively small percentage of the assets of Farm Credit banks, proper investment management enables System banks to control risks stemming from their operations as monoline providers of agricultural credit. The FCA's proposal is specifically designed to enhance investment management practices at Farm Credit banks, and many aspects of this proposal are consistent with the policies that the Federal Financial Institutions Examination Council (FFIEC) recently adopted in a document entitled "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities." [1]

The proposed amendments enable FCA to relax or repeal many of the detailed criteria that the existing regulations prescribe for specific types of investments. As a result, § 615.5140 will provide broader parameters for various classes of investments while retaining essential safety and soundness controls, such as credit ratings and diversification standards.

II. Investment Portfolio Management

Board and senior management should develop and implement comprehensive risk management processes to effectively identify, measure, monitor, and control risks associated with investment activities. Although risk management programs will differ among System banks, certain elements are fundamental to all sound risk management programs. Safe and sound banking practices require System banks to have programs to manage the market, credit, liquidity, operational, legal, and other risks associated with investment activities. Effective risk management also addresses risks in individual instruments, the investment portfolio, and the entire institution.

Proposed § 615.5133 sets forth the fundamental criteria for developing sound investment management practices at Farm Credit banks. Senior management, under the oversight of the board of directors, should adhere to investment practices that are appropriate for the bank's individual circumstances and consistent with these regulations. The failure to understand and manage the risks associated with investment activities will generally be considered an unsafe and unsound banking practice.

A. Investment Policy Requirements

Many aspects of the current investment management regulations are retained in this proposal. However, the complexity of many financial products, both on- and off-balance sheet, compels the FCA and other Federal financial institution regulators to advocate a more comprehensive and institution-wide approach to risk management. Thus, the FCA is proposing to strengthen, redesign, and reorganize this section.

1. Board and Senior Management Oversight

The introductory paragraph to proposed § 615.5133 outlines the basic responsibilities of the board of directors regarding the investment activities of its bank. The proposed rule requires the board to adopt written policies that specifically identify the purposes and objectives, risk parameters, delegations of authority, and reporting requirements for managing the bank's investment portfolio. The investment policy should also address how investment activities affect the institution's capital and earnings. For this reason, a Farm Credit bank board may include its investment policy in a broader asset-liability management (ALM) or risk management policy.

Oversight by both the board of directors and senior management of each Farm Credit bank is an integral

[1] *See* 63 FR 20191 (April 23, 1998).

part of an effective risk management program. The board of directors is responsible for ensuring that management and operational personnel have the requisite skills and resources to manage the risks associated with investment activities in accordance with the board's policies. Annually, the board of directors of each Farm Credit bank must review its investment policies to determine whether objectives and risk exposure limits continue to be appropriate for the bank. Senior management discharges its responsibility by adhering to the board's policies, providing advice to the board, and safely and soundly conducting investment activities on both a strategic and operational basis.

2. Risk Limits

Proposed § 615.5133(a) requires the board's policies to define the risk parameters for the bank's investment activities. Foremost, risk parameters are to be based on the strength of each Farm Credit bank's capital position and its ability to measure and manage risk. The risk parameters should be consistent with the bank's broader business strategies and institutional objectives. The bank's investment policies should identify the risk characteristics of permissible investments and establish risk limits and diversification requirements for the various classes of eligible investments and the investment portfolio. The policies of each Farm Credit bank should control credit, market, liquidity, and operational risks associated with investment activities.

B. Credit Risk

A System bank should not acquire investments without assessing the creditworthiness of issuers, obligors, or other counterparties. Credit risk generally refers to the risk that an issuer, obligor, or other counterparty will default on its obligation to pay the investor under the terms of the security or instrument.

Proposed § 615.5133(a)(1) requires each System bank to establish comprehensive policies to control credit risk in its investment portfolio. Each Farm Credit institution must maintain a well-diversified investment portfolio. As a result, every Farm Credit bank should limit concentrations relating to single or related counterparties, geographical areas, industries, or obligations with similar characteristics.

The FCA proposes to delete current § 615.5133(i) relating to specific credit risk controls on investments in collateralized mortgage obligations (CMOs), real estate investment conduits (REMICs), and asset-backed securities (ABS), in favor of the broader language proposed in § 615.5133(a)(1)(i). Nevertheless, the FCA continues to expect banks to address concentration risks associated with CMOs, REMICs, mortgage-backed securities (MBS), and ABS by establishing appropriate portfolio limits on each of these investments. More specifically, the policy of each Farm Credit bank should address minimum pool size, the minimum number of loans in a pool, geographic diversification of a pool, and maximum allowable premiums.

As part of its efforts to control credit risks, Farm Credit banks should consider the ability of counterparties to honor their obligations and commitments. The selection of dealers, brokers, and investment bankers (collectively, securities firms) is an important aspect of effective management of counterparty credit risk. Proposed § 615.5133(a)(1)(ii) requires bank boards of directors to identify the criteria for selecting securities firms. A satisfactory approval process includes a review of each firm's financial statements and an evaluation of its ability to honor its commitments, including an inquiry into the general reputation of the securities firm. In some situations, it is also prudent for System banks to review information from Federal or State securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel. Proposed § 615.5133(a)(1)(ii) also requires the board of directors to set limits on the amounts and types of transactions that the bank can execute with authorized securities firms. The board of directors must annually review management's selection of securities firms and limitations on transactions with such firms.

Proposed § 615.5133(a)(1)(ii) responds to requests by System banks for modifications in the FCA's policy concerning the board's role in selecting securities firms, financial institutions, and other counterparties. The proposed rule would no longer require the board of directors to approve specific depository institutions where the bank holds certificates of deposits and Federal funds. The FCA originally imposed this requirement on System banks at a time when small, isolated, and financially weak commercial banks were offering brokered deposits with high rates of return.[2] Reforms in the commercial banking industry and a widespread awareness of the risks inherent in such instruments have lessened FCA's regulatory concern. Furthermore, proposed § 615.5140(a)(4)(i) sets minimum credit and maturity limits for investments in certificates of deposits, Federal funds, and bankers acceptances.

Proposed § 615.5133(a)(1)(iii) requires Farm Credit banks to establish appropriate collateral margin requirements for repurchase agreements.[3] The FCA is proposing this amendment, in part, because proposed § 615.5140(a)(4)(iv) would expand the types of securities that Farm Credit banks may accept as collateral in repurchase transactions. As a means of managing potential counterparty credit risk, it is prudent for System banks to establish appropriate collateral margin requirements based on the quality of the collateral and the terms of the agreement. Farm Credit banks should also manage their exposure to loss on repurchase agreements by regularly marking the collateral to market and maintaining control of the collateral.[4]

C. Market Risk

From a safety and soundness perspective, it is crucial for the management of a Farm Credit bank to fully understand the market risks associated with investment securities prior to acquisition and on an ongoing basis. Market risk is the risk to a bank's financial condition resulting from adverse changes in value of its holdings arising from movements in interest rates or prices. The most significant market risk of investment activities is interest rate risk. Proposed § 615.5133(a)(2) would require bank boards to establish limits on market risk exposure at the institutional, portfolio, or individual instrument level. This change corresponds with pending changes in other parts of the FCA regulations that address interest rate risk management.[5]

To manage market risk exposure, System banks should evaluate how

[2] *See* 58 FR 63034, 63040 (November 30, 1993).

[3] In general, whether a given agreement is termed a "repurchase agreement" or a "reverse repurchase agreement" depends largely on which party initiated the transaction. Market participants typically view the transaction from the dealer's perspective. In this preamble and the proposed regulation, the FCA uses the term "repurchase agreement" regardless of the perspective from which the transaction is viewed.

[4] For a more detailed discussion on managing risks associated with repurchase agreements, Farm Credit banks should review the FFIEC's modified policy statement on repurchase agreements with securities dealers and others. *See* 63 FR 6935 (February, 11, 1998).

[5] The FCA's proposed capital regulations provide more detailed discussions of FCS institution responsibilities as they relate to interest rate risk management. *See* 62 FR 49623 (September, 23, 1997).

individual instruments and the investment portfolio as a whole affect the bank's overall interest rate risk profile. Bank's should monitor the price sensitivity of its investment portfolio and specify institution-wide interest rate risk limits. In addition, banks may find it useful to establish interest rate risk limits on the investment portfolio or on certain types of securities. Risk parameters should be commensurate with the bank's ability to measure, manage, and absorb risk. Boards should consider the bank's level of capital and earnings and its tolerance for market risk exposure when setting risk parameters. Market risk limits should be established in a manner that is consistent with all relevant regulations, policies, and guidance issued by the FCA.

D. Liquidity Risk

The FCA expects Farm Credit banks to manage liquidity risk at both the investment and the institutional levels. System banks may encounter liquidity risk stemming from market conditions surrounding individual investment activities. In this context, liquidity risk is the risk that a bank would not be able to easily sell or liquidate an investment quickly at a fair price. This inability may be due to inadequate market depth or market disruption. At the institutional level, liquidity risk is the risk that System banks could encounter a liquidity crisis if they are unable to fund operations at reasonable rates because access to the capital markets is impeded. This impediment may result from a market disruption or real or perceived credit problems.

The FCA proposes to repeal a provision in existing § 615.5134(b) which requires System banks to segregate investments held in the liquidity reserve from investments that are maintained for the other purposes permitted by existing § 615.5132. As a result of this amendment, System banks will have greater flexibility to decide how best to use their investments to manage exposure to risk.[6] Since the liquidity characteristics of an investment influence whether it is suitable for meeting particular institutional objectives, the FCA also proposes a conforming change to § 615.5133(a)(3). Pursuant to this amendment, the bank's policies must specify the desired liquidity characteristics of investments that it will use for maintaining a liquidity reserve and accomplishing other institutional objectives.

The bank's investment policies must also require the bank to maintain sufficient quantities of liquid investments to comply with the liquidity reserve requirements of § 615.5134. Pursuant to § 615.5132, each Farm Credit bank's total investments, including its liquidity reserve, cannot exceed 30 percent of its total outstanding loans. The FCA expects the policies of each Farm Credit bank to strike an appropriate balance between the need for a liquidity reserve, the management of interest rate risk, and the investment of surplus funds as it strives to accomplish its institutional objectives.

E. Operational Risk

Operational risk occurs when deficiencies in internal controls or information systems result in unexpected loss to a financial institution. Operational risk may arise from inadequate procedures, human error, information system failure, or fraud. Internal controls that effectively detect and prevent operating risks are an integral part of prudent investment management. The ability of management to accurately assess and control operating risks is often one of the greatest challenges that financial institutions face from investment activities. Therefore, proposed § 615.5133(a)(4) would require the board of directors of each Farm Credit bank to address operating risks by establishing policies that foster effective internal controls.

Organizational structure and reporting lines should clearly delineate responsibility and accountability for all investment management functions, including risk measurement, risk management, and oversight. Organizational structure should periodically be reviewed to reveal conflicts of interest or inadequate checks and balances. Proposed § 615.5133(b) specifically requires System banks to identify who has delegated authority to conduct investment transactions and the extent of that authority. In addition, the proposed rule requires a separation of duties and supervision between personnel executing investment transactions and those responsible for approving, revaluating, and overseeing the bank's investments. Separation of duties promotes integrity, accuracy, and reasonable business practices that reduce the risk of loss. Senior management must ensure that bank investment practices and risk exposure are regularly reviewed and evaluated by personnel who are independent from those responsible for executing investment transactions.

Existing § 615.5133(h), which the FCA proposes to modify and redesignate as § 615.5133(c), requires Farm Credit banks to establish appropriate internal controls to monitor their investment activities and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investment practices. Redesignated § 615.5133(c)(1) adds conflicts of interest as an issue that every System bank must specifically address in its investment policies. The policies of each Farm Credit bank should provide guidelines to prevent or resolve conflicts of interest that may arise from employees who are directly involved in purchasing and selling securities. Furthermore, the bank's policies should ensure that all directors, officers, and employees act in the best interest of the institution.

Due to the increasingly complex nature of investment instruments, Farm Credit banks must maintain information systems that are capable of monitoring, measuring, and evaluating the risks inherent in their investment activities. Proposed § 615.5133(c)(3) would require banks to maintain management information systems that are commensurate with the nature, scope, and complexity of the bank's investment activities. Internal quantitative models and management expertise must be adequate to analyze individual investment instruments, the investment portfolio, and the effect investments have on the bank's cashflows, earnings, and capital.

Farm Credit banks may also be exposed to other sources of operating risks, such as legal risk that may result from contracts that are not legally enforceable. The FCA expects each bank to adequately assess and control other operational risks relating to investment activities. Accordingly, Farm Credit banks should clearly define documentation requirements for securities transactions, retention and safekeeping of documents, as well as possession and control of purchased instruments.

F. Securities Valuation

Accurate and frequent securities valuation is essential to measuring risk and monitoring compliance with the bank's objectives and risk parameters. Proposed § 615.5133(d) establishes the basic requirements for securities valuations by Farm Credit banks.[7]

[6] The minimum liquidity reserve that System banks maintain under § 615.5134 must be sufficient to fund their operations for approximately 15 days in the event that System access to the capital markets becomes impeded.

[7] Two provisions of this regulation, § 615.5133(d)(1) and (d)(2) are new, while existing

Continued

System banks must understand the value and price sensitivity of their investments prior to purchase and on an ongoing basis. System banks should rely on valuation methodologies that take into account all the risk elements in a security to determine its price. Appropriate securities valuation practices enable managers to fully understand the risks and cashflow characteristics of the investments.

A critical step in sound investment management is the independent verification of securities prices. Accordingly, proposed § 615.5133(d)(1) requires each Farm Credit bank, at the time of purchase or sale, to verify the value of the security (except new issues) with a source that is independent of the broker, dealer, counterparty, or other intermediary in the specific transaction. Under the proposed rule, independent verification of price can be as simple as obtaining a price from an industry-recognized information provider. Although price quotes from information providers are not actual market prices, they confirm whether the broker's price is reasonable. In the event that a bank is unable to obtain a second price quote on a particular security, a price quote may be obtained on a security with substantially similar characteristics.

Proposed § 615.5133(d)(2) requires Farm Credit banks to determine, at least monthly, the fair value of each security in their portfolio and the fair value of the investment portfolio as a whole. This provision is added to the regulations to ensure that management has the necessary information to assess the performance of the bank's investment portfolio. Additionally, this requirement enables management to provide accurate and timely reports to the board of directors in accordance with proposed § 615.5133(e).

Existing § 615.5140(c) has been modified and redesignated as proposed § 615.5133(d)(3). Currently, § 615.5140(c) requires each Farm Credit bank to perform ongoing evaluations of all eligible investments in its portfolio and to support its evaluation with the most recent credit rating by at least one nationally recognized statistical rating organization (NRSRO). As amended, proposed § 615.5133(d)(3) specifically requires Farm Credit banks to perform evaluations of the credit quality and price sensitivity to changes in market interest rates of all investments held in its portfolio prior to purchase and on an ongoing basis. This change emphasizes that effective credit and interest rate risk management is vital to successful FCS bank operations.

The substance and form of the evaluations are likely to vary depending on the type of instrument. Relatively simple or standardized instruments with readily identifiable risks require significantly less analysis than more volatile or complex instruments. Proposed § 615.5141 contains specific stress testing guidance for evaluating the price sensitivity of mortgage securities. Other eligible investments that have uncertain cashflows as a result of embedded options (such as call options, caps or floors) may require similar analytical techniques to appropriately evaluate the instruments. For example, prior to investing in ABS, the FCA expects a bank to conduct or obtain an evaluation of the collateral (including type, aging of the assets, and the credit quality of the underlying loans) and an analysis of the securities' structure and cashflows.

System banks must continue to support their credit evaluations by the most recent credit rating with a NRSRO. However, Farm Credit banks should not rely exclusively on NRSRO ratings prior to purchasing investments because there may be a lag before an adverse event is reflected in the credit rating.

G. Reports to the Bank's Board

Adequate reporting enables bank boards to properly discharge their fiduciary responsibilities. The investment policy should define routine reporting requirements and the means for reporting exceptions to policy. Management reports need to communicate effectively to the board of directors the nature of the risks inherent in the bank's investment activities. Reporting should occur frequently so that the board has timely, accurate, and sufficient information to understand how changes in the investment portfolio affect the balance sheet and the bank's risk profile. The FCA proposes to modify the second sentence of existing § 615.5133(h) to emphasize these points and to redesignate it as § 615.5133(e).

Proposed § 615.5133(e) requires quarterly reports on the performance (i.e., gains or losses) and risk of individual investments and the investment portfolio. Key risks should be specifically identified and discussed in the report. More specifically, reports should relate potential risk exposure to changes in market interest rates and any other factors (such as credit deterioration) that may affect the value of the bank's investment holdings. In addition, proposed § 615.5133(e) requires management reports to discuss how investments affect the bank's overall financial condition and to evaluate whether the performance of the investment portfolio effectively achieves the objectives established by the board of directors. Reports should specifically identify any deviations from the board's policies.

III. Eligible Investments

A. Overview

Section 615.5140 lists the eligible investments that System banks may purchase and hold to maintain a liquidity reserve, manage interest rate risk, and invest surplus short-term funds. Associations are also authorized to hold eligible investments listed in § 615.5140 to invest surplus funds and reduce interest rate risk pursuant to existing § 615.5141 (redesignated as § 615.5142). Only investments that can be promptly converted into cash without significant loss are suitable for achieving these objectives. For this reason, the eligible investments listed in both existing and proposed § 615.5140 generally have short maturities and maintain a high investment grade credit rating by an NRSRO. Furthermore, all eligible investments are either traded in active secondary markets or are valuable as collateral.

The proposed rule provides System institutions with a broad array of high-quality and liquid investments. The FCA proposes to expand the list of eligible investments and to relax or repeal certain restrictions in existing § 615.5140. These revisions reflect changes in the financial markets as well as the FCA's desire to develop a regulatory framework that can more readily accommodate innovations in financial products and analytical tools.

The FCA Board proposes to restructure the format of § 615.5140 to accommodate eligible investments that are newly authorized by the FCA and to provide an organizational structure that is easy to understand. Similar classes of investments, such as full faith and credit obligations of Federal and State governments and short-term money market instruments are now grouped together in proposed § 615.5140(a). The FCA proposes to reduce the number of portfolio caps and repeal existing regulatory restrictions on the amount that each FCS institution can invest in negotiable certificates of deposit, Federal funds, bankers acceptances, and prime commercial paper.

Requirements that apply to several categories of eligible investments have been relocated to § 615.5140(b). For example, the requirement that an investment must be marketable will now be covered by a single provision in

§ 615.5140(d) has been modified and redesignated as proposed § 615.5133(d)(3).

proposed § 615.5140(b)(1). Additionally, the sovereign rating for political and economic stability of foreign countries, which is currently repeated several times in the existing regulation, is relocated to proposed § 615.5140(b)(2).

The FCA is proposing to revise its regulatory terminology for credit ratings. References to the credit ratings of specific NRSROs are omitted from the proposed rule so it more accurately encompasses the broad universe of market ratings. Instead, the proposed regulation requires each eligible investment listed in § 615.5140(a) to maintain a specified long-term or short-term credit rating by an NRSRO that is recognized by the Securities and Exchange Commission (SEC). Whereas the existing regulation refers, for example, to a Standards and Poor's (S&P) Corporation rating of "AA" or its equivalent, the proposed regulation refers to "the highest two credit ratings by an NRSRO." The following table provides a comparative illustration of S&P's investment grades for both long-term and short-term issue credit ratings.

Investment grade	S&P ratings	
	Long-term	Short-term
First	AAA	A–1
Second	AA	A–2
Third	A	A–3
Fourth	BBB	

The ratings in the table are often modified by either plus or minus signs to show relative standing within a major rating category. Specific investment credit ratings in the proposed rule refer to the generic rating categories, not modifiers within the generic group. Thus, for example, a long-term rating of "AA–" by S&P would be, for the purposes of FCA's regulations, within the "two highest credit ratings by an NRSRO."

The following section provides a category-by-category discussion of the FCA's proposed regulatory framework for eligible investments.

B. U.S. Treasury and Agency Securities

The FCA retains § 615.5140(a)(1) without revision. This provision authorizes each FCS institution to invest in obligations that are backed by the full faith and credit of the United States, its agencies, instrumentalities, and corporations. In response to frequent questions about the scope of this provision, the FCA confirms that § 615.5140(a)(1) permits the purchase of debt obligations of other Government-sponsored enterprises (GSEs). Private obligations that are fully insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations are also covered by this regulation. Thus, for example, a System institution may hold federally insured deposits, loans that are guaranteed by either the Export-Import Bank of the United States or the Overseas Private Investment Corporation, and certain obligations of the Small Business Administration.

C. Municipal Securities

The FCA proposes to redesignate § 615.5140(a)(10), which authorizes the investment in the general obligations of State and municipal governments, as § 615.5140(a)(2), without significant change. The FCA proposes to add a definition of "general obligation of a State or political subdivision" to § 615.5131 to codify its recent guidance on which bonds are deemed to be backed by the full faith and credit of a State or local government.[8] Under this definition, general obligation bonds are those that are: (1) Full faith and credit obligations of a State or local government that possesses powers of general taxation; or (2) obligations of a governmental unit that lacks powers of general taxation if an obligor possessing general powers of taxation unconditionally guarantees to make all payments on these obligations.

System banks have requested authority to invest in municipal revenue bonds. These bonds are not supported by the taxation powers of the obligor and are repayable from fee income and other sources of revenue. Although many municipal revenue bonds are highly rated by NRSROs and are actively traded in secondary markets, others are not. The universe of municipal revenue bonds is also diverse, and effective regulation of System investment in these securities could be difficult. For these reasons, the FCA requests comments on how it could permit these investments while limiting risks to System institutions. Specifically, the FCA solicits comments on how the regulation could establish: (1) Criteria for determining which revenue bonds are suitable for meeting the investment purposes in § 615.5132; and (2) an appropriate limit on the amount of these investments.

D. International and Multilateral Development Banks

Obligations of the International Bank for Reconstruction and Development (World Bank) are eligible investments under existing § 615.5140(a)(3). The FCA's proposal expands the scope of this provision to include the obligations of other international and multilateral development banks (such as the Inter-American Development Bank and the North American Development Bank) in which the United States is a voting shareholder. This amendment recognizes other highly rated banks that work in concert with the World Bank to promote development in various countries.

E. Money Market Instruments

Several provisions of existing § 615.5140(a) authorize investments in negotiable certificates of deposit, Federal funds, bankers acceptances, prime commercial paper, and repurchase agreements. These money market instruments have high credit quality and short maturities. Additionally, they can be sold on active secondary markets prior to maturity. These qualities make them highly liquid and valuable as collateral. Accordingly, the FCA proposes to group all money market instruments together into a single regulatory provision, § 615.5140(a)(4). Since these money market instruments pose limited risks to investors, the FCA believes that this regulation should no longer impose specific limitations on the amounts of negotiable certificates of deposit, Federal funds, bankers acceptances, and prime commercial paper that each FCS institution could hold in its investment portfolio. However, § 615.5140(b)(3) continues to restrict the amount that an FCS institution could invest with a single obligor or institution to 20 percent of its total capital. The FCA is also proposing to omit the definitions of negotiable certificates of deposit, Federal funds, and Term Federal funds from existing § 615.5131 because the meanings of these instruments are commonly understood by participants in the money markets. Additionally, the FCA has relocated the definitions of prime commercial paper and repurchase agreements from existing § 615.5131 to proposed § 615.5140(a)(4) so these regulations are easier to read.

The FCA proposes to omit specific references to Eurodollar and Yankee certificates of deposits from § 615.5131 and § 615.5140 because proposed § 615.5140 (a)(4)(i) is sufficiently broad to permit investment in both of these instruments. The provision in existing § 615.5140(a)(5) regarding deposit insurance for domestic and Yankee certificates of deposit became redundant in 1996 when the FCA amended § 615.5140(a)(1) to specifically cover Federal insurance of private debt

[8] *See* FCA BL–038, "Guidance Relating to Investment Activities," (November 26, 1997).

obligations.[9] Deposit insurance usually is not a consideration when an FCS institution purchases negotiable Eurodollar certificates of deposit because only a small portion of its investment is typically insured.

System banks requested authority to invest in Eurodollar time deposits. A Eurodollar time deposit is a non-negotiable deposit denominated in United States dollars that is issued by an overseas branch of a United States bank or by a foreign bank outside the United States. The riskiness of Eurodollar time deposits depends on both the creditworthiness of the issuing bank and the foreign country where the deposit is located. Financial institutions generally use Eurodollar time deposits as an alternative to Federal funds. Most Eurodollar time deposits mature within 180 days.

The FCA agrees that Eurodollar time deposits are suitable for investing short-term surplus funds and interest rate risk management. However, the FCA proposes several safety and soundness constraints for Eurodollar time deposits because these instruments are not negotiable and they are held at depository institutions outside of the United States. Specifically, proposed § 615.5140(a)(4)(ii) allows each FCS institution to invest in Eurodollar time deposits that mature within 90 days and that are issued by depository institutions that maintain the highest short-term issuer credit rating by an NRSRO. In addition, proposed § 615.5140(b)(2) further requires Eurodollar time deposits to be held at depository institutions located in foreign countries that maintain the highest sovereign rating for political and economic stability. The FCA also proposes to limit investments in Eurodollar time deposits to 20 percent of an FCS institution's total investment portfolio to control concentration risk in these non-negotiable instruments.

System banks also requested authority to invest in certificates of deposits that mature within 3 years but contain a put option that enables the investor to require the depository institution to repurchase the instrument. The FCA's research reveals that the market for certificates of deposits with embedded put options is almost nonexistent, and no commercial banks have issued these instruments in several years. These instruments are neither liquid nor traded in active secondary markets. Commercial banks have engineered the few existing certificates of deposits with put options for specific customers. Therefore, the FCA has not added these instruments to the list of eligible investments in the proposed rule.

Prime commercial paper remains an eligible investment under the proposed regulations. The FCA has redesignated § 615.5140(a)(7) as § 615.5140(a)(4)(iii).

The FCA proposes to expand the types of collateral that support eligible repurchase agreements. System banks have asserted that the FCA's investment eligibility criteria limit their ability to participate in the repurchase agreement market because market participants are often unwilling to post collateral that specifically complies with the investment criteria in existing § 615.5140. The FCA acknowledges that repurchase transactions can be a valuable tool for investing short-term surplus funds, and they are relatively safe due to short maturities, high quality of collateral, and collateral margin requirements. For this reason, the FCA proposes to amend this regulation. The proposed regulatory approach will allow more latitude to participate in this market, while maintaining essential safety and soundness controls.

Redesignated § 615.5140(a)(4)(iv) permits each FCS institution to invest in repurchase agreements where the FCS institution agrees to purchase marketable securities subject to a legal agreement that requires the counterparty to repurchase the same or identical securities at a specific price within 100 days or less. Any securities held as collateral in connection with repurchase agreements must be either eligible investments authorized by this section or other marketable securities that are rated in the highest credit rating category by an NRSRO. In the event that the counterparty defaults on the agreement and the FCS institution takes possession of the collateral, the divestiture requirements in existing § 615.5142 (redesignated as proposed § 615.5143) apply to any collateral that fails to qualify as an eligible investment under § 615.5140(a).

In 1995, the FCA approved a System request to invest in Master Notes pursuant to existing § 615.5140(a)(11), which permits the FCA to authorize additional investments on a case-by-case basis. As requested, the FCA proposes § 615.5140(a)(4)(v) to codify System institutions' authority to invest in Master Notes.[10] The proposed regulation authorizes investments in Master Notes that: (1) Are executed with a domestic counterparty that maintains the highest issuer short-term credit rating by an NRSRO; and (2) mature overnight or within 270 days under a callable contract. The FCA also proposes to increase the portfolio limit on Master Notes from 15 to 20 percent of the FCS institution's investment portfolio.

F. Mortgage Securities

1. Overview

Currently, § 615.5140(a)(2) authorizes investment in mortgage securities that are issued or guaranteed by the Government National Mortgage Association (Ginnie Mae or GNMA), the Federal National Mortgage Association (Fannie Mae or FNMA), and the Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC). CMOs that are collateralized by mortgage securities of GNMA, FNMA and FHLMC are also expressly authorized under the current regulations, even though they are packaged, issued, and sold under a private label.[11] Under the existing regulation, eligible mortgage securities must either reprice within 1 year or comply with the stress tests specified in § 615.5140(a)(2)(iii).[12] System banks may hold mortgage securities that are issued or fully guaranteed by Ginnie Mae without restriction as to amount. However, the existing regulation restricts mortgage securities that are issued or fully guaranteed by Fannie Mae and Freddie Mac to 50 percent of each bank's total investments.

System banks seek further opportunities to invest in the mortgage securities market because of the high credit quality and liquidity of these securities. In particular, Farm Credit banks have requested authority to invest in mortgage securities that are collateralized by loans that do not comply with the FNMA and FHLMC underwriting standards and certain stripped mortgage-backed securities (SMBS). Recently, System banks petitioned the FCA to repeal the portfolio limit on Fannie Mae and Freddie Mac mortgage securities. This request also suggested that the revised regulation authorize FCS institutions to invest in mortgage securities that are rated within the two highest investment credit grades by an NRSRO. The

[9] *See* 61 FR 67187 (December 20, 1996).

[10] Master Notes are interest-bearing unsecured promissory notes that are issued by institutions to investors under a master note agreement. The most common type of master note agreement is a variable-amount note which is a type of open-ended commercial paper that allows the investment and withdrawal of funds on a daily basis and pays a daily interest rate tied to the commercial paper rate.

[11] *See* 58 FR 63035, (November 30, 1993). Private label mortgage securities are issued by commercial banks, thrifts, and private conduits. Unlike agency securities, private label mortgage securities must be registered with the SEC.

[12] Section 615.5174 permits Farm Credit banks and associations to invest in mortgage-related securities that are guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac).

proposed rule permits investment in a greater variety of mortgage securities, subject to essential safety and soundness constraints.

2. Limits on FNMA and FHLMC Mortgage Securities

As previously noted, System banks requested that the FCA repeal the 50-percent investment portfolio limit on mortgage securities that are issued or guaranteed as to principle and interest by FNMA and FHLMC. System banks commented that no other financial institution regulatory agency places restrictions on the credit exposure to GSEs and that exposure limits on these securities should be left to the discretion of each bank.

At this time, the FCA does not propose to repeal the existing portfolio limits for FNMA and FHLMC mortgage securities. As explained in greater detail below, the proposed regulation significantly expands the authority of System institutions to purchase and hold mortgage securities. The FCA's proposal will permit System institutions to invest, for the first time, in non-agency mortgage securities. Under certain circumstances, System banks would also be able to hold mortgage derivative products, such as SMBS, for interest rate risk management. Additionally, the new regulations will enable System institutions to rely on alternate stress tests for measuring the price sensitivity of mortgage securities.

The FCA agrees with System commenters that the board and management of each FCS institution should establish risk exposure limits for all mortgage securities. A regulatory portfolio limit on FNMA and FHLMC mortgage securities does not absolve an institution's board or management of its responsibility to establish risk parameters that are based on the institution's unique risk-bearing capacity. The FCA also expects each FCS institution to maintain a well-diversified investment portfolio, regardless of whether these regulations impose a portfolio cap on particular classes of investments.

Regulatory portfolio limits enhance safety and soundness by limiting credit exposure, promoting diversification of System investment portfolios, and curtailing investments in securities that may exhibit considerable interest rate or liquidity risks. The FCA invites further comment about this issue.

3. Non-agency Mortgage Securities

The size and liquidity of the non-agency mortgage securities market has increased markedly since the implementation of the current regulations in 1993. The largest sector of the non-agency market is comprised of securities that are collateralized by "jumbo" mortgages with principal amounts that exceed the maximum limits for FNMA and FHLMC programs.[13]

The credit quality and liquidity of any particular non-agency mortgage security are dependent upon a myriad of factors, including the type of collateral and the structure, term, and originator of the issue. Non-agency mortgage securities are not explicitly or implicitly guaranteed by the United States, so these instruments typically require credit enhancements to receive a high rating. Credit enhancement is usually provided by some combination of issuer or third-party guarantee, letter of credit, over-collateralization, pool insurance, or subordination. As a result of these credit enhancements, highly rated non-agency mortgage securities enjoy low default rates.

The FCA determines that non-agency mortgage securities that maintain the highest credit rating by an NRSRO have sufficient protections against default risk. Proposed § 615.5140(a)(5)(ii) permits each System institution to invest in mortgage securities that are offered by private sector entities. Under this proposal, privately issued mortgage securities are eligible investments for System institutions if they are rated in the highest rating category by an NRSRO and they are collateralized by qualifying residential mortgages, meeting the requirements of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA).[14] Prior to investing in such securities, every System bank must subject each non-agency mortgage security to stress testing in accordance with § 615.5141. Non-agency mortgage securities cannot exceed 15 percent of each institution's total investments. Furthermore, mortgage securities that are issued by any party other than Ginnie Mae cannot exceed 50 percent of each institutions' total investments. This amendment balances the System's request for a broader selection of mortgage securities with appropriate safety and soundness restraints.

4. Fixed-rate Mortgage Pass-through Securities

Currently, fixed-rate mortgage securities are eligible investments for System institutions if they satisfy the three-pronged stress test in existing § 615.5140(a)(2)(ii).[15] This stress test provides a basic method for measuring the price sensitivity of a mortgage security to changes in interest rates.[16] System banks requested that the FCA repeal the requirement in existing § 615.5140(a)(2) that subjects mortgage pass-through securities to the stress test. The Farm Credit banks asserted that interest rate risk in mortgage pass-through securities is easier to model and analyze and other federally regulated financial institutions are not subject to similar requirements.

The FCA believes that stress testing of all mortgage securities is a necessary discipline that enables each System institution to better understand and manage the risks inherent in these instruments. Therefore, the FCA does not incorporate the System's suggestion in this proposal. However, as discussed below, the FCA proposes significant changes to the stress-testing requirements for mortgage securities.

5. Other Mortgage-derivative Products

The FCA also plans to repeal existing §§ 615.5131(r) and (s), 615.5140(a)(2)(v), and certain provisions in § 615.5174(c) that explicitly ban investments in SMBS and inverse floating-rate debt classes.[17] System banks claim that the explicit ban on SMBS is overly broad and, as a

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[13] Several other asset classes in the non-agency MBS market exist, including: (1) Housing and Urban Development paper; (2) high loan-to-value loans; (3) Community Reinvestment Act loans; and (4) loans to borrowers with conforming loan balances with other features that prevent agency securitization, such as low documentation, self-employment, and unique property features.

[14] The proposed rule allows investments in mortgage securities that are offered and sold pursuant to section 4 (5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or are residential mortgage related securities within the meaning of section 3 (a) (41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a) (41). SMMEA amended several statutes to encourage private sector investment in certain mortgage-related securities. *See* Pub. L. 98-440, 98 Stat. 1689, October 3, 1984.

[15] A recent FCA bookletter explains the authority of System banks to invest in fixed-rate mortgage securities that convert to adjustable rate securities. *See* BL-038, "Guidance Relating to Investment Activities," (November 26, 1997).

[16] Under existing § 615.5140(a)(2)(ii), each fixed-rate mortgage security must have a weighted average life (WAL) of 5 years or less, and changes in its WAL and price cannot exceed specified percentages, assuming parallel and sustained shift in interest rates of 300 basis points.

[17] Existing § 615.5131(r) defines SMBS as "securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two." Furthermore, existing § 615.5140(a)(2)(v)(A) and 615.5174(c) specifically prohibit System banks from acquiring SMBS that are issued by GNMA, FNMA, FHLMC, and the Farmer Mac. When the existing regulations were adopted, the FCA reasoned that SMBS exhibit extreme price volatility to shifting interest rates, and therefore, these instruments were not suitable for maintaining a liquidity reserve or managing interest rate risk. *See* 56 FR 65091, 65096 (December 18, 1991); 58 FR 63034, 63046 (November 30, 1993).

result, it excludes securities with limited interest rate risk. The FCA concludes that the explicit regulatory ban on certain mortgage-derivative products is unnecessary because all mortgage securities are subject to stress-testing requirements under both the current and proposed rules. The degree of price sensitivity that a mortgage security exhibits to changes in market interest rates is influenced by its unique characteristics. A System institution should determine whether a particular mortgage security meets its risk management objectives by using analytical techniques and methodologies that effectively evaluate how interest rate changes will affect prepayments and cashflows of the instrument.

Repeal of these regulatory restrictions will afford each System institution greater latitude to manage interest rate risks in the investment portfolio and its balance sheet. Although certain mortgage derivative products are risky because their prices may be subject to substantial fluctuations, the FCA recognizes that they can also be useful tools for reducing interest rate risk. Successful risk management of these instruments requires a thorough understanding of the principles that govern the pricing of these instruments. In general, FCA would view it as an unsafe and unsound practice to hold SMBS and inverse floaters for any purpose other than to reduce specific interest rate risks. Management must document, prior to purchase and each quarter thereafter, that the mortgage derivative product is reducing the interest rate risk of a designated group of assets or liabilities and the interest rate risk of the institution. However, if such an instrument exhibits only minimal price sensitivity under the stress test in proposed § 615.5141, a System institution would be allowed to purchase and hold the instrument for other purposes permitted by existing § 615.5132.

6. Stress-testing Requirements

Although credit risk on highly rated mortgage securities is minimal, these securities may expose investors to significant interest rate risk. Since borrowers may prepay their mortgages, investors may not receive the expected cashflows and returns on these securities. Numerous factors influence the cashflow pattern and price sensitivity of mortgage securities. Prepayments on these securities are affected by the spread between market rates and the actual interest rates of mortgages in the pool, the path of interest rates, and the unpaid balances and remaining terms to maturity on the mortgage collateral. The price behavior of a mortgage security also depends on whether the security was purchased at a premium or at a discount. Therefore, each System institution needs to employ appropriate analytical techniques and methodologies to measure and evaluate interest rate risk inherent in mortgage securities. More specifically, prudent risk management practices require every System institution to examine the performance of each mortgage security under a wide array of possible interest rate scenarios. For these reasons, the FCA continues to believe that appropriate stress testing of all mortgage securities is necessary to gain a full understanding of the risks inherent in the instruments.

Originally, FCS banks requested technical modifications to FCA's existing regulatory stress test. System banks subsequently requested that the FCA repeal the regulatory stress test after the FFIEC rescinded a policy statement that required depository institutions to stress test mortgage derivative products.[18] The System banks commented that the FCA should make its regulatory approach consistent with the FFIEC's new policy.

In response, the FCA proposes significant changes to existing requirements for evaluating the price sensitivity of mortgage securities and determining their suitability. The FCA's revised regulatory approach reflects improvements in prepayment models and methodologies for evaluating and measuring the price sensitivity of a security. Specifically, this proposal would enable each FCS institution to choose between two alternative approaches for measuring and evaluating the price sensitivity of mortgage securities to interest rate fluctuations.

Under the first option, an FCS institution may continue to use a modified version of the existing three-pronged stress test. The FCA proposes to modify the third prong of the stress test, which establishes a price sensitivity limit for mortgage securities. Under proposed § 615.5141(a)(3), the estimated change in the price of the security cannot exceed 13 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. This revision, which was originally requested by System banks, corrects an inconsistency in the test that may arise under certain interest rate scenarios. This change affords more latitude for investment in mortgage securities.

[18] *See* 63 FR 20191 (April 23, 1998).

Proposed § 615.5141(b) allows the use of alternative stress tests to evaluate the price sensitivity of investments in mortgage securities. The FCA is permitting alternative stress tests because new risk management technologies better enable investors to measure interest rate risks in complex mortgage securities. Alternative stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios prior to purchase and each quarter thereafter. The methodology that an FCS institution uses to analyze mortgage securities must be commensurate with the complexity of the instrument's structure and cashflows. For example, a pre-purchase analysis may show the effect of an immediate and parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Depending on the instrument's complexity, such analysis may encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into consideration other relevant factors, such as interest rate volatility and changes in credit spreads. The methodology used to evaluate an instrument's price sensitivity should enable management to determine that the particular mortgage security: (1) Is compatible with the objectives and risk limits in the institution's investment policies; and (2) does not expose capital and earnings to excessive risk.

An FCS institution employing internal models for valuation and risk measurement of mortgage securities should have adequate procedures to validate the models and periodically review all elements of the modeling process, including assumptions and risk measurement methodologies and techniques. Any FCS institution that relies on third parties for valuation and risk measurement must understand the assumptions and techniques used. All analysis must be available for review by the Office of Examination of the FCA.

7. Other Technical Changes

The FCA proposes to replace the definitions of "CMOs," "mortgage-backed securities," and "REMICs" in existing § 615.5131(e), (l), and (p) with a single definition of "mortgage securities" in proposed § 615.5131(i), which encompasses mortgage pass-through securities and all mortgage derivative products. Although proposed § 615.5131(i) continues to refer to CMOs and REMICS, the FCA has omitted specific regulatory definitions for these securities from the regulation because

their meanings are commonly understood in the financial markets.

The FCA proposes to relocate the applicable regulatory provision governing ARM securities from § 615.5140(a)(2)(ii) to § 615.5141 and to delete the definition of "adjustable-rate mortgage" in existing § 615.5131(b) because it is redundant.

G. Corporate Debt Obligations and ABS

Currently, corporate debt obligations and ABS are subject to a single regulatory provision, existing § 615.5140(a)(8). Under the existing regulation, corporate bonds and ABS, *combined*, cannot exceed 15 percent of the total investments of each FCS institution. Under this proposal, corporate bonds and ABS would be governed by separate regulatory provisions, and the portfolio cap for each category would be 20 percent of total outstanding investments. The FCA's proposal to expand the portfolio limits for these two investments provides every FCS institution with greater flexibility to invest in these securities within reasonable risk diversification parameters.

Existing § 615.5140(a)(8)(ii) authorizes each FCS institution to invest in ABS that mature in 5 years, are collateralized by loans on new automobiles (CARs) or credit card receivables (CARDs), and maintain the highest investment grade credit rating by an NRSRO. The FCA adopted § 615.5140(a)(8)(ii) in 1993 when CARs and CARDs comprised approximately 80 percent of the ABS market and other types of ABS were not actively traded in the secondary markets.[19]

The scope and depth of the ABS market has expanded rapidly since 1993. As a result, System banks have requested authority to invest in ABS that are collateralized by other types of assets. Originally, System banks petitioned the FCA for authority to purchase and hold ABS that are secured by home equity loans, manufactured housing loans, agricultural equipment loans, student loans, and wholesale dealer automobile loans. Subsequently, System banks requested that the FCA amend the regulation so it places no restrictions on the types of collateral that securitize ABS. System banks assert that a high credit rating is more indicative of an ABS's liquidity than its underlying collateral. Farm Credit banks also suggested that the FCA revise the maturity limits on ABS to permit fixed-rate ABS that have both a final maturity of 7 years or less and a WAL of 5 years or less, and floating-rate ABS that have both a final maturity of 10 years or less and a WAL of 7 years or less.

This proposal adopts a modified version of the System's original recommendation.[20] Proposed § 615.5140(a)(6) would authorize investment in ABS that are collateralized by CARs, CARDs, home equity loans, manufactured housing loans, equipment loans, student loans, and wholesale dealer automobile loans. The FCA emphasizes that securities collateralized by home equity loans are ABS, not mortgage securities, under this proposal. The FCA finds that the market for these types of ABS is sufficiently developed and that these securities are suitable for meeting the objectives of § 615.5132. This broad array of ABS should provide FCS institutions with an ample selection of highly rated, fixed-income investments that have relatively stable cashflows.

Under proposed § 615.5140(a)(6), FCA specifies that the WAL for all eligible ABS cannot exceed 5 years *and* the final maturity cannot exceed 7 years. The FCA proposes to extend the final maturity from 5 to 7 years in recognition that ABS with final maturities of 7 years typically have much shorter WALs. This approach has the added advantage of facilitating comparisons between amortizing ABS and other fixed-income securities. The FCA does not adopt the System's suggestion regarding the maturity of adjustable-rate ABS for two reasons. Most ABS have final maturities that are shorter than the timeframe recommended by Farm Credit banks. Other factors, such as the frequency of repricing, periodic and life-time interest rate caps and the index to which the instrument is tied are important determinants of how the instrument will perform. Therefore, the FCA requests comments on how the regulations could address maturity limits for adjustable ABS.

The FCA anticipates that there will be further growth in the ABS market and active secondary markets will ultimately develop for ABS that are backed by other types of collateral. Thus, the FCA also requests comments on how it could develop a more flexible final regulation that would enable the regulator to establish criteria for determining the suitability of new types of ABS that financial markets may create.

The FCA proposes no substantive changes to the regulatory provisions that govern investments in corporate debt obligations. Under this proposal, existing § 615.5140(a)(8)(i) will be redesignated as § 615.5140(a)(7).

H. Shares in Investment Companies

The FCA believes that investment companies provide System institutions with another convenient method to diversify and manage risks. Therefore, the FCA proposes to authorize investment in shares of any investment company that is registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8, as long as the investment company's portfolio consists exclusively of securities that are authorized by § 615.5140. Prior to investing in a particular investment company, an FCS institution would be required by proposed § 615.5140(a)(8) to evaluate the investment company's risk and return objectives. As part of this evaluation, the FCS institution should determine whether the investment company's use of financial derivatives is consistent with its investment policies. For instance, the FCA would generally view it an unsafe and unsound practice for an FCS institution to invest in an investment company that uses financial derivatives for speculative purposes rather than as a risk management tool. Every System institution should maintain appropriate documentation on each investment, including a prospectus and analysis, so its investment and selection process can be audited and examined.

Proposed § 615.5140(b)(5) addresses how the obligor and portfolio limitations in § 615.5140(b)(3) and (b)(4) apply to an FCS institution's interest in an investment company. Generally, proposed § 615.5140(b)(5)(i) requires combining the institution's direct holdings of an eligible investment with its pro rata interest in the same type of instrument in the portfolio of an investment company for the purpose of complying with § 615.5140(b)(3), (b)(4)(i), and (b)(4)(ii). The FCA notes that aggregation is required only if this regulation subjects a particular investment to an obligor or portfolio limit. For example, prime commercial paper is subject to an obligor limit, but not a portfolio limit. As a result, the regulation requires aggregation to ensure that no more than 20 percent of an FCS institution's total capital is invested in the prime commercial paper of any single obligor. However, no regulatory restriction applies to the amount of prime commercial paper that an FCS institution may hold in its investment portfolio, either directly or through an investment company.

Proposed § 615.5140(b)(5)(ii) carves out two exceptions to this aggregation rule. The first exception applies to the

[19] *See* 58 FR 63034, 63050 (November 30, 1993).

[20] Although the System's recommendation did not address the credit rating for ABS, the FCA proposes to retain the requirement in the existing regulation that all eligible ABS maintain the highest credit rating by an NRSRO.

obligor limit, while the second exemption covers portfolio restrictions. Under § 615.5140(b)(5)(ii)(A), an FCS institution may elect not to combine its pro rata interest in a particular security in an investment company with its direct holdings of securities that are issued by the same obligor if the investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio. Pursuant to § 615.5140(b)(5)(ii)(B), an FCS institution may elect not to combine its pro rata interest in a type of security in an investment company with its direct holding of a class of securities that are subject to the portfolio limits if its shares in a particular investment company do not exceed 10 percent of its total investments.

I. Other Eligible Investments

The FCA proposes to redesignate existing § 615.5140(a)(11) as § 615.5140(a)(9). This proposal contains no substantive amendments to this provision, which allows the purchase of other short-term investments, as authorized by the FCA that are marketable and highly rated by an NRSRO. Whenever possible, the FCA seeks to repeal regulatory prior-approval requirements that are not mandated by the Act. The FCA requests comments on how the final regulation could permit FCS institutions, under certain circumstances, to invest in short-term, highly rated, marketable securities that are not expressly authorized by § 615.5140 without requiring Agency approval.

IV. Technical Amendments

The FCA proposes several conforming amendments to § 615.5174 relating to investments in securities issued by Farmer Mac. The terminology for mortgage securities has been revised so that it is consistent with proposed amendments to § 615.5131.

The FCA proposes to repeal the definitions of "asset-liability management," "Federal funds," "interest rate risk," "market value of equity," "net interest income," "total capital," and "weighted average maturity" in § 615.5131 because the meanings of these terms are commonly understood in financial markets. Separately, the FCA has redefined "absolute final maturity" in § 615.5131(a) as "final maturity" in proposed § 615.5131(c).

The FCA also proposes to repeal § 615.5142(a) and remove the designation from paragraph (b) because this provision is obsolete. Existing § 615.5142(a) pertains to the divestiture of investments that were rendered ineligible when the FCA originally adopted these regulations in 1993.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. Subpart E is amended by revising the heading to read as follows:

Subpart E—Investment Portfolio Management

3. Section 615.5131 is revised to read as follows:

§ 615.5131 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Asset-backed securities (ABS)* mean investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes of this subpart, ABS exclude mortgage securities that are defined in § 615.5131(i).

(b) *Eurodollar time deposit* means a non-negotiable deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(c) *Final maturity* means the last date on which the remaining principal amount of a security is due and payable (matures) to the registered owner. It shall not mean the call date, the expected average life, the duration, or the weighted average maturity.

(d) *General obligations of a State or political subdivision* means:

(1) The full faith and credit obligations of a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision thereof that possesses general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(e) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow and a reasonable amount can be sold at those prices.

(f) *Loans* are defined by § 621.2(f) of this chapter and are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(g) *Market risk* means the risk to the bank's financial condition resulting from a decline in value of its holdings arising from changes in interest rates or market prices. A bank's exposure to market risk can be measured by assessing the effect of changing rates and prices on either earnings or economic value of an individual instrument, a portfolio, or the entire institution.

(h) *Marketable investment* means an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(i) *Mortgage securities* means securities that are either:

(1) Collateralized with residential mortgage loans (excluding home equity loans) that represent ownership of a fractional undivided interest in a specific pool of mortgages (commonly known as pass-through securities or participation certificates), or

(2) A multi-class, pay-through bond backed by a pool of residential mortgage pass-through securities or residential mortgage loans (including securities commonly known as collateralized mortgage obligations and real estate mortgage investment conduits).

(j) *Nationally Recognized Statistical Rating Organization (NRSRO)* means a rating organization that the Securities and Exchange Commission has recognized as an NRSRO.

(k) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average

life for mortgage and asset-backed securities is calculated under specific prepayment assumptions.

4. Section 615.5133 is revised to read as follows:

§ 615.5133 Investment portfolio management.

The board of directors of each Farm Credit bank is responsible for adopting written policies for managing the bank's investment activities. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with the written policies and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. Written investment policies must address the purposes and objectives of investments, risk parameters, delegations of authority, and reporting requirements. Annually, the board of directors of each Farm Credit bank shall review its investment policies to determine whether objectives and risk exposure limits continue to be appropriate for the bank.

(a) *Risk parameters.* The investment policies shall establish risk limits and diversification requirements for the various classes of eligible investments and the entire investment portfolio. Risk parameters shall be based on the Farm Credit bank's institutional objectives, capital position, and its tolerance for risk. The policies must identify the types and quantity of investments that the bank will hold to achieve its objectives and control credit, market liquidity, and operational risks.

(1) *Credit risk.* The bank's investment policies shall establish:

(i) Credit quality standards, limits on counterparty risk, and risk diversification requirements that limit concentrations based on a single or related counterparties, a geographical area, industries or obligations with similar characteristics.

(ii) Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms). The policy shall also set limits on the amounts and types of transactions that the bank shall execute with authorized securities firms. The board of directors shall annually review management's selection of securities firms and limitations on transactions with such securities firms.

(iii) Collateral margin requirements on repurchase agreements.

(2) *Market risk.* The bank's investment policies shall set market risk limits for the institution, the investment portfolio or specific types of investments pursuant to the regulations in this chapter and guidance by the Farm Credit Administration.

(3) *Liquidity risk.* The bank's policies shall describe the liquidity characteristics of investments used to accomplish institutional objectives and its liquidity needs sufficient to comply with the requirements of § 615.5134.

(4) *Operational risk.* The bank's policy shall address operational risks, including delegations of authority and internal controls in accordance with paragraphs (b) and (c) of this section.

(b) *Delegations of authorities.* All delegations of the management of the bank's investments to specific personnel or committees shall state the extent of management's authority and responsibilities.

(c) *Internal controls.* Each Farm Credit bank shall:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments and ensure compliance with policies established by the board.

(2) Ensure that a separation of duties and supervision exists between personnel executing investment transactions and those responsible for approving, revaluating, and overseeing the bank's investments.

(3) Maintain management information systems that are commensurate with the level and complexity of the bank's investment activities.

(d) *Securities valuation.* Each Farm Credit bank shall:

(1) Verify the value of any security (except new issues) that it purchases or sells from a source that is independent of the broker, dealer, counterparty, or other intermediary in the specific transaction.

(2) Determine, at least monthly, the fair value of each security in its portfolio and the fair value of the portfolio as a whole.

(3) Perform evaluations of the credit quality and price sensitivity to changes in market interest rates of all investments held in its portfolio prior to purchase and on an ongoing basis.

(e) *Reports to the board.* Reports on the performance and risk of each investment and the investment portfolio shall be made to the board of directors or a committee thereof each quarter. Reports shall identify potential risk exposure to changes in market interest rates and other factors that may affect the value of the bank's investment holdings. Each report shall discuss how investments affect the bank's overall financial condition and evaluate whether the performance of the investment portfolio effectively achieves the objectives established by the board of directors. Any deviations from the board's policies shall be specifically identified in the report.

5. Section 615.5134 is amended by revising paragraph (b) to read as follows:

§ 615.5134 Liquidity reserve requirement.

* * * * *

(b) All investments held for the purpose of meeting the liquidity reserve requirement under this section shall be free of lien.

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6. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible investments.

(a) Farm Credit banks are authorized to hold the following types of eligible investments, denominated in United States dollars, to comply with the requirements of §§ 615.5132, 615.5134, and 615.5135 of this subpart:

(1) *Treasury and agency securities.* Obligations of the United States; full-recourse obligations, other than mortgage securities, of agencies, instrumentalities or corporations of the United States, or debt obligations of other obligors that are fully insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations.

(2) *General obligations of a State or political subdivision* that mature within 10 years and are rated in one of the three highest credit rating categories by an NRSRO.

(3) *Obligations of international and multilateral development banks* in which the United States is a voting shareholder.

(4) *Money market instruments:* (i) Negotiable certificates of deposit that mature within 1 year or less, Federal funds, term Federal funds that have a callable contract with a term to maturity of 100 days or less, and bankers acceptances that are issued by depository institutions. All issuers of money market instruments listed in paragraph (a)(4)(i) of this section shall maintain a rating in one of the two highest short-term credit rating categories by an NRSRO.

(ii) Eurodollar time deposits that mature within 90 days and are held at depository institutions that maintain a rating in the highest short-term credit rating category by an NRSRO.

(iii) Prime commercial paper that has a maturity of 270 days or less and is rated in the highest short-term credit rating category by an NRSRO.

(iv) Repurchase agreements where a Farm Credit bank agrees to purchase marketable securities subject to an agreement that requires a counterparty

to repurchase the same or identical securities at a specific time within 100 days or less. The collateral for repurchase agreements shall be either eligible investments authorized by this section or other marketable securities that are rated in the highest credit rating category by an NRSRO.

(v) Master notes that mature overnight, or have a callable feature and mature within 270 days, and are executed with domestic counterparties that maintain a rating in the highest short-term credit rating category by an NRSRO.

(5) *Mortgage securities* that are rated in the highest credit rating category by an NRSRO and are either:

(i) Agency mortgage securities that are issued or guaranteed as to principal and interest by the Government National Mortgage Association, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or

(ii) Non-agency mortgage securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5) or are residential mortgage-related securities within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41).

(iii) Mortgage securities shall not be consider eligible investments, unless they comply with the requirements of § 615.5141 of this subpart.

(6) *Asset-backed securities* that are collateralized by credit card receivables, automobile loans, home equity loans, manufactured housing loans, equipment loans, student loans, or wholesale dealer automobile loans that are rated in the highest credit rating category by an NRSRO. The expected WAL on eligible ABS shall not exceed 5 years and the final maturity shall not exceed 7 years.

(7) *Corporate debt securities* that are rated within the two highest credit rating categories by an NRSRO, mature within 5 years and are not convertible into equity securities.

(8) *Investment companies.* Shares of an investment company registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8 (including mutual funds, unit investment trusts, and collective investment funds maintained by a national bank under 12 CFR part 9), provided that the portfolio of the investment company consists exclusively of eligible investments that are authorized by this section or § 615.5174 of this part. In addition, Farm Credit banks must evaluate the investment company's risk and return objectives and use of derivatives to ensure that the investment company's objectives and strategies for achieving its objectives are consistent with the bank's investment policies and the requirements of this subpart.

(9) *Other investments,* as authorized by the Farm Credit Administration, that have a short maturity and are rated investment grade by an NRSRO. A Farm Credit bank seeking approval of an investment under this paragraph should provide the Farm Credit Administration with documentation that describes the risk characteristics of the investment and explains the bank's purpose and objectives for making the investment.

(b) The authority of Farm Credit banks to hold the investments listed in paragraph (a) of this section is subject to the following requirements:

(1) *Marketable securities.* Except for the money market instruments listed in paragraph (a)(4) of this section, all other eligible investments shall be marketable within the meaning of § 615.5131(h).

(2) *Rating of foreign countries.* Whenever the obligor or issuer of an eligible investment is located outside of the United States, the host country shall maintain the highest sovereign rating for political and economic stability by an NRSRO.

(3) *Obligor limits.* Except for eligible investments covered by paragraph (a)(1) of this section and mortgage securities that are issued by or guaranteed as to principal and interest by the Government National Mortgage Association, Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation under paragraph (a)(5)(i) of this section, each Farm Credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(4) *Portfolio limits.* Subject to § 615.5132, each Farm Credit System bank is authorized to hold eligible investments listed in paragraph (a) of this section without limitation as to amount except:

(i) Mortgage securities shall not exceed fifty (50) percent of the bank's total investments authorized under this section provided that mortgage securities that are issued under paragraph (a)(5)(ii) of this section shall not exceed fifteen (15) percent of the bank's total investments. Mortgage securities that are issued by the Government National Mortgage Association shall not be subject to any restriction on amount.

(ii) Each of the following types of investments shall not exceed twenty (20) percent of the bank's total investments authorized under this section:

(A) Eurodollar time deposits;

(B) Master notes;

(C) Asset-backed securities; and

(D) Corporate bonds.

(5) *Limit on investment company holdings.* (i) *General.* A Farm Credit bank shall combine its direct holdings of eligible investments with its pro rata interest in the same type of instrument or obligor in the portfolio of an investment company for the purpose of complying with the obligor and portfolio limitations of paragraphs (b)(3), (b)(4)(i), and (b)(4)(ii) of this section.

(ii) *Alternate diversification requirements for investment companies.* (A) *Exemption from the obligor limit.* A Farm Credit bank may elect not to combine its pro rata interest in a particular security in an investment company with the bank's direct holdings of securities that are subject to the obligor limit in paragraph (b)(3) of this section if the investment company's holdings of the securities of any one issuer do not exceed five (5) percent of its total portfolio.

(B) *Exemption from the portfolio limits.* A Farm Credit bank may elect not to combine its pro rata interest in a type of security in an investment company with the bank's direct holding of a class of securities that are subject to the portfolio limits in paragraphs (b)(4)(i) and (b)(4)(ii) of this section if the bank's shares in an investment company do not exceed ten (10) percent of its total investments.

§ 615.5141 through 615.5143 [Redesignated]

7. Sections 615.5141, 615.5142, and 615.5143 are redesignated as §§ 615.5142, 615.5143, and 615.5144, respectively, and a new § 615.5141 is added to read as follows:

§ 615.5141 Stress tests for mortgage securities.

Each Farm Credit bank shall perform stress tests to determine how interest rate fluctuations will affect the cashflows and price of all mortgage securities that it purchases and holds under § 615.5140(a)(5), as well as their overall affect on the earnings and capital of the bank. Adjustable mortgage securities that have a repricing mechanism of 12 months or less and tied to an index are not subject to stress testing. Farm Credit banks may conduct the stress tests in accordance with either paragraph (a) or (b) of this section.

(a) Mortgage securities shall comply with the following three tests at the time of purchase and each quarter thereafter:

(1) *Average Life Test.* The expected WAL of the instrument does not exceed 5 years.

(2) *Average Life Sensitivity Test.* The expected WAL does not extend for more

than 2 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in price is not more than thirteen (13) percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) *Exemption.* A floating-rate mortgage security shall not be subject to paragraphs (a)(1) and (2) of this section if at the time of purchase, and each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(b) A Farm Credit bank may use alternative stress tests to evaluate the price sensitivity of its investments in mortgage securities. Alternative stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios prior to purchase and each quarter thereafter. The methodology used to analyze mortgage securities shall be commensurate with the complexity of the instrument's structure and cashflows. Prior to purchase and quarterly thereafter, the stress test should determine that the mortgage security's risk is compatible with the bank's investment policies and the investment does not expose the bank's capital and earnings to excessive risks.

(c) In applying the stress tests in either paragraphs (a) or (b) of this section, each Farm Credit bank shall rely on verifiable information to support all of its assumptions, including prepayment and interest-rate volatility assumptions. All assumptions that form the basis of the bank's evaluation of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions shall be documented. If at any time after purchase, a mortgage security no longer complies with requirements in this section, the bank shall divest the security in accordance with § 615.5143 of this part.

§ 615.5143 [Amended]

8. Newly designated § 615.5143 is amended by removing paragraph (a) and the paragraph designation from paragraph (b).

Subpart F—Property and Other Investments

§ 615.5174 [Amended]

9. Section 615.5174 is amended by removing the words "mortgage-backed securities (MBSs), as defined by § 615.5131(l), collateralized mortgage obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p)" in paragraph (a), and adding in their place, the words "mortgage securities as defined by § 615.5131(l);" by removing the words, "as defined by § 615.5131(b)," from paragraph (b)(1); by removing paragraph (c); and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

Dated: June 15, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–16208 Filed 6–17–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth K.G. Model Cirrus Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Schempp-Hirth K.G. (Schemmp-Hirth) Model Cirrus sailplanes. The proposed AD would require modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 millimeter (mm) bolt with an 8 mm bolt. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control.

DATES: Comments must be received on or before July 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Postfach 1443, D–73230 Kircheim/Teck, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Schempp-Hirth Model Cirrus sailplanes. The LBA reports that the threaded bolt welded to the connecting rod of the airbrake bellcranks broke off on two of the above-referenced sailplanes. The threaded bolt is a 6 millimeter (mm) bolt. Beginning with serial number 51, Schempp-Hirth manufactured Model Cirrus sailplanes with an 8 mm bolt that is welded to the connecting rod of the airbrake bellcranks. The FAA has not received reports of broken 8 mm bolts on Schempp-Hirth Model Cirrus sailplanes.

These conditions, if not corrected, could result in loss of airbrake control with a possible reduction/loss of sailplane control.

Relevant Service Information

Schempp-Hirth has issued Technical Note No. 265–8, dated February 11, 1985, which specifies procedures for modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 mm bolt with an 8 mm bolt.

The LBA classified this technical note as mandatory and issued German AD 85–56, dated March 4, 1985, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the technical note referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Schempp-Hirth Model Cirrus sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 mm bolt with an 8 mm bolt. Accomplishment of the proposed action would be in accordance with Schempp-Hirth Technical Note 265–8, dated February 11, 1985.

Compliance Time of the Proposed AD

Although the unsafe condition identified in this proposed AD occurs during flight and is a direct result of sailplane operation, the FAA has no way of determining how long the 6 mm bolt may go without breaking. For example, the condition could exist on a sailplane with 200 hours time-in-service (TIS), but could be developing and not actually exist on another sailplane until 300 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 21 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,380, or $780 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Schempp-Hirth K.G.: Docket No. 98–CE–51–AD.

Applicability: Model Cirrus sailplanes, serial numbers 1 through 50, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control, accomplish the following:

(a) Modify or replace the connecting rod between the airbrake bellcranks, and replace the existing 6 millimeter (mm) bolt with an 8 mm bolt. Accomplish these actions in accordance with Schempp-Hirth Technical Note 265–8, dated February 11, 1985.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Schempp-Hirth Technical Note 265–8, dated February 11, 1985, should be directed to Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Postfach 1443, D–73230 Kirchheim/Teck, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 85–56, dated March 4, 1985.

Issued in Kansas City, Missouri, on June 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16165 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) PW4000 series turbofan engines not incorporating modifications described in certain PW service bulletins listed in the applicability section. This proposal would require high pressure compressor (HPC) blade tip grinding of the rotor assembly, installation of aluminum oxide coated HPC blade tips in stages 9 through 12, modification of HPC 8th through 14th stage stators, incorporation of 1st stage high pressure turbine (HPT) vanes with increased airflow area which also requires additional HPT hardware modifications, and incorporation of HPC 13th–15th stage zirconium oxide blade tips. This proposal is prompted by reports of HPC surge caused by excessive HPC rear stage rotor-to-case clearance. The actions specified by the proposed AD are intended to prevent HPC surge, which can result in engine power loss at a critical phase of flight such as takeoff or climb.

DATES: Comments must be received by August 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of certain Pratt & Whitney (PW) PW4000 series turbofan engine power loss events occurring frequently during a critical phase of flight such as takeoff or climb. The events have led to the flight crew conducting rejected takeoffs and to engine power loss or shutdown events in flight. A rejected takeoff could result in the airplane overrunning the runway, incurring airplane damage, and injuring airplane occupants. Engine power loss or shutdown during takeoff also significantly increases crew workload during a critical phase of flight. The investigations into these events revealed that they were caused by high pressure compressor (HPC) surge that could require crew action to recover. Further investigation revealed that the surge results from excessive HPC rear stage rotor-to-case clearance. This condition, if not corrected, could result in HPC surge, which can result in engine power loss at a critical phase of flight such as takeoff.

The FAA has reviewed and approved the technical contents of the following PW Service Bulletins (SB): PW4ENG–72–484, Revision 3, dated July 1, 1997, that describes procedures for HPC blade tip grinding at the rotor assembly and introduces HPC aluminum oxide blade tip coating in stages 9 through 15 compatible with tip grinding; PW4ENG–72–486, Revision 1, dated November 23, 1994, that describes procedures for modifying HPC 8th through 14th stage stators; PW4ENG–72–514, Revision 1, dated August 2, 1996, that describe procedures for high pressure turbine (HPT) hardware modifications to accommodate the incorporation of 1st stage HPT vanes with increased airflow area; and PW4ENG–72–575, Revision 1, dated June 30, 1997, that describes procedures for incorporating HPC 13th–15th stage zirconium oxide tips.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require grinding of the HPC blade tips at the rotor assembly and incorporation of HPC stage 9 through 12 aluminum oxide blade tips, modification of HPC 8th through 14th stage stators, modification of HPT hardware to accommodate incorporation of 1st stage HPT vanes with increased airflow area and incorporation of these vanes, and incorporation of HPC 13th through 15th stage zirconium oxide blade tips, within 1,400 cycles in service after the effective date of this AD, or prior to June 30, 1999, whichever occurs first. The calendar end-date was based upon analysis of test data and service experience data. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 187 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently 61 engines installed on aircraft of U.S. registry that would be affected by this proposed AD. Required parts would cost approximately $20,000 per engine. Based on these figures, the total cost impact of the proposed AD, including labor costs, is estimated to be $1,220,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 97–ANE–53–AD.

Applicability: Pratt & Whitney (PW) Model PW4152, PW4056, PW4156, PW4256, PW4052, PW4158, W4060, PW4160, PW4460, PW4050, PW4060A, PW4156A, PW4062, PW4462, PW4060C, and PW4650 turbofan engines, not incorporating at least one of the modifications described in the PW service bulletins (SBs) and listed in items (1) through (6), excluding those engines having a (-3) identifier next to the engine model number on the engine data plate. These engines are installed on but not limited to Boeing 767 and 747 series aircraft, McDonnell Douglas MD–11 series aircraft, and Airbus A310 and A300–600 series aircraft.

(1) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(2) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–575, Revision 1, dated June 30, 1997, or original issue, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(3) PW4ENG 72–514, Revision 1, dated August 2, 1996, or original issue.

(4) PW4ENG 72–490, Revision 1, dated August 2, 1994, or original issue.

(5) PW4ENG 72–504, Revision 1, dated May 9, 1995, or original issue.

(6) PW4ENG 72–572, dated June 16, 1995.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) surge, which can result in engine power loss at a critical phase of flight such as takeoff, accomplish the following:

(a) Within 1,400 cycles in service (CIS) after the effective date of this AD, or prior to June 30, 1999, whichever occurs first, perform the following modifications:

(1) Incorporate stage 9 through 12 aluminum oxide blade tips and grind HPC blade tips at the rotor assembly in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–484, Revision 3, dated July 1, 1997, concurrently with the requirements of paragraph (a)(4) of this AD.

(2) Modify HPC 8th–14th stage stators in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–486, Revision 1, dated November 23, 1994.

(3) Modify the 1st stage high pressure turbine (HPT) cooling duct (TOBI Duct), install a metering plug in the Number 2 bearing thrust balance vent tube, and incorporate 1st stage HPT vanes with increased airflow area in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–514, Revision 1, dated August 2, 1996.

(4) Incorporate HPC 13th–15th stage zirconium oxide blade tips in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–575, Revision 1, dated June 30, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16271 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Concept Release: Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for Comments.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") wishes to obtain public comment regarding possible changes to regulatory requirements which apply to the programs offered to the public by commodity trading advisors ("CTAs") and commodity pool operators ("CPOs"). The proposals discussed in this release originate from two sources. First, National Futures Association ("NFA") submitted a set of proposals (the "NFA Proposal") to the Commission for its approval, which concern computational and disclosure matters relating to participating in CTA programs on a partially-funded basis. Second, the Commission staff's preliminary review of the NFA Proposal gave rise to a number of additional related proposals which the Commission also wishes to consider. The NFA Proposal is set forth separately in a section entitled "NFA Proposal," in the form in which it was submitted to the Commission for approval. NFA's and the Commission staff's related proposals, collectively, fall within the following categories: (1) improving risk profile data for clients considering participation in CTA programs on a partially-funded basis, (2) providing CTA client account information to FCMs for risk management purposes, (3) improving risk profile data on commodity pools, (4) providing a theoretically sound basis of computation and presentation for rate of return ("ROR") and related risk profile data, (5) improving the presentation of historical performance and risk profile data, and (6) providing periodic statements of program activity and results to CTA clients.

All of the proposals, including the NFA Proposal and the additional proposals originated by the Commission staff, are discussed in detail in Part IV of this release, entitled "Request for Comment." At the end of each section, questions are posed to help focus public comment on the issues raised. Comment would also be welcome on any related issue and need not be limited to the questions posed in this release.

After considering the comments received, the Commission may approve or disapprove the NFA Proposal without further public notice, may request NFA to amend its proposal, or may propose for public comment changes to various Commission rules, advisories or interpretations pertaining to performance reporting and disclosure.

DATE: Comments must be received on or before August 17, 1998.

ADDRESS: Interested parties should submit their comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Reference should be made to "Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools." In addition, comments may be sent by facsimile transmission to (202) 418–5221 or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, (202) 418–5459, electronic mail: "paulb@cftc.gov;" Robert B. Wasserman, Special Counsel, (202) 418–5092, electronic mail: "rwasserman@cftc.gov;" Kevin P. Walek, Branch Chief, (202) 418–5463, electronic mail: "kwalek@cftc.gov;" or Eileen R. Chotiner, Futures Trading Specialist, (202) 418–5467, electronic mail: "echotiner@cftc.gov," Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Past performance information presented to clients and prospective clients is a primary marketing tool for CTA programs and commodity pools. This type of information appears in disclosure documents, advertisements, promotional materials, and in compendia prepared by third-party services. Performance information is also reported either directly to clients to communicate the results of the CTA's trading on behalf of their accounts or in periodic report to investors in public and private commodity pools.

The Commission's aim is that information provided to clients be accurate, complete, and understandable. The Commission believes that performance data can be useful to clients as a way of making risk and return comparisons among investment alternatives. Performance information can assist clients in distinguishing one CTA from another in terms of historical willingness to undertake risk, fee load, volatility and longer term results or facilitating comparisons with other investment opportunities. However, the Commission recognizes that requiring more data does not always result in better information for clients. It does not wish to overload clients with excessive amounts of data, nor does it wish to burden CTAs and CPOs with excessive requirements. As noted above, the Commission and NFA have identified ways to improve existing regulatory requirements that apply to CTAs and CPOs. This release discusses a variety of issues and requests public comment thereon.

II. Discussion

A. Rate-of-Return

The Commission's current requirements for the presentation of ROR data are based upon the "return on investment" ("ROI") concept used by economists, financial analysts and other professionals throughout the business world to measure the results of a variety of investment activities, from real estate development to internal capital budgeting to securities or commodities trading. ROI is used to compare various types of investments, as well as different investment managers. However, in all areas outside of commodities trading, the divisor used in the calculation of ROI represents an actual "investment" of tangible assets of the client—that is, the divisors used are amounts of actual cash funding that are owned or borrowed by the investor.

ROR is calculated, in accordance with Commission regulations, by dividing the net performance [1] by the beginning net asset value ("BNAV") as of the beginning of the period.[2] Under current Commission advisories,[3] the BNAV used to calculate the ROR must be based on a set of "fully-funded" accounts—accounts for which the "nominal account size" [4] at the inception of the trading program is equal to the "actual

[1] Commission Rules 4.25(a)(7)(i)(D) and 4.35(a)(6)(i)(D) specify that net performance represents the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses.

[2] Commission Rules 4.25(a)(7)(i)(A) and 4.35(a)(6)(i)(A). Commission Rule 4.10(b) defines "net asset value" as "total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value."

[3] CFTC Advisory 87–2 [1986–87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,624 (June 2, 1987); CFTC Advisory 93–13, 58 FR 8226 (February 12, 1993).

[4] "Nominal account size" is discussed in the next section.

funds"[5] subject to the CTA's access and control.[6]

"Actual funds" held pursuant to the CTA's trading program are funds deposited with the client's FCM either (1) in an account for which the CTA is granted discretionary trading authority or (2) in another account, subject to a binding agreement permitting the FCM to transfer funds to the first account at the direction of the CTA and committed to the CTA's trading program, as demonstrated by factors specified in Advisory 87–2.[7]

Commission Rules 4.25 and 4.35 require that the performance of accounts directed by a CTA be disclosed for the past five years and the current year to date. In order to permit performance data to be disclosed without excessive detail and repetition, the rules permit the performance of all reasonably comparable accounts in each of a CTA's programs to be shown on a composite basis.[8] When performance disclosure requirements were first adopted by the Commission over 20 years ago, the data required under the rules provided only a simple historical perspective on the profits earned or losses incurred by the participants in a CTA's or CPO's programs. However, in recent years the Commission has amplified the requirements to include data which provides a clearer focus on volatility, as opposed to simply displaying profits and losses. The performance capsules are now required to include, among other things, monthly rates of return for the most recent five calendar years and the current year-to-date, the worst monthly percentage drawdown[9] during that time period, the worst peak-to-valley percentage drawdown[10] for the time period, and the amount of funds under management.[11]

B. Nominal Account Size

The "nominal account size" is an amount the CTA and the customer have agreed upon, usually in a written contract.[12] It determines the level of trading for the client relative to other accounts in the CTA's program, regardless of the level of actual funds.[13] This means that customers of a given CTA who have the same nominal account size will have the same trades placed for their accounts. Generally, it also means that a customer who has agreed to a nominal account size of twice that of another customer of the same CTA will have twice the number of positions.[14] The use of nominal account sizes simplifies management of the trading for a multiplicity of accounts, especially where the desired level of trading by the clients is not represented by the actual funding levels, as explained below.

It is important to point out what nominal account size does not represent. It does not represent a particular number of positions, since there are times when a CTA may believe it prudent to stay out of the markets entirely or, alternatively, to be more aggressive than usual. It is not a function of margin requirements, nor is there any absolute or constant relationship to margin requirements arising from the CTA's trading. While in a retail context, the nominal account size is sometimes described as an amount sufficient to make it unlikely that any further cash deposits will be necessary over the course of the client's participation in the CTA's program, the client may not look to the nominal account size as a maximum possible loss, since unexpected losses could exceed the nominal account size. Therefore, the nominal account size does not represent the limit of the customer's liability, nor may any CTA represent that it is an indication of the maximum likely or possible loss that may be incurred.

Nominal account sizes are not comparable from one CTA to the next. In discussions with representatives of the industry concerning this issue over the past ten years, it has become clear to the Commission staff that there is no method in common use in the industry relating the nominal account sizes to the number of positions traded. Indeed, NFA has reported that setting such levels "is inherently a subjective process" and "a matter of the CTA's judgement."[15]

Nominal account size is sometimes referred to as a "legally binding" amount. While the amount specified does establish some legally binding obligations between the customer and the CTA, these only extend to (1) the basis of the management fees to be paid by the customer and (2) the trading level to be employed by the CTA for this account relative to other accounts managed under the same program. the nominal account size does not represent an obligation to furnish an amount of actual funds. The account arrangement between the CTA and its client may be terminated by the client at any time regardless of the amounts deposited in any account over which the CTA has or had trading authority. Of course, the client must settle any debits left in the account at the FCM as a result of trades ordered by the CTA before termination. As indicated above, these debits could exceed the nominal account size.

The fact that nominal account size does not represent an actual investment—or even a comitment—of tangible funds and the lack of a commonly accepted method for determining the nominal account size have been major factors in the Commission's reluctance to permit the use of the nominal account size in determining ROR, except as permitted by Advisory 93–13.[16]

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[5] CFTC Advisory 93–13 defines actual funds as "the amount of margin-qualifying assets on deposit in a commodity interest account, generally cash and marketable securities."

[6] A CPO may only report the performance of a pool on the basis of actual funds. *See* Advisory 93–13, 58 FR at 8229. However, the issues discussed herein are applicable to CPOs with respect to disclosure of CTA performance in pool disclosure documents.

[7] These factors include the following: (1) the client must have the same ownership interest in each account; (2) the funds must be available for transfer to the client's trading account; (3) the client must commit the funds to the CTA's program under a written agreement, signed by the FCM, which permits the FCM to transfer up to a specific amount to the client's regulated commodity account at the direction of the CTA, and (4) the CTA must be able to demonstrate that the funds committed to his control were actually deposited in accounts to which he had access.

[8] Commission Rules 4.25(a)(4) and 4.35(a)(3).

[9] Commission Rule 4.10(k) defines "drawdown" as "losses experienced by a pool or account over a specified period."

[10] Worst peak-to-valley drawdown is defined in Commission Rule 4.10(l) as "the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value."

[11] The table must also include any additional notes needed to avoid misleading the reader about the CTA's program or the data presented. Commission Rules 4.24(w) and 4.34(o).

[12] A written contract would be required under the NFA Proposal and is required under Advisory 93–13.

[13] Advisory 93–13.

[14] In practice, there are exceptions to this rule. For example, in some programs newly-opened accounts will take up to a few months to be fully phased into a program. Therefore, an account being phased in will not always have the full gamut of positions in it, as compared to the other accounts. Also, in some programs the smaller accounts may not be large enough to carry the full range of trades indicated by a CTA's program. In such a case, the CTA may only include the smaller accounts together with the larger accounts in the composite and in calculating ROR if it can be demonstrated that the RORs are materially the same. Advisory 93–13, 58 FR at 8228.

[15] October 2, 1997 letter from Daniel J. Roth, General Counsel, NFA, to Paul H. Bjarnason, Jr., Chief Accountant, Division of Trading and Markets, CFTC.

[16] Advisory 93–13 describes the use of a fully-funded subset to compute ROR. The fully-funded subset is a device to link the nominal account sizes assigned by the CTA to its clients to tangible funding.

C. Evolution of Present Commission Requirements

As mentioned above, the Commission's requirements have evolved over time in response to identified problems and issues. One of the issues which has been at the forefront of consideration is the so-called "notional funds" issue. This issue pertains to the determination of the BNAV, which is the amount to be used as the divisor in the computation of ROR. The Commission first addressed this issue in 1987. Consistent with current Commission rules on the matter, Advisory 87–2 affirmed that only actual funds on deposit could be used in determining BNAV. Its purpose was to permit inclusion in BNAV of funds which are not carried at the FCM, but which can be reached by the FCM to satisfy a margin call. Advisory 87–2 provided that actual funds for the ROR calculation could include funds carried at the FCM or located at other depositories to which the FCM had access. This Advisory was needed because a literal application of the Commission's rules resulted in the exclusion of some funding for accounts which logically should have been included. For the successful trader, the undue minimization of BNAV had the effect of resulting in unrealistically magnified RORs. The converse was true for losses. However, issuing Advisory 87–2 did not solve all of the reporting issues.

Some clients deposit to the account managed by a CTA actual funds which are only a fractional percentage of the nominal account size. This practice is referred to as "notional funding" or "partial funding." As indicated by NFA, the widespread use of partially-funded accounts raises the issue of how to report the performance of these accounts in a manner which is not misleading and without creating an undue number of performance tables. Prior to 1993, the Commission's reporting scheme was entirely based on "actual funds."

Advisory 93–13's main feature was the "fully-funded subset" method of ROR reporting. Under this method, the RORs presented in the performance table were not based upon all the accounts in a CTA's program. The RORs were based only upon the fully-funded accounts—hence, the name "fully-funded subset" method. The Advisory provided for a matrix to permit clients to convert the fully-funded subset RORs to RORs for various partial funding levels. To qualify for the method, the fully-funded accounts must, in the aggregate, represent at least ten percent of the total nominal amount of funds traded by the CTA in the trading program. The Advisory also requires that the CTA make certain additional calculations to ensure that the subset is representative of the CTA's program.[17] As long as the two tests are met, this method produces approximately the same ROR as does a method (such as the NFA Proposal) that bases BNAV on the nominal account size.

The Commission has also sought to highlight the risk of CTA trading programs and commodity pools. In August 1995, the Commission enhanced requirements for the disclosure of the risk of volatility in all CTA and CPO programs by adding two new disclosure requirements—the largest percentage monthly drawdown and peak-to-valley drawdown for each program or pool offered by a CTA or CPO. The Commission felt that this new dimension to performance data provided a valuable heightened focus upon the risk of commodities trading, namely the possibility of large drawdowns of equity—either on a monthly or continuous basis.[18]

Since August 1995, the Commission has received requests to address CTAs that have difficulty achieving the fully-funded subset necessary to qualify to use Advisory 93–13. The interest in this issue suggests that partially-funded account programs are becoming more prevalent. Because of the possibility that more clients are participating on a partially-funded basis, the Commission has become concerned that full-funded basis data may be irrelevant or misleading for a growing segment of clients. Since partially-funded accounts are more highly leveraged than fully-funded accounts, they will incur magnified gains and losses compared to fully-funded accounts. For example, a customer who is funding its account at 25% of the nominal account size will realize gains—and losses—at four times the rate experienced by a fully-funded client. A loss of 30% on a fully-funded basis will result in a loss of 120% of the investment of a customer which funds its account at 25% of the nominal level, wiping out the initial investment and leaving a deficit to be repaid by the customer.

The Commission has also noted that commodity pools are accessing CTA programs on a partially-funded basis. Therefore, commodity pools raise similar concerns because their disclosure documents contain information on the pool's CTAs only on a fully-funded basis.

III. NFA Proposal

On February 26, 1998, NFA submitted for Commission approval a change to its Compliance Rule 2–29(b)(5) that would require RORs for CTAs to be based on the nominal account size as described in proposed NFA Compliance Rule 2–34, rather than upon the actual funds which are associated with the CTA's program, as presently required by Commission regulations. Proposed NFA Compliance Rule 2–34 and a related Interpretive Notice, both of which were previously submitted for Commission approval, specify certain requirements regarding account documentation and disclosure for partially-funded accounts, as well as certain disclosure requirements for COPs.[19] Together, the amendments to NFA Compliance Rule 2–29(b)(5), proposed NFA Compliance Rule 2–34, and the proposed Interpretive Notice constitute the NFA Proposal.[20]

The NFA Proposal requires a CTA who directs a client's account to enter into a written agreement with the client that includes:

(1) The account size which the CTA will use as the basis for its trading decisions, i.e., the nominal account size;

(2) The name or description of the trading program in which the client is participating;

(3) Whether the client will deposit, maintain or make accessible the FCM an amount equal to or less than the nominal account size; and

(4) How additions, withdrawals, profit and losses will affect the nominal account size and the computation of fees.

The CTA would be required to provide a copy of this agreement to the FCM carrying the client's account. The CTA would be required to disclose, in writing, the factors considered by the CTA in determining any minimum account size of the trading program in

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[17] The latter requirement is not unique to partially-funded accounts, since all accounts include in a composite must be similar to one another. The calculation simply established or proved that the accounts of the fully-funded subset performed similarly to all of the other accounts.

[18] While there is generally agreement that past performance data is not predictive of future performance, academic studies have shown that it does some predictive value as to volatility. *See* Scott H. Irwin, *et al., The Predictability of Managed Futures Returns*, J. Derivatives 20, 23 (Winter 1994). This is why the Commission has sought to emphasize the drawndown aspects of ROR, as opposed to the profitability aspects.

[19] The full text of NFA Compliance Rules 2–29(b)(5) and 2–34 and the Interpretive Notice are attached to this release as Appendix I.

[20] The Commission notes that approval of the NFA Proposal by the Commission would, in order to avoid conflicts between NFA and Commission rules, require the Commission to rescind its Advisories 87–2 and 93–13, which are discussed elsewhere in this release.

which the client is participating. In addition, unless a client is a qualified eligible client as defined in Commission Rule 4.7,[21] the CTA would be required to disclose the following information in writing:

(1) An estimated range of the amount of customer equity generally devoted to margin requirements or option premiums, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage;

(2) A description of how management fees will be computed, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage;

(3) An estimated range of the commissions generally charged to an account, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage; and

(4) A statement that the greater the disparity between the nominal account size and the amount deposited, maintained with or made available to the FCM, the greater the likelihood, and possible size, of margin calls.

The NFA Proposal prohibits the use of ROR figures in promotional material unless such figures are calculated in a manner consistent with that required under CFTC regulations and are based on the nominal account size as described in NFA Compliance Rule 2–34.[22]

The NFA Proposal also imposes disclosure requirements on CPOs who allocate assets among the pool's CTAs in such a way that the total allocations to its CTAs are greater than the total assets of the pool. In particular, the CPO must disclose the following information in writing to all participants except QEPs, as defined in Commission Rule 4.7:

(1) A statement of the total amount allocated to CTAs as a percentage of the pool's net assets;

(2) A description of how management fees charged by the CPO and the CTAs will be computed, including a statement of the total amount of management fees charged to the pool as a percentage of the pool's net assets;

(3) An estimated range of the amount of commissions and transaction fees that will be charged to the pool in the next twelve months and an estimate of these fees as a percentage of the pool's net assets; and

(4) A statement that allocating in excess of the pool's net assets among CTAs has the effect of proportionately magnifying the profits and losses that may be incurred by the pool.

NFA presents several reasons for its Proposal. NFA states that basing BNAV solely on the amount deposited by the client with the FCM can distort the past performance results reported to clients. The accounts of two clients who have permitted the CTA to base its trade orders on the same account size during the same time period, using the same program, can show very different RORs based solely on their cash management strategies. According to NFA, this factor has nothing to do with the CTA's trading decisions. NFA believes that a CTA's performance history should reflect the results of the CTA's trading decisions and should not be affected by the client's cash management strategies. NFA further believes that computing ROR for partially-funded accounts based on actual funds on deposit overstates both positive and negative returns in those accounts. In addition, NFA believes that the fully-funded subset is so restrictive that more and more CTAs have been unable to use it.

NFA also recognizes that there are valid concerns regarding the documentation, disclosure, and sales practice problems that notional funding can create. According to NFA, however, these concerns are not computational issues to be addressed through BNAV but are separate issues that should be addressed independently of the ROR calculation. Therefore, NFA has proposed using the nominal account size for calculating BNAV and imposing the separate requirements, which are set forth above, to address these compliance concerns.

IV. Request for Comment

The Commission shares NFA's concern for accurate disclosure. In this connection, the proposals, collectively, are designed to ease the calculation of ROR for CTAs and enhance the amount and quality of data available to prospective clients of CTAs and investors in commodity pools. In considering the issues involved, the Commission wishes to obtain as much information as possible and to consider all relevant options. The sections below contain discussion and pose questions regarding several broad topic areas. The Commission does not wish to limit comment to the issues and questions set forth below, and comment is welcome on any aspect of CTA or commodity pool ROR reporting, accounting or disclosure.

A. Disclosure of Risk Profile Data on CTA Programs for Clients Considering Participation on a Partially-Funded Basis

The Commission staff suggests consideration of expanded disclosure of historical percentage drawdown data, as explained below.

Discussion: Presently, drawdown data is required to be presented for CTA programs only on a fully-funded basis. The Commission staff has become concerned that historical drawdown data presented only on a fully-funded basis may mislead investors who are considering a partially-funded participation. It is important to convey to investors, as clearly as possible, that partially-funded participation in a CTA program will result in proportionately greater volatility—and proportionately greater drawdowns—compared to a fully-funded participation. Accordingly, the Commission wishes to explore the costs and benefits of requiring drawdown percentage data to be presented at two or three partial-funding levels that are representative of those offered by the CTA (*e.g.*, at the 25% 50%, and 75% levels) in addition to the fully-funded level. Presenting actual drawdown data on a partially-funded basis would illustrate the volatility of partial funding with a clarity that could not be achieved in a textual discussion. A CTA would not be required to present information for partial funding levels which are below the minimum offered by that CTA (*e.g.*, a CTA which does not accept accounts which are funded at less than 50% partial funding would not be required to present information at the 25% level).

Questions:

(1) What would be the costs and benefits of presenting drawdown figures geared to two or three partial funding levels?

(2) What would be the most effective format for the presentation?

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[21] Commission Rule 4.7 provides an exemption from certain Part 4 requirements with respect to the operators of commodity pools whose participants are limited to qualified eligible participants ("QEPs") and with respect to commodity trading advisors whose clients are qualified eligible clients ("QECs"), as those term are defined by the Rule.

[22] The NFA Proposal would appear to prohibit the presentation of ROR figures based on any of the "actual funds" methods required in Commission regulations or permitted in Advisories 87–2 and 93–13. This language would also appear to prohibit the presentation of worst month and worst peak-to-valley figures—which are rate-of-return figures—on a partially-funded basis to prospective investors. As discussed below, the Commission is requesting comment on a proposal that CTAs who permit the use of partial funding levels present such "worst-case" information to potential investors on a partially-funded, "as-if" basis, in order to highlight the increased risk imposed by the leveraging that partial funding represents. The NFA Proposal would thus proscribe the disclosure of risks which the Commission proposal would require.

B. Presentation of Data Concerning Estimated Margin Ratios

NFA proposes to require CTAs to disclose, to any client which is not a QEC under Commission Rule 4.7 and which partially funds a participation in a CTA's program:

> An *estimated* range of the amount of customer equity *generally* devoted to margin requirements or option premiums, expressed as a percentage of the nominal account size of the accounts traded by the CTA, and an explanation of the effect of partially funding an account at that percentage.

Proposed Rule 2–34(b)(1) (emphasis added).

Discussion: This ratio, which is to be presented to *partially*-funded customers, is nonetheless a measure of the CTA's program on a *fully*-funded basis, since it is based upon the nominal account size. It appears that use of the ratio is intended to provide a measure or indicator of the risk of the CTA's program. The addition textual requirement is designed to help clients understand how partial funding increases such risk.

The Commission believes any new required disclosure should be assessed in light of its clarity, reliability in achieving its intended purpose, and its potential for being misunderstood by investors. If this proposed disclosure were required, it is possible that prospective clients will compare CTAs on the basis of this ratio. This possibility leads to the following issues for consideration:

- In determining whether presentation of the margin ratio should be required, it is important to consider whether aggregate margin requirements are a reliable indicator of risk. It is unclear that any two portfolios with the same aggregate margin requirement are equal as to their level of risk, regardless of the mix of commodities represented or the mix of futures, long and short options comprising the portfolio. The Commission knows of no academic studies on the matter, and the staff's experience reviewing margin requirements indicates that there can be significant differences between margin requirements relative to the level of risk on different contracts. For example, the margin requirements on stock index futures are generally more conservative (*i.e.*, higher relative to volatility) than the margin requirements on energy products.
- The NFA Proposal's provision that the "estimated" range be disclosed allows the CTA to exceed the upper limit of the range presented. The Commission staff is concerned that disclosure of such a range might create a misleading expectation of limited losses.
- It is unclear that a textual explanation of the risk of partially funding a CTA program participation, added to the currently required disclosures, is likely to attract the attention of the potential investor.

Questions:

(1) Will disclosure of information concerning the margin ratio, as discussed above, be useful to potential investors? Please give details of how potential investors will use this information.

(2) What evidence, in the form of studies or otherwise, supports the proposition that margin requirements are a reliable indicator of the level of risk?

(3) Does a requirement that CTAs disclose an "estimated" range of the amount of customer equity "generally" devoted to margin involve a standard so inherently discretionary that it creates a danger of presenting information that is misleading to potential investors?

(4) Would a requirement that CTAs commit to an absolute maximum percentage of customer equity devoted to margin, beyond which no margin-increasing changes will be made, provide a more useful disclosure structure? What would be the advantages and disadvantages of such a structure? How should such a structure be implemented?

(5) Would any other alternative structures present more useful information? What would be the advantages and disadvantages of such structures?

C. Providing the CTA/Client Agreement to the FCM

The NFA Proposal calls for the CTA to provide a copy of the CTA/client agreement to the FCM carrying the customer's account.

Discussion: NFA has indicated that it believes an FCM would find the nominal account size useful as a general indicator of the amount and size of trading intended to be undertaken in the account on behalf of the customer. The FCM could use this information in making a determination as to whether to accept this client and, if so, under what credit terms.

Questions:

(1) Do FCMs consider the client's nominal account size useful information? Do they currently obtain such information? Would the imposition of a regulatory requirement aid them in doing so?

(2) Would a different method of providing the FCM with information concerning nominal account sizes be more efficient? What method (if any) of communication should be required? What should the timing and the form of this communication be?

D. Presentation of Risk Profile Data on Commodity Pools

The NFA Proposal imposes various disclosure requirements on CPOs that allocate assets among a pool's CTAs in such a way that the total allocations to its CTAs are greater than the total assets of the pool. One of the requirements is for the CPO to provide a statement of the total amount of nominal account sizes allocated to a pool's CTAs as a percentage of the pool's net assets. The Commission desires to obtain comment on an alternative method of presenting a risk profile for a commodity pool which was developed by its staff.

Discussion: The most readily apparent use for NFA's proposed ratio would be for prospective clients to compare one commodity pool to another. On initial consideration, it might seem that the greater the amount of the nominal account size compared to pool net assets, the greater the risk of a pool would be. But in this connection there are some issues that should be explored.

Although nominal account sizes may be useful in the context of an individual CTA, it does not follow that the ratio would be a consistent measure for even a single pool over time. As noted above, nominal account sizes are not comparable across CTAs. Therefore, a ratio based on the aggregate of nominal account sizes would not lend itself to making accurate and reliable comparisons between pools. Moreover, the ratio of one CTA's nominal account size to the others may change over time. The Commission is interested in reviewing evidence which contradicts or supports this preliminary conclusion.

The Commission wishes to explore an alternative approach to enhancing the presentation of risk profile data for pools. This approach is founded on the precept that the volatility of a pool is a function of the volatilities of the investment vehicles (*i.e.*, CTA programs or investee funds) in which it has invested. Therefore, the Commission wishes to consider requiring the presentation of data disclosing, on a pro forma basis, the effect of the worst historical drawdown for each of the vehicles the pool invested in over the course of the year. Such a presentation requirement might be implemented as follows:

> (1) For each investment vehicle selected, present the worst monthly and worst peak-to-valley drawdown percentages on a leveraged basis for:

(a) the investment vehicle itself, at the pool's leveraged basis (*e.g.*, if the fully-funded worst drawdown for CTA "X" was 10 percent and the pool funds its participation in the program of CTA "X" on a 50 percent basis, the worst drawdown would be presented as 20 percent); and

(b) the investment vehicle's historical pro-forma impact on the pool, as though the highest percentage of pool assets over the past year were invested in the investment vehicle for the full historical period, at the leverage level of the pool (*e.g.*, if CTA "X" had been allocated 25 percent of the pool's net assets, the 20 percent worst monthly drawdown would be presented as a 5 percent impact (20% * 25%) upon the pool's net assets).

(2) For major investee funds, data on the investee fund's major investments would be required on a "look-through" basis, if they qualified as material under the selection criteria discussed below.

(3) Finally, for each investment vehicle, identify the number of days during the year that the fund was invested in the vehicle and whether it is currently so invested.

An example of such a presentation follows:

Investment	Investment (leveraged)		Highest percentage of fund	Impact on fund		Number of days held
	Worst month	Worst peak-to-valley		Worst month	Worst peak-to-valley	
CTA *X*	(20%)	(Y%)	25%	(5%)	(Y *25%)	365

The purpose of the selection criteria is to select investment vehicles for which detailed risk profile data must be provided, *i.e.*, those which expose the pool to the risk of material loss. It is also important to limit the number of vehicles for which information is presented, to avoid overwhelming the investor with an excessive volume of data. Finally, the criteria should consider the pool's investments over the course of a year, rather than on a particular date, to avoid strategic behavior aimed at "cleaning up" the portfolio for a single measurement day. One example of a selection method would be the following:

Identify each investment vehicle in which, at any time during the course of the year, the actual funds invested by the pool equaled or exceeded five percent of the pool net assets. For each such investment vehicle, calculate an index which is the product of (A) the greatest amount invested (by *notional* value) times (B) the vehicle's worst monthly drawdown percentage, times (C) the number of days during the year that the pool was invested in this vehicle. Present the data described above for the investment vehicles with the top *N* index values.

Questions:

(1) What evidence supports or contradicts the proposition that the ratio between aggregate notional value and total pool net asset value is a useful measure of the risk level of a commodity pool?

(2) Would presentation of leverage worst drawdown data, as described above, for a selection of a commodity pool's investment vehicles provide useful information to potential investors? What would be the disadvantages of providing such information? What is the most effective means of presenting such information? Should the results of the calculations described above be presented, or should different information be presented?

(3) Are the selection criteria described above useful? Would a different selection method be more appropriate? For how many investment vehicles should the data be presented?

(4) When should this table be presented: in disclosure documents? Sales literature? Pool annual reports?

E. Theoretical Soundness of the Basis of Computation and Presentation for ROR and Related Risk-Profile Data

The NFA Proposal does not require CTAs to maintain any fully-funded accounts to validate their nominal account sizes. By contrast, current practice, as described in Advisory 93–13, requires a fully-funded subset comprised of fully-funded accounts accounting for ten percent of the aggregate nominal account sizes, to validate the nominal account sizes. The Commission wishes to explore the implications of this change.

Discussion: The Commission has always sought to ensure that the methodologies it has required or permitted to be used in the various reporting schemes under its jurisdiction are based upon sound economic and accounting principles. In this connection, wherever possible, the Commission adheres to Generally Accepted Accounting Principles ("GAAP") in CTA, commodity pool, and FCM financial reporting. The fully-funded subset method permitted in Advisory 93–13 is consistent with the Commission's historical approach to standards by requiring that the nominal account sizes set by the CTA be validated by the existence of a subset of accounts that are fully-funded with actual assets, pursuant to GAAP. This explicit linkage to actual funds, in effect, permitted to RORs to have some basis in traditional financial and accounting methods. By contrast, the NFA Proposal, which permits unrestricted use of the subjectively established nominal account size, lacks such an anchor or reference point.

Question:

(1) Should the fully-funded subset requirement be retained to validate the nominal account sizes used by the CTA, or should it be dropped entirely?

(2) Does the fact that many CTAs may have difficulty in obtaining a fully-funded subset demonstrate a flaw in the regulatory methodology, or does it demonstrate an unrealistic setting of nominal account sizes? In other words, if the greatest actual funding level for any of a given CTA's accounts was 50% (e.g., all $1 million nominal accounts are funded at $500,000 or less), is it not more accurate to express the nominal account sizes at 50% of their initial level?

(3) If the fully-funded subset should be dropped, what would be the theoretical basis for the method of computing ROR, in terms of economic and financial accounting theory?

(4) How do nominal account sizes used by CTAs generally fit into the broader world of financial services, so that a potential investor might fairly compare investments in commodity pools with other potential investments?

F. Changes in the Presentation of Historical Data

Current regulations require disclosure of approximately five years of historical ROR data, presented on a monthly basis, and presentation on a capsule basis of the single worst monthly drawdown and worst peak-to-valley drawdown during the same period.[23] The Commission wishes to consider the costs and benefits of requiring a longer time-frame for disclosing performance data for CTAs and commodity pools while reducing the period for which disclosure of monthly data is necessary in the basic disclosure documents.[24]

[23] Commission Rule 4.25(a)(1)(F), (G); Rule 4.25(a)(2)(ii). The time required is "the most recent five calendar years and year-to-date." Commission Rule 4.25(a)(5).

[24] The Commission anticipates that monthly data would be made available by some means to

The focus of the disclosure document would be to provide key profile information. The Commission staff has also suggested that the Commission consider expanding the number of worst drawdown months presented, from one to three or possibly six. The overall effect of this change would be to reduce the number of data items presented in the disclosure document, while increasing the scope of the information made available to the investor.

Discussion: In many markets, extreme market events do not always occur within a five-year time-frame, which is the limit of the present requirement. Often the time interval between market events is ten years or more. Thus, limiting the historical presentation requirements to a five-year period, as the current regulations do, may permit some CTAs and commodity pools to omit their greatest drawdowns from their historical risk profiles.[25] Requiring data for a longer period will present a fuller picture to prospective clients.[26] Such disclosure is especially important where notional funding is used, given the magniification of drawdowns inherent in partial funding.

The Commission also seeks to strike a balance between the sometimes conflicting goals of requiring all data that would be useful and avoiding the presentation of a volume of data that is cumbersome to read and analyze or too complex or voluminous to be easily assimilated by the prospective client. Therefore, the Commission staff has suggested that the Commission consider reducing the number of years for which monthly data is required and presenting the balance of the information on an annual basis or on some other summary basis, as discussed below.

In connection with consideration of reducing the number of monthly data items, the Commission staff has suggested that the Commission consider requiring more detailed information concerning the volatility of the CTA's program, either by requiring presentation of an expanded number of worst drawdown months, e.g., the three worst months or the six worst months, or by requiring presentation of the standard deviation of the monthly returns. Presently, only disclosure of the worst single monthly return is required. Given the unreliability of past performance data as a predictor of future performance and the relatively greater correlation between past and future volatility, presentation of data which is more indicative of volatility seems warranted.

Questions:

(1) What are the costs and benefits of requiring performance data for a period greater than the past five years? What period should be required?

(2) How many years of monthly data should be required? What would be the most effective method of presenting such data? What would be the most appropriate method of presenting data for earlier periods (e.g., annual performance, annual performance plus footnoted standard deviation of monthly performance, etc.)?

(3) What data should be presented to enable investors to measure the volatility of returns from a CTA's program or a commodity pool? How many months of worst drawdown data should be required (e.g., one, three, six)? What would be the most effective format for the presentation of this data?

G. Keeping Clients Regularly Informed Regarding CTA Program Status

The Commission seeks to ensure that clients receive timely and complete information on the status of their participation in CTA programs.

Discussion: Commission rules do not currently require that CTAs provide any periodic reports to their clients.[27] Presently, the only information the Commission requires to be reported to a client is that provided to the FCM (e.g. trade confirmations and monthly account statements provided to the CTA's clients and to the CTA).[28] However, this information does not fully inform the customer as to the status of its participation in the CTA's program. Among the items the customer may also need are the following: (a) account fees (e.g., the amount of fees earned/charged during the period, payments received from client on amounts owed during the period both through charges to the client account at the FCM and from sources outside the FCM account, and may balance unpaid by or credit due to the client at end of the period); (b) information on the basis of incentive fee calculations (including the amount of unrecovered prior losses carried forward); and (c) the current nominal account (i.e., amount originally agreed to, changes during the period and balance at end of period). It also may be useful to require the monthly statement to contain the management and incentive fee percentages, even though they are contained in the CTA/client agreement. This would permit the clients more easily to verify the amount charged.

Questions:

(1) Which of the data items discussed above would be valuable for clients to receive on a regular basis from CTAs? Are there any other data items which should be required? How often should this information be reported to clients? Is there a particular format which should be required?

(2) What would be the costs for CTAs to report this information to clients on a regular basis?

(3) On balance, what reporting requirements, if any, should be established?

V. Conclusion

The Commission believes that it is appropriate to examine concerns regarding ROR computation and other performance issues which are raised in connection with the proposals made by the Commission staff and NFA. The Commission hopes to develop a balanced approach to address these issues that will enable performance data provided to customers to be as useful and meaningful as possible, while not being excessively burdensome to CTAs and CPOs. To this end, the Commission requests public comment on the proposals and the related issues set forth above.

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potential investors who wish it, such as by mail on request or by inclusion on the CTA's website.

[25] Commission Advisory 96–1 allows, but does not require, CTAs to present the performance of offered programs, and CPOs to present the performance of offered pools, since inception provided that such performance capsules include, among other things, worst monthly and peak-to-valley drawdown percentages for both the required five-year and year-to-date period and since inception of trading for the program or pool. Comm. Fut. L. Rep. (CCH) ¶ 26,639 (March 6, 1996).

[26] For example, recent revisions to the Securities and Exchange Commission's ("SEC") Form N–1A, which is used by mutual funds to register their securities and offer their shares, require that a fund's risk/return summary include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. In order to assist investors in understanding the variability of a fund's returns and the risks of investing in the fund, a fund must also disclose its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart. Securities & Exchange Commission, Registration Form Used by Open-End Management Investment Companies, 63 FR 13916, 13947–52 (March 23, 1998).

[27] However, Commission Rule 4.36(c)(1)(i) specifies that if a CTA knows or should know that its Disclosure Document is materially inaccurate or incorporate in any respect, it must distribute corrected information to its existing clients.

[28] Commission Rule 1.33.

Issued in Washington, D.C. on June 11, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Concept Release: Performance Data and Disclosure for Commodity Trading Advisor and Commodity Pools

Statement of Commissioner John E. Tull, Jr.

I concur in issuing this Concept Release, because I believe wholeheartedly in the practice that a better informed agency makes smarter, better decisions in carrying out its regulatory functions. And as I have consistently maintained, I believe this agency should defer to the private sector and self-regulatory organizations to the fullest extent possible in fulfilling our mission to protect the integrity of the markets and their users.

Therefore, I welcome and endorse this concept release. I am not entirely convinced that the rule changes discussed may not create more confusion than they would resolve. At this point I personally believe that using the notional amount of an account may be the simplest and most uniform method of disclosing risk and performance data. This, after all, is the objective of the rules under consideration.

With that in mind, I look forward to reviewing the comments to this Concept Release.

John E. Tull, Jr.,

June 11, 1998.

Appendix I—Compliance Rules

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RULE 2–29. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL

* * * * *

(b) Content of Promotional Material.

No Member or Associate shall use any promotional material which:

* * * * *

(5) includes any specific numerical or statistical information about the past performance of any actual accounts (including rate of return) unless such information is and can be demonstrated to NFA to be representative of the actual performance for the same time period of all reasonably comparable accounts and, in the case of rate of return figures, unless such figures are calculated in a manner consistent with that required under CFTC Rule 4.25(a)(7)(i)(F) and are based on the nominal account size (as described in Compliance Rule 2–34).

* * * * *

RULE 2–34. DIRECTED ACCOUNTS AND COMMODITY POOLS

(a) At the time a Member CTA enters into an agreement to direct a client's account, the Member CFT must obtain a written agreement signed by the client (or someone legally authorized to act on the client's behalf) which states:

(1) the account size which the CTA will use as the basis for its trading decisions, i.e., "the nominal account size";

(2) the name or description of the trading program in which the client is participating;

(3) whether the client will deposit, maintain or make accessible to the FCM an amount equal to or less than the nominal account size, i.e., to fully or partially fund the account; and

(4) how additions, withdrawals, profits and losses will affect the nominal account size and the computation of fees.

The Member CTA must provide a copy of the agreement to the FCM carrying the account. The Member CTA must also disclose in writing the factors considered by the CTA in determining any minimum account size of the trading program in which the client is participating.

(b) Unless the client is a qualified eligible client under CFTC Rule 4.7, any Member CTA which directs a partially funded account must provide the following information in writing to the client:

(1) an estimated range of the amount of customer equity generally devoted to margin requirements or options premiums expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(2) a description of how the management fees will be computed, expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(3) an estimated range of the commissions generally charged to an account expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(4) a statement that the greater the disparity between the nominal account size and the amount deposited, maintained or made accessible to the FCM, the greater the likelihood, and possible size of, margin calls.

(c) Unless the pool participants are qualified eligible participants under CFTC Rule 4.7, any Member CPO which allocates assets among the pool's CTAs in such a way that the total allocations to its CTAs is greater than the total assets of the pool must provide the following information in writing to the pool participants:

(1) a statement of the total amount allocated to CTAs as a percentage of the pool's net assets;

(2) a description of how management fees charged by the CPO and the CTAs will be computed, including a statement of the total amount of management fees charged to the pool as a percentage of the pool's net assets;

(3) an estimated range of the amount of commissions and transaction fees which will be charged to the pool in the next twelve months and an estimate of such fees as a percentage of the pool's net assets; and

(4) a statement that allocating in excess of the pool's net assets among CTAs has the effect of proportionately magnifying the profits and losses which may be incurred by the pool.

(d) Each CTA Member which directs accounts and each CPO Member which allocates assets among CTAs in such a way that the total committed is greater than the total assets of the pool shall maintain the records required by this Rule in the form and for the period of time required by CFTC Rule 1.31.

(e) Each CTA Member which directs accounts and each CPO Member to which this rule applies allocates assets among CTAs in such a way that the total allocated is greater than the total assets of the pool shall establish and enforce adequate procedures to review all records made pursuant to this Rule and to supervise the activities of its Associates in complying with this Rule.

* * * * *

INTERPRETIVE NOTICE NFA COMPLIANCE RULE 2–34

The Board of Directors recently passed NFA Compliance Rule 2–34, Documentation and Disclosure for Partially Funded Accounts. The Board recognized that certain customers may, for their own legitimate business purposes, deposit with the FCMs carrying their accounts less than the amount which they have directed the CTA trading their account to use as the basis for trading decisions. The Board sought to ensure that in such situations performance records accurately reflect trading results, that there is an adequate audit trail to verify past performance records and that customers receive adequate disclosures on the implications of partially funded accounts.

In the Board's view, the solicitation of partially funded accounts, particularly with less sophisticated customers, raises a number of compliance issues. Therefore, the Board wishes to make clear that NFA Compliance Rule 2–34 does not in any way diminish a Member's responsibilities under other NFA rules, most notably NFA's sales practice rules, when dealing with a customer who is considering a partially funded account.

Specifically, the Member must ensure that any solicitation present a balanced view of the risks and benefits of such an arrangement and disclose all material information. Furthermore, under NFA Compliance Rule 2–30, the Member must obtain the specified information regarding its customer's experience and financial condition and, in light of that information, must provide the customer with an adequate description of the risks of his investment. As the Board stated in its Interpretive Notice of that rule, for some customers the only adequate disclosure is that futures trading is simply too risky for that customer. That is particularly true when retail customers are induced to increase their leverage further by partially funding a trading account.

Any Member soliciting unsophisticated customers to trade with a partially funded account will bear the burden of demonstrating that its solicitation was in compliance with all NFA requirements.

[FR Doc. 98–16075 Filed 6–17–98; 8:45 am]

BILLING CODE 8351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–7546; 34–40089; 35–26884; 39–2364; IA–1726; IC–23250; File No. S7–16–98]

RIN 3235–AH47

Proposed Amendment to Rule 102(e) of the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing an amendment to Rule 102(e) of the Commission's Rules of Practice. Under Rule 102(e), the Commission can censure, suspend or bar persons who appear or practice before it. The proposed amendment clarifies the Commission's standard for determining when accountants engage in "improper professional conduct" under Rule 102(e)(1)(ii).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–16–98; include this file number on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael J. Kigin, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400; or David R. Fredrickson, Assistant General Counsel, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment an amendment to Rule 102(e).[1]

I. The Purpose of this Release

The purpose of this release is to solicit comments on a proposed amendment to Rule 102(e) of the Commission's Rules of Practice. Under Rule 102(e), the Commission can censure, suspend or bar professionals who appear or practice before it.[2] Specifically, pursuant to the Rule, the Commission can impose a sanction upon a professional whom it finds, after notice and an opportunity for hearing:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder.[3]

In a recent opinion addressing the conduct of two accountants, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission had not articulated clearly the "improper professional conduct" element of the Rule.[4] To address the court's concerns, the Commission is proposing an amendment to the text of Rule 102(e) that clarifies the Commission's standard for determining when accountants engage in "improper professional conduct."[5]

II. A Brief Overview of Rule 102(e)

A. The Importance of Rule 102(e)

The Commission adopted Rule 102(e) as a "means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence."[6] Courts have recognized that it is appropriate for the Commission to use a disciplinary mechanism such as Rule 102(e) to encourage professionals to adhere to ethical standards and minimum standards of competence.[7] In adopting the Rule, the Commission did not intend to add an "additional weapon" to its "enforcement arsenal"[8] but to protect its system of securities regulation and, by extension, the interests of the investing public.

B. The Important Role of Accountants

Accountants play many roles in the Commission's system of securities regulation. In recognition of the significance of auditors and audited financial statements in the Commission's disclosure process, this release focuses particular attention upon the role of auditors in the securities registration and reporting processes under the federal securities laws. The proposed amendment, however, covers all accountants who appear or practice before the Commission.[9]

"Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public."[10] Various provisions of the federal securities laws require publicly held companies to file audited financial statements with the Commission.[11] These financial statements must be audited by independent accountants in accordance with generally accepted auditing standards ("GAAS").[12] The auditor plans and performs the audit to obtain reasonable assurance that the financial statements are free from material misstatement. Commission regulations require the auditor to issue a report containing an opinion on the financial statements.[13] The auditor's opinion states whether the financial statements present fairly, in all material respects, the financial position of the company as of a specific date.[14] The opinion also states whether the results of the company's operations and cash

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[1] 17 CFR 201.102(e).

[2] The Rule addresses the conduct of attorneys, accountants, engineers and other professionals or experts who appear or practice before the Commission. 17 CFR 201.102(e)(2) and (f)(2).

[3] 17 CFR 201.102(e)(1)(i), (ii) and (iii).

[4] *Checkosky v. SEC*, 139 F.3d 221 (D.C. Cir. 1998) ("*Checkosky II*").

[5] This clarification addresses the conduct of accountants only, and is not meant to address the conduct of lawyers or other professionals who practice before the Commission.

[6] *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979). The AICPA also recognizes that accountants must discharge their duties with competence. *See, e.g.*, AICPA Professional Standards, Vol. 2, ET sec. 56 (1997).

[7] Rule 102(e) was promulgated under the Commission's broad authority to adopt those rules and regulations necessary for carrying out the agency's designated functions and its inherent authority to protect the integrity of the agency's processes. Three U.S. Courts of Appeals have upheld the validity of Rule 102(e). *See Touche Ross; Sheldon v. SEC*, 45 F.3d 1515, 1518 (11th Cir. 1995); *Davy v. SEC*, 792 F.2d 1418, 1421 (9th Cir. 1986). The *Checkosky* opinions held that the Commission had not clearly articulated the "improper professional conduct" standard or the rationale for that standard. Also, the *Checkosky* opinions did not decide the issue of the scope of the Commission's authority.

[8] *Touche Ross*, 609 F.2d at 579.

[9] *See* 17 CFR 201.102(f)(1) and (2). The Commission has interpreted "practice" before the Commission to include accountants functioning in many roles, including those who serve as officers of public companies. *See, e.g., In re Terrano*, Securities Exchange Act of 1934 ("Exchange Act") Rel. No. 39485 (Dec. 23, 1997), 66 SEC Docket 494 (Jan. 20, 1998); *In re Hersh*, Exchange Act Rel. No. 39089 (Sept. 18, 1997), 65 SEC Docket 1170 (Oct. 14, 1997); *In re Bryan*, Exchange Act Rel. No. 39077 (Sept. 15, 1997), 65 SEC Docket 1129 (Oct. 14, 1997).

[10] *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 810 (1984).

[11] *See, e.g.*, Securities Act of 1933 ("Securities Act") Schedule A (25)—(27), 15 U.S.C. 77aa(25)—(27); Exchange Act 12(b)(1)(J)—(L), 15 U.S.C. 78*l*(b)(1)(J)—(L).

[12] Regulation S-X, 17 CFR 210.1–02(d) (1997).

[13] *See* Regulation S-X, 17 CFR 210.2–02 (1985).

[14] *Id.*

flows for the year (or other period) then ended, are in conformity with generally accepted accounting principles ("GAAP"), and whether the audit was conducted in accordance with GAAS. [15]

Investors have come to rely on the accuracy of the financial statements of public companies when making investment decisions. Because the Commission has limited resources, it cannot closely scrutinize each of these financial statements. [16] Consequently, the Commission must rely on the integrity of the auditors who certify, and accountants who prepare, financial statements. In short, both the Commission and the investing public rely heavily on accountants to assure corporate compliance with federal securities law requirements and disclosure of accurate and reliable financial information.

The Commission and the courts have long acknowledged "the duty of accountants to those who justifiably rely on [their] reports." [17] Accountants who issue audit and other reports speak to investors, publicly representing that the accounting and auditing standards of the accounting profession have been followed. [18] An incompetent or unethical accountant can damage the Commission's processes and erode investor confidence in our markets. [19]

III. The Standard Applied to Accountants

A. "Improper Professional Conduct" In General

The Court of Appeals in *Checkosky II* criticized the Commission for not clearly articulating when an accountant would be deemed to have engaged in "improper professional conduct" under Rule 102(e)(1)(ii). This proposed amendment clarifies that whether an accountant engages in "improper professional conduct" is determined first by evaluating whether the accountant violated applicable professional standards. It also specifies the mental state required before an accountant may be sanctioned under the Rule. The proposed amendment covers conduct that the Commission historically has treated as "improper professional conduct" under Rule 102(e)(1)(ii).

Rule 102(e)(1)(ii) has been an effective disciplinary and remedial tool because it has been used to address a range of misconduct that poses a future threat to the Commission's processes. [20] Accountants who engage in intentional or knowing misconduct, which includes reckless misconduct, clearly pose this type of future threat. Accountants who engage in negligent misconduct also can pose as great a threat to the Commission's system of securities regulation as accountants who knowingly violate the professional standards.

Rule 102(e)(1)(ii) is not meant, however, to encompass every professional misstep. [21] A harmless judgment error or immaterial mistake does not pose a future threat to the Commission's processes and does not constitute "improper professional conduct." Similarly, the Commission does not seek to use the Rule to establish new standards for the accounting profession.

B. The Proposed Standard

The Rule addresses conduct that fails to meet professional standards. The proposed amendment delineates categories of conduct that constitute "improper professional conduct" under Rule 102(e)(1)(ii). These categories are:

(A) An intentional or knowing violation, including a reckless violation, of applicable professional standards; [22] or

(B) Negligent conduct in the following circumstances:

(1) An unreasonable violation of applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading; or

(2) Repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence.

1. Intentional or Knowing Violations, Including Reckless Violations

Subparagraph (A) of the amendment defines "improper professional conduct" to include the most blatant violations of the professional standards. The Commission consistently has used Rule 102(e)(1)(ii) proceedings to address these types of violations of the professional standards. [23]

Clearly, an accountant who intentionally or knowingly, including recklessly [24], violates the professional standards has engaged in "improper professional conduct." Accountants who engage in this type of misconduct undoubtedly pose the type of future threat to the Commission's system of regulation that requires Commission action.

2. Specific, Negligent Conduct

The proposed amendment also covers specific, negligent violations of the professional standards. [25] The Commission has recognized that "an incompetent or negligent auditor can do just as much harm to public investors and others who rely on him as one who acts with an improper motive." [26] For this reason, the Commission has stated that negligent conduct can trigger a Rule 102(e)(1)(ii) proceeding, and has brought Rule 102(e)(1)(ii) proceedings based on negligent conduct. [27]

The Court of Appeals in *Checkosky II* faulted the Commission for not articulating with some degree of

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[15] *Id.*

[16] *See Touche Ross*, 609 F.2d at 580–81.

[17] *In re Carter*, Exchange Act Rel. No. 17595 (Feb. 28, 1981), 22 SEC Docket 292, 298 (Mar. 17, 1981). Cf. *Arthur Young*, 465 U.S. at 817–18.

[18] *See Carter*, 22 SEC Docket at 298.

[19] "In our complex society, the accountant's certificate * * * can be instruments for inflicting pecuniary loss more potent than the chisel or the crowbar." *U.S. v. Benjamin*, 328 F.2d 854, 863 (2d Cir.), *cert. denied*, 377 U.S. 953 (1964).

[20] *Carter*, 22 SEC Docket at 297. Because Rule 102(e)(1)(ii) is remedial and not punitive in nature, the conduct must be evaluated to determine whether the accountant poses a future threat to the Commission's processes.

[21] As Commissioner Johnson has noted:

A professional often must make difficult decisions, navigating through complex statutory and regulatory requirements, and in the case of accountants, complying with (GAAS) and applying (GAAP). These determinations require the application of independent professional judgment and sometimes involve matters of first impression.

Exchange Act Rel. No. 38183 (Jan. 21, 1997), 63 SEC Docket 1948, 1976 (Feb. 18, 1997) (Johnson, Comm'r, dissenting), *rev'd Checkosky II*.

[22] "Applicable professional standards" includes such things as generally accepted accounting principles, generally accepted auditing standards, generally accepted attestation standards, the AICPA Code of Professional Conduct, the AICPA Statements on Standards for Consulting Services, the AICPA Statements on Standards for Accounting and Review Services, pronouncements of the Independence Standards Board, and certain of the Commission's rules and regulations.

[23] *See, e.g., In re Finkel*, Securities Act Rel. No. 7401 (Mar. 12, 1997), 64 SEC Docket 103 (Apr. 8, 1997); *In re Basson*, Exchange Act Rel. No. 35840 (June 13, 1995), 59 SEC Docket 1650 (July 11, 1995); *In re F.G. Masquelette & Co.*, Accounting Series Rel. No. 68, [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH), ¶ 72,087 (June 30, 1982); *In re Weiner*, Exchange Act Rel. No. 14249 (Dec. 12, 1997), 13 SEC Docket 1113 (Dec. 27, 1977).

[24] *See generally SEC v. Blavin*, 760 F.2d 706, 711 (6th Cir. 1985); *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1023–24 (6th Cir. 1979).

[25] In other instances, the federal securities laws expressly subject auditors to liability without requiring intentional misconduct. For example, the Supreme Court has recognized that Section 11 allows recovery for "negligent conduct." *Herman & MacLean v. Huddleston*, 459 U.S. 375, 384 (1983), *referring to Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 210 (1976).

[26] *In re Checkosky*, Exchange Act Rel. No. 31094 (Aug. 26, 1992), 52 SEC Docket 1389, 1410 (Sept. 15, 1992), *rev'd Checkosky v. SEC*, 23 F.3d 452 (D.C. Cir. 1994) ("*Checkosky I*"), *citing In re Schulzetenberg*, Admin. Proc. 3–6881, slip op. at 2 (Order Denying Motion to Dismiss Nov. 10, 1987)(unpublished opinion).

[27] *In re Gotthilf*, Exchange Act Rel. No. 33949 (April 21, 1994), 56 SEC Docket 1543 (May 10, 1944).

specificity when negligent conduct by an accountant constitutes "improper professional conduct."[28] The proposed amendment provides this specificity. Specifically, subparagraph (B) of the amendment defines "improper professional conduct" to include: (1) An unreasonable violation of the applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially[29] misleading; or (2) repeated, unreasonable violations of the applicable professional standards that demonstrate that the accountant lacks competence.

Under this standard, a single violation of the professional standards could constitute "improper professional conduct" if the violation presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading. Under these circumstances, the single violation most likely would be related to a transaction or event as to which any reasonable auditor would give heightened scrutiny.[30] The integrity of the Commission's processes is threatened by an accountant who fails to exercise due professional care with respect to the critical areas of his or her professional responsibilities.

For example, an auditor who failed to verify properly the amount of cash purportedly held in a vault at a branch of a bank, where that amount constituted 61% of the branch's and 45% of the bank's total cash on hand, engaged in improper professional conduct under Rule 102(e)(1)(ii).[31] In this particular matter, at least $400,000 of the $2.7 million cash purportedly on hand had been misappropriated by a bank employee. Although the sum of money misappropriated may not have been quantitatively material to the bank's balance sheet, a Rule 102(e)(1)(ii) proceeding was appropriate. Because a shortage of the total amount of cash actually on hand would impact materially on the bank's pre-tax earnings, the auditor's failure to verify properly the cash on hand could be considered negligent under subparagraph (B)(1) of the proposed amendment since it presented a substantial risk, which should have been known, of making a document prepared pursuant to the federal securities laws materially misleading.[32]

Proposed subparagraph (B)(2) of the amendment would define improper professional conduct to include repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence. Repeated, unreasonable violations of the professional standards by an accountant can damage both the Commission's processes and investor confidence in the integrity of financial statements. This level of incompetence calls into question the reliability of any work performed by the accountant. Further, an accountant who engages in this type of misconduct may well benefit from remedial measures before resuming practice before the Commission. Repeated violations would include two or more violations that could occur within one audit[33] or in several audits.[34] Repeated violations also could include a course or pattern of violations regardless of whether the types of violations are similar.

C. The "Good Faith" Defense

With respect to defenses to a Rule 102(e)(1)(ii) proceeding, the Commission has never considered the subjective good faith of an accountant to be an absolute defense.[35] Good faith actions of an accountant are more appropriately considered when determining what sanction would be appropriate. For instance, an accountant who acts in good faith, but is unable to conform to the minimum standards of the profession, may benefit from additional training, peer review, supervision and other appropriate remedial action undertaken while suspended from practicing before the Commission or as a condition of future practice before the Commission.

D. The AICPA Rulemaking Petition

The American Institute of Certified Public Accountants ("AICPA") submitted a rulemaking petition to the Commission proposing a definition for "improper professional conduct" under Rule 102(e)(1)(ii).[36] The AICPA Rulemaking Petition would define improper professional conduct in a manner that includes a knowing violation and a conscious and deliberate disregard of the professional standards, as well as a course or pattern of misconduct.[37] The Commission, like the AICPA, also is proposing that accountants who engage in knowing misconduct or a course or pattern of misconduct should be subject to Rule 102(e)(1)(ii) proceedings.

The Commission preliminarily believes that the public interest may be better served with the somewhat broader definition of "improper professional conduct" proposed in this release. While a harmless judgment error or immaterial mistake should not trigger a Rule 102(e)(1)(ii) proceeding, reckless and specific negligent misconduct may require Commission action to protect the integrity of the Commission's processes and the interests of the investing public. Accordingly, the Commission has determined to seek comment on the proposed amendment contained in this release.

IV. General Request For Comments

The Commission requests that any interested persons submit comments on the proposed amendment to Rule 102(e). The Commission also invites comments on the following specific issues.

The proposed amendment is intended to clarify the definition of "improper professional conduct." Does the proposed amendment achieve this objective? This definition is consistent with how the Commission has applied the "improper professional conduct" standard. Would another definition of "improper professional conduct" be

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[28] *Checkosky II*, 139 F.3d at 224.

[29] Material, as used in this context, means a substantial likelihood of being considered significant by a reasonable investor. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988), *citing TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[30] *Cf.* AICPA Professional Standards, Vol. 1 AU sec. 312 (1997).

[31] *See In re Curtin*, Exchange Act Rel. No. 32519 (June 28, 1993), 54 SEC Docket 1137 (July 20, 1993).

[32] *See also In re Valade*, Exchange Act Rel. No. 4002 (May 19, 1998), 1998 SEC LEXIS 966; *In re Smith*, Exchange Act Rel. No. 37738 (Sept. 27, 1996), 62 SEC Docket 2840 (Oct. 29, 1996); *In re Denton*, Exchange Act Rel. No. 35381 (Feb. 15, 1995), 58 SEC Docket 2294 (Mar. 14, 1995); *In re Lamirato*, Exchange Act Rel. No. 33660 (Feb. 23, 1994), 56 SEC Docket 345 (Mar. 15, 1994).

[33] *See, e.g., In re Childers*, Exchange Act Rel. No. 32505 (June 24, 1993), 54 SEC Docket 1017 (July 13, 1993).

[34] *See, e.g., In re Withers*, Exchange Act Release No. 34537 (Aug. 17, 1994), 57 SEC Docket 1101 (Sept. 13, 1994).

[35] *See In re Haskins & Sells*, Accounting Series Rel. No. 73 (Oct. 30, 1952), [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 72,092 (June 30, 1982). Similarly, an auditor who is deceived by the client and commits an audit error in reliance upon the deception does not have an automatic defense. *See generally In re Hope*, Accounting and Auditing Enforcement Rel. No. 109A (Aug. 6, 1986), 36 SEC Docket 663, 750–55 (Sept. 10, 1986). *See also In re Ernst & Ernst*, Accounting Series Rel. No. 248 (May 31, 1978), 14 SEC Docket 1276, 1301 and n.71 (June 13, 1978).

[36] Rulemaking Petition by the AICPA Concerning Rule 102(e) ("AICPA Rulemaking Petition"), SEC File No. 4–410 (May 7, 1998).

[37] Under the AICPA Rulemaking Petition, before an accountant can be found to have engaged in "improper professional conduct," the accountant also must pose a current threat to the integrity of the Commission's processes or to the financial reporting system. *See also* Task Force on Rule 102(e) Proceedings, American Bar Association, *Report of the Task Force on Rule 102(e) Proceedings: Rule 102(e) Sanctions Against Accountants*, 52 Bus. Law. 965, 985 (May 1997).

better suited to achieving the Commission's goal of protecting the integrity of its processes? Does the proposed amendment include conduct that should not be considered "improper professional conduct?" If yes, what conduct should be excluded? Does the proposed amendment cover all of the conduct that should be considered "improper professional conduct" under Rule 102(e)(1)(ii)? If not, what else should be included? The proposed amendment defines "improper professional conduct" to include "reckless" conduct. Should the Commission use a definition of "recklessness" commonly used in cases brought under Rule 10b-5 of the Exchange Act?[38] Would a less rigorous standard of "recklessness"[39] be more appropriate in the context of a disciplinary rule such as Rule 102(e)(1)(ii) where the purpose of the rule is to protect the integrity of the Commission's processes?

The proposed amendment defines "improper professional conduct" to include negligent conduct under two specified circumstances. In order to adequately protect the Commission's processes, should other circumstances be included?

Does the term "applicable professional standards" provide adequate guidance to the accounting profession? What weight should be given to the good faith of an accountant at the sanctioning stage of a Rule 102(e)(1)(ii) proceeding?

Any interested person wishing to submit written comments on any of the issues set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–16–98 this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") on the proposed amendment to Rule 102(e). The IRFA indicates that the proposed amendment would clarify the standard by which the Commission determines whether accountants have engaged in "improper professional conduct."

The IRFA sets forth the statutory authority for the proposed amendment. The IRFA also discusses the effect of the proposed amendment on small entities. The IRFA states that approximately 1000 accounting firms can or do appear or practice before the Commission. While most of this practice is conducted by the "Big Six" firms, which are not small entities, many smaller firms do practice before the Commission. However, the Commission does not collect information about revenues of accounting firms, which information generally is not made public by the firms, and therefore cannot determine how many of these are small entities for purposes of the analysis. In any event, the proposed amendment should have little or no impact on small entities because the proposal simply clarifies the Commission's standard for determining when accountants engage in "improper professional conduct."

The IRFA states that the proposed amendment would not impose any new reporting, recordkeeping or compliance requirements, and the Commission believes that there are no rules that duplicate, overlap or conflict with the proposed amendment.

The IRFA discusses the various alternatives considered to minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Rule, or any part thereof, for small entities. The Commission believes it would be inconsistent with the purposes of the Rule to exempt small entities from the proposed amendment. Different compliance or reporting requirements for small entities are not necessary because the proposed amendment does not establish any new reporting, recordkeeping or compliance requirements. The proposed amendment is already designed to clarify the current standard employed in Rule 102(e)(1)(ii), and the Commission does not believe it is feasible to further clarify, consolidate or simplify the Rule for small entities. Finally, the proposal does use a performance standard, not a design standard, to specify what conduct is expected of accountants; the Commission does not believe different performance standards for small entities would be consistent with the purposes of the Rule.

The IRFA solicits comments generally, and in particular, on the number of small entities that would be affected by the proposed amendment and the existence or nature of the effect. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[40] the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis—in particular, whether the proposed amendment is likely to have an annual effect on the economy of $100 million or more. Commenters should provide empirical data to support their views.

A copy of the IRFA may be obtained by contacting David R. Fredrickson, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Cost-Benefit Analysis

The Commission requests the views of commenters about any costs or benefits associated with the proposed amendment. The Commission anticipates several benefits from the amendment. The amendment will provide clearer guidance to accountants. Members of the accounting profession will better understand the standard the Commission uses to determine "improper professional conduct" and thus conduct themselves accordingly. Also, the clarifying amendment will make it easier for the Commission, its administrative law judges and the courts to administer the Rule, which will further benefit the integrity of the Commission's processes. The Commission anticipates no costs associated with the proposal.

Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact of its rules on competition. Moreover, section 2(b) of the Securities Act, section 3(f) of the Exchange Act and section 2(c) of the Investment Company Act of 1940 ("Investment Company Act") require the Commission, when engaged in

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[38] *See, e.g., Mansbach, SEC v. Steadman*, 967 F.2d 636, 641–642 (D.C. Cir. 1992) (both citing *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977)).

[39] *See, e.g., Saba v. Compagnie Nationale Air France*, 78 F.3d 664, 668 (D.C. Cir. 1996), *citing Farmer v. Brennan*, 511 U.S. 825, 836–37 (1994); *see generally* W. Keeton, *et al., Prosser and Keeton on the Law of Torts* ("Prosser"), sec. 34 at 213–214; (5th ed. 1984); *Restatement (Second) of Torts* sec. 500, comment (a) (1965).

[40] 5 U.S.C. 801 *et seq.*

rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The Commission requests data on what effect, if any, the proposed amendment would have on efficiency, competition and capital formation.

VII. Statutory Authority

The Commission is proposing the amendment to the Rule pursuant to its authority under section 19(a) of the Securities Act, section 23(a) of the Exchange Act, section 20(a) of the Public Utility Holding Company Act of 1935, section 319(a) of the Trust Indenture Act of 1939, section 211(a) of the Investment Advisers Act of 1940 and section 38(a) of the Investment Company Act.

Text of Amendment

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78*l*, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12 unless otherwise noted.

2. Amend § 201.102 by adding paragraphs (e)(1)(iv) to read as follows:

§ 201.102 Appearance and practice before the Commission.

(e) *Suspension and disbarment.*—(1) *Generally.* * * *

(iv) With respect to persons licensed to practice as accountants, "improper professional conduct" under § 201.102(e)(1)(ii) means:

(A) An intentional or knowing violation, including a reckless violation, of applicable professional standards; or

(B) Negligent conduct in the following circumstances:

(*1*) An unreasonable violation of applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading; or

(*2*) Repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence.

* * * * *

Dated: June 12, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

Separate Statement of Commissioner Norman S. Johnson

I write separately to address what I consider to be the plain import of the two decisions of the United States Court of Appeals for the District of Columbia Circuit in *Checkosky v. SEC*, 23 F.3d 452 (D.C. Cir. 1994) (*Checkosky I*), and *Checkosky v. SEC*, 139 F.3d 221 (D.C. Cir. 1998) (*Checkosky II*).[1] In today's release, the Commission proposes to adopt a negligence standard under Rule 102(e) of our Rules of Practice, a matter of crucial importance to the accountants who practice before us.[2] As Judge Randolph observed:

> A proceeding under Rule 2(e) threatens "to deprive a person of a way of life to which he has devoted years of preparation and on which he and his family have come to rely." Henry J. Friendly, "*Some Kind of Hearing*," 123 U. Pa. L. Rev. 1267, 1297 (1975). It is of little comfort to an auditor defending against such charges that the Commission's authority is limited to suspending him from agency practice. For many public accountants such work represents their entire livelihood. Moreover, when one jurisdiction suspends a professional it can start a chain reaction.

Checkosky I, 23 F.3d at 479 (opinion of Randolph, J.).

With all due respect to my esteemed colleagues, today's release reflects precisely the same sort of overly aggressive approach that led to the Commission's two stinging defeats in *Checkosky*. The consequences of overreaching in this area might well be severe. If the Commission selects an insupportable standard many of the worst offenders of Rule 102(e) may escape sanction altogether. Prudence would seem to dictate a much more cautious approach than that taken in today's release.

Because I believe that the Commission lacks the authority to adopt a negligence standard, I must dissent. *See Checkosky I*, 23 F.3d 452; *Checkosky II*, 139 F.3d 221. Even apart from the *Checkosky* decisions, adoption of a negligence standard would contravene public policy.

Some background is in order.

I.

Respondents in *Checkosky* were two accountants who audited the financial statements of Savin Corporation in the early 1980's. The Commission brought charges against the accountants in 1987, and in 1992 affirmed an Administrative Law Judge's decision finding violations of Rule 102(e). *See David J. Checkosky*, Release No. 34–31094, 1992 SEC LEXIS 2111 (Aug. 26, 1992). In its first opinion, the Commission found that Savin's financial statements were false in that the company improperly capitalized certain expenses for research and development rather than recording them in their entirety as expenses in the years incurred. *Id.* These violations were based on finding that the auditors, in violation of Generally Accepted Auditing Standards (GAAS), had improperly permitted Savin to capitalize these expenditures and falsely certified that Savin's financial statements set forth its financial condition in accordance with Generally Accepted Accounting Principles (GAAP).[3] *Id.*

In *Checkosky I*, the D.C. Circuit remanded the case because it was unable to discern from the Commission's opinion the basis for the Commission's action other than the finding that the accountants had violated GAAS and falsely certified that the financial statements set forth the financial condition of the company in accordance with GAAP. 23 F.3rd at 454. The Court held that the Commission was authorized to promulgate Rule 102(e) as a means to protect the integrity of its processes, but each of the three judges (Judges Silberman, Randolph and a district court judge sitting by designation, Judge Reynolds) issued a separate opinion.

Judges Silberman and Randolph both questioned the Commission's ability to impose sanctions under Rule 102(e) for misconduct not rising to the level of scienter, i.e., misconduct that is only negligent.[4] Judge Silberman explained that:

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[1] The weight the Commission must attach to the views of the D.C. Circuit cannot be overstated. Under the jurisdictional provisions of the securities laws, every respondent in a Commission administrative proceeding has the option of appealing an adverse outcome to the D.C. Circuit. *See, e.g.*, 15 U.S.C. 77*l*(a) & 78y(a)(1).

[2] Rule 102(e) was formerly designated Rule 2(e). There are no substantive differences between the two rules.

[3] Commissioner Roberts concurred in the majority's finding that respondents violated GAAS and had misapplied GAAP, but dissented from the finding that these errors amounted to "improper professional conduct" under Rule 102(e)(1)(ii). 1992 SEC LEXIS 2111, at *47. In Commissioner Roberts' view respondents' conduct did not provide a sufficient basis for a finding that they would threaten the Commission's processes. *Id.* at *48.

[4] Senior District Judge Reynolds disagreed with the circuit judges' conclusion that "improper

Continued

> If the purpose of Rule 2(e) is to protect the integrity of administrative processes, then sanctions for improper professional conduct under 2(e)(1)(ii) are permissible only to the extent that they prevent the disruption of proceedings. Punishment for mere negligence, so the argument goes, extends beyond this realm of protective discipline into general regulatory authority over a professional's work.

23 F.3d at 456. Judge Silberman further suggested that the Commission could not legitimately adopt a negligence standard under Rule 102(e) because that might amount to "a *de facto* substantive regulation of the profession." 23 F.3d at 459; *see also* 23 F.3d 460 (suggestion that Commission adoption of negligence standard might be arbitrary and capricious).

Judge Randolph also questioned the Commission's ability to adopt a negligence standard. In Judge Randolph's view, the "Commission's authority under Rule 2(e) must rest on and be derived from the statutes it administers," such as Section 10(b) of the Exchange Act that requires scienter. *See* 23 F.3d at 466–69. Judge Randolph also extensively discussed an earlier Commission decision that rejected a negligence standard under Rule 102(e) in a case involving lawyers, *William R. Carter*, 47 S.E.C. 471 (1981). *See* 23 F.3d at 480–87. In Judge Randolph's view, the reasoning of *Carter* was equally applicable to accountants, and precluded the Commission from adopting a negligence standard under Rule 102(e). *See* 23 F.3d at 483–87.

On remand, the Commission's majority opinion did not directly address the mental state question posed by the Court. *David J. Checkosky*, Release No. 34–38183, 1997 SEC LEXIS 137 (Jan. 21, 1997). While the majority found that the accountants had behaved recklessly, it insisted that any deviation from GAAP or GAAS, including purely negligent deviations, could violate Rule 102(e), and that the accountants' recklessness was relevant only to the choice of sanctions. *Id.* I dissented from the Commission's second *Checkosky* opinion because of my belief that "improper professional conduct" requires proof of scienter, which includes recklessness.[5] 1997 SEC LEXIS 137, at *48.

On appeal in *Checkosky II*, the D.C. Circuit again reversed. The Court again found that the Commission had again failed to offer an adequate explanation of its interpretation of Rule 102(e). 139 F.3d at 222 (referring to the "multiplicity of inconsistent interpretations" in the Commission's opinion). Because of the Commission's "persistent failure to explain itself" and "the extraordinary duration of these proceedings," the Court declined to give the Commission a third chance to explain itself, and instead invoked the extremely rare remedy of remanding the case with instructions to dismiss. 139 F.3d at 222 & 227.

More importantly for today's release, the D.C. Circuit in *Checkosky II* again questioned the Commission's ability to adopt a negligence standard under Rule 102(e)(1)(ii). 139 F.3d at 225. The Court appeared to reaffirm its previous statements about the limits of the Commission's authority in disciplining securities professionals subject to Rule 102(e), remarking that "adoption of a negligence standard might be *ultra vires*" because it might amount to "a back-door expansion of [the Commission's] regulatory oversight powers." *Id.* (citing *Checkosky I*, 23 F.3d at 459).[6]

II.

As explained above, the *Checkosky* opinions preclude us, as a practical matter, from adopting a negligence standard. Even were the situation otherwise, public policy considerations also call for rejection of a negligence standard. *See, e.g., David J. Checkosky*, Release No. 34–38183, 1997 SEC LEXIS 137, at *48 (Jan. 21, 1997) (dissenting opinion of Commission Johnson). In my view, "improper professional conduct" in Rule 102(e)(1)(ii) requires proof of scienter.

Our system of securities regulation is based on disclosure. To ensure that Commission filings and other statements made to the investing public are truthful and accurate, we have to rely in large part on the work of talented, well-trained professionals. Accordingly, I fully agree with former Chairman Williams' statement that we would be unable to administer effectively the securities laws if those "involved in the capital raising process were not routinely served by professionals of the highest integrity and competence, well-versed in the requirements of the statutory scheme Congress has created." *Keating, Muething & Klekamp*, 47 S.E.C 95, 120 (1979) (concurring opinion of Chairman Williams); *see also Touche, Ross & Co. v. SEC*, 609 F.2d 570, 580–81 (2d Cir. 1979) (because of limited resources, "the Commission necessarily must rely heavily on both the accounting and legal professions to perform their tasks diligently and responsibly"). On the other hand, I also believe that the Commission has a limited mandate under Rule 102(e) for determining who may "practice" before us, and that we must exercise a high degree of self-restraint in this area.

As to accountants, the very nature of their responsibilities within our disclosure system mandates restraint. Accountants, like other securities professionals subject to Rule 102(e), must make difficult judgment calls, navigating through complex statutory and regulatory requirements. In addition, accountants are required to follow GAAS and to apply GAAP. These determinations demand the application of independent professional judgment and often involve matters of first impression.

The Commission itself recognized the importance of these principles in *Carter*, when it asserted that, in order to assure the exercise of a professional's "best independent judgment," the professional "must have the freedom to make innocent—or even, in certain cases, careless—mistakes without fear of (losing) the ability to practice before" us. 47 S.E.C. at 504. Equating negligence with "improper professional conduct" will impair relationships between professionals and their clients. If such an adverse impact occurs, our ability to rely on these professionals to enhance compliance with the securities laws will be crippled. I share the view endorsed by the Commission in *Carter* that professionals "motivated by fears for their personal liability will not be consulted on difficult issues." *Id.*

Securities professionals owe a duty to serve the interests of their clients. To discharge this duty, professionals must enjoy the cooperation and trust of their clients. Indeed, in construing *Carter*, Judge Randolph observed:

> (W)ithout a scienter requirement, lawyers would slant their advice out of fear of incurring liability, and management therefore would not consult them on difficult questions. I cannot see why this sort of reasoning would not apply as well to auditors. I recognize that although companies need not retain outside counsel, they are legally compelled to "consult" independent accountants * * *. This creates an obligation on the part of management to cooperate with and provide information to the auditor. * * * There are, however, degrees of cooperation. Encouraging management to be completely candid with its

professional conduct" under Rule 102(e)(1)(ii) required proof of scienter. 23 F.3d at 493–95.

[5] *See Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (defining recklessness as "'highly unreasonable'" conduct involving "'an extreme departure from the standards of ordinary care'"); *see also, e.g., Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1023 (6th Cir. 1979) (following *Sundstrand*).

[6] This point is made clear by the concurring opinion, in which Judge Henderson expressly disagreed with the majority's discussion of this issue. *See* 139 F.3d at 227.

auditor about difficult accounting issues may be just as desirable as encouraging management to consult candidly with outside lawyers, and for similar reasons.

Checkosky I, 23 F.3d at 485.

Accountants and attorneys are members of "ancient professions," regulated according to rigorous ethical rules enforced by professional societies and, in the case of accountants, state licensing boards. I simply do not believe that we should recast negligent violations of an accounting standard as improper professional conduct under the Commission's Rules of Practice. That is not an appropriate role for this Commission. Difficult ethical and professional responsibility concerns are generally matters most appropriately dealt with by professional organizations or, in certain cases, malpractice litigation. Nor do I believe that mere misjudgments or negligence establishes either professional incompetence warranting Commission disciplinary action or the likelihood of future danger to the Commission's processes.

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For all these reasons, I believe that the Commission lacks the authority to adopt a negligence standard under Rule 102(e). Likewise, the Commission may only hold a professional liable for "improper professional conduct" only if scienter is proven. I urge accountants and trade groups directly subject to Rule 102(e), as well as any others who have an interest in Rule 102(e), to submit their views on this important matter. It is my most fervent hope that the Commission receives an abundance of comment letters responding to this release.

[FR Doc. 98–16251 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–98–023]

RIN 2115–AE84

Regulated Navigation Area; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent regulated navigation area in San Juan Harbor in the vicinity of La Puntilla in San Juan, PR. This regulated navigation area is needed to protect personnel and vessels moored at Coast Guard Base San Juan from the hazards created by the wakes of passing vessel traffic. By establishing this permanent regulation, the Coast Guard expects to reduce the risk of personnel injury and property damage.

DATES: Comments must be received on or before August 17, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, P.O. Box 9023666, San Juan, PR 00902–3666. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT D.R. Xirau, Assistant Chief Port Operations Department, USCG Marine Safety Office San Juan at (787) 729–6800, ext 320.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–98–023], and the specific section of this proposal to which each comment applies and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8" X 11" unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commanding Officer, Marine Safety Office San Juan at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These proposed regulations create a regulated navigation area requiring all vessels to maintain minimum steerageway in the vicinity of Coast Guard Base San Juan. These proposed regulations are necessary to provide for the safety of personnel and the protection of vessels that are moored alongside the piers at Coast Guard Base San Juan. Coast Guard Base San Juan is located at La Puntilla in Old San Juan, at a junction of major channels in the San Juan Harbor. The Coast Guard believes that a significant risk exists under current conditions because wakes cause damage to vessels and the piers, and create major safety hazards to personnel working onboard moored vessels.

The vessels most affected by wakes at Base San Juan are 110-foot Coast Guard patrol boats and other smaller vessels. Heavy wakes have caused moored vessels to roll up to 15 degrees without warning. This places Coast Guard personnel working onboard these vessels at higher risk of injury due to the unexpected movement brought on by wakes. Moreover, while heavy equipment and supplies are being moved on a vessel, a sudden roll could cause the load to be dropped or the personnel carrying the load to lose their balance, possibly resulting in serious injury. There have been many "near miss" incidents which could have proven fatal if personnel had been directly involved, including heavy hatches secured in the open position being jarred loose by strong wakes and slamming shut without warning.

Heavy wakes also cause damage to property at Coast Guard Base San Juan. Vessel hulls, cleats, stanchions, and gangways have been bent or parted. Piers have deteriorated more rapidly due to the added stresses of vessels affected by wakes. In addition, electrical shore ties and fueling hoses have been pulled loose, creating very hazardous situations. By establishing a minimum steerageway in the vicinity of La Puntilla, the risks to personnel and property inherent to wakes will be minimized.

Additionally, beginning in June 1998, five Coast Guard patrol boats will be relocated to Coast Guard base San Juan. After this relocation, there will be a total of eight Coast Guard vessels permanently stationed in San Juan. The construction of new piers to accommodate the additional vessels will commence prior to the end of Fiscal Year 1998. These proposed regulations will also serve to minimize hazards during the construction, which is expected to take one year to complete.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as the regulations only require minimum steerage way speeds and do not limit the amount of incoming and outgoing vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this proposal, if adopted, would not have a significant impact on a substantial number of small entities as there are no limits imposed on the quantity of incoming or outgoing vessels.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Analysis

The Coast Guard has considered the environmental impact of this proposal and has determined pursuant to figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be prepared during the comment period and will be available for inspection and copying after the comment period for this proposed rulemaking has expired.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add a new § 165.756 to read as follows:

§ 165.756 Regulated Navigation Area; San Juan Harbor, San Juan, Puerto Rico.

(a) *Regulated Area.* The following is a Regulated Navigation Area: All the waters of San Juan Harbor bounded by the following geographic coordinates: Lighted Buoy #11 (LLNR 30805) in approximate position 18–27.31N, 066–07.01W; east to Puerto Rico Ports Authority Pier #3 in approximate position 18–27.40N, 066–06.43W; south to Lighted Buoy "A" (LLNR 30845) in approximate position 18–26.55N, 066–06.26W; west to Nun Buoy "A" in approximate position 18–27.01N, 066–06.59W; and thence north to the point of origin. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* Unless otherwise authorized by the Captain of the Port, San Juan, Puerto Rico, vessels operating in the regulated area must travel no faster than needed for steerageway. The general regulations in § 165.13 of this part apply.

(c) *Enforcement.* Violations of this regulated navigation area should be reported to the Captain of the Port, San Juan, PR.

Dated: June 5, 1998.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16240 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0064; FRL–6112–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

This Federal Register action for the South Coast Air Quality Management

District excludes the Los Angeles County portion of the Southeast Desert AQMD, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD) Rule 1113, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on November 26, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 110(a)(2)(A) of the Act requires that plans which are submitted to the EPA in order to achieve or maintain the National Ambient Air Quality Standards (NAAQS) contain enforceable emission limitations. The Los Angeles-South Coast Air Basin Area has retained its designation of nonattainment and is classified as extreme.[1]

The State of California submitted many rules for incorporation into its SIP on November 26, 1996, including the rule being acted on in this document. This document addresses EPA's proposed action for South Coast Air Quality Management District Rule 1113, Architectural Coatings. The South Coast Air Quality Management District adopted Rule 1113 on November 8, 1996. This submitted rule was found to be complete on February 11, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2] and is being proposed for approval into the SIP.

The South Coast Air Quality Management District Rule 1113 controls volatile organic compound (VOC) emissions from architectural coatings. VOCs contribute to the production of ground-level ozone and smog. This rule was adopted as part of the district's efforts to achieve the NAAQS for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the general requirements of the Clean Air Act (section 110 and part D), 40 CFR part 52, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**" (EPA's "Blue Book"), and the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 1113, Architectural Coatings that had been adopted by the SCAQMD on March 16, 1984. The version of Rule 1113 currently included in the SIP was also used to evaluate the version being proposed for approval. The SCAQMD Rule 1113 submitted on November 26, 1996 includes the following significant changes from the current SIP:

- Addition, deletion, and consolidation of definitions (section (b));
- Future low-VOC limits for the following coating categories: flats, lacquers, multi-color, and traffic coatings (section (c)(2));
- VOC content limits for the following specialty coating categories: japans, magnesite, and fire-proofing coatings (section (c)(2));
- VOC content limits for previously exempted specialty coating categories (section (c)(2));
- Requirement that VOC containing materials must be stored in closed containers (section (c)(5));
- Averaging provision to allow manufacturers to average the VOC content of their flat coatings, on a sales weighted basis (section (c)(6) and appendix A);
- Language clarifying how exceedances of allowable emissions will be handled when a source uses averaging (appendix A);
- Labeling requirements for quick-dry enamels and quick-dry primers, sealers, and undercoaters (section (d)(4));
- Test methods for determining VOC content, acid content, metal content, flame spread index, drying times, and gloss (section (e));
- Technology assessment for flat and lacquer coating categories (section (f));
- Additional reporting requirements for manufacturers utilizing the exemption for quick-dry primers, sealers, and undercoaters (section (g)(2));
- Exemption for lacquers to add up to 10% retarder above the VOC limit during cool, humid days to prevent blushing of acetone formulated lacquers with a maximum VOC content of 550 g/L (section (g)(3)); and
- Small business exemption from lower future effective VOC limits for lacquers and flats (section (g)(4)). In the aggregate, these changes to the SIP approved rule provide additional flexibility and recognition of some specialty products without relaxing the requirements of the rule.

The SCAQMD staff report for Rule 1113 projects that the submitted rule will reduce VOC emissions from architectural coatings by 17.2% by the year 2010. In contrast, control measure CTS–07 of SCAQMD's 1994 Air Quality Management Plan (AQMP) commits SCAQMD to reduce architectural coating emissions by 75% by 2010. EPA approved the 1994 AQMP, and thus the 75% commitment, into the SIP on September 26, 1996 (52 FR 1150, January 8, 1997). The AQMP relies on the concept that each industry will reduce its fair share of emissions. Therefore, the 17.2% reduction is "only a fraction of the 75% emission reduction that will eventually be required from AIM coatings to provide their fair share of the required emission reductions" (page 8, District staff recommendation to Board regarding Board meeting to be held on November 8, 1996 to amend Rule 1113).

EPA has evaluated the submitted rule and has determined that it is enforceable and strengthens the applicable SIP. Therefore, South Coast Air Quality Management District Rule

[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

1113, Architectural Coatings is being proposed for approval under section 110(k)(3) of the CAA in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The submitted version of Rule 1113 strengthens the SIP by updating a portion of the SIP for the Los Angeles Air Basin that has not been revised since 1985. EPA notes, however, that the submitted rule does not fulfill SCAQMD's SIP-approved commitment in CTS–07 to reduce VOCs from architectural coatings by 75%. Air quality progress and attainment of the public health-based ozone standard both require that the District pursue expeditiously further emission reductions from this large segment of the South Coast VOC emissions inventory.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 7, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–16255 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH116–1; FRL–6112–8]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve an April 27, 1998, request from Ohio, for State Implementation Plan (SIP) maintenance plan revision for the Dayton-Springfield (Montgomery, Clark, Greene and Miami Counties) ozone maintenance area. The revision would remove the air quality triggers from the area's contingency plan. The contingency plans were included in the areas' maintenance plan to correct violations of the one hour ozone National Ambient Air Quality Standard (NAAQS), which has been proposed to be revoked for this area.

DATES: Written comments on this proposal must be received on or before July 20, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

SUPPLEMENTARY INFORMATION:

I. Attainment Areas in Ohio

Since the initial Clean Air Act (CAA) attainment status designations were made, the Dayton area has attained the one hour ozone standard and has been redesignated to attainment status for ozone. As a requirement to being redesignated to attainment status, the

area developed a maintenance plan. The purpose of the maintenance plan is to assure maintenance of the one hour ozone NAAQS for at least ten years.

The maintennce plan included contingency provisions. The purpose of the contingency provisions are to identify and correct any violation of the one hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions to identify the need to implement measures and correct air quality problems until such time as a revised maintenance or attainment plan could be developed to address the level of the air quality problem. Triggering events in the contingency plans could be linked to ozone air quality and/or an emission level of ozone precursors.

Dayton's maintenance plan was finalized by EPA and published in the **Federal Register** on May 5, 1995 (60 FR 22289).

II. One Hour Ozone Standard Revocation

On July 18, 1997, EPA finalized a revision to the NAAQS for ozone which changed the standard from 0.12 parts per million (ppm) averaged over one hour, to 0.08 ppm, averaged over eight hours. The EPA is revoking the one hour standard in separate rulemakings based on an area's attainment of the one hour ozone standard. The first round of revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1994–1996. The second round of one hour ozone standard revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. After these two rulemakings are finalized, EPA intends to publish rulemakings on an annual basis revoking the one hour ozone standard for additional areas that come into attainment of the one hour standard.

On May 18, 1998, EPA published a proposed rule (63 FR 27247) in the **Federal Register** proposing to revoke the one hour ozone standard in areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. In that proposal, EPA proposed to revoke the one hour ozone standard in the Dayton, Ohio ozone maintenance area.

On July 16, 1997, President Clinton issued a directive to Administrator Browner on implementation of the new ozone standard, as well as the current one hour ozone standard (62 FR 38421). In that directive the President laid out a plan on how the new ozone and particulate matter standards, as well as the current one hour standard, are to be implemented. A December 29, 1997, memorandum entitled "Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS," signed by Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, reflected that directive. The purpose of the guidance reflected in the memorandum is to ensure that the momentum gained by States to attain the one hour ozone NAAQS was not lost when moving toward implementing the eight hour ozone NAAQS.

The guidance document explains that maintenance plans will remain in effect for areas where the one hour standard is revoked; however, those maintenance plans may be revised to withdraw certain contingency measure provisions that have not been triggered or implemented prior to EPA's determination of attainment and revocation. Where the contingency measure is linked to the one hour ozone standard or air quality ozone concentrations, the measures may be removed from the maintenance plan. Measures linked to non-air quality elements, such as emissions increases or vehicle miles traveled, may be removed if the State demonstrates that removing the measure will not affect an area's ability to attain the eight hour ozone standard.

In other words, after the one hour standard is revoked for an area, EPA believes it is permissible to withdraw contingency measures designed to correct violations of that standard. Since such measures were designed to address future violations of a standard that no longer exists, it is no longer necessary to retain them. Furthermore, EPA believes that future attainment and maintenance planning efforts should be directed toward attaining the eight hour ozone NAAQS. As part of the implementation of the eight hour ozone standard, the State's ozone air quality will be evaluated and eight hour attainment and nonattainment designations will be made.

III. Review of the State Submittal

In a letter from Donald R. Schregardus, Director, Ohio Environmental Protection Agency (OEPA) received by EPA on April 27, 1998, OEPA officially requested that all air quality triggers be deleted from the maintenance plans for the areas in Ohio now attaining the one hour ozone standard and where EPA has proposed to revoke the one hour standard. On May 18, 1998, EPA proposed to revoke the one hour ozone standard in the Dayton area. Therefore, in this **Federal Register** document, EPA is proposing to delete the air quality trigger in the Dayton area's maintenance plan. In a previous Notice of Proposed Rulemaking, EPA proposed the deletion of air quality triggers in maintenance plans for other Ohio areas (where the one hour standard was proposed to be revoked) (see 63 FR 27895).

The OEPA has officially announced a public hearing on this matter to be held on June 1, 1998.

EPA believes that Ohio's request is consistent with the December 29, 1997 guidance document and the July 16, 1997 Presidential Directive, and that the request is approvable.

This revision approval is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than any consistent with this document, the EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA on Ohio's request to revise the maintenance plan to remove the air quality trigger will occur only after the one hour ozone standard has been revoked in final and Ohio's public hearing documentation is submitted to the EPA.

IV. EPA Proposed Action

The EPA is proposing to approve the requested revision to the Dayton area's maintenance plan. The EPA is parallel processing this request concurrent with State proceedings on the affected provision. Written comments must be received by EPA on or by July 20, 1998.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

The proposed rule is not subject to Executive Order 13045, titled "Protection of Children's Health from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

C. Future Requests

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors and in relation to relevant statutory and regulatory requirements.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA.*, 427 U.S. 246, 256–66 (1976) 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

F. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 2, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–16247 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

Notic

This section contains do proposed r public. Noti committee rulings, del petitions an statements examples c section.

DEPARTI

Cooperat Educatio

Research Notice of Research Economi Committ

AGENCY: Economic

ACTION: N

SUMMARY: Federal A U.S.C. Ap Departme Special M Committ Research Economi

SUPPLEME National Extensio Advisory constitue section 1 Agricultu Teaching amended Agricultu Act of 19 a special Board's F USDA of Board's r Agricultu Reform A

Dates: p.m.

Place: Research Conferen SW., Wa

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Notices

Federal Register
Vol. 63, No. 117
Thursday, June 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Research, Education, and Economics; Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Executive Committee Special Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of special meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a Special Meeting of the Executive Committee of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), will have a special meeting of the Advisory Board's Executive Committee, with USDA officials to discuss the Advisory Board's role under the pending Agricultural Research, and Education Reform Act of 1998.

Dates: June 29, 1998, 9:00 a.m.–4:30 p.m.

Place: USDA, Cooperative State Research Service, Aerospace Building, Conference Room 824A–B, 901 D Street, SW., Washington, DC.

Type of Meeting: Open to the public. Conference room space is limited. The public is requested to confirm attendance with the contact person below. Identification is required upon entering the USDA facilities.

Comments: The public may also file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

For Further Information Contact: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 9th day of June 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–16154 Filed 6–17–98; 8:45 am]
BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Moira Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Ketchikan Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest up to an estimated 435 million board feet (mmbf) of timber on an estimated 3,000 acres in several timber sales. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Value Comparison Units 683, 691, 692, 693, and 694 on Prince of Wales Island, Alaska, on the Craig Ranger District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by July 30, 1998.

ADDRESSES: Please send written comments to Forest Supervisor's Office; Tongass National Forest, Ketchikan Area; Attn: Moira EIS; Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Dale Kanen, District Ranger, Craig Ranger District, Tongass National Forest, P.O. Box 500, Craig, AK 99921; telephone (907) 826–3271 or Norm Matson, Planning Biologist, Federal Building, Ketchikan, AK 99901; telephone (907) 228–6273.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by July 30, 1998. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Subsistence resources, old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber supply, scenery and recreational resources, anadromous and resident fish habitat, soil and water resources, wetlands, cultural resources and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact

Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in May 1999. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during the comment period on the Draft EIS. The Final EIS is anticipated by April 2000.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: permits required for implementation include the following:

1. U.S. Army Corp of Engineers
   —Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standard (401 Certification)

Responsible Official

Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: June 9, 1998.

Bradley E. Powell,

Forest Supervisor.

[FR Doc. 98–16222 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hells Canyon National Recreation Area Comprehensive Management Plan, Wallowa-Whitman, Nez Perce, and Payette National Forests, Baker and Wallowa Counties in Oregon and Nez Perce, Idaho, and Adams Counties in Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a Revised Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare a revised draft environmental impact statement for the Hells Canyon National Recreation Area Comprehensive Management Plan. The decision to revise the draft environmental impact statement is based on two factors: (1) Over two years have passed since the release of the draft environmental impact statement and new information has been released from the Interior Columbia Basin Ecosystem Management Project that may affect the project area, thus warranting a review. This new information will be evaluated in the context of the affected environment to determine if proposed management direction should be modified; and (2) an additional alternative should be analyzed in detail that was submitted by interest groups in 1995 and was never fully analyzed in the February 1996 draft environmental impact statement. This alternative proposes management direction to manage the Hells Canyon National Recreation Area to thrive as a healthy native ecosystem that is an integral component of a larger bioregion. The proposed action is unchanged from that described in the November 16, 1994 issue of **Federal Register** (59 FR 59203).

DATES: Comments concerning the scope of the analysis should be received in writing, no later than June 30, 1998.

ADDRESSES: Send written comments to Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this notice of intent and its modification to Kurt Wiedenmann, Ecosystem Planning Staff Officer at 541–523–1296 or e-mail at: kwiedenmann/r6pnw_wallowawhitman@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Wallowa-Whitman National Forest proposes to amend the Forest Land and Resource Management Plan (Forest Plan) to modify management direction for the Hells Canyon National Recreation Area (HCNRA) and affirm continuation of other existing management direction. The planning process will be guided by the National Environmental Policy Act (NEPA) with implementation scheduled for January 2000.

This modified or affirmed direction will provide programmatic management direction for the next 10 to 15 years. The changes will reflect the intent of the HCNRA Act (Pub. L. 94–199), public and private land use regulations (36 CFR Part 292), Forest Service directives, changing social values, agency emphasis on ecosystem sustainability, new information and research findings, and results from the monitoring and evaluation process.

The proposed action would integrate management direction from the HCNRA within the framework of Forest Plan decisions and would establish: management goals; management objectives; standards and guidelines; management area direction; and monitoring and evaluation. Management goals, objectives, standards, and guidelines will be developed for the following resource areas: recreation; access and facilities; wild and scenic rivers; wilderness; heritage resources; scientific; vegetation; biologically unique habitat; soil; air; fire; fish habitat; wildlife habitat; heritage resources/pre-historic sites; heritage resources/historic sites; minerals; landownership; and tribal trust responsibilities.

The HCNRA consists of an estimated 652,488 acres. The HCNRA is comprised of the following management areas: wilderness, wild and scenic rivers, dispersed recreation/native vegetation, forage, dispersed recreation/timber management, research natural areas, and developed recreation and administrative facilities.

The analysis will consider a range of alternatives, including no-action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals, organizations, or governments who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.).

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by January 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is expected to be available for public review by June 1999.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 30-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully be considered and responded to in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal. Karyn L. Wood, Forest Supervisor, is the Responsible Official. As the Responsible Official, she will decide whether to implement the proposal or a different alternative. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: June 18, 1998.

William R. Gast, Jr.,

Deputy Forest Supervisor.

[FR Doc. 98–16199 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1998.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1998.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1998, and ending September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, Room 0227–S, Stop 1524, 1400 Independence Avenue, SW, Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the third calendar quarter of 1998 for municipal rate electric loans. RUS regulations at 7 CFR 1714.4 state that each advance of funds on a municipal rate loan shall

bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the third Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	5.000
2012	4.875
2011	4.750
2010	4.625
2009	4.625
2008	4.500
2007	4.500
2006	4.375
2005	4.375
2004	4.250
2003	4.250
2002	4.125
2001	4.000
2000	3.875
1999	3.750

Dated: June 8, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–16146 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On February 9, 1998, the Department of Commerce published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The types of subject merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 20 manufacturers and/or exporters. The period of review is May 1, 1996, through April 30, 1997.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France—Chip Hayes (SKF), Lisa Tomlinson (SNFA), or Richard Rimlinger.

Germany—Davina Hashmi (SKF), Hermes Pinilla (Torrington Nadellager), or Robin Gray.

Italy—Mark Ross (FAG), William Zapf (Meter), Chip Hayes (SKF), Minoo Hatten (Somecat), Robin Gray, or Richard Rimlinger.

Japan—J. David Dirstine (Koyo Seiko), Hermes Pinilla (NPBS), Thomas Schauer (NSK Ltd. and Nachi-Fujikoshi Corp.), Gregory Thompson (NTN), Robin Gray, or Richard Rimlinger.

Romania—Suzanne Flood (Tehnoimportexport, S.A.) or Robin Gray.

Singapore—Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden—Mark Ross (SKF) or Richard Rimlinger.

United Kingdom—Suzanne Flood (Barden), Hermes Pinilla (FAG U.K.), Diane Krawczun (NSK–RHP), Lyn Johnson (SNFA U.K.), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

On February 9, 1998, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (63 FR 6512). The reviews cover 20 manufacturers and/or exporters. The period of review (POR) is May 1, 1996, through April 30, 1997. We invited parties to comment on our preliminary results of reviews. At the request of certain interested parties, we held public hearings for U.K.-specific issues on March 24, 1998, and for Japan-specific issues on March 25, 1998. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following types of subject merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts

thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these types of subject merchandise, including a compilation of all pertinent scope determinations, *see* the "Scope Appendix," which is appended to this notice of final results.

Use of Facts Available

In the preliminary results under the "Use of Facts Available" section, we inadvertently made two inaccurate statements with regard to Torrington Nadellager (*see* Memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, dated February 5, 1998). Neither of the statements was accurate for Torrington Nadellager. We did not use facts available when calculating Torrington Nadellager's margin.

Sales Below Cost in the Home Market

The Department disregarded home-market sales made at prices below the cost of production for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SKF	BBs.
Germany	SKF	BBs, CRBs, SPBs.
Italy	FAG	BBs.
	SKF	BBs.
Japan	Koyo	BBs.
	Nachi	BBs, CRBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
	NPBS	BBs.
Singapore	NMB/Pelmec	BBs.
Sweden	SKF	BBs.
United Kingdom	Barden	BBs.
	NSK–RHP	BBs, CRBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain revisions that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we or the parties do not agree are discussed in the relevant sections of the Issues Appendix.

In addition, as a result of *CEMEX, S.A.* v. *United States*, 133 F.3d 897 (CAFC 1998) (CEMEX), we have changed our model-matching methodology when we have disregarded sales of identical merchandise in the home market because they were at prices below the cost of production. Instead of relying on constructed value (CV) as the basis for normal value for that U.S. model, as we did in the preliminary results, we have attempted first to match models sold in the United States to models sold in the comparison market that fall within the same family of bearings (*i.e.*, similar bearings). If we found no appropriate matches within the same family, we then used CV as the basis of normal value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the "Issues Appendix," which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1996, through April 30, 1997:

Company	BBs	CRBs	SPBs
France			
SKF	8.31	(3)	54.84
SNFA	0.45	1.78	(3)
Germany			
SKF	2.26	7.32	5.06
Torrington Nadellager	(2)	0.16	(3)
Italy			
FAG	1.18	(3)	.....
Meter	(3)	10.65	.....
SKF	3.61	(3)	.....
Somecat	0.00	(3)	.....
Japan			
Koyo Seiko	6.17	(3)	(3)
Nachi	3.37	1.67	(3)
NPBS	2.30	(2)	(3)
NSK	2.35	2.21	(3)
NTN	7.10	11.55	14.18
Romania			
TIE	0.94	.....	.....
Singapore			
NMB Singapore/ Pelmec Ind.	5.33	.....	.....
Sweden			
SKF	11.61	(1)	.....
United Kingdom			
Barden	6.63	(1)	.....
FAG	(1)	(1)	.....
NSK–RHP	17.14	22.16	.....
SNFA	58.20	(3)	.....

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

[3] No review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we have calculated, wherever possible, an exporter/importer-specific assessment rate or value for each type of subject merchandise.

Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of

merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

Constructed Export Price Sales

For constructed export price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. Where an affiliated party acts as an importer for EP sales we have included the applicable EP sales in this assessment-rate calculation. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the respondent's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with section 715(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Scope Appendix Contents

A. Description of the Merchandise
B. Scope Determinations

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- Abbreviations
- Comments and Responses
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A. Credit Expense
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A. Programming and Clerical Errors
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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following three types of subject merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made:

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 19006, 19019 (May 3, 1989):

Products Covered

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination) (*see International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488 (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990 (*see Scope Rulings*, 55 FR 42750 (October 23, 1990)):

Products Excluded

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990 (*see Scope Rulings*, 55 FR 43020 (October 25, 1990)):

Products Covered

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I)*, 56 FR 31692, 31696 (July 11, 1991):

Products Covered

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between April 1, 1991, and June 30, 1991 (*see Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products Excluded

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings completed between July 1, 1991, and September 30, 1991 (*see Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products Covered

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products Excluded

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991 (*see Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products Covered

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992 (*see Scope Rulings*, 57 FR 19602 (May 7, 1992)):

Products Covered

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products Excluded

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992 (*see Scope Rulings*, 57 FR 32973 (July 24, 1992)):

Products Excluded

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992 (*see Scope Rulings*, 57 FR 57420 (December 4, 1992)):

Products Covered

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992 (*see Scope Rulings*, 58 FR 11209 (February 24, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993 (*see Scope Rulings*, 58 FR 27542 (May 10, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993 (*see Scope Rulings*, 58 FR 47124 (September 7, 1993)):

Products Covered

- Certain series of INA bearings

Products Excluded

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993 (*see Scope Rulings*, 59 FR 8910 (February 24, 1994)):

Products Excluded

- Certain textile machinery components

Scope rulings completed between January 1, 1994, and March 31, 1994:

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products Excluded

- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order

Scope rulings completed between April 1, 1995 and June 30, 1995 (see Scope Rulings, 60 FR 36782 (July 18, 1995)):

Products Covered

- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products Covered

- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products Excluded

- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order
- Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order
- Enkotec Company, Inc.—"Main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order

Issues Appendix

Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd. and the Barden Corporation
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG U.K.—FAG (U.K.) Ltd.
Koyo—Koyo Seiko Co. Ltd.
Meter—Meter, S.p.A.
Nachi—Nachi-Fujikoshi Corp., Nachi America Inc. and Nachi Technology, Inc.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK–RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN—NTN Corporation; NTN Bearing Corporation of America; American

NTN Bearing Manufacturing Corporation
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV–SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF—France; SKF-Germany; SKF—Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA France—SNFA S.A.
SNFA U.K.–SNFA Bearings, Ltd.
TIE—Tehnoimportexport
Torrington—The Torrington Company
Torrington Nadellager—Torrington Nadellager, GmbH

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NME—Non-Market Economy
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
SG&A—Selling, General, & Administrative Expenses
URAA—Uruguay Round Agreements Act

Regulations

19 CFR Part 353, *et al.*, Antidumping Duties; Countervailing Duties; Final rule (applicable regulations).

19 CFR Part 351, *et al.*, Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296—27424 (May 19, 1997) (new regulations).

AFB Administrative Determinations

LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs 1—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs 2—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs 3—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs 4—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs 5—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

AFBs 6—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 2081 (January 15, 1997).

AFBs 7—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 54043 (October 17, 1997).

1. Discounts, Rebates, and Price Adjustments

Comment 1: Torrington contends that the Department should disallow certain discounts which NTN reported. Torrington states that, based on its understanding of the record, NTN's reported discounts were allocated across all sales to a particular customer, but the discounts only applied to certain products sold to that customer. Torrington states that this makes the allocation methodology distortive and open to potential manipulation.

Citing to *The Torrington Company* v. *United States*, 82 F.3d 1039, 1047–1051 (Fed. Cir. 1996) (*Torrington*), Torrington states that the Court made a distinction between direct and indirect expenses and rejected a contention that the former could be allocated in a manner suitable for the latter, *i.e.*, allocated to sales not directly affected. Torrington states that NTN's allocation is clearly inconsistent with this decision.

NTN states the Department properly accepted these discounts in the preliminary results, and in prior reviews, and that Torrington is ignoring the Department's prior decisions on this issue. NTN states further that the Department verified the discount methodology thoroughly and that the Department should deny Torrington's request.

Department's Position: We agree with NTN. Contrary to petitioner's understanding of the way this discount is granted and allocated, we found that NTN granted the discount on a customer-and product-category basis (*i.e.*, by customer and on an antidumping (AD) order-specific (*i.e.*, BB, CRB, SPB) basis), as well as allocated it by customer on an AD order-specific basis (BBs, CRBs, or SPBs). (*See* Verification Report dated January 22, 1998, at 8 and at exhibit 13.) During verification, we reviewed numerous documents which NTN uses to track this type of discount (on an order-specific basis) and determined that NTN reported this discount in the most feasible manner possible. The allocation was AD order-specific (BBs, CRBs, or SPBs) and the bearings do not vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that the results of the allocation are not unreasonably inaccurate or distortive. Therefore, we find this methodology to be acceptable.

In addition, we disagree with Torrington's characterization of the Federal Circuit's decision in *Torrington*. Therein, the Court held that the Department could not make an adjustment for post-sale price adjustments (PSPAs) as indirect selling expenses (under the exporter's sales price-offset regulation) when the PSPAs were related directly to the transactions in question. While the Court held that the method of allocating or reporting an expense does not alter the relationship between the expense and the related sales (*see Torrington*, 82 F.3d at 1051), the Court did not indicate that allocations of direct expenses were impermissible.

Comment 2: Torrington argues that the Department should reject two types of Nachi's reported rebates because, it alleges, the allocation methodology Nachi used is distortive. (In making its argument, Torrington relies on business proprietary information which is not susceptible to summary.)

Nachi contends that Torrington has not demonstrated that Nachi's rebates are distortive and that the Department has accepted its rebate-allocation methodologies in prior reviews. Nachi contends that, because the Department verified that it is impossible for Nachi to report these rebates on a transaction-specific basis and because the reporting method that it has employed is the best alternative given its particular method of keeping records, the Department should allow these rebates in the final results of reviews.

Department's Position: We disagree with Torrington. We find that Nachi acted to the best of its ability in reporting both types of rebates with which Torrington takes issue and that Nachi's allocation methodology was reasonable. In addition, there is no information on the record which indicates that the bearings included in Nachi's allocations vary significantly in terms of value, physical characteristics, or the manner in which sold, such that Nachi's allocations would result in unreasonably inaccurate or distortive allocations.

With regard to rebate 3, the first of the two rebates in question, we find that Nachi reported this rebate on the most specific basis feasible, considering its particular method of recordkeeping. Nothing on the record indicates that only certain types of bearings are subject to the rebate. Nachi's response indicates that it calculated the rebate on an invoice-specific basis (Nachi generates invoices on a monthly basis in the home market). We determine that Nachi's statement that the rebate is based on "the bearings covered by the claim submitted by the customer" refers to the bearings covered by a specific invoice and not a limited set of bearings. *See* Nachi's Section B response, dated September 5, 1997, at page B–2 of Exhibit B/18.1. We found nothing at verification to contradict this statement. *See* Verification Report, dated January 26, 1998. Therefore, we conclude that, by allocating the rebate over the sales of each invoice to which the rebate was applicable, Nachi reported rebate 3 as accurately as possible.

With regard to rebate 5, we determine that Nachi reported this rebate as specifically as is feasible, given the records Nachi keeps in its normal course of business. Nachi reported that it "pays (this rebate) on a customer-specific basis for eligible products only and has allocated and reported rebates to the Department on the same basis." *See* Nachi's Section B response dated September 9, 1998, at page B–1 of Exhibit B/18.1. Nachi also noted in its Supplemental Response dated November 10, 1998, at page 14 that, "because it is not possible (for Nachi) to tie the payment of a rebate paid several months after a sale, Nachi allocated the payment each month on as specific a basis as possible." Again, we found nothing at verification that contradicts these statements. *See* the Verification Report for Nachi, dated January 26, 1998. Therefore, because we determine that Nachi acted to the best of its ability and that its allocation methodology for these rebates is reasonable, we have adjusted normal value for these rebates for these final results.

Comment 3: Torrington contends that the Department should reject SKF Germany's claim for adjustments in connection with its support rebate because SKF Germany applied the rebate to all sales of any distributor who qualified for this type of rebate. Torrington argues that, in addition, SKF Germany has granted rebates to distributors for non-subject merchandise. Torrington states that, because the rebate is allocated over all sales to a given distributor and not on a transaction-specific basis, the allocation is not reflective of how the rebate was incurred and, thus, distorts the dumping margins. The petitioner states that, because it does not have access to the information that would enable it to demonstrate such distortions, the respondent should bear the burden of proving that the reporting of its support rebate is not distortive.

SKF Germany rebuts Torrington's argument that it has employed a distortive methodology for reporting the support rebate. It states that it reported this rebate for each customer which received the rebate. SKF Germany explains that the rebate applied to the aggregate sales of a particular customer and that it reported the rebate by customer number. SKF Germany argues that, by allocating the support rebate to all sales to each of the particular customers which actually received the rebate, SKF Germany reported the rebate in the manner in which it was incurred. SKF Germany refutes Torrington's argument that the support rebate includes non-subject merchandise and points to the Department's verification report which indicates that the rebate is reasonable and allocated in a non-distortive manner. SKF Germany states that the Department has accepted its reporting methodology for the support rebate in the two previous AFB administrative reviews. SKF Germany states that, moreover, the CIT has affirmed SKF Germany's support rebate as a direct adjustment, citing *INA Walzlager Schaeffler KG et al.* v. *United States*, 957 F. Supp. 251, 269 (CIT 1997).

Department's Position: We disagree with Torrington. As in *AFBs 7*, we have not found SKF Germany's allocation methodologies to be unreasonably distortive. Because SKF Germany grants the support rebates to distributors/dealers on the basis of their overall sales to the particular distributor/dealer, SKF Germany can not report this rebate on a transaction-specific basis. We examined SKF Germany's home-market support rebates in detail at verification and found that, although SKF Germany calculates this rebate on a customer-specific basis, "we found no evidence of distortion in the data that we reviewed," a point which Torrington has acknowledged. Furthermore, we verified the accuracy of the claim of payments. There is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. Moreover, we find that SKF Germany reported these rebates on as specific a basis as possible. For these reasons, we have adjusted for SKF Germany's support rebates. *See AFBs 7* at 54052–53 for a further discussion on the Department's position regarding this issue.

Comment 4: Torrington argues that the Department should deny certain home-market rebates claimed by Koyo. The petitioner contends that, instead of identifying the sales to a certain distributor and reporting the rebate for these sales only, Koyo allocated this substantial rebate across all sales to the distributor.

In rebuttal, Koyo argues that it reported its rebate expenses in these reviews in the same manner as it has in past reviews and that the Department has verified and accepted the claimed expense repeatedly. Koyo contends further that, during the POR, it did not have the capability in its computerized recordkeeping system to distinguish between sales of bearings to this distributor for a specific application covered by the rebate and sales to the same distributor of these bearing models that, although suitable for the specific application for which the rebate was intended, were sold for different applications that were not covered by the rebate. Koyo admits that its rebate-allocation methodology adjusts sales prices for some sales to this distributor for which rebates were not actually granted, but it concludes that its methodology is, nonetheless, not distortive overall. Koyo states that the determination of whether an allocation is distortive is not dependent on whether the allocation pool included merchandise for which the expense was not originally incurred, the degree to which the allocated adjustment exceeded any arbitrary benchmark, nor the difference between the allocated adjustment and the actual adjustment associated with any individual transaction. Instead, Koyo argues that the Department's test of whether an allocation is distortive is whether the

merchandise for which the adjustment was actually granted is different from the merchandise over which the adjustment was allocated in terms of value, physical characteristics, and the manner in which it was sold. Koyo contends that, in this case, it was not. Finally, Koyo argues that, before accepting an allocated rebate adjustment, the Department determines whether the respondent acted to the best of its ability in reporting these adjustments.

Department's Position: We disagree with Torrington. For these final results we have accepted claims for rebates as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. While we recognize that there are differences in bearings, we have found no support for the proposition that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocation would result in an unreasonably inaccurate or distortive allocation. Thus, since Koyo has reported this rebate on as specific a basis as possible, we have made a direct adjustment to home-market price for Koyo's rebates.

Comment 5: Torrington argues that the Department should disallow NSK's reported negative post-sale billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sale or that they are part of NSK's normal business practice.

NSK contends that Torrington is incorrect when it argues that, in order for NSK to claim a negative billing adjustment, its customer must have known at the time of sale that there would be a downward adjustment to price. Citing the preamble to new regulations, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295 (new regulations) at 27344, NSK contends that the Department rejected the request of certain parties that the Department adopt such a requirement.

Department's Position: We disagree with Torrington. The new regulations, at 19 CFR 351.401(c), state that the Department "(i)n calculating export price, constructed export price, and normal value (where normal value is based on price) * * * will use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable)." Price adjustments are defined in the new regulations at section 351.102(b) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." While the Department stated in the preamble at 27344 that respondents should not be "allowed to eliminate dumping margins by providing price adjustments 'after the fact,'" there is no evidence on the record in these reviews that demonstrates or even suggests that this is happening. Finally, generally speaking, there is nothing unusual about PSPAs in this industry and, specifically, there is nothing on the record to suggest that NSK manipulated these adjustments. Accordingly, we have granted NSK this adjustment.

Comment 6: Torrington argues that the Department should disallow NSK's reported negative lump-sum billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sales or that they are part of NSK's normal business practice. Torrington contends further, citing *Torrington*, that, because these billing adjustments are allocated on a customer-specific basis and, as a result, applied to sales on which they were not actually incurred, the Department should deny the adjustment.

NSK contends that it documented its entitlement to this adjustment fully. NSK also asserts that this issue has been raised by Torrington in previous reviews and that the Department has rejected Torrington's argument in those reviews.

Department's Position: We disagree with Torrington. With regard to the contention that the lump-sum billing adjustments were not contemplated at the time of sale, *see* our position in response to Comment 5 of this section, above. With regard to the fact that NSK allocated these adjustments, we note that our new regulations at 19 CFR 351.401(g)(1) direct that we "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided (we are) satisfied that the allocation method used does not cause inaccuracies or distortions." Although NSK allocated lump-sum price adjustments on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information when it used customer-specific allocations.

Our review of the information which NSK submitted indicates that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of sales NSK made during the POR, it is not feasible for NSK to report this adjustment on a more specific basis. Furthermore, there is no information on the record which indicates that the bearings included in NSK's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that NSK's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have adjusted normal value for NSK's reported negative lump-sum billing adjustments.

Comment 7: Torrington argues that the Department should reject SKF Germany's home-market billing adjustment 2 and, accordingly, deny all related downward adjustments. Torrington contends that SKF Germany claimed downward adjustments for transactions for which none were warranted because SKF Germany allocated the adjustment over all transactions with a given SKF Germany customer. By not reporting this adjustment on a transaction-specific basis, Torrington claims that SKF Germany has distorted the home-market price of particular models. Torrington also argues that the Department should deny billing adjustment 2 because double-counting may have occurred for those transactions for which SKF Germany reported both billing adjustment 1 and billing adjustment 2 and that SKF Germany has failed to demonstrate that double-counting did not occur. Torrington acknowledges that the Department accepted SKF Germany's reported home-market billing adjustment 2 in *AFBs 7*, but states that the Department's decision to do so was contrary to the Court of Appeals, for the Federal Circuit (CAFC) decision in *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1040 (Fed. Circ. 1996) (Fujitsu). Torrington posits that the Department should deny only SKF Germany's reported downward adjustments associated with billing adjustment 2 as it has done in previous AFB administrative reviews.

SKF Germany rebuts Torrington's argument that its reporting methodology for home-market billing adjustment 2 is distortive. SKF Germany argues that the Department has verified and accepted both the manner in which its billing adjustment 2 is recorded in its normal course of business and the manner in which it was reported to the Department in the 1994/95, 1995/96, and current AFB administrative reviews. SKF Germany also refutes Torrington's claim that double-counting may have occured because, for some sales transactions, both billing adjustment 1 and billing

adjustment 2 were reported. SKF Germany contends that the underlying purposes of these two adjustments are distinct from one another and, as such, the adjustments are not mutually exclusive. SKF Germany also refutes Torrington's assertion that the only adjustments that should be disallowed are downward adjustments.

Department's Position: We disagree with the petitioner. We examined this expense closely at verification and found that the calculation of this adjustment was not unreasonably distortive. In particular, there is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. We also found that SKF Germany has used the most specific reporting methodology possible by calculating an individual adjustment factor for each customer based on SKF Germany's annual sales of bearings to that customer. SKF Germany then used this factor to calculate each specific adjustment. *See* Verification Report, December 12, 1997, p. 6–7. In addition, we verified that billing adjustments 1 and 2 are separate billing adjustments, with different underlying purposes. Accordingly, we have determined that SKF Germany has allocated billing adjustment 2 in the most specific manner possible and this allocation is not unreasonably distortive. Therefore, we have granted this adjustment for these reviews.

We also disagree with Torrington's statement that our acceptance of SKF Germany's billing adjustment 2 is inconsistent with the CAFC's decision in *Fujitsu*. In *Fujitsu*, the CAFC upheld the Department's rejection of a respondent's claim regarding start-up costs because the respondent had failed to meet its burden of proof. In this case, SKF Germany has provided sufficient information such that the Department was able to and has determined that SKF Germany is entitled to a price adjustment for billing adjustment 2.

Comment 8: Torrington argues that the Department should deny all of Koyo's downward billing adjustments because they were not truly billing adjustments and, in some cases, were not reported correctly. The petitioner argues that the Department should only accept billing adjustments if they reflect agreements made prior to the sale or if they reflect normal business practices. Specifically, Torrington asserts that the Department should reject billing adjustments 1 and 2 because both include a "substantial number" of downward adjustments and because both offer a potential for manipulation associated with PSPAs. In addition, the petitioner contends that billing adjustment 2 is distortive because it includes adjustments which Koyo granted on a model-specific basis but allocated over all sales to the customer involved, as well as lump-sum adjustments granted on a customer-specific basis, with the end result that adjustments are made to transactions for which no adjustment actually applied. Torrington argues that Koyo has the burden of justifying any downward adjustment to normal value and that this requires the company to present concrete evidence demonstrating distortion is not likely, given the nature of each adjustment, each customer, and each sale.

In rebuttal, Koyo argues that the Department should reject Torrington's arguments in these reviews as it has done in the past two AFB reviews. Koyo contends that, given that there is a complete absence of evidence that Koyo has been manipulating price adjustments, the Department should accept them as reported. Koyo states that it reported three general types of price adjustments in its questionnaire response: (1) adjustments made to preliminary prices where a pricing agreement did not previously exist; (2) adjustments made due to the renegotiation of existing price agreements (*e.g.*, to correct for Koyo's continued shipment of merchandise to a customer under the terms of an expired contract while price negotiations continued); and (3) lump-sum adjustments negotiated between Koyo and its customers without reference to the model-specific selling prices and other adjustments negotiated on a case-by-case basis. Koyo contends that each of these types of adjustments is a "normal business practice" for Koyo. Koyo argues further that, although the Department, under the pre-URAA antidumping law, rejected some of Koyo's PSPAs in some administrative reviews, it did so because of objections to the allocation methodology Koyo used, never because of any doubt as to the validity of the underlying post-sale commercial activities. Koyo states that, for billing adjustment 1, it matched debit and credit memos to the relevant sales and claimed the adjustment on a transaction-specific basis. In refuting Torrington's argument that Koyo's customer-specific billing adjustments reported under billing adjustment 2 are distortive, Koyo argues that requiring the precise assignment of adjustments to sales would in effect prohibit the use of allocations. Koyo argues that this is contrary to Congressional intent, as expressed in the URAA, and the express provisions of the Department's recently enacted antidumping regulations.

Department's Position: With respect to both billing adjustments, our examination of the record leads us to conclude that both rebates are part of Koyo's long-term business practices and there is no information on the record that Koyo attempted to manipulate its downward price adjustments for the purpose of lowering or eliminating its dumping margin. Koyo incurs and reports the first billing adjustment on a transaction-specific basis and therefore this adjustment does not involve any type of allocation. Accordingly, each adjustment to normal value reflects an actual billing adjustment. With respect to the second billing adjustment, we have determined that Koyo has reported it to the best of its ability. We have based our determination on the fact that this PSPA is comprised of two types of adjustments, including both lump-sum adjustments negotiated with customers without reference to model-specific prices and also adjustments granted on a model-specific basis, but which Koyo records in its computer system on a customer-specific basis only. Given the large number of sales involved, it is not feasible to report this on a more specific basis. *See AFBs 7* at 54050–51. Moreover, there is no information on the record which indicates that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have allowed Koyo's lump-sum adjustments as direct adjustments to normal value.

2. Circumstance-of-Sale Adjustments

2.A. *Credit Expense. Comment:* Torrington argues that the Department should reject the credit expense adjustment NMB/Pelmec claimed on its home-market sales. Although NMB/Pelmec alleges that it used the borrowing experience of its affiliate, Minebea Technologies Pte., Ltd. (MTL), Torrington asserts that the actual interest rates NMB/Pelmec used to calculate home-market credit expenses are unsupported by evidence on the record. Torrington notes first that NMB/Pelmec miscalculated the short-term interest rate of MTL (the exact nature of this alleged miscalculation can not be described here due to its proprietary nature—*see* Analysis Memorandum

dated May 19, 1998). Torrington then points to NMB/Pelmec's financial statements and the interest rates for NMB/Pelmec's parent company, Minebea Group, as an example of the inconsistent reporting. Furthermore, Torrington asserts that the rate NMB/Pelmec used for calculating home-market credit expenses (*i.e.*, MTL's short-term interest rate) is also inconsistent with the rate it used to calculate inventory carrying costs.

NMB/Pelmec responds that it calculated its average short-term interest rate for the POR by dividing MTL's average monthly interest expenses by its average outstanding end-of-month loan balances which, NMB/Pelmec contends, is a routinely accepted formula to derive interest rates in antidumping proceedings. NMB/Pelmec cites *Steel Wire Rope from the Republic of Korea*, 61 FR 55965, 55969 (October 30, 1996), and *Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51420–21 (October 2, 1996), to support its statement. NMB/Pelmec argues that Torrington has not provided any supporting evidence demonstrating that the Department should disregard this methodology. Moreover, NMB/Pelmec notes, the Department verified the home-market credit calculations in prior reviews. NMB/Pelmec argues that Torrington's reference to Minebea Group's rates is irrelevant since MTL holds the receivables in the home market and other Minebea Group companies do not. Furthermore, NMB/Pelmec argues that, during the time that the merchandise remains in inventory at the factory (Stage 1), it is being held by NMB/Pelmec and, therefore, it is appropriate to use NMB/Pelmec's rate to calculate inventory carrying costs (as opposed to MTL's rate).

Department's Position: Although we agree with NMB/Pelmec that its use of MTL's interest rates is appropriate for calculating home-market credit expenses, we also agree with Torrington that there was a miscalculation in NMB/Pelmec's methodology for deriving its average short-term interest rate. Therefore, we have corrected this error for these final results (*see* Analysis Memo dated May 19, 1998). Furthermore, we agree with the respondent that the use of NMB/Pelmec's interest rate is appropriate for the calculation of inventory carrying costs for Stage 1 because NMB/Pelmec incurs this cost. Where there are differences in the circumstances, such as how NMB/Pelmec incurs inventory carrying costs as opposed to its short-term interest expenses, different applications are appropriate, supported by evidence on the record. Therefore, with the correction noted above, we have accepted NMB/Pelmec's credit expenses and inventory carrying costs.

2.B. *Other Direct Selling Expenses.*

Comment: Torrington argues that the Department should reject NSK–RHP's claim for a direct adjustment for other direct selling expenses. Torrington maintains that NSK–RHP has not shown that these expenses are direct expenses and that these expenses include the cost of salaries. Torrington argues further that the Department should reject an adjustment for direct expenses allocated across all reported sales rather than to those sales where the expense was actually incurred. In addition, Torrington argues, the respondents must substantiate that more accurate reporting is not feasible and that the allocation does not cause unreasonable inaccuracies or distortions. Torrington concludes that NSK–RHP should have reported its expenses on a sale-specific basis in accordance with *Torrington*.

NSK–RHP responds that, since the Department's verification in these reviews uncovered no evidence suggesting evasive reporting by NSK–RHP, the Department should continue to deduct other direct selling expenses from normal value as it did in *AFBs 6* and *AFBs 7*. NSK–RHP also maintains that it incurred the expense on a sale-by-sale basis. NSK–RHP argues that it reported, in separate direct cost centers for its channels of distribution, expenses associated with selling activities related to particular customers. NSK–RHP contends that, since it was not feasible to report these expenses on a more specific basis due to its accounting system, it acted to the best of its ability and allocated the costs in a manner that did not cause unreasonable inaccuracies or distortions.

Department's Position: We agree with Torrington. The expenses which NSK–RHP claims are "other direct selling expenses" are the type of expenses which we normally do not categorize as sale-specific expenses and, in the absence of the sale, such expenses would be incurred. NSK–RHP includes salaries as an other direct selling expense; however, we normally categorize the costs of salaries to employees as a fixed, indirect expense. *See* Department's Questionnaire at I–5; *Torrington* at 1050. Moreover, the other expenses which NSK–RHP claims to be other direct selling expenses, which can not be described here due to their proprietary nature, also do not vary depending upon whether a particular sale occurs. *See* Analysis Memorandum dated May 20, 1998. Therefore, we have treated these costs as indirect selling expenses.

Because we find these selling costs to be indirect in nature, we need not address whether NSK–RHP allocated its costs in an unreasonably inaccurate or distortive manner. The fact that NSK–RHP allocated this expense did not enter into our decision to treat it as an indirect selling expense. We note further that *Torrington* addresses the allocation of direct, rather than indirect expenses, and thus this argument is inapplicable here.

Finally, neither our treatment in previous reviews of these expenses as direct nor our verification of U.S. expenses precludes the current finding. Furthermore, the issue is not whether evidence has been uncovered suggesting evasive reporting. Rather, the burden is on the respondent to demonstrate that the expenses are direct, as claimed. In this case, the evidence indicates that the expenses are indirect in nature.

2.C. *Indirect Selling Expenses.*

Comment: NTN states that the Department should use its indirect selling expenses as reported by level of trade instead of allocating them on an aggregate basis. NTN states further that the Department provides no explanation in its preliminary results as to its rationale for recalculating this expense. Finally, NTN states that the adjustment is particularly inappropriate because it combines NTN's selling expenses with those of an affiliate.

Torrington contends that, since the Department refused to find the relationship between home-market levels of trade and home-market indirect selling expenses self evident in *AFBs 7*, the burden of proof was on NTN to provide such evidence. Torrington states that, because NTN showed no relationship between the home-market levels of trade and indirect expenses incurred, the Department should affirm its preliminary results.

Department Position: We agree with Torrington. The method that NTN used to allocate its indirect selling expenses does not bear any relationship to the manner in which NTN incurs the expenses in question, thereby leading to distorted allocations (*see AFBS 3* at 39750). Therefore, we have allocated NTN's home-market indirect selling expenses over the total sales values, without regard to levels of trade.

3. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal-value level

of trade is that of the starting-price sales in the comparison market or, when normal value is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal-value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make an level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal-value level is more remote from the factory than the CEP-level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

As in the preliminary results, where we established that the comparison sales were made at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the differences in levels of trade affected price comparability. We determined the effect on price comparability by examining sales at different levels of trade in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign-market sales used for comparison and foreign-market sales at the level of trade of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different levels of trade. We used the average difference in net prices to adjust normal value when normal value is based on a level of trade different from that of the export sale. If there was a pattern of no price differences, the differences in levels of trade did not have a price effect and, therefore, no adjustment was necessary.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving EP sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the comparison market but we could only match the U.S. sale to comparison-market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted normal value as the level-of-trade adjustment.

We were unable to quantify price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP for merchandise under review did not exist in the comparison market for any respondent except NMB/Pelmec. We also did not find the same level of trade in the comparison market for some EP sales of merchandise under review. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondents' home market sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that "if information on the same product and company is not available, the level-of-trade adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products." *See* SAA at 830. Accordingly, where necessary, we attempted to examine the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us tc apply these alternative methods for companies that, unlike NMB/Pelmec, did not have a home-market level of trade equivalent to the level of the CEP.

The only company for which we made a level-of-trade adjustment for CEP sales in these final results was NMB/Pelmec. However, we concluded that it would be inappropriate to apply the level-of-trade adjustment we calculated for NMB/Pelmec to any of the other respondents. Because no respondent reported sales in the same market as NMB/Pelmec (*i.e.*, Singapore), we have not used NMB/Pelmec's data as the basis of a level-of-trade adjustment for any other respondents.

In those situations where the U.S. sales were EP sales and we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, the statute requires no further adjustments. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the home-market sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Act.

Comment 1: NSK argues that the Department should make a level-of-trade adjustment when CEP sales are matched to home-market aftermarket sales. NSK contends that the Department can make a level-of-trade adjustment on the basis of the difference between the OEM and aftermarket levels of trade in the home market. NSK asserts that, although the home-market OEM sales and the level of CEP sales are not equivalent, the Department is not required to adjust for the entire amount of the difference between levels of trade when making a level-of-trade adjustment and could make a partial adjustment instead. NSK contends that the level of home-market OEM sales is closer to the level of CEP sales than is the level of home-market aftermarket sales because the prices for home-market OEM sales are lower than the prices for home-market aftermarket sales. NSK asserts that it would be appropriate, therefore, to adjust normal value with a level-of-trade adjustment based on the difference between the home-market levels of trade whenever CEP sales are compared to home-market aftermarket sales.

Torrington states that the Department's approach to level-of-trade adjustments and CEP offsets is extraordinarily complex. Torrington contends that NSK's arguments are incomplete and fail to address the

complexities of the Department's approach. For example, Torrington argues, NSK fails to describe how the statutory language at section 773(7)(A) "partly due to" is quantifiable when customer categories define level of trade. Torrington states that the fact that the CEP level of trade is "closer to the factory" than any other home-market level of trade is not in itself a controlling factor for purposes of quantifying an adjustment.

Department's Position: We disagree with NSK. We may make level-of-trade adjustments when there is "any difference... between the export price or constructed export price and the normal value that is shown to be wholly or partly due to a difference in the level of trade between the export price or the constructed export price and normal value." *See* section 773(a)(7)(A) of the Act. We find no explicit authority to make a level-of-trade adjustment between two home-market levels of trade where neither level is equivalent to the level of the U.S. sale. *See AFBs 7.*

Comment 2: The petitioner alleges that, based on the record, there are considerable differences in the selling functions NSK and SKF Italy perform for EP and home-market OEM customers and thus, home-market OEM sales are not equivalent to EP OEM sales. Therefore, Torrington concludes, because there is no home-market level of trade equivalent to the level of EP sales, there is no basis for making a level-of-trade adjustment to normal value for EP OEM sales when the comparison sales were made to aftermarket customers.

NSK contends that, although there are some differences in selling functions between the home-market OEM level of trade and the level of the EP OEM sales, these two levels of trade are equivalent because many of the selling functions are the same. More importantly, NSK asserts, the purpose of defining levels of trade is to determine which customers are at the same marketing stage. In this case, NSK asserts, both home-market sales and EP OEM sales are sold directly to customers for OEM consumption. NSK contends that the fact that there are some differences does not alone demonstrate that the two levels of trade are not equivalent.

SKF Italy counters that Torrington has misconstrued or incorrectly analyzed and compared data regarding U.S. and home-market levels of trade in its response. SKF Italy affirms that it provided thorough, accurate, and accordant information on the levels of trade in the two markets that supports their being considered comparable.

Department's Position: We disagree with Torrington. As we stated in *AFBs 7* at 54055, "differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade." We have reviewed the records in these reviews and found that the differences in selling functions between the home-market and the EP OEM levels of trade are not great. Some of the differences Torrington describes appear to be small differences in the level of intensity of the selling function. For some other functions, the record indicates that a minimal level of the function is performed at one level and not at the other level. While there are a few individual selling functions that vary substantially, we determine that these functions, by themselves, do not offset many similarities of the selling functions both respondents performed at the two levels of trade. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

Furthermore, while customer categories alone are also insufficient in themselves to establish that there is a difference in the levels of trade, they provide useful information in the identification of such differences. In this case, given the fact that the customer categories of the home-market and EP OEM levels of trade are identical, the fact that there is a qualitatively minimal difference in selling functions between the levels of trade does not persuade us that they are distinct. For these reasons, we conclude that the home-market and EP OEM levels of trade are equivalent.

Therefore, because we determined that there were two levels of trade in both home markets (*see* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998), we have made our comparisons and a level-of-trade adjustment, as appropriate.

Comment 3: Koyo contends that the Department's practice with regard to level of trade effectively precludes a level-of-trade adjustment to normal value for CEP sales and is thus contrary to law and the intent of Congress.

Koyo asserts that it and other respondents have proposed alternative methods by which the Department could construct an appropriate home-market level of trade by deducting from normal value those expenses which correspond to the expenses the Department deducts from CEP, but that the Department has failed to provide a reasonable explanation for rejecting the proposals.

Torrington agrees with the Department's rejection of Koyo's proposal to use a "constructed normal value" to calculate a level-of-trade adjustment. Torrington maintains that the Department has responded to Koyo's argument in detail in *AFBs 6* and *AFBs 7.*

Department's Position: We disagree with Koyo that we should adopt alternative methods by which to construct home-market levels of trade. We base home-market levels of trade on the respondent's actual experience in the home market. The statute is clear that "...the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined." (*See* 773(a)(7)(A)). Therefore, we have not used Koyo's claimed constructed home-market levels of trade in order to calculate a level-of-trade adjustment for Koyo's CEP-sales comparisons. *See AFBs 6* at 2081 and *AFBs 7* at 54043.

Comment 4: NTN states that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment. NTN suggests that, based on this transaction, NTN satisfies the statutory requirements for an adjustment. Finally, NTN states that the methodology the Department used in the preliminary results would effectively bar an entire class of sales, CEP transactions, from ever being granted a price-based level-of-trade adjustment.

While Torrington acknowledges that it once espoused this same position, it acquiesces to the Department's past decisions on this issue and believes the current approach is now well established and should not be changed. Finally, Torrington states that, since the statute is unclear on this matter, the Department needs only to construct a reasonable methodology, which it has done.

Department's Position: We disagree with NTN. The statutory definition of "constructed export price" contained at section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price adjusted for selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a "constructed" export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Act ("Additional Adjustments for Constructed Export Price"), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive

of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section. Therefore, because no home-market levels of trade NTN reported were equivalent to the level of trade of its CEP sales, we were unable to make a level-of-trade adjustment for such sales. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

4. Cost of Production and Constructed Value

4.A. *Cost-Test Methodology.* On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (CAFC 1998) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home-market sales to be outside the "ordinary course of trade." The URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* section 771(15) of the Act. In our preliminary results, we invited parties to comment on this issue and various parties have provided comments.

Comment 1: Torrington argues that the Department should attempt to match U.S. sales to comparison-market sales of similar models before resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. Torrington asserts that the CAFC's decision in *CEMEX* requires the Department to do this whenever comparison-market sales of identical models are outside the ordinary course of trade or otherwise do not exist. Koyo does not disagree with the position stated by Torrington regarding the impact of the *CEMEX* decision.

NSK argues that the *CEMEX* decision does not provide a basis for the Department to change its practice of resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. NSK contends that *Federal-Mogul Corp.* v. *United States*, 918 F. Supp. 386, 396–397 (CIT 1996) (*Federal-Mogul 1*), supports this methodology. NSK asserts that, in *CEMEX*, the CAFC was faced with sales that were outside the ordinary course of trade under the statute as it existed prior to its amendment pursuant to the URAA. NSK explains that, under the pre-URAA law, below-cost sales were not considered outside the ordinary course of trade. NSK argues that it is incumbent upon the Department to demonstrate how the URAA amendments require a change in the practice endorsed by *Federal-Mogul 1*. NSK contends that the statute, at section 773(b), provides that the Department shall base normal value upon CV when all sales of the foreign like product are excluded because they have failed the below-cost test. NSK also asserts that the SAA supports this interpretation by indicating that the only change from the Department's practice prior to the URAA was to eliminate the ten-percent floor for using above-cost sales of a particular model and that, to the extent that the Department perceives any conflict between sections 773(b)(1) and 771(15), the express language of the former must control the general language of the latter. NSK contends further that the SAA confirms that sales below cost are a special, separate category of non-ordinary-course-of-trade sales to which *CEMEX* can not be applied.

NTN states that the *CEMEX* decision should have no impact on the current reviews because it did not address the issue of below-cost sales. NTN asserts further that the CAFC made no mention of section 773(b)(1) of the Act which requires the Department to use CV when it has disregarded below-cost sales from the calculation of normal value. In conclusion, NTN contends that, based on the aforementioned section of the law, if all sales of identical merchandise are found to have been sold below cost, as is the case in the current reviews, no sales of like product remain in the ordinary course of trade and the Department should base normal value on CV.

SKF France, SKF Germany, and SKF Italy contend that the Department should adhere to the policy set forth in the *CEMEX* decision and, as such, should resort to finding similar merchandise as a basis for determining normal value rather than CV in instances where normal value can not be based on identical merchandise in the home market.

Department's Position: The Department has reconsidered its practice as a result of the *CEMEX* decision and has determined that it would be inappropriate to resort directly to CV as the basis for normal value if the Department finds sales of the most similar merchandise to be outside the "ordinary course of trade." Instead, the Department will use sales of other similar merchandise, if such sales exist. The Department will use CV as the basis for normal value only when there are no above-cost sales of a foreign like product that are otherwise suitable for comparison.

In response to NSK's comments, the Court stated in *CEMEX* that "[t]he language of the statute requires Commerce to base foreign market value on nonidentical but similar merchandise * * *, rather than constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade." *See CEMEX* at 904. There was no cost test in *CEMEX* and *CEMEX* was under the pre-URAA statute. However, under the URAA, below-cost sales in substantial quantities and within an extended period of time are outside the ordinary course of trade and we disregard them from consideration. Therefore, in order to be consistent with *CEMEX* for these final results, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market that were comparable to merchandise within the scope of each order and which were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Only where there where no sales of foreign like product in the ordinary course of trade did we resort to CV.

Comment 2: Barden argues that the Department does not have the authority to conduct a sales-below-cost test with respect to Barden because the Department can not use the results of a prior below-cost investigation which the Department has acknowledged was unlawful to conclude that it has "reasonable grounds to believe or suspect" that sales in the home market have been made below COP in these reviews. As such, Barden requests that the Department restore all disregarded home-market sales and recalculate the margin accordingly.

Torrington disagrees with Barden and asserts that the Department acted correctly by using COP data Barden submitted both to test whether home-market sales were above COP and to calculate profit for CV on the basis of above-cost sales. Torrington claims further that the Department is entitled to use COP data voluntarily placed on the record and, therefore, a respondent may not submit data voluntarily and then insist that the Department can not use it. Torrington claims that Barden does not argue that its COP data can not be used because it is in error, unreliable, or

incomplete. As such, the petitioner believes that section 773(b) of the Act authorizes the Department to consider and use the COP data submitted, both to test home-market prices and to calculate CV profit.

Department's Position: We have reconsidered the original decision to initiate a below-cost investigation for Barden in this review. In *FAG (U.K.) Ltd.* v. *United States*, Consol. Court No. 97–01–00063–SI *(FAG–U.K.)*, reviewing the results of *AFBs 5*, the Department has acknowledged that, "prior to conducting the test, Commerce had no reasonable belief that Barden's ball bearings were sold at below cost." Therefore, we conceded that we had applied the below-cost test to Barden in the 1993–1994 administrative review unlawfully, and, accordingly, we have requested a partial remand to rescind the COP investigation for that POR. Since our initiation of cost investigations in subsequent reviews were based on the results of our below-cost test in the 1993–1994 administrative reviews, we have concluded that our initiation of cost investigations in the current administrative reviews was unjustified. However, since the petitioner was precluded from filing cost allegations prior to the 120-day deadline due to our earlier decision to initiate these cost investigations, we allowed the petitioner to file cost allegations after our normal deadline. *See* the Department's letter dated April 2, 1998. We have now accepted Torrington's April 13, 1998 cost allegation and have performed a below-cost test of Barden's home-market sales for these final results. *See* Cost-Allegation Memorandum, dated May 1, 1998.

Comment 3: SKF France argues that the Department conducted a below-cost test of home-market sales for its SPB transactions improperly. SKF France notes that the Department has never initiated a test of sales below cost for SPBs. SKF France also contends that the Department should not use its reported costs in the calculation of profit for CV. SKF France contends that the data should only be used to test its reported variable costs of manufacture.

Torrington counters that the Department should continue to use SKF France's reported cost data. The petitioner states that the CIT has affirmed the Department's authority under the statute to consider and use submitted cost data both to test home-market prices and to calculate CV profit, citing *NSK Ltd.* v. *United States*, 969 F. Supp. 34 (1997).

Department's Position: We agree with SKF France that we were incorrect in conducting a test to determine whether it made home-market sales of SPBs below COP. We stated in *FAG U.K.* (*see* our response to Comment 2 above) that it is improper to examine whether sales are being made below COP unless we have received an allegation to substantiate such an examination or have disregarded below-cost sales in the most recent segment of the proceeding. Since we did not receive such an allegation in this review and have not disregarded below-cost sales in prior reviews, we have not conducted a below-cost test of SKF France's sales of home-market SPBs for these final results. We disagree with SKF France, however, that we should not use reported costs to determine profit for CV. Although we have flexibility to use alternate methods to determine profit for CV, our stated preference is to calculate profit on the sales of the foreign like product. Therefore, since SKF France submitted such data voluntarily, we have continued to use SKF France's reported costs for the calculation of CV profit of SPBs for these final results.

4.B. *Profit for Constructed Value.* Subparagraph (A) of section 773(e)(2) of the Act sets forth the preferred method for determining the amount of profit to be included in CV, and subparagraph (B) of the same section sets forth three alternative CV-profit calculation methods for use when the actual data are not available with respect to the amounts described in subparagraph (A). For all respondents, except Torrington Nadellager, in the preliminary results of these administrative reviews we calculated CV profit in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act. For Torrington Nadellager, we calculated CV profit using the alternative methodology set forth under section 773(e)(2)(B)(iii).

Comment 1: FAG Italy and Barden argue that the Department has not calculated CV profit as required by section 773(e)(2)(A) of the Act since the actual calculations encompass multiple foreign like products, *i.e.*, all AFB models within the order-specific subject merchandise that were reported in the foreign-market sales databases as potential matches to U.S. sales. The respondents assert that, if the Department is going to calculate CV profit based on multiple foreign like products, it must perform the calculation in accordance with one of the three alternative methodologies set forth in section 773(e)(2)(B) of the Act.

The respondents assert that section 773(e)(2)(B)(i) of the Act provides for a CV-profit calculation methodology that is, for the most part, similar to the one the Department used. However, the respondents claim that, unlike the Department's methodology, section 773(e)(2)(B)(i) does not specifically limit the calculation of CV profit to sales in the ordinary course of trade. The respondents suggest that, since sections 773(e)(2)(A) and (2)(B)(ii) of the Act contain specific language to limit the CV-profit calculation to sales in the ordinary course of trade, the Department should interpret the lack of specificity under section (2)(b)(i) as not requiring such a limitation. As support for this position, the respondents cite to *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 12 F.3d 398, 401 (CAFC 1994) (*Portland Cement*), in which the Court stated that "(w)here Congress has included specific language in one section of the statute but has omitted it from another, related section of the same Act, it is generally assumed that Congress intended the omission."

Torrington asserts that the Department has calculated CV profit in accordance with section 773(e)(2)(A) of the Act. Torrington contends that it is not necessary therefore to use one of the alternative CV-profit calculation methodologies as suggested by the respondents.

Department's Position: We agree with Torrington. As we stated in *AFBs 7* at 54062, we believe that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of section 773(e)(2)(A) of the Act. Moreover, we believe that, in applying the preferred method for computing CV profit under section 773(e)(2)(A) of the Act, the use of aggregate data results in a reasonable and practical measure of profit that we can apply consistently in each case. By contrast, a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping duty proceedings without necessarily generating more accurate results. It would also make the statutorily preferred CV-profit method inapplicable to most cases involving CV. *See* the preamble to our new regulations at section 351.405.

As noted above, we believe that our calculation of CV profit is in accordance with section 773(e)(2)(A) of the Act and, therefore, we disagree with respondents' assertion that our methodology for calculating CV profit is most similar to the first alternative methodology

described under section 773(e)(2)(B)(i) of the Act. However, we agree with the respondents' assertion that we should interpret the lack of a specific reference to sales in the ordinary course of trade under section 773(e)(2)(B)(i) of the Act as requiring that we not limit the CV-profit calculation under this method to sales in the ordinary course of trade. We addressed this issue in the preamble of our new regulations (*see* section 351.405), stating that, "(w)ith respect to the other alternative profit methods authorized by section 773(e)(2)(B), the Department believes that the absence of any ordinary course of trade restrictions under the first alternative (subsection (i)) is a clear indication that the Department normally should calculate profit under this method on the basis of all home-market sales, without regard to whether such sales were made at below-cost prices." Therefore, for these final results we have used all sales under consideration for normal value and in the ordinary course of trade as the basis for calculating CV profit.

Comment 2: NSK argues that the Department must calculate CV profit on a model-specific or family-specific basis. Acknowledging that in prior segments of these proceedings the Department rejected arguments in support of such a methodology, NSK suggests that the issue be revisited in light of the recent CAFC decision in *CEMEX*. NSK suggests that the Department's calculation of CV profit based on the aggregation of data that encompasses all foreign like products under consideration for normal value is unlawful in light of the statutory requirement that the calculation of CV profit be limited to actual amounts for a "foreign like product" (NSK claims that a foreign like product as defined by section 771(16) of the Act is a category of merchandise that is narrower than the pre-URAA class-or-kind definition). In conclusion, NSK suggests that its proposed methodology for the calculation of CV profit would improve the accuracy of the margin calculations by more closely approximating price-to-price comparisons.

Torrington disagrees with NSK and asserts that the justification the Department provided for using this methodology in the last segment of these proceedings is still valid. Torrington suggests that the Department's interpretation of section 773(e)(2)(A) is reasonable on the basis that the law did not specify how the term "foreign like product" is to be applied in the context of calculating CV profit. Torrington contends that there is no reason that the term "foreign like product" can not have different applications for different purposes in the same statute. Noting that section 773(e)(2)(A) of the Act is the preferred method for calculating profit, Torrington asserts that NSK's narrow reading of the statute would render the "preferred" method useless in most situations involving CV. Furthermore, Torrington asserts that the Department could never apply the alternative CV-profit calculation methodology in section 773(e)(2)(B)(ii) of the Act if it were to adopt NSK's reading of the statute. Finally, Torrington argues that NSK's reliance on the Court's decision in *CEMEX* is misplaced because the decision dealt with a different issue.

Department's Position: We disagree with NSK for the reasons we stated in *AFBs 7* at 54062 and our response above to Comment 1 of this section. Therefore, we have not changed our CV-profit calculation methodology for the final results of these reviews. Regarding NSK's assertion that we should re-examine the issue in light of the CAFC's recent decision in *CEMEX*, we agree with Torrington that NSK's reliance on that decision is misplaced. The Court's decision in *CEMEX* dealt with how to determine foreign market value when there were home-market sales which were outside the ordinary course of trade. *See* our response to Comment 1 of section 4.A. above.

Comment 3: SNFA U.K. argues that, using its ten-transaction home-market sales listing to calculate CV profit is improper (the ten transactions comprise sales of models that are potential identical or similar matches to those models of subject merchandise sold to the United States during the POR). SNFA U.K. claims that the ten transactions account for a small percentage of its total home-market sales of BBs during the POR. The respondent asserts that relying on this limited reporting to calculate profit for CV does not yield a fair and representative result and ignores the economic reality of SNFA U.K.'s actual overall profit experience. The respondent asserts further that the average profit for one bearing model drives the profit rate for the entire limited database. SNFA U.K. argues that such a result is contrary to the Department's policy, noting that the Department stated in the preamble to its new regulations at section 351.405 that "the sales used as the basis for CV profit should not lead to irrational and unrepresentative results."

SNFA U.K. asserts that, in recent cases, the Department has resorted to more accurate data submitted on the record. SNFA U.K. cites *Certain Stainless Steel Wire Rods From France: Final Results of Administrative Review*, 62 FR 7206 (February 18, 1997) *(Certain Stainless Steel Wire Rods)*, and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Administrative Review*, 61 FR 56514 at 56514 (November 1, 1996) *(Lead and Bismuth Carbon Steel Products)* to support its argument.

SNFA U.K. contends that the CIT and CAFC have rejected the use of data that leads to clearly anomalous and unrepresentative results. To support this, SNFA U.K. cites *CEMEX*, at 901, stating that the Court upheld the Department's exclusion of certain sales in the calculation of CV profit because the (much lower) profit level of these sales indicated that they were distortive and outside the ordinary course of trade. SNFA U.K. asserts that what is most important is that the Court stated that "these sales represent a minuscule percentage of CEMEX's total sales of cement, a fact that indicates that they were not in the ordinary course of trade" (id). SNFA U.K. also cites *Fabrique de fer de Charleroi S.A. v. United States, et al.*, 1998 CIT Lexis 53, Slip Op. 98–4 (CIT 1998) (*Fabrique*), in which the Court directed that unusually high-priced sales be excluded from the calculation of CV profit where the sales were "but a fraction of sales" made in the home market and led to unrepresentative results. (*Id.* at * 13.)

Finally, SNFA U.K. argues that section 771(16)(A) of the Act defines "foreign like product" as "subject merchandise *and* other merchandise which is identical in physical characteristics with * * * that [subject] merchandise" (emphasis added). Citing section 771(25) of the Act, SNFA U.K. continues that subject merchandise is in turn defined as "the class or kind of merchandise that is within the scope of an investigation." SNFA U.K. asserts that the Department's June 20, 1997, AFBs questionnaire (at Appendix I–7) supports this definition and contends that the Department itself has held in other cases that "(f)or purposes of calculating CV and CEP profit, we interpret the term "foreign like product" to be inclusive of all merchandise sold in the home market which is in the same general class or kind or merchandise as that under consideration," citing *Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38145–38147 (July 23, 1996).

SNFA U.K. requests that the Department use the profit rate that it calculated and submitted in its

questionnaire response which is based on audited financial data for home-market sales of subject merchandise. SNFA U.K. contends that its profit calculation is supported under section 773(e)(2)(A) of the Act.

Torrington argues that the fact that the home-market transactions used to calculate CV profit involve sales of high-tech merchandise does not render the profit unrepresentative but, rather, duly reflects the nature of SNFA U.K. as a producer of high-tech bearings. Torrington points out that, in *AFBs 6* at 2114, the Department rejected a similar argument by FAG Germany and FAG Italy on the basis that nothing in the statute or SAA required the Department either to identify bearings with equivalent commercial values or to limit the profit levels observed on home-market sales. Therefore, Torrington concludes, the Department should not modify its calculation of CV profit in this case.

Department's Position: We agree with Torrington and, consistent with our practice in these proceedings, have continued to calculate CV profit using all foreign-like products under consideration for normal value, which is in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act. *See* our response to Comment 1 of this section.

First, we do not find the respondent's submitted profit information to be an appropriate basis for determining CV profit. Although the respondent calculated and reported an alternative profit rate in its questionnaire response, it did not explain why it was providing this information at the time of submission or at any time during which additional factual information could reasonably be sought. It was not until the submission of its case brief that SNFA U.K. took issue with our usual practice for calculating CV profit and proposed using its alternative profit rate. By waiting until this late date in these reviews to claim that we should use SNFA U.K.'s alternative data, SNFA U.K. precluded our ability to seek additional information about its claimed profit rate. In particular, we did not have an opportunity to obtain necessary record evidence to establish the accuracy of the alternative profit rate (*e.g., a* reconciliation of the alternative profit rate with SNFA U.K."s audited financial statements). Because we did not have an opportunity to obtain necessary record evidence regarding SNFA U.K.'s alternative profit rate, we can not consider using this information.

Furthermore, we disagree with SNFA U.K. that our CV-profit calculation is improper. In support of its argument, SNFA U.K. cites to the preamble of our new regulations where we stated that "the sales used as the basis for CV profit should not lead to irrational and unrepresentative results." *See* preamble at section 351.405. This is an accurate statement of our policy, even before the adoption of these regulations. However, in deciding whether certain sales used as the basis for CV profit lead to irrational and unrepresentative results, we must consider the specific facts and circumstances surrounding the transactions. Furthermore, this is an issue that must be examined on a case-by-case basis, and the burden of showing that certain profits earned are "abnormal," or otherwise unusable as the basis for CV profit, rests with the party making the claim. *See* preamble at section 351.405. Proof that the profits a respondent earned on specific sales are abnormal will depend on a number of factors. These factors include the type of merchandise under investigation or review and the normal business practices of the respondent and of the industry in which the merchandise is sold. In this respect, SNFA U.K. argues that it reported a few home-market sales which consist of some specialty, high-priced bearings that are rarely sold in the home market, but SNFA U.K. has not claimed that certain transactions in the home-market sales listing are outside the ordinary course of trade. Based on our analysis of the home-market sales listing and other information on the record, it appears that all of the reported models have a relatively high profit margin and that these high-profit home-market sales (reported by SNFA U.K. as potential identical or similar matches to those models of subject merchandise sold to the United States during the POR) meet the requirements for calculating CV profit in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act.

In the respective final determinations for *Certain Stainless Steel Wire Rods* and *Lead and Bismuth Carbon Steel Products*, we acknowledged that, in the respective preliminary results, we had erred in each case by calculating the profit ratio multiplied by COP to derive CV profit. Initially, we calculated the profit ratio by computing a profit percentage for each home-market sales transaction and then weight-averaged the percentages by quantity. We later revised our calculation to derive the profit ratio by dividing total home-market profit by total home-market costs which is consistent with our normal methodology. However, this recalculation was not a result of too few home-market sales transactions or, as suggested by respondents, a "micro-calculation" which caused serious distortion in the profit rate. In fact, we derived the profit ratio for SNFA U.K. in the same way we derived the corrected profit ratio in the cases cited above by dividing the total home-market profit by total home-market costs.

In *CEMEX*, the CAFC supported the Department's decision to exclude certain types of cement sold in the home market from the margin calculations because there was substantial evidence on the record to support that the sales were outside the ordinary course of trade. The substantial evidence upon which we relied was that (1) the sales represented a minuscule percentage of total home-market sales, (2) shipping arrangements departed significantly from the standard industry practice in the home market which resulted in a significantly low profit margin, and (3) the sales were of a promotional quality which differentiated them from other products. *See CEMEX* at 133 F.3d at 901. With respect to SNFA U.K., again, the respondent did not provide substantial evidence on the record for the Department to determine whether sales of any of the models that SNFA U.K. claims were designed for special use were outside the ordinary course of trade. Furthermore, sales of these specially designed bearings do not represent a minuscule percentage of the total home-market sales reported in SNFA U.K.'s sales listing. In fact, these so-called specialty bearings account for most of SNFA U.K.'s reported home-market sales. At any rate, the simple fact that these products represent a small portion of total home-market sales alone does not render the sales outside the ordinary course of trade. In *CEMEX*, the Court cited *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993), and stated that the Department must evaluate not just "one factor taken in isolation but rather * * * all the circumstances particular to the sales in question." Here, after evaluating all the circumstances particular to the sales in question, we do not find that the transactions are outside the ordinary course of trade.

Finally, we do not find SNFA U.K's reliance on *Fabrique* persuasive. While in *Fabrique* the CIT found that the inclusion of profit on certain home-market sales for the calculation of CV profit extrapolated the average profit "out of realistic and rational proportion" (*Fabrique* at *16), we believe the facts of that case differ significantly from the present case. In *Fabrique*, the CV-profit calculation was affected by home-market sales of "Z-

type product," a type of merchandise that the respondent did not sell in the United States. *Id.* at * 3–4. In the present case, SNFA U.K. is objecting to the inclusion in the CV-profit calculation of the home-market sales of merchandise it reported as potential identical or similar to matches to merchandise it sold in the United States. For this reason, we do not find *Fabrique* to be persuasive.

We note that the cases SNFA U.K. cites are pre-URRA cases in which profit was required to be calculated on the general class or kind of merchandise sold in the country of exportation. Under the new law, we are directed to calculate, where possible, profit in connection with the production and sale of the foreign like product made in the ordinary course of trade. In other new-law cases, we have interpreted this to mean the specific products reported for use as normal value for purposes of the CV-profit calculation. We discussed this in *AFBs 7* at 54062 and in our response to Comment 1 of this section. Therefore, our calculation of SNFA U.K.'s profit based on its reported sales is consistent with our past practice. Since SNFA U.K. has not demonstrated that its high-profit sales were outside the ordinary course of trade, we have continued to use them in our profit calculation for CV.

Comment 4: Barden argues that, in the absence of a valid sales-below-cost investigation (*see* Comment 2 of Section 4.A. above), the Department should deem all of its home-market sales as sold in the ordinary course of trade and, therefore, use all of the transactions to calculate CV profit.

Torrington disagrees with the Barden. Torrington contends that the Department was correct to eliminate sales below cost from the home-market sales database before calculating CV profit.

Department's Position: As we noted in our response to Comment 2 of Section 4.A. above, for the current segment of the proceedings we believe that we are justified in performing a sales-below-cost examination of Barden's reported home-market sales. Therefore, for the final results of reviews, in calculating the Barden's CV profit, we have continued to eliminate home-market sales that we disregarded because they were sold at below-cost prices and thus, not in the ordinary course of trade. This CV-profit calculation methodology is in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act.

Comment 5: Citing to the CAFC's ruling in *CEMEX*, Barden argues that sales with abnormally high profits, or sales in small quantities, must be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. Barden notes that the CAFC upheld the Department's decision to exclude from the calculation of CV profit two types of cement products on the basis that the "profit margin on these types was significantly lower than * * * profits on other cement types," citing *CEMEX* at 901. Regarding sales in small quantities, Barden asserts that in *CEMEX* and in the CIT's ruling in *Mantex* v. *United States*, 841 F. Supp. 1290, 1307–08 (CIT 1993) (*Mantex*), the courts observed that a low volume of sales of certain products being examined demonstrates that such transactions are outside the ordinary course of trade.

In light of the above court rulings, Barden suggests that for the final results the Department perform a special analysis of profit and sales volume of transactions in the home-market database to determine whether certain sales fall outside a mean profit/quantity amount and thus outside the ordinary course of trade.

Torrington does not agree with Barden's argument that high-profit sales should be excluded from the calculation of CV profit. Torrington notes that, in *AFBs 7* at 54065, the Department rejected similar arguments in which the respondents claimed that section 773(a)(1)(B) of the Act and the Department's new regulations at 351.102(b) require that sales with abnormally high profits be treated as outside the ordinary course of trade. Torrington asserts that the ruling in *CEMEX* is different from the issue at hand here because the Department found "unique or unusual characteristics," apart from differences in profit margins, which rendered the sales outside the ordinary course of trade. Torrington contends that, since there is no such evidence in this case, no modification should be made for the final results.

Department's Position: We disagree with Barden. First, we believe that the circumstances surrounding the CAFC's ruling in *CEMEX* are different from the circumstances here. As Torrington notes, in *CEMEX* we found "unique or unusual characteristics," apart from differences in profit margins, that rendered the sales outside the ordinary course of trade. These characteristics include sales in a niche market and shipping arrangements that differ significantly from standard industry practice. Here, we find that there is not substantial evidence on the record to justify such a determination.

Rather than supporting its argument by citing to record evidence or presenting an analysis based on its reported home-market sales, Barden merely claims that sales with abnormally high profits or sales in small quantities should be found to be outside the ordinary course of trade. Barden attempts to place the burden of substantiating its arguments upon the Department, suggesting that the Department must develop special tests regarding profit and sales volume on the reported home-market sales transactions in order to determine whether such sales are outside the ordinary course of trade. Implementing such a suggestion would cause unnecessary delays in these reviews and impose an inappropriate burden upon the Department. As we stated in the preamble of the new regulations at section 351.405 (page 27358), the burden of showing that profits earned on above-cost sales are abnormal (or otherwise unusable as the basis for CV profit) rests with the party making the claim. If Barden wanted particular sales to be disregarded in the calculation of CV profit, it bore the burden of providing substantial record evidence and analysis to justify excluding those sales. Barden has not met that burden.

We also disagree with Barden's assertion that the courts' rulings in *CEMEX* and *Mantex* support a determination, here, that certain sales in small quantities should be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. As noted above, the burden of establishing that a particular sale (or grouping of sales) is outside the ordinary course of trade rests on the party making the claim. Barden has not provided evidence to substantiate its claim that the sales in question are outside the ordinary course of trade.

Accordingly, we have not altered our calculation of Barden's CV profit for the final results of these administrative reviews.

4. C. *Affiliated-Party Inputs.*

Comment: The petitioner argues that the Department should use the higher of transfer price or actual costs for all NTN affiliated-party inputs. Specifically, the petitioner states that, pursuant to section 773(f)(2) of the Act, the Department should reject NTN's transfer values not meeting the arm's-length test, just as the Department did in *AFBs 7* (at 54065). Torrington makes the additional argument that, due to the circumstances involved (*see* proprietary case brief dated March 16, 1998), the Department should apply facts available in

accordance with the same methodology used in seventh review.

NTN contends that the Department should accept NTN's reported transfer prices for affiliated-party inputs because they reflect market values accurately and that use of facts available is not appropriate. NTN states that it realizes that sections 773(f)(2) and (3) of the Act instruct the Department to disregard certain affiliated-party transactions. However, the respondent emphasizes that these provisions do not apply to the factual situation at hand. NTN claims that there is no record evidence that its affiliated-party input transactions did not reflect arm's-length prices. Moreover, NTN argues that, even if a company sells an input at less than its cost of production, it does not follow that the transfer price is not reflective of a fair market price. NTN then argues that section 773(f)(3) of the Act applies only to "major inputs." Thus, the company believes that the Department's decision in the preliminary results is incorrect because it applied the major-input rule to minor inputs NTN obtained from affiliates. NTN also states that the Department made a ministerial error in its preliminary results by applying section 773(f)(3) of the Act to services provided by affiliates. NTN believes that the Department did not intend to apply the major-input rule to these transactions.

Department's Position: We disagree with NTN that we should accept in all instances its reported transfer prices for transactions between affiliates. Pursuant to section 773(f)(3) of the Act, in the case of a transaction between affiliated persons involving the production of a major input, the Department may consider whether the amount represented as the value of the major input is less than its cost of production. In addition, section 351.407 of the Department's new regulations states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. We have relied upon this methodology in past AFB reviews as well as in other cases. *See, e.g., AFBs 7* at 54065, *AFBs 6* at 2117; *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18449, 18457 (April 15, 1997).

In this case, in our COP questionnaire we asked NTN to provide a list of the major inputs it received from affiliated parties which it used to produce the merchandise under review. NTN responded to the question by directing us to several exhibits. These exhibits listed the inputs NTN considered to be major inputs and provided the respective transfer prices and cost information for the inputs. We examined this information and determined that in some instances the company's reported transfer prices were less than their respective COP. As there were no other market prices available in most instances, we restated NTN's COP and CV in the instances where the affiliated supplier's COP for inputs used to manufacture the merchandise under review was higher than the transfer price.

In this regard, we disagree with NTN's contention that we misapplied section 773(f)(3) of the Act. This section governs the valuation of major inputs. NTN provided information regarding the cost of major inputs it used in manufacturing the subject merchandise; it was reasonable to rely upon the costs of producing these inputs which NTN provided. Therefore, the Department applied section 773(f)(3) correctly for purposes of determining COP and CV for these final results.

Furthermore, we disagree with NTN's allegation that we applied the major-input rule incorrectly, as described above, to processes performed by affiliates in the preliminary results. We intended to apply the the major-input rule to processes performed by affiliates because section 773(f)(3) of the Act directs us to examine the costs incurred for transactions between affiliated persons. These transactions may involve either the purchase of materials, subcontracted labor, or other services.

Finally, we did not find it necessary to use facts available in applying the major-input rule as we did in our previous review of NTN (*see AFBs 7* at 54065) and as suggested by the petitioner for these reviews. NTN provided the necessary information to restate costs appropriately.

4.D. *General, Selling, and Administrative Expenses. Comment:* The petitioner contends that NTN did not include in its calculation of COP and CV the bonus payments it made to its board of directors and auditors. Torrington notes that, in the normal course of business, NTN treats these payments as direct reductions to the company's retained earnings. However, the petitioner believes NTN should include these bonus payments in COP and CV in the same manner as any other current personnel expense. To adjust for this omission, the petitioner first suggests that the Department allocate the omitted cost exclusively to the merchandise under review. Second, Torrington suggests that the Department re-characterize all other reductions to "retained earnings" as current expenses because NTN apparently uses "retained earnings" to pay current expenses.

NTN counters that it excluded the bonuses distributed from retained earnings from its COP and CV calculations appropriately. NTN argues that the Department has determined on numerous occasions that these type of bonuses are similar to dividend payments and, accordingly, are not production costs, citing *Final Results of Antidumping Duty Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 57 FR 4951, 4957 (February 11, 1992), and *Final Results of Antidumping Administrative Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 56 FR 41508 (August 21, 1991). Furthermore, NTN argues that these bonuses should not be considered as a personnel expense because the payments are not for contractual remuneration, the disbursement is a distribution from retained earnings, and the company makes this distribution when it deems it appropriate.

Department's Position: We agree with the petitioner that these bonus payments which NTN distributed through its retained earnings represent compensation for services provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we believe that it is appropriate to include these amounts in the calculation of COP and CV. Moreover, including this type of bonus payment in COP and CV is consistent with our treatment of this type of retained-earnings bonus distributions in the *Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8921 (February 23, 1998). In that proceeding, we determined that the amounts distributed by the respondents represented compensation for services which the individual had provided the companies. In the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995), and the *Final Results of Antidumping Duty Administrative Review of Porcelain-on-Steel Cookware from Mexico*, 62 FR 25908, 25914 (May 12, 1997), we also made similar determinations. In both instances, we determined that the respondents' bonuses and profit-sharing

distributions were forms of compensation and not dividends. Hence, we disagree with NTN's classification of these payments as dividends and its claim that the inclusion of these amounts in COP and CV contradicts our normal practice. We have revisited this issue in more recent cases and, based on a more thorough analysis, revised the position that we took in the TRBs decisions NTN cited.

As to the petitioner's suggestion that this bonus distribution only relates to the production of subject merchandise, we disagree. We found that this distribution relates to the administrative activities of the company as a whole and should be treated as such because it is not specific to the manufacture, design or sale of the product under review. We also disagree with petitioner's suggestion that it is necessary to include all other reductions made to "retained earnings" in the calculation of COP and CV. We reviewed the information on the record and found no evidence to suggest that NTN's other retained-earning distributions related to current expenses of the company. As for revising NTN's reported costs, we reviewed the information on the record and noted that the excluded amount is insignificant in this instance; inclusion of this bonus in the calculation of the dumping margins would have a minuscule effect on the final margin calculations. Therefore, while our policy is to include such amounts in our calculations because it has no effect on the final margins, for these final results, we have not included the bonus payments that NTN distributed from its retained earnings to its board of directors and auditors.

4.E. *Cost Variances. Comment*: The petitioner argues that the Department should restate NTN's reported cost variance to conform with variances reported in the company's normal books and records. The petitioner alleges that NTN is manipulating its reported COP and CV because it calculated its reported variances inconsistently. According to the petitioner, NTN calculated some of its models' variances based on product-specific costs while others were based on general plant-wide costs. Torrington asserts that the Department's acceptance of respondent's different calculation methods allows respondent too much potential for cost manipulation. Thus, petitioner suggests that the Department rely on the variances NTN calculated in the normal course of business.

NTN does not object to the Department's use of the company's variances calculated in the normal course of business. However, NTN points out that it only recalculated its submitted variances to conform voluntarily with previous Departmental decisions on this issue. Consequently, NTN does not believe that a revision of its reported COP and CV is necessary.

Department's Position: We disagree with the petitioner that the variances NTN used in the calculation of COP and CV distort model-specific costs. In *AFBs 4* at 10928, the Department determined that NTN's application of a plant-wide variance shifted costs unreasonably between products. Moreover, the Department found that the cost-accounting system the company used in the ordinary course of business maintained the necessary data to calculate more specific variances. Since completion of that administrative review, we have required NTN to compute its reported variances on the more specific basis when calculating COP and CV. For the instant reviews, we found NTN's more-specific variance computations reasonable because they allocate costs to products under review accurately. We also found that NTN only applied plant-wide variances to those models that it manufactured in facilities dedicated to producing only a single product type. If a facility produced more than one product type, NTN calculated and applied product-specific variances. At verification, we reviewed and tested NTN's method of calculating its product-specific variances (*see Memorandum from Stan Bowen to Chris Marsh*, pages 14, 15, 16, and related cost-verification exhibits (January 30, 1998)). The following is a summary of the verification steps we performed: (1) we reconciled NTN's submitted variances to source accounting records; (2) we confirmed that NTN calculated the submitted variances in the same manner as the variance calculated in the normal course of business; (3) we reconciled NTN's product-specific variances to respective plant-wide variances used in the normal course of business; (4) we confirmed that NTN grouped physically similar models when calculating its product-specific variances; and (5) we confirmed that NTN used the same method of calculating its various product-specific variances consistently. Our testing and review noted no exceptions. Therefore, for these final results, we have accepted NTN's product-specific variances and used them to calculate NTN's COP and CV.

5. Further Manufacturing

Comment: NSK–RHP argues that the Department erred when it did not apply the "special rule" for NSK–RHP's further-manufactured merchandise. NSK–RHP asserts that the Department erred when it used its traditional value-added methodology based on respondent's Section E data. NSK–RHP maintains that the weighted-average entered value of merchandise subject to further manufacturing is less than 35 percent of the net selling price to its unaffiliated U.S. customer; thus, it contends, these sales qualify for the special rule. NSK–RHP asserts further that there is a sufficient quantity of U.S. sales of finished bearings to provide a reasonable basis for comparison.

Torrington responds that the Department's rejection of the special rule was a proper exercise of its discretion. Torrington argues that the Department retains the authority to both employ and excuse Section E data as the basis of its further-manufacturing analysis. The Department need not modify the preliminary results with regard to the further-manufactured products, Torrington maintains, since calculating the value added clearly did not impose an added burden upon the Department.

Department's Position: We agree with the petitioner. As we stated in our new regulations, the special rule for further manufacturing exists in order to reduce the Department's administrative burden. 62 FR at 27353. *See*, also, section 772(e) of the Act, which provides that the Department need only apply the special rule where it determines that the use of such alternative calculation methodologies is appropriate. We retain the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate. *Id.* Respondent submitted Section E data in its questionnaire and supplemental responses. We acted within our discretion by employing this data to calculate the U.S. value added, as the calculation involves little more than the subtraction of the value-added figures which NSK–RHP provided. Thus, this case does not present the complex data-gathering and calculation burdens contemplated by the special rule.

6. Packing and Movement Expenses

6.A. *Repacking Expenses. Comment*: NSK and NSK–RHP argue that the Department should deduct U.S. repacking expenses as a movement expense. Both respondents state that U.S. repacking is an element of warehousing and as such should be classified like a warehousing expense under section 772(c)(2)(A) of the Act of 1930. NSK and NSK–RHP also contend that the Department's reasoning as expounded in *AFBs 7* at 54067 is flawed: the fact that respondents would

not repack merchandise if they did not have to in order to make a sale does not make repacking expense a selling expense. NSK and NSK–RHP assert that for the final results the Department should deduct U.S. repacking as a movement charge from CEP and exclude U.S. repacking from the calculation of CEP profit.

Torrington argues that the Department should not treat U.S. repacking expense as a movement expense. It asserts that the Department's existing position is valid. Furthermore, Torrington asserts that repackaging is a function of selling. Moreover, Torrington believes that the expense is incurred by reason of the sale, which is the test for a *direct* selling expense, and cites *Torrington* at 1050. In Torrington's view, the mere fact that the above-named companies do not retain sale-by-sale records does not change this basic character of the repacking. Accordingly, Torrington concludes that the Department's *AFBs 7* determination remains valid.

Department's Position: We disagree with NSK and NSK–RHP. As NSK and NSK–RHP note, section 772(c)(2)(A) of the Act covers "transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." *See* SAA at 153. We do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. Rather, we view repacking expenses as direct selling expenses respondents incur on behalf of certain sales which we deduct pursuant to section 772(d)(1)(B) of the statute, which directs us to reduce CEP by "expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties."

We also disagree with NSK and NSK–RHP's characterization of repacking expense as a warehousing expense. We regard repacking expense as a direct selling expense because it was performed on individual products in order to sell the merchandise to the unaffiliated customer in the United States. Warehousing expense, on the other hand, is merely an expense associated with storing the merchandise in a location before or during the movement process. As noted above, repacking does not have to be performed in order for merchandise to be moved while warehousing may be required in the movement process. Thus, we conclude that U.S. repacking expense is an expense associated with selling the merchandise.

6.B. *Inland Freight. Comment 1:* Torrington contends that the Department should reject the home-market inland-freight expenses which SKF Italy, SKF France, SKF Sweden, Barden, Koyo, FAG Italy, and NSK–RHP reported because those expenses are distortive since respondents failed to account for modes of transportation or distances shipped. Torrington asserts that freight charges are likely to be affected by the latter factors, noting that respondents' customers are located in different parts of the domestic markets and that in some situations sea transport might have been necessary. Due to the potential for distortion, Torrington asserts that the respondents should have employed a more specific per-unit freight-cost calculation methodology. Torrington states that, since the Department's dumping analysis is transaction-specific and given that variances in freight expenses may, in part, be a function of distance, the derivation of an average freight expense using a factor based on total transport expense and total transport weights or total sales values provides over-stated freight expenses in certain instances. Torrington states further that transaction-specific reporting is feasible, as Torrington's affiliate exporting from Germany, Torrington Nadellager, demonstrated.

SKF Italy, SKF France, and SKF Sweden respond that the Department has verified the accuracy of the expense and weight components of their inland-freight factors in these and earlier reviews and found those factors to be a reasonable reflection of SKF's freight expenses. The respondents assert that the Department has broad discretion under the post-URAA statute to employ the allocation of expenses when transaction-specific reporting is not feasible, provided such allocation does not cause inaccuracies or distortions. SKF Italy, SKF France, and SKF Sweden contend that the fact that transaction-specific reporting may be feasible for Torrington Nadellager is irrelevant to a determination of whether such reporting is feasible for other respondents. Therefore, SKF Italy, SKF France, and SKF Sweden state, the Department should continue to accept their reported home-market inland-freight expenses.

Barden argues that Torrington has not demonstrated sufficiently that Barden's methodology is in fact distortive. Barden claims that it is unable to report freight amounts on a shipment-specific basis from its records and that the Department has verified this on three separate occasions, most recently in these reviews. Barden argues further that the record demonstrates that it ships a significant amount of bearings in the home market using the regular postal service. Barden asserts that all postal rates are dependent upon weight, not distance, in England.

In rebuttal, Koyo states that, as it reported in its response, its home-market freight expenses are not incurred on a distance (or weight or volume) basis. Koyo argues that the methodology which it has used in prior reviews reflects Koyo's experience of shipping to hundreds of customer locations from various Koyo warehouses and plants throughout its home market. In summary, Koyo argues that Torrington's argument regarding its home-market freight expenses should be rejected and that Koyo's freight adjustment should be accepted as in all prior reviews.

FAG Italy contends that the Department should accept its reporting methodology unless Torrington can provide evidence of distortion. FAG Italy asserts that, in accordance with the questionnaire, it allocated freight expenses on the basis incurred, *i.e.*, by weight, and contends that there is nothing on the record to suggest that freight charges are dependent upon distance. Furthermore, FAG Italy notes that in its supplemental questionnaire response it stated that freight rates are based upon weight of the merchandise and do not vary significantly based upon the customer's destination.

NSK–RHP responds that it is unable, and should not be required, to submit freight charges on a transaction-specific basis. NSK–RHP argues that it used largely its own fleet of vehicles to ship merchandise to home-market customers and that it should not be forced to maintain freight accounts in the manner of Torrington's foreign affiliate. NSK–RHP asserts that the Department has verified and accepted previously its allocation of freight expense on the basis of weight and, therefore, has recognized that freight expenses are often not incurred on a transaction-specific basis.

Department's Position: We disagree with Torrington that respondents' reported home-market inland-freight expenses should be disallowed as distortive. In the first instance, Torrington's argument about the Department's uses of a transaction-specific analysis is not thoroughly accurate. While we do initially examine transaction-specific information on home-market sales, ultimately we

calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices. Respondents in different markets incur freight charges on different bases and frequently on more than one basis. These factors generally make the calculation of a transaction-specific expense infeasible and no more reasonable than the allocation techniques respondents employed for these reviews. We are satisfied that the components of respondents' reported inland-freight expenses were reported accurately and allocated reasonably for the calculation of normal value. Therefore, we have continued to use these reported expenses in our final results.

Comment 2: Torrington contends that, because NTN calculated home-market pre-sale inland-freight expenses based upon sales values, the Department should disallow this expense or, at the minimum, apply the lowest per-unit amount reported by any other Japanese respondent as a facts-available solution. Torrington states that determining this expense based upon sales value is unnecessary and yields distortive results. Torrington states further that Torrington Nadellager was able to make allocations for this expense by invoice and that other respondents should be able to do the same.

NTN states that the Department verified the reported movement expenses and found them to be accurate and, as such, it should use them for the final results. In addition, NTN states that Torrington's argument regarding Torrington Nadellager's experience is illogical. NTN states that the argument completely ignores the fact that the Department's determination must be based on the facts unique to NTN, citing *Ipsco. Inc.* v. *U.S.*, 899 F.2d 1192, 1197 (Fed. Cir. 1990).

Finally, NTN argues that the Department's decision in *AFBs 7* must apply here since there have been no changes in law or fact which would compel a different result in these reviews.

Department's Position: In these reviews, we have accepted the methodology NTN used in past reviews. We did not find it to be distortive in those reviews and do not find it distortive here. See *AFBs 7* at 54084. Furthermore, we verified NTN's methodology for these reviews and found it to be reasonable because NTN explained that it can not calculate these expenses on a transaction-specific basis (*see* verification report dated January 22, 1998, at 8). Finally, one respondent's experience or recordkeeping system can not be imposed on another respondent. Therefore, we have accepted NTN's methodology for allocating freight expenses in the present reviews.

Comment 3: Torrington asserts that SKF Sweden might have overstated the reported per-unit cost of inland freight from warehouse to customer by including freight revenue in the numerator of the factor calculation.

SKF Sweden contends that it did not overstate the reported per-unit cost of inland freight from warehouse to customer. SKF Sweden asserts that, in order to calculate the total freight expense to use as the numerator in the freight-expense factor calculation, it must sum freight expenses from two separate freight accounts, freight revenue (freight which SKF Sweden initially incurred but later charged to customers) and freight expenses. SKF Sweden notes that it reported the actual per-unit freight revenue it received from its customers separately.

Department's Position: We agree with SKF Sweden that it did not overstate the per-unit cost of inland freight from warehouse to customer. The respondent calculated the reported per-unit cost of inland freight from warehouse to customer by applying a freight factor to the weight of each bearing shipped. SKF Sweden's invoice price includes an amount for freight paid by its customers. Therefore, to calculate the freight factor, SKF Sweden added the amount of freight it ultimately incurred on its own account to the amount of freight it initially incurred but later charged to customers, and it divided the sum by the corresponding weight of all bearings shipped. Since SKF Sweden reported the amount of freight revenue it received separately in its response and we added this revenue to the unit price, we must take into account freight costs SKF billed to its customers in calculating the numerator of the freight-factor calculation. This avoids understating SKF Sweden's total freight costs. The *AFBs 7* verification report for SKF Sweden's home-market sales contains a detailed explanation of how the respondent calculated this per-unit adjustment. We have included a public version of the report as an attachment to our May 29, 1998, analysis memorandum for the final results of this administrative review for SKF Sweden.

6.C. *Ocean and Air Freight. Comment 1:* Torrington argues that the Department should not have allowed Koyo to aggregate and then allocate ocean-and air-freight costs. Moreover, the petitioner notes that Koyo made no attempt to demonstrate that the failure to report separate amounts for ocean- and air-freight expenses did not distort the reported freight costs. As such, Torrington believes that the Department should not accept Koyo's position that it does not maintain a database that permits it to trace individual transactions. In addition, Torrington asserts that the Department should reject Koyo's reporting and recalculate a separate air-freight factor.

Koyo states that nothing in its recordkeeping or data-reporting methodologies has changed from previous reviews and that the Department has verified and accepted Koyo's treatment of these expenses. Koyo contends further that nothing in its response to the Department's requests for additional information demonstrates an ability to identify air-freight shipments with specific U.S. sales.

Department's Position: We disagree with Torrington. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. *See, e.g., AFBs 7* at 54081. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. *See AFBs 6* at 2121; *see also The Torrington Company* v. *United States*, Slip Op. 97–57 at 11–14 (CIT May 14, 1997) (affirming the Department's methodology for accepting co-mingled ocean and air freight where a respondent could not report the two expenses separately). Furthermore, we note that section 351.401(g) of our new regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. While the new regulations are not binding in the instant reviews, they are a codification of our practice in this area. *See* also *AFBs 7* at 54081. While we have considered Torrington's claim that aggregating and then allocating air and ocean freight is potentially distortive, we find that this allocation is not unreasonably distortive.

Because we determined that the respondent acted to the best of its ability, it would be improper to make adverse inferences about its reported data by applying facts available simply because its recordkeeping system does not record the data on a transaction-specific basis. Therefore, we have

accepted Koyo's reported air-and ocean-freight expenses.

Comment 2: Torrington argues that the Department should disallow SKF Italy's attribution of air-freight expenses to all EP sales, but it should distinguish such shipments on a transaction-specific basis. The petitioner contends that the Department should not assume that more accurate delineation of transportation expenses for EP sales is not feasible. Torrington states that the diluted attribution of the expense distorts the calculation of net prices for EP transactions. Torrington suggests that the Department increase international-freight expenses for SKF Italy's EP transactions with a factor representing the additional cost of air freight.

SKF Italy counters that it would be inappropriate for the Department to segregate and identify the expense on a transaction-specific basis, since transportation of the shipments in question is dictated by SKF's determination to maintain inventory balances rather than customer orders. SKF states that it has calculated a separate international-freight factor for EP transactions and that the Department has verified and accepted this methodology in verifications of previous responses.

Department's Position: We disagree with Torrington that SKF Italy's reporting of air-freight expenses for EP transactions distorts the calculation of net prices for those transactions. In verifications of the expense in past reviews we have found that SKF has reported it in the best manner that its records will allow. It was not feasible to tie the air shipments to specific transactions. Thus, we determined its methodology of allocating the expense to the specific customer to be a reasonable attribution of the expense to EP sales. There is no information in the record of these reviews that would indicate that the attribution of the expense is no longer reasonable. Because SKF has acted to the best of its ability, we have continued to accept SKF's reporting methodology for the final results.

7. Affiliated Parties

Comment 1: Torrington claims that the Department should apply facts available to Nachi because Nachi reported sales it made to its affiliated resellers instead of sales which the affiliated resellers made to unaffiliated customers. Citing the preamble of the Department's regulation at section 351.402, Torrington argues that the volume of sales to unaffiliated resellers is greater than the regulatory threshold that the Department considers significant. Torrington also claims that the letters Nachi's affiliated resellers provided claiming an inability to report resales are unconvincing. Citing *Fresh Cut Flowers from Colombia*, 62 FR 53287 (October 14, 1997) (*Colombian Flowers*), Torrington argues that the Department has previously required small companies to adhere to similar standards in other proceedings regardless of the computer capacity of the company involved. In addition, Torrington notes that the Department's verification report does not address whether sales to affiliated resellers were at arm's-length prices. As facts available, Torrington suggests that the Department increase dumping duties by an amount equal to the value of the sales to resellers multiplied by the applicable facts-available margin for cooperative respondents for both BBs and CRBs.

Nachi contends that it has reported its sales to the best of its ability and that the Department tested its sales to affiliated resellers to ascertain whether they were made at arm's length. Nachi argues that the verification report's silence on the issue of sales to affiliated parties indicates the Department's acceptance of the evidence Nachi submitted. In addition, Nachi contends that Torrington's citation to *Colombian Flowers* is inapposite, since the case does not establish a rule as to how much information is required to determine that a respondent with limited computer capabilities has reported information to the best of its ability. Accordingly, Nachi argues that the record of these reviews demonstrates that Nachi has reported its sales to the best of its ability and that it would be contrary to law to apply adverse facts available.

Department's Position: We disagree with Torrington that the use of facts available is warranted. The record shows that Nachi attempted to obtain downstream-sales information from its affiliates, but it was unable to do so because "these affiliates are small companies with unsophisticated computer systems that do not permit them to retain the sales data required by the Department." *See* Nachi's Supplemental Questionnaire response dated November 10, 1997, at page 11 and the letters from the affiliates contained in Exhibit A/1.f of Nachi's Section A Response dated September 5, 1997. No evidence on the record contradicts this claim.

Furthermore, Torrington's citation to the preamble to the new regulations does not compel the use of facts available in this case. Although the regulation to which Torrington cites does not govern these administrative reviews, they do reflect current practice. Section 351.403(d) of the new regulations states that "the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question." The preamble to the regulations at section 351.403 also states that "we have decided to codify the Department's current practice regarding the reporting of downstream sales when the volume of sales to affiliates is small. Under our current practice, we normally do not require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales." 62 FR at 27356. Those provisions do not indicate that we will necessarily base normal value on sales by affiliates in every circumstance. Rather, the preamble states that "(t)he Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length." *Id.* Thus, while we normally require respondents to report sales by affiliates rather than sales to affiliates, we can and do make exceptions on a case-by-case basis. In this case, we have accepted Nachi's sales to affiliates *in lieu* of sales by Nachi's affiliates for the following reasons: (1) the large overall number of sales to unaffiliated customers Nachi reported; (2) the fact that the majority of sales Nachi made to affiliated customers were made at arm's-length prices (*see* the margin calculation program attached to Nachi's Final Results Analysis Memorandum dated May 12, 1998); and (3) Nachi's inability to obtain those prices from its affiliates.

Finally, we agree with Nachi that *Colombian Flowers* is inapposite. In *Colombian Flowers* we did not establish a rule that must be applied in other cases but, rather, we stated our practice of determining whether to accept a respondent's sales to its affiliates instead of sales by its affiliates on a case-by-case basis. Therefore, for these final results we have based normal value on Nachi's sales to its affiliates

where we determine that those sales were made at arm's-length prices.

Comment 2: Torrington argues that the Department should increase Nachi's dumping margin to account for certain sales Nachi made to affiliated parties but did not report to the Department. Torrington states that Nachi excluded sales to affiliates of the foreign like product in the comparison market which Nachi sold for consumption. Torrington claims that, had they been reported, a portion of these unreported sales would have been matched to U.S. sales and thus resulted in margins. Torrington suggests as facts available that the Department increase dumping duties by an amount equal to the unreported sales multiplied by the facts-available margin for cooperative respondents.

Nachi claims that the Department should accept the exclusion of these sales from its home market database because these sales were outside the ordinary course of trade. According to Nachi, the total volume of sales was extremely small and its affiliated customers purchased the bearings for the purpose of repairing machinery and not resale. Nachi also states that it made these sales at aberrant prices.

Department's Position: We agree with Torrington that Nachi should have reported certain sales made to affiliated parties. In the questionnaire, we asked all respondents to "report (their) sales to affiliated customers that consume the foreign like product." *See* questionnaire dated June 20, 1997, at B–7. Nachi failed to report these sales and did not explain why it did not report these sales either in its original response or its supplemental response. The company did not claim that these sales were outside of the ordinary course of trade until its March 23, 1998, rebuttal brief, and there is no evidence on the record to demonstrate that these sales actually are outside the ordinary course of trade. In addition, Nachi was obligated to report all sales, irrespective of the number of sales being excluded, and we do not consider the ultimate use of a bearing to be a relevant factor in our dumping analysis. Because there is no information on the record concerning the kinds, quantities, or values of bearings Nachi failed to report, we are adopting Torrington's suggestion for adverse facts available.

Comment 3: Torrington contends that Koyo did not report resales by all its resellers as the Department requested in its questionnaire and urges the Department to apply facts available to all models for which Koyo did not report home-market reseller sales. Torrington states that Koyo admitted it would have been possible, but that compliance efforts would be "out of proportion" to the fraction of home-market sales involved.

In rebuttal, Koyo states that it consulted with the Department on this issue prior to responding to the questionnaire. Specifically, Koyo reasons that it conferred with the Department as to whether it was acceptable to report (1) its sales to certain affiliated resellers rather than the sales by those affiliates to their customers, and (2) the percentage of sales made to the affiliated resellers rather than those affiliates' resales. Koyo argues that, although the volume of merchandise involved is small, the number of transactions is enormous. Furthermore, Koyo explains that the subject affiliates do not maintain either their sales information in a computerized format consistent with Koyo's records or their sales records according to the product descriptions Koyo uses. Thus, Koyo contends that the amount of work required to collect this data would involve an amount of time that ultimately would be disproportional to the volume of sales. Koyo also states that it used the same methodology in these reviews as in the 1994/95 and 1995/96 reviews. Finally, Koyo argues that the amount of sales involved accounts for less than five percent of the firm's total sales of the foreign like product.

Department's Position: We disagree with the petitioner. Koyo notified us of its intention to report sales to affiliated customers in the home market prior to answering our questionnaire (Koyo reported its direct sales to unaffiliated customers as well). Given that the sales to certain affiliated customers, for which collecting the data regarding the resales would be a major undertaking, constituted less than five percent of Koyo's home-market sales, we agreed that Koyo could report the sales to these affiliates and that it would not be necessary to report those affiliates' resales. Furthermore, since the quantity of these sales is below the five-percent threshold as stated in the new regulations at 351.403, we determined that facts available is not warranted in this case.

8. Sample Sales/Prototypes and Zero-Priced Transactions

On June 10, 1997, the CAFC held that the term "sold" requires both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation lacked consideration. *Id.* Moreover, the CAFC found that, since free samples did not constitute "sales," the Department should not have included them in calculating U.S. price.

In light of the CAFC's opinion, we have re-evaluated and revised our policy with respect to sales of sample products. Therefore, pursuant to the CAFC's opinion, the Department now excludes from the margin calculation sample transactions for which a respondent has established that there is no transfer of ownership and no consideration.

This new policy does not mean that the Department automatically excludes from analysis any transaction to which a respondent applies the label "sample." In fact, in these reviews, we determined that there were instances where we should not exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party in possession of the needed information. *See, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (Fed. Cir. 1993) (citing *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993), and *Tianjin Mach. Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992)). In several cases, as discussed below, respondents failed to demonstrate or to submit documentation to show that their claimed sample sales lacked consideration. When respondents failed to support their sample claim, we did not exclude the alleged samples from our margin analysis. Because the inclusion of zero-priced transactions in the home-market database would benefit respondents by lowering average normal value, however, we excluded zero-priced items from the home-market database when such unsupported transactions occurred in the home market.

With regard to home-market sales, in addition to excluding home-market sample transactions which do not meet the definition of "sales," we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Act when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

With regard to assessment rates, in order to ensure that we collect duties only on sales of subject merchandise, we included the entered values and quantities of the sample transactions in our calculation of the assessment rates, and we set the dumping duties due for

such transactions to zero. We have done this because U.S. Customs will collect the *ad valorem* (or per-unit, where applicable) duty-assessment rate on all entries of subject merchandise regardless of whether the merchandise was a sample transaction. However, to ensure that sample transactions do not dilute the cash-deposit margin, we excluded both the calculated U.S. prices and quantities for sample transactions from our calculation of the cash-deposit rates.

Comment 1: Torrington contends that the Department should include SKF Germany's reported home-market sample and prototype sales in the final margin calculation. Torrington argues that SKF Germany did not reply to many of the Department's requests for information to support such an exclusion (*i.e.*, comparison of prices and quantities of samples and non-samples). Torrington also submits that, in its supplemental questionnaire response, SKF Germany admitted that it did not respond to the Department's inquiries purposely because the effort to do so would be disproportionate to any potential benefit. Citing *Fujitsu*, Torrington argues that the respondents have the burden of proof to establish that the sales in question were made outside the ordinary course of trade.

SKF Germany argues that the Department should exclude its home-market sample and prototype sales. SKF Germany submits that, given the few sample and prototype sales it made, it did not find it necessary to provide detailed information to the Department's exhaustive request for information. SKF Germany posits that the Department should rely on the same information provided in these reviews as it provided in *AFBs 7*. SKF Germany also states that its three-page narrative is responsive and the identification of these sales in its sales listing should be sufficient to warrant the exclusion of such sales from the margin calculation.

Department's Position: We agree with Torrington. Our practice is to exclude home-market sales transactions that are outside the ordinary course of trade based on the circumstances particular to the sales in question. However, despite our additional request for information in our supplemental questionnaire, SKF Germany has not demonstrated that the circumstances relating to these home-market sales are outside the ordinary course of trade and, therefore, we have included them in our analysis.

Comment 2: Torrington argues that the Department should include SKF Germany's reported zero-value and non-zero-value U.S. sample and prototype sales in the final margin calculation. Torrington contends that SKF Germany did not provide all of the data, including price and quantity comparisons, necessary for the Department to determine whether such sales lacked consideration to support their exclusion from the dumping analysis.

SKF Germany rebuts that it did provide enough data to establish that its zero-priced transactions lacked consideration to support their exclusion from the dumping analysis. SKF Germany argues that, pursuant to the Department's supplemental questionnaire, it answered in detail each of the five questions in the Department's questionnaire and it provided sales, cost, price, and quantity data for all sales transactions in question. SKF Germany contends that it has provided all necessary data to support the exclusion of its zero-priced U.S. sample and prototype sales from the final margin calculation.

Department's Position: We disagree with Torrington. Based on the information provided in SKF Germany's responses, we determined that no consideration was provided for SKF Germany's reported U.S. zero-priced transactions and prototype sales. Therefore, we did not calculate a margin on U.S. sales which SKF Germany designated as zero-priced samples or prototypes.

Comment 3: Torrington argues that, since Koyo is not requesting the exclusion of any U.S. sample sales or prototype sales from the margin calculation, the Department should assume that any zero-priced U.S. sales are nevertheless for consideration and not exclude them from the database.

Koyo does not oppose Torrington's suggestion.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information. Koyo did not answer our questions regarding the purchase history of parties receiving samples. Koyo also did not answer our questions regarding comparisons of the prices and quantities involved in sample and non-sample transactions. Lacking knowledge of the details of these transactions, we can not conclude that Koyo received no consideration for these alleged samples. Therefore, for these final results, we have included Koyo's samples sales in its U.S. sales database in calculating the margins.

Comment 4: NTN requests that the Department exclude its sample sales from its U.S. sales databases in accordance with the CAFC's ruling in *NSK*. NTN also states that, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2581 (January 15, 1998), the Department stated that it had reconsidered its policy with respect to samples and would now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership and no consideration. Finally, NTN states that zero-priced sales, by their very nature, lack consideration.

Torrington argues that NTN has the burden of proving entitlement to any favorable claim. Torrington asserts that NTN does not represent, much less demonstrate with facts, that no consideration is involved in its U.S. sample transactions. Rather, Torrington maintains, NTN merely asserts that zero-priced sales, by their very nature, lack consideration. Torrington states that NTN has failed to provide facts showing the absence of consideration, other than the zero price, and that the Department should reject the claim.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. NTN did not answer our questions regarding the purchase history of parties receiving samples or our questions regarding comparisons of the prices and quantities involved in U.S. sample and non-sample sales adequately. The answers to these questions would have aided us in determining whether the alleged sample sales were, in fact, zero-priced samples with no consideration or, instead, provided essentially as a discount in conjunction with other sales. Because NTN did not provide the details we requested, we can not conclude that NTN received no consideration for these alleged samples. NTN withheld information within the meaning of section 776(a)(2)(A) of the Act and, in so doing, failed to cooperate by acting to the best of its ability to comply with our information request within the meaning of section 776(b) of the Act. Thus, we have determined that an adverse inference is appropriate. Therefore, for these final results, we have included NTN's claimed sample sales in its U.S. sales database.

Comment 5: NTN states that sample sales with abnormally high profits

should be excluded from the calculation of normal value. NTN asserts that normal value must be based on sales made in the home market that are in the "ordinary course of trade." NTN states that the ordinary-course-of-trade provision serves an important purpose: "to prevent dumping margins from being based on sales which are not representative" of the home market, citing *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (CIT 1988). NTN states further that, to guarantee that sales the Department uses to calculate normal value are representative, the Department examines "the circumstances particular to the sales in question," citing *CEMEX* at 6. Finally, NTN states that a profit-level comparison is probative of the economic reality of the sales and therefore the disparity in profit margins is indicative of sales that were not in the ordinary course of trade, citing *Mantex* v. *United States*, 841 F. Supp. 1290, 1308 (CIT 1993).

Torrington states the Department should include all alleged samples in NTN's home-market database. Torrington states that providing samples is ordinary practice in the market for bearings and the fact that NTN records transactions as "samples" in its books is not a basis for allowing the company to exclude arguably higher-price transactions from its antidumping database, as that would be a self-serving practice. Furthermore, Torrington states that NTN failed to show that profits it earned on particular transactions were aberrational or abnormal, and, thus, outside the ordinary course of trade. Finally, Torrington states that no one factor can determine whether particular transactions are within or outside the ordinary course of trade, citing *CEMEX*.

Department's Position: We agree with Torrington. With regard to home-market "sample" sales which NTN claimed were outside the ordinary course of trade, our practice is to exclude home-market sales transactions from the margin calculation as outside the ordinary course of trade based on *all* the circumstances particular to the sales in question. *See Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993). With regard to NTN's abnormally high-profit sales, the presence of profits higher than those of numerous other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sale in question which make it unrepresentative of the home market. *See CEMEX*, 133 F.3d at 900 (citation omitted). However, NTN has provided no information other than the numerical profit amounts to support its contention that these home-market sales had abnormally high profits. The simple fact of high profits, standing alone, is not sufficient to find sales to be outside the ordinary course of trade. Accordingly, we have not excluded NTN's "sample" sales with allegedly high profits in calculating normal value.

Comment 6: Nachi argues that the Department should have excluded its claimed home-market prototype sales. Nachi contends that it demonstrated that these sales were outside the ordinary course of trade and the Department verified the accuracy of the claim.

Torrington disagrees, asserting that Nachi did not provide the information the Department requested with regard to its home-market prototype sales. Torrington contends further that whether the Department verified the fact that these sales were outside the ordinary course of trade can not remedy Nachi's failure to respond to the Department's questionnaire.

Department's Position: We agree with Nachi. Nachi demonstrated at verification that its home-market prototype sales are outside of the ordinary course of trade. *See* the Department's home-market verification for Nachi report dated January 26, 1998, at page 11. Therefore, we have excluded such sales from our analysis for these final results.

9. Export Price and Constructed Export Price

Comment 1: SKF Sweden asserts that the Department erroneously deducted the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States from the price used to establish the CEP. SKF Sweden argues that the Department should not deduct these expenses because they are not associated with commercial activity occurring in the United States.

Torrington requests that the Department continue to deduct these expenses from CEP. Citing to the SAA at 823 and the Department's new regulations at 351.402(b), Torrington asserts that the Department will generally make a deduction from CEP for expenses associated with commercial activities in the United States. Torrington contends that, since SKF Sweden's U.S. affiliate bore the expenses at issue, the costs are associated with U.S. commercial activity.

In addition, Torrington suggests that because the expenses relate to the transit of goods from Europe to the United States, the expenses should be deducted as a movement expense under section 772(c)(2)(A) of the Act.

Department's Position: We agree with SKF Sweden that the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States should not be deducted from the price used to calculate CEP. It is evident from both the SAA at 823 and our new regulations that, under section 772(d) of the Act, we only deduct from CEP the expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. We find that the expenses at issue are not associated with commercial activity in the United States and do not relate to the resale to the unaffiliated customer. Rather, these inventory carrying costs reflect part of the interest expense SKF Sweden incurred when it extended credit on the sale to its U.S. affiliate. Our new regulations direct us clearly not to deduct from the starting price any expense that is "related solely to the sale to an affiliated importer in the United States," *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate (*see* 351.402). Thus, for the final results, we did not deduct these expenses from CEP.

We also disagree with Torrington's suggestion for treating the inventory carrying costs as a movement expense. Section 772(c)(2)(A) of the Act instructs us to reduce CEP by "* * *: the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to *bringing* the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * *" (emphasis added). The expenses at issue do not relate to "bringing" the subject merchandise from Sweden to the United States. As noted above, the expenses reflect the financing cost of holding inventory. Thus, we have not treated the inventory carrying costs as a movement expense.

Comment 2: Torrington argues that, with respect to certain sales made through one of FAG Italy's U.S. affiliates, to calculate CEP in accordance with section 772(d)(1)(A) of the Act the Department should have deducted the warehousing commissions and sales commissions paid to affiliated warehousing companies rather than deducting pre-sale warehousing expenses and indirect selling expenses for these sales. Torrington argues that

under no circumstance should the Department resort to the amounts reported for pre-sale warehousing expenses and indirect selling expenses over the actual commission amounts FAG Italy's U.S. affiliate paid to an affiliated warehousing company. Torrington argues further that the statute prefers the use of the commissions over adjustments like pre-sale warehousing expenses and indirect selling expenses on the basis that commissions are direct and reflect the actual amount paid while pre-sale warehousing expenses and indirect selling expenses are costs. In support of this argument, Torrington cites *Smith Corona Group* v. *United States*, 713 F.2d 1568, 1575 (Fed. Cir 1983), cert. denied, 465 U.S. 1022, 79 L.Ed.2d 679 (1984).

FAG Italy supports the Department's methodology of deducting pre-sale warehousing expenses and indirect selling expenses rather than deducting the commissions paid to affiliated warehousing companies. FAG Italy argues that commission payments between affiliated parties are not actual expenses within the meaning of the antidumping law. On the basis that commission payments between affiliated parties are not actual expenses, FAG Italy suggests that Torrington's argument for deducting actual amounts supports rather than disputes the Department's methodology.

Department Position: We disagree with Torrington's contention that in calculating the CEP of FAG Italy's U.S. sales we should have deducted certain warehousing commissions and sales commissions rather than pre-sale warehousing expenses and indirect selling expenses.

The sales that Torrington addresses in its comment were made by one of FAG Italy's U.S. affiliates to unaffiliated customers through affiliated warehousing companies. For these CEP sales, FAG Italy's U.S. affiliate paid both a sales commission and a warehousing commission to the affiliated warehousing companies. FAG Italy asserted on page 24 of its December 3, 1997, supplemental questionnaire response that the Department should deduct pre-sale warehousing expenses incurred on these transactions and not the warehousing commissions it paid to the affiliated warehousing companies because the deduction of both would result in double-counting. To avoid further double-counting, FAG Italy requested, if the Department deducted the sales commissions on these transactions, that it not deduct the indirect selling expenses reported for the U.S. affiliate because the sales agent assumed the selling functions and expenses for these sales.

To address FAG Italy's concern about double-counting, for the preliminary results we did not deduct from the price used to establish the CEP the warehousing commissions and sales commissions that FAG Italy's U.S. affiliate paid to its affiliated warehousing companies. Rather, we deducted the actual expenses, *i.e.*, indirect selling expenses and pre-sale warehousing expenses, that FAG Italy's U.S. affiliates incurred on the sales. We followed this methodology because we generally rely on actual expenses rather than intra-company transfers. See, for example, *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 53287, 53294 (October 14, 1997), and *AFBs 5* at 66489. Affiliated-party commissions are an intra-company transfer of funds to compensate an affiliate for actual expenses incurred in completing the sale to unaffiliated customers. We do not believe that such intra-company transfers of funds are a proper adjustment to price and, therefore, have not altered our methodology for the final results.

Comment 3: Torrington argues that the Department should reject Koyo's exclusion from the sum of its U.S. indirect selling expenses its excluded antidumping-related expenses because Koyo did not explain how they were calculated or what they involve.

In rebuttal, Koyo argues that it is evident from its questionnaire response that the only antidumping-related expense it reported was the antidumping-related legal expense that Koyo incurred during the POR. Koyo argues further that the Department has a well-established policy by which it does not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States, citing *AFBs 7* at 54079.

Department's Position: We agree with Koyo that the response makes clear that the expenses in question are antidumping-related legal expenses. We also agree with Koyo that we should not consider the legal fees associated with participation in an antidumping case to be U.S. indirect selling expenses. As we stated in *AFBs 7* at 54079, such expenses are incurred solely as a result of the existence of the antidumping duty order and to deduct such expenses from U.S. price would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping.

Comment 4: NTN states that the Department had no basis for including in the preliminary results the profit on EP sales in the calculation of CEP profit. NTN contends that the statute states clearly that the adjustment of profit to the CEP is to be based on expenses incurred in the United States as a percentage of total expenses, citing section 772(d) of the Act. NTN states that there is no provision in the statute for the inclusion of EP expenses or CV profit in this calculation and requests that the Department exclude these sales from the calculation of CEP profit in the final results.

Torrington states that the Department addressed this issue in *Tapered Roller Bearings, Four Inches or Less from Japan* (63 FR 2558, 2570 (January 15, 1998)) recently and in a policy bulletin dated September 4, 1997, and should stand by its determination in the preliminary results.

Department Position: We disagree with NTN. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as home-market expenses). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions. Therefore, because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See* also September 4, 1997, policy bulletin.

Comment 5: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. Citing section 772(f) of the Act, NTN maintains that the statute expresses a preference for CEP profit to be calculated on the narrowest possible basis which, NTN states, ensures more accurate results.

Torrington contends that the Department should follow its prior determinations. Torrington notes that NTN is mischaracterizing the statute and states that the statute refers to the "narrowest" group of products only when the groups are broader than the subject merchandise involved.

Department's Position: We agree with Torrington that NTN's reliance on the "narrowest" language is misplaced (section 773 (f)(2)(c)(ii)). That language addresses only the second alternative basis for the profit calculation, whereas here we rely on the first alternative. Moreover, neither the statute nor the

SAA requires us to calculate CEP profit using any of the alternatives on a basis more specific than subject merchandise and foreign like product (*see AFBs 7* at 54072). Thus, we have not adopted NTN's suggestion.

10. Miscellaneous Issues

10.A. *Programming and Clerical Errors.* Barden, FAG Italy, Koyo, Nachi, NMB/Pelmec, NSK, NSK-RHP, NTN, SNFA France, SKF France, SKF Germany, SKF Italy, SKF Sweden, Torrington Nadellager, and the petitioner have alleged that we made programming and/or clerical errors in the preliminary result calculations. Where we and all parties agree that a programming or clerical error had occurred, we made the necessary correction and addressed the comment only in the final-results analysis memoranda. (*See* Final Results Analysis Memoranda of various dates.) The comments included in this notice address situations where parties alleged that we made a programming or clerical error but either we or a party to the proceedings disagrees with the allegation.

Comment 1: SKF Italy, SKF France, and SKF Germany address inconsistencies between the methodology the Department specified for assigning level of trade in its preliminary results analysis memoranda dated January 26, January 27, and February 2, 1998, respectively, and the actual methodology the Department used in its margin calculations. Specifically, the respondents note that, while the Department's preliminary-results analysis memoranda indicate that the variable for customer category, *e.g.*, OEM or distributor, was used to designate a level of trade for sales to unaffiliated customers, the Department actually used the channel-of-distribution variable in its calculations. The respondents assert that, in a situation where there is an inconsistency between the calculations and the analysis memoranda, the calculations reflect the Department's intent. For the final results, the respondents request that the Department note a correction in the analysis memoranda.

Torrington asserts that the Department's preliminary-results analysis memoranda are statements of intent. Therefore, Torrington contends, the Department should modify its calculations for SKF France, SKF Germany, and SKF Italy so that the variable for customer category is used to designate the level of trade.

Department's Position: We agree with these respondents that, for these reviews, we should use the variable for channel of distribution to designate the level of trade on their sales to unaffiliated customers for this period of review. Our reference in the analysis memoranda to assigning the level of trade of the respondents' sales to unaffiliated customers based on the variable for customer category was an error.

In our view, customer categories alone are insufficient to establish the level of trade. For the CEP transactions at issue, in performing the analysis necessary for determining normal value at the same level of trade as the starting price for the CEP, which was the price to the unaffiliated customer, we examined the selling activities performed in each channel of distribution, as well as the point in the chain of distribution where the selling activities occurred. *See* January 26, 1998, Level-of-Trade memorandum that is on the General Issues record. Based on our analysis of all the SKF companies in these reviews, we determined that the variable for channel of distribution was the most appropriate item to use for designating the level of trade of their sales to unaffiliated customers. This variable identifies groupings of transactions that are most similar in terms of the selling activities the respondents and their affiliates performed in selling to unaffiliated customers in the home market and the United States. For the final results, we did not need to alter the level-of-trade designations in the margin calculations for SKF Italy, SKF France, and SKF Germany because we used the variable for channel of distribution to assign a level-of-trade for the preliminary results.

Comment 2: SKF Sweden asserts that in its preliminary-results margin calculation the Department assigned the level of trade for sales to unaffiliated customers incorrectly based on customer categories rather than channels of distribution.

Torrington asserts that no changes need to be made to SKF Sweden's calculations since the Department implemented the methodology described in the preliminary-results analysis memorandum.

Department's Position: We agree with SKF Sweden that we should use the variable for channel of distribution to designate the level of trade of sales to unaffiliated customers. In our preliminary-results margin calculations, we erred by assigning the level of trade to SKF Sweden's sales to unaffiliated customers based on the variable for customer category. Based on our analysis of SKF Sweden, the variable for channel of distribution is the most appropriate item to use for designating the level of trade on its sales to unaffiliated customers. *See* our response to Comment 1 of this section for additional information regarding our level-of-trade analysis. Thus, for these final results, we altered our calculations for SKF Sweden such that we used the channel-of-distribution variable to assign the level of trade of sales to unaffiliated customers.

Comment 3: Torrington refers to language in the Department's computer program for FAG Italy and asserts that the language excludes zero-priced U.S. sales from the margin calculation. Torrington contends that the Department should remove this programming language since FAG Italy reported that there were no sample transactions of Italian-made bearings in the U.S. sales database.

FAG Italy asserts that, since it did not report any zero-priced U.S. sales, there is no reason for the Department to delete the programming language. FAG Italy also suggests that the programming language should remain since it represents a correct statement of law.

Department's Position: We agree with FAG Italy that there is no reason to delete the programming language to which Torrington refers. However, we disagree with the respondent that this particular programming language should remain because it represents a correct statement of law. Rather, the purpose of this programming language is to avoid the creation of an error message when the numerator of the transaction-specific percentage margin calculation is zero or negative and the denominator is positive.

Moreover, with respect to FAG Italy, the issue of whether to exclude zero-priced U.S. sales is moot because we examined the respondent's U.S. sales database and determined that there are no such transactions. We also examined the output of the margin-calculation program and confirmed that no U.S. sales are being removed.

Comment 4: NTN contends that the Department's application of a sampling factor to its CEP sales of SPBs is an error, asserting that it did not report these sales on a sampled basis.

Torrington states that, if NTN reported 2000 or more SPB transactions, the Department should apply the sampling factor but, if the company had fewer transactions, it should not.

Department Position: We agree with NTN. However, because of the proprietary nature of our position on this issue, we are not able to respond adequately here. *See* memorandum from Greg Thompson to the file dated May 20, 1998.

Comment 5: NTN asserts that the Department miscalculated CEP profit.

Torrington contends that NTN's comment on this issue is too vague. Torrington contends that it is not able to provide a meaningful response without the respondent clarifying its point of contention and requests that the Department reject NTN's argument.

Department Position: We agree with Torrington. Inasmuch as NTN does not state what it believes is in error, what caused the error, or how the calculations should be changed to fix the alleged problem, we can not address the issue.

Comment 6: NTN states that, consistent with the Department's position in the *Final Results of the Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan*, 61 FR 57629, 57636 (November 7, 1996), the Department should use the U.S. selling expenses based on level of trade as NTN reported.

Torrington asserts that the Department should not use NTN's U.S. selling expenses based on level of trade because the reporting rationale is not supported by the record. Furthermore, Torrington contends that the Department's use of NTN's reported methodology appears to be a ministerial error, noting that the analysis memorandum does not provide an explanation of the Department's substantive departure from prior determinations.

Department Position: We agree with Torrington on both points. Moreover, due to a ministerial error, we did not revise NTN's reporting of U.S. indirect selling expenses for the preliminary results of review. We have corrected the problem for the final results. *See* memorandum from Greg Thompson to the file, dated May 20, 1998. Also, *see* our response to comment B.2. of the "Circumstance of Sale" section of this document.

10.B. *Pre-Existing Inventory. Comment:* SKF Italy, SKF France, and SKF Germany note that the Department's preliminary-results analysis memoranda dated January 26, January 27, and February 2, 1998, do not address the issue of whether U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation in the original LTFV investigation were excluded from the margin calculations. The respondents suggest that the Department's failure to include instructions in the margin-calculation program to exclude sales of this merchandise is a programming error. Respondents request that the Department address this oversight for the final results and modify its calculations to exclude sales of pre-suspension inventory.

Torrington contends that no programming error occurred and, therefore, no changes need to be made. Moreover, Torrington asserts that it is the Department's policy to base its antidumping analysis of CEP sales on all transactions that have a sale date during the POR. Since the merchandise at issue was sold during the POR, Torrington argues, the Department should continue to include the sales in the margin analysis.

Department's Position: We agree with Torrington that no programming error occurred.

In *Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (Sept. 11, 1996), we discussed the treatment of U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation. In that case, we indicated that sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise within the meaning of section 771(25) of the Act and, therefore, are not subject to our review. However, in these reviews, the respondents did not submit record evidence to establish that the sales at issue are of merchandise that entered the United States prior to the original suspension of liquidation. Therefore, consistent with our practice in the prior segment of these proceedings (*see AFBs 7* at 54084), for the final results we have continued to consider the transactions to be sales of subject merchandise and included them in our margin calculation.

10.C. *Military Sales. Comment:* Barden argues that the Department included military sales improperly in the preliminary calculations. Barden observes that, in its preliminary-analysis memo, the Department stated that, "because the United Kingdom government does not have a Memorandum of Understanding (MOU) with the United States, we have included these sales in our analysis." Barden argues that this statement is incorrect and that there is a current MOU between the United States and the United Kingdom. Therefore, Barden contends that the Department must exclude all U.S. military sales in the calculation of Barden's final margins as it has in all prior reviews to date.

Torrington disagrees with Barden's argument and opines that the Department is not required to modify its preliminary results because Barden did not supply the Department with the information requested in the initial and supplemental questionnaires necessary to permit an exclusion of military sales. The petitioner asserts that the Department should reject Barden's argument and that the Department is justified in ignoring Barden's claims, citing *Murata Mfg. Co. Ltd.* v. *United States*, 17 CIT 259, 264, 820 F. Supp. 603, 607 (1993).

Department's Position: We agree with the respondent because our preliminary-analysis memorandum was in error. There is a current MOU between the U.S. and the U.K. governments effective until January 1, 2005. This memorandum is an agreement in the public domain. Therefore, we have excluded Barden's military sales from the final results in these reviews, as we have in all prior reviews to date. *See* section 771(20)(B) of the Act.

11. Cash-Deposit Financing

Comment: NTN argues that the Department's decision to ignore adjustments to NTN's U.S. indirect selling expenses for interest on cash deposits of antidumping duties is contrary to the Department's position in past reviews of these orders and in recent litigation.

NTN contends, the Department noted in *AFBs 6* at 2104 that such expenses were not selling expenses since they "were incurred only because of the existence of the antidumping duty orders" and the Department concluded that "the expenses can not correctly be characterized as selling expenses." NTN also points to the Department's acceptance of this adjustment in *AFBs 5 and 6*, and in the position the Department took in comments it filed with the CIT in the litigation arising from *AFBs 4*. According to NTN, the CIT adopted these comments in large part, holding that "interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses" (*Federal-Mogul* v. *United States*, 20 CIT __, __, Slip Op. 96–193 (December 12, 1996) (*Federal-Mogul 2*)).

NTN argues that, in addition to disregarding Departmental and judicial precedent on this issue, the Department's decisions in the instant reviews are flawed. First, NTN contends, the Department's decision to disallow the adjustment in the preliminary results contradicts the well-reasoned analysis the Department set forth in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative*

Reviews and Termination in Part (*TRBs Final Results*), 62 FR 11,825, 11828–830 (March 13, 1997), in which the Department explained that it "recognize(s) that opportunity costs * * * have a real financial impact on the firm."

Second, NTN asserts, the Department's statements that opportunity costs are not associated with making cash deposits is a misunderstanding of the definition of "opportunity costs." NTN argues that opportunity costs are "the real economic loss which an entity experiences when it must forgo some other, more profitable use of its resources," citing *Cartersville Elevator, Inc.* v. *ICC*, 724 F.2d 668, 670 (8th Cir. 1984), and *Mira* v. *Nuclear Measurements Corp.*, 107 F.3d 466, 472 (7th Cir. 1997) (describing the diversion of funds from more profitable activity as "the classic definition of opportunity costs"). NTN argues that the expense associated with making cash deposits fits these definitions. In NTN's view, the source of the funds does not determine whether this is an opportunity cost because, in either case, these funds can not be put to a more profitable use.

Finally, NTN argues that, at some point, the Department's prior decisions must become case law, citing *Shikou Chemicals* v. *United States*, 16 CIT 383, 388 (1992) (*Shikou Chemicals*).

Torrington argues that the Department rejected an adjustment to NTN's U.S. selling expenses for cash-deposit financing expenses properly. Torrington contends that there are both policy and legal reasons that support the Department's decision.

Torrington states that posting the estimated antidumping duties is a direct consequence of respondent's conscious decision to dump and, as such, is a selling (or other import) expense. Torrington contends that, if deposits were not made, then there would be no merchandise to resell. Thus, Torrington concludes, deposits are a cost of doing business for those who choose to trade unfairly.

Torrington acknowledges that the CIT, in *Federal-Mogul 2*, reached a contrary conclusion but contends that this is irrelevant, stating that, when the statute is unclear on its face, the court only reviews the Department's determinations for reasonableness, citing *The Timken Company* v. *United States*, 37 F.3d 1470, 1474 (Fed Cir. 1994). Torrington states that, since the statute provides no definition of "indirect selling expense," the Court only affirmed the reasonableness of the Department's old position and, therefore, it remained open for the Department to reconsider and reach another reasonable position. Torrington states further that administrative agencies may change their positions, as the Department did in *AFBs 7*, if they provide reasoned explanations, citing *Busse Broadcasting Corp.* v. *F.C.C.*, 87F.3d 1456 (CAFC 1996), and *Household Goods Forwarders Tariff Bureau* v. *I.C.C.*, 968 F.2d 81 (CAFC 1992).

Torrington contends that the "law of the case" doctrine does not apply in this situation. Torrington states that the Department made this very clear in *AFBs 5* when it stated that each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts.

Finally, Torrington states that *Shikou Chemicals* is not relevant in the instant case because the Department has determined that its old methodology was conceptually incorrect and required change, whereas in *Shikou Chemicals* the Department simply changed a methodology to improve a prior method. Moreover, Torrington argues that, in *Shikou Chemicals*, the respondent relied on the old methodology. In the instant reviews, NTN was fully aware of the determination made in *AFBs 7*.

Department's Position: We agree with Torrington that we should deny an adjustment to NTN's U.S. indirect selling expenses for expenses which NTN claims are related to financing cash deposits. However, we do not agree with the reasons Torrington has presented.

We should not remove such financial expenses from reported indirect selling expenses under any circumstances because they do not bear directly on an expense that parties incur solely as a result of the antidumping duty order; this holds regardless of whether the party claims any link to antidumping duty deposits or other expenses, such as legal fees. As we have stated previously: "money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost." *See AFBs 7* at 54079.

Even if a respondent has a loan amount that equals its cash deposits or can demonstrate a "paper trail" connecting the loan amount to cash deposits, we do not consider the loan amount to be related to the cash deposits and will not remove it from the indirect selling expenses. Moreover, the result should not be different where an actual expense can not be associated in any way with the cash deposits. We reject imputation of an adjustment both for this reason and the reason Torrington stated: there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. As a result, we have not accepted NTN's reduction in indirect selling expenses based on actual borrowings to finance cash deposits nor will we accept such a reduction based on imputed borrowings. We consider all financial expenses the affiliated importer incurred with respect to sales of subject merchandise in the United States to be indirect selling expenses under section 772(d)(1)(D) of the Act.

Although we have allowed removal of expenses for financing cash deposits in a post-URAA case (*see TRBs Final Results*), we reexamined this issue in a previous segment of these proceedings and concluded that the new policy best reflects commercial reality with respect to affiliated-importer situations (*see AFBs 7*).

12. Romania-Specific Issues

Comment 1: Torrington argues that the Indonesian import data used to value the steel to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) appear to be erroneous. Torrington claims that these data only appear in the trade statistics for January-February 1996 and therefore do not include full-year data for 1996. Torrington also argues that the Indonesian import statistics for the entire year 1996 demonstrate no imports of that category of steel. Torrington claims that the only reliable Indonesian import data on the record for HTS 7228.30 are those for the full-year 1995, which Torrington submitted on December 12, 1997. Thus, Torrington contends that the Department should determine that the January-February 1996 data for this certain Indonesian tariff classification are unreliable and rely on data for the full-year 1995 instead.

TIE disagrees with Torrington's argument and claims that the January-February 1996 data the Department used to value steel used to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) are reliable. TIE states that it is logical to assume that the end-of-year data for that tariff classification was simply not available for publication at the time the year-end Indonesian statistics were issued. TIE claims that Torrington provided no factual evidence showing that end-of-year steel data are available. TIE notes that there is only a slight difference between the average import price as derived from the January-February 1996

data and the full-year 1995 data and thus claims that the similarity in prices supports the reliability of January-February 1996 data.

Department's Position: We agree with the petitioner. We find that using full-year 1995 data is more appropriate than using only two months of data from 1996, especially given that the 1995 data, unlike the 1996 data, allow us to remove imports from NME countries and countries with small volumes of exports to Indonesia. *See* our response to comment 2 below.

Comment 2: Torrington argues that surrogate values for bearing-quality steel should have been adjusted in conformity with Department practice to exclude imports from NMEs, imports of small quantities, and imports from non-producers of bearing-quality steel when the Department calculated surrogate values from import statistics. Torrington suggests that the Department use the 1995 Indonesian import-statistics report that lists the source countries of the import data and develop ratios to apply to Indonesian imports in other periods for which the source countries are not listed, citing *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Final Results of Antidumping Duty Administrative Review*, 62 FR 37194, 37195 (July 11, 1997) (*TRBs from Romania*).

The respondent argues that, under the circumstances, the Department should not exclude imports from NMEs, imports of small quantities, and imports from non-producers of the relevant product in calculating surrogate values from import statistics. TIE states that the most current and accurate data are not available to make the appropriate adjustments in the final results.

Department's Position: We agree with the petitioner. It is our practice to exclude imports from countries we have previously determined to be NMEs, small import quantities, and imports from non-producers of bearing-quality steel in calculating surrogate values for material inputs, where such exclusions are possible based on record information. *See TRBs from Romania* at 37195. Therefore, using the data available in the record and consistent with our practice in *TRBs from Romania* at 37195, we have excluded imports from countries that export less than seven metric tons *per annum* to Indonesia for the final results. We also have excluded imports from NMEs and imports from non-producers of bearing-quality steel.

Comment 3: Torrington argues that the Department should not use factory overhead, SG&A, and profit rates from the financial statements of an Indonesian steel company, P.T. Jaya Pari Steel, and asserts that it is not in the same industry category as the bearing industry. Torrington asserts that data from another Indonesian manufacturer, P.T. Lion Metal Works, is on the record and this company produces merchandise which more closely approximates the bearing industry. Torrington asserts that in the final results the Department should use the financial statements of P.T. Lion to calculate SG&A and profit rates, adjusting the calculation to avoid double-counting of movement expenses by using public data available on the record.

TIE disagrees with Torrington's argument that the Department should use the financial statements of P.T. Lion Metal works to calculate factory overhead, SG&A, and profit rates instead of using the financial statement of P.T. Jaya Pari Steel. TIE recognizes that P.T. Jaya Pari Steel is not a bearings producer. However, TIE argues that P.T. Jaya Pari Steel is a steel company and, therefore, is more closely related to a bearings producer than is P.T. Lion, which is involved in activities such as hospital and high-security equipment.

TIE asserts that, in *AFBs 7* at 54080, the Department used the factory overhead, SG&A, and profit values of P.T. Jaya Pari and should conform to past practice. TIE also asserts that, in this review, P.T. Jaya Pari's information contains, in a single, public source, factory overhead, SG&A, and profit data. TIE claims that it would be inaccurate to use P.T. Lion's data since it could not be ensured that costs are included correctly within administrative or distribution expenses and that the Department would be forced to go to another source to get the overhead information for its analysis.

Department's Position: As we stated in *AFBs 7* at 54080, in our hierarchy for selecting data for possible surrogate values, we prefer to use current, publicly available information. P.T. Jaya Pari's information is contemporaneous with the POR, P.T. Jaya Pari is a steel producer and therefore more similar to a bearings producer than P.T. Lion, a manufacturer of hospital and high-security equipment, and, finally, the P.T. Jaya Pari statements, unlike the P.T. Lion statements, allow us to calculate overhead, SG&A, and profit from one source as well as to analyze the components of each element. *See* Preliminary Analysis Memorandum for AFBs from Romania for the 1996–1997 POR dated January 26, 1998. Therefore, we have used P.T. Jaya Pari's financial statement because it represents a closer approximation of the costs incurred by TIE than would use of P.T. Lion's financial statement.

Comment 4: Torrington argues that, to value the steel used in the manufacture of TIE's bearings, the Department should use the appropriate tariff classification for steel used to manufacture balls, *i.e.*, other wire of alloy steel (HTS 7229.90). Torrington argues that TIE stated that wire is used to produce balls but it appears that the Department used the value of steel "rod" in coils (HTS 7227.90), not "wire" (HTS 7229.90), to value the steel for balls. Torrington suggests that the Department correct this error in the final results, replacing the value for "rod," wherever it is used to value the steel for balls, with the appropriate value for "wire."

Department's Position: We have reviewed the record and found that we used the appropriate values for steel used to manufacture balls, *i.e.*, HTS 7229.90 (other alloy wire of alloy steel). Our materials for the final results contain the correct HTS numbers.

Comment 5: Torrington contends that the International Labor Office (ILO) costs the Department used in the preliminary results of review are flawed because the wage rates the Department used to calculate labor costs reflect only minimum wages in Indonesia and thus do not represent actual labor costs accurately.

Torrington also disagrees with the Department's use of the ILO's "average daily wage and hours worked per week for the iron and steel basic industries" to value direct labor. Torrington claims that the iron and steel basic industries are not within the same industry category as the industry producing bearings. Torrington argues that the Department decided the proper classification of the AFB industry in *TRBs from Romania* at 37194. The petitioner claims that, even if the minimum wage rates the Department used reflected rates actually paid in Indonesia, the rates would not be applicable to the industry in this review under any reasonable interpretation of the comparable-merchandise standard set forth in section 773(c)(4)(B) of the Act.

Torrington proposes that, in the interest of the Department's desire to obtain actual or as accurate as possible information, the Department should use, for the final results, either the Department's *Expected Wages of Selected Nonmarket Economy Countries*, the 1997 issue of *Investing, Licensing and Trading Conditions Abroad* (IL&T), or *Doing Business in Indonesia* (1996).

TIE claims that it was reasonable and in accordance with law for the Department to use the ILO labor costs. TIE argues that there is nothing on the record which indicates that the ILO wages do not reflect actual costs to employers. TIE explains that in *TRBs from Romania* at 37197 the Department found no indication that the "minimum" rate for the industry excludes any employee-benefit costs which the Department normally considers. TIE notes that the Department also addressed this issue in its January 26, 1998, Preliminary Analysis Memorandum, where it added amounts to labor rates to account for benefits. TIE states that the Department adjusted the ILO data correctly by using information from the Foreign Labor Trends, as in *Lighters from the PRC*, which showed supplementary benefits to be 33 percent of manufacturing earnings.

TIE also opposes Torrington's contention that the Department should not use data from Indonesian iron and steel basic industries to value direct and indirect labor. TIE claims that the Department responded to this same argument in *TRBs from Romania* at 37197, where it acknowledged that wage rates for laborers in the iron and steel basic industries are not in the same industry as the bearings industry. TIE notes that section 773(c)(4) of the statute states that the Department will attempt to find producers of comparable products in selecting surrogate countries when the Department can not locate information from the same industry. TIE argues that the facts of the current case are the same as those in *TRBs from Romania* and, therefore, that there is no information on the record which pertains specifically to the bearing industry.

In addition, TIE argues that the Department rejected in *TRBs from Romania* at 37197 two of the alternate sources for surrogate data, *IL&T* and *Doing Business in Indonesia* (1996), proposed by Torrington. Also, TIE contests Torrington's suggestion that the Department use its own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries*, which is referenced by the Department's new regulations. TIE argues that the new regulations are not relevant in this review and, therefore, it would be unreasonable for the Department to apply those wage rates in an old-regulations case without prior notice to TIE.

Department's Position: We disagree with the petitioner. The wage rates we used in the preliminary results represent actual costs. Although the ILO data is a minimum wage, it includes such costs as "cost-of-living allowances, and other guaranteed and regularly paid allowances," according to the ILO's Special Supplement to the Bulletin of Labor Statistics (1994). Furthermore, this follows our practice in *AFBs 7, TRBs from Romania*, and in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11217 (March 6, 1998). Thus, we have continued to use, in these final results, the ILO labor data that we used in the preliminary results.

We have not used our own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries*, because this administrative review is not governed by the new regulations. We do, however, intend to use this data source in any subsequently requested administrative reviews which will be governed by the new regulations.

[FR Doc. 98–16100 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of pressure sensitive plastic tape from Italy.

SUMMARY: In response to a request from an importer, Horizon Plastics, the Department of Commerce is conducting an administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy. The period of review is October 1, 1996 through September 30, 1997. This review covers products manufactured and exported by N.A.R.S.p.A. We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On October 21, 1997, the Department published in the **Federal Register** (42 FR 56110) the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy. On October 31, 1997, in accordance with 19 CFR 351.213(b), an interested party and importer of the subject merchandise, Horizon Plastics, Inc., requested that the Department conduct an administrative review of N.A.R.S.p.A. exports of subject merchandise to the United States. We published the notice of initiation of this review on November 26, 1997 (62 FR 63069).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring 1⅜ inches in width and not exceeding 4 mils in thickness. During the period of review (POR), the above described PSPT was classified under HTS subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available is

appropriate for N.A.R.S.p.A. because this firm did not respond to the Department's antidumping questionnaire. In addition, there is no information on the record within the meaning of section 782(e) of the Act with regard to sales by N.A.R.S.p.A. and therefore no information to consider as an alternative to facts available in determining the margin for N.A.R.S.p.A.

The Department finds that, in not responding to the questionnaire, this firm failed to cooperate by not acting to the best of its ability to comply with requests for information from the Department. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because the respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of the respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, we have used the highest rate from any prior segment of the proceeding, 12.66 percent. This rate was calculated in the *Final Results of Administrative Review of Antidumping Finding* (48 FR 35666), covering the period February 18, 1977 through September 30, 1980. Information from prior segments of the proceeding constitutes "secondary information" within the meaning of section 776(c) of the Act. Section 776(c) provides that the Department shall, to the extent practicable, corroborate secondary information by comparing it with independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567), where the Department disregarded the highest margin as averse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). No such circumstances exist in this case which would cause the Department to disregard a prior margin.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period October 1, 1996, through September 30, 1997:

Manufacturer/exporter	Margin (percent)
N.A.R.S.p.A	12.66

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 39 days after the date of publication of the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pressure sensitive plastic tape from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required where weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 12.66 percent, the "new shipper" rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 11, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–16273 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 4, 1998 the binational panel issued its decision in the review of the final antidumping duty administrative review respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–97–1904–03. The panel affirmed in part and remanded in part the final determination for further action within 60 days. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules to Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

BACKGROUND: On May 12, 1997, Stelco, Inc. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty Administrative review made by the International Trade Administration in the administrative review respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** on April 15, 1997 (62 FR 18448). The NAFTA Secretariat assigned Case Number USA–97–1904–03 to this request. The panel reviewed the complaints, briefs and other documents and heard oral argument in this matter.

Panel Decision: The panel remanded the final determination to ITA to (1) reconsider the calculations of transfer prices for certain inputs and consider arguments that the transfer price of those inputs should be recalculated to take account of the actual costs with regard to those inputs; (2) recompute the net interest expense factor to include certain payments to governments other than income tax; and (3) correct clerical errors concerning certain inland freight expenses. The panel ordered the remand determination to be returned within 60 days (by August 3, 1998).

Dated: June 8, 1998.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 98–16159 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980429111–8111–01]

RIN 0648–ZA43

Coastal Services Center Coastal Change Analysis Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Coastal Services Center announces the availability of Federal assistance for fiscal year 1999 in the Coastal Change Analysis Program. This announcement provides detailed guidelines for the program area and include details for the technical program, evaluation criteria, and selection procedures. All applicants are required to submit a NOAA Grants Application Package and project proposal. The standard NOAA Grants Application Package (which includes forms SF–424, SF–424A, SF–424B, SF–424C, SF–424D, CD–511, DC–512, and SF–LLL) can be obtained from the Coastal Services Center, (843) 740–1200. Each funded project will establish a cooperative agreement. The total amount of funding is $200,000 to $335,000. A 20% cost share is required.

DATES: Completed applications will be accepted through 5:00 pm Eastern Daylight Time on July 15, 1998. Target award date is anticipated to be within 90 days of application closing date.

ADDRESSES: Send completed applications to Dr. Dorsey Worthy, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413.

FOR FURTHER INFORMATION CONTACT: Dr. Dorsey Worthy, (843) 740–1234 or dworthy@csc.noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Statutory authority for this program is provided under 16 U.S.C. Sec. 1456.c (Technical Assistance); 15 U.S.C. Sec. 1540 (Cooperative Agreements); 33 U.S.C. Sec. 1442 [Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems]; and 33 U.S.C. Sec. 1441 (Monitoring and research programs).

Catalog of Federal Domestic Assistance (CFDA)

The CSC Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

Program Description

NOAA's Coastal Services Center (CSC) is seeking proposals to expand its national effort to monitor change in coastal habitats. The purpose of these guidelines is to identify eligibility criteria, roles and responsibilities, milestones, and selection criteria associated with the award. Each funded project will establish a one year cooperative agreement between CSC and the Cooperator. Most projects will be funded in the approximately $10,000–$75,000 range. A cost share of 20% of the total award amount is required for consideration.

Background

The National Oceanic and Atmospheric Administration's (NOAA) Coastal Services Center (CSC) in Charleston, South Carolina is a coastal science and resource advisory center that draws on the expertise of NOAA and its partners to address critical coastal resource issues. Established in 1994 in Charleston, the Center's mission is to provide information, education and technology transfer to the coastal community for improved decision making. The Center serves to bridge the gap between coastal scientists and resource managers by bringing Center staff, technologies, and outside partner expertise to bear on national problems related to coastal ecosystems and economies.

The Coastal Services Center's Coastal Change Analysis Program (C–CAP) is a nationwide effort to produce standardized land cover and benthic habitat maps and change data for all coastal areas of the United States. This work is accomplished in close

cooperation with state and local resource management agencies. The objectives of the program are to produce nationally consistent baseline and change data, and to determine the impacts these changes have on living marine resources for informed coastal decision making as well as for identifying and protecting essential fish habitat. For these C–CAP efforts, consideration for funding will be limited to projects in the following states, based on gaps in previous mapping efforts: Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon and Texas. Total amount of funding available is $200,000 to $335,000.

C–CAP will initiate projects in three general areas in FY99:

0. New terrestrial land cover change analysis projects will be initiated to derive Landsat Thematic Mapper (TM) based terrestrial wetlands and uplands land cover characterizations and change for state or regional scale studies. These projects are part of the C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Project funding for FY99 will range from $10,000 to $75,000, for a total of up to $300,000 maximum for this category.

1. New seagrass and other submersed-benthic mapping projects will be initiated to derive location and change maps of seagrass and other nearshore benthic resources as part of the continuing C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Project funding for FY99 will range from $5,000 to $10,000, for a total of up to $30,000 maximum for this category.

2. State and local land cover and benthic change applications projects will be initiated to foster local (county and township level) use of C–CAP land cover and benthic resource maps for coastal land use planning and management. Project funding for FY99 will range from $10,000 to $35,000, for a total of up to $35,000 maximum for this category.

Roles and Responsibilities

These projects are intended to be cooperative in nature. The project proposals should demonstrate cooperative efforts among various participants such as federal, state, and local governments. Successful proposals will establish a consortium of key participants, and identify appropriate responsibilities for these project partners. The following items identify the minimum project participation expected by the Coastal Services Center and the project applicant. Additional roles and responsibilities should be identified by the applicant.

1. Coastal Services Center. C–CAP and the Coastal Services Center shall have primary responsibility for the following activities associated with the project:

2 Provide all Landsat TM imagery or aerial Photography needed for the project. The original, government-provided data are property of CSC and must be returned to CSC upon completion of the project.

2 Provide technical guidance for image processing, field verification, and accuracy assessment to ensure all procedures and products meet the guidelines presented in Dobson *et al.* 1995 (Available on the C–CAP homepage of the CSC web site or upon request from the CSC library). This includes:

—The provision of guidance and manpower in all field exercises deemed necessary by both parties; and

—Site visits by C–CAP personnel to the facilities of the cooperator(s) to provide technical assistance as necessary during data processing.

2 Provide all necessary forms, information and assistance to document Federal Geographic Data Committee (FGDC) compliant metadata for the change detection product.

2 Monitor progress and evaluate biannual progress reports.

0. Cooperator. The Cooperator shall have primary responsibility for the following activities associated with the project:

2 Organize and manage project planning and partnership development.

2 Administer the cooperative agreement in accordance with the terms of the cooperative agreement award.

2 Identify a technical coordinator that will take the lead for all technical aspects of the change detection and a management coordinator that will be responsible for relating the data to key management issues an ensuring that the data are integrated into pertinent coastal management programs.

2 Perform a change detection analysis for the study area as per this announcement presented in Dobson *et al.* 1995.

2 Furnish for the change detection analysis all digital (i.e. NWI) or hard copy (i.e. aerial photos) data at their disposal that may be valuable as ancillary data.

2 Provide complete FGDC compliant metadata for the change detection products.

2 Provide all georeferenced field data collected during image verification and accuracy assessment.

2 Submit biannual progress reports.

0. Joint Responsibility Both C–CAP and the cooperator will provide final field accuracy assessment of the product, which may require either party to supply such equipment as laptop computers for field use, GPS units, four-wheel drive vehicles, etc.

Project Funding Priority

Program policy factors may be considered in final award decisions to ensure a balance of technical areas and geographic distribution.

Project Proposal

All project proposals should include the following sections for a total of 6–8 pages maximum:

2 Goals and Objectives—identify broad project goals and quantifiable objectives;

2 Background/Introduction—state the problem and summary of existing federal/state/local efforts;

2 Audience—describe specifics of how the project will contribute to improving or resolving coastal management issues with the primary target audience, also identify the audience explicitly;

2 Project Description/Methodology—describe the specifics of the project (in 3 pages maximum), with a complete and explicit description of the project area (i.e. TM scene path, row; number and location of aerial photos, flightlines etc);

2 Project Partners—identify project partners and their respective roles;

2 Milestones and Outcomes—list target milestones, timelines, and desired outcomes in terms of products or services; and,

2 Project Budget—provide a detailed budget breakdown by category and provide a brief narrative budget justification, including identification of 20% cost share.

Note: All applicants are required to submit 1 original and 2 copies of a completed and signed NOAA Grants Application Package. The application package may be obtained by calling the Coastal Services Center at (843) 740–1200.

Selection Process

Applicants will submit applications to the Coastal Services Center by the published due date. Each proposal will be reviewed by two external and two NOAA reviewers. Reviewers will individually score each proposal following the criteria published in these guidelines. Each proposal will be ranked by average score and submitted to the CSC Coastal Information Services Associate Director, who will make the final selections based on reviewer

rankings and the project funding priorities outlined above. It is anticipated that 3 to 10 projects will be funded.

Evaluation Criteria (With Weights)

Applications that do not meet the required 20% cost share *will not be considered.*

Coastal Management Relevance (40 points).

2 Does the project tie into ongoing federal, state or local management activities and/or programs? (25 points).

2 Does the project address critical federal, state or local coastal management policies relating to land cover and land cover change (i.e. non-point source runoff? (15 points).

Strength of Partnerships (30 points).

2 Does the project have a clearly defined audience and products have clearly defined users? (15 points).

2 How will the project foster ongoing federal, state or local partnerships for use of land cover change to answer coastal management needs among key collaborators? (15 points).

Technical Merit (30 points).

2 Does the proposed project maximize the use of existing resources? (15 points).

2 Is the approach scientifically sound and relevant at the local level? (15 points).

Selection Schedule

The following are the approximate milestones and dates for the selection schedule of the cooperator:

Applications due: July 15, 1998
Award target start date: October 31, 1998

Project Reporting/Evaluation Requirements

The Cooperator will be asked to provide biannual progress reports.

Funding Availability

Specific funding available for awards will be finalized after NOAA budget for FY 99 is authorized. Total funding available for this announcement will be between $200,000 and $335,000. There is nos guarantee that sufficient funds will be available to make awards for all approved projects. Publication of this notice does not obligate NOAA to award any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

Cost sharing at 20% of the total Federal project funding cost is required in response to these guidelines and should be provided by the applicant or third party contributions.

Eligibility Criteria

Applicant eligibility is limited to projects in the following states, based on gaps in previous efforts; Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon and Texas. Other Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the current indirect cost rate negotiated and approved by the applicant's cognizant Federal agency, prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. If a rate has not been established, one will be negotiated by the Department of Commerce Office of Inspector General.

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any oral or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs, should an award not be made or funded at a level less than requested.

No Obligation for Future Funding

If the application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award or Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All organizations or individuals preparing grant applications must submit a completed Form CD–511 "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and explanations are hereby provided:

Non-Procurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart f, "Government side Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying

Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts,

subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the aware document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

____ Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless the collection of information displays a currently valid OMB control number.

This notice involves a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: June 9, 1998.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–16268 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061198C]

Federal Investment Task Force; Public Meeting

AGENCY: National Marine fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. The Federal Investment Task Force will hold its fourth meeting on June 26–29, 1998, in Portland, ME.

DATES: The meeting of the task force will be held June 26–29, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Sheraton South Portland, 363 Maine Hall Road, Portland, ME 04106, telephone (207) 775–6161.

FOR FURTHER INFORMATION CONTACT: John Reisenweber, Atlantic States Marine Fisheries Commission, (301) 713–2363; fax: (301) 713–1875; email: john.reisenweber@noaa.gov; or Matteo Milazzo, (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 26, 1998, 1:00 p.m. to 9:00 p.m.

The Task Force will review the Federal programs that were discussed at the previous meeting. The review will include a discussion of the influence that these programs have had on capacity and capitalization of fishing fleets.

June 27, 1998, 8:30 a.m. to 6:00 p.m.

The Task Force will review the working papers that have been updated and developed since the last meeting.

June 28, 1998, 7:00 p.m. to 9:00 p.m.

The Task Force will hear public input regarding the Federal Investment Study. The public is encouraged to comment on the general scope and concept of the study, as well as the effect of Federal programs on the capacity and capitalization of fishing fleets.

June 29, 1998, 8:30 a.m. To 5:00 p.m.

The Task Force will review the comments received at the public meeting. The Task Force will conclude its review and further discuss the influence of other federal agencies and policies on capacity and capitalization in the fishing fleet. The Task Force will also determine the subjects and topics to be included on the agenda for the next meeting.

Special Accommodations

The meeting is physically accessible to those with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Reisenweber at (301) 713–2363 at least 5 days prior to the meeting date.

Dated: June 15, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16244 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 980422102–8152–02]

Public Meeting To Explore Privacy Issues Related to Electronic Commerce

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This public meeting will provide an opportunity for members of the academic community, industry, privacy advocates, public interest groups, the public and government to explore issues surrounding electronic commerce privacy. The meeting will provide a forum for debate and dialogue.

DATES: The meetings will be held on June 23 and 24, 1998 from 9 a.m. until 5 p.m.

ADDRESSES: The meeting is scheduled to take place at the Department of Commerce, main auditorium, 14th Street and Constitution Avenue, NW., Washington, DC. Attendees should use the Main Entrance on 14th Street. To facilitate entry please (1) have a picture ID available and/or a U.S. government building pass if applicable and (2) have your registration form with you.

If the meeting location changes, another Federal Register notice will be

issued. Updates about the location of the meeting will also be available on the NTIA website at *www.ntia.doc.gov/ntiahome/privacy,* or you may call Jane Coffin at 202–482–1866. The meeting will also be broadcast over the Internet. The broadcast can be accessed via the NTIA website.

FOR FURTHER INFORMATION CONTACT: Jane Coffin, by phone (202) 482–1866, by facsimile (202) 482–1865, by mail marked to her attention at NTIA/OIA, Room 4701, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or by electronic mail at privacy@ntia.doc.gov.

MEDIA INQUIRIES: Please contact the Office of Public Affairs, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: The U.S. Department of Commerce announces a two-day meeting on privacy and electronic commerce. The purpose of the meeting is to promote dialogue and discussion regarding privacy issues related to electronic commerce, to discuss whether, and to what extent, self regulation can address privacy concerns, to discuss the elements of effective self regulation, to consider privacy issues and concerns specific to children, to review and discuss the advantages and disadvantages regarding a proposed methodology for assessing compliance in regard to self regulation, to examine successful strategies for protecting privacy on the Internet and to survey current technologies available to protect consumer privacy on the Internet.

Agenda

June 23
- Overview of privacy issues
- Issues of Children's Privacy
- Results of Public Surveys on Privacy
- Elements of Effective Self Regulation

June 24
- Industry Reports on Self Regulatory Approaches
- Children's Workshop
- Technology Tools to Protect Privacy
- Consumer Education/Consumer Assistance

This agenda is subject to change. For an updated, more detailed agenda, please check the NTIA website at *www.ntia.doc.gov/ntiahome/privacy/.*

Public Participation: The meeting will be open to the public and physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Amy Flatten at least five (5) working days prior to the meeting at (202) 482–1866.

Registration: Information about paper and electronic registration for the summit will be available on the National Telecommunications and Information Administration website, *http://www.ntia.doc.gov/ntiahome/privacy/,* or contact Jane Coffin, Telecommunications Policy Specialist, the NTIA/OIA, U.S. Department of Commerce, Main Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–1866; Fax: (202) 482–1865; e-mail at *privacy@ntia.doc.gov.*

Shirl Kinney,

Deputy Assistant Secretary and Administrator, National Telecommunications and Information Administration.

[FR Doc. 98–16126 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Department of Defense Standard Tender of Freight, MT Form 364–R, OMB Number 0704–0261.

Type of Request: Reinstatement.

Number of Respondents: 993.

Responses per Respondent: 13.

Annual Responses: 13,500.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 10,125.

Needs and Uses: The Department of Defense Standard Tender of Freight Services is used to determine freight transportation charges, accessorial and security service costs, and to select carriers for 1.2 million Government Bill of Lading (GBL) freight shipments annually. The information derived from the DoD tenders on file with the Military Traffic Management Command (MTMC) is used by the MTMC subordinate commands and DoD shippers to select the lowest cost carrier to transport freight shipments. This information is used to develop about 140,000 procurement rate quotations annually. Additionally, DoD tender rate and other pertinent tender data are noted on the GBL at the time of shipment. The DoD tender is used as the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16172 Filed 6–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–17, with attached transmittal and policy justification.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

1 JUN 1998
In reply refer to:
I-56705/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-17 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $160 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 120 million
Other	$ 40 million
TOTAL	$ 160 million

(iii) Description of Articles or Services Offered:
Twenty-eight sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods, integration of the pods with the F-16A/B aircraft, flight testing, personnel training and training equipment, special test sets and support equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, spare and repair parts, maintenance support of repairable material and other related elements of program support.

(iv) Military Department: Air Force (SKA, Amendment 8)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 1 JUN 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - Navigation and Targeting Pods

The Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8 has requested a possible sale of 28 sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods, integration of the pods with the F-16A/B aircraft, flight testing, personnel training and training equipment, special test sets and support equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, spare and repair parts, maintenance support of repairable material and other related elements of program support. The estimated cost is $160 million.

This possible sale is consistent with the United States law and policy as expressed in Public Law 96-8.

The recipient will use these navigation and targeting pods on its F-16A/B aircraft to provide a low altitude navigation and targeting capability. Taiwan will have no difficulty absorbing these navigation and targeting pods into its inventory as part of the F-16A/B aircraft program.

The possible sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Lockheed Martin Corporation, Orlando, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this possible sale will not require the assignment of any additional U.S. Government personnel in-country; however, it is estimated that five contractor representatives will be required in-country to provide technical support for approximately three to six months following delivery of the pods.

There will be no adverse impact on U.S. defense readiness as a result of this possible sale.

[FR Doc. 98–16173 Filed 6–17–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13–23 July 1998.

Time of Meeting: 0800–1700.

Place: Arnold & Mabel Beckman Center—Irvine, CA.

Agenda: The Army Science Board's (ASB) Summer Study panels on "Prioritizing Army Space Needs" and "Concepts and Technology of the Army Beyond 2010" will meet for the purpose of discussion, report writing, and finalizing briefings for their respective sponsors. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–16150 Filed 6–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 June 1998.

Time of Meeting: 0900–1600.

Place: Edgewood, MD.

Agenda: The Army Science Board's (ASB) Issue Group panel on "Review of Risk Assessment Methodology for Proposed DoD Range Rule" will meet to the effort to scope and write their assessment of the risk methodology. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–16151 Filed 6–17–98; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 24, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:30 a.m. at the same location and will include a presentation on loadings of PCBs from tributaries and point sources to the tidal Delaware River; discussion of DRBC advisory committee functions and 1998 DRBC meeting schedule and locations.

In addition to the subjects listed below which are scheduled for public hearing, the Commission will also address the following: Minutes of the May 27, 1998 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; consideration of request for hearing re Glen Mills School Docket No. D–97–39; a resolution concerning funding to support the position of Delaware Estuary Program Coordinator; a resolution providing for the election of the Commission offices of Chair, Vice Chair and Second Vice Chair; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 2.8 of the Compact

1. *Evansburg Water Company D–96–57 CP.* A ground water withdrawal project to supply water to the applicant's Perkiomen Division distribution system from existing Well Nos. 201, 203, 204, and from new Well No. 202, and to increase the combined allocation of ground water from 5.5 million gallons (mg)/30 days to 6.06 mg/30 days. The project is located in Perkiomen Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *New Jersey Department of Military and Veterans Affairs D–96–66 CP.* A ground water withdrawal project to supply up to 14.4 mg/30 days of water to the applicant's cemetery turf irrigation system from new Well Nos. A, B and C, and to limit the withdrawal limit from all wells to 14.4 mg/30 days. The project is located in North Hanover Township, Burlington County, New Jersey.

3. *Township of Buckingham D–97–49 CP.* A ground water withdrawal project to supply water to the applicant's distribution system from existing Well Nos. BV–1, BV–2, FS–1, FS–2, CS–1, CS–2 and CS–3, from acquired Well Nos. L–1 and L–2 (formerly Peddler's Village Partnership Well Nos. 1 and 3), from new Well Nos. F–1 and F–2, and to increase the existing withdrawal limit from 21.15 mg/30 days to 33.2 mg/30 days. The project is located in Buckingham Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Warwick Township Water & Sewer Authority D–98–19 CP.* An interconnection project for the transfer of an average up to 1.2 million gallons per day (mgd) of treated water from Philadelphia Suburban Water Company (PSWC) to the applicant. The water transfer will serve the projected needs of the applicant's service area in Warwick Township, Bucks County, Pennsylvania. The proposed transfer will establish a conjunctive use water system for the project service area, which currently relies on ground water and is located in the Southeastern Pennsylvania Ground Water Protected Area. PSWC's Neshaminy Creek intake in Middletown Township, Bucks County, will supply the surface water via the interconnection that entails a water main extension from the PSWC system along County Line Road in Warminster Township, Bucks County north to the applicant's storage tank on Dark Hollow Road in Warwick Township, Bucks County.

5. *Moorestown Township D–98–21 CP.* A project to rerate the applicant's sewage treatment plant (STP) No. 1 from 3.5 mgd to 3.88 mgd. Located off Pine Road in Moorestown Township, Burlington County, New Jersey, the STP serves Moorestown Township and will continue to discharge to North Branch Pennsauken Creek.

6. *Papen Farms, Inc. D–98–24.* A ground water withdrawal project to supply up to 32.4 mg/30 days of water to the applicant's agricultural irrigation system from the Wilson Farm Well; to increase the existing withdrawal limit of

130 mg/30 days from all wells to 160.2 mg/30 days, and to increase the withdrawal limit from all wells and intakes from 176 mg/30 days to 207 mg/30 days. The project is located in Kent County, Delaware.

7. *Great Spring Waters of America, Inc. D–98–27.* A project to increase withdrawals from an existing spring water system from a combined total of just less than 100,000 gallons per day (gpd) to 300,000 gpd, which consists of three sources, Spring Nos. 1, 2 and 3, located in the drainage area of Ontelaunee Creek in Lynn Township, Lehigh County, Pennsylvania. The springs are situated within 1,000 feet of each other and are approximately 2,000 feet east of State Route 309 and 1,000 feet west of Mountain Road. The withdrawals will be transported via tank truck to the applicant's bottling plant located near the City of Allentown, Lehigh County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: June 9, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–16223 Filed 6–17–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 20, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 12, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Perkins Loan Program (formerly National Direct/Defense Student Loan Program) Assignment Form.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 30,500; Burden hours: 15,250.

Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan program. The ED Form 533 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection.

[FR Doc. 98–16162 Filed 6–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2354–001]

Citizens Utilities Company; Notice of Filing

June 12, 1998.

Take notice that on December 15, 1997, Citizens Utilities Company (Citizens), tendered for filing an Amendment to its March 27, 1997, revised Open Access Transmission Tariff filing applicable to its Vermont Electric Division.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before June 22, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16181 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4632–020 and 4632–021]

Clifton Power Corporation; Notice of Intent To Accept Surrender of License

June 12, 1998.

Take notice that the Commission proposes to accept surrender of Clifton Power Corporation's license for the 800-

kilowatt Clifton Mills No. 1 Project No. 4632 located on the Pacolet River in Spartanburg County, South Carolina.

By order issued June 2, 1998, (Clifton Power Corporation, Order on Settlement Offer, 83 FERC ¶ 61,257) the Commission directed its Secretary to issue public notice of its intention to unconditionally accept surrender of the license for this project, unless comments opposing such acceptance are filed within 30 days after issuance of the notice. The Commission will also terminate, without re-assessment, the civil penalty proceeding in this matter (*Clifton Power Corp.* v. *FERC*, 88 F.3d 1258 (D.C. Cir. 1996), pending on remand from the court).

The Commission will consider whether to accept surrender of the license, and if so, under what conditions, in light of any such comments received. If no such comments are received, the surrender of the license will be accepted unconditionally on the thirty-first day after issuance of this public notice, without further order of the Commission. After acceptance of surrender, the Commission will no longer regulate the safety of the project or any other aspect of its operation.

Any person may file comments. All comments must be received on or before July 13, 1998, and must bear in all capital letters the title "COMMENTS," and the project number P–4632. Comments may be filed by providing an original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Comments must also be served upon: Clifton Power Corporation, 5250 Clifton-Glendale Road, Spartansburg, SC 29307.

Questions about this notice may be addressed to Dean Wight at (202) 219–2675.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16188 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–234–002]

CNG Transmission Corporation; Notice of Tariff Compliance

June 12, 1998.

Take notice that on June 9, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of June 15, 1998:

Sub. Third Revised Sheet No. 361A

CNG respectfully requests a waiver of Section 154.207 of the Commission's Regulations, so that its proposed repagination tariff sheet become effective June 15, 1998.

CNG states that the purpose of this filing is to comply with the Commission's directive to correct the pagination of a duplicately numbered tariff sheet from CNG's June 3, 1998 filing in Docket No. RP98–234–001. CNG proposes no substantive revision to the content of these tariff sheets, other than that which was reflected in CNG's June 3, 1998 filing.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16192 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–598–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 12, 1998.

Take notice that on June 5, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax Virginia 22030–0146, filed a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities necessary to establish four new points of delivery for firm transportation service, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the necessary facilities to establish four new delivery points for firm transportation service under Part 284. Columbia states that the quantities to be provided through the new delivery points will be within its authorized level of services. As such, Columbia states that there is no impact on its existing design daily and annual obligations to the customers.

Columbia estimates the cost to install the new taps to be approximately $150 per tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16185 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–128–008]

Eastern Shore Natural Gas Company; Notice of Proposed change in FERC Gas Tariff

June 12, 1998.

Take notice that on June 1, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 1998:

First Revised Sheet No. 213
First Revised Sheet No. 214
First Revised Sheet No. 215

Eastern Shore states that the purpose of the filing is to comply with ordering paragraph (G) of the Commission's October 15, 1997 order issued in Docket Nos. CP96–128–000, *et al.* The order

directed Eastern Shore to file revised tariff sheets by June 1, 1998 to be effective July 1, 1998 to fully comply with the GISB electronic communication standards.

Eastern Shore states that copies of its filing are available for inspection at its office at 417 Bank Lane, Dover, Delaware and has been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16184 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–245–000]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998, High Island Offshore System (HIOS) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1998:

Sixth Revised Sheet No. 110
Second Revised Sheet No. 110A
Third Revised Sheet No. 110B
Second Revised Sheet No. 110C

HIOS asserts that the purpose of this filing is to comply with the Commission's April 16, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3) (ii) through (v)).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16195 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–342–005]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 12, 1998.

Take notice that on June 9, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original sheet No. 141, to become effective July 1, 1998.

Kern River states that the purpose of this filing is to comply with the Commission's June 2, 1998 letter order in Docket No. RP97–342–004 by modifying Kern River's pooling provision to clarify that reimbursement for fuel and lost and unaccounted-for gas will be determined according to Section 12 of the General Terms and Conditions of Kern River's tariff.

Kern River states that it has served copies of the filing upon all intervenors in Docket No. RP97–342.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16191 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–592–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 12, 1998.

Take notice that on June 4, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP98–592–000, pursuant to Sections 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal an inactive 1-inch delivery tap, authorized in blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal, a 1-inch tap that formerly served an individual farm tap customer on behalf of Entex, Inc. (Entex), a local distribution company, in Jim Wells County, Texas. The tap is inactive since the end-user was converted to propane service. Entex concurs with the proposed abandonment.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16183 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–246–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective July 10, 1998:

Second Revised Sheet No. 36
Third Revised Sheet No. 66
Second Revised Sheet No. 81
Second Revised Sheet No. 307A
Original Sheet 307B

NGT states that the revised tariff sheets are being filed to implement the non-discriminatory waiver of fuel charges for certain path-specific limited term backhaul transactions that do not require the use of fuel on NGT's system and to implement the posting of such transactions via NorAm's EDGE electronic bulletin board.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16196 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–247–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 9, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with the proposed effective date of October 1, 1998:

Original Sheet Nos. 124DN–124DQ
First Revised Sheet No. 219
Original Sheet Nos. 220–223
First Revised Sheet No. 317
Original Sheet Nos. 318–321
Fifth Revised Sheet No. 400

Northwest Alaskan states that this filing is being made to reflect the proposed abandonment and tariff termination of Rate Schedule X–4 and tariff revisions to Rate Schedules X–1, X–2 and X–3 to implement, in part, a broader transaction which is intended to restructure the arrangements among Northwest Alaskan, its supplier, Pan-Alberta Gas Ltd. (Pan-Alberta) and its purchaser, PITCO. In brief, this transaction would restructure the sale such that Northwest Alaskan's rights and obligations under the Gas Sales Contract dated March 9, 1978, by and between Northwest Alaskan and Pan-Alberta, as amended (WesternContract) will be assigned to and assumed by Pan-Alberta Gas U.S. (PAG–US); Northwest Alaskan's related sale to PITCO and PITCO's related sale to Southern California Gas Company ("SoCalGas") will be terminated; and PAG–US will enter into a new contract directly with SoCalGas for the sale of a portion of the gas. In addition, PITCO will transfer its current pipeline capacity rights on the PG&E Gas Transmission-Northwest Pipeline Corporation (PGT) and Northwest Pipeline Corporation systems to PAG–US.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16197 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–243–000]

Panhandle Eastern Pipe Line Company; Notice of Reconciliation Report

June 12, 1998.

Take notice that on June 5, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its final reconciliation report in compliance with Article I, Section 3(d)(ii) of the April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (Settlement). The Settlement required the filing of a reconciliation report as soon as practicable following the termination of the Second Firm GSR Settlement Rates.

Panhandle states that it filed in Docket No. RP98–146–000 on February 27, 1998, to suspend the Second GSR Settlement Reservation Surcharge for firm transportation services provided under Rate Schedules FT, EFT and LFT and the Second GSR Settlement Volumetric Surcharge for service provided under Rate Schedule SCT effective April 1, 1998. Panhandle's February 27, 1998 filing was approved by Commission letter order issued March 27, 1998.

Panhandle states that copies of its filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16193 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–244–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998 U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Eighth Revised Sheet No. 73,
Third Revised Sheet No. 73A,
Second Revised Sheet No. 73B,

U–TOS asserts that the purpose of this filing is to comply with the Commission's April 16, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16194 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–51–000]

Viking Gas Transmission Company; Notice of GRI Refund

June 12, 1998.

Take notice that on June 9, 1998, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1997 to December 31, 1997.

Viking states that the refunds have been based on a total refund from GRI to Viking of $181,337.00, and have been allocated to Viking's firm shippers based on their relative contributions to GRI funding during 1997. Viking also states that the reported refunds will be credited to Viking's customers on May 1998 invoices that will be mailed in June.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16186 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3006–000, et al.]

K&K Resources, Inc., et al. Electric Rate and Corporate Regulation Filings

June 9, 1998.

Take notice that the following filings have been made with the Commission:

1. K&K Resources, Inc.

[Docket No. ER98–3006–000]

Take notice that on June 4, 1998, K&K Resources, Inc. (K&K) amended its petition for acceptance of K&K Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

K&K intends to engage in wholesale electric power and energy purchases and sales as a marketer. K&K is not in the business of generating or transmitting electric power.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket Nos. EC96–19–028 ER96–1663–029, ER98–1955–001, and ER98–2095–001]

Take notice that on June 1, 1998, California Power Exchange Corporation (PX) tendered for filing proposed compliance changes to its PX Operating Agreement and Tariff, including Protocols. The compliance filing responded to Commission orders issued October 30, 1997, December 17, 1997, and March 30, 1998 in the WEPEX proceedings. The filing also includes a *pro forma* Meter Service Agreement for PX Participants and a PX Participation Agreement. The PX also seeks waiver of Section 35.10 of the Commission's Regulations, 18 CFR 35.10.

The PX states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice. In addition, the comment must be categorized as follows:

(1) Comments related to the proposed changes to the PX Operating Agreement and Tariff, including Protocols in compliance with the Commission's orders;

(2) Comments on issues other than compliance changes to the PX Operating Agreement and Tariff, including protocols, such as issues that have not yet been addressed by the Commission;

(3) Comments related to the proposed changes to the PX Participation Agreement or the Meter Service Agreement for PX Participants.

3. California Independent System Operator Corporation

[Docket Nos. EC96–19–029 and ER96–1663–030]

Take notice that on June 1, 1998, California Independent System Operator Corporation (ISO) tendered for filing proposed compliance changes to its Tariff, including Protocols, Bylaws and Code of Conduct. The ISO seeks an extension of time to file certain

additional changes to its Tariff and Bylaws. The ISO also seeks waiver of section 35.10 of the Commission's regulations, 18 CFR 35.10 (1997).

The ISO states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice, and must included a one-page executive summary.

In addition, for administrative convenience, the Commission has classified the compliance filing into eight categories. The captioned docket includes, and is limited to, the ISO Tariff, including Protocols, Bylaws, and Code of Conduct.[1]

Any comments addressing the ISO's June 1 submittal of the ISO Tariff, including Protocols, Bylaws, and Code of Conduct, must be filed in the captioned proceeding, and should be further categorized as follows:

(1) Comments related to the proposed changes to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, in compliance with the Commission's orders; or

(2) Comments on issues other than compliance changes to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, such as issues that have not yet been addressed by the Commission;

4. California Independent System Operator Corporation

[Docket Nos. ER98–899–001, ER98–990–001, ER98–992–001, ER98–1019–001, ER98–1057–001, ER98–1499–001, and ER98–1971–001]

Take notice that on June 1, 1998, California Independent System Operator Corporation (ISO), tendered for filing proposed compliance changes to its Transmission Control Agreement, certain *pro forma* operating agreements and certain bilateral operating agreements. The ISO seeks an extension of time to file certain additional compliance changes to its Transmission Control Agreement. The ISO also seeks waiver of Section 35.10 of the Commission's Regulations, 18 CFR 35.10.

The ISO states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

In addition, for administrative convenience, the Commission has classified the ISO's compliance filing into eight categories. The captioned dockets include, and are limited to, seven of these categories, including the Transmission Control Agreement, the *pro forma* agreements, and the bilateral agreements submitted by the ISO as part of the compliance filing. [2]

Any comments addressing the ISO's June 1 submittal of the various agreements must be filed in separate documents under the appropriate docket number, as follows:

(1) Comments related to the proposed changes to the Transmission Control Agreement should be submitted in Docket No. ER98–1971–001.

(2) Comments related to the proposed changes to the *pro forma* and bilateral Scheduling Coordinator Agreements should be submitted in Docket No. ER98–990–001.

(3) Comments related to the proposed changes to the Interim Black Start Agreement should be submitted in Docket No. ER98–1019–001.

(4) Comments related to the proposed changes to the pro forma and bilateral Meter Service Agreements with either Scheduling Coordinators or ISO Metered Entities should be submitted in Docket No. ER98–1499–001.

(5) Comments related to the proposed changes to the pro forma and bilateral Participating Generator Agreements should be submitted in Docket No. ER98–992–001.

(6) Comments related to the proposed changes to the Responsible Participating Transmission Owner Agreements should be submitted in Docket No. ER98–1057–001.

(7) Comments related to the proposed changes to the pro forma and bilateral Utility Distribution Company Agreements should be submitted in Docket No. ER98–899–001.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER98–3216–000]

Take notice that on June 4, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Central Minnesota Municipal Power Agency (CMMPA). Wisconsin Electric respectfully requests an effective date of June 1, 1998, to allow for economic transactions.

Copies of the filing have been served on CMMPA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–3218–000]

Take notice that on June 4, 1998, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Orlando Utilities Commission for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on May 15, 1998.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–3219–000]

Take notice that on June 4, 1998, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (BIA) on behalf of the San Carlos Irrigation Project applicable under the APS–FERC Rate Schedule No. 201.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new facilities or modifications to existing facilities are required as a result of these revisions.

Copies of the filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER98–3220–000]

Take notice that on June 4, 1998, Carolina Power & Light Company (CP&L), tendered for filing a service

[1] The remaining seven categories relate to the Transmission Control Agreement and certain pro forma and bilateral agreements submitted by the ISO as part of the compliance filing. These portions of the compliance filing are addressed in a separate notice, issued concurrently in Docket Nos. ER98–899–001, ER98–990–001, ER98–992–001, ER98–1019–001, ER98–1057–001, ER98–1499–001 and Docket No. ER98–1971–001. Comments addressing the various agreements submitted with the compliance filing, including pro forma agreements, should be submitted in separate documents in the relevant dockets, as described in the separate notice.

[2] The remaining category relates to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, submitted by the ISO as part of the compliance filing. Those portions of the compliance filing are addressed in a separate notice, issued concurrently in Docket Nos. EC96–19–029 and ER96–1663–030. Comments addressing the ISO Tariff, including Protocols, Bylaws, and Code of Conduct should be submitted separately in the relevant dockets, as described in the separate notice.

agreement between CP&L and Engelhard Power Marketing, Inc., pursuant to CP&L's Power Sales Tariff No. 1; a service agreement between CP&L and Baltimore Gas and Electric Company pursuant to CP&L's Power Sales Tariff No. 1; a service agreement between CP&L and LG&E Power pursuant to CP&L's Open Access Transmission Tariff; and a service agreement between CP&L and Pan Energy Power Services, Inc., pursuant to CP&L's Open Access Transmission Tariff. Additionally, CP&L filed a Motion for Waiver of Notice of Filing Requirements or, in the Alternative, Request for Exercise of Commission's Equitable Authority.

Copies of the filing were served on the affected customers and on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–3221–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Burney Forest Products (Burney) for acceptance by the Commission.

The ISO states that this filing has been served on Burney and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER98–3222–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Scheduling Coordinator Agreement between the ISO and Hafslund Energy Trading L.L.C. (Hafslund) for acceptance by the Commission.

The ISO states that this filing has been served on Hafslund and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER98–3223–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between Burney Forest Products (Burney) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Burney and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER98–3224–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between Ormond Beach Power Generation, L.L.C. (Ormond Beach) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Ormond Beach and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Empire District Electric Co.

[Docket No. ER98–3225–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Merchant Energy Group of the Americas providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Merchant Energy Group of the Americas.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Empire District Electric Co.

[Docket No. ER98–3226–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Southern Company Energy Marketing L.P. providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Southern Company Energy Marketing L.P.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Empire District Electric Co.

[Docket No. ER98–3227–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Western Resources Incorporated providing firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Western Resources Incorporated.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Empire District Electric Co.

[Docket No. ER98–3228–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing changes of name and address for companies with which EDE has on file with the Commission completed umbrella service agreements for non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Cargill-IEC L.L.C., LG&E Energy Marketing, Inc., and PG&E Power Services.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. The Empire District Electric Co.

[Docket No. ER98–3229–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and AMOCO Energy Trading Corp., providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on AMOCO Energy Trading Corp.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER98–3230–000]

Take notice that on June 4, 1998, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customer: OGE Energy Resources, Inc.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Co.

[Docket No. ER98–3231–000]

Take notice that on June 4, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Virginia Power and City of Springfield, Illinois City Water, Light and Power under Virginia Power's FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to City of Springfield, Illinois City Water, Light and Power under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of June 1, 1998, for the Service Agreement.

Copies of the filing were served on City of Springfield, Illinois City Water, Light and Power, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The Empire District Electric Co.

[Docket No. ER98–3232–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and OGE Energy Resources, Inc., providing for non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on OGE Energy Resources, Inc.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Environmental Resources Trust, Inc.

[Docket No. ER98–3233–000]

Take notice that on June 4, 1998, Environmental Resources Trust, Inc. (ERT), tendered for filing an Application for Blanket Approvals, Waivers and Order Accepting Rate Schedule for Filing, requesting authorization to engage in electric power and energy transactions as a marketer. ERT also requests certain authorizations, waiver of certain regulations, and acceptance for filing of its proposed FERC Electric Rate Schedule No. 1, which provides for the sale of electric energy and/or capacity at negotiated rates.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The Empire District Electric Co.

[Docket No. ER98–3234–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and American Electric Power Services Corporation providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on American Electric Power Services Corporation.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16182 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–356]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

June 12, 1998.

An Environmental Assessment (EA) is available for public review. The EA was prepared for an application filed on November 17, 1997, by the Duke Energy Corporation, licensee for the Catawba-Wateree Hydroelectric Project located in North Carolina and South Carolina. In its application, the licensee requests that the Commission allow Harborside Development, LLC., to excavate an approximately 0.64 acre area of lake bottom and to stabilize 295 feet of shoreline on Lake Norman.

The EA finds that the proposed action would not be a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's public reference room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16187 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Application Filed With the Commission

June 12, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–11607–000.

c. *Date Filed:* January 30, 1998.

d. *Applicant:* Holyoke Gas & Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

George E. Leary, Manager, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040–4457, (413) 536–9311.

Roger W. Bacon, Director, Power Services Division, Massachusetts Wholesale Electric Company, Randall Road, P.O. Box 426, Ludlow, MA 01056, (413) 589–1041

John LeMieur, Acting General Manager, Ashburnham Municipal Light Plant, 78 Central Street, P.O. Box 823, Ashburnham, MA 01430–0823, (508) 827–4424

i. *FERC Contact:* Allan Creamer (202) 219–0365.

j. *Comment Date:* July 20, 1998.

k. *Description of Amendment:* On January 30, 1998, the Holyoke Gas & Electric Department (HG&E), the Ashburnham Municipal Light Plant (Ashburnham), and the Massachusetts Municipal Wholesale Electric Company (MMWEC) jointly filed an application to amend the license application filed by

Ashburnham and MMWEC on August 29, 1997, for the Holyoke Hydroelectric Project (FERC Project No. 11607), which is pending before the Commission. The Commission staff will be acting on this license application in the future.

The amendment: (1) adds HG&E as a co-applicant to the application originally filed by Ashburnham and MMWEC; (2) specifies that HG&E, rather than MMWEC, will finance the project and sell a portion of the project power to Ashburnham; and (3) adds several new environmental measures, including (a) sponsoring the annual shad derby, (b) providing canoe portage around the Holyoke dam, and (c) installing an exclusion structure at the mouth of the No. 2 Overflow spillway. The amendment also (1) changes the location where copies of the amended application are available to HG&E's offices, (2) names the applicant contact for HG&E, and (3) makes changes to the applicant contacts for Ashburnham and R.W. Beck, the applicant's consultant.

l. Federal, state, and local agencies, as well as other interested parties, are invited to file comments on the described amendment of application. A copy of the amended application may be obtained by agencies directly from the applicant. If any agency or other party does not file comments within the time specified for filing comments, as shown in paragraph (j), it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representative(s).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16189 Filed 6–17–98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

June 12, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11614–000.

c. *Date filed:* May 1, 1998.

d. *Applicant:* Allison Lake Hydro.

e. *Name of Project:* Allison Lake Project.

f. *Location:* On Allison Lake and Creek discharging into Port Valdez, in Valdez County, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Earle V. Ausman, Allison Lake Hydro, 1503 West 33rd Avenue, Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact:* Mr. Robert Bell, (202) 219–2806.

j. *Comment Date:* August 18, 1998.

k. *Description of Project:* The proposed project would consist of: (1) an existing natural Allison Lake having a surface area of 245 acres with a storage capacity of 8,000 acre-feet and normal water elevation of 1,345 feet msl; (2) a proposed intake structure; (3) a proposed 3,900-foot-long, micro-drilled tunnel, and a proposed 6,800-foot-long 38-inch-diameter pipeline; (4) a proposed powerhouse having a generating unit with an installed capacity of 6,000–kW; (5) a proposed rock lined channel or culvert tailrace; and (6) appurtenant facilities.

The project would have an annual generation of 20.4 MWH and would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal state of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In Determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comnment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above named documents must be filed by providing the original and the number of copies provided by the commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–16190 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6112–4]

Agency Information Collection Activities-Proposed Collection; Comment Request; Survey of the Chlorinated Aliphatics Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Survey of Chlorinated Aliphatics Industry, ICR Number 1866.01. This ICR includes information about clarifications to updated information from the initial RCRA section 3007 questionnaire and possible site visits anticipated for this information collection effort. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 17, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–CAIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments also may be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format also should be identified by the docket number F–98–CAIP–FFFFF. All electronic comments must be submitted as an ASCII. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically;

WWW: http://www.epa.gov/epaoswer/osw/hazwaste. htm#id

FTP: ftp.epa.gov
Login: anonymous
Password: your internet address
Files are located in /pub/epaoswer

The official record or this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a document in the **Fedeal Register.** EPA will not reply immediately to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (Hearing impaired).In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Wanda Levine, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–0438, or levine. wanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those generating, transporting, storing or disposing of the wastes of interest from the chlorinated aliphatics industry.

Title: Survey of Chlorinated Aliphatics Industry ICR, Number 1866.01.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries during the rest of this fiscal year through FY 1999, primarily for the purpose of developing hazardous waste listing determinations as part of a rulemaking effort under sections 3001 and 3004 of the Resources Conservation and Recovery Act (RCRA). Information collected under authority of this ICR specifically will be used to establish and expand an information data base with regard to hazardous waste generation and management by industry to support a goal of more effective regulation under sections 3001 and 3004 of RCRA.

The information acquired through the Industry Studies Program has contributed to the effective development and implementation of the hazardous waste regulatory program. The ICR, once approved, will allow continued and expanded data collection for the following program areas:

- Listing.
- Land Disposal Restrictions (LDR) and Capacity.
- Source Reduction and Recycling.
- Risk Assessment.

To support these hazardous waste program areas, EPA has been conducting surveys and site visits for the chlorinated aliphatics industry since 1992 under authority granted under RCRA section 3007 and OMB #2050–0042. Responses to the surveys were received and site visits conducted in early 1993 to collect data for development of hazardous waste rulemakings as required by a consent decree signed December 9, 1994, which resulted from the *EDF* v. *Reilly* case.

For the chlorinated aliphatics that is the subject of this information collection, the main data to be collected will be clarifications to updated survey information, and possibly site visits if necessary.

The information collected will be used primarily to determine if wastes from the chlorinated aliphatics industry should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

EPA anticipates that some data provided by respondents will be

claimed as confidential business information (CBI). Respondents may make a business confidentially claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The average annual burden imposed by the clarification to the survey updates is approximately 20.0 hours per respondent. The average number of responses for each respondent is 1. The estimated number of likely respondents is 25. The average annual burden imposed by site visits is approximately 16 hours per respondent. The average number of responses for each respondent is 1.

The estimated number of likely respondents is 3.

Data will be collected from the chlorinated aliphatics industry that generate wastes that may be listed as hazardous.

Dated: June 2, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–16257 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–7]

Second Public Scoping Meeting for EPA's Environmental Impact Statement for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of second public scoping meeting for EPA's Environmental Impact Statement (EIS) for the final rule for environmental impact assessment (EIA) of nongovernmental activities in Antarctica.

SUMMARY: The U.S. EPA, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), will prepare a Draft EIS for proposed final regulations that will provide for: (1) environmental impact assessment of nongovernmental activities, including tourism, in Antarctica for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; and (2) coordination of the review of information regarding environmental impact assessments received by the United States from other Parties to the Protocol on Environmental Protection to the Antarctic Treaty. These final regulations will be prepared pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996. EPA held its first public scoping meeting on July 8, 1997, and, at the request of the International Association of Antarctica Tour Operators, individual Antarctica tour operators, and The Antarctica Project on behalf of the Antarctic and Southern Ocean Coalition, agreed to conduct a second scoping meeting following the 1997–1998 Antarctic tour season, the first such season following promulgation of EPA's Interim Final Rule governing Environmental Impact Assessment of Nongovernmental Activities in Antarctica (**Federal Register**/Vol. 62, No. 83/ Wednesday, April 30, 1997/Rules and Regulations). EPA invites comments and suggestions on the scope of the rulemaking with regard to the environmental and regulatory issues to be addressed in the EIS.

DATES: The public scoping meeting will be on Tuesday, July 14, 1998, from 1:00 PM until 4:30 PM, at the Washington Information Center—EPA Conference Service Center, Conference Room 3 North, Waterside Mall, 4th and M Street SW, Washington, DC. To access Conference Room 3 North, enter Waterside Mall through the entrance directly in front of the Waterfront-SEU Metro Station (green line), turn right at the central hallway, left at the end of this hallway, and enter the North Conference Center through the last door on the right. Written comments from the public may also be sent directly to EPA to the contacts listed below and will be accepted by EPA through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone: (202)564–7157 or (202)564–7144, respectively.

SUPPLEMENTARY INFORMATION: Please refer to the Public Scoping Meeting Notice for the July 8, 1997 meeting (**Federal Register**/Vol. 62, No. 105/ Monday, June 2, 1997/Notices), and the Notice of Intent to Prepare an EIS for the final rule for EIA of nongovernmental activities in Antarctica (**Federal Register**/Vol. 62, No. 90/Friday, May 9, 1997/Notices). Copies of documents pertinent to this project are available from the contacts listed above and also on the World Wide Web at: http://www.epa.gov/oeca/ofa.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 98–16209 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6112–3]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Petroleum Refining and Computers

and Electronics Sector Subcommittee meetings; open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Petroleum Refining and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcement below.

(1) Petroleum Refining Sector Subcommittee Meeting—July 7–8, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Petroleum Refining Sector Subcommittee on July 7–8, 1998. The Equipment Leaks and Refinery Air Information Reporting System (RAIRS) Workgroup meetings will be held from 1:00 p.m. EST to 6:00 p.m. EST on Monday, July 6. The full Petroleum Refining Sector Subcommittee will meet from 9:00 a.m. EST to 6:00 p.m. EST on Tuesday, July 7 and from 9:00 a.m. EST to 5:00 p.m. EST on Wednesday, July 8. The meeting will be held at the Old Town Alexandria Holiday Inn Select, 480 King Street, Alexandria, VA 22314. The hotel telephone number is 703–549–6080 or 800–368–5047.

The preliminary agenda for the Subcommittee meeting includes comments from the National Petroleum Refiners Association and the American Petroleum Institute on an Equipment Leaks Project Report and a discussion of a strategic framework and performance goals for the Petroleum Refining Sector Subcommittee. There will also be reports of the Accidental Release Information Project, the RAIRS Project, and the Equipment Leaks Project. Additionally, presentations are planned on Marathon Oil Company's Texas City Refinery consolidated leak detection and repair program, and the potential of laser technologies as alternatives to current emissions monitoring methods. A public comment period will also be provided.

For further information concerning this meeting of the Petroleum Refining Sector Subcommittee, please contact either Craig Weeks, Designated Federal Officer (DFO), at US EPA Region 6 (6EN), 1445 Ross Avenue, Dallas, TX 75202–2733, by telephone at 214–665–7505 or E-mail at weeks.craig@epamail.epa.gov or Steve Souders, Alternate DFO, at US EPA by mail (5306W), 401 M Street, SW, Washington, DC 20460, by telephone at 703–308–8431 or E-mail at souders.steve@epamail.epa.gov.

(2) Computers and Electronics Sector Subcommittee—July 15 and 16, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Computers and Electronics Sector Subcommittee on July 15 from 8:30 a.m. EST to 5:00 p.m. EST and on July 16 from 8:30 a.m. EST to 3:00 p.m. EST. The meeting will be held at the Washington Marriott Hotel at 1221—22nd Street, NW, Washington, DC. The Hotel telephone number is 202–872–1500.

Both days, July 15 and 16, 1998, will include meetings of the full subcommittee, and breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Alternative Strategies). Projects to be discussed include CURE (Consolidated Uniform Report for the Environment); BOLDER (Basic On-Line Disaster and Emergency Response); Green Track, a project to offer regulatory flexibility or other incentives for improvement of environmental performance at facilities; a project to develop a printed resource guide to assist stakeholders to develop constructive approaches to address environmental issues in their own communities; Evaluation of Models and Development of Best Practices for Electronic Equipment Recovery in a San Francisco Recycling Pilot, an examination of data from pilot collection projects to identify data gaps and develop a report. The subcommittee will also discuss the results of the June 9, 1998 meeting of the Common Sense Initiative Council. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning the meeting of the Computers and Electronics Sector Subcommittee meeting, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, S.W., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, U.S. EPA Region 9 on (415) 744–2266.

Inspection of Subcommittee Documents: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meeting, will be available for public inspection in room 3802M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: June 12, 1998.

Helga B. Butler,

Acting Designated Federal Officer.

[FR Doc. 98–16256 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6111–9]

Peak Oil Superfund Site Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 650 de minimis parties at the Peak Oil Superfund Site (Site) an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. On August 28, 1997, EPA published the names of 140 parties that returned signature pages accepting EPA's offer. Since that time, 37 additional parties have submitted signature pages accepting EPA's de minimis settlement offer.

Following is a list of those additional 37 parties: B&W Corporation f/k/a Bowman Transportation, Case International Harvester, Crews Equipment Company, City of Fort Myers, City of Wauchula, Compressed Air Products, Inc., Crown Datsun n/k/a Crown Nissan, Crown Pontiac, Dundee Citrus Growers Association, Eagle Supply, Inc., Fred P. Smith, Inc., Graff's Union 76, Grimsley Oil Company, Inc., Haines City Citrus Growers Association, Hoagland Oldsmobile, Hough Chevrolet, Jiffy Lube International, Inc., Jim McKeel Buick-GMC Trucks n/k/a Blount Buick-GMC Trucks, Lake Placid Citrus Growers, Inc., M. Anderson Industries, Inc., Nitram, Inc., Okeechobee County School Board, SmithKline Beecham Corporation, Peace River Packing

Company, Penreco, Pinckney, Inc., Polk Nursery Company, Inc., Shell Distributor (Hobson Ingram), Sims Crane & Equipment Co. (Sims Crane Service, Inc.), Smith Brothers Oil Company, Smoak Groves, Inc., Spring Lock Scaffolding, Tampa Bay Hermetics, Inc., Tampa Yacht and Country Club, Inc., Tito's Service Center, Inc., United Telephone Company of Florida, Unocal Corp., and The Wickie Company.

EPA will consider public comments on the proposed settlement with these 37 parties for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 27, 1998.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 98–16253 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 15702.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 18, 1998, 10:00 a.m., Meeting open to the public.

This meeting has been cancelled.

* * * * *

DATE & TIME: Tuesday, June 23, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: Thursday, June 25, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Audit: 1996 Democratic National Convention Committee, Inc.

Audit: Chicago's Committee for '96.

Soft Money: Revised Draft Notice of Proposed Rulemaking.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR. Doc. 98–16334 Filed 6–16–98; 10:49 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573; Kenneth Clark Company, Inc., 6505 St. Helena Avenue, P.O. Box 9145, Baltimore, MD 21222, Officers: Wayne K. Clark, President, Janice M. Clark, Vice President.

Dated: June 15, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16204 Filed 6–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-15501) published on page 31994 of the issue for Thursday, June 11, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Frank P. Giltner III, Phoenix, Arizona, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Frank P. Giltner III, and Renee Valladares Giltner, both of Phoenix, Arizona; to acquire voting shares of The Avoca Company, Avoca, Nebraska, and thereby indirectly acquire voting shares of Farmers State Bank of Nebraska, Bennet, Nebraska.

Comments on this application must be received by June 25, 1998.

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16170 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Habersham Bancorp, Cornelia, Georgia; to acquire 27.06 percent of the voting shares of Empire Bank Corp., Homerville, Georgia, and thereby

indirectly acquire Empire Banking Co., Homerville, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Community First Financial, Inc., Maysville, Kentucky, and thereby indirectly acquire Community First Bank of Kentucky, Warsaw, Kentucky, and Community First Bank, N.A., Maysville, Kentucky.

2. National City Bancshares, Inc., Evansville, Indiana; to merge with Trigg Bancorp, Inc., Cadiz, Kentucky, and thereby indirectly acquire Trigg County Farmers Bank, Cadiz, Kentucky.

3. Independent Southern Bancshares, Inc. ESOT, Brownsville, Tennessee, and its subsidiary, Independent Southern Bancshares, Inc., Brownsville, Tennessee; to acquire 100 percent of the voting shares of First Western Bank, Cooper City, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Archer, Inc., Central City, Nebraska; to acquire an additional 9 percent, for a total of 57.20 percent, of the voting shares of Osceola Insurance, Inc., Osceola, Nebraska, and thereby indirectly acquire First National Bank, Osceola, Nebraska, and Gretna State Bank, Gretna, Nebraska.

2. Gold Banc Corporation, Inc., and Gold Banc Acquisition Corporation VII, Inc., both of Leawood, Kansas; to acquire 100 percent of the voting shares of First State Bancorp., Inc., Pittsburg, Kansas, and thereby indirectly acquire First State Bank & Trust Company, Pittsburg, Kansas. In connection with this application Gold Banc Acquisition Corporation VII, Inc., Leawood, Kansas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bancorp., Inc., Pittsburg, Kansas;, and thereby indirectly acquire First State Bank & Trust Company, Pittsburg, Kansas.

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16171 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The A.N.B. Holding Company, Ltd., The ANB Corporation, and ANB Delaware Corporation, all of Terrell, Texas; to acquire 100 percent of the voting shares of Bank of Van Zandt, Canton, Texas.

Board of Governors of the Federal Reserve System, June 15, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16250 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Utrecht, The Netherlands; to acquire Weiss, Peck & Greer, L.L.C., New York, New York, and thereby engage in acting as investment and financial adviser to any person, pursuant to § 225.28(b)(6) of Regulation Y; conducting agency transactional services for customer investments, pursuant to § 225.28 (b)(7) of Regulation Y; acting directly or indirectly as general partner of, managing member in or otherwise controlling investment funds that invest in up to 5 percent of the voting securities and 25 percent of the nonvoting equity of companies; *See The Dresdner Bank, A.G.*, 84 Fed. Res. Bull. 361 (1998), ("Dresdner/Oeschle"); *The Bessemer Group, Incorporated*, 82 Fed. Bull. 569 (1996); and *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994); acting as a commodity pool operator, *See Dresdner/Oeschle*; providing administrative services to mutual funds to the extent set forth in Board orders, *See Lloyds/IAI Lloyds TSB Group plc*, 84 Fed. Res. Bull. 116 (1998); *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996); *Bankers Trust New York Corporation*, 83 Fed. Res. Bull. 780 (1996); and *J.P.Morgan*, 84 Fed. Res. Bull. 113 (1997).

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16169 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0381]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—NDA's; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 8, 1998, the comment period for a notice announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—NDA's" that appeared in the **Federal Register** of April 8, 1998 (63 FR 17184). FDA is taking this action in response to a request for an extension and to allow interested parties additional time for review and to submit comments.

DATES: Written comments by July 8, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth Edmunds, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3276; ESUB@CDER.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1998 (63 FR 17184), FDA's Center for Drug Evaluation and Research (CDER) published a notice announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—NDA's." The draft guidance is intended to assist applicants who wish to submit new drug applications (NDA's) in electronic format. Although voluntary, submissions of NDA's in electronic format should reduce the amount of paperwork for applicants and the agency. The April 8, 1998, notice invited interested persons to submit written comments on the draft guidance within 60 days.

On April 20, 1998, FDA received a letter from Pharmaceutical Research and Manufacturers of America, requesting that the agency extend the comment period on the draft guidance 90 days. In addition, in the **Federal Register** of June 1, 1998 (63 FR 29741), FDA's Center for Biologics Evaluation and Research (CBER) published a draft guidance for industry entitled "Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/Establishment License Application (ELA) to the Center for Biologics Evaluation and Research."

Because a number of NDA sponsors have expressed the wish to see the draft guidance become final as soon as possible and because the agency considers this to be a dynamic document, which will be updated in the future, the agency does not believe it is necessary to extend the comment period an additional 90 days. However, the agency agrees that an additional period will provide time for interested parties to review both CDER and CBER's guidances. Therefore, the agency is reopening the comment period for an additional 30 days, until July 8, 1998.

Interested persons may, on or before July 8, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16140 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0388]

Draft Guidance for Industry on Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies." The draft guidance is intended to provide recommendations to sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplements who intend to perform bioavailability and bioequivalence studies for topically applied dermatological drug products during either the preapproval or postapproval period. The agency is seeking comments on the draft guidance.

DATES: Written comments may be submitted on the draft guidance by August 17, 1998. General comments on the agency guidances are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm".

Submit written comments on this draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD. 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies." The draft guidance

is intended to provide recommendations to sponsors of NDA's, ANDA's, and supplements who intend to perform, during either the preapproval or postapproval period, bioavailability and bioequivalence studies for topical dermatological drug products.

The definitions of "bioavailability" and "bioequivalence," the requirements for submitting such data in NDA's, ANDA's, and supplements, and the types of in vivo studies that are acceptable to establish bioavailability and bioequivalence are set forth in CFR part 320. These regulatory definitions and requirements reflect requirements in the Federal Food, Drug, and Cosmetic Act and other agency regulations.

Generally, bioavailability and bioequivalence of a drug product can be assessed through measurement of the active moiety(ies)/active ingredient(s) in an accessible biologic fluid such as blood, plasma, and urine. For some drug products, including topical dermatological drug products, it is not possible to use pharmacokinetic measurements of the active moiety(ies)/active ingredient(s) in blood, plasma, or urine to document bioequivalence because topical dermatological products generally do not produce measurable concentrations in extracutaneous biological fluids. This draft guidance document proposes other methods to establish bioavailability and bioequivalence, including the following types of studies: (1) Clinical studies; (2) pharmacodynamic studies; (3) dermatopharmacokinetic studies; and (4) in vitro studies. These approaches are discussed at 21 CFR 320.24, although these regulations do not provide specific methodologic approaches. In addition to general comments, FDA welcomes the submission of data that support or refute the use of any of these approaches, especially dermatopharmacokinetic approaches, in the documentation of bioavailiability and bioequivalence of topical dermatological drug products. FDA also welcomes the submission of relevant clinical, dermatopharmacokinetic, and in vitro release data for further evaluation of these approaches in the guidance. At some time following receipt of public comments and other information to this draft guidance, FDA intends to discuss the guidance and the public response to the guidance before a joint meeting of the Advisory Committee for Pharmaceutical Science and the Dermatologic and Ophthalmic Drugs Advisory Committee.

This draft guidance is a level 1 draft guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on bioavailability and bioequivalence approaches for topical dermatological drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Requests should be identified with the docket number found in brackets in the heading of this document. Copies of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16141 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–SP–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Post-Eligibility Preprint and Supporting Regulations in 42 CFR 430.10; *Form No.:* HCFA–SP–0001 (OMB# 0938–0673); *Use:* The post-eligibility preprint is part of the comprehensive statement that a State submits to show that it is meeting the requirements for Federal funding of its Medicaid program. It comprises part of each State's Plan which outlines the mandatory and optional aspects of a State's Medicaid program. Accurate submission of this information is necessary in order for States to receive Federal funding.; *Frequency:* On occasion; *Affected Public:* State, local or tribal government and Federal Government; *Number of Respondents:* 56; Total Annual Responses: 56; *Total Annual Hours:* 280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16148 Filed 6–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form # HCFA–21, 21B, 21P, 21.11A, 21E, 64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9P, 64.10P, 64.11A, 64.9d]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the need for States to report financial and related statistical information pursuant to the operation of their Medicaid programs, under title XIX of the Social Security Act, and their Children's Health Insurance Programs (CHIP) under title XXI of the Act. States will begin reporting information after the end of the third quarter of Federal fiscal year 1998 (after June 30, 1998). Without the capacity for States to report this information discussed below, the States and HCFA will not be able to properly implement the provisions enacted by the Balanced Budget Act (BBA) of 1997 related to the CHIP.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, within ten working days of publication of this notice in the **Federal Register**.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

(1) *Type of Information Collection Request:* New Collection;

Title of Information Collection: Children's Health Insurance Program (CHIP) Budget and Expenditure System State Reporting Forms.

Form Nos.: HCFA–21, 21B, 21P, 21.11A, 21E;

Use: These forms will be used by State CHIP agencies to report CHIP program budget projections and actual CHIP program benefits and administrative expenditures, and the numbers of children being served in the CHIP program, to the Health Care Financing Administration (HCFA). The information provided by these new forms will be used by HCFA to prepare the grant awards to States for the CHIP, to ensure that the appropriate level of Federal payments for State expenditures under the CHIP are made in accordance with the CHIP-related BBA legislative provisions of 1997, and to track, monitor, and evaluate the numbers of children being served by the CHIP.

Note: At this time Form HCFA–21E of this package is for States to report the numbers of children, by service delivery system, that are served in the States' CHIPs based on age categories. However, we are continuing to work with the States to develop an appropriate format for States to report the numbers of children, by service delivery system, that are served in the CHIP based on Federal poverty income level categories and under the age categories previously requested. When this format is finalized it will be incorporated into Form HCFA–21E.

For a short description of the CHIP reporting forms, see below:

- Form HCFA–21 Summary Sheet. Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI Summary Sheet. This form summarizes the total expenditures in the State's CHIP reported by the State for the reporting quarter.
- Form HCFA–21. Children's Health Expenditures by Type of Service for the Title XXI Program, Expenditures in this Quarter. States use this form to report CHIP current quarter expenditures in accordance with services categories authorized under title XXI.
- Form HCFA–21B. Children's Health Insurance Program Budget Report for the Title XXI Program State Expenditure Plan. States use this form to report their budget projections each quarter for their Title XXI CHIPs for the current and budget Federal fiscal years and broken out by quarter.
- Form HCFA–21P. Children's Health Expenditures by Type of Service for the Title XXI Program, Prior Period Adjustments. States use this form to report CHIP prior period adjustment expenditures claimed in the submission quarter in accordance with services categories authorized under title XXI.
- Form HCFA–21.11A. Provider-Related Donations and Health Care Related Taxes, Fees, and Assessments Received Under Section 1903(w) for Title XXI. States use this form to report CHIP-related State receipts of provider related donations, and health care related taxes, fees, and assessments.
- Form HCFA–21E. Children's Health Insurance Program, Number of Children Served. States use this form to report the numbers of children, by service delivery system, that are served in the States' CHIPs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children, by service delivery system, that are served in the CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 224;

Total Annual Hours: 7,840.

(2) *Type of Information Collection Request:* Revision of a currently approved collection; Title of Information Collection: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

Form Nos.: HCFA–64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9, 64.10, 64.10P, 64.11a, 64.9d;

Use: These new forms are revisions of the currently approved collection report Form HCFA–64. These forms will be used by State Medicaid agencies to report their actual CHIP-related Medicaid expenditures and the numbers of CHIP-related children, and other children being served in the Medicaid program, to the Health Care Financing Administration(HCFA). The forms will be used by the HCFA to ensure that the appropriate level of Federal payments for the State's CHIP-related Medicaid program expenditures are made in accordance with the CHIP and related Medicaid provisions of the BBA of 1997, and to track, monitor, and evaluate the numbers of CHIP-related children and other individuals being served by the Medicaid program.

Note: At this time Forms HCFA–64.21E and HCFA–64EC of this package are for States to report the numbers of CHIP-related children and other children, by service delivery system, that are served in States' Medicaid programs based on age categories. However, we are continuing to work with the States to develop an appropriate format for States to report the numbers of children, by service delivery system, that are served in the States' Medicaid programs based on Federal poverty income level categories and under the age categories previously requested. When this format is finalized it will be incorporated into Forms HCFA–21E and HCFA–64EC.

For a short description of the CHIP-related Medicaid reporting forms, see below:

• HCFA–64 SUMMARY SHEET

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Summary Sheet. The form HCFA–64 summary sheet is a one-page summary sheet summarizing the total expenditures reported for the quarter. The remaining forms provide additional detail and support the entries made on the summary sheet.

• HCFA–64.9

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.9 is comprised of two pages that are used for detailing, by category, current quarter program expenditures by type of service (e.g., clinical services, dental services). The total figures from the form HCFA–64.9 are transferred to the form HCFA–64 Summary Sheet, Line 6, columns (a) and (b). A separate copy of the form HCFA–64.9 must also be submitted for each waiver granted to the State agency for which expenditures have been incurred. The total waiver figures are already incorporated in the expenditures reported on the "base" (one form) form HCFA–64.9.

• HCFA–64.9p

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Prior Period Adjustment. The form HCFA–64.9p supports claims or adjustments for prior period (years) which are transferred to the form HCFA–64 summary sheet and noted on Lines 7, 8, 10.A., and 10.B., columns (a) and (b). It contains the same service categories as the form HCFA–64.9. This two-page form details the program expenditures, by category, arraying the expenditures by fiscal year. A separate form HCFA–64.9p is prepared to support each fiscal year and each line entry (Lines 7, 8, 10.A., and 10.B.) on the summary sheet. If the prior period adjustment includes waiver-related expenditures, a separate form HCFA–64.9p must be filed for each waiver including HCBS waivers.

• HCFA–64.9d

Allocation of Disproportionate Share Hospital Payment Adjustments to Applicable FFYs. The form HCFA–64.9d has been created to track payments of DSH by Federal Fiscal Year. This one page form details, by Inpatient Hospital Services and Mental Health Facility Services, details the allotment and DSH payments by Federal Fiscal Years. This is authorized under § 1923(f) of the Act.

• HCFA–64.10

Expenditures for State and Local Administration for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.10 supports administrative expenditures reported on the summary sheet. This one page form details, by category, the current quarter expenditures for administering the Medicaid program. The total figures from the "base" form HCFA–64.10 summary sheet. The State agency must also file a separate form HCFA–64.10 or each of its waivers granted to the State agency for which expenditures have been incurred. The waiver expenditures reported on a supporting form HCFA–64.10 are already included with the overall expenditures reported on the "base" form HCFA–64.10.

• HCFA–64.10p

Expenditures for State and Local Administration for the Medical Assistance Program, Prior Period Adjustments. The form HCFA–64.10p is similar to the form HCFA–64.10 except that it addresses adjustments to prior period expenditures. The totals from the form HCFA–64.10p are transferred to the form HCFA–64 summary sheet, Lines 7, or 8. or 10.A., or 10.B., columns (c) and (d). A separate form HCFA–64.10p must be completed for each line item entry, by fiscal year, on the summary sheet.

• HCFA–64.11

Summary Total of Receipts from form HCFA–64.11A. The form HCFA–64.11 has been created to summarize the information reported on the various HCFA–64.11a forms. This is authorized under § 1903(w) of the Act.

• HCFA–64.11A

Actual Receipts by Plan Name. The form HCFA–64.11a has been created to report the actual receipts by plan names form provider-related donation and health care related taxes, fees and assessments. This is authorized under § 1903(w) of the Act.

• There are no forms numbered 64.1 through 64.8 because of form development and redevelopment over the years. There are also no forms detailing items 9.B. through 9.E. of the summary sheet because there is no need for further breakdown of these figures for reimbursement calculations.

HCFA–64.21 Quarterly Medical Assistance Expenditure By Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21U Quarterly Medical Assistance Expenditure Categories by Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures described under section 1905(u)(2) and 1905(u)(3) of the Act.

HCFA–64.21P Quarterly Medical Assistance Expenditures By Children's Health Insurance Program expenditure categories. States will use this form to report prior period expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21UP Quarterly Medical Assistance Expenditures by Children's Health Insurance Program Expenditure Categories, Prior Period Expenditures. States will use this form to report prior period expenditures described under section 1905(u)(2) and (3) of the Act.

HCFA–64.21E Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs related to CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

HCFA–64EC Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of children (other than CHIP-related children), by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children (other than CHIP-related children), by service delivery system, that are served in the Medicaid program based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 224;

Total Annual Hours: 16,464.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web

Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

HCFA is requesting OMB review and approval of these collections within eleven working days of publication in the **Federal Register**. However, comments on these information collections and record keeping requirements must be received by the designees referenced below, within ten working days of publication in the **Federal Register**: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Laura Oliven , HCFA Desk Officer.

Dated: June 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16221 Filed 6–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HIV/AIDS Dental Reimbursement Program

(OMB No. 0915–0151)—Extension and Revision—This is a request for extension and revision of the instructions used by accredited dental schools and post-doctoral dental programs requesting reimbursement for documented uncompensated costs for providing oral health care for HIV-infected individuals. Awards are authorized under section 776(b) of the Public Health Service Act (42 U.S.C. 294n).

The HIV/AIDS Bureau needs to collect this information to determine the amount of the reimbursement award that is made to each institution. The information will also assist the Health Resources and Services Administration (HRSA) in understanding: (1) the extent to which dental programs are involved in the treatment of HIV-infected individuals; (2) the type of individuals seeking care; (3) the scope and extent of HIV oral health services provided; (4) the time and costs involved in providing these services; and (5) how the funds used by the institutions are allocated.

Comparisons are requested between HIV and non-HIV infected patients to enable HRSA to determine the impact on dental programs of providing oral health services to HIV-infected patients.

The hourly burden estimate has increased substantially based on the experience of the grantees in completing the information required.

Collection	Number of respondents	Hours per response	Total burden hours
Reimbursement Request	125	20	2,500

Send comments to HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: June 12, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–16143 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 63 FR 7422 dated February 13, 1998). This notice reflects the establishment of the Health Resources and Services Administration's (HRSA) five (5) Field Clusters in the Office of Field Coordination (RS5). This notice also updates the functional statements for the Division of Facilities and Loans (RR2) in the Office of Special Programs (RR). The changes are as follows.

I. Under Part R, HRSA, establish a new chapter as the "HRSA Field Clusters (RS5F)," to read as follows:

Section RS5F–00 Mission

The HRSA Field Clusters are comprised of the Northeast Cluster, the Southeast Cluster, the Midwest Cluster, the West Central Cluster and the Pacific West Cluster. These clusters support the Department's mission of improving the health of the Nation's population by administering HRSA field health programs and activities to assure a coordinated HRSA effort in support of national health policies and State and local needs within the field. The clusters will assist HRSA in addressing cross-cutting program issues and initiatives to achieve program goals, and in providing a HRSA focal point for responding to the needs of State and local governments, community agencies and others involved in the planning or provision of general health. This organizational structure will support intergovernmental activities which respond to health issues on both the State and local levels, help administer health activities and programs to provide prevention of health problems, and assure access to and quality of general health services.

Section RS5F–10 Organization

Each cluster is headed up by a Field Coordinator who reports to the Director, Office of Field Coordination, who reports to the Associate Administrator for Management and Program Support.

The clusters are organized as follows:

A. Northeast Cluster (RS5F1)

1. Philadelphia, PA.—lead city

2. Boston, MA.
3. New York, NY.

B. Southeast Cluster (RS5F2)
1. Atlanta, GA.

C. Midwest Cluster (RS5F3)
1. Chicago, IL.—lead city
2. Kansas City, MO.

D. West Central Cluster (RS5F4)
1. Dallas, TX.—lead city
2. Denver, CO.

E. Pacific West Cluster (RS5F5)
1. San Francisco, CA.—lead city
2. Seattle, WA.

Section RS5F–20 Function

A. The lead cities in the Northeast, Southeast, Midwest, West Central and Pacific West Clusters consist of the following components.

1. Immediate Office of the Field Coordinator

Serves as HRSA's senior public health official in the field, providing liaison with State and local health officials as well as private and professional organizations; (2) provides input from local regional and State perspectives to assist the Administrator and Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the Associate Administrators and the Director, Office of Field Coordination, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (e.g. Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with the other Federal agencies in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

2. Division of Health Services

Directs and coordinates field development and implementation of HRSA primary care programs and activities designed to increase access to primary care for underserved populations in the States served by the division; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies and performance standards; (3) assures implementation of loan programs; (4) provides for development, implementation and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by the appropriate HRSA bureau component and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as a source of expertise on health services development, primary health care programs and as field program liaison with HRSA headquarters on technical programmatic matters; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health service programs and related efforts, including voluntary professional and other private sector activities.

3. Division of Health Resources

Directs and coordinates field development and implementation of HRSA programs and activities designed to increase the capacity and capability of health facilities construction, maternal and child health care programs and other health-related programs in the States served by the cluster; (2) provides continuous program monitoring of HRSA grants and contracts for compliance with applicable laws, regulations, policies and performance standards; (3) assures implementation of loan programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as a source of expertise on resource development, maternal and child health programs, HIV/AIDS programs, health professions programs and as field program liaison with HRSA headquarters on technical programmatic matters, (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions, (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional and other private sector activities.

II. Under the Office of Special Programs, Division of Facilities and Loans, make the following changes:

Delete the and before item (9). Place a (;) at the end of item (9) and add the following statement: and (10) coordinates the facilities and construction engineering activities for the field.

Section RS5F–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon date of signature.

Dated: June 10, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–16142 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Studies To Evaluate Toxicologic and Carcinogenic Potential of Triethanolamine in Mice.

Date: June 23, 1998.

Time: 9:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Carol K. Shreffler, PHD, Health Scientist Administrator, 104 T. W.

Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1445.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16231 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Coordinating Center for the African-American Diabetes Mellitus Study Network.

Date: July 8, 1998.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 3446, Research Triangle park, NC 27709 (Telephone Conference Call).

Contact Person: Carol K. Shreffler, PHD, Health Scientist Administrator, 104 T. W. Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1445.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 30–31, 1998.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–South Campus, Building 1, Conference Room "B", Research Triangle Park, NC 27709.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Div of Extramural Res & Training, Natl Inst of Environmental Hlth Scis, National Institutes of Health, PHS, DHHS, Research Triangle Park, NC 27709.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposure; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16232 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 12, 1998.

Time: 7:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rouke, Scientific Review Administrator, 6000 Executive Blvd., Suite 409.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16233 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 6, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 16, 1998.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHD, DHHS, Bethesda, MD 20892, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 23–24, 1998.

Time: July 23, 1998, 8:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Insititute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 28, 1998.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Conference Room "O", Rockville, MD 20857.

Contact Person: Ron Schoenfeld, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parlwan Building—Room 9–010, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division Of Extramural Activities, National Institute of Mental Health, PHS, DHHS, Bethesda, MD 20892. 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 31, 1998.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 31, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russel E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16234 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS SEP Clinical Trial B.

Date: July 9, 1998.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PHD, NIAMS, 45 Center Drive, 5AS 25U.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS SEP Eisenberg Supplement.

Date: July 15, 1998.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Bldg, Bethesda, MD 20892–6400 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PHD, NIAMS 45 Center Drive, 5AS 25U.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16235 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1998.

Time: 9:00 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9–105, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 23, 1998.

Time: 10:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Ron Schoenfeld, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600

Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16236 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Horseshoe Creek Wildlife Foundation, Inc., Davenport, FL, PRT–691840

The applicant requests a permit to re-export and re-import leopards (*Panthera pardus*), tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Exotic Endangered Cats of World, Gibsonton, FL, PRT–798412.

The applicant requests a permit to re-export and re-import leopards (*Panthera pardus*), tiger (*Panthera tigris*)(*Panthera tigris altaica*) (*Uncia uncia*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: John Horton, McKenzie, FL, PRT–843762.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Peter's Taxidermy, Graham, WA, PRT–840263.

The applicant requests a permit to export one mounted jaguar (Panthera onca) and the articulated skeleton of one snow leopard (Unica unica) to a museum in Japan for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Kenneth Glander, Duke University Primate Center, Durham, NC, PRT–843817.

The applicant requests a permit to import blood samples taken from wild mantled howling monkeys (*Alouatta palliata*) in Ecuador for the purpose of genetic research.

Applicant: Richard H. Manly, Augusta, GA, PRT–843737.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Mote Marine Laboratory, Sarasota, FL, PRT–843809.

Permit Type: Take for Scientific Research.

Name and Number of Animals: Florida Manatee (*Trichecus manatus latirostris*), 70.

Summary of Activity to be Authorized: The applicant requests a permit to conduct controlled approaches to manatees using a variety of vessels and operating conditions, as part of a study of responses of manatees to vessels.

Source of Marine Mammals: Manatees occupying Sarasota Bay, Florida from April through October.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Dennis John Tucker, Deforest, WI, PRT–843445.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Joseph J. Sisca, Jr., Brewster, NY, PRT–843452.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: William F. Kneer, Jr., Whitehall, MI, PRT–843647.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Leroy M. Wurst, Pigeon, MI, PRT–843726.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Ronald Guire, Los Gatos, CA, PRT–843828.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North

Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 12, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–16156 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service, Interior

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Bonny Doon Quarries, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: RMC Lonestar of Pleasanton, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) the Endangered Species Act of 1973, as amended. The proposed 10-year permit would authorize the incidental take of the California red-legged frog (Rana aurora draytonii), federally listed as threatened, during operation and maintenance of settlement ponds in the Bonny Doon Quarries in Santa Cruz County, California.

This notice announces the availability of the permit application and the environmental assessment for public comment. The permit application includes a habitat conservation plan for the Bonny Doon Quarries' settlement ponds and an implementation agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before July 20, 1998.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments also may be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: David Pereksta, Fish and Wildlife Biologist, at the above address (805–644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

RMC Lonestar proposes to continue operation and maintenance of five of seven settlement ponds and associated culverts and open drains that serve active and formerly active operational areas, including both quarrying and waste disposal areas, at the Bonny Doon Quarries. The site is known to support populations of the California red-legged frog. As a component of recent environmental review conducted by the County of Santa Cruz (County) for RMC Lonestar's operations and as a condition of RMC Lonestar's mining permit, the County now requires regular cleaning of an engineered drainage system that includes the five settlement ponds and associated culverts and open drains noted above. Operational areas are either owned or leased by RMC Lonestar and covered by the mining permit. The County may add these maintenance requirements to two additional ponds and their associated culverts and drains.

At a minimum, each settlement pond must have adequate capacity to hold run-off from a 10-year, 2-hour rainfall event falling in its catchment area. To maintain this pond capacity, RMC Lonestar must perform general maintenance and remove accumulated sediment each year from at least some of the ponds in the late summer or early fall. The pond maintenance cannot begin before April 15 and must be completed by October 15 to satisfy the County's objectives for the protection of water quality.

RMC Lonestar needs an incidental take permit from the Service because listed wildlife species are protected against "take" pursuant to section 9 of the Endangered Species Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are found at 50 CFR 17.32.

The Service proposes to issue a 10-year permit to RMC Lonestar for incidental take of California red-legged frogs during operation and maintenance of settlement ponds, associated culverts, and open drains at the Bonny Doon Quarries. The proposed project would result in the loss of California red-legged frogs and their habitat within the settlement ponds, associated culverts, and open drains as the natural vegetation communities in which they are found and the hydrological conditions that provide suitable habitat are removed or altered during operation and maintenance activities.

The proposed action would authorize the incidental take of California red-legged frogs within the 5-acre area of the settlement ponds serving the 455-acre Bonny Doon Quarries. During 1997, California red-legged frogs were found in three of the seven settlement ponds; breeding occurred within two of those three. California red-legged frogs also were found along Liddell Creek and at RMC Lonestar's mitigation ponds along Liddell Creek.

RMC Lonestar's habitat conservation plan contains the following measures to minimize and mitigate impacts to the California red-legged frog and its habitat from the operation and maintenance of the settlement ponds and to further the conservation of the species: (1) training programs to familiarize employees and subcontractors of RMC Lonestar with the biology of the species and the protection provided to the frog under the Endangered Species Act; (2) a community outreach program for distribution to local schools and community associations in Davenport and Bonny Doon; (3) annual breeding surveys at all settlement ponds and mitigation ponds; (4) pre-maintenance activity surveys for California red-legged frogs; (5) avoidance of impacts to or removal from harm's way of juvenile or adult California red-legged frogs to the greatest extent possible; (6) timing of water releases to minimize impacts to breeding populations of California red-legged frogs; (7) the use of speed limits, trash control, and predator control as necessary to protect California red-legged frogs; (8) minimization of disturbance to and enhancement of habitat within Settlement Pond 1, consistent with other regulatory objectives; (9) deepening and maintaining the depth of the mitigation ponds to provide benefits to the California red-legged frog; (10) monitoring of project impacts and success of mitigation measures for the term of this habitat conservation plan and for 5 years following the term of the permit; and (11) submission of an annual report of the activities conducted under this habitat conservation plan during the previous year.

Environmental Assessment

The environmental assessment considers the environmental consequences of the proposed action

and no-action alternatives. The proposed action alternative is issuance of the incidental take permit and implementation of the habitat conservation plan as submitted by RMC Lonestar. Two other alternatives were considered, but were not advanced for detailed analysis because they were neither technically nor economically feasible.

Under the no-action alternative, the Service would not issue an incidental take permit to RMC Lonestar and a habitat conservation plan would not be implemented. No maintenance activities would be performed on the ponds, and the incidental take associated with those activities would be avoided. Therefore, no permit would be needed. This alternative is not being used because RMC Lonestar is under a legal obligation to carry out these maintenance activities by the County and the Regional Water Quality Control Board. These objectives are in place to protect water quality in the streams below the quarry areas. If the ponds were allowed to fill with sediment, the protection to water quality provided by the ponds would be lost and increased sedimentation of downstream areas would result. California red-legged frogs inhabiting downstream habitat would likely be adversely affected. For these reasons, this alternative was rejected.

This notice is provided pursuant to section 10(a)(1)(B) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: June 11, 1998.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–16267 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–420–1050–01 24 1A]

Notice of New Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval from the Office of Management and Budget (OMB) to collect certain information from Alaska natives, groups of Alaska natives, or associations or corporations of Alaska natives who want to graze reindeer on public lands in Alaska that are vacant and unappropriated. This information allows BLM to determine whether or not applicants are qualified to receive a reindeer grazing permit. BLM also collects information from permittees to determine whether or not they are using their permits according to the terms and conditions.

DATES: BLM must receive comments on the proposed information collection by August 17, 1998 to assure consideration of them.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C St., NW, Mail Stop 401LS, Washington, DC 20240. Send comments via Internet to: WoComment@wo.blm.gov. Please include "Attn: 1004-NEW" and your name and return address in the Internet message.

FOR FURTHER INFORMATION CONTACT: Frances Watson, (202) 452–5006.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information from 10 or more people who are not Federal employees on (a) whether a proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from OMB.

BLM conducts the reindeer grazing program under the authority of the Act of September 1, 1937, which authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for natives of Alaska. The Act also authorizes the Secretary to issue permits to those natives for grazing reindeer on public lands.

BLM uses the information on the Grazing Permit Application to determine an individual or group's qualifications to receive a grazing lease or permit. The information requested on the form includes: the applicant's name and address; a legal description of the land applied for; whether or not the applicant is an Alaska native, citizen of the United States, or a qualified corporation; whether or not the applicant has examined the land and whether there are any improvements on the land, in which case a list of the owners; whether or not the applicant has previously used the land; how many acres of adjoining land, if any, the applicant controls; whether or not the applicant can furnish a statement of financial responsibility; and the types and numbers of livestock the applicant intends to graze on the land.

The Reindeer Grazing Permit requires permittees to file a report describing his or her grazing operations for the preceding year. The report is filed annually with BLM before April 1.

There is an average of six applicants annually for grazing permits, and six permittees file annual reports with BLM. The estimated time for collecting the information, filling out and filing each permit application is 1 hour, for a total of 6 burden hours. The estimated time for collecting the information and providing it for the annual report is 15 minutes, for a total of 1.5 burden hours. The total number of respondents for this collection is therefore six respondents and 7.5 burden hours annually.

Dated: June 11, 1998.

Carole Smith,

Bureau of Land Management, Information Collection Officer.

[FR Doc. 98–16220 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–078–98–1310–00]

Notice of Availability of the Draft Supplemental Environmental Impact Statement (SEIS) on Oil and Gas Leasing in the Glenwood Springs Resource Area

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: Pursuant to sec. 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.5–5, BLM proposes to amend the Resource Management Plan (RMP) for its Glenwood Springs Resource Area (GSRA). As described in a Notice of Intent published on April 21, 1997 (62 FR 19349), BLM has prepared a supplemental EIS on the impacts of oil and gas development in the GSRA. On March 17, 1998, an additional Notice of Intent (63 FR 13068) expressed BLM's intent to include lands in the Naval Oil Shale Reserves (NOSR) in the SEIS and the RMP amendment. That SEIS is now available for review and comment.

Copies of the SEIS will be available at the following BLM offices: the Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado, 81602; the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506; and the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215.

DATES: Comments will be accepted until September 17, 1998. A public meeting on the SEIS will be held on July 7, 1998, from 3:00 to 8:00 PM in the Valley Senior Center, 540 Parachute Avenue, Parachute, Colorado, 81635.

ADDRESSES: Comments should be sent to the Area Manager, Glenwood Springs Resource Area, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, CO 81602, ATTN: Oil and Gas SEIS.

FOR FURTHER INFORMATION CONTACT: Steve Moore,(970) 947–2824

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a supplemental EIS on oil and gas leasing and development in the GSRA was published on April 21, 1997 (62 FR 19349). The EIS process indicated that some changes in the leasing decisions are necessary and that an RMP amendment will be required. After publication of that notice, the Department of Defense Authorization Act of 1998 (November 18, 1997) transferred management authority for the Naval Oil Shale Reserves (NOSR) from the Department of Energy to BLM. In addition to transferring management authority to BLM, the Act directs BLM to lease approximately 6,000 acres in the NOSR for oil and gas development by November 18, 1998. On March 17, 1998, BLM published an additional Notice of Intent (63 FR 13068) expressing its intent to include lands in the Naval Oil Shale Reserves (NOSR) in the oil and gas leasing SEIS and RMP amendment.

Among the issues identified and evaluated in the SEIS are: the effects on visual quality of gas development in highly visible terrain; the impact on riparian areas; the effects on wildlife and wildlife habitat; and the potential success of reclamation efforts in the arid environment.

Three alternatives were evaluated:

The Continuation of Current Management Alternative, which would continue leasing and mitigation decisions adopted in a 1991 RMP amendment and extend them to the NOSR area to be leased;

The Maximum Protection Alternative, which would attempt to maximize mitigation measures regardless of the impact on gas production; and

The Proposed Action, which describes the GSRA's attempt to provide multiple resource management of oil and gas development.

Larry J. Porter,

Acting District Manager.

[FR Doc. 98–16164 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–018–1430–00]

Notice of Availability, Wolford Mountain Reservoir, Amended Record of Decision

AGENCY: Craig District Office, Kremmling Resource Area.

ACTION: Notice of Availability, Wolford Mountain Reservoir, Amended Record of Decision.

SUMMARY: In accordance with Section 102(c) of the National Environmental Policy Act, the Craig District prepared a Final Environmental Impact Statement (FEIS) and issued a Record of Decision (ROD), February 8, 1991, for the Muddy Creek Reservoir project, now referred to as the Wolford Mountain Reservoir project. The FEIS analyzed the impacts of storing water to the 7,500 foot elevation level. The ROD stated that 60,000 acre-feet of water would be stored up to the 7,485 elevation level. During construction, the Probable Maximum Flood Event was recalculated. This permitted the spillway to be redesigned to allow storage of an additional 6,000 acre-feet of water at a maximum elevation of 7,489 feet, an increase of four feet in elevation. The new pool elevation remains below the 7,500 foot elevation level analyzed in the FEIS. No additional "in basin" impacts were identified. "Out of basin" impacts are mitigated by using the additional 6,000 acre-feet of storage as a "fish pool" from which the Colorado River Water Conservation District will make releases for the benefit of endangered fish species downstream in the Colorado River.

DATES: This notice announces the beginning of the 30 day review period.

ADDRESSES: Comments on the Amended Record of Decision should be sent to Linda M. Gross, Kremmling Area Manager, BLM, PO Box 68, Kremmling, CO 80459.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or to receive a copy of the Amended Record of Decision, contact Jim Perry at (970) 724–3437.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, and agencies with known interest in the proposal have been sent a copy of the Amended Record of Decision.

Mark T. Morse,

District Manager.

[FR Doc. 98–16149 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1620–01; WYW141435]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on a lease application received from Antelope Coal Company for Federal coal in the decertified Powder River Federal Coal Production Region, Wyoming, and Notice of Scoping on a modification to the lease application.

SUMMARY: The Bureau of Land Management (BLM) received a competitive coal lease application (WYW141435) from Antelope Coal Company (ACC) on February 14, 1997, for a tract containing approximately 177.5 million tons of Federal coal and including approximately 1,471 acres in an area adjacent to the company's Antelope Mine. ACC is a subsidiary of Kennecott Energy and Coal Company. The Antelope Mine is located in northern Converse County, Wyoming; the lease application area is located in Campbell and Converse Counties, Wyoming. The tract, which is referred to as the Horse Creek LBA Tract, was applied for as a maintenance tract lease-by-application (LBA) under the provisions of 43 Code of Federal

Regulations (CFR) 3425.1. The Powder River Regional Coal Team (RCT) reviewed the competitive lease application at their meeting on April 23, 1997, in Casper, Wyoming, and recommended that it be processed. On May 1, 1998, BLM received an application from ACC to modify the area included in the proposed Horse Creek LBA Tract. The modified tract includes approximately 2,838 acres and approximately 356.5 million tons of coal. The BLM is currently requesting comments from the public on specific concerns or issues that BLM should consider in processing the modified application for the Horse Creek LBA Tract.

BLM conducted scoping on the original lease application in November 1997, including a public scoping meeting held at the Tower West Lodge in Gillette, Wyoming, on November 13 at 7 p.m. As part of that scoping process, BLM requested comments on whether an EIS or an Environmental Assessment (EA) would best satisfy the requirements of the National Environmental Policy Act (NEPA).

After consideration of the comments received during the scoping period and discussions with the applicant, the BLM determined that the requirements of NEPA would be best served by preparing an EIS for this lease application. The Office of Surface Mining will be a cooperating agency on the EIS.

DATES: As part of the public scoping process on the modified lease application area, the public has the opportunity to submit written comments on concerns or issues that the BLM should address in processing the modified lease application. BLM will accept comments on the modified lease application at the address given below. Comments should be submitted by July 24, 1998, in order to be considered in the draft EIS.

ADDRESSES: Please address questions, comments, or concerns to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601, or fax them to 307–234–1525.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On February 14, 1997, ACC filed coal lease application WYW141435 for the following lands in Campbell and Converse Counties, Wyoming:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 2 and 3;
Section 23: Lots 10 thru 16;
Section 25: Lot 11;
Section 26: Lots 1 thru 8, 12, and 13;
Section 27: Lots 5, 6, 11 thru 14, and 16;
Section 34: Lots 1, 7, 8 thru 10, and 16;
Section 35: Lots 8 thru 10;

Containing 1,470.570 acres more or less with an estimated 177.5 million tons of coal.

On May 1, 1998, ACC filed a modification to the Horse Creek LBA tract which added the following lands to the area applied for:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 14: Lots 5 thru 7, and 10 thru 15;
Section 15: Lots 6 thru 11, and 14 thru 16;
Section 22: Lots 1, 4 thru 6, and 9 thru 13;
Section 23: Lots 2 thru 7;
Section 25: Lot 12 (S 1/2);
Section 27 Lots 1 thru 3;

Containing 1,493.470 acres more or less.

The Horse Creek LBA Tract application modification also removed the following lands from the area applied for:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 22: Lot 2;
Section 27: Lots 6 and 11;

Containing 126.130 acres more or less.

The modified Horse Creek LBA tract includes the following lands:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 14: Lots 5 thru 7, and 10 thru 15;
Section 15: Lots 6 thru 11, and 14 thru 16;
Section 22: Lots 1, 3 thru 6, and 9 thru 13;
Section 23: Lots 2 thru 7, and 10 thru 16;
Section 25: Lots 11 and 12(S 1/2);
Section 26: Lots 1 thru 8, 12, and 13;
Section 27: Lots 1 thru 3, 5, 12 thru 14, and 16;
Section 34: Lots 1, 7, 8 thru 10, and 16;
Section 35: Lots 8 thru 10;

Containing 2,837.91 acres more or less with an estimated 356.5 million tons of coal.

The Antelope Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 30 million tons of coal per year. According to the application filed for the Horse Creek LBA Tract, the maintenance tract would be mined to extend the life of the existing mine.

Using the LBA process, ACC acquired maintenance coal lease WYW128322, containing approximately 617 acres and 60 million tons of minable coal adjacent to the Antelope Mine, effective February 1, 1997.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the Horse Creek LBA tract is leased to the applicant, the new lease must be incorporated into the existing mining plans for the adjacent mine and the Secretary of the Interior must approve the revised mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised mining plan to the Secretary if the tract is leased.

The lease application area is within the boundaries of the Thunder Basin National Grasslands. Some of the surface lands in the area were formerly under the jurisdiction of the United States and were administered by the U.S. Forest Service (USFS) as part of the Thunder Basin National Grasslands. As a result of recent land exchanges between the USFS and local landowners, however, there are no longer any surface lands within the lease application area that are under the jurisdiction of the USFS, and as a result, the USFS will not be a cooperating agency in the preparation of the EIS.

There are six surface coal mines (Jacobs Ranch, Black Thunder, North Rochelle, Rochelle, North Antelope, and Antelope) located southeast of Wright, Wyoming, in southern Campbell County and northern Converse County. Since decertification of the Powder River Federal Coal Region in 1990, these mines have leased approximately 10,360 acres including approximately 1.2 billion tons of minable Federal coal, and have applied for approximately 8,900 additional acres of Federal coal.

Several issues related to this lease application were identified during the initial scoping in November of 1997, including the potential impacts to wetlands, aquifers, agricultural producers, wildlife, wildlife habitat, wildlife-based recreation, cultural resources, and access to public lands that may occur if a lease is issued for this tract, and the potential for conflict with development of existing oil and gas leases in this area, including coalbed methane. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this application, please address them in writing to the above address. Written comments should be received by July 24, 1998, in order to be fully considered in the draft EIS.

Dated: June 15, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–16274 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 9 AM, Friday, July 10, 1998. The main issue will be to prepare guidelines for BLM trails and roads.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 PM. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (PO Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Merle Good at the above address or telephone number.

Dated: June 8, 1998.

Merle Good,

Field Office Manager.

[FR Doc. 98–16176 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–08–0777–52]

Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

Utah's Resource Advisory Council (RAC) will meet June 29–30, 1998. The RAC will be touring the Five Mile Pass Area and the Salt Flats looking at the impacts of recreation within these areas. The RAC will be briefed on OHV usage on the Five Mile Pass Recreation Area and looking at the results of the first year of the lay-down project along with filming use conflicts on the Salt Flats.

A public comment period has been scheduled for June 29, from 4:30–5:00 p.m. at the Comfort Inn, 491 South Main Street, Tooele, Utah. Anyone wishing to address the Council and/or attend the meeting should contact Sherry Foot, Special Programs Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111; telephone (801) 539–4195. Resource Advisory Council meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

Dated: June 10, 1998.

Linda Colville,

Associate State Director.

[FR Doc. 98–16225 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–08–1060–00–24 1A]

Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet July 9–10, 1998, from 1:00 p.m. to 5:30 p.m. local time on Thursday, July 9, and from 8:00 a.m. to 5:00 p.m. local time on Friday, July 10. On July 11, 1998, the advisory board will participate in a field trip from approximately 7:30 a.m. to 1:00 p.m. local time.

Submit written comments no later than close of business July 20, 1998.

ADDRESSES: The advisory board will meet in the DoubleTree Club Hotel Riverport, 13735 Riverport Drive, Maryland Heights (St. Louis County), Missouri, 63043.

Send written comments to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern Daylight Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Thursday, July 9, 1998

—Breakout into subcommittees to address the following topics: horses on the range, horses off the range, science, and burros;

Friday, July 10, 1998

—Welcome by BLM Director Pat Shea;
—Program Update;
—Subcommittee Reports to the entire Board;
—Presentation of comments by members of the public.

Saturday, July 11, 1998

—Field trip to the Flickerwood Arena in Jackson, Missouri, 120 miles southeast of St. Louis, to observe a competitive bid adoption of wild horses and burros.

The meeting is open to the public. The advisory board will make detailed minutes of the meeting. BLM will make the minutes available to interested parties who contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Under the Federal advisory committee management regulations (41 CFR 101–6.1015(b)), BLM is required to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on July 10, 1998 at the appropriate point in the agenda, which is anticipated to occur at

3:30 p.m. local time. Persons wishing to make statements should register with BLM by noon on July 10, 1998, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments where feasible. BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: mknapp@wo.blm.gov. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: June 15, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–16265 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–11; WYW 83359]

Public Land Order No. 7842; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies 2 Secretarial orders to establish a 20-year term as to 2,762.97 acres of public lands withdrawn for stock driveway purposes. The lands will remain closed to surface entry. The lands have been and will remain open to mineral location, subject to the regulations found at 43 CFR 3815. In addition, this order partially revokes 11 Secretarial orders as to 72,826.27 acres of public and National Forest System lands withdrawn for stock driveway purposes that are no longer needed for that purpose. There are an additional 2,948.18 acres of stock driveway withdrawals on patented lands being revoked for record clearing purposes only. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated August 3, 1921, and December 7, 1926, which withdrew lands for stock driveway purposes, are hereby modified to expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Mangement Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawals should be extended insofar as they affect the lands described below.

Sixth Principal Meridian

T. 32 N., R. 106 W.,
  Sec. 19, lots 1, 3, NE¼NE¼, and NE¼NW¼;
  Sec. 20, lots 1 to 4, inclusive;
  Sec. 21, N½N½.
T. 35 N., R. 110 W.,
  Sec. 5, lot 4, SW¼NW¼, and W½SW¼;
  Sec. 6, lots 1 to 3, inclusive, S½NE¼, and SE¼NW¼;
  Sec. 8, W½;
  Sec. 17, W½E½ and E½W½;
  Sec. 20, W½NE¼ and NW¼SE¼.
T. 36 N., R. 110 W.,
  Sec. 17, NW¼ and W½SW¼;
  Sec. 18, SE¼NE¼ and E½SE¼;
  Sec. 19, NE¼NE¼;
  Sec. 20, NW¼NW¼;
  Sec. 30, lots 1 to 4, inclusive, NW¼NE¼, and E½W½;
  Sec. 31, lots 1 to 4, inclusive, E½W½, and W½SE¼.

The areas described aggregate 2,762.97 acres in Sublette County.

2. Secretarial Orders dated May 24, June 20, and September 13, 1918, March 9, 1920, February 4 and August 17, 1921, May 25, 1923, December 7, 1926, April 30, 1930, March 5, 1931, and August 27, 1941, which withdrew lands for stock driveway purposes, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

(a) Public Lands

T. 18 N., R. 97 W.,
  Sec. 6, lots 8 to 11, inclusive, S½N½, and S½;
  Sec. 24, SE¼NW¼ and NE¼SW¼.
T. 19 N., R. 97 W.,
  Sec. 12, lots 1 to 4, inclusive, and W½;
  Secs. 14, 22, 28, 30, and 32.
T. 14 N., R. 98 W.,
  Secs. 3 and 4;
  Sec. 10, E½NE¼, W½, and SW¼SE¼;
  Sec. 15, W½NE¼, W½, NW¼SE¼, and SE¼E¼;
  Sec. 22, NE¼NE¼, SW¼NE¼, W½, NW¼SE¼, and SE¼SE¼;
  Sec. 25, S½;
  Sec. 26, S½;
  Sec. 27, E½E½, NW¼, W½SW¼, and SW¼SE¼.
T. 15 N., R. 98 W.,
  Sec. 18.
T. 16 N., R. 98 W.,
  Secs. 4, 8, 18, 20, 28, 32, and 34.
T. 17 N., R. 98 W.,
  Sec. 6, lots 8 to 11, inclusive, S½NE¼, E½SW¼, and SE¼;
  Secs. 8, 18, and 20.
T. 18 N., R. 98 W.,
  Secs. 12, 14, 22, 28, and 32.
T. 21 N., R. 98 W.,
  Secs. 6, 8, 18, 20, 30, and 32.
T. 22 N., R. 98 W.,
  Secs. 5, 8, 18, 20, 30, and 32.
T. 17 N., R. 99 W.,
  Secs. 2, 10, 12, and 14.
T. 18 N., R. 99 W.,
  Secs. 2, 4, and 6;
  Sec. 10, lots 2, 3, N½N½, SE¼NE¼, SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, S½S½, and NE¼SE¼;
  Secs. 14, 20, 22, 26, 28, and 34.
T. 19 N., R. 99 W.,
  Secs. 2, 10, 14, 22, 26, and 34.
T. 20 N., R. 99 W.,

Secs. 2, 10, 14, 22, and 26;
Sec. 34, N½, SW¼, N½SE¼, and SE¼SE¼.
T. 29 N., R. 100 W.,
Sec. 30.
T. 13 N., R. 101 W.,
Secs. 7 and 8.
T. 13 N., R. 102 W.,
Secs. 7 to 12, inclusive.
T. 13 N., R. 103 W.,
Secs. 1 to 6, inclusive, and sec. 12.
T. 14 N., R. 103 W.,
Sec. 7, lots 5 and 11;
Sec. 18, lots 5, 8, 9, and SE¼NW¼;
Sec. 19, lots 9 to 11, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Secs. 30 and 31.
T. 15 N., R. 104 W.,
Sec. 26, SW¼NW¼;
Sec. 27, SE¼NE¼, SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 28, NW¼NW¼, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 29, E½NE¼.
T. 16 N., R. 104 W.,
Secs. 4, 8, 20, and 28.
Sec. 34, N½, SW¼, N½SE¼, and SW¼SE¼.
T. 17 N., R. 104 W.,
Secs. 18, 20, and 28;
Sec. 32, N½, N½SW¼, SE¼SW¼, and SE¼.
T. 18 N., R. 104 W.,
Sec. 20, NE¼NE¼.
T. 16 N., R. 105 W.,
Sec. 4;
Sec. 28, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼, and E½SE¼.
T. 17 N., R. 105 W.,
Sec. 22, S½NE¼ and SE¼NW¼.
T. 20 N., R. 105 W.,
Sec. 6, lots 13 to 15, inclusive, NE¼SE¼, and S½SE¼;
Sec. 8;
Sec. 21, E½;
Secs. 22 and 26;
Sec. 28, E½, N½NW¼, SE¼NW¼, and NE¼SW¼.
T. 32 N., R. 107 W.,
Sec. 20, lot 1.
T. 33 N., R. 107 W.,
Sec. 19, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 30, W½E½;
Sec. 31, W½E½.
T. 30 N., R. 108 W.,
Sec. 2, lot 4 and SW¼NW¼.
T. 32 N., R. 108 W.,
Sec. 17, lots 2, 3, W½SW¼, and SE¼SW¼;
Sec. 18.
T. 33 N., R. 108 W.,
Sec. 1, lots 1 to 4, inclusive;
Sec. 2, lot 1, SE¼NE¼, and E½SE¼;
Sec. 11, E½NE¼, N½SE¼, and SW¼SE¼;
Sec. 14, W½E½ and S½SW¼;
Sec. 23, NW¼NW¼ and S½N½;
Sec. 24, E½SW¼ and S½SE¼.
T. 35 N., R. 109 W.,
Sec. 33, W½E½.
T. 25 N. R. 115 W.,
Sec. 10, W½SE¼;
Sec. 15, NW¼NE¼, S½NE¼, and SE¼;
Sec. 22, W½E½;
Sec. 27, W½E½.
T. 25 N., R. 115½ W.,
Sec. 34, lots 1 and 2;
Sec. 35, lots 3 and 4.
T. 26 N., R. 115 W.,
Sec. 32, NW¼.
T. 30 N., R. 119 W.,
Sec. 11, NW¼.

(b) National Forest System Lands

T. 29 N., R. 118 W.,
Sec. 14;
Sec. 21, SE¼;
Sec. 22, NE¼ and S½;
Secs. 23 and 24;
Sec. 27, NW¼;
Sec. 28, N½ and SW¼;
Sec. 29, NE¼ and S½;
Sec. 30, SE¼;
Sec. 31;
Sec. 32, N½.

The areas described in (a) and (b) above aggregate 72,826.27 acres in Sweetwater, Sublette, and Lincoln Counties.

(c) Non-Federal Lands

T. 15 N., R. 97 W.,
Sec. 7, lots 1, 2, and E½NW¼.
T. 14 N., R. 98 W.,
Sec. 10, W½NE¼, N½SE¼, and SE¼SE¼;
Sec. 15, E½NE¼, NE¼SE¼, and SW¼SE¼;
Sec. 22, NW¼NE¼, SE¼NE¼, NE¼SE¼, and SW¼SE¼;
Sec. 27, W½NE¼, SE¼SW¼, NW¼SE¼, and NE¼SW¼.
T. 15 N., R. 98 W.,
Sec. 8, SW¼.
T. 17 N., R. 98 W.,
Sec. 6, lots 3 to 5, inclusive, and SW¼NW¼.
T. 18 N., R. 99 W.,
Sec. 10, lots 1, 4, and NE¼NW¼SW¼;
Tract 37.
T. 15 N., R. 104 W.,
Sec. 22, NE¼SE¼;
Sec. 26, NW¼NE¼ and N½NW¼;
Sec. 29, SE¼;
Sec. 32.
T. 16 N., R. 104 W.,
Sec. 34, SE¼SE¼.
T. 17 N., R. 104 W.,
Sec. 32, SW¼SW¼.
T. 18 N., R. 104 W.,
Sec. 28, SW¼.
T. 30 N., R. 104 W.,
Sec. 17, NE¼SE¼.
T. 16 N., R. 105 W.,
Sec. 28, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.
T. 20 N., R. 105 W.,
Sec. 28, SW¼NW¼, W½SW¼, and SE¼SW¼.
T. 25 N., R. 115 W.,
Sec. 15, NE¼NE¼.

The areas described in (c) above aggregate 2,948.18 acres in Sublette, Sweetwater, and Lincoln Counties.

3. At 9:30 a.m. on July 20, 1998, the public lands described in paragraph 2(a) shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. on July 20, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9:30 a.m. on July 20, 1998, the National Forest System lands described in paragraph 2(b) shall be opened to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

5. The lands described in paragraph 2(c) have been conveyed out of Federal ownership. This is a record clearing action only.

Dated: June 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–16160 Filed 6–17–98; 8:45 am]
BILLING CODE 4310–JJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–08–1430–01; AA–77640]

Lease of Public Land; Crooked Creek, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 20 year renewable commercial lease to Chris Bulard, Watana Lodge East Fork Adventures. The lease is intended to resolve an unintentional occupancy trespass involving commercial recreational facilities related to guiding and outfitting activities on public Land.

DATES: Comments and an application must be received on or before August 3, 1998.

ADDRESSES: Comments and an application must be submitted to the Glennallen District Management Team, P.O. Box 147, Glennallen, Alaska 99588–0147.

FOR FURTHER INFORMATION CONTACT: David Mushovic (907) 822–3217.

SUPPLEMENTARY INFORMATION: The 17.5 acre site examined and found suitable for leasing under the provisions of Sec. 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR 2920, is described as within:

Sec. 29 and 30, T. 20 S., R. 8 W., Fairbanks Meridian.

An application will only be accepted from Chris Bulard, who owns Watana

Lodge East Fork Adventures and all existing improvements. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

David Mushovic,
Realty Specialist.
[FR Doc. 98–16200 Filed 6–17–98; 8:45 am]
BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1050–00]

Cultural Resource Areas Critical Environmental Concern (ACECs) for the Farmington District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: The BLM, Farmington District announces the availability of a Proposed Resource Management Plan (RMP) Amendment/Finding of No Significant Impact (FONSI) and supporting Environmental Assessment (EA). This document discusses the designation of 44 new ACECs, including the expansion of three existing Special Management Area and their designation as ACECs. Approximately 10,592.76 federal acres are identified for designation. In addition to designation, the plan amendment, when approved, will guide the BLM programs and management practices within the ACECs. The Proposed Plan is a modified version of the Preferred Alternative presented in the Draft. The Proposed RMP Amendment/FONSI and supporting EA is available for public review. A 30-day protest period is provided, as required, by BLM planning regulations (43 CFR 1610.5–2).

DATES: Protests on the Proposed Plan must be postmarked on or before July 20, 1998.

ADDRESSES: Protests must be sent to Director (WO–210), Bureau of Land Management, ATTN: Brenda Williams, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, District Manager, BLM Farmington District at (505) 599–6300 or Peggy Gaudy, Project Leader, Farmington District at (505) 599–6337.

SUPPLEMENTARY INFORMATION: ACECs are land designations unique to the BLM. The purpose of ACECs is to recognize, protect, and manage unique or sensitive resources or potential hazards to the public. Each area receives management or protection based on its unique needs, in consultation and coordination with the public. The Farmington District has completed inventories of areas containing unique or sensitive cultural resources and has designated a sample as ACECs. In addition the District has reviewed nominations both internally and from the public to consider several areas as ACECs based on cultural values.

The draft document discusses two alternatives, the No Action Alternative and the Proposed Action. The BLM's preferred alternative is to implement the Proposed Action by designating and managing 44 new ACECs, including the expansion of three existing Special Management Areas and their designation as ACECs. These management prescription proposals represent the highest level of resource protection and continued public use.

The proposed ACECs represent seven site types: Chacoan Outliers, Chacoan Roads, Navajo Refugee (Pueblito) Sites, Navajo Habitation Sites (Non-pueblito), Pictograph and Petroglyph Sites, Historic Sites, and Native American Traditional Use and Sacred Areas. Management prescriptions are site specific depending on both the site type and the current development in each proposed ACEC.

Eight Chacoan Outliers have been identified and proposed for ACEC designation. They are: Toh-la-kai, Bee Burrow, Indian Creek, Upper Kin Klizhin, Bis sa'ani, Morris 41, Andrews Ranch and Church Rock Outlier.

Management prescriptions for Chacoan Outliers vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans at sites without existing plans, designation as "closed' or "limited" Off-Highway Vehicle (OHV) areas, if possible acquisition of non-federal minerals, withdrawal from mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. No new rights-of-way will be issued. The only exception is where a new right-of-way will be issued in existing disturbance at Church Rock Outlier. The BLM will coordinate with existing right-of-way and easement holders, and continue monitoring and patrol programs. Also proposed is complete Historic American Buildings Survey (HABS) documentation of sites which have not been documented, stabilize structures as needed, conduct cultural inventories, complete cadastral survey and fences as needed, nominate to the National Register of Historic Places and World Heritage List, consolidate previous research data, and designate as Class I Visual Resource Management areas. Church Rock Outlier will be proposed for inclusion as a Chaco Culture Archaeological Protection Site. Private and state lands have been identified for acquisition at Andrews Ranch if there are willing participants.

Three Chacoan Roads have been identified and proposed for ACEC designation. They are: North Road, Ah-shi-sle-pah Road, and Crownpoint Steps and Herradura.

Management prescriptions for Chacoan Roads vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, if possible acquisition of minerals which are not under federal ownership, withdrawal from oil and gas leasing or sale under 160 acres, with other "no surface occupancy" lease stipulation on other parcels, withdrawal from other mineral entry, withdrawal from land or resource modification or sale, coordination with existing lease holders to minimize resource damage, and acquisition of identified private lands. No new rights-of-way will be issued in the 160 acres containing Halfway House or the Crownpoint Steps and Herradura parcel, or across parallel roads and the "Quads." In other areas, rights-of-way will only be authorized with intensive roads inventory. The BLM will coordinate with existing right-of-way holders. Also proposed is to conduct roads inventories, nominate to National Register of Historic Places, consolidate previous research data, and designate as Class II Visual Resource Management areas (the 40 acres containing Halfway House in Segment 6 have already been designated and will remain a Class I area).

Nine Navajo Refugee (Pueblito) Sites have been identified and proposed for ACEC designation. They are: Deer House, NM 01–39344, Kachina Mask, Hummingbird, Blanco Mesa, Ye'is-in-Row, Kiva, Pretty Woman and Gomez Point.

Management prescriptions for Navajo Refugee (Pueblito) Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface

occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is complete Historic America Building Survey documentation, nominate to National Register of Historic Places, and stabilize structures as needed. The proposed ACECs will be designated as Class II Visual Resource Management areas.

Two Navajo Habitation Sites (Non-pueblito) have been identified and proposed for ACEC designation. They are: Gould Pass Camp and Superior Mesa Community.

Management prescriptions for the Navajo Habitation Sites (Non-pueblito) include preparation of Cultural Resource Management Plans, designation as "closed" OHV area at Gould Pass Camp and "limited" OHV area at Superior Mesa Community, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. Also proposed is that new rights-of-way will only be authorized in existing right-of-way disturbance, coordinate with existing right-of-way holders, and designate as Class II Visual Resource Management areas. The ACECs will be nominated to the National Register of Historic Places.

Fifteen Petroglyph and Pictograph Sites have been identified and proposed for ACEC designation. They are: Pregnant Basketmaker, Encierro Canyon, NM 01–39236, Delgadita/Pueblo Canyons, Cibola Canyon, Bi Yaazh, Four Ye'i, Largo Canyon Star Ceiling, Star Spring, Blanco Star Panel, Shield Bearer, Big Star, Rabbit Tracks, Carrizo Cranes, and Martinez Canyon.

Management prescriptions for Petroglyph and Pictograph Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. State land and minerals at two sites and private surface at one site have been identified for acquisition if there are willing participants. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposed is nomination to the National Register of Historic Places, Class III cultural inventories including detail documentation of images, withdrawal of 55 acres from grazing, and designation as Class II Visual Resource Management areas.

Recent land survey in the Pregnant Basketmaker proposed ACEC determined that the boundaries needed to be adjusted. The revised legal description of this 10 acre proposed ACEC is T30N R8W Section 35. E/2NE/4SW/4SW/4 and S/2NW/4SE/4SW/4

Six Historic Sites have been identified and are proposed for ACEC designation. They are: Dogie Canyon School, Rock House—Nestor Martin Homestead, Gonzales Canyon—Senon S. Vigil Homestead, Martin Apodaco Homestead, Margarita Martinez Homestead and Santos Peak.

Management prescriptions for Historic Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing rights-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is nomination to the National Register of Historic Places, conduct stabilization of structures as needed, withdrawal of 35 acres from grazing and designation as Class II Visual Resource Management area. Private minerals have been identified for acquisition at three sites.

One Native American Traditional Use and Sacred Area has been identified and is proposed for ACEC designation. It is Cho'li'i [Gobernador Knob].

Management prescriptions for the Native American Traditional Use and Sacred Area include preparation of a Cultural Resource Management Plan, designation as a "limited" Off-Highway Vehicle area, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposed is nomination to the National Register of Historic Places, conduct Class III cultural and ethnographic inventories, and designation as Class II Visual Resource Management area. The area will remain open for Native American religious practices.

Additional data on management prescriptions for individual ACECs can be found in this RMP amendment.

Any person who is on record for participating in the planning process and has an interest that may be adversely affected may be adversely affected may protest approval of the Plan Amendment. Protest should be made to the Director with the following information : (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the concern or concerns being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the concern or concerns that were submitted during the planning process by the protesting party or an indication of the date the concern or concerns were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong. At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, will become final. Approval will be withheld on any portion of the Plan under protest until final action has been completed on such protest. Individuals not wishing to protest the Plan, but wanting to comment, may send comments to the BLM, Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401. All comments received will be considered in preparation of the Decision Record.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico, during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays, and may be published as part of the RMP Amendment/EA. Individuals respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be made available for public inspection in their entirety.

Public participation has occurred throughout the RMP Amendment process. A Notice of Intent was filed in the **Federal Register** (Vol. 61, No. 39 Pages 7273–7274) on February 27, 1996. An article was published in the Farmington Daily Times on March 6, 1996, notifying the public that the BLM was requesting public input on proposed ACECs. A notice of a 60-day comment period on the designation of the ACECs and a Notice of Availability of the draft RMP Amendment/ preliminary FONSI and supporting EA was published in the **Federal Register** (Vol. 62, No. 247, pages 67402–67405) on December 24, 1997. Affected individuals and companies along with those known to have concern with cultural resources or the planning process on public lands in northwest New Mexico were notified of the availability of the draft RMP Amendment/preliminary FONSI and supporting EA by mail. Several public meetings and briefing were conducted during the comment period to solicit comments and ideas, or to familiarize various groups with the proposal and the BLM planning process. Comments received during the 60-day comment period were considered in preparation of the Proposed RMP Amendment and supporting EA. Single copies of the proposed RMP Amendment/FONSI and supporting EA for the Cultural Resource ACECs may be obtained from the BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401. A public reading copy is available for review at the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico.

Dated: June 8, 1998.

Lee Otteni,

District Manager, Farmington.

[FR Doc. 98–15544 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Draft Environmental Impact Statement, Interagency Bison Management Plan for the State of Montana and Yellowstone National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a draft environmental impact statement (DEIS) for the long-term management of bison in Yellowstone National Park and the state of Montana. This notice also announces the locations of public hearings for the purpose of receiving comments on the draft document.

DATES: There will be a 120-day public review period on the document. Comments on the DEIS should be received no later than October 16, 1998. Public hearings will be held in Helena, Billings, Gardiner, and West Yellowstone, Montana; Cody and Jackson Hole, Wyoming; Idaho Falls, Idaho; Denver, Colorado; Salt Lake City, Utah; Minneapolis, Minnesota; San Francisco, California; Austin, Texas; and Washington D.C. from July through October 1998. The exact dates and locations of the public hearings will be announced in press releases in regional newspapers.

ADDRESSES: Comments on the DEIS should be sent to Sarah Bransom, National Park Service DSC–RP, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2310. A limited number of copies of the DEIS or the executive summary are available upon request from the above address. The executive summary of the DEIS and a complete listing of libraries where the DEIS is available for review on the Internet at http://www.nps.gov/planning/current.htm.

Copies of the DEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington D.C. 20240, Telephone: (202) 208–6843.

Yellowstone National Park, Yellowstone NP, Wyoming 82190, Telephone: (307) 344–2207.

National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2310.

Gallatin National Forest, 10 East Babcock Street, Bozeman, Montana 59771, Telephone: (406) 587–6701.

MT. Department of Fish, Wildlife and Parks, 1420 East 6th, Helena, Montana 59620, Telephone: (406) 444–2535.

MT. Department of Livestock, 301 Roberts, Room #308, Helena, MT 59620, Telephone: (406) 444–2023.

APHIS Veterinary Services, Western Regional Office, 384 Inverness Drive South, Englewood, CO 80112, Telephone: (303) 784–6200.

Montana State University Reene Library, P.O. Box 73320, Bozeman, Montana 59717–3320, Telephone: (406) 994–3119.

University of Montana, Mansfield Library, Missoula, Montana 59812, Telephone: (406) 243–6860.

SUPPLEMENTARY INFORMATION: Since 1990, management of bison in and adjacent to Yellowstone National Park has been covered by a series of interim management plans. In 1992, the National Park Service (lead agency), state of Montana (co-lead), United States Forest Service (co-lead), and the Animal and Plant Health Inspection Service (cooperating agency) signed a Memorandum of Understanding to prepare a long-term bison management plan/EIS.

The DEIS presents seven alternatives with a full range of management techniques for maintaining a wild, free ranging bison population while minimizing the risk of transmitting the disease Brucellosis from bison to domestic cattle on public and private lands in Montana adjacent to Yellowstone National Park. Management techniques used in various combinations to meet the plan's objectives include capturing and testing bison for Brucellosis, quarantining, slaughtering, hunting and vaccination.

Impacts are analyzed on the following topics: bison population, recreation, livestock operations, socioeconomics, threatened, endangered and sensitive species, other wildlife species, human health, cultural resources, and visual resources.

All review comments received on the DEIS will become part of the public record.

Dated: June 3, 1998.

John E. Cook,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 98–16203 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–781 through 786 (Preliminary)]

Stainless Steel Round Wire From Canada, India, Japan, Korea, Spain, and Taiwan

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a)

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire, provided for in subheading 7223.00.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 27, 1998, a petition was filed with the Commission and Commerce by ACS Industries, Inc., Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Co., Inc., Pomfret, CT; Sandvik Steel Co., Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Co., Inc., Mahwah, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan. Accordingly, effective March 27, 1998, the Commission instituted antidumping investigations Nos. 731–TA–781 through 786 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 6, 1998 (63 FR 16827). The conference was held in Washington, DC, on April 17, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on June 5, 1998. The views of the Commission are contained in USITC Publication 3111 (June.1998), entitled "Stainless Steel Round Wire from Canada, India, Japan, Korea, Spain, and Taiwan: Investigations Nos. 731–TA–781 through 786 (Preliminary)."

By order of the Commission.

Issued: June 11, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–16202 Filed 6–17–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on June 8, 1998, a proposed Consent Decree in *United States v. American Honda Motor, Co., Inc.*, Civil Action No. 98–01433, was lodged with the United States District Court for the District of Columbia.

The United States has asserted, in a civil complaint under the Clean Air Act, 42 U.C.S. 7401 *et seq.*, that certain model-year 1995, 1996, and 1997 American Honda vehicles fail to comply with the emission-control requirements of the Act and the regulations promulgated thereunder relating to the detection of engine misfire through the use of computerized on-board diagnostics. Under the proposed Consent Decree, American Honda has agreed to resolve the United States' claims by proving each current and all subsequent owners of Honda vehicles covered by the settlement with a 14 year/150,000 mile extended emissions warranty, a free engine check at any time between 50,000 an 75,000 miles of use (to identify emission-related defects covered by the extended emissions warranty), plus a free tune up (to maintain the engines' emissions performance) at any time between 75,000 and 150,000 miles of use. The Decree requires American Honda to notify affected owners of the extended emissions warranty and services available under the Decree (including persons who purchase the vehicles from current owners) following entry of the Consent Decree by the Court, again when each vehicle is approximately four years old, and a final time when the vehicle is approximately 9 years old. Further, Honda will pay $10.1 in civil penalties and spend $1 million to implement a supplemental environmental project to enhance the use of on-board diagnostics by the states in connection with their motor vehicle emissions inspection and maintenance programs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and American Honda Motor, Co., Inc.*, Civil Action No. 98–01433, D.J. Ref. 90–5–2–1–2170.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $21.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16214 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

This Notice amends a Notice previously published at 63 FR 29751–29752 (Wed., Jun. 1, 1998), announcing that a proposed consent decree was lodged on April 21, 1998 with the United States District Court for the Eastern District of California. The Consent Decree embodies a settlement in *United States* v. *Chevron USA, Inc., et al.*, Civil Action No. F–98–5412 REC DLB. This Notice makes technical corrections to the description of the work to be performed under the Consent Decree.

In the complaint filed concurrently with the lodging of the consent decree, the United States sought injunctive relief for performance of response actions, and reimbursement for response costs incurred by the United States Environmental Protection Agency, in response to releases of hazardous substances at the Purity Oil Sales Superfund Site, located near Fresno, California, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* The settling defendants have agreed to contribute towards performance of future response actions at the Purity Site; defendant Chevron USA Inc. has agreed to perform that work. Future work includes operation and maintenance of the groundwater extraction and treatment system for the groundwater operable unit (estimated to cost $10 million) and construction, operation, and maintenance of the components of the soils operable unit (estimated to cost between $10 and 12 million). The soils operable unit may include treatment of soils at a depth of 14 to 40 feet with a soil vapor extraction system pending a two-year soil vapor monitoring program, construction of a cap, and enclosure of an on-site canal in a reinforced concrete pipe.

The consent decree includes a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chevron USA Inc.*, DOJ Ref. #90–11–2–355. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, Room 3654 Federal Building, 1130 "O" Street, Fresno, California 93721; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $116.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of signature pages and attachments, may be obtained for $21.50.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16215 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(i), notice is hereby given that a proposed Consent Decree in *United States* v. *William Davis, et al.*, Civ. Action No. 90–0484–T, was lodged in the United States District Court for the District of Rhode Island on May 18, 1998. The proposed Consent Decree resolves the United States' claims against Power Semiconductors, Inc. and Swan Engraving Company ("Settling Defendants"), under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9607(a), concerning response action at the Davis Liquid Waste Superfund Site located in Smithfield, Providence County, Rhode Island (the "Davis Site").

Under the terms of the Consent Decree the Settling Defendants are required to pay $74,375 to the United States in partial reimbursement of the United States' past and future costs. Swan Engraving Company's share of this amount, $63,750, will be paid in three equal payments over two years. In addition, the Settling Defendants are jointly and severally responsible along with United technologies Corp. ("UTC") and other previous settlers for the source control portion of the remedy at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *William Davis, et al.*, Civ. Action No. 90–0484–T, DOJ #90–11–2–137B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island 02903; at the Region I Office of the U.S. Environmental Protection Agency, 90 Canal Street, Boston, Massachusetts 02203; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, In requesting a copy, please enclose a check in the amount of $11.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 98–16211 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR § 50.7, and with Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that a consent decree in *United States* v. J.E.M., a Partnership, Civil Action No. 3:CV–95–1882 (M.D. Pa.), was lodged on June 2, 1998, with the United States District Court for the Middle District of Pennsylvania. The consent decree resolves the claims of the United States under Section 107 of

the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), for reimbursement of costs incurred and to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Route 940 Drum Site in Tobyhanna Township, Monroe County, Pennsylvania, and a declaration of liability for further response costs to be incurred at the Site. Under the terms of the Consent Decree, the Estate of Herman Martens and Emil Wagner will pay $335,000, John Baymor will pay $40,000, and Summit Tool Corporation will pay $25,000. In addition, Emil Wagner (or his estate) will be obligated to pay to the United States the sum of $300,000 if either one of two contingencies occurs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *J.E.M. a Partnership*, DOJ Ref. #90–11–3–1539.

The consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.50 (25 cents per page reproduction cost), payable to the Consent Decree library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16212 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on May 19, 1998, the United States, on behalf of the United States Environmental Protection Agency, filed with the United States District Court for the Western District of Washington a modification to the Consent Decree that was entered on June 5, 1996, in *United States* v. *Selleck, Inc. and Robert E. Schaefer*, Civil Action No. C93–1004Z. The modification amends the June 5, 1996 Consent Decree in light of the defendants' agreement to convey the Selleck Water Supply System in its entirety to the Kangley Water Association. Accordingly, the parties agree that their June 5, 1996 Consent Decree should be modified so that only Section III.B (permanent injunction against Robert E. Schaefer) and Section XIV (retention by the district court of jurisdiction) will remain operative and in effect. This modification is expressly conditioned upon the successful completion of the defendants' conveyance to the Kangley Water Association.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification to the June 5, 1996 Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer*, DOJ Ref. #90–5–1–1–5029.

A copy of the proposed modification to the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies of the consent decree, please refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer*. If you are requesting a copy from the Consent Library, please enclose a check payable to the Consent Decree Library in the amount of $1.00 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and natural Resources Division.

[FR Doc. 98–16213 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Enova Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Enova Corporation*, Civil No. 98–CV–583 (TFH). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

On March 9, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Pacific Enterprises ("Pacific") would merge with Enova Corporation ("Enova"). Pacific is a California gas utility company and Enova is a California electric utility company. Enova sells electricity from plants that use coal, gas, nuclear power, and hydropower. Pacific is virtually the sole provider of natural gas and transportation storage services to plants in southern California. The proposed merger would have created a company with both the incentive and the ability to lessen competition in the market for electricity in California. The Complaint alleged that the proposed merger would substantially lessen competition in the market for electricity in California during high demand periods in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment, filed contemporaneously with the Complaint, (1) orders Enova to sell certain of its generating assets to a purchaser or purchasers acceptable to the United States; and (2) limits Enova's ability to acquire similar assets. The Stipulation also imposes a hold separate agreement that, in essence, requires the defendant to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Enova's generators subject to the divestiture will be held separate and apart from, and operated independently of, any of its other Enova assets and businesses. A competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-days comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone (202) 307–6351).

Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust

Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue., NW., Washington, DC 20001. Copies of any of the materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court, District of Columbia

United States of America, Plaintiff, v. Enova Corporation, Defendant. Civil Action No. 1:98CV00583. Filed: March 9, 1998. Judge: Thomas Hogan.

Stipulation and Order

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that Plaintiff United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of signing of this Stipulation, comply with all terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event Plaintiff United States withdraws its consent, as provided in Paragraph 2, above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry to the Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted.

For Plaintiff

United States of America

Jade Alice Eaton,

DC Bar # 939629.

Andrew K. Rosa,

HI Bar # 6366, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Washington, DC 20004, (202) 307–6316, (202) 307–0886.

For Defendant

Enova Corporation

Steven C. Sunshine,

DC Bar # 450076, Shearman & Sterling, 801 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 508–8022.

Dated: March 9, 1998.

Order

It is so ordered, this _____ day of _____, 1998.

_____

United States District Court Judge

Final Judgment

Whereas Plaintiff United States of America (hereinafter "United States"), having filed its Complaint herein on March 9, 1998, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trail or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And *whereas* Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And *whereas* the essence of this Final Judgment is divestiture of assets to ensure that competition, as alleged in the Complaint, is not substantially lessened;

And *whereas* Plaintiff requires Defendant to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas Defendant has represented to Plaintiff that as to the divestiture ordered herein Defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trail or adjudication or admission of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended. 15 U.S.C.A. § 18 (West 1997).

II. Definitions

As used in this Final Judgment:

A. "Acquire" means obtaining any interest in any electricity generating facilities or capacity, including, but not limited to, all real property, deeded development rights to real property, capital equipment, buildings, fixtures, or contracts related to the generation facility, and including all generations, tolling, reverse tolling, and other contractual rights.

B. "California Generation Facilities" means (1) electricity generation facilities in California in existence in January 1, 1998, excluding such facilities that are rebuilt, repowered, of activated out of dormancy after January 1, 1998, as long as such rebuild, repower, or activation out of dormancy project, if done by Defendant, begins with one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power ("LADWP").

C. "California Public Power Generation Management Services Contract" means a bona fide contract for managing for operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract.

D. "Common Facilities" means those facilities associated with the generation assets to be divested that are located on

or near such assets, and that are necessary to the operation of non-generating aspects of Enova's electric business, including, but not limited to, the operation of Enova's distribution, transmission, and communications systems.

E. "Control" means to have the ability to set the level of output of an electricity generation facility.

F. "Divestiture Assets" means the Encina and South Bay electricity generation facilities owned by Enova at Carlsbad and Chula Vista, California, including, but not limited to, all real property rights necessary to the operation of the facilities; buildings, generation equipment, inventory, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property to improvements used in the operation of the facilities; licenses, permits (including but not limited to environmental permits and all permits from federal or state agencies), and authorizations issued by any governmental organization relating to the facilities, and all work in progress on permits or studies undertaken in order to obtain permits; plans for design or redesign of these electricity generating assets; contracts (including but not limited to customer contracts), agreements, leases, commitments, and understandings pertaining to the facilities and their operations; customer lists, and marketing or consumer surveys relating to these electricity generating assets; contracts for firm capacity and energy of longer than three months relating to these assets; records maintained by Enova necessary to operation of these assets; and all other interests, assets or improvements customarily used in the generation of electricity at these facilities.

G. The terms "Enova" and "Defendant" mean Enova Corporation, a California corporation headquartered in San Diego, California, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

H. The terms "Independent System Operators" or "ISO" means an entity that operates the intrastate gas transmission pipelines and related facilities of Pacific Enterprises. "Operates" includes full operational and pricing control over all such facilities and total authority to determine whether and how much capacity is available in the intrastate pipeline, whether curtailment of transmission service is require on any part of that system, whose service is curtailed, and the prices to be charged.

I. "Pacific" means Pacific Enterprises, a California corporation headquartered in Los Angeles, California, and includes its successors and assign, and its parents, subsidiaries, directors, officers, managers, agents, and employee acting for or on behalf of any of them.

J. "Portland General Electric Contract" means the contracts, dated November 15, 1985, for 75 MW of firm capacity and associated transmission.

K. The terms "Auction Procedures" and "California Auction Procedures" mean the auction procedures set forth in a decision addressing Enova's application under section 851 of the California Public Utilities Code to divest the Divestiture Assets.

L. The term "Southern California" means the counties in California currently served by Pacific's gas pipelines.

III. Applicability

A. The provisions of this Final Judgment apply to Defendant, its successors and assigns, parents, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Enova shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes Enova's business of intrastate transmission and retail distribution and sale of natural gas, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant is hereby ordered and directed, in accordance with the terms of this Final Judgment, and specifically in accordance with the schedule in this section, to divest the Divestiture Assets to a purchaser or purchasers acceptable to the United States, in its sole discretion. Purchasers whose bids are accepted by the United States under Section IV(D)(3) will be deemed acceptable.

B. Except as provided in Section VI, these divestitures shall occur through the Auction Procedures and shall be subject to necessary approvals by the California Public Utilities Commission ("CPUC") and other governmental authorities.

C. Defendant shall use its best efforts to accomplish the divestiture as expeditiously as possible, but in any event within the schedule set forth in Section IV(E) below. These efforts shall include, but are not limited to, making the necessary regulatory filings and applications in a timely fashion and using its reasonable best efforts to obtain such approvals as expeditiously and timely as possible.

D. Certain Conditions on the Auction Procedures.

1. Enova may reject any bid submitted by any party for all or part of the Divestiture Assets if the bid offers consideration in an amount less than the book value of such assets as reflected on the most recent regularly prepared balance sheet of Enova at the time the bid is submitted; provided, however, that nothing in this section shall prevent the CPUC from setting a minimum bid price or rejecting any bid on the basis of price or otherwise.

2. Enova may structure its requests for bids to require reasonable easements, licenses, and other arrangements for the continued operation of Common Facilities by Enova.

3. Before Enova can accept a bid by a potential purchaser received under the Autcion Procedures with respect to any of the Divestiture Assets to be divested, the bid must be screened by the United States as specified in this section. Enova shall provide to the United States copies of all bids and any other documents submitted by any potential purchaser pursuant to the Auction Procedures. The United States shall have thirty days from the date it receives a copy of a bid to notify Enova that the potential bid is unacceptable with respect to any of the Divestiture Assets specified in the bid; provided, however, the United States may extend the thirty-day review period for any such bid for one additional thirty-day period by providing written notice to Enova; provided further, in all cases the period for review of potential bids by the United States shall expire no later than the earlier of five days prior to the date set by the CPUC for submission of the proposed winning bid by Enova or the thirty-day period (with one possible thirty-day extension) described above. If the United States does not notify Enova that a proposed bid is unacceptable within the applicable time period specified above, the purchaser making such bid shall be deemed acceptable by the United States with respect to all of the Divestiture Assets specified in that bid. The United States shall base its review of all potential bids screened pursuant to this paragraph solely on the criteria identified in Section IV(I) of this Final Judgment. The United States shall take all appropriate and necessary steps to keep the information received pursuant to this section confidential.

E. Timing.

1. Enova shall submit applications for authorization and approval of the auctions specified in Paragraph IV(B) above for the Divestiture Assets no later than ninety days after notice of entry of this Final Judgment.

2. Enova shall complete the sale of the Divestiture Assets as soon as practical after the receipt of all necessary governmental approvals; provided, however, if the sale of any of the Divestiture Assets is not completed within eighteen months after the date of the entry of this Final Judgment, a trustee shall be appointed pursuant to Section VI of this Final Judgment to effect the divestiture of any unsold assets; provided further, the United States may extend the eighteen-month period by six months by servicing written notice on Enova prior to the expiration of the eighteen-month period; provided further, Enova and the United States may be mutual agreement extend further the time in which any of the Divestiture Assets shall be sold.

F. In accomplishing the divestiture ordered by this Final Judgment, Defendant promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. The California Auction Procedures shall be deemed to satisfy this requirement. Defendant shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets defined in Section II(F) are being offered for sale. Defendant shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendant shall make available such information to Plaintiff at the same time that such information is made available to any other person.

G. Defendant shall not interfere with any negotiations by any purchaser to employ any employee of the Defendant necessary to the operation of Divestiture Assets.

H. Defendant, shall, at minimum, permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

I. Unless the United States otherwise consents in writing, the divestiture or divestitures pursuant to this section, or by the trustee appointed pursuant to Section VI of this Final Judgment, shall include the Divestiture Assets as specified in this Final Judgment (though not necessarily all to the same purchaser) and be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between any purchaser and Defendant give Defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of electricity in California; provided, however, the purchaser need not continue operation of these assets.

V. Acquisition

A. General Prohibitions.

1. Defendant is enjoined from acquiring California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

2. Defendant is enjoined from entering into any contracts that allow Defendant to control any California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

B. Limitations on Prohibitions.

1. Acquisition cap—Defendant may acquire or control California Generation Facilities without prior approval of the United States if Defendant does not own or control, in the aggregate, more than 500 MW of capacity of California Generation Facilities. The capacity of Defendant's existing nuclear generation assets are excluded from the calculation of whether the 500 MW cap has been reached so long as the prices Enova receives for electricity generated by the existing nuclear generation assets are fixed by law or regulation. The Portland General Electric Contract capacity (75 MW) shall be included in the calculation of whether the 500 MW cap has been reached (reducing the total available to 425 MW), unless and until the Portland General Electric Contract terminates or is divested. The capacity of the Divestiture Assets shall be included in the calculation of whether the 500 MW cap has been reached, as long as Defendant owns such assets.

2. Acquisitions above the cap—In any event, the Defendant may acquire or control, California Generation Facilities in excess of 500 MW, subject to the prior approval of the United States as provided in Paragraphs V(A)(1) and V(A)(2).

C. Exceptions.

1. Outside California—Defendant may own, operate, control, or acquire any electricity generation facilities other than California Generation Facilities.

2. Cogeneration facilities—Defendant may own, operate, or control any cogeneration or renewable generation facilities in California.

3. Tolling agreements—Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: "In accordance with the Final Judgment in *United States v. Enova Corporation*, entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility."

4. California Public Power Generation Management Services Contracts.—Defendant's entry into California Public Power Generation Management Services Contracts is not prohibited under Section V(A)(2) above, regardless of whether the contract allows for Defendant to exercise control of such facilities, and such contracts shall not be included in the calculation of whether the Acquisition Cap in Section V(B)(1) has been reached; provided however, Defendant may not enter into California Public Power Generation Management Services Contracts that allow the Defendant to exercise control of such facilities, without notice to the United States.

5. Notification of California Public Power Generation Management Services Contracts—Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997) ("HSR Act"), for each California Public Power Generation Management Services Contract it enters for which notice is required, Defendant shall provide notice thereof to the United States as follows:

a. Notification shall be provided within five days of acceptance of the contract, and shall include copies of all contracts, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the California Public Power Generation Management

Services Contract that was the subject of the transaction.

b. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

D. Methods of Obtaining Prior Approvals and of Providing Notice—Defendant shall obtain prior approval and provide notice by sending the required materials to Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004.

E. Other Legal Requirements—Nothing in this section limits the Defendant's responsibility to comply with the requirements of the HSR Act, with respect to any acquisition.

VI. Appointment of Trustee

•A. In the event that Defendant has not divested all of the Divestiture Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the assets.

B. At or anytime after the appointment of the trustee, if either party believes a conflict may exist between this Final Judgment and an order of the CPUC relating to the Divestiture Assets, that party may move the Court for a resolution of the conflict in light of the status of any relevant CPUC proceeding and the purpose of this Final Judgment.

C. After the appointment of the trustee becomes effective, the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections VI and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(D) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendant must be conveyed in writing to Plaintiff and the trustee no later than ten calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

D. The trustee shall serve at the cost and expense of Defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assist sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Enova and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. After the appointment of the trustee becomes effective, Defendant shall take no action to interfere with or impede the trustee's accomplishment of the required divestiture, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and Defendant shall develop such financial or other information relevant to the Divestiture Assets to be divested customarily provided in a due diligence process as the trustee may reasonably request. Defendant shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. After the appointment of the trustee becomes effective, the trustee shall file monthly reports with Defendant, the United States, and the Court, setting forth the trustee's efforts to accomplish divestiture of the Divestiture Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendant may request that information in such reports that has been provided as confidential by the Defendant be deemed confidential by the trustee. If the trustee does not deem the information to be confidential, the information shall not be made public before Defendant has an opportunity to seek a protective order from the Court. The trustee shall maintain full records of all efforts made to divest these operations.

G. If the trustee has not accomplished the divestiture required by Section IV of this Final Judgment within six months after the appointment of the trustee becomes effective, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to Defendant and the United States, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purposes of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment by a period requested by the United States.

VII. Notification

Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or VI of this Final Judgment, Defendant of the trustee, whichever is then responsible for effecting the divestiture, shall notify Plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who

offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendant, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendant and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty calendar days after receipt of the notice or within twenty calendar days after Plaintiff has been provided the additional information requested from Defendant, the proposed purchaser, any third party, and the trustee, if there is one, whichever is later, the United States shall provide written notice to Defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Defendant and the trustee that it does not object, then the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection by Defendant under the proviso in Section VI(C), a divestiture proposed under Section VI shall not be consummated. Provided, however, a proposed divestiture pursuant to the Auction Procedures approved by the United States under Section IV(D)(3) of this Final Judgment shall be deemed acceptable to the United States under this section.

VIII. Affidavits

A. Within thirty calendar days of the filing of this Final Judgment and every forty-five calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section VI of this Final Judgment, Enova shall, with respect to Divestiture Assets, deliver to Plaintiff an affidavit as to the fact and manner of Defendant's compliance with Sections IV or VI of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendant has taken to solicit a buyer from the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. For Divestiture Assets being sold using the California Auction Procedures, during such Auction Procedures, submission of bids to the United States in compliance with Section IV shall satisfy compliance with the required contents of the affidavits in Section VII(A).

C. Within twenty calendar days of the filing of this Final Judgment, Defendant shall deliver to Plaintiff an affidavit which describes in detail all actions Defendant has taken and all steps Defendant has implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section X of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individuals described at Section X(J) of this Final Judgment with respect to Defendant's efforts to preserve the Divestiture Assets. Defendant shall deliver to Plaintiff an affidavit describing any changes to the efforts and actions outlined in Defendant's earlier affidavits filed pursuant to this section within thirty calendar days after the change is implemented. The United States shall take all necessary steps to keep the information received pursuant to this section confidential.

D. Defendant shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

IX. Financing

Defendant shall not finance all or any part of any divestiture made pursuant to Sections IV or VI of this Final Judgment.

X. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of electricity; and that, except as necessary to comply with Sections X (B) to X (K) of this Final Judgment, the management of any electricity generating facilities shall be kept separate and apart from the management of Defendant's other businesses and will not be influenced by Defendant, and the books, records, and competitively sensitive sales, marketing and pricing information associated with electricity generating facilities will be kept separate and apart from that of Defendant's other businesses.

B. Defendant shall use all reasonable efforts to maintain and increase sales of electricity by the Divestiture Assets, and Defendant shall use reasonable efforts to maintain and increase promotional, advertising, sales, marketing, and merchandising support for wholesale electricity sold in California.

C. Defendant shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendant shall provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

E. Defendant shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

F. Defendant shall not, except as part of a divestiture approved by the United States, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless it has obtained the prior approval of the United States, Defendant shall not terminate or reduce the current employment, salary, or benefit arrangements for any personnel employed by Defendant who work at, or have managerial responsibility for, electricity generating facilities, except in the ordinary course of business.

H. Defendant shall continue all efforts in progress to obtain or maintain all permits necessary for operating their electricity generating capacity.

I. Defendant shall take no action that would jeopardize its ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendant shall appoint a person or persons to oversee the Divestiture Assets, and who will responsible for Defendant's compliance with Section X of this Final Judgment.

K. Prior to the sale of Divestiture Assets, Enova shall not transfer any of the Divestiture Assets to any affiliate not regulated as a public utility by the CPUC.

XI. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Plaintiff, including consultants and other persons retained by the United

States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to their principal offices, shall be permitted:

1. Access during office hours of Defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal offices, Defendant shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section VIII or Section XI of this Final Judgment shall be divulged by a representative of the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the Plaintiff is a party, including grant jury proceedings, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rules 26(c)(7) of the Federal Rules of Civil Procedure," then ten calendar days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding, other than a grant jury proceeding.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination and Modification

A. This Final Judgment will expire on the tenth anniversary of the date of its entry unless the Final Judgment is terminated pursuant to Section XIII(B); provided, however, the Final Judgment will terminate when the United States notifies Enova and the Court that Enova has provided to the United States documentation sufficient to prove (1) that the merger between Enova and Pacific identified in the Complaint has been terminated; or (2) that an Independent System Operator has assumed control of Pacific's gas pipelines within California in a manner satisfactory to the United States. The United States shall, in its sole discretion, determine whether the documentation proffered by Enova is sufficient.

B. After five years from the date it is entered, this Final Judgment shall terminate if Defendant demonstrates to the Court that (1) it no longer owns any of its existing nuclear assets, or (2) such assets are no long in operation, or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

C. Enova's obligation to divest an asset shall terminate if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into settlement agreement with Enova regarding he disposition of such asset to a third party.

D. Modification of Section V.

1. In the event that Defendant divests all of its existing nuclear generation assets, the total ownership capacity limit in Section V(B)(1) of this Final Judgment will increase to 800 MW; however, in no event shall the total ownership capacity limit in Section V(B)(1) exceed the greater of 500 MW or 10% of Defendant's total electricity retail sales.

2. In the event that Defendant's total retail electricity sales at any point exceed 8,000 MW capacity, the total capacity ownership limit in Section V(B)(1) of this Final Judgment will be increased up to 10% of such retail electricity sales.

XIV. Effect of Regulatory Approvals

The approvals by the United States required by his Final Judgment for sale of Divestiture Assets are in addition to the necessary approvals by the CPUC or any other governmental authorities for the sale of such assets.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on March 9, 1998, alleging that the proposed merger of Pacific Enterprises ("Pacific") and Enova Corporation ("Enova") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Pacific is a California gas utility company and Enova is a California electric utility company, and that this transaction would give the combined company ("PE/Enova") both the incentive and the ability to lessen competition in the market for electricity in California. In particular, this acquisition would give PE/Enova the incentive and ability to limit the supply of natural gas to California electric power plants, raising their costs and the price California consumers pay for electricity. The acquisition is thus likely to lessen competition substantially among providers of electricity, and so violate Section 7 of the Clayton Act. The prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a preliminary and permanent injunction preventing consummation of the proposed merger; (3) an award to the United States of the costs of this action; and (4) such other relief as is proper.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Pacific Enova to merge, but requires a divestiture that would preserve competition in the market for electricity in California. This settlement consists of a Stipulation and Order ("Stipulation") and a proposed Final Judgment ("Final Judgment").

The proposed Final Judgment orders Enova to sell all of its rights, titles, and interests in Encina and South Bay electricity generation facilities located at Carlsbad and Chula Vista, California (the "Divestiture Assets"), to a

purchaser or purchasers acceptable to the United States in its sole discretion.[1] Enova must submit required applications to divest the assets no later than ninety days after entry of the Final Judgment, and complete the divestiture as soon as practicable after receipt of all necessary government approvals, in accordance with the procedures specified in the proposed Final Judgment. The Stipulation and Final Judgment also require Enova to ensure that until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities will be kept separate and apart from the management of Enova's other businesses.

The United States and Enova have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation

A. Enova, Pacific, and the Proposed Transaction

Enova, a California corporation headquartered in San Diego, California, owns San Diego Gas & Electric Co. ("SDG&E"), which is an electric utility that serves the San Diego area. Through SDG&E, Enova is a major provider of electricity in southern California, with approximately $1.6 billion in annual electricity sales. It sells electricity generated by plants that use coal, gas, nuclear power, and hydropower for fuel.

Pacific, through its wholly owned subsidiary Southern California Gas Company, is virtually the sole provider of natural gas transportation services to plants in southern California that use natural gas to produce electricity ("gas-fired generators" or "gas-fired plants"). Pacific is also the sole provider of natural gas storage services throughout all of California.

Under an Agreement and Plan of Merger and Reorganization dated October 12, 1996, Enova and Pacific will each become wholly owned subsidiaries of a common holding company parent as soon as all state and federal regulatory approvals have been obtained.

B. Trade and Commerce

The Complaint alleges that the effect of the merger of Pacific and Enova would be to lessen competition substantially in the provision of electricity in California during high demand periods.

California's electricity industry is dominated by Enova and two other regulated, investor-owned utilities. Electricity services are also provided by California public power providers such as municipalities, water districts, irrigation districts and the state of California. As a result of a legislatively mandated restructuring, the California electric power market will experience significant changes in 1998. As of March 31, 1998, most electricity generated in California is bought and sold through the California Power Exchange ("the pool"), a central, computerized bidding system that matches electricity supply and demand during every half-hour period during the day. State regulations require regulated utilities to buy and sell all their electricity through the pool during a four-year transition period.[2]

With the pool, all sellers of electricity send in bids for every half hour in which they want to sell electricity. Similarly, all buyers of electricity send in bids for every half hour in which they wish to buy. The pool allocates power until all demand is met. The price per unit of electricity for any given half hour is determined by the most expensive unit sold that half hour with all sellers receiving that price, regardless of their costs or their bids. Nuclear-powered generators, however, will continue to receive regulated rates for at least four years after the California pool began operation.

Currently, regulated electric utilities sell over 80% of all retail electricity in California. Because these utilities must buy all of their electricity from the pool, the pool prices—the price the utilities pay for the electricity they distribute—will directly affect the price most consumers in California pay for electricity.

Electricity sold in California is generated from power plants using one of four fuels—gas, coal, hydropower, and nuclear—and the costs of generating electricity from these plants differ significantly. Although certain gas-fired plants are more efficient than others, gas-fired plants are in general the most costly to operate. Because they cost the most to operate, the gas-fired plants will bid the highest prices into the pool and are the last ones to be turned on to meet consumer demand for electricity. They operate about 30% to 50% of the time, primarily during periods of high electricity demand, such as the summer when consumer use of air conditioning and other electric-powered appliances increases and less expensive hydroelectric power is unavailable. During these periods, the gas-fired plants, as the most costly to operate and thus the highest bidders into the pool, are able to set the price for all electricity sold through the pool.

Gas-fired power plants cannot and do not switch to other fuels in response to price increases in natural gas transportation or storage services, and in California Pacific controls almost all gas-fired generators' access to gas supply because the state of California has granted Pacific a monopoly on transportation of natural gas within southern California. Consequently, 96% of gas-fired generators in southern California buy gas transportation services from it. Pacific also has a monopoly on all natural gas storage services throughout California. Although regulated by the California Public Utilities Commission ("CPUC"), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, including gas-fired generators, by limiting their supply or cutting them off entirely. Limiting or cutting off gas supply raises the price gas-fired plants pay for delivered natural gas and in turn raises the cost of the electricity they produce.

C. The Relevant Market

The Complaint alleges that the provision of electricity in California during high demand periods constitutes a relevant market for antitrust purposes—that is, in the language of the Clayton Act, it is a "line of commerce" and is in a "section of the country."

Consumers of electricity in California cannot and do not switch to other products in response to an increase in the price of electricity. Thus, a small but significant and nontransitory increase in prices for electricity would not cause a significant number of electricity consumers to substitute other energy sources for electricity, and electricity is a relevant product for antitrust purposes.

During periods of high demand, California consumers can only obtain electricity from local power plants. There is very limited electricity transmission capacity into California,

[1] The Final Judgment provides that the approvals by the United States required by this Final Judgment for sale of these assets are in addition to the necessary approvals by the California Public Utilities Commission ("CPUC") or any other governmental authorities for the sale of such assets.

[2] Under these state regulations, the utility companies continue to own California's electricity transmission grid. The transmission grid, however, is under the operational control of an Independent Systems Operator ("ISO"), and distribution continues to be regulated by the CPUC.

with only two major transmission lines leading into the state, one from the hydroelectric and coal-rich northwestern United States, and one from several coal and nuclear plants in Arizona. During peak hours, the two major transmission lines are filled to capacity, and generation located within the state must supply the remaining electricity required by California consumers. Thus, in periods of high demand, consumers are unable to turn sources of electricity generated outside of California, and California is therefore a relevant geographic market for antitrust purposes.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that, if the proposed transaction would have the following effects, among others, unless it is restrained:

1. Competition in the market for electricity in California during high demand periods may be substantially lessened; and

2. Prices for electricity to consumers in California during high demand periods are likely to increase.

By virtue of its monopoly over natural gas transportation and storage, Pacific currently has the ability to increase the price of electricity, when during high demand periods, electricity from California gas-fired generators is needed to supplement less costly electricity. Pacific can restrict gas-fired generators' access to gas, which has the effect of raising the cost of gas-fired generators in general. Alternatively, Pacific can cut off or impede the more efficient gas generators' access to gas, leaving higher-cost generators to meet consumer demand for electricity. In either case, Pacific is able to increase the cost of electricity from gas-fired plants, thereby increasing the prices they bid into the pool and ultimately the price of electricity sold through the pool. But Pacific currently owns no electricity generation plants that would benefit from an increase in the pool price for electricity.

Enova, on the other hand, controls over 2600 MW of electricity, some of which comes from lower cost plants that run most of the time, and as a consequence, would benefit from an increase of the price of electricity sold through the pool. However, Enova currently has no ability to increase the price of electricity by raising the costs of competing electric utilities because it does not control any input, such as gas.

Once Pacific's control of gas is combined with Enova's low-cost electricity generation facilities, the merged firm, PE/Enova, would have the ability to raise electricity prices by limiting gas supply to competing gas-fired generators, as well as the incentive to do so. PE/Enova's ownership of lower-cost generation would enable it to profit substantially from any increase in the price of electricity sold through the pool, and these profits would more than offset any losses from reducing its gas transportation and storage sales to competing gas-fired plants. The merged firm, PE/Enova, would thus have the incentive and ability to lessen competition in the market for electricity in California. As a result, consumers would likely pay higher prices for electricity.

E. Entry

Successful entry or expansion in either the market for electricity generation or the market for intrastate natural gas transportation and storage in California would not be timely, likely, or sufficient to prevent any harm to competition. Entry or expansion would be difficult, time consuming, and costly, as well as extremely unlikely. Entry into electricity generation could counteract a post-merger price increase only if the entrants provided significant generation capacity and were not dependent on natural gas to generate electricity. Entry by building new hydro-powered, coal-fired, or nuclear-powered generators is highly unlikely, however. Each of these face substantial safety, environmental, and other regulatory barriers that would make entry costly, time consuming, and uncertain. Similarly, entry by building new lines to transmit electricity from outside California requires myriad environmental, safety, and zoning approvals, which would be difficult, costly, an time consuming to obtain. Finally, California's present regulatory scheme makes it economically impossible for alternative suppliers of natural gas transportation to enter the California market. California's pipeline certification process discourages entry by intrastate firms, while its restrictions on access to intrastate gas transportation markets discourages entry by interstate pipelines.[3]

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve the competition that would have been lost in California's emerging competitive market for electricity had the PE/Enova merger gone forward as originally structured. Within eighteen months after filing the proposed Final Judgment, Defendant must sell all of Enova's rights, titles, and interests in the Divestiture Assets. The assets and interests will be sold to a purchaser or purchasers acceptable to the United States in its sole discretion. In addition, the Final Judgment limits the ability of the merged company to reacquire or control any similar assets, or to enter into contracts to manage generating plants in California.

A. Divestiture

The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the incentive to raise electricity prices.[4] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators—1644 MW of generation assets in total. In particular, Defendant is required to divest South Bay plant (951 MW) in Chula Vista, California, and the Encina plant (693 MW) in Carlsbad, California. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceeding its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool and thus the price PE/Enova would receive for electricity.

Under the Final Judgment, Enova is required to use its best efforts to sell the Divestiture Assets under auction procedures approved by the CPUC. Enova has already requested that the CPUC begin an auction of all of the Divestiture Assets.[5] Under the Final Judgment, bid proposals will be submitted to the United States for review to determine whether the divestiture to that bidder would be acceptable.

Defendant will have eighteen months after entry of the Final Judgment to auction the Divestiture Assets.[6] The United States may extend this eighteen-month period, and both parties may jointly agree to extend the auction

[3] Entry into gas storage requires access to appropriate geologic formations, such as drained aquifers and abandoned gas fields and sale mines of a particular size and porosity, which, in California, are all owned by Pacific.

[4] The relief in the proposed Final Judgment is intended to remedy only those anticompetitive effects stemming from the PE/Enova merge. Nothing in the Proposed Final Judgment is intended to limit the United States' ability to investigate or to bring actions, where appropriate, challenging other past or future activities of Pacific or Enova.

[5] The CPUC proceeding contemplates 18 months for completion of the divestitures. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[6] The divestiture period, which is longer than the usual period permitted by the Division, avoids unnecessary conflict with the ongoing state regulatory process for divestiture.

period further. If any part of the Divestiture Assets are not sold within the eighteen months or any extension, Defendant must withdraw those assets from the California auction process and allow them to be sold by a trustee, under specific procedures designed to ensure expeditious sales.

Enova is not required to divest certain generation assets that are not likely to provide an incentive to raise pool prices. These are combustion turbine assets ("CTAs"), nuclear assets, cogeneration assets presently under contract ("Cogeneration Assets"), and a long-term contract with Public Service Company of New Mexico ("New Mexico Contract").[7]

1. CTAs—The CTAs are seventeen generators scattered throughout California, none of which exceed 20 MW capacity. They are fueled primarily by natural gas, and in some cases by diesel fuel. They are very expensive to run and were built to be used only at times of the very highest peak demand. Owning CTAs gives PE/Enova little, if any, incentive to raise electricity prices—even with increased electricity prices, PE/Enova cannot count either on selling the electricity from these generators or obtaining a price that significantly exceed their costs. Further, air pollution restrictions may prevent operation of certain CTAs during peak summer hours.

2. Nuclear—Enova holds a 20% (or 430 MW) non-operating interest in the San Onofre Nuclear Generating Station ("SONGS") and its output. PE/Enova, however, will not receive the pool price for SONGS electricity for at least the next four years, because nuclear plants will remain price regulated. If nuclear power prices become deregulated after 2001, the Final Judgment provides that (1) SONGS capacity will count towards calculation of Defendant's reacquisition cap (see discussion of cap, *infra*); and (2) the Final Judgment will remain in effect for ten years instead of five.

3. Congeneration Assets—The cogeneration assets comprise nine contracts of no more than 50 MW each, for a total of 207 MW. Their output is more costly than most of the electricity produced in California and will be sold at a regulated rate. Retention of these assets, therefore, does not provide PE/Enova with the incentive to increase the pool price for electricity.

4. The New Mexico Contract—This contract provides Enova with 100 MW. Given the other divestitures, the small amount of capacity involved, and the fact that the contract expires in less than three years, it provides little incentive to raise the pool price.

B. Limitations on Acquisition

1. *Reacquistion.* The Final Judgment limits Enova's ability to reacquire the same kind of assets that it has been ordered to divest: existing, low-cost assets inside California. These assets are referred to in the Final Judgment as "California Generation Facilities.[8] At any time during the Final Judgment, if Defendant owns or controls more than 500 MW (total) of California Generating Facilities,[9] then it cannot acquire or gain control of additional California Generation Facilities without prior approval of the United States.[10] Because the Divestiture Assets count towards calculation of the 500 MW acquisition cap, Enova cannot acquire or gain control of any more California Generation Facilities without prior approval by the United States until Enova substantially completes the divestiture.

Prior approval of subsequent acquisitions ensures that PR/Enova does not circumvent the divestiture ordered by the Final Judgment by acquiring or controlling generating facilities that give it the same incentive to raise the pool price for electricity as the Divestiture Assets did. Because of the California electricity market restructuring (which includes CPUS orders requiring major divestiture from regulated utilities), unusual and significant amounts of generating capacity will be readily available for purchase, lease, or contractual control for the next few years.

2. *The Acquisition Cap.* The Final Judgment allows the merged company to own or control 500 MW of existing California Generation Facilities. As a California retail distributor, PE/Enova may operate more effectively if it owns or controls some local capacity. This 500 MW capacity provides PE/Enova a source of back-up electricity for its 1600 MW retail sales in case of problems with electricity supply bought on the open market. At the same time, it does not provide PE/Enova with sufficient wholesale electricity sales to give it the incentive to raise the pool price for electricity by reducing its gas sales.

3. *Limitation Applicable Only to Existing California Assets.* The Final Judgment does not impose the prior approval requirement on Enova's acquisition of assets outside of California. As noted above, Pacific has the ability to raise the price of electricity during high demand periods because significant transmission constraints limit electricity imports from outside of the state. These import constraints mean that PE/Enova cannot count on the sale in the California pool of electricity from assets outside California, and thus acquisition of such assets would not give it the incentive to raise the pool price.

In addition, the Final Judgment does not prevent PE/Enova from building new capacity in California, or from acquiring capacity built in California after January 1, 1998. New capacity will only be built in California if the output is inexpensive enough to be sold in many hours. By increasing the amount of less expensive power available to meet demand, new, low-cost capacity will reduce the number of hours in which the most costly gas-fired capacity is needed. This in turn will limit PE/Enova's ability to raise the pool price since it is more costly and difficult for PE/Enova to restrict gas to more numerous low-cost plants. For the same reasons, the Final Judgment allows the merged company to acquire or gain control of plants that are rebuilt, repowered, or activated out of dormancy after January 1, 1998. Output from such plants is the equivalent of output from new-build capacity.

Finally, Enova may own, operate, and control any cogeneration or renewable resources and may enter into tolling agreements and reverse tolling agreements,[11] so long as it does not

[7] Although the Final Judgment does not place any additional obligation on the Defendant to sell any assets beyond South Bay and Enicina, the Defendant has applied to the CPUC to sell all its generation assets, including the nuclear assets, the CTAs, and the Cogeneration Assets, in the CPUC auction. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[8] The Final Judgment specifically defines "California Generation Facilities" to mean "(1) electricity generation facilities in California in existence on January 1, 1998, excluding such facilities that are rebuilt, repowered, or activated out of dormancy after January 1, 1998, as long as such rebuilding, repowering, or activation out of dormancy project, if done by Defendant, begins within one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power."

[9] A contract with Portland Gas & Electric for 75 MW, along with the same amount of firm transmission capacity, is included in the 500 MW cap, because it is a source of low-cost generation that can be sold in the pool. The Final Judgment allows Defendant to keep the contract, which expires Dec. 31, 2013, but reduces the cap by 75 MW until the contract is divested.

[10] The Final Judgment defines "acquire" to include "obtaining any interest in any electricity generating facilities or capacity," and defines "control" to mean "have the ability to set the level of output of an electricity generation facility."

[11] Tolling agreements allow one company to produce electricity with its own gas at another company's generator for a set fee. Reverse tolling

Continued

control the plan's output level. None of these arrangements or facilities will provide PE/Enova significant additional ability or incentive to raise the price for electricity by reducing its gas sales.

C. Limitations on Management Contracts

The Final Judgment provides a check on Enova's ability to acquire control of California Public Power Provider ("CPPP") owned assets through management contracts.[12] With the exception of Los Angeles Department of Water and Power's ("LADWP") facilities, the generation facilities owned by CPPPs are primarily small, gas- and oil-fired or hydroelectric plants. Management contracts enable CPPPs to hire experts in generation management to run their plants for them. The current investor-owned utilities, including Enova, plan to compete for these contracts. Under these contracts, the manager may obtain control of the generation facilities and all or most of the profits which, if PE/Enova were the manager, could give it the incentive to raise electric prices.

The Final Judgment directs that Defendant shall provide notice to the United States of any management contract that Defendant enters, unless such management contract is reportable under the Hart-Scott-Rodino Antitrust Improvements Act. The notice provision balances the efficiencies of competition for CPPP management contracts with the possible anticompetitive effect from Defendant controlling CPPP assets. It enables the United States to monitor Defendant's level of capacity control without removing it as a viable competitor for these contracts.

If PE/Enova were to enter into a management contract with LADWP, however, it would be required to obtain prior approval from the United States. LADWP controls 3700 MW of capacity in or directly linked to California. A large part of this capacity is low cost. Absent the prior approval requirement, the merged company could regain in one transaction even more incentive to raise the pool price than it had before auctioning the Divestiture Assets. The probable competitive harm threatened by Defendant's sudden reacquisition of all or a substantial part of LADWP's 3700 MW of generation via management contacts more than offsets possible efficiencies gained by Enova bidding on a LADWP management contracts.

D. Termination or Modification of the Final Judgment

The Final Judgment—and its prior approval and notice obligations—remain in effect until the tenth anniversary of the date of its entry unless the Final Judgment is terminated earlier under specific conditions. The Final Judgment also provides that the reacquisition limitations will be modified under certain conditions.

1. *Termination of the Final Judgment.* The Final Judgment provides that it shall terminate at any time if the United States determines that the merger between Enova and Pacific identified in the Complaint has been terminated. It will also terminate if the United States determines that an Independent System Operator ("ISO") has assumed control of Pacific's gas pipelines within California. In that event, PE/Enova will lose the ability to control access to gas transportation and storage. Without these tools, the merged company will not be able to raise the price for electricity sold through the pool by reducing its gas sales, and the basis for the Final Judgment would be removed.

In addition, the decree will terminate after five years under certain conditions. As noted above, the decree imposes continuing prior approval and notice obligations to ensure that PE/Enova does not simply reacquire assets similar to those it has divested, which it could readily do during the restructuring of California's electricity market.[13] Most of the changes in ownership in electric generation and control should occur in the next five years. Hence termination of the decree at the end of five years would be reasonable.

There would be a cause for concern, however, if PE/Enova could sell SONGS capacity at the unregulated pool price—it would be in essence be acquiring 430 MW of output without opportunity for the government to challenge. For this reason, the decree will terminate in five years only if (1) Enova no longer owns any of its existing nuclear assets; (2) its nuclear assets are no longer in operation; or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

Finally, the Final Judgment will partially terminate as to any Divestiture Asset if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into a settlement agreement with Enova regarding the disposition of such asset to a third party.

2. *Modification of Reacquisition Limits.* The Final Judgment provides that the 500 MW ownership cap may increase under two conditions: (1) If Enova divests all of its existing nuclear generation assets, the acquisition cap will increase to 800 MW; and (2) if defendant's total retail electricity sales at any point exceed 8,000 MW the ownership cap will be increased up to 10% of such retail electricity sales. The first condition allows an adjustment of the ownership cap in the event the SONGS is sold to replace a portion of the SONGS generation. (The 500 MW cap is a cap on acquisitions in addition to holding SONGS.) The second condition provides for the possibility that SONGS is not sold but that Enova's retail sales exceed 8,000 MW, and it allows defendant sufficient local generation to back up its expended retail sales.

E. Trustee Provisions

Until the ordered divestiture takes place, Enova must take all reasonable steps necessary to accomplish the divestiture, and cooperate with any prospective purchaser. If defendant does not accomplish the ordered divestiture within the specified time period, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. In that case, Defendant must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Defendant will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her

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agreements allow a gas supplier to stop providing natural gas to a generator at the supplier's discretion. The Final Judgment provides that Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: "In accordance with the Final Judgment in *United States* v. *Enova Corporation*, entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility."

[12] The Final Judgment defines a specific type of management services contract—a "California Public Power Generation Management Services Contract"—to mean "a bona fide contract for managing the operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract."

[13] As discussed above in Section III(B)(1), significant amounts of generating capacity will be available for purchase, lease, or contractual control during the next few years.

appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth (1) the trustee's efforts to accomplish the divestiture, (2) the reasons, in the trustee's judgment, why the divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to accomplish the purposes of this Final Judgment.

F. Provisions for Separate Management

The Stipulation and Final Judgment require Enova to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities shall be kept separate and apart from the management of defendant's other businesses, and will not be influenced by defendant. Enova must appoint a person or persons to oversee the Divestiture Assets and to be responsible for it's compliance with these provisions.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final judgment has no *prima facies* effect in any subsequent private lawsuit that may be brought against Enova.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Defendant. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the market for electricity in California that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination the Court *may* consider.

(1) The competitive impact of such judgment, including termination of alleged violations, provisions of enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the United States Court of Appeals for the District of Columbia Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the Final Judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the Final Judgment may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[14] Rather,

absent a shoring of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairyman. Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th

[14] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, *see* 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Cir.) *cert denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added.[15]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetition effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'" *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp 713, 716 (D. Mass. 1975)), *aff'd sub nom, Maryland* v. *United States*, 460 U.S. 10Q1 (1983); *United States* v. *Alcan Aluminum. Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by the United States in formatting the proposed Final Judgment.

Dated: June 8, 1998.

Respectfully submitted,

Jade Alice Eaton*

Andrew K. Rosa

Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004, (202) 307–6316.

*Counsel of Record.

[15] *See United States* v. *BNS, Inc.* 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendant in this manner in the manner set forth below:

By first class mail, postage prepaid:

Steven C. Sunshine,

Shearman & Sterling, 801 Pennsylvania Avenue, N.W., Washington, DC 20004.

Jade Alice Eaton,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, (202) 307–6456, (202) 616–2441(Fax).

[FR Doc. 98–16218 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 96–2031]

Proposed Modified Final Judgment and Memorandum In Support of Modification

Notice is hereby given that a Modified Final Judgment, Motion to Modify Final Judgment, Memorandum in Support of the Modification of the Final Judgment, Stipulation and Order, and Hold Separate Stipulation and Order have been filed with the United States District Court in the District of Columbia, in *United States et al* v. *USA Waste Services, Inc., et al.*, Civil No. 96–2031.

The existing Final Judgment stems from a 1996 acquisition of Sanifill, Inc., by USA Waste. The Final Judgment was entered to resolve competitive concerns that the Antitrust Division had about the impact of the acquisition in Houston, Texas. Pursuant to the Final Judgment, USA Waste divested Sanifill's small container commercial hauling assets and a USA Waste disposal site in Houston and sold 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area. The assets were purchased by TransAmerican Waste Industries, Inc. On January 26, 1998, TransAmerican and USA Waste entered into an agreement whereby TransAmerican would be merged into USA Waste, and the Houston assets TransAmerican purchased from USA Waste would be owned by USA Waste.

On May 5, 1998, the United States filed a proposed Modified Final Judgment to modify the Final Judgment in this case. The United States maintained that the proposed acquisition of TransAmerican's commercial hauling and disposal assets in the Houston area would violate the original Final Judgment. The proposed Modified Final Judgment requires USA Waste to divest the TransAmerican commercial small container and disposal assets in the Houston area and provide 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area.

The Hold Separate Stipulation and Order and the Stipulation and Order ensure that the provisions of the proposed Modified Final Judgment will be observed and that the assets to be divested will be held separate and maintained as a viable competitive entity until the divestiture takes place.

Public comments on the proposed Modified Final Judgment should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202/307–0924). Such comments and responses thereto will be filed with the Court.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Stipulation and Order

To further the objectives of the Modified Final Judgment filed with the Court in this matter, it is stipulated by and between the United States of America ("United States"), the State of Texas ("Texas"), USA Waste Services, Inc. ("USA Waste"), and TransAmerican Waste Industries, Inc. ("TransAmerican"), by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Modified Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after completion of the procedures specified in the United States' Explanation of Procedures filed herewith without further notice to any party or other proceedings, provided that the United States and Texas have not withdrawn their consent, which they may do at any time before the entry of the proposed Modified Final Judgment by serving notice thereof on USA Waste and TransAmerican and by filing that notice with the Court.

3. USA Waste and TransAmerican shall abide by and comply with the provisions of the proposed Modified Final Judgment pending entry of the

proposed Modified Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Modified Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Modified Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Modified Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) the United States and Texas have withdrawn their consent, as provided in paragraph 2 above, or (b) the proposed Modified Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Modified Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Modified Final Judgment, then the United States, Texas, USA Waste, and TransAmerican are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. USA Waste and TransAmerican represent that the divestiture ordered in the proposed Modified Final Judgment can and will be made, and that USA Waste and TransAmerican will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 5, 1998.

For the United States:

Frederick H. Parmenter

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For the State of Texas

Dan Morales

Texas Attorney General.

Mark Tobey

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

For USA Waste Services, Inc.

James R. Weiss

District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006–5209, (202) 662–8425.

For TransAmerican Waste Industries, Inc.

J. David Green

Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956–1212.

Order

It is So Ordered, this 6th day of May, 1998.

Gladys Kessler,

United States District Judge.

Modified Final Judgment

Whereas, the United States of America ("United States"), the State of Texas ("Texas"), and the Commonwealth of Pennsylvania ("Pennsylvania") filed a Complaint in this action on August 30, 1996 and a Final Judgment was entered on December 17, 1996.

And whereas, the United States, Texas, USA Waste Services, Inc. ("USA Waste") and TransAmerican Waste Industries, Inc. ("TransAmerican"), by their respective attorneys have consented to the entry of this Modified Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Modified Final Judgment constituting any evidence against or an admission by the United States, Texas, USA Waste, or TransAmerican with respect to any issue of law or fact herein;

And whereas, USA Waste and TransAmerican have agreed to be bound by the provisions of this Modified Final Judgment pending its approval by the Court.

And whereas, prompt and certain divestiture of the Houston Divestiture Assets to assure that competition is not substantially lessened in the Houston Area is the essence of this agreement;

And whereas, USA Waste and TransAmerican have represented to the United States and Texas that the divestiture required below can and will be made and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States and Texas believe that entry of this Modified Final Judgment is in the Public Interest;

Now, therefore, it is hereby *Ordered, Adjudged, and Decreed* that this Modified Final Judgment, shall modify the provisions in the Final Judgment relating to the Houston Divestiture Assets and the Houston area in the following ways:

I. Definitions

As used in this Modified Final Judgment:

A. Solid waste hauling means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

B. Solid waste disposal means the disposal of Type 1 or 4 solid waste into disposal sites approved by the Texas Natural Resources Conservation Commission for Type 1 or Type 4 waste. Type 1 waste is municipal solid waste and Type 4 waste is dry waste such as construction and demolition waste.

C. USA Waste means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston. Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. TransAmerican means TransAmerican Waste Industries, Inc., A Delaware corporation with its headquarters in Houston, Texas and its successors, and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

E. Houston Area means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

F. Houston Hauling Assets means the front load commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including

all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas, 77041 and 999 Ashland, Channelview, Texas 77530.

G. Sunray Assets means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resources Conservation Commission, all customers lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

H. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazelwood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

I. *Houston Divestiture Assets* refers to the Houston Hauling assets, Sunray Assets, and Airspace Assets.

J. *Small Container* means a 1 to 10 cubic yard container.

II. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican and venue of this action is proper in the United States District Court for the District of Columbia.

III. Applicability

A. The provisions of this Modified Final Judgment apply to USA Waste and TransAmerican, their successors and assignees, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Modified Final Judgment by personal service or otherwise.

B. USA Waste and TransAmerican shall require, as a condition of the sale or other disposition of all or substantially all of the Houston Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Modified Final Judgment.

IV. Divestiture of Assets

A. USA Waste and TransAmerican agree within 90 days from the filing of this Modified Final Judgment to divest the Houston Divestiture Assets, unless the United States, after consultation with Texas, consents that only some portion of the Houston Divestiture Assets need be divested. USA Waste and TransAmerican further agree to notify the United States and Texas in writing immediately when they have completed the divestitures.

B. Unless the United States, after consultation with Texas, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Houston Hauling Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste hauling, and that the Sunray Assets can and will be operated by the purchases as a viable, ongoing business engaged in solid waste disposal in the Houston Area. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Texas, that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling, dry waste disposal, or both, and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and/or disposal.

C. In accomplishing the divestitures ordered by this Modified Final Judgment, USA Waste and TransAmerican promptly shall make known, by usual and customary means, the availability of the Houston Divestiture Assets described in this Modified Final Judgment. USA Waste and TransAmerican shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Modified Final Judgment and provide such person with a copy of this Modified Final Judgment. USA Waste and TransAmerican shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Houston Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. USA Waste and TransAmerican shall make available such information to the United States and Texas at the same time such information is made available to any other person. In giving notice of the availability of the Houston Hauling Assets, defendants shall not exclude any persons bound by any non-compete obligations to Sanifill, Inc., or TransAmerican.

D. USA Waste and TransAmerican shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Houston Divestiture Assets be offered or guaranteed continued employment after the divestiture.

E. USA Waste and TransAmerican shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Modified Final Judgment.

F. As part of the sale of the Airspace Assets, USA Waste and TransAmerican will include an agreement to accept waste from the purchaser or anyone designated by the purchaser to dispose of waste at the landfills. As agents of the purchaser, USA Waste and TransAmerican will operate the gate, scale house, and disposal area under terms and conditions no less favorable than those provided to USA Waste's and TransAmerican's vehicles or the vehicles of any municipality in the Houston Area, except as to price and credit terms.

V. Appointment of Trustee

A. In the event that USA Waste and TransAmerican have not divested all of their assets required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Texas, appoint a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. USA Waste and TransAmerican shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Modified Final Judgment. Any such objections by USA Waste or TransAmerican must be conveyed in writing to the United States, Texas, and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve the cost and expense of USA Waste and TransAmerican, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the

trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to USA Waste and TransAmerican and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. USA Waste and TransAmerican shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Houston Divestiture Assets, and USA Waste and TransAmerican shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. USA Waste and TransAmerican shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the United States, Texas, USA Waste, TransAmerican, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Modified Final Judgment. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the United States, Texas, USA Waste, and TransAmerican, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Texas.

E. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the solid waste hauling industry in the Houston Area where the person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

F. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the municipal solid waste or dry waste disposal industry in the Houston Area, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous six months, exceed the revenue limits of paragraph E above. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

G. The purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Texas, sell any of those assets to, or combine any of those assets with, those of USA Waste or TransAmerican during the life of this Modified Final Judgment. Furthermore, the purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall notify the United States and Texas 45 days in advance of any proposed sale of all or substantially all of the assets, or change in control over those assets, acquired pursuant to this Modified Final Judgment.

VI. Notification

A. USA Waste, TransAmerican, or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and Texas of any proposed divestiture required by Section IV or V of this Modified Final Judgment. If the trustee is responsible, it shall similarly notify USA Waste and TransAmerican. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Houston Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States and TransAmerican may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. USA Waste and TransAmerican or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing USA Waste and TransAmerican and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing USA Waste and TransAmerican and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to USA Waste's and TransAmerican's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Texas, or by USA Waste and TransAmerican under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when USA Waste and TransAmerican consummate the acquisition, but in no event later than May 30, 1998, and every thirty (30) days thereafter until the divestiture has been completed, USA Waste and TransAmerican shall deliver to the United States and Texas a written report as to the fact and manner of compliance with Section IV of this Modified Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Houston Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. USA Waste and TransAmerican shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII. Financing

USA Waste and TransAmerican shall not finance all or any part of any purchase made pursuant to Section IV or V of this Modified Final Judgment without the prior written consent of the

United States, after consultation with Texas.

VIII. Preservation of Assets

Until the divestitures required by the Modified Final Judgment have been accomplished:

A. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Hauling Assets will be maintained and operated in the ordinary course of business and consistent with past practices, and shall (1) maintain all insurance policies and all permits that are required for the operation of the assets, and (2) maintain books of account and records in the usual, regular, and ordinary manner and consistent with past practices.

B. USA Waste and TransAmerican shall take all steps necessary to ensure that the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the provision of dry waste disposal services in the Houston Area, with management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of TransAmerican's solid waste hauling and disposal business.

C. USA Waste and TransAmerican shall use all reasonable efforts to maintain and increase sales of solid waste hauling and disposal services provided by the Houston Divestiture Assets, and they shall maintain at 1997 or previously approved levels, whichever is higher, promotional, advertising, sales, marketing and merchandising support for such services.

D. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement and maintenance schedules for the Houston Divestiture Assets.

E. USA Waste and TransAmerican shall not, except as part of a divestiture approved by the United States and Texas, remove, sell or transfer any Houston Divestiture Assets, other than solid waste hauling and disposal services provided in the ordinary course of business.

F. USA Waste and TransAmerican shall take no action that would jeopardize the sale of the Houston Divestiture Assets.

G. USA Waste and TransAmerican shall appoint a person with oversight responsibility for the Houston Divestiture Assets to insure compliance with this section of the Modified Final Judgment.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Modified Final Judgment, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States and Texas including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, and on reasonable notice to USA Waste and TransAmerican made to its principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USA Waste and TransAmerican, which have counsel present, relating to any matters contained in this Modified Final Judgment; and

2. Subject to the reasonable convenience of USA Waste and TransAmerican and without restraint or interference from them, to interview their directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, made to USA Waste and TransAmerican at their principal offices, USA Waste and TransAmerican shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Modified Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney General of Texas to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas, except in the course of legal proceedings to which the United States or Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by USA Waste and TransAmerican to the United States and Texas, USA Waste and TransAmerican represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and USA Waste and TransAmerican mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States and Texas shall give ten (10) days notice to USA Waste and TransAmerican prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste or TransAmerican is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Modified Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Modified Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

This Modification Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Modified Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Certificate of Service

I hereby certify that copies of the Modified Final Judgment, Motion of the United States and Texas for Modification of the Final Judgment, United States' Explanation of Procedures, Hold Separate Stipulation and Order, Stipulation and Order, and Memorandum of the United States in Support of Modification of the Final Judgment have been served upon USA Waste Services, Inc., TransAmerican Waste Industries, Inc., and the Office of the Attorney General of Texas, by placing copies of the foregoing documents in the U.S. Mail, directed to each of the foregoing parties at the addresses given below, this 6th day of May, 1998.

USA Waste Services, Inc., c/o James R. Weiss, Esq., Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW., Washington, DC 20006–5209.

TransAmerican Waste Industries, Inc., J. David Green, Esq., Sr. Vice President

and General Counsel, 10554 Tanner Road, Houston, Texas 77041.
Mark Tobey, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546.
Frederick H. Parmenter,
U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Memorandum of the United States and Texas in Support of Modification of the Final Judgment

The United States of America ("United States") and the State of Texas ("Texas") submit this memorandum in support of their motion to modify the Final Judgment entered in the above-captioned matter. Filed with the memorandum is a Stipulation and Order, a Hold Separate Stipulation and Order, a Motion for Modification of the Final Judgment, an Explanation of Procedures, and a proposed Modified Final Judgment. In accordance with the provisions of the Stipulation and Order, USA Waste Services, Inc. ("USA Waste") and TransAmerican Waste Industries, Inc. ("TransAmerican") have agreed to be bound by the Modified Final Judgment following consummation of the merge and pending entry of the Modified Final Judgment. Similarly, in accordance with the Hold Separate Stipulation and Order, USA Waste and TransAmerican have agreed to hold the Houston Divestiture Assets separate and maintain them as competitively viable entities after the consummation of the merger and entry of the Modified Final Judgment. The proposed Modified Final Judgment only modifies the provisions of the Final Judgment relating to the Houston, Texas area. It does not have any impact, and is not meant to have any impact, on the provisions relating to Johnstown, Pennsylvania. The modifications are necessary to ensure that the original intent of the Final Judgment, to prevent competition from being lessened in the Houston refuse hauling and disposal markets, is preserved. Consequently, the modifications are in the public interest.

I. Background

On August 30, 1996, the United States filed a civil antitrust Complaint in the above-styled action alleging that the proposed acquisition of the voting stock of Sanifill, Inc. ("Sanifill") by USA Waste would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that the combination of these competitors would lessen competition substantially in the provision of small containerized waste hauling services and landfill disposal services in the Houston, area, among other geographic locations. The Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend Count, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas, including the municipalities located, in whole or in part, in those counties ("Houston market").

When the Complaint was filed, the United States also filed a proposed settlement that was set forth in a proposed Final Judgment that permitted USA Waste to complete its acquisition of Sanifill, but required certain divestitures that would preserve competition in the Houston area. On December 17, 1996 after the comment period required by the Antitrust Penalties & Procedures Act ("APPA"), 15 U.S.C. 16, had passed, the Court entered the Final Judgment finding that it was in the public interest. On January 31, 1997, various waste hauling and disposal assets located in the Houston area where purchased by TransAmerican from USA Waste. Section V.G. of the Final Judgment required: (1) the purchaser of the divested hauling and disposal assets (e.g., Trans-American) to give the United States and Texas 45 days notice in advance of any sale of the assets, and (2) the purchaser would not sell the divested assets to be defendants (e.g., USA Waste) during the life of the decree.

On February 26, 1998, TransAmerican notified the United States and Texas, as required by the Final Judgment, that TransAmerican had undertake to merge itself with USA Waste. The proposed merger of TransAmerican with USA Waste would permit USA Waste to acquire the TransAmerican Houston assets that TransAmerican was prohibited from selling to USA Waste by the Final Judgment. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation and consultation with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets. The United States and Texas were concerned that the acquisition would substantially lessen competition in the provision of small containerized waste hauling services and landfill disposal services in the Houston area. USA Waste and TransAmerican were substantially informed that the United States would undertake to enforce the Final Judgment if concerns about small containerized hauling and landfills in the Houston market were not resolved. The assets in the Houston area which were of concern to the United States that USA Waste would require through the merger were: (1) the TransAmerican frontload commercial assets ("Houston Hauling Assets"). (2) a TransAmerican Type 4 landfill and related assets ("the Sunray Assets"), and (3) the rights TransAmerican had acquire to dispose of 2,000,000 tons of municipal solid waster ("MSW") for ten years at a maximum rate of 270,000 tons a year at the USA Waste Hazlewood Landfill located at 4791 Tri-City Beach Road, Baytown, Texas 77520 and the USA Waste Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. ("Airspace Assets"). Together the Houston Hauling Assets, Sunray Assets, and Airspace Assets are known as the Houston Divestiture Assets.

To prevent competition from being substantially lessened for small containerized hauling and landfill disposal in the Houston area, and to permit USA Waste to complete TransAmerican's merger with USA Waste, the United States has filed with the Court a proposed settlement that supplements the Final Judgment entered by the Court on December 17, 1996. It requires USA Waste to divest the Houston Divestiture Assets.

The proposed Modified Final Judgment orders USA Waste to divest the Houston Divestiture Assets. In addition, USA Waste must complete the divestiture of the Houston Divestiture Assets within ninety (90) days after the date on which the proposed Modified Final Judgment was filed (i.e., May 6, 1998), in accordance with the procedures specified therein.

The Stipulation and Order, Hold Separate Stipulation and Order, and proposed Modified Final Judgment require USA Waste to ensure that, until the divestitures mandated by the proposed Modified Final Judgment have been accomplished, the Houston Hauling Assets and the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Modified Final Judgment.

The United States, Texas, USA Waste, and TransAmerican have stipulated that the proposed Modified Final Judgment may be entered after compliance with the 60-day comment period provided for in the United States' Explanation of

Procedures. Entry of the proposed Modified Final Judgment would terminate any need for action regarding the proposed merger of TransAmerican with USA Waste, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Modified Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Proposed Modified Final Judgment

USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal in 49 states and the District of Columbia. In 1997, USA Waste had total revenues of over $1.6 billion.

TransAmerican is a Delaware corporation with its principal office in Houston, Texas. TransAmerican is engaged in providing nonhazardous solid waste hauling and/or disposal in five states. In 1996 TransAmerican had total revenues of over $16 million.

On January 26, 1998, USA Waste entered into an agreement and plan of merger whereby TransAmerican's stock would be acquired for approximately $125,470,000. This transaction is of concern to the United States and Texas because it would take place in the highly concentrated Houston small container hauling and landfill disposal industries and violate the December 17, 1996 Final Judgment entered in this action.

The Transaction's Effects in the Houston Market

A. The Solid Waste Hauling Industry

The United States asserts that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area constitutes an appropriate section of the country, or relevant geographic market. The United States maintains that the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services and landfill disposal services in the Houston market. As a result, when USA Waste undertook to acquire TransAmerican, the United States took the position that USA Waste could not obtain the small containerized hauling and landfill assets it divested to TransAmerican 18 months ago to resolve anticompetitive concerns that arose in August 1996, when USA Waste purchased Sanifill.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities, it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

The United States asserts that USA Waste's acquisition of TransAmerican would substantially lessen competition for the provisions of small containerized hauling service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of small containerized hauling service in the Houston market will be eliminated.

USA Waste and TransAmerican are two of the largest providers of small

containerized hauling service in the Houston market. In the Houston market, USA Waste has 28 percent share and TransAmerican has a 7 percent share. The acquisition would give USA Waste a 35 percent share of the market.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service. A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable municipal solid waste ("MSW") landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30–50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital cost, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what is referred to as a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

TransAmerican's merger with USA Waste will substantially lessen competition for landfill service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of MSW and dry waste landfill service in the Houston market will be eliminated. USA Waste is the largest owner of dry waste landfill services in the Houston market. In the Houston area, there are 18 Type 4 landfills in the Houston area. USA Waste has eleven dry waste landfills (four operating) and TransAmerican has one. Concerning Type 1 MSW landfills, there are nine in the Houston area that are owned by three firms. Through the Final Judgment, TransAmerican obtained access to the USA Waste Type 1 landfills for a period of ten years thereby assuring it disposal access for the MSW it hauls.

As a result of the acquisition, the concentration of dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. Furthermore, a small containerized hauling competitor with guaranteed access to Type 1 landfills will be removed from the Houston area. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

C. Harm to Competition as a Consequence of the Acquisition

The United States asserts that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA Waste and TransAmerican in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small contianerized hauling service and landfill disposal service in the Houston market are likely to increase above competitive levels.

III. Explanation of the Proposed Modified Final Judgment

The provisions of the proposed Modified Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by ensuring that the intent of the provisions of the Final Judgment relating to the Houston market and the Houston Divestiture Assets entered by the Court on December 17, 1996 are enforced and a new, independent and economically viable competitor is established in the Houston market. The proposed Modified Final Judgment requires USA Waste and TransAmerican, within 90 days of May 6, 1998, to divest, as viable ongoing business, the Houston Hauling Assets, Sunray Assets and the Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill disposal assets, and such other assets as may be necessary to ensure the viability of the small container and landfill businesses. If USA Waste and TransAmerican cannot accomplish these divestitures within the above-described period, the proposed Modified Final Judgment provides that, upon application (after consultation with Texas) by the United States, the Court will appoint a trustee to effect divestiture.

The proposed Modified Final Judgment provides that these assets must be divested in such a way as to satisfy the United States (after consultation with Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. USA Waste and TransAmerican must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Modified Final Judgment provides that USA Waste and TransAmerican will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the

trustee will file monthly reports with the United States, Texas, USA Waste, TransAmerican and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States, Texas, USA Waste, and TransAmerican will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Modified Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston Area market for MSW disposal services by requiring USA Waste and TransAmerican to sell the rights to dispose of 2 million tons of MSW waste over ten years at USA Waste's only two MSW landfills in the area. The proposed Modified Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The availability of this landfill capacity helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Modified Final Judgment mandates that USA Waste and TransAmerican divest TransAmerican's sole dry waste (Type 4) landfill (the North County Landfill) in the Houston area market. The divestiture of the North County Landfill will help moderate any possible anticompetitive effect related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Modified Final Judgment that USA Waste and TransAmerican provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market ensures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

IV. Modification is in the Public Interest

Uncontested motions to modify the Final Judgment are granted if the proposed modification is within the reaches of the public interest. *See, e.g., United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (D.D.C. 1993) (*Citing United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.D.C. 1990) (hereinafter *Triennial Review*)). In the context of an uncontested motion to modify an existing consent decree, the "public interest" standard "directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today." United States v Western Electric 1993 F.2d at 1576 (*quoting Triennial Review*, 900 F.2d at 307) (emphasis in original). Thus, "it is not up to the court to reject an agreed-on change simply because the proposal diverged from *its view* of the public interest. Rather, the court [is] bound to accept any modification that the Department (with the consent of third parties, we repeat) reasonably regarded as advancing the public interest." *United States* v. *Western Electric Co.*, 993 F.2d at 1576. *See also United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995); *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *BNS.* Inc., 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is 'within the reaches of the *public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (*emphasis added*); *See BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) *See also Microsoft*, 56 F.3d at 1461.

V. Conclusion

For all of the foregoing reasons, the proposed modification is in the public interest, and the motion to enter the Modified Final Judgment should be granted. Respectfully submitted.

Dated: May 5, 1998.

For the United States

Frederick H. Parmenter

Virginia Bar No.: 18184, Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 307–0620.

For the States of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Motion of the United States and Texas for Modification of The Final Judgment

The United States of America ("United States") and the State of Texas ("Texas") move this Court to modify the Final Judgment in the above-captioned matter as to the provisions relating to the Houston Divestiture Assets and the Houston area. This motion is based on the following grounds:

I. Definitions

1. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates directors, officers, managers, agents and employees.

2. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

3. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

4. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including

all equipment, material, and supplies associated with these assets.

5. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

6. *Houston Divestiture Assets* means the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

II. Background and Objectives

1. On August 30, 1996, the United Texas, and Pennsylvania filed a complaint in the above-cationed case alleging that USA Waste's acquisition of Sanifill, Inc. ("Sanifill") violated Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleged that the combination of USA Waste and Sanifill would substantially lessen competition in providing hauling and disposal services in the Houston Area and Johnstown, Pennsylvania.

2. On December 17, 1996, the Court entered a Final Judgment which directed the defendants to divest the Houston Divestiture Assets and undertake certain measure in Johnstown to alleviate the competitive harm of the acquisition.

3. The Houston Divestiture Assets were purchased by TransAmerican on January 31, 1997.

4. On January 26, 1998, USA Waste entered into an agreement with TransAmerican pursuant to which USA Waste proposed to merge TransAmerican with USA Waste. The value of the proposed transaction is approximately $125,470.000.

5. On February 26, 1998, TransAmerican notified the United States and Texas as required by the Final Judgment that TransAmerican has undertaken to merge itself with USA Waste. Section V.G. of the Final Judgment requires the purchaser of the Houston Divestiture Assets (e.g., TransAmerican) to give the United States and Texas 45 days notice in advance of any sale of the Houston Divestiture assets and that the purchaser shall not sell the Houston Divestiture Assets to the defendants (e.g., USA Waste) during the life of the decree.

6. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation consultations with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets.

7. USA Waste and TransAmerican have agreed to the prompt and certain divestiture of the Houston Divestiture Assets as a viable business operation to a third party or parties to assure that competition is not substantially lessened in the Houston Area.

8. For the purpose of accomplishing the divestiture of the Houston Divestiture Assets, USA Waste and TransAmerican authorize the United and Texas to state that they concur in this motion.

9. The United States does not believe that that proposed Modified Final Judgment is subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16. However, the United States intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the United States will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted.

Dated: May 5th, 1998

For the United States:

Frederick H. Parmenter,

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For The State of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the United States of America, the State of Texas, USA Waste Services, Inc., and TransAmerican Waste Industries, Inc., subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *Solid waste hauling* means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

B. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. *TransAmerican* means TransAmerican Waste Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

F. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

G. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, and containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

H. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of USA Waste with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

I. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

J. *Houston Divestiture Assets* means to the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

II. Objectives

The Modified Final Judgment filed in this case is meant to ensure USA Waste's prompt divestiture of the Houston Divestiture Assets for the purpose of maintaining a viable competitor in the waste disposal and hauling business in the Houston area to remedy the effects that the United States and Texas allege would otherwise result from USA Waste's proposed acquisition of TransAmerican. This Hold Separate

Stipulation and Order ensures, prior to such divestiture, that the Houston Hauling Assets and the Sunray Assets which are being divested be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Modified Final Judgment has been accomplished:

A. USA Waste shall preserve, maintain, and operate the Houston Hauling Assets and the Sunray Assets as independent competitors with management, sales, and operations held entirely separate, distinct and apart from those of USA Waste. USA Waste shall not coordinate the marketing or sale of its waste disposal and hauling business with the waste disposal and hauling business at the Houston Hauling Assets and the Sunray Assets. Within thirty (30) days of the entering of this Order, USA Waste will inform the United States and Texas of the steps taken to comply with this provision.

B. USA Waste shall take all steps necessary to ensure that the Houston Hauling Assets and the Sunray Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal and hauling business in the Houston area; and that the management of the Houston Hauling Assets and the Sunray Assets will not be influenced by USA Waste, and the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Houston Hauling Assets and the Sunray Assets will be kept separate and apart from the operations of USA Waste. USA Waste's influence over the Houston Hauling Assets and the Sunray Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Modified Final Judgment.

C. USA Waste shall use all reasonable efforts to maintain and increase waste disposal and hauling sales at the Houston Hauling Assets and the Sunray Assets, and shall maintain at 1997 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for the disposal and hauling of waste associated with the Houston Hauling Assets and the Sunray Assets.

D. USA Waste shall provide sufficient working capital to maintain the Houston Hauling Assets and the Sunray Assets as economically viable, ongoing businesses.

E. USA Waste shall take all steps necessary to ensure that the Sunray Assets are fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Houston Hauling Assets and the Sunray Assets.

F. USA Waste shall not, except as part of a divestiture approved by the United States and Texas, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of the Houston Hauling Assets and the Sunray Assets, including intangible assets that relate to the permits described in Section I of the Modified Final Judgment.

G. USA Waste shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Houston Hauling Assets and the Sunray Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, USA Waste and TransAmerican shall not hire and USA Waste and TransAmerican shall not transfer or terminate, or alter any current employment or salary agreements for any USA Waste or TransAmerican employees who (I) on the date of the signing of this Agreement, work at the Houston Hauling Assets or the Sunray Assets or (ii) are members of management referenced in Section III(I) of this Order.

I. Until such time as the Houston Hauling Assets and the Sunray Assets are divested, the Assets to be Divested shall be managed by Ted Meyer of TransAmerican. Ted Meyer shall have complete managerial responsibility for the Houston Hauling Assets and the Sunray Assets, subject to the provisions of this Order and the Modified Final Judgment. In the event that Ted Meyer is unable to perform his duties, USA Waste shall appoint, subject to the United States' and Texas' approval, a replacement within ten (10) working days. Should USA Waste fail to appoint a replacement acceptable to the United States and Texas within ten (10) working days, the United States and Texas shall appoint a replacement.

J. USA Waste shall take no action that would interfere with the ability of any trustee appointed pursuant to the Modified Final Judgment to complete the divestiture pursuant to the Modified Final Judgment to a suitable purchaser.

K. this Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Modified Final Judgment or until further Order of the Court.

Dated: May 5, 1998.

For the United States:

Frederick H. Parmenter,

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For the State of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

For USA Waste Services, Inc.

James R. Weiss,

District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006–5209, (202) 662–8425.

For TransAmerican Waste Industries, Inc.

J. David Green,

Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956–1212.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Order

It is so ordered, this 6th day of May, 1998.

Gladys Kessler,

United States District Judge.

[FR Doc. 98–16216 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on June 25, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Deutsche Telekom, Berlin, GERMANY; and Excel, Inc., Hyannis, MA, have become Principal Members. Ariel Corp., Cranbury, NJ; Comdial Corporation, Charlottesville, VA; DeTeWe Kommunikations, Berlin, GERMANY; Dictaphone, Stratford, CT; Eastman Kodak, Rochester, NY; Force Computers, San Jose, CA; Mitsubishi Electronics Corp., Kanagawa, JAPAN; Offnet SPA, Rome, ITALY; Phillips Business Communications, Hilversum, THE NETHERLANDS; Summa Four, Inc., Manchester, NH; and Vanguard, Morris Plains, NJ, have become Auditing Members.

Precision Systems, Inc. and Voice Technologies Group are no longer Principal Members.

Ascom Telecom Ltd, Berkeley Speech Technologies; and Digital Systems International, are no longer Auditing Members.

No other changes have been made in the membership, nature or objectives of ECTF. Membership remains open, and ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on May 2, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63387).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–16219 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 10, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: Dow-United Technologies Composite Products, Inc., Wallingford, CT; OG Technology, Inc., Ann Arbor, MI; Preco Industries, Inc., Lenexa, KS; Steel Products Division (United Defense Systems, L.P.), Anniston, AL; MicroDexterity Systems, Inc., Carbondale, CO. Also approved for affiliate membership in NCMS were: Alberta Research Council, Edmonton, Alberta, CANADA; Interconnection Technology Research Institute, Austin, TX; Industry Canada, Ottawa, Ontario, CANADA; Materials and Manufacturing Ontario, Mississauga, Ontario, CANADA; National Research Council, Ottawa, Ontario, CANADA.

The following companies recently resigned from membership in NCMS: Angle, Inc., Springfield, VA; SDL, Inc., San Jose, CA; American Foundrymen's Society, Des Plains, IL; Gear Research Institute, Evanston, IL.

No other changes have been made in either the membership or planned activity of the group research project. membership remains open, and NCMS intends to file additional written notification disclosing all changes.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on October 20, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63388).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–16217 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Tuesday, August 11, 1998, from 9 a.m. to 4 p.m. in lecture room A of the National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001.

The agenda for the meeting will be Charters reencasement needs and reencasement design concept.

This meeting will be open to the public. For further information, contact Alan Calmes at (301) 713–7403.

Dated: June 12, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–16224 Filed 6–17–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: July 9–10, 1998, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16245 Filed 6–17–98; 8:45 am]

BILLING CODE 7555–01–M

PANAMA CANAL COMMISSION

Extension of a Currently Approved Collection of Information

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163), this notice announces the Panama Canal Commission (PCC) is planning to submit to the Office of Management and Budget a Paperwork

Reduction Act Submission (83-I) for an extension of a currently approved collection of information entitled "Procurement-Related Forms and Contract Clauses," OMB No. 3207–0007.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by August 17, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202–634–6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502 (3) and 5 CFR 1320.3 (c). Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 requires agencies to provide a 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, by soliciting comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the collection will have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Procurement-Related Forms and Contract Clauses.

Type of Request: Extension of a currently approved collection.

Background: The information requested is authorized by the Panama Canal Commission Acquisition Regulation, codified at 48 Code of Federal Regulations Chapter 35.

Abstract: On September 15, 1982, the Panama Canal Commission submitted to OMB a request for approval of the forms used by the Commission in connection with the procurement of supplies, services, and construction required by the Panama Canal Commission for the operation and maintenance of the Panama Canal. OMB approved this collection for use through September 30, 1985, and assigned it OMB No. 3207–0007. On August 30, 1985, the Commission requested extension of the expiration date of the collection of information designated Procurement-Related Forms through September 30, 1988. Prior to the expiration, the Commission requested another extension and received approval through December 1992. On October 7, 1992, the Commission submitted to OMB for approval the collection "Procurement-Related Forms and Contract Clauses." OMB approved the collection through October 31, 1995. On July 12, 1995, the Commission submitted a request for revision of this collection and received approval through August 31, 1998. The forms are used to furnish the information required by solicitation provisions or contract clauses.

Annual Burden Hours: 19,853.

Estimated Number of Respondents: 69,092.

Estimated Total Hours per Response: 30 minutes.

Frequency of Collection: On occasion.

Affected Public: Business or other for profit.

Jacinto Wong,

Chief Information Officer, Senior Official for Information Resources Management.

[FR Doc. 98–16157 Filed 6–17–98; 8:45 am]

BILLING CODE 3640–04–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., July 23, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1999 and election of a Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: June 16, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–16339 Filed 6–16–98; 11:46 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Equus II Incorporated, Common Stock, $.001 Par Value) File No. 1–11362

June 12, 1998.

Equus II Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company's Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 20, 1998, the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's Security on the NYSE commenced at the opening of business on May 20, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of resolutions adopted by the Company's Board of Director's authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered the expense of maintaining a dual listing.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 6, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms,

if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16246 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23249; 812–10904]

New York Life Capital Corporation; Notice of Application

June 12, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant, New York Life Capital Corporation, requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company and certain companies controlled by the parent company.

FILING DATES: The application was filed on December 18, 1997, and amended on April 28, 1998, and June 4, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1998 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation and a wholly-owned indirect subsidiary of New York Life Insurance Company ("New York Life"). New York Life is a mutual insurance company organized under the laws of the State of New York. New York Life, directly and through its subsidiaries, provides various financial services including the sale of group pension products, health insurance, annuities, brokerage services, investment advisory services, mutual funds, and variable life and annuity insurance products. New York Life is exempt from regulation under the Act by section 3(c)(3) of the Act.

2. Applicant was formed in 1995 for the purpose of financing the business operations of New York Life and its subsidiaries ("Controlled Companies"). Applicant's primary function to borrow funds through the sale of short-term, medium-term, and long-term debt securities as well as non-voting preferred stock, and to lend the proceeds from these offerings to New York Life and its Controlled Companies to help finance their operations. Certain of the Controlled Companies are exempt from regulations under the Act by certain provisions of section 3(c) of the Act. None of the Controlled Companies to which applicant may lend will be relying on sections 3(c)(1) or 3(c)(7) of the Act.

3. All of applicant's debt securities and non-voting preferred stock issued to or held by the public will be unconditionally guaranteed by New York Life as to the payment of, as applicable, principal, interest, premium, dividends, liquidation preference and sinking fund payments. In the event of any default in payment of these amounts, the public holders of the securities may institute legal proceedings directly against New York Life without first proceeding against applicant. Furthermore, any convertible or exchangeable securities issued by applicant shall be convertible or exchangeable only for securities issued by New York Life or for applicant's debt securities or non-voting preferred stock.

4. Applicant will invest in or loan at least 85% of any cash or cash equivalents raised by applicant to New York Life and its Controlled Companies as soon as practicable, but in no event later than six months after applicant receives the cash or cash equivalents. If applicant borrows amounts in excess of the amounts required by New York Life and its Controlled Companies, applicant will invest this excess in certain temporary investments pursuant to rule 3a–5 under the Act discussed below.

Applicant's Legal Analysis

1. Applicant requests an order under section 6(c) of the Act exempting it from all provisions of the Act. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(2) provides that a "parent company" is a company that derives its non-investment company status from section 3(a) of the Act, the rules under section 3(a) of the Act, or section 3(b) of the Act. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, the rules under section 3(a) of the Act, or section 3(b) of the Act.

3. Applicant states that New York Life may not qualify as a "parent company" under rule 3a–5(b)(2) because it derives its non-investment company status from section 3(c)(3) of the Act. Applicant also states that certain Controlled Companies that may receive loans from applicant, may not qualify as a "company controlled by the parent company" under rule 3a–5(b)(3)(i) because these Companies derive their non-investment company status from sections 3(c)(2), 3(c)(3), 3(c)(5), or 3(c)(6) of the Act.

4. Applicant asserts that neither New York Life nor these Controlled Companies engage primarily in investment company activities. If New York Life, or any of its Controlled Companies, were itself to issue the debt obligations that are to be issued by applicant and use the proceeds for its own purposes or advance them to its subsidiaries, neither New York Life nor any of its Controlled Companies would be subject to regulation under the Act. New York Life has chosen instead to use applicant as a vehicle for this borrowing for reasons unrelated to the regulatory purposes of the Act.

5. Section 6(c) of the Act provides that the SEC may exempt any person,

security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act when the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that for the reasons given above its request for exemptive relief meets the standards of section 6(c).

Applicant's Condition

Applicant agrees that the order granting the requested relief will be subject to the following condition:

1. Applicant will comply with all of the provisions of rule 3a–5 under the Act, except: (a) New York Life will not meet the portion of the definition of parent company in rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (b) Controlled Companies will not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by sections 3(c)(2), 3(c)(3), 3(c)(5), or 3(c)(6) of the Act, provided that any such entity excluded from the definition of investment company under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of its holdings of accounts receivable of either their own customers or of the customers of other New York Life Controlled Companies, or by reason of loans made by it to such New York Life Controlled Companies or customers, provided further, that any such entity excluded from the definition of investment company pursuant to section 3(c)(6) of the Act will not be engaged primarily, directly or through majority-owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in this condition).

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16259 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 22, 1998.

An open meeting will be held on Monday, June 22, 1998, at 11:00 a.m.

A closed meeting will be held on Monday, June 22, 1998, following the 11:00 a.m. closed meeting. A closed meeting will be held on Tuesday, June 23, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The open meeting scheduled for Monday, June 22, 1998, at 11:00 a.m., will be:

The Commission will hear oral argument on an appeal by Laurie Jones Canady, formerly a salesperson with Merrill Lynch, Pierce, Fenner & Smith Incorporated, from an administrative law judge's initial decision. For further information, contact Kermit B. Kennedy at (202) 942–0879.

The closed meeting scheduled for Monday, June 22, 1998, following the 11:00 a.m. open meeting, will be:

Post argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, June 23, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16344 Filed 6–16–98; 11:46 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 32273, June 12, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 12, 1998.

CHANGE IN THE MEETING: Correction.

The Commission considered the following item at a closed meeting held on Tuesday, June 16, 1998, at 10:00 a.m. The item was inadvertently omitted from the notice announced in the **Federal Register** on June 12, 1998 (63 FR 32273).

Post argument discussion.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: June 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16345 Filed 6–16–98; 11:46 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40080; File No. SR–CBOE–98–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to ILX Fees

June 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to revise the monthly fees for ILX optional features available to members. These fees are currently set forth in Regulatory Circular 95–74. The CBOE will issue a new regulatory circular, as set forth below. Proposed new language is in italics; proposed deleted language is in brackets.

REGULATORY CIRCULAR [RG 95–74]
RG 98–

DATE: [September 8, 1995]

TO: CBOE [Member Firms] *Members/ Member Firms*
FROM: [Department of Trading Operations] *Market Operations Systems Operations*

RE: [Monthly Fees for Optional ILX Features/Entitlements] *Revised Monthly ILX Fees for Optional Features/Entitlements*

The following is a listing of optional features or entitlements *now* available from ILX, in addition to the basic ILX package [covered by the $350.00 monthly fee].* The optional features fees below are stated on a monthly, per ILX terminal basis.

New Feature Available:	*FEE/month*	*Each addl. terminal*
Firse Call Analysis Estimate	*$25.00*	*same*
[NOW AVAILABLE:		
Options Analytics (OPA)	$50.00	same
Intermediate Charts CIT	$20.00	"
CTI real time intraday charting (CTI)	$35.00	"]
[FEATURE:] Feature:		
Block Ticker [(BLT)]	$10.00	[*]*same*
[Business Pulse (BPP	$10.00	"]
Futures Montage [(FUT)]	$25.00	[*] *same*
Market Guide [(MGD)]	[$70.00] *$50.00*	[*] *$20.00*
NASDAQ Static Level II	*$35.00*	*same*
NASDAQ Dynamic Level II	*$175.00*	*same*
Options Analytics w/Intermediate Charts	*$25.00*	*same*
Options on Futures Montage [(OFM)]	$25.00	[*] *same*
Portfolio Watch [(PTF)]	[$125.00] *$25.00*	[$25.00] *same*
Select Ticker *(additional window fee)* [(SLT)]	$10.00	*same*
Ticker [(TKR)]	$10.00	[*] *same*
Traders Portfolio [(TRP)]	[$125.00] *$40.00*	[$40.00] *same*
[CHARTS:] Charts:		
[Basic Historical (HST)	$25.00	same
Real Time/Intraday (CHI)	$45.00	"
Advanced (WCA)	$60.00	"
Additional Windows (CHT)	$10.00	"]
Windows Advanced Historical	*$60.00*	*same*
Windows Advanced Historical & Real-Time	*$100.00*	*same*
[NEWS:] News:		
[Dow Jones & Reuters	$101.00	"]
Dow Jones Headlines & Retrieval	*$79.00*	"
Reuters Headlines & Retrieval	*$35.00*	"
[EXCHANGES:] Exchanges:		
Chicago Board of Trade [(CBT)]	$66.00	[$11.50] *$12.00*
Commodities Exchange Center [(CEC)]	$100.00	[21.00] *$11.00*
Kansas City Board of Trade [(KCB)]	[$11.50] *$14.50*	[$1.50] *$3.25*
Mid-America Commodity Exchange	*$9.50 per user (additional user windows at no charge).*	
NASDAQ-Level II	*$50*	*same*
New York Commodity Exchange	*$63.00*	*$12.00*
New York Mercantile [(NYM)]	[$62.50]*$63.00*	[$11.50] *$12.00*

Members who wish to [receive] *access* optional ILX features on *ILX kiosk terminals, or member firms who wish to receive optional ILX features* at their ILX workstation terminals may direct any questions to Steve Pawloski at 786–7789 in Trading Operations.

*[The first Select Ticker window will be no charge, each additional window will be the rate shown.] *The basic package now includes at no additional cost a Business Pulse window (several economic/business reports for the current day) and one Select Ticker window (combined NYSE, AMEX, Nasdaq, US Options and US Equities trades throughout the day).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to revise monthly fees for optional ILX news and information services available to members on the CBOE trading floor. ILX Systems is an information vendor. The proposed changes result from ILX's recently announced changes to features and/or fees.

In the past, the Commission approved the basic ILX package fee and optional ILX news and information service fees for member firms accessing the services from terminals located in trading floor booths.[3] Members can now more readily access optional ILX services from numerous CBOE-owned kiosk terminals located throughout the trading floor, as well as from firm booth terminals.

The revised ILX fees will be outlined in detail in a Regulatory Circular which will be issued to the Exchange's membership.[4] An individual member can request optional ILX features to be displayed on a CBOE-owned kiosk terminal by submitting to the Exchange an Entitlement Request form, and entering an ILX user identification number of the kiosk terminal. ILX will then switch on the chose feature(s) or "entitlement(s)" from a remote location to enable that terminal to receive the data.

The revised ILX optional fees will be effective retroactive to May 1, 1998.[5]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members, issuers, and other persons using CBOE facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–24 and should be submitted by July 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,
Secretary.

[FR Doc. 98–16260 Filed 6–17–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40083; File No. SR–OCC–98–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Stock Loan/Hedge Program

June 11, 1998.

On April 13, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–98–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 4, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

OCC's stock loan/hedge program ("hedge program") is a clearing system for stock loans between OCC clearing members.[3] The rule change amends OCC's By-Laws and Rules governing the hedge program.[4]

A. Stock Loan Initiation and Mark-to-Market Payments

Currently under the hedge program, a stock loan is initiated when two hedge clearing members agree on the terms of the loan.[5] Next, the lending clearing member transfers the stock to OCC's account at a "correspondent depository"

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[3] In 1994, the CBOE established a monthly $350 fee for the basic ILX news package to members with ILX/WDN PC terminals at their floor booth locations. *See* Securities Exchange Act Release No. 33983 (April 29, 1994), 59 FR 23756 (May 6, 1994). In 1995, the CBOE established monthly fees for optional ILX news, market data and informational features available on terminals at member firm booth locations. *See* Securities Exchange Act Release No. 36349 (October 6, 1995), 60 FR 53651 (October 16, 1995).

[4] The Regulatory Circular will list all currently available ILX optional features and current fees, although some fees have not changed since the 1995 filing referenced in note 3 above.

[5] In April 1998, the CBOE filed with the Commission a proposed rule change to revise the same ILX fees. *See* SR–CBOE–98–18. In May 1998, the CBOE withdrew that filing and replaced it with this filing, SR–CBOE–98–24, to make technical corrections to the fees. Based on SR–CBOE–98–18 becoming effective on filing, the CBOE began charging the revised ILX fees (as those fees were stated in SR–CBOE–98–24) to members as of May 1, 1998.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 204.19b–4(e)(2).

[9] 17 CFR 200.30–3)a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40042 (May 28, 1998), 63 FR 30544 (June 4, 1998).

[3] For a complete description of the hedge program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (July 22, 1993) [File No. SR–OCC–92–34] (order approving proposed rule change).

[4] For a detailed section-by-section discussion of the specific changes to OCC's By-Laws and Rules refer to Securities Exchange Act Release No. 40042, *supra* note 2. The rule change adds a new Rule 2201 to OCC's rules. As a result, Rules 2201–2210 have been renumbered 2202–2211 and they are referred to in this order by their revised numbers.

[5] Clearing members that are approved to participate in the hedge program are referred to as "hedge clearing members." A clearing member that lends stock through the hedge program is referred to as a "lending clearing member," and a clearing member that borrows stock through the hedge program is referred to as a "borrowing clearing member."

(*i.e.*, a clearing agency which is registered with the Commission, which acts as a securities depository and at which OCC has an account). OCC then directs the correspondent depository to redeliver the stock to the borrowing clearing member against payment of the required collateral amount. OCC then pays the required collateral amount to the lending clearing members.

Under the rule change, OCC will not participate in a stock loan transaction until after the hedge clearing members that are parties to the stock loan have transferred the securities and required collateral between themselves through the facilities of The Depository Trust Company ("DTC"). Upon receiving notice of the stock loan from DTC, OCC will verify the accuracy of the clearing members' account numbers and the information supplied to OCC with respect to the transaction. If this information is verified, OCC will accept the loan into the hedge program. Upon OCC's acceptance of the loan, the stock loan contract will be replaced by two parallel contracts with congruent terms: one between the lending clearing member and OCC as stock borrower and one between the borrowing clearing member and OCC as stock lender. If OCC rejects a stock loan transaction, the transaction will remain in effect between the lending clearing member and the borrowing clearing member but will be outside the hedge program.

B. Eligible Stock

Currently, the only stocks that are eligible for the hedge program are stocks that are the underlying stocks for stock option contracts. Under the rule change, all equity securities that are eligible for deposit at DTC will be eligible for the hedge program (other than any stock as to which OCC has made a determination pursuant to Article XXI, Section 2(c) of its By-Laws to terminate all outstanding stock loans relating to that stock).

C. Collection of Margin on Stock Loan and Borrow Positions

Currently a hedge clearing member is required to deposit margin with OCC to cover OCC's risk that the market will move against the member's stock loan and borrow positions during a day and that the member will fail before making the required mark-to-market payment on the next business day. All stock loan and stock borrow positions are taken into account in calculating each clearing member's obligation to deposit "additional margin" with OCC and may generate either an increased additional margin requirement (if the stock loan or borrow positions do not hedge other positions of the clearing member) or a reduced additional margin requirement (if the stock loan or borrow positions do hedge other positions of the clearing member).

Under the rule change, a clearing member will be able to designate one or more of its accounts with OCC as "margin-ineligible." If an account is designated as margin-ineligible, OCC will not include any stock loan and stock borrow positions carried in that account in the calculation of the clearing member's additional margin obligations. However, margin-ineligible accounts will be subject of the other elements of OCC's protection and back-up systems (such as OCC's clearing fund and its concentration monitoring surveillance system) to mitigate OCC's risk with respect to the positions carried in those accounts.

Rule 601 currently provides that additional margin calculations are based in part on the "gross" stock loan and borrow positions of a hedge clearing member (*i.e.*, without regard to whether a position on the other side of the market is carried in the account). The rule change amends Rule 601(c) to state that additional margin on margin-eligible stock loan and borrow positions will be based only on the "net" stock loan or borrow position in an account in a manner analogous to the method that OCC uses for options.

D. Stock Loan and Borrow Baskets

Under the rule change, a clearing member will be able to instruct OCC to treat specified stock loan positions in an account as constituting a "stock loan basket" and may instruct OCC to treat specified stock borrow positions in an account as constituting a "stock borrow basket." All stock loan baskets and all stock borrow baskets will be subject to margin under OCC's Rule 602.[6] Currently, the hedge program has no provisions for stock loan and borrow baskets.

The rule change amends the definition of "class group" in Rule 602(b)(2) to state that OCC will treat any stock loan basket or stock borrow basket defined by a clearing member as within the class group identified by the clearing member even if the stock loan or borrow positions the basket do not replicate the composition or weighting of the index group for the class group and even if the stocks underlying the identified stock loan or borrow positions are not even included in the index group. However, a stock loan or borrow basket that does not meaningfully replicate the composition and weighting of the index group for a class group will be subject to a large haircut when OCC takes the basket into account in determining the additional margin requirement for the class group.[7] In addition, the rule change amends Rule 602(c)(1)(ii)(A) to state that if a clearing member defines two or more stock loan baskets or two or more stock borrow baskets in an account as within the same class group, OCC will take each basket into account separately and calculate a "haircut" for each separately in determining additional margin for the class group.

The rule change also adds Rule 602(f)(8) which sets forth OCC's procedures if a hedge clearing member modifies a stock loan or borrow position that is completely or partly included in a stock loan basket or stock borrow basket. Rule 602(f)(8) states that if a hedge clearing member reduces or terminates one or more of the stock loan or borrow positions that are included in a stock loan or borrow basket OCC will regard any stock loan or borrow positions remaining in the basket as a new basket in the same class group as the previous basket unless the hedge clearing member instructs OCC otherwise. In addition, Rule 602(f)(8) states that if a hedge clearing member reduces a stock loan or borrow position that is partially included in a stock loan or borrow basket OCC will regard the entire remaining stock loan or borrow position as having been withdrawn from the basket unless the hedge clearing member instructs OCC otherwise through standing instructions or timely instructions after the reduction of the position.

E. Stock Loan Termination and Hedge Member Suspension

Under the current hedge program, the termination of a stock loan begins when the borrowing clearing member transfers the stock to OCC's account at the corresponding depository. Next, OCC directs the correspondent depository to redeliver the stock to the lending clearing member against payment of the collateral amount to OCC. OCC then pays the collateral amount to the borrowing clearing member. Under the rule change, a stock loan will be terminated when the borrowing clearing member transfers the stock to the lending clearing member's account at DTC against payment by the lending

[6] OCC rule 602 describes the calculation of margin requirements for securities which are neither equity securities nor based on equity securities. This margin system is sometimes referred to as OCC's "NEO" or "non-equity option" margin system.

[7] OCC's authority to determine haircuts is set forth in OCC Rule 602(c)(1)(ii)(C)(1).

clearing member of the collateral amount.

The rule change adds an interpretation to section 2 of Article XXI of the By-Laws to address situations in which the termination of a stock loan is reported to OCC at a settlement price (*i.e.*, the amount of collateral that the lending clearing member must return to the borrowing clearing member) that is not consistent with OCC's records. A similar interpretation is added to Rule 2209 to address situations in which OCC receives a report of the termination either of a purported stock loan that does not exist on OCC's records or of a stock loan on OCC's records in a quantity that does not match the quantity in the termination report. In each case, the interpretation states that OCC's records will be dispositive in both of these situations and that OCC will not accept any responsibility for reconciling the discrepancy between its record and those of the affected clearing members.

The rule change also provides for an alternative termination process if OCC has suspended a hedge clearing member. Under the rule change, Rules 2202(c) and 2208(c) are amended to give OCC the express authority to instruct each hedge clearing member on the other side of a suspended clearing member's stock loans to terminate the stock loan in a manner other than the standard terminated described above. The rule change amends Rules 2210(b) and 2211 to allow OCC to direct the hedge clearing member that has not been suspended to use the collateral to buy in the loaned stock (if the suspended clearing member is the borrowing clearing member) or to sell out the loaned stock and apply the proceeds to the repayment of the collateral (if the suspended clearing member is the lending clearing member).

The rule changes amends Rule 2210(a) to state that if DTC suspends one of the parties to a stock loan prior to the time at which OCC would have otherwise accepted the stock loan into the hedge program, OCC will not accept the stock loan. Rule 2210(a) is also amended to state that OCC will accept any stock loan that complies with the completeness and accuracy requirements of Rule 2202(b) even if OCC suspends one of the hedge clearing members which is a party to the stock loan prior to the time at which OCC accepts the stock loan.[8]

[8] In such cases, OCC will instruct the hedge clearing member that has not been suspended to terminate the stock loan contract through the process set forth in revised Rules 2210(b) and 2211, as described above.

II. Discussion

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency by designed to remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with OCC's obligation under Section 17A(b)(3)(F) because it should increase the use of OCC's hedge program which should in turn help to improve the efficiency and safety of stock lending transactions. Specifically, the Commission believes that increased use of the hedge program should reduce exposure to counterparty default, increase payment netting, reduce collateral requirements, and apply advanced clearing and risk management practices to the stock loan market. Accordingly, the Commission believes that the rule change should enable OCC to remove impediments to and help perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

OCC requested that the Commission approve the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval should allow OCC to provide needed assurances to clearing members that the hedge program will be implemented, should OCC to institute changes to the hedge program to make it more attractive to clearing members and should allow OCC to train hedge clearing members on the new system interfaces. These changes should result in increased efficiency in the clearance and settlement process for OCC's clearing members that use the hedge program. The Commission also notes that the use of the hedge program is not mandated by OCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–03) be and hereby is approved.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16262 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40088; File No. SR–Phlx–98–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding the Temporary Relocation of Phlx Dell Options to the American Stock Exchange, Inc. Trading Floor

June 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 1998,[3] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx is proposing to rent facilities from the American Stock Exchange Inc. ("Amex") for the trading of options on Dell Computer Inc. ("Dell") on the Amex for up to six months to address the exigency of extraordinary contract and trade volume, unique to Phlx-traded Dell options ("Phlx Dell options"). Specifically, Phlx proposes to utilize the options floor trading space and facilities, including the quotation, order entry, processing, execution, trade reporting and comparison functions, of Amex for Phlx member trades in Phlx Dell options. Thus, Amex would rent to Phlx a facility on Amex's New York

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule filing, the substance of which is incorporated into the notice. *See* letter from Edith Hallahan, Associate General Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Market Regulation, Commission, dated June 11, 1998.

floor for all Phlx Dell option series, with related support services. These options would continue to trade pursuant to Phlx rules, subject to Phlx supervision. As part of this arrangement, the Phlx specialist in Dell options, Phlx Registered Options Traders ("ROTs") and Phlx floor brokers would trade Phlx Dell options on the Amex, and Amex floor brokers would be deputized as Phlx members to trade Phlx Dell options, as discussed further below.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** The Exchange requests accelerated approval of the proposal to promptly facilitate an orderly, temporary relocation of Phlx Dell options to the Amex, in the interest of fair and orderly markets. As discussed in detail below, this arrangement, which is for a six-month period, addresses the exigency of recent extraordinary order and contract volume in Dell options, in light of the critical needs of order entry firms and their customers to receive prompt execution reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a temporary facility in New York to permit the trading of Phlx Dell options on Amex, to immediately improve the handling of Dell options by using Amex's options trading floor space and attendant technology. Recently, Phlx Dell options have been heavily traded on the Phlx[4], accounting for daily volumes of roughly 30,000 contracts and as much as 69,000 contracts on a single day.[5] This volume has increased steadily and dramatically over months, and, most recently, over the past several weeks, with the concomitant increase in order traffic, including cancel-replace orders. At the same time, trading in the stock of Dell computer has been active, due to various industry and corporate events.

In response to these events and others, the Phlx has been implementing technological improvements respecting its Automated Options Market ("AUTOM") System, and, specifically, upgrading the features available to Phlx specialists respecting the electronic limit order book. These improvements have benefited customers using the AUTOM System as well as the specialists and ROTs trading options on the Exchange. Phlx is committed to continuing to improve its systems. The development of AUTOM's X-Station reflects this commitment; its continued roll-out and improvements reflect the Exchange's commitment to address the needs created by active options such as Dell. The key features include improved cancellation order processing and contra-side "Wheel" enhancements. The X-Station continues to address the needs of the ever-changing options marketplace.

While Phlx has made significant enhancements to address higher volumes, they have been insufficient to address the critical needs of the order entry firms and their customers in the uniquely active Phlx Dell options. As Phlx Dell options volume has skyrocketed, the Exchange has faced delays in transaction reporting to order entry firms, due to the time intensity associated with ticket matching and key punching, exacerbated by the number of contra-side participants to Phlx Dell options trades. Certainty as to an order's status is essential in the options markets, particularly where the stock is volatile, such as in the computer industry.[6]

Accordingly, the Exchange is now proposing to move Dell options to a rented facility at Amex to immediately improve the processing of the increasing volume of Phlx Dell options trades with attendant increases in trade reporting.[7] Promptly renting and using Amex's facilities for Phlx Dell options trading should help protect investors and the public interest by providing a technologically appropriate facility for Phlx Dell options trading, pending further enhancements on the Phlx floor.

In short, the extraordinary volume in Phlx Dell options has given rise to this arrangement, which is specific to Phlx Dell options, as no other Phlx option currently generates this volume of quotes, orders and trades.[8] Thus, the Exchange believes that the immediate and critical technological need is unique to Phlx Dell options and has arisen with such speed and magnitude that prompt relocation is necessary to enable the specialist unit and the Exchange to provide the most efficient and effective service to customers and the investing public with respect to Phlx Dell options.

Phlx is requesting immediate accelerated approval of this rule change for such time as this arrangement to trade Phlx Dell options through Amex facilities is in effect, up to six months. The rules, policies and procedures associated with this move are discussed below. Trading of Phlx Dell options through the Amex facilities will remain subject to all of Phlx's rules, except for certain appropriate exceptions as enumerated below. Phlx will pay Amex for its facilities and other services provided for under the arrangement. As part of this relocation, the Exchange notes that operational functions respecting these options will be handled by Amex systems, including quotation processing, booking orders, transactions processing, trade correction, and clearing through OCC.[9] Accordingly, trades cleared by OCC may have Amex identifier codes on certain OCC reports, although OCC has agreed to advise its members that Phlx Dell options are registered, listed and traded under the rules of Phlx. While Amex systems rather than the AUTOM system will be used, Phlx Rule 1080 will continue to

[4] Dell options volume increased 163% in 1997 from the first quarter to the fourth quarter of 1997.

[5] 69,063 Dell options contracts traded on February 19, 1998, with 9,952 orders and 8,599 trades processed.

[6] Many member firms and customers use options as "insurance" or "hedges" in connection with trading and investment strategies in underlying securities. Timely reports of option trade executions and corrections are critical to the execution of these strategies and, more generally, meeting customer expectations and needs.

[7] The Phlx will continue the implementation of electronic order book feature upgrades on its own floor.

[8] The next most active option has recently traded 89% less than Dell options, on average. In the first five months of 1998, Dell options accounted for 22.5% of Phlx volume, as compared to 14% in 1997.

[9] Phlx Dell options are currently registered by The Options Clearing Corporation ("OCC") as securities listed on Phlx via a Form 8 amendment under the Act. Trading Phlx Dell options using rented facilities on the floor of Amex is no way suggests that these options are listed on the Amex. Indeed, in October 1989, when options listed on the Pacific Stock Exchange were physically moved to the Amex, Chicago Board Options Exchange, New York Stock Exchange and the Phlx due to an earthquake, OCC did not register those options at any other exchanges. *See* Securities Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (SR–Phlx–89–52).

apply, except for those parameters in the rule that are not currently compatible with Amex system configurations. Specifically, until such time as the relevant Amex systems can be reconfigured to apply Phlx parameters to the Dell options, Amex parameters will apply regarding the maximum order six eligible for electronic delivery to the trading floor, and the specific order types that may be accommodated in the system.[10] Phlx will notify its members of its relocation of Phlx Dell options and of all necessary changes in applicable system parameters. Phlx intend to retain its authority to apply the parameters specified in its own rules and procedures at such time as Amex systems can be reconfigured to accommodate them. Members firms will be timely notified of all such system changes.

As a result of being traded through the Amex facility, Phlx Dell options would become eligible or order delivery and execution through the Amex Order File ("AOF"), a host order processing system that includes a variety of subsystems, including the automatic execution ("AUTO–EX") system.[11] Thus, the benefits of quick and efficient order entry and execution that small order entry systems provide will continue to be available to Phlx Dell options customers.

Phlx will permit, and has made arrangements with Amex to facilitate, Phlx members who are floor brokers to have physical access to the Phlx Dell post in New York for trading and order execution of orders in Phlx Dell options only. Phlx is also proposing to deputize Amex floor brokers as Phlx members for purposes of Phlx Dell options order handling to permit them to execute Phlx Dell options orders as brokers. Phlx states that such deputization is consistent with prior Commission-approved practices respecting the use of another exchange facility to trade options.[12] Deputization of Amex floor brokers will provide an additional method for the submission and execution of orders in Phlx Dell options, which is beneficial to investors. Deputized Amex floor brokers executing orders in Phlx Dell options will be subject to all provisions in Phlx rules that would apply today to a Phlx member in the course of his acting as a floor broker for an order in the Phlx Dell options on the Phlx trading floor. However, an exception is that, deputized Amex floor brokers, as such, will be deemed to have satisfied, and the Phlx will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Phlx member, including all dues, fees and charges imposed generally upon Phlx members based on their status as such. In that regard, Amex procedures respecting the admission and qualification of members to trade on the Amex will be deemed to satisfy Phlx Rule 1061 regarding registration of floor brokers. In addition, with respect to deputized Amex floor brokers, the Exchange will waive application of Phlx Rule 1062, as a letter of authorization from a clearing member is not requisite for Amex floor brokers and is not considered necessary to protect the interests of either other members or the public. Phlx believes that the overall regulatory framework of the Amex adequately addresses the subject matter of these rules.[13]

The Phlx specialist unit would continue to act as such in Phlx Dell options in New York, and any Phlx ROTs choosing to trade Phlx Dell options would be eligible to do so at the Amex facility. Recognizing the two-sided market-making obligations associated with good faith market maker margin treatment, the Exchange notes that Phlx ROTs would be required to be physically present executing trades in person on the Amex floor to receive favorable margin treatment respecting Phlx Dell options, unless they were acting pursuant to Phlx Rule 1014.01 respecting off-floor orders. Otherwise, such ROTs would be subject to customer margin treatment respecting opening transactions.

As discussed above, Phlx Dell options would continue to trade pursuant to Phlx rules. Accordingly, the minimum trading increment, strike price, position and exercise limits, and other trading related rules of Phlx would govern, subject only to system configuration issues discussed below. As Phlx rules will apply to Phlx Dell options trading but such trading will be conducted through Amex systems, surveillance reports will be generated by the Amex systems, but surveillance respecting Phlx Dell options trading will remain the responsibility of Phlx. With respect to trading floor disputes, Phlx rules and procedures will apply, such that Floor Officials versed in Phlx rules, policies and procedures will be appointed to act at the Phlx's New York facility. With respect to FLEX options trading, Phlx Rule 1079 will govern, although Amex systems will process such trades, possibly necessitating immaterial procedural changes for Phlx FLEX trades relating to symbols and Request-for-Quote processing.

With respect to the liability provision of Phlx By-Law Article XII Section 12–11, the use of the facilities includes the Phlx Dell option facility on the Amex. Thus, non-liability for damages sustained by a member or member organization growing out of the use or enjoyment by such member organization of the facilities afforded by the Exchange for the conduct of their business should be extended to Amex systems and facilities provided under this temporary arrangement for Phlx Dell options trading on Amex as well as to Amex floor brokers who may trade Phlx Dell options pursuant to the deputization discussed above. In addition, by accepting this arrangement, Phlx, its members and employees shall accept the same limitations on the liability of Amex, as provided in the Amex Constitution and rules with respect to the use of Amex facilities for the conduct of business, as such limitations apply to any Amex member, member organization or employee thereof in the conduct of his or its business on Amex.

Because Phlx Dell options trading on Amex will be processed through Amex systems, such trades will appear in market data systems as Amex trades and may be cleared with other Amex trades, though the appropriate transaction volume will subsequently be attributed to the Phlx for various purposes, including the determination of Options Price Reporting Authority ("OPRA") revenues. Phlx transaction fees will continue to apply. Similarly, for technological reasons, a quotation through the Amex system will appear as an "Amex" quote, although in actuality it is a Phlx quote being processed by Amex. Notwithstanding the above, through dissemination of information memoranda to members and member organizations, it should be abundantly clear that Phlx Dell options are listed, traded and supervised according to Phlx rules and not the rules of any other exchange. Phlx has taken steps to advise member firms of the change in trading venue, so that member firms can make all necessary system and order routing changes that may be required and thereby reduce the risk of investor confusion in the trading of Dell options.

[10] In addition, the specialist will not be able to be assured the first trade of the day on AUTO–EX, pursuant to Phlx Floor Procedure Advice F–24.

[11] The AOF also interfaces with the Amex Options Display Book ("AODB"), the Amex's electronic order book for options, which accommodates not only small orders sent in electronically, but also larger orders entered from the trading floor.

[12] *See supra* note 9. As discussed in that note, there was no required for OCC to re-register Pacific Stock Exchange options at each temporary facility after the 1989 earthquake.

[13] *See* Amendment No. 1, *supra* note 3.

These steps will include notice to members and an educational session with Phlx for deputized Amex members who will be trading Dell options at the new facility. Phlx will monitor events and take additional steps as necessary to address specific confusion.[14]

With respect to disciplinary jurisdiction, the Exchange would continue to retain such jurisdiction over its members at the Amex facility for violations of Phlx rules. Because Phlx rules apply to trading in Phlx Dell options on the Amex, Phlx Rules 60, respecting order and decorum on the trading floor, and 970, respecting the minor rule violation enforcement and reporting plan, apply. Phlx would assume disciplinary jurisdiction over Amex floor brokers deputized to trade Phlx Dell options, pursuant to an acknowledgment signed by such Amex floor brokers that participation in the Phlx Dell option trading crowd triggers such jurisdiction. Deputized Amex floor brokers will also be required to attend a seminar familiarizing them with Phlx rules before they are permitted to execute orders as a floor broker in the Phlx Dell option.

2. Statutory Basis

For the reasons discussed above, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act [15] in general, and in particular, with Section 6(b)(5),[16] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a Phlx facility on the Amex for the trading of Phlx Dell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–25 and should be submitted by July 9, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that Phlx's proposal to immediately establish a satellite trading facility on Amex to trade Phlx Dell options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [17] in that the arrangement between Phlx and Amex fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal should also help protect investors and the public interest by immediately providing a technologically appropriate facility to trade the Phlx Dell options and by permitting the prompt and effective processing of the increasing number of Dell options trades.

The Commission believes that it is reasonable, given the exigent circumstances of the recent extremely heavy trading of Dell options, for Phlx to move the trading of Dell options to a leased trading floor located at Amex. Amex is particularly well-suited to accommodate the trading of Dell options in a manner that is consistent with the promotion of fair and orderly markets and investor protection. In particular, Amex is an already established self-regulatory organization ("SRO") that is subject to its own rules and regulations and the rules and regulations of the federal securities laws. Moreover, Amex has the necessary technological systems in place to ensure that orders for actively traded options, such as Dell, are routed, executed and processed in a prompt and efficient manner. The Commission notes that the trading volume in Phlx Dell options has increased steadily and dramatically over the past few months, particularly in the past several weeks, and that trading in Dell stock has also been active, due to various industry and corporate events. This increase in volume in Dell options trading has been accompanied by an increase in order traffic. As the volume has increased, Phlx has faced delays in transaction reporting to order entry firms, and this delay has been heightened by the number of contra-side participants to Phlx Dell option trades. The Commission understands that Phlx is committed to making the necessary systems improvements to accommodate very actively traded options such as Dell in the future. Presently however, the Commission believes it is essential to allow Phlx Dell options to trade through facilities that are technologically capable of supporting the magnitude of the trading volume that trading in Dell options commands. Accordingly, a temporary transfer of trading in Phlx Dell options to the Amex floor is an appropriate means of ensuring that the investing public has available a reliable trading venue for Dell options.

The Commission believes that, given the unique circumstances of the trading of Phlx Dell options on Phlx, Phlx has devised a regulatory framework that will reasonably ensure adequate regulatory oversight of the trading of Dell options on the Amex floor. As discussed above, Phlx is proposing to establish a satellite trading floor where Phlx floor brokers can trade Phlx Dell options pursuant to Phlx rules. The Phlx specialist in Dell options will continue to act as the specialist in Dell options on the Amex satellite floor, and any Phlx ROTs choosing to trade Phlx Dell options would be eligible to do so at the Amex facility. Phlx will continue to be responsible for surveillance of Phlx members trading in Dell options on the Amex floor, retaining jurisdiction over those members for violations of Phlx rules. Floor officials familiar with Phlx rules, policies and procedures will be assigned to act at the Phlx's Amex facility to resolve trading floor disputes.[18] While it is true that, to

[14] *See* Amendent No. 1, *supra* note 3.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

[18] Phlx Rule 1079 will continue to apply to the trading of Dell FLEX options, although Amex systems will process such trades, which may

Continued

obtain the benefit of Amex's advanced technology and system, certain Phlx rules will not apply to the trading of Dell options on Amex,[19] the use of Phlx of Amex systems (such as AOF) that have already been approved by the Commission is an appropriate regulatory alternative under the circumstances. In light of the exigent circumstances, the Commission believes that the proposed solution is an appropriate measure that provides adequate regulatory protections.

The Commission also believes that it is consistent with the Act for Phlx to deputize Amex floor brokers as Phlx members, to trade Dell options, to help ensure sufficient access by the investing public to Phlx's satellite facility at Amex. The Commission notes that it has, on a prior occasion, authorized similar deputization to allow for the use of another exchange facility to trade options.[20] As noted above, the deputized Amex floor brokers would be subject to all provisions in Phlx rules that would apply today to a Phlx member in the course of his acting as a floor broker for an order in the Phlx Dell options on the Phlx trading floor, with certain minor appropriate exceptions. In addition, Phlx will have disciplinary jurisdiction and oversight over deputized Amex floor brokers relating to the trading of Dell options on the Amex floor. Finally, deputized Amex floor brokers will be required to attend a training seminar to familiarize them with Phlx rules and any relevant distinctions between Phlx rules and Amex rules before they will be allowed to execute orders as a floor broker in the Phlx Dell options.

Phlx's proposed view that Phlx By-Law Article XII, Section 12–11, which disclaims Phlx's liability to Phlx members for damages growing out of the use and enjoyment of Phlx's facilities, is applicable to Phlx business conducted on the Amex floor, is appropriate given that Phlx is leasing such space and will be conducting its business through such facilities. Likewise, it is appropriate for those Phlx members that are temporarily re-located to the Amex facility to accept the same limitations on liability of the Amex. These Phlx members will utilize the applicable Amex systems in a nearly identical fashion to which they would have relied on Phlx systems prior to the move. Therefore, this requirement is a reasonable component of the agreement to allow Phlx to create a temporary trading facility on Amex in Dell options.

Phlx essentially concludes that Phlx Dell options that will be traded on its temporary Amex facility should not be considered Amex-traded options for securities registration purposes and notes that in October 1989, when options listed on PCX were physically moved to Amex and other options exchanges, due to an earthquake, "OCC did not register those options at any other exchanges." The Commission believes that the continued trading of Phlx Dell options by Phlx using leased space on the floor of Amex does not cause such options to cease to be option traded on Phlx and that, accordingly, OCC does not need to amend its 1934 Act Registration to re-characterize these options as options listed or traded on another exchange.

Finally, the Commission notes that, to minimize investor confusion in the trading of Dell options, Phlx has stated that it will provide adequate notice to its members to ensure that they and the investing public are aware that Phlx Dell options are listed, traded and supervised according to Phlx rules, but are to be traded at a facility of Phlx located on the Amex floor. Phlx states that it has taken steps to advise member firms of the change in trading venue, so that they can make necessary system and order routing changes. These steps will include notice to members and an educational session with Phlx of deputized Amex members who will be trading Dell options at the new facility. Phlx is committed to monitoring events and will take additional steps as necessary to address specific confusion. These additional steps could include issuing press releases or making needed information otherwise available to Phlx's members and to the public.

For the reasons discussed above, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve Phlx's proposal on an accelerated basis to protect the trading interests of the investing public, due to the exigency of transferring the trading of Phlx Dell options from the Phlx trading floor, which is not currently capable of managing the high trading volume of Dell options, to another SRO floor where the Dell options can be effectively and efficiently traded.

It is therefore ordered, pursuant to Section 19(b)(2)[21] of the Act that the proposed rule change (SR–Phlx–98–25) is hereby approved on an accelerated basis through December 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16258 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

necessitate procedural changes for Phlx FLEX trades relating to symbols and Request-for-Quote processing.

[19] *See* Discussion section, *supra*.

[20] *See supra* note 9.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40082; File No. SR–Phlx–98–19]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., and Amendment No. 1 Thereto Relating to When a Security is Considered Open For Trading

June 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On May 22, 1998, the Phlx filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rules 1047 (Trading Rotations, Halts and Suspensions), 1047A (Trading Rotations, Halts or Reopenings), and Option Floor Procedure Advice G–2 ("Advice G–2") (Trading Rotations, Halts or Reopenings), to clarify when a security is consider open for trading. Specifically, and underlying security

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda S. Christie, Counsel, Phlx, to Yvonne Fraticelli, Attorney, Division of Market Regulation ("Division"), Commission (May 22, 1998) ("Amendment No. 1"). In Amendment No. 1 Phlx replaces the phase "principal exchange" in Rule 1047 with the phrase "primary market" to provide consistency with the language in the proposed amendments to Phlx Rule 1047A and Option Floor Procedure Advice G–2. Corresponding with Amendment No. 1, the word "exchange" should be replaced by the word "market" in the amended portion of Phlx Rule 1047. Telephone conversation between Linda S. Christie, Counsel, Phlx, and Marc McKayle, Attorney, Division, Commission (May 26, 1998).

shall be considered open for trading where a transaction has been reported or an opening indication disseminated, whichever occurs first, and there has not been an indication of a delayed opening given.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes amending Phlx Rules 1047 (Trading Rotations, Halts and Suspensions), 1047A (Trading Rotations, Halts or Reopenings), and Options Floor Procedure Advice G–2 (Trading Rotations, Halts or Reopenings) to clarify when a security is open. These provisions govern the various types of option rotations. Commentary .01(a) of Rule 1047 pertains to opening rotations, specifying that the opening rotation in each class of potions shall be held promptly following the opening of the underlying security on the principal market where it is traded. However, neither Commentary .01 of Rule 1047, Rule 1047A, or Advice G–2 delineates when a security is considered open for trading. For clarification purposes, the Phlx proposes amending Rule 1047 Commentary .01(a) to indicate that an underlying security shall be deemed to have opened on the primary market where it is traded it such market has either (1) reported a transaction in the underlying security, or (2) disseminated an opening quotation for the underlying security and given no indication of a delayed opening.[4] A corresponding amendment is also proposed for Rule 1047A and Advice G–2. Thus, the proposal is intended to correct an ambiguity and expressly provide in Exchange rules that an opening quote signals the opening of a security.[5] The proposal should promote more prompt options openings by not requiring a transaction to occur in the underlying security.

The proposed rule change is consistent with Section 6 of the Act, in general,[6] and Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in relating, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. By clarifying the Exchange's provisions concerning options openings and encouraging more prompt openings, the aim of the Act should be achieved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–19 and should be submitted by July 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16261 Filed 6–17–98; 8:45 am]

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[4] Telephone conversation between Linda S. Christie, Counsel, Phlx, and Yvonne Fraticelli, Attorney and Marc Mckayle, Attorney, Division of Market Regulation, Commission (May 28, 1998).

[5] Only quotations disseminated at the opening of a trading day will be deemed to have opened the market in an underlying security. Stale quotations disseminated on a prior trading day will be ineffective under this proposed rule change. Telephone conversation between Linda S. Christie, Counsel, Phlx, and Yvonne Fraticelli, Attorney, and Marc McKayle, Attorney, Division, Commission (May 8, 1998).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998, [63 FR 11472].

DATES: Comments must be submitted on or before July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.;

Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Physiological Training.
OMB Control Number: 2120–0101.
Type of Request: Extension of currently approved collection.
Form(s): AC Form 3150–7.
Affected Public: Individuals or households.
Abstract: This collection of information is used to determine if the applicants meet the qualifications for the voluntary physiological training under the FAA/USAF training agreement.
Annual Estimated Burden Hours: 458 hours.
Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.
Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on June 12, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–16145 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[RST–97–5]

The New Jersey Transit Rail Operations, Incorporated

The New Jersey Transit Rail Operations, Inc., (NJT) has petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of Title 49 CFR Part 213.233(c). NJT proposes to substitute the operation of a track geometry measuring car over main track and sidings quarterly in place of one of the currently required twice weekly visual inspections.

The FRA issued two public notices seeking comments of interested parties. After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. EDT, on Tuesday, August 4, 1998 in the Peter W. Rodino Federal Building, 970 Broad Street, Rooms 204–205, in Newark, New Jersey. Interested parties are invited to present oral statements at the hearing

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on June 8, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–16158 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3472
Applicants:
Burlington Northern and Santa Fe Railway Company, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106
Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between Sherman, Texas, milepost 645.9 and South Sherman, Texas, milepost 649.9, on the Texas Division, Madill Subdivision, including conversion of three power-operated switches to hand operation, removal of all associated signals, and implementation of Track Warrant Control Rules as the method of operation.

The reasons given for the proposed changes are to improve operating efficiency and reduce maintenance costs of plants no longer needed.

BS–AP–No. 3473
Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed temporary discontinuance of the signal system, on the two main tracks, at "J Tower," milepost BI–3.10, in Willard, Ohio, on the Willard Terminal Subdivision, Baltimore Service Lane, for approximately 120 days, and govern train movements by Yard Limit Rules under the direction of a Switch Tender. The proposal is associated with major modifications in track and signal arrangements, including installation of a traffic control system.

The reason given for the proposed changes is to safely and efficiently expedite train movements during construction and cut-over.

BS–AP–No. 3474
Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481

Wisconsin Central Limited seeks approval of the proposed modification of the signal system, on the two main tracks and siding, near Slinger, Wisconsin, milepost CM122.60, Chicago Subdivision, consisting of the removal of the existing interlocking plant, installation of two power-operated switches for the new connection tracks

at the northeast and southwest quadrants, relocation of the east end of siding at Slinger to the west out of the curve, and conversion of the east and west siding switches to hand operation, equipped with electric locks.

The reason given for the proposed changes is to eliminate the blockage of a state highway and traffic in the town of Slinger, associated with interchange switching movements. The proposed new alignment and construction of a set out track at Ackerville will remove switching moves from Slinger.

BS–AP–No. 3475

Applicant: Burlington Northern and Santa Fe Railway Company, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106

Burlington Northern and Santa Fe Railway Company seeks approval of the proposed modification of the traffic control system, on the north main track, at milepost 55.7, near Lincoln, Nebraska, on the Nebraska Division, Creston Subdivision, consisting of the discontinuance and removal of Holding Signal N55.71

The reason given for the proposed changes is that the upgrade of the highway crossing warning devices at milepost 55.8 has eliminated the need for Holding Signal N55.71.

BS–AP–No. 3476

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between milepost 185 and milepost 195, near Houston, Texas, on the Houston Subdivision, consisting of the removal of Signals: D (milepost 185.7), 21, 32, 37, 38, 52, 56, 59, 69, 78, 79, 88, 89, 98, 99, and 108; conversion of Signal 25 to a D signal; installation of a new D signal at milepost 188.2; and the establishment of Yard Limits as the method of operation.

The reason given for the proposed changes is that signals are no longer required under train operating practices.

BS–AP–No. 3477

Applicant: Paducah & Louisville Railway, Incorporated, Mr. C. D. Edwards, General Supervisor of Signals and Structures, 1500 Kentucky Avenue, Paducah, Kentucky 42003

Paducah & Louisville Railway, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Charolais, milepost J154.18 and Dawson Springs, milepost J163.73, in Hopkins County, Kentucky, consisting of the removal of all existing signals in the area, and installation of an operative approach signal near milepost J163.8.

BS–AP–No. 3478

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Ames, Indiana, milepost 00Q–148.4 and Greencastle, Indiana, milepost 00Q–176.7, on the Monon Subdivision, Chicago Service Lane, and operate exclusively under a Direct Traffic Control Block System. The proposal includes the installation of operative approach signals at Ames and Greencastle.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

BS–AP–No. 3479

Applicant: South Orient Railroad Company, LTD., Mr. Roy D. Williams, Chief Operating Officer, 210 South Main Street, Brownwood, Texas 76801

The South Orient Railroad Company, LTD. seeks approval of the proposed permanent discontinuance and removal of the traffic control system, on the single main track, between Birds Siding, milepost 1.3 near Fort Worth, Texas, and Rickers, milepost 134.5, near Brownwood, Texas, on the Dublin Subdivision.

The reason given for the proposed changes is that the railroad's operation does not warrant a signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 30 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on June 9, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–16177 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3813; Notice 1]

Application for Determination of Inconsequential Noncompliance to Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM), has determined that blackout paint on the rear window of the 1997 GM EV1 (electric vehicle) may cause the center high-mounted stop lamp (CHMSL) to fail to meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108—*Lamps, Reflective Devices and Associated Equipment*. Pursuant to 49 U.S.C. 30118 and 30120, GM has applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential as it relates to motor vehicle safety. GM has submitted a noncompliance notification to the agency pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

During the inclusive manufacturing dates from August 1996 to June 1997, GM produced 624 model year 1997 EV1 electric cars, that may have CHMSLs that fail to meet FMVSS No. 108.

GM claims that only 290 of the vehicles in the field are covered by this application, and that the other vehicles are within GM's control, and will be remedied before delivery to retail customers.

GM states that the EV1 CHMSL meets the requirements of FMVSS No. 108 Figure 10—Photometric Requirements for Center High-Mounted Stop Lamps. However, when the CHMSL is mounted in the vehicle, the blackout paint on the rear window may inadvertently obscure

a portion of the CHMSL's photometric output. GM states that if the worst case build condition were present on a vehicle, blackout paint would obscure the portion of the CHMSL corresponding to the 5D (5 degrees below horizontal) photometric requirements .

GM believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

The EV1 sits low to the ground, so light provided by the CHMSL is visible to drivers of other vehicles, even with the bottom of the CHMSL obscured.

The specified range of photometric output for a CHMSL, from 10U to 5D, was developed from SAE J186a and is presumably intended to allow manufacturers latitude in locating CHMSLs for the myriad of vehicle designs, while assuring sufficient signal light to drivers of following vehicles. Because the EV1 CHMSL is so low to the ground, the 5D angle is far less significant to following drivers than it would be if mounted higher.

A perceived benefit of the CHMSL is the ability it provides following drivers to see through intervening vehicles. Because the EV1 and its CHMSL are low to the ground, a following driver's ability to see the CHMSL through intervening vehicles is not compromised by the lost light at the lower portion of the CHMSL.

To reduce aerodynamic drag, the EV1 was designed to be extremely narrow. As a consequence of its narrow profile, the stop lamps are in close proximity to the CHMSL (510 mm from the center of the brake lamp to the center of the CHMSL). This minimizes the effect of the obscured portion of the CHMSL.

Except for 5D, the EV1 CHMSL meets all other requirements of FMVSS No. 108, and the photometric output of the stop lamps, which are supplemented by the CHMSL, far exceed the FMVSS No. 108 minimum requirements.

GM is not aware of any accidents, injuries, owner complaints or field reports related to this issue.

Additionally GM provided two figures (which are available in the application filed in the public docket) that illustrate rear stop lamp visibility to following vehicle drivers, to support the claims for inconsequentiality.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that six copies be submitted. Docket hours are 10:00 A.M. to 5:00 P.M.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 20, 1998.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 12, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16230 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3869]

Western Star Trucks, Inc.; Receipt of Application for Determination of Inconsequential Noncompliance

Western Star Trucks, Inc. of Kelowna, British Columbia, Canada, has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials," on the basis that the noncompliance is inconsequential to motor vehicle safety. Western Star Trucks has filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Information Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Paragraph S6.2 of Standard No. 205 specifies that a number designating the material used, the symbol "DOT," and the manufacturer's code mark, shall be marked on all glazing materials by the prime glazing material manufacturer.

Vehicles Involved

Western Star Constellation Series truck/tractor manufactured between January 17, 1996 and February 3, 1998 equipped with 58" or 72" sleepers with side windows. The serial numbers of the affected vehicles fall with the range, 944129 to 953410.

Number of Vehicles

Eight hundred ninety-one (891) vehicles manufactured as of February 3, 1998, potentially contain the noncompliance.

Description of the Noncompliance

Certain Western Star Constellation truck/tractors were equipped with 58" or 72" sleepers with side windows which were not marked per the requirements of S6 of Federal Motor Vehicle Safety Standard (FMVSS) 205. The window glazing is not marked per the requirements of Section 6 of ANS Z26. They also were not marked with the symbol "DOT" or the manufacturer's code mark per S6.2 of FMVSS 205. The window glazing does, however, meet the physical requirements of FMVSS 205 and is located out of the truck/tractor driver's compartment in an area where highway visibility is not required.

Supporting Information

Although the glazing is not marked per the requirements of FMVSS 205, the glazing has been tested and complies to Item AS–2 of ANSIZ26.1 per the attached report 1/95, from Inchcape Testing Test Services.

The sleeper windows, Western Star Trucks part numbers 63320–3562 and 63320–3563, were purchased from Sun-view Industries Ltd., 15915 Bentley Pl., Box 1079, Summerland, British Columbia, Canada, VOH 1ZO. Sun-view in turn purchased the 3 mm glazing from Wescan Glass—Burnaby, 3153 Thunderbird Cres., Burnaby, British Columbia, V5A 3G2 (A division HGP Industries, Inc., Moorestown, NJ). The attached test report was provided by Inchcape Testing for the test performed on the glass that Wescan provides to Sun-view.

The test report 1/95 indicates that the 3 mm glazing meets the requirements for AS–2 (Safety Glazing Material for Use Anywhere in Motor Vehicle Except Windshields). However, the sleeper windows only need meet AS–5 as they are at a height not requisite with highway visibility, and are "glazing to the rear of the driver in trucks or truck tractor cabs where other means of affording visibility of the highway to the side and rear of the vehicle are provided."

Interested persons are invited to submit written data, views and arguments on the application of Western Star, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 20, 1998.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 12, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16210 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in JANUARY–APRIL 1998. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on May 15, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

MODIFICATION EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemptions thereof
970–M	DOT–E 970	Callery Chemical Corp., Pittsburgh, PA.	49 CFR 173.21(f)(3), 173.302(g).	Authorizes the transportation of diboran classed as a Division 2.3 material in DOT Specification 3AA cylinders overpacked in certain insulated drums or wooden boxes. (modes 1, 2).
5493–M	DOT–E 5493	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 173.314(c)	Authorizes the shipment of hydrogen sulfide in DOT–105A600W tank cars. (mode 2).
6117–M	DOT–E 6117	Montana Sulphr & Chemical Co., Billings, MT.	49 CFR 173.314(c)	Authorizes the transport of hydrogen sulfide in DOT Specification 105A600W tank car tanks or proposed DOT Specification 120A600W tank car tanks.
7026–M	DOT–E 7026	Walter Kidde Aerospace, Wilson, NC.	49 CFR 173.304 (a)(1), 175.3, 178.47.	Authorizes the manufacture, marking and sale of a non-DOT specification welded steel pressure vessel, for transportation of a compressed gas. (modes 1, 2, 5).
7835–M	DOT–E 7835	Matheson Gas Products, East Rutherford, NJ.	49 CFR 177.848(d)	Authorizes the transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (mode 1).
8230–M	DOT–E 8230	Olin Corporation, Norwalk, CT.	49 CFR 173.178, 173.243.	Authorizes the shipment of certain Division 5.1 materials in non-DOT specification containers. (modes 1, 2, 3, 4).
9184–M	DOT–E 9184	The Carbide/Graphite Group, Inc., Louisville, KY.	49 CFR 173.178	Authorizes the shipment of calcium carbide and substances which in contact with water emit flammable gases, solid n.o.s. (strontium aluminate), in polyethylene-lined woven polypropylene collapsible bags in truckload or carload lots only. (modes 1, 2).
9413–M	DOT–E 9413	EM Science, Cincinnati, OH.	49 CFR 173.286	Authorizes the transport of a chemical kit which contains small amounts of hydrochloric acid and zinc powder. (mode 1).
9610–M	DOT–E 9610	Alliant Techsystems Inc., Hopkins, MN.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Parts 107, Appendix B (2), (3), Parts 171–189.	Authorizes the transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (modes 1, 2).
9791–M	DOT–E 9791	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173.301(h), 173.302(a), 173.34 (a)(1), 178.37.	Authorizes the manufacture, marking, and sale of a high strength, non-specification cylinder conforming in part with the DOT–3AA specification for transportation of certain nonflammable, nonliquefied compressed gases. (mode 1).
9791–M	DOT–E 9791	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173.301(h), 173.302(a), 173.34 (a)(1), 178.37.	Authorizes the manufacture, marking, and sale of a high strength, non-specification cylinder conforming in part with the DOT–3AA specification for transportation of certain nonflammable, nonliquefied compressed gases. (mode 1).

MODIFICATION EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemptions thereof
10798–M	DOT–E 10798	Olin Corporation, Norwalk, CT.	49 CFR 174.67 (i) and (j).	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (mode 2)
11054–M	DOT–E 11054	Welker Engineering Co., Sugar Land, TX.	49 CFR 178.36, Subpart C.	Authorizes the manufacture, mark and sell of non-DOT specification cylinders conforming to 3A specification for use in shipment of various hazardous materials classed in Class 3, Division 2.1 and 2.3. (modes 1, 2, 3, 4)
11644–M	DOT–E 11644	United States Can Company, Elgin, IL.	49 CFR 173.1200 (a)(8), 173.304(e), 173.306(a), 178.33a.	To authorize the transportation in commerce of a non-DOT specification three-piece inside metal container with welded side seam and double seamed ends conforming to DOT-Specification 2Q for use in transporting R–134a (1, 1, 2, tetrafluoroethane). (modes 1, 2, 3, 4)
11790–M	DOT–E 11790	United States Enrichment Corporation, Bethesda, MD.	49 CFR 172.302(c)	To authorize the transportation of uranium hexafluoride in non-DOT 5A specification cylinders without required markings. (mode 1)
11888–M	DOT–E 11888	Alliant Techsystems, Inc., Hopkins, MN.	49 CFR 172.101	Request for an emergency exemption in order to transport an explosive 1.1A in a solution of ethanol and water. (mode 1)
11962–M	DOT–E 11962	Bayer Corp., Pittsburgh, PA.	49 CFR 173.212	Bayer is requesting an emergency exemption to transport pure sodium in a chemical process vessel (accumulator). (mode 1)
11984–M	DOT–E 11984	Trans World Airlines, Inc., Kansas City, MO.	49 CFR 172.102 (c)(1) special provision 60.	Request for an emergency exemption from the requirement for a second safety mechanism when shipping oxygen generators. (modes 1, 4)
11986–M	DOT–E 11986	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.136 (a) and (b).	Request for emergency exemption to authorize the stowage of Division 1.2, comp. group L explosives in a freight container below deck aboard large, med. speed roll on/roll off vessels. (mode 3)
11989–M	DOT–E 11989	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.504, 172,504, 176.83(9b), 176.83(9b), 176.83(9d), 176.83(9d), 176.83(9f).	Request for an emergency exemption from segregation requirements aboard vessels for explosive materials. (mode 3)
12007–M	DOT–E 12007	SCC Products, Hollister, CA.	49 CFR 173.40	Request for packaging not authorized for Chloropicrin (mode 1)
12009–M	DOT–E 12009	U.S. Department of Justice, Washington, DC.	49 CFR 173.304	Request for an emergency exemption to transport anhydrous ammonia in cylinders that are not authorized or exceed the maximum storage density. (mode 1)
12013–M	DOT–E 12013	All Pure Chemical Company, Walnut Creek, CA.	49 CFR 172.302, 177.834(h), part 173, subparts d & F.	Request for an emergency exemption to authorize the discharge of certain class 8 liquids from IBCs without removing tanks from the vehicles on which they are transported. (mode 1)
12018–M	DOT–E 12018	MVE, Inc., New Prague, MN.	49 CFR 173.320	Request for emergency exemption to authorize the bulk transportation of refrigerated liquids in cargo tanks when the tanks are not mounted on motor vehicles. (modes 1, 3)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11739–N	DOT–E 11739	Oceaneering Space Systems, Houston, TX.	49 CFR 178.57	To authorize the manufacture, mark and sale of a breathing and cooling system consisting of a non-specification cylinder, comparable to a DOT Specification 4L cylinder, containing a Division 2.2 material (modes 1, 2, 3, 4, 5)
11759–N	DOT–E 11759	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.15(a)	To authorize the transportation in commerce of 112S400W and 112S500W tanks cars equipped with 1.5 inch Crosby JQ relief valves for use in transporting Division 6.1 material. (mode 2)

Applicatio No.
11762–N
11769–N
11770–N
11798–N
11809–N
11811–N
11872–N
11881–N
11899–N
11913–N
11914–N
11917–N
11924–N
11930–N
11942–N

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11762–N	DOT–E 11762	Owens Fabricators, Inc., Baton Rouge, LA.	49 CFR 178.245–1(a)	To authorize the manufacture, mark and sale of DOT-Specification 51 portable tanks constructed in accordance with Part UHT of the ASME Code that are not postweld heat treated for the transport of certain Class 2 material (modes 1, 2, 3)
11769–N	DOT–E 11769	Great Western Chemical Co., Portland, OR.	49 CFR 177.834(h)	To authorize the unloading of various Class 8 material from truck-mounted intermediate bulk containers. (mode 1)
11770–N	DOT–E 11770	Gas Cylinder Technologies Inc., Tecumseh, ON.	49 CFR 173.301, 173.302, 173.304.	To authorize the transportation in commerce of non-DOT specification cylinders comparable to DOT 3E for use in transporting liquified and non-liquified compressed gases, Division 2.1 and 2.2. (modes 1, 2)
11798–N	DOT–E 11798	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.34 (e)(15), 173.34 (e)(15)(ii).	To authorize the transportation in commerce of DOT specification 3A or 3AA cylinders for use in transporting various gases classed in Division 2.1. (modes 1, 2, 3, 4, 5)
11809–N	DOT–E 11809	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 173.156 (b)(1)(iii)	To authorize the transportation in commerce of consumer commodities from a manufacturer, a distribution center, or a retail outlet to a disposal facility from more than one offeror. (mode 1)
11811–N	DOT–E 11811	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 172.202(c)	To authorize the transportation in commerce of various household hazardous wastes to be transported without having the quantity and unit measurement shown on the shipping paper. (mode 1)
11872–N	DOT–E 11872	Polymet Alloys, Inc., Saginaw, AL.	49 CFR 172.101, B105 & B106.	To authorize the transportation in commerce of water reactive, solid, Division 4.3 in flexible intermediate bulk containers. (modes 1, 2, 3)
11881–N	DOT–E 11881	Wampum Hardware Co., New Galilee, PA.	49 CFR 176.168(e)	To authorize the transportation in commerce of explosives classed in Division 1.1, 1.4 and 1.5 on the same vehicle aboard ferry vessel for quarry operations. (mode 3)
11899–N	DOT–E 11899	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 178.65	To authorize the transportation in commerce of a sealed high pressure gas cylinder system, equipped with twin pyrotechnic cutters, Division 1.4D, charged with Nitrogen, Division 2.2, to be offered for shipment as a Division 2.2. (modes 1, 2, 3, 4)
11913–N	DOT 11913	Wheatland Tube Company, Wheatland, PA.	49 CFR 178.507(6)	To authorize the transportation in commerce of Class 9 Hazardous Material in 16 gauge 1A2 drums in weight that exceed the quantity limitation as presently authorized. (mode 1)
11914–N	DOT–E 11914	Glowmaster Corp., Garfield, NJ.	49 CFR 173.304 (d)(3)(ii), 178.33.	To authorize the transportation in commerce of a Division 2.1 hazardous materials in nonrefillable non-DOT specification inside container conforming with the DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3, 4)
11917–N	DOT–E 11917	Sexton Can Co., Martinsburg, WV.	49 CFR 173.304(a), 178.65.	To authorize the manufacture, marking and sale of a non-DOT specification cylinder to be used for the transportation in commerce of certain Division 2.2 materials. (modes 1, 2, 3, 4)
11924–N	DOT–E 11924	U.F. Strainrite, Lewiston, ME.	49 CFR 173.12(b)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications for use in transporting various classes of hazardous wastes. (modes 1, 2, 3)
11930–N	DOT–E 11930	Boeing North American, Inc., Downey, CA.	49 CFR 173.226, 173,336	To authorize the transportation in commerce of non-specification propellant tanks designed to military specification, non-pressurized during shipment, containing hazardous materials classed in Division 6.1 and 2.3, to be transported in non-specification packaging. (modes 1, 3)
11942–N	DOT–E 11942	DowElanco, Indianapolis, IN.	49 CFR 172.203(a), 172.302(c), 173.227.	To authorize the transportation in commerce of a Division 6.1, liquid PIH material meeting Hazard Zone B, in DOT specifications 4BW cylinders authorized under Sec. 173.227, but do not meet the general packaging provisions for liquid poisonous materials in cylinders required under Sec. 173.40 (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11953–N	DOT–E 11953	Manchester Tank, Brentwood, TN.	49 CFR 178.61(a)	To authorize the transportation in commerce of DOT 4B cylinders that are exempt from the maximum 1,000 pound water capacity requirement. (modes 1, 2, 3, 4)
11967–N	DOT–E 11967	Savage Industries Inc., Norristown, PA.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of various hazardous materials to remain connected during unloading without the physical presence of an unloader. (mode 2)
11980–N	DOT–E 11980	American Type Culture Collection (ATCC), Rockville, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of infectious substances in small quantities in glass, plastic vials and ampules in mechanical freezers. (mode 1)
11981–N	DOT–E 11981	The Dexter Corporation, Electric Materials Division, Londonderry, NH.	49 CFR 173.28(b)(2)	To authorize the one-time reuse of 1H1 plastic drums without performing the leakproofness test and marking the drums as would otherwise be required by Sec. 173.28(b)(2). (mode 1)
11993–N	DOT–E 11993	Breed Technologies, Inc., Lakeland, FL.	49 CFR 173.301(h), 173.302, 173.306 (d)(3).	To authorize the manufacture, mark and sale of non-DOT specification cylinders for use as components of automobile vehicle safety systems. (modes 1, 2, 3, 4)
11999–N	DOT–E 11999	Rhone-Poulenc, Shelton, CT.	49 CFR 174.67(i)&(j)	To authorize the rail cars to remain connected during unloading operation of Class 3 and 8 material without the physical presence of an unloader. (mode 2)
12014–N	DOT–E 12014	The Trane Co., TEN–E Packaging Services, Newport, MN.	49 CFR 173.305 (e)(1)	To authorize the transportation in commerce of used refrigerating machines containing no more than 1000 pounds of class A refrigerants classed as Division 2.2. (mode 1)
12015–N	DOT–E 12015	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 174.67(i)&(j)	To authorize the tank cars containing various hazardous materials to remain standing with unloading connections attached when unloading has been temporarily discontinued or unloading in complete without the physical presence of an unloader. (mode 2)
12023–N	DOT–E 12023	Apollo Industries, N. Clarendon, VT.	49 CFR 171.5, 171.5 (a)(1)(ii), 178.603.	To authorize the manufacture, marking, and sale and use of an alternative discharge control system for cargo tanks used for the transportation in commerce of liquefied compressed gases. (mode 1)
12024–N	DOT–E 12024	Warner-Lambert Co., Morris Plains, NY.	49 CFR 171–180	To authorize the the transportation of various health care and consumer products, meeting the definition of hazardous materials, across public roadway to be transported as unregulated. (mode 1)
12038–N	DOT–E 12038	Duracool Limited, Edmonton, Alberta, CN.	49 CFR 173.306 (a)(3)	To authorize the transportation in commerce of Hydrocarbon Blend B refrigerant gas, Division 2.1, in non-DOT specification containers similar to DOT2Q cans with overpack. (modes 1, 2, 3)
12045–N	DOT–E 12045	Jefferson Smurfit Corp., Fernandina Beach, FL.	49 CFR 174.67(i)&(j)	To authorize tank cars loaded with chlorine to stand with unloading connections attached after unloading is completed and remain attached to transfer connection without the physical presence of an unloader. (mode 2)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11998–N	DOT–E 11998	Safety-Kleen Oil Recovery, East Chicago, IN.	49 CFR 172.102, SP B74.	To authorize the emergency transportation of seventeen (17) DOT Specification 105J200W tank cars transporting RQ Waste Toxic Liquids, corrosive, Inorganic, n.o.s., Division 6.1 and Class 8, Poison Inhalation hazard zone B not meeting SP B74. (mode 2)
EE 12010–N	DOT–E 12010	Laidlaw Environmental, Columbia, SC.	49 CFR 173.244	Request for an emergency exemption to transport non-DOT spec tanks containing sodium. (mode 1)
EE 12013–N	DOT–E 12013	All Pure Chemical Co., Wash DC.	49 CFR 172.302, 177.834(h), part 173, subpart D & F.	Request for an emergency exemption to authorize the discharge of certain class 8 liquids from IBCs without removing tanks from the vehicles on which they are transported. (mode 1)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12018–N	DOT–E 12018	MVE, Inc., New Prague, MN.	49 CFR 173.320	Request for emergency exemption to authorize the bulk transportation of refrigerated liquids in cargo tanks when the tanks are not mounted on motor vehicles. (modes 1, 3)
EE 12028–N	DOT–E 12028	Van Waters & Rogers Inc., Carencro, LA.	49 CFR 173.24(b), 179.300–12(b).	Request for an emergency exemption to move a ton container of chlorine that has a leak but has been equipped with an emergency "B" kit. (mode 1)
EE 12040–N	DOT–E 12040	Airpack of Virginia, Inc., Sterling, VA.	49 CFR 172.102(c)(1)	To authorize the emergency one-time transportation in commerce of remnant Oxygen generators and parts. (mode 1)
EE 12041–N	DOT–E 12041	GE Plastics, Pittsfield, MA.	49 CFR 173.182(c)(30)	Request for an emergency exemption to use alternate methods of testing cylinders. (mode 1)
EE 12042–N	DOT–E 12042	E.I. duPont de Nemours & Co., Wilmington, DE.	49 CFR 172.302(c), 180.407(h)(1).	Request for an emergency exemption to transport a damaged cargo tank containing hydrogen fluoride, anhydrous. (mode 1)
EE 12047–N	DOT–E 12047	True Drilling Co., Casper, WY.	49 CFR 171.2	Request for an emergency exemption to transport flammable liquids in packages that are not authorized in the HMR. (mode 1)
EE 12049–N	DOT–E 12049	Nevada Goldfields Inc., McGrath, AK.	49 CFR 172.101(9)(b)	Request for an emergency exemption to permit transporting a 4.2 material in packages that exceed the quantity limitation per package for cargo aircraft only. (mode 5)
EE 12058–N	DOT–E 12058	Zenon	49 CFR 123	To authorize the one-time emergency transportation of calcium hypochlorite and a corrosive solid, n.o.s. in non-specification packaging overpacked in a metal housing. (mode 4)
EE 12059–N	DOT–E 12059	Nalco/Exxon Energy Chemicals, Anchorage, AL.	49 CFR 172.101(9)(b)	Request for an emergency exemption to permit amounts of a corrosive material to exceed the package quantity limitations in 172.101 for cargo aircraft. (mode 5)
EE 12062–N	DOT–E 12062	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.242	Request for an emergency exemption to continue to use a non-DOT specification tank to transport a 6.1 material. (mode 1)

DENIALS

11561–N Request by Solkatronic Chemicals Fairfield, NJ to authorize the transportation in commerce of stainless steel refillable containers on vehicles other than company-owned or exclusive-use vehicles denied April 6, 1998.

11905–N Request by Russell-Stanley Corp. Red Bank, NJ to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4231) Wilmington, DE to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4232) Addison, IL to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4233) Monmouth Junction, NJ to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4234) Lithonia, GA to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4235) Conroe, TX to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (HD) Bramalea ONT, CN to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11918–N Request by E.I. DuPont de Nemours & Co., Inc. Wilmington, DE to authorize the transportation in commerce of tank cars without head and thermal protection for use in transporting Class 2 material denied April 21, 1998.

11925–N Request by Concorde Battery Corp. West Covina, CA to authorize the transportation in commerce of non-spillable aircraft batteries which have been altitude tested at a pressure less than the test pressure set forth in the regulations, overpacked in non-specification fiberboard boxes to be transported without required markings and labels denied February 26, 1998.

11948–N Request by Sumitomo Corporation San Francisco, CA to authorize the transportation in commerce of non-specification cylinders manufactured and filled in Japan for use in transporting certain compressed gases denied January 9, 1998.

11987–N Request by Exceed, Inc. Oklahoma City, OK to authorize the manufacture, marking and sale of a specially designed combination packaging for use in transporting infectious substances, Division 6.2 in vials denied February 13, 1998.

12000–N Request by Primex Technologies St. Petersburg, FL to authorize the transportation in commerce of Division 1.3C material in M13A2 metal containers without required labeling denied February 26, 1998.

12025–N Request by South Florida Plastics Opa-Locka, FL to authorize an emergency exemption to use a UN jerry can that fails the drop test denied January 13, 1998.

12027–N Request by Amato Industries Silver Spring, MD to authorize an emergency exemption to remit reuse of 15 gallon plastic containers without performing leakproofness tests denied April 20, 1998.

[FR Doc. 98–16144 Filed 6–17–98; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 20, 1998.

ADDRESS COMMENT TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12079–N	RSPA–1998–3920	ASAHI SEISAKUSHO CO., LTD, Saitama, 339–0078, Japan.	49 CFR 173.301(h), 173.302(a)(1), 173.305(a), 173.34(a)(1).	To authorize the manufacture, mark and sale of non-DOT specification cylinders comparable to a DOT specification 3AA for use as a scuba diving cylinder containing a Division 2.2 gas. (modes 1, 2, 3, 4)
12083–N	RSPA–1998–3934	Northern Indiana Fuel & Light Co., Inc., Auburn, IN.	49 CFR 173.29(a)	To authorize the bulk transportation in commerce of residual quantities of Class 3 material to be transported in specially designed tanks. (mode 1)
12084–N	RSPA–1998–3941	AlliedSignal Inc., Morristown, NJ.	49 CFR 173.34(e)(11)	To authorize an alternative schedule for retesting of DOT 4B, 4BA and 4BW cylinders used in transporting refrigerant gases and blends. (modes 1, 2, 3)
12086–N	RSPA–1998–3942	Yale University, New Haven, CT.	49 CFR 173.196(a)(ii)(b)	To authorize an alternative packaging for use in transporting used syringes classed as Infectious substances, Division 6.2. (mode 1)
12087–N	RSPA–1998–3943	LND, Inc., Fairfield, CT ...	49 CFR 172.101, Co. 9, 173.306, 175.3.	To authorize the manufacture, mark, and sale of non-DOT specification metal containers containing Boron Trifluoride, classed as 2.3 for use in radiation detectors. (modes 1, 2, 3, 4, 5)
12088–N	RSPA–1998–3936	Westvaco, Richmond, VA	49 CFR 173, 177, 178 & 180.	To authorize the transportation in commerce of samples of hazardous materials in compatible containers as essentially unregulated. (mode 1)

[FR Doc. 98–16167 Filed 6–17–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 6, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

MODIFICATION OF EXEMPTIONS

Application No.	Docket No.	Applicant	Exemption
1862–M		Greer Hydraulics, Incorporated, Rockford, IL [1]	1862
8915–M		Advanced Silicon Materials, Inc., Moses Lake, WA [2]	8915
10784–M		The United States Secret Service, Washington, DC [3]	10784
11703–M		Walter Kidde Portable Equipment Company, Inc., Mebane, NC [4]	11703
11725–M		Dynatherm Corporation, Hunt Valley, MD [5]	11725

[1] To modify the exemption to provide for several design changes.
[2] To modify the exemption to provide for rail as an additional mode of transportation for transportation of Silane gas, 2.1.
[3] To reissue an exemption originally issued on an emergency basis to authorize the shipment of first aid/trauma kits, containing oxygen in DOT Specification 3AA2015 cylinders, in the passenger compartment of commercial aircraft.
[4] To modify the exemption to provide for passenger aircraft as an additional mode of transportation for use in transporting Division 2.2 materials.
[5] To authorize party status and to authorize a similar non-DOT specification heat pipe assembly for shipment of certain liquefied and compressed gases.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act 49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–16168 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33605]

J.K. Lines, Inc.—Acquisition and Operation Exemption—Line of The Burlington Northern and Santa Fe Railway Company

J.K. Lines, Inc. (JK), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 2 miles of rail line, the track right-of-way, and certain adjacent real estate owned by The Burlington Northern and Santa Fe Railway Company (BNSF).[1] The line covers seven parcels extending from the end of BNSF's track in Joliette, ND, at milepost 179.55, south to the North Dakota Highway No. 5 right-of-way line, near milepost 177.44. J.K. Line will provide common carrier rail service on the involved line through a subcontractor.

The transaction was scheduled to be consummated on or shortly after May 31, 1998.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33605, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Donelan, Cleary, Wood & Maser, P.C., 1100 New York Ave., N.W., Suite 750, Washington, D.C. 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary,

[FR Doc. 98–15973 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33604]

Lone Star Railroad, Inc.—Acquisition Exemption—Union Pacific Railroad Company

Lone Star Railroad, Inc. (LSRI), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire through lease a Union Pacific Railroad Company rail line as follows: all Abilene, TX yard tracks south of the Abilene wye track and south of the east-west main line, including the A&S Industrial Lead from milepost 0.0 to milepost 4.30, a distance of approximately 8.24 miles, at Abilene, Taylor County, TX.

The transaction was scheduled to be consummated on or shortly after May 26, 1998.

This proceeding is related to STB Finance Docket No. 33604 (Sub-No. 1), *Southern Switching Company—Operation Exemption—Lone Star Railroad, Inc.*, wherein Southern Switching Company (SSC), also a Class III rail carrier, has concurrently filed a notice of exemption to operate the Abilene line pursuant to an operating agreement with LSRI.[1]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33604, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: June 12, 1998.

[1] J.K. Line certifies that the projected revenues do exceed those that would qualify as Class III rail carrier.

[1] LSRI and SSC are commonly controlled by Gregory B. Cundiff. *See Gregory B. Cundiff—Continuance in Control Exemption—Lone Star Railroad, Inc. and Southern Switching Company*, Finance Docket No. 32501 (ICC served May 27, 1994).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16319 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33604 (Sub–No. 1)]

Southern Switching Company—Operation Exemption—Lone Star Railroad, Inc.

Southern Switching Company (SSC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to operate over approximately 8.24 miles of railroad leased by Lone Star Railroad, Inc. (LSRI). The involved trackage is as follows: all Abilene, TX yard tracks south of the Abilene wye track and south of the east-west main line, including the A&S Industrial Lead from milepost 0.0 to milepost 4.30, at Abilene, Taylor County, TX.

The transaction was scheduled to be consummated on or shortly after May 26, 1998.

This proceeding is related to STB Finance Docket No. 33604, *Lone Star Railroad, Inc.—Acquisition Exemption—Union Pacific Railroad Company,* wherein LSRI has concurrently filed a notice of exemption to acquire through lease the Abilene line from Union Pacific Railroad Company.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33604 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: June 12, 1998.

[1] LSRI and SSC are commonly controlled by Gregory B. Cundiff. *See Gregory B. Cundiff—Continuance in Control Exemption—Lone Star Railroad, Inc. and Southern Switching Company,* Finance Docket No. 32501 (ICC served May 27, 1994).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16318 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 6, 1998 to be assured of consideration.

Special Request: In order to conduct the surveys described below at the beginning July 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 23, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–011–G.

Type of Review: Revision.

Title: 1998 Second Quarter Automated 941 TeleFile Customer Survey.

Description: The 941 TeleFile automated customer satisfaction survey is part of the 1998 941 Quality Measurement plan and is designed as one means of evaluating the effectiveness of the 941 TeleFile system. This survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,385.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 23 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16226 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 10, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 25, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Taxes.

Description: Internal Revenue Code (IRC) section 6402, 6404, and sections 301.6402–2, 301.6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 125,292.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—35 hr., 9 min.
Learning about the law or the form—1 hr., 30 min.

Preparing, copying, assembling, and sending the form to the IRS—2 hr., 7 min.

Frequency of Response: Quarterly, Weekly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 890,507 hours.

OMB Number: 1545–1596.

Form Number: IRS Form 8857.

Type of Review: Extension.

Title: Request for Innocent Spouse Relief.

Description: Section 6103(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: taxpayer filed a joint return with tax substantially understated; taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. GAO Report GAO/GGD–97–34 recommended IRS develop a form to make relief easier for the public to request.

Respondents: Individuals or households.

Estimated Number of Respondents: 11,667.

Estimated Burden Hours Per Respondent:

Learning about the law or the form—14 minutes
Preparing the form—16 minutes
Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 9,684 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16227 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Late Paid Schedule C Health Care Study.

Description: This is a survey for quantitative research to identify potential causes and remedies for late payment of federal income taxes by Form 1040 Schedule C filers in the Health Care industry. The data developed in this research will be used to formulate treatments for late payments by heal care sole proprietors.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,430.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 170 hours.

OMB Number: 1545–0160.

Form Number: IRS Form 3520-A.

Type of Review: Extension.

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

Description: Section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520-A. The form is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520-A to determine if the U.S. owner of the trust has included the net income of the trust in it's gross income.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—36 hr., 21 min.
Learning about the law or the form—2 hr., 59 min.
Preparing and sending the form to the IRS—3 hr., 42 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 21,515 hours.

OMB Number: 1545–1597.

Revenue Procedure Number: Revenue Procedure 98–27.

Type of Review: Extension.

Title: Qualified Intermediaries (QI).

Description: Revenue Procedure 98–27 describes application procedures for becoming a qualified intermediary (QI) and the requisite agreement that a QI must execute with the IRS.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 88,504.

Estimated Burden Hours Per Respondent/Recordkeeper:

Estimated Time for a QI Account Holder—30 minutes
Estimated Time for a QI—2,093 hours
Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 301,393 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16228 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the focus group interviews described below at the beginning July 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 19, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–010–G.
Type of Review: Revision.
Title: Proposed Incentives, Rewards and Customer Service Products Focus Group Interviews (Electronic Tax Administration (ETA)).
Description: The purpose of the focus group interviews will be to gather opinions and ideas from tax practitioners, Certified Public Accountants, enrolled agents, and attorneys about some incentives or customer service products. These focus groups interviews (one each day) will be held at each of the four IRS 1998 Nationwide Tax Forums sponsored by the Electronic Tax Administration Office. The forums will be held as follows: Philadelphia: July 8–9; Las Vegas: August 5–6; St. Louis: August 19–20; and New Orleans: September 2–3.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 80 (10 participants times 8 groups).
Estimated Burden Hours Per Respondent:
Screening—5 minutes.
Focus Group Interview Sessions—2 hours.
Frequency of Response: Other (conducted at 4 forums).
Estimated Total Reporting Burden: 180 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–16229 Filed 6–17–98; 8:45 am]
BILLING CODE 4830–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

BILLING CODE: 8720–01.
AGENCY: United States Enrichment Corporation.
SUBJECT: Board of Directors.
TIME AND DATE: 8:00 a.m., Tuesday, June 16, 1998.
PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.
STATUS: This meeting has been canceled.
CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 15, 1998.
William H. Timbers, Jr.,
President and Chief Executive Officer.
[FR Doc. 98–16338 Filed 6–16–98; 10:39 am]
BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Proposed Information Collection

AGENCY: United States Information Agency.
ACTION: Comment request; Proposed New Collection: USIA Evaluation of the Use of Arrival Host Families.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the proposed public use form entitled, "USIA Evaluation of the Use of Arrival Host Families". This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, 22 U.S.C. 2451, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended. The Exchange Visitor Program regulations in 22 CFR part 514 implement the Act; the regulations in 22 CFR 514.25 specifically govern the high school exchanges ("Secondary school students").

DATES: Comments are due on or before August 17, 1998.
COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.
FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–4408, internet address: JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty (30) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond an average of 2 times. Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Current Actions: USIA is requesting OMB revision and approval of this new collection for a three-year period.

Title: USIA Evaluation of the Use of Arrival Host Families.

Form Numbers: N/A.

Abstract: USIA strives to evaluate the policies, attainment of program goals, impact and administration of all its exchanges. To that end, USIA proposes to conduct a one-time evaluation project during the 1998–99 Academic year to evaluate the quality of and impact on foreign high school students placed in arrival host families (temporary living arrangements).

Proposed Frequency of Responses:

No. of Respondents—6,520
Recordkeeping Hours—.50
Total Annual Burden—3,260

Dated: June 12, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–16178 Filed 6–17–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

College and University Partnerships Program for Armenia, Azerbaijan, Georgia, and Moldova

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (a) foreign institution(s) of higher education from Armenia, Azerbaijan, Georgia, or Moldova in specified fields.

Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled "Eligibility" below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are consistent with the goals and activities of the College and University Partnerships Program (CUPP).

The program awards up to $200,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the College and University Partnerships Program for Armenia, Azerbaijan, Georgia, and Moldova and reference number E/ASU–98–11.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, August 10, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about September 30, 1998.

Duration: September 30, 1998—August 31, 2001.

FOR FURTHER INFORMATION, CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Unit, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–4126, fax: (202) 401–1433, internet: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA TAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–98–11, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC, 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

The College and University Partnership Program for Armenia, Azerbaijan, Georgia, and Moldova is limited to specific academic disciplines.

For Georgia and Azerbaijan, eligible disciplines include:

(1) Law;

(2) Business/economics/trade;

(3) Government/public policy/public administration; and

(4) Journalism/communications.

The eligible discipline for Armenia is journalism; please note that the Journalism Faculty of Yerevan State University is the only eligible NIS partner institution.

The eligible discipline for Moldova is political science; please note that Moldovan State University is the only eligible partner institution.

Proposals must focus on curriculum, faculty, and staff development in one or more of these eligible disciplines. Administrative reform at the foreign partner may also be a project component.

Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, DC. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s).

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's started authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the partner institution, and the citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign partners from the following countries are eligible:

Armenia—only the journalism faculty of Yerevan State University is eligible.

Azerbaijan—any recognized, degree-granting post-secondary educational institution is eligible.

Georgia—any recognized, degree-granting post-secondary educational institution is eligible.

Moldova—only Moldovan State University is eligible.

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below, USIA will not cover overseas non-NIS partner institution costs.

In order to promote regional cooperation, limited funds may be budgeted for the exchange, as part of this partnership agreement, of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia).

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $200,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 12, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–16179 Filed 6–17–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 117
Thursday, June 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

Correction

In notice document 98–15427 beginning on page 31715 in the issue of Wednesday, June 10, 1998, make the following correction:

On page 31715, in the third column, in the **SUMMARY**, in the 20th line, "commit" should read "comment".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42205B; FRL–5798–3]

Enforceable Consent Agreement Development for Methyl Isobutyl Ketone (MIBK); Solicitation of Interested Parties and Notice of Public Meeting

Correction

In notice document 98–15856, beginning on page 32656, in the issue of Monday, June 15, 1998, in the **DATES** section, in the fourth line, "July 6, 1998" should be added following "before".

BILLING CODE 1505-01-D

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federal register

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June 18, 1998

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Standards Improvement (Miscellaneous Changes) For General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. S–778]

RIN 1218–AB 53

Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is removing from the Code of Federal Regulations or revising provisions in its standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is making these regulatory changes to reduce the burden imposed on the regulated community by these provisions and to respond to a March 4, 1995 memorandum from the President. In this document, substantive changes are made to both health and safety standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Changes being made to health standards include reducing the frequency of required chest x-rays and eliminating sputum-cytology examinations for workers covered by the coke oven and inorganic arsenic standards, and changing the emergency-response provisions of the vinyl chloride standard. Changes being made to OSHA safety standards include eliminating the public safety provisions of the temporary labor camp standard, eliminating unnecessary cross-references in the textile industry standards, and others. OSHA estimates that these changes will result in annualized savings for employers of over $9,600,000 and in reducing paperwork burden of 6600 hours annually.

EFFECTIVE DATE: This final rule becomes effective August 17, 1998.

ADDRESSES: Send petitions for review of this final rule to the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For additional copies of this rule contact U.S. Department of Labor, Occupational Safety and Health Administration, Office of Publications, Room N–3101, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 219–9667.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board at (202) 219–4748; or OSHA's Web Site on the Internet at http://www.osha.gov. For news releases, fact sheets, and other short documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, (202) 219–8151.

SUPPLEMENTARY INFORMATION:

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References to the rulemaking record are provided in the text of the preamble. References are identified as "Ex." followed by a number to designate the reference in this rulemaking docket, S–778. For example, "Ex. 3" means exhibit three in Docket S–778. Exhibit 3 is a copy of the "Notice of Proposed Rulemaking for Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic", the first step in the rule-making action being completed today, which was published in the **Federal Register** on July 22, 1996 (61 FR 37849).

A list of exhibits and copies of the exhibits are available in the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 219–7894.

I. Background

OSHA has made a continuing effort to eliminate confusing, outdated, and duplicative requirements from its standards and regulations. In 1978 and again in 1984, the Agency conducted revocation and revision projects that resulted in the elimination of hundreds of unnecessary provisions. In response to the President's Memorandum of March 4, 1995, which requested Agencies to review and stream-line their regulations, the Agency continued this effort by conducting a line-by-line review of its regulations to determine where they could be eliminated, simplified or clarified. As a result of this review, OSHA completed a document on May 31, 1995, entitled "OSHA's Regulatory Reform Initiatives" (Ex. L–5). That document detailed the Agency's findings as to which regulations could be deleted or revised without reducing employee health and safety. OSHA stated in that document that clarifying, deleting, or revising these regulations would improve employer compliance and, consequently, enhance safety and health protection for employees.

The Agency began the rulemaking process that would implement the changes identified in the review with an administrative notice that made minor clarifications and technical amendments to OSHA standards (61 FR 9228, March 7, 1996). In a second notice, duplicate health provisions from the shipyard and construction standards were eliminated and replaced with cross-references to the identical text in the general industry standards (61 FR 31427, June 20, 1996). Eliminating these duplicate provisions

has reduced the number of pages devoted to OSHA rules in the Code of Federal Regulations (CFR) without changing the substantive requirements of the standards.

On July 22, 1996 (61 FR 37849), OSHA proposed substantive changes to certain standards that the Agency believed are unnecessary to, duplicative of, or inconsistent with the protection of worker safety and health. OSHA requested comments and set 60 days for their receipt. The final changes supported by the public record, and reflected in the **Federal Register** notice being published today, complete the regulatory action initiated with the July, 1996 **Federal Register** notice. OSHA is also reducing paperwork burden by deleting the requirements for sputum-cytology examinations and reducing the frequency of chest x-rays for workers covered by the arsenic and coke oven emissions standards.

II. Distribution Table

For the convenience of the public, OSHA is providing a distribution table, below, which shows the section designations of those existing OSHA General Industry rules that are being removed, removed and reserved, and redesignated in this rulemaking action.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
110(b)(15)(vi)	Removed.
110(b)(15)(vii)	Removed.
110(b)(15)(viii)	Removed.
110(b)(15)(ix)	110(b)(15)(vi).
110(c)(2)(i)	110(c)(2).
110(c)(2)(ii)	Removed.
110(c)(2)(iii)	Removed.
110(c)(2)(iv)	Removed.
110(e)(10)	Removed and Reserved.
110(g)	Removed and Reserved.
111(f)(7)	Removed and Reserved.
111(f)(8)	Removed and Reserved.
141(a)(2)(i)	Removed.
141(a)(2)(ii)	Removed Paragraph Designation.
141(a)(2)(iii)	Removed Paragraph Designation.
141(a)(2)(iv)	Removed Paragraph Designation.
141(a)(2)(v)	Removed Paragraph Designation.
141(a)(2)(vi)	Removed Paragraph Designation.
141(a)(2)(vii)	Removed Paragraph Designation.
141(a)(2)(viii)	Removed Paragraph Designation.
141(a)(2)(ix)	Removed Paragraph Designation.
141(a)(2)(x)	Removed Paragraph Designation.
141(a)(2)(xi)	Removed Paragraph Designation.
142(a)(4)	Removed.
151	Added Appendix A.
156(f)(2)(iii)	Removed.
183(a)	Removed and Reserved.
261(a)(3)(ii)	Removed.
261(a)(3)(iii)	261(a)(3)(ii) .
261(a)(3)(iv)	Removed.
261(a)(3)(v)	Removed.
261(a)(3)(vi)	Removed.
261(a)(3)(vii)	261(a)(3)(iii).
261(a)(3)(viii)	261(a)(3)(iv).
261(a)(3)(ix)	Removed.
261(a)(3)(x)	261(a)(3)(v).
261(a)(3)(xi)	Removed.
261(a)(3)(xii)	Removed.
261(a)(3)(xiii)	Removed.
261(a)(3)(xiv)	261(a)(3)(vi).
261(a)(3)(xv)	Removed.
261(a)(3)(xvi)	261(a)(3)(vii).
261(a)(3)(xvii)	Removed.
261(a)(3)(xviii)	Removed.
261(a)(3)(xix)	Removed.
261(a)(3)(xx)	Removed.
261(a)(3)(xxi)	261(a)(3)(viii).
261(a)(3)(xxii)	Removed.
261(a)(3)(xxiii)	261(a)(3)(ix).
261(a)(3)(xxiv)	Removed.
261(a)(3)(xxv)	Removed.
261(a)(3)(xxvi)	Removed.
261(a)(3)(xxvii)	Removed.
261(b)(1)	Removed.
261(b)(2)	Removed.
261(b)(3)	Removed.
261(b)(4)	261(b)(1).
261(b)(5)	Removed.
261(b)(6)	Removed.
261(b)(7)	261(b)(2).
261(c)(2)(vi)	Removed.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
261(c)(2)(vii)	Removed.
261(c)(2)(viii)	261(c)(2)(vi).
261(c)(6)(i)	261(c)(6).
261(c)(6)(ii)	Removed.
261(c)(7)(i)	261(c)(7).
261(c)(7)(ii)	Removed.
261(d)(1)(i)	261(d)(1).
261(d)(1)(ii)	Removed.
261(e)(3)	Removed and Reserved.
261(e)(7)	Removed and Reserved.
261(e)(9)	Removed and Reserved.
261(g)(1)(iv)	Removed.
261(g)(1)(v)	261(g)(1)(iv).
261(g)(2)(i)	Removed.
261(g)(2)(ii)	261(g)(2)(i).
261(g)(2)(iii)	261(g)(2)(ii).
261(g)(15)(iv)	Removed.
261(g)(15)(v)	261(g)(15)(iv).
261(g)(15)(vi)	Removed.
261(h)(2)(iii)	Removed.
261(h)(2)(iv)	261(h)(2)(iii).
261(j)(1)(iv)	Removed and Reserved.
261(j)(3)	Removed and Reserved.
261(j)(4)(ii)	Removed.
261(j)(4)(iii)	261(j)(4)(ii).
261(j)(4)(iv)	261(j)(4)(iii).
261(j)(4)(v)	261(j)(4)(iv).
261(j)(4)(vi)	261(j)(4)(v).
261(j)(5)(iv)	Removed.
261(j)(6)(ii)	Removed.
261(j)(6)(iii)	261(j)(6)(ii).
261(k)(2)(i)	Removed.
261(k)(2)(ii)	261(k)(2)(i).
261(k)(2)(iii)	261(k)(2)(ii).
261(k)(2)(iv)	261(k)(2)(iii).
261(k)(2)(v)	261(k)(2)(iv).
261(k)(2)(vi)	261(k)(2)(v).
261(k)(4)	Removed and Reserved.
261(k)(16)	Removed and Reserved.
261(m)(2)	Removed and Reserved.
261(m)(4)	Removed and Reserved.
261(m)(5)(i)	Removed.
261(m)(5)(ii)	Removed.
261(m)(5)(iii)	261(m)(5).
262(c)(3)	Removed and Reserved.
262(c)(4)	Removed and Reserved.
262(gg)	Removed and Reserved.
262(ll)(1)	Removed.
262(ll)(2)	262(ll).
262(qq)(1)	Removed.
262(qq)(2)	Removed.
262(rr)	Removed.
265(a)(1)	265(a).
265(a)(2)	Removed.
265(c)(3)(i)	Removed and Reserved.
265(c)(10)	Removed and Reserved.
265(c)(14)	Removed and Reserved.
265(c)(16)	Removed and Reserved.
265(c)(17)	Removed and Reserved.
265(c)(22)	Removed and Reserved.
265(c)(24)(iv)(a)	Removed.
265(c)(24)(iv)(b)	265(c)(24)(iv).
265(c)(24)(iv)(c)	Removed.
265(c)(26)(i)	Removed and Reserved.
265(c)(30)(vi)	Removed and Reserved.
265(c)(30)(x)	Removed and Reserved.
265(e)(3)(ii)(d)	Removed and Reserved.
265(f)(9)	Removed.
265(g)	Removed.
265(h)	Removed.
265(i)	Removed.
267	Removed and Reserved.
268(f)	Removed and Reserved.
1017(g)(5)(i)	Removed.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
1017(g)(5)(ii)	Removed.
1017(g)(6)	1017(g)(5) .
1017(g)(7)	1017(g)(6).
1018(n)(2)(ii)(C)	Removed.
1018(n)(2)(ii)(D)	1018(n)(2)(ii)(C).
1018(q)(2)(iii)(F)	Removed.
1018(q)(2)(iii)(G)	Removed.
1018(q)(2)(iii)(H)	Removed.
1018 App C, Section I, General	Removed "(4) A sputum cytology examination;".
1018 App C, Section I, General	Redesignated paragraph 5 as paragraph 4
1018 App C, Section I, General	Removed entire section entitled "III. Sputum cytology".
1029(j)(2)(vii)	Removed.
1029(j)(2)(viii)	1029(j)(2)(vii). Added new 1029(j)(3)(iv).
1029(j)(3)(iv)	1029(j)(3)(v).

III. Summary and Explanation

In this section, OSHA explains the changes made to each regulatory provision being removed, revised, or redesignated. First, the changes that were proposed in the July 1996 Notice of Proposed Rulemaking (NPRM) and the reasons for proposing those changes are discussed. Next, any comments that OSHA received about the proposed changes are identified and addressed. Finally, the action that OSHA is taking with regard to the proposed changes is explained.

The proposed changes to Part 1910 standards are listed first, followed by those for Part 1926. Within this framework, provisions that received either no comments or positive comments only are listed first, in numerical order, followed by the few provisions for which minor varied comments were received.

Amendments to Part 1910 That Received No Comments or Positive Comments Only

A. Explosives and Blasting Agents (§ 1910.109)

Paragraph (d)(1)(iv) of § 1910.109 prohibits the transporting of blasting caps on a vehicle that is carrying other explosives. However, The Department of Transportation (DOT) has issued regulations that provide an approved method for safely transporting blasting caps on the same vehicle with other explosives. Therefore, OSHA proposed to amend paragraph (d)(1)(iv) of 29 CFR 1910.109 to permit transporting blasting caps on the same vehicle with other explosives if they are transported in accordance with the method specified in the DOT regulations at 49 CFR 177.835(g)(3)(i).

OSHA received supporting comments (e.g. Ex. 4: 1,10) on the proposed provision, and no commenter opposed the proposed action. As a result, OSHA is amending paragraph (d)(1)(iv) of § 1910.109 as proposed.

Paragraph (e)(2)(i) of § 1910.109 requires that boxes and packaging materials that have previously contained explosives not be used again and be destroyed by burning at an approved outdoor location. However, environmental agencies often will not permit the burning of these materials. Additionally, DOT permits the re-use of such packaging materials if such re-use is accomplished in accordance with certain criteria contained in 49 CFR 173.28.

OSHA proposed to amend paragraph (e)(2)(i) to permit reusing uncontaminated containers and packaging materials if such re-use is accomplished in accordance with DOT regulations.

All of the comments OSHA received on this provision supported the proposed action. For example, the Institute of Manufacturers of Explosives (IME) (Ex. 4: 10 pp. 1–2) stated:

In addition, IME supports OSHA's amendment to § 1910.109 (e)(2)(i). The amended regulation will allow companies to reuse, rather than burn, uncontaminated packaging materials. As a result, companies will not be forced to violate state or local prohibitions against burning in order to comply with OSHA, or vice versa.

Accordingly, OSHA is amending paragraph (e)(2)(i) of § 1910.109 as proposed.

B. Storing and Handling of Liquefied Petroleum Gases (§ 1910.110)

Paragraphs (b)(15)(v)–(vii) of § 1910.110 contain requirements for the location of backflow check valves, excess-flow valves, and shutoff valves on tank cars and transport trucks. Paragraph (b)(15)(viii) of § 1910.110 contains requirements for locating tank cars and transport trucks during loading and unloading operations.

OSHA had proposed to delete paragraphs (b)(15)(v)–(viii) of § 1910.110, because the design of transportation vehicles and the safe location of such vehicles during loading and unloading operations are under the jurisdiction of DOT and not OSHA. Upon further review of these paragraphs, OSHA has concluded that paragraph (b)(15)(v) is not under the jurisdiction of DOT, since it addresses valves associated with storage tank piping located at a worksite. Accordingly, OSHA is retaining paragraph (b)(15)(v) and deleting paragraphs (b)(15)(vi)–(viii). OSHA is also redesignating paragraph (b)(15)(ix) as new paragraph (b)(15)(vi) of § 1910.110.

Paragraphs (c)(2)(ii)–(iv) of § 1910.110 contain specifications for marking LPG cylinders. OSHA proposed deleting these marking specifications because they duplicate DOT requirements. No comments were received on the proposed changes, and OSHA is deleting the text of paragraphs (c)(2)(ii)–(iv). OSHA is also redesignating paragraph (c)(2)(i) as new paragraph (c)(2).

Paragraph (e)(10) of § 1910.110 contains limitation requirements on the capacity of LPG containers that are used to fuel passenger carrying vehicles. OSHA proposed deleting these requirements pertaining to passenger carrying vehicles because they are under the jurisdiction of DOT. No comments were received on the proposed changes, and OSHA is deleting the text of paragraph (e)(10) of § 1910.110 and reserving the paragraph designation.

Paragraph (g) of § 1910.110 contains requirements for installing LP-gas systems on commercial vehicles. OSHA proposed deleting these requirements because the installation of LP-gas systems on commercial vehicles is under the jurisdiction of DOT. No comments were received on the proposed changes. OSHA, therefore, is deleting the text from paragraph (g) of § 1910.110 and reserving the paragraph designation.

C. Storing and Handling of Anhydrous Ammonia (§ 1910.111)

Paragraph (f)(7) of § 1910.111 contains safety requirements for full trailers and semitrailers that transport ammonia. Paragraph (f)(8) of § 1910.111 contains requirements to protect such vehicles from collision. Because full trailers and semitrailers that transport ammonia are under the jurisdiction of DOT, OSHA proposed deleting the text of paragraphs (f)(7) and (f)(8) of § 1910.111 and reserving the paragraph designations.

OSHA received no comments on the proposed changes, and the text of paragraphs (f)(7) and (f)(8) of § 1910.111 is therefore being deleted and the paragraph designations are being reserved.

D. Sanitation (§ 1910.141)

OSHA proposed deleting the definition of "lavatory" given in paragraph (a)(2)(i) of § 1910.141. This definition stated that "*lavatory* means a basin or similar vessel used exclusively for washing of hands, arms, faces, and head." OSHA believes that the meaning of the term Lavatory is self-explanatory in the context of the section and that deleting this definition will not diminish the health of employees in affected workplaces. No comments were received in opposition to the proposed deletion of the definition of "lavatory" in § 1910.141. The definition of "lavatory" is, therefore, being deleted from § 1910.141. Further, to conform to the format typically found in other OSHA standards, all paragraph designations for the definitions within paragraph (a)(2) of § 1910.141 are also being removed.

E. Temporary Labor Camps (§ 1910.142)

Paragraph 1910.142(a)(4) provides regulations for closing temporary labor camps. Upon closing a camp site, the regulations require the employer to collect all refuse, garbage, and manure, to fill all privy pits, to lock and secure any remaining privy buildings, and to leave all grounds and buildings in a clean and sanitary condition.

Because this paragraph deals with closing the site, which occurs after the employees have left, this paragraph does not relate to worker safety but to public safety, which is outside the Agency's mission. For these reasons, OSHA proposed removing paragraph 1910.142(a)(4). No comments were received on this issue, and paragraph 1910.142(a)(4) is accordingly being removed. OSHA notes, however, that employers may be responsible for adhering to other standards related to public health and safety in the locality or State in which the camp site is located.

F. Safety Color Code for Marking Physical Hazards (§ 1910.144)

Section 1910.144 provides guidance on the colors to use to mark physical hazards. These colors were required so that emergency devices and physical hazards could be identified quickly by employees. OSHA proposed removing these requirements from 29 CFR part 1910 because they have relatively narrow scope and for employers desiring guidance in this area, the American National Standards Institute standard ANSI Z535.1–91, Safety Color Code is available. No comments were received on this issue. However on reconsideration, OSHA has decided to retain this section to indicate that proper color coding is necessary for worker protection in emergencies.

G. Fire Brigades (§ 1910.156)

Section 1910.156 contains requirements for organizing, training, and providing personal protective equipment for members of fire brigades. Requirements for negative-pressure self-contained breathing apparatus are listed in § 1910.156(f)(2)(iii). These requirements were intended to remain mandatory for 18 months after the National Institute for Occupational Safety and Health (NIOSH) certified a positive-pressure breathing apparatus with the same or longer service life as the then required negative-pressure breathing apparatus. The 18-month period was to allow employers to phase in the new apparatus.

NIOSH has since certified a positive-pressure breathing apparatus, and the 18 month phase-in period has ended. This paragraph is therefore unnecessary and OSHA proposed removing it. There were no comments on the proposed change, and OSHA is therefore removing § 1910.156(f)(2)(iii) as proposed.

H. Helicopters (§ 1910.183)

Paragraph 1910.183(a) states that helicopter cranes are expected to comply with any applicable regulations of the Federal Aviation Administration (FAA). OSHA does not have the statutory authority to enforce FAA regulations for helicopters (found at 14 CFR part 133) and therefore proposed removing this paragraph. There were no comments on the proposed change and OSHA is therefore removing paragraph 1910.183(a) and reserving the paragraph designation as proposed.

I. Pulp, Paper, Paperboard Mills (§ 1910.261)

Section 1910.261 contains requirements that apply to establishments where pulp, paper, and paperboard are manufactured and converted. Paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k), and (m) of § 1910.261 require these establishments to comply with a number of standards of the American National Standards Institute (ANSI). Including these ANSI standards in § 1910.261 duplicates other standards in part 1910 that apply to general industry as a whole, cover the same hazards, and in many cases, share the same source materials as the provisions in § 1910.261.

All but one of the ANSI standards referenced in § 1910.261 were source documents for OSHA standards that have general application without regard to any specific industry. For example, ANSI Standard A12.1–1967, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards is referenced in paragraph 1910.261(a)(3)(ii) and is also the source standard for Section 1910.23, Guarding Floor and Wall Openings and Holes.

OSHA believes that the OSHA standard, codified in Section 1910.23, provides equivalent or better protection for workers in this industry than the ANSI standard, A12.1–967, which is referenced in § 1910.261. Accordingly, OSHA proposed deleting paragraph 1910.261(a)(3)(ii).

Similarly, there are a number of other OSHA standards that OSHA believes can provide equivalent or better protection for pulp and paper workers than the ANSI standards referenced in paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k), and (m) in Section 1910.261. For this reason, OSHA proposed deleting many provisions of § 1910.261 and applying the corresponding provisions found elsewhere in part 1910. The following table lists the OSHA standards that were proposed for deletion, the referenced ANSI standards, and the OSHA standards that will provide equivalent or better protection.

Deleted standard	Referenced ANSI standard	Equivalent OSHA standard
1910.261(a)(3)(ii)	A12.1–1967	§ 1910.23
1910.261(a)(3)(iv)	A14.1–1968	§ 1910.25

Deleted standard	Referenced ANSI standard	Equivalent OSHA standard
1910.261(a)(3)(v)	A14.2–1956	§ 1910.26
1910.261(a)(3)(vi)	A14.3–1956	§ 1910.27
1910.261(a)(3)(ix)	B15.1–1953	§ 1910.219
1910.261(a)(3)(xi)	B30.2–1967	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xii)	B30.2–1967	§ 1910.179
1910.261(a)(3)(xiii)	B30.2–1943	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xv)	B56.1–1969	§ 1910.178
1910.261(a)(3)(xvii)	0.1–1954	§ 1910.213
		§ 1910.214
1910.261(a)(3)(xviii)	Z4.1–1968	§ 1910.141
1910.261(a)(3)(xix)	Z9.1–1951	§ 1910.94
1910.261(a)(3)(xx)	Z9.2–1960	§ 1910.94
1910.261(a)(3)(xxiv)	Z35.1–1968	§ 1910.145
1910.261(a)(3)(xxv)	Z87.1–1968	§ 1910.133
1910.261(a)(3)(xxvi)	Z88.2–1969	§ 1910.134
1910.261(a)(3)(xxvii)	Z89.1–1969	§ 1910.135
1910.261(b)(1)	B15.1–1953	§ 1910.219
1910.261(b)(2)	Z24.22–1957	§ 1910.132
	Z87.1–1968	§ 1910.133
	Z88.2–1968	§ 1910.134
	Z89.1–1969	§ 1910.135
1910.261(b)(3)	A12.1–1967	§ 1910.23
1910.261(b)(6)	B56.1–1969	§ 1910.178
1910.261(c)(2)(vi)	B30.2–1967	§ 1910.179
1910.261(c)(3)(i)	A12.1–1967	§ 1910.23
	A14.1–1968	§ 1910.25
	A14.2–1956	§ 1910.26
	A14.3–1956	§ 1910.27
1910.261(c)(8)(i)	B30.2–1967	§ 1910.179
1910.261(c)(11)	B56.1–1969	§ 1910.30
1910.261(d)(1)(ii)	Z87.1–1968	§ 1910.133
1910.261(e)(3)	B15.1–1955	§ 1910.219
1910.261(e)(7)	O1.1–1961	§ 1910.213
1910.261(e)(9)	B15.1–1953	§ 1910.219
1910.261(g)(15)(vi)	Z4.1–1968	§ 1910.141
1910.261(h)(2)(iii)	K13.1–1967	§ 1910.134
	Z88.2–1967	
1910.261(j)(1)(iv)	B15.1–1958	§ 1910.219
1910.261(j)(3)	A12.1–1967	§ 1910.23
1910.261(j)(4)(ii)	A12.1–1967	§ 1910.23
1910.261(j)(5)(iv)	B15.1–1953	§ 1910.219
1910.261(j)(6)(ii)	B15.1–1953	§ 1910.219
1910.261(k)(2)(i)	B15.1–1953	§ 1910.219
1910.261(k)(4)	A12.1–1967	§ 1910.23
1910.261(m)(2)	B56.1–1969	§ 1910.178
1910.261(m)(4)	Z87.1–1968	§ 1910.133
1910.261(m)(5)(i)	Z87.1–1968	§ 1910.132
1910.261(m)(5)(ii)	B56.1–1969	§ 1910.178

Similarly, OSHA believes that the OSHA standard, § 1910.95, Occupational Noise Exposure, provides worker protection that is at least equivalent to that provided by the ANSI standard, Z24.22–1957, Method of Measurement of Real-Ear Attenuation of Ear Protectors, that is referenced in § 1910.261(a)(3)(xxii). OSHA, therefore, proposed removing § 1910.261(a)(3)(xxii) to eliminate this duplicate coverage.

Paragraph (b)(5) of § 1910.261 requires workers in the pulp, paper and paperboard industry who enter closed vessels, tanks, chip bins, and similar equipment to follow specific procedures and wear personal protective equipment. This standard, however, does not provide the necessary requirements for monitoring, testing, and communication that are critical when working in a confined space.

OSHA proposed deleting paragraph (b)(5) of § 1910.261 for two reasons. First, § 1910.146, Permit-Required Confined Spaces, provides better protection for workers required to work in a confined space. Section 1910.146 provides a comprehensive regulatory program within which employers can effectively protect employees working in confined spaces. This program addresses the ongoing need for monitoring, testing, and communication at these workplaces. Second, employers are required to comply with § 1910.146 when a specific industry standard does not completely address the known hazards of working in a confined space, a principle noted in paragraph (c)(2) of § 1910.5. This means that employers must already comply with § 1910.146 rather than paragraph (b)(5) of § 1910.261.

Paragraph (c)(2)(vii) of § 1910.261 requires employers to provide personal protective equipment to workers on a job basis. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132, OSHA proposed removing paragraph (c)(2)(vii) to eliminate this

duplication of requirements in a way that will not decrease worker protection.

Paragraphs (c)(6)(ii) and (c)(7)(ii) of § 1910.261 require employers to provide workers with personal protective equipment and ear protection when the noise level may be harmful. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132 and the general requirements for occupational noise exposure in § 1910.95, OSHA proposed removing paragraphs (c)(6)(ii) and (c)(7)(ii) to eliminate this duplication of requirements.

Paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 are specific electrical standards prescribed for the pulp, paper, and paperboard industry that require compliance with subpart S, Electrical, in OSHA's standards. Since all of general industry is required to comply with all of subpart S for electrical standards, OSHA proposed removing paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 to eliminate this duplication.

Paragraph (g)(2)(i) of § 1910.261 requires employers to provide gas masks to employees working in the acid department. Since employers are required to comply with the general requirements for respiratory protection in § 1910.134, OSHA proposed removing paragraph (g)(2)(i) to eliminate this regulatory duplication.

Paragraph (g)(15)(iv) of § 1910.261 is a standard prescribed for the pulp, paper, and paperboard industry that addresses lead dust exposure and requires compliance with § 1910.1000, Air Contaminants. Since employers are required to comply with all of § 1910.1000, including paragraph 1910.1025 which addresses lead exposure, OSHA proposed removing paragraph (g)(15)(iv) to eliminate this duplication.

All of the proposed changes to § 1910.261 adopted by this notice were supported by two commenters, American Forest & Paper Association (AFPA) and the Pacific Coast Association of Pulp and Paper Manufacturers (PCAP&PM) (Exs.4–15, 4–24). The AFPA stated that "AFPA wishes to commend OSHA for the substantial efforts which the Agency has made to remove or revise standards that are obsolete, duplicative, unnecessary, or inconsistent for maintaining employee protection". There were no comments opposing these changes and OSHA is therefore removing the paragraphs listed above and shown on the table from § 1910.261, for the reasons stated above and given in the proposal.

AFPA also recommended that OSHA delete a number of other provisions. OSHA believes these suggestions require additional study and there needs to be more extensive opportunity for comment on them. Rather than holding up the deregulatory changes in this document, OSHA will consider including those suggestions in its next proposal to eliminate unneeded provisions.

J. Textiles (§ 1910.262)

For the purpose of eliminating duplicate standards coverage, OSHA proposed to delete a number of standards in § 1910.262 that reference general occupational safety and health standards. The following table lists the standards OSHA proposed to delete. The referenced general OSHA standards will continue to apply to employers in the Textile industry.

Deleted standard	Referenced OSHA standard
1910.262(c)(3)	1910.219
1910.262(c)(4)	1910.141
1910.262(gg)	1910.219
1910.262(ll)(1)	1910.23
1910.262(qq)(1)	1910.132; 1910.133; 1910.134
1910.262(qq)(2)	1910.134
1910.262(rr)	1910.1000; 1910.94(d)

No comments were received on this issue, and OSHA is therefore deleting the standards listed in the table above.

Paragraph (c)(8) of § 1910.262 requires employers to identify physical hazards in accordance with the requirements of § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA has decided to retain this provision to indicate that proper color coding is necessary for worker protection in emergencies. Because OSHA is retaining § 1910.144, which is referenced in § 1910.262(c)(8), OSHA will also retain § 1910.262(c)(8).

No comments were received on this issue, and OSHA is therefore retaining § 1910.262(c)(8).

K. Sawmills (§ 1910.265)

Section 1910.265 contains safety requirements for sawmill operations including, but not limited to, log and lumber handling, sawing, trimming, and planing; waste disposal; dry kiln operation; finishing; shipping; storage; yard and yard equipment; and for power tools and related equipment used in connection with such operations. Certain paragraphs of § 1910.265 incorporate and apply general occupational safety and health standards that apply to all employment covered by 29 CFR part 1910. As required in paragraph (a)(2) of this section, such standards apply to sawmill operations in accordance with the rules of construction set forth in § 1910.5. For example, the general standard regarding mechanical power-transmission apparatus in § 1910.219 is applicable to employment in sawmill operations covered in § 1910.265, but it is also incorporated by reference in paragraph (c)(22) of § 1910.265. OSHA believes that this repetition does not enhance worker safety, and therefore proposed removing paragraph (c)(22) of § 1910.265. Also, since § 1910.5 applies to all industries, including the sawmill industry, OSHA proposed removing paragraph (a)(2) of § 1910.265, which merely references § 1910.5.

Similarly, to eliminate duplicate standards coverage, OSHA proposed deleting various provisions currently found in § 1910.265 that reference general occupational safety and health standards. The following table lists the standards OSHA proposed deleting and the referenced general OSHA standards that will continue to apply to sawmills.

Deleted standard	Referenced OSHA standard
1910.265(c)(3)(i)	1910.23
1910.265(c)(10)	1910.25–27
1910.265(c)(14)	1910.110
1910.265(c)(16)	1910.106
1910.265(c)(17)(i)	1910.1000
1910.265(c)(17)(ii)	Subpart I
1910.265(c)(17)(iii)	1910.94(d)
1910.265(c)(22)	1910.219
1910.265(c)(26)(i)	1910.219
1910.265(c)(30)(vi)	1910.219
1910.265(c)(30)(x)	1910.178
1910.265(e)(3)(ii)(d)	1910.219
1910.265(f)(9)	1910.219
1910.265(g)	Subpart I
1910.265(h)	1910.141
1910.265(i)	Subpart L

Paragraph (c)(11) of § 1910.265 requires employers to mark physical hazards as specified in § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA is retaining § 1910.144 since the Agency believes that proper color coding is necessary for worker protection in emergencies. Since OSHA is retaining § 1910.144, which is referenced in § 1910.265(c)(11), OSHA will also retain § 1910.265(c)(11).

Paragraph (c)(24)(iv)(a) of § 1910.265 requires employers to inspect slings daily when in use, and to remove a sling from service if it is found to be defective. In addition, paragraph

(c)(24)(iv)(c) of § 1910.265 requires employers to provide suitable protection between the sling and the sharp unyielding surfaces of the load to be lifted. These provisions duplicate some of the general requirements for the use of slings in § 1910.184, which also includes provisions for sling inspection, removal, and protection. OSHA proposed deleting paragraphs (c)(24)(iv)(a) and (c)(24)(iv)(c) to eliminate the duplication of requirements for slings in § 1910,265.

The American Forest & Paper Association (AFPA) (Ex. 4–15) supported the changes to the provisions in Section 1910.265 that had been proposed by OSHA and that are now made final by this notice. There were no comments opposing these changes, and OSHA is therefore deleting the standards as proposed. The AFPA (Ex. 4–15) also suggested several other changes. OSHA concluded that they need further study, and rather than delaying this final rule, OSHA will consider including them in the next proposal to eliminate unnecessary provisions.

L. Agricultural Operations (§ 1910.267)

Section 1910.267 previously contained part 1910 requirements applicable to agricultural operations. These requirements were moved to § 1928.21 in 1975 (40 FR 18268). Since that time, § 1910.267 has been used simply to refer employers to § 1928.21 to locate these requirements. OSHA believes that § 1910.267 is now unnecessary and proposed removing and reserving this section.

No comments were received on this issue, and OSHA is therefore removing § 1910.267 and reserving this section.

M. Vinyl Chloride (§ 1910.1017)

OSHA proposed deleting paragraphs (g)(5) (i) and (ii) of § 1910.1017, vinyl chloride, which was promulgated in 1974. These paragraphs addressed entry into unknown and hazardous vinyl-chloride atmospheres. Paragraph (g)(5)(i) allows entry into unknown concentrations of vinyl chloride or concentrations greater than 36,000 ppm (lower explosive limit) only for purposes of life rescue. Paragraph (g)(5)(ii) allows entry into concentrations of vinyl chloride of less than 36,000 ppm, but greater than 3,600 ppm, only for purposes of life rescue, firefighting, or securing equipment that will prevent a greater release of vinyl chloride.

In 1989, OSHA promulgated industry-wide provisions addressing emergency response with respect to entry into unknown or hazardous atmospheres under § 1910.120, the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (54 FR 9317, Mar. 6, 1989). Included in the scope of the HAZWOPER standard are requirements for "Emergency response operations for release of, or substantial threats of release of, hazardous substances without regard to the location of the hazard." Thus, vinyl chloride, which is a "hazardous substance" as defined under the HAZWOPER standard, is covered by the emergency response provisions in both the vinyl chloride and HAZWOPER rules. With regard to overlapping provisions, the HAZWOPER standard specifically states in paragraph (a)(2)(i) that "If there is a conflict or overlap [between emergency-response provisions in § 1910.120 and provisions in substance-specific standards], the provisions more protective of employee safety and health shall apply. * * *"

At the time it proposed to revoke the vinyl chloride provisions, OSHA believed that the emergency-response provisions in § 1910.120 were more protective overall than the relevant provisions in the vinyl chloride standard. Further, the provisions of § 1910.120, which require employers to develop a broad program to respond appropriately to any potential emergency situation, were viewed by the Agency as giving employers more flexibility to tailor and implement effective, comprehensive emergency-response programs to suit their needs. Key provisions in § 1910.120(q) that would apply where there is a potential emergency associated with the release of vinyl chloride address the following: development and implementation of an emergency response plan, paragraph (q)(1); required elements of the emergency response plan, paragraph (q)(2); procedures for handling emergency response, paragraph (q)(3); using skilled support personnel, paragraph (q)(4); using specialist employees, paragraph (q)(5); training emergency personnel, paragraphs (q) (6), (7), and (8); medical surveillance and consultation for emergency-response personnel, paragraph (q)(9); using chemical protective clothing, paragraph (q)(10); and procedures for post-emergency operations, paragraph (q)(11).

OSHA continues to believe that deleting § 1910.1017(g)(5) (i) and (ii) in favor of § 1910.120 will not result in an increased risk to the safety or health of employees engaged in vinyl chloride emergency response operations. The Agency solicited comment on the question of the sufficiency of § 1910.120 to address the protection of vinyl chloride emergency response employees, if the emergency response provisions currently in the vinyl chloride standard were deleted.

Comments were received which fully supported the proposed action. The Vinyl Institute (Ex. 4–11) commented as follows:

> In the event of a vinyl chloride incident during transportation, storage, or manufacture, it is necessary to respond quickly to stop or minimize any release and prevent the situation from escalating. Because of the quantity of material that potentially could be involved, such an incident or leak, if not quickly corrected, could create a cloud of explosive gas within a relatively short time. The emergency response provisions contained in the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard would enable the emergency responders to appropriately respond to the incident. In contrast, the vinyl chloride standard can be interpreted to prevent action if the exposure concentration is unknown or if it is expected to exceed 36,000 ppm and life rescue is not necessary.
>
> Following good emergency response practices and acting consistently with the HAZWOPER standard should produce the optimum results while protecting the life and safety of employees and other potentially exposed individuals. In addition, eliminating the emergency response provisions of the vinyl chloride standard clarifies which standard should govern in the event of such an emergency incident.
>
> OSHA's proposal to delete two specific emergency response provisions in the vinyl chloride standard and rely on the emergency response provisions in HAZWOPER will result in optimal responsive action. The HAZWOPER standard is flexible enough to allow responders and companies to develop comprehensive emergency response programs that can be adapted to the particular factual circumstances of a vinyl chloride incident.

The Vinyl Chloride Panel Transportation Committee of the Chemical Manufacturers Association (Ex. 4–12A) commented that:

> The Committee agrees with OSHA's proposal, and believes that the emergency response criteria in the HAZWOPER standard are more appropriate than the relevant provisions of the current vinyl chloride standard. HAZWOPER recognizes that entry into an unknown concentration or a confined space may be necessary for reasons other than life rescue, in order to avoid catastrophic human or environmental threats. Unlike the current vinyl chloride standard, the HAZWOPER provisions are flexible enough to allow responders and companies to develop comprehensive emergency response programs that suit their individual needs.

OSHA received no comments objecting to this proposed action.

Based on the reasoning set forth in the Notice of Proposed Rulemaking (NPRM)

(61 FR 37849, July 22, 1996), the discussion of the issues in this notice, and on supporting comments submitted to the record, OSHA has determined that deleting paragraphs (g)(5) (i) and (ii) from the vinyl chloride standard (29 CFR 1910.1017) is appropriate, and this final rule accomplishes that action.

N. Inorganic Arsenic (§ 1910.1018) and Coke Oven Emissions (§ 1910.1029)

OSHA proposed to revise the existing medical surveillance requirements in paragraph (n) of 29 CFR 1910.1018 that address inorganic arsenic and paragraph (j) of 29 CFR 1910.1029 that address coke oven emissions exposure with respect to sputum-cytology examinations and chest x-rays.

Those changes are being made in accordance with Section 6(b)(7) of the OSH Act which provides that "The Secretary, in consultation with the Secretary of Health, Education and Welfare, may by rule promulgated pursuant to Section 553 of Title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard".

Specifically, OSHA proposed to delete the requirement in paragraph (n)(2)(ii)(C) of § 1910.1018 (the inorganic arsenic standard) that provides for sputum-cytology examination, as well as the requirement in paragraph (j)(2)(vii) of § 1910.1029 (The coke oven emission standard) that provides for sputum-cytology examination. Sputum-cytology examinations were originally included in the medical surveillance programs for inorganic arsenic and coke oven workers based on OSHA's belief that such examinations were useful in lung cancer screening. Subsequent studies indicate that sputum-cytology does not improve survival.

OSHA also proposed to revise the requirement in paragraph (n)(3)(ii) of § 1910.1018 of the inorganic arsenic standard that provided for a semi-annual chest x-ray for employees who are 45 years of age or older or who have 10 or more years of arsenic exposure over the action level. OSHA also proposed to change the required frequency of chest x-rays for these employees from semi-annual to annual. Likewise, OSHA proposed to amend the requirement in § 1910.1029, paragraph (j)(3)(ii) of the coke oven emissions standard, which provides for a semi-annual chest x-ray for employees 45 years of age or older or with 5 or more years of employment in a regulated area. OSHA proposed to amend the coke oven standard provision to require an annual chest x-ray in the medical surveillance program for the group of employees noted above. OSHA originally promulgated the provision for semi-annual x-rays in the belief that semi-annual examinations were appropriate for certain coke oven workers for lung cancer screening. Subsequent studies indicate that annual screening is equally effective.

The basis for OSHA's final determinations with respect to its proposed treatment of the relevant sputum-cytology provisions is given below, followed by a discussion addressing the relevant x-ray provisions.

Sputum-cytology. When OSHA issued its coke oven emission standard in 1976 and inorganic arsenic standard in 1978, it included sputum-cytology as a medical screening technique for lung cancer. Medical opinion at the time believed that this would improve lung cancer survival rates for those at higher risk, such as arsenic and coke oven emission exposed workers.

Two subsequent studies of persons at high risk of lung cancer did not indicate any improved survival from sputum-cytology screening. Therefore, OSHA proposed to delete the requirements.

Two randomized controlled studies evaluated the benefits of sputum-cytology examinations as a screening tool for lung cancer in a high-risk group, male smokers 45 years of age and older. The two studies included the Johns Hopkins Lung Project [Ex. 1–3] and the Memorial Sloan-Kettering Lung Project [Ex. 1–4], both part of the National Cancer Institute Cooperative Early Lung Cancer Detection Program. Together, the studies included 20,427 male smokers. These men were assigned at random to a dual-screen group (in which subjects underwent an annual chest radiograph, and sputum-cytologic study every 4 months) or to a single-screen group (in which annual chest radiographic screening was performed).

For both studies, there were no significant survival differences between the dual-screen and single-screen groups in the total number of lung-cancer cases, the number of late-stage lung-cancer cases, the number of resectable lung cancers, five year (Sloan Kettering) and eight year (Johns Hopkins) survival rates and the number of lung-cancer deaths. Therefore, sputum-cytology did not add any benefit to a lung cancer screening program that already included annual chest x-rays. Other evaluations of the same studies, (Chest X-ray Screening Improves Outcome in Lung Cancer, A Reappraisal of Randomized Trials on Lung Cancer Screening) (Ex. 1–1), and (The National Cancer Institute Cooperative Early Lung Cancer Detection Program) (Ex. 1–2), reached the same conclusion.

There are no controlled studies on the impact of sputum-cytology directly on inorganic arsenic and coke oven emission exposed workers. But inorganic arsenic and coke oven emission exposed workers are similar to the smokers studied in that both groups include older males that are placed at higher risk of lung cancer through inhalation.

The American Cancer Society's recommendations for early detection of cancer in asymptomatic persons do not include the use of sputum-cytology examinations [Ex. 1–7]. The Society's decision in this regard was based on the lack of epidemiological evidence that would support the use of sputum-cytology screening, and the risks and costs associated with false positive exams (Ex. 1–8).

OSHA solicited comments on these conclusions with respect to the value of sputum-cytology exams, and requested submission of other data and views that would support or dispute the Agency's proposed findings and conclusions.

OSHA received no comments objecting to this proposed action. Comments were submitted which support the Agency's proposal and conclusions with respect to the questionable value of sputum-cytology as a useful lung cancer screening technique (Exs. 4–2, 4–7, 4–17, 4–22, 4–27).

James Craner, MD, MPH, and a Board-Certified Occupational Medicine physician stated:

> I fully concur with the proposal to eliminate sputum cytology examinations for the reasons that OSHA has cited. In my experience, I have also found this test to be inaccurate with a significant false positive rate, particularly in smokers. The test is expensive for employers, uncomfortable for employees, and generates unacceptable costs and anxiety for all involved in chasing (false) positive results. [Ex. 4–17]

Newport News Shipbuilding's Director of Environmental Health and Safety (Ex. 4–27) commented that:

> In the 17 years since this regulation was established there has been considerable further experience with cytology and screening techniques in general. This experience and the scientific literature published since 1978 established that bronchial cytology is of no added value in the protection of industrial workers against the health hazards of arsenic.

An analysis of the NNS experience of bronchial cytology revealed that since inception of the program well over 1000 cytological examinations have been done. No case of dysplasia has been detected. This contrasts with the 16 per 1000 found in the Mayo lung project which used multiple screening techniques for cancer in high risk persons.

Also in support of OSHA's proposal, The American Iron and Steel Institute (AISI) commented that:

As OSHA points out, sputum cytology examinations were originally included in the [coke oven emissions] standard based on the belief that they "were useful in screening for lung cancer." See 61 Fed. Reg. at 37855–56. Studies and information that have become available since the standard was promulgated show this belief to have been incorrect. Two large-scale studies (the Johns Hopkins and Sloan-Kettering Lung Projects) of male smokers 45 years of age or older (a high risk group) found that sputum cytology had no significant value as a screening tool for lung cancer when used in addition to annual x-ray screening. [Ex. 4–22]

AISI further indicated that:

Experience in the steel industry is consistent with the results of the Johns Hopkins and Sloan-Kettering Studies. From 1977 through 1990, the cytology laboratory at Shadyside Hospital in Pittsburgh, PA, performed almost 71,000 sputum cytology examinations of coke oven workers from various steel companies. Only two definite malignancies were detected in all of these examinations, for a detection rate of 0.000028 [Ex. 4–22]

Based on their experience, AISI asserts that "* * * sputum cytology has not been of any more benefit in terms of lung cancer screening under the Coke Oven Emissions Standard than it was in the Johns Hopkins and Sloan-Kettering studies." (Ex. 4–22)

The studies indicate the sputum-cytology screening does not appear to improve survival rates of groups at higher risk of lung cancer beyond that which would be accomplished through annual chest x-rays. Arsenic and coke-oven emission exposed workers fit in this category. The commenters support this analysis and have provided additional data which tends to support these conclusions. Since the studies and analysis do not indicate survival benefits, OSHA is deleting the requirements for sputum-cytology in the inorganic arsenic and coke oven emission standards as proposed.

X-Rays. As noted above, OSHA proposed to revise the requirements in the inorganic arsenic and coke oven standards for chest x-rays from semi-annual to annual for higher risk workers covered by those standards. The basis for the proposal was studies that indicate that semi-annual x-rays did not improve lung cancer survival rates over annual x-rays.

This evidence continues to show that employees at a higher risk of lung cancer from exposures to inorganic arsenic and coke oven emissions profit from a medical surveillance program, including annual chest x-rays, for the early detection of lung cancer.

As discussed in the Notice of Proposed Rulemaking (NPRM), two recent randomized controlled studies were conducted on a group at high risk for developing lung cancer (namely, male smokers 45 years of age or older), and were evaluated with respect to the utility of periodic x-rays. These studies, which included the Mayo Lung Project [Ex. 1–9] and the Czechoslovak Study [Ex. 1–10], were designed specifically to assess the efficacy of chest x-rays in detecting early-stage lung cancer among the members of this group. The studies compared a number of outcomes between experimental groups that were assessed using chest x-rays administered at periodic intervals (4 months in the Mayo Lung Project and 6 months in the Czechoslovak Study) and control groups receiving less infrequent or, in some cases, no chest x-rays. (Participants in both the experimental and control groups were administered chest x-rays at the beginning of each study to ensure that they had no detectable lung tumors that would bias the research outcomes.)

These studies (Exs. 1–9, 1–10) found that periodic chest x-rays led to enhanced detection of early-stage lung cancer and, consequently, higher rates of resectability for this cancer. As demonstrated by a subsequent analysis of these studies (Lung Cancer Detection, Results of Randomized Prospective Study in Czechoslovakia) (Ex. 1–11), lung-cancer-specific survival based on fatality rate (i.e., number of deaths per diagnosed cases) improved significantly. This analysis also showed that the lower fatality rate among the experimental groups was not the result of over diagnosis for lung cancer or lead-time bias. For the Mayo Lung Project and the Czechoslovak Study, respectively, fatality rates of persons diagnosed with lung cancer were found to be 59% and 78% in the experimental groups, and 72% and 95% in the control group.

The efficacy of chest x-rays was also demonstrated by analyzing the outcomes for the few experimental group participants who did not undergo surgery when diagnosed with early-stage lung cancer, either because they refused surgery or surgery was contraindicated. This analysis was part of the research described in Exhibit 1–11, which combined the outcomes for experimental group participants in the Mayo Lung Project with similar experimental group participants from two other groups (the Memorial Sloan-Kettering Project and the Johns Hopkins Lung Project). The 5 year fatality rate for the nonsurgery participants was about 90 percent, compared with a 30-percent fatality rate for those participants who underwent cancer surgery. This comparison provides strong support for the efficacy of chest x-rays in detecting early-stage lung cancer and enhancing the survival of those participants who undergo subsequent surgery for removal of a detected tumor. Additionally, this comparison indicates that over-diagnosis and lead-time biases did not contribute significantly to the fatality-rate differences obtained between the experimental and control groups in the Mayo Lung Project and Czechoslovak Study.

Based on this discussion, OSHA concludes that employees exposed to inorganic arsenic and coke oven emissions continue to need medical surveillance to detect lung cancer, and that periodic chest x-rays are a necessary part of the medical surveillance to improve detection and survival from lung cancer. OSHA proposed reducing the frequency of chest x-rays from semi-annually to annually for older persons with higher risk exposures.

This frequency is based, in part, on an analysis described in Exhibit 1–11 showing that the 5-year fatality rate (about 30–35 percent) for persons diagnosed with lung cancer was the same for the experimental-group participants in the Mayo Lung Project, which administered chest x-rays every 4 months, and the experimental-group participants in the Memorial Sloan-Kettering Project and Johns Hopkins Lung Project, which performed chest x-rays once a year. [See also Exs. 1–12 and 1–13] This analysis demonstrates that fatality rates did not differ in any practical or statistically significant fashion across these three major studies. Frequent chest x-rays very slightly increase cancer rates from radiation and therefore should not be given more frequently than necessary from a health perspective.

In summary, large randomized controlled studies demonstrate that semi-annual chest radiography screenings show no benefit over annual screenings. The studies also demonstrate that annual chest radiography screening of high-risk individuals, including workers exposed to inorganic arsenic and coke oven emissions results in earlier detection of lung cancer and improved survival.

Several commenters (Exs. 4–17, 4–22) suggested that intervals between x-rays

for high-risk workers could be longer than 1 year; however, the Agency is aware of no data to demonstrate with reasonable confidence what longer interval, if any, would not reduce survival rates. In addition, no such data were received by OSHA in response to the proposal. OSHA therefore concludes that an annual x-ray provision is reasonable for the reasons set forth in the proposal and this final notice. Moreover, if the Agency has erred in this instance, it has done so on the side of over-protection rather than under-protection, as sanctioned by the U.S. Supreme Court in Industrial Union Department v. American Petroleum Institute, 448 U.S. 607 (1980).

OSHA solicited comments and data in the proposal to reduce the frequency of chest x-rays from semi-annual to annual for certain workers exposed to inorganic arsenic and coke oven emissions. OSHA received no comments objecting to this proposed action. Comment was received supporting the proposal (Exs. 4–7, 4–17, 4–22, 4–27).

AISI commented that:

> * * * the requirement for semiannual x-rays originally was included in the Coke Oven Emissions Standard "in the belief that semiannual examinations were valid for screening for lung cancer." *See* 61 Fed. Reg. At 37856/2. Since then, the results of several large randomized control studies have become available. These studies, the Mayo Lung Project and Czechoslovak Study, indicate that periodic chest x-rays do lead to enhanced detection of early-stage lung cancer. *See* 61 Fed. Reg. At 37856/3. However, when the results of the Mayo Lung Project (where chest x-rays were taken every four months) were compared to the results of the Johns Hopkins and Sloan-Kettering studies described above (where chest x-rays were taken only once a year), it was found that the fatality rates "did not differ in any practical or statistically-significant fashion across these three major studies." See 61 Fed. Reg. At 37856/1.
>
> What this demonstrates, as OSHA correctly points out, is that "semiannual chest radiography screenings show no benefit over annual screenings." *Id.* That being the case, OSHA clearly is justified in finding that "an annual chest x-ray satisfies the purpose of the medical surveillance program required under the standard." *See* 61 Fed. Reg. At 37856/1. A contrary conclusion not only would impose unjustified burdens on coke oven employers, it also would continue to expose coke oven employees to an increased risk of cancer associated with the performance of unnecessary diagnostic x-rays. For that reason, the Energy Technology Committee of the American College of Occupational and Environmental Medicine has cautioned against the routine administration of chest x-rays and stated that for individuals at increased risk of lung disease or cancer, such as persons exposed to pulmonary irritants or carcinogens, "a chest x-ray every 12–24 months may be justified." (See American College of Occupational and Environmental Medicine Guidelines for Use of Routine X-Ray Examinations in Occupational Medicine; ACOEM Membership Directory 1995/1996: Addendum at 517.)
>
> The semiannual chest x-rays currently required under the standard do not provide a significant benefit over annual chest x-ray screening in terms of early lung cancer detection...Chest x-rays under the Coke Oven Emissions Standard should, therefore, be required no more often than annually." (Ex. 4–22)

With respect to the arsenic standard, James Craner, MD, MPH stated that "* * * I agree with the proposal to reduce the frequency of chest x-ray examinations' (Ex. 4–17).

In summary, available data do not indicate that semi-annual x-rays provide additional protection than do annual x-rays in improving the detection of and survival from lung cancer for higher risk persons. The record strongly supports this analysis and OSHA's proposal to reduce the x-ray frequencies from semi-annual to annual for certain workers exposed to inorganic arsenic and coke oven emission. OSHA concludes that this final action will not reduce the health of affected workers and accordingly finalizes the changes proposed.

Amendments to Part 1910 That Received Varied Comments

O. Explosives and blasting agents (§ 1910.109)

In 1978 OSHA published a final rule (43 FR 49726) which revoked certain requirements that were called "nuisance standards" because they did not deal directly with workplace safety and health or were within the jurisdiction of some other regulatory agency. Among the requirements revoked were the three columns of Table H–21 (American Table of Distances for Storage of Explosives)(ATD)that specified minimum distances between explosive storage magazines and inhabited buildings, passenger railways, and public highways because they dealt with public and property protection and not employee protection.

Paragraph (c)(1)(vi) of § 1910.109 was inadvertently overlooked during the 1978 rulemaking and still makes reference to the three columns of Table H–21 which were revoked. Therefore, OSHA proposed to delete the phrase in paragraph (c)(1)(vi) which made reference to these three revoked columns. OSHA also proposed to delete the word "manufacture" from footnote number 5 of Table H–21 to clarify that the Table applies only to the storage of explosives in magazines.

In response to the proposal, the Institute of Makers of Explosives (IME) objected to OSHA making changes to Table H-21, which is a revised version of the American Table of Distances (ATD) that is published by the IME. The IME (Ex. 4–10) asserted that the portion of the ATD published as Table H–21 comes from an outdated version of the ATD; 1991 is the current publication date for the ATD. This commenter also stated that Table H–21 only provides the distances applicable to barricaded magazines, and that OSHA fails to provide the unbarricaded distances, which are significantly greater, and which are necessary to fully protect on-site workers.

In expressing its concern, the IME (Ex. 4–10, pg.2) stated:

> The ATD, in its entirety, provides anyone storing explosives with all of the key parameters for maintaining sufficient distances between magazines and buildings on-site, as well as between on-site magazines and inhabited buildings, passenger railways, and public highways. IME is adamant that an understanding of, and adherence to, all of the distances is necessary to maintain the safety of every explosives manufacturing and storage site. IME thus requires that those who use the copyright protected ATD must publish the entire ATD, with all its footnotes and columns, verbatim. In the interest of promoting overall safety, the IME suggests that OSHA publish the entire ATD.

OSHA is appreciative of the comment expressed by IME; however, after a careful evaluation of this issue, OSHA has concluded that IME's suggestion to publish the entire ATD will require additional study. In addition, the public, and specifically the user community has not had notice or an opportunity to comment on this suggestion. Therefore, more extensive opportunity is needed for public comment to be expressed on this issue. Rather than holding up the deregulatory changes in this document, OSHA will consider this suggestion in its next proposal on technical amendments to the OSHA standards. However OSHA will make the minor corrections proposed so the existing language will be consistent and correct.

P. Medical Services and First Aid (§ 1910.151)

Section 1910.151 states the employer's obligation to have medical services available to provide advice on workplace health matters, and for use by employees if needed.

Paragraph (b), in particular, requires the availability of first aid services for workplaces that do not have medical providers nearby. This paragraph also requires that employers have on hand first aid supplies approved by the consulting physician.

OSHA proposed amending § 1910.151(b) so that the approval of first aid supplies by the consulting physician is no longer required, although the standard would continue to require that adequate supplies be available. Commercial first aid kits that meet the needs of most employers and most work sites are readily available. If the workplace had unusual hazards or posed special problems that would require modifying a commercial first aid kit or developing a specialized kit, the Agency expected the employer to provide those special items. An employer who was unsure whether a commercially available kit was sufficient could seek professional advice. Such advice, however, would not have been required by OSHA as a matter of course.

Two commenters, Occupational Health Network and Gundersen Clinic Ltd. (Exs. 4–18, 4–23) opposed this amendment. One of the commenters (Ex. 4–23) said:

> While indeed commercial first aid kits are readily available and often meet the needs of many employers and many work sites, such first aid kits have been available for many years. We find that employers need improved first aid attention and protocols for use of specific first aid supplies that are in tune with the types of problems identified on their incident reports and OSHA 200 logs.

American Pulpwood Association, Inc., Southwestern Bell Telephone Company, Bell Atlantic, and Nynex (Ex. 4–5, 4–6, 4–19, 4–20, respectively) urged OSHA to adopt the proposed amendment. For example, Southwestern Bell Telephone Company said:

> Southwestern Bell Telephone Company provides employees' vehicles and work locations with the most up-to-date and well-stocked first aid kits available. We continually monitor their use and revise the kits accordingly.

Nynex stated:

> The wide variety of commercially available first aid kits have proven to be adequate for occupational settings.

After a review of the comments, OSHA concludes that workers will continue to be well protected after the change. Employers still must provide adequate first aid supplies for their workplace and can be cited if they fail to do so. As discussed below, there are many sources of information on appropriate supplies such as that provided by the American National Standards Institute (ANSI) and the American Society For Testing and Materials (ASTM). The employer may also consult with appropriate medical professionals, emergency rooms, and local fire/rescue departments if the employer prefers. If there are unique hazards in the employer's workplace, the requirement for providing adequate first aid supplies means that the employer must provide adequate supplies for those professionals who would determine what additional supplies are needed. Accordingly, OSHA is adopting the proposed amendment to § 1910.151(b).

Since some employers may find it useful to refer to a list of basic first aid supplies, OSHA is providing a reference to this information in a new non-mandatory Appendix A to § 1910.151. The Appendix refers to ANSI standard ANSI Z308.1–1978, "Minimum Requirements for Industrial Unit-type First-aid Kits." OSHA is aware that ANSI Z308.1 is currently under revision. When ANSI issues its revision to the Z308.1 standard, OSHA may revise Appendix A to reference the revised ANSI standard, if the Agency determines that the new edition is as effective as the earlier edition. In addition, at that time OSHA will consider adding other consensus standards on first aid kits as references in the Appendix.

In providing references to applicable voluntary consensus standards, OSHA is complying with Section 12(d)(1) of the National Technology Transfer Act of 1995 (P.L. 104–113) which states that all Federal agencies shall use applicable technical standards that are developed by voluntary consensus standards bodies as a means to carry out their policy objectives or activities.

Q. Telecommunications (§ 1910.268)

Paragraph (f) of existing § 1910.268 contains requirements for rubber insulating equipment (gloves and blankets) used at telecommunications centers and field installations. In the notice of proposed rulemaking, OSHA presented several reasons why it believed that § 1910.268(f) was unnecessary. First, the general industry standard found at 29 CFR 1910.137, Electrical Protective Equipment, addresses all rubber insulating equipment, and removing § 1910.268(f) would eliminate this duplication of standards and the associated compliance problems. Second, § 1910.137 provides more comprehensive employee protection, since it covers requirements for manufacture and marking, electrical proof tests, test and maximum use voltages, test intervals, workmanship, and in-service care and use. Third, § 1910.137 is written in performance language that provides employers with flexibility in meeting the standard. Thus, OSHA believed that paragraph (f) of § 1910.268 could be removed without diminishing employee safety and health.

OSHA received seven comments from the telecommunications industry objecting to the proposed removal of this paragraph (Exs. 4–4, 4–6, 4–8, 4–9, 4–14, 4–19, 4–20). These commenters argued that applying § 1910.137 to their rubber gloves would increase the frequency with which the gloves had to be tested from every 9 months under § 1910.268(f) to every 6 months under § 1910.137. The commenters stated that this would increase the cost of testing rubber gloves without a commensurate increase in safety. Mr. James M. Degen of NYNEX (Ex. 4–20) worded the industry's arguments as follows:

> NYNEX does not agree, however, with OSHA's proposal to revoke the requirements for rubber insulating equipment used at telecommunications centers and field installations [29 CFR 1910.268(f)] . . . Specifically, 1910.268(f) requires the electrical testing of rubber insulating gloves on a nine month interval, while 1910.137 requires that these tests be conducted on a six month interval. NYNEX finds that the test interval in 1910.268(f) is adequate for the telecommunications industry and should be maintained for the following reasons:
>
> 1. In contrast to the electric utility industry, telecommunications workers do not work with or otherwise handle live electric lines. Rubber insulating gloves are used as a precautionary measure against an unintentional contact with energized conductors or equipment.
>
> 2. The national consensus standard that is referenced as a source of the requirements of 1910.137, ASTM F496–93b, Standard Specification for In-Service Care of Insulating Gloves and Sleeves, recognizes this difference between the electric utility industry and telecommunications in paragraph 7.3, which states:
>
> "Industries, such as telecommunications, that utilize insulating gloves as precautionary protection against unintentional contact with energized conductors, may increase the maximum interval between issue and retest to nine months."
>
> 3. NYNEX has not experienced any work-related injuries or fatalities as a result of the failure of rubber insulating gloves.
>
> 4. Finally, shortening the retest interval from nine months to six months would result in a fifty percent increase of direct costs to NYNEX amounting to $165,000 per year, as well as a fifty percent increase of indirect costs attributed to the administrative and lost productive time associated with exchanging, testing and reissuing of insulating gloves. These increased costs to NYNEX, as well as the rest of the telecommunications industry, will not result in any demonstrable improvement in employee safety.

OSHA agrees with this commenter's rationale. Paragraph (f)(5) of § 1910.268 reads as follows:

> (5) The employer is responsible for the periodic retesting of all insulating gloves,

blankets, and other rubber insulating equipment. This retesting shall be electrical, visual and mechanical. The following maximum retesting intervals shall apply:

Gloves, blankets, and other insulating equipment	Natural rubber	Synthetic rubber
	Months	
New	12	18
Re-issued	9	15

By contrast, Table I–6 in § 1910.137 sets intervals for testing rubber insulating equipment that differ from the intervals for such equipment in the telecommunications. Table I–6 requires rubber blankets to be tested before first use and every 12 months thereafter. It requires rubber insulating gloves to be tested before first use and every 6 months thereafter. No distinction is made between natural and synthetic rubber.

As noted by the commenters, removing § 1910.268(f) in its entirety would effectively increase the amount of testing performed by telecommunications employers on rubber gloves.[1] This would consequently increase the industry's testing costs.

Employees performing telecommunications work wear rubber insulating gloves to protect them against accidental contact with energized parts. These employees use specific work practices required in § 1910.268, including maintaining minimum approach distances from energized parts, to protect them against electric shock hazards. The gloves provide secondary protection in case the work practices are not followed. This contrasts with the way rubber insulating gloves are used for other types of electrical work, such as electric power transmission and distribution work. In this type of work, employees wearing rubber insulating gloves handle energized conductors directly, and the gloves provide the primary form of protection for the worker.

All the commenters on this issue maintained that they had experienced no injuries as a result of the failure of rubber insulating gloves. For these reasons, OSHA has decided not to remove § 1910.268(f)(5).

[1] The testing intervals for synthetic rubber insulating blankets would also be shorter. However, the commenters did not object on that basis. Additionally, the national consensus standard for this equipment, American Society for Testing and Materials F479 Specification for In-Service Care of Insulating Blankets, which formed the basis for the test intervals in § 1910.137, provides a maximum interval of 12 months between tests, regardless of whether the rubber is natural or synthetic.

OSHA is also retaining paragraph (f)(6) of Section 1910.268 because of its connection with paragraph (f)(5). This paragraph requires that rubber gloves and blankets be marked to indicate compliance with the test schedule required under paragraph (f)(5) and that rubber gloves be destroyed if they fail the tests or if they are otherwise found to be defective.

OSHA continues to believe that the remaining provisions contained in existing § 1910.268(f) unnecessarily duplicate requirements in § 1910.137. None of the interested persons who commented on § 1910.268(f) presented reasons why any paragraphs other than § 1910.268 (f)(5) and (f)(6) should be retained. Therefore, the Agency is revising paragraph (f)(1), removing paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and redesignating paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3) of § 1910.268. Paragraph (f)(1) as revised explains that 1910.137 applies to telecommunications except for Table I–6.

Amendments to Part 1926 That Received No Comments or Positive Comments Only

A. Incorporation by reference (§ 1926.31)

This final rule amends § 1926.31 to clarify that only mandatory provisions of standards incorporated by reference are adopted as OSHA standards.

As stated in the proposal, based on its ongoing review of compliance and enforcement activities and recommendations from its Advisory Committee on Construction Safety and Health (ACCSH), OSHA is aware that difficulties have arisen regarding certain provisions of part 1926 that were adopted under section 6(a) of the Act. Many of the standards adopted under Section 6(a) were American National Standards Institute (ANSI) or National Fire Protection Association (NFPA) consensus standards which were incorporated by reference and contained advisory provisions (e.g., use the word "should" rather than "shall").

In the past, OSHA maintained that all standards, regardless of whether the term "should" or "shall" is used, created mandatory compliance responsibilities. Employers have consistently challenged this position on the basis that Section 6(a) of the Act only gave OSHA the authority to adopt ANSI standards verbatim. In ANSI standards, using the term "should" means that the provision is only advisory. Therefore, employers maintained that ANSI "should" standards could only be advisory when adopted or incorporated by reference by OSHA under Section 6(a).

OSHA's ability to enforce "should" standards has been denied by the Occupational Safety and Health Review Commission and by most of the appellate courts in which contested cases have been heard. For example, in *Marshall* v. *Pittsburgh-Des Moines Steel Company*, 584 F.2d 638, 643–44 (1978), the Third Circuit Court of Appeals determined that "should" standards were merely advisory because the consensus organization had reached "substantial agreement" that these provisions be viewed only as *recommendations*, and not as mandatory standards.

The courts have also ruled that failure to adopt an ANSI provision verbatim renders the resulting OSHA Section 6(a) provision invalid and unenforceable [see *Usery* v. *Kennecott Copper Corporation*, 577 F.2d 1113, 1117 (10th Cir. 1977)].

Although the "should" standards have not been enforceable in and of themselves, OSHA has used them to help demonstrate the existence of "recognized hazards" under the general duty clause [Section 5(a)(1)] of the Act. However, the Review Commission has ruled that, as long as the "should" provision remains in effect as an OSHA standard, OSHA may not issue a general duty clause citation for the hazard it addresses (see A. Prokosch & Sons Sheet Metal and Mid Hudson Automatic Sprinkler, 1980 CCH OSH ¶ 24,840).

In order to address these issues, the Agency is revising § 1926.31(a) to clarify that only the mandatory requirements of incorporated consensus standards are adopted as OSHA standards. The removal of the advisory provisions will also simplify and streamline the existing Part 1926 standards.

In 1984, OSHA conducted a rulemaking for 29 CFR part 1910 (General Industry Standards) that was similar to the one described above for the construction standards in part 1926. At that time, paragraph (a)(1) of § 1910.6 was revised to clarify that "only the mandatory provisions * * * of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act" (49 FR 5318).

In the present rule making, OSHA proposed to revise paragraph (a) of § 1926.31 to read the same as § 1910.6 by adding a sentence to existing § 1926.31(a) to read as follows: "Only the mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted as standards under the

Occupational Safety and Health Act." No comments were received on the proposed revision, and this paragraph (§ 1926.31(a)) is therefore being revised as proposed.

B. Flammable and combustible liquids (§ 1926.152)

Paragraph (a)(1) of § 1926.152 requires employers to use a safety can, which is defined as a container with a capacity of 5 gallons or less that is equipped with a spring-closing lid and spout cover, a means to relieve internal pressure, and a flash arresting screen, for the storage, use, and handling of flammable and combustible liquids. As stated in the proposal, while approved metal safety cans are still acceptable, various nationally recognized testing laboratories have also approved the use of plastic safety cans for flammable liquids. The Agency has determined that Department of Transportation (DOT) approved containers of 5 gallon capacity or less that are not equipped with a spring closing lid, spout cover, and flash-arresting screen are also acceptable for the storage, use, and handling of flammable and combustible liquids because they sufficiently reduce the risk from fire, spills and explosions.

Furthermore, the Agency has determined that it is sufficient to require the use of the original container only for quantities of flammable liquids that are one gallon or less because that will adequately protect against the risk of fire and explosion. Where the original container is available, the employer may choose to use it instead of an approved safety can for quantities of one gallon or less. If the original container is not available, an approved safety can must be used.

One comment was received on the proposed revision to § 1926.152(a)(1), (Ex. 4–2). This commenter supported the proposed revision as written. Based on the reasons stated above, OSHA is revising § 1926.152(a)(1) as proposed.

C. Initiation of explosive charges—Electric blasting (§ 1926.906)

OSHA proposed revising paragraph (q) of § 1926.906 to allow the use of other types of specifically designed instruments, in addition to those equipped with silver chloride cells, when testing circuits to charged holes.

The general industry standard, § 1910.109(e)(4)(vii), Explosives and Blasting Agents, states that "Blasters, when testing circuits to charged holes, shall use only blasting galvanometers designed for this purpose." The standard does not specifically require using silver chloride cells. In addition, the Mine Safety and Health Administration (MSHA) currently allows for the use of a blasting galvanometer or other instruments that are specifically designed for testing blasting circuits (30 CFR CH.1 § 56.6407). The revision of § 1926.906(q) will correct the inconsistency with the above mentioned standards.

One comment was received on the proposed revision to § 1926.906(q). This commenter (Ex. 4–10) substantially supported the proposed revision to § 1926.906(q). OSHA is therefore revising § 1926.906(q) as proposed.

Amendments to Part 1926 That Received Varied Comments

D. Medical services and first aid (§ 1926.50)

OSHA proposed revising paragraphs (d)(1) and (d)(2) of § 1926.50 to eliminate the requirement for physician approval of first aid supplies. As stated in the proposal, since first aid kits that are commercially available will meet the needs of most employers, it is unnecessary for most employers to have a physician approve the contents of a first aid kit. However, if the workplace has unusual hazards or special situations which would require modification of a commercial first aid kit, or the development of a specialized kit, the Agency expects that the employer will provide these special items. If the employer is unsure whether a commercially available kit is sufficient, professional advice should be obtained. Such advice, however, would not be required as a matter of course. The Agency believes that this change will allow the employer more flexibility in meeting the first aid requirements without affecting employee safety.

No comments were received on this proposed revision; however, nine comments were received addressing the proposal to revise the identical provision in the General Industry standard § 1910.151(b) (Exs. 4–5, 4–6, 4–18, 4–19, 4–20, 4–23, 4–26, 4–28 and 4–30). Those comments are discussed in the General Industry section above. In addition, as stated in the § 1910.151(b) discussion, OSHA is providing a reference for basic first aid supplies and their use in a new non-mandatory Appendix A to § 1910.151. In order to be consistent with the General Industry standards, and for the reasons stated in the discussion of the General Industry standard, this final rule revises § 1926.50 in the same manner as § 1910.151 with the addition of a non-mandatory Appendix A to § 1926.50.

Appendix A for § 1910.151 includes a statement that employers are to follow the provisions of § 1910.1030(d)(3) of the OSHA standard on occupational exposure to blood borne pathogens (56 FR 64175). As that standard is not applicable to employers in the construction industry, this statement is not repeated in Appendix A to § 1926.50. Additional First aid supplies (other than those referenced in Appendix A) may be necessary to address specific work hazards and prevalent injuries.

OSHA is revising Paragraph (f) of § 1926.50 to limit the requirement for posting the telephone numbers of physicians, hospitals or ambulances to those areas where the 911 emergency number is not available. OSHA believes that requiring all employers to post the numbers where the 911 emergency number is available could lead to confusion and might slow emergency response, and would place an unnecessary burden on the employers.

IV. Summary of the Final Economic Analysis Introduction

Based on the record of this rulemaking, this final rule eliminates a number of provisions in OSHA standards that are duplicative, unnecessary, or potentially in conflict with the rules of other Federal agencies. All of the changes OSHA is making are expected to benefit the regulated community by making the rules clearer, simple and easier to understand and apply. Quantifiable economic benefits can be estimated only for four of these changes, however.[2] By eliminating these "problem provisions" from its standards, this Standards Improvement rule will lessen the burden employers currently experience, and will, in turn, generate cost savings. No commenters disputed these findings, reported by OSHA in the Preliminary Economic Analysis that accompanied the proposed rule. The following paragraphs discuss the Final Economic Analysis in detail.

First Aid Kits

The final rule eliminates the requirements in § 1910.151(b) and § 1926.50(d)(1) that employers must have certain first aid supplies approved by a consulting physician before they are used. This requirement applied only in cases where no infirmary, clinic, or hospital was in close proximity to the worksite and the employer intended to treat first aid injuries at the site.

[2] For example, the Duke Power Company (Ex. 4–2) applauded OSHA's elimination of a provision (§ 1926.152) on storage cans for flammable and combustible liquids that conflicts with a DOT requirement on the same topic. Unfortunately, the Agency does not have sufficient data to estimate the apparent cost savings from this change.

Although the number of establishments meeting these criteria is not known, the Agency believes that its estimate of 10 percent of establishments is reasonable, and no commenter disagreed with this estimate. The provisions being eliminated did not specify how the physician was to provide this consultation, but OSHA assumed that, at most, five minutes of a physician's time, valued at $100/hr,[3] would be required to approve the contents of the first aid kit at these establishments. For purposes of this analysis, OSHA also assumed that the physician provided five minutes of his or her time at an hourly wage rate, i.e., at a cost of $8.33.

The analysis further assumed that the physician would need to approve the first aid supplies once every 10 years, after which time the development of new kinds of medical supplies and the possibility of new hazards at the worksite would make a new consultation necessary. The cost of five minutes of a physician's time annualized over 10 years is $1.19 per year.

The Agency estimates that approximately 6.4 million employers fall under OSHA jurisdiction and will be affected by this change [*County Business Patterns*, 1993]. Of these, 10% would be affected by the change; the annualized cost for employers to comply with these provisions in the past was approximately $761,600 ((6.4 million × 10%) × $1.19). By eliminating the requirement for a physician's approval of an establishment's first aid kit, OSHA will eliminate this burden.

Coke Oven Emissions

The final rule will eliminate the requirement at § 1910.1029(j) for employers to conduct semiannual sputum cytology tests and will reduce the frequency at which they must supply chest x-rays from twice a year to once a year for workers who are 45 years of age or older or who have five or more years of employment in areas defined by the standard as regulated areas. Regulated areas encompass the coke oven battery, including topside and its machinery, pushside and its machinery, cokeside and its machinery, and battery ends; the wharf; the screening station; and the beehive oven and its machinery.

The Inflationary Impact Statement developed by OSHA in support of the Coke Oven standard (§ 1910.1029), [*Inflationary Impact Statement: Coke Oven Emissions, 1976*] estimated total employment in coke ovens at 29,600 workers. The same analysis estimated that 75 percent of these employees worked in regulated areas. The *1992 Census of Manufacturers* (Industry Series) indicated total employment for SIC 33121 (Coke Oven and Blast Furnace Products) at 8,600 and total production person-hours at 15.7 million. A separate Census Industry Series count specific to coke ovens indicates a total of 11.2 million production person-hours, which constitutes approximately 71 percent of SIC 3312's productive person-hours, suggesting a current total number of 6,135 coke oven workers.

Assuming that the proportion of coke oven employees working in regulated areas has remained constant, approximately 4,600 coke oven employees currently work in regulated areas. Approximately 30 percent of the workforce in 1994 was over 45 years of age [BLS data presented in *Statistical Abstract of the United States, 1995*, p. 402]. Turnover rates in SIC 33, which includes coke ovens, are estimated at 5 percent annually [*National Occupational Exposure Survey: Analysis of Management Interview Responses, 1988*]. Thus, approximately 77 percent of the current regulated area workforce will have been exposed to coke oven emissions for five years or more.[4] Adjusting this percentage to reflect the assumption that 30 percent of employees are over 45 years of age yields an estimate of 84 percent[5] of coke oven employees (3,864 workers) potentially affected by the revocation or revision of these requirements.

Data for 1994 obtained from the Physician Payment Review Commission [E-mail from Christopher Hogan, PPRC, to Tom Mockler, OSHA] indicate that the average x-ray charge nationally is $54.40 and the average lab charge for cytological examination of bodily fluids is $51.90. (OSHA assumes that the additional average charge of $19.00 for sputum specimen collection is included in the fee for the medical exam required by the standard.) Therefore the savings associated with the elimination of one chest x-ray and two sputum cytologies annually is $158.20 per worker ($54.40 for one x-ray, and $103.80 for two sputum cytology tests). For the group of 3,864 employees, the annual savings is thus $611,285.

The American Iron and Steel Institute (AISI) [Ex. 4–22] agreed with the Preliminary Economic Analysis's finding that this change would save employers money. AISI's analysis, which assumed higher wage rates and a larger affected population than OSHA's analysis, estimated a cost savings of $925,000 per year. Thus, the Agency's cost savings estimate for this regulatory action may be understated.

Inorganic Arsenic

As in the case of the coke oven standard, OSHA is eliminating the requirement for sputum cytology and reducing the frequency of chest x-ray exams from semi-annual to annual for workers exposed above the inorganic arsenic action level of 5μg/m³ (29 CFR 1910.1018). Paragraph (n) of § 1910.1018 formerly required employees exposed above the action level for 30 days per year to receive these medical surveillance elements semi-annually if they were 45 years of age or older or had had more than 10 years of exposure above the action level.

The **Federal Register** notice for the inorganic arsenic rulemaking [May 5, 1978, p. 19585] indicated that, of 660,000 workers exposed to inorganic arsenic, 7,400 were exposed above an 8-hour TWA 4μg/m³, i.e., close to or above the action level. Although arsenic uses and related exposures have shifted over time, the level of inorganic arsenic use in the U.S. appears to be approximately the same as it was at the time of the original rulemaking.[6] Therefore, for the purposes of this analysis, the Agency assumes that the size of the exposed population is unchanged.

At the time of the original rulemaking, the Inflationary Impact Statement [*Inflationary Impact Statement: Inorganic Arsenic*, 1976] estimated that 50% of employees exposed above the action level would need the semi-annual x-ray exams, based on OSHA's analysis of age, job tenure and turnover. Using the same assumptions, the Agency estimates that approximately 3,700 workers will be affected by the final rule's revision to this provision. This change will eliminate the need for x-ray and sputum cytology testing valued at $158.20 (see the explanation above for coke ovens for cost details) for 3,700 employees, for an annual cost savings of $584,340.

Pulp and Paper

OSHA's existing pulp and paper standard, § 1910.261, contains paragraph (b)(5), "vessel entering," which states:

[3] Opportunity cost measured as the market price for occupational physical exams, i.e., at the rate of about $100 an hour.

[4] $(1-0.05)^5 = 0.77$ This calculation assumes an equal probability of turnover in each year thereafter.

[5] $((0.77) \times (1-0.30)) + (0.30) = 0.84$ All other things equal, at least 30 percent of those with 5 or more years of exposure would be over 45.

[6] Based on the estimated level of raw arsenic trioxide consumed in the U.S. [*Arsenic: Industrial, Biomedical, Environmental Perspectives*, 1983, p. 7; Bureau of Mines, Mineral Commodity Summary, 1995].

Lifelines and safety harness shall be worn by anyone entering closed vessels, tanks, chip bins, and similar equipment, and a person shall be stationed outside in a position to handle the line and to summon assistance in the case of emergency.

Paragraph (b)(5) also prescribes other safety precautions for similar confined spaces in pulp and paper mills.

OSHA is eliminating these specific separate requirements for confined space entry in pulp and paper mills and instead is cross-referencing § 1910.146, OSHA's generic permit-required confined space standard. In other words, employers in the pulp and paper industry will no longer have to comply with § 1910.261(b)(5) but will instead be required to comply with § 1910.146. § 1910.146 requires employers to assess the hazards associated with their confined spaces and take appropriate safety precautions to deal with those hazards. Although § 1910.146 may require employers under certain circumstances to complete additional checklists, conduct training, and plan for rescue, depending on the hazard(s) present, pulp and paper mill employers will in some cases no longer need to require employees to wear lifelines or provide for outside "attendants",[7] as was required by § 1910.261.

The costs of complying with § 1910.146 in the pulp and paper industry were included in OSHA's supporting Regulatory Impact Analysis (*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Spaces Standard*, December 1992). They were estimated to be approximately $4 million. No economic or technological feasibility problems were identified.

By deleting the more rigid confined space requirements of the pulp and paper industry-specific standard and requiring employers to comply with the more performance-oriented requirement for attendants and lifelines of the permit-required confined spaces standard, OSHA is simultaneously relieving a burden and enhancing safety. Based on the underlying analysis used by OSHA in producing the RIA for § 1910.146, a comparison of the costs associated with the requirement that an attendant be present (§ 1910.261 (b)(5)) with the more flexible requirements in § 1910.146 indicates a savings to employers of approximately 450,000 person-hours annually. Given the hourly compensation rate of $17 used in the RIA, this represents an annual savings of $7.7 million.

In summary, by revoking or revising these four unnecessary or duplicative requirements, the Agency is reducing annual employer burdens related to first aid kits by $761,000, to medical surveillance for coke oven emission workers by $611,285 and inorganic arsenic workers $584,340, and to confined space entry in pulp and paper mills by $7.7 million, for a total annualized employer savings of $9,656,625.

Technological Feasibility

OSHA could not identify any provision of the final rule that raised technological feasibility problems for employers. OSHA therefore concludes that technological feasibility is not an issue for the changes made to these standards in this regulatory action.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended, requires that the Agency examine its regulatory actions to determine if they have a significant economic impact on a substantial number of small entities. As stated at the time of the proposal, and confirmed by this final economic analysis and comments to the record, these modifications to existing regulations are expected to reduce the regulatory burden on all affected employers, large and small. No commenters disputed this conclusion. For that reason, the Agency hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Assessment

The final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA procedures (29 CFR part 11). As a result of this review, OSHA has concluded that the rule will have no significant environmental impact.

VII. International Trade

This revision and revocation of OSHA standards is not likely to have a significant effect on international trade, since the changes involve the revocation of obsolete provisions, consolidation of repetitious provisions, and clarification of confusing language.

VIII. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final "Standards Improvement For General Industry and Construction Standards" standard. OMB has approved the collections of information contained in the Inorganic Arsenic standard and has assigned the OMB Control Number of 1218–0104 to these collections. OMB has also approved the collections of information contained in the Coke Oven Emissions standard and has assigned the OMB Control Number of 1218–0128 to them. Both approvals expire on 3/31/2000. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) the collection of information displays a currently valid OMB control number; and (2) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

IX. Federalism

This revision and revocation of OSHA standards has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy actions, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The revision and revocation of standards is meant to reduce the volume and complexity of OSHA standards, and

[7] For example, § 1910.146(c)(5) states that, if an employer can certify that ventilation alone can reliably control atmospheric hazards in a space, and that is the only hazard posed by the space, the employer is exempt from many requirements of the standard, including the need for an outside attendant. Similarly, in § 1910.146(k)(3), employers are expressly exempt from using a lifeline if such usage is either valueless or counterproductive from a safety standpoint.

to improve compliance by employers, without diminishing worker safety and health. Those States which have elected to participate under Section 18 of the OSH Act are not preempted by the revocation and revision of these standards and will be able to address any special conditions within the framework of the Federal Act while ensuring that the State standards are at least as effective as the Federal standard.

X. State Plan Standards

The States with their own approved occupational safety and health plans must have at least as effective standards in place within 6 months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

XI. Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects

29 CFR Part 1910

Business and industry, Coke oven emission, Explosives, Fire prevention, Hazardous substances, Inorganic arsenic, Occupatioal safety and health.

29 CFR Part 1926

Construction industry, Electric power, First-aid, Fire prevention

Signed at Washington, D.C. this 11th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, pursuant to sections 4, 6, 6(b) (7) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and Secretary of Labor's Order No. 6–96 (62 FR 111), 29 CFR Parts 1910 and 1926 are amended as set forth below.

PART 1910—[AMENDED]

Subpart H—Hazardous Materials

1. The authority citation for subpart H is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, and 29 CFR part 1911.

1a. Remove the phrase, "from inhabited buildings, passenger railways, and public highways and" from paragraph (c)(1)(vi) of § 1910.109.

2. Remove the words, "manufacture and" from the first sentence in footnote number 5, of Table H–21, of § 1910.109.

3. Revise paragraphs (d)(1)(iv) and (e)(2)(i) of § 1910.109 to read as follows:

§ 1910.109 Explosives and blasting agents.

* * * * *

(d) * * *

(1) * * *

(iv) Blasting caps or electric blasting caps shall not be transported over the highways on the same vehicles with other explosives, unless packaged, segregated, and transported in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

* * * * *

(e) * * *

(2) * * *

(i) Empty containers and paper and fiber packing materials which have previously contained explosive materials shall be disposed of in a safe manner, or reused in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

§ 1910.110 [Amended]

1. Remove paragraphs (b)(15)(vi) through (b)(15)(viii) of § 1910.110, and redesignate paragraph (b)(15)(ix) as (b)(15)(vi).

2. Remove paragraphs (c)(2)(ii) through (c)(2)(iv) of § 1910.110 and redesignate paragraph (c)(2)(i) as (c)(2).

3. Remove and reserve paragraph (e)(10) of § 1910.110.

4. Remove and reserve paragraph (g) of § 1910.110.

§ 1910.111 [Amended]

5. Remove and reserve paragraphs (f)(7) and (f)(8) of § 1910.111.

Subpart J—General Environmental Controls

1. The authority citation for subpart J is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, 29 CFR Part 1911.

§ 1910.141 [Amended]

2. Remove paragraph (a)(2)(i) of § 1910.141 and all paragraph designations for the definitions within paragraph (a)(2) of § 1910.141.

§ 1910.142 [Amended]

3. Remove paragraph (a)(4) of § 1910.142.

Subpart K—Medical and First Aid

1. The authority citation for subpart K is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, 29 CFR part 1911.

2. Revise the final sentence in paragraph (b) of § 1910.151 to read as follows:

§ 1910.151 Medical services and first aid.

* * * * *

(b) * * * Adequate first aid supplies shall be readily available.

* * * * *

3. In § 1910.151, add Appendix A to read as follows:

Appendix A to § 1910.151—First aid kits (Non-Mandatory)

First aid supplies are required to be readily available under paragraph § 1910.151(b). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1–1978 "Minimum Requirements for Industrial Unit-Type First-aid Kits." The contents of the kit listed in the ANSI standard should be adequate for small worksites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 200 log, OSHA 101's or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

If it is reasonably anticipated that employees will be exposed to blood or other potentially infectious materials while using first aid supplies, employers are required to provide appropriate personal protective equipment (PPE) in compliance with the provisions of the Occupational Exposure to Blood borne Pathogens standard,

§ 1910.1030(d)(3) (56 FR 64175). This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.

Subpart L—Fire Protection

1. The authority citation for subpart L is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111) as applicable; 29 CFR part 1911.

§ 1910.156 [Amended]

2. Remove paragraph (f)(2)(iii) of § 1910.156.

Subpart N—Materials Handling and Storage

1. The authority citation for subpart N is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

§ 1910.183 [Amended]

2. Remove and reserve paragraph (a) of § 1910.183.

Subpart R—Special Industries

1. The authority citation for subpart R is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

§ 1910.261 [Amended]

2. Remove the following paragraphs in § 1910.261: (a)(3) (ii), (iv) through (vi), (ix), (xi) through (xiii), (xv), (xvii) through (xix), (xx), (xxii), (xxiv) through (xxvii).

3. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (a)(3)(iii) as paragraph (a)(3)(ii),

b. paragraph (a)(3)(vii) as paragraph (a)(3)(iii),

c. paragraph (a)(3)(viii) as paragraph (a)(3)(iv),

d. paragraph (a)(3)(x) as paragraph (a)(3)(v),

e. paragraph (a)(3)(xiv) as paragraph (a)(3)(vi),

f. paragraph (a)(3)(xvi) as paragraph (a)(3)(vii),

g. paragraph (a)(3)(xxi) as paragraph (a)(3)(viii),

h. paragraph (a)(3)(xxiii) as paragraph (a)(3)(ix).

4. Remove paragraphs (b)(1) through (b)(3), (b)(5), and (b)(6) of § 1910.261.

5. Redesignate paragraph (b)(4) as paragraph (b)(1) and paragraph (b)(7) as paragraph (b)(2) of § 1910.261.

6. Remove the following paragraphs in § 1910.261: (c) (2)(vi), (2)(vii), (6)(ii), and (7)(ii).

7. Remove and reserve the following paragraphs of § 1910.261: (c) (3)(i), (8)(i), and (11).

8. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (c)(2)(viii) as paragraph (c)(2)(vi),

b. paragraph (c)(6)(i) as paragraph (c)(6),

c. paragraph (c)(7)(i) as paragraph (c)(7),

d. paragraph (d)(1)(i) as paragraph (d)(1).

9. Remove paragraph (d)(1)(ii) of § 1910.261.

10. Remove and reserve paragraphs (e)(3), (e)(7), and (e)(9) of § 1910.261.

11. Remove paragraphs (g)(1)(iv) and (g)(2)(i) of § 1910.261.

12. Remove paragraphs (g)(15)(iv) and (g)(15)(vi) of § 1910.261.

13. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (g)(1)(v) as paragraph (g)(1)(iv),

b. paragraph (g)(2)(ii) as paragraph (g)(2)(i),

c. paragraph (g)(2)(iii) as paragraph (g)(2)(ii),

d. paragraph (g)(15)(v) as paragraph (g)(15)(iv).

14. Remove paragraph (h)(2)(iii) of § 1910.261, and redesignate (h)(2)(iv) as (h)(2)(iii).

15. Remove paragraphs (j)(1)(iv), (j)(4)(ii), (j)(5)(iv) and (j)(6)(ii) of § 1910.261.

16. Remove and reserve paragraph (j)(3) of § 1910.261.

17. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (j)(4)(iii) through paragraph (j)(4)(vi) as paragraph (j)(4)(ii) through paragraph (j)(4)(v),

b. paragraph (j)(6)(iii) as paragraph (j)(6)(ii).

18. Remove paragraph (k)(2)(i) of § 1910.261, and redesignate paragraphs (k)(2)(ii) through (k)(2)(vi) as paragraphs (k)(2)(i) through (k)(2)(v), respectively.

19. Remove and reserve paragraphs (k)(4) and (k)(16) of § 1910.261.

20. Remove and reserve paragraphs (m)(2) and (m)(4) of § 1910.261.

21. Remove paragraphs (m)(5)(i) and (m)(5)(ii) of § 1910.261.

22. Redesignate paragraph (m)(5)(iii) of § 1910.261 as paragraph (m)(5), and add a heading to paragraph (m)(5) to read "Unloading Cars."

§ 1910.262 [Amended]

23. Remove and reserve paragraphs (c)(3) and (c)(4) of § 1910.262.

24. Remove and reserve paragraph (gg) of § 1910.262.

25. Remove paragraphs (ll)(1), (qq), and (rr) of § 1910.262.

26. Redesignate paragraph (ll)(2) of § 1910.262 as paragraph (ll).

§ 1910.265 [Amended]

27. Remove paragraph (a)(2) of § 1910.265.

28. Redesignate paragraph (a)(1) of § 1910.265 as paragraph (a).

29. Remove and reserve paragraphs (c)(3)(i), (c)(10), (c)(14), and (c)(16) of § 1910.265.

30. Remove and reserve paragraph (c)(17) of § 1910.265.

31–32. Remove and reserve paragraph (c)(22) of § 1910.265.

33. Remove paragraph (c)(24)(iv)(*a*) of § 1910.265 and redesignate paragraph (c)(24)(iv)(*b*) as paragraph (*c*)(24)(iv).

34. Remove paragraph (c)(24)(iv)(c) of § 1910.265.

35. Remove and reserve paragraphs (c)(26)(i), (c)(30)(vi), (c)(30)(x), and (e)(3)(ii)(*d*) of § 1910.265.

36. Remove paragraphs (f)(9), (g), (h), and (i) of § 1910.265.

§ 1910.267 [Removed and Reserved]

37. Remove and reserve § 1910.267.

§ 1910.268 [Amended]

38. Revise paragraph (f)(1), remove paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and redesignate paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3) as follows:

§ 1910.268 Telecommunications.

* * * * *

(f) *Rubber insulating equipment.* (1) Rubber insulating equipment designed for the voltage levels to be encountered shall be provided and the employer shall ensure that they are used by employees as required by this section. The requirements of § 1910.137, Electrical Protective Equipment, shall be followed except for Table I–6.

* * * * *

Subpart Z—Toxic and Hazardous Substances

1. The authority citation for subpart Z is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

§ 1910.1017 [Amended]

2. In § 1910.1017, remove paragraph (g)(5).

3. Redesignate paragraphs (g)(6) and (g)(7) of § 1910.1017 as paragraphs (g)(5) and (g)(6), respectively.

4. In § 1910.1018, remove paragraph (n)(2)(ii)(C); redesignate paragraph (n)(2)(ii)(D) as (n)(2)(ii)(C); add the word "and" after paragraph (n)(2)(ii)(B); and revise the reference in paragraph (n)(3)(i) that reads "(n)(2)(ii)(A) (B) and (D)" to read "(n)(2)(ii)"; and revise paragraph (n)(3)(ii) to read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(n) * * * *

(3) * * * *

(ii) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii)(B) and (C) of this section at least semiannually, and the x-ray requirement specified in paragraph (n)(2)(ii)(A) of this section at least annually, for other covered employees.

* * * * *

§ 1910.1018 [Amended]

5. In § 1910.1018, remove paragraphs (q)(2)(iii)(F), (q)(2)(iii)(G), and (q)(2)(iii)(H); and insert the word "and" after paragraph (q)(2)(iii)(D).

6. In Appendix A to § 1910.1018, revise paragraph VI to read as follows:

Appendix A to § 1910.1018—Inorganic Arsenic Substance Information Sheet

* * * * *

VI. MEDICAL EXAMINATIONS

If your exposure to arsenic is over the Action Level (5 mg/m3)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest x-ray; skin examination and a nasal examination. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions.

Appendix C—[Amended]

* * * * *

7. In Appendix C to § 1910.1018. Section I, General, remove paragraph (4) which reads "(4) A Sputum Cytology examination;" redesignate paragraph (5) as paragraph (4); and insert the word "and" after paragraph (3).

8. In Appendix C to § 1910.1018, remove the entire section entitled "III. Sputum Cytology".

9. In § 1910.1029, remove paragraph (j)(2)(vii) and redesignate paragraph (j)(2)(viii) as paragraph (j)(2)(vii) and insert the word "and" after paragraph (j)(2)(vi).

10. In paragraph (j)(3)(ii) of § 1910.1029, the reference "(j)(2)(i)–(viii)" is revised to read "(j)(2)(i) and (j)(2)(iii) through (vii)."

11. In paragraph (j)(3)(iii) of § 1910.1029, the reference "(j)(2)(i)–(viii)" is revised to read "(j)(2)(i) and (j)(2)(iii) through (vii)."

12. In § 1910.1029, redesignate paragraph (j)(3)(iv) as paragraph (j)(3)(v), and add a new paragraph (j)(3)(iv) to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(j) * * *

(3) * * *

(iv) The employer shall provide the x-ray specified in paragraph (j)(2)(ii) of this section at least annually for employees covered under paragraph (j)(3) of this section.

13. In Appendix A to § 1910.1029, paragraph VI is revised to read as follows:

Appendix A to § 1910.1029—Coke Oven Emissions Substance Information Sheet

* * * * *

VI. MEDICAL EXAMINATIONS

If you work in a regulated area at least 30 days per year, your employer is required to provide you with a medical examination every year. The medical examination must include a medical history, a chest x-ray, pulmonary function test, weight comparison, skin examination, a urinalysis, and a urine cytology exam for early detection of urinary cancer. The urine cytology exam is only included in the initial exam until you are either 45 years or older, or have 5 or more years employment in the regulated areas when the medical exams including this test, but excepting the x-ray exam, are to be given every six months; under these conditions, you are to be given an x-ray exam at least once a year. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion.

14. In Appendix B to § 1910.1029, Section II, paragraph A is revised to read as follows:

Appendix B to § 1910.1029—Industrial Hygiene and Medical Surveillance Guidelines

* * * * * *

II. Medical Surveillance Guidelines

A. *General.* The minimum requirements for the medical examination for coke oven workers are given in paragraph (j) of the standard. The initial examination is to be provided to all coke oven workers who work at least 30 days in the regulated area. The examination includes a 14" × 17" posterior-anterior chest x-ray reading and a ILO/UC rating to assure some standardization of x-ray reading, pulmonary function tests (FVC and FEV 1.0), weight, urinalysis, skin examination, and a urinary cytologic examination. These tests are needed to serve as the baseline for comparing the employee's future test results. Periodic exams include all the elements of the initial exams, except that the urine cytologic test is to be performed only on those employees who are 45 years or older or who have worked for 5 or more years in the regulated area; periodic exams, with the exception of x-rays, are to be performed semiannually for this group instead of annually; for this group, x-rays will continue to be given at least annually. The examination contents are minimum requirements; additional tests such as lateral and oblique x-rays or additional pulmonary function tests may be performed if deemed necessary.

15. In Appendix B to § 1910.1029, Section II, the paragraphs entitled "C. Sputum Cytology," are removed.

PART 1926—[AMENDED]

Subpart C—General Safety and Health Standards

1. The authority citation for subpart C is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraph (a) of § 1926.31 to read as follows:

§ 1926.31 Incorporation by reference.

(a) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same

force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act. The locations where these standards may be examined are as follows:

(1) Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, Frances Perkins Building, Washington, DC 20210.

(2) The Regional and Field Offices of the Occupational Safety and Health Administration, which are listed in the U.S. Government Manual.

* * * * *

Subpart D—Occupational Health and Environmental Controls

1. The authority citation for subpart D is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraphs (d)(1), (d)(2) and (f) of § 1926.50 to read as follows:

§ 1926.50 Medical services and first aid.

* * * * *

(d)(1) First aid supplies shall be easily accessible when required.

(2) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

* * * * *

(f) In areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.

* * * * *

4. In § 1926.50, add Appendix A to read as follows:

Appendix A to § 1926.50—First aid Kits (Non-Mandatory)

First aid supplies are required to be easily accessible under paragraph § 1926.50(d)(1). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1–1978 "Minimum Requirements for Industrial Unit-Type First-aid Kits". The contents of the kit listed in the ANSI standard should be adequate for small work sites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.

In a similar fashion, employers who have unique or changing first-aid needs in their workplace, may need to enhance their first-aid kits. The employer can use the OSHA 200 log, OSHA 101's or other reports to identify these unique problems. Consultation from the local Fire/Rescue Department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

If it is reasonably anticipated employees will be exposed to blood or other potentially infectious materials while using first-aid supplies, employers should provide personal protective equipment (PPE). Appropriate PPE includes gloves, gowns, face shields, masks and eye protection (see "Occupational Exposure to Blood borne Pathogens", 29 CFR 1910.1030(d)(3)) (56 FR 64175).

Subpart F—Fire Protection and Prevention

1. The authority citation for subpart F is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111) as applicable; and 29 CFR part 1911.

2. In § 1926.152, revise paragraph (a)(1) to read as follows:

§ 1926.152 Flammable and combustible liquids.

(a) * * * (1) Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Approved safety cans or Department of Transportation approved containers shall be used for the handling and use of flammable liquids in quantities of 5 gallons or less, except that this shall not apply to those flammable liquid materials which are highly viscid (extremely hard to pour), which may be used and handled in original shipping containers. For quantities of one gallon or less, the original container may be used, for storage, use and handling of flammable liquids.

Subpart U—Blasting and Use of Explosives

1. The authority citation for subpart U is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraph (q) of § 1926.906 to read as follows:

§ 1926.906 Initiation of explosive charges—electric blasting.

* * * * *

(q) Blasters, when testing circuits to charged holes, shall use only blasting galvanometers or other instruments that are specifically designed for this purpose.

* * * * *

[FR Doc. 98–15936 Filed 6–17–98; 8:45 am]
BILLING CODE 4510–26–P

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federal register

Thursday
June 18, 1998

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Submission for OMB Review; Comment Request; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Food Safety Research, Fiscal Year 1998 Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service (CSREES).

ACTION: Announcement of availability of grant funds and Request for Proposals (RFP) for the Special Research Grants Program, Food Safety Research.

SUMMARY: CSREES announces the availability of grant funds and requests proposals for the Special Research Grants Program, Food Safety Research for fiscal year (FY) 1998. The amount available for support of this program in FY 1998 is approximately $1,869,545.

This RFP sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Food Safety Research Project grant.

DATES: Applications must be received on or before August 3, 1998. Proposals received after August 3, 1998, will not be considered for funding.

ADDRESSES: To obtain a copy of this RFP and application materials for the FY 1998 Special Research Grants Program, Food Safety Research, contact the Proposal Services Unit, Office of Extramural Programs; USDA/CSREES at (202)401–5048. Application materials may also be requested via Internet by sending a mesage with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the RFP and application materials for the FY 1998 Special Research Grants Program, Food Safety Research.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Bertinuson, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220; telephone (202) 401–6825; Internet: abertinuson@reeusda.gov; or Dr. William Wagner, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220; telephone (202) 401–4952; Internet: wwagner@reeusda.gov.

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Part I—General Information

A. Legislative Authority

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). This Program is subject to the administrative provisions found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991) for the Special Research Grants Program which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, the RFP shall take precedence.

In accordance with the statutory authority, grants awarded under the Special Research Grants Program are for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable in addition to the definitions identified in 7 CFR Part 3400.

(1) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(2) *Authorized organizational representative* means the president, director, or the chief executive officer of the applicant organization or the official, designated by the president, director, or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(3) *Grant* means the award by the Secretary of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in this program solicitation.

(4) *Principal Investigator/Project Director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the scientific and technical direction of the project.

(5) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (1) above.

(6) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals must be directly related to ensuring the safety of imported and domestic fruits and vegetables. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Food Safety Research for FY 1998. The purpose of this grant program is to support problem-solving food safety research that addresses National emerging issues in food safety. The first year of this program will focus on research needs under the President's Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables. Proposals are encouraged that address:

(1) developing safe and efficacious techniques to enhance or ensure safety

of fresh and minimally processed imported and domestic fruits and vegetables;

(2) developing means to prevent infection and cross-contamination of fresh and minimally processed imported and domestic fruits and vegetables by microbial pathogens during harvesting, handling, transportation, and distribution;

(3) developing procedures for sampling fresh and minimally processed imported and domestic fruits and vegetables to accurately detect the presence of microbial pathogens.

Encouragement is also given for proposals which address minor fruit and vegetable crops. Proposals should describe how the research will be transferred for implementation. Thus, partnerships are encouraged with potential users of the new practices or technologies.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support research projects that address food safety research that focuses on ensuring the safety of imported and domestic fruits and vegetables. Matching funds are encouraged but not required. The total amount of funds available in FY 1998 for support of this program is approximately $1,869,545. Each proposal submitted in FY 1998 shall request funding for a period not to exceed two years. Funding for additional years will depend upon the availability of funds, progress toward objectives, and program priorities. FY 1998 awardees would need to recompete in future years for additional funding.

Congress, in Section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 1998, Pub. L. 105–86, encourages entities receiving Federal financial assistance to use grant funds to purchase only American-made equipment or products in the case of any equipment or product authorized to be purchased with funds provided under this program.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D. C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Special Research Grants Program, Food Safety Research.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the Special Research Grants Program, Food Safety Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½" x 11") white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially in the upper right-hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the "Project Summary" as a separate attachment.

(2) Cover Page

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES-661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

(b) Program to Which You Are Applying (Block 7). "Special Research Grants Program, Food Safety Research" should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

(c) Program Area and Number (Block 8). The name of the program area, "Food Safety Research," should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

(d) Type of Award Request (Block 13). Check the box adjacent to "New." Leave the section adjacent to "Prior USDA Award No." blank.

(e) Principal Investigator(s)/Project Director(s) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processes. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors

including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

(3) Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the upper right-hand corner, should begin with the first page of the Project Summary.

(4) Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the principal investigator(s)/project director(s), followed by the summary.

(5) Project Narrative

PLEASE NOTE: The Project Narrative shall not exceed 15 pages. This maximum has been established to ensure fair and equitable competition. Reviewers are instructed that they need to read only the first 15 pages of the Project Narrative and to ignore information on additional pages.

(a) Objectives—Clear, concise, complete, and logically arranged statement(s) of specific aims of the proposed effort must be included in all proposals.

(b) Procedures—The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

(i) a description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) techniques to be employed, including their feasibility;

(iii) kinds of results expected;

(iv) means by which data will be analyzed or interpreted;

(v) pitfalls which might be encountered; and

(vi) limitations to proposed procedures.

(c) Justification—This section should include in-depth information on the following, when applicable:

(i) estimates of the magnitude of the food safety problem and its relevance to ongoing National food and agricultural research programs;

(ii) importance of starting the work during the current fiscal year, and

(iii) reasons for having the work performed by the proposing institution.

(d) Cooperation and Institutional Units Involved—Cooperative and multi-State (regional) applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-State proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

(e) Literature Review—A summary of pertinent publications with emphasis of their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(f) Current Work—Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

(g) Equipment and Facilities—All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of the precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(h) Project Timetable—The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

(6) Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

(a) an estimate of the time commitment involved;

(b) vitae of the principal investigator(s)/project director(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings; and

(c) a chronological listing of the most representative publications during the past five (5) years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(7) Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement.

All anticipated subcontractual arrangements should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of

Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

(8) Certifications

Note that by signing the Form CSREES–661 the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

(9) Additions to the Project Narrative

Each project narrative or description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is deemed necessary, appendices may be either attached or submitted as part of the proposal. Material in the appendices must be identified, and if not attached to each proposal must be identified with the title of the project and the name(s) of the PI/PD's as they appear on the Form CSREES–661. Examples of material suitable as appendices include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

(10) Budget

Prepare the budget form (Form CSREES–55) in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. (For example, for a two-year project, the proposal would include three budget forms; one for each of the two years of the project and one cumulative budget for the full two years.) The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to explain and justify their budgets. The following guidelines should be used in developing your proposal budget(s):

(a) Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

(b) Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

(c) Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change. Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, Pub. L. 105–86, encourages entities to use Federal grant funds to purchase only American-made equipment or products.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(d) Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

(e) Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. For both domestic and foreign travel, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip in the budget narrative. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

(f) Publication Costs/Page Charges. Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

(i) Indirect Costs. Section 712 of Pub. L. 105–86 limits indirect costs for this program to 14 percent of total Federal funds provided under each award. Therefore, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal

funds awarded (TFFA). If no rate has been negotiated, a reasonable dollar amount (equivalent to or less than 14 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

(j) Cost-sharing. Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

(11) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, "Current and Pending Support," which is suitable for listing current and pending support. Note that the project being proposed should be included in the pending section of the form.

(12) Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be placed after Form CSREES–661, "Application for Funding," in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

(13) Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

(a) Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

(b) Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, as amended, 3, as amended, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(c) Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

Part IV—Submission of a Proposal

A. What To Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or by August 3, 1998. Proposals may be sent by First Class mail, but applicants are strongly encouraged to send their proposal by certified mail and obtain a receipt to document the mailing. Proposals sent via the U.S. Postal Service must be sent to the following address:

Special Grants Program—Food Safety Research c/o Proposal Services Unit, Office of Extramural Programs
USDA/CSREES, STOP 2245, 1400 Independence Avenue, SW., Washington, DC 20250–2245
Telephone: (202) 401–5048

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure

timely receipt by the USDA and to obtain a receipt to document dispatch of the proposal.

Hand-delivered proposals or those delivered by an overnight express service should be brought to the following address:

Special Grants Program—Food Safety Research, c/o Proposal Services Unit, Office of Extramural Programs.
USDA/CSREES, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel.

The individual peer panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used by CSREES staff to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer panel reviewers, and the proposed principal investigator(s)/project director(s), to the extent permitted by law.

B. Evaluation Criteria

In accordance with the provisions of 7 CFR 3400.5, the evaluation factors below will be used in lieu of those contained in 7 CFR 3400.15 in reviewing applications submitted in response to this request for proposals on National issues for food safety in fruits and vegetables:

(1) Scientific merit of the proposal (represents 50% of the evaluation).

- Conceptual adequacy of the hypothesis or approach as related to the program objectives in reducing microbial contamination of fresh fruits and vegetables;
- Clarity and delineation of proposed project objectives as related to National issues and objectives;
- Adequacy of the description of the proposed work;
- Suitability and feasibility of the methodology for implementation in reducing microbial contamination of fresh fruits and vegetables;
- Probability of success of the project; and
- Novelty, uniqueness, and originality.

(2) Qualifications of the proposed project personnel and adequacy of the facilities (represents 25% of the evaluation).

- Training and demonstrated awareness of previous alternative approaches to relevant objective(s) listed in the Request for Proposals and performance record and/or potential for future accomplishments;
- Time allocated for systematic attainment of objectives;
- Institutional experience and competence in food safety of fruits and vegetables; and
- Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(3) Adoption or transfer of technology strategies (represents 25% of the evaluation).

- Established or documented linkage with industry partner(s); and
- Clear and effective plan for educational outreach and technology transfer to end users in fruit and vegetable industry.

Part VI—Additional Information:

A. Access to Peer Review Information

Copies of summary reviews, not including the identity of the reviewers, will be sent to all applicant PI/PD's automatically, after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the Administrator shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

(3) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD's are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052 (62 FR 45947)—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.4

Done at Washington, D.C., this 11 day of 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–16152 Filed 6–17–98; 8:45 am]

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federal register

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June 18, 1998

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Pest Management Alternatives Program: Addressing Food Quality Protection Act Issues (FY 1998); Grant Funds Availability and Proposal Requests; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 1998; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of availability of grant funds and request for proposals.

SUMMARY: Proposals are invited for competitive grant awards under the Special Research Grants Program titled "Pest Management Alternatives Program: Addressing Food Quality Protection Act Issues for Fiscal Year 1998." This program addresses anticipated changes in pest management on food, feed, livestock, and ornamental commodities resulting from implementation of the Food Quality Protection Act of 1996 (FQPA), Pub. L. No. 104–170.

The goals of this program are to: (1) Develop commodity profiles that summarize production practices, pesticide use/usage data, and available pest management alternatives for pesticides considered a high priority for tolerance reassessment under FQPA; and (2) Develop and demonstrate alternatives and possible mitigation strategies to ensure that producers have reliable methods of managing pests.

DATES: Proposals are due July 20, 1998.

ADDRESSES: Proposals sent by First Class mail must be sent to the following address: Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be sent to the following address: Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Telephone: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Michael Fitzner, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220. Telephone: (202) 401–4939; fax number: (202) 401–6156; e-mail address: mfitzner@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Authority and Eligibility

This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES), United States Department of Agriculture (USDA). The authority is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this authority, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists affiliated with non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

The Pest Management Alternatives Program was established to support the development and implementation of pest management alternatives when regulatory action by the Environmental Protection Agency (EPA) or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. The program was created to meet the policy goals set forth in sections 1439 and 1484 of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101–624. These activities pertain to pesticides identified for possible regulatory action under section 210 of the Food Quality Protection Act of 1996, which amends the Federal Insecticide, Fungicide, and Rodenticide Act. The program has been developed pursuant to the Memorandum of Understanding (MOU) between USDA and EPA signed August 15, 1994, and amended April 18, 1996, which establishes a coordinated framework for these two agencies to support programs that make alternative pest management materials available to agricultural producers when regulatory action by EPA or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. In this MOU, USDA and EPA agreed to cooperate in conducting the research, technology transfer, and registration activities necessary to ensure adequate pest management alternatives are available to meet important agricultural needs for situations in which regulatory action would result in pest management problems. Any proposal meeting the criteria under this request for proposals will be considered for funding provided the eligibility requirements are met.

Available Funding and Eligibility

The amount available for support of this program in fiscal year (FY) 1998 is approximately $1,500,000. It is anticipated that EPA will provide $124,000 in support of Objective 1. Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105–86, prohibits CSREES from paying indirect costs on competitively awarded research grants that exceed 14 percent of total Federal funds provided for each award under this program. In addition, section 716(b) of that Act directs that, in the case of any equipment or product that may be authorized to be purchased with funds under this program, entities receiving such grant funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the processes regarding the awarding of grants, and regulations relating to the post-award administration of such grants. Other Federal statutes and regulations apply to grant proposals considered for review or to grants

awarded under this program. These include, but are not limited to:

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

7 CFR Part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

Program Description

This competitive grants program supports efforts to modify existing pest management approaches or develop new methods that address needs created by the implementation of FQPA. The program also addresses the need for collection of information for regulatory decision making and for prioritization of research and education needs. This information includes pesticide use and usage on commodities (including livestock and ornamentals), potential alternatives for pesticides on EPA's priority list (see Appendix I), integrated pest management programs, pesticide resistance management strategies, and potential mitigation strategies for reducing dietary risk.

In FY 1998, CSREES will provide funding for projects that: (1) Develop pest management profiles summarizing practices for specific commodities or commodity groups (including livestock and ornamentals), and (2) Identify and develop replacement or mitigation technologies for pesticides included on EPA's priority list (Appendix I). Proposals must either develop Commodity and Pest Management Profiles (Objective 1) or develop *both* Commodity and Pest Management Profiles (Objective 1) *and* replacement or mitigation technologies (Objective 2). Applicants are encouraged to collaborate with staff involved in university pesticide impact assessment programs and integrated pest management programs to develop Commodity and Pest Management Profiles. The two objectives are described below.

I. Commodity and Pest Management Profiles

Profiles are needed for commodities that depend heavily on pesticides included on EPA's priority list (see Appendix I and Appendix II). Profiles should document the importance of priority pesticides to pest management on the commodities addressed by the proposal. Profiles should describe the production process and provide data on pesticide use (how, why, what, when and where pesticides are used) and usage (how much is used, e.g., percentage crop treated) patterns, pest management practices used by growers, and pest management practices ready for implementation but not yet widely used. Profiles should also indicate whether pesticides on the priority list (Appendix I) are important to integrated pest management programs or to strategies to manage resistance to other pesticides, and whether there are any potential labeled or unlabeled alternatives (chemical or nonchemical) to replace priority list pesticides on a specific commodity or commodity group. Alternatives can include other pesticides, biological controls, pest resistant varieties, or cultural practices. In addition, practices or procedures that have the potential to mitigate dietary risk from priority list pesticides should be described. Pest management profiles should follow the format presented in Appendix III. The sources for information used in preparing pest management profiles should be provided in the "References" section. Potentially affected growers or commodity groups must be involved in the development of commodity and pest management profiles. *Profiles must be completed within six months after receipt of funding.* Priority will be given to proposals addressing one or more commodities that depend heavily on pesticides included on EPA's priority list (see Appendix I and Appendix II); however, proposals addressing commodities not included in the list will be considered.

II. Replacement or Mitigation Technologies

Funding is available to support projects to develop and demonstrate pest management alternatives or risk mitigation strategies for one or more of the priority pesticides (Appendix I) for which there are few or no effective alternatives on any given commodity. The focus should be on modification of existing approaches or introduction of new methods, especially biologically based methods, that can be rapidly brought to bear on pest management challenges resulting from implementation of FQPA. Durability and practicality of the proposed pest management option(s) or mitigation procedure(s), and compatibility with integrated pest management systems, are critical. Both technological and economic feasibility should be considered. Pest management alternatives or risk mitigation options identified should address various risk concerns including dietary, occupational and non-occupational exposure, ground and surface water, and other ecological risks.

Note: The development of replacements for methyl bromide is being supported by other funding agencies and will not be supported by the Pest Management Alternatives Program.

Proposals will show evidence that producers, commodity groups, and other affected user groups are involved in project design and will be supportive of the project if funded. Public-private partnerships and matching resources from non-Federal sources, including producer or commodity groups, are encouraged. Proposals should show potential for commercialization (including product registration if necessary) of any new technologies that are developed.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR Part 3400, set forth instructions for the preparation of grant proposals. The following requirements deviate from those contained in § 3400.4(c). The following provisions of this solicitation shall apply. Proposals should adhere to the format requirements for the specific objective addressed by the proposal format below. Items three through six should be no more than 12 pages in length, numbered, and single-spaced with text on one side of the page using a 12 point (10 cpi) type font size and one-inch margins.

(1) Application for Funding (Form CSREES–661). All proposals must contain an Application for Funding (Form CSREES–661), which must be signed by the proposed principal investigator(s) and by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(2) Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the

proposal. Pagination should begin immediately following the Table of Contents.

(3) Executive Summary. Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff, and the general public. This should be on a separate page, no more than one page in length and have the following format: Name(s) of principal investigator(s) and institutional affiliation, project title, key words, and project summary.

(4) Problem Statement. Identify the pest management problem addressed, its significance, and options for solution. Identify the commodities (from the commodity list, Appendix II) and the pesticides (from the priority list, Appendix I) that will be addressed by the proposed project. Proposals can address commodities not listed in Appendix II as long as priority pesticides are used in the production system. Describe the production area addressed (including acreage), frequency and severity of losses to pests controlled with priority pesticides (Appendix I), and the potential applicability to other production regions (if the proposal addresses Objective 2). Provide sources of data and other information on pesticide use, usage patterns, and pest management practices. As appropriate, proposals should address issues as they relate to current integrated pest management and crop production practices, technologic and economic feasibility of potential new practices, and their potential durability.

(5) Objectives. Provide clear, concise, complete, and logically arranged statements of the specific aims of the proposed effort.

(6) Research, Education, and Technology Transfer Plan. This section is only needed if the proposed project includes development of replacement or mitigation technologies (Objective 2). Proposals should provide a detailed plan for the research, education, and technology transfer required to implement the alternative solution in the field, and should identify milestones.

(7) User Involvement. Describe role of producers, commodity groups, and other end-users in identifying the need for the work being proposed, and their anticipated involvement in the project if funded. Competitive proposals will demonstrate involvement of affected user groups in project design, implementation, and funding.

(8) Facilities and Equipment. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully complete the proposed project should be listed with the amount and justification for each item.

(9) Collaborative Arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Funding contributions by collaborators that will be used to accomplish the stated objectives should be identified. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(10) Personnel Support. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be clearly identified. For each principal investigator involved, and for all senior associates and other professional personnel who are expected to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, or commodity production knowledge or experience with that commodity (e.g., educational, employment and professional history, and honors and awards). Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past four years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(11) Budget. A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose (Form CSREES–55), along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute. However, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(12) Research Involving Special Considerations. If it is anticipated that the research project will involve recombinant DNA or RNA research, experimental vertebrate animals, or human subjects, an Assurance Statement, Form CSREES–662, must be completed and included in the proposal. Please note that grant funds will not be released until CSREES receives and approves documentation indicating approval by the appropriate institutional committee(s) regarding DNA or RNA research, animal care, or the protection of human subjects, as applicable.

(13) Current and Pending Support. All proposals must contain Form CSREES–663 listing this proposal and any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors

will not prejudice proposal review or evaluation by the Administrator of CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

(14) Additions to Project Description. The Administrator of CSREES, the members of peer review groups, and the relevant program staff expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

Note: Specific organizational management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. If necessary, USDA will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (CSREES's implementation of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Proposal Evaluation

Priority will be given to proposals that address one or more of the commodities listed in Appendix II; however, proposals addressing commodities not included in this list will be considered. Proposals will be evaluated for relevancy (Criterion 1, 25 points) by representatives from USDA, EPA, appropriate farm and commodity organizations, and consumer groups. Methodology and scientific rigor (Criteria 2–6, 75 points) will be evaluated by panel with appropriate IPM and pesticide expertise. Panel members will include representatives with appropriate science backgrounds from land-grant universities (including IPM, IR–4, and the National Agricultural Pesticide Impact Assessment Program), USDA, EPA, and other organizations as appropriate. Funding determinations will be made by the Administrator of CSREES, in consultation with the Administrator of EPA or her designee, based on technical merit and targeted need areas.

Proposals that will only develop Crop and Pest Management Profiles (Objective 1) will be evaluated as a separate group, and will not be scored on potential to reduce reliance (Criterion 4).

The following criteria will be used in evaluating proposals:

1. Relevance to Program Objectives (25 points)
2. Importance of the Problem (Problem Statement) (15 points)
3. Appropriateness of Methods in Meeting Objectives (20 points)
4. Potential to Reduce Reliance (20 points)
5. Level of User Involvement (10 points)
6. Appropriateness of the Budget (10 points)

Confidentiality

CSREES receives grant proposals in confidence and will protect the confidentiality of their contents to the maximum extent permitted by law. Information contained in unfunded proposals will remain the property of the applicant. However, CSREES will retain one copy of all proposals received for a one year period; extra copies will be destroyed.

When a proposal results in a grant, it becomes a part of the public record, available to the public upon specific request under the Freedom of Information Act (FOIA). Information that the Secretary of Agriculture determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked by the applicant with the term "confidential proprietary information."

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3400), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program "Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1998 Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues. The materials will then be mailed to you (not E-mailed) as quickly as possible.

Proposal Submission

What to Submit

An original and 20 copies of a proposal must be submitted. Each copy

must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals must be received by July 20, 1998. Proposals sent by First Class mail must be sent to the following address: Special Research Grants—Pest Management Alternatives, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, *Telephone:* (202) 401–5048.

Proposals that are delivered by express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024; Telephone: (202) 401–5048.

Additional Information

For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 11th day of June, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

PRIORITY LIST OF PESTICIDES

[Pesticides that will be first to undergo review of tolerances by EPA, as required by the Food Quality Protection Act of 1996]

ORGANOPHOSPHATES

Acephate—I
Azinphos-methyl—I
Bensulide—H
Chlorethoxyfos—I
Chlorpyrifos—I
Chlorpyrifos methyl—I
Coumaphos—I
DEF—Defoliant
Diazinon—I
Dichlorvos—I
Dicrotophos—I
Dimethoate—I
Disulfoton—I
Ethion—I
Ethoprop—I, N
Ethyl parathion—I
Fenamiphos—I, N
Fenitrothion—I
Fenthion—I
Fonofos—I
Isofenphos—I
Malathion—I
Methamidophos—I
Methidathion—I
Methyl parathion—I
Naled—I
Oxydemeton methyl—I
Phorate—I
Phosmet—I
Phostebupirim—I
Pirimiphos methyl—I
Profenofos—I
Propetamphos—I
Sulfotepp—I
Sulprofos—I
Temephos—I
Terbufos—I
Tetrachlorvinphos—I
Trichlorfon—I

CARBAMATES

2EEEBC—F
Aldicarb—I, N
Asulam—H
Bendiocarb—I
Benomyl—F
Carbaryl—I
Carbendazim—F
Carbofuran—I, N
Chlorpropham—H
Desmidipham—H
Fenoxycarb—I
Formetanate HC—I
Methiocarb—I
Methomyl—I
Oxamyl—I, N
Phenmedipham—H
Propamocarb hydrochloride—F
Propoxur—I
Thiodicarb—I
Thiophanate methyl—F
Troysan KK—AM, F

POTENTIAL CARCINOGENS (B1's AND B2's)

Acetochlor—H
Aciflourfen sodium—H
Alachlor—H
Amitrol—H
Cacodylic acid—H
Captan—F
Chlorothalonil—F
Creosote—wood preservative
Cyproconazole—F
Daminozide (Alar)—growth retardant
ETO—fumigant, sterilant
Fenoxycarb—IGR
Folpet—F
Formaldehyde—fumigant, germicide
Heptachlor—I
Iprodione—F
Lactofen—H
Lindane—I
Mancozeb—F
Maneb—F
Metam sodium—F, I, H, N, soil fumigant
Metiram—F
MGK repellent—repellent, synergist
Orthophenylphenol—AM, F, virucide
Oxythioquinox—I
Pentachlorophenol—F
Pronamide—H
Propargite—I
Propoxur—I
Propylene oxide—AM, I, F
Telone—N, soil fumigant
Terrazole—F
Thiodicarb—I
TPTH—F
Vinclozolin—F

AAbbreviations: AM = antimicrobial; I = insecticide; F = fungicide; IGR = insect growth regulator; H = herbicide; N = nematicide.

Appendix II

USDA and EPA have determined that production of the following commodities may depend heavily on the pesticides included on the priority list (Appendix I). The possible regulatory impacts of FQPA for these commodities are not known. To answer questions that may arise during FQPA implementation, Pest Management Profiles are critical for these commodities. Priority will be given to proposals that address one or more of the commodities on this list.

alfalfa (seed, forage)
artichoke
asparagus
avocado
barley
beans (dry, lima, snap)
beets
blackberry
blueberry
broccoli
brussels sprouts
canola
carrot
cauliflower
celery
citrus
clover seed
cole crops
collards
cranberry
cucumber
date
eggplant
endive
fig
filberts
garlic
green onions

greens
hops
kale
kiwi
lettuce
livestock
mango
melons
mint
okra
onion
ornamentals (nursery, greenhouse)
parsley
peach
peanut
pear
peas (dry, green, processed)
peppers (bell, sweet, hot)
pineapple
pistachio
potato
pumpkin
radish
spinach
squash
stonefruit
sugarbeet
sweet potato
tomato
turnip
watermelon

Appendix III

FQPA instructs USDA and EPA to obtain use and usage data for major and minor crops. Commodity and Pest Management Profiles will help USDA and EPA better understand the impacts of FQPA implementation on individual commodities by providing an overview of the production system. The crop profiles should include *typical* use information (not simply what pesticide labels state) and should be presented in the following format:

[insert name of commodity(ies) and state(s)/region covered by profile here]

Production Facts: State/region ranking in the national production of the commodity; state/region contribution to total U.S. production of the commodity (percent); state/region yearly production numbers for the last 3 to 5 years (total acres grown; total acres harvested) and cash value; production costs on a yearly basis; portion of commodity for fresh market v. that for processing.

Production Regions: Define the production regions for the commodity within your state/region.

Cultural Practices: Describe the cultural practices used for producing this commodity within your state (e.g., soil types, irrigation practices, land preparation, planting times, thinning practices, etc.). Highlight intrastate or regional differences if they exist.

Pest Management

For All Pests: Identify the pests needing to be managed (diseases, insects, nematodes, vertebrates, weeds, etc.), frequency of occurrence (yearly, sporadic, weather related), the damage they do, percentage of acres infested with the pest (for each growing season or crop cycle), pest life cycles, critical timing of control measures, yield losses attributed to each pest. Note any regional differences that may occur within the state or region covered by this profile.

Chemical Controls: For each pest discussed above identify the active ingredients from Appendix I that are used to control that pest; include chemical name, trade name, formulations, percent crop treated, type of application (aerial, ground, chemigation, banded, broadcast, in-furrow, etc.), *typical* application rates, timing (pre-plant, foliar, 5-leaf stage, etc.), *typical* number of applications per growing season or crop cycle, *typical* pre-harvest interval. Identify importance to IPM or resistance management programs. Discuss efficacy issues for each active ingredient.

Chemical and Nonchemical Alternatives: Discuss availability and efficacy issues associated with alternatives for pest/pesticide combinations discussed above. Chemical alternatives that also are priority pesticides (Appendix I) should be identified as such. Include a description of possible IPM strategies that could reduce reliance on priority pesticides identified in Appendix I.

Cultural Control Practices: Identify and discuss any cultural practices (e.g., planting dates, resistant varieties, row spacing) used to manage pests.

Biological Controls: Discuss any biological control programs that are relevant for the pest/commodity; include pheromone use if applicable.

Other issues: Discuss any export issues (international or interstate) or food processor restrictions that may limit the use of a given active ingredient, or any other relevant issues involving pesticide use on this commodity.

Key Contacts: Identify commodity experts within the state or production region by specialty.

Cite References: Identify sources of pesticide use and usage data, pest management practices, etc.

[FR Doc. 98–16153 Filed 6–17–98; 8:45 am]
BILLING CODE 3410–22–P

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federal register

Thursday
June 18, 1998

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program (FY 1998): Proposals Solicitation; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Fiscal Year 1998 Agricultural Telecommunications Program; Solicitation of Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

SUMMARY: The Cooperative State Research, Education, and Extension Service is soliciting proposals under the Agricultural Telecommunications Program. The Agricultural Telecommunications Program is authorized in Section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624 (7 U.S.C. 5926). It is anticipated that grants will be awarded competitively under the program in support of the following program areas: (1) Program Delivery and Innovative Program Development/ Production, and (2) Capacity Building.

DATE: Applications must be received on or before August 17, 1998. Proposals received after August 17, 1998 will not be considered for funding.

ADDRESSES: *Proposals sent by First Class mail must be sent to the following address:* Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245. *Telephone:* (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be sent to the following address: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024. *Telephone:* (202) 401–5048.

For programmatic issues contact: Cathy Bridwell; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2216; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2216; telephone (202) 720–6084; Internet: cbridwell@reeusda.gov

For administrative issues contact: the Grants Management Branch, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2246; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2246; telephone (202) 401–5050.

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Part I—Program Description

A. Purpose

Proposals are requested for the purpose of awarding competitive grants for fiscal year (FY) 1998 under the Agricultural Telecommunications Program (Program). Grants will be awarded to eligible institutions to assist in the development and utilization of an agricultural communications network to facilitate and to strengthen agricultural extension, resident education and research, and domestic and international marketing of United States commodities and products through a partnership between eligible institutions and the U.S. Department of Agriculture (USDA). The network will employ satellite and other telecommunications technology to disseminate and to share academic instruction, cooperative extension programming, agricultural research, and marketing information. The authority for this Program is contained in Section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624 (7 U.S.C. 5926). This Program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

B. Available Funding

For FY 1998, $873,000 is available for the Program. Grants under this Program may provide funds for no more than 50 percent (50%) of the cost of a proposed project, unless otherwise determined by the Secretary in accordance with the provisions of Sec. 1673(g) of Pub. L. 101–624 (7 U.S.C. 5926(g)). Project funds will be awarded for one fiscal year. Applicants may recompete for additional funding, but projects will not be renewed. Funds will be awarded for no more than $50,000 for Capacity Building projects. Funds will be awarded for no more than $100,000 for Program Delivery and Innovative Program Development/Production projects.

C. Matching Funds Requirement

A grant awarded under this Program must be matched by the recipient with equal funds from a non-Federal source unless otherwise determined by the Secretary in accordance with the provisions of Sec. 1673(g) of Pub. L. 101–624 (7 U.S.C. 5926(g)). The matching requirement must be satisfied through allowable costs incurred by the recipient or subrecipient and through third party in-kind contributions.

D. Eligibility

Proposals are invited from accredited institutions of higher education. Applicants must demonstrate that they participate in a network that distributes programs consistent with the following objectives: (1) make optimal use of available resources for agricultural extension, resident education, and research by sharing resources between participating institutions; (2) improve the competitive position of United States agriculture in international markets by disseminating information to producers, processors, and researchers; (3) train students for careers in agriculture and food industries; (4) facilitate interaction among leading agricultural scientists; (5) enhance the ability of United States agriculture to respond to environmental and food safety concerns, and; (6) identify new uses for farm commodities and to increase the demand for United States agricultural products in both domestic and foreign markets.

Pursuant to Sec. 1673(e) of Pub. L. 101–624 (7 U.S.C. 5926(e)), preferential consideration will be given to applications that—(i) are submitted by institutions affiliated with an established agricultural telecommunications network that distributed programs to a wide geographical area; or (ii) demonstrate the need for such assistance, taking into consideration the relative needs of all applicants and the financial ability of the applicants to otherwise secure or create the telecommunications system.

These preferences will be factored into the evaluation of the Partnerships and Collaboration and Project Need Criteria, respectively.

E. Definitions

For the purpose of awarding funding under this Program, the following definitions are applicable:

(1) *Accredited institutions of higher education* means a college or university which is an educational institution in any State which: (a) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (b) is legally authorized within such State to provide a program of education beyond secondary education; (c) provides an educational program for which a baccalaureate degree or any other higher degree is awarded; (d) is a public or other nonprofit institution; and (e) is accredited by a nationally recognized accrediting agency or association.

(2) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(3) *Agricultural telecommunications* means those activities established to encourage development and utilization of an agricultural communications network employing satellite and other telecommunications technologies to disseminate and to share academic instruction, cooperative extension programming, agricultural research, and marketing information.

(4) *Authorized departmental officer* means the Secretary of the U.S. Department of Agriculture (USDA) or the individual acting within the scope of delegated authority, who is responsible for awarding and administering grants on behalf of the Secretary.

(5) *Authorized organizational representatives* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(6) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(7) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(8) *Communications network* refers to television or cable television origination or distribution equipment, signal conversion equipment (including both modulators and demodulators), computer hardware and software, programs or terminals, or related devices, used to process and exchange data through a telecommunications system in which signals are generated, modified or prepared for transmission, or received, via telecommunications terminal equipment or via telecommunications transmission.

(9) *Delivery* means the transmission and reception of programs by facilities that transmit, receive, or carry data between telecommunications terminal equipment at each end of a telecommunications circuit or path.

(10) *Department* or *USDA* means the United States Department of Agriculture.

(11) *Equipment* means tangible personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(12) *Facilities* includes microwave antennae, fiberoptic cables and repeaters, coaxial cables, communications satellite ground station complexes, and copper cable electronic equipment associated with telecommunications transmission and similar items subject to the approval of the authorized departmental officer.

(13) *Grant* means the award by the authorized departmental officer of funds to an accredited institution of higher education to assist in meeting the costs of conducting, for the benefit of the public, as identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(14) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(15) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(16) *Peer Review Panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(17) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (4) above.

(18) *Project* means the particular activity within the scope of the program supported by a grant award.

(19) *Project director* means the single individual designated by the grantee in the grant application and approved by the authorized departmental officer who is responsible for the direction and management of the project.

(20) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(21) *Satellite ground station complex* includes transmitters, receivers, and communications antennae at the Earth station site together with the interconnecting terrestrial transmission facilities (including cables, line, or microwave facilities) and modulating and demodulating equipment necessary for processing traffic received from the terrestrial distribution system prior to transmission via satellite and the traffic received from the satellite prior to transfer to terrestrial distribution systems.

Part II—Program Areas

A. Program Delivery and Innovative Program Development/Production

1. Description

Applicants may submit a proposal in the Program Delivery and Innovative Program Development/Production area requesting funding to: (1) operate an agricultural communications network, employing satellite and other telecommunications technology, to deliver Cooperative Extension programming, academic instruction, agricultural research and marketing information through partnership(s) between eligible institutions and the Department; or, (2) develop distance education programming. The project goal(s) and objective(s) must be clearly stated in the proposal. Proposals in this area must clearly target a systematic approach to building an infrastructure to deliver programming at a distance or must demonstrate an innovation to developing distance education programming.

Each proposal will be evaluated based on three broad principles: (1) Is there a real need for the project; (2) will the strategy identified meet the need; and (3) is the project sustainable?

Each proposal must document the need for the project, based on literature review, case studies, audience analysis and/or needs assessment.

The project strategy should reflect an integrated approach to instructional design including subject-matter content, educational methodology and compatible production and delivery techniques. The approach described must meet the identified need.

Evidence must be given that the project will be supported by the institution or by other groups or

institutions that may wish to continue the project.

2. Project Narrative

The narrative portion of the proposal must describe how the project meets the three broad principles identified above. It must not exceed 20 pages in length and no additional material or appendix will be considered. The narrative should contain the following sections:

(a) Project Need. Describe the background and situation leading to the need for the project. The project must be based on a need articulated by an audience or on a needs assessment. Describe the targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on audience. If appropriate, describe the methodology and results of the needs assessment. Demonstrate the need for assistance under this Program, including financial ability or inability to otherwise pursue the proposed program.

(b) Strategy. (i) *Partnerships and Collaboration.* Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation. Partners are defined as all those who will collaborate on the project. Submit evidence that partnerships are in place, and that those partners have a substantial role and interest in the project. Examples of role and interest might include joint risk-taking and shared benefits. Include information about any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area.

(ii) *Appropriate Distance Learning Technologies.* Describe appropriate distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies to be developed or employed in this project.

(iii) *Infrastructure.* Describe a framework representing both the technological and human infrastructure for this project including, but not limited to, technical trouble-shooting, scheduling and operation management, and learner and program support. Evidence of learner support includes, but is not limited to, facilitation of access, accommodation for diversity in special needs and learning styles, and recognition of need for alternative modes of program design and delivery.

(iv) *Innovation.* Describe the innovative application of distance education/learning delivery identified in the project. Examples of innovation may include, but are not limited to, approaches in reaching audiences, methods of connectivity and/or interaction, use of existing resources with innovations in the teaching/learning transaction, and entrepreneurial approaches to distance education delivery.

(v) *Outreach Plan.* Describe a plan for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and research findings from the project.

(vi) *Evaluation Plan.* Describe both formative and summative design for evaluating specific aspects of the project. These designs may include methods for evaluating the overall effectiveness of the Program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication.

(c) Sustainability. (i) *Project Sustainability.* Include strong evidence of the project's ability to continue and grow after receiving the funding. Examples may include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others.

(ii) *Cost/Benefit.* Include a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits.

B. Capacity Building

1. Description

Applicants submitting proposals in the Capacity Building area should target the development of capacity in the area of distance education at the university, state, regional, national or international level. Proposals must include a detailed plan for assessing capacity or a plan for targeting need based on a completed needs assessment.

Each proposal will be evaluated based on three broad principles: (1) Is there a real need for the project; (2) will the strategy identified meet the need; and (3) is the project sustainable?

Each proposal must document the need for the project, based on literature review, case studies, audience analysis and needs assessment.

The project strategy should reflect an integrated approach to instructional design including subject-matter content, educational methodology and compatible production and delivery techniques. The approach described must meet the identified need.

Evidence must be given that the project will be supported by the institution or by other groups of institutions that may wish to continue the project.

2. Project Narrative

The narrative portion of the proposal must describe how the project meets the three broad principles identified above. It must not exceed 20 pages in length and no additional material or appendix will be considered. The narrative should contain the following sections:

(a) Project Need. Describe the background and situation leading to the need for the project. The project must be based on a need articulated by an audience or on a needs assessment. Describe the targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on the targeted audience(s). If appropriate, describe the methodology and results of the needs assessment. Applicants should describe how the capacity built will improve program production or program delivery. Demonstrate the need for assistance under this Program, including financial ability or inability to otherwise pursue the proposed program.

(b) Strategy. (i) *Capacity Assessment.* Include a detailed assessment of capacity or a fully developed plan for assessing capacity. Areas of consideration include, but are not limited to: faculty/staff development; support resources; production/technical capability; delivery capability; building learner capacity.

(ii) *Evaluation Plan.* Describe both formative and summative design for evaluating specific aspects of the project. These designs may include methods for evaluating the overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner need, and/or potential for replication.

(iii) *Outreach Plan.* Describe a plan for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, research findings from the project.

(c) Sustainability. (i) *Sustainability.* Include strong evidence of the project's ability to continue and grow after receiving the funding. Examples may include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others.

(ii) *Institutional Commitment.* Discuss institutional commitment to the project. For example, substantiate that the institution(s) attributes a priority to the project; discuss how the project will contribute to the achievement of the

institution's(s') long-term (five- to ten-year) goals; explain how the project will help satisfy the institution's(s') high priority objectives; or show how this project is linked to and supported by the institution's(s') strategic plan.

(iii) *Partnerships and Collaboration.* Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as the learner, institution, agency, state, and nation. Partners are defined as all those who will collaborate on the project. Submit evidence that partnerships are in place, and that those partners have a substantial role and interest in the project. Examples of role and interest might include joint risk taking and shared benefits. Include information about any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area.

Part III—Preparation of a Proposal

A. Program Application Materials

Copies of this solicitation and the Application Submission Package, which contains required forms, certifications, and instructions for preparing and submitting project applications, may be obtained by contacting: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2245, 1400 Independence Avenue, S.W., Washington, DC 20250–2245. *Telephone:* (202) 401–5048.

Application materials may also be requested via internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov stating that you wish to receive a copy of the application materials for the FY 1998 Agricultural Telecommunications Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

1. Cover Page. Complete the "Project Application" form, Form CFR–2101, in its entirety. a. One copy of the "Project Application" form must contain the pen-and-ink signatures of the project director and authorized organizational representative for the applicant organization.

b. Note that by signing the "Project Application" form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended by 61 FR 250, January 4, 1996, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary. The proposal must contain a project summary of 200 words or less on a separate page. This page must include the title of the project and the names of the project director and the applicant organization, followed by the summary. The summary should be self-contained, and should describe the situation, targeted audience, purpose of the project, program goal, methodology, and expected outcomes of the project.

4. Program Areas. Each proposal must identify the area under which funds are requested and contain the required information for that area. Note that the project narrative should be limited to 20 pages in length.

5. Staffing Pattern and Procedure. Each proposal must describe the staff needed for project administration, instructional design/curriculum development, production, evaluation, and marketing/promotion. The narrative should demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individual staff members proposed are qualified to perform these roles. The emphasis of the narrative should be placed on the relationship of the staff expertise to the proposed effort.

6. Personnel Support. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each project director involved, and for all senior associates and other professional personnel who are expected to work on the project, whether or not funds are sought for their support, the following should be included:

(a) An estimate of the time commitments necessary;

(b) A curriculum vitae limited to the presentation of academic, research and extension credentials, e.g., educational, employment and professional history, and honors and awards, with emphasis on their relationship to the effort being proposed. Unless pertinent to the project, to personal status, or the status of the organization—meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages in length, excluding the publication list(s); and

(c) Publication List(s). A chronological list of the most representative publications during the past five years as it relates to the proposed effort, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

7. *A. Budget.* A detailed budget is required for each year of funding requested. In addition, a summary budget is required detailing requested support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and this solicitation, and can be justified as necessary for the successful conduct of the proposed project.

The following guidelines should be used in developing your proposal budget(s):

(a) *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Professionals and Other Personnel and the number of full-time equivalents (FTE) must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. However, if requested under A., **they must be fully justified.**

(b) *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of the

institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

(c) *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change. Each applicant also must attach to its budget an analysis of the costs and benefits of purchasing (or leasing) different types of facilities, equipment, components, hardware and software, and other items.

In addition, pursuant to Section 716(b) of Pub. L. 105–86 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Note: Sec. 1673(g)(2) of Pub. L. 101–624 identifies that not more than 10% of the funds appropriated for this program may be applied to the acquisition and installation of nonexpendable equipment.

(d) *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

(e) *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified.

(f) *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the project being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to the budget. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services. Applicants are encouraged to consult the "Instructions for Completing the Agricultural Telecommunications Program Budget," for detailed guidance relating to this budget category.

(i) *Indirect Costs.* If requested, the current rate negotiated with the cognizant Federal negotiating agency should be used. Indirect costs may not exceed the negotiated rate. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA.

B. Matching funds. (1) Proposals must include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the project period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form and any attachment thereto. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," and A–122, "Cost Principles for Non-Profit Organizations," for further guidance and other requirements relating to matching and allowable costs.

8. Current and Pending Support. All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

9. Compliance with the National Environmental Policy Act (NEPA). As outlined in 7 CFR Part 3407 (the CSREES regulations implementing NEPA), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–

1234 should be included at the end of the proposal. Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effects.

Part IV—Submission of a Proposal

A. What To Submit

An original and eight copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left hand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before (60 days from date of publication).

Proposals sent by First Class mail must be sent to the following address: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, *Telephone:* (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be submitted to the following address (Note that the zip code differs from that shown above): Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street S.W., Washington, D.C. 20024, *Telephone:* (202) 401–5048.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

1. All proposals will be acknowledged.

2. Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this solicitation. Proposals that meet these requirements will be technically evaluated by a peer review panel using the criteria identified in the annual solicitation, as appropriate. Each proposal will be judged on its own merits.

3. Final decisions will be made by USDA based upon the individual views of the panel members and consideration of other factors, including the budget limitation.

B. Evaluation Criteria

The maximum score a proposal can receive is 100 points. The peer review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. In the event the number of proposals accepted exceed dollars available, proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in FY 1998. The projects will be judged based on the following criteria.

1. Program Delivery and Innovative Program Development/Production

(a) Project Need—40 points.

Did the proposal describe the background and situation leading to the need for the project? Is the project based on a need articulated by an audience, or on a needs assessment? Are the targeted audience(s) for whom the project will be designed described, including pertinent history identified in need, demographics, and expected impact on audience? If appropriate, are methodology and results of needs assessment described? Did the proposal demonstrate the need for assistance under this Program, including a statement of financial ability or inability to otherwise pursue the proposed program and the impact of participation in this Program on this ability?

(b) Strategy—40 points. (1) *Partnerships and Collaboration.* Are partnerships and collaborations fostered through this project described, including expected impact and benefit to those involved such as learner, institution, agency, state, and nation? Is there evidence that partnerships are in place, and that those partners have a substantial role and interest in the project and are examples of role and interest given, including joint risk taking and shared benefits? Is evidence provided of any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area?

(ii) *Alternative Distance Learning Technologies.* Does the proposal include a plan for the development and employment of alternative distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies?

(iii) *Infrastructure.* Does the proposal include a framework representing both the technological and human infrastructure including, but not limited to, technical trouble-shooting, scheduling and operation management, and learner and program support? Is there evidence of learner support including, but not limited to, facilitation of access, accommodation for diversity in special needs and learning styles, and recognition of need for alternative modes of program design and delivery?

(iv) *Innovation.* Does the proposal describe how the application of distance education/learning delivery identified in the project is innovative? Are examples provided that may include, but are not limited to, approaches in reaching audiences; methods of connectivity and/or interaction; use of existing resources with innovations in the teaching/learning transaction; entrepreneurial approaches to distance education delivery.

(v) *Outreach Plan.* Is there an outreach plan articulating an approach for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and findings from the project?

(vi) *Evaluation Plan.* Are both formative and summative design for evaluating specific aspects of the project described? Do they include evaluating the overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication?

(c) Sustainability—20 points. (i) *Project Sustainability.* Does the proposal present strong evidence of the project's ability to continue and grow after receiving the funding? Does this evidence include replication by others; continued funding other than from this program, or opportunities for sale of products; and/or use of ideas and results of project by others?

(ii) *Cost/Benefit.* Does the proposal include a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits?

2. Capacity Building

(a) Project Need—20 points. Did the proposal describe the background and situation leading to the need for the project? Is the project based on a need articulated by an audience, or on a needs assessment? Are the targeted audience(s) for whom the project will be designed described, including pertinent history identified in terms of need, demographics, and expected impact on an audience? If appropriate, are the

methodology and results of needs assessment described? Did the applicant describe how the capacity built will improve program production or program delivery? Did the proposal demonstrate the need for assistance under this Program, including a statement of financial ability or inability to otherwise pursue the proposed program and the impact of participation in this Program on this ability?

(b) Strategy—30 points. (i) *Capacity Assessment.* Is a detailed assessment of capacity or a fully developed plan for assessing capacity included? Does the assessment include faculty/staff development; support resources; production/technical capability; delivery capability; building learner capacity?

(ii) *Evaluation Plan.* Are both formative and cummative design for evaluating specific aspects of the project described? Do they include evaluating the overall effectiveness of the Program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication?

(iii) *Outreach.* Does the outreach plan articulate an approach for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and findings from the project?

(c) Sustainability—50 points. (i) *Sustainability.* Does the proposal present strong evidence of the project's ability to continue and grow after receiving the funding? Does this evidence include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others?

(ii) *Institutional Commitment.* Does the proposal discuss the institutional commitment to the project? Does the proposal substantiate that the institution(s) attributes a priority to the project; discuss how the project will contribute to the achievement of the institution's(s') long-term (five- to ten-year) goals; explain how the project will help satisfy the institution's(s') high priority objectives; or show how this project is linked to and supported by the institution's(s') strategic plan?

(iii) *Partnerships and Collaboration.* Are partnerships and collaborations fostered through this project described, including expected impact and benefit to those involved such as learner, institution, agency, state, and nation? Is there evidence that partnerships are in place, and that those partners have a substantial role and interest in the project? Are examples of role and interest given including joint risk taking and shared benefits? Is evidence provided of any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area?

Part VI—Supplementary Information

A. Access to Peer Review Information

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR Part 1.

B. Grant Awards

1. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and under the procedures set forth in this solicitation. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this solicitation shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

2. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

3. Grant Award Document and Notice of Grant Award

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Project Director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Departmental financial assistance approved during the project period.

(7) Legal authority under which the grant is awarded.

(8) Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

C. Use of Funds; Changes

1. *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. *Change in project plans.* (a) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in

whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

3. *Changes in project period.* The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

4. *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will result in a need or claim for the award of additional funds or involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations that Apply

Several other Federal statutes and/or regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended by 62 FR 40924 and 60451—USDA implementation of OMB Circular A–129, regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended by 62 FR 45947—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–22) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended by 61 FR 250, January 4, 1996—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended by 62 FR 45934—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Institutions.

7 CFR 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and *7 CFR Part 15B* (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Other Conditions

The Department may, with respect to any grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, D.C., on this 11th day of June, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–16155 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–22–M

VOL
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ISS
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federal register

Thursday
June 18, 1998

Part VI

Department of Education

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research: Applications Invitation for New Awards Under Certain Programs (FY 1999); Notice

VOL 63 ISS 117 JE 18 1998 UMI

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR part 356.

Field-Initiated Projects—34 CFR part 350.

Advanced Rehabilitation Research Training Projects—34 CFR part 350.

Program Title: Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of the Research Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by persons with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

The Fellowship awards are for twelve months and include a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses. Applicants are not required to submit budget proposals.

Selection Criteria: The Secretary evaluates applications for Fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Only individuals are eligible to be recipients of Fellowships. Institutions are not eligible to be recipients of Fellowships.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1999 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
Research Fellowships	September 30, 1998	10	Merit: $45,000 Distinguished: $55,000.	12

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Field-Initiated Projects.

CFDA Number: 84.133G.

Purpose: Field-Initiated (FI) projects must further one or more of the following purposes: Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and improve the effectiveness of services authorized under the Act. Field-Initiated projects carry out *either* research activities *or* development activities.

In carrying out a research activity, a grantee must identify one or more hypotheses, and based on the hypotheses identified, perform an intensive systematic study directed toward new or full scientific knowledge, or understanding of the subject or problem studied.

In carrying out a development activity, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

There are two different sets of selection criteria for FI projects: one set to evaluate applications proposing to carry out research activities, and a second set to evaluate applications proposing to carry out development activities. The set of FI selection criteria that will be used to evaluate an

application will be based on the applicant's designation of the type of activity that the application proposes to carry out.

AN APPLICANT FOR A FIELD-INITIATED PROJECT SHOULD CLEARLY IDENTIFY ON THE COVER PAGE OF THE APPLICATION WHETHER THE PROPOSAL IS FOR A RESEARCH OR DEVELOPMENT PROJECT.

Invitational Priorities:

The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1).an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are: (1) The marketing of disability-related products, services, and publications; (2) issues related to the implementation of the Americans with Disabilities Act on individuals with disabilities from minority backgrounds, especially Asian-Americans; (3) the needs of individuals with a combination of significant physical and speech disabilities; and (4) issues related to the effectiveness of alternative rehabilitation treatments such as acupuncture, exercise, and therapeutic massage.

Selection Criteria: Research Project.

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out *research activities*.

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed activities further the purposes of the Act (4 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (6 points).

(b) *Design of research activities* (40 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (10 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (4 points); and

(E) The data analysis methods are appropriate (4 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (7 points).

(c) *Design of dissemination activities* (5 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(d) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(e) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(f) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(h) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Selection Criteria: Development Project.

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out *development activities.*

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed activities further the purposes of the Act (4 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (6 points).

(b) *Design of development activities* (40 points total).

(1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique (6 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (9 points);

(C) The new device or technique will be developed and tested in an appropriate environment (6 points);

(D) The new device or technique is likely to be cost-effective and useful (5 points);

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product (9 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (5 points).

(c) *Design of dissemination activities* (5 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(d) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(e) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(f) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(h) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are

appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1999 FIELD-INITIATED PROJECTS, CFDA NO. 84.133G

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Projects	September 30, 1998	30	$150,000	36

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Advanced Rehabilitation Research Training Projects.

CFDA Number: 84.133P.

Purpose: Advanced Rehabilitation Research Training (ARRT) Projects must provide research training and experience at an advanced level to individuals *with doctorates or similar advanced degrees* who have clinical or other relevant experience. ARRT Projects train rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act and that improve the effectiveness of services authorized under the Act.

ARRT Projects must carry out all of the following activities: recruit and select candidates for advanced research training; provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions; provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities; provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

Selection Criteria: Advanced Rehabilitation Research Training Projects

The Secretary uses the following criteria to evaluate an Advanced Rehabilitation Research Training Project application.

(a) *Importance of the problem* (10 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers (10 points).

(b) *Design of training activities* (40 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (5 points).

(ii) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (6 points).

(iii) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities (7 points).

(iv) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers (6 points).

(v) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers (6 points).

(vi) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (5 points).

(vii) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate (5 points).

(c) *Plan of operation* (10 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (5 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (5 points).

(d) *Collaboration* (5 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (2 points).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (1 point).

(e) *Adequacy and reasonableness of the budget* (10 points).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (4 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (3 points).

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner (3 points).

(f) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (2 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (2 points).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (10 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (1 point).

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(h) *Adequacy and accessibility of resources* (5 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The quality of an applicant's past performance in carrying out a grant (1 point).

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1999 ADVANCED REHABILITATION RESEARCH TRAINING PROJECTS, CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Advanced Rehabilitation Research Training Projects.	September 30, 1998	5	$150,000	60

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Application Narrative

Recommended Page Limits: Field-Initiated and Advanced Rehabilitation Research Projects

The Secretary strongly recommends that applicants for FI or ARRT projects:

(1) Include a one-page abstract in their application;

(2) Limit Part III—Application Narrative to no more than 50 double-spaced 8½" x 11" pages (on one side only) with one inch margins (top, bottom, and sides);

(3) Double-space (no more than 3 lines per vertical inch) all sections of text in the application narrative; and

(4) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The recommended application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the recommended page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

The recommendations for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

AN APPLICANT FOR A FIELD-INITIATED PROJECT SHOULD CLEARLY IDENTIFY ON THE COVER PAGE OF THE APPLICATION

WHETHER THE PROPOSAL IS FOR A RESEARCH OR DEVELOPMENT PROJECT.

Strict Page Limits: Research Fellowships

The research proposal for a Fellowship application must be limited to no more than 12 pages.

Note: The Secretary will reject without consideration or evaluation any application for a Research Fellowship that does not adhere to the 12-page limit.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # (Applicant must insert number and letter)), Room #3633, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR APPLICATIONS CONTACT: The Grants and Contracts Service Team, Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: June 10, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

FREQUENT QUESTIONS

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application. Applicants for an Advanced Rehabilitation Research Training project must limit indirect charges to 8 percent. Applicants for a Field-Initiated project program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for *fellowships*.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLICATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicants control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matter related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12.	List the State and area (county, city, etc.) the applicant is applying to serve with this application.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350

Research Training and Career Development Program - (CFDA No. 84.133P) 34 CFR Part 350.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

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OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant,

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency,

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. **a. Name and Address of Lobbying Entity Registrant** *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ○ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

http://www.dnb.com/dbis/aboutdb/intlduns.htm

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

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[FR Doc. 98–16180 Filed 6–17–98; 8:45 am]
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H.R. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

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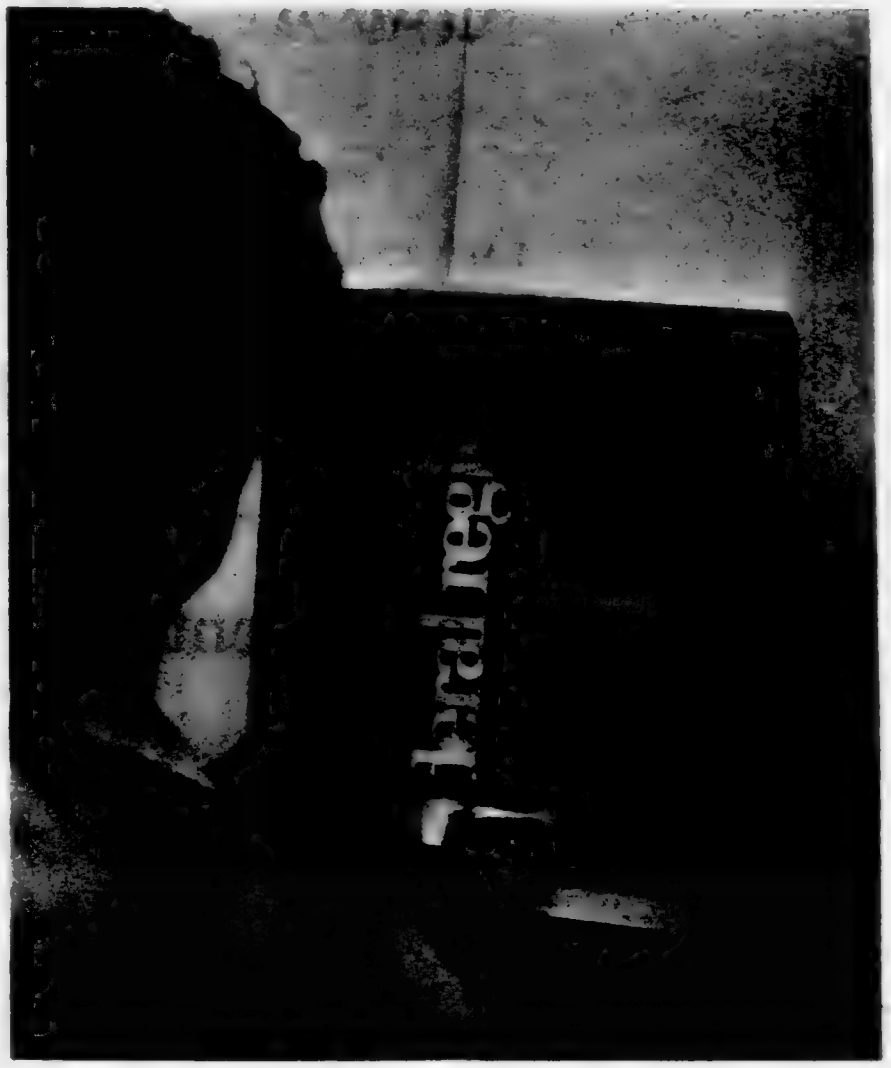

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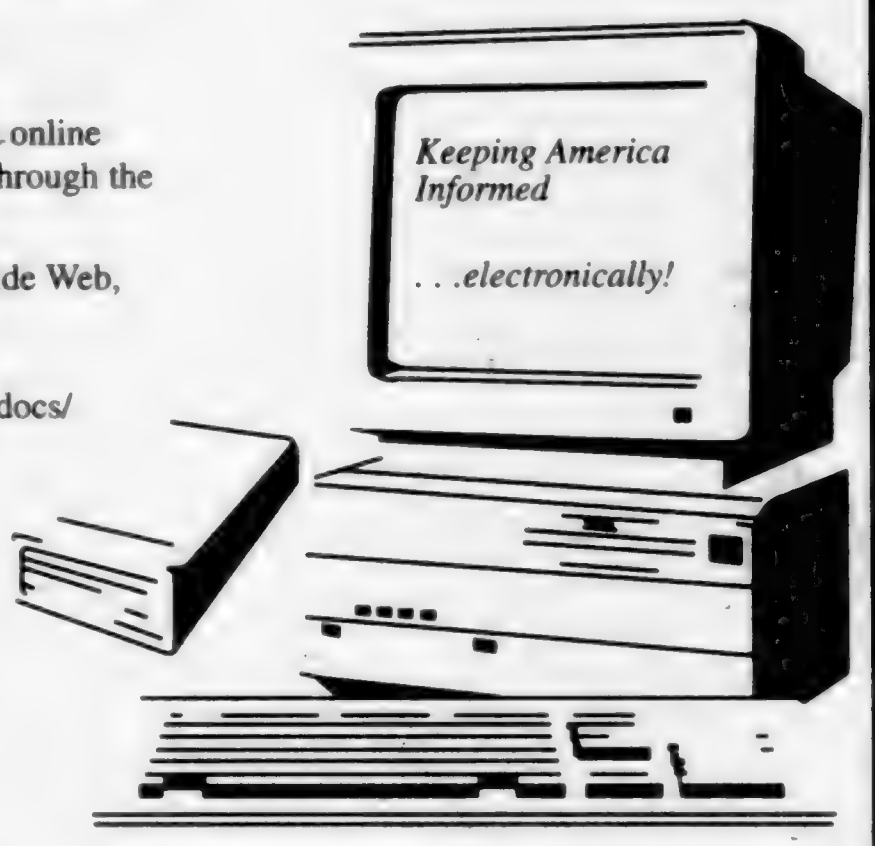

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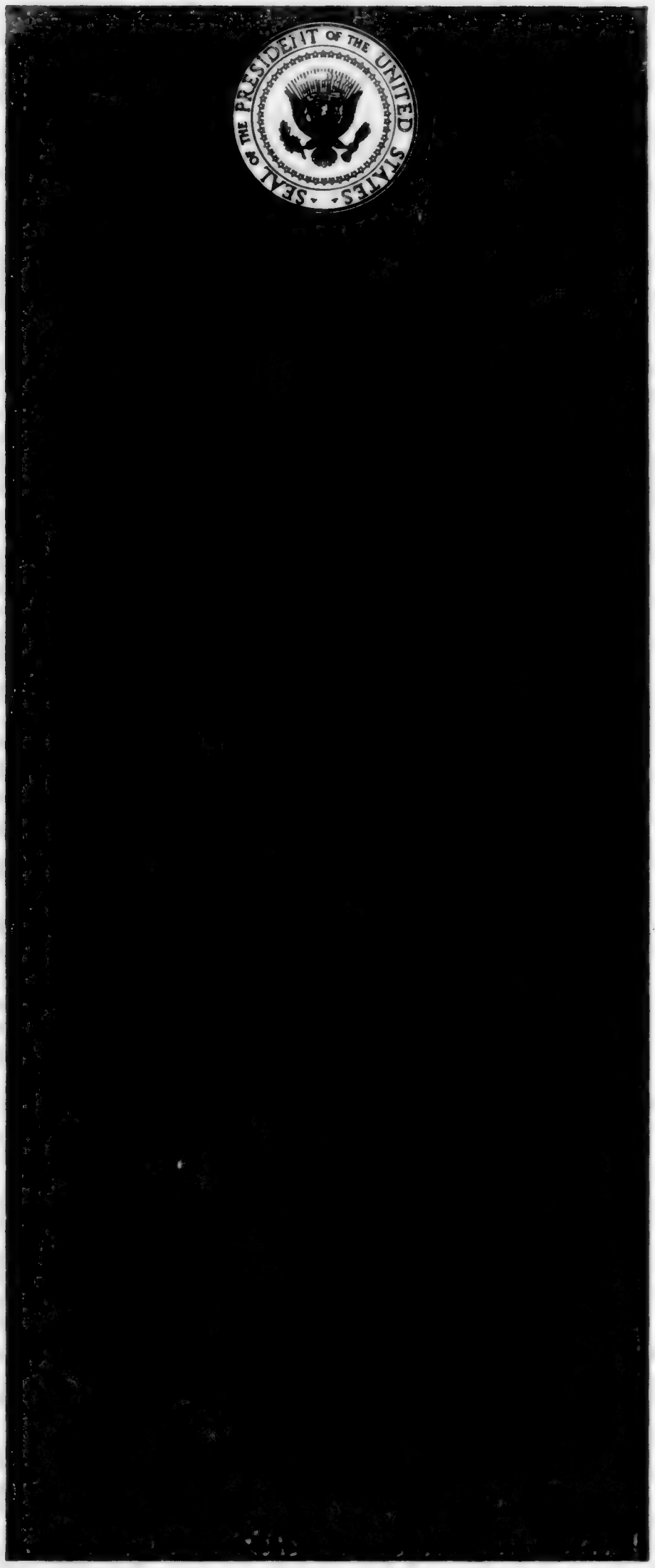

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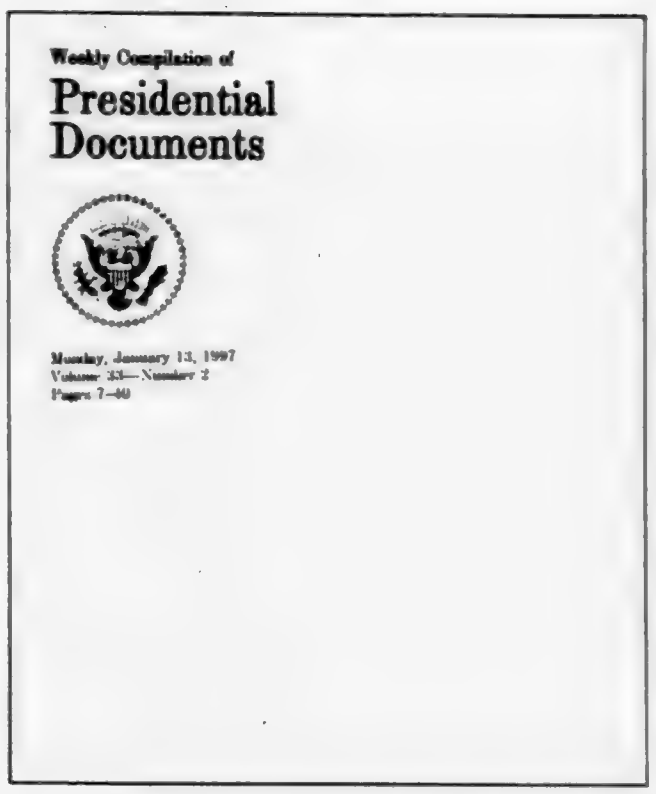

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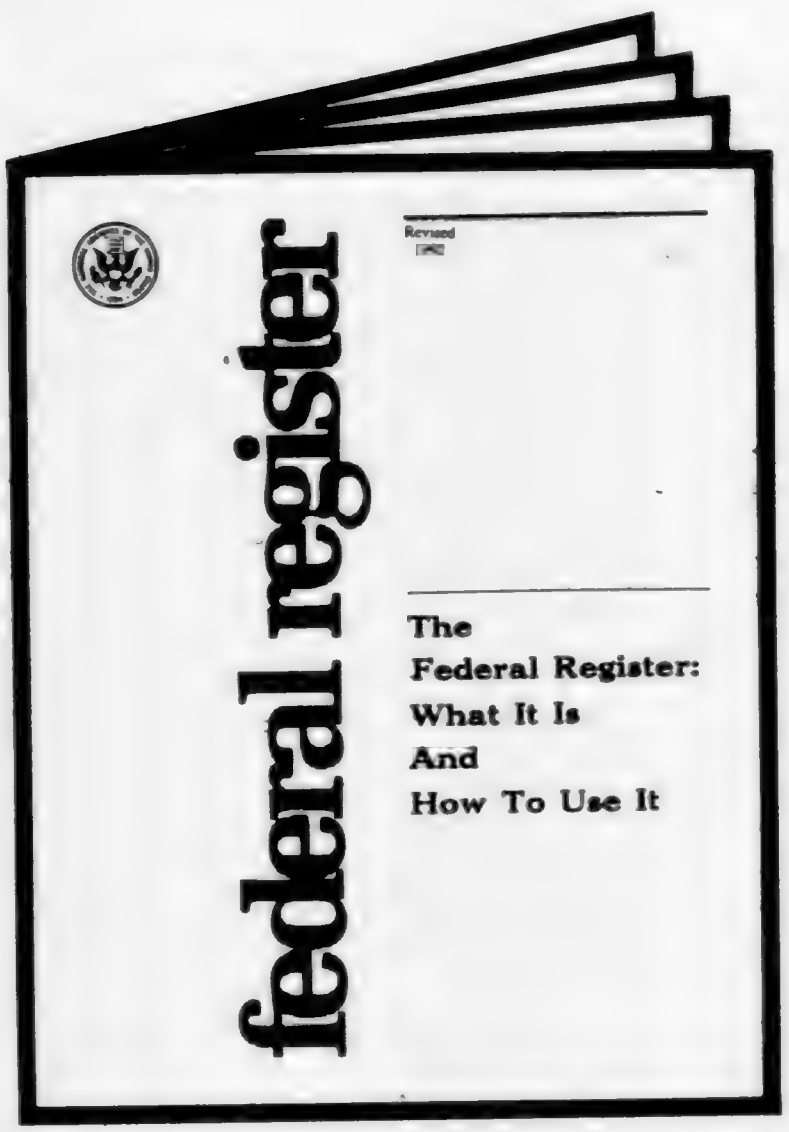

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Establishment of Rules and Regulations for Grower Diversion and a Compensation Rate for the Cherry Industry Administrative Board Public Member and Alternate Public Member

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes rules and regulations for a grower diversion program under the tart cherry marketing order for the 1998–1999 and following crop years. It also establishes a compensation rate to be paid to the Cherry Industry Administrative Board (Board) public member and/or alternate public member when attending Board meetings.

EFFECTIVE DATE: This rule becomes effective June 20, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes rules and regulations for grower diversion under the tart cherry marketing order and also establishes a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The tart cherry marketing order became effective in September of 1996 and the Board met March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998, to establish and recommend to the Secretary rules and regulations to implement order authorities. At its meetings, the Board recommended grower diversion regulations and a compensation rate for the public member and alternate public member to the Department for appropriate action.

An interim final rule was published in the **Federal Register** on August 25, 1997, to establish terms and conditions for the issuance of grower diversion certificates for the 1997–1998 crop season. A final rule was published on April 22, 1998, in the **Federal Register**. A proposed rule establishing the grower diversion program for the 1998–99 and following crop years was published in the **Federal Register** on April 23, 1998, (63 FR 20274). This final rule contains the terms and conditions for the grower diversion program to be used for 1998–1999 and subsequent crop years.

Section 930.33 of the order authorizes the Board to compensate the public member and/or alternate public member for performance of their duties. The Board at its discretion may request the attendance of the alternate public member at any or all meetings, notwithstanding the expected or actual presence of the public member. The $250 compensation rate will allow the Board to compensate the public member and alternate public member for attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts four days or four hours, the public member and/or alternate public member attending the meeting will receive $250. This action is intended to compensate them for loss of work and wages. This payment will be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending public Board meetings.

The order in section 930.50 provides the method of establishing an optimum supply level of cherries for the crop year. The optimum supply is defined as the average of the prior three years' sales of tart cherries, adjusted for carry-in and desired carry-out inventory. The optimum supply consists of a free percentage amount of cherries which a handler could sell to any market and a restricted percentage amount, when warranted, which would have to be withheld from the market. Based on the optimum supply level, the Board establishes preliminary free and restricted percentages. No later than September 15, after harvesting and processing of the crop, the Board computes and recommends to the Secretary final free and restricted percentages based on actual crop

amounts. After receiving the Board's recommendation, the Secretary designates the final free and restricted percentages through informal rulemaking if he finds that such action would tend to effectuate the purposes of the Act. The difference between any final free market percentage and 100 percent is the final restricted percentage. The Board established an optimum supply of 247 million pounds and preliminary free and restricted percentages for tart cherries acquired by handlers during the 1997–98 crop year during its June 26–27, 1997, meeting. Final free and restricted percentages which were recommended by the Board to the Secretary were established during its September 11–12, 1997, meeting. A final rule setting the final free and restricted percentages for the 1997–98 crop year at 55 percent and 45 percent, respectively, was published in the **Federal Register** on April 27, 1998, (63 FR 20522).

Handlers can satisfy their restricted percentage in various ways. The restricted percentage cherries can be maintained in handler-owned inventory reserve pools. Handlers can also satisfy restricted percentage obligations by redeeming grower diversion certificates, exporting cherries to designated countries, shipping to exempt outlets, contributing to charitable organizations or diverting cherries at the handler's facility.

The maximum volume of cherries that can be held in the primary inventory reserve is 50 million pounds. Handlers can establish a secondary inventory reserve after the primary inventory reserve has reached its maximum volume. There is no maximum volume in the secondary inventory reserve. Each handler establishing a reserve (primary and secondary) is required to pay all of his or her own storage expenses. Reserve cherries can be released for sale upon Board approval into commercial outlets when the current crop is not expected to fill demand.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Growers will receive diversion certificates from the Board stating the weight of cherries diverted. The grower could then present this certificate to a handler in lieu of actual cherries. The handler could apply the weight of cherries represented by the certificate against the handler's restricted percentage amount. In comments concerning the 1997–98 grower diversion program there were concerns that such program could act as an insurance policy for cherries that are not marketable contrary to the intent of the order. The overall intent of the order is that only cherries that have reached a harvestable, marketable condition be allowed to be diverted. Therefore, in order to further clarify this concept, this rule will provide that the Board will not allow diversion credit to a grower whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail, diversion credit could be granted.

A new section 930.158 is added to the rules and regulations specifying the guidelines for grower diversion for the 1998–99 and subsequent crop years. First, any grower desiring to divert in the orchard would need to request an application form from the Board and would need to apply by June 24, 1998, for the 1998–99 crop year and by April 15 for subsequent crop years. The proposed June 15, 1998, date is changed in this final rule to June 24, 1998, to allow growers adequate time to apply for grower diversion for the 1998–99 crop year. The application will include the name, address, phone number and a signed statement certifying that the grower will abide by all the rules and regulations for diversion. In addition, the grower will need to include maps of such grower's orchard. Each map will include the grower's name, address and location of the orchard.

The Board has recommended four types of in-orchard diversion. These are: (1) random row diversion, in which rows of cherry trees are randomly selected by the Board's computer programs to remain unharvested; (2) whole block diversion, in which an entire orchard block is left unharvested; (3) partial block diversion, in which a contiguous portion of a definable block is diverted; and (4) in-orchard tank diversion, in which cherries harvested into tanks are measured, calculated and then diverted in the orchard. The regulations for the 1997–98 crop year only provide for random row and whole block diversion.

For all types of diversion, except tank diversion, growers will need to map each orchard block they intend to divert. A block is defined as a group of trees that are of similar age, running in the same direction and having definable boundaries (e.g., roads, ditches). If a grower desires to divert using the random row method, all of the grower's orchards would need to be mapped, since random row diversion involves diverting a certain amount of trees from all the grower's orchards. If the grower elects whole or partial block diversion, all blocks to be diverted would need to be mapped. The maps would need to be supplied to the Board so that the Board can calculate the diversion amounts. New maps would not need to be prepared each season. However, maps would have to be updated to reflect any substantive changes in the grower's orchard such as new trees or trees destroyed by inclement weather.

For the 1998–99 and subsequent crop years, the proposed rule provided that only trees more than six years old would qualify for diversion. Based on information from the National Agricultural Statistical Service (NASS), and from record testimony, it appears that tart cherry trees do not come into full commercial production before they are five to seven years old. Using trees which are not producing cherries or which are only beginning to come into full production when calculating diversion amounts would result in figures which are not representative of a grower's true production. A comment was received on this issue and will be discussed later in this document as well as the change in the regulations concerning this matter.

By July 1 of each crop year in which volume regulation is recommended, a grower that has provided the Board with the required orchard maps would have to inform the Board of such grower's intention to divert in the orchard and the method of diversion. If a grower does not elect the method of diversion by July 1, then only random row or in-orchard tank diversion would be available and the Board would provide the information necessary for the grower to divert by the random row method.

Random Row Diversion

Based on orchard maps submitted to the Board by the grower, the Board, using a computer program, would randomly designate rows of trees in each orchard block for nonharvest and inform the grower of this designation. This designation would be based upon the preliminary restricted percentage amount computed and announced by the Board. For example, if the preliminary restricted percentage is 20 percent, the Board's computer would randomly select rows of trees across all blocks in the grower's orchard to allow the grower to divert 20 percent of such grower's crop. The grower, however, would not have to choose this diversion amount. No less than seven days prior to each grower's individual harvest date, such grower could request a different diversion percentage (either smaller or greater). The purpose of the seven day notice is to allow the Board adequate

time to prepare a different orchard map using different percentages.

To divert cherries through random row diversion, the grower will not harvest the designated rows. After completing harvest of all trees not designated for diversion, the grower would be required to notify the Board and/or a Board compliance officer. Such grower will also need to provide the Board with total harvested production amounts so the Board could calculate the amount of grower diversion tonnage to be placed on the diversion certificate. Independent confirmation by the Board of the grower's production would also be provided by the handler on Board form number two.

Growers will receive diversion certificates only after confirmation of diversion is provided to the Board. After harvest, the Board's compliance staff will visit the grower's orchards to ensure that the rows selected on the orchard map for random row diversion had not been harvested. Once the orchard has been visited by a compliance officer and the grower has carried out the terms and conditions for random row diversion, a diversion certificate will be issued to the grower. The diversion certificate will represent the weight of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Whole Block Diversion

Whole block diversion involves diversion of the production from an entire block of cherry trees.

In whole block diversion, the value of the diversion would be determined by application of a statistical sampling protocol. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows, 5 rows would be randomly chosen to be sampled.

The Board originally recommended that a 5 percent sample size be used. However, after the first season of operation, the Board determined that the statistical method of sampling would be much more accurate in obtaining the weight of what is to be diverted. From each of the rows to be sampled, ten contiguous originally planted tree sites would be sampled within the rows. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. Only trees over the age of six years old would be harvested for the sample. For example, if it is determined that five rows are to be sampled, then 10 tree sites in each of the five rows would be sampled. A total of 50 tree sites would be sampled ((10 original tree sites)×(5 rows)=50 trees). If a total of 4600 pounds is harvested from the sample trees and this is divided by 50 tree sites, a yield of 92 pounds per tree site will be obtained. The yield for the block is found by multiplying 92 pounds per site by 880 trees that were mapped in the block to yield 80,960 pounds per block.

The Board discussed another sampling option. This would have required that mapping be done by the grower each year the grower applied for diversion. However, the Board felt that was an undue burden on the grower. Using the sampling method recommended by the Board will only require the grower to map an orchard one time and update the map, as necessary, to reflect any substantive changes in the grower's orchard. The grower will not need to redo the map every year such grower may want to divert.

Prior to sampling, the grower will notify the Board to allow observation of the sampling process by a compliance officer. After harvest, the compliance officer could again visit the grower's orchard to verify that diversion actually took place.

A diversion certificate will be issued for an amount equal to the volume of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Partial Block Diversion

The Board recommended that partial block diversion be available as an option to growers. Inclusion of this option would permit growers added flexibility. Also, it would help discourage the tendency of growers to break up large blocks into multiple small blocks. Partial block diversion would also speed up the orchard diversion activity by decreasing the sampling time for growers and the Board. Growers may wish to divert only partial blocks of marketable, harvestable cherries that have been subjected to storm damage or are of lower quality. For example, this will allow a grower that has a block that is 35 rows by 40 trees per row to divert contiguous rows 1 through 22 and harvest rows 23 through 35. The partial block would be sampled as in whole block diversion. This provides the grower with more options when determining if such grower should in-orchard divert.

The Board recommended limiting partial block diversions to one partial block per grower per year. This will alleviate the time that compliance officers would need to spend observing sampling and diversion at grower's premises. The Board may evaluate partial block diversions at the end of the season to decide if it is not timely or not cost effective to administer by the compliance officers. Based on this evaluation the Board may recommend increasing the number of partial block diversions or eliminate this type of diversion as an option to growers. The grower should inform the Board by July 1 if such grower elects to whole or partial block divert. If whole block or partial block diversion is not selected by July 1, growers who wish to divert could then choose the random row method or the in-orchard tank method of diversion.

In-Orchard Tank Diversion

The Board recommended that in-orchard tank diversion be authorized to growers as another option for diversion. The Board discussed at length the fact that the grower diversion program must be grower friendly in order for growers to take full advantage of the program. Adding options to the grower diversion program provides more flexibility to the grower.

A grower diverting by this method would need to notify the Board and compliance officers of such diversion. Growers may wish to use tank diversion when marketable cherries in part of the orchard have sustained damage or are of lower quality. Such cherries could be picked and placed in harvesting tanks until a compliance officer could come to the orchard to probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises.

To use this diversion option a grower would need to inform a compliance officer that such grower has tanks ready for diversion. The Board recommended that the grower have no fewer than 10 tanks for diversion prior to informing the compliance officer. This will keep the cost of inspections to a minimum and decrease the compliance officer's time from traveling from location to location to observe a small amount of in-orchard tank diversion. The Board discussed the fact that 10 tanks is not a large amount, since each tank holds about 1,000 pounds and 10 tanks would be about a truckload of cherries. This will not be an undue hardship on small growers that wish to take advantage of such diversion.

After the grower informs the compliance officer of such diversion, the compliance officer will have up to five days to come to the grower's premises to probe the tanks and observe the diversion. This will allow the compliance officer the flexibility to schedule visits throughout the area and save compliance costs.

Compliance

In-orchard diversion by growers is a voluntary action. However, once chosen, growers are expected to meet all of the terms and conditions for diversion to receive a diversion certificate and to be diligent in actually diverting the percentage of the crop for which they have applied. Handlers depend upon growers to accurately divert the percentages requested as they make their marketing and storage decisions throughout the season. Thus, in the case where growers fail to properly divert all of the cherries specified in their application, such growers should not receive diversion credit for the undiverted cherries.

When a grower chooses random row diversion, such grower would not harvest trees in rows that have been randomly chosen by the Board's computer programs, to be left unharvested. Unintended errors could occur during harvest that could void a growers diversion efforts. The Board has recommended that growers who choose random row diversion should be permitted to rectify any unintended errors that may occur during harvest. Therefore, growers who fail to properly divert designated rows, but who otherwise meet the terms and conditions of diversion, will have to divert cherries in addition to those randomly chosen, but will still receive the diversion percentage originally applied for.

For example, a grower's map could require such grower to random row divert rows 5 and 6 and such grower may harvest row 5 in error. Such grower will then be required to divert another two rows to make up for the mistake in diverting. This will discourage mistakes being made in the orchard since such growers know they may have to divert more cherries to correct a mistake. This recommended adjustment will allow a grower to correct an error in the orchard and still receive a diversion certificate.

However, if growers are harvesting at the end of the orchard and thus, do not have an opportunity to rectify a mistake by diverting additional rows or trees, the Board could reduce the grower's diversion certificate by using the two for one method. For example, a grower specifies a diversion amount of 20 percent on the original application for diversion (and does not increase or decrease such percentage by the June 24, 1998, cutoff date for the 1998–99 crop year and by April 15 for subsequent crop years). Subsequently, the grower fails to divert a complete block or all of the specified rows, resulting in diversion of only 16 percent of the crop. Thus, the grower has failed to divert an additional 4 percent of the crop. The Board would then multiply that percent by two and subtract that amount from the original diversion application amount. This would reduce the diversion amount by twice the amount of the mistake that was made and therefore, a 2 for 1 reduction would be made as explained above. In this example, 2 times 4 percent equals 8 percent; which, when subtracted from the original percentage of 20 percent, yields a diversion credit of 12 percent of the grower's total production. Thus, the grower would receive a diversion certificate equal to 12 percent of the originally requested amount.

Growers, when aware of such errors, will need to immediately inform the Board when such errors are made during the diversion process to ensure that they continue to meet the terms and conditions of diversion. Growers who divert more than their preliminary percentage will not receive additional diversion credit. The Department agrees with this recommendation. The "two for one" method is a necessary part of compliance for the diversion provisions because it is important that the industry accurately projects the annual tonnage of cherries available for market.

The Board recommended that all grower diversion certificates should be redeemed with handlers by November 1. After November 1, grower diversion certificates will not be valid. It was intended that diversion certificates be used within the same crop year that they were issued, as if a crop had been produced. The November 1 date will allow handlers adequate time to meet their restricted percentage amounts after final percentages have been established.

Compensation

The Board also recommended adding a new section 930.133 to provide a compensation rate of $250 to be paid to the public member and to the alternate public member for each meeting they attend. Section 930.33 provides that the public member and alternate public member shall receive such compensation as the Board may establish and the Secretary may approve. The public and alternate public member cannot have a financial interest in the tart cherry industry. To attend meetings, it may be necessary for them to be absent from their places of employment. Therefore, the Board recommended a compensation rate be established. This payment will be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending Board meetings. For example, if a Board meeting is convened and lasts for a day or two or only four hours, the public member and/or alternate public member attending the meeting would receive $250.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 1,220 producers or growers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This final rule establishes rules and regulations for grower diversion under the tart cherry marketing order. The order was promulgated on September 25, 1996. The Board was established on December 20, 1996, met several times in 1997 and recommended numerous rulemaking actions. The Board recommended establishing an assessment rate and late payment charges, procedures for grower and

handler diversion and exemptions for certain order provisions. The Board also recommended regulations for the issuance of grower diversion certificates and final free and restricted percentages for the 1997–98 crop year. These actions were recommended at Board meetings held March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998.

The impact of this rule will be beneficial to growers. The receipt of grower diversion certificates is one of the methods under the order that handlers can utilize to meet any such handler's restricted percentage. Growers may voluntarily choose to divert because they have an abundance of low value, poor quality marketable cherries or because they are unable to find a processor willing to process some or all of their cherries. Before choosing to divert, the grower would most likely evaluate the harvesting and other cultural costs that could be saved by diverting and locate a handler that would be willing to redeem such grower's diversion certificate. An interim final rule was published on August 25, 1997, (62 FR 44881) establishing terms and conditions for the issuance of grower diversion certificates by the Board for the 1997–98 crop year. A final rule was published on April 22, 1998, (63 FR 20019) in the **Federal Register**.

Initially, about 700 growers expressed an interest in participating in the voluntary grower diversion program. However, because of the exceptional quality of 1997–98 tart cherry crop, fewer growers opted to participate in the grower diversion program. As such, approximately 120 growers (65 growers diverting by random row and 55 diverting by whole block diversion) received diversion certificates for a total of 6,139,600 pounds of diverted cherries for an average of 51,163 pounds of cherries diverted per grower. Although it is difficult to quantify the overall effect the grower diversion program has had on the tart cherry industry at this time, information from the Board indicates that the program's economic impact on both the handlers and growers appears to have been positive. There seems to be overall satisfaction among both growers and handlers with this year's returns. The economic impact of the grower diversion provisions of this regulation are also expected to be positive. They should result in benefits to both growers and handlers which are similar to those which resulted from the 1997–98 program. In addition, this rule offers growers greater flexibility when diverting their cherries.

With regard to methods of diversion, this rule establishes four different ones: random row, whole block, partial block and in-orchard tank. During diversion for the 1997–1998 season only the first two were used. The Board discussed limiting the blocks to be diverted to 5 acre blocks, but felt that this could have an adverse impact on small growers that produce on less than 5 acre blocks. Therefore, the Board recommended there be no limit on the size of orchard blocks to be diverted. The Board also discussed a sampling option that would have required mapping to be done by the grower each year the grower applied for diversion, but rejected it because it would be an undue burden on the grower. Using the sampling methods in this rule will only require the grower to map an orchard one time and not redo the map every year such grower may want to divert.

This rule also establishes a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The public member and alternate public member would receive $250 whether the Board meeting convened and lasted for one or two days or only four hours. The compensation to be paid to the public member and alternate public member would compensate such persons for loss of work or wages since such persons do not have a financial interest in the tart cherry industry. There was consideration for a lower compensation rate but the Board decided to proceed with the above mentioned amount. The Board did not support a lower compensation rate because it did not adequately compensate the public member and alternate public member for their time to attend Board meetings.

This rule will not impose any reporting or recordkeeping requirements on either small or large tart cherry growers or handlers in addition to those already considered or approved during the order promulgation proceeding. The only written information requested from a grower is an orchard map and the grower's final production volume. Since growers maintain this information as part of their normal farming operations, it takes approximately 10 minutes to prepare a map and less than a minute to total the final production volume. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the March, June, September 1997, meetings and January 1998 meeting were public meetings and all entities, both large and small, were allowed to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Diversion Subcommittee met on March 12, 1997, and discussed grower diversion in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on Thursday, April 23, 1998, (63 FR 20274). Copies of the rule were also mailed or sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 30-day comment period was provided which ended on May 26, 1998. One comment was received in response to the proposal. The commenter is the Executive Director of the Board. The commenter disagreed with the age of the trees for which diversion is authorized. The Board recommended to the Secretary that the age of trees for which diversion of fruit is permitted should be 5 years or older. The proposal stated that only trees seven years or older qualify for diversion. The commenter stated that this is not consistent with the needs of the industry.

The commenter further stated its recommendation for change was not an arbitrary action by the Board. Rather, it is was done to bring the Board's diversion activities and authority in line with cultural practices of the industry. The proposal states that tart cherry trees come into full commercial production

in a range from their fifth to seventh growing season. The point at which a particular tree reaches production capacity depends upon geographic location. The commenter stated that recognition of this variance must be made for in the diversion process. The commenter believes that only allowing trees seven years old or older to qualify for diversion contributes to inequitable treatment of producers in different areas with different circumstances and with different cultural practices. The commenter further stated that the Board unanimously determined that it was more appropriate to recognize the full age range in the diversion of younger trees and orchards. By recognizing the full range, the opportunity for diversion activity is expanded for growers.

After consideration of this comment, the Department is changing the provision in the regulations concerning the age of trees eligible for diversion (§ 930.158(b)) to provide that trees that are four years or younger do not qualify for diversion. This would recognize the full five to seven year range of age maturation for the trees and allow producers with younger fully producing trees to qualify for diversion. This is also in keeping with other provisions of the regulations providing that only cherries that have reached a harvestable, marketable production will be eligible for diversion.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is hereby found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because growers are expected to begin harvesting and diverting their crop by mid-June and need to know the rules and regulations in order to participate in the grower diversion program. Further, growers are aware of this rule which was recommended at a public meeting.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 930.133 is added to read as follows:

§ 930.133 Compensation rate.

A compensation rate of $250 per meeting shall be paid to the public member and to the alternate public member when attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts one or two days or only four hours, the public member and/or alternate public member attending the meeting would receive $250 each.

3. A new § 930.158 is added to read as follows:

§ 930.158 Grower diversion and grower diversion certificates.

(a) *Grower diversion certificates.* The Board may issue diversion certificates to growers in districts subject to volume regulation who have voluntarily elected to divert in the orchard all or a portion of their tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through November 1 of each crop year. After November 1 of the crop year that crop year's grower diversion certificates are no longer valid. Cherries that have reached a harvestable, marketable condition will be eligible for diversion. Diversion will not be granted to growers whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail diversion credit could be granted.

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than random row or in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by June 24, 1998, for the 1998–99 crop year (July 1, 1998 through June 30, 1999) and April 15 for subsequent crop years. The application includes a statement which must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or a combination of diversion methods. Only random row or in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are four years or younger do not qualify for diversion.

(1) *Random row diversion.* Using the orchard map furnished by the grower, the Board will randomly select rows of trees within the orchard to be diverted. The amount of cherries to be diverted will be based on the preliminary restricted percentage amount established pursuant to § 930.50. A grower may elect a different percentage amount; however, the grower needs to inform the Board as soon as possible after the preliminary percentages are announced of this other amount, but in no event shall this be less than seven days in advance of harvest. The designated rows indicated by the map must not be harvested. After completing harvest of the remaining rows in the orchard, the grower must notify the Board and/or the Board's compliance officer. A compliance officer will then be allowed to observe the grower's orchard to assure that the selected rows have not been harvested. The grower must inform the Board of the total production of the orchard to calculate the tonnage that was diverted.

(2) *Whole block diversion.* Based on maps supplied by the grower, a sampling procedure will be used to determine the amount of cherries in the orchard to be diverted. A block is defined as rows that run the same direction, are similar in age, and have definable boundaries. The Board would require a number of trees to be sampled depending on the size of the block. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled, if a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled, and if a block has 16 or more rows, 5 rows would be randomly chosen to be sampled. From each of the rows

to be sampled ten contiguous originally planted tree sites will be sampled within the rows. Only trees more than five years old will be harvested for the sample. For example, if it is determined that five rows are to be sampled and 10 trees in the five rows are to be sampled, then a total of 50 trees are to be sampled ((10 original tree sites) × (5 rows)= 50 trees). A total of 4600 pounds will be harvested from the sample trees which is divided by 50 trees to obtain a yield of 92 pounds per tree. To find the yield for the block, 92 pounds is multiplied by 880 trees that were mapped in the block to yield 80,960 pounds per block. The harvested tonnage will be converted to a volume that represents the entire block of cherries. The grower should inform the Board when the samples are being taken so a compliance officer can observe the sampling. The compliance officer would be allowed to confirm that the block has been diverted.

(3) *Partial block diversion.* Partial block diversion will also be accomplished using maps supplied by the grower. Sampling will be done as in whole block diversion except that only partial blocks would be selected and sampled. Growers may divert one partial block per year. Such block must be mapped and would be sampled as described under whole block diversion. Rows used in partial block diversion must be contiguous.

(4) *In-orchard tank diversion.* Growers wishing to in-orchard tank divert must pick the cherries to be diverted and place them in harvesting tanks. A compliance officer would then probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises. Growers wishing to take advantage of this option must have at least 10 tanks ready for diversion. The compliance officer has up to five days to come to the grower's premises to observe the diversion after being contacted.

(c) *Compliance.* Growers who voluntarily participate in the grower diversion program must sign and file with the Board a Grower Diversion Application. By signing the application, a grower agrees to the terms and conditions of the grower diversion program as contained in these regulations. To be eligible to receive diversion credit, growers voluntarily choosing to divert cherries must meet the following terms and conditions:

(1) In order to receive a certificate, a grower must demonstrate, to the satisfaction of the Board, that rows or trees which were selected for diversion were not harvested. Trees four years old or younger do not qualify for diversion.

(2) The grower must furnish the Board with a total harvested production amount so the Board can calculate the amount of grower diversion tonnage to be placed on the diversion certificate. The Board will confirm the grower's production amount with information provided by handlers (to which the grower delivers cherries) on Board form Number Two.

(3) The grower must agree to allow a Board compliance officer to visit the grower's orchard to confirm that diversion has actually taken place. If the terms and conditions for whole block, partial block or in-orchard tank diversion are not completed, the Board shall not issue the grower a diversion certificate. If a grower who chooses random row diversion harvests rows that were designated not to be harvested, the grower should inform the Board immediately of the error. The grower will then be required to divert twice the amount (rows or trees) incorrectly harvested to correct the mistake. The grower will still receive a diversion certificate equal to the original requested amount. However, in instances where a grower is at the end of harvesting the orchard and fails to divert a complete block or specified rows, the Board shall multiply by two the difference between the original diversion amount and the actual diverted amount. The Board shall subtract that amount from the diversion application amount. Thus, the grower would receive a grower diversion certificate equal to a portion of the originally requested amount. If the grower does not inform the Board of such errors, the grower will not receive a diversion certificate.

Dated: June 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–16377 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 98–ANE–119; Special Conditions No. 33–001–SC]

Special Conditions: Turbomeca S.A., Model Arriel 2S1 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Turbomeca S.A., of Bordes, France, Model Arriel 2S1 turboshaft engine. This engine was validated on June 10, 1996, by the Federal Aviation Administration (FAA) and Type Certificate No. E00054EN was issued. The engine will have an additional new novel or unusual engine rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by existing airworthiness standards.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7115; Fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1998, Turbomeca S.A., applied for an amendment to Type Certificate No. E00054EN to include a new 30-minute engine rating to Model Arriel 2S1 turboshaft engine. The rating is intended for use up to 30 minutes at any time after takeoff in a flight for performing search and rescue missions. The Model Arriel 2S1 turboshaft engine will be rated at 30-Second one engine inoperative (OEI), 2-Minute OEI, Continuous OEI, 30-Minute, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain a definition for a "30-minute" power rating, and do not contain adequate or appropriate safety standards of this new and unusual engine rating. The FAA published a notice of proposed special conditions on April 29, 1998 (63 FR 23402), Docket No. 98–ANE–119, and requested public comments.

Type Certification Basis

Under the provisions of Title 14 of the Code of Federal Regulations (14 CFR) § 21.101 Turbomeca S.A., must show that the Model Arriel 2S1 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application, or the applicable provisions of the regulations incorporated by reference in Type Certificate No. E00054EN. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis". The regulations

incorporated by reference in Type Certificate No. E00054EN are 21.29 and part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–14, and Special Conditions SC–33–ANE–05, Docket No. 95–ANE–46, published on April 15, 1996 (61 FR 16375).

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the additional new engine rating for the Model Arriel 2S1 turboshaft engine because it is a novel or unusual engine rating feature; special conditions are prescribed under the provision of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Novel or Unusual Design Features

The Turbomeca S.A., Model Arriel 2S1 turboshaft engine will incorporate the following novel or unusual design features: Rated 30-minute power. The power available for rotorcraft hovering to perform maritime search and rescue missions is currently limited to the maximum continuous rating power under current part 33. The proposed "30-minute power" rating would provide higher power level than currently available for use up to 30 minutes at any time between takeoff and landing in one flight. This new rating will enhance rotorcraft safety through the availability of increased power for hovering operations calling for greater than maximum continuous power.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. No comments were received on the special conditions as proposed. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the special conditions without change.

Applicability

As discussed above, these special conditions are applicable to the Turbomeca S.A., Model Arriel 2S1 turboshaft engine. Should Turbomeca S.A., of Bordes, France, apply at a later date for a change to the type certificate to include another model incorporating the same or novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

These special conditions provide necessary increased hover time to enable operators to better perform critical, life-saving search and rescue missions, particularly in overwater situations. For this reason and because a delay would not be in the public interest, the FAA has determined that good cause exists for adopting these special conditions immediately upon publication.

Conclusion

This action affects only certain novel or unusual design features on one model of engines. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Turbomeca S.A., Model Arriel 2S1 turboshaft engine:

Section 33.4, Instructions for Continued Airworthiness

(a) In addition to the requirements of § 33.4, the procedures must:

(1) Ensure that the engine deterioration in service will not exceed the level shown in certification using the rated 30-minute rating.

(2) Be included in the airworthiness limitations section of the Instructions for Continued Airworthiness.

Section 33.7, Engine Ratings and Operating Limitations

(a) In addition to the ratings provided in § 33.7, a "Rated 30-minute power" rating is available, which shall be defined as the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 of this chapter, and limited in use to periods of not over 30 minutes each.

Section 33.87, Endurance Test

(a) Unless already accomplished under § 33.87(d), in addition to the requirements of § 33.87, the following test must be conducted:

Rated 30-minute power. Thirty minutes at rated 30-minute power during the twenty-five 6-hour endurance test cycles.

Issued in Burlington, Massachusetts on June 12, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16359 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–46–AD; Amendment 39–10585; AD 98–12–32]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, that requires a one-time eddy current inspection (ECI) for cracks or gouges in certain high pressure turbine rotor (HPTR) disks. This amendment is prompted by a report of a HPTR disk found to have a crack in a rim bolt hole during a routine shop manual ECI. The actions specified by this AD are intended to prevent the potential for an uncontained failure of the HPTR disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office,

FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines was published in the **Federal Register** on January 22, 1998 (63 FR 3275). That action proposed to require a one-time eddy current inspection for cracks or gouges in certain high pressure turbine rotor (HPTR) disks in accordance with CFM56–2 Service Bulletin (SB) No. 72–817, dated January 14, 1997, CFM56–2A SB No. 72–419, Revision 1, dated January 31, 1997, CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, and CFM56–3/–3B/–3C SB No. 72–843, dated January 14, 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the rule as proposed.

Since issuance of the proposed rule, CFMI has revised CFM56–2 SB No. 72–817, CFM56–2A SB No. 72–419, and CFM56–3/–3B/–3C SB No. 72–843. These revisions include an update of a HPTR disk serial number identified in Table 1. Therefore, since these SB revisions do not alter the proposed actions, this AD will include reference to CFM56–2 SB No. 72–817, Revision 1, dated November 25, 1997, CFM56–2A SB No. 72–419, Revision 2, dated November 14, 1997, and CFM56–3/–3B/–3C SB No. 72–843, Revision 1, dated November 25, 1997, for the accomplishment of the HPTR disk inspections.

In addition, this AD revises the compliance date requirement for CFM56–2, CFM56–3, –3B, and –3C engines to 45 days after the effective date of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 276 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 300 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Replacement parts, if required, would cost approximately $86,000 per engine. Based on these figures, and assuming that 16 of the inspected HPTR disks will require replacement, the total cost impact of the AD on U.S. operators is estimated to be $3,176,000. The manufacturer has advised the FAA that certain costs incurred from the inspection and replacement of parts affected by this AD may be borne by the manufacturer; therefore, the total cost impact of this AD to U.S. operators may be less than estimated by the FAA.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–12–32 CFM International: Amendment 39–10585. Docket 97–ANE–46–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines installed on, but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (military) series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potential for an uncontained failure of the high pressure turbine rotor (HPTR) disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect for cracks or gouges in HPTR disks, Part Numbers 1475M29P01, 1475M29P02, 9514M69P01, 9514M69P04, 9514M69P05, 9514M69P06, and 9514M69P09, with Serial Numbers listed in Table 1 of the applicable Service Bulletin (SB), as follows:

(1) For CFM56–2 engines, in accordance with CFM56–2 SB No. 72–817, Revision 1, dated November 25, 1997, within 45 days after the effective date of this AD.

(2) For CFM56–2A engines, in accordance with CFM56–2A SB No. 72–419, Revision 2, dated November 14, 1997, within 500 cycles in service (CIS) after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(3) For CFM56–2B engines, in accordance with CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, within 500 CIS after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(4) For CFM56–3, –3B, and –3C engines, in accordance with CFM56–3/–3B/–3C SB No. 72–843, Revision 1, dated November 25, 1997, within 45 days after the effective date of this AD.

(b) Remove from service HPTR disks found cracked or gouged, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may

add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following CFMI SBs:

Document No.	Pages	Revision	Date
CFM56–2 SB No. 72–817	1–2	1	November 25, 1997.
	3–12	Original	January 14, 1997.
	13	1	November 25, 1997.
	14–19	Original	January 14, 1997.
Total Pages: 19.			
CFM56–2A SB No. 72–419	1–2	2	November 14, 1997.
	3–4	1	January 31, 1997.
	5–10	Original	January 14, 1997.
	11–12	2	November 14, 1997.
	13–18	Original	January 14, 1997.
Total Pages: 18.			
CFM56–2B SB No. 72–561	1	1	January 31, 1997.
	2	Original	January 14, 1997.
	3–4	1	January 31, 1997.
	5–19	Original	January 14, 1997.
Total Pages: 19.			
CFM56–3/–3B/–3C SB No. 72–843	1–2	1	November 25, 1997.
	3–11	Original	January 14, 1997.
	12	1	November 25, 1997.
	13–18	Original	January 14, 1997.
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 20, 1998.

Issued in Burlington, Massachusetts, on June 5, 1998.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–15785 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–53–AD; Amendment 39–10591; AD 98–13–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 82–20–04 R1, which currently requires repetitively inspecting the main landing gear (MLG) hinge fitting, support angles, and attachment bolts on British Aerospace H.P. 137 Mk1 and Jetstream series 200 airplanes, and repairing or replacing any part that is cracked beyond certain limits. This AD requires installing improved design MLG fittings, as terminating action for the repetitive inspections that are currently required by AD 82–20–04 R1, and will incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The actions specified by this AD are intended to prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

DATES: Effective August 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to British Aerospace (Operations) Limited H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on March 4, 1998 (63 FR 10579). The supplemental NPRM proposed to supersede AD 82–20–04 R1 with a new AD that would: (1) initially retain the requirements contained in AD 82–20–04 R1 of repetitively inspecting the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; (2) incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD; and (3) eventually require the installation of improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections. Accomplishment of this action would be in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218, which includes procedures for installing improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), on H.P. 137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between This AD, the British AD, and AD 82–20–04 R1

AD 82–20–04 R1 allows continued flight if cracks are found in the MLG hinge fitting support angles that propagate no further than the tooling holes. The applicable service bulletin specifies replacement of the support angles only if cracks are found exceeding this limit, as does British AD 015–05–85. This AD will not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven, and then this is only considered a temporary solution until a design correction is developed and incorporated. The main landing gear is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

The FAA's Aging Commuter Aircraft Policy

The actions required by this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to installing improved design MLG fitting would be to repetitively inspect this area for the life of the airplane.

Cost Impact

The FAA estimates that 71 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 271 workhours (inspections: 61 workhours; installation: 210 workhours) per airplane to accomplish these actions, and that the average labor rate is approximately $60 an hour. Parts to accomplish this AD are provided by the

manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,154,460, or $16,260 per airplane. This figure only takes into account the cost of the initial inspections and inspection-terminating modification and does not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplane owner/operator will incur.

This figure is also based on the presumption that no affected airplane operator has accomplished this installation. This action will eliminate the repetitive inspections required by AD 82–20–04 R1. The FAA has no way of determining the operation levels of each individual owner/operator of the affected airplanes, and cannot determine the repetitive inspection costs that will be eliminated by this action. The FAA estimates these costs to be substantial over the long term.

In addition, British Aerospace has informed the FAA that parts have been distributed to owners/operators that will equip approximately 39 of the affected airplanes. Presuming that each set of parts has been installed on an affected airplane, the cost impact of this modification upon the public will be reduced $634,140 from $1,154,460, to $520,320.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small entity as "a small business or small not-for-profit organization which is independently-owned and operated and has no more than a specified number of employees or aircraft." For operators of aircraft for hire (those entities that are affected by parts 121, 127, and 135 of the Federal Aviation Regulations (14 CFR parts 121, 127, and 135)), the size threshold specified in FAA Order 2100.14A is nine aircraft.

There are only nine different operators of British Aerospace H.P. 137 MK1, Jetstream series 200, and Jetstream Model 3101 airplanes. Of these nine, only four operate less than nine airplanes. Because 4 is a number that is less than 11 and the rulemaking official has not determined this number to be substantial, this AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for this action may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 82–20–04 R1, Amendment No. 39–4468, and by adding a new AD to read as follows:

98–13–03 British Aerospace (Type Certificate No. A21EU formerly held by Jetstream Aircraft Limited): Amendment 39–10591; Docket No. 95–CE–53–AD; Supersedes AD 82–20–04 R1, Amendment 39–4468.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have improved design main landing gear (MLG) fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), installed in accordance with Jetstream Service Bulletin (SB) 57–JM 5218:

Model	Serial Nos.
H.P. 137 MK1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream Model 3101	601 through 695.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural failure of the MLG caused by fatigue cracking, which could

result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings. If the total number of airplane landings is not kept or is unknown, hours time-in-service (TIS) may be used by multiplying the total number of airplane hours TIS by 0.75.

(a) For the H.P. 137 MK1 and Jetstream series 200 airplanes, within the next 50 landings after the effective date of this AD or within 200 landings after the last inspection required by AD 82–20–04 R1 (superseded by this AD), whichever occurs first, and thereafter at intervals not to exceed 200 landings, accomplish the following in accordance with British Aerospace Mandatory Service Bulletin (MSB) No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(1) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting.

(2) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found, prior to further flight, resecure the MLG hinge fitting to auxiliary spar in accordance with actions 3.8 through 3.16 of British Aerospace MSB No. 7/5.

(b) Upon accumulating 4,000 landings on the left and right MLG fittings or within the next 50 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 landings, inspect the MLG hinge support angles for cracks in accordance with the following, as applicable:

(1) For the H.P. 137 MK1 and Jetstream series 200 airplanes: British Aerospace MSB 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

(2) For the Jetstream Model 3101 airplanes:

Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

(c) Install improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as applicable. Perform these installations at the applicable compliance time presented below (paragraphs (c)(1) and (c)(2) of this AD). Accomplish this installation in accordance with Jetstream Service Bulletin (SB) 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

(1) Prior to further flight on any fitting found cracked during an inspection required by paragraph (b) of this AD; and

(2) Upon accumulating 20,000 landings on the left MLG fitting or within the next 50 landings after the effective date of this AD (whichever occurs later), unless already accomplished as required by paragraph (c)(1) of this AD; and

(3) Upon accumulating 20,000 landings on the right MLG fitting or within the next 50 landings after the effective date of this AD (whichever occurs later), unless already accomplished as required by paragraph (c)(1) of this AD.

(d) Incorporating both P/N 1379133B1 and P/N 1379133B2 MLG fittings (Modification 5218) as required by paragraph (c), including all subparagraphs, of this AD terminates the repetitive inspection requirement of paragraph (a) of this AD. The repetitive inspections of the MLG support angles required by paragraph (b) of this AD are still required.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 82–20–04 R1 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to the service information referenced in this AD should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspections, modifications, and installations required by this AD shall be done in accordance with the following:

—British Aerospace Jetstream Mandatory Service Bulletin No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace Mandatory Service Bulletin No. 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.

Pages	Revision level	Date
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes AD 82–20–04 R1, mendment 39–4468.

(j) This amendment becomes effective on August 3, 998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15884 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–21–AD; Amendment 39–10595; AD 98–13–07]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam.

DATES: Effective August 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 1, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 24, 1998 (63 FR 14049). The NPRM proposed to require accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the potential of the rudder control system to jam because of water freezing will only be unsafe while the airplane is in flight, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it is for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $600, or $120 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–07 Industrie Aeronautiche E Meccaniche: Amendment 39–10595; Docket No. 98–CE–21–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1002, 1004, 1006 through 1017, 1019, and 1021 through 1030, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish a leakage check of all lavatory water tube/hose connections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997. If leakage is found, prior to further flight, correct the installation of these connections in accordance with the above-referenced service bulletin.

Note 2: Although not required by this AD, the FAA recommends an inspection of the rudder cables for corrosion if any evidence of water is found on the cables.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspection and correction required by this AD shall be done in accordance with Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Italian AD 97–022, dated March 2, 1997.

(f) This amendment becomes effective on August 1, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15886 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–13–AD; Amendment 39–10594; AD 98–13–06]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. This AD requires replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door making contact with the engine, which could result in loss of glider power and potential loss of control.

DATES: Effective August 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small

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Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Glaser-Dirks Model DG–400 gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1998 (63 FR 13376). The NPRM proposed to require replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the left engine restraining cable or bowden cable of the rear engine door would only contact the engine and block the engine extension during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 27 gliders in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,400, or $200 per glider.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–06 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10594; Docket No. 98–CE–13–AD.

Applicability: Model DG–400 gliders, serial numbers 4–1 through 4–140, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door catching on the engine, which could result in loss of glider power and potential loss of control, accomplish the following:

(a) Replace the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door in accordance with the Installation plan included with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacements required by this AD shall be done in accordance with Glaser-

Dirks Technical Note No. 826/15, dated October 1, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 85–223, dated November 7, 1985.

(f) This amendment becomes effective on August 2, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15893 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–38–AD; Amendment 39–10610; AD 97–21–07 R1]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming) Model T5313B, T5317A, and T53 (Military) Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), that currently requires a one-time visual inspection of accessory drive carrier assemblies for affected serial numbers (S/Ns) designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. This amendment adds military helicopter models and removes one civilian helicopter model to the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines. This amendment is prompted by the need to revise the Applicability paragraph. The actions specified by this AD are intended to prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

DATES: Effective July 6, 1998.

The incorporation by reference of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997, ASB No. T53–L–13B–A0092, dated June 4, 1997, and ASB No. T53–L–703–A0092, dated June 4, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53935, October 17, 1997).

Comments for inclusion in the Rules Docket must be received on or before August 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ray Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 8, 1997, the Federal Aviation Administration (FAA) issued AD 97–21–07, Amendment 39–10160 (62 FR 53935, October 17, 1997), applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), to require a one-time visual inspection of accessory drive carrier assemblies for affected serial numbers (S/Ns) designating a potentially defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. That action was prompted by a report of an N2 overspeed condition on an AlliedSignal Inc. Model T5317A–1 turboshaft engine. That condition, if not corrected, could result in accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

Since the issuance of that AD, the FAA has been informed that the military helicopter models that incorporate this engine installation had been omitted from the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines, and that a civilian helicopter model, the Kaman Aircraft Corp. K–1200 series helicopter, should be removed from the list. The military helicopter models, certified in accordance with Section 21.25 of the FAR, are: the UH–1A through E; UH–1G, H, L, M; AH–1F, Q, G, S; HH–1H, K; TH–1L; OV–1C, D; and HH–43. This revised AD makes these changes to the Applicability paragraph. All mandatory actions required by the AD remain the same.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997. These ASBs describe procedures for performing a one-time visual inspection of accessory drive carrier assemblies for affected S/Ns designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises AD 97–21–07 to add military helicopter models and remove one civilian helicopter model from the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines. The actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that allows the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity

for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–38–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10160 (62 FR 53935, October 17, 1997) and by adding a new airworthiness directive, Amendment 39–10610, to read as follows:

97–21–07 R1 AlliedSignal Inc.: Amendment 39–10610. Docket 97–ANE–38–AD. Revises AD 97–21–07, Amendment 39–10160.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B and T5317A series commercial turboshaft engines, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), with accessory drive carrier assemblies, part numbers (P/Ns) 1–070–220–03, 1–070–220–12, and 1–070–220–13, that were installed after November 1, 1985, and have serial numbers (S/Ns) listed in AlliedSignal Inc. Alert Service Bulletins (ASBs) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; or ASB No. T53–L–703–A0092, dated June 4, 1997. These engines are installed on but not limited to Bell Helicopter Textron Model 205A–1 and 205B series helicopters and the following military helicopters certified in accordance with Section 21.25 of the FAR: UH–1A through E; UH–1G, H, L, M; AH–1F, Q, G, S; HH–1H, K; TH–1L; OV–1C, D; and HH–43.

Note 1: A shipping records, engine logbooks, work orders, and parts invoices review may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure, accomplish the following:

(a) Within 100 hours time in service (TIS), or 6 months after the effective date of this AD, whichever occurs first, accomplish the following in accordance with AlliedSignal Inc. ASB No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997, as applicable:

(1) Visually inspect to determine if the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASBs.

(2) If the accessory drive carrier assembly is not marked with an affected S/N listed in the applicable ASB, no further action is required.

(3) If the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASB, or the serial number cannot be positively determined, remove the accessory drive carrier assembly from service and replace with a serviceable assembly.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. ASBs:

Document No.	Pages	Revision	Date
T5313B/17A–A0092	1–7	1	July 1, 1997.

Document No.	Pages	Revision	Date
Total pages: 7.			
T53–L–13B–A0092	1–7	Original	June 4, 1997.
Total pages: 7.			
T53–L–703–A0092	1–7	Original	June 4, 1997
Total pages: 7.			

The incorporation by reference of AlliedSignal Inc. ASB No. T5313B/17A–A0092, Revision 1, dated July 1, 1997, ASB No. T53–L–13B–A0092, dated June 4, 1997, and ASB No. T53–L–703–A0092, dated June 4, 1997, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53935, October 17, 1997). Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 6, 1998.

Issued in Burlington, Massachusetts, on June 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16272 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–4]

Amendment to Class D Airspace; MacDill AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D airspace at MacDill AFB, FL. The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D airspace at MacDill AFB, FL (63 FR 17741). The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace was proposed to be amended from part time to continuous. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D airspace at MacDill AFB, FL. The MacDill AFB control tower is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 500 Class D airspace.

* * * * *

ASO FL D MacDill AFB, FL [Revised]

MacDill AFB, FL
(Lat. 27°50′57″N, long. 82°31′17″W)
Albert Whitted Airport
(Lat. 27°45′54″N, long 82°37′38″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of MacDill AFB; excluding the portion within the Tampa International Airport, FL, Class B airspace area; excluding that portion southwest of a line connecting the 2 points of intersection with a 4-mile radius circle centered on the Albert Whitted Airport.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffrey N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16310 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–2]

Amendment of Class D and Removal of Class E Airspace; Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and removes Class E airspace at Atlanta, GA, for the Fulton County Airport-Brown Field. The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous. Additionally, the current Class E surface airspace that is effective when the control tower closes is no longer necessary and is removed.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D and removing Class E airspace at Atlanta, GA (63 FR 17740). The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace was proposed to be amended from part time to continuous. Additionally, the Class E surface airspace that was effective when the control tower was closed is no longer necessary and was proposed to be removed. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D and Class E airspace at Atlanta, GA. The Fulton County Airport-Brown Field control tower is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous. Additionally, the Class E surface area airspace that is effective when the control tower is closed is no longer necessary and is removed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO GA D Atlanta, GA [Revised]

Atlanta, Fulton County Airport-Brown Field, GA
(Lat. 33°46′45″N, long. 84°31′17″W)
Dobbins ARB
(Lat. 33°54′54″N, long. 84°31′00″W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4-mile radius of Fulton County Airport-Brown Field; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Dobbins ARB.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Atlanta, GA [Removed]

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16312 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–1]

Establishment of Class E Airspace; Hohenwald, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Class E airspace at Hohenwald, TN. A Non-Directional Beacon (NDB) Runway (RWY) 2 Standard Instrument Approach Procedure (SIAP) has been developed for John A. Baker Field. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at John A. Baker Field. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Hohenwald, TN (63 FR 17742). This action provides adequate Class E airspace for IFR operations at John A. Baker Field. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Hohenwald, TN. A NDB RWY 2 SIAP has been developed for John A. Baker Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at John A. Baker Field. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 Amended

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Hohenwald, TN [New]

John A. Baker Field, TN
(lat. 35°32'45" N, long. 87°35'51" W)

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of John A. Baker Field.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16311 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–3]

Amendment of Class E Airspace; Fernandina Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Fernandina Beach, FL. A Global Postioning System (GPS) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) has been developed for Fernandina Beach Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Fernandina Beach Municipal Airport. The Class E airspace has been increased from a 6.4 to a 6.6-mile radius.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Fernandina Beach, FL (63 FR 15110). This action would provide adequate Class E airspace for IFR operations at Fernandina Beach Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Fernandina Beach, FL. A GPS RWY 13 SIAP has been developed for Fernandina Beach Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Fernandina Beach Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small

entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read a follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO FL E5 Fernandina Beach, FL [Revised]

Fernandina Beach Municipal Airport, FL
(lat. 30°36′35″ N, long. 81°27′38″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Fernandina Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16309 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–6]

Amendment of Class E Airspace; Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Daytona Beach, FL. The Standard Instrument Approach Procedure (SIAP) for VHF Omnidirectional Range (VOR) Runway (RWY) 8 at the Ormond Beach Municipal Airport has been amended to a VOR or Global Positioning System (GPS) RWY 17 SIAP. As result, the airspace for the Ormond Beach Municipal Airport has been amended. The Class E airspace has been increased from a 6.4 to a 7.3-mile radius.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Daytona Beach, FL, (63 FR 19858). This action provides adequate Class E airspace for IFR operations at Ormond Beach Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Daytona Beach, FL. A VOR or GPS RWY 17 SIAP has been developed for Ormond Beach Municipal Airport. Additional controlled airspace extending upward for 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Ormond Beach Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10′48″ N., long. 81°03′27″ W.)
Spruce Creek Airport
(Lat. 20°04′49″ N., long. 81°03′27″ W.)
Ormond Beach Municipal Airport
(Lat. 29°18′04″ N., long. 81°06′50″ W.)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, within a 6.4-mile radius of Spruce Creek Airport and within a 7.3-mile radius of Ormond Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 10, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16355 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These regulations implement section 13735 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new supplemental security income (SSI) benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal SSI benefit payments for the first 2 months for which the COLA is in effect. These rules provide that we value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This precludes a decrease in the benefit amount the third month after a COLA, a situation which occurred under the prior law. The legislation is effective for benefits paid for months after calendar year 1994.

EFFECTIVE DATE: These final rules are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–0001, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month ("budget month") before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103–66, the VTR and the PMV were based on the applicable benefit rates in effect in the "budget month." Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the "budget month." For example, in figuring an individual's January 1994 benefit, we used November 1993 as the "budget month." Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of $144.66 from the 1994 benefit rate of $446.00, giving the individual an SSI benefit of $301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of $446.00 less the January 1994 VTR amount of $148.66, resulting in an SSI benefit amount of $297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the "budget month." Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there was no change in their living arrangements.

We are changing the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103–66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, beginning with the COLA effective January 1, 1995, both the new increased benefit rate and new increased VTR or PMV amounts are being used in computing a January and February benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This eliminates confusion for recipients and also eliminates the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the final regulations at § 416.420(a) that we will use the benefit rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We have added a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the final regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies, and we have altered the example to reflect the situation when a COLA becomes effective.

On August 9, 1995, we published these rules as a notice of proposed rulemaking in the **Federal Register** at 60 FR 40542 with a 60-day comment period. We received comments from only one source, and the commenter fully supported the proposed rule because it eliminates a significant anomaly in the SSI program. Therefore, we are publishing the final rules essentially unchanged from the proposed rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act of 1980

These final rules impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of

Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart D—[Amended]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

Subpart K—[Amended]

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

§ 416.1130 Introduction

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

* * * * *

[FR Doc. 98–16206 Filed 6–18–98; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket 96–9; FHWA–97–2281]
RIN 2125–AD89

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendment to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains an amendment to the MUTCD which has been adopted by the FHWA for inclusion therein. The amendment revises sections of the MUTCD to permit the optional use of fluorescent yellow green (FYG) warning signs related to pedestrian, bicycle, and school applications. The MUTCD is incorporated by reference in FHWA's regulations on traffic control devices on Federal-aid and other streets and highways, and recognized as the national standard for traffic control devices on all public roads. This amendment is intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: The final rule is effective on June 19, 1998. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Highway Safety (202) 366–9064; or Mr. Ray Cuprill, Office of Chief Counsel, (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http:/

/dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

The text for Parts I, II, VII, and IX of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10) or from the FHWA Home Page at the URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html

Background

The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $44 (Domestic) or $55 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The purchase of the MUTCD includes the 1993 revision of Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation, dated September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received. This amendment contains the disposition of a proposed change which was published on June 7, 1996, at 61 FR 29234. Text changes required as a result of amendments contained herein will be distributed to everyone currently appearing on the FHWA, Office of Highway Safety, **Federal Register** mailing list and will be published in the next edition of the MUTCD. Those wishing to be added to this **Federal Register** mailing list should write to the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590.

Summary of Comments

The FHWA has reviewed the comments received in response to the proposed amendment and other information related to the MUTCD. The FHWA is acting on the following request for change to the 1988 edition of the MUTCD.

This amendment to the MUTCD allows the use of fluorescent yellow green (FYG) as an optional color for Advance Pedestrian Crossing Sign (W11–2), Pedestrian Crossing Sign (W11A–2), Bicycle Crossing Sign (W11–1), School Advance Sign (S1–1), School Crossing Sign (S2–1), and School Bus Stop Ahead Sign (S3–1).

The FHWA received 141 comments in response to the proposed amendment, of which 110 agreed with the FHWA's position; 21 opposed; and 10 were either undecided or suggested recommendations not addressed in the NPRM. The FHWA received 12 comments suggesting this color be adopted for use in incident management. The FHWA is currently conducting research with the States of New Jersey, Maryland and Virginia on the appropriate color for incident management. Included in this research is FYG. Upon conclusion of the research rulemaking action will be considered.

The notice of proposed amendment published on June 7, 1996, included a vague and incomplete reference to the Pedestrian Crossing Sign and the Advance Pedestrian Crossing Sign. Both signs were intended to be embraced by the amendment permitting optional FYG use. Inadvertently, however, the former was referenced by name only; the latter was referenced by sign number only, although dual (name and sign number) references were included for each of the other signs involved in the amendment.

The FHWA believes, however, that it is appropriate to include both the Pedestrian and Advance Pedestrian Crossing Signs in the amendment adopted here. Although comment was not specifically invited concerning the Advance Pedestrian Crossing Sign by name, we note that the sign is equivalent in context to the School Advance Sign which received no opposing comments. Moreover, because the amendment provides for optional installation of FYG signs, inclusion of both the Pedestrian and Advance Pedestrian Crossing Signs should not impose any hardship or result in any detriment. Conversely, failure to include both signs within the scope of the amendment adopted at this time could unduly burden those municipalities that choose to install FYG signs, but would then have to do so under different installation schedules for the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Sequential installation of the signs would contradict the FHWA's recommendation that a systematic approach be used to install the signs, potentially resulting in negative safety implications. Indeed, several commenters questioned the advisability of not including both the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Further, several commenters indicated that a mixing of FYG and standard yellow signs, resulting from failure to include both in this notice, could lead to motorists' confusion and should not be permitted.

Pedestrian-motor vehicle crashes are a serious problem in the United States. A total of 5,412 pedestrians were reported killed and another 82,000 were injured in motor vehicle crashes in 1996. An estimated 59,000 bicyclists were injured and 761 were killed in motor vehicle collisions in 1996. Of the 41,907 people who lost their lives in motor vehicle crashes in 1996, 13 percent were pedestrians and 2 percent were bicyclists (Traffic Safety Facts 1996 (NHTSA)). Although a drop in pedestrian fatalities has occurred in recent years, a serious problem continues to exist in the United States relative to pedestrian and bicyclist deaths and injuries.

The DOT Secretarial Initiative for Pedestrian and Bicycle Safety is a new effort to promote walking and bicycling as a safe, healthy, and efficient way to travel. By the year 2000, the Secretarial Initiative will have attempted to decrease by 10 percent the number of injuries and fatalities occurring to bicyclists and pedestrians, and to double the national percentage of transportation trips made by walking or bicycling.

As reported in the NPRM, the FHWA conducted a nationwide study during 1993–1995. North Carolina State University, Civil Engineering Department, took part in this study and performed an in-depth research study in the use of FYG warning signs. The study involved eight sites in multiple pedestrian environments in multiple cities. The overall results of the study indicate that FYG warning signs produced only marginal improvement in perceived safety at the crossing sites. At three of the crossing sites studied, the evaluation indicated a significant reduction in the number of pedestrian/vehicle conflicts, as well as a significant increase in the percentage of vehicles slowing or stopping. Public opinion surveys reflected a strong indication that the FYG warnings do "stand out" and were associated with the need for caution. (Source: "Field Evaluation of Fluorescent Strong Yellow Green Pedestrian Warning Signs," M.S. Thesis, K.L. Clark, North Carolina State University, 1994.)

Over the last 26 months, the FHWA has approved 28 jurisdictions to experiment with FYG warning signs. Several of the jurisdictions that have taken part in the experimentation have indicated that the use of the FYG warning signs meets pedestrian safety needs and have requested permission to install additional signs. Many other jurisdictions have expressed an interest in their use and are awaiting the FHWA final rule.

Of the 141 comments received in response to the NPRM, 23 represented jurisdictions that either participated in the original two-year experimentation, or that are currently experimenting with FYG, submitted comments. Of those jurisdictions, 22 were in agreement with the proposed optional use, and 1 opposed the proposal.

The City of Chicago has recently implemented a "Safe Route to School Program" for the Chicago Board of Education. This program is a direct result of crashes involving motorists and children in school zones. The City of Chicago has requested and been granted approval to experiment with FYG signs at 10 school crossings that have been identified as "problem locations." Installation of the first FYG sign received media attention and its use has been well received by elected officials, the Board of Education, and the public. In many instances, jurisdictions have publicized the installation of the FYG signs and have received positive responses from educators, parents, students, and motorists.

The NPRM received favorable comments and overwhelming support from local governments, including police departments and public school systems, in addition to special interest groups and the general public. National organizations with safety interests, such as the National Safety Council, Institute of Transportation Engineers, and the American Automobile Association (AAA-Florida, Louisiana, Mississippi), have all responded very positively to the use of FYG warning signs.

Many of the public comments received in response to the NPRM voiced common concerns that will be addressed individually. The NPRM addressed the cost increase of fluorescent sheeting material as one and a half times as much as the high intensity sign material. The FHWA estimated the cost of the fluorescent sheeting material to be $7.45 per sq.ft. versus the high intensity sign material at $5.32 per sq.ft. These costs considered sign blank, sheeting material, and labor costs for a 30" x 30" sign. Several docket comments stated that FYG sheeting material ($4.90 per sq. ft.) actually costs only 30 percent more than high intensity sign material ($3.75 per sq.ft.) When comparing total installed sign costs (fabrication, hardware, installation, and labor costs), the actual cost difference would only be 7 percent ($17.74 per sq. ft. versus $18.90 per sq. ft.) for a 30" School Crossing Sign. The FHWA agrees with this cost statement as these costs follow along with the cost evaluation method using the Bellomo-McGee calculation. (Source: 1987 study conducted by Bellomo-McGee for the FHWA, "Retroreflectivity of Roadway Signs for Adequate Visibility: A Guide," (FHWA/DF–88/001).) The FHWA is also concerned with the cost burden on State and local transportation agencies and believes the "optional" use as opposed to an unfunded mandate will relieve the agencies of an undue cost burden. The overall installation cost for the sign is not much different because the sheeting cost is only a small amount of the total cost of a sign installation.

There is concern that the NPRM gave conflicting guidance in proposing a "systematic approach" at locations selected for use of the FYG warning signs, and the "gradual phase-in" as part of "routine maintenance." Historically, when signs are installed at the same time, they generally deteriorate beyond usefulness at the same time and need to be replaced at the same time. Signs that are taken down to comply with the "systematic approach" and that are in a usable condition may be used again at other locations. Additionally, signs can be taken down and refurbished with new sheeting material and used again at new locations.

Several commenters believe the use of FYG warning signs should be implemented as a mandatory (shall) condition in the MUTCD, rather than an optional condition as proposed in the NPRM. Designation of FYG signs as an option fits in with the present character of the MUTCD which allows the State and local transportation agencies to make a determination on use of traffic control devices that may be beneficial to some locations. An example is the use of channelizing devices in work zones with the optional use of tubular markers, cones, and drums. This is a positive step in allowing State and local agencies to address their safety needs and avoids an undue burden on their budgets.

Concern has been expressed over the "novelty effect" of the FYG signs. While there is always the possibility of a "novelty" effect which could decrease the benefits over time, the experimentation procedures took into consideration the possibility of the novelty effect on drivers by instructing the implementing agency to allow at least 30 days between the time the experimental signs were installed and the time the study proceeded.

The American Society for Testing and Materials (ASTM) publishes standard test methods, specifications, practices, guides, classifications, and terminology. These standards are developed voluntarily and used voluntarily. They become legally binding only when a government body makes them so, or when they are cited in a contract. Specifically, ASTM E991 describes procedures for measuring the color of fluorescent specimens as they would be perceived when illuminated by daylight, and for calculating tristimulus values and chromaticity coordinates for these conditions. ASTM E1247 provides spectrophotometric methods for identifying the presence of fluorescence in object-color specimens.

There is some concern regarding the use of ASTM E991 and E1247 for determining compliance with specifications listed in the NPRM. It was mentioned that most State and local agencies would not have the instrumentation necessary to accurately measure fluorescence specifications. This is not deemed a critical concern as the testing for FYG would be no different than what is done in field offices now. Most States currently have the capability to do initial testing of retroreflectivity. When a State purchases sign material, the manufacturer certifies the specifications; however, some States reserve the option to do their own lab work.

The Commission Internationale de l'Eclairage (CIE) (English: International Commission on Illumination) chromaticity coordinates (x,y), defining the corner of the Fluorescent Yellow Green daytime color region, are stated in the table below. Several docket comments received mentioned that the Y values were omitted from the NPRM; therefore, the Y values have been inserted in the table below:

x	y	Y	Y_F
0.387	0.610	50	20
0.368	0.539	.....	.....
0.421	0.486	.....	.....
0.460	0.540	.....	.....

Fluorescent materials differ from non-fluorescent materials in that the total luminance is the sum of the luminances due to reflection and fluorescence. The luminance factor Y of such materials is the sum of the luminance due to reflection (Y_R) and the luminance due to fluorescence (Y_F). Therefore, $Y=Y_R+Y_F$. If the value of Y_F is greater than zero,

the material is fluorescent; if Y_F equals zero, then the luminance factor Y is equal to Y_R.

These four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System (2 degree standard observer) measured with CIE Standard Illuminant D65 in accordance with ASTM E991. In addition, the color shall be fluorescent, as determined by ASTM E1247.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The change in this notice provides additional guidance, clarification, and optional application for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This final amendment allows the optional use of alternative traffic control devices and the changes adopted here merely provide expanded guidance and clarification on the selection of appropriate traffic control devices. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rulemaking relates to the Federal-aid Highway Program which is a financial assistance program in which State, local, or tribal governments have authority to adjust their program in accordance with changes made in the program by the Federal government, and thus is excluded from the definition of Federal mandate under the Unfunded Mandates Reform Act of 1995.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements, Signs, Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

2. In section 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No.1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, "Errata No. 1 to the 1988 MUTCD, Revision 3 dated November 1, 1994," Revision No. 4 dated November 1, 1994, Revision No. 4a (modified) dated February 19, 1998, Revision No. 5 dated December 24, 1996, and Revision No. 6, dated June 19, 1998. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The amendments to the MUTCD, titled "1988 MUTCD Revision No. 1," dated January 17, 1990, "1988 MUTCD Revision No. 2," dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1, 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, "Revision No. 4a(modified)," dated February 19, 1998, and "1988 MUTCD Revision No. 5," dated December 24, 1996, and Revision No. 6 dated June 19, 1998 are available from the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7.

* * * * *

Issued: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–15882 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, and 602

[TD 8770]

RIN Nos. 1545–AP81 and 1545–AI32

Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to certain transfers of stock or securities by U.S. persons to foreign corporations pursuant to the corporate organization and reorganization provisions of the Internal Revenue Code, and the reporting requirements related to such transfers. The regulations provide the public with guidance necessary to comply with the Tax Reform Act of 1984.

DATES: These regulations are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1271. Responses to these collections of information are required in order for certain U.S. shareholders that transfer stock or securities in section 367(a) exchanges to qualify for an exception to the general rule of taxation under section 367(a)(1).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated burden per respondent varies from .5 to 8 hours, depending upon individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, T:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On May 16, 1986, temporary and proposed regulations under sections 367 (a) and (d), and 6038B were published in the **Federal Register** (51 FR 17936). These regulations, which addressed transfers of stock or securities and other assets, as well as related reporting requirements, were published to provide the public with guidance necessary to comply with changes made to the Internal Revenue Code by the Tax Reform Act of 1984. The IRS and the Treasury Department later issued Notice 87–85 (1987–2 C.B. 395), which set forth substantial changes to the 1986 regulations, effective with respect to transfers of domestic or foreign stock or securities occurring after December 16, 1987. A further notice of proposed rulemaking containing rules under section 367(a) with respect to transfers of domestic or foreign stock or securities, as well as section 367(b), was published in the **Federal Register** on August 26, 1991 (56 FR 41993). The section 367(a) portion of the 1991 proposed regulations was generally based upon the positions announced in Notice 87–85, but the regulations proposed certain modifications to Notice 87–85, particularly with respect to transfers of stock or securities of foreign corporations.

Subsequently, the IRS and the Treasury Department have issued guidance focusing on the transfers of stock or securities of domestic corporations. Notice 94–46 (1994–1 C.B. 356) announced modifications to the positions set forth in Notice 87–85 (and the 1991 proposed regulations) with respect to transfers of stock or securities of domestic corporations occurring after April 17, 1994. Temporary and proposed regulations (referred to as the inversion regulations) implementing Notice 94–46 (with certain modifications) were published in the **Federal Register** on December 26, 1995 (60 FR 66739 and 66771). Final inversion regulations, published in the **Federal Register** on December 27, 1996 (61 FR 61849), generally followed the rules contained in the temporary regulations, with modifications.

The final regulations herein address transfers of foreign stock or securities, and other matters addressed in the 1991 proposed regulations under section 367(a) that were not addressed in the 1996 final inversion regulations.

In addition, these final regulations address those portions of the 1991 proposed section 367(b) regulations that relate to transactions that are subject to both sections 367 (a) and (b). The remainder of the 1991 proposed section 367(b) regulations will be finalized at a later date.

This document also contains final regulations under section 6038B with respect to reporting requirements applicable to transfers of stock or securities described under section 367(a). Rules regarding outbound transfers to corporations of assets other than stock (including intangibles), and outbound transfers to foreign partnerships will be addressed in separate guidance.

Finally, these final regulations contain a clarification with respect to the scope of certain outbound transfers of intangibles that are subject to section 367(d).

Explanation of Provisions

Sections 367 (a) and (b): Introduction

Section 367(a)(1) generally treats a transfer of property (including stock or securities) by a U.S. person to a foreign corporation (an outbound transfer) in an exchange described in section 332, 351, 354, 356 or 361 as a taxable exchange unless the transfer qualifies for an exception to this general rule.

Section 367(a)(2) provides that, except as provided by regulations, section 367(a)(1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization. Section 367(a)(3) contains an exception to section 367(a)(1) for certain outbound transfers of tangible assets other than stock or securities. Section 367(a)(5) contains limitations on any exceptions to section 367(a)(1) in certain instances.

Section 367(b) provides that, with respect to certain nonrecognition transfers in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will retain its status as a corporation unless regulations provide otherwise.

These final regulations address transactions described in both sections

367 (a) and (b), and are prescribed under the authority of both sections 367 (a) and (b).

Stock Transfers Under Sections 367 (a) and (b): Scope

Outbound transfers of stock that are subject to section 367(a) may be either direct (such as an outbound transfer of stock described under section 351), indirect (as described below with respect to certain transfers) or constructive (such as an outbound stock transfer that may occur pursuant to a change in an entity's classification). See § 1.367(a)–3(a) (as amended) for the general rules regarding the scope of stock transfers that are subject to section 367(a).

Indirect Stock Transfers: in General

The current temporary regulations contain illustrative examples of certain transactions, including triangular reorganizations described under section 368(a)(1)(A) and either section 368(a)(2)(D) or (E), section 368(a)(1)(B) or (C), that are treated as indirect stock transfers subject to section 367(a) where the acquired company and the acquiring company are domestic corporations and the shareholders of the acquired company receive stock of the acquiring company's foreign parent in the exchange. (Under the terminology used in the proposed and final regulations, in the case of a reorganization described in sections 368(a)(1)(A) and (a)(2)(E), U.S. shareholders exchange their stock for stock of the *acquired* company's foreign parent.)

The proposed regulations clarified the treatment of indirect stock transfers, and provided extensive examples of the rules. The proposed regulations provided that transactions that are treated as indirect stock transfers include: (i) successive section 351 exchanges, and (ii) section 368(a)(1)(C) reorganizations followed by section 368(a)(2)(C) exchanges. In addition, the reorganizations illustrated under the existing temporary regulations are also treated as indirect stock transfers under the proposed regulations where the acquired and/or acquiring corporations are foreign corporations.

The proposed regulations requested comments as to the scope of the indirect stock transfer rules. The IRS and the Treasury Department carefully considered comments received with respect to the scope of the indirect stock transfer rules and have decided to retain the rules set forth in the proposed regulations. These rules are contained in § 1.367(a)–3(d), and additional examples are provided in the final regulations.

Indirect Stock Transfer Rules and Section 367(d)

In the case of a triangular section 368(a)(1)(C) reorganization in which a U.S. target company (UST) transfers its assets to a foreign acquiring company (FA) and UST's U.S. parent company (USP) receives stock of FA's foreign parent (the transferee foreign corporation or TFC) in exchange for the UST stock, the indirect stock transfer rules and the asset transfer rules will apply contemporaneously.

If UST is taxable under section 367(a) with respect to its outbound (section 361) transfer of all or a portion of its tangible assets (because such assets do not qualify for an exception to section 367(a)(1)), USP will receive a step up in the basis of its stock in UST, provided that USP and UST file a consolidated Federal income tax return. See § 1.1502–32. USP will also be deemed to make an indirect transfer of the stock of UST for TFC stock. See § 1.367(a)–3(d)(1)(iv). Thus, if USP receives at least five percent of either the total value or the total voting power of the stock of TFC (i.e., USP is a 5-percent shareholder (which is also referred to as a 5-percent transferee shareholder in § 1.367(a)–3(c)(5)(ii)) and the value of the UST stock exceeds USP's basis in UST (taking into account basis adjustments relating to the asset transfer), USP may qualify for nonrecognition treatment by entering into a gain recognition agreement (GRA), described below, provided that the requirements of § 1.367(a)–3(c)(1) are satisfied. See, e.g., § 1.367(a)–3(d)(3), *Example 7* through *Example 7C*.

If the asset transfer involves tangible assets and the transfer is fully taxable (so that USP's basis in its UST stock equals the value of the UST stock), the indirect stock transfer would not be taxable under section 367(a), and, hence, no GRA would be required. In contrast, if the assets transferred by UST include intangibles that are taxable under section 367(d), the exact manner in which section 367(d) operates is less certain.

The regulations under section 367(d) do not address the tax consequences when the U.S. transferor goes out of existence pursuant to the transaction. The IRS and the Treasury Department are studying the manner in which the rules under section 367(d) should operate when the U.S. transferor goes out of existence contemporaneously with (or subsequent to) its outbound transfer of an intangible. Comments are requested with respect to this issue.

Transactions Subject to Sections 367(a) and (b)

An outbound transfer of foreign stock or securities can be subject to both sections 367(a) and (b). Pursuant to section 367(a)(2), § 1.367(a)–3T(b) of the current temporary regulations provides that, if an exchange is described in section 354 or 361, an outbound transfer of stock or securities of a foreign corporation that is a party to the reorganization is not subject to section 367(a). Thus, for example, an outbound transfer in which a U.S. person exchanges stock in one controlled foreign corporation (CFC) for another CFC that qualifies as a reorganization under section 368(a)(1)(B) (a B reorganization), including a transfer that qualifies as both a B reorganization and a section 351 exchange, is subject only to section 367(b), not section 367(a). In such case, no GRA, described below, is required under the current temporary regulations to preserve nonrecognition treatment. In contrast, an outbound transfer of foreign stock that qualifies as a section 351 exchange but not a B reorganization is currently subject to only section 367(a), not section 367(b), and, thus, a GRA may be required to preserve nonrecognition treatment.

The IRS and the Treasury Department believe that substantially similar transactions, such as these, should not be treated in markedly different manners. Thus, these final regulations adopt the approach contained in the proposed regulations: that all outbound transfers of foreign stock will be subject to sections 367(a) and (b) concurrently, except to the extent that the exchange is fully taxable under section 367(a)(1). See § 1.367(a)–3(b)(2).

Sections 367(a) and (b): Exceptions to Taxation

Once a determination is made that a particular outbound transfer of stock or securities is subject to section 367(a), the next determination is the tax treatment of such transfer. In general, the current rules regarding the outbound transfer of stock or securities under section 367(a) provide for three different tax consequences depending upon the particular facts: (i) certain transfers retain nonrecognition treatment without condition, (ii) certain transfers retain nonrecognition treatment only if the U.S. transferor enters into a GRA, and (iii) certain transfers of stock are taxable to the U.S. transferor under section 367(a)(1) with no option to file a GRA to secure nonrecognition treatment. These final regulations retain this general framework.

The current rules governing whether a taxpayer may qualify for an exception under section 367(a) in the case of an outbound transfer of stock are described in § 1.367(a)–3(c) of the final inversion regulations (in the case of domestic stock or securities) and Notice 87–85 (in the case of foreign stock or securities).

Notice 87–85 provides that in the case of an outbound transfer of foreign stock or securities to which section 367(a) applies, a U.S. transferor may generally qualify for nonrecognition treatment if it either (i) is not a 5-percent shareholder, or (ii) is a 5-percent shareholder but enters into a GRA for a term of 5 or 10 years, depending upon the TFC stock owned by all U.S. transferors. Under current law, a 5-percent shareholder that qualifies for nonrecognition treatment under section 367(a) by filing a GRA agrees that if the TFC disposes of the stock of the transferred corporation in a taxable transaction during the term of the GRA, the 5-percent shareholder must amend its return for the year of the transfer and include in income the amount that it realized but did not recognize with respect to the stock of the transferred corporation, and pay the tax due, plus interest, on this amount. (Under Notice 87–85, the term of the GRA is 5 years if all U.S. transferors, in the aggregate, own less than 50 percent of both the total voting power and the total value of the TFC immediately after the transfer, or 10 years if all U.S. transferors, in the aggregate, own 50 percent or more of either the total voting power or the total value of the TFC immediately after the transfer.) Although GRAs are currently used solely with respect to outbound transfers of stock or securities, the IRS and the Treasury Department may, at a later date, permit taxpayers to secure nonrecognition treatment under section 367(a) with respect to other types of assets by entering into GRAs.

Notice 87–85, however, provides no exception to section 367(a)(1) if a U.S. transferor transfers stock in a CFC in which it is a United States shareholder (as defined in § 7.367(b)–2(b) or section 953(c)) but does not receive back stock in a CFC in which it is a United States shareholder.

The final regulations, following the proposed regulations on this point, provide that a transfer described in the preceding paragraph, such as a section 351 exchange in which a U.S. transferor exchanges stock of a CFC in which it is a United States shareholder for stock of a non-CFC, is not automatically taxable. Instead, both sections 367(a) and (b) apply to the exchange. If the U.S. transferor is required under section 367(a) to enter into a GRA to preserve nonrecognition treatment and fails to do so, the transaction is fully taxable under section 367(a) (and, as a consequence, the section 1248 amount that would be included as a dividend under section 367(b) had a GRA been filed is instead treated as a dividend under section 1248). If the U.S. transferor is required to enter into a GRA and properly does so, the U.S. transferor is required under section 367(b) to include in income the section 1248 amount attributable to the stock exchanged. The amount of the GRA equals the gain realized on the transfer less the inclusion under section 367(b). See § 1.367(a)–3(b)(2).

As noted above, Notice 87–85 addressed outbound transfers of both domestic and foreign stock. The (1996) final inversion regulations superseded Notice 87–85 with respect to outbound transfers of domestic stock. The rules in Notice 87–85 with respect to outbound transfers of foreign stock have been incorporated into these final regulations with respect to transfers that occur prior to July 20, 1998. See § 1.367(a)–3(g). Notice 87–85 will be obsolete when these final regulations are effective.

Section 367(a): Post-GRA Transactions

Section 1.367(a)–8 provides general rules regarding terms and conditions relating to GRAs, and the manner in which post-GRA transactions impact the GRA. The general terms and conditions for GRAs have not changed significantly from the terms and conditions set forth in § 1.367(a)–3T(g) of the current temporary regulations, except that the final regulations contain an election (the GRA election), described below, to permit the taxpayer to include the GRA amount in income in the year of the triggering event (with interest on the tax due from the year of the transfer) rather than on an amended return for the year of the initial transfer. In addition, the final regulations generally follow the proposed regulations by providing a more comprehensive explanation of the manner in which the GRA is affected by both taxable and nontaxable dispositions by the U.S. transferor, the TFC, and the transferred corporation.

The current temporary regulations provide that the GRA is triggered if (i) the TFC disposes of all or a portion of the stock of the transferred corporation, or (ii) the transferred corporation disposes of a substantial portion of its assets. The term *substantial portion* was not defined in the regulations.

Both the final and the proposed regulations use the rule from the current temporary regulations that a GRA is triggered to the extent that the TFC disposes of all or a portion of the stock of the transferred corporation. The final regulations also adopt the rule contained in the proposed regulations that a GRA is triggered if the transferred corporation disposes of substantially all of its assets (within the meaning of section 368(a)(1)(C)). In addition, the final regulations provide that a GRA will be triggered if the U.S. transferor is either a U.S. citizen or long-term resident (as defined in section 877(e)(2)) at the time of the initial transfer and such person ceases to be a U.S. citizen or long-term resident during the GRA term.

Under the current temporary regulations, if a GRA is triggered, the U.S. transferor must amend its tax return for the year of the initial transfer, include in income the gain that was realized but not recognized, and pay the tax due thereon with interest. The proposed regulations would have maintained the amended return/interest charge requirement, but requested comments as to (i) the amount of gain to be recognized by the U.S. transferor upon a triggering event, (ii) the year in which the gain should be included in the income of the U.S. transferor, and (iii) whether an interest charge is appropriate.

A number of commentators have suggested that the 10-year GRA term under Notice 87–85 in certain instances is too restrictive because a disposition of the stock of the transferred corporation in year 8, for example, would likely not be a tax avoidance transfer but the interest charges would be burdensome in such case. Other commentators suggested a deferred income approach similar to that applicable in the consolidated return deferred intercompany context.

In response to these comments, these final regulations contain two significant modifications to the current temporary regulations. First, in conformity with the final inversion regulations, these regulations provide that the GRA term will be 5 years in all cases involving outbound transfers of foreign stock. (Moreover, taxpayers may elect to apply these final regulations to past transactions so that any 10-year GRA that is in existence (i.e., has not been triggered) on July 20, 1998 will be a 5-year GRA. Thus, the 10-year GRA will be considered to be a 5-year GRA by the IRS, and, such GRA will terminate on the fifth full taxable year following the close of the taxable year of the initial transfer.) Second, because the IRS and the Treasury Department are concerned that the amended return requirement can be burdensome to taxpayers in the event that a GRA is triggered, the final regulations contain an election (the GRA election), which must be filed with the

U.S. transferor's tax return that includes the date of the initial transfer, that permits taxpayers to report a triggering event in the year of the triggering event rather than on an amended return for the year of the initial transfer. (No such election is available with respect to GRAs that are in existence when these final regulations become effective.)

Even if a transferor makes a GRA election, such person is still required to extend the statute of limitations, comply with all of the applicable GRA reporting requirements (such as filing annual certifications) and, in the case of a triggering event, include in income the GRA amount plus interest in the same manner as under the current temporary regulations, except that (i) the GRA amount and interest would be included on the U.S. transferor's tax return for the year that includes the triggering event, and (ii) other computations, such as the section 1248 amount (if any) attributable to the transferred stock, will be determined on the triggering date rather than the date of the initial transfer.

Consistent with the proposed regulations, the final regulations clarify that post-GRA nonrecognition transactions (e.g., nonrecognition transactions in which the U.S. transferor transfers the stock of the TFC, the TFC transfers the stock of the transferred corporation, or the transferred corporation transfers substantially all of its assets) generally do not trigger the GRA, provided that the U.S. transferor reports the transaction and amends the GRA to reflect the post-GRA transaction.

The current temporary regulations do not provide instances that would cause the GRA to be terminated (i.e., extinguished). The proposed regulations would have provided that the GRA would be terminated if either (i) the U.S. transferor disposed of all of its TFC stock in a taxable transaction, or (ii) the transferred company is a U.S. company that sold substantially all of its assets in a taxable transaction (but only if the transferred company was affiliated with the U.S. transferor under section 1504(a)(2) prior to the initial transfer).

The final regulations retain these two rules. In addition, the final regulations also provide that a GRA will be terminated if (i) the TFC distributes the stock of the transferred corporation back to the U.S. transferor in a section 355 exchange, or (ii) the TFC liquidates into the U.S. transferor under section 332, provided that, immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer of such stock.

Finally, the current temporary regulations provide (and the 1991 proposed regulations would have provided) certain restrictions on taxpayers' ability to use net operating losses and credits to offset the amount of gain recognized upon the trigger of a GRA. In response to suggestions from commentators, the final regulations remove these restrictions.

Section 367(a) and "Check-the-Box" Rules

The IRS and the Treasury Department are aware that taxpayers may attempt to use the entity classification (i.e., check-the-box) regulations to avoid entering into GRAs. For example, assume that a U.S. transferor (USP) owns all of the stock of two CFCs, CFC1 and CFC2. USP transfers the stock of CFC2 to CFC1 in an exchange otherwise described as both a section 351 exchange and a B reorganization. USP elects under § 301.7701–3(c) to treat CFC2 as a disregarded entity, and such election is effective immediately prior to the transfer.

Provided that the election is respected, USP would, for Federal income tax purposes, transfer the assets (and not the stock) of CFC2 to CFC1 in a section 351 exchange. If the assets will be used by CFC1 in the active conduct of a trade or business outside the United States, the transfer of the assets by USP will qualify for the exception contained in section 367(a)(3) and § 1.367(a)–2T (as limited by certain provisions, including §§ 1.367(a)–4T through 1.367(a)–6T). If the assets are disposed of (either directly by CFC2 or because the stock of CFC2 is disposed of by CFC1) in connection with the transfer to CFC1, the step transaction doctrine may apply to deny nonrecognition treatment to the outbound transfer to the extent it is treated as an asset transfer. In addition, the active trade or business exception under § 1.367(a)–2T is inapplicable if, as part of the same transaction in which the TFC received the assets, it disposes of such assets. See § 1.367(a)–2T(c). Thus, if USP intended to sell CFC2 or its business at the time of the election or the asset transfer, the transfer would be treated as a taxable exchange under section 367(a)(1). If the step transaction doctrine and the active trade or business anti-avoidance rule do not apply, however, the use of the "check-the-box" regulations in this context will not be viewed as inconsistent with the purposes of section 367(a), and, therefore, the transaction will be respected as an asset transfer.

Section 367(a) and Tax-Motivated Transactions

The IRS and the Treasury Department are aware that certain taxpayers have entered into (or are contemplating) transactions that are designed to avoid the inversion regulations under § 1.367(a)–3(c). In these transactions (where a foreign corporation acquires the stock of a domestic corporation), one or more U.S. transferors attempt to avoid taxation under the inversion regulations by retaining an equity interest (or receiving a modified equity interest) in the domestic target corporation. Such interest, however, is typically coupled with an interest in the foreign acquirer, or a right to convert the interest in the domestic target into stock of the foreign acquirer.

The IRS and the Treasury Department are currently scrutinizing these transactions on a case-by-case basis using substance over form (or other) principles, and are studying whether it is appropriate to issue specific guidance with respect to these transactions. Comments are requested as to the instances in which a U.S. transferor that receives (or maintains) a stock interest in the domestic target in circumstances similar to those described above should not be treated as having received stock in the foreign acquirer for purposes of section 367(a).

Section 367(b)

This document finalizes the 1991 proposed section 367(b) regulations to the extent necessary to address those transfers of foreign stock subject to both sections 367(a) and (b) under the 1991 proposed regulations.

In addition, this document contains a number of other miscellaneous provisions, at the request of commentators.

First, under current law, if a United States shareholder (defined under § 7.367(b)–2(b) as a 10 percent shareholder of a CFC within the past 5 years) exchanges, under section 351, stock of a foreign corporation for stock of a domestic corporation, the U.S. transferor is not taxable under section 367(b). However, if the transaction constitutes a section 354 exchange, under § 7.367(b)–7(c)(1) the United States shareholder must include in income the section 1248 amount attributable to the stock exchanged. Consistent with the 1991 proposed regulations as well as the purpose of these final regulations to harmonize the Federal income tax consequences of substantially similar transactions, the final section 367(b) regulations provide that a section 1248 inclusion generally

is not required in the case of the section 354 exchange described above. (This result is accomplished by excluding domestic stock from the categories of nonqualifying consideration described in § 1.367(b)–4(b)(1). Thus, these transfers will generally be respected as nonrecognition exchanges under 367(b).)

Second, consistent with the principles of section 367(b), in cases where the final regulations do not require that the section 1248 amount be included in income, the regulations clarify the appropriate treatment of post-reorganization exchanges under section 1248 or 367(b). See § 1.367(b)–4(b)(5).

Third, in an effort to reduce the reporting burdens of U.S. persons that make outbound transfers of foreign stock or securities, the section 367(b) regulations are amended to provide that, to the extent that a transaction is described in both sections 367(a) and (b), and the exchanging shareholder is not a United States shareholder of the corporation whose stock is exchanged, reporting under section 367(b) is not required. See § 1.367(b)–1(c).

Finally, the proposed section 367(b) regulations provided that final regulations generally would be effective for exchanges that occur on or after 30 days after the final regulations were published in the **Federal Register**. However, § 1.367(b)–2(d) (relating to the definition of the all earnings and profits amount) was proposed to be effective for transfers occurring on or after August 26, 1991. In response to comments regarding this provision and its effective date, a separate notice of proposed rulemaking is issued with these final regulations to delete the August 26, 1991, effective date with respect to the all earnings and profits amount. Thus, the definition of the all earnings and profits amount that will be included in forthcoming section 367(b) final regulations will apply to exchanges that occur on or after 30 days after the issuance of those final regulations.

The IRS and the Treasury Department will issue guidance at a later date to address section 367(b) provisions described in the 1991 proposed regulations that are not addressed herein.

Section 6038B: In General

Section 6038B, as enacted under the Deficit Reduction Act of 1984 (Public Law 98–369), provided that U.S. persons that made certain outbound transfers of property to foreign corporations were required to report those transfers in the manner prescribed by regulations. The penalty for failure to comply with the regulations was 25 percent of the gain realized on the exchange, unless the failure was due to reasonable cause and not to willful neglect. (The penalty was modified by the Taxpayer Relief Act of 1997 (TRA '97).)

Section 1.6038B–1T, promulgated on May 15, 1986, by TD 8087 (together with regulations under sections 367(a) and (d)), provided rules concerning the information that was required to be reported under section 6038B with respect to transfers of property to foreign corporations.

Section 6038B: Transfers of Stock or Securities

Section 1.6038B–1T(b)(2)(i) of the current temporary regulations provides, inter alia, that no notice is required under section 6038B with respect to a transfer of stock or securities described in § 1.367(a)–3T(f)(1) of the current temporary regulations. Section 1.367(a)–3T(f)(1) had provided that an outbound transfer of stock or securities of a domestic or foreign corporation was not taxable under section 367(a)(1) if immediately after the transfer (i) all U.S. transferors owned in the aggregate less than 20 percent of both the total voting power and the total value of the stock of the TFC, or (ii) all U.S. transferors owned in the aggregate 20 percent or more of either the total voting power or the total value of the stock of the TFC, but less than 50 percent of that total voting power and total value and the subject U.S. transferor was not a 5-percent shareholder.

Notice 87–85 superseded the 1986 temporary regulations under section 367(a) (including § 1.367(a)–3T(f)(1)) with respect to the exceptions available for outbound stock transfers. Notice 87–85 provided that final regulations would incorporate the rules contained in the Notice, for transfers occurring after December 16, 1987. The exceptions in the 1986 temporary regulations, including § 1.367(a)–3T(f)(1) of the current temporary regulations, were removed as deadwood (for transfers occurring after December 16, 1987) by the 1995 temporary inversion regulations (TD 8638).

Prior to the issuance of these final regulations, however, section 6038B had not been amended with respect to outbound transfers of stock or securities. Thus, there was uncertainty whether a U.S. transferor that qualified under the inversion regulations or Notice 87–85 for nonrecognition treatment without filing a GRA (i.e., such U.S. transferor was not a 5-percent shareholder) was required to comply with section 6038B.

To reduce the reporting burdens on U.S. taxpayers that make outbound transfers of stock subject to section 6038B, the final section 6038B regulations provide that, with respect to transfers occurring after December 16, 1987, and before these final regulations are generally effective, a U.S. transferor that makes an outbound transfer subject to section 367(a) will not be subject to section 6038B with respect to such transfer if (i) such person was not a 5-percent shareholder and the transfer qualified for nonrecognition treatment under section 367(a), or (ii) such person was not a 5-percent shareholder in the case of a taxable transaction but such person included the gain on its Federal income tax return for the taxable year that included the date of the transfer.

With respect to transfers occurring after these final regulations are effective, these regulations contain the two exceptions described above. In addition, a 5-percent shareholder that is required to file a GRA is not subject to section 6038B provided that a GRA is properly filed. Moreover, U.S. transferors that are taxable on their outbound transfers of stock or securities (such as under the inversion regulations or because a 5-percent shareholder that was eligible to qualify for nonrecognition treatment chose not to file a GRA) are not subject to section 6038B if they properly report the gain recognized on the transfer on their tax returns that include the date of the transfer.

Thus, a U.S. transferor that does not properly report the gain recognized on its outbound stock transfer has not met its section 6038B filing obligation with respect to such transfer, and will be subject to the penalty under section 6038B, unless the transferor's failure to report the gain from the outbound transfer was due to reasonable cause and not willful neglect. Such person will also be subject to the extended statute of limitations under section 6501(c)(8).

Section 6038B: Transfers of Cash and Unappreciated Property

As noted above, prior to the enactment of TRA '97, the penalty for failure to comply with section 6038B was 25 percent of the gain realized on the outbound transfer. Thus, in the case of an outbound transfer of cash or unappreciated property required to be reported under section 6038B, no penalty was imposed upon the failure to report the transfer.

Pursuant to the TRA '97, the penalty for failure to report under section 6038B is revised from 25 percent of the gain realized in the property transferred to 10 percent of the fair market value of the property transferred, but limited to $100,000 unless the failure to report the

exchange was due to intentional disregard. (The final regulations reflect the modification to the penalty provision under section 6038B.)

In response to the TRA '97 change to the penalty structure under section 6038B, these final regulations clarify that transfers of unappreciated property are required to be reported, or the 10 percent penalty will apply. These final regulations, however, do not require outbound transfers of cash to be reported. Rules regarding outbound transfers of cash will be provided in future regulations.

Section 6038B: Other Transfers

Pursuant to TRA '97, certain outbound transfers to foreign partnerships are required to be reported under section 6038B. Rules regarding outbound transfers to foreign corporations of assets not covered in these final regulations (such as intangibles), and outbound transfers to foreign partnerships, will be addressed in separate guidance.

Section 367(d) and Other TRA '97 Matters

A clarification provides that certain rules under section 367(a) will also apply under section 367(d) for purposes of determining the identity of the transferor that makes an outbound transfer of an intangible subject to section 367(d). Section 367(a)(4) and § 1.367(a)–1T(c)(5) provide that, for purposes of section 367(a), a partnership is treated as an aggregate in cases where a U.S. person transfers a partnership interest or a partnership makes an outbound transfer of stock (or other assets).

The IRS and the Treasury Department believe that the identity of the transferor has been and must be consistent under both sections 367(a) and (d). Consequently, a U.S. person may not attempt the use of a foreign partnership as an intermediary (in light of the repeal of section 1491) for an outbound transfer of an intangible by a U.S. person to a foreign corporation to avoid section 367(d). In the case of a transfer of an intangible by a partnership to a foreign corporation that qualifies as a section 351 exchange, each partner that is a U.S. person is treated as transferring its share of the intangible in a transfer that is subject to section 367(d).

Guidance under TRA '97 relating to the repeal of section 1491 may address situations in which inappropriate results can be achieved through transactions facilitated by such repeal. For example, guidance may address the appropriate tax consequences when a U.S. person who is a United States shareholder of a CFC transfers stock in the CFC to a foreign partnership, and immediately after the transfer the foreign corporation loses its status as a CFC. Guidance is generally not, however, expected to require gain recognition under section 721(c) in cases where gain is not inappropriately shifted to foreign persons.

Effective Dates

The final regulations contained herein are generally effective for transfers occurring on or after July 20, 1998. However, taxpayers generally may elect to apply the final regulations under § 1.367(a)–3(b) and (d) to transfers of foreign stock or securities occurring after December 17, 1987. A taxpayer that makes the election must apply section 367(b) and the regulations thereunder to such transfers. In the case of a transfer described in section 351, an electing transferor must apply section 367(b) and the regulations thereunder as if the exchange was described in § 7.367(b)–7. Thus, for example, in a case of a section 351 exchange in which a U.S. person exchanges stock of a CFC in which it is a United States shareholder but does receive back stock of a CFC in which it is a United States shareholder, the electing transferor must include in income the section 1248 amount with respect to the transferred stock.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these final regulations generally reduce the reporting requirements in comparison with the requirements contained under current law and the proposed sections 367(a) and (b) regulations. For example, the maximum term of the GRA under section 367(a) is reduced from 10 to 5 years, thus eliminating the need for annual certifications in years 5 through 9. Moreover, the requirements under section 6038B have been substantially revised for outbound transfers of stock described in section 367(a) so that the amount of filing required under that section will be significantly reduced. In addition, as a general matter, these regulations will primarily affect large shareholders and U.S. multinational corporations with foreign operations. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of these regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 7

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for section 1.367(b)–7 and adding new entries to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(a)–3 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(a)–8 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–1 also issued under 26 U.S.C. 367(a) and (b). * * *

Section 1.367(b)–4 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–7 also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(a)–1T is amended as follows:

1. Paragraph (a), fourth sentence is amended by removing the reference "§ 1.367(a)–3T" and adding "§ 1.367(a)–3" in its place.

2. Paragraph (a), last sentence is amended by removing the reference "§ 1.6038B–1T" and adding "§§ 1.6038B–1 and 1.6038B–1T" in its place.

3. Paragraph (b)(2)(i) is removed and reserved.

4. Paragraph (b), the concluding text immediately following paragraph (b)(2)(iii) is removed.

5. Paragraph (c)(1), the last sentence is removed.

6. Paragraph (c)(2) is revised to read as set forth below.

7. Paragraph (c)(3)(ii)(C), the second sentence of the concluding text immediately following paragraph (c)(3)(ii)(C)(*2*) is amended by removing the language "§ 1.367(a)–3T" and adding "§ 1.367(a)–3" in its place.

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): in general (temporary).

* * * * *

(c) * * *

(2) *Indirect transfers in certain reorganizations.* [Reserved] For further guidance, see § 1.367(a)–3(d).

* * * * *

Par. 3. Section 1.367(a)–3 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. Paragraph (c)(1)(iii)(B) is amended by removing the reference "§ 1.367(a)–3T(g)" and adding "§ 1.367(a)–8" in its place.
3. Revising paragraph (d).
4. Removing paragraphs (e) through (h) and adding paragraphs (e), (f) and (g).

The revisions and additions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a). In general, a transfer of stock or securities by a U.S. person to a foreign corporation that is described in section 351, 354 (including a reorganization described in section 368(a)(1)(B) and including an indirect stock transfer described in paragraph (d) of this section), 356 or section 361(a) or (b) is subject to section 367(a)(1) and, therefore, is treated as a taxable exchange, unless one of the exceptions set forth in paragraph (b) of this section (regarding transfers of foreign stock or securities) or paragraph (c) of this section (regarding transfers of domestic stock or securities) applies. However, if in an exchange described in section 354, a U.S. person exchanges stock of one foreign corporation for stock of another foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D) or (F) that is not treated as an indirect stock transfer under paragraph (d) of this section, such section 354 exchange is not a transfer to a foreign corporation subject to section 367(a). See, e.g., paragraph (d)(3) *Example 12*. For rules regarding other indirect or constructive transfers of stock or securities subject to section 367(a), see § 1.367(a)–1T(c). For additional rules relating to an exchange involving a foreign corporation in connection with which there is a transfer of stock, see section 367(b) and the regulations under that section. For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section. For rules regarding reporting requirements with respect to transfers described under section 367(a), see section 6038B and the regulations thereunder.

(b) *Transfers by U.S. persons of stock or securities of foreign corporations to foreign corporations*—(1) *General rule.* Except as provided in section 367(a)(5), a transfer of stock or securities of a foreign corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if either—

(i) *Less than 5-percent shareholder.* The U.S. person owns less than five percent (applying the attribution rules of section 318, as modified by section 958(b)) of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer; or

(ii) *5-percent shareholder.* The U.S. person enters into a five-year gain recognition agreement with respect to the transferred stock or securities as provided in § 1.367(a)–8.

(2) *Certain transfers subject to sections 367(a) and (b)*—(i) *In general.* A transfer of foreign stock or securities described in section 367(a) or any regulations thereunder as well as in section 367(b) or any regulations thereunder shall be concurrently subject to sections 367(a) and (b) and the regulations thereunder, except to the extent that the transferee foreign corporation is not treated as a corporation under section 367(a)(1). The example in paragraph (b)(2)(ii) of this section illustrates the rules of this paragraph (b)(2). For an illustration of the interaction of the indirect stock transfer rules under section 367(a) (described under paragraph (d) of this section) and the rules of section 367(b), see paragraph (d)(3) *Example 11* of this section.

(ii) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

Example. (i) *Facts.* DC, a domestic corporation, owns all of the stock of FC1, a controlled foreign corporation within the meaning of section 957(a). DC's basis in the stock of FC1 is $50, and the value of such stock is $100. The section 1248 amount with respect to such stock is $30. FC2, also a foreign corporation, is owned entirely by foreign individuals who are not related to DC or FC1. In a reorganization described in section 368(a)(1)(B), FC2 acquires all of the stock of FC1 from DC in exchange for 20 percent of the voting stock of FC2. FC2 is not a controlled foreign corporation after the reorganization.

(ii) *Result without gain recognition agreement.* Under the provisions of this paragraph (b), if DC fails to enter into a gain recognition agreement, DC is required to recognize in the year of the transfer the $50 of gain that it realized upon the transfer, $30 of which will be treated as a dividend under section 1248.

(iii) Result with gain recognition agreement. If DC enters into a gain recognition agreement under § 1.367(a)–8 with respect to the transfer of FC1 stock, the exchange will also be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). In such case, DC will be required to recognize the section 1248 amount of $30 on the exchange of FC1 for FC2 stock. See § 1.367(b)–4(b). The deemed dividend of $30 recognized by DC will increase its basis in the FC1 stock exchanged in the transaction and, therefore, the basis of the FC2 stock received in the transaction. The remaining gain of $20 realized by DC (otherwise recognizable under section 367(a)) in the exchange of FC1 stock will not be recognized if DC enters into a gain recognition agreement with respect to the transfer. (The result would be unchanged if, for example, the exchange of FC1 stock for FC2 stock qualified as a section 351 exchange, or as an exchange described in both sections 351 and 368(a)(1)(B).)

* * * * *

(d) *Indirect stock transfers in certain nonrecognition transfers*—(1) *In general.* For purposes of this section, a U.S. person who exchanges, under section 354 (or section 356) stock or securities in a domestic or foreign corporation for stock or securities in a foreign corporation in connection with one of the following transactions described in paragraphs (d)(1)(i) through (v) of this section (or who is deemed to make such an exchange under paragraph (d)(1)(vi) of this section) shall be treated as having made an indirect transfer of such stock or securities to a foreign corporation that is subject to the rules of this section, including, for example, the requirement, where applicable, that the U.S. transferor enter into a gain recognition agreement to preserve nonrecognition treatment under section 367(a). If the U.S. person exchanges stock or securities of a foreign corporation, see also section 367(b) and the regulations thereunder. For an example of the concurrent application of the indirect stock transfer rules under section 367(a) and the rules of section 367(b), see, e.g., paragraph (d)(3) *Example 11* of this section.

(i) *Mergers described in sections 368(a)(1)(A) and (a)(2)(D).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation)

for stock or securities of a foreign corporation that controls the acquiring corporation in a reorganization described in sections 368(a)(1)(A) and (a)(2)(D). See, e.g., paragraph (d)(3) *Example 1* of this section.

(ii) *Mergers described in sections 368(a)(1)(A) and (a)(2)(E).* A U.S. person exchanges stock or securities of a corporation (the acquiring corporation) for stock or securities in a foreign corporation that controls the acquired corporation in a reorganization described in sections 368(a)(1)(A) and (a)(2)(E).

(iii) *Triangular reorganizations described in section 368(a)(1)(B).* A U.S. person exchanges stock of the acquired corporation for voting stock of a foreign corporation that is in control (as defined in section 368(c)) of the acquiring corporation in connection with a reorganization described in section 368(a)(1)(B). See, e.g., paragraph (d)(3) *Example 4* of this section.

(iv) *Triangular reorganizations described in section 368(a)(1)(C).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation) for voting stock or securities of a foreign corporation that controls the acquiring corporation in a reorganization described in section 368(a)(1)(C). See, e.g., paragraph (d)(3) *Example 5* of this section (for an example of a triangular section 368(a)(1)(C) reorganization involving domestic acquired and acquiring corporations), and paragraph (d)(3) *Example 7* of this section (for an example involving a domestic acquired corporation and a foreign acquiring corporation). If the acquired corporation is a foreign corporation, see paragraph (d)(3) *Example 11* of this section, and section 367(b) and the regulations thereunder.

(v) *Reorganizations described in sections 368(a)(1)(C) and (a)(2)(C).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation) for voting stock or securities of a foreign acquiring corporation in a reorganization described in sections 368(a)(1)(C) and (a)(2)(C) (other than a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(iv) of this section). In the case of a reorganization in which some but not all of the assets of the acquired corporation are transferred pursuant to section 368(a)(2)(C), the transaction shall be considered to be an indirect transfer of stock or securities subject to this paragraph (d) only to the extent of the assets so transferred. (Other assets shall be treated as having been transferred in an asset transfer rather than an indirect stock transfer, and such asset transfer would be subject to the other provisions of section 367, including sections 367(a)(1), (3), (5) and (d) if the acquired corporation is a domestic corporation). See, e.g., paragraph (d)(3) *Example 5B* of this section.

(vi) *Successive transfers of property to which section 351 applies.* A U.S. person transfers property (other than stock or securities) to a foreign corporation in an exchange described in section 351, and all or a portion of such assets transferred to the foreign corporation by such person are, in connection with the same transaction, transferred to a second corporation that is controlled by the foreign corporation in one or more exchanges described in section 351. For purposes of this paragraph (d)(1) and § 1.367(a)–8, the initial transfer by the U.S. person shall be deemed to be a transfer of stock described in section 354. (Any assets transferred to the foreign corporation that are not transferred by the foreign corporation to a second corporation shall be treated as a transfer of assets subject to the general rules of section 367, including sections 367(a)(1), (3), (5) and (d), and not as an indirect stock transfer under the rules of this paragraph (d).) See, e.g., paragraph (d)(3) *Example 10* and *Example 10A* of this section.

(2) *Special rules for indirect transfers.* If a U.S. person is considered to make an indirect transfer of stock or securities described in paragraph (d)(1) of this section, the rules of this section and § 1.367(a)–8 shall apply to the transfer. For purposes of applying the rules of this section and § 1.367(a)–8:

(i) *Transferee foreign corporation.* The transferee foreign corporation shall be the foreign corporation that issues stock or securities to the U.S. person in the exchange.

(ii) *Transferred corporation.* The transferred corporation shall be the acquiring corporation, except that in the case of a triangular section 368(a)(1)(B) reorganization described in paragraph (d)(1)(iii) of this section, the transferred corporation shall be the acquired corporation; in the case of a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(iv) of this section followed by a section 368(a)(2)(C) transfer or a section 368(a)(1)(C) reorganization followed by a section 368(a)(2)(C) transfer described in paragraph (d)(1)(v) of this section, the transferred corporation shall be the transferee corporation; and in the case of successive section 351 transfers described in paragraph (d)(1)(vi) of this section, the transferred corporation shall be the transferee corporation in the final section 351 transfer. The transferred property shall be the stock or securities of the transferred corporation, as appropriate in the circumstances.

(iii) *Amount of gain.* The amount of gain that a U.S. person is required to include in income in the event of a disposition (or a deemed disposition) of some or all of the stock or securities of the transferred corporation shall be the proportionate share (as determined under § 1.367(a)–8(e)) of the U.S. person's gain realized but not recognized in the initial exchange (or deemed exchange) of stock or securities under section 354.

(iv) *Gain recognition agreements involving multiple parties.* The U.S. transferor's agreement to recognize gain, as provided in § 1.367(a)–8, shall include appropriate provisions, consistent with the principles of these rules, requiring the transferor to recognize gain in the event of a direct or indirect disposition of the stock or assets of the transferred corporation. For example, in the case of a triangular section 368(a)(1)(B) reorganization described in paragraph (d)(1)(iii) of this section, a disposition of the transferred stock shall include an indirect disposition of such stock by the transferee foreign corporation, such as a disposition of such stock by the acquiring corporation or a disposition of the stock of the acquiring corporation by the transferee foreign corporation. See, e.g., paragraph (d)(3) *Example 4* of this section.

(v) *Determination of whether the transferred corporation disposed of substantially all of its assets.* For purposes of applying § 1.367(a)–8(e)(3)(i) to determine whether the transferred corporation has disposed of substantially all of its assets, the following assets shall be taken into account (but only if such assets are not fully taxable under section 367 in the taxable year that includes the indirect transfer)—

(A) In the case of a sections 368(a)(1)(A) and (a)(2)(D) reorganization, and a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(i) or (iv) of this section, respectively, the assets of the acquired corporation;

(B) In the case of a sections 368(a)(1)(A) and (a)(2)(E) reorganization described in paragraph (d)(1)(ii) of this section, the assets of the acquiring corporation immediately prior to the transaction;

(C) In the case of a sections 368(a)(1)(C) and (a)(2)(C) reorganization described in paragraph (d)(1)(v) of this section, the assets of the acquired corporation that are subject to a transfer described in section 368(a)(2)(C); and

(D) In the case of successive section 351 exchanges described in paragraph (d)(1)(vi) of this section, the assets that are both transferred initially to the foreign corporation, and transferred by the foreign corporation to a second corporation.

(vi) *Coordination between asset transfer rules and indirect stock transfer rules.* If, pursuant to any of the transactions described in paragraph (d)(1) of this section, a domestic corporation transfers (or is deemed to transfer) assets to a foreign corporation (other than in an exchange described in section 354), the rules of section 367, including sections 367(a)(1), (a)(3) and (a)(5), as well as section 367(d), and the regulations thereunder shall apply prior to the application of the rules of this section. However, if a transaction is described in this paragraph (d), section 367(a) shall not apply in the case of a domestic acquired corporation that transfers its assets to a foreign acquiring corporation, to the extent that such assets are re-transferred to a domestic corporation in a transfer described in section 368(a)(2)(C) or paragraph (d)(1)(vi) of this section, but only if the domestic transferee's basis in the assets is no greater than the basis that the domestic acquired company had in such assets. See, e.g., paragraph (d)(3) *Example 8* and *Example 10A* of this section.

(3) *Examples.* The rules of this paragraph (d) and § 1.367(a)–8 are illustrated by the following examples:

Example 1. Section 368(a)(1)(A)/(a)(2)(D) reorganization—(i) *Facts.* F, a foreign corporation, owns all the stock of Newco, a domestic corporation. A, a domestic corporation, owns all of the stock of W, also a domestic corporation. A and W file a consolidated Federal income tax return. A does not own any stock in F (applying the attribution rules of section 318, as modified by section 958(b)). In a reorganization described in sections 368(a)(1)(A) and (a)(2)(D), Newco acquires all of the assets of W, and A receives 40% of the stock of F in an exchange described in section 354.

(ii) *Result.* Pursuant to paragraph (d)(1)(i) of this section, the reorganization is subject to the indirect stock transfer rules. F is treated as the transferee foreign corporation, and Newco is treated as the transferred corporation. Provided that the requirements of paragraph (c)(1) of this section are satisfied, including the requirement that A enter into a five-year gain recognition agreement as described in § 1.367(a)–8, A's exchange of W stock for F stock under section 354 will not be subject to section 367(a)(1). If F disposes (within the meaning of § 1.367(a)–8(e)) of all (or a portion) of Newco's stock within the five-year term of the agreement (and A has not made a valid election under § 1.367(a)–8(b)(1)(vii)), A is required to file an amended return for the year of the transfer and include in income, with interest, the gain realized but not recognized on the initial section 354 exchange. If A has made a valid election under § 1.367(a)–8(b)(1)(vii) to include the amount subject to the gain recognition agreement in the year of the triggering event, A would instead include the gain on its tax return for the taxable year that includes the triggering event, together with interest.

Example 1A. Transferor is a subsidiary in consolidated group—(i) *Facts.* The facts are the same as in *Example 1*, except that A is owned by P, a domestic corporation, and for the taxable year in which the transaction occurred, P, A and W filed a consolidated Federal income tax return.

(ii) *Result.* Even though A is the U.S. transferor, P is required under § 1.367(a)–8(a)(3) to enter into the gain recognition agreement and comply with the requirements under § 1.367(a)–8. In the event that A leaves the P group, A would make the annual certifications required under § 1.367(a)–8(b)(5)(ii). P would remain liable with A under the gain recognition agreement.

Example 2. Taxable inversion pursuant to indirect stock transfer rules—(i) *Facts.* The facts are the same as in *Example 1*, except that A receives more than fifty percent of either the total voting power or the total value of the stock of F in the transaction.

(ii) *Result.* A is required to include in income in the year of the exchange the amount of gain realized on such exchange. See paragraph (c)(1)(i) of this section. If A fails to include the income on its timely-filed return, A will also be liable for the penalty under section 6038B (together with interest and other applicable penalties) unless A's failure to include the income is due to reasonable cause and not willful neglect. See § 1.6038B–1(f).

Example 3. Disposition by U.S. transferred corporation of substantially all of its assets—(i) *Facts.* The facts are the same as in *Example 1*, except that, during the third year of the gain recognition agreement, Newco disposes of substantially all (as described in § 1.367(a)–8(e)(3)(i)) of the assets described in paragraph (d)(2)(v)(A) of this section for cash and recognizes currently all of the gain realized on the disposition.

(ii) *Result.* Under § 1.367(a)–8(e)(3)(i), the gain recognition agreement is generally triggered when the transferred corporation disposes of substantially all of its assets. However, under the special rule contained in § 1.367(a)–8(h)(2), because A and W filed a consolidated Federal income tax return prior to the transaction, and Newco, the transferred corporation, is a domestic corporation, the gain recognition agreement is terminated and has no further effect.

Example 4. Triangular section 368(a)(1)(B) reorganization—(i) *Facts.* F, a foreign corporation, owns all the stock of S, a domestic corporation. U, a domestic corporation, owns all of the stock of Y, also a domestic corporation. U does not own any of the stock of F (applying the attribution rules of section 318, as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(B) and paragraph (d)(1)(iii) of this section, S acquires all the stock of Y, and U receives 10% of the voting stock of F.

(ii) *Result.* U's exchange of Y stock for F stock will not be subject to section 367(a)(1), provided that all of the requirements of paragraph (c)(1) are satisfied, including the requirement that U enter into a five-year gain recognition agreement. For purposes of this section, F is treated as the transferee foreign corporation and Y is treated as the transferred corporation. See paragraphs (d)(2)(i) and (ii) of this section. Under paragraph (d)(2)(iv) of this section, the gain recognition agreement would be triggered if F sold all or a portion of the stock of S, or if S sold all or a portion of the stock of Y.

Example 5. Triangular section 368(a)(1)(C) reorganization—(i) *Facts.* F, a foreign corporation, owns all of the stock of R, a domestic corporation that operates an historical business. V, a domestic corporation, owns all of the stock of Z, also a domestic corporation. V does not own any of the stock of F (applying the attribution rules of section 318 as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(C) (and paragraph (d)(1)(iv) of this section), R acquires all of the assets of Z, and V receives 30% of the voting stock of F.

(ii) *Result.* The consequences of the transfer are similar to those described in *Example 1*; V is required to enter into a 5-year gain recognition agreement under § 1.367(a)–8 to secure nonrecognition treatment under section 367(a). Under paragraphs (d)(2)(i) and (ii) of this section, F is treated as the transferee foreign corporation and R is treated as the transferred corporation. In determining whether, in a later transaction, R has disposed of substantially all of its assets under § 1.367(a)–8(e)(3)(i), see paragraph (d)(2)(v)(A) of this section.

Example 5A. Section 368(a)(1)(C) reorganization followed by section 368(a)(2)(C) exchange—(i) *Facts.* The facts are the same as in *Example 5*, except that the transaction is structured as a section 368(a)(1)(C) reorganization, followed by a section 368(a)(2)(C) exchange, and R is a foreign corporation. The following additional facts are present. Z has 3 businesses: Business A with a basis of $10 and a value of $50, Business B with a basis of $10 and a value of $40, and Business C with a basis of $10 and a value of $30. V and Z file a consolidated Federal income tax return and V has a basis of $30 in the Z stock, which has a value of $120. Assume that Businesses A and B consist solely of assets that will satisfy the section 367(a)(3) active trade or business exception; none of Business C's assets will satisfy the exception. Z transfers all 3 businesses to F in exchange for 30 percent of the F stock, which Z distributes to V pursuant to a section 368(a)(1)(C) reorganization. F then contributes Businesses B and C to R pursuant to section 368(a)(2)(C).

(ii) *Result.* The transfer of the Business A assets by Z to F is subject to the general rules under section 367, as such transfer does not constitute an indirect stock transfer. The transfer by Z of the Business B and C assets to F must first be tested under sections 367(a)(1), (3) and (5). Z recognizes $20 of gain on the outbound transfer of the Business C

assets, as such assets do not qualify for an exception to section 367(a)(1). The Business B assets, which will be used by R in an active trade or business outside the United States, qualify for the exception under section 367(a)(3) and § 1.367(a)–2T(c)(2). V is deemed to transfer the stock of Z to F in a section 354 exchange subject to the rules of paragraph (d). V must enter into the gain recognition agreement in the amount of $30 to preserve Z's nonrecognition treatment with respect to its transfer of Business B assets. Under paragraphs (d)(2)(i) and (ii) of this section, F is the transferee foreign corporation and R is the transferred corporation.

Example 5B. Section 368(a)(1)(C) reorganization followed by section 368(a)(2)(C) exchange with U.S. transferee—(i) *Facts.* The facts are the same as in *Example 5A*, except that R is a U.S. corporation.

(ii) *Result.* As in *Example 5A*, the outbound transfer of Business A assets to F is subject to section 367(a) and is not affected by the rules of this paragraph (d). The Business B assets qualified for nonrecognition treatment; the Business C assets did not. However, pursuant to paragraph (d)(2)(vi) of this section, the Business C assets are not subject to section 367(a)(1), provided that the basis of the assets in the hands of R is no greater than the basis of the assets in the hands of Z. V is deemed to make an indirect transfer under the rules of this paragraph (d). To preserve nonrecognition treatment under section 367(a), V must enter into a 5-year gain recognition agreement in the amount of $50, the amount of the appreciation in the Business B and C assets, as the transfer of such assets by Z were not taxable under section 367(a)(1) but were treated as an indirect stock transfer.

Example 6. Triangular section 368(a)(1)(C) reorganization followed by 351 exchange—(i) *Facts.* The facts are the same as in *Example 5*, except that, during the fourth year of the gain recognition agreement, R transfers substantially all of the assets received from Z to K, a wholly-owned domestic subsidiary of R, in an exchange described in section 351.

(ii) *Result.* The disposition by R, the transferred corporation, of substantially all of its assets would trigger the gain recognition agreement if the assets were disposed of in a taxable transaction. However, because the assets were transferred in a nonrecognition transaction, such transfer does not trigger the gain recognition agreement if V satisfies the reporting requirements contained in § 1.367(a)–8(g)(3)(i) (which includes the requirement that V amend its gain recognition agreement to reflect the transaction). See also paragraph (d)(2)(iv) of this section. To determine whether substantially all of the assets are disposed of, any assets of Z that were transferred by Z to R and then contributed by R to K are taken into account.

Example 6A. Triangular section 368(a)(1)(C) reorganization followed by section 351 exchange with foreign transferee—(i) *Facts.* The facts are the same as in *Example 6* except that K is a foreign corporation.

(ii) *Result.* This transfer of assets by R to K must be analyzed to determine its effect upon the gain recognition agreement, and such transfer is also an outbound transfer of assets that is taxable under section 367(a)(1) unless the active trade or business exception under section 367(a)(3) applies. If the transfer is fully taxable under section 367(a)(1), the transfer is treated as if the transferred company, R, sold substantially all of its assets. Thus, the gain recognition agreement would be triggered (but see § 1.367(a)–8(b)(3)(ii) for potential offsets to the gain to be recognized). If each asset transferred qualifies for nonrecognition treatment under section 367(a)(3) and the regulations thereunder (which require, under § 1.367(a)–2T(a)(2), the transferor to comply with the reporting requirements under section 6038B), the result is the same as in *Example 6*. If a portion of the assets transferred qualify for nonrecognition treatment under section 367(a)(3) and a portion are taxable under section 367(a)(1) (but such portion does not result in the disposition of substantially all of the assets), the gain recognition agreement will not be triggered if such information is reported as required under § 1.367(a)–8(b)(5) and (e)(3)(i).

Example 7. Concurrent application of asset transfer and indirect stock transfer rules in consolidated return setting—(i) *Facts.* Assume the same facts as in *Example 5*, except that R is a foreign corporation and V and Z file a consolidated return for Federal income tax purposes. The properties of Z consist of Business A assets, with an adjusted basis of $50 and fair market value of $90, and Business B assets, with an adjusted basis of $50 and a fair market value of $110. Assume that the Business A assets do not qualify for the active trade or business exception under section 367(a)(3), but that the Business B assets do qualify for the exception. V's basis in the Z stock is $100, and the value of such stock is $200.

(ii) *Result.* Under paragraph (d)(2)(vi), the assets of Businesses A and B that are transferred to R must be tested under sections 367(a)(3) and (a)(5) prior to consideration of the indirect stock transfer rules of this paragraph (d). Thus, Z must recognize $40 of income under section 367(a)(1) on the outbound transfer of Business A assets. Under § 1.1502–32, because V and Z file a consolidated return, V's basis in its Z stock increases from $100 to $140 as a result of Z's $40 gain. Provided that all of the other requirements under paragraph (c)(1) of this section are satisfied, to qualify for nonrecognition treatment with respect to V's indirect transfer of Z stock, V must enter into a gain recognition agreement in the amount of $60 (the gain realized but not recognized by V in the stock of Z after the $40 basis adjustment). If F sells a portion of its stock in R during the term of the agreement, V will be required to recognize a portion of the $60 gain subject to the agreement. To determine whether R disposes of substantially all of its assets (under § 1.367(a)–8(e)(3)(i)), only the Business B assets will be considered (because the transfer of the Business A assets was taxable to Z under section 367). See paragraph (d)(2)(v)(A) of this section.

Example 7A. Concurrent application without consolidated returns—(i) *Facts.* The facts are the same as in *Example 7*, except that V and Z do not file consolidated income tax returns.

(ii) *Result.* Z would still recognize $40 of gain on the transfer of its Business A assets, and the Business B assets would still qualify for the active trade or business exception under section 367(a)(3). However, V's basis in its stock of Z would not be increased by the amount of Z's gain. V's indirect transfer of stock will be taxable unless V enters into a gain recognition agreement (as described in § 1.367(a)–8) for the $100 of gain realized but not recognized with respect to the stock of Z.

Example 7B. Concurrent application with individual U.S. shareholder—(i) Facts. The facts are the same as in *Example 7*, except that V is an individual U.S. citizen.

(ii) *Result.* Section 367(a)(5) would prevent the application of the active trade or business exception under section 367(a)(3). Thus, Z's transfer of assets to R would be fully taxable under section 367(a)(1). Z would recognize $100 of income. V's basis in its stock of Z is not increased by this amount. V is taxable with respect to its indirect transfer of its Z stock unless V enters into a gain recognition agreement in the amount of the $100, the gain realized but not recognized with respect to its Z stock.

Example 7C. Concurrent application with nonresident alien shareholder—(i) *Facts.* The facts are the same as in *Example 7*, except that V is a nonresident alien.

(ii) *Result.* Pursuant to section 367(a)(5), the active trade or business exception under section 367(a)(3) is not available with respect to Z's transfer of assets to R. Thus, Z has $100 of gain with respect to the Business A and B assets. Because V is a nonresident alien, however, V is not subject to section 367(a) with respect to its indirect transfer of Z stock.

Example 8. Concurrent application with section 368(a)(2)(C) Exchange—(i) *Facts.* The facts are the same as in *Example 7*, except that R transfers the Business A assets to M, a wholly-owned domestic subsidiary of R, in an exchange described in section 368(a)(2)(C).

(ii) *Result.* Pursuant to paragraph (d)(2)(vi) of this section, section 367(a)(1) does not apply to Z's transfer of Business A assets to

R, because such assets are transferred to M, a domestic corporation. Sections 367(a)(1), (3) and (5), as well as section 367(d), apply to Z's transfer of assets to R to the extent that such assets are not transferred to M. However, the Business B assets qualify for an exception to taxation under section 367(a)(3). Thus, if the requirements of paragraph (c)(1) of this section are satisfied, including the requirement that V enter into a 5-year gain recognition agreement and comply with the requirements of § 1.367(a)–8 with respect to the gain realized on the Z stock, $100, the entire transaction qualifies for nonrecognition treatment under section 367(a)(1). See also section 367(a)(5) and any regulations issued thereunder. Under paragraphs (d)(2)(i) and (ii) of this section, the transferee foreign corporation is F and the transferred corporation is M. Pursuant to paragraph (d)(2)(iv) of this section, a disposition by F of the stock of R, or a disposition by R of the stock of M, will trigger the gain recognition agreement. To determine whether substantially all of the assets have been disposed of (as described under § 1.367(a)–8(e)(3)(i)), the Business A assets in M and the Business B assets in R must both be considered.

Example 9. Concurrent application of direct and indirect stock transfer rules—(i) *Facts.* F, a foreign corporation, owns all of the stock of O, also a foreign corporation. D, a domestic corporation, owns all of the stock of E, also a domestic corporation, which owns all of the stock of N, also a domestic corporation. Prior to the transactions described in this *Example 9*, D, E and N filed a consolidated income tax return. D has a basis of $100 in the stock of E, which has a fair market value of $160. The N stock has a fair market value of $100, and E has a basis of $60 in such stock. In addition to the stock of N, E owns the assets of Business X. The assets of Business X have a fair market value of $60, and E has a basis of $50 in such assets. Assume that the Business X assets qualify for nonrecognition treatment under section 367(a)(3). D does not own any stock in F (applying the attribution rules of section 318 as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(C) and paragraph (d)(1)(iv) of this section, O acquires all of the assets of E, and D exchanges its stock in E for 40% of the voting stock of F.

(ii) *Result.* E's transfer of its assets, including the N stock, must be tested under the general rules of section 367(a) before consideration of D's indirect transfer of the stock of E. E's transfer of the assets of Business X qualify for nonrecognition under section 367(a)(3). E could qualify for nonrecognition treatment with respect to its transfer of N stock if it enters into a gain recognition agreement (and all of the requirements of paragraph (c)(1)(i) of this section are satisfied); however under § 1.367(a)–8(f)(2)(i), D, the parent of the consolidated group, must enter into the agreement. O is the transferee foreign corporation; N is the transferred corporation. D may also qualify for nonrecognition with respect to its indirect transfer of the stock of E if it enters into a separate gain recognition agreement with respect to the E stock (and all of the requirements of paragraph (c)(1)(i) of this section are satisfied). As to this transfer, F is the transferee foreign corporation; O is the transferred corporation. The amount of the gain recognition agreement is $60. See also section 367(a)(5) and any regulations issued thereunder.

Example 10. Successive section 351 exchanges—(i) *Facts.* D, a domestic corporation, owns all the stock of X, a controlled foreign corporation that operates an historical business, which owns all the stock of Y, a controlled foreign corporation that also operates an historical business. The properties of D consist of Business A assets, with an adjusted basis of $50 and a fair market value of $90, and Business B assets, with an adjusted basis of $50 and a fair market value of $110. Assume that the Business B assets qualify for the exception under section 367(a)(3) and § 1.367(a)–2T(c)(2), but that the Business A assets do not qualify for the exception. In an exchange described in section 351, D transfers the assets of Businesses A and B to X, and, in connection with the same transaction, X transfers the assets of Business B to Y in another exchange described in section 351.

(ii) *Result.* Under paragraph (d)(1)(vi) of this section, this transaction is treated as an indirect stock transfer for purposes of section 367(a), but the transaction is not recharacterized for purposes of section 367(b). Moreover, under paragraph (d)(2)(vi) of this section, the assets of Businesses A and B that are transferred to X must be tested under section 367(a)(3). The Business A assets, which were not transferred to Y, are subject to the general rules of section 367(a), and not the indirect stock transfer rules described in this paragraph (d). D must recognize $40 of income on the outbound transfer of Business A assets. The transfer of the Business B assets is subject to both the asset transfer rules (under section 367(a)(3)) and the indirect stock transfer rules of this paragraph (d) and § 1.367(a)–8. Thus, D's transfer of the Business B assets will not be subject to section 367(a)(1) if D enters into a five-year gain recognition agreement with respect to the stock of Y. Under paragraphs (d)(2)(i) and (ii) of this section, X will be treated as the transferee foreign corporation and Y will be treated as the transferred corporation for purposes of applying the terms of the agreement. If X sells all or a portion of the stock of Y during the term of the agreement, D will be required to recognize a proportionate amount of the $60 gain that was realized by D on the initial transfer of the Business B assets.

Example 10A. Successive section 351 exchanges with ultimate domestic transferee—(i) *Facts.* The facts are the same as in *Example 10*, except that Y is a domestic corporation.

(ii) *Result.* As in *Example 10*, D must recognize $40 of income on the outbound transfer of the Business A assets. Although the Business B assets qualify for the exception under section 367(a)(3) (and end up in U.S. corporate solution, in Y), the $60 of gain realized on the Business B assets is nevertheless taxable under paragraphs (c)(1) and (d)(1)(vi) of this section because the transaction is considered to be a transfer by D of stock of a domestic corporation, Y, in which D receives more than 50 percent of the stock of the transferee foreign corporation, X. A gain recognition agreement is not permitted.

Example 11. Concurrent application of indirect stock transfer rules and section 367(b)—(i) *Facts.* F, a foreign corporation, owns all of the stock of Newco, which is also a foreign corporation. P, a domestic corporation, owns all of the stock of S, a foreign corporation that is a controlled foreign corporation within the meaning of section 957(a). P's basis in the stock of S is $50 and the value of S is $100. The section 1248 amount with respect to S stock is $30. In a reorganization described in section 368(a)(1)(C) (and paragraph (d)(1)(iv) of this section), Newco acquires all of the properties of S, and P exchanges its stock in S for 49 percent of the stock of F.

(ii) *Result.* P's exchange of S stock for F stock under section 354 will be taxable under section 367(a) (and section 1248 will be applicable) if P fails to enter into a 5-year gain recognition agreement in accordance with § 1.367(a)–8. Under paragraph (b)(2) of this section, if P enters into a gain recognition agreement, the exchange will be subject to the provisions of section 367(b) and the regulations thereunder as well as section 367(a). Under § 7.367(b)–7(c)(1)(i) of this chapter, P must recognize the section 1248 amount of $30 because P exchanged stock of a controlled foreign corporation, S, for stock of a foreign corporation that is not a controlled foreign corporation, F. The indirect stock transfer rules do not apply with respect to section 367(b). The deemed dividend of $30 recognized by P will increase P's basis in the F stock received in the transaction, and F's basis in the Newco stock. Thus, the amount of the gain recognition agreement is $20 ($50 gain realized on the transfer less the $30 inclusion under section 367(b)). Under paragraphs (d)(2)(i) and (ii) of this section, F is treated as the transferee foreign corporation and Newco is the transferred corporation.

Example 11A. Triangular section 368(a)(1)(C) reorganization involving foreign acquired corporation—(i) *Facts.* Assume the same facts as in Example 11, except that P receives 51 percent of the stock of F.

(ii) *Result.* P may still enter into a gain recognition agreement to avoid taxation under section 367(a). There is, however, no inclusion under section 367(b) because P would be exchanging stock in one controlled foreign corporation for another. The amount of the gain recognition agreement is $50. See, also, § 1.367(b)–4(b)(4).

Example 12. Direct asset reorganization not subject to stock transfer rules—(i) *Facts.* D is a publicly traded domestic corporation. D's assets consist of tangible assets, including stock or securities. In a reorganization described in section 368(a)(1)(F), D becomes a foreign corporation, F.

(ii) *Result.* The reorganization is characterized under § 1.367(a)–1T(f). D's outbound transfer of assets is taxable under section 367(a)(1). Even if any of D's assets would have otherwise qualified for an exception to section 367(a)(1), section 367(a)(5) provides that no exception can

apply. The section 368(a)(1)(F) reorganization is not an indirect stock transfer described in paragraph (d) of this section. Moreover, the exchange by D's shareholders of D stock for F stock in an exchange described under section 354 is not an exchange described under section 367(a). See paragraph (a) of this section.

(e) *Effective dates*—(1) *In general.* The rules in paragraphs (a), (b) and (d) of this section apply to transfers occurring on or after July 20, 1998. The rules in paragraph (c) of this section with respect to transfers of domestic stock or securities are generally applicable for transfers occurring after January 29, 1997. See § 1.367(a)–3(c)(11). For rules regarding transfers of domestic stock or securities after December 16, 1987, and before January 30, 1997, and transfers of foreign stock or securities after December 16, 1987, and before July 20, 1998, see paragraph (g) of this section.

(2) *Election.* Notwithstanding paragraphs (e)(1) and (g) of this section, taxpayers may, by timely filing an original or amended return, elect to apply paragraphs (b) and (d) of this section to all transfers of foreign stock or securities occurring after December 16, 1987, and before July 20, 1998, except to the extent that a gain recognition agreement has been triggered prior to July 20, 1998. If an election is made under this paragraph (e)(2), the provisions of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) shall apply, and, for this purpose, the term *substantial portion* under § 1.367(a)–3T(g)(3)(iii) (see 26 CFR part 1, revised April 1, 1998) shall be interpreted to mean *substantially all* as defined in section 368(a)(1)(C). In addition, if such an election is made, the taxpayer must apply the rules under section 367(b) and the regulations thereunder to any transfers occurring within that period as if the election to apply § 1.367(a)–3(b) and (d) to transfers occurring within that period had not been made, except that in the case of an exchange described in section 351 the taxpayer must apply section 367(b) and the regulations thereunder as if the exchange was described in § 7.367(b)–7 of this chapter. For example, if a U.S. person, pursuant to a section 351 exchange, transfers stock of a controlled foreign corporation in which it is a United States shareholder but does not receive back stock of a controlled foreign corporation in which it is a United States shareholder, the U.S. person must include in income under § 7.367(b)–7 of this chapter the section 1248 amount attributable to the stock exchanged (to the extent that the fair market value of the stock exchanged exceeds its adjusted basis). Such inclusion is required even though § 7.367(b)–7 of this chapter, by its terms, did not apply to section 351 exchanges.

(f) *Former 10-year gain recognition agreements.* If a taxpayer elects to apply the rules of this section to all prior transfers occurring after December 16, 1987, any 10-year gain recognition agreement that remains in effect (has not been triggered in full) on July 20, 1998 will be considered by the Internal Revenue Service to be a 5-year gain recognition agreement with a duration of five full taxable years following the close of the taxable year of the initial transfer.

(g) *Transition rules regarding certain transfers of domestic or foreign stock or securities after December 16, 1987, and prior to July 20, 1998*—(1) *Scope.* Transfers of domestic stock or securities described under section 367(a) that occurred after December 16, 1987, and prior to April 17, 1994, and transfers of foreign stock or securities described under section 367(a) that occur after December 16, 1987, and prior to July 20, 1998 are subject to the rules contained in section 367(a) and the regulations thereunder, as modified by the rules contained in paragraph (g)(2) of this section. For transfers of domestic stock or securities described under section 367(a) that occurred after April 17, 1994 and before January 30, 1997, see Temporary Income Regulations under section 367(a) in effect at the time of the transfer (§ 1.367(a)–3T(a) and (c), 26 CFR part 1, revised April 1, 1996) and paragraph (c)(11) of this section. For transfers of domestic stock or securities described under section 367(a) that occur after January 29, 1997, see § 1.367(a)–3(c).

(2) *Transfers of domestic or foreign stock or securities: additional substantive rules*—(i) *Rule for less than 5-percent shareholders.* Unless paragraph (g)(2)(iii) of this section applies (in the case of domestic stock or securities) or paragraph (g)(2)(iv) of this section applies (in the case of foreign stock or securities), a U.S. transferor that transfers stock or securities of a domestic or foreign corporation in an exchange described in section 367(a) and owns less than 5 percent of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 958) is not subject to section 367(a)(1) and is not required to enter into a gain recognition agreement.

(ii) *Rule for 5-percent shareholders.* Unless paragraph (g)(2)(iii) or (iv) of this section applies, a U.S. transferor that transfers domestic or foreign stock or securities in an exchange described in section 367(a) and owns at least 5 percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules under section 958) may qualify for nonrecognition treatment by filing a gain recognition agreement in accordance with § 1.367(a)–3T(g) in effect prior to July 20, 1998 (see 26 CFR part 1, revised April 1, 1998) for a duration of 5 or 10 years. The duration is 5 years if the U.S. transferor (5-percent shareholder) determines that all U.S. transferors, in the aggregate, own less than 50 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer. The duration is 10 years in all other cases. See, however, § 1.367(a)–3(f). If a 5-percent shareholder fails to properly enter into a gain recognition agreement, the exchange is taxable to such shareholder under section 367(a)(1).

(iii) *Gain recognition agreement option not available to controlling U.S. transferor if U.S. stock or securities are transferred.* Notwithstanding the provisions of paragraph (g)(2)(ii) of this section, in no event will any exception to section 367(a)(1) apply to the transfer of stock or securities of a domestic corporation where the U.S. transferor owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer (i.e., the use of a gain recognition agreement to qualify for nonrecognition treatment is unavailable in this case).

(iv) *Loss of United States shareholder status in the case of a transfer of foreign stock.* Notwithstanding the provisions of paragraphs (g)(2)(i) and (ii) of this section, in no event will any exception to section 367(a)(1) apply to the transfer of stock of a foreign corporation in which the U.S. transferor is a United States shareholder (as defined in § 7.367(b)–2(b) of this chapter or section 953(c)) unless the U.S. transferor receives back stock in a controlled foreign corporation (as defined in section 953(c), section 957(a) or section 957(b)) as to which the U.S. transferor is a United States shareholder immediately after the transfer.

§ 1.367(a)–3T [Removed]

Par. 4. Section 1.367(a)–3T is removed.

Par. 5. Section 1.367(a)–8 is added to read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

(a) *In general.* This section specifies the general terms and conditions for an agreement to recognize gain entered into pursuant to § 1.367(a)–3(b) or (c) to qualify for nonrecognition treatment under section 367(a).

(1) *Filing requirements.* A transferor's agreement to recognize gain (described in paragraph (b) of this section) must be attached to, and filed by the due date (including extensions) of, the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Gain recognition agreement forms.* Any agreement, certification, or other document required to be filed pursuant to the provisions of this section shall be submitted on such forms as may be prescribed therefor by the Commissioner (or similar statements providing the same information that is required on such forms). Until such time as forms are prescribed, all necessary filings may be accomplished by providing the required information to the Internal Revenue Service in accordance with the rules of this section.

(3) *Who must sign.* The agreement to recognize gain must be signed under penalties of perjury by a responsible officer in the case of a corporate transferor, except that if the transferor is a member but not the parent of an affiliated group (within the meaning of section 1504(a)(1)), that files a consolidated Federal income tax return for the taxable year in which the transfer was made, the agreement must be entered into by the parent corporation and signed by a responsible officer of such parent corporation; by the individual, in the case of an individual transferor (including a partner who is treated as a transferor by virtue of § 1.367(a)–1T(c)(3)); by a trustee, executor, or equivalent fiduciary in the case of a transferor that is a trust or estate; and by a debtor in possession or trustee in a bankruptcy case under Title 11, United States Code. An agreement may also be signed by an agent authorized to do so under a general or specific power of attorney.

(b) *Agreement to recognize gain*—(1) *Contents.* The agreement must set forth the following information, with the heading "GAIN RECOGNITION AGREEMENT UNDER § 1.367(a)–8", and with paragraphs labeled to correspond with the numbers set forth as follows—

(i) A statement that the document submitted constitutes the transferor's agreement to recognize gain in accordance with the requirements of this section;

(ii) A description of the property transferred as described in paragraph (b)(2) of this section;

(iii) The transferor's agreement to recognize gain, as described in paragraph (b)(3) of this section;

(iv) A waiver of the period of limitations as described in paragraph (b)(4) of this section;

(v) An agreement to file with the transferor's tax returns for the 5 full taxable years following the year of the transfer a certification as described in paragraph (b)(5) of this section;

(vi) A statement that arrangements have been made in connection with the transferred property to ensure that the transferor will be informed of any subsequent disposition of any property that would require the recognition of gain under the agreement; and

(vii) A statement as to whether, in the event all or a portion of the gain recognition agreement is triggered under paragraph (e) of this section, the taxpayer elects to include the required amount in the year of the triggering event rather than in the year of the initial transfer. If the taxpayer elects to include the required amount in the year of the triggering event, such statement must be included with all of the other information required under this paragraph (b), and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Description of property transferred*—(i) The agreement shall include a description of each property transferred by the transferor, an estimate of the fair market value of the property as of the date of the transfer, a statement of the cost or other basis of the property and any adjustments thereto, and the date on which the property was acquired by the transferor.

(ii) If the transferred property is stock or securities, the transferor must provide the information contained in paragraphs (b)(2)(ii)(A) through (F) of this section as follows—

(A) The type or class, amount, and characteristics of the stock or securities transferred, as well as the name, address, and place of incorporation of the issuer of the stock or securities, and the percentage (by voting power and value) that the stock (if any) represents of the total stock outstanding of the issuing corporation;

(B) The name, address and place of incorporation of the transferee foreign corporation, and the percentage of stock (by voting power and value) that the U.S. transferor received or will receive in the transaction;

(C) If stock or securities are transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder;

(D) If the property transferred is stock or securities of a domestic corporation, the taxpayer identification number of the domestic corporation whose stock or securities were transferred, together with a statement that all of the requirements of § 1.367(a)–3(c)(1) are satisfied;

(E) If the property transferred is stock or securities of a foreign corporation, a statement as to whether the U.S. transferor was a United States shareholder (a U.S. transferor that satisfies the ownership requirements of section 1248(a)(2) or (c)(2)) of the corporation whose stock was exchanged, and, if so, a statement as to whether the U.S. transferor is a United States shareholder with respect to the stock received, and whether any reporting requirements contained in regulations under section 367(b) are applicable, and, if so, whether they have been satisfied; and

(F) If the transaction involved the transfer of assets other than stock or securities and the transaction was subject to the indirect stock transfer rules of § 1.367(a)–3(d), a statement as to whether the reporting requirements under section 6038B have been satisfied with respect to the transfer of property other than stock or securities, and an explanation of whether gain was recognized under section 367(a)(1) and whether section 367(d) was applicable to the transfer of such assets, or whether any tangible assets qualified for nonrecognition treatment under section 367(a)(3) (as limited by section 367(a)(5) and §§ 1.367(a)–4T, 1.367(a)–5T and 1.367(a)–6T).

(3) *Terms of agreement*—(i) *General rule.* If prior to the close of the fifth full taxable year (i.e., not less than 60 months) following the close of the taxable year of the initial transfer, the transferee foreign corporation disposes of the transferred property in whole or in part (as described in paragraphs (e)(1) and (2) of this section), or is deemed to have disposed of the transferred property (under paragraph (e)(3) of this section), then, unless an election is made in paragraph (b)(1)(vii) of this section, by the 90th day thereafter the U.S. transferor must file an amended return for the year of the transfer and recognize thereon the gain realized but

not recognized upon the initial transfer, with interest. If an election under paragraph (b)(1)(vii) of this section was made, then, if a disposition occurs, the U.S. transferor must include the gain realized but not recognized on the initial transfer in income on its Federal income tax return for the period that includes the date of the triggering event. In accordance with paragraph (b)(3)(iii) of this section, interest must be paid on any additional tax due. (If a taxpayer properly makes the election under paragraph (b)(1)(vii) of this section but later fails to include the gain realized in income, the Commissioner may, in his discretion, include the gain in the taxpayer's income in the year of the initial transfer.)

(ii) *Offsets.* No special limitations apply with respect to net operating losses, capital losses, credits against tax, or similar items.

(iii) *Interest.* If additional tax is required to be paid, then interest must be paid on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year of the initial transfer and the date on which the additional tax for that year is paid. If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should enter the amount of interest due, labelled as "sec. 367 interest" at the bottom right margin of page 1 of the Federal income tax return for the period that includes the date of the triggering event (page 2 if the taxpayer files a Form 1040), and include the amount of interest in their payment (or reduce the amount of any refund due by the amount of the interest). If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should, as a matter of course, include the amount of gain as taxable income on their Federal income tax returns (together with other income or loss items). The amount of tax relating to the gain should be separately stated at the bottom right margin of page 1 of the Federal income tax return (page 2 if the taxpayer files a Form 1040), labelled as "sec. 367 tax."

(iv) *Basis adjustments*—(A) *Transferee.* If a U.S. transferor is required to recognize gain under this section on the disposition by the transferee foreign corporation of the transferred property, then in determining for U.S. income tax purposes any gain or loss recognized by the transferee foreign corporation upon its disposition of such property, the transferee foreign corporation's basis in such property shall be increased (as of the date of the initial transfer) by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount) by the U.S. transferor. In the case of a deemed disposition of the stock of the transferred corporation described in paragraph (e)(3)(i) of this section, the transferee foreign corporation's basis in the transferred stock deemed disposed of shall be increased by the amount of gain required to be recognized by the U.S. transferor.

(B) *Transferor.* If a U.S. transferor is required to recognize gain under this section, then the U.S. transferor's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(C) *Other adjustments.* Other appropriate adjustments to basis that are consistent with the principles of this paragraph (b)(3)(iv) may be made if the U.S. transferor is required to recognize gain under this section.

(D) *Example.* The principles of this paragraph (b)(3) are illustrated by the following example:

Example—(i) *Facts.* D, a domestic corporation owning 100 percent of the stock of S, a foreign corporation, transfers all of the S stock to F, a foreign corporation, in an exchange described in section 368(a)(1)(B). The section 1248 amount with respect to the S stock is $0. In the exchange, D receives 20 percent of the voting stock of F. All of the requirements of § 1.367(a)–3(c)(1) are satisfied, and D enters into a five-year gain recognition agreement to qualify for nonrecognition treatment and does not make the election contained in paragraph (b)(1)(vii) of this section. One year after the initial transfer, F transfers all of the S stock to F1 in an exchange described in section 351, and D complies with the requirements of paragraph (g)(2) of this section. Two years after the initial transfer, D transfers its entire 20 percent interest in F's voting stock to a domestic partnership in exchange for an interest in the partnership. Three years after the initial exchange, S disposes of substantially all (as described in paragraph (e)(3)(i) of this section) of its assets in a transaction that would be taxable under U.S. income tax principles, and D is required by the terms of the gain recognition agreement to recognize all the gain that it realized on the initial transfer of the stock of S.

(ii) *Result.* As a result of this gain recognition and paragraph (b)(3)(iv) of this section, D is permitted to increase its basis in the partnership interest by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount), the partnership is permitted to increase its basis in the 20 percent voting stock of F, F is permitted to increase its basis in the stock of F1, and F1 is permitted to increase its basis in the stock of S. S, however, is not permitted to increase its basis in its assets for purposes of determining the direct or indirect U.S. tax results, if any, on the sale of its assets.

(4) *Waiver of period of limitation.* The U.S. transferor must file, with the agreement to recognize gain, a waiver of the period of limitation on assessment of tax upon the gain realized on the transfer. The waiver shall be executed on Form 8838 (Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement) and shall extend the period for assessment of such tax to a date not earlier than the eighth full taxable year following the taxable year of the transfer. Such waiver shall also contain such other terms with respect to assessment as may be considered necessary by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(5) *Annual certification*—(i) *In general.* The U.S. transferor must file with its income tax return for each of the five full taxable years following the taxable year of the transfer a certification that the property transferred has not been disposed of by the transferee in a transaction that is considered to be a disposition for purposes of this section, including a disposition described in paragraph (e)(3) of this section. The U.S. transferor must include with its annual certification a statement describing any taxable dispositions of assets by the transferred corporation that are not in the ordinary course of business. The annual certification pursuant to this paragraph (b)(5) must be signed under penalties of perjury by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(ii) *Special rule when U.S. transferor leaves its affiliated group.* If, at the time of the initial transfer, the U.S. transferor was a member of an affiliated group (within the meaning of section 1504(a)(1)) filing a consolidated Federal income tax return but not the parent of such group, the U.S. transferor will file the annual certification (and provide a copy to the parent corporation) if it leaves the group during the term of the gain recognition agreement, notwithstanding the fact that the parent entered into the gain recognition agreement, extended the statute of limitations pursuant to this section, and remains liable (with other corporations that were members of the group at the time of the initial transfer) under the

gain recognition agreement in the case of a triggering event.

(c) *Failure to comply*—(1) *General rule.* If a person that is required to file an agreement under paragraph (b) of this section fails to file the agreement in a timely manner, or if a person that has entered into an agreement under paragraph (b) of this section fails at any time to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, then the initial transfer of property is described in section 367(a)(1) (unless otherwise excepted under the rules of this section) and will be treated as a taxable exchange in the year of the initial transfer (or in the year of the failure to comply if the agreement was filed with a timely-filed (including extensions) original (not amended) return and an election under paragraph (b)(1)(vii) of this section was made). Such a material failure to comply shall extend the period for assessment of tax until three years after the date on which the Internal Revenue Service receives actual notice of the failure to comply.

(2) *Reasonable cause exception.* If a person that is permitted under § 1.367(a)–3(b) or (c) to enter into an agreement (described in paragraph (b) of this section) fails to file the agreement in a timely manner, as provided in paragraph (a)(1) of this section, or fails to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, the provisions of paragraph (c)(1) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect and if the person files the agreement or reaches compliance as soon as he becomes aware of the failure. Whether a failure to file in a timely manner, or materially comply, was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(d) *Use of security.* The U.S. transferor may be required to furnish a bond or other security that satisfies the requirements of § 301.7101–1 of this chapter if the district director determines that such security is necessary to ensure the payment of any tax on the gain realized but not recognized upon the initial transfer. Such bond or security will generally be required only if the stock or securities transferred are a principal asset of the transferor and the director has reason to believe that a disposition of the stock or securities may be contemplated.

(e) *Disposition (in whole or in part) of stock of transferred corporation*—(1) *In general*—(i) *Definition of disposition.* For purposes of this section, a disposition of the stock of the transferred corporation that triggers gain under the gain recognition agreement includes any taxable sale or any disposition treated as an exchange under this subtitle, (e.g., under sections 301(c)(3)(A), 302(a), 311, 336, 351(b) or section 356(a)(1)), as well as any deemed disposition described under paragraph (e)(3) of this section. It does not include a disposition that is not treated as an exchange, (e.g., under section 302(d) or 356(a)(2)). A disposition of all or a portion of the stock of the transferred corporation by installment sale is treated as a disposition of such stock in the year of the installment sale. A disposition of the stock of the transferred corporation does not include certain transfers treated as nonrecognition transfers (under paragraph (g) of this section) in which the gain recognition agreement is retained but modified, or certain transfers (under paragraph (h) of this section) in which the gain recognition agreement is terminated and has no further effect.

(ii) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. Interaction between trigger of gain recognition agreement and subpart F rules—(i) *Facts.* A U.S. corporation (USP) owns all of the stock of two foreign corporations, CFC1 and CFC2. USP's section 1248 amount with respect to CFC2 is $30. USP has a basis of $50 in its stock of CFC2; CFC2 has a value of $100. In a transaction described in section 351 and 368(a)(1)(B), USP transfers the stock of CFC2 in exchange for additional stock of CFC1. The transaction is subject to both sections 367 (a) and (b). See §§ 1.367(a)–3(b) and 1.367(b)–1(a). To qualify for nonrecognition treatment under section 367(a), USP enters into a 5-year gain recognition agreement for $50 under this section. No election under paragraph 8(b)(1)(vii) of this section is made. USP also complies with the notice requirement under § 1.367(b)–1(c).

(ii) *Trigger of gain recognition agreement with no election.* Assume that in year 2, CFC1 sells the stock of CFC2 for $120, and that there were no distributions by CFC2 prior to the sale. USP must amend its return for the year of the initial transfer and include $50 in income (with interest), $30 of which will be recharacterized as a dividend pursuant to section 1248. As a result, CFC1 has a basis of $100 in CFC2. As a result of the sale of CFC2 stock by CFC1, USP will have $20 of subpart F foreign personal holding company income. See section 951, et. seq., and the regulations thereunder.

(iii) *Trigger of gain recognition agreement with election.* Assume the same facts as in paragraphs (i) and (ii) of this *Example*, except that when USP attached the gain recognition agreement to its timely filed Federal income tax return for the year of the initial transfer, it elected under paragraph (b)(1)(vii) of this section to include the amount of gain realized but not recognized on the initial transfer, $50, in the year of the triggering event rather than in the year of the initial transfer. In such case, the result is the same as in paragraph (e)(1)(ii)(B) of this section, except that USP will include the $50 of gain on its year 2 return, together with interest. For purposes of determining the dividend component, if any, of the $50 inclusion, USP will take into account the section 1248 amount of CFC2 at the time of the disposition in Year 2.

(2) *Partial disposition.* If the transferee foreign corporation disposes of (or is deemed to dispose of) only a portion of the transferred stock or securities, then the U.S. transferor is required to recognize only a proportionate amount of the gain realized but not recognized upon the initial transfer of the transferred property. The proportion required to be recognized shall be determined by reference to the relative fair market values of the transferred stock or securities disposed of and retained. Solely for purposes of determining whether the U.S. transferor must recognize income under the agreement described in paragraph (b) of this section, in the case of transferred property (including stock or securities) that is fungible with other property owned by the transferee foreign corporation, a disposition by such corporation of any such property shall be deemed to be a disposition of no less than a ratable portion of the transferred property.

(3) *Deemed dispositions of stock of transferred corporation*—(i) *Disposition by transferred corporation of substantially all of its assets*—(A) *In general.* Unless an exception applies (as described in paragraph (e)(3)(i)(B) of this section), a transferee foreign corporation will be treated as having disposed of the stock or securities of the transferred corporation if, within the term of the gain recognition agreement, the transferred corporation makes a disposition of substantially all (within the meaning of section 368(a)(1)(C)) of its assets (including stock in a subsidiary corporation or an interest in a partnership). If the initial transfer that necessitated the gain recognition agreement was an indirect stock transfer, see § 1.367(a)–3(d)(2)(v). If the transferred corporation is a U.S. corporation, see paragraph (h)(2) of this section.

(B) The transferee foreign corporation will not be deemed to have disposed of the stock of the transferred corporation if the transferred corporation is liquidated into the transferee foreign corporation under sections 337 and 332,

provided that the transferee foreign corporation does not dispose of substantially all of the assets formerly held by the transferred corporation (and considered for purposes of the substantially all determination) within the remaining period during which the gain recognition agreement is in effect. A nonrecognition transfer is not counted for purposes of the substantially all determination as a disposition if the transfer satisfies the requirements of paragraph (g)(3) of this section. A disposition does not include a compulsory transfer as described in § 1.367(a)–4T(f) that was not reasonably forseeable by the U.S. transferor at the time of the initial transfer.

(ii) *U.S. transferor becomes a non-citizen nonresident. If a U.S. transferor loses U.S. citizenship or a long-term resident ceases to be taxed as a lawful permanent resident (as defined in section 877(e)(2)), then immediately prior to the date that the U.S. transferor loses U.S. citizenship or ceases to be taxed as a long-term resident, the gain recognition agreement will be triggered as if the transferee foreign corporation disposed of all of the stock of the transferred corporation in a taxable transaction on such date. No additional inclusion is required under section 877, and a gain recognition agreement under section 877 may not be used to avoid taxation under section 367(a) resulting from the trigger of the section 367(a) gain recognition agreement.*

(f) *Effect on gain recognition agreement if U.S. transferor goes out of existence*—(1) *In general.* If an individual transferor that has entered into an agreement under under paragraph (b) of this section dies, or if a U.S. trust or estate that has entered into an agreement under paragraph (b) of this section goes out of existence and is not required to recognize gain as a consequence thereof with respect to all of the stock of the transferee foreign corporation received in the initial transfer and not previously disposed of, then the gain recognition agreement will be triggered unless one of the following requirements is met—

(i) The person winding up the affairs of the transferor retains, for the duration of the waiver of the statute of limitations relating to the gain recognition agreement, assets to meet any possible liability of the transferor under the duration of the agreement;

(ii) The person winding up the affairs of the transferor provides security as provided under paragraph (d) of this section for any possible liability of the transferor under the agreement; or

(iii) The transferor obtains a ruling from the Internal Revenue Service providing for successors to the transferor under the gain recognition agreement.

(2) *Special rule when U.S. transferor is a corporation*—(i) *U.S. transferor goes out of existence pursuant to the transaction.* If the transferor is a U.S. corporation that goes out of existence in a transaction in which the transferor's gain would have qualified for nonrecognition treatment under § 1.367(a)–3(b) or (c) had the U.S. transferor remained in existence and entered into a gain recognition agreement, then the gain may generally qualify for nonrecognition treatment only if the U.S. transferor is owned by a single U.S. parent corporation and the U.S. transferor and its parent corporation file a consolidated Federal income tax return for the taxable year that includes the transfer, and the parent of the consolidated group enters into the gain recognition agreement. However, notwithstanding the preceding sentence, a U.S. transferor that was controlled (within the meaning of section 368(c)) by five or fewer domestic corporations may request a ruling that, if certain conditions prescribed by the Internal Revenue Service are satisfied, the transaction may qualify for nonrecognition treatment.

(ii) *U.S. corporate transferor is liquidated after gain recognition agreement is filed.* If a U.S. transferor files a gain recognition agreement but is liquidated during the term of the gain recognition agreement, such agreement will be terminated if the liquidation does not qualify as a tax-free liquidation under sections 337 and 332 and the U.S. transferor includes in income any gain from the liquidation. If the liquidation qualifies for nonrecognition treatment under sections 337 and 332, the gain recognition agreement will be triggered unless the U.S. parent corporation and the U.S. transferor file a consolidated Federal income tax return for the taxable year that includes the dates of the initial transfer and the liquidation of the U.S. transferor, and the U.S. parent enters into a new gain recognition agreement and complies with reporting requirements similar to those contained in paragraph (g)(2) of this section.

(g) *Effect on gain recognition agreement of certain nonrecognition transactions*—(1) *Certain nonrecognition transfers of stock or securities of the transferee foreign corporation by the U.S. transferor.* If the U.S. transferor disposes of any stock of the transferee foreign corporation in a nonrecognition transfer and the U.S. transferor complies with reporting requirements similar to those contained in paragraph (g)(2) of this section, the U.S. transferor shall continue to be subject to the terms of the gain recognition agreement in its entirety.

(2) *Certain nonrecognition transfers of stock or securities of the transferred corporation by the transferee foreign corporation.* (i) If, during the period the gain recognition agreement is in effect, the transferee foreign corporation disposes of all or a portion of the stock of the transferred corporation in a transaction in which gain or loss would not be required to be recognized by the transferee foreign corporation under U.S. income tax principles, such disposition will not be treated as a disposition within the meaning of paragraph (e) of this section if the transferee foreign corporation receives (or is deemed to receive), in exchange for the property disposed of, stock in a corporation, or an interest in a partnership, that acquired the transferred property (or receives stock in a corporation that controls the corporation acquiring the transferred property); and the U.S. transferor complies with the requirements of paragraphs (g)(2)(ii) through (iv) of this section.

(ii) The U.S. transferor must provide a notice of the transfer with its next annual certification under paragraph (b)(5) of this section, setting forth—

(A) A description of the transfer;

(B) The applicable nonrecognition provision; and

(C) The name, address, and taxpayer identification number (if any) of the new transferee of the transferred property.

(iii) The U.S. transferor must provide with its next annual certification a new agreement to recognize gain (in accordance with the rules of paragraph (b) of this section) if, prior to the close of the fifth full taxable year following the taxable year of the initial transfer, either—

(A) The initial transferee foreign corporation disposes of the interest (if any) which it received in exchange for the transferred property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(B) The corporation or partnership that acquired the property disposes of such property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(C) There is any other disposition that has the effect of an indirect disposition of the transferred property.

(iv) If the U.S. transferor is required to enter into a new gain recognition

agreement, as provided in paragraph (g)(2)(iii) of this section, the U.S. transferor must provide with its next annual certification (described in paragraph (b)(5) of this section) a statement that arrangements have been made, in connection with the nonrecognition transfer, ensuring that the U.S. transferor will be informed of any subsequent disposition of property with respect to which recognition of gain would be required under the agreement.

(3) *Certain nonrecognition transfers of assets by the transferred corporation.* A disposition by the transferred corporation of all or a portion of its assets in a transaction in which gain or loss would not be required to be recognized by the transferred corporation under U.S. income tax principles, will not be treated as a disposition within the meaning of paragraph (e)(3) of this section if the transferred corporation receives in exchange stock or securities in a corporation or an interest in a partnership that acquired the assets of the transferred corporation (or receives stock in a corporation that controls the corporation acquiring the assets). If the transaction would be treated as a disposition of substantially all of the transferred corporation's assets, the preceding sentence shall only apply if the U.S. transferor complies with reporting requirements comparable to those of paragraphs (g)(2)(ii) through (iv) of this section, providing for notice, an agreement to recognize gain in the case of a direct or indirect disposition of the assets previously held by the transferred corporation, and an assurance that necessary information will be provided to appropriate parties.

(h) *Transactions that terminate the gain recognition agreement*—(1) *Taxable disposition of stock or securities of transferee foreign corporation by U.S. transferor.* (i) If the U.S. transferor disposes of all of the stock of the transferee foreign corporation that it received in the initial transfer in a transaction in which all realized gain (if any) is recognized currently, then the gain recognition agreement shall terminate and have no further effect. If the transferor disposes of a portion of the stock of the transferee foreign corporation that it received in the initial transfer in a taxable transaction, then in the event that the gain recognition agreement is later triggered, the transferor shall be required to recognize only a proportionate amount of the gain subject to the gain recognition agreement that would otherwise be required to be recognized on a subsequent disposition of the transferred property under the rules of paragraph (b)(2) of this section. The proportion required to be recognized shall be determined by reference to the percentage of stock (by value) of the transferee foreign corporation received in the initial transfer that is retained by the United States transferor.

(ii) The rule of this paragraph (h) is illustrated by the following example:

Example. A, a United States citizen, owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X (and other assets) for 100 percent of the outstanding voting and nonvoting stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, A disposes of 60 percent of the fair market value of the stock of Y, thus terminating 60 percent of the gain recognition agreement. One year thereafter, Y disposes of 50 percent of the fair market value of the stock of X. A is required to include in his income in the year of the later disposition 20 percent (40 percent interest in Y multiplied by a 50 percent disposition of X) of the gain that A realized but did not recognize on his initial transfer of X stock to Y.

(2) *Certain dispositions by a domestic transferred corporation of substantially all of its assets.* If the transferred corporation is a domestic corporation and the U.S. transferor and the transferred corporation filed a consolidated Federal income tax return at the time of the transfer, the gain recognition agreement shall terminate and cease to have effect if, during the term of such agreement, the transferred corporation disposes of substantially all of its assets in a transaction in which all realized gain is recognized currently. If an indirect stock transfer necessitated the filing of the gain recognition agreement, such agreement shall terminate if, immediately prior to the indirect transfer, the U.S. transferor and the acquired corporation filed a consolidated return (or, in the case of a section 368(a)(1)(A) and (a)(2)(E) reorganization described in § 1.367(a)–3(d)(1)(ii), the U.S. transferor and the acquiring corporation filed a consolidated return) and the transferred corporation disposes of substantially all of its assets (taking into account § 1.367(a)–3(d)(2)(v)) in a transaction in which all realized gain is recognized currently.

(3) *Distribution by transferee foreign corporation of stock of transferred corporation that qualifies under section 355 or section 337.* If, during the term of the gain recognition agreement, the transferee foreign corporation distributes to the U.S. transferor, in a transaction that qualifies under section 355, or in a liquidating distribution that qualifies under sections 332 and 337, the stock that initially necessitated the filing of the gain recognition agreement (and any additional stock received after the initial transfer), the gain recognition agreement shall terminate and have no further effect, provided that immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

(i) *Effective date.* The rules of this section shall apply to transfers that occur on or after July 20, 1998. For matters covered in this section for periods before July 20, 1998, the corresponding rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87–85 ((1987–2 C.B. 395); see § 601.601(d)(2)(ii) of this chapter) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers prior to July 20, 1998, then the rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) shall continue to apply in lieu of this section in the event of any direct or indirect nonrecognition transfer of the same property. See, also, § 1.367(a)–3(f).

Par. 6. Section 1.367(b)–1 is added to read as follows:

§ 1.367(b)–1 Other transfers.

(a) *Scope.* Section 367(b) and the regulations thereunder set forth certain rules regarding the extent to which a foreign corporation shall be considered to be a corporation in connection with an exchange to which section 367(b) applies. An exchange to which section 367(b) applies is any exchange described in section 332, 351, 354, 355, 356 or 361, with respect to which the status of a foreign corporation as a corporation is relevant for determining the extent to which income shall be recognized or for determining the effect of the transaction on earnings and profits, basis of stock or securities, or basis of assets. Notwithstanding the preceding sentence, a section 367(b) exchange does not include a transfer to the extent that the foreign corporation fails to be treated as a corporation by reason of section 367(a)(1). See § 1.367(a)–3(b)(2)(ii) for an illustration of the interaction of sections 367 (a) and (b). This paragraph applies for transfers occurring on or after July 20, 1998.

(b) [Reserved]. For further guidance, see § 7.367(b)–1(b) of this chapter.

(c) *Notice required*—(1) *In general.* If any person referred to in section 6012

(relating to the requirement to make returns of income) realized gain or other income (whether or not recognized) on account of any exchange to which section 367(b) applies, such person must file a notice of such exchange on or before the last date for filing a Federal income tax return (taking into account any extensions of time therefor) for the person's taxable year in which such gain or other income is realized. This notice must be filed with the district director with whom the person would be required to file a Federal income tax return for the taxable year in which the exchange occurs. Notwithstanding anything in this paragraph (c)(1) to the contrary, no notice under this paragraph (c)(1) is required to the extent a transaction is described in both section 367(a) and (b), and the exchanging person is not a United States shareholder of the corporation whose stock is exchanged. This paragraph applies to transfers occurring on or after July 20, 1998.

(c)(2) through (f) [Reserved]. For further guidance, see § 7.367(b)–1(c)(2) through (f) of this chapter.

Par. 6a. Section 1.367(b)–4 is added to read as follows:

§ 1.367(b)–4 Certain exchanges of stock described in section 354, 351, or sections 354 and 351.

(a) *In general.* This section applies to an exchange of stock in a foreign corporation by a United States shareholder if the exchange is described in section 351, or is described in section 354 and is made pursuant to a reorganization described in section 368(a)(1)(B) (including an exchange that is also described in section 351), without regard to whether the exchange may also be described in section 361.

(b) *Recognition of income.* If an exchange is described in paragraph (b)(1), (2) or (3) of this section, the exchanging shareholder shall include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges. See, also, § 1.367(a)–3(b)(2). However, in the case of a recapitalization described in paragraph (b)(3) of this section that occurred prior to July 20, 1998, the exchanging shareholder shall include the section 1248 amount on its tax return for the taxable year that includes the exchange described in paragraph (b)(2)(iii) of this section (and not in the taxable year of the recapitalization), except that no inclusion is required if both the recapitalization and the exchange described in paragraph (b)(2)(iii) of this section occurred prior to July 20, 1998.

(1) *Loss of United States shareholder or controlled foreign corporation status.* An exchange is described in this paragraph (b)(1) if—

(i) An exchanging shareholder receives stock of a foreign corporation that is not a controlled foreign corporation;

(ii) An exchanging shareholder receives stock of a controlled foreign corporation as to which the exchanging United States shareholder is not a United States shareholder; or

(iii) The corporation whose stock is exchanged is not a controlled foreign corporation immediately after the transfer.

(2) *Receipt by domestic corporation of preferred or other stock in certain instances.* An exchange is described in this paragraph (b)(2) if—

(i) Immediately before the exchange, the foreign acquired corporation and the foreign acquiring corporations are not members of the same affiliated group (within the meaning of section 1504(a), but without regard to the exceptions set forth in section 1504(b), and substituting the words "more than 50" in place of the words "at least 80" in sections 1504(a)(2)(A) and (B));

(ii) Immediately after the exchange, a domestic corporation meets the ownership threshold specified by section 902(a) or (b) such that it may qualify for a deemed paid foreign tax credit if it receives from the foreign acquiring corporation a distribution (directly or through tiers) of its earnings and profits; and

(iii) The exchanging shareholder receives preferred stock (other than preferred stock that is fully participating with respect to dividends, redemptions and corporate growth) in consideration for common stock or preferred stock that is fully participating with respect to dividends, redemptions and corporate growth, or, in the discretion of the District Director (and without regard to whether the stock exchanged is common stock or preferred stock), receives stock that entitles it to participate (through dividends, redemption payments or otherwise) disproportionately in the earnings generated by particular assets of the foreign acquired corporation or foreign acquiring corporation. See, e.g., paragraph (b)(4) *Example 1* through *Example 3* of this section.

(3) *Certain exchanges involving recapitalizations.* An exchange pursuant to a recapitalization under section 368(a)(1)(E) shall be deemed to be an exchange described in this paragraph (b)(3) if the following conditions are satisfied—

(i) During the 24-month period immediately preceding or following the date of the recapitalization, the corporation that undergoes the recapitalization (or a predecessor of, or successor to, such corporation) also engages in a transaction that would be described in paragraph (b)(2) of this section but for paragraph (b)(2)(iii) of this section, either as the foreign acquired corporation or the foreign acquiring corporation; and

(ii) The exchange in the recapitalization is described in paragraph (b)(2)(iii) of this section.

(4) *Examples.* The rules of paragraph (b)(2) of this section are illustrated by the following examples:

Example 1—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation, and FC2 has no outstanding preferred stock. The value of FC2 is $100 and DC has a basis of $50 in the stock of FC2. The section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 and, in exchange, DC receives FC1 voting preferred stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). Immediately after the exchange, FC1 and FC2 are controlled foreign corporations and DC is a United States shareholder of FC1, so paragraph (b)(1) of this section does not require inclusion in income of the section 1248 amount.

(ii) *Result.* Pursuant to § 1.367(a)–3(b)(2), the transfer is subject to both section 367(a) and section 367(b). Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement in accordance with § 1.367(a)–8. The amount of the gain recognition agreement is $50 less any inclusion under section 367(b). Even though paragraph (b)(1) of this section does not apply to require inclusion in income by DC of the section 1248 amount, DC must nevertheless include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section. Thus, if DC enters into a gain recognition agreement, the amount is $30 (the $50 gain realized less the $20 recognized under section 367(b)). (If DC fails to enter into a gain recognition agreement, it must include in income under section 367(a)(1) the $50 of gain realized; $20 of which is treated as a dividend. Section 367(b) does not apply in such case.)

Example 2—(i) Facts. The facts are the same as in *Example 1*, except that DC owns all of the outstanding stock of FC1 immediately before the transaction.

(ii) *Result.* Both section 367(a) and section 367(b) apply to the transfer. Paragraph (b)(2) of this section does not apply to require inclusion of the section 1248 amount. Under paragraph (b)(2)(i) of this section, the transaction is outside the scope of paragraph (b)(2) of this section, because FC1 and FC2 are, immediately before the transaction, members of the same affiliated group (within the meaning of such paragraph). Thus, if DC enters into a gain recognition agreement in

accordance with § 1.367(a)–8, the amount of such agreement is $50. As in *Example 1*, if DC fails to enter into a gain recognition agreement, it must include in income $50, $20 of which will be treated as a dividend.

Example 3—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the stock of FC2, a foreign corporation. The section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 in exchange for FC1 voting stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). The FC1 voting stock received by DC in the exchange carries voting rights in FC1, but by agreement of the parties the shares entitle the holder to dividends, amounts to be paid on redemption, and amounts to be paid on liquidation, which are to be determined by reference to the earnings or value of FC2 as of the date of such event, and which are affected by the earnings or value of FC1 only if FC1 becomes insolvent or has insufficient capital surplus to pay dividends.

(ii) *Result.* Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement with respect to the transfer of FC2 stock to FC1. Under § 1.367(a)–3(b)(2), the exchange will be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). Furthermore, even if DC would not otherwise be required to recognize income under this section, the District Director may nevertheless require that DC include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section.

(5) *Special rules for applying section 1248 to subsequent exchanges.* (i) If income is not required to be recognized under paragraph (b) of this section in a transaction described in paragraph (b)(1) of this section involving a foreign acquiring corporation, then, for purposes of applying section 1248 or 367(b) to subsequent exchanges, the earnings and profits attributable to an exchanging shareholder's stock received in the transaction shall be determined by reference to the exchanging shareholder's pro rata interest in the earnings and profits of the foreign acquiring corporation and foreign acquired corporation that accrue after the transaction, as well as its pro rata interest in the earnings and profits of the foreign acquired corporation that accrued prior to the transaction. See also section 1248(c)(2)(D)(ii). The earnings and profits attributable to an exchanging shareholder's stock received in the transaction shall not include any earnings and profits of the foreign acquiring corporation that accrued prior to the transaction.

(ii) The following example illustrates this paragraph (b)(5):

Example. (i) *Facts.* DC1, a domestic corporation, owns all of the stock of FC1, a foreign corporation. DC1 has owned all of the stock of FC1 since FC1's formation. DC2, a domestic corporation, owns all of the stock of FC2, a foreign corporation. DC2 has owned all of the stock of FC2 since FC2's formation. DC1 and DC2 are unrelated. In a reorganization described in section 368(a)(1)(B), DC1 transfers all of the stock of FC1 to FC2 in exchange for 40 percent of FC2. DC1 enters into a five-year gain recognition agreement under the provisions of §§ 1.367(a)–3(b) and 1.367(a)–8 with respect to the transfer of FC1 stock to FC2.

(ii) *Result.* DC1's transfer of FC1 to FC2 is an exchange described in paragraph (b) of this section. Because the transfer is not described in paragraph (b)(1), 2) or (3) of this section, DC1 is not required to include in income the section 1248 amount attributable to the exchanged FC1 stock and the special rule of this paragraph (b)(5) applies. Thus, for purposes of applying section 1248 or section 367(b) to subsequent exchanges, the earnings and profits attributable to DC1's interest in FC2 will be determined by reference to 40 percent of the post-reorganization earnings and profits of FC1 and FC2, and by reference to 100 percent of the pre-reorganization earnings and profits of FC1. The earnings and profits attributable to DC1's interest in FC2 do not include any earnings and profits accrued by FC2 prior to the transaction. Those earnings and profits are attributed to DC2 under section 1248.

(6) *Effective date.* This section applies to transfers occurring on or after July 20, 1998.

(c) and (d) [Reserved]. For further guidance, see § 7.367(b)–4(c) and (d) of this chapter.

Par. 7. In § 1.367(b)–7, paragraphs (a) and (b) are added to read as follows:

§ 1.367(b)–7 Exchange of stock described in section 354.

(a) Scope. (1) This section applies to an exchange of stock in a foreign corporation (other than a foreign investment company as defined in section 1246(b)) occurring on or after July 20, 1998.

(i) The exchange is described in section 354 or 356 and is made pursuant to a reorganization described in section 368(a)(1)(B) through (F); and

(ii) The exchanging person is either a United States shareholder or a foreign corporation having a United States shareholder who is also a United States shareholder of the corporation whose stock is exchanged.

(2) However, this section shall not apply if a United States shareholder exchanges stock of a foreign corporation in an exchange described in section 368(a)(1)(B). For further guidance, see § 1.367(b)–4.

(b) [Reserved]. For further guidance, see § 7.367(b)–7(b) of this chapter.

* * * * *

Par. 8. Section 1.367(d)–1T is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.367(d)–1T Transfers of intangible property to foreign corporations (temporary).

(a) * * * For purposes of determining whether a U.S. person has made a transfer of intangible property that is subject to the rules of section 367(d), the rules of § 1.367(a)–1T(c) shall apply.

* * * * *

Par. 9. Section 1.6038B–1 is added to read as follows:

§ 1.6038B–1 Reporting of certain transactions.

(a) *Purpose and scope.* This section sets forth information reporting requirements under section 6038B concerning certain transfers of property to foreign corporations. Paragraph (b) of this section provides general rules explaining when and how to carry out the reporting required under section 6038B with respect to the transfers to foreign corporations. Paragraph (c) of this section and § 1.6038B–1T(d) specify the information that is required to be reported with respect to certain transfers of property that are described in section 6038B(a)(1)(A) and 367(d), respectively. Section 1.6038B–1T(e) specifies the limited reporting that is required with respect to transfers of property described in section 367(e)(1). Paragraph (f) of this section sets forth the consequences of a failure to comply with the requirements of section 6038B and this section. For effective dates, see paragraph (g) of this section. For rules regarding transfers to foreign partnerships, see section 6038B(a)(1)(B) and any regulations thereunder.

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, or cash, which is currently not required to be reported, any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e)(1) is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926 (Return by Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership). For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)–1T(c) and § 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Notwithstanding any

statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of, the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in § 1.6038B–1T(b)(4)). Any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct, and complete to the best of the transferor's knowledge and belief.

(ii) *Reporting by corporate transferor.* If the transferor is a corporation, Form 926 must be signed by an authorized officer of the corporation. If, however, the transferor is a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return, but the transferor is not the common parent corporation, an authorized officer of the common parent corporation must sign Form 926.

(iii) *Transfers of jointly-owned property.* If two or more persons transfer jointly-owned property to a foreign corporation in a transfer with respect to which a notice is required under this section, then each person must report with respect to the particular interest transferred, specifying the nature and extent of the interest. However, a husband and wife who jointly file a single Federal income tax return may file a single Form 926 with their tax return.

(2) *Exceptions and special rules for transfers of stock or securities under section 367(a)*—(i) *Transfers on or after July 20, 1998.* A U.S. person that transfers stock or securities on or after July 20, 1998 in a transaction described in section 6038(a)(1)(A) will be considered to have satisfied the reporting requirement under section 6038B and paragraph (b)(1) of this section if either—

(A) The U.S. transferor owned less than 5 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)), and either:

(*1*) The U.S. transferor qualified for nonrecognition treatment with respect to the transfer (i.e., the transfer was not taxable under §§ 1.367(a)–3(b) or (c)); or

(*2*) The U.S. transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transfer was taxable to the U.S. transferor under § 1.367(a)–3(c), and such person properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(B) The U.S. transferor owned 5 percent or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)) and either:

(*1*) The transferor (or one or more successors) properly entered into a gain recognition agreement under § 1.367(a)–8; or

(*2*) The transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transferor properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer.

(ii) *Transfers before July 20, 1998.* With respect to transfers occurring after December 16, 1987, and prior to July 20, 1998, a U.S. transferor that transferred U.S. or foreign stock or securities in a transfer described in section 367(a) is not subject to section 6038B if such person is described in paragraph (b)(2)(i)(A) of this section.

(3) *Special rule for transfers of cash.* [Reserved].

(4) [Reserved]. For further guidance, see § 1.6038B–1T(b)(4).

(c) *Information required with respect to transfers described in section 6038B(a)(1)(A).* A U.S. person that transfers property to a foreign corporation in an exchange described in section 6038B(a)(1)(A) (including unappreciated property other than cash) must provide the following information, in paragraphs labelled to correspond with the number or letter set forth in this paragraph (c) and § 1.6038B–1T(c)(1) through (5). If a particular item is not applicable to the subject transfer, the taxpayer must list its heading and state that it is not applicable. For special rules applicable to transfers of stock or securities, see paragraph (b)(2)(ii) of this section.

(1) through (5) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (5).

(6) *Application of section 367(a)(5).* If the asset is transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder.

(d) and (e) [Reserved]. For further guidance, see § 1.6038B–1T(d) and (e).

(f) *Failure to comply with reporting requirements*—(1) *Consequences of failure.* If a U.S. person is required to file a notice (or otherwise comply) under paragraph (b) of this section and fails to comply with the applicable requirements of section 6038B and this section, then with respect to the particular property as to which there was a failure to comply—

(i) That property shall not be considered to have been transferred for use in the active conduct of a trade or business outside of the United States for purposes of section 367(a) and the regulations thereunder;

(ii) The U.S. person shall pay a penalty under section 6038B(b)(1) equal to 10 percent of the fair market value of the transferred property at the time of the exchange, but in no event shall the penalty exceed $100,000 unless the failure with respect to such exchange was due to intentional disregard (described under paragraph (g)(4) of this section); and

(iii) The period of limitations on assessment of tax upon the transfer of that property does not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under this section. See section 6501(c)(8) and any regulations thereunder.

(2) *Failure to comply.* A failure to comply with the requirements of section 6038B is—

(i) The failure to report at the proper time and in the proper manner any material information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section. Thus, a transferor that timely files Form 926 with the attachments required under the rules of this section shall, nevertheless, have failed to comply if, for example, the transferor reports therein that property will be used in the active conduct of a trade or business outside of the United States, but in fact the property continues to be used in a trade or business within the United States.

(3) *Reasonable cause exception.* The provisions of paragraph (f)(1) of this section shall not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause

shall be determined by the district director under all the facts and circumstances.

(4) *Definition of intentional disregard.* If the transferor fails to qualify for the exception under paragraph (f)(3) of this section and if the taxpayer knew of the rule or regulation that was disregarded, the failure will be considered an intentional disregard of section 6038B, and the monetary penalty under paragraph (f)(1)(ii) of this section will not be limited to $100,000. See § 1.6662–3(b)(2).

(g) *Effective date.* This section applies to transfers occurring on or after July 20, 1998. See § 1.6038B–1T for transfers occurring prior to July 20, 1998.

Par. 10. Section 1.6038B–1T is amended as follows:

1. The section heading is revised.
2. Paragraphs (a) through (b)(2) are revised.
3. Paragraph (b)(3) is redesignated as paragraph (b)(4).
4. New paragraph (b)(3) is added and reserved.
5. Paragraph (c) introductory text is revised and paragraph (c)(6) is added.
6. Paragraph (f) is revised.
7. Paragraph (g) is added.

The revisions and additions read as follows:

§ 1.6038B–1T Reporting of certain transactions (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see § 1.6038B–1(a) through (b)(2).

(b)(3) [Reserved].

* * * * *

(c) Introductory text [Reserved]. For further guidance, see § 1.6038B–1(c).

* * * * *

(6) [Reserved]. For further guidance, see § 1.6038B–1(c)(6).

* * * * *

(f) [Reserved]. For further guidance, see § 1.6038B–1(f).

(g) *Effective date.* This section applies to transfers occurring after December 31, 1984, except paragraph (e)(1) applies to transfers occurring on or after September 13, 1996. See § 1.6038B–1T(a) through (b)(2), (c) introductory text, and (f) (26 CFR part 1, revised April 1, 1998) for transfers occurring prior to July 20, 1998. See § 1.6038B–1 for transfers occurring on or after July 20, 1998.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 11. The authority citation for part 7 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. Section 7.367(b)–1 is amended as follows:

1. Paragraphs (a) and (c)(1) are revised.
2. The authority citation at the end of the section is removed.

The revisions read as follows:

§ 7.367(b)–1 Other transfers.

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–1(a) of this chapter.

* * * * *

(c)(1) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–1(c) of this chapter.

* * * * *

Par. 13. Section 7.367(b)–4 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

§ 7.367(b)–4 Certain changes described in more than one Code provision.

(a) and (b) [Reserved]. For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–4(a) and (b) of this chapter.

* * * * *

Par 14. Section 7.367(b)–7 is amended as follows:

1. Paragraph (a) is revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

§ 7.367(b)–7 Exchange of stock described in section 354.

* * * * *

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–7(a) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 15. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 16. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.367(a)–3T	1545–0026
. . . . .	

2. Adding the following entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.367(a)–8	1545–1271
. . . . .	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 13, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–15454 Filed 6–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 62 and 66

[USCG 97–3112; CGD 97–018]

RIN 2115–AF45

Merger of the Uniform States Waterway Marking System With the United States Aids to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard commences a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This merger eliminates distinctions between the two systems and creates safer, less confusing waterways.

DATES: This final rule is effective July 20, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, [USCG–97–3112], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT:

For questions on this rule contact Dan Andrusiak, OPN–2 Short Range Aids to Navigation Division, USCG Headquarters, telephone (202) 267–0327, For questions on viewing material in the docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or

Paulette Twine, Chief Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 23, 1997, the Coast Guard published a notice of proposed rulemaking entitled "Merger of the Uniform State Waterway Marking System and the United States Aids to Navigation System" in the **Federal Register** (62 FR 67031). The Coast Guard received five letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05–5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 62.02–25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10–1(b), allows the use USATONS on state and non-navigable internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safewater,
2. Change the black USWMS buoy to the green USATONS buoy, and
3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties. A comparison of these two systems showed that almost all of the requirements of the USWMS are contained in the USATONS.

The major differences between the two systems are:

1. The USMWS has the additional requirement of orange bands on regulatory buoys;
2. The USWMS allows for lights on mooring buoys whereas the USATONS is silent; and,
3. The USWMS uses the cardinal system to mark obstructions and the USATONS uses the lateral System of marking obstructions.

Discussion of Comments and Changes

One comment suggested that in §§ 62.1(b)(2), 62.21(a), 66.05–1, 66.05–5(b), and 66.05–20 (c)(3) the wording "insert date five years from the date of publication in the **Federal Register** of the final rule" be changed to "December 31, 2003". The Coast Guard agrees with this suggestion, and will also change § 66.10–1.

One comment suggested that in § 62.33(b) the Coast Guard delete "of international orange" from the first sentence. The Coast Guard concurs and has changed § 62.33(b). This change eliminates potential confusion from a belief that two different shades of orange are required.

One comment suggested that in § 62.33(b) in the second sentence, change "at the top" to "near the top." The Coast Guard agrees with this suggestion because an orange band at the very top of a buoy would cease to be a band but would result in a buoy with an orange top.

One comment suggested the Coast Guard not add the lighting requirements for mooring buoys to § 62.35, but to § 62.45(d)(6), which prescribes the light rhythm requirements. The Coast Guard agrees.

One comment suggested that in § 62.54 the wording be changed to be less ambiguous. Specifically the comment suggested that § 62.54 read "Succinct, concise ownership identification which does not compromise signal effectiveness is permitted on aids to navigation." The Coast Guard disagrees with the suggested wording. Historically, ownership identification on private or State aids to navigation has not been a problem. Additionally, the Coast Guard does not desire at this time to expand the authority for ownership markings to Federal aids to navigation.

Another comment suggested that the reference to the "second category" in paragraph 66.10–15(a) be removed and this paragraph changed to read "USWMS aids to navigation may have lateral or cardinal meaning." The Coast Guard agrees, The "first category" of USWMS aids was regulatory markers discussed in § 66.10–5. This section is removed since equivalent regulatory marks exist in § 62.33. Therefore, because no "first category" exists, discussion of a "second category" may be confusing.

One comment expressed concern over the change in definition of the red and white striped buoy, because this would eliminate an aid which provides the mariner specific information "not to pass between the buoy and the nearest shore". The comment also stated that in an area where it is hard to determine the head of navigation, the use of side marks would be impracticable. The comment suggested the creation of a black and white vertically striped buoy available for use on Inland Waters, with the meaning "do not pass between the buoy and the nearest shore". The Coast Guard agrees. A new section has been added that allows the use of a black and white striped buoy on Inland waters, where the head of navigation is hard to define, which warns mariners not to pass between the buoy and the nearest shore. Further, to avoid confusion, USWMS red and white striped obstruction buoys under § 66.10–15(e)(3) will not be permitted to exist on a body of water for which the new USATONS black and white vertically striped buoy is used.

Another comment suggested that once the regulations from the two systems are merged, proper training must be given to all users. The Coast Guard agrees, and will provide education and outreach information regarding the merger of these two systems through the office of Boating Safety website (www.uscgboating.org) and through the Coast Guard Customer Information Line at 1–800–368–5647. Additionally, the Coast Guard expects that the various State Boating Law Administrators will modify existing educational materials to reflect the changes.

One comment suggested that in addition to changing the meaning of the red and white striped buoy, the Coast Guard also change the shape of this aid. The USATONS requires the red and white safe water mark to be spherical or display spherical top mark. This is the requirement for all newly established safe water marks and for all safe water marks at the end of the phase-in period.

One comment suggested that the costs associated with this change would impose a monetary burden on the states currently using USWMS. The replacement of USWMS aids is linked to the aid's lifecycle. Since, the existing aids will need replacement during the phase-in period, no additional costs should be incurred. Also, most existing educational materials will need to be replaced during this five year phase-in period. Further, through training and education the Coast Guard believes any

confusion from the existence of the two systems on one waterway to be minimal.

Discussion of Rule

Regulatory and Informational Markers: The USATONS provides a system for information and regulatory markers nearly identical to the USWMS. The only USWMS requirement not prescribed by the USATONS is that buoys have two horizontal orange bands, one just above the water line and one near the top of the buoy. The Coast Guard amends 33 CFR 62.33 to add the USWMS requirement of two horizontal orange bands to the USATONS.

Channel markers: The USWMS black buoy will be replaced, via a phased-in process, with the green buoy required by the USATONS. The phase-in process avoids unnecessary replacement costs to the states.

Red and white striped buoy: The meaning of the red and white striped buoy changes from the USWMS "do not pass between the buoy and nearest shore" to the USATONS "safewater all around." Obstructions marked with the USWMS red and white striped buoy can be marked, via a phased-in process, with the USATONS' sidemark prescribed in 33 CFR 62.25(b), with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

Cardinal marks: In the USWMS, white buoys with a red top band mean that the mariner can pass safely south or west of the buoy, and white buoys with a black top band mean that the mariner can pass safely north or east of the buoy. The USATONS does not contain cardinal marks, and areas presently marked with these USWMS aids can be replaced with the USATONS isolated danger mark prescribed in 33 CFR 62.29, or a side mark prescribed in 33 CFR 62.25(b), or with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

Mooring buoys: Unlike the USWMS, the USATONS is silent on prescribing lights on mooring buoys. The Coast Guard amends 33 CFR 62.45 to incorporate mooring buoys, allowing white lights of various rhythms.

Numbers, letters, or words on markers: The guidance in the USATONS, 33 CFR 62.43(a) & (b), is similar to that in the USWMS 33 CFR 66.10–25, so the merging of the two systems does not affect numbers, letters, or words on marks.

Reflectors and retroeflective materials: The USATONS guidance for the uses of retroreflective material, 33 CFR 62.43(c), is less restrictive than the USWMS guidance found in 33 CFR 66.10–30, so the merger does not require a change in the use of reflectors or retroflective material.

Navigation lights: The USATONS requirements for the use of navigation lights, 33 CFR 62.45, is similar to that of the USWMS found in 33 CFR 66.10–35, so the merger does not affect the use of navigation lights.

Size, shape, material, and construction of markers: No specific guidance for size, shape, material and construction of markers exists in the USATONS. The USWMS wording on these items, found in 33 CFR 66.10–20, is not necessary and is not inserted into the USATONS.

Ownership identification: The USWMS, in 33 CFR 66.10–40, allows for the discretionary use of ownership identification on aids to navigation. The USATONS does not prohibit use of ownership identification. Ownership identification, however, should not be placed on an aid in a way that would change the meaning of the aid to navigation. The Coast Guard adds a section to the USATONS stating language to this effect.

Changes to 33 CFR Subpart 66.05

The merging of the USWMS with the USATONS requires conforming editorial corrections to Subpart 66.05 entitled, "State Aids to Navigation," to reflect the new rules.

Changes to 33 CFR Subpart 66.10

Sections 66.10–5, 66.10–10, 66.10–20, 66.10–25, 66.10–30, 66.10–40, and 66.10–45 are removed because the provisions of these sections are contained in the USATONS, or are being inserted into the USATONS.

The only sections remaining in subpart 66.10 are the general section, the aids to navigation section, and that portion of the navigation lights section which refers to lights on cardinal marks. These sections may be used until December 31, 2003.

General, § 66.10–1: This section is revised to reflect the merger of the two systems, the implementation date, and to remove references to deleted sections.

Aids to Navigation, § 66.10–15: This section provides information concerning the marking of channels and the cardinal system of marking, and as such remains until the end of the phase-in period.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Merging the USWMS with the USATONS, via a phased-in implementation period, linked to the aid's lifecycle, will not impose an increased monetary burden on the States currently using the USWMS. There is currently no price difference between aids with the USWMS markings and aids with USATONS markings. Further, because the replacement of the aid is linked to its lifecycle, purchase of a USATONS aid is not required until the end of the USWMS aid's lifecycle, any additional costs are eliminated.

Consequently, the Coast Guard believes that this rulemaking will not impose any additional costs on the states.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this rule will have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. The USWMS is a system that regulates state aids to navigation and will not directly impact small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If you have questions concerning its provisions or options for compliance, please contact Mr. Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Pursuant to 14 U.S.C. 85, the Coast Guard, as delegated by the Secretary, Department of Transportation, has responsibility to create all regulations concerning aids to navigation for all waters subject to the jurisdiction of the United States. This rule does not affect the states ability to prescribe regulations for its own internal non-navigable waters.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to access the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain any Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities, to spend in aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph 34(a) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Merging the USWMS with the USATONS has no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR Part 66

Intergovernmental relations, navigation (water).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 62 and 66 as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

2. In § 62.1, redesignate paragraph (b) as paragraph (b)(1), and add a paragraph (b)(2) to read as follows:

§ 62.1 Purpose.

* * * * *

(b)(1) * * *

(2) The regulations found in 33 CFR subpart 66.10 expire on December 31, 2003, at which time the provisions of this part will apply.

* * * * *

§ 62.21 [Amended]

3. In § 62.21(a), add after the words "The navigable waters of the United States" the words "and non-navigable State waters after December 31, 2003,".

4. Add § 62.32 to subpart B to read as follows:

§ 62.32 Inland waters obstruction mark.

(a) On inland waters designated by the Commandant as State waters in accordance with § 66.05–5 of this chapter and on non-navigable internal waters of a State which have no defined head of navigation, a buoy showing alternate vertical black and white stripes may be used to indicate to a vessel operator that an obstruction to navigation extends from the nearest shore to the buoy.

(b) The black and white buoy's meaning is "do not pass between the buoy and the shore". The number of white and black stripes is discretionary, provided that the white stripes are twice the width of the black stripes. Prior to December 31, 2003, this aid shall not be used on a waterway which has a red and white striped obstruction marker defined in § 66.10–15(e)(3) of this chapter, unless all obstruction markers are replaced.

5. In § 62.33, redesignate the introductory text as paragraph (a), redesignate existing paragraphs (a) through (d) as (a)(1) to (a)(4), and add a new paragraph (b) to read as follows:

§ 62.33 Information and regulatory marks.

* * * * *

(b) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands placed completely around the buoy circumference. One band shall be near the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

6, In § 62.45, revise paragraph (d)(6) to read as follows:

§ 62.34 Light characteristics.

* * * * *

(d) * * *

(6) Mooring Buoys and Information and Regulatory Marks display white lights of various rhythms.

* * * * *

7. Add § 62.54 to subpart B to read as follows:

§ 62.54 Ownership identification.

Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

PART 66—PRIVATE AIDS TO NAVIGATION

8. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

§ 66.01–10 [Amended]

9. In § 66.01–10 remove paragraph (b) and remove the paragraph designation (a).

10. Revise § 66.05–1 to read as follows:

§ 66.05–1 Purpose.

The purpose of the regulations in this subpart is to prescribe the conditions under which state governments may regulate aids to navigation owned by state or local governments, or private parties. With the exception on the provisions of subpart 66.10, which are valid until December 31, 2003, aids to navigation must be in accordance with the United States Aids to Navigation System in part 62 of this subchapter.

11. In § 66.05–5, revise the section heading and paragraph (b) to read as follows:

§ 66.05–5 Definitions.

* * * * *

(b) The term Uniform State Waterway Marking System (USWMS) means the system of private aids to navigation which may be operated in State waters. Subpart 66.10, which describes the USWMS, expires on December 31, 2003.

* * * * *

§ 66.05–20 [Amended]

12. In § 66.05–20(c)(3) add to the beginning of the paragraph the words "If prior to December 31, 2003," and uncapitalize the word "Specification".

13. Revise § 66.10–1 to read as follows:

§ 66.10–1 General.

(a) Until December 31, 2003, the Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation shall be in accordance with United States Aid to Navigation System, described in part 62 of this subchapter.

(b) The USATONS may be used in all U.S. waters under state jurisdiction, including non-navigable state waters.

§ 66.10–5 [Removed]

14. Remove § 66.10–5.

§ 66.10–10 [Removed]

15. Remove § 66.10–10.

16. In § 66.10–15 revise paragraph (a) to read as follows:

§ 66.19–15 Aids to navigation.

(a) USWMS aids to navigation may have lateral or cardinal meaning.

* * * * *

§ 66.10–20 [Removed]

17. Remove § 66.10–20.

§ 66.10–25 [Removed]

18. Remove § 66.10–25.

§ 66.10–30 [Removed]

19. Remove § 66.10–30.

20. Revise § 66.10–35 to read as follows:

§ 66.10–35 Navigation lights.

A red light shall only be used on a solid colored red buoy. A green light shall only be used on a solid colored black or a solid colored green buoy. White lights shall be used for all other buoys. When a light is used on a cardinal system buoy or a vertically striped white and red buoy, it shall always be quick flashing.

§ 66.10–40 [Removed]

21. Remove § 66.10–40.

§ 66.10–45. [Removed]

22. Remove § 66.10–45.

Dated: June 11, 1998.

Ernest R. Riutta,

Assistant Commandant for Operations.

[FR Doc. 98–16242 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–98–037]

RIN 2115–AE46

Special Local Regulations: EZ Challenge Speed Boat Race, Ohio River, Beech Bottom, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the EZ Challenge Speed Boat Race. This event will be held on Saturday and Sunday, July 4 and 5, 1998, between 9:30 a.m. and 6:30 p.m. Eastern Standard Time (EST) on the Ohio River. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 9:30 a.m. and terminate at 6:30 p.m. EST on July 4 and 5, 1998.

FOR FURTHER INFORMATION CONTACT: LT Ted Ferring, Coast Guard Marine Safety Office, Pittsburgh, PA at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Ted Ferring, Project Officer, Coast Guard Marine Safety Office, Pittsburgh and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication in the **Federal Register**. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delay effective date.

Background and Purpose

The marine event requiring this regulation is a powered boat race called the "EZ Challenge Speed Boat Race." This event is sponsored by Beech Bottom Marina. It will consist of approximately 20 participants operating at high speeds. Also, 50–100 spectator craft are expected for this event. The speed boat race will occur near Beech Bottom, West Virginia on the Ohio River. The resulting congestion of navigable channels creates an extra and unusual hazard in the navigable waters.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, as this regulation will be in effect for approximately eighteen hours in a limited area of the Ohio River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because the regulation is in effect for approximately eighteen hours in a limited part of the Ohio River.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with section 2–1, paragraph (34)(h), Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subject in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record keeping requirements. Waterways.

Temporary Regulation.

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulation, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–028 is added to read as follows:

§ 100.35–T08–028 Special Local Regulation, Ohio River, Beech Bottom, WV.

(a) Regulated Area: A regulated area is established on the Ohio River, which consists of all waters, bank-to-bank, inside mile markers 77.2 to 78.0.

(b) Special Local Regulation:

(1) Entry into the regulated area is closed to all commercial and recreational marine traffic from 9:30 a.m. to 6:30 p.m. EST on July 4 and 5, 1998 without the consent of the Captain of the Port, Pittsburgh.

(2) Only vessels participating in the speed boat race and sponsor safety vessels will be permitted in the regulated area.

(3) There will be periodic breaks in the schedule. Vessels wishing to transit the area must coordinate passage with the Coast Guard Patrol Commander.

(c) Dates: This section is effective at 9:30 a.m. and terminates at 6:30 p.m. EST on July 4 and 5, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16371 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–028]

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 1 vertical lift bridge across Lafourche Bayou, mile 13.3, in Leeville, Lafourche Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge to navigation continuously from 7 a.m. on Tuesday through 7 p.m. on Thursday each week from July 7, 1998 through July 30, 1998. This temporary deviation is issued to allow for the replacement of all four sets of lift cables for the vertical lift span.

DATES: This deviation is effective from 7 a.m. on July 7, 1998 until 7 p.m. on July 9, 1998; from 7 a.m. on July 14, 1998 until 7 p.m. on July 16, 1998; from 7 a.m. on July 21, 1998 until 7 p.m on July 23, 1998; and from 7 a.m. on July 28, 1998 until 7 p.m. on July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson or Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 1 vertical lift span bridge across Lafourche Bayou at Leeville, Lafourche Parish, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. Mean high water elevation is 3 feet above Mean Sea Level (MSL). Navigation on the waterway consists primarily of fishing vessels, some tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing all four sets of lift cables of the vertical lift span. The cables are worn, have begun to fray, and are in need of immediate replacement. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the SR 1 vertical lift span bridge across Lafourche Bayou, Louisiana to remain in the closed-to-navigation position continuously from 7 a.m. on Tuesday through 7 p.m. on Thursday each week from July 7, 1998 through July 30, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16372 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–025]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the Flagler Beach Bridge (SR 100) mile 810.6, at Flagler Beach, Florida. This drawbridge has been removed and replaced by a higher fixed bridge and there is no longer a need for the regulation.

DATES: This rule is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, at (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The bridge regulation for the Flagler Beach Bridge (SR 100) was published in the **Federal Register** on October 13, 1995 [60 FR 53274]. The regulation established draw times for the opening of the drawbridge. This drawbridge was replaced by a new higher fixed level bridge, which opened to vehicular traffic in June, 1997. All parts of the old drawbridge not used in the new fixed bridge have been removed from the waterway. Therefore, the regulation governing the operation of the old drawbridge is no longer necessary and the Coast Guard is removing 33 CFR 117.261(e).

The Coast Guard finds in accordance with 5 U.S.C. 553, that good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that was removed in June 1997. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The office of Management and Budget under that order has not

reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge to which the rule applies no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and government jurisdictions with populations of less than 50,000.

Therefore the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because the drawbridge has been replaced with a new fixed bridge and the drawbridge regulation is no longer necessary.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination has been prepared and is available for inspection and copying in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

117.261 [Removed and Reserved]

2. In 117.261, remove and reserve paragraph (e).

Dated: May 18, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16370 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–029]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast guard is removing the regulations governing the operation of the Seabreeze Boulevard Bridge, mile 829.1 at Daytona Beach, Florida. This drawbridge has been replaced by two higher fixed bridges and there is no longer a need for the regulations.

DATES: This rule is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, at (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The bridge regulation for the Seabreeze Boulevard Bridge, mile 829.1, was published in the **Federal Register** February 8, 1979 [44 FR 7981] and revised in the **Federal Register** on November 19, 1979 [44 FR 66195]. This regulation established draw times on the opening of the State Road 430 drawbridge. This drawbridge was replaced by two higher fixed level bridges, which opened to vehicular traffic in June, 1997. All parts of the old drawbridge not used in the new fixed bridges have been removed from the waterway. Therefore, the regulation governing the operation of the old drawbridge is no longer necessary and the Coast Guard is removing 33 CFR 117.261(f).

The Coast Guard finds in accordance with U.S.C. 553, good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that was removed in October, 1997. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register**

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require a assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget under that order has not reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge to which the rule applies no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because the drawbridge has been replaced with two new fixed bridges and the drawbridge regulation is no longer necessary.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria

contained in Executive Order 12612 and have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination has been prepared and is available for inspection and copying in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.261 [Removed and Reserved]

2. In § 117.261, remove and reserve paragraph (f).

Dated: May 18, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16369 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–023]

Drawbridge Operating Regulation; Dulac Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the SR 57 swing span drawbridge across Dulac Bayou, mile 0.6, at Dulac, Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge from 7 a.m. and noon and from 12:30 p.m. until 3:30 p.m., on July 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28 and 29, 1998. The span will open for the passage of traffic from noon until 12:30 on each of these days. The bridge will operate normally at all other times. This temporary deviation is issued to allow for the cleaning and painting of the swing span, an extensive but necessary maintenance operation.

DATES: This deviation is effective from 7 a.m. on July 6 until 3:30 p.m. on July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 57 swing span drawbridge across Dulac Bayou, mile 0.6, in Dulac, Terrebonne Parish, Louisiana, has a vertical clearance of 7 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. The maintenance work involves cleaning and painting of the swing span. This work is essential for the continued operation of the draw span.

This deviation allows the draw of the SR 57 swing span bridge across Dulac Bayou, mile 0.6, at Dulac to remain in the closed-to-navigation position between 7 a.m. and noon and from 12:30 p.m. until 3:30 p.m., on July 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28 and 29, 1998. The span will open for the passage of traffic from noon until 12:30 on each of these days. The bridge will operate normally at all other times.

This deviation will be effective from 7 a.m. on July 6 until 3:30 p.m. on July 29, 1998. Presently, the draw opens on signal at any time.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16368 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–030]

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 1 vertical lift bridge across Lafourche Bayou, mile 13.3, in Leeville, Lafourche Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge to navigation from 7 a.m. until 9 a.m.; 9:30 a.m. until noon; 12:30 p.m. until 3 p.m.; and 3:30 p.m. until 7 p.m., Monday through Friday, except Federal holidays, from August 3, 1998, until October 2, 1998. This temporary deviation is issued to allow for general maintenance repairs.

DATES: This deviation is effective from 7 a.m. on August 3, 1998, until 7 p.m. on October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson or Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 1 vertical lift span bridge across Lafourche Bayou at Leeville, Lafourche Parish, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. Mean high water elevation is 3 feet above Mean Sea Level (MSL). Navigation on the waterway consists primarily of fishing vessels, some tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of mechanical, electrical, and structural repairs which require the bridge to remain in the closed to navigation position for several hours at a time. During portions of this repair work, scaffolding may be placed below the bridge over the navigation channel reducing the approved vertical

clearance to less than 40 feet above mean high water. The reduction in the vertical clearance will be approximately 4 feet. Alternate routes are available. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the SR 1 vertical lift span bridge across Lafourche Bayou, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 9 a.m.; 9:30 a.m. until noon; 12:30 p.m. until 3 p.m.; and 3:30 p.m. until 7 p.m., Monday through Friday, except Federal holidays, from August 3, 1998, until October 2, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16367 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–040]

RIN 2115–AA97

Safety Zone: Great Catskills Triathlon, Hudson River, Kingston, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Great Catskills Triathlon located on the Hudson River in the vicinity of Kingston Point Reach, Kingston, New York. The safety zone is in effect from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Hudson River, in the vicinity of Kingston Point Reach.

DATES: This rule is effective from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998, unless terminated sooner by the Captain of the Port, New York.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–040), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays

FOR FURTHER INFORMATION CONTACT: Lietuenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway to protect swimmers and the maritime public from the hazards associated with 500 athletes competing in the swimming portion of the Great Catskills Triathlon.

Background and Purpose

On April 12, 1998, the New York Triathlon Club, submitted an Application for Approval of Marine Event to hold the swimming competition of the Great Catskills Triathlon on the waters of the Hudson River in the vicinity of Kingston Point Reach. this regulation establishes a safety zone in all waters of the Hudson River within a 1000 year radius of 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of red buoy #74 to green buoy #77. The safety zone is in effect from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998, unless terminated sooner by the Captain of the Port, New York. The safety zone prevents vessels from transiting this portion of the Hudson River and is needed to protect swimmers and boaters from the hazards associated with 500 swimmers competing in a confined area of the Hudson River.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, and advance notifications which will be made by the Local Notice to Mariners and marine information broadcasts. Recreational traffic will be able to transit the river to the east of the safety zone during this event. Commercial traffic is not heavy in this area of the Hudson River. It is expected that no more than 1 or 2 commercial vessels may be effected by this event. Due to the advance advisories being made, commercial traffic will be able to adjust their transit time to arrive before or after the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

Under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded

from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–040 to read as follows:

§ 165.T01–040 Safety Zone: Great Catskills Triathlon, Hudson River, Kingston, New York.

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 1000 yard radius of 41°56′06″N 073°57′57″W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of red buoy #74 to green buoy #77.

(b) *Effective period.* This section is effective from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 4, 1998.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98–16239 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AJ27

Delegation of Authority for Certain Ethics Matters

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations captioned "Standards of Ethical Conduct and Related Responsibilities." It removes material regarding certain ethics determinations for agency employees. This material is not required to be published in the Code of Federal Regulations because it does not affect the public. It affects only internal VA practices.

DATES: *Effective Date:* June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Walter A. Hall, Assistant General Counsel (023) and Designated Agency Ethics Official, Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–6334.

SUPPLEMENTARY INFORMATION: This document does not constitute rulemaking under the provisions of 5 U.S.C. 552 and 553. Accordingly, there is no basis for prior notice and comment or a delayed effective date.

This document does not concern a "rule" as defined in the Regulatory Flexibility Act. 5 U.S.C. 601. Nevertheless, the Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the amendment only affects individuals.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 0

Conflict of interests.

Approved: May 27, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set forth in the preamble, 38 CFR part 0, subpart A, is amended as follows:

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 0.735–2 [Removed]

2. Section 0.735–2 is removed.

§ 0.735–3 [Redesignated as § 0.735–2]

3. Section 0.735–3 is redesignated as § 0.735–2.

[FR Doc. 98–16275 Filed 6–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Board of Veterans' Appeals

38 CFR Part 20

RIN 2900–AI87

Board of Veterans' Appeals: Rules of Practice—Continuation of Representation Following Death of a Claimant or Appellant

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to eliminate a rule which automatically assigns a deceased appellant's representative to the appellant's survivor. This change is necessary because of a court ruling which eliminates the need for such a provision.

DATES: *Effective Date:* July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: On October 23, 1997, VA published in the **Federal Register** (62 FR 55200) a proposed rule which would eliminate a provision in the Board's Rules of Practice—Rule 611 (38 CFR 20.611)—permitting a deceased appellant's representative to continue to act with respect to any appeal pending upon the death of the appellant. We proposed this change because the U.S. Court of Veterans Appeals had ruled that, generally, a claim for benefits does not survive the death of the claimant. *Smith (Irma)* v. *Brown*, 10 Vet. App. 330 (1997).

The public was given 60 days to submit comments. VA received no comments.

Accordingly, based on the rationale set forth in the proposed rule document,

we are adopting without change the provisions of the proposed rule as a final rule.

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. In addition, since no notice of proposed rule making is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: April 6, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 20.611 [Removed]

2. In subpart G, § 20.611 is removed.

[FR Doc. 98–16363 Filed 6–18–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 159

[OPP–60010J; FRL–5792–2]

RIN 2070–AB50

Reporting Requirements For Risk/Benefit Information; Amendment and Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This is a two-fold action to make minor adjustments to the reporting requirements for risk/benefit information regulation. EPA is amending and correcting the final regulation published in the **Federal Register** on September 19, 1997 (62 FR 49370). The regulation codified EPA's interpretation and enforcement policy regarding the requirement of pesticide registrants to report to the Agency information concerning unreasonable adverse effects of their products as mandated in section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In the first part of this action, EPA is issuing a final rule to change the definition of a registrant to provide consistency with that which is in the statute. The amendment to the regulation will also serve to clarify the scope of the registrant's responsibilities and liabilities. In the second part of this action, the Agency is making technical corrections to the regulations for clarification purposes. These corrections include omitted, yet implied, reporting time frames and required information, missing conjunctions, and minor editorial changes.

DATES: These actions will become effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Bouve, Office of Pesticide Programs (7502C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 224, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703) 305–5832; bouve.kate@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Affected Parties

Entities potentially affected by this rule are persons who hold or ever held a pesticide registration under FIFRA section 3 or 24(c). This rule may also affect any officer, employee, agent, or any other person acting on behalf of a registrant. This listing is not intended to be exhaustive, but rather to provide examples of those entities that are likely to be affected by this action. To determine whether you or your business is affected, refer to the regulatory text contained in § 159.153 (definition of registrant), and § 159.155(d). Any questions regarding applicability should be directed to the Agency Contact Person listed above.

II. Background

In the **Federal Register** of September 19, 1997 (62 FR 49370) (FRL–5739–1), EPA issued a final rule to codify its interpretation and enforcement policy under section 6(a)(2) of FIFRA. This section of the law requires pesticide registrants to report information concerning unreasonable adverse effects of their products to EPA. The rule clarifies what information must be submitted, how and when to submit it, as well as what failures to report information, or delays in reporting, will be regarded by EPA as violations of FIFRA section 6(a)(2), and actionable under FIFRA sections 12(a)(2)(B)(ii) and 12 (a)(2)(N). The rule is to become effective on June 16, 1998. As published, the final regulation contains several errors which may prove to be misleading and are in need of clarification. This notice makes the needed corrections to the regulation.

EPA is issuing the first part of this action as a final rule without prior proposal because it believes public comment on this part of the rule would be unnecessary, impracticable, and contrary to the public interest, and therefore is not required pursuant to the "good cause' exemption under section 553(b)(B) of the Administrative Procedure Act. The Agency believes it is important to make this change as expeditiously as possible, so that the change can be incorporated into the new part 159 before publication of the next volume of the Code of Federal Regulations, and so that the change can be effective before the new part 159 becomes effective on June 16, 1998. A provision for public comments is not warranted because the rule only implements a technical correction and does not impose any new requirements. As explained below, the change is being made to assure that the definition of registrant in the rule is consistent with that which is in the underlying statute authorizing the rule.

III. Agency Decision

Section 6(a)(2) of FIFRA imposes an obligation on pesticide registrants to report to the Agency additional factual information regarding unreasonable adverse effects on the environment related to their pesticide products. By its terms, this requirement is placed only on a "registrant," a term defined in section 2(y) of FIFRA as "a person who has registered any pesticide pursuant to [FIFRA]."

The Agency changed the definition of "registrant" in the final rule issued on September 19, 1997 from that in the proposal to include agents and other persons acting on behalf of a registrant. As explained in the preamble to the final rule, the purpose of the change was to clarify that "registrants [are] responsible for the actions of their agents" and that "registrants will be held liable for the actions of their agents." The intent in drafting the rule was to make absolutely clear that a registrant is deemed to possess information when certain people

working for the benefit of the registrant possess the information.

The effect of including language on agents in the definition of registrant in § 159.153, however, was to make agents potentially liable themselves for failing to report information to the Agency pursuant to section 6(a)(2). A number of persons have complained to the Agency that this broadens the reach of section 6(a)(2), because the statutory requirement is imposed only upon registrants, and because agents who have never regisfered a pesticide product can not be considered a registrant under FIFRA. This was never the Agency's intent, and the Agency agrees that the definition in the final rule published in September 1997 could be interpreted to exceed, as written, the statutory reach of section 6(a)(2).

The Agency is therefore issuing this final rule to correct the definition of registrant in § 159.153, so that it only will include "any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c)." The rest of the definition in the final rule published in September 1997 referring to employees and agents has been moved to § 159.155(b) (redesignated as § 159.155(d) in this document). The effect of this change is that registrants are still responsible under section 6(a)(2) for information possessed by their employees and agents, but the employees and agents themselves, who are not registrants under FIFRA, are not themselves responsible for reporting adverse effects information to the Agency.

IV. Technical Corrections

The corrections listed in this notice address errors in the regulation published on September 19, 1997. The technical corrections consist of three types: reporting time frames, required information, and editorial.

The majority of the corrections ensure that the time frames for submitting all types of adverse effects information are clearly established. In the proposed rule, the time frame for reporting all section 6(a)(2) information was 30 days. In response to the public comments it received, the Agency decided to allow for different reporting schedules for different types of information. The final rule, however, listed only those categories where the time frames had been changed and erroneously failed to establish time frames for all other types of submissions.

Information concerning pesticides in food or feed above the tolerance level or if no tolerance has been established; metabolites, degradates, contaminants, and impurities; efficacy failure studies for public health products; substantiated incidents of pest resistance; and other information described in § 159.195 must be received by EPA no later than the 30th calendar day after the registrant first possesses or knows of the information. Incidents of efficacy failure of public health products and pesticide detections in water above the maximum contaminant level (MCL) or health advisory level (HAL) may be accumulated for 1 month and submitted by the end of the month following the accumulation period.

A correction will be made to the regulation to specify that detections of pesticides in water below the MCL or HAL but otherwise reportable (§ 159.178(b)) may be accumulated for 3 months and submitted by the end of the second month following the accumulation period. The preamble to the final rule stated that this type of information must be aggregated into quarterly statistical summaries as described in § 159.184(d)(3) and (e).

Other technical corrections ensure that useful information is submitted to the Agency. Although these informational items are implied, the specifics relating to the information required was inadvertently omitted. First, for detections of pesticides in or on food or feed (§ 159.178), and in surface water and ground water (§ 159.184(c)(4)(iv) and (v)) will be changed to specify that the amount of pesticide detected is reportable. Second, the technical corrections will create a cross reference between the requirement to report detections of pesticides in or on food or feed, or water found in § 159.178 with the appropriate specified reportable data elements listed in § 159.184(c).

The last group of corrections to the regulation include missing conjunctions, typographical errors, and minor cross referencing errors.

V. Statutory Review Requirements

A draft of this rule was provided to the Secretary of Agriculture (USDA), the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, and to the Committee on Agriculture of the House of Representatives. The FIFRA Scientific Advisory Panel has waived its review of this rule.

VI. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to a previously issued **Federal Register** notice and the Code of Federal Regulations (CFR). Any assessments necessary for the original final rule being corrected through this action are discussed in that final rule and are not affected by today's action. In fact, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VII. Submission to Congress and the General Accounting Office

Pursuant to the Congressional Review Act (5 U.S.C. 801(a)(1)(A)), the Agency will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This is a technical correction to the CFR and is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 159

Environmental protection, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: June 5, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Amendment to 40 CFR Part 159

Therefore, 40 CFR part 159 is amended as follows:

PART 159—[AMENDED]

1. The authority citation for part 159 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. In § 159.153 the definition of "Registrant" is revised to read as follows:

§ 159.153 Definitions.

* * * * *

Registrant includes any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c).

* * * * *

Correction to Rule Published in the Federal Register

Accordingly, the publication on September 19, 1997 of the final regulations which were the subject of FR Doc. 97-24937 and published on page 49370 is corrected as follows:

1. On page 49388, in the table of contents for part 159, the title of § 159.160 is corrected to read "Obligations of former registrants."

2. On page 49388, § 159.155 is corrected to read as follows:

§ 159.155 When information must be submitted.

(a) The following reportable information must be received by EPA not later than the 30th calendar day after the registrant first possesses or knows of the information:

(1) Scientific studies described in § 159.165.

(2) Information about discontinued studies described in § 159.167.

(3) Human epidemiological and exposure studies described in § 159.170.

(4) Detection of a pesticide in or on food or feed described in § 159.178(a).

(5) Detection of metabolites, degradates, contaminants, impurities described in § 159.179.

(6) Failure of performance studies described in § 159.188(a)(2), (b)(2), and (c).

(7) Other information described in § 159.195.

(b) Reportable information concerning detections of pesticides in water described in § 159.178(b), adverse effects incidents described in § 159.184(a), and efficacy failure incidents described in § 159.188(a)(1) and (b)(1) must be reported according to the time frames set forth in § 159.184(d).

(c) EPA may, in its discretion, notify a registrant in writing of a different reporting period that will apply to specific types of reportable information or eliminate reporting requirements entirely. Such notification supersedes otherwise applicable reporting requirements set forth in this part.

(d) For purposes of this part, a registrant possesses or knows of information at the time any officer, employee, agent, or other person acting for the registrant first comes into possession of, or knows of, such information; provided that, such person performs any activities for the registrant related to the development, testing, sale or registration of a pesticide or the person could be reasonably expected to come into possession of information otherwise reportable under this part. In the case of information known to or possessed by an agent or other person acting for the registrant, a registrant is responsible for such information only if the agent or other person acquired such information while acting for the registrant.

§ 159.158 [Corrected]

3. On page 49389, § 159.158 is corrected as follows:

i. In paragraph (a) the introductory text, the second sentence is corrected to read:

(a) * * * Information relevant to the assessment of the risks or benefits also includes conclusion(s) or opinion(s) rendered by a person who meets any of the following:

* * * * *

ii. In paragraph (b)(1), after the heading, the introductory text is corrected to read:

(b) * * *

(1) * * * Information need not be submitted if before that date on which the registrant must submit such information if all of the following conditions are met:

* * * * *

iii. In paragraph (b)(3) introductory text, the phrase "either of the categories described in paragraphs (b)(3)(i) or (b)(3)(ii) of this section." is corrected to read "either of the following categories:".

iv. On page 49390, paragraph (b)(4) introductory text, the phrase "reportable under this part, if:" is corrected to read "reportable under this part, if both of the following conditions are met:".

§ 159.159 [Corrected]

4. On page 49390, in § 159.159 is corrected as follows:

i. Paragraph (a)(1) introductory text is corrected to read:

(a) * * *

(1) Information is otherwise reportable under § 159.184, and pertains to an incident that is alleged to have occurred on or after January 1, 1994, and to have involved any of the following:

* * * * *

ii. In paragraph (a)(2), the reference to "§ 159.195(b)," is corrected to read "§ 159.195(c)."

§ 159.160 [Corrected]

5. On page 49390, in § 159.160, in paragraphs (b)(1), (3), and (4), the phrase "formerly-registered" is corrected to "formerly registered."

§ 159.165 [Corrected]

6. On page 49390 § 159.165 is corrected as follows:

i. In paragraph (b)(4), the introductory text is corrected to read:

* * * * *

(b) * * *

(4) For plants when tested at the maximum label application rate or less, if either of the following conditions is met:

* * * * *

ii. On page 49391, paragraphs (d)(1) and (d)(2), the introductory text in both paragraphs is corrected to read:

(d) * * *

(1)* * * A study using a test regimen lasting 90 calendar days or less, and all of the following conditions are met:

* * * * *

(2)* * * A study using a test regimen lasting 90 calendar days or less, and all of the following conditions are met:

* * * * *

§ 159.178 [Corrected]

7. On page 49391, § 159.178 is corrected as follows:

i. In paragraph (a), the phrase "the pesticide is present on food or feed" is corrected to read "the pesticide is present in or on food or feed."

ii. In paragraph (a) by adding a new sentence to the end thereof reading as follows:

(a) * * * The information to be submitted is the same as that required in § 159.184(c)(1), (2), (3), and (4)(iv)(E), (F), (G), and (H).

* * * * *

iii. In paragraph (b)(1), in the introductory text, the phrase "the water reference level in:" is corrected to read "the water reference level in any of the following instances:".

iv. By adding paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) Information to be submitted is the same as that required in § 159.184(c)(1), (2), (3), (4)(iv) and (v), and (5)(vi).

§ 159.179 [Corrected]

8. On page 49391 § 159.179 is corrected as follows:

i. In paragraph (a), in the introductory text, the phrase "must be submitted if:" is corrected to read "must be submitted if either of the following conditions is met:".

ii. In paragraph (a)(2), in the introductory text, the phrase "and one of the conditions in paragraph (a)(3)(i)

or (ii) of this section is met:" is corrected to read "and either of the following conditions is met:".

§ 159.184 [Corrected]

9. On page 49392, § 159.184 is corrected as follows:

i. In paragraph (c)(2), in the introductory text, the phrase "reports must be submitted if the registrant" is corrected to read "reports must be submitted for each pesticide that may have contributed to the incident, if the registrant".

ii. Paragraph (c)(2)(vi) is removed.

iii. On page 49393, paragraph (c)(4)(iv)(G), is corrected to read:

* * * * *

(c) * * *

(4) * * *

(iv) * * *

(G) Pesticides and degradates analyzed for, the detection limits, and the amount detected.

* * * * *

iv. In paragraph (c)(4)(v)(A) is corrected to read:

* * * * *

(c) * * *

(4) * * *

(v) * * *

(A) Pesticides and degradates analyzed for, the analytical method used, the detection limits, and the amount detected.

* * * * *

v. On page 49393 in paragraph (c)(5)(iii), in the introductory text, the phrase "if any of the criteria listed in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(G) of the section are met, or" is corrected to read "if any of the following criteria are met, or".

vi. On page 49393, in paragraph (c)(5)(iii)(D), the word "relativelycommon" is corrected to read "relatively common."

vii. On page 49394, in paragraph (c)(5)(iii)(G), the word "orthreatened" is corrected to read "or threatened."

viii. On page 49394, paragraph (c)(5)(iv), in the introductory text, the phrase "if the single criterion listed in paragraph (c)(5)(iv)(A) of this section is met, or" is corrected to read "if the following criterion is met, or".

ix. On page 49394, paragraphs (d)(2) and (d)(3) are corrected to read as follows:

* * * * *

(d) * * *

(2) Information concerning incidents which meet the criteria for the following exposure and severity category labels described in paragraph (c)(5) of this section, reports of detections of pesticides in water, and efficacy failure incidents described in § 159.188(a)(1) and (b)(1), may be accumulated for a 30–day period, and submitted to the Agency within 30 days after the end of each 30–day accumulation period for: Humans, H-B, and H-C; Wildlife, W-A; Plants, P-A; Water, G-A; Property Damage, PD-A.

(3) Incidents or reports of detections of pesticides in water meeting all other exposure and severity label categories, information may be accumulated by registrants for 90 days and submitted within 60 days after the end of each 90–day accumulation period.

* * * * *

§ 159.195 [Corrected]

10. On page 49395, in § 159.195, paragraph (b), the word "sectioin" is corrected to read "section," and the phrase "otherwise-reportable" is corrected to read "otherwise reportable."

[FR Doc. 98–16410 Filed 6–18–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300667; FRL–5794–7]
RIN 2070–AB78

Buprofezin; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time–limited tolerances for residues of the pesticide buprofezin and its metabolite BF 12 in or on citrus fruit at 2.0 parts per million (ppm); dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat at 0.02 ppm, fat at 0.02 ppm, and meat byproducts at 0.5 ppm for an additional 1–year period, to July 31, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on citrus and cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective June 19, 1998. Objections and requests for hearings must be received by EPA, on or before August 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300667], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300667], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e–mail) to: opp– docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e–mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e–mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9356; e–mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of July 30, 1997 (62 FR 40735) (FRL–5732–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time–limited tolerance for the residues of buprofezin and its metabolites in or on citrus fruit at 2.0 ppm, dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm, and cattle, sheep, hogs, goats, and horse meat at 0.02 ppm, fat at 0.02 ppm, and meat byproducts at 0.5 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA

requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of buprofezin on citrus for this year's growing season to control red scale, which has developed resistance to available controls in some areas of California, and has caused significant losses for affected growers; this situation remains unchanged from that of last year. EPA also received requests from California and Arizona to extend the use of buprofezin on cotton for this year's growing season since the situation has remained the same as last year; a recently–introduced new strain or species of whitefly has caused significant losses to cotton growers and has demonstrated resistance to available controls. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of buprofezin on citrus for control of red scale and on cotton for control of whiteflies.

EPA assessed the potential risks presented by residues of buprofezin in or on citrus, cotton, and animal commodities. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 30, 1997 (62 FR 40735). Based on that data and information considered, the Agency reaffirms that extension of the time–limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time–limited tolerances are extended for an additional 1–year period. Although these tolerances will expire and are revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus fruit; dried citrus pulp; cotton seed; cotton gin byproducts; milk; and the meat, fat and meat byproducts of cattle sheep, hogs, goats, and horse, after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp–docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300667]. No CBI should be submitted through e–mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends time–limited tolerances that were previously established by EPA under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of existing time–limited tolerances does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 4, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.511 [Amended]

2. In § 180.511, by amending the table in paragraph (b) for all of the commodities by changing the expiration dates "7/31/98" to read "7/31/ 99."

[FR Doc. 98–16409 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 96–262, 94–1, 91–213, and 95–72; FCC 97–420]

Universal Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 13, 1998, a document making certain changes, on reconsideration, to the Commission's universal service rules. This document corrects those rules.

DATES: Effective on June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published in FR Doc. 98–541, published in the **Federal Register** of January 13, 1998 (63 FR 2094) a summary of the Commission's Fourth Order on Reconsideration in CC Docket No. 96–45 and Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72, FCC 97–420 (Fourth Order on Reconsideration). On January 29, 1998, the Commission released errata to the Fourth Order on Reconsideration. This correction reflects the changes included in that errata. The full text of the errata is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC.

In rule FR Doc. 98–541, published on January 13, 1998 (63 FR 2094) make the following corrections.

1. On page 2125, in the third column, in § 54.101, paragraph (a)(1), line 3, remove the period and add, in its place, a semi-colon.

2. On page 2127, in the second column, in § 54.301, revise paragraph (c)(5) to read as follows:

(c) * * *

(5) Corporate Operations Expenses (Accounts 6710, 6720) shall be allocated according to the following factor:

{[Account 2210 Category 3 + (Account 2210 + Account 2220 + Account 2230)}] × (Account 6210 + Account 6220 + Account 6230)} + [(Account 6530 + Account 6610 + Account 6620) × (Account 2210 Category 3 + Account 2001)] + (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

3. On page 2127, in the second column, in § 54.301, in paragraph (c)(6), lines 6 and 7, add the word "Account" in the parentheses before "2210", "2220", and "2230."

4. On page 2127, in the second column, in § 54.301, in paragraph (d) in the heading and in the introductory text, line 2, add the phrase "projected annual unseparated" before "local switching revenue requirement"; in line 3 of the introductory text add the word "by" before "summing."

5. On page 2127, in the second column, in § 54.301, in the first sentence of paragraph (d)(1) revise to read as follows:

(d) * * *

(1) Return on Investment attributable to COE Category 3 shall be obtained by multiplying the average projected unseparated local switching net investment by the authorized interstate rate of return. Projected unseparated local switching net investment shall be calculated as of each December 31 by deducting the accumulated reserves, deferrals and customer deposits attributable to the COE Category 3 investment from the gross investment attributable to COE Category 3. The average projected unseparated local switching net investment shall be calculated by summing the projected unseparated local switching net investment as of December 31 of the calendar year following the filing year and such investment as of December 31 of the filing year and dividing by 2.

6. On page 2127, in the second column, in § 54.301, in the second sentence of paragraph (d)(1) remove the word "Unseparated" and add, in its place, "Projected unseparated".

7. On page 2127, in the second column, in § 54.301, in the third sentence of paragraph (d)(1) remove the phrase "projected unseparated local switching average" and add, in its place, "average projected unseparated local switching" and remove "and the projected unseparated local switching net" and add, in its place, "year and such".

8. On page 2127, in the second column, in § 54.301, in paragraph (d)(3) add the phrase ",excluding depreciation expense," after the word "expenses".

9. On page 2127, in the second column, in § 54.301 revise paragraph (d)(4) to read as follows:

(d) * * *

(4) Federal income tax attributable to COE Category 3 shall be calculated

using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section:
[Return on Investment attributable to COE Category 3 − Account 7340 − Account 7500 − Account 7210)] × [Federal Income Tax Rate ÷ (1 − Federal Income Tax Rate)].

10. On page 2128, in the first column, in § 54.303, in paragraph (b)(1) revise to read as follows:

(b) * * *

(1) To calculate the unadjusted base-level of Long Term Support for 1998, the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line tariff participants projected to be recovered in 1997 and the sum of end user common line charges and the 1997 projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

11. On page 2130, in the third column, in § 54.511, in paragraph (c)(1), in lines 7 and 8, remove the phrase "competitive bid" and change the reference from "§ 54.504(a)" to "§ 54.504(a), (b)(3), and (b)(4)"; in paragraph (c)(1)(i), in line 3, add the word "of" between "life" and "the contract"; and in paragraph (c)(1)(ii), in line 7, remove the phrase "that were provided" and add, in its place, "that are provided".

12. On page 2131, in the first column, in § 54.518, in the section heading remove the word "Wide" and add, in its place "Support for wide".

13. On page 2131, in the first column, in § 54.519, in paragraph (a)(3), remove the phrase "Make a good faith effort" and add, in its place, "Take reasonable steps".

14. On page 2131, in the second column, in § 54.604, in paragraph (a), in line 5, remove the phrase "service provider" and add, in its place, "telecommunications carrier".

15. On page 2131, in the third column, in § 54.604, in paragraph (c), in the last line, remove the phrase "service providers" and add, in its place, "telecommunications carriers".

16. On page 2132, in the second column, in § 54.703, in the first sentence of paragraphs (b) and (c) remove the phrase "The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications" and add, in its place, "The following entities will not be required to contribute to universal service" and in line 9 of paragraphs (b) and (c) remove the phrase "of video programming" after the word "broadcasters".

17. On page 2132, in the second column, in § 54.703, in paragraph (c), in line 9, remove the comma before "systems integrators" and add in its place, a semi-colon.

Federal Communications Commission.

Lisa Gelb,

Chief, Accounting Policy Division.

[FR Doc. 98–13239 Filed 6–18–98; 8:45 am]

BILLING CODE 8712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 219, 252, and 253

[DFARS Case 90–D011]

Defense Federal Acquisition Regulation Supplement; Direct Award of 8(a) Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a) Program.

DATES: *Effective date:* June 19, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 18, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D011 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D011 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 601–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The SBA's 8(a) Program, named for the section of the Small Business Act (Pub. L. 85–536, as amended) which it implements, helps small disadvantaged businesses compete for Federal contracts. The program authorizes the SBA to enter into all types of contracts with other agencies and award subcontracts for performing these contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

Section 8(a) requires the SBA to function as an intermediary for 8(a) contracts, but permits the SBA to delegate its authority through special agreements. One such agreement is the Memorandum of Understanding dated May 6, 1998, between SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) contractors; by reducing SBA's response time to a DoD offering and for making an eligibility determination; and by providing a number of other changes to procurement procedures under the 8(a) Program. This interim rule amends Parts 213, 219, 252, and 253 of the DFARS to implement the MOU.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects the administrative process established for award of 8(a) contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 98–D011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement a MOU dated May 6, 1998, between the SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a)

Program by authorizing DoD to award contracts directly to 8(a) concerns; by reducing SBA's response times; and by providing a number of other changes to procurement procedures under the 8(a) Program. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 213, 219, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 213, 219, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 213, 219, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Subpart 213.70 is added to read as follows:

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

Sec.
213.7001 Policy.
213.7002 Procedures.
213.7003 Purchase orders.
213.7003–1 Obtaining contractor acceptance and modifying purchase orders.
213.7003–2 Contract clauses.

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

213.7001 Policy.

For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.

213.7002 Procedures.

For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

(1)(i) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804–2(2); or

(ii) For other types of acquisitions, the procedures in subpart 219.8, excluding the procedures in 219.804–2(2); or

(2) The procedures for award to the Small Business Administration in FAR subpart 19.8.

213.7003 Purchase orders

213.7003–1 Obtaining contractor acceptance and modifying purchase orders.

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804–2(2).

213.7003–2 Contract clauses.

Use the clauses prescribed in 219.811–3(1) and (3) for purchase orders under the 8(a) Program pursuant to the Memorandum of Understanding cited in 219.800.

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.800 is added to read as follows:

219.800 General.

(a) By Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense for Acquisition and Technology its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under paragraph 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority is being delegated and redelegated on a pilot test basis and shall expire on May 5, 2001. Notwithstanding this MOU, contracting officers may elect to award the contract pursuant to the provisions of FAR subpart 19.8.

(b) Awards under the MOU may be awarded directly to the 8(a) participant on either a sole source or competitive basis.

(c) Contracts awarded under the MOU may be awarded directly to the 8(a) participant. An SBA signature on the contract is not required.

4. Sections 219.804–2, 219.804–3, 219.805, 219.805–2, 219.806, 219.808, 219.808–1, 219.811, 219.811–1, 219.811–2, 219.811–3, and 219.812 are added to read as follows:

219.804–2 Agency offering.

(1) For requirements processed under the MOU cited in 219.80 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the MOU. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the MOU, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii) (A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the MOU cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in part 213 and FAR part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail—

(i) A copy of the purchase order; and

(ii) A notice stating that the purchase order is being processed under the MOU. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

219.804–3 SBA acceptance.

For requirements processed under the MOU cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804–2(2) for purchase

orders that do not exceed the simplified acquisition threshold).

219.805 Competitive 8(a).

219.805–2 Procedures.

(c) For requirements processed under the MOU cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on as many as three of the most highly rated offerors.

219.806 Pricing the 8(a) contract.

For requirements processed under the MOU cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

219.808 Contract negotiations.

219.808–1 Sole source.

For requirements processed under the MOU cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

219.811 Preparing the contracts.

219.811–1 Sole source.

(a) Awards under the MOU cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811–3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the MOU cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219–7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

219.811–2 Competitive.

Awards made under the MOU cited in 219.800 shall be prepared in accordance with 219.811–1.

219.811–3 Contract clauses.

(1) Use the clause at 252.219–7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219–11, Special 8(a) Contract Conditions, FAR 52.219–12, Special 8(a) Subcontract Conditions, and FAR 52.219–17, Section 8(a) Award, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(2) Use the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219–7010, Alternate A, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(3) Use the clause at 252.219–7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804–2(2).

219.812 Contract administration.

(d) Awards under the MOU cited in 219.800 are subject to Section 407 of Pub. L. 100–656. These contracts include the clause at 252.219–7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 252.219–7009, 252.219–7010, and 252.219–7011 are added to read as follows:

252.219–7009 Section 8(a) Direct Award.

As prescribed in 219.811–3(1), use the following clause:

Section 8(a) Direct Award (Jun 1998)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The Contractor agrees that—

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

252.219–7010 Alternate A.

Alternate A (Jun 1998)

As prescribed in 219.811–3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

252.219–7011 Notification to Delay Performance.

As prescribed in 219.811-3 (3), use the following clause NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that

it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

PART 253—FORMS

6. Section 253.204–70 is amended by revising paragraph (d)(5)(iv)(B)(*2*) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(d) * * *
(5) * * *
(iv) * * *
(B) * * *

(*2*) *Code B—Section 8(a).* Enter code B if the contract was awarded to—

(i) The Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR subpart 19.8); or

(ii) An 8(a) contractor under the direct award procedures at 219.811.

* * * * *

7. Section 253.204–71 is amended by revising paragraph (g)(2)(ii)(A) to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

* * * * *

(g) * * *
(2) * * *
(ii) * * *

(A) Block E2a, Through SBA-Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (FAR subpart 19.8) or under the 8(a) direct award procedures at 219.811.

* * * * *

[FR Doc. 98–16282 Filed 6–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–293]

Organization and Delegation of Powers and Duties; Delegation to the Assistant Secretary for Budget and Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Assistant Secretary for Budget and Programs the authority to make appropriate Congressional notification pursuant to The National Energy Conservation Policy Act, as amended (42 U.S.C. 8287 et seq.). The Act requires the agency head to provide Congressional notification for awards of Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of $750,000. In order that the Code of Federal Regulations reflect the delegation to the Assistant Secretary for Budget and Programs regarding Congressional notification for ESPC awards, an addition to section 1.58 of Title 49 is necessary.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Lesley Field, Office of Acquisition and Grant Management, Department of Transportation, (202) 366–4960, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pursuant to The National Energy Conservation Policy Act, the head of the agency is required to provide Congressional notification for ESPCs with cancellation ceilings in excess of $750,000 (42 U.S.C. 8287(a)(2)(D)). The Act authorizes federal agencies to enter into multiyear ESPCs for a period not to exceed 25 years, without funding of cancellation charges before cancellation, provided certain conditions are met. One of these conditions is that appropriate notice be given to Congress 30 days prior to award of a contract that contains a cancellation ceiling in excess of $750,000.

Delegating the notification function to the Assistant Secretary for Budget and Programs will expedite the notification process. Since the notification in question is to the Appropriation Committees and Authorizing Committees, the Budget Office is well situated to implement the notification requirement as it handles contacts with these committees on many other Departmentwide budgetary issues.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary finds good cause, under 5 U.S.C. 553(b) and (d)(3), that notice, and public procedure on the notice are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.58 [Amended]

2. Section 1.58 is amended by adding a new paragraph (h) to read as follows:

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

The Assistant Secretary for Budget and Programs is delegated authority to:

* * * * *

(h) Provide Congressional Notification for Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of $750,000, pursuant to the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8287 et seq.

Issued in Washington, DC this 15th day of June, 1998.

Rodney Slater,

Secretary of Transportation.

[FR Doc. 98–16281 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–294]

Organization and Delegation of the Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, the authority contained in the National Defense Authorization Act for Fiscal Year 1998 to allow personnel to participate in management of certain non-Federal entities. Participation under this authority includes acting as an officer or voting board member. The term "Non-Federal entities" includes, but is not limited to, the following organizations: Coast Guard Mutual Assistance, the National Collegiate Athletics Association, the Coast Guard Academy Athletic Association, the Freedom Football Conference, the New England Women's and Men's Athletic Conference, the Pilgrim Conference, the

United States Olympic Committee, the New England Association of Schools and Colleges, the International Association of Management Education, the American Medical Association, the Aerospace Medical Association, the American Public Health Association, and the American Dental Association.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael J. Lodge, Office of the General Law (G–LGL), (202) 267–6921, United States Coast Guard, 2100 Second Street, SW, Washington, DC 20593; or Ms. Gwynneth Radloff, Office of General Counsel, C–50, (202) 366–9305, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pub. L. 105–85 is the National Defense Authorization Act for Fiscal Year 1998 (Act). Section 593 of the Act amends Title 10 U.S. Code Chapters 53 and 81 by adding sections 1033 and 1589. These two new sections authorize and direct actions by the Secretary, on behalf of the Coast Guard. This rule amends 49 CFR 1.46, by adding a new paragraph (ooo) to reflect the delegation of the Secretary's authority under the National Defense Authorization Act for Fiscal Year 1998 (10 U.S.C. Chapters 53 and 81).

This rule is published as a final rule and is effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, The Secretary, for good cause, finds, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice, and the opportunity for public comment before the effective date of the rule are unnecessary and that the rule should be made effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding the following paragraph (ooo) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ooo) Carry out the functions and responsibilities and exercise the authorities vested in the Secretary by the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, pertaining to authority for personnel to participate in management of certain non-Federal entities (10 U.S.C. Chapters 53 and 81).

Issued at Washington, DC this 11th day of June, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–16380 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–14–P

VOL 63 ISS 118 JE 19 1998 UMI

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DEPARTM

Federal A

14 CFR Pa

[Airspace D

Proposed Airspace;

AGENCY: F Administr

ACTION: N

SUMMARY: establish G GA. A Glo Runway (I Approach developed result, con upward fr Level (AG the SIAP a Rules (IFR Airport. T airport wi Rules (VF concurren SIAP.

DATES: Co or before J

ADDRESSE proposal i Aviation A 98–ASO– ASO–520, Georgia 30

The offi in the Offi Southern Columbia 30337, tel

FOR FURTH Nancy B. Branch, A Aviation A 20636, At telephone

SUPPLEME

Comment

Interest participat

Proposed Rules

Federal Register
Vol. 63, No. 118
Friday, June 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–9]

Proposed Establishment of Class E Airspace; Villa Rica, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Villa Rica, GA. A Global Positioning System (GPS) Runway (RWY) 10 Standard Instrument Approach Procedure (SIAP) has been developed for Stockmar Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Stockmar Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–9, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Villa Rica, GA. A GPS RWY 10 SIAP has been developed for Stockmar Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Stockmar Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

Spruce Creek Airport

(Lat. 29°04'49" N, long. 81°03'27" W)

Ormond Beach Municipal Airport

(Lat. 29°18'04" N, long. 81°06'50" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, within a 6.4-mile radius of Spruce creek Airport and within a 7.3-mile radius of Ormond Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 10, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16354 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 334

[Docket No. 78N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record and proposing to amend the tentative final monograph (proposed rule) for over-the-counter (OTC) laxative drug products to reclassify the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada, and senna (including sennosides A and B) from Category I (generally recognized as safe and effective and not misbranded) to Category III (further testing is required). FDA is issuing this proposed rulemaking after considering data and information on the safety of bisacodyl, senna, and two related stimulant laxative ingredients, danthron and phenolphthalein. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by September 17, 1998. Written comments on the agency's economic impact determination by September 17, 1998. New data by June 21, 1999. Comments on the new data by August 19, 1999.

ADDRESSES: Submit written comments and new data to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these classes. In the advance notice of proposed rulemaking, the Panel recommended Category I status for the OTC stimulant laxative ingredients aloe, bisacodyl, cascara sagrada preparations, danthron, phenolphthalein, and senna preparations (40 FR 12902 at 12908 to 12910). The agency concurred with the Panel's Category I classification of these ingredients in the tentative final monograph published in the **Federal Register** of January 15, 1985 (50 FR 2124 at 2152 to 2156).

II. Danthron and Phenolphthalein

In the **Federal Register** of September 2, 1997 (62 FR 46223), the agency reopened the administrative record for this rulemaking, discussed the carcinogenic risk of danthron and phenolphthalein, and proposed to reclassify these two anthraquinone laxative ingredients from Category I to Category II (not generally recognized as safe and effective or misbranded). The agency is evaluating the data and comments submitted in response to that proposal and will discuss this subject further in a future issue of the **Federal Register**.

III. Bisacodyl

The FDA Center for Drug Evaluation and Research (CDER) Carcinogenicity Assessment Committee (CAC) has recommended that the anthraquinone laxatives (aloe, cascara sagrada, and senna) and bisacodyl be tested in the standard battery of genotoxicity tests and under the test conditions by which phenolphthalein was found to be positive (Ref. 1). Phenolphthalein and bisacodyl are diphenylmethane derivatives with a similar chemical structure and pharmacological characteristics. The CAC recommended the Syrian Hamster Embryo (SHE) cell transformation assay as an early screen for bisacodyl and, based on its results, either the p53 transgenic mouse assay or another in vivo alternative assay, as appropriate, follow. Two-year carcinogenicity studies would then be contingent upon the results of these assays.

The agency has informed industry that additional testing for bisacodyl will be necessary (Ref. 2). Subsequently, industry submitted data from two mutagenicity studies (Ames test and rat bone marrow micronucleus assay) and a chromosomal aberration study in Chinese hamster ovary cells. The agency has reviewed these studies and determined that the results of all of the tests were negative (Ref. 3). Phenolphthalein was tested in two of these tests and was found negative in one (Ames test). However, findings from further studies indicated that phenolphthalein presents a potential carcinogenic risk. Thus, because of the chemical similarity of bisacodyl to phenolphthalein and the lack of previous carcinogenicity testing of bisacodyl, the agency is requesting that bisacodyl undergo further testing to assess its carcinogenic potential. Industry has completed dose range finding studies intended to select bisacodyl doses for a 6-month oral gavage carcinogenicity study in the p53 transgenic mouse (Ref. 4).

IV. Senna

The agency has reviewed metabolic, genotoxicity, and carcinogenicity data on senna and its components (Ref. 5). Senna contains a number of components, including but not limited to: Sennosides A and B, sennosides C and D, rhein (including rhein anthrone-8-monoglucoside and rhein-8-monoglucoside), chrysophanol, emodin, and aloe-emodin. The metabolic studies show that varying amounts of senna and its metabolites are absorbed into the

systemic circulation. The data do not present conclusive absorption information, nor indicate whether any of the metabolites present a safety hazard, if absorbed.

The agency believes that there are sufficient mutagenicity (Ames test) data in the literature on the senna extracts sennosides A and B, aloe-emodin, chrysophanol, and emodin. The data indicate that sennosides A and B are negative, while the senna extracts aloe-emodin, emodin, and chrysophanol are positively genotoxic (Ref. 5). Thus, senna preparations containing any of these components (or kaempferol or quercetin) may have mutagenic properties. These potentially mutagenic anthrones are found in the dried leaves and pods of senna. Therefore, until manufacturers can show that commercially available senna preparations do not contain mutagenic/genotoxic components, the agency is unable to state that sennosides A and B do not pose a relative risk to humans.

The agency also reviewed a 2-year carcinogenicity study with sennosides in the rat (Ref. 6). However, the agency found this study deficient because of the limited and incomplete histopathologic examination of tissues (Ref. 5). The agency concludes that further testing is necessary to assess the carcinogenic potential of senna products. In these studies, specific analysis of the test substance should be done to enable quantitative estimation of each component of the preparation. The senna dose selection should be based on a 1-month dose ranging study for an alternative assay or a 3-month dose ranging study for a 2-year carcinogenicity study in the rodent species and strains selected for the carcinogenicity studies. Histopathologic examination of all tissues from all groups of animals should be conducted (Ref. 5).

V. Aloe and Cascara Sagrada Preparations

Aloe and cascara sagrada are other anthraquinone ingredients. Cascara sagrada ingredients included in the tentative final monograph are casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract (50 FR 2124 at 2152). The agency has not received any mutagenicity, genotoxicity, or carcinogenicity data for these ingredients. The agency concludes that these ingredients need to have these types and other toxicity data using tests similar to those used and found positive for phenolphthalein.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. MM13, Docket No. 78N–036L, Dockets Management Branch.

2. Letter from D. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association (NDMA), coded LET111, Docket No. 78N–036L, Dockets Management Branch.

3. Letter from D. Bowen, FDA, to L. Totman, NDMA, coded LET175, Docket No. 78N–036L, Dockets Management Branch.

4. Comment No. C178, Docket No. 78N–036L, Dockets Management Branch.

5. Letter from D. Bowen, FDA, to J. Conover, The Purdue Frederick Co., coded LET173, Docket No. 78N–036L, Dockets Management Branch.

6. Comment No. LET113, Docket No. 78N–036L, Dockets Management Branch.

VII. Summary of the Agency's Changes to the Proposed Rule

The agency is proposing to reclassify the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada (including casanthranol), and senna (including sennosides A and B) from Category I (monograph) to Category III (more data needed). The agency recommends that persons interested in testing these drugs consult the agency about carcinogenicity study requirements and protocols before initiating any studies. If these data are not provided or are inadequate for any of these ingredients, these ingredients will be placed in Category II (nonmonograph) in a final rule. The agency will add any of these ingredients that become nonmonograph to the list of stimulant laxatives in § 310.545(a)(12)(iv) (21 CFR 310.545(a)(12)(iv)) in new § 310.545(a)(12)(iv)(C). The agency will also amend proposed §§ 334.18, 334.30, 334.32, 334.60, 334.66, and 334.80 to remove any of these ingredients and their labeling if any of these ingredients are not included in the final monograph.

VIII. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to establish conditions under which the OTC stimulant laxative ingredients aloe, bisacodyl, cascara sagrada, and senna are or are not generally recognized as safe and effective. If the ingredients are determined to be safe and effective, no product reformulation will be necessary. If the ingredients are not determined to be safe and effective, product reformulation will be needed. There are a number of other laxative ingredients in proposed part 334 (50 FR 2124 at 2152) or one of these ingredients, if found safe and effective, that could be used if product reformulation becomes necessary.

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Because of the large number of monograph active ingredients available for substitution, no manufacturer should need to change its dosage form; however, a manufacturer would have to redo the validation (product, process, new supplier), conduct stability tests, change master production records, and, for some dosage forms, conduct palatability tests. Competitive market forces and increased public awareness of a potential safety hazard of these ingredients would most likely lead all manufacturers to move to alternative products over time.

Manufacturers of these products will also incur costs to relabel their products to reflect the new formulation. The agency obtained estimates of relabeling costs for the type of changes required by this proposed rule ranging from $2,700 to $10,000 per standard stock keeping unit (SKU) (individual products, packages, and sizes) for nationally branded products and from $500 to $1,500 per SKU for private label products. The agency estimates the number of SKU's that will need to be relabeled as a result of reformulation as between 500 and 1,000, depending if

some or all of the involved ingredients are not included in the final monograph for OTC laxative drug products. Most of these label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling.

Finally, some manufacturers that do not reformulate and validate their products by the effective date of the final rule may incur a loss of revenue. Nevertheless, because of the large number of substitute products that are available, many in the same dosage form, there should be no significant drop in the overall consumption of laxative drug products. Some manufacturers already have other laxative products. If products need to be reformulated eventually, manufacturers will be able to retain the same brand names. Consumer loyalty to these brands should lessen the revenue losses to these firms.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. The rule will not require any new reporting and recordkeeping activities. No additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with this rule.

Small business impact. The U.S. Small Business Administration designates an entity as small if it employs less than 750 employees. The agency does not believe that any small firms will be conducting genotoxicity or carcinogenicity studies on any of the laxative ingredients included in this proposal. Small firms that may have to reformulate their products could incur significant costs as a result of this rule. The agency is attempting to reduce this burden by keeping industry informed of the findings of new research on these products through public meetings and letters to manufacturers of products containing these ingredients. In this manner, manufacturers should be aware of which ingredients are likely to be included or excluded from the final monograph and can make their marketing decisions accordingly.

The agency considered but rejected the following alternatives: (1) Fewer testing requirements, and (2) an exemption from coverage for small entities. The agency does not consider either of these approaches acceptable because they do not assure that consumers will have safe and effective OTC laxative drug products at the earliest possible time. The agency does not believe that there are any significant alternatives to the proposed rule that would adequately provide for the safe and effective use of these OTC drug products.

The agency expects that this proposed rule will not be economically significant under Executive Order 12866, nor would it impose an Unfunded Mandate (as that term is described in the Unfunded Mandate Act). The agency also believes that it is undertaking steps to reduce the burden to small entities. Nevertheless, some entities may incur significant impacts, especially manufacturers that may have to reformulate their products and, to a lesser extent, private label manufacturers that provide labeling for a number of the affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

Finally, the agency specifically invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC laxative drug products containing aloe, bisacodyl, cascara sagrada, and senna, particularly the costs associated with reformulation. Comments regarding the impact of this rulemaking on OTC laxative drug products containing any of these ingredients should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that labeling requirements related to this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, this proposed rulemaking involves labeling that is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

X. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

XI. Request for Comments

Interested persons may, on or before September 17, 1998, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before September 17, 1998. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also submit new data demonstrating the safety of any of those conditions not classified in Category I on or before June 21, 1999. Written comments on the new data may be submitted on or before August 19, 1999. Three copies of all data and comments should be submitted as stated previously, and received data and comments may be seen as stated previously. In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on August 19, 1999. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner of Food and Drugs finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 334

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 334 (as proposed in the **Federal Register** of January 15, 1985 (50 FR 2124), September 2, 1993 (58 FR 46589), and September 2, 1997 (62 FR 46223)) be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by adding new paragraphs (a)(12)(iv)(C) and (d)(30), and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(C) *Stimulant laxatives*—Approved as of (date of publication in the **Federal Register**).

Aloe

Bisacodyl

Cascara sagrada in any form (e.g., casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, cascara sagrada fluidextract)

Senna in any form (e.g., senna fluidextract, senna fruit extract, senna leaf powder, senna pod concentrate, senna syrup, or sennosides A and B)

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(30) of this section.

* * * * *

(30) (Date 6 months after date of publication in the **Federal Register**), for products subject to paragraph (a)(12)(iv)(C) of this section.

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 334 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 334.18 [Amended]

4. Section 334.18 *Stimulant laxative active ingredients* is amended by removing paragraphs (a), (b), (c)(1) through (c)(5), and (f) and redesignating paragraphs (d) and (e) as paragraphs (a) and (b), respectively.

§ 334.30 [Amended]

5. Section 334.30 *Permitted combinations of active laxative ingredients* is amended by removing and reserving paragraphs (c), (e), (g), (h), and (i).

§ 334.32 [Amended]

6. Section 334.32 *Bowel cleansing systems* is amended by removing and reserving paragraph (a).

§ 334.60 [Amended]

7. Section 334.60 *Labeling of stimulant laxative drug products* is amended by removing paragraphs (b)(3), (d)(1) through (d)(7), (d)(10), and (d)(11), by removing and reserving paragraph (c), and by redesignating paragraphs (d)(8) and (d)(9) as paragraphs (d)(1) and (d)(2), respectively.

§ 334.66 [Amended]

8. Section 334.66 *Labeling of bowel cleansing systems identified in § 334.32* is amended in paragraph (a) by removing "§ 334.32(a)" and adding in its place "§ 334.32"and by removing and reserving paragraphs (c)(1) and (d)(3)(iii)(A).

§ 334.80 [Amended]

9. Section 334.80 *Professional labeling* is amended in paragraph (a)(2) by removing the words "or bisacodyl identified in § 334.18(b)", by removing paragraphs (a)(4) and (c)(5) through (c)(10), and by adding the word "or" after "§ 334.16(a)" in paragraph (a)(2), and by redesignating paragraphs (c)(11), (c)(12), and (c)(13) as paragraphs (c)(5), (c)(6), (c)(7), respectively.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16290 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209035–86]

RIN 1545–AI32

Foreign Liquidations and Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amendment to notice of proposed rulemaking.

SUMMARY: This document removes from an existing (1991) notice of proposed rulemaking the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied; thus, when final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date. This modification may affect domestic corporations in connection with an acquisition of a foreign corporation in a liquidation described in section 332 or in an asset acquisition described in section 368(a)(1)).

DATES: Written comments must be received by September 17, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209035–86), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209035–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 367(b) was enacted in its current form by the Tax Reform Act of 1976. On December 27, 1977, proposed and temporary regulations §§ 7.367(b)–1 through 7.367(b)–12 were adopted (TD 7530, 1978–1 C.B. 92). Prior to the issuance of a notice of proposed rulemaking in 1991 (the 1991 proposed regulations), discussed below, the regulations under section 367(b) were amended on several occasions. The 1991 proposed regulations, which were published in the **Federal Register** on August 26, 1991 (56 FR 41993), propose to completely revise the regulations under section 367(b), as well as the rules under section 367(a) with respect to certain transfers of stock or securities by U.S. persons to foreign corporations.

Section 1.367(b)–6(a) of the proposed regulations provides that the rules contained in the section 367(b) proposed regulations will be effective for exchanges that occur on or after the date that is 30 days after final regulations are published. However, an exception to the general effective date provides that § 1.367(b)–2(d) (relating to the definition and computation of the "all earnings and profits amount") is effective for exchanges that occur on or after August 26, 1991.

A package of final regulations, published elsewhere in this issue of the **Federal Register**, contains final rules with respect to the section 367(a) portion of the 1991 proposed regulations (to the extent that such rules were not previously finalized) and final

rules with respect to the section 367(b) portion of the 1991 proposed regulations, but generally only to the extent that a particular transaction is subject to both sections 367(a) and (b). The final regulations do not address the all earnings and profits amount.

The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied before final regulations are promulgated. Moreover, the IRS and the Treasury Department believe that the final regulations concerning the all earnings and profits amount should not be subject to a special effective date. Thus, this notice of proposed rulemaking removes from the 1991 proposed regulations the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. When final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that this regulation does not have a significant impact on small entities because this regulation, which only contains a limited effective date rule, impacts only U.S. corporations with investments in foreign corporations. Thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

Drafting Information

The principal author of these proposed regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 1.367(b)–6 [Amended]

Par. 2. Section 1.367(b)–6, as proposed to be added on Monday, August 26, 1991 (56 FR 42015), is amended by removing the last sentence of paragraph (a).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–15453 Filed 6–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–033]

RIN 2115–AE46

Special Local Regulations; St. Johns River, Jacksonville, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the permanent special local regulations for the Annual Greater Jacksonville Kingfish Tournament, by increasing the size of the No Wake Zone on the waters of the St. Johns River and establishing the annual date of the event during the second full week of July. The increased size of the zone is needed to safeguard the increasingly larger number of participants and other vessels transiting the St. Johns River and Sisters Creek during the Annual Greater Jacksonville Kingfish Tournament. Vessel operators should use minimum speed in this area to avoid creating wakes, unless otherwise authorized by the Captain of the Port.

DATES: Comments must be received on or before July 9, 1998.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Mayport, 4200 Ocean Street, Mayport, FL 32233, or may be delivered to the operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Ensign Gary Watson, Group Mayport, Tel: (904) 247–7318.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD07–98–033), and the specific section of this proposal to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES** and stating why a hearing would be beneficial. The comment period of twenty days is justified because the persons affected by this rulemaking are within the greater Jacksonville area and additional efforts are being made to notify that community of the rulemaking so they may be able to comment within the shortened period.

Background and Purpose

The event requiring this regulation is the Annual Greater Jacksonville Kingfish Tournament, which will be held annually during the second full week in July. It will begin in 1998 on July 14 in the Sisters Creek Marina, Sisters Creek, Jacksonville, Florida, at 6 a.m. and terminate at 4 p.m. each day until July 19. Due to the large number of participants and spectator craft, a larger No Wake Zone has been proposed on the waters of the St. Johns River lying between the eastern boundary formed by St. Johns River Lighted Buoy 7 position 30–23.56N, 081–23.04W, and Lighted Buoy 8 position 30–24.03N, 081–23.01W, and the western boundary formed by Lighted Buoy 25 position 30–23.40N, 081–28.26W, and Short Cut Light 26 position 30–23.46N, 081–28.16W with the northern and southern boundaries formed by the banks of the St. Johns River and extended north from the boundary formed by the St. Johns River and the Intracoastal Waterway, Sisters Creek, to Lighted Buoy 83 on the

Intracoastal Waterway. The zone is needed to safeguard vessels transiting in the St. Johns River and Sisters Creek during this event. This event will occur annually and the date and times will be published in the **Federal Register** and in a Local Notice to Mariners. During each of these events, local law enforcement agents will be on scene to assist in enforcing the No Wake Zone and to monitor vessel traffic. This regulation is issued pursuant to 33 U.S.C. 1233 through 1236 as set out in the authority citation for all of Part 100.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040: February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only a small amount of recreational and fishing vessel traffic is expected to be disrupted by the increased size of the No Wake Zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the No Wake Zone will only be in effect in a limited area for approximately 60 hours each year.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded under Figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis checklist will be completed during the comment period.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The Authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Revise § 100.710 to read as follows:

§ 100.710 Annual Greater Jacksonville Kingfish Tournament; Jacksonville, Florida.

(a) *Regulated area.* A regulated area is established for the waters of the St. Johns River lying between a eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR (7145) position 30–23.56N, 081–23.04W, and Lighted Buoy 8 (LLNR 7150) position 30–24.03N, 081–23.01W, and the western boundary formed by Lighted Buoy 25 (LLNR 7305) position 30–23.40N, 081–28.26W, and Short Cut Light 26 (LLNR 7310) position 30–23.46N, 081–28.16W with the northern and southern boundaries formed by the banks of the St. Johns River and extended north from the boundary formed by the St. Johns River and the Intracoastal Waterway, Sisters Creek, to Lighted Buoy 83 (LLNR 38330) on the Intracoastal Waterway.

(b) *Regulations.* Vessels operating in the regulated area must operate at No Wake Speed.

(c) *Dates.* This section is effective annually during the second full week of July. Coast Guard Group Mayport will issue a Local Notice to Mariners each year announcing future specific times and dates of the event. In 1998, the event will occur from July 14 to July 19 from 6 a.m. to 4 p.m. each day.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–16241 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID 21–7001; FRL–6113–4]

Designation of Areas for Air Quality Planning Purposes: State of Idaho and the Fort Hall Indian Reservation

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to revise the designation for particulate matter with an aerodynamic diameter of less than a nominal 10 microns (PM–10) for the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas that together cover the identical geographic area as the original nonattainment area. The revised areas would be divided at the boundary between State lands and the Fort Hall Indian Reservation, with one revised area comprised of State lands and the other revised area comprised of lands within the exterior boundary of the Fort Hall Indian Reservation. The redesignation is based upon a request from the State of Idaho, which is supported by monitoring and modeling information. Both areas would retain PM–10 nonattainment designations and classification as moderate PM–10 nonattainment areas as a result of this proposed action.

In a concurrent notice of proposed rulemaking published today, EPA is proposing to make a finding that the proposed PM–10 nonattainment area within the exterior boundary of the Fort Hall Indian Reservation failed to attain the National Ambient Air Quality Standards (NAAQS) for PM–10 by the applicable attainment date. Such a finding would, by operation of law, result in the reclassification of the proposed PM–10 nonattainment area within the Fort Hall Indian Reservation to a serious PM–10 nonattainment area.

EPA recently established a new standard for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal,

however, does not address these new and revised standards.

DATES: All written comments should be submitted to Steven K. Body, EPA Region 10, [Docket #ID 21–7001], at the address indicated below by July 20, 1998.

ADDRESSES: Information supporting this action can be found in Public Docket No. [#ID 21–7001]. The docket is located at EPA, Region 10, 1200 Sixth Avenue, Seattle WA 98101. The docket may be inspected from 9:00 am to 4:30 pm on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–0782.

I. Background

A portion of Power and Bannock Counties in Idaho is designated nonattainment for PM–10 [1] and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991).[2] For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29676 (June 12, 1996).

The Power-Bannock Counties PM–10 nonattainment area covers approximately 266 square miles in south central Idaho and comprises both trust and fee lands within the exterior boundary of the Fort Hall Indian Reservation and State lands in portions of Power and Bannock Counties. Approximately 75,000 people live in the nonattainment area, most of whom live in the cities of Pocatello and Chubbuck, which are located near the center of the nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," which includes the two major stationary sources of PM–10 in the nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex. One of the major stationary sources of PM–10, FMC Corporation (FMC), is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation.[3] The other major stationary source of PM–10 in the nonattainment area, J.R. Simplot Corporation (Simplot), is located on State lands immediately adjacent to the Reservation.

The State of Idaho has established and operates four PM–10 State and Local Air Monitoring Stations (SLAMS) in the current Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands (the State monitors). All of the State monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. No levels above the 24-hour standard have been recorded at any of the State monitors since January of 1993.

The Shoshone-Bannock Tribes began operating a PM–10 monitor on the portion of the nonattainment area within the exterior boundary of the Reservation in February 1995. Prior to this time, the Tribes relied on data from the State operated samplers for area designations and classifications. This reliance was due to a lack of resources to establish and operate their own Tribal monitoring stations. In 1994 the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own monitoring stations to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning efforts. This monitor, called the "Sho-Ban site," is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data were not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" is located approximately 100 feet north of the FMC facility across the frontage road, 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. The "Tribal background site" is approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex. All three monitoring sites are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Both the Sho-Ban and Primary sites on the Reservation portion of the nonattainment area have recorded numerous PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since October 1996.[4]

II. This Action

A. Idaho's Request

Pursuant to section 107(d)(3)(D) of the Act, the Governor of any State, on the Governor's own motion, is authorized to submit to the Administrator a revised designation of any area or portions thereof within the State. On April 16, 1998, the State of Idaho submitted to EPA a request to revise the designation of the Power-Bannock Counties PM–10 nonattainment area to split the nonattainment area into two separate nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands. Together, the two nonattainment areas would cover the same geographic area as the

[1] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. See 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arthimetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

[2] The 1990 Amendments to the CAA made significant changes to the Act. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended. The CAA is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] EPA has learned that a portion of the FMC facility is located on State lands. This issue is discussed in more detail below.

[4] Private industry operated a seven station air monitoring network, funded by FMC and Simplot, on and near the industrial complex from October 1, 1993, through September 30, 1994 (EMF monitors). There were no measured PM–10 concentrations above the level of the 24-hour PM–10 NAAQS (150 ug/m3) at any of the EMF stations. EMF Site #2, however, which was on the Fort Hall Indian Reservation less than 300 yards east of where the primary site is now located, reported several 24-hour concentrations of PM–10 at or near the level of the NAAQS. EMF Site #2 also reported an annual concentration of 55.1 ug/m3 for the one year period the network was in operation. This is 10% greater than the 50 ug/m3 level of the annual PM–10 NAAQS. Because the EMF network did not collect a calendar year's worth of data, EPA concluded that data from EMF Site #2 did not document a violation of the annual NAAQS. See 61 FR 66602, 66604 (December 18, 1996). EPA also stated, however, that the number of the recorded 24-hour concentrations at or near the level of the standard and the high annual concentration for the one-year period EMF Site #2 was in operation indicated that a serious air quality problem continued in the Power-Bannock Counties PM–10 nonattainment area. *Id.* This is confirmed by the more recent data from the Tribal monitors.

existing Power-Bannock Counties PM–10 nonattainment area.

In support of its request, the State of Idaho noted that the State has the primary PM–10 planning responsibility under the Clean Air Act for State lands within the nonattainment area, whereas EPA and the Tribes have the primary PM–10 planning responsibility for the Tribal lands within the nonattainment area. The State also noted that it has largely completed the PM–10 planning and implementation of control measures for the PM–10 sources located on State lands within the nonattainment area whereas no controls have been proposed or imposed on sources in the Tribal portion of the nonattainment area.

The State also supported its request with monitoring data which shows that State monitors have not recorded any PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since January 1993 and that the State lands within the nonattainment area have attained the PM–10 NAAQS. In addition, the State provided an analysis of pollution concentrations recorded at the Tribal primary site and the Sho-Ban site as a function of wind direction which shows that violations of the PM–10 NAAQS at the Tribal sites are not the result of emissions from sources located on State lands. The State also provided modeling information to support its assertion that sources on State lands are not contributing to the violations of the PM–10 NAAQS that have been recorded at the Tribal monitors.

On May 21, 1998, the Shoshone-Bannocks Tribes and FMC submitted to the State of Idaho documents opposing Idaho's request to EPA to split the nonattainment area into two nonattainment areas. The Tribes and FMC contend that the State failed to follow Idaho law in submitting the request to EPA without first providing public notice and opportunity for comment. The Tribes also expressed concern that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. In addition to its contention that the State failed to comply with State requirements for public notice and opportunity for public comment, FMC further contends that the State failed to comply with the Clean Air Act in making its request and noted that part of the FMC facility is located on State lands.

On May 29, 1998, Idaho provided EPA with a letter from the Idaho Attorney General's Office stating that public notice and opportunity to comment were not required under State law. The letter also responded to the other issues raised by FMC and asked EPA to move forward on the State's request to split the nonattainment area. The State also provided EPA with a copy of the State's letter responding to the issues raised by the Tribes. Copies of the letters from FMC and the Tribes to the State and from the State to EPA and the Tribes are in the Docket for this proposal.

B. EPA's Proposed Action on Idaho's Request

In determining whether to approve or deny a State's request for a revision to the designation of an area under section 107(d)(3)(D), EPA believes it is appropriate to consider the same factors Congress directed EPA to consider when EPA initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." Based on the information submitted by Idaho and other information available to EPA, EPA believes that the air quality data, planning and control considerations, and other air quality-related considerations support the State's request to revise the Power-Bannock Counties PM–10 nonattainment area into two PM–10 nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands. EPA therefore proposes to create two separate nonattainment areas in place of the existing Power-Bannock Counties PM–10 nonattainment area. One area, to be called the "Portneuf Valley PM–10 Nonattainment Area", would consist of the existing portion of the Power-Bannock Counties PM–10 nonattainment area outside of the exterior boundary of the Fort Hall Indian Reservation and under the regulatory jurisdiction of the State of Idaho. The other area, to be called the "Fort Hall PM–10 nonattainment area," would consist of the existing portion of the nonattainment area within the exterior boundary of the Fort Hall Reservation. Both areas would continue to be designated nonattainment for PM–10 and classified as moderate should this proposal be finalized by EPA.

Although the comments from the Tribes and FMC were directed to the State in the context of the State proceeding, and not to EPA, EPA has considered those issues in making this proposal, as is discussed in more detail below. The Tribes and FMC will also have an opportunity to raise those and other issues in the public comment period on this proposal.

1. Air Quality Data and Other Air Quality-Related Considerations

As stated above, there have been no violations of the annual PM–10 standard at any of the four State monitoring sites since 1990 and no levels above the 24-hour standard have been recorded at any of the State sites since January of 1993. The data recorded at the State monitors also show a decline in the yearly annual average at each State monitoring station since 1993 and, with the exception of the Sewage Treatment Plant (STP) monitoring station, a decline in the highest and second highest 24-hour PM–10 readings for each year at each of the State monitoring stations. The STP monitoring site did record a 24-hour PM–10 concentration of 149 ug/m3, just below the level of the 24-hour standard of 150 ug/m3. Even if that monitoring site had recorded one PM–10 concentration above the standard, however, the 24-hour PM–10 standard would not have been violated because the site operates on an everyday sampling schedule and the expected exceedence rate, averaged over a three year period, would have been less than 1.1. Moreover, the second highest 24-hour PM–10 readings for each year at the STP site have remained fairly constant since 1993, and there has been a decline in the yearly PM–10 annual average at the STP site since 1992. In summary, the State monitors show attainment of the PM–10 standard in the State portion of the nonattainment area, as well as a general decline in the PM–10 values recorded on the State monitors.

In contrast, the monitors located within the Tribal portion of the nonattainment area continue to show numerous levels above the standard. Although the monitors did not begin recording valid data until October 1996, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October and December 1996 resulted in a violation of the 24-hour PM–10 NAAQS as of December 31, 1996, the attainment date for the area.[5] Appendix K of 40 CFR part 50, contains "gapfilling" techniques for situations where less than three complete years of data are available. Using the gapfilling techniques of appendix K, the number

[5] The Power-Bannock Counties PM–10 nonattainment area originally had an attainment date of December 31, 1994, see section 188(a) and (c)(1), but the area could not demonstrate attainment by that date. At the request of the State of Idaho, EPA granted the area two one-year extensions of the attainment date, in accordance with section 188(d) of the CAA. See 60 FR 44452 (August 28, 1995) (proposed action on first extension); 61 FR 20730 (May 8, 1996) (final action on first extension); 61 FR 66602 (December 18, 1996)(direct final action on second extension).

of exceedences reported from the Sho-Ban and primary sites during the last three months of 1996 represent a violation of the 24-hour PM–10 NAAQS. The expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, from these two monitors is greater than 1:1, even if the days during which the monitors did not operate or collect valid data had reported zero PM–10 levels. Numerous levels above the standard have been recorded since December 31, 1996, as well.

In addition to the monitoring data which document that the monitors on State lands show attainment of the PM–10 standard, the State of Idaho also provided monitoring and modeling information to support its request to divide the current nonattainment area at the State-Reservation boundary. The State first presented information to demonstrate that there are two separate areas of air quality impacts and sources within the current nonattainment area. One area, which the State refers to as the "urban complex," encompasses the City of Pocatello and is solely on State lands. The other area is the industrial complex, which includes FMC within the Fort Hall Indian Reservation and J.R. Simplot on State lands. Based on chemical analysis of the particulate collected on the filters from both State and Tribal monitors and comparing these results to the chemical composition of emissions from various sources, the State determined that the urban area is impacted by PM–10 emissions from residential wood burning, traffic, and commercial establishments. In contrast, the industrial complex is impacted by industrial emissions.

Analysis of the 1993 dispersion modeling used by the State in developing its SIP shows that the urban complex and the industrial complex have different sources contributing to the high PM–10 levels that have been recorded in each area. The modeling also shows that there is no evidence of significant mixing of emissions between the industrial complex and the urban complex. Appendix A to the State's request contains a detailed discussion of these modeling results, including an analysis of four specific days with worst case meteorology. In general, this analysis consists of PM–10 concentration isopleth graphs that demonstrate two separate areas of maximum concentrations of PM–10, one located over the urban complex and the second located over the FMC and J.R. Simplot industrial facilities.

The State also showed that, within the industrial complex, it is possible to separate the impacts of sources on Tribal lands from sources on State lands at the State-Reservation boundary. In the process of developing the PM–10 plan for the Tribal portion of the nonattainment area, EPA constructed "pollution wind roses" from the ambient PM–10 monitoring data from two of the Tribal monitors (the Sho-Ban site and the primary site) and the meteorological station at the primary site. "Pollution wind roses" relate pollutant concentration measurements (in this case PM–10 levels) and the wind direction that occurred during that measurement. The State reviewed pollution wind roses for the period from October 1996 and May 1997. The data show that, on days when the primary site recorded values greater than the 24-hour standard (150 ug/m3), the wind was blowing from the FMC facility toward the monitor, i.e., from the southwest. Similarly, on days when the Sho-Ban site recorded values greater than the standard, the wind was blowing from FMC facility toward the Sho-Ban monitor, i.e., from the south. In contrast, on days when the wind was blowing from State lands, particularly Simplot, toward the primary and Sho-Ban monitors, high PM–10 values were not recorded on the monitors. The State concludes from this information that sources on State lands, particularly Simplot, are effectively controlled and do not contribute to violations of the PM–10 NAAQS on State or Tribal lands.

EPA evaluated the information submitted by the State along with the more recent information provided by FMC to the State that a portion of the FMC facility is located on State lands. FMC property extends approximately 7000 feet east-west along a frontage road of which 1100 feet appears to extend east onto State lands. The only PM–10 sources of potential significance on this portion of FMC property (i.e., on State lands) are a portion (approximately 1100 feet) of the north and south main ore shale storage piles and a small number of unpaved access roads. The piles are approximately 1500 feet long and 300 feet wide of which two-thirds extend onto State lands. EPA estimates that PM–10 emissions from that portion of the FMC facility located on State lands account for only 89 pounds of the 12,021 pounds per day of total PM–10 emissions from the facility, or less than 1% of total FMC emissions of PM–10. When the "pollution rose" graphs relied on by the State are laid over a map of the area, it is apparent that violations at the primary site occur when winds are blowing from the south to west-southwest, which is down wind of the FMC calcining operations, furnace building, and slag pit operations. Violations occur at the Sho-Ban site when the winds are blowing from the west-southeast to east-southwest, which is again downwind from the FMC calcining operations, furnace building, and slag pit operations. Violations have not occurred with a wind direction blowing from the eastern portion of the FMC property, which is the portion of the FMC facility located on State lands, or from the Simplot facility, which is also located on State lands. Based on the small percentage of emissions from the FMC PM–10 sources located on State lands to total FMC PM–10 emissions and EPA's review of the pollution and wind roses for the area, EPA does not believe that the new information provided by FMC—that part of the FMC facility is located on State lands—alters the analysis provided by the State to support its request to split the existing nonattainment area into two nonattainment areas at the State-Reservation boundary. In summary, EPA agrees with the State's analysis and with the State's conclusion that emissions from sources on State lands do not appear to be contributing to the exceedences that have been recorded on the Tribal monitors. In light of the recent information provided by FMC to the State, however, EPA specifically requests comment on this issue.

2. Planning and Control Considerations

The current Power-Bannock Counties PM–10 nonattainment area encompasses two different regulatory jurisdictions: the State of Idaho for the State portion of the nonattainment area and the Shoshone-Bannock Tribes and EPA for the Reservation portion of the nonattainment area. Under the Clean Air Act, the State has the primary PM–10 planning responsibilities for the State portion of the nonattainment area. See CAA sections 110 and 189. In furtherance of those planning obligations, the State of Idaho, along with several local agencies, developed and implemented control measures on PM–10 sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures in 1993 for the Power-Bannock Counties PM–10 nonattainment area as part of its moderate PM–10 nonattainment State Implementation Plan (SIP) under section 189(a) of the Act. These control measures include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited

unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of PM–10 on the portion of the nonattainment area on State lands. Although EPA has not yet taken final action to approve the State's moderate PM–10 SIP for the area, EPA has previously stated (based on EPA's preliminary review in the context of approving the State's requests for extensions of the attainment date) that these control measures substantially meet EPA's guidance for reasonably available control measures (RACM), including RACT, for sources of primary particulate on the State portion of the nonattainment area. See 61 FR 66602, 66604–66605 (December 18, 1996).

The effect of these control measures on air quality can be seen in the reported ambient PM–10 measurements at the State monitoring sites. As discussed above, there have been no violations of the annual PM–10 standard since 1990 at any of the State monitoring sites, no violations or exceedences of the 24-hour PM–10 standard at any of the State sites since January 1993, and a general decline in the reported ambient PM–10 concentrations at the State sites since 1993. The beginning of the decline in the ambient concentrations roughly coincides with the period when the State began to impose the PM–10 control measures discussed above. These facts support the State's assertion that the State's PM–10 planning efforts have been effective.

In its request to split the nonattainment area, the State also discusses how it is addressing the deficiencies that EPA had previously identified in the State's SIP submission. The State has advised EPA that it will submit a SIP revision in the near future that addresses these deficiencies. The deficiencies previously identified by EPA include the State's failure to address PM–10 precursors in the State's emissions inventory and control strategy and the fact that the 1993 SIP did not demonstrate attainment in the downtown Pocatello area due to road dust emissions. The State also plans to address PM–10 emissions from Bannock-Paving Company, Incorporated. A summary of the State's plans with respect to addressing these deficiencies is presented below.

Section 189(e) of the Act states that the control requirements applicable to major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where EPA determines that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the PM–10 standard in the area. At the time the State developed and submitted its SIP, PM–10 precursors were not thought to contribute to PM–10 levels which exceeded the PM–10 standard in the Power-Bannock Counties PM–10 nonattainment area. However, subsequent monitoring data and analysis of the particulates collected on the filters by the State in January 1993 showed significant levels of secondary aerosol and necessitated a reevaluation of the contribution of PM–10 precursors to the nonattainment problem in the Power-Bannock Counties PM–10 nonattainment area.[6] Accordingly, in conjunction with EPA and the Tribes, the State developed a work plan for analyzing and addressing the contribution of PM–10 precursors to the nonattainment problem in the Power-Bannock Counties PM–10 nonattainment area.

Since PM–10 precursors were first identified in particulate samples collected in January 1993 as a potential contributor to the nonattainment problem in the nonattainment area, however, no levels above the standard have been recorded at any of the State monitors. Instead, it appears that PM–10 precursors represent a significant fraction of the total PM–10 mass loading only during very specific meteorological conditions—cold stagnant winter days with relative high humidity. There have been only two days between 1986 and 1997 in which violations of the PM–10 NAAQS in the Power-Bannock Counties PM–10 nonattainment area have been attributed to secondary aerosols. Based on the fact that the State monitors have not recorded an exceedence since January 1993, it does not appear that major stationary sources of PM–10 precursors contribute significantly to PM–10 levels which exceed the standard within the portion of the Power-Bannock Counties PM–10 nonattainment area located on State lands. Although EPA reserves final determination on this issue until the State submits its SIP revision and EPA takes final action on that revision, EPA's preliminary determination is that stationary sources of PM–10 precursors do not appear to contribute significantly to PM–10 levels which exceed the standard on the portion of the nonattainment area on State lands. Final action on such a finding would mean that the State will not be required to further address PM–10 precursors in completing its SIP planning obligations for the State portion of the Power-Bannock Counties PM–10 nonattainment area.

EPA is aware that the Shoshone-Bannock Tribes and citizens in the Power-Bannock counties PM–10 nonattainment area believe that particulate precursors contribute to air quality problems in the area and should be addressed. EPA shares this concern. On July 18, 1997, EPA promulgated new, more stringent, air quality standards for particulate matter with an aerodynamic diameter equal to or less than 2.5 microns (PM–2.5). These standards were promulgated to address the serious health effects associated with these very small particles, of which secondary aerosol makes up a significant fraction. EPA, the State, and the Tribes are just now in the process of establishing PM–2.5 air monitoring stations to better define and characterize the nature and extent of the fine particulate air quality problem in the Portneuf Valley and Fort Hall area. EPA's preliminary determination that PM–10 precursors do not need to be addressed by the State in its current PM–10 planning process for the Portneuf Valley area should not be interpreted to imply that particulate precursors will not need to be addressed under the new PM–2.5 standard. To the contrary, EPA believes it is likely that particulate precursors will need to be addressed in the Portneuf Valley and Fort Hall area under the new PM–2.5 standard.

Another deficiency previously identified by EPA in the State's PM–10 planning process was the State's inability to model attainment of the PM–10 standard in the Pocatello urban area due to projected fugitive road dust emissions. The State has long suspected that the emission factors it used to estimate road dust emissions in the emissions inventory and attainment demonstration (AP–42 emission factors) were far too high. Idaho therefore commissioned a study to measure road dust emissions in the Pocatello area and to develop new emission factors if appropriate. Preliminary results from the study, which are included in the Docket for this rulemaking, indicate that the emission factors derived from the study are, on average, 68% less than the AP–42 emission factors used to develop the original emissions inventory. The State therefore asserts that the modeled exceedences of the PM–10 standard in the downtown Pocatello area appear to be due to the erroneously high road dust emission factors and are not representative of actual ambient conditions. Although EPA defers a final

[6] Secondary aerosol particulates are small particles formed in the atmosphere through chemical reactions from emissions of precursor gases.

determination on this issue until it receives and reviews the State's SIP revision, EPA tentatively agrees with the State that additional controls on road dust emissions do not appear to be necessary to demonstrate attainment in the State portion of the nonattainment area.

As discussed above, the State also intends to address emissions from Bannock Paving Company, Incorporated (Bannock Paving), in its SIP revision. Bannock Paving operates five portable facilities that operate in attainment and nonattainment areas in the State of Idaho, each of which is a minor source of PM–10.[7] The State has submitted the existing construction permits for the Bannock Paving facilities, which were issued under a federally enforceable permit program. The existing permits contain several emission limitations that control PM–10, such as opacity limits, grain loading standards, and requirements for controlling fugitive emissions, and the State asserts that the level of controls currently imposed on Bannock Paving in these construction permits represents RACT. The State has also advised EPA that it intends to consolidate all of the existing construction permits the State has issued for Bannock Paving into a new operating permit for Bannock Paving and submit the revised permit and a demonstration that the permit constitutes RACT in its SIP revision. EPA defers a final determination on this issue until EPA has received the State's SIP revision, but notes that Bannock Paving is currently subject to controls on PM–10 emissions.

Based on the controls that have been previously imposed by the State on the sources of PM–10 on State lands within the nonattainment area and the discussion by the State of its soon-to-be submitted SIP revision in support of its request to split the nonattainment area, EPA believes that the State has largely completed its PM–10 planning obligations under the Clean Air Act. Indeed, on its portion of the nonattainment area, the State is demonstrating and, in all likelihood will continue to demonstrate, attainment of the PM–10 NAAQS. In light of the information that some sources of PM–10 emissions at the FMC facility are located on State lands, however, the State's SIP revision will also need to address the PM–10 emissions from that portion of the FMC facility located on State lands.

In contrast, the PM–10 requirements for the Tribal portion of the nonattainment area are still under development.[8] Because of long-standing concerns about the air quality in the Power-Bannock County PM–10 nonattainment area, EPA has been developing a Federal Implementation Plan (FIP) for the portion of the nonattainment area within the exterior boundary of the Fort Hall Indian Reservation. The plan is being developed in close consultation with the Tribes and with extensive public participation. EPA intends to propose the FIP by the end of January 1999, and to finalize the FIP in the year 2000.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as States. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR". The TAR implements the provisions of section 301(d) of the Act to authorize eligible Tribes to implement their own Tribal air programs. This includes a delegation of authority, to Tribes which meet certain requirements and request delegation, to develop, adopt and submit PM–10 nonattainment area Tribal Implementation Plans for lands within the exterior boundary of Indian Reservations, including fee lands. Until promulgation of the TAR in February 1998, however, the Shoshone-Bannock Tribes did not have authority under the Clean Air Act to carry out the PM–10 planning responsibilities for the Tribal portion of the nonattainment area.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution on Tribal land under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, even should they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. EPA's understanding is that the Tribes continue to support EPA's efforts to promulgate a PM–10 nonattainment FIP for the Tribal portion of the nonattainment area notwithstanding the recent promulgation of the TAR.

In summary, although the State has largely completed its PM–10 planning responsibilities for the portion of the Power-Bannock Counties PM–10 nonattainment area on State lands, the planning responsibilities for the Tribal portion of the nonattainment area, including the FMC facility, are still under development.

3. Issues Raised by the Tribes and FMC to the State

As discussed above, on May 21, 1998, the Shoshone-Bannock Tribes and FMC submitted to the State of Idaho documents opposing Idaho's request to EPA to split the nonattainment area into two nonattainment areas. Although the Tribes and FMC raised these issues in the State proceeding and will have an opportunity to raise the issues in the public comment period on this proposal, EPA has considered the issues raised by the Tribes and FMC prior to this proposal.

The Tribes and FMC assert that the State failed to follow Idaho law (Idaho Administrative Procedures Act (IDAPA) 16.01.01.578.04) by submitting its request to EPA without first providing public notice and opportunity for comment. FMC further asserts that the State's request failed to comply with other provisions of IDAPA 16.01.01.578, as well, such as the requirement to consider certain factors enumerated in IDAPA 16.01.01.578.02 for designating boundaries, and that public notice and comment was also required by Idaho Code sections 67–5221 and 5222, which govern rulemaking proceedings. The Idaho Attorney General's Office has advised EPA that the State's request to EPA to split the nonattainment area into two nonattainment areas is not subject to IDAPA 16.01.01.578, which is entitled "Designation of Attainment, Unclassifiable and Nonattainment Areas." The Attorney General's office has also advised EPA that the State's request to EPA is not a rulemaking under State law and is thus not subject to Idaho Code sections 67–5221 and 67–5222. EPA defers to the Idaho Attorney General's Office on these interpretations of Idaho law.

[7] The State's request to split the nonattainment area states that Bannock Paving is a major stationary source of PM–10. Based on EPA's review of the five State permits for Bannock Paving and conversations with the State, EPA understands that the statement in the State's request was in error and that each of the Bannock Paving facilities is a minor source of PM–10, even when the portable facilities co-locate.

[8] In developing its PM–10 control strategy and SIP, the State did not seek to impose controls on any sources located on Reservation lands, including fee lands within the exterior boundary of the Reservation, or attempt to demonstrate to EPA that it had authority to promulgate and enforce air controls on Reservation lands.

The Tribes and FMC also expressed concern that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. EPA was previously aware of the Tribes concern on this issue based on several meetings between the EPA and the Tribes regarding the State's request. EPA has carefully considered this concern, especially the interests of the Shoshone-Bannock Tribes, but continues to believe that the proposed split is in the overall best interest of the area as a whole. The State has largely completed its PM–10 planning requirements for the area. Therefore, EPA does not believe that splitting the nonattainment area will result in a less comprehensive approach to PM–10 planning for the existing Power-Bannock Counties PM–10 nonattainment area as a whole. If some area in or near the City of Pocatello or the Fort Hall Indian Reservation is later identified as a nonattainment area for PM–2.5, EPA will consider at the time of such identification whether, based on air quality data, planning and control considerations, or other air quality-related considerations, the planning requirements for PM–2.5 are best carried out by having a single nonattainment area or having two nonattainment areas divided at the State-Reservation boundary or in some other way.

In addition to its contention that the State failed to comply with State requirements for public notice and opportunity for public comment, FMC further contends that the State failed to comply with the Clean Air Act in making its request to EPA. FMC argues that sections 110(a)(2) and 110(l) of the CAA also require that the State's request to EPA be subject to public notice and comment before submission to EPA. EPA disagrees. Sections 110(a)(2) and 110(l) of the CAA require a State to provide public notice and comment at the State level for State Implementation Plans (SIPs) and SIP revisions. The State's request to EPA to split the Power-Bannock Counties PM–10 nonattainment area is not a SIP or SIP revision, and is therefore not subject to the requirements of section 110 of the CAA. FMC further argues that the State's request is incomplete as a matter of federal law because it does not address the factors enumerated in section 107(d)(3)(E) of the CAA. That section, however, by its terms applies only to requests to redesignation of an area from nonattainment to attainment. The State has not requested that the portion of the Power-Bannock Counties PM–10 nonattainment area located on State lands be redesignated from nonattainment to attainment. As stated above, the proposed Portneuf Valley PM–10 nonattainment area will retain its classification as a moderate PM–10 nonattainment area as a result of this proposed action. Therefore, section 107(d)(3)(E) is inapplicable to the State's request and EPA's proposed action. Finally, FMC asserts that splitting the nonattainment area into two nonattainment areas is inconsistent with section 107(d)(1) of the CAA absent a showing that "other sources in the area are not collectively causing or contributing to a violation of the NAAQS." As stated above, based on information currently available to EPA, EPA believes the State has shown that sources located on State lands are not causing or contributing to the violations of the PM–10 NAAQS that have been recorded on the Tribal monitors. Therefore, EPA believes that splitting the Power-Bannock Counties PM–10 nonattainment areas into two nonattainment areas at the State-Reservation boundary is consistent with section 107(d)(1) of the CAA.

FMC also asserts that a portion of the FMC facility is located on State lands. As discussed above, EPA has considered the impact of this fact on the State's request, and continues to believe it is appropriate to split the nonattainment area at the State-Reservation boundary. Based on the fact that more of the FMC facility is located on State lands than was previously understood by EPA, however, EPA specifically invites comment on whether, as an alternative proposal, it would be appropriate to split the current Power-Bannock Counties PM–10 nonattainment area at the State-Reservation boundary, except to include in the proposed Fort Hall PM–10 nonattainment area that portion of the FMC facility located within State lands.

4. Summary

Based on the information provided by the State in its request and other information available to EPA, EPA proposes to grant the State's request to split the Power-Bannock Counties PM–10 nonattainment area into two nonattainment areas along the State-Reservation boundary. The monitors located on State lands have not registered a violation or even an exceedence of the PM–10 NAAQS for more than five years. In addition, modeling and monitoring information shows that sources on State lands within the nonattainment area are not contributing to the exceedences of the PM–10 NAAQS that have been recorded on the Tribal monitors. Finally, the State has imposed controls on major sources of PM–10 within the State portion of the nonattainment area and the monitors sited on State lands have shown a general decline in the ambient PM–10 values recorded since the State first imposed these controls. In contrast, the monitors situated on Tribal lands have recorded numerous exceedences of the PM–10 NAAQS since they began operation in 1996, and EPA has not yet completed rulemaking action that would impose controls on the major sources of PM–10 in the Tribal portion of the nonattainment area. EPA therefore believes that air quality data, planning and control considerations, and other air quality-related information support dividing the current Power-Bannock Counties PM–10 nonattainment area into two separate PM–10 nonattainment areas at the State-Reservation boundary, as requested by the State.

III. Implications of this Proposed Action

A. Area Classifications and Designations

If EPA takes final action on this proposal, the current Power-Bannock Counties PM–10 nonattainment area would be split into two nonattainment areas that together cover the identical geographic area of the current nonattainment area. The revised areas would be divided at the boundary between State lands and the Fort Hall Indian Reservation, with one revised area, to be referred to as the "Portneuf Valley PM–10 nonattainment area," comprised of State lands and the other revised area, referred to as the "Fort Hall PM–10 nonattainment area," comprised of lands within the exterior boundary of the Fort Hall Indian Reservation.

The table below indicates how EPA is proposing to revise the PM–10 designation for the current Power-Bannock Counties PM–10 nonattainment area, for both Idaho and the Fort Hall Indian Reservation in 40 CFR section 81.313.

PART 81.313—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	ype
Idaho		Nonattainment		Moderate.
Portneuf Valley Area:				
T.5S, R.34E Sections 25–36.				
T.5S, R.35E Section 31.				
T.6S, R.34E Sections 1–36.				
T.6S, R.35E Sections 5–9, 16–21, 28–33.				
Plus the West ½ of Sections 10,15,22,27,34.				
T.7S, R.34E Sections 1–4, 10–14, and 24.				
T.7S, R.35E Sections 4–9, 16–21, 28–33.				
Plus the West ½ of Sections 3,10,15,22,27,34.				
T.8S, R.35E Section 4.				
Plus the West ½ of Section 3.				
Fort Hall Indian Reservation		Nonattainment		Moderate.
T.5S, R.34E Sections 15–23.				
T.5S, R.33E Sections 13–36.				
T.6S, R.33E Sections 1–36.				
T.7S, R.33E Sections 4,5,6.				
T.7S, R.34E Section 8.				

Both the Portneuf Valley PM–10 nonattainment area and the Fort Hall PM–10 nonattainment area would retain nonattainment designations as PM–10 nonattainment areas as a result of this proposed action. In a concurrent notice of proposed rulemaking published today, however, EPA is proposing to make a finding that the proposed "Fort Hall PM–10 nonattainment area" has failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. If EPA makes a final determination that the proposed "Fort Hall PM–10 nonattainment area" has failed to attain the standard, that area would be reclassified as a serious PM–10 nonattainment area by operation of law under section 188(b) of the Act, whereas the Portneuf PM–10 nonattainment area would remain classified as a moderate area.

B. New and Revised NAAQS for Particulate Matter

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour PM–10 standard, by itself, reflects a relaxation of that standard. In the preamble to the final rule setting the new and revised particulate matter standards, EPA stated that the pre-existing PM–10 standards would remain in effect for a period of time after the effective date of the new standard to ensure a smooth transition to the new standards. 62 FR 38701.

Based on the transition policy announced by EPA in the preamble to the final rule setting the new and revised particulate standards, if EPA takes final action on its proposal to split the Power-Bannock Counties PM–10 nonattainment area, the existing PM–10 standards will ultimately be revoked in the two resulting nonattainment areas at different times. Because the monitors located on State lands showed attainment of the pre-existing PM–10 standard at the time promulgation of the revised PM–10 standards became effective, the pre-existing PM–10 standard would continue to apply in the proposed Portneuf Valley PM–10 nonattainment area until such time as EPA approves the control measures that have been adopted and implemented at the State level to bring the area into attainment with the pre-existing PM–10 NAAQS, and the State of Idaho has an approved SIP under section 110 of the Act for purposes of implementing the revised particulate matter standards. See 62 FR 38701. The monitors in the Tribal portion of the nonattainment area, however, did not show attainment of the pre-existing PM–10 standard at the time promulgation of the revised PM–10 NAAQS became effective. Therefore, the pre-existing PM–10 NAAQS would continue to apply in the proposed Fort Hall PM–10 nonattainment area until EPA has completed its rulemaking under section 172(e) of the Act to prevent backsliding in those areas that had not attained the pre-existing PM–10 standard as of the date the relaxed PM–10 standard became effective. See 62 FR 39701. The rule promulgated under section 172(e) must require controls in the Fort Hall PM–10 nonattainment area, that are "not less stringent than the controls applicable to areas designated nonattainment before the relaxation of the 24-hour PM–10 standard." EPA is also in the process of drafting a Federal Implementation Plan for the proposed Fort Hall PM–10 nonattainment area and expects that such FIP will meet the requirements promulgated by EPA under section 172(e).

C. Consultation With the Shoshone-Bannock Tribes

As discussed above, EPA consulted with the Shoshone-Bannock Tribes prior to making this proposal. In particular, as discussed above, EPA is aware that the Tribes are concerned that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. As also discussed above, EPA has carefully considered the Tribes concerns but believes that the proposed split is in the overall best interest of the area as a whole because the State has largely completed its PM–10 planning requirements for the area. Therefore, EPA does not believe that splitting the nonattainment area will result in a less comprehensive approach to PM–10 planning for the existing Power-Bannock Counties PM–10 nonattainment area as a whole. In this regard, EPA would like to emphasize that until EPA promulgated the TAR in February of 1998, the Tribes did not have authority under the Clean Air Act

to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period on this action, including the Tribes preference for the name of the nonattainment area located within the Fort Hall Indian Reservation.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities."

The OMB has exempted this action from review under E.O. 12866. In addition, the Agency has determined that EPA's proposal to split the nonattainment area into two nonattainment areas would result in none of the effects identified in section 3(f).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A regulatory flexibility screening analysis of this proposed action revealed that it would not have a significant adverse economic impact on a substantial number of small entities. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). To the extent that a State, Tribe or EPA must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time EPA takes action on those regulations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that the approval of the revised designation action proposed today does not have a significant economic impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA has determined that this proposed action, if promulgated, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on the State, Tribes or the private sector. Redesignation is an action that affects the air quality status of a geographic area or the boundary of the geographic area and does not impose any regulatory requirements on the State, Tribes or private sector. Accordingly, EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

V. Request for Public Comments

EPA is, by this document, proposing that the PM–10 designation for the Power-Bannock Counties PM–10 nonattainment area be revised. The EPA is requesting public comments on all aspects of this proposal, including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–16403 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID 22–7002; FRL–6113–3]

Clean Air Act Reclassification; Fort Hall Indian Reservation Particulate Matter (PM–10) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that a portion of the Fort Hall Indian Reservation has not attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the applicable attainment date for moderate PM–10 nonattainment areas under the Clean Air Act (CAA). In a concurrent notice of proposed rulemaking published today, EPA has proposed that the existing Power-Bannock Counties PM–10 nonattainment area, which is currently classified as moderate with an attainment date of December 31, 1996,

be separated into two nonattainment areas at the boundary between State lands and the Fort Hall Indian Reservation. If EPA takes final action to revise the Power-Bannock Counties PM–10 nonattainment area into two nonattainment areas, EPA proposes in this action to find that the PM–10 nonattainment area within the exterior boundary of the Fort Hall Indian Reservation (which EPA has proposed be referred to as the "Fort Hall PM–10 nonattainment area") has not attained the PM–10 NAAQS by December 31, 1996.

EPA's proposed finding that the proposed Fort Hall PM–10 nonattainment area has not attained the PM–10 NAAQS by December 31, 1996, is based on EPA's review of monitored air quality data from 1994 through 1996. If EPA takes final action on this proposal, the proposed Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area.

EPA recently established a new standard for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal, however, does not address these new and revised standards.

COMMENTS: Comments on this proposal must be received in writing by July 20, 1998.

ADDRESSES: Written comments should be addressed to Ms. Montel Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket ID 22–7002, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Shoshone-Bannock Tribes, Land Use Commission, Office of Air Quality, Fort Hall, Idaho.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, at the address above, or telephone (206) 553–0782.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

A portion of Power and Bannock Counties in Idaho was designated nonattainment for PM–10 [1] and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991).[2] For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. See section 188 (a) and (c)(1) of the CAA. States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM–10 NAAQS by December 31, 1994. See section 189(a) of the CAA.[3]

B. Power-Bannock Counties PM–10 Nonattainment Area

The Power-Bannock Counties PM–10 nonattainment area covers approximately 266 square miles in south central Idaho and comprises both trust and fee lands within the exterior boundary of the Fort Hall Indian Reservation and State lands in portions of Power and Bannock Counties. Approximately 75,000 people live in the nonattainment area, most of whom live in the cities of Pocatello and Chubbuck, which are located near the center of the nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," which includes the two major stationary sources of PM–10 in the nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex. One of the major stationary sources of PM–10, FMC Corporation (FMC), is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation.[4] The second major stationary source of PM–10 in the nonattainment area, J.R. Simplot Corporation (Simplot), is located on State lands immediately adjacent to the Reservation.

The State of Idaho has established and operates four PM–10 State and Local Air Monitoring Stations (SLAMS) in the current Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands (State monitors). All of the State monitors meet EPA network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. There have been no exceedences of the 24-hour PM–10 standard recorded at any of the State monitors since January of 1993.

The Shoshone-Bannock Tribes began operating a PM–10 monitor in February 1995 on the portion of the nonattainment area within the exterior boundary of the Reservation in February 1995. Prior to this time, the Tribes relied on data from the State operated samplers for area designations and classifications because of a lack of resources to establish and operate their own Tribal monitoring stations. In 1994 the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own monitoring stations in order to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning

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[1] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. See 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter up to 2.5 microns in diameter (PM–2.5). See 62 FR 38651 (July 18, 1997). The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour PM–10 standard, by itself, reflects a relaxation of that standard.

[2] The 1990 Amendments to the CAA made significant changes to the CAA. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] The moderate area SIP requirements are set forth in section 189(a) of the CAA.

[4] EPA has learned that a portion of the FMC facility is located on State lands. As discussed in the Federal Register document in which EPA is proposing to split the nonattainment area at the State-Reservation boundary, EPA is specifically requesting comment on whether the proposed Fort Hall PM–10 nonattainment area should include the portion of the FMC facility that is located on State lands.

efforts. This monitor, called the "Sho-Ban site," is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data was not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" is located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. Both the Sho-Ban and primary sites are located in the area of expected maximum concentration of PM–10 in the ambient air. The "Tribal background site" is located approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex.

All three monitoring sites (Tribal monitors) are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Both the Sho-Ban and primary sites on the Reservation portion of the nonattainment area have recorded numerous PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since October 1996.

Private industry operated a seven station air monitoring network, funded by FMC and Simplot, on and near the industrial complex from October 1, 1993, through September 30, 1994 (EMF monitors). There were no measured PM–10 concentrations above the level of the 24-hour PM–10 NAAQS at any of the EMF stations. EMF Site #2, however, which was on the Fort Hall Indian Reservation less than 300 yards east of where the primary site is now located, reported several 24-hour concentrations of PM–10 at or near the level of the NAAQS. EMF Site #2 also reported an annual concentration of 55.1 μg/m3 for the one year period the network was in operation. This is 10% greater than the 50 μg/m3 level of the annual NAAQS. Because the EMF network did not collect a calendar year's worth of data, EPA has previously concluded that data from EMF Site #2 did not document a violation of the annual PM–10 NAAQS. *See* 61 FR 66602, 66604 (December 18, 1996). EPA also stated, however, that the number of the recorded 24-hour concentrations at or near the level of the standard and the high annual concentration for the one-year period EMF Site #2 was in operation indicated that a serious air quality problem continued in the Power-Bannock Counties PM–10 nonattainment area. *Id.* This conclusion is confirmed by the more recent data from the Tribal monitors.

The current Power-Bannock Counties PM–10 nonattainment area encompasses two different regulatory jurisdictions: the State of Idaho for the State portion of the nonattainment area and the Shoshone-Bannock Tribes and EPA for the Reservation portion of the nonattainment area. Under the Clean Air Act, the State has the primary PM–10 planning responsibilities for the State portion of the nonattainment area. See CAA sections 110 and 189. In furtherance of those planning obligations, the State of Idaho, along with several local agencies, developed and implemented control measures on PM–10 sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures in 1993 as part of its moderate PM–10 nonattainment State Implementation Plan (SIP) under section 189(a) of the Act. These control measures include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of PM–10 on the portion of the nonattainment area on Sate lands. Although EPA has not yet approved the State's moderate PM–10 SIP for the area, EPA has previously stated (in the context of approving the State's requests for extensions of the attainment date) that these control measures substantially meet EPA's guidance for reasonably available control measures (RACM), including RACT, for sources of primary particulate on the State portion of the nonattainment area. See 61 FR 66602, 66604–66605 (December 18, 1996).

In contrast, the PM–10 requirements for the Tribal portion of the nonattainment area are still under development.[5] Because of long-standing concerns about the air quality in the Power-Bannock County PM–10 nonattainment area, EPA has been developing a Federal Implementation Plan (FIP) for the portion of the nonattainment area within the exterior boundary of the Fort Hall Indian Reservation. The plan is being developed in close consultation with the Tribes and with extensive public participation. EPA intends to propose the FIP by the end of January 1999, and to finalize the FIP in the year 2000.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as States. See CAA sections 301(d) (1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR". The TAR implements the provisions of section 301(d) of the Act to authorize eligible Tribes to implement their own Tribal air programs. This includes a delegation of authority, to Tribes which meet certain requirements and request delegation, to develop, adopt and submit PM–10 nonattainment area Tribal Implementation Plans for lands within the exterior boundary of Indian Reservations, including fee lands. Until promulgation of the TAR in February 1998, however, the Shoshone-Bannock Tribes did not have authority under the Clean Air Act to carry out the PM–10 planning responsibilities for the Tribal portion of the nonattainment area.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution on Tribal land under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, even should they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. EPA's understanding is that the Tribes continue to support EPA's efforts to promulgate a PM–10 nonattainment FIP for the Tribal portion of the nonattainment area notwithstanding the recent promulgation of the TAR.

C. Attainment Date Extensions

Section 188(d) authorizes the EPA Administrator to grant up to two one-year extensions of the moderate area

[5] In developing its PM–10 control strategy and SIP, the State did not seek to impose controls on any sources located on Reservation lands, including fee lands within the exterior boundary of the Reservation, or attempt to demonstrate to EPA that it had authority to promulgate and enforce air controls on Reservation lands.

attainment date, provided certain requirements are met. The Power-Bannock Counties PM–10 nonattainment area did not attain the PM–10 NAAQS by December 31, 1994. Two monitors on State lands recorded a measured value above the level of the 24-hour PM–10 standard in January 1993, which resulted in six exceedences for each monitor because of a sampling frequency at those sites of once every six days. This, in turn, represented a violation of the NAAQS as of December 31, 1994. EPA granted the State's request for a one-year extension and extended the attainment date to December 31, 1995. See 60 FR 44452 (August 28, 1995) (proposed action); 61 FR 20730 (May 8, 1996) (final action). The area continued to violate the 24-hour PM–10 NAAQS through December 31, 1995 because of the exceedence recorded on the State monitors in January 1993. EPA granted a second one-year extension of the attainment date to December 31, 1996. See 61 FR 66602 (December 18, 1996).

D. Reclassification to Serious

1. Regulatory Requirements

EPA has the responsibility, pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, to determine within six months of the applicable attainment date, whether PM–10 nonattainment areas attained the PM–10 NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon an area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58, appendices A and B). The data are reviewed in accordance with 40 CFR part 50, appendix K, to determine the area's air quality status.

Pursuant to appendix K, the annual PM–10 standard is attained when the expected annual arthimetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. A total of three consecutive years of non-violating air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

EPA is publishing this proposal pursuant to section 188(b)(2) of the Act. Under subpart (A) of that section, a moderate PM–10 nonattainment area is reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a **Federal Register** document within six months after the applicable attainment date identifying those areas that have failed to attain the standard and that have been reclassified to serious by operation of law. See section 188(b)(2); see also section 179(c)(1).

2. Ambient Air Monitoring Data

Attainment determinations are based upon an area's "air quality as of the attainment date." See section 179(c) of the CAA. Therefore, EPA determines whether an area's air quality has met the 24-hour PM–10 NAAQS by December 31, 1996, based upon calendar year data from 1994, 1995, and 1996.

As stated above, there are three Tribal PM–10 monitors within the Fort Hall PM–10 nonattainment area which were installed during 1995 and 1996. All three monitors meet EPA's SLAMS network design and siting requirements, which are set forth in 40 CFR Part 58, appendices D and E. A description of the monitoring network and instrument siting relative to the EPA SLAMS siting criteria as specified in 40 CFR Part 58, appendices D and E, can be found in the air quality data report in the Docket for this proposal.

The air quality data for the period from October 8, 1996, to December 31, 1996, was validated by the Shoshone-Bannock Tribes. EPA has reviewed the air quality data collected and reported by the Tribes during this period and quality assured the data for precision and accuracy prior to entering the data into the AIRS data base. In addition, a contractor with extensive experience in operating large state monitoring networks, conducted an independent audit of the Tribal monitoring data. The audit included a review of both the sampling effort and filter analysis, and concluded that the data reported by the Tribes during 1996 and 1997 was valid and reliable data.

Table 1 lists each of the monitoring sites within the proposed Fort Hall PM–10 nonattainment area where the 24-hour PM–10 NAAQS was exceeded during 1994–1997.[6] Table 2 lists the concentration, in micrograms per cubic meter, of each exceedence.

TABLE 1.—FORT HALL PM–10 MONITORING DATA—1994, 1995, 1996

Site	Year	Number of exceedences	Expected exceedences	3 year average of exceedences
Primary	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	18	20.96	7.0.
	1997	19	20.1	13.69.
Sho-Ban	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	9	11.34	3.78.
	1997	13	14.20	8.5.
Upwind Site	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	0	0.00	0.00.
	1997	1	1.05	.35.

[6] Data from 1997 is after the attainment date and is included for informational purposes only.

TABLE 2.—PM–10 EXCEEDENCES AT TRIBAL MONITORS

Date	Primary site (ug/m3)	Sho-ban site (ug/m3)	Background site (ug/m3)
Oct. 10, 1996	165.2	.....	.....
Oct. 16, 1996	198.6	.....	.....
Oct. 18, 1996	184.2	193.3	.....
Oct. 22, 1996	200.4	.....	.....
Oct. 24, 1996	228.5	.....	.....
Nov. 17, 1996	.....	245.3	.....
Nov. 18, 1996	.....	276.8	.....
Nov. 19, 1996	.....	419.7	.....
Nov. 28, 1996	.....	163.2	.....
Dec. 3, 1996	168.4	.....	.....
Dec. 4, 1996	.....	199.1	.....
Dec. 9, 1996	184.3	198.8	.....
Dec. 10, 1996	.....	208.1	.....
Dec. 15, 1996	218.8	.....	.....
Dec. 20, 1996	155.9	156.3	.....
Dec. 24, 1996	173.6	.....	.....
Dec. 25, 1996	174.3	.....	.....
Dec. 26, 1996	316.8	.....	.....
Dec. 27, 1996	236.1	.....	.....
Dec. 29, 1996	290.4	282.1	.....
Dec. 30, 1996	187.1	292.6	.....
Dec. 31, 1996	186.0	441.8	.....
Jan. 1, 1997	267.7	408.5	.....
Jan. 2, 1997	160.8	.....	.....
Jan. 22, 1997	164.8	.....	.....
Jan. 25, 1997	.....	.....	245.5
Feb. 14, 1997	221.7	.....	.....
Feb. 17, 1997	198.0	.....	.....
Feb. 19, 1997	215.0	259.3	.....
Mar. 1, 1997	222.7	220.6	.....
Mar. 2, 1997	195.8	.....	.....
Mar. 9, 1997	239.4	.....	.....
Mar. 10, 1997	336.8	.....	.....
Mar. 11, 1997	205.6	.....	.....
Mar. 18, 1997	.....	173.1	.....
Mar. 26, 1997	165.9	.....	.....
Mar. 30, 1997	.....	234.3	.....
Jun. 3, 1997	.....	167.3	.....
Aug. 26, 1997	.....	183.6	.....
Sept. 13, 1997	.....	229.6	.....
Sept. 14, 1997	.....	345.8	.....
Sept. 15, 1997	166.5	.....	.....
Sept. 26, 1997	222.3	.....	.....
Oct. 3, 1997	186.3	156.4	.....
Oct. 4, 1997	253.7	.....	.....
Oct. 5, 1997	273.1	.....	.....
Oct. 8, 1997	.....	200.0	.....
Oct. 9, 1997	.....	271.4	.....
Dec. 17, 1997	158.1	.....	.....
Dec. 27, 1997	169.2	.....	.....
Dec. 29, 1997	245.3	.....	.....

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, averaged over three years, is equal to or less than one. Because the Tribal monitoring sites did not begin full operation until October 1996, the data base is less than the three years of data generally needed for determination of compliance with the PM–10 NAAQS under 60 CFR 50.6. Nevertheless, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October 8, 1996, and December 31, 1996 results in the Tribal monitors showing a violation of the 24-hour PM–10 NAAQS as of the December 31, 1996, attainment date for the area. Appendix K of 40 CFR part 50 contains "gapfilling" techniques for situations where less than three complete years of data are available. In brief, that procedure allows a determination of non-compliance with a standard if it can be unambiguously demonstrated that a violation occurred. With respect to the Sho-Ban and primary sites, the expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, for each site is substantially greater than the 1.1 allowed for the PM–10 NAAQS, even if the days during which the monitors did not operate or collect valid data would have reported zero PM–10 levels. For example, the expected exceedence rate for 1996 was 20.96 at the primary site and 11.34 at the Sho-Ban site. When this rate is averaged with an assumed zero for 1994 and 1995, the three year average expected exceedence rate of 7.0 for the primary site and 3.78 for the Sho-Ban site are above the 1.1 required to show

attainment of the 24-hour PM–10 NAAQS. In other words, even if there were zero exceedences from January 1, 1994, to October 8, 1996, a violation of the standard would occur because of the number of exceedences that occurred from October 8, 1996, to December 31, 1996. EPA therefore believes that there is a violation of the 24-hour NAAQS for PM–10 under 40 CFR 50.6 in the proposed Fort Hall PM–10 nonattainment area using calendar year data from 1994, 1995, and 1996. Based on this data, EPA proposes to find that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 NAAQS by the attainment date of December, 31, 1996.

None of the Tribal monitors collected sufficient data during 1994, 1995 and 1996 to make an attainment determination with respect to the annual PM–10 standard. Generally, three years worth of data must be collected in order to calculate the three year average of each year's annual average, and the gap filling approach does not show a violation in this instance.

EPA notes that it is evident from a review of the data recorded at the Tribal monitors since December 31, 1996, that the values recorded on the Tribal monitors from October through December 1996 are not an aberration. Numerous levels above the 24-hour PM–10 standard have been recorded since December 31, 1996, and these values have been fairly consistent with the values recorded during 1996. Please refer to the air quality data report in the Docket for further analysis of the data from the Tribal monitors and appendix K "gapfilling" techniques.

E. Portneuf Environmental Council Lawsuit

On November 20, 1997, the Portneuf Environmental Council (PEC) filed suit against EPA alleging that EPA had failed to make a finding that the Power-Bannock Counties PM–10 nonattainment area had not attained the PM–10 NAAQS by the December 31, 1996, attainment date, as provided for in CAA section 188(b)(2)(A). EPA is making this proposal in response to that lawsuit.

F. Revision to the Area Designation

In a concurrent notice of proposed rulemaking published in the Federal Register today, EPA is proposing to revise the designation of the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas along the State-Reservation boundary that together cover the identical geographic area of the existing nonattainment area. EPA has proposed that one revised area be comprised of State lands (to be referred to as the "Portneuf Valley PM–10 nonattainment area") and that the other revised area be comprised of lands within the exterior boundary of the Fort Hall Indian Reservation (to be referred to as the "Fort Hall PM–10 nonattainment area"). If EPA finalizes its proposal to split the Power-Bannock Counties PM–10 nonattainment area, the areas will thereafter be considered separately for PM–10 planning purposes and on the basis of the air quality data within each separate nonattainment area.

II. Implications of This Action

A. Reclassification to Serious

By today's action, EPA is proposing to find that the proposed Fort Hall PM–10 nonattainment area did not attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. As discussed above, this finding is based on air quality data showing exceedences and violations of the PM–10 NAAQS during calendar years 1994, 1995 and 1996. If EPA takes final action on this proposed finding, the Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area under section 188(b)(2)(A) of the Act.

B. Serious Area Planning Requirements

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the Act are required to submit, within 18 months of the area's reclassification, SIP provisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM–10 no later than four years from the date of reclassification. The SIP must also contain a demonstration that its implementation will provide for attainment of the PM–10 NAAQS. These requirements are in addition to the moderate PM–10 nonattainment requirements of RACT/RACM.

As discussed above, EPA, in consultation with and with the support of the Tribes, has been developing a FIP that will address the PM–10 planning requirements for the proposed Fort Hall PM–10 nonattainment area. EPA intends to propose the FIP for the Fort Hall PM–10 nonattainment area no later than January 31, 1999, and to finalize the FIP no later than July 31, 2001. As also discussed above, the Shoshone-Bannock Tribes have expressed interest in applying for authority within the next few years under EPA's newly promulgated Tribal Authority Rule (TAR) to assume the PM–10 planning requirements for the Fort Hall Indian Reservation, including the Fort Hall PM–10 nonattainment area. Until the Tribes apply for and receive EPA approval under the TAR for the PM–10 planning requirements for the Fort Hall Indian Reservation, however, EPA will carry out, in consultation with the Tribes, the PM–10 planning responsibilities for the Fort Hall Indian Reservation.

Based on discussions with the Tribes, EPA is aware that the Tribes are concerned that the reclassification of the Tribal portion of the nonattainment area to serious will imply that the Tribes have not been diligent in addressing the PM–10 planning requirements for the Tribal portion of the nonattainment area. In this respect, EPA would like to emphasize that until EPA promulgated the TAR in February of 1998, the Tribes did not have authority under the Clean Air Act to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period.

C. New Particulate Matter NAAQS

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour standard, by itself, reflects a relaxation of that standard.

EPA notes that, after converting the 1996 and 1997 PM–10 data as reported by the Tribes to local temperature and pressure and calculating the 99th percentile as is done under the revised 24-hour PM–10 NAAQS, there is a strong likelihood that the proposed Fort Hall PM–10 nonattainment area will violate the revised PM–10 NAAQS if the number and extent of exceedences remain constant.

In the preamble to the final rule setting the new and revised particulate matter standards, EPA stated that the pre-existing PM–10 standards would remain in effect for a period of time after the effective date of the new standards to ensure a smooth transition to the new

standards. 62 FR 38701. Given that the revision of the PM–10 NAAQS, by itself, constitutes a relaxation, the proposed Fort Hall PM–10 nonattainment area will be subject to the provisions of section 172(e) of the Act. Section 172(e) applies to prevent backsliding in those areas that have not attained the pre-existing PM–10 standard as of the date the PM–10 NAAQS revision became effective. As a result, the pre-existing PM–10 standards will continue to apply in the proposed Fort Hall PM–10 nonattainment area until EPA has completed the rulemaking required under section 172(e). See 62 FR 38701. The rule promulgated under section 172(e) must require controls in the proposed Fort Hall PM–10 nonattainment area that are "not less stringent than the controls applicable to areas designated nonattainment before the relaxation of the 24-hour PM–10 standard."

III. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities." The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain are based upon air quality considerations and the resulting reclassifications must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Findings of failure to attain and reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in and of themselves create any new requirements. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking only proposes to make a factual determination, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the proposed Fort Hall PM–10 nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

IV. Request for Public Comments

EPA is, by this document, proposing a finding that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 standard by December 31, 1996, the applicable attainment date. EPA solicits public comments on all aspects of this proposal. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–16404 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–1; FHWA–1997–2222]

RIN 2125–AD27

Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers engaged in interstate commerce install retroreflective tape or reflex reflectors on the sides and rear of trailers that were manufactured prior to

December 1, 1993, have an overall width of 2,032 mm (80 inches) or more, and a gross vehicle weight rating (GVWR) of 4,536 kg (10,001 pounds) or more. The FHWA is proposing that motor carriers be required to install retroreflective tape or reflex reflectors within two years of the effective date of the final rule. Motor carriers would be allowed a certain amount of flexibility in terms of the colors or color combinations during a 10-year period beginning on the effective date of the final rule, but would be required to have all older trailers equipped with conspicuity treatments identical to those mandated for new trailers at the end of the 10-year period. The locations at which the retroreflective material would have to be applied to trailers during the phase-in period would be specified. This rulemaking is intended to help motorists detect trailers at night and under other conditions of reduced visibility, thereby reducing the incidence of passenger vehicles colliding with the sides or rear of trailers.

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Submit written, signed comments to the docket identified at the beginning of this notice, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Background

On December 10, 1992, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108), to require that trailers with an overall width of 2,032 mm (80 inches) or more and a GVWR greater than 4,536 kg (10,000 pounds), except trailers manufactured exclusively for use as offices or dwellings, be equipped on the sides and rear with a means for increasing their conspicuity (57 FR 58406). Trailer manufacturers are given a choice of installing either red and white retroreflective sheeting or reflex reflectors arranged in a red and white pattern. Manufacturers of retroreflective sheeting or reflex reflectors intended for use in satisfying these requirements must certify compliance of their product with FMVSS No. 108, whether the material is used as original or replacement equipment. The effective date for the final rule was December 1, 1993.

Summary of the NHTSA Rulemaking

The NHTSA issued an advance notice of proposed rulemaking (ANPRM) on May 27, 1980, requesting comments on methods to reduce the incidence and severity of collisions between passenger cars and large trailers during conditions of darkness or reduced visibility (45 FR 35405). The use of retroreflective materials was considered a possible solution.

Between 1980 and 1985, the NHTSA conducted a fleet study in which retroreflective material was placed on van-type trailers in a manner designed to increase their conspicuity during conditions of darkness or reduced visibility. The treatment of the trailers consisted of outlining the rear perimeter, and delineating the lower sides with retroreflective tape. The authors of the study concluded that truck-trailer combinations equipped with retroreflective material were involved in 15 percent fewer accidents (in which a trailer was struck in the side or rear by a passenger car at nighttime) than combinations that were not equipped with the material. This research is documented in the following research reports: *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task I—Accident Analysis and Functional Requirements*, March 1981 (DOT HS 806–100); *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task II—Analyses, Experiments and Design Recommendations*, October 1981 (DOT HS 806–098); and, *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task III—Field Test Evaluation of Vehicle Reflectorization Effectiveness*, September 1985 (DOT HS–806–923). A copy of each of the reports is in the docket.

On September 18, 1987, the NHTSA published a notice discussing the results from the fleet study and requesting comments on the research as well as information from motor carriers about their experiences using reflective material to enhance conspicuity (52 FR 35345).

In response to the NHTSA fleet study, Congress included in the Motor Carrier Safety Act of 1990 (Pub. L. 101–500, 104 Stat. 1218), a provision directing the Secretary of Transportation to initiate a rulemaking on the need to adopt methods for making commercial motor vehicles more visible to motorists. The rulemaking was required to begin no later than February 3, 1991, and to be completed no later than November 3, 1992.

Between March 1990 and September 1991 the NHTSA conducted additional research on trailer conspicuity. The purpose of the research program was to define a range of minimally acceptable large truck conspicuity enhancements that could be used as a basis for developing Federal regulations. A number of laboratory and field studies were carried out to assess the value of using a pattern of retroreflective sheeting, the form the pattern should take, the placement of the treatment on the trailer, the effect of retroreflective markings on the detection and identification of stop and turn signals, and the trade-off between the width and retroreflective intensity of the treatment material. In addition, field surveys were conducted to assess the effect of environmental dirt on the performance of the marking systems and the durability of retroreflective materials when used on commercial motor vehicles.

The final report for the research conducted between 1990 and 1991 (*Performance Requirements for Large Truck Conspicuity Enhancements*, March 1992, (DOT HS 807 815)) includes recommendations that the retroreflective tape be at least two inches in width, applied in a red and white pattern (continuous or broken strip) along the bottom of the trailer on the sides, with a continuous strip along the bottom of the rear of the trailer. The

authors also recommend white corner markers at the top of trailers. In addition, the report provides recommendations concerning minimum retroreflectivity levels, taking into account the effects of environmental dirt, aging, and orientation of the marked vehicle. A copy of the final report is in the docket.

On December 4, 1991, the NHTSA published a notice of proposed rulemaking (NPRM) based upon the research conducted between 1990 and 1991 (56 FR 63474). The NHTSA considered its NPRM, which was part of a rulemaking initiated before the enactment of the Motor Carrier Safety Act of 1990, to be responsive to the congressional mandate and its December 10, 1992, final rule as the completion of the rulemaking mandated by Congress.

Current FHWA Requirements for Trailer Conspicuity

The FHWA is responsible for establishing standards for commercial motor vehicles operated in interstate commerce. Commercial motor vehicles subject to the FMCSRs must meet the requirements of 49 CFR parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair, and Maintenance). The requirements for lamps and reflective devices are contained in §§ 393.11 through 393.26.

Section 393.11 of the FMCSRs requires that all lighting devices on commercial motor vehicles placed in operation after March 7, 1989, meet the requirements of FMVSS No. 108 in effect at the time the vehicle was manufactured. Therefore, trailers manufactured on or after December 1, 1993, the effective date of the NHTSA requirement for retroreflective tape or reflex reflectors, must have retroreflective tape or reflex reflectors of the type and in the locations specified in FMVSS No. 108 in order to comply with the FHWA's requirements.

On April 14, 1997, the FHWA published a notice of proposed rulemaking in which the agency proposed general amendments to part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), Parts and Accessories Necessary for Safe Operation (62 FR 18170). The proposed amendments covered a wide range of topics, including conspicuity treatments on trailers manufactured on or after December 1, 1993. To make certain that all motor carriers operating trailers subject to the FMCSRs are aware of their responsibility to maintain the conspicuity treatment, the FHWA proposed the addition of detailed language under § 393.11. The FHWA would cross-reference the specific paragraphs of FMVSS No. 108 related to the applicability of NHTSA's trailer conspicuity standards, the required locations for the conspicuity material, and the certification and marking requirements.

FHWA Rulemaking Concerning Retrofitting

On January 19, 1994, the FHWA published an ANPRM requesting comments on issues related to the application of conspicuity treatments to trailers manufactured prior to the effective date of the NHTSA's final rule on trailer conspicuity (59 FR 2811). The agency requested that commenters respond, at a minimum, to several specific questions listed in the notice:

1. Many motor carriers have been using retroreflective sheeting or reflex reflectors which are not of the colors, retroreflective intensity, width, or configuration of the conspicuity treatment in the NHTSA's final rule. The FHWA seeks information on the type of conspicuity treatments in use and quantitative data on the cost and effectiveness of those treatments in preventing and/or mitigating accidents.

2. What types of technical problems (e.g., tape not adhering to the surface of the trailer) have motor carriers encountered when applying conspicuity materials to in-service trailers? Are any problems unique to certain types of trailers, or to certain types of paints, coatings, or surfaces?

3. What is the approximate cost (parts and labor) to apply conspicuity treatments to trailers? Is special training required for employees performing this task? What cost differences may exist between having this task performed by the motor carrier's own maintenance department or by third parties?

4. How long must a trailer be taken out of service to have the conspicuity material applied to its surfaces?

5. With regard to conspicuity treatments that differ from those in the NHTSA final rule, a retrofitting requirement would result in many motor carriers having to replace their current conspicuity treatments with one that is consistent with the requirements of FMVSS No. 108. The FHWA believes that some form of conspicuity treatment (even certain forms which may be less effective than that covered in the NHTSA's final rule) is better than no conspicuity treatment. What different types of conspicuity treatment are currently being used by motor carriers? What results have been experienced by motor carriers using conspicuity treatments?

6. If this rulemaking proceeds, should the FHWA propose requiring the same red/white color combination, retroreflective intensity, width and configuration as the NHTSA's final rule, or should alternative requirements be considered? If alternatives are considered, do commenters foresee problems in the enforcement of a retrofitting requirement?

7. If this rulemaking proceeds, should the FHWA consider an effective date which is several (2, 3, 4, or 5) years after the date of publication of the final rule?

In addition to responding to the preceding questions, the FHWA encouraged commenters to include a discussion of any other issues that the commenters believed were relevant to the rulemaking.

On August 6, 1996, the FHWA published a notice announcing that the agency had completed its review of the comments received in response to the ANPRM and that it would issue a notice of proposed rulemaking (61 FR 40781).

Discussion of Responses to the ANPRM

The FHWA received 955 comments in response to the ANPRM. The strongest voice of support came from concerned private citizens—a total of 828 responses. The FHWA received 321 responses on behalf of Carl Hall, who was killed in a collision with a tractor-semi-trailer that blocked the road as the truck driver backed the vehicle into a driveway. Another 285 responses were on behalf of Guy Crawford, a 16-year old boy who was killed in an underride accident with a coal truck. In addition, the agency received 223 responses from other concerned citizens, many of whom lost family members or friends in accidents involving commercial motor vehicles.

The FHWA has the greatest sympathy for the losses suffered by these respondents. The goal of this rulemaking is to reduce the number of such accidents, but rules must be based on consideration of evidence and data submitted. Since these commenters did not include answers to the questions listed in the ANPRM or provide information concerning technical or economic aspects of retrofitting trailers with conspicuity treatments, the remainder of this preamble will focus on those issues. The agency, however, has not ignored the advice of those whose tragic personal experiences led them to support a conspicuity rule.

The specific concerns or issues raised by the commenters that discussed technical or economic issues are discussed in the following sections.

General Discussion of Comments Opposed to the Rulemaking

The FHWA received 40 comments from motor carriers and industry groups that were either opposed to any type of retrofitting requirements, or supportive of the concept of voluntary use of conspicuity treatments but opposed to requiring the red-and-white color scheme specified by the NHTSA. The commenters were: Allied Van Lines, Inc.; the American Movers Conference (AMC); the American Trucking Associations (ATA); Beaver Express Service, Inc.; Becker Hi-Way Frate; Bestway Systems, Inc.; BTI; Churchill Truck Lines, Inc.; the Colorado/Wyoming Petroleum Marketers Association (CWPMA); Contract Freighters, Inc.; Crowley Maritime Corporation; Dart Transit Company; Fleetline, Inc.; Grote Industries, Inc.; the Institute of International Container Lessors; the Interstate Truckload Carriers Conference; John W. Ritter Trucking Inc.; Metalcore, Ltd.; the Missouri Motor Carriers Association; Mobil Oil Corporation (Mobil); the National Private Truck Council (NPTC); the National-American Wholesale Grocers' Association—International Foodservice Distributors Association (NAWGA/IFDA); the Pacific Merchant Shipping Association; the Petroleum Marketers Association of America (PMAA); Reliance Trailer Manufacturing (Reliance); the Rocky Mountain Oil and Gas Association (RMOGA); San Joaquin Sand and Gravel; Schneider National; the Steamship Operators Intermodal Committee (SOIC); Talley Transportation; United Van Lines, Inc.; United Parcel Service (UPS); USA Truck; Wal*Mart Stores, Inc.; Watkins Motor Lines, Inc.; Werner Enterprises; Western Distributing Transportation Corporation; the Wyoming Trucking Association, Inc.; XTRA Corporation (XTRA); and Yellow Freight System Inc.

Generally, the commenters opposed to the retrofitting rulemaking believe that it is important to improve highway safety. However, many of them do not believe that conspicuity treatments are a cost-effective solution to the problem of passenger cars colliding with trailers. In several cases, the commenters argued that there is not enough data to assess the effectiveness of the NHTSA's requirements for trailers manufactured on or after December 1, 1993. For motor carriers that installed conspicuity treatments on their trailers manufactured before December 1, 1993, the opposition to the retrofitting rulemaking is based upon the belief that the FHWA would require them to remove retroreflective materials that do not conform to the NHTSA standard.

On the subject of data to support the FHWA's rulemaking, the NAWGA/IFDA stated:

> Before [the FHWA] issues proposed rules in this docket, NAWGA/IFDA suggests that accident experience data for [the trailers covered by the NHTSA's conspicuity rule]—perhaps for calendar year 1994—be obtained by FHWA. Indeed, such data would be responsive to FHWA's first issue raised in its [ANPRM]—the existence of data on the effectiveness of various marking treatments in preventing and/or mitigating accidents. With this data in hand, FHWA would then be in a better position to proceed to an informed decision as to whether to extend the NHTSA requirements to pre-December, 1993 trailers.

United Parcel Service (UPS) also expressed concern that there is insufficient accident data to support a retrofitting requirement. The UPS stated:

> A proposed FHWA rulemaking mandating the retroactive installation of reflective sheeting is at the very least premature, and perhaps entirely unwarranted.
>
> The first assumption is that the current DOT regulations for vehicle visibility are inadequate and need to be improved. In fact, FHWA has presented no data to support such a contention. The rule also assumes knowledge of what constitutes adequate conspicuity. Again, no supporting data is offered.
>
> UPS unsuccessfully opposed NHTSA's conspicuity rule, arguing at the time that the data was insufficient to warrant a rule. In our view, FHWA risks compounding NHTSA's mistake, but in an even more expensive and less sensible way. If FHWA is willing to delay its rulemaking long enough, NHTSA's present regulation (FMVSS No. 108) will provide enough reliable data to make a judgement on the safety impact of the reflective sheeting. It should be noted that in reviewing our own considerable highway safety data, UPS has found no evidence to support the creation of a new mandate that would immediately [affect] such a large number of vehicles.

In addition to the NAWGA/IFDA and UPS, the Interstate Truckload Carriers Conference (ITCC) commented that the benefits of conspicuity treatments have not been proven. The ITCC stated:

> As a general observation, retroreflective sheeting or reflex reflectors for trailers manufactured prior to December 1, 1993, should be voluntary, not mandatory, although the Federal Highway Administration ("FHWA") may wish to develop and offer recommended guidelines to assist those carriers wishing to apply retroreflective treatments to their trailer equipment. In spite of the perceived safety benefits of having retroreflective sheeting applied to older trailers, not one of the carriers responding to the ITCC survey, which own and operate more than 34,000 trailers, are able to quantify any correlation between their use of retroreflective materials and a decrease in trailer accidents where conspicuity was a factor. Moreover, operational and cost considerations suggest that any requirement to improve trailer conspicuity would be burdensome. Should the FHWA proceed with this matter and institute a proposed rulemaking, it should propose to accept the conspicuity treatments applied to trailers prior to the effective date of any adopted rule, even though such treatments may not conform to the NHTSA rules prescribing conspicuity treatments for trailers manufactured after December 1, 1993, in type, color, size, placement or configuration, construction, brightness, or other aspect.

The ATA opposes a retrofitting requirement because it believes there is no cost-effective and reasonable method to apply reflective materials to all of the trailers manufactured before December 1, 1993. The ATA also indicated that a large number of trailers are already marked with materials of greater intensity, but different color schemes than those mandated by the NHTSA and that retrofitting to the NHTSA color scheme would cause an unjustified economic hardship on many carriers. The ATA stated:

> FHWA did not evaluate this regulatory action because of a lack of necessary cost information. A federal mandate to retrofit reflective materials on trailers built before December 1, 1993, will have a significant cost impact. With 3.8 million trailers on America's highways, the total cost of a federal mandate will exceed $1 billion. This figure includes costs for conspicuity materials, labor costs for preparing the trailers and applying the materials, and loss of use of trailer productivity while [the trailer is] being prepared/repaired and retrofitted.

In addition the ATA indicated that The Maintenance Council of the ATA has published a recommended practice (*Large Vehicle Conspicuity Markings*, RP 722, Issued March 1993, Revised June 1994) concerning the application of reflective tape or materials to unmarked trailers, and that the Society of Automotive Engineers (SAE) was preparing a Surface Vehicle Information Report, *Large Vehicle Conspicuity Markings*, SAE J2117. The ATA believes that there are already market forces (e.g., potential litigation) pressuring motor carriers to retrofit their trailers with conspicuity materials and that a retrofitting rule is not necessary.

Another commenter expressing concerns about the economic impact of a retrofitting requirement was the American Movers Conference (AMC). The AMC stated:

> It would be a serious mistake for FHWA to mandate specific conspicuity treatments for existing trailers. Such regulatory action is

impractical and would cause unjustified economic burdens for the moving industry. However, the trailers now in service in our industry are already marked with conspicuity materials that, although different in color and composition from that mandated for new trailers by NHTSA, are highly visible and effectively "conspicuous."

The FHWA does not agree with the NAWGA/IFDA and UPS" assertions that there is insufficient data to support a retrofitting requirement. The FHWA acknowledges that no studies or analyses of the impact of the NHTSA's final rule have been completed to date. However, previous research findings concerning trailer conspicuity strongly suggest that significant improvements in safety could be achieved by requiring all trailers to be equipped with retroreflective materials.

As indicated in the background section of this notice, between 1980 and 1985 the NHTSA conducted a fleet study in which retroreflective material was placed on van-type trailer combinations in a manner designed to increase their conspicuity during conditions of darkness or reduced visibility. The study concluded that truck-trailer combinations equipped with certain conspicuity materials were involved in 15 percent fewer accidents (in which the trailer was struck in the side or rear) than combinations lacking the material.

In addition to the research conducted in the 1980's, the NHTSA conducted a study between March 1990 and September 1991 to define a range of minimally acceptable trailer conspicuity enhancements that could be used as a basis for Federal regulations. The report covering the research performed between 1990 and 1991 is entitled *Performance Requirements for Large Truck Conspicuity Enhancements*, March 1992, (DOT HS 807 815). A copy of this report is included in the docket. The NHTSA's 1992 report states:

> Previous research sponsored by NHTSA [a reference to the research documented in *Improved Commercial Vehicle Conspicuity and Signaling Systems*] indicated that the use of retroreflective tape markings systems enhanced the conspicuity of large trucks and, therefore, had the potential to reduce the number and seriousness of car-into-truck crashes. This earlier research specifically examined the effectiveness of enhanced conspicuity on the crash experience of approximately 2,000 van trailers over a period of 23 months and found a significant reduction in conspicuity relevant crashes for the treated vehicles as compared to control vehicles (untreated). The research report also included a discussion of the methodology for the study.

The authors summarized the research methodology as follows:

> Both laboratory and field investigations were conducted to address the issues of interest. For example, two laboratory studies were carried out to establish reasonable upper limits for glare from retroreflective surfaces. Field measurements of glare from retroreflective panels positioned at various distances were then taken from different vehicles to relate the laboratory measurements to actual driving conditions.
>
> Minimum reflectivity values were determined from field studies that related material reflectivity values to detection distance. Full scale presentations of various treatment configurations were employed on an actual trailer. The distance at which subjects could detect the trailer were measured on each trial. Final recommendations were based on values corrected for subject expectancy.
>
> The recommendations for pattern and configuration of retroreflective enhancements were based on several field and laboratory studies. The first laboratory investigation involved a paired comparison of various combinations of red and white retroreflective materials viewed at two distances. Two field studies were also carried out in which subjects, who were instructed to look for "potential hazards," detected and identified various retroreflective treatments in a normal driving situation. Finally, using computer presentations of stimuli, two additional laboratory studies were conducted to evaluate the relative importance of different configurations of retroreflective treatments in estimating relative vehicle speed and changes in vehicle spacing.
>
> The tradeoff between treatment width and reflectivity value was assessed in a field study in which subjects drove toward different retroreflective displays and indicated when they could detect them. Measures were taken of detection distance.
>
> Finally, surveys of trucks in use were conducted to assess the effects of environmental dirt and grime as well as degradation due to aging. To measure the effects of dirt, 17 trailers were fitted with retroreflective patches on the sides and rears. The reflective values of these were measured at regular intervals for a period of one year. The effects of aging were assessed by measuring the reflectivity value of retroreflective material that had been in place on trailers for various periods of time. The oldest material measured had been in place for more than 20 years.

The FHWA considers the NHTSA's research results to be reliable indicators of the potential safety benefits of the use of retroreflective materials in preventing passenger cars from crashing into the sides or rear of trailers. None of the commenters identified flaws in the research methodology for the work performed between 1980 and 1985, or the work performed between 1990 and 1991. Furthermore, none of the commenters presented technical data that would call into question the conclusions and recommendations presented in the NHTSA research reports.

Although several motor carriers indicated that they have not experienced any benefits (in terms of preventing passenger cars from crashing into their trailers) from using retroreflective tape, the FHWA believes that negative conclusions are not valid unless based upon detailed information. The information that needs to be evaluated includes: the total number of trailers operated by the fleets in question; the types of trailers operated; the total number of trailers that have conspicuity treatments; daytime and nighttime exposure data (miles traveled with a distinction between urban and rural roads) for the trailers that were treated with conspicuity materials and the trailers that were not treated with conspicuity materials; reflectivity levels for the conspicuity materials used; and, color combinations and patterns for the conspicuity treatments. The before-and-after accident experience of each of the fleets should also be examined carefully. None of the commenters indicated that this type of information was collected and analyzed, or that such information would be made available for review by the FHWA. Therefore, the FHWA does not believe that the commenters have provided enough technical information to warrant terminating the rulemaking.

In response to the commenters who argue that the problem of passenger cars crashing into trailers is not severe enough to warrant a retrofitting requirement, the FHWA believes that the number of these collisions indicates that motorists have a major problem recognizing trailers at night and under other conditions of reduced visibility. The FHWA has reviewed recent accident data and determined that the number of accidents, fatalities and injuries are strong indicators of the need for continuing this rulemaking. The NHTSA's Fatality Analysis Reporting System (FARS) data for 1994 indicates that nighttime collisions in which the passenger vehicle struck the side of a trailer at an angle (as opposed to sideswiping the trailer) accounted for 119 incidents resulting in a total of 140 fatalities. There were 173 nighttime incidents involving a passenger vehicle rear-ending a trailer. The result was 198 fatalities.

The FARS data for 1995 indicates that nighttime collisions in which the passenger vehicle struck the side of a trailer at an angle accounted for 115 incidents resulting in a total of 136 fatalities. There were 200 nighttime incidents involving a passenger vehicle rear-ending a trailer. The result was 224 fatalities. When consideration is given to the NHTSA's estimate (based upon

the research cited earlier in this notice) of the effectiveness of trailer conspicuity treatments at preventing certain types of accidents, and the NHTSA data on the number of accidents, fatalities, injuries, and property damage associated with these accidents, it is reasonable to conclude that significant safety benefits could be achieved if a retrofitting requirement was established.

With regard to the ATA's reference to The Maintenance Council's (TMC) recommended practice, *Large Vehicle Conspicuity Markings*, RP 722, the FHWA does not believe the TMC publication has any relevance to this rulemaking since motor carriers are not required to comply with the recommended practice. This is especially the case given that many trailers have not been retrofitted with any form of conspicuity treatment. The FHWA's observations of trailers currently in use suggest that a large number of motor carriers are either unaware of the ATA's recommended practice, or have chosen to ignore the recommendation. The large number of untreated trailers also suggests that the market forces that the ATA alluded to have not been effective in prompting carriers to voluntarily retrofit their vehicles. Therefore, the FHWA believes that it is necessary to continue this rulemaking and to request public comments on the specific regulatory language that is being proposed in this notice.

The FHWA contacted the SAE to inquire about the status of its efforts to publish a surface vehicle information report concerning conspicuity markings. The SAE advised the FHWA that the project was discontinued.

On the subject of the potential economic impact that this rulemaking would have on the motor carrier industry, the FHWA has prepared a preliminary regulatory evaluation (PRE) to accompany this rulemaking notice. A copy of the PRE is included in the docket. The FHWA estimates that the total cost of this rulemaking would be $339 million. This estimate is based upon the assumption that approximately 1,373,000 trailers would be covered by the rule (if a 2-year phase-in period chosen). The FHWA estimates that the benefits of the rulemaking would be approximately $741 million. A detailed discussion of how the FHWA prepared its estimates is provided later in this notice for commenters that are not able to review the PRE.

In response to commenters concerned about whether their fleets would be required to replace conspicuity treatments that are of a different pattern or color scheme than the NHTSA requirements, it is not the intention of the FHWA that motor carriers remove conspicuity treatments applied to trailers prior to the issuance of this proposal solely because they employ different color schemes than that required by the NHTSA. To accommodate this concern, the FHWA is proposing to allow carriers flexibility in terms of the colors used to satisfy the requirements for a period of 10 years from the effective date of the final rule. This time period was chosen because trailers that were voluntarily equipped with conspicuity treatments will have exceeded their useful service lives and be retired from service. It is, therefore, reasonable to require that at the end of the 10-year period, all motor carriers to use conspicuity treatments that conform to the NHTSA standard (i.e., the use of a red-and-white pattern, and retroreflective sheeting that is certified as meeting the minimum reflectivity levels specified in the NHTSA rule). Although the FHWA would allow the use of alternative colors during a 10-year period, the agency would adopt regulatory language that encourages motor carriers to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern. Motor carriers which do not retrofit their trailers to the NHTSA standard (for example by using an alternative color pattern) during the 10-year period, would be required to comply with FHWA's rules concerning the locations and colors. The FHWA would require that the locations at which the conspicuity treatments are installed be consistent with the NHTSA standards under FMVSS No. 108. This preliminary decision is supported by information contained in *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task II, Analyses, Experiments and Design Recommendations.*

The research included studies to determine the relative conspicuity of certain patterns of retroreflective material in a field setting under nighttime and daytime viewing conditions. The color combinations included red and white, blue and white, green and white, and fluorescent red-orange and white. Pairs of conspicuity patterns were installed side-by-side on a truck and viewed at two distances. Subjects were asked to judge which of each pair was the most attention demanding, appeared closer, and showed the most detail. All possible pairs of the 12 test patterns were presented to the subjects. The research showed that the high-reflectivity red and white pattern (using a 3 to 2 ratio of red to white) was the only configuration that received high rankings during both daytime and nighttime conditions. The next best patterns, in terms of the test subjects' reactions, were high-reflectivity blue and white, and green and white (using 3 to 2 ratio of the darker color to the white).

It is very important to note that the researchers acknowledged that an "emphasis was placed on deriving an improved and practical pattern, rather than some optimum pattern." While the findings indicate the red and white pattern was the most effective in terms of hazard recognition, it does not imply that other color schemes or patterns had no value or effect. Therefore, allowing alternative colors for a 10-year period will minimize the economic impact of this rule on motor carriers that have voluntarily retrofitted their trailers with alternate color schemes, while ensuring to the greatest extent practicable, safety benefits during the transition period.

The FHWA fully supports the NHTSA's selection of a standardized red and white pattern for use by trailer manufacturers. However, it is obvious that similar treatments in other colors already applied by safety conscious motor carriers also improve conspicuity and provide potential safety benefits. The FHWA believes it would be inappropriate to immediately prohibit the use of other colors of conspicuity material on trailers manufactured prior to December 1, 1993, because it would have the effect of requiring motor carriers to remove reasonable conspicuity treatments of other colors from older trailers. Such a regulation would penalize motor carriers who had taken steps to retrofit their vehicles prior to the establishment of Federal standards.

The principal reason for NHTSA's requirement of a red and white pattern was to make the reflective image on the side of a trailer recognizable to motorists. Since the side conspicuity treatment consists of a single line of material, a distinct color pattern, less ambiguous than solid white or yellow, was established so that motorists would learn to associate it with trailers. A red and white pattern was chosen for standardization because it was already commonly associated with danger. This color combination is widely recognized and associated with highway hazard warning signs such as stop signs and railroad grade crossing gates. NHTSA also considered outlining the sides of trailers with reflective material to make

them recognizable, but rejected that approach because it was more costly and impractical for trailer configurations other than van-type trailers.

The FHWA does not believe that this proposal will inhibit NHTSA's goal of having the public learn to associate a long red and white line of retroreflective sheeting (or reflex reflectors) with the side of a trailer. On the contrary, the agency expects the majority of conspicuity retrofits to be red and white despite an equitable policy toward existing treatments of other colors during a 10-year transition period. The NHTSA has received numerous inquiries from fleets about voluntary retrofitting since 1993 and none of those fleets expressed an interest in color combinations other than red and white. At the end of the 10-year period, all trailers, irrespective of the date of manufacture, would be required to be equipped with red-and-white retroreflective material which meets the NHTSA's requirements, including certification marking. During the transition period the FHWA's regulations will continue to require red and white treatments be maintained on trailers manufactured on or after December 1, 1993. Therefore there is no financial or aesthetic incentive for motor carriers to retrofit their older trailers in ways that avoid a common fleet appearance with their newest equipment and with future acquisitions.

In addition to the reasons cited in the preceding paragraphs, the FHWA has opted to allow flexibility for trailers that have not been retrofitted with any type of conspicuity treatment because it would be difficult, if not impossible, to enforce a requirement for the use of red and white material. The agency would have to distinguish between older trailers covered by the proposed "grandfathering" clause, and older trailers that were retrofitted on or after the effective date of the final rule. The FHWA is not aware of a practical and effective means of obtaining proof of the date that the reflective material is actually installed on the trailers.

The FHWA requests comments on its preliminary decision to allow, during a 10-year transition period, motor carriers flexibility in the colors or color combinations of retroreflective materials that would be used to satisfy the proposed requirements.

General Discussion of Comments in Support of the Rulemaking

As mentioned previously in this notice, the FHWA received 828 comments from concerned citizens (including individual truck drivers) in support of the rulemaking. In addition to the concerned private citizens the FHWA received 87 comments from companies, organizations, law firms (most of which represented individuals who were killed or injured in accidents involving a commercial motor vehicle), State governments, and municipal governments (including fire and police departments). Commenters included: 3M; Advocates for Highway and Auto Safety (the Advocates); Alterman Transport Lines, Inc.; the American Society of CLU and ChFC; the Denton County Democratic Party; the Eye Care Center; the Insurance Institute for Highway Safety (IIHS); the National Sheriffs' Association; Roberson Corporation; R.R. Crawford Engineering; D.A.S. Roofing Company; Joseph E. Badger Accident Reconstruction Services; the Wellness Center; the Seniors Civil Liberties Association, Inc.; the Maryland State Highway Administration; Merck and Co., Inc.; the Montana chapter of the American Automobile Association; Miller and Bethman, Inc.; Minnesota State Representative Sidney Pauly; Minnesota State Patrol; New Jersey State Senator John J. Matheussen; New York City Department of Transportation, Bureau of Traffic; City of Tampa, Department of Public of Works; Strategic Metro Area Reduction Team, Inc.; Transamerica Leasing, Inc.; U.S. Representative James C. Greenwood; U.S. Representative Paul McHale; former U.S. Representative Marjorie Margolies-Mezvinsky; University of South Florida, Department of Community and Family Health; Montana Office of Public Instruction; Kay E. Konz, Nebraska Volunteer Coordinator for Citizens for Reliable and Safe Highways; Operation Front Line; and the Owner-Operator Independent Drivers Association (OOIDA).

The OOIDA indicated that it supported the NHTSA's rulemaking to require conspicuity treatments on newly manufactured trailers because it agreed with NHTSA's findings that better conspicuity would significantly reduce the likelihood of side and rear collisions. The OOIDA stated:

> It has been the experience of the Association that owner-operators equip their vehicles in such a way that better use is made of reflective devices and additional lighting. OOIDA believes that it would be in the best interests of motor carriers to do all that is necessary to enhance the visual conspicuity of their vehicles, regardless of the age of the tractor or trailer in question. Not only will the safety of the driving public be increased, but insurance costs would likely be reduced. For example, OOIDA works closely with one insurance company that already requires reflective devices on flatbed trailers. However, such requirements should not be left to the uncertainties of voluntary compliance.

The Insurance Institute for Highway Safety (IIHS) indicated that requiring retrofitting of the red and white retroreflective materials is needed to achieve the full safety benefits of the NHTSA requirements in terms of reductions in deaths, injuries, and property damage. The IIHS believes that only a portion of the fleet of trailers will be replaced during a given year and that the retrofitting should be required for all trailers in operation.

The Advocates also supports a requirement to retrofit vehicles with conspicuity treatments that conform to the NHTSA standard. The AHAS stated:

> Given the fact that the current regulation is in effect, Advocates wants to stress early in these comments that, notwithstanding our concern that the NHTSA did not choose an optimal reflectorization design for truck trailers, we think it is crucial that any retrofit of existing heavy truck trailers with reflective materials should adhere strictly to the marking regime established by NHTSA in its amended Final Rule. The importance of [an] unambiguous conspicuity message for other drivers cannot be overestimated and, therefore, any proposal for reflectorization of the sides and rears of trucks by the FHWA should conform in all particulars to the regulation for new trailers. Competition from reflectorized logos and accessory reflectorization of trailers already threatens to overwhelm the sparse conspicuity signature of the NHTSA FMVSS. Any prospective Federal Motor Carrier Safety Regulation (FMCSR) must assist in reducing the wide variety of competing conspicuity cues already present in the existing truck fleet. Without such uniformity, the FHWA may saddle the motor carrier industry with an additional financial burden that does not reap substantial benefits in reducing both crashes and crash severity.

In addition, the AHAS argues that the FHWA should require retrofitting of conspicuity materials on single-unit trucks and apply the conspicuity requirements to vehicles operated in the United States by Canada- and Mexico-based motor carriers.

Several law firms submitted comments in support of a retrofitting requirement. One of the firms was Elliot, Reihner, Siedzikowski, North and Egan which represents the estates of Marion Steward and Carl Hall, both of whom were killed in accidents involving collisions into the side of a trailer. David Narkiewicz, responding on behalf of the law firm, stated:

> There is no question in my mind but that both of the above individuals would still be alive if appropriate retroreflective tape and additional lighting had been installed on both of the tractor trailers which were positioned at 45 degree angles across both lanes of the highway in both accidents.

On the subject of the red and white pattern for conspicuity treatments, Mr. Narkiewicz stated:

> [M]any of the conspicuity experts which I have utilized have told me that the broken pattern of red and white now mandated on new trailers is not as good as solid white, so I would ask that reflective tape be required but leave the colorant pattern up to the owners of the vehicles. There should be minimum standards as to size and location but do not overregulate so that improvements in the future would not be possible because of rigid guidelines that need to be continually amended.

Only one motor carrier submitted a comment in support of a requirement to retrofit vehicles in a red and white pattern. Alterman Transport Lines, Inc. (Alterman), with a fleet of 1,400 trailers, indicated that it had already started retrofitting its older trailers. Alterman stated:

> We think it provides perfect visibility. We have checked conditions a number of times especially during the night in rainy and foggy conditions, indeed it does support that which the program was designed [to accomplish].

The FHWA agrees that older trailers should be retrofitted with red-and-white conspicuity treatments. However, the FHWA believes that motor carriers should not be penalized for voluntarily retrofitting their trailers with conspicuity treatments of alternate colors. The FHWA is proposing to allow these carriers 10 years to continue to use the non-conforming colors. The end of the 10-year period would coincide with the expected end of the useful service life of the vehicles in question.

The NHTSA in its final regulatory evaluation estimated that the average trailer has a useful service life of approximately 14 years. Commenters to both the NHTSA's NPRM and the FHWA's ANPRM generally agreed with this estimate. Tank trailers are both more expensive and more durable than other types of trailers and are believed to have a useful life of approximately 20 years. The NHTSA requirements cover trailers manufactured on or after December 1, 1993, which means that the 14-year useful service life on most trailers manufactured shortly before this date would be reached around the year 2007. The useful service life of most tank trailers would be reached around the year 2013. Therefore, the 10-year period will help to ensure that motor carriers operating trailers equipped with non-conforming conspicuity treatments will not be penalized by the retrofitting rulemaking. However, if these carriers choose to continue operating these trailers at the end of the 10-year period, the vehicles would have to be retrofitted with a conspicuity treatment that conforms to the NHTSA standard. For carriers operating tank trailers equipped with non-conforming conspicuity treatments, the old treatments would have to be replaced with a conforming conspicuity treatment within 10 years of the effective date of the final rule.

As discussed in the preceding section of this notice, the NHTSA's research suggests that there are potential safety benefits from the use of other color combinations. While the FHWA fully supports the NHTSA's decision to require the red and white pattern on newly manufactured trailers, attempting to immediately extend that requirement to trailers that are already equipped with a different conspicuity scheme would not result in a cost effective improvement in safety. The FHWA is not aware of data that would enable the agency to conclude that the level of effectiveness of the alternative color schemes on older trailers is unacceptable for use during the proposed 10-year transition period.

The FHWA does not intend to propose, at this time, conspicuity treatments on single-unit trucks. This rulemaking is not intended to serve as a forum for resolving complaints about the NHTSA's conspicuity rulemaking. The NHTSA provided all interested parties with the opportunity to comment on the amendments to FMVSS No. 108 during its rulemaking on trailer conspicuity.

The Advocates have not provided data to prove that a retrofitting requirement for single-unit trucks would be a cost-effective solution to the problem of passenger vehicles colliding with single-unit trucks. The NHTSA's accident data (Fatality Analysis Reporting System (FARS) and General Estimates System (GES)) indicate that combination vehicles are over represented in collisions involving passenger vehicles striking the sides or rear of commercial motor vehicles. This means that the number of accidents in which a passenger vehicle strikes a combination vehicle (a single-unit truck pulling a trailer(s), or a truck-tractor pulling a trailer(s)) exceeds the amount that one would expect if one looked at the percentage of the registered commercial vehicle fleet that is listed in the combination-vehicle category.

In 1995 there were an estimated 16,674 nighttime accidents in which one commercial motor vehicle and one passenger vehicle were involved. All of these accidents resulted in a fatality, injury, or one of the vehicles incurring damage severe enough to require that the vehicle be towed from the accident scene. In 4,734 of these accidents, a passenger vehicle rear-ended a trailer (2,313 cases) or struck the side of the trailer (2,421 cases). By comparison, in 2,027 of the 16,674 nighttime accidents a passenger vehicle rear-ended a single-unit truck or truck-tractor (1,112 cases) or struck the side of the single-unit vehicle (915 cases).

Looking at the 1995 FARS data, there were 914 fatal nighttime accidents involving one commercial motor vehicle and one passenger vehicle. In 315 of these accidents, a passenger vehicle rear-ended a trailer (200 cases) or struck the side of the trailer (115 cases). By comparison, in 67 of these nighttime accidents a passenger vehicle rear-ended a single-unit truck or truck tractor (50 cases), or struck the side of the single-unit vehicle (17 cases).

The 1995 nighttime accident statistics indicate that the frequency with which passenger vehicles strike the rear of trailers is double the frequency with which passenger vehicles strike the rear of single-unit vehicles. The frequency with which passenger vehicles strike the side of a combination vehicle is approximately 2.6 times the frequency with which passenger vehicles strike the side of a single-unit vehicle. The FARS data for 1995 show that frequency of fatal nighttime accidents involving a passenger vehicle striking the side of a combination vehicle is almost seven times the rate at which passenger vehicles strike the side of a single-unit commercial motor vehicle. The frequency of fatal nighttime accidents involving a passenger vehicle rear-ending a combination vehicle is four times the rate at which passenger vehicles strike the rear of a single-unit commercial motor vehicle.

The difference between the nighttime accident involvement for combination vehicles and single-unit vehicles is especially important because the number of registered single-unit trucks (4,219,920) is 2.63 times the number of combination trucks (1,607,183).[1] Therefore, combination vehicles represent approximately 27 percent of the fleet, but 70 percent (4,734 out of 6,761 cases) of nighttime accidents in which a passenger car struck the side or rear of a commercial motor vehicle. Looking at the fatal nighttime accidents, combination vehicles were involved in 82 percent (315 out of 382 cases) of the incidents in which a passenger vehicle struck the side or rear of a commercial motor vehicle. Based upon this data, the FHWA has decided to limit this rulemaking to semi-trailers and trailers.

[1] *Summary of Medium and Heavy Truck Crashes in 1990*, National Highway Traffic Safety Administration, February 1993 (DOT HS 807 953).

The FHWA agrees with the Advocates' recommendation that the retrofitting requirements apply to Canada- and Mexico-based vehicles. The agency's proposal applies to trailers operated by foreign-based motor carriers. This issue is discussed in greater detail later in this notice.

With regard to commenters who believe that specific accidents would not have occurred, or the severity of the accidents would have been decreased, if the trailers involved had been equipped with conspicuity treatments, the FHWA notes that the commenters offered more conclusions than evidence. While it is possible to estimate, based upon an analysis of accident data and a structured research program, the percentage of certain types of accidents that could be prevented if conspicuity requirements are established for all trailers, it is generally difficult to identify a specific accident and state with certainty that the use of retroreflective tape would have prevented the accident.

Motor Carrier Experiences Applying and Maintaining Conspicuity Treatments

The FHWA received comments from motor carriers, industry groups, and manufacturers of retroreflective sheeting in response to the question concerning motor carrier experiences retrofitting their trailers with conspicuity materials. Both supporters and opponents of the retrofitting rulemaking provided detailed information.

Contract Freighters, Inc. (Contract Freighters) indicated that when attempting to retrofit its trailers in 1986 and 1987, several hours of labor were required to prepare the surface of the trailers for proper adhesion of the conspicuity treatment. Contract Freighters also indicated that most trailers have a line of rivets that sometimes hamper the application of reflective tape. The company stated:

> The other problems with large fleets is the ability to move all the equipment to one location where the treatment can be applied in a cost effective manner. During 1986 and 1987 we were unable to get all 1,500 trailers retrofitted simply due to the logistics problems of getting them to our shop.
>
> The application is very time consuming and while a trailer may pass through our facility for inspecting and routine maintenance, there were consistently occasions that time simply did not permit putting the trailer out of service for conspicuity treatment.

The Interstate Truckload Carriers Conference (ITCC) indicated that the primary difficulty that its members experienced in retrofitting trailers was the preparation of the surface. The ITCC stated:

> Some carriers report an inordinate amount of time consumed with surface preparation so that adhesive-backed conspicuity treatments will properly adhere to the trailer surface. Some older trailers have gouges, scratches, and surface metal deterioration that result in poor application. Other older trailers have poor paint finishes that similarly prevent proper adhesion. On these older trailers, carriers report the need to sand, prepare, and repaint trailers before adhesive-backed conspicuity treatments can be applied. Ironically, some newer trailers manufactured before December 1, 1993, are treated with a paint finish, designed to reject moisture and dirt, that makes it difficult for adhesive tape to adhere to the trailer surface.

On the subject of maintaining the conspicuity treatments that had been retrofitted on the older trailers, the ITCC stated:

> Maintenance of adhesive tape poses a problem for carriers. Many carriers simply do not apply adhesive tape—or any other reflective markers—on the trailer underride bar because of the abuse that area of the trailer experiences, at loading docks and when used as a step for trailer entry, and because of the almost immediate corresponding reduction in retroreflective benefit. Carriers operating flatbed trailers report a harsh environment for retroreflective applications generally, as a result of chains and bindings that are often used with such equipment and which scrape against reflective treatments. On some applications, dirt was found to be obscuring the edge of the reflective material, so the material is now being edge-coated to prevent this problem.

The NAWGA/IFDA indicated that its members generally have not experienced problems applying reflective materials to their trailers. However, members of NAWG/IFDA did encounter adhesion problems on some of the older trailers because of rust and the condition of the trailer surfaces. The NAWGA/IFDA stated:

> For those members that have experienced problems, the biggest is not so much a "technical" problem as a matter of preparing the surface of the trailer before installation of the material. Cleaning the surface before application of the material can be a labor-intensive and costly process. In addition, certain types of conspicuity materials cannot be properly installed over or around rivets and welds.

Grote Industries, Inc., a manufacturer of lighting devices, mirrors, wiring systems, emergency warning equipment, and switches stated:

> As a manufacturer of painted, plated, and decorated parts, many of which require adhesive labels, the importance of good surface preparation is well [known] to us. There is a wide range of surfaces found on both new and in-service trailers (e.g., steel, aluminum, wood, fiberboard, various types and grades of paint, etc.) and they will or have been exposed to a wide range of contaminants and environmental effects (e.g., salt, water, oil, gas, dirt, dust, wind abrasion, diesel fuel, etc.). The net effect is a huge variety of possible barriers to good adherence of conspicuity tape. It is clear that many if [not] all in-service trailers will have surfaces that are chipped, oxidized, rusted, dirty, oily, dented, scratched, and contaminated in numerous ways and combinations of ways. The only way to provide even a chance for adherence of conspicuity tape would be to restore the trailer's finish to its original condition; a process that will be both costly and time consuming.

XTRA also expressed concerns about getting conspicuity materials to adhere to the surface of older trailers. XTRA stated:

> Any retrofitting requires the application of materials to trailers in varying conditions and produces less than optimal results. Trailer surfaces must be cleaned to achieve satisfactory adhesion. Conspicuity treatments cannot be applied satisfactorily in cold and adverse weather conditions. Because of the lack of indoor facilities, this limits the time of year in which conspicuity treatments could be applied in many areas of the country. Retrofitting of trailers may have to be repeated to maintain the conspicuity to the standard because of durability problems in applying materials to existing trailers.

The SOIC indicated that it is not aware of any intermodal chassis fleets which utilize conspicuity treatments other than required lights and reflectors. The SOIC stated:

> Many, if not most, intermodal chassis in service today have been coated with wax-based coatings. Tape materials will not adhere to these coatings and it would be necessary to apply the retroreflective tape to metal plates which must then be riveted or welded to the chassis structure.
>
> In addition, because intermodal chassis have very narrow profiles at the front and rear, it will be necessary for most chassis fleet operators to purchase new identification markings and reapply them in new locations in order to comply with the rules being contemplated hereunder. A third technical problem, not encountered in the manufacture of new equipment, is that adhesive films cannot generally be applied under very low temperature or high humidity conditions, thus affecting the ease of application of many field locations.

Schneider explained that in the case of polyurethane paints and other high gloss enamel surfaces, all road grime must be removed from the surface prior to applying the conspicuity treatment. Schneider indicated that normally an ordinary solvent is sufficient to properly clean the surface. It was emphasized that surface temperature is critical. The surface of the trailer must be greater than 4.4°C (40°F) for proper adhesion of the conspicuity treatment.

Schneider also indicated that it had experienced difficulty applying retroreflective sheeting to rear underride devices. Schneider stated:

The application of reflective sheeting to the rear underride protection of semi-trailers is best done when the underride protection is brand new. When applying to an old surface that has the normal wear and tear type abrasions and nicks in the painted surface that has resulted in a certain amount of surface rust, the surface must be buffed clean, painted, allowed to dry and then have the reflective sheeting applied in a retrofit operation. This is one of the more costly aspects of applying reflective sheeting to the rear of the trailer during retrofit and it is also an area of high maintenance because of the abrasion and scuffing of the reflective sheeting caused by locking devices which attach to the bumper at the dock areas during loading and unloading of the semi-trailer.

By contrast, the OOIDA indicated that none of its members had submitted complaints concerning technical problems applying conspicuity treatments to trailers.

The 3M Corporation stated that "Proper surface preparation protocols, tests for surface evaluation and application techniques have been developed which, when followed and used with properly manufactured adhesive systems, ensure optimal conditions for the formation of adhesive bonds." The 3M Corporation also stated:

There are some surface coatings, such as "non-hardening" paint, which are formulated to have very low surface energy. An alternate (non-adhesive) system is required to affix conspicuity treatments to these substrates.

The FHWA recognizes the difficulties that motor carriers have had retrofitting conspicuity treatments to older trailers. The agency has considered the technical problems associated with installing conspicuity treatments as part of the process for preparing the preliminary regulatory evaluation (PRE) to accompany this notice. The agency has also considered the scheduling problems cited by the commenters and used this information as one of the factors for deciding to propose a two-year phase-in period for installing retroreflective materials on trailers that are not equipped with any form of conspicuity treatment, and a 10-year transition period to replace non-conforming treatments with retroreflective material that conforms to the NHTSA requirement.

The agency believes that, in most cases, retrofitting an older trailer would not require major repairs of the trailer. Generally, thorough cleaning and proper preparation of the surfaces on which the retroreflective materials would be applied should be adequate to ensure that the tape sticks to the trailer for the remainder of the trailer's service life. The FHWA encourages commenters to this NPRM to provide additional information, including color photographs, concerning surface conditions of in-service trailers that require extensive repairs prior to applying conspicuity materials.

In response to comments concerning the difficulty of retrofitting conspicuity treatments to the rear underride guard, the FHWA is not proposing that carriers be required to apply retroreflective material at that location. The FHWA believes that requiring conspicuity treatments on the rear underride guard would, in many cases, also require the complete refurbishment of the underride device and significantly increase the economic burden of a retrofitting rule. Extensive work on the underride device would increase the amount of time the trailer would be out of revenue service, and the labor, supplies and materials needed to complete the retrofitting process. While there are potential safety benefits to having conspicuity treatments on the rear underride, the agency does not have enough information to ensure that safety benefits that would be gained by requiring the retrofitting of conspicuity treatments on the underride guard exceed the costs for installing and maintaining the reflective material in that location. The FHWA requests comments from all interested parties on this issue.

Color Combinations Currently Used by Motor Carriers

The FHWA received numerous comments from industry groups, motor carriers, and manufacturers of retroreflective sheeting in response to the request for information about current conspicuity schemes. Both supporters and opponents of the retrofitting rulemaking provided detailed descriptions of the types of reflective tape/material in use on trailers manufactured before December 1, 1993.

Gra-Gar, Inc. (Gra-Gar), which operates approximately 8,000 trailers manufactured before December 1, 1993, indicated that all of its older trailers are marked with a "light blue diamond grade reflective tape" which is compatible with the color scheme on its trailers. Gra-Gar believes that this color scheme is adequate and provides high visibility during nighttime hours.

Mobil Oil Corporation (Mobil), with a domestic fleet of more than 200 trailers (primarily MC–306 specification cargo tanks), is concerned that the FHWA's rulemaking does not acknowledge additional trailer visibility enhancement associated with the use of retroreflective corporate logos. Mobil stated:

Mobil's conspicuity enhancements to trailer sides include application of two 2-inch-wide strips of white retroreflective tape: one delineating the trailer overturn rail and one delineating the trailer lower-side rails; two retroreflective corporate logos: one 27-inch diameter "Pegasus" medallion and one 23-inch high by 77-inch "Mobil" trademark on each side of cargo tank equipment. Mobil's conspicuity enhancements to the trailer rear include application of one 19-inch high by 66-inch length retroreflective "Mobil" trademark and an eight-inch high by 108-inch length retroreflective bumper strip. Retroreflective DOT placards have also been applied to both sides and the front and rear heads of cargo tank equipment.

The 3M Corporation stated:

In addition to the NHTSA standard Red & White sheeting, we have supplied prismatic material for conspicuity in Blue & White, Red, Orange, White and other colors. These colors were chosen for their compatibility with existing graphics or corporate identity systems, as well as for their conspicuity.

The 3M Corporation indicated that its own vehicles have been marked with conspicuity materials since 1979. Red and white markings are used on the rear of the trailer and white markings are used on the sides.

The American Movers Conference stated:

The use of reflective treatment for trailers is not new in the moving industry. Movers have been installing reflective markings on trailers for a number of years. As an example, North American Van Lines began installing reflective logos and "barricades" on the rear doors of their trailers in 1969, and since 1988 have been using "jumbo" reflective logos and sheeting on the sides of trailers. In addition, some of their more recently acquired trailers are also equipped with [1½ inch] reflective silver striping along the side rails. Mayflower, Allied and United have likewise been using reflective enhancements to highlight their corporate logos on the sides and rear of trailers.

Schneider National (Schneider) indicated that it has approximately 21,000 trailers that have reflective sheeting applied in a pattern established by the company to meet its internal requirements established in 1987. Schneider uses orange reflective sheeting (2-inch by 12-inch segments) in an alternating pattern to outline the perimeter of the rear of its van-type trailers. Both of the vertical supports of the rear underride device as well as the horizontal member have white reflective sheeting applied (one 12-inch segment for the vertical components, and one 36-inch segment for the horizontal component). The sides of the trailers are outlined in a pattern of 36-inch long, 2-inch wide orange reflective sheeting.

The ATA indicated that a number of motor carrier fleets are already using reflective materials that meet or exceed the NHTSA requirements for reflectance and that the prevailing 33621opinion among

these fleets is that the color red should be used only on the rear of all trailers. The ATA stated:

> Current fleet applications of reflective materials follow the NHTSA rule in the scheme of application, with a few basic deviations. Most fleets use a broken line on the side of trailers. The rears of the trailers have, for the most part, a broken outline and/or a barricade pattern. The deviations from the NHTSA rule are the use of other colors than red, e.g., blue, orange or green and leaving tape off underride devices and the top of headerboards.

In response to the comments, the FHWA is proposing to allow, during a 10-year transition period, motor carriers to use color combinations other than red and white to satisfy the proposed retrofitting requirements. At the end of this transition period, however, motor carriers would be required to use conspicuity treatments that conform to the NHTSA requirements for trailers manufactured on or after December 1, 1993. As indicated earlier in this notice, the FHWA believes that there are safety benefits associated with the use of other color combinations. There is insufficient data to require motor carriers to immediately remove conspicuity treatments that have been applied to trailers manufactured before December 1, 1993. The effectiveness of these alternate approaches, in terms of getting the attention of motorists, may be close enough to the NHTSA standard that a requirement to replace existing treatments prior to the end of the useful service life of the trailers would not be cost effective. Therefore, the agency is proposing to allow, during a 10-year transition period, alternate colors or color combinations, with the stipulation that red retroreflective sheeting or reflex reflectors cannot be used along the sides of the trailer unless it is part of a red and white pattern.

With regard to commenters requesting that the FHWA consider allowing the use of reflective logos as a substitute for the more conventional forms of conspicuity treatments, the FHWA is not aware of any research data or other information that would support such a decision. Therefore, the FHWA is not proposing to allow the use of logos in lieu of retroreflective material in the locations specified in FMVSS No. 108. However, logos may be used in addition to the retroreflective material.

Costs To Install Conspicuity Treatments

The FHWA received numerous comments from private citizens, motor carriers, industry groups and manufacturers concerning the costs of installing conspicuity treatments.

Generally, the private citizens estimated that retrofitting a trailer costs less than $200. Most of the commenters stated that Landstar System retrofitted its trailers at a cost of $125 to $135 per trailer for a total cost of approximately $1 million. However, none of the commenters provided documentation of these estimates, and Landstar System did not submit comments.

As far as comments from the industry, Ryder Commercial Leasing & Services (Ryder) indicated that when a trailer is "almost new" it typically costs $250 (material, labor and adequate attention/skill in cleaning) for a 48-foot trailer, if the NHTSA requirement for reflective material on the rear underride is excluded.

Contract Freighters, Inc. stated that "A recent quote from a current vendor to supply reflective material came to approximately $50.00 per trailer. This estimate included material for the sides and rear of the trailer." The labor involved would include approximately "one-hour per trailer at an average labor rate of $30.00 per hour."

Bestway Systems, Inc. estimates that the cost of conspicuity markings would be approximately $90 per trailer for the tape plus a minimum of 2 hours labor at $35 per hour for a total of $160.

The Interstate Truckload Carriers Conference (ITCC) commented that its members reported costs ranging from $65 for 1,248 square inches of reflective material to $150 for 2,424 square inches of material. The ITCC also stated:

> There is a variance of up to 30 percent in the cost of materials for those carriers using a similar number of square-inch treatments. Thus, one carrier with 2,500 square inches of conspicuity treatments reports a cost of $100.00 per trailer for materials, which generally consist of the retroreflective treatment, tape, screws, and other required materials. Other carriers experience a much greater materials cost, such as $580.00 for 3,456 square inches of treatment.
>
> Labor costs vary as well, and reflect the amount of time needed to adequately prepare the trailer surface for adhesive application, to trim the material, and the like. Some carriers have not directly figured the labor cost of applying conspicuity treatments, as it is performed within the general duties of shop personnel. Other carriers report labor costs per trailer of as much as $300.00, again depending upon the amount of treatments per trailer. Only a few carriers reported seeking bids from outside vendors for conspicuity application, and reported quotes of about $185.00 per trailer for labor costs only.

The ATA believes that the labor costs for retrofitting tape cannot be accurately determined due to extreme variations in serviceable trailer conditions. However, the ATA estimates that the total cost per trailer could reach $1,400. The ATA derived its estimate as follows:

ATA ESTIMATE FOR RETROFITTING A TRAILER WITH CONSPICUITY MATERIAL

MATERIALS:	
Tape	$75–100
Chemicals	25–150
Repair parts (rubrails)	200
LABOR:	
Cleaning/grease	175–200
Cleaning/oxide	300
Vehicle repairs (replace rubrails).	500
Total Cost	1,400

The National Private Truck Council stated that some of its members reported an approximate cost of $250 for parts and labor with a high-end of $740 per trailer.

The Steamship Operators Intermodal Committee (SOIC) stated:

> The costs to apply conspicuity treatment to existing intermodal chassis vary widely, depending on the fleet operator's labor arrangements and the location at which the work is accomplished. Material expenses range from a low of $40.00 per chassis to a high of $75.00. Labor costs range from $25.00 per hour at some non-union locations to $48.00 at some unionized facilities. Two to four man-hours would be required to apply the material.
>
> Thus, the direct costs for applying retroreflective materials to a container chassis can vary from a low of $90.00 to a high of $267.00. It is SOIC's view that the mean is probably in the $210.00 range. This does not include transportation to and from repair shops nor out-of-service time.

The Pacific Merchant Shipping Association estimates that the cost for a conspicuity retrofit would be approximately $470 per chassis. This includes the cost of a new "stepguard," labor, plates and tape. The estimate does not include the cost of down time for the chassis or for drayage to and from the retrofit site.

The AMC indicated that its members reported costs from $250 to $500 for reflective tape with labor costs between $150 on a relatively new trailer and $300 for a trailer that required surface preparation.

The PMAA surveyed its members and determined that the cost of installing reflective material is estimated to be approximately $500 per vehicle. The association believes that when vehicle down time and administrative expenses are considered, the total cost per trailer would rise to more than $1,000.

Schneider National indicated that the cost of retrofitting an individual trailer is approximately $180 for materials and labor. Schneider National also indicated that there is a cost associated with

pulling a trailer out of the fleet for the retrofitting process. The cost for pulling the trailer out of revenue service is $75 per day. The company believes a trailer can be retrofitted with only one day of lost productivity.

Yellow Freight Systems, Inc. (Yellow) estimates the cost of retrofitting the trailers in its fleet to be between $168.11 and $183.94 depending on the type of trailer.

In addition to motor carriers and leasing companies, the FHWA received one comment from a trailer manufacturer, Reliance Trailer Manufacturing (Reliance). Reliance reported that its costs to install conspicuity treatments on new trailers is between $125 and $175. Reliance also stated:

> On a used trailer, the cost to install the reflective tape would be significantly higher. This additional cost is due to the preparation required [for the] contact surface of the trailer prior to application of retroreflective sheeting. The additional time required to sand, prime, and paint throughout the installation process could range from $200–$1,000 per trailer. (In addition to the regular conspicuity cost.)

The FHWA estimates that the total costs of retrofitting a 45–53 foot van-type trailer would be approximately $316. This estimate includes the cost for the retroreflective tape ($97), labor ($75), and the loss in revenues while the trailer is being retrofitted ($144). Details about how the agency developed its estimates for the costs of retrofitting are presented later in this notice as well as in the FHWA's preliminary regulatory evaluation (PRE). The FHWA notes that it is reasonable to expect that some motor carriers may be able to retrofit their trailers for less than the FHWA's estimates while others may end up spending more. However, the FHWA believes it is very unlikely that motor carriers would have to spend $1,400, as the ATA estimates.

Based upon the information presented by the commenters, the FHWA does not believe that the amount of cleaning and repairs required to comply with the proposed requirements would reach the levels estimated by the ATA (i.e., approximately $700 for rubrail repair/replacement, and approximately $400 for cleaning grease and oxidation off the surfaces of the trailer). The ATA's estimate, when compared to the estimates of other commenters, appears to be a worst case scenario for a vehicle that has not been cleaned on a regular basis, or the physical appearance of which has not been maintained. The agency believes this worst case scenario would only be applicable to a small fraction of the flatbed and heavy hauler trailers that would be subject to this rulemaking. The FHWA believes that most motor carriers have adequately maintained their vehicles and that $1,100 in repairs would not be necessary to comply with the proposed requirements.

The FHWA requests additional comments from motor carriers that believe their costs for retrofitting a trailer would greatly exceed the agency's estimates. Commenters are encouraged to provide detailed information on how their estimates were prepared, especially if the estimates are based upon first-hand experience retrofitting vehicles in their fleet.

Summary of the FHWA's Rationale for Issuing the NPRM

The FHWA recognizes the technical and economic concerns of commenters opposed to a retrofitting requirement. However, based upon the information currently available, the agency believes that retrofitting of trailers with conspicuity treatments will provide significant safety benefits. Retrofitting appears to be cost-effective and technically feasible.

The FHWA has completed a preliminary regulatory evaluation (PRE) for this rulemaking. A copy of the PRE is included in the docket. Three key issues were considered in determining whether to issue a notice of proposed rulemaking.

The first issue is the cost of installing retroreflective material on older vehicles. The surfaces of many of the older trailers will require preparation (e.g., removal of oxidation, pre-treating, etc.) to ensure that the retroreflective tape adheres. In many cases the trailer will have to be removed from revenue service to complete the retrofit. Therefore, the FHWA is proposing a two-year phase-in period to allow motor carriers to complete the retrofitting at routine maintenance intervals. The FHWA estimates that the total cost (conspicuity material, labor, and the loss in revenues) for retrofitting a 45–53 foot trailer would be approximately $316, with the cost for shorter trailers being less.

The second issue is the voluntary use of retroreflective material on older trailers by certain fleets. A large number of fleets have been using conspicuity treatments on their trailers since the mid-1980's. However, many of the color schemes as well as the levels of reflectivity of the tape used on the older trailers differ from the NHTSA requirements for trailers manufactured on or after December 1, 1993. If these motor carriers are required to replace the retroreflective materials that they voluntarily installed to improve safety, it would have the effect of penalizing motor carriers that demonstrated an extra level of safety consciousness. This would have the unintended effect of discouraging motor carriers from exploring innovative approaches to improving safety. With this in mind, the FHWA is proposing to allow these motor carriers 10 years to remove alternative conspicuity treatments applied to trailers manufactured before December 1, 1993.

The third issue concerns the projected safety benefits of trailer conspicuity material that meets the NHTSA requirement. The NHTSA estimates that retroreflective tape could lead to a 25 percent reduction in rear end collisions and a 15 percent reduction in side impact collisions. From data available at the time of the NHTSA's final rule implementing conspicuity enhancements, tractor-trailer combinations were involved annually in about 11,000 accidents in which they were struck in the side or rear at night. Within this group of accidents, about 8,700 injuries and about 540 fatalities occurred. The NHTSA indicated that the conspicuity requirements, when fully implemented, are expected to prevent, annually, 2,113 of these accidents. The NHTSA estimated 1,315 fewer injuries and about 80 fewer fatalities would occur.

In 1995 there were an estimated 16,674 nighttime accidents in which one commercial motor vehicle and one passenger vehicle were involved. All of these accidents resulted in a fatality, injury, or one of the vehicles incurring damage severe enough to require that the vehicle be towed from the accident scene. In 4,734 of these accidents, a passenger vehicle rear-ended or struck the side of a combination vehicle—a truck or truck-tractor, towing one or more trailers. It is estimated that more than 4,200 injuries occurred in these nighttime accidents.

Looking specifically at fatal accidents, the NHTSA's Fatality Analysis Reporting System (FARS) data for 1995 indicate there were 2,587 fatal accidents involving one commercial motor vehicle and one passenger vehicle. In 1,819 of these fatal accidents, the commercial motor vehicle was a combination vehicle. Of the 1,819 fatal accidents between a passenger vehicle and a combination vehicle, 200 cases were nighttime accidents in which the passenger vehicle rear-ended the trailer. The result was 224 fatalities (compared to 54 fatalities for 50 nighttime accidents in which a passenger vehicle rear-ended a single-unit commercial motor vehicle). Nighttime accidents in

which the passenger vehicle struck the side of a trailer at an angle accounted for 115 incidents resulting in a total of 136 fatalities.

FHWA Estimates of the Costs and Benefits

The FHWA has completed a preliminary regulatory evaluation comparing the projected safety benefits of a retrofitting requirement to the potential economic impact on the motor carrier industry. The following discussion summarizes the FHWA's analysis. A copy of the complete PRE is available for review in the docket.

Based upon an analysis and comparison of the estimated costs and benefits of two-, three-, and five-year phase-in period options for a retrofitting requirement, the FHWA is proposing a two-year phase-in period for trailers that are not currently equipped with retroreflective sheeting. The FHWA estimates that the total costs for motor carriers to comply with the proposed requirements within a two-year period would be $339 million, with the safety benefits (fatalities and injuries prevented) and economic benefits (property damage prevented) totaling $741 million. The FHWA estimates that this rulemaking would apply to approximately 1.4 million trailers if a 2-year phase-in period were allowed (fewer trailers would be subject to the rulemaking if the 3-or 5-year phase-in periods were chosen). It is estimated that the rulemaking would, over a ten year period, prevent 258 fatalities and 4,224 injuries associated with passenger cars colliding with trailers. In addition, this rule would prevent approximately 5,300 property damage only (PDO) accidents. The FHWA believes the projected safety benefits (in terms of accidents prevented and lives saved) outweigh the economic burden on the motor carrier industry. The following section provides a detailed discussion of how the FHWA prepared its estimates of the costs and benefits.

The costs are considered one-time costs in that the conspicuity treatments will not need to be replaced during the remaining years of the useful service lives of the trailers that would be subject to the retrofitting requirement. The estimates for the benefits are the total expected benefits over the remaining years of the useful service lives of the trailers that would be retrofitted.

Generally, there are three types of costs associated with retrofitting: the tape or reflex reflectors; the labor required to apply it; and, the opportunity cost of withdrawing the trailer from revenue-producing service. The following describes how the FHWA arrived at its estimates for the different types of costs and benefits.

Costs for Retroreflective Sheeting

The NHTSA's preliminary regulatory evaluation used a tape cost of $.675 per linear foot for 50 mm (2-inch) wide tape. Based upon comments to the NHTSA rulemaking and further analysis, the NHTSA adjusted this figure to $1.29 in its final regulatory evaluation.

The amount of tape required to retrofit a trailer varies with its size. For example, a 28-foot trailer would need 47 feet of tape: 14 feet of material per side (because the rule would require that at least 50 percent of the length of the trailer must be covered); an 8-foot strip along the bottom of the rear; 2 pairs of one foot strips for the outline of the upper rear, and approximately seven feet of material for the underride guard. (The FHWA notes that the estimated cost for retrofitting a rear underride guard that does not require complete refurbishment was included in the PRE although the FHWA is not proposing that carriers be required to install conspicuity materials on the underride guard.) By contrast a 48-foot trailer would require the use of an additional 10 feet of material for each side of the trailer or a total of 67 feet of tape.

The NHTSA estimated that the total cost for the tape would be $60.84 for 28-foot trailers, $77.67 for 40–42 foot trailers, and $86.73 for 45–53 foot trailers. The FHWA adjusted these figures to account for inflation between 1992, when the NHTSA's final regulatory evaluation was completed, and 1995. This adjustment, based upon the producer price index for industrial commodities (See Table b63 from the *Economic Report of the President*, 1996, ISBN 0–16–048501–0), increased the costs to $65.04 for 28-foot trailers, $83.03 for 40–42 foot trailers, and $92.71 for 45–53 foot trailers.

The FHWA made an additional adjustment to take into consideration the comments to the ANPRM. The additional adjustment increased the cost by approximately $4.50 per trailer. The total estimated tape cost is $69.54 for 28-foot trailers, $87.53 for 40–42 foot trailers, and $97.21 for 45–53 foot trailers.

Cost for Labor To Apply the Retroreflective Sheeting to the Trailers

The FHWA used an average wage of $25 per hour, including fringe benefits, for calculating labor costs. The NHTSA estimated that it takes 30 minutes to install tape on a trailer. While this is a reasonable estimate for factory installed tape, the FHWA recognizes that it would take longer to retrofit a trailer. This assumption is supported by the docket comments. Trailers will generally have to be prepared and cleaned for the conspicuity treatment. Trailers which have holes and other damage may require more extensive repairs.

The comments to the docket, as well as observations by FHWA staff during a 1994 site visit to a Roadway terminal (documentation of the visit is included in the docket file), indicate that the amount of time required to retrofit a trailer will vary significantly with trailer type and condition. For example, trailers with outer posts may require more extensive work than trailers with smooth exterior surfaces.

Taking into account these considerations, the FHWA estimates that the retrofitting process for the average 28-foot trailer would take 2 hours to complete. The agency estimates that the time required to retrofit 40–42 foot and 45–53 foot trailers would be 2.5 and 3 hours, respectively. The FHWA's preliminary estimates of labor costs are $50, $62.50, and $75 for the 28-, 40–42, and 45–53 foot trailers, respectively.

Opportunity Costs

Estimating the value of revenue that cannot be generated while the trailer is being retrofitted is difficult because of the variety of trailer types, the variety of motor carrier operations and the rates that are charged, and the overall manner in which some trailers are used—being left idle at the motor carrier's terminals for periods of time that may be as short as a few hours to several days.

The FHWA believes that it is more likely than not that a large percentage of trailers would have to undergo routine repair and/or maintenance at some point during the two-year phase-in period. Retrofitting trailers at the same time that repairs or maintenance are performed would result in negligible opportunity cost since the trailers would not be generating revenue in any case. Even the trailers that do not require routine repairs may be idle at some point during the phase-in period and could be retrofitted at minimal opportunity cost. However, the less time motor carriers have to comply with the retrofitting requirement, the less likely it is that they could take advantage of the routine repair or maintenance cycles or periods when the vehicle would be idle. This means that the opportunity cost increases as the phase-in period decreases.

The FHWA does not have the detailed information required to develop a comprehensive model of opportunity costs. Therefore, the agency constructed a simple model which relates the costs

to the logarithm of the phase-in period. With a five-year period, the estimated opportunity cost per trailer would be $62, while the cost for a three-year phase-in period would be $91. The opportunity costs for two-year phase-in period would be $144.

Number of Trailers

The FHWA estimates that there are 2.1 million trailers and semi-trailers in operation as of January 1994. This estimate is based largely upon the U.S. Bureau of the Census trailer production data.

The NHTSA in its final regulatory evaluation estimated that the average trailer has a usable service life of approximately 14 years. Commenters to both the NHTSA's NPRM and the FHWA's ANPRM generally agreed with this estimate. Tank trailers are both more expensive and more durable than other types of trailers and are believed to have a useful life of approximately 20 years.

The FHWA used data from the Truck Trailer Manufacturers Association (TTMA) and the U.S. Bureau of the Census concerning the number of trailers sold in the United States. This data was compiled by trailer type and year for the previous 25 years. The TTMA data was available through 1993. The NHTSA estimated that 170,000 new trailers would be sold annually. The FHWA used the NHTSA estimate for 1994 and 1995.

Given the trailer sales data and the average trailer useful service life estimates, the FHWA determined that the number of trailers in use at the end of 1995 was approximately 2.12 million. However, not all of these trailers would be affected by this regulation since some of the vehicles would reach the end of their service life before the end of the two-year phase-in period for compliance with the final rule. In addition, some of these trailers already have conspicuity markings (although the markings may not be in conformance with the NHTSA specifications) which would enable motor carriers to continue operating these vehicles during the proposed 10-year transition period for replacing non-conforming conspicuity treatments. The 10-year transition period coincides with the end of the useful service life of most of the older trailers currently in use, with the exception of tank trailers. The FHWA believes that the number of trailers that will have to be retrofitted under the two-year option would be 1,373,000. The number of trailers that would be retrofitted if the three-year option was chosen would be 1,202,000 while the number that would be covered under the five-year option would be 834,000.

With regard to the number of trailers that would have to have non-conforming conspicuity treatments replaced at the end of the 10-year transition period, the FHWA estimates most of these vehicles will be tank trailers since the useful service life of this type of trailer is approximately 20 years. Tank/dry bulk trailers are approximately 2 percent of the fleet population and tank/liquids or gas trailers represent 7.4 percent of the population of trailers (*1992 Truck Inventory and Use Survey*, U.S. Census Bureau). Applying these estimates to the 1995 data, there are approximately 199,280 tank trailers (all types). It is believed that only a fraction of these trailers have been voluntarily retrofitted with non-conforming conspicuity treatments. If 20 percent of these trailers would be covered by a requirement to replace non-conforming treatments, the agency estimates less than 40,000 tank trailers would have to have non-conforming conspicuity treatments replaced before they reach the end of their useful service life.

Total Costs for Retrofitting Trailers

Based upon the information currently available concerning the costs for retroreflective sheeting, labor, and opportunity costs, and the estimates of the number of trailers for which motor carriers would be required to take some type of actions to comply with the proposed requirements, the FHWA believes the total costs for retrofitting under the 2-year option would be $339 million. The costs for the 3-year option would be $238 million while the costs for the 5-year option would be $138 million. It should be noted that opportunity cost makes up 45 percent of the total cost for the 2-year option, and decreases to only 27 percent of the costs for the 5-year phase in period. These estimates are for a 10-year period discounted at a 7-percent rate.

Benefits of a Retrofitting Requirement

The estimated benefits of this rulemaking are a reduction in the number of fatalities, injuries, and property damage only (PDO) accidents caused by nighttime accidents in which a passenger car collides with the rear or side of a trailer. The FHWA estimates that over a 10-year period, a total of 258 fatalities and 4,224 injuries would be prevented because of this rule. The following table shows the number of accidents and injuries prevented. The net present value of this level of accident reduction is $741 million.

The reduction in fatalities comprises the largest component of benefits, at over 65 percent of the total. The second largest component is maximum adjusted injury scale (MAIS) 3 accidents, which constitute 10.5 percent of the total benefits.[2]

DISTRIBUTION OF DOLLAR AMOUNTS OF BENEFITS

Severity	Number	Percent total benefits
PDO	5,379	5.2
MAIS 1	3,282	3
MAIS 2	615	6.6
MAIS 3	265	10.5
MAIS 4	40	4.1
MAIS 5	22	4.6
Fatality	258	66

Benefits are spread unevenly over the 10-year analysis period. Benefits are expected to peak two years after the effective date of the final rule, after which there is a slow decline. Two years after the effective date of the final rule, all trailers covered by the retrofitting requirement would have conspicuity treatments. As the population of pre-1993 trailers decreases, the benefits of the retrofitting rule would decline. This pattern holds for both discounted and non-discounted dollars as well as for accidents. By the year 2000, all trailers would be required to be equipped with conspicuity treatments, and nighttime accidents would fall by 15 percent (for retrofitted trailers still in use).

[2] The Abbreviated Injury Scale (AIS) was developed by the American Medical Association and the American Association for Automotive Medicine to measure the threat to life of an accident. The MAIS refers to the maximum (most severe) injury sustained in a crash. The scale ranges from 0 for no injury to 6 for a fatality. A more detailed discussion of MAIS, including examples of the types of injuries that are included in each of the levels, is included in the FHWA's preliminary regulatory evaluation (PRE) for this rulemaking. A copy of the PRE is contained in FHWA Docket No. MC–94–1.

SUMMARY OF COSTS AND BENEFITS OF CONSPICUITY RETROFIT OPTIONS

Options for retrofitting phase-in period	2 years	3 years	5 years
Estimated number of trailers that would have to be retrofitted	1,373,000	1,202,000	834,000
Estimated benefits ($millions)	741	634	425
Estimated costs ($millions)	339	236	138
Estimated Net Benefit ($millions)	402	395	288
Benefit-to-cost ratio	2.2	2.7	3.1
Fatalities prevented (during a 10-year period)	258	226	160
Injuries prevented (during a 10-year period)	4,224	3,701	2,615

The benefit of this regulation results from an expected 15 percent reduction in nighttime side and rear crashes into trailers, and an expected 19 percent reduction in the severity of certain property damage only accidents. These estimates come from the NHTSA, which performed extensive fleet evaluations in the 1980's. According to the NHTSA, these kinds of accidents result in an average of 536 fatalities annually, and almost 8,800 injuries, most of which are minor. This proposal would prevent between 258 fatalities over a 10-year period.

The monetary value of these benefits range from over $741 million for the 2-year phase in to $425 for the 5 year phase in. Under all of the phase-in options the ratio of the benefits to costs exceeds two, with the ratio increasing as the phase-in period is extended. More importantly, all three scenarios yield net benefits (benefits minus costs) in excess of $280 million, with net benefits increasing as the phase-in period is shortened.

Two issues which could affect these results are the number of trailers already equipped with conspicuity marking, and the safety impact of existing markings which are not in compliance with the NHTSA specifications. The FHWA estimates, based on non-random observation and anecdotal information, that approximately 20 percent of trailers manufactured prior to December 1, 1993, have some form of conspicuity treatment. Although the FHWA does not have data concerning the effectiveness of the alternate conspicuity treatments that are currently in use on trailers manufactured prior to December 1, 1993, the agency believes, based upon the NHTSA's research, that many of the alternate retroreflective sheeting treatments improve conspicuity and provide potential safety benefits. Some form of conspicuity treatment is better than no conspicuity treatment, with the most effective form of conspicuity treatment being a system that conforms to the NHTSA standard. The FHWA requests comments from motor carriers using conspicuity treatments that differ from that required by the NHTSA. Specifically, the FHWA requests information concerning a reduction in the number of accidents in which passenger cars collide with the sides of rear of trailers.

Discussion of the Proposed Regulatory Language

The FHWA proposes to amend the FMCSRs by adding a new § 393.13, Retroreflective sheeting and reflex reflectors, requirements for semi-trailers and trailers manufactured before December 1, 1993. This section would be added to subpart B of part 393, Lighting Devices, Reflectors, and Electrical Equipment. Paragraph (a) would provide the applicability for § 393.13. The proposed requirements would not apply to trailers that are manufactured exclusively for use as offices or dwellings because these types of trailers are rarely transported at night. In addition, the NHTSA conspicuity requirements do not apply to this type of trailer. The FHWA is proposing to exclude pole trailers (as defined in § 390.5) from the conspicuity requirements because these trailers generally do not have side and rear surfaces to which conspicuity treatments could be applied in a cost-effective manner. The agency notes that § 393.11 does require lamps and reflectors on pole trailers and requests comments on whether retrofitting of conspicuity materials should be required on all pole trailers, including those that are currently manufactured without any type of conspicuity treatment.

In addition, the FHWA is proposing to exclude trailers that are being towed in a driveaway-towaway operation (as defined in § 390.5). This would not be a blanket exception for certain types of trailers, but an exception that would cover certain movements of trailers. Examples of the types of transportation that would be covered include movements between a dealership or other entity selling or leasing the trailer and a purchaser or lessee, to a maintenance/repair facility for the repair of disabling damage (as defined in § 390.5).

Paragraph (b) would encourage motor carriers to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, but allow the use of alternate color or color combination of retroreflective sheeting or reflex reflectors during a 10-year transition period. At the end of the 10-year period, all trailers would be required to have conspicuity treatments identical to the NHTSA requirements. Although the FHWA is proposing to allow motor carriers a certain amount of flexibility with regard to the colors of retroreflective tape or reflex reflectors, the locations for the conspicuity treatments would be required to conform to those specified in the NHTSA regulations.

Paragraph (c) would cover the locations for retroreflective sheeting, excluding the use of the reflective material on the rear underride device. Paragraph (d) would specify the locations for the arrays of reflex reflectors, excluding the use of reflectors on the rear underride device. The FHWA recognizes the concerns that motor carriers have about conspicuity treatments on the rear impact guards or rear underride devices. Consequently, the agency has tentatively determined that motor carriers should not be required to apply conspicuity material to the rear underride device. However, the FHWA specifically requests comments from motor carriers as to whether the underride device should be excluded as a required location for reflective material.

With regard to the effective date for the retrofitting requirements, the FHWA is proposing that motor carriers be allowed 2 years from the effective date of the final rule, to retrofit trailers operated in interstate commerce. Motor carriers would be allowed 10 years from the effective date of the final rule to replace non-conforming conspicuity treatments with ones that meet the NHTSA requirements for newly manufactured trailers.

Applicability to Canadian and Mexican Vehicles

The FHWA is not proposing an exemption for trailers operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require retrofitting of the trailers operating in their countries, the FHWA believes that it is appropriate to require retrofitting of conspicuity treatments on foreign-based trailers manufactured prior to the December 1, 1993, if those vehicles are operated within the United States. This preliminary decision is consistent with the applicability of the requirements of parts 393 and 396 of the FMCSRs and ensures that all commercial motor vehicles operating in interstate or foreign commerce within the United States are required to meet the same safety standards. The FHWA specifically requests comments from Canada- and Mexico-based motor carriers.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may adopt a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA has prepared a preliminary evaluation of the economic impact the proposed regulatory changes would have on the motor carrier industry. A copy of the preliminary regulatory evaluation is included in the docket file.

The FHWA estimates that the total costs for motor carriers to comply with the proposed requirements within a 2-year period would be $339 million, with the safety and economic benefits totaling $741 million. The FHWA estimates that this rulemaking would apply to approximately 1.4 million trailers. It is estimated that the rulemaking would, over a ten year period, prevent 258 fatalities and 4,224 injuries associated with passenger cars colliding with trailers. In addition, this rule would prevent approximately 5,300 property damage only (PDO) accidents.

The costs are considered one-time costs in that the conspicuity treatments will not need to be replaced during the remaining years of the useful service lives of the trailers that would be subject to the retrofitting requirement. The estimates for the benefits are the total expected benefits over the remaining years of useful service lives of the trailers that would be retrofitted. A copy of the FHWA's preliminary regulatory evaluation has been placed in the docket.

Based upon the information received in response to this NPRM, the FHWA will carefully consider the costs and benefits associated with establishing a conspicuity retrofitting requirement. The FHWA requests comments, information, and data concerning the economic impact of establishing retrofitting requirements.

Regulatory Flexibility Act

The FHWA has evaluated the effects of the proposed regulatory changes on small entities. A copy of the Regulatory Flexibility Analysis is provided in the docket file. Generally, the costs per trailer for retrofitting should be comparable, but not necessarily identical, for both large motor carriers and small motor carriers. For example, large carriers will be able to obtain discounts when ordering conspicuity materials in bulk. The costs for the retroreflective tape needed to comply with the proposed requirement is $69.54 for 28 foot trailers, $87.53 for 40–42 foot trailers, and $97.21 for 45–53 foot trailers. The FHWA's preliminary estimates of labor costs are $50, $62.50, and $75 for the 28–, 40–42, and 45–53 foot trailers, respectively. The FHWA believes the opportunity cost would be approximately $144 per trailer. Therefore, the costs per trailer for small entities would be $263 for 28-foot trailers, $293 for 40–42 foot trailers, $316 for 45–53 foot trailers. The costs would only apply to small entities that have trailers that were manufactured before December 1, 1993, and have not already been retrofitted with a conspicuity system that would satisfy the proposed requirements. Furthermore, the costs would only be applicable if the small entities intend to continue to operate these older trailers after the proposed 2-year phase-in period.

As of September 1996, the FHWA estimates that there were approximately 382,128 interstate motor carriers. Of these carriers, 136,360 own, term-lease or trip-lease 6 or fewer trailers (68,405 have 1 trailer, 45,770 have 2–3 trailers, and 22,185 have 4–6 trailers). The number of motor carriers that own, term-lease or trip-lease more than 6 trailers but fewer than 21 is 21,793 (6,658 carriers have 7–8 trailers, 6,197 have 9–11 trailers, 3,887 carriers have 12–14 trailers, 2,779 carriers have 15–17 trailers, and 2,272 carriers have 18–20 trailers). If only those motor carriers that own, term-lease, or trip-lease 20 or fewer trailers are considered small entities, this rulemaking could have an economic impact on up to 158,153 small entities.

The economic impact on each of the motor carriers would vary depending on the number of trailers that the carrier would be responsible for retrofitting by the end of the 2-year phase-in period, and the size of those trailers. If, for example, the carrier only operates one 45–53 foot trailer, the total economic impact would be $316. If the carrier operates 20 such trailers that have to be retrofitted, the total economic impact would be $ 6,320.

The Small Business Administration (SBA), which oversees agencies' compliance with the Regulatory Flexibility Act, has published guidelines to classify small business. The SBA has indicated that for entities engaged in motor freight transportation and warehousing, small businesses are those with $18.5 million or fewer dollars in annual receipts. Therefore, if the motor carrier described in the preceding example is a private motor carrier with its principal business being something other than transportation, and operates 20, 45–53 foot trailers and has annual receipts of $18.5 million, the total economic impact would be less than one-tenth of one percent of the private motor carrier's annual receipts ($6,320/$18.5 million). If this carrier operated 100 trailers and had annual receipts of $18.5 million, the economic impact would be approximately two-tenths of one percent of the carrier's annual receipts ($31,600/$18.5 million).

Based on its preliminary regulatory flexibility analysis summarized above, the FHWA believes that this proposed rule, if adopted, would affect a substantial number of small entities, but would not have a significant impact on these entities. Based upon the information received in response to the NPRM, the FHWA, in compliance with

the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), will further consider the economic impacts of these potential changes on small entities. The FHWA requests comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538). However, this rule would likely result in a Federal mandate requiring expenditure by the private sector of $100 million or more in any one year. Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Issued on: June 8, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.13 is added to read as follows:

§ 393.13. Retroreflective sheeting and reflex reflectors, requirements for semi-trailers and trailers manufactured before December 1, 1993.

(a) *Applicability.* All trailers and semi-trailers manufactured prior to December 1, 1993, which have an overall width of 2,032 mm (80 inches) or more and a gross vehicle weight rating of 4,536 kg (10,001 pounds) or more, except trailers that are manufactured exclusively for use as offices or dwellings and pole trailers (as defined in § 390.5) and trailers transported in a driveaway-towaway operation, must be equipped with retroreflective sheeting or an array of reflex reflectors that meet the requirements of this section. Motor carriers have until [two years from the effective date of the final rule] to comply with the requirements of this section.

(b) *Retroreflective sheeting and reflex reflectors.* Motor carriers are encouraged to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern (see Federal Motor Vehicle Safety Standard No. 108 (49 CFR 571.108), S5.7, *Conspicuity systems*). Motor carriers which do not retrofit their trailers to meet the requirements of FMVSS No. 108, for example by using an alternative color pattern, must comply with the remainder of this paragraph and with paragraph (c) or (d) of this section. Retroreflective sheeting or reflex reflectors in colors or color combinations other than red and white may be used on the sides or lower rear area of the semi-trailer or trailer until [ten years from the effective date of the final rule]. The alternate color or color combination must be uniform along the sides and lower rear area of the trailer. The retroreflective sheeting or reflex reflectors on the upper rear area of the trailer must be white and conform to the requirements of FMVSS No. 108 (S5.7). Red retroreflective sheeting or reflex reflectors shall not be used along the sides of the trailer unless it is used as part of a red and white pattern. Retroreflective sheeting shall have a width of at least 50 mm (2 inches).

(c) *Locations for retroreflective sheeting.*—(1) *Sides.* Retroreflective sheeting shall be applied to each side of the trailer or semi-trailer. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The strip need not be continuous but the sum of the length of all of the segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. If necessary to clear rivet heads or other similar obstructions, 50 mm (2 inches) wide retroreflective sheeting may be separated into two 25 mm (1 inch) wide strips of the same length and color, separated by a space of not more than 25 mm (1 inch).

(2) *Lower rear area.* The rear of each trailer and semi-trailer must be equipped with retroreflective sheeting. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each of the strips of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area.

(3) *Upper rear area.* Two pairs of white strips of retroreflective sheeting, each pair consisting of strips 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semi-trailer, as close as practicable to the top of the

trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides.

(d) *Locations for reflex reflectors.*—(1) *Sides.* Reflex reflectors shall be applied to each side of the trailer or semi-trailer. Each array of reflex reflectors shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The array need not be continuous but the sum of the length of all of the array segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array. If reflex reflectors are arranged in an alternating color pattern, the length of reflectors of the first color shall be as close as practicable to the length of the reflectors of the second color.

(2) *Lower rear area.* The rear of each trailer and semi-trailer must be equipped with reflex reflectors. Each array of reflex reflectors shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

(3) *Upper rear area.* Two pairs of white reflex reflector arrays, each pair at least 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semi-trailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the arrays may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

[FR Doc. 98–15622 Filed 6–18–98; 8:45 am]
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Notice of
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Notices

Federal Register
Vol. 63, No. 118
Friday, June 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–049–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Comments on this notice must be received by August 18, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–049–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–049–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the Cooperative State-Federal Bovine Tuberculosis Eradication Program, contact Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5970. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, APHIS' Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Number: 0579–0084.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of serious communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, the Animal and Plant Health Inspection Service participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis (a serious disease of livestock) from the United States.

The disease also affects man through contact with infected animals or their byproducts. Our program is conducted under the various States' authorities supplemented by Federal regulations on the interstate movement of animals.

Implementing our Bovine Tuberculosis Eradication Program necessitates the use of a number of information-gathering documents, including various forms needed to properly identify, test, and transport animals. Other information gathering documents are used to report and review epidemiological data collected during investigations necessary to locate the disease and ensure adequate controls are in place to prevent its spread. Still other documents provide information we need to pay indemnity to owners of animals that are destroyed because of tuberculosis.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.32444 hours per response.

Respondents: State Veterinarians, livestock inspectors, herd owners.

Estimated annual number of respondents: 5,031.

Estimated annual number of responses per respondent: 10.642.

Estimated annual number of responses: 53,540.

Estimated total annual burden on respondents: 17,371 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16279 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–048–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the proposed release into the environment of nonindigenous weevils for use as biological control agents to suppress hound's-tongue (*Cynoglossum officinale*), an introduced weed. The environmental assessment has been prepared to provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing these biological control agents into the environment.

ADDRESSES: Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald D. Hennessey, Entomologist, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737, (301) 734–7839; or E-mail: rhennes@aphis.usda.gov. For copies of the environmental assessment, write to Dr. Ronald D. Hennessey at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has received an application from Montana State University for a permit to release a nonindigenous root-feeding weevil, *Mogulones cruciger* (Coleoptera: Curculionidae), for biological control of hound's-tongue, *Cynoglossum officinale* (Boraginaceae). Hound's-tongue is an introduced weed that has been reported in 36 of the 48 contiguous States. The purpose of the proposed action is to reduce the severity of infestations of hound's-tongue in the United States through the introduction of *M. cruciger*.

Hound's-tongue is an invasive weed that significantly reduces forage and whose barbed seeds stick to sheep, reducing the value of wool, and stick to cattle, causing skin irritation and behavioral problems. Hound's-tongue also contains large quantities of pyrrolizidine alkaloids, which are toxic to cattle and horses. Distribution of hound's-tongue is currently increasing in Montana and British Columbia.

The applicant is proposing to collect the *M. cruciger* adults from Hungary and Serbia and import them to the Insect Quarantine Laboratory at Montana State University in Boseman, MT, where their species identity would be confirmed, and examinations for diseases, parasitoids, and other contaminants would be made. The weevil would then be released in infestations of hound's-tongue at several selected sites in western and central Montana.

After substantial weevil populations are established, insects would be collected and distributed to other sites in Montana. Distribution would follow in other affected States as soon as possible. Eventually, the weevil is expected to spread throughout many or all of the 36 States in which hound's-tongue occurs.

If a permit to release *M. cruciger* is issued, this weevil will be the first exotic biological control agent approved for release against Hound's-tongue in the United States.

To provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing these biological control agents into the environment, we have prepared an environmental assessment relative to the release into the environment of *M. cruciger* entitled "Field Release of *Mogulones cruciger* (Coleoptera: Curculionidae), a Nonindigenous Weevil Proposed for Biological Control of Hound's-Tongue, *Cynoglossum officinale* (Boraginaceae)" (May 1998).

The environmental assessment has been prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1509), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 12th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16280 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: July 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed.

Administrative Services

General Services Administration, Federal Protective Service Division, 450 Golden Gate Avenue, San Francisco, California
NPA: Jewish Vocational and Career Counseling Service, Inc., San Francisco, California

Facilities Services Support

White Sands Missile Range, White Sands, New Mexico
NPA: Tresco, Inc., Las Cruces, New Mexico

Food Service

U.S. Marine Corps Base Dining Facilities, Quantico, Virginia
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–16393 Filed 6–18–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 1, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 FR 24153) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List.

Janitorial/Custodial

Federal Building and Courthouse, 1 North Palafox Street, Pensacola, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–16394 Filed 6–19–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Under Secretary David Aaron's High-Technology Trade Mission to Southeast Asia

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice serves to inform the public that Ambassador David L. Aaron, Under Secretary for International Trade, will lead a High-Technology Trade Mission to Malaysia, Singapore, Thailand and the Philippines, September 7–19, 1998. This notice also sets forth mission objectives, application procedures, and participation criteria.

DATES: Applications should be submitted to Alain de Sarran by Friday, July 31, 1998, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

ADDRESSES: Request for and submission of applications—Applications are available from Alain de Sarran, Deputy Director, Office of International Operations, East Asia and the Pacific, at (202) 482–2422 or via facsimile at (202) 501–6165. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the project officer noted above. Applications sent by facsimile must be immediately followed by submission of the original application to Mr. de Sarran at the following address: Office of International Operations, East Asia and the Pacific, Room 1223, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Alain de Sarran or Paul Kullman at (202) 482–2422. Information is also available via the International Trade Administration's (ITA) Internet home page at "http://www.ita.doc.gov"

Trade Mission Description

This trade mission is designed to lend high-profile U.S. Government advocacy to American companies, particularly small and medium-sized firms, seeking business opportunities in high-technology sectors in Southeast Asia, and to demonstrate U.S. support of countries in the region recovering from the financial crisis. The current financial problems affecting Southeast Asia are slowing growth in the short term. However, as these economies implement financial reforms, their rates of economic growth can be expected to resume a more dynamic pace, thereby providing U.S. companies with exceptional high-tech export opportunities.

Government leaders of Malaysia, Singapore, Thailand and the Philippines place many of their hopes for industrial modernization, increased competitiveness, and economic recovery in their high-tech sectors, and they often look to the United States first to help fulfill these hopes because U.S. companies possess cutting-edge technology and know-how. Guided by reporting on best export prospects from the Department's overseas offices, this mission endeavors to meet foreign demand for information technology, telecommunications and environmental technology.

The mission will visit Kuala Lumpur and Penang, September 7–10 ;

Singapore, September 11; Manila, September 12–16; and Bangkok, September 16–19. The program for the mission includes embassy briefings on the commercial/economic environment, meetings with potential buyers, agents, distributors and strategic alliance partners, and engagements with Asian ministers and business leaders as well as American business executives based in Southeast Asia.

Trade Mission Goals

The goals of the trade mission are to:

(1) Boost U.S. high-technology exports and market share in Southeast Asia;

(2) Establish and expand business relations between U.S. executives and host-country government and industry leaders;

(3) Highlight U.S. leadership and competitiveness in high-technology sectors;

(4) Identify new and upcoming commercial high-technology opportunities in the region;

(5) Achieve greater transparency and fairness in host-country procurement and purchasing decisions; and

(6) Demonstrate high-visibility U.S. support for the Southeast Asian economies recovering from the recent economic downturn.

Criteria for Participation

The recruitment and selection of private sector participants in this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary William Daley on March 3, 1997. Company participation will be determined on the basis of:

(1) Relevance of the company's business line to the trade mission's goals;

(2) Potential for sales to the selected high-technology sectors in the target countries;

(3) Timeliness of company's completed application and payment of the participation fee;

(4) Certification that the company's product or service is manufactured or produced in the United States, or, if manufactured/produced outside the United States, the product/service is marketed under the name of a U.S. firm and has U.S. content representing at least 51 percent of the value of the finished product or service.

Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process. Third parties may nominate or endorse potential applicants, but companies that are nominated or endorsed must themselves submit an application to be eligible for consideration. Referrals from political organizations will not be considered.

Costs

The fee to participate in the trade mission is $5,500 per person. Each additional person from the same company costs $500. This fee does not cover travel or lodging expenses.

Authority: 15 U.S.C. 1512.

Dated: June 15, 1998.

Alice Davenport,

Regional Director, Office of East Asia and the Pacific, International Trade Administration, Department of Commerce.

[FR Doc. 98–16333 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of a subgroup of the Ad Hoc Crustacean Stock Assessment Panel (SAP).

DATES: The meeting of the Crustacean SAP held June 1–4, 1998, will be continued on June 30, 1998 with the subgroup meeting beginning at 9:00 a.m. and concluding by 12:00 noon.

ADDRESSES: The Crustacean SAP subgroup meeting will be held at the Florida Department of Environmental Protection, Florida Marine Research Institute, 100 Eighth Avenue, Southeast, St. Petersburg, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: A subgroup of the SAP will convene to review stock assessment information on spiny lobster and to develop alternatives for determining the overfishing criteria as required by the Sustainable Fisheries Act in accordance with the original **Federal Register** Notice published May 8, 1998.

Although other issues not contained in this agenda may come before the subgroup for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 16, 1998.

Dated: June 15, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16374 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1156, 1159); Issuance of scientific research permits (1095, 1120, 1140) and a modification to a scientific research permit (994).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of listed species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: U.S. Environmental Protection Agency at Corvallis, OR (EPA) (1156) and Robert L. Brownell, Jr., Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA (SWFSC) (1159); NMFS has issued permits to: U.S. Bureau of Reclamation at Denver, CO (USBR) (1095); Idaho Department of Fish and Game at Boise, ID (IDFG) (1120); and the Environmental Conservation Division, Northwest Fisheries Science Center, National Marine Fisheries Service, Seattle, WA (NWFSC-ECD) (1140); and NMFS has issued a modification to a scientific research permit to the Idaho

Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) (994).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before July 20, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 994, 1095, 1120, 1140, 1156: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1159: Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 994 and 1120: Robert Koch, Portland, OR (503–230–5424).

For permits 1095, 1140, and 1156: Tom Lichatowich, Portland, OR (503–230–5438).

For permit 1159: Michelle Rogers, Endangered Species Division, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**)). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of the permits and modifications, as required by the ESA, was based on a finding that such permits and modifications: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits and modifications were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*Oncorhynchus kisutch*), Cutthroat trout (*Oncorhynchus clarki clarki*), Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eretmochelys imbricata*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*), Olive ridley sea turtle (*Lepidochelys olivacea*), and Sockeye salmon (*Oncorhynchus nerka*).

New Applications Received

EPA (1156) requests a 5-year permit for direct takes of juvenile, threatened, southern Oregon/northern California coast coho salmon; adult and juvenile, endangered, Umpqua River cutthroat trout; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with research designed to collect data in the South Upmqua, Rogue, and Snake Rivers. ESA-listed fish are proposed to be captured using electrofishing, examined, and released. The data will be used to enforce the Clean Water Act which will increase the recovery potential of listed species. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

SWFSC (1159) has requested a 3-year scientific research permit to take listed sea turtles opportunistically during marine mammal research surveys in the eastern tropical Pacific. Authorization has been requested to take up to 400 turtles over the 3-year period to include the following species: olive ridley, green, leatherback, hawksbill, and loggerhead. The turtles would be weighed, photographed, flipper tagged, blood sampled, and tissue sampled. Additionally, stomach lavage would be performed on captured turtles to identify prey items and up to 30 turtles would be outfitted with satellite transmitters. The purposes of the proposed research are to obtain data on the geographic distribution and stock assessment, migratory and dive behavior, and habitat needs and primary foraging areas of turtles at sea.

Permits and Modifications Issued

Notice was published on March 6, 1998 (63 FR 11220) that an application had been filed by ICFWRU for modification 3 to scientific research permit 994. Modification 3 to permit 994 was issued to ICFWRU on June 12, 1998. Permit 994 authorizes ICFWRU annual takes of adult, threatened, Snake River spring/summer and fall chinook salmon and adult, endangered, Snake River sockeye salmon associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. For modification 3, ICFWRU is authorized an increase in the annual take of adult, threatened, Snake River spring/summer and fall chinook salmon associated the study. Also for modification 3, ICFWRU is authorized an annual take of adult, threatened, Snake River spring/summer chinook salmon associated with a new study designed to determine if adult salmon successfully return to natal streams or hatcheries after passing Lower Granite Dam on the Snake River and if homing is affected by mode of seaward migration (in-river versus transport). Modification 3 is valid for the duration of the permit which expires on December 31, 2000.

Notice was published on 24 October, 1997 (62 FR 55394) that an application had been filed by USBR for a 1-year scientific research permit. Permit 1095 was issued to USBR on June 11, 1998. The permit authorizes USBR to capture, handle, and release juvenile, threatened, SONCC coho salmon associated with research designed to collect date on seasonal fish distribution and abundance, particularly during spring and late summer, in Bear Creek and its principal tributaries, Little Butte Creek and its tributaries, and Big Butte Creek in southwest Oregon. The purpose of the study is to support a proposal to implement habitat enhancement activities designed in part to increase instream flows, improve the reliability and efficiency of existing water supplies, improve water quality and environmental values, and conserve water. Permit 1095 expires on September 30, 1998.

Notice was published on February 19, 1998 (63 FR 8435) that an application had been filed by IDFG for a scientific research/enhancement permit. Permit 1120 was issued to IDFG on June 11, 1998. Permit 1120 authorizes IDFG annual direct takes of adult and juvenile, endangered, Snake River sockeye salmon associated with the continuation of a captive broodstock program. The program will help to preserve and perpetuate the species and provide Snake River sockeye salmon for future recovery actions. The captive broodstock program is a cooperative

effort among IDFG, NMFS, the Shoshone-Bannock Tribes, the University of Idaho at Moscow, the Idaho Department of Environmental Quality, and the Bonneville Power Administration (BPA). Funding is provided by BPA. Incidental takes of ESA-listed anadromous fish species as a result of releases from the captive broodstock program are also authorized. Permit 1120 expires on December 31, 2002.

Notice was published on 16 April, 1998 (63 FR 73) that an application had been filed by NWFSC-ECD for a 5-year scientific research permit. Permit 1140 was issued on June 12, 1998. Permit 1140 authorizes direct takes of juvenile, endangered, Snake River fall chinook salmon and juvenile, threatened, SONCC coho salmon associated with a research study designed to assess the relationship between environmental variables, selected anthropogenic stresses, and bacterial and parasitic pathogens on disease-induced mortality in juvenile salmon in selected coastal estuaries in Oregon and Washington. The results of the study will benefit listed species by providing a better understanding of how environmental factors influence disease. Permit 1140 expires on December 31, 2002.

Dated: June 15, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–16373 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16988), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the safety regulations for full-size cribs (16 CFR 1500.18(a)(13) and Part 1508). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length ranging from 49¾ inches to 55 inches and an interior width ranging from 25⅝ to 30⅝ inches.) The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Recordkeeping Requirements for Full-Size Baby Cribs, 16 CFR 1508.10.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of full-size cribs.

Estimated Number of respondents: 49.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 49 per year.

Estimated number of hours per response: 5.

Estimated number of hours for all respondents: 245 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16320 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16989), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the safety regulations for non-full-size cribs (16 CFR 1500.18(a)(14) and Part 1509). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length greater than 55 inches or smaller than 49¾ inches; or an interior width greater than 30⅝ inches or smaller than 25⅜ inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and Part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Baby Cribs, 16 CFR 1509.12.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of non-full-size cribs.

Estimated Number of respondents: 49.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 49 per year.

Estimated number of hours per response: 5.

Estimated number of hours for all respondents: 245 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16321 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16989), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR Part 1632).

In response to the **Federal Register** notice, one comment was received, from the American Textile Manufacturers Institute (ATMI). In its comment, ATMI supported the extension of approval of the collection of information, adding that "the costs incurred with this data collection are minimal and are now part of business practices for these two industry sectors." The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 USC 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattress or mattress pads which they produce.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated Number of respondents: 850.

Estimated average number of responses per respondent: 8 per year.

Estimated number of responses for all respondents: 6,800 per year.

Estimated number of hours per response: 3.25.

Estimated number of hours for all respondents: 22,100 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16322 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16990), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in regulations codified at 16 CFR Part 1019, which establish procedures for export of noncomplying

products. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Procedures for export of noncomplying products, 16 CFR Part 1019.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of noncomplying goods exported.

General description of respondents: Exporters of products that fail to comply with standards or regulations enforced under provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act.

Estimated Number of respondents: 160 per year.

Estimated average number of responses per respondent: 1.125 per year.

Estimated number of responses for all respondents: 180 per year.

Estimated number of hours per response: 1.

Estimated number of hours for all respondents: 180 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16323 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, June 25, 1998 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 16, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–16577 Filed 6–17–98; 3:03 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 25, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–8196.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used

in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 15, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Year 2000 Survey of the Direct Loan Schools.

Abstract: In order to facilitate decison making, the Department will survey Direct Loan Institutions to learn their Year 2000 compliance situations.

Additional Information: Direct Loan Schools or their third party servicers will be asked five survey questions.

Frequency: One time.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,739.

Burden Hours: 290.

[FR Doc. 98–16324 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for initial or renewed recognition.

DATES: Commenters should submit their written comments by August 3, 1998 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8399 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the Secretary's Criteria for Recognition. In order for Department staff to give full consideration to the comments received and to address them in the staff analyses that will be presented to the Advisory Committee at its December 1998 meeting, the comments must arrive at the address listed above not later than August 3, 1998. Comments received after the deadline will be reviewed by Department staff, which will take action, as appropriate, either before or after the meeting, should the comments suggest that an accrediting agency is not acting in accordance with the Secretary's Criteria for Recognition.

All comments must related to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to the agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The Advisory Committee advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet December 7–9, 1998 in Washington, DC. All written comments in response to this notice that are received by the Department by the deadline will be considered by both the Advisory Committee and the Secretary. Comments received after the deadline, as indicated previously, will be reviewed by Department staff, which will take follow-up action, as appropriate, either before or after the meeting. Commenters whose comments are received after the deadline will be notified by staff of the disposition of those comments.

The following agencies will be reviewed during the December 1998 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Northwestern Association of Schools and Colleges, Commission on Schools (requested scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of schools offering non-degree, postsecondary education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington)

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: The accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree. Requested expansion of scope: The accreditation of institutions offering predominantly allied health education programs. "Predominantly" is defined by the agency as follows: At least 70 percent of the number of active programs offered are in the allied health area, and the number of students enrolled in those programs exceeds 50 percent of the institution's full-time equivalent (FTE) students, or at least 70 percent of the FTE students enrolled at the institution are in allied health programs)

2. National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation and preaccreditation ("Preaccreditation") of baccalaureate programs in environmental health science and protection)

3. National League for Nursing Accrediting Commission (requested scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs)

4. New York State Board of Regents (requested scope of recognition: The accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the state of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the state of New York)

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted initial or renewed recognition to the agency)—

1. Accrediting Commission of Career Schools and Colleges of Technology
2. American Academy for Liberal Education
3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar
4. American Board of Funeral Service Education, Committee on Accreditation
5. American Dental Association, Commission on Dental Accreditation
6. American Psychological Association, Committee on Accreditation
7. American Veterinary Medical Association, Council on Education
8. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission
9. The Council on Chiropractic Education, Commission on Accreditation
10. Council on Education or Public Health
11. Liaison Committee on Medical Education
12. Montessori Accreditation Council for Teacher Education, Commission on Accreditation
13. Western Association of Schools and Colleges, Accrediting Commission for Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education
2. Utah State Board for Vocational Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Iowa Board of Nursing
2. Maryland Board of Nursing

Federal Agencies Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that maybe proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for his purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. Air University Montgomery, AL; Air War College (request to award the master's degree in Strategic Studies) and Air Command and Staff College (request to award the master's degree in Operational Military Arts and Science)
2. Department of Defense Polygraph Institute, Anniston AL (request to award the master's of science in Forensic Psychophysiology)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copy at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 15, 1998. They will be available again after the December 7–9 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Dated: June 16, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–16395 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision, and extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, "Nuclear Fuel Data Survey", and the termination of RW–859S "Nuclear Fuel Data Supplement".

DATES: Written comments must be submitted on or before August 18, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650, telephone: (202) 426–1960, e-mail: *jim.finucane@eia.doe.gov*, and fax (202)–426–1280.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden required by section 3506(c)(2)(A)g of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly

understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by OMB for the collections under sections 3507(g) and (h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, title 44, U.S.C. Chapter 35).

This data collection will provide the Office of Civilian Radioactive Waste Management of the Department of Energy (DOE) with detailed information concerning the spent nuclear fuel generated by the respondents (commercial generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and needs this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final storage/disposal site for all of the spent fuel and high level radioactive waste materials.

II. Current Actions

The current proposed actions are: (1) An extension of an existing data collection, RW–859, and (2) the termination of a second data collection, RW–859S. A three-year extension of the data collection, RW–859, is proposed. The RW–859S, which was collected every five years, will be terminated and four data items from that form will be collected by RW–859. Such data items include information on each discharged assembly, canistered materials, uncanistered materials, and non-fuel components. As before, all data will be collected once; only changes in the specific data element will require updating.

This revision will also permit the data elements to be collected to be streamlined. Specifically, all of the data which is needed on an assembly specific basis will be collected at one time; thereafter referring this data by reference to the assembly serial number. In addition, the certification statement, the crane data, the site data, the transportation data, and the request for data on fresh fuel in core will be eliminated.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for Form RW–859 is estimated to average 40 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

F. Would you be interested in receiving and submitting the new RW–859 form and related materials by e-mail in electronic format?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) title 44, U.S.C. Chapter 35).

Issued in Washington, DC, June 12, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–16342 Filed 6–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2498–000]

Cobisa-Person Limited Partnership; Notice of Issuance of Order

June 15, 1998.

Cobisa-Person Limited Partnership (Cobisa-Person), is an exempt wholesale generator comprised of a single general partner, Cobisa-Person Power Company, Inc., and a single limited partner, Cobisa-Person Corporation. Cobisa-Person filed an application requesting that the Commission accept a power purchase agreement and amendment and authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Cobisa-Person requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Cobisa-Person. On June 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates And Interconnection Agreement And Amendment (Order), in the above-docketed proceeding.

The Commission's June 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Cobisa-Person should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Cobisa-Person is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Cobisa-Person, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of

Cobisa-Person's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16300 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2491–000]

Consolidated Edison Energy, Inc.; Notice of Issuance of Order

June 15, 1998.

Consolidated Edison Energy, Inc. (ConEd Energy), a power marketing affiliate of Consolidated Edison Company of New York, Inc., filed an application for authorization to engage in wholesale sales of electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, ConEd Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ConEd Energy. On June 1, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates And Directing Revisions To Tariffs And Codes Of Conduct (Order), in the above docketed proceeding.

The Commission's June 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ConEd Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, ConEd Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ConEd Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ConEd Energy's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16299 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. ER98–2020–000]

Federal Energy Regulatory Commission

Energy Clearinghouse Corporation; Notice of Issuance of Order

June 15, 1998.

Energy Clearinghouse Corporation (ECC) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, ECC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ECC. On June 1, 1998, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ECC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, ECC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ECC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ECC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 1, 1998. Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16297 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2494–000]

ESI Vansycle Partners, L.P.; Notice of Issuance of Order

June 15, 1998.

ESI Vansycle Partners. L.P. (ESI), an affiliate of Florida Power & Light Company, filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, ESI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ESI. On June 2, 1998, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 2, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ESI should file a motion to intervene or protest with

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(g) Absent a request to be herd within the period set forth in Ordering Paragraph (F) above, ESI is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ESI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(i) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ESI's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is July 2, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16298 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4345–004 and ER98–2295–000]

Origen Power Corporation, OGE Energy Resources, Inc. and Oklahoma Gas and Electric Company; Notice of Issuance of Order

June 15, 1998.

Origen Power Corporation (Origen) and OGE Energy Resources, Inc. (OGE Energy) filed a request for authorization for Origen to engage in wholesale sales of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Origen requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Origen. On June 2, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates, Amendment To Market-Based Rate Schedule, And Authorizing Power Sales To Affiliate (Order), in the above-docketed proceedings.

The Commission's June 2, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Origen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Origen is hereby authorizied to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Origen, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Origen's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 2, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16296 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2603–000]

Southwood 2000, Inc.; Notice of Issuance of Order

June 15, 1998.

Southwood 2000, Inc. (Southwood), is a power marketing affiliate of Redwood Electric Cooperative and South Central Electric Cooperative, rural electric cooperatives engaged in the distribution and sale of electric cooperatives engaged in the distribution and sale of electric power at retail. Southwood filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Southwood requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Southwood. On June 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southwood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Southwood is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Southwood, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Southwood's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16301 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

VOL 63 ISS 118 JE 19 1998 UMI

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–85–000, et al.]

InnCOGEN, Limited, et al. Electric Rate and Corporate Regulation Filings

June 12, 1998.

Take notice that the following filings have been made with the Commission:

1. InnCOGEN, Limited

[Docket No. EG98–85–000]

Take notice that on June 5, 1998, InnCOGEN, Limited, a limited liability company under the laws of the Republic of Trinidad and Tobago, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status. InnCOGEN will be engaged directly and exclusively in the business of owning and operating a 215 MW generating facility (the Project) on the Island of Trinidad in the Republic of Trinidad and Tobago which will be an eligible facility. All of the electricity produced by the Project will be sold at wholesale to the Trinidad and Tobago Electricity Commission pursuant to a long-term contract or to retail customers outside the United States.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. North American Electric Reliability Council

[Docket No. EL98–52–000]

Take notice that on June 5, 1998, the North American Electric Reliability Council (NERC) filed a petition for a declaratory order asking the Commission to address the interrelationship between NERC's transmission loading relief (TLR) procedure for public utilities within the Eastern Interconnection and the Commission's *pro forma* open access transmission tariff. NERC asks in its petition that the Commission find that the TLR procedures are consistent with the *pro forma* tariff curtailment provisions and can be implemented by public utility transmission providers without filings to incorporate them into the public utilities' transmission tariffs. However, if the Commission determines that NERC's TLR procedures should be incorporated as an amendment to the transmission tariffs, NERC attaches to its petition two alternative proposed amendments to implement such changes. NERC states that a copy of its petition is available on NERC's website (www.nerc.com).

NERC states that it anticipates that the TLR procedures will play a critically important role in maintaining the reliability of the transmission system over this summer's peak season. NERC states that the TLR procedures are currently in effect on an interim basis. NERC requests that the Commission give an abbreviated notice period and act as expeditiously as reasonably possible on its petition.

The NERC filing raises important questions about subjects that have, under the Commission's "rule of reason" approach, not traditionally been considered in public utility tariffs. Therefore, the Commission does not believe it appropriate to abbreviate its consideration of the matter. Rather, because the summer season has already begun and in order to avoid any uncertainties that may jeopardize system reliability, the Commission hereby gives notice that it is acceptable for public utilities within the Eastern Interconnection to continue to utilize the NERC TLR procedures without amending their transmission tariffs while the Commission considers the merits of the petition filed by NERC. Actions taken by the Commission on the merits of the NERC petition shall be given prospective effect from the date of a Commission order.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. WKE Station Two Inc., Western Kentucky Energy Corp., LG&E Energy Marketing Inc.

[Docket Nos. ER98–2568–000 and ER98–2569–000 and ER98–2684–000 not consolidated]

Take notice that on June 9, 1998, WKE Station Two Inc. (Station Two Subsidiary), Western Kentucky Energy Corp. (WKEC), and LG&E Energy Marketing Inc. (LEM)(collectively Petitioners), tendered for filing a Second Amendment to the New Participation Agreement which in part amends certain rate schedules and service agreements previously submitted for approval in each of the above-referenced dockets.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER98–2766–000]

Take notice that on June 9, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission an amendment to its filing in the above-referenced case to show unbundled rates under the Service Agreement between AEP and the City of Radford, Virginia (Radford), under the Wholesale Market Tariff of the AEP Companies.

AEP states that a copy of its filing was served upon Radford, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER98–3163–000]

Take notice that on May 29, 1998, Illinois Power Company tendered for filing a summary of its activity for the first quarter of 1998, under its Market Power Sales Tariff, FERC Electric Tariff, Original Volume No. 7.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power, Inc.

[Docket No. ER98–3192–000]

Take notice that on June 9, 1998, Minnesota Power, Inc., tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with Powerex (British Columbia Power Exchange Corporation) under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power, Inc.

[Docket No. ER98–3198–000]

Take notice that on June 9, 1998, Minnesota Power, Inc., tendered for filing a signed Non-Firm Point-to-Point Transmission Service Agreement with Entergy Power Marketing Corp., under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER98–3210–000]

Take notice that on June 3, 1998, Idaho Power Company tendered for filing with a Quarterly Transaction Summary Report under Idaho Power

Company's Market Rate Power Sale Tariff.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Empire District Electric Company

[Docket No. ER98–3232–000]

Take notice that on June 9, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and OGE Energy Resources, Inc., providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon OGE Energy Resources, Inc.; P O Box 24300, Oklahoma City, OK 73124.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Valley Electric Association, Inc.

[Docket No. ER98–3262–000]

Take notice that on June 9, 1998, Valley Electric Association, Inc., tendered for filing an agreement extending the term of a transmission service contract with the United States Department of Energy.

A copy of the filing was served upon the Department of Energy.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER98–3265–000]

Take notice that on June 9, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Wisconsin Electric Power Co., under its Market-Based Rate Tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PSI Energy, Inc.

[Docket No. ER98–3267–000]

Take notice that on June 9, 1998, PSI Energy, Inc. (PSI), tendered for filing Notice Of Cancellation of its Interim Scheduled Power Agreement, Rate Schedule FERC No. 241, between itself and Wabash Valley Power Association, Inc., with the request that it be canceled and terminated effective year end December 31, 1997.

The service being canceled is to be succeeded by a long term Power Supply Agreement.

Copies of this filing were served upon Wabash Valley Power Association, Inc., the Indiana Utility Regulatory Commission and the Indiana Office of the Consumer Counsel.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER98–3268–000]

Take notice that on June 9, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to VTEC Energy, Inc. (VTEC), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 11, 1998.

Copies of the filing have been served upon VTEC and the New Jersey Board of Public Utilities.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER98–3269–000]

Take notice that on June 9, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Electric Clearinghouse, Inc. (ECI), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 11, 1998.

Copies of the filing have been served upon ECI and the New Jersey Board of Public Utilities.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER98–3271–000]

Take notice that on June 9, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Energy Transfer Group LLC under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Energy Transfer Group LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER98–3273–000]

Take notice that on June 9, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission a Transaction Service Agreement entered into between Midwest and Tenaska Power Services Co.

Midwest states that it is serving copies of this filing to its customers, State Commissions and other interested parties.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma , Southwestern Electric Power Co.

[Docket No. ER98–3274–000]

Take notice that on June 9, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted for filing a Transmission Coordination Agreement.

The CSW Operating Companies state that a copy of the filing has been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER98–3275–000]

Take notice that on June 9, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Merchant Energy Group of the Americas, Inc.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER98–3276–000]

Take notice that on June 9, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Merchant Energy Group of the Americas, Inc.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Alliant Service, Inc.

[Docket No. ER98–3277–000]

Take notice that on June 9, 1998, Alliant Services, Inc., tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement, establishing St. Charles Light and Water Department as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Alliant Service, Inc.

[Docket No. ER98–3278–000]

Take notice that on June 9, 1998, Alliant Services, Inc., tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement, establishing Rushford Electric Utility as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Nantahala Power and Light Company

[Docket No. ER98–3280–000]

Take notice that on June 9, 1998, Nantahala Power and Light Company tendered for filing Notice of Cancellation of service under Rate Schedule FERC No. 6, and Supplement Nos. 1 through 9 to Rate Schedule No. 6, by Nantahala Power and Light Company only to the extent that it relates to service to North Carolina Electric Membership Corporation (NCEMC), on behalf of Haywood Electric Membership Corporation is to be canceled.

Notice of the proposed cancellation has been served upon the Town of Highlands, North Carolina Electric Membership Corporation, Western Carolina University, and Spiegel & McDiarmid.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16284 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1090–001, et al.]

Montaup Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER96–1090–001]

Take notice that on June 8, 1998, Montaup Electric Company (Montaup), filed a compliance refund report.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., AES Redondo Beach, L.L.C.

[Docket No. EC98–43–000]

Take notice that on June 8, 1998, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C. and AES Redondo Beach, L.L.C., filed a supplemental to their application to assign their must run electric service agreements with the California Independent System Operator (ISO). The supplemental filing is intended to clarify the distinction between must-run service and emergency service provided pursuant to the ISO Tariff.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Wind Energy Partners, LLC

[Docket No. ER98–1965–001]

Take notice that on June 5, 1998, West Texas Wind Energy Partners, LLC (WTWEP), in compliance with the Commission's order issued on April 23, 1998, submitted a revised Code of Conduct with Respect to the Relationship between West Texas Wind Energy Partners, LLC and its affiliates.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER98–3242–000]

Take notice that on June 8, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of June 1, 1998, of Merrimac Municipal Light Department (Merrimac). Such termination is pursuant to the terms of

the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Merrimac. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Merrimac with a retroactive date of June 1, 1998, would relieve this entity, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Merrimac from membership in the Pool. Merrimac has not received any energy related services (such as scheduling, transmission, capacity or energy services) under the NEPOOL Agreement.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Tucson Electric Power Company

[Docket No. ER98–3245–000]

Take notice that on June 8, 1998, Tucson Electric Power Company (TEP), tendered for filing one (1) non-firm umbrella transmission service agreement pursuant to Part II of TEP's Open Access Transmission Tariff, which was filed in Docket No. OA96-140–000.

The details of the service agreement are as follows:

1. Service Agreement for Non-Firm Point-to-Point Transmission Service with ConAgra Energy Services, Inc. dated May 29, 1998. TEP has not yet provided transmission service under this service agreement.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98–3254–000]

Take notice that on June 8, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Dayton Power and Light Company.

NSP requests that the Commission accept the agreement effective June 2, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER98–3255–000]

Take notice that on June 8, 1998, Western Resources, Inc., (Western Resources), tendered for filing a proposed change to its Rate Schedule FERC No. 218. Western Resources states that the change is to add a new delivery point under its electric power supply contract with Kaw Valley Electric Cooperative Association, Inc., (Cooperative). The change is proposed to become effective July 1, 1998.

Copies of the filing were served upon the Cooperative and the Kansas Corporation Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER98–3256–000]

Take notice that on June 8, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PG&E Energy Trading—Power, L.P.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER98–3257–000]

Take notice that on June 8, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Aquila Power (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 4th, Aquila Power's Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER98–3258–000]

Take notice that on June 8, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 0.2 MW of New York Power Authority power to Norampac Industries, Inc. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of June 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER98–3259–000]

Take notice that on June 8, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and (WRI). The Transmission Service Agreement allows WRI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on WRI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–3260–000]

Take notice that on June 8, 1998, PECO Energy Company (PECO), filed a

Service Agreement dated June 2, 1998, with North Carolina Electric Membership Corporation (NCEMC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NCEMC as a customer under the Tariff.

PECO requests an effective date of June 2, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to NCEMC and to the Pennsylvania Public Utility Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Reliable Energy, Inc.

[Docket No. ER98–3261–000]

Take notice that on June 8, 1998, Reliable Energy, Inc., petitioned the Commission for acceptance of Reliable Energy, Inc's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and the waiver of certain Commission Regulations.

Reliable Energy, Inc., intends to engage in wholesale electric power and energy purchases and sales as a marketer. Reliable Energy is not in the business of generating or transmitting electric power. Reliable Energy is a New Jersey corporation. It will act as power marketer and will also engage in other non-jurisdictional activities to facilitate efficient trade in the bulk power market such as power brokering, load aggregation, metering, energy management and consulting.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER98–3263–000]

Take notice that on June 8, 1998, Western Resources, Inc., tendered for filing a revised summary of activity for the quarter ending March 31, 1998.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER98–3264–000]

Take notice that on June 8, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Central Power & Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Rochester Gas and Electric Corporation

[Docket No. ER98–3266–000]

Take notice that on June 8, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed copy of a service agreement between RG&E and Energetix that was accepted as a form of service agreement in an order issued March 28, 1998.

A copy of the service agreement was served on the New York Public Service Commission and on each party listed on the official service list for Docket No. ER98–1605.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER98–3272–000]

Take notice that on June 8, 1998, MarketSpan Generation LLC, tendered for filing a Notice of Succession pursuant to a transaction between Long Island Lighting Company (LILCO) and Long Island Power Authority (LIPA) which took place on May 28, 1998, GENCO the subsidiary of LILCO which was to sell energy and capacity at the rate proposed is now MarketSpan Generation, LLC a subsidiary of MarketSpan Corporation. As stated in the Notice of Succession, effective May 28, 1998, MarketSpan Generation LLC is the successor entity to Long Island Lighting Company.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Power Authority

[Docket No. NJ98–4–000]

Take notice that on May 21, 1998, the Long Island Power Authority (LIPA), tendered for filing its compliance filing in the above referenced docket. LIPA requests that the Commission issue an order finding that its open access transmission tariff is an acceptable reciprocity tariff.

The Authority also states that a paper copy of its filing is available for inspection at its principal place of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16361 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–84–000, et al.]

Scrubgrass Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

June 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Scrubgrass Generating Company, L.P.

[Docket No. EG98–84–000]

On June 5, 1998, Scrubgrass Generating Company, L.P. (Applicant), with its principal office at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it is and will be engaged in owning the Scrubgrass project consisting of an approximately 87 megawatt (net), small power production facility and related transmission interconnection facilities located in Kennerdell, Pennsylvania (the Eligible Facility) and selling electric energy exclusively at wholesale. Electric

energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. California Independent System Operator Corporation

[Docket No. ER98–1309–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between Texaco Exploration and Production Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–1310–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between El Segundo Power, LLC and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket, including the California Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1503–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for ISO Metered Entities between Texaco Exploration and Production Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Hawkeye Power Partners, L.L.C.

[Docket No. ER98–2076–001]

Take notice that on June 5, 1998, Hawkeye Power Partners, L.L.C. (Hawkeye), in compliance with the Commission's order issued on April 30, 1998, submitted a revised Code of Conduct with Respect to the Relationship between Hawkeye Power Partners, L.L.C. and its affiliates.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER98–3235–000]

Take notice that on June 5, 1998, Southern California Edison Company (SCE), tendered for filing a revised Radial Lines Agreement (Revised Agreement) for Ormond Generating Station to be executed by SCE and Houston Industries Power Generation, Inc.

SCE requests waiver of the Commission's 60-day notice requirements and that the Commission accept the Revised Agreement for filing, unexecuted.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–3236–000]

Take notice that on June 5, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Avista Energy, Inc., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served upon Avista Energy, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–3237–000]

Take notice that on June 5, 1998, Cinergy Services, Inc., (Cinergy) on behalf of the Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), filed, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, Notices of Cancellation for Cinergy and Industrial Energy Applications, Inc. (IEA), to cancel the Interconnection Agreement, dated November 1, 1995, as amended, between Cinergy and IEA.

Cinergy has requested an effective date of June 15, 1998.

Copies of the filing have been served upon Industrial Energy Applications, Inc., Iowa Utilities Board, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–3238–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Letter Agreement among Pacific Gas and Electric Company (PG&E), Western Area Power Administration (WAPA), the City of Redding (Redding) and the ISO for acceptance by the Commission. The ISO states that the Letter Agreement is intended to enable PG&E to act on an interim basis as proxy scheduling coordinator for Redding's interest in certain transmission rights held by the Transmission Agency of Northern California, pending the conclusion of negotiations for a long-term arrangement for WAPA to act as scheduling coordinator for Redding's interest.

The ISO states that this filing has been served on PG&E, Western, Redding and the California Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–3239–000]

Take notice that on June 5, 1998, Maine Public Service Company (Maine

Public), filed an executed Service Agreement with Enserch Energy Services, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company

[Docket No. ER98–3240–000]

Take notice that on June 5, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Great Bay Power Corporation.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Nevada Power Company

[Docket No. ER98–3241–000]

Take notice that on June 5, 1998, Nevada Power Company (Nevada Power), tendered for filing an executed Amendment No. 3, to the Purchased Power Agreement between the Colorado River Commission (CRC) and Nevada Power. This filing supplements Nevada Power's filing tendered on May 28, 1998, which contained an unexecuted agreement.

Copies of this filing have been served on the CRC and the Nevada Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER98–3243–000]

Take notice that on June 5, 1998, Commonwealth Edison Company (ComEd), submitted for filing two Service Agreements, establishing Southern Illinois Power Cooperative (SIPC), and Merchant Energy Group of the Americas, Inc. (MEGA), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of June 1, 1998, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MEGA, SIPC, and the Illinois Commerce Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER98–3244–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Morgan Stanley Capital Group, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER98–3246–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Vitol Gas & Electric LLC.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER98–3247–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and PP&L, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Corporation

[Docket No. ER98–3248–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Merchant Energy Group of the Americas, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER98–3249–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Engage Energy US, L.P.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER98–3250–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Service Agreement between LG&E and Public Service Electric and Gas Company under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER98–3251–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and Tractebel Energy Marketing, Inc., under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER98–3252–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and DTE Energy Trading, Inc., under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER98–3253–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and The Power Company of America, LP under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. David Bing

[Docket No. ID–3191–000]

Take notice that on April 28, 1998, David Bing, Applicant, tendered for filing an application under Section 305(b) to hold the following positions:

Director—The Detroit Edison Company
Director— Standard Federal Bank

Comment date: June 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Electric Power Company, Inc.

[Docket No. OA96–189–004]

Take notice that on May 29, 1998, the Maine Electric Power Company, Inc., tendered for filing a compliance report showing monthly billing determinants, revenue receipt dates, revenues under the prior, present, and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16283 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rate Formulas for Desert Southwest Customer Service Region Transmission and Ancillary Services

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Western Area Power Administration's (Western) Desert Southwest Region (DSW) is initiating a rate adjustment process for network integration transmission service for both the Parker-Davis Project (P–DP) and the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and for ancillary services from the P–DP, Boulder Canyon Project (BCP), and part of the Colorado River Storage Project (CRSP) located in DSW's Control Area. This action is necessary to bring DSW into compliance with the intent of Federal Energy Regulatory Commission (FERC) Order Nos. 888 and 888–A. To date, DSW has not developed charges for the long term sales of the six ancillary services defined by FERC, or for network integration transmission service.

The proposed rate and its impact are explained in greater detail in a rate brochure which will be made available to all interested parties.

The proposed rate is scheduled to go into effect on November 1, 1998. This **Federal Register** notice initiates the formal process for the proposed rate.

DATES: Submit comments on or before September 17, 1998.

The forum dates are:

1. Public Information Forum, June 30, 1998, 10 a.m. MST, Phoenix, Arizona.
2. Public Comment Forum, July 30, 1998, 10 a.m. MST, Phoenix, Arizona.

ADDRESSES: Written comments should be sent to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. Western should receive written comments by the end of the consultation and comment period to be assured consideration. The public forums will be held at the Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457; telephone (602) 352–2768.

SUPPLEMENTARY INFORMATION:

Proposed Rate for Network Integration Transmission Service

The DSW will offer, subject to provisions in its Open Access Transmission Service Tariff (OAT), Network Integration Transmission Service (NTS) to eligible transmission customers. The customer must obtain ancillary services for NTS pursuant to Western's OAT. The NTS charge for Intertie and P–DP will be calculated independently. The monthly charge for NTS is the product of the network transmission customer's load-ratio share times one-twelfth of the annual revenue requirement allocated to transmission. The customer's load-ratio share is calculated on a rolling 12-month basis (12 CP). It is equal to the network transmission customer's hourly load coincident with DSW's monthly transmission system peak divided by the resultant value of DSW's monthly transmission system peak minus the coincident peak (CP) for all firm point-to-point transmission service plus firm point-to-point reservations. Service for point-to-point transmission service can be obtained through rate schedules PD-FT6 and INT–FT2.

The projected annual revenue requirement allocated to transmission for Fiscal Year (FY) 1999 for P–DP is $23,001,589, and for Intertie the projected annual revenue requirement is $21,943,150. The annual power repayment study derives the revenue requirement to be recovered from network and firm point-to-point transmission service. The annual transmission costs included in the revenue requirement are operation and maintenance expenses, administrative and general expenses, interest expense, and principal expenses associated with transmission.

Proposed Rates For Ancillary Services

Western will provide ancillary services subject to provisions in the OAT. The proposed rates are designed to recover only the costs incurred for the service(s). The annual generation costs included in the revenue requirement for Reactive Supply and Voltage Control, Regulation and Frequency Response, and Spinning and Supplemental Reserves are operation and maintenance expenses, administrative and general expenses, interest expense, and principal expense associated with providing ancillary services.

On April 1, 1998, the Western Area Upper Colorado Control Area, which includes the Salt Lake City Area Integrated Projects (SLCA/IP) generation and most of the CRSP transmission system, was merged with two other Control Areas: The Western Area Colorado Missouri, operated by Western's Rocky Mountain Region, and the Western Area Lower Colorado (WALC) Control Area, operated by DSW. As a result, regulation and frequency response and reactive supply and voltage control ancillary services will include certain SLCA/IP generation costs as well as DSW generation costs.

Proposed Rate for Scheduling, System Control, and Dispatch Service

Scheduling, System Control and Dispatch ancillary service is required to schedule the movement of power through, out of, within, or into a Control Area. This ancillary service can be provided only by the Control Area operator or transmission provider.

Scheduling, System Control and Dispatch ancillary service costs are calculated as an annual cost of all personnel, capital costs (such as the dispatch center building), and other related costs involved in providing the service. The cost is divided by the number of schedules per year to derive a rate per schedule per day. Up to five schedule changes per transaction, per day will be allowed at no additional charge.

The rates charged for the Scheduling, System Control and Dispatch ancillary service are contingent on the type of service required. The range of the service on a cost per schedule per day

is up to $34.10 for an existing schedule, which requires no Supervisory Control and Data Acquisition (SCADA) programming or intra-bus transfer, and up to $56.20 for a new schedule which requires both SCADA programming and intra-bus transfer. Intermediate rates are available for schedules requiring combinations of the two. This ancillary service is included in the transmission customer's rate.

Proposed Rate for Reactive Supply and Voltage Control from Generation Sources

In order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits, generation facilities under the control of the Control Area operator are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from generation sources service must be provided for each transaction on the transmission provider's transmission facilities. This ancillary service is required to be offered to the transmission customer by the transmission provider in order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits.

The rate for Reactive Supply and Voltage Control ancillary service is calculated by combining the revenue requirements of P–DP, BCP, and SLCA/IP. This total revenue requirement is then divided by the sum of the long-term firm transmission reservations, yielding a rate of $0.08/kilowattmonth (kWmo). The transmission customer is required to maintain a power factor between 95 percent leading and 95 percent lagging. The rate of $0.08/kWmo will be applied to all transmission customers taking service under Western's OAT.

Proposed Rate for Regulation and Frequency Response Service

Regulation and Frequency Response service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must either purchase this service from the transmission provider or make alternative comparable arrangements to satisfy its regulation and frequency response service obligation.

DSW will offer regulation from its own resources, if available. The charge for this service from DSW resources is calculated based on P–DP, BCP, and SLCA/IP data. The total annual revenue requirement of P–DP, BCP, and SLCA/IP is divided by the nameplate plant capacities to derive an average revenue requirement per kilowatt (kW) result. The resultant average revenue requirement per kW is multiplied by the capacity used to provide regulation service and then divided by the CP of the Control Area load. This result is divided by 12 to derive a monthly rate of $0.20/kWmo. If DSW cannot supply this service from its resources, it will purchase the service on the market adding a 10 percent administrative charge.

Proposed Rate for Energy Imbalance Service

Energy Imbalance service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must either purchase this service from the transmission provider or make alternative comparable arrangements to satisfy its Energy Imbalance service obligation.

The Energy Imbalance Service rate will be a penalty-type rate which DSW reserves the right to apply against deviations outside a 3 percent bandwidth (± 1.5 percent deviations), with a 2 MW deviation minimum. Negative excursions (under deliveries) greater than 1.5 percent and occurring more than five times per month will be assessed a penalty charge of 100 mills/kilowatthour (kWh); e.g., the sixth time an under delivery occurs within a month, the 100 mills/kWh charge will be applied to the difference between the total excursion and 1.5 percent.

Any positive excursion (over delivery) will be credited to the customer within thirty days for 50 percent of the market value of the over delivery, provided the over deliveries do not impinge upon WALC Control Area operations. For example, during times of high water or operating constraints, DSW reserves the right to eliminate credits for over deliveries. The market value determinant will be the average monthly non-firm price from Western merchants operating within the WALC Control Area.

Proposed Rate for Operating Reserves: Spinning Reserve Service

Spinning Reserve service is needed to serve load immediately in the event of a system contingency. Spinning Reserve service may be provided by generating units that are on-line and loaded at less than maximum output. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must purchase this ancillary service either from DSW or make alternative comparable arrangements to satisfy its Spinning Reserve service obligation. The transmission customer will be responsible for the transmission service to get these reserves to their destination.

These reserves will not be available from DSW resources on a long-term basis. If Spinning Reserves are unavailable from WALC resources, Western may obtain the reserves on the open market for the customer and pass through the cost, with an added 10 percent administrative charge.

Proposed Rate for Operating Reserves: Supplemental Reserve Service

Supplemental Reserve service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load, but rather within a short period of time. Supplemental Reserve service may be provided by generating units that are on-line and unloaded, by quick-start generation or by interruptible load. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must purchase this ancillary service either from DSW or make alternative comparable arrangements to satisfy its Supplemental Reserve service obligation. The transmission customer will be responsible for the transmission service to get these reserves to their destination.

These reserves will not be available from DSW resources on a long-term basis. If Supplemental Reserves are unavailable from WALC resources, Western may obtain the reserves on the open market for the customer and pass through the cost, with an added 10 percent administrative charge.

Authorities

Since the proposed rates constitute a major rate adjustment as defined in 10 CFR 903.2, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the proposed rates or revised proposed rates for approval on an interim basis by the Deputy Secretary of Department of Energy (DOE).

The proposed Project transmission and ancillary service rates are being established pursuant to the Department

of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 8 of the Act of August 31, 1964, (16 U.S.C. 837g).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western, and therefore is not a rule within the purview of the act.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*; Council On Environmental Quality Regulations, 40 CFR Parts 1500–1508; and DOE NEPA Regulations, 10 CFR Part 1021, Western conducts environmental evaluations of the proposed rates and develops the appropriate level of documentation.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates will be made available for inspection and copying at Western's Desert Southwest Regional Office at 615 South 43rd Avenue in Phoenix, Arizona.

Dated: June 8, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–16341 Filed 6–18–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5492–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or (202) 564–7153.

Weekly Receipt of Environmental Impact Statements

Filed June 8, 1998 Through June 12, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980225, Draft EIS, EPA, FL, Tampa Water Resource Recovery Project, (TWRRP), Design and Construction, Funding and COE Section 404 Permit, City of Tampa, FL, *Due:* August 3, 1998, *Contact:* Robert B. Howard (404) 562–9370.

EIS No. 980226, Final EIS, COE, FL, C–51 West End Flood Control Project, Implementation To Improve the Level of Flood Control, Central and Southern Florida Project, Palm Beach County, FL, *Due:* July 20, 1998, *Contact:* Rudy Nyc (404) 331–4619.

EIS No. 980227, Final EIS, BLM, AK, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK, *Due:* July 20, 1998, *Contact:* Gary Foreman (907) 474–2339.

EIS No. 980228, Final Supplement, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Integrated Dredge Material Management Study, OR and WA, *Due:* July 20, 1998, *Contact:* Steven J. Stevens (503) 808–4768.

EIS No. 980229, Draft Supplement, AFS, ID, Thompson Creek Mine (TCM), Updated Information, Prevent and/or Control Potential Acid-Rock Drainage, Plan of Operations, Custer County, ID, *Due:* August 3, 1998, *Contact:* Leon Jadlowski (208) 838–3300.

EIS No. 980230, Draft, EIS, AFS, MT, Hemlock Point Access Project, Construction of 860 feet of Low Standard Road, Plum Creek, Swan Valley, Flathead National Forest, Missoula County, MT *Due:* August 3, 1998, *Contact:* Earl Sutton (405) 758–5326.

EIS No. 980231, Final EIS, NPS, MI, Keweenaw National Historical Park General Management Plan, Implementation, Houghton County, MI, *Due:* July 20, 1998, *Contact:* Michael Madell (402) 221–3493.

EIS No. 980232, Final EIS, BLM, OR, Beaty Butte Allotment Management Plan, Implementation, Lakeview District, Hart Mountain National Antelope Refuge, Lake and Harney Counties, OR, *Due:* July 20, 1998, *Contact:* Paul Whitman (541) 947–2177.

EIS No. 980233, Draft EIS, COE, FL, Jacksonville Harbor Navigation Channel Deepening Improvements, Construction, St. Johns River, Duval County, FL, *Due:* August 3, 1998, *Contact:* Kenneth Dugger (907) 232–1686.

EIS No. 980234, Final EIS, AFS, MI, Porter Creek Recreational Lake and Complex, Implementation, Homochitto National Forest, Homochitto Ranger District, Franklin County, MI, *Due:* July 20, 1998, *Contact:* Gary W. Bennett (601) 384–5876.

EIS No. 980235, Draft Supplement, BLM, CO, Glenwood Springs Resource Area, Updated Information, Oil & Gas Leasing and Development, Leasing Lands in the Naval Oil Shale Reserves, Resource Management Plan Amendment, Garfield County, CO, *Due:* September 17, 1998, *Contact:* Steve Moore (970) 947–2824.

Amended Notices

EIS No. 980191, Final EIS, NPS, OR, Crater Lake National Park, Visitor Services Plan, Implementation, OR, *Due:* June 29, 1998, *Contact:* Al Hendricks (541) 594–2211.

Published FR–05–29–98–Correction to Title, Due Date and Contact Person.

Dated: June 16, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–16396 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5492–9]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared June 1, 1998 Through June 5, 1998 pursuant to the Environmental Review Process (ERP), Under Section 309 of the Clean Air Act and Section

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102(2)(c) of the National Environmental Policy Act as amended.

Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Final EISs

ERP No. F–MMS–L02026–AK, Beaufort Sea Planning Area Outer Continental Shelf Oil and Gas Lease Sale 170 (1997) Lease Offering, Offshore Marine, Beaufort Sea Coastal Plain, North Slope Borough of Alaska.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–A11074–00, Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA.

Summary: EPA stated that the Air Force adequately addressed earlier concerns and has no further comment.

ERP No. F–UAF–L11013–ID, Idaho Enhanced Training Project, Training for the 366th Wing at Mountain Home Air Force Base (AFB), Approval for Rights-of-Way Permit by (BLM) and Airspace Modifications by (FAA), Owyhee County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–APH–A82124–00, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA continued to have environmental objections to the proposed project. Issues of concern included the efficacy of combinations of control methods, compliance by exporting countries, human health effects of eradication and control efforts, comparison of the alternatives, and the use of methyl bromide.

Dated: June 16, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–16397 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00540; FRL–5798–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the FQPA 10x Safety Factor, Linear Low Dose Extrapolation for Cancer Risk Decisions, Proposed Methods for Basin-Scale Estimation of Pesticide Concentrations in Flowing Water and Reservoirs for Tolerance Reassessment, DDVP (Dichlorvos)and Chlorothalonil. The Agency will present a status report of the FQPA 10x Safety Factor, as requested by the SAP at the March 25, 1998, SAP meeting. For the cancer risk assessment session, the Agency will discuss the issue that due to uncertainties and variabilities surrounding input measures, estimates of carcinogenic risk using linear low dose extrapolation should be presented in a manner that reflects the precision of the estimated risk. The precision of the risk estimate can be no better than that for the least certain input parameter into the model. Representation of additional significant figures in risk estimates may introduce false precision into risk management decisions. The Agency will also present a session evaluating and developing improved methods to allow for basin-scale estimation of pesticide concentrations in surface waters used as drinking water. As an interim approach, the Agency is developing a reservoir scenario as a replacement water body for the standard small water body currently used in ecological exposure assessments and drinking water exposure assessments. The reservoir scenario is being developed to be representative of an actual reservoir which serves as a drinking water supply for a rural community. Additionally, the Agency is critically evaluating basin scale models and developing linkages of field scale models to estimate pesticide concentrations in flowing surface waters and reservoirs. Two sessions are scheduled for pesticide specific discussions. The first session will focus on two issues concerning the chlorothalonil human health risk assessment: (1) mechanism for the formation of renal and forestomach tumors and; (2) calculations for acceptable margins of exposure. The second pesticide for discussion is DDVP (dichlorvos). For this session, the Agency will present the DDVP risk assessment.

DATES: The meeting will be held on Wednesday and Thursday, July 29 and July 30, 1998, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: Embassy Suites Hotel, 1300 Jefferson Davis Highway, Arlington, Virginia. The telephone number for the hotel is: (703) 979–9799.

By mail, submit written comments (one original and 20 copies) to: Larry C. Dorsey, Designated Federal Official for the FIFRA/Scientific Advisory Panel, (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 819–B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00540." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 819B, CM2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: Dorsey.Larry@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than July 6, 1998, and may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460;

Office location: Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit twenty copies of the summary information. Please note that comments should be received by July 20, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice under docket number "OPP–00540" (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

List of Subjects

Environmental protection.

Dated: June 11, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs

[FR Doc. 98–16248 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6113–7]

Science Advisory Board; Notification of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Executive Committee

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public meeting on Wednesday, July 8, 1998, and Thursday, July 9, 1998. The meeting will convene each day at 8:30 a.m., in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building at 401 M Street, SW, Washington, DC 20460, and adjourn no later than 5:30 p.m. on each day (Eastern Time). The meeting is open to the public, however, seating is limited and available on a first-come basis.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Anticipated drafts include the following:

(a) Ecological Processes and Effects Committee Review of the Blackstone River Initiative in Region I;

(b) Environmental Economics Advisory Committee Advisory on Economic Research Topics;

(c) Radiation Advisory Committee

(1) Commentary on the Radiation Quality Assurance Program

(2) Report on the Environmental Radiation Ambient Monitoring System (ERAMS).

Other items on the agenda tentatively include, but are not limited to, the following:

(a) Discussion of the Agency's new Urban Environment program and the role of science in the program;

(b) Discussion of the Agency's American Indian Program and the associated scientific issues;

(c) Discussion of Agency requests for SAB reviews in FY99.

For Further Information—Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–4126; fax (202)–260–9232; or via Email at: barnes.don@epa.gov. Copies of the draft meeting agenda and the draft reports will be available on the SAB Website (//http:www.epa.gov/sab) by July. Alternatively, these materials can be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers or via Email: tillery.priscilla@epa.gov.

2. Ecological Processes and Effects Committee

The Ecological Processes and Effects Committee (EPEC) of the Science

Advisory Board will meet on July 9–10, 1998 in Room 3709 Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The meeting will convene at 8:30 am and end no later than 5:30 pm on both days. The meeting is open to the public, with seating available on a first-come basis. The purpose of the meeting is to: (a) engage in a consultation with Agency staff on a framework for the application of Toxicity Equivalency Factors in ecological risk assessments; (b) engage in a consultation with Agency staff on the development of further guidance on four ecological risk assessment topics; and (c) develop a Committee strategic project on ecological report cards.

An SAB Consultation in an interaction between SAB members and Agency staff where the advice of individual members is offered, rather than a consensus Committee opinion, and no formal report results from the discussions. The purpose of a Consultation is for SAB members to assist the Agency during the early phases of project scoping and planning. This is in contrast to a formal written review of an Agency work product.

Background

(a) Ecological Toxicity Equivalency Factors

In January 1998, EPA's Risk Assessment Forum and the Department of the Interior sponsored a workshop on the application of recently developed World Health Organization toxicity equivalency factors (TEFs) for assessing risks to mammals, fish, and birds from chemicals that elicit toxicity through an aryl-hydrocarbon mediated mechanism. The participants at the workshop concluded that the TEF methodology is technically appropriate for ecological risk assessments, and proposed to develop a framework for the application of TEFs in Agency ecological risk assessments. The advice of individul Committee members is sought on the scope and content of such a framework document.

(b) Ecological Risk Assessment Topics

EPA's first Agency-wide guidelines for ecological risk assessment were published in the **Federal Register** on May 14, 1998. As part of the review process for the draft guidelines, EPA solicited recommendations for specific ecological risk-related topics requiring further development, considering the state of the science and Agency needs and priorities. The Committee's suggestions for future guidance topics are contained in its report on the draft guidelines (EPA–SAB–EPEC–97–002). The Risk Assessment Forum, after considering all of the recommendations received, is initiating follow-on projects in FY98 on four topics. Three of these are risk assessment process topics: (a) assessment endpoints and measures of effect; (b) effects at higher levels of biological organization, including landscape-level effects; and (c) risk characterization techniques. The fourth topic, objectives for ecological risk assessment, follows from both the Guidelines and a January 1997 EPA document, Priorities for Ecological Protection: An Initial List and Discussion Document ("Priorities"). In a September 1997 Advisory (EPA–SAB–EPEC–ADV–97–002), EPEC urged the Agency to develop additional guidance on ecological risk assessment for risk managers. This Forum project will revisit the list proposed in Priorities of ecological entities to consider during the Planning and Formulation steps of ecological risk assessments.

For the consultation on the four risk assessment topics, Committee members have been asked to provide individual feedback in the following areas: (a) How should the content of these broad issues be targeted most effectively to improve ecological risk assessments at the Agency? (b) What aspects of these topics are best suited for guidance in the short-term, and which require long-term emphasis? and (c) What types of products should be considered for short-term and long-term efforts to assist Agency risk assessors with each issue (for example, workshops and reports, white papers, guidance documents, other)?

(c) Ecological Report Cards

The Committee is interested in developing a strategic project to offer advice to the Agency on the content and design of an ecological report card, including the definition of baseline ecological data and benchmarks that can be measured to demonstrate improvements in ecological integrity as a result of management or restoration programs. The Committee will hear briefings from various Agency staff involved in efforts to develop indicators and progress measures, and will develop a proposal for conducting the strategic project.

For Further Information—Copies of the background materials for the consultations on TEFs and Ecological Risk Assessment Topics can be obtained from Ms. Christine Boivin, Risk Assessment Forum, U.S. Environmental Protection Agency, 401 M Street, SW (8601–D), Washington, DC, telephone (202) 564–3362. Copies of the agenda are available from Ms. Wanda Fields, Committee Operations Staff, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington DC 20460, telephone (202) 260–5510, fax (202) 260–7118, or via Email at fields.wanda@epa.gov.

Any member of the public wishing to submit comments must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the Committee, *in writing* no later than noon on July 2nd at: Science Advisory Board (1400), Room 3702, U.S. Environmental Protection Agency, Washington DC 20460; FAX (202) 260–7118; or Email at sanzone.stephanie@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. This time may be reduced at the discretion of the SAB, depending on meeting circumstances. Oral presentations at teleconferences will normally be limited to three minutes per speaker or organization. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments, which may of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

Copies of SAB prepared reports mentioned in this FR Notice may be obtained from the SAB's Committee Evaluation and Support Staff at (202) 260–4126, or via fax at (202) 260–1889. Please provide the SAB report number when making a request.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 15, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–16407 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00544; FRL–5798–9]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, June 29 and 30, 1998. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, June 29, 1998, from 8:30 a.m. to 5 p.m. and Tuesday, June 30, 1998, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at: The Ronald Reagan National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA, CM–II, (703) 305–5306, (703) 308–1850 (fax); e-mail: lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the State FIFRA Issues Research and Evaluation Group includes the following:

1. Outcome of the Second Annual Antimicrobial National Workshop.
2. Consumer Information Sheets for Treated Wood.
3. Pesticide Use/Usage Data.
4. Pesticide Residue Data.
5. Update on Biotechnology.
6. OPP Updates on the following:
   - Quality Assurance Project Plan (QAPP)
   - Food Quality Protection Act
     - (i) Section 18 Rule
     - (ii) Tolerance Reassessment Advisory Committee
     - (iii) Impact on 24c
   - Worker Protection Standard
   - Certification and Training Advisory Group
   - International Activities - (NAFTA)
   - Bee Labeling
   - Chlorine Gas RED
   - PR Notice for Pesticide Products Used in Greenhouses
   - Label Language - mandatory vs. advisory
7. Update on the Office of Enforcement and Compliance Assurance activities.
8. Regional and Committee Reports - Presentation of Issue Papers.
9. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 15, 1998.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 98–16573 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6106–9]

Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); In the Matter of Spiegelberg Superfund Site, Green Oak Township, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Settlement of CERCLA section 107 Cost Recovery Matter.

SUMMARY: EPA is proposing to settle a cost recovery claim with a potentially responsible party (PRP) with regard to past costs at the Spiegelberg site (the Site) in Green Oak Township, Michigan. EPA is authorized under section 122(h) of the CERCLA to enter into this administrative settlement.

Response costs totaling $200,873.35 were incurred by EPA, between December 30, 1993 and September 30, 1997, in connection with the remedial action at the Site. On September 25, 1997 and October 22, 1997, EPA sent the PRP demands for reimbursement of the EPA's past costs. The Settling Party has agreed to pay $194,000 to settle EPA's claim for reimbursement of response costs related to the Site. The U.S. Department of Justice has approved this settlement, consistent with section 122(h)(1) of CERCLA.

The EPA is proposing to approve this administrative settlement because it reimburses EPA, in part, for costs incurred during its response activities at this Site.

DATES: Comments on this administrative settlement must be received by no later than July 20, 1998.

ADDRESSES: Written comments relating to this settlement, Docket Number V–W–98–C–461, should be sent to Cynthia N. Kawakami, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Copies of the Agreement and the Administrative Record for this Site are available at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. It is strongly recommended that you telephone Ms. Denise Williams at (312) 886–9481 before visiting the Region 5 Office.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

Dated: May 22, 1998.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–16405 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6111–6]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Application for approval of Texas Pollutant Discharge Elimination System.

SUMMARY: The State of Texas has submitted a request for approval of the Texas Pollutant Discharge Elimination System (TPDES) program pursuant to section 402(b) of the Clean Water Act (CWA or "the Act"). With this request, the Texas Natural Resource Conservation Commission (TNRCC) seeks approval to administer a major category partial permit program for all discharges of pollutants into waters of the United States under its jurisdiction. Today, EPA Region 6 is providing public notice of Texas' request for TPDES program approval and of both a public hearing and public comment period on the State's program approval submission. EPA will either approve or disapprove the State's request after considering all comments it receives.

ADDRESSES FOR VIEWING/OBTAINING COPIES OF DOCUMENTS: Copies of Texas' TPDES program approval submission

(referred to throughout this notice as Texas' "application") and all other documents in the official record (Docket No. 6WQ–98–1) are available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at EPA Region 6, 12th Floor Library, 1445 Ross Ave., Dallas, Texas 75202.

A copy of Texas' TPDES application is also available for inspection from 8 am to 5 pm, Monday through Friday, excluding State holidays, at Record Services, Room 1301, Building F, TNRCC, 12100 Park 35 Circle, Austin, Texas 78753. You may contact Records Services at (512) 239–0966.

Chapters 1–8 of Texas' TPDES application are available for review, but not copying, at the following TNRCC Regional Offices:

Region 1 (Amarillo): 3918 Canyon Dr., Amarillo, TX 79109–4996, (806) 353–9251, FAX (806) 358–9545

Region 2 (Lubbock): 4630 50th St., Suite 600, Lubbock, TX 79414–3509, (806) 796–7092, FAX (806) 796–7107

Region 3 (Abilene): 209 S. Danville, Suite B200, Abilene, TX 79605–1451, (915) 698–9674, FAX (915) 692–5869

Region 4 (Arlington): 1101 E. Arkansas Ln., Arlington, TX 76010–6499, (817) 469–6750, FAX (817) 795–2519

Region 5 (Tyler): 2916 Teague Dr., Tyler, TX 75701–3756, (903) 535–5100, FAX (903) 595–1562

Region 6 (El Paso): 7500 Viscount Blvd., Suite 147, El Paso, TX 79925–5633, (915) 778–9634, FAX (915) 778–4576

Region 7 (Midland): 3300 North A St., Bldg. 4, Suite 107, Midland, TX 79705–5421, (915) 570–1359, FAX (915) 570–4795

Region 8 (San Angelo): 301 W. Beauregard Ave., Suite 202, San Angelo, TX 76903–6326, (915) 655–9479, FAX (915) 658–5431

Region 9 (Waco): 6801 Sanger Ave., Suite 2500, Waco, TX 76710–7807, (254) 751–0335, FAX (254) 772–9241

Region 10 (Beaumont): 3870 Eastex Fwy., Suite 110, Beaumont, TX 77703–1892, (409) 898–3838, FAX (409) 892–2119

Region 11 (Austin): 1921 Cedar Bend, Suite 150, Austin, TX 78758–5336, (512) 339–2929, FAX (512) 339–3795

Region 12 (Houston): 5425 Polk Ave., Suite H, Houston, TX 77023–1486, (713) 767–3500, FAX (713) 767–3520

Region 13 (San Antonio): 140 Heimer Rd., Suite 360, San Antonio, TX 78232–5042, (210) 490–3096, FAX (210) 545–4329

Region 14 (Corpus Christi): 6300 Ocean Dr., Suite 1200, Corpus Christi, TX 78412–5503, (512) 980–3100, FAX (512) 980–3101

Region 15 (Harlingen): 134 E. Van Buren, Suite 301, Harlingen, TX 78550–6807, (956) 425–6010, FAX (956) 412–5059

Copies of the entire State TPDES application are available in paper format. Copies of most documents are also available in electronic format.

Part or all of the State's application (which comprises approximately 4106 pages) may be copied at the TNRCC office in Austin, or EPA's office in Dallas, at a minimal cost per page. A paper copy of the entire application may be obtained from the TNRCC office in Austin for a $510.00 fee. The cost of the principal documents, i.e the Attorney General's Statement, Memorandum of Agreement, Program Description, water quality Continuing Planning Process (Continuing Planning Process + Implementation Procedures) and the Enforcement Management System (Enforcement Guidelines + Compliance Procedures Manual) all *without* their other associated appendices is $152.00.

Copies of the following portions of the TPDES application are available in both paper and electronic format:

Chapter 1—Memorandum of Agreement Between TNRCC and EPA
Chapter 2—Overview of the TNRCC
Chapter 3—Permitting Program Description
Chapter 4—Pretreatment Program Description
Chapter 5—Sewage Sludge Program Description
Chapter 6—Enforcement Program Description
Chapter 7—Program Cost and Funding Description
Chapter 8—Attorney General's Statement of Legal Authority
Table 1 TPDES Estimated Program Costs (Existing Employees)
Table 2 TPDES Estimated Program Costs (New Employees)
Appendix 2–A Facilities Permitted by the TNRCC Having Oil & Gas Related Activities
Appendix 3–C TNRCC Continuing Planning Process
Appendix 3–D Implementation of the TNRCC Standards Via Permitting
Appendix 3–E TNRCC Playa Policy
Appendix 3–I Standard Permit Provisions
Appendix 3–J Sewage Sludge Provisions
Appendix 6–A Enforcement Guidelines
Appendix 6–B Water Quality Inspection Procedures
Appendix 6–C Water Quality Inspection/Audit Forms
Appendix 6–D Water Quality Inspection Letters
Appendix 6–G Compliance Procedures Manual

The following portions of the TPDES application are only available in paper format:

Figure 2–1 TNRCC Organization
Figure 2–2 Organization of Office of Chief Clerk
Figure 2–3 Organization of Legal Division
Figure 2–4 Organization of Field Operations Division
Figure 2–5 Organization of Enforcement Division
Figure 2–6 Organization of Water Quality Division
Figure 3–1 Wastewater Permitting Process Flow Chart
Figure 5–1 Sewage Sludge Application Registration Procedure
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Copies of the documents available in electronic format are accessible on the Internet at the EPA Region 6 web page *http://www.epa.gov/region6/6wq/npdes/publicnotice.htm* and the TNRCC web page *http://www.tnrcc.state.tx.us.*

Every effort has been made to include each document relevant to EPA's decision on this matter in the official record for Docket No. 6WQ–98–1. However, because the documents associated with Texas' request for

TPDES program approval are voluminous and have come from many sources, EPA invites input from the public on any document that the public feels should have been included in the official record, but has not been.

DATES FOR THE PUBLIC COMMENT PERIOD AND PUBLIC HEARING: The public comment period on the State's request for approval to administer the proposed TPDES program will be from the date of publication until August 3, 1998. Comments must be received or post-marked by no later than midnight on August 3, 1998.

Both an informal public meeting and a public hearing will be held in Austin, Texas on July 27, 1998. The public meeting will include a presentation on the TPDES program approval request, a brief update on the status of the ongoing Endangered Species Act § 7 consultation, and a question and answer session. Written, but not oral, comments for the official record will be accepted at the public meeting. The public hearing will be conducted in accordance with 40 CFR 124.12, and will provide interested parties with the opportunity to provide written and/or oral comments for the official record. The public meeting will begin at 1:00 pm. The public hearing will begin at 7:00 pm. Both the public meeting and the public hearing will be held at the Holiday Inn-South, 3401 South IH 35, Austin, Texas 78741 (IH–35 and Woodward Dr.).

All public comments should reference Docket No. 6WQ–98–1 and may be in either paper or electronic format. If submitting comments in paper format, please submit the original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that comments be typed or legibly written and that commentors cite the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope.

Send all paper copy comments to: Ms. Wilma Turner (6WQ–O), Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Comments may also be submitted electronically to the following e-mail address: "tpdescomment@epa.gov".

Electronic comments must be submitted as an ASCII file or in WordPerfect 6.0 format, avoiding the use of special characters and forms of encryption. Electronic comments should be identified by the docket number 6WQ–98–1. EPA requests that electronic comments also include the commentor's postal mailing address. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 6.0 format or ASCII file format. For those without regular access to an e-mail system, electronic comments on this notice may be filed online at many Federal Depository Libraries.

A copy of each comment should be submitted to: Mr. Thomas W. Weber, Water Quality Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner at the EPA address listed above or by calling (214) 665–7516, FAX (214) 665–6490, e-mail: tpdescomment@epa.gov or Mr. Tom Weber at the TNRCC address listed above or by calling (512) 239–4576, Fax: (512) 239–4420).

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements.

The regulatory requirements for state program approval are set forth in 40 CFR part 123. 40 CFR 123.21 lists the basic elements of an approvable application. EPA Region 6 considers the documents submitted by the State of Texas administratively complete at the time of this document. EPA will not make a final decision on TPDES program approval until after (1) considering all public comments provided during the public comment period or at the public hearing, (2) completion of the ongoing consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on effects program approval may have on endangered or threatened species and their designated critical habitat, and (3) completion of ongoing consultations with the State Historic Preservation Officer on effects program approval may have on historic properties or sites listed or eligible for listing in the National Register of Historic Places.

On February 5, 1998, the Governor of Texas requested NPDES major category partial permit program approval [1] and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 6 and the Executive Director of TNRCC. Supplements to the State application were received by EPA Region 6 on February 12, March 16, April 15, and May 4, 1998. EPA Region 6 determined that Texas' February 5, 1998, approval request, supplemented by this additional information, constituted a complete package under 40 CFR 123.21, and a letter of completeness was sent to the Chairman of the TNRCC on May 7, 1998.

EPA is required to approve the submitted program within 90 days of submission of the complete information unless it does not meet the requirements of section 402(b) of the Act and EPA regulations, or EPA and TNRCC jointly agree to extend this deadline. (See 40 CFR 123.21(d)). To obtain such approval, the State must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period and completion of the required consultations with other federal agencies, the Regional Administrator for EPA Region 6 will make a decision to approve or disapprove the TPDES program for implementation by the State.

EPA's final decision to approve or disapprove the TPDES program will be based on the requirements of section 402 of the CWA and 40 CFR part 123. EPA is also required by the Endangered Species Act (ESA), the National Historic Preservation Act and the Coastal Zone

[1] Major category partial permit program approval is provided for under section 402(n)(3) of the CWA. Pursuant to that section, EPA may approve a partial permit program covering a major category of discharges if the program represents a complete permit program and covers all of the discharges under the jurisdiction of the agency seeking approval, and if EPA determines the program represents a significant and identifiable part of the State program required by section 402(b) of the Act. As discussed below under "Scope of the Partial Program," TNRCC seeks permitting authority for all facilities that have discharges within its jurisdiction. However, TNRCC does not have jurisdiction over all discharges within the State of Texas. A small portion of the State's discharges fall under the jurisdiction of the Texas Railroad Commission.

Management Act, to consult with other federal agencies before making a final decision in this matter. For example, the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the effects of federal actions (including NPDES state program approvals) on endangered species. Section 7(a)(2) of the ESA places a statutory requirement (separate and distinct from CWA § 402(b)) for EPA to "* * * insure that any action authorized, funded or carried out *, * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat * * * determined to be critical * * *" EPA Region 6 initiated formal consultation under section 7 of the ESA on January 29, 1998. EPA's responsibilities under ESA, as well as under the National Historic Preservation Act and the Coastal Zone Management Act are discussed in more detail later in this notice. Under federal law, EPA may not make a final decision on TPDES program approval until consultation under these acts are completed, and it may be necessary to seek TNRCC's agreement on an extension of the 90 day approval deadline.

If EPA approves the Texas partial program, the Regional Administrator will so notify the State and will sign the proposed MOA. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will transfer to the TNRCC NPDES permitting authority and primary enforcement responsibility for those discharges subject to the TPDES program, with certain exceptions, which are discussed below under *Scope, Transfer of NPDES Authority, and Summary of the TPDES Permitting Program*. If EPA's Regional Administrator disapproves the TPDES program, the TNRCC will be notified of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearing.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

6. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to summarize their points rather than reading lengthy written comments verbatim into the record. All comments received by EPA Region 6 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Texas request for NPDES program approval.

Scope, Transfer of NPDES Authority, and Summary of the TPDES Permitting Program

A. Scope of the Partial Program

The proposed TPDES program is a partial program which conforms to the requirements of section 402(n)(3) of the CWA. TNRCC's application for program approval applies to all discharges covered by the authority of that agency. This includes most discharges of pollutants subject to the federal NPDES program (e.g. municipal wastewater and storm water point source discharges, pretreatment, most industrial wastewater and storm water point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with section 405 of the Act and 40 CFR part 503).

The TNRCC has authority to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes except for those facilities classified as 1311, 1321, 1381, 1382, 1389, 4922, and 4925, which are regulated by the Texas Railroad Commission. Some activities at facilities within these SIC codes are regulated by the TNRCC, and a list of the ten facilities currently affected is included in Appendix 2–A of the TPDES application. EPA will retain NPDES permitting authority and primary responsibility for enforcement over all discharges not under the jurisdiction of TNRCC and therefore not subject to the TPDES program, including those within the jurisdiction of the Texas Railroad Commission. The TNRCC has authority to regulate discharges of storm water associated with industrial activity and discharges of storm water from municipal separate storm sewer systems, except at facilities regulated by the Texas Railroad Commission (see above). The TNRCC has primary responsibility for implementing a Pretreatment Program and a Sewage Sludge Program. The TNRCC has authority to regulate discharges from publicly owned and privately owned treatment works and for discharges from concentrated animal feeding operations (CAFOs) within the TNRCC's jurisdiction.

EPA would retain permitting authority and primary enforcement responsibility over discharges from CAFOs not subject to TNRCC jurisdiction. Pursuant to state statute, CAFOs authorized by TNRCC to use, and that have actually used, a playa lake that does not feed into any other surface water in the state as a wastewater retention facility before July 10, 1991 (the effective date of TNRCC's adoption of related revisions to the Texas Surface Water Quality Standards, 30 TAC Chapter 307) are not subject to water quality standards or other requirements for discharges to waters in the state. These discharges, however, if to waters of the United States, are subject to federal CWA requirements. Because TNRCC would not have jurisdiction under the TPDES program to require compliance with water quality standards for these discharges, EPA would retain permitting authority and primary enforcement responsibility over discharges into playa lakes that are waters of the United States by CAFOs that received authorization to discharge and commenced operation prior to July 10, 1991, and that are therefore not subject to TNRCC jurisdiction.

TNRCC does not have, and is not seeking, the authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). EPA will retain NPDES permitting authority and primary enforcement responsibility over Indian Country in Texas.

B. Transfer of NPDES Authority and Pending Actions

Upon approval of the TPDES program, authority for all NPDES permitting activities, as well as primary

responsibility for NPDES enforcement activities, within the scope of TNRCC's jurisdiction, would be transferred to the State, with some exceptions. These exceptions would be agreed to by EPA and the State under the MOA that would be signed upon program approval, and are explained below. In addition to the exceptions listed below, EPA would retain on a permanent basis its authority under section 402(d) of the CWA to object to TPDES permits proposed by TNRCC, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA would also retain on a permanent basis its authority under sections 402(I) and 309 of the CWA to file federal enforcement actions in those instances in which it determines the State has not taken timely or appropriate enforcement action.

1. Permits Already Issued by EPA

40 CFR 123.1(d)(1) provides that EPA retains jurisdiction over any permit that it has issued unless the State and EPA have reached agreement in the MOA for the State to assume responsibility for that permit. The proposed MOA between EPA and the TNRCC provides that the TNRCC would assume at the time of program approval permitting authority and primary enforcement responsibility over all NPDES permits issued by EPA prior to program approval, with the following exceptions:

a. Jurisdiction over those discharges covered by permits already issued by EPA, but for which variances or evidentiary hearings have been requested prior to TPDES program approval. Jurisdiction over these discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to the State once the variance or evidentiary hearing request has been resolved and a final effective permit has been issued.

b. Jurisdiction over all existing discharges of storm water associated with industrial or construction activity (40 CFR 122.26(b)(14)), including allowable non-storm water, authorized to discharge as of the date of program approval under one of the NPDES storm water general permits issued by EPA prior to approval of the TPDES program. The storm water general permits affected are: Baseline Construction storm water general permit (57 FR 41209), NPDES permit numbers TXR10*###; Baseline Non-construction storm water general permit (57 FR 41297), NPDES permit numbers TXR00*###; and Multi-sector storm water general permit (60 FR 51108), NPDES permit numbers TXR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers—e.g. TXR00Z999). Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

Note: EPA Region 6 is in the process of modifying the Multi-sector storm water general permit and this action is expected to be completed prior to the time a final decision on TPDES program approval is made. However, because permit modification does not trigger the transfer of permit jurisdiction under this section, the Multi-sector storm water general permit would remain under EPA's jurisdiction until it expires or is replaced by a TNRCC permit regardless of whether it is modified prior to program approval.

In addition, EPA Region 6 is in the process of reissuing the Baseline Construction storm water general permit. This action is also expected to be completed prior to a final decision on program approval. If the Baseline Construction storm water general permit is reissued prior to program approval, the permit would temporarily remain under EPA jurisdiction pursuant to this section. However, even if the permit is not reissued prior to program approval, EPA would temporarily retain jurisdiction over the permit under paragraph 2 below (Permits Proposed for Public Comment but Not Yet Final). The Baseline construction storm water general permit was proposed for public comment by EPA on June 2, 1997, and has not yet been finalized.

c. Jurisdiction over new discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under one of the NPDES storm water general permits issued by EPA prior to TPDES approval and listed above. Facilities eligible for but not currently covered by one of these general permits would continue to apply to EPA for coverage. Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

Except as provided in paragraphs 2 and 3 below, EPA would not retain, even on a temporary basis, jurisdiction over discharges from individual storm water permits; storm water outfalls in waste water permits; and storm water discharges designated by the State in accordance with 40 CFR 123.26(g)(1)(I). The State would have jurisdiction and permitting authority, including primary enforcement responsibility, over these discharges immediately upon TPDES program approval.

d. Jurisdiction over all discharges covered by large and medium Municipal Separate Storm Sewer System (MS4) permits issued by EPA prior to TPDES program approval. Jurisdiction over EPA-issued MS4 permits, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued permit expires or TNRCC issues a renewed, amended or replacement TPDES permit.

2. Permits Proposed for Public Comment but Not Yet Final

EPA would temporarily retain NPDES permitting authority, as well as primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), over all discharges covered by general or individual NPDES permits that have been proposed for public comment by EPA but have not been issued as final at the time of program approval. Although section 402(c)(1) of the Act establishes a 90 day deadline for EPA approval or disapproval of a proposed State program and, if the program is approved, for the transfer of permit issuing authority over those discharges subject to the program from EPA to the State, this provision was intended to benefit States seeking NPDES program approval. As a result, and in the interest of an orderly and smooth transition from federal to State regulation, the time frame for transfer of permitting authority may be extended by agreement of EPA and the State. See, for example, 40 CFR 123.21(d), which allows a State and EPA to extend by agreement the period of time allotted for formal EPA review of a proposed State program. In order to render programmatic transition more efficient and less confusing for permit applicants and the public, the State of Texas and EPA have agreed to enter into an MOA that extends the time frame for transfer of permit issuing authority over those permits that EPA has already proposed for public comment, but which are not yet final at the time of program

approval. Permitting authority and primary enforcement responsibility would be transferred to the State as the permits are finalized.

3. Facilities With Outstanding Compliance Issues

EPA would temporarily retain primary NPDES enforcement responsibility for those facilities which have any outstanding compliance issues. EPA would retain jurisdiction of these facilities until resolution of these issues is accomplished in cooperation with the State. Files retained by EPA for the reasons given above would be transferred to the State as the actions are finalized. Facilities would be notified of this retained jurisdiction and again when the file is transferred to the State. Permitting authority over these facilities would transfer to the State at the time of program approval.

A list of existing Permittees that would temporarily remain under EPA permitting jurisdiction/authority is included as part of the public record and available for review. Texas would continue to provide State-only permits for those dischargers over which EPA temporarily retains permitting authority, and which need State authorization to discharge.

C. Summary of the Application Documents

The TPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, i.e., a letter from the Governor requesting program approval; a Memorandum of Agreement (MOA) for execution by TNRCC and EPA; a Program Description, including an Enforcement Management System, outlining the procedures, personnel and protocols that would be relied on to run the State's permitting and enforcement programs; and a Statement signed by the Attorney General that describes the legal authority which the State has to administer a program equivalent to the federal NPDES program. The State's TPDES application consists of a letter from the Governor of Texas, enclosing eight chapters and associated appendices. The content of those documents is summarized below.

1. A Letter from the Governor

Texas' application for program approval includes a letter dated February 5, 1998, from Governor George W. Bush, officially requesting NPDES program approval.

2. The EPA/TNRCC MOA (Chapter 1)

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program. A MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight.

The MOA submitted by the State of Texas has been signed by Dan Pearson, Executive Director of the Texas Natural Resource Conservation Commission. The Regional Administrator of U.S. EPA Region 6 would sign the document only if the program has been determined approvable after all comments received during the comment period (including comments received at the public hearing) have been considered. The MOA submitted by TNRCC includes the following items:

Section I—General: This section contains general statements describing the purpose of the MOA.

Section II—Scope of Authorization: This section contains the statement of the scope of the NPDES program (pretreatment, storm water, sewage sludge disposal programs) TNRCC would be administering.

Section III—State and Federal Responsibilities: Lists the responsibilities of TNRCC and EPA in maintaining an effective program. Also outlines the procedures for transfer of authority over discharges over which EPA would be temporarily retaining authority and gives timing for the transition.

Section IV—Permit Processing, Review and Issuance: describes all agreements on the review and issuance of TPDES permits. It covers TNRCC's responsibilities to issue permits, the transfer of EPA files to the State, and the State's application review and permit development process. Included are such things as procedures for permit modification or reissuance, and EPA's review of TPDES drafted individual and general permits. This section includes the State's commitment for responding to public concerns and providing public participation in connection with public hearings, evidentiary hearings, and administrative and judicial enforcement actions.

Section V—Compliance Monitoring and Permit Enforcement: Describes summary agreements between EPA and TNRCC regarding EPA oversight of the TPDES enforcement program. These include those commitments on TNRCC's compliance monitoring, reviews, pretreatment audits, and inspections.

Section VI—Pretreatment Program: Describes summary agreements between EPA and TNRCC regarding EPA oversight of TPDES's implementation of the industrial pretreatment program regulating industrial users of municipal wastewater treatment plants.

Section VII—Sludge Management Program: Describes summary agreements between EPA and TNRCC regarding EPA oversight of TPDES's regulation of the disposal of biosolids (sewage sludge) generated by wastewater treatment systems.

Section VIII—Transmittal of Information: This section describes how reports and requests for information would be handled; and how information is transferred between the two agencies.

Section IX—TPDES Program Review by EPA: Explains how EPA would periodically review the TPDES program for implementation and continued consistency with Clean Water Act requirements.

Section X—Amendments To Be Approved by EPA: This section describes procedures to insure that EPA is given an opportunity to review any proposed amendment, recision or repeal of any State statute or regulation that could affect the continued viability of the TPDES program.

Section XI—Approval, Effective Date And Term Of the MOA: Describes how the MOA can be modified by EPA and TNRCC. Also establishes a commitment to review the MOA within five years and make any necessary changes. The MOA would become effective on the date of program approval.

3. Program Description (Chapters 2–7)

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program for the first two years after program approval. It must describe all applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The program description submitted by TNRCC includes the following items:

Chapter 2—Overview of the TNRCC: This chapter gives an overview of the history, authority, and organization of the TNRCC.

Chapter 3—Permitting Program Description: Describes how TNRCC staff

would develop effluent limitations; the permitting process, including procedures for public participation in decision making process; and the process for determining the Total Maximum Daily Load a surface water can assimilate and still support its designated beneficial uses (e.g., swimming, fishing, public water supply, etc.).

The Continuing Planning Process (CPP) and its associated Implementation Procedures (IP) used by the TNRCC to develop and implement water quality standards and assess the condition of surface waters of the State are found in two appendixes to Chapter 3 (Appendix 3–C: "TNRCC Continuing Planning Process" and Appendix 3–D: "Implementation of the TNRCC Standards Via Permitting"). Portions of the CPP and IP previously approved by EPA when TNRCC was not proposed to be the NPDES permitting authority would be superseded by agreements found in the section IV.B. of the proposed MOA between TNRCC and EPA. The issues addressed by these superseding agreements include: suspension of the use of biological surveys in the Implementation Procedures; determining cessation of lethality in biomonitoring; use of alternate test species for biomonitoring; calculation of Dioxin/Furan permit limits; development of water quality-based effluent limitations for discharges into the Rio Grande; ensuring all final limitations in a TPDES permit would be consistent with the EPA-approved Water Quality Management Plan (including any applicable Total Maximum Daily Loads); ensuring variance from water quality standards would not be used to establish an effluent limitation for a TPDES permit until the standards variance has been reviewed and approved by EPA; and ensuring appropriate limitations would be included in general permits to ensure compliance with water quality requirements. Texas has committed to incorporating the MOA agreements into the CPP and IP during the next update to the CPP and IP. Taken together, these three documents constitute the CPP required under 40 CFR 130.5(c) for the Administrator's approval of a state program.

Chapter 4—Pretreatment Program Description: This chapter gives the authority for the TNRCC pretreatment program; and the components of the program such as, the establishment of limits for indirect users, fundamentally different factors, categorical determination requests, reporting requirements, inspections and enforcement.

Chapter 5—Sewage Sludge Program Description: This Chapter gives a brief description of the TNRCC sewage sludge program, its history, and statutory framework. It describes sludge permits and reports required.

Chapter 6—Enforcement Program Description: This chapter gives the legal authority for TNRCC enforcement actions, outlines TNRCC policies related to compliance and enforcement and provides a description of State enforcement actions. It also gives a brief overview of compliance review activities for inspections, Discharge Monitoring Reports and other required reports to be submitted by the permittee, and describes the Permits Compliance System and the types of data tracked by it.

States seeking approval of their permitting and enforcement program under NPDES have the option of adopting EPA's enforcement policies, procedures, and guidance; or providing in their program package a complete description of their own enforcement authority and compliance evaluation program (40 CFR 123.26 and 123.27). Texas submitted its own enforcement management system (EMS) (Appendices 6–A through 6–G). An EMS outlines the way the State systematically and efficiently identifies instances of noncompliance and provides timely and appropriate enforcement actions to achieve the final objective of full compliance by the permittee with the Clean Water Act. An EPA memo dated October 2, 1989, titled "Final Version of the Revised Enforcement Management System," describes seven basic principles that are common to an effective EMS:

—Maintain a source inventory that is complete and accurate;
—Handle and assess the flow of information available in a systematic and timely basis;
—Accomplish a pre-enforcement screening by reviewing the flow of information as soon as possible after it is received;
—Perform a more formal enforcement evaluation where appropriate, using systematic evaluation screening criteria;
—Institute a formal enforcement action and follow-up whenever necessary;
—Initiate field investigations based on a systematic plan; and
—Use internal management controls to provide adequate enforcement information to all levels of organization.

The TNRCC's Enforcement Management System (EMS) is a written outline or guide which discusses the procedures that would be followed to ensure that both federal and State regulatory requirements and goals are accomplished in a timely and appropriate manner. For the purpose of review, EPA considers the TNRCC EMS to consist of the seven appendices to Chapter 6.

The inspection and enforcement functions of the TNRCC reside in the Field Operations Division, Compliance Support Division, and Enforcement Division of the Office of Compliance & Enforcement. The Field Operations Division, with 16 regional offices across the State, is responsible for inspecting all permitted and unpermitted facilities which have or are believed to have a surface water discharge and is primarily responsible for the investigation and resolution of all citizen complaints involving waters of the State. The Compliance Support Division provides agency sponsored or administered training courses and technical assistance aimed at development of environmental expertise by agency staff and those regulated by the TNRCC. The Enforcement Division, in coordination with the Field Operations Division, is responsible for addressing non-compliance with the agency's regulations through enforcement actions.

The TNRCC has not adopted EPA's civil penalty policy, but uses their own policy to assess and collect administrative penalties. The penalty policy is discussed in detail in Appendix VI.

Chapter 7—Program Cost and Funding: This chapter gives a budget summary on the projected costs and funding sources for the TPDES program for the first two years after program approval.

4. Attorney General's Statement (Chapter 8)

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. The State Attorney General must certify that the State has lawfully adopted statutes and regulations which provide the State agency with the legal authority to administer a permitting program in compliance with 40 CFR part 123. The Texas Attorney General's Statement describes and cites State legal authority it believes adequate to administer the TPDES program; and certifies that the State has the legal authority to administer the TPDES program in accordance with the regulations in 40 CFR part 123. Chapter 8 entitled "Authority for the Texas National Pollutant Discharge Elimination System Program," which was submitted by the

State of Texas on February 5, 1998, and the supplemental March 16, 1998, letter from Texas Attorney General Dan Morales to Acting EPA Region 6 Regional Administrator Jerry Clifford, taken together, constitute the Attorney General's Statement required by section 402(b) of the CWA and 40 CFR 123.23 for purposes of the State's TPDES application. All references to the "Attorney General's Statement" or "statement of legal authority" made in this document refer to the combination of these two documents.

Public Comment on the Described Program

The program submitted by the State of Texas has been determined by EPA to be complete in accordance with the regulations found at 40 CFR part 123. EPA and TNRCC want the citizens of Texas to understand the proposed TPDES program and encourage public participation in the decision making process. Therefore, EPA requests that the public review the program that TNRCC has submitted and provide any comments they feel are appropriate. EPA will consider all comments on the TPDES program and/or its approval in its decision.

EPA is specifically seeking public input on the following aspects of the proposed TPDES program:

Public Participation

In discussions with the State of Texas over the last couple of years concerning the possibility of federal approval of a Texas NPDES program, EPA expressed various concerns regarding the opportunity for public participation in the State permitting and enforcement processes. For example, EPA raised concerns that notice and opportunity for comment should be provided on proposed settlements of administrative enforcement actions; that Texas notices should notify the public that it may request a hearing on permit applications and that a hearing would be granted if there was a significant degree of public interest; that Texas should provide for permissive intervention in administrative penalty actions; and over restrictions placed by the State on the participation of citizens in formal evidentiary contested case hearings and the implications of those restrictions on the ability of citizens to establish standing to obtain judicial review of permits. In response to these discussions, the State of Texas has implemented various regulatory and statutory changes to enhance the opportunity for public participation under the State program, and the Texas Attorney General has stated that the law governing individual standing in Texas judicial proceedings is substantially equivalent to current requirements for standing under federal law. Through these statutory and regulatory changes and the Texas Attorney General's statement, Texas has worked to address EPA's concerns in this area. The results of the various discussions between EPA and TNRCC regarding public participation issues are reflected in an exchange of letters between TNRCC Commissioner Barry McBee and Acting Region 6 Regional Administrator Jerry Clifford dated June 16, 1997 (McBee to Clifford), June 19, 1997 (Jerry Clifford to Barry McBee) and November 25, 1997 (Barry McBee to Jerry Clifford). These three letters are included as part of the official record for this matter.[2]

Texas' Regulatory Flexibility Under Texas Water Code 5.123

The Texas Legislature added section 5.123 to the Texas Water Code in 1997 (implementing Senate Bill 1591). This section gives the TNRCC flexibility to exempt from State statutory or regulatory requirements an applicant proposing an alternative method or alternative standard to control or abate pollution. EPA raised questions concerning the effect of the statute on TNRCC's obligations under the TPDES program. In response, the Texas Attorney General stated that Texas Water Code 5.123 does not subtract from the TNRCC's authority required as a condition of program approval under the CWA or EPA regulations since the statute does not authorize the TNRCC to grant an exemption that is inconsistent with the environmental requirements of any federally approved program. In a letter from TNRCC Commissioner Ralph Marquez to Acting Region 6 Regional Administrator Jerry Clifford dated March 16, 1998, Commissioner Marquez clarified TNRCC's position that section 5.123 does not authorize TNRCC to grant permits that vary from applicable federal requirements. To further clarify this position, Commissioner Marquez committed to include the following language in the proposed MOA between EPA and the TNRCC:

> The regulatory flexibility authority in Senate Bill 1591 will not be used by TNRCC to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under § 402(b) of the Clean Water Act, EPA regulations implementing that Section, or this MOA, including but not limited to inspection, monitoring or information collection requirements that are required under § 402(b) of the Clean Water Act, EPA regulations implementing that Section or this MOA to carry out implementation of the approved federal program.

This language is included on page 8 of the proposed MOA.

Texas' Defense to Liability for Acts of God, War, Strike, Riot, or Other Catastrophe

Section 7.251 of the Texas Water Code provides that if an event that would otherwise be a violation of a statute, rule, order or permit was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit. This statute and its effect on the TPDES program are discussed in detail in the Attorney General's Statement provided by the State of Texas as part of its application. However, EPA wishes to also clarify its understanding of this statute and its role in the federally authorized program.

It is important to first note that section 7.251 of the Texas Water Code creates a defense to liability not provided for under the federal CWA. Should EPA authorize the TPDES program, EPA would still retain its authority to bring enforcement actions for violations of the Act, and this authority would not be affected by section 7.251. Both EPA and the courts have consistently interpreted the CWA as a strict liability statute. The only defense to liability recognized under federal law is the federal upset defense found at 40 CFR 122.41(n), which is a very narrow affirmative defense for violations of technology-based effluent limitations. Although both Texas Water Code section 7.251 and 40 CFR 122.41(n) provide for affirmative defenses that must be pled and proven by the asserting party, the defenses are not analogous.

The Attorney General's Statement provided by the State of Texas acknowledges that the defenses are not analogous. However, in his effort to clarify the scope of the State statute, the Attorney General compares section 7.251 to "a federal defense that CWA § 301(a) only applies to any person causing an unauthorized discharge." It is EPA's belief that no such federal defense exists. EPA has consistently taken the position, which it believes is supported by available case law, that any unauthorized discharge of pollutants is unlawful regardless of the cause, and that a facility owner or operator is responsible for any unlawful

[2] Also included in the record and of interest on this issue is an exchange of letters between Mr. Richard Lowerre of Henry, Lowerre, Johnson, Hess, & Frederick and the TNRCC dated November 19, 1997 (Lowerre to TNRCC Chairman Barry McBee) and January 6, 1998 (Jim Phillips, Deputy Director of the Office of Legal Services, TNRCC to Lowerre).

discharge occurring at his facility. Therefore, although Texas Water Code section 7.251 creates an affirmative defense to liability for actions brought by Texas under State law, section 7.251 is not a defense to enforcement actions brought by EPA pursuant to the federal CWA.

As interpreted by the Texas Attorney General, section 7.251 provides an affirmative defense to unauthorized discharges under State law only if the event causing the discharge is completely outside the control of the person otherwise responsible for the discharge and only if the discharge could not have been avoided by the exercise of due care, foresight, or proper planning, maintenance or operation. Section 7.251 does not shield a party from liability if that party's action or inaction contributed to the violation. Based on this interpretation, it is EPA's understanding that if a facility owner or operator could have reasonably anticipated a discharge, and could have taken steps to prevent it by care and foresight, proper planning, or maintenance, then the affirmative defense is unavailable. For example, if a heavy rainfall, a strike, or a riot is reasonably foreseeable, or the facility is not designed, operated, or maintained properly, then any discharge resulting from such an event would not be solely caused by the event, and the facility owner or operator would be unable to claim the defense for such a discharge.

The Attorney General also states that section 7.251 would not preclude the imposition of penalties for a violation that persists after the original force majeure event ceases to be the sole cause of a discharge, whether the persisting violation was a continuing discharge or a failure to comply with a rule, order, or permit requirements. EPA understands this to mean that even if a discharge at a facility were initially caused by an act of God, and the facility owner or operator in no way contributed to the discharge, either through his action or inaction, if the facility owner or operator could have taken steps to stop the discharge from continuing, but failed to do so, the facility operator would be liable for the continuing discharge.

As discussed in the Attorney General's Statement, the main impact of section 7.251 is to insulate a party from penalties; the statute's effect on the TNRCC's injunctive authority is minimal in that it does not affect a court's authority to issue an injunction to enforce any Code requirement or prohibition, including the requirement that a party comply with any permit, rule or order issued by the TNRCC. EPA understands the Texas Attorney General's statement to conclude that the TNRCC can enjoin by suit in State court any violation or threat of violation of a statute, rule or permit under the TPDES program. Based on this understanding, TNRCC appears to have injunctive authority equivalent to EPA's authority under federal law despite the existence of section 7.251.

In regard to the insulation of parties from penalties under section 7.251, EPA would rarely seek penalties for violations of the Act that were completely beyond the control of a party, and in regard to which that party had exercised due care, foresight, proper planning and maintenance.

Therefore, based on the Texas Attorney General's Statement and EPA's understanding of TNRCC's broad injunctive authority, the statute does not appear to prevent TNRCC from demonstrating adequate authority to meet its obligations under section 402(b) of the CWA.

Inspections

The federal regulations (40 CFR 123.26(e)(5)) require State NPDES compliance evaluation programs to have the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge facilities where applicable at least annually. In the proposed MOA between EPA and the TNRCC, the TNRCC states that it has the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge facilities where applicable at least annually, and that it will inspect 100% of the majors and Class I sludge facilities on an annual basis, or a universe of majors/minors agreed upon annually by EPA and the TNRCC. The agreement to allow TNRCC to substitute the inspection of a mutually agreed-upon universe of majors/minors for inspection of 100% of the majors and Class I sludge facilities is based on EPA's and TNRCC's commitment to a process for targeting inspections according to the priorities established by TNRCC to protect the waters of Texas. Under the terms of the proposed MOA, the TNRCC will develop an annual inspection plan that establishes priorities, lists the major and minor dischargers to be inspected, and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities where applicable. The TNRCC will have to inspect majors at some regular interval while expending resources on minors equivalent to 100% of the majors annually. The TNRCC will also have to demonstrate water quality improvement as a result of the trade-off. Under the proposed MOA, if EPA and the TNRCC are unable to reach agreement on the universe of majors/minors to be inspected under the annual inspection plan by the beginning of the following fiscal year, TNRCC agrees to inspect 100% of the majors and all Class I sludge management facilities where applicable.

Timely and Appropriate Enforcement

Section 402(b) of the Act requires that a State have adequate authority to abate violations of the permit or the permit program. Because the ability to take timely and appropriate enforcement action is fundamental to an adequate enforcement program, EPA's Oversight Guidance states that by the time a facility appears on the second Quarterly Noncompliance Report, a formal enforcement action should have been taken. Chapter 6 of Texas' application (Enforcement Program Description) outlines the time frames for TNRCC issuance of enforcement actions. The average time for TNRCC enforcement action issuance is 255 days. As a result, in implementing the TPDES program, TNRCC would not in all cases be able to meet the timely and appropriate criteria contained in EPA's Oversight Guidance. In cases where TNRCC cannot meet this criteria, TNRCC has agreed in the proposed MOA to notify EPA 45 days prior to a facility appearing on the Exception List. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner.

Penalty Policy

The TNRCC proposes to use its own Penalty Policy in administering the TPDES program, and the TNRCC policy differs in some respects from the EPA penalty policy. It is EPA policy that penalties generally should, *at a minimum*, collect the economic benefit accruing to the violator as a result of violating the law. EPA's policy also states that every effort should be made to calculate and recover an additional amount, over and above economic benefit, to ensure that the violator does not gain economically by violating the law. (EPA's February 1984 "Policy on Civil Penalties" (#GM–21) as implemented in EPA's March 1, 1995 "Interim CWA Settlement Penalty Policy"). TNRCC's policy will not ensure that economic benefit will be collected, at a minimum, in all cases, and TNRCC's policy allows for mitigation of penalties to zero in some instances. Neither the CWA nor 40 CFR part 123 require a State seeking NPDES

authority to adopt EPA's penalty policy verbatim. However, 402(b) of the Act and 40 CFR 123.27 require that States have enforcement authority, including civil and criminal penalties, adequate to abate violations of a permit or the permit program. If the TPDES program were approved, EPA would be required to over-file in certain instances in order to ensure consistency with the Federal penalty policy that no party be allowed to garner an unfair economic advantage through avoiding the cost of compliance with environmental protection requirements. Any penalties collected by EPA go to the federal, not the State, treasury.

Applicability of Water-Quality Based Limits in the Absence of Technology-Based Effluent Guidelines

In a brief filed February 12, 1998, in the U.S. Court of Appeals for the Fifth Circuit on behalf of the State of Texas and the Texas Railroad Commission in *Texas Mid-Continental Oil & Gas Association v. EPA* (No. 97–60042 and Consolidated Cases), the Texas Attorney General took the position that EPA did not have the authority to include water quality-based effluent limitations in an NPDES permit unless technology-based effluent guidelines had been developed. EPA vigorously disagrees with this position and continues to maintain that under the CWA, technology-based and water quality-based effluent limitations are independently applicable in determining appropriate effluent limitations for an NPDES permit.

While confident that the Texas Attorney General's position on EPA's authority to independently require compliance with water quality standards will not be upheld by the courts, EPA also believes it is not necessary to wait for a final ruling by the courts before acting on the TPDES program proposed by TNRCC. The Texas Attorney General's statement confirms that TNRCC has full authority under state law to impose effluent limitations for any discharge as necessary to insure compliance with approved water quality standards. In addition, in a March 16, 1998, letter to EPA Region 6 Acting Regional Administrator Jerry Clifford from TNRCC Commissioner Ralph Marquez, Commissioner Marquez committed to add additional language to the MOA to clarify that in implementing the TPDES program, TNRCC would use water quality-based effluent limits in permits wherever necessary to insure compliance with water quality standards. As a result of Commissioner Marquez' commitment, the following language is now included on page 24 of the proposed MOA:

> Water quality based effluent limitations will be included in TPDES permits for all discharges to ensure compliance with approved water quality standards. Water quality based effluent limitations are part of the federally approved program and the State will impose such limitations in TPDES permits unless technology-based effluent limitations are more stringent.

Therefore, the proposed TPDES program would appear to function in a manner consistent with EPA's interpretation of the requirements of the CWA and its implementing regulations.

TPDES Resource Needs

The CWA and EPA regulations require States seeking approval of State NPDES programs to demonstrate adequate resources, including qualified personnel and sufficient funding, to operate the proposed program if approved. Section 304(I)(2) of the CWA requires EPA to promulgate guidelines establishing the minimum procedural and other elements of State programs, including among other things, funding, personnel qualifications, and manpower requirements. 40 CFR 123.22 requires a state seeking NPDES approval to provide as part of its program submission a description of the staff who will carry out the proposed State program and an itemization of the estimated costs of establishing and administering the proposed program for the first two years after approval. As required by 40 CFR 123.22, the State included a description of the cost of establishing and administering the proposed TPDES program for the first two years after program approval in Chapter 7 of its application. However, information provided to EPA by two public interest groups, the Texas Center for Policy Studies (letter to Samuel Coleman and Steven A. Herman dated May 7, 1998) and People Organized in Defense of Earth and her Resources (letter to Carol Browner and Jerry Clifford dated April 29, 1998), has raised questions concerning whether the available information indicates that the State, if authorized, will have sufficient funding to adequately implement the program. The answers to these questions will be important to EPA's final decision on TPDES program approval. To that end, EPA intends to seek clarification from the TNRCC regarding certain aspects of the information provided. Any additional comments by the public will also be considered by the Regional Administrator in making his final decision.

It is also important to note that under the proposed TPDES program, authority over storm water general permits (approximately 20,000 permittees) and municipal separate storm sewer permits (approximately 30 permits) already issued by EPA would not be transferred to TNRCC until the federal permits expire or are replaced by a TPDES permit. Therefore, permitting authority and primary enforcement responsibility over a significant portion of the NPDES universe would not transfer to TNRCC until after the period covered by the financial capability information included in the program approval request. In addition, the State would be required to begin administering Phase II of the NPDES storm water program (expected to require permitting of numerous smaller municipalities and construction sites) starting around 2001. As a result of these anticipated increases in TNRCC responsibility in the years following program approval, resources needed to run the program would also increase. If the TPDES program were approved, TNRCC would be expected to increase its resources commensurate with program growth, and if it were unable to do so, the program would be subject to withdrawal by EPA under 40 CFR 123.64(b).

Funding Sources Available for the TPDES Program

Under 40 CFR 123.22(b)(3), the program description must include an itemization of the sources and amounts of funding, including Federal grant money, expected to be available to TNRCC for the first two years after approval to meet the costs of establishing and administering the proposed TPDES program. However, since EPA cannot guarantee the level of Federal funding Congress will make available in future years, a State seeking program approval must be able to run its program with or without the assistance of Federal funding.

Chapter 7 of the TPDES application contains both the expected program costs and the required breakdown on funding sources. The funding sources TNRCC would rely on for the first two years of the proposed TPDES program includes federal grants totaling $7,224,305 per year. Approximately 49% of the proposed TPDES budget would therefore be dependent on the continued availability of Federal grants. The Texas Legislature has already authorized TNRCC to increase the maximum annual permit fee to $25,000 and to collect additional fees to recover the costs of an authorized program.[3] If

[3] Under Texas' proposed funding plan, the TNRCC will charge fees for storm water permittees. As a result, many industrial facilities, construction

current levels of available Federal grant funds decline, TNRCC would need to further increase fee revenue or seek additional funds from the Texas Legislature to fund the TPDES program.

Environmental Justice

EPA encourages States to include environmental justice provisions in their environmental programs in furtherance of environmental justice policies, and to help ensure compliance with non-discrimination provisions of Title 6 of the Civil Rights Act. EPA wrote to TNRCC in December of 1997, recommending that the State include an environmental justice program as part of its proposed TPDES program. Under the current regulations for State program approval, Texas is not required to submit a description of program procedures to ensure environmental justice issues are taken into consideration in TNRCC's permitting and enforcement decisions. In a letter dated February 6, 1998, TNRCC indicated it does have an environmental justice program. However, the State did not make that program a part of the TPDES application.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires that all federal agencies must consult with the State Historic Preservation Officer and the Advisory Council on Historic Preservation on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800. EPA has initiated section 106 consultation on the State's request for approval of the TPDES program.

B. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult on federal actions which may affect federally listed species to insure they are unlikely to jeopardize the continued existence of those species or adversely modify their critical habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. The approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent TPDES permit actions are not. EPA Region 6 initiated formal consultation with the U.S. Fish and Wildlife Service on January 29, 1998.

C. Coastal Zone Management Act

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource within the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Texas' approved Coastal Zone Management Plan is administered by the General Land Office and, more particularly, by its Coastal Coordination Council. TNRCC permit actions are themselves subject to consistency review under 31 TAC § 505(11)(a)(6); thus approval of TNRCC's TPDES program would not affect Texas' coastal zone and would be consistent with the enforceable requirements of Texas' Coastal Zone Management Plan.

D. Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval", within the meaning of the APA, constitutes a "license," which, in turn, is the product of an "adjudication". For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed TPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

I hereby provide public notice of the application by the State of Texas for approval to administer, in accordance with 40 CFR part 123, the TPDES program.

Dated: June 11, 1998.

Gregg A. Cooke,

Regional Administrator.

[FR Doc. 98–16249 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–60–P

development projects and municipal separate storm sewer systems not currently regulated by the TNRCC will become subject to the TPDES fee system as storm water permitting authority transfers from EPA to the TNRCC.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 1, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from flooding, severe storms, and tornadoes on April 25, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Bakersky of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

McCook County for Individual Assistance and Categories A and B under the Public Assistance program.

Day County for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–16387 Filed 6–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1998:

The counties of Hanson and McCook for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–16388 Filed 6–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, by June 29, 1998.

Agreement No.: 203–011321–006.
Title: Maersk/Sea-Land/U.S./Far East & Middle East Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 65 vessels, each with a maximum capacity of 7,000 TEUs.

Agreement No.: 203–011448–001.
Title: U.S./Latin America Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 50 vessels, each with a maximum capacity of 4,100 TEUs. It would also modify the Agreement's geographic scope to delete Jamaica and add the Bahamas.

Agreement No.: 203–011541–001.
Title: Maersk/Sea-Land Mediterranean Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 30 vessels, each with a maximum capacity of 7,000 TEUs.

By Order of the Federal Maritime Commission.

Dated: June 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16343 Filed 6–18–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 24, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed 1999 Federal Reserve Bank budget objectives.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16518 Filed 6–17–98; 12:19 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 24, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16519 Filed 6–12–98; 12:19 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0235).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Price Reductions clause.

DATES: *Comment Due Date:* August 18, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, concerning Price Reductions clause. The Price Reductions clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Respondents: 6,862; annual responses: 13,724; average hours per response: 2; burden hours: 27,448.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–16302 Filed 6–18–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Personal Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0112).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

DATES: *Comment Due Date:* August 18, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

the GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0112, concerning GSA form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report complies with Public Law 94–519 which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55; annual responses: 220; average hours per response: 1; burden hours: 220.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–16303 Filed 6–18–98; 8:45 am]

BILLING CODE 6820–61–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed New Public Financial Disclosure Access Customer Service Survey

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit the information collection proposed in this notice to the Office of Management and Budget (OMB) for review and three-year approval under the Paperwork Reduction Act.

DATES: Comments by the public and agencies on this proposed information collection are invited and should be received by September 2, 1998.

ADDRESSES: Comments should be sent to William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—"Proposed Public Financial Disclosure Access Customer Service Survey Paperwork Comment").

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed survey may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the following proposed customer service survey form for the collection of information to OMB for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and three-year approval thereunder.

The Office of Government Ethics is planning to assess, through the proposed "Public Financial Disclosure Access Customer Service Survey" form, requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with the Office. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix, § 105, and 5 CFR 2634.603 of OGE's executive branchwide regulations thereunder, by completing an OGE Form 201, "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record." The survey forms will be distributed to requesters along with their copies of requested SF 278 reports, with instructions asking them to complete and return the survey to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a preaddressed postcard). The purpose of the survey will be to determine through customer responses how well OGE is responding to such requests and how the Agency can improve its customer service in this important area.

Pursuant to the Paperwork Reduction Act, OGE is not including in its public burden estimate for the new access customer service survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor is OGE including in that estimate the also limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture), since the survey will only be sent to persons who request copies of SF 278 reports. As so defined and assuming a 100% return rate, the total number of access survey forms for copies of SF 278s estimated to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 186. This estimate is based on a calculation of the average number of underlying access requests for copies of SF 278 reports received at OGE over the past two calendar years—1996 (152 requests) and 1997 (220 requests). The estimated average amount of time to read the instructions on the new customer service survey form and complete the form is three minutes. Thus, the overall estimated annual public burden for the proposed OGE Public Financial Disclosure Access Customer Service Survey will be nine hours (186 forms X 3 minutes per form, with the number of hours rounded off from 9.3 to 9).

Public comment is invited on each aspect of OGE's proposed new access customer service survey form, as set forth in this notice, including specifically views on: the need for and practical utility of this new collection of information; the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the forthcoming OGE request for OMB three-year paperwork approval for this new proposed information collection. At that time, after this notice and comment period, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and Federal agencies.

Approved: June 15, 1998.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

[FR Doc. 98–16285 Filed 6–18–98; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Planning and Evaluation; Notice Inviting Applications for New Award for Fiscal Year 1998; Grants to States to Support Child Indicator Initiatives

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE).

ACTION: Announcement of the availability of grant funds and request for applications from states to make advancements in developing and using indicators of children's health and well-being in state and local policy work.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation

announces the availability of funds for a program of small grants and invites applications from states to participate in technical assistance opportunities and make advancements in developing and using indicators of children's health and well-being in state and local policy work. The overall aims are (1) to promote state efforts to develop and monitor indicators of the health and well-being of children as welfare reform and other policy changes occur and (2) to help to institutionalize the use of indicator data in state and local policy work. Our intent is to award funds to states with a range of experience, including states not already engaged in substantial work in this area, based on their readiness to make advancements. Applications are invited from partnerships of state agencies and, where appropriate, other state governance groups such as children's councils or committees which have responsibilities for addressing children's issues. The proposed partnership should have a designated lead agency, ability to identify state goals for enhancing children's health and well-being, and ability to direct work with existing or new sources of data to produce child indicators. Technical assistance opportunities will be provided for states to work with one another, research and policy experts, and federal staff. Separate funding is being provided to Chapin Hall, at the University of Chicago, to convene grantee meetings, to promote the exchange of ideas and knowledge among states, and to organize and coordinate technical assistance from a network of experts from a variety of organizations. Assistance will be provided on issues in conceptualizing and measuring child indicators and institutionalizing the use of indicators in policy processes. Approximately ten grants will be awarded in FY98 for up to $50,000 for a one-year budget period. Continuation funding on a noncompetitive basis may be available for a second-budget year, and applicants should use a two-year project period in developing their plans (for a total award of up to $100,000). Awards may be made to additional applicants in FY99, depending on the availability of funds and the interest of the government.

CLOSING DATE: The deadline for submission of applications under this announcement is August 10, 1998.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, D.C. 20201, Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to five working days prior to the closing date for the receipt of applications. Application submissions may not be faxed.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded in any other source is accurate and complete.

Request for forms and questions administrative and technical will be accepted and responded to up to five days prior to the closing date for the receipt of applications.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the grants officer at the address or phone number listed above. Technical questions should be directed to Martha Moorehouse, Ph.D., Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 450G, Hubert H. Humphrey Building, Washington, D.C. 20201. Telephone: (202) 690–6461. Questions may be faxed to (202) 690–5514 or emailed to mmooreho@osaspe.dhhs.gov. Consult the final section of the report for information on obtaining any of the publications referenced in the document.

Part I. Supplementary Information

Legislative Authority

This activity is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under PL 105–78 Department of Health and Human Services Appropriations Act, 1998.

Eligible Applicants

This competition is open only to states. Eligible applicants include states not already engaged in substantial work in this area and those with well-established efforts. A state applicant should propose a partnership among state agencies and, where appropriate, other state public governance groups (e.g., a cabinet-level children's council or committee) which have responsibilities for addressing children's issues.

The proposed partnership should have a designated lead agency. The partnership also should have the ability to identify state goals for enhancing children's health and well-being, to direct work with existing or new sources of data to produce child indicators, and to influence the use of indicators in policy work. At a minimum, the partnership should include (1) the state health and human service agencies with lead responsibilities for children's programs, including children's health programs, and the welfare and income support programs and (2) any state agencies or governance groups (e.g., a cabinet-level children's council or committee), already working to develop and use child indicators. Involvement of the state education agency is strongly encouraged.

States also are invited to propose additional partners such as city or county agencies, research institutions, or other state or local groups as part of a well-designed strategy to promote work on child indicators. Public or private nonprofit organizations, including research institutions, may collaborate with states in submitting applications, but states will be the principal grantees. Private for-profit organizations may also participate, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant.

Available Funds

ASPE anticipates awarding approximately ten grants of up to $50,000 for each budget year of an up to two-year project period (for a total award of up to $100,000). The budget period is the interval of time into which the project period is divided for funding and reporting purposes. The project period is the total time for which a project has been programmatically approved, and two years is the expected length of the project period for these awards. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-year project period, will be entertained in the subsequent year on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and

determination that continued funding would be in the best interest of the government. Awards to additional applicants may be made in FY99, depending on the availability of funds and the interest of the government.

Part II. Purpose and Background

Indicators of children's health and well-being are the focus of increased attention at national, state, and local levels in a variety of initiatives. There are significant new national initiatives to monitor key trends in child health and well-being on a yearly basis in order to identify areas of progress and concern. At a variety of levels, there is interest in using indicators to monitor aspects of children's well-being that are most likely to be affected by welfare reform or by a combination of changes in key policies for children like those also occurring in child welfare or access to health care services. In addition, indicators are used increasingly in initiatives to set goals and establish benchmarks related to policies for children and to assess program performance through child outcome measures, though indicators cannot directly demonstrate causal effects of programs or policies.

ASPE is interested in building on existing activities and encouraging new work by states. The aim is to support states in making committed efforts to assess key trends in children's health and well-being and to improve the use of this information in policy development and implementation. ASPE is interested in promoting indicators as a monitoring tool for states to track broadly the status of low-income children in relation to other groups and to monitor changes for children as policy shifts occur in a number of key policy areas (welfare reform, child welfare, child care, health care). An additional purpose is to help states focus on areas where children's well being may be affected—positively or negatively—by welfare policies. ASPE is especially interested in encouraging state welfare agencies to work closely with other agencies to develop and use indicators as part of a strategy to monitor the health and well-being of children whose families leave the welfare rolls. The focus of the small grants is on supporting approximately ten states with varying degrees of experience in these areas to participate in technical assistance opportunities and make advancements.

Building on Federal Initiatives to Establish National Indicators of Children's Health and Well-Being

There is a new national commitment to using indicators to document trends in the health and well-being of America's children. The Federal Interagency Forum on Child and Family Statistics was formally established by Presidential Executive Order in 1997. The Forum works to coordinate and improve the collection and reporting of national data on children, and ASPE is an active member. The Forum's new charge is to report each year on the most important indicators of children's well-being so that policy decisions for children are based on better information.

The first report, America's Children: Key National Indicators of Children's Well-Being, was issued in 1997. The report offers a succinct portrait of what we do and do not know about the health and well-being of children in our nation. Using twenty-five indicators, the report shows how children from infancy through adolescence are faring in critical areas such as mortality, poverty, and health care coverage. Gaps in the report reflect areas where national data sources are inadequate. One gap is in the area of producing positive outcomes for children; most existing indicators are problem focused. Certain key areas such as school readiness are also missing. In producing future reports, the Forum will document change and stability for children using existing indicators and will seek to fill in some of the missing pieces through improvements in data collections.

ASPE is sponsoring additional projects as part of a program of work to promote the development and use of child indicators for purposes of monitoring policy outcomes and identifying new policy needs. ASPE supports the production of a much more extensive annual report on national trends in children's well being. The second edition of Trends in the Well-Being of America's Children and Youth: 1997 presents the most recent and reliable estimates on more than 80 indicators of well-being. The indicators cover five broad areas: population, family and neighborhood; economic security; health conditions and health care; social development, behavioral health, and teen fertility; and education and achievement. The report also calls attention to the areas where better national data—reliably and regularly measured—are needed.

In light of these national developments, this project seeks to promote a committed effort by states to regularly monitor key indicators for children. Working toward a common core of indicators that have comparability across states is valued, but the first emphasis will be on indicators of interest to each of the participating states.

Good data sources for producing state indicators on a year-to-year basis are scarce. Data from national surveys, which are used to produce the national indicators, have gaps in what they cover and use a sampling frame which does not readily yield estimates for most states. Data can be combined over multiple years, an approach used to produce certain indicators for the well known national Kids Count Data Book published by the Annie E. Casey Foundation. However, yearly trends cannot be tracked with this approach. Information on the strengths and limitations of national data sources is provided in The Guide to State and Local-Level Indicators of Child Well-Being Available Through the Federal Statistical System produced by Child Trends.

Administrative data bases, state surveys, and state supplements of national surveys are potential data sources for producing state child indicators with each of these sources having particular strengths and weaknesses. A number of states have begun to produce indicator reports using a variety of sources. This project is intended to build on and stimulate such efforts by states.

A goal of the present project is to establish indicators projects within the state governance structure and to support states' efforts to institutionalize the production and use of indicators using state funds. In addition to funding the national Kids Count Data Book, the Casey Foundation has funded state-level Kids Count grantees to produce more detailed state and local indicator profiles of children's well-being on a yearly basis. Relationships between state governments and Kids Count grantees are highly varied. In some states, grantees are a part of state government or have established common goals and close working relationships. In other states, relationships are distant or problematic. States are encouraged to take stock of the base of technical experience accumulated by these grantees and compatibility of goals and determine the best relationship to establish between these existing efforts and the proposed project. Areas where this project may provide a different focus or add value include: creating or refining indicators based on states' goals for children's health and well-being, accessing

additional sources of state data, developing methods for tracking indicators year-to-year rather than over longer periods, and leveraging state resources for institutionalizing the production and use of indicator information.

Linking Child Indicators to Monitoring of Welfare Reform and Other Policy Changes

Children's indicators are an important tool for monitoring changes in children's health and well-being as welfare reforms are implemented in response to passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Census Bureau surveys will provide a major source of data for producing national indicators for children and for conducting analyses of welfare impacts. As part of implementing the 1994 Welfare Indicators Act, ASPE will work with the Census Bureau and other federal agencies to produce annual reports which focus on indicators of welfare dependence and the well-being of children and adults. With the advice and recommendations of the bipartisan Advisory Board on Welfare Indicators and the assistance of other Federal agencies, an interim and first annual report to Congress entitled Indicators of Welfare Dependence.

Sources are more limited for producing state-specific indicators, especially for indicators which can be tracked at regular intervals. Under the PRWORA, using a methodology to be established by DHHS, states will report annually on changes in child poverty. ASPE is interested in assisting states with the development of indicators which go beyond child poverty. With the Administration on Children and Families and other funding partners, ASPE is supporting the Project on State-Level Child Outcomes (PCO). The primary focus of this project is supporting states in adding child outcome measures to welfare waiver evaluations. A second focus is indicator development. State welfare agencies have been encouraged to work with other state agencies to create or improve capacities for monitoring indicators of children's well-being which are most likely to be affected by welfare reforms. We have found that welfare agencies often were not connected to existing indicator initiatives, but were able to establish connections with the support of the project. Descriptions of the focus on indicators and states' activities are provided in a report summarizing the third meeting of the planning phase, Indicators of Children's Well-Being: From Construct to Application, prepared by Child Trends. From this experience, the present project seeks to strengthen the involvement of state welfare agencies in work on children's indicators. If appropriate, states may designate the welfare agency to lead the project. However, for most states, we anticipate that leadership will come from another agency which is promoting work on children's indicators or which has lead responsibilities for children's policies and programs.

In relation to welfare monitoring, the purpose is to help states focus on areas where children's well being may be affected—positively or negatively—by welfare policies. ASPE is especially interested in encouraging states to work on indicator strategies for monitoring the health and well-being of children whose families leave the welfare rolls. The Project on State-Level Child Outcomes worked with states during the planning phase to develop a common conceptual framework of the linkages between welfare reforms and potential child outcomes. The resulting matrix identifies ways in which welfare reform provisions may produce changes for adults (e.g., welfare dependence, income changes, work participation) which would affect family processes (e.g., residential stability, family routines, parental depression and behavior) and children's participation in child care (e.g., use of care, amount, type, stability, quality) which would in turn affect child outcomes (health and safety, education, social and emotional adjustment). The conceptual matrix and related measures are presented in the report From Constructs to Measures prepared by Child Trends.

A number of the state officials participating in the Project on State-Level Child Outcomes also participate in the Midwest Welfare Peer Assistance Network (WELPAN), a group of senior welfare officials who began meeting in October 1996 on welfare reform issues, with the Family Impact Seminar providing coordination. This group's recent report, Welfare Reform: How Will We Know If It Works?, presents a similar framework and outlines the process the group followed to select and refine goals and measures. The ultimate outcomes identified for children are affected by much more than welfare reform, as the report notes. Recognizing, therefore, that no one agency can be held solely accountable for broad outcomes, the process of identifying ultimate outcomes should lead to better coordination across policies and programs and to improvements for children.

WELPAN's report notes that choosing outcomes and the appropriate measures is only the first step, and recommends that states invest in sufficient resources to ensure that the right data are available and that the measures are used and interpreted objectively. A purpose of this project is to help states to consider multiple data sources and make progress in accessing data, developing new data sources, and analyzing and reporting indicator data.

The Assessing New Federalism Study, conducted by the Urban Institute, is producing profiles of a limited set of policy variables and social indicators for the 50 states. The health and well-being of children and families is being monitored in 13 states with surveys in 1997 and 1999. Along with the efforts described above, the data and methods from this project can provide a base for states to use in considering designs for longer-term monitoring efforts.

As states are implementing welfare reforms, changes are occurring in other key policies for children including those related to health care, child care, and child welfare. A number of states are also making innovations in early childhood and educational policies. Innovations are likely to continue at national, state, and local levels in a number of these key policy areas for children and their families. Individually and in combination these changes may affect a number of important health and well-being outcomes for children.

This project aims to support states' efforts to develop indicator systems which can serve as a tool for monitoring how children are faring as multiple policy changes occur. Though indicators cannot be used to attribute changes in well-being to specific changes in policy, they can signal whether changes are moving in positive, negative, or neutral directions. Good indicator systems also can help identify unmet needs and inform policy development in new areas.

Linkages With Performance Measurement Initiatives

Indicators are seeing increasing use in national, state, and local initiatives to set goals and establish benchmarks in policies for children and to measure the performance of programs by assessing whether outcomes for children are achieved. DHHS and other federal agencies are in the process of implementing the Government Performance and Results Act of 1993 (GPRA). GPRA requires federal agencies to set long-term strategic goals, link goals to specific program activities, identify indicators, and develop the information systems and measures to produce the required data.

Examples of federal performance measurement efforts that have a primary focus on children include those underway for Head Start, immunizations (tracking rates at national and state levels through the National Immunization Survey), the Maternal and Child Health Block Grants (with measures established in partnership with states), and the new Children's Health Insurance Program (with measures selected by states). These efforts are at an early stage, and it is yet to be seen how well these programmatically-focused efforts will be able to inform policy development and produce improvements in key areas of children's health and well-being. An aim of the technical assistance component of this project is to help apply the lessons emerging from the successes and failures of these efforts.

Another effort of DHHS is Healthy People 2000 which provides a framework for measuring performance by outcomes. It specifies objectives for 22 priority areas, including areas focusing on children. The overarching goals are to increase years of healthy life, reduce disparities in health among different population groups, and achieve access to preventive health services. All but a few states have developed their own Healthy People 2000 plans tailored to their own needs. Planning for Healthy People 2010 is underway and will address emerging issues, such as changing demographics, advances in preventive therapies and new technologies.

Through legislative or management initiatives, a number of states are implementing a variety of performance measurement efforts. The Harvard Family Research Project has published the Resource Guide of Results-Based Accountability Efforts. This 1996 report highlights the efforts of eighteen states which have developed systems focusing on children and families. Descriptions of the ways in which six states (California, Florida, Massachusetts, Minnesota, Oregon, and Vermont) are developing and using children's indicators are provided in the 1997 report by Child Trends, Social Indicators of Child and Family Well-being: A Profile of Six State Systems, published as an Institute for Research on Poverty Special Report.

The most sensitive issue for performance measurement initiatives is how changes in indicators will be attributed to the good or poor performance of a specific program, and how program funds may be increased or decreased accordingly. Indicators can show changes in children's well-being, but cannot show the causes of changes. For states now using indicator data in policy processes, indicators are seeing more usage in setting overarching goals for children and their families, assessing baselines, and tracking whether changes are moving in the right direction. For example, Oregon and Vermont have used negative indicator data (a teenage pregnancy or birth rate that is higher in one county than in other counties) as a starting point for policy development and the provision of additional resources and technical assistance. It is this type of focus that the present project seeks to promote.

The process of identifying indicators of program performance at federal, state and local levels can change the focus of policy making. This process should focus attention on the fact that outcomes of fundamental importance for children are interactive and cannot be accomplished by any one program alone. Vermont's experience shows the importance of considering sets of related indicators and their interactions with one another. For example, improvements in input indicators such as the percent of the population covered by health insurance, the percent of women with early prenatal care, the percent of newborns receiving home visits, have been followed by declines in teen birth rates, child abuse, and numbers of children needing special education ("The Importance of Indicators and What They Can Do", by C. D. Hogan, Vermont Agency of Human Services, in Indicators of Children's Well-Being: From Construct to Application, prepared by Child Trends).

The present project seeks to build on experiences at all levels and focus on helping to transfer knowledge, especially from state to state. States are encouraged to build on technical work that they are doing to develop specific performance measures. However, this project must have a focus on broader state-identified goals for children's health and well-being, as in the examples above, and thus go beyond the selection of specific performance measures for individual programs.

Technical Assistance

This project will provide opportunities for states to work with one another and with research and policy experts to develop indicators and promote their use in policy. States should plan to fully participate in technical assistance opportunities and may use grant funds for travel to project meetings (see Budget section of the Application Instructions). Separate funding has been provided to Chapin Hall, at the University of Chicago, to convene grantee meetings, promote the exchange of ideas and knowledge among states, and organize and coordinate consultations with a broad network of experts (from a team at Chapin Hall and from a variety of other organizations). Areas of expertise include: policies and programs for children and their families, issues in conceptualizing and measuring different domains of children's health and well-being, data strategies for producing children's indicators, and appropriate ways of using indicator data in policy processes. Technical assistance will be oriented to the interests and needs of participating states and will support the purposes described in this announcement.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered.

Whatever the state's prior experience is this area, the application should clearly show that the state is motivated and prepared to make advancements in indicators work. States not already engaged in substantial work in this area are encouraged to apply and to propose plans for new work. States with substantial experience should focus on what new advancements will be made and what value will be added. Applications also should include plans to make full use of the opportunities to work with one another and with the broad network of research and policy experts to be arranged and coordinated by Chapin Hall.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.
2. *Authorship:* Authors of the proposal and their planned role in the project.
3. *Goals:* Focus on proposed advancements, and describe the goals and objectives to be achieved with regard to developing and using child indicators. Describe the expected contributions of participating agencies for achieving the identified goals and objectives, the proposed accomplishments and how they will be assessed, the value to be added to

existing state indicator initiatives, and knowledge and information to be gained from the project by the applicant, the government, and the research and policy communities.

4. *Background information on the lead agency and the partnership:* Identify and provide background information on the participating agencies and their roles, responsibilities, and decision making authority. Explain the leadership structure. Describe existing collaborations pertinent to the project. Indicate previous experience in coming to agreement on goals for children (and key indicators, if applicable), with sharing information and data across agencies and in disseminating indicators publicly. If experience is limited, provide clear and specific plans for working collaboratively in these areas. Provide attachments documenting interagency agreements. At a minimum, the partnership should include (1) the state governmental agencies with lead responsibilities for children's programs, including children's health programs, and the welfare and income support programs and (2) any state agencies or governance groups, (e.g., a Governor's Office on Children or a cabinet-level children's council or committee), already working to develop and use child indicators. Involvement of the state education agency is strongly encouraged. States also are invited to propose additional partners, including city or county agencies, research institutions, and other state and local groups, as part of a well-designed strategy to promote work on child indicators. As applicable, describe the planned roles for other organizations, including research institutions. Demonstrate the capacity of the partnership for institutionalizing the production and use of indicators within the state public governance structure. Demonstrate a commitment from senior leadership in the state.

5. *Experience, capacity, qualifications, and use of staff for the lead agency and partnering agencies:* Describe the organizational capabilities of the lead agency and its experience in conducting related projects. Show capability to direct work with existing or new sources of data to produce child indicators. Provide specific examples of work with data that can be applied to this project. Identify the key staff who are expected to carry out the project and provide a résumé or curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project. Describe their normal duties and indicate how time will be allocated to work on this project. Show commitment to staffing this project from policy, program, and research and planning areas. Provide similar information on partnering agencies in sufficient depth to understand how the proposed project will be accomplished.

6. *Work plan outline:* Provide sufficient information to show that the applicant is prepared to engage in a sequence of tasks and activities that will enable meaningful progress to be made in accomplishing the identified goals and objectives. There should be a clear relationship between the work plan and the identified roles and responsibilities described for the participating agencies and key staff. The work plan should anticipate a project start date of no later than September 30, 1998, and outline plans for a two-year period, providing more detail for the first year. It is expected that plans will evolve over the course of the project and in response to participation in technical assistance opportunities. Information on areas of interest for technical assistance (that Chapin Hall will provide or coordinate including opportunities to work with other states) should be indicated and the range of issues and preferred priorities should be described.

The plan should indicate what will be most emphasized in relation to the following areas:

Conceptualizing and Measuring Indicators: The process and activities that the partnership will undertake to choose a set of child indicators to be tracked at regular intervals. Work to be conducted to use existing data resources or develop new data resources for measuring the indicators. Where appropriate, data plans should build on existing technical work and resources, such as projects to link administrative data bases, to produce program performance measures, or ability to use national survey data or other major data bases (e.g., New Federalism). The focus should be on using these data sources to produce child indicators at regular intervals.

Use of Indicators and Possible Products: The ways in which the appropriate use of indicators will be promoted through this project. Outline steps to be taken to institutionalize a commitment within state government to regularly produce and appropriately use child indicators. Possible products (reports, presentations, events, web postings, etc.), intended audiences, and value to be added over any existing efforts.

7. *Budget:* Applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included which explains fund usage in more detail and which makes clear the value to be added over any existing efforts. For budgeting purposes, states should plan for travel of four representatives to at least three meetings (of two days) using costs for Washington, D.C. for one meeting and Chicago, IL for two meetings.

ASPE anticipates awarding approximately ten grants of up to $50,000 for each budget year of an up to two-year project period (for a total award of up to $100,000). The budget period is the interval of time into which the project period is divided for funding and reporting purposes. The project period is the total time for which a project has been programmatically approved, and two years is the expected length of the project period for these awards.

On page 2 of SF 424A, Section E "Budget Estimates of Federal Funds Needed for Balance of the Project." indicate the amounts estimated for the first and second funding (budget) periods. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-year project period, will be entertained in the subsequent year on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Grantees must provide at least $5,000 of the total approved cost of the project. The total approved cost of the project is the sum of the Federal Share and the non-Federal Share. The non federal share may be met by cash or in-kind contribution. Therefore a project requesting $50,000 in Federal funds must include a match of at least $5,000 for a total approved project cost of $55,000.

Review Process and Funding Information

A Federal panel will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement). The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the ASPE in making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the

reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submittal of applications under this announcement is August 10, 1998. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, D.C. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either (1) received at, or hand-delivered to, the mailing address on or before August 10, 1998, or (2) postmarked before midnight August 10, 1998 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes, or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, D.C. 20201, Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 5 working days prior to the closing date for receipt of applications. We will not accept faxed applications.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded in any other source is accurate and complete.

Length of Application

Applications should be as brief as possible but should assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendices and other appropriate attachments) be longer than 20 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation. Video tapes and cassette tapes may not be included as part of a grant application for panel review. A signed original and two (2) copies of each application are required. Applicants are encouraged to send an additional (2) copies of their application to ease processing, but applicants will not be penalized if these extra forms are not included. One of these copies must be unbound, suitable for photocopying; if only one is the original (has an original signature, is attached to a cover letter, etc.) it should not be this copy. The applicant's Form 424 must be signed by the applicant's representative authorized to act with the full authority on behalf of the applicant.

Selection Process and Evaluation Criteria

Selection of the successful applicant will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications.

Two (2) copies of each application are required. Applicants are encouraged to submit a total of five (5) copies. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.) it should not be this copy.

Applications will be judged according to the criteria set forth below:

Goals and potential usefulness (25 points). The fit between the applicants' goals and the purposes described in this announcement, the value to be added through augmentation of any existing indicator initiatives, the potential usefulness of the proposed accomplishments, and the ways the anticipated results of the proposed project will advance the development and use of indicators by the state and contribute to the knowledge base in this area. ASPE seeks to fund a group of grantees with varying amounts of experience, and emphasis will be placed on the clarity of states' goals for advancing work on indicators rather than on the overall level of sophistication that states will be able to achieve.

Qualifications and soundness of the partnership (25 points). The extent to which the partnership is able to meet or

exceed the requirements for which agencies and groups agree to participate and have well-defined roles, responsibilities, and decision making authority. There is a clear leadership structure. There is good evidence of an ability to work together or to create new and productive partnerships in the areas relevant to this project. There is evidence of capacity to help institutionalize the production and use of indicators within the state public governance structure, and an indication of commitment from senior leadership in the state.

Qualifications of personnel and organizational capability (20 points). The experience, training, and qualifications of proposed personnel for leading work on identifying indicators, directing work with data, and influencing the institutionalized use of indicators. The ability of designated staff to allocate time to the project. The capacity of the lead agency to provide the infrastructure and support necessary for the project. The lead agency's ability to collaborate effectively with other partnering agencies. The information provided about partnering agencies (staff commitments and organization capabilities) is sufficient to understand how the proposed project will be accomplished. Any planned role for other organizations, including research institutions, will add value to the effort.

Quality and soundness of the work plan (20 points). The work plan will be evaluated on the extent to which the proposed plans will enable the state to make meaningful advancements on the goals it specifies in relation to (1) developing and monitoring indicators of the health and well-being of children overall and as welfare reform and other policy changes occur and (2) helping to institutionalize the use of indicator data in state and local policy work.

4. *Appropriateness of the budget.* (10 points). Reviewers will examine how these specific funds will be used and ways they will enhance other committed resources.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or © defer action on the application for such reasons as lack of funds or a need for further review. However, nothing commits the Assistant Secretary to making an award or limits the ability to make multiple awards.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard From 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93–239.

Reports

Grantees must submit quarterly progress reports and annual summary reports. The specific format and content for these reports will be provided by the project officer.

Information on Obtaining Publications Referenced in the Document

Federal Publications

Healthy People 2000

Published by: Department of Health and Human Services (OPHS)
Websites: http://odphp.osophs.dhhs.gov/pubs/hp2000/

American's Children: Key National Indicators of Well-Being: 1997

Published by: National Center for Health Statistics
Website: http://www.cdc.gov/publications.htm
Copy Request: Fax all requests for copies to the attention of Lisa L. Franklin at (202) 690–5514

Trends In The Well-Being of America's Children and Youth: 1997

Published by: Department of Health and Human Services
Website: http:/aspe.os.dhhs.gov/hsp/trends/TOC.HTM
Copy Request: Fax all requests for copies to the attention of Lisa L. Franklin at (202) 690–5514

Indicators of Welfare Dependence: 1997

Published by: Department of Health and Human Services
Website: http://aspe.os.dhhs.gov/hsp/indicator/front.htm
Copy Request: Fax all requests for copies to the attention of Barbara Bishop at (202) 690–6562

Reports by Child Trends, Inc.

- From Constructs To Measures.
- Indicators of Children's Well Being: From Construct to Applications.
- Social Indicators of Child and Family Well-Being.
- A Profile of Six State Systems.
- The Guide to State and Local-Level Indicators of Child Well-Being Available Through the Federal Statistical System.

Websites:
http://Childtrends.org/research.htm (Synopsis of Publications)
http://Childtrends.org/order.htm (Ordering Publications)
Copy Request: Child Trends, Inc., 4301 Connecticut Avenue, NW., Washington, D.C. 20008, Phone: (202) 362–5580 Fax: (202) 362–5533

Other Reports

Kids Count Data Book: 1998

Published by: The Annie E. Casey Foundation
Website: http://www.kidscount.org
Copy Request: (410) 223–2890

Resource Guide of Results Based Accountability Efforts

Copy Request: Harvard Family Research Project, 38 Concord Avenue, Cambridge, MA 02138

Welfare Reform: How Will We Know If It Works

Published by: Family Impact Seminar
Website:
http://www.ssc.wisc.edu/irp
http://www.ssc.welfareinfo.org
Copy Request Phone: (202) 496–1964 ext 12

Dated: June 11, 1998.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–16362 Filed 6–18–98; 8:45 am]
BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98062]

Notice of Availability of Funds for Fiscal Year 1998; Cooperative Agreement for Asthma Education

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement for the development, implementation, and evaluation of an asthma education and management program for families enrolled in Welfare-to-work programs.

The purpose of this project is to bring together public health expertise and welfare reform to provide the asthma education and management techniques necessary to enable families enrolled in the Welfare-to-work program to finish job training and enter the work force.

B. Eligible Applicants

Eligible applicants are State health departments or other State agencies or departments deemed most appropriate to lead, coordinate, and conduct this project. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

If a State agency applying for funds is other than the official State health department, written concurrence by the State health department must be provided.

Only one application per State may enter the review process and be considered for award under this program.

Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application.

C. Availability of Funds

Approximately $100,000 will be available in FY 1998 to support one award. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget and project period. Continued funding under this program will be based on grantee performance and the availability of funding.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. Develop, implement, and evaluate in collaboration with other organizations, an asthma education and management program for families enrolled in the Welfare-to-work program.
2. Provide asthma education and management techniques to the target population.
3. Evaluate and analyze surveillance data in terms of the impact of asthma education and management on job training among the target population.
4. Disseminate findings.

B. CDC Activities

1. Provide programmatic technical assistance in planning, implementing, and evaluating program activities.
2. Provide up-to-date scientific information and activities of other projects in the area.

E. Application Content

All applications must be developed in accordance with the instructions for PHS Form 5161–1 (revised 5/96), information that is contained in this program announcement, and the instructions outlined in the following section headings. The narrative section of the application should not exceed 25 pages. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each section of the proposal on a new page. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, with un-reduced type on 8½" by 11" paper, with at least 1" margins, heading and footers, and printed on one side only. All graphics, maps overlays, etc., should be in black and white and meet the above criteria.

A. Description of Problem

Describe the issues related to requirements, problems, objectives, complexities, and interactions required in developing and implementing a project such as this. Include a discussion of past experiences with similar projects.

B. Goals and Objectives

For each of the elements cited in the program plan (item C. of Application Content), provide objectives that are realistic, time-phased, measurable, and consistent with the applicant's proposed theme, purpose, and objectives.

C. Program Plan

Submit a plan that describes how the project goals will be achieved. The plan must address the following topics:

1. "Study activities"—discuss the administrative and scientific capacity critical to the development and implementation of the study.

2. "Public Input and coordination of affected parties"—discuss the administrative capacity and plans necessary to ensure that the affected parties have ample input during all phases of this study.

3. "State agency linkages"—describe the linkages and support that will be used during the development, implementation and conclusion of this study and the potential long-term sustainability of the intervention.

D. Management and Staffing Plan

Submit a management and staffing plan that includes a list of key Department staff and, if appropriate, key contractor staff, their role in the study and their resume.

E. Evaluation

Describe how progress made toward meeting the demonstration objectives will be evaluated.

F. Budget

A detailed budget and justification should be submitted for the study. A brief budget projection should be submitted that clearly separates and distinguishes direct and indirect costs.

F. Application Submission and Deadline

The original and 2 copies of the application PHS Form 5161–1 (revised 5/96) must be submitted to David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before *August 7, 1998.*

Deadlines: Applications shall be considered as meeting the deadline above if they are either: (1) received on or before the deadline date; or (2) sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding the Problem (10 points)

Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement.

2. Measurable Objectives (20 points)

The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period.

3. Proposed Plan (20 points)

The adequacy of the applicant's plan to carry out the activities proposed. Of particular interest is the potential long-term sustainability of the intervention and the involvement of community organizations.

4. Management and Staffing Plan (35 points)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant in terms of related asthma projects, (b) allocations of time and effort of staff devoted to the project, (c) information on how the applicant will implement and administer the project, (d) the qualifications of the key project staff in terms of asthma related programs and experience.

5. Proposed Evaluation Plan (15 points)

The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

6. Budget (not scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports including the following for each goal or activity involved in the study: (a) comparison of actual accomplishments to the objectives established for the period; (b) the reasons for slippage if objectives were not met; (c) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status report and performance report no more than 90 days after the end of the project period.

Send all reports to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mailstop E13, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 included in the application kit.

AR98–1—Human Subjects Requirements
AR98–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9—Paperwork Reduction Act Requirements
AR98–10—Smoke-Free Workplace Requirements
AR98–11—Healthy People 2000
AR98–12—Lobbying Restrictions
AR98–7—Executive Order 12372
AR98–8—Public Health System Reporting Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a) [42 U.S.C. 241(a)], as amended. The Catalog of Federal Domestic Assistance number assigned to this project is 98.062.

J. Where To Obtain Additional Information

Please refer to Announcement Number 98062 and contact David Elswick, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6521, for business management technical assistance.

Programmatic technical assistance may be obtained from James Rifenburg, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), Mailstop F–39, 4770 Buford Highway, N.E., Atlanta, GA 30341–3724, telephone (770) 488–7322.

Dated: June 15, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–16325 Filed 6–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement Number 98068]

Notice of Availability of Funds for Fiscal Year 1998; Grants for Radiation Studies and Research

Introduction

The Centers for Disease Control and Prevention (CDC), announces that applications are being accepted for Grants for Radiation Studies and Research. The efforts funded by these grants will result in models and procedures that will improve systems to track environmental exposures and diseases.

CDC is committed to achieving the health promotion and disease prevention objectives of HEALTHY PEOPLE 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health. For ordering a copy of HEALTHY PEOPLE 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.

Authority

This program is authorized under Section 301(a) of the Public Health Service Act [42 U.S.C. Section 241(a)] as amended, and under the Occupational Safety and Health Act [29 U.S.C. Section 669(a)].

Eligible Applicants

Eligible applicants include all non-profit organizations. Thus State and local health departments and other State and local governmental agencies, universities, colleges, research institutions, laboratories, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants.

Availability of Funds

Approximately $350,000 is expected to be available in Fiscal Year 1998 to fund approximately two to four awards. It is expected that the average award will be $100,000–$150,000, the range being $60,000 to $200,000 (including both direct and indirect costs). It is expected that the awards will begin on or about September 30, 1998, and are usually made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds: Grant funds may not be used to support direct care services.

Background

The Secretary, Department of Health and Human Services (HHS) and the Secretary, Department of Energy (DOE) signed a Memorandum of Understanding (MOU) transferring the authority and resources to manage and conduct energy-related analytic epidemiologic research from DOE to HHS. This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: workers at DOE facilities; residents of communities in the vicinity of DOE facilities; other persons potentially exposed to radiation; and persons exposed to potential hazards resulting from non-nuclear energy production and use.

The Secretary, HHS, delegated the responsibility for implementation of the MOU to the Centers for Disease Control and Prevention (CDC). The Director, CDC, designated the National Center for Environmental Health (NCEH) as lead for CDC and for the conduct of environmental studies. The National Institute for Occupational Safety and Health has the responsibility for the conduct of occupational studies.

Purpose

The purposes of this program are:

A. To support radiation research on priority issues in the following categories:

1. A broad-based need for participation in International Validation Studies for Environmental Transport Models.
2. Development of methodologies for using current sampling data as an indicator of past contaminant releases to the environment.
3. Development of Usage Factors for Environmental Dose Calculations.
4. Uncertainty Analysis of Dose Conversion Factors for Radio nuclides.
5. Risk Factors for Thyroid Disease.
6. Development of Ultra sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry.

B. To encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, physical sciences, and others, to undertake radiation research programs.

C. To evaluate current and new scientific methodologies and strategies in the areas of radiation research.

Program Requirements

The following are applicant requirements:

A. A director who has specific authority and the responsibility to carry out the project.

B. Demonstrated experience in conducting, evaluating, and publishing radiation, epidemiology, and or dose assessment research.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. The ability to disseminate and implement the research findings through organizations (such as public health agencies) or systems, both public and private.

E. An overall match between the applicant's proposed theme and research objectives, and the program priorities as described in the PURPOSE, A. Radiation research.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interest

The focus of each grant application should reflect priority issues in one or more of the following areas; (1) a broad-based need for participation in International Validation Studies for Environmental Transport Models; (2) development of methodologies for using current sampling data as an indicator of past contaminant releases to the environment; (3) development of Usage Factors for Environmental Dose Calculations; (4) Uncertainty Analysis of Dose Conversion Factors for Radio nuclides; (5) Risk Factors for Thyroid Disease; and (6) Development of Ultra sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry.

International Validation Studies for Environmental Transport Models

The best way to determine the accuracy of any environmental transport model is to compare predictions made by the model with measurements of the same quantity in the environment, a process known as model validation. The environmental transport models potentially useful in dose reconstruction projects must be validated to the extent possible if the results produced by the models are to be scientifically and publicly defensible. A series of recent international projects coordinated by the International Atomic Energy Agency have been attempting to address this issue using environmental radio nuclide data gathered from around the world, especially from nations formerly part of the Soviet Union.

Environmental Indicators of Past Releases

All environmental dose reconstructions will require the extensive use of mathematical models of source term development and environmental transport and dosimetry. These models will be validated against past and present environmental monitoring results. Early environmental monitoring was not as comprehensive or sensitive as today's methods. Therefore, the use of monitoring data for model validation for early years of site operations potentially will be less certain than later years. A number of methods are available for defining long-term trends of environmental contamination. For example, tree ring analyses have been performed to reconstruct historical concentrations of tritium and mercury. Methods developed must provide information on the temporal and geographic patterns of contamination in the environment.

Usage Factors for Environmental Dose Calculations

There are four major factors that determine the dose and risk to people from the inhalation and ingestion of radio nuclides and chemicals released to the environment:

1. the source term (the type and amount of contaminant released to the environment);
2. environmental transport to people (via the atmosphere, hydrosphere, and/or food chains);
3. usage factors (time spent outdoors, rate of inhalation, amount of a particular food product consumed, etc.); and
4. metabolism or the particular radio nuclide or chemical in the body resulting in a particular dose or risk.

What is required for modern dose and risk estimation is a probability distribution for each usage factor.

Uncertainty Analysis of Dose Conversion Factors for Radio Nuclides

All environmental dose reconstructions require the extensive use of Dose Conversion Factors (DCF) that relate intake or exposure to radioactive materials to the endpoint dose. The DCFs in use today have been developed mainly for radiation protection purposes. In as much, these DCFs were derived by the use of conservative values and assumptions, non-stochastic values of DCFs are listed singularly (i.e., with no estimates of

uncertainty). Modern dose and risk estimates require that (1) probability distributions be defined for each of the parameters used to derive the DCF's; (2) each of these distributed parameters be propagated through the model which defines the specific DCF; and (3) the final DCF be presented as a distribution with uncertainties.

Risk Factors for Thyroid Disease

Historical releases of iodine from activities at DOE facilities and during weapons testing have raised questions concerning the risk of thyroid disease associated with radiation exposure. Not only have questions been raised about the risk of thyroid neoplasia, but also about other thyroid diseases that may or may not be related to radiation exposure. Medical monitoring for all thyroid diseases has been proposed for the population around the Hanford nuclear weapons facility potentially exposed to historical releases of radio iodine. A large number of studies have been completed in the last ten years that shed light on the risk factors for thyroid disease and on the association between thyroid disease and radiation.

Development of Ultra Sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry

Much work on environmental dose reconstruction deals with computer modeling using limited environmental monitoring data to ascertain radiation doses to individuals for the purpose of risk assessment and epidemiologic study. This is often due to the fact that the radio nuclides of concern have short effective half lives with respect to the elapsed time from exposure to assessment. In many cases the environmental levels of contamination are significantly below conventional levels of detection for in vivo radiation detection. The purpose of this grant is to develop Ultra sensitive techniques that could be used for assessing environmental exposures to people who are now alive and who may have been exposed to historical releases from DOE weapons facilities. Development of novel techniques or significant improvements on current techniques will be considered.

Application Content

Applications for radiation research should include:

A. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings. The focus should be based on one or more of the priority topic issues.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the grant's principal investigator's role and responsibilities.

E. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of those activities related to, but not supported by the grant.

G. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

H. A detailed first year budget for the grant with future annual projections, if relevant.

I. Applicants must identify the principal priority topic areas upon which their project focuses.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option, on the original and six copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the deleted amounts shown. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The specific aims of the research project, i.e., the broad long term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested; (15 points)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the knowledge gaps which the proposal is intended to fill; (10 points)

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research; (20 points)

4. The progress of preliminary studies pertinent to the application; (5 points)

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and a statistical analysis plan; (15 points)

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives; (15 points)

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities; (10 points)

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement); (5 points)

9. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds; (Not scored) and

10. Adequacy of existing and proposed facilities and resources. (5 points)

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadlines

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and six copies, on or before August 7,1998 to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Atlanta, GA 30305.

Deadlines: Applications shall be considered as meeting a deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to

the review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

Applications which do not meet the criteria in 1. or 2. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

All application procedures and guidelines are contained within the present announcement. Business management technical information may be obtained from David Elswick, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6521.

Programmatic technical assistance may be obtained from Steven Adams, Project Officer, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy, N.E., Mailstop F–35, Atlanta, GA 30341–3724, telephone (770) 488–7040.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 513–1800).

Dated: June 15, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–16327 Filed 6–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0384]

Knickerbocker Biologicals, Inc.; Revocation of U.S. License No. 458–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 458–001) and the product licenses issued to Knickerbocker Biologicals, Inc., for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes. Knickerbocker Biologicals, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

DATES: The revocation of the establishment license (U.S. License No. 458–001) and the product licenses is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 458–001) and the product licenses issued to Knickerbocker Biologicals, Inc., doing business as Knickerbocker Blood Bank, 272 Willis Ave., Bronx, NY 10454, for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes.

An attempted inspection of the facility by FDA revealed that the facility was no longer in operation at the location listed on the license. A certified, returned-receipt letter from FDA dated November 14, 1996, notifying the Responsible Head of the unsuccessful inspection and requesting the status of the firm was returned to the agency as "undeliverable; address unknown". A later attempt by FDA to visit three other known addresses of Knickerbocker Biologicals, Inc., New York, NY, verified that the company was no longer in business at these locations. The respective post office for each location was also visited and each verified that no information regarding either a forwarding address or address change was available. Based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility, FDA initiated proceedings for the revocation of the licenses under 21 CFR 601.5(b)(1) and (b)(2). A certified, returned-receipt letter, dated January 24, 1997, to the firm's Responsible Head providing notice of FDA's intent to revoke the licenses and its intent to offer an opportunity for a hearing on the proposed revocation was returned as undeliverable.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of October 6, 1997 (62 FR 52135), a notice of opportunity for a hearing on a proposal to revoke the licenses of Knickerbocker Biologicals, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation and noted that documentation in support of the license revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. The 30-day time period, prescribed in the notice of opportunity for a hearing and in the regulation, may not be extended. No comments were received from any other parties within the 60-day time period.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 458–001), and the product licenses issued to Knickerbocker Biologicals, Inc., are revoked, effective June 19, 1998.

Dated: May 28, 1998.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 98–16294 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Studies of Adverse Effects of Marketed Drugs; Availability of Grants (Cooperative Agreements); Request for Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing $1.4 million for cooperative agreements to study adverse effects of drugs marketed in Canada, the United States and its territories, subject to the availability of Fiscal Year 1999 funds. This amount is consistent with the level

of funding in the President's budget. FDA expects to make up to four awards for $300,000 per year for 3 years for general data bases and up to two awards for $100,000 per year for 3 years for special population data bases. The purpose of these agreements is to conduct drug safety analysis to the benefit of the public's health; respond expeditiously to urgent public safety concerns; provide a mechanism for collaborative pharmacoepidemiological research designed to test hypotheses, particularly those arising from suspected adverse reactions reported to FDA; and enable rapid access to multiple data sources to ensure public safety when necessary.

DATES: Submit applications by August 3, 1998.

ADDRESSES: Application kits are available from, and completed applications should be submitted to: Robert L. Robins, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7185.

Note: Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. Please DO NOT send applications to the Center for Scientific Review (CSR), National Institutes of Health (NIH). Applications mailed to CSR and not received by FDA in time for orderly processing, will be returned to the applicant without consideration.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Thomas M. Conrad, Division of Pharmacovigilance and Epidemiology (HFD–730), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3180.

SUPPLEMENTARY INFORMATION: Because of the reduction of funding throughout the U.S. Government and particularly in this program, continuation of funding will be evaluated annually to a higher degree than ever before. As stated later in this document, funding of the second and third years will be contingent upon: (1) Investigator's demonstrated success collaborating with FDA scientists, as well as with other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for and design of a study, analysis of data sets, and publication of results among FDA and cooperative agreement investigators, and (2) the availability of Federal fiscal year appropriations. A points system has been established to quantitate the grantee's usefulness in the Government's collaborative efforts with non-Federal organizations to improve the health of the American public.

It is determined that these cooperative agreements are exempt from Protection of Human Subjects requirements in accordance with 45 CFR 46.102(b).

FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program are not subject to the requirements of Executive Order 12372.

I. Background

New drugs are required to undergo extensive testing before marketing. With the submission of adequate data on safety and effectiveness, FDA approves a new drug application (NDA) and that permits a manufacturer to market its product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a product once it comes into general use. This request for applications (RFA) is intended to encourage collaboration between FDA and researchers with pharmacoepidemiological data bases to address postmarketing issues confronting the agency.

FDA is also interested in the ability to measure and/or estimate incidence rates and test hypotheses based on signals of possible drug safety problems originating from reports of adverse reaction reports received by FDA.

II. Program Research Goals

FDA shall fund a variety of data bases representing, without overlap to each other or agency contracts, different patient populations and/or types of patient care settings.

The goal for these cooperative agreements is to collaborate with researchers with pharmacoepidemiological data bases, to investigate suspected associations between specific drug exposures and specific adverse events, and to estimate such risk. The specific objectives are to: (1) Provide immediate access to existing data sources with the capability of providing assessments of study feasibility; (2) respond to specific drug safety questions within a few weeks; and (3) provide a complete analysis to those questions deemed feasible within a few months.

Additional points will be awarded for the collaborative sharing of data sets with the agency and with other cooperative agreement recipients.

Databases

For the purpose of this RFA, all $300,000 awards will be to longitudinal data bases. Awards for data bases of special populations ($100,000 awards) may be either longitudinal or case control.

A. Longitudinal Data Bases

These data bases must be able to: (1) Provide exposure data on new molecular entities (those approved within the last 5 years in the United States); (2) perform feasibility studies of multiple drugs and/or multiple outcomes; (3) identify adverse drug events that occur infrequently (i.e., at rates lower than can be detected in clinical trials); and (4) provide data and preliminary analysis within a very short timeframe (2 to 4 weeks depending on the problem).

Data base characteristics of interest might include the ability to: (1) Estimate adverse event rates or relative risks for a specific event; (2) estimate the contribution of various risk factors associated with the occurrence of adverse events (e.g., age, sex, dose, coexisting disease, disease severity, concomitant medication); (3) determine adverse event rates for generic entities as well as for classes of drugs; (4) obtain data from laboratory results; (5) link to state vital statistics; (6) link to cancer registry; (7) determine inpatient exposure; and (8) follow patients long term after an exposure to a suspect drug.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated previously to general populations.

The ideal data source would: (1) Capture all drug exposures linked longitudinally to each patient regardless of health care delivery setting. Outcomes of interest could be either acute or chronic effects, all health provider encounters (i.e., medical records) would be captured whether in the ambulatory, emergency, chronic care or acute care setting; (2) have the statistical power to identify rare (<1 event per 1000 exposures) adverse events in the population of interest; (3) be automated with a computerized system available for linking each patient to all relevant medical care data including drug exposure data, coded medical outcomes, vital records, cancer registries and birth defect registries; (4) have a low patient turn-over, thereby permitting long-term longitudinal followup of most patients for delayed

adverse effects; (5) address effects from chronically used drugs (e.g., Framingham Study); and (6) address delayed effects resulting from drug use.

Additional points would be awarded for linkage of data bases to laboratory values and readily accessible medical records as evidenced by past performance in studies. The ability to retrieve medical records relevant to study questions posed by FDA is extremely important.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses or drug exposures in the population.

The applicant shall also provide evidence that their data base has sufficient exposure to marketed drugs (as evidenced by listing their top 50 drug substances of exposure; including the drug and number of exposures). The quality and validity of the data should be described in detail.

B. Case-Control Data Bases

These data bases must be able to: (1) Provide exposure data in general and/or hospital populations; (2) perform feasibility studies; and (3) provide data and preliminary analysis within a very short timeframe (2 to 4 weeks depending on the problem).

The specific objectives are to: (1) Provide immediate access to existing data sources with the capability of providing assessments of study feasibility; (2) respond to specific drug safety questions within a few weeks; and (3) provide a complete analysis to those questions deemed feasible within a few months.

Characteristics of interest might include: (1) The use of standardized ascertainment and outcome methodology; (2) the ability to perform prospective and retrospective studies; (3) demonstrated validation of data; (4) estimate the contribution of various risk factors associated with the occurrence of adverse events (e.g., age, sex, dose, coexisting disease, disease severity, concomitant medication); (5) availability of large numbers of cases with validated outcomes of interest in drug safety and associated controls; (6) construct cases and controls for case-controlled and nested case-controlled studies (include sampling scheme); (7) determine odds ratios; and (8) determine attributable risks.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated previously to general and specifically defined populations.

The ideal data source would: (1) Capture all drug exposures for each patient regardless of health care delivery setting; (2) identify rare (<1 event per 1000 exposures) adverse events in the population of interest; and (3) be automated with a computerized system available for linking each patient to all relevant medical care data including drug exposure data, coded medical outcomes.

Additional points would be awarded for linkage of data bases to laboratory values and readily accessible medical records as evidenced by past performance in studies. The ability to retrieve medical records relevant to study questions posed by FDA is extremely important.

Submitted applications shall include an indepth description of the data base and provide descriptive and quantitative information on diagnoses and drug exposures in the population. The quality and validity of the data should be described in detail. The applicant shall also provide evidence that their data base has sufficient exposure to marketed drugs (as evidenced by listing their top 50 drug substances of exposure; including the drug and number of exposures) and demonstrate the prevalence of exposure in their control groups.

III. Reporting Requirements

Program progress reports will be required annually. These reports must be submitted 60 days prior to the last day of the budget period of the cooperative agreement. The Progress Report Summary required for Non-Competing Continuation Application is sufficient, if amended with the following information: (1) Publications, abstracts, presentations to professional organizations; (2) top 50 drug substance exposures for the previous year; and (3) summary of any changes in the demographics or capabilities of the data base over the last year.

Financial Status Reports (SF–269) will be required annually. These reports must be submitted within 90 days after the last day of the budget period of the cooperative agreement. Send the original and one copy each, of the Annual Progress and Financial Reports to the Grants Office at the address listed above. Failure to file the Annual Progress Report or the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

Program monitoring of the grantees will be conducted on an ongoing basis and written reports will be prepared by the Project Officer. The monitoring may be in the form of telephone conversations between the Project Officer and/or Grants Management Specialist and the Principal Investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the Official Grant File and may be available to the grantee upon request.

A final Program Progress Report, Financial Status Report (SF–269) and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award. Send the original and one copy to the Grants Management Officer at the address listed above.

Up to two representatives from each cooperative agreement may be required, if requested by the Project Officer, to travel to FDA up to twice a year for no more than 2 days at a time. These meetings will include, but are not limited to, presentation on study design and findings and discussions with FDA staff involved in the collaborative research. At least one FDA employee may visit the cooperative agreement site at least once a year for collaboration and information exchange.

IV. Mechanism of Support

A. Award Instrument

Support of this program will be in the form of cooperative agreements. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92 and PHS Grants Policy Statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State, local, and foreign units of government) and any for-profit organization. For-profit organizations must exclude fees or profit from their requests for support. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant/cooperative agreement awards.

C. Length of Support

The first year will be competitive and future support for the second and third years will be noncompetitive. Future support will be contingent upon: (1) Investigator's demonstrated success collaborating with FDA scientists, as well as other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for and design of a study, analysis of data sets, and publication of

results from investigations performed by FDA and cooperative agreement investigators, and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

Up to four cooperative agreements may be funded with the intent that they will have large, general data bases with the ability to address a variety of questions in the field of pharmacoepidemiology. (If an application using case-control methods research is received, it will be placed in the special population data bases as described in the next paragraph.) These cooperative agreements have $1.2 million dollars budgeted per year.

Up to two cooperative agreements may be funded for special populations, such as acquired immune deficiency syndrome (AIDS), pregnant women, pediatrics, maternal-child linked data bases. The data base type for these awards may be either longitudinal or case control. These two cooperative agreements have $200,000 dollars budgeted per year.

These amounts are to include all direct and indirect costs. Federal funds for this program are limited; therefore, if two or more approved cooperative agreements are perceived as duplicative or very similar data sources with one another, FDA will support only the source with the best score. If any data source is perceived as duplicative or very similar to an existing FDA research contract, the contract will take precedence over the application.[1]

Applicants may compete for either type of cooperative agreement, but not both. An applicant can only be awarded one cooperative agreement under this RFA. Applicants must clearly label block No. 2 of the face page of their application either "Large" or "Special". If the application appears to be eligible for both areas of consideration and is not labeled, reasonable efforts will be made to contact the applicant to determine their preference. If reasonable efforts to contact the applicant fail, program staff shall determine in which area the applicant will compete.

V. Delineation of Substantive Involvement

Program support will be offered through cooperative agreements because FDA will have a substantive involvement in the programmatic activities of all projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to the following:

1. FDA staff will participate in the selection and approval of the drug and medical events to be studied as predicated by the needs of FDA. The drug and medical events to be studied will be jointly agreed upon by the Principal Investigator and the FDA staff.

2. FDA scientists will collaborate with awardees in study design and data analysis. Collaboration may include sharing of the analysis data set, interpretation of findings, review of manuscripts, design of protocols and where appropriate, coauthorship of publications.

3. Because of the ad hoc and frequently urgent nature of the agency's request, we have decided to quantify the amount of requests we would ask of an awardee in one year's time. We expect that the grantee would perform at least one medium or large study in the course of each year. We also would expect that at least one large or one medium study, per year, result from requested feasibility studies. The following table illustrates our method to quantify work.

TABLE 1.—QUANTIFICATION OF WORK

Large Study[1]	30–60 points
Medium Study[2]	15–40 points
Other[3] (e.g., Data Base Search or Feasibility Study)	1–3 points

[1] Large Study—a large study is one that would involve extensive use of the data base (e.g., large studies with laboratory linkages) and, possibly, the retrieval of medical records.

[2] Medium Study—a medium study is one that might be a large data base search only or a smaller data base search with medical records retrieval required.

[3] Other—include feasibility studies and requests for information that may include a few tables describing demographics of the patients, drug exposures and denominator data.

The determination of the points per project will normally be determined by the grantee and the program before work begins; however, if circumstances dictate a change is needed after work has begun, it will be permissible, if agreed by both the grantee and the agency.

All grantees will receive requests for all feasibility studies made by the agency. This method will afford all grantees the opportunity to respond to requests.

An additional 10 points will be awarded to medium and large studies (after the above points have been negotiated) for sharing data sets with the agency and other cooperative agreements.

These points will be used in determining continued support of the cooperative agreement for the second and third years of the project period.

VI. Review Procedure and Criteria

A. Review Procedure

All applications submitted must be responsive to the RFA. Those applications found to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Again, this RFA is limited to data bases where data have been collected from drugs marketed in Canada, the United States and its Territories.

Responsive applications will undergo dual peer review. A review panel of experts, comprised primarily of non-Federal scientists, in the fields of epidemiology, statistics and data base management will review and evaluate each application based on its scientific merit. Responsive applications will also be subject to a second level review by the National Advisory Environmental Health Science Council for concurrence with the recommendations made by the first level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Review Criteria

Applications will be reviewed according to the following criteria, with each criteria being of equal weight within each major category, unless

[1] FDA Contracts include IMS America's National Prescription Audit, National Disease and Therapeutic Index, Provider Prospective, Retail Prospective (Contract No. 223–98–5520) and Mediplus (Purchase Order No. F–07396).

otherwise specified. All applications will be scored with a maximum of 100 points allowable.

Specific review data base size and characteristics apply to each type of data base (General Longitudinal or Special Populations, Case-Control or Special Populations, Longitudinal). Each applicant will be reviewed by the type of data base the applicant claims to be applying for. Separate scores will not be given for the same data base.

1. Size and Characteristics of the Data Base (General Longitudinal; Special Populations, Longitudinal; or Special Populations, Case-Control) (45 points—Total)

General, Longitudinal Data Base

The size and characteristics of the general, longitudinal data base should include the following:

a. Structure (10 points)

Common data structure and elements. With this, we would desire to have a data base that has unified and linked data that has common structure and data elements for critical variables (including, at a minimum, demographics, drug use and clinical outcomes.)

b. Size (10 points)

1. Patient population >3 million individuals enrolled annually (10 points).
2. Patient population >2 million individuals enrolled annually (7 points).
3. Patient population >1 million individuals enrolled annually (4 points).

c. Duration (10 points)

A long calendar time-period for which patient longitudinal data are available and linked.

- No points to data bases with less than 2 years of drug exposure and outcome data.
- 2 points for 2 years of drug exposure and outcome data.
- 2 points for each year greater than 2 years of drug exposure and outcome data.
- 10 points (maximum) for 6 years or more of drug exposure and outcome data.

d. General Data Base Features (15 points)

1. Ability to assemble and follow (retrospectively and prospectively) well-defined cohorts based on exposure or clinical diagnosis for the purpose of performing case-control or cohort studies.
2. Ability to access and to link to the patient, all health provider encounters and drug exposure information regardless of patient care setting.
3. Ability to detect rare (<1:1,000) adverse drug events in one or more specific target populations of interest (i.e., children, pregnant women, and the elderly).
4. Ability to detect and study, with sufficient power, birth defect and cancer outcomes related to drug exposure (if applicable).
5. Ability to ascertain patient enrollment and turnover rates as demonstrated by descriptions of the entry and dropout rates and the average length of enrollment.
6. A standard set of drug and disease classification systems.
7. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.
8. Ability to link to state vital statistics.
9. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.
10. Ability to assess drug interactions.
11. A long calendar time period for which data are available and longitudinally linkable. *No points will be awarded to data bases with less than 2 years of history.*
12. A short lag time (<6 months) between patient events (hospitalization, etc.) and availability of clean data.
13. A listing of the data base's top 50 drug substances of exposure to include the drug and number of exposures at the time of the panel review.

Special Populations Data Base, Case-Control

The size and characteristics of the case controlled data base should include the following:

a. Size (15 points)

Investigators should be able to provide information on at least 500 cases of a specific disease or disorder and exposure primarily to new molecular entities.

b. Controls (15 points)

Evidence of past experience performing case-control studies, estimating sample size, exposure rates and proper use of controls as evidenced in literature and abstracts.

c. General Data Base Features (15 points)

1. Ability to provide information on a variety of diseases or disorders and drug exposures.
2. Ability to assemble and follow cases and controls based on drug exposure and clinical diagnosis.
3. Ability to access and to link to the cases, all health provider encounters and drug exposure information regardless of patient care setting.
4. Ability to study drug-induced risks in one or more specific target populations of interest (i.e., children, pregnant women, and the elderly).

Special Populations Data Base, Longitudinal

The size and characteristics of the data base should include the following:

a. Size (15 points)

Special population data bases shall demonstrate that their data base is representative of their special population as a whole. These special data bases can be awarded full points if sufficient evidence is submitted that demonstrates that their special population is adequately represented.

b. General Data Base Features (30 points)

1. Ability to assemble and follow (retrospectively and prospectively) well defined cohorts based on drug exposure or clinical diagnosis for the purpose of performing case-control or cohort studies.
2. Ability to access and to link to the patient, all health provider encounters and drug exposure information regardless of patient care setting.
3. Ability to study all drug products, especially NME's approved by FDA since 1993.
4. Ability to detect and study, with sufficient power, birth defect and cancer

5. Ability to study all drug products, especially NME's approved by FDA since 1993.

6. Ability to attain complete and unbiased ascertainment of cases and controls.

7. A standard set of drug and disease classification systems.

8. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.

9. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.

10. Ability to assess drug interactions.

11. A listing of the data base's top 50 drug substances of exposure to include the drug and number of exposures at the time of the panel review.

The Remaining Criteria Apply to General, Longitudinal; Special Populations, Longitudinal; and Special Populations, Case-Controlled Data Bases:

2. Identification of NME's (15 points)

NME's in a data base (as identified in the following list) with:

- at least 6,000 exposures will be awarded 3 points for each NME;
- at least 4,000 exposures will be awarded 2 points for each NME;
- at least 2,000 exposures will be awarded 1 point for each NME.

Applicant's may choose five NME's from the following list for evaluation and scoring by the panel.

NME's eligible for scoring with the previously described criteria are shown below in Table 2:

TABLE 2.—NEW MOLECULAR ENTITIES

Brand names	Approval year
Cedax	1995
Claritin	1994
Cognex	1993
Cozaar	1995
Effexor	1993
Felbatol	1993
Fosamax	1995
Glucophage	1994
Lamictal	1994
Lovenox	1993
Neurotin	1993
Propulsid	1993
Risperdal	1993
Serevent	1994
Ultram	1995

3. Information Systems and Software Capabilities (10 points)

Information systems and software capabilities should include the following (2 points each):

a. A well-defined and acceptable description of computer resources and the extent of automation and software capabilities.

b. Availability of computerized data elements (inpatient drugs, diagnostic procedures and diagnosis; outpatient drugs, diagnostic procedures and diagnosis; medical records) or progress toward automation of those data elements not yet available.

c. Existing software to calculate person-time at risk and time of event occurrence.

d. Ability to complete routine searches of the data base within a short time period of about 15 working days.

e. Ability to generate customized statistical, ASCII or other appropriate data sets to facilitate data transfer and research collaboration.

4. Personnel (20 points)

Personnel should have the following qualifications:

a. Scientific (10 points)—Extensive research experience, training and competence of all personnel. Special consideration will be given to teams with knowledge and previous experience in drug epidemiology. Applicants with strong acute and chronic disease epidemiology backgrounds and a demonstrated ability to draw on consultative expertise (particularly in the areas of postmarketing surveillance and epidemiology) are encouraged to apply. (If consultants are used, letters of intent or other contractual agreements, with beginning and end dates, shall be included in the application to fulfill this requirement.) Demonstrated ability to initiate, conduct, complete and publish epidemiology studies in a timely manner.

b. Support (10 points)—Project management and information systems expertise with previous experience in the organization and manipulation of large data sets and specific experience in data bases under agreement.

5. Data Sharing (5 points)

To provide study data sets (free of patient identifiers and in a format usable to the agency) with members of FDA for analysis and with other cooperative agreement holders in studies that would require data pooling.

6. Budget (5 points)

Reasonableness of the proposed budget. Special consideration will be given to methodology which is cost effective (e.g., well-structured medical records and/or records linkage) if otherwise scientifically acceptable.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (rev. 5/95) or the original and two copies of Form 5161 (Rev. 7/92) or Form PHS 398 for applications from State and local governments, with sufficient copies of the appendix for each application should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. The outside of the mailing package should be labeled "Response to RFA–FDA–CDER–99–1".

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before August 3, 1998.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by the legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format of Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label addresses. Do not send applications to the Center for Scientific Review, NIH. This information collection is approved under OMB control number 00925–0001. Applications from State and local governments may be submitted on Form PHS 5161 (Rev.7/92) or PHS 398 (Rev.5/95). The face page of the application must reflect the request for applications number RFA–FDA–CDER–99–1. This information collection is approved under OMB control number 0937–0189.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of the application that have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16293 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0192]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishment and Product License Applications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1998 (63 FR 17183), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0124. The approval expires on June 30, 1998.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16292 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0529]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "National Tobacco Retailer Tracking Study," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, December 30, 1997 (62 FR 67876), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0369. The approval expires on May 31, 2001.

Dated: June 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16340 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0401]

Draft "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product." The draft guidance document would provide guidance to applicants on the content and format of the Chemistry, Manufacturing and Controls (CMC) and Establishment Description sections of the "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use"

(revised Form FDA 356h) for vaccines or related products. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and the FDA Modernization Act of 1997, and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time, however, comments should be submitted by August 18, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product." This draft guidance document, when finalized, is intended to provide guidance to applicants in completing the CMC section and the establishment description information of revised Form FDA 356h. As announced in the **Federal Register** of July 8, 1997 (62 FR 36558), this form will be used as a single harmonized application form for all drug and licensed biological products. Use of the new harmonized Form FDA 356h, when fully implemented, will allow a biologic product manufacturer to submit one biologics license application instead of two separate applications (product license application and establishment license application).

This draft guidance document represents FDA's current thinking on the content and format of the CMC and Establishment Description sections of a license application for a vaccine or related product. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

II. Request for Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by August 18, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16291 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–24]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* July 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Manufactured Home Construction and Safety Standards.

Office: Housing.

OMB Approval Number: 2502–0253.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form number: None.

Respondents: State, Local or Tribal Governments, and businesses or other for-profit.

Frequency of submission: Monthly and recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports	432		1		.64		276
IPIA Reports	1,056		1		.60		633
Manufacturer Records	360,000		1		.16		57,600
Consumer Information Cards	360,000		1		.48		172,800
State Plans	12		40		1.00		480
Consumer Manuals	360,000		1		.08		28,800
Labels and Notices	360,000		1		.22		79,200

Total Estimated Burden Hours: 339,789.

Status: Reinstatement with changes.

Contacts: Stuart Margulies, HUD, (202) 708–6409; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1998.

[FR Doc. 98–16329 Filed 6–18–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–25]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* July 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Lead-Based Paint Hazard Control Grant Program Data Collection for Rounds Two and Three Grantees.

Office: Lead Hazard Control.

OMB Approval Number: 2539–0008.

Description of the Need for the Information and its Proposed Use: This data collection is designed to provide timely information to HUN regarding the implementation progress of the grantees on carrying out the Lead-Based Paint Hazard Control Grant Program. The information collection will also be used to provide Congress with status reports as required by Title X of the Housing and Community Development Act of 1992.

Form Number: 96005.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Data collection	51		4		45		9,075

Total Estimated Burden Hours: 9,075.
Status: Extension.
Contact: Matt Ammon, HUD, (202) 755–1785; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1998.

[FR Doc. 98–16330 Filed 6–18–98; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired: (202) 708–2565 (these telephone numbers are not toll-free,) or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; Navy: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342 (these are not toll-free numbers).

Dated: June 11, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 6/19/98

Suitable/Available Properties

Buildings (by State)

Washington

149 Duplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Landholding Agency: Navy
Property Number: 779820118
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

9 Fourplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Landholding Agency: Navy
Property Number: 779820119
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

2 Sixplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Landholding Agency: Navy

Property Number: 779820120
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

1 Single Unit
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Landholding Agency: Navy
Property Number: 779820121
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

Storage Building
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 779820122
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Admin. Building, Structure 001
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 779820123
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Wisconsin

Natl Weather Svc Forecast Ofc.
3009 W. Fairview Rd.
Neenah Co: Winnebago WI 54956–
Landholding Agency: GSA
Property Number: 549820004
Status: Excess
Comment: 1755 sq. ft., good condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–C–WI–594

Unsuitable Properties

Buildings (by State)

California

214 Enlisted Barracks
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820192
Status: Unutilized
Reason: Secured Area; Extensive deterioration

47 Dining Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820193
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Open Dining
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820194
Status: Unutilized
Reason: Secured Area; Extensive deterioration

43 HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820195
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Maint. Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820196
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Theater w/Stage
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820197
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Dental Clinic
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820198
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 Day Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820199
Status: Unutilized
Reason: Secured Area; Extensive deterioration

27 Recreation Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820200
Status: Unutilized
Reason: Secured Area; Extensive deterioration

15 B.N. HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820201
Status: Unutilized
Reason: Secured Area; Extensive deterioration

6 RG HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820202
Status: Unutilized
Reason: Secured Area; Extensive deterioration

6 Officer Dining Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820203
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Post HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820204
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Div. HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820205
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Admin. Bldg.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820206
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Gen. Purp. Admin. Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820207
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Gen. Storage
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820208
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Gen. Storehouse
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820209
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Gen. Purp. Warehouse
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820210
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Tele. Exchange Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820211
Status: Unutilized
Reason: Secured Area; Extensive deterioration

5 Unit Chapels
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820212
Status: Unutilized
Reason: Secured Area; Extensive deterioration

9 Gen. Inst. Bldgs.
Camp Roberts

Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820213
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 TLR PK Svc Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820214
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Target Stor. Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820215
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Exch. Branch Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820216
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Clorinator Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820217
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Veh. Maint. Sh. Org.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820218
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Veh. Storage Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820219
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 QM Repair Shops
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820220
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Det Latrine Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820221
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Scale House
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820222
Status: Unutilized
Reason: Secured Area; Extensive deterioration

5 Flam. Mt. Stor. Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820223
Status: Unutilized
Reason: Secured Area; Extensive deterioration

FE Storage Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820224
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Insect. Storage Fac.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820225
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 Lum & P Shed FE
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820226
Status: Unutilized
Reason: Secured Area; Extensive deterioration

LP Gas Str/Trans Fac.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820227
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 DFE Admin. Shops
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820228
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 FE Facility
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820229
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Green House
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820230
Status: Unutilized
Reason: Secured Area; Extensive deterioration

WPlat Org LP
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820231
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Exch Branch Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820232
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Commercial Facility
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820233
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Oil Storage Bldg.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820234
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Veh. Wash Cov
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820235
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Florida

Bldg. 139
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820098
Status: Unutilized
Reason: Secured Area;

Bldg. 221
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820099
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 226
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820100
Status: Unutilized
Reason: Secured Area;

Bldg. 654
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820101
Status: Unutilized
Reason: Secured Area;

Bldg. 701
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820102
Status: Unutilized
Reason: Secured Area;

Bldg. 1805
Naval Air Station
Pensacola Co: Escambia FL 32508–

Landholding Agency: Navy
Property Number: 779820103
Status: Unutilized
Reason: Secured Area

Bldg. 1806
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820104
Status: Unutilized
Reason: Secured Area

Bldg. 1971
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820105
Status: Unutilized
Reason: Secured Area

Bldg. 1994
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820106
Status: Unutilized
Reason: Secured Area

Bldg. 2657
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820107
Status: Unutilized
Reason: Secured Area

Bldg. 3213
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820108
Status: Unutilized
Reason: Secured Area

Bldg. 3443
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820109
Status: Unutilized
Reason: Secured Area

Mississippi

Bldg. 170
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 779820110
Status: Unutilized
Reason: Secured Area

New York

Bldg. P–1
Glen Falls Reserve Center
Glen Falls Co: Warren NY 12801–
Location: 67–73 Warren Street
Landholding Agency: GSA
Property Number: 219540015
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–D–NY–865

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820111
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820112
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820113
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820114
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820115
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area; Extensive deterioration

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820116
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Land (by State)

Maine

Land—Triangular Area;
NAS Brunswick, Wildwood Subd. Encroachment
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779820117
Status: Excess
Reason: Other
Comment: landlocked

[FR Doc. 98–16065 Filed 6–18–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment for Determining the Future Role of Leadville National Fish Hatchery, Leadville, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment for determining the future role of the Leadville National Fish Hatchery, a whirling disease and bacterial kidney disease positive facility.

SUMMARY: The U.S. Fish and Wildlife Service, Mountain-Prairie Region, has developed a draft environmental assessment on the future operation of the Leadville National Fish Hatchery in light of the discovery of whirling disease at the Hatchery in May, 1995. This notice advises the public that the Service proposes to continue fish production at the Leadville Hatchery and line all earthen rearing units in order to reduce tubifex worm populations which host whirling disease, and therefore control (reduce) whirling disease infection levels at the Hatchery. Lining earthen rearing units will also help prevent bacterial kidney disease epidemics.

This draft environmental assessment has been developed by Service biologists in coordination with the Colorado Division of Wildlife, private conservation organizations, and the general public. The assessment considers the biological, environmental, and socioeconomic effects of operating the Hatchery, stocking whirling disease-positive trout in Colorado, and lining earthen rearing units. The assessment evaluates nine alternative actions and potential impacts of those alternatives on the environment. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: The draft assessment will be available to the public for review and comment on June 15, 1998. Written comments must be received no later than July 20, 1998, to be considered in developing a final environmental assessment.

ADDRESSES: Comments and requests for copies of the assessment should be addressed to Mr. John Hamill, Associate Manager (Colorado), U.S. Fish and Wildlife Service, Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225.

SUPPLEMENTARY INFORMATION: The Leadville Hatchery currently produces 39,000 pounds of fish annually for Fryingpan-Arkansas Project waters mitigation per a Memorandum of Agreement with the Bureau of Reclamation: 13,000 pounds for the Grand Valley as per an agreement with Colorado Division of Wildlife to mitigate lost recreational fishing opportunities due to recovery activities on the Colorado River authorized under the Endangered Species Act; 30,000 pounds (cost reimbursable) for Military waters in Colorado Springs and Denver as per an agreement with the

Department of Defense authorized by the Sikes Act; and 3,000 pounds for the Hatchery public fishing ponds.

Whirling disease was first detected in Colorado in 1987 and has since been detected in 13 major river basins, 16 State fish hatcheries, and the Leadville Hatchery. Reports that whirling disease was responsible for decreases in wild rainbow trout recruitment in the upper Colorado River in Colorado during 1994 and 1995, and population declines of wild rainbow trout in the upper Madison River, Montana beginning in 1991 caused significant concern over the disease's effects on wild trout populations in Colorado. Colorado Division of Wildlife has responded to this concern by adopting new policies and regulations in January 1997 which severely restrict the stocking locations of fish produced at hatcheries were whirling disease has been detected.

Nine alternatives for the disposition of the Leadville Hatchery were formulated utilizing input from the public, environmental organizations, and resource agencies. Each alternative was evaluated for consistency with Service priorities, compliance with Service operational and fish health policies, compliance with Colorado Division of Wildlife regulations, preservation of the historical value of the Hatchery, potential for spreading whirling disease and other fish diseases to native fish and wild fish in Colorado, and cost effectiveness. Alternative 1 (current program, no action) was used as a baseline for evaluation of the environmental impacts of the other alternatives.

The Service designated Alternative 2a as the preferred alternative. This is strictly a preliminary decision which will be reevaluated after comments from the public are received. Alternative 2a was chosen as the most feasible means of fulfilling fish stocking obligations while taking progressive action towards controlling whirling disease infection levels. Disease monitoring indicates that the earthen lakes and ponds used for fish production are the most significant sources of disease on the Hatchery. Lining these rearing units would vastly reduce tubifex worm populations at the Hatchery which host the disease. Alternative 2b (installing hatchery influent ozonation facility) will be considered in the future if funding can be attained.

Although construction costs are lower for Alternatives 3a and 3b, these alternatives would necessitate termination of production for Fryingpan-Arkansas Project waters. These alternatives are not as cost effective in the long run due to a significant decrease in fish production and increase in cost per pound of fish produced.

Alternatives 4, 5a, and 5b emphasize production of native cutthroat trout utilizing spring water in the Hatchery building. Under current Service policies and Colorado Division of Wildlife regulations, such trout can only be certified as whirling disease-negative if all fish production utilizing open water supplies is terminated. Therefore, Alternative 4 (maintaining production using open water supplies) cannot be achieved under current Service policies and Colorado Division of Wildlife regulations. Alternatives 5a and 5b (ceasing all production using open water supplies) are not cost effective since only 500 to 3,000 pounds of trout could be achieved in producing whirling disease negative fingerlings due to the proximity of whirling disease to the Hatchery building. It would be more practical to use currently whirling disease-negative hatchery facilities to produce disease-free native cutthroat trout for restoration purposes.

Alternative 6 (closing the Hatchery and transferring ownership) was not chosen due to opposition from the general public, and because the Service desires to continue to honor the obligations for fish production currently being fulfilled by the Leadville Hatchery. Since the Leadville Hatchery stocks waters where there is no trout reproduction, where whirling disease already exists, and at considerable distances from uncontaminated waters, the Service believes that the most feasible means of fulfilling these obligations is by continuing to produce the fish at the Leadville Hatchery.

Author: The primary author of this notice is Mr. John Hamill (See **ADDRESSES** section) (telephone 303/236–8155, extension 252).

Authority: The authority for this action is the National Environmental Policy Act of 1969, as amended (P.L. 91–190, 42 U.S.C. *et seq.*).

Dated: June 12, 1998.

Ralph O. Morgenweck,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 98–16332 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans for 8 National Wildlife Refuges in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and other environmental documents for certain National Wildlife Refuges listed in the **SUPPLEMENTAL INFORMATION** section pursuant to the National Environmental Policy Act and its implementing regulations.

DATES: The Service will be open to written comments through October 30, 1998.

ADDRESSES: Address comments and requests for more information to: Mr. Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to gather information necessary to prepare a CCP and other environmental documents for Las Vegas National Wildlife Refuge, Las Vegas, New Mexico; Maxwell National Wildlife Refuge, Maxwell, New Mexico; Muleshoe and Grulla National Wildlife Refuges, Muleshoe, Texas; Buffalo Lake National Wildlife Refuge, Umbarger, Texas; Salt Plains National Wildlife Refuge, Jet, Oklahoma; and Sequoyah and Ozark Plateau National Wildlife Refuges, Vian, Oklahoma. The Service is furnishing this notice in compliance with Service CCP policy: (1) to advise other agencies and the public of our intentions, and (2) to obtain suggestions

and information on the scope of issues to include in the environmental documents.

Additional opportunities for written comments will be provided during the draft review process. If necessary, the Service will solicit information from the public via open houses, meetings, and workshops. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the current status of the project as well as the time and place of any meetings to be conducted.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

The Service anticipates that draft CCP documents and any associated NEPA documents will be available by June, 1999.

Dated: June 12, 1998.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 98–16326 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW126102]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 10, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126102 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.000 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126102 effective February 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 98–16305 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–08–1430–01; CACA–39215, CACA–39714]

El Dorado and Amador Counties, California: Realty Action, CACA–39215 and CACA–39714

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action—Leasing of Public Lands; El Dorado and Amador Counties, California.

SUMMARY: The following public lands in El Dorado County, California will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased for seasonal commercial use, including RV storage, primitive tent camping, a volleyball court, and RV camp sites (partial), to Ponderosa Park Campground.

Mount Diablo Meridian, California

T. 11 N., R. 10 E.,
Sec. 18, portion of NWNENW.
Containing 5.0 acres, more or less.

In addition, the following described public lands in Amador County, California, will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased to Mr. Elton Rodman, of the Roaring Camp Mining Company, for seasonal recreation use associated with the Roaring Camp Mining Resort, including picnic facilities, vehicle parking, equipment storage, and a small assay office.

Mount Diablo Meridian, California

T. 6 N., R. 12 E.,
Sec. 13, that portion of lot 5 lying west of the North Fork of the Mokelumne River.
Containing 5.0 acres more or less.

This action will resolve two inadvertent trespasses. The leases will be issued for 10 years, with the right to renew.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease to the address under the **ADDRESSES** caption of this notice. Any adverse comments will be evaluated by the Field Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Field Manager, this Realty Action will become the final determination of the Bureau.

ADDRESSES: For further information or to submit comments regarding the proposed leases contact Karen Montgomery, Realty Specialist, or John Beck, Realty Specialist, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, (916) 985–4474.

D.K. Swickard,

Field Manager.

[FR Doc. 98–16364 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 26 N., R. 71 W., accepted June 10, 1998
T. 23 N., R. 116 W., accepted June 10, 1998
T. 24 N., R. 116 W., accepted June 10, 1998

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s)

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from

the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: June 10, 1998.

Jerry L. Messick,

Acting Chief, Cadastral Survey Group.

[FR Doc. 98–16315 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplement to the Final Environmental Impact Statement/ Resources Management Plan for Improvement of Water Quality and Conservation of Rare Species and Their Habitats on Santa Rosa Island, Channel Islands National Park; Availability

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared an abbreviated Final Supplement to the Final Environmental Impact Statement/ Resources Management Plan for improving water quality and conserving rare species and their habitats on Santa Rosa Island. Upon completion of the current conservation planning and impact analysis process, a new Record of Decision will be prepared which will supersede the previous decision concerning this stewardship initiative.

BACKGROUND: In August, 1995, the National Park Service (NPS) began developing a resources management plan for Santa Rosa Island to address impacts from ongoing commercial ranching and hunting on water quality, riparian values, and rare plant species and their habitats. In May, 1996 the NPS completed and distributed a draft environmental impact statement (Draft) for this plan; during a 125-day public review period, the NPS received over 240 comments. The Draft was subsequently revised, and a final environmental impact statement (Final) for the resources management plan was released in April, 1997. In a Record of Decision signed June 9, 1997, the NPS indicated the intent to implement the Proposed Action, *Alternative D,* Revised Conservation Strategy. Subsequently negotiations for revising the alternative ensued among Vail & Vickers, the National Park and Conservation Foundation, and the NPS. As a result, a draft supplement to the Final was prepared which identified a new alternative, *Alternative F,* Negotiated Settlement. Members of the public and interested agencies and organizations were afforded an opportunity to comment during a 60-day public review period from February 17 to April 17, 1998. Although many elements of the negotiated *Alternative F* were similar to the previously selected *Alternative D,* there were some differences.

New Proposed Action: Under *Alternative F,* Negotiated Settlement, water quality and riparian values would be improved and rare plants and their habitats would be conserved by rapid removal of cattle and phased removal of deer and elk. With the exception of 12 head in Lobo Pasture, all cattle would be removed by the end of 1998. Deer and elk would be removed by the end of 2011, although they could be removed earlier if necessary to achieve recovery goals for selected listed species and their habitats. After an initial reduction in deer and elk, an adaptive management program for deer and elk would be implemented. Under adaptive management, deer and elk would be managed at levels allowing rare species and their habitats to recover. Provided recovery goals were met, Vail & Vickers would be permitted to conduct commercial deer and elk hunting activities. After the adaptive management period, deer and elk populations could be eliminated during a final phaseout period. If for some reason an acceptable adaptive management program cannot be developed, deer and elk populations will be reduced at a pre-determined rate. Also, the NPS would implement road management actions to reduce impacts to island streams, and would develop a comprehensive alien plant management plan to address problems caused by alien species. The NPS would develop monitoring programs for rare species, water quality, and riparian recovery. Visitor access to Santa Rosa Island would be increased beyond current levels.

Other Alternatives: Other alternatives subject to the supplemental conservation planning and impact analysis process were the same as identified and described in the Final. In addition to the above, these include: *Alternative A,* No Action; *Alternative B,* Minimal Action; *Alternative C,* Targeted Management Action; and *Alternative E,* Immediate Removal of Ungulates.

SUPPLEMENTARY INFORMATION: The final supplement contains responses to seven (7) respondents to the draft supplement (eight comments were received). It also contains changes and clarifications which are minor and few in number; information and analysis otherwise remains essentially unchanged. As an abbreviated document, it must be combined with the draft supplement and original Draft and Final EIS to comprise a complete record. The no-action period for the final supplement will extend for 30-days from EPA's notice of the filing of the document in the **Federal Register**. Requests for information or copies of the document should be directed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001, or by telephone at (805) 658–5776. Copies will also be available at area libraries.

Dated: May 21, 1998.

Martha K. Leicester,

Acting Regional Director, Pacific West.

[FR Doc. 98–16375 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Universal Hiring Program Application; Reinstatement, without change, of a previously approval collection for which approval has expired.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted until August 18, 1998.

Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Universal Hiring Grant Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form: None. Office of Community Oriented Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and Local governments, Tribal governments.

Other: None.

This application will be used by state and local jurisdictions to apply for federal funding which will be used to increase the number of law enforcement positions in their law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3200 respondents; 5.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 15, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–16295 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2166–98]

RIN 1105–AA56

Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

AGENCY: Department of Justice.

ACTION: Proposed guidelines.

SUMMARY: The United States Department of Justice is publishing Proposed Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998.

DATES: Comments must be received by August 18, 1998.

ADDRESSES: Comments may be mailed to Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104–236, 110 Stat. 3093 (the "Pam Lychner Act"), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105–119, 111 Stat. 2440, 2461 (the "CJSA"), amended section 17101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act" or "the Act"). These legislative changes require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. No. 104–145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the **Federal Register** (62 FR 39009).

The Wetterling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. *Original requirements.* Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071(g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071(g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. *Pam Lychner Act requirements.* The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and

recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act—three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. *CISA requirements.* The CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under CJSA amendments, as specified in section 115(c)(2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The proposed guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Proposed Guidelines

1. *General purposes and principles of interpretation.* These guidelines carry out a statutory directive to the Attorney General in subsection (a)(1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are not required under the Act's standards. For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who are convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statute. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. *Related litigation.* Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. *See, e.g., Roe* v. *Office of Adult Probation,* 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy); *Russell* v. *Gregoire,* 124 F.3d 1079 (9th Cir. 1997) (Washington state act), *cert denied,* 118 S.Ct. 1191 (1998); *Doe* v. *Pataki,* 120 F.3d 1263 (2d Cir. 1997) (New York act), *cert denied,* 118 S.Ct. 1066 (1998); *E.B.* v. *Verniero,* 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), *cert. denied.* 118 S.Ct. 1039 (1998); *Artway* v. *Attorney General,* 81 F.3d Cir. 1996) (New Jersey registration provision); *Doe* v. *Kelley,* 961 F. Supp. 1105 (W.D. Mich. 1997) (Michigan notification provisions); *Doe* v. *Weld,* 954 F. Supp. 425 (D. Mass. 1996) (Massachusetts registration of juvenile offenders); *State* v. *Pickens,* 558 N.W. 2d 396 (Iowa 1997); *Arizona Dep't of Public Safety* v. *Superior Court,* 949 P.2d 983 (Ariz. App. 1997); *Opinion of the Justices to the Senate,* 423 Mass. 1201, 668 N.E. 2d 738 (Mass 1996); *Doe* v. *Poritz,* 142 N.J. 1, 662 A.2d 367 (N.J. 1995); *State* v. *Ward,* 123 Wash. 2d 488, 869 P.2d 1062 (Wash. 1994). The United States has filed "friend of the court" briefs in several of these cases, arguing that sex

offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clause or violate privacy or liberty interests guaranteed by the federal Constitution.

In a few other cases, however, courts have found that certain applications or provisions of some state systems violate the United States Constitution or provisions of a state constitution. *See, e.g., Doe* v. *Attorney General,* 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe—who had been convicted of "indecent assault" for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult males—without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical "dangerousness" determination could be justified by certain other conviction offenses); *State* v. *Myers,* 260 Kan. 669, 923 P. 2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the Ex Post Facto Clause), *cert. denied,* 117 S. Ct. 2508 (1997). The New Jersey Supreme Court in *Doe* v. *Poritz* (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in *E.B.* v. *Verniero* (above).

In addition, when these guidelines were written, there were appeals pending in the Sixth Circuit, *see Cutshall* v. *Sundquist,* 980 F. Supp. 928 (M.D. Tenn. 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), *appeal pending,* 6th Cir. Nos. 97–6276 & 97–6321, and in the Third Circuit, *see Paul* v. *Verniero,* 3d Cir. No. 97–5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania.

3. *Summary and text of guidelines.* The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

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I. Ten-Year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who is a Minor or a Sexually Violent Offense [Time For Compliance: September 12, 1997; Possible Two-Year Extension]

To comply with subsections (a)(1) and (b)(6)(A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of "a criminal offense against a victim who is a minor" or a "sexually violent offense."

This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. "States" to Which the Act Applies

For purposes of the Act, "state" refers to the political units identified in the provision defining "state" for purposes of eligibility for Byrne formula Grant funding (42 U.S.C. 3791(a)(2)). Hence, the "states" that must comply with the Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

B. Duration of Registration

Subsection (b)(6)(A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration "during ensuing periods of incarceration." The reference to subsequent "incarceration" should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal

or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. *"Criminal offense against a victim who is a minor"*. The Act requires registration of any person convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual exploitation of minors. "Minors" for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of "criminal offense against a victim who is a minor" are as follows:

(1)–(2) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as "kidnapping," "criminal restraint," or "false imprisonment"—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of "rape," "sexual assault," "sexual abuse," or "incest"—in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of "sexual conduct" should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of "criminal offense against a victim who is a minor" allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)) and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. *"Sexually violent offense"*. The Act prescribes a 10-year registration requirement for offenders convicted of a "sexually violent offense," as well as for those convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(B) defines the term "sexually violent offense." The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses—i.e., non-consensual sexually assaultive crimes involving penetration—regardless of the age of the victim. The definition refers specifically to any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of "sexually violent offenses":

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242—the federal "aggravated sexual abuse" and "sexual abuse" offenses—if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration—together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim, establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. *"Comparable * * * range of offenses".* As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with the Act by requiring registration for persons convicted of offenses in a "range of offenses specified by State law which is comparable to or which exceeds" the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. *See* H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997). As a result, Congress was concerned that some states "may inadvertently find themselves out of compliance with the Wetterling Act" because the state registration provisions "are not exactly congruent" with the Act's offense categories, "even if the offenses covered by the [state] program are much broader in other respects than required by the Wetterling Act." *Id.* The language concerning coverage of a "comparable" range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing authority, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and of persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements which are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program "is comparable to or * * * exceeds" the Act's offense coverage specifications.

D. Coverage of Offenders

1. *Resident offenders convicted in other states.* In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b)(7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. *See* 42 U.S.C. 14072(g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders—registration for at least 10 years or for life as provided in subsection (b)(6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. *Juvenile delinquents and offenders.* The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states may require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

3. *Tribal offenders.* The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concern as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. *Protected witnesses.* The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (*see* 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-relocation address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521(b)(1)(H), enacted by section 115(a)(9) of CJSA, specifically authorizes the Attorney General to

adopt regulations to "protect the confidentiality of the identity and location" of protected witnesses who are subject to registration requirements, "including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons." The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the Attorney General's discretion, the Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-Year Extension]

Paragraphs (1)(A) and (2)(A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release ("parole, supervised release, or probation"). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs (4)–(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b)(3)(A) states that "State procedures shall provide for verification of address at least annually."

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states which have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)—a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)—derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1. *Taking of registration information and informing offenders of registration obligations.* Subsection (b)(1)(A) provides that "a State prison officer, the court, or another responsible officer or official" must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude "honor systems" in which the initial registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially, serial and stranger rapes.

2. *Transmission of registration information.* Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registrant will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be "promptly" made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed

in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure: (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as provision of the information to an appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a "criminal justice agency" as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since "criminal justice agency" is defined broadly in the rule and generally includes (inter alia) law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. *Fingerprinting.* The final subsection of the Wetterling Act—which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA—relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. *Intrastate moves.* Subsection (b)(4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner which ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. *Interstate moves.* Subsection (b)(5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to an agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An "honor system" approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D.1 of these guidelines, the Wetterling Act's registration requirements "follow the registrant" if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b)(6)(B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

C. Periodic Address Verification

Subsection (b)(3)(A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of changes made by the CJSA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a nonforwardable address verification form, which the registrant is required to sign and return within 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b)(3)(A). The legislative history of the CJSA amendments to the Act noted other possible approaches: "A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These * * * procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods." H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, *see* H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104–145, 110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states which have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirement under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure requirement applies both in relation to offenders required to register because of conviction for "a criminal offense against a victim who is a minor" and those required to register because of conviction for a "sexually violent offense."

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with registration information limited to law enforcement uses for offenders in

the "low risk" level; notice to organizations with a particular safety interest (such as schools and other child car entities) for "medium risk" offenders; and notice to neighbors for "high risk" offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identity of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives in the area.

Concerns have been raised that the disclosure of registration information to the public under "community notification" programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs to minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice to the community concerning a registrant's presence.

IV. Special Registration Requirements Under The Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999; Possible Two-Year Extension]

Subsection (b)(6)(B)(i)–(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an "aggravated offense."

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act—Oct. 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b)(6)(B)(i) requires lifetime registration for certain recidivist. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registration is required by the Act—i.e., an offense in the range of offenses specified in subsection (a)(3)(A)–(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an "aggravated offense," even on a first conviction. "Aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for persons convicted of the state offenses which cover such conduct.

A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b)(6)(B)(i), it become inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

V. Special Registration Requirements Under The CJSA Amendments Relating to Sexually Violent Predators. Federal and Military Offenders, and Non-Resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(2), (a)(3)(C)–(E), (b)(1)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be "sexually violent predators" under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c)(2) of the CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. *Heightened sexually violent predator registration.* Subparagraphs (B)–(E) of subsection (a)(3) contain the Act's definition of "sexually violent predator" and related definitions. Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a medical abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offense. Subparagraph (D) essentially defines "medical abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of "personality disorder" is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM–IV. American Psychiatric Association, *Diagnostic and Statistical Manual of Medical Disorders* (4th ed. 1994). Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a)(2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocation or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determining whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be "sexually violent predators" under the Act's definitions, the Act prescribes three special registration requirements:

First, subsection (b)(1)(B) provides that the initial registration information obtained from a sexually violent predator must include "the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person." In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b)(3)(B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b)(3)(A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B)(iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a)(1)(B) of the Act alludes to possible termination of sexually violent predator status under subsection (b)(6)(B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is no longer a sexually violent predator

or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for the offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. *Alternative measures of comparable or greater effectiveness.* Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators." This authorization was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can "incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders." H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

States can * * * incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders. For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators. * * * Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders.

H.R. Rep. No. 256 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures "of comparable or greater effectiveness" if the state applies the principal heightened registration requirements under the Act's sexually violent predator provisons—i.e., lifetime registration and quarterly address verification—to a class of offenders that is generally broader than "sexually violent predators." Since "sexually violent predators" are, by definition, a subclass of persons convicted of a "sexually violent offense," a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a "sexually violent offense."

For states that follow other approaches, the determination whether "alternative measures of comparable or greater effectiveness" have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders: Non-Resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses—such as those defined in chapters 109A, 110, and 117 of title 18, United States Code—and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their place of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. *Federal and military offenders.* In relation to federal and military offenders, states can comply with the new requirement under subsection (b)(7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal convictions or court martial sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that "it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs; all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a)(8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a)(8) of the CJSA, federal sex

offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. *Non-resident workers and students.* Subsection (b)(7)(B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a)(3)(F)–(G) and (c). As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state "in order to work or attend school" and sometimes refer to persons who are may be in another state where the person "is employed," "carries on a vocation," or "is a student." These are merely terminological variations; the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The "registration information" the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that "it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b)(1)(A)(iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b)(1)(A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in The National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsection (b)(2)(B) of the Act requires states to "participate in the national database established under section 14072(b)"—i.e., the National Sex Offender Registry (NSOR)—"in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines."

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in section 115(c)(2) of CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a "minimally sufficient" sex offender registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a)(7) of the CJSA, states have until October 2, 1999, to establish "minimally sufficient" programs (subject to a possible two-year extension for states making good faith efforts). In states that have not established "minimally sufficient" programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072(h)(1) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR–AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the "Interim Registry") to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a "pointer" system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be

included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system which will be known as "NCIC 2000." NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the "Permanent Registry"). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting at the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act, Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs for unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review; Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligiblity for full Byrne Formula Grant funding following September 12, 1999—the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year "good faith" extension—such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999—the end of the implementation period for the Pam Lychner Act requirements, absent an extension—states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Grant funding following November 25, 2000—the end of the implementation period for the CJSA requirements, absent an extension—states must submit to the Bureau of Justice Assistance by September 25, 2000, information that shows compliance, in the reviewing authority's judgment, with the requirements described in the parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

After the reviewing authority has determined that a state is in compliance with the Act, the state will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Act.

Dated: June 13, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–16391 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–88–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Atkemix Thirty-Seven, Inc.*, (M.D. Fl.) Civil Action No. 98–1203–CIV–T–25–F was lodged on June 10, 1998, with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and recovery of response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tampa, Florida ("the Site").

Under a proposed Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of a portion of the Site, has agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atkemix Thirty-Seven, Inc.*, (M.D. Fl.), DOJ# 90–11–2–1227.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $50.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check for $20.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16389 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *City of Clear Lake, Iowa*, Civil Action No. C 98 3043, was lodged on June 4, 1998 with United States District Court for the Northern District of Iowa, Central Division. In a complaint filed contemporaneously with lodging of the proposed consent decree, the United States alleged that the Defendant City of Clear Lake is liable as an owner at the time of disposal of hazardous substances, and is the current owner of the Clear Lake FMGP Superfund Site located in Cerro Gordo County, Iowa ("Site") pursuant to Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. 9607(a)(1) and (2). The Complaint also alleges that Defendants Kansas City Power and Light, and Centel Corporation, are successors to and assumed liability for persons who at the time of disposal of hazardous substances owned and/or operated a facility at the Site at which hazardous substances were disposed, and who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site, and are liable pursuant to Sections 107(a) (2) and (3) of CERCLA, 42 U.S.C. 9607(a) (2) and (3). The complaint further alleges that the United States incurred costs and may continue to incur costs for response actions at and in connection with the Site.

The proposed consent decree provides that the Defendants shall pay $350,000 to the EPA Hazardous Substance Superfund for Response Costs. The proposed consent decree also provides that the United States covenants not to sue or take administrative action against the Defendants under sections 106, 107 and 113 of CERCLA, 42 U.S.C. 9606, 9607 and 9613 except as specifically provided in the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Clear Lake, Iowa*, DOJ Ref. 90–11–2–1343.

The proposed consent decree can be examined at the Office of the United States Attorney, Northern District of Iowa, Hach Building, 401 1st Street, SE, Suite 400, Cedar Rapids, Iowa 52401–1825; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16390 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
- NJ980002 (Feb. 13, 1998)
- NJ980003 (Feb. 13, 1998)
- NJ980004 (Feb. 13, 1998)
- NJ980005 (Feb. 13, 1998)
- NJ980007 (Feb. 13, 1998)

Volume II

None

Volume III

Alabama
- AL980007 (Feb. 13, 1998)
- AL980008 (Feb. 13, 1998)
- AL980052 (Feb. 13, 1998)

Georgia
- GA980034 (Feb. 13, 1998)

Kentucky
- KY980001 (Feb. 13, 1998)
- KY980002 (Feb. 13, 1998)
- KY980003 (Feb. 13, 1998)
- KY980007 (Feb. 13, 1998)
- KY980025 (Feb. 13, 1998)
- KY980027 (Feb. 13, 1998)
- KY980029 (Feb. 13, 1998)

North Carolina
- NC980001 (Feb. 13, 1998)
- NC980003 (Feb. 13, 1998)

Volume IV

Illinois
- IL980001 (Feb. 13, 1998)
- IL980002 (Feb. 13, 1998)
- IL980003 (Feb. 13, 1998)
- IL980004 (Feb. 13, 1998)
- IL980005 (Feb. 13, 1998)
- IL980006 (Feb. 13, 1998)
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- IL980023 (Feb. 13, 1998)
- IL980026 (Feb. 13, 1998)
- IL980028 (Feb. 13, 1998)
- IL980039 (Feb. 13, 1998)
- IL980040 (Feb. 13, 1998)
- IL980041 (Feb. 13, 1998)
- IL980042 (Feb. 13, 1998)
- IL980047 (Feb. 13, 1998)
- IL980053 (Feb. 13, 1998)
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- IL980062 (Feb. 13, 1998)
- IL980064 (Feb. 13, 1998)
- IL980065 (Feb. 13, 1998)
- IL980068 (Feb. 13, 1998)

Ohio
- OH980002 (Feb. 13, 1998)
- OH980003 (Feb. 13, 1998)
- OH980012 (Feb. 13, 1998)
- OH980024 (Feb. 13, 1998)
- OH980026 (Feb. 13, 1998)
- OH980029 (Feb. 13, 1998)
- OH980032 (Feb. 13, 1998)

Wisconsin
- WI980002 (Feb. 13, 1998)
- WI980003 (Feb. 13, 1998)
- WI980005 (Feb. 13, 1998)
- WI980006 (Feb. 13, 1998)
- WI980008 (Feb. 13, 1998)
- WI980010 (Feb. 13, 1998)
- WI980013 (Feb. 13, 1998)
- WI980017 (Feb. 13, 1998)

Volume V

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- IA980005 (Feb. 13, 1998)
- IA980007 (Feb. 13, 1998)
- IA980009 (Feb. 13, 1998)
- IA980019 (Feb. 13, 1998)
- IA980032 (Feb. 13, 1998)
- IA980038 (Feb. 13, 1998)
- IA980047 (Feb. 13, 1998)
- IA980067 (Feb. 13, 1998)

Volume VI

Idaho
- ID980001 (Feb. 13, 1998)
- ID980002 (Feb. 13, 1998)

North Dakota
- ND980003 (Feb. 13, 1998)
- ND980004 (Feb. 13, 1998)

Oregon
- OR980001 (Feb. 13, 1998)
- OR980004 (Feb. 13, 1998)
- OR980017 (Feb. 13, 1998)

Washington
- WA980001 (Feb. 13, 1998)
- WA980002 (Feb. 13, 1998)
- WA980005 (Feb. 13, 1998)
- WA980007 (Feb. 13, 1998)
- WA980008 (Feb. 13, 1998)
- WA980011 (Feb. 13, 1998)

Volume VII

Arizona
- AZ980002 (Feb. 13, 1998)
- AZ980013 (Feb. 13, 1998)
- AZ980014 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 12th day of June 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–16074 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–27]

Agency Information Collection Activities; Proposed Collection; Comment Request; Powered Platforms for Building Maintenance (29 CFR 1910.66)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Powered Platforms for Building Maintenance (29 CFR 1910.66). The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–27, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Powered Platforms for Building Maintenance (29 CFR 1910.66), contact OSHA's WebPage on the Internet at http://www.osha-slc.gob/

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

One of the information collection requirements if for the employer to develop written work procedures to be used to train employees (§ 1910.66(i)(1)(iv)). The employer would then prepare a certification record to verify that the training has been given (§ 1910.66(i)(1)(v)). The written work procedures would address the operation, safe use, and inspection of powered platforms.

Another information collection requirement is that employers develop a written emergency action plan for employees who work on powered platforms at different building sites (§ 1910.66(e)(9)). OSHA believes it is necessary for the employer to prepare for emergencies so that employees using powered platforms know what actions are required of them during emergency situations. Employers would also certify that employees had been trained in the emergency action plan.

OSHA also requires employers to conduct inspections and tests (§§ 1910.66(g)(2)(i), (g)(2)(ii), (g)(3)(i), and (g)(5)(iii)) and to certify that these inspections and tests had been conducted (§§ 1910.66(g)(2)(iii), (g)(3)(ii) and (g)(5)(v)). Certification records are required to show inspections: (1) Of the building supports (once a year); (2) of the equipment used on the platform—the hoist, control systems, bearings, gears, and governors, for example (as recommended by the manufacturer or supplier, but at least once a year inspection and tested as needed); (3) of the installation of the platform (every 30 days or when used less frequently, before each work cycle); (4) of the wire rope every month or before being used; and (5) to demonstrate employee training.

OSHA estimates the burden for all of the inspections, tests, and certification records at 256,500 hours based on professional staff knowledge of the time it takes to perform the inspections and tests of the building supports, platform installation and platform equipment, including wire ropes, and to prepare the required certification records. OSHA believes about half of the burden it has calculated is a usual and customary burden to employers for the following reasons: (1) Many employers rent powered platforms and the rental company supplies the documentation required by the OSHA standard as a usual and customary business practice; (2) insurance carriers require building owners to inspect the platform support system; (3) building owners, for their own liability, inspect the platform installation and equipment; (4) many states require building owners to make the same inspections that OSHA requires in its standard; and (5) there is a national consensus standard, ANSI A–120, which prescribes similar requirements which have been adopted by local and state officials and represents standard industry practice. In consideration of all of these factors, OSHA believes it would be reasonable to assume that 50 percent of the burden is usual and customary. For the purpose of this paperwork package, OSHA is reducing the burden estimate to 128,250 hours for those inspections, tests, and records. In addition, there are 144 hours of burden for the training certification records.

The Agency specifically invites the public to comment on its estimate that 50 percent of the burden discussed above is considered normal business operations.

The final group of information collection requirements in the standard pertains to a number of provisions requiring tags and labels. Section 1910.65(f)(5)(i)(C) requires a load rating plate to be affixed to each suspended unit. Section 1910.66(f)(5)(ii)(N) requires the compartment for an emergency electric operating device to be labeled with instructions for use. Sections 1910.66(f)(7)(vi), 1910.66(f)(7)(vii), and 1910.66(f)(7)(viii) require the attachment of a tag on a suspension wire rope when it is installed, renewed or resocketed.

The information collected would also be used by OSHA compliance officers to ensure that employers are complying with the requirements set forth in 29 CFR 1910.66.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Powered Platforms for Building Maintenance standard.

Type of Review: Extension of a Currently Approved collection.

Agency: U.S. Department of labor, Occupational Safety and Health Administration.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Agency Number: Docket Number ICR–98–27.

Affected Public: Business or other for-profit; State or local governments.

Number of Respondents: 51,687.

Frequency: Varies (Initially, Annually, Monthly, On Occasion).

Average Time per Response: Varies from five minutes to generate, maintain and disclose records to 8 hours to prepare plans (average of two hours).

Estimated Total Burden Hours: 129,763.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, D.C., this 15th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16381 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–18]

Concrete and Masonry Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection request; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments on the information collection requirement contained in 29 CFR 1926.703(a)(2). that provision requires that formwork drawings or plans for cast-in-place concrete construction work be available at the jobsite.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to submitted to the Docket Office, Docket ICR–98–18, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on Information Collection Requests).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (records) requirements contained in 29 CFR 1926.703(a)(2). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Section 1926.703(a)(2) requires that formwork drawings or plans for cast-in-place concrete construction work be available at the jobsite. The information is needed by employers, employees, OSHA compliance officers, and other interested persons in the construction industry to ensure concrete structures are erected in a safe and purposeful manner. This provision addresses safety and health concerns caused by improperly designed and erected formwork. Such hazards could cause partial or total collapse of concrete structures and result in serious or fatal injuries to workers.

Current Action

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1926.703(a)(2).

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Concrete and Masonry Construction (29 CFR 1926.703(a)(2)).

OMB Number: 1218–0095.
Agency Number: Docket No. ICR–98–18.
Frequency: On Occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 994.
Estimated Time Per Respondent: 10 Minutes.
Total Burden Hours: 7,787.
Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16382 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–13]

Construction Crane Rating Chart Limitations Instructions and Hand Signal Illustrations

AGENCY: Occupational and Health Administration, Labor.

ACTION: Notice of proposed information collection request; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the collection of information requirements contained in 29 CFR 1926.550(a)(1), (2), (4) and (16).

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR 98–13, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Act of 1970 authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

There are several provisions in OSHA's crane and derrick standard that require employers to obtain information and post it on the crane or derrick. Specifically, employers are required to post the rated load capacities, recommended operating speeds, special hazard warnings, and instructions. In addition, an illustration of hand signals is to be posted at the jobsite. OSHA believes this information is normally provided by the crane or derrick manufacturers as a usual and customary business practice and there is a minimal time burden in posting this information. There is also a cost burden for employers who field modify cranes or derricks to obtain the information (loading ratings and limitations) for the employer to post.

Current Action

This notice requests comment on OSHA's burden hour estimates prior to seeking OMB approval of the information collection requirements in 29 CFR 1926.550(a)(1), (2), (4) and (16).

Type of Review: Revision.
Agency: Occupational Safety and Health Administration, U.S. Department of Labor.
Title: Construction Crane Rating Chart Limitations Instructions and Hand Signal Illustrations (29 CFR 1926.550(a)(1) and (a)(2), 1926.550(a)(4), and 1926.550(a)(16)).
Agency Number: Docket No. ICR 98–13.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 59,944.
Estimated Time Per Respondent: 5 minutes per respondent.
Total Burden Hours: 4996 hours.
Total Annualized Capital/Start-up Costs: $330,000.
Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16383 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–11]

Underground Construction—Air Quality Record

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirement on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1926.800, which addresses underground construction.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–11, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (records) requirements contained in 29 CFR 1926.800(j)(3). The approval will expire on August 31, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Under § 1926.800(j)(3), employers are required to test the atmosphere at underground work locations, and prepare and retain a written record of these air quality test findings. The provision requires that employers retain the record aboveground at the job site until completion of the project, and make it available to the Secretary of Labor upon request. The record provides a means to check the effectiveness of ventilation at the site and to evaluate the need to modify ventilation or withdraw employees from a hazardous location.

In addition, under § 1926.800(t)(3)(xxi), employers are required to inspect and test hoisting assemblies at the time of installation, after repairs or alterations, after safety devices have been tripped, and annually. Persons performing these inspections and load tests are to certify when the tests were performed, identify the hoist, and sign the certification (only the most recent certification must be maintained).

There are also seven provisions in § 1926.800 that contain posting requirements: Employers are required to post warnings to notify employees when there are unused openings; a gassy atmosphere is present; testing results show that the atmosphere is dangerous; smoking or open flames are not allowed due to fire hazards; the ground is not stable; air lines are buried or hidden by water or debris; and when work is being done in a shaft normally used for hoisting.

In the request for an extension, OSHA is proposing to adjust the burden hours downward to reflect increased use of technologically advanced equipment for monitoring and advanced tunneling methods, such as microtunneling. The adjustment also reflects a reassessment of the estimated time to perform and record these air quality tests based upon discussions with OSHA compliance personnel and industry specialists who are knowledgeable about underground construction, as well as OSHA's inspection data.

Current Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the paperwork requirements in 29 CFR 1926.800(j)(3), as well as approval of provisions in § 1926.800(t)(3)(xxi) and seven posting requirements in the standard.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Underground Construction (29 CFR 1926.800).

OMB Number: 1218–0067.

Agency Number: Docket No. ICR–98–11.

Affected Public: Business or other for-profit.

Number of Respondents: 320.

Frequency: On Occasion.

Estimated Time Per Respondent: Ranges from 30 seconds to record monitoring results, up to 1 hour to inspection and certify hoisting assemblies.

Total Burden Hours: 8,357 hours.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16384 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–16]

Crane- or Derrick-Suspended Personnel Platforms Used in Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection requirement contained in 29 CFR 1926.550(g)(4)(ii)(I) (Crane- or derrick-suspended personnel platforms). The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–16, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7207 ext. 131. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Laurence Davey at (202) 219–7207 ext. 131 or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (record) requirements contained in 20 CFR 1926.550(g)(4)(ii)(I). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Section 1926.550(g)(4)(ii)(I) requires that personnel platforms suspended from cranes or derricks have information posted on plates or other permanent markings indicating the weight of the platform and its rated load capacity or maximum intended load.

Type of Review: Extension.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Crane- or Derrick-Suspended Personnel Platforms Used in Construction.

OMB Number: 1218–0151.

Agency Number: ICR–98–16.

Frequency: On Occasion.

Affected Public: Business or other for profit.

Number of Respondents: 2,750.

Average time per Response: 5 minutes.

Estimated Total Burden Hours: 229.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16385 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–15]

Construction Oxygen and Toxic Gas Test; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments on the collection of information requirements contained in 29 CFR 1926.550(a)(11). Under that provision, records of oxygen and toxic gas tests must be made whenever internal combustion engines of construction cranes or derricks exhaust into enclosed workspaces.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–15, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection requirement contained in 29 CFR 1926.550(a)(11). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. The provision requires employees to keep a record of oxygen and toxic gas tests made when internal combustion engines of construction cranes or derricks exhaust into enclosed workspaces.

Current Action

The notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1926.550(a)(11).

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Construction Oxygen and Toxic Gas Test.

OMB Number: 1218–0054.

Agency Number: Docket No. ICR–98–15.

Affected Public: Business or other for-profit.

Number of Respondents: 50.

Frequency: Daily.

Average Time Per Response: 2 minutes.

Total Burden Hours: 100.

Comments submitted in response to this notice will be summarized and included in the request of Office of Management and Budget approval of the information collection (record) request; they will also become a matter of public record.

Signed this 15th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16386 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10327, et al.]

Proposed Exemptions; Lehman Brothers, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written comments and hearing requests: All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. *Attention:* Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to interested persons: Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lehman Brothers Inc. (Lehman) and Lehman Brothers Trust Company and Affiliates (LBTC) Located in New York, New York

[Application No. D–10327]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the lending of securities to Lehman or to any other U.S. registered broker-dealer who is an affiliate of Lehman (collectively, Lehman Broker-Dealers) by employee benefit plans, including commingled investment funds holding plan assets (the Client Plans), with respect to which the Lehman Broker-Dealer is a party in interest, or for which LBTC or any other affiliate of Lehman, acts as directed trustee or custodian and/or securities lending agent (or sub-agent) for such Client Plan; and (2) the receipt of compensation by LBTC in connection with these transactions, provided that the following conditions are met:

1. Neither the Lehman Broker-Dealers nor LBTC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received), or renders investment advise (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

2. Before a Client Plan participates in a securities lending program and before any loan of securities to the Lehman Broker-Dealers is affected, a Client Plan fiduciary who is independent of LBTC and the Lehman Broker-Dealers must have:

(a) Authorized and approved a securities lending authorization agreement with LBTC (the Agency Agreement), where LBTC is acting as the direct securities lending agent;

(b) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where LBTC is lending securities under a sub-agency arrangement with the primary lending agent;[1]

(c) Approved the general terms of the securities loan agreement (the Basic Loan Agreement) between such Client Plan and the borrower, the Lehman Broker-Dealers, the specific terms of which are negotiated and entered into by LBTC;

3. A Client Plan may terminate the securities lending agency agreement at any time without penalty on five (5) business days notice, whereupon the Lehman Broker-Dealers shall deliver securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (a) the customary delivery period for such securities, (b) five (5) business days, or (c) the time negotiated for such delivery by the Client Plan and the Lehman Broker-Dealers, whichever is less;

4. LBTC (or another custodian on behalf of the Client Plan) will receive from the Lehman Broker-Dealers either by physical delivery, book entry in a securities depository, wire transfer or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by an entity other than the Lehman Broker-Dealers) or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans)[2] by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities. If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of business on that day, the Lehman Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien on, the collateral. LBTC will monitor the level of the collateral daily;

6. All the procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTE 81–6 and PTE 82–63;

7. In the event the Lehman Broker-Dealer fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate, including any attorneys fees incurred by the Client Plan for legal action arising out of default on the loans, or failure by the Lehman Broker-Dealer to properly indemnify the Client Plan;

8. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

9. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Lehman Broker-Dealers; provided, however, that—

(a) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million

[1] When LBTC acts as sub-agent, rather than the primary lending agent, the primary lending agent is receiving no section 406(b) of the Act relief herein. In such situations, the primary lending agent may be provided relief by Prohibited Transaction Class Exemption (PTE) 81–6 and PTE 82–63. PTE 81–6 was published at 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987, and PTE 82–63 was published at 47 FR 14804, April 6, 1982.

[2] The Department notes that this proposed exemption would provide relief from the restrictions of section 406(a) as well as section 406(b)(1) and (b)(2) of the Act, whereas PTE 81–6 provides relief only for securities lending transactions which would violate section 406(a) of the Act. Thus, any amendments that may be made by the Department to PTE 81–6 which would permit different types of assets to be used as collateral for a securities loan would not allow the use of such assets as collateral under this proposed exemption to the extent that the transactions covered by this exemption (if granted) would require relief from section 406(b) of the Act.

requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

10. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

11. The terms of each loan of securities by the Client Plans to the Lehman Broker-Dealer will be at least as favorable to such plans as those terms which would exist in a comparable arm's-length transaction between unrelated parties;

12. Each Client Plan will receive monthly reports on the transactions, so that an independent fiduciary of such plan may monitor the securities lending transactions with the Lehman Broker-Dealer;

13. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to the Lehman Broker-Dealer, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of the Lehman Broker-Dealer, including the audited and unaudited financial statements of the Lehman Broker-Dealer;

14. The Lehman Broker-Dealer will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in the Lehman Broker-Dealer's financial condition, since the date of the most recently furnished financial statements;

15. With regard to the "exclusive borrowing" agreement (as described below), the Lehman Broker-Dealer will directly negotiate the agreement with a Client Plan fiduciary who is independent of the Lehman Broker-Dealers and LBTC, and such agreement may be terminated by either party to the agreement at any time; [3]

16. The Client Plan: (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Lehman Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay an unrelated party in an arm's length transaction;

17. In the event that a Lehman Broker-Dealer is also the securities lending agent for a Client Plan, LBTC shall act as securities lending sub-agent in connection with any loan of securities to the Lehman Broker-Dealer;

18. Prior to the Client Plan's approval of the lending of its securities to the Lehman Broker-Dealers, a copy of the exemption, if granted, (and this notice of pendency) will be provided to the Client Plan; and

19. Lehman maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (20) below to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than Lehman or the Lehman Broker-Dealers, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Lehman or the Lehman Broker-Dealers, such records are lost or destroyed prior to the end of such six year period;

20. (i) Except as provided in subparagraph (ii) of this paragraph (20) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (19) are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a Client Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any Client Plan, or any duly authorized employee or representative of such employer, and

(d) Any participant or beneficiary of any Client Plan, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (b)–(d) of this paragraph (20) shall be authorized to examine trade secrets of Lehman or the Lehman Broker-Dealers, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. Lehman, a Delaware corporation, is the principal operating subsidiary of Lehman Brothers Holdings Inc. (LB Holdings), also a Delaware corporation. Lehman is one of the largest full-line investment service firms in the United States, and is registered with and regulated by the Securities and Exchange Commission (SEC). Lehman is a member of the New York Stock Exchange and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. As of November 30, 1995, Lehman had $82.6 billion in assets.

2. Lehman and the Lehman Broker-Dealers acting as principals, borrow securities from institutions and either utilize such securities to satisfy their own needs, or re-lend these securities to borrowing brokerage firms and other

[3] The termination will be without penalty to the Client Plan, except for the return to the Lehman Broker-Dealers of a part of any flat fee paid by the Lehman Broker-Dealers to the Client Plan, if the Client Plan has terminated its exclusive borrowing agreement with the Lehman Broker-Dealers.

entities which need a particular security for certain periods of time. Borrowers often need securities to satisfy deliveries in cases of short sales, or where a broker fails to receive securities it is required to deliver. Lehman Broker-Dealers borrow and lend approximately $50 billion of securities on an average daily basis, and are among the largest institutional securities borrowers and lenders in the United States. In making such loans, the Lehman Broker-Dealers carefully review the credit-worthiness of its counterparties.

3. LBTC is an affiliate of Lehman, and is a wholly owned subsidiary, organized and chartered by LB Holdings as a limited purpose trust company under the laws of the State of New York. LBTC has its principal executive offices in New York, New York. LBTC provides a variety of services to its clients, including custodial services and securities lending services as a direct securities lending agent. LBTC may also be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, LBTC's role (i.e., negotiating the terms of the loans with borrowers pursuant to a client-approved form of a loan agreement, and monitoring receipt of, and marking-to-market, the required collateral) parallels those under the lending transactions for which LBTC acts as a primary lending agent on behalf of its clients.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or a bank to earn a fee in addition to any interest, dividends, or other distributions paid on the loaned securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is cash or high quality liquid securities issued by the U.S. Government, or Federal Agency obligations or certain bank letters of credit. When the collateral is cash, the lender generally invests the cash and rebates a portion of the earnings on such collateral to the borrower. The fee received by the lender is the difference between the earnings on the collateral and the amount of the rebate that is paid to the borrower. When a securities loan is collateralized with U.S. Government or Federal Agency securities or with letters of credit issued by a bank, the fee is paid directly by the borrower to the lender.

Institutional investors often utilize the services of an agent in performing securities lending transactions. The lending agent is paid a fee for its services which may be a percentage of the income earned by the investor from lending its securities. The applicants represent that the essential functions which define a securities lending agent are identifying appropriate borrowers of securities and negotiating loan terms to the borrowers. Certain services which are ancillary to securities lending include monitoring the level of collateral, the value of loaned securities, and in some instances, investing the collateral.

5. LBTC and Lehman request an exemption for the lending of securities owned by the Client Plans, with respect to which the Lehman Broker-Dealer is a party in interest, or for which LBTC will serve as directed trustee or custodian and/or securities lending agent (or sub-agent),[4] following disclosure to the Client Plans of LBTC's affiliation with the Lehman Broker-Dealer, under either of the two arrangements described as Plan A and Plan B, and for receipt of compensation by LBTC in connection with such transactions. Neither LBTC nor the Lehman Broker-Dealers will have discretionary authority or control over the Client Plans' decisions concerning the acquisition or disposition of securities available for lending. However, because LBTC under the Plan A arrangement and the Lehman Broker-Dealers under the Plan B arrangement (as discussed further below), will have discretion with respect to whether there is a loan of the Client Plan securities to the Lehman Broker-Dealers, the lending of securities to the Lehman Broker-Dealers under such arrangements may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[5]

6. When a loan of securities by a Client Plan is collateralized with cash, LBTC, at the Client Plan's direction, will either transfer such cash collateral to the Client Plan or its designated agent for investment. Alternatively, LBTC may invest the cash in short-term securities or interest-bearing accounts. In either case, LBTC will rebate a portion of the earnings on the cash collateral to the Lehman Broker-Dealers on behalf of the Client Plan. The Lehman Broker-Dealers will pay a fee to the Client Plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under the Plan A arrangement and, in some instances, under the Plan B arrangement (see paragraph 24 for the types of lending services which may be provided to the Client Plans by LBTC under Plan B arrangement), the Client Plan will pay a fee to LBTC for providing lending services to the Client Plan, which will reduce the income earned by the Client Plan from lending its securities to the Lehman Broker-Dealers. The Client Plan and LBTC will agree in advance to this fee, which will represent a percentage of the income the Client Plan earns from its lending activities.

Several safeguards, described more fully below, are incorporated into the application to ensure the protection of the Client Plans' assets involved in these securities lending transactions. In addition, the applicants represent that both the Plan A and Plan B arrangements described herein incorporate the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. Plan A. Where LBTC is the direct securities lending agent, a fiduciary of a Client Plan who is independent of LBTC and the Lehman Broker-Dealers will sign a securities lending agency agreement (the Agency Agreement) with LBTC before the Client Plan participates in the LBTC securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of the securities loan agreement to be entered into on behalf of the Client Plan with the borrowers, identify the securities which are available to be lent, required collateral and daily marking-to-market, and provide the list of permissible borrowers, including the Lehman Broker-Dealers. The Agency Agreement will also set forth the basis and rate for LBTC's compensation from the Client Plan for the performance of securities lending services. The Client

[4] Future references to LBTC's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent, and references to the Client Plans should be deemed to include those plans for which LBTC is acting as a sub-agent with respect to securities lending activities, unless otherwise specifically indicated or by the context of reference.

[5] PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest. However, condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

Plan may terminate the Agency Agreement at any time, without penalty, on no more than five business days' notice.

8. The Agency Agreement will contain provisions regarding designation by the Client Plan of the Lehman Broker-Dealer as an approved borrower. Specifically, the Client Plan will acknowledge that the Lehman Broker-Dealer is an affiliate of LBTC. Pursuant to the Agency Agreement, LBTC will represent to the Client Plan that each loan made to the Lehman Broker-Dealer on behalf of the Client Plan will be at market rates, and in no event less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

9. When LBTC is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of the Client Plan, who is independent of such primary lending agent, LBTC and the Lehman Broker-Dealers, before the Client Plan participates in the securities lending program. Except as set forth in paragraph 10 below, the primary lending agent will be unaffiliated with LBTC and the Lehman Broker-Dealers. The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement described above, relating to the description of the operation of the lending program, use of an approved form of securities loan agreement, identification of securities which are available to be lent, required collateral and daily marking-to-market, and provision of a list of approved borrowers (which will include the Lehman Broker-Dealers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including LBTC, to facilitate its performance of securities lending agency functions. Where LBTC is to act as a sub-agent, the Primary Lending Agreement will expressly disclose that LBTC is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services, and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement. The Client Plan may terminate the Primary Lending Agreement at any time, without penalty, on no more than five business days' notice.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with LBTC under which the primary lending agent will retain and authorize LBTC, as sub-agent, to lend securities of the primary lending agent's clients, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of basic loan agreement (described in paragraph 12 below) will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (which will include the Lehman Broker-Dealers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Sub-Agency Agreement will contain provisions which are in substance comparable to those described in paragraphs 7 and 8 above, which would appear in the Agency Agreement in situations where LBTC is the primary lending agent. In this regard, LBTC will make the same representation in the Sub-Agency Agreement as described in paragraph 8 above with respect to arm's-length dealings with the Lehman Broker-Dealers. The Sub-Agency Agreement will also set forth the basis and rate for LBTC's compensation to be paid by the primary lending agent.

10. Lehman has been informed that some Client Plans will not be able to hire LBTC as direct securities lending agent, because under the provisions of that Plan any such agent for such Client Plans is required to be registered as a broker-dealer with the Securities and Exchange Commission (SEC). In these cases, the applicants propose that a Lehman Broker-Dealer, which is registered as a broker-dealer with the SEC, will act as a primary lending agent and LBTC will act as sub-agent. In other respects the sub-agency relationship will operate as set forth in paragraph (9) above.

11. In all cases, LBTC will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Lehman Broker-Dealers are effectively at arms-length terms. Such records will be provided to the Client Plan fiduciary, who is independent of LBTC and the Lehman Broker-Dealers, in the manner and format agreed to by the Client Plan fiduciary and LBTC, without charge to the Client Plan.

12. LBTC, under the Agency Agreement, as securities lending agent for the Client Plans, will negotiate a master securities borrowing agreement with a schedule of modifications attached thereto (the Basic Loan Agreement) with the Lehman Broker-Dealers on behalf of the Client Plans. An independent fiduciary of the Client Plan will approve the form of the Basic Loan Agreement before such fiduciary executes the Agency Agreement. The Basic Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Client Plan's rights in the event of any default by the Lehman Broker-Dealers. The Basic Loan Agreement will set forth the basis for compensation to the Client Plan for lending securities to the Lehman Broker-Dealers under each category of collateral. The Basic Loan Agreement will also contain a requirement that the Lehman Broker-Dealers must pay all transfer fees and transfer taxes related to the security loans.

13. Prior to making any loans under the Basic Loan Agreement, the Lehman Broker-Dealers will furnish its most recent available audited and unaudited financial statements to LBTC (assuming LBTC does not already possess such statements), which, in turn, will provide such statements to the Client Plan before the independent fiduciary of the Client Plan is asked to approve the terms of the Basic Loan Agreement. The terms of the Basic Loan Agreement will contain a requirement that the Lehman Broker-Dealer must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, LBTC will request that the independent fiduciary of the Client Plan approve the loan in view of the changed financial condition.

14. As noted above, the agreement by LBTC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and LBTC will agree to an arrangement under which LBTC will be compensated for its services as the lending agent prior to the commencement of any lending activity. Similarly, with respect to arrangements under which LBTC is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole

discretion, to any sub-agent, including LBTC, which is to provide securities lending services to the plan.[6]

15. Each time a Client Plan loans securities to the Lehman Broker-Dealers pursuant to the Basic Loan Agreement, the Lehman Broker-Dealers will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

16. LBTC will establish each day a written schedule of lending fees[7] and rebate rates[8] to assure uniformity of treatment among borrowing brokers and to limit the discretion LBTC would have in negotiating securities loans to the Lehman Broker-Dealers. Loans to the Lehman Broker-Dealers on any day will be made at rates on the daily schedule or at rates which may be more advantageous to the Client Plans. In no case will the loans be made to the Lehman Broker-Dealers at rates or lending fees less advantageous to the Client Plan than those on the schedule.

The rebate rates, which are established for cash collateral loans made by the Client Plans, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds indices [typically, the U.S. Federal Funds Rate established by the Federal Reserve System (Federal Funds), the overnight "REPO"[9] rate, or the like] and the anticipated investment return on overnight investments which are permitted by the Client Plan Fiduciary. The lending fees, which are established with respect of loans made by the Client Plans collateralized by other than cash, will be set daily to reflect conditions as influenced by potential market demand.

LBTC will negotiate rebate rates for cash collateral payable to each borrower, including the Lehman Broker-Dealers, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the investment return (assuming no investment default). With respect to any loan to the Lehman Broker-Dealers, LBTC will not knowingly negotiate a rebate rate with respect to such loan which over the anticipated term of the loan would produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where LBTC has investment discretion over the cash collateral). LBTC represents that the written rebate rate established daily for cash collateral under loans negotiated with the Lehman Broker-Dealers will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. LBTC will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of the Client Plan for approval before lending any securities to the Lehman Broker-Dealers on behalf of the Client Plan.

17. For collateral other than cash, the applicable lending fee in respect of any outstanding loan will be reviewed daily by LBTC for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to any calendar quarter, at least 50 percent of the securities loans negotiated on behalf of the Client Plans will be to borrowers not affiliated with LBTC, and so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, the applicants state that loans to the Lehman Broker-Dealers should result in a competitive rate of income to the lending Client Plan. At all times, LBTC will effect loans in a prudent and diversified manner.

The method of determining the actual daily securities lending rates (fees and rebates), the minimum lending fees payable by the Lehman Broker-Dealers and the maximum rebate payable to the Lehman Broker-Dealers, will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and LBTC in cases where LBTC is the direct securities lending agent. These methods of determination need not be formulative, but may consist of a description of the process involved in determining rebate rates and lending fees.

18. If LBTC reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any index with respect to which the fee or rebate is calculated), LBTC, by the close of business on the date of such adjustment, shall provide the independent fiduciary of the Client Plan with notice that it has adjusted such fee or rebate to such affiliated borrower, and that the Client Plan may terminate such loan at any time. LBTC shall provide the independent fiduciary with such information as the independent fiduciary may reasonably request regarding such adjustment.

19. While LBTC will normally lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, in some cases it may not be possible to adhere to first come, first served allocation. This can occur in instances where (a) the credit limit established for such "first in line" borrower by LBTC and/or the Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by a particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different representatives of LBTC at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c), securities would be allocated as equitably as practicable among all eligible requesting borrowers.

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[6] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82–63 will be satisfied.

[7] LBTC will adopt minimum daily lending fees for non-cash collateral payable by the Lehman Broker-Dealer to LBTC on behalf of the Client Plans. LBTC will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to a Lehman Broker-Dealer on behalf of a Client Plan.

[8] LBTC will adopt maximum daily rebate rates with respect to securities loans collateralized with cash collateral. LBTC will submit the method for determining such maximum daily rebate rates to an independent fiduciary of a Client Plan for approval before initially lending any securities to the Lehman Broker-Dealer on behalf of such Client Plan.

[9] An overnight "REPO" is an overnight repurchase agreement which is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other). See Barron's *Dictionary of Finance and Investment Terms*, 2nd Edition (New York, 1987).

20. LBTC on behalf of the Client Plan will receive collateral from Lehman Broker-Dealers by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers. The collateral will consist of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than the Lehman Broker-Dealers or any affiliates thereof) or such other types of collateral which might be permitted by the Department under PTE 81–6 or any successor.[10] The market value of the collateral on the close of business on the business day preceding the day the loaned securities are delivered to the Lehman Broker-Dealers will be at least 102 percent of the then market value of the loaned securities. The Basic Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. LBTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent, LBTC will require the Lehman Broker-Dealers to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

21. Subject to the terms and conditions of the Agency Agreement (or the Primary Lending Agreement), LBTC will invest and reinvest all or substantially all cash collateral in approved investments designated by the applicable Client Plan and identified on a schedule attached to the relevant agreement. All approved investments made by LBTC will be for the sole account and risk of the applicable Client Plan. These approved investments shall not include securities, instruments, transactions and investments issued by LBTC or any of its affiliates. From time to time, the Client Plan may instruct LBTC in writing not to make any approved investment with a certain counterparty, or through a particular financial institution or intermediary. Alternatively, the Client Plan may also retain the right to directly control the reinvestment of the cash collateral.

22. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. At the request of the Client Plan, such a report will be provided on a weekly or daily basis, rather than a monthly basis. Also, upon request of the Client Plan, LBTC will also provide the Client Plan with daily confirmations of securities lending transactions.

In order to provide the means for monitoring lending activity, rates on loans to the Lehman Broker-Dealers compared with loans to other brokers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Lehman Broker-Dealers and to other borrowers. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the Lehman Broker-Dealers compared with those at which securities are loaned to other brokers. This statement will give an independent Client Plan fiduciary information which can be compared to that contained in the daily rate schedule.

23. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Lehman Broker-Dealers; provided, however, that—

(a) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

24. Plan B. The Lehman Broker-Dealers will directly negotiate "exclusive borrowing" agreements with fiduciaries of Client Plans, including Client Plans for which LBTC serves as directed trustee or custodian, where such fiduciary is independent of the Lehman Broker-Dealers and LBTC. Under the exclusive borrowing agreement, the Lehman Broker-Dealer will have exclusive access for a specified period of time to borrow securities of the Client Plan pursuant to certain conditions. LBTC will not participate in the negotiation of the exclusive borrowing agreement. The involvement of LBTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral, and investing or depositing any cash collateral and supplying the Client Plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the Lehman Broker-Dealer nor LBTC will perform for the Client Plans the functions which

[10] See Footnote 2 above regarding the scope of relief that may be provided by the Department in any successor class exemption and the type of assets that may be used as collateral for a securities loan.

constitute the essential functions of a securities lending agent.

25. Upon delivery of loaned securities to the Lehman Broker-Dealer, LBTC, or another custodian on behalf of the Client Plan, will receive from the Lehman Broker-Dealer the same day by physical delivery, book entry in a securities depository, wire transfer, or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than a Lehman Broker-Dealer or any affiliate thereof) or other non-cash collateral permitted under PTE 81–6 or any successor. The market value of the collateral at the close of business on the business day preceding the day the loaned securities are delivered to the Lehman Broker-Dealer will be at least 102 percent of the then market value of the loaned securities. LBTC or such other custodian, will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, the Lehman Broker-Dealer will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The Lehman Broker-Dealer or, in the case of some Client-Plans, LBTC, will provide a weekly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the Lehman Broker-Dealer, and the aggregate market value of the collateral.

26. Before entering into an exclusive borrowing agreement, the Lehman Broker-Dealer will furnish to the Client Plan, if it does not already possess such statements, the most recent publicly available audited and unaudited statements of its financial condition, as well as any other publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the agreement, and a copy of the final exemption, if granted, together with this proposed exemption. The agreement will contain a representation by the Lehman Broker-Dealer that, as of each time it borrows securities, there has been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

27. In exchange for the exclusive right to borrow certain securities from the Client Plan, the Lehman Broker-Dealer will pay the Client Plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. A percentage may be established by reference to an objective formula. The Lehman Broker-Dealer and the independent fiduciary of the Client Plan may agree that different fee arrangements will apply to different securities or different groups of securities. Any change in the rate paid to the Client Plan will require written consent of the Client Plan independent fiduciary. However, such Client Plan's consent will be presumed where the rate changes pursuant to an objective formula. In such instances, an independent fiduciary of the Client Plan must be notified at least 24 hours in advance of the rate change, and the independent fiduciary must not object in writing to such change, prior to the effective date of the change. Under this fee arrangement, all earnings generated by the cash collateral will be returned to the Lehman Broker-Dealer. The Client Plan will receive credit for all interest, dividends or other distributions on any borrowed securities. In addition, under some arrangements, the earnings on the collateral due to the Lehman Broker-Dealer, and the dividends, interest, and other distributions on the borrowed securities payable to the Client Plan may be offset against each other, so that only a net amount will be returned to the Lehman Broker-Dealer.

28. The exclusive borrowing agreement and/or any securities loan outstanding may be terminated by either party at any time. Upon termination of any securities loan, the Lehman Broker-Dealer will deliver any borrowed securities back to the Client Plan within five business days of written notice of termination. If the Lehman Broker-Dealer fails to return the loaned securities or the equivalent thereof, the Client Plan will have the right under the agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase. Pursuant to the terms of the exclusive borrowing agreement, if the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default together with expenses not covered by the collateral, plus applicable interest at a reasonable rate.

29. With regard to those Client Plans for which LBTC provides custodial, clearing and/or reporting functions relative to securities loans, LBTC and a Client Plan fiduciary independent of LBTC and the Lehman Broker-Dealers, will agree in advance and in writing to any fee that LBTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., LBTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee LBTC has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for LBTC to provide such functions relative to securities loans to the Lehman Broker-Dealer will be terminable by the Client Plan within five business days of receipt of written notice without penalty to the Client Plan, except for the return to the Lehman Broker-Dealer of a part of any flat fee paid by the Lehman Broker-Dealer to the Client Plan, if the Client Plan has also terminated its exclusive borrowing agreement with the Lehman Broker-Dealer. Before entering into an agreement with the Client Plan to provide such functions relative to securities loans to the Lehman Broker-Dealer, LBTC will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the exclusive borrowing agreement.

30. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

A. Plan A requires approval of the terms of the Basic Loan Agreement and the execution of the Agency Agreement (or the Primary Lending Agreement) by a Client Plan fiduciary independent of the Lehman Broker-Dealers and LBTC before a Client Plan lends any securities to the Lehman Broker-Dealers;

B. Under Plan B, the Lehman Broker-Dealers will directly negotiate exclusive borrowing agreement with the Client Plan;

C. The lending arrangements will permit the Client Plans to lend securities to the Lehman Broker-Dealers, which have a substantial market position as securities lenders, and will enable the Client Plans to earn additional income from the loaned securities while continuing to receive any dividends, interest payments and other distributions on those securities;

D. Neither the Lehman Broker-Dealers nor LBTC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

E. Before a Client Plan participates in a securities lending program and before any loan of securities to the Lehman Broker-Dealers is affected, a Client Plan fiduciary who is independent of LBTC and the Lehman Broker-Dealers must have:

(i) Authorized and approved a securities lending authorization agreement with LBTC (i.e., the Agency Agreement) with LBTC, where LBTC is acting as the direct securities lending agent;

(ii) Authorized and approved the primary securities lending authorization agreement (i.e., the Primary Lending Agreement) with the primary lending agent, where LBTC is lending securities under a sub-agency arrangement with the primary lending agent;

(iii) Approved the general terms of the securities loan agreement (i.e., the Basic Loan Agreement) between such Client Plan and the borrower, the Lehman Broker-Dealers, the specific terms of which are negotiated and entered into by LBTC;

F. A Client Plan may terminate any securities lending agency agreement at any time without penalty on five (5) business days' notice;

G. LBTC (or another custodian on behalf of the Client Plan) will receive from the Lehman Broker-Dealers either by physical delivery, book entry in a securities depository, wire transfer or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by an entity other than the Lehman Broker-Dealers) or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans) by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers;

H. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities. If the market value of the collateral falls below 100 percent, the Lehman Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien, on the collateral. LBTC will monitor the level of the collateral daily;

I. All the procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTE 81–6 and PTE 82–63;

J. In the event the Lehman Broker-Dealer fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate, including any attorneys fees incurred by the Client Plan for legal action arising out of default on the loans, or failure by the Lehman Broker-Dealer to properly indemnify the Client Plan;

K. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

L. Only those Client Plans which have assets with an aggregate market value of at least $50 million (except for certain Related Client Plans or Unrelated Client Plans whose assets are commingled in a group trust under the conditions discussed herein) will be permitted to lend securities to the Lehman Broker-Dealers;

M. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers;

N. The terms of each loan of securities by the Client Plans to the Lehman Broker-Dealer will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

O. Each Client Plan will receive monthly reports on the transactions, including but not limited to the information described in paragraph 22 above, so that an independent fiduciary of such plan may monitor the securities lending transactions with the Lehman Broker-Dealer;

P. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to the Lehman Broker-Dealer, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of the Lehman Broker-Dealer, including the audited and unaudited financial statements of the Lehman Broker-Dealer;

Q. The Lehman Broker-Dealer will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in LBTC's financial condition, since the date of the most recently furnished financial statements;

R. With regard to the "exclusive borrowing" agreement, the Lehman Broker-Dealer will directly negotiate the agreement with a Client Plan fiduciary who is independent of the Lehman Broker-Dealers and LBTC, and such agreement may be terminated by either party to the agreement at any time;

S. The Client Plan: (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Lehman Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay an unrelated party in an arm's length transaction;

T. In the event that a Lehman Broker-Dealer is also the securities lending agent for a Client Plan, LBTC shall act as securities lending sub-agent in connection with any loan of securities to the Lehman Broker-Dealer; and

U. Prior to the Client Plan's approval of the lending of its securities to the Lehman Broker-Dealers, a copy of the final exemption, if granted, (and this notice of pendency) will be provided to the Client Plan.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean and David McKean, and Burton Young (Collectively, the Participants) Located in Miami, Florida

[Application No. D–10558–10561, 10565–10566, 10568]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sales (the Sales) of certain stock (the Stock) by the IRAs [11] to the Applicants, disqualified persons with respect to the IRAs, provided that the following conditions were met:

(a) The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale of Stock by each IRA was a one-time transaction for cash;

(c) Each IRA received the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) Each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

Effective Date: These proposed exemptions, if granted, will be effective as of March 30, 1998.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in Section 408(a) of the Code. Among the assets of each IRA were shares of closely-held stock in Turnberry Financial Services, Inc. (Turnberry), a unitary savings and loan holding company located in Aventura, Florida. The primary asset held by Turnberry is the Turnberry Bank (the Bank), also of Aventura, Florida.

The applicants describe the Participants, the IRAs, and their former holdings of the Stock as follows:

(a) The IRA of Roark Young, Chairman and CEO of Turnberry and the Bank, and majority shareholder in Turnberry, currently holds assets of approximately $260,141 which, prior to the Sale, included 6,400 shares of the Stock. The IRA acquired most of the Stock from the issuer, at various times and various prices, from the period between 1993 and 1995.

(b) The IRA of Russell Rice, President of Turnberry, Executive Vice President of the Bank, and Director of both, currently holds total assets of approximately $22,000 which, prior to the Sale, included 700 shares of the Stock. The IRA acquired the Stock from other shareholders during 1997 at a price of $25, the fair market value at the time of purchase.

(c) The IRA of Mary J. Rice, wife of Russell Rice, currently holds total assets of approximately $9,600 which, prior to the Sale, included 300 shares of the Stock. The IRA acquired the Stock during 1997 at a price of $25, the fair market value of the Stock at the time of purchase.

(d) The IRA of Burton Young, Director of the Bank, currently holds total assets of approximately $1,563,039 which, prior to the Sale, included 4,567 shares of the Stock. The IRA acquired all of the Stock from the issuer in October of 1995.

(e) The IRA of David McKean currently holds total assets of approximately $14,000 which, prior to the Sale, included 380 shares of the Stock. The IRA acquired most of the Stock from the issuer at various times and prices during the period from 1990 to 1997.

(f) The IRA of Steven McKean currently holds total assets of approximately $20,000 which, prior to the Sale, included 715 shares of the Stock. The IRA acquired most of the Stock from the issuer at various times and various prices during the period of 1990 to 1997.

(g) The IRA of Bruce Lamchick currently holds total assets of approximately $320,000, which, prior to the Sale, included 700 shares of the Stock. The IRA acquired the Stock from other shareholders in October 1995 for its fair market value.

2. The applicants request an exemption for the Sale of the Stock by each individual IRA to its respective Participant. Business and income tax considerations have recently caused Turnberry to elect to be taxed as a Subchapter S corporation pursuant to the Code, effective the close of business on March 31, 1998. However, section 1361 of the Code only permits eligible shareholders to hold stock in a Subchapter S corporation. Because the IRAs are not eligible shareholders for purposes of the Code, the applicants wished to purchase the Stock from their IRAs. The applicants represent that the acquisition of the Stock by each IRA was done for investment purposes and that, in fact, each IRA made a profit on its original investment.[12] Furthermore, the applicants represent that the Stock held by the IRAs only represented a small portion of the 296,300 shares outstanding.

3. Mr. David A. Harris (Mr. Harris) and Mr. Douglas K. Southard (Mr. Southard), both accredited appraisers with Southard Financial, located in Memphis, Tennessee, appraised the Stock on July 14, 1997. Both Mr. Harris and Mr. Southard represent that they are full-time, qualified appraisers, as demonstrated by the fact that they both are currently Senior Members of the American Society of Appraisers. In addition, Mr. Harris and Mr. Southard represent that they and their firm are independent of the Participants. After analyzing the Stock, on a marketable minority interest basis which they believed appropriate for this transaction, Southard and Mr. Harris concluded that the fair market value of the Stock was $30 per share.

In reaching their conclusion as to the value of the Stock, Mr. Harris and Mr. Southard took the weighted average of the asset-based approach, the income approach, the market approach using price/book value, and the market approach using prior transactions, and arrived at a per share value of $29.98.

[11] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[12] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by some of the Applicants.

Further, to the extent that Turnberry or the other sellers were not disqualified persons with respect to the IRAs under section 4975(e)(2), the purchase of the Stock would not have constituted a prohibited transaction under section 4975(c)(1)(A) of the Code. However, the purchase and holding of the Stock by the IRAs of officers and directors of Turnberry and/or the Bank raises questions under section 4975(c)(1)(D) and (E) depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. The IRA Participants, as officers and directors of Turnberry and/or the Bank, may have interests in the proposed transactions which may affect their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may violate 4975(c)(1)(D) and (E) of the Code. *See* Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions herein.

After obtaining this number, they rounded the fair market value to reflect what they believe is the imprecision inherent in the various assumptions used in the fair market value determination.

4. The applicants represent that the transactions were feasible in that each was a one-time transaction for cash. Furthermore, the applicants state that the transactions were in the best interest of the IRAs because they provided each IRA with the opportunity to dispose of the Stock for cash at the fair market value, thus allowing for diversification and enhancing liquidity so as to facilitate future distributions. Finally, the applicants represent that the transactions were protective of the rights of the Participants and beneficiaries because each IRA received the fair market value of the Stock, as determined by a qualified, independent appraiser, and incurred no commissions, costs, or other expenses as a result of each Sale.

5. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) the terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale of Stock by each IRA was a one-time transaction for cash; (c) each IRA received the fair market value of the Stock, as established by a qualified, independent appraiser; and (d) each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

Notice to Interested Persons: Because the applicants are the only participants in the IRAS, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

Service Employees International Union Local 252 Welfare Fund (the Fund) Located in Wynnewood, Pennsylvania

[Application No. L–10595]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed sale (the Sale) of certain improved real property located in Wynnewood, Pennsylvania (the Property) to the Service Employees International Union Local 252 (Local 252), a party in interest with respect to the Fund, provided the parties adhere to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(c) The Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser;

(d) The Fund does not incur any expenses with respect to the Sale.

Summary of Facts and Representations

1. The Fund is a welfare plan providing medical, hospital, and disability benefits to approximately 900 health care workers currently affiliated with Local 252, a 4000 member labor organization based in Wynnewood, Pennsylvania. The Fund was created and is maintained pursuant to collective bargaining agreements between Local 252 and employers in and around the Philadelphia, Pennsylvania area. The Local 252 trustee for the Fund is Anthony L. Teti, and the employer trustee is Zelick Kaplan. As of April 30, 1997, the Fund held net assets of $4,745,862.

2. Among the assets of the Fund is the Property, a parcel of improved real property located at 3 East Wynnewood Road in Wynnewood, Pennsylvania. Purchased for $725,000 in July 1994 from an unrelated third party, the Property consists of 8,490 square feet of land improved with a 5,360 square foot, two-story plus basement office building (the Building). The first floor of the Building consists primarily of office space with the second floor containing additional office space and a meeting room. Currently, the Fund and Local 252 occupy the Building, the latter leasing the space for its principal office.[13]

3. The Fund's need to sell the Property arises out of a recent restructuring imposed by the Service Employees International Union (the International). According to the applicant, the International has ordered the approximately 900 health care workers affiliated with Local 252 to transfer their membership to two other local organizations whose membership also consists of workers in the health care industry. Pursuant to the agreement between Local 252 and the International, the Fund will be terminated and the assets currently held therein transferred to the International's welfare fund. As a result of this transfer, the International plans to dispose of the Property. Because the Building currently serves as Local 252's principal office, and fearing that the Fund faces taking a substantial loss on the sale of the Property to an unrelated third party, Local 252 wishes to purchase the Property from the Fund.

4. Paul J. Leis (Mr. Leis), an accredited appraiser with Hayden Real Estate, Inc., located in Conshohocken, Pennsylvania, appraised the Property on January 21, 1998. Mr. Leis states that he is a qualified appraiser, as demonstrated by his status as a Member of the Appraisal Institute and a Certified Pennsylvania General Appraiser. In addition, Mr. Leis represents that both he and Hayden Real Estate, Inc. are independent of the International, Local 252, and the Trustees. After inspecting the Property, Mr. Leis determined a fee simple interest in the Property is worth $550,000.

As noted above, the Fund originally paid $725,000 for the Property. In light of the fact that this amount exceeds the fair market value determined pursuant to Mr. Leis's appraisal, Local 252 represents that it will pay $725,000 to the Fund for the Property. Local 252 has determined that paying the Fund an amount equal to the Property's acquisition price would be in the best interest of the Fund and its participants and beneficiaries as it would enable the Fund to recoup its original investment.

5. The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Fund because the price offered by Local 252 exceeds that obtainable in a sale to an unrelated third party and because it will allow the Fund to recoup its original investment. Finally, the applicant asserts that the transaction

[13] The Fund and Local 252 represent that the lease satisfies the requirements of Prohibited Transaction Class Exemption 76–1 (PTE 76–1, 41 FR 12740, March 26, 1976) and Prohibited Transaction Class Exemption 77–10 (PTE 77–10, 42 FR 33918, July 1, 1977), relating to, among other things, the leasing of office space by a multiemployer plan to a participating employee organization. The Department expresses no opinion as to whether the lease satisfies the conditions of PTE 76–1 or PTE 77–10.

will be protective of the rights of the participants and beneficiaries because the Fund will receive a purchase price which is an amount representing the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) the Sale is a one-time transaction for cash; (b) the terms and conditions are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party; (c) the Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser; and (d) the Fund does not incur any expenses with respect to the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before ____.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of June, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16335 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–28; Exemption Application No. D–10396, et al.]

Grant of Individual Exemptions; Massachusetts Mutual Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings: In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, Massachusetts [Prohibited Transaction Exemption 98–28; Exemption Application No. D–10396]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to

the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in the notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all

additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to MM and its affiliates. This condition shall not apply to plans covering employees of MM.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the final exemption.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the

Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) MM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of MM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of MM includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MM,

(2) Any officer, director or employee of MM or person described in section V(a)(1), and

(3) Any partnership in which MM is a partner.

(b) An "Account" means the General Account (including the general accounts of MM affiliates which are managed by MM), any separate account managed by MM, or any investment advisory account, trust, limited partnership or other investment account or fund managed by MM.

(c) The "General Account" means the general asset account of MM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

For a more complete statement of the facts and representations supporting the department's decision to grant this exemption, refer to the notice of proposed exemption published on February 6, 1998 at 63 FR 6217.

Written Comments and Hearing Requests: The Department received no hearing requests with respect to the proposed exemption. The only written comments were submitted by MM in order to clarify certain of the information contained in the summary of facts and representations for the proposed exemption (the Summary).

First, MM states that with regard to the reference to health insurance in Representation 1 of the Summary, Footnote 1 is intended to indicate only the extent to which MM currently offers such health insurance. The footnote states that MM sold its group life and health subsidiary on March 31, 1996 and will no longer offer group life and health insurance after the completion of a transition period under the purchase and sale agreement relating thereto.

Second, with respect to the second paragraph of Representation 1 of the Summary, MM wishes to clarify that the exemption will cover Accounts (including ERISA-Covered Accounts) other than those currently in existence, and which may invest in equity real estate and mortgage investments.

Third, the last sentence of Representation 7 of the Summary concerns those persons to whom MM must make certain disclosures regarding its shared real estate investments. With respect to the proposed exemption and other information to be contained in such disclosures, MM seeks to clarify that it was only required to provide a copy of the proposed exemption within 30 days of the publication of the proposed exemption (i.e., March 8, 1998) to each current contractholder in an ERISA-Covered Account that proposes to engage in transactions which are structured as shared investments under the exemption. In addition, MM states that it will provide a copy of this exemption (as published in the **Federal Register**) before the Account begins to participate in such investments.

Fourth, concerning the first sentence of Representation 8 of the Summary, MM states that in order to more clearly define the persons to whom certain disclosures must be made, the sentence should be rewritten to read as follows:

With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments which are structured as shared investments under this exemption, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted, before the Account begins to participate in the sharing of such investments.

Fifth, with respect to Footnote 4 in Representation 12 of the Summary, relating to the sophistication of investors participating in MM's single customer and pooled closed-end real estate Accounts, MM states that this footnote only refers to contractholders in its ERISA-Covered Accounts which engage in transactions structured as shared investments under this exemption.

Finally, the third sentence in Representation 18 of the Summary and the fourth paragraph of Representation 21 of the Summary both refer to the partition and sale of undivided and divided real estate investment interests, respectively. In this regard, MM seeks to clarify that the partition and sale of such interests is meant to establish a possible resolution to the stalemates which are described in Representations 18 and 21 of the Summary. Such events would involve the partition of property in which Accounts own a fractional undivided interest in the whole, and the sale of one or more resulting divided interests, including those interests which are co-owned by some of the Accounts. The Department confirms that these scenarios are presented only as examples of possible resolutions to the stalemates which are described in Representations 18 and 21 of the Summary, and are not meant to describe resolutions to other matters.

In addition, the Department acknowledges all of the above-described clarifications by MM to the record which formed the basis for the proposed exemption as published in the **Federal Register**.

Accordingly, after considering the entire record, including the comments made by MM, the Department has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Prohibited Transaction Exemption 98–29; Exemption Application No: D–10506]

Exemption

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M.D., and P. Kevin Zirkle, M.D., parties in interest with respect to the Plan provided the following conditions are satisfied: (1) The Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of $780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 6, 1998 at 63 FR 6216.

Written Comments: The Department received one comment from the applicant. The applicant noted that during the Department's consideration of the exemption application, the Knoxville Surgical Group had originally planned to merge the Plan into the Premier Surgical Plan. However, this merger did not occur. Rather, the Plan will remain a dormant plan with all participants fully vested.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed.

For Further Information Contact: Allison Padams Lavigne, U. S. Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

Jack Mayesh Wholesale Florist, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 98–30; Exemption Application No. D–10524]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain unimproved real property (the Property) to Roy Dahlson, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount which is the greater of either (a) the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 22, 1998 at 63 FR 19950.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pipefitters Local Union No. 537 Pension Fund (the Plan) Located in Boston, Massachusetts

[Prohibited Transaction Exemption No. 98–31; Application No. D–10577]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) to the Plan by Local Union 537 (the Union) of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale;

(D) The Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and

(E) The independent fiduciary for the Plan will undertake to monitor and enforce the terms of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption, refer to the Notice of Proposed Exemption published on April 22, 1998, at 63 FR 19953.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202)219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of June 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16337 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D–10470 and D–10576]

Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

AGENCY: Department of Labor.

ACTION: Notice of proposed amendments to Prohibited Transaction Exemption (PTE) 93–69

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed amendments to PTE 93–69 [58 FR 51105, September 30, 1993]. PTE 93–69 provides an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for: (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (New Plan) of shares of Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplementary Benefit Program Trust; and (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar. The proposed amendments, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the New Plan.

EFFECTIVE DATE: If granted, the proposed amendments will be effective July 1, 1998.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before the expiration of August 3, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application Nos. D–10470 and D–10576. The applications for amendments and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5638, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 93–69. The proposed amendments were requested in applications filed by the Supplemental Program Committee and Navistar pursuant to section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847. August 10, 1990). One of the proposed amendments would permit William Craig, a member of the Supplemental Program Committee, to continue to serve on the NIC board of directors beyond the termination of the Lock-up Period. The other amendment would permit the sale of shares of NIC Common Stock by the New Plan to NIC or Navistar for not less than adequate consideration as defined in section 3(18) of the Act.

Summary of Facts and Representations

The applications contain representations with regard to the proposed amendments which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. Background

(a) Navistar, a Delaware corporation headquartered in Chicago, Illinois, is a manufacturer of large and medium size trucks and mid-range diesel engines.

(b) NIC is a publicly-traded corporation which wholly owns Navistar.

(c) The Supplemental Program Committee is a five-member committee which is responsible for managing the assets of the Supplemental Benefit Program Trust.

(d) In 1992 , Navistar proposed to terminate its retiree health and life insurance benefit program and to replace it with a plan providing a reduced schedule of benefits. The New Plan was created as part of the 1993 settlement of a class action which was filed by the Navistar retirees against Navistar in response to the proposed

termination.[1] The New Plan consists of two parts, the Retiree Health Benefit Program and Trust ("Base Program" and "Base Trust") and the Supplemental Benefit Program and Trust. The Supplemental Benefit Program Trust was initially funded with approximately 255 million shares of NIC Class B Common Stock.

Until the end of the Lock-up Period (July 1, 1998),[2] the NIC Class B Common Stock generally is restricted and has no voting or transfer rights. The NIC Class B Common Stock certificates bear a legend indicating that the stock has not been registered under the Securities Act of 1933 and may not be sold or transferred. In addition, under the terms of NIC's Certificate of Incorporation and pursuant to the Shy Settlement, the Supplemental Benefit Program Trust could not sell its Class B Common Stock until the end of the Lock-up Period, except in a transaction approved by NIC's board of directors. On July 1, 1998 (or upon an earlier sale approved by the Board), the Class B Common Stock will automatically convert to NIC Common Stock, a widely-held publicly-traded New York Stock Exchange security with full voting rights. After the Lock-up Period expires, a Registration Rights Agreement gives the Supplemental Benefit Program Trust the right to require NIC to register the Supplemental Benefit Program Trust's NIC Common Stock and the exclusive right to sell NIC Common Stock to the public for five years or until the sale of $500 million in NIC Common Stock by the Supplemental Benefit Program Trust, whichever occurs first. All decisions regarding management of the Supplemental Benefit Trust, including decisions affecting the NIC stock, are made by a five-person committee, the Supplemental Program Committee.

PTE 93–69 provides, in part, that effective July 1, 1993, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act shall not apply to the acquisition and holding by the New Plan of Class B Common Stock, the extension of credit which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplemental Benefit Trust the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares, or the sale of NIC Class B Common Stock by the New Plan to Navistar. One of the conditions in the notice of proposed exemption for PTE 93–69[3] requires in part, that:

(1) the majority of the members of the Supplemental Program Committee would be individuals who:

(a) Are not affiliates of Navistar, NIC or the UAW;

(b) Did not have any ownership interest in Navistar or NIC;

(c) Are not officers, directors, or 5 percent or more shareholders or partners of a person in which NIC has an ownership interest.

In commenting on the proposed exemption, the UAW requested that the final exemption permit the Supplemental Program Committee to name one of its non-UAW members to serve on NIC's board of directors. The UAW represented that the failure to allow a non-UAW member of the Supplemental Program Committee to serve on NIC's board of directors would impair the Committee's ability to pursue the most prudent course towards maximizing the value of the Supplemental Benefit Program Trust. The UAW stated that the Supplemental Program Committee desired to make [board] selections that would best facilitate the Committee's efforts to protect its stake in the company. The UAW further stated that without dual membership on the part of at least one of its appointments, the Committee felt that its ability to act as an effective "watchdog" over NIC's management would be materially diminished. After considering the UAW's comment, the Department decided to modify the final exemption to permit one of the three non-UAW members of the Supplemental Program Committee to serve on NIC's board of directors during the Lock-up Period. In this regard, William Craig has served on NIC's board of directors as well as on the Supplemental Program Committee up to the present time.

2. The Supplemental Program Committee's Requested Amendment

(a) In support of its application to amend PTE 93–69 to allow Mr. Craig to continue to serve on both the board of directors of NIC and on the Supplemental Program Committee, the Committee represents that Mr. Craig has a broad background in, and extensive knowledge of the trucking industry and, especially, NIC's role therein which has brought important insights to the deliberations of the Supplemental Program Committee. The Committee members have learned to rely on his judgement and abilities as he has brought his wealth of experience to bear on issues arising from his service as both a non-UAW member of the Supplemental Program Committee and a member of NIC's board of directors.

The applicant further notes that Mr. Craig's current dual service has only served to enhance the value of his views to the Supplemental Program Committee. He has demonstrated both a dedication to furthering the interests of the shareholders of NIC and an acute sensitivity to the importance that successful resolution of labor-management issues confronting NIC has to the future success of NIC and the health and welfare of its employees and retirees.

In addition, the Supplemental Program Committee states that the unique perspective afforded Mr. Craig as a result of the dual service permitted under PTE 93–69 and the distinct background and abilities he brings to this dual service provides a function that the Supplemental Program Committee believes it can ill afford to lose.

(b) In commenting on the proposed exemption, the UAW represented that the potential for conflict regarding dual membership, if any, is minimal. To the extent any conflicts were to arise a Committee/board members' conduct would be reviewable under ERISA's fiduciary standards and, moreover, the Committee would, in such circumstances, be empowered to remove such individual from the NIC board, if appropriate.

(c) The Supplemental Program Committee has acknowledged that they have been briefed and understand the limits that are placed on Mr. Craig under federal and state securities laws relating to Mr. Craig's ability to make disclosures to the Committee regarding information he obtains at meetings of the board of directors of NIC. Despite those limitations, the Supplemental Program Committee members believe that Mr. Craig's continuing dual service on the Committee and on the board of directors of NIC is critical to the Supplemental Benefit Plan's success. The Committee further noted that Mr. Craig will have available to him, at all times, two different, expert legal advisors, one for his service on the Supplemental Program Committee and one in his role on NIC's board of directors.

(d) In summary, the Supplemental Program Committee believes that the requested amendment to permit Mr. Craig to continue in his dual roles will assist the Supplemental Program Committee in its future planning and

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[1] *Shy et al.* v. *Navistar International Corporation, et. al.*, Civil Action No. C–3–92–333 (S.D. Ohio, 1992) (Shy Settlement).

[2] The period beginning on the date of the contribution of Class B Common Stock to the Supplemental Benefit Program Trust in 1993 until July 1, 1998 is the "Lock-up Period".

[3] 58 FR 35467, 35468 (July 1, 1993).

help to ensure the future stability of the Supplemental Benefit Program Trust.

4. Navistar's Requested Amendment

Upon the expiration of the Lock-up Period, the NIC Class B Common Stock will automatically convert to NIC Common Stock. Navistar requests an amendment to PTE 93–69 to permit the Supplemental Benefit Program Trust to sell NIC Common Stock to either NIC or Navistar after the expiration of the Lock-up Period for not less than adequate consideration as defined in section 3(18) of the Act. Navistar represents that having the ability to sell NIC Common Stock to NIC or Navistar will provide the Supplemental Benefit Program Trust with an additional market for the stock. In this regard, Navistar notes that NIC Common Stock is widely traded on the New York Stock Exchange, thus pricing issues associated with non-publicly traded securities would not be present in these transactions.

The proposed amendments, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the proposed amendment.

Notice to Interested Persons

Because of the large number of potentially interested parties, it is not possible to provide a separate copy of notice of the proposed amendment to each participant. The only practical form of notice to interested parties is the **Federal Register**. The Committee will, however, provide notices to both NIC and the UAW. Also, the Supplemental Program Committee will supply copies of the notice to union locals and chapters of salaried employee retiree organizations for posting or other possible distribution to retirees. Provision of notice in this manner can be accomplished within 15 working days of publication.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The proposed amendments to PTE 93–69, if adopted, will not extend to transactions prohibited under section 406(b)(3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed amendments to PTE 93–69, if adopted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a part of the record. Comments received will be available for public inspection with the applications for amendment at the address set forth above.

Proposed Amendments

Under section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B [55 FR 32836, 32847 August 10, 1990], the Department proposes to amend PTE 93–69 as set forth below in italics in the republished exemption below.

Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act shall not apply to (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (the New Plan) of shares or Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplemental Benefit Program Trust; (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar; and (5) the sale of shares of NIC Common Stock by the New Plan to NIC or Navistar, provided that:

(a) All decisions regarding the management of the Supplemental Benefit Program Trust, including determinations affecting NIC stock held by such Trust, are made by the Supplemental Program Committee;

(b) The Supplemental Program Committee will take whatever action is necessary to protect the New Plan's rights with respect to the transaction;

(c) With respect to the sale of NIC Class B Common Stock by the New Plan to Navistar, each Class B share will be valued at the average closing price per share of NIC Common Stock during the 30 day trading period immediately prior to the date Navistar acquires the Class B Shares, but in no case will the price be less than adequate consideration as defined in section 3(18) of the Act;

(d) With respect to the sale of NIC Common Stock by the New Plan to Navistar or NIC, in no case will the price be less than adequate consideration as defined in section 3(18) of the Act;

(e) The Supplemental Program Committee shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (f) below to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Supplemental Program Committee, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than the Supplemental Program Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (f) below; and

(f)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) above shall be unconditionally available at their customary location during business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The UAW or any duly authorized representative of the UAW;

(C) Any participant or beneficiary of the New Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (e) shall be authorized to examine the trade secrets of NIC or Navistar or commercial or financial information which is privileged or confidential.

(g) For purposes of this exemption:

(1) The majority of the members of the Supplemental Program Committee will be individuals who:

(A) Are not affiliates of Navistar, NIC or the UAW;

(B) Do not have any ownership interest in Navistar or NIC;

(C) Are not officers, directors, or 5 percent or more shareholders or partners of a person in which NIC has any ownership interest;

(D) Have acknowledged in writing acceptance of fiduciary responsibility;

(E) Do not receive more than 5 percent of their annual gross income (excluding retirement income and directors fees received) for any taxable year in the aggregate from Navistar, UAW or any affiliate thereof; and

(F) Will not acquire any property from, sell any property to or borrow any funds from NIC, UAW, or any affiliate thereof, during the period that such individual serves as a member of the supplemental Program Committee and continuing for a period of 6 months after such individual ceases to be a member of the Supplemental Program Committee or negotiate any such transaction during the period that such individual serves as a member of the Supplemental Program Committee.

Notwithstanding (A) and (C) above, William Craig is not precluded from serving on NIC's board of directors while also serving as a member of the Supplemental Program Committee.

(2) An affiliate of another person means:

(A) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(B) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(C) Any corporation or partnership of which such other person is an officer director or partner.

(3) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, D.C., this 16th day of June, 1998.

Ivan Strasfeld,

Director of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16336 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–060]

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before July 20, 1998.

ADDRESSES: All comments should be addressed to Mr. Robert J. Bobek, Code ICB National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports

Title: Patent Waiver Report.

OMB Number: 2700–0050.

Type of Review: Reinstatement.

Need and Uses: Reports are analyzed by the NASA Inventions and Contributions Board to evaluate the progress made by NASA contractors who received waiver of patent rights in terms of development and commercialization of waived inventions.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 66.

Responses Per Respondent: 1.

Estimated Annual Responses: 66.

Estimated Hours Per Request: 2.

Estimated Annual Burden Hours: 147.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–16328 Filed 6–18–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Meetings

TIME AND DATE: 10:00 a.m., Tuesday, June 23, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.
2. Funding for the Office of Corporate Credit Unions.

RECESS: 11:00 a.m.

TIME AND DATE: 11:30 a.m., Tuesday, June 23, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7) and (8).
3. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
4. Administrative Act under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).
5. Four (4) Personnel Actions. Closed pursuant to exemptions (2), (5), (6) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–16453 Filed 6–16–98; 4:41 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Co. (Peach Bottom Atomic Power Station, Units 2 and 3); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24 for Facility Operating License Nos. DPR–44 and DPR–56, issued to PECO Energy Company (the licensee), for

operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24(a), which require in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated March 18,1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that, if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors. However, an exemption to 10 CFR 70.24(a) is needed to permit a deviation from these requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or public dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Peach Bottom Atomic Power Station, Units 2 and 3," April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 6, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney, of the State of Pennsylvania, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 18, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA.

Dated at Rockville, MD, this 15th day of June 1998.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16378 Filed 6–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 8–10, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Wednesday, July 8, 1998

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 a.m.–10:30 a.m.: BWR Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the General Electric Nuclear Energy (GE), the Northern States Power Company (NSP), and the NRC staff regarding the GE extended power uprate program for operating BWRs, and the NSP application for a power level increase of 6.3 percent for the Monticello Nuclear Generating Plant.

Note: A portion of this session may be closed to discuss GE Nuclear Energy proprietary information.

10:45 a.m.–12:15 p.m.: Proposed Revisions to CFR 50.59 (Changes, Tests and Experiments) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to 10 CFR

50.59, resolution of issues identified in the March 24, 1998 Staff Requirements Memorandum related to SECY–97–205, "Integration and Evaluation of Results from Recent Lessons Learned Reviews," and related matters.

1:15 p.m.–3:45 p.m.: AP600 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Company and the NRC staff regarding Westinghouse's application for certification of the AP600 design and the associated NRC staff's evaluation.

Note: A portion of this session may be closed to discuss Westinghouse proprietary and safeguards information related to the AP600 design.

4:00 p.m.–5:30 p.m.: Fire Barrier Penetration Seals and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Supplement 1 to NUREG–1552, "Fire Barrier Penetration Seals at Nuclear Power Plants," an Information Notice on "Inadequate Identification and Analysis of Required and Associated Electrical Circuits Resulting in the Potential Loss of Post-Fire Safe-Shutdown Capability," and related matters.

5:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, July 9, 1998

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: BWR Pressure Vessel Shell Weld Inspections (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the BWR Vessel and Internals Project (BWRVIP) regarding the BWRVIP–05 report, "BWR Pressure Vessel Shell Weld Inspection Recommendations," and the associated NRC staff's evaluation.

10:45 a.m.–12:15 p.m.: Operating Plan for the NRC Office of Nuclear Reactor Regulation (NRR) (Open)—The Committee will hear presentations by and hold discussions with the NRR Director and his staff regarding the NRR Operating Plan and related matters.

1:15 p.m.–1:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:45 p.m.–2:00 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including EDO's response to the ACRS comments and recommendations included in its May 11, 1998 report on, "Elevation of CDF to a Fundamental Safety Goal and Possible Revision of the Commission's Safety Goal Policy Statement."

2:00 p.m.–2:30 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, qualifications of candidates for ACRS membership, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

2:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Friday, July 10, 1998

8:30 a.m.–3:00 p.m. (12:00–1:00 p.m. Lunch): Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

3:00 p.m.–4:30 p.m.: Technical Papers for the Quadripartite Meeting (Open)—The Committee will discuss several Technical Papers to be discussed at the Quadripartite meeting scheduled to be held in Japan on October 5–9, 1998, including the following:

- Safety of Future Nuclear Power Plants
- Safety of Aging Plants
- Steam Generator Operating Experience
- Assessment of Computerized Systems
- Safety of High Burnup and Mixed Oxide Fuels/Fuel Behavior Under Reactivity Induced Accidents
- Risk Significance of Low-Power and Shutdown Events
- Probabilistic Safety Assessment and Risk-Based Regulation

4:30 p.m.–5:00 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4), Westinghouse safeguards information per 5 U.S.C. 552b(c)(3), matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), General Electric Nuclear Energy proprietary information per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are

available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: June 15, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–16379 Filed 6–18–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549

Extension:
Rule 45, SEC File No. 270–164, OMB Control No. 3235–0154
Rule 52, SEC File No. 270–326, OMB Control No. 3235–0369

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 45 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79A, *et seq.*) ("Act") imposes a filing requirement of registered holding companies and their subsidiaries under section 12(b) of the Act. Under the requirement, the companies must file a declaration seeking authority to make loans or otherwise extend credit to other companies in the same holding company system. Among others, the rule excepts from the filing requirement the performance of payment obligations under consolidated tax agreements. The purpose of the rule is to ensure that registered holding companies and their subsidiaries do not engage in activities that are a detriment to interests the Act is designed to protect (*i.e.*, cross-subsidization). The Commission estimates that the total annual reporting and recordkeeping burden is 46 hours. (*e.g.*, 14 recordkeepers x approximately 3.3 hours = approximately 46 hours).

Rule 52 under the Act permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The purpose of collecting the information is to determine the existence of detriment to interests the Act was designed to protect. The Commission estimates that the total annual reporting and recordkeeping burden of collections under rule 52 is 33 hours (*e.g.*, 33 responses x one hour = 33 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: June 11, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16352 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23251; 812–11118]

Fountain Square Funds, et al.; Notice of Application

June 12, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of the Fountain Square Funds ("FSF") to acquire all of the assets and certain stated liabilities of certain series of The Cardinal Group ("Cardinal").

APPLICANTS: FSF, Cardinal, Cardinal Management Corp. ("CMC"), and Fifth Third Bank (the "Bank").

FILING DATES: The application was filed on May 1, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 7, 1998, and should be accomplished by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Fountain Square Funds and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263. The Cardinal Group and Cardinal Management Corp., 155 East Broad Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. FSF is a Massachusetts business trust registered under the Act as an open-end management investment company. FSF currently has sixteen separate series, five of which are the acquiring funds ("Acquiring Funds"). The Bank, an Ohio state-chartered bank, serves as the investment adviser to FSF. The Bank is not required to register under the Investment Advisers Act of 1940 ("Advisers Act"). The Bank is a subsidiary of Fifth Third Bancorp ("Fifth Third"), a bank holding company.

2. Cardinal is an Ohio business trust registered under the Act as an open-end management investment company.

Cardinal currently has six separate series, five of which are termed the "Acquired Funds" for purposes of this application (the Acquired Funds together with the Acquiring Funds, the "Funds").[1] CMC serves as the investment adviser to Cardinal and is registered under the Advisers Act. CMC is a subsidiary of The Ohio Company. The Ohio Company, as a fiduciary for its customers, owns more than 5% of each of the Acquired Funds.

3. On or about July 12, 1998, The Ohio Company will merge with a subsidiary of Fifth Third ("The Ohio Company Merger"). As a result of the Ohio Company Merger, CMC will become an indirect subsidiary of Fifth Third.

4. On March 12, 1998, the board of trustees of Cardinal, including a majority of its trustees who are not "interested persons" under section 2(a)(19) of the Act, approved and authorized an Agreement and Plan of Reorganization and Liquidation (the "Reorganization Agreement") pursuant to which the Acquiring Funds will acquire a corresponding series of the Acquired Funds having similar investment objectives. Pursuant to the Reorganization Agreement, as soon as practicable after July 13, 1998 or such later date as the parties may mutually agree ("Closing Date"), each Acquiring Fund will acquire all of the assets and certain stated liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund equal in value to the Acquired Fund's aggregate net asset value, computed as of the close of business on the last day preceding the Closing Date (the "Reorganizations").[2] As soon as practicable after the Closing Date, each Acquired Fund will liquidate and distribute *pro rata* to the Acquired Fund's shareholders of record, determined as of the close of business on the Closing Date, the Acquiring Fund's shares received by the Acquired Fund.

5. The Acquired Funds, except for the Cardinal money market funds, offer two classes of shares, Investor Y ("Institutional") Shares and Investor A ("Investor") Shares. The Acquiring Fund currently offer two classes of shares, Investment A Shares and Investment C Shares, but will begin offering Institutional Shares in connection with the Reorganizations.

6. In the Reorganizations, holders of Institutional Shares of an Acquired Fund will receive Institutional Shares of the corresponding Acquiring Fund and holders of Investor Shares of an Acquired Fund will receive Investment A Shares of the corresponding Acquiring Fund. Holders of the Cardinal money market funds who are eligible to purchase Institutional Shares will receive Institutional Shares of the corresponding Acquiring Fund. Holders of the Cardinal money market funds who are not eligible to purchase Institutional Shares will receive Investment A Shares of the corresponding Acquiring Fund. No sales charges will be imposed in connection with the Reorganizations.

7. Institutional Shares of the Acquired and the Acquiring Funds are not subject to any asset-based distribution fees. Institutional Shares of the Acquired Funds are subject to an administrative service fee of .15% of average net assets. Institutional Shares of the Acquiring Funds are not subject to administrative service fees. Investor Shares and Investment A Shares are both subject to a 4.5% front-end sales charge. Investor Shares and Investment A shares also are subject to asset-based distribution fees of up to .25% of the average net assets. After the Reorganizations the Acquiring Funds will begin paying asset-based distribution fees, with the exception of the Fountain Square Tax Exempt Money Market Fund for which these fees will be waived. None of the classes of the Acquiring and the Acquired Funds are subject to any redemption fees.

8. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are substantially similar. The investment policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund also are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies used by the Acquiring Funds.

9. The board of directors of the Acquiring and the Acquired Funds (collectively, "Boards") approved the Reorganizations as in the best interests of the existing shareholders and determined that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. The Boards, including a majority of the disinterested trustees (the "Independent Trustees"), considered various factors in approving the Reorganizations, including that: (i) the investment objectives and policies of the Acquiring and the Acquired Funds are substantially similar; (ii) no sales charges will be imposed in connection with the Reorganizations; (iii) the Reorganizations will be free from federal income taxes; (iv) the conditions and policies of rule of 17a–8 under the Act will be followed: (v) the Reorganizations will be based on net asset values calculated by the Bank, as custodian of the Acquiring Funds, in accordance with the stated policies and procedures of both the Acquiring and Acquired Funds; (vi) the Reorganizations will be submitted to shareholders of the Acquired Funds in a combined proxy statement/prospectus; and (vii) no overreaching of any person is occurring. Expenses incurred in connection with the Reorganizations will be borne by the Bank.

10. The Reorganization Agreement may be terminated at any time prior to the Closing Date (a) by mutual written consent of the Acquiring and Acquired Funds or (b) by either an Acquiring or an Acquired Fund by written notice to the other, without liability on the part of either party, if circumstances develop that, in the opinion of the Board of either Fund, make proceeding with the Reorganizations not in the best interests of the Fund's shareholders.

11. A registration statement on Form N–14 was filed with the Commission on April 6, 1998 and became effective on May 27, 1998. Applicants mailed a prospectus/proxy statement to shareholders of the Acquired Funds on or about June 1, 1998. A special meeting of the Acquired Funds' shareholders will be held on July 10, 1998 to vote on the Reorganizations.

12. The consummation of the Reorganizations is subject to the following conditions, as set forth in the Reorganization Agreement: (i) the N–14 Registration Statement will have become effective; (ii) the Acquired Funds' shareholders will have approved the Reorganization Agreement; (iii) applicants will have received exemptive relief from the Commission with respect to the issues in the application; (iv) the Acquiring and the Acquired Funds will have received an opinion of counsel concerning the federal income tax aspects of the Reorganizations; and (v) each Acquired Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net gain, if any, to its shareholders. Applicants agree not to make any material changes to the Reorganization Agreement that affect the application without prior Commission approval.

[1] The sixth series also is an acquired fund but no relief is being sought for this series because it may rely on rule 17a–8.

[2] The Acquired Funds and the corresponding Acquiring Funds are: (i) The Cardinal Fund and Fountain Square Cardinal Fund; (ii) Cardinal Aggressive Growth Fund and Fountain Square Mid Cap Fund; (iii) Cardinal Balanced Fund and Fountain Square Balanced Fund; (iv) Cardinal Government Securities Money Market Fund and Fountain Square Government Cash Reserves Fund; (v) Cardinal Tax Exempt Money Market Fund and Fountain Square Tax Exempt Money Market Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. Because the Ohio Company owns 5% or more of each of the Acquired Funds, each Acquired Fund may be deemed an "affilaited person of an affiliated person" of each Acquiring Fund.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b) of the Act. Applicants also note that the Boards of the Acquiring and the Acquired Funds, including the Independent Trustees, have determined that the Reorganizations are in the best interests of their shareholders and that the interests of the existing shareholders of the Funds will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of the Acquired Funds' shares for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16346 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26885]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 12, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–9205)

Notice of Proposal to Amend Declaration of Trust to Eliminate Requirement of Shareholder Approval For the Sale By Eastern Utility Associates of Any of Its Majority-Owned Subsidiaries; Order Authorizing Solicitation of Proxies

Eastern Utilities Associates, ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration with the Commission under section 6(a)(2), 7, and 12(e) of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 62 and 65 under the Act.

EUA's declaration of trust ("Declaration of Trust") currently provides that a two thirds majority of the holders of its outstanding common shares entitled to vote must approve the sale by EUA of any of its majority-owned subsidiaries. EUA seeks authority to amend its Declaration of Trust to eliminate this requirement ("Proposed Amendment").

EUA proposes to solicit proxies from its common shareholders ("Shareholders") to approve the Proposed Amendment at a special meeting scheduled for July 20, 1998 ("Special Meeting"). Accordingly, EUA requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d).

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16347 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26886]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 12, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for

public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70–9203)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania, 15222–3199, a registered holding company, and CNG's wholly owned subsidiaries, CNG Energy Services Corporation ("Energy Services"), CNG Power Company ("Power Company"), both at One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, CNG Retail Services Corporation ("Retail Services"), One Chatham Center, Pittsburgh, Pennsylvania 15219, CNG Products and Services, Inc. ("Products and Services"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199 and CNG Producing Company ("Producing Company"), CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000 (collectively, "Applicants"), have filed an application-declaration, as amended, under sections 9(a), 10 and 12(c) of the Act and rules 43, 46 and 54 under the Act.

CNG has decided to discontinue wholesale marketing and trading of natural gas and electricity. Energy Services was principally formed to be the subsidiary in the CNG system to market natural gas at wholesale, and CNG Power Services Corporation ("Power Services") was formed to market electricity at wholesale. Power Services is an exempt wholesale generator ("EWG") under section 32 of the Act. Energy Services has several wholly owned subsidiaries engaged in the energy business. The six directly owned subsidiaries of Energy Services (collectively, "Energy Services Subsidiaries") are: Products and Services, Power Company, CNG Storage Service Company, CNG Main Pass Gas Gathering Corporation ("Main Pass"), CNG Oil Gathering Corporation ("Oil Gathering") and Retail Services. Power Services has one wholly owned subsidiary, CNG Lakewood, Inc., which is also an EWG. In its exiting of the wholesale energy industry, CNG may sell its equity ownership in Energy Services and Power Services. In order to prepare these companies for disposition, Applicants propose to transfer ownership of each subsidiary of Energy Services and Power Services. Additionally, two subsidiaries of Energy Services would be consolidated.

Applicants consequently propose to effect a two-phase restructuring of the Energy Services group consisting of the following transactions.

Phase One

Energy Services Subsidiaries Become Direct Subsidiaries of CNG

Since CNG desires to retain the Energy Services Subsidiaries as part of the CNG System after the disposition of Energy Services, Applicants propose to transfer ownership of these companies. This would occur through Energy Services transferring to CNG all of the common stock of the six subsidiaries as a dividend, so that each company initially will become a direct subsidiary of CNG ("Phase One").[1]

Phase Two

Products and Services Merged Into Retail Services

Retail Services was formed under Commission order dated January 15, 1997, HCAR No. 26647 ("January 1997 Order"), which authorized Energy Services, among other things, to engage in all forms of energy brokering and marketing transactions, including those involving electricity, natural gas, coal, oil, other hydrocarbons, wood chips, wastes and other combustibles, at wholesale and retail. By order dated August 28, 1995, HCAR No. 26363 ("August 1995 Order"), the Commission, among other things authorized Energy Services to form Products and Services to engage in the business of certain energy-related services. By a subsequent order dated August 27, 1997, HCAR No. 26757 ("August 1997 Order"), the Commission further authorized Products and Services to offer several additional categories of energy-related services.

Applicants now propose that Retail Services merge with Products and Services, with Retail Services being the surviving corporation (the "Merger").

Retail Services Succeeds to Certain Authorizations

Upon completion of the Merger, Retail Services would succeed to the prior authorizations granted to Products and Services under the August 1995 Order and the August 1997 Order. However, Applicants request the elimination of one restriction in these orders. Both orders state that Products and Services will provide it categories of services both within and outside of the four states of Virginia, West Virginia, Pennsylvania and Ohio where the public utility company subsidiaries of CNG are located (collectively, "LDC States"). Both orders require that during the twelve-month period beginning on the first day of the month following the commencement of Products and Services' business, and for each subsequent calendar year, total revenues derived by Products and Services in LDC States exceed total revenues similarly derived from customers in all other states. Due to the trend of energy markets in a deregulation environment to become integrated national markets, Applicants request that this "50% limit" be eliminated for all future revenues of Retail Services as the successor to Products and Services after the Merger.

In view of the proposed disposition of Energy Services by CNG, Applicants propose that Retail Services also succeed to the authorizations granted to Energy Services under the January 1997 Order. Specifically, Retail Services would be authorized to engage in energy marketing to the same extent as that allowed Energy Services, and Retail Services would be permitted to form subsidiaries through which to engage in marketing activities to the same extent permitted Energy Services. CNG would provide financing to Retail Services under rule 52 of the Act.

CNG Technologies, Inc. Becomes a Subsidiary of Power Company

By order dated December 21, 1990, HCAR No. 25224, the Commission authorized CNG to form CNG Technologies, Inc. ("CNG Technologies") and to invest up to 2 million in CNG Technologies for it to acquire limited partnership interests in a gas industry fund created to invest in

[1] The Application states that the transfers of stock of the Energy Services Subsidiaries in Phase One may be in the form of either dividends or liquidating distributions under a plan of liquidation adopted under section 332 of the Internal Revenue Code, depending upon the CNG system's business needs and the ultimate tax impact of the restructuring transactions. The term "dividend", as used in this notice, includes both dividends and liquidating distributions.

smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. CNG Technologies is currently a subsidiary of Products and Services. Applicants propose that the outstanding common stock of CNG Technologies be declared as a dividend by Products and Services to CNG, and subsequently be transferred by CNG as a capital contribution to Power Company after Power Company becomes a direct subsidiary of CNG.

Main Pass and Oil Gathering Each Become a Subsidiary of Producing Company

Producing Company is a wholly owned subsidiary of CNG which engages in gas and oil exploration and production primarily in the Gulf of Mexico, the southern and western United States, the Appalachian region and in Canada.

By order dated July 26, 1995, HCAR No. 26341 ("July 1995 Order"), Energy Services was authorized, without further Commission approval, through December 31, 1997, to invest an aggregate amount up to at least $150 million to acquire direct or indirect interests in entities engaged in Gas Related Activities.[2]

As of December 31, 1997, Energy Services had invested $24,235,000 and $14,323,000 and acquired a partnership interest in the Main Pass Gathering Company and the Main Pass Oil Gathering Company, respectively, under the July 1995 Order. Energy Services owns the interests in these partnerships through Main Pass and Oil Gathering, respectively.

The July 1995 Order was extended through December 31, 2002 by Commission order dated December 30, 1997, HCAR No. 26807 ("December 1976 Order"). The December 1997 Order also increased the amount Energy Services may invest and the amount of guarantees which could be made to $200 million in each case.

Applicants propose the transfer of ownership of all of the outstanding common stock of Main pass and Oil Gathering to be held by CNG after completion of Phase One to Producing Company. The transfer would occur through a transfer by CNG of the stock to Producing Company as a capital contribution.

[2] "Gas Related Activities" include purchasing, pooling, transporting, exchanging, storing and selling gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and Producing Company.

Producing Company Succeeds to Certain Authorizations

As indicated above, Applicants propose that Producing Company succeed to Energy Services' interests in Main Pass and Oil Gathering, which are acquired by Energy Services under the July 1995 Order. Producing Company will also continue to engage in all aspects of the business of a gas producing company which substantially encompasses all of the activities defined as "Gas Related Activities" in the July 1995 Order. Applicants propose that Producing Company succeed to and be substituted for Energy Services as the authorized party under the July 1995 Order and the December 1997 Order.

Source and Form of Declaration and Payment of Dividends

Applicants propose that dividends declared and paid in connection with the restructuring be paid out of capital or unearned surplus, to the extent permitted under applicable corporate law, in the event the payer does not have sufficient earned surplus on its books to cover the amount of the dividend. Applicants represent that the payment of dividends out of capital or unearned surplus in connection with the restructuring would not in any way adversely affect the financial integrity of any company in the CNG system or the working capital of any public utility company in the CNG system.

The Application states that the form of distributions to CNG in Phase One of the restructuring and the timing, manner and extent of the re-distributions by CNG in Phase Two of the restructuring will depend on the CNG system's business needs as well as the ultimate tax impact of the restruturing transactions.

Atlantic City Electric Company (70–9307)

Atlantic City Electric Company ("ACE"), 6801 Blackhorse Pike, Egg Harbor Township, New Jersey 08234, a wholly owned electric utility subsidiary of Conectiv, Inc., a public utility holding company to be registered under the Act, has filed an application under sections 9(a) and 10 of the Act and rule 41 under the Act.

By order dated February 25, 1998 (HCAR No. 26832), Conectiv was authorized to acquire all of the outstanding voting securities of ACE, Delmarva Power & Light Company, a public utility company ("Delmarva"), and various nonutility subsidiaries of Delmarva and ACE.

ACE now requests authority to purchase two 39.3 megawatt combustion turbine generating units and accessory equipment ("Units") for a purchase price of $8 million. ACE states that the Units were previously leased by ACE under a December 1, 1972 Indenture of Lease ("Lease") among ACE, Frank B. Smith and Ben Maushardt, as lessors ("Lessor"), and United States Leasing Corporation, as agent for the Lessor. ACE has used the Units, located in Upper Deerfield Township, Cumberland County, New Jersey, for the generation of electricity for twenty five years. The Lease terminates on July 11, 1998 and ACE wishes to purchase the Units and continue them in service.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16348 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40085; International Series Release No. 1140; file No. SR–CBOE–98–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the Chicago Board Options Exchange, Incorporated Relating to Listing and Trading Warrants on a Narrow-Based Index

June 12, 1998.

I. Introduction

On April 23, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the proposed rule change to list and trade warrants on an equal dollar-weighted, narrow-based index ("Index"), comprised of 15 to 20 actively traded common stocks. The Exchange submitted Amendment No. 1 to the filing on April 30, 1998.[3] Notice

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Stephanie C. Mullins, Attorney, CBOE to Martianne H. Duffy, Special Counsel, Division of Market Regulation ("Division"), SEC, dated April 30, 1998. Amendment No. 1 clarifies, among other things, that the Index, as defined above, is narrow-based and will comply with the

of the filing and Amendment No. 1 appeared in the **Federal Register** on May 13, 1998.[4] No comments were received concerning the proposed rule change. On June 11, 1998, the Exchange submitted Amendment No. 2.[5] This order approves the CBOE's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade warrants based on the Index, comprised of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the American Stock Exchange, Incorporated ("Amex"), New York Stock Exchange, Incorporated ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation ("Nasdaq") system and are reported national market system securities ("Nasdaq/NMS").

The Exchange is permitted to list and trade stock index warrants under CBOE Rule 31.5E. The Exchange now is proposing to list and trade cash-settled, stock index warrants linked to the Index. At the time of listing and trading, the warrants will meet all of the generic criteria for stock index warrants as set forth in CBOE Rule 31.5E as well as the specific generic criteria for narrow-based index warrants discussed below.

Rule 31.5E requires, among other things, that: (1) the issuer has a tangible net worth in excess of $150,000,000 and otherwise substantially exceeds earnings requirements in Rule 31.5(A)[6] or meet the alternate guideline in paragraph (4) of Rule 31.5E;[7] (2) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000; (3) the term of the warrants shall be for a period ranging from one to five years from date of issuance; (4) if 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States, the terms of the warrants provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (*i.e.* the settlement value at expiration); and (ii) the settlement value for the warrants as valued on either of the two business days preceding the day on which the final settlement value is to be determined; (5) all stock index warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted and that all unexercised warrants that are in the money (or in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange; (6) foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, shall not, in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading; and (7) the issuer of the warrants will make arrangements to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information itself. If any change in the number of warrants occurs, notice will be filed with the Exchange by 3:30 p.m. Chicago time, on the date when the settlement value for the Warrants is determined.

The generic criteria for narrow-based index warrants include, among other things, initial listing standards which state that: (1) each component security have a market capitalization of at least $75 million, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market capitalization is at least $50 million; (2) the trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months; (3) no single component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60%, for an index consisting of fewer than 25 component securities, of the weight of the Index; (4) at least 80% of the total number of component securities in an index satisfy the requirements of CBOE Rule 5.3[8] applicable to individual underlying securities; (5) U.S. component securities are "reported securities" as defined in Rule 11Aa3–1 under the Act; (6) the current underlying Index value will be reported at least once every fifteen seconds during the time the Index warrants are traded on the exchange; and (7) for maintenance purposes, the total number of component securities in the Index may not increase or decrease by more than 33⅓% from the number of component securities in the Index at the time of its initial listing, and in no event may be less than nine component securities.[9]

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generic narrow-based margin requirements (CBOE Rule 30.53) and position limit requirements (CBOE Rule 30.35) of the Exchange.

[4] Securities Exchange Act Release No. 39965 (May 6, 1998) 63 FR 26658.

[5] See Letter from Stephanie C. Mullins, Attorney, CBOE to Marianne H. Duffy, Special Counsel, Division, SEC, dated June 11, 1998. Amendment No. 2 clarifies that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depository receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an American Depositary Receipt ("ADR") has already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.

[6] Rule 31.5A requires that an issuer's total assets less total liabilities are at least $4,000,000, that pre-tax income earnings of at least than $750,000 in the issuer's last fiscal year or in two of the last three fiscal years and net income of at least $400,000.

[7] Paragraph (4) of CBOE Rule 31.5E states that where an issuer has a minimum tangible net worth in excess of $150,000,000, but less than $250,000,000, the Exchange shall not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issue price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

[8] CBOE Rule 5.3 describes, among other things, the options eligibility requirements for individual equity securities.

[9] The Commission notes that the requirement of paragraph (7) may not be maintained in the following limited circumstances. The CBOE has represented that no attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to bankruptcy or similar circumstances.

A. Index Design and Stock Selection Criteria

The Exchange represents that the Index will be categorized as narrow-based. The stocks to be included in the Index will be selected by a member firm of the Exchange and will be announced at or as close as possible to the time of the offering, and included in the issuer's offering materials. The Exchange represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than $4,000,000; pre-tax income earnings were greater than $750,000 in its last fiscal year; and the issuer's net income was greater than $400,000), and the issuer has a minimum tangible net worth in excess of $250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each component security of the Index will have a minimum market capitalization of $150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than $50 million.

B. Calculation and Dissemination of the Index Value

The Index will be calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by a member firm of the Exchange representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the market value of the sum of the assigned number of shares of each of the component securities divided by an Index divisor. The Index divisor initially will be set to provide a benchmark value of 100 at the time that the warrants are priced for sale to the investing public.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security also may be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer.

The Exchange represents, that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.[10] If the security remains in the Index, the number of shares of the security may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The CBOE also represents that after the selection of the initial securities has been made, the CBOE, not the broker-dealer that initially will select the stocks, will decide all subsequent issues relating to the composition of the Index and/or the component securities.

Primary and backup pricing sources will be used to obtain prices for foreign stocks. All non-U.S. traded stocks will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's composite New York rates, or comparable rates, quoted at 2:00 p.m. Chicago time the previous day, will be used to convert any non-U.S. traded stock price from the respective countries to U.S. dollars. If there are several quotes, the first quoted rate in that minute will be used to calculate the Index. In the event that there is no Bloomberg exchange rate for a country's currency at 2:00 p.m. the previous day, stocks will be valued at the first U.S. dollar cross-rate quoted before 2:00 p.m. Chicago time the previous day.

As previously stated, the Index value will be calculated and disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value.[11]

C. Index Warrant Trading (Exercise and Settlement)

The warrants will be direct obligations of their issuer, subject to cash-settlement in U.S. dollars and will be exercisable throughout their life (*i.e.*, American-Style).[12] Upon exercise, the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of a Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Index has increased above the pre-stated cash settlement value. Warrants that are "out-

[10] No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to a bankruptcy or similar circumstances, supra note 9.

[11] See Amendment No. 2, supra footnote 5.

[12] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE and Marianne H. Duffy, Special Counsel, June 12, 1998.

of-the-money" at the time of expiration will expire worthless.

D. Warrant Listing Standards and Customer Safeguards

Sales practice rules applicable to the trading of index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The same suitability and use of discretion provisions that are applicable to transactions in options will be equally applicable to the warrants pursuant to CBOE rules. The listing and trading of index warrants on the Index will be subject to these guidelines and rules.

E. Other Applicable Exchange Rules

As previously stated, the CBOE represents that the Index will be categorized as narrow-based. As such, the generic narrow-based warrant standards regarding margin requirements provided for under Exchange rule 30.53 will apply. The applicable generic narrow-based position and exercise limits will be determined pursuant to Exchange rule 30.35.[13]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change by the Exchange is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission finds that the listing and trading of warrants based on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with a portion of the equity markets[15] and promote efficiency, competition and capital formation.[16]

Nevertheless, the trading of warrants on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these concerns.

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the CBOE to apply its narrow-based index warrant listing standards and trading rules to the Index. First, the Index will be composed of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the Amex, NYSE or through the facilities of Nasdaq and are reported Nasdaq/NMS securities.

The Commission notes that with respect to the maintenance of the Index, the CBOE has implemented several safeguards in connection with the listing and trading of Index warrants that will serve to ensure that the Index component securities are relatively highly capitalized and actively traded. In this regard, the CBOE represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than $4,000,000; pre-tax income earnings were greater than $750,000 in its last fiscal year; and the issuer's net income was greater than $400,000), and the issuer has a minimum tangible net worth in excess of $250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each component security of the Index will have a minimum market capitalization of $150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than $50 million.[17]

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of Index warrants. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the CBOE warrant listing standards satisfactorily address potential concerns. Moreover, the CBOE plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Further, pursuant to the Exchange's listing guidelines, only companies capable of meeting the CBOE's index warrant issuer standards will be eligible to issue Index warrants. These standards, among other things, help to ensure that the issuer is sufficiently creditworthy to be able to meet its obligations at the expiration of the Index warrants.

C. Surveillance

In evaluating new derivative instruments, the Commission consistent with the protection of investors, considers the degree to which the derivative exchange has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. It is for this reason that the Commission requires that there be a comprehensive surveillance agreement in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying stocks.[18] Such agreements facilitate the

[13] See Amendment No. 1, supra note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] 15 U.S.C. 78c(f).

[17] The Commission notes that the proposal does not contain a list of the actual components of the Index. The CBOE has committed to provide the list to the Commission, when it becomes publicly available, prior to the trading of the Index warrants. See Amendment No. 2, supra note 5.

[18] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance agreement. A comprehensive surveillance agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a

Continued

availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In order to address the above concerns, the Commission notes that the Index will be maintained in accordance with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index.

For the reasons discussed above, the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index. The Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[19] of the Act, to find good cause exists to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–17 and should be submitted by July 10, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade warrants based on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–98–17), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16349 Filed 6–18–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40007; File No. SR–NASD–98–23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule

June 12, 1998.

I. Introduction

On March 10, 1998, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD") or "Association") to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The proposed rule change was published for comment in Exchange Act Release No. 39893 (April 21, 1998), 63 FR 23317 (April 28, 1998) NASD Regulations submitted an amendment to the proposed rule change on April 29, 1998.[3] A second amendment to the

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comprehensive surveillance agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. *See* Securities Exchange Act Release No. 31529 (November 27, 1992).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, dated April 29, 1998 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the text of the proposed rule change.

proposed rule change was submitted on June 3, 1998.[4] One comment letter was received on the proposal.[5] This order approves the proposed rule change, as amended.

II. Description

NASD Rule 2860(b)(3) provided that the position limit[6] for each equity option is determined according to a five-tiered system whereby more actively traded securities with larger public floats are subject to higher position limits and less actively traded stocks are subject to lower limits.[7] Presently, conventional and standardized equity options are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized or FLEX Equity Option.[8] On September 9, 1997, the Commission approved a two-year pilot program ("Pilot Program") to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Exchange, Inc. ("PCX") (collectively "Options Exchange").[9] In light of the Pilot Program, NASD Regulation is proposing to amend its rules governing position and exercise limits for conventional equity options. NASD Regulation previously has filed a proposed rule change to eliminate position and exercise limits on FLEX Equity Options to make its rules consistent with the Pilot Program.[10] NASD Regulation believes the proposed rule change herein is necessary to foster competition between the over-the-counter ("OTC") market and the Options Exchanges.

FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Because they are non-uniform and individually negotiated, FLEX Equity Options closely resemble and are economically equivalent to conventional equity options. Accordingly, to align more closely the NASD's position limit rules for conventional equity options with the rules for FLEX Equity Options, NASD Regulation proposes to amend Rule 2860(b)(3) to provide that: (1) position limits on conventional equity options shall be increased to three times the basic position limits for standardized equity options on the same security, (2) conventional equity options shall be disaggregated from standardized equity options FLEX Equity Options for position limit purposes; and (3) the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The NASD's Equity Option Hedge Exemption[11] provides for an automatic exemption from equity option limits for accounts that have established hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). Under the Equity Option Hedge Exemption, the largest options position that may be established (combining hedged and unhedged positions) may not exceed three times the basic position limit. The OTC Collar Aggregation Exemption[12] provides that positions in conventional put and call options establishing OTC collars need not be aggregated for position limit purposes. An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position.

At the present time, NASD Regulation believes that the prudent regulatory approach is to increase position limits on conventional equity options in conjunction with continued availability of the Equity Option Hedge Exemption and OTC Collar Aggregation Exemption. NASD Regulation proposes an incremental approach and in this case believes increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate. These proposed limits correspond to the position limits in effect for FLEX Equity Options prior to the Pilot Program.

NASD Regulation also believes that conventional equity options positions should not be aggregated with standardized and FLEX Equity Options on the same securities for position limit purposes. It believes that disaggregation of conventional and other options is necessary to give full effect to the proposed increase in position limits for conventional equity options. Without disaggregation, positions in FLEX Equity Option or standardized option positions would reduce or potentially even eliminate (in the case of FLEX

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[4] See Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, dated June 2, 1998 ("Amendment No. 2"). Amendment No. 2 corrects a deficiency in the language of the proposed rule change by clarifying that the tripling aspect of the proposal will apply to all conventional equity options. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardize equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples the position limits for all conventional equity options, including those for which there is no standardize equity option contract overlying the security.

[5] See Letter to Jonathan G. Katz, Secretary, Commission, from Deutsche Bank Securities, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Salomon Brothers Inc./Smith Barney, Inc., and SBC Warburg Dillon Read, Inc., dated June 2, 1998 ("Firms' Letter"). The letter supports the approval of SR–NASD–98–23, as amended.

The Commission notes that it received a comment letter on a separate NASD rule filing (SR–NASD–97–80) on January 23, 1998, that is relevant to present filing. The letter supported the approval of SR–NASD–97–80, as well a SR–NASD–97–67, which was substantively very similar to the present filing. SR–NASD–97–67, was withdrawn and replaced by the present filing. See Letter to Jonathan G. Katz, Secretary, Commission, from Bear, Stearns & Co., Deutsche Morgan Grenfell, Inc., Goldman, Sachs & Co., Lehman Brothers, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Natwest Securities Corporation, Salomon Brothers, Inc., SBC Warburg Dillon Read, Inc., and Smith Barney, Inc., dated January 23, 1998.

[6] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. See NASD Rules 2860(b) (3) and (4).

[7] Currently, the five tiers are for 4,500, 7,500, 10,500, 20,000, and 25,000 contracts NASD rules do not specifically govern how a specific equity option falls within one of the five position limit tiers. Rather, the NASD's position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purpose of the Government's rule.

[8] Standardized options are exchange-traded options issued by the Options Clearing Corporation ("OCC") that have standard terms with respect to strike prices, expiration dates, and the amount of the underlying security. A conventional option is any other option contract not issued, or subject to issuance by, OCC.

[9] See Exchange Act Release No. 39032 (September 9, 1997) 62 FR 48683 (September 16, 1997).

[10] SR–NASD–98–15. The Commission notes that SR–NASD–98–15 was approved on March 19, 1998. See Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998).

[11] Rule 2860(b)(3)(A)(vii).

[12] 2860(b)(3)(A)(viii).

Equity Options) the available position limits for conventional equity options.

To illustrate how these proposed amendments would work, consider the following example of stock ABCD, which is subject to a position limit of 25,000 standardized equity option contracts. In this example, a market participant could establish a position of 25,000 standardized option contracts on ABCD and an additional 75,000 conventional option contracts on ABCD on the same side of the market, since conventional and standardized option positions would be disaggregated. In addition, the market participant also may have a position of any size in FLEX Equity Options overlying ABCD, since such FLEX Equity Options would not be aggregated with either the conventional equity options or standardized equity options overlying ABCD. Further, by taking advantage of the Equity Option Hedge Exemption, which permits a market participant to assume a hedged options position that is three times the otherwise applicable position limit, a market participant could increase the number of conventional equity options to 225,000 contracts.

NASD Regulation proposes to modify the terms of the OTC Collar Aggregation Exemption to apply to an entire conventional equity option position, not just the portion that is established pursuant to the Equity Option Hedge Exemption. NASD Regulation believes such an amendment is consistent with the economic logic underlying the OTC Collar Aggregation Exemption, *i.e.*, that if the terms of the exemption are met, the segments of an OTC collar will never both be in-the-money at the same time or exercised. Under current rules, assuming that stock ABCD is subject to a basic position limit of 25,000 contracts, a market participant taking advantage of the Equity Option Hedge Exemption could establish a hedged position on ABCD involving a total of 75,000 conventional equity option contracts (three times the basic limit), including 50,000 contracts that are established under the Equity Option Hedge Exemption. A market participant using the OTC Collar Aggregation Exemption could then establish a conventional position of 50,000 long (short) calls and 50,000 short (long) puts, for a total of 125,000 contracts overlying ABCD. The proposed rule change to the OTC Collar Aggregation Exemption would allow a market participant to establish a collar consisting of two segments, each of which involves a position three times greater than the basic position limit. Consequently, using the example above, a market participant could establish an OTC collar on ABCD involving 75,000 long (short) calls and 75,000 short (long) puts, for a total of 150,000 contracts.[13]

If, however, the basic position limits for conventional options were tripled, as proposed above, the permissible options position established under the OTC Collar Aggregation Exemption would be correspondingly increased. For example, if the market participate in the above example had increased the size of its conventional options position to 225,000 contracts pursuant to the Equity Option Hedge Exemption as proposed above (based upon a limit of three times the 75,000 conventional equity options position limit), the market participant could establish an OTC collar on ABCD involving 225,000 long (short) calls and 225,000 short (long) puts, for a total of 450,000 contracts.

Finally, in addition to the proposed rule changes discussed above, the NASD is proposing to clarify and update the examples contained in IM–2860–1 so that they are consistent with the instant proposal and prior increases in the hedge exemption.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[14] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule changes is consistent with Section 11A of the Act in that it will increase the position limits on conventional equity options, disaggregate conventional equity options from exchange-traded equity options for position limit purposes, and provide that the OTC Collar Aggregation Exemption may be utilized with respect to any conventional equity options position, not just that part of the position that is established pursuant to the NASD's Equity Option Hedge Exemption, and thereby allow market participants in the OTC options market to compete effectively with the participants using standardized options or with entities not subject to position limit rules.

Since the inception of conventional equity options trading, the NASD has had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.[15] These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulation [16] and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

The Commission has been careful to balance two competing concerns when considering a self-regulatory organization's position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[17]

The Commission believes that the proposed rule change will improve the conventional equity options market for several reasons. First, the Commission notes that the NASD's current reporting requirements for all conventional equity options transactions establishing large options positions will apply to such transactions effectuated under the new rule. Rule 2860(b)(5)(ii) imposes

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[13] While the OTC Collar Aggregation Exemption is self-effectuating with respect to the hedged components of conventional options positions, NASD Regulation has also permitted members to include non-hedged positions within OTC collars under the terms of the OTC Collar Aggregation Exemption on a pre-approval basis. Accordingly, the instant rule change would turn this pre-approval process for non-hedged components of OTC collars into a self-effectuating process.

[14] 15 U.S.C. 78o–3(b)(6).

[15] As stated earlier, under NASD rules conventional and standardized equity options currently are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized of FLEX Equity Option.

[16] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[17] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978) ("Options Study").

reporting obligations on "each account in which the member has an interest * * * and each customer account, which has established an aggregate position of 200 or more option contracts * * *." Information reported to the NASD is used by the NASD Regulation Market Regulation staff as part of their ongoing market surveillance operations and helps to minimize the risk of any market manipulation or disruption related to the accumulation or disposition of large options positions. It also enables NASD Regulation to identify large positions held or written by a member that could pose a financial risk to the member or its clearing firm.

Second, the tripling of the position limits on conventional equity options will help those investors who utilize conventional equity options, typically large, sophisticated institutional investors, or persons of extremely high net worth, with their extensive hedging needs.[18]

Third, the Commission also believes that the proposed tripling of position limits for conventional equity options will expand the depth and competitiveness of the conventional equity option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Broker-dealers and banks act as dealers in the OTC derivatives market, and compete with each other for counterparty business. The proposal will enable broker-dealers to compete more effectively with banks that are not subject to NASD rules for OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal presents substantial increases in OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal present substantial increases in OTVC options positions. Although the proposed rule change increases threefold the position limits for conventional equity options, those markets that are relatively less active and not as deep in trading interest will remain subject to the lowest existing position limit, *i.e.*, 4,500×3, or 13,500 option contracts. Moreover, as noted above, the large positions will be reported to the NASD for monitoring. Finally, the Commission notes that the proposed positions for conventional equity options are still capped at a fixed level, whereas there are no position limits for FLEX Equity options.

Fourth, the Commission believes that the disaggregation of conventional equity options from standardized equity options is warranted given that the tripling provision will otherwise be of limited effect. That is, if an investor has reached the limit for standardized equity options and is required to aggregate those options with his conventional equity options, he will reach the total position limit for conventional equity options sooner than if the standardized and conventional equity options were not aggregated. The Commission also notes that, under the rules of the Options Exchanges, FLEX Equity Options, which are very similar to conventional equity options, are not aggregated with standardized equity options for position limit purposes.[19]

Fifth, the Commission notes that in September 1997, it approved the elimination of position and exercise limits for FLEX Equity Options on a two year pilot basis.[20] As stated above, FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Conventional equity options are very similar to FLEX Equity Options given that they are also non-uniform and individually negotiated.[21] Traditionally, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission believes that increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate given the Commission's previous approach to the expansion of position and exercise limits. The Commission also believes that the proposed rule change will help to foster competition between the OTC market and the Options Exchanges, as well as ensure that OTC market participants are not placed at a competitive disadvantage vis-à-vis the Options Exchanges.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 makes minor technical changes to the text of the proposed rule. Specifically, Amendment No. 1 clarifies in the rule language that the Equity Option Hedge Exemption program was approved by the Commission on a pilot basis only until December 31, 1998. Amendment No. 1 also makes certain clerical corrections. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No 2 corrects a deficiency in the text of the proposed rule. Specifically, Amendment No. 2 clarifies in the rule language that position limits for conventional equity for which there is not standardized equity option contract overlying the security are also to be tripled. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardized equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples these limits. The Commission believes that accelerated approval of Amendment No. 2 is appropriate given that it clarifies the application of the new position limits in a manner that is consistent with the approach established in the original rule filing. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 and Amendment No. 2 to the proposed rule change, including whether the amendments are consistent

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[18] In the Firms' Letter, the commenters indicate that they "have experienced an overwhelming interest by institutional and other accredited investors to enter into collar transactions and other hedging transactions involving conventional options." On several occasions they have been unable "to meet the demand for this hedging activity due to the relatively low [applicable] conventional option position limits." *See* Firms' Letter, *supra*, note 5.

[19] Positions in FLEX Index Options generally are also not aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index. *See, e.g.*, CBOE Rule 24A.7(c).

[20] *See supra* note 9.

[21] Conventional equity options are not, however, issued or subject to issuance by OCC.

with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–23 and should be submitted July 10, 1998.

IV. Conclusion

For the foregoing reasons, the Commission finds that NASD Regulation's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–98–23) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16351 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40086; File No. SR–NSCC–98–4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Adopting an Interpretation of the Board of Directors Regarding NSCC's Obligation to Continuously Review Participants to Determine if Participants Are Required to Reapply for Membership Due to a Material Change in Conditions

June 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 24, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–98–4) as described in Items I, II, and II below, which items have been prepare primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add Addendum T to NSCC's Rules and Procedures regarding NSCC's obligation to continuously review participants to determine if they are required to reapply for membership due to a material change in conditions. A copy of proposed Addendum T is attached as Exhibit A to the rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NSCC will be permitted to (i) reexamine a participant who has undergone a material change in circumstances,[3] (ii) reconsider the participant's continuing status as a participant as if such entity was initially applying for membership when conditions originally in existence at the time a participant was accepted for membership have materially changed, and (iii) require the participant to satisfy any concerns NSCC may have as to the participant's ongoing membership in NSCC as part of such reevaluation. In addition, Addendum T explicitly states that participants have the affirmative obligation to advise NSCC if such material change occurs.

Under the Act and the rules and regulations thereunder, NSCC is obligated to safeguard securities and funds in the possession and control. NSCC believes that this obligation, coupled with the fact that NSCC is the guarantor of participants' transaction submitted to it for clearance and settlement, require that NSCC have flexibility to consider material changes pertaining to such participants and have the ability to take appropriate steps in light of such changes.

When a material change occurs with respect to an existing participant's ownership, control or management, mix of business, use of third party service provides, or regulatory history, among other areas, NSCC is faced with a different risk perspective than that which it faced at the time it approved such participant's application for membership. The NSCC board has concluded that it is in the best interests of NSCC and its membership as a whole that NSCC address these types of changes, including the ability to require the participants to reapply for membership, as if the participant was not already a participant.

NSCC believes that participants change their business mix as their focus in the financial industry change. According to NSCC, enter new businesses, discontinue old ones, change management, change risk policies, or take other actions or steps which could result in an entirely different entity (other than changing the corporate name of such entity) from the one which was approved for NSCC membership. NSCC believes that if it did not have the ability to continually reexamine participants' status, the purpose behind scrutinizing applications and the comfort level provided by such process, would be undermined.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will clarify the rules of NSCC relating to the continuing standards required for membership and NSCC's obligation to safeguard securities and fund within its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition that is

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[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Proposed Addendum T sets forth three categories where changes may warrant reconsideration: (1) material changes in ownership, control of management, (2) material changes in business lines, including but not limited to, new business lines undertaken, or (3) participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business. Proposed Addendum T states that these categories are listed as examples and should not be viewed as exclusive in the process.

not necessary to appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–98–3 and should be submitted by July 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

BILLING CODE 8010-01-M

[4] 17 CFR 200.30–3(a)(12).

Exhibit A

Underlined, boldface text indicates additions

Modify NSCC's Rules as follows:

ADDENDUM T

**INTERPRETATION OF THE BOARD OF DIRECTORS
CONTINUING RESPONSIBILITY OF THE CORPORATION**

National Securities Clearing Corporation (the "Corporation") is a self-regulatory organization under the Securities Exchange Act of 1934, as amended, and as such has, among others, the obligation to enforce compliance with its rules by its participants. Compliance by participants with the Rules of the Corporation helps to ensure that the Corporation is able to safeguard securities and funds in its possession and to fulfill its obligation as a guarantor of participant's transactions in the Corporation's clearance and settlement systems.

The Corporation's Rules and Procedures establish criteria which applicants must meet to become participants as well as criteria and requirements with respect to continuance, including the ability of the Corporation to require additional assurances as to a participant's ability to meet its commitments as they come due. To fulfill its obligation to ensure the continued eligibility of a clearing participant to utilize the services of the Corporation, the Corporation has employed, among other techniques, a myriad of computerized surveillance programs and interfaces with marketplace self-regulatory organizations and other clearing corporation and depositories.

For more than a decade, the Corporation has recognized that conditions in existence at the time the applicant is accepted for membership may materially change either before the participant has started or subsequent thereto. The Corporation has further recognized that such change in conditions may result in a material change in the firm's risk profile, as determined by the Corporation, thus issues of safety and soundness may cause the Corporation to consider addressing anew the continued membership of some existing participants.

The Board of Directors of the Corporation has determined to clarify, for all concerned, the types of events which may warrant a reconsideration by the Corporation of a participant's continued use of the Corporation's services, beyond simply those circumstances dealing with the immediate ability of a

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participant to meet its obligations as they come due (which are already definitively spelled out in the Corporation's Rules). Three categories where changes may warrant reconsideration are listed below as examples and should not be viewed exclusive in the process:

- o material changes in ownership, control or management;
- o material changes in business lines, including but not limited to, new business lines undertaken; or
- o participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business.

In addition to the above, a firm may fail to meet current entrance standards, whether or not those standards were in effect at the time the firm was admitted. This may, for instance, be due to the development of operational problems or the advent of an adverse regulatory history of the type that would disqualify the firm from initial membership under then current standards.

In the event of the occurrence of any of the above conditions, the Corporation may, among other actions:

a. require that the participant present testimony, facts and/or evidence sufficient to address, to the satisfaction of the Corporation, concerns or questions it may have as to the appropriateness of the participant continuing as such;

b. impose new requirements of a financial or operational nature upon the participant; and/or

c. require the participant to be presented to the Corporation for formal reconsideration of its continued membership as if it were initially applying under then current membership standards (with an adverse determination requiring a reasonable time-frame for the participant to make other clearing arrangements).

All such actions will continue to be subject to appeal, pursuant to the rules of the Corporation. To assist the process of identifying and addressing changes at existing participants, each participant shall have an affirmative duty to notify the Corporation of conditions which may fall within the above categories. Failure to so notify the Corporation shall be deemed, in and of itself, to be a violation of the Corporation's Rules and therefore subject to sanctions.

[FR Doc. 98–16350 Filed 6–18–98; 8:45 am]
BILLING CODE 8010–01–C

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board, Public Meeting

The U. S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, July 12, 1998, from 11:00 a.m. to 5:00 p.m. at the Reno Small Business Development Center, University of Nevada in Reno, to discuss such matters as may be presented by members and staff of the U. S. Small Business Administration, or others present.

For further information, please write or call Ms. Ellen Thrasher, U. S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone (202) 205–6817.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16353 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Midwestern States Regional Fairness Board; Public Hearing

The Midwestern States Regional Fairness Board Public Hearing is to be held on August 10, 1998, starting at 1:00 p.m. at the KeyCorp National Headquarters, 127 Public Square, Cleveland, OH 44114, in space being donated by the KeyCorp Banking Group, to receive comments from small businesses concerning regulatory enforcement or compliance taken by Federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

FOR FURTHER INFORMATION CONTACT: Gary P. Peele, telephone (312) 353–0880.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16286 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Southeastern States Regional Fairness Board; Public Hearing

The Southeastern States Regional Fairness Board Public Hearing is to be held on August 21, 1998, starting at 1:00 p.m. at the BellSouth Building, 333 Commerce, Nashville, TN 37201, in space being donated by the BellSouth Corporation, to receive comments from small businesses concerning regulatory enforcement or compliance taken by Federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact: Gary P. Peele, telephone (312) 353–0880.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16287 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV North Florida District; Jacksonville Florida; Advisory Coucil Meeting; Public Meeting

The U. S. Small Business Administration North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., July 16, 1998, at the Cafe Tropical, 2441 N. W. 43rd Street, Gainesville, Florida, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16288 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10:00 a.m. on Tuesday, June 16, 1998, at the Boston District Office, Room 265, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

For Further Information, please write or call Ms. Mary E. McAleney, District, U. S. Small Business Administration, 10 Causeway Street, Room 265, Boston, Massachusetts 02222–1093, telephone (617) 566–5560.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16289 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2841]

Delegation of Authority No. 145–1; to the Assistant Secretary for International Narcotics and Law Enforcement Affairs

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby amend Delegation of authority No. 145 as follows.

Section 1(g) is amended (I) in the title by striking "Matters" and inserting in its place "and Law Enforcement Affairs"; (II) in subparagraph 1(g)(1) by striking "section 481" each time it appears and inserting in its place "sections 481 and 487" and by striking "Procurement Regulations (41 CFR Chapter 6)" and inserting in its place "Acquisition Regulation (48 CFR Chapter 6)"; and (III) in subparagraph 1(g)(3) by inserting "and anticrime" after "international narcotics control", to read:

"(g) To the Assistant Secretary for International Narcotics and Law Enforcement Affairs:

"(1) Those functions conferred upon the President by sections 481 and 487 of the act, together with all those authorities contained in the act, to the extent necessary or appropriate to accomplish the purposes of sections 481 and 487 of the act: *Provided*, That Department of State procurement for the International Narcotics Control Program shall be carried out in accordance with Department of State Acquisition Regulation (48 CFR Chapter 6).

"(2) Those functions conferred upon the Secretary of State by the determination of the President pursuant to section 604(a) of the act, dated October 18, 1961 (26 FR 10543), and by section 4 of the Executive Order 11223 of May 12, 1965 (30 FR 6635).

"(3) The functions of negotiating, concluding and terminating international agreements relating to international narcotics control and anticrime programs subject to the concurrences required by the Circular 175 Procedure."

This Delegation of Authority shall be effective upon signature.

Dated: May 31, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–16365 Filed 6–18–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice No. 2639]

State Department Consultation With American Indigenous Groups

The Department of State will hold a consultation between U.S. Government officials, federally recognized American Indian and Alaska Native Tribes, and other interested groups/parties to discuss issues of interest to indigenous groups and to provide tribal leaders with an update on progress on the United Nations (U.N.) and Organization of American States (OAS) draft declarations on the indigenous rights. This consultation is intended to build upon previous consultations held in 1996 and 1997, providing a regular forum for discussions between the Department of State and federally recognized American Indian and Alaska Native Tribes. The consultation, which is open to the general public, is scheduled for Tuesday, July 14 from 8:15 a.m. to 5 p.m. and Wednesday, July 15, from 8:15 a.m. to 5 p.m., at the Department of State in Washington, D.C. A reception will be held following the meeting from 5–7 p.m. at the Department.

The consultation will take place in the Loy Henderson Auditorium, Department of State, 2201 C Street, NW., Washington, DC. Registration begins at 8:15 a.m, on both days, at the main entrance, 2201 C Street, of the Department of State. The public is invited to attend the meetings.

Those interested in attending or seeking additional information should contact Karen Jo McIsaac (202–647–2362; fax: 202–647–9519) in the Bureau of Democracy, Human Rights, and Labor at the Department of State. To ensure that your name is on the list of participants, please contact the Department of State no later than July 10, 1998.

Dated: June 4, 1998.

John Shattuck,

Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. 98–16366 Filed 6–18–98; 8:45 am]

BILLING CODE 4710–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 9, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 15, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition For Exemption

Docket No.: 29204.
Petitioner: The Boeing Company.
Regulations Affected: 25.562(b)(2), 25.562(c)(5), 25.562(c)(6).
Description of Petition: To exempt The Boeing Company Model MD–17 freighter airplanes from the floor warpage and femur compression test requirements, and from the head injury criteria requirements of 14 CFR 5.562(b)(2), 25.562(c)(5), 25.562(c)(6), for the pilot, co-pilot, and observer's seat.

Dispositions of Petitions

Docket No.: 28541.
Petitioner: Isaac B. Weathers.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Description of Relief Sought/Disposition: To permit the petitioner to conduct certain flight instruction and simulated instrument flights to meet the recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, June 2, 1998, Exemption No. 6526A.*

Docket No.: 29243.
Petitioner: Atlantic Coast Airlines.
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a).
Description of Relief Sought/Disposition: To allow front row passenger seating on the petitioner's Jetstream Series 4100 Model 4101 airplane. *GRANT, June 2, 1998, Exemption No. 6776.*

Docket No.: 29120.
Petitioner: Air Lab.
Sections of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Air Lab to assign Inspection Procedures Manuals (IPM) to key individuals within departments and to functionally place an adequate number of IPM's for access by all employees, in lieu of providing a copy of the IPM to all supervisory and inspection personnel, subject to certain conditions and limitations. *GRANT, May 18, 1998, Exemption No. 6777.*

Docket No.: 28934.
Petitioner: Covington Aircraft Engines, Inc.
Sections of the FAR Affected: 14 CFR 45.13 (b) and (c).
Description of Relief Sought/Disposition: To permit Covington, instead of the engine manufacturer, to

replace mutilated or unreadable data plates with a copy of the original data plate on Pratt & Whitney Wasp, Wasp Jr., R985, and R1340 engines when an engine or component is overhauled at its facility. The operation would be accomplished using the conditions specified in Covington's petition in lieu of the procedures set forth in FAA Order 8130.2C for the removal of aircraft engine identification plates and the placement of the same data plate on a different engine assembly. *DENIAL, May 29, 1998, Exemption No. 6778.*

Docket No.: 29112.
Petitioner: Pennsylvania Bureau of Aviation.
Sections of the FAR Affected: 14 CFR 156.5(b).
Description of Relief Sought/ Disposition: To permit the petitioner to use up to 1 percent of the State apportionment annual funds issued during fiscal years 1997 and 1998 for program and administrative training costs under the Airport Improvement Program. *GRANT, May 20, 1998, Exemption No. 6779.*

Docket No.: 27821.
Petitioner: Cedar Rapids Police Department Air Support Division.
Sections of the FAR Affected: 14 CFR 91.209(a) and (d).
Description of Relief Sought/ Disposition: To permit the petitioner to conduct air operations in support of law enforcement and drug interdiction without illuminating the lighted position and anticollision aircraft lights required by § 91.209, subject to certain conditions and limitations. *GRANT, June 2, 1998, Exemption No. 6780.*

Docket No.: 29075.
Petitioner: Mercy Medical Center Redding.
Sections of the FAR Affected: 14 CFR 135.213(a).
Description of Relief Sought/ Disposition: To permit the petitioner to conduct emergency medical system departures in fixed-wing aircraft under instrument flight rules in weather that is at or above visual flight rules minimums from airports at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the Administrator. *DENIAL, June 2, 1998, Exemption No. 6781.*

Docket No.: 29025.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit the petitioner to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *GRANT, June 3, 1998, Exemption No. 6782.*

Docket No.: 29012.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Continental to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *GRANT, June 11, 1998, Exemption No. 6783.*

Docket No.: 29151.
Petitioner: Aramco Associated Company.
Sections of the FAR Affected: 14 CFR 91.609(c).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its four Bell Model 212 helicopters in part 91 operations without a digital flight data recorder installed in each of those aircraft, as required by part 91, subject to certain conditions and limitations. *GRANT, June 12, 1998, Exemption No. 6784.*

Docket No.: 29142.
Petitioner: Geo-Seis Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its Bell Model 212 helicopter without an approved digital flight data recorder installed subject to certain conditions and limitations. *GRANT, June 12, 1998, Exemption No. 6785.*

[FR Doc. 98–16360 Filed 6–18–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Establishment of an Aviation Research Grants Program Involving Primarily Undergraduate Institutions and Technical Colleges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of criteria.

SUMMARY: The Federal Aviation Administration (FAA) is providing notice of the principal criteria for the awarding of grants under the Research Grants Program Involving Undergraduate Students, as provided under the FAA Research, Engineering, and Development Authorization Act of 1997, Public Law 105–155. The FAA is soliciting proposals for research grants from primarily undergraduate institutions and technical colleges, including Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs), for research on subjects of relevance to the FAA.

Grants may be awarded in the following three categories:

1. Research projects to be carried out at primarily undergraduate institutions and technical colleges;

2. Research projects that combine research at primarily undergraduate institutions and technical colleges with other research supported by the FAA; or

3. Research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees.

The principal criteria for the awarding of grants under this program are:

1. The relevance of the proposed research to technical research needs identified by the FAA;

2. The scientific and technical merit of the proposed research; and

3. The potential for participation by undergraduate students in the proposed research.

The FAA explicitly reserves the right to make one award, multiple awards, or no awards under this program.

A solicitation, entitled "Grants for Undergraduate Aviation Research" will be available through the Internet beginning June 12, 1998. The ftp address is: ftp://ftp.tc.faa.gov/Grants/Solicitations/ungrad.doc.

Colleges and universities not eligible under the program described in this notice are encouraged to submit applications under our existing grant program. Interested parties may access the current solicitation, Grants for Aviation Research, Program No. 97.2 at any time throughout the year at the ftp site: ftp://ftp.tc.faa.gov/Grants/Solicitations/solic97.doc.

DATES: The solicitation for applications under this program will be available on the Internet beginning June 12, 1998. The Opening Date for receipt of grant applications is July 01, 1998 and the Closing Date is July 31, 1998. Proposals postmarked on or before the closing date will be accepted for review. Applicants should allow at least 90 days for review and processing.

ADDRESSES: Grant applications should be submitted to Clare J. Nanni, Grants Officer, Aviation Research Grants

Program, Office of Research and Technology Applications, AAR–201, FAA, William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405.

FOR FURTHER INFORMATION CONTACT: Clare J. Nanni, Grants Officer, Aviation Research Grants Program, Office of Research and Technology Applications, AAR–201, FAA, William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, e-mail: clare.nanni@faa.dot.gov. Voice: (609) 485–6970, Fax: (609) 485–6509, or the FAA Aviation Research Grants Program hotline at 609–485–8410.

SUPPLEMENTARY INFORMATION: "Research Grants Program Involving Undergraduate Students", appearing at Section 3 of the FAA Research, Engineering, and Development Authorization Act of 1997 (Public Law 105–155), authorizes the FAA to establish a research grants program to utilize primarily undergraduate and technical colleges, including Historically Black Colleges and Universities and Hispanic Serving Institutions, in research on subjects of relevance to the FAA. The central purpose of the FAA Aviation Research Grants Program involving undergraduate students is to encourage the participation of undergraduate students in proposed projects that support innovative research of potential benefit to the long-term growth of civil aviation.

Research Areas

Areas that contribute to the FAA's mission of improving aviation safety, capacity, efficiency, human factors, and security, are as follows:

a. Capacity and Air Traffic Control Technology;

b. Communications, Navigation, and Surveillance;

c. Aviation Weather;

d. Airports;

e. Aircraft Safety Technology;

f. System Security Technology;

g. Human Factors and Aviation medicine;

h. Environment and Energy;

i. Systems Science/Operations Research; and

In addition, research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees are highlighted in the recent legislation. Detailed descriptions of these programs and additional research areas are contained in the program solicitation.

Eligibility

Applications may be submitted by two- and four-year colleges and universities, including HBCUs, HSIs and other minority institutions that meet the following definition of "technical college" or "primarily undergraduate" institutions:

1. Technical College is defined as an institution that offers associate degree programs in arts and science.

2. Primarily undergraduate institutions are such institutions that focus primarily on undergraduate education. Included by the definition are two- and four-year colleges, masters-level institutions, and smaller doctoral institutions that institution-wide did not award a total of more than 20 doctoral degrees during the past two academic years in science and engineering fields supported by the National Science Foundation (NSF).

Proposal Submission

Guidelines for the application format and content are contained in the Solicitation. Every effort will be made to reach a decision and inform the applicant promptly. Unless and until an award is made, the FAA is not responsible for any costs incurred by the proposing organization.

Award Date

Recipients of FAA research grants will be announced on a continuous basis.

Issued in Atlantic County, New Jersey on June 12, 1998.

Jan Brecht-Clark,

Acting Director, Office of Aviation Research, AAR–1.

[FR Doc. 98–16314 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 13–16, 1998, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Tower Building, Minneapolis Airport, 6311 34th Avenue, Minneapolis, Minnesota, from July 13–14, and the Fort Snelling Officers Club, Highway 5 and Post Road, building 395, from July 15–16.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Lintner, Executive Director, ATPAC, Strategic Operations/Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held at the Tower Building, Minneapolis Airport, 6311 34th Avenue, Minneapolis, Minnesota, from July 13–14, 1998, and the Fort Snelling Officers Club, Highway 5 and Post Road, building 395, from July 15–16, 1998.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 9, 1998. The next quarterly meeting of the FAA ATPAC is planned to be held from October 5–8, 1998, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 12, 1998.

Thomas Lintner,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 98–16313 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a change in a task previously assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Brian A. Yañez, Federal Aviation Administration, Aircraft Certification Service (AIR–110), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–9588; fax: (202) 267–5340.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area of the ARAC deals with is aircraft certification procedures, which involve the procedures for aircraft certification found in 14 CFR parts 21, 39, and 183 and Special Federal Aviation Regulation No. 36 (SFAR 36), and which are the responsibility of the Director, Aircraft Certification Service.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC and supported by the Delegation System Working Group. The revision was requested by ARAC.

Review the current system of delegation functions to determine what would improve the safety, quality, and effectiveness of the system, and making recommendations concerning new or revised rules and advisory, guidance, and other (including legislative and training) collateral materials. The FAA is seeking a comprehensive, up-to-date, systematic approach for delegating certification functions to both individuals and organizations, a smooth transition from the delegation systems currently used to the system recommended, and a system as compatible as practicable with the systems used by the civilian aviation authorities of other countries. Specifically, the FAA desires to consolidate the delegation regulations in subparts J and M of part 21, SFAR 36, and section 183.33, into a new subpart. Revise section 183.15 to reflect a change in duration of delegations and in addition, the designation system would be expanded to include organizations designated to issue operating certificates under 14 CFR parts 133 and 137, air agency certificates under CFR part 141, and training center certificates under 14 CFR part 142.

While the examiners delegation functions relative to certification of aircraft and operations have been added to the overall list of delegations, the FAA does not intend to approve designations for functions that are related to air carrier operations at this time. Some examples of functions of which delegation will not be designated include, (1) Training center certificates for approval of air carrier training programs (14 CFR part 142), (2) determination of operational suitability, (3) approval of master minimum equipment lists, (4) approval of air carrier minimum equipment lists, (5) issuance of repair station certificates (14 CFR part 145), (6) approval of flight crew operating manuals, (7) instructions for continued airworthiness which includes the Maintenance Review Board and associated maintenance documents, and other items deemed inappropriate by the Administrator.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of ARAC to consider aircraft certification procedures issues will be open to the public. Meetings of the Delegation System Working Group are not open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 15, 1996.

Brian A. Yañez,

Assistant Executive Director, Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–16357 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Ford Airport, Iron Mountain, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William H. Marchetti, Airport Manager, of the Dickinson County Board of Commissioners, at the following address: County Courthouse, 701 Stevenson Avenue, P.O. Box 609, Iron Mountain, MI 49801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dickinson County Board of Commissioners, under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158)

On March 27, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the Dickinson County Board of

Commissioners was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 14, 1998.

The following is a brief overview of the application.

PFC Application No.: 98–03–U–00–IMT.

Level of the PFC: $3.00.

Actual charge effective date: September 1, 1995.

Estimated charge expiration date: December 31, 2000.

Total approved net PFC revenue: $215,820.00.

Brief description of proposed projects: Install sanitary sewer; rehabilitate runway lighting; construct and light Taxiway "H", GA apron and GA access road. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not applicable.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dickinson County Board of Commissioners.

Issued in Des Plaines, Illinois, on June 12, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–16356 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Grand Forks International Airport, Grand Forks, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stephen E. Johnson, Interim Executive Director, of the Grand Forks Regional Airport Authority at the following address; Grand Forks Regional Airport Authority, 2787 Airport Drive, Grand Forks, North Dakota 58203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Forks Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158. On June 2, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Grant Forks Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 1, 1998.

The following is a brief overview of the application.

PFC application number: 98–05–C–00–GFK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1998.

Proposed change expiration date: October 31, 2004.

Total estimated PFC revenue: $1,398,163.00.

Brief description of proposed project(s): Expand Air Cargo Apron and Construct Service Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Forks Regional Airport Authority offices at the Grand Forks International Airport.

Issued in Des Plaines, Illinois on June 12, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–16358 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Salt Lake and Davis Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) is being prepared for a proposed transportation project in Salt Lake and Davis Counties, Utah. The initial notice of intent was given in the **Federal Register** on March 17, 1997 (Volume 62, Number 51, Pages 12681–12682).

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone (801) 963–0182; Byron Parker, Utah Department of Transportation, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone (801) 975–4806; or Michael Schwinn, U.S. Army Corps of Engineers, Suite A, 1403 South 600 West, Woods Cross, Utah 84010, Telephone (801) 295–8380.

SUPPLEMENTARY INFORMATION: Changes to the original notice of intent include: the determination of the northern terminus, change of the southern terminus from I–80 and 5600 West to 2100 North and I–215, change of the length of the highway from 17 to 13 miles, and updated information on the alternatives studied in detail and public meetings held. A detailed description of these changes are represented in the following information.

The FHWA, in cooperation with the U.S. Army Corps of Engineers, and the

Utah Department of Transportation is preparing an EIS for transportation improvements in the corridor from 2100 North and I–215 in Salt Lake City, Utah northward and eastward to the I–15/U.S. 89 interchange in Farmington, Utah due to transportation demand studies identifying the need for an additional north-south route in corridor. System connections at each end as well as other appropriate interchanges will be included. The proposed improvement involves construction of approximately 13 miles of limited access, divided highway along a new alignment.

Alternatives considered in this study include: (1) taking no action; (2) transportation system management; (3) intelligent transportation systems; (4) investment in mass transit; (5) reconstruction and widening of I–15 North; and (6) build alternatives. Transportation build alternatives being studied in detail include, but are not limited to: three alternative alignments with options.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Three public meetings have been held. Scoping meetings were held on April 30, 1997 and May 1, 1997. Public meetings presenting alternatives were held on August 20 and 21, 1997, and public meetings presenting impacts of alternatives were held on October 28 and 29, 1997. A public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued: June 15, 1998.

Michael G. Ritchie,

Division Administrator.

[FR Doc. 98–16331 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20921]

Coach USA, Inc.—Control—Blue Bird Coach Lines, Inc.; Butler Motor Transit, Inc.; Gad-About Tours, Inc.; P&S Transportation, Inc.; Pittsburgh Transportation Charter Services, Inc.; Syracuse and Oswego Coach Lines, Inc.; Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines; Tucker Transportation Co., Inc.; and Utica-Rome Bus Co., Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of Blue Bird Coach Lines, Inc. (Blue Bird), Butler Motor Transit, Inc. (Butler), Gad-About Tours, Inc. (Gad-About), P&S Transportation, Inc. (P&S), Pittsburgh Transportation Charter Services, Inc. (PTCS), Syracuse and Oswego Coach Lines, Inc. (S&O), Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines (Tippett), Tucker Transportation Co., Inc. (Tucker), and Utica-Rome Bus Co., Inc. (Utica-Rome), all motor passenger carriers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subparts B and C. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 3, 1998. Applicant may file a reply by August 24, 1998. If no comments are filed by August 3, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC–F–20921 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 45 motor passenger carriers. In this transaction, it seeks to acquire direct control of Blue Bird,[1] Butler,[2] Gad-About,[3] P&S,[4] PTCS,[5] S&O,[6] Tippett,[7] Tucker,[8] and Utica-Rome[9] by acquiring all of the outstanding stock of these carriers. According to applicant, the stock of

[1] Blue Bird is a New York corporation. It holds federally issued operating authority in MC–108531, intrastate operating authority issued by the New York Department of Transportation (NYDOT), the Pennsylvania Public Utilities Commission (PAPUC), the New Jersey Department of Transportation, and the Ohio Public Utilities Commission (OHPUC), and authority issued by the Province of Ontario, Canada. The carrier operates 127 motorcoaches, 21 school buses and 8 vans; and it earned revenues of approximately $14.1 million in Fiscal Year (FY) 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Louis A. Magnano.

[2] Butler is a Pennsylvania corporation. It holds federally issued operating authority in MC–126876 and intrastate authority issued by the PAPUC. The carrier operates 28 buses and 3 sedans; it has 68 employees; and it earned revenues of approximately $4.7 million in FY 1996. Prior to the transfer of its stock into a voting trust, it had been owned by William G. Kaylor, Robert M. Kaylor and Thomas M. Kaylor. Prior to the establishment of a voting trust, Butler owned all of the stock of Gad-About, which Coach is also proposing to acquire in this transaction.

[3] Gad-About is an Ohio corporation. It holds federally issued operating authority in MC–196451 and intrastate authority issued by the OHPUC. The carrier operates 3 buses; it has 14 employees; and it earned revenues of approximately $1.9 million in FY 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Butler.

[4] P&S is a Florida corporation. It holds federally issued operating authority in MC–255382. The carrier operates 30 buses; it has 58 employees; and it earned revenues of approximately $3.7 million in FY 1996. Prior to the transfer of its stock into a voting trust, it was owned by Daniel G. Schambon.

[5] PTCS is a Delaware corporation. It holds federally issued operating authority in MC–319195. The carrier operates 400 vehicles; it has 260 employees; and, together with affiliated companies, it earned revenues of approximately $13 million in FY 1997. Prior to the transfer of its stock into a voting trust, it had been owned by Tyburn Limited, a noncarrier.

[6] S&O is a New York corporation. It holds federally issued operating authority in MC–117805 and intrastate authority issued by the NYDOT. The carrier operates 14 buses; it has 26 employees; and it earned revenues of approximately $1.7 million in 1997. Prior to the transfer of its stock into a voting trust, it had been owned by Russell Ferdinand. The carrier is affiliated through common ownership with Utica-Rome.

[7] Tippett is a Florida corporation. It holds federally issued operating authority in MC–174043. The carrier operates 17 buses, 3 minibuses, and 1 limousine; it has 38 employees; and it earned revenues of approximately $4.4 million for the fiscal year ending June 30, 1997. Prior to the transfer of its stock into a voting trust, it was owned by Marie Louise Tippett.

[8] Tucker is a Florida corporation. It holds federally issued operating authority in MC–223424. The carrier operates 7 buses; it has 24 employees; and it earned revenues of approximately $650,000 for the fiscal year ending May 31, 1997. Prior to the transfer of its stock into a voting trust, it was owned by Benjamin C. Early.

[9] Utica-Rome is a New York corporation. It holds federally issued operating authority in MC–7914 and intrastate operating authority issued by the NYDOT. The carrier operates 13 buses; it has 37 employees; and it earned revenues of approximately $1.6 million in 1997. Prior to the transfer of its stock into a voting trust, it was owned by Russell Ferdinand, who also owned all of the stock of S&O.

each of these carriers is currently held in independent voting trusts to avoid any unlawful control pending disposition of this proceeding.

Applicant submits that there will be no transfer of any federal or state operating authorities held by the acquired carriers. Following the consummation of the control transaction, each of the acquired carriers will continue operating in the same manner as before and, according to applicant, granting the application will not reduce competitive options available to the traveling public. Applicant asserts that the acquired carriers do not compete with one another or, to any meaningful degree, with any other Coach-controlled company. Applicant submits that each of the acquired carriers is relatively small and each faces substantial competition from other bus companies and other transportation modes.

Applicant also submits that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicant claims that the carriers to be acquired will benefit from lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicant indicates that Coach will provide each of the carriers to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, applicant states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment and that coordinated driver training services will be provided. Applicant also states that the proposed transaction will benefit the employees of the acquired carriers and that all collective bargaining agreements will be honored by Coach.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby enhancing the benefits resulting from these control transactions.

Applicant certifies that: (1) Blue Bird, Butler, Gad-About, and P&S hold satisfactory safety ratings from the U.S. Department of Transportation (DOT) and that PTCS, S&O, Tippett, Tucker, and Utica-Rome have not been rated by DOT; (2) each of the acquired carriers has sufficient liability insurance; (3) none of the acquired carriers is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

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This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on August 3, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: June 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16392 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33606]

Minnesota Commercial Railway Company—Acquisition and Operation Exemption—Certain Lines of The Burlington Northern and Santa Fe Railway Company

Minnesota Commercial Railway Company (MC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 5 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF), plus incidental trackage rights to reach certain industries and MC's own trackage.[1] The line is located in Minneapolis, MN, known as the Southeast Minneapolis Switching District (SEMSD).[2]

The transaction was scheduled to be consummated on or shortly after May 28, 1998.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33606, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eugenia Langan, Esq., Shea & Gardner, 1800 Massachusetts Ave., N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 11, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16317 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

[1] MC certifies that its projected revenues will not result in the creation of a Class II or Class I rail carrier.

[2] BNSF classified the SEMSD as industrial trackage, and, consequently, there are no mileposts on the subject trackage.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–369 (Sub-No. 3X)]

Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY

On June 1, 1998, Buffalo & Pittsburgh Railroad, Inc. (B&P) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon two contiguous segments of rail line: (1) from milepost 2.0, at or near Buffalo, NY, to milepost 45.0, at or near Ashford Junction, NY, a distance of 43.0 miles; and (2) from milepost 93.8, at or near Ashford Junction, to milepost 103.0, at or near Salamanca, NY, a distance of 9.2 miles, in Erie and Cattaraugus Counties, NY. The line segments traverse U.S. Postal Service Zip Codes 14224, 14218, 14127, 14098, 14170, 14033, 14055, 14141, 14171, 14731, and 14741. The line segments include the stations of Lackawanna-South Park (milepost 3), Kellogg (milepost 5), East Hamburg (milepost 8), Orchard Park (milepost 9), Colden (milepost 19), East Concord (milepost 26), Springville (milepost 30), West Valley (milepost 39), Ashford Junction (milepost 45), and Ellicottville (milepost 98.1).

The line segments do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 18, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line segments, the segments may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 13, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–369 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sebastian Ferrer, 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796. Replies to the B&P petition are due on or before July 13, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

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Decided: June 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16316 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–354 (Sub–No. 2X)]

Rochester & Southern Railroad, Inc.—Abandonment Exemption—in Cattaraugus County, NY

On June 1, 1998, Rochester & Southern Railroad, Inc. (R&S) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 10.41-mile line of railroad, extending from milepost 83.39, at or near Machias, to milepost 93.8, at or near Ashford Junction, in Cattaraugus County, NY. The line traverses U.S. Postal Service Zip Codes 14101 and 14731, and includes the non-agency rail stations of Ashford Junction, located at milepost 93.6, and Machias, located at milepost 83.4.

The line does not contain federally granted rights-of-way. Any documentation in R&S's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 18, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 13, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–354 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796. Replies to the R&S petition are due on or before July 13, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who

commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–15972 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, June 24, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTER TO BE CONSIDERED: Privatization of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 16, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–16517 Filed 6–17–98; 12:17 pm]

BILLING CODE 8720–01–M

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federal register

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Part II

Department of Education

34 CFR Parts 662, 663, and 664
Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, Fulbright-Hays Faculty Research Abroad Fellowship Program, and Fulbright-Hays Group Projects Abroad Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 662, 663, and 664

RIN 1840–AC53

Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, Fulbright-Hays Faculty Research Abroad Fellowship Program, and Fulbright-Hays Group Projects Abroad Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program, Faculty Research Abroad Fellowship Program, and Group Projects Abroad Program. These amendments are needed as a result of changes in terminology applicable to these programs and changes in the selection criteria. The proposed regulations would change the names of these programs, remove obsolete references, modify the selection criteria, and make other technical changes.

DATES: Comments must be received by the Department on or before July 20, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Karla Ver Bryck Block, U.S. Department of Education, 600 Independence Avenue, SW., Suite 600C Portals Building, Washington, DC 20202–5331. Comments may also be sent through the Internet to: comments@ed.gov

You must include the term "Fulbright-Hays" in the subject line of your electronic message.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Karla Ver Bryck Block. Telephone: (202) 401–9774. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 600C Portals Building, 1280 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Background

On March 4, 1995 the President announced a Regulatory Reinvention Initiative to reform the Federal regulatory system. In response to the President's initiative, on August 23, 1996 the Secretary issued an Advance Notice of Proposed Rulemaking (ANPRM) to request public comment on the changes being considered in the Department' programs to simplify regulations and reduce regulatory burden (Regulatory Reinvention, 61 FR 43639, August 23, 1996). Regulations for the International Education Programs in 34 CFR Parts 662 (Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program), 663 (Faculty Research Abroad Fellowship Program), and 664 (Group Projects Abroad Program) were included in the ANPRM. The Secretary received no comments on changes proposed in the ANPRM for the International Education Programs.

Proposed Regulatory Changes

As part of the President's Regulatory Reinvention Initiative, the Department is reviewing and revising the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program, Faculty Research Abroad Fellowship Program, and Group Projects Abroad Program. The Secretary is proposing amendments which are needed to improve the application review process and to update the regulations in light of developments in the field of foreign language, area, and international studies, including political developments abroad, modifications in the policies and practices of the J. William Fulbright Foreign Scholarship Board, and interpretations of regulations. In the spirit of reinventing government, the goal of the proposed changes is to markedly reduce burden associated with the regulations.

The proposed regulations would change the names of these programs to align them with how they are popularly referred to in the field. Additionally, the proposed regulations would make changes in the terminology applicable to these programs, remove obsolete references, and make changes in the selection criteria. The proposed regulations would also reorganize the sections, change the names of several section titles, correct errors in the numbering of the sections, and make other technical changes to improve the regulations.

The substantive changes proposed in the regulations are discussed with respect to each part. A number of the substantive changes proposed would affect each of the parts being amended (34 CFR Parts 662, 663, and 664). Therefore, in the discussion of the proposed changes under Part 662, it is noted whether the proposed change would be duplicated in a corresponding section of Parts 663 or 664.

Part 662

The name of Part 662 would be changed to Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program. Throughout Parts 662, 663, and 664 the "Board of Foreign Scholarships" would be changed to "J. William Fulbright Foreign Scholarship

Board" to reflect the change in the name of the board.

Proposed § 662.3 would delete current paragraph (a)(3) to eliminate persons "in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident" as eligible applicants. The proposed change reflects the Secretary's decision that to receive a federally funded fellowship, a person should demonstrate commitment to the United States, either by being a citizen or permanent resident. The proposed change furthers the goal of the program to train people who will then serve in the United States educational field. The proposed change would also apply to §§ 663.3 and 664.3.

Proposed § 662.3 would also delete current paragraph (a)(4) which states that a resident of the Trust Territory of the Pacific Islands is eligible for a fellowship, since these islands are no longer a trust territory. The proposed change would also apply to §§ 663.3 and 664.3.

Proposed § 662.7 would revise the list of terms used in this part that are defined in 34 CFR Part 77, and it would add 34 CFR Part 80. Terms that are not used in this part would be deleted.

Proposed § 662.7(c) would change the definition of "dependent". The proposed regulation would add the requirement that the individual being claimed as a dependent must accompany the recipient to his or her training site for the entire fellowship period. Also, the proposed regulation would narrow the definition of "dependent" to exclude parent(s) of a participant or parents of the participant's spouse. Both changes in the definition are grounded in the need to conserve limited program funds. By requiring that in order to receive a dependent's allowance the dependent be at the training site for the entire fellowship period, the Secretary will preclude the use of program funds for short term visits. The changes in the dependent's definition with regard to parents would bring the program's policy toward dependents more in line with similar fellowship programs. Additionally, only once in more than 30 years of program administration has a dependent's allowance been requested for a parent.

Proposed § 662.7(c) would eliminate the definition for "foreign currencies" since all foreign currency accounts previously available to the Secretary for operation of this program have been exhausted.

All of the proposed changes to § 662.7(c) would also apply to § 663.7(c).

Proposed § 662.10 incorporates the language found in current § 662.21. Paragraph (c) of current § 662.21 which addresses requirements for an applicant who plans to conduct research in the former USSR and Eastern European countries was deleted, since changes in the research climate in those countries have eliminated the need to require an applicant to apply to the International Research and Exchange Board. The proposed change would also apply to § 663.10.

Proposed § 662.20(d) preserves and clarifies the current position of the Department relating to veteran's preference. The regulation would add language to clarify that if two scores are tied and one of the applicants is a veteran, the applicant who is a veteran will receive a preference. The proposed change would also apply to § 663.20(d).

Proposed § 662.21 would revise the selection criteria. The revised criteria would reflect a greater consistency with criteria used in comparable fellowship programs. This would facilitate writing fellowship applications for individuals since the applications would be similar.

There would also be a greater emphasis on foreign language training. Since these programs were originally intended to enhance the foreign language competence of individuals trained in American schools, the criteria would be modified to give greater emphasis to having acquired a foreign language. Paragraph (c)(3) would add the requirement that the applicant be proficient in one or more of the languages of the country or countries of research, excluding English and the applicant's native language. The proposed language most likely would result in a decrease in the number of applications from individuals wishing to conduct research in English and would encourage non-native born United States citizens or resident aliens to acquire an additional foreign language. The Department has experienced a substantial increase in the number of applications for conducting research in English.

The points assigned would be changed to allow the readers greater ability to differentiate among the applications. The proposed changes in points assigned are reflected in § 662.21(a), (b), and (c). Due to the extremely high caliber of applications, there is frequently a clustering of high scores. The proposed point structure would allow readers a broader range in which to assign points. Under current § 662.21 points are assigned in a narrow range and a multiplication factor is applied, which results in significant clustering of like applications.

The Department has consulted with various experts in language and area studies as well as administrators of fellowship programs in developing the proposed revisions to the selection criteria. Their comments and feedback have been incorporated into these proposed changes.

The proposed changes to § 662.21 would also apply to § 663.21.

Proposed § 662.22 incorporates the language from current § 662.33 and would add a new paragraph (b) to prevent an applicant from receiving more than one fellowship under the Fulbright-Hays Act in a given fiscal year. The provision would prevent an applicant from receiving a fellowship from the Department and United States Information Agency (USIA) within the same fiscal year. The proposed change would ensure that limited funds appropriated to the agencies have a broader impact and are not used duplicatively. The proposal reflects the current policy statements of the Foreign Scholarship Board.

Similar to proposed § 662.10, proposed § 662.22 would eliminate language from current § 662.33(a)(2) which addresses requirements for an applicant who plans to conduct research in the USSR and Eastern European countries. Changes in the research climate in those countries have eliminated the need to require an applicant to apply to the International Research and Exchange Board. The proposed change would also apply to § 663.22.

Part 663

The name of Part 663 would be changed to Fulbright-Hays Faculty Research Abroad Fellowship Program.

Section 663.3 outlines who is eligible to receive a fellowship under this program. Current § 663.3(d)(1) and (2) would be deleted from the proposed regulations because they are part of the selection criteria and should not be considered under eligibility.

Part 664

The name of Part 664 would be changed to Fulbright-Hays Group Projects Abroad Program.

Proposed § 664.5 would revise the list of terms used in this part that are defined in EDGAR, 34 CFR Part 77. Terms that are not used in this part would be deleted.

Sections 664.11, 664.12, and 664.13 propose changes in the length of the projects, allowing for shorter project periods. The changes are proposed to allow applicants greater flexibility in carrying out their projects. The current provisions encouraged longer periods in

the field, even when they were not necessary for the successful accomplishment of the project goals. Proposed § 664.11 would change the length of a short term project from six weeks under current regulations, to from four to six weeks. Proposed § 664.12 would change the length of a curriculum development project from six to eight weeks under current regulations, to four to eight weeks. Proposed § 664.13 would change the length of a group research project from two to twelve months under current regulations, to three to twelve months.

In order to be consistent with Parts 662 and 663, proposed § 664.30 would add a new paragraph (d) which establishes that the Secretary will consider for funding only projects that an applicant proposes to carry out in a country in which the United States has diplomatic representation.

Proposed § 664.31(a)(2)(v) and (b)(4) which address the inclusion of underrepresented groups in the selection criteria for applications would be revised to be consistent with the Education Department General Administrative Regulations (EDGAR) (§ 75.210(c)(5) and (d)(1)(iv)). The proposed language would require the applicant to ensure that participants in the Fulbright-Hays Group Projects and its personnel selected for employment are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Proposed § 664.33(b)(1) would allow for greater flexibility in establishing annual per diem rates, consistent with the cost of living in overseas areas. Current regulations require a maintenance stipend to be based on 50 percent of the amount established in the U.S. Department of the State publication "Maximum Travel Per Diem Allowances for Foreign Areas". Proposed § 664.33(b)(1) would eliminate the 50 percent limitation which would permit an upwards or a downwards adjustment based on the cost of living in the host country.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 662.1 *What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program*?). (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FB–10B), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small institutions of higher education. The proposed regulations would not have a significant economic impact on any of the entities participating in the programs because the regulations impose minimal application and administrative costs necessary to protect Federal funds.

Paperwork Reduction Act of 1995

Sections 662.21, 663.21, and 664.31 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: *Application for Grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program (Part 662), Fulbright-Hays Faculty Research Abroad Fellowship Program (Part 663).*

Under the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) and Faculty Research Abroad (FRA) Programs, individual scholars and eligible institutions apply simultaneously for benefits under a single grant. Individual scholars apply for fellowships; however grants are made to the successful scholars' institutions. Respondents include individuals and institutions of higher education. The data requested are used in determining the academic qualifications and suitability of the individual applicant, potential political sensitivity and feasibility of the project in terms of the host country reaction, research climate, and adequacy of the proposed budget.

The data requested are the minimum necessary to administer the grant in compliance with program regulations. The annual reporting and record keeping burden for: (1) student respondents is estimated to average 30 hours for each response for 600 respondents, totaling 18,000 burden hours; (2) faculty respondents is estimated to average 8 hours for each response for 70 respondents, totaling 560 burden hours; (3) project directors is estimated to average 15 hours for each response for 130 respondents, totaling 1,950 burden hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 20,510 hours.

Fulbright-Hays Group Projects Abroad Program (Part 664)

Under these proposed regulations, institutions of higher education, State departments of education, and private nonprofit organizations are eligible to apply for grants to conduct educational projects abroad. Teachers, undergraduate and graduate students, and faculty are selected by grantees to participate in these projects. The proposed regulations will be used to obtain the programmatic and budgetary information needed to evaluate applications and make funding decisions. The data requested are used in determining the need and academic worth of specific projects, political sensitivity and feasibility in terms of host country reaction, and adequacy of the proposed budget.

Advanced intensive language projects, which apply every three years, do not have to submit full-blown proposals each year, only in the initial year for multi-year projects. The annual reporting and record keeping burden for this collection of information is estimated to average 100 hours for each response for 95 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 9,500 hours.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control

number. The valid OMB control numbers assigned to the collection of information in these regulations will be displayed at the end of the affected sections of the final regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

These programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects

34 CFR parts 662 and 663

Colleges and universities, Education, Educational research, Educational study programs, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR part 664

Colleges and universities, Education, Educational study programs, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Numbers: 84.022 Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; 84.019 Fulbright-Hays Faculty Research Abroad Fellowship Program; and 84.021 Fulbright-Hays Group Projects Abroad Program)

Dated: June 15, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 662, 663, and 664 to read as follows:

PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.

662.1 What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program?
662.2 Who is eligible to receive an institutional grant under this program?
662.3 Who is eligible to receive a fellowship under this program?
662.4 What is the amount of a fellowship?
662.5 What is the duration of a fellowship?
662.6 What regulations apply to this program?
662.7 What definitions apply to this program?

Subpart B—Applications

662.10 How does an individual apply for a fellowship?
662.11 What is the role of the institution in the application process?

Subpart C—Selection of Fellows

662.20 How is a Fulbright-Hays Doctoral Dissertation Research Abroad Fellow selected?
662.21 What criteria does the Secretary use to evaluate an application for a fellowship?
662.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

Subpart D—Post-award Requirements for Institutions

662.30 What are an institution's responsibilities after the award of a grant?

Subpart E—Post-award Requirements for Fellows

662.41 What are a fellow's responsibilities after the award of a fellowship?
662.42 How may a fellowship be revoked?

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 662.1 What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program?

(a) The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to doctoral candidates who propose to conduct dissertation research abroad in modern foreign languages and area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b)(1) Is a graduate student in good standing at an institution of higher education; and

(2) When the fellowship period begins, is admitted to candidacy in a doctoral degree program in modern foreign languages and area studies at that institution;

(c) Is planning a teaching career in the United States upon completion of his or her doctoral program; and

(d) Possesses sufficient foreign language skills to carry out the dissertation research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow and his or her dependents related to cost of living in the host country or countries;

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses; and

(4) Health and accident insurance premiums.

(b) In addition, the Secretary may pay—

(1) Emergency medical expenses not covered by health and accident insurance; and

(2) The costs of preparing and transporting a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e)(1) and (2))

§ 662.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than six nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 662; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 34 CFR Parts 77 and 80:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Secretary

(b) The definition of *institution of higher education* as used in this part is contained in 34 CFR 600.4.

(c) The following definitions of other terms used in this part apply to this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—Applications

§ 662.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education in which the individual is enrolled.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 662.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its students;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary and requesting an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 662.20 How is a Fulbright-Hays Doctoral Dissertation Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 662.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 662.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a)(1) The Secretary uses the criteria in this section to evaluate an application for a fellowship.

(2) The maximum score for all of the criteria is 100 points. However, if priority criteria described in paragraph (c) of this section are used, the maximum score is 110 points.

(3) The maximum score for each criterion is shown in parentheses with the criterion.

(b) *Quality of proposed project.* (60 points) The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline;

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries; and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field.

(c) *Qualifications of the applicant.* (40 points) The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record; (10)

(2) The extent to which the applicant's academic record demonstrates a strength in area studies relevant to the proposed project; (10)

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; (15) and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both. (5)

(d) *Priorities.* (10 points) (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the **Federal Register**.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as the Caribbean or Poland;

(ii) An academic discipline, such as economics or political science;

(iii) A language, such as Tajik or Indonesian; or

(iv) A topic, such as public health issues or the environment.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 662.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

(a) The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 662.20(e) from binational commissions or United States diplomatic missions.

(b) No applicant for a fellowship may be awarded more than one graduate fellowship under the Fulbright-Hays Act from appropriations for a given fiscal year.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 662.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 662.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 662.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 662.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 662.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain a student in good standing with the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 662.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.

663.1 What is the Fulbright-Hays Faculty Research Abroad Fellowship Program?
663.2 Who is eligible to receive an institutional grant under this program?
663.3 Who is eligible to receive a fellowship under this program?
663.4 What is the amount of a fellowship?
663.5 What is the duration of a fellowship?
663.6 What regulations apply to this program?
663.7 What definitions apply to this program?

Subpart B—Applications

663.10 How does an individual apply for a fellowship?
663.11 What is the role of the institution in the application process?

Subpart C—Selection of Fellows

663.20 How is a Fulbright-Hays Faculty Research Abroad Fellow selected?
663.21 What criteria does the Secretary use to evaluate an application for a fellowship?
663.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

Subpart D—Post-award Requirements for Institutions

663.30 What are an institution's responsibilities after the award of a grant?

Subpart E—Post-award Requirements for Fellows

663.41 What are a fellow's responsibilities after the award of a fellowship?
663.42 How may a fellowship be revoked?

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 663.1 What is the Fulbright-Hays Faculty Research Abroad Fellowship Program?

(a) The Fulbright-Hays Faculty Research Abroad Program is designed to contribute to the development and improvement of modern foreign language and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to faculty members who propose to conduct research abroad in modern foreign languages and area studies to improve their skill in languages and knowledge of the culture of the people of these countries.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b) Is employed by an institution of higher education;

(c) Has been engaged in teaching relevant to his or her foreign language or area studies specialization for the two years immediately preceding the date of the award;

(d) Proposes research relevant to his or her modern foreign language or area specialization which is not dissertation research for a doctoral degree; and

(e) Possesses sufficient foreign language skills to carry out the research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow related to his or her academic year salary; and

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses.

(b) The Secretary may pay—

(1) Emergency medical expenses not covered by the faculty member's health and accident insurance; and

(2) The costs of preparing and transporting a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e)(1) and (2))

§ 663.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than three nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 663; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 34 CFR Parts 77 and 80:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Secretary

(b) The definition of *institution of higher education as used in this part is contained in 34 CFR 600.4.*

(c) The following definitions of other terms used in this part apply to this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—Applications

§ 663.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education at which the individual is employed.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 663.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its faculty;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary through a request for an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 663.20 How is a Fulbright-Hays Faculty Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 663.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 663.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a)(1) The Secretary uses the criteria in this section to evaluate an application for a fellowship.

(2) The maximum score for all of the criteria is 100 points. However, if priority criteria described in paragraph (c) of this section are used, the maximum score is 110 points.

(3) The maximum score for each criterion is shown in parentheses with the criterion.

(b) *Quality of proposed project.* (60 points) The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline;

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community; and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies.

(c) *Qualifications of the applicant.* (40 points) The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of applicant's academic record (teaching, research, contributions, professional association activities); (10)

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization; (10)

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language), of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; (15) and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both. (5)

(d) *Priorities.* (10 points) (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the **Federal Register**.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as East Asia or Latvia;

(ii) An academic discipline, such as history or political science;

(iii) A language, such as Hausa or Telegu; or

(iv) A topic, such as religious fundamentalism or migration.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 663.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 663.20(e) from binational commissions or United States diplomatic missions.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 663.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 663.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 663.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 663.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 663.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain employed by the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 663.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 664—FULBRIGHT-HAYS GROUP PROJECTS ABROAD PROGRAM

Subpart A—General

Sec.
664.1 What is the Fulbright-Hays Group Projects Abroad Program?
664.2 Who is eligible to apply for assistance under the Fulbright-Hays Group Projects Abroad Program?
664.3 Who is eligible to participate in projects funded under the Fulbright-Hays Group Projects Abroad Program?
664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?
664.5 What definitions apply to the Fulbright-Hays Group Projects Abroad Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

664.10 What kinds of projects does the Secretary assist?
664.11 What is a short-term seminar project?
664.12 What is a curriculum development project?
664.13 What is a group research or study project?
664.14 What is an advanced overseas intensive language training project?

Subpart C—How Does the Secretary Make a Grant?

664.30 How does the Secretary evaluate an application?
664.31 What selection criteria does the Secretary use?
664.32 What priorities may the Secretary establish?
664.33 What costs does the Secretary pay?

Subpart D—What Conditions Must Be Met by a Grantee?

664.40 Can participation in a Fulbright-Hays Group Projects Abroad be terminated?

Authority: 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 664.1 What is the Fulbright-Hays Group Projects Abroad Program?

(a) The Fulbright-Hays Group Projects Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries.

(b) Under the program, the Secretary awards grants to eligible institutions, departments, and organizations to conduct overseas group projects in research, training, and curriculum development.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.2 Who is eligible to apply for assistance under the Fulbright-Hays Group Projects Abroad Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) State departments of education;

(c) Private non-profit educational organizations; and

(d) Consortia of institutions, departments, and organizations described in paragraphs (a), (b), or (c) of this section.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.3 Who is eligible to participate in projects funded under the Fulbright-Hays Group Projects Abroad Program?

An individual is eligible to participate in a Fulbright-Hays Group Projects Abroad, if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; and

(b)(1) Is a faculty member who teaches modern foreign languages or area studies in an institution of higher education;

(2) Is a teacher in an elementary or secondary school;

(3) Is an experienced education administrator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or postsecondary level; or

(4) Is a graduate student, or a junior or senior in an institution of higher education, who plans a teaching career in modern foreign languages or area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?

The following regulations apply to this program:

(a) The regulations in this part 664; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1), 2456(a)(2))

§ 664.5 What definitions apply to the Fulbright-Hays Group Projects Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Project
Private
Public
Secretary
State
State educational agency
Supplies

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Fulbright-Hays Group Projects Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

J. William Fulbright Foreign Scholarship Board means the presidentially appointed board which is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 664.10 What kinds of projects does the Secretary assist?

The Secretary assists projects which are designed to develop or improve programs in modern foreign language or area studies at the elementary, secondary, or postsecondary level by supporting overseas projects in research, training, and curriculum development by groups of individuals engaged in a common endeavor. Projects may include, as described in §§ 664.11 through 664.14, short-term seminars, curriculum development teams, group research or study, and advanced intensive language programs.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.11 What is a short-term seminar project?

A short-term seminar project is—

(a) Designed to help integrate international studies into an institution's or school system's general curriculum; and

(b) Normally four to six weeks in length and focuses on a particular aspect of area study, such as, for example, the culture of the area or a portion of the culture.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.12 What is a curriculum development project?

(a) A curriculum development project—

(1) Is designed to permit faculty and administrators in institutions of higher education and elementary and secondary schools, and administrators in State departments of education the opportunity to spend generally from four to eight weeks in a foreign country acquiring resource materials for curriculum development in modern foreign language and area studies; and

(2) Must provide for the systematic use and dissemination in the United States of the acquired materials.

(b) For the purpose of this section, resource materials include artifacts, books, documents, educational films, museum reproductions, recordings, and other instructional material.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.13 What is a group research or study project?

(a)(1) A group research or study project is designed to permit a group of faculty of an institution of higher education and graduate and undergraduate students to undertake research or study in a foreign country.

(2) The period of research or study in a foreign country is generally from three to twelve months.

(b) As a prerequisite to participating in a research or training project, participants—

(1) Must possess the requisite language proficiency to conduct the research or study, and disciplinary competence in their area of research; and

(2) In a project of a semester or longer, shall have completed, at a minimum, one semester of intensive language training and one course in area studies relevant to the projects.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.14 What is an advanced overseas intensive language training project?

(a)(1) An advanced overseas intensive language project is designed to take advantage of the opportunities present in the foreign country that are not present in the United States when providing intensive advanced foreign language training.

(2) Project activities may be carried out during a full year, an academic year, a semester, a trimester, a quarter, or a summer.

(3) Generally, language training must be given at the advanced level, i.e., at the level equivalent to that provided to students who have successfully completed two academic years of language training.

(4) The language to be studied must be indigenous to the host country and maximum use must be made of local institutions and personnel.

(b) Generally, participants in projects under this program must have successfully completed at least two academic years of training in the language to be studied.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart C—How Does the Secretary Make a Grant?

§ 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad under the criteria in § 664.31.

(b) In general, the Secretary awards up to 95 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 110 possible points. The maximum possible points for each criterion are shown in parentheses.

(c) All selections by the Secretary are subject to review and final approval by the J. William Fulbright Foreign Scholarship Board.

(d) The Secretary does not recommend a project to the J. William Fulbright Foreign Scholarship Board if the applicant proposes to carry it out in a country in which the United States does not have diplomatic representation.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the J. William Fulbright Foreign Scholarship Board projects for funding under this part. The criteria are weighted and may total 105 points:

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information to determine the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (Maximum 15 points).

(1) The Secretary reviews each application for information to determine the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the

project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (Maximum 30 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education. (Maximum 15 points).

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies. (Maximum 5 points).

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (Maximum 10 points).

(g) *Priorities.* (Maximum 15 points) The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(Authority: 22 U.S.C. 2452(b)(6); 2456(a)(2))

§ 664.32 What priorities may the Secretary establish?

(a) The Secretary may establish for each funding competition one or more of the following priorities:

(1) Categories of projects described in § 664.10.

(2) Specific languages, topics, countries or geographic regions of the world; for example, Chinese and Arabic, Curriculum Development in Multicultural Education and Transitions from Planned Economies to Market Economies, Brazil and Nigeria, Middle East and South Asia.

(3) Levels of education; for example, elementary and secondary, postsecondary, or postgraduate.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 664.33 What costs does the Secretary pay?

(a) The Secretary pays only part of the cost of a project funded under this part. Other than travel costs, the Secretary does not pay any of the costs for project-related expenses within the United States.

(b) The Secretary pays the cost of the following—

(1) A maintenance stipend related to the cost of living in the host country or countries;

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart D—What Conditions Must Be Met by a Grantee?

§ 664.40 Can participation in a Fulbright-Hays Group Projects Abroad be terminated?

(a) Participation may be terminated only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a termination of participation on the basis of failure by the grantee to ensure that participants adhere to the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

[FR Doc. 98–16266 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–P

VOL 63 ISS 118 JE 19 1998 UMI

federal register

Friday
June 19, 1998

Part III

Department of Labor

29 CFR Parts 402 et al.
Office of Labor-Management Standards; Technical Amendments of Rules Relating to Labor-Management Standards and Standards of Conduct for Federal Sector Labor Organizations; Final Rule

VOL 63 ISS 118 JE 19 1998 UMI

DEPARTMENT OF LABOR

29 CFR Parts 402, 403, 404, 406, 408, 409, 417, 452, 453, 457, and 458

RIN 1215–AB22

Office of Labor-Management Standards, Technical Amendments of Rules Relating to Labor-Management Standards and Standards of Conduct for Federal Sector Labor Organizations

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document makes a number of technical amendments to the Department of Labor's regulations at Chapter IV of title 29 of the Code of Federal Regulations. These amendments are necessary to ensure that the regulations conform to prior regulatory revisions and organizational changes, and to correct typographical and other errors.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, D.C. 20210, (202) 219–7373 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Chapter IV of title 29 of the Code of Federal Regulations contains the regulations implementing the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) and the standards of conduct for federal sector labor organizations. An internal review of Chapter IV disclosed the need to make a number of technical corrections and amendments to the regulations.

First, section 408.6 is amended to delete the reference to Form LM–1A. That reporting form had previously been used by unions to disclose changes in their constitution and bylaws and changes to the information reported on Form LM–1. Form LM–1A was eliminated in the final rule published in the **Federal Register** on December 21, 1993, 58 FR 67594, 67599. However, that final rule inadvertently neglected to revise section 408.6 to eliminate the reference to Form LM–1A.

Second, due to a reorganization in the Department of Labor pursuant to Secretary's Order No. 5–96 (62 FR 107), the Office of Management and Budget (OMB) assigned new control numbers approving the reporting forms required by the LMRDA and the standards of conduct regulations. Accordingly, the regulations are amended to cite the new OMB control numbers.

Third, sections 417.2(a), 457.15, and 457.16, which define positions in the Office of Labor-Management Standards (OLMS), are amended to clarify that OLMS is a unit within the Employment Standards Administration pursuant to the reorganization established in Secretary's Order No. 5–96 (62 FR 107).

Fourth, sections 458.53 and 458.85 are amended to change the words "area office" to "district office." This revision is necessary because of a reorganization within OLMS which changed the name of its field offices.

Fifth, section 417.7, 417.21, and 458.85, which deal with obtaining transcripts for hearings before an administrative law judge, are amended to change the reference to "29 CFR 70.62" to "part 70 of this title." The Department amended 29 CFR part 70 in a final rule published on May 30, 1989, 54 FR 23144, and section 70.62 no longer exists.

The other revisions in this final rule correct typographical and grammatical errors and make minor stylistic changes.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The portion of this rulemaking that reflects agency organization, procedure, and practice is exempt under section 553(b)(A) of the APA. For the portion of this rulemaking that makes technical amendments and corrections, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive, merely reflects agency organization, practice, and procedure, and makes amendments required by statute and technical amendments and corrections. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d).

Administrative Requirements

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical amendments have been approved by the Office of Management and Budget (OMB control number 1215–0188).

D. Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a "major rule" requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately

upon publication as stated previously in this notice.

E. Unfunded Mandates Reform Act

For purposes of Section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875 (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects

29 CFR Parts 417 and 452

Labor unions.

29 CFR Parts 402, 403, 404, and 408

Labor unions, Reporting and recordkeeping requirements.

29 CFR 405 and 406

Labor management relations, Reporting and recordkeeping requirements.

29 CFR 409

Insurance companies, Reporting and recordkeeping requirements.

29 CFR Part 453

Labor unions, Surety bonds.

29 CFR Parts 457 and 458

Administrative practice and procedure, Labor unions, Reporting and recordkeeping requirements.

Adoption of Amendments of Regulations

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends Chapter IV of title 29 of the Code of Federal Regulations as set forth below.

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

1–2. The authority citation for part 402 continues to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 402.13 [Amended]

3. Section 402.13 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

4. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 403.11 [Amended]

5. Section 403.11 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

6. The authority citation for part 404 continues to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 404.9 [Amended]

7. Section 404.9 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 405—EMPLOYER REPORTS

8. The authority citation for part 405 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 405.11 [Amended]

9. Section 405.11 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

10. The authority citation for part 406 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 406.1 [Amended]

11. Section 406.1(b) is amended by changing the word "designated" in the second sentence to "designates."

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

12. The authority citation for part 408 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

13. Section 408.6 is revised to read as follows:

§ 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization any change in the information required by part 402 of this chapter in accordance with the procedure set out in § 402.4.

PART 409—REPORTS BY SURETY COMPANIES

14. The authority citation for part 409 continues to read as follows:

Authority: Secs. 207, 208, 211; 79 Stat. 888; 88 Stat. 852 (29 U.S.C. 437, 438, 441); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 409.7 [Amended]

15. Section 409.7 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

16. The authority citation for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

17. In § 417.2, paragraph (a) is revised to read as follows:

§ 417.2 Definitions.

(a) "Chief, DOE" means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

* * * * *

§ 417.7 [Amended]

18. Section 417.7 is amended by changing "29 CFR 70.62" to "part 70 of this title."

§ 417.21 [Amended]

19. Section 417.21 is amended by changing "29 CFR 70.62" to "part 70 of this title."

§ 417.22 [Amended]

20. The heading for section 417.22 is amended by changing the word "organizations" to "organization."

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

21. The authority citation for part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 452.2 [Amended]

22. Section 452.2 is amended by changing the words "the title" to "title IV."

§ 452.5 [Amended]

23. Section 452.5 is amended by changing the parenthetical at the end of footnote 6 from "(1966)" to "(S.D.N.Y 1966)."

§ 452.12 [Amended]

24. Section 452.12 is amended by changing the last word in footnote 13 from "title" to "chapter."

§ 452.77 [Amended]

25. Section 452.77 is amended by changing the word "rules" to "ruled" in the second sentence.

§ 452.99 [Amended]

26. Section 452.99 is amended by changing the word "residents" to "residence" in the second to last sentence.

PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

27. The authority citation for part 453 continues to read as follows:

Authority: Sec. 502, 73 Stat. 536; 79 Stat. 886 (29 U.S.C. 502); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

28. The centered heading before section 453.2 is amended by removing the number "1" after the word "BONDED."

§ 453.21 [Amended]

29. Section 453.21(a) is amended by changing the word "is," which appears in the third sentence after the words "It appears, therefore, that," to "it."

PART 457—GENERAL

30. The authority citation for part 457 continues to read as follows:

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

31. Section 457.15 is revised to read as follows:

§ 457.15 District Director.

District Director means the Director of a district office within the Office of Labor-Management Standards, Employment Standards Administration.

32. Section 457.16 is revised to read as follows:

§ 457.16 Chief, DOE.

Chief, DOE means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

PART 458—STANDARDS OF CONDUCT

33. The authority citation for part 458 continues to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 458.3 [Amended]

34. Section 458.3 is amended by changing the OMB control number in the parenthetical statement after the text to "1215–0188."

§ 458.33 [Amended]

35. Section 458.53 is amended by changing the words "area office" to "district office."

§ 458.85 [Amended]

36. Section 458.85 is amended by changing the words "Area Office" to "district office."

37. Section 458.85 is further amended by changing "29 CFR 70.62(c)" to "part 70 of this title."

Signed in Washington, D.C. this 12th day of June, 1998.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 98–16276 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–86–P

federal register

Friday
June 19, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 63, 261, and 270
Hazardous Waste Combustors; Revised Standards; Final Rule

VOL 63 ISS 118 JE 19 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 261, and 270

[EPA F–98–RCSF–FFFFF; FRL–6110–3]

RIN 2050–AE01

Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 19, 1996, EPA proposed revisions for air emission standards for certain hazardous waste combustion units. Today's rule finalizes some elements of that proposal. These elements include a conditional exclusion from RCRA for fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels; a new RCRA permit modification provision which is intended to make it easier for facilities to make changes to their existing RCRA permits when adding air pollution control equipment or making other changes in equipment or operation needed to comply with the upcoming air emission standards; notification requirements for sources which intend to comply with the final rule; and allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies to replace or supplement emission control technologies for meeting the emission standards.

EFFECTIVE DATE: This rule is effective on June 19, 1998.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703–603–9230 and request the list of references in EPA Docket #F–98–RCSF–FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00 a.m.–6:00 p.m. EST, at 800–424–9346 (toll-free); 703–412–9810 (from Government phones or if in the Washington, D.C. local calling area); or 800–553–7672 (for the hearing impaired). For more detailed information on specific aspects of the rulemaking, contact Mary Jo Krolewski on the comparable fuel exclusion at (703) 308–7754, Tricia Buzzell on permit modifications at (703) 308–8632, James Lounsbury on waste minimization and pollution prevention at (703) 308–8463, David Hockey on the notification of intent to comply at (703) 308–8846, or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Permits and State Programs Division, 401 M St., S.W. (Mailcode 5303W), Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically:

From the World Wide Web (WWW), type either
http://www.epa.gov/epaoswer/hazwaste/combust/fastrack.

EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS #PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place," (May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

The official record for this action is kept in a paper format. Accordingly, EPA has transferred all electronic comments received into paper form and placed them into the official record, with all the comments received in writing. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

EPA's responses to comments have been incorporated in a "Response to Comments" document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comment sections of this preamble.

The contents of today's preamble are listed in the following outline:

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I. Authority

These regulations are being finalized under the authority of sections 1004, 1006, 2002, 3001, 3004, 3005, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by the Resource Conservation and Recovery Act.

II. Scope of the Final Rule

On April 19, 1996, EPA proposed rules to control emissions of HAPs from hazardous waste-burning incinerators, cement kilns, and light weight aggregate kilns. (61 FR 17358) After promulgation of the proposal, the Agency issued the following notices of data availability (NODA): NODA 1 (Peer review and Comparable fuels)—August 23, 1996: 61 FR 43501; NODA 2 (Revised emissions database)—January 7, 1997: 62 FR 960; Continuous Emissions Monitoring Systems (CEMS) NODA—March 21, 1997: 62 FR 13775; NODA 3 (MACT standards and implementation)—May 2, 1997: 62 FR 24212; and NODA 4 (Comparable fuels data)—September 9, 1997: 62 FR 47402.

Today's final rule addresses four elements of the April 19, 1996 (61 FR 17358) proposal to revise the standards for hazardous waste combustors. The remaining issues of the proposal will be addressed in final rules in the near future.

III. Comparable Fuels Exclusion

Under this final rule, EPA is excluding from the regulatory definition of solid waste hazardous waste-derived fuels that meet specification levels comparable to fossil fuels for concentrations of hazardous constituents and for physical properties that affect burning.[1] The exclusion would apply to the comparable fuel from the point it is generated and would be claimed by the person generating the comparable fuel (which person can include a hazardous waste treater). With respect to the fuels, generators of the comparable fuel would have to comply with sampling and analysis, notification and certification, and recordkeeping requirements in order for their fuels to be excluded. The exclusion potentially applies to gaseous and liquid hazardous waste-derived fuels. However, this exclusion does not apply to solids or to used oil, which is subject to special standards under 40 CFR Part 279.

Today's rule is consistent with EPA's goal to develop a comparable fuel specification which is of use to the regulated community but assures that an excluded waste-derived fuel is similar in composition to commercially available fuel and therefore poses no greater risk than burning fossil fuel. Accordingly, EPA is using a "benchmark approach" to identify a specification that would ensure that constituent concentrations and physical properties of excluded waste-derived fuel are comparable to those of fossil fuels.

The rationale for the Agency's approach is that if a hazardous waste-derived fuel is comparable to a fossil fuel in terms of hazardous and other key constituents and has a heating value indicative of a fuel, EPA has discretion to classify such material as a fuel product, not as a waste. Given that a comparable fuel would have legitimate energy value and the same hazardous constituents in comparable concentrations to those in fossil fuel (and satisfies other parameters related to comparability as well), classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating any risk greater than those posed by the commonly used commercial fuels. Under these circumstances, EPA can permissibly classify a comparable fuel as a non-waste. See 46 FR 44971 (August 8, 1981) (exemption from Subtitle C regulation for spent pickle liquor used as a wastewater treatment agent in part because of its similarity in composition to the commercial acids that would be used in its place); 50 FR 49180, 49181, 49183 (November 29, 1985) (explanation of a similar type of benchmark approach in establishing used oil fuel specification); 53 FR at 31164 (August 18, 1988) (exemption for certain hazardous waste-derived fertilizers due to similarity to the commercial fertilizers that would be used in their place).

Put another way, EPA can reasonably determine that a material which is a legitimate fuel and which contains hazardous constituents at levels comparable to fossil fuels is not being "discarded" within the meaning of RCRA section 1004 (27). "Discarded" itself is an ambiguous term, see *American Petroleum Inst.* v. *EPA*, 906 F. 2d 729, 741 (D.C. Cir. 1990). EPA's interpretation that hazardous waste-derived fuels which are comparable to fossil fuels need not be considered to be "discarded" serves the statutory objective of encouraging resource recovery. RCRA section 1003 (a) (10). In addition, burning of such fuels does not present the element of discarding hazardous constituents through combustion that underlies the typical classification of hazardous waste-derived fuels as a solid waste. 50 Fed. Reg. at 629–630 (Jan. 4, 1985). This is because, as noted, hazardous constituent concentration levels are comparable to those in fossil fuels.

[1] We note that DOW Chemical Company (Dow) in a petition to the Administrator, dated August 10, 1995, specifically requested that the Agency develop a generic exclusion for "materials that are burned for energy recovery in on-site boilers which do not exceed the levels of fossil fuel constituents* * *." (Petition, at p.3). This final rule also responds to that petition.

The case law further makes clear that EPA may classify secondary materials as "discarded" based, at least in part, upon whether such materials may be considered part of the waste management problem. *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990). Today's rule contains conditions to assure that burning of comparable fuels will not become part of the waste management problem. The chief condition is limitation on burning to industrial furnaces (as defined in 260. 10), industrial and utility boilers, and hazardous waste incinerators. Another condition prevents specification limits for hazardous constituents being achieved by means of dilution, so that the total volume of hazardous constituents emitted from burning comparable fuels would remain comparable to those from burning fossil fuels. The rule also contains notification and record keeping conditions which assure that the fuels meet the specification and will be burned in the requisite type of unit, and that this can be verified objectively by third persons.

EPA notes that today's final rule is consistent with the main approach discussed in the Dow petition (see footnote 1 above), which also points out a number of benefits that would result from promulgating this type of exclusion: (1) Support for the statutory goal of promoting beneficial energy recovery and resource conservation; (2) reduction of unnecessary regulatory burden and allowing all parties to focus resources on higher permitting and regulatory priorities; and (3) demonstration of a common-sense approach to regulation. Dow's petition contained data on the chemical and physical aspects of the fuel for which the petition was submitted. Based on these data and additional data submitted during the comment period, it appears that the waste petitioned for exclusion by Dow meets the individual physical and chemical comparable fuel specifications set forth in this rule. Today's rule does not exclude Dow's wastestreams or other wastestreams for which commenters submitted data that may meet the specifications of the final rule. It remains the responsibility of the generator to comply with the specifications of the comparable fuel exclusion stipulated by the State RCRA implementing authority.

A. EPA's Approach to Establishing Benchmark Constituent Levels

1. The Benchmark Approach

EPA considered using risk to human health and the environment as the way to determine the scope and levels of a "clean fuels" specification. However, the Agency encountered several technical and implementation problems using a purely risk-based approach to develop a national rule. Specifically, EPA has insufficient data relating to the types of waste burned and the risks they pose to develop a fully protective and complete "clean fuels" exemption. EPA also does not have sufficient data to determine the relationship between the amount of "clean fuel" burned and emissions, especially of dioxins and other non-dioxin PICs. EPA also does not know how emissions (likely uncontrolled) at the multitude of actual facilities that would burn an excluded fuel would compare to emissions from the example facilities that EPA would use to derive a "clean fuel" specification. (Emissions and/or risks at a given facility could be higher than those of the example facilities given site-specific considerations.) Without considering all reasonable, possible emission scenarios, which is not feasible for the Agency at this time, the Agency is not prepared today to address these potential risks[2].

The Chemical Manufacturers Association (CMA) submitted a proposal to exempt certain "clean" liquid wastes from RCRA regulation. (61 FR at 17469) Unlike EPA's benchmark-based comparable fuel approach, the CMA approach would establish "clean fuel" specifications for mercury, LVM, and SVM metals based on the technology-based MACT emissions standards proposed for hazardous waste combustors on April 19, 1996. As just discussed above, EPA is concerned about using risk to establish a "clean fuel" specification. EPA does not have data available documenting that emissions from burning a "clean fuel" would not pose a significant risk for the potential combustion and management scenarios in which the clean fuel exclusion from RCRA might be used. Therefore, EPA will not be adopting CMA's proposal in today's rule, but may address aspects of the CMA concept in future actions if appropriate and feasible.

The Agency instead developed a comparable fuel specification, based on the level of hazardous and other constituents normally found in fossil fuels. EPA refers to this as the benchmark approach. For this approach, EPA set a comparable fuel specification such that concentrations of hazardous constituents in the comparable fuel could be no greater than the concentration of hazardous constituents normally occurring in commercial fossil fuels. Thus, EPA expects that the comparable fuel would pose no greater risk when burned than a fossil fuel and would at the same time be physically comparable to a fossil fuel, leading to the conclusion that EPA may classify these materials as products, not wastes. See proposal for more details (61 FR 17460, April 19, 1996).

Some commenters argued that by using a benchmark approach, EPA had failed to assess potential risks to human health and the environment resulting from the exclusion. Commenters argued that EPA cannot determine that there are no adverse risks by the comparison to fossil fuels. EPA disagrees with commenters conclusions concerning the need to determine absolute risk. In this final rule, EPA is setting a comparable fuel specification with concentrations of hazardous constituents no greater than the concentrations of hazardous constituents occurring in fossil fuels. Thus, EPA reasonably expects—based on the methodology used to establish the specification—that the comparable fuel will pose no greater risk when burned than a fossil fuel and concomitant energy recovery benefits will be realized from reusing the waste to displace fossil fuels. The Agency concludes it has discretion in exercising jurisdiction over hazardous waste-derived fuels that are essentially the same as fossil fuel, since there would likely not be environmental benefits from regulating those hazardous waste-derived fuels (i.e., burners would likely just choose to burn fossil fuels). Indeed, as explained below, many commercial fuels could be less "clean" than the comparable fuels, so that substitution of some commercial fuels could be a net deterrent. See 50 FR at 49186 (November 29, 1985) where EPA discussed similar considerations when developing a specification for used oil fuel. See also discussion above as to why such fuels need not be considered to be "discarded". EPA has therefore decided not to regulate comparable hazardous waste-derived fuels meeting the benchmark specifications as hazardous waste under RCRA.

Furthermore, the Agency notes that the comparable fuel exclusion promulgated today is the first phase in addressing the "clean fuels" issue. Although EPA has identified problems with commenters' alternatives, there is

[2] It is possible to determine on an individual basis that particular waste-derived fuel should be excluded from RCRA on risk-based grounds. See 63 FR at 18533 (April 15, 1998) where EPA finalized such an exclusion for a waste fuel which could be generated by the pulp and paper industry. However, EPA cautions that making such a demonstration is difficult (because of potential uncertainties regarding combustion conditions and exposure patterns) and resource-intensive for the Agency to evaluate, and would still involve rulemaking.

room for further expansion of the comparable or clean fuel concept. EPA will continue to work with the regulated community to identify areas to expand the approach taken in today's final rulemaking.

2. Selection of the Benchmark Fuels

Since commercially available fossil fuels are diverse, EPA considered a range of fuels upon which to base its benchmark fuel selection. Available fuels ranged from gases, such as natural gas and propane, to liquids (such as gasoline and fuel oils) to solids (such as coal, coke, and peat). The Agency proposed a benchmark based on liquid fossil fuels (gasoline, No.2 fuel oil, and No.6 fuel oil). (61 FR at 17462)

Commenters argued that EPA should consider solid fossil fuels in developing the benchmark specifications. Commenters believe that materials such as coal are fuels that are widely used throughout the U.S. and failing to consider these materials ignores legitimate fuels used by certain industries. EPA disagrees with commenters' requests to include solid fossil fuels in its benchmark specification. From an environmental standpoint, the comparable fuel specification, which would exclude a hazardous waste-derived fuel from RCRA subtitle C regulation, should not be based on fossil fuels that have high levels of toxic constituents that will not be destroyed or detoxified by burning (e.g., metals and halogens). Data show that solid fossil fuels have comparatively higher metal [3] and possibly halogen levels than liquid fossil fuels [4]. Metals and halogens are not destroyed in the combustion process unlike organic constituents which are commonly destroyed or detoxified through combustion. Comparison with this type of fuel could easily result in a least common denominator approach whereby a hazardous waste-derived fuel would be "comparable" if it was no more dangerous to burn than the most contaminated fossil fuels. Such "comparability" is not congruent with the overall objective of RCRA to protect human health and the environment and is inconsistent with the specific directive to regulate combustion of hazardous waste-derived fuels where necessary to protect human health and the environment. (RCRA section 3004(q)). Thus, while EPA has chosen to use a benchmark rather than a risk-based approach, the Agency has chosen benchmark fuels that, in general, have lower contaminant levels for constituents that are not destroyed. Therefore, in today's rule, EPA is not using solid fossil fuels as part of the comparative benchmark.

EPA also will not be using a gas fuels as benchmarks. Basing the comparable fuel specification on a gas fuel would be overly conservative and have no utility to the regulated industry. (The reader should note that EPA is promulgating an exclusion for a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") meeting particular specifications (see Section D below). This hazardous waste derived gas can be used as a fuel and an exclusion provides beneficial resource recovery.) Liquid fuels, on the other hand, are widely used by industry, readily combusted, and do not present the inconsistencies of solid or gaseous fuels. Simply put, the Agency, in assessing comparability, is not required to base a specification on either the most or least contaminated fossil fuels, but may reasonably choose a median, in this case, representative fuel oils. In this final rule, EPA is selecting only liquid fuels for its benchmark fuel specification.

With regard to liquid fuels, commenters argued that EPA should consider as benchmark fuels non-petroleum liquid based fuels such as turpentine and tall oil. One commenter recommended that EPA identify turpentine as a benchmark fuel because it has a very high Btu value and is used as a fuel (and a manufacturing feedstock) both within and outside the forest products industry. Another commenter pointed out that tall oil is not only used in commerce as a traditional fuel, but that EPA has previously noted that tall oil is a legitimate non-waste fuel under the BIF rule low risk waiver exemption (LRWE) and DRE trial burn exemptions (56 FR 7193, February 21, 1991).

While EPA is interested in establishing a broad-based benchmark of liquid fuels, EPA disagrees that turpentine should be included in the benchmark specification. Turpentine is not a widely used commercial fuel. There are no ASTM standards for turpentine fuel which specify the minimum properties which must be met for the product to be considered as a commercial fuel. By contrast, there are ASTM specifications for each of the petroleum fossil fuels EPA is using as a benchmark.

EPA does agree with the commenter that tall oil is used in commerce as a traditional fuel and could be used as a benchmark fuel. At the time of the proposal, EPA had no data on tall oil. The commenter did submit one set of data that EPA was unable to use because it did not meet EPA data quality standards. Therefore, at this time, EPA will not include tall oil in its benchmark fuels.

Finally, some commenters did not support the use of gasoline for setting comparable fuel specifications, because it is not typically utilized in industrial boilers and furnaces. Gasoline is typically limited used in internal combustion engines, and the commenter did not anticipate that industry or individuals will utilize hazardous waste-derived fuels in automobiles, trucks and buses. EPA disagrees that gasoline should be excluded as one of the benchmark fuels. The Agency notes that gasoline is a widely used, commercially available, liquid fuel and EPA does not believe that our selection is necessarily limited to fuel burned in boilers or industrial furnaces. EPA has chosen its benchmark fuels so that the resulting comparable fuel when substituted would have hazardous constituents lower than the fuel it replaces. However, because the comparable fuel will not be substituted for use in gasoline applications (the exclusion is restricted to air regulated stationary combustion units, see Section H below), the rationale for the inclusion of gasoline differs. The Agency believes that gasoline provides a reasonable upper boundary for volatile organics, which are fuel-worthy constituents. The Agency notes that unlike some solid fuels, gasoline has low concentrations of metals. When compared to lighter fuel oils (e.g., No. 2 fuel oil), the gasoline specification has higher specifications for only the detected volatile organics, which are readily burnable compounds.

B. Options for the Benchmark Approach

At proposal, EPA presented several options for deciding what fossil fuel(s) data to use as the benchmark. The options range from developing a suite of comparable fuel specifications based on individual benchmark fuels (i.e., gasoline, No. 2, No. 4, No. 6) to basing the specification on composite values derived from the analysis of all benchmark fuels. (61 FR at 17643).

EPA took comment on individual benchmark fuel specifications based on gasoline, No. 2, and No. 6 fuel oil, using the 90th percentile values for the basis of the individual specifications. Under this approach, individual fuel specification(s) could be implemented

[3] A smaller fraction of metals in coal partitions to emissions than for liquid fuels. Given that most potentially comparable fuels are liquids, allowing metals at the concentrations present in coal could result in substantially higher metals emissions.

[4] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

in one of two ways. First, a facility could use any of the individual benchmark specifications, without regard to what fuel it currently burns. The second approach is to link the comparable fuel specification to the type of fuel burned at the facility and being displaced by the comparable fuel. Under a composite fuel benchmark approach, EPA took comment on using: (1) The 90th percentile aggregate values for the benchmark fuels; and (2) the 50th percentile aggregate values for the benchmark fuels. (61 FR at 17643).

1. Selection of Percentile Level

To calculate benchmark specifications, EPA obtained 27 fossil fuel samples, comprised of eight gasoline, eleven No. 2, one No. 4, and seven No. 6 fuel oil samples. Due to the small sample sizes of each fuel type, EPA initially used a nonparametric rank order statistical approach to analyze the fuel data. Rank order involved ordering the data for each constituent from lowest to highest concentration, assigning each data point a percentile value from lowest to highest percentile, respectively. Results were then calculated from the data percentiles. Because there were different numbers of samples for each fuel type, EPA was concerned that the fuel with the largest number of samples would dominate the composite database. To address this issue, EPA's statistical analysis "normalized" the number of samples, i.e., treated each fuel type in the composite equally without regard to the number of samples taken.[5] See *Kennecott* v. *EPA*, 780 F.2d 445, 457 (4th Cir. 1985) (upholding this statistical methodology). The fuel samples were weighted equally because this weighting reflects the fact that benchmark fuels can be used interchangeably in stationary combustion units. In addition, as noted in the next section, equal weighting prevented over-estimation of either metals and semi-volatiles in No. 6 fuel oil or volatiles in the higher end fractions.

One commenter argued that EPA's proposed constituent-by-constituent comparison approach is flawed because it ignores the compounding effect of joint probability. The commenter has examined the rank order statistics technique EPA used and has concluded that the percentile values for the individual constituents must be set higher for all of them to meet the overall percentile value simultaneously. For example, a candidate comparable fuel taken from the same reservoir as a benchmark fuel would, because of random variability in constituent concentrations, have a 23 percent chance of "failing" a comparison to a benchmark (at the 90th percentile) that has 14 constituents above the detection limits. Thus the commenter argued that the proposed constituent-by-constituent comparison would have little utility to the regulated community.

While EPA believes there is some interdependence among individual constituents and that the principle of joint probability cannot be strictly applied, EPA is inclined to agree with the commenter. At the time of proposal, EPA believed that a 50th percentile analysis represented a midpoint of potential benchmark fuels that were studied. EPA also believed that a 90th percentile analysis represented a reasonable upper bound of what is found in all fuels capturing variability both with each fuel category and in the case of the composite approach, between categories. However, when the individual fuel samples were compared to the benchmark specifications, EPA found that at the 50th percentile composite *none* of the virgin fuel samples met the specification and at the 90th percentile composite only 40 percent met the specification. This appears to confirm the commenter's concern over joint probability, and reflects on the degree to which the comparable fuels exclusion would actually be useable. It was EPA's goal to base the comparable fuel specifications on the 99th percentile, a level near which 90 percent of EPA's individual fuel samples would meet the specification. However, the size of the data base precluded the calculating of a 99th percentile constituent specification. Therefore, in this case, the Agency used the largest measured value to approximate an upper percentile. In the future, EPA may choose alternative methods of evaluating any new data that may be submitted suggesting that these specifications need to be modified. After re-calculating the specification taking joint probability into account, the composite at the largest value more closely represents what EPA intended to propose with the 90th percentile, a reasonable upper bound that is also useable in practice. The 90th percentile closely represents what EPA intended with the proposed 50th percentile, i.e., a midpoint.

Some commenters did support the 50th percentile because they argued it was more protective. The majority of commenters supported the 90th percentile and some commenters argued for the use of a higher percentile, i.e., 95th or 99th. Because none of EPA's own fuel samples meet this specification, the 50th percentile is overly conservative. If EPA selected the 50th percentile, comparable fuels would have to be "cleaner" than *all* commercial liquid fuels (or at least all of those in the Agency's current database), which would greatly restrict the utility of the provision. Also, with such a strict approach, additional quantities of virgin oils with higher contaminant levels would be burned, leading to greater emissions than if a higher percentile was chosen. Therefore, EPA agrees with commenters that a higher percentile better reflects the liquid fossil fuels burned nationally and is a better benchmark.

After considering the issue of joint probability, EPA has decided to promulgate a composite specification based on the largest measured value to approximate what 90 percent of individual benchmark fuels are likely to meet. This approach has the virtue of being representative of a range of fuels that are burned nationally in combustion devices.

Based on the proposal, EPA had the option of choosing between an individual fuel specification approach and a composite approach. The majority of commenters supported using the composite specification plus the suite of individual fuel specifications that could be used irrespective of the fuel displaced.

The composite approach has advantages over the individual fuel specification approach. One issue associated with the single fuel specification approach is that gasoline has relatively higher levels of volatile organic compounds while No. 6 fuel oil has higher levels of semi-volatile organic compounds and metals. If a potential comparable fuel were to have a volatile organic constituent concentration below the gasoline specification but higher than the others and a particular metal concentration lower than the No. 6 fuel oil specification but higher than gasoline, it would not be a comparable fuel since it meets no single specification entirely. Therefore, EPA is concerned that establishing specifications under this

[5] For the gasoline sample analysis, the resulting detection limits for volatile organic compounds were an order of magnitude higher than the other fuel specifications. EPA believes analysis of comparable fuels will more likely result in detection limits much lower than gasoline and similar to those associated with analysis of fuel oils. To address this issue, EPA has performed an analysis of a fuel oil-only composite (one which does not include gasoline in the composite) to use as a surrogate for the volatile organic gasoline non-detect values. Therefore, the volatile organic gasoline non-detect values used in the development of the composite and individual gasoline specification were based on this fuel oil-only composite.

option would significantly limit the utility of the exclusion without any obvious advantage in terms of the technical basis of the specifications themselves.

Compositing all the fuels has the advantage that it may better reflect the range of fuel choices and potential for fuel-switching available nationally to burners. A facility would be allowed to use the composite fuel specification regardless of which fuel(s) it burns. In addition, the composite well represents the constituent makeup of liquid fossil fuels currently burned nationally. Because allowing individual specifications would unnecessarily complicate the Agency's implementation oversight, EPA has decided not to allow the individual specifications as an alternative. Furthermore, EPA notes that because it has chosen to promulgate constituent standards for comparable fuels based on the largest measured value, the composite approach will provide industry with greater flexibility in using the exclusion. A composite specification provides a simpler regulatory framework, which would facilitate implementation of the exclusion. Therefore, in this final rule, EPA is promulgating a composite specification for comparable fuels.

C. Parameters for the Comparable Fuel Specification

Using the benchmark approach discussed above, EPA is promulgating a set of technical specifications. The specifications address the following[6]:

(1) Physical specifications:

—Heating value (BTU/lb);

—Kinematic viscosity (centistokes, cs, as-fired),

(2) General constituent specifications for:

—Total Halogens (ppmw, expressed as Cl)

—Nitrogen, total (ppmw), and

(3) Individual hazardous constituent specifications, for:

—Individual Metals (ppmw),

—Individual Appendix VIII Toxic Organics (ppmw)

The constituent specifications and heating value would apply to both gases and liquids. The kinematic viscosity would not apply to gases. (See Section D, below, which discusses synthesis gases specifically.)

1. Physical Specifications

a. *Heating Value.* The Agency is concerned with the acceptability of the potential fuel and wants to ensure that comparable fuels have a legitimate use as a fuel. As discussed below, the comparable fuels exclusion only applies to waste fuels that are ultimately burned. In addition, the Agency has relied on a heating value of 5,000 Btu/lbm (11,500 J/g) as a reasonable heating value specification for determining if a waste is being burned for energy recovery; that is, wastes with this Btu value or higher are considered to be burned for energy recovery. (See § 266.103(c)(2)(ii). 50 FR at 49173n.24 (November 29, 1985)).[7] This type of minimum Btu value specification is appropriate here as well as for the overall fuel (note that this is a different issue than finding the appropriate Btu value by which to correctly determine if the individual constituent specifications are being met, discussed below). EPA is thus setting a 5,000 Btu/lbm limit today as a minimum heating value for a comparable fuel to ensure that comparable fuels are in fact legitimate fuels. See § 261.38(a)(1)(i).

b. Kinematic viscosity. Viscosity is an important specification to help ensure that a comparable fuel is as readily burnable as the benchmark fuel. Viscosity is important to the proper atomization and feed to the burning device and is an important design specification of the burner assembly. EPA proposed two options for setting a viscosity specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the ASTM viscosity specification for fuel oil. (61 FR at 17465). Under the ASTM option for the composite fuel viscosity specification, EPA took comment on using the second highest ASTM viscosity specification. This would have the effect of not considering the extremes, viscosity of No. 6 fuel oil (50.0 cs at 100°C) and using as the specification the viscosity of No. 4 fuel oil (24.0 cs at 40°C).

Given the choice of EPA-derived viscosity values and ASTM values, the majority of commenters supported the use of the ASTM physical specification for viscosity. In addition, several commenters argued that the viscosity specification should apply at the point (temperature) that the fuel is fired rather than the point of generation. Commenters pointed out that it is common practice to reduce the as-fired viscosity to promote good atomization and combustion through blending with less viscous fuels or by warming the fuel to above-ambient temperature before firing. For example, while No. 6 fuel oil has an elevated viscosity at ambient conditions, it is typically stored and fired at temperatures which promote atomization and combustion.

EPA is persuaded by commenters that basing our viscosity specification on No. 4 fuel oil would possibly limit comparable fuels similar to No. 6 fuel oil (one of the benchmark fuels) from qualifying for the exclusion. EPA agrees that the viscosity specification should be based on ASTM standard for No. 6 fuel oil (50 cs at 100°C). The ASTM standard represents the typical temperature and viscosity at which No.6 fuel oil is fired. Thus, it is appropriate for a comparable fuel, when fired, to have the same viscosity as No. 6 fuel when fired. This will allow for a specification that is achievable for all liquid fossil fuels.

Therefore, in this final rule, EPA is promulgating a kinematic viscosity specification of 50 cs, as-fired . The specification for viscosity will only pertain to non-gaseous fuels, because gases are inherently less viscous than liquids. See § 261.38(a)(1)(ii).

c. Flashpoint (proposed, but not promulgated). EPA proposed two options for setting a minimum flashpoint specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the requirements for flashpoint specified by ASTM. Under the ASTM option for the composite fuel flashpoint specification, EPA took comment on using the second lowest flash point as the specifications. (61 FR at 17465). This would have the effect of not considering the extremes, flash point of gasoline (−42°C) and using as the specification the flash point of No. 2 fuel oil (38°C).

Several commenters opposed setting specifications for flash point. Commenters argued that DOT and OSHA have developed and promulgated regulations that control the hazards such materials can pose. Commenters also argued that the specification would preclude burning materials that are normally fuels such as methanol. EPA agrees with commenters that DOT (49 CFR Parts 171 through 180) and OSHA (29 CFR Part 1910) regulations adequately address the transportation and handing of low flashpoint material and setting a flashpoint specification under RCRA would be unnecessarily redundant with no ostensible gain in protectiveness. In addition, by limiting the exclusion to units subject to Federal/State/local air emission requirements, comparable fuels will be burned in units subject to OSHA requirements. (See Section H, below,

[6] Note that ppmw is an alternate way of expressing the units mg/kg.

[7] The 5,000 Btu/lb measure is not, however, an unvarying measure of legitimate versus insufficient energy recovery. See, e.g., 48 FR at 1158 (March 16, 1983).

which discusses this requirement.) Therefore, EPA is not establishing a flashpoint specification for the final rule.

2. General Constituent Specifications

In determining general constituent specifications and in determining individual hazardous constituent specifications (see following discussion), the Agency is concerned with the overall environmental loading. Comparable fuels could have lower heating value than the fossil fuels they would displace. In these situations, more comparable fuel would be burned to achieve the same heat input, with the result that more hazardous constituents would be fired and emitted (e.g., halogenated organic compounds and metals) than if fossil fuel were to be burned. This would lead to greater environmental loading of potentially toxic substances, which is not in keeping with the intent of the comparable fuels exclusion nor with RCRA's overall protectiveness goals.

To address environmental loading, the approach used in this final rule is to establish a minimum heating value specification comparable to the BTU content of the benchmark fossil fuel(s). The Agency is establishing the specification(s) for comparable fuels at a heating value of 10,000 BTU/lb, which is near to what liquid commercial fuels contain.[8] EPA chose 10,000 BTU/lb because it is typical of current hazardous waste burned for energy recovery.[9] However, candidate comparable fuels when generated initially can have heating values very different than 10,000 BTU/lb. Therefore, under this final rule, when determining whether a waste meets the comparable fuel constituent specifications, a generator must first correct the constituent levels in the candidate waste to a 10,000 BTU/lb heating value basis prior to comparing them to the comparable fuel specification tables. In this way, a facility that burns a comparable fuel would not be feeding more total mass of hazardous constituents than if it burned fossil fuels.[10]

a. Specification Levels for Halogenated Compounds. I. Summary. For the final rule, EPA is using its composite benchmark approach to establish a total halogen specification and allowing compliance with a total organic halogen limit in lieu of complying with limits on individual Appendix VIII halogenated compounds. Therefore, a comparable fuels generator would have the option of complying: (a) with a total organic halogen specification of 25 ppm plus the total PCB specification or (b) with the all of the individual Appendix VIII specifications for halogen compounds. In addition, in both cases, the generator would also have to comply with the total halogen limit (which includes both organic and inorganic halogens) of 540 ppm and with a total PCB specification (non-detect at a minimum required detection limit of 1.4 ppm). See § 261.38(a)(2), Table 1.

Compliance with a total organic halogen specification in lieu of limits on individual halogenated compounds will ensure that measurable levels of halogenated compounds will be no greater than in benchmark fuels. In addition, the total organic halogen specification will result in less sampling and analysis costs. Finally, the total halogen limit (both organic and inorganic) will create a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel will not be emitted at higher levels than from burning a benchmark fossil fuel.

ii. Total Halogen Rationale. Although total halogens are not listed in Appendix VIII, Part 261, EPA proposed a total halogen specification to establish a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17461) and subsequent notices of data availability (61 FR 43502, August 23, 1996 and 61 FR 47402, September 9, 1997). PICs resulting from the burning of halogenated organic compounds can pose a particular hazard to human health and the environment.[11] Using the benchmark approach, EPA proposed a composite fuel total halogen limit of 25 ppm.

At the time of the proposal, EPA intended to establish a total halogen limit that included both organic and inorganic halogens. However, the total halogen data used by EPA in the proposed rule for its No. 4 and No. 6 fuel oils were based on analytical methods measuring only total organic halogens, not both organic and inorganic halogens. Commenters raised concerns about including total halogen data that did not include inorganic halogens because it did not represent typical halogen content found in benchmark fuels. EPA was persuaded by commenters' arguments and noticed additional total halogen data gathered from its own database (i.e., Certifications of Compliance (CoC) required by the Boilers and Industrial Furnace Rule) and data submitted by one commenter. In addition, EPA will continue to use its original gasoline and No. 2 fuel oil halogen data, which included both organic and inorganic halogens. Using the additional data, the total halogen specification would be 540 ppm for the composite benchmark data. For further discussion, see NODA 61 FR at 47402.

In response to EPA's NODA, commenters argued that some of the data should not be used to establish the total halogen specification due to the use of inappropriate analytic methods. In particular, commenters believe that CoC data from two facilities (Huntsman Polypropylene Corporation and American Cyanamid) should not be included because the analytical method used measured organic halogens only. In addition, commenters believe that CoC data from another facility (Dow Chemical) should not be included because the detection limit of the method used to analyze for total halogens (ASTM Standard D 808) is not sensitive below 1000 ppm, and unless some other, more sensitive analytical method were followed afterward, the method could not have been effective at the levels reported. EPA is persuaded by these commenters' arguments and has excluded the data from these three facilities from its halogen data set. Using this revised data set, the total halogen specification would be 540 ppm for the composite benchmark data. For the final rule, EPA is promulgating a total halogen specification of 540 ppm.

In response to the initial proposal, some commenters argued that EPA should consider solid fuels like wood and coal in the development of a total halogen specification. As discussed above, EPA has decided not to include solid fuels in its benchmark specification. Thus, EPA is not inclined to consider using solid fuels to set one of the specifications. Also, EPA is concerned about the formation of halogenated PICs from comparable fuels containing halogens. At this time, EPA has no data to support a conclusion that the higher halogen levels in solid fuels would not cause an increase in

[8] Constituent levels presented in today's final rule have been corrected from the fuel's heating value (approximately 20,000 BTU/lb) to 10,000 BTU/lb.

[9] Consult USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[10] Note that the heating value correction would apply only to allowable constituent levels in fuels, not to detection limits. Detection limits would not be corrected for heating value.

[11] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

halogenated PIC formation compared to benchmark fuels.

The Agency also received comment on an emissions-based equivalency determination to qualify for the total halogen specification. One commenter argued that the Agency should consider the commenter's candidate comparable fuel as a comparable fuel even though it cannot meet the comparable fuel specification for total halogens. The Agency considered the situation but, as indicated in the September 9, 1997 NODA (62 FR at 47403), continues to maintain that an emissions-based equivalency determination to the halogen specification on a national regulatory basis would be inappropriate and infeasible at this time.

In response to EPA's NODA, the commenter argued that an equivalency determination would not be administratively complex and that it could involve a demonstration by the person applying for the equivalency determination that the chemistry of the fuel is such that it is incapable of forming halogenated PICs. EPA is not persuaded by the commenter's arguments. For hydrocarbon-based fuels, combustion conditions (such as oxygen level, mixing, temperature, etc.) will have an impact on non-chlorinated and/or chlorinated PIC emissions. Additionally, chlorine in both inorganic and organic forms in the waste fuel can contribute to chlorinated PIC emissions. Dioxin/furans and other chlorinated PICs have been detected from sources burning both inorganic (e.g., salts) and/or organic chloride (e.g., plastics) containing wastes.[12] Furthermore, if the Agency were to develop an equivalency determination for total halogens, the implementation details needed in a national regulation to ensure proper combustion of halogenated wastes would be numerous, including, for example, provisions on burner operating parameters, performance testing, and monitoring. These details would almost certainly result in a complicated conditional exclusion from the definition of solid waste that is viewed as both potentially unworkable and very difficult to implement on a national basis.

Therefore, EPA is not inclined at this time to consider developing any national equivalency determination to the total halogen specification. At some future point, perhaps as the Agency's understanding of cause-and-effect relationships regarding emissions from a wider variety of sources grows, EPA may be able to address aspects of the commenter's recommendations if appropriate and feasible.

iii. Total Organic Halogen Rationale. As an additional part of its proposal, EPA invited comment on whether a total halogen specification could act as a surrogate for limits on individual halogenated compounds found in Appendix VIII. In this case, EPA's proposed limit of 25 ppm for total organic halogens would act as the surrogate for the individual halogenated organics. Commenters supported the surrogate approach and indicated that it would reduce the testing and recordkeeping costs on the regulated community. EPA agrees that this approach will simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators.

However, some commenters raised concerns that a total halogen analysis will not be an effective screen for some of the more hazardous halogenated Appendix VIII constituents which could constitute a potential risk at low detection levels (e.g., tetrachlorodibenzo-p-dioxins). EPA calculated the equivalent constituent concentrations using the minimum detection limit values for these hazardous halogenated organics and determined that the 25 ppm total organic halogen limit will be an effective screen for all of the chlorinated dibenzofurans and chlorinated dibenzodioxins (i.e., the tetra- through octa-congeners). The minimum detection limits calculated for these congeners ranged from 30 to 150 ppm and the 25 ppm organic halogen specification will limit these congeners' concentrations to below those minimum detection limits. Additional factors in this decision to use the 25 ppm halogen limit as a screen for dioxins include the following:

(1) In particular, waste codes F020, F021, F022, F023, F026 and F028 have been designated as "inherently waste-like" under 40 CFR 261.2(d) and therefore are not eligible for the comparable fuel exclusion;

(2) Wastes listed because they contain dioxins would also be expected to contain significant levels of other halogenated organics. (The reader should note that the compounds in question are typically formed from the breakdown and reaction of other halogenated organics.) The higher concentrations of these other halogenated organics would drive the total organic halogen content of the waste up and, thus, the contribution of any chlorinated dibenzofurans and dioxins would have to be significantly less than the 25 ppm limit; and

(3) Waste codes expected to contain significant levels of other halogenated organics can be readily discerned from their list descriptions in 40 CFR 261 Subpart D (e.g., F001 and F002 solvent wastes are defined as halogenated solvents; F024 includes waste from production of halogenated organics.) In addition, Appendix III to Part 268 lists the halogenated organics typically found in hazardous wastes and that are subject to land disposal restrictions under 40 CFR 268.32. By comparing these, a person implementing today's rule could easily determine the most likely waste codes that could contain halogenated organics in excess of the 25 ppm limit, and thus easily identify wastes not eligible for the comparable fuels exclusion. See also Section E below for point of generation and blending/treatment discussions.

Commenters are also concerned that the use of a total organic halogen surrogate will possibly mask illegal PCB disposal. Since low analytical detection limits for PCBs (i.e., 1.4 ppm) in the benchmark fuel matrices have been well-demonstrated, the 25 ppm total organic halogen limit would not be a sufficient screen. Since PCBs are relatively common halogenated contaminants in fuel-like wastes and the probability of finding them is non-trivial, EPA is keeping the limits on PCBs to ensure levels no greater than from benchmark fuels. EPA also points out that there are several relatively inexpensive analytical screening methods that have been developed specifically for the determination of total PCBs.

With regard to analysis methodology, commenters have indicated that the test method (ASTM Method 4929) used by EPA to analyze for organic halogens may not be appropriate to analyze their candidate comparable fuel. EPA recognizes that the methods used in its own analysis of the benchmark fuels may not be appropriate for some candidate comparable fuels. Thus, in the final rule EPA is allowing the use of alternate methods or modifications to current methods that meet the performance based criteria in section § 261.38(c)(7). It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For further details, see Section G. Sampling and Analysis, below.

b. Specification Levels for Nitrogenated Compounds. Although total nitrogen is not listed on Appendix VIII, Part 261, EPA proposed a total

[12] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

nitrogen specification to ensure that nitrogenated products of incomplete combustion (PICs) from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17462) and a subsequent notice of data availability (61 FR 43502, August 23, 1996). PICs resulting from burning nitrogenated organic compounds can also pose a particular hazard to human health and the environment.[13]

Commenters generally did not address the issue of formation of nitrogenated PICs. Instead, most commenters disagreed with the need to establish a specification for nitrogen under RCRA's comparable fuel specification when this pollutant (as NOx) is controlled under the Clean Air Act (CAA). Commenters argued that EPA has the authority under the CAA to control certain criteria pollutants, such as nitrogen oxides and, in fact, has promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen. EPA believes that a total nitrogen specification is necessary. The counter-arguments advanced do not address EPA's rationale for establishing a total nitrogen limit. The CAA NAAQS do not themselves ensure control of individual combustion units in a manner that prevents formation of nitrogenated PICs, nor do they ensure that a hazardous waste-derived fuel would contain no greater amounts of nitrogenated compounds than fossil fuels. EPA is therefore establishing a total nitrogen specification to ensure that concentrations of nitrogenated PICs in comparable fuels will be no greater than in benchmark fuels.

As an additional part of its proposal, similar to total halogens, EPA invited comment on whether a total nitrogen specification could act as a surrogate for limits on individual nitrogenated compounds found in Appendix VIII. EPA believes that a surrogate approach would simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators. However, analysis of EPA's composite data results in a total nitrogen specification of 4,900 ppm. The detection limits for EPA's analysis of individual nitrogenated compounds in its benchmark fuels ranged from 1 to 2200 ppm. Since detection limits for nitrogenated compounds in the benchmark fuels have been demonstrated well below 4,900 ppm, a total nitrogen specification would not be a sufficient screen for individual Appendix VIII nitrogenated compounds.

Therefore, for nitrogen compounds, EPA is promulgating a total nitrogen specification of 4,900 ppm with individual Appendix VIII nitrogen specifications. See § 261.38(a)(2), Table 1. This approach ensures that levels of individual nitrogenated compounds and the total nitrogen concentration are no greater than the benchmark fuels and creates a presumption that concentrations of nitrogenated PICs from burning a comparable fuel are no greater than burning a benchmark fuel.

3. Individual Hazardous Constituent Specifications

To limit the Part 261, Appendix VIII constituents in comparable fuels to those found in benchmark fossil fuels, the Agency calculated concentration limits using the Agency's analysis of individual benchmark fuel samples. Where EPA did not detect a particular Appendix VIII constituent in the benchmark fuel, the Agency set the constituent specification using one of two approaches. For constituents that the Agency did not detect and did not have reason to believe would be present in a benchmark fuel (e.g., halogenated organics), the comparable fuel specification is "non-detect" with an associated, specified minimum required detection limit for each compound. The detection limit is a statistically-derived level based on the quantification limit determined for each sample. While these constituents should not be present, the Agency will allow non-detects lower than the detection limits that EPA was able to obtain. However, EPA will not allow measured or quantified results below the specified minimum required detection limit where "non-detect" is the comparable fuel specification. For metals, hydrocarbons, and oxygenates, the Agency followed a different approach, which is described below.

a. Individual CAA and Appendix VIII Metals. EPA proposed concentration levels or minimum required detection limits for all CAA metals and RCRA Appendix VIII metals (61 FR at 17460). Commenters argued that the Agency should modify its approach with respect to non-detect levels and allow the hazardous constituent to be present in the comparable fuel up to the detection limit. In particular, commenters argued that metals are expected to be present in petroleum products, resulting from the formation process or the production process, and, therefore, it is reasonable to assume that non-detect metals in EPA's benchmark analysis would be present up to the detection limit. EPA agrees that metals could be present in fossil fuels but below EPA's detection limits. Therefore, the final rule allows metals to be present at any concentration less than or equal to the detection limits in EPA's analysis.

In addition, as proposed, EPA is setting limits for two metals that are not found on Part 261, Appendix VIII: cobalt and manganese. EPA included these metals in the analysis because they are listed in the Clean Air Act as hazardous air pollutants (HAPs). See CAA, section 112(b) and proposal (61 FR at 17460). By including these metal HAPs and the RCRA metals listed on Appendix VIII, Part 261, the Agency will ensure that the specification limits all toxic metals of concern in hazardous wastes to levels present in the benchmark fossil fuels. Therefore, EPA is promulgating constituent levels for the all CAA metals and RCRA Appendix VIII metals at the largest value composite of EPA fossil fuel data. See § 261.38(a)(2), Table 1.

b. Individual Appendix VIII Toxic Organics. EPA is promulgating constituent levels or minimum required detection limits for all Part 261, Appendix VIII, toxic organic constituents, unless otherwise noted. See § 261.38(a)(2), Table 1. Some Appendix VIII compounds were not analyzed because a routine analytical method is not available. Because EPA did not analyze for some compounds in Appendix VIII, EPA will not be promulgating standards for these remaining Appendix VIII constituents. These compounds are not listed in today's specifications, and a comparable fuel generator will not have to comply with specifications for these compounds. EPA believes it highly unlikely that a hazardous waste-derived fuel would contain only these undetectable Appendix VIII constituents.

i. Specification Levels for Undetected Pure Hydrocarbons. EPA proposed allowing pure hydrocarbons on Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. Since fossil fuels are comprised almost entirely of pure hydrocarbons [14] in varying concentrations, it is possible that many pure hydrocarbons in Appendix VIII, Part 261, could be present in fossil fuel but below detection limits. These materials, which include compounds such as fluoranthene, might not even be considered solid wastes when burned in

[13] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[14] Excluding sulfur, carbon and hydrogen comprise 99.6 to 100% of liquid fossil fuels.

their pure carbon form since they are themselves products. See § 261.2(c)(2)(ii), and see proposal (61 FR at 17461).

Some commenters argued that no comparable fuels specifications should be established for pure hydrocarbon compounds because pure hydrocarbons will burn cleanly. EPA disagrees for the purpose of today's rule because establishing no limits for Appendix VIII hydrocarbons would depart from the basic comparable benchmark approach and even relatively clean-burning compounds may produce some toxic emissions. EPA's analysis confirms that these compounds are not present in the benchmark fuels above the minimum detection limits. However, it is reasonable to assume that the "non-detect" pure hydrocarbons could in fact be present in fossil fuels up to the detection limit since fossil fuels are comprised entirely of pure hydrocarbons. Therefore, the final rule allows hydrocarbons in Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

Some commenters argued that toluene, a typical fuel component, should be allowed without limitation in comparable fuels. As discussed above for all hydrocarbons, EPA disagrees with not establishing any limits on toluene, or establishing a different specification not based on fuel data, because this would depart from the comparable benchmark approach. EPA has established the toluene specification at the fuel data-based concentration found in its benchmark fuel analysis. However, because toluene can be a fuel component, setting a different data-based specification for toluene may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

ii. Specification Levels for Undetected Oxygenates. In addition to the pure hydrocarbon compounds, EPA invited comment on whether oxygenates should be allowed up to the detection limits in EPA's analysis and on what would be an appropriate minimum oxygen-to-carbon ratio to identify an oxygenate. (61 FR at 17461). Oxygenates are organic compounds comprised solely of hydrogen, carbon, and oxygen and can serve as fuels or fuel additives. Examples of oxygenates (not in Appendix VIII and thus not RCRA regulated) include alcohols such as ethanol, and ethers such as methyl tert-butyl ether (MTBE). Appendix VIII oxygenates are not routinely found in fossil fuels and only a few oxygenates were detected in EPA's sampling and analysis program.

Several commenters supported allowing oxygenates at any concentration less than or equal to the detection limit but also argued that EPA should go a step further and set no specification limits for oxygenated compounds. Commenters argued that oxygenates (like isobutyl alcohol) burn well and promote good combustion of other constituents in a fuel. Again, for the purpose of today's rule, EPA disagrees with not establishing any limits on oxygenates because this would depart from the basic comparable benchmark approach. EPA's analysis confirms that these compounds are not present in the benchmark fuel above the minimum detection limits and establishing a specification without fuel data containing oxygenates would depart from the comparable fuel approach. Furthermore, oxygenates are listed on Appendix VIII for their toxicity and in particular, one group of organic oxygenates, organic peroxides, can be extremely hazardous to manage. However, since most oxygenates burn well and are not likely to produce significant PICs, EPA will allow these compounds at any concentration less than or equal to the detection limits found in EPA's analysis.

EPA notes that the Clean Air Act provides for the use of some oxygenates (like isobutyl alcohol) as additives in unleaded gasoline and it may be appropriate to consider their use in a comparable fuel. However, at the time of this final rulemaking, EPA had no fuel data in which these oxygenates were used as gasoline additives and thus was not able to set a specification different than in today's final rule. As discussed above, any approach without using fuel data would depart from the comparable fuel approach. However, setting data-based specifications for certain oxygenates may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

With regard to a minimum oxygen-to-carbon ratio to define an oxygenate, one commenter recommended defining oxygenates simply as aliphatic compounds comprised of carbon, hydrogen, and oxygen. If EPA was intent on defining an oxygen-to-carbon ratio, other commenters recommended a ratio of 0.266, which is the ratio for MTBE. Defining an oxygenate with a minimum oxygen-to-carbon ratio or limiting the definition to only aliphatics is more conservative than necessary. Instead, EPA is defining an oxygenate as any compound comprised solely of hydrogen, carbon, and oxygen.

In summary, the final rule allows oxygenates, defined as any compound comprised solely of hydrogen, carbon, and oxygen, at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

D. Parameters for the Synthesis Gas Fuel Exclusion

In today's final rule, EPA is also excluding from the regulatory definition of solid waste (and, therefore regulation as hazardous waste) a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") fuel meeting particular specifications. The exclusion applies to syngas that results from the thermal reaction of hazardous wastes by a process designed to generate both hydrogen gas (H_2) and carbon monoxide (CO) as usable fuel. See proposal (61 FR at 17465).

Some commenters stated that synthesis gas fuels are beyond EPA's regulatory authority because they are uncontained gases. EPA has broad statutory authority to regulate fuels produced from hazardous wastes. RCRA section 3004 (q) (1); see also *Horsehead Resource Development Co.* v. *Browner*, 16 F. 3d 1246, 1262 (D.C. Cir. 1994) (broadly construing this authority). The fact that syngas (by definition) is a gas, rather than a solid or liquid, does not appear to raise jurisdictional issues. It is still produced from the hazardous wastes that are being processed thermally. See § 261. 2 (c) (2) (A) and (B) (defining such materials as solid wastes). EPA believes its authority to be clear under these provisions.

EPA also received a number of comments from persons operating synthetic gasification processes within the petroleum industry. These comments also argued that the Agency was without legal authority to regulate the fuel output of these processes even if the processes use hazardous waste as a feed material. The Agency has in fact adjudicated the status under existing regulations of such a unit, indicating that while both the process and the fuel output are within RCRA subtitle C jurisdiction, the process is a type of exempt recycling unit under 40 CFR 261.6(c)(1) and the fuel is also exempt under § 261.6(a)(3). Letter of Michael Shapiro (Director of Office of Solid Waste) to William Spratlin (Director RCRA Division EPA Region VII) (May 25, 1995).

Upon reflection, it appears that these petroleum gasification operations may be similar to other within-petroleum industry recycling activities that EPA has proposed to exclude from Subtitle C jurisdiction in the petroleum listing rule

proposed on November 20, 1995. 60 *FR* 57747. It therefore appears more appropriate to consider this overall jurisdictional issue in the context of that rulemaking. However, EPA is not at this time limiting the synthetic gas fuel exclusion insofar as it potentially applies to the output of gasification operations conducted as part of normal petroleum refining (SIC Code 2911). Thus, these syngas fuels can also be eligible for the exclusion in today's rule.

To ensure that any excluded hazardous waste-derived syngas contains low levels of hazardous compounds relative to levels in fossil fuels, the Agency is setting a series of syngas specifications addressing:

(1) physical specifications:

—Minimum Btu value (Btu/scf);

(2) general constituent specifications for:

—Total halogen (ppmv)
—Total nitrogen (ppmv)
—Hydrogen Sulfide (ppmv)

(3) individual hazardous constituent specifications, for:

—Individual Appendix VIII constituents (ppmv)

1. Physical Specifications

a. Minimum Btu value. Like the comparable fuel specification, EPA proposed that syngas fuel have a minimum Btu value of 5,000 Btu/lb. Commenters had several concerns with this specification. First, commenters noted that the heating value of a gas is almost universally measured in units of Btu per unit volume ("scf"). Second, commenters argued that due to the efficiencies of combustion, a gas can be used as a fuel even though its heating value, when expressed in terms of Btu per pound, is less than 5000. Commenters argued that using fuels with significantly higher Btu per scf could actually degrade efficiency of gas turbine electric generation systems and increase air emissions. For example, syngas with a heating value of 5000 Btu per pound would have to be diluted to reduce its heating value to enable a combustion turbine to meet NO_x emission limits. Furthermore, commenters argued that in many potential applications, syngas produced from hazardous waste would be used as a substitute for syngas produced from fossil fuels or syngas produced from non-hazardous secondary materials. Syngas produced from coal, coke, and certain types of secondary materials, with heating values less than 5000 Btu per pound (when expressed in these terms), are currently used as fuels.

EPA agrees with commenters' concerns with regard to the heating value of syngas. To set an appropriate heating value, EPA investigated the heating values of syngas currently manufactured for use as a fuel.[15] For fuel usage related purposes, syngas is classified as either medium- or low-Btu gases (medium-Btu generally being produced with pure oxygen, low-Btu generally with air). Medium-Btu syngas generated from the gasification of fuels (including coal, fuel oil, biomass, municipal solid wastes, plastics, etc.) with pure oxygen typically has heating values from 200 to 400 Btu/scf. Medium-Btu syngas can typically be used as a fuel for power production in a gas turbine. Low-Btu syngas generated from the gasification of fuels with air has heating values from about 100 to 200 Btu/scf. In most cases, low-Btu syngas does not achieve temperature and expansion ratios needed for thermodynamically efficient power generation. Low-Btu syngas is usually mixed with higher energy sources and is not generally desired for most applications. However, EPA notes that there are certain specifically designed gas turbines (with very large "silo" combustion chambers) that can handle very low-Btu (100 Btu/scf) syngases for power generation. Thus, a heating value of 100 Btu/scf is reasonable for syngas because it represents fuels used as legitimate energy sources. Therefore, EPA is establishing a minimum Btu value of 100 Btu/scf for synthesis gas. See § 261.38(b)(1).

2. General Constituent Specifications

a. Total Halogen Specification. As proposed, EPA is promulgating a total halogen specification for synthesis gas fuels of less than 1 ppmv. Like comparable fuels, EPA is establishing a total halogen specification to limit the formation of halogenated PICs from the burning of the hazardous waste-derived syngas fuel. EPA has looked at syngas manufactured from non-hazardous waste sources, such as coal, and concludes that 1 ppmv is a reasonable specification for total halogen for a synthesis gas fuel. See § 261.38(b)(2).

b. Total Nitrogen Specification. EPA proposed a total nitrogen specification of less than 1 ppmv of total nitrogen, other than diatomic nitrogen (N_2). Like comparable fuels, EPA was concerned about the formation of nitrogenated PICs from the nitrogen contained in the hazardous waste-derived syngas fuel. Commenters argued that regardless of whether nitrogen is present in the syngas, when syngas is burned, NO, NO_2 and NO_x will always form, as nitrogen present in the air combines with oxygen in the syngas, the air or both. In addition, commenters argued that the Agency or authorized states already regulate the emissions of these air pollutants through the issuance of air permits. Furthermore, commenters argued that nitrogen in the syngas would not lead to the formation of PICs.

EPA disagrees with the commenters that a total nitrogen specification is unnecessary and believes that the comments did not address EPA's rationale for a total nitrogen limit. EPA is establishing a total nitrogen specification to limit the formation of nitrogenated PICs. Diatomic nitrogen is not included in a total nitrogen specification because only organic-bound nitrogen compounds are expected to form PICs. However, a total nitrogen specification based on syngas used as a fuel is a more appropriate specification. EPA has looked at syngas currently manufactured for use as a fuel to establish a total nitrogen specification. Nitrogen compounds in syngas (other than N_2) are mostly in the form of HCN or NH_3. Syngas manufactured from coal can have HCN and NH_3 levels of 100 to 300 ppmv.[16] A total nitrogen specification of 300 ppmv would ensure that concentrations of nitrogenated PICs in waste-derived syngas will be no greater than syngas manufactured from coal. Therefore, in today's final rule, EPA is promulgating a total nitrogen specification of 300 ppmv, other than diatomic nitrogen (N_2) for synthesis gas fuel. See § 261.38(b)(3).

c. Hydrogen Sulfide Specification. EPA proposed a hydrogen sulfide (H_2S) specification of 10 ppmv for syngas fuels. Commenters argued that the H_2S specification is not necessary because the Clean Air Act has specifications that restrict the amount of sulfur that can be emitted by sources that would likely burn syngas fuel (i.e., boilers, combustion turbines). In addition, commenters argued that the potential of facilities that burn syngas as a fuel to emit sulfur compounds is low in comparison to facilities burning fossil fuels. For example, facilities that produce power by burning syngas produced from the gasification of coal emit approximately one-fifth of the level of sulfur compounds emitted by similar facilities burning coal.

EPA disagrees with the commenters that no hydrogen sulfide specification

[15] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[16] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Rule, Development of Comparable Fuels Specifications", May 1998.

should be promulgated. EPA is establishing the syngas exclusion by limiting Part 261 Appendix VIII constituents, one of which is hydrogen sulfide. However, a more appropriate specification would be based on current applications where syngas is used as a fuel, rather than the proposed specification of 10 ppmv. To set an appropriate hydrogen sulfide specification, EPA investigated the hydrogen sulfide levels in syngases currently manufactured from non-hazardous waste sources for use as a fuel.

The sulfur content of the material used to produce the syngas is converted to almost entirely H_2S in the gasification process, with smaller amounts of carbonyl sulfide (COS). Syngas produced from low sulfur content material does not contain appreciable H_2S. The H_2S content of high sulfur coal-based syngas can be over 1000 ppmv. However, in these cases, H_2S is removed during the gasification process. The amount of H_2S removal is dependent on how the syngas will be used. In the case of syngas used for chemical feedstock, the H_2S removal can be to a level under 1 ppmv. For the case of syngas used for fuel, H_2S removal can range to levels between 50 and 200 ppmv (above 200 ppmv leads to corrosion of down stream gas handling equipment, such as turbine blades.[17] Thus, 200 ppmv represents the level of H_2S in gas currently used in applications where syngas is used as a fuel. Therefore, in this final rule, EPA is promulgating a H_2S specification of 200 ppmv for synthesis gas fuels. See § 261.38(b)(4). EPA further notes that H_2S removal is considered as part of the gasification process and a syngas generator is required to meet the H_2S specification after this removal process.

3. Individual Hazardous Constituent Specifications

As proposed, EPA is promulgating specifications of less than 1 ppmv for each hazardous constituent listed in Appendix VIII of part 261 (that could reasonably be expected to be in the gas). Having received no comments to the contrary, this a reasonable specification for Appendix VIII constituents in a synthesis gas fuel. See § 261.38(b)(5). Since EPA is promulgating a total halogen specification for syngas and since this specification ensures that the excluded syngas has less than 1 ppmv of individual halogenated compounds, a syngas generator would not be expected to analyze for the individual halogenated compounds in Appendix VIII. However, a syngas generator would be expected to analyze for the individual nitrogenated compounds in Appendix VIII since a total nitrogen specification of 300 ppmv would not ensure that individual nitrogenated compounds would be limited to 1 ppmv. In addition, a syngas generator would be expected to analyze for the Appendix VIII constituents identified in the comparable fuels specification. See § 261.38(a)(2) Table 1.

[17] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Rule, Development of Comparable Fuels Specifications", May 1998.

E. Meeting the Comparable Fuel Specifications

1. Potential Applicability of Today's Rule to Specific Waste Codes

The probability of today's rule being applicable to any specific hazardous waste is highly dependent upon the waste codes assigned to that waste as well as the industry generating the waste. In developing the Land Disposal Restrictions (40 CFR part 268) and in developing the listings of hazardous wastes (40 CFR part 261), the majority of the listed hazardous wastes were analyzed for concentrations of specific hazardous constituents. EPA has already determined that the majority of listed hazardous wastes (i.e., those having codes beginning with "F", "K", "U" or "P") are known to contain at least one of the hazardous constituents that are restricted by today's rule to "non-detect" levels. Appendix VII to Part 261 provides a partial list of hazardous constituents that are known to be present in each Listed Waste code, and the Treatment Standards for Hazardous Wastes (40 CFR 268.40) indicate constituents (and concentrations) that are specifically regulated for land disposal for each waste code. The majority of these constituents and waste codes are restricted to "non-detect" levels in today's rule and so a potential comparable fuel containing these constituents either could not be used, or would have to be treated so that the hazardous constituents are removed or destroyed to non-detect levels. See treatment discussion below, Section E.4. It is possible, however, that an organic solvent or oil could carry one of these codes, based on the derived-from rule only, and could comply with the limits in today's rule. As such, EPA did not restrict the application of today's rule to any waste code, except in the case of wastes listed for the presence of dioxins or furans. See 261.38(c)(12). However, EPA does not expect that corrosive or reactive wastes would be candidate comparable fuels because of the detrimental impacts on the burning unit that would occur.

At the same time, there are specific listed waste codes that EPA expects to contain only those constituents for which today's rule sets maximum allowable concentrations. As such, some wastes with these codes would be likely candidates for compliance with the corresponding constituent limits. These applicable wastes are primarily expected to be: ignitable solvent wastes (F003 and F005), wastes from petroleum production (F037, F038, and K048–51), and wastes from coking operations (K060, K087, K141–145, K147 and K148). Table 1 also lists a set of U waste codes and their corresponding constituents that may be applicable depending upon their concentrations.

It is expected that today's rule will primarily be applied to wastes that are classified as hazardous only because they exhibit the hazardous characteristic of ignitability (D001) and/or corrosivity (D002). In comparing the regulatory levels for characteristic metal wastes (D004–D011) and the corresponding allowable limits for these metals in today's rule, there is an extremely small window of applicability for some wastes identified as D006 (cadmium) or D009 (mercury) and likewise a relatively small window of applicability for some D008 wastes (lead). All other characteristic metal wastes fail the limit restrictions for metals. D003 wastes that are classified as hazardous due to their cyanide (CN) content are expected, for the most part, to fail to meet the specification for total nitrogen. Except for D018 wastes (benzene), wastes that are characteristic for organics (D012–D043) are also expected to be unable to comply with either the limits or the "non-detect" requirements.

All wastes consisting primarily of alcohols (e.g., ethanol or isopropanol), petroleum distillates, oils, or other ignitable organic liquids) are the most likely candidates for applying today's rule. This is quite logical in that these chemicals tend to have good fuel value when compared to the fuels examined for today's rule. The most probable listed wastes that are expected to be able to comply with today's rule are F003 and F005 solvents (except those F005 wastes containing carbon disulfide, pyridine, or nitrobenzene). There are an additional number of "U" wastes identified in Table 2 that are also good candidates for compliance with today's rule. These chemicals are either hydrocarbons or oxygenated hydrocarbons for which today's rule does not establish any limits.

Because of the potential for cross-contamination, wastes from facilities

(e.g., pesticide manufacturers and halogenated solvent manufacturers) known to manufacture concentrated forms of the chemicals restricted by today's rule, are the most likely to require closer scrutiny and testing. However, wastes generated by these facilities that are not expected to be cross-contaminated would include non-contact solvents, hydraulic or lubricating oils, and solvent-based wastes from the production of unregulated constituents.

TABLE 1.—LISTED "U" WASTES WITH CORRESPONDING CONSTITUENT LIMITS

Constituent for which the code was listed	Waste code
Acetophenone	U004
Benz[a]anthacene	U018
Benzene	U019
Benzo(a)pyrene	U022
Bis(2-ethylhexyl) phthalate	U028
Chrysene	U050
Creosote	U051
Cresol cresylic acid (total cresols)	U052
Dibenz[a,h]anthracene	U063
Di-n-butyl phthalate	U069
Diethyl phthalate	U088
7,12-Dimethylbenz[a]anthracene	U094
Di-n-octyl phthalate	U107
Fluoranthene	U120
Indeno(1,2,3-cd) pyrene	U137
3-Methylcholanthrene	U157
Naphthalene	U165
Toluene	U220
Acrolein	P003
Allyl alcohol	P005
Endothall	P088
Propargyl alcohol	P102
Ethyl methacrylate	U118
Isobutyl alcohol	U140
Isosafrole	U141
Methyl ethyl ketone [2-Butanone] [MEK].	U159
Methyl methacrylate	U162
1,4-Naphthoquinone	U166
Phenol	U188
Safrole	U203
2-Ethoxyethanol [Ethylene glycol monoethyl ether].	U359

TABLE 2.—LISTED "U" WASTES WITH NO CORRESPONDING CONSTITUENT LIMITS

Constituent for which the waste was listed	Waste code
Acetaldehyde [Ethanal]	U001
Acetone [2-Propanone]	U002
2-Acetylaminofluorene [2-AAF]	U005
Acrylic acid	U008
Benz[c]acridine	U016
n-Butyl alcohol [n-Butanol]	U031
Carbon oxyfluoride	U033
Crotonaldehyde	U053
Cumene [Isopropyl benzene]	U055
Cyclohexane	U056
Cyclohexanone	U057

TABLE 2.—LISTED "U" WASTES WITH NO CORRESPONDING CONSTITUENT LIMITS—Continued

Constituent for which the waste was listed	Waste code
Dibenzo[a,i]pyrene	U064
1,2:3,4-Diepoxybutane [2,2'-Bioxirane]	U085
∝,∝-Dimethyl benzyl hydroperoxide	U096
2,4-Dimethylphenol	U101
Dimethyl phthalate	U102
1,4-Dioxane [1,4-Diethyleneoxide]	U108
Ethyl acetate	U112
Ethyl acrylate	U113
Ethylene oxide	U115
Ethyl ether	U117
Formaldehyde	U122
Formic Acid	U123
Furan	U124
Furfural	U125
Glycidylaldehyde	U126
Maleic anhydride	U147
Methanol	U154
Methyl ethyl ketone peroxide	U160
Methyl isobutyl ketone [4-Methyl-2-pentanone].	U161
Paraldehyde	U182
1,3-Pentadiene	U186
Phthalic anhydride	U190
Quinone [p-Benzoquinone]	U197
Resorcinol	U201
Tetrahydrofuran	U213
Xylenes, mixed isomers [Xyenes, total].	U239

2. General

The proposal provided several methods by which a hazardous waste could qualify as a comparable fuel. The final rule retains these methods and adds clarifying conditions to ensure that the methods do not violate existing policy with regard to blending and treatment. The person claiming that a hazardous waste meets the exclusion criteria of this rule will be referred to as the "comparable fuel generator," in the case of excluded liquid fuel, or "syngas fuel generator," in the case of excluded syngas fuel. In today's final rule, a hazardous waste can meet the comparable fuel hazardous constituent, heating value and viscosity specifications of § 261.38(a) in several ways. However, in each case, the generator claiming the exclusion is responsible for demonstrating eligibility. In addition, just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion. The implementation requirements of § 261.38(c) (e.g., notification, certification, sampling and analysis, recordkeeping) must also be satisfied for a hazardous waste to be excluded as a comparable fuel.

A waste can meet the § 261.38(a)(2) hazardous constituent specification if the hazardous waste "as generated," i.e. without any processing, blending or other alteration: (a) Meets the hazardous constituent specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), so that the hazardous constituents of concern are destroyed or removed to concentrations that meet the exclusion specification.

A waste can meet the § 261.38(1)(i) heating value specification if the hazardous waste as generated without processing: (a) Meets the heating value specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), that destroys or removes material to increase the heating value to meet the exclusion specification.

A waste can meet the § 261.38(a)(1)(ii) viscosity specification if the hazardous waste as generated without processing: (a) Meets the viscosity specification; (b) does not meet the viscosity specification, but through blending, pursuant to § 261.38(c)(3) with fossil fuel, another excluded comparable fuel, or other non-waste changes the viscosity to meet the exclusion specification; or (c) does not meet the viscosity specification, but undergoes treatment, pursuant to § 261.38(c)(4) that destroys or removes material to decrease the viscosity to meet the exclusion specification.

3. Blending

Commenters supported allowing the blending of a hazardous waste that meets the constituent and heating value specifications for the purpose of decreasing viscosity. However, commenters were concerned that blending could dilute toxic constituents and said that blending should only be allowed if toxic constituents in the hazardous waste would not be diluted. In today's final rule, the Agency allows an as-generated hazardous waste, which meets the hazardous constituent and heating value specifications, but does not meet the viscosity specification, to be blended to meet the viscosity specification (see § 261.38(a)). The generator must document that the hazardous waste, as generated without processing, meets the hazardous constituent and heating value specifications prior to any blending. It is also the responsibility of the generator to document that the blending does not violate the dilution prohibition of § 261.38(c)(6). This provision states that the hazardous constituent and heating

value specifications cannot be met through dilution; i.e. they can only be met through treatment which destroys or removes hazardous constituents, or by the waste as-generated. See generally 61 FR at 15586–87 (April 8, 1996) (extending dilution prohibition in § 268.3 to include combustion of inorganic wastes). Allowing blending to meet the hazardous constituent or heating value specification simply increases the amounts of hazardous constituents emitted when the fuels are burned, and would increase these amounts above those emitted if fossil fuels were burned instead. This is at inconsistent with the whole premise of comparable fuels, and also is inconsistent with the section 3004(m) hazardous waste treatment provisions (which, although not directly applicable, articulate important overall statutory objectives) which require hazardous constituents to be removed or destroyed by treatment, not diluted. *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16 (D.C. Cir. 1992). As noted earlier, such burning can be viewed as part of the waste management problem, and EPA may validly condition the exclusion to prevent that result.

Blending of a hazardous waste pursuant to § 261.38(c)(3) to meets the viscosity specification obviously may be performed only in regulated units: at a permitted RCRA treatment, storage facility; a regulated interim status treatment, storage facility; or at a 90-day generator unit meeting the requirements of § 262.34.

4. Treatment

Commenters also supported the proposal to allow a hazardous waste to be treated to meet the comparable fuel specifications. Many of the same commenters also expressed concerns that any treatment allowed should reduce emissions of hazardous constituents, i.e. treatment must destroy or remove the constituents or materials of concern. The Agency agrees, and § 261.38(c)(4) specifically states that only treatment which destroys or removes hazardous constituents or materials is permissible. Moreover, as noted above, the waste remains subject to subtitle C control during treatment and thus treatment can only occur in regulated units. (Treatment by blending to meet the viscosity specification likewise can only occur in regulated units, for the same reason.)

It is the responsibility of the generator claiming the exclusion to demonstrate eligibility. See generally § 261.2(f). It should be noted that just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion; the implementation requirements of § 261.38(c) (e.g., notices, certification, sampling and analysis, recordkeeping, etc.) also must be satisfied for a hazardous waste to be excluded as a comparable fuel. The person that treats the hazardous waste to generate a comparable fuel must also demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituents or materials of concern from the waste. The treater must: (1) Document that the unit that will treat the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents (at the levels present in the waste) or materials of concern from the type of waste being treated; or (2) treat the waste in a unit that removes or destroys the constituents of concern, then reanalyze the waste, in accordance with the requirements of § 261.38(c)(8), to document that the constituent specifications have been satisfied.

If a hazardous waste is treated to produce a comparable fuel, only the waste-derived fuel would be excluded from RCRA subtitle C regulation upon a determination that it met the specification. The hazardous waste would be regulated under Subtitle C from the point of generation until the generation of a comparable fuel that meets the exclusion specifications and implementation requirements. This means that the generation, transport, storage, and treatment of the hazardous waste, until exclusion as a comparable fuel, remains subject to applicable Subtitle C regulations.

In addition, residuals from the treatment of a hazardous waste remain solid waste and, if hazardous, are subject to applicable Subtitle C regulations. Thus, if comparable fuel is produced from treatment of listed hazardous waste, the wastes from that process are automatically hazardous by virtue of the derived from rule. (See the derived-from rule in § 261.2(d).)

F. Meeting the Syngas Specifications

Commenters felt the proposal was not very specific in describing ways in which a syngas fuel could be generated from hazardous waste. The final rule makes clear that a hazardous waste can meet the syngas fuel constituent and heating value specifications through the treatment of the hazardous waste. As with comparable fuels, it is the responsibility of the generator claiming the exclusion to demonstrate eligibility. The treatment of a hazardous waste to generate a syngas fuel can occur in either: (1) A unit subject to applicable Subtitle C treatment, storage and disposal requirements (i.e., Parts § 264, § 265 or § 262.34); or (2) a recycling unit exempt under § 261.6(c).

The generator of the syngas fuel must demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituent of concern from the waste. A generator of syngas fuel from the treatment of hazardous waste must: (1) Document that the unit that will process the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents of concern from the type of waste being treated; and (2) process the hazardous waste in a unit that removes or destroys the constituents of concern, then analyze the waste in accordance with the requirements of § 261.38(c)(8) to document that the exclusion specifications have been satisfied. If a hazardous waste is processed to produce a syngas fuel that meets the exclusion specifications, only the syngas fuel would be excluded from RCRA subtitle C regulation.

In addition, residuals from the treatment of a hazardous waste to generate an excluded syngas fuel remain solid waste and are subject to applicable Subtitle C regulations if they are also hazardous wastes. Residuals from the treatment of a listed hazardous waste to generate a syngas fuel remain hazardous wastes due to the derived-from rule: the residuals are derived from treatment of listed hazardous wastes.

G. Sampling and Analysis

Commenters expressed concern that the Agency proposed: (1) To initially require sampling and analysis for all Appendix VIII constituents; (2) to require the use of SW–846 methods to conduct sampling and analysis of Appendix VIII constituents; and (3) to also require the use of the same methods for syngas as for comparable fuels. In response to commenters concerns, the Agency is finalizing the following approaches to sampling and analysis of comparable fuel and syngas fuel.

1. Use of Process Knowledge

A majority of commenters believed that EPA should allow the use of process knowledge under limited circumstances in determining which constituents to test for in the initial scan as well as any follow up testing. The Agency agrees with commenters. Generators of hazardous wastes should have adequate knowledge of their waste to allow the use of process knowledge in determining which constituents may and may not be present in their waste.

The use of process knowledge may only be used by the original generator of

the hazardous waste. If the generator of the hazardous waste and generator of the comparable/syngas fuel are different, then the generator of the comparable/syngas fuel may not use process knowledge to determine that constituents are not present in the waste. The generator of the comparable/syngas fuel, if not the original generator of the hazardous waste, must test for all of the constituents and properties in § 261.38(a)(2) Table 1 of the regulations. This is because the Agency believes that only the original generator may have intimate knowledge of the constituents in the waste to make such a determination. See § 268.7, where EPA uses the same approach for analyzing compliance with LDR treatment standards; *see also Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355, 368–71 (D.C. Cir. 1989) (upholding this approach).

Therefore, the final rule allows the use of process knowledge under certain circumstances. Today's rule requires testing for all constituents except those the initial generator of the hazardous waste determines should not be present in the waste. The following cannot be determined to "not be present" in the waste: (1) A hazardous constituent that causes the waste to exhibit the toxicity characteristic for the waste or hazardous constituents that were the basis for the listing of the waste; (2) a hazardous constituent detected in previous analysis of the waste; (3) a hazardous constituent introduced into the process that generates the waste; or (4) a hazardous constituent that is a byproduct or side reaction to the process that generates the waste.

It is the responsibility of the original generator/comparable fuel generator to document their claim that specific hazardous constituents meet the exclusion specifications based on process knowledge. Regardless of which method a generator uses, testing or process knowledge, the generator is responsible for ensuring that the waste meets all constituent specifications at all times. If at any time the comparable fuel fails to meet any of the specifications, that fuel is in violation of Subtitle C requirements.

2. Waste Analysis Plan

As in the proposal, the final rule requires comparable fuel generators to develop a waste analysis plan prior to sampling and analysis of their hazardous waste to determine if the waste meets the exclusion specifications. This is consistent with the usual requirement throughout the Subtitle C rules that persons generating and treating hazardous waste must prepare a waste analysis plan. See, e.g. § 264.13 (general waste analysis plans) and § 268.7(a)(4) (requiring even generators using 90-day units for treatment to prepare waste analysis plans with respect to hazardous waste prohibited from land disposal). To ensure that the chemical/physical measurements of the waste are sufficient, accurate and precise, the Agency is requiring comparable fuel generators to develop a waste analysis plan, and suggest doing so in accordance with Agency guidance. Chapter Nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) addresses the development and implementation of a scientifically credible sampling plan. Chapter One of SW–846 describes the basic elements to be included in a Quality Assurance Project Plan (QAPP), as well as information describing basic quality assurance (QA) and quality control (QC) procedures. Chapter Two of SW–846 aids the analyst in choosing the appropriate methods for samples, based upon sample matrix and the analytes to be determined.

Comparable fuel generators may want to follow the SW–846 guidance in developing their waste analysis plans. As specified in the recordkeeping section of the rule (§ 261.38(c)(10)) the generator also must have documentation of the: (1) Sampling, analysis, and statistical analysis protocols that were employed; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste tested; and (4) results of the statistical analysis.

3. Methods To Analyze Comparable Fuels

In the proposal, EPA required the use of SW–846 methods for the sampling and analysis of wastes to determine if the waste meets the comparable fuel exclusion constituent specifications. Based on commenter response and the Agency's overall increased use of alternative methods to those specified in SW–846, the final rule allows the use of alternate methods that meet the performance based criteria in section § 261.38(c)(8).

The approach allows comparable/syngas fuel generators to use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that: (1) Each constituent of concern is not present above the specified specification level at the 95% upper confidence limit around the mean; and (2) the analysis could have detected the presence of the constituent at or below the specified specification level at the 95% upper confidence limit around the mean. (See Guidance for Data Quality Assessment—Practical Methods for Data Analysis, EPA QA/G–9, January 1998, EPA/600/R–96/084).

The Agency will consider that the exclusion level was achieved in the waste matrix if an analysis in which the constituent is spiked at the exclusion level indicates that the analyte is present at that level within analytical method performance limits (e.g., bias and precision). In order to determine the performance limits for a method, EPA recommends following the quality control (QC) guidance provided in Chapters One and Two of SW–846, and the additional QC guidance provided in the individual methods.

The Office of Solid Waste's (OSW) standing policy on the Appropriate Selection and Performance of Analytical Methods for Waste Matrices Considered to be "Difficult-to-Analyze" was stated in a January 31, 1996 memorandum from Barnes Johnson, Director of the Economics, Methods, and Risk Assessment Division, to James Berlow, Director of the Hazardous Waste Minimization and Management Division. The following excerpts are appropriate to this rulemaking.

Inadequate recovery of target analytes from the RCRA-regulated waste matrices of concern demonstrates that the analytical conditions selected are inappropriate for the intended application. Proper selection of an appropriate analytical method and analytical conditions (as allowed by the scope of that method) are demonstrated by adequate recovery of spiked analytes (or surrogate analytes) and reproducible results. Quality control data obtained must also reflect consistency with the data quality objectives and intent of the analysis.

(a) For extractable organics in standard RCRA matrices, e.g., groundwater, aqueous leachates, soils, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 70% or greater (Method 8270C, Sec. 1.1). For extractable organics in "difficult matrices", e.g., sludges, ash, stabilized wastes, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 50% or greater.

(b) For volatile organics, using relative recoveries, i.e., standard curves established by purge-and-trap, or other

techniques for the preparation of standards, OSW considers a sample preparation method appropriate if it generates a relative analyte recovery of 80% or greater (Methods 8260B, 8015B).

(c) For inorganic analytes in almost all matrices, an absolute recovery and precision of 80–120% can generally be achieved with the proper choice of acid digestion procedure and determinative method for the analyte of interest."

4. Syngas Waste Analysis Plan and Analysis Methods

a. General. EPA is concerned that tested and generally accepted methods may not exist for the sampling and analysis of gases from pressurized systems that will ensure an accurate, unbiased, and precise representation of the hazardous constituents present in the gas.

Hazardous constituents present in a gas at high pressure and high temperature may be difficult to analyze accurately due to possible physical and chemical changes in the constituents when a sample is drawn into a low pressure and temperature environment for analysis. For example, some constituents, while present as a gas under high pressure and temperature, may solubilize into liquids that have condensed or adhere to the sampling components as the pressure and temperature drops in the sampling device. If this were to occur, the analysis of the sampled gas would not accurately represent the concentrations of the constituents in the original gas.

The Agency also shares the general concern stated in comments that enforcement of the exclusion specifications could be compromised because of the difficulty in applying or potential absence of accepted sampling and analysis methods for these gases. Therefore, the final rule requires syngas generators to submit for approval, prior to sampling and analysis, a waste analysis plan to the appropriate regulatory authority (see § 261.38(c)(7)(iii)). At a minimum, the plan must specify: (1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters; (2) the test methods which will be used to test for these parameters; (3) the sampling method which will be used to obtain a representative sample of the waste to be analyzed; and (4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and (5) if process knowledge is used in the waste determination, any information prepared by the facility owner or operator in making such determination.

b. Analysis. A syngas fuel generator also may use the performance-based approach (§ 261.38(c)(8)) to demonstrate that the performance of the methods selected is appropriate to meet the exclusion specifications (as described in 3 above). Guidance on demonstration of appropriate method performance can be found in Chapter One of SW–846 and the Quality Control sections of the individual methods.

5. Non-Detects

EPA proposed that for a waste to meet a non-detect standard, the analysis must achieve a detection limit equal to or less than the EPA specified number and also not detect the constituent of concern in the waste (61 FR 17358). However, some commenters believe that the Agency should develop numerical levels for each parameter in the benchmark where results are "non-detect." They are concerned that a potential comparable fuel that has any measurable levels of Appendix VIII constituents below the Agency's detection limits would not qualify as a comparable fuel.

The final rule maintains the proposed approach for non-detect constituent specifications, except in the case of metals, hydrocarbons and oxygenates (see Section C. above). The Agency believes that allowing concentrations of constituents not found in the benchmark fuels to be present in the comparable fuel is counter to the comparable approach and could allow higher emissions of toxic compounds from burning excluded waste than from benchmark fuels. Additionally, commenters noted that the detection limit, referenced as the "maximum" detection limit, should more accurately be referred to as the "minimum" detection limit that must be achieved. The Agency agrees and the final rule requires that analysis for a constituent with a specification of non-detect must: (1) Meet a detection limit at or less than the minimum required detection limit listed for the constituent; and (2) not detect the constituent of concern in the waste (see § 261.38(a) and (b)).

Commenters also indicated that it may be difficult to achieve the detection limits specified for the non-detect specifications. The Agency continues to believe that the detection limits can be met. This is due in part to the fact that the detection limits are primarily based on the limits found for the No. 6 fuel oil analysis. EPA believes that the matrix for No. 6 fuel oil is a more difficult matrix to analyze than what the Agency believes will be the matrix for the majority of comparable fuels—a light solvent matrix. In addition, to assist generators who may have difficult matrices to analyze, the final rule provides the latitude to use any method that will ensure an unbiased and precise analysis of the waste.

H. Notification, Certification, and Documentation

1. Who Must Make the Exclusion Notification

The person claiming that a hazardous waste meets the exclusion criteria of this rule is known as the "comparable fuel generator" in the case of excluded liquid fuel or "syngas fuel generator" in the case of excluded syngas fuel. The comparable/syngas fuel generator need not be the person who originally generates the hazardous waste. The comparable/syngas fuel generator can be the first person who documents and certifies that a specific hazardous waste meets the exclusion criteria.

2. Notification Requirements

Most commenters agreed with the proposal that a one-time notification was appropriate; however, some commenters said that the exclusion should not be self-implementing and should require some type of review and approval by the implementing authority. The Agency continues to believe that a one-time notification in combination with the other requirements of this section, gives sufficient notice to the regulating officials (i.e., State RCRA and CAA officials). Since this is a self-implementing exclusion, in order to ensure delivery, the notification must be sent certified mail and until the notification of exclusion is received the waste is still a hazardous waste and must be managed as such. Only after the receipt of such notification that the hazardous waste-derived fuel meets the requirements of this rule is the waste excluded and free to be managed in accordance with the requirements for a comparable or syngas fuel. If a comparable/syngas fuel generator loses its exclusion, the generator must renotify for the exclusion, after coming into compliance with the requirements of this section. If necessary the generator must also comply with any applicable Subtitle C requirements for the waste.

a. EPA Regional or State Notification. Prior to managing any waste as an excluded comparable/syngas fuel under this section, the generator must send to, in States not authorized to implement this Section, the EPA Regional RCRA and CAA Directors, and, in authorized States, to the State RCRA and CAA Directors. The notification of the exclusion claim should be sent via

certified mail, or other mail service that provides written confirmation of delivery. Notification of the RCRA and CAA Directors will provide notification of the exclusion and appropriate documentation to both the RCRA and CAA implementing officials. The Agency's intent is for copies of the exclusion information to reach both the RCRA and CAA implementing officials because of the nature of this exclusion—a RCRA excluded waste being burned in CAA regulated units. If the comparable/syngas is to be burned in a State other than the generating State, then the comparable/syngas fuel generator must also provide notification to that State's or Region's RCRA and CAA Directors.

The notification shall contain the following items: (1) The name, address, and RCRA ID number of the person/facility claiming the exclusion; (2) the applicable EPA Hazardous Waste Codes for the hazardous waste; (3) the name and address of the units, meeting the requirements of § 261.38(c)(2), that will burn the comparable/syngas fuel; and (4) the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.38(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. Public Notification. As a self-implementing exclusion effective upon receipt of the notification by the implementing authority, there is no decision prior to exclusion being made by the implementing authority regarding the waste. The opportunity exists at all times for the public to bring to the implementing authority's attention any circumstance that might aid that authority in its monitoring and enforcement efforts. The public, furthermore, would have the ability to bring a citizen suit for a claimant's failure to comply with any requirement of the exclusion. Based on comments received on the proposal, the Agency believes that requiring the comparable/syngas fuel burner to provide a simple public notification of an exclusion claim would aid the public in its efforts. In most cases, the Agency believes the burner will also be the generator of the fuel.

Therefore, under the final rule, the comparable/syngas fuel burner must submit for publication in a major newspaper of general circulation local to the site where the comparable/syngas fuel will be burned, a notice entitled "Notification of Burning of Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information: (1) Name, address, and RCRA ID number of the claimant's facility; (2) name and address of the unit(s) that will burn the comparable/syngas fuel; (3) a brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel; (4) an estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; (5) name and mailing address of the State or Regional Directors to whom the claim is being submitted. This notification must be published in the newspaper prior to the burning of the comparable/syngas fuel. Notification is only necessary once for each waste stream excluded.

c. Burner Certification. As proposed, the final rule requires comparable/syngas fuel to be burned only in units subject to Federal/State/local air emission requirements. The Agency believes that limiting the burning of comparable/syngas fuels to industrial furnaces or industrial boilers, or hazardous waste incinerators, along with a certification from the burner, would ensure that the fuel was burned in a unit subject to Federal/State/local air emission regulations. Industrial furnaces or industrial boilers, or hazardous waste incinerators are believed to be a universe of units that are capable of handling comparable/syngas fuels and that would be subject to Federal/State/local air emission requirements. In response to comments, the Agency believes that these excluded hazardous wastes are best handled and burned in the types of units specified in § 261.38(c)(2). To ensure that comparable/syngas fuels burned off-site are burned in a unit specified in § 261.38(c)(2) (see discussion below), the Agency is requiring the generator to obtain from the burner a one-time written, signed certification that: (1) The comparable/syngas fuel will be burned only in an industrial furnace or boiler, or hazardous waste incinerator subject to Federal, State, or local air emission requirements; (2) identifies the name and address of the units that will burn the comparable/syngas fuel; and (3) the state in which the burner is located is authorized to exclude wastes as comparable fuels (i.e., under the provisions of § 261.38). This requirement coupled with the requirement to notify the State or Regional Directors will enable regulatory officials to take any measure that may be appropriate to ensure that excluded fuel is burned in conformance with applicable regulations and so does not become part of the waste management problem.

If the generator or burner intends to change the unit where the comparable/syngas fuel is burned (i.e., burn a comparable/syngas fuel in a unit that has not previously been included in a certification), then prior to burning, the generator must again follow the requirements for: (1) Obtaining a burner certification; (2) notifying the public; and (3) submitting a revised notification to the State or Regional Directors. Once the revised notification has been received by the State or Regional Directors and the notification has been published in the newspaper, the generator/burner may burn the fuel as an excluded waste.

I. Exclusion Status

Some commenters requested clarification of the regulatory status of the comparable/syngas fuel if the conditions of the exclusion were not met. After the exclusion for a waste has become effective, the conditions of the exclusion must continue to be met in order to maintain the exclusion.

Separate and distinct from any requirement or condition established in this final rule, all generators—including comparable/syngas fuel generators under this exclusion—have a continuing obligation to identify whether they are generating a hazardous waste and to notify the appropriate government official if they are generating a hazardous waste. Section 3010; 40 CFR 262.11. If a comparable fuel claimed as excluded under today's rule fails to meet the exclusion requirements of sections § 261.38(a)–(c), that comparable/syngas fuel and subsequently generated comparable/syngas fuel would be required to be managed as a hazardous waste—including compliance with all notification requirements—until testing demonstrated that the waste was below the exclusion specifications.

A comparable/syngas fuel that is not ultimately burned remains a hazardous waste and is subject to all applicable Subtitle C regulations (unless another exclusion from RCRA applies). As stated

in the proposal, the only allowable treatment or disposal method for a comparable/syngas fuel is burning. Any disposal method other than burning is a RCRA violation, unless the comparable/syngas fuel is properly managed as a hazardous waste meeting applicable Subtitle C regulations. The implications of not burning are that any prior management of the waste was subject to Subtitle C requirements.

Excluded comparable/syngas fuel generators, transporters and burners are subject to the speculative accumulation requirements under § 261.2(c)(4). Thus, there must be turnover of a given percentage of comparable fuel stock each calendar year, and the persons holding such fuels must be able to demonstrate that such turnover is occurring. See § 261.2(f). Since ultimate users are notified that they are receiving comparable fuels, they may feasibly comply with this requirement by documenting how much such fuel is received when it is burned.

If a generator knows or should have known that a waste fails to meet the constituent specifications, the exclusion ends as of the point of determination and the material must be managed as a hazardous waste.

J. Recordkeeping

1. General

Some commenters believed that the recordkeeping requirements in the proposal were excessive, while others felt they were too lenient. The Agency, however, believes that because of the self-implementing nature of this exclusion, maintenance of the proper information on-site is essential to the proper implementation of the exclusion.

The final rule requires the comparable/syngas fuel generator to maintain the following files (see § 261.38(c)(10)) at the facility generating the fuel: (1) All information required to be submitted to the State RCRA and CAA Directors as part of the notification of the claim: (i) the name, address, and RCRA ID number of the person claiming the exclusion; (ii) the applicable EPA Hazardous Waste Codes for the hazardous waste; (2) a brief description of the process that originally generated the hazardous waste and process that generated the excluded fuel; (3) an estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded; (4) documentation for any claim that a constituent is not present in the hazardous waste as required under § 261.38(8); (5) the results of all analyses and all quantitation limits achieved for the fuel; (6) documentation as required for the treatment or blending of a waste to meet the exclusion specifications; (7) a certification from the burner if the waste is to be shipped off-site; and (8) the certification signed by the person claiming the exclusion or his authorized representative.

The generator must also maintain documentation of the waste analysis plan and the results of the sampling and analysis that includes the following: (1) the dates and times waste samples were obtained, and the dates the samples were analyzed; (2) the names and qualifications of the person(s) who obtained the samples; (3) a description of the temporal and spatial locations of the samples; (4) the name and address of the laboratory facility at which analyses of the samples were performed; (5) a description of the analytical methods used, including any clean-up and sample preparation methods; (6) all quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred; (7) all laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and (8) all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.38(c)(11) and also provides for the availability of the documentation to the generator upon request. These records and those required for off-site shipments must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

2. Off-Site Shipments

The final rule requires that for each shipment of comparable/syngas fuel a generator sends off-site for burning in an industrial furnace or boiler, or hazardous waste incinerator, a record of the shipment must be kept by the generator on-site. Because these fuels are not required to be accompanied by a manifest, it is the Agency's belief, supported by commenters, that to ensure that comparable/syngas fuels are transported to and burned in only those units approved for such burning some type of tracking mechanism is warranted. Therefore, the final rule requires for off-site shipments the following information be maintained by the generator on-site: (1) The name and address of the facility receiving the comparable/syngas fuel for burning; (2) the quantity of comparable/syngas fuel delivered; (3) the date of shipment or delivery; (4) a cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications; and (5) the one-time certification by the burner.

K. Transportation and Storage

Commenters concurred with the Agency's belief that the Department of Transportation (DOT) and the Occupational Safety and Health Agency (OSHA) requirements for the transportation and handling of comparable/syngas fuels will be adequate to ensure the safe management of these excluded fuels. The final rule does not require comparable/syngas fuel handlers to comply with the RCRA storage and transportation requirements. It should be noted that excluded comparable/syngas fuel transporters are required to comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180.

Anyone who stores an excluded comparable/syngas fuel (e.g., generator, transporter, burner) is required to comply with all applicable requirements under the Occupational Safety and Health Agency regulations in 29 CFR part 1910. The occupational safety and health standards for flammable and combustible liquids can be found in Subpart H—Hazardous Materials section 1910.106 and standards for compressed gases in section 1910.101.

L. Comparable Fuels Exclusion and Waste Minimization

1. Introduction

In its April 1996 NPRM (61 FR 17464), EPA solicited comment on the effects of the comparable fuels provision on facilities' efforts to promote pollution prevention and waste minimization measures (i.e., source reduction and environmentally sound recycling). In particular, EPA wanted to determine the extent to which companies might: (1) Shift from hazardous waste recycling practices to burning wastes as fuel in broader markets; (2) continue to recycle these wastes for product recovery; (3) undertake source reduction for those wastes currently failing the comparable fuel specifications; or (4) continue to burn the excluded waste fuel in either an hazardous waste incinerator, light weight aggregate kiln, or cement kiln.

EPA received many comments on this issue, most of which indicated there

would probably be a shift from recycling toward combustion, but the Agency received very little quantitative information that would allow the Agency to assess the extent and impact of potential shifts. Consequently, EPA used data from the RCRA Biennial Reporting System, which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. This approach is described in the next section.

The results of EPA's analysis conclude that about three-fourths of hazardous wastes now meeting the comparable fuels specifications are already being combusted; the remainder (about one-fourth) is recycled. The 70,000 tons of hazardous wastes, that qualify for the comparable fuels exclusion and are currently recycled annually, could shift to the comparable fuels market, if all generators responded the same way, a possibility which seems unlikely. This figure represents less than a one percent annual increase in the amount of hazardous waste combusted, but it represents a decrease of about 20% in the amount of hazardous wastes recycled annually.

If the comparable fuels provision were implemented alone, a 20% decrease in recycling might appear to have a negative effect on pollution prevention and waste minimization. However, as one commenter pointed out, some generators will install pollution prevention and waste minimization measures (i.e., to prevent high levels of constituents from becoming part of the waste) in order to qualify for the comparable fuels exclusion. This would have the effect of increasing pollution prevention. Furthermore, EPA fully expects that the increased cost of upcoming MACT standards will cause the regulated community to seek cost effective pollution prevention and waste minimization solutions to offset the higher costs (a response seen, for example, in the RCRA land disposal restrictions program). EPA is examining this effect in the regulatory impact analysis for the upcoming MACT standards. On balance, the impact of the comparable fuels provision on pollution prevention and waste minimization in the context of MACT standards appears to be negligible.

2. Major Concerns of Commenters

EPA received comments generally expressing either concerns or support for the exclusion. There was some concern that the comparable fuels exclusion would lead to combustion of spent solvents and other high-energy wastes low in halogens and metals that would otherwise be recovered as product. Conversely, others supported the exclusion pointing to incentives it may create to source reduce and conserve resources by replacing fossil fuels with comparable fuels. In addition, concerns were raised over the role of energy recovery in the waste management hierarchy, and the impact of fuel blending on comparable fuels.

Impact on Source Reduction and Recycling: Several commenters stated that EPA failed to investigate whether the comparable fuels exclusion would encourage combustion of wastes now being recycled. Some of these commenters took positions on how the comparable fuels exclusion would impact the recycling-combustion balance. One group claimed that the comparable fuels exclusion would encourage combustion at the expense of recycling. A smaller group of commenters stated that the comparable fuels exclusion would offer an incentive for generators to use more source reduction to lower the levels of toxic constituents to the specification levels. The commenters provided little quantitative information describing these changes.

As noted above, EPA used data from the RCRA Biennial Reporting System (BRS), which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. Results from both analyses indicate that about three-fourths of wastes likely to meet the comparable fuel specifications are already combusted rather than recycled, and that the remaining wastes could shift from the current recycling market to the comparable fuels depending on the economics and individual company preferences. The methodologies used are summarized below. A full discussion of these analyses is provided in the docket.

Analysis #1: EPA searched the 1993 BRS data to identify waste streams that would be most likely contain wastes that could meet comparable fuel specifications for energy value and low levels of contaminants. EPA focused its search on D001/ignitable wastes because this waste typically contains spent nonhalogenated solvents. EPA also used the BRS data to determine how these wastes were managed after generation, and found that about three-fourths of D001 wastes are combusted, while the remaining one-fourth goes to recycling for solvent recovery.

Analysis #2: Using waste stream specific laboratory analysis data from the NHWCS, EPA identified those waste streams in the survey that meet the comparable fuels specifications for about half of the recycled wastes reported in the BRS. Using this data, EPA was able to estimate the total amount of recycled wastes that could be comparable fuels, and how much waste currently sent to combustion meets the comparable fuels specifications. Analysis of these estimates indicates that about 75% of waste streams meeting the comparable fuels criteria is combusted while the remainder is recycled.

The "Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking" (contained in the docket) predicts savings to generators who can begin to combust hazardous wastes as comparable fuels rather than as hazardous wastes. EPA believes this offers generators incentives to achieve the comparable fuels specifications through source reduction. However, since the costs of source reduction initiatives vary widely from facility to facility, EPA could not reliably estimate net cost savings that facilities could achieve by turning hazardous wastes into comparable fuels through upstream source reduction. Therefore we did not attempt such an estimation.

In addition, many solvent recycling facilities could begin to combust streams meeting the comparable fuels specifications instead of continuing to recycle them. EPA's comparison of recycling costs and revenues with costs for combusting these streams as comparable fuels indicate that in many cases facilities may find the combustion option more economical. Since solvent recycling costs and revenues vary considerably from facility to facility and also fluctuate in time according to the market values of virgin solvent (fuel costs also fluctuate), EPA could not and did not estimate the extent of this shift. Individual facilities may continue to recycle wastes rather than combust them as comparable fuels.

Recycling and the Waste Management Hierarchy: Some commenters stated that letting wastes similar to fuels be burned is evidence of an Agency preference for

combustion over recycling. EPA disagrees: The comparable fuels exclusion is based on the fact that some hazardous waste fuels very closely resemble fossil fuels and do not warrant the full slate of RCRA Subtitle C controls. This does not suggest that the Agency has altered its commitment to the hierarchy. The underpinning of the comparable fuels exclusion is simply a determination on the degree of regulatory oversight needed for fuel-like waste materials, which does not translate to any change of view on the waste management hierarchy.

Burning for Energy Recovery: Some commenters claim that burning for energy recovery is waste minimization. While EPA is clearly providing greater flexibility to burn wastes that closely resemble virgin fuels, EPA distinguishes this from waste minimization. Waste minimization includes source reduction and environmentally sound recycling, but does not include any "method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10)(emphasis added).

Blenders and Third Parties: Some commenters expressed concern that EPA would allow blending of hazardous wastes to meet the concentration specifications for a comparable fuel, thereby raising the issue of dilution to avoid RCRA regulation. Similarly, commenters objected to allowing third parties, such as fuel blenders, to handle and blend wastes between generation and combustion. Commenters pointed out that blending and third-party involvement would constitute impermissible dilution. It would also undermine any incentive to minimize the volume or toxicity of these wastes. The Agency agrees that blending hazardous wastes to bring them within the comparable fuels concentration specifications would constitute dilution which is not only impermissible but also would likely inhibit waste minimization. Today's rule explicitly prohibits any blending or other "treatment" which does not remove or destroy hazardous constituents. Blending of two wastes already meeting the comparable fuels specifications is, however, allowed only to achieve the viscosity specification. The rationale for this limited use of blending is discussed in that section of today's preamble.

Opportunities for Source Reduction: One commenter commented that the Standards for the Management of Used Oil (40 CFR Part 279) offered generators an incentive for keeping used oil streams clean by requiring oil exceeding certain concentration specifications for metals and chlorine to be managed as hazardous waste, and predicts that the comparable fuels exclusion will result in similar incentives for source reductions to achieve the comparable fuel exclusion criteria, particularly for generators of D001 (ignitable) wastes. EPA agrees with this view, but did not receive industry-specific information from commenters with which to complete an analysis of this issue.

IV. RCRA Permit Modifications for Hazardous Waste Combustion Units

A. Introduction

The Clean Air Act (CAA) sets a maximum time frame of three years for facility owners or operators to comply with Maximum Achievable Control Technology (MACT) emission standards once final standards are published in the **Federal Register**. EPA expects that many facility owners or operators will need to make changes to their process(es) in order to come into compliance with the new standards. For facilities operating under a RCRA permit, these changes may have to be incorporated into the permit before they may be put in place at the facility. To facilitate meeting the three year deadline, EPA is revising the RCRA permit modification procedures to explicitly address changes to a facility's design or operations that are necessary to comply with the new MACT emission standards. The revised modification process offers streamlined procedures that will help facility owners and operators meet two compliance concerns—compliance with their RCRA permits and compliance with the new MACT standards.

EPA anticipates that a substantial number of requests to modify facility design or operations will be submitted in a relatively short period of time following promulgation of the final MACT standards. Although the states could always use their current modification process, the revised procedures offer a potentially more viable way for states to handle the anticipated volume of requests in a more timely manner.

In most cases, state permitting agencies have been authorized by EPA to issue and modify RCRA permits. Authorized states that wish to implement the revised procedures may have to modify their state procedures, consistent with today's rule, before they may use the streamlined procedures to respond to MACT-related modification requests from facility owners or operators. Once the final MACT standards are promulgated, facility owners and operators have three years to begin operating under the lower emissions levels. The Agency believes that these three years are better used for processing modification requests, and subsequently implementing the necessary changes, than for modifying state regulations and going through the authorization process. By promulgating the revised procedures on an expedited schedule (i.e., before the final MACT standards), EPA hopes to provide ample time for states to develop comparable standards and obtain EPA authorization before they need to process MACT-related modification requests from facility owners or operators. It should be noted that states which currently have temporary authorization procedures equivalent to the federal 40 CFR 270.42(e) procedures may also use these, in many cases, to approve facility changes needed to come into compliance with MACT standards. However, these procedures would allow operation under the modified conditions only up to 180 days (with a possible extension of up to 180 additional days), followed by a full class 2 or 3 permit modification. Therefore, EPA encourages states to adopt procedures comparable to those in today's rule.

Combining the streamlined modification procedures with the expedited schedule for promulgating them sets up a procedural framework to promote compliance with the MACT standards. But even this combination does not guarantee that other factors will not ultimately interfere with a facility's efforts to comply. As part of a common sense approach to implementing, and enforcing, its programs, EPA would like to make sure that the consequences of non-compliance are commensurate with the causes. With regard to the three-year deadline for operating under the lower emissions levels required by MACT, EPA is further examining potential consequences of non-compliance, particularly if the causes are beyond the facility's control (e.g., a permitting agency's administrative procedures or workload cause delays, necessary equipment is back ordered, or testing contractors are unavailable). For example, the Agency is looking into the possibility of using standard

enforcement procedures under the Clean Air Act (CAA), rather than requiring more stringent consequences through regulations (e.g., requiring a facility to stop burning hazardous waste until it receives a permit or revoking a permit). The potential consequences of non-compliance are discussed in more detail in the Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, Notice of Data Availability (62 FR 24212, May 2, 1997).

EPA is not going to pursue any of the three companion implementation options discussed in the proposed rule (see 61 FR 17456, April 19, 1996). Those options were intended to address possible permit implementation conflicts which may have occurred if a State did not become authorized to carry out the provisions of the proposed MACT rule in time to handle necessary modifications. By promulgating the revised modification procedures prior to the remainder of the proposed rule, EPA anticipates that States will have adequate time to receive authorization to process the requisite modifications. Thus, the need to put in place a separate implementation mechanism no longer exists. Today's rule does not address any of the longer-term implementation options discussed in the proposed rule (e.g., placing the MACT standards in a Clean Air Act permit, in a RCRA permit, or in both permits). Implementation will be discussed in the final rule promulgating revised standards for hazardous waste combustors.

B. Overview

1. Background on RCRA Permit Modification Procedures

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards that are "necessary to protect human health and the environment." EPA, or EPA-authorized States, implement these standards by issuing RCRA permits to these types of facilities. Once a permit has been issued to a facility, the facility must operate in compliance with the conditions in the permit; any subsequent changes to the facility's design or operations are incorporated into the permit in accordance with the Agency's, or authorized State's, permit modification procedures.

EPA's regulations concerning permit modifications requested by facility owners or operators are set forth in 40 CFR 270.42. The regulations break the types of potential modifications into three classes (see § 270.42 Appendix I). Class 1 modifications cover administrative or routine changes, including replacing equipment with functionally equivalent equipment. They are relatively straightforward and in most cases do not require Agency approval before being made. Class 2 modifications cover somewhat more complex changes, for example, to address common variations in the types and quantities of wastes managed, where the changes can be implemented without substantially altering the design specifications or management practices prescribed by the permit. Class 3 modifications involve substantial changes to facility operating conditions or waste management practices and are subject to principally the same review and public participation procedures as permit applications. Each class of modification request requires varying degrees of facility preparation, Agency review time, and public involvement. The various degrees have a significant impact on the amount of time needed to put the change into effect. For example, Class 1 modifications typically can be implemented in a very short time, where Class 2 and 3 modifications may take several years.

Prior to promulgating the Class 1, 2, 3 procedures, modifications were divided into two categories, major and minor. States authorized to implement the RCRA program were not required to adopt the Class 1, 2, 3 procedures, since they were considered less stringent than the predecessor major/minor system. As a result, both systems are in use today. EPA would like to point out that, in converting to the new system, many of the modifications that had been designated as minor were placed into Class 1, or Class 1 with prior Agency approval. EPA presumes that modifications listed in Appendix I as Class 1, or Class 1 requiring prior Agency approval, are most likely processed as minor modifications in states that continue to use that system.

2. Shortcomings of the Current Procedures

EPA did not consider, in developing the modification classes and procedures, that changes to RCRA permit conditions might be necessary in order to comply with other environmental statutes. Similarly, the Agency did not anticipate changes to comply with upgrades to existing regulations (although the process was developed to include changes for new regulations). EPA developed the Class 1 through 3 modification scheme within the context of the RCRA program to provide both incentives to facility owners and operators to pursue facility changes that lead to improved management of hazardous wastes, and greater flexibility for timely processing of change requests, e.g., by tailoring the level of review to the type of change (see Permit Modifications for Hazardous Waste Management Facilities; Final Rule, 53 FR 37912, September 28, 1988). EPA is now concerned, however, that the RCRA permit modification procedures, as a practical matter, will not allow enough time to meet statutory deadlines for implementing new standards under the Clean Air Act.

3. How Today's Rule Impacts the Procedures

EPA proposed several options for amending RCRA permit modification procedures to accommodate the Clean Air Act requirement that facilities comply with MACT standards within three years of publishing a final rule in the **Federal Register** (61 FR 17454, April 19, 1996). In all five of the proposed options, the Agency tried to balance the need to develop a process that would enable facilities to comply with more stringent emissions standards within the allotted time with the need to provide adequate opportunities for public participation in the process. The level of regulatory oversight that would take place under each option was also discussed. The Agency requested comments on the proposed options, as well as on any combinations thereof, or any other feasible approaches.

EPA has decided to finalize, with some adjustments, its originally proposed recommended approach, i.e., to establish a new section in the permit modification table for changes to existing permit conditions necessary to come into compliance with MACT standards. This approach best meets the Agency's objective of implementing a process that enables facilities to meet the three year statutory deadline. This approach also allows for public notification of the modification request.

Today's final rule establishes a new section in Appendix I of 40 CFR 270.42 for technology changes that are necessary for a facility to achieve compliance with the MACT standards. The new section is designated as Class 1 modifications, with prior Agency approval. As such, the Agency will have an opportunity to review the proposed physical and operational changes to the facility before they are implemented, in order to ensure that these changes do not have other undesirable consequences. Agency experience suggests that steps intended to reduce emissions may not, in all cases, lead to overall enhanced environmental protection. For example, decreasing combustion temperature as a way to

decrease air pollution control device (ACPD) inlet temperature, in order to reduce dioxin emissions could increase organic emissions by allowing poor combustion.

The new section in 40 CFR 270.42 Appendix I, specifically, section L(9) "Technology Changes Needed to Meet MACT Standards Under 40 CFR Part 63 Subpart EEE—National Emissions Standards for Hazardous Air Pollutants From Hazardous Waste Combustors," is limited to technology changes to existing permits to allow a facility to come into compliance with the new Part 63 standards. General retrofitting changes outside the framework of meeting MACT-related technology, or subsequent changes for maintaining compliance with Part 63 standards, are outside the scope of this category. The permitting agency director will determine whether the types of modifications requested qualify as "technology changes needed to meet standards under 40 CFR part 63 Subpart EEE." The Agency anticipates that the distinction between technology changes necessary to allow a facility to operate under the lower emissions levels and general retrofitting changes will be clear. EPA expects that the same types of changes to comply with the MACT standards will be needed at most facilities, thus the requests submitted under section L(9) should be fairly uniform.

EPA, in response to public comments, is also incorporating a time default into the modification procedures for changes requested under section L(9) only. Section 270.42(a) is being amended to add a paragraph specifying that the permitting agency Director has 90 days, with a possible one-time 30 day extension, to make a decision about modifications requested under section L(9). If the Director does not make a decision, then the permittee may consider the request approved. EPA is also requiring owners or operators to comply with the requirements for the Notification of Intent to Comply (NIC) (see 40 CFR 63.1211) in order to benefit from the streamlined modification process.

C. Discussion of RCRA Permit Modifications Procedures for Facilities Coming Into Compliance With MACT requirements

1. Summary of Proposed Options

EPA is in the process of developing final MACT standards imposing more stringent (lower) emissions levels for hazardous waste combustion activities; facilities will have to operate in compliance with these standards within three years of their promulgation, with a possible one year extension (for a total of four years). The Agency expects that a large number of facilities will need to modify their design or operations to meet the more stringent emissions standards required under MACT. For example, incinerators that currently operate above the MACT emissions standard for particulate matter (PM) might have to add electrostatic precipitators (ESP) or baghouses to reduce emissions; similarly, incinerators that need to reduce dioxin emissions to meet the MACT standards may need to implement additional controls on temperature or employ carbon injection; or light weight aggregate kilns (LWAKs) with high acid gas emissions may need to add a control technology, such as wet scrubbers.

For these facilities to remain in compliance with their RCRA permits, they will need to modify their permits to allow any design or operational changes needed to achieve compliance with the MACT standards. The Agency proposed five options for handling these "MACT related" RCRA permit modifications. The options, which varied with regard to the level of procedural requirements and administrative review required, were: (1) Provide facilities with "self-implementing" authority to proceed with necessary changes without Agency review; (2) categorize the changes needed to comply with MACT standards as Class 1 modifications that do not require prior Agency approval; (3) categorize the changes as Class 1 modifications that do require prior Agency approval (this option was discussed in the proposal as the recommended option); (4) categorize the changes as Class 1 modifications requiring prior Agency approval, but give the Director authority to elevate change requests to Class 2; and, (5) retain the current scheme for modifying the RCRA permits. Under the current scheme, the MACT-related changes would likely be categorized as Class 2 or 3 modifications.

2. Summary of Public Comments

In general, there were three recurring themes in the comments received by the Agency in this area. First, commenters expressed concern about being able to meet the three year time frame. They cited, as reasons, (1) that three years are insufficient to allow state agencies to obtain authorization for the rule and to subsequently process the anticipated volume of modification requests, and (2) that the modification procedures themselves are too long. Secondly, commenters emphasized the need to allow sufficient public participation, but with the caveat that the modification process not be unduly delayed by public participation activities (this being yet another factor in potentially being unable to meet the three year deadline). Finally, commenters were concerned that the consequences of non-compliance are too severe (e.g., having to stop burning), given that delays in achieving compliance could be the result of permitting agencies being unable to process modification requests in a timely manner (and not a consequence of the facility's activities).

The Agency received a wide variety of comments on the options themselves. Each of the proposed options received support, with most commenters favoring the first three options for their more streamlined procedures. A few commenters suggested that incorporating a time limit into the modification review process would aid in coming into compliance with the MACT standards. Many commenters expressed the importance of developing a streamlined permit modification process that would allow facilities to make the necessary technology upgrades in a timely fashion, while retaining enough regulatory oversight to ensure that the changes have a proper degree of "buy-in" by the permitting agency. Some commenters expressed concern that options 4 and 5 would delay implementation of MACT-related changes beyond the three year deadline mandated by Congress. A few commenters preferred options 4 and 5 since they incorporate a greater degree of public participation into the review process. Additionally, some commenters thought that options 4 and 5 might be more readily accepted by and implemented in authorized States that chose to remain with the original permit modification structure composed of minor and major changes. [Note: States were not required to adopt the Class 1, 2, 3 structure since it was determined to be less stringent than the major/minor structure.]

Finally, some commenters requested that the Agency consider as a possible alternative that a Class 3 modification could be reclassified as Class 2 for the purposes of MACT compliance.

3. Response to Comments and Discussion of Final Provisions

EPA agrees with commenters that streamlined modification procedures for MACT-related changes are essential. The three year time frame for complying with the MACT standards has been set by Congress; it is the Agency's responsibility to ensure that facilities are able to comply with those

requirements without violating other areas of their environmental responsibilities, like their RCRA permit. As discussed earlier, EPA anticipates that many facilities will need to make some changes to meet the lower emissions levels imposed by MACT, and that these changes will have to be incorporated into their RCRA permits. EPA does not want the RCRA permit modification procedures to hinder a facility's ability to comply with MACT.

As discussed in the Section B.1. Background on RCRA Permit Modifications Procedures, Class 1 modifications may be done quickly, whereas Class 2 or 3 modifications may take several years to process. The combination of the time normally required to completely process Class 2 or 3 modification requests, and the anticipated volume of requests from facilities striving to meet MACT emission levels, would make meeting the three year deadline unrealistic. Permitting agencies would not have the resources to meet the workload demand. This leads EPA to concur with commenters on the need to embrace a more streamlined approach than would be provided by options 4 or 5. Similarly, EPA chose not to pursue the option suggested by some commenters to reclassify changes from Class 3 to Class 2. A streamlined approach is consistent with general efforts within the Agency (e.g., through the Permits Improvement Team) to improve the permitting process by focusing on performance standards rather than on a detailed review of the technology requirements.

The Agency acknowledges the validity of the concerns expressed by some commenters that the options offering the more streamlined procedures offer fewer opportunities for public participation. It is important to strike an appropriate balance between streamlined modification procedures that promote coming into compliance sooner with more stringent standards and public participation. The Agency has repeatedly emphasized its commitment to a common-sense approach to permitting—one that minimizes regulatory burden and provides flexibility to tailor activities to specific situations. In carrying this commitment to today's rule, EPA wants to ensure three things; (1) that the permit modification process is not an obstacle for complying with the MACT standards; (2) that facilities are not forced to operate outside of their permitted conditions in order to comply with MACT standards; and (3) that public participation is not streamlined out of the process.

EPA believes that Option 3, with some modifications, provides the best framework for meeting these objectives and responding to public comments. This option was supported by many commenters, particularly because the streamlined procedures will facilitate meeting the three year deadline for complying with the more stringent emission levels. There has been a precedent set in the past for streamlining the modifications process. To ensure that facilities implemented timely changes necessary to meet land disposal restriction (LDR) levels for newly listed or newly identified hazardous waste, the Agency designated the modifications needed to meet the LDR levels for newly identified wastes as Class 1 modifications (see 54 FR 9596, March 7, 1989).

The prior agency approval under Option 3 provides the regulatory oversight requested by commenters, since the permitting agency will have the opportunity to review the proposed physical and operational changes to the facility before they are implemented. EPA concurs with commenters who encouraged retaining some amount of regulatory oversight in the modifications. As discussed previously, sometimes changes to one part of a facility's design or operations that have a positive effect, like reducing one type of emissions, may cause detrimental effects to other parts of the facility's operations. It is important for permitting agencies to have the opportunity to review proposed changes to make sure they do not lead to other undesirable impacts.

Some commenters expressed concern, however, that a facility's ability to begin implementing the change(s) might be delayed by requiring regulatory oversight (i.e., if the Agency failed to respond to the request in a timely manner). EPA recognizes the validity of this concern, given the anticipated volume of requests from facilities striving to meet the new emissions standards; therefore, the Agency is incorporating a time default for reviewing the requests into the final modification process. The time default for review, codified in a new paragraph 270.42(a)(4), specifies that if a determination to approve or deny the Class 1 permit modification request submitted under item L(9) is not made within 90 days (with the possibility of a one-time extension for up to 30 days) from the time the request was received by the permitting agency, the request is to be considered approved, and the facility can proceed with the modification(s). In some situations, the Director of the permitting agency may deny a request, for example, if the request contained insufficient information upon which to base a decision. The permittee could revise its request to address the shortfalls and resubmit it to the permitting agency. Such a resubmittal would initiate a new 90 day review period.

EPA anticipates that the incorporation of the time default, coupled with the fact that the revised modification procedures are being promulgated on an expedited schedule, will alleviate commenters' concerns about non-compliance. Although the consequences of non-compliance are outside the scope of this rule, this approach (streamlined modification procedures coupled with expedited promulgation) establishes a procedural framework through which there is a greater chance that permitting agencies will not cause undue delays in facilities' compliance with the MACT standards. Under the new streamlined process, permitting agencies should be able to process the modification requests with sufficient time remaining for facility owners or operators to make the changes within the three year time frame.

Some commenters expressed concern that option 3 does not provide the same levels of public participation that would be available through options 4 and 5. Those options would require facilities to request Class 2 or 3 permit modifications for MACT-related changes. The procedures for Class 2 and 3 modifications include public meetings, notices, and comment periods. Class 1 modifications, even those requiring prior Agency approval, only require that the facility owner or operator send a notice of the change to the facility mailing list within 90 days of approval being given.

EPA is committed to enhancing public participation in all of its processes, and has established additional requirements in today's rule to provide opportunities, beyond the public notice requirements associated with Class 1 (with prior approval) modifications, to involve the public in permitting changes required to comply with MACT standards. These opportunities are being incorporated into requirements for a Notification of Intent to Comply (NIC), discussed in more detail in Section V. One goal of the NIC development process is to promote interaction between the facility and its host community, for example, by requiring the facility to host an informal meeting with the community before submitting the final NIC to the permitting agency. Since the NIC must describe anticipated activities for coming into compliance with the MACT

standards, the technology changes that trigger the RCRA permit modification would be a natural component of the NIC and the public meeting. EPA expects that the meeting will be similar in style and intent to the pre-application meetings required under 40 CFR 124.31.

The final rule requires facility owners or operators to complete the NIC in order to benefit from the streamlined modification procedures. This requirement means that owners or operators will need to submit a final NIC either before, or at the same time as, they submit the modification request. If they do not comply with the NIC requirements, they will need to follow the otherwise applicable modification scheme, i.e., the permitting agency Director will likely reclassify their request to Class 2 or 3. EPA is not requiring documentation in the modification request that the permittee completed the NIC. Since both items are submitted to the permitting agency, EPA assumes the permitting agency will be aware of whether the permittee has indeed complied with the NIC requirements.

EPA expects that information about anticipated changes to facility design or operations to comply with the more stringent standards will be included in the NIC, and thus will be available for public review and discussion during the NIC public meeting. Through this meeting, communities have an early vehicle for learning, among other things, about potential changes to facility design and operations necessary to meet the lower emission levels. Of course, in accordance with the current requirements concerning Class 1 modifications, the permittee must also inform the public about the modifications within 90 days of their approval by the permitting agency (see 40 CFR 270.42(a)(1)(ii)).

EPA would like to point out that although similar information about facility design or operation changes may be included in both the NIC and the modification request, the Agency does not believe it is redundant to have both documents. The two have different purposes, and the formats and levels of detail may differ accordingly. The modification request would most likely differ from the NIC, since the request has to tie directly to the permit itself. For example, the NIC may talk in general terms about adding baghouses to reduce emissions, but the modification request would have to specifically cite the section(s) of the permit being modified to include information on the baghouses.

Today's requirements would not, of course, preclude additional public participation activities beyond the regulations, where appropriate on a facility-specific basis. At certain RCRA facilities, in fact, permitting agencies and facilities have implemented a variety of public involvement activities, such as additional fact sheets or information availability sessions, that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance manual designed to help all stakeholders in the permitting process (permit writers, industry, and communities) determine what types of public participation activities might be helpful. The RCRA Public Participation Manual (EPA530-R-96–007, September 1996) also offers tips on how to conduct a wide variety of activities. Supplemental public participation activities on a site-specific level, geared for a particular facility's operations and tailored to meet the host community needs, could be used to augment community understanding of the changes taking place to comply with MACT standards. In closing, EPA would like to reiterate that facilities are making changes to meet more stringent standards. Requiring facilities to comply with lower emissions levels in a relatively short time frame does offer significant benefits to public health and the environment that the Agency believes communities will generally welcome.

In response to the comments that options 4 and 5 might be more compatible with permit modification procedures in authorized states, EPA is aware that States have to evaluate new regulations in terms of their specific structures. Promulgating the revised modification procedures in today's rule, however, will provide ample time for states to obtain authorization before they actually begin processing modification requests following promulgation of the final MACT standards. EPA encourages states to expedite their requests for authorization to implement the provisions in today's rule. EPA expects that States using the Class 1, 2, 3 modification system would incorporate the provisions by reference, and that States using the major/minor system would incorporate the provisions as minor modifications. As discussed in Section B.1. Background on RCRA Permit Modification Procedures, many changes that were formerly classified as minor were converted to Class 1, or Class 1 requiring prior Agency approval. Thus, EPA believes it is consistent for states using the major/minor system to incorporate this category of changes into the minor classification.

If the states cannot adopt an approach that ensures expeditious implementation of the MACT standards, however, then the Agency expects that changes necessary to comply with MACT standards may well be accomplished under a compliance order, with a specified schedule to come into compliance.

F. RCRA Changes in Interim Status Procedures

RCRA facilities operating under interim status are allowed to implement certain facility changes in accordance with requirements and procedures set forth in 40 CFR 270.72(a). (Note: EPA anticipates that the types of changes a facility may need to make to comply with the MACT standards would be allowable under this section). Section 270.72(b) imposes a limit, however, by stating that the changes cannot amount to "reconstruction" (defined in the regulation as "when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility"). As discussed in the preamble to the proposed rule, the Agency does not anticipate that the costs to perform facility changes necessary to come into compliance with the MACT standards would exceed the 50 percent reconstruction limit. However, since the limit is cumulative for all changes at the interim status facility, there could conceivably be situations where the cost for MACT-related changes might push a facility over the limit.

To ensure that the reconstruction clause does not present an obstacle for interim status facilities trying to implement changes to meet the new emissions levels, the Agency proposed adding a new paragraph to § 270.72(b) exempting changes necessary to comply with the MACT standards from the reconstruction limit. The Agency did not receive any adverse comments, and so is finalizing this provision in today's rule.

It is important to note that facilities operating under interim status will, like permitted facilities, be required to comply with the NIC requirements. Thus, the public will have the opportunity to review planned changes as part of the NIC and to participate in the public meeting. EPA anticipates that owners or operators of interim status facilities will hold the meeting and complete the NIC before proceeding with any changes to facility design or operations necessary to comply with the MACT standards.

V. Notification of Intent To Comply and Progress Report

A. Background

In the proposed rule (61 FR 17358), the Agency requested comments on strategies to identify and encourage or require affected sources to comply with the final emission standards at the earliest possible date. The Agency also asked for views on how best to determine when a source can realistically conclude whether it will comply with the final standards. A number of commenters suggested that the Agency require a submission from affected sources that would identify whether the facility intends to comply with the final standards, and outline the procedures the facility would employ to achieve compliance. This primary purpose of this submission (referred to by the commenters as a "Notification of Intent to Comply") would be to identify the sources that will choose as a compliance strategy to stop burning hazardous waste, so that those sources could be required to terminate waste burning activities as soon as possible following the effective date of the final Hazardous Waste Combustor (HWC) rule.

Other commenters suggested that EPA require submission of a plan that outlines the procedures a facility will follow to comply with the final standards. However, the purpose of this submission would be to begin an early process of communication between the public and the facility through the public disclosure of the facility's compliance strategy to meet the final HWC standards.

The Agency reviewed these comments and found the suggestions for an early notification persuasive. In the Notice of Data Availability (NODA) published in the **Federal Register** on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241), EPA described its strategy to promote early compliance planning through a Public and Regulatory Notice of Intent to Comply (PRNIC). The discussion laid out a process by which an affected source would be required to develop a draft document including anticipated plans for coming into compliance with the new emissions standards, hold an informal meeting with the public to discuss the draft planning document, and to subsequently provide a final planning document to the permitting agency. The information to be covered in the document and during the meeting would include such topics as a description of waste minimization and pollution control technique(s) being considered and their effectiveness, a description of emission monitoring techniques being considered, and an outline of key dates for activities the source would need to accomplish in order to operate within the MACT standards.

The intended purpose of the PRNIC, as described in the NODA, was twofold. First, the PRNIC was intended to provide for public involvement in a source's compliance planning process. EPA envisioned that this involvement would also serve to offset public participation opportunities that may be "lost" if a source is able to take advantage of the new streamlined RCRA modification procedures for HWCs, since modifications required under RCRA would naturally be part of the source's overall plan for achieving compliance with the standards. Secondly, the PRNIC would provide an expeditious notice to the permitting Agency as to whether sources would be able to come into compliance with the new standards. Having information about plans for compliance might prove helpful to permitting agencies in planning the most efficient use of their resources during the three year compliance period.

B. Summary of Final Provisions

EPA is moving forward with an early compliance planning requirement. However, the final rule contains certain changes from the PRNIC discussed in the NODA; the Agency has revised the requirements based on public comments received following the NODA's publication and based as well on the original proposal. EPA is finalizing new requirements in § 63.1211 for facility owners and operators to develop and submit a Notification of Intent to Comply (NIC), and in § 63.1212 to develop and submit a Progress Report. Section 63.9(h) "notification of compliance status" requires facilities to submit such notification when a source becomes subject to a relevant CAA standard. As such, today's requirement is an enhancement of this requirement to give notification of intent to comply prior to the three year compliance date of the emissions standards. The source can use the NIC to notify either the source's intent to come into compliance with the new standards, or the source's intent not to come into compliance with the new standards. The NIC must be submitted to the permitting agency within a year of the final standards being promulgated, and the Progress Report within two years.

As proposed, the primary purpose of the NIC is to serve as a planning and outreach tool for achieving compliance with the MACT standards. The contents of the NIC, set forth in § 63.1211(a)(1), are similar to those presented in the NODA discussion on the PRNIC with modifications based on comments received on the NODA. Also as discussed in the NODA, sources will have to make a draft of the document available to the public as part of the process of developing the NIC. They will also have to provide notice of and conduct an informal meeting with the public to discuss anticipated plans for achieving compliance with the standards. The purpose of the Progress Report is to help permitting agencies determine if sources are making reasonable headway in their efforts to come into compliance. In deciding on this approach to compliance planning—the NIC followed by the Progress Report—EPA determined (1) that one year is sufficient time for a source to establish its general "plan of attack" for achieving compliance, and (2) that during the second year a source should be well on its way to making necessary modifications, if it plans to meet the MACT limits, or to making alternate arrangements for handling the hazardous waste, if it does not intend to meet the MACT limits.

The final rule does not contain provisions for updates to the final NIC following a significant change in the facility's implementation strategy, as considered in the NODA. Since the Agency decided to implement a requirement for a Progress Report at the end of the second year, there is no purpose served by having a revised NIC. EPA anticipates that any significant changes to a facility's compliance plan would necessarily be reflected in the Progress Report.

C. Discussion of Public Comments and Final NIC Provisions

1. General.

The majority of commenters supported the concept of early compliance planning, particularly with regard to the public involvement component. Those advocating early involvement indicated that the PRNIC concept appears reasonable, not overly burdensome, and represents a positive step to ensure public involvement in the MACT process. Many lauded the Agency's effort to bring the spirit of the recently promulgated RCRA enhanced public participation requirements (see 69 FR 63417 (Dec. 11, 1995)) to the MACT arena and the strong RCRA goal of public participation for decisions involving permitted hazardous waste management facilities (RCRA section 7004(b)). Commenters opposing the

additional public involvement required as part of the PRNIC development process stated that the activities (e.g., the public meeting) would create more controversy and impose additional burdens on both sources and permitting agencies at a time when they will be faced with a substantial workload. Some commenters expressed concern that the additional activities would provide no real benefit, since neither the permitting agencies nor the public have authority to disapprove of a source's chosen control options, as long as the source operates within the MACT limits. One commenter noted that the concept of a PRNIC was unprecedented for CAA sources; they said a PRNIC was not required under the CAA and it was beyond EPA's authority to impose such a requirement.

The Agency agrees with commenters who recognize the value of early public involvement. EPA has repeatedly emphasized its commitment to enhancing public participation in all of its programs (see National Waste Minimization and Combustion Strategy and Enhanced Public Participation Rule). Experience has shown that hazardous waste combustors spark a tremendous amount of legitimate public interest; many communities have expressed a desire to be involved at all stages of combustor operations and permitting activities. Given this background, EPA fully expects the promulgation of the final MACT standards to receive significant and appropriate public scrutiny. As one commenter points out, HWCs are already subject to RCRA regulations, and many of them operate under risk-based permits that were subject to extensive public review. EPA anticipates that the fact that HWCs will now be regulated under CAA is likely to remain of vital interest. People will know that new emissions limits are being imposed, and will want to know how the source plans on meeting them. The NIC provides this information, and the NIC meeting opens the door for the public to communicate directly with the owners or operators.

EPA does not share the concern expressed by commenters that the public involvement activities impose a substantial burden with no commensurate benefit. The effort associated with drafting a NIC and holding the NIC meeting is not overly burdensome. Facilities will most likely need to compile the information for their own uses, in order to effectively decide which compliance option(s) they will pursue. Making the information available to the public and discussing it during an informal meeting could provide benefits in many areas, even if the permitting agency and the public do not have the authority to approve or disapprove of the compliance method(s) ultimately selected. For example, it could save time and money at the end of the permitting process. Talking to people early on about what can and cannot be accomplished in a given situation, asking their input on decisions that need to be made, and explaining the rationale behind decisions that have already been made, can lead to fewer challenges on draft permit conditions. EPA also believes the public could provide useful information to owners or operators that might contribute to a quality plan for achieving compliance with the MACT standards. The level of knowledge on environmental matters exhibited by the public (at public meetings, in correspondence, for example) appears to be increasing. As the public's knowledge base grows, so might the quality of input they can provide into technical decisions.

EPA disagrees also that there is no precedent for the concepts inherent in the NIC, and that EPA does not have authority to impose such a requirement. Since EPA has chosen to provide the maximum amount of time for compliance allowed under the CAA (3 years), requiring sources to identify their compliance plans is particularly appropriate. As stated before, EPA is committed to enhancing public involvement in environmental matters. Providing the compliance plans to the public is one of many ways the Agency is implementing this policy. Precedent for early public involvement has been set both in the Agency's Hazardous Waste Minimization and Combustion Strategy and in the enhanced RCRA public participation requirements promulgated in December, 1995 (see 69 FR 63417, December 11, 1995).

2. Purpose of the NIC

As discussed in the background part of this section, the original purpose of the PRNIC was to promote public involvement and to assist in compliance planning. Commenters supported these goals, which continue to be the compelling motives for adopting the NIC requirement. The primary purpose of the NIC is thus to serve as a planning tool for achieving compliance with the MACT standards. In other words, the NIC is designed to ensure that facility owners or operators get an early start on evaluating their options for meeting the new standards, and to serve as a vehicle for public involvement. EPA's intent is to facilitate dialogue regarding a facility's compliance strategy. The NIC also serves the purpose of having sources identify to the regulators and the public their intent to comply or not to comply with the applicable emission control requirements of this Subpart. The NIC and public meeting will foster mutual understanding of the compliance options, including consideration of both technical (e.g., equipment changes to upgrade air pollution control devices) and operational (e.g, process changes to minimize waste generation) alternatives. Ideally, it will also result in the selection of a method that will meet the goals of both the facility and the community.

The NIC will not serve as a basis for requiring facilities to cease burning hazardous waste if they intend to comply with the emission standards of this Subpart. If, however, a facility indicates in its NIC that it does not intend to meet the emission standards of this Subpart, then the source must stop burning hazardous waste within two years of the standards being promulgated. This requirement is discussed in more detail in Section D. Discussion of Public Comments and Progress Report. EPA would like to clarify that its intent has never been to shut a source down completely. The source might be required to cease burning hazardous waste; however, it would not be precluded from burning non-hazardous waste or other alternative fuels. However, those sources who indicate in the NIC their intent not to comply with the applicable emission control requirements of this Subpart will be required to stop burning hazardous waste within two years of the effective date of the emission control requirements.

Although the NIC will not be used to cause sources to stop burning, there are enforceable requirements associated with it. Sources must provide a draft NIC for public review, advertise and conduct an informal meeting, and submit a final NIC to the permitting agency. If these activities do not take place within the time frames specified in the regulations, sources will be in violation of the requirements, and subject to appropriate enforcement action. The key milestone dates contained in the schedule submitted with the NIC are not enforceable, however; the requirement to submit a schedule containing key dates is the enforceable requirement.

Finally, one commenter suggested that the NIC be used to identify RCRA permit conditions that would "disappear" when MACT limits are set. EPA is not using the NIC for this purpose. EPA will address permitting

schemes, and the process for transitioning from a RCRA permit to a Title V permit, in the final rule promulgating MACT standards for HWCs. The NIC is not the appropriate vehicle for accomplishing this task.

3. Timing

In the PRNIC discussion in the May 2, 1997 NODA, EPA said that the final PRNIC would be due to the permitting agency within 270 days following the effective date of the final MACT standards. A draft of the document would have to be available within 210 days, and at least 30 days before the informal public meeting was to be held.

Although several of commenters considered the time frame too long, many others said it would be difficult to prepare a quality compliance planning document so quickly. They also expressed concern about meeting with the public at such an early stage. The commenters' position was that any draft plan put together within 7 months after the standards are finalized would be tentative only. They were reluctant to go to the public with a tentative plan that was likely to change significantly before it was final.

EPA agrees with commenters that the time frames are tight. In order to be operating within the new limits by the end of the compliance period, it is imperative to start the planning process immediately. In recognition of commenters' concerns about preparing the draft plan, EPA is extending the time frames in the final rule. In accordance with the provisions in § 63.1211, the final NIC will be due to the permitting agency within one year of promulgation of the final standards. The NIC meeting must be held no later than 10 months following promulgation, and the draft NIC made available at least 30 days before the meeting is held. So, facilities basically have 2 extra months to prepare a draft document, and 3 extra months to submit a final NIC to the permitting agency. The revised time frames should provide sufficient time not only to prepare the initial draft, but also to revise it, as appropriate, to reflect discussions from the public meeting and final engineering decisions about the source's operation.

The Agency understands the concerns expressed by commenters about sharing draft material with the public. However, EPA does not expect, nor should facilities or the public expect, the draft NIC to describe all of the technical aspects of the compliance options in extensive detail. Similarly, discussion of the options at the public meeting should not focus on minute details. The purpose of sharing the draft and discussing the options at the public meeting is to capture major ideas in a planning document, to facilitate dialogue regarding a facility's compliance strategy, and to discuss possible courses of action. The information in the draft NIC should be sufficient to stimulate this level of discussion. The more in-depth technical discussion can be incorporated into the final document. Since all sources are required to have the final NIC submitted to the permitting agency one year after the final standards are promulgated, anyone may request a copy of it from the permitting agency at that time.

4. NIC Meeting

EPA is requiring facilities to provide notice of and host an informal meeting with the community to discuss anticipated plans for complying with the MACT emissions standards (see § 63.1211(b)). The meeting must take place within 10 months of the final standards being promulgated. At least 30 days before the meeting takes place, the facility must provide public notice of the meeting, and must make the draft NIC available for public review.

Commenters were generally supportive of EPA's intent to require a public meeting to discuss compliance planning. Some commenters had specific concerns, ranging from the timing issues addressed above, to the methods for providing notice, and the potential for being required to conduct several redundant meetings to meet various purposes.

EPA had listed three mechanisms in the NODA for providing notice of the public meeting: a display ad in a newspaper, a sign at the facility, and a broadcast announcement. These were the same mechanisms used to provide notice of the RCRA pre-application meeting, and EPA believes they are appropriate for the NIC meeting as well. At least one commenter thought the mechanisms were too broad, and that a notice via newspaper and a sign at the facility would be enough. Another commenter suggested that a notice be sent to the facility mailing list as well. EPA decided not to limit the notice methods for the NIC meeting, but did add the facility mailing list to the methods in § 63.1211(b)(3). Each of these notices must include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, a statement asking people who need special access to notify the facility in advance, the name of a contact for the NIC, and a statement describing how the draft NIC can be obtained.

Commenters who were concerned about redundant public meetings described a few possible scenarios. For example, in states that do not adopt the streamlined RCRA modification procedures a facility might be required to conduct a public meeting as part of a Class 2 or 3 RCRA modification, as well as the NIC meeting. Federal facilities might have public meeting requirements under the National Environmental Policy Act (NEPA). Other facilities might be facing RCRA pre-application meetings, either for initial permits or those up for renewal. Or, some facilities might have routine meetings scheduled with communities as part of Responsible Care or Good Neighbor agreements.

It is not EPA's intent in imposing the NIC meeting requirement to create duplicative requirements for public meetings. To do so would burden both the facility and the public. Everyone's time is valuable, and most people would probably prefer not to go to several meetings if one will do. EPA recognizes this, and would like to clarify that nothing in today's rule precludes a facility from combining meetings as long as the purposes of each are served. EPA sees combining events, particularly public involvement activities, as a first step in moving towards a multi-media approach to environmental management. Thus, if a facility has to complete a class 2 or 3 RCRA modification because it is located in a state that has not adopted the RCRA streamlined modification process, EPA would expect, and fully encourage, the facility to set up one meeting that would serve both the RCRA requirements and the CAA NIC requirements. The same is true for combining the NIC meeting with a RCRA pre-application meeting, if the facility has to host one for either an initial RCRA permit or because its permit is up for renewal, or with other types of public meetings the facility may have scheduled.

A few commenters expressed concerns about responding to public comments on the draft NIC, either during or following the public meeting. They cited time as the driving reason for this concern; they suggested their time would be better spent finalizing their plans for complying than formally responding to comments. One commenter noted that it was unclear in the NODA whether the draft NIC would be available prior to the meeting. In response, EPA would like to clarify that facilities are not required to formally respond to any comments, oral or written. However, it is important to keep in mind that the public may request a copy of the final NIC, and will

be reviewing the facility's final plans for coming into compliance. Facilities must also submit a summary of the meeting to the permitting agency as part of the final NIC, so the permitting agency will be apprised of the discussions that took place. EPA believes that this provides incentive for the facility to address any significant issues raised by the public in the NIC meeting.

EPA expects that the exchange between the facility and the community that takes place during the meeting will be much like it is for RCRA pre-application meetings. That is, the Agency intends for the meeting to provide an open, flexible and informal occasion for the facility and the public to discuss various aspects of the facility's compliance strategy. The Agency anticipates that the facility and the public will share ideas, and build a framework for a solid working relationship. The final NIC should reflect, to the extent appropriate, ideas or suggestions raised by the public.

The final provisions in § 63.1211 clarify that the draft NIC must be made available to the public at least 30 days before the meeting is to take place. This will provide sufficient time for people to review the facility's intended strategy. EPA did not prescribe in the regulations the manner in which the draft NIC must be provided. There is not a "one-size-fits-all" approach to getting information out to the public. It is more logical to allow the facility to make that decision in the context of their particular situations. For example, if a facility has an information repository established, the draft NIC may be made available there. Or they could make it available upon request, since the name, phone number, and address of the NIC contact must be in the meeting notice.

5. Relation Between NIC and Other Notification Requirements

The requirements for the NIC are being promulgated in a new subpart applicable to HWCs in the Part 63 CAA regulations. Several commenters did not believe it necessary to add these new requirements, arguing that existing provisions under both the CAA and RCRA would fulfill the purpose of the NIC. They cited the initial notification requirements in § 63.9(b), the notifications of compliance status in § 63.9(h), Title V permit application requirements in § 70.5(c), and RCRA public involvement requirements in § 270.42 (permit modification procedures).

EPA has reviewed the requirements in each of these sections, and is not persuaded that the information or the timing of the submittals are sufficient to meet the objectives of the NIC. In terms of the information, the NIC actually seems to fall between the initial notification and the notification of compliance status. The information included in the NIC supplements the initial notification requirements in 40 CFR Part 63.9(b). The initial notification requirements in § 63.9(b) address basic information such as name and address of the owner and the source, and a brief description of the source. The focus is on the source as it exists, not as it may need to be modified to meet new standards. The information in the NIC provides this next step—it focuses on what types of changes might have to take place in order to achieve the emission limits set by MACT. The types of changes may be physical, such as adding or replacing air pollution control devices, or they may be operational, for example, achieving lower emissions by minimizing the waste generated elsewhere that is subsequently used as fuel for the combustor.

The information required in the NIC will enable the public to engage in a meaningful dialogue about the facility's compliance strategy, including a discussion of the various options under consideration. For example, when a facility identifies and describes the type of control technique(s) being considered, it would be ideal for the facility to have examined all of the waste minimization and/or pollution control options available, including emission control through process modification, feed restriction, and pollution control equipment, (e.g., Hg control by production process changes, recovery, segregation, feedrate restriction, carbon injection, carbon bed, wet scrubbing, etc.). The compliance notification requirements in § 63.9(h), on the other hand, have a different objective. They focus not on options for coming into compliance, but rather on how compliance will be demonstrated and monitored.

EPA chose not to tie the NIC requirements to the Title V permitting process. In terms of timing, the Title V process may not always be appropriate. It is important to keep in mind that MACT standards set forth in Part 63 are self-implementing; activities associated with them often take place outside of the permitting process. When MACT standards are promulgated, sources must begin adhering to the regulations, regardless of where they stand in the Title V permit process. For example, sources that already have Title V permits do not have to reopen them until renewal, if they are within 3 years of the expiration date. This time frame obviously is too long to meet the goals of the NIC. In addition, Title V permits contain all applicable requirements for all sources at a facility. To use the Title V process just for hazardous waste combustors is not practical.

The Agency has also determined that the information requirements for Title V applications do not meet the spirit of the NIC. Like the § 63.9(h) compliance notification requirements, the Title V information does not address options for achieving compliance, particularly with regard to waste minimization and pollution prevention techniques being considered. Of course, the NIC is not intended to be the primary vehicle for waste minimization or pollution prevention planning. EPA expects that these are ongoing areas of exploration for facilities. EPA does expect, however, that to the extent these may be used to achieve compliance with the MACT standards, facilities will investigate them as viable options and will discuss them as such with the public.

Some commenters suggested that facilities having to follow Class 2 or 3 RCRA permit modification procedures (e.g., because they are located in states that do not adopt the RCRA streamlined modification procedures) not be required to submit a NIC, since public meetings are a required step in those procedures. Another suggested that RCRA interim status facilities not be subject to NIC requirements, because they are not "losing" any public involvement in a modification process (since they have no permit to modify). EPA disagrees with these suggestions. The NIC is broader in scope than just facility modifications that may have to be incorporated into a RCRA permit or that may be accomplished by following the procedures in 40 CFR 270.72(a) for allowable changes under interim status. The NIC is intended to lay out for discussion the source's overall plan for achieving compliance; this goal is relevant regardless of whether the facility is operating under a permit or under interim status. Facility changes under RCRA would just be one piece of the overall document, and one segment of the public discussion. As stated in the previous section, however, there is nothing in today's rule that precludes a facility having to follow Class 2 or 3 permit modification procedures from combining the public meeting required as part of the modification process with the public meeting required as part of the NIC process. EPA would expect, and fully encourage, a facility in this situation to set up one meeting that would serve both purposes.

D. Discussion of Public Comments and Progress Report

1. Overview

The Clean Air Act requires the Administrator to establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided via a one year extension. CAA section 112(i)(3). EPA believes that compliance as expeditiously as practicable will have numerous benefits for human health and the environment. In particular, for those sources that do not intend to ultimately come into compliance with the emission standards of this Subpart, expeditious compliance would be achieved by ceasing to burn hazardous waste. The Agency anticipates that numerous sources will choose not to come into compliance with the requirements of this rule, and will cease burning hazardous waste prior to issuance of the rule or at some later date, but prior to the compliance date. This section is intended to expeditiously limit the burning of hazardous waste by those sources who do not intend to come into compliance with the requirements of the emission standards of this Subpart, but continue to burn hazardous waste after the effective date of the emission standards of this Subpart. These sources are, quite simply, able to meet the standards earlier than the three years allowed for sources which will continue to burn hazardous waste. Thus, for this class of facilities, EPA is creating a means of compliance "as expeditiously as practicable" (CAA section 112(i)(3)).

In the April 1996 proposal, the Agency invited comment on how sources could be identified and strategies that could be used to encourage or require these types of sources to comply at the earliest possible date. Several commenters suggested methods to require sources to identify their intent to comply or not comply with the emission standards soon after the promulgation of the final rule for these standards. They also suggested that those sources that did not intend to come into compliance would be required to stop burning hazardous waste.

2. Summary of Progress Report Requirements

The Agency has adopted in the final rule a variation of the concept commenters suggested along the lines of the April 1996 concept EPA proposed. The final rule requires those sources subject to the rule to signify in their NIC an intent to comply or not to comply with the requirements of the emission standards of this Subpart. Sources who make the decision not to comply with the rule must stop burning hazardous waste on or before two years after the effective date of the emission standards of this Subpart. The Agency believes that two years is an adequate length of time for these sources to arrange for alternate management of their hazardous waste through process changes to minimize the waste, use of alternate on-site management, or the use of off-site management. Those sources who intend to come into compliance with the emission standards will have the full three years to come into compliance as intended by the statute.

The sources who do not intend to comply with this rule must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents. The types of closure documents that would need to be submitted will most likely vary depending on the source's status. For example, if a source is in interim status, it may need to submit a closure plan. If the source is permitted, it will probably need to update its closure plan (that is part of the permit); thus, the "document" may be a permit modification request.

a. Submittal. Commenters suggested that sources submit progress reports to track source's actions toward compliance. The Agency also believes that a progress report would be a useful tool to evaluate a source's progress toward compliance. In the final rule, EPA requires those sources to submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this Subpart. Any sources burning waste on and/or after two years following the effective date of the emission standards of this Subpart will be required to submit a progress report.

b. Demonstration. The Agency believes that any source which intends to come into compliance with the emission standards of this Subpart, except for those sources in compliance on the effective date of the emission standards of this Subpart, will be required to make modifications to the source to come into compliance. To gauge the progress of these modifications, the final rule requires sources to submit with their progress report information demonstrating that the source has: (1) Completed engineering design for any physical modifications to the source needed to comply with the emissions standards of this Subpart; (2) Submitted applicable construction applications to the applicable regulatory authority; and (3) Entered into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this Subpart. Those sources which fail to make this demonstration in their progress report or who fail to submit a progress report shall stop burning hazardous waste on or before the date two years after the effective date of this Subpart.

Because the types of modifications that sources will have to make are anticipated to require the commitment of substantial resources, sources are required to demonstrate that they have entered into a binding contractual commitment to purchase the resources necessary to make those modifications. Some examples of binding contractual commitments follow; however, EPA may judge other demonstrations adequate on a case-by-case basis. In some cases, EPA will allow evidence of an in-house construction plan to satisfy the demonstration. If on-site labor by facility personnel will be used, a statement of commitment must be provided by upper management, and such other evidence of a commitment as is available, such as company memoranda or annual budgets committing funds, purchase orders, or copies of contracts with any suppliers of equipment or materials. EPA expects that, in most cases, sources will use off-site resources in their modifications. To demonstrate commitment in these cases, sources must provide copies of binding contracts with companies to perform tasks or supply equipment that will facilitate bringing the source into compliance.

There may be a limited number of sources who intend to come into compliance, but will not need to undertake any of the activities identified in the demonstration criteria above to do so. These sources are required to submit instead documentation: (1) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or (2) specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities identified in the demonstration criteria. The Agency anticipates that few if any sources will not need to enter into binding contracts in order to come into compliance with the emission standards of this Subpart.

Those sources who indicated in the NIC their intent not to comply with the

emission control requirements of this Subpart must still submit a progress report. These sources, however, must only indicate that they have stopped burning hazardous waste and have submitted the required RCRA closure documents.

c. Schedule. To determine that facilities are undertaking the steps necessary to come into compliance by the compliance date, the progress report shall contain a schedule. This schedule must take into account the key dates listed in 63.1211(a)(1)(ii) for projects that will bring the source into compliance with the emission standards. The schedule must cover the time frame from the submittal of the progress report through the compliance date of the emission standards. EPA is requiring that the following key dates, as applicable to each source, be contained in their schedule: (1) Bid and award dates for construction contracts and equipment supply contractors; (2) milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing; (3) the dates on which applications were submitted for or obtained operating and construction permits or licenses; (4) the dates by which approvals of any permits or licenses applied for are anticipated; and (5) the projected date by which the source will be in compliance with emission standards. The Agency anticipates that many sources will be able to update the schedule included with their NIC in submitting a schedule for the progress report.

d. Sources That Do Not Intend To Comply. The Agency anticipates that some facilities, which intended to comply at the time of their NIC submittal, may make the determination not to comply based on engineering studies or evaluations by the time of their progress report submittal. Those sources that signify in their progress report, submitted on or any time before two years after the effective date of the emission standards of this Subpart, their intention not to comply with the requirements of this Subpart must stop burning hazardous waste on or before the date two years after the effective date of the emissions standards of this Subpart. Sources who, at the time of their NIC submittal, have any belief or concern that they may decide not to comply with the emission standards should consider planning alternate waste management alternatives well in advance of the two year stop burning deadline.

e. Facilities with Multiple Sources. Commenters stated that some facilities may have multiple units at the same site subject to the MACT requirements. These facilities may decide to bring a portion of the sources into compliance and cease burning hazardous waste in the other portion of their sources. If a facility did decide to upgrade one or more units, it may be necessary to utilize the remaining unit, in which it intended to stop burning hazardous waste prior to the compliance date, to handle the capacity of the unit being upgraded until the installation of controls was complete. The commenters believed that it was unjustified to close a source at the two year deadline in the case where a source: (1) Was designated for closure at or before the three year compliance date; and (2) was handling the waste from another on-site source being upgraded to comply with the MACT standards or in order to install source reduction modifications eliminating the need for further combustion of wastes.

The Agency agrees that the intent of the requirement for sources that did not intend to comply to stop burning hazardous waste should not apply to these types of sources. Therefore, the requirement to stop burning hazardous waste at the two year deadline does not apply to a source if: (1) The source was designated in the NIC as a source that would stop burning hazardous waste on or before the compliance date; and (2) the source was shown in the NIC to be necessary to handle the capacity of another on-site source while that source was unable to handle the waste and undergoing modifications to come into compliance with the emission standards of this Subpart or in order to install source reduction modifications eliminating the need for further combustion of wastes.

E. Certification

To ensure that information submitted by a source is true and accurate, all NIC and progress reports submitted shall contain the following certification signed and dated by an authorized representative of the source: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

F. Extension of the Compliance Date

The CAA provides sources that intend to come into compliance, but because of the need to install controls will not meet the compliance date, the ability to request an extension of the compliance date for one year. The Agency believes facilities that choose to install process changes (which are essentially pollution prevention or waste minimization measures) and/or other controls that are appropriate for meeting MACT standards are eligible to request a one year extension of the compliance date to install these controls (CAA Section 112(i)(3)(B)). Facilities that request an extension to install pollution prevention and/or waste minimization measures may use part 63.1216 below, which describes the pollution prevention related information to be submitted. Facilities that request an extension for installing only end-of-pipe emission controls may use part 63.6(i)(4) requirements. In either case, the extension request shall be filed at least one year prior to the compliance date of this Subpart.

G. Sources Which Become Affected Sources After the Effective Date of This Subpart

The Agency is concerned that there may be sources who become subject to the emission standards of this Subpart after the effective date of the emission standards of this Subpart. The following is intended to clarify the requirements and time frames that must be met by such sources. A source which begins to burn hazardous waste after the effective date of the emission standards of this Subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this Subpart, shall comply with all the requirements of this section and associated time frames for public meetings and document submittals.

A source which intends to begin burning hazardous waste after 9 months after the effective date of the emission standards of this Subpart, therefore becoming an affected source, shall meet all the requirements concerning the NIC and progress report prior to burning hazardous waste. Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste. Such sources also shall submit their progress report at

the time of the submittal of their final NIC.

VI. Waste Minimization and Pollution Prevention

A. Overview

Pollution prevention is widely recognized as the most preferable form of environmental management. Indeed, the Clean Air Act, the Pollution Prevention Act, and the Resource Conservation and Recovery Act explicitly make pollution prevention the preferred tool in our nation's environmental management toolbox. The States have been strong leaders as well in moving pollution prevention to the forefront. Over the past decade, 30 states have passed legislation that promotes pollution prevention.[18] Those States have embarked on a variety of programs that move pollution prevention more into the mainstream of their environmental management strategies—ranging from pollution prevention based permits and inspections, to mandatory pollution prevention planning programs, to voluntary partnerships and technical assistance. Nearly every State operates some form of pollution prevention technical assistance program to help companies reduce as much waste as possible at the source.

EPA has embarked on several experimental programs, including, for example, Project XL and the Common Sense Initiative, to identify barriers in Federal regulations that impede cleaner, cheaper, smarter environmental solutions, and to demonstrate ways of redrafting regulations to provide greater flexibility in solving environmental problems.

In 1994, EPA began an extensive outreach effort to begin identifying pollution prevention barriers and incentives affecting hazardous waste combustion. Over the course of the past four years, EPA has worked extensively with the States, industry, environmental groups, and citizens, in many dozens of discussions and correspondences to explore a broad range of approaches to pollution prevention in the combustion arena. Today's rulemaking puts in place several incentive based pollution prevention and waste minimization incentives that derive from that long term effort, and that will provide the regulated community with additional flexibility to use pollution prevention technologies where it makes sense to do so. Some barriers were identified that are not easily solvable within the limits of the Clean Air Act, such as time limits on compliance that sometimes force companies to install end-of-pipe emission controls, instead of pollution prevention process changes, because they are faster and less risky to install. Nevertheless, today's rule suggests an approach that can address even this problem.

Today's rule contains incentives that provides the regulated community:

—several months of planning time before the MACT compliance period begins to explore cost effective pollution prevention alternatives that might reduce the cost of hazardous waste combustion,

—the opportunity to extend the compliance period by one year where the additional time is needed to install pollution prevention controls that reduce the amount of hazardous waste entering combustion units, and

—the opportunity to engender public support on pollution prevention alternatives that reduce the amount of waste that will be combusted.

The six pollution prevention alternatives EPA published for comment, the comments received and a description of the incentives contained in today's rule are discussed further below.

B. Background

The goals of the Clean Air Act clearly express Congress' intent to use pollution prevention as a fundamental tool for protecting our nation's air resources:

"A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local government actions, consistent with the provisions of this chapter, for pollution prevention." (Clean Air Act, Section 101 (c))."

"Air pollution prevention (that is, the reduction or elimination , through any measures, of the amount of pollutants produced or created at the source) * * * is the primary responsibility of States and local governments." (Clean Air Act, Section 101 (a)(3))."

Congress' intent in the CAA is consistent, if not identical, to the policies set in the Pollution Prevention Act of 1990 (PPA) and the Hazardous and Solid Waste Amendments to RCRA of 1984, RCRA Section 1003(b) and Section 6602 (a).

More specifically, we note the definition of pollution prevention as used in the CAA is best captured in the operational definition used in Section 112 (d)(2). This section requires EPA to consider pollution prevention techniques in addition to "end of pipe" emission controls and other methods in the setting of MACT standards. Pollution prevention is used here to include: "measures, processes, methods, systems, or techniques including, but not limited to, measures which * * * (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitutions of materials or other modifications, * * * or (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) * * *"

To avoid some of the historical confusion that has occurred over the definitions of pollution prevention and waste minimization, it is useful to compare the CAA definition to those in the PPA and in the Hazardous and Solid Waste Amendments to RCRA of 1984.

The PPA (at Section 6603(5)(A)) defines pollution prevention as source reduction activities, which includes any practice that reduces the amount of hazardous substance, pollutant or contaminant entering a waste stream, or otherwise prior to recycling, treatment or disposal. It includes such activities as: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, and inventory control. The meaning contained in the PPA is essentially the same meaning referred to in Section 112(d)(2) of the CAA. Both focus on reducing waste generation at the source by making changes in the way things are manufactured.

The PPA excludes from pollution prevention any practice which "alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service." (Section 6603(5)(B). In essence, this definition excludes waste management, recycling (except for closed loop recycling that is integrated into production processes), burning for energy recovery, waste treatment, and disposal.

Since many of the facilities affected by today's rulemaking are simultaneously regulated by RCRA, it is important to also explain the use of the term waste minimization, under RCRA.

Waste minimization includes pollution prevention (or source reduction) and environmentally sound recycling, i.e., recycling that does not constitute disposal (see 40 CFR 261.1(c)). It does not include treatment—i.e, any "method, technique, or process, including neutralization,

[18] *Pollution Prevention 1997, A National Progress Report* (June, 1997). U.S. Environmental Protection Agency, EPA 742–R–97–00, Washington, D.C.

designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10). RCRA also contains requirements for hazardous waste generators and permitted waste management facilities to make routine certifications that they have a "waste minimization program in place," and large generators must also report waste minimization activities biennially.

The environmental literature and public statements of many companies provide strong evidence of the potential benefits to industry and the environment that result from using pollution prevention over waste generation and management. For example, pollution prevention techniques can help companies reduce the amount of raw materials purchased and the amount of waste generated. These reductions can reduce the amount spent on waste management and can also reduce worker exposure to hazardous substances. Pollution prevention can help companies improve product yield and find ways to recover materials that might otherwise be destroyed or landfilled.

The literature also points to barriers that may impede a company's ability to pursue pollution prevention. Barriers may include, for example: little or no access to technical information on pollution prevention technologies, concern over the impact of process changes on product quality, a lack of access to capital, requirements in existing environmental regulations that conflict with pollution prevention objectives.

Today's regulation focuses on reducing several potential regulatory barriers that could interfere with pollution prevention solutions. The incentive based approach contained in today's rule is explained further below.

C. Summary of Proposed Pollution Prevention/Waste Minimization Incentives and Comments Received

EPA requested comment on six alternatives for promoting pollution prevention and waste minimization at hazardous waste incinerators, cement kilns and LWAKs. Three were proposed in the Agency's April 1996 NPRM and three were proposed in the Agency's Notice of Data Availability (NODA) published in the **Federal Register** on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241). All six incentive based alternatives were designed to promote the identification and installation of pollution prevention and waste minimization techniques that reduce or eliminate the amount and/or toxicity of hazardous wastes entering combustion feedstreams, either as an alternative to end-of-pipe combustion measures, or in combination with combustion measures, to meet MACT standards.

Two of the six alternatives proposed focused on using waste minimization facility planning as a tool that would cause regulated facilities to identify pollution prevention/waste minimization measures that could be used to reduce the amount and/or the toxicity of hazardous wastes entering combustion feedstreams. Two additional alternatives focused on extending compliance deadlines to allow additional time for companies to fully explore pollution prevention/waste minimization measures and combustion measures that may be necessary to meet MACT standards. A fifth alternative requested comment on an approach that would harness the power of public involvement during the initial stage of corporate compliance planning. The sixth alternative proposed promulgating pollution prevention and waste minimization incentives several months before the MACT standards are promulgated—which would provide companies several months of advance planning time before the MACT compliance period begins. The alternatives were not designed to be exclusive. Today's rule promulgates a combination of three of these options, encourages States to adopt two others, and recommends an alternative voluntary approach for the sixth. The options, comments received and EPA's response to major comments are discussed below. EPA's response to each comment is contained in the docket.

EPA received over 40 comments on the options contained in the April 1996 NPRM and the NODA. Most of the commenters addressed one or more of the following topics:

—Time-based incentives, including the opportunity to enter into enforcement agreements beyond four years,
—The effectiveness of pollution prevention planning and planning criteria,
—Perceived effectiveness of pollution prevention in the context of this rulemaking,
—Setting MACT standards based on pollution prevention/waste minimization,
—Public review of pollution prevention and waste minimization,
—The role of pollution prevention and waste minimization in waste management,
—The definition of pollution prevention and waste minimization, and
—Applicability of pollution prevention incentives to commercial facilities.

EPA asked for comments on the appropriateness of two options requiring pollution prevention/waste minimization facility planning. One option would require facilities to complete a waste minimization facility plan that identifies alternatives for reducing the amount of hazardous waste managed by combustion. While this approach would not require facilities to select any particular pollution prevention technology, it presumes that going through the process of exploring alternatives would cause a company to consider more pollution prevention options than they would have otherwise and select any that are cost-effective.

In the second waste minimization planning option, EPA proposed to allow States and EPA Regions (in cases where States are do not have an approved CAA Title V program) to require pollution prevention planning on a case-by-case basis. Determining which facilities should be required to complete a pollution prevention/waste minimization facility plan could take into account several factors, including, for example, whether an existing state program had already accomplished this objective, the extent to which this requirement may be too burdensome for some states, and the extent to which facility specific conditions indicate emissions could be controlled by feed stream management and waste minimization at the source.

A variety of commenters addressed this issue. Four states and one state association commented pollution prevention/waste minimization should be the highest priority waste management approach, though they had diverse and sometimes conflicting opinions about the specific options proposed. One State commented that mandatory planning should be required for all facilities that generate and combust waste on-site, and that planning should be required on a case-by-case basis for commercial off-site combustion facilities. One State and the State association stated that the mandatory planning requirement should be expanded to include all facilities that generate waste managed by combustion. A fourth State said that no waste minimization incentives should be included in this rule because the

regulated community has had many years to reduce waste generation through pollution prevention/ waste minimization, and should have already considered waste minimization as an approach to compliance. One state did not comment specifically on the pollution prevention planning options but was in favor of encouraging pollution prevention incentives in this rule.

This diversity of opinion among States leads EPA to believe that the pollution prevention/waste minimization incentives contained in this rule must allow broad flexibility for State programs. EPA is also aware, from discussions outside the context of this rulemaking, that some states are specifically opposed to mandatory pollution prevention requirements, and a few states have not yet established pollution prevention programs.

Several dozen comments were received from industry. Most of the comments from companies who generate and combust waste on-site were in favor of pollution prevention/ waste minimization as the most desirable form of waste management. However, most were opposed or silent regarding required pollution prevention planning. Only one argued that mandatory pollution prevention planning is not appropriate, and that the case by case option provides greater flexibility and is therefore more appropriate.

Commercial combustion facilities generally oppose pollution prevention planning requirements because they have virtually no control over what types or how much waste their customers generate for combustion. However, one company argued strongly for the Agency to require mandatory pollution prevention planning by all regulated units to identify pollution prevention alternatives that eliminate or reduce the amount and toxicity of combusted wastes. The commenter further argued that pollution prevention should be used to leverage the closing of combustion units where wastes could more effectively be eliminated or reduced. Another commercial company believes EPA should implement "good actor" incentives for companies that educate their customers regarding available waste minimization resources. Such incentives could include reduced inspection frequencies, reduced performance testing, and a recognition program. This approach was not suggested by any other commenters. EPA believes this approach might be appropriate for further exploration at a later time. One Federal agency commented in favor of a case-by-case approach.

EPA considered several factors regarding this approach. First, the CAA clearly envisions States as the primary implementers of the Title V program, and the pollution prevention programs operated by the States are clearly diverse. While 15 States have enacted mandatory pollution prevention planning programs, the remaining States continue to emphasize voluntary pollution prevention programs and technical assistance to encourage pollution prevention.

Available data shows that mandatory pollution prevention planning can be an effective State tool. It is not clear how effective this approach would be for a broad array of states. In a review of seven states that have chosen to implement mandatory pollution prevention planning programs, the National Pollution Roundtable concludes that mandatory pollution prevention planning produces beneficial results for the regulated community and the environment, and encourages other states to consider this direction.[19] However, New Jersey (one of the seven States reviewed) notes in a separate report that its companies began making significant reductions through pollution prevention well before the State passed legislation requiring mandatory pollution prevention planning. In this case, the State is not able to pinpoint why this occurred.[20]

Of the 21 commercial hazardous waste incinerators and the 141 on-site hazardous waste incinerators (i.e., incinerators co-located with a company manufacturing facilities), 58 percent are located in states which have legislated pollution prevention programs already in place. Nearly all of the remaining facilities are located in States that provide pollution prevention technical assistance. In addition, all of these facilities are co-regulated by RCRA and have been required since 1984 to certify on an annual basis, that they have a waste minimization program in place. Therefore, it is not clear what additional pollution prevention benefits would result from a mandatory requirement. Based on its analysis, EPA believes that a federal requirement for pollution prevention planning is not appropriate.

EPA also considered the impact Federal pollution prevention planning requirements would have on the Agency's paperwork reduction commitments. EPA is committed to decreasing its information collection request budget. In light of the baseline requirements and voluntary programs States have already established in this area, EPA concludes this requirement would increase federal paperwork without necessarily creating a commensurate improvement in environmental quality.

EPA has also expanded the availability of voluntary pollution prevention incentives available—which in turn reduce the need for mandatory federal pollution prevention requirements. For example, EPA has recently released the "Waste Minimization Prioritization Tool."[21] This tool is an easy-to-use computer program that allows industrial, government and public users to quickly identify their highest hazard wastes as targets for pollution prevention efforts. The tool allows the user to enter information on particular waste streams and develop a screening-level assessment of chemicals based on their persistence, bioaccumulation potential, and human and ecological toxicity. The system ranks about 900 chemicals that have "complete" data on chemical persistence, bioaccumulation potential, and human and ecological toxicity, and it includes partial data for 3,800 others. This tool has received much review and is targeted for widespread distribution in the regulated community.

EPA continues to provide $5–$8 million dollars per year in grant funds to States that develop innovative pollution prevention approaches, and EPA is promoting pollution prevention innovation in States through the National Environmental Performance Partnership System (NEPPS). NEPPS agreements give the States flexibility to combine individual program grants to maximize achieve environmental goals, including using funds for pollution prevention that have historically been used for end-of-pipe pollution controls. Texas, New Jersey, and Ohio (which oversee a total of 45 hazardous waste incinerators) are among the states that signed NEPPS agreements in 1996. Thirty states were scheduled to negotiate NEPPS agreements in 1997.

In addition, a variety of government-industry partnerships are producing pollution prevention results. For example, 163 industry members of Texas' Clean Industries 2000 program

[19] "Facility Pollution Prevention Planning Requirements: An Overview of State Program Evaluations," National Pollution Prevention Round table (August 8, 1997), Washington, D.C. 20036.

[20] Aucott, M., Wachspress, D., & Herb J., (May, 1996). "Industrial Pollution Prevention in New Jersey," New Jersey Department of Environmental Protection, Trenton, N.J.

[21] "Waste Minimization Prioritization Tool, Version 1.0: User's Guide and System Documentation," (EPA 530–R–97–019, June, 1997). U.S. Environmental Protection Agency, Washington, D.C.

are committed to reducing emissions of Toxic Release Inventory (TRI) chemicals by 50 percent by the year 2000. A twenty-nine percent reduction was reached by the year 1994.

Balancing all of the above factors, EPA believes mandatory and case-by-case pollution prevention planning approaches are not necessary to achieve the pollution prevention goals of the CAA. A combination of strong incentives and broad flexibility for States and the regulated community, including some of the options discussed below and contained in today's rule, will accomplish the pollution prevention goals of the CAA.

Two options were proposed that would allow the MACT compliance period to be extended for facilities that demonstrate the need for extra time to install pollution prevention measures. One of these options would allow facilities to apply for a one-year compliance extension to the MACT compliance period under Section 112(i)(3)(B) where additional time is needed to install pollution prevention or waste minimization measures that reduce or eliminate hazardous wastes entering the combustion feedstreams of regulated facilities. Of course, such applications must still be evaluated on a case-by-case basis CAA 112(b)(3). However, the following discussion provides an indication of how EPA might evaluate such applications based on pollution prevention.

Facilities that apply for this one-year extension would be required to provide a description of the pollution prevention/waste minimization measures that would significantly reduce or eliminate the volume and/or toxicity of hazardous wastes entering combustion feedstreams, a reduction goal (i.e., how much waste will no longer enter combustion feedstreams of the regulated unit(s)), a discussion of additional combustion or other treatment technology that will be installed to meet MACT standards, and a schedule of milestones necessary to achieve compliance. The pollution prevention/waste minimization measures installed could be used either alone to meet MACT standards (e.g., in cases where elimination of certain combusted waste streams will either achieve MACT standards for the regulated unit(s), or will eliminate the need for the regulated unit(s)), or in combination with combustion or other treatment technologies that enable the facility to comply with MACT standards. We emphasize that identifying expected reductions in combustion feedstreams is required, but identifying reductions in emissions as a result of installing pollution prevention measures is not required. EPA recognizes this would not be practical. The compliance date for facilities that are granted a one year extension by the permitting agency would be four years after the promulgation of MACT standards, rather than three years after the date of promulgation.

EPA recognized in its proposal that States operate very diverse pollution prevention programs. However, to ensure some degree of consistency in granting one year extensions, EPA proposed four flexible factors to be considered in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. These factors included: (1) The extent to which the process changes (including waste minimization measures) proposed as a basis for the extension reduce or eliminate hazardous wastes entering combustion feed streams and are technologically and economically feasible, (2) whether the magnitude of the reductions in hazardous wastes entering combustion feed streams through process changes are significant enough to warrant granting an extension, (3) a clear demonstration that reductions of hazardous wastes entering combustion feed streams are not shifted as increases in pollutants emitted through other regulated media, and (4) a demonstration that the design and installation of process changes, which include waste minimization measures, and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period.

EPA received no adverse comments on the four factors for ensuring consistency. Companies that operate on-site units (many of which are large chemical plants which operate complex production processes and which generate diverse and complex waste streams) commented that they prefer to use pollution prevention and waste minimization measures wherever they are cost effective. However, in the instant rulemaking, the dual tasks of designing, testing and installing pollution prevention process changes and combustion or other treatment equipment is not practical in a three year compliance period plus a one-year extension. Some commented that meeting the compliance date may often force companies to install combustion controls at great expense and forego exploration of pollution prevention options.

The four states and one State association that commented on the compliance extension options had diverse opinions. Two states commented that pollution prevention/waste minimization should be encouraged in this rulemaking. However, they believe three years plus a one-year extension may not be enough time for companies to identify and install waste minimization measures. A third State said that pollution prevention/waste minimization incentives should not be included in this rule because companies have had more than ample time to pursue pollution prevention/waste minimization as an approach to compliance. A fourth State and State association commented that facilities have had ample time to identify and install pollution prevention solutions—however, one year compliance extensions should be considered in cases where it will promote further pollution prevention.

Two commercial hazardous waste treatment organizations commented that a one-year extension for pollution prevention/waste minimization purposes is not appropriate since the companies generating the waste have had several years to consider pollution prevention and waste minimization measures as a waste management alternative.

EPA believes that compliance extensions provide a strong incentive for pollution prevention, and provide States additional flexibility. EPA agrees that, in some cases, three years plus a one-year extension may not be sufficient time to identify and install waste minimization measures that achieve compliance. However, the one year extension is the maximum allowable under the CAA. EPA disagrees with the commenters opposing the extension because pollution prevention and waste minimization should be viewed as an on-going process that adopts new pollution prevention technologies as they become available. In some cases, the economics of complying with new MACT standards may make pollution prevention more cost-effective than it would have otherwise been.

In today's rule, EPA has chosen to implement the one-year compliance extension approach. In evaluating extension requests, EPA urges permitting agencies to give first preference to facilities that request the extra time to install pollution prevention measures (either alone or in addition to combustion controls) over facilities that request an extension only for installing combustion controls. EPA has also simplified the factors that must be considered by permitting agencies in making determinations for one year extensions by making them identical to

the factors facilities must include in requests for extensions.

In its 1997 NODA, EPA encouraged facilities that wish to apply for a one-year extension to coordinate the development the application for extension with the information contained in Notice of Intent to Comply (NIC), which is also described in today's rulemaking. Based on the comments received from industry and States noting the need for extra time to consider and then install pollution prevention measures, EPA would expect to see a reasonable degree of consistency between pollution prevention alternatives discussed in the NIC and pollution prevention technologies identified in a subsequent request for a one year extension to install pollution prevention technologies. Requests for a one-year compliance extension from facilities who did not address pollution prevention in the NIC should be viewed with caution to guard against last minute attempts to delay compliance.

The second compliance extension option, proposed in the 1997 NODA, would allow certain facilities to enter into a written consent agreement or consent order in cases where pollution prevention/waste minimization technologies would significantly reduce wastes entering combustion feed streams, but would take more than four years (i.e., three years plus a one-year extension). EPA could use this alternative using the principles articulated in the Agency's "Policy on Encouraging Self-Policing and Voluntary Correction" (also known as the "Audit Policy" 60 FR 66706, December 22, 1995).

Very few commenters addressed this option. Some industry commenters expressed limited interest in this approach, since entering into a consent agreement would provide no shield against citizen suits.

EPA agrees that longer than four years may be needed in some cases. However, based on the comments received and after further evaluation, the Agency has decided not to pursue this proposal as part of this rulemaking. Instead, EPA believes its Project XL program provides a better opportunity for EPA to work with companies who are interested in undertaking projects which hold the promise of superior environmental results in exchange for regulatory flexibility. The XL program is also designed to include public involvement early in the process, which would hopefully reduce the likelihood of citizen suits. Project XL proposals should be developed and submitted well in advance of the deadline for meeting this MACT standard, possibly before the promulgation of MACT standards. See the May 22, 1995 **Federal Register** Notice [FRL–5197–9] for further information on developing and submitting a proposal.

EPA proposed a fifth pollution prevention/waste minimization incentive in the 1997 NODA which focused on harnessing the power of public involvement to encourage companies to consider pollution prevention alternatives. The NODA proposed to require facilities to make public, within ten months after promulgation of the MACT standards, a draft Notice of Intent to Comply (NIC) that contains a description of technologies that will be used to achieve compliance with MACT standards, including pollution prevention and waste minimization technologies. Regulated facilities would also be required to hold a public meeting on its compliance plan and to submit a final NIC to the permitting agency no later than one year after the promulgation of standards. In this setting, the public would be able to review a company's draft compliance plan and make known its concerns and views regarding the use of pollution prevention, combustion or other treatment methods.

Several commenters responded to the pollution prevention/waste minimization components of the NIC proposal. One industry trade organization commented that the NIC requirements are unnecessary since its members already participate in a responsible care program that includes pollution prevention and community involvement. Another commenter argued strongly that the public involvement opportunity provided by the NIC process is inadequate, and that the point at which the public interacts with the facility is too late to influence decisions to encourage the installation of pollution prevention technology that may reduce or eliminate the need for combustion.

It is crucial to provide the public with information and a public meeting on the pollution prevention/waste minimization and combustion measures that are planned at individual facilities. The NIC process occurs early enough in the compliance process to provide meaningful public involvement, and the NIC process provides a strong lever for citizens to voice their opinions. The pollution prevention aspects of the NIC requirements are further discussed in the NIC portion of today's preamble.

The sixth pollution prevention/waste minimization option proposed involved promulgating a "fast track" rule in advance of MACT standards to provide the regulated community time to explore, plan and possibly begin implementation of pollution prevention and waste minimization measures several months before the promulgation of MACT standards.

One commenter strongly urged this option because it provides facilities with additional planning time to identify pollution prevention options before the MACT compliance period begins. Although no other commenters specifically addressed this option, EPA believes it provides States additional flexibility, and comports with the variety of comments that expressed general support for pollution prevention as a top priority environmental management strategy.

D. Waste Minimization Incentives Contained in Today's Rule

Today's rulemaking provides three incentives to encourage the use of pollution prevention measures to reduce or amount and/or toxicity of hazardous wastes entering combustion feedstreams. Wastes that cannot be reduced at the source should be recycled in an environmentally sound manner, i.e., in a manner that does not constitute disposal. Wastes that cannot be reduced at the source or recycled should be either burned for energy recovery, treated, or disposed in accordance with environmental standards. Today's incentive based approach encourages and rewards facilities that significantly reduce the amount of combusted hazardous waste using pollution prevention measures as a method for achieving MACT standards, and it provides the flexibility needed by the States to build on or expand existing pollution prevention programs.

Today's rule (at Section 63.1216) allows owners/operators of hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns to request a one-year extension to the MACT compliance period in cases where additional time is needed to install pollution prevention and waste minimization measures that reduce the amount of hazardous waste entering combustion feedstreams. The Administrator or State with an approved Title V program is authorized to grant one-year extensions for this purpose under Section 112(i)(3)(B) of the CAA. Pollution prevention and waste minimization measures that can be considered in this determination include: process changes (including closed loop recycling), raw material substitutions, design changes, equipment changes, work practice changes, changes in operational standards or other similar measures that

EPA or State permitting agencies may determine is pollution prevention or waste minimization. Waste minimization activities that may be considered for an extension include pollution prevention activities and recycling measures, as defined in 40 CFR 261.1(c) and conducted in accordance with RCRA regulations.

The term recycling, as defined in defined in 40 CFR 260.10 does not include burning for energy recovery or treatment activities. Therefore, burning for energy recovery will not be considered for an extension. Companies who burn for energy recovery are presumed, in accordance with their RCRA waste minimization program in place certification (discussed above), to have determined that wastes burned for energy recovery could not be economically source reduced or recycled prior to burning. EPA believes this approach is completely consistent with past Agency policy and provides the regulated community with greater flexibility in managing its non-product outputs.

Requests for a one-year extension must reasonably document that the waste minimization measures, and whatever additional compliance measures are necessary to achieve compliance, could not otherwise be installed in time to meet the three-year compliance period. Stronger consideration should be given to requests that contain, for example: (1) A schedule to redesign a production process that eliminates the use of solvents and the generation of spent solvents (which are currently combusted in an on-site hazardous waste incinerator), (2) a commitment to reduce by 25% the amount of hazardous wastes entering the incinerator feedstream (as a result of the waste minimization process change), (3) a description and schedule for designing and installing combustion controls to treat remaining wastes, and (4) evidence that the extension reflects the reality that the design specs and schedule for the remaining combustion controls can not be completed or installed without first having information on waste minimization related feedstream changes. In contrast, requests that propose to simply send wastes off-site for recycling, for example, without first exploring on-site process changes or operating practices, should receive little or no consideration for an extension because there is nothing in this action that would require extensive time.

Decisions to grant one-year extensions will be made by EPA or state programs that have delegated the authority to implement and enforce the emission standard for that source. In light of the wide range of approaches States employ regarding waste minimization planning, it is appropriate to encourage some degree of consistency in how these decisions are made, without superseding State approaches. Therefore, EPA is requiring that permitting agencies must consider all of the information required in Section 63.1216 in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. EPA will also work with States to develop separate guidance, with examples, of how to review requests for an extension, based on pollution prevention/waste minimization efforts.

The second pollution prevention/waste minimization incentive promulgated in today's rule is the requirement for regulated facilities to include in their Notice of Intent to Comply (NIC) a description of pollution prevention and waste minimization activities proposed to reduce the amount and/or toxicity of hazardous waste entering the facility's combustion feedstream(s). This approach will harness the power of public involvement, through the NIC review and public meeting process, to encourage facilities to consider pollution prevention measures in their MACT compliance plan. The requirements for the NIC process are described in today's preamble.

It is important to note here that companies should consider coordinating the development of a NIC process with any subsequent requests for a one year extension. For example, it would seem logical that pollution prevention measures identified in the NIC (prepared in the first year of the compliance period), would also appear in a subsequent request for a one year extension (prepared in the second year of the compliance period). In contrast, requests for a one year extension from companies that did not consider pollution prevention in their NIC might be looked at with more caution.

As a third pollution prevention incentive, EPA is promulgating today's rule several months in advance of promulgating MACT standards to provide companies with several valuable months of advance planning time to identify waste minimization measures can be used to meet, or assist in meeting MACT standards. The timing of today's rule, therefore, serves as a valuable pollution prevention incentive.

Taken together, the tailored incentives contained in today's rule provide strong encouragement for regulated companies to pursue cost effective pollution prevention and waste minimization measures in their individual approaches to meeting MACT standards.

As a final note, a substantial amount of free technical information, assistance and guidance on pollution prevention and waste minimization is available from the Federal government and States, and from a variety of private sources. EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS # PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place,"(May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

VII. State Authority

A. RCRA State Authorization

Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Because the new Federal requirements in today's final rule are promulgated under non-HSWA authority, they are not Federally enforceable in an authorized State until the State has adopted equivalent (or more stringent) standards under its authorized laws and regulations, and those changes have

been approved by EPA. See RCRA section 3006, 42 U.S.C. 6926. Thus, upon their effective date, these requirements will be applicable only in those States that do not have authorization.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. RCRA section 3009 allows States to impose standards that are more stringent than those in the Federal program (see also 40 CFR 271.1(i)(1)). Thus, for those Federal changes that are less stringent, or reduce the scope of the Federal program, States are not required to modify their programs. The revisions to the Federal RCRA Subtitle C program that are promulgated today are considered to be less stringent than the existing Federal regulations. However, EPA believes that their adoption by States will greatly enhance the implementation of the upcoming MACT standards, and ease the permitting burden on the States. Thus, EPA strongly urges States to adopt all aspects of today's final rule as quickly as their legislative and regulatory processes will allow.

B. Program Delegation Under the Clean Air Act

Today's final rule adds notification procedures for hazardous waste combustors under Title III. Specifically, today's rule requires sources to provide to the permitting agency a Notification of Intent to Comply (NIC) within a year following promulgation of new emissions standards in 40 CFR part 63 Subpart EEE, and a Progress Report within two years. As part of the process of developing a NIC, the source is also required to conduct additional public involvement activities, in particular an informal meeting with the community. Section 112(l) of the Clean Air Act allows EPA to approve State rules or programs for the implementation and enforcement of emission standards and other requirements for air pollutants subject to section 112. Under this authority, EPA has developed delegation procedures and requirements located at 40 CFR Part 63, Subpart E, for NESHAPS under Title III of the CAA (See 57 FR 32250, July 21, 1992).

Submission of rules or programs by States under 40 CFR Part 63 is voluntary. Once a State receives approval from EPA for a standard under section 112(l) of the CAA, the State is delegated the authority to implement and enforce the approved State rules or programs in lieu of the otherwise applicable federal rules (the approved State standard would be federally enforceable). States may also apply for a partial Title III program, such that the State is not required to adopt all rules promulgated in 40 CFR Part 63. EPA will administer any rules federally promulgated under section 112 of the CAA that have not been delegated to the State.

VIII. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that today's final rule is not "significant" under points one through three above. The Agency is sensitive, however, to interpretations that may define today's action as "significant" under point number four above, due to the nature of the policy issues raised and recognizes today's action as significant. The Agency has examined economic impacts potentially associated with the three key elements of today's action: the comparable fuel exclusion, waste minimization incentives, and streamlined RCRA permitting modifications. The comparable fuels exclusion in today's final rule will result in national annual cost savings to generators ranging from approximately $11 to $36 million, net of the cost of gaining the exclusion. Blending and combustion facilities, however, are estimated to experience reduced receipts for managing hazardous wastes, coupled with the costs of replacing these materials with more expensive substitutes. The combined impact is estimated to cost these firms an additional $3 to $13 million per year. Today's action also allows sources to apply for up to a one year extension of the three-year compliance period for implementation of waste minimization procedures. Overall, this extension is likely to provide a greater incentive for facilities with on-site combustion units to implement waste minimization options rather than to continue burning hazardous wastes and implement appropriate control technologies. The degree to which this incentive will change the waste burning behavior of combustion facilities is undetermined. EPA is also implementing streamlined procedures for modifying RCRA permits at hazardous waste combustion units. Only those states that regulate combustion units and choose to adopt the streamlined modification system would have to undergo rulemaking and authorization for the streamlined permitting process. The Agency estimates that approximately half of the states with MACT-regulated combustion units will not alter their current permitting system. Based on the average cost to a state for rulemaking and authorization, the Agency estimates aggregate national costs for those states that would modify their systems at a one-time cost of no more than $685,000. In addition to rulemaking and authorization costs, the aggregate national cost for permit review may be as high as $3.8 million. For more information on the cost impacts of today's final rule, see the Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking, March 1998, which is part of the docket for this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

EPA has determined that today's rule will primarily affect large scale facilities. Furthermore, since today's final notice generally provides savings

over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C., I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. A more detailed discussion of small entity impacts is presented in the Economic Analysis Report.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0073.

The incremental annual public reporting and record keeping burden for this collection of information is estimated to be 55,196 hours at a cost of about $5,164,000. For those generators applying for the comparable/syngas fuel exclusion, the average annual respondent reporting burden is estimated to be 0.5 hours per facility and the average annual record keeping burden is estimated to be 47.3 hours per facility. For burners of comparable/syngas fuels, there is no reporting burden and the annual record keeping burden is 8.0 hours per facility. For HWCs complying with the notification of intent to comply regulations, the average annual reporting burden is 300.5 hours per facility and the average annual record keeping burden is 9.0 hours per facility.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

During its review of the proposed rule ICR, OMB offered comments concerning the burdens associated with the proposed testing requirements and records retention for the comparable fuel/syngas exclusion. In the final rule, EPA is allowing generators to use process knowledge and requiring testing for only those constituents the generator determines should be in the waste. The frequency of the testing will be specified by the generator in the waste analysis plan. With regards to records retention, the final rule will require the retention of records of all comparable and syngas fuel-related information for three years. EPA also received several public comments on the final rule ICR which was noticed on January 28, 1998 at 63 FR 4249. EPA has responded to those comments in the supporting statement for the ICR.

EPA estimates that the addition of the comparable fuels exclusion will cause the BIF universe to decrease by 25 facilities. Although the burden reduction is not reflected in the ICR, EPA expects reporting and recordkeeping requirements for BIFs to decrease by 70,743 hours (18 percent) and $7,493,221 (15 percent) annually. EPA will revise the ICR to reflect this burden reduction when it finalizes the emissions standards for hazardous waste combustors.

EPA is also amending the table of currently approved ICR control numbers issued by OMB for various regulations. This amendment updates the table to display accurately this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations (CFR) at 40 CFR Part 9 satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and Tribal governments would not exceed approximately $4.5 million over ten years. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), therefore, the effective date of the rule is not affected.

X. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Potential Effects

Today's final rule is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

XI. Children's Health

Executive Order 13045: The Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and safety Risks (62 FR 19885, April 23, 1997), because: (a) "This is not an economically significant regulatory action as defined by E.O. 12866."

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not finalizing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and record keeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: June 5, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 63, 261, and 270 are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding Subpart EEE, to read as follows:

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

Sec.

63.1200–63.1210 [Reserved]
63.1211 Notification requirements.
63.1212 Progress reports.
63.1213 Certification.
63.1214 Extension of the compliance date.
63.1215 Sources that become affected sources after the effective date of this subpart.
63.1216 Extension of compliance date to install pollution prevention or waste minimization controls.

§ 63.1211 Notification requirements.

(a) *Notification of Intent To Comply (NIC).* (1) All hazardous waste combustors subject to this subpart shall prepare a Notification of Intent to Comply that includes the following information:

(i) General information:

(A) The name and address of the owner/operator and the source;

(B) Whether the source is a major or an area source;

(C) Waste minimization and emission control technique(s) being considered;

(D) Emission monitoring technique(s) being considered;

(E) Waste minimization and emission control technique(s) effectiveness;

(F) A description of the evaluation criteria used or to be used to select waste minimization and/or emission control technique(s); and

(G) A statement that the source intends to comply with this subpart by controlling emissions from the combustion of hazardous waste pursuant to the standards of this subpart.

(ii) Information on key activities and estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. The submission of key activities and dates is not intended to be static and may be revised by the source during the period the NIC is in effect. Revisions shall be submitted to the regulatory authority and be made available to the public. The following are the key activities and dates that shall be included:

(A) The dates for beginning and completion of engineering studies to evaluate emission control systems or process changes for emissions;

(B) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(C) The date by which construction applications will be submitted;

(D) The date by which on-site construction, installation of emission control equipment, or process change is to be initiated;

(E) The date by which on-site construction, installation of emission control equipment, or process change is to be completed; and

(F) The date by which final compliance is to be achieved. The individual dates and milestones listed in paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC are not requirements and therefore are not enforceable deadlines; the Agency is

requiring paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC only to inform the public of the source's intentions towards coming into compliance.

(iii) A summary of the public meeting required under paragraph (b) of this section.

(iv) For any source that does not intend to comply, but will not stop burning hazardous waste as required under paragraph (c) of this section, a certification that the designated source will:

(A) Stop burning hazardous waste on or before the compliance date of the emission standards of this Subpart; and

(B) Be necessary to combust the hazardous waste from another on-site source, during the year prior to the compliance date of the emission standards of this Subpart, because that other source is:

(*1*) Installing equipment to come into compliance with the emission standards of this Subpart; or

(*2*) Installing source reduction modifications to eliminate the need for further combustion of wastes.

(2) A draft of the NIC must be made available for public review no later than 30 days prior to the public meeting required under paragraph (b)(1) of this section.

(3) The final NIC must be submitted to the permitting agency no later than one year following the effective date of the emission standards of this subpart.

(b) *NIC Public Meeting and Notice.* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart, the source shall hold at least one informal meeting with the public to discuss anticipated activities described in the draft NIC for achieving compliance with the MACT standards promulgated in this subpart. The source must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(2) The source shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as part of the final NIC, in accordance with paragraph (a)(1)(iii) of this section.

(3) The source must provide public notice of the NIC meeting at least 30 days prior to the meeting. The source shall provide public notice in all of the following forms:

(i) *Newspaper advertisement.* The source shall publish a notice in a newspaper of general circulation in the county or equivalent jurisdiction of the source. In addition, the source shall publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdiction where such publication would be necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *Visible and accessible sign.* The source shall post a notice on a clearly marked sign at or near the source. If the source places the sign on the source's property, then the sign must be large enough to be readable from the nearest spot where the public would pass by the source.

(iii) *Broadcast media announcement.* The source shall broadcast a notice at least once on at least one local radio station or television station.

(iv) *Notice to the facility mailing list.* The source shall provide a copy of the notice to the facility mailing list in accordance with § 124.10(c)(1)(ix) of this chapter.

(4) The notices required under paragraph (b)(3) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the source and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the source location;

(iv) A statement encouraging people to contact the source at least 72 hours before the meeting if they need special access to participate in the meeting;

(v) A statement describing how the draft NIC can be obtained; and

(vi) The name, address, and telephone number of a contact person for the NIC.

(c) *Sources that do not intend to comply.* Those sources subject to the requirements of this subpart, except those sources meeting the requirements of paragraph (a)(1)(iv) of this section:

(1) Who signify in their NIC an intent not to comply with the requirements of this Subpart, must stop burning hazardous waste on or before two years after the effective date of the emmission standards of this subpart;

(2) Who do not intend to comply with this subpart must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents.

§ 63.1212 Progress reports.

(a) *General.* Not later than two years after the effective date of the emission standards of this subpart, all sources subject to this Subpart except those hazardous waste combustion sources that comply with paragraph (b)(2) of this section shall:

(1) Complete engineering design for any physical modifications to the source needed to comply with the emissions standards of this subpart;

(2) Submit applicable construction applications to the applicable regulatory authority; and

(3) Enter into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this subpart.

(b) *Demonstration* (1) Hazardous waste combustion sources shall submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this subpart which contains information demonstrating that the source has met the requirements of paragraph (a) of this section. This information will be used by the regulatory authority to determine if the source has made adequate progress towards compliance with the applicable emission standards.

(2) Sources that intend to come into compliance with the emissions standards of this subpart, but can do so without undertaking any of the activities described in paragraph (a) of this section, shall submit documentation either:

(i) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or

(ii) Specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities listed in paragraphs (a)(1) through (3) of this section.

(3) Sources that fail to comply with paragraph (a) above or paragraph (b)(2) of this section shall stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

(c) *Schedule.* (1) The progress report shall contain a detailed schedule that lists key dates for all projects that will bring the source into compliance with the requirements of this subpart (i.e., key dates for the activities required under paragraphs (b)(1)(i) through (iii) of this section). Dates shall cover the time frame from the progress report through the compliance date of the emission standards of this subpart.

(2) The schedule shall contain the following dates:

(i) Bid and award dates for construction contracts and equipment supply contractors;

(ii) Milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing;

(iii) The dates on which applications were submitted for or obtained operating and construction permits or licenses;

(iv) The dates by which approvals of any permits or licenses are anticipated; and

(v) The projected date by which the source will be in compliance with the requirements of this subpart.

(d) *Notice of intent to comply.* The progress report shall contain a statement that the source intends or does not intend to come into compliance with the applicable emission control requirements of this subpart.

(e) *Sources that do not intend to comply.* (1) Sources that: indicated in their NIC their intent not to comply with this subpart and stop burning hazardous waste prior to the submittal of a progress report; or meet the requirements of paragraph (a)(1)(iv) of this section are not required to include the requirements of paragraphs (b) and (c) of this section to their progress report, but shall include in their progress report: the date on which the source stopped burning hazardous waste; and the date(s) on which RCRA closure documents were submitted.

(2) Those sources that signify in the progress report, submitted not later than two years after the effective date of the emission standards of this subpart, their intention not to comply with the requirements of this subpart must stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

§ 63.1213 Certification.

(a) The Notice of Intent to Comply (NIC) and Progress Report submitted shall contain the following certification signed and dated by an authorized representative of the source:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

§ 63.1214 Extension of the compliance date.

(a) A source that intends to come into compliance with the requirements of this subpart, but due to the installation of controls will not meet the compliance date, may request an extension of the compliance date for one year.

(b) Sources subject to this subpart shall follow the requirements of § 63.6(i)(4) or § 63.1216 to request an extension of the compliance date.

§ 63.1215 Sources that become affected sources after the effective date of the emission standards of this subpart.

(a) A source that begins to burn hazardous waste after the effective date of the emission standards of this subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this subpart shall comply with all the requirements of §§ 63.1211 through 63.1213 and associated time frames for public meetings and document submittals.

(b) A source that intends to begin burning hazardous waste more than 9 months after the effective date of the emission standards of this subpart, therefore becoming an affected source, shall meet all the requirements of §§ 63.1211 through 63.1213 prior to burning hazardous waste.

(1) Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste.

(2) Such sources also shall submit their progress report at the time of the submittal of their final NIC.

§ 63.1216 Extension of the compliance date to install pollution prevention or waste minimization controls.

(a) *Applicability.* The owner or operator of any source subject to the requirements of this subpart may request from the Administrator or State with an approved Title V program an extension of one year to comply with the emission standards in this subpart, if the owner or operator can reasonably document that the installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart, and that the facility could not otherwise install the necessary control measures and comply within three years after the effective date of the emission standards of this subpart.

(b) *Requirements for requesting an extension.* Requests for a one-year extension must be in writing, must be received not later than 12 months before the affected source's compliance date, and must contain the following information:

(1) A description of pollution prevention or waste minimization controls that, when installed, will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart. Pollution prevention or waste minimization measures may include: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, inventory control, or recycling practices conducted as defined in 40 CFR 261.1(c);

(2) A description of other pollution controls to be installed that are necessary to comply with the emission standards;

(3) A reduction goal or estimate of the annual reductions in quantity and/or toxicity of hazardous waste(s) entering combustion feedstream(s) that will occur by installing the proposed pollution prevention or waste minimization measures;

(4) A comparison of reductions in the amounts and/or toxicity of hazardous wastes combusted after installation of pollution prevention or waste minimization measures to the amounts and/or toxicity of hazardous wastes combusted prior to the installation of these measures; and, if the difference is less than a fifteen percent reduction, a comparison to pollution prevention and waste minimization reductions recorded during the previous five years;

(5) Reasonable documentation that installation of the pollution prevention or waste minimization changes will not result in a net increase (except for documented increases in production) of hazardous constituents released to the environment through other emissions, wastes or effluents;

(6) Reasonable documentation that the design and installation of waste minimization and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period, and

(7) The information required in 40 CFR 63.6(i)(6)(i)(B) through (D).

(8) Documentation prepared under an existing State required pollution prevention program that contains the information may be enclosed with a

request for extension in lieu of paragraphs (b)(1) through (7) of this section.

(c) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (a) of this section, the Administrator or State with an approved Title V program may grant an extension of compliance with the emission standards identified in paragraph (a) of this section. The extension will be in writing in accordance with §§ 63.6(i)(10)(i) through 63.6(i)(10)(v)(A). EPA and States must consider the information required in paragraph (a) of this section in approving or denying requests for one-year compliance extensions.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (a)(16) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of § 261.38.

* * * * *

3. Section 261.38 is added to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:

(a) *Comparable fuel specifications.*—(1) *Physical specifications.*—(i) *Heating value.* The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

(ii) *Viscosity.* The viscosity must not exceed: 50 cs, as-fired.

(2) *Constituent specifications.* For compounds listed in table 1 to this section the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1).

(b) *Synthesis gas fuel specification.*—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(1) Have a minimum Btu value of 100 Btu/Scf;

(2) Contain less than 1 ppmv of total halogen;

(3) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(4) Contain less than 200 ppmv of hydrogen sulfide; and

(5) Contain less than 1 ppmv of each hazardous constituent in the target list of Appendix VIII constituents of this part.

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	na	4900	
Total Halogens as Cl	na	540	
Total Organic Halogens as Cl	na	25 or individual halogenated organics listed below.	
Polychlorinated biphenyls, total [Arocolors, total][a]	1336-36-3	Non-detect	1.4
Cyanide, total	57-12-5	Non-detect	1.0
Metals:			
Antimony, total	7440-36-0	7.9	
Arsenic, total	7440-38-2	0.23	
Barium, total	7440-39-3	23	
Beryllium, total	7440-41-7	1.2	
Cadmium, total	7440-43-9	1.2	
Chromium, total	7440-47-3	2.3	
Cobalt	7440-48-4	4.6	
Lead, total	7439-92-1	31	
Manganese	7439-96-5	1.2	
Mercury, total	7439-97-6	0.24	
Nickel, total	7440-02-0	58	
Selenium, total	7782-49-2	0.15	
Silver, total	7440-22-4	2.3	
Thallium, total	7440-28-0	23	
Hydrocarbons:			
Benzo(a)anthracene	56-55-3	1100	
Benzene	71-43-2	4100	
Benzo(b)fluoranthene	205-99-2	960	
Benzo(k)fluoranthene	207-08-9	1900	
Benzo(a)pyrene	50-32-8	960	
Chrysene	218-01-9	1400	
Dibenzo(a,h)anthracene	53-70-3	960	
7,12-Dimethylbenz(a)anthracene	57-97-6	1900	
Fluoranthene	206-44-0	1900	
Indeno(1,2,3-cd)pyrene	193-39-5	960	
3-Methylcholanthrene	56-49-5	1900	
Naphthalene	91-20-3	3200	
Toluene	108-88-3	36000	
Oxygates:			

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Acetophenone	98–86–2	1900	
Acrolein	107–02–8	37	
Allyl alcohol	107–18–6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117–81–7	1900	
Butyl benzyl phthalate	85–68–7	1900	
o-Cresol [2-Methyl phenol]	95–48–7	220	
m-Cresol [3-Methyl phenol]	108–39–4	220	
p-Cresol [4-Methyl phenol]	106–44–5	220	
Di-n-butyl phthalate	84–74–2	1900	
Diethyl phthalate	84–66–2	1900	
2,4-Dimethylphenol	105–67–9	1900	
Dimethyl phthalate	131–11–3	1900	
Di-n-octyl phthalate	117–84–0	960	
Endothall	145–73–3	100	
Ethyl methacrylate	97–63–2	37	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110–80–5	100	
Isobutyl alcohol	78–83–1	37	
Isosafrole	120–58–1	1900	
Methyl ethyl ketone [2-Butanone]	78–93–3	37.	
Methyl methacrylate	80–62–6	37.	
1,4-Naphthoquinone	130–15–4	1900.	
Phenol	108–95–2	1900.	
Propargyl alcohol [2-Propyn-1-ol]	107–19–7	30.	
Safrole	94–59–7	1900.	
Sulfoted Organics:			
Carbon disulfide	75–15–0	Non-detect ..	37
Disulfoton	298–04–4	Non-detect ..	1900
Ethyl methanesulfonate	62–50–0	Non-detect ..	1900
Methyl methanesulfonate	66–27–3	Non-detect ..	1900
Phorate	298–02–2	Non-detect ..	1900
1,3-Propane sultone	1120–71–4	Non-detect ..	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689–24–5	Non-detect ..	1900
Thiophenol [Benzenethiol]	108–98–5	Non-detect ..	30
O,O,O-Triethyl phosphorothioate	126–68–1	Non-detect ..	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75–05–8	Non-detect ..	37
2-Acetylaminofluorene [2-AAF]	53–96–3	Non-detect ..	1900
Acrylonitrile	107–13–1	Non-detect ..	37
4-Aminobiphenyl	92–67–1	Non-detect ..	1900
4-Aminopyridine	504–24–5	Non-detect ..	100
Aniline	62–53–3	Non-detect ..	1900
Benzidine	92–87–5	Non-detect ..	1900
Dibenz[a,j]acridine	224–42–0	Non-detect ..	1900
O,O-Diethyl O-pyrazinyl phophoro-thioate [Thionazin]	297–97–2	Non-detect ..	1900
Dimethoate	60–51–5	Non-detect ..	1900
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60–11–7	Non-detect ..	1900
3,3'-Dimethylbenzidine	119–93–7	Non-detect ..	1900
α,α-Dimethylphenethylamine	122–09–8	Non-detect ..	1900
3,3'-Dimethoxybenzidine	119–90–4	Non-detect ..	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99–65–0	Non-detect ..	1900
4,6-Dinitro-o-cresol	534–52–1	Non-detect ..	1900
2,4-Dinitrophenol	51–28–5	Non-detect ..	1900
2,4-Dinitrotoluene	121–14–2	Non-detect ..	1900
2,6-Dinitrotoluene	606–20–2	Non-detect ..	1900
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88–85–7	Non-detect ..	1900
Diphenylamine	122–39–4	Non-detect ..	1900
Ethyl carbamate [Urethane]	51–79–6	Non-detect ..	100
Ethylenethiourea (2-Imidazolidinethione)	96–45–7	Non-detect ..	110
Famphur	52–85–7	Non-detect ..	1900
Methacrylonitrile	126–98–7	Non-detect ..	37
Methapyrilene	91–80–5	Non-detect ..	1900
Methomyl	16752–77–5	Non-detect ..	57
2-Methyllactonitrile [Acetone cyanohydrin]	75–86–5	Non-detect ..	100
Methyl parathion	298–00–0	Non-detect ..	1900
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70–25–7	Non-detect ..	110
1-Naphthylamine, [α-Naphthylamine]	134–32–7	Non-detect ..	1900
2-Naphthylamine, [β-Naphthylamine]	91–59–8	Non-detect ..	1900
Nicotine	54–11–5	Non-detect ..	100

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
4-Nitroaniline, [p-Nitroaniline]	100–01–6	Non-detect ..	1900
Nitrobenzene	98–95–3	Non-detect ..	1900
p-Nitrophenol, [p-Nitrophenol]	100–02–7	Non-detect ..	1900
5-Nitro-o-toluidine	99–55–8	Non-detect ..	1900
N-Nitrosodi-n-butylamine	924–16–3	Non-detect ..	1900
N-Nitrosodiethylamine	55–18–5	Non-detect ..	1900
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86–30–6	Non-detect ..	1900
N-Nitroso-N-methylethylamine	10595–95–6	Non-detect ..	1900
N-Nitrosomorpholine	59–89–2	Non-detect ..	1900
N-Nitrosopiperidine	100–75–4	Non-detect ..	1900
N-Nitrosopyrrolidine	930–55–2	Non-detect ..	1900
2-Nitropropane	79–46–9	Non-detect ..	30
Parathion	56–38–2	Non-detect ..	1900
Phenacetin	62–44–2	Non-detect ..	1900
1,4-Phenylene diamine, [p-Phenylenediamine]	106–50–3	Non-detect ..	1900
N-Phenylthiourea	103–85–5	Non-detect ..	57
2-Picoline [alpha-Picoline]	109–06–8	Non-detect ..	1900
Propythioracil [6-Propyl-2-thiouracil]	51–52–5	Non-detect ..	100
Pyridine	110–86–1	Non-detect ..	1900
Strychnine	57–24–9	Non-detect ..	100
Thioacetamide	62–55–5	Non-detect ..	57
Thiofanox	39196–18–4	Non-detect ..	100
Thiourea	62–56–6	Non-detect ..	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95–80–7	Non-detect ..	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823–40–5	Non-detect ..	57
o-Toluidine	95–53–4	Non-detect ..	2200
p-Toluidine	106–49–0	Non-detect ..	100
1,3,5-Trinitrobenzne, [sym-Trinitobenzene]	99–35–4	Non-detect ..	2000
Halogenated Organics [b]:			
Allyl chloride	107–05–1	Non-detect ..	37
Aramite	104–57–8	Non-detect ..	1900
Benzal chloride [Dichloromethyl benzene]	98–87–3	Non-detect ..	100
Benzyl chloride	100–44–77	Non-detect ..	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111–44–4	Non-detect ..	1900
Bromoform [Tribromomethane]	75–25–2	Non-detect ..	37
Bromomethane [Methyl bromide]	74–83–9	Non-detect ..	37
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101–55–3	Non-detect ..	1900
Carbon tetrachloride	56–23–5	Non-detect ..	37
Chlordane	57–74–9	Non-detect ..	14
p-Chloroaniline	106–47–8	Non-detect ..	1900
Chlorobenzene	108–90–7	Non-detect ..	37
Chlorobenzilate	510–15–6	Non-detect ..	1900
p-Chloro-m-cresol	59–50–7	Non-detect ..	1900
2-Chloroethyl vinyl ether	110–75–8	Non-detect ..	37
Chloroform	67–66–3	Non-detect ..	37
Chloromethane [Methyl chloride]	74–87–3	Non-detect ..	37
2-Chlorophthalene [beta-Chlorophthalene]	91–58–7	Non-detect ..	1900
2-Chlorophenol [o-Chlorophenol]	95–57–8	Non-detect ..	1900
Chloroprene [2-Chloro-1,3-butadiene]	1126–99–8	Non-detect ..	37
2,4-D [2,4-Dichlorophenoxyacetic acid]	94–75–7	Non-detect ..	7.0
Diallate	2303–16–4	Non-detect ..	1900
1,2-Dibromo-3-chloropropane	96–12–8	Non-detect ..	37
1,2-Dichlorobenzene [o-Dichlorobenzene]	95–50–1	Non-detect ..	1900
1,3-Dichlorobenzene [m-Dichlorobenzene]	541–73–1	Non-detect ..	1900
1,4-Dichlorobenzene [p-Dichlorobenzene]	106–46–7	Non-detect ..	1900
3,3'-Dichlorobenzidine	91–94–1	Non-detect ..	1900
Dichlorodifluoromethane [CFC–12]	75–71–8	Non-detect ..	37
1,2-Dichloroethane [Ethylene dichloride]	107–06–2	Non-detect ..	37
1,1-Dichloroethylene [Vinylidene chloride]	75–35–4	Non-detect ..	37
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane	111–91–1	Non-detect ..	1900
2,4-Dichlorophenol	120–83–2	Non-detect ..	1900
2,6-Dichlorophenol	87–65–0	Non-detect ..	1900
1,2-Dichloropropane [Propylene dichloride]	78–87–5	Non-detect ..	37
cis-1,3-Dichloropropylene	10061–01–5	Non-detect ..	37
trans-1,3-Dichloropropylene	10061–02–6	Non-detect ..	37
1,3-Dichloro-2-propanol	96–23–1	Non-detect ..	30
Endosulfan I	959–98–8	Non-detect ..	1.4
Endosulfan II	33213–65–9	Non-detect ..	1.4

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Endrin	72–20–8	Non-detect ..	1.4
Endrin aldehyde	7421–93–4	Non-detect ..	1.4
Endrin Ketone	53494–70–5	Non-detect ..	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106–89–8	Non-detect ..	30
Ethylidene dichloride [1,1-Dichloroethane]	75–34–3	Non-detect ..	37
2-Fluoroacetamide	640–19–7	Non-detect ..	100
Heptachlor	76–44–8	Non-detect ..	1.4
Heptachlor epoxide	1024–57–3	Non-detect ..	2.8
Hexachlorobenzene	118–74–1	Non-detect ..	1900
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87–68–3	Non-detect ..	1900
Hexachlorocyclopentadiene	77–47–4	Non-detect ..	1900
Hexachloroethane	67–72–1	Non-detect ..	1900
Hexachlorophene	70–30–4	Non-detect ..	1000
Hexachloropropene [Hexachloropropylene]	1888–71–7	Non-detect ..	1900
Isodrin	465–73–6	Non-detect ..	1900
Kepone [Chlordecone]	143–50–0	Non-detect ..	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58–89–9	non-detect ...	1.4
Methylene chloride [Dichloromethane]	75–09–2	non-detect ...	37
4,4'-methylene-bis(2-chloroaniline)	101–14–4	non-detect ...	100
Methyl iodide [Iodomethane]	74–88–4	non-detect ...	37
Pentachlorobenzene	608–93–5	non-detect ...	1900
Pentachloroethane	76–01–7	non-detect ...	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82–68–8	non-detect ...	1900
Pentachlorophenol	87–86–5	non-detect ...	1900
Pronamide	23950–58–5	non-detect ...	1900
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93–72–1	non-detect ...	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746–01–6	non-detect ...	30
1,2,4,5-Tetrachlorobenzene	95–94–3	non-detect ...	1900
1,1,2,2-Tetrachloroethane	79–34–5	non-detect ...	37
Tetrachloroethylene [Perchloroethylene]	127–18–4	non-detect ...	37
2,3,4,6-Tetrachlorophenol	58–90–2	non-detect ...	1900
1,2,4-Trichlorobenzene	120–82–1	non-detect ...	1900
1,1,1-Trichloroethane [Methyl chloroform]	71–55–6	non-detect ...	37
1,1,2-Trichloroethane [Vinyl trichloride]	79–00–5	non-detect ...	37
Trichloroethylene	79–01–6	non-detect ...	37
Trichlorofluoromethane [Trichlormonofluoromethane]	75–69–4	non-detect ...	37
2,4,5-Trichlorophenol	95–95–4	non-detect ...	1900
2,4,6-Trichlorophenol	88–06–2	non-detect ...	1900
1,2,3-Trichloropropane	96–18–4	non-detect ...	37
Vinyl Chloride	75–01–4	non-detect ...	37

[a] Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

[b] Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds on Appendix VIII at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

(c) *Implementation.*—Waste that meets the comparable or syngas fuel specifications provided by paragraphs (a) or (b) of this section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in paragraphs (c)(3) or (4) of this section) is excluded from the definition of solid waste provided that the following requirements are met:

(1) *Notices*—For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

(i) State RCRA and CAA Directors in Authorized States or Regional RCRA and CAA Directors in Unauthorized States.—

(A) The generator must submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying compliance with the conditions of the exclusion and providing documentation as required by paragraph (c)(1)(i)(C) of this section;

(B) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(C) A comparable/syngas fuel generator's notification to the Directors must contain the following items:

(*1*) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(*2*) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(*3*) Name and address of the units, meeting the requirements of paragraph (c)(2) of this section, that will burn the comparable/syngas fuel; and

(4) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.28(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) Public notice.—Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(A) Name, address, and RCRA ID number of the generating facility;

(B) Name and address of the unit(s) that will burn the comparable/syngas fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(E) Name and mailing address of the Regional or State Directors to whom the claim was submitted.

(2) *Burning.*—The comparable/syngas fuel exclusion for fuels meeting the requirements of paragraphs (a) or (b) and (c)(1) of this section applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable CAA MACT requirements:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.

(3) *Blending to meet the viscosity specification.*—A hazardous waste blended to meet the viscosity specification shall:

(i) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraphs (a)(1)(i) and (a)(2) of this section;

(ii) Be blended at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(iii) Not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(4) *Treatment to meet the comparable fuel exclusion specifications.*—(i) A hazardous waste may be treated to meet the exclusion specifications of paragraphs (a)(1) and (2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this Chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this seciton.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.*—(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (b) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c) of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition for comparable and syngas fuels.*—No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph (a)(1)(i), (a)(2) or (b) of this section.

(7) *Waste analysis plans.* The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846). The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) The waste analysis plan shall also contain records of the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the

documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (c)(7)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(8) *Comparable fuel sampling and analysis.* (i) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (c)(8): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph (c)(8)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(2) and (b) of this section have been met.

(iii) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

(A) Each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(B) The analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under paragraph (c)(7) of this section.

(vii) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.

(viii) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(A) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(ix) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(9) *Speculative accumulation.* Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under § 261.2(c)(4) of this chapter.

(10) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (c)(8)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (c)(8) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under paragraph (c)(3) or (4) of this section;

(vii) If the waste is to be shipped off-site, a certification from the burner as required under paragraph (c)(12) of this section;

(viii) A waste analysis plan and the results of the sampling and analysis that includes the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also

provides for the availability of the documentation to the claimant upon request; and

(ix) If the generator ships comparable/syngas fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the comparable/syngas fuel for burning;

(B) The quantity of comparable/syngas fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under paragraph (c)(8) of this section; and

(E) A one-time certification by the burner as required under paragraph (c)(12) of this section.

(11) *Records retention.* Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

(12) *Burner certification.* Prior to submitting a notification to the State and Regional Directors, a comparable/syngas fuel generator who intends to ship their fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (c)(2) of this section;

(ii) Identifying the name and address of the units that will burn the comparable/syngas fuel; and

(iii) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.

(13) *Ineligible waste codes.* Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this part, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart D—Changes to Permits

2. Section 270.42 is amended by adding a new paragraph (j) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) *Combustion facility changes to meet part 63 MACT standards.* The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this section.

(2) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

3. In § 270.42 Appendix I is amended by adding entry L(9) to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
L. Incinerators, Boilers and Industrial Furnaces	[1] 1
. . . . .	
9. Technology Changes Needed to meet Standards under 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(i) are followed	
. . . . .	

[1] Class 1 modifications requiring Agency prior approval.

* * * * *

Subpart G—Interim Status

4. Section 270.72 is amended by adding paragraph (b)(8) to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(8) Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

[FR Doc. 98–15843 Filed 6–18–98; 8:45 am]
BILLING CODE 6560–50–P

VOL
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federal register

Friday
June 19, 1998

Part V

Department of Education

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research: Reinviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Engineering Research Center for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Notice Reinviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Engineering Research Center (RERC) for Fiscal Year (FY) 1998

Purpose: On March 9, 1998 a notice was published in the **Federal Register** (63 FR 11562) inviting applications for a new FY 1998 award for a RERC on communication enhancement. Satisfactory applications were not received for this priority area. There is a continuing need for this project.

The purposes of this notice are to: (1) reinvite applications for a RERC on communication enhancement for FY 1998; and (2) invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations, institutions of higher education; and Indian tribes and tribal organizations.

Applications Available: June 19, 1998.

Pre-Application Meetings: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for a RERC on communication enhancement and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on Monday, July 20, 1998 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5:00 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Part 350; and (c) the notice of final priorities published on March 9, 1998 in the **Federal Register** (63 FR 11554); and the notice inviting applications published on March 9, 1998 in the **Federal Register** (63 FR 11562).

Deadline for Transmittal of Applications: August 19, 1998.

Maximum Award Amount Per Year: $900,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on the RERC on communication enhancement contact William Peterson, U.S. Department of Education, Room 3425 Switzer Building, 600 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 205–9192. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136.

In order to obtain an application package, contact Donna Nangle, U.S. Department of Education, Room 3423 Switzer Building, 600 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: June 16, 1998.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 98–16400 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–P

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Federal Register

Vol. 63, No. 118

Friday, June 19, 1998

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

S. 1605/P.L. 105–181

Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

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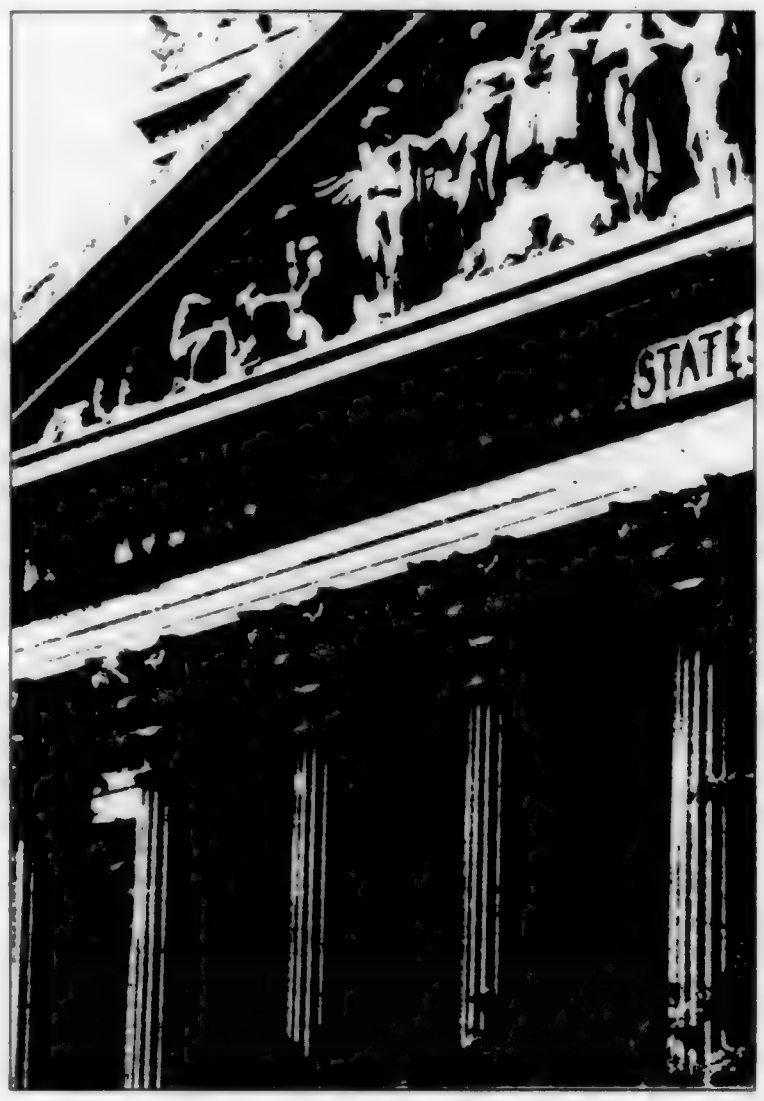

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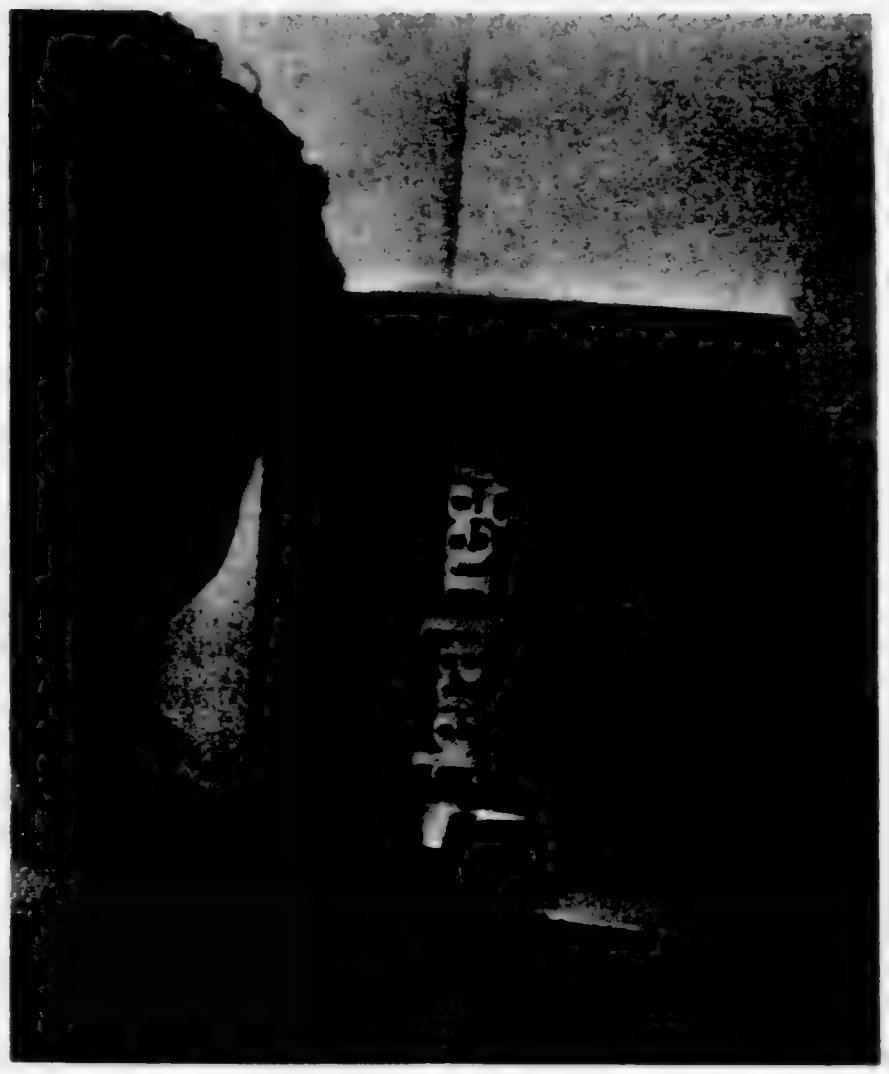

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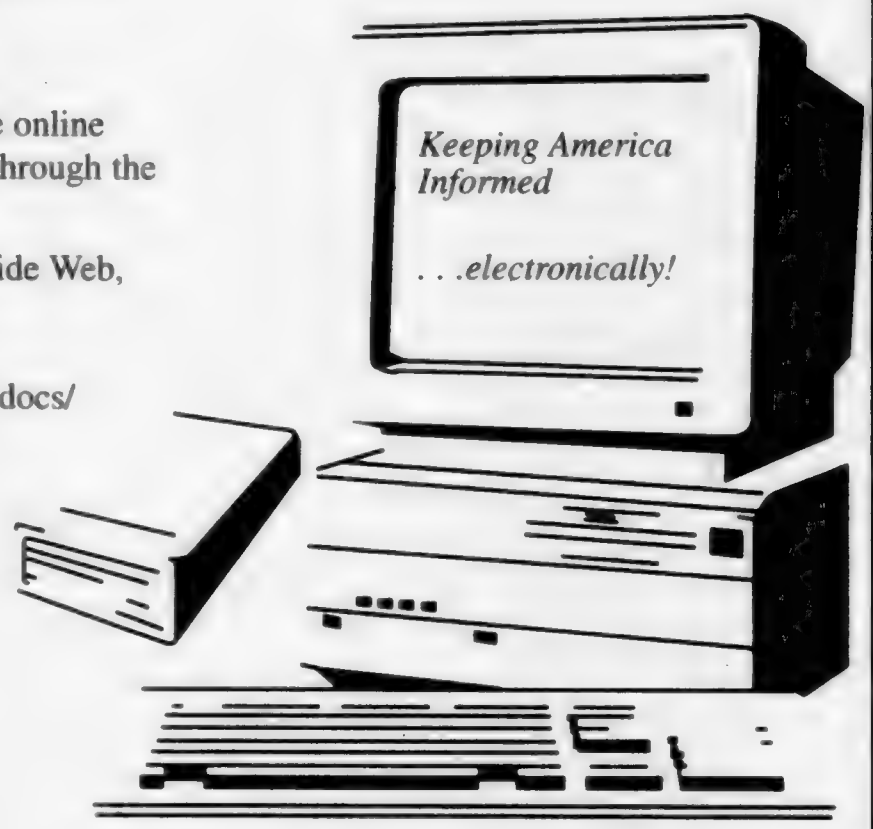

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Title 3—

The President

Proclamation 7106 of June 17, 1998

Father's Day, 1998

By the President of the United States of America

A Proclamation

Fathers hold us close and lift us up in so many ways throughout our lives. Devoted fathers work day in and day out, not only to help provide their families with food, clothing, education, and a good home, but also to give their children the values, guidance, encouragement, and self-esteem to make the most of their lives. With careful planning and many quiet sacrifices, fathers seek to give their children the freedom to dream and the opportunity to make those dreams a reality. Across our Nation, at piano recitals and basketball games, at science fairs and high school graduations, proud fathers rejoice at the achievements of their sons and daughters.

In today's complex and changing society, fathers have taken on new roles and additional responsibilities within their homes, balancing the varied demands of work and family. They are nurturers as well as providers, confidants and best friends as well as heroes and role models. They teach their children how to read, how to drive, and how to live. And, like generations of fathers who came before them, they build a strong foundation of love that enables their sons and daughters to stand taller, see farther, and reach higher. On Father's Day, let us thank the biological fathers, stepfathers, foster fathers, and adoptive fathers across America whose love graces their children's lives and whose character strengthens our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 21, 1998, as Father's Day. I invite the States, communities across the country, and all the citizens of the United States to observe this day with appropriate ceremonies and activities that demonstrate our deep appreciation and abiding love for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of June, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–16696
Filed 6–19–98; 8:45 am]
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RIN 0563–A

**Popcorn C
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AGENCY: Fe
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ACTION: Fi

SUMMARY:
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SUPPLEMEN

Executive

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Rules and Regulations

Federal Register
Vol. 63, No. 119
Monday, June 22, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 447 and 457

RIN 0563–AB48

Popcorn Crop Insurance Regulations; and Common Crop Insurance Regulations, Popcorn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of popcorn. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current popcorn crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current popcorn crop insurance regulations to the 1998 and prior crop years.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information now required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the insured or the insurance companies. Additionally, this regulation does not require any greater action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Wednesday, April 9, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 17103 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.126, Popcorn Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring popcorn found at 7 CFR part 447 (Popcorn Crop Insurance Regulations). FCIC also amends 7 CFR part 447 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to

submit written comments and opinions. A total of 31 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization and two reinsured companies asked whether, under the definition of "good farming practices," there may exist acceptable cultural practices that are not necessarily recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters recommended changing the term "county" in the definition of "good farming practices" to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *"

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing popcorn. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term "generally" will only make the definition ambiguous and more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. However, the definition of "good farming practices" has been moved to the Basic Provisions.

Comment: A reinsured company expressed concern about the definition of "final planting date" because it infers that coverage is provided after the final planting date; however, there are no provisions for "late planting."

Response: The definition of "late planting" as well as provisions for late and prevented planting coverages common to most crops have been moved to the Basic Provisions. FCIC has added late planting provisions, section 14, and prevented planting provisions, section 15, to these popcorn crop provisions.

Comment: A reinsured company recommended adding the words "and quality" after the word "quantity" in the definition of "irrigated practice."

Response: There are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured person failed to exercise due care and diligence. The definition of "irrigated practice" has been moved to the Basic Provisions.

Comment: An insurance service organization and a reinsured company stated the definition of "replanting" is confusing and awkward. One of the commenters recommended revising the definition to specify "* * * growing a successful popcorn crop."

Response: The definition of "replanting" clearly describes the steps required to replant the crop. The producer must first perform the cultural practices needed to replant the seed before replanting the seed. FCIC has revised the definition to specify that the crop be replanted with the expectation of producing at least the guarantee. The definition of "replanting" has been moved to the Basic Provisions.

Comment: A reinsured company recommended that the reference contained in the definition of "written agreement" should be section 14 rather than section 15.

Response: The provisions for written agreements have been moved to the Basic Provisions with reference to the correct section.

Comment: An insurance service organization and a reinsured company recommended amending section 2 of the proposed rule to clarify whether optional units may be established if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC has amended section 2 to specify that processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for such production-based processor contracts. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage-based and production-based processor contracts. In addition, language in this section that is common with other Crop Provisions has been moved to the Basic Provisions.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(b)(5)(iv)(B) that states "In addition to, or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * * "since section 2(b)(5)(iv) specifies that "Each optional unit must meet one or more of the following criteria* * *."

Response: FCIC has revised the language accordingly. However, the optional unit provisions common to most crops have been moved to the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a) which provides guidelines for selection of price elections should be moved to the Basic Provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum prices does not apply to all crop policies. However, this clause applies to a sufficient number of policies so as to make it an item for consideration whenever 7 CFR part 457 is amended. This recommendation will be considered at that time, and no change has been made to these popcorn provisions.

Comment: An insurance service organization expressed concern that the November 30 contract change date is not early enough for counties with a January 15 sales closing date.

Response: The January 15 cancellation and termination dates are applicable only to counties in the most southern part of Texas. The commenter did not provide specific details as to why the November 30 contract change date is not sufficient. FCIC believes that the 45 days between the contract change date and the cancellation date allows an ample period of time for the insured to make a decision regarding subsequent crop year coverages considering the small number of policies and areas involved. Therefore, no change has been made.

Comment: An insurance service organization stated that section 6 which requires the producer to provide a copy of the processor contract no later than the acreage reporting date, could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Popcorn producers will have processor contracts much sooner to ensure that they have a market before expending the costs to plant the crop. The requirement to provide a copy of the processor contract with the acreage report is also most convenient for the producer. Language in section 6 has been revised to clarify that a copy of all processor contracts must be provided on or before the acreage reporting date.

Comment: An insurance service organization recommended changing the word "before" in section 7(a)(3) to "by" or "on or before" the acreage reporting date. This would allow for the processor contract to be established that day.

Response: FCIC has amended the provision accordingly.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted popcorn or popcorn planted into an established grass or legume. The commenter further indicted that consideration should be given to inserting the language in section 7(a)(4) into the Basic Provisions.

Response: Popcorn has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(4) to accommodate such developments if they should occur. In addition, interplanting provisions are not the same among the crop policies and, therefore, will be retained in the Crop Provisions.

Comment: An insurance service organization indicated that the provisions contained in section 7(b) are confusing and seem to indicate that only a landlord would have a share in the insured crop and that a tenant cannot have a share since that person does not retain possession of the acreage. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a) (1) and (3).

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or owns acreage. The word "possession" has been changed to "control" for clarification and FCIC has added that the insured must have a risk of loss. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: Two comments from an insurance service organization and one from a reinsured company questioned whether the provisions in section 9(b), which state that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provisions in section 13(a), that states "We will determine your loss on a unit basis." The commenters questioned how the insured will know enough production has been harvested before acceptance by the processor. One commenter stated that the insured may not be aware of discounts and production modifications (*e.g.*, shrinkage, foreign material, etc.) that may be imposed by the processor. The insured may believe the contracted amount of production has been harvested and later learn that the amount harvested is short of the production guarantee. The insurance service organization asked if any production in excess of the contracted amount will be considered as production to count for APH purposes, or is the production only counted when there is a processor settlement sheet? The insurance service organization recommended the language in section 9(b) be made similar to the language contained in the sugar beet policy, such as, "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the popcorn processor contract." The insurance service organization also questioned whether "delivered to" is the same as "accepted by" the processor and suggested adding wording to include "whether delivered or not."

Response: Section 9(b) does not conflict with section 13(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contracted amount, and the producer can only establish one basic unit per processor contract. Therefore, once the contracted amount is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there still is unharvested production, any insurable cause of loss is covered up to the contracted amount, assuming it has not been abandoned. With respect to the issue of when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. As a result, both the producer and processor are aware of the amount of production that has been delivered. All production from the unit, including any in excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. The claim settlement provisions have been clarified to state that, for the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised or harvested production lost due to uninsured causes that rendered the production unacceptable to the processor, will be included as production to count. FCIC has also revised section 9(b) to clarify that the insurance period ceases when the production accepted by the processor equals the contracted amount of production if the processor contract stipulates a specific amount of production to be delivered. However, rejected production will be considered as production to count unless it was damaged by an insurable cause of loss occurring during the insurance period.

Comment: An insurance service organization questioned a discrepancy between section 9(b), which states that insurance ceases on "The date you harvested sufficient production to fulfill your processor contract," and section 10(b)(3) of the proposed rule, which states that loss of production will not be insured due to "damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC has deleted the provision contained in section 10(b)(3) accordingly.

Comment: An insurance service organization stated that some crop policies allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when landlord and tenant are insured by the same company. However, the commenter questioned why this language is not contained in section 11 of the proposed Popcorn Crop Provisions.

Response: It is true that a few crop provisions allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when the landlord and tenant are insured with the same company. However, due to comments received on other regulations, FCIC reevaluated this provision and has concluded it is not equitable to all insureds. Specifically, if a landlord and tenant are insured with one company, the provisions apply, but if the landlord and tenant are insured with different companies, the provisions do not apply. Any Crop Provisions containing these terms will be amended to eliminate them. Therefore, no change has been made.

Comment: An insurance service organization suggested that language contained in section 11(b) should include 20 acres as a minimum qualifier in addition to the others.

Response: The commenter misunderstood the provisions contained in section 11(b). Section 13 of the Basic Provisions contains the 20 acre or 20 percent rule referenced by the commenter which is applicable to this policy. Section 11(b) of the Popcorn Crop Provisions establishes the

maximum amount of the replanting payment (20 percent of the production guarantee or 150 pounds, multiplied by the price election, multiplied by the share). Therefore, no change has been made.

Comment: An insurance service organization stated the indemnity calculation contained in section 13(b) was wordy, difficult to follow, and should be simplified for crops without separate prices by type.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the section reference would make the provisions less clear. However, an example has been added to clarify section 13.

Comment: An insurance service organization stated that section 13(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short "shelf life."

Response: This provision allows deferment of a claim only if the insurance provider agrees that representative samples should be left or if the insured elects to continue to care for the entire crop in order to obtain a more accurate determination of the production to count for the unit. In either case, if the insured does not provide sufficient care for the crop or crop samples, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended removal of the requirement contained in section 15 that a written agreement be renewed each year if there are no significant changes to the farming operation. Two of the commenters stated a written agreement should be continuous and the effective period should be specified in the written agreement.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to ensure that the insured is well aware of the specific terms of the policy. The written agreement provisions have been moved to the Basic Provisions since they apply to most crops.

Comment: An insurance service organization and two reinsured companies stated the proposed rule did not contain provisions for late planting and prevented planting coverages. The commenters questioned whether popcorn was intended to have late and prevented planting coverages?

Response: Provisions for late and prevented planting coverages are now contained in the Basic Provisions which are applicable to popcorn. FCIC has added to the Popcorn Crop Provisions, a new section 14, which specifies that late planting provisions are applicable to popcorn if written approval is obtained from the processor by the acreage reporting date. FCIC has also added a new section 15, providing the available prevented planting coverage.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Popcorn Crop Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definition of "planted acreage" to add a requirement that popcorn must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise excepted. Amended the definition of "practical to replant" to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage. Clarified the definition of "processor contract" to specify that multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the specified contract, will be considered as a single processor contract. Removed the definitions of "approved yield," "days," "FSA," "interplanted," "production guarantee (per acre)," and "timely planted" because these definitions now appear in the Basic Provisions.

3. Section 2—Moved all the provisions common to most crops to the Basic Provisions.

4. Section 7(a)—Revised "actuarial table" to "actuarial documents" to be consistent with language in other crop provisions.

5. Section 7(c)(2)—Amended and clarified that the Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract.

6. Section 14—Revised provisions to address only late planted acreage.

7. Section 15—Deleted provisions for written agreements and added provisions for prevented planting coverage.

List of Subjects in 7 CFR Parts 447 and 457

Crop insurance, Popcorn.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Popcorn Crop Insurance Regulations (7 CFR part 447) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH THE 1998 CROP YEARS

1. The authority citation for 7 CFR part 447 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

Part Heading [Revised]

2. The part heading is revised as set forth above.

Subpart Heading [Removed]

3. The part heading "Subpart—Regulations for the 1987 and Succeeding Crop Years is removed.

4. Section 447.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 447.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Popcorn Insurance Policy for the 1987 through 1998 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CROP YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.126 is added to read as follows:

§ 457.126 Popcorn Crop Insurance Provisions.

The Popcorn Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Popcorn Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor before any adjustments for quality.

Harvest. Removing the grain or ear from the stalk either by hand or by machine.

Merchantable popcorn. Popcorn that meets the provisions of the processor contract.

Planted acreage. In addition to the definition contained in the Basic Provisions, popcorn must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen (16) ounces avoirdupois.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the popcorn processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing popcorn that possesses all licenses, permits or approved inspections for processing popcorn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted popcorn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow popcorn, and to deliver the popcorn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract;

(c) A date, if specified on the processor's contract, by which the crop must be harvested to be accepted; and

(d) A base contract price.

Multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the processor contact, will be considered as a single processor contract.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 13 of these Crop Provisions, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates only the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the popcorn in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each popcorn type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties Texas, and all Texas counties lying south thereof.	January 15.
All other Texas counties and all other states.	March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the popcorn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as popcorn;

(3) That is grown under, and in accordance with the requirements of, a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the popcorn is grown, you have a risk of loss, and the processor contract provides for delivery of popcorn under specified conditions and at a stipulated base contract price.

(c) A popcorn producer who is also a processor may be able to establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) The Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases on each unit or part of a unit at the earliest of:

(a) The date the popcorn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) When the processor contract stipulates a specific amount of production to be delivered, the date the production accepted by the processor equals the contracted amount of production;

(c) Final adjustment of a loss; or

(d) December 10 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we do not insure against any loss of production due to:

(1) Damage resulting from frost or freeze after the date designated in the Special Provisions; or

(2) Failure to follow the requirements contained in the processor contract.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 150 pounds, multiplied by your price election, multiplied by your insured share.

(c) When popcorn is replanted using a practice that is uninsurable as an original planting, our liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 13(c)), of each type if applicable, by its respective price election;

(5) Totaling the results of section 13(b)(4) if there is more than one type;

(6) Subtracting the result of section 13(b)(4) from the result in section 13(b)(2) if there is only one type or subtracting the result of section 13(b)(5) from the result of section 13(b)(3) if there is more than one type; and

(7) Multiplying the result of section 13(b)(6) by your share.

For example:
You have a 100 percent share in 100 acres of Type A popcorn in the unit, with a guarantee of 2,500 pounds per acre and a price election of $.12 per pound. You are only able to harvest 150,000 pounds. Your indemnity would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 pound guarantee;
2 ..... 250,00 pounds × $.12 price election = $30,000 value of guarantee;
4 ..... 150,000 pounds production to count × $.12 price election = $18,000 value of production to count;
6 ..... $30,000 − $18,000 = $12,000 loss; and
7 ..... $12,000 × 100 percent share = $12,000 indemnity payment.

You also have a 100 percent share in 150 acres of type B popcorn in the same unit, with a guarantee of 2,250 pounds per acre and a price election of $.10 per pound. You are only able to harvest 70,000 pounds. Your total indemnity for both popcorn types A and B would be calculated as follows:

1 ..... 100 acres × 2,500 pounds = 250,000 guarantee for type A and 150 acres × 2,250 pounds = 337,500 pound guarantee for type B;
2 ..... 250,000 pound guarantee × $.12 price election = $30,000 value of guarantee for type A and 337,500 pound guarantee × $.10 price election = $33,750 value guarantee for type B;
3 ..... $30,000 + $33,750 = $63,750 total value guarantee;
4 ..... 150,000 pounds × $.12 price election = $18,000 value of production to count for type A and 70,000 pounds × $.10 price election = $7,000 value of production to count for type B;
5 ..... $18,000 + $7,000 = $25,000 total value of production to count;
6 ..... $63,750 − $25,000 = $38,750 loss; and
7 ..... $38,750 × 100 percent = $38,750 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;
(B) Put to another use without our consent;
(C) Damaged solely by uninsured causes; or
(D) For which you fail to provide production records;

(ii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d));

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on June 11, 1998.

Robert Prchal,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–16147 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–5]

Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Class E airspace at Kotzebue, AK. The establishment of Global Positioning system (GPS) instrument approaches to runway (RWY) 8 and RWY 26 at Kotzebue, AK, made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kotzebue, AK.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Kotzebue, AK, was published in the **Federal Register** (63 FR 17743). The proposal was necessary due to the establishment of GPS instrument approaches to RWY 8 and RWY 26.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Kotzebue, AK, due to the establishment of GPS instrument approaches to RWY 8 and RWY 26. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kotzebue, AK.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kotzebue, AK [Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME
(Lat. 66°53′08″ N., long. 162°32′24″ W.)
Hotham NDB
(Lat. 66°54′05″ N., long. 162°33′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Ralph Wien Memorial Airport and within 14 miles of the Kotzebue VOR/DME extending clockwise from the 206° radial to the 130° radial and within 4 miles southeast and 8 miles northwest of the Hotham NDB 039° bearing extending from the NDB to 16 miles northeast of the NDB and within 4 miles north and 8 miles south of the Kotzebue VOR/DME 278° radial extending from the VOR/DME to 20 miles west of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 18 miles of the Kotzebue VOR/DME clockwise from the 020° radial to the 130° radial and within 38 miles of the Kotzebue VOR/DME clockwise from the 130° radial to the 314° radial and within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from the VOR/DME to 34 miles east of the VOR/DME; and that airspace extending upward from 5,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from 34 miles east of the VOR/DME to 51.3 miles east of the VOR/DME; and that airspace extending upward from 7,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial at 51.3 miles east of the Kotzebue VOR/DME widening to 7.4 miles each side of the 103° radial at 96 miles east of the Kotzebue VOR/DME.

* * * * *

Issued in Anchorage, AK, on June 11, 1998.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–16307 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–22]

RIN 2120–AA66

Establishment of VOR Federal Airway V–605; SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Federal Airway 605 (V–605) from Holston Mountain, TN, to Spartanburg, SC. Establishing V–605 will expedite the flow of air traffic and reduce the workload for pilots and controllers. In addition, the FAA will not adopt as final the portion of the proposal to establish Federal Airway V–603 from Pulaski, VA, to Columbia, SC.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 17, 1996, the FAA proposed to amend 14 CFR part 71 (part 71) to establish two Federal Airways, V–603 and V–605 (61 FR 30550). The FAA anticipated aligning V–603 with the Pulaski Very High Frequency Omnidirectional Range (VORTAC). However, V–603 could not be certified for navigation because of problems associated with the Pulaski VORTAC. Consequently, the FAA will not adopt as final the portion of the proposal to establish V–603. Interested parties were invited, by the FAA, to participate in this rulemaking effort by submitting written comments on the proposal. No comments objecting to the proposal were received. Except for editorial changes and the decision not to adopt as final the portion of the proposal to establish V–603, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 establishes Federal Airway V–605 from Holston Mountain, TN, to Spartanburg, SC. Establishing V–605 will expedite the flow of air traffic and reduce the workload for pilots and controllers. The FAA will not adopt as final the portion of the proposal to establish V–603 from Pulaski, VA, to Columbia, SC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–605 [New]

From Holston Mountain, TN; INT Holston Mountain 171° and Spartanburg, SC, 358° radials; to Spartanburg.

* * * * *

Issued in Washington, DC, on June 8, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15959 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–30]

RIN 2120–AA66

Modification of VOR Federal Airway V–405; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Federal Airway 405 (V–405) between Pawling, NY, Very High Frequency Omnidirectional Range (VOR) and the CASSH Intersection, NY. This action will enhance air traffic control (ATC) and allow for better utilization of the navigable airspace.

DATES: Effective 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 6, 1998.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 97–AEA–30, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430. Comments may be also sent electronically to the following Internet address: 9-Direct Rule-Comments@faa.dot.gov. Comments delivered must be marked Airspace Docket No. 97–AEA–30.

The official docket may be examined weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m., in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

The FAA is amending 14 CFR part 71 to modify V–405 from the Pawling, NY, VOR to the CASSH Intersection. Modifying this airway will enhance ATC and will allow for better utilization of that airspace. Currently, V–405 extends southeast from the Pawling VOR to a dog leg beginning at the CASSH Intersection and continues to the southeast from that intersection to the Carmel, NY, VOR. The section of V–405 between Pawling VOR and the CASSH Intersection is unusable for navigation in the current configuration and must be realigned. Three Federal airways, V–123, V–483, and V–405, converge at the CASSH Intersection. The alignment of each airway is significant to ensure that aircraft operations are contained within the assigned airspace as required for ATC. Realigning V–405 will allow the airway to be used for navigation and will allow for better utilization of that airspace.

Incorporation by Reference

VOR Federal airway designations are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Federal airway designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This regulation is a minor technical amendment involving a one-degree change in the radial for the airway. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be sumitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environment, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–AEA–30." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–405 [Revised]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 050 and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; INT Carmel 344° and Pawling, NY, 204° radials; Pawling; INT Pawling 059° and Bradley, CT 266° radials; Bradley; Providence, RI; INT Providence 151° and Martha's Vineyard, MA, 267° radials; to Martha's Vineyard.

* * * * *

Issued in Washington, DC, on June 8, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15958 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29243; Amdt. No. 1873]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591–;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adoption these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 12, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b((2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NOB/DME; § 97.29 ILS, ILS/DME, ISMLS MLS, MLS/DME, MILS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPS; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective 16 July 1998*

Indiana, PA, Indiana County/Jimmy Stewart Field, NDB OR GPS–A, Amdt 5, CANCELLED
Greer, SC, Greenville-Spartanburg, GPS RWY 21, Amdt 1
Columbia, SC, Columbia Owens Downtown, LOC RWY 31, Amdt 1

** * * Effective 13 August 1998*

St Paul Island, AK, St Paul Island, GPS RWY 18, Orig.
St Paul Island, AK, St Paul Island, GPS RWY 36, Orig.
Tuscalossa, AL, Tuscaloosa Muni, GPS RWY 4, Orig
Tuscalossa, AL, Tuscaloosa Muni, GPS RWY 22, Orig
Hanford, CA, Hanford Muni, VOR OR GPS–A, Amdt 8
Merced, CA, Merced Municipal/Macready Field, VOR RWY 12, Amdt 7
Merced, CA, Merced Municipal/Macready Field, GPS RWY 30, Orig
Merced, CA, Merced Municipal/Macready Field, GPS RWY 12, Orig
Washington, DC, Washington National, NDB RWY 36, Amdt 10
Washington, DC, Washington National, COPTER ILS 007, Orig
Washington, DC, Washington National, ILS RWY 36, Amdt 39
Ormond Beach, FL, Ormond Beach Muni, GPS RWY 8, Orig
Sebring, FL, Sebring Regional, GPS RWY 36, Orig
Sebring, FL, Sebring Regional, NDB OR GPS RWY 36, Amdt 4, CANCELLED
Canton, GA, Cherokee County, NDB RWY 4, Amdt 2
McPherson, KS, McPherson, VOR/DME RWY 36, Amdt 6
McPherson, KS, McPherson, NDB RWY 18, Amdt 1
McPherson, KS, McPherson, GPS RWY 18, Orig
McPherson, KS, McPherson, GPS RWY 36, Amdt 1
Biddeford, ME, Biddeford Muni, VOR OR GPS–A, Amdt 5, CANCELLED
Biddeford, ME, Biddeford Muni, VOR RWY 6, Orig
Biddeford, ME, Biddeford Muni, GPS RWY 6, Orig
Appleton, MN, Appleton Muni, NDB RWY 13, Amdt 1
Appleton, MN, Appleton Muni, GPS RWY 13, Orig
Olive Branch, MS, Olive Branch, LOC RWY 18, Amdt 1
Olive Branch, MS, Olive Branch, NDB OR GPS RWY 18, Amdt 4
Olive Branch, MS, Olive Branch, NDB OR GPS RWY 36, Amdt 5
Cameron, MO, Cameron Mermorial, NDB OR GPS RWY 35, Amdt 1
Bowman, ND, Bowman Muni, NDB RWY 29, Amdt 3
Bowman, ND, Bowman Muni, GPS RWY 29, Orig
Hettinger, ND, Hettinger Municipal, GPS RWY 30, Amdt 1
Atkinson, NE, Stuart-Atkinson Muni, VOR/DME RWY 29, Orig
Atkinson, NE, Stuart-Atkinson Muni, GPS RWY 29, Orig
Painesville, OH, Casement, NDB OR GPS–B, Amdt 8, CANCELLED
Easton, PA, Easton, VOR–C, Amdt 2, CANCELLED
Easton, PA, Easton, GPS RWY 36, Orig
Philadelphia, PA, Philadelphia Intl, ILS RWY 9R, Amdt 8
Philadelphia, PA, Philadelphia Intl, ILS RWY 27R, Amdt 8
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 8
Philadelphia, PA, Philadelphia Intl, GPS RWY 17, Orig
Rock Hill, SC, Rock Hill/York County/Bryant Field, VOR/DME OR GPS–B, Amdt 5A, CANCELLED
Spartanburg, SC, Spartanburg Downtown Memorial, VOR/DME RNAV OR GPS RWY 5, Amdt 6B, CANCELLED
Arlington, TN, Arlington Muni, LOC RWY 15, Amdt 2
Arlington, TN, Arlington Muni, NDB OR GPS RWY 15, Amdt 8
Arlington, TN, Arlington Muni, NDB OR GPS RWY 33, Amdt 8
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig, CANCELLED
Memphis, TN, Memphis Intl, VOR OR GPS RWY 27, Amdt 1B, CANCELLED
Memphis, TN, Memphis Intl, VOR/DME RWY 18R, Orig
Memphis, TN, Memphis Intl, NDB OR GPS RWY 9, Amdt 26
Memphis, TN, Memphis Intl, ILS RWY 9, Amdt 25
Memphis, TN, Memphis Intl, ILS RWY 18L, Amdt 1
Memphis, TN, Memphis Intl, ILS RWY 18R, Amdt 12
Memphis, TN, Memphis Intl, ILS RWY 27, Amdt 2
Memphis, TN, Memphis Intl, ILS RWY 36L, Amdt 13
Memphis, TN, Memphis Intl, ILS RWY 36R, Amdt 1
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Amdt 1, CANCELLED
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Orig
Millington, TN, Charles W. Baker, GPS RWY 18, Orig
Millington, TN, Millington Muni, VOR/DME RWY 22, Amdt 1, CANCELLED
Millington, TN, Millington Muni, VOR/DME RWY 22, Orig
Millington, TN; Millington Muni, ILS RWY 22, Amdt 1
Shelbyville, TN, Bomar Field-Shelbyville Muni, GPS RWY 18, Orig
Shelbyville, TN, Bomar Field-Shelbyville Muni, GPS RWY 36, Orig
Abilene, TX, Abilene Regional, GPS RWY 17L, Orig
Abilene, TX, Abilene Regional, GPS RWY 35R, Orig
Danville, VA, Danville Regional, ILS RWY 2, Amdt 3
Richmond, VA, Chesterfield County, LOC RWY 33, Amdt 1A, CANCELLED
Richmond, VA, Chesterfield County, ILS RWY 33, Orig
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME OR GPS RWY 5, Orig-A, CANCELLED
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME OR GPS RWY23, Admt 10A, CANCELLED

[FR Doc. 98–16545 Filed 6–19–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29249; Amdt. No. 1874]
RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPS, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports Navigation (air).

Issued in Washington, DC on June 12, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective upon publication:

FDC date	State	City	Airport	FDC No.	SIAP
05/15/98	MO	Jefferson City	Jefferson City Memorial	8/2964	LOC BC Rwy 12, Amdt 6A... This Replaces FDC 8/2964 Published in TL98–13
05/27/98	MI	Bellaire	Bellaire/Antrim County	8/3276	GPS Rwy 2, Orig...
05/27/98	MN	Warroad	Warroad Intl-Swede Carlson Field	8/3275	NDB or GPS Rwy 31, Amdt 1...
05/28/98	ID	Hailey	Friedman Memorial	8/3301	GPS Rwy 31, Orig...
05/28/98	NC	Wadesboro	Anson County	8/3296	NDB or GPS Rwy 16, Amdt 1B...
05/28/98	NY	Utica	Oneida County	8/3292	NDB or GPS Rwy 15 Amdt 9A...
05/28/98	NY	Utica	Oneida County	8/3293	ILS Rwy 33 Amdt 1A...
05/28/98	NY	Utica	Oneida County	8/3294	ILS Rwy 15 Amdt 3A...
05/28/98	OH	Painesville	Concord Airpark	8/3309	VOR or GPS–A, Orig...

FDC date	State	City	Airport	FDC No.	SIAP
06/29/98	KS	Atwood	Atwood-Rawlins County City-County	8/3324	NDB or GPS Rwy 16, Amdt 1...
05/29/98	KS	Norton	Norton Muni	8/3327	NDB or GPS Rwy 17, Amdt 2...
05/29/98	KS	Norton	Norton Muni	8/3329	NDB or GPS Rwy 35, Amdt 2...
05/29/98	KS	Oberlin	Oberlin Muni	8/3330	NDB or GPS Rwy 35, Orig...
05/29/98	KS	Phillipsburg	Phillipsburg Muni	8/3325	NDB or GPS Rwy 31, Amdt 6...
05/29/98	MO	St. Louis	Lambert-St. Louis Intl	8/3336	ILS Rwy 12R, Amdt 21...
05/29/98	NY	Albany	Albany County	8/3344	VOR or GPS Rwy 19 Admt 19...
06/01/98	AL	Dothan	Dothan	8/3400	VOR–A or TACAN or GPS Amdt 11A...
06/01/98	AL	Dothan	Dothan	8/3401	LOC BC Rwy 14 Amdt 6B...
06/01/98	AL	Dothan	Dothan	8/3402	ILS Rwy 32 Amdt 7B...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3397	VOR or GPS Rwy 29, Amdt 26A...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3398	ILS Rwy 29, Admt 3A...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3399	VOR/DME or GPS Rwy 11, Admt 5A...
06/01/98	MS	Laurel	Hseler-Noble Field	8/3419	NDB Rwy 13, Amdt 6...
06/01/98	MS	Laurel	Hseler-Noble Field	8/3424	VOR/DME–A, Amdt 2...
06/01/98	MS	Prentiss	Prentiss-Jefferson Davis County	8/3422	NDB or GPS Rwy 30, Orig...
06/01/98	PR	Ponce	Mercedita	8/3420	VOR Rwy 30, Amdt 10...
06/01/98	PR	San Juan	Luis Munoz Marin Intl	8/3413	NDB Rwy 8, Amdt 7A...
06/01/98	PR	San Juan	Luis Munoz Marin Intl	8/3442	ILS Rwy 8, Amdt 15A...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3485	GPS Rwy 27 Orig...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3486	GPS Rwy 9 Orig...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3487	VOR Rwy 27 Amdt 6...
06/02/98	FL	Miami	Miami Intl	8/3475	ILS Rwy 9L, Amdt 28A...
06/02/98	FL	Miami	Miami Intl	8/3478	ILS Rwy 9R, Amdt 8B...
06/02/98	FL	Miami	Miami Intl	8/3480	GPS Rwy 27R, Orig...
06/02/98	FL	Miami	Miami Intl	8/3482	GPS Rwy 9R, Orig...
06/02/98	FL	Miami	Miami Intl	8/3483	ILS Rwy 27R, Amdt 13...
06/02/98	FL	Orlando	Kissimmee Muni	8/3467	VOR/DME or GPS–A, Amdt 7A...
06/02/98	MS	Columbia	Columbia-Marion County	8/3463	VOR/DME or GPS Rwy 23, Amdt 4...
06/02/98	NC	Roanoke Rapids	Halifax County	8/3454	NDB or GPS Rwy 5 Amdt 3...
06/02/98	PR	San Juan	Luis Munoz Marin Intl	8/3488	NDB Rwy 10, Amdt 5A...
06/03/98	FL	Crestview	Bob Sikes	8/3502	NDB or GPS Rwy 17 Amdt 2A...
06/03/98	WA	Payallup	Pierce County-Thun Field	8/3508	GPS Rwy 34 Orig...
06/04/98	AL	Dothan	Dothan	8/3551	VOR or GPS Rwy 18 Amdt 3A...
06/04/98	AL	Dothan	Dothan	8/3552	VOR or GPS Rwy 14 Amdt 3B...
06/04/98	IL	Chicago	Chicago O'Hare Intl	8/3565	ILS Rwy 14L (Cat I, Cat II and Cat III), Amdt 28B...
06/04/98	MO	Kansas City	Kansas City Intl	8/3537	ILS Rwy 19R, Amdt 9...
06/04/98	MO	Springfield	Springfield-Branson Regional	8/3538	ILS Rwy 2, Amdt 16B...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3568	VOR Rwy 27, Orig...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3570	NDB or GPS Rwy 27, Amdt 12...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3571	VOR–B, Orig...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3572	NDB or GPS Rwy 9, Amdt 9...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3573	VOR–A, Orig...
06/04/98	OH	Wooster	Wayne County	8/3540	VOR or GPS Rwy 10, Orig–A...
06/04/98	OH	Wooster	Wayne County	8/3542	VOR Rwy 28, Orig–A...
06/04/98	OH	Wooster	Wayne County	8/3543	NDB Rwy 28, Amdt 7A...
06/05/98	FL	Tampa	Peter O'Knight	8/3612	Radar–1, Amdt 4...
06/05/98	FL	Tampa	Peter O'Knight	8/3613	NDB or GPS–A, Orig...
06/05/98	FL	Tampa	Peter O'Knight	8/3614	NDB or GPS Rwy 3, Amdt 10A...
06/05/98	GA	Brunswick	Malcolm McKinon	8/3610	NDB Rwy 4, Orig...
06/05/98	MI	West Branch	West Branch Community	8/3590	VOR Rwy 27, Orig–C...
06/05/98	MI	West Branch	West Branch Community	8/3591	NDB or GPS Rwy 27, Amdt 6B...
06/05/98	MS	Columbus/West Point-Starkville.	Golden Triangle Regional	8/3599	ILS Rwy 18, Amdt 6...
06/05/98	OH	Marion	Marion Muni	8/3596	VOR or GPS–A, Orig–A...
06/08/98	MS	Walls	Twinkletown	8/3652	Radar–1 Amdt 2...
06/08/98	OH	Marion	Marion Muni	8/3650	NDB or GPS Rwy 12, Amdt 4A...
06/08/98	TX	Abilene	Abilene Regional	8/3670	VOR or GPS–A, Amdt 8...
06/08/98	TX	Abilene	Abilene Regional	8/3671	VOR or GPS Rwy 22, Amdt 3...
06/08/98	TX	Abilene	Abilene Regional	8/3672	LOC BC Rwy 17L, Amdt 3...
06/08/98	TX	Abilene	Abilene Regional	8/3676	ILS Rwy 35R, Amdt 6...
06/08/98	TX	Abilene	Abilene Regional	8/3680	NDB or GPS Rwy 35R, Amdt 5...
06/09/98	TX	McAllen	McAllen Miller Intl	8/3700	LOC BC Rwy 31, Amdt 9...

[FR Doc. 98–16544 Filed 6–19–98; 8:45 am]
BILLING CODE 6910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trading Hours

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is making amendments to its Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney-Advisor, Contract Markets, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION: Regulation 1.41(k) allows a change in trading hours which does not permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time in the city where the contract market is located to be deemed approved by the Commission at the close of business one business day after properly labeled written notice of the change is received by the Commission if the change is not inconsistent with the Commodity Exchange Act or the Commission's other regulations. Trading hour changes which do permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time must be submitted to the Commission for approval pursuant to Regulation 1.41(b).

On May 1, 1998 (63 FR 24142), the Commission published for comment proposed amendments to Regulation 1.41(k) to allow additional changes in trading hours, as set forth below, to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation. The comment period for the proposal was 15 days and closed on May 18, 1998. The Commission received two comments in response to the notice and both were supportive of the proposal.

The Commission has determined to amend Regulation 1.41(k) in the manner previously notice. As revised, Regulation 1.41(k) will allow additional changes is trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the subsection. Specifically, if a contract market has previously received Commission approval for trading between 6:00 p.m. and 7:00 a.m. in at least one of its designated contracts, it may submit all subsequent changes in trading hours pursuant to Regulation 1.41(k). Thus, under revised 1.41(k), the first time a contract market proposes changing trading hours for any of its designated contracts to fall between the hours of 6:00 p.m. to 7:00 a.m., the proposal must be submitted to the Commission for approval pursuant to Regulation 1.41(b). The Commission will review such initial proposal to ensure that adequate systems and procedures are in place to accommodate the expanded trading hours. Matters to be addressed will include, among other matters, clearing, margin, market data, and surveillance programs. Any subsequent change to trading hours can be approved under the expedited procedures of Regulation 1.41(k).

The Commission notes that listing a contract for trading on an automated trading system will constitute more than a change in trading hours. It will also be a change in the method of trading. Accordingly, neither the initial establishment of an electronic trading system nor the subsequent listing of additional contracts will be eligible for treatment under Regulation 1.41(k). However, changes in the trading hours of a contract that is already listed on an electronic system will be eligible for treatment under revised Regulation 1.41(k).

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed regulation has no burden, the group of regulations (3038–0022), of which this is a part has the following burden:

Average burden hours per response, 3,546.26
Number of Respondents, 10,971
Frequency of response, on occasion

Copies of the OMB approved information collection package associated with this regulation may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting regulations, consider the impact of those regulations on small businesses. The only entity this rulemaking will affect would be contract markets. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, (47 FR 18618 (April 30, 1982)). Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumers protection, Reporting and recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular Section 8a thereof, 7 U.S.C. 12a, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 is amended by revising paragraph (k)(1) to read as follows: 1.41 Contract market rules; submission of rules to the Commission, exemption of certain rules.

* * * * *

(k) *Trading Hours.* (1) Notwithstanding the provisions of paragraph (b) of this section and except in connection with an initial listing of a contract on an automated trading system, all changes in trading hours shall be deemed approved by the Commission at the close of business one business day after written notice of such a change is received by the Commission if:

(i) The change is not inconsistent with any provision of the Act or the Commission's regulations;

(ii) For a change that permits trading anytime between 6:00 p.m. and 7:00 a.m. local time in the city where the contract market is located, the contract

market has previously received Commission approval for trading between such hours in at least one of its designated contracts; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (k) of this section.

* * * * *

Issued in Washington D.C. on June 16, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16520 Filed 6–19–98; 8:45 am]

BILLING CODE 6351–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE87

Supplemental Security Income for the Aged, Blind, and Disabled; Charging Administration Fees for Making State Supplementary Payments

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are revising our rules to reflect statutory changes that require the Social Security Administration (SSA) to increase the administration fees it charges States for making supplementary payments on behalf of States.

EFFECTIVE DATE: This rule is effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gareth Dence, Social Insurance Specialist, Division of Payment Policy, Office of Program Benefits Policy, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–9872 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1993, pursuant to amendments made to the Social Security Act (the Act) and to Pub. L. No. 93–66 by section 13731 of Pub. L. No. 103–66, SSA began charging States that had elected Federal administration of optional and/or mandatory State supplementary payments a fee for administering those payments. This regulation reflects section 5102 of Pub. L. No. 105–33 (the Balanced Budget Act of 1997), which increase the administration fee SSA charges States for making supplementary payments on their behalf.

Present Policy

The administration fee is charged monthly and is derived by multiplying the number of State supplementary payments made by SSA on behalf of a State for a month by the applicable dollar rate for the fiscal year (FY), as prescribed in section 13731 of Pub. L. No. 103–66. The dollar rates are as follows: for FY 1994, $1.67; for FY 1995, $3.33; for FY 1996, $5.00. For FY 1997 and each succeeding FY, the statutory rate reflected in section 13731 of Pub. L. No. 103–66 is $5.00 or such different rate as determined by SSA to be appropriate for any particular State. In making this determination, SSA may take into account the complexity of administering the State's supplementary payment program.

Revised Policy

We are amending the regulation at § 416.2010(b) to reflect section 5102 of Pub. L. No. 105–33, that increases the fees SSA is required to charge for administering State supplementary payments.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, 5 U.S.C. 601 *et seq.* is not required.

Paperwork Reduction Act

This rule imposes no reporting/recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, SSA follows the procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of this final rule we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the NPRM procedures. This rule contains no discretionary policy; the changes made by this final rule merely conform our regulation to the statutory changes made by Pub. L. No. 105–33. The statute requiring the increase in State supplementation administration fees was effective on August 5, 1997. Therefore, we find that opportunity for prior comment is unnecessary. In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). We have determined that a delay in the effective date of this rule is unnecessary because the rule contains no discretionary policy but merely conforms our regulations to a statutory provision that is already in effect.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Subpart T of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart T—[Amended]

1. The authority citation for subpart T of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c note, 1431 note and 42 U.S.C. 1382e note); secs. 1(a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 note, 1382e note).

2. Section 416.2010 is amended by removing "and" at the end of paragraph (b)(1)(iii), by revising (b)(1)(iv), and by adding (b)(1) (v) through (x) to read as follows:

§ 416.2010 Essentials of the administration agreements.

* * * * * *

(b) *Administrative costs.*

(1) * * *

(iv) For fiscal year 1997, $5.00;

(v) For fiscal year 1998, $6.20;

(vi) For fiscal year 1999, $7.60;

(vii) For fiscal year 2000, $7.80;
(viii) For fiscal year 2001, $8.10;
(ix) For fiscal year 2002, $8.50; and
(x) For fiscal year 2003 and each succeeding fiscal year—
(A) The applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or
(B) Such different rate as the Commissioner determines is appropriate for the State taking into account the complexity of administering the State's supplementary payment program.

[FR Doc. 98–16207 Filed 6–19–98; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF–399; Re: Notice No. 853]

RIN 1512–AA07

Diablo Grande Viticultural Area (97–104)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area located in the western foothills of Stanislaus County, California, to be known as "Diablo Grande" under 27 CFR part 9. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. This viticultural area is the result of a petition submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the viticultural area and developers of the Diablo Grande Resort Community.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

Dr. Vincent E. Petrucci, Sc.D., petitioned ATF on behalf of the Diablo Grande Limited Partnership, for the establishment of a new viticultural area located in the western foothills of Stanislaus County, California, to be known as "Diablo Grande." The Diablo Grande Limited Partnership is the principal property owner within the proposed viticultural area and the developer of the Diablo Grande Resort Community. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. Currently there are 35 acres of grapes planted with an additional 17 acres planned for 1997. The petitioner claims that the area can accommodate an additional 2700 acres of future grape plantings.

Comments

A Notice of Proposed Rulemaking, Notice No. 853 (62 FR 34027) was published in the **Federal Register** on June 24, 1997, requesting comments from all interested persons concerning the proposed "Diablo Grande" viticultural area. No comments were received in response to this notice.

Evidence That the Name of the Area Is Locally or Nationally Known

"Diablo Grande," is the name of the destination resort and residential community that occupies the viticultural area. The petitioner stated that this name was given to the area because of its proximity to Mount Diablo, the highest peak of the Pacific Coast mountain range. Mount Diablo is located 38–40 miles due north of the proposed area. The petitioner emphasized the fact that the proposed area lies in the Diablo Mountain Range, which extends from Mount Diablo State Park in Contra Costa County to the south of and beyond the proposed "Diablo Grande" viticultural area located in Stanislaus County. There is evidence that the name, "Diablo Grande," has become associated with the area by both the residents of California, and perhaps the nation, as a result of the development of the destination resort and residential community. The resort community has been in existence since the early 1990s. As evidence that the area is known as "Diablo Grande," the petitioner submitted copies of 21 newspaper articles that discuss the development of the resort. With the exception of the Golf Course Report, Alexandria, Virginia, all of the articles are from local California newspapers.

There is also evidence that the area occupied by the resort was historically known as the "Oak Flats Valley." A working ranch, known as the Oak Flats Valley Ranch once occupied this land. Many of the newspaper articles submitted by the petitioner refer to the area as the "Oak Flats Valley Ranch" or the "Oak Flats Valley." No evidence was provided that the area was tied to Mount Diablo prior to the development of the resort. Accordingly, ATF solicited comments in Notice No. 853 on whether the use of the name "Diablo Grande" was proper for this area. No comments were received on this issue. Consequently, based on the evidence submitted by the petitioner, ATF believes the name "Diablo Grande" is now associated with the area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

As evidence that the boundaries of the viticultural area are as specified in the petition, the petitioner submitted a map titled, "Stanislaus County Vicinity Map" drawn by Thompson-Hysell Engineers. A more detailed map entitled "Concept Plan Diablo Grande," prepared by T.R.G. Land Resources, Inc., was also submitted. In addition, the petitioner submitted a newspaper article from The Modesto Bee dated June 28, 1993, showing the boundary area (map) in respect to Interstate Highway 5, the city of Patterson, the City of Newman, and the Santa Clara County line. The border for "Diablo Grande" is illustrated on the "Stanislaus County Vicinity Map" and the maps in the newspaper article giving the location within Stanislaus County, California. The Modesto Bee article describes the site as being located about five miles west of Interstate 5 and seven miles southwest of Patterson consisting of gently sloping hills to steep ridges in the Diablo Range, an eastern arm of the Coast Ranges. The article further describes the site as encompassing portions of three major watersheds—Orestimba, Crow, and Salado Creeks.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The petitioner provided a table of heat summation in degree days illustrating the contrast in temperature between the viticultural area and areas immediately outside the viticultural area. The data was taken from four separate weather stations located in Newman (10 miles east), Westley (10 miles north), Tracy (25 miles north) and Modesto (30 miles northeast). The petitioner chose these areas because they were the closest areas with climate records. According to the table, the "Diablo Grande" viticultural area is 384 degree days warmer than Modesto, 191 degree days cooler than Newman, 243 degree days cooler that Tracy, and 1022 degree days cooler than Westley.

The petitioner submitted a four year record of rainfall spanning from 1992 to 1995 for the viticultural area. The petitioner also provided a table illustrating the contrast in monthly and annual rainfall in inches between the "Diablo Grande" viticultural area and areas immediately outside of the viticultural area. The rainfall data shows that the "Diablo Grande" viticultural area has an annual rainfall 13.8% to 22.6% higher that the other four areas (Newman, Westley, Modesto, and Tracy). The higher rainfall in the viticultural area is due to its higher elevation (800 to 2600 feet) as compared to the other four areas which range in elevation from 40 to 300 feet. Rainfall generally occurs during the winter in all five areas, with little or no rainfall during the summer months.

Due to its elevation and the protective mountains, the viticultural area lies above the fog belt in contrast with areas immediately outside of the viticultural area. In the Newman, Patterson, and Westley areas, fog is a common occurrence throughout the rainy season in all but the foothill regions.

The predominant wind directions are from northeast to northwest in the "Diablo Grande" viticultural area due to the orientation of the many mini-valleys encompassing the area and the wind deflection caused by the hills surrounding these mini-valleys. This is a unique feature of the viticultural area's micro-climate as contrasted with the Newman/Westley areas where the reverse is true with the predominant winds coming from the northwest, typical of the flat lands outside of the viticultural area's perimeter.

Soils

The soil characteristics of the "Diablo Grande" viticultural area are not only different and distinct from those of the lower foothills and Central Valley to the east and north, but they are also different from other areas of the Diablo Range to the south and west of the viticultural area.

The petitioner provided a general description of the soils in the form of a report entitled, "Diablo Grande Specific Plan Draft Environmental Impact Report" prepared by LSA Associates, Inc., Pt. Richmond, California for the Stanislaus County Department of Planning and Community Development. The petitioner also submitted a report from the Soil Conservation Service which recently mapped soils within the viticultural area and identified 16 major soil types.

Extensive soil sampling and detailed analysis (both physical and chemical) have been conducted at two different locations within the viticultural area. In December of 1989, thirteen samples were taken at various sites in the vicinity of the Oak Flat Ranch. In May of 1996, fourteen samples from Isom Ranch were collected and analyzed. A copy of this analysis was included with the petition.

These reports show that a majority of the soils found in the "Diablo Grande" viticultural area are composed of the following series listed in approximate order of occurrence: Arburua loam, Wisflat sandy loam, Contra Costa clay loam, and San Timoteo sandy loam, with lesser amounts of Zacharias clay loam and gravelly clay loam. Most of the soils are complexes made up of two or more of these series as well as occasional rock outcrops of exposed sandstone and shale. In these complexes, the soil series are so intimately intermixed that it is not practical to separate them geographically.

The reports show that the soils within the viticultural area typically have slopes ranging from 30% to 75% and elevations from 400 to 2700 feet. An exception is the relatively minor Zacharias series which has slopes of 2% to 5% and elevations of 200 to 400 feet. The soils in the viticultural area are derived from sandstone and vary from shallow to very deep with most of the complexes showing moderate depth. The soils are well-drained to somewhat excessively-drained. Permeability varies from slow to moderately rapid, surface run-off rates are rapid and, according to the petitioner, the potential for water erosion can be severe. The petitioner provided a table giving a complete description of the characteristics for each soil type.

In contrast to the soils of the viticultural area, the soils of the surrounding areas are largely composed of different soil series with different characteristics, including elevations and slopes. The petitioner provided an exhibit defining the various soil series and soil types, and an exhibit with aerial photographic maps showing soil type location by map numbers.

While most of the soil series which are found within the "Diablo Grande" viticultural area can also be found in the nearby surrounding areas, these series represent very small portions of the total in those surrounding areas. Additionally, many of the soil series which make up the major soil types of the surrounding areas are not found at all within the viticultural area. These soil types include Capay clay, Vernalis clay loam, Stomar clay loam, Chaqua clay loam, Calla clay loam, Carbona clay, Alo clay, Vaquero clay, El Salado loam and fine sandy loam. These series are found to the east and north of the viticultural area. Most of these series have slopes of 0% to 2% and elevations of 25 to 400 feet with four of these series having slopes up to 8%, 15%, 30%, and 50% respectively and elevations from 300 to 1600 feet.

There is another major difference between the "Diablo Grande"

viticultural area soils and most of those to the east and north. The "Diablo Grande" soils are residual soils formed from sedimentary deposits of sandstone and calcareous sandstone while most of the surrounding soils are from alluvial deposits of mixed rock parent material having lower slopes and elevations.

The area surrounding the "Diablo Grande" viticultural area to the west and south includes the Orestimba Creek Canyon beyond which lies a more rugged portion of the Diablo Range. Much of the land directly west of the viticultural area is part of the Henry W. Coe State Park and although this area includes some of the same soil series as the "Diablo Grande" viticultural area, there are also many new series including Gonzaga clay, Honker clay, Franciscan clay loam, Vellecitos clay, Gaviota gravelly loam, Henneke clay, Hentine loam, and Hytop clay. These soils generally have slopes of 30% to 75% and elevations of 700 to 3300 feet.

Topography

The geography of the viticultural area sets it apart from the surrounding areas in several respects. Three main water courses traverse the area: Salado Creek, Crow Creek, and Orestimba Creek. Salado and Crow Creek traverse the area from the vicinity of Mikes Peak along the western boundary of the viticultural area, northeast and east respectively, toward Interstate 5. Orestimba Creek traverses the southwestern and southern boundary line as it flows eastward.

Current vineyard plantings are at elevations ranging from 1000 feet mean sea level (msl) near the vineyard located in the vicinity of the Oak Flat Ranch to 1800 feet msl at the Isom Ranch. These vineyard site elevations are the highest elevations where grapes are grown in Stanislaus County. This contrasts with other Stanislaus County vineyards outside the "Diablo Grande" viticultural area where grapes are grown at elevations ranging from 70 to 90 feet at Modesto to 300 to 340 feet at the base of the foothills near Patterson where a newly planted vineyard (1996) of 90 acres exists approximately 4.2 miles east of the viticultural area boundary. The petitioner distinguishes this vineyard site from the "Diablo Grande" viticultural area by noting that the Patterson site is 340 feet lower and has a soil type which is all Vernalis-Zacharias complex with 0% to 2% slopes. These conditions do not exist in the "Diablo Grande" viticultural area.

The topographic features of the viticultural area include many "mini-valleys" as a result of its mountainous structure. This provides several attributes not found in the vineyards planted on the flat lands in the interior of Stanislaus County. Grapes grown on the terraced hillsides of the viticultural area are subject to a mesoclimate (or topoclimate or site climate) which can vary from the general macroclimate due to differences mainly in elevation and slope. Thus, site selection becomes an important feature when working with this type of topography as contrasted to the flat lands of 1% to 2% slopes. There is the opportunity to grow grapes on slopes (15%–30%) that have western, eastern, southern, or northern exposure or any combination of all four slope exposures.

The petitioner provided a diagram purporting to show how mesoclimates are influenced by sloping contour topography. The southern and western slopes receive a greater exposure to sunshine and, therefore, accumulate more heat units than the northern or eastern slopes. It is this difference in sunshine and heat that makes the viticultural area's mesoclimate. According to the petitioner, grapes grown on all four slope exposures, when harvested together and crushed as one lot, make wines that differ considerably from grapes grown on the lower elevation flat lands. The petitioner claims that this is the key factor which makes the viticultural area wines distinct from those of the surrounding area. In support of this claim the petitioner provided several letters from staff members at the Viticulture and Enology Research Center, California State University, Fresno and winemakers. These letters indicate that wines made from grapes grown in the "Diablo Grande" viticultural area exhibit characteristics distinctive enough to deserve consideration for a specific appellation. ATF has concluded that there is sufficient evidence to establish the "Diablo Grande," area as a distinct viticultural area under 27 CFR part 9.

Geographic Brand Names

A brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. See 27 CFR 4.39(i). Consequently, establishment of this viticultural area would preclude the use of the term "Diablo Grande" as a brand name for a wine, unless the wine can claim "Diablo Grande" as an appellation of origin, or complies with one of the exceptions in the regulation.

Boundaries

The boundary of the "Diablo Grande" viticultural area may be found on four United States Geological Survey Quadrangle 7.5 minute series (Topographic) maps, entitled Patterson Quadrangle, California—Stanislaus Co., Copper Mtn. Quadrangle, California—Stanislaus Co., Wilcox Ridge, California—Stanislaus Co., and Orestimba Peak, California—Stanislaus Co.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.156 to read as follows:

§ 9.156 Diablo Grande.

(a) *Name.* The name of the viticultural area described in this section is "Diablo Grande".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California—Stanislaus Co., 1953 (Photorevised 1971, Photoinspected 1978);

(2) Copper Mtn. Quadrangle, California—Stanislaus Co., 1953 (Field Check 1956, Aerial Photo 1971);

(3) Wilcox Ridge, California—Stanislaus Co., 1956 (Photorevised 1971);

(4) Orestimba Peak, California—Stanislaus Co., 1955 (Photorevised 1971).

(c) *Boundary.* The Diablo Grande viticultural area is located in the western foothills of Stanislaus County, California. The beginning point is at Reservoir Spillway 780 in section 8, Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point where the 1000 foot contour line crosses the northern section line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section 16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E., on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Oristimba Creek in section 6, T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast and then east/northeast to the point where Orestimba Creek meets Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir Spillway 780 in section 8, T. 6S., R. 7E.

Signed: May 11, 1998.

John W. Magaw,

Director.

Approved: May 29, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–16502 Filed 6–19–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 216, and 250

RIN 1010–AC23

Royalties on Gas, Gas Analysis Reports, Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Mienrals Management Service (MMS), Interior.

ACTION: Final rulemaking; corrections.

SUMMARY: MMS published in the **Federal Register** of May 12, 1998 (63 FR 26361), a final rule commonly known as the "GVS rule" that updated production measurement, surface commingling, and security requirements and made other amendments. The MMS needs to make several minor corrections to the final regulations.

EFFECTIVE DATE: This final rule is effective June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division at (703) 787–1600.

SUPPLEMENTARY INFORMATION: On May 20, 1998 (63 FR 27677) MMS corrected the effective date of the final rule and made two other technical corrections to the final rule. As published and subsequently corrected, the final regulations still contain several errors which may prove to be misleading and are in need of correction.

Corrections of Publication

Accordingly, the publication on May 12, 1998 of the final regulations which were the subject of FR Doc. 98–11803, is corrected as follows:

§ 250.182 [Corrected]

1. On page 26372, in the third column, in § 250.182(g), the first sentence is corrected to read "What correction factors must I use when proving meters with a mechanical-displacement prover, tank prover, or master meter?"

2. On page 26373, in the second column, in § 250.182(k), the word "hydrogen" is corrected to read "hydrocarbon".

§ 250.183 [Corrected]

3. On page 26373, in the second column § 250.183(b)(1) is corrected to read "Submit a written application to, and obtain approval from, the Regional Supervisor before commencing gas production or making changes to previously approved measurement procedures."

4. On page 26373, in the third column, in § 250.183(b)(7) the word "Btu" is corrected to read "(Btu)".

§ 250.184 [Corrected]

5. On page 26374, in the second column, § 250.184(a)(1) is corrected to read "Submit a written application to, and obtain approval from, the Regional supervisor before commencing the commingling of production or making changes to previously approved commingling applications."

Dated: June 15, 1998.

William S. Cook,

Acting Chief, Engineering and Operations Division.

[FR Doc. 98–16507 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–MR–M

PANAMA CANAL COMMISSION

35 CFR Part 115

RIN 3207–AA–47

Board of Local Inspectors: Composition and Functions; Correction

AGENCY: Panama Canal Commission.

ACTION: Final rule; correction.

SUMMARY: The Panama Canal Commission (Commission) published in the **Federal Register** of April 16, 1998, a document which changed the title of the Marine Director to Maritime Operations Director. Inadvertently § 115.2 was incorrectly amended. This document corrects that amendment.

DATES: Effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Telephone: (202) 634–6441, Facsimile: (202) 634–6439, E-mail: pancanalwo@aol.com: or John L. Haines, Jr., Telephone: 011 (507) 272–7511, Facsimile: 011 (507) 272–3748.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of April 16, 1998, (63 FR 18836) to amend 35 CFR 115.2 which also changed the title of the Marine Director to that of Maritime Operations Director. Inadvertently that title was set out incorrectly in § 115.2. This correction corrects that amendment.

In rule FR Doc. 98–9965 published on April 16, 1998, (63 FR 18836 make the following correction. On page 18837, in the second column, remove the words: "Marine Operations Director" and add in their place, "Maritime Operations Director".

Dated: June 16, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–16516 Filed 6–19–98; 8:45 am]

BILLING CODE 3540-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0077; FRL–6112–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 10, 1997, and March 30, 1998. The revisions concern San Diego County Air Pollution Control District (SDCAPCD) Rule 67.10 and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4401. SDCAPCD Rule 67.10 controls volatile organic compound (VOC) emissions from kelp processing and bio-polymer manufacturing operations, and SJVUAPCD Rule 4401 controls VOC emissions from steam-enhanced crude oil production well vents. This final action will incorporate these rules into the Federally-approved SIP and will also permanently stop the sanctions and Federal implementation plan clocks that were started on February 14, 1996, and September 27, 1996, respectively, when EPA published final limited disapproval actions for the State's previous submittals of these rules. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 22, 1998.

ADDRESSES: Copies of these rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For questions regarding SDCAPCD Rule 67.10, contact Patricia Bowlin, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1188. For questions on SJVUAPCD Rule 4401, contact Mae Wang at the same address, telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California State Implementation Plan (SIP) are San Diego County Air Pollution Control District (SDCAPCD) Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4401, Steam-enhanced Crude Oil Production Well Vents. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 1, 1997, and March 10, 1998, respectively.

II. Background

On October 10, 1997, in 62 FR 52959, EPA proposed to approve SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, into the California SIP. Rule 67.10 was adopted by SDCAPCD on June 25, 1997. The rule was submitted by CARB to EPA on August 1, 1997. On March 30, 1998, in 63 FR 15116, EPA proposed to approve SJVUAPCD Rule 4401, Steam-enhanced Crude Oil Production Well Vents, into the California SIP. Rule 4401 was adopted by SJVUAPCD on January 15, 1998, and was submitted by CARB to EPA on March 10, 1998. Both rules were submitted in response to EPA's 1988 SIP-Call and the 1990 Clean Air Act (CAA or the Act) section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each rule is provided in the appropriate proposed rulemaking document cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rulemaking documents cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in each proposed rulemaking and in the technical support documents available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 52959 and 63 FR 15116. No comments were received.

IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the rules under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the Federally-approved SIP and will also stop the sanctions process and Federal implementation plan clocks, which were started on February 14, 1996, and September 27, 1996, when limited disapproval actions were published in the **Federal Register**. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the CAA.

The final action on these rules serves as a final determination that the deficiencies in these rules have been corrected. Therefore, on July 22, 1998, any sanction or Federal implementation plan clock is permanently stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation

plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866 review.

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 21, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: June 9, 1998.

David Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (248) and (c) (254) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(248) New and amended regulations for the following APCDs were submitted on August 1, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) San Diego County Air Pollution Control District.

(*1*) Rule 67.10 adopted June 25, 1997.

* * * * *

(254) New and amended regulations for the following APCDs were submitted on March 10, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4401 adopted January 15, 1998.

[FR Doc. 98–16408 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6111–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Beulah Landfill Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Beulah Landfill Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR

part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Effective June 22, 1998.

ADDRESSES: Comprehensive information on this Site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, Phone: (404) 562–9530, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday—By Appointment Only; and

Media Center, George Stone Vocational School, 2400 Longleaf Drive, Pensacola, Florida 32526–8922, Phone: (850) 944–1424, Hours: 8:00 a.m. to 9:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

SUPPLEMENTARY INFORMATION: EPA announces the deletion of the Beulah Landfill Superfund Site in Pensacola, Escambia County, Florida from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. EPA published a Notice of Intent to Delete the Beulah Landfill Superfund Site from the NPL on April 24, 1998 in the **Federal Register**, (63 FR 20361–20362). EPA received no comments on the proposed deletion; therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion. Deletion of a site from the NPL does not affect the responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, penalties, superfund, Water pollution control, Water supply.

Dated: June 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Beulah Landfill, Pensacola, FL."

[FR Doc. 98–16252 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 482

[HCFA–3005–F]

RIN: 0938–AI95

Medicare and Medicaid Programs; Hospital Conditions of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule addresses only provisions relating to organ donation and transplantation. It imposes several requirements a hospital must meet that are designed to increase organ donation. One of these requirements is that a hospital must have an agreement with the Organ Procurement Organization (OPO) designated by the Secretary, under which the hospital will contact the OPO in a timely manner about individuals who die or whose death is imminent in the hospital. The OPO will then determine the individual's medical suitability for donation. As well, the hospital must have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as long as the agreement does not interfere with organ donation. The final rule requires a hospital to ensure, in collaboration with the OPO with which it has an agreement, that the family of every potential donor is informed of its option to donate organs or tissues or not to donate. Under the final rule, hospitals must work with the OPO and at least one tissue bank and one eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of organs and tissues take place. In addition, transplant hospitals must provide organ-transplant-related data, as requested by the OPTN, the Scientific Registry, and the OPOs. The hospital must also provide, if requested, such data directly to the Department.

DATES: These regulations are effective on August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Marcia Newton, (410) 786–5265.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

I. Background

A. Key Statutory Provisions

Sections 1861(e) (1) through (8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital must also meet such other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients.

Under this authority, the Secretary has established in regulations the requirements that a hospital must meet to participate in Medicare (42 CFR Part 482, Conditions of Participation for Hospitals).

Section 1905(a) of the Act provides that Medicaid payments must be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii), hospitals generally are required to meet the Medicare Conditions of Participation in order to participate in Medicaid.

Section 1138 of the Act provides that a hospital participating in Medicare must establish written protocols for the identification of potential organ donors that (1) ensure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline donation, (2) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of those families, and (3) require that an organ procurement agency designated by the Secretary be notified of potential organ donors.

B. Why the Hospital/OPO Relationship Must Improve

An estimated 12,000 to 15,000 deaths occurring in the United States every year could yield suitable donor organs. [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall." *Critical Care Medicine* (1996); 24 432–39] However, in 1997, only 5,475 of these deaths resulted in the donation of an organ.

As progress has been made in the science of transplantation, the gap has widened considerably between the number of individuals who could benefit from transplants and the number of organs available for transplantation. In the twelve years since the enactment of Section 1138 of the Act, the number of organ donors has increased by only 33 percent, while the transplant waiting list has grown by 250 percent. As of June 3, 1998, 56,222 individuals were on the waiting list for a transplant, but the number of organs transplanted from cadaveric donors in 1997 numbered only 17,032. Preliminary 1997 data compiled by the Organ Procurement and Transplantation Network contractor indicates that the number of donors (5,475 donors in 1997) increased by only 54 donors or by less than one percent over the 5,421 donors in 1996.

A 1993 Gallup poll showed that 85 percent of Americans support the general concept of organ donation and 69 percent would be somewhat or very likely to donate their own organs. [The Gallup Organization, Inc. "The American Public's Attitudes Toward Organ Donation and Transplantation," A survey prepared by the Gallup Organization, Inc. for The Partnership for Organ Donation, Boston, Massachusetts, (February 1993)] Information from a number of recent studies and from States that have passed organ donor legislation has given us a clearer understanding of the reasons for the disparity between the strong public support for the concept of organ donation and the apparent failure of the current system to convert potential donors to actual donors. We have used this information to guide us in promulgating the final rule.

II. Notice of Proposed Rulemaking

On December 19, 1997, a proposed rule, "Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval" [HCFA–3745–P] was published in the **Federal Register** [62 FR 66726]. The proposed rule extensively revised the current conditions of participation for hospitals. Among the proposed changes were provisions designed to increase the number of organs available for transplantation.

The proposed rule was developed in response to issues raised during public hearings held by the Department on December 11 through 13, 1996, to examine the allocation policies for liver transplantation and to receive comments regarding methods to increase organ donation. The comments we received at the public hearings highlighted that there is a critical shortage of organs available for transplantation and some of the options available to alleviate the shortage.

Every day an estimated 10 individuals in the United States die because organs are not available to save their lives. This fact gave particular urgency to publication of a final rule covering the provisions of the proposed rule designed to increase donation and transplantation. Therefore, we have extracted those provisions from the proposed rule and are publishing them here, with some modifications, as a final rule. We will be publishing other provisions of the proposed rule as a final rule at a later date.

III. Analysis of and Responses to Public Comments

We received a total of 150 comments on these provisions from hospitals, OPOs, tissue and eye banks, professional organizations, transplant organizations, medical practitioners, donor family organizations, and other organizations and individuals. A summary of the major issues and our responses follow:

Impact on Tissue and Eye Donation

Comment: Several commenters said the regulation should not require that hospitals contact OPOs exclusively about potential donors, including potential tissue and eye donors. Commenters voiced concern that calls about potential tissue donors would not be handled by the OPOs satisfactorily.

Response: The proposed rule did not include a requirement that all calls be referred exclusively to an OPO. However, the final rule does include a requirement that all deaths must be referred to the OPO or a third party designated by the OPO, using protocols developed by the OPO. In the absence of separate arrangements between the hospital and a tissue bank and an eye bank, the OPO will identify and refer potential tissue and eye donors using protocols developed in consultation with the tissue bank and eye bank. The final rule also authorizes a hospital to notify a tissue or eye bank directly about potential tissue or eye donors. We believe these requirements will assure that the interests of the tissue and eye banks are considered and will encourage all parties to reach a consensus that will honor the hospital's need for a referral process that is not burdensome for hospital staff.

Comment: One commenter stated that the proposed rule does not address ways to effectively ensure OPO and hospital cooperation with the eye and tissue banks in their communities. Many commenters questioned why the OPOs should be the "gatekeepers" for all donations and predicted this would adversely impact tissue and eye donations. One commenter suggested all language referring to tissues or eyes be removed from the text of the regulation, so that the rule applies only to organ donation. The commenter expressed the belief that expecting OPOs to serve as the focal point for both organ and tissue donation places too great a burden on OPOs.

Response: In promulgating a rule designed to increase organ donation, we wish to avoid the possibility that the rule will have an adverse impact on tissue and eye donation and retrieval. In the proposed rule, we stated our expectation that hospitals, OPOs, eye and tissue banks would work cooperatively and effectively to facilitate and enhance organ, tissue, and eye donation. However, we noted the considerable local variation in arrangements and how they might be modified under the proposed changes. We specifically requested comments on

how the proposed rule might impact tissue donation and suggestions for measures we can take to maximize donation of organs, tissues, and eyes.

We received many comments from tissue and eye banks, their professional organizations, and individuals active in this area. Some of these commenters stated that in communities where the relationship among the hospitals, OPOs, and the tissue and eye banks is collaborative in nature, the system works well. Many described communities where a single, toll-free telephone number has been established for hospitals to call for referrals of potential organ, tissue, and eye donors. The entity taking the call (whether the OPO or, in some cases, a commercial entity under contract) screens the calls and refers them appropriately and expeditiously. However, other commenters described communities where some hospitals have never referred a single potential donor and where the relationship between the OPO and the tissue and eye banks is acrimonious and antagonistic.

The final rule preserves the flexibility of hospitals, tissue banks, and eye banks to enter into arrangements that do not involve the OPO. However, the final rule makes OPOs the default "gatekeepers" for referral of potential tissue and eye donors in the absence of other arrangements. Therefore, we have included in the final rule a requirement that the OPO consult with the tissue and eye bank(s) in establishing protocols for the identification and referral of potential tissue and eye donors. We have also added language to ensure that hospitals work cooperatively with a tissue bank and an eye bank, as well as the OPO, in educating hospital staff, reviewing death records, and maintaining potential donors. We will be monitoring the progress of the cooperative relationships envisioned by this rule to ensure that the gatekeeper role described does not harm tissue and eye donation.

Comment: Many commenters suggested expanding the regulation so that tissues and eyes are included. One commenter pointed out that there is a critical shortage of tissues for transplant in the United States. For example, patients who await a long bone allograft for treatment of cancer must often wait months for a transplant or resort to amputation. Several commenters said that only 8 percent of needed tissue is currently obtained. Other commenters added that we should include in the final regulation definitions for tissues and eyes.

Response: We agree there is a critical need for tissues and corneas as well as solid organs. We have, therefore, modified the text of this regulation to ensure that tissue and eye banks participate in the local decision-making process. We believe that the addition of these references will increase donations for tissues and eyes as well as solid organs. The procurement and transplantation of tissues and eyes, however, is not regulated by HCFA; therefore, we are not including definitions of these terms in the final rule. The regulation requires OPOs to consult with the designated tissue and eye bank in defining tissue and eye donor and we will rely upon the OPOs, tissue banks, and eye banks to define tissues and eyes as well.

Comment: Some commenters suggested that the rule discourage excessive fees charged by OPOs for referral of tissue donations to tissue and eye banks. Some commenters said that some OPOs may begin referring their donor calls to the highest cost reimburser, with eye and tissue banks forced to try to outbid each other for tissues. One commenter was concerned about donor family and public perceptions that might negatively affect willingness to donate. Other commenters expressed concern that high referral fees would put eye banks out of business.

Response: Our policies defining reimbursement for OPOs extend only to those activities in which the OPO engages on behalf of an eligible Medicare or Medicaid beneficiary, and are limited to reasonable costs. Therefore, any expenses incurred by an OPO, or any charges which may be made to payers other than HCFA, will not be addressed here. We have, however, expressly preserved hospitals' rights to enter into agreements with tissue and eye banks so long as those arrangements do not interfere with an OPO's efforts to recover solid organs. We would anticipate that tissue and eye banks that encounter fees they consider excessive would have the opportunity to address this issue during the establishment of donor and referral protocols.

Comment: One commenter stated we should clarify that our intent is not to disrupt existing contracts between hospitals and tissue banks.

Response: It is certainly not our intent to disrupt contracts between hospitals and tissue banks or hospitals and eye banks. We believe the regulation's requirement which authorizes agreements between the hospital and a tissue bank and an eye bank and its emphasis on collaboration among hospitals, OPOs, and tissue and eye banks will increase tissue and eye donation without disrupting contracts.

Referral Systems

Comment: Some commenters expressed concern that the proposed rule would mean elimination of current, successful community systems for referral of organ, tissue, and eye donors.

Response: Our intent in promulgating this rule is certainly not to disturb successful community referral systems, and we would urge hospitals and OPOs not to abandon them. Therefore, we have revised the rule to clarify that it does not preclude such systems. The final rule permits the hospital to refer potential donors to a third party designated by the OPO and to continue successful arrangements with tissue banks and eye banks. In addition, we encourage OPOs and hospitals, in consultation with tissue and eye banks, to use this opportunity to improve upon current referral systems to maximize not only organ donation but tissue and eye donation as well.

Comment: Many commenters suggested a system whereby all referral calls go to a single non-proprietary answering service or a referral system operated by one of the organ or tissue agencies and supported by all. They pointed out that the process is more successful when hospitals are required to make a single phone call, rather than contacting multiple agencies about a potential donor. One commenter added that hospitals and grieving families should not be burdened with two distinct but parallel operating communications regarding donations. One large, nationwide tissue bank suggested that all referrals be made either to the OPO or a non-proprietary service. One eye bank commented that eye banks in areas with a non-proprietary phone number experience an increase in donations. In contrast, another tissue bank suggested a two-call system which is used in its State. In this State, hospitals are required to contact the OPO on all brain deaths. All other deaths are reported to a referral agency, based on a plan agreed to by the hospital and all other agencies.

Response: Before responding to the comment, we want to clarify that this rule requires hospitals to notify OPOs or a third party designated by the OPO, of individuals whose death is imminent of who have died in the hospital. Some commenters make reference to "brain death" donors, meaning heart beating donors who have been declared brain dead. This regulation does not exclude the reporting of non-heartbeating deaths. Hospitals must report both brain dead and cadaveric potential donors.

We have added language to the text of the regulation to clarify that referral of phone calls to a third party entity designated by the OPO is not precluded. Anecdotal evidence indicates that a one-phone-call referral process may increase organ donations, as well as tissue and eye donations. Logically, it would seem that a system that makes it possible for a hospital to refer potential donors with a single phone call would make hospital compliance easier and, therefore, more likely. We would urge communities to explore this option.

However, regardless of how the referral by the hospital is accomplished, we would also urge that protocols ensure that families of potential donors are approached about donation by a single agency (either the OPO, a tissue bank, or an eye bank) in collaboration with hospital staff. For example, Florida donation legislation provides that the OPO must be given the opportunity to approach the families of suitable vascular organ donors. OPOs may represent the tissue and eye bank. Under the Florida law, the tissue bank must be given the opportunity to approach the family of suitable tissue donors if the OPO has not already approached the family. Eye banks must be given the opportunity to approach the family of suitable eye donors if the OPO or a tissue bank has not already approached the family.

Comment: Several commenters suggested we strengthen the regulation by adopting a routine referral approach which requires referral of all patient deaths to OPOs. Commenters pointed to the success of the Pennsylvania routine referral law and predicted similar increases in donation rates if a nationwide routine referral approach were to be adopted. Commenters gave the following reasons for supporting routine referral: (1) A clear standard is established for hospitals regarding when referrals must be made to the OPO; (2) allows early intervention by the OPO to guide the organ and tissue process to ensure a successful outcome; (3) ensures that the hospital will not erroneously assume that a potential donor is too old or has a medical condition that precludes donation; (4) removes from hospitals the burden of keeping abreast of changing standards for donor screening and suitability criteria; (5) minimizes regional differences in organ procurement and transplant waiting times, and (6) facilitates compliance by hospital systems whose member hospitals are served by more than one OPO. However, many commenters who supported routine referral suggested some flexibility be built into the regulation in consideration of resource limitations or local circumstances. For example, commenters suggested that deaths of individuals above a certain age be excluded from routine referral.

Response: We agree with the commenters who support routine referral of all deaths and have adopted their recommendation in this regulation. We believe that the experiences of States with routine referral legislation have demonstrated that referral of all deaths is the single most critical factor in increasing organ donation rates. Referral of all deaths assures that determination of medical suitability is made by the OPOs, because OPOs are the entities with knowledge of transplant hospitals' donor suitability criteria.

However, we have not adopted the recommendations of those who advised us to give OPOs the discretion to exclude certain categories of deaths from the requirement for routine referral. Referral of all deaths, with no exclusions, eliminates the need for OPOs and hospitals to rewrite referral protocols and reeducate hospital staff whenever transplant hospitals' donor suitability criteria change. It is also less difficult for HCFA to monitor hospital compliance if there are no exclusions. Finally, it is important to note that many OPOs will be screening donors for tissue and eye donation, and tissue and eye banks often have criteria for donation that differ significantly from the criteria for organ donation. For example, in 1997, only 6.4 percent of organ donors were over the age of 65. The Eye Bank Association of America reports however, that more than 28 percent of all eye donors in 1997 were over the age of 70.

Comment: Some commenters urged us not to adopt a routine referral approach. Commenters stated that routine referral will not work where relationships between OPOs and hospitals are, at best, uncooperative. Other commenters cited the burden and cost to hospitals and OPOs of making or receiving many unproductive calls.

Response: We believe routine referral is workable and will increase organ donation. We hope that all OPOs and hospitals will be encouraged by this regulation to develop relationships that increase organ and tissue donation. If they are not able to develop such relationships, however, a hospital may choose to seek waiver to associate with another OPO, or the original OPO may find itself unable to meet HCFA certification standards and be replaced by an OPO better able to develop the kind of relationships that lead to greater organ and tissue recovery.

A 1988 commentary published in the *Journal of the American Medical Association* states that the cooperation of the medical professions is the primary factor limiting the supply of transplantable organs. The author suggests that routine referral "would not solve all the problems of professional cooperation, but it would ameliorate a key one and open the bottleneck that presently constrains the supply of organs." [Prottas, J. "Shifting Responsibilities in Organ Procurement: A Plan for Routine Referral." *Journal of the American Medical Association.* 1988;260:6]

We do not expect the cost to hospitals of referring all deaths to be significant. As discussed in the Regulatory Impact Statement, the average hospital should require no more than four person days per year to report every death that occurs in the hospital to the OPO. This time is in lieu of time hospitals' spend complying with existing requirements. If tissue and eye referrals are made by the hospital to either the OPO or a third party entity, rather than to tissue and eye banks, calls made to tissue and eye banks about medically unsuitable donors should not increase, as the calls will be screened by the OPO or third party entity. However, we expect that OPOs will find that the increased number of donations resulting from routine referral will enable them to meet the additional expenses without a significant increase to their current standard organ acquisition costs. Further information about the expected economic impact of routine referral on OPOs can be found in the Regulatory Impact Analysis.

Best Practices

Comment: Some commenters suggested that HCFA is abdicating its policy-making and regulatory authority to the OPOs. The commenters urged us to identify the best practices by which organ donation can be increased and use those practices as the basis for a regulatory definition of potential donor. The commenters pointed out that the proposed rule indicates that approximately 12,000 to 15,000 of the one million patients who die in hospitals annually are likely to be potential organ donors but that the proposed rule does not establish criteria by which hospitals would be required to identify those patients.

Response: We have not specifically defined potential donor in the final rule because the definition is continually changing, particularly as to the upper age. Instead, we have included the requirement that hospitals routinely refer all deaths and all individuals for

whom death is imminent to the OPO, with the assumption that this requirement will, in most communities, lead to better identification of the medical suitability of the potential donor based on the most recent medical research in transplantation. Contrary to the commenter's statement that one million patients die annually in hospitals, it is estimated that there are approximately 2,080,000 hospital deaths per year. The final rule also requires that the hospital and OPO collaborate in advising the family of potential donors of their option to donate. We have chosen not to dictate best practices for other aspects of organ donation, such as education and death records review, as we believe that each hospital and OPO, working together, can identify practices that will be most useful in their specific situation.

Following is a synopsis of the most recent research in organ donation and best practices for organ donation. We encourage hospitals and OPOs to use these studies and the many other studies that have been done on best practices for organ donation to guide their development of protocols that will work to increase organ donation in their communities. The estimate of 12,000 to 15,000 potential organ donors annually is based on the results of retrospective reviews of 1,990 medical records in 69 acute care hospitals in 4 geographic regions in the United States and a stratified random sample of 89 hospitals in 3 of the same areas (33 of the same hospitals) in 1993. The study found that only one third of the potential organ donors became organ donors. By extrapolating the 1990 findings to the entire United States, researchers postulated a pool of 13,700 medically suitable donors per year. [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall," *Critical Care Medicine* (1996); 24:432–39]

The study also showed that potential donors were correctly identified 90 percent of the time, and families were advised of their donation options only 71 percent of the time. The study's authors concluded that prospective identification and requesting donation in all suitable potential donor cases could lead to 1,800 additional donors per year.

An earlier study based on 1988 and 1989 data estimated the pool of potential organ donors to be between 6900 and 10,700 annually. [Evans RW, Orians CE, Ascher NL. "The Potential Supply of Organ Donors: An Assessment of the Efficiency of Organ Procurement Efforts in the United States," *Journal of the American Medical Association* (1992); 267:239–246.] The study was based on a review of multiple cause of death data from death certificates. The researchers excluded non-traumatic causes of death and, therefore, may have underestimated the potential donor pool by as much as 50 percent. However, the study demonstrated that there are many more potential than actual donors. The study's authors concluded that it may be possible to increase the number of actual donors by 80 percent.

These studies and several other recent studies are defining the best practices for increasing organ donation. As research continues in the field of organ donation, best practices will continue to evolve. Therefore, we are hesitant to use current best practices as the sole basis for promulgating a regulation that cannot be changed quickly enough to keep pace with the results of future research in the field of organ donation. However, we firmly believe there has been sufficient research upon which OPOs and hospitals can develop protocols that will lead to a significant increase in organ donation rates.

Through this final rule and related activities in the National Organ and Tissue Donation Initiative, we are encouraging hospitals and OPOs to incorporate other best practices into protocols for increasing donation rates. For example, recent studies have indicated that organ donation rates can be increased using a variety of best practices related to (1) advising families of potential donors of their rights regarding donation; (2) medical record reviews for evaluating performance and identifying opportunities for education; and (3) education of hospital staff.

The study cited above [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall," *Critical Care Medicine* (1996); 24:432–39] found that approximately half of the families asked to donate a relative's organs decline to give consent. Likewise, a stratified random sample of 23 acute-care general hospitals in two metropolitan areas found that only 46.5 percent of families of potential organ donors agreed to donate organs, and 22 percent of those who agreed to donate placed conditions on the donation. [Siminoff LA, Arnold RM, Caplan, AL, Virnig BA, Seltzer DL. "Public Policy Governing Organ and Tissue Procurement in the United States." *Annals of Internal Medicine*. 1995; 123:10–17] The study's authors concluded that "problems with the ways in which families are asked about donation rather than the failure of . . . altruism, may account for the high refusal rate."

An interview study of donor and nondonor families [DeJong W, Franz HG. "Requesting Organ Donation: An Interview Study of Donor and Nondonor Families," *American Journal of Critical Care* (1998);7: 13–23] identified the factors identified with consent for organ donation. The study cites unpublished data [Gortmaker SL, Beasley CL, Sheehy E, et al] that demonstrate a significant increase in the consent rate when three elements are in place when the family is advised of its right to consent to or to decline donation. First, family members must be given time to understand and accept their relative's death before the donation request is made. This means that the hospital staff's notification of the family about the patient's death and the explanation of brain death must be "decoupled" from the request for donation. An earlier study of the consent process also found the timing of the request to be critical. The study indicated a 60 percent consent rate when the subject of organ donation was discussed with the family before notification of death, a 68 percent consent rate when organ donation was discussed simultaneously with notification of death, and a 78 percent consent rate when organ donation was discussed after notification of death. [Cutler JA, et al. "Increasing the Availability of Cadaveric Organs for Transplantation: Maximizing the Consent Rate," *Transplantation* (1993); 56(1)225–28]

Second, consent rates are higher when the request is made by the OPO in conjunction with the hospital staff. A retrospective review of all medically suitable potential donors referred to a single OPO in a one-year period found a 67 percent consent rate when the OPO coordinator approached the family alone, a 9 percent consent rate when the hospital staff approached the family alone, and a 75 percent consent rate when the approach was made by the OPO coordinator and hospital staff together. [Klieger J, Nelson K, Davis R, er al. Analysis of Factors Influencing Organ Donation Consent Rates. *Journal of Transplant Coordination* (1994); 4:132–34] A 1995 article [Dejong, W, Drachman, et al. "Options for Increasing Organ Donation: The Potential Role of Financial Incentives, Standardized Hospital Procedures, and Public Education to Promote Family Discussion," *The Milbank Quarterly* (1995);73: 463–79] suggested that the donation option should first be mentioned to the family by a hospital-based health professional, but the

formal request should be made by the OPO coordinator.

The third critical element in the consent process is the setting in which the request for donation is made to the family. The request should be made in a quiet, private setting, such as a conference room or family meeting room, rather than in a hallway or waiting room. When all of these methods are used in conjunction, consent rates are 47 percent higher than when none of these methods is used.

The study's authors note that in general there is currently no widely accepted protocol with regard to the process for requesting donation. They suggest that hospitals' protocols should include (1) communicating often and honestly with the family about the patient's prognosis, (2) making sure the family understands brain death, (3) decoupling the request for donation from the explanation of brain death, (4) using a quiet, private setting for discussion of donation options, and (5) defining clear roles and responsibilities for the hospital staff and the OPO coordinator.

Another recent study [McNamara P, Franz HG, Fowler RA, et al. "Medical Record Review as a Measure of the Effectiveness of Organ Procurement Practices in the Hospital," *Joint Commission Journal on Quality Improvement* (1997);23:321–33] makes several recommendations for quality improvement initiatives based on medical records review. The study's authors suggest that OPO staff provide feedback from medical records review to key hospital staff concerning practice improvements. They suggest hospitals use information from medical records review to assess the hospitals' performance in the organ donation process, identify areas where performance can be improved, and monitor the effectiveness of the implemented changes. They also suggest that medical records review should be conducted annually at large hospitals.

As referenced earlier, research in education of hospital critical care staff [Evanisko MJ, Beasley, CL, Brigham, LE. "Readiness of Critical Care Physicians and Nurses to Handle Requests for Organ Donation," *American Journal of Critical Care* (1998); 7:4–12] found that training of critical care physicians and nurses in effective procedures for requesting organ donation is significantly associated with higher rates of organ donation. However, two thirds of critical care staff reported no relevant training. A 1986 United Network for Organ Sharing survey found a surprising lack of knowledge among the transplant hospital staff regarding knowledge of organ donation and transplantation. [Ettner BJ, Youngstein KP, Ames JE. "Professional Attitudes and Knowledge About Organ Donation and Organ Transplantation," *Dialysis and Transplantation*, (1988); 17:72–76] Eighteen percent of the respondents were physicians, and 68 percent were nurses. Thirty-four percent of the respondents were unsure if their hospital had written protocols for organ recovery, and nearly half of the respondents answered no to the statement that the organ donor protocols provided adequate guidelines and protection for the donor and for hospital staff. The final rule ensures that only OPO representatives or trained individuals will approach families to explain their donation options and make the actual request for donation.

Our review of these and other studies has convinced us that there has been sufficient research upon which OPOs and hospitals can base protocols that will take advantage of best practices for advising families of their right to consent to or to decline donation, evaluate hospital and OPO staff performance through medical records reviews, and educate hospital staff.

Necessity for Change

Comment: Several commenters suggested that we make no change in the hospital conditions of participation for organ procurement responsibilities. They pointed out that the current regulations, which allow hospitals to establish their own organ donation policies, often result in good donation rates. They suggested that in lieu of a regulation, HCFA continue to evaluate what works to increase donation rates and encourage hospitals and others to make changes.

Response: The current hospital conditions of participation have not produced the results which were anticipated. Therefore, in our response to the previous comment, we outlined research studies that show several approaches that work to increase donation rates. We believe that all hospitals, including those that are currently successful, should consider whether these approaches, in addition to routine referral, could further increase organ donation. A study of 1,990 death records from 69 hospitals in four geographic regions found a wide variation in hospital performance with a hospital donation rate (i.e., actual donors as a percentage of potential donors) ranging from 0 percent to 68 percent. Note that this was not a random sample of hospitals; the hospitals tended to be larger institutions with either a history of donor activity or suspected potential for donation. The average organ donor potential in the hospitals was 13.3; average actual organ donors were 4.3. [Sheehy E, Poretsky A, Gortmaker, SL. "Relationship of Hospital Characteristics to Organ Donation Performance," *Transplantation Proceedings* (1996); 28:139–141]

These data demonstrate that, some hospitals need more than encouragement to meet the requirements of section 1138 of the Act, which mandates that hospitals identify potential organ donors and assure that families of organ donors are informed of their donation options. In view of the critical and growing shortage of donated organs in this country, we would be abdicating our responsibility as a Federal agency if our only response to this crisis were merely to be encouragement. We believe that a less burdensome approach for hospitals, requiring only a phone call to the OPO, will be more successful in providing opportunities for families to consider donation. Therefore, we are not accepting this comment.

Comment: One commenter suggested a delay in publishing the final rule until the Department can convene a workshop to come up with a different proposal. The same commenter also suggested allowing hospitals at least three years to develop an action plan to increase donation rates.

Response: We believe the need to substantially increase organ donation immediately outweighs any potential benefits from adopting the commenter's suggestion. As noted above, 10 people die every day waiting for an organ transplant. In addition, the Department sought public comments on the issue of increasing organ donation as part of its development of a related rule regarding the Organ Procurement and Transplantation Network, including a three-day public hearing in December 1996. It also conducted a conference in April 1998 to identify methods to evaluate and identify successful mechanisms to increase donating consent. In view of the every-widening gap between the number of people waiting for organ transplants and the number of organs available, further delay in passing a regulation to alleviate this crisis is unacceptable.

Regulatory Flexibility

Comment: Many commenters warned against promulgating a final regulation that is too prescriptive. They emphasized that what is needed, above all, is flexibility to design protocols to meet needs of local communities, rather than a "one-size-fits-all" regulation

which defines potential donor and the protocols for notification and referral for the entire country. One commenter pointed out that such flexibility allows for look-back data and new research to be incorporated into hospitals' policies.

Response: We agree with these commenters and have used this viewpoint to guide our development of the final rule. For example, it allows the OPO to determine medical suitability in light of the most recent transplantation research and the needs of transplant recipients, surgeons, and hospitals. The final rule requires collaboration between the hospital and the OPO in informing families of potential donors of their donation options because the evidence is overwhelming that involvement of the OPO in the consent process is critical. We believe however, it is best for hospitals and OPOs to have the flexibility to design a protocol for informing families that takes into account circumstances in each community. Finally, the final rule allows hospitals, OPOs, and tissue and eye banks the flexibility to adapt best practices in the areas of death record reviews and education of hospital staff to suit the circumstances in their local communities.

Medical Suitability

Comment: One commenter suggested there should be Federal baseline criteria for defining potential donors, with HCFA setting minimum standards, including tests, required for an individual to donate an organ. Hospitals and OPOs could be more exacting, but could not fall below the Federal standard. Another commenter called for a national conference to determine the broadest possible definition based on national need and the varying acceptance criteria of transplant surgeons and institutions. For example, commenters suggested variously that "potential donor" should be defined as a patient who is brain dead and heart beating or any patient on a ventilator.

Response: We believe these commenters are seeking a Federal definition for medically suitable donors, rather than a Federal definition for potential donors. Generally, a definition for potential donors is designed to cast a wide net by defining potential donors, for example, as all hospital deaths or all patients on ventilators. By making the pool of potential donors so large, OPOs ensure that no medically suitable donors are missed. However, many, if not most, of the potential donors in this large pool will not be medically suitable to be actual donors.

We are reluctant to impose a Federal standard for medically suitable donors. Some OPOs, for example, the Louisiana Organ Procurement Agency, have experimented with expanded criteria for determining medically suitable donors, with good results. However, transplant hospitals vary in their willingness and ability to transplant organs from potential donors with particular medical conditions or from donors who are past a certain age. At one time, most organ donors were age 45 or younger; now some transplant hospitals are transplanting livers from 80-year-old donors. According to the Organ Procurement and Transplantation Network contractor, the 33 percent increase in cadaveric donors between 1988 and 1996 is primarily due to the increase in donors ages 50 and over. Cadaveric donors age 50 and over increased from 12 percent in 1988 of all cadaveric donors to 27 percent in 1996. [*United Network for Organ Sharing 1997 Scientific Registry and Organ Procurement and Transplantation Network Annual Report*] Some transplant hospitals will consider organs from donors with any medical condition other than metastatic cancer or HIV; other transplant hospitals are more restrictive.

It is likely that as transplantation research continues, the ability of medical professionals to obtain and transplant organs from patients once considered medically unsuitable will grow. Therefore, since the definition of medically suitable donor will likely be broadened in the future, we believe it would be inappropriate to impose a regulatory definition.

Comment: One commenter stated that in order to determine if a potential donor is medically suitable to be a donor, it may be necessary for the OPO to examine the body, conduct tests, review medical records, and obtain medical information from the family and physician. The commenter said that hospitals have expressed concern that this violates laws governing patient privacy and confidentiality of medical records and asked us to emphasize that the authority to do so is implicit in the law.

Response: We agree with the commenter that the OPO may examine the body of the potential donor and his or her medical records and conduct the tests, inquiries, and investigations that are necessary to determine if the potential donor would be medically suitable to be a donor. The Public Health Service Act section 371, 42 U.S.C. 274 specifies that OPOs must arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the OPTN under section 372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome. Section 371 of the Act also specifies that OPOs must arrange for the appropriate tissue typing of donated organs. Certainly, after receipt of consent for donation from the potential donor's family, it would be necessary for the OPO to examine the body of the potential donor, conduct tests, review medical records, and obtain medical information from the family and physician in order to accomplish the requirements of section 371 of the Act. Therefore, after receipt of consent, we believe the authority to conduct testing, review medical records, and gather other medical information needed to determine the medical suitability of the potential donor is implicit in the law.

OPO Conditions of Coverage

Comment: Some commenters had suggestions for changes in the OPO procedural standards in the regulations governing OPOs, such as requiring OPOs to refer potential tissue donors to eye banks and/or tissue banks.

Response: We are not making changes to the OPO conditions of coverage here, as the OPO conditions of coverage are not within the purview of this regulation. However, we will retain the comments for reference and continue to review the OPO requirements with a view toward improving their effectiveness. In addition, we would point out that the OPO conditions of coverage do require OPOs to "have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors." [42 CFR 486.306(l)] Because this final rule does establish OPOs as the default gatekeepers for referral of tissues and eyes, we will regard very seriously the failure of any OPO to refer promptly all potential tissue and eye donors to the tissue and eye bank(s) specified by the hospital.

Comment: One commenter cited "anecdotal evidence" that managed care organizations, hospitals, and other providers are reluctant to provide services for patients with non-survivable brain injuries. The commenter recommended changing HCFA reimbursement rules for OPOs to allow costs related to donor clinical assessment prior to declaration of death. The commenter suggested this would eliminate a barrier to OPOs' early

involvement with the potential donor and address hospital concerns regarding donation-related charges incurred prior to brain death.

Response: Although reimbursement is not within the scope of this regulation, HCFA will be looking into this matter with a view to determining what steps appropriately can be taken to ensure that providers' difficulties in obtaining reimbursement for services to patients with non-survivable brain injuries does not become a barrier to organ donation.

Comment: A few commenters responded to our request for suggestions about how to design or implement the most cost-effective outcome standard for OPOs related to organ recovery. The commenters called for a more precise way to measure potential donors for comparison with actual donors so that each OPO is evaluated in light of its true potential. Some commenters said that if HCFA adopts an outcome standard based on conversion of potential to actual donors, the current performance standards should be reviewed with a view to changing or eliminating them.

Response: We agree that the current method of using population to define potential donors may not reflect regional differences in number and cause of deaths. A recent GAO report [U.S. General Accounting Office, "Alternatives Being Developed to More Accurately Assess Performance (GAO/HEHs–98–26)," (November 1997)] noted that unless OPO performance is measured according to the number of potential donors, HCFA cannot determine OPOs' effectiveness in acquiring organs. We agree with the conclusions of the GAO report and will be evaluating two methods suggested by the GAO for more accurately identifying the number of potential donors in an OPO's service area: death record review and modeling. We also will be evaluating the results of the study of death record reviews being conducted by the Association of Organ Procurement Organizations in conjunction with the American Congress for Organ Recovery and Donation (ACORD) and a methodology for estimating potential donors, which is being developed by Harvard Medical School, the Harvard School of Public Health, and the Partnership for Organ Donation. If the current method of using population to estimate the number of potential donors in an OPO's service area is changed, we will review all OPO conditions of coverage to determine their appropriateness in view of that change.

Comment: One commenter suggested hospitals should be allowed to set minimum credentials for OPO personnel working in their hospitals. The commenter said surveys of donor family satisfaction and satisfaction of hospital personnel with OPO personnel should be permitted, and hospitals should have the option of terminating their contract with the OPO if a workable solution is not found.

Response: There is nothing in the regulation that precludes a hospital from surveying donor families or hospital personnel to determine their level of satisfaction with the OPO. However, standards for OPO personnel are a HCFA responsibility. [42 CFR 486.306] A hospital dissatisfied with its designated OPO has the option of requesting a waiver from HCFA permitting an agreement with an OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to HCFA showing that the waiver is expected to increase organ donations and will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

Resolution of Disputes

Comment: Several commenters suggested there should be a mechanism for "due process" if there are disagreements between OPOs and hospitals or between OPOs and tissue and eye banks. One commenter suggested that the rule should require an agreement as to the content of the protocols signed by both the OPO and the hospital. The commenter suggested that the Department should set up a system for mediating and, if necessary, arbitrating disputes. In the case of arbitration, the decision of the Secretary would be final.

Response: We have tried to structure a final rule that will encourage hospitals and OPOs to work together to alleviate the critical shortage of organs for transplant. We have included a requirement that hospitals and OPOs work "collaboratively" in advising families of potential donors of their donation options. We have included a requirement that hospitals work "cooperatively" with OPOs and tissue and eye banks in reviewing death records, educating hospital staff about donation issues, and maintaining potential donors. We have included a requirement that the OPO consult with a tissue and an eye bank in developing protocols for identification and referral of tissues and eyes. We believe these requirements will obviate the need for dispute resolution mechanisms, such as mediation or arbitration. However, based on the correspondence we have received, we understand that, in some communities, relationships between hospitals and OPOs and between OPOs and tissue and eye banks are contentious and that collaboration may prove to be difficult.

We know that hospitals, OPOs, and tissue and eye banks share our view that organs and tissues are a precious national resource and that only through the collaborative efforts of all parties can lives be saved. As one commenter wrote, "at risk in * * * this issue are patient lives that could either be saved or be unnecessarily lost by the success—or failure—of hospitals and OPOs working together."

We will monitor donation rates and OPO and hospital performance after this rule becomes effective. In those instances where tensions among the actors in the donation process are hindering improvements in organ donation, we will explore ways in which we might play a constructive role in encouraging and facilitating a successful local solution.

Family Consent to Donation

Comment: One commenter expressed concern that strengthening the role of the OPOs in the donation process will encourage OPOs to apply too much pressure on bereaved families in order to meet HCFA performance standards. The commenter suggested the final rule should address the need for sensitivity toward families and their religious views and the need for education of hospital staff in sensitivity to families' grief. Another commenter cited OPO "quotas" and hospitals' concerns about lack of control as reasons why the OPO should not be involved with the potential donor's family until the family has agreed to donation or requested additional information about donation.

Response: We have no evidence that families of potential donors are being pressured by OPO or hospital staff and no reason to believe that this change in the hospital conditions of participation would lead to such a problem. We note however, that the final rule requires collaboration between the hospital and OPO in informing families of potential donors of their donation options and also requires hospitals to encourage discretion and sensitivity with respect to the circumstances, views and beliefs of families of potential donors. In addition, the final rule both permits the hospital to choose the individual who will initiate the request for donation to the family and ensures that the

individual initiating the request has been educated in the consent process.

Although our earlier references to research on the family consent process emphasize that best practices lead to improved consent rates, such improvement is achieved in large part through greater sensitivity to families and their beliefs, their backgrounds, and their grief. For example, the interview study cited earlier [DeJong W, Franz HG. "Requesting Organ Donation: An Interview Study of Donor and Nondonor Families," *American Journal of Critical Care* (1998);7:13–23] discusses family demographic characteristics, such as race, ethnicity, and education and concludes, "This information should be used to remind the health care team to be especially attentive to concerns that certain families might have and to take special care to meet the families' informational and emotional needs. Healthcare providers should approach the family with the belief that a donation is possible and should take steps to ensure the family is treated with respect and care."

The services provided by Nebraska Health Systems are an example of what hospitals and OPOs can do to increase family consent to donation while providing emotional support and counseling to grieving families. This transplantation facility offers a program called Acute Bereavement Services, staffed by organ recovery personnel, nurse resource coordinators, and pastoral care staff. These individuals are available at any time to guide discussions with survivors concerning potential organ and tissue donation; act as a resource for family questions about funeral arrangements, coroner notification, autopsy consent, grief resources, hospital leave-taking, religious resources, and ritual; act as a resource for staff questions about notification of organ recovery staff; and act as advocates for the immediate grief needs of survivors. Nebraska Health Systems instituted their Acute Bereavement Services because "we wanted to have a positive impact on the grieving process even after our medical responsibilities to the patient and family ended." In 1996, the Nebraska Health Systems family consent rate was 75 percent. Hospitals interested in obtaining more information about Acute Bereavement Services can contact Nebraska Health Systems at Box 984075, 600 South 42nd St., Omaha, NE 68198–4075, Attention: Marsha Morien.

Comment: Some commenters voiced concern about the use of the word "discretion" in the text of the regulation. The regulation requires that hospitals "encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors." Commenters suggested there is a risk that in some circumstances the term "discretion" might be used as a justification to avoid advising eligible families about organ donation because of a presumption on the part of hospital staff that the family would not be receptive because of their intense grief, socioeconomic status, race, or religion. The commenter cited a study that found minority families, particularly African Americans, were less likely to be asked about the option of donation. The commenter suggested this might be due to hospital staff perception that ethnic minorities are opposed to donation, despite ample evidence that minorities donate in significant numbers. One OPO commented that the greatest impediment to donation is a hospital's conclusion that consent cannot be obtained. The OPO stated, "In such a situation, the OPO has lost a potential donor without ever being afforded the opportunity to act."

Response: Our use of the term "discretion" in the text of the regulation reflects the statute's use of that term in section 1138(a)(1)(A)(ii) of the Act. However, we are grateful for an opportunity to point out that our use of the term "discretion" in the text of the regulation should not be construed to mean that hospital staff should, under any circumstances, make a judgment that certain families should not be approached about donation. The hospital staff's perception that a family's grief, race, ethnicity, religion, or socioeconomic background would prove a barrier to donation should never be used as a reason not to approach the family. We cannot emphasize too strongly that all families of potential donors must be advised about their donation options.

Comment: Many commenters strongly supported our language regarding notification of donor families. Many mentioned the research that shows that highest family consent rates are obtained when OPOs and hospitals collaborate. One OPO reported an 87 percent consent rate when OPO staff and hospital staff collaborate in the request to the family and a 38 percent consent rate when the hospital staff approach the family alone. Some commenters emphasized that hospital staff should be free to continue to participate in advising families of their donation options. However, one commenter suggested that if hospital staff consent rates differ markedly from OPO staff consent rates, the hospital should be required to return consent responsibility to the OPO or provide training to hospital staff. Some commenters recommended that the regulation specify that only trained personnel (whether OPO or hospital staff) are permitted to advise families of potential donors of their donation options. One commenter pointed out that in Pennsylvania, which has a routine referral law, hospital personnel can become designated requestors only after undergoing training by the OPO.

Response: We appreciate the commenters' support for the final rule's emphasis on collaboration in notifying families of potential donors of their options for donation. Research has shown best practices include participation of both OPO personnel and hospital staff in the process, with the actual request for donation made by OPO personnel. We encourage hospitals and OPOs to consider these best practices when determining how this process will occur. We agree with the commenters who suggested that only personnel trained in the consent process be permitted to approach families with a request for donation, and we have included that provision in the final regulation. We have also modified the text of the regulation to make it clear that hospitals have discretion in determining who will initiate the request for donation.

Comment: Some commenters suggested further strengthening the rule by giving the OPOs even more control over the process. For example, one commenter suggested the rule be strengthened to give OPOs the sole responsibility for initiation of the request for organs or tissues. The commenter mentioned that currently OPOs are being held accountable by the Federal government but have not been given the tools to increase donation rates. Several commenters urged us to eliminate the requirement for collaboration between the OPOs and the hospital in the consent process and make it clear that only OPO staff should be permitted to approach the family about donation.

Response: We are sympathetic to the commenters' point of view. OPOs have been in the difficult position of having to meet specific performance standards for organs donated and transplanted, while at the same time having less than total control over the donation and transplantation processes. However, we disagree that only OPOs should be permitted to advise families of potential donors of their donation options. As stated elsewhere in this preamble, studies show that the highest family consent rates are a result of collaboration between OPOs and

hospitals. The participation of hospital staff is critical both to ensure that a family understands and accepts the brain death of the potential donor and to provide compassionate support to the family. A 1987 study of donor family perspectives concluded that the hospital nursing staff are in the best position to have a positive effect on donor families' attitudes toward their donation experiences and, ultimately, as families share their experiences with family and friends, in the future availability of organs for transplant. [Bartucci, MR. "Organ Donation: A Study of the Donor Family Perspective." *Journal of Neuroscience Nursing.* 1987; 19:305–309] The final rule gives OPOs considerably more control over the donation process while at the same time encouraging collaborative relationships between OPOs and hospitals.

Death Record Reviews

Comment: Many commenters strongly supported the requirement for death record reviews. One commenter, a hospital association from a State with a routine referral law, suggested that death record reviews be performed only by licensed OPOs. Another commenter encouraged us to take the next step by providing support and resources to allow compilation of medical records review data in a centralized database, and by accelerating the development and application of methods to accurately estimate underlying donor potential in hospitals and OPOs.

Response: We agree that death record reviews are an essential component of this final rule. We expect that requiring hospitals to cooperate with OPOs, tissue banks and eye banks in reviewing death records will allow the OPOs, tissue banks and eye banks the opportunity to review death records to determine donor potential, monitor hospital compliance, and identify areas where education in a hospital's organ donation procedures is needed. The final rule will permit the hospital, OPO, tissue bank, and eye bank to determine who will perform the death record reviews. Providing resources for compilation of medical records review data is beyond the scope of this regulation. However, we are interested in a further exploration of how such a database could be useful in increasing organ donation. We are currently considering various methods for estimating donor potential and are also awaiting the outcome of a review of hospital death records being conducted by the Association of Organ Procurement Organizations in conjunction with the ACORD.

Comment: A few commenters were concerned that giving outside agencies access to death records would be disruptive or would jeopardize patient confidentiality.

Response: In requiring hospitals to work cooperatively with OPOs, tissue, and eye banks in performing death record reviews, we are confident that a system can be worked out among all parties to minimize disruptions. Likewise, we would expect that all parties can come to an agreement on the protocols that will be used both to perform death record reviews and analyses. We also expect all parties involved to use the resulting data in a manner that ensures patient confidentiality is not threatened. Note that both hospital and OPO regulations require hospitals and OPOs to have procedures for ensuring the confidentiality of patient records. Hospitals and OPOs must ensure that unauthorized individuals cannot gain access to or alter patient records. Hospitals and OPOs must also ensure that original medical records are released only in accordance with Federal or State laws, court orders, or subpoenas. [See 42 CFR 482.24(b)(3) and 42 CFR 486.306(o).] We believe that sufficient safeguards exist in Federal and State law to protect the confidentiality of hospital death records.

Comment: One commenter asked that HCFA provide explicit authority for OPOs to conduct audits of hospital organ and tissue donation performance to be provided upon request to HCFA or the Joint Commission on Accreditation of Health Care Organizations. Confidentiality would be assured as a condition of OPO designation.

Response: Although this regulation does not give OPOs specific authority to conduct death record reviews, it does require that hospitals work cooperatively with their OPOs in reviewing death records. This means that a hospital must develop a protocol which permits the OPO access to death record information that will allow the OPO to assess the hospital's donor potential, assure that all deaths or imminent deaths are being referred to the OPO in a timely manner, and identify areas where both OPO and hospital staff performance might be improved.

General Comments

Comment: One commenter cited "concerns in the medical community" about the broad language of the proposed rule and the possibility that unintended and unanticipated actions could be taken. The commenter suggested that we hold meetings with interested parties to assess their understanding of the language and request suggestions for clarifying the proposed rule.

Response: We carefully considered all comments we received from hospital and medical associations; tissue and eye banks and their professional organizations; transplant and donor organizations; OPOs; and other organizations and individuals. In addition, we have tried to be quite specific in this preamble in our discussions of the meaning of the regulation text and in our suggestions for implementation.

Comment: Some hospital associations expressed concern that OPOs would establish policies that are unworkable because the proposed rule provides no guidance to OPOs about the policies they should establish. The hospital associations gave as an example, the proposed requirement that the hospital assure that the family of each potential donor knows of its option to donate or decline to donate organs or tissues. They suggested that if an OPO defined potential organ donor as any patient who dies, the hospital would be required to inform the families of all deceased patients of their donation options even if it knew the patients were not medically suitable to be donors.

Response: We believe the final rule's emphasis on cooperation and collaboration between hospitals and OPOs will ensure protocols are developed and implemented that will function efficiently for both hospitals and OPOs. In addition, since OPOs must meet regulatory performance standards, it certainly is in their best interests to establish policies that are workable.

Comment: One commenter stated that the key to success of protocols for defining and referring donors will be ensuring that the burden on hospitals to carry out the protocols is not unduly heavy. The commenter suggested there should be some latitude in local protocols but that all protocols should strive to meet three criteria: (1) Ensuring that no medically suitable potential organ donor is missed; (2) minimizing the number of non-eligible cases that are referred; and (3) ensuring referral well before discontinuation of ventilation and cardiac arrest. Others echoed the third criterion in asking us to clarify that, whenever possible, referrals should be made when death is imminent to ensure that brain-dead or near brain-dead patients are maintained until a referral is made and are not referred to the OPO after mechanical support has been discontinued.

Response: We agree with the commenters' first and third criteria and believe the final rule will achieve these goals. OPOs are the entities familiar with the parameters for transplantable organs used by transplant hospitals and surgeons. Routine referral coupled with the OPO's determination of medical suitability increases the likelihood that no medically suitable potential donors are missed.

The requirement for timely referral at death or when death is imminent means that hospitals must make referrals both before a potential donor is removed from ventilator and while the potential donor's organs are still viable. Timely referral also means that the hospital must notify the OPO about potential donors early enough in the process to allow sufficient time for the family of the potential donor to make an informed decision about donation. We added these requirements to the final rule to minimize the possibility that organs will be lost to medical complications. One recent study noted that without aggressive support, cardiac arrest occurs in 20 percent of potential donors within 6 hours after the declaration of brain death and in 50 percent of donors within 24 hours. The authors conclude that delays in referrals may reduce the availability of organs since hemodynamic instability and cardiac arrest can develop relatively soon after brain death and emphasize that early identification and intervention are crucial for the successful recovery of organs. [Hauptman PJ, O'Connor KJ. "Medical Progress: Procurement and Allocation of Solid Organs for Transplantation," *New England Journal of Medicine;* 336:422–431]

With respect to the commenters' second suggested criterion, we would prefer also to minimize the referrals of potential donors later determined not to be medically suitable. We believe such an approach is implicit in our current regulation which permits hospitals to develop protocols for potential donors and refer only those cases to OPOs. However, as discussed previously, this approach has resulted in a significant percentage of potential donors not being identified.

Comment: Some commenters suggested we include provisions and funding for public education, which could be a cooperative effort by the OPOs and hospitals. One commenter questioned the need for any of the provisions in the proposed rule and implied the best way to increase the donation rate is to educate the public.

Response: We agree with the commenters that public education about organ donation is important and a variety of efforts have been and will be needed to enhance public awareness of the benefits of organ donation. The Department of Health and Human Services launched the National Organ and Tissue Donation Initiative with dozens of partners in December 1997. One of the three goals of the initiative is to build public awareness about the essential role of families in consenting to donation. The initiative features the Coalition on Donation's message, "Organ and Tissue Donation: Share your life. Share your decision" to underscore the need for family discussion about donation. The Department also has a new site on the Internet at http://www.organdonor.gov to provide up-to-date information to the public about organ and tissue donation and transplantation.

However, we do not believe we should rely exclusively on that as a strategy to increase donation. If hospitals do not identify potential donors, if families of potential donors are not asked to donate, or if those families are asked in a way that is unlikely to lead to their consent for donation, then public support for organ donation is immaterial.

Comment: Several commenters suggested we expand the definition of organ to include small bowel or intestine.

Response: We will not expand the definition of organ at this time. Before moving forward, we will need to assess fully the policy considerations of expanding the definition of organ to include small bowel or intestine. However, we will retain these comments with a view toward consideration of expanding the definition of organ in a future regulation.

Comment: A rural hospital suggested we take into account rural frontier areas when finalizing the regulation. They pointed out that their closest tertiary facility is 300 miles away. Another commenter recommended an exemption from the regulation for hospitals without potential donors, such as those facilities that lack ventilator support capabilities, do not have ICUs and do not provide trauma, neurology or neurosurgery services.

Response: We do not intend to establish exemptions for particular types of hospitals at this time. We do not believe routine referral will be burdensome to these small hospitals, and we believe that the information provided to the OPOs through the referral calls made by these hospitals may prove to be useful for organ, tissue, or eye donation.

Comment: A commenter pointed out that studies have shown that transplant hospitals as a group are no more effective in organ donation than non-transplant hospitals. The commenter recommended an extra level of donation accountability for transplant hospitals.

Response: We believe the requirements contained in the final rule will maximize the number of transplantable organs yielded by every hospital, making it unnecessary to have a different level of accountability for transplant hospitals. We agree that transplant hospitals should be especially active in identifying potential donors. However, we intend to hold all hospitals to the same level of accountability, that is, to use their best efforts to respond to the critical organ shortage.

Comment: Three commenters described proposed regulations or existing laws in their States that require hospitals to develop their own protocols for organ donation. The commenters expressed concern that the proposed rule is in conflict with those State laws because it would remove a hospital's authority under State law to determine a potential donor's medical suitability.

Response: We do not believe the final rule is in conflict with the spirit of the State legislation described by the commenters, which appears to have been written for the purpose of increasing organ donation. We note that in the 1980s, 44 States and the District of Columbia passed legislation designed to increase organ donation by requiring hospitals to develop protocols for identifying potential organ donors and informing families of their option to donate, and it is clear from the research on potential donors that have not been identified by hospitals that the laws have been inadequate. In response, States have begun to pass routine referral laws. We would also point out that the Federal regulation would supersede both State law and State regulations to the extent that it presents otherwise irreconcilable conflicts with State policies.

Comment: One commenter had several questions related to how various issues should be handled in cases where two or more OPOs are operating in the same area, such as whether hospitals would be responsible for two or more sets of criteria from these OPOs.

Response: The regulations at 42 CFR Part 486, Conditions for Coverage for Organ Procurement Organizations, specifically § 486.316, states that HCFA designates only one OPO per service area. A hospital must enter into an agreement only with the OPO designated to serve the area in which

the hospital is located unless HCFA has granted the hospital a waiver. Thus, a hospital would never be permitted nor required to have an agreement with more than one OPO at a time.

Hospitals' Provision of Transplant Data and Hospital Accountability

Comment: Several commenters urged us not to add outcome standards to the regulation because they would be too prescriptive. One commenter suggested individual hospitals should decide whether they need to monitor their outcomes.

Response: This regulation does not include numerical organ donation goals for hospitals.

Comment: An OPO pointed out that a hospital cannot (except with HHS approval) choose its OPO and is at the mercy of how well the OPO performs. The commenter suggested that to ensure hospitals' cooperation and to ensure they are not evaluated on the basis of their OPOs' performance, a provision be added to the final rule that states a hospital has met its obligations under section 1138 of the Act if it has entered into an agreement with an OPO designated by HCFA, the OPO certifies that the hospital has complied with the agreement and protocols, and the hospital has authorized the OPO to determine medical suitability and to make requests for donation.

Response: We see no need to include this specific language in the regulation. However, we would agree that if a hospital has met the requirements in the regulation, then it is likely the hospital has met its obligations under section 1138 of the Act, regardless of whether the OPO's performance has been satisfactory or unsatisfactory. Meeting the requirements of the regulation include, but are not limited to, referring all deaths to the OPO and ensuring that the family of every potential donor determined by the OPO to be medically suitable for donation has been advised of its donation options by an OPO representative or a designated requestor.

Comment: One commenter suggested oversight of the hospitals' actual participation in the process, which could be assured through death record reviews, audit results, or other record keeping to demonstrate the hospitals' level of compliance. The commenter added that this should be enforced by Medicare surveyors, and a second commenter urged us to discuss our plans for educating surveyors to ensure that hospitals will work assiduously to meet organ donor identification, referral and other related requirements. Another commenter suggested that hospitals be required to maintain records of a quality improvement process that supports its protocols. One commenter stated that they would support the inclusion of an assessment of organ donation procedures as part of a hospital's overall quality assessment and performance improvement process. The commenter added that such a provision would establish a hospital's accountability for actions it can control. Some commenters recommended including performance standards for hospitals to measure the variance between the number of potential donors, referrals, and actual donations. The commenters added that OPOs should participate in developing performance indicators based on documented best practices.

Response: Surveyors and HCFA regional offices will oversee compliance with the requirements of this regulation. However, surveyor procedures are beyond the scope of this regulation. The proposed rule for the hospital conditions of participation does not propose a specific set of quality indicators or objective performance measures be used. Instead, each hospital would be allowed flexibility to identify its own measures of performance for the activities it identifies as priorities in its quality assessment and performance improvement strategy. We recommend that every hospital make organ donation one of its priorities for quality assessment and performance improvement. Death record reviews are a powerful tool hospitals can use in their quality assessment and performance improvement strategies. In addition, we strongly recommend that OPOs perform death record reviews and advise hospitals of any failure to identify or refer potential donors or to advise families of potential donors of their donation options.

Comment: Many commenters suggested that the proposed rule must be strengthened to hold hospitals accountable if they do not cooperate with OPOs. Several commenters stated that the language of the proposed rule falls short of requiring hospital staff to cooperate with the OPO. One commenter suggested that we strengthen the language related to termination of participation in Medicare and Medicaid if a hospital does not cooperate. Another commenter added, "We do not see how these proposed regulations will make a hospital with a "lukewarm" interest in donation become more actively involved in the process."

Response: We believe the language of the final rule is unequivocal in requiring a hospital to refer all deaths to the OPO or a third party designated by the OPO, collaborate with the OPO in assuring that families of potential donors are advised of their donation options, and cooperate with the OPO and tissue and eye banks in reviewing death records and educating hospital staff in donation issues. This regulation is part of the conditions for hospital participation in the Medicare and Medicaid programs. Therefore, a hospital will jeopardize its Medicare and Medicaid certification should it fail to meet the requirements listed in the regulation.

Hospital Transplant Data

Comment: We received many comments about the requirement in the proposed rule for transplant hospitals to provide transplant-related data. Several commenters pointed out that the text of the proposed rule specifies that the data must be provided to the Organ Procurement and Transplantation Network, the Scientific Registry, the OPOs, and the Department of Health and Human Services, whereas the preamble language specifies that the data must be provided to the Organ Procurement and Transplantation Network, the Scientific Registry, the OPOs, or the Department of Health and Human Services. Commenters added that requiring hospitals to report data to all entities would be duplicative, burdensome, and would increase administrative costs.

Response: The information provided in the preamble was correct. The text of the final rule has been changed to state that the data must be provided as requested to the OPTN, the Scientific Registry, or the OPOs. The hospital must also provide data directly to the Department when requested by the Secretary. However, our intent is not to require hospitals routinely to report identical data to more than one entity, but rather to authorize direct requests by each of these entities.

Comment: Several commenters asked whether the intent of this provision is to require hospitals to provide tissue transplant data as well as organ transplant data. They pointed out that approximately 500,000 tissue transplants are performed annually in the U.S., and providing tissue transplant data would be a significant burden for hospitals.

Response: This requirement applies only to organ transplant data. The text of the regulation has been changed to clarify that hospitals must provide organ-transplant-related data.

Comment: Many commenters pointed out that the proposed rule was too vague regarding the type of data hospitals would be required to provide and how often they would be required to provide it. Commenters asked for reassurance that data requests will be reasonable.

One commenter suggested that we specify what data will be requested and allow time for meaningful comment. The commenter added, "In the absence of this specificity, the claim on page 66754 of the **Federal Register** that these requirements are usual and customary in the conduct of hospital business are without foundation." Another commenter asked that we specify the branch of the Department that will receive the data.

Response: At this time, we have not determined the type of organ transplant data that may be requested by the Department. We included this provision to give the Department the flexibility to request data from transplant hospitals in the event that needed data cannot be obtained expeditiously from the OPOs, the OPTN, or the Scientific Registry. Data may be needed by HCFA, the Health Resources and Services Administration (HRSA), or the Office of the Secretary, but, under this regulation, data could be requested by any agency within the Department. Note that a similar provision regarding the mandatory reporting of data by transplant hospitals also is contained in a related regulation. [See final rule with comment period, Organ Procurement and Transplantation Network [98–HRSA–01, 63 FR 16295] published April 2, 1998, effective October 1, 1998.] In accordance with 42 CFR 121.11(a)(2)(record maintenance requirements for OPOs and transplant programs) and 121.11(b)(2) (reporting requirements for OPOs and transplant hospitals) these programs are required to maintain and report to the OPTN, the Scientific Registry, and the Secretary data concerning, among other things, each potential donor identified. Therefore, the requirement in this (HCFA) rule, when considered with the requirements in the OPTN rule, will enable the Department to obtain information routinely from all transplant hospitals and OPOs in support of donation programs under this authority.

Comment: Several commenters expressed concern about the confidentiality of the data and pointed out the extremely sensitive nature of transplant patient data. One commenter stressed that because the patient population is relatively small, it is difficult to protect patient confidentiality, even when patient identifiers are removed from the data.

Response: HCFA's primary intent is to use requested data internally to assess whether a transplant hospital is qualified to participate (or continue to participate) in the Medicare program and monitor organ donation. We agree that the confidentiality of donor and transplant recipient records must be protected and are confident that Federal and State laws provide adequate safeguards. No additional specific provisions to protect confidentiality are required in this regulation.

Comment: One commenter suggested that the public have access to all data provided by the transplant hospitals. However, several commenters warned that release of data without proper analysis and verification can result in dissemination of inaccurate or misleading information. One commenter noted that release of such data may harm individuals or have a negative impact on organ donation.

Response: Section 121.11(b)(1)(v) of the recent OPTN regulation [98–HRSA–01, 63 FR 16295] requires the OPTN and the Scientific Registry to provide data which is to be used for *bona fide* research or analysis purposes, to the extent that resources permit, or as directed by the Secretary. Section 121.11(b)(1)(vi) requires the OPTN and the Scientific Registry to provide data to the public. Section 121.11(b)(2) requires that hospitals and OPOs provide data directly to the Department upon request and that they may not impose restrictions on subsequent redisclosure. The Secretary has requested comments on whether the provisions "sufficiently achieve the several important purposes served by providing information to the OPTN, the Department, and the public, while protecting patient privacy."

Another related provision § 121.11, "Public access to data" provides that the Secretary may release to the public information that will serve the public interest. This information would include data on comparative costs and outcomes at different transplant programs, information on waiting list time, and information on the frequency with which transplant hospitals refuse offers of organs for their listed patients. The preamble to the OPTN regulation notes that release of this data is consistent with section 375 of the Public Health Service Act, 42 U.S.C. 274c, which directs the Department to provide information to patients, their families, and their physicians about transplantation resources and about the comparative costs and patient outcomes at each transplant hospital affiliated with the OPTN.

IV. Provisions of the Final Rule

We are adding § 482.45 in regulations to add the new requirements concerning organ procurement organizations and transplant hospitals. The final rule strengthens the role of OPOs in the donation process, encourages the use of best practices, and provides a framework for better collaboration among organizations involved in organ, tissue, and eye donation with the goal of making transplants more readily available to the many patients who need them. We are confident these revisions to the current hospital conditions of participation will narrow the gap between the number of deaths of patients on the waiting list and the number of organs available for transplant.

The final rule will enable hospitals and OPOs to take advantage of the most recent research in organ donation by using protocols that have proved successful for referring potential donors, obtaining family consent for donation, educating OPO and hospital staff, and reviewing death records. We have written the provisions of this final rule to enable hospitals and OPOs to take advantage of these best practices in order to increase organ donation rates nationwide.

In view of the research that has been done in the field of organ donation, the demonstrated increase in organ donation rates in States that have passed routine referral laws, and the comments we have received, we believe that routine referral of all deaths is the most effective way to increase organ donation rates substantially.

However, the final rule does not mandate how best practices are to be applied at the local level. It is designed to maximize organ donation while allowing local communities a certain amount of flexibility in applying the rule to their local situation. The rule takes this approach in order to encourage innovation at the local level and to assure that successful alternative approaches are not disrupted. For example, although the final rule specifies that the individual requesting donation from the family of a potential donor must be trained in the family consent process, it allows the hospital to decide whether that individual will be an OPO representative, a tissue bank or eye bank representative, or a hospital employee and encourages OPOs and hospitals to collaborate in defining how the process will occur [§ 482.45(a)(3)].

There are a number of sources of information and guidance about the most recent research in organ donation for OPOs and hospitals that want to ensure their protocols reflect best practices. One of these is The Partnership for Organ Donation, Inc., Two Oliver St., Boston, MA 02109–4901. The Partnership is an independent, nonprofit organization that sponsors research in organ donation and has worked with hospitals and

OPOs across the United States to improve organ donation.

The current regulations require the governing board of a hospital to have a written protocol to identify potential organ donors and carry out the other requirements of section 1138 of the Act. We have revised how these requirements are articulated, in keeping with the way in which we are generally transforming these conditions of participation for hospitals. The final rule requires that the hospital actually carry out specified responsibilities. For example, the hospital must contact the OPO or its designee about every death or imminent death that occurs in the hospital. This requirement will relieve the hospital of the responsibility for keeping current with changing potential donor criteria and determining the medical suitability of potential organ donors (unless the hospital has an alternative arrangement with its tissue and eye banks in which the hospital determines the medical suitability of tissue and eye donors) and will ensure that no potential donors are missed.

The Commonwealth of Pennsylvania passed legislation effective in March 1995, requiring that hospitals report all deaths to the OPO. The OPO for southeastern Pennsylvania, Delaware and southern New Jersey (Delaware Valley Transplant Program) has seen a 40 percent increase in organ donation since enactment of the law. In contrast, since 1990, the organ donation rate nationwide has increased an average of less than 3 percent per year and, as noted above, remained essentially unchanged in 1997. Other OPOs that have instituted routine referral within some hospitals in their service areas have seen similar, substantial increases in those hospitals. One OPO reported that two of their hospitals had their first organ donors in 1997, yielding five organs for transplantation. Another OPO that uses routine referral has seen their consent rate for organ donation among African Americans rise from 32.7 percent in 1991 to 68.9 percent in 1997.

The final rule specifies that the hospital must ensure, in collaboration with the OPO, that the family of each medically suitable potential donor identified by the OPO is advised of the right to donate or decline to donate. This provision is based on research that indicates that consent to organ donation is highest when the formal request is made by OPO staff or by OPO and hospital staff together rather than by hospital staff alone. While we require collaboration, we also recognize that hospital staff may wish to perform this function and may do so when properly trained. Under this final rule, the hospital may choose to have OPO staff contact potential donor families, have hospital and OPO staff jointly perform this function, or rely exclusively on hospital staff. If hospital staff, rather than organ procurement coordinators, initiate the request for donation to the family, it is important that they be trained in best practices for advising the family of their options and initiating the request for donation. Therefore, the rule requires that hospital staff who initiate the request for donation must be designated requestors. A designated requestor is defined in the regulation as an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology of approaching potential donor families and requesting organ or tissue donation. The Pennsylvania routine referral legislation also requires that hospital employees complete a course in how to approach families and explain their donation options.

One recent study demonstrated a 47 percent increase in consent rates when best practices are used. [Gortmaker SL, Beasley CL, Sheey E, et al, unpublished data] Another recent study demonstrated that training of hospital staff about protocols for organ donation is significantly associated with superior rates of organ donation. However, the study also demonstrated that current levels of training about organ donation are inadequate. [Evanisko MJ, Beasley, CL, Brigham, LE "Readiness of Critical Care Physicians and Nurses to Handle Requests for Organ Donation." *American Journal of Critical Care* (1998; 7:4–12]

The final rule requires a hospital to ensure that it works cooperatively with the OPO, a tissue bank, and an eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors during necessary testing and placement of donated organs and tissues [§ 482.45(a)(5)]. Review of death records is the key method an OPO uses to determine a hospital's donor potential. It allows the hospital to develop strategies for improving donation and allocating resources to educate hospital staff. Review of death records also enables hospitals to recognize missed opportunities for organ donation and to identify hospital, OPO, and recovery staff who may need additional education.

The final rule mandates that a hospital have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes [§ 482.45(a)(2)]. This agreement can be used to spell out whether the OPO will determine medical suitability for tissue and eye donation and handle the referral process for tissue and eye donors or whether an alternative referral process will be used. If the OPO determines medical suitability and refers tissue and eye donors, it must do so using the definition of potential tissue and eye donor and a notification protocol developed in consultation with the tissue bank and eye bank designated by the hospital. An alternative arrangement might, for example, specify that the hospital will refer potential tissue and eye donors directly to the tissue bank and eye bank. We added these requirements in the final rule to ensure that tissue and eye banks have potential tissue and eye donors referred to them appropriately and expeditiously. It is important to note when discussing agreements between hospitals, tissue banks and eye banks, that some OPOs are also tissue and/or eye banks. This regulation does not preclude a hospital from having a single agreement with such an OPO which encompasses the services the OPO will provide in regard to organs, tissues, and eyes, in lieu of separate agreements with an OPO, a tissue bank, and an eye bank.

The final rule stresses cooperation and collaboration between all parties. It is our expectation that in communities where hospitals, OPOs, and tissue and eye banks have not yet developed cooperative relationships, these requirements will encourage all parties to work together with the best interests of their communities in mind to establish protocols that will increase organ, tissue, and eye donation rates.

The final rule requires transplant centers to provide requested organ-transplant-related data to the OPTN, the Scientific Registry, the OPO, or the Department, as requested by the Secretary [§ 482.45(b)(3)]. Currently, transplant centers report data to the OPTN, the OPO, and the Scientific Registry regarding the disposition of organs made available for transplant. These data include information regarding why a center declines the offer of a donated organ, information regarding patients waiting for transplants, information on those who have received a transplant, follow-up data on patients who have received a transplant, and information on those offered an organ for transplant but declining to use the organ at the time. At the time the proposed rule was published, submission of these data by transplant centers to the OPTN was voluntary.

However, a final rule with comment period, Organ Procurement and Transplantation Network [98–HRSA–01, 63 F.R. 16295, published April 2, 1998, effective October 1, 1998] has made reporting by transplant centers mandatory. In accordance with 42 CFR 121.11(a)(2) (record maintenance requirements for OPOs and transplant programs) and 121.11(b)(2) (reporting requirements for OPOs and transplant hospitals) these programs are required to maintain and report data to the OPTN, the Scientific Registry, and the Secretary. Therefore, the requirement in this HCFA final rule, when considered with the requirements in the OPTN rule, will ensure that data will be available to implement section 1138 of the Act to operate the OPTN and to obtain information from the Scientific Registry, and to provide information to the Secretary, patients, their families, physicians, and the public.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) requires agencies to analyze options for regulatory relief for small entities. Consistent with the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat most hospitals and most other providers, physicians, health care suppliers, carriers, and intermediaries as small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The Unfunded Mandate Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual mandated expenditure by State, local, and tribal governments, in the aggregate, or by both the private sector, of $100 million. The notice has no mandated consequential effect on State, local, tribal governments, or the private sector and will not create an unfunded mandate.

We have determined that this regulation is economically significant under E.O. 12866 and a major rule for purposes of Congressional review of agency rulemaking.

We do not anticipate that the provisions in this final rule will have a substantial economic impact on most hospitals, including small rural hospitals. However, we believe it is desirable to inform the public of our projections of the likely effects of the final rule on hospitals, small rural hospitals, OPOs, tissue banks, and eye banks.

There are several provisions in this regulation that will impact hospitals to a greater or lesser degree. Specifically, hospitals will be required to have written protocols; have agreements with an OPO, a tissue bank, and an eye bank; refer all deaths that occur in the hospital to the OPO; ensure that hospital employees who initiate a request for donation to the family of a potential donor have been trained as "designated requestors"; and work cooperatively with the OPO, tissue bank, and eye bank in educating hospital staff, reviewing death records, and maintaining potential donors. It is important to note that because of the inherent flexibility of this regulation, the extent of the economic impact of most of these requirements is dependent upon decisions which will be made either by the hospital or by the hospital in conjunction with the OPO and/or the tissue and eye banks. Thus, the impact on individual hospitals will vary and is subject in large part to their decision making. The impact will also vary according to each hospital's current organ donation protocols and level of compliance with existing law and regulation. For example, eight States already have routine referral legislation, and in several other States, OPOs and hospitals have routine referral agreements.

The first requirement in the regulation is that hospitals have and implement written protocols that reflect the various provisions of the regulation. Currently, under section 1138 of the Act and the existing regulation, hospitals must have written protocols for organ donation. Most hospitals will need to rewrite their existing protocols to conform with this regulation; however, this is clearly not a requirement that imposes a significant economic burden.

In addition, a hospital must have an agreement with its designated OPO and with at least one tissue bank and at least one eye bank. Although the current regulation does not specifically require an agreement with an OPO, hospitals are required under section 1138 of the Act and the existing regulation to refer all potential donors to an OPO. Also, the OPO regulation at 42 CFR 486.306 requires, as a qualification for designation as an OPO, that the OPO have a "working relationship" with at least 75 percent of the hospitals in its service area that participate in the Medicare and Medicaid programs and that have an operating room and the equipment and personnel for retrieving organs. Therefore, presumably most hospitals already have some type of agreement with their designated OPO. Although hospitals may need to modify those existing agreements, the need to make modifications would not impose a significant economic burden. The current regulation does not require hospitals to have agreements with tissue and eye banks. However, we must assume most hospitals have agreements with tissue and eye banks, since hospitals are the source for virtually all tissues and eyes.

The provision of the regulation that will have the most impact on hospitals is the requirement to notify the OPO about every death that occurs in the hospital. Approximately 400 deaths per year occur in the average hospital in the U.S. If the average notification telephone call to the OPO takes five minutes, the hospital will need approximately four person days per year to make the calls. We believe this is a generous estimate. One OPO has reported that the referral calls hospitals make to the vendor that handles their referral calls average one minute, 20 seconds. An OPO in a State with routine referral estimates the calls they receive from hospitals, on average, last no more than three to five minutes. (A call about a ventilator dependent patient might last an hour, but, of course, these calls are infrequent.)

Most likely, additional time would be needed by the hospital staff person to annotate the patient record or fill out a form regarding the disposition of the call. This paperwork should take no more than five minutes. Therefore, paperwork associated with the call might add approximately four person days per year.

In summary, the impact of referring all deaths to the OPO should be limited to approximately eight person days per year. Thus, the economic impact for a hospital of referring all deaths will be small. Although small rural hospitals have fewer staff than the average hospital, there are also fewer deaths to report. Therefore, the impact on small rural hospitals of notifying OPOs of all deaths would be commensurately small.

Under the regulation, a hospital may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the hospital's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a hospital chose to contact both a tissue bank and an eye bank directly on all deaths, it would need a total of 16 person days per year (i.e., five minutes per call (four person days) and five minutes for paperwork (four person days) in order to call both the tissue and eye bank directly). Again, the impact is small, and the regulation permits the hospital to decide how this process will take place. Note that many communities already have a one-phone-call system in place, and this regulation does not preclude, and in fact encourages, these local systems. Also, some OPOs are also tissue banks and/or eye banks. A hospital that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

This regulation requires that the individual who initiates a request for donation to the family of a potential donor must be an OPO representative or a "designated requestor." A designated requestor is an individual who has taken a course offered or approved by the OPO in the methodology for approaching families of potential donors and requesting donation. It is difficult to estimate how much hospital staff time will be needed for designated requestor training, as it is dependent both upon the length of the course and the number of employees the hospital wishes to have trained. An OPO in a State with similar legislation has a one-day training course for its designated requestors. The Partnership for Organ Donation, an independent, nonprofit organization that sponsors research in organ donation and work with hospitals and OPOs to improve organ donation, offers intensive two-day training for hospital donation teams. Even if the OPO requires a two-day training course and the hospital wants to have a sufficient number of designated requestors to ensure that all shifts are covered, this provision of the regulation would not have a significant economic impact on hospitals. In addition, the hospital may choose to have donation requests initiated by the OPO staff rather than hospital staff, in which case there is no economic impact.

The regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in educating hospital staff. We do not believe education of hospital staff will demand a significant amount of staff time. For example, the Pacific Northwest Transplant Bank recently worked with the Oregon Health Sciences University to educate all 400 nurses and all staff physicians, chaplains, social workers, and medical interpreters. The OPO transplant coordinator gave a 15-minute presentation highlighting staff responsibilities and changes in the hospital protocol, with an emphasis on a more sensitive family approach. Presentations were given at times convenient for the staff, such as at regular staff meetings and before and after shift reports. Clearly, such brief educational presentations, even if given once a year or more often, would not have a significant impact on hospitals. Also, most OPOs currently have educational programs for their hospitals. For example, one OPO has one full-time and eight part-time staff devoted to hospital staff training for the hospitals in their service area.

The regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in reviewing death records. Most OPOs currently conduct extensive hospital death record reviews. The hospital's assistance is required only to provide lists of hospital deaths and facilitate access to records.

Finally, the regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in maintaining potential donors while necessary testing and placement of potential donated organs and tissues take place. If this regulation is successful in increasing organ donation, hospitals will have more brain dead potential donors to maintain until family consent is obtained and the donors' organs are removed. As referenced earlier, The OPO for southeastern Pennsylvania, Delaware and southern New Jersey (Delaware Valley Transplant Program) has seen a 40 percent increase in organ donation since enactment of routine referral legislation in Pennsylvania in 1995. In contrast, since 1990, the organ donation rate nationwide has increased an average of less than 3 percent per year. Of course, we must take into account the fact that eight States have some type of routine referral legislation, although most of it is quite recent. Therefore, if we assume that this regulation will result in a more modest increase of 20 percent (10 percent or 548 additional donors per year) in the two years following the effective date, there will be approximately 1,096 additional donors in that two-year period (based on the 5,475 organ donors in 1997). (Note that the goal of the Organ and Tissue Donation Initiative is an increase in the organ donation rate of 20 percent in two years.) However, since there are approximately 5,200 short stay hospitals in the U.S., the additional number of donors per hospital would be quite small.

It is possible that because of the final rule, some small rural hospitals may have their first organ donors. Therefore, we considered the impact on a rural hospital of maintaining a brain dead potential donor on a ventilator until the organs can be placed. Small rural hospitals with full ventilator capability should have no trouble maintaining a potential donor until the organs are placed. However, some small rural hospitals have ventilator capability only so that a patient can be maintained until he or she is transferred to a larger facility for treatment. These hospitals would have the equipment and staffing to maintain a potential donor until transfer to another facility occurs. Many small rural hospitals do not have ventilator capability and would be unable to maintain a potential donor however, small rural hospitals without ventilator capability will still be obligated to notify the OPO, or a third party designated by the OPO, of all individuals whose death is imminent or who have died in the hospital. We do not believe there will be a significant impact on small rural hospitals no matter what their situation—full ventilator capability, ventilator capability only for patients who are to be transferred to a larger facility, or no ventilator capability.

It is important to estimate the costs to OPOs of screening the significant number of additional calls they will receive. There are 63 OPOs that will receive the referral calls generated by the approximately 2,080,000 hospital deaths per year. This means that the average OPO will receive 33,016 referral calls per year (90 referral calls per day). An OPO may choose to hire a third party vendor to triage the phone calls or may hire staff to handle the calls in-house. Currently, some OPOs use a combination of systems, with OPO staff

handling calls received during business hours and a vendor handling calls received during non-business hours. One OPO that uses a vendor pays $1,200 per month for the first 300 calls and $3.20 per call for each additional call. The vendor's staff enters all necessary information into a database that can be accessed by the OPO and also contacts the tissue and eye banks on every call. One vendor that triages calls for a number of OPOs charges $5 to $10 per call, depending upon the type of services desired.

An OPO that chooses to have calls handled by OPO staff will have costs for staff training, additional telephone lines and computers, and computer software upgrades. One OPO in a State with routine referral legislation, has 70 percent of the 32,000 calls it receives every year handled by a vendor and the remainder handled by OPO staff. An OPO representative estimated their start-up costs to be approximately $40,000. The OPO pays the vendor $180,000 per year and spends $220,000 per year on salary and benefits for the additional staff that is needed for routine referral. The OPO has also seen their telephone charges increase by about 50 percent. However, in spite of these costs, the OPO has maintained its organ acquisition costs below the national average. A representative from an OPO in a State that recently passed routine referral legislation called its start-up costs "significant." However, in the seven-month period since the legislation went into effect, the OPO's organ donors have increased by 70 percent (when compared to the nine-month period prior to the legislation), while its organ acquisition cost has risen just 3 percent.

It is clear that set-up costs for OPOs to handle the increased calls resulting from routine referral are significant. They include costs for improving communications and computer systems and hiring and training staff. Likewise, ongoing costs for OPOs of handling the increased calls are significant. The OPO that pays its vendor $1,200 per month for the first 300 calls and $3.20 per call for each additional call would spend approximately $105,280 to screen 32,000 calls per year. An OPO that uses a vendor that charges $10 per call would spend $320,000 per year to screen 32,000 calls. An OPO that uses both a vendor and OPO staff might spend more than $400,000 per year to screen 32,000 calls. However, the critical issue is whether the acquisition cost per organ will increase significantly. The acquisition cost per organ is a function not only of the cost per call, but the number of calls required for each organ, given the system set up by the OPO. Based on the experience of some OPOs in States with routine referral, these costs are likely to remain the same or increase only slightly.

We received many comments about the proposed rule which expressed concern that the regulation would have a negative impact on tissue and eye banks. A few commenters even predicted that some eye banks would be forced out of business. However, the final rule contains safeguards to ensure that OPOs consult with tissue and eye banks in establishing protocols for identifying and referring tissue and eye donors to the tissue banks and eye banks chosen by the hospital. Therefore, we do not believe there will be a significant impact on a substantial number of tissue and eye banks.

We expect that this regulation will increase tissue and eye donations as well as organ donations. A study of the impact of the Pennsylvania routine referral legislation on tissue and eye donations was presented at the Fourth International Society for Organ Sharing Congress and Transplant Congress in July 1997. [Nathan, HM, Abrams, J, Sparkman BA, et al. "Comprehensive State Legislation Increases Organ and Tissue Donations'] This study used data from the Delaware Valley Transplant Program, the OPO for southeastern Pennsylvania, and found that although the maximum donor age was lowered from <66 to <60, tissue donations increased 14 percent from 1994 through 1996. The study also showed that eye donations increased 28 percent during the same period, despite more restrictive donor criteria. This virtually eliminated the waiting list for suitable corneas. North Carolina's routine referral legislation became effective in October 1997. The Carolina Organ Procurement Agency (one of three North Carolina OPOs) has seen heart valve donations increase by 109 percent and other tissue donations increase 114 percent through May 1998.

As discussed earlier, we expect this regulation will result in an additional 1,096 donors in the first two years after it goes into effect. In 1997, there were 3.11 organs transplanted for every organ donor (17,032 cadaveric transplants from 5,475 organ donors). Therefore, an additional 1,096 donors could result in an additional 3,409 transplants, that is, an additional 3,409 lives being improved or saved in the first two years of the regulation.

Transplants are performed both to save lives and to improve the quality of recipients' lives. In the case of kidneys, dialysis is an alternative to transplantation for extended periods of time. Therefore, for most patients, kidney transplantation is not necessary for survival, but it does significantly improve the quality of the transplant recipient's life. Physical health while on dialysis is significantly impaired, and dialysis imposes major stresses and substantial inconveniences in carrying out normal activities. Of the 17,032 transplants from cadaveric donors performed in 1997, slightly more than half (50.4 percent), or 8,584, were kidney transplants.

For all other organs, a transplant is, in most cases, necessary for survival. In the first two years, this regulation will result in approximately 1,718 (50.4 percent of 3,409) lives vastly improved by kidney transplants and 1,691 (49.6 percent of 3,409) lives both vastly improved and prolonged by transplantation of other major organs.

The following reasoning was used to construct a benefit cost analysis in the OPTN regulation. It is common, in benefit cost analysis, to use a concept termed "value of a statistical life" to estimate in monetary terms the benefits from lives saved. Estimates of this value can be derived from information on the preferences of individuals for reduction in the risk of death, and their willingness to pay for such reductions. In this case, however, it is important to take into account two major factors that reduce the usefulness of a statistical life as a measure: (a) most organ transplant recipients are much older than average and hence gain fewer years than would average beneficiaries of other lifesaving interventions, and (b) an organ transplant carries a substantial risk of either the graft or the patient not surviving. For example, according to historical data from the 1997 Annual Report of the OPTN (page 23), only 62 percent of cadaveric kidney grafts survive 5 years, and only 81 percent of these patients survive 5 years (patient survival is substantially higher because dialysis is usually an option if the organ fails). Five year patient survival rates for livers are 72 percent, for hearts 67 percent, and for lungs 43 percent. As each year passes, additional patients die, though at lower rates than in the first year or two. Survival rates have improved in recent years, but the statistical expectation of increased longevity and/or graft survival from a transplant is on the order of a dozen years (a rough estimate since we do not yet know what the long-term experience will become), not the 40 years (half a lifetime) that underlies most estimates of statistical lives. Using the more conservative concept of a "statistical life-year" saved, then, the benefit from 1,691 non-renal transplant recipients

approximates 20,292 life years in the first two years of the regulation.

In a recent rulemaking on tobacco, HHS estimated the value of a statistical life-year at about $116,000 (see **Federal Register** of August 28, 1996, at page 44576). This was a conservative estimate that would reasonably apply to organ procurement and transplantation (though a figure several times as high could equally reasonably be used). Applying the conservative $116,000 value to statistical life-years saved by non-renal organ transplants, the social benefit from 1,687 non-renal transplants is approximately $2,353,872,000 in the first two years of the regulation.

In order to calculate the transplantation costs that will occur because of this regulation, we have used five-year costs, which include follow-up costs. The OPTN regulation uses Milliman and Robertson's estimates for the five-year cost of major organ transplants (adjusted for survival). They are as follows: liver, $394,000; heart, $317,000; lung, $312,000; heart-lung, $351,000; pancreas, $149,000; and kidney $172,000. According to HCFA actuaries, kidney transplantation costs are offset by reductions in other medical costs over time, such as dialysis costs.

In 1997, 24 percent of transplants performed were liver transplants, 13 percent were heart transplants, 5 percent were lung transplants, 6 percent were pancreas transplants, and 1/3 of one percent were heart-lung transplants. Slightly more than half of all major organ transplants in 1997 were kidney transplants. (Figures are approximate.)

Earlier we postulated a 20 percent increase in organ donation in a two-year period, resulting in an additional 1,096 donations and 3,409 organs transplanted in the first two years after the effective date of the legislation. If we assume that all the gains from the regulation occur in the first two years (that is, the number of additional donors remains at 1,096 in every two-year period) or 584 per year, the number of additional donors due to this regulation would stand at approximately 2,740 (5 years X 548 donors per year) in a five-year period, and the number of additional transplants would stand at 8,521.

Using 1997 percentages, we would expect that during the five year period following the effective date of this regulation, there would be an additional 2,045 liver transplants, 1,108 heart transplants, 426 lung transplants, 28 heart-lung transplants, and 511 pancreas transplants. Therefore, the approximate overall five-year cost of the additional non-renal organ transplants would be as follows: liver, $805,730,000; heart, $351,236,000; lung, $132,912,000; heart-lung, $9,828,000 and pancreas, $76,139,000, for a total greater than $1,375,845,000. As stated earlier, kidney transplant costs are offset overtime by reductions in other medical costs, such as kidney dialysis. Therefore, we did not include the costs of kidney transplants in the calculation of the overall five year transplantation costs. Some offsetting reductions in medical costs for other types of transplants are also likely, but are not as readily quantifiable.

We also calculated the statistical and social benefits from the 4,118 non-renal transplants during a five-year period. Using our earlier methodology, the five year statistical and social benefits would be as follows: 49,416 additional life-years and $5,732,256,000 additional social benefit.

Below, provided by HCFA actuaries, are estimated costs to the Medicare program resulting from additional organ transplants.

ESTIMATED COSTS TO THE MEDICARE PROGRAM

Fiscal year	Cost (millions)
1999	35
2000	75
2001	115
2002	160
2003	200
2004	240

These estimates include both the cost of the transplants and follow-up medical care, adjusted for patient survival. Costs increase every year because each year's cost includes transplants performed in that year plus medical care for those transplant recipients who received transplants in previous years. Thus, the impact in each year was calculated as the sum of the number of transplants in that year plus the cost of patient graft survivals. Our analysis indicates that administrative costs to the Medicare budget are minimal.

Cost estimates were adjusted for:

- Normal annual percentage increase in organ donation and transplantation that would occur independent of the impact of this regulation;
- The fact that the Medicare population tends to be sicker than the general transplant population;
- The fact that approximately ⅓ of kidney transplant recipients leave Medicare end stage renal disease (ESRD) rolls after three years if the transplant is successful; and
- Reduced costs to the Medicare program for kidney transplant recipients because they no longer need dialysis.

HCFA actuaries also estimated the cost to the Medicare program of transplants and follow-up medical care for transplant recipients in FY 2004 *without* the regulation to be $1,630,000,000. Total costs to the Medicare program in FY 2004 *with* this regulation total $1,870,000,000 ($1,630,000,000 + $240,000,000). Thus, the regulation will increase the cost to the Medicare program and associated medical care by approximately 15 percent in FY 2004.

Note the cost estimate for 1999 does not include the first three months of FY 1999. Although the regulation's effective date will be in August 1998, it is not expected that there will be an impact on the Medicare budget until January 1, 1999.

We attempted to compare the costs to hospitals and OPOs of the proposed regulation and the final regulation. The proposed regulation would have permitted OPOs to define both "potential donor" and the notification protocol hospitals would use to refer potential donors. We cannot quantify the costs of implementing the proposed regulation because we have no way of knowing with any certainty, what the individual OPOs would decide to do if given the responsibility of deciding which deaths would be referred by their hospitals. Some OPOs might exclude individuals by age; other OPOs might exclude individuals by clinical category (e.g., HIV positive or metastatic cancer). However, even absent a comparison of costs, we believe the final regulation is a more effective mechanism to increasing organ donation. Referring all deaths is a better approach because it creates a clear standard for hospitals to follow, it ensures that hospitals will not erroneously assume that a potential donor should be excluded, it allows early intervention by the OPO to guide the organ and tissue procurement process to ensure a successful outcome, and will make it easier to standardize transplantation waiting time.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and

approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements summarized and discussed below.

Section 482.45(a) Standard: Organ Procurement Responsibilities

The burden associated with the requirements of this section include; (1) the requirement to maintain protocol documentation demonstrating that the five requirements of this section have been met, (2) the requirement for a hospital to notify an OPO and/or tissue bank of a death, and (3) the time required for a hospital to document and maintain OPO referral information.

We estimate that, on average, the requirement to maintain protocol documentation demonstrating that the requirements of this section have been met will impose one hour of burden per hospital (on 5,200 hospitals) on an annual basis (a total of 5,200 annual burden hours).

The burden associated with the requirement for a hospital to notify an OPO of every death that occurs in the hospital is estimated to be approximately 400 calls per year in an average hospital, multiplied by five minutes per call, for a total annual burden of 34 hours per hospital (a total of 176,800 annual burden hours). We believe this is a generous estimate. One OPO has reported that the referral calls hospitals make to the vendor that handles their referral calls average one minute, 20 seconds. An OPO in a State with routine referral estimates the calls they receive from hospitals, on average, last no more than three to five minutes. (A call about a ventilator dependent patient might last an hour, but, of course, these calls are infrequent.)

In addition, time would be needed by the hospital staff person to annotate the patient record or fill out a form regarding the disposition of the call. The burden associated with this activity is estimated that be five minutes per call, multiplied by 400 calls, for an annual burden of 34 burden hours per hospital (a total of 176,800 annual burden hours).

Under the regulation, a hospital may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the hospital's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a hospital chose to contact both a tissue bank and an eye bank directly on all deaths, it would need an additional 68 annual hours of burden per hospital (a total of 353,600 annual burden hours), (i.e., five minutes per call and five minutes for paperwork in order to call both the tissue and eye bank directly). Again, the impact is presumed to be small, since the regulation permits the hospital to decide how this process will take place. It should be noted that many communities already have a one-phone-call system in place, and this regulation does not preclude, and in fact encourages, these local systems. Also, some OPOs are also tissue banks and/or eye banks. A hospital that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

Section 482.45(b) Standard: Organ Transplantation Responsibilities

If a hospital performs any type of transplants, it must provide organ-transplant-related data as requested by the Organ Procurement and Transplantation Network (OPTN), the Scientific Registry (SR), or the organ procurement organizations (OPOs). The hospital must also provide such data directly to the Department of Health and Human Services when requested by the Secretary.

The new reporting requirement imposed with this section, which is subject to the PRA, is the requirement on an estimated 300 transplant hospitals to provide data to 63 OPOs. Based upon discussions with industry representatives the data that will be requested by the OPO's is data currently requested and supplied by transplant hospitals to the OPOs. Therefore, we are assigning one token-hour for the burden associated with this requirement.

The burden related to the requirement for a hospital to provide data to the OPTN and SR is currently imposed by the Health Resources and Services Administration and is approved under OMB number 0915–0157, with an expiration date of 10/31/99. The burden associated with these requirements ranges from .1 hour to .4 hours per submission, depending on donor type. On an annual basis the total number of submissions is 285,600 for a total burden of 39,970 hours. The remaining requirement that data may be requested by the Secretary, would be collected on an individual basis and/or during the pursuit of an administrative action, audit, or investigation, and is therefore not subject to the requirements of the PRA as defined under 5 CFR 1320.3 (h)(6) and 1320.4.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in *§§ 482.45(a) and 482.45(b)*. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn.: John Burke HCFA–3005–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer

List of Subjects in 42 CFR Part 482

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

Subpart B—Administration

§ 482.12 [Amended]

2. In § 482.12, paragraph (c)(5) is removed.

Subpart C—Basic Hospital Functions

3. A new § 482.45 is added to subpart C to read as follows:

§ 482.45 Condition of participation: Organ, tissue, and eye procurement

(a) *Standard: Organ procurement responsibilities.* The hospital must have and implement written protocols that:

(1) Incorporate an agreement with an OPO designated under part 486 of this chapter, under which it must notify, in a timely manner, the OPO or a third party designated by the OPO of individuals whose death is imminent or who have died in the hospital. The OPO determines medical suitability for organ donation and, in the absence of alternative arrangements by the hospital, the OPO determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose;

(2) Incorporate an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage and distribution of tissues and eyes, as may be appropriate to assure that all usable tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement;

(3) Ensure, in collaboration with the designated OPO, that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to decline to donate. The individual designated by the hospital to initiate the request to the family must be an organ procurement representative or a designated requestor. A designated requestor is an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ or tissue donation;

(4) Encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

(5) Ensure that the hospital works cooperatively with the designated OPO, tissue bank and eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place.

(b) *Standard: Organ transplantation responsibilities.* (1) A hospital in which organ transplants are performed must be a member of the Organ Procurement and Transplantation Network (OPTN) established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274) and abide by its rules. The term "rules of the OPTN" means those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act which are enforceable under 42 CFR 121.10. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act, or with the requirements of this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

(2) For purposes of these standards, the term "organ" means a human kidney, liver, heart, lung, or pancreas.

(3) If a hospital performs any type of transplants, it must provide organ-transplant-related data, as requested by the OPTN, the Scientific Registry, and the OPOs. The hospital must also provide such data directly to the Department when requested by the Secretary.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.778, Medical Assistance Program)

Dated: June 15, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 16, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16490 Filed 6–17–98; 10:12 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 98–117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On June 15, 1998, the Commission released a Notice of Proposed Rule Making and Order. The Commission adopted a number of changes in this proceeding to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications in several services.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau (202) 418–2780.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making and Order* (*Order*) in MM Docket No. 98–93 and FCC No. 98–117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Order* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Order

1. The Commission is making a number of amendments to the FM technical rules in order to clarify existing rules. Because these amendments are non-controversial and will have no adverse effect on any party, we find that notice and comment procedures are unnecessary and need not be followed prior to their adoption.

Ordering Clauses

2. *Accordingly, it is ordered,* that these minor rule changes shall become effective July 22, 1998.

List of Subjects

47 CFR Part 73

Radio, reporting and recordkeeping requirements.

47 CFR Part 74

Radio, reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

Accordingly, Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Amend § 73.45 by revising paragraph (c) introductory text and paragraph (c)(2) to read as follows:

§ 73.45 AM antenna systems.

* * * * *

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by

a method described in § 73.51(a)(1) or (d). (If the changes are due to the construction of FM or TV transmitting facilities, see §§ 73.316, 73.685, and 73.1692.) Upon completion of any necessary repairs or adjustments, or upon completion of authorized construction or modifications, the licensee must make a new determination of the antenna resistance using the procedures described in § 73.54. Operating power should then be determined by a direct method as described in § 73.51. Notification of the value of resistance of the antenna system must be filed with the FCC in Washington, DC as follows:

(1) * * *

(2) Whenever AM stations use direct reading power meters pursuant to § 73.51, a letter notification to the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, must be filed in accordance with § 73.54(e).

3. Amend § 73.54 by revising paragraph (d) introductory text to read as follows:

§ 73.54 Antenna resistance and reactance measurements.

* * * * *

(d) A letter of notification must be filed with the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, when determining power by the direct method pursuant to Section 73.51 and must specify the antenna or common point resistance at the operating frequency. The following information must also be kept on file at the station:

* * * * *

4. Amend § 73.58 by revising paragraph (f) to read as follows:

§ 73.58 Indicating instruments.

* * * * *

(f) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, information requested in accordance with § 73.3549 may be filed by letter with the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, to request additional time as may be required to complete repairs of the defective instrument.

5. Amend § 73.68 by revising paragraph (b), the note following paragraph (b) and paragraph (d)(1) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(b) A station having an antenna sampling system constructed according to the specifications given in paragraph (a) of this section may obtain approval of that system by submitting an informal letter request to the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau. The request for approval, signed by the licensee or authorized representative, must contain sufficient information to show that the sampling system is in compliance with all requirements of paragraph (a) of this section.

Note to paragraph (b): A public notice dated December 9, 1985 giving additional information on approval of antenna sampling systems is available through the Internet at http://www.fcc.gov/mmb/asd/decdoc/letter/1985–12–09—sample.html.

* * * * *

(d) * * *

(1) Special Temporary Authority (*see* § 73.1635) shall be requested and obtained from the Commission's Audio Services Division, Mass Media Bureau in Washington to operate with parameters at variance with licensed values pending issuance of a modified license specifying parameters subsequent to modification or replacement of components.

* * * * *

6. Amend § 73.69 by revising paragraphs (c) and (d)(5) to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the allowed period, an informal letter request in accordance with § 73.3549 of the Commission's rules must be filed with the FCC, Attention: Audio Services Division, Mass Media Bureau in Washington, DC for such additional time as may be required to complete repairs of the defective instrument.

(d) * * *

(5) An informal letter request for modification of license shall be submitted to the FCC, Attention: Audio Services Division, Mass Media Bureau in Washington, DC within 30 days of the date of monitor replacement. Such request shall specify the make, type, and serial number of the replacement monitor, phase and sample current indications, and other data obtained pursuant to paragraph (d) of this section.

* * * * *

7. Amend § 73.151 by revising paragraph (a) introductory text and (a)(1) introductory text to read as follows:

§ 73.151 Field strength measurements to establish performance of directional antennas.

(a) In addition to the information required by the license application form, the following showing must be submitted to establish, for each mode of directional operation, that the effective measured field strength (RMS) at 1 kilometer (km) is not less than 85 percent of the effective measured field strength (RMS) specified for the standard radiation pattern, or less than that specified in § 73.189(b) for the class of station involved, whichever is the higher value, and that the measured field strength at 1 km in any direction does not exceed the field shown in that direction on the standard radiation pattern for that mode of directional operation:

(1) A tabulation of inverse field strengths in the horizontal plane at 1 km, as determined from field strength measurements taken and analyzed in accordance with § 73.186, and a statement of the effective measured field strength (RMS). Measurements shall be made in at least the following directions:

* * * * *

8. Amend § 73.213 by revising paragraph (a) introductory text to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by § 73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that (i) any area predicted to receive interference lies completely within any area currently predicted to receive co-channel or first-adjacent channel interference as calculated in accordance with paragraph (a)(1) of this section, or that (ii) a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

* * * * *

9. Amend § 73.258 by revising paragraph (d) to read as follows:

§ 73.258 Indicating instruments.

* * * * *

(d) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, an informal letter request in accordance with § 73.3549 may be filed with the FCC, Attention: Audio Services Division, Mass Media Bureau, in Washington, DC for such

additional time as may be required to complete repairs of the defective instrument.

10. Amend § 73.312 by revising paragraph (b) to read as follows:

§ 73.312 Topographic data.

* * * * *

(b) The Commission will not ordinarily require the submission of topographical maps for areas beyond 24 km (15 miles) from the antenna site, but the maps must include the principal city or cities to be served. If it appears necessary, additional data may be requested.

* * * * *

11. Amend § 73.313 by revising paragraphs (c)(2) and (d)(2) to read as follows:

§ 73.313 Prediction of coverage.

* * * * *

(c) * * *

(2) To use the chart for other ERP values, convert the ordinate scale by the appropriate adjustment in dB. For example, the ordinate scale for an ERP of 50 kW should be adjusted by 17 dB [10 log (50 kW) = 17 dBk], and therefore a field strength of 60 dBu would correspond to the field strength value at (60 − 17 =) 44 dBu on the chart. When predicting the distance to field strength contours, use the maximum ERP of the main radiated lobe in the pertinent azimuthal direction (do not account for beam tilt). When predicting field strengths over areas not in the plane of the maximum main lobe, use the ERP in the direction of such areas, determined by considering the appropriate vertical radiation pattern.

(d) * * *

(2) Where the 3 to 16 kilometers portion of a radial extends in whole or in part over a large body of water or extends over foreign territory but the 50 uV/m (34 dBu) contour encompasses land area within the United States beyond the 16 kilometers portion of the radial, the entire 3 to 16 kilometers portion of the radial must be included in the computation of antenna height above average terrain. However, where the 50 uV/m (34 dBu) contour does not so encompass United States land area, and (i) the entire 3 to 16 kilometers portion of the radial extends over large bodies of water or over foreign territory, such radial must be completely omitted from the computation of antenna height above average terrain, and (ii) where a part of the 3 to 16 kilometers portion of a radial extends over large bodies of water or foreign territory, only that part of the radial extending from 3 kilometers to the outermost portion of land in the United States covered by the radial used must be used in the computation of antenna height above average terrain.

* * * * *

12. Amend § 73.503 by revising the note at the end of the section to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

Note to § 73.503: Commission interpretation on this rule, including the acceptable form of acknowledgements, may be found in the *Second Report and Order* in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 FCC 2d 141 (1981); the *Memorandum Opinion and Order* in Docket No. 21136, 90 FCC 2d 895 (1982), and the *Memorandum Opinion and Order* in Docket 21136, 97 FCC 2d 255 (1984). *See also,* "Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations," Public Notice, 7 FCC Rcd 827 (1992), which can be retrieved through the Internet at http://www.fcc.gov/mmb/asd/nature.html.

13. Amend § 73.561 by revising paragraphs (c) and (d) to read as follows:

§ 73.561 Operating schedule; time sharing.

* * * * *

(c) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Services Division, Mass Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, DC, Attention: Audio Services Division, Mass Media Bureau.

(d) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraphs (a) or (b) of this section or to continue operating, the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission, *Provided,* That notification is sent to the Commission in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, no later than the 10th day of limited or discontinued operation. During such period, the permittee shall continue to adhere to the requirements of the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the permittee or licensee will notify the FCC, Attention: Audio Services Division of the date that normal operations resumed. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, Special Temporary Authority (*see* Section 73.1635) must be requested to remain silent for such additional time as deemed necessary. The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of license to the contrary.

14. Amend § 73.1350 by revising paragraph (g) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(g) Whenever a transmission system control point is established at a location other than the main studio or transmitter, a letter of notification of that location must be sent to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, within 3 days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

* * * * *

15. Amend § 73.1560 by revising paragraph (d) to read as follows:

§ 73.1560 Operating power and mode tolerances.

* * * * *

(d) *Reduced power operation.* In the event it becomes technically impossible to operate at authorized power, a broadcast station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC. If operation at reduced power will exceed 10 consecutive days, notification must be made to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, not later than the 10th day of the lower power operation. In the event that normal power is restored within the 30 day period, the licensee must notify the FCC of the date that normal operation was restored. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority (*see*

§ 73.1635) must be made to the FCC in Washington, DC for additional time as may be necessary.

16. Amend § 73.1680 by revising paragraph (b) introductory text to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) Prior authority from the FCC is not required by licensees and permittees to erect and commence operations using an emergency antenna to restore program service to the public. However, an informal letter request to continue operation with the emergency antenna must be made within 24 hours to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, within 24 hours after commencement of its use. The request is to include a description of the damage to the authorized antenna, a description of the emergency antenna, and the station operating power with the emergency antenna.

* * * * *

17. Revise § 73.1750 to read as follows:

§ 73.1750 Discontinuance of operation.

The licensee of each station shall notify by letter the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.

18. Amend § 73.3542 by revising paragraph (b) to read as follows:

§ 73.3542 Application for emergency authorization.

* * * * *

(b) Emergency operating authority issued under this section may be cancelled or modified by the FCC without prior notice or right to hearing. *See also* § 73.1250, Broadcasting Emergency Information, for situations in which emergency operation may be conducted without prior authorization, and § 73.1635, Special Temporary Authorization (STA), for temporary operating authorizations necessitated by circumstances not within the ambit of this section.

19. Amend § 73.3544 by revising paragraph (b) introductory text to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(b) An informal application, see § 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, to cover the following changes:

* * * * *

20. Revise § 73.3549 to read as follows:

§ 73.3549 Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

21. Add a new § 73.3617 to read as follows:

§ 73.3617 Broadcast information available on the Internet.

The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions. The Mass Media Bureau Internet address ishttp://www.fcc.gov/mmb/; the Audio Services Division address ishttp://www.fcc.gov/mmb/asd/; the Video Services Division address is http://www.fcc.gov/mmb/vsd/; the Policy and Rules Division address is http://www.fcc.gov/mmb/prd/; and the Enforcement Division address is http://www.fcc.gov/mmb/enf/.

Alphabetical Index

22. Add the following references to the Alphabetical Index at the end of part 73, in alphabetical order:

Construction Near or Installation On an AM Tower 73.1692

* * * * * * *

Information available on the Internet 73.3617

* * * * * * *

Installation On or Construction Near an AM Tower 73.1692

* * * * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

23. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307 and 554.

24. Amend § 74.734 by revising paragraph (a)(4) to read as follows:

§ 74.734 Attended and unattended operation.

(a) * * *

(4) A letter notification must be filed with the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, providing the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the transmitter promptly should such action be deemed necessary by the FCC. Such information shall be kept current by the licensee.

* * * * *

25. Amend § 74.751 by revising paragraph (c) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(c) Other equipment changes not specifically referred to in paragraphs (a) and (b) of this section may be made at the discretion of the licensee, provided that the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, is notified in writing upon the completion of such changes.

* * * * *

26. Amend § 74.763 by revising paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, shall be notified in writing of the date normal operations resumed. If causes beyond the control of the licensee make it impossible to comply within the allowed period, a request for Special Temporary Authority (*see* § 73.1635 of this chapter) shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

27. Amend § 74.784 by revising paragraph (b) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station authorized under the provisions of this Subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC, Attention: Video Services Division, Mass Media Bureau, shall be notified of the call letters of each station rebroadcast, and the licensee of the low power TV or TV broadcast translator station shall certify it has obtained written consent from the licensee of the station whose programs are being retransmitted.

* * * * *

28. Amend § 74.1231 by revising paragraph (b) introductory text to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201–220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided,* however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

* * * * *

29. Amend § 74.1234 by revising paragraph (a)(4) to read as follows:

§ 74.1234 Unattended operation.

(a) * * *

(4) The FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, shall be supplied by letter with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * *

30. Amend § 74.1235 by revising paragraph (c) and adding paragraphs (d)(1), (d)(2) and (d)(3) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(c) The effective radiated power of FM booster stations shall be limited such that the predicted service contour of the booster station, computed in accordance with § 73.313 paragraphs (a) through (d) of this chapter, may not extend beyond the corresponding service contour of the primary FM station that the booster rebroadcasts. In no event shall the ERP of the booster station exceed 20% of the maximum allowable ERP for the primary station's class.

(d) * * *

(1) Translator stations located within 125 kilometers of the Mexican border may operate with an ERP up to 50 watts (0.050 kW) ERP. A booster station may not produce a 34 dBu interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour of the booster station exceed 8.7 km from the transmitter site in the direction of the Mexican border.

(2) Translator stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with an ERP in excess of 50 watts, up to the maximum permitted ERP of 250 watts per § 74.1235(b)(2). However, in no event shall the location of the 60 dBu contour lie within 116.3 km of the Mexican border.

(3) Applications for translator or booster stations within 320 km of the Canadian border may employ an ERP up to a maximum of 250 watts, as specified in § 74.1235(a) and (b). The distance to the 34 dBu interfering contour may not exceed 60 km in any direction.

* * * * *

31. Amend § 74.1251 by revising paragraph (b)(6) to read as follows:

§ 74.1251 Technical and equipment modifications.

* * * * *

(b) * * *

(6) Any change in the output frequency of a translator.

* * * * *

32. Add a new § 74.1290 to read as follows:

§ 74.1290 FM translator and booster station information available on the Internet.

The Mass Media Bureau's Audio Services Division provides information on the Internet regarding FM translator and booster stations, rules, and policies at http://www.fcc.gov/mmb/asd/.

Alphabetical Index

33. Add the following reference to the Alphabetical Index at the end of part 74, in alphabetical order:

Information on the Internet, FM translator and booster stations	74.1290

[FR Doc. 98–16513 Filed 6–19–98; 8:45 am]
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Proposed Rules

Federal Register
Vol. 63, No. 119
Monday, June 22, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–12]

Proposed Revision of Class E Airspace; Price, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Carbon County Airport. This new SIAP requires airspace extending upward from 1200 feet above the surface in order to contain an associated holding procedure.

DATES: Comments must be received on or before August 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Price, UT. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 36 SIAP to the Carbon County Airport, Price, UT. This amendment proposes to add a 1200-foot Class E area extension to the south in order to accommodate a holding pattern for the SIAP. The holding pattern is required to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Carbon County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Price, UT

Price, Carbon County Airport, UT
(Lat. 39°36'43" N, long. 110°45'02" W)
Carbon VOR/DME
(Lat. 39°36'11" N, long. 110°45'13" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Carbon VOR/DME, and within 1.8 miles each side of the 200° radial of the Carbon VOR/DME extending from the 4.3-mile radius to 7 miles south of the Carbon VOR/DME; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°50'00" N, long. 111°00'00" W; to lat. 39°45'00" N, long. 110°30'00" W; to lat. 39°05'00" N, long. 110°30'00" W; to lat. 39°05'00" N, long. 111°00'00" W; to lat. 39°21'00" N, long. 111°05'00" W; thence to point of beginning; excluding that airspace within Federal Airways, the Moab, UT, and the Salt Lake City, UT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on June 8, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–16546 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[HCFA–1906–P]

RIN 0938–AI44

Medicare Program; Payment for Teleconsultations in Rural Health Professional Shortage Areas

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement parts of section 4206 of the Balanced Budget Act of 1997 by amending our regulations to provide for payment for professional consultation by a physician and certain other practitioners via interactive telecommunication systems. Payment may be made if the physician or other practitioner is furnishing a service for which payment may be made under Medicare to a beneficiary residing in a rural area that is designated as a health professional shortage area.

This proposed rule would also establish a methodology for determining the amount of payments made for the consultation.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 21, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1906–P, P.O. Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1906–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Craig Dobyski, (410) 786–4584.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Telemedicine is the use of telecommunications to furnish medical information and services. Generally, two different kinds of technology are in use in telemedicine. One technology is two-way interactive video. This technology is used, for example, when a consultation involving the patient, the primary care giver, and a specialist is necessary. The videoconferencing equipment at two (or more) locations permits a "real-time" or "live" consultation to take place, providing for two-way exchange of information between the locations during the examination. We refer to this process as "teleconsultation." Teleconsultation typically involves a primary care practitioner with a patient at a remote, rural (spoke) site and a medical specialist (consultant) at an urban or referral center (hub) facility, with the primary care practitioner seeking advice from the consultant concerning the patient's condition or course of treatment.

The other technology, called "store and forward," is used to transfer video images from one location to another. A camera or similar device records (stores) an image(s) that is then sent (forwarded) via telecommunications media to another location for later viewing. The sending of x-rays, computed tomography scans, or magnetic resonance images are common store-and-forward applications. The original image may be recorded and/or forwarded in digital or analog format and may include video "clips" such as ultrasound examinations, where the series of images that are sent may show full motion when reviewed at the receiving location.

Currently, Medicare allows payment for those telemedicine applications in which, under conventional health care delivery, the medical service does not require face-to-face "hands on" contact between patient and physician. For example, Medicare permits coverage of teleradiology, which is the most widely used and reimbursed form of telemedicine, as well as physician interpretation of electrocardiogram and electroencephalogram readings that are transmitted electronically. In contrast, Medicare does not cover other physicians services delivered through telecommunications systems because,

under the conventional delivery of medicine, those services are furnished in person.

B. Legislation

In section 4206 of the Balanced Budget Act of 1997 (BBA)(Public Law 105–33), the Congress required that, not later than January 1, 1999, Medicare Part B (Supplementary Medical Insurance) pay for professional consultation via telecommunications systems. Under section 4206(a), the provision applies to consultations with a physician or with certain other practitioners (identified below) furnishing a service for which payment may be made under Part B, provided the service is furnished to a beneficiary who resides in a county in a rural area that is designated as a health professional shortage area, and notwithstanding that the physician or other practitioner furnishing the consultation is not at the same location as the physician or other practitioner furnishing the service to the beneficiary.

The practitioners listed in section 4206(a) are physicians (as defined in section 1861(r) of the Social Security Act (the Act)) and those practitioners described in section 1842(b)(18)(C) of the Act. The practitioners described in 1842(b)(18)(C) include: physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, anesthesiologist's assistants, nurse-midwives, clinical social workers, and clinical psychologists.

Section 4206(b) requires that the Secretary establish a methodology for determining the amount of payments made for a consultation, within the following parameters:

- The payment is to be shared between the referring practitioner and the consulting practitioner. The amount of the payment is not to exceed the current fee schedule amount that would be paid to the consulting practitioner.
- The payment is not to include any reimbursement for any telephone line charges or any facility fees, and a beneficiary may not be billed for these charges or fees.
- The payment is to be subject to the coinsurance and deductible requirements under section 1833(a)(1) and (b) of the Act.
- The payment differential of section 1848(a)(3) of the Act is to be applied to services furnished by nonparticipating physicians. (Section 1848(a)(3) specifies that, in the case of physicians services furnished by a nonparticipating physician, the payment basis is 95 percent of what it would have been had the service been furnished by a participating physician.)
- The provisions of sections 1848(g) and 1842(b)(18) of the Act are to apply. (Section 1848(g) provides a limitation on charges to beneficiaries and provides sanctions if a physician, supplier, or other person knowingly and willfully repeatedly bills or collects for services in violation on the limitation. It also provides for sanctions if a physician, supplier, or other person fails (1) to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge for the service, or (2) to timely refund excess collections. In addition, it requires that physicians and suppliers submit claims, for services they furnished to a beneficiary, to a carrier on behalf of the beneficiary using a standard claim form specified by the Secretary. The statute imposes a penalty for failure to so submit the claim. In addition, section 1848(g) prohibits imposing any charge relating to completing and submitting the claim. Section 1842(b)(18) provides that services furnished by a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, anesthesiologist's assistant, certified nurse-midwife, clinical social worker, or clinical psychologist for which payment may be made on a reasonable charge or fee schedule basis may be made only on an assignment-related basis. It also limits the beneficiary's liability to any applicable deductible and coinsurance amounts. It further provides for sanctions against a practitioner who knowingly and willfully bills (or collects an amount) in violation of the limitation.)
- Further, payment for the consultation service is to be increased annually by the update factor for physicians services determined under section 1848(d) of the Act.

In addition, the statute directs that, in establishing the methodology for determining the amount of payment, the Secretary take into account the findings of the report required by section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the findings of the report required by section 4206(c) of the BBA, and any other findings related to clinical efficacy and cost-effectiveness of telehealth applications.

C. HCFA Telemedicine Demonstration Program

In October 1996, we began a demonstration of Medicare fee-for-service payment for teleconsultation services. The demonstration is expected to run through fiscal year 2001. Under the demonstration, providers at selected sites in Iowa, Georgia, North Carolina, and West Virginia have been furnishing teleconsultation services. These sites were selected as a result of proposals submitted during our 1993 and 1994 general research solicitations and a subsequent expansion request in 1998. Special data collection plans are in place for those health care providers participating in the demonstration. The demonstration is being independently evaluated through a cooperative agreement with the Center for Health Policy Research in Denver.

In this demonstration, we are experimenting with a variety of payment options beyond that proposed under this rule. Since relatively little is known at present about either the process or content of telemedicine service delivery, we expect to learn from the demonstration about the general characteristics and practice patterns of telemedicine practitioners. After completion of the demonstration, we will compare the results to operations under the reimbursement strategy that would be established under this proposed rule, and we may propose adjustments, as appropriate.

II. Provisions of This Proposed Rule

This rule proposes to establish policies for implementing the provisions of section 4206 of the BBA that address Medicare reimbursement for telehealth services.

A. Professional Consultation Services Via Telecommunications Systems

The title of section 4206 of the BBA refers to telehealth services, although the text specifically refers to professional consultation services via telecommunications systems. In this document, we will refer to professional consultation services via telecommunications systems as teleconsultations.

A consultation is a type of service provided by a physician (or, under section 4206, certain other health care practitioners) "whose opinion or advice regarding evaluation and/or management of a specific problem is requested by another physician or other appropriate source. A [physician] consultant may initiate diagnostic and/or therapeutic services. The request for a consultation from the attending physician or other appropriate source and the need for consultation must be documented in the patient's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the patient's medical record and

communicated to the requesting physician or other appropriate source." [1] We do not consider a teleconsultation to be a new medical service; rather, we consider it to be a new way or process of delivering a consultation.

Earlier in this document we included a discussion of the two general technologies used in telemedicine, that is, store and forward, and interactive video. We believe that, although asynchronous transmission may be sufficient for diagnostic interpretation of images (such as radiological images), a teleconsultation is equivalent to a traditional, face-to-face consultation only if it permits the consultant to control the examination of the patient as the examination is taking place. With store-and-forward technology, the consultant is reviewing an examination that has already occurred and is limited to whatever information was recorded at that time.

We believe that a teleconsultation instead must be an interactive patient encounter. The teleconsultation must meet the criteria included in the descriptor quoted above for a given consultation service and include—

- Clinical assessment via medical examination directed by the consultant (specialist);
- The use of multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way real time communication;
- Participation of the referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant; and
- Feedback of the consultation assessment to the referring practitioner.

Note that, to qualify for Medicare payment, the patient must be present and the telecommunications technology must allow the consulting practitioner to control an interactive medical examination of the patient. Store and forward technologies would not allow a medical examination of the patient but would allow only a review of a prior examination, test, or diagnostic procedure, which would be outside the scope of this proposed rule. By requiring an interactive communications system, however, we are not mandating full motion video, but are requiring interactive real time audio-video communication. We recognize that full motion video requires large bandwidth that may be physically and/or financially unavailable to many health care entities in rural areas. This rule would not prohibit the use of lower end interactive video technology in which less than full motion video is sufficient for the consulting practitioner to control an examination of the patient. As such, we would encourage the use of the simplest and least expensive equipment that meets the real time requirement proposed under this rule.

The [Physicians'] Current Procedural Terminology (CPT) is a systematic listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other medical practitioners. We propose to cover as teleconsultation services the following categories of services listed as consultant services in the 1998 CPT:

Office or Other Outpatient Consultations—CPT codes 99241 through 99245;

Initial Inpatient Consultations—CPT codes 99251 through 99255;

Follow-up Inpatient Consultations—CPT codes 99261 through 99263; and

Confirmatory Consultations—CPT codes 99271 through 99275.

Proposed Regulatory Provisions

Based on the above, we would specify, in paragraph (a) of proposed § 410.75 (Consultations via telecommunication systems), that Medicare Part B pays for professional consultations furnished by means of interactive telecommunications systems if the following conditions, and others discussed later in this preamble, are met:

- The medical examination of the beneficiary is under the control of the consultant practitioner.
- The consultation involves the participation of the referring practitioner, as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant.
- The consultation results in a written report that is furnished to the referring practitioner.

In addition, at paragraph (b) of § 410.75, we would define "interactive telecommunications systems" as multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way, real time consultation among the patient, consulting practitioner, and referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consulting practitioner. We would also specify that telephones, facsimile machines, and electronic mail systems do not meet the definition of interactive telecommunications systems.

B. Coverage and Eligibility Provisions

In addition to limiting telemedicine coverage to consultation services, section 4206 of the BBA limits coverage of teleconsultations to services furnished to Medicare beneficiaries residing in a "county in a rural area * * * that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act * * *." Section 332 of the Public Health Service Act authorizes the Secretary to designate health professional shortage areas (HPSAs) based on criteria established by regulation. HPSAs are defined in section 332 to include geographic areas, population groups, and facilities with shortages of health professionals. Section 332(a)(1)(A) speaks to geographic HPSAs.

We found the language "a county in a rural area * * * that is designated as a health professional shortage area" to be somewhat ambiguous. We considered that the Congress may have intended that the benefit apply only to county-wide HPSAs (an entire county that is designated as an HPSA), but have rejected that construction of the law. First, it would seem illogical to restrict coverage of teleconsultations to county-wide HPSAs. The purpose of this provision is to provide access to health care for beneficiaries who now may face barriers to that care because they reside in rural areas where there is a shortage of medical professionals. We do not believe the Congress intended that only beneficiaries in the largest HPSAs be entitled to the telemedicine benefit. We note that an existing statutory provision related to HPSAs, that is, the 10 percent incentive payment for physician services furnished in HPSAs, does not make a distinction between county-wide HPSAs and other HPSAs. Second, we found that, by limiting coverage of teleconsultations to county-wide HPSAs, we would perpetuate barriers to care because many HPSAs would be excluded. From a random review of HPSA listings, we found that beneficiaries in at least one eastern State would not be entitled to telemedicine coverage because there are no county-wide HPSAs in that State. In several western States, we found that between 50 percent and 95 percent of rural HPSAs would be excluded as sites for the telehealth benefit. Therefore, for purposes of this section, we would specify that teleconsultations are covered only in rural HPSAs as defined in the Public Health Service Act.

[1] [Physicians'] Current Procedural Terminology (4th Edition, 1998, copyrighted by the American Medical Association), p. 20.

We had a number of concerns about the statutory language that ties coverage of teleconsultations to services furnished to a beneficiary "*residing* in a county in a rural area * * *." [emphasis supplied]. Medicare claims processing systems are not geared to making such eligibility determinations. Therefore, such a provision would add another "gatekeeping" responsibility to the presenting practitioner by requiring him or her to screen the beneficiary's address for eligibility for the teleconsultation benefit. To do this, the practitioner would need to develop and maintain a list of HPSAs for all areas covering the entire population base from which he or she would potentially draw patients. Moreover, the centralized beneficiary file, which contains the beneficiary's address and is maintained by us, would also have to contain a list of HPSAs nationwide against which the beneficiary's address would be compared. We note that, if an eligibility error were made, it would not be detected until a claim is submitted, which occurs only after the service has been furnished. At that point, Medicare payment on the claim would be denied, and the beneficiary would be liable for the full charges for the teleconsultation service. We believe that the Congress did not intend to expose Medicare beneficiaries to this financial risk. Therefore, we propose to use the location of the presenting practitioner at the time of the service, that is, where the beneficiary is receiving care, as proxy for the beneficiary's residence. If the location of the presenting practitioner is in a rural HPSA (as defined above), we believe it can be reasonably presumed that the beneficiary resides in a rural HPSA. However, if a beneficiary can demonstrate that he or she lives in a rural HPSA, we would allow payment for the teleconsultation without regard to the location of the originating facility (site of presentation).

Section 4206(a) of the BBA specifically requires that Medicare make payments for professional consultation via telecommunications systems with a physician or "a practitioner (described in section 1842(b)(18)(C) of the Act." Nonphysician practitioners who may provide a teleconsultation include physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists or anesthesiologists' assistants, certified nurse midwives, clinical social workers, and clinical psychologists. However, for consultation services delivered via traditional face-to-face "hands on" methods, current Medicare policy does not permit certified registered nurse anesthetists, anesthesiologist's assistants, clinical social workers, or clinical psychologists to bill for these services. We note that, although section 4206 of the BBA provides for coverage of teleconsultations furnished by certain health practitioners other than physicians, this provision does not change current Medicare coverage policy for consultation services delivered in person.

Proposed Regulatory Provisions

Based on the above, we would provide at § 410.75 that, as a condition for Medicare Part B payment for the teleconsultation—

- The referring and consultant practitioner must be any of the following:
  - + A physician as described in existing § 410.20.
  - + A physician assistant as defined in existing § 491.2.
  - + A nurse practitioner as defined in existing § 491.2.
  - + A clinical nurse specialist as described in existing § 424.11(e)(6).
  - + A certified registered nurse anesthetist or anesthesiologist's assistant as defined in existing § 410.69.
  - + A certified nurse-midwife as defined in existing § 405.2401.
  - + A clinical social worker as defined in existing § 410.73(a).
  - + A clinical psychologist as described in existing § 410.71(d).
- The services must be furnished to a beneficiary residing in a rural area as defined in section 1886(d)(2)(D) of the Act that is designated as an HPSA under section 332(a)(1)(A) of the Public Health Service Act. We would further specify that for purposes of this requirement, the beneficiary is deemed to be residing in such an area if the teleconsultation presentation takes place in such an area.

C. Payment Provisions

General Payment

Section 4206 of the BBA provides that payment for a teleconsultation may not exceed the amount in the current fee schedule for the consulting practitioner. Medicare payment for physicians services is made, under section 1848 of the Act, on the resource-based fee schedule. Payment to the other health care practitioners listed earlier, authorized under section 1833 of the Act, is based on a percentage of the physician fee schedule. Therefore, we would pay for teleconsultation services furnished by physicians at 80 percent of the lower of the actual charge or the fee schedule amount for physicians services, and those furnished by other practitioners at 80 percent of the lower of the actual charge or that practitioner's respective percentage of the physician fee schedule (that is, the fee schedule for clinical psychologists would be 100 percent of the physician fee schedule; for clinical social workers, the fee schedule would be 75 percent of the clinical psychologist fee schedule; and for all other eligible health care practitioners, the fee schedule would be 85 percent of the physician fee schedule).

Site of Service

We recognize that the consulting and presenting practitioners will likely be located a significant distance apart, raising the issue of where the service is being furnished. The site of service determines the pricing locality to be used for Medicare payment. In our view, the use of telecommunications to furnish a medical service effectively transports the patient to the consultant (a concept analogous to the traditional delivery of health care, in which the patient travels to the consultant's office). Therefore, we believe that the site of service for a teleconsultation is the location of the practitioner providing the consultation. We thus would designate the location of the consultant at the time of the service as the applicable pricing locality for teleconsultation claims. As a result, the fee schedule for the consultation will reflect the geographic adjustment factor applicable to the consulting practitioner.

We considered designating the location of the beneficiary as the site of service (and pricing locality) but rejected this option because this alternative would likely result in lower payment levels than the consultant would have otherwise received if the beneficiary had traveled to his or her office for a consultation. This would probably occur because the consulting practitioner, who is a medical specialist, is usually affiliated with a "hub" facility, which is typically a major medical center located in an urban or metropolitan area. The referring practitioner is located at the "spoke" facility, which is typically a primary care facility and, under the provisions of section 4206 of the BBA, is in a rural HPSA area. In the majority of cases, we would expect that the different geographic adjustment factors used to adjust the relative value units (RVUs) under the physician fee schedule are somewhat higher for urban areas than for rural areas because the cost of operating a medical practice in an urban area is generally higher.

We also considered using a neutral site of service, which would be neither

practitioner's respective location. This option was based on the proposition that the service is furnished in "cyber space" rather than at a fixed location. Under this approach, payment would have been based on the RVUs for the service, with no geographic adjustment factor applied. As a result, payment would be the same nationwide, regardless of the practitioners' geographic locations. We rejected this option because the use of unadjusted national RVUs could result in a payment amount that exceeds the amount the consulting practitioner would have otherwise received, thereby exceeding the payment ceiling imposed by section 4206 of the BBA. Conversely, use of unadjusted national RVUs could result in a lower payment amount than the consulting practitioner would have otherwise received, thereby creating a disincentive for specialists to furnish teleconsultations.

Payment Allocation

Section 4206 further provides that payment be shared between the referring and consulting practitioners. We propose to allocate the payment in the following manner: the consulting practitioner will receive 75 percent of the applicable amount, and the presenting practitioner will receive the remaining 25 percent of the applicable amount. Using a hypothetical consultation payment of $100, this would result in a payment of $75 to the consultant and $25 to the presenting practitioner.

We arrived at these percentages by developing a mean teleconsultation RVU to simulate the level of intensity for both a consulting practitioner and a presenting practitioner. In determining the mean RVUs for the consulting practitioner, we used fiscal year (FY) 1997 RVUs applicable to the proposed covered consultation services (that is, CPT codes 99241–99245, 99251–99255, 99261–99263, and 99271–99275). In determining the mean RVUs for the presenting practitioner, we used FY 1997 RVUs applicable to office/inpatient visit services for established patients (that is, CPT codes 99211–99215, 99221–99223, and 99231–99233). We decided to use established visit codes to represent the presenting practitioner's role in the teleconsultation to reflect the fact that a primary care practitioner has already seen the patient to have determined that a consultation is necessary. RVUs were weighted by the frequency of 1997 national allowed services attributed to each CPT code. The weighted mean RVUs for both consulting and presenting practitioner were calculated as a percentage of the total simulated weighted mean teleconsultation RVUs. A summary of this process is shown in the following table.

PRACTITIONER ALLOCATION SUMMARY TABLE

	Model #1 w/50% work expense reduction to presentation component	Model #2 w/full RVUs
Intensity Simulation: *		
Mean Consultation RVU	3.21	3.21
Mean Established Office/Inpatient Visit RVU	0.91	1.35
Total RVU	4.12	4.56
Percentage Allocation: **		
Consulting Practitioner	80%	70%
	(3.21 + 4.12 = 77.91%)	(3.21 + 4.56 = 70.39%)
	Rounded to 80%	Rounded to 70%
Presenting Practitioner	20%	30%
	(0.91 + 4.12 = 22.09%)	(1.35 + 4.56 = 29.60%)
	Rounded to 20%	Rounded to 30%
Mid Point of Rounded Allocations: Consultant 75%; Presenter 25%.		

*FY 1997 National mean RVU weighted by FY 1997 national allowed services.
Consultation component includes CPT codes: 99241–99245; 99251–99255; 99261–99263; 99271–99275.
Presentation component includes CPT codes 99211–99215; 99221–99223; 99231–99233.
**Allocations rounded to nearest 5 percent.

The table illustrates two models. In the first model, the work RVUs for outpatient/inpatient evaluation and management (E&M) services were reduced by 50 percent to account for the fact that the presenting practitioner is performing no "new" work. This reduction factor is used under the current Medicare telemedicine demonstration project. Under the demonstration, the work expense for the primary care practitioner is reduced by 50 percent to reflect the fact that the practitioner would have already billed for an initial E&M service prior to initiating the teleconsultation. This model results in a payment allocation in which the consulting practitioner would receive 80 percent of the payment and the presenting practitioner would receive 20 percent of the payment.

In the second model, we did not use a 50 percent reduction in developing the allocation methodology, on the theory that there may be instances in which the medical needs of the patient require a greater amount of work on the part of the presenting practitioner. This model resulted in an allocation in which the consulting practitioner would receive 70 percent and the presenting practitioner would receive 30 percent of the total payment. Because of our lack of information about likely teleconsultation scenarios, we believe that it is reasonable to set the allocations at the midpoint of the values resulting from the two models, that is, a 75 percent allocation for the consulting practitioner and a 25 percent allocation for the presenting practitioner.

We considered reducing the presenting practitioner's share in cases in which the presenting practitioner is a nonphysician practitioner. Thus, if a patient had been presented to a physician by a physician assistant (PA), for example, we considered applying the PA payment rule to the PA's allocation; that is, we would have used 85 percent of the proposed 25 percent allocation as the payment basis for the presenting practitioner. Using a hypothetical physician fee schedule amount of $100, this would result in the following allocation for the consulting

practitioner and presenting practitioner (physician assistant):

Physician fee schedule for teleconsultation	$100.00
Less 75 percent consultant allocation	−75.00
Balance	$25.00
PA percent of physician fee schedule	× .85
PA allocation	$21.25

We rejected this option because we believe that only one service is being furnished and that service is a consultation; there is no "presentation" payable under the Medicare physician fee schedule. In teleconsultation, the resenting practitioner is acting as directed by the consultant. Therefore, in our view, he or she is acting as a surrogate for the consultant rather than as a nonphysician practitioner, and we decided that the payment rule for practitioners should not apply. Thus, the following payment allocation would apply for the consulting physician and a nonphysician presentation practitioner (using the hypothetical fee schedule amount of $100):

Physician fee schedule for teleconsultation	$100.00
75 percent consultant allocation	75.00
25 percent presentation allocation	25.00

However, when a consultation service is furnished by a nonphysician practitioner, rather than a physician, the amount of payment will be made according to the appropriate percentage of the physician fee schedule, which for most nonphysician practitioners is 85 percent. Using the same hypothetical physician fee schedule amount as above, the payment amounts for a nonphysician consulting practitioner and referring practitioner are as follows (when the nonphysician consulting practitioner's fee schedule is 85 percent of the physician fee schedule):

Physician fee schedule for consultation	$100.00
Nonphysician payment rule	× .85
Nonphysician fee schedule amount	$85.00
75 percent consultant allocation	−63.75
Presenting practitioner allocation	$21.25

Bundled Payment

We propose to use a bundled payment approach for teleconsultation services; that is, a single Medicare payment for the total amount due for the service will be made to the consulting practitioner. Under this approach, a claim for a teleconsultation service will be submitted by the consulting practitioner to his or her Medicare carrier. The carrier will make the full payment to the consultant who, in turn, will remit 25 percent of the total to the presenting practitioner. The consultant will be responsible for billing the beneficiary for coinsurance and deductible amounts and also remitting 25 percent of the total to the presenting practitioner. This proposal is consistent with our view that only one service—a teleconsultation—is being provided. As stated earlier, we believe that the presenting practitioner is not providing a distinct service, but acting as a surrogate for the consultant. We believe, moreover, that this approach is better for Medicare beneficiaries because they would receive only one bill for the coinsurance and deductible amount.

Note that the method of payment we have chosen for teleconsultations raises some issues under the physician self-referral law in section 1877 of the Act. Under this provision, a physician is prohibited from referring a Medicare patient to an entity (which can include another physician or a nonphysician practitioner) for the furnishing of certain designated health services if the physician or a member of the physician's immediate family has a financial relationship with that entity. Section 1877 defines "financial relationship" as an ownership or investment interest in the entity or a compensation arrangement with the entity. It is the compensation aspect of the self-referral law that could have a negative impact on teleconsultation payments.

We believe that a presenting physician who refers a case to a consulting practitioner has made a referral under the self-referral law. Under section 1877(h)(5)(A), a physician's referral is defined, in the case of an item or service covered under Part B, as the request by a physician for the item or service, including the request for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician. These referrals could potentially be prohibited if the physician and the providing entity have a financial relationship, such as a compensation arrangement. A compensation arrangement is defined in the law broadly to include any arrangement involving any remuneration between a physician and an entity (other than certain very narrowly defined exclusions). "Remuneration," in turn, is defined to include any remuneration, paid directly or indirectly, overtly or covertly, in cash or in kind. We have further defined the concept of "remuneration" in our regulations covering self-referrals for clinical laboratory services in 42 CFR 411.351 to include *any payment*, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, by an entity to a referring physician.

Our payment policy could place a presenting physician in the position of violating section 1877 if the presenting physician receives payments from the practitioner to whom he or she has referred and the services at issue are designated health services. In order to avoid such a result, we propose to interpret the payments that the consulting practitioner will forward to the presenting physician as falling outside of the definition of "remuneration." That is, we will not regard the consulting practitioner as actually making a payment to the presenting physician, but as simply serving as a "conduit" to pass a portion of the Medicare payment on to the presenting physician, strictly as an administrative convenience to us. We do not believe this interpretation violates the purpose of the self-referral law, which was specifically designed to prevent entities that furnish certain health services from purchasing referrals from physicians.

We considered requiring both the consulting and presenting practitioners to submit separate claims. This alternative was rejected because (1) two services are not being furnished; (2) the beneficiary would receive two cost sharing bills; and (3) the claims processing system would need to link claims from both practitioners to ensure that the total payment does not exceed the payment ceiling provided under section 4206 of the BBA. It would be difficult and costly to implement claims processing systems modifications that would be capable of identifying and linking related teleconsultation claims to prevent overpayments from occurring. Such an effort would become even more complex if two carriers were involved because the practitioners' locations fell within separate carrier jurisdictions. Moreover, total payment might exceed what the consultant would have otherwise received if the presenting practitioner were to submit a claim for a consultation at a higher intensity level than the consultant. For example, the consulting practitioner might bill for a consultation requiring only a detailed examination and low complexity medical decisionmaking, whereas the presenting practitioner might bill for a consultation with a

comprehensive examination and moderately complex decisionmaking. There is a 40 percent difference in the Medicare RVU values between these two services. Another overpayment could occur in those rare cases where the factor for the pricing locality for the presenting practitioner is higher than for the consulting practitioner.

Because of the difficulty in linking claims, we considered another approach that would have involved separate claims, but without linking. We considered establishing a new code for the presenting practitioner's role and pricing it at 25 percent of the average consultation amount. Under this option, the consultant's fee would be based on the appropriate fee schedule and adjusted by the geographic practice cost index, but would be reduced by the flat, national value paid to the presenting practitioner. However, this alternative achieves anomalous results; in several cases, the presenting practitioner would receive more than the consulting practitioner. Therefore, we rejected this option.

Coding: For teleconsultation coding purposes, we would develop modifiers to use in conjunction with existing CPT codes for consultation services. The purpose of the modifier is to identify the service as a consultation furnished via telecommunications systems. This approach conforms with our view that a teleconsultation is simply a new way of delivering a consultation, rather than a new service.

We considered developing a new coding structure for teleconsultations. We rejected this option, however, because it is administratively cumbersome for both the medical community and the Medicare program. First, the practitioner community is already familiar with the current codes for consultation. We believe it will be easier for practitioners to use a single modifier than an entirely new set of codes. Second, separate teleconsultation codes would unnecessarily double the number of current codes used for consultation services.

Proposed Regulatory Provisions

To reflect the above proposals and the payment provisions of section 4206 of the BBA, we would add a new § 414.62 (Payment for consultations via interactive telecommunication systems) to our regulations. We would specify, in paragraph (a), that Medicare total payments for a professional consultation conducted via interactive telecommunications systems may not exceed the current fee schedule amount for the service when furnished by the consulting practitioner. We would further specify that the payment (1) may not include any reimbursement for any telephone line charges or any facility fees, and (2) is subject to the coinsurance and deductible requirements of section 1833(a)(1) and (b) of the Act. We would also specify that the payment differential of section 1848(a)(3) of the Act applies to services furnished by nonparticipating physicians.

In paragraph (b), we would specify that the beneficiary may not be billed for any telephone line charges or any facility fees. In paragraph (c), we would provide that payment to nonphysician practitioners is made only on an assignment-related basis. Paragraph (d) would provide that only the consultant practitioner may bill for the consultation, and paragraph (e) would require the consultant practitioner to provide the referring practitioner 25 percent of any payments, including any applicable deductible or coinsurance amounts, he or she received for the consultation.

Paragraph (f) would specify that a practitioner may be subject to the sanctions provided for in 42 CFR chapter V, parts 1001, 1002, and 1103 if he or she (1) knowingly and willfully bills or collects for services in violation of the limitations of § 414.62 on a repeated basis, or (2) fails to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge or fails to timely refund excess collections.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for proposed rules with economically significant effects (that is, a proposed rule that would have an annual effect on the economy of $100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). The benefit changes in this proposed rule resulting from the BBA will not result in additional Medicare expenditures of $100 million or more for any single FY through FY 2003. Therefore, this proposed rule is not considered economically significant, and, thus, we have not prepared a regulatory impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We estimate that the cost of providing consultation services in accordance with section 4206 of the BBA will be approximately $20 million in FY 1999 and approximately $90 million by FY 2003. Note that the FY 1999 estimate reflects only a partial year estimate, given the January 1, 1999 effective date for teleconsultation coverage. We estimate that teleconsultation will cost approximately $270 million for the first 5 years of coverage, as indicated below:

MEDICARE COSTS

[In millions]

FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
$19	$39	$54	$70	$85

Additionally, this proposed rule would provide for payment exclusively for professional consultation with a physician and certain other practitioners via interactive telecommunication systems. Section 4206 of the BBA does not provide for payment for telephone line fees or any facility fees associated with teleconsultation that may be incurred by hospitals included in the telemedicine network.

Further, this rule does not mandate that entities provide consultation services via telecommunications. Thus, this rule would not require entities to purchase telemedicine equipment or to acquire the telecommunications infrastructure necessary to deliver consultation services via telecommunication systems. Therefore, this rule does not impose costs associated with starting and operating a telemedicine network.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV would be amended as follows:

A. Part 410.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 410.1 [Amended]

2. Section 410.1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read "Section 4206 of the Balanced Budget Act of 1997 (42 U.S.C. 1395j) sets forth the conditions for payment for professional consultations that take place by means of telecommunications systems.".

3. A new § 410.75 is added to subpart B to read as follows:

§ 410.75 Consultations via telecommunications systems.

(a) *General rule.* Medicare Part B pays for professional consultations furnished by means of interactive telecommunications systems if the following conditions are met:

(1) Each of the referring and consultant practitioner is any of the following:

(i) A physician as described in § 410.20.

(ii) A physician assistant as defined in § 491.2 of this chapter.

(iii) A nurse practitioner as defined in § 491.2 of this chapter.

(iv) A clinical nurse specialist as described in § 424.11(e)(6) of this chapter.

(v) A certified registered nurse anesthetist or anesthesiologist's assistant as defined in § 410.69.

(vi) A nurse-midwife as defined in § 405.2401 of this chapter.

(vii) A clinical social worker as defined in section 1861(hh)(1) of the Act.

(viii) A clinical psychologist as described at § 417.416(d)(2) of this chapter.

(2) The services are furnished to a beneficiary residing in a rural area as defined in section 1886(d)(2)(D) of the Act, and the area is designated as a health professional shortage area (HPSA) under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)). For purposes of this requirement, the beneficiary is deemed to be residing in such an area if the teleconsultation presentation takes place in such an area.

(3) The medical examination of the beneficiary is under the control of the consultant practitioner.

(4) The consultation involves the participation of the referring practitioner, as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant.

(5) The consultation results in a written report that is furnished to the referring practitioner.

(b) *Definition.* For purposes of this section, *interactive telecommunications systems* means multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way, real time consultation among the patient, consulting practitioner, and referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consulting practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of interactive telecommunications systems.

B. Part 414.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. Section 414.1 is revised to read as follows:

§ 414.1 Basis and scope.

This part implements the following:

(a) The indicated provisions of the following sections of the Act:

1833—Rules for payment for most Part B services.

1834(a) and (h)—Amounts and frequency of payments for durable medical equipment and for prosthetic devices and orthotics and prosthetics.

1848—Fee schedule for physician services.

1881(b)—Rules for payment for services to ESRD beneficiaries.

1887—Payment of charges for physician services to patients in providers.

(b) Sections 4206(a) and (b) of the Balanced Budget Act of 1997 (42 U.S.C. 1395j).

3. Section 414.62 is added to subpart A, to read as follows:

§ 414.62 Payment for consultations via interactive telecommunications systems.

(a) *Limitations on payment.* Medicare payment for a professional consultation conducted via interactive telecommunications systems is subject to the following limitations:

(1) The payment may not exceed the current fee schedule amount of the consulting practitioner for the health care services provided.

(2) The payment may not include any reimbursement for any telephone line charges or any facility fees.

(3) The payment is subject to the coinsurance and deductible requirements of section 1833(a)(1) and (b) of the Act.

(4) The payment differential of section 1848(a)(3) of the Act applies to services furnished by nonparticipating physicians.

(b) *Prohibited billing.* The beneficiary may not be billed for any telephone line charges or any facility fees.

(c) *Assignment required for nonphysician practitioners.* Payment to nonphysician practitioners is made only on an assignment-related basis.

(d) *Who may bill for the consultation.* Only the consultant practitioner may bill for the consultation.

(e) *Sharing of payment.* The consultant practitioner must provide to the referring practitioner 25 percent of any payments, including any applicable deductible or coinsurance amounts, he or she received for the consultation.

(f) *Sanctions.* A practitioner may be subject to the applicable sanctions provided for in chapter V, parts 1001, 1002, and 1003 of this title if he or she—

(1) Knowingly and willfully bills or collects for services in violation of the limitations of this section on a repeated basis; or

(2) Fails to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge for the service or fails to timely refund excess collections.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 14, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16278 Filed 6–19–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; DA 98–971]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Clarification; proposed rule.

SUMMARY: The Order released May 21, 1998 clarifies various issues pertaining to the *Second Report and Order and Further Notice of Proposed Rulemaking* released February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted and released May 21, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/da98971.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC. 20036.

Synopsis of Order on Reconsideration

I. Introduction

1. On February 26, 1998, the Commission released a *Second Report and Order and Further Notice of Proposed Rulemaking*, 63 FR 20326, April 24, 1998 (*Second Report and Order*), interpreting and implementing, among other things, the portions of section 222 of the Communications Act of 1934, as amended, that govern the use and disclosure of, and access to, customer proprietary network information (CPNI) by telecommunications carriers. Since the release of the *Second Report and Order*, a number of parties have requested that the Commission clarify various issues pertaining to that order. In response to these requests, the Common Carrier Bureau issues this order clarifying the *Second Report and Order* as follows:

(a) Independently-derived information regarding customer premises equipment (CPE) and information services is not CPNI and may be used to market CPE and information services to customers in conjunction with bundled offerings.

(b) A customer's name, address, and telephone number are not CPNI.

(c) A carrier has met the requirements for notice and approval under section 222 and the Commission's rules where it has both provided annual notification to, and obtained prior written authorization from, customers with more than 20 access lines in accordance with the Commission's former CPNI rules.

(d) Although a carrier must ensure that its certification of corporate compliance with the Commission's CPNI rules is made publicly available, it is not required to file this certification with the Commission.

II. Clarification of Marketing Uses of Customer Information Related to CPE or Information Services

2. Section 222(c)(1) establishes the limited circumstances in which carriers can use, disclose, or permit access to CPNI without first obtaining customer approval. In interpreting section 222(c)(1) in the *Second Report and Order*, the Commission adopted an approach that allows carriers to use CPNI, without first obtaining customer approval, to market improvements or enhancements to the package of telecommunications services the carrier already provides to a particular customer, which it referred to as the "total service approach."

3. The Commission's discussion, however, did not specifically address a carrier's ability to use CPNI when its customers obtain their telecommunications service as part of a bundled package that includes non-telecommunications service offerings, such as CPE or certain information services.

4. We make clear that, when a customer purchases CPE or information services from a carrier that are bundled with a telecommunications service, the carrier subsequently may use any customer information independently derived from the carrier's prior sale of CPE to the customer or the customer's subscription to a particular information service offered by the carrier in its

marketing of new CPE or a similar information service that is bundled with a telecommunications service. Neither CPE nor information services constitute "telecommunications services" as defined in the Act. Therefore, any customer information derived from the carrier's sale of CPE or from the customer's subscription to the carrier's information service would not be "CPNI" because section 222(f) defines CPNI in terms of information related to a "telecommunications service." As a result, in situations where the bundling of a telecommunications service with CPE, information services, or other non-telecommunications services is permissible, a carrier may use CPNI to target particular customers in a manner consistent with the *Second Report and Order*, and it also may use the customer information independently derived from the prior sale of the CPE, the customer's subscription to a particular information service, or the carrier's provision of other non-telecommunications offerings to market its bundled offering.

5. In an effort to further explain a carrier's obligation in the context of bundled offerings, we provide an example of how the Commission's rules would apply in the CMRS context. A CMRS provider could use CMRS-derived CPNI to target its high usage analog wireless customers to offer them new digital wireless service plans. If such an analog customer also had purchased previously a CMRS handset, or an information service such as voice mail, as part of a bundled offering from the carrier, the carrier also would have access to information concerning the customer's purchase of the carrier's CPE and information service that is independent from the CPNI derived from the provision of the CMRS service. Consistent with the total service approach, the carrier could use such customer information to market new digitally-compatible CPE and new voice mail service in conjunction with the offering of new digital wireless service in a single contact with the customer, without first obtaining the customer's approval.

6. In contrast, where a particular customer has not purchased CPE or information services from the carrier that is providing its telecommunications services, the carrier would be subsequently prohibited from using CPNI, without first obtaining customer approval, to market a bundled offering of CPE or information services with telecommunications services to such a customer. In this situation, absent customer approval, the carrier would be using CPNI in violation of section 222(c)(1) to market CPE or information services to a customer with whom they had no existing relationship derived from the carrier's sale of CPE or the customer's subscription to the carrier's information service. Similarly, the general knowledge that all wireline customers have a telephone would not permit carriers to use CPNI derived from wireline service to select those individuals to whom to market the carrier's CPE offerings.

7. We also clarify that, only where CPE or an information service is part of a bundled offering, including a telecommunications service, and the carrier is the existing CPE or information service provider, could the carrier use CPNI to market a new bundled offering that includes new CPE or similar information services. For example, carriers cannot use CPNI to select certain high usage customers to whom they also sold telephones, and then market only new CPE that is not part of a new bundled plan. Section 222(c)(1)(A) permits the use of CPNI, without first obtaining customer approval, only "in the provision of the telecommunications service from which such information is derived." Therefore, when a carrier has identified a customer through the use of CPNI, but is not offering a telecommunications service in conjunction with its marketing of CPE or information services, that carrier would be using CPNI outside the provision of the service from which it is derived, in violation of section 222 and the Commission's rules.

III. Customer's Name, Address, and Telephone Number

8. We clarify that a customer's name, address, and telephone number do not fall within the definition of CPNI, set forth in section 222(f)(1).

9. We consider this information to be part of a carrier's business record or customer list that identifies the customer and indicates how that customer can be contacted by the carrier. Although such information generally appears on a customer's billing statement, it does not pertain to the "telephone exchange service or toll service" received by the customer, as specified by the statutory definition in section 222(f)(1)(B). If the definition of CPNI included a customer's name, address, and telephone number, a carrier would be prohibited from using its business records to contact any of its customers to market any new service that falls outside the scope of its existing service relationship with those customers. In fact, under such an interpretation, a carrier would not even be able to contact a single customer in an effort to obtain permission to use their CPNI for marketing purposes because the carrier's mere use of its customer list to initiate contact with its customers would constitute a violation of section 222. This anomalous result was clearly not intended by section 222. Therefore, we clarify that a carrier's use of its customers' name, address, and telephone number for marketing purposes would not be subject to the CPNI restrictions in section 222(c)(1) because such information is not CPNI. Thus, under section 222 and the Commission's rules, a carrier could contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customer's name, address, and telephone number, so long as it does not use CPNI to select a subset of customers from that list.

IV. Notice and Written Approval Under the Computer III CPNI Framework

10. Prior to the adoption of the Telecommunications Act of 1996, the framework established under the Commission's *Computer III* regime governed the use of CPNI by the BOCs, AT&T, and GTE to market CPE and enhanced services. Two important components of this *Computer III* framework were: (1) a carrier's obligation to provide an annual notification of CPNI rights to multi-line customers regarding enhanced services, as well as a similar notification requirement regarding CPE that applied only to the BOCs, and (2) a carrier's obligation to obtain prior written authorization from business customers with more than 20 access lines to use CPNI to market enhanced services. We clarify that in circumstances where a carrier has provided annual notification and received prior written authorization from customers with more than twenty access lines, the requirements for notice and approval under section 222, and the associated Commission rules, are satisfied for those customers.

11. We find that carriers that have complied with the *Computer III* notification and prior written approval requirement in order to market enhanced services to business customers with more than 20 access lines are also in compliance with section 222 and the Commission's rules. Such carriers may rely on their previous compliance with the *Computer III* notification and approval requirements to market enhanced services to business customers with more than 20 access lines without taking any additional steps to notify such customers of their CPNI rights or to obtain customer approval to use CPNI to market enhanced services to such customers.

V. Safeguards

12. As one of several CPNI safeguards, the Commission required in the *Second Report and Order* each carrier to certify that it is in compliance with the Commission's CPNI rules. In describing a carrier's duty, the Commission stated that each carrier must "submit a certification" and that the certification "must be made publicly available." We clarify that the Commission's use of the word "submit" in the order was not intended to require carriers to file such certifications with the Commission. Rather, the order directs carriers to ensure only that these corporate certifications be made publicly available.

VI. Ordering Clauses

13. *It is ordered* that, pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), and authority delegated thereunder pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, this Order is hereby adopted.

Federal Communications Commission.

Richard K. Welch,

Acting Deputy Chief, Common Carrier Bureau.

[FR Doc. 98–16511 Filed 6–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 98–117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on proposals that would change fundamentally the way it evaluates proposals that would create interference in the FM band. It also seeks comment on whether the contingent application rule should be modified to permit coordinated facility modifications among broadcasters. The Commission proposes a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would not occur; adoption of this methodology would permit certain applicants to obtain greater service improvements. The Commission also proposes other changes to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications to modify existing facilities in several services.

DATES: Comments must be filed on or before August 21, 1998. Reply comments are due September 21, 1998. Written comments by the public on the proposed information collections are due on or before August 21, 1998.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings also should be sent to the Mass Media Bureau, Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel (Room 610), 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau, (202) 418–2780. For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking (Document)* contact Judy Boley at (202) 418–1214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in MM Docket No. 98–93 and FCC No. 98–117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Notice of Proposed Rulemaking* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Negotiated Interference in the FM Service

A. Introduction/Background

1. The Commission frequently has used the term "negotiated interference" to describe agreements between or among stations to accept new or increased interference within their protected service contours, typically in connection with proposals to expand service by one or several stations. The Commission generally has rejected attempts by applicants to negotiate interference levels on a case-by-case basis, holding that the selection of interference standards is a non-delegable Commission responsibility. Nevertheless, the Commission has concluded that the public interest would be served by modifying the contingent application rule and AM cut-off procedures to facilitate coordinated technical changes between AM stations. No parallel changes have been adopted for FM applications, with the exception of certain grandfathered short-spaced stations. Thus, the Commission has condoned the use of agreements to promote service improvements in the technically more difficult AM service, as well as agreements between stations that operate, axiomatically, at spacings substantially less than current new station requirements, while consistently rejecting the use of these same agreements between fully-spaced FM stations where interference concerns generally would be less. In short, current Commission policy provides the least flexibility for technical facility improvements in mid-sized major markets where FM broadcasters face the greatest technical constraints to undertake such improvements.

B. Specific Proposals

i. Agreements Involving Applications for Coordinated FM Station Changes

2. *Background.* Section 73.3517 prohibits the filing of contingent applications in the FM broadcast services.[1] As stated above, the Commission permits the filing of contingent applications to facilitate interference reduction and service improvements by either separately or commonly owned AM stations. The Commission has received similar requests from FM stations that have entered into agreements that propose "coordinated" or "interrelated" facility

[1] The rule does not differentiate between major and minor changes. *Amendment of Sections 1.517 and 1.520*, 61 FCC 2d 38 (1976).

relocations, modifications, and "one-step" upgrades and downgrades.[2]

3. *Discussion.* We propose to allow the filing of contingent minor change FM construction applications on a limited basis. We would require that such applications be filed on the same date, and that each include a copy of the agreement covering all related applications. These related minor change applications would be processed and if grantable, granted simultaneously. The construction permits would be conditioned as necessary to allow an orderly implementation of non-interfering service. If any application in the group could not be approved, we propose to dismiss all applications filed as an interrelated group. We would reject any coordinated agreement that, in our determination, would not serve the public interest. We seek comment on each aspect of this proposal.

4. We also propose to permit the filing of contingent proposals that include one-step upgrade and downgrade applications. We tentatively conclude that this change is consistent with the rationale underlying the one-step policy. The "opportunity" for filing competing proposals in this context is wholly dependent on two stations reaching agreement on the coordinated facility changes. However, stations are reluctant to pursue coordinated facility changes where there is a possibility that a competing application could be filed. We tentatively conclude that the potential preclusion of competing allotment and minor change proposals is consistent with the public interest, and that the proposed procedures are consistent with section 307(b) of the Act.

5. In addition, we tentatively conclude that contingent applications should be limited to four related, simultaneously filed applications. We seek comment on this limitation and whether a different policy should apply where some or all proposals involve stations under common ownership.

6. We also propose additional requirements when the coordinated changes include cancelling an NCE FM station license. In 1990, the Commission decided against establishing a specific local transmission service floor with respect to our public interest evaluation of contingent arrangements that propose to terminate AM facilities. Instead we adopted guidelines that permit case-by-case evaluation of such applications. We propose to apply AM interference reduction principles to NCE FM agreements proposing the cancellation of an NCE FM station license. Thus, proposals could not create white or gray areas.[3] In addition, agreements to terminate a community's only local transmission service would be considered on a case-by-case basis and would take into account the availability of other services and the possibility of restoring local service with either an AM or FM station. We seek comment on whether to establish a "local service floor" to ensure that the granting of contingent applications does not result in a loss of service that would be detrimental to the public interest.

ii. Agreements Involving Applications That Would Cause New or Increased Interference

7. *Background.* The Commission has been extremely reluctant to permit the creation of interference within a station's protected service contour, particularly where none currently exists. We have been concerned that this policy would lead to further clustering of stations in urban areas in contravention of section 307(b) of the Act. We also have opposed such proposals on spectrum efficiency grounds and because grant of interference-creating applications could effectively foreclose facility improvements by stations receiving new interference. Nevertheless, we believe that this technical streamlining initiative provides an opportunity to reconsider our policy options in the context of the technically simpler NCE FM and commercial FM services. Radio is truly a mature service. Congestion in the FM band provides a major technical impediment to the further "urban clustering" of stations. Moreover, a station's core obligation to serve its community of license will continue to limit transmitter relocations and service area modifications. As a result, measures designed to give broadcasters additional flexibility may raise lesser concerns at this time regarding the "fair, efficient, and equitable distribution of radio service * * *."[4]

8. There are additional reasons to reconsider these policies at this time. The financial and management sophistication of the radio broadcast industry has grown dramatically in recent years, spurred by fundamental changes in local ownership and the elimination of national ownership restrictions. Moreover, both Congress and the Commission are committed to relying to the greatest extent possible on competitive communications markets rather than resource-intensive regulatory policies to safeguard the public interest. In this environment, we seek comment on whether it is possible to provide broadcasters some additional flexibility under our technical rules to expand service while at the same time establishing requirements to ensure that negotiated interference agreements are limited to situations where service gains would outweigh service losses and the creation of new and/or expanded areas of interference.

9. *Discussion.* We seek comment on whether we should amend §§ 73.215(a) and 73.509 to permit applications that would result in prohibited overlap and, therefore, interference based on the following four criteria:

(1) Total interference received by any station from all interfering stations must be no greater than five percent of the area and population within each affected station's protected service contour;

(2) Total service gain must be at least five times as great as the increase in total interference, in terms of both area and population. Service gain would be defined as the difference between the current service contour area and population, and the proposed service contour area and population. Total service gain would be the sum of all service gains for all stations included in the agreement. Interference increase would be defined as the difference between the current interference area and population, and the proposed interference area and population. Total interference would be the sum of all interference increases and decreases received by all affected stations and applicants, in terms of area and population. Interference calculations would include interference received by a proposal even if it occured beyond that station's current service contour. If interference calculations made in accordance with this criterion established that total interference would be decreased, an applicant would be exempt from any service gain requirement;

(3) No predicted interference can occur within the boundaries of any

[2] The commercial FM "one-step" processing rules were designed to facilitate improvements by eliminating the necessity for a petition for rulemaking in instances where licensees seek upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channel. One-step applications are processed as minor change applications.

[3] A "white" area receives no full-time aural service, a "gray" area receives one full-time aural service. We note that case law suggests that the Commission is precluded from allowing the creation of any white or gray areas. *See, e.g., West Michigan Television* v. *FCC*, 460 F.2d 883 (D.C. Cir. 1971).

[4] 47 U.S.C. 307(b).

affected station's community of license; and

(4) Any application causing or receiving interference in an area that previously received interference-free service would be required to demonstrate the existence of at least five remaining aural services within each interference area.

We request comment on each of these factors, including whether the interference cap and gain/loss ratio strike an appropriate public interest balance. Should the Commission adopt additional or fewer restrictions? Should the Commission adopt separate service floor requirements for commercial and NCE FM stations?

10. If a rule change is adopted, applicants would be required to file coordinated facility modifications on the same date and clearly cross-reference all associated applications. A copy of the written consent of all stations receiving interference within their protected service contour as a result of proposed facility modification(s) would be submitted with the applications. Under this approach, we would amend Form 301 to require applicants to certify compliance with these negotiated interference standards and to submit supporting materials in exhibit form. We believe that careful review of interference-creating proposals filed pursuant to novel procedures would be particularly warranted. We seek comment on this conclusion and whether the Commission should rely on applicant certifications without supporting exhibits. All non-reserved band applications would be required to satisfy the less stringent § 73.215(e) spacing requirements and all construction permits granted to FM non-reserved band applicants would be granted as § 73.215 proposals. In addition, we would amend § 73.509 to prohibit second- and third-adjacent channel NCE FM stations from proposing transmitter sites within an affected station's 63 dBu contour. This would prevent interference areas deep within a station's service contour, and assure minimum distance separations between stations, thus promoting fair and equitable distribution of stations as required by section 307(b) of the Communications Act. We seek comment on whether this NCE FM restriction is necessary to prevent a deluge of modification applications that would shift service away from less well-served areas. All construction permits granted pursuant to these procedures would be conditioned on the simultaneous implementation of all related proposals. We invite comment on each aspect of this proposal.

11. To the extent that these procedures would result in the favorable consideration of applications that propose new areas of caused interference, they would also support changes in the way we treat interference received. New areas of received interference can result from a station's unilateral proposal to extend its own service contour so that it overlaps the interfering contour of an authorized station. In effect, such a proposal reflects a station's determination that increased potential listenership outweighs a certain amount of interference within its (expanded) service area. Typically, the new area of interference affects potential listeners who were not predicted to receive service previously. We seek comment on whether we should permit such modifications provided that an applicant demonstrates compliance with each of these requirements. However, no consent from any other station would be required where the proposal would not result in interference occurring within the service contour of any reserved band station, any § 73.215 station or any station operating with the equivalent of maximum class facilities. Applicants that propose a short-spacing to any other type of station would have to obtain consent from such affected station to receive interference. If the affected station chooses not to increase power simultaneously to a full-class facility as part of the agreement with the applicant, the affected station must request reclassification as a § 73.215 licensee/permittee. This "§ 73.215 condition" on the affected station's authorization effectively would limit that station to its current facilities (with regard to the applicant's proposal) and would prevent subsequent unilateral increases by the affected station resulting in interference caused to the applicant's improved facilities.

12. We seek comment on whether we should follow the methodology adopted in the recent grandfathered short-spaced FM station proceeding to determine areas of interference using the desired-to-undesired signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves. *Grandfathered Short-Spaced FM Stations, Report and Order*, 62 FR 50518, September 26, 1997. As noted therein, the ratio method is the most appropriate method for determining areas of interference. We seek comments on this view. Cochannel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength. First-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceed a value 6 dB below the desired (protected) F(50,50) field strength. Second- and third-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage area where the undesired (interfering) F(50,10) field strength exceeds a value 40 dB above the desired (protected) F(50,50) field strength. We invite comment on these standards and the use of this methodology.

13. We believe that consideration is warranted in this document of the standards that would apply to waiver requests of the interference rules proposed herein. Section 73.215 codifies a relief mechanism for applicants to specify sub-standard spacings provided that certain criteria are met. If an applicant cannot meet these standards, then § 73.207 distance separation requirements must control. We propose to continue to follow this same procedure with regard to any interference-related rule changes adopted pursuant to this document. Specifically, in analyzing a request for waiver of § 73.215(e), we propose to measure the short-spacing in accordance with § 73.207 and to apply the traditional threshold three-part and public interest tests developed in § 73.207 jurisprudence. Similarly, with regard to interference-creating proposals between or among consenting broadcasters, the Commission would consider prohibited overlap in accordance with established precedent. In no event would such an applicant be entitled to a presumption that creating any interference—much less five percent—within any station's protected service contour would be in the public interest. We seek comment on these proposed waiver policies.

14. A broadcaster's obligations to accurately prepare each facility application, to truthfully complete each application certification, to construct and operate facilities in accordance with its authorization, and, generally, to adhere to the Commission's technical rules become particularly significant where stations may create small amounts of interference and where several facility modifications may be mutually interdependent. We are fully committed to exercising our plenary enforcement powers against applicants that enter into negotiated interference

agreements where we find that application showings and/or certifications have fallen short of Commission standards, regardless of the time at which the application errors are brought to the Commission's attention. In the event we adopt negotiated interference procedures for FM stations, we propose to publish, as necessary, decisions that explain or clarify these new procedures. We believe that a program that combines strict enforcement and broad information dissemination would promote full and candid disclosure of material technical information in applications and compliance with our rules and policies. We seek comment on this enforcement approach for negotiated interference agreements. We also request that commenters identify specific enforcement procedures that the Commission should follow and the sort of sanctions that it should impose where an applicant provides false or incomplete information in its application or where construction is at variance to an authorization.

15. We seek comment on whether this proposal to permit small amounts of interference in limited circumstances would protect service to a station's community of license and would help preserve an adequate service floor for all listeners. In particular, we invite public comment on the following issues to help develop a better record on the technical and policy issues that these proposals raise: (1) Would these negotiated interference procedures sufficiently protect the interests of listeners and licensees not party to an agreement?; (2) Could this proposal result in service losses to smaller communities and/or less desirable demographic audiences?; (3) Should negotiated interference agreements between commercial stations be treated differently from agreements between noncommercial educational stations?; (4) How might this proposal affect the development and implementation of in-band on-channel (IBOC) digital radio systems?; (5) Is there a danger that negotiated interference agreements over time may lead to less flexibility to make future changes when, for example, a transmitter site is lost and a station must relocate?; (6) Is there reason to believe that the accumulation of negotiated interference agreements over a period of years could lead to a general degradation of FM service in the United States?; (7) Is this negotiated interference proposal consistent with section 307(b) of the Communications Act?; (8) To what extent should the Commission rely on applicant certifications to ensure compliance with negotiated interference agreement requirements?; (9) Should the Commission require licensees to maintain negotiated interference agreements in their local public inspection files? Should they be filed with the Commission?; (10) Should the Commission limit agreements to one or several license terms? Should an agreement be terminable following the transfer of a station that previously consented to interference within its service contour?; (11) What remedies should the Commission and affected licensees have if a station breaches its negotiated interference agreement?

II. Other Proposals To Give Stations Greater Technical Flexibility

A. The Point-to-Point Prediction Methodology

16. *Background.* Interference between FM stations is defined in terms of protected and interfering contours. Because of the limited length (3 to 16 kilometers) of the radials used to determine antenna height above average terrain, the Commission's standard propagation methodology does not accurately account for all terrain effects. In 1975, the Commission adopted a limited correction factor to measure "terrain roughness" to overcome the effects of terrain beyond 16 kilometers.[5] However, the Commission later stayed the general use of the terrain roughness factor (contained in § 73.313 (f) through (j) and Figures 4 and 5 of § 73.333) because of difficulties with "atypical terrain configurations."[6] Presently, the Commission does not accept supplemental terrain analyses to determine predicted interference between FM stations. Thus, applications proposing new or expanded service may be precluded unreasonably where interference is predicted although, in fact, unlikely.

17. *Discussion.* In Appendix B of this document, we set forth a supplemental point-to-point ("PTP") prediction model which under many circumstances would provide for a more accurate prediction of interfering contours. We propose that an applicant may use the PTP method to calculate interfering contours for the purpose of demonstrating compliance with the Commission's various overlap/interference requirements.[7] Such showings would be limited to the relationships between the PTP predicted interfering contours and the affected station's standard F(50,50) curve predicted protected service contour. We also propose to permit the use of PTP methodology to demonstrate compliance with the interference area and population limits set forth above for negotiated interference agreements.

18. We tentatively conclude that applicants should be permitted to use the PTP methodology for certain other purposes. All commercial FM stations must demonstrate compliance with the community of license city grade coverage requirements of § 73.315. Since the PTP methodology more accurately incorporates the effects of terrain into the prediction of coverage, we propose to permit the use of PTP calculations by both applicants and objectors to resolve any questions raised regarding compliance with § 73.315 and to treat the PTP calculations as controlling. We propose to require applicants to submit a PTP contour study where terrain between a transmitter site and a community of license could put in issue either the use of the standard methodology or the station's compliance with city grade coverage requirements. Existing stations that currently cover their community based on the standard prediction method, but fail to satisfy the PTP methodology, would be exempt from a PTP determination provided they do not propose to relocate transmission facilities or withdraw coverage towards the community of license. Additionally, we propose to allow PTP methodology in two specific instances that require the calculation of 3.16 mV/m coverage: (1) compliance with main studio requirements of § 73.1125;[8] and (2) demonstration that an allotment, when

[5] *Field Strength Curves, Report and Order* in Dockets 16004 and 18052, 53 FCC 2d 855, 863 (1975).

[6] *Temporary Suspension of Certain Portions of Sections 73.313, 73.333, 73.684, and 73.699,* FCC 75–1226, 56 FCC 2d 749 (1975), *stay extended indefinitely,* 40 Rad. Reg. 2d 965 (1977).

[7] Specifically, we refer to interfering contours calculated in association with the Commission's overlap requirements for FM commercial, NCE FM, and FM Translator stations (47 CFR 73.215, 73.509, 73.1204, respectively); overlap of the interfering contours of intermediate frequency (IF) grandfathered short-spaced stations (§ 73.213(b)); and the interfering contours utilized in showings that involve undesired- to-desired (U/D) signal ratios in conjunction with FM to TV Channel Six interference showings (§ 73.525) and public interest showings related to pre-1984 grandfathered short-spaced stations (§ 73.213(a)).

[8] The staff currently entertains alternate prediction methods in the context of main studio locations. However, in order to warrant study, current commercial FM processing policy requires that such showings may be submitted if they alter the 3.16 mV/m contour by at least ten percent when compared to the standard prediction method. In contrast, the staff can efficiently confirm that an applicant has properly used the PTP methodology. Accordingly, we propose to eliminate the ten percent method for PTP contour studies that establish compliance with the Commission's main studio location rule.

considered at maximum Class facilities; would comply with § 73.315 with respect to the community of license (if use of a supplemental method is warranted consistent with existing precedents). We seek comment on these proposals.

19. The PTP methodology is proposed in this document for the primary purpose of demonstrating that the standard prediction method overstates the area encompassed by a station's interfering contour. Thus, we propose to prohibit the use of the PTP methodology to extend interfering contours beyond the standard F(50,10) predicted curves for the purpose of demonstrating harmful interference received. PTP showings are not permitted in any of our international agreements and thus could not be used to demonstrate compliance with international requirements. We also propose not to permit the use of this methodology to calculate protected service contours for the purposes of demonstrating: (1) the lack or existence of overlap; or (2) compliance or non-compliance with contour limitations for boosters, fill-in translators, or auxiliary facilities. In addition, we propose not to consider PTP showings in the context of demonstrating compliance with the multiple ownership requirements of § 73.3555. We seek comments on each aspect of this proposal regarding the adoption and use of the PTP methodology.

20. As noted above, we stayed the terrain roughness provision because of difficulties with atypical terrain configurations. However, this adjustment and the PTP prediction method would provide a more sophisticated and not unduly burdensome method of assessing the effects of a variety of terrain anomalies. Therefore, we propose to delete the long-stayed terrain roughness provisions from § 73.313(f) though (j) and Figure 4 of § 73.333 from the Commission's rules as they apply to FM broadcast stations. We seek comment on these proposals.

B. Commercial FM Technical Requirements: Amendments to § 73.215

i. Reduced Minimum Separation Requirements in § 73.215(e) for Second- and Third-Adjacent Channel Stations

21. *Background.* In 1989, the Commission adopted § 73.215 to afford FM applicants some additional flexibility in locating potential transmitter sites. In response to concerns of spectrum overcrowding, the Commission retained minimum but lesser spacing requirements for § 73.215 applicants. For second- and third-adjacent channel stations, § 73.215(e) generally limits the amount of relief from § 73.207 minimum distance separation requirements to no more than three kilometers and in some cases provides no relief.[9] As a result, stations with second-and third-adjacent channel spacing problems have, in many cases, less flexibility to relocate facilities under § 73.215(e) than under the former § 73.207 waiver policies that permitted the staff to grant spacing waivers of up to six kilometers.

22. *Discussion.* We propose to revise the § 73.215(e) spacing table to afford all FM commercial stations a minimum of 6 kilometers of relief from the applicable § 73.207(a) standards. We also propose that grants under this proposal would continue to be listed as a contour protection construction permit. We seek comment on these proposals.

ii. Additional Flexibility for Stations in Puerto Rico and the U.S. Virgin Islands

23. In 1993, the staff granted a request for waiver of § 73.215(a)(1) to permit an alternate method to define the protected and interfering contours of certain stations in the Virgin Islands and Puerto Rico.[10] We propose revising § 73.215 to incorporate the actual protected and interfering contours for Class A, B1 and B stations set forth in *St Croix Wireless Co.* The proposed modifications take into account the higher HAAT limits specified in the rules for Puerto Rico and the Virgin Islands, while affording stations additional site location flexibility. We believe that this revision would protect other stations from interference in excess of that which may occur under our spacing rules. We seek comment on this proposal.

C. New Class C Height Above Average Terrain Requirements

24. *Background.* A recent staff study reveals that many Class C stations operate with facilities that are significantly less than maximum. Specifically, the study reveals that 519 of the 863 FM stations presently occupying Class C assignments, or approximately 60 percent, operate with facilities less than 450 meters HAAT. The fact that such a large percentage of Class C stations are operating more than 150 meters below one-half the maximum antenna height limitation of 600 meters HAAT indicates that the Commission's present allotment structure overprotects a substantial number of Class C stations and, therefore, may unnecessarily preclude proposals to introduce new and/or expand existing services.

25. *Discussion.* We propose to create an additional intermediate class of stations between Class C and Class C1, to be designated Class C0 (Class C zero). Class C0 stations would have a maximum height limitation of 450 meters HAAT and a minimum antenna height requirement of 300 meters HAAT. Both classes of stations would be required to maintain a power level of 100 kW, the present value for Class C stations. Under this proposal, Class C stations would be required to operate at a minimum antenna height of no less than 451 meters HAAT. We would amend the FM distance separation tables to include the reduced spacing requirements for the new station class. In order to provide a reasonable opportunity for existing Class C stations not operating at the proposed antenna height minimum to maintain their full Class C status, we propose a three-year transition period to obtain a construction permit specifying an antenna HAAT of at least 451 meters. During the three-year period, each such station would be renewed on a conditional basis. If the station has not obtained the necessary authorization within the three-year period, then the station would be reclassified as a Class C0 station. We seek comments regarding this proposal, including comments that may shed light on the additional service the proposed additional station class could create, the effect of the loss of primary service areas for reclassified Class C0 stations, and whether creation of a temporary "buffer zone" to protect the ability of existing Class C stations to upgrade during the three-year transition period would be appropriate.

[9] Specifically, out of 28 possible combinations between the second-and third-adjacent channel stations, § 73.215 provides 10 km relief to Class B1—C stations, and 9 km relief to Class C2–C stations. In addition, four combinations have 3 km of relief, 14 combinations have 2 km of relief, five combinations have 1 km of relief, and three combinations have no relief.

[10] *See St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329 (1993). In *St. Croix Wireless, Co.*, the permittee requested a waiver of § 73.215 as it defined the protected contour of a Class B station as the 54 dBu contour. The permittee demonstrated that use of the 54 dBu contour for Class B stations in Puerto Rico and the Virgin Islands produced an anomalous result, affording vastly more protection than the spacings provide. Instead, the permittee showed that given the spacings and maximum facilities permitted in this region, the normally protected contour of such stations is the 63 dBu contour, and the use of this contour for Caribbean stations produces a result equivalent to that on the mainland.

D. Streamlined Application Processing Changes

i. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications

26. *Background.* Under our present rules, minor change applications for non-reserved FM band broadcast stations are subject to "first come/first served" processing, whereby a first-filed application cuts off the filing rights of subsequent, mutually exclusive proposals. Minor changes for AM, reserved FM band and FM translator stations do not receive such cut-off protection, but remain subject to competing proposals until the staff disposes of the applications. This policy imposes significant uncertainty and delay on minor change applicants in these services: at any time during the pendency of an application, a conflicting proposal may be filed that could halt further processing of the application and necessitate a technical amendment, settlement between the parties or designation of the mutually exclusive applications for comparative hearing.

27. *Discussion.* We propose to extend application of the first come/first served processing system to AM, NCE FM and FM translator minor change applications. We believe that the unlimited exposure to conflicting applications and the concomitant expense and delay under the current policy is both inequitable and inconsistent with our treatment of minor changes for FM commercial band stations. We anticipate that this proposal would effectively remedy the uncertainty and delay presently associated with AM, NCE FM and FM translator minor change applications. We invite comment on this proposal.

ii. Revisions to the Definition of "Minor" Change in AM, NCE FM, and FM Translator Services

28. *Background.* Under our present rules, a proposed change in the facilities of an existing commercial FM band station is classified as a major change only if it involves a change in community of license and/or certain changes in frequency and/or class. For AM, NCE FM and FM translator stations, however, various other facility changes also are classified as major changes: (1) for AM stations, most proposed increases in power; (2) for NCE FM stations, any proposed change of 50 percent or more in the station's predicted 1 mV/m (60 dBu) coverage area; and (3) for FM translators, any proposed change or increase of over 10 percent in the 1 mV/m coverage area. Accordingly, facility modification applications in these services may be subject to additional administrative procedures.

29. We propose to expand the definition of minor change for the AM, NCE FM and FM translator services to conform to the commercial FM "minor change" definition. Thus, only applications to change community of license and to change to a non-mutually exclusive channel and class would be classified as "major" changes.[11] To prevent NCE FM and FM translator stations from abandoning their present service areas, however, we propose to require these stations to continue to provide 1 mV/m service to some portion of their presently authorized 1 mV/m service areas in order for their applications to be classified as minor changes. We tentatively conclude that this proposal would eliminate the present inconsistent treatment of proposed facilities increases for different radio services without undermining the administration of any Commission rule or policy. We invite comment on this proposal.

iii. Coordinate Corrections by Single Application for Licensed Stations

30. *Background.* Presently, broadcast stations seeking to correct coordinates must file a construction permit application, and after grant, a license application.[12] Coordinate corrections, however, are generally considered to be minor changes to broadcast facilities because they do not involve physical changes to the facilities or a change in licensed parameters. We believe that for many coordinate corrections the two-application procedure is unduly burdensome.

31. *Discussion.* We propose to adopt new provisions in Parts 73 and 74 to allow corrections of coordinates for broadcast facilities, where no other licensed parameters are changed, via a single license application. We also propose to require the applicant to certify that all licensed parameters not altered in the license application would remain unchanged. Under our proposal, the applicant would not be required to file a separate construction permit. We propose to make this procedure available where the correction would be less than 3 seconds latitude and 3 seconds longitude, provided that the applicant has sought FAA clearance and antenna structure registration.[13] We seek comment on this proposal and whether an alternative standard should be adopted. We also propose to continue our policy of issuing public notices announcing the receipt of the application, and the processing of the coordinate correction as if it were a routine minor change application. However, in the event the coordinate correction establishes a violation of our technical rules, the Commission would retain a full range of options including the designation of the license application for hearing and the issuance of an order to show cause why the construction permit should not be revoked. We propose to require any permittee that discovers an antenna structure coordinate error to file an application to modify its outstanding construction permit. We tentatively conclude that the Commission may adopt this change in licensing procedures pursuant to section 319(d) of the Communications Act. We seek comment on these proposals.

iv. FM Translator and Booster Station Power Reductions by Single Application

32. *Background.* We have found when reviewing license renewals that many FM translator and booster stations are actually operating at a power less than that specified in their license. In order to authorize the reduced power operation, we now require licensees to go through the two-step process. In addition, FM translator licensees may resolve an interference complaint by a reduction in power. In this instance, the two-step process delays the resolution of the interference problem.

33. *Discussion.* In order to expedite FM station license modifications in these circumstances, we propose to eliminate the two-step application process for FM translator and booster stations seeking to decrease ERP. We tentatively conclude that recent changes

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[11] We propose to continue to treat AM applications to change from Class B to Class D as "minor" changes.

[12] *See* 47 CFR 73.1690(b)(2) and 73.3536.

[13] In 1996, the Commission received comments in response to the *Notice of Proposed Rulemaking* in MM Docket 96–58 requesting that a rule be adopted to allow a coordinate correction in a modification of license application, thereby eliminating the requirement for a construction permit. *See Certain Minor Changes in Broadcast Facilities Without a Construction Permit, Notice of Proposed Rulemaking,* 61 FR 15439, April 8, 1996. The Commission denied the request stating that the proposed one-step procedure could invite abuse by applicants "correcting" coordinates to a short-spaced transmitter site or a site involving prohibited contour overlap. By retaining the construction permit process, the Commission indicated that the safeguards against abuse inherent in the construction permit process would be not be lost. *See Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order,* 62 FR 51052, September 30, 1997. We now believe that limiting one-step license application coordinate corrections to situations involving less than 3 seconds of longitude and latitude would provide adequate safeguards. We seek comment on this conclusion.

in section 319 of the Communications Act permit the Commission to adopt this one step licensing procedure.[14] We seek comment on this view. In these instances, we would permit licensees to decrease their ERP after the filing of a license application proposing the power decrease. We seek comment on this proposal.

E. Relaxed NCE FM and Translator Technical Requirements

i. Second-Adjacent Channel Interference Ratios for Predicting Prohibited Overlap in the Reserved Band

34. *Background.* The Commission's commercial FM station interference protection standards require stations operating on the same channel or any of the first three adjacent channels to meet certain minimum distance standards. Like commercial FM stations, NCE FM stations are protected from interference by stations operating on co- and the first three adjacent channels under the rules. The NCE FM rules do not specify minimum distance separation requirements. Actual, rather than maximum class facilities are used to calculate whether prohibited contour overlap would occur. Thus, the location of a station's service and interfering contours determines the preclusionary impact of such stations on other potential cochannel and adjacent channel facilities. Although both commercial and NCE FM interference standards are derived from a common methodology, the commercial rules use a less preclusive 100 dBu interfering contour to calculate minimum distance separations for stations operating on second-adjacent frequencies.

35. *Discussion.* We propose to eliminate the inconsistency between the commercial and NCE FM station interference protection standards. Specifically, we propose to modify §§ 73.509 and 74.1204(a) to specify a 100 dBu interfering contour for second-adjacent channel NCE FM and FM translator stations.[15] We seek comment on this proposed rule change.

ii. Minimum Coverage of the Community of License by NCE FM Stations

36. *Background.* The Commission's rules do not require NCE FM stations operating in the reserved band (Channels 201 to 220) to place a minimum field strength signal over their communities of license, unlike their commercial counterparts. The Commission enacted this policy based on the fact that many NCE FM stations operate at low power levels and simply could not provide coverage to the entire area within the legal boundaries of its community of license. The Commission also recognized that NCE FM stations are generally dependent on listener support, and may not have the financial resources to construct facilities that serve the entire community of license. However, public interest concerns are raised where an NCE FM station covers *no* portion of its community of license with its 60 dBu contour. The association of a broadcast station with a community of license is a basic tenet of the Commission's allocation scheme for broadcast stations.

37. *Discussion.* We propose to delete the Note to § 73.315(a) and to add a provision requiring NCE FM stations to provide 60 dBu (1 mV/m) service to at least a portion of the community of license. We believe this proposal would give NCE FM applicants significant flexibility to locate technical facilities, consistent with the Commission's statutory licensing requirements. We seek comment on this proposal and on the percentage of the population and/or area of the community that should be covered. In the event that an NCE FM community coverage standard is adopted, we propose to apply the rule only to new station and modification applications filed after the effective date of this new rule. We seek comment on these tentative conclusions.

iii. Revisions to Class D Rules

38. *Background.* The Commission created a low power NCE FM Class D service in 1948, as an inexpensive means of encouraging the FM broadcasting service and as a substitute for the "campus broadcasting systems" then in use. By 1976, however, the demand for NCE FM licenses had increased dramatically, prompting the Commission to initiate a rule making proceeding to determine how to foster the most effective use of NCE FM spectrum. The Commission concluded that Class D stations constituted an inefficient use of spectrum, and adopted measures to minimize their negative impact on the development of the NCE FM radio service. Specifically, the Commission encouraged Class D stations to upgrade to Class A status. It required Class D stations that did not upgrade to migrate to a commercial FM channel or Channel 200, where they would have secondary status. Those stations unable to migrate would be required to move to the reserved band channel with "the least preclusionary impact on other potential stations[.]" In addition, the Commission ended Class D stations' protection against interference and imposed a permanent freeze on applications for new Class D stations.[16]

39. The Commission remains committed to promoting the full use of the NCE FM channels. Congestion in the reserved band has increased during the past twenty years, and demand for NCE FM licenses remains high. Furthermore, a recent staff study reveals that a number of the remaining Class D stations with reserved band authorizations are causing interference to full service NCE FM stations.[17] We believe, therefore, that certain modifications to our Class D policies are appropriate. We anticipate that the changes proposed herein would serve the Commission's original objective while avoiding the unnecessary cancellation of Class D licenses. In addition, we believe that the proposed changes would simplify and expedite Class D station licensing and renewal procedures.

40. *Discussion.* Under § 73.512(a), Class D stations are required with each renewal cycle to migrate to an available commercial channel or Channel 200, or demonstrate the unavailability of such channels. We do not believe the administrative burdens these requirements impose on both licensees and the Commission staff are warranted where an existing Class D station is operating on an NCE FM channel without objectionable interference. Accordingly, we propose to permit Class D stations to operate on any channel where no interference (as defined by § 73.509(b)) would be caused to any broadcast station, and to eliminate the requirement that Class D licensees with reserved band authorizations demonstrate the unavailability of any commercial FM channel or Channel 200 in their license renewal applications. Under this proposal, the staff would handle channel location issues as they arise rather than addressing them as license renewal issues. Furthermore, whereas the current rules require Class D stations to migrate to available

[14] In 1996, Congress amended section 319 of the Act to authorize the Commission to waive the requirement for a construction permit for minor changes in the facilities of authorized broadcast stations. *Telecommunications Act of 1996*, Pub. L. No. 104–104, § 403(m), 110 Stat. 56 (1996).

[15] The 97 and 94 dBu interfering contours will be specified for second-adjacent channel FM translator stations protecting class B1 and B stations in the reserved band, respectively.

[16] This notice neither makes nor proposes any change to this permanent freeze policy. We note that the Commission has requested public comment on two rulemaking petitions to establish a low power or microbroadcasting service. *See Public Notice*, Report No. 2254 (released February 5, 1998) (RM # 9208); *Public Notice*, Report No. 2262 (released March 12, 1998) (RM # 9242) (erratum).

[17] The study reveals that 38 of the 70 Class D stations with reserved band licenses are causing interference.

commercial channels or Channel 200 and contain no provision for such stations to move back to the reserved band, the proposed new rules would allow existing Class D stations to relocate to any available interference-free reserved or nonreserved channel in order to avoid receiving interference from full power FM stations, or for any other reason.

41. With regard to Class D stations that are causing or are predicted to cause interference (as defined by § 73.509(b)) on their current channel, we propose to apply the following standards: first, stations would be required to move to an available interference-free channel; second, if no interference-free channel is available, stations would be required to move to an NCE FM channel that would result in only second- and/or third-adjacent channel contour overlap; [18] and third, if no channel is available that would be either interference-free or create only second-and/or third-adjacent channel interference, the station would be required to obtain the consent of each affected NCE FM station subject to co- or first-adjacent channel interference as a condition for continued operation. Should there be a number of potential channels for an existing Class D station in this situation to choose from, we propose to require applicants to adhere to the following frequency selection criteria: first, we would prefer overlap beyond an affected station's community of license to overlap within the licensed community; second, we would prefer third to second adjacent channel overlap; and third, we would prefer overlap involving the smallest percentage of population in a station's coverage area, so that there would be the least possible adverse impact on the affected station. In conjunction with these changes, we also propose to eliminate the "least preclusion" requirement, which is inadequately defined in the existing rules and has proved impracticable. With regard to Class D stations presently causing second or third adjacent channel overlap in the NCE FM band, we invite comment as to whether such stations should be allowed to remain on their present channels absent actual complaints of interference or required to move in accordance with the standards proposed herein.

42. A recent staff study reveals that every Class D station authorized to operate on a reserved band frequency has available at the present time an NCE FM channel on which it could operate free of co- or first-adjacent channel contour overlap. However, in the event that changes in NCE FM authorizations create a situation where no channel free of co- and first-adjacent channel interference is available, we propose to require the Class D station to obtain the consent of the affected NCE FM station(s) as a condition for continued operation.[19] In the event that no agreement is reached, the Class D station would be required to cease operation when program tests for the affected station commence, and would have up to one year to obtain the required consent.

43. *Revise Class D Definition Based on Transmitter Power Output.* The current rules define Class D stations as stations with transmitter power output ("TPO") of 10 watts or less. Higher class NCE FM stations, however, are defined by their predicted 1 mV/m (60 dBu) contour distances, as determined by power and antenna height in accordance with § 73.211(b). We propose to conform the definition of Class D stations to that of higher class NCE FM stations, by eliminating the TPO restriction and instead defining Class D stations as stations with predicted 60 dBu contour distances not exceeding five kilometers, as determined in accordance with § 73.211(b). We are aware of five Class D stations with predicted 60 dBu contour distances exceeding the proposed five kilometer restriction. We propose to grandfather such "superpowered" Class D facilities, permitting them to continue to operate as Class D stations at their present power and antenna height and to modify their facilities provided they do not extend their predicted 60 dBu contour distances.[20]

44. *Classify Construction Permit Applications as Minor Changes.* Certain Class D construction permit applications, including those proposing operation on a new channel, are treated as major change applications. We propose to consider all Class D facility applications as minor change applications that would be processed under our more efficient "first come/first served" procedures. In light of the unprotected status of Class D stations, only other Class D applications would be affected by this proposal, and mutually exclusive Class D applications are extremely unlikely due to the low power and relatively small number of Class D stations. By eliminating the 30-day public notice period for Class D permit applications, we anticipate that this proposal would expedite processing of such applications, conferring an important benefit on displaced Class D stations.[21] Consistent with the above, we propose to permit Class D stations to propose changes of licensed community or of 50 percent or more of the area within their predicted 1 mV/m contour areas provided their applications demonstrate that they would maintain continuity of service to their core audience. The present rules prohibit such changes in order to prevent the establishment of "new" Class D stations. We seek comment on these proposals.

45. *Revise Contour Protection Requirements for Class B and B1 Stations.* Section 73.509(b) requires Class D stations to protect the 1 mV/m (60 dBu) contour of all other broadcast stations, regardless of class or location on the FM band. Commercial Class B and B1 FM stations, however, traditionally have received greater protection to their 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu) contours, respectively. Accordingly, we propose to modify § 73.509(b) to require Class D stations to protect commercial Class B and B1 stations, as well as NCE FM Class B and B1 stations operating on commercial channels, to their respective 54 dBu and 57 dBu contours. We invite comment as to whether Class D stations that currently are required to protect the 60 dBu contours of Class B or B1 stations but would not comply with the proposed new standard should be permitted to continue to operate at their present powers and antenna heights absent actual interference complaints.

46. We invite comment on these Class D station proposals. Are they warranted in the interest of improved NCE FM channel use? Would they promote more efficient use of NCE FM channels? Should we apply to Class D stations the "actual interference" standard applicable to FM translators? Would the proposed changes sufficiently protect the ability of Class D stations to continue to operate?

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[18] The current rules define Class D stations operating in the non-reserved band as "secondary," and we propose no change in this definition. *See* 47 CFR 73.506(a). For purposes of this Class D channel displacement discussion, Channel 200 is treated as an NCE FM channel.

[19] We would allow Class D licensees to obtain such consent not only for the channel they are currently operating on but for any NCE FM channel or Channel 200.

[20] In this regard, we also propose to grandfather "underpowered" Class A facilities: Class A stations authorized prior to the adoption of the Class A minimum power and antenna height requirements in § 73.511 which do not meet such requirements. 47 CFR 73.211(a)(3). In practice, such stations currently are treated as Class A facilities.

[21] We invite comment as to whether an application by a Class D station proposing to upgrade to Class A status should be classified as a major change. Arguably, a Class D to A upgrade should be classified as a major change because it would confer protected status on the subject station.

III. Procedural Matters

47. *Paperwork Reduction Act.* This Notice proposes rule and procedural revisions that may contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public and other federal agencies are invited to comment on the information collection requirements proposed in this proceeding. Public and agency comments are due at the same time as other comments in this Notice; OMB comments are due August 21, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements proposed herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

48. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

49. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice.

A. Need for and Objectives of the Proposed Rules

50. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of certain technical rules and policies governing the radio broadcast services.

B. Legal Basis

51. Authority for the actions proposed in this Notice document may be found in sections 4(i), 4(j), 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

52. RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[22] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."

53. The proposed rules and policies will apply to radio broadcasting licensees and potential licensees. The Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. As of January 31, 1998, official Commission records indicate that 12,241 radio stations were operating, of which 7,488 were FM stations. Thus, the proposed rules will affect some of the 12,241 radio stations, approximately 11,751 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

54. In addition to owners of operating radio stations, any entity who seeks or desires to obtain a radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a radio broadcast license is unknown. We invite comment as to such number.

D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

55. In addition to enhancing opportunities for improvement of radio broadcast technical facilities and service, a number of the measures proposed in this notice document would reduce the reporting required of prospective and current applicants, permittees and licensees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

56. This notice document solicits comment on a variety of alternatives discussed herein. These alternatives are intended to enhance opportunities for improvement of technical facilities and service and eliminate unnecessary administrative burdens and delays associated with our radio broadcast licensing processes. Any significant alternatives presented in the comments will be considered.

[22] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio stations, for purposes of this document, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations subject to the proposed rules in this document and to consider further the issue of the number of small entities that are radio broadcasters or other small media entities in the future.

F. Federal Rules that Overlap, Duplicate, or Conflict With the Proposed Rules

57. None.

Ordering Clauses

58. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 4(i), 4(j), 303, 308, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309 and 310, this Notice of Proposed Rule Making and Order is adopted.

List of Subjects

47 CFR Part 73

Radio, reporting and recordkeeping requirements.

47 CFR Part 74

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16514 Filed 6–19–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Endangered Status and Notice of Availability of the Draft Conservation Agreement for Review and Comment for Pediocactus winkleri (Winkler cactus) in Central Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list *Pediocactus winkleri* (Winkler cactus) as endangered, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal and any new information. In addition, the Service announces the availability of a draft conservation agreement for *Pediocactus winkleri,* also for public comment. This conservation agreement is accessible on the internet at www.blm.gov\utah.

DATES: The comment period on this proposal and draft conservation agreement is extended until July 22, 1998.

ADDRESSES: Written comments and materials concerning the proposal and draft conservation agreement should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1993, the Service proposed to add *Pediocactus winkleri* (Winkler cactus) to the list of endangered and threatened plants (58 FR 52059). At that time *Pediocactus winkleri* was known from six populations with a total population of about 3,500 plants with a range in central Utah from near Notom in central Wayne County to near Fremont Junction in southwestern Emery County.

Since the closing of the comment period on December 6, 1993, an additional population has been discovered near Ferron in western Emery County, Utah. In addition, additional plants have been documented within previously known populations. While the documented numbers of the species have increased little over the 1993 estimates, the Service now estimates that the population may number up to 10,000 plants (Fish and Wildlife Service 1994, 1997). The Bureau of Land Management and the National Park Service initiated a comprehensive inventory of the species within its potential habitat in the spring of 1998.

The Species continues to be exploited by cactus collectors. In 1984, the Service established a population monitoring transect for *P. winkleri* in an easily accessible area that cactus collectors frequent (Fish and Wildlife Service 1994, 1997). The Service has periodically monitored this transect, usually at 2-year intervals. The P. winkeri population along this transect declined from 53 plants 1984 to zero plants in 1997. The Notom population's estimated size has declined from about 2,000 individuals in 1984 (Heil 1984) to an estimated 700 individuals in 1997 (Fish and Wildlife Service 1997). The Service during its 1997 survey of the Notom population discovered several shovel marks within the occupied habitat of this species. These marks were at the locations of plants last observed in 1994 and missing in 1997. Threats to species and its habitat, from off-highway vehicles, mining and quarrying, oil and gas drilling, and livestock trampling, continue with varying significance throughout the species range (Fish and Wildlife Service 1997).

A moratorium on listing actions (Public Law 104–6) took effect April 10, 1996, and prevented the Service from making a final decision on this proposal by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a **Federal Register** document published on May 16, 1996 (61 FR 24722), the Service outline in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of the final rule for this proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 16, 1996, **Federal Register** notice.

The Service does not believe that the new distributional and population information has changed the status of the species. However, we are reopening the comment period on the proposed rule to solicit comments on this new information and request any additional information on scientific studies conducted since the comment period last closed on December 6, 1993.

The Draft Conservation Agreement was developed by the Bureau of Land Management, in coordination with the Park Service, Forest Service, and the Service. The agreement focuses on identifying, reducing and eliminating significant threats to *Pediocactus winkleri* (and *P. Despainii,* a listed species) that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Service also is seeking comments on the adequacy of the proposed conservation agreement and whether or not the agreement will satisfactorily provide for the species conservation independent of the Endangered Species Act. The Service hereby announces reopening of the comment period until July 22, 1998.

References Cited

Heil, K.D. 1984. Status report on *Pediocactus winkleri.* U.S. Fish and Wildlife Service, Denver, Colorado. 14 pp.

U.S. Fish and Wildlife Service. 1994. *Pediocactus winkleri* status report supplement. Salt Lake City, Utah. 12 pp.

U.S. Fish and Wildlife Service. 1997. *Pediocactus winkleri* status report supplement 2. Salt Lake City, Utah. 11 pp. + append.

Author: The primary author of this notice is John L. England (see **ADDRESSES** above).

Authority.

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 15, 1998.

Terry T. Terrell,

Deputy Regional Director, Fish and Wildlife Service.

[FR Doc. 98–16500 Filed 6–19–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 119
Monday, June 22, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 17, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology would be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Farmers' Market Nutrition Program (FMNP) Annual Financial Report, FMNP Recipient Report and FMNP.

OMB Control Number: 0584–0447.

Summary of Collection: The WIC Farmers' Market Nutrition Program (FMNP) is authorized by Public Law 102–314, enacted on July 2, 1992. The purpose of the FMNP is to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and, to increase sales at such markets. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

Need and Use of the Information: FNS will collect information from state agency administering the FMNP to develop an annual financial report on the number and type of recipients served by both Federal and non-Federal benefits under the program. The information is necessary for reporting to Congress in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for program planning purposes.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit.

Number of Respondents: 1,283.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 4,086.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–New.

Summary of Collection: The Food Security Supplement is sponsored by the Economic Research Service (ERS) as a research and evaluation activity authorized under Section 17 of the Food Stamp Act of 1977. ERS is collaborating with the Food and Nutrition Service (FNS) and the Bureau of Census to continue this program of research and development. The Food Stamp Program (FSP) is currently the primary source of nutrition assistance for low-income Americans enabling households to improve their diet by increasing their food purchasing power. As the nation's primary public program for ensuring food security and alleviating hunger, USDA needs to regularly monitor these conditions among its target population. The Food Security Supplement will be administered as a set of questions appended to the Current Population Survey (CPS) managed by the Bureau of Census.

Need and Use of the Information: ERS will collect information from the Current Population Survey Food Security Supplement to routinely obtain reliable data from a large, representative national sample in order to develop a measure that can be used to track the prevalence of food insecurity and hunger within the U.S. population, as a whole, and by important population subgroups. The data collection will partially fulfill the requirements of the Congressionally mandated 10-Year Plan for the National Nutrition Monitoring and Related Research Program (NNMRRP). It will also contribute to provisions of the Government Performance Review Act (GPRA) by allowing FNS to quantify the effects and accomplishments of the Food Stamp Program.

Description of Respondents: Individuals or households.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,667.

Agricultural Marketing Service

Title: Poultry Market News Report.

OMB Control Number: 0581–0033.

Summary of Collection: The Agricultural Marketing Act of 1946, legislates that USDA shall "* * * collect" and "disseminate marketing information * * * "and" * * * collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof." The Agricultural Marketing Service (AMS), on behalf of the Secretary of Agriculture, is directed and authorized to collect and disseminate marketing information, including

adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products. Information is collected from trade members covering 86 markets and 64 poultry commodity items to prepare the monthly report.

Need and Use of the Information: Government agencies such as the Foreign Agricultural Service, Economic Research Service, and the National Agricultural Statistics Service use market news data. Market News Reports are an aid to these government agencies in tracking prices, wages, and productivity or as indicators of economic activity. Market news information is contained in published reports distributed by other government agencies; for example, the "Situation and Outlook" reports by the Economic Research Service. The poultry and egg industry uses the data to help determine future production and marketing projections. Additionally, educational institutions, specifically, agricultural colleges and universities use market news information. The absence of these data would deny primary and secondary users' information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: .Business or other for-profit.

Number of Respondents: 1,720.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 17,657.

Agricultural Marketing Service

Title: Seed Service Testing Program.

OMB Control Number: 0581–0140.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 and regulations 7 CFR 75, thereunder provide for the inspection and certification of the quality of agricultural and vegetable seeds in order to bring about efficient orderly marketing and to assist the development of new or expanding markets. Under the voluntary program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for certain quality factors such as purity, germination, and noxious-weed seed content. The items for which the seed is tested are designated by the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS which tests the seed and issues the certificates is the only Federal seed testing facility which can issue the Federal Seed Analysis Certificate.

Need and Use of the Information: Generally, applicants are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment if present, along with a sample of seed in order for AMS to provide the service. The information provided by the applicant is included on the seed analysis certificate, often to satisfy requirements of importing countries or letters of credit. If the pertinent information is not collected AMS would not know which tests to conduct or would not be able to relate the test results with a specific lot of seed. The information must be provided for each sample the applicant submits for test. Without the AMS program, applicants would have to obtain tests from state or commercial laboratories.

Description of Respondents: Business or other for-profit; Farms; State, Local, or Tribal Government.

Number of Respondents: 92.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 389.

Farm Service Agency

Title: Highly Erodible Land and Wetland Conservation Certification Requirements, 7 CFR Part 12.

OMB Control Number: 0560–NEW.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture , conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetlands and to reduce the rate at which the conversion of highly erodible land occurs. In order to ensure that persons who request benefits subject to the conservation restrictions get technical assistance needed and are informed regarding the compliance requirements on their land, the Farm Service Agency (FSA) collects information from producers with regard to their intended activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additionally, information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 400,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 109,477.

Food and Nutrition Service

Title: Coordination Best Practices Handbook project.

OMB Control Number: 0584–NEW.

Summary of Collection: The special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was established in 1972 through an amendment to the Federal Child Nutrition Act. Its purpose is to provide low-income pregnant, breastfeeding, and postpartum women, infants and children up to age 5 with supplemental foods, nutrition education, and health care referrals to counteract the adverse effects of poverty on their nutrition and health status. The FNS is planning to conduct two consecutive information collections to determine best practices in coordinating WIC services with primary care services. From this information, a Best Practices Handbook will be prepared. The information will be collected through telephone screening and in-depth interviews with key informants.

Need and Use of the Information: FNS will use the information gathered in the study to develop a Best Practices Handbook. The handbook will provide information about collocation, collaboration and integration efforts, which will be distributed to state and local WIC, Community/Migrant Health Centers, and Indian Health Service directors. It is designed to motivate agency directors to move ahead with concrete plans that will results in improved coordination between their collective programs, thereby increasing access for women and children to the benefits available from all three programs.

Description of Respondents: State, Local, or Tribal Government; Not-for-profit institutions; Federal Government.

Number of Respondents: 270.
Frequency of Responses: Reporting: Other (One time).
Total Burden Hours: 195.

Food and Nutrition Service

Title: Case Study Data Collection for Tracking State Food Stamp choices and Implementation Strategies Under Welfare Reform.
OMB Control Number: 0584–NEW.
Summary of Collection: The Food Stamp Program, administered by the Food and Nutrition Service (FNS), is a major components of the nation's nutrition security strategy and a central element of America's antipoverty efforts. With the enactment of the new Federal welfare reform law, States have been given many more policy options in the way they administer the Food Stamp Program. FNS is conducting a two-part study to collect information regarding innovative local implementation of State Food Stamp Program choices. The first phase of this study was completed in December 1997. This proposed collection represents the second phase where information will be collected through qualitative interviews with State and local food stamp officials in up to 10 states. Information will be gathered on changes in State food stamp policy decisions, how these changes are being implemented, and, if available, the number of food stamp participants affected by individual provisions.
Need and Use of the Information: The information collected should help FNS understand more about how States make choices regarding implementation strategies and how successful the implementation policies have been in helping clients move from welfare to work. FNS also hopes to gain insight into how various State policy choices have been translated into changes in local office practices and where and how the Food Stamp Program most succeeds in embodying the goals of welfare reform.
Description of Respondents: State, Local, or Tribal Government; Not-for-profit institutions.
Number of Respondents: 285.
Frequency of Responses: Reporting: Other (One time).
Total Burden Hours: 350.

Animal and Plant Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.
OMB Control Number: 0579–0013.
Summary of Collection: To fulfill its mission of preventing the importation, preparation, sale, or shipment of harmful veterinary biological products, the Veterinary Biologics Division of USDA's Animal and Plant Health Inspection Service (APHIS) issues licenses to qualified establishments that produce biological products, and issues permits to importers seeking to import such products into the United States. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms, and field study summaries.
Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing.
Description of Respondents: Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 115.
Frequency of Responses: Recordkeeping, Reporting: On occasion.
Total Burden Hours: 71,547.

Agricultural Marketing Service

Title: Federal Seed Act Program.
OMB Control Number: 0581–0026.
Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.
Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by AMS program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.
Description of Respondents: Business or other for-profit; Farm; State, Local or Tribal Government.
Number of Respondents: 3,208.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 36,793.

Agricultural Marketing Service

Title: Reporting Requirements Under the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.
OMB Control Number: 0581–0126.
Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), Title II, Section 202 states, "The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the nation. The Government, industry, and the consumer will be well served if the Government can help insure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are being requested.
Need and Use of the Information: The information requested is used to identify the product offered for grading, to identify and contact the party responsible for payment of the grading fee and expense, to identify persons who are responsible for payment of the grading fee and expense, and to identify persons who are responsible for administering the grade label program. Only information essential to provide service is requested. AMS uses several forms to collect information that is essential to carrying out and administering the inspection and grading program.
Description of Respondents: Business or other for-profit.
Number of Respondents: 131.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 383.

Agricultural Marketing Service

Title: Cotton Classification and Market News Service.

OMB Control Number: 0581–0009.

Summary of Collection: The Cotton Statistics and Estimates Act, 7 U.S.C. 471–476, authorizes and directs the Secretary of Agriculture and Agricultural Marketing Service (AMS), to collect and publish annually, statistics or estimates concerning the grades and staple length of stocks of cotton, known as the carryover, on hand on the 1st of August of each year in warehouses and other establishments of every character in the continental U.S.; and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471). Additionally, AMS collects, authenticates, publishes, and distributes by telegraph, radio, mail, and otherwise, timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B).

Need and Use of the Information: AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. This is information that is needed and used by all segments of the cotton industry. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. In addition, other USDA agencies use the information on carryover stocks for calculating accurate projections and estimates used in policy decisions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 495.

Frequency of Responses: Reporting: On occasion; weekly; annually.

Total Burden Hours: 218.

Farm Service Agency

Title: Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—7 CFR Part 1951.

OMB Control Number: 0560–0160.

Summary of Collection: The Farm Service Agency (FSA) farm loan programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT) [P.L. 87–128]. Occasionally, FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in program regulations or where the borrower qualified for loan assistance but a subsidized interest was charged on the loan, resulting in receipt of unauthorized interest subsidy benefits. The assistance may also be loan servicing where a borrower received an excessive write down or write-off of their debt. The information collected under the provisions of this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan.

Need and Use of the Information: The information to be collected by FSA will primarily be financial data such as amount of income, farm operating expenses, crop yields, etc. The borrower will provide written records or other information to refute FSA's finding when it is determined through audit or by other means that a borrower has received financial assistance to which he or she was not entitled. If the borrower is unsuccessful in having the FSA change its determination of unauthorized assistance, the borrower may appeal the FSA decision. Otherwise, the unauthorized loan recipient may pay the loan in full, apply for a loan under a different program, convey the loan security to the government, enter into an accelerated repayment agreement, or sell the security in lieu of forced liquidation.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 420.

National Agricultural Statistics Service

Title: Trade Association Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The National Agricultural Statistics Service (NASS) has been asked by the Foreign Agricultural Service (FAS) and the U.S. Agency for International Development (USAID) to conduct a survey of U.S. agricultural producer and commodity trade associations. This survey is designed to determine the degree that agricultural trade associations and other associations and organizations who support agriculture and the broader food and fiber economy participate in or facilitate international marketing, foreign direct investment, agricultural research and development, and food safety related activities. NASS will collect information using a survey.

Need and Use of the Information: NASS will ask for information about steps the organizations have taken, are taking, or may be thinking of taking to help their organization members become more competitive in the emerging global economy. The data collected are vital to helping USAID formulate programs to foster agricultural trade that is mutually beneficial to agricultural producers and consumers in the U.S. and in the rest of the world. The USAID/Economic Research Service will analyze the data to determine the extent that the trade associations encourage international trade and the extent to which they use U.S. government information in determining trading partners and investment opportunities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 706.

Frequency of Responses: Reporting: Other (One-time).

Total Burden Hours: 165.

Animal and Plant Health Inspection Service

Title: Certificate for Poultry and Hatching Eggs for Export.

OMB Control Number: 0579–0048.

Summary of Collection: Certificate for Poultry and Hatching Eggs for Export is authorized by 21 U.S.C. 112 and 113. The regulation that implements this law is found in part 91 of Title 9, Code of Federal Regulations. The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission to facilitate the export of U.S. poultry and poultry products, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services, maintains information regarding the import health requirements of other countries for poultry and hatching eggs exported from the U.S. Most countries require a certification that our poultry and hatching eggs are disease free. APHIS will collect information on the quantity and type of poultry and hatching eggs designated for export, using form 17–6, Certificate for Poultry & Hatching Eggs for Export.

Need and Use of the Information: The information collected prevents unhealthy poultry or disease-carrying hatching eggs from being exported from the United States, thereby preventing the international dissemination of poultry diseases. The collection of

information also is necessary to satisfy the import requirements of the receiving countries, thereby protecting and encouraging trade with the United States.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,500.

Economic Research Service

Title: Family Child Care Homes Legislative Changes Study.

OMB Control Number: 0536–NEW.

Summary of Collection: The Family Child Care Homes (FCCHs) Legislative Changes Study is designed to study the effects of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, on the family child care component of USDA's Child and Adult Care Food Program (CACFP). The study was mandated by Congress to provide information on the impact of the legislative changes on the characteristics and operations of family child care home (FCCH) sponsors and providers, and to assess the effects of the legislation on targeting low-income families for participation. Information collected will come from information received from the study.

Need and Use of the Information: Information collected will be on the effect of the Personal Responsibility and Work Opportunity Reconciliation Act on the family child care component of CACFP. The study will examine the effects of the legislative changes on the sponsors, providers, and families served by the program.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions.

Number of Respondents: 3,676.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,521.

Farm Service Agency

Title: Authorization Agreement for Peanut Handlers Automatic Marketing Assessment Payments.

OMB Control Number: 0560–NEW.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 requires that the Secretary and the Farm Service Agency (FSA) provide for a non-refundable Peanut Marketing Assessment (PMA) for peanuts. The regulations found at 7 CFR Part 729.316(c)(1) provide that the peanut handler must remit the PMA required in the regulations to the Commodity Credit Corporation (CCC) in a manner specified by the Secretary. For 1991 through 1996 crop years, peanut handlers were required to remit their PMA checks to lockboxes. However, for the 1997 and subsequent crop years, the Tobacco and Peanuts Division, in conjunction with the lockbox bank, NationsBank, is providing peanut handlers with a PMA payment alternative, the DirectPay debit authorization service. Form CCC–1047, Authorization Agreement for Peanut Handler's Automatic Marketing Assessment Payments, will be used to collect information to enroll peanut handlers in the NationsBank DirectPay service for the 1998 and subsequent crop years.

Need and Use of the Information: Information collected will include the peanut handler's address, accounting contact, depository name, branch, address and checking account information to be forwarded to NationsBank to enroll the peanut handler in the DirectPay Service. The new payment alternative will allow peanut handlers to make automated PMA payments to CCC.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 30.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5.

Animal and Plant Health Inspection Service

Title: Animal Welfare, 9 CFR, Part 3, Marine Mammals.

OMB Control Number: 0579–0115.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) requires the U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service (APHIS) to regulate the humane care and handling of most warmblooded animals including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. The purpose of the AWA is to insure that animals intended for use in research facilities or exhibition purposes or for use as pets are provided humane care and treatment and to ensure the humane treatment of animals during transportation in commerce; and to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. Records and reports will be used to collect information on the care and maintenance of marine mammals.

Need and Use of the Information: APHIS will collect information from records and reports on facilities construction, veterinary care, personnel, feeding, water quality, sanitation space requirements, transportation enclosures, and handling and care in transit. The records and reports provide APHIS with the data necessary for review and evaluation of program compliance by regulated facilities, and provide a workable enforcement system to carry out the requirements of the AWA, and the intent of Congress, on a practical daily basis without resorting to more detailed and stringent regulations and standards which could be more burdensome to regulated facilities.

Description of Respondents: Business or other for-profit; not for-profit institutions.

Number of Respondents: 812.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Semi-annually.

Total Burden Hours: 9,555.

Emergency approval for this information collection has been requested by June 26, 1998.

Farm Service Agency

Title: Operating Loans, Policies, Procedures and Authorizations—7 CFR Part 1941.

OMB Control Number: 0560–0162.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1941) (CONACT) authorizes the Secretary of Agriculture and the Farm Service Agency (FSA) to make (1) direct loans to eligible farmers and ranchers for farm operating loans, and (2) youth loans to enable them to operate enterprises in connection with 4–H Clubs, Future Farmers of America, and similar organizations. The basic objective of the farm operating loan program is to provide credit management assistance to farmers and ranchers to become operators of family sized farms, or continue such operations when credit is not available elsewhere. The assistance enables family farm operators to use their land, labor, and other resources and to improve their living and financial conditions so that they can eventually obtain credit elsewhere. Information must be collected in order for FSA officials to determine a loan applicant's eligibility to qualify for a loan and repayment ability.

Need and Use of the Information: FSA will collect the information through the use of the following forms: FmHA 441–10, Non-disturbance Agreement; FmHA 441–13, Division of Income and Non-disturbance Agreement; FmHA 1940–51, "Crop-share-Cash Farm Lease," FmHA 1940–53, "Cash Farm Lease," FmHA 1940–55," "Livestock Share Farm Lease," FmHA 1940–56, "Annual Supplement to Farm Lease; FmHA 441–8, "Assignment of Proceeds from the

Sale of Products"; FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products"; FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest". The FSA loan approval official must determine that adequate security and repayment ability exists before a loan is granted and that funds are used only for those purposes authorized by law.

Description of Respondents: Farm; individuals or households; business or other for-profit.

Number of Respondents: 52,210.

Frequency of Responses: Recordkeeping: On occasion.

Total Burden Hours: 11,012.

Farm Service Agency

Title: Agreement For The Use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent decree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation. FSA will collect information on the actual and planned disposition of chattel security through the use of form FmHA 1962–I.

Need and Use of the Information: Information collected will be from FSA borrowers who may be individual farmers or farming partnerships or corporations. The collection is on an individual-case basis by FSA staff directly from the borrower.

Description of Respondents: Farms; business or other for-profit; individuals or households.

Number of Respondents: 56,075.

Frequency of Responses: Recordkeeping: Annually.

Total Burden Hours: 18,505.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–16540 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Extension of the Period for Providing Comments Concerning the Proposed Revision of the NRCS Policy for Nutrient Management Technical and Program Assistance Activities

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Extension of the period for providing comments concerning the proposed revision of the NRCS policy for nutrient management technical and program assistance activities.

SUMMARY: NRCS advertised a notice of intention to adopt a revised policy for nutrient management related technical and program assistance activities in the **Federal Register** on April 22, 1998 (63FR19889). This notice is located on pages 19889–19892 (Vol 63, Number 77). Published with the notice was draft 10a of the proposed policy. Because of the significant public interest in this proposed policy revision, NRCS has extended the comment period for an additional thirty (30) days.

EFFECTIVE DATES: Comments must be received by July 22, 1998. This revised policy will be adopted after the close of the comment period. It will be issued as either part 503 of the NRCS National Agronomy Manual or in the NRCS General Manual.

FOR FURTHER INFORMATION CONTACT: Questions or comments about this policy should be directed to the Ecological Sciences Division, NRCS, Washington, DC. Submit questions or comments in writing to Charles H. Lander, Nutrient Management Specialist, NRCS, Post Office Box 2890, Room 6155–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. NRCS will receive comments relative to the proposed changes through July 22, 1998. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on June 10, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, DC.

[FR Doc. 98–16418 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Associated Electric Cooperative, Inc., to construct a 100 megawatt simple cycle electric generating plant in Southeast Missouri.

Meeting Information

RUS will conduct a scoping meeting in an open house forum on Thursday, July 23, 1998, from 7 p.m. until 9 p.m. in the commission courtroom at the Stoddard County Courthouse in Bloomfield Missouri. The courthouse is located at 305 East Court Street.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utility Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468. Bob's E-mail address is bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: Associated Electric Cooperative, Inc., proposes to construct the plant at one of two potential sites. These sites are in the Missouri counties of Butler and Stoddard. The site in Butler County is located on State Highway 51, 1.7 miles north and 1.0 mile east of Fagus and the site in Stoddard County is located 1.2 miles east of Idalia on County Road E.

The proposed project is a nominal 100 megawatt simple cycle combustion turbine. It will be a single fuel gas-fired combustion turbine that will be

permitted as a deminimus air pollution source. This project will be used as a peaking unit and the deminimus permit status will be maintained by limiting the hours of operation. The number of operating hours will depend on the emission rates ultimately guaranteed by the vendor. The simple cycle gas-fired combustion turbine requires minimal water for operation. Depending on temperature and humidity conditions, there may be some water discharges from the site. Such discharges will be permitted under the Missouri National Pollutant Discharge Elemination System program.

Alternatives considered by RUS and Associated Electric Cooperative, Inc., to constructing the generation facility proposed include: (a) no action, (b) purchase of power, (c) load management, (d) construction of additional base load capacity, and (e) renewable energy.

To be presented at the public scoping meeting will be a siting and alternative study prepared by Associated Electric Cooperative, Inc. The siting and alternative study is available for public review at RUS at the address provided in this notice or at Associated Electric Cooperative, Inc., 2814 South Golden, Springfield, Missouri, 65801–0754, phone (417) 881–1204. This document will also be available at the Bloomfield Public Library which is located at 200 Seneca Street.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Associated Electric Cooperative, Inc., will be available at the scoping meeting to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the siting and alternative study, input that may be provided by government agencies, private organizations, and the public, Associated Electric Cooperative, Inc., and Burns and McDonnell will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the **Federal Register** and in newspapers with a circulation in the project area. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: June 17, 1998.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 98–16521 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–15–P

AMERICAN BATTLE MONUMENTS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: American Battle Monuments Commission.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), American Battle Monuments Commission is issuing notice of our intent to amend the system of records entitled the Official Personnel Records and the General Financial Records to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by June 30, 1998.

The proposed routine use will become effective as proposed without further notice on June 30, 1998 unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to LTC Theodore Gloukhoff, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Fax: (703) 696–6666. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: LTC Theodore Gloukhoff, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Tel: (703) 696–6908, Fax: (703) 696–6666.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, American Battle Monuments Commission will disclose data from its Official Personnel Records and General Financial Records system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by American Battle Monuments Commission, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each American Battle Monuments Commission employee, within one month of the end of the quarterly reporting period.

Information submitted by American Battle Monuments Commission to the FPLS will be disclosed by the Office of

Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by American Battle Monuments Commission to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Official Personnel Records and the General Financial Records system notice is amended by addition of the following routine use:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 98–16470 Filed 6–19–98; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Plant Capacity

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elinor Champion, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, Telephone (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to resubmit the Survey of Plant Capacity. Data are gathered from a sample of manufacturing plants in the United States. The survey forms collect data on the value of plant production during actual operations and at full production capability.

This resubmission is to address proposed changes to the MQ–C1 form. We plan to expand one item to collect plant operations data by shift. We also plan to collect the number of temporary production workers and hours worked by temporary production workers in addition to the total number of production workers and hours worked.

In the 1997 survey, the reference period covers the fourth quarter of the survey year only rather than the fourth quarter of the survey year and the prior year. This change decreased the respondent burden from 2 hours to 1.25 hour per respondent. Based on discussions with potential respondents, we estimate that the new data will require about 1.5 hours to complete. Therefore we estimate the total respondent burden to complete the revised form to be 2.75 hours.

The survey data are used in measuring inflationary pressures and capital flows, in understanding productivity determinants, and in analyzing and forecasting economic and industrial trends. The survey results are used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense.

II. Method of Collection

The Census Bureau mails out survey forms to collect the data. Companies are asked to respond to the survey within 30 days of the initial mailing. Letters encouraging participation are mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.
Form Number: MQ–C1.
Type of Review: Regular.
Affected Public: Manufacturing Plants.
Estimated Number of Respondents: 17,000 plants.
Estimated Time Per Response: 2.75 hours.
Estimated Total Annual Burden Hours: 46,750.
Estimated Total Annual Cost: $606,815 (46,750 * $12.98).
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 131, 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16533 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999 American Community Survey—Group Quarters Screening—Form ACS–2(GQ)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Paletta, Bureau of the Census, Room 3715–3, Washington, DC 20230, (301) 457–4269.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 1999 the American Community Survey (ACS) will be conducted in 53 counties. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining characteristic information from the GQs will ensure that we include the necessary people residing at GQs in the 1999 ACS.

A GQ screening operation is being conducted in conjunction with 1998 ACS activities. This request revises the existing GQ clearance for use in the 1999 ACS. Major changes are in the estimated number of respondents and in the estimated time per response. In 1998 we are screening a sample of the GQs in eight counties. In 1999 we will screen a sample of the GQs in 53 counties. After completing one-third of the 1998 screening, we have learned that screening averages about 20 minutes per response instead of 10 minutes as originally estimated. In 1999 we will use the same questionnaire for screening that we are using in 1998, Form ACS–2(GQ), ACS GQ Screening.

We will telephone a sample of GQs in the 53 counties where the 1999 ACS will be conducted. We will verify/update information such as GQ name, address, type, and phone number. We will screen to determine if the residents stay for less than 30 days and have another place to live. If so, the GQ will be classified as out-of-scope for ACS interviewing. If the GQ is in-scope, we will screen to determine if we can complete ACS interviews of the GQ residents by mail, thus saving the expense of personal visits. We will obtain a list of rooms and/or residents from which we can select a sample. All ACS interviewing will be conducted under OMB clearance number 0607–0810.

II. Method of Collection

Telephone interviews will be conducted from Census Bureau's National Processing Center in Jeffersonville, Indiana.

III. Data

OMB Number: 0607–0836.

Form Number: ACS–2(GQ).

Type of Review: Regular Submission.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 900 GQs in the 1999 ACS.

Estimated Time Per Response: 20 minutes (.33 hours).

Estimated Total Annual Burden Hours: 300 hours.

Estimated Total Annual Cost: The group quarters screening is part of the 1999 American Community Survey, the cost of which is estimated to be 38.8 million dollars.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, USC, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16534 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–97]

Foreign-Trade Zone 50—Long Beach, CA Withdrawal of Application for Subzone Status for the L.A. Gear Footwear Distribution Facility

Notice is hereby given of the withdrawal of the application submitted by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 86, requesting special-purpose subzone status for the footwear distribution facility of L.A. Gear, Inc. The application was filed on April 7, 1997 (62 FR 18312, 4/15/97).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: June 12, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–16576 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 85–00014.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Grays Harbor Exporting Trading Company. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1996). Pursuant to this authority, a certificate of review was issued on December 20, 1985 to Grays Harbor Exporting Trading Company.

A certificate holder is required by law to submit to the Department of

Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On June 22, 1995, the Department of Commerce sent to Grays Harbor Exporting Trading Company a letter containing annual report questions with a reminder that its annual report was due on July 7, 1995. Additional reminders were sent on June 11, 1996 and on June 4, 1997. The Department has received no written response from Grays Harbor Exporting Trading Company to any of these letters.

On May 1, 1998, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Grays Harbor Exporting Trading Company that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Grays Harbor Exporting Trading Company thirty days to respond was published in the **Federal Register** on May 7, 1998 at 61 FR 60091. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Grays Harbor Exporting Trading Company to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Grays Harbor Exporting Trading Company for its failure to file an annual report. The Department has sent a letter, dated June 16, 1998, to notify Grays Harbor Exporting Trading Company of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: June 16, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–16421 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Standards Conformity—National Voluntary Conformity Assessment Systems Evaluation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Gladhill, National Institute of Standards and Technology (NIST), Building 820, Room 306, Gaithersburg, MD 20899. (301) 975–4273.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program includes activities related to laboratory testing, product certification, and quality system registration. The information provided is used to conduct an evaluation. After NVCASE evaluation, NIST provides recognition to qualified U.S. organizations that effectively demonstrate conformance with established criteria. The ultimate goal is to help U.S. manufacturers satisfy applicable product requirements mandated by other countries through conformity assessment procedures conducted in this country prior to export.

NVCASE recognition (1) provides other governments with a basis for having confidence that qualifying U.S. conformity assessment bodies (CABs) are competent, and (2) facilitates the acceptance of U.S. products in foreign regulated markets based on U.S. conformity assessment results. NVCASE would promote U.S. trade with Europe and allow the flow of U.S. products to those countries unhindered.

II. Method of Collection

Applicants submit written information to NIST.

III. Data

OMB Number: 0693–0019.

Form Number: None.

Type of Review: Regular submission for an extension of a currently approved collection.

Affected Public: Accreditation Bodies.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost: The estimate of the total annual cost to submit this information for fiscal year 1998 and future years is $1500. The cost is borne by the entities submitting the information.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, an clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16532 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Mauritius

June 16, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for shift, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67626, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on June 23, 1998, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	559,351 dozen.
347/348	1,053,280 dozen.
638/639	449,905 dozen.
647/648/847	551,304 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–16465 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Chuck Helfer, Office of Evaluation, (202) 606–5000, Extension 248, or through e-mail request (chelfer@cns.gov). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, NW., Washington, DC 20503. (202) 395–7316, by July 22, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

I. Foster Grandparent Program (FGP) Accomplishment Survey

Agency: Corporation for National and Community Service.

Title: Foster Grandparent Program (FGP) Accomplishment Survey.

OMB Number: None.

Agency Number: None.

Frequency: Annually.

Affected Public: Public and private non-profit institutions served by FGP volunteers.

Number of Respondents: 1,250.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 937.5 hours.

Total Annualized capital/startup costs: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.

Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. To date, accomplishment data has not been collected for the Foster Grandparent Program (FGP). "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

II. Retired and Senior Volunteer Program (RSVP) Accomplishment Survey

Agency: Corporation for National and Community Service.

Title: Retired and Senior Volunteer Program (RSVP) Accomplishment Survey.

OMB Number: None.

Agency Number: None.

Frequency: Annually.

Affected Public: Public and private non-profit institutions served by RSVP volunteers.

Number of Respondents: 1,250.
Estimated Time Per Respondent: 45 minutes.
Total Burden Hours: 937.5 hours.
Total Annualized capital/startup costs: 0.
Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.
Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. In the past, accomplishment data has been collected for the Retired and Senior Volunteer Program (RSVP) only once as part of a test study conducted in 1996 for the Corporation by Westat, Inc., an independent evaluation contractor. "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

III. Senior Companion Program (SCP) Accomplishment Survey

Agency: Corporation for National and Community Service.
Title: Senior Companion Program (SCP) Accomplishment Survey.
OMB Number: None.
Agency Number: None.
Frequency: Annually.
Affected Public: Public and private non-profit institutions served by FGP volunteers.
Number of Respondents: 1,250.
Estimated Time Per Respondent: 45 minutes.
Total Burden Hours: 937.5 hours.
Total Annualized capital/startup costs: 0.
Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.
Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. To date, accomplishment data has not been collected for the SCP. Therefore, the Corporation seeks an accomplishment survey for the SCP. "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

IV. Background

The Corporation published a Notice in the **Federal Register** (63 FR 1832, dated January 12, 1998), for the 60-day public comment period. In response to the 60-day public comment period on its proposed National Senior Service Corps Activities, Inputs and Accomplishments Surveys, 323 written comments were received broken down as follows: 37 on the SCP Survey, 77 on the FGP Survey, and 209 on the RSVP Survey. Approximately half of the project directors felt that the survey would be burdensome to a station supervisor. Thirty-eight percent of project directors suggested that Project Directors were better suited to fill out the survey because of station supervisors workload, lack of information, and potential damage to the project director/station supervisor relationship.

With respect to administration, almost all of the Foster Grandparent project directors stated that summer administration was not advised, as schools are closed over the summer. A tailored survey approach was suggested by a quarter of RSVP project directors because the survey was too long. One-fifth of the Senior Companions project directors and one-third of the Foster Grandparent project directors commented that their stations do not participate in professional activities. Lastly, approximately one-third of all project directors supplied specific wording, graphics or formatting suggestions. Based on the comments received, the Survey instruments, administration process and time line were revised. Changes can be summarized as follows:

- Administration of the Project Profile and Volunteer Activity (PPVA) data collection will be suspended for 1998 (and will resume in 1999) to reduce overall administrative burden as projects modify existing input-based data collection systems to include more outcome-oriented information on accomplishments.
- The Surveys will now be mailed to Project Directors instead of directly to Station Supervisors. Project Directors will work with stations selected for the samples in reporting the data.
- The deadline for submission of completed surveys will be delayed to September 30, 1998, to avoid potential reporting difficulties for stations such as schools which experience summer down-time.
- The RSVP Survey will be customized for each selected station to include only those BHN (Basic Human Needs) service codes specific to that station's operations.
- BHN service code definitions, which were designed to accommodate the broadest range of service activities in Senior Corps programs, were customized for the FGP and SCP Surveys to provide specific examples more applicable to these programs.
- Refinements were made in wording, format, and instructions.

Dated; June 16, 1998.
Kenneth L. Klothen,
General Counsel.
[FR Doc. 98–16508 Filed 6–19–98; 8:45 am]
BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, DoD.
ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses announces public information collections and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.
DATES: Consideration will be given to all comments received by August 21, 1998.
ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041, ATTN: Mr. Bob Menig.
FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection please write to the above address, or call the Office of the Special Assistant for Gulf War Illnesses at (703) 578–8500.
Title and OMB Number: Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses—Generic Clearance; OMB Number 0704–[To be determined.]
Needs and Uses: The information collections addressed by this notice are

necessary to facilitate the investigations of the Office of the Special Assistant for Gulf War Illnesses into the experiences of Gulf War veterans during the war that may be related to the illnesses experienced by some Gulf War veterans. The information collected will be used to determine which Gulf War veterans may have further information about potential exposure incidents, to discover if there are any other observed incidents of exposure, to contribute to a better understanding of the events during and after the Gulf War, and to encourage veterans to enroll in a Department of Defense or Veterans Affairs medical program.

Affected Public: Individuals or Households.

Annual Burden Hours: 1,572.

Number of Respondents: 3,143.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Information on Each Collection Covered by This Notice

Chemical/Biological Incident Survey

Respondents are Gulf War veterans whose units were in the vicinity of a positive chemical/biological detection, alarm, or other reported incident. The purpose of this survey is to develop investigational leads to assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Possible Weapons Sites

Respondents are Gulf War veterans who served in units that reported possible storage sites for chemical or biological weapons agents. The purpose of this survey is to develop possible investigational leads that may assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Depleted Uranium

Respondents are Gulf War veterans who served in units that may have placed them in contact with equipment potentially contaminated with depleted uranium (DU). Veterans will include personnel who were in or on U.S. combat vehicles at the time they were struck by DU munitions fired from U.S. tanks and personnel who were in contact with equipment either as a member of unit involved in retrograde operations, or as a member of a battle damage assessment team.

Pesticide Exposure Survey

Respondent are Gulf War veterans. Outreach letters will be mailed to Gulf War veterans based on their unit assignment during the Gulf War and their period of deployment. Calls will be made to respondents to ask information on experiences with pesticides during the Gulf War deployment.

Pesticides Use/Application

Gulf War veterans who served as physicians, environmental science officer, entomologists, preventive medicine specialists, field sanitation teams members, and veterans who served in logistics and supply positions will be contacted to determine which pesticides were used (including those purchased locally) and how they were employed in the Gulf during Operations Desert Shield and Desert Storm.

Water Contamination

Respondents will be preventive medicine specialists, field sanitation specialists, and transportation personnel involved with the maintenance of water transport vehicles who served in the Gulf War.

Food Contamination

Respondent will be preventive medicine specialists, field sanitation specialists, and food service personnel to determine what steps were taken to ensure the safety of the food provided to Gulf War troops.

Oil Well Fires

Respondents will be Gulf War veterans who reported contract with oil well fires in calls to the DoD Incident Reporting Line. Veterans will be contacted to get first hand accounts of their experience with oil well fire smoke, precautions they took, and the duration of their exposure under the oil well fire plume.

Retrograde Equipment

Respondents will be Gulf War veterans involved in vehicle cleaning operations prior to vehicles being shipped from the Gulf and personnel who accompanied vehicles during their retrograde shipment.

Armed Services Medical Department Personnel

Respondents will be medical personnel who served in the Gulf War. These personnel will be contacted to complete a survey of their experiences with medical surveillance, vaccine administration, and medical recordkeeping during the Gulf War deployment.

Combat Stress Control

Respondents will be military chaplains who served in the Gulf War. These chaplains will be surveyed to understand their experiences as participants in combat stress control.

Enemy Prisoners of War

Respondents will be Gulf War veterans who served in military police or medical units that were involved in the processing and treatment of enemy prisoners of war during the Gulf War deployment.

Petroleums, Oils, and Lubricants

Respondents will be Gulf War veterans who served in units during the Gulf War deployment that were involved in the acquisition, distribution, and use of petroleums, oils, and lubricants.

Personnel Deployed on Designated Deployments

Respondents will be former members of the Armed Services (including active and reserve component) who served during designated deployments. Personnel will be surveyed about their perceptions and experiences with Medical Force Protection, Medical Surveillance, and health support during the designated deployment.

Dated: June 16, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16435 Filed 6–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Beam Tech Corporation (hereafter Beam Tech), a Texas Corporation, an exclusive license under: United States Patent Application Serial No. 08/933,561 filed in the names of Jill E. Parker, John L. Alls, and Johnathan L. Kiel on September 19, 1997 for a "Diazodenitrification in Manufacture of Recombinant Bacterial Biosensors."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from

the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Senior Intellectual Property Counsel, Secretary of the Air Force, Office of the General Counsel, SAF/GCQ, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone (703) 696–9037.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–16471 Filed 6–19–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) Self-Study Instrument.

Frequency: Every 3 or 4 years per State, based on the monitoring schedule.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 3,360.

Abstract: Under the Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act), States are required to maintain and implement a Statewide, comprehensive, coordinated, multi disciplinary, interagency system that provides early intervention services to infants and toddlers with disabilities and their families. The State's lead agency for Part C is responsible for the monitoring of programs and activities within the State, and the Federal government must provide technical assistance to States to carry out their Part C responsibilities. The self study instrument provides technical guidance to the State, and is also used for Federal and State monitoring of the Part C program.

[FR Doc. 98–16473 Filed 6–19–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the

information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 16, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of Effective Adult Basic Education Programs and Practices.
Frequency: Three (3) times per year (May, September, and December).
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 78.
Burden Hours: 618.
Abstract: The U.S. Department of Education has been working with State Directors of adult education and local providers to document the learning gains of adult education participants. Because little is known about the effectiveness of adult basic education (ABE) programs for first-level learners, this is an exploratory study. Hence, we are developing measures to describe the operational and instructional characteristics of ABE programs and are testing methods of measuring outcomes. The programs participating in the study were selected based on information collected in previous case studies that had evidence of good instruction, where teachers had been trained in a specific model for delivering adult education instruction, and where there was evidence of effective program operations. Respondents are program participants who voluntarily enroll in federally funded adult basic education classes.

[FR Doc. 98–16474 Filed 6–19–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 16, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: 1999 National Household Education Survey (NHES: 99).
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 107,155.
Burden Hours: 15,826.
Abstract: The NHES: 99 will be a telephone survey of households remeasuring key indicators from past NHES surveys related to such topics as Early Childhood Care and Program Participation, Parent/Family Involvement in Education; Youth Civic Involvement, and Adult Education. Respondents will be parents of children from birth through 12th grade, youth enrolled in grades 6 through 12, and adults age 16 and older and not enrolled in grade 12 or below. The collection will provide information on the National Household Education Goals which pertain to school readiness (Goal 1), student achievement and citizenship (Goal 3), adult literacy and lifelong learning (Goal 6), and parental participation (Goal 8), and the U.S. Department of Education's Strategic Plan of 1998–2000.

[FR Doc. 98–16475 Filed 6–19–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–595–000]

ANR Pipeline Company; Notice of Application

June 16, 1998.

Take notice that on June 5, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to utilize

additional work space and for any other authorization deemed necessary associated with a pipeline replacement project in Bolivar County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that it is required to replace two 0.30 mile segments of its Southeast mainline system because of increased population density and in order to satisfy U.S. Department of Transportation safety regulations. ANR states that in order to accomplish this replacement construction, it will have to utilize work areas which may not have been included in the scope of the authorizations for the facilities when they were originally certificated and constructed. Therefore, ANR requests the temporary use of work space in order to make the replacement. ANR states that the construction will be done under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 7, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16477 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–249–000 and RP98–250–000]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1998.

Take notice that on June 11, 1998, Columbia Gas Transmission Corporation, (Columbia Transmission) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively referred to as Columbia), tendered for filing as part of their FERC Gas Tariffs, Second Revised Volume No. 1, the following pro forma tariff sheets:

Columbia Gas Transmission Corporation

Pro Forma Fifth Revised Sheet No. 171
Pro Forma Third Revised Sheet No. 185
Pro Forma Fourth Revised Sheet No. 197
Pro Forma Third Revised Sheet No. 208
Pro Forma Fourth Revised Sheet No. 217
Pro Forma Second Revised Sheet No. 223
Pro Forma Fourth Revised Sheet No. 261
Pro Forma Second Revised Sheet No. 463
Pro Forma Original Sheet No. 463A
Pro Forma Original Sheet No. 463B

Columbia Gulf Transmission Company

Pro Forma Fourth Revised Sheet No. 125
Pro Forma First Revised Sheet No. 287
Pro Forma Original Sheet No. 288
Pro Forma Original Sheet No. 289
Pro Forma Original Sheet No. 290

In these filings, Columbia Transmission and Columbia Gulf are presenting a specific proposal to permit the negotiation of the terms and conditions of tariffed services to provide a specific framework within which the Commission may address the issue of negotiated terms and conditions. In this regard, Columbia states that the proposal is set forth in the format of pro forma tariff sheets to provide the Commission with the opportunity to examine Columbia's proposal without the necessity of accepting or rejecting the sheets within a short time period. Columbia is not filing here any specific negotiated arrangement. Given the nature of the proposal and as explained in greater detail in its "Statement of Nature, Reasons and Basis," Columbia requests that the Commission set this filing for resolution by means of a technical conference, and permit Columbia, its customers, and interested parties an opportunity to discuss the issues presented. Columbia further requests that the technical conference be scheduled no earlier than 120 days from the date of this filing to permit Columbia and its customers to meet informally to discuss the issues raised by the filing.

Columbia further states that the specific proposal contained in the pro forma tariff sheets defines recourse or standard service as that which is provided under the current tariffs. It also lists certain non-negotiable tariff provisions as well as the procedures for the disclosure and implementation of an actual negotiated service arrangement. The procedures are consistent with procedures submitted on May 4, 1998 by the American Gas Association. As explained in greater detail in the filings, these elements of the proposal address stated concerns about the continuing viability of recourse services, market power and undue discrimination in the negotiated terms and conditions context.

Columbia Transmission and Columbia Gulf state that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; 2603 Augusta, Suite 124, Houston, Texas; and 700 Thirteenth Street, NW, Suite 900, Washington, DC; and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16488 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–17–003]

Dauphin Island Gathering Partners; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 11, 1998, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 12, 1998:

Third Revised Sheet No. 9

DIGP states that the purpose of this filing is to report the name and rate of persons that DIGP expects to begin receiving service at negotiated rates on June 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16536 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–346–000, TM97–3–24–000, and RP98–123–000]

Equitrans, L.P., Notice of Informal Settlement Conference

June 16, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 25, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of reviewing the draft settlement documents in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102 (b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16482 Filed 06–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–001]

Granite State Gas Transmission, Inc., Notice of Compliance Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 336, for effectiveness on May 1, 1998.

According to Granite State, Substitute Original Sheet No. 336 is submitted in compliance with the Commission's order issued May 28, 1998 in Docket No. RP98–205–000. Granite State further states that, in the foregoing order, the Commission accepted tariff sheets filed by Granite State proposing a surcharge on its rates for firm and interruptible transportation services to recover costs related to an extension of a lease of a pipeline facility from Portland Pipe Line for one year, from May 1, 1998 to April 30, 1999.

According to Granite State, when it initially filed the surcharge tariff provision, it proposed an effective date of June 1, 1998; later, Granite State says that, by letter on May 7th, it requested that the surcharge be made effective on May 1 for a period of one year, corresponding with the term of the extension of the lease.

Granite State further states that the Commission accepted the surcharge tariff provision for effectiveness on May 1, 1998, and Substitute Original Sheet No. 336 has been revised to reflect the effectiveness of the surcharge as of May 1, 1998, for one year ending April 30, 1999, instead of May 31, 1999, as originally filed.

Granite State also states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16486 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–010]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, KN Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–D, the following tariff sheets to be effective November 1, 1997:

Substitute First Revised Sheet No. 18B
Original Sheet No. 61A

KNI states that these tariff sheets are being filed in accordance with the Office of Pipeline Regulation's (OPR) letter order dated May 29, 1998, in (KNI) Order No. 587 proceeding in Docket Nos. RP97–142–008 and RP97–142–009.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16483 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–602–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 9, 1998, NorAm Gas Transmission Company (NGT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–602–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate a tap, regulator, and metering facilities, located in Poinsett County, Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate a 1-inch tap and 1-inch regulator on Line JM–25, located in Section 29, Township 11 North, Range 7 East, located in Poinsett County, Arkansas. NGT states that these facilities were constructed under Section 311 of the Natural Gas Policy Act and Subpart B, Part 284 of the Commission's Regulations and are necessary to provide increased service to the rural distribution system of Arkla, a distribution division of NorAm Energy Corporation (Arkla).

NGT states that the total estimated increased volumes to be delivered through this new tap are approximately 1,000 MMBtu annually and 10 MMBtu on a peak day. NGT declares that the total costs are estimated at $2,032 and Arkla will reimburse NGT an estimated $1,600 of those costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16485 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–599–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 8, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103–0330, filed in Docket No. CP98–599–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon five small volume measuring stations (farm taps) located in Nebraska, under Northern's blanket certificate issued in Docket No CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that all five end-users have requested the removal of the measuring stations from their property. The Nebraska counties involved with the abandonment are Butler, Gage and Lancaster.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16478 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–601–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 9, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–601–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to construct and operate approximately 2.8 miles of 6-inch loop line on its Moscow Lateral in Whitman County, Washington and to upgrade its Moscow Meter Station in Latah County, Idaho to better accommodate existing firm service delivery obligations to The Washington Water Power Company, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to partially loop the existing 4-inch Moscow Lateral in Whitman County, Washington with 2.8 miles of 6-inch pipeline, which Northwest states will increase the maximum design capacity of the Moscow Lateral from approximately 8,200 Dth per day to approximately 9,800 Dth per day.

Northwest also proposes to upgrade the Moscow Meter Station by removing the two existing 2-inch regulators, the two existing 4-inch orifice meters and the existing 4-inch outlet piping and appurtenances, and installing as replacement facilities two new 4-inch regulators, two 4-inch control valves, two new 6-inch orifice meters, a new relief valve and new 6-inch outlet piping and appurtenances. Northwest

states that as a result of this upgrade, the maximum design capacity of the meter station will increase from approximately 3,200 Dth per day to approximately 12,000 Dth per day at 150 psig.

Northwest states that the estimated cost of constructing the proposed loop line is approximately $1,447,517 and the estimated cost of upgrading the Moscow Meter Station is approximately $197,100.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16479 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–597–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 5, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–597–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for approval to partially abandon facilities at the Soda Springs Meter Station in Caribou County, Idaho, and to construct and operate upgraded replacement facilities at this station to accommodate a request for additional delivery capabilities under authorized transportation agreements with Intermountain Gas Company's affiliate, IGI Resources, Inc., under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Soda Springs Meter Station by removing the four 2-inch regulators, one 4″ x 8″ relief valve and appurtenances and installing two new 3-inch regulators (with 50 percent trim), a 6″ x 8″ relief value and appurtenances. Northwest states that as a result of this upgrade, the maximum design capacity of the meter station will increase from 12,087 Dth per day at 350 psig to approximately 17,432 Dth per day at 400 psig. The total cost of the proposed facility replacement is estimated to be approximately $58,100, which will be reimbursed by Intermountain.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16480 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–248–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1998.

Take notice that on June 10, 1998, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective July 11, 1998:

First Revised Sheet No. 16
Seventh Revised Sheet No. 24
Fourth Revised Sheet No. 104
Fourth Revised Sheet No. 108
Seventh Revised Sheet No. 200
Sixth Revised Sheet No. 242
Fourth Revised Sheet No. 274
Original Sheet No. 274–A
Fourth Revised Sheet No. 275
Second Revised Sheet No. 276
Third Revised Sheet No. 277
Second Revised Sheet No. 278
Original Sheet No. 278–A

Northwest states that the purpose of this filing is to propose changes to the way in which it awards available capacity. Section 25 of the General Terms and Conditions of Northwest's tariff, "Right of First Refusal; Posting of Available Capacity," currently pertains only to capacity that becomes available under expiring or terminating agreements. Proposed Section 25, which is now entitled "Available capacity," has been revised and expanded to establish a new procedure for posting, bidding and awarding unsubscribed capacity instead of awarding such capacity on a first-come, first-served basis. Section 25 also has been expanded to establish the procedures Northwest will use to reserve capacity for future expansion projects. Corresponding changes also have been made to related tariff sheets.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16487 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2579–000]

Pittsfield Hydropower Company Inc.; Notice of Withdrawal

Jnue 16, 1998.

Take notice that on June 11, 1998, Pittsfield Hydropower Company Inc., tendered for filing a Notice of Withdrawal of its filing made on April 20, 1998, in docket No. ER98–2579–000.

Copies of the notice of withdrawal is being served upon Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before June 26, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16535 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–38–001]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 1998:

Substitute Third Revised Sheet No. 5
Substitute Third Revised Sheet No. 6
Substitute First Revised Sheet No. 6A
Substitute First Revised Sheet No. 7
Substitute Second Revised Sheet No. 8
Substitute Third Revised Sheet No. 9
Second Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed to show the legend, names of areas, fields, receipt and delivery points and other points of reference reflected on Williston Basin's system maps in a legible format, in accordance with the Commission's May 28, 1998, Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16484 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3108–000, et al.]

Rocky Mountain Natural Gas & Electric, L.O.C., et al.; Electric Rate and Corporate Regulation Filings

June 15, 1998.

Take notice that the following filings have been made with the Commission:

1. Rocky Mountain Natural Gas & Electric, L.L.C.

[Docket No. ER98–3108–000]

Take notice that on June 10, 1998, Rocky Mountain Natural Gas & Electric L.L.C., amended the notice of filing dated January 22, 1998, for Waivers, Blanket Approvals, and Order Approving Rate Schedule for an Electric License. Rocky Mountain Natural Gas & Electric L.L.C., seeks approval of an initial rate schedule, to be effective 60 days after the date of filing, or the date the Commission issues an order in this proceeding.

In its filing, Rocky Mountain Natural Gas & Electric L.L.C., states that the rates included in the above-mentioned Service Agreement are Rocky Mountain Natural Gas & Electric L.L.C.'s rates and requests in the compliance filing to FERC Order No. 888–A.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER98–3279–000]

Take notice that on June 10, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Avista Energy, Inc.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with PP&L, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER98–3281–000]

Take notice that on June 10, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of June 1, 1998, of Federal Energy Sales, Inc., (Federal Energy). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Federal Energy. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL EPC No. 2.

The Executive Committee states that termination of Federal Energy with a retroactive date of June 1, 1998, would relieve this entity, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Federal Energy from membership in the Pool. Federal Energy has not received any energy related services (such as scheduling, transmission, capacity or energy services) under the NEPOOL Agreement.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER98–3282–000]

Take notice that on June 10, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted materials relating to the financial

security and payment provisions of the restated and amended New England Power Pool Agreement. The Executive Committee requests that the late payment provisions be permitted to become effective July 1, 1998.

The NEPOOL Executive Committee states that copies of these materials were sent to the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER98–3283–000]

Take notice that on June 10, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Entergy Power Marketing Corp., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon Entergy Power Marketing Corp., and the Public Utilities Commission of Ohio.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–3284–000]

Take notice on June 10, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Commonwealth Edison Company, Energy 2000 Power Services, Northeast Energy Services, Inc., PacificCorp Power Marketing, Inc., and Avista Energy, Inc., for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed Service Agreements with Commonwealth Edison Company, Entergy Services, Inc., Northeast Energy Services, Inc., PacifiCorp Power Marketing, Inc., Oglethorpe Power Corporation, Southern Company Services, Inc., Tennessee Valley Authority, Aquila Power Corporation, Avista Energy, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., LG&E Energy Marketing, Inc., Tractebel Energy Marketing, Inc., and Williams Energy Services Company for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on May 14, 1998.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company, as Agent for Union Electric Company and Central Illinois Public Service Company

[Docket No. ER98–3285–000]

Take notice that on June 10, 1998, Ameren Services Company (Ameren Services), as agent for Union Electric Company and Central Illinois Public Service Company (collectively identified as the Ameren Companies) tendered for filing a proposed Market Based Rate Power Sales Tariff (the Tariff) under which it proposes to engage in the sales of electricity at market-based rates on behalf of the Ameren Companies. Ameren Services has asked that the Tariff be permitted to become effective on June 11, 1998. Ameren Services proposes that the Tariff supersede a Market-Based Rate Power Sales Tariff previously filed by Union Electric Company in Docket No. ER96–3664–000.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER98–3286–000]

Take notice that on June 10, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Plum Street Enterprises Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶ 61,284 (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 4, 1998, for Plum Street Enterprises Inc., Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Upper Peninsula Power Company

[Docket No. ER98–3287–000]

Take notice that on June 10, 1998, Upper Peninsula Power Company (UPPCo), tendered for filing an Electric Service Agreement dated as of August 7, 1996 between UPPCo, and Wisconsin Public Service Corporation (WPSC) (the Agreement), and a Service Agreement for Non-Firm Point-to-Point Transmission Service under UPPCo's open access transmission tariff that may be utilized for delivery of capacity and/or energy sold under the Agreement to WPSC. UPPCO has proposed to make the Agreement and the transmission service agreement effective on July 15, 1997.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER98–3288–000]

Take notice that on June 10, 1998, Louisville Gas and Electric Company tendered for filing copies of an unexecuted Purchase and Sales Agreement between Louisville Gas and Electric Company and Amoco Energy Trading Corporation under Rate GSS.

Comment date: May 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER98–3289–000]

Take notice that on June 10, 1998, Louisville Gas and Electric Company tendered for filing copies of an unexecuted Sales Agreement between Louisville Gas and Electric Company and Ameren Service Company under Rate GSS.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Alliant Services, Inc.

[Docket No. ER98–3290–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant), on behalf of Interstate Power Company (IPC) and IES Utilities, Inc. (IES), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and IES for the period May 15, 1998 through October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Services, Inc.

[Docket No. ER98–3291–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and IES Utilities, Inc. (IES), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and IES for the period May 15, 1998 through

October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Alliant Services, Inc.

[Docket No. ER98–3292–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light Company (WPL), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period August 1, 1998 through October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Services, Inc.

[Docket No. ER98–3293–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant), on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light Company (WPL), tendered for filing a Negotiated Capacity Transaction Agreement (Agreement) between IPC and WPL for the period May 1, 1998 through July 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Alliant has served copies of this filing to the Iowa Utilities Board, Minnesota Public Utilities Commission, the Public Services Commission of Wisconsin and the Illinois Commerce Commission.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16476 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 17, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 24, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO

701ST MEETING—JUNE 24, 1998

REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2310, 094, PACIFIC GAS & ELECTRIC COMPANY
CAH–2.
OMITTED
CAH–3.
DOCKET# P–2530, 019. CENTRAL MAINE POWER COMPANY
OTHER#S P–2531, 023, CENTRAL MAINE POWER COMPANY
CAH–4.
OMITTED
CAH–5.
DOCKET# P–10856, 003, UPPER PENINSULA POWER COMPANY
CAH–6.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–917, 000, SOUTHWEST RESERVE SHARING GROUP
CAE–2.
DOCKET# ER98–2783, 000, BRIDGEPORT ENERGY L.L.C.
CAE–3.
OMITTED
CAE–4.
DOCKET# ER98–2878, 000, ORMOND BEACH POWER GENERATION, L.L.C.
CAE–5.
DOCKET# EL98–39, 000, WESTERN KENTUCKY ENERGY CORPORATION, WESTERN KENTUCKY LEASING CORPORATION AND WKE STATION TWO INC.
OTHER#S ER98–2568, 000, WKE STATION TWO INC.
ER98–2569, 000, WESTERN KENTUCKY ENERGY CORPORATION
ER98–2684, 000, LG&E ENERGY MARKETING, INC., WESTERN KENTUCKY ENERGY CORPORATION AND WKE STATION TWO INC.
CAE–6.
DOCKET# ER98–2752, 000, WISCONSIN POWER & LIGHT COMPANY
CAE–7.
DOCKET# ER98–2731, 000, PORTLAND GENERAL ELECTRIC COMPANY
OTHER#S ER98–2791, 000, ARIZONA PUBLIC SERVICE COMPANY
CAE–8.
DOCKET# ER98–2773, 000, CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S ER98–2774, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2775, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2778, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2779, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2792, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2793, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2794, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2795, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2796, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2797, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2798, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2799, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2800, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2801, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2802, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2803, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2804, 000, CALIFORNIA POWER EXCHANGE CORPORATION

ER98–2805, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2806, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2810, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2811, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2812, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2813, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2814, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2815, 000, CALIFORNIA POWER EXCHANGE CORPORATION
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ER98–2817, 000, CALIFORNIA POWER EXCHANGE CORPORATION
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ER98–2836, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2837, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2838, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2839, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2840, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2841, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2842, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–9.
DOCKET# ER98–2680, 000, DUKE ENERGY MOSS LANDING LLC
OTHER#S ER98–2681, 000, DUKE ENERGY MORRO BAY LLC
ER98–2682, 000, DUKE ENERGY OAKLAND LLC

CAE–10.
DOCKET#, OA97–25, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OTHER#S EL98–40, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–1890, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–2060, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–606, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)

CAE–11.
DOCKET# OA97–572, 000, EASTON UTILITIES COMMISSION
OTHER#S OA97–577, 000, DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION, INC.
OA97–582, 000, CITIES OF ANAHEIM, AZUSA, BANNING, COLTON AND RIVERSIDE, CALIFORNIA
OA97–603, 000, VALLEY ELECTRIC ASSOCIATION, INC.
OA97–711, 000, SALUDA RIVER ELECTRIC COOPERATIVE, INC.
OA97–717, 000, IDAHO COUNTY LIGHT & POWER COOPERATIVE ASSOCIATION, INC.
OA97–723, 000, LYON RURAL ELECTRIC COOPERATIVE
OA98–1, 000, FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.
OA98–7, 000, NORTHERN CALIFORNIA POWER AGENCY
OA98–8, 000, NORTH WEST RURAL ELECTRIC COOPERATIVE
OA98–9, 000, MINNKOTA POWER COOPERATIVE, INC.
OA98–10, 000, NORTHERN LIGHTS, INC.
OA98–11, 000, KANDIYOHI COOPERATIVE ELECTRIC POWER ASSOCIATION
OA98–13, 000, CITY UTILITIES OF SPRINGFIELD, MISSOURI

CAE–12.
DOCKET# ER97–1523, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OTHER#S OA97–470, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, ONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.

CAE–13.
DOCKET# ER92–323, 000, APPALACHIAN POWER COMPANY
OTHER#S ER92–324, 000, APPALACHIAN POWER COMPANY

CAE–14.
DOCKET# EC98–35, 000, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.

CAE–15.
DOCKET# ER93–471, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY

CAE–16.
DOCKET# ER98–2624, 000, DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD., L.L.P.

CAE–17.
DOCKET# OA96–114, 000, GPU SERVICE CORPORATION

CAE–18. OMITTED

CAE–19.
DOCKET# ER98–2668, 000, DUKE ENERGY MOSS LANDING LLC
OTHER#S ER98–2669, 000, DUKE ENERGY OAKLAND, LLC
ER98–2785, 000, PACIFIC GAS & ELECTRIC COMPANY

CAE–20.
DOCKET# ER97–4691, 000, MONTAUP ELECTRIC COMPANY
OTHER#S ER98–861, 000, MONTAUP ELECTRIC COMPANY

CAE–21.
DOCKET# ER96–371, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OTHER#S ER95–1295, 000, MARKET RESPONSIVE ENERGY, INC.

CAE–22.
DOCKET# ER98–1106, 000, NEW ENGLAND POWER COMPANY, BANGOR HYDRO-ELECTRIC COMPANY, BOSTON EDISON COMPANY AND CENTRAL MAINE POWER COMPANY, ET AL.

CAE–23.
OMITTED

CAE–24.
DOCKET# ER97–852, 001, ONTARIO HYDRO INTERCONNECTED MARKETS INC.

CAE–25.
DOCKET# EL98–32, 000, UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS V. PACIFICORP

CAE–26.
DOCKET# EL98–18, 000, ENTERGY SERVICES, INC.

CAE–27.
DOCKET# OA97–408, 003, AMERICAN ELECTRIC POWER SERVICE CORPORATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OTHER#S OA97–117, 003 ALLEGHENY POWER SERVICE CORPORATION, ONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OA97–125, 003, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
OA97–126, 003, ILLINOIS POWER COMPANY
OA97–158, 003, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 003, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 003, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA97–279, 003, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–284, 003, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT

LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 003, MIDAMERICAN ENERGY COMPANY
OA97–411, 003, PACIFICORP
OA97–430, 003, EL PASO ELECTRIC COMPANY
OA97–431, 003, BOSTON EDISON COMPANY
OA97–434, 003, CONSUMERS ENERGY COMPANY
OA97–439, 001, VIRGINIA ELECTRIC AND POWER COMPANY
OA97–442, 002, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–445, 003, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 003, PUGET SOUND ENERGY, INC.
OA97–459, 003, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
OA97–630, 002, NORTHEAST UTILITIES SERVICE COMPANY, ONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–344, 009, TEXAS GAS TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP98–155,001, GRANITE STATE GAS TRANSMISSION, INC
OTHER#S RP98–155, 002, GRANITE STATE GAS TRANSMISSION, INC
TM98–3–4, 001, GRANITE STATE GAS TRANSMISSION, INC
TM98–4–4, 000, GRANITE STATE GAS TRANSMISSION, INC
CAG–3.
DOCKET# RP98–232, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–4.
DOCKET# RP98–234, 000, CNG TRANSMISSION CORPORATION
OTHER#S RP97–406, 012, CNG TRANSMISSION CORPORATION
RP98–91, 004, CNG TRANSMISSION CORPORATION
RP98–91, 005, CNG TRANSMISSION CORPORATION
RP98–91, 006, CNG TRANSMISSION CORPORATION
RP98–103, 003, CNG TRANSMISSION CORPORATION
RP98–234, 001, CNG TRANSMISSION CORPORATION
RP98–234, 002, CNG TRANSMISSION CORPORATION
CAG–5.
DOCKET# RP98–236, 000, DISCOVERY GAS TRANSMISSION L.L.C.
CAG–6.
DOCKET# RP98–237, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP98–239, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–8.
DOCKET# GT98–45, 000, EL PASO NATURAL GAS COMPANY
CAG–9. OMITTED
CAG–10.
DOCKET# RP98–229, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–11.
DOCKET# RP98–233, 000, NORTHERN NATURAL GAS COMPANY
CAG–12.
OMITTED
CAG–13.
OMITTED
CAG–14.
OMITTED
CAG–15.
DOCKET# CP88–391, 021, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP88–391, 022, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 006, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP97–177, 008, STEUBEN GAS STORAGE COMPANY
CAG–17.
OMITTED
CAG–18.
DOCKET# RP91–26, 018, EL PASO NATURAL GAS COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RP98–145, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–21.
OMITTED
CAG–22.
DOCKET# RP98–198, 000, TEXAS EASTERN TRANSMISSION CORPORATION
OTHER#S RP85–177, 126, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–23.
DOCKET# OR98–12, 000, LONGHORN PARTNERS PIPELINE, L.P.
CAG–24.
DOCKET# IS98–141, 000, PLANTATION PIPE LINE COMPANY
CAG–25.
DOCKET# RP98–52, 003, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S GP98–3, 000, OXY USA, INC.
GP98–4, 000, AMOCO PRODUCTION COMPANY
GP98–13, 000, MOBILE OIL CORPORATION
GP98–16, 000, UNION PACIFIC RESOURCES CORPORATION
GP98–18, 000, ANADARKO PETROLEUM CORPORATION
CAG–26.
DOCKET# RP97–149, 005, GAS RESEARCH INSTITUTE
OTHER#S RM97–3, 002, RESEARCH, DEVELOPMENT AND DEMONSTRATION FUNDING
RP97–391, 003, GAS RESEARCH INSTITUTE
CAG–27.
DOCKET# RP91–229, 026, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP92–166, 019, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–28.
DOCKET# RP97–320, 001, JOINT PARTIES V. NORTHWEST PIPELINE CORPORATION
CAG–29.
OMITTED
CAG–30.
DOCKET# RS92–49, 011, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP92–74, 018, SOUTH GEORGIA NATURAL GAS COMPANY
RP92–204, 005, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–31.
DOCKET# RP91–143, 045, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–32.
DOCKET# RS92–5, 020, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S RS92–6, 018, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–33.
DOCKET# RS92–24, 019, TEXAS GAS TRANSMISSION CORPORATION
CAG–34.
DOCKET# RS92–45, 021, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP94–87, 011, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–122, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–169, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–195, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–35.
DOCKET# MG98–10, 000, VENICE GATHERING SYSTEM, L.L.C.
CAG–36.
DOCKET# CP98–192, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–37.
DOCKET# CP98–249, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–38.
DOCKET# CP98–132, 000, NORTHERN NATURAL GAS COMPANY
CAG–39.
DOCKET# CP98–128, 000, WYOMING INTERSTATE COMPANY, LTD. AND COLORADO INTERSTATE GAS COMPANY
CAG–40.
OMITTED
CAG–41.
DOCKET# CP98–178, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–42.
DOCKET# CP98–238, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–43.
DOCKET# CP96–213, 007, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S CP90–644, 006, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–44.
DOCKET# TM98–2–8, 000, SOUTH GEORGIA NATURAL GAS COMPANY

HYDRO AGENDA

H–1. RESERVED

ELECTRIC AGENDA

E–1. RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
OMITTED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16618 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00242; FRL–5796–5]

Pilot Project Approach for the Acquisition of Environmentally Preferable Products and Services; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is making available for public review its Pilot Project Approach on the use of non-governmental entities in connection with Executive Order 12873's mandate to EPA to issue guidance concerning the acquisition of environmentally preferable products and services by the Federal Government. Interested parties may request a copy of the Agency's Pilot Project Approach as set forth in the ADDRESSES unit of this notice.

ADDRESSES: To obtain a copy of the Pilot Project Approach contact: Pollution Prevention Information Clearinghouse (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–1023, facsimile number: 202–260–0178, e-mail: PPIC@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Julie Shannon, Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–2736, e-mail: shannon.julie@epamail.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the Pilot Project Approach are available from the EPA Home Page at the Federal Register--Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

B. Fax-On-Demand

Using a faxphone call 202–401–0527 and select item 8001 for a copy of the Pilot Project Approach.

II. Background

Section 503 of Executive Order 12873 on Federal Acquisition, Recycling and Waste Prevention, issued on October 20, 1993, includes a mandate for EPA to issue guidance to help Executive agencies identify and purchase environmentally preferable products. Pursuant to this mandate, on September 28, 1995, EPA issued a proposed Guidance on the Acquisition of Environmentally Preferable Products and Services (60 FR 50722, September 29, 1995) (FRL–4760–5). In EPA's proposed Guidance (see Unit III.E. of the September 29th document), EPA acknowledged the existence of non-governmental entities, including, but not limited to, environmental standard-setting organizations, third-party certification programs, and environmental labeling or environmental "report card" programs and other environmental consulting organizations to which Executive agencies, in appropriate circumstances, may refer for technical assistance in meeting the Executive Order's goals.

III. The Pilot Project Approach

This Notice of Availability publicizes EPA's Pilot Project Approach for Executive agencies to generate information regarding potential uses of non-governmental entities in the acquisition of environmentally preferable products and services.

This Pilot Project Approach will be used to further refine the concepts and principles established in EPA's proposed Guidance on the Acquisition of Environmentally Preferable Products and Services. Simultaneously with the issuance of this Notice of Availability, EPA and other agencies will begin moving forward with the Pilot Project Approach. Ultimately, this Pilot Project Approach will provide practical information to EPA in the development of EPA's final Guidance.

IV. Public Record

Materials related to the use of non-governmental entities are available in the public record under docket control number "OPPTS–00149." The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

List of Subjects

Environmental protection.

Dated: June 10, 1998.

Mary Ellen Weber,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16570 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6113–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees; access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted on or before June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Street, National Program Director, Senior Environmental Employment Program (3641), U.S. Environmental Protection Agency, 401 N Street, S.W., Washington, DC 20460. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313) , which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to: Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives. of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
CQ–820932–02	National Older Worker Career Center, Inc.
CQ–822791–02	NOWCC.
CQ–822911–02	NOWCC.
CQ–822912–02	NOWCC.
CQ–822985–02	NOWCC.
CQ–823144–02	NOWCC.
CQ–823655–02	NOWCC.
CQ–823893–02	NOWCC.
CQ–823905–02	NOWCC.
CQ–823952–02	NOWCC.
CQ–823973–02	NOWCC.
CQ–824021–02	NOWCC.
CQ–824417–02	NOWCC.
CQ–824455–02	NOWCC.
CQ–824714	National Caucus and Center on Black Aged, Inc.
CQ–824715	NCBA.
CQ–824716	NCBA.
CQ–824717	NCBA.
CQ–824718	NCBA.
CQ–825083	NCBA.
CQ–825084	NCBA.
CQ–825085	NCBA.
CQ–825086	NCBA.
CQ–825087	NCBA.
CQ–826277–01	NCBA.
CQ–826278–01	NCBA.
CQ–826377	NCBA.
QS–823447	NCBA.
CQ–822261	National Association for Hispanic Elderly.
CQ–825236	NAHE.
CQ–826228	NAHE.
CQ–826229	NAHE.
QS–823047	NAHE.
CQ–824362	National Council On the Aging, Inc.
CQ–824363	NCOA.
CQ–824364	NCOA.
CQ–825438	NCOA.
CQ–825527	NCOA.
CQ–826218	NCOA.
CQ–822533	National Senior Citizens Education and Research Center.
CQ–822769	NSCERC.
CQ–824298	NSCERC.
CQ–824299	NSCERC.
CQ–824399	NSCERC.
CQ–824721	NSCERC.
CQ–825529	NSCERC.
CQ–825530	NSCERC.
CQ–826279–01	NSCERC.
CQ–822810–02	National Asian Pacific Center on Aging.
CQ–825520	NAPCA.
CQ–825447	NAPCA.
CQ–825448	NAPCA.
CQ–826340	NAPCA.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h)(2)(iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are require to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: June 16, 1998

Donald W. Sadler,

Director, Human Resources Staff for OA, OIA, OARM, OCFO and SES.

[FR Doc. 98–16567 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6114–1]

Notice of Proposed Administrative De Micromis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Pollution Abatement Services Superfund Site, Oswego, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative "de micromis" settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (Site). The Site is located near the eastern boundary of the City of Oswego, New York. The Site is included on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (Order) between EPA and Corning Incorporated, Borg-Warner Automotive, Inc. on behalf of Morse Chain (Borg-Warner Corporation), and Unisys Corporation (Respondents). Respondents individually contributed a minimal amount of hazardous substances to the Site and are eligible for a de micromis settlement under EPA's policies and section 122(g) of CERCLA. This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to this agreement.

DATES: Comments must be provided on or before July 22, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Pollution Abatement Services Superfund Site, U.S. EPA Index No. II–CERCLA–98–0204." For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007, telephone: (212) 637–3177.

Dated: June 11, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–16568 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98-888]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 11, 1998, the Telecommunications Division of the International Bureau of the Federal Communications Commission adopted an Order modifying the exclusion list that prohibits U.S. carriers from making use of non-U.S. licensed facilities. The Commission removed the following facilities from the exclusion list: U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES. This decision will reduce the regulatory burden on U.S. carriers seeking to obtain capacity on these facilities and should make the market for cable access more competitive, leading to lower prices for U.S. carriers' end users.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Adam Krinsky, Attorney, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1099.

SUPPLEMENTARY INFORMATION: This is a summary of the Telecommunications Division's Order adopted on May 11, 1998 and released on May 13, 1998 (DA 98-888). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800. The Order also is available as a text file at <http://www.fcc.gov/Bureaus/International/Orders/1998/da980888.txt>. It is available as a WordPerfect file at <http://www.fcc.gov/Bureaus/International/Orders/1998/da980888.wp>.

Summary of Order

1. On February 29, 1996, the Federal Communications Commission adopted rules to streamline the international Section 214 authorization process and tariff requirements. (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, FCC 96-79, released March 13, 1996, 61 FR 15724, April 9, 1996). The Report and Order adopted procedures for issuing global, rather than country-specific and facility-specific, Section 214 authorizations to qualified applicants. As part of the new procedures, the Commission required the International Bureau to establish and maintain an exclusion list identifying restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization. On July 26, 1996, the International Bureau adopted the exclusion list. (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, DA 96-1205, released July 29, 1996, 61 FR 50023, September 24, 1996). The exclusion list was subsequently modified on October 22, 1996 (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, DA 96-1752, released October 24, 1996, 61 FR 58689, November 18, 1996).

2. On December 29, 1997, PLD Telekom Inc. (PLD) requested authority to provide authorized and future services using the following non-U.S.-licensed facilities not yet identified as exceptions to the Commission's exclusion list: U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES (*See* PLD Telekom, File No. ITC-98-040, filed December 29, 1997). No parties opposed PLD's request.

3. With regard to the cable facilities identified by PLD, we do not find any imperative circumstances that warrant their continued exclusion. Removal of these cable systems from the exclusion list will reduce the regulatory burden on U.S. carriers wishing to obtain capacity on these facilities and should make the market for cable access more competitive, leading to lower prices for U.S. carriers' end users. We therefore find that the public interest will be served by removing the requested facilities from the exclusion list. The U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES cables will therefore be added to the facilities specified as excepted from the exclusion list. This modification of the exclusion list allows any U.S. facilities-based carrier with global Section 214 authorization to use these cable systems.

Ordering Clauses

4. Accordingly, *it is ordered* that the Exclusion List attached to this order, which identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization, is hereby adopted.

5. This order is issued under § 0.261 of the Commission's rules, 47 CFR 0.261, and is effective upon adoption. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Commission's Rules may be filed within 30 days of the date of the public notice of this Order (*See* 47 CFR 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division, International Bureau.

Attachment

International Section 214 Authorizations; Exclusion List as of May 11, 1998.

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules. 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.01 of the Commission's Rules, unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.8(e)(6) of the Commission's Rules. 47 CFR 63.18(e)(6).

Countries

Cuba (applications for service to this country shall comply with the separate filing requirements of the Commission's Public Notice Report No. I-6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities

All non-U.S. licensed Cable and Satellite Systems ExceptForeign Cable Systems.

Aden-Djibouti
APC
APCN
APHRODITE 2
ARIANNE 2
ASEAN
B-M-P
Brunei-Singapore
CADMOS
CANTAT-3
CARAC
CELTIC
China-Japan
CIOS
Denmark-Russia
ECFS
EMOS-1
EURAFRICA
FLAG
Germany-Denmark 1
Germany-Sweden No. 4
Germany-Sweden No. 5
H-J-K
HERMES
HONTAI-2
ITUR
KATTEGAT-1

Kuantan-Kota Kinabalu
LATVIA-SWEDEN
Malaysia-Thailand
Marseille/Palermo Link
MAT–2
ODIN
PENCAN–5
R–J–K
RIOJA
SAT–2
SEA–ME–WE 2
SEA–ME–WE 3
Sweden-Finland
T–V–H
TAGIDE 2
TASMAN 2
UGARIT
UK–BEL 6
UK-Denmark 4
UK-Germany 5
UK-Germany 6
UK-Netherlands 12
UK-Netherlands 14
UK-Spain 4
Ulysses
Unisur

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission will then release an order amending the exclusion list. The list also is subject to change upon issuance of an Executive Order. See Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, released March 13, 1996.

For additional information, contact the International Bureau's Telecommunications Division, Policy and Facilities Branch, (202) 418–1460.

[FR Doc. 98–16515 Filed 6–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 12, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission.

OMB Control No.: 3060–0789.

Expiration Date: 06/30/2001.

Title: Modified Alternative Plan, CC Docket No. 90–571, Order ("1997 Suspension Order").

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 35 respondents; 13.48 hour per response (avg.); 472 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Title IV of the Americans with Disabilities Act of 1990 ("ADA") requires each common carrier providing voice transmission services to provide Telecommunications Relay Services ("TRS") throughout the area it serves to individuals with hearing and speech disabilities by 1993. The TRS enables customers with hearing or speech disabilities to use the telephone network in ways that are "functionally equivalent" to those used by customers using traditional telephone service. Under the Commission's rules, the TRS must be able to handle all calls normally provided by common carriers, unless those carriers demonstrate the infeasibility of doing so. 47 CFR 64.604(a)(3). The Commission has interpreted "all calls" to include coin sent-paid calls, which are calls made by depositing coins in a standard coin-operated public payphone. The Bureau has suspended enforcement of the requirement that carriers provide coin sent-paid calls through the TRS centers since 1993 based on common carriers' representations that it has been technically infeasible to provide the coin sent-paid service through the TRS centers ("coin sent-paid rule"). Since 1995, carriers have made payphones accessible to TRS users through an Alternative Plan ("Alternative Plan"). The Alternative Plan enables TRS users to make local relay calls for free and to make toll calls from payphones using calling or prepaid cards at or below the coin call rates. The Alternative Plan also requires carriers to educate TRS users about the alternative payment methods for the TRS users to make relay calls from payphones. In an Order issued in Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90–571 (adopted August 20, 1997; released August 21, 1997), the Common Carrier Bureau ("Bureau") suspended the enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one year until August 26, 1998 because the only technological solution that can provide the coin sent-paid calls through the TRS centers, coin signalling interface ("CSI"), has serious deficiencies and no new technological solution appears imminent. In the Order, the Bureau recommends that during the one year suspension, the Commission conduct a rulemaking on coin sent-paid issues to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. In addition, the Bureau directed the industry to continue to make payphones accessible to TRS users under the terms of the Alternative Plan, as set forth in Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Memorandum Opinion and Order, 10 FCC Rcd 10927 (1995) ("*1995 Suspension Order*"), and as modified by the Order. The Order modifies the Alternative Plan by requiring industry to: (1) send a consumer education letter to TRS centers (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4 hours); (2) inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry booth will be located, and at what times the booth will be in operation (no. of respondents: 1; hour burden per respondent: 15 minutes; total annual burden: 1.5 hours); (3) publish an article in Consumer Action Network ("CAN's") respective organizations' magazines or newsletters (no. of respondents: 1; hour burden per respondent: 8 hours; total annual hour burden: 8 hours); (4) send a letter directly to all CAN's members (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4 hours); and, (5) create laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones to be distributed to TRS users (no. of respondents: 30; hour burden per respondent: 15 hours; total annual hour burden: 450 hours). The Commission has imposed these third party disclosure requirements to educate TRS users about their ability to make relay calls from payphones, the payment methods available and the rates for the payphone calls. Obligation to respond: Required.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 98–16419 Filed 6–19–98; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 16334.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 25, 1998, 10:00 a.m., meeting open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Audit: 1966 Committee on Arrangements for the Republican National Convention.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 98–16614 Filed 6–18–98; 10:53 am]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 A.M., Wednesday, June 24, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Policy Statement—Federal Home Loan Bank System Financial Disclosure.
- Final Rule—Financial Disclosures by Federal Home Loan Bank.
- Final Rule—Membership Regulation Revisions.
- Proposed Settlement Agreement Regarding the Federal Home Loan Bank of Des Moines Petition.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,
Managing Director.
[FR Doc. 98–16596 Filed 6–17–98; 5:05 pm]
BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 6, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Julia Dobbins, Fort Worth, Texas, and Jean Lauder, Mercedes, Texas; to acquire additional voting shares of Mercedes Bancorp, Inc., Mercedes, Texas, and thereby indirectly acquire additional voting shares of Mercedes National Bank, Mercedes, Texas.

Board of Governors of the Federal Reserve System, June 16, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–16422 Filed 6–19–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Jeanette M. Doty and Jane Ferrier, The Jeanetter Metherell Doty Trust, Lajolla, California; to retain 15.88 percent of the voting shares of First Community Financial Corporation, Mifflintown, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Teebank Family Limited Partnership, Prospect, Kentucky; to acquire 31.59 percent of the voting shares of Republic Bancorp, Inc., Louisville, Kentucky, and thereby indirectly acquire Republic Bank and Trust, Louisville, Kentucky.

Board of Governors of the Federal Reserve System, June 17, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–16542 Filed 6–19–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Danvers Bancorp, Inc., Danvers, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Danvers Savings Bank, Danvers, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. One Valley Bancorp, Inc., Charleston, West Virginia; to acquire 100 percent of the voting shares of Summit Bankshares, Inc., Raphine, Virginia, and thereby indirectly acquire Bank of Rockbridge, Raphine, Virginia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First American Bankshares, Inc., Fort Atkinson, Wisconsin; to acquire 100 percent of the voting shares of Jefferson County Bancorp, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Jefferson County Bank, Jefferson, Wisconsin.

Board of Governors of the Federal Reserve System, June 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16423 Filed 6–19–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. UST Corp., Boston, Massachusetts; to acquire and thereby merge with Affiliated Community Bancorp, Waltham, Massachusetts, and thereby indirectly acquire Lexington Savings Bank, Lexington, Massachusetts; and Middlesex Bank & Trust Company, Newton, Massachusetts.

In connection with this application, Applicant also has filed to acquire the Federal Savings Bank, Waltham, Massachusetts, and thereby operate a federal savings bank, pursuant to § 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Second Bancorp Incorporated, Warren, Ohio; to merge with Enfin, Inc., Solon, Ohio, and thereby indirectly acquire Enterprise Bank, Solon, Ohio.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of The Middle Tennessee Bank, Columbia, Tennessee.

2. Synovus Financial Corp., and TB&C Bancshares, Inc., both of Columbus, Georgia; to merge with Community Bank Capital Corporation, Alpharetta, Georgia, and thereby indirectly acquire Bank of North Georgia, Alpharetta, Georgia.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. The Connor Trusts, Marshfield, Wisconsin; to acquire 51 percent of the voting shares of Pioneer Bancorp, Inc., Auburndale, Wisconsin, and thereby indirectly acquire Pioneer Bank, Auburndale, Wisconsin.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Hoosier Hills Financial Corporation, Osgood, Indiana, and thereby indirectly acquire The Ripley County Bank, Osgood, Indiana.

Board of Governors of the Federal Reserve System, June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16543 Filed 6–19–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank AG, Frankfurt am Main, Germany; to acquire German American Capital Corporation, New York, New York, and thereby engage in acquiring debt that is in default at the time of acquisition, pursuant to § 225.28(b)(2)(vii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16541 Filed 6–19–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0364]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on product specific reports and recordkeeping requirements for certain electronic products.

DATES: Submit written comments on the collection of information by August 21, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping for Electronic Products: Specific Product Requirements 21 CFR Parts 1020, 1030, 1040, and 1050 (OMB Control Number 0910–0213—Reinstatement)

Under sections 532 to 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii to 360ss), FDA has the responsibility to protect the public from unnecessary exposure to radiation from electronic products. Section 532 of the act (21 U.S.C. 360ii) directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic radiation by, among other things, developing and administering performance standards for electronic products. Section 534(g) of the act (21 U.S.C. 360kk(g)) directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act (21 U.S.C. 360ll(e) and (f)) directs the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliance with performance standards. The agency's authority to require records and reports is contained in section 537(b) and (c) of the act (21 U.S.C. 360nn(b) and (c)).

Under this authority, FDA issued regulations detailing product-specific performance standards that specify information to be supplied with the product or require specific reports.

The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

The consequence of not obtaining the required information is that the public unknowingly may be exposed to unnecessary radiation hazards presented by electronic products. Without this information, FDA could not adequately make rational decisions and take appropriate actions to protect the public from these hazards as called for in the act.

Respondents to this collection of information are manufacturers, importers, and assemblers of electronic products. Not all of the requirements are placed on all of these groups.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.20(c)(4)	1	1	1	1	1
1020.30(g)	200	1.33	265	35	9,275

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)[2]*	200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)[2]*	9	1.00	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)	8	1.00	8	40	320
1030.10(c)(4)	41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)[2]*	41	1.61	66	20	1,320
1040.10(h)(1)(i) through (h)(1)(iv)	805	1.00	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)[2]*	100	1.00	100	8	800
1040.11(a)(2)[2]*	190	1.00	190	10	1,900
1040.20(d)(1), (d)(2), (e)(1), and (e)(2)	110	1.00	110	10	1,100
1040.30(c)(1)	1	1.00	1	1	1
1050.10(f)(1) and (f)(2)(i) through (f)(2)(iii)	10	1.00	10	56	560
Disclosure Subtotal	1,176		1,896		32,672
1020.30(d)(1) and (d)(2) and Form FDA 2579	2,345	8.96	21,000	.30	6,300
1030.10(c)(6)(iii) and (c)(6)(iv)	1	1.00	1	1	1
1030.10(c)(6)(iv)	1	1.00	1	1	1
1040.10(a)(3)(i)	83	1	83	3	249
1040.10(i)—burden in 1002.10 (0910–0025)	0		0	0	0
Reports Subtotal	2,430		21,085		6,551
Total Annual Reporting Burden	3,606	6.37	22,981	1.71	39,223

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]The total number of respondents in the reporting burden, Table 1, include respondents who have already been included as a subset of another group in the table. The number of firms marked by an asterisk have been included and counted as a subset of the total firms subject to reporting burden. Therefore, the number of firms represented by an asterisk have not been added to the total number of respondents on the entry for "Disclosure Subtotal," and are not included in the total listed on the last entry of the reporting burden table entitled "Total Annual Reporting Burden." However, any hours of burden generated by these firms were added to the total reporting burden hours on both the disclosure subtotal and total lines of the reporting burden table.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1020.30(q)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1	83
1040.30(c)(2)	7	1	7	1	7
Total Annual Recordkeeping Burden					101

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Certain labeling requirements included in these regulations are either exempt from the definition of "collection of information" under 5 CFR 1320.3(c)(2) because they are "public disclosure[s] of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" or have negligible burden. For example, 21 CFR 1040.10(g) states that "in addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph." The provision goes on to require several cautionary statements in the labeling of laser products approved under this regulation, and further specifies the wording, placement and label design of the required labeling.

21 CFR 1040.30(c)(1), 1050.10(d)(1) through (d)(5), and 1020.10(c)(4) are labeling requirements which are exempt from OMB.

The burden hour and cost estimates were derived by consultation with FDA and industry personnel. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the "Estimated Annual Reporting Burden" table .

Dated: June 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16503 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0431]

EM Industries, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that EM Industries, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of synthetic iron oxide to color ingested drugs at levels higher than the current limit and to provide for the safe use of mica to color ingested drugs.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0257) has been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532. The petition proposes to amend the color additive regulations to provide for the safe use of synthetic iron oxide to color ingested drugs at levels higher than the current limit and to provide for the safe use of mica to color ingested drugs.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 10, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–16504 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F–0432]

Ticona; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ticona has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chromium oxide green, Cr_2O_3 (C.I. Pigment Green 17) as a colorant for polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4603) has been filed by Ticona, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of chromium oxide green, Cr_2O_3 (C.I. Pigment Green 17) as a colorant for polymers intended for use in contact with food. The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–16505 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) (A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for NHSC Recruitment and Retention Assistance and Waiver of NHSC Site Bill—(in use Without Approval)

The National Health Service Corps (NHSC) of the HRSA's Bureau of Primary Health Care, assists underserved communities through the development, recruitment, and retention of primary health care clinicians dedicated to serving people in health professional shortage areas.

The Application for NHSC Recruitment and Retention Assistance submitted by sites or clinicians requests information on the practice site, sponsoring agency, recruitment contact, staffing levels, service users, site's 5-year infant mortality or low birth rate averages, and next nearest site. Assistance in completing the application may be obtained through the appropriate State Primary Care Offices, State Primary Care Associations and HRSA field offices. A form requesting a waiver of the NHSC site bill for a calendar year may be requested at the same time. The information on the application is used for determining eligibility of sites and to verify the need for NHSC providers. Sites must submit applications annually or when they need a provider. The request for a waiver is used to suspend the educational and loan repayment costs of NHSC providers.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hour
Application	1,000	.75	750
Waiver	738	4	2,952
Total	1,000		3,702

Send comments to HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 15, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–16452 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Substance Abuse Treatment Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

This proposed information collection was previously in the **Federal Register** on October 27, 1997, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after December 31, 1999, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Substance Abuse Treatment Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The information proposed for collection in this study will be used by the NIAAA to observe group treatment at up to 20 treatment facilities. At each facility, directors will be asked to provide information about treatment practices and about the client population. At each facility at least seven members of the treatment staff will be asked to provide information about their treatment activities, personal experiences and training. At each facility eight treatment groups will be observed. The group leader will be asked to complete a questionnaire about the observed session and other client demographics. At least seven group members will also be asked to complete a questionnaire about the observed group session. The target population for the study is a group of outpatient public and private providers that will include group treatment as part of their overall plan of clinical therapeutics.

The specific aim of this study is the testing of instruments and methodologies for the systematic measurement of the content, process, and context of group treatment.

Frequency of Response: On occasion. *Affected Public:* Individuals. *Type of Respondents:* American adults. *Estimated Number of Respondents:* 1440. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* .3465. *And Estimated Total Annual Burden Hours Requested:* 449. *The annualized cost to respondents is estimated at:* $5,676. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Facility Director—20	1	20	.75	15
Group Leader—80	2	160	.334	55
Treatment Staff—140	1	140	.334	48
Group Member—560	2	1120	.334	381
Total Number of Respondents		1440		
Total Number of Responses		1440		
Total Hours		499		

Request for Comments: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Willco Bldg., Suite 505, 6000 Executive Blvd., Bethesda, Maryland 20892–7003.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research, NIAAA, NIH, Willco Bldg., Suite 505, 6000 Executive Blvd., Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–0638.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 22, 1998.

Dated: April 6, 1998.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 98–16424 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco use Supplement to the 1998–1999 Current Population Survey"

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National

Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 26, 1998, page 14721 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco use Supplement to the 1998–1999 Current Population Survey". Type of Information Request: OMB #0925–0368, Exp. 3/31/97, REINSTATEMENT, with change. Need and Use of Information Collection: The "Tobacco use" supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, smoking intervention dissemination of workplace smoking policies and cessation programs, and changes in smoking norms and attitudes. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale, 17-state demonstration project. This survey will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. The survey will allow state specific estimates to be made. Data will be collected in September 1988, January 1999 and May 1999 from approximately 255,000 respondents. Frequency of Response: One-time study. Affected Public: Individuals or households. Type of Respondents: Persons 15 yrs of age or older. The annual reporting burden is as follows: Estimated Number of Respondents: 170,000; Estimated Number of Responses per Respondent: 1; Average Burden Hours per Response: .1169; and Estimated Total Annual Burden Hours Requested: 19,873. The annualized cost to respondents is estimated at: $198,727. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Statistician, National Cancer Institute, Executive Plaza North, Room 313, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4970, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne__Hartman@nih.gov.

Comments due date: Comments regarding this information collection are best assured of having their full effect if received on or before July 22, 1998.

Dated June 11, 1998.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 98–16428 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug and Method To Prevent and Treat Graft-Versus-Host Disease and Allograft Rejection

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is seeking Licensees to further develop, evaluate, and commercialize anti-Tac(Fv)–PE38, also known as LMB2. Anti-Tac(Fv)–PE38 is a recombinant toxin composed of the Fv portion of the anti-Tac antibody which binds to the a subunit of the IL2 receptor (also called P55, Tac, or CD25) fused to PE38 a mutant form of *Pseudomonas* Exotoxin A. Anti-Tac (Fv)–PE38 is very cytotoxic to normal or malignant cells expressing IL2 receptors and is being developed for several proposed applications including (1.) the prevention of Graft-versus Host Disease ("GVHD") by purging bone marrow of potentially recipient-reactive donor T-cells, (2.) the treatment of Graft-versus Host Disease by i.v. administration, and (3.) the treatment or prevention of allograft rejection. The goal is to move this methodology into clinical trials. The inventions claimed in USPN 4,892,8927, Entitled: "Recombinant *Pseudomonas* Exotoxins: Construction of an Active Immunotoxin with Low Side Effects"; USSN 07/865,722, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,696,237, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; and USSN 08/461,825, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; are available for either exclusive or nonexclusive licensing for these aforementioned applications (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" on or before September 21, 1998 for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NCI on or before September 21, 1998 for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 206; Facsimile: (301) 402–0220; E-Mail: "DixonJ@OD.NIH.GOV". Information about Patent Applications and pertinent information not yet publicly described

can be obtained under the terms of a Confidential Disclosure Agreement.

Depending upon the mutual interests of the Licensee(s) and the NCI, a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the Anti-Tac (Fv)-PE38 may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Ms. Karen Maurey, Acting Deputy Director, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Boulevard, Room 450, Rockville, Maryland 20852; Telephone: (301) 496–0477; Facsimile: (301) 402–2117. Respondees interested in submitting a CRADA. Proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: Bone marrow transplantation ("BMT") is an useful therapy for the treatment of various malignant and nonmalignant genetic and acquired blood disorders which are otherwise incurable. However, a significant limitation of using allogeneic BMT is that only a minority (less than 30%) of patients have an HLA-identical sibling donor. The use of phenotypically matched unrelated donors can only partially overcome this problem, mainly because the time needed to search for an acceptable donor is often too long for patients with advanced disease. Another problem is that ethnic or racial minorities are under-represented in the volunteer bone marrow donor registries. As a result, the chances of finding an unrelated matched donor for such patients is limited.

Graft-versus-Host disease is one of the most frequent complications of allogenic BMT, and is particularly difficult to control in the mismatched setting. Not only does severe GVHD impact greatly on the quality of life of the transplant recipient, as well as contribute significantly to the cost of therapy, but it is the major cause of patient mortality either directly or indirectly (e.g. opportunistic infections due to long-term immunosuppressive therapy).

As has been well documented, GVHD is the result of alloreactive T-cells in the bone marrow graft that are capable of recognizing and attacking the tissues of the immunosuppressed recipient. As it also known, upon recognition and activation by foreign antigen, T-cells express the receptor for interleukine 2 ("LL–2)—which offers a possible method for the removal of alloreactive T-cells. If it were possible to eliminate the presence of contaminating recipient-alloreactive T-cells in the bone marrow graft, thus preventing or reducing the severity of GVHD, allogeneic transplantation might find greater applications and use in the treatment of a variety of other diseases (e.g., autoimmune diseases such as rheumatoid arthritis, etc.). In cases where haploidentical related donors may be readily available to serve as a donor, specific T-cell depletion would permit the haploidentical donor's immunity to be transferred with the graft while preventing severe GVHD, thus improving the overall patient outcome

While GVHD can be prevented by extensive non-selective T-cell depletion of the bone marrow graft, this procedure increases the risk of infection and graft rejections. In HLA genotypically identical sibling transplant, GVHD can be controlled somewhat through the use of immunosuppressive therapy (e.g., Cyclosporin, Methotrexate, etc.). However, such therapeutic modalities are much less effective in the mismatched setting and are associated with susceptibility to bacteria and viral infections, development of new malignancies, and end organ failure.

NIH/NCI scientists at the National Cancer Institute have developed and evaluated in animal models, a recombinant immunotoxin (e.g., Anti-Tac (Fv)/PE38) which kills activated T-cells at very low immunotoxin concentrations. The subject Immunotoxin is a single chain protein composed of the Fv portion of an antibody fused to the amino terminus of the PE. The toxin has three domains: IA is responsible for cell binding, II is required for translocation and has the proteolytic processing site, and III has the ADP-ribosylating activity. After call internalization, a truncated form of PE, generated by proteolytic cleavage translocates to the cytosol where ADP-ribosylation of elongation factor 2 terminates protein synthesis causing cell death.

NIH/NCI scientists have shown that Anti-Tac(Fv)–PE38 may prevent and reduce the severity of GVHD by specific elimination or reduction of recipient-alloreactive donor T-cells without adversely affecting other T-cell population or compromising stem cell engraftment and recipient hematopoietic rescue and survival. These experiments have demonstrated that it is possible to inexpensively and selectively eliminate or reduce the numbers of alloreactive T-cells present in a bone marrow graft resulting in prevention of or a reduction in the severity of GVHD after bone marrow transplantation procedures, but does not compromise stem cell engraftment and recipient hematopoietic rescue and survival. The methodology is simple and does not involve significant lengths of time or specialized equipment. Thus it should be possible to transition these findings to the clinical situation without significant problems. If clinical results approximate the observed animal finding it might then be possible to utilize BMT in many other disease conditions.

In addition NIH/NCI scientists have shown in a Phase I Trial that Anti-Tac(Fv)–PE38 can be safely administered intravenously to patients with cancer; good blood levels of the immunotoxin are also achieved. Thus Anti-Tac(Fv)–PE38 may also be used to treat patients with GVHD or the treat patients undergoing allograft rejection.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of Anti-Tac(Fv)–PE38. The expected duration of the CRADA would be from one (1) to five (5) years.

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of Anti-Tac(Fv)–PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cyotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
4. Providing technical and/or financial support to facilitate scientific goals and for further design of

applications of the technology outlined in the agreement.

5. Providing immunotoxin for laboratory and animal studies.

6. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

2. The demonstration of adequate resources to perform the research and development of this technology (e.g., facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

4. The demonstration of expertise in the commercial development and production of products related to this area of technology.

5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of immunotoxin in the prevention or treatment of graft-versus-host disease and/or allograft rejection.

7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the right of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant for an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: June 11, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

Dated: April 30, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 98–16427 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug and Method for the Therapeutic Treatment of Ovarian Cancer and Mesotheliomas

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is a seeking Licensee(s) and/or Cooperative Research and Development Agreement ("CRADA") Collaborators to further develop, evaluate, and commercialize a recombinant immunotoxin, termed SS(dsFv)–PE38. SS(dsFv)–PE38 is a disulfide-linked recombinant immunotoxin fused to PE38, a mutant form of *Pseudomonas* Exotoxin, that binds to mesothelin. Mesothelin is a differentiation antigen present on the surface of most ovarian cancers, mesoltheliomas, and several other types of human cancers including cervical cancer. In normal tissue, mesothelin is limited in its expression to mesothelial cells and basal cells of the trachea (low expression). Therefore, it represents an excellent target for antibody-mediated delivery of cytotoxic agents. The antigen is a 40 kD glycoprotein that is attached to the cell surface by phosphatidylinositol. SS (dsFv)–PE38 immunotoxin is very cytotoxic to cancer cells expressing mesothelin and binds with an affinity of approximately 11 nanomolar. The SS (dsFv)–PE38 immunotoxin also produces complete regressions of mesothelin containing solid tumors growing in nude mice. The goal is to move this drug and methodology into clinical trials. The invention is claimed in USPA SN 08/776,271 and PCT patent application PCT/US97/00224, entitled: "Mesothelin, A Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers and Methods and Kits for targeting the Antigen" and is available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" on or before September 21, 1998 for priority consideration.

Interested CRADA Collaborators must submit a confidential proposal summary to the NCI on or before September 21, 1998 for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 206; Facsimile: (301) 402–0220; E-Mail: "DixonJOD.NIH.GOV". Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions".

Depending upon the mutual interests of the Licensee(s) and the National Cancer Institute ("NCI"), a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the SS(dsFv)–PE38 immunotoxin may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Ms. Karen Maurey, Acting Deputy Director, National Cancer Institute, Technology Development & Commercialization Branch, 6120 Executive Plaza South-Room 450, Rockville, Maryland 20852; Telephone: (301) 496–0477; Facsimile: (301) 402–2117. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: NIH/NCI scientists have done toxicity studies with the SS(dsFv)-PE38 immunotoxin in mice and with an earlier single chain variant (SSFv-PE38) in Cynomolgus monkeys. Treatment of mice with 5μg

QOD x 3 (0.25 mg/kilo) produced complete tumor regressions without death or toxicity. Since the antibody does not react with mouse mesothelin, possible toxicities in mice are due to non-specific (liver) toxicity. NIH/NCI scientists have also administered this aforementioned single chain form to monkeys. SS(Fv)-PE38 reacts just as strongly with monkey mesothelin as it does with human mesothelin, and therefore, one would expect the monkey to be a good predictor of toxicity in humans. At a 0.05 mg/kilo dose level, no toxicity was experienced. A second monkey received 0.5 mg/kilo and showed a transient elevation in liver enzymes and non-specific physical signs (inactivity), but fully recovered.

In the United States, an estimated 15,000 patients die of ovarian cancer each year despite therapy. Although less common, mesotheliomas are known to be resistant to all chemotherapeutic agents. Development of new therapeutic modalities to treat these malignancies is needed.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of the SS(dsFv)-PE38 immunotoxin.

The rule of the NCI in the CRADA may include, but are not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of the SS(dsFv)-PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cytotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
4. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
5. Incorporating the immunotoxin into liposomes or producing other formulations in order to increase the therapeutic efficacy.
6. Providing immunotoxin for laboratory and animal studies.
7. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
2. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
4. The demonstration of expertise in the commercial development and production of products related to this area of technology.
5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of the SS (dsFv)-PE38 immunotoxin for the treatment of ovarian cancer and mesotheliomas.
7. The demonstration of expertise in the formulation of drugs into liposomes or other delivery vehicles.
8. The willingness to cooperate with the NCI in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any.

These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: May 18, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

Dated: May 26, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98–16426 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Novel Antitumor Macrocyclic Lactones, Compositions and Methods of Use

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees for the further development, evaluation and commercialization of materials and methods for novel cancer treatment agents. The invention claimed in DHHS Reference No. E–244–97/0, "Novel Antitumor Macrocyclic Lactones, Compositions and Methods of Use," (Boyd, M. et al.) filed on 29 June 1997 as USSN 60/053,784, is available for licensing (in accordance with 35 USC 207 and 37 CFR Part 404).

ADDRESSES: Questions about the licensing opportunity should be addressed to Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7056 ext. 263; Fax: 301/402–0220.

SUPPLEMENTARY INFORMATION: The invention relates to a series of macrocyclic lactones based on compounds isolated from certain marine sponges and tunicates. These compounds have *in vitro* activity against certain human solid tumors, including non-small cell lung cancer, renal cancer and melanoma, all important killers which are resistant to currently used drugs.

Of particular interest is the cell-line activity profile of these lactones, which indicates a novel mechanism of action. Such compounds hold the promise of *in*

vivo activities unlike those seen with current drugs. These lactones thus have the potential for use as therapeutics alone or in combination with existing drugs.

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention will be required to submit an Application for License to Public Health Service Inventions.

Dated: June 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–16425 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDKI GRB–4(02).

Date: July 15–16, 1998.

Time: July 15, 1998, 7:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5 Boston, MA 02114.

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16430 Filed 6–19–98; 8:45 am]

BILLING CODE 1410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(03).

Date: June 30, 1998.

Time: 3:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 6AS.25S, MD 20892 (Telephone Conference Call).

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 1998.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16431 Filed 6–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–7(67).

Date: June 22–23, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, sss–x(6).

Date: June 22, 1998.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–7 (68).

Date: June 25–26, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Woodfin Suite Hotel, 1380 Piccard Drive, Rockville, MD 20850.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Behavioral and Neurosciences Special Emphasis Panel.
Date: June 29–July 1, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Clarion Hampshire Hotel, Washington, DC.
Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7–SSS–X (07).
Date: June 29, 1998.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD(2).
Date: June 30, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.
Date: July 1–3, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.
Date: July 1–2, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 4435–1041.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (04).
Date: July 1, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel MEDB (01).
Date: July 6, 1988.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Multidisciplinary Sciences Special Empahasis Panel, ZRG7–SAT (1S).
Date: July 7–8, 1998.
Time: 6:00 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Bethesda, 8400 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Gerald Becker, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 8, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7850, Bethesda, MD 20892, (301) 435–1177.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel SSS–Z.
Date: July 8, 1998.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 9, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2102 Wisconsin Ave, Washington, DC 20007.
Contact Person: Eileen Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG5 AARR–2 (01).
Date: July 9–10, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 9, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7850, Bethesda, MD 20892, (301) 435–1177.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Chemistry and Related Sciences SEP ZRG3 PBC(1).
Date: July 9, 1998.
Time: 3:00 pm to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (03).
Date: July 9, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: July 9–10, 1998.
Time: 7:00 pm to 5:00 pm.
Agenda: To review evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD, 20815.
Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Metallobiochemistry Study Section.
Date: July 10, 1998.
Time: 8:30 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel.
Date: July 10–11, 1998.
Time: 8:30 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (7).
Date: July 10, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, Phd, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–8 (46).
Date: July 13–14, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Nadarajen Vydelingum, Phd, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176.

Name of Committee: Behavioral and Neurosciences Special Emphasis Panel.
Date: July 13–14, 1998.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7848, Bethesda, MD 20892.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.
Date: July 15, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 10892 (Telephone Conference Call).
Contact Person: Raymond Bahor, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3048, MSC 7766, Bethesda, MD 20892, (301) 435–0903.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: July 15, 1998.
Time: 12:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Everett Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892. (301) 435–1016, ev__sinnett@nih.gov.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG5 AARR–6 (01).
Date: July 20–21, 1998.
Time: 8:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.
Date: July 20, 1998.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–16429 Filed 6–19–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–841019

Applicant: Dr. Michael C. Wooten, Auburn University, Alabama

The applicant requests authorization to take (capture, tag, release, or translocate) the endangered Alabama Beach mouse, *Peromyscus polionotus ammobates*, Choctawhatchee beach mouse, *P.p. allophrys*, Perdido Key beach mouse, P.p. trissyllepsis, and the (currently proposed for listing as endangered) St. Andrews beach mouse, *P.p. peninsularis*, throughout the species' ranges in Alabama and Florida, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by July 22, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: June 15, 1998.
Sam D. Hamilton,
Regional Director.
[FR Doc. 98–16466 Filed 6–19–98; 8:45 am]
BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for Higgins' Eye Pearly Mussel, Lampsilis higginsi, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of a technical/agency draft revised recovery plan for the endangered Higgins' eye pearly mussel, *Lampsilis higginsi*. This freshwater mussel is known to presently occur in the Mississippi River from Minneapolis/St. Paul, Minnesota, to approximately the Iowa-Missouri border, near Keokuk, Iowa, with populations also occurring in the Wisconsin River, downstream of Prairie du Sac, Wisconsin; St. Croix River downstream of Taylors Falls, Minnesota-St. Croix Falls, Wisconsin; and Rock River below Steel Dam, at Milan, Illinois, all tributaries to the Mississippi River. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 21, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Twin Cities Field Office, U.S. Fish and Wildlife Service, 4101 East 80th Street, Bloomington, Minnesota 55125–1665 (telephone 612/725–3548). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received will be available, by appointment, for public inspection during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gerry Bade, Rock Island Field Office, U.S. Fish and Wildlife Service, 4469 48th Avenue Court, Rock Island, Illinois 61201 (telephone 309/793–5800, ext. 520), or contact Mr. Chuck Kjos, Twin Cities Field Office, U.S. Fish and Wildlife Service, 4101 East 80th Street, Bloomington, Minnesota 55425–1665 (telephone 612/725–3548, ext. 206).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for upgrading and recovering them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document under review revises the original Higgins' eye pearly mussel recovery plan, which was approved by the Service in 1983. Since 1983, additional information on the abundance, distribution, biology, and threats to the species has been developed—for example, the species is known today to be somewhat more widespread than was known in 1983 and zebra mussel (*Dreissena polymorpha*), believed today to be a serious threat to Higgins' eye pearly mussel, did not invade U.S. waters until the late 1980s. Endangered species recovery planning today incorporates population concepts and genetic considerations to a greater and more developed degree than it did in 1983 and statistical methods for analysis of mussel populations have advanced significantly since that date. Much recovery work recommended in the 1983 recovery plan remains valid and needs to continue, but the recovery plan needs revision to reflect current knowledge and information of the species' present abundance, distribution, and welfare, as well as actions currently needed for its recovery. The draft revised recovery plan updates information on Higgins' eye pearly mussel abundance, distribution, threats, recommended recovery actions, and recommended criteria for reclassification to threatened status and delisting.

Higgins' eye pearly mussel is known to presently occur in the Mississippi River from Minneapolis/St. Paul, Minnesota, to approximately the Iowa-Missouri border, near Keokuk, Iowa, with populations also occurring in the St. Croix River downstream of Taylors Falls, Minnesota-St. Croix Falls, Wisconsin; Wisconsin River downstream of Prairie de Sac, Wisconsin; and Rock River below Steel Dam, at Milan, Illinois, all tributaries to the Mississippi River. Water quality, navigation, past and present habitat alteration, zebra mussels, incidental loss via legal and illegal harvest of commercial mussel species, natural predation, and loss of genetic variability are addressed in the recovery plan. Recovery efforts will concentrate on protecting the habitat of areas known to support viable Higgins' eye pearly mussel populations and on addressing individually the above identified threats.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Comments should be sent to the Field Supervisor, Twin Cities Field Office, at the above address.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1998.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–16469 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30

days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Comments and suggestions on the requirement should be made directly to the Desk Office for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Consolidated Consumers' Report.

Current OMB Approval Number: 1032–0084.

Abstract: Repsondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as monthly and annual reports for use by Government agencies, industry, and the general public.

Bureau Form Number: 9–4117–MA.

Frequency: Monthly and Annually.

Description of Respondents: Consumers of ferrorus and related metals.

Annual Responses: 2,923.

Annual Burden Hours: 2,192.

Bureau Clearance Officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–16506 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Public Comment Period on Proposed Agreement for Leasing of Colorado River Water and Non-Irrigation of Lands on Chemehuevi Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Chemehuevi Indian Tribe entered into an agreement with Southeastern Nevada Water Company, Inc., dated January 31, 1998, for a 25-year lease of 5,000 acre-feet per year of the Tribe's Colorado River water entitlement. The agreement has been submitted to the Secretary of the Interior with a request for the Secretary's approval as a lease of Indian lands within the meaning of 25 U.S.C. 415 and for approval under 25 U.S.C. 81. As part of the Secretary's review, the Bureau of Indian Affairs has determined it is in the public interest to allow an opportunity for interested parties to comment on the proposed lease.

DATES: Any comments must be received by the agency on or before August 6, 1998.

ADDRESSES: If you wish to comment, you may submit your comments to the Area Director, Bureau of Indian Affairs, Attention: Ms. Cathy Wilson, Phoenix Area Office, P.O. Box 10, MS 420, Phoenix, AZ 85004.

SUPPLEMENTARY INFORMATION: The Chemehuevi Indian Tribe is a federally recognized Indian tribe organized under section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476). The Tribe is the beneficial owner of the Chemehuevi Indian Reservation which is located entirely within San Bernardino County, California. On February 2, 1998, the Chemehuevi Indian Tribe provided the proposed Agreement for the Leasing of Reservation Water and for Non-Irrigation of Reservation Lands to the Secretary of the Interior for approval. If the lease is approved by the Secretary, it will become effective upon that approval and remain in effect for a term of 25 years.

Under the proposed lease agreement, the Tribe will lease 5,000 acre-feet of Colorado River water per year to the lessee, Southeastern Nevada Water Company, Inc. The lessee is a for-profit corporation, organized under the laws of the State of Nevada and based in Scottsdale, Arizona. The lessee is authorized to do business in the State of California and will use the water acquired during the period of the lease to meet the present and future water demands of the lessee and any sublessees or assignees in the State of California.

Copies of the lease are available from the Bureau of Indian Affairs at the address listed under **ADDRESSES**. In addition, the Tribe is assessing the environmental impacts of the lease. Any documents created during the environmental compliance process will be made available, as appropriate, from the Bureau of Indian Affairs' Phoenix Area Office at the address listed under **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Wilson, telephone (602) 379–6789.

Dated: June 15, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–16561 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Agency Action

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency action.

SUMMARY: Notice is hereby given that the Secretary of the Interior has decided to take approximately 146 acres of land, located in New London County, Connecticut, into trust for the Mashantucket Pequot Tribe of Connecticut. The Secretary shall acquire title in the name of the United States no sooner than 30 days after date of this notice. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: The Mashantucket Pequot Tribe of Connecticut submitted an application to acquire approximately 146 acres of land located in New London County, Connecticut, into trust status. Based upon information provided, we have determined that the acceptance of the parcels into trust status is consistent with applicable guidelines and is in the best interest of the Mashantucket Pequot Tribe. The acquisition qualifies for

conversion to trust status pursuant to the provisions of the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 465). The Secretary shall acquire title in the name of the United States of America in trust for the Mashantucket Pequot Tribe of Connecticut no sooner than 30 days after date of this notice according to 25 CFR 151.12(b) (see 61 FR 18083, April 24, 1996), subject to the receipt of satisfactory title evidence in accordance with 25 CFR 151.13.

Fanning Road Tracts

Tract One: Lot number 42 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 819 of the Ledyard Land Records.

Tract Two: Lot number 48 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 215, at Page 189 of the Ledyard Land Records.

Tract Three: Lot number 54 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 219, at Page 468 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 18 which map is on file in the Town of Ledyard Tax Assessor's Office.

Shewville Road Tracts

Tract One: Lot number 812R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 239, at Page 327 of the Ledyard Land Records.

Tract Two: Lot number 854R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 634 of the Ledyard Land Records.

Tract Three: Lot number 858 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 268 of the Ledyard Land Records.

Tract Four: Lot number 871 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 269, at Page 891 of the Ledyard Land Records.

Tract Five: Lot number 875 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 565 of the Ledyard Land Records.

Tract Six: Lot number 879 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 565 of the Ledyard Land Records.

Tract Seven: Lot number 899 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 216, at Page 752 of the Ledyard Land Records.

Tract Eight: Lot number 904 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 242, at Page 295 of the Ledyard Land Records.

Tract Nine: Lot number 929 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 224, at Page 307 of the Ledyard Land Records.

Tract Ten: Lot number 935 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 224, at Page 106 of the Ledyard Land Records.

Tract Eleven: Lot number 938R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 174, at Page 426 of the Ledyard Land Records.

Tract Twelve: Lot number 943 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 220, at Page 419 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 18 which map is on file in the Town of Ledyard Tax Assessor's Office.

Coachman Pike Tracts

Tract One: Lot number 41 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 551 of the Ledyard Land Records.

Tract Two: Lot number 49 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 226 of the Ledyard Land Records.

Tract Three: Lot number 51 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 612 of the Ledyard Land Records.

Tract Four: Lot number 52 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 68 of the Ledyard Land Records.

Tract Five: Lot number 53 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 233, at Page 530 of the Ledyard Land Records.

Tract Six: Lot number 54 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 262 of the Ledyard Land Records.

Tract Seven: Lot number 56 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 233, at Page 487 of the Ledyard Land Records.

Tract Eight: Lot number 58 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 211, at Page 634 of the Ledyard Land Records.

Tract Nine: Lot number 59 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 257 of the Ledyard Land Records.

Tract Ten: Lot number 60 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 237, at Page 203 of the Ledyard Land Records.

Tract Eleven: Lot number 64 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 223, at Page 23 of the Ledyard Land Records.

Tract Twelve: Lot number 66 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 57 of the Ledyard Land Records.

Tract Thirteen: Lot number 67 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 210, at Page 386 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 30 which map is on file in the Town of Ledyard Tax Assessor's Office.

That certain tract or parcel of land situated on the easterly and southerly side of Coachman Pike in the Town of Ledyard, County of New London and state of Connecticut and consisting of the portion of Lot No. 38 on various

plans of Stonehedge subdivision, which portion is located within the definition of private settlement land of the Mashantucket Pequot Tribe as defined by 25 U.S.C. § 1752 and specifically excluding any portion of said lot outside the defined settlement area said tract is bounded and described as follows:

Beginning at a merestone at the northwesterly corner of the herein described tract, said point of beginning being in the easterly street line of Coachman Pike, so-called, at the southwesterly corner of Lot No. 48; thence along Lot No. 48, S. 63°03′30″ E. 140.00 feet to an iron pipe; thence N. 83°14′05″ E. 350.00 feet to an iron pipe, said point being the northeasterly corner of Lot No. 38; thence S. 06°38′01″ E. 175.63 feet to an iron pipe and the southeasterly corner of the within described lot; thence S. 83°14′05″ W. 364.53 feet to an iron pipe which is set at the intersection of said line with the settlement boundary; thence 312.00 feet more or less in a northwesterly direction along the settlement boundary to a point on the southerly side of Coachman Pike; thence in a northeasterly direction along said Coachman's Pike approximately 105.00 feet to the point and place of beginning.

Said lot contains 2 acres more or less and consists of that portion of Lot No. 38 as is located within the settlement area and specifically excludes any portion of said lot which is not within said settlement area.

Title to the land described above will be conveyed subject to any valid existing easements for public roads, highways, utilities, pipelines, and any other valid easements or rights-of-way now on record.

Dated: June 12, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–16420 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1430–00]

Temporary Closure of Selected Public Lands and Roads in Pima County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of selected public lands and Roads (route locally known as Indian Kitchen and Dogtown Roads).

SUMMARY: This notice is to inform the public of the Bureau of Land Management's (BLM) decision by the Tucson Field Office Manager of the Tucson Field Office of the temporary road closure of selected public lands under the Field Office's administration. The selected public land roads are located in: *T. 17 S., R. 12 E.*, sections 11, 14 and 15. This action is being taken to provide for public safety and to prevent unnecessary environmental degradation to archaeological sites, soil resources, native vegetation and wildlife.

DATES: This closure is effective May 26, 1998.

ADDRESSES: 12661 E. Broadway Blvd. Tucson, AZ 85748.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Tucson Field Office, 12661 E. Broadway Blvd., Tucson, Arizona 85748, (520) 722–4289.

SUPPLEMENTARY INFORMATION: The unauthorized construction, excavation and road grading of existing roads has damaged archaeological sites, native vegetation and existing roads. Authority for this action is contained in 43 Code of Federal Regulations 8364–1. Violations are punishable as a Class A misdemeanor. This action is taken protect life and property and allow for safe public land use. The following are supplemental rules for the area described above and apply to all persons using public lands. The special rules are in addition to existing rules and regulations previously established under 43 Code of Federal Regulations (CFR) as well as other Federal laws applicable to the use of public land.

Specific restrictions and closures are as follows:

1. All *posted* roads shall be closed to all vehicular use.

2. All roads described above shall be open to BLM authorized and permitted activities on an event specific basis as authorized by the Tucson Field Office Management or his designee.

3. Casual use of these lands such as hiking, and vehicular use on existing two track trails are permitted.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or Pima County. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined up to $100,000.00 and/or imprisoned for not more than 12 months as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581. This closure shall stay enforced until a resolution of the unauthorized use is reached, terminated or modified by the Bureau of Land Management.

Dated: June 15, 1998

Jesse J. Juen,

Field Manager.

[FR Doc. 98–16501 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61891]

Notice of Realty Action: Classification and Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose conveyance.

SUMMARY: The following described public land in Lincoln County, Nevada has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Lincoln County proposes to use the land for *a* Solid Waste Disposal Site.

Mount Diablo Meridian, Nevada

T. 3 S., R. 65 E.,
Sec. 18, S2SW.
Containing 80 acres, more or less.

The land is not required for any federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Ely District Field Office, 702 N. Industrial Way, Ely, Nevada. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for Conveyance under the Recreation and Public Purposes Act,

leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed Conveyance for classification of the lands to the District Manager, Ely District, HC33, Box 33500, Ely, Nevada 89301.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a solid waste disposal facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste disposal site.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right to appeal to the IBLA. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for Conveyance until after the classification becomes effective.

Dated: June 9, 1998.

Gene A. Kolkman,

District Manager, Ely, NV.

[FR Doc. 98–16468 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty-Day Notice of Intention To Request Clearance of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS') intention to request approval of nine information collections to be carried out pursuant to the Government Productivity and Results Act and the NPS Strategic Plan. Seven of the proposed information collections are surveys of customer satisfaction with certain NPS programs and types of assistance. The other two collections seek information on the number of historic properties designated as such and/or protected by State and local governments that have an official partnership with NPS. The information sought through these nine efforts is not currently collected elsewhere.

NPS' National Center for Recreation and Conservation is proposing to conduct annual mail surveys of the clients of five recreation and conservation assistance programs to assess client satisfaction with the services received and to identify needed program improvements. The NPS goal in conducting these surveys is to use the survey information to identify areas of strength and weakness in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb1 of the 1997 National Park Service Strategic Plan) under the Government Performance and Results Act.

NPS' National Center for Cultural Resources, Stewardship, and Partnerships is proposing to collect information on customer satisfaction with technical assistance publications (using response cards) and technical training, conferences, etc. through responses to training evaluation questions. The National Center for Cultural Resources, Stewardship, and Partnerships also is proposing to collect information on the number of historic properties officially designated and/or protected at the State and local governmental level respectively. The historic property information will be collected from State Historic Preservation Offices and Certified Local Governments (CLGs). CLGs are local governments that have an official historic preservation partnership agreement with their State and NPS pursuant to the National Historic Preservation Act, as amended. The NPS goal in collecting this information is to assist in the evaluation of NPS' historic preservation partnership program effectiveness in achieving the historic preservation results sought and specified in Goals IIIa1, IIIa2, and IIIa3 of the 1997 National Park Service Strategic Plan produced pursuant to the Government Performance and Results Act.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for all nine information collections. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Public comments will be accepted on or before August 21, 1998.

SEND COMMENTS TO: Diane M. Cooke, Information Collection Clearance Office, WASO Administrative Program Center, National Park Service, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION: Contact Rob Campellone—*Voice:* 202–565–1198, *Email:* <rob__campellone@nps.gov>—for further information regarding the surveys related to Recreation and Conservation Assistance customer satisfaction.

Contact Stephen Newman—*Voice:* 292–343–9577, *Email:* snewman@hps.cr.nps.gov__for further information regarding the questionnaires related to historic preservation technical assistance customer satisfaction.

Contact John Renaud—*Voice:* 202–343–1059, *Email:* jrenaud@hps.cr.nps.gov—for further information regarding the collection of data on the number of historic properties designated or protected at the State and local government level.

SUPPLEMENTARY INFORMATION:

Titles: National Park Service Partnership Programs' GPRA Information Collections; Recreation and Conservation Assistance Customer Satisfaction Survey, Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, Historic Properties Designated or Protected By State Government Partners, and Historic Properties Designated or Protected By Local Government Partners

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The Government Productivity and Results Act requires Federal agencies to prepare annual performance report documenting the

progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goals IIIa1, IIIa2, IIIa3, and IIIb1 of the National Park Service Strategic Plan of 1997. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or recordkeeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion.

The National Park Service needs information to help evaluate and improve its recreation and conservation assistance programs and its historic preservation programs.

Automated data collection and statistical sampling: NPS is exploring means to supplement hard copy information with electronic submittal and/or sampling. Total automation would have the potential to skew the results because many potential respondents do not have the ability to respond electronically. NPS intends to test Internet and e-mail submittal for some of the information collections. The results of the initial rounds of these information collections will help to determine the suitability of automation, electronic submittal, and sampling in terms of quality control and in terms of confidence in making extrapolations from the responses available.

Description of respondents: The type of respondents will vary as follows depending upon the information collection.

For the Recreation and Conservation Assistance Customer Satisfaction Surveys, the potential respondents will be all principal contact persons of principal cooperating organizations and agencies which have received substantial assistance from any of the five participating programs during the prior Fiscal Year (October 1 through September 30).

For the Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, the potential respondents will be any recipient of a NPS historic preservation technical assistance publication (an estimated 30,000 distributed annually) and any person receiving NPS historic preservation technical assistance information in a course, workshop, conference, etc. (an estimated 5,000 participants annually).

For collecting information on the number of Historic Properties Designated or Protected By State Government Partners, the potential respondents will be 56 State Historic Preservation Offices. There is one State Historic Preservation Office for each State, Territory, etc. defined as a State by the National Historic Preservation Act, as amended.

For collecting information on the number of Historic Properties designated or Protected By Local Government Partners, the potential respondents will be the Certified Local Governments (CLGs). A CLG is a local government that has executed a formal agreement with its State Historic Preservation Office and NPS and thereby has committed itself to carry out the historic preservation responsibilities specified by the National Historic Preservation Act for participants in the CLG program. There will be an estimated 1,300 CLGs by the end of the approval period being sought for this information collection.

Estimated average number of respondents: 36,845. See the chart below for a breakdown by each information collection.

Estimated average number of responses: 9,974. See the chart below for a breakdown by each information collection.

Estimated average burden hours per response: 2.78 minutes. See the chart below for a breakdown by each information collection.

Frequency of Response: Various. For the Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, the frequency of response is one time per publication or technical assistance event. For the other seven proposed information collections the frequency of response is one time per respondent per year.

Estimated annual reporting burden: 464 hours. See the chart below for a breakdown by each information collection.

Information collection	Estimated number of:			Total hours
	Respondents	Responses	Average time per response (in minutes)	
Rivers, Trails and Conservation Assistance Program	250	250	10	42
Federal Lands to Parks Program	100	100	10	17
Long Distance Trails Program	125	125	10	21
Heritage Areas Program	10	10	10	2
Wild and Scenic Rivers Coordination Program	4	4	10	1
Subtotal	489	489	10	83
Historic Preservation Technical Assistance Publications Customer Satisfaction	30,000	4,500	2	150
Historic Preservation Technical Assistance Training (etc.) Customer Satisfaction	5,000	4,500	2	150
Historic Properties Designated or Protected by State Partners	56	56	10	9
Historic Properties Designated or Protected by CLG Partners	1,300	429	10	72
Subtotal	36,356	9,485	2.41	381
Grand Total	36,845	9,974	2.78	464

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–16495 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park; Advisory Commission Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoa Pili o Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 10:00 a.m. to 2:00 p.m., July 18, 1998, Hawaii Community College, Manono Campus, 200 West Kawili Street, Bldg. 379–A, Room #6, Hilo, Hawaii.

Topic of discussion will be committee reports.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 15, 1998. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: June 8, 1998.

Bryan Harry,

Superintendent, Pacific Islands Support Office.

[FR Doc. 98–16494 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 13, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 7, 1998.

Beth Boland,

Acting Keeper of the National Register.

Arkansas

Craighead County

Craighead County Courthouse, 511 Main St., Jonesboro, 98000831

Desha County

Pindall, Xenophon Overton, Law Office, Jct. of Capitol and Kate Adams Sts., Arkansas City, 98000832

Ouachita County

Two Bayou Methodist Church and Cemetery, Ouachita Cty Rd. 125, Camden vicinity, 98000830

California

San Diego County

City of San Diego Police Headquarters, Jails and Courts, 801 W. Market St., San Diego, 98000833

Connecticut

Hartford County

High Street Historic District, 402–418 Asylum St., 28 High St., and 175–189 Allyn St., Hartford, 98000850

District of Columbia

District of Columbia State Equivalent

Lyndon Baines Johnson Memorial Grove on the Potomac, Lady Bird Johnson Park, Washington, 98000834

Florida

Hamilton County

Johns House, Jct. of FL 135 and Adams Memorial Dr., White Springs, 98000835

Louisiana

St. Bernard Parish

Friscoville Street Historic District, 100–900 blocks of Friscoville St., Arabi, 98000837

Old Arabi Historic District, Roughly along parts of Angela, Mehle, and Esteban Sts., Arabi, 98000836

Maryland

Calvert County

Lyons, Joseph D., House, 7120 Wayside Dr., Sunderland vicinity, 98000839

Massachusetts

Plymouth County

South Hingham Historic District, Roughly along Main St., from Cushing St. to Tower Brook Rd., Hingham, 98000838

Missouri

St. Louis County

Jefferson Barracks National Cemetery (Civil War Era National Cemeteries MPS), 2900 Sheridan Rd., Green Park vicinity, 98000840

South Dakota

Pennington County

Rapid City Commercial Historic District (Boundary Increase), Roughly along St. Joseph and Main Sts., from Mt. Rushmore and Fifth Sts., Rapid City, 98000841

Tennessee

Davidson County

Lyttle, Hulda Margaret, Hall of Meharry Medical College, 1005 Dr. D. B. Todd, Jr. Blvd., Nashville, 98000842

Texas

Bexar County

Maverick—Carter House, 119 Taylor St., San Antonio, 98000844

Our Lady of Mount Carmel and St. Therese Church, 906 Kentucky, San Antonio, 98000843

Virginia

Shenandoah County

Edinburg Historic District, Roughly along Stony Creek Blvd., Shenandoah and Railroad Aves., Edinburg, 98000845

Washington

Chelan County

Leavenworth National Fish Hatchery, 12790 Fish Hatchery Rd., Leavenworth vicinity, 98000847

Grays Harbor County

Lake Quinault Lodge, South Shore Rd., Lake Quinault, 98000846

Wisconsin

Rock County

Pomeroy and Pelton Tobacco Warehouse, 1 W. Fulton St., Edgerton, 98000848

Sheboygan County

Imig, Henry and Charles, Block, 625–629 N. Eighth St., Sheboygan, 98000849.

[FR Doc. 98–16512 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; baggage and personal effects of detained aliens.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies, estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects on Detained Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–43. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his/her property. The Immigration and Naturalization Service also uses this form to protect the government from possible fraudulent claims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 1 minute (.017) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 53–07, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time many also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Department of Clearance Officer, United States Department of Justice.

[FR Doc. 98–16432 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; *ABC* change of address form and special filing instructions for *ABC* class members.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information/Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection: ABC* Change of Address Form and Special Filing Instructions for *ABC* Class Members.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–855 and M–426. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is mandated by the *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) and will be used by class members to inform the Immigration and Naturalization Service of address changes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 I–855 responses at 30 minutes (.50) per response; and 250,000 M–426 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–16433 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application for stay of deportation or removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved Collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–246. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the Immigration and Naturalization Service to determine the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minute (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Departmental Clearance Officer, United States Department of Justice.

[FR Doc. 98–16434 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,352]

Allied Signal, Inc., Automotive Safety Restraints Systems (a/k/a Breed Technologies, Inc.), Greenville, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 23, 1996, applicable to workers of Allied Signal, Inc., Automotive Safety Restraints Systems located in Greenville, Alabama. The notice was published in the **Federal Register** on June 20, 1996 (6 FR 31553).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that Breed Technologies, Inc. purchased the subject firm plant on October 31, 1997. Consequently, some of the workers separated from employment at the Greenville facility have had their wages reported under the unemployment insurance (UI) tax account for Breed Technologies, Inc. The workers of the subject firm produce seat belt and air bag assembly components for the automotive industry.

The intent of the Department's certification is to include all workers of the Greenville, Alabama plant adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect that Allied Signal, Inc., Automotive Safety Restraints Systems is under the new ownership of Breed Technologies, Inc.

The amended notice applicable to TA–W–32,352 is hereby issued as follows:

All workers of Allied Signal, Inc., Automotive Safety Restraint Systems, also known as Breed Technologies, Inc., Greenville, Alabama who became totally or partially separated from employment on or after April 22, 1995 through May 23, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of May 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16550 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–2–34,400]

Apocalypse Inc.; Ellenville, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, and investigation was initiated on April 6, 1998, in response to a worker petition which was filed on behalf of workers at Apocalypse Inc., Ellenville, New York.

The subject firm closed in March of 1997. The Department has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16557 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,591]

B.E.L.-Tronics Limited, a/k/a BELL-Tronics LLC, Covington, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 25, 1997, applicable to workers of B.E.L.-Tronics Limited located in Covington, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm engaged in employment related to the production of swingmates (circuit board assemblies). New information provided by the State shows that on January 1, 1998, the subject firm began operating under the name BEL-Tronics LLC. Consequently, some of the workers separated from employment at the Covington facility have had their wages reported under the unemployment insurance (US) tax account for BEL-Tronics LLC.

The intent of the Department's certification is to include all workers of the B.E.L.-Tronics Limited, Covington, Georgia plant adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect that B.E.L.-Tronics Limited is also known as BEL-Tronics LLC.

The amended notice applicable to TA–W–33,591 is hereby issued as follows:

All workers of B.E.L.-Tronics Limited, also known as BEL-Tronics LLC, Covington, Georgia engaged in employment related to the production of swingmates (circuit board assemblies) who became totally or partially separated from employment on or after June 10, 1996 through July 25, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16548 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,296]

Doehler-Jarvis, Toledo, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 5, 1998, the United Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Local 1058, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice applicable to workers of the subject firm located in Toledo, Ohio, was signed on April 8, 1998 and published in the **Federal Register** on May 6, 1998 (63 FR 25081).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of Doehler-Jarvis, Toledo, Ohio, producing transmission cases was denied based on the finding that the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. None of the Doehler-Jarvis customers reported increased import purchases while decreasing purchases of transmission cases from the Toledo plant.

In support of their application for reconsideration, the UAW Local 1058 submitted documents concerning a foreign company that will supply transmission cases to one of the major Doehler-Jarvis customers. A follow-up with this customer confirms that there were no imports of transmission cases during the time period relevant to the petition investigation. The customer reported that once Doehler-Jarvis made the announcement to close the Toledo production facility, they were required to pursue other suppliers of transmission cases.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16547 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,386]

E.I. du Pont de Nemours & Company, Incorporated, Martinsville, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 12, 1998, applicable to all workers of E.I. du Pont de Nemours & Company, Incorporated, located in Martinsville, Virginia. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce nylon yarn. New information provided by the company shows that some workers of E.I. du Pont de Nemours & Company, Incorporated were leased from Belcan Corporation and Cad Plus Technical Services, both of Martinsville, Virginia. The leased workers provided computer and

information systems support services to the Martinsville, Virginia location of E.I. du Pont de Nemours & Company. Worker separations occurred at Balcan Corporation and Cad Plus Technical Services as a result of worker separations of E.I. du Pont de Nemours & Company. Accordingly, the Department is amending the workers certification to include the workers of Belcan Corporation and Cad Plus Technical Services, Martinsville, Virginia.

The intent of the Department's certification is to include all workers of E.I. du Pont de Nemours & Company, Incorporated adversely affected by imports of nylon yarn.

The amended notice applicable to TA–W–34,386 is hereby issued as follows:

All workers of E.I. du Pont de Nemours & Company, Incorporated, located in Martinsville, Virginia and leased workers of Belcan Corporation and Cad Plus Technical Services, located in Martinsville, Virginia that provided computer and information systems support services for the production of nylon yarn produced at E.I. du Pont de Nemours & Company, Incorporated, Martinsville, Virginia who became totally or partially separated from employment on or after March 10, 1997 through May 12, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of June 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16558 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 202010.

Signed at Washington, D.C. this 1st day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 06/01/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,594	Goodyear Tire and Rubber (Wrks)	Cartersville, GA	03/31/98	Tire Cord Fabrics.
34,595	Carthage Machine Co (IAMAW)	Birmingham, AL	05/13/98	Wood Chippers.
34,596	Koehler Manufacturing Co (Comp)	Marlboro, MA	05/18/98	Portable Lighting and Charging Equipment.
34,597	Price Pfister (Wrks)	Pacoima, CA	05/18/98	Faucets, Plumbing Parts.
34,598	J. Fashions International (UNITE)	Jessup, PA	05/18/98	Dresses.
34,599	J K Operating Corp (UNITE)	Mahanoy City, PA	05/18/98	Sleepwear.
34,600	Kowa Printing Corp (GCIU)	Danville, IL	05/17/98	Print Insurance Forms, Manuals, etc.
34,601	Sanibel Co and ARTO (Wrks)	Hialeah, FL	05/10/98	Ladies' Sportswear.
34,602	Willamette Industries (WCIU)	Eugene, OR	05/17/98	Lumber.
34,603	Oxford of Wadley (Comp)	Wadley, GA	05/07/98	Men's Dress Shirts.
34,604	Master Lock Door Co (Comp)	Auburn, AL	05/21/98	Builders Hardware.
34,605	G.F. Wright Steel & Wire (Wrks)	Worcester, MA	05/18/98	Woven Handware Clothes.
34,606	UNITE, Mid-Atlantic Reg. (UNITE)	Bristol, VA	05/15/98	Union Office.
34,607	Berg Electronics (IBEW)	Franklin, IN	05/20/98	BNC and Coxial Communication Connectors.
34,608	Corbro Mfg Co. LP (Wrks)	West Warwick, RI	05/20/98	Raschel Lace.
34,609	Allied Signal, Inc (Comp)	Columbia, SC	05/26/98	Nylon.
34,610	Saint Gobain Corp (Wrks)	Keasbey, NJ	05/15/98	Ceramic Refractories.
34,611	Inter-State Dyeing (Comp)	Passaic, NJ	04/03/98	Finished Fabric.
34,612	Wex TEx Ind., Inc (Comp)	Ashford, AL	05/19/98	Pajamas, Sleepwear and Boxer Shorts.
34,613	Hovland Mfg. Co., Inc (Comp)	Cody, WY	05/18/98	Ladies' Large and Tall Sizes.
34,614	Champion International (Wrks)	Hamilton, OH	05/15/98	Uncoated Freesheet Paper.

[FR Doc. 98–16552 Filed 6–19–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 05/26/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,568	MPM Automotive Prod. (Comp)	Tucson, AZ	05/12/98	Automotive Products.
34,569	Georgia Apparel, Inc (UNITE)	New York, NY	05/12/98	Pants, Skirts, Shorts.
34,570	Buena Vista Manufacturing (Wrks)	Buena Vista, VA	05/11/98	T-Shirt and Fleece Sweatshirts.
34,571	California Microwave (Wrks)	Stafford, TX	04/28/98	Wireless Communications.
34,572	Joe Sharp Manufacturing (Wrks)	Ranch Cucamonga, CA.	05/05/98	Cutting and Sewing of Soft Luggage.
34,573	Code Alarm (Wrks)	Georgetown, TX	05/12/98	Wire Harnesses.
34,574	Valorie's Folk Art (Wrks)	Springdale, AR	05/11/98	Sweat Shirts and T-Shirts.
34,575	Kleinert's Inc (Comp)	Largo, FL	05/14/98	Infants and Toddler Playwear.
34,576	OPS, Inc (Wrks)	Great Bend, KS	05/12/98	Oilwell Services.
34,577	Wausau-Mosinee Paper Corp (Wrks)	Rhinelander, WI	05/13/98	Specialty Papers.
34,578	Quorum Lanier, Inc (Wrks)	Bloomington, MO	05/11/98	Data Base.
34,579	Zenith Electronicsw Corp (Wrks)	Melrose Park, IL	05/11/98	T.V. Tubes and Computer Monitors.
34,580	Siebe Appliance Controls (Comp)	New Stanton, PA	05/07/98	Cooking Appliances Controls.
34,581	Champion International (Corp)	Machias, ME	05/06/98	Lumber.
34,582	Phillips-Van Heusen (Comp)	Opelika, AL	04/28/98	Magnetic Tape for Audio, Video.
34,583	Quantegy, Inc (Comp)	Opelika, AL	04/28/98	Magnetic Tape for Audio, Video.
34,584	Quantegy, Inc (Comp)	Peachtree City, GA	04/28/98	Magnetic Tape for Audio, Video.
34,585	Robertshaw Controls Co (Comp)	Long Beach, CA	05/08/98	Gas Heating Control Valves.
34,586	Star Food Processing, Inc (Comp)	San Antonio, TX	05/06/98	Cattle and Tomatoes.
34,587	Stella Foods, Inc. (Wrks)	Green Bay, WI	05/14/98	Cheese: Mozzarella, Provolone, Romano.
34,588	Tri-Clover, Inc (IAMAW)	Kenosha, WI	05/14/98	Tubular Fittings.
34,589	Beardsley and Piper (Wrks)	Chicago, IL	04/03/98	Foundary Equipment.
34,590	Eagle Precision Tech. (Comp)	Jackson, MI	04/24/98	Tube End Forming Machines.
34,591	Americold Logistics (Wrks)	Nampa, ID	05/12/98	Potatoes and Vegetables.
34,592	Paper Magic Group, Inc (Comp)	Scranton, PA	04/23/98	Collectible Figures.
34,593	Int'l Transportation (Wrks)	Bowling Green, KY	05/15/98	Underwear—T-Shirts.

[FR Doc. 98–16553 Filed 6–19–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Quantum Opportunity Program Demonstration Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of information for the Quantum Opportunity Program (QOP) Demonstration Evaluation.

A copy of the proposed information collection request (ICR) can be obtained

by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 21, 1998. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed data collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Eileen Pederson, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202–219–5782, extension 145 (this is not a toll-free number). Internet address: PedersonE@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1995, under authority of Title IV of the Job Training Partnership Act (JTPA), ETA—in partnership with The Ford Foundation—launched the QOP demonstration in seven sites: Memphis, Tennessee; Cleveland, Ohio; Washington, D.C.; Fort Worth, Texas; Houston, Texas; Philadelphia, Pennsylvania; and Yakima, Washington. Simultaneously, the Department of Labor selected Mathematica Policy Research, Inc. to determine the net impact of the program. This data collection covers outcome variables for determining the program's impact on the student participants.

QOP provides mentoring, computer-assisted instruction, course-based tutoring, lifeskills training, and community service activities for at-risk disadvantaged high school students. A youth was eligible for QOP if he or she attended a high school with a four-year dropout rate equal to or greater than 40 percent, was entering the 9th grade for the first time in the 1995–96 academic year (the Washington, D.C. site began operations a year later: in the 1996–1997 academic year), and was in the lower two-thirds of the grade distribution for entering 9th graders according to the grade point averages from the 8th grade. The evaluation will measure QOP's impact on academic achievement in reading and mathematics, high school graduation, and enrollment in postsecondary education or training programs. The demonstration will also be evaluated based on its impact on behaviors that are associated with barriers to achieving economic self-sufficiency as adults. Such behaviors include substance abuse, teen parenting, and criminal activity.

II. Current Actions

This notice concerns the collection of data by means of a questionnaire covering outcomes and behaviors, and the collection of school records for each member of the research sample.

Type of Review: New.

Agency: Employment and Training Administration, U.S. Department of Labor.

Title: Quantum Opportunity Program (QOP) Demonstration Evaluation.

OMB Number: 1205–New.

Affected Public: Individuals.

Cite/Reference/Form: The QOP promotion protocol, in-person questionnaire, telephone questionnaire, and school record collection protocol.

Total Respondents: 1,069 youth and 175 school administrators.

Frequency: The protocols and questionnaires will be administered as shown in the following table:

Item	Washington, D.C.	Other sites
Promotion Protocol	Fall 1998, 1999	Fall 1998.
In-Person Questionnaire	Spring 2000	Spring 1999.
School Record Protocol	Fall 2000	Fall 1999, 2000.
Telephone Questionnaire	Fall 2000, 2001	Fall 1999, 2000, 2001.

Estimated Average Time per Respondent: Collection of school records (including promotion records) is estimated to require five minutes per student. The in-person questionnaire is estimated to require 30 minutes to complete, the telephone questionnaire is estimated to take 20 minutes to complete.

Estimated Total Burden Hours:

Item	Respondents	Frequency of administration	Response rate (percent)	Total responses	Minutes per response	Burden hours
Promotion Protocol	175	1.2	100	175	30	105
In-Person Questionnaire	1069	1	80	855	30	428
School Record Protocol	175	1.5	90	236	30	118
Telephone Questionnaire	1069	2.86	80	2446	20	815
Total	1244					1466

Total Burden Cost: The cost of collecting promotion and school records, based on an average school staff salary of $20, is anticipated to be $4,460. The cost to student participants to complete the questionnaire in person and by telephone, based on the minimum wage of $5.15, is approximately $6,401. Thus, the total burden cost is expected to be $10,861.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 16, 1998.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 98–16556 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01702]

B.E.L.-Tronics Limited a/k/a BEL Tronics LLC, Covington, GA; Amendment Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on July 25, 1997, applicable to workers of B.E.L.-Tronics Limited located in Covington, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm engaged in employment related to the production of swingmates (circuit board assemblies). New information provided by the State shows that on January 1, 1998, the subject firm began operating under the name BEL-Tronics LLC. Consequently, some of the workers separated from employment at the Covington facility have had their wages reported under the unemployment insurance (UI) tax account for BEL-Tronics LLC.

The intent of the Department's certification is to include all workers of the B.E.L.-Tronics Limited, Covington, Georgia plant adversely affected by increased imports from Canada or Mexico. Accordingly, the Department is amending the certification to reflect that B.E.L.-Tronics Limited is also known as BEL-Tronics LLC.

The amended notice applicable to NAFTA–01702 is hereby issued as follows:

All workers of B.E.L.-Tronics Limited, also known as BEL-Tronics LLC, Covington, Georgia, who became totally or partially separated from employment on or after June 10, 1996 through July 25, 1999, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16559 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,188 and NAFTA–02140]

Badger Paper Mills, Incorporated, Peshtigo, WI; Notice of Revised Determination on Reconsideration

On March 2, 1998, the Department issued Negative Determinations Regarding Eligibility to apply for TAA and NAFTA–TAA, applicable to workers and former workers of Badger Paper Mills, Incorporated located in Peshtigo, Wisconsin. The notices were published in the **Federal Register** on March 23, 1998 (63 FR 13878) and (63 FR 13879), respectively.

By letter of March 27, 1998, the petitioners requested administrative reconsideration regarding the Department's denial of TAA and NAFTA–TAA for workers of the subject firm. Workers at Badger Paper Mills, Incorporated are engaged in employment related to the production of commercial business paper and twisting papers for candies and gum. The petitioners claim that the investigations were lacking in substance in that the Department did not examine paper grade, pricing or competition. Price and marketing practices by domestic competitors would not form the basis for a worker group certification under the Trade Act of 1974, as amended.

One of the findings in the original TAA and NAFTA–TAA negative determinations for workers of Badger Paper Mills, Incorporated was that the subject firm exported a majority of their products, and thus, were not import impacted. The petitioners requesting reconsideration, however, presented evidence that some of the commercial paper customers decreasing purchases were domestic customers.

On reconsideration, the Department obtained additional information regarding the output at the Peshtigo plant and the major declining domestic customers. The primary output at Badger Paper Mills in 1996 and 1997 was commercial business paper.

On reconsideration, the Department conducted a survey of the domestic customers reducing purchases of commercial business paper from the subject firm. The customers reported continued or increasing reliance on import purchases of commercial business paper from Mexico or Canada.

Other findings on reconsideration show that the workers at the subject firm are interchangeable among the product lines. Accordingly, the Department recognizes that the worker separations resulting from increased imports of commercial business paper indirectly affected the workers producing of twisting papers for candies and gum. Workers at Badger Paper Mills, Incorporated that formerly produced pulp at the Peshtigo location are covered under TA–W–32,366 until the expiration date of June 17, 1998, and are therefore, excluded from this finding.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude there were increased imports from foreign sources, including Mexico or Canada, of articles like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Badger Paper Mills, Incorporated, Peshtigo, Wisconsin engaged in employment related to the production of commercial business paper and twisting papers for candies and gum who became totally or partially separated from employment on or after January 19, 1997 through two years from the issuance of this revised determination are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

All workers of Badger Paper Mills, Incorporated, Peshtigo, Wisconsin engaged in employment related to the production of commercial business paper and twisting papers for candies and gum who became totally or partially separated from employment on or after January 16, 1997 through two years from the issuance of this revised determination are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 3rd day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16549 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,475; Ocean Beauty, Astoria, OR
TA–W–34,442; Sea Watch International, Ltd. Easton, MD
TA–W–34,218; Kane Handle Co., Kane, PA
TA–W–34,351; Clearing Niagara Bliss (CNB), International, Inc., New Products Div., Buffalo, NY
TA–W–34,311; Couvee Corp., Rancho Dominguez, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,494; UNDC-Wilson Sporting Goods Co., Algood, TN
TA–W–34,521; Rugby Laboratories, Glenview, IL
TA–W–34,528; Independent Order of Foresters, San Diego, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,447; OilTanking Houston, Inc., d/b/a Carter-Roag Coal Co., Elkins, WV
TA–W–34,379; Kezar Falls Woolen Co., Parsonsfield, ME
TA–W–34,361; Otis Elevator Co., Bloomington, IN
TA–W–34,434; North American Refractories Co., Curwensville Plant, Curwensville, PA
TA–W–34,363; Dana Corp., Marion Forge Div., Marion, OH
TA–W–34,228; Avery Dennison, Chicopee Binder Div., Chicopee, MA
TA–W–34,344; Lipton, Flemington, NJ
TA–W–34,415; Superior Design Co., Liverpool, NY, Employed at the Global Heavy Absorption Design Center, Carrier Corp., Syracuse, NY
TA–W–34,465; United Industries, Beloit, WI
TA–W–34,399; Kenecott Utah Copper Corp., Magna, UT
TA–W–34,457; Pre Con Corp., Kalamazoo, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,375; Pacificorp, Wyodak Plant, Gillette, WY
TA–W–34,467; Lone Star Cutting Services, Inc., El Paso, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–34,389; BHP Copper, Inc., Pinto Valley Operations, Miami, AZ

Aggregate imports of copper ore and concentrate did not increase during the period under investigation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,418; Cole Haan Manufacturing, Sanford, ME: March 26, 1997.
TA–W–34,433; Champion Products, Inc. "Screen Printing Department" and "Embroidery Department", Dunn, NC: March 24, 1997.
TA–W–34,398; Semitool, Inc., Kalispell, MT: March 14, 1997.
TA–W–34,410; Quantum Corp., Workstation and Systems Storage Group, Hard Disk Drive Prototype Manufacturing, Shrewsbury, MA: March 26, 1997.
TA–W–34,449; Midstate Garment Manufacturing, Inc., McMinnville, TN: March 31, 1997.
TA–W–34,356; The Sero Co., Inc., Cordele, GA: March 12, 1997.
TA–W–34,360; Conway Acquisition Corp., d/b/a/ Uniblend Spinners, Inc., Union, SC: March 10, 1997.
TA–W–34,414; Bensal Fashions, Inc., Briarcliff Manor, NY: March 16, 1997.
TA–W–34,452; Libby Sawmill, Louisiana-Pacific Corp., Northern Div., Libby, MT: June 5, 1997.
TA–W–34,426; Bay City Fashions, Bay City, MI: March 25, 1997.
TA–W–34,387; Bowcraft Trimming Co., Inc., Newark, NJ: March 13, 1997.
TA–W–34,485; Kaufman Footwear Corp., Dushore, PA
TA–W–34,460 & A; Westark Garment Manufacturing, Waldron, AR: and Havana, AR: March 25, 1997.
TA–W–34,391, A & B; Forstmann and Co., Dublin, GA, Milledgeville Plant, Milledgeville, GA and Louisville Plant, Louisville, GA: March 16, 1997.
TA–W–34,392; Voyager Emblem Co., Sanborn, NY: March 9, 1997.
TA–W–34,367; Stevcoknit Fabrics Co., A Div. Of Delta Mills, Inc., A Subsidiary of Delta Woodwide Industries, Inc., Carter and Holly Plant, Wallace, NC and Operating at The Following Locations: A; Michel Plant, Spartanburg, SC, B; Stevcoknit Administrative Offices, Greer, SC, C; New York Sales Office, New York, NY, D; California Sales Office, Torrance, CA, E; Texas Sales Office, Planos, TX, Sales Representative: F; Duluth, GA, G; Columbus, GA, H; Palm Beach Gardens, FL: March 17, 1997.
TA–W–34,233; Eastman Kodak Co., Rochester, NY, Kodak Park and Elmgrove, NY: January 20, 1997.
TA–W–34,346; Russell-Neuman, Inc., Cisco, TX: March 10, 1997.
TA–W–34,437; Golding City Hosiery Mills, Inc., Villa Rica, GA: March 30, 1997.
TA–W–34,366; Tiscarora, Inc., Martinsville, IN: March 11, 1997.
TA–W–34,565; Sinclair Technologies, Inc., Tonawanda, NY: April 30, 1997.
TA–W–34,377; Smoaks Manufacturing Co., Smoak, SC: March 17, 1997.
TA–W–34,386; E.I. du Pont de Nemours & Co., Inc., Martinsville, VA Including the Following leased Workers Employed at E.I. de Pont de Nemours & Co, CSI Services, Inc., Martinsville, VA, Macro Warehouse, Inc., Martinsville, VA, Greater Barrier Insulation, Martinsville, VA, Noland, Martinsville, VA and Fluor-Daniel, Martinsville, VA: March 10, 1997.
TA–W–34,473; Bugatti, Inc., New England Leather, Rochester, NH: March 31, 1997.
TA–W–34,499; Federal-Mogul Corp., Powertrain Systems Div., Mooresville, IN: April 17, 1997.

TA–W–34,502; Master Casual Wear, Ripley, TN: April 17, 1997.
TA–W–34,221; Pekin Plastics, Pekin, IN: January 23, 1997.
TA–W–34,394; Action West, Div. Of Don Shapiro Industries, El Paso, TX: March 16, 1997.
TA–W–34,353; Lane Plywood, Engene, OR: March 12, 1997.
TA–W–34,365; Smith of Galeton Gloves, Galeton, PA: March 19, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02327; Lone Star Cutting Services, Inc., El Paso, TX
NAFTA–TAA–02270, A & B; Forstmann & Co., Dublin, GA, Milledgeville Plant, Milledgeville, GA and Louisville Plant, Louisville, GA
NAFTA–TAA–02303; General Dynamics, Defense Systems, Pittsfield, MA
NAFTA–TAA–02260; The Sero Co., Inc., Cordele, GA
NAFTA–TAA–02280; Denise Lingerie, Div. of House of Ronnie, Inc., Johnson City, TN

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02375; Transcity Terminal Warehouse, Indiana, Distribution Warehouse, Indianapolis, IN
NAFTA–TAA–02330; Young and Morgan Trucking, Lyons, OR
NAFTA–TAA–02292; Caliber Logistics, Inc., Vancouver, WA
NAFTA–TAA–02367; Independent Order of Foresters, San Diego, CA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02333; The Proctor and Gamble Manufacturing Co., Health Care Div., Greenville, SC: April 15, 1997.
NAFTA–TAA–02313; Champion Products, Inc., "Screen Printing Department" and "Embroidery Department" Dunn, NC: March 31, 1997.
NAFTA–TAA–02355; Megas Beauty Care, Inc., Div. of American Safety Razor, Sparks, NE: March 31, 1997.
NAFTA–TAA–02326; Bugatti, Inc., New England Leater, Rochester, NH: March 31, 1997.
NAFTA–TAA–02362; Rotadyne, Engineered Roller Div., Lancaster, NY: April 27, 1997.
NAFTA–TAA–02363; Sheldahl. Inc., Aberdeen, SD: March 30, 1997.
NAFTA–TAA–02372; Sinclair Technologies, Inc., Tonawanda, NY: April 30, 1997.
NAFTA–TAA–02337; Kaufman Footwear Corp., Dushore, PA: April 15, 1997.
NAFTA–TAA–02357; J.C. Viramontes, Inc., d/b/a/ International Garment Finishers, Inc., El Paso, TX: April 29, 1997.
NAFTA–TAA–02339; Eagle Precision Technologies, Jackson Plant, Jackson, MI: April 1, 1997.
NAFTA–TAA–02380; Kimberly Clark Corp., Tecnol Products, Inc., Del Rio, TX: May 8, 1997.
NAFTA–TAA–02386; Jostens Photography, Inc., Webster, NY: May 11, 1997.
NAFTA–TAA–02416; Easton Corp., Commercial Controls Div., Salisbury, MD: May 11, 1997.
NAFTA–TAA–02370; Garland Commerical Industries, Inc., Div. of Welbilt Corp., Freeland, PA: May 5, 1997.

I hereby certify that the aforementioned determinations were issued during the month of June 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 11, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16560 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02329]

Penske Logistics, Incorporated, Bloomington, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Penske Logistics, Incorporated, Bloomington, Indiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–02329; Penske Logistics, Incorporated, Bloomington, Indiana (June 11, 1998).

Signed at Washington, D.C. this 12th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16551 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

VOL 63 ISS 119 JE 22 1998 UMI

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can by properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the suspension of pension benefits regulation issued pursuant to the authority of section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) which governs the circumstances under which pension plans may suspend pension benefits payments to retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). The Department is particularly interested in comments which evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the basis for any suggested alternative burden estimates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 21, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department previously issued a regulation which described the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, i.e. 29 CFR 2530.203–3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because the requirement that retirees or participants be notified in the event of suspension of benefits is intended to protect their nonforfeitable right to their normal retirement benefits. By informing retirees or participants of the reasons for the suspension, the authority for the suspension, and the plan's procedure for review of a suspension of benefits, retirees or participants are informed of the status of their pension benefits and are able to raise with the plan facts or issues which may be relevant to determining whether a suspension of benefits is proper under the circumstances.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Suspension of Benefits Regulation pursuant to 29 CFR § 2530.203–3.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0048.

Affected Public: Indivdiuals of households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 57,374.

Total Responses: 57,374.

Frequency of Response: On occasion.

Total Annual Burden: 14,343.5 hours.

Comments submitted in response to this comment request will be summarize and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16554 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public

and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 21, 1998. The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company (mutual fund) when a fiduciary with respect to the plan (e.g., investment manager) is also the investment advisor for the investment company. In absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because without the relief provided by this exemption, an open-end mutual fund could not sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and establish new investment structures and policies, and amend their plan documents.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption two basic disclosure requirements. The first is intended to put the plan on notice of possible fees associated with the redemption of open-end mutual fund shares. It requires disclosure of any redemption fees in the current prospectus of the open-end mutual fund (the prospectus in effect at the time of the plan's acquisition or disposal of such shares). The second requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charged to or paid by the plan and the open-end mutual fund to the investment advisor.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 624.

Total Responses: 46,800.

Frequency of Response: On occasion.

Total Annual Burden: 4,212 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16555 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Retirement Plan Leakage—Cashing In Your Future From ERISA Employer-Sponsored Pension Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, July 8, 1998, of the Retirement Plan Leakage—Cashing in Your Future—Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans. The group is studying pre-retirement distributions, including in-service distributions, hardship loans and participant loans from ERISA employer-sponsored pension plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for Working Group members to continue gathering statistical information and/or to take additional testimony on the import of these "pension preservation" issues.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may

be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 2, 1998, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, D.C. this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16562 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Small Businesses: How To Enhance and Encourage the Establishment of Pension Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, July 7, 1998, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying the obstacles to why small businesses are not establishing retirement vehicles for their employees when so many different savings arrangements are available. The Working Group also is focusing on how to encourage these businesses to establish such pension plans.

The session will take place in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 3:30 p.m., is for Working Group members to continue taking testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations, should contact Sharon Morrissey by July 2, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, D.C. this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16563 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Disclosure of the Quality of Care in Health Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group established by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what kind of information on the quality of care in health plans should be transmitted to fiduciaries and participants and how the information should be transmitted will hold an open public meeting on Tuesday, July 7, 1998, in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to continue taking testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 2, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, DC, this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16564 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 22, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal

agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 14, 1998 (63 FR 18234–18235). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request for and Record of Pass.

OMB number: 3095–0026.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit organizations and institutions, and Federal Government.

Estimated number of respondents: 1,266.

Estimated time per response: 3 minutes.

Frequency of response: On occasion (when respondent wishes to enter NARA facilities). Respondents who are contractors are given a building pass which expires at the end of each fiscal year; those who are volunteers are given a pass valid for 5 years.

Estimated total annual burden hours: 64 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in National Archives and Records Administration (NARA) facilities and to facilitate the issuance of passes. Use of the form is authorized by 44 U.S.C. 2104. At the NARA College Park facility, individuals receive an access card with the pass that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The access card system is part of the security management system which meets the accreditation standards of the Government intelligence agencies for storage of classified information, and serves to comply with E.O. 12958.

Dated: June 17, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–16574 Filed 6–19–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 22, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 7, 1998 (63 FR 17035). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 334 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.42. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.42 and to schedule the date.

Dated: June 17, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–16575 Filed 6–19–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services: Grant Deadline Extended

SUMMARY: The Institute of Museum and Library Services (IMLS) announces the extension of the application deadline for the Basic Library Services Grants of the Native American Library Services grant program to Friday, July 31, 1998. This extension will ensure that all eligible tribes have an opportunity to apply for these non-competitive grants to support existing library operations. The deadline for two types of special-purpose grants in the Native American Library Services grant program, Technical Assistance Grants and Enhancement Grants, have not been extended. The Institute of Museum and Library Services is sending the guidelines to all 1997 grant applicants who have not submitted applications this year, as well as to others who have requested them.

ADDRESSES: For more information, or to be placed on the mailing list contact: The Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 606–5227; *imlsinfo@imls.fed.us*

(Catalogue of Federal Domestic Assistance No. 45.311)

Dated: June 15, 1998.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 98–16566 Filed 6–22–98; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators Meeting, Notice

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting.

Date and Time: July 16, 1998, 12:30 p.m.–5:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Office of Polar Programs, National Science Foundation, Arlington, VA 22230, Telephone: 703/306–1030; Fax: 703/306–0139.

Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (P.L. 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected sites, and other items designed to protect the Antarctic environment.

Agenda

- Introduction and Overview.
- Review of 1997–98 Visits to McMurdo, Palmer and South Pole Stations.
- Tour Operator's Comments on 1997–98 Season Visits.
- 1998–99 Visits to McMurdo, Palmer and South Pole Stations.
- Report from the International Association of Antarctic Tour Operators (IAATO).
- Information Dissemination.
- Yachting Activities in the Antarctic Peninsula.
- Update on Peninsula Site Inventory Project.
- Australian Approach to Tourism Management and Government Activities.
- Other Items.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 98–16464 Filed 6–19–98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: July 22–23, 1998; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biotechnology Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1998 Inter-Agency Metabolic Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16528 Filed 6–19–98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences: Committee of Visitors (1110).

Date and Time: July 22–24, 1998; 8:30 A.M. to 5:00 P.M. each day.

Place: National Science Foundation, Room 330, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Contact Person: Dr. Maryanna Henkart, Division Director for Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, (703) 306–1440.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Type of Meeting: Part open (see agenda below):

Agenda

Closed: July 22 (11:00 a.m.–5:00 p.m.); July 23 (8:30 a.m.–9:00 a.m., and 2:00 p.m.–5:00 p.m.); and July 24 (8:30 a.m.–12:00 a.m.)—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of programs in the Division of Molecular and Cellular Biosciences.

Open: July 22 (8:30 a.m.–11:00 a.m.); July 23 (9:00 a.m.–2:00 p.m.), and July 24 (1:00 p.m.–4:00 p.m.)—To assess the results of NSF program investments in the Molecular and Cellular Biosciences Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16523 Filed 6–19–98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (173).

Date and Time: July 23–24, 1998, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Win Aung, Senior Staff Associate, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted under the Funding for Research Centers—Small Firms Collaborative R&D.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16526 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meetings

In accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: July 9–10 (Room 370); July 10, 1998, 8:00 a.m.–5:00 p.m. (Room 580).

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact: Dr. William Butcher, Senior Engineering Advisor, & Mr. Alex Schwarzkoph, Program Director, Division of Engineering and Education and Centers, Engineering Directorate, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1383.

Purpose of Meetings: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Industry/University Cooperative Research Centers Program as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16529 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: July 14–15, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Margrete S. Klein, Ph.D., Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1637.

Purpose of Meeting: To review proposals submitted to the Program for Women and Girls Implementation and Development Projects Over $100,00 Budget initiative.

Agenda: To review proposals for this program and make funding recommendations.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16524 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Integrative Activities (1373); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Integrative Activities.

Date and Time: July 20, 1998—8:30 a.m.–5:00 p.m.; July 21, 1998—8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Blvd., Arlington, Virginia.

Type of meeting: Closed.

Contact person: Dr. Nathaniel G. Pitts, Director, Office of Integrative Activities, Room 1270, 4201 Wilson Blvd, Arlington, Virginia 22230; Telephone: (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate full applications submitted to the Awards for the Integration of Research and Education (AIRE) program.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16522 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and time: July 22–24, 1998 from 8:30 AM to 5:00 PM.

Place: National Superconducting Cyclotron Laboratory; Michigan State University; East Lansing, MI 48824–1321.

Type of meeting: Closed.

Contact person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of meeting: Technical review of Coupled Cyclotron Project at the National Superconducting Cyclotron Laboratory of Michigan State University.

Agenda: Presentation and evaluation of progress report pertaining to Coupled Cyclotron Project.

Reason for closing: The information being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16525 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Research, Evaluation and Communication (#1210).

Date and Time: July 8–9, 1998 and 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 830 and 880, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bernice T. Anderson, Program Director, Research, Evaluation and Communication, Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to Evaluation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16527 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant); Revocation of Exemption

I

The Rochester Gas and Electric Corporation (the licensee) is the holder of Facility Operating License No. DPR–18, which authorizes operation of the R. E. Ginna Nuclear Power Plant. The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Wayne County, New York.

II

On March 21, 1985, the NRC issued 11 exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50. The first exemption, relevant here, related to the Refueling Water Storage Tank (RWST). The licensee was granted an exemption from the technical requirements of Section III.G.2 in connection with the absence of a required continuous fire-rated barrier between redundant shutdown systems in the Auxiliary Building Fire Areas ABBM and ABI. The RWST extends through the concrete floor/ceiling at elevation 271 feet, which provides the common boundary between Fire Area ABBM and ABI. An 8-foot concrete block wall partially circles the circumference of the RWST on the upper side of the barrier. At the time the exemption was granted, there was a 6-inch gap around the circumference of the RWST.

III

By letter dated January 13, 1998, the licensee informed the NRC that the exemption is no longer required. The licensee indicated that the subject barrier has now been sealed by insertion of a 12 inch minimum depth of kaowool into the 6-inch gap around the circumference of the tank and closure of the gap by a ¾-inch thick steel plate.

On the basis of the licensee's submittal, the Commission hereby revokes the exemption granted on March 21, 1985, from the technical requirements of Section III.G of Appendix R to 10 CFR Part 50 with respect to the absence of a continuous fire-rated barrier at the common boundary between Fire Areas ABBM and ABI. The NRC staff did not review the modification that the licensee implemented to eliminate the need for the original exemption. The NRC staff may review the modification and its supporting technical bases during a future on-site inspection.

Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of the exemption will have no significant impact on the quality of the human environment (63 FR 31534).

This revocation of exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of June 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16538 Filed 6–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Texas License L03835]

ProTechnics International, Inc.—Houston, TX: Field Flood Tracer Study; Finding of No Significant Impact and Notice of Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering authorizing ProTechnics International, Inc. (ProTechnics) to conduct a field flood tracer study in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma near Stillwater, Oklahoma.

Environmental Assessment

Identificiation of the Proposed Action

The proposed action is authorizing ProTechnics to conduct a field flood tracer study using hydrogen-3 in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma, near the town of Stillwater, Oklahoma. ProTechnics, with offices in Houston, Texas, is authorized by the State of Texas License L03835, to conduct field flood tracer activities in oil and gas reservoirs at temporary jobsites within that State. NRC's regulations in 10 CFR 150.20, "Reciprocity—Recognition of Agreement State Licenses," states, in part, "* * * any person holding a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity * * * is granted a general license to conduct the same activity in * * * Non-Agreement States * * * [provided] the specific Agreement State license [does not] limit the authorized activity to a specific installation or location." Because the Texas license authorizes ProTechnics to use the requested radioisotopes in field flood tracer studies at temporary jobsites, ProTechnics qualifies for the general license. Paragraph (b)(1) of 10 CFR Part 150.20 further states, "* * *[any person] shall * * * before engaging in each activity * * * file an NRC Form-241, "Report of Proposed Activities in Non-Agreement States" * * * "with NRC. ProTechnics met this requirement with a submission dated April 22, 1998.

On January 13, 1997 (62 FR 1662), NRC published a final rule in the **Federal Register** amending 10 CFR 150.20. The amendment, primarily intended to clarify requirements concerning activities conducted at areas of exclusive federal jurisdiction with Agreement States, also revised 10 CFR 150.20(b) to make clear that licensees operating pursuant to the rule must comply with all NRC regulations applicable to materials licensees. 10 CFR Part 51 specifies the environmental protection regulations applicable to NRC's licensing activities and implements section 102(2) of the National Environmental Policy Act of 1969, as amended. Section 51.21 provides that all licensing actions require an environmental assessment except those identified in 10 CFR 51.20 as requiring an environmental impact statement or those identified in 10 CFR 51.22(c) as categorical exclusions. The use of radioactive tracers in field flood studies is not identified in either section. Therefore, an environmental assessment must be prepared. Paragraph 51.60(b)(1)(vi) requires that an applicant

submit an environmental report with any request for use of radioactive tracers in field flood studies. ProTechnics submitted an environmental report in a letter dated April 1, 1998.

The Need for the Proposed Action

The action is to determine if the licensee's request to perform activities under the general license should be approved or denied. Field flood tracer studies are conducted in conjunction with enhanced recovery of oil and natural gas, commonly referred to as enhanced oil recovery (EOR).

The oil from a producing well in a new reservoir initially flows because of the pressure exerted by water and gas in the reservoir. As oil production continues the reservoir pressure declines unless fluids are injected into the reservoir to maintain the pressure. The average recovery from primary production, with and without pressure maintenance, is 20 to 30 percent of the original oil in place. Oil production can be increased through a secondary recovery technique called waterflooding, which is the injection of water through injection wells to push the oil toward production wells. Further enhancements in oil production may occur with the use of so-called tertiary recovery methods in which steam, sulfactants (soaps), or other compounds or gases are injected into the reservoir.

Radioactive tracers are used to define the movement of liquids or gases injected into an oil and gas reservoir to enhance recovery and to monitor reservoir performance. The water-soluble or gaseous tracer is introduced into a reservoir with the injected fluid. Both radioactive and nonradioactive tracers may be used. The tracer is placed in the injection well, where it is diluted and swept into the reservoir by injection liquid or gas. The diluted tracer is subsequently recovered at production wells and is monitored by sampling the recovered fluids.

In evaluating reservoir performance, it is desirable to determine the source of the injected fluid being collected at a production well. It is frequently desirable, therefore, to employ several tracers, using a different tracer in each of a number of injection wells.

Environmental Impacts of the Proposed Action

NRC published NUREG/CR–3467, "Environmental Assessment of the Use of Radionuclides as Tracers in the Enhanced Recovery of Oil and Gas" In November 1983. This generic environmental assessment (EA) evaluated the use of 16 different radioisotopes, used in certain activity ranges, as interwell tracers in field flooding for EOR operations. A typical operation using radioisotopes for interwell tracing was analyzed from the standpoint of three stages of operation: aboveground, subsurface, and recovery and disposal. Doses to workers who handle radioactive tracers and to members of the public were estimated for normal and accidental exposure scenarios. For the isotope ProTechnics requested authorization to use. NUREG/CR–3467 analyzed the use of up to 30 curies of hydrogen-3. The ProTechnics submittal only requests authorization to use up to 2 curies of hydrogen-3, well within the bounds of the generic assessment. The NUREG estimated the national radiological impact on the use of radioisotopes as interwell tracers in EOR projects to be a collective dose equivalent of less than 16 man-rem/yr. Accidental exposures were estimated to contribute little to the total. The ProTechnics proposal, which only includes one radioisotope and only a small percentage of the total activity evaluated in the NUREG for that radioisotope, will result in a lower collective dose equivalent.

Alternatives

Denial of ProTechnics request is a possible alternative to the proposed action. This would avoid any of the environmental impacts associated with the use of radioactive tracers. However, the proposed action is nevertheless reasonable because its environmental impacts are so small and it will provide benefits such as assisting to meet U.S. energy needs.

Agencies and Persons Consulted

Ms. Pam Bishop of the State of Oklahoma, Department of Environmental Quality (DEQ), was contacted on June 2, 1998, to discuss ProTechnics field flood tracer study reciprocity request and its potential environmental impacts. In a letter dated June 8, 1998, Ms. Bishop indicated that the DEQ had no objections to the tracer study.

Conclusion

The NRC staff concludes that the environmental impacts associated with ProTechnics proposed request to conduct a field flood tracer study using hydrogen-3 in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma, are expected to be significant.

Finding of No Significant Impact

The Commission previously prepared an EA related to the use of certain quantities of radionuclides as tracers in field flood operations for the enhanced recovery of oil and gas. On the basis of the assessment, the Commission concluded that environmental impacts that would be created by such actions would not be significant and do not warrant the preparation of an Environmental Impact Statement. Because ProTechnics' request is within the bounds of that EA, it has been determined that a Finding of No Significant Impact is appropriate.

The generic EA is made available as NUREG/CR–3467. Copies of NUREG/CR–3467 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy and ProTechnics' submittal are also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Opportunity for a Hearing

Any person whose interest may be affected by the approval of this action may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (ProTechnics International, Inc., 1160 Dairy Ashford, Suite 444, Houston, TX 77079); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, "Information Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the request must address in detail, are:

1. The interest of the rquestor in the proceeding;
2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe

the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 16th day of June, 1998.

For the Nuclear Regulatory Commission.

Stevens L. Baggett,

Acting Chief, Materials Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–16537 Filed 6–19–98; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station, Units 2 and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Mr. Stephen Dwyer dated April 25, 1997, for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3.

The Petition requests that the Commission shut down the San Onofre Nuclear Generating Station pending a retrofitting of the steam generators. As a basis for the request, the Petitioner asserts that the ability of the steam generators to withstand a major seismic event is seriously compromised by the degraded eggcrate supports discovered in the SONGS Unit 3 steam generators.

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–06), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555–0001, and at the Local Public Document Room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 11th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By e-mail dated April 25, 1997, Stephen Dwyer (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS) regarding his concerns about the ability of the SONGS steam generators to withstand a major seismic event.[1] Specifically, the Petitioner stated that the ability of the SONGS steam generators to withstand a major seismic event is seriously compromised by the degradation observed in the SONGS Unit 3 steam generator internal tube supports (eggcrate supports) during its 1997 refueling outage. The Petitioner requested an investigation to determine if Unit 2 has experienced degradation similar to that found in Unit 3 and also stated that further seismic analysis should be performed for the SONGS steam generators and that a retrofitting upgrade of the steam generator supports could be accomplished at this time. On June 26, 1997, the NRC staff acknowledged receipt of the Petition as a request pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) and informed the Petitioner that there was insufficient evidence to conclude that immediate action was warranted. Notice of the receipt of the Petition indicating that a final decision with respect to the requested action would be forthcoming within a reasonable time was published in the **Federal Register** on July 3, 1997 (62 FR 36085).

My Decision in this matter follows.

[1] The Petitioner sought to add this concern to his Petition dated September 22, 1996, wherein he requested the NRC to shut down the SONGS facility "as soon as possible" pending a complete review of the seismic design of the SONGS units based on information gathered from the Landers and Northridge earthquakes. By letter dated June 26, 1997, the NRC advised the Petitioner that his e-mail request dated April 25, 1997, concerning the ability of the SONGS steam generators to withstand a major seismic event, would be treated as a separate 10 CFR 2.206 Petition. The Director's Decision (DD–97–23) issued by the NRC on September 19, 1997, denied the Petitioner's September 22, 1996, request to shut down the SONGS units, providing a detailed discussion of the adequacy of the seismic licensing basis for the SONGS facility.

II. Discussion

A. Request for an Investigation to Determine if SONGS Unit 2 Has Experienced Eggcrate Degradation Similar to Unit 3

1. Background

The SONGS units utilize Combustion Engineering Model 3410 recirculating steam generators. This model of steam generator contains 9,350 Inconel 600 (ASME Material Specification SB–163) U-tubes with a nominal diameter and wall thickness of 0.75 and 0.048 inch, respectively. Secondary side tube support structures consist of seven horizontal full eggcrate supports, three horizontal partial eggcrate supports, and upper bundle supports (i.e., two batwing diagonal supports and seven vertical supports). The materials used for fabrication of the steam generator vessels and internals (including tube supports) are low-alloy and carbon steels, respectively. Figure 1 is a simplified cross-sectional diagram of the SONGS steam generators that clearly displays the 10 eggcrate support levels, and Figure 2 is a three-dimensional representation of the steam generators that gives additional structural detail.

The eggcrate supports consist of 1- and 2-inch carbon steel strips interlocked perpendicular to each other as shown in Figure 3. The eggcrate supports limit lateral motion of the tubes and, at the same time, allow free flow of fluid around the tubes.

During the 1997 refueling outage for SONGS Unit 3, the licensee discovered that portions of the eggcrate supports had experienced degradation, ranging from minor wastage of the eggcrate material to severe thinning in localized areas. The significant degradation observed during this refueling outage was confined mainly to the periphery locations of the eggcrate supports. The secondary sides of the steam generators in both units were inspected during their 1997 refueling outages and during their 1998 mid-cycle outages and, as discussed below, significant degradation was limited to the periphery locations of the SONGS Unit 3 eggcrate supports.

The licensee has extensively researched the cause of the eggcrate degradation and has concluded that the degradation was caused by a form of flow accelerated corrosion (FAC), a general term describing processes that use assistance from fluid flow to remove the protective oxide layer from base material. Removal of the protective oxide layer exposes the base material to the fluid environment, allowing further material removal through corrision and/or erosion processes. The carbon steel

eggcrate material utilized in the SONGS steam generators can be susceptible to FAC in the presence of sufficiently high fluid velocities.

The licensee concluded that the FAC occurred during recent operation of Unit 3 primarily as a result of steam generator secondary side increased fluid velocities caused by the buildup of deposits on the steam generator tubes. This buildup of deposits on the tubes significantly reduced the available flow area within the tube bundle causing flow diversion to the periphery of the tube bundle. The flow diversion to the periphery was also affected by the increased steam quality of the fluid within the tube bundle. The buildup of deposits on the tubes changed the heat transfer characteristics of the tubes causing the steam quality to increase in the central region of the steam generators. This resulted in an increase of the flow resistance in the central portions of the steam generator, forcing more flow to the peripheral regions, with resulting higher velocities. The resulting large velocity gradients at the periphery initiated vortices which further elevated local velocities that were capable of dislodging the protective oxide layer of the eggcrate material and initiating erosive FAC.

The chemical cleaning of the SONGS Units 2 and 3 steam generators during the 1997 refueling outages removed the deposit buildup and restored fluid flow to their original design values (i.e., nominal conditions). The licensee stated in its October 17, 1997, letter that with the flow area restored to nominal conditions, the high fluid velocities that lead to FAC would no longer exist, thus stabilizing eggcrate support degradation. The licensee has also made changes to the chemistry control program for the secondary system at SONGS Units 2 and 3 to reduce the feedwater iron transport. This is expected to prevent the level of deposit buildup observed in the steam generators before chemical cleaning was done in 1997. The staff concurs with the licensee's evaluation that FAC was caused by deposit buildup on the steam generator tubes and that removal of the deposits should restore the steam generator secondary fluid flow to within nominal design values, thereby eliminating continued significant eggcrate degradation. To confirm that FAC has been stopped by the chemical cleaning of the steam generators, and to assure that no significant degradation of the eggcrate support structure goes undetected, the licensee has committed to conduct periodic inspections of the secondary side of the steam generators in both units during future outages. The licensee will conduct periodic inspections of the secondary side of the steam generators to check the level of deposit buildup on the tubes and to verify that future degradation of the eggcrate, if any, remains within the assumptions used in the analysis to demonstrate continued operability of the steam generators (discussed later in this Decision).

2. Description of the Eggcrate Inspections

The SONGS licensee inspected the steam generator secondary side support structures, which include the eggcrate supports, in both SONGS units during their 1997 refueling outages and during their 1998 mid-cycle outages. The results of these inspections are contained in the licensee's letters dated May 16, 1997, and June 5, 1997 (SONGS Unit 2 and Unit 3 refueling outage inspections results, respectively), and letters dated March 10, 1998, and April 15, 1998 (SONGS Unit 2 and Unit 3 1998 mid-cycle outages, respectively).

The objective of the inspections for both units was to provide video documentation of all areas in which indications of support bar degradation was suspected and to verify that other areas did not exhibit these same characteristics. The extent and results of these video inspections are summarized below.

The inspection of the secondary side of each steam generator was divided into six areas: (1) general inspection, (2) inner tube bundle, (3) batwings and vertical straps, (4) eggcrate periphery, (5) eggcrate interior (blowdown lane),and (6) stay cylinder. Each of these areas was inspected to the extent necessary to understand, with a high degree of confidence, the amount of degradation present. The majority of these areas did not exhibit any significant degradation and therefore the design function of the support structures was not adversely impacted.

The general inspections were performed in the steam generators from the top of the moisture separator can deck and included the general area, U-bend, and annulus regions. The areas inspected included I-beams, I-beam to shroud attachments, drains, vertical supports, batwings and the batwing hoop, and baffle anti-rotational keys. These inspections identified no significant degradation in either unit in these areas.

The inner tube bundle consists of that area between the outer or peripheral tubes to the inner tubes of the stay cylinder. The inner bundle inspections were performed in both steam generators from the can deck. A small camera was dropped down in between the tubes in a number of different locations to assess the general material condition of the eggcrates away from the periphery area. For the steam generators in both units, the inspections indicated that the inner bundle did not exhibit the degraded characteristics of the periphery eggcrates found in the Unit 3 steam generators during the 1997 refueling outage.

No indications of thinning were detected during the inspections of the interior batwing and vertical strips on either unit.

Comprehensive peripheral eggcrate inspections were performed in both steam generators in the two units from the can deck. This included the lattice bars and tube to lattice bar interfaces at each eggcrate. The area near the periphery of the eggcrate supports in the Unit 3 steam generators experienced the maximum thinning, as shown in Figure 3 and discussed above. As stated earlier, minor isolated instances of thinning were observed in the peripheral eggcrate locations in the SONGS Unit 2 steam generators, but overall the thinning was considerably less than that observed on SONGS Unit 3.

Inspections of the blowdown lane eggcrates were performed in the steam generators through the 6-inch handhole at the secondary face of the tubesheet from the handhole to the stay cylinder. This included the lattice bars and the eggcrate rings. The inspection scope was to sample the eggcrate area nearest the tubes on both the hot- and cold-leg sides of the blowdown lane. Minor amounts of eggcrate degradation were found in the steam generators of both units, with the Unit 3 steam generators exhibiting the larger amount of degradation in this area.

For the inspection of the overall condition of the eggcrates and ring in the stay cylinder, a support plate inspection device was used. Little or no degradation was found in this area in either unit.

3. Summary of SONGS Unit 2 Eggcrate Inspection

The licensee's initial assessment of the Unit 2 stream generator eggcrate supports, conducted after the degradation issue was identified in the SONGS Unit 3 steam generators, was reported in its letter dated May 16, 1997. The licensee concluded that the Unit 2 eggcrate supports were in very good to excellent overall condition, based on the limited video examinations of the eggcrates performed in support of the chemical cleaning process. Although the licensee considered operation for the normal period of operation between refueling intervals to be acceptable on the basis of this limited examination,

the licensee conservatively performed a more extensive video examination of the eggcrates during a mid-cycle outage that began on January 24, 1998. As reported in its March 10, 1998, letter, the licensee observed minor isolated instances of thinning in the periphery areas of the eggcrate supports, but overall the thinning was considerably less than that observed on SONGS Unit 3.

The NRC reviewed the program established by the licensee to conduct the video examinations of the eggcrate supports during the SONGS Unit 2 mid-cycle outage and reported its findings in Inspection Report 50–361/98–10; 50–362/98–01, dated May 29, 1998. This program was similar to the licensee's program for inspecting the Unit 3 eggcrate supports during its mid-cycle outage. The primary difference between the inspection programs for the two units was that a larger portion of the Unit 3 eggcrate structures was inspected. The staff concluded in its inspection report that the scope of the SONGS Unit 2 secondary side visual inspections was satisfactory and the results supportive of the licensee's conclusion that no steam generator tubes needed to be removed from service due to insufficient support from any secondary side support structures, which includes the eggcrate support structures.

4. Actions Taken as a Result of Observed Eggcrate Degradation

Following the secondary side inspection activities conducted during the SONGS Unit 3 1997 refueling outage and 1998 mid-cycle outage, the licensee plugged and stabilized (by insertion of a steel cable inside the subject tube) some Unit 3 steam generator tubes as a precautionary measure due to the degradation observed in certain eggcrate supports. No tubes in the Unit 2 steam generators were removed from service. Once the tube is removed from service in the above described manner, support from the eggcrate structures is no longer needed. The criterion established by the licensee for removing tubes from service is described in detail below.

B. Concern About the Seismic Adequacy of the SONGS Steam Generators

The Petitioner asserts that the degradation of the steam generators, eggcrate supports could seriously weaken the supports and make the steam generators vulnerable to seismic events.

In its letter of May 16, 1997, the licensee committed to perform an evaluation of the effect of the degraded eggcrates on steam generator tube integrity in the SONGS Unit 3 steam generators before return to power from the Unit 3 1997 refueling outage. This initial evaluation was provided by the licensee in its letter of June 5, 1997, and included the effects of a postulated design-basis earthquake. The licensee submitted the final version of the degraded eggcrate support evaluation for SONGS Unit 3 on October 17, 1997. As stated in the previous section, the amount of eggcrate support degradation observed in SONGS Unit 2 was considerably less than that observed in Unit 3. Therefore, the staff concludes that demonstrating the ability of the SONGS Unit 3 steam generators to withstand a design basis seismic event will demonstrate the adequacy of the Unit 2 steam generators as well.

The staff's review of the seismic adequacy of the SONGS Unit 3 generators is detailed below.

1. Methodology and Acceptance Criteria

The Petitioner did not specifically request the staff to evaluate the eggcrate supports assuming other design loads concurrent with earthquake loads. However, to provide additional conservatism, and to conform with General Design Criterion (GDC) 2 of 10 CFR Part 50, Appendix A, the licensee, in its October 17, 1997, letter, evaluated the ability of the eggcrate supports to perform their intended safety function assuming the most limiting combination of load conditions.

GDC 2 requires, in part, that the design bases for structures, systems, and components important to safety reflect appropriate combinations of the effects of normal and accident conditions with the effects of natural phenomena such as earthquakes. The earthquake for which these plant features are designed is defined as the safe-shutdown earthquake (SSE).[2] The Petitioner's concerns on the adequacy of the seismic design of the SONGS units, based on information gathered from the Landers and Northridge earthquakes, were addressed previously by the staff in DD–97–23 (*see* footnote 1).

Appendix A of Standard Review Plan,[3] (SRP) Section 3.9.3, "[American Society of Mechanical Engineers] ASME Code Class 1, 2, and 3 Components, Component Supports, and Core Support Structures," delineates acceptable design limits and appropriate combinations of loadings associated with normal operation, postulated accidents, and specified seismic events for the design of Seismic Category I fluid system components (i.e., water- and steam-containing components). This appendix also provides that necessary plant features important to safety meet the appropriate design limits specified in Section III of the ASME Boiler and Pressure Vessel Code (ASME Code) when the component is subjected to concurrent loadings associated with the normal plant condition, the vibratory motion of the SSE, and the dynamic system loadings associated with the faulted plant condition. Faulted plant conditions are those operating conditions associated with postulated events of extremely low probability, such as loss-of-coolant accidents (LOCAs) or main streamline break (MSLB) accidents. The design limits and loading combinations utilized by the licensee in the October 17, 1997, evaluation of individual steam generator tubes are the same design limits and loading combinations that were reviewed and approved by the staff at the time of plant licensing. This evaluation is contained in Chapter 3 of NUREG–0712.[4] Therefore, the staff finds acceptable the licensee's use of these design limits and loading combinations in evaluating the impact of the degraded eggcrate supports on individual steam generator tubes.

The evaluation of the potential for lateral movement of the entire steam generator tube bundle (whole bundle evaluation) was not explicitly addressed during the staff's review performed at the time of plant licensing. Also, the ASME Code does not provide specific design limits for the whole bundle evaluation. The whole bundle evaluation contained in the October 17, 1997, letter performed by the licensee to verify that the structural integrity of the eggcrate is maintained to ensure that it does not shift in a way that could damage the tubes. This is not an ASME Code evaluation; however, ASME Code techniques were used by the licensee to generate and assess the results. The staff has reviewed the specific ASME Code techniques utilized by the licensee, and concludes that they provide conservative results, and are, therefore, acceptable for the whole bundle evaluation.

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[2] The SSE is defined, in part, as "that earthquake which is based upon an evaluation of the maximum earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material. It is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components are designed to remain functional." See 10 CFR Part 100, Appendix A, Section III.(c).

[3] The Standard Review Plan (SRP) is published as NUREG–0800, and is used as guidance for the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants.

[4] NUREG–0712, "Safety Evaluation Report related to the Operation of San Onofre Nuclear Generating Station, Units 2 and 3," Chapter 3, February 1981.

Furthermore, the loading combinations used in the licensee's whole bundle evaluation are the same loading combinations used in the individual tube evaluations, and are the same loading combinations that were reviewed and approved at the time of plant licensing.

2. Degraded Eggcrate Support Assumptions

The staff reviewed the assumptions used in the licensee's October 17, 1997, evaluation regarding the amount of eggcrate support judged to be available, and verified that these assumptions were supported by the results of the licensee's inspections.

For the individual steam generator tube analysis, the licensee calculated the maximum loads that could occur assuming that adequate support was not available at two consecutive eggcrate levels (*see* Figure 1). The staff finds this assumption conservative and acceptable because the licensee has removed from service all tubes where two consecutive eggcrate levels were found degraded to the point where adequate support could not be assured.

For the whole bundle analysis, the licensee used the inspection results to sort the eggcrates into categories based on a conservative estimate of the remaining thickness of the eggcrate lattice bars. The staff reviewed the sorting criteria used by the licensee, and concludes that the material strength assumptions established by the licensee for the degraded eggcrate supports are conservative, and appropriate for evaluating the ability of the eggcrate structures to perform their intended function.

The visual inspections performed by the licensee during the 1998 mid-cycle outages for both units confirmed the appropriateness of these assumptions pertaining to the amount of eggcrate support degradation used in the licensee's evaluation.

3. Evaluation Results

Using the above described methodology and assumptions, the licensee determines that the peak calculated loads on the individual steam generator tubes would remain below the allowable design limits approved by NUREG–0712 during and following a postulated design basis earthquake.

The results of the licensee's whole bundle evaluation confirmed that the eggcrate structure will provide sufficient support to ensure that the tube bundle will not impact the eggcrate support ring during and following a postulated design basis earthquake.

The staff finds these results acceptable, and as detailed above, also finds acceptable the methodology and assumptions used by the licensee in the generation of these results. The staff concludes, therefore, that the amount of degradation observed in the eggcrate supports will not prevent the SONGS Units 2 and 3 steam generators from performing their intended safety functions.[5]

4. Confirmatory Actions

The licensee's 1998 mid-cycle inspection of the SONGS Unit 3 steam generators confirmed that the condition of the Unit 3 eggcrate internal supports remained within the analytical assumptions used in the licensee's evaluation contained in its October 17, 1997, letter and also supported the licensee's contention that the phenomenon (FAC) that led to the degradation of the eggcrates had been arrested by the chemical cleaning of the steam generators.

Furthermore, the licensee has committed in its letters to the NRC (April 15, 1998, for Unit 2 and October 17, 1997, for Unit 3) to inspect the eggcrate supports during future outages to assure that their condition remains within the analytical assumptions used in the licensee's evaluation. These inspections will continue to be conducted until it is established that further inspections are not required.

In summary, on the basis of the video inspection results for the steam generators in both units, and the staff's review of the detailed evaluations performed by the licensee, the staff concludes that the SONGS steam generators are fully capable of performing their intended safety function during and following a postulated SSE, and no retrofitting upgrade of the steam generators is required.

[5] Since the amount of support degradation in SONGS Unit 2 was observed to be considerably less than that observed in Unit 3, the NRC staff concludes that the licensee's October 17, 1997, evaluation of SONGS Unit 3 steam generator structural integrity and the staff's review of that evaluation support the adequacy of SONGS Unit 2 steam generators to withstand a design basis event and perform their intended safety function.

III. Conclusion

As explained above, there is no evidence of significant degradation of the SONGS Unit 2 steam generator eggcrate supports, and the extensive analyses demonstrate the ability of the steam generators in both SONGS units to perform their intended safety function. Accordingly, the Petitioner's requested action, pursuant to Section 2.206, is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 11th day of June 1998.

For the Nuclear Regulatory Commission.

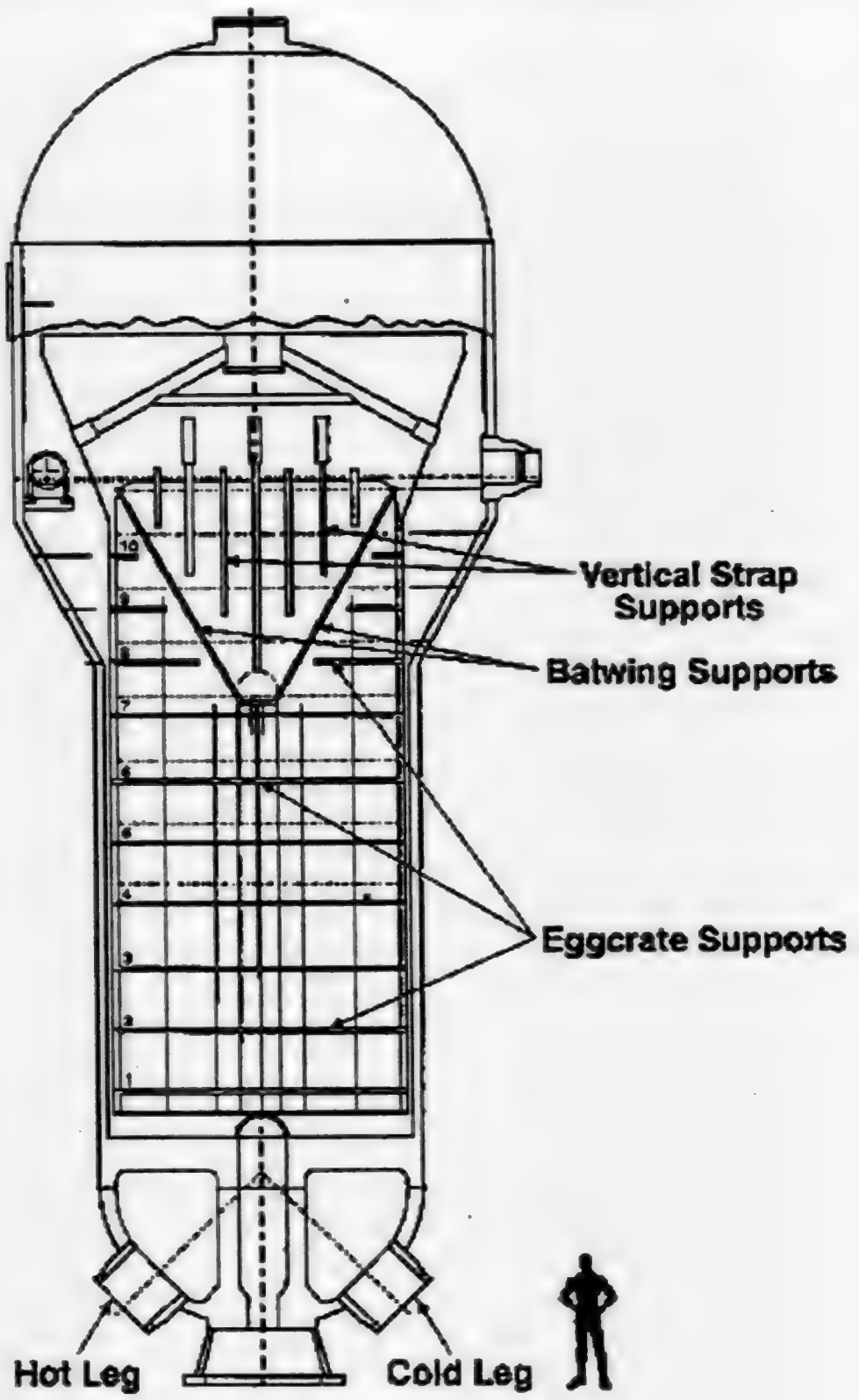
Original signed by

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachments: Figures (3)

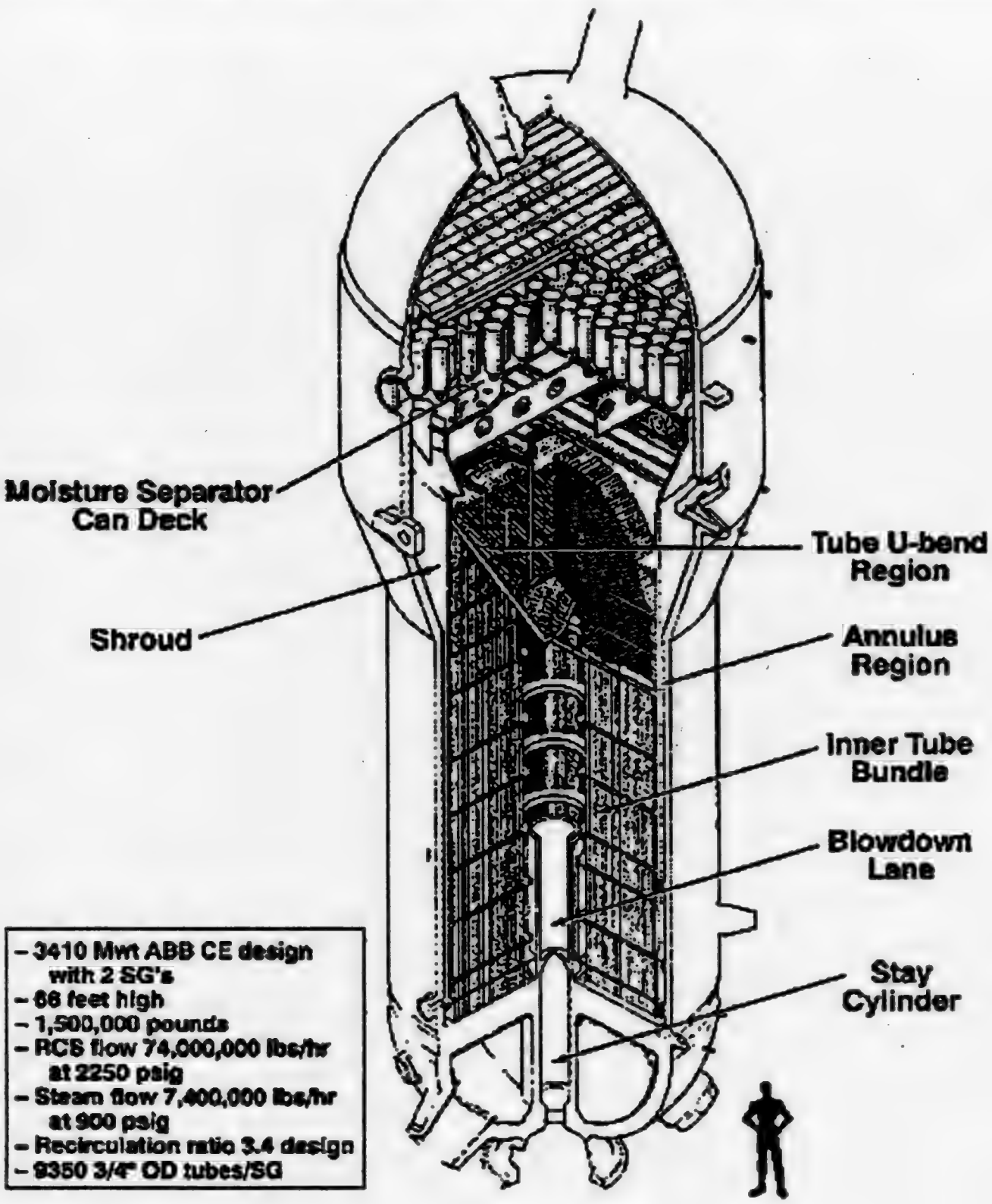
BILLING CODE 7590-01-M



Steam Generator
Eggcrate Locations

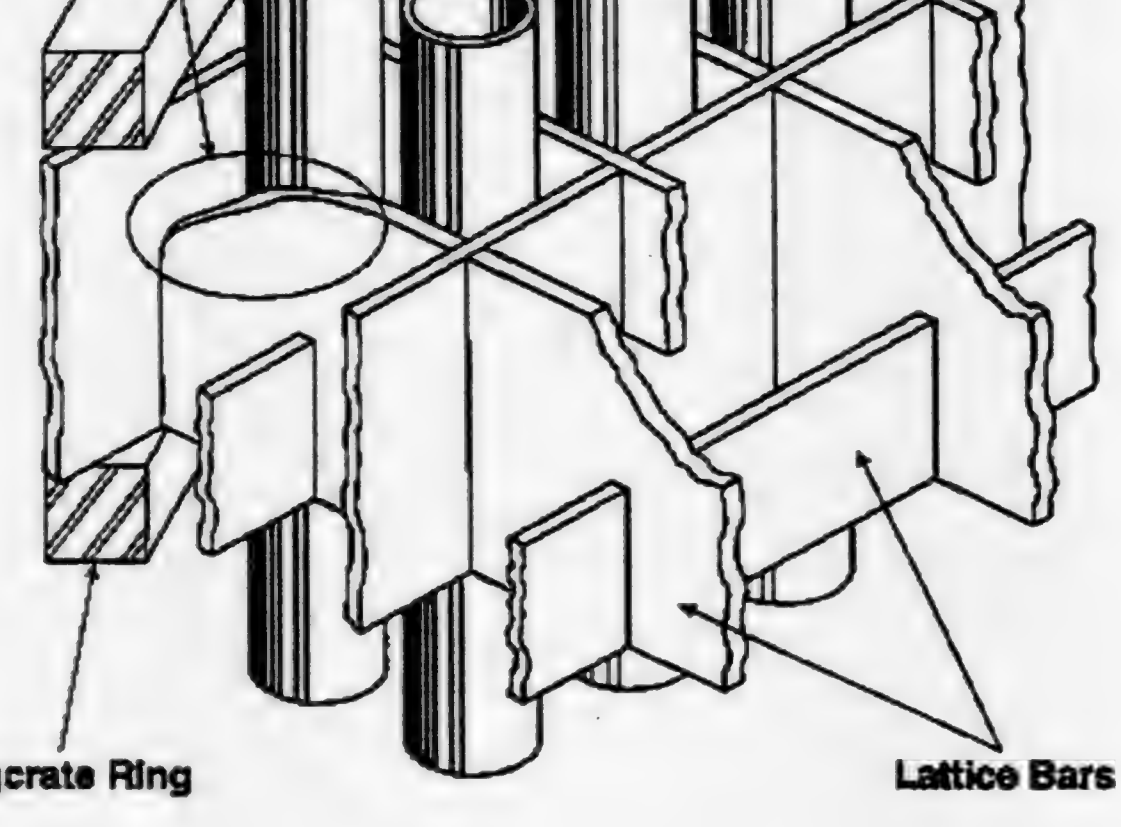
Figure 1

VOL 63 ISS 119 JE 22 1998 UMI



Typical CE Steam Generator

Figure 2



Eggcrate Arrangement

Figure 3

[FR Doc. 98–16539 Filed 6–19–98; 8:45 am]
BILLING CODE 7590–01–C

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
- Part 257, SEC File No. 270–252, OMB Control No. 3235–0306
- Form U–1, SEC File No. 270–128, OMB Control No. 3235–0125
- Rule 58, Form U–9C–3, SEC File No. 270–400, OMB Control No. 3235–0457
- Rule 71, Form U–12(I)–A, & Form U–12(I)–B SEC File No. 270–161, OMB Control No. 3235–0173
- Rules 93–94, Form U–13–60, SEC File No. 270–79, OMB Control No. 3235–0153

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The rules under 17 CFR Part 257 implement sections of the Public Utility Holding Company Act of 1935 ("Act") that require registered holding companies and their subsidiary service companies to preserve records for certain periods. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise unregulated subsidiaries, the subsidiary service companies, and the regulated utility subsidiaries which the holding company controls, or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is one hour (18 recordkeepers × 1/18 hour = one burden hour).

Form U–1, under rule 20(c) of the Act, must be used by any person filing or amending an application or declaration under sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d) or (f) of the Act. The form must also be used for filings under any rule under other sections of the Act, for which a form is not prescribed. The Commission estimates that the total annual reporting and recordkeeping burden is 27,225 hours (121 recordkeepers × 225 hours = 27,225 burden hours). This represents an increase of 10,020 hours annually in the paperwork burden from the prior estimate, which was caused by an increase in the number of respondents for the period and the fact that the filings have become generally more complex.

Rule 58 under the Act, allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Acquisitions are made without prior Commission approval under section 20 of the Act. However, within 60 days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a certificate of notification on Form U–9C–3 containing the information prescribed by that form. The Commission requests this information because rule 58 of the Act requires it. The Commission uses this information to determine the existence of detriment, regarding the acquisition of certain energy-related companies, to interests the Act is designed to protect. The 61 recordkeepers together incur about 976 annual burden hours to comply with these requirements (61 recordkeepers × 16 hours = 976 burden hours.)

Rule 71 and Forms U–12(I)-A and U–12(I)-B implement subsection 12(i) of the Act, which makes it unlawful for an employee to prevent, advocate or oppose any matter affecting a registered holding company before Congress, the Commission or the FERC. The Commission estimates that the total annual reporting and recordkeeping burden is 167 hours (250 respondents × ⅔ hour = 167 burden hours). The purpose of collecting the information is to determine the existence of detriment to interests the Act is designed to protect. The Commission uses the information to enable it to enforce the provisions of section 12(i) of the Act.

Rule 93 imposes recordkeeping and record maintenance requirements on mutual and subsidiary service companies of registered holding companies. Under the rule, the service companies must keep their accounts and records according to the Uniform System of Accounts, as provided in 17 CFR 256. Further, the companies must maintain those records in the manner and for the periods provided in 17 CFR 257. Rule 94 requires service companies to file annual financial reports on Form U–13–60, as provided in 17 CFR 259.313. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise unregulated subsidiaries, the subsidiary service companies and the regulated utility subsidiaries which the holding company controls or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is 580 hours (40 respondents × 14.5 hours = 580 hours).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 15, 1998.

Maragaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16436 Filed 6–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–40094; File No. SR–NYSE–97–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Revise Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances

June 15, 1998.

I. Introduction

On December 29, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to revise the Exchange's policy for entry of market-on-close ("MOC") and limit-at-the-close ("LOC") orders and publication of order imbalances for both expiration and non-expiration days. On March 18, and June 4, 1998, respectively, the Exchange submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change to the Commission.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on March 26, 1998.[5] One comment was received on the proposal.[6] This order approves the proposal as amended.

II. Description of the Proposal

Special procedures regarding the entry of MOC and LOC orders[7] have been in place on the Exchange for more than ten years.[8] These procedures are designed to alleviate excess volatility at the close by providing MOC and LOC imbalance information to market participants in a timely manner to attract contra-side interest. The procedures have been refined over the years based on the Exchange's experience and input from constitutes.[9] The Exchange is now proposing additional refinements to the procedures to enhance their usefulness.

Current Procedures

The current procedures require that MOC and LOC orders in any stock be entered by 3:40 p.m. on expiration days, and by 3:50 p.m. on non-expiration days.[10] A member may not cancel or reduce a MOC or LOC order in any stock after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days, (except in a case of legitimate error or to comply with the provisions of Exchange Rule 80A). In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m. or 3:50 p.m., for expiration and non-expiration days, respectively.

For the selected stocks identified by the Exchange (formerly known as "pilot stocks")[11] and published in its "special stock list," a single publication of imbalances of 50,000 shares or more must be made as soon as practicable after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days. On expiration days, stocks on the special stock list that do not have an imbalance of 50,000 shares or more at 3:40 p.m. must publish a "no imbalance" status. Imbalances of 50,000 shares or more must also be published for stocks going into or out of an index. For all other stocks (*i.e.*, those that are not on the "special stock list" and those not going into or out of an index), an imbalance of 50,000 shares or more may be (but is not required to be) published at the request of the specialist, with Floor Official approval. After the 3:40 p.m. or 3:50 p.m. imbalance publication, MOC and LOC orders may be entered only to offset a published imbalance. No MOC and LOC orders may be entered if there is no imbalance publication. On expiration days, the entry of MOC or LOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted, even if such orders might offset published imbalances.

New Procedures

In July of 1997, the NYSE's Market Performance Committee appointed a subcommittee to review MOC procedures. The subcommittee recommended that the Exchange implement several changes to increase the effectiveness of the procedures. These changes, which the Exchange is proposing to implement, are:

- The Exchange is proposing a 3:40 p.m. deadline for entry of MOC and LOC orders and indication of MOC interest to specialists by Floor brokers representing any MOC orders, every day. This earlier deadline (from 3:50 p.m. to 3:40 p.m.) on non-expiration days would provide additional time to attract contra-side interest.
- The Exchange is also proposing mandatory publication of all MOC/LOC imbalances of 50,000 shares or more in *all* stocks and *any* trading day as soon as practicable after 3:40 p.m.[12] Publication of an imbalance of *less than* 50,000 shares may be made at that time with the approval of a Floor Official. This proposed new provision would permit, but not require, the publication of an imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a stock.
- The Exchange is also proposing to include both MOC and marketable LOC orders in the imbalance publication.[13] The determination of whether an LOC order is "marketable" would be based upon the last sale price at 3:40 or 3:50 p.m., depending on the time of the order imbalance publication. This means that LOC orders to buy at a higher price would be included with the buy MOC orders; LOC orders to sell at a lower price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation.
- The Exchange is also proposing a new procedure to permit non-mandatory publication of MOC/LOC imbalances of *any* size between 3:00 and 3:40 p.m., with Floor Official approval; these publications would be informational only, with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m. for all stocks on all days, regardless of size, to provide timely imbalance information to market participants.
- An additional imbalance publication on both expiration and non-expiration days, must be made at 3:50 p.m. for any stock that had an imbalance

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[2] 17 CFR 240.19b–4.

[3] *See* Letter from Donald Siemer, Director, Market Surveillance, NYSE to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission dated March 13, 1998 ("Amendment No. 1").

[4] *See* Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to David Sieradzki, Attorney, Division, Commission dated June 1, 1998 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarifies the proposal to indicate that, where a bona fide error has been made, causing the cancellation of an order, or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m., the Exchange would publish the imbalance even though there had been no 3:40 p.m. publication.

[5] Securities Exchange Act Release No. 39770 (Mar. 18, 1998), 63 FR 14747 (Mar. 26, 1998).

[6] *See* Letter from Terry McCloskey, Vice President, BNP Securities, Inc. to Jonathan G. Katz, Secretary, Commission dated April 15, 1998 ("BNP Letter").

[7] A MOC order is a market order to be executed in its entirely at the closing price on the Exchange. A LOC order is a limit order entered for execution at the closing price, provided that the closing price is at or within the limit specified. *See* NYSE Rule 13.

[8] The Exchange's pilot program for expiration day auxiliary closing procedures was permanently approved by the Commission on October 30, 1996. *See* Securities Exchange Act Release No. 37894 (Oct. 30, 1996), 61 FR 56987 (Nov. 5, 1996) (order approving SR–NYSE–96–31).

[9] The Exchange's LOC pilot program will expire on July 31, 1998. The Exchange has requested that the Commission permanently approve the program (SR–NYSE–98–15).

[10] The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

[11] The pilot stocks consisted of the 50 most highly capitalized Standard & Poor's ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included in the S&P stock group.

[12] As discussed above, currently, the Exchange requires mandatory publication of imbalances of 50,000 shares or more only in stocks on the Exchange's special stock list and stocks being added to or dropped from an index on expiration days as soon as practicable after 3:40 p.m. (or 3:50 p.m. for non-expiration days).

[13] Currently, imbalance publications indicate MOC interest but not LOC interest. *See* Amendment No. 1, *supra* note 3.

publication at 3:40 p.m.[14] If the imbalance at 3:50 p.m. is less than 50,000 shares, a "no imbalance" status must be published, except that an imbalance of less than 50,000 shares may be published with Floor Official approval, provided there had been an imbalance publication at 3:40 p.m. Except under two limited circumstances,[15] if there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m., since MOC and LOC orders could not be entered during the interim to change the imbalance. If the 3:50 p.m. imbalance publication reversed the first imbalance publication, only MOC and LOC orders which offset the 3:50 p.m. imbalance would be permitted to be entered thereafter.

• MOC/LOC order entry is precluded after 3:40 p.m. in all stocks on all days, unless an imbalance is published, in which case entry of MOC/LOC orders would be permitted only on the contra side of the published imbalance.

III. Comment Summary

As noted above, the Commission received one comment on the proposal.[16] The commenter agreed that order imbalance dissemination reduces volatility at the close and favors expanding imbalance indications to all listed issues. In addition, the commenter noted that neither the NYSE nor the American Stock Exchange ("Amex") provide members with information regarding order imbalances at the close in electronic form. The commenter believes that if the NYSE and Amex were required to disseminate order imbalances through the Securities Industry Automation Corporation ("SIAC"),[17] customers would receive better information and therefore, better executions.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Section 6[18] of the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5)[19] requirements that the rules of an Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[20]

Over the past several years, the Exchange and other self-regulatory organizations have been developing procedures to minimize excess market volatility that may arise from the liquidation of stock positions on expiration days.[21] Special procedures regarding the entry of MOC orders on Expiration Fridays were first used in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options and options on stock index futures on Expiration Fridays.[22] On April 10, 1995, the Commission approved a proposed rule change to institute similar auxiliary closing procedures on non-expiration days.[23] Finally, on March 3, 1994, the Exchange, as an additional means of attracting contra-side interest to help alleviate MOC order imbalances, initiated a pilot program relating to the entry of LOC orders on both expiration and non-expiration days.[24] These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC/LOC orders at the end of the day. If there is a substantial imbalance on one side of the market, the procedures provide the investing public with timely and reliable notice of that imbalance and with an opportunity to make appropriate investment decisions in response.

Generally, the NYSE auxiliary closing procedures have worked well and may have resulted in more orderly markets on both expiration and non-expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could create a situation in which member firms and their customers would be unwilling to acquire significant positions.

In this regard, the Commission notes that the proposed rule change may increase public awareness of MOC/LOC order imbalances and provide the market participants with more of an opportunity to make appropriate investment decisions. Specifically, the proposal will impose a deadline of 3:40 p.m. for entry of all MOC/LOC orders on both expiration and non-expiration days. Floor brokers representing MOC orders also must indicate their MOC interest to the specialist by 3:40 p.m. every day. In conjunction with the prohibition on canceling or reducing any MOC/LOC order after 3:40 p.m., these requirements should allow the specialist to make a timely and reliable assessment, for every NYSE-listed stock, on expiration and non-expiration days alike, of MOC/LOC order flow and its potential impact on closing prices.

The proposal would also make several changes to imbalance publication procedures, which are designed to get more information to the public earlier in the day. First, the proposal would integrate marketable LOC orders into the current MOC order imbalance publication. Second, the proposal would require publication of MOC/LOC imbalances of 50,000 shares or more in all securities on any trading day as soon as practicable after 3:40 p.m. The proposal also requires an additional publication of MOC/LOC imbalances of 50,000 shares or more at 3:50 p.m. for stocks that reported an imbalance at 3:40 p.m. If the order imbalance for a stock publishing an imbalance at 3:40 p.m. has fallen below 50,000 shares by 3:50 p.m. then, a "no imbalance" message must be posted unless Floor Official approval is sought to publish an imbalance of less than 50,000 shares.

The Commission believes that the enhanced publication requirements described above are appropriate and consistent with the Act. Integrating marketable LOC orders into the order imbalance publication should serve to better reflect actual investor interest. Also, requiring an additional order imbalance publication at 3:50 p.m. for securities having a published imbalance as of 3:40 p.m. may help ease market volatility at the close by attracting additional offsetting MOC/LOC orders for stocks that have a significant order imbalance as of 3:50 p.m. With respect to changing the deadline for entering MOC/LOC orders on non-expiration days, the Commission believes that, by giving market participants more time to react to published MOC/LOC order imbalances, the proposal may contribute to reducing volatility at the close.

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[14] Currently, the Exchange requires only a single imbalance publication at 3:40 p.m. on expiration days and at 3:50 p.m. on non-expiration days. *See* Amendment No. 1, *supra* note 3.

[15] *See* Amendment No. 2, *supra* note 4.

[16] *See* BNP Letter, *supra* note 6.

[17] SIAC processes last sale information and quotation information reported to it by its participants (eight national securities exchanges and the National Association of Securities Dealers, Inc.) for consolidation and dissemination to vendors and others.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

[21] *See supra* note 8.

[22] *See supra* note 10.

[23] *See* Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving SR–NYSE–94–44).

[24] *See supra* note 9.

Finally, the Exchange proposes to permit dissemination of MOC/LOC order imbalances of any size between 3:00 p.m. and 3:40 p.m. with Floor Official approval. These optional publications would be informational only and would be required to be updated at 3:40 p.m., regardless of size. The Commission believes that this optional publication of MOC/LOC order imbalances is consistent with the Act in that it should increase the amount of accurate market information available to the public.[25] The Commission believes that this dissemination of MOC/LOC order imbalances prior to 3:40 p.m. could help reduce volatility at the close by giving market participants more time to react to reported order imbalances.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the proposal to indicate that, under certain circumstances, the Exchange may publish an order imbalance at 3:50 p.m. where an imbalance was not published at 3:40 p.m.[26] The Exchange has represented that, under certain limited circumstances described in Amendment No. 2 (*i.e.*, where a bona fide error was made causing an order to be cancelled or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m.) the Exchange would publish an order imbalance at 3:50 p.m. even if an imbalance had not been published at 3:40 p.m. As a result, the Commission does not believe that Amendment No. 2 raises any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period during which one comment, generally supporting the proposal, was received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)[27] of the Act, to approve Amendment No. 2 to the Exchange's proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether that amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–36 and should be submitted by July 13, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSE–97–36) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16510 Filed 6–19–98; 8:45 am]

BILLING CODE 8010–01–M

[25] In approving this proposed rule change, the Commission is aware of the possibility that the publication of order imbalances on a more frequent basis may allow market participants to enter orders without the good faith intention that the order be executed, but instead with the intention of canceling the order and profiting in some way from a market reaction to the publication of the order. The Commission expects that the Exchange will be mindful of any potential formarket manipulation or other abuse that the amended procedures may create and that the Exchange will be vigilant in its surveillance efforts to ensure that the MOC/LOC procedures are executed in a manner consistent with the Act and the rules thereunder and the rules of the Exchange.

[26] *See* Amendment No. 2, *supra* note 4.

[27] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998 [63 FR 11472].

DATES: Comments on this notice must be received on or before July 22, 1998.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, FAR part 39.

OMB Control Number: 2120–0056.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of the affected products.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Records of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition.

Estimated Burden: The estimated total annual burden is 6,771 hours.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 15, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–16509 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports and Guidance Documents; Air Carriers; Cessation of Operations

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department's Office of Aviation Analysis issues this notice to provide guidance regarding the effect that a cessation of operations pursuant to a voluntary agreement with the Federal Aviation Administration (FAA) has upon an air carrier's economic authority issued pursuant to 49 U.S.C. 41102 or 41738. The notice advises U.S. certificated and commuter air carriers that the Department considers the cessation of operations pursuant to such a voluntary agreement with the FAA to be a cessation of operations within the meaning of 14 CFR 204.7. Therefore, the carrier may not hold out, sell, wet lease, provide or obtain subservice, or conduct any other direct air transportation operations until it has again been found fit.

FOR FURTHER INFORMATION CONTACT: William J. Wagner, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Tel. No. (202) 366–9357.

John V. Coleman,

Director, Office of Aviation Analysis.

[FR Doc. 98–16463 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33612]

The Burlington Northern and Santa Fe Railway Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision) and Tower 55, Fort Worth, TX, in the vicinity of UP's milepost 245.5 (Dallas Subdivision), a distance of approximately 30.9 miles.[1]

The transaction was scheduled to be consummated on June 15, 1998.

The purpose of the trackage rights is to allow BNSF to operate over an alternative line while BNSF's line is undergoing maintenance and repair.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33612, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 15, 1998.

[1] On June 4, 1998, BNSF and UP filed a petition for exemption in STB Finance Docket No. 33612 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF and UP request that the Board permit the overhead trackage rights arrangement described in the present proceeding to expire on July 31, 1998. That petition will be addressed by the Board in a separate decision.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16531 Filed 6–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–120–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–120–86 (TD 8584), Capitalization of Interest (§§ 1.263A–8(b)(2)(iii), 1.263A–9(d)(1), 1.263A–9(e)(1), 1.263A–9(f)(1)(ii), 1.263A–9(f)(2)(iv), 1.263A–9(g)(2)(iv)(C), 1.263A–9(e)(1) and 1.263A–9(g)(3)(iv)).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Interest.

OMB Number: 1545–1265.

Regulation Project Number: IA–120–86.

Abstract: Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate

activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100.

Estimated Number of Recordkeepers: 500,000.

Estimated Time Per Recordkeeper: 14 minutes.

Estimated Total Annual Recordkeeping Hours: 116,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16412 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, EE–113–90 (TD 8324), Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (§ 1.62–2).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

OMB Number: 1545–1148.

Regulation Project Number: EE–113–90.

Abstract: These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The regulations affect employees who receive payments and payors who make payments under such arrangements.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 1,419,456.

Estimated Time Per Recordkeeper: 30 minutes.

Estimated Total Annual Recordkeeping Hours: 709,728.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16413 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–97–91; PS–101–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–97–91 and PS–101–90 (TD 8448), Enhanced Oil Recovery Credit (§§ 1.43–3(a)(3) and 1.43–3(b)(3)).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1292.

Regulation Project Number: PS–97–91 and PS–101–90.

Abstract: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 73 hours.

Estimated Total Annual Burden Hours: 1,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16414 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2119

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2119, Sale of Your Home.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sale of Your Home

OMB Number: 1545–0072.

Form Number: 2119.

Abstract: Form 2119 is filed with Form 1040 by individuals to report the sale of their main residence and to:

- Claim the exclusion for sales after May 6, 1997, or
- Elect the one-time exclusion for people who were age 55 or older on the date of sale, or
- Postpone paying tax on all or part of the gain.

Current Actions: Form 2119 will become obsolete for tax year 1998 and subsequent years, due to changes made to Internal Revenue Code section 121 by the Taxpayer Relief Act of 1997 (particularly the increase in the exclusion amount to $250,000/$500,000) which will allow most taxpayers to fully exclude gain on home sales after May 6, 1997. Taxpayers who need to figure a reduced exclusion or whose gain is more than $500,000 should use the worksheet in Publication 523, Selling Your Home, which will retain explanations of prior law. Any taxable gain would be carried forward to Schedule D (Form 1040). Taxpayers who sold homes under the prior law and who are reporting either gain or the replacement of the home would still need to file Form 2119. A supply of 1997 Forms 2119 will be available for this purpose.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000

Estimated Time Per Respondent: 3 hr., 25 min.

Estimated Total Annual Burden Hours: 34,100

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16415 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065, U.S. Partnership Return of Income, Schedule D, Capital Gains and Losses, and Schedule K–1, Partner's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Return of Income (Form 1065), Capital Gains and Losses (Schedule D), and Partner's Share of Income, Credits, Deductions, etc. (Schedule K–1).

OMB Number: 1545–0099.

Form Number: 1065, Schedule D, and Schedule K–1.

Abstract: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used by the IRS to verify correct reporting of partnership items and for general statistics. The information is used by partners to determine the income, loss, credits, etc., to report on their tax returns.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals or households.

Estimated Number of Respondents: 1,513,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,122,528,688.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16416 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–INT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–INT, Interest Income.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Income.

OMB Number: 1545–0112.

Form Number: 1099–INT.

Abstract: Form 1099–INT is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the

recipient has included the proper amount of interest on his or her income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 274,797,664.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 54,959,533.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16417 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–A, U.S. Corporation Short-Form Income Tax Return.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Short-Form Income Tax Return.

OMB Number: 1545–0890.

Form Number: 1120–A.

Abstract: Form 1120–A is used by small corporations with less than $500,000 of income and assets to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether these corporations have correctly computed their tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 285,777.

Estimated Time Per Respondent: 113 hr., 28 min.

Estimated Total Annual Burden Hours: 32,427,116.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16437 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2555–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2555–EZ, Foreign Earned Income Exclusion.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Earned Income Exclusion.

OMB Number: 1545–1326.

Form Number: 2555–EZ.

Abstract: U.S. citizens and resident aliens who qualify may use Form 2555–EZ instead of Form 2555, Foreign Earned Income, to exclude a limited amount of their foreign earned income. Form 2555–EZ is a simpler form that can be used by taxpayers whose foreign earned income is $70,000 or less and who satisfy certain other conditions. The information on the form is used by the IRS to determine if a taxpayer qualifies for, and has properly computed, the foreign earned income exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 43,478.

Estimated Time Per Respondent: 2 hr., 1 min.

Estimated Total Annual Burden Hours: 87,391.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16438 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 792,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16439 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 926

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

OMB Number: 1545–0026.

Form Number: 926.

Abstract: Form 926 is filed by any U.S. person who transfers property to a foreign corporation, foreign estate or trust, or foreign partnership.

Current Actions: Form 926 is being revised to reflect the repeal of Internal Revenue Code sections 1491 through 1494 and changes to Code sections 367 and 6038B. However, the actual changes to the form have not been decided upon at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondents: 22 hr., 45 min.

Estimated Total Annual Burden Hours: 22,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not require to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16440 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4, Employee's Withholding Allowance Certificate.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee's Withholding Allowance Certificate.

OMB Number: 1545–0010.

Form Number: W–4.

Abstract: Employees file Form W–4 to tell employers their marital status, the number of withholding allowances claimed, the dollar amount they want withholding increased each pay period, and if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 54,209,079.

Estimated Time Per Respondent: 2 hr., 6 min.

Estimated Total Annual Burden Hours: 113,839,066.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16441 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4835

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4835, Farm Rental Income and Expenses.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Farm Rental Income and Expenses.

OMB Number: 1545–0187.

Form Number: 4835.

Abstract: Form 4835 is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by a tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. The information on the form is used by the IRS to determine whether the proper amount of farm rental income received by the taxpayer has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and farms.

Estimated Number of Respondents: 407,719.

Estimated Time Per Respondent: 4 hr., 23 min.

Estimated Total Annual Burden Hours: 1,789,886.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16442 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8834

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8834, Qualified Electric Vehicle Credit.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Electric Vehicle Credit.

OMB Number: 1545–1374.

Form Number: 8834.

Abstract: Internal Revenue Code section 30 allows a 10% tax credit, not to exceed $4,000, for qualified electric vehicles placed in service after June 30, 1993. Form 8834 is used to compute the allowable credit. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 7 hr., 50 min.

Estimated Total Annual Burden Hours: 3,915.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16443 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098, Mortgage Interest Statement.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Statement.

OMB Number: 1545–0901.

Form Number: 1098.

Abstract: Section 6050H of the Internal Revenue Code requires mortgagors to report mortgage interest, including points, of $600 or more paid to them during the year by an individual. The form will be used by the IRS to verify that taxpayers have deducted the proper amount of mortgage interest expense or have included the proper amount of mortgage interest refunds in income on their tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Responses: 66,989,155.

Estimated Time Per Response: 7 min.

Estimated Total Annual Burden Hours: 7,815,401.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16444 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–5

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–5, Earned Income Credit Advance Payment Certificate.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Earned Income Credit Advance Payment Certificate.

OMB Number: 1545–1342.

Form Number: W–5.

Abstract: Form W–5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W–5 to their employers. The employer uses the information on the form to compute the amount of the advance payment to include with the employee's pay.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 35,200.

Estimated Time Per Respondent: 43 min.

Estimated Total Annual Burden Hours: 24,992.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16445 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-S, Proceeds From Real Estate Transactions.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Real Estate Transactions.

OMB Number: 1545–0997.

Form Number: 1099–S.

Abstract: Internal Revenue Code section 6045(e) and the regulations thereunder require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099-S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 3,646,110.

Estimated Time Per Response: 8 min.

Estimated Total Annual Burden Hours: 486,148.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16447 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition: Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Sacred Visions: Early Painting from Tibet" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 5, 1998, to on or about January 17, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: June 16, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–16446 Filed 6–19–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW, Washington, DC 20547–0001.

Corrections

Federal Register

Vol. 63, No. 119

Monday, June 22, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0992]

Truth in Lending

Correction

In rule document 98–8829, beginning on page 16669, in the issue of Monday, April 6, 1998, make the following corrections:

PART 226 [Corrected]

1. On page 16677, in Supplement I to Part 226, in the first column, in paragraph 10.ii.A., in the last line "14(c)10.11.B" should read "14(c)10.ii.B".

2. On the same page, in the same section, in the same column, in paragraph 10.ii.B.1., in the second line, "14(c)10.11.A" should read "14(c)10.ii.A".

BILLING CODE 1505-01-D

VOL 63 ISS 119 JE 22 1998 UMI

federal register

Monday
June 22, 1998

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 213
Track Safety Standards; Final Rule

VOL 63 ISS 119 JE 22 1998 UMI

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 8]

RIN 2130–AA75

Track Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends the Track Safety Standards to update and enhance its track safety regulatory program. To address today's railroad operating environment, these amendments present additional regulatory requirements, including standards specifically addressing high speed train operations. FRA issues these changes to improve track safety and provide the railroad industry with the flexibility needed to effect a safer and more efficient use of resources. The amendments reflect recommendations submitted to FRA by the Railroad Safety Advisory Committee. The provisions included in this notice become effective with this rule. However, FRA anticipates that further amendments will be added to address the use of Gage Restraint Measuring Systems.

DATES: *Effective Date:* This final rule is effective September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3344), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION:

Introduction

The first Federal Track Safety Standards were implemented in October, 1971, following the enactment of the Federal Railroad Safety Act of 1970 in which Congress granted to FRA comprehensive authority over "all areas of railroad safety." See 36 FR 20336 and 49 U.S.C. 20101 *et seq.* FRA envisioned the new standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development.

FRA amended the Track Safety Standards with minor revisions several times in the past two decades. It began a project to revise the standards extensively in 1978, but later withdrew the effort when investigation revealed that considerably more data collection and analysis were necessary to support recommended revisions. A less extensive revision of the Track Safety Standards was issued in November, 1982. Since then, FRA has acquired much information crucial to further development of the Track Safety Standards through the enhanced statistical analysis capabilities resulting from additional field reporting requirements and improved data collection processes.

Statutory Background

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

> (a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—
>
> (1) Procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;
>
> (2) The need for revisions to regulations on track excepted from track safety standards; and
>
> (3) Employee safety.
>
> (b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.
>
> * * * * *
>
> (d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—
>
> (1) Inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and
>
> (2) Any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

Petitions for Rulemaking

In May, 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards. The petition suggested substantive changes to the standards, the addition of new regulations addressing recent developments in the industry, as well as the reinstatement of many of the regulations deleted from the standards in 1982. The BMWE also petitioned FRA to further address employee safety by incorporating in the Track Safety Standards certain sections of the Occupational Safety and Health Standards presently administered by the U.S. Department of Labor.

In March, 1992, the Association of American Railroads (AAR) submitted to FRA a list of recommended revisions to the Track Safety Standards. The AAR suggested some changes in the wording of existing regulations to provide additional flexibility to accommodate future innovations in railroad technology. Several suggested revisions included new approaches to determining compliance with certain existing regulations. Most notable among those was AAR's proposal that the revised track standards permit the use of a Gage Restraint Measuring System (GRMS) in place of detailed crosstie and fastener requirements.

Proceedings to Date

On November 16, 1992, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) in this docket. *See* 57 FR 54038. The ANPRM summarized FRA's knowledge about developments in the rail industry in the past two decades and then posed some 52 questions regarding how those developments should be addressed in the revised track safety standards.

The ANPRM also announced plans for four public workshops in which technically-knowledgeable persons with specialized experience in track maintenance were invited to share their views with FRA in an informal setting. The workshops were fact-finding sessions comprised of informal give-and-take exchanges between industry, labor, and government professionals charged with the administration of the track safety standards on a day-to-day basis. They constituted an initial step by FRA to use more active collaboration with labor, railroad management, manufacturers, state governments, and public interest associations in structuring the revised regulations.

Participants in the workshops included representatives of major and short line railroads, the AAR, the American Short Line Railroad Association (ASLRA), the BMWE, as well as individuals with a particular interest in certain areas of the track safety standards. In addition to the workshops, FRA invited interested

persons to submit written comments to the questions posed in the ANPRM. Approximately 30 individuals, railroads, and industry groups submitted their suggestions and observations.

Following one workshop which included an extensive discussion about the safety of maintenance-of-way employees, FRA decided to isolate that issue from this proceeding so that it could be addressed thoroughly in a separate rulemaking. That issue became the focus of a proceeding addressing roadway worker safety, FRA's first negotiated rulemaking. FRA established its first formal regulatory negotiation committee in 1994. After months of discussions and debates, the committee reached consensus conclusions and recommended provisions for an NPRM to the Federal Railroad Administrator (Administrator) on May 17, 1995. An NPRM based upon those recommendations was published on March 14, 1996 (*see* 61 FR 10528), and a final rule was issued on December 16, 1996 (*see* 61 FR 65959). Thus, a significant portion of the mandate of the Rail Safety Enforcement and Review Act of 1992 calling for a general revision of the Track Safety Standards already has become effective.

The Railroad Safety Advisory Committee and the Track Working Group

In past rulemakings, interested parties generally have approached the proceedings in an adversarial manner, a tactic that often inhibited the development of the best regulatory solutions to resolve difficult safety issues. In addition, parties also have resorted to pressuring Congress for legislation that would grant regulatory results with which FRA disagreed or were at odds with FRA's regulatory agenda. FRA concluded, therefore, that inclusion of these parties in its regulatory process would result in a more positive approach to developing the best solutions to pressing safety problems.

Although FRA gathered much information in the 1993 track workshops, as well as in similar workshops associated with other rulemaking proceedings, the agency recognized that continued use of these "ad hoc" collaborative procedures for each rulemaking was not the most effective means of accomplishing the agency's goal of achieving a more consensus-based regulatory program. Following the success in 1995 of the negotiated rulemaking addressing roadway worker safety, FRA decided that several pending rulemakings, including this proceeding to revise Part 213, should advance under a new rulemaking model that relies upon consensus among various members of the affected industry and the regulated community. On March 11, 1996, FRA announced formation of the Railroad Safety Advisory Committee (RSAC), the centerpiece of the agency's new regulatory program which emphasizes rulemaking by consensus with those most affected by the agency's regulations. *See* 61 FR 740.

The RSAC is comprised of 48 individual representatives drawn from 27 member organizations. The membership of the RSAC is representative of those interested in railroad safety issues, including railroad owners, manufacturers, labor groups, state government groups, and public interest associations. It's sponsor is the Administrator, who recommends specific issues for it to address. The RSAC operates by consensus. It is authorized to establish smaller "working groups" to research and initially address the issues recommended by the Administrator and accepted by the RSAC to resolve.

Most of the text of this final rule was recommended to FRA by the RSAC. The committee was tasked by the Administrator to formulate and present to FRA recommendations for new regulations and revisions of existing ones.

In accordance with established RSAC procedures, RSAC formed a Track Working Group, comprised of approximately 30 representatives from railroads, rail labor, trade associations, state government, track equipment manufacturers, and FRA, to develop and draft a proposed rule for the revision of Part 213. It met periodically over a span of six months in 1996.

The Track Working Group identified issues for discussion from several sources. One source of issues was, of course, the statutory mandates issued by Congress in 1992 and in 1994. Two other sources were the BMWE's petition and AAR proposals. Several issues came to the Track Working Group by way of requests for consideration made by FRA's track safety Technical Resolution Committee. The group also examined track issues involved in a number of recommendations made to FRA by the National Transportation Safety Board (NTSB) in the past decade. Discussions utilized information acquired by FRA through its research and development program, as well as from findings from routine agency investigations and accident investigations. Finally, the Track Working Group systematically surveyed the existing regulations to identify those sections and subsections that needed updating or, in some cases, deletion.

At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC for approval to recommend it to the Administrator. As required by RSAC procedures, each provision in the proposed rule had received unanimous approval by the members of the Track Working Group. At the request of the BMWE, the RSAC agreed to defer the vote on whether to recommend the proposed rule to the Administrator to provide that organization additional time to inform its members. At the time of the formal vote by mail on November 21, 1996, representatives of many of the labor unions withdrew support of the proposed rule and recommended that it be returned to the Track Working Group for further discussion.

Despite the lack of support by many RSAC representatives of rail labor, the number of votes cast in favor of recommending the proposed rule to the Administrator exceeded the number necessary for a simple majority. RSAC's procedures provide that where there is a majority vote to recommend to the Administrator a rule presented to the RSAC with full consensus of the working group that produced it, the RSAC will recommend adoption of the rule by the Administrator. Following those procedures, the RSAC formally recommended to the Administrator that FRA issue the proposed rule as it was drafted.

On July 3, 1997, FRA published a Notice of Proposed Rulemaking (NPRM) which included substantially the same rule text and preamble developed by the Track Working Group. *See* 62 FR 36138. In developing the regulatory evaluation for the NPRM, FRA attempted to incorporate additional data in the cost/benefit analysis beyond the impact data provided by the Track Working Group. In the NPRM, FRA requested additional relevant data to use in the regulatory evaluation for this final rule, but parties who had access to relevant data did not respond to that request.

Comments and Responses

The NPRM generated comments from 12 sources. Four of the commenters, namely, the AAR, the BMWE, the ASLRA, and Amtrak, were represented on the Track Working Group and helped draft the recommended rule which became the basis for the NPRM. All four of those commenters expressed support for the RSAC process.

The BMWE stated that it agrees with many of the revisions proposed in the NPRM, but that the standards proposed

therein "do not go far enough to ensure the integrity of the track structure." The BMWE stated that "several significant deficiencies" led that group, as well as RSAC members representing other labor organizations, to recommend to RSAC that the proposed rule as drafted by the Track Working Group be returned to that group for further consideration.

The AAR, in its comments to the docket, stated that it continues to support the NPRM and the language drafted by the Track Working Group. However, the AAR also added a request that should FRA revise any of the proposed rule in direct response to comments by RSAC participants who withdrew support of the rule drafted by the Track Working Group, then FRA would also re-examine the positions the AAR originally expressed about those issues. The AAR stated that its support of the proposed rule reflects that organization's willingness to compromise some of its positions in the interest in reaching consensus about the proposed rule in the Track Working Group. Therefore, the AAR's general support of the NPRM should not be misconstrued as agreement by the organization with each and every provision of the NPRM.

FRA has not significantly changed the NPRM based on comments from other RSAC participants who withdrew support for the rule proposed by the Track Working Group. Thus the AAR's suggested revisions based on that contingency are not examined in the "Section By Section Analysis" portion of this final rule.

Continuous Welded Rail (CWR)

In the first track safety standards published in 1971, § 213.119 dealt with CWR in a rather general manner, stating simply that CWR must be installed at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends, and that it should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature. (*See* 36 FR 20341.) In 1979, when FRA proposed a significant revision of Part 213, the agency suggested that this subsection be eliminated because it provided "little guidance to railroads" and was "difficult to enforce." The agency further stated that research had "not advanced to the point where specific safety requirements can be established." (*See* 44 FR 52114.) However, when the proposed revision was withdrawn in 1981 (*see* 46 FR 32896), the proposal to eliminate § 213.119 was also abandoned. In the November, 1982 revisions to the Track Safety Standards, § 213.119 was deleted.

In the Rail Safety Enforcement and Review Act of 1992, Congress mandated FRA to evaluate procedures for installing and maintaining CWR. In 1994, in the Federal Railroad Authorization Act, Congress added an evaluation of cold weather installation procedures to that mandate. In light of the evaluation of those procedures, as well as information resulting from FRA's own research and development, this final rule returns CWR procedures to Part 213.

CWR is naturally subjected to high compressive and tensile forces which, if not adequately restrained, can result in track buckling or pull-aparts. The potential for track buckling increases as the ambient air temperature increases while the potential for pull-aparts increases as the ambient air temperature decreases. Track buckling tends to occur under train movement and therefore can be instantaneous and somewhat unpredictable.

In recent years, FRA engaged in a research program to develop criteria and guidelines for improving CWR's resistance to buckling. The program sought to (1) define critical forces and conditions associated with track buckling, (2) quantify parameters which govern the resistance of track to buckling, and (3) develop technology to detect incipient failures prior to track buckling. Railroads have also invested considerable resources into CWR research and employee training which has resulted in a marked decrease in the number of reportable buckled track incidents over the last decade. FRA's Accident/Incident data base reveals that the number of reportable buckled track derailments has been reduced by approximately 50% since 1985, dropping from a yearly average of approximately 60 instances to approximately 30 such occurrences per year.

How a railroad provides the adequate lateral resistance to prevent track buckling may vary from railroad to railroad. The Track Working Group found that consistent methodology is not as important as effective methodology in installing and maintaining CWR. Therefore, the Track Working Group's recommendations and the new subsection (§ 213.119) are premised on the concept that the regulations should provide railroads with as much flexibility as safely feasible. The new subsection allows railroads to develop and implement their individual CWR programs based on procedures which have proven effective for them over the years. At a minimum, procedures shall be developed for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal requirements for recordkeeping. FRA fully expects the railroad industry to take advantage of continuing research initiatives to update and enhance their CWR procedures, and cautions railroads not to develop less than acceptable CWR procedures as a means to lessen the effect of regulatory oversight. FRA will monitor the railroads' adherence to these procedures as well as the overall effectiveness of the CWR programs.

While the CWR provision, as proposed, received support from some commenters (the NTSB), others were critical of the new provision. The AAR called it "a classic case of overregulation" and suggested that the provision require track owners only to have CWR procedures and training programs in effect and accessible to FRA. While it supported the provision as a means to enhance track safety, the BMWE also advised that the provision lacks a means to address railroads' non-compliance with their own CWR programs. The ASLRA suggested that railroads should have the option of excluding from their CWR plans any trackage over which trains do not operate at speeds over 30 m.p.h. and which do not exceed one million gross ton miles in traffic annually. The AAR also stated that it generally supports the provision as drafted by the Track Working Group and that its suggestions for changes were to be considered only in the event FRA decides to revise the proposed provision in response to recommendations of other RSAC participants who, after helping to draft the recommended NPRM, withdrew support for the recommendation. All three commenters who expressed negative comments were active participants in the Track Working Group and helped to draft the language which adds the provision for CWR in this final rule.

Excepted Track

With some limitations, the excepted track regulation permits railroads to designate track as "excepted" from compliance with minimum safety requirements for roadbed, track geometry and track structure. FRA added the excepted track provision (§ 213.4) to the regulations in 1982 in response to an industry outcry for regulatory relief on those rail lines producing little or no income. FRA believed that without some relief for low density lines, railroads would accelerate abandonment of those lines rather than invest their slim resources where returns would be limited.

Therefore, the 1982 revision provided the industry with a means to operate over designated tracks without complying with the substantive requirements of the Track Safety Standards. FRA believed that the designated tracks would be located in yards or otherwise on comparatively level terrain in areas where the likelihood was remote that a derailment would endanger a train crew or the general public.

The 1982 provision contains a number of operating restrictions, including limitations on where excepted track can be located and the number of cars containing hazardous materials (five) that can be hauled in one train. Maximum speed is 10 m.p.h., and passenger service is prohibited.

Despite these limitations, railroads have embraced the concept of excepted track. In 1992, an FRA survey revealed the existence of approximately 12,000 miles of designated excepted track nationwide, far more than FRA envisioned when the provision was added to the regulations. Recent surveys conducted by the AAR and the ASLRA indicate that between 8,000 and 9,000 miles of excepted track presently exist nationwide.

Comments to the ANPRM, the NPRM, as well as some opinions expressed within the Track Working Group, showed that many railroads favor maintaining an excepted track provision in the Track Safety Standards. They argued that accident and injury data do not support the notion that trackage in "excepted" status presents any significant safety hazard. FRA's data show that between 1990 and 1995, track-caused derailments on excepted track caused three reportable injuries and one release of hazardous materials. In commenting on the NPRM, the ASLRA stated that, in a recent survey of short line railroads, 146 railroads that reported having excepted track had 122 reportable accidents in a five-year period from 1991 through 1995. Of those accidents, 87 were track-related.

The ASLRA strenuously argued that short line railroads depend on the excepted track provision in order to keep certain track segments in business. Many short lines operate over track they acquired just before abandonment by a major railroad. A significant number of those lines serve only a handful of industries with comparatively small gross tonnage. The ASLRA commented that the cost to short line railroads to upgrade and maintain excepted track would exceed $230 million. Elimination of the excepted track provision would cause the abandonment of approximately 95 lines affecting 1,063 shippers who may be then compelled to use highway transportation.

Approximately 65% of all reportable derailments on excepted track from 1988 through the third quarter of 1995 were track-caused. Of those, nearly 33% were attributed to wide gage as a result of defective crossties or rail fasteners. Several commenters expressed approval of some type of gage restriction. The BMWE suggested that the revised provision should also address the condition and placement of ties and fasteners, as well as switch maintenance and rail/joint bar defects.

The AAR commented that the gage restrictions proposed in the NPRM should be eliminated. The AAR stated that there are situations where wide gage is safe, for instance, in road crossings. In those cases, pavement would have to be destroyed and replaced to correct wide gage when the pavement would have restricted wheel position and prevented a derailment. The AAR also stated that it recommends that the gage restriction be eliminated only if FRA decides to revise the proposed provision based on the comments of other RSAC participants who helped draft the recommendations and then later withdrew support of them. Otherwise, the AAR supports the NPRM as drafted by the Track Working Group.

Because none of the commenters presented FRA with a compelling reason to make further changes to the gage restrictions in the excepted track provision, this final rule adopts the language as recommended by the Track Working Group and as proposed in the NPRM. Under this final rule, track owners must maintain gage to a 58¼" standard and perform periodic switch inspections.

FRA and state inspectors have found instances where railroads have taken advantage of the permissive language in the 1982 provision to conduct operations in a manner not envisioned when FRA drafted the provision. For example, a railroad removes a segment of track from the excepted designation only long enough to move a train with more than five cars carrying hazardous materials, or to operate an excursion passenger train, and then replaces the segment in excepted status as soon as the movement is completed. The BMWE and the NTSB suggested that the revised provision include time limits for the use of this provision over any segment of track. The final rule adopts the language as proposed in the NPRM and requires railroads to provide FRA with notification 10 days prior to removing track from excepted status.

The revision also changes the word "revenue" to "occupied" in describing passenger trains prohibited from operating over excepted track. This change codifies FRA's long-standing interpretation of the 1982 provision which allowed trains on excepted track to be occupied by crews, work gangs, and other railroad employees attending to their job-related duties. It is also designed to dispel the misconception by some railroads that passengers could be hauled over excepted track as long as they were not charged, and the railroad received no "revenue," for their transportation. The purpose of the passenger prohibition is to safeguard railroad passengers; its purpose is not concerned with the revenue-generating power of passenger service.

Liability Standard

The current track regulations are enforced against a track owner "who knows or has notice" that the track does not meet compliance standards. This knowledge standard is unique to the track regulations; other FRA regulations are based on strict liability. The knowledge standard is founded on the notion that railroads cannot prevent the occurrence of some defects in track structures that are continually changing in response to the loads imposed on them by traffic and effects of weather. Many defects may not be detected even when the track owner exercises reasonable care. Therefore, track owners should be held responsible only for those defects about which they know or should know. Today, even after years of track abandonments by major railroads, the industry is responsible for maintaining about 200,000 miles of track. Many defects occur suddenly in remote areas, making it difficult for even the most diligent track inspectors to keep pace with all defects as they happen.

With a knowledge standard attached to the track regulations, railroads are held liable for non-compliance or civil penalties for only those defects that they knew about or those that are so evident the railroad is deemed to have known about them. FRA and state inspectors meet this knowledge standard in a number of ways. Sometimes they record and notify a railroad of a defect that they find, and then re-inspect later to see if the defect has been repaired. If it has not, they may cite the railroad for a violation of the track safety standards. While this method provides a failsafe way of proving railroad notice of a defect, it is not always practicable for inspectors to perform follow-up inspections. Such a system would make railroads responsible only for defects

FRA already has detected, which is clearly not a sufficient incentive to comply.

Often, inspectors choose to inspect the railroad's own inspection records to see if a defect they have noted is recorded there. If it is, the inspection record forms proof that the railroad had notice of the defect. If the defect is not recorded in the railroad's inspection records, but is of the nature that it would have had to exist at the time of the railroad's last inspection (for example, defective crossties or certain breaks that are covered with rust) and would have been detected with the exercise of reasonable care, the defect's existence constitutes constructive knowledge by the railroad and the railroad is cited for a violation. FRA's reading of its "knows or has notice" standard has been its long-standing enforcement policy and is explained in FRA's Track Enforcement Manual.

In its petition, the BMWE suggested that FRA put track owners under a strict liability standard by removing the phrase "knows or has notice" from § 213.5. Under that standard, any defect found by an FRA inspector could be written as a violation regardless of the railroad's ignorance of it or the railroad's opportunity to have detected it under the required inspection schedule. The AAR requested in its petition that FRA develop performance standards for the track regulations. Certain defects would not be cited as long as the track is performing safely, making unnecessary many of the regulations (for example, inspection requirements and the minimum number of crossties). The inherent weakness in such a proposal is that railroads will develop differing internal requirements for track inspection and maintenance. Some railroads may not be as vigilant as others in spotting defects or potential defects. Track defects compromising safety may not be discovered until the track fails, causing a derailment and possibly injuries and death.

Neither the BMWE nor the AAR provided FRA with cost/benefit information to support their respective requests.

The Track Working Group considered and rejected both proposals, finding that the existing language, as it has been enforced to date, strikes the best balance of all interests. Therefore, the NPRM proposed to leave the standard of liability unchanged. In its comments on the NPRM, the BMWE again proposed that the standard of liability be changed to that of strict liability. According to the BMWE, the current language encourages railroads to under-report track defects and offers the railroads no disincentive from assigning railroad track inspectors "overly-expansive inspection territories" resulting in less thorough and comprehensive track inspections.

In preparing this final rule, FRA weighed the BMWE comments, as well as its own enforcement experience, against the consensus-based recommendation of the Track Working Group which representatives of the railroads, FRA, and labor developed. FRA has concluded that the Track Working Group struck the right balance, and thus in this final rule, railroads will continue to be held liable for track defects of which they knew or had notice. Even if a railroad has not recorded those defects, notice may include constructive knowledge of defects that, by their nature, would have had to be in existence when the railroad was last required to perform an inspection.

Moreover, the penalty provision now makes clear what has been the law for many years, *i.e.*, that anyone who makes a false report under the safety laws is liable for criminal penalties under 49 U.S.C. 21311. This should provide an additional deterrent to anyone who would purposely under-report defects.

Tourist Railroads

The Track Safety Standards apply to only those tourist railroads that operate on the general system. FRA estimates that approximately 95 tourist railroads operating over 1,350 miles of standard gage track off the general system are not currently subject to the track safety standards. The agency sees the need to address this growing market and increasing safety exposure in the area of track safety, as well as other areas of rail operation.

In April, 1996, FRA referred tourist railroad safety issues to the RSAC. The RSAC, in turn, established a working group comprised of agency and tourist railroad industry representatives to analyze the industry's unique aspects and formulate recommendations for appropriate regulation of that specialized industry. Among the issues the working group will examine is track safety. The findings of that group may or may not lead to a recommendation by the RSAC that the Track Safety Standards should be revised to apply to all tourist railroads. However, if such a recommendation is the result, FRA may then consider initiating a separate rulemaking to address that issue. The NTSB took the opportunity of this proceeding to express its opinion that the Track Safety Standards should apply to tourist railroads both on and off the general system. Because many issues affecting tourist railroads are still under consideration by FRA, this final rule includes no changes to the Track Safety Standards that are directed specifically to those railroads.

Gage Restraint Measurement System

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fasteners. However, the inability of the track structure to maintain gage sometimes becomes apparent only after a derailment occurs. Many railroads throughout the country have successfully tested the GRMS, which was developed under a joint FRA/industry research project.

Accident statistics taken from FRA's Annual Accident/Incident Bulletins reveal that from 1985 through 1995, reportable wide gage derailments from defective crossties and fasteners totaled 2,232 instances and cost the industry over 60 million dollars in damages.

Current crosstie and fastener maintenance techniques rely heavily on visual inspections by track inspectors, whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of those inspections sometimes creates inconsistent determinations about the ability of individual crossties and fasteners to restrain track gage. Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, a crosstie of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or fasteners, the static or unloaded gage is within the limits prescribed by the current track standards. However, when a train applies an abnormally high lateral load to a section of track that contains marginal crosstie or fastener conditions, the result is often a wide gage derailment.

In 1993, FRA granted CSX Transportation a waiver of compliance for the purpose of conducting a test program to evaluate the GRMS performance-based standard using FRA's research vehicle, in lieu of existing crosstie and rail fastening requirements, on nearly 500 miles of various track segments. The experience gained under this waiver has provided FRA with the opportunity to continually make adjustments to the conditional

requirements of the waiver to the point where the technology has proven itself to be a more consistent method of objectively determining crosstie and fastener effectiveness. FRA believes the technology is now ready to be deployed within the industry.

The Track Working Group could not reach consensus about how the revised Track Safety Standards should address GRMS technology. The RSAC therefore recommended that a small task group continue evaluating the possibility of developing GRMS standards for broader application within the industry. Nevertheless, some parties submitted comments to the NPRM concerning the use of GRMS. The NTSB recommended that the revised standards incorporate the use of advanced track inspection technologies, such as track geometry cars, GRMS, light-weight loading fixtures, and state-of-the-art rail inspection methods for internal rail defects. In its comments to the NPRM, the BMWE reiterated its position that GRMS technology be used in conjunction with current inspection requirements. The AAR, in its comments, repeated its position that the revised Track Safety Standards should allow alternate inspection procedures that would permit railroads to use some combination of geometry cars, measurement equipment and instrumentation such as GRMS, hyrail inspections, and other means of inspecting in place of the required visual inspections. At the publication of this final rule, the task group continues to work to reconcile the differences and reach a consensus on what type of GRMS provision would be most effective. FRA, for its part, is still examining the points made for and against incorporation of a GRMS provision and is not prepared to resolve the issue at this time. However, FRA anticipates coming to resolution in the near future. All of the relevant issues appear to have been identified and discussed in this proceeding.

High Speed Rail Standards

The current Track Safety Standards include six classes of track that permit passenger and freight trains to travel up to 110 m.p.h. Passenger trains have been allowed to operate at speeds over 125 m.p.h under conditional waiver granted by FRA. This final rule adds three new classes of track that designate standards for track over which trains may travel at speeds up to 200 m.p.h. Standards for high speed track classes will be contained in a new Subpart G of Part 213 which will cover track Classes 6 through 9. The new subpart is intended to function as "stand alone" regulations governing any track identified as belonging to one of these higher classes. In other words, the track owner needs to refer only to Subpart G for compliance with the Track Safety Standards for track over which railroads operate trains at the speeds associated with the high speed track classes. However, if that same track does not meet the standards in Subpart G at any time, the other subparts (A through F) apply.

These track standards constitute only one of several components comprising a regulatory program permitting trains to travel at high speeds. FRA also may address high speed issues in regulations outside of Part 213, such as emergency preparedness, wheel conditions, braking systems, and grade crossings. These track standards are an integral part of that larger regulatory scheme.

FRA's approach to track safety standards for high speeds is based on the fundamental principle that vehicles in the high speed regime must demonstrate that they will not exceed minimum vehicle/track performance safety limits when operating on specified track. In addition, railroads must monitor the vehicle/track system to ensure that the safety limits will be met under traffic conditions.

A panel of experts in high speed rail transportation worked with the Track Safety Working Group to provide recommendations for vehicle/track performance limits and track geometry. The panel identified acceleration and wheel/rail force safety criteria by reviewing technical studies, considering foreign experience and practices, and performing independent computer simulation and analytical studies. Once it identified vehicle/track performance limits, the panel developed specific geometry safety criteria. The panel also recommended requirements necessary for track structure to sustain the forces generated by vehicles at high speeds.

In developing this final rule, FRA sought out the best available technical data about dynamic performance of vehicle/track systems to devise safety standards that are practical to implement. The high speed standards in this notice provide for the qualification of vehicles; geometry standards for gage, surface, and alinement; track structure; and inspection requirements for both automated and visual inspections. While some of the sections in the new Subpart G are identical, or nearly identical, to their counterparts in other sections of the regulation, the standards for high speed operations generally differ markedly from those for the lower track classes which cover a much broader range of railroad vehicles. Several sections have no counterpart in the standards for the lower classes of track because they address issues unique to the high speed environment. Other sections are simply modifications of the requirements for the lower track classes.

Comments to the new Subpart G proposed in the NPRM came from Amtrak, the NTSB, Bombardier GEC Alsthom Consortium, Union Switch and Signal, and the Director of Ground Transportation of the French Ministere de l'Equipment des Transports et du Logement. The commenters were generally supportive of the new standards, but they offered suggestions for modifying some sections in the subpart. Their specific comments are addressed in this notice under segment designated as "Section by Section Analysis."

A representative for the Florida Overland eXpress responded to the NPRM with a request that FRA remove from the final rule reference to Florida Overland eXpress's plans to operate trains at very high speeds. Florida Overland eXpress petitioned FRA in 1996 for a Rule of Particular Applicability for its proposed operation. Such a rule would include a variety of railroad safety regulations, including track safety regulations, that would apply only to the Florida Overland eXpress. FRA issued a Notice of Rule of Particular Applicability, published on December 12, 1997. *See* 62 FR 65478. Florida Overland eXpress objected to a reference to that operation in the NPRM because this rule of general applicability will not apply to its operation. FRA agrees that the reference in the NPRM to the Florida Overland eXpress, without explanation of its unique circumstances, may mislead others into believing that this rule will apply to that operation. It will not.

Following the closure of the comment period for the NPRM (September 15, 1997), the Volpe National Transportation Systems Center (VNTSC) issued a working paper entitled "Evaluation of Proposed High Speed Track Surface Geometry Specification," dated December 1, 1997. The working paper evaluated the response of different high speed locomotive designs to track profile geometry variations. Because the VNTSC working paper contained relevant and useful information for this final rule but was not available at the time of the publication of the NPRM, FRA placed the paper in the docket for this proceeding and issued a special notice on December 12, 1997, inviting public comment on its content. *See* 62 FR 65401. The comment period for the

VNTSC working paper expired on December 22, 1997. FRA received only one response to the special notice. The AAR noted that it would not be able to provide comment on the VNTSC working paper without knowing how FRA would use the report to set the geometry standards for the high speed classes of track.

Torch Cut Rails

Torch cutting rail, a practice that was widespread in the railroad industry until a few years ago, is now used by most railroads only for emergency repairs in Classes 3 through 5 track. Technology has advanced to the point where cutting rail with the various types of rail saws that are readily available is more efficient than torch cutting. FRA lacks reliable data on the number of existing torch cuts. The railroads report that torch cuts no longer exist on Class 6 track, and the torch cuts remaining in Class 5 track nationwide probably number "in the hundreds." Nevertheless, torch cuts from years ago when the practice was more prevalent still exist and are believed to pose a safety hazard.

In 1983, following its investigation of an Amtrak derailment in Texas, the NTSB recommended that torch cuts be removed and that trains move at only 10 m.p.h. over torch cuts made in emergency situations or as a preparatory step in field welding. It should be noted, however, that the rail involved in the Texas accident had a type of high alloy content which the industry now recognizes as inferior. It is no longer used in the industry.

Because rails that have been torch-cut have a greater tendency to develop fractures in the short term, the NPRM proposed that the practice of torch-cutting rails in Classes 3 through 5 track should be prohibited in the future except for emergency temporary repairs. The NPRM further proposed that existing torch cuts in Class 3 track over which regularly scheduled passenger trains operate should be inventoried and any torch cuts that are found later but are not listed on the inventory must be removed. Torch cuts in Class 4 track must be removed within two years of the effective date of this final rule, and torch cuts in Class 5 track must be removed within one year. Because torch cuts existing on yard tracks and main tracks where trains operate at slow speeds (Classes 1 and 2) do not pose as high a risk, the NPRM proposed that existing torch cuts in Classes 1 and 2 track be allowed to remain.

In commenting on the NPRM, the NTSB suggested that torch cuts should be prohibited and eliminated from all track in classes above Class 1, and movement over torch cuts should be restricted to 10 m.p.h. The BMWE commented that torch cutting should be prohibited in all classes above Class 2, and that existing torch cuts in Class 2 track should be removed within a reasonable time. The AAR commented that the torch cut provision should simply prohibit torch cutting in Classes 3 through 5 track. However, the AAR further stated that it generally supports the NPRM and offered this suggestion to be considered only in the event FRA decides to change the proposed provision in accordance with the comments of other RSAC participants who helped draft the provision and then later withdrew support of the RSAC recommendations.

This final rule adopts the proposed rule as drafted by the Track Working Group, approved by majority consensus of the RSAC, and proposed in the NPRM. The comment by the NTSB, that torch cuts should be removed from any track class above Class 1, is based upon the NTSB's investigation of the 1983 Amtrak derailment in Texas. However, FRA's analysis of the derailment indicates that the high alloy content of the rail at the site of the accident played a larger part in causing the derailment than did the torch cut. Therefore, FRA is not persuaded by the NTSB's analysis. The BMWE offered no clear explanation of its proposal to prohibit all torch cuts in track classes above Class 2. Similarly, FRA was not persuaded by AAR's argument that accident statistics fail to support a torch cut regulation that requires anything more than a prohibition against any future torch cutting in track classes above Class 3. FRA believes that existing torch cuts in the higher classes of track may pose a danger of derailment.

Other Issues

Plant Railroads and Industrial Spurs

In general, FRA has elected not to exercise jurisdiction over the safety of railroads that conduct their operations exclusively within an industrial or military installation. FRA chose this self-imposed limitation because such operations have not demonstrated the same degree and frequency of track problems found on tracks in the general system which are subject to heavier tonnages and more frequent use. Nevertheless, FRA recognizes its responsibility for the safety of railroad employees and operations inside such facilities where a general system railroad provides service on that property, either by picking up and placing cars for transportation in interstate commerce or by switching for the plant. The same responsibility applies to operations on privately owned industrial spurs used exclusively by a main line railroad to serve an industry.

The applicability section of the current Track Safety Standards (§ 213.3) excludes track "located inside an installation which is not part of the general railroad system of transportation." This broad statement implies that the track standards do not apply anywhere inside a plant, regardless of who operates there or the type of operations that occur on the plant track. However, § 213.3 must be read in conjunction with 49 C.F.R. Part 209, Appendix A, which explains that the track owner of any plant railroad trackage over which a general system railroad operates is responsible for the condition of track used by the general system railroad. With the entrance of a general system railroad, the plant does not become part of the general system, but it does lose some of its insularity as to that part of the track used by the general system railroad.

Since the enactment of the Federal Railroad Safety Act of 1970, FRA has had at its disposal statutory authority to issue emergency orders to repair or discontinue use of industrial or plant trackage should the agency find that conditions of the track pose a hazard of death or injury. *See* 49 U.S.C. § 20901. It is FRA's opinion that this emergency order authority is sufficient power to ensure track safety within plants, as well as other installations (*e.g.*, military installations). However, if conditions or events in the future tend to demonstrate that track safety within plants or installations should be more specifically regulated, FRA will seek to change the applicability of this Part in a future rulemaking. This final rule leaves the application section of the Track Safety Standards unchanged.

Train Speed/Preemption

Under the current Track Safety Standards, FRA has only an indirect role in determining speed limits. Railroads set train speed in their timetables or train orders. Once a railroad sets a train speed, it must then maintain the track according to FRA standards for the class of track that corresponds to that train speed. The signal and train control regulations also fix limits on train speed based upon the type of signal system that is in place. If the railroad fails to comply with track or signal system requirements for speed at which trains are operated, the railroad is subject to penalty.

FRA's current regulations governing train speed do not afford any adjustment of train speeds in urban settings or at grade crossings. This omission is intentional. FRA believes that locally established speed limits may result in hundreds of individual speed restrictions along a train's route, increasing safety hazards and causing train delays. The safest train maintains a steady speed. Every time a train must slow down and then speed up, safety hazards, such as buff and draft forces, are introduced. These kinds of forces can enhance the chance of derailment with its attendant risk of injury to employees, the traveling public, and surrounding communities.

FRA always has contended that Federal regulations preempt any local speed restrictions on trains. Section 20106 of Title 49, United States Code (formerly 45 U.S.C. § 434) declares that—

> [l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—(1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonable burden interstate commerce.

FRA's long-held belief that Part 213 preempts local speed laws was verified by the U.S. Supreme Court in 1993 in the case *CSX* v. *Easterwood*, 507 U.S. 658 (1993). The Court held that legal duties imposed on railroads by a state's common law of negligence fall within the scope of preemption provision of 49 U.S.C. 20106, which preempts any state "law, rule, regulation, order or standard relating to railroad safety." The Court said that preemption of such state laws "will lie only if the federal regulations substantially subsume the subject matter of the relevant state law." *Easterwood*, 664. However, the Court further stated that because Part 213 ties certain track requirements to train speed, it should be viewed as "covering the subject matter" of speed limits.

Notwithstanding some of the language in *Easterwood* that a cursory reading may otherwise indicate, FRA has never assumed the task of setting train speed. Rather, the agency holds railroads responsible for minimizing the risk of derailment by properly maintaining track for the speed they set themselves. For example, if a railroad wants its freight trains to operate at 59 m.p.h. between two certain locations, it must maintain the tracks between those locations to Class 4 standards.

Moreover, there are significant safety reasons for facilitating the fastest transit of trains throughout the railroad system. For example, the risk of releases of hazardous materials is reduced by minimizing the time such shipments spend in transportation. It would be poor public policy to allow local governments to attempt to lower their risk by raising everyone's risk and by clogging the transportation system. Railroads have strong economic motives to minimize the time shipments spend in transportation, so public safety and employee safety are best served by setting and enforcing the standards railroads must meet to travel at particular speeds.

In recent years, FRA has encountered increasing pressure from communities along railroad rights-of-way to set slower train speeds on main tracks located in urban areas. They typically cite the inherent dangers of grade crossings, pedestrian safety, as well as the risk of derailments of rail cars containing hazardous materials.

As to grade crossings, FRA has consistently maintained that their danger is a separate issue from train speed. The physical properties of a moving train virtually always prevent it from stopping in time to avoid hitting an object on the tracks regardless of the speed at which the train is traveling. Prevention of grade crossing accidents is more effectively achieved through the use of adequate crossing warning systems and through observance by the traveling public of crossing restrictions and precautions. Therefore, FRA continues to sponsor and/or support initiatives to improve safety at grade crossings under the Department of Transportation's Grade Crossing Action Plan. These initiatives are geared towards enhancing enforcement of traffic laws at crossings, closing unneeded crossings, enhancing rail corridor crossing reviews and improvements, expanding public education and Operation Lifesaver activities, increasing safety at private crossings, improving data and research efforts, and preventing rail trespassing.

In January, 1995, FRA implemented regulations for maintenance, inspection and testing of warning devices at crossings, such as lights and gates. *See* 59 FR 50086. The agency also implemented regulations requiring certain locomotives to be equipped with auxiliary lights making trains more visible to motorists, railroad employees, and pedestrians. *See* 61 FR 8881. FRA believes that these measures are more effective approaches to enhancing safety at grade crossings than an attempt to design speed limits for each geographic situation.

FRA received no comments on this issue following a similar discussion of the issue in the NPRM.

Vegetation

The vegetation control requirements of Part 213 currently deal with fire hazards to bridges, visibility of railroad signs and signals, interference with normal trackside duties of employees, proper functioning of signal and communication lines, and the ability to inspect moving equipment ("roll by" inspections). The regulation does not address the issues of motorists' and pedestrians' ability to see warning devices at highway-rail crossings.

Since 1978, accidents and fatalities at highway-rail grade crossings have decreased dramatically due to engineering improvements at individual crossings, education of the public, and greater enforcement of highway traffic laws. Nevertheless, FRA finds that the present loss of life, injuries, and property damage are still unacceptable. Projections for 1997 based upon nine months of preliminary data show that 441 people were killed, and 1,525 suffered serious injuries in grade crossing accidents. Second only to trespasser fatalities as a leading cause of death in the railroad industry, highway-rail collisions far out-number fatalities to railroad employees and passengers.

In lengthy discussions about vegetation at grade crossings, the Track Working Group quickly realized that the issue requires the expertise of entities not represented on the Track Working Group or RSAC, *e.g.*, state and federal highway designers, traffic engineers, as well as representatives of local jurisdictions with grade crossings. The NPRM generated no comments concerning the issue of vegetation at grade crossings. FRA agrees with the assessment reached by the Track Working Group that the issue requires the judgment of experts in other transportation arenas. Therefore, this final rule adds only one requirement for railroads in maintaining vegetation. Under this rule, railroads are required to clear vegetation away from signs and signals on railroad rights-of-way at grade crossings. The additional language is intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility of railroad signs and signals to the traveling public. It is not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings, nor is it

intended to dictate standards for surrounding landowners.

Because concern about this issue remains, the FRA Administrator has recommended that the Department of Transportation initiate a joint regulatory proceeding by FRA and the Federal Highway Administration to address vegetation maintenance and sight distances for motorists at grade crossings. Should the Department of Transportation decide not to initiate such a regulatory project, FRA will then consider the next appropriate action which may include launching its own regulatory proceeding.

Metric System

In the 1992 ANPRM, FRA requested comments in response to a proposal to create a dual system of measurements, English and metric, for inclusion in these regulations. Responses were varied. Some commenters suggested that FRA implement metric standards, while others recommended that a dual system would be better. Still others argued that the addition of metric standards, whether as a single standard or in a dual system with English standards, would cause confusion in the industry. They added that computerized recordkeeping would have to be re-programmed at a significant expense.

The RSAC did not recommend the addition of metric standards in this proceeding. Although the issue was raised in the NPRM, it generated no comments. FRA concludes that the introduction of metric values into the regulations is not appropriate at this time.

Section by Section Analysis—Track Classes 1–5

The Federal Track Safety Standards, until now, included only six classes of track representing speeds up to 110 m.p.h. The regulations applied to all of the classes. This final rule separates the classes of track into two general categories: Classes 1 through 5 for speeds up to 90 m.p.h. (80 m.p.h. for freight) and Classes 6 through 9 for speeds above 90 m.p.h. (80 m.p.h. for freight). Subparts A through F apply to Classes 1 through 5, as they always have. However, the new Subpart G applies exclusively to Classes 6 through 9. This separation of the classes of track is designed for better ease of use. Owners of track over which high speed trains operate need to refer only to Subpart G for almost all of the relevant regulations. (The exceptions are § 213.2, Preemptive effect; § 213.3, Application; and § 213.15, Penalties.) On the other hand, track owners over which train speeds do not exceed 90 m.p.h. continue to refer to Subparts A through .

Class 6 is included in the category for high speed track, governed by Subpart G, because the safety issues associated with that class of track more closely resemble those associated with the higher classes.

Section 213.1—Scope of the Part

Proposed rule: An amendment to this section would eliminate the word "initial." When the Track Safety Standards were first published in 1971, they were referred to as "initial safety standards" because they were the first Federal standards addressing track safety. Twenty-five years and several amendments later, the current Track Safety Standards are no longer initial standards. Therefore this amendment eliminates a mischaracterization of the standards by removing the outdated descriptive "initial."

Comments: Comments received supported the proposed amendment.

Final rule: The section incorporates the change as proposed in the NPRM and adds a sentence to distinguish the applicability of Subpart G from the applicability of Subparts A through F. Subpart G applies to track over which trains are operated at speeds in excess of those permitted over Class 5 track, a maximum of 80 m.p.h. for freight trains and 90 m.p.h. for passenger trains. Subpart G is designed to be mostly comprehensive, so that a railroad operating at speeds above Class 5 maximum speeds may refer to Subpart G for all of the substantive track safety requirements for high speed rail. Such a railroad needs to refer to the earlier sections of the Track Safety Standards only for the general provisions at § 213.2 (preemptive effect), § 213.3 (application), and § 213.1 (Penalties). On the other hand, railroads which never operate at speeds in excess of the maximum Class 5 speeds need not refer to Subpart G at all.

The final rule also adds language to this section to state that railroads are not restricted from adopting and enforcing more stringent track safety requirements as long as they are not inconsistent with the track safety standards in this Part. This statement is consistent with the earlier statement that these regulations are minimum requirements.

Section 213.2—Preemptive Effect

Proposed rule: This section is added to Part 213 to indicate that states cannot adopt or continue in force laws related to the subject matter covered in this rule, unless such laws are needed to address a local safety hazard and they impose no undue burden on interstate commerce. This section is consistent with the mandate of 49 U.S.C. 20106, formerly § 205 of the Federal Railroad Safety Act of 1970. Although the courts ultimately determine preemption in any particular factual context, this section provides a statement of agency intent and promotes national uniformity of regulation in accordance with the statute.

Comments: Comments received supported the proposed amendment.

Final rule: The section is modified slightly so that the language more closely corresponds to the language of the statute. *See* 49 U.S.C. 20106.

Section 213.3—Application

Proposed rule: This section was not proposed to be amended. The Track Working Group discussed amending subsection (b) to reference Appendix A of Part 209 in an effort to clarify FRA's safety policy toward trackage used by general system railroads within the confines of installations. According to Appendix A of Part 209, a plant does not become a general system railroad, subject to all of the attendant safety requirements applied to such railroads, simply because a general system railroad operates over a portion of the plant trackage. Nevertheless, a plant owner is held liable for the condition of any plant trackage over which a general system railroad operates. Under this policy, FRA will not hold plant owners responsible for compliance with ancillary track safety provisions, such as the requirements for recordkeeping or inspection frequencies. However, FRA will judge the safety of the plant railroad against the substantive safety requirements in those standards to assess the need to invoke its emergency order authority against the plant owner.

The Track Working Group advised that a reference in Part 213 to Appendix A of Part 209, which is merely a statement of FRA policy, could have the effect of making all provisions of Part 213, including those ancillary provisions, enforceable against thousands of plant owners, at least to the extent general system railroads operate within plant borders. Such a result would be more far-reaching than intended by the RSAC.

Comments: One commenter suggested that the application of Part 213 be extended to cover standard gage tourist railroads which operate off the general system and meet the FRA's test for insularity. This commenter also suggested that the agency consider developing track safety standards for non-standard gage tourist railroad operations.

Final rule: This section is amended to conform the discussion of jurisdiction over rapid transit service to the statute. See 49 U.S.C. 20102. The statute has been amended since part 213 was issued, but § 213.3(b)(2) was never amended to conform to the statute. The Track Safety Standards will still exclude urban area rapid transit systems that are unconnected to the general system. This change is not intended make the Track Safety Standards applicable to rapid transit whose only connection to the general system is a switch permitting receipt of shipments from the general system.

In response to concerns expressed by and about tourist railroads, FRA proffered, and the RSAC accepted, a task to study tourist railroad concerns. The RSAC has established a working group to perform the task. It is comprised of agency and tourist railroad industry representatives who are analyzing the industry's unique aspects and formulating recommendations for appropriate regulation of that specialized industry. Therefore, the NPRM proposed no changes in that regard.

While FRA does not think a reference to Appendix A to Part 209 would have the effect feared by the Track Working Group, FRA declines to exercise its jurisdiction over plant railroads at this time because the safety issues now presented on their track do not warrant the allocation of agency resources that would be diverted from matters presenting greater safety risks. The agency continues to have safety jurisdiction over those railroads and may invoke its statutory emergency authority if it deems that necessary in order to safeguard anyone from the hazard of death or personal injury.

Section 213.4—Excepted Track

Proposed rule: The NPRM proposed to maintain the provision for excepted track with added restrictions for its use and maintenance. Since its inception in 1982, the excepted track category has become an economic issue for some small railroads, particularly short line railroads and low volume shippers. It allows railroads to continue to use, on a limited basis, low-density trackage that does not earn sufficient revenue to justify the expense of maintaining it to higher track standards. It allows short lines to acquire and use trackage that may have been abandoned by larger railroads, thereby preserving rail service to shippers and avoiding the necessity of shifting traffic over those lines from moving to some other, perhaps more hazardous, means of transport.

Because the majority of reportable derailments on excepted track are track-caused, and the majority of this total are wide gage-related, the NPRM proposed to institute a requirement that gage must not exceed of 58¼" on excepted track. This requirement would apply to the actual gage measurement itself, and would not extend to the evaluation of crossties and fasteners which provide the gage restraint. A clarification was added to the inspection requirements on excepted track which specifically reference turnout inspections required under this section.

The NPRM also proposed to include a requirement that railroads notify FRA at least 10 days before removing trackage from excepted status. This provision is intended to prevent the practice FRA has witnessed in the past by some railroads who remove trackage from excepted status only long enough to move a passenger excursion train or a train with more than five cars containing hazardous materials. Furthermore, the NPRM included an edit to § 213.4(e)(2) changing the word "revenue" to "occupied" in describing passenger trains prohibited from operating over excepted track. This change addresses a misconception by some railroads that they could operate passenger excursion trains over excepted track as long as they did not charge passengers admission for a ride. The proposed change clarifies that the prohibition is directed toward all passengers but is not meant to include train crew members, track maintenance crews, and other railroad employees who must travel over the track to attend to their work duties.

Comments: Comments received generally supported the proposed amendments to the excepted track regulation. However, several commenters proposed that additional requirements and restrictions should be incorporated into the regulation. Proposals included a total prohibition of hazardous materials shipments, additional restrictions on where excepted track could be utilized, additional minimum safety standards, and a time limit for length of time a track could remain in excepted status.

Final rule: In preparing its recommended proposed rule, the Track Working Group discussed at length the same requirements and restrictions suggested for inclusion into this final rule by commenters. The final rule includes additional regulatory control over abuses of the excepted track provision which have been documented in the past. The final rule also prescribes a minimum safety standard for gage that addresses the major causal factor associated with track-caused derailments on excepted track.

FRA rejected the suggestion that the provision should include a prohibition of all hazardous material shipments. Many small short line railroads who operate over excepted track haul hazardous materials on a regular basis. A general prohibition would cause many of these railroads to close operation, and the hazardous materials would be hauled by trucks over public highways. Similarly, a restriction on the length of time track may remain in excepted status, and a restriction on where excepted track could be utilized, would place an undue burden on many short line railroads who operate exclusively on excepted track. Statistics show that 87 track-caused reportable accidents occurred on 8,000 to 9,000 miles of excepted track in five years. These numbers, in FRA's judgment, do not justify implementing restrictions over-burdensome to small railroads.

FRA considered implementing minimum safety standards, in addition to the new gage and switch requirements. However, the ASLRA estimated that the cost to short line railroads to improve excepted track to Class 1 standards would cost the short line industry some $230 million. FRA believes that this final rule provides needed additional measures of safety for excepted track while maintaining the regulatory relief the excepted track provision provides, but under more restrictive conditional and operational requirements.

Section 213.5—Responsibility of Track Owners

Proposed rule: The NPRM proposed to change subsections (c) and (d) to modify the way in which track owners may assign compliance responsibility to another entity. Under the current regulations, a track owner may petition the Federal Railroad Administrator to recognize another party as the one primarily responsible for the maintenance and inspection of the owner's track. This provision is intended to facilitate compliance by track owners whose track is leased to another entity for operation. Often track owners (*e.g.*, municipal communities, county governments) do not have the necessary expertise to maintain compliance with Federal track standards, but their track lessees do. Thus, track owners can successfully petition FRA for reassignment of primary responsibility by providing certain information about the assigned party and the relationship of the assigned party to the track owner. When such a petition is approved by FRA, the

assigned party becomes responsible, along with the track owner, for compliance with Part 213.

The change for these subsections eliminates the approval process by FRA, shown in years past to be the cause of unnecessary paperwork. Records show that FRA has approved almost every such petition it has reviewed. Under the subsection proposed in the NPRM, a track owner could reassign responsibility to another entity simply by notifying FRA's regional administrator for the FRA region in which the track is located. The notification would include the same information required for the petitions under the current standards. However, FRA would discontinue its practice of publishing in the **Federal Register** the petitions for reassignment, along with requests for public comment. The reassignments would no longer be reviewed by FRA's Railroad Safety Board.

FRA believes that the change would not diminish track safety. Although the intent of the original subsection was to give FRA some control over who should be responsible for maintaining track, the practical application of the subsection has shown that such control by the agency is unnecessary. Rather, it is more important for FRA to know what party or parties to hold responsible for compliance with track safety standards. Therefore, the subsection (c) would require notification to the agency of reassignments of track responsibility, but it would no longer require approval by FRA now required in subsection (d). The text currently shown as subsection (d) would be eliminated.

The NPRM also proposed one minor change in current subsection (e), substituting the name "Surface Transportation Board" for "Interstate Commerce Commission." This substitution is meant to reflect Congress' action in 1995 to eliminate the Interstate Commerce Commission and turn over many of its functions to the new Surface Transportation Board within the Department of Transportation. With the elimination of the current text of subsection (d), this subsection now designated as (e) would become subsection (d).

Comments: Comments received were supportive of these changes.

Final rule: Subsection (f) of this section is added to include in the category of those responsible for compliance with the track standards those who perform the function of complying with the standards, not just the track owner. For example, this addition will hold track maintenance contractors responsible for compliance. This is not inconsistent with past enforcement and it conforms to the authority given FRA by the statute. See 49 U.S.C. 21301 and 1 U.S.C. 1.

Paragraph (e) of this section is changed to correct a typographical error in the NPRM. The correct cite for the Federal law which gives the Surface Transportation Board authority to direct rail service is 49 U.S.C. 11123.

Section 213.7—Designation of Qualified Persons To Supervise Certain Renewals and Inspect Track

Proposed rule: In the past, FRA has interpreted this section in a way that allowed signal maintainers and other railroad employees to pass trains over broken rails or pull-aparts in situations when they were the first on the scene to investigate a signal or track circuit problem. Under this interpretation, the intent of the regulation would not be violated if signal maintainers or others had been given selected training relating to the safe passage of trains over broken rails and pull-aparts. The BMWE, however, has argued that this section was never intended to allow for the partial qualification of personnel on Part 213 standards.

The RSAC recommended the creation of a new subsection (d) which prescribes the manner in which persons not fully qualified as outlined in subsections (a) and (b) of this section may be qualified for the specific purpose of authorizing train movements over broken rails and pull-aparts. Language in the new subsection is specific to employees with at least one year of maintenance of way or signal experience and requires a minimum of four hours of training and examination on requirements related to the safe passage of trains over broken rails and pull-aparts. The purpose of the examination is to ascertain the person's ability to effectively apply these requirements. A railroad may use the examination to determine whether or not a person should be allowed to authorize train movements over broken rails and pull-aparts. However, the examination is not to be used as a test to disqualify the person from other duties.

The maximum speed over broken rails and pull-aparts shall not exceed 10 m.p.h. However, movement authorized by a person qualified under this subsection may further restrict speed over broken rails and pull-aparts if warranted by the particular circumstances. This person must watch all movements and be prepared to stop the train if necessary. Fully qualified persons under § 213.7 must be notified and dispatched to the location promptly to assume responsibility for authorizing train movements and effecting temporary or permanent repairs. The word "promptly" is meant to provide the railroad with some flexibility in events where there is only one train to pass over the condition prior to the time when a fully qualified person would report for a regular tour of duty, or where a train is due to pass over the condition before a fully qualified person is able to report to the scene. Railroads should not use persons qualified under 213.7(d) to authorize multiple train movements over such conditions for an extended period of time.

Comments: Comments generally supported the proposed amendments to this section. One commenter argued that only those employees fully qualified under § 213.7 should be designated to authorize train movements over broken rails and pull-aparts. FRA disagrees with this statement. For the narrow purpose of temporarily authorizing train movements over broken rails or pull aparts, a person does not need to be trained in all of the remedial actions included in Part 213, as outlined in § 213.7.

Several commenters suggested that § 213.7 should contain a requirement for the requalification of employees designated to inspect track or to supervise restorations or renewals. A regulation requiring such requalification of designated persons would overlap the existing regulation, as FRA has long held that the requirement to be "qualified" is a continuing requirement, not a static one, and it is the responsibility of the track owner to assure that persons designated under this section are qualified at all times. This mandate for qualification is not periodic, it is continuing. FRA will address this issue by issuing a technical bulletin containing "good practice" industry guidelines for the requalification of persons designated under § 213.7, as drafted by the Track Working Group.

Final rule: FRA believes that persons who are trained, examined, and periodically re-examined on specific issues relating to the singular function of passing trains over broken rails and pull-aparts at restricted speed does not violate the intent of the Track Safety Standards, nor does this practice compromise safety provided those persons demonstrate to the track owner that they know and understand the requirements on which they were examined.

FRA proposes to re-designate paragraph (d) in the NPRM as paragraph (c) in the final rule. Similarly, paragraph (c) in the NPRM will become paragraph

(d) in the final rule with a reference to "persons not fully qualified" for the purpose of maintaining records of those designations. These changes provide for a more orderly structure of the requirements of this section and also recognize FRA's and the railroads "need to know" what persons are being designated under this new paragraph for purposes of compliance with this part.

Section 213.9—Classes of Track: Operating Speed Limits

Proposed rule: The NPRM proposed to move Class 6 standards to Subpart G, a new subpart which establishes track safety standards for high speed rail operations. As proposed in the NPRM, the new subpart would consist of Class 6 and three new track classes, Classes 7 through 9, to accommodate train speeds up to 200 m.p.h. The Track Working Group and the RSAC recommended including Class 6 in the high speed standards because that class of track already requires certain heightened maintenance practices not required by the lower classes of track.

Comments: Comments received generally supported the proposed amendment to this section. One commenter suggested that the provision under § 213.9(b) allowing operation for up to 30 days over track not in compliance with Class 1 standards was too liberal, and this option should only be allowed as an upper limit for track under emergency repairs.

Final rule: FRA believes that the option provided the track owner under subsection (b) of this section, to continue operations over track not in full compliance with Class 1 standards, at Class 1 speeds for a period of not more than 30 days, is appropriate, considering the many types of defects that can occur and the various levels of risks associated with these defects. The regulation requires that the person designated under § 213.7(a) who makes the determination to continue operations at Class 1 speeds shall do so only after personally evaluating the immediate circumstances and the associated risks presented by the non-compliance condition, and then determining that operations may safely continue.

However, this provision is not meant to supplant the remedial actions for defective rails prescribed in § 213.113. If a person designated under § 213.7 determines that tracks containing defective rail may continue in use, the rail must be replaced or the remedial action prescribed in the table in § 213.113 must be initiated.

There are several minor editorial changes to this section. In subsection (a), the reference to subsection (c) contained in the NPRM was deleted in the final rule because there is no subsection (c) to this section. The final rule also cross-references the maximum allowable speed for excepted track in the § 213.9(a) table concerning "Maximum Allowable Operating Speeds."

Otherwise, this section as proposed, is adopted in this final rule. In grouping Class 6 with Classes 7 through 9, FRA does not suggest, and it would be inaccurate to infer, that Class 6 track or operation of trains over Class 6 track at the speeds permitted is in any way unconventional or unusual. Trains have been run at those speeds for decades.

Section 213.11—Restoration or Renewal of Track Under Traffic Conditions

Proposed rule: An added phrase recommended by the RSAC for the end of this section would clarify a qualified inspector's authority to limit the speed of trains operating through areas under restoration or renewal. In the Track Working Group, the BMWE expressed concern that the current language of the section provides no guidance for track inspectors determining the appropriate speed through restoration areas. The language proposed by the NPRM gives a qualified track inspector discretion to set train speed through a work area, but does not allow the inspector to authorize trains to operate at speeds faster than the maximum speed for the appropriate track class. This change does not represent a change to past interpretation and enforcement of this section; it is merely a clarification of established policy.

Comments: Comments received supported the proposed amendment.

Final rule: The section as proposed is adopted in this final rule.

Section 213.13—Measuring Track Not Under Load

Proposed rule: The proposed rule recommended no changes to this section.

Comments: One commenter suggested that the phrase "under a loaded condition" should be more clearly defined.

Final rule: FRA considers that the dynamic loading conditions applied by train operations is implicit in the phrase "under a loaded condition" and therefore the final rule is adopted as proposed by the NPRM.

Section 213.15—Penalties

Proposed rule: The NPRM proposed no changes to this section. The section covers all subparts to this part, including the new Subpart G.

Comments: One commenter advised FRA that Appendix B had not been revised to reflect entries for the new § 213.119 addressing Continuous Welded Rail (CWR).

Final rule: The final rule changes this section in several ways. The section is now entitled, "Penalties" rather than "Civil penalties" because it now includes a provision for criminal penalties. The authority for FRA to initiate criminal penalties is granted by the statute at 49 U.S.C. 21311.

The section also adds language to indicate that "person" as used in this section is defined by the statute at 1 U.S.C. 1 and includes, but is not limited to, a railroad, manager, supervisor, official, agent of the railroad, owner, manufacturer, lessor or lessee of railroad equipment or track, independent contractor to the railroad.

The section also changes the maximum penalties FRA is authorized to assess for violations of the provisions of this Part. The maximum penalty is raised from $10,000 to $11,000 for violations, and from $20,000 to $22,000 for willful violations. This change is included to comply with the provisions of the Debt Collection Improvement Act of 1996 which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. *See* Pub. L. 104–134, April 26, 1996. According to the Act, the inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June, 1995, exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. Hence, the maximum penalties for violations of this Part are increased by 10 percent. In addition, the minimum civil penalty amount shown in this section is changed from $250 to $500 to conform with Rail Safety Enforcement and Review Act of 1992, codified at 49 U.S.C. 21301.

In further compliance with the Debt Collection Improvement Act, FRA reviewed existing penalties contained in Appendix B of Part 213. After examination of those penalties and FRA's enforcement policies, FRA decided that the existing penalties require no adjustment at this time.

The civil penalties shown in Appendix B of the NPRM did not include penalties for CWR, torch cut rail, new provisions in excepted track or Subpart G. The Appendix B in this final rule includes penalties for the new provisions in the final rule. Because

FRA's civil penalties are statements of policy, notice and comment of these changes were not required.

Section 213.17—Exemptions

Proposed rule: The Track Working Group considered a proposal by the BMWE that this section be eliminated. However, the group agreed that the existing language allowing for the temporary suspension of certain track standards is appropriate and exemptions are necessary for the industry to experiment with alternative methods of compliance and new technology. Further, FRA is required by law to consider appropriately suggested waiver requests and has adopted generally applicable procedures for doing so in 49 CFR Part 211. Therefore, the NPRM recommended that this section be left as currently written.

Comments: No comments received.

Final rule: The title of this section, as well as the language of the section itself, are changed by the replacement of "exemptions" with "waivers." This language change makes the section consistent with the language contained in 49 U.S.C. 20103, as well as 49 CFR Part 211.

Section 213.19—Information Collection

Proposed rule: The addition of this section was not proposed in the NPRM.

Comments: No comments were received concerning this addition.

Final rule: FRA adds this section to show which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* The requirement for approval by OMB has been added since the Track Safety Standards were first issued. While subsequent revisions to the track standards have received OMB approval, those approvals have not been reflected in the standards themselves.

Section 213.31—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.33—Drainage

Proposed rule: In its 1990 petition for revision of the track standards, the BMWE requested that this section be expanded to include more specific requirements for drainage and water diversion around track roadbeds, addressing water seeping toward the track, water falling upon the roadbed, cross drainage, and the use of geotextiles. The proposal was discussed by the Track Working Group, as was a proposal by the AAR that merely modified the phrase "clear of obstruction" to "sufficiently clear of obstruction." The NPRM proposed to follow an RSAC recommendation that the section be left unchanged.

Comments: No comments received.

Final rule: The section as proposed is adopted in this final rule.

Section 213.37—Vegetation

Proposed rule: The NPRM proposed to add a phrase to subsection (b) to include a requirement to clear vegetation from signs and signals along railroad rights-of-way and at highway-rail grade crossings. The current regulation stipulates only that vegetation cannot interfere with visibility of railroad signs and signals. Because the scope of Part 213 limits vegetation requirements to railroad property, this proposal was not intended to be an attempt to dictate standards for surrounding landowners. The additional language was intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility to the traveling public of railroad signs and signals; it was not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings.

Comments: Comments received supported the proposed amendment.

Final rule: The final rule includes one minor change to the rule text of this section to correct an error regarding the effective date for compliance with the change. In the NPRM, paragraphs (b)(1) and (2) were both exempt from compliance for a period of one year following the effective date of the rule. The requirement for controlling vegetation along the right-of-way so that it does not obstruct the visibility of railroad signs and signals, as outlined in paragraph (b)(1), has been a requirement of the Track Safety Standards since their inception. The final rule will clarify that only paragraph (b)(2), which was added to enhance visibility to the traveling public of railroad signs and signals at highway-rail crossings, will be exempt from compliance for one year following the effective date of the rule.

Section 213.51—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.53—Gage

Proposed rule: The proposed rule recommended no changes to this section.

Comments: No comments received.

Final rule: The final rule includes one minor editorial change to this section. The section now cross-references the maximum allowable gage for excepted track in the gage table under § 213.53(b) which was inadvertently omitted in the NPRM.

Section 213.55—Alinement

Proposed rule: The NPRM introduced a 31-foot chord requirement, in addition to the present 62-foot chord requirement, for measuring alinement on curves in Classes 3 through 5 track. The RSAC, on advice from the Track Working Group, recommended this addition to control transient short wavelength variations in alinement. This control was considered necessary to introduce an averaging approach for the application of the V_{max} formula which determines the maximum allowable operating speed for each curve. The change in the application of the V_{max} formula is discussed in § 213.57 of this notice.

Comments: Comments received supported the proposed amendment.

Final rule: The section as proposed is adopted in this final rule.

Section 213.57—Curves; Elevation and Speed Limitations

Proposed rule: The existing subsection (a) limits the design elevation on curves to a maximum of six inches. However, this subsection also provides for a deviation from this design elevation, which is contained in the § 213.63 table. For a curve elevated to six inches in Class 1 track, the allowable deviation would be three inches and therefore any point in that curve could have as much as nine inches of elevation and remain in compliance. For a similar situation in Class 3 track, any point in that curve could have as much as seven and three-fourths inches of elevation and still be in compliance. For modern rail cars with a high center of gravity, low speed curve negotiation under excessive levels of superelevation places the vehicle in an increased state of overbalance. This condition creates the possibility of wheel unloading and

subsequent wheel climb when warp conditions are encountered within the curve.

The Track Working Group considered the characteristics of the present-day vehicle fleet and concluded that a lower limit on maximum elevation in a curve should be prescribed in the regulations. Therefore, the NPRM proposed to revise subsection (a) to limit the amount of crosslevel at any point in a curve to not more than eight inches on Classes 1 and 2 track, and not more than seven inches on Classes 3 through 5 track.

Subsection (b) of this section addresses the maximum allowable operating speed for curved track. The equilibrium speed on a curve is the speed where the resultant force of the weight and centrifugal force is perpendicular to the plane of the track. The American Railway Engineering and Maintenance-of-way Association's (AREMA) Manual of Engineering, Chapter 5, states that passenger cars have been shown to ride comfortably around a curve at a speed which produces three inches of underbalance, or otherwise stated, three inches less elevation than would be required to produce equilibrium conditions. The AREMA Manual sets forth a formula based on the steady-state forces involved in curve negotiation which is commonly referred to as the V_{max} formula. This formula considers the variables of elevation, curvature, and the amount of unbalanced elevation or cant deficiency in determining the maximum curving speed. (Note: FRA considers the terms "unbalanced elevation" and "cant deficiency" to be interchangeable.) The present standards under paragraph (b) limit curving speed based on a maximum of three inches of unbalance or cant deficiency and is commonly referred to as the "three-inch unbalance formula." FRA has granted waivers for other levels of unbalance on specified equipment.

Over the years, railroad engineers have differed as to the application of this three-inch unbalance formula. Some engineers have suggested the designed elevation and curvature should be used to calculate the maximum operating speed around a curve. Other engineers recommend that an average of the entire curve or segment of the curve better recognizes situations where steady-state conditions change. For example, the elevation may be decreased through a road crossing to accommodate road levels and then increased beyond the crossing.

Recognizing the origin and purpose of the V_{max} formula, the Track Working Group recommended that an average of the alinement and crosslevel measurements through a track segment in the body of the curve should be used in the formula to arrive at the maximum authorized speed. This approach recognizes the "steady-state" purpose of the formula. Transient locations (points) are covered by the alinement and track surface tables. Normally, approximately 10 stations are used through the track segment, spaced at 15'6" apart. If the length of the body of the curve is less than 155 feet, measurements should be taken for the full length of the body of the curve.

This uniform or averaging technique over the 10 stations through the track segment is consistent with the concept used by the vehicle/track dynamicists who discuss "g" levels in steady-state conditions, often considered to be one or two seconds. At 80 m.p.h., a vehicle will have traversed approximately 118 feet of track in one second. Measurements taken over 155 feet (10 stations at 15'6") provide the necessary distance to determine the behavior of the vehicle over the one- or two-second steady-state interval.

Analysis has shown that, although application of the V_{max} formula on a point-by-point basis is overly conservative, it does provide for the coverage of certain combinations of alinement and crosslevel deviations in Classes 3 through 5 track which could result in wheel climb derailments. However, further analysis has shown that these transient short-wavelength anomalies can be covered by the introduction of a 31-foot chord to the alinement table contained in § 213.55.

The Track Working Group also recommended the addition of new paragraphs (c), (d), (e), and (f) which will permit curving speeds based on four inches of unbalance or cant deficiency for certain categories of equipment that demonstrate safe curving performance at this level of unbalance. The means of qualification is a basic procedure known as a "static lean" test that has been used many times in recent years for the testing of equipment for operation at higher cant deficiencies. Although four inches of cant deficiency is usually applied to passenger trains, other types of equipment with comparable suspension systems, centers of gravity, and cross-sectional areas may perform equally well. Standard freight equipment, however, typically does not have the prerequisite vehicle characteristics which would allow curving speeds based on more than three inches of cant deficiency. The Track Working Group recommended that FRA review the information provided by the track owner or operator to verify safe curving performance and approve the proposal before the vehicles are operated at four inches of cant deficiency.

The NPRM proposed to revise Appendix A, which currently contains a table specifying the maximum allowable operating speed for each curve based on three inches of cant deficiency. Under this proposed change, Appendix A would be amended to include two tables. Table 1 would be identical to the current table, while Table 2 would specify curving speeds based on four inches of cant deficiency.

Comments: Comments received supported the proposed amendments.

Final rule: FRA adds paragraph (g) to this section to afford track owners or railroads operating above Class 5 speeds an option to qualify equipment at cant deficiencies greater than four inches in lower track classes. Track owners or railroads operating under the provisions of Subpart G may exercise the option on lower track classes (Classes 1 through 5) that are contiguous with high speed territory without first petitioning FRA for a waiver from compliance with the other provisions of § 213.57.

Under paragraph (g), a track owner or railroad operating under Subpart G on track that is contiguous to lower speed track may request FRA approval to operate at a higher level of cant deficiency using the same procedures available under § 213.329(c) and (d). The track owner or railroad must submit to FRA for approval a test plan which will determine through engineering analysis the safety limits for lateral carbody accelerations which can be used as a surrogate measure to determine the amount of wheel unloading under cant deficient operation.

Upon FRA approval of the test plan, the track owner or railroad may conduct incrementally increasing train speed test runs to demonstrate that wheel unloading is within the prescribed safety limits. Once the test is completed and FRA approves a level of cant deficient operation, paragraph (g) requires geometry car inspections and acceleration measurements to confirm the integrity of the vehicle/track interaction on the curves.

The provision in paragraph (g) does not apply to track owners or railroads which operate trains in only Classes 1 through 5. FRA must consider other factors associated with track in Classes 1 through 5, such as the likelihood of a decrease in overall track quality and an absence of information generated through vehicle qualification testing procedures as required under § 213.345. Therefore, a track owner or railroad wishing to operate in Classes 1 through

5 at cant deficiencies greater than four inches must petition FRA for a waiver.

Section 213.59—Elevation of Curved Track; Runoff

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

§ 213.63—Track Surface

Proposed rule: The present track surface table contained in this section was established in the original standards more than 20 years ago and has served the industry well as a minimum safety requirement. However, some of the parameters need updating to recognize the knowledge gained from investigation of derailment causes, engineering analysis, and changes in terminology. Therefore, the NPRM proposed several changes to track surface requirements to better address current knowledge of track/vehicle interaction.

The NPRM proposed that the parameter referring to the rate of runoff at the end of a track raise and the parameter for deviation from uniform profile should both remain unchanged. The profile parameter is conservative for single occurrences on both rails and less conservative for repeated perturbations.

In the 1982 revisions to the Track Safety Standards, the requirement for maintenance of curve records, including degree of curvature and the amount of elevation designated in curves was removed. Since that time, the term "designated elevation" has been controversial and difficult to apply. The NPRM proposed to remove that term from the revised table.

The NPRM also proposed to revise the way the Track Safety Standards address transition spirals. For many curves, especially in the lower track classes, track maintenance personnel often differ as to the locations where spirals begin and end, as well as to the measured runoff rate. In view of the somewhat subjective nature of the concept of uniform runoff in spirals, the proposed changes in this notice use a different approach from runoff or "variation in crosslevel in spirals" and incorporate this parameter into another parameter.

In the present track surface table, the maximum variation in crosslevel in spirals could exceed that allowed on tangents and in the full body of curves over the same distance. The mechanism for derailment in the body of the curve is the same as in the spiral. The NPRM proposed that the differences in crosslevel in spirals be included in one parameter to simplify the table and correct the discrepancy that currently exists. The NPRM also proposed that the existing parameters referring to "deviation from designated elevation" and "variation in crosslevel" in spirals are unnecessary, provided spiral variations in crosslevel are included in the "warp" parameter. The "warp" parameter is measured by determining the difference in crosslevel between two points less than 62-feet apart.

While the difference in crosslevel parameter (warp) addresses the majority of situations where wheel climb or rock off can occur, three footnotes are added to the table to address specific situations.

The footnote identified by an asterisk inside the table addresses the present practice on some railroads to design a greater runoff of elevation in spirals due to physical restrictions on the length of spirals. Spiral runoff in new construction must be designed and maintained within the limits shown in the table for difference in crosslevel.

Footnote 1 is included to address the known derailment cause where a warp occurs in conjunction with an amount of curve elevation that approaches the maximum typically in use. When a vehicle is in an unbalanced condition on this curve elevation and encounters a warp condition, the vehicle is subjected to wheel/rail forces that could result in wheel climb.

Footnote 2 is included to address the harmonic rock off problem of which the railroad industry has been aware for many years. Under repeated warp conditions, the vehicle can experience an increase in side-to-side rocking that may result in wheel climb in curves or center plate separation on tangents.

Comments: Comments received supported the proposed amendments. One commenter questioned the use of the terms "variation" and "difference," and recommended the consistent use of one or the other, but not both.

Final rule: The term "variation" only appears in the statement behind the asterisk inside the track surface table. The term "variation" is used because this statement refers to the previous warp standard for spirals which used the same term. In certain locations, the prior standard for warp in spirals will be grandfathered due to physical restrictions and therefore FRA believes the terms should be consistent. In all other instances in this section, the term "difference" is used exclusively. The final rule makes one change in the track surface table under the parameter described as the difference in crosslevel between any two points less than 62 feet apart, or commonly referred to as the "warp" parameter. The results of recent track twist (warp) studies conducted at the Transportation Technology Center (TTC), where three different vehicle types were tested to determine their responses to crosslevel and combined crosslevel/alinement perturbations on tangent and curved test zones, indicate that a limit for warp of 2¼ inches for Class 2 track would be more appropriate than the proposed limit of 2½ inches by RSAC. The report of the TTC testing was not available to the Track Working Group when their recommendations were made.

Section 213.101—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.103—Ballast; General

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.109—Crossties

Proposed rule: The NPRM proposed to amend this section to include several recommendations made by the Track Working Group and adopted by the RSAC. After reviewing FRA's Accident/Incident data base, the Track Working Group concluded that wide gage resulting from defective crossties continues to be the single largest causal factor associated with track-caused reportable derailments.

Gage widening forces applied to the track structure from the movement of rolling stock tend to increase as track curvature increases. Therefore, the NPRM proposed to increase the number of effective crossties required under subsection (c) for turnouts and curved track with over two degrees of curvature. The purpose of this proposed requirement was to strengthen the track structure to enable it to better resist such forces.

In Class 1 track, the required number of crossties in any 39-foot segment of track would increase from five to six; in Class 2 track, from eight to nine; in Class 3 track, from eight to 10; and in Classes 4 and 5 track, from 12 to 14. These changes were proposed to become effective two years after the effective date of the final rule.

Under subsection (d), the NPRM proposed an optional requirement for the number and placement of crossties near rail joints in Classes 3 through 5 track. The existing requirement calls for one crosstie within a specified distance from the rail joint location, while the proposed optional requirement would allow two crossties, one on each side of the joint, within a specified distance from the rail joint location. FRA previously examined both standards under various static loading conditions. The results indicated that the proposed optional requirement provides equal or better joint support than the present requirement.

The NPRM also proposed to add a new subsection (e) to address track constructed without conventional crossties, such as concrete-slab track. The existing standards do not address this type of construction in which the running rails are secured through fixation to another structural member. The proposed addition addressed this type of track construction by requiring railroads to maintain gage, surface, and alinement to the standards specified in subsections (b)(1)(i), (ii), and (iii).

Comments: Comments received supported the proposed amendments. One commenter suggested that the GRMS technology be incorporated into this section.

Final rule: As discussed earlier in the preamble to this final rule, a separate task group continues to evaluate GRMS technology for possible incorporation into the Track Safety Standards.

The final rule includes subsection (c) as it is currently written, as well as subsection (d) to become effective two years after the effective date of this final rule.

The section as proposed is adopted in this final rule with renumbering of the subsections. Subsection (d) in the NPRM appears as subsection (f) in the final rule, and subsection (e) in the NPRM appears as subsection (g) in the final rule.

Section 213.113—Defective Rails

Proposed rule: The NPRM proposed several substantive changes to this section which reflect the results of FRA's on-going rail integrity research program. The results indicate the need to revise the remedial action tables and specifications to more adequately address the risks of rail failure, reserving the most restrictive actions on limiting operating speed for those rail defects which are large enough to present a risk of service failure.

Because "zero percent" entries serve no useful purpose, they should be dropped from the remedial action tables. Similarly, "100 percent" of rail head cross-sectional area is not a meaningful dividing point for transverse defects. The proposed revisions to the remedial action table for transverse defects placed a lower limit of five percent of the rail head cross-sectional area. If a transverse defect is reported to be less than five percent, no remedial action would be required under the revised standards. Defects reported less than five percent are not consistently found during rail breaking programs and therefore defect determination within this size range is not always reliable. Furthermore, if the determination is reliable, defect growth to service failure size within the newly established testing frequency under § 213.237 is highly unlikely. The proposed revisions to the remedial action table for transverse defects also established one or more mid-range defect sizes, between five percent and 100 percent, each of which would require specific remedial actions.

In the proposed revised remedial action table, all longitudinal defects were combined within one group subject to identical remedial actions based on their reported size. These types of longitudinal defects all share similar growth rates and the same remedial actions are appropriate to each type. The lower limit of "0" inches was eliminated and the size divisions were revised upward slightly to reflect FRA's research findings which indicate that this class of rail defect has a relatively slow growth rate.

The "0" inch lower limit was eliminated also for bolt hole cracks and broken bases. The proposed revision also included minor changes in the size divisions for bolt hole cracks, as well as changes in the required remedial action for broken bases less than 6 inches and damaged rail.

The NPRM also proposed to add "Flattened Rail" to the rail defect table. Although it is not a condition shown to affect the structural integrity of the rail section, it can result in less-than-desirable dynamic vehicle responses in the higher speed ranges. The flattened rail condition is identified in the table, as well as in the definition portion of subsection (b), as being ⅜ inches or more in depth and 8 inches or more in length.

The Track Working Group discussed at length a "break out in rail head," but was unable to agree on a standard definition. The RSAC therefore recommended that the industry continue to be guided by FRA's current interpretation that a break out in the rail head consists of a piece physically separated from the parent rail.

The NPRM also proposed to make several substantive revisions to the remedial actions specified under "Notes" in subsection (a)(2) of this section. A new note "A2" was added to address the mid-range transverse defect sizes which were added to the table. This remedial action allows for train operations to continue at a maximum of 10 m.p.h. for up to 24 hours, following a visual inspection by a person designated under § 213.7.

Note "B", which currently does not define a limiting speed, was changed to limit speed to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

Notes "C", "D", and "H" were revised to limit the operating speed, following the application of joint bars, to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. Presently, the standards limit speed to 60 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

A second paragraph in Note "C," the remedial action which applies specifically to detail fractures, engine burn fractures, and defective welds, proposed a significant change to the current standards. This revision addressed defects which are discovered in Classes 3 through 5 track during an internal rail inspection required under § 213.237, and whose size is determined not to be in excess of 25 percent of the rail head cross-sectional area. For these specific defects, a track owner may operate for up to four days at a speed limited to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. If the defective rail is not removed or a permanent repair made within four days of discovery, the speed is limited to 30 m.p.h. until joint bars are applied.

Under the existing standards, these types of defects, predominant on heavy utilization trackage, would require a 30 m.p.h. restriction until joint bars are applied. Practice within the industry today is to operate the rail test vehicle until the number of defects found exceeds the railroad's ability to effect immediate repairs. At that time the rail test vehicle is shut down for the day.

The purpose of this practice is to reduce speed restrictions which not only affect the railroad's ability to move trains, but also can produce undesirable in-train forces that can lead to derailments. However, prematurely shutting down rail test car operations negate any possibility of discovering larger and more serious defects that may lie just ahead.

Furthermore, the results of FRA's research indicate that defects of this type and size range have a predictable slow growth life. Research indicates that even on the most heavily utilized trackage in use today, defects of this type and size are unlikely to grow to service failure size in four days.

Comments: Comments received generally supported the proposed amendments to this section. One commenter suggested that definitions for "bolt hole crack," "defective weld," and "head-web separation" should be added to subsection (b). This commenter also suggested that remedial actions for certain rail defects, which are expressed in terms of an "either/or" option, could be made less ambiguous by bracketing those options.

One commenter suggested that a periodic re-examination of "flattened rails" should be required so that the severity and growth rate of this rail defect can be monitored. This commenter also suggested that "shelled rail" should be defined as a rail defect which would require some specified remedial action.

One commenter argued that when a track owner voluntarily elects to conduct a continuous search for internal defects on Class 1 and 2 track where regulatory requirements for inspections of this type are non-existent, any rail defects found should be subject to the requirements of only remedial action B, regardless of the defect type or size of the defect. The commenter argued that such a provision would ensure that there is not a regulatory disincentive for voluntarily conducting internal rail inspections on Class 1 and 2 track.

Another commenter suggested that FRA's definition of "break out in rail head" should be more restrictive than the present version. This commenter also suggested that the final rule should set parameters for determining "excessive rail wear" in a manner similar to the methods used to measure excessive wheel wear prescribed in the 49 CFR Part 215, Railroad Freight Car Safety Standards.

Final rule: The Track Working Group discussed at length the issues associated with "flattened rail" (localized collapsed head rail) and "shelled rail." FRA and industry research indicates that these occurrences are more accurately categorized as rail surface conditions, not rail defects, as they do not in themselves cause service failure of the rail.

FRA believes that the risk of detail fractures being masked by "shelled rail" conditions was appropriately addressed in the proposed rule by specifying more restrictive inspection intervals and by requiring specific remedial actions to be taken when surface conditions such as "shelled rail" prevent a valid inspection for internal defects. The proposed rule addresses the issue of "flattened rail" in terms of a specified remedial action for those of a certain depth and length. FRA believes that further monitoring of "flattened rail" conditions can be accomplished without prescribing regulations which mandate inspection procedures beyond which already exist. FRA's rail integrity research program will continue to study "shelled rail" and "flattened rail" conditions, and in the event that research indicates additional regulation is necessary in the future, FRA will not hesitate to do so.

The Track Working Group was unable to improve FRA's current definition of a "break out in rail head." The current definition, when viewed in terms of the remedial action which it requires when met, has been considered too liberal under certain circumstances, while conversely, it has also been considered too conservative under other circumstances. The circumstances primarily dictated by the type and size of defect, along with the location of the defect in the rail. FRA believes that under the current remedial action requirement, the current definition for "break out in rail head" is adequate.

The issue of "excessive rail wear" continues to be evaluated by FRA's rail integrity research program. FRA believes that insufficient data exist at this time which would indicate that parameters for this condition should be proposed as a minimum safety standard.

FRA believes that the remedial action tables and specifications in this final rule better address the risks associated with rail failure. These risks are primarily dependent upon defect type and size and should not be dependent upon the manner or mechanism which reveals the existence of the defect. FRA believes that providing special regulatory relief for defects found during voluntary inspections for internal rail defects would not be a prudent approach to take. However, in revising the remedial action table, FRA has sought to provide enhanced flexibility where warranted by safety considerations.

FRA agrees that additional definitions would be helpful, so this final rule adds definitions for "bolt hole crack," "defective weld," and "head-web separation." FRA also agrees that bracketing certain "either/or" remedial actions will clarify the intent of those requirements.

With the exception of these minor changes, the rule is adopted as proposed by the Track Working Group and endorsed by the RSAC.

Section 213.115—Rail End Mismatch

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.119—Continuous Welded Rail (CWR); General

Proposed rule: The NPRM proposed to introduce a requirement for railroads to establish and place in effect written procedures to address CWR. These procedures must address the installation, adjustment, maintenance and inspection of CWR track, and include a formal training program for the application of these procedures. The procedures, including a program for training, must be submitted to FRA within six months following the effective date of this rule. Although many railroads already have in effect a CWR program, FRA will review each submitted set of procedures for compliance with the individual requirements of the proposed regulation.

Within the last decade, through the determined efforts of researchers from industry and government, along with experience gained from accident investigators and track maintenance people, the railroad industry has gained a better comprehension of the mechanics of laterally unstable CWR track. As a result, the industry has identified maintenance procedures that are critical to maintaining CWR track stability.

As proposed, the requirements do not detail how each procedure is to be carried out. Rather, they identify the basic safety issues and permit railroads to develop and implement their own procedures to address those issues, provided the procedures are consistent with current research results as well as findings from practical experience documented in recent years. The procedures should be clear, concise, and

easy to understand by maintenance-of-way employees. A comprehensive training program must be in place for the application of these procedures.

The proposed regulation requires the designation of a "desired rail installation temperature range" for the geographic area in which the CWR is located. By definition contained in the proposed regulation, "desired rail installation temperature range" is the rail temperature range at which forces in CWR should not cause a track buckle in extreme heat, or a pull-apart during cold weather. Current general practice within the industry, based to a large extent on research findings, is to establish a "desired rail installation temperature range" which is considerably higher than the annual mean temperature for the geographic area in which the CWR is located. The regulation, as proposed in the NPRM, provides railroads with flexibility to establish the "desired rail installation temperature range" based on the characteristics of the specific territory involved and the historical knowledge acquired through the application of past procedures.

When CWR is installed and anchored/fastened at the "desired rail installation temperature range," it is considered to be in its initial "stress-free" state, where the net longitudinal force is equal to zero. Research discloses that many factors, some of which are unavoidable, like dynamics of train operation, the necessary lining and surfacing of the track structure, and performing rail repairs all contribute to a gradual lowering over time of the initial rail installation temperature range which increases the potential for track buckling. This phenomenon substantiates the need to install and anchor/fasten CWR at a relatively high rail installation temperature range.

Maintenance of the "desired rail installation temperature range" is critical to ensuring CWR stability. Therefore, the procedures for installation, adjustment, effecting rail repairs, and repairing track buckles or pull-aparts must compare the existing rail temperature with the "desired rail installation temperature range" for the area concerned.

The procedures also must address several other topics, such as rail anchoring, controlling train speed when CWR track has been disturbed, ballast re-consolidation, inspections, and recordkeeping for the installation of CWR and rail repairs that do not conform to the railroad written procedures. A track owner may update or modify CWR procedures as necessary, upon notification to FRA of those changes.

Development of individual CWR programs could prove burdensome for many small railroads. As recommended by the Track Working Group, FRA will work with the ASLRA to develop a generic set of CWR procedures to apply to low speed/low tonnage Class 2 and Class 3 railroad operations.

Comments: Comments generally supported the proposed amendment. One commenter questioned the need for certain railroads that only conduct low speed/low tonnage operations to adopt written procedures addressing CWR. Another commenter questioned FRA's enforceability of the proposed new section.

Final rule: The details of these procedures are to be based on research findings and sound engineering principles. FRA is committed to working with ASLRA to develop a generic set of CWR procedures with wide applicability for the spectrum of smaller railroads. FRA believes that certain requirements contained in the generic procedures, such as a requirement to operate at reduced speed following maintenance work which disturbs the track, will not have an impact on a railroad that normally only operates at 10 m.p.h. Other requirements of this generic set of procedures would also be less burdensome due to the nature of most low speed/low tonnage operations.

This new section is enforceable to the extent that CWR procedures must be developed and implemented, and employees responsible for their application must be trained on these procedures. In the proper exercise of its enforcement discretion, the agency is unlikely to take enforcement action against minor deviations from CWR procedures unless, together with other violations, they are part of a larger problem.

Section 213.121—Rail Joints

Proposed rule: Under existing subsection (a), the phrase "proper design and dimension" often has been interpreted to prohibit the use of any joint bar on a rail section for which it was not specifically designed. This interpretation does not consider the fact that certain joint bars are interchangeable between different rail sections. Therefore, the NPRM proposed to change the word "proper" to "structurally sound" in subsection (a).

In subsection (b), the NPRM proposed to add the modifier "excessive" in front of the phrase "vertical movement." The existing language in this subsection implies that no vertical movement of either rail could be allowed when all bolts are tight. This interpretation is too strict. FRA's Enforcement Manual suggests that FRA inspectors evaluate excessive vertical movement when determining compliance with this paragraph. This change would make the rule conform to sound practices.

The NPRM proposed to extend to Class 2 track the prohibition of torch cutting bolt holes in rail. The reference to joint bars was removed, the subject to be covered in the proposed new subsection (h) which restricts the practice of re-configuring joint bars. Joint bars for older rail sections are becoming increasingly difficult to find and are no longer being manufactured. Therefore, the new subsection (h) prohibits the re-configuration of joint bars in Classes 3 through 5 track, but not in Classes 1 and 2 track.

Comments: Comments generally supported the proposed amendments. One commenter agreed that the term "structurally sound" is more technically correct, but stated that the term provides no additional guidance as to what joint bars are interchangeable with various rail sections. Several commenters suggested that the prohibition on reconfiguring joint bars with a torch should be extended to Class 2 track. Another commenter suggested that the term "excessive" should be quantified.

Final rule: FRA believes the risks in the lower speed track classes are minimal when a railroad torch cuts bolt holes in joint bars and reconfigures joint bars with a torch. The most critical of joint bar failures are those in which the bar cracks or breaks through the middle two bolt holes. If this were to happen as a result of reconfiguring by a torch, a regulation already exists which prohibits any cracks or breaks in this area of the joint bar for any class of track.

FRA believes that the term "excessive" in the context of this section should be left to the discretion of a qualified person based on that person's evaluation of what risks may be associated with any particular set of conditions. FRA agrees that additional guidance should be provided for the interpretation of "structurally sound" joint bars and will work with the industry to develop and issue guidelines in the form of a Technical Bulletin addressing the interchange ability of joint bars between various rail sections. This approach is similar to a recent recommendation issued by FRA's Technical Resolution Committee.

The rule is adopted as proposed by the NPRM.

Section 213.122—Torch Cut Rail

Proposed rule: The NPRM proposed this new section to address the proper

handling of rails cut by the use of a torch. The practice of torch-cutting rail at one time was commonplace on railroads, but was discontinued in higher speed track several years ago when better saws were developed and railroads discovered that rails that have been torch-cut have a greater tendency to develop fractures. Today, on track Classes 3 and above, the practice is used almost exclusively for temporary emergency repairs, such as quickly returning a track to service following a derailment or washout. These locations are then quickly replaced with new rail. The purpose of this section is to outlaw the practice of torch cutting rails, except for emergency repairs, on all track in classes above Class 2. Train speed on track that has been torch cut for emergency repairs made after the effective date of this rule must be reduced to the maximum allowable speed for Class 2 until the torch cut rail is replaced.

The proposed section also provides railroads with guidance for eliminating old torch cut rail in track Classes 3 through 5. The industry believes no torch cuts exist in Class 6 track. Torch cuts in Class 5 track must be eliminated within a year of the effective date of this final rule, while torch cuts in Class 4 track must be removed within two years. Within one year of the effective date of this final rule, railroads must inventory existing torch cuts in any Class 3 track over which regularly scheduled passenger trains operate. Those torch cuts found and inventoried will be "grandfathered in." Any torch cuts that are found on such track after the expiration of one year and that are not inventoried will be limited immediately to Class 2 speed and removed within 30 days of discovery. If a railroad chooses to upgrade a segment of track from Classes 1 or 2 to Class 3, and regularly scheduled passenger trains operate over that track, the railroad must remove any torch cuts before the speeds can be increased beyond the maximum allowable for Class 2 track. If a railroad chooses to upgrade a segment of track from any class of track to Class 4 or 5, it must remove all torch cuts.

Comments: Comments received generally supported the proposed amendments. Several commenters suggested that torch cut rail ends be prohibited in all but Class 1 track. One commenter also suggested that existing torch cut rail ends be restricted to 10 m.p.h..

Final rule: FRA believes the risks associated with torch cut rail ends in Class 2 track are minimal based on lower speeds and lower impact loads. If rail defects were to develop as a result of torch cut rail ends, requirements already exist which would address them. FRA also believes that existing torch cut rail ends have survived the early mortality rate which is associated with rails that fail due to poor torch cutting practices, and therefore existing torch cuts do not present a significant risk, given the low frequency of expected failure and lower accident severity at Class 2 speeds.

The rule is adopted as proposed by the NPRM.

Section 213.123—Tie Plates

Proposed rule: The NPRM proposed to add a new subsection (b) to this section which reads, "In Classes 3 through 5 track, no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of rail and the bearing surface of the tie plate." The specific reference to "metal object" is intended to include only those items of track material which pose the greatest potential for broken base rails such as track spikes, rail anchors, and shoulders of tie plates. The phrase "causes a concentrated load by solely supporting a rail" further clarifies the intent of the regulation to apply only in those instances where there is clear physical evidence that the metal object is placing substantial load on the rail base, as indicated by lack of load on adjacent ties.

Comments: Comments supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.127—Rail Fastening Systems

Proposed rule: The NPRM proposed to change the title of this section from "Rail fastenings" to "Rail fastening systems" and to reduce the language of the regulation to one sentence which reads, "Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b)."

The change to "rail fastening systems" more adequately addresses the many individual components of modern-day elastic fastening systems, such as pads, insulator clips, and shoulder inserts. The failure of certain critical components within the system could adversely affect the ability of the individual fastener to provide adequate gage restraint. The revised language of the regulation provides for an evaluation of all components within the system, if necessary, in order to evaluate whether they are affording effective gage restraint.

The RSAC considered the current reference to qualified Federal or State track inspectors and the definition of a qualified State track inspector to be redundant, given the adoption of Part 212. Therefore, the NPRM proposed to delete the phrase "qualified Federal or State track inspector," as well as the last sentence of the current section which contains the definition of a qualified state track inspector.

Comments: Comments supported the proposed amendment. One commenter suggested that the GRMS technology be incorporated into this section.

Final rule: As discussed earlier in the preamble to this final rule, a separate task group continues to evaluate GRMS technology for possible incorporation into the Track Safety Standards. The rule is adopted as proposed by the NPRM.

Section 213.133—Turnouts and Track Crossings Generally

Proposed rule: The NPRM proposed to retain the language of subsection (a) which reads, "In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place." The AAR proposed to revise the language to say, "* * * the fastenings must be maintained for the safe passage of trains." The AAR contended that turnout and track crossings are designed with a high degree of redundancy, making it unnecessary for each fastening to be intact to maintain safety. However, the RSAC recommended that the regulations allow track inspectors discretion to evaluate immediate circumstances in determining what level of remedial action is necessary for loose or missing fastenings. RSAC recommended that inspectors be provided specific guidance about interpreting this provision, such as the guidance contained in technical bulletin T–95–09 recently issued by FRA.

The NPRM proposed to change subsection (b) to reflect proposals presented by the BMWE and by the AAR and FRA. The RSAC recommended that rail anchoring requirements be extended to include Class 3 trackage and that "rail anchors" be changed to "rail anchoring " so that rail anchoring would include elastic rail fasteners.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.135—Switches

Proposed rule: The NPRM proposed to revise subsection (b) to consider the existence of reinforcing bars or straps on

switch points where joint bars cannot be applied to certain rail defects, as required under § 213.113(a)(2), because of the physical configuration of the switch. In these instances, remedial action B will govern, and a person designated under § 213.7(a), who has at least one year of supervisory experience in track maintenance, will limit train speed to that not exceeding 30 m.p.h. or the maximum allowable under § 213.9(a) for the appropriate class of track, whichever is lower. Of course, the person may exercise the options under § 213.5(a) when appropriate.

The RSAC did not recommend specific dimensions for determining when switch points are "unusually chipped or worn," as provided for in subsection (h). FRA stated that its Accident/Incident data base indicates that worn or broken switch points are the largest single cause of derailments within the general category of "Frogs, Switches, and Appliances." However, the AAR contended that developing meaningful numbers for these measurements would be a difficult task because most of these derailments are related also to other causal factors such as wheel flange condition, truck stiffness, and train handling characteristics. The NPRM, therefore, proposed to retain the current wording in subsection (h), allowing qualified individuals to evaluate immediate circumstances to determine when switch points are "unusually chipped or worn."

The NPRM also proposed a new subsection (i) to read, "Tongue and plain mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track." This new subsection provides an exemption for this item of specialized track work, primarily used in pavement or street railroads, which by design does not conform to the maximum gage limits prescribed for Class 1 and excepted track.

Comments: Comments generally supported the proposed amendments. One commenter suggested that the term "unusually chipped or worn" be quantified.

Final rule: FRA believes that the term "unusually chipped or worn" in the context of this section should be left to the discretion of a qualified person based on that person's evaluation of what risks may be associated with any particular set of circumstances. The rule is adopted as proposed by the NPRM.

Section 213.137—Frogs

Proposed rule: The NPRM proposed to add a new subsection (d) to this section, which reads, "Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds." This subsection provides an exemption for an item of specialized track work which by design does not conform to the minimum flangeway depth requirements prescribed in subsection (a) of this section.

Comments: Comments received supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.139—Spring Rail Frogs

Proposed rule: The proposed rule recommended no changes to this section.

Comments: No comments were received.

Final rule: This final rule inserts the word "compression" for that of the phrase "a tension" in subsection (d) to correct a technical error in wording. In order for the wing rail to be held tight against the point rail, the spring must be in compression and not in tension.

Except for this minor change, the rule is adopted as proposed by the NPRM.

Section 213.141—Self-Guarded Frogs

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.143—Frog Guard Rails and Guard Faces; Gage

Proposed rule: To facilitate an easier understanding of the requirements contained in this section, the NPRM proposed to add a diagram to illustrate the method for measuring guard check gage and guard face gage. The proposal contained no substantive changes to this section.

Comments: Comments supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.201—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.205—Derails

Proposed rule: The NPRM proposed to add language to this section designed to ensure that derails are maintained to function properly. The RSAC recommended these changes as additional safety features for train crews, as well as railroad employees working on and around tracks.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.231—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.233—Track Inspections

Proposed rule: The NPRM proposed several changes to subsection (b). The five m.p.h. restriction over highway crossings is eliminated to permit safe operation of vehicles through highway traffic. However, the subsection would still require an inspector to perform an adequate inspection, regardless of how the inspector operates over the crossing. Also, the word "switch" is replaced by the word "turnout" to clarify the track device originally intended to be addressed in the regulation.

The Track Working Group considered advising the RSAC to recommend specific speed restrictions for inspection vehicles. However, after several lengthy discussions, the group suggested instead that this subsection provide the individual inspector with sole discretion in determining vehicle speed based on track conditions, inspection requirements, and other circumstances that may vary from day to day and location to location. The group also suggested the insertion of a footnote at the end of this section which indicates this discretion is not limited by any other part of this section, and is extended to determine sight distance ("visibility remains unobstructed by any cause") which is referenced in paragraphs (b)(1) and (2) of this section.

The existing language under subsection (b) does not specify how many tracks may be inspected in one pass of an inspection vehicle in multiple track territory. FRA has never issued interpretive language regarding this issue, opting to judge the overall effectiveness of the inspection program

rather than the specific manner in which it was conducted. The NPRM proposed to establish some guidelines for hyrail inspections conducted in multiple track territory.

As a result, subsection (b), as proposed in the NPRM, contains additional language specifying the number of additional tracks that can be inspected, depending on whether one or two qualified individuals are in the vehicle, and depending on the distance between adjacent tracks measured between track centerlines. Inspectors may inspect multiple tracks from hy-rail vehicles only if their view of the tracks inspected is unobstructed by tunnels, differences in ground level, or any other circumstance that would prevent an unobstructed inspection of all the tracks they are inspecting. The revised subsection also requires railroad to traverse each main track bi-weekly and each siding monthly, and to so note on the appropriate track inspection records.

With respect to the inspection frequency required in subsection (c), neither the Track Working Group nor the RSAC could reach agreement in determining a frequency requirement that would be based on speed, tonnage, or track usage. Therefore, the NPRM did not propose to change the language in this subsection.

Comments: Comments generally supported the proposed amendments. Several commenters suggested that the requirements that address inspections in multiple track territory should be more restrictive. Several commenters suggested that a maximum speed limit should be set when performing inspections for compliance with this part, one of which suggested a maximum speed of 15 m.p.h..

Final rule: FRA believes that the appropriate vehicle inspection speed over a particular territory is subject to many variables, *i.e.*, track condition, type of track construction, weather conditions, time of day, as well as many others which may only be apparent to the individual inspector at that moment in time. With this in mind, FRA believes that the appropriate vehicle speed for any particular set of conditions should be determined by the person performing the inspection, including those performed in multiple track territory. The final rule provides for the inspector's discretion as it involves inspection speed and sight distance.

This final rule also changes this section by cross-referencing excepted track in the § 213.233(c) table for required inspection frequency.

Section 213.235—Inspection of Switches, Track Crossings, and Lift Rail Assemblies or Other Transition Devices on Moveable Bridges

Proposed rule: The NPRM proposed to change subsection (a) by adding the word "turnout" after the word "switch" to clarify the track device and the intent of the requirement which is to inspect the entire turnout. The word "switch" is retained to include switch point derails or any other device which is not considered a full turnout.

The NPRM proposed a second sentence to be added to subsection (a) which reads, "Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every three-month period." The nature of this type of switch requires a thorough inspection of the critical parts, some of which are non-redundant. Thorough inspection is best accomplished by operating the switch mechanism to allow for a better inspection of these components. The phrase "all positions" is intended to cover slip switches and lap switches.

In subsection (b), the word "turnout" is added after the word "switch" for the same reasons explained above.

Comments: Comments generally supported the proposed amendments. One commenter suggested that all switch mechanisms should be operated during inspections required under this section.

Final rule: FRA believes that a requirement to operate all switch mechanisms on a monthly basis would be too burdensome on the industry, especially in some geographical locations that are subject to snow, ice, and freezing conditions for many months of the year.

The final rule includes several changes to this section. On November 23, 1996, more than three weeks after the Track Working Group had submitted its recommendations for revision of the Track Safety Standards to the RSAC, an Amtrak passenger train derailed on the moveable bridge over the Hackensack River in Secaucus, New Jersey. This derailment was the result of a malfunctioning lift rail assembly which provides the transition from the moveable span to the fixed span on the bridge. Because of this derailment, FRA believes that transition devices on moveable bridges should be addressed in the revised Track Safety Standards.

Therefore, this final rule adds moveable bridge lift rail assemblies and other transition devices to the inspection requirements in this section. This section adds only a requirement to visually inspect on foot; it is not intended to impose additional functional requirements for bridge lift rail assemblies beyond what is already required by the Track Safety Standards. However, FRA considers these assemblies to be no less critical than switches or track crossings, and they should be subject to monthly on-foot visual inspections by a person qualified under § 213.7.

In addition, this section is restructured in order to reference the operation of specified switch operating mechanisms in a separate subsection (b). This change is designed to emphasize the importance of these non-redundant mechanisms.

Section 213.237—Inspection of Rail

Proposed rule: Under existing subsection (a), the Track Safety Standards require Classes 4 and 5 track, as well as Class 3 track over which passenger trains operate, to be tested annually for internal rail defects. This requirement was established at a time when main line freight traffic was considerably lighter than it is today. At the time the original standards were drafted, test frequencies generally equated to intervals between 15 and 20 million gross tons (MGTs), although there existed some track that carried 40 MGTs or more in one year. As a matter of practice, railroads generally test more often than presently required under the standards, with intervals between tests typically ranging from 20 to 30 MGTs. These typical intervals define a good baseline for generally accepted maintenance practices, and the industry's rail quality managers consider these limits as points of departure for adjustment of test schedules to account for the effects of specific track characteristics, maintenance, traffic, and weather.

The NPRM proposed to leave unchanged the present annual test requirement for Classes 4 and 5 track and Class 3 track over which passenger trains operate, based on risk factors associated with freight train speeds and passenger train operations. However, with the high utilization trackage that now exists on Class 1 freight railroads, the original requirement based solely on the passage of time, without regard to tonnage, is no longer adequate.

Selecting an appropriate frequency of rail testing is a complex and somewhat controversial task involving many different factors including temperature differential, curvature, residual stresses, rail sections, and cumulative tonnage. Taking into consideration all of the above factors, FRA's research suggests

that 40 MGTs is the maximum tonnage that can be hauled between rail tests and still allow a safe window of opportunity for detection of an internal rail flaw before it propagates in size to service failure. The NPRM proposed that intervals be set at once per year or 40 MGTs, whichever is shorter, for Classes 4 and 5 track and for Class 3 track over which passenger trains operate.

The NPRM also proposed that Class 3 trackage not supporting passenger traffic be subject to testing for internal rail defects. FRA's Accident/Incident data point to a need for inclusion of all Class 3 trackage in a railroad's rail testing program. Therefore, the NPRM proposed to add a requirement that Class 3 track over which passenger trains do not operate be tested once a year or once very 30 MGTs, whichever is longer.

The NPRM proposed the limit of once a year or 30 MGTs because a more frequent testing cycle or a cycle identical to that proposed for Classes 4 and 5 track would be too burdensome for the industry. The proposed limits are designed to give short line railroads and low tonnage branch lines some relief from the introduction of a new regulatory requirement and still reduce the present risks associated with not testing Class 3 track at all.

The NPRM also proposed the addition of subsections (d) and (e). Subsection (d) addresses the case where a valid search for internal rail defects could not be made because of rail surface conditions. Several types of technologies are presently employed to continuously search for internal rail defects, some with varying means of displaying and monitoring search signals. A continuous search is intended to mean an uninterrupted search by whatever technology is being used, so that there are no segments of rail which are not tested. If the test is interrupted, *i.e.*, as a result of rail surface conditions which inhibit the transmission or return of the signal, then the test over that segment of rail may not be valid because it was not continuous. Therefore, as proposed in the NPRM, a non-test is not defined in absolute technical terms. Rather, the provision leaves this judgment to the rail test equipment operator who is uniquely qualified on that equipment.

As proposed in the NPRM, subsection (e) specifies the options available to a railroad following a non-test due to rail surface conditions. These options must be exercised prior to the expiration of time or tonnage limits specified in paragraph (a) of this section.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.239—Special Inspections

Proposed rule: The RSAC recommended no change to this section, and likewise, the NPRM proposed no change to the language in the regulation. However, the preamble of the NPRM provided an explanation of agency policy interpreting the section.

Comments: One commenter referred to the Notice of Safety Advisory 97–1, issued by FRA on September 4, 1997. *See* 62 FR 46793. The commenter recommended that the provisions contained in the advisory be adopted as regulations under this section.

Because of a number of fairly recent train derailments caused by unexpected track damage from moving water, FRA deemed it appropriate to issue the safety advisory to provide railroads with recommended procedures that reflect best industry practice for special track inspections. The procedures include: (1) prompt notification of dispatchers of expected bad weather; (2) limits on train speed on all track subject to flood damage, following the issuance of a flash flood warning, until special inspection can be performed; (3) identification of bridges carrying Class 4 or higher track which are vulnerable to flooding and over which passenger trains operate; (4) availability of information about each bridge, such as identifying marks, for those who may be called to perform a special inspection; (5) training programs and refresher training for those who perform special inspections; and (6) availability of a bridge maintenance or engineering employee to assist the track inspectors in interpreting the inspectors' findings.

Final rule: The rule is adopted as proposed by the NPRM, and does not incorporate the procedures outlined in the Notice of Safety Advisory 97–1. As it stated in that advisory, FRA believes that this section is necessarily general in nature, because it is not practical to specify in a minimum safety standard all the conditions which could trigger a special inspection, nor the manner in which any particular special inspection should be conducted. Of course, all such inspections should be conducted so as to effectively prevent derailments, and the procedures included in the safety advisory are designed to aid railroads in performing effective inspections.

Although this section contains a sample list of surprise events that routinely occur in nature, FRA does not view this provision as limited to only the occurrences listed or to only natural disasters. The section addresses the need to inspect after "other occurrences" which include such natural phenomena as temperature extremes, as well as unexpected events that are human-made, *e.g.*, a vehicle that falls on the tracks from an overhead bridge, a water main break that floods a track roadbed, or terrorist activity that damages track. This interpretation is not new; FRA has always viewed this section to encompass sudden events of all kinds that affect the safety and integrity of track.

Section 213.241—Inspection Records

Proposed rule: The NPRM proposed to change the requirement that railroads retain a record of each track inspection at division headquarters for at least one year. When this provision in subsection (b) was first written, railroads maintained many division headquarters throughout their systems, making it relatively convenient for railroads to maintain inspection records at these locations. Over the years, however, railroads consolidated many of their headquarters, often naming only a few locations as "division headquarters." FRA has contended that maintaining inspection records in only a few locations over a system that may include thousands of miles of track was not in keeping with the spirit of the regulation. Railroads have argued, on the other hand, that compelling them to maintain headquarters for no other purpose than to store records was a burdensome requirement.

The NPRM proposed to allow railroads to designate a location within 100 miles of each state where records can be viewed by FRA track inspectors following 10 days notice by FRA. The provision does not require the railroads to maintain the records at these designated locations, only to be able to provide viewing of them at the locations within 10 days after notification. The proposal stipulates locations within 100 miles of each state, rather than locations in each state, to accommodate those railroads whose operations may cross a state's line by only a few miles. In those cases, the railroad could designate a location in a neighboring state, provided the location is within 100 miles of that state's border.

A change to subsection (c) requires a track owner to record any locations where a proper rail inspection cannot be performed because of rail surface conditions. A new provision at § 213.237(d) specifies that if rail surface conditions prohibit the railroad from conducting a proper search for rail defects, a test of that rail does not fulfill the requirements of § 213.237(a) which requires a search for internal defects at

specific intervals. The new language in subsection (c) of this section requires a recordkeeping of those instances.

The NPRM also proposed to add a provision for maintaining and retrieving electronic records of track inspections. Patterned after an experimental program successfully tried by the former Atchison Topeka & Santa Fe Railroad with oversight by FRA, the provision in subsection (e) allows each railroad to design its own electronic system as long as the system meets the specified criteria to safeguard the integrity and authenticity of each record. The provision also requires that railroads make available paper copies of electronic records when needed by FRA or by railroad track inspectors.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section by Section Analysis—High Speed Track Standards

Section 213.301—Scope of Subpart

Proposed rule: Subpart G applies to track required to support the passage of passenger and freight equipment in specific speed ranges higher than those permitted over Class 5 track. For those speeds above Class 5, the track and the vehicles operated on the track must be considered as an integral system. Of course, conventional passenger equipment has been operated for decades by many railroads at speeds up to 110 m.p.h. and on the Northeast Corridor by Amtrak and its predecessors at speeds up to 125 m.p.h. This subpart does not apply to technologies such as magnetic levitation that do not use flanged wheel equipment.

Comments: No comments were received pertaining to this section.

Final rule: A minor change in this section clarifies that Subpart G begins at a speed greater than 90 miles per hour (not at 91 miles per hour) for qualified passenger equipment and a speed greater than 80 miles per hour (not 81 miles per hour) for qualified freight equipment.

Section 213.303—Responsibility for Compliance

Proposed rule: Only two response options are available under this paragraph. Track owners who know or have notice of non-compliance with this subpart may either bring the track into compliance with the subpart or halt operations over that track. This section does not offer the railroad the option of operating under this subpart with the supervision of a qualified person, as in the standards for track Classes 1 through 5. Such an option would permit too much opportunity for disaster from human error. Under this subpart, if a track does not comply with the requirements of its class, it must be repaired immediately or train speeds must be reduced to the maximum speed for the track class with which the track complies. It may be necessary on occasion for the track owner to reduce the class of track to Class 5 or below. When this occurs, the requirements for the lower classes (1–5) will apply.

Comments: No comments were received pertaining to this section.

Final rule: FRA decided to delete the proposed subsection (d), which discussed directed service by the Surface Transportation Board, because this provision is not needed in the high speed context.

FRA decided to add a new subsection (d) of this section to include in the category of those responsible for compliance with the track standards those who perform the function of complying with the standards, not just the track owner. This is consistent with the counterpart regulation for Classes 1 through 5 track in § 213.5(f). It conforms to the authority given FRA by the statute. *See* 49 U.S.C. 21301 and 1 U.S.C. 1.

Section 213.305—Designation of Qualified Individuals; General Qualifications

Proposed rule: Work on or about a track structure supporting qualified high speed passenger trains demands the highest awareness of employees about the need to perform work properly.

A person may be qualified to perform restorations and renewals under this subpart in three ways. First, the person may combine five or more years of supervisory experience in track maintenance for track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training. Second, a person may be qualified by a combination of at least one year of supervisory experience in track maintenance of Class 4 or higher, 80 hours of specialized training or in a college level program, supplemented with on-the-job training. Under the third option, a railroad employee with at least two years of experience in maintenance of high speed track can achieve qualification status by completing 120 hours of specialized training in maintenance of high speed track, provided by the employer or by a college level engineering program, supplemented by special on-the-job training.

Similarly, a person may be qualified to perform track inspections in Classes 6, 7, 8 and 9 by attaining five or more years of experience in inspection in track Class 4 or higher and by completing a course taught by the employer or by a college level engineering program, supplemented by special on-the-job training. Or, the person may be qualified by attaining a combination of at least one year of experience in track inspection in Class 4 and higher and by successfully completing 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented with on-the-job training. Finally, a person may be qualified by attaining two years of experience in track maintenance in Class 4 and above and by successfully completing 120 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the inspection of high speed track. The third option is intended to provide a way for employees with two years of experience in the maintenance of high speed track to gain the necessary training to be qualified to inspect track.

For both categories of qualifications, the person must have experience in Class 4 track or above. To properly maintain and inspect Class 4 track or higher requires a level of knowledge of track geometry and track conditions that are not as readily obtained at lower classes. Persons who are qualified for high speed track must know how to work, maintain, and measure high quality track. Experience in Class 4 track is established as a lower limit to provide a pool of candidates, that may be drawn from freight railroads, who would provide the necessary experience on well-maintained track.

This section also includes specific requirements for qualifications of persons charged with maintaining and inspecting CWR. Training of employees in CWR procedures is essential for high speed operations. Each person inspecting and maintaining CWR must understand how CWR behaves and how to prevent track buckles and other adverse track reactions to thermal and dynamic loading.

Comments: No comments were received pertaining to this section.

Final rule: A minor change to subsection (e) has been made to clarify that records must be maintained for those employees qualified to supervise movements over broken rails.

Section 213.307—Class of Track: Operating Speed Limits

Proposed rule: For several years, passenger service on the Northeast Corridor has operated at 125 m.p.h. under conditional waivers granted by FRA. Amtrak has established specific procedures for this category of speed from which the railroad industry has accumulated valuable knowledge about track behavior in this speed range. The speed of 125 m.p.h. is the natural boundary for the maximum allowable operating speed for Class 7 track. Because trainsets have operated in this country at speeds up to 160 m.p.h. for periods of several months under waivers for testing and evaluation, the maximum limit of 160 m.p.h. is established for Class 8. In the next several years, certain operations may achieve speeds of up to 200 m.p.h. Class 9 track is established for this possibility. The exceptions for the maximum allowable operating speeds for each class of track parallels the standards for the lower classes, except that a speed of 10 m.p.h over the maximum intended operating speeds is permitted during the qualification phase per Section 213.345.

Although high speed rail is most often considered in terms of passenger travel, non-passenger high speed train service (*e.g.*, the mail trains operated by Amtrak on the Northeast Corridor) is also a possibility. All equipment, whether used for passenger or freight, must demonstrate the same vehicle/track performance and be qualified on the high speed track. Hazardous materials, except for limited and small quantities, may not move in bulk on trains operated at high speeds. The limitations noted are similar to those involved in commercial passenger and freight air travel.

Comments: The Florida Overland eXpress commented that a reference to that project in the section-by-section analysis of the NPRM may seem to erroneously suggest that the requirements established for Class 9 track apply to that project.

Final rule: FRA agrees that the language in the preamble to the NPRM may have been confusing. This analysis clarifies that Subpart G is not applicable to the Florida Overland eXpress. The proposed rule itself did not reference that proposed operation, so the language in the rule remains unchanged for the final rule.

FRA does not presently foresee authorization of mixed passenger and conventional freight operations above 150 m.p.h. Accordingly, passenger equipment safety standards, as proposed, address equipment for speeds only to 150 m.p.h. FRA expects to handle service above 150 m.p.h. through rules of particular applicability. Nevertheless, standards contained here are useful benchmarks for future planning with respect to track/vehicle interaction, track structure, and inspection requirements.

Section 213.309—Restoration or Renewal of Track Under Traffic Condition

Proposed rule: This section addresses two elements of concern: (1) that the stability of the track structure not be significantly degraded and (2) that roadway worker safety not be compromised. For restoration under traffic conditions, this section allows only track maintenance that does not affect the safe passage of trains and involves the replacement of worn, broken, or missing components or fastenings or minor levels of spot surfacing.

Comments: No comments were received pertaining to this section.

Final rule: The section as proposed is adopted in this final rule.

Section 213.311—Measuring Track Under Load; section 213.317 Waivers; section 213.319 Drainage

Proposed rule: Proposed language for these sections is identical to the similar sections for track Classes 1 to 5 (§§ 213.13, 213.17, and 213.33).

Comments: Refer to the corresponding sections in classes 1–5 for comments.

Final rule: The sections as proposed are adopted in this final rule, with minor language changes to § 213.317.

Section 213.321—Vegetation

Proposed rule: These sections are identical to the corresponding sections in the standards for track Classes 1 though 5.

Comments: Refer to the corresponding sections in classes 1–5 for comments.

Final rule: The section as proposed is adopted in this final rule.

Section 213.323—Track Gage

Proposed rule: This section introduces limits for change in gage. Analysis has shown that an abrupt change in gage can produce significant wheel forces at high speeds. The minimum and maximum limits for gage values Classes 6, 7, 8 and 9 were set to minimize the onset of truck hunting.

Comments: No comments were received pertaining to this section.

Final rule: With the exception of one minor change, the section as proposed is adopted in this final rule. The title of the heading in the fourth column of the gage table was changed from "the change of gage in 31 feet" to "the change of gage within 31 feet" to clarify that the change of gage parameter applies between two points anywhere within a 31-foot distance along the track, including two points exactly 31 feet apart.

Section 213.327—Alinement

Proposed rule: Uniformity is established by averaging the offset values for nine points centered around each point along the track at a spacing specified in the table. Uniformity defined in this way applies anywhere—curves, tangent segments, and spirals. Analysis has shown that points in transition areas such as around the "point-of-spiral-to-curve" can be included in this averaging technique. No distinction is made as to where the uniform calculation takes place. Tangent, curve, and spiral transitions have historically been difficult to determine in the field. The use of the uniformity filter obviates the need to make determinations based on the identification of these transitions.

This section provides three chord lengths for different types of vehicle/track interaction modes. Chords of 31-, 62-, and 124-foot lengths provide control of single and multiple defects in the wavelength bands most likely to affect vehicle dynamics and ride quality.

The 62-foot chord was selected because of its proximity to the truck center spacing of most high speed passenger vehicles. In phase carbody resonance modes such as bounce, roll and sway are most affected by track anomalies with a wavelength that is near the truck center spacing. Control of track geometry limits based on the 62-foot chord will help reduce the magnitude of such carbody motion. This chord also is predominantly used for track Classes 1 through 5 and is familiar to track inspection and maintenance personnel.

The 31-foot chord controls short wavelength defects that can result in high wheel forces over a short portion of track. These forces may not produce excessive carbody motion, yet their action on the wheels and truck may cause derailment. Most foreign high speed railroads use a 10-meter chord which is approximately equal in length to the 31-foot chord required in this section.

To control longer wavelengths, most foreign high speed railroads use a 30- or 40-meter chord. The 124-foot chord, which is approximately equal to a 40-meter chord, provides a means to locate and measure longer wavelength track anomalies. These long-wavelength

anomalies provide dynamic input to the high speed rail vehicles and can excite carbody resonance modes at high speeds. Excessive carbody motion can lead to poor carbody accelerations and wheel/rail forces, and in the extreme, may also cause derailment.

Addition of this chord length allows measurement of anomalies with wavelengths up to 300 feet. The Japanese National Railway adopted a 40-meter chord after recent speed increases on its Tokaido line. Research and testing indicated a stronger correlation between carbody motion and track geometry limits based on 40-meter mid-chord offsets.

Comments: No comments were received pertaining to this section.

Final rule: The final rule includes two changes to limits shown in the alinement tables. The permissible limit for track Class 9 for a single alinement deviation for a 124-foot chord is changed from one-half inch to three-quarters inch, and the Class 9 limit for three or more non-overlapping deviations for a 124-foot chord is changed from three-eighths to one-half inch. The limits for these two parameters shown in the NPRM were overly conservative, based on the recommendations of the technical experts who worked with the task group that developed the proposed high speed standards. These recommendations are contained in the report, "Track and Vehicle-Track Interaction Safety Assurance for U.S. High Speed Rail", July 1997, which is contained in the public docket for these proceedings.

Section 213.329—Curves, Elevation and Speed Limitations

Proposed rule: The determination of the maximum speed that a vehicle may operate around a curve is based on the degree of curvature, actual elevation, and amount of unbalanced elevation where the actual elevation and curvature are derived by a moving average technique. This approach is as valid in the high speed regime as in the lower classes. The moving average technique recognizes the steady state (one or two second duration) nature of the Vmax formula.

The maximum operating speed for each curve is determined by the Vmax formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

where:

V_{max} = Maximum allowable operating speed (miles per hour).
E_a = Actual elevation of the outside rail (inches).
E_u = Unbalance elevation or cant deficiency
D = Degree of curvature (degrees).

While the cant deficiency proposed in Classes 1 through 5 is three or four inches, cant deficiencies proposed for qualified high speed train are considerably higher. FRA has granted waivers for up to nine inches for revenue service and up to twelve inches for testing for qualified equipment. Higher cant deficiencies are allowed for high speed trains that may include tilting systems. The qualification testing will ensure that the vehicle will not exceed the vehicle/track safety performance limits set forth in this subpart when operating at these higher cant deficiencies.

In order to qualify the vehicle at higher cant deficiencies, the railroad must provide technical testing information using the same procedures that have been used in past years for waivers for higher cant deficiencies. This procedure is commonly called the "static lean test" where the vehicle is elevated on one side and wheel loads are measured and the roll angle is determined. Based on acceptable testing information and other technical submissions, FRA will approve the higher cant deficiencies for the specific vehicle type.

The maximum crosslevel on the outside of a curve is established at seven inches. Elevation in excess of that amount presents a safety consideration for freight trains with high centers of gravity, operating at lower speeds in the curve.

Comments: The Bombardier GEC Alsthom Consortium (Bombardier/GEC) commented that this section permits FRA to approve a higher of level of cant deficiency, but the same option does not exist for track classes 1 through 5. Furthermore, Bombardier/GEC urged that the requirements concerning the roll angle between the floor of the vehicle and the horizontal should be deleted and explained that this method was not valid for non-tilting equipment.

Final rule: FRA agrees that the concept of the roll angle would not apply to non-tilting power cars and has changed paragraphs (d)(1) and (2) to apply the requirements for the roll angle only to passenger-carrying equipment. FRA has changed § 213.57 in track Classes 1 through 5 to address the commenter's concern.

FRA has deleted footnote 2 from paragraph (f) of this section because it is no longer necessary. If a waiver previously has been granted to the railroad to operate at a higher level of cant deficiency, the railroad or FRA should have the static lean and other information readily available for consideration of FRA approval required under this section. This will allow the present waiver, including conditional requirements not necessarily compatible with Subpart G, to be replaced with an FRA approval process which incorporates all necessary requirements under this new subpart.

FRA considered the issue of the difference between a curve that has been introduced in high speed track as a result of maintenance or geometry degradation and a curve that was introduced by design. In either case, superelevation may or may not be present and trains may experience an unbalanced condition. FRA believes that the deviations from uniform profile and uniform alinement, as outlined in sections 213.331 and 213.327, will not preclude longer wavelength misalinements on the order of 200 feet or greater that resemble the characteristics of a curve, from being treated as a curve for which the unbalance formula defined in this section will be applied.

Section 213.331—Track Surface

Proposed rule: The chord lengths in the table are selected for the same reasons discussed in § 213.327 (alinement). The multiple chords measure different surface anomaly wavelengths.

The surface table addresses both single and multiple events. Studies have shown that the smaller limits are necessary when surface anomalies repeat themselves three more times over the specified chord length. The parameter commonly called "warp," the difference in crosslevel between any two points, does not require a specific limit for repeated warp conditions at high speeds.

Comments: Bombardier/GEC and the French Ministere de l'Equipment, des Transports et du Logement separately expressed concerns that the limits for track geometry have been extended from the present class 6 standards, permitting more track defects in the high speed track classes. As an example, Bombardier/GEC said that the proposed rule would permit a single 1.25 inch mid-ordinate offset on a 62 ft. chord for a profile condition, compared to the current requirement of 0.5 inch. In addition, Bombardier/GEC questioned why the difference in crosslevel between two points less than 62 feet apart is lower for Classes 4 and 5 track than it is for Classes 6 through 9 track. Bombardier/GEC urged that the values for all the geometry limits be "verified by industry" before the rule is

promulgated. The Bombardier/GEC also pointed out that the titles in the tables defining surface requirements should not have the "inches" in them since class of track is not defined in inches.

The AAR commented that the NPRM included an inconsistency between § 213.63 for track Classes 1 to 5 and § 213.331 in regard to repeated low joints. The AAR suggested that footnote 2 to the warp parameter (the difference in crosslevel between any two points less than 62 feet apart) should apply to § 213.331 for track Classes 6 through 9. The AAR notes that a condition which is a defect in track Classes 1 through 5 should also be a defect in the higher track classes.

Final rule: FRA has adopted the proposed geometry standards except for a few changes in the limits for the track profile parameter. The changes in the profile parameters are based on a recent study conducted at the VNTSC.

FRA believes it is crucial to revise the standards for Class 6 track. Years of experience by Amtrak on the Northeast Corridor indicate a lack of correlation between the former Class 6 standards and adverse vehicle responses. Adverse vehicle response occasionally occurred on track that was in compliance; on the other hand, track that was not in compliance sometimes did not contribute to any adverse vehicle response.

In response to the concern that the "warp parameter" permits a greater difference in crosslevel between any two points less than 62 feet apart for the higher classes than is permitted in the lower classes, FRA notes that the limit established for Classes 6 through 9 track, one and one-half inches, is the same limit established for Class 5 track. Therefore, FRA does not believe that a discrepancy exists. In addition, FRA believes the format in the surface tables in this section does not need modification since it is similar to the surface table in § 213.63 for the lower classes, a format that has been used in the track standards for many years.

The geometry standards are based on the recommendations of a panel of experts who conducted extensive studies, reviewed foreign practice, and recommended to the RSAC the safety limits shown in the proposed rule. The recommendations of this panel are contained in a working paper dated July, 1997, and entitled "Track and Vehicle Interaction Safety Assurance for U.S. High Speed Rail." The working paper is part of the docket for this proceeding. The proposed high speed standards were based on the principle that the high speed track and the equipment operating on high speed track are an integral system.

Following the publication of the NPRM, the VNTSC completed a report entitled "Evaluation of Proposed High Speed Track Surface Geometry Specification", dated November 10, 1997, which is in the docket of these proceedings. The study describes an evaluation of the responses of different high speed locomotive designs to track profile geometry variations. The working paper focuses on a comparative analysis of high speed locomotive designs with carbody-mounted traction motors and locomotive designs with truck-mounted traction motors. The minimum amplitudes of track profile variations required to cause excessive vertical accelerations in the operator's cab and to cause suspension bottoming are compared with the maximum amplitudes prescribed in the proposed high speed standards. The analysis shows that a locomotive design with truck-mounted traction motors requires an approximately 33 percent smaller track profile variation amplitude to cause excessive vertical accelerations than a locomotive design with carbody-mounted traction motors. These results indicate that a locomotive with truck-mounted traction motors may exceed the proposed minimum safety limits for a single profile event that were proposed in the NPRM for Subpart G.

In light of those findings, FRA has adopted the proposed surface limits contained in the NPRM, except that the geometry limits for profile are reduced, based on the results of the VNTSC study. This final rule requires that the deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not exceed one inch for track Classes 6 and 7. The deviation from uniform profile on either rail at the midordinate of a 62-foot chord has now been set to one inch for track Classes 6, 7 and 8 and three-quarters of an inch for track Class 9. Similarly, for three or more non-overlapping deviations in track surface, each deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not exceed three-quarters of an inch for track Classes 6 and 7. Also, for three or more non-overlapping deviation in track surface, each deviation from uniform profile on either rail at the midordinate of a 62-foot chord has been changed to three-quarters for track Classes 6, 7 and 8 and one-half inch for track Class 9.

FRA concurs with the comments made by the AAR in regard to repeated low joints. For consistency with § 213.63, footnote two with a minor modification has been added to the table in § 213.331(a).

Section 213.333—Automated Vehicle Inspection Systems

Comments were received from Amtrak and from Bombardier/GEC in regard to the proposed requirements for automated measurement systems. These systems include the track geometry measurement system, the gage restraint measurement system, and the systems necessary to monitor vehicle/track interaction (acceleration and wheel/rail force requirements). Because of the complexity of these systems and the technical nature of the comments, the following discussion addresses each automated measurement system separately in the order of the paragraphs in the proposed rule.

Track Geometry Measurement System (TGMS), Paragraphs (a) Through (g)

Proposed rule: Railroads that operate trains at speeds above 110 m.p.h. universally employ automatic track geometry measuring systems to generate data to point out train safety hazards in the track structure. Reliance upon only visual inspections to locate small track irregularities is difficult. In France, track geometry measuring vehicles are operated quarterly over high speed lines for the purpose of collecting track maintenance data.

Comments: Comments were received concerning the track geometry system.

Final rule: No changes to paragraphs (a) through (g) were made in the final rule.

Gage Restraint Measurement System, Paragraphs (h) and (i)

Proposed rule: The GRMS is primarily used on timber-tied track of certain freight railroads, to evaluate the effectiveness, on a continuous basis, of rail/tie fastening systems. This section requires the use of GRMS in Classes 8 and 9 to measure the gage restraint of the track, including the strength of the ties and the ability of the fastenings to maintain gage. Specified safety limits were established after testing on the Northeast Corridor where the track is predominately concrete-tied with timber tie turnouts. GRMS on concrete ties is effective in identifying defective ties and conditions with missing fasteners or a relaxation of toe load of gage-side rail fasteners. GRMS is required in Classes 8 and 9 to measure the resistance of the track to forces generated by wheel flanging in the gaging space. The use of the GRMS is necessary to insure sufficient gage restraint at the gage limits set to control truck hunting.

Comments: Bombardier/GEC commented that the GRMS requirements are unnecessary. It stated

that the GRMS could be a beneficial tool when used to inspect lower classes of track built with wooden ties, and any requirement for regular GRMS inspection should be limited to lower track classes and tracks with wooden ties where a cost/safety benefit can be shown.

Final rule: FRA does not agree with the recommendation that the GRMS be restricted to timber-tied track. While most of the industry's GRMS experience has been on timber-tied track, FRA and Amtrak jointly conducted a program to evaluate the performance of FRA's GRMS on the Northeast Corridor, a route with large numbers of concrete ties. This joint evaluation program indicated that the GRMS is an important safety tool for the measurement of gage restraint in concrete ties, as well as timber ties. The evaluation program also concluded that the optimum GRMS safety criterion for concrete ties is the gage-widening ratio (GWR) which is based on the unloaded track gage, loaded track gage and actual lateral load applied.

The GWR limit to the high speed standards is a completely different concept than the application of the GRMS technology discussed for the lower track classes. This preamble describes various proposals for implementation of GRMS technology for lower track classes, such as the use of a GRMS to supplant certain crosstie and fastener requirements in the track safety standards. While the GRMS is new to the high speed environment, FRA concludes that GRMS inspections in the higher classes is important to confirm the safety of crossties and fasteners. The GRMS is an important tool which has been proven to identify missing fasteners and help locate other conditions that can affect the ability of both timber and concrete crossties to maintain track gage.

Paragraphs (h) and (i) are unchanged from the proposed rule with two exceptions. Since there is no requirement to calculate Projected Loaded Gage (PLG24) in Classes 8 and 9, the reference to PLG 24 has been removed from the final rule. Several other minor word changes have been made in the language of the rule text to agree with the current language being proposed by the GRMS Task Group.

Vehicle/Track Safety Measurement Systems, Paragraph (j)

Proposed rule: The proposed rule required functional carbody and truck frame accelerometers on at least two vehicles of every train in track Classes 8 and 9. The track owner would be required to have in effect written procedures when these devices indicate a possible track-related condition.

Comments: Both Amtrak and Bombardier/GEC in separate comments state that the requirements in paragraph (j) are unnecessary. Both commenters objected to the requirement for accelerometers on every train, except for lateral truck frame accelerometers, and also objected to the requirement for written procedures for the notification of track personnel. The commenters argued that such a requirement would likely create significant availability problems for various operators due to the reliability of such permanently installed equipment.

In its comments to the docket, Amtrak re-evaluated an earlier endorsement of a requirement for carbody accelerometers on every train and now recommends that this paragraph be replaced with a requirement for written procedures when on-board crews report indication of a possible track-related condition. Amtrak said that it had earlier assumed that these monitoring systems would be autonomous "black boxes" that would be on each train and report exception to the engineer or directly to the dispatcher. Amtrak said that further investigation into the application of this requirement raised doubts about the necessity for the frequency of the monitoring as well as the ability of an operator to ensure compliance with that frequency because "track deterioration is a slow process occurring over long periods of time." In addition, Amtrak stated that it has had in place for years a process by which engineers report rough track when they encounter it.

Final rule: FRA has received widely differing opinions about the use of accelerometers on daily trains. Some experts point out that accelerometers on every train would be extremely useful to locate track conditions that may need correction. Other experts have differing opinions. The French National Railway (SNCF), for example, employs lateral truck-mounted accelerometers to address truck hunting on every train, but uses vertical and lateral carbody accelerometers only on a vehicle which inspects about twice each month. Those who advocate accelerometers on two cars in every train believe that they may indicate a track-caused response if both vehicles exhibit similar readings. On the other hand, if only one vehicle shows a high acceleration, the cause may be attributed to the dynamics of that vehicle only, not the track. Some experts believe that a requirement to equip every train with carbody and truck frame accelerometers would be costly to implement and would have questionable safety benefits.

However, many experts believe that a requirement for carbody and truck frame accelerometers on one train per day would accomplish several important safety goals that can not be achieved with a periodic program such as the one on the SNCF. The principal advantage is that conditions such as a culvert this is settling would be identified before the next periodic inspection.

While FRA agrees with the commenters that lateral and vertical accelerometers on every train would be unnecessary and that track does generally deteriorate slowly, FRA believes that some undesirable track geometry conditions may occur between periodic inspections for geometry and vehicle/track safety. The engineer's subjective perception of rough track conditions would be enhanced with available technology. FRA concludes that a requirement for functioning carbody and truck-mounted accelerometers on at least one train per day is needed to address those conditions that may occur on a daily basis, such as a culvert which has settled or a track condition that may be inadvertently introduced during track repair. These conditions may not be noticeable to a locomotive engineer.

The final rule is changed to require that at least one vehicle in one train per day operating in Classes 8 and 9 shall be equipped with functioning on-board truck frame and carbody accelerometers. Each track owner shall have in effect written procedures for the notification of track personnel when on-board accelerometers on trains in Classes 8 and 9 indicate a possible track-related condition. The implementation of this requirement and the extent of human involvement in the process and the specific acceleration levels that would trigger notification of track personnel is being left up to the railroad.

Paragraph (k)

Proposed rule: In paragraph (k), the proposed rule requires that for track Classes 7, 8 and 9, an instrumented car having dynamic response characteristics representative of other equipment assigned to service, or a portable device that monitors on-board instrumentation on trains, shall be operated over the track at the revenue speed profile at least twice within 60 days with not less than 15 days between inspections. The instrumented car or the portable device shall monitor vertically and laterally oriented accelerometers on the vehicle's floor level and lateral truck-mounted accelerometers. If the carbody lateral, carbody vertical, or truck frame lateral safety limits in this section are

exceeded, speeds will be reduced until these safety limits are not exceeded.

Comments: Both Amtrak and Bombardier/GEC were generally supportive of this paragraph which requires periodic measurements of truck frame and carbody accelerations. Amtrak recommended that two vehicles be used, rather than one, and Bombardier/GEC questioned the requirement that the accelerometers be mounted above the axle where they would be subjected to damage from snow, ballast, and debris. Bombardier/GEC also stated that the rule should make clear what the remedial action should be taken when these limits are exceeded.

Final rule: FRA agrees with the comments regarding the placement of the accelerometers and has revised the paragraph to clarify the remedial action that must be taken when these safety limits are exceeded. Paragraph (k) is changed to remove the requirement that the accelerometers on the truck frame shall be mounted "directly above the axle." Instead the accelerometers must be mounted on the truck frame. While Amtrak's recommendation that two vehicles be equipped with the accelerometers, FRA concludes that one inspection vehicle when combined with the daily monitoring of accelerometers and the other inspection requirements in the rule, will provide the necessary level of safety. For clarification, the rule is changed to require that "if the carbody lateral, carbody vertical or truck frame lateral safety limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded." These changes clearly indicate that when the vehicle/track interaction safety limits are exceeded on the inspection vehicle, the speeds of all trains, not just the test train, shall be reduced until the source of the exception is corrected, whether track or vehicle-related.

Paragraph (l)

Proposed rule: In this proposed section, paragraph (l) would require, for track Classes 8 and 9, a car equipped with instrumented wheelsets to be operated annually to ensure that the wheel/rail force safety limits are not exceeded.

Comments: Bombardier/GEC stated that the rule as proposed is not clear about whether the requirement for an annual measurement of wheel/rail forces using instrumented wheelsets is intended to "re-qualify the rolling stock, or verify the quality of the track." Bombardier/GEC stated that, based on the practices of all operators of high speed equipment around the world, there is no reason to re-qualify a vehicle design once it has been properly qualified. Bombardier/GEC also commented that if the intent of the measurement is to verify the condition of the track, it will be less effective as an indicator than information obtained from the other requirements in the rule that are specifically included for that purpose and which are conducted more frequently. Bombardier/GEC also recommended a few technical changes to the table of vehicle/track interaction safety limits.

Final rule: The commenter recommends that the measurement of wheel/rail forces is only necessary during the qualification period and is not necessary to be employed for periodic inspections. The SNCF relies on accelerometers for the purpose of confirming the safety of its high speed system; however, other high speed railroads use instrumented wheelsets on a regular basis to monitor wheel/rail forces. The final rule establishes safety criteria for both accelerometers and wheel/rail forces that must be monitored during the life of the system. FRA does not agree with the comment that accelerometer measurements alone will ensure safety.

The vehicle/track interaction safety limits are the cornerstone of the high speed standards. Vehicle/track interaction has critical consequences in railroad safety, and so establishing safe parameters and developing a measurement system to adhere to those parameters is highly important for any track safety program. There are several hazardous and unacceptable vehicle/track interaction events that are well-known in railroad engineering, and for the most part, may occur on existing high speed operations, including wheel climb, rail roll-over, vehicle overturning, gage widening, and track panel shift.

The safety limits contained in the Vehicle/Track Interaction Safety Limits table are derived from technical literature, years of research, experience by foreign railroads, and computer simulation and validation. They must not be exceeded either during the qualification phase required under § 213.345 or in the periodic measurement of accelerations and wheel/rail forces required in this section.

The minimum vertical wheel load safety limit is 10 percent of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry while stationary on level track. These safety criteria assure that no excessive wheel unloading is experienced by any wheel on the operating vehicle. Significant wheel unloading greatly increases the risk of derailment in the dynamic environment of a vehicle traveling at high speed.

The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail (L/V ratio) is limited by the Nadal formula. The limit on any wheel's L/V ratio ensures that the risk of a wheel climb derailment is minimized. The wheel flange angle (δ) referenced in the formula should correspond to actual measurements of wheel flange angle as provided by the requirements of the vehicle qualification testing specified in § 213.345.

The net axle lateral force exerted by any axle on the track should not exceed 50 percent of the static vertical load exerted by the same axle. This safety criterion ensures that no excessive track panel shift or misalinement is produced by the moving vehicle. For vehicles operating at high speeds, track panel shift can produce unsafe carbody and/or truck motion and, in the extreme, can cause derailment.

The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail must not exceed 0.60. This limit ensures that the risk of a rail rollover derailment is minimized.

The lateral carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.5 g. Carbody lateral accelerations above this limit reflect a very poor ride quality and a degraded track and/or vehicle condition.

The vertical carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.6 g. Carbody vertical accelerations above this limit also reflect a poor ride quality and a degraded track and/or vehicle condition.

The Root Mean Square (RMS) of the lateral truck acceleration for any two-second duration is limited to 0.4 g. This safety limit ensures that no sustained truck hunting is experienced by the moving vehicle. Sustained truck hunting produces undesirable ride quality and significantly increases the risk of derailment. The RMS of the lateral truck acceleration must be calculated over a two-second window from which the mean value of the acceleration has been removed. The vertical truck zero-to-peak acceleration

is limited to 5.0 g. Exceeding this safety limit can indicate undesirable short wavelength track anomalies.

Ultimately, vehicle/track interaction safety is assured by controlling wheel/rail forces to safe limits. Appropriate limits for track geometry and vehicle response acceleration provide strong indications of the likely wheel/forces which would be produced by operating trains. Use of an instrumented wheelset also provides a level of safety assurance for new and unusual vehicle designs that differ from the conventional vehicle dynamic models that were used to develop the track geometry and vehicle/track interaction limits.

FRA believes that an annual inspection using functioning instrumented wheelsets must be implemented as part of a high speed inspection strategy that includes visual inspections, geometry car inspections, periodic carbody and truck-mounted accelerometer measurements, and other inspections deemed necessary.

The measurement of wheel/rail forces and accelerations is necessary to confirm that the vehicle/track system is performing within safe limits. The Japanese National Railway, for example, employs instrumented wheelsets to measure wheel/rail forces at a frequency of approximately every three months. The purpose of the periodic measurement of wheel/rail forces required in this paragraph is to monitor, or in a sense "requalify," the vehicle/track system, not to "requalify" only the track or only the vehicle design. Neither the track nor the vehicles on the high speed track can be considered in isolation; they must be monitored together as a system.

The final rule contains a few changes to the table of vehicle/track interaction safety limits. A 25 Hz filter is specified so that important high speed events will not be filtered from the data and the location of truck frame accelerometers is changed in Footnote 3.

Paragraph (m)

Proposed: Paragraph (m) requires the track owner to maintain a copy of the most recent exception printouts for the inspection required under paragraphs (k) and (l) of this section.

Comments: No comments were received concerning this paragraph.

Final rule: The paragraph as proposed is adopted in this final rule.

Section 213.335—Crossties

Proposed rule: Various types of crossties may be installed in high speed track provided that the ties maintain the proper gage, surface and alinement. Slab track (track imbedded in concrete) or other construction may also be used if the construction complies with the requirements of this section. Because of the wide use of concrete ties in high speed track throughout the world, this section establishes safety requirements for concrete ties.

The requirements for crossties in this subpart differ from those in the corresponding section for crossties in Classes 1 through 5. For non-concrete-tied construction, the requirements for ties parallel those of the lower standards except that permissive lateral movement of tie plates is set at 3/8 inch instead of 1/2 inch and a requirement for rail holding spikes is added.

For concrete-tied track, effective ties must not exhibit the known failure modes listed. These failure modes were derived largely from experience in the Northeast Corridor. The number and distribution requirements of both non-concrete ties and concrete ties is more stringent than the requirements for the lower classes. For example, 14 effective concrete crossties are required in Class 6, and 16 effective concrete ties are required in Classes 7, 8 and 9 in each 39-foot segment of track. For both concrete and timber construction, a minimum number of non-defective ties is specified on each side of a defective tie.

Comments: The AAR commented that a discrepancy exists in that paragraph (e) is inconsistent with the required location of crossties at rail joint locations for lower speed operations covered by § 213.109.

Final rule: Review of this section also reveled a typographical mistake which is being corrected; in paragraphs (c)(6) and (d)(6), "Able" is changed to "So unable." The discrepancy was inadvertent and has been corrected. The measurement is changed from 25 inches to 24 inches in paragraph (e) to make this subsection consistent with the requirements for the lower track classes.

Section 213.337—Defective Rails

Proposed rule: The requirements for the identification of rail flaws and appropriate remedial action are valid in high speed track classes as well as the lower track classes. This section is unchanged from the standards for the lower classes except that language references to specific lower classes are deleted as unnecessary. Surface conditions such as corrugation, shelling, spalling and checking are not included in the high speed rail defect table since these conditions, if they were to progress to a severe level, would contribute to dynamic loading conditions that are addressed by the requirements for vehicle/track interaction in § 213.333. The flattened rail head is especially important to identify in high speed track because of the adverse effect on track geometry caused by this short anomaly in the surface of the rail head.

Comments: No comments were received pertaining to this section.

Final rule: To improve clarity, definitions were added and a small change was made to include brackets around some items in the rail flaw table so that this section is identical to the corresponding section in the lower track classes.

Section 213.339—Inspection of Rail in Service

Proposed rule: A continuous search for internal rail defects must be made of all rail in track in track Classes 6, 7, 8 and 9 at a frequency of twice per year. This requirement is consistent with the frequency used on Amtrak's Northeast Corridor (essentially, Class 6 and 7) and as well as the approach used in France which inspects rails twice a year.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.341—Initial Inspection of New Rail and Welds

Proposed rule: This section provides for the initial inspection of new rail, either at the mill or within 90 days after installation, and for the initial inspection of new welds made in new or used rail. It also provides for alternatives for these inspections. Compliance with the initial inspection of new rail and welds may be demonstrated by in-service inspection, mill inspections, welding plant inspections, and inspections of field welds.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.343—Continuous Welded Rail (CWR)

Proposed rule: As with CWR for the lower classes of track, FRA will review the railroad's written procedures for the installation, adjustment, maintenance and inspection of CWR, and training for the application of these procedures.

Comments: No comments were received concerning this section.

Final rule: The final rule is unchanged from the proposed rule for this section.

Section 213.345—Vehicle Qualification Testing

Proposed rule: All rolling stock, both passenger and freight, must be qualified for operation for its intended class. This section "grandfathers" equipment that has already operated in the specified classes. Rolling stock operating in Class 6 within one year prior to the promulgation of this rule shall be considered as qualified. Vehicles operating at Class 7 speeds under conditional waivers prior to the promulgation of the rule are qualified for Class 7 at the current level of cant deficiency. This includes equipment that is presently operating on the Northeast Corridor at Class 7 speeds.

The qualification testing will ensure that the equipment will not exceed the vehicle/track performance limits specified in § 213.333 at any speed less than 10 m.p.h. above the proposed maximum operating speed. Testing at a maximum speed at least 10 m.p.h. above the proposed operating speed is required. The test report must include the design flange angle of the equipment that will be used for the determination of the lateral to vertical wheel load safety limit for the vehicle/track performance measurements required in § 213.333(k).

Subsection (d) requires the operator to submit an analysis and description of the signal system and operating practices to govern operations in Classes 7, 8 and 9. This submission will include a statement of sufficiency in these areas for the class of operation intended. Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

Comments: Bombardier/GEC stated that this part of the proposed rule is intended to be followed to qualify equipment types for their intended operation on a specific route, not to determine the operating limits of the equipment and track, as stated. Bombardier/GEC said that to achieve this, it is recommended that the words "* * * and conduct a test program sufficient to evaluate the operating limits of the track and equipment" be replaced with "* * * and conduct a test program sufficient to evaluate the safe operation of the equipment for the intended service."

Bombardier/GEC said that it is not practical to include a requirement to suspend the vehicle qualification tests at the speed where any of the vehicle/track performance limits in § 213.333 are exceeded. The qualification tests, according to Bombardier/GEC, should be completed to determine the safe operational limits for the equipment throughout the route. In addition, the specific location of all violations should be recorded and the condition of the track in those locations should be checked to determine if the non-compliance is related track or equipment.

Final rule: FRA believes that it is important not to emphasize the vehicle component in the qualification testing. The purpose of this section is not to conduct a test program to evaluate the safe operation of the equipment, but to qualify the vehicle/track system. The consideration of the high speed track and the vehicles together as an integral system is fundamental to the approach adopted in this final rule. To evaluate the system, a test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from acceptable Class 6 limits to the target maximum test speeds.

The commenter believes that the tests should not be suspended when the safety limits are reached. However, these safety limits are set at levels where continued operation could result in a derailment. FRA does not believe it would be prudent to continue the testing on that portion of track if these safety limits are reached. However, the rule is not intended to imply that all testing must be stopped. It can continue, but the locations where the limits are reached must be identified and test speeds may not be increased at those locations until corrective action is taken. This action may be an adjustment in the track, in the vehicle, or in both of these system components.

FRA has considered the consistency of this final rule with the proposed Passenger Equipment Safety Standards, **Federal Register**, September 23, 1997, and has changed § 213.345(b) to state that the testing will not exceed the wheel/rail force safety limits and the truck lateral accelerations specified in § 213.333 and the vertical and lateral carbody acceleration levels listed in (b)(1), (2), and (3). FRA believes the tighter ride quality limits in the proposed Passenger Equipment Safety Standards are more appropriate for a new system. However, as the equipment and track wear, those tighter ride quality limits which were used at the time of system qualification should be used to establish long-term maintenance levels, and the limits contained in § 213.333, which are minimum safety levels, should be used during the life of the system to monitor safety.

A small change has been added to § 213.345(a) which now states that all rolling stock types which operate at Class 6 and above speeds shall be qualified. This change emphasizes that trains which operate at Class 5 speeds or lower on the high speed line do not need to be qualified to operate on the high speed track.

The rule in § 213.345(e) requires the railroad to submit an analysis and description of the signal system and operating practices to govern operations in Classes 7, 8 and 9. FRA has modified § 213.345(f) to make it clear that trains shall not operate in revenue service until FRA has approved a maximum train speed and value of cant deficiency based on FRA's review of the test results and the other submissions by the track owner.

Section 213.347—Automotive or Railroad Crossings at Grade and Moveable Bridges

Proposed rule: There are no highway or railroad grade crossings on the Amtrak route between Washington, D.C. and New York City. Much of this line is operated by revenue passenger trains at 125 m.p.h. (Class 7 speeds). Highway crossings and railroad crossings at grade (diamonds) may not be present in Class 8 and 9 track.

Technology currently is being developed that would prevent inappropriate intrusion of vehicles onto the railroad rights-of-way. This technology involves the use of barrier systems with intrusion detection and train stop, as well as advance warning systems. Because the technology is under development, it would be premature to include specific requirements for barrier systems and related technology in this section. However, the railroad is required to submit for approval a description of the crossing warning system for each crossing.

Comments: No comments were received for this section.

Final rule: A minor addition was added to paragraph (b) to make it clear that trains shall not operate at Class 7 speeds unless an FRA-approved warning/barrier system exists on the track segment and all elements of that warning/barrier system are functioning.

The rule precludes the presence of highway grade crossings and rail-to-rail crossings for the highest speed operations, track Classes 8 and 9. Presently no highway-rail crossings exist on Class 6 track (on Amtrak and commuter railroads), although highway-rail crossings existed for several years on Class 6 track on the Northeast Corridor. FRA believes highway/grade crossings should be limited in the high speed regime. Where highway/rail crossings exist at higher speeds, the

railroad should install the most advance warning/barrier systems available.

FRA is continuing to conduct risk analysis related to treatments for high-speed crossings. To date, the analysis demonstrates that risk to a motorist is not likely to increase with increasing train speeds above 110 m.p.h. On average, collision frequency should not rise (although sight distance may be an issue in individual situations). Accident severity in the range of 80 m.p.h. is already so high that no further increase in the likelihood of fatal injury in the motor vehicle should result from increases in train speed.

However, FRA does not believe that sufficiently refined analytical techniques currently exist to predict the effect of increased speeds on damage to the passenger train through the initial collision, possible derailment, and possible secondary collisions—including interaction among the units in the consist. Collisions with heavy trucks, construction equipment and agricultural equipment are an issue of particular concern. FRA believes it is prudent to take the safe course and ensure against collisions by the most secure means possible, rather than risk the occurrence of a catastrophic event involving multiple fatalities to crew members and passengers.

Section 213.349—Rail End Mismatch

Proposed rule: Vertical or horizontal mismatch of rails at joints must be less than one-eighth of an inch for Classes 6 through 9. A more restrictive criterion is not necessary and would be impractical.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.351—Rail Joints

Proposed rule: This section is less permissive than its counterpart for the lower speed classes. Fracture mechanics tests and analyses demonstrate that there is no place in the high speed train operating regime for defective joint bars. The propagation rate of a crack large enough to be visible in a joint bar is unpredictable. Once a joint bar has ruptured, its companion joint bar is immediately in danger of overload. Upon discovery of a defective joint bar, the track owner must reduce the track class at the location of the defective bar and proceed according to the requirements of Subpart D.

Comments: No comments were received for this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.352—Torch Cut Rail

Proposed rule: This section mirrors the corresponding section (§ 213.122) track Classes 3 through 5. This provision prohibits future torch cutting of rails in high speed track, except for emergency situations. When a rail end is torch cut in an emergency situation, speed over the rail must not exceed the maximum allowable for Class 2 track.

For existing torch cut rails in Class 6 track, all torch cut rails must be removed within six months of the issuance of the final rule of this proceeding. If after six months from the issuance of the final rule of this proceeding any torch cut rail is discovered in Classes 6 through 9 track, it must be removed within 30 days, and speed over that rail must not exceed the maximum allowable speed for Class 2 track until it is removed.

Comments: No comments were received for this section.

Final rule: After further review, FRA determined that the proposed requirement in § 213.352(a)(2) requiring speeds in existing Class 7, 8 and 9 track to be reduced to Class 6 until a torch cut rail is replaced is unnecessary and has been deleted. For existing torch cut rail ends in Class 6 track, all torch cut rail ends, if any, must be removed within six months of this rule. Following the six-month period, if torch cut rail ends are discovered, train speeds over that rail must be reduced to the maximum allowable for Class 2 track until removed.

Section 213.353—Turnouts, Crossovers and Lift Rail Assemblies or Other Transition Devices on Moveable Bridges

Proposed rule: The requirements in this section are similar to those in the lower classes. Fastenings must be intact and maintained so as to keep the components securely in place. Each switch, frog, and guard rail must be free of obstructions that may interfere with the passage of wheels. Rail anchoring is required to restrain rail movement affecting the position of switch points and frogs.

Experience in this country with the maintenance of turnouts and crossovers in high speed territories is limited. The use of conventional switch and frog components in present-day 125 m.p.h. track can produce harsh vehicle response which, while not necessarily unsafe, is likely to be less and less welcome in the future, particularly at train speeds above 125 m.p.h.

Worldwide, the trend for turnouts and crossovers in high speed lines is toward reliance on long switch points and moveable point frogs. Amtrak has some limited experience with these features at fairly high train speeds, and the western coal railroads have a great deal of experience, especially with moveable point frogs, with turnout component performance in low speed, cumulative tonnage conditions. This section requires that the track owner, intending to operate trains at high speeds, to develop a turnout and inspection handbook for the instruction of employees involved in this work. Requirements for switches, frogs, and spring frogs that are present in the standards for the lower classes are not specifically listed, but will be addressed in the railroad's Guidebook.

The purpose of such a document is to encourage formal consideration of problems associated with inspection and maintenance of these track features and to establish a consistent system approach to the performance of related work.

Comments: No comments were received for this section.

Final rule: FRA has added a requirement for the inspection and maintenance of lift rail assemblies and other transition devices on moveable bridges. By introducing this requirement, FRA is not encouraging high speeds over moveable bridges. Currently, the highest speed over a moveable bridge is 70 m.p.h. However, in view of the 1997 accident over a lift rail assembly in New Jersey, FRA believes it necessary to introduce a requirement to inspect these transition devices in the high speed standards to address the potential that lift rail technology may change.

Section 213.355—Frog Guard Rails and Guard Faces; Gage

Proposed rule: The most restrictive practical measurements for these important parameters are included. The limits for guard check and guard face gage are set at a limit that permits minimal wear.

Comments: No comments were received for this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.357—Derails

Proposed rule: Because it is essential that railroad rolling stock be prevented from fouling the track in front of a high speed train, this section presents strict requirements for derails to be fully functional and linked to the signal systems.

Comments: A railroad supplier commenting on the NPRM suggested that derails also serve to prevent encroachment of main tracks by

locomotives, trains or maintenance-of-way equipment under power, and should not be excepted only because of grade characteristics. The commenter suggested that a better approach would be to permit this exception only where grade characteristics are favorable (significant ascent toward the main track) and where trains are not permitted to clear the main track. The commenter said that turnouts or crossings connecting to yard leads or branch tracks should not be excepted.

The commenter also recommended that the term "sidetrack" be better defined or described to make it clear that the term does not apply to other main tracks, sidings, or rail-to-rail crossings. The commenter was concerned that certain types of derails may be ineffective and described an accident that occurred several years ago when a train moving at over 50 mph passed over a derail. The commenter recommended that the rule include a definition of the term "derail" and suggested that turnouts, wheel stops, bollards, etc. may be equally effective in comparison to a conventional block or split point derail. The commenter expressed a concern that gates, chocks, skates, wire ropes, wood ties, etc., do not assure the same type of arresting action. The commenter asked for FRA's position on the removal of a length of rail, a pile of ballast or a bumper post.

The commenter said that the proposed requirement for each derail to be "interlocked" with the signal system should be modified and included in 49 CFR Part 236 which establishes requirements for hand-operated switches in ABS and TCS territory. The commenter said that the addition of circuit controllers to independent hand-operated derails in ABS will be costly and that such a requirement would tend to discourage voluntary installation of sidetrack derails on Classes 2 to 6 trackage.

The commenter also recommended that the term "interlocked" be replaced with the term "interconnected" and suggested that the phrases "interlocked", "maximally restrictive", "deployed", and "completely functional" are unfamiliar terms and invite confusion and disagreement. The commenter said that there would be little sacrifice of safety in allowing display of a "proceed at restricted speed" aspect on the main train when a sidetrack derail is not in the derailing position. Finally, the commenter suggested that this section be moved to the signal regulations at 49 CFR Part 236 because applicable sections in that part already apply to derails. For example, § 236.205(c) sets forth requirements for an independently operated fouling point derail equipped with switch circuit controller which is not in the derailing position.

Final rule: FRA does not believe it is necessary to move the entire section on derails to the signal rules at 49 CFR Part 236, because the subject of derails is appropriate for the track standards. However, FRA may wish to consider changes in Part 236 at a later date. FRA agrees with many of commenters recommendations.

The terms "industrial" and "sidetrack" as proposed may lead to confusion. FRA, therefore, has modified the rule to remove these terms and use terminology which is more common to the industry. Paragraph (a) now requires that each track, other than a main track, which connects with a Classes 7, 8 and 9 main track shall be equipped with a functioning derail of the correct size and type. The term "main track" has a familiar meaning in the railroad industry and is defined, for example in § 236.831(a) and § 240.7.

FRA believes the exception to the requirement for derails at locations "where railroad equipment, because of grade characteristics, cannot move to foul the main track" is reasonable. FRA believes it is not necessary to go beyond this exception to address every conceivable circumstance. FRA points out that § 213.361 requires the railroad to submit a right-of-way plan" for FRA approval. This plan must contain provision for the intrusion of vehicles from adjacent tracks.

The final rule under § 213.357(b) explains that a derail is a device which will physically stop or divert movement of railroad rolling stock or other railroad on-track equipment past the location of the device. Ineffective piles of ballast, wire ropes, chains, or similar methods are not sufficient. Other methods may be as effective as conventional derails in accomplishing the goal of preventing the railroad equipment from moving into the clearance envelope of the high speed main track.

Paragraphs (c) through (f) of this section mirror the derail requirements for the lower track classes in § 213.205. FRA agrees with the commenter's concern about the term "interlocked" because it refers to a particular arrangement of signals. FRA concurs with the commenter's concern that a requirement for derails to be connected to the signal system in Class 6 track would be costly and tend to discourage voluntary installation of derails. To address these concerns, paragraph (g) is changed to read that "each derail on a track connected to a Class 7, 8 or 9 main track shall be interconnected with the signal system." The term "interconnected" is consistent with the signal rules in § 235.205, which requires, in part, that circuits shall be installed so that each signal governing train movements into a block will display its most restrictive aspect "when an independently operated fouling point derail equipped with a switch circuit controller is not in derailing position."

Section 213.359—Track Stiffness

Proposed rule: Track must have sufficient vertical strength and lateral strength to withstand the maximum loads generated at maximum permissible train speeds, cant deficiency and lateral or vertical defects so that the track will return to a configuration in compliance with the track performance and geometry requirements of this subpart. It is imperative that the track structure is structurally qualified to accept the loads without unacceptable deformation.

The track's resistance to track panel shift is difficult to quantify. However, FRA believes that at a future date, it may be possible, based on ongoing research addressing track panel shift, to further refine the safety limit for the Net Axle L/V Ratio in the table of vehicle/track interaction safety limits in § 213.333. The present limit of 0.5 is based on an extrapolation of the Prud'homme limit and experimental data. An FRA sponsored research program is currently in place addressing the development of criteria and possible safety limits for track shift mitigation which are driven by the proposition that lateral loads generated by vehicles operating under maximum speed, cant deficiency, thermal loads, and initial line defect conditions should not cause the exception of an allowable deflection limit. Depending upon the specific track conditions and vehicle characteristics, permissible net axle lateral to vertical load ratios for an allowable deflection limit can be in the range of 0.4 to 0.6. Key influencing parameters are the track lateral resistance characteristics, tie/ballast friction coefficients, vehicle vertical axle loads, track curvature, thermal loads, and constant versus variable lateral axle loads.

Comments: No comments were received concerning this section.

Final rule: This section is unchanged from the proposed rule.

Section 213.361—Right-of-Way

Proposed rule: This section requires that the track owner to submit a barrier plan, termed a "right-of-way plan," to FRA for approval. The plan will include, at a minimum, provisions in

areas of demonstrated need to address the prevention of vandalism by trespassers and intrusion of vehicles from adjacent rights of way. A particular form of vandalism, the launching of objects from overhead bridges or structures, is specifically listed.

Comments: No comments were received concerning this section.

Final rule: The final rule is unchanged from the proposed rule for this section.

Section 213.365—Visual Inspections

Proposed rule: Visual inspections are considered to be an important component of the railroad's overall inspection program. The section largely parallels the requirements for the lower classes. The inspection requirements are twice weekly for Classes 6, 7 and 8 and three times per week for Class 9. Turnouts and crossovers must be inspected in accordance with the Guidebook required under § 213.353. The practice in France of operating a train at reduced speeds following a period with no train traffic is adopted in this section.

Comments: Bombardier/GEC said that the basis to limit the speed of trains in paragraph (f) to 100 m.p.h. after a traffic interruption of eight hours is not clear. Equipment currently is permitted to run at speeds of 110 m.p.h. on Class 6 track, and up to 125 m.p.h. on the Northeast Corridor on the first run of the day. The proposed rule would limit the speed of these trains to 100 m.p.h. after the track is upgraded to Class 8 or Class 9, if the disruption was greater than eight hours. Bombardier/GEC recommended that the rule require the speed to be reduced to Class 7 speeds if an eight-hour disruption in service occurs on Class 8 track.

Final rule: FRA believes the commenter may be misinterpreting the rule which requires that if no train traffic operates for a period of eight hours in track Classes 8 or 9, a train shall be operated at less than 100 m.p.h. before the resumption of the maximum authorized speed. FRA believes the requirement for one train to operate over the track is not burdensome and follows the practice on the SNCF lines for an early morning pilot train. The rule is unchanged from the proposed rule for this section.

Section 213.367—Special Inspections

Proposed rule: The requirements of this section are the same as those for the lower track classes except that the occurrence of temperature extremes is specifically listed as an event that requires a track inspection.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.369—Inspection Records

Proposed rule: The requirements of this section are the same as those for the lower track classes.

Comments: No comments were received for this section.

Final rule: FRA has made one small change in paragraph (f). The phrase "Each Track/vehicle Performance record" has been changed to "Each Vehicle/track interaction safety record." This change corresponds to the change in the title for the table of vehicle/track interaction safety limits in § 213.333.

Appendix A

Proposed rule: The NPRM proposed to add a curving speed chart based on four inches unbalance. For many years, the track standards included a curving speed chart based only on three inches unbalance. However, the NPRM proposed to allow qualified equipment to operate at curving speeds based on four inches of unbalance, making an additional chart necessary.

Comments: FRA received no comments on the new chart.

Final rule: FRA decided that inclusion of the new chart in Appendix A is necessary to accommodate the provision in the final rule which allows qualified equipment to operate at curving speeds based on four inches of unbalance.

Appendix B

Proposed rule: The NPRM stated that FRA would revise the schedule for civil penalty assessment as it found necessary. At the very least, the schedule would have to be revised to include civil penalties for the new subsections added to the Track Safety Standards. These would include penalties for §§ 213.4(e)(4) and (f) (Excepted track), § 213.119 (Continuous welded rail), § 213.122 (Torch cut rails), and most of the subsections in Subpart G.

Comments: FRA received no comments about the penalty schedule.

Final rule: Under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373), FRA is required to adjust civil penalties it administers to incorporate the effects of inflation. *See* 28 U.S.C. 2461 note.

FRA added penalties to the Schedule of Civil Penalties to accommodate the new subsections of the final rule. The amounts for the new penalties were chosen based on penalties that have been used in the enforcement of the Track Safety Standards for years. For instance, penalties for violations of most of the substantive subsections of the track standards are either $2,500 or $5,000, the higher penalty being reserved for the more serious violations. For those subsections under Subpart G that have counterparts in Subparts A through F, the new penalties are the same as those for their counterparts. After some consideration, FRA decided not to include generally higher penalties for high speed rail because there are currently few track owners to which Subpart G will apply. However, FRA will reconsider this decision in the future if experience demonstrates the need to assess higher penalties for Subpart G.

Regulatory Impact, Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. The final rule revising the Track Safety Standards is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February 26, 1979) because of substantial public interest and safety implications. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

Ordinarily, in conducting an analysis of the costs and benefits of a proposed or final rule, FRA gathers more extensive economic data than was made available in this proceeding. However, in light of the consensus in the Track Working Group and the majority vote of the RSAC members, FRA does not believe more data is necessary. FRA has relied principally on the recommendations and experience of the railroad industry and labor representatives who, through the RSAC process, helped develop this rule. The working group members provided valuable non-quantitative data on their preferences. Thus, their unanimous consensus on the contents of the rule allows FRA to conclude that the rule is cost beneficial. Although rail labor subsequently withdrew its support for this rulemaking, their objection to the rule did not relate to the finding that the rule is cost beneficial. Furthermore, the railroads, who will bear the burden of

the costs imposed by the rule, have continued to support the rule. In its conclusion, FRA finds that the net effect of the changes to the existing rule is an increase in safety and an increase in the burden on the railroads, but that the burden on the railroads from the changes is not likely to be as great as the benefit, although there was no way to quantify the magnitude on the net benefit.

The Track Working Group formed, reached a consensus on internal working procedures, and addressed the issues. Several issues were delegated to task groups, which are subgroups of the working group. The procedure remained the same. The task groups could make no recommendations until they had a consensus. The working group would not adopt any recommendation, even if a result of a consensus in the task group, until there was a consensus in the working group. The full RSAC would make no recommendation to the Administrator until there was a majority consensus in the full RSAC, even if there was a consensus in the working group.

An implication of this is that no entity represented would accept a consensus agreement, unless the entity he or she represented would be at least as well off after the agreement as it had been before. This analysis therefore uses as a fundamental assumption that there are no provisions which will impose drastic costs on any segment represented by members of the working group, and Pareto superiority of the revised rule over the current rules. Pareto superiority implies that no party would be willing to pay to return to the current standards, although some party might be indifferent between the current standards and the revised standard. There is no implication that this rule is Pareto optimal, although Pareto optimality has not been excluded. Were the rule Pareto optimal, there would not exist another possible set of rules which at least one party would be willing to pay to adopt, and the amount that party would be willing to pay would be sufficient, were it given to other parties, to induce them to agree to the set of rules. Nor is the final rule assumed to be optimal. Were it optimal the total net benefit would be maximized.

The guidance in E.O. 12866 is that we should select the rule with the maximum net benefit. We believe we have done that here, because no party who is burdened by the rule objected in comments to the docket following publication of the NPRM. What we know is that the revised rule is closer to the optimum than the current rules. The guidance in the Regulatory Flexibility Act is that we should adopt rules that are flexible, that fit in with how businesses actually conduct operations, and that are sensitive to the concerns of small businesses. Clearly the RSAC process does this. Had we adopted the suggestions of labor organizations objecting to the proposed rule in the full RSAC and in their comments to the docket, then we would have produced a rule with greater benefits and greater costs, which the FRA believes would have substantially lower net benefits than the proposed rule or this final rule.

Estimated Benefit of Changes to the Track Standards

In 1995, there were 827 reported train accidents from track-related causes, which caused about $62 million in damage to railroad property. These accidents also caused 17 injuries and the evacuation of approximately 1,000 people. *See* Tables 22, 65, and 27, Accident/Incident Bulletin 164, Calendar Year 1995, FRA 1996. If each accident resulted in $20,000 in miscellaneous costs, such as rerailing trains, providing emergency response, and legal costs, then the total miscellaneous cost would have been about $16 million.[1] If each injury cost $10,000, then the total injury cost would be about $170,000.[2] If each evacuation cost $1,000, then the total evacuation cost would have been about $1 million.[3] These costs are further documented in FRA's economic analysis, available in the public docket. The total for all of these costs would have been about $80 million.

The FRA believes it is conservative to estimate that these costs will be reduced by five percent, as the revision addresses virtually every accident cause found in the bulletin. That would provide an estimated benefit of about $4 million per year, or about $40 million in net present value over 20 years. This value may be significantly higher, as the average cost of accidents in certain categories targeted in the rule tends to be above average. For instance, broken rail derailments on main lines (internal rail flaw detection provisions) and accidents caused by buckled track (CWR provisions) tend to be higher-speed accidents with large railroad damage totals and greater potential for third-party impacts, such as evacuations and disruptions in adjacent transportation corridors.

Using reasonably conservative assumptions, it appears that the net burden on railroads will be less than $2 million per year, a very small number when compared to total rail revenues ($37.6 billion in 1995 for Class 1 railroads only). Railroads will receive a benefit in the form of greater certainty over the future of track safety standards as a result of their active participation in the RSAC process which provided the framework for the revised rule. They will also receive some benefit where existing provisions have been made less stringent.

It is not clear whether that benefit exceeds the burden, although it appears from the willingness of railroads to consent to the Track Working Group proposal that they would receive a net benefit. Of course, the railroads would be even better off if the provisions which burden them were removed and those which benefit them remained. Other members of the Track Working Group did not accept that proposal. In their comments, railroads agreed that they would rather have FRA implement the proposed rule as a whole than continue with the current standards, although they would prefer that the proposed rule changed certain provisions.

Federalism Implications

This final rule has been analyzed according to the principles of Executive Order 12612 ("Federalism"). It has been determined that these amendments to Part 213 do not have federalism implications. As noted previously, the U.S. Supreme Court, in *CSX* v. *Easterwood*, upheld Federal preemption of any state or local attempts to regulate train speed. Nothing in this notice proposes to change that relationship. Likewise, the addition to Part 213's requirement for vegetation maintenance near grade crossings is not intended to preempt any similar existing state or local requirements. The provisions that require railroads seeking to operate in Classes 8 and 9 to have a program addressing vandalism and trespassing are directed only to the railroads, and not to state or local governments. If a railroad is unable to provide an adequate program to address these issues, it will not be allowed to operate at Classes 8 and 9 speeds. For these reasons, the preparation of a Federalism Assessment is not warranted.

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[1] Internal FRA estimates show that it would cost about $2,000 to rerail a single car, and that it costs about $10,000, conservatively, for an emergency response to a small derailment, and about $8,000 for about 80 hours of legal time at $100 per hour, which is also conservative as a measure of the resources used in response to a derailment.

[2] Based on an injury between AIS 1, minor, and AIS 2, moderate, on the Accidental Injury Severity scale, the society would be willing to pay between $5,400 and $41,850 to avoid the injury.

[3] Based on about $200 to relocate, house and feed an evacuee for one night, plus other costs to society, such as business, school and road closures, which come to about four times the individual evacuation cost.

Regulatory Flexibility Act

This notice contains a summary of a regulatory flexibility analysis (RFA) as required by the provisions of the Regulatory Flexibility Act at 5 U.S.C. 601–612. FRA completed a RFA as part of an economic analysis of costs and benefits, and placed of copy of the RFA in the docket for this proceeding.

1. Why action by the agency is being considered:

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

> (a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—
>
> (1) Procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;
>
> (2) The need for revisions to regulations on track excepted from track safety standards; and
>
> (3) Employee safety.
>
> (b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection "(c)" of this section.
>
> * * * * *
>
> (d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—
>
> (1) Inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and
>
> (2) Any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

The reasons for the actual provisions of the action considered by the agency are explained in the body of the analysis.

2. The objectives and legal basis for the rule:

The objective of the rule is to enhance the safety of rail transportation, protecting both those traveling and working on the system, and those off the system who might be adversely affected by a rail incident. The legal basis is reflected in the response to "1." above and in the preamble.

3. A description of and an estimate of the number of small entities to which the rule would apply:

The rule would apply to railroads. Small entities among affected railroads would all be short line railroads. There are approximately 700 short line railroads in the United Sates, but many of them are not small entities, either because they are large enterprises as railroads, or because they are operations of large entities in other industries.

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

See the Paperwork Reduction Act analysis.

5. Federal rules which may duplicate, overlap, or conflict with the rule:

None.

Significant Alternatives

In their comments to the NPRM, labor organizations suggested certain enhancements. However, the FRA does not believe that their suggestions would have made the rule more flexible; rather, they would have increased the burden on small entities significantly with relatively little commensurate benefit.

1. Differing compliance or reporting requirements or timetables which take into account the resources available to small entities:

In the two sections most likely to affect small entities, § 213.4 Excepted Track and § 213.109 Crossties, the final rule includes a two year phase-in period.

2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities:

Although their needs were considered at every step of the process, there was no way to reduce the burden on small entities that did not apply as well to larger entities.

3. Use of performance, rather than design standards:

Where possible, especially in the geometry standards, the standards were tied to performance. Although they were expressed as specifications, the underlying performance model ensures that they will have the same effect as a performance standard would. In the high speed standards, vehicle qualification is expressed strictly as a performance standard.

4. Exemption from coverage of the rule, or any part thereof, for such small entities:

There was no practicable way to exclude small entities. Further, the low volume operations of the largest railroads often serve shippers which are small entities, and any additional burden on the low volume lines of large railroads would likely have adverse impacts on those small shippers.

Definition of Small Entity

SBREFA incorporates the definition for "small entity" that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR Part 121) for those businesses to be covered by agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. Also, "small governmental jurisdictions" that serve populations of 50,000 or less are small entities. (Commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation for small governmental jurisdictions, or small entities.) An agency may establish one or more other definitions for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities.

Pursuant to its statutory authority, the Small Business Administration (SBA) promulgated regulations that clarify the term "small entity" by industry, using number of employees or annual income as criteria. *See* 13 CFR 121.101–108 and 201. In the SBA regulations, main line railroads with 1,500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. The SBA regulations do not address hazardous material shippers in the railroad industry.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC) developed a classification system for freight railroads as Class I, II, or III, based on annual operating revenue. (The detailed, qualifying criteria for these classifications are set forth in 49 CFR part 1201.) The Department of Transportation's Surface Transportation Board, which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify entities by size. The SBA recognized this classification system as a sound one, and concurs with FRA's decision to continue using it, provided the public has notice of the classification system in use for any particular proceeding and an opportunity to comment on it.

As explained in detail in the "Interim Policy Statement Concerning Small

Entities Subject to the Railroad Safety Laws," published August 11, 1997 at 62 Fed. Reg. 43024, FRA has decided to define "small entity," on an interim basis, to include only those entities whose revenues would bring them within the Class III definition. This definition is the basis of the small business analysis for this proceeding.

Effect of This Rule on Small Businesses

All of the small entities directly affected by this rule are short line railroads. They are represented by the ASLRA who participated in the Track Working Group. The ASLRA was not, of course, involved in developing those standards which would not apply to any of their members, for example, the high speed track standards. The ASLRA supported the NPRM as drafted by the Track Working Group and recommended by the RSAC. All of the individual short line railroads that participated directly in the Track Working Group agreed to the proposal as well. In addition, the ASLRA and several short line railroads participated in all of the workshops hosted by FRA in 1993 following the publication of the ANPRM in this proceeding.

Almost every change in this final rule will enhance safety. Some provisions serve to reduce burdens, but in most cases, the burden is increased, particularly for the railroads. However, the Track Working Group considered the impact on small entities at every step, and introduced phase-in periods to mitigate the effect on small entities by the crosstie standard and the new gage standard for excepted track. While there is no clear way to measure the net effect of the final rule, it is likely the net benefit will be positive. The RSAC process was intended to take rulemaking into areas where data is sparse, and the end product, as might be expected, is difficult to quantify.

FRA did not quantify the estimated annual cost to the average firm, nor compare it to average annual revenue or profits, because the relative impact of the final rule varies more by condition of the track owned by a railroad than by the size of the railroad. Railroads with better, safer track will face proportionally much smaller effects from the final rule. The average annual total cost is likely to be less than $2 million per year for the entire railroad industry, with more than half of the cost borne by large railroads. The average burden per small railroad is likely therefore to be less than $1,500 per year. The burden will be greater on railroads with more track, and lower on railroads with less.

No provision included in this final rule will have a very adverse impact on the affected firms. A proposal which would have a large beneficial impact is the GRMS as an alternative to the crosstie standard. (*See* previous discussion in the preamble to this notice.) Some provisions which at first impression seem to have a significant impact, such as an increase in the number of required crossties, in fact will have little impact.

For example, this final rule includes an increase in the number of crossties required on curved track. In a worst case, about 30 percent of the Class 1 track of a very small entity might not comply with the requirement for six ties per 39-foot section of rail. Of this, 80 percent would not comply with geometry standards or standards affecting effective distribution of ties, which likely would be fixed by adding enough ties comply or exceed the standard. The remaining track, about six percent of all track, would not have sufficient ties to meet the revised standard. Some of this track would not meet the current standard. One tie per section for six percent of the track would be slightly more than eight ties per mile. At a cost of $40 per tie installed, this would mean a cost of about $320 per mile, for a worst case. A railroad with track this poor would have presented a serious safety hazard in the first place, and would not be representative. Most small railroads currently exceed the revised standard. A more detailed description of the impact is contained in the complete IRFA, found in the docket for this proceeding.

Throughout the discussions of the Track Working Group, and in the NPRM for this proceeding, FRA asked for additional information on benefits and costs. On occasion, participants shared such data with FRA. For example, the ASLRA which conducted a survey of its members to analyze the potential impact of increasing the number of crossties required in a 39-foot segment of track. At other times, data were not shared with FRA, and the agency was unable to determine whether the information was withheld for proprietary reasons or whether it simply was not available. However, by voting in the Track Working Group and in the RSAC to accept a provision in the proposed rule, often as part of a compromise with other interested parties, the parties' acceptance of a package of compromises revealed that they preferred the compromise position to a position of no compromise (the existing rule with the possibility of some other rulemaking activity). This implies that the burdens which rail management representatives accepted likely were not significant. Details of provisions that will have little or no impact may be found in the complete IRFA, found in the docket for this proceeding.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The FRA has analyzed the existing burden, and the burden under the final rule analyzed here. According to this analysis, the total annual burden increases from about $42,000,000 to about $53,000,000. However, the overwhelming majority of this apparent increase is due to a change in FRA's assumption regarding wages. In an earlier analysis under the Paperwork Reduction Act, the FRA had assumed a wage of $22 per hour for recording track inspections, but in the analysis of this final rule, the FRA used an assumed wage of $30 per hour. In addition, the number of railroads calculated by FRA to be covered by the regulations increased from 500 to 680. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.4—Excepted Track:					
—Designation of track as excepted	160 railroads	32 designations	15 minutes	8 hours	$240
—Notification to FRA about removal of excepted track.	160 railroads	40 notifications	10 minutes	7 hours	210
213.5—Responsibility of track owners	620 railroads	16 notifications	8 hours	120 hours	3,600
213.7—Designation of qualified persons to supervise certain renewals and inspect track:					

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Designations (fully qualified)	620 railroads	1,500 names	10 minutes	250 hours	7,500
—Designations (partially qualified)	31 railroads	300 names	10 minutes	50 hours	1,500
—Notification and dispatched to location.	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.17—Waivers	620 railroads	4 petitions	24 hours	96 hours	2,880
213.57—Curves, elevation and speed limitations:					
—Request to FRA for approval	620 railroads	3 requests	40 hours	120 hours	3,600
—Notification to FRA with written consent of other affected track owners.	620 railroads	2 notifications	45 minutes	1.5 hours	45
—Test plan	1 railroad	6 plans	16 hours	96 hours	2,880
213.119—Continuous welded rail (CWR), general:					
—Written procedures	110 railroads	110 procedures	40 hrs. Class I RRs	2,000 hours	60,000
—Training program	110 railroads	110 programs	16 hrs. Class II RRs	1,200 hours	36,000
—Recordkeeping	110 railroads	4,500 records	40 hrs Class I RRs 8 hrs Class II RRs 10 minutes	750 hours	22,500
213.122—Torch cut rail	20 railroads	2,000 records	5 minutes	167 hours	5,010
213.233—Track inspections	620 railroads	2,500 inspections	1 minute	41.5 hours	1,079
213.237—Inspection of rail	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.241—Inspection records	620 railroads	Varies	Varies	1,763,991 hours	52,919,730
213.303—Responsibility for Compliance	2 railroads	1 petition	8 hours	8 hours	240
213.305—Designation of qualified individuals; general qualifications:					
—Designations (fully qualified)	2 railroads	150 qualifications	10 minutes	25 hours	750
—Designations (partially qualified)	2 railroads	15 qualifications	10 minutes	2.5 hours	75
213.317—Waivers	2 railroads	1 petition	24 hours	24 hours	720
213.329—Curves, elevation and speed limitations:					
—FRA approval of qualified equipment and higher curving speeds.	2 railroads	1 notification	40 hours	40 hours	1,200
—Written notification to FRA with written consent of other affected track owners.	2 railroads	1 notification	45 minutes	45 minutes	22.50
213.333—Automated Vehicle Inspection System					
—Track Geometry Measurement System.	3 railroads	18 reports	20 hours	360 hours	9,360
—Track/Vehicle Performance Measurement System.					
—Written procedures	1 railroad	1 program	8 hours	8 hours	240
—Copies of most recent exception printouts.	2 railroads	13 printouts	20 hours	260 hours	7,800
213.339—Inspection of rail in service	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.341—Initial inspection of new rail and welds					
—Mill inspection	2 railroads	1 report	8 hours	8 hours	240
—Welding plant inspection	2 railroads	2 reports	8 hours	16 hours	480
—Inspection of field welds	2 railroads	200 records	20 minutes	67 hours	2,010
—Marking of defective rail	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.343—Continuous welded rail (CWR):					
—Written procedures	2 railroads	2 procedures	40 hours	80 hours	2,400
—Training program	2 railroads	2 programs	40 hours	80 hours	2,400
—Recordkeeping	2 railroads	200 records	10 minutes	33 hours	990
213.345—Vehicle qualification testing	1 railroad	1 report	16 hours	16 hours	480
213.347—Automotive or railroad crossings at grade					
—Protection plans	1 railroad	2 plans	8 hours	16 hours	480
213.353—Turnouts and crossovers, generally.	1 railroad	1 guidebook	40 hours	40 hours	1,200
213.361—Right of Way	1 railroad	1 plan	40 hours	40 hours	1,200
213.369—Inspection records:					
—Record of inspection	2 railroads	500 records	1 minute	8 hours	208
—Designation of location where record should be maintained.	2 railroads	2 designations	15 minutes	30 minutes	15

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4 hours	104

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Mark Weihofen at 202–632–3303.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The information collection requirements contained in this rule have been approved under OMB control number 2130–0010.

Environmental Impact

FRA has evaluated these track safety regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. These regulations and this statement of policy meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA revises part 213, title 49, Code of Federal Regulations as follows:

PART 213—TRACK SAFETY STANDARDS

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213.343 Continuous welded rail (CWR).
213.345 Vehicle qualification testing.
213.347 Automotive or railroad crossings at grade.
213.349 Rail end mismatch.
213.351 Rail joints.
213.352 Torch cut rail.
213.353 Turnouts, crossovers, and lift rail assemblies or other transition devices on moveable bridges.
213.355 Frog guard rails and guard faces; gage.
213.357 Derails.
213.359 Track stiffness.
213.361 Right of way.
213.365 Visual inspections.
213.367 Special inspections.
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Appendix A to Part 213—Maximum Allowable Curving Speeds
Appendix B to Part 213—Schedule of Civil Penalties

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461; and 49 CFR 1.49(m).

Subpart A—General

§ 213.1 Scope of part.

(a) This part prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. The requirements prescribed in this part apply to specific track conditions existing in isolation. Therefore, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide for safe operations over that track. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(b) Subparts A through F apply to track Classes 1 through 5. Subpart G and 213.2, 213.3, and 213.15 apply to track over which trains are operated at speeds in excess of those permitted over Class 5 track.

§ 213.2 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the

same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and that does not impose an unreasonable burden on interstate commerce.

§ 213.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all standard gage track in the general railroad system of transportation.

(b) This part does not apply to track—

(1) Located inside an installation which is not part of the general railroad system of transportation; or

(2) Used exclusively for rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

§ 213.4 Excepted track.

A track owner may designate a segment of track as excepted track provided that—

(a) The segment is identified in the timetable, special instructions, general order, or other appropriate records which are available for inspection during regular business hours;

(b) The identified segment is not located within 30 feet of an adjacent track which can be subjected to simultaneous use at speeds in excess of 10 miles per hour;

(c) The identified segment is inspected in accordance with 213.233(c) and 213.235 at the frequency specified for Class 1 track;

(d) The identified segment of track is not located on a bridge including the track approaching the bridge for 100 feet on either side, or located on a public street or highway, if railroad cars containing commodities required to be placarded by the Hazardous Materials Regulations (49 CFR part 172), are moved over the track; and

(e) The railroad conducts operations on the identified segment under the following conditions:

(1) No train shall be operated at speeds in excess of 10 miles per hour;

(2) No occupied passenger train shall be operated;

(3) No freight train shall be operated that contains more than five cars required to be placarded by the Hazardous Materials Regulations (49 CFR part 172); and

(4) The gage on excepted track shall not be more than 4 feet 10¼ inches. This paragraph (e)(4) is applicable September 21, 1999.

(f) A track owner shall advise the appropriate FRA Regional Office at least 10 days prior to removal of a segment of track from excepted status.

§ 213.5 Responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall—

(1) Bring the track into compliance;

(2) Halt operations over that track; or

(3) Operate under authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, subject to conditions set forth in this part.

(b) If an owner of track to which this part applies designates a segment of track as "excepted track" under the provisions of § 213.4, operations may continue over that track without complying with the provisions of subparts B, C, D, and E of this part, unless otherwise expressly stated.

(c) If an owner of track to which this part applies assigns responsibility for the track to another person (by lease or otherwise), written notification of the assignment shall be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but shall be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this part; and

(6) A statement signed by the assignee acknowledging the assignment to him of responsibility for purposes of compliance with this part.

(d) The Administrator may hold the track owner or the assignee or both responsible for compliance with this part and subject to penalties under § 213.15.

(e) A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect.

(f) When any person, including a contractor for a railroad or track owner, performs any function required by this part, that person is required to perform that function in accordance with this part.

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track under traffic conditions. Each person designated shall have—

(1) At least—

(i) 1 year of supervisory experience in railroad track maintenance; or

(ii) A combination of supervisory experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance;

(2) Demonstrated to the owner that he or she—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this part.

(b) Each track owner to which this part applies shall designate qualified persons to inspect track for defects. Each person designated shall have—

(1) At least—

(i) 1 year of experience in railroad track inspection; or

(ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection;

(2) Demonstrated to the owner that he or she—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

(c) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a) and (b) of this section, but with at least one

year of maintenance-of-way or signal experience, may pass trains over broken rails and pull aparts provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alinement, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is adequate for initial training;

(2) The person deems it safe and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.7 of this part are notified and dispatched to the location promptly for the purpose of authorizing movements and effecting temporary or permanent repairs.

(d) With respect to designations under paragraphs (a), (b), and (c) of this section, each track owner shall maintain written records of—

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241. These records shall be kept available for inspection or copying by the Federal Railroad Administration during regular business hours.

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§ 213.57(b), 213.59(a), 213.113(a), and 213.137(b) and (c), the following maximum allowable operating speeds apply—

[In miles per hour]

Over track that meets all of the requirements prescribed in this part for—	The maximum allowable operating speed for freight trains is—	The maximum allowable operating speed for passenger trains is—
Excepted track	10	N/A
Class 1 track	10	15
Class 2 track	25	30
Class 3 track	40	60
Class 4 track	60	80
Class 5 track	80	90

(b) If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements for Class 1 track, operations may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

§ 213.11 Restoration or renewal of track under traffic conditions.

If during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work on the track shall be under the continuous supervision of a person designated under § 213.7(a) who has at least one year of supervisory experience in railroad track maintenance, and subject to any limiting conditions specified by such person. The term "continuous supervision" as used in this section means the physical presence of that person at a job site. However, since the work may be performed over a large area, it is not necessary that each phase of the work be done under the visual supervision of that person.

§ 213.13 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this part, the amount of rail movement, if any, that occurs while the track is loaded must be added to the measurements of the unloaded track.

§ 213.15 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. "Person" means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and anyone held by the Federal Railroad Administrator to be responsible under § 213.5(d) or § 213.303(c). Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 213.17 Waivers.

(a) Any owner of track to which this part applies, or other person subject to this part, may petition the Federal Railroad Administrator for a waiver from any or all requirements prescribed in this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver is in the public interest and is consistent with railroad safety, the Administrator may grant the exemption subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

213.19 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are assigned OMB control number 2130–0010.

(b) The information collection requirements are found in the following sections: §§ 213.4, 213.5, 213.7, 213.17, 213.57, 213.119, 213.122, 213.233, 213.237, 213.241, 213.303, 213.305, 213.317, 213.329, 213.333, 213.339, 213.341, 213.343, 213.345, 213.353, 213.361, 213.369.

Subpart B—Roadbed

§ 213.31 Scope.

This subpart prescribes minimum requirements for roadbed and areas immediately adjacent to roadbed.

§ 213.33 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals:

(1) Along the right-of-way, and

(2) At highway-rail crossings; (This paragraph (b)(2) is applicable September 21, 1999.)

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Subpart C—Track Geometry

§ 213.51 Scope.

This subpart prescribes requirements for the gage, alinement, and surface of track, and the elevation of outer rails and speed limitations for curved track.

§ 213.53 Gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table—

Class of track	The gage must be at least—	But not more than—
Excepted track	N/A	4′10¼″.
Class 1 track	4′8″	4′10″.
Class 2 and 3 track	4′8″	4′9¾″.
Class 4 and 5 track	4′8″	4′9½″.

§ 213.55 Alinement.

Alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62-foot line[1] may not be more than—(inches)	The deviation of the mid-ordinate from a 31-foot chord[2] may not be more than—(inches)	The deviation of the mid-ordinate from a 62-foot chord[2] may not be more than—(inches)
Class 1 track	5	[3] N/A	5
Class 2 track	3	[3] N/A	3
Class 3 track	1¾	1¼	1¾
Class 4 track	1½	1	1½
Class 5 track	¾	½	⅝

[1] The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail shall be used for the full length of that tangential segment of track.

[2] The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

[3] N/A—Not Applicable.

§ 213.57 Curves; elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2 and 7 inches on Classes 3 through 5. Except as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail. (The first sentence of paragraph (a) is applicable September 21, 1999.)

(b)(1) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

(2) Table 1 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(c)(1) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula—

[1] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve .

[2] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

$$V_{max} = \sqrt{\frac{E_a + 4}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

(2) Table 2 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by the Federal Railroad Administration and the railroad demonstrates that:

(1) When positioned on a track with a uniform 4-inch superelevation, the roll angle between the floor of the equipment and the horizontal does not exceed 5.7 degrees; and

(2) When positioned on a track with a uniform 6 inch superelevation, no wheel of the equipment unloads to a value of 60 percent of its static value on perfectly level track, and the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees.

(3) The track owner shall notify the Federal Railroad Administrator no less than 30 calendar days prior to the proposed implementation of the higher curving speeds allowed under the formula in paragraph (c) of this section. The notification shall be in writing and shall contain, at a minimum, the following information—

(i) A complete description of the class of equipment involved, including schematic diagrams of the suspension systems and the location of the center of gravity above top of rail;

(ii) A complete description of the test procedure[3] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(iii) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment; and

(iv) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(e) A track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.

(f) Equipment presently operating at curving speeds allowed under the formula in paragraph (c) of this section, by reason of conditional waivers granted by the Federal Railroad Administration, shall be considered to have successfully complied with the requirements of paragraph (d) of this section.

(g) A track owner or a railroad operating above Class 5 speeds, may request approval from the Federal Railroad Administrator to operate specified equipment at a level of cant deficiency greater than four inches in accordance with § 213.329(c) and (d) on curves in Class 1 through 5 track which are contiguous to the high speed track provided that—

(1) The track owner or railroad submits a test plan to the Federal Railroad Administrator for approval no less than thirty calendar days prior to any proposed implementation of the higher curving speeds. The test plan shall include an analysis and determination of carbody acceleration safety limits for each vehicle type which indicate wheel unloading of 60 percent in a steady state condition and 80 percent in a transient (point by point) condition. Accelerometers shall be laterally-oriented and floor-mounted near the end of a representative vehicle of each type;

(2) Upon FRA approval of a test plan, the track owner or railroad conducts incrementally increasing train speed test runs over the curves in the identified track segment(s) to demonstrate that wheel unloading is within the limits prescribed in paragraph (g)(1) of this section;

(3) Upon FRA approval of a cant deficiency level, the track owner or railroad inspects the curves in the identified track segment with a Track Geometry Measurement System (TGMS) qualified in accordance with § 213.333 (b) through (g) at an inspection frequency of at least twice annually with not less than 120 days interval between inspections; and

(4) The track owner or railroad operates an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service or a portable device that monitors on-board instrumentation on trains over the curves in the identified track segment at the revenue speed profile at a frequency of at least once every 90 days with not less than 30 days interval between inspections. The instrumented car or the portable device shall monitor a laterally-oriented accelerometer placed near the end of the vehicle at the floor level. If the carbody lateral acceleration measurement exceeds the safety limits prescribed in paragraph (g)(1), the railroad shall operate trains at curving speeds in accordance with paragraph (b) or (c) of this section; and

(5) The track owner or railroad shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (g)(3) and (4) of this section.

§ 213.59 Elevation of curved track; runoff.

(a) If a curve is elevated, the full elevation shall be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable operating speed for that curve under § 213.57(b).

(b) Elevation runoff shall be at a uniform rate, within the limits of track surface deviation prescribed in § 213.63, and it shall extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

§ 213.63 Track surface.

Each owner of the track to which this part applies shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The runoff in any 31 feet of rail at the end of a raise may not be more than.	3½	3	2	1½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	3	2¾	2¼	2	1¼

[3] The test procedure may be conducted in a test facility whereby all the wheels on one side (right or left) of the equipment are alternately raised and lowered by 4 and 6 inches and the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the equipment has been rotated.

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than* [1, 2]	3	2¼	2	1¾	1½
*Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	2	1¾	1¼	1	¾

[1] Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches. (Footnote 1 is applicable December 21, 1999.)

[2] However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote. (Footnote 2 is applicable September 21, 1999.)

Subpart D—Track Structure

§ 213.101 Scope.

This subpart prescribes minimum requirements for ballast, crossties, track assembly fittings, and the physical conditions of rails.

§ 213.103 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will —

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alinement.

§ 213.109 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.53(b);

(ii) Maintain surface within the limits prescribed in § 213.63; and

(iii) Maintain alinement within the limits prescribed in § 213.55.

(2) The minimum number and type of crossties specified in paragraphs (c) and (d) of this section effectively distributed to support the entire segment; and

(3) At least one crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (f) of this section.

(c) Each 39 foot segment of: Class 1 track shall have five crossties; Classes 2 and 3 track shall have eight crossties; and Classes 4 and 5 track shall have 12 crossties, which are not:

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally more than ½ inch relative to the crossties; or

(4) Cut by the tie plate through more than 40 percent of a ties' thickness.

(d) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table (this paragraph (d) is applicable September 21, 2000)

Class of track	Tangent track and curves ≤2 degrees	Turnouts and curved track over 2 degrees
Class 1 track	5	5
Class 2 track	8	9
Class 3 track	8	10
Class 4 and 5 track	12	14

(e) Crossties counted to satisfy the requirements set forth in the table in paragraph (d) of this section shall not be—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally ½ inch relative to the crossties; or

(4) Cut by the tie plate through more than 40 percent of a crosstie's thickness this paragraph (e) is applicable September 21, 2000.

(f) Class 1 and Class 2 track shall have one crosstie whose centerline is within 24 inches of each rail joint location, and Classes 3 through 5 track shall have one crosstie whose centerline is within 18 inches of each rail joint location or, two crossties whose centerlines are within 24 inches either side of each rail joint location. The relative position of these ties is described in the following diagrams:

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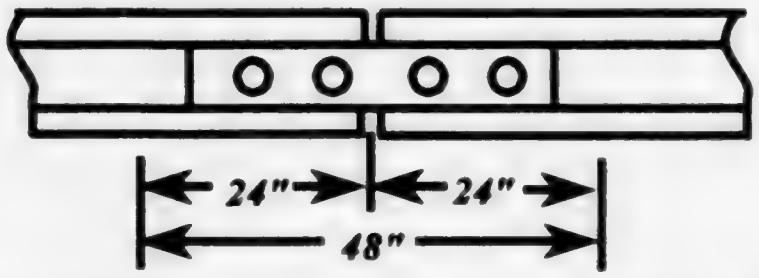
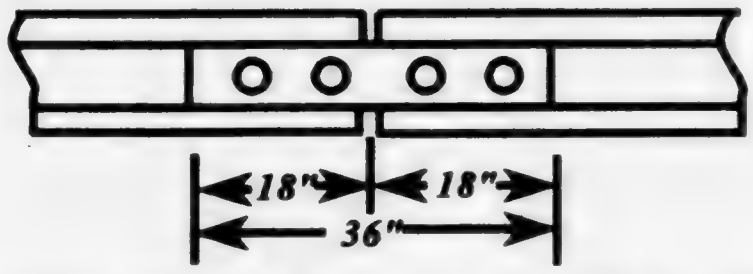
Classes 1 and 2

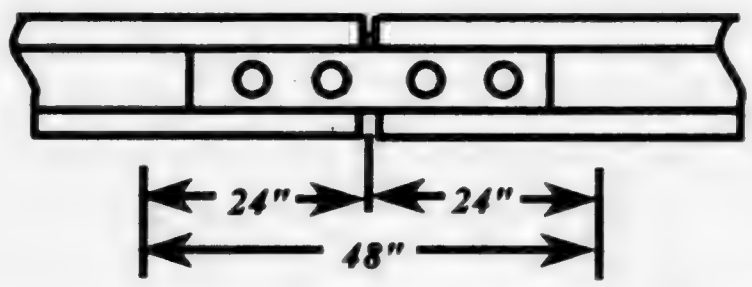


Each rail joins in Classes 1 and 2 track shall be supported by at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 48" shown above.

Classes 3 through 5



Each rail joins in Classes 3 through 5 track shall be supported by either at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 36" shown above, or:



Two crossties, one on each side of the rail joint, whose centerlines are within 24" of the rail joint location shown above.

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(g) For track constructed without crossties, such as slab track, track connected directly to bridge structural components and track over servicing pits, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

§ 213.113 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated.

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture			25	5	C.
Engine burn fracture			80	25	D.

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Defective weld			100	80	[A2] or [E and H].
				100	[A] or [E and H].
Horizontal split head	1	2			H and F.
Vertical split head	2	4			I and G.
Split web	4				B.
Piped rail	[1]	[1]	[1]		A.
Head web separation					
	½	1			H and F.
Bolt hole crack	1	1½			H and G.
	1½				B.
	[1]	[1]	[1]		A.
Broken base	1	6			D.
	6				[A] or [E and I].
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth ≥ ⅜ and Length ≥ 8.				H.

[1] Break out in rail head.

Notes

A. Assign person designated under § 213.7 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.7 to make visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under § 213.237, and defects are discovered in Classes 3 through 5 which require remedial action C, the operating speed shall be limited to 50 m.p.h., or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

E. Apply joint bars to defect and bolt in accordance with § 213.121(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over defective rail to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken base* means any break in the base of the rail.

(8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary break* means a partial or complete break in which there is no sign

of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.

(14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ 213.115 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following—	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 1 track	1/4	1/4
Class 2 track	1/4	3/16
Class 3 track	3/16	3/16
Class 4 and 5 track	1/8	1/8

§ 213.119 Continuous welded rail (CWR); general.

Each track owner with track constructed of CWR shall have in effect and comply with written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration by December 21, 1998. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.7 of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55 of this part. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/kinky rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.121 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) In the case of conventional jointed track, each rail shall be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.

(e) In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.

(f) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this paragraph do not apply. Those locations when over 400 feet in length, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this part.

(g) No rail shall have a bolt hole which is torch cut or burned in Classes 2 through 5 track. For Class 2 track, this paragraph (g) is applicable September 21, 1999.

(h) No joint bar shall be reconfigured by torch cutting in Classes 3 through 5 track.

§ 213.122 Torch cut rail.

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used in Classes 3 through 5 track. When a rail end is torch cut in emergency situations, train speed over that rail end shall not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends in Classes 3 through 5 track the following shall apply—

(1) Within one year of September 21, 1998, all torch cut rail ends in Class 5 track shall be removed;

(2) Within two years of September 21, 1998, all torch cut rail ends in Class 4 track shall be removed; and

(3) Within one year of September 21, 1998, all torch cut rail ends in Class 3 track over which regularly scheduled passenger trains operate, shall be inventoried by the track owner.

(b) Following the expiration of the time limits specified in paragraphs (a)(1), (2), and (3) of this section, any torch cut rail end not removed from Classes 4 and 5 track, or any torch cut rail end not inventoried in Class 3 track over which regularly scheduled passenger trains operate, shall be removed within 30 days of discovery. Train speed over that rail end shall not exceed the maximum allowable for Class 2 track until removed.

§ 213.123 Tie plates.

(a) In Classes 3 through 5 track where timber crossties are in use there shall be tie plates under the running rails on at least eight of any 10 consecutive ties.

(b) In Classes 3 through 5 track no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate. This paragraph (b) is applicable September 21, 1999.)

§ 213.127 Rail fastening systems.

Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b). Each component of each such system shall be evaluated to determine whether gage is effectively being maintained.

§ 213.133 Turnouts and track crossings generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) Classes 3 through 5 track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. For Class 3 track, this paragraph (b) is applicable September 21, 1999.)

(c) Each flangeway at turnouts and track crossings shall be at least 1½ inches wide.

§ 213.135 Switches.

(a) Each stock rail must be securely seated in switch plates, but care shall be used to avoid canting the rail by overtightening the rail braces.

(b) Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail. Broken or cracked switch point rails will be subject to the requirements of § 213.113, except that where remedial actions C, D, or E require the use of joint bars, and joint bars cannot be placed due to the physical configuration of the switch, remedial action B will govern, taking into account any added safety provided by the presence of reinforcing bars on the switch points.

(c) Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

(d) The heel of each switch rail shall be secure and the bolts in each heel shall be kept tight.

(e) Each switch stand and connecting rod shall be securely fastened and operable without excessive lost motion.

(f) Each throw lever shall be maintained so that it cannot be operated with the lock or keeper in place.

(g) Each switch position indicator shall be clearly visible at all times.

(h) Unusually chipped or worn switch points shall be repaired or replaced. Metal flow shall be removed to insure proper closure.

(i) Tongue & Plain Mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.

§ 213.137 Frogs.

(a) The flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1⅜ inches, or less than 1½ inches on Classes 2 through 5 track.

(b) If a frog point is chipped, broken, or worn more than five-eighths inch down and 6 inches back, operating speed over the frog shall not be more than 10 m.p.h..

(c) If the tread portion of a frog casting is worn down more than three-eighths inch below the original contour, operating speed over that frog shall not be more than 10 m.p.h..

(d) Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.

§ 213.139 Spring rail frogs.

(a) The outer edge of a wheel tread shall not contact the gage side of a spring wing rail.

(b) The toe of each wing rail shall be solidly tamped and fully and tightly bolted.

(c) Each frog with a bolt hole defect or head-web separation shall be replaced.

(d) Each spring shall have compression sufficient to hold the wing rail against the point rail.

(e) The clearance between the holddown housing and the horn shall not be more than one-fourth of an inch.

§ 213.141 Self-guarded frogs.

(a) The raised guard on a self-guarded frog shall not be worn more than three-eighths of an inch.

(b) If repairs are made to a self-guarded frog without removing it from service, the guarding face shall be restored before rebuilding the point.

§ 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line[2], may not be less than—	Guard face gage The distance between guard lines[1], measured across the track at right angles to the gage line[2], may not be more than—
Class 1 track	4′ 6⅛″	4′ 5¼″
Class 2 track	4′ 6¼″	4′ 5⅛″
Class 3 and 4 track	4′ 6⅜″	4′ 5⅛″
Class 5 track	4′ 6½″	4′ 5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line ⅝ inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

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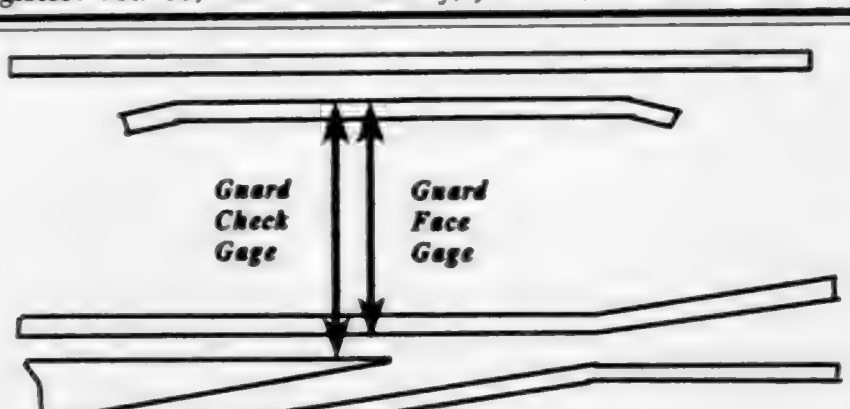

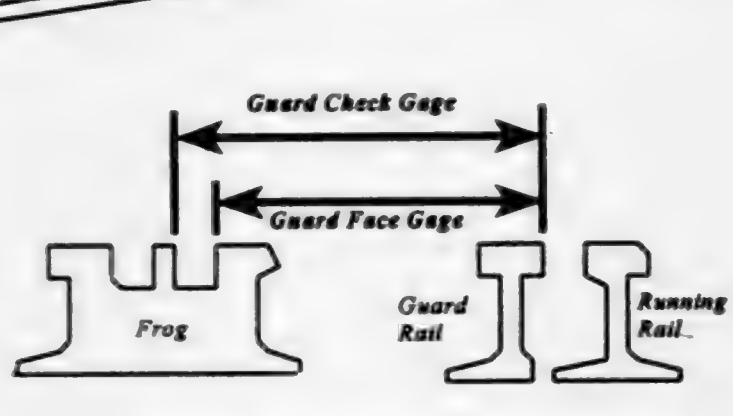

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Subpart E—Track Appliances and Track-Related Devices

§ 213.201 Scope.

This subpart prescribes minimum requirements for certain track appliances and track-related devices.

§ 213.205 Derails.

(a) Each derail shall be clearly visible.

(b) When in a locked position, a derail shall be free of lost motion which would prevent it from performing its intended function.

(c) Each derail shall be maintained to function as intended.

(d) Each derail shall be properly installed for the rail to which it is applied. (This paragraph (d) is applicable September 21, 1999.)

Subpart F—Inspection

§ 213.231 Scope.

This subpart prescribes requirements for the frequency and manner of inspecting track to detect deviations from the standards prescribed in this part.

§ 213.233 Track inspections.

(a) All track shall be inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.7.

(b) Each inspection shall be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection shall be made in accordance with the following schedule—

Class of track	Type of track	Required frequency
Excepted track and Class 1, 2, and 3 track.	Main track and sidings	Weekly with at least 3 calendar days interval between inspections, or before use, if the track is used less than once a week, or twice weekly with at least 1 calendar day interval between inspections, if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.
Excepted track and Class 1, 2, and 3 track.	Other than main track and sidings	Monthly with at least 20 calendar days interval between inspections.

Class of track	Type of track	Required frequency
Class 4 and 5 track		Twice weekly with at least 1 calendar day interval between inspections.

(d) If the person making the inspection finds a deviation from the requirements of this part, the inspector shall immediately initiate remedial action.

Note to § 213.233: Except as provided in paragraph (b) of this section, no part of this section will in any way be construed to limit the inspector's discretion as it involves inspection speed and sight distance.

§ 213.235 Inspection of switches, track crossings, and lift rail assemblies or other transition devices on moveable bridges.

(a) Except as provided in paragraph (c) of this section, each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device shall be inspected on foot at least monthly.

(b) Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every 3 month period.

(c) In the case of track that is used less than once a month, each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device shall be inspected on foot before it is used.

§ 213.237 Inspection of rail.

(a) In addition to the track inspections required by § 213.233, a continuous search for internal defects shall be made of all rail in Classes 4 through 5 track, and Class 3 track over which passenger trains operate, at least once every 40 million gross tons (mgt) or once a year, whichever interval is shorter. On Class 3 track over which passenger trains do not operate such a search shall be made at least once every 30 mgt or once a year, whichever interval is longer. (This paragraph (a) is applicable January 1, 1999.

(b) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail shall be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under paragraph (a) of this section. (This paragraph (d) is not retroactive to tests performed prior to September 21, 1998.

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time or tonnage limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.239 Special inspections.

In the event of fire, flood, severe storm, or other occurrence which might have damaged track structure, a special inspection shall be made of the track involved as soon as possible after the occurrence and, if possible, before the operation of any train over that track.

§ 213.241 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Each record of an inspection under §§ 213.4, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of records which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.237(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data;

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part shall be made available for inspection and copying by the Federal Railroad Administration at the locations specified in paragraph (b) of this section; and

(7) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections.

Subpart G—Train Operations at Track Classes 6 and Higher

§ 213.301 Scope of subpart.

This subpart applies to all track used for the operation of trains at a speed greater than 90 m.p.h. for passenger equipment and greater than 80 m.p.h. for freight equipment.

§ 213.303 Responsibility for compliance.

(a) Any owner of track to which this subpart applies who knows or has notice that the track does not comply with the requirements of this subpart, shall—

(1) Bring the track into compliance; or

(2) Halt operations over that track.

(b) If an owner of track to which this subpart applies assigns responsibility for the track to another person (by lease or otherwise), notification of the assignment shall be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but shall be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this subpart;

(6) A statement signed by the assignee acknowledging the assignment to that person of responsibility for purposes of compliance with this subpart.

(c) The Administrator may hold the track owner or the assignee or both responsible for compliance with this subpart and subject to the penalties under § 213.15.

(d) When any person, including a contractor for a railroad or track owner, performs any function required by this part, that person is required to perform that function in accordance with this part.

§ 213.305 Designation of qualified individuals; general qualifications.

Each track owner to which this subpart applies shall designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements prescribed in this subpart. Each individual, including a contractor or an employee of a contractor who is not a railroad employee, designated to:

(a) Supervise restorations and renewals of track shall meet the following minimum requirements:

(1) At least;

(i) Five years of responsible supervisory experience in railroad track maintenance in track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the supervision, restoration, and renewal of high speed track; or

(ii) A combination of at least one year of responsible supervisory experience in track maintenance in Class 4 or higher and the successful completion of a minimum of 80 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track; or

(iii) A combination of at least two years of experience in track maintenance in track Class 4 or higher and the successful completion of a minimum of 120 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track.

(2) Demonstrate to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Be authorized in writing by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(b) Inspect track for defects shall meet the following minimum qualifications:

(1) At least:

(i) Five years of responsible experience inspecting track in Class 4 or above and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the inspection of high speed track; or

(ii) A combination of at least one year of responsible experience in track inspection in Class 4 or above and the successful completion of a minimum of 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(iii) A combination of at least two years of experience in track maintenance in Class 4 or above and the successful completion of a minimum of 120 hours of specialized training in the inspection of high speed track provided by the employer or from a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(2) Demonstrate to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Be authorized in writing by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(c) Individuals designated under paragraphs (a) or (b) of this section that inspect continuous welded rail (CWR) track or supervise the installation, adjustment, and maintenance of CWR in accordance with the written procedures established by the track owner shall have:

(1) Current qualifications under either paragraph (a) or (b) of this section;

(2) Successfully completed a training course of at least eight hours duration specifically developed for the application of written CWR procedures issued by the track owner; and

(3) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(4) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successful completion of a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or it may be a computer file with the results of an interactive training course.

(d) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a), (b) and (c) of this section, but with at least one year of maintenance of way or

signal experience, may pass trains over broken rails and pull aparts provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alinement, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is adequate for initial training;

(2) The person deems it safe, and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.305 of this subpart are notified and dispatched to the location as soon as practicable for the purpose of authorizing movements and effectuating temporary or permanent repairs.

(e) With respect to designations under paragraphs (a), (b), (c) and (d) of this section, each track owner shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the track owner has determined a successful completion of that training course, including test scores or other qualifying results;

(3) Track inspections made by each individual as required by § 213.369. These records shall be made available for inspection and copying by the Federal Railroad Administration during regular business hours.

§ 213.307 Class of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§ 213.329, 213.337(a) and 213.345(c), the following maximum allowable operating speeds apply:

Over track that meets all of the requirements prescribed in this subpart for—	The maximum allowable operating speed for trains [1] is—
Class 6 track	110 m.p.h.
Class 7 track	125 m.p.h.
Class 8 track	160 m.p.h.[2]
Class 9 track	200 m.p.h.

[1] Freight may be transported at passenger train speeds if the following conditions are met:

(1) The vehicles utilized to carry such freight are of equal dynamic performance and have been qualified in accordance with Sections 213.345 and 213.329(d) of this subpart.

(2) The load distribution and securement in the freight vehicle will not adversely affect the dynamic performance of the vehicle. The axle loading pattern is uniform and does not exceed the passenger locomotive axle loadings utilized in passenger service operating at the same maximum speed.

(3) No carrier may accept or transport a hazardous material, as defined at 49 CFR 171.8, except as provided in Column 9A of the Hazardous Materials Table (49 CFR 172.101) for movement in the same train as a passenger-carrying vehicle or in Column 9B of the Table for movement in a train with no passenger-carrying vehicles.

[2] Operating speeds in excess of 150 m.p.h. are authorized by this part only in conjunction with a rule of particular applicability addressing other safety issues presented by the system.

(b) If a segment of track does not meet all of the requirements for its intended class, it is to be reclassified to the next lower class of track for which it does meet all of the requirements of this subpart. If a segment does not meet all of the requirements for Class 6, the requirements for Classes 1 through 5 apply.

§ 213.309 Restoration or renewal of track under traffic conditions.

(a) Restoration or renewal of track under traffic conditions is limited to the replacement of worn, broken, or missing components or fastenings that do not affect the safe passage of trains.

(b) The following activities are expressly prohibited under traffic conditions:

(1) Any work that interrupts rail continuity, e.g., as in joint bar replacement or rail replacement;

(2) Any work that adversely affects the lateral or vertical stability of the track with the exception of spot tamping an isolated condition where not more than 15 lineal feet of track are involved at any one time and the ambient air temperature is not above 95 degrees Fahrenheit; and

(3) Removal and replacement of the rail fastenings on more than one tie at a time within 15 feet.

§ 213.311 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this subpart, evidence of rail movement, if any, that occurs while the track is loaded shall be added to the measurements of the unloaded track.

§ 213.317 Waivers.

(a) Any owner of track to which this subpart applies may petition the Federal Railroad Administrator for a waiver from any or all requirements prescribed in this subpart.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by §§ 211.7 and 211.9 of this chapter.

(c) If the Administrator finds that a waiver is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

§ 213.319 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.321 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not —

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals:

(1) Along the right of way, and

(2) At highway-rail crossings;

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

§ 213.323 Track gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table:

Class of track	The gage must be at least—	But not more than—	The change of gage within 31 feet must not be greater than—
6	4'8"	4'9¼"	½"
7	4'8"	4'9¼"	½"
8	4'8"	4'9¼"	½"
9	4'8¼"	4'9¼"	½"

§ 213.327 Alinement.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points centered around that point and which are spaced according to the following table:

Chord length	Spacing
31'	7'9"
62'	15'6"
124'	31'0"

(b) For a single deviation, alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	½	¾	1½
7	½	½	1¼
8	½	½	¾
9	½	½	¾

(c) For three or more non-overlapping deviations from uniformity in track alinement occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the alinement of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	3/8	½	1
7	3/8	3/8	7/8
8	3/8	3/8	½
9	3/8	3/8	½

§ 213.329 Curves, elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be more than ½ inch lower than the inside rail.

(b) (1) The maximum allowable operating speed for each curve is determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches) [4].

D = Degree of curvature (degrees) [5].

3 = 3 inches of unbalance.

(2) Appendix A includes tables showing maximum allowable operating speeds computed in accordance with this formula for various elevations and degrees of curvature for track speeds greater than 90 m.p.h.

(c) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches) [4].

D = Degree of curvature (degrees) [5].

E_u = Unbalanced elevation (inches).

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by

[4] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve. If E_a exceeds 4 inches, the Vmax formula applies to the spirals on both ends of the curve.

[5] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

the Federal Railroad Administration and the railroad demonstrates that—

(1) When positioned on a track with uniform superelevation, E_u, reflecting the intended target cant deficiency, E_u, no wheel of the equipment unloads to a value of 60 percent or less of its static value on perfectly level track and, for passenger-carrying equipment, the roll angle between the floor of the vehicle and the horizontal does not exceed 5.7 degrees.

(2) When positioned on a track with a uniform 7-inch superelevation, no wheel unloads to a value less than 60% of its static value on perfectly level track and, for passenger-carrying equipment, the angle, measured about the roll axis, between the floor of the vehicle and the horizontal does not exceed 8.6 degrees.

(e) The track owner shall notify the Federal Railroad Administrator no less than thirty calendar days prior to any proposed implementation of the higher curving speeds allowed when the "E_u" term, above, will exceed three inches. This notification shall be in writing and shall contain, at a minimum, the following information:

(1) A complete description of the class of equipment involved, including schematic diagrams of the suspension system and the location of the center of gravity above top of rail;

(2) A complete description of the test procedure [6] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(3) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment;

(4) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(f) A track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment, may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.

§ 213.331 Track surface.

(a) For a single deviation in track surface, each owner of the track to which this subpart applies shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track			
	6 (inches)	7 (inches)	8 (inches)	9 (inches)
The deviation from uniform [1] profile on either rail at the midordinate of a 31-foot chord may not be more than	1	1	¾	½
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	1	1	1	¾
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¾	1½	1¼	1¼
The difference in crosslevel between any two points less than 62 feet apart may not be more than [2]	1½	1½	1½	1½

[1] Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement.
[2] However, to control harmonics on jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

(b) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the surface of the track within the limits prescribed for each deviation:

Track surface	Class of track			
	6 (inches)	7 (inches)	8 (inches)	9 (inches)
The deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not be more than	¾	¾	½	⅜
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	¾	¾	¾	½
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¼	1	⅞	⅞

§ 213.333 Automated vehicle inspection systems.

(a) For track Class 7, a qualifying Track Geometry Measurement System (TGMS) vehicle shall be operated at least twice within 120 calendar days with not less than 30 days between inspections. For track Classes 8 and 9, it shall be operated at least twice within 60 days with not less than 15 days between inspections.

(b) A qualifying TGMS shall meet or exceed minimum design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10,000 pounds per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval which shall not exceed 2 feet; and

(3) Calibration procedures and parameters are assigned to the system which assure that measured and recorded values accurately represent track conditions. Track geometry measurements recorded by the system shall not differ on repeated runs at the same site at the same speed more than 1/8 inch.

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters, at an interval of no more than every 2 feet,

[6] The test procedure may be conducted in a test facility whereby all wheels on one side (right or left) of the equipment are raised or lowered by six and then seven inches, the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the vehicle has been rotated.

which enables the system to determine compliance with: § 213.323, Track gage; § 213.327, Alinement; § 213.329, Curves; elevation and speed limitations; and § 213.331, Track surface.

(d) A qualifying TGMS shall be capable of producing, within 24 hours of the inspection, output reports that —

(1) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (c) of this section;

(2) Provide an exception report containing a systematic listing of all track geometry conditions which constitute an exception to the class of track over the segment surveyed.

(e) The output reports required under paragraph (c) of this section shall contain sufficient location identification information which enable field forces to easily locate indicated exceptions.

(f) Following a track inspection performed by a qualifying TGMS, the track owner shall, within two days after the inspection, field verify and institute remedial action for all exceptions to the class of track.

(g) The track owner shall maintain for a period of one year following an inspection performed by a qualifying TGMS, copy of the plot and the exception printout for the track segment involved, and additional records which:

(1) Specify the date the inspection was made and the track segment involved; and

(2) Specify the location, remedial action taken, and the date thereof, for all listed exceptions to the class.

(h) For track Classes 8 and 9, a qualifying Gage Restraint Measurement System (GRMS) shall be operated at least once annually with at least 180 days between inspections to continuously compare loaded track gage to unloaded gage under a known loading condition. The lateral capacity of the track structure shall not permit a gage widening ratio (GWR) greater than 0.5 inches.

(i) A GRMS shall meet or exceed minimum design requirements which specify that—

(1) Gage restraint shall be measured between the heads of the rail—

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10,000 pounds per rail;

(iii) Under an applied lateral load which provides for lateral/vertical load ratio of between 0.5 and 1.25 [7], and a load severity greater than 3,000 pounds but less than 8,000 pounds per rail. Load severity is defined by the formula—

$S = L - cV$

where:

S = Load severity, defined as the lateral load applied to the fastener system (pounds).

L = Actual lateral load applied (pounds).

c = Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

V = Actual vertical load applied (pounds).

(2) The measured gage value shall be converted to a gage widening ratio (GWR) as follows:

$$GWR = \frac{(LTG - UTG)}{L} \times 16{,}000$$

Where:

UTG=Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG=Loaded track gage measured by the GRMS vehicle at the point of application of the lateral load.

L=Actual lateral load applied (pounds).

(j) At least one vehicle in one train per day operating in Classes 8 and 9 shall be equipped with functioning on-board truck frame and carbody accelerometers. Each track owner shall have in effect written procedures for the notification of track personnel when on-board accelerometers on trains in Classes 8 and 9 indicate a possible track-related condition.

(k) For track Classes 7 , 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service or a portable device that monitors on-board instrumentation on trains shall be operated over the track at the revenue speed profile at a frequency of at least twice within 60 days with not less than 15 days between inspections. The instrumented car or the portable device shall monitor vertically and laterally oriented accelerometers placed near the end of the vehicle at the floor level. In addition, accelerometers shall be mounted on the truck frame. If the carbody lateral, carbody vertical, or truck frame lateral safety limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded.

(l) For track Classes 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service shall be operated over the track at the revenue speed profile annually with not less than 180 days between inspections. The instrumented car shall be equipped with functioning instrumented wheelsets to measure wheel/rail forces. If the wheel/rail force limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded.

(m) The track owner shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (k) and (l) of this section.

VEHICLE/TRACK INTERACTION SAFETY LIMITS

Parameter	Safety limit	Filter/window	Requirements
Wheel/Rail Forces [1]			
Single Wheel Vertical Load Ratio	≥0.1	5 ft	No wheel of the equipment shall be permitted to unload to less than 10% of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track. The vertical wheel load limit shall be increased by the amount of measurement error.
Single Wheel L/V Ratio	≤ tanδ—.5 1 + .5tanδ	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall be less than the safety limit calculated for the wheel's flange angle (δ).

[7] GRMS equipment using load combinations developing L/V ratios which exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

VEHICLE/TRACK INTERACTION SAFETY LIMITS

Parameter	Safety limit	Filter/window	Requirements
Net Axle L/V Ratio	≤ 0.5	5 ft	The net lateral force exerted by any axle on the track shall not exceed 50% of the static vertical load that the axle exerts on the track.
Truck Side L/V Ratio	≤ 0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall be less than 0.6.
Accelerations			
Carbody Lateral[2]	≤ 0.5 g peak-to-peak	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one second time period, shall not exceed 0.5 g.
Carbody Vertical[2]	≤ 0.6 g peak-to-peak	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period, shall not exceed 0.6 g.
Truck Lateral[3]	≤ 0.4 g RMS mean-removed.	10 Hz 2 sec window.	Truck hunting[4] shall not develop below the maximum authorized speed.

[1] The lateral and vertical wheel forces shall be measured with instrumented wheelsets with the measurements processed through a low pass filter with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples/sec.
[2] Carbody lateral and vertical accelerations shall be measured near the car ends at the floor level.
[3] Truck accelerations in the lateral direction shall be measured on the truck frame. The measurements shall be processed through a filter having a pass band of 0.5 to 10 Hz.
[4] Truck hunting is defined as a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4 g root mean square (mean-removed) for 2 seconds.

§ 213.334 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will—

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alinement.

§ 213.335 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.323(b);

(ii) Maintain surface within the limits prescribed in § 213.331; and

(iii) Maintain alinement within the limits prescribed in § 213.327.

(2) The minimum number and type of crossties specified in paragraph (c) of this section effectively distributed to support the entire segment; and

(3) Crossties of the type specified in paragraph (c) of this section that are(is) located at a joint location as specified in paragraph (e) of this section.

(c) For non-concrete tie construction, each 39 foot segment of Class 6 track shall have fourteen crossties; Classes 7, 8 and 9 shall have 18 crossties which are not—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally ⅜ inch relative to the crossties;

(4) Cut by the tie plate through more than 40 percent of a crosstie's thickness;

(5) Configured with less than 2 rail holding spikes or fasteners per tie plate; or

(6) So unable, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(d) For concrete tie construction, each 39 foot segment of Class 6 track shall have fourteen crossties, Classes 7, 8 and 9 shall have 16 crossties which are not—

(1) So deteriorated that the prestress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track;

(2) Configured with less than 2 fasteners on the same rail;

(3) So deteriorated in the vicinity of the rail fastener such that the fastener assembly may pull out or move laterally more than ⅜ inch relative to the crosstie;

(4) So deteriorated that the fastener base plate or base of rail can move laterally more than ⅜ inch relative to the crossties;

(5) So deteriorated that rail seat abrasion is sufficiently deep so as to cause loss of rail fastener toeload;

(6) Completely broken through; or

(7) So unable, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(e) Class 6 track shall have one non-defective crosstie whose centerline is within 18 inches of the rail joint location or two crossties whose center lines are within 24 inches either side of the rail joint location. Class 7, 8, and 9 track shall have two non-defective ties within 24 inches each side of the rail joint.

(f) For track constructed without crossties, such as slab track and track connected directly to bridge structural components, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

(g) In Classes 7, 8 and 9 there shall be at least three non-defective ties each side of a defective tie.

(h) Where timber crossties are in use there shall be tie plates under the running rails on at least nine of 10 consecutive ties.

(i) No metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ 213.337 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.305 shall determine whether or not the track may continue in use. If the person determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated—

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture Engine burn fracture Defective weld.			25	5	C.
			50	25	D.
			100	80	[A2] or [E and H.]
				100	[A] or [E and H].
Horizontal split head Vertical split head Split web Piped rail.	1	2			H and F.
	2	4			I and G.
	4				B.
Head web separation	(1)	(1)	(1)		A.
	½	1			H and F.
Bolt hole crack	1	1½			H and G.
	1½				A.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				[A] or [E and I].
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth ≥ 3/8 and				H.
	Length ≥ 8				

(1) Break out in rail head.

Notes:

A. Assign person designated under § 213.305 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.305 to make visual inspection. That person may authorize operation to continue without visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.305(a)(1)(i) or (ii). The operating speed cannot be over 30 m.p.h.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. Limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. When a search for internal rail defects is conducted under § 213.339 and defects are discovered which require remedial action C, the operating speed shall be limited to 50 m.p.h., for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.305(a)(1)(i) or (ii) until joint bars are applied; thereafter, limit speed to 50 m.p.h.

E. Apply joint bars to defect and bolt in accordance with § 213.351(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h.

I. Limit operating speed over defective rail to 30 m.p.h.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or

through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken base* means any break in the base of the rail.

(8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened rail* means a short length of rail, not a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint shall be reported as separate defects.

(14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ 213.339 Inspection of rail in service.

(a) A continuous search for internal defects shall be made of all rail in track at least twice annually with not less than 120 days between inspections.

(b) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail shall be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under § 213.337(a).

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.341 Initial inspection of new rail and welds.

The track owner shall provide for the initial inspection of newly manufactured rail, and for initial inspection of new welds made in either new or used rail. A track owner may demonstrate compliance with this section by providing for:

(a) *In-service inspection*—A scheduled periodic inspection of rail and welds that have been placed in service, if conducted in accordance with the provisions of § 213.339, and if conducted not later than 90 days after installation, shall constitute compliance with paragraphs (b) and (c) of this section;

(b) *Mill inspection*—A continuous inspection at the rail manufacturer's mill shall constitute compliance with the requirement for initial inspection of new rail, provided that the inspection equipment meets the applicable requirements specified in § 213.339. The track owner shall obtain a copy of the manufacturer's report of inspection and retain it as a record until the rail receives its first scheduled inspection under § 213.339;

(c) *Welding plant inspection*—A continuous inspection at a welding plant, if conducted in accordance with the provisions of paragraph (b) of this section, and accompanied by a plant operator's report of inspection which is retained as a record by the track owner, shall constitute compliance with the requirements for initial inspection of new rail and plant welds, or of new plant welds made in used rail; and

(d) *Inspection of field welds*—An initial inspection of field welds, either those joining the ends of CWR strings or those made for isolated repairs, shall be conducted not less than one day and not more than 30 days after the welds have been made. The initial inspection may be conducted by means of portable test equipment. The track owner shall retain a record of such inspections until the welds receive their first scheduled inspection under § 213.339.

(e) Each defective rail found during inspections conducted under paragraph (a) or (d) of this section shall be marked with highly visible markings on both sides of the web and base and the remedial action as appropriate under § 213.337 will apply.

§ 213.343 Continuous welded rail (CWR).

Each track owner with track constructed of CWR shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration within six months following the effective date of this rule. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when —

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral and/or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify —

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.305(c) of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records shall include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation of 5 inches measured with a 62-foot chord. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/kinky rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.345 Vehicle qualification testing.

(a) All rolling stock types which operate at Class 6 speeds and above shall be qualified for operation for their intended track classes in order to demonstrate that the vehicle dynamic response to track alinement and geometry variations are within acceptable limits to assure safe operation. Rolling stock operating in Class 6 within one year prior to the promulgation of this subpart shall be considered as being successfully qualified for Class 6 track and vehicles presently operating at Class 7 speeds by reason of conditional waivers shall be considered as qualified for Class 7.

(b) The qualification testing shall ensure that, at any speed less than 10 m.p.h. above the proposed maximum operating speed, the equipment will not exceed the wheel/rail force safety limits and the truck lateral accelerations

specified in § 213.333, and the testing shall demonstrate the following:

(1) The vertical acceleration, as measured by a vertical accelerometer mounted on the car floor, shall be limited to no greater than 0.55g single event, peak-to-peak.

(2) The lateral acceleration, as measured by a lateral accelerometer mounted on the car floor, shall be limited to no greater than 0.3g single event, peak-to-peak; and

(3) The combination of the lateral acceleration (L) and the vertical acceleration (V) within any period of two consecutive seconds as expressed by the square root of $(V^2 + L^2)$ shall be limited to no greater than 0.604, where L may not exceed 0.3g and V may not exceed 0.55g.

(c) To obtain the test data necessary to support the analysis required in paragraphs (a) and (b) of this section, the track owner shall have a test plan which shall consider the operating practices and conditions, signal system, road crossings and trains on adjacent tracks during testing. The track owner shall establish a target maximum testing speed (at least 10 m.p.h. above the maximum proposed operating speed) and target test and operating conditions and conduct a test program sufficient to evaluate the operating limits of the track and equipment. The test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from acceptable Class 6 limits to the target maximum test speeds. The test shall be suspended at that speed where any of the safety limits specified in paragraph (b) are exceeded.

(d) At the end of the test, when maximum safe operating speed is known along with permissible levels of cant deficiency, an additional run shall be made with the subject equipment over the entire route proposed for revenue service at the speeds the railroad will request FRA to approve for such service and a second run again at 10 m.p.h. above this speed. A report of the test procedures and results shall be submitted to FRA upon the completions of the tests. The test report shall include the design flange angle of the equipment which shall be used for the determination of the lateral to vertical wheel load safety limit for the track/vehicle interaction safety measurements required per § 213.333(k).

(e) As part of the submittal required in paragraph (d) of the section, the operator shall include an analysis and description of the signal system and operating practices to govern operations in Classes 7 and 8. This statement shall include a statement of sufficiency in these areas for the class of operation. Operation at speeds in excess of 150 m.p.h. is authorized only in conjunction with a rule of particular applicability addressing other safety issues presented by the system.

(f) Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

§ 213.347 Automotive or railroad crossings at grade.

(a) There shall be no at-grade (level) highway crossings, public or private, or rail-to-rail crossings at-grade on Class 8 and 9 track.

(b) If train operation is projected at Class 7 speed for a track segment that will include rail-highway grade crossings, the track owner shall submit for FRA's approval a complete description of the proposed warning/barrier system to address the protection of highway traffic and high speed trains. Trains shall not operate at Class 7 speeds over any track segment having highway-rail grade crossings unless:

(1) An FRA-approved warning/barrier system exists on that track segment; and

(2) All elements of that warning/barrier system are functioning.

§ 213.349 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following—	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 6, 7, 8 and 9	1/8	1/8

§ 213.351 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) Each rail shall be bolted with at least two bolts at each joint.

(e) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this section do not apply. Those locations, when over 400 feet long, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this subpart.

(f) No rail shall have a bolt hole which is torch cut or burned.

(g) No joint bar shall be reconfigured by torch cutting.

§ 213.352 Torch cut rail.

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used. When a rail end with a torch cut is used in emergency situations, train speed over that rail shall not exceed the maximum allowable for Class 2 track. All torch cut rail ends in Class 6 shall be removed within six months of September 21, 1998.

(b) Following the expiration of the time limits specified in paragraph (a) of this section, any torch cut rail end not removed shall be removed within 30 days of discovery. Train speed over that rail shall not exceed the maximum allowable for Class 2 track until removed.

§ 213.353 Turnouts, crossovers and lift rail assemblies or other transition devices on moveable bridges.

(a) In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels. Use of rigid rail crossings at grade is limited per § 213.347.

(b) Track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. Elastic fasteners designed to restrict longitudinal rail movement are considered rail anchoring.

(c) Each flangeway at turnouts and track crossings shall be at least 1½ inches wide.

(d) For all turnouts and crossovers, and lift rail assemblies or other transition devices on moveable bridges, the track owner shall prepare an inspection and maintenance Guidebook for use by railroad employees which shall be submitted to the Federal Railroad Administration. The Guidebook shall contain at a minimum—

(1) Inspection frequency and methodology including limiting measurement values for all components subject to wear or requiring adjustment.

(2) Maintenance techniques.

(e) Each hand operated switch shall be equipped with a redundant operating mechanism for maintaining the security of switch point position.

§ 213.355 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage—The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	Guard face gage—The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 6 track	4′ 6½″	4′ 5″
Class 7 track	4′ 6½″	4′ 5″
Class 8 track	4′ 6½″	4′ 5″
Class 9 track	4′ 6½″	4′ 5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.
[2] A line ⅝ inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

§ 213.357 Derails.

(a) Each track, other than a main track, which connects with a Class 7, 8 or 9 main track shall be equipped with a functioning derail of the correct size and type, unless railroad equipment on the track, because of grade characteristics cannot move to foul the main track.

(b) For the purposes of this section, a derail is a device which will physically stop or divert movement of railroad rolling stock or other railroad on-track equipment past the location of the device.

(c) Each derail shall be clearly visible. When in a locked position, a derail shall be free of any lost motion which would prevent it from performing its intended function.

(d) Each derail shall be maintained to function as intended.

(e) Each derail shall be properly installed for the rail to which it is applied.

(f) If a track protected by a derail is occupied by standing railroad rolling stock, the derail shall be in derailing position.

(g) Each derail on a track which is connected to a Class 7, 8 or 9 main track shall be interconnected with the signal system.

§ 213.359 Track stiffness.

(a) Track shall have a sufficient vertical strength to withstand the maximum vehicle loads generated at maximum permissible train speeds, cant deficiencies and surface defects. For purposes of this section, vertical track strength is defined as the track capacity to constrain vertical deformations so that the track shall return following maximum load to a configuration in compliance with the vehicle/track interaction safety limits and geometry requirements of this subpart.

(b) Track shall have sufficient lateral strength to withstand the maximum thermal and vehicle loads generated at maximum permissible train speeds, cant deficiencies and lateral alinement defects. For purposes of this section lateral track strength is defined as the track capacity to constrain lateral deformations so that track shall return following maximum load to a configuration in compliance with the vehicle/track interaction safety limits and geometry requirements of this subpart.

§ 213.361 Right of way.

The track owner in Class 8 and 9 shall submit a barrier plan, termed a "right-of-way plan," to the Federal Railroad Administration for approval. At a minimum, the plan will contain provisions in areas of demonstrated need for the prevention of—

(a) Vandalism;

(b) Launching of objects from overhead bridges or structures into the path of trains; and

(c) Intrusion of vehicles from adjacent rights of way.

§ 213.365 Visual inspections.

(a) All track shall be visually inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.305.

(b) Each inspection shall be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspector's visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection shall be made in accordance with the following schedule—

Class of track	Required frequency
6, 7, and 8.	Twice weekly with at least 2 calendar-day's interval between inspections.
9	Three times per week.

(d) If the person making the inspection finds a deviation from the requirements of this part, the person shall immediately initiate remedial action.

(e) Each switch, turnout, crossover, and lift rail assemblies on moveable bridges shall be inspected on foot at least weekly. The inspection shall be accomplished in accordance with the Guidebook required under § 213.353.

(f) In track Classes 8 and 9, if no train traffic operates for a period of eight hours, a train shall be operated at a speed not to exceed 100 miles per hour over the track before the resumption of operations at the maximum authorized speed.

§ 213.367 Special inspections.

In the event of fire, flood, severe storm, temperature extremes or other occurrence which might have damaged track structure, a special inspection shall be made of the track involved as soon as possible after the occurrence and, if possible, before the operation of any train over that track.

§ 213.369 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Except as provided in paragraph (e) of this section, each record of an inspection under § 213.365 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of record which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.339(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administrator.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed such that the integrity of each record maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part, shall be made available for inspection and copying by the FRA and track inspectors responsible under § 213.305. Such paper copies shall be made available to the track inspectors and at the locations specified in paragraph (b) of this section.

(7) Track inspection records shall be kept available to persons who performed the inspection and to persons performing subsequent inspections.

(f) Each vehicle/track interaction safety record required under § 213.333 (g), and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Appendix A to Part 213—Maximum Allowable Curving Speeds

TABLE 1.—THREE INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
	Maximum allowable operating speed (mph)												
0°30'	93	100	107	113	120	125	131	136	141	146	151	156	160
0°40'	80	87	93	98	103	109	113	118	122	127	131	135	139
0°50'	72	78	83	88	93	97	101	106	110	113	117	121	124
1°00'	66	71	76	80	85	89	93	96	100	104	107	110	113
1°15'	59	63	68	72	76	79	83	86	89	93	96	99	101
1°30'	54	58	62	66	69	72	76	79	82	85	87	90	93
1°45'	50	54	57	61	64	67	70	73	76	78	81	83	86
2°00'	46	50	54	57	60	63	66	68	71	73	76	78	80
2°15'	44	47	50	54	56	59	62	64	67	69	71	74	76
2°30'	41	45	48	51	54	56	59	61	63	66	68	70	72
2°45'	40	43	46	48	51	54	56	58	60	62	65	66	68
3°00'	38	41	44	46	49	51	54	56	58	60	62	64	66

TABLE 1.—THREE INCHES UNBALANCE—Continued

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
3°15′	36	39	42	45	47	49	51	54	56	57	59	61	63
3°30′	35	38	40	43	45	47	50	52	54	56	57	59	61
3°45′	34	37	39	41	44	46	48	50	52	54	56	57	59
4°00′	33	35	38	40	42	44	46	48	50	52	54	56	57
4°30′	31	33	36	38	40	42	44	45	47	49	50	52	54
5°00′	29	32	34	36	38	40	41	43	45	46	48	49	51
5°30′	28	30	32	34	36	38	40	41	43	44	46	47	48
6°00′	27	29	31	33	35	36	38	39	41	42	44	45	46
6°30′	26	28	30	31	33	35	36	38	39	41	42	43	45
7°00	25	27	29	30	32	34	35	36	38	39	40	42	43
8°00′	23	25	27	28	30	31	33	34	35	37	38	39	40
9°00′	22	24	25	27	28	30	31	32	33	35	36	37	38
10°00′	21	22	24	25	27	28	29	31	32	33	34	35	36
11°00′	20	21	23	24	26	27	28	29	30	31	32	33	34
12°00′	19	20	22	23	24	26	27	28	29	30	31	32	33

TABLE 2.—FOUR INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
	Maximum allowable operating speed (mph)												
0°30′	107	113	120	125	131	136	141	146	151	156	160	165	169
0°40′	93	98	104	109	113	118	122	127	131	135	139	143	146
0°50′	83	88	93	97	101	106	110	113	117	121	124	128	131
1°00′	76	80	85	89	93	96	100	104	107	110	113	116	120
1°15′	68	72	76	79	83	86	89	93	96	99	101	104	107
1°30′	62	65	69	72	76	79	82	85	87	90	93	95	98
1°45′	57	61	64	67	70	73	76	78	81	83	86	88	90
2°00′	53	57	60	63	66	68	71	73	76	78	80	82	85
2°15′	50	53	56	59	62	64	67	69	71	73	76	78	80
2°30′	48	51	53	56	59	61	63	65	68	70	72	74	76
2°45′	46	48	51	53	56	58	60	62	64	66	68	70	72
3°00′	44	46	49	51	53	56	58	60	62	64	65	67	69
3°15′	42	44	47	49	51	53	55	57	59	61	63	65	66
3°30′	40	43	45	47	49	52	53	55	57	59	61	62	64
3°45′	39	41	44	46	48	50	52	53	55	57	59	60	62
4°00′	38	40	42	44	46	48	50	52	53	55	57	58	60
4°30′	36	38	40	42	44	45	47	49	50	52	53	55	56
5°00′	34	36	38	40	41	43	45	46	48	49	51	52	53
5°30′	32	34	36	38	39	41	43	44	46	47	48	50	51
6°00′	31	33	35	36	38	39	41	42	44	45	46	48	49
6°30′	30	31	33	35	36	38	39	41	42	43	44	46	47
7°00′	29	30	32	34	35	36	38	39	40	42	43	44	45
8°00′	27	28	30	31	33	34	35	37	38	39	40	41	42
9°00′	25	27	28	30	31	32	33	35	36	37	38	39	40
10°00′	24	25	27	28	29	30	32	33	34	35	36	37	38
11°00′	23	24	25	27	28	29	30	31	32	33	34	35	36
12°00′	22	23	24	26	27	28	29	30	31	32	33	34	35

Appendix B to Part 213—Schedule of Civil Penalties

Section	Violation	Willful Violation [1]
Subpart A—General:		
213.4(a) Excepted track [2]	$2,500	$5,000
213.4(b) Excepted track [2]	2,500	5,000
213.4(c) Excepted track [2]	2,500	5,000
213.4(d) Excepted track [2]	2,500	5,000
213.4(e):		
(1) Excepted track [2]	5,000	7,500
(2) Excepted track [2]	7,000	10,000
(3) Excepted track [2]	7,000	10,000
(4) Excepted track [2]	5,000	7,500
213.4(f) Excepted track	2,000	4,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	1,000	2,000
213.9 Classes of track: Operating speed limits	2,500	2,500
213.11 Restoration or renewal of track under traffic conditions	2,500	2,500
213.13 Measuring track not under load	1,000	2,000
Subpart B—Roadbed:		
213.33 Drainage	2,500	5,000
213.37 Vegetation	1,000	2,000

Section	Violation	Willful Violation [1]
Subpart C—Track Geometry:		
213.53 Gage	5,000	7,500
13.55 Alinement	5,000	7,500
213.57 Curves; elevation and speed limitations	2,500	5,000
213.59 Elevation of curved track; runoff	2,500	2,500
213.63 Track surface	5,000	7,500
Subpart D—Track surface:		
213.103 Ballast; general	2,500	5,000
213.109 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties	1,000	2,000
(d) Joint ties	2,500	5,000
(e) Track constructed without crossties	2,500	5,000
213.113 Defective rails	5,000	7,500
213.115 Rail end mismatch	2,500	5,000
213.119 Continuous welded rail		
(a) through (h)	5,000	7,500
213.121 (a) Rail joints	2,500	5,000
213.121 (b) Rail joints	2,500	5,000
213.121 (c) Rail joints	5,000	7,500
213.121 (d) Rail joints	2,500	5,000
213.121 (e) Rail joints	2,500	5,000
213.121 (f) Rail joints	2,500	5,000
213.121 (g) Rail joints	2,500	5,000
213.121 (h) Rail joints	5,000	7,500
213.122 Torch cut rail	2,500	5,000
213.123 Tie plates	1,000	2,000
213.127 Rail fastenings	2,500	5,000
213.133 Turnouts and track crossings, generally	1,000	1,000
213.135 Switches:		
(a) through (g)	2,500	5,000
(h) chipped or worn points	5,000	7,500
213.137 Frogs	2,500	5,000
213.139 Spring rail frogs	2,500	5,000
213.141 Self-guarded frogs	2,500	5,000
213.143 Frog guard rails and guard faces; gage	2,500	5,000
Subpart E—Track appliances and track-related devices:		
213.205 Derails	2,500	5,000
Subpart F—Inspection:		
213.233 Track inspections	2,000	4,000
213.235 Switches, crossings, transition devices	2,000	4,000
213.237 Inspection of rail	2,500	5,000
213.239 Special inspections	2,500	5,000
213.241 Inspection records	1,000	1,000
Subpart G—High Speed:		
213.305 Designation of qualified individuals; general qualifications	1,000	2,000
213.307 Class of track; operating speed limits	2,500	5,000
213.309 Restoration or renewal of track under traffic conditions	2,500	5,000
213.311 Measuring track not under load	1,000	2,000
213.319 Drainage	2,500	5,000
213.321 Vegetation	1,000	2,000
213.323 Track gage	5,000	7,500
213.327 Alinement	5,000	7,500
213.329 Curves, elevation and speed limits	2,500	5,000
213.331 Track surface	5,000	7,500
213.333 Automated vehicle inspection systems	5,000	7,500
213.335 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties, non-concrete	1,000	2,000
(d) Sufficient number of nondefective concrete ties	1,000	2,000
(e) Joint ties	2,500	5,000
(f) Track constructed without crossties	2,500	5,000
(g) Non-defective ties surrounding defective ties	2,500	5,000
(h) Tie plates	2,500	5,000
(i) Tie plates	1,000	2,000
213.337 Defective rails	5,000	7,500
213.339 Inspection of rail in service	2,500	5,000
213.341 Inspection of new rail	2,500	5,000
213.343 Continuous welded rail (a) through (h)	5,000	7,500
213.345 Vehicle qualification testing (a) through (b)	5,000	7,500
(c) through (e)	2,500	5,000

Section	Violation	Willful Violation [1]
213.347 Automotive or railroad crossings at grade	5,000	7,500
213.349 Rail end mismatch	2,500	5,000
213.351 (a) Rail joints	2,500	5,000
213.351 (b) Rail joints	2,500	5,000
213.351 (c) Rail joints	5,000	7,500
213.351 (d) Rail joints	2,500	5,000
213.351 (e) Rail joints	2,500	5,000
213.351 (f) Rail joints	5,000	7,500
213.351 (g) Rail joints	5,000	7,500
213. 352 Torch cut rails	2,500	5,000
213.353 Turnouts, crossovers, transition devices	1,000	2,000
213.355 Frog guard rails and guard faces; gage	2,500	5,000
213.357 Derails	2,500	5,000
213.359 Track stiffness	5,000	7,500
213.361 Right of way	5,000	7,500
213.365 Visual inspections	2,500	5,000
213.367 Special inspections	2,500	5,000
213.369 Inspections records	2,000	4,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

[2] In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of Part 213 until such noncompliance is remedied.

Issued in Washington, D.C. on June 10, 1998.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 98–15932 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–06–P

VOL 63 ISS 119 JE 22 1998 UMI

federal register

Monday
June 22, 1998

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation (FAR); Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–05; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–05 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Subcontract Consent	95–011	Klein.
II	Availability of Specifications	97–034	DeStefano.
III	Liquidated Damages	89–042/97–300	Moss.
IV	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts	97–042	DeStefano.
V	Rehabilitation Act, Workers With Disabilities (Interim)	96–610	O'Neill.
VI	Trade Agreements Thresholds	97–044	Linfield.
VII	Restrictions on Purchases from Sudan	97–301	Linfield.
VIII	Software Copyrights	97–614	O'Neill.
IX	Travel Reimbursement	97–007	Nelson.
X	No-Cost Value Engineering Change Proposals (Interim)	96–011	Klein.
XI	Technical Amendments.		
XII	Availability of FAR via Internet.		

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–05 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Subcontract Consent (FAR Case 95–011)

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

Item II—Availability of Specifications (FAR Case 97–034)

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update addresses and other information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

Item III—Liquidated Damages (FAR Cases 89–042 and 97–300)

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84–50, FAR case 89–042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97–042)

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97–02 eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222–36 has been increased from $2,500 to $10,000.

Item VI—Trade Agreements Thresholds (FAR Case 97–044)

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

Item VII—Restrictions on Purchases from Sudan (FAR Case 97–301)

This final rule amends FAR 25.701 and the clause at 52.225–11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 997.

Item VIII—Software Copyrights (FAR Case 97–614)

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

Item IX—Travel Reimbursement (FAR Case 97–007)

The interim rule published as Item IX of FAC 97–03 is converted to a final rule without change. The rule amends FAR 31.205–46 to increase from $25.00 to $75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

Item X—No-Cost Value Engineering Change Proposals (FAR Case 96–011)

This interim rule revises FAR 48.104–3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item XI—Technical Amendments

Amendments are being made at FAR 5.201(b)(2), 8.404(a), 31.002, and 45.607–2(b) to update references and make editorial changes.

Item XII—Availability of FAR via Internet

The FAR, along with Federal Acquisition Circulars and other informational items, is available on the Internet at http://www.arnet.gov/far.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

June 22, 1998.

Federal Acquisition Circular (FAC) 97–05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–05 are effective August 21, 1998, except for Items V, X, and XI, which are effective June 22, 1998.

Dated: June 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: June 11, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: June 10, 1998.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98–16111 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 35, 36, 44, and 52

[FAC 97–05; FAR Case 95–011; Item I]

RIN 9000–AH57

Federal Acquisition Regulation; Subcontract Consent

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reduce requirements for consent to subcontract. The rule eliminates the consent requirements for contractors that have an approved purchasing system, except when specific subcontracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 95–011.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 21, 1997 (62 FR 19465). Comments were received from nine respondents. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the consent to subcontract requirement has a very small administrative cost that is passed along to the Government as part of the contract price, and this rule reduces the requirement for consent to subcontract.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of the information collection requirements was submitted to the Office of Management and Budget (OMB) and approved through June 30, 2000, under OMB Control Number 9000–0149. Public comments concerning this request were invited through **Federal Register** notice 62 FR 19465, April 21, 1997, and no comments were received.

List of Subjects in 48 CFR Parts 4, 22, 35, 36, 44, and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 22, 35, 36, 44, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 22, 35, 6, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.705–3 [Amended]

2. Section 4.705–3 is amended in paragraph (f) by revising the parenthetical to read "(see 52.244–2)".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.810 [Amended]

3. Section 22.810 is amended in paragraph (g) by removing the phrase "paragraph (a), (b), or (c) of 44.204" and adding in its place "44.204(a)".

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

4. Section 35.009 is amended by revising the last sentence to read as follows:

35.009 Subcontracting research and development effort.

* * * The clause at 52.244–2, Subcontracts, prescribed for certain types of contracts at 44.204(a), requires the contracting officer's prior approval for the placement of certain subcontracts.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. Section 36.606 is amended by revising paragraph (e) to read as follows:

36.606 Negotiations.

* * * * *

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see 52.244–4), limits a firm's subcontracting to firms agreed upon during negotiations.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

6. Section 44.000 is revised to read as follows:

44.000 Scope of part.

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review, evaluation, and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of subpart 44.2 are not applicable to prime contracts for commercial items acquired pursuant to part 12.

44.102 [Removed]

7. Section 44.102 is removed.

44.201 Consent and advance notification requirements.

8. The heading of section 44.201 is revised to read as set forth above.

9. Sections 44.201–1 and 44.201–2 are revised to read as follows:

44.201–1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (*e.g.*, subcontracts for engines on a prime contract for airframes).

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for—

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and

(2) Fixed-price subcontracts that exceed—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.

(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see part 51) constitutes consent.

44.201–2 Advance notification requirements.

Under cost-reimbursement contracts, even if the contractor has an approved purchasing system and consent to subcontract is not required under 44.201–1, the contractor is required by statute (10 U.S.C. 2306(e) or 41 U.S.C. 254(b)) to notify the agency before the award of—

(a) Any cost-plus-fixed-fee subcontract; or

(b) Any fixed-price subcontract that exceeds—

(1) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(2) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

44.201–3 and 44.201–4 [Removed]

10. Sections 44.201–3 and 44.201–4 are removed.

11. Section 44.202–1 is amended by revising paragraphs (b) and (c) to read as follows:

44.202–1 Responsibilities.

* * * * *

(b) The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244–2. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (k) of the clause at 52.244–2.

44.202–2 [Amended]

12. Section 44.202–2 is amended in the introductory text of paragraph (a) by adding ", at a minimum," after the word "shall".

13. Section 44.204 is revised to read as follows:

44.204 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.244–2, Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A letter contract that exceeds the simplified acquisition threshold;

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or

(v) A labor-hour contract that exceeds the simplified acquisition threshold.

(2) If a cost-reimbursement contract is contemplated—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate II.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244–4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in fixed-price architect-engineer contracts.

(c) The contracting officer shall, when contracting by negotiation, insert the clause at 52.244–5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is contemplated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.244–1 [Removed and Reserved]

14. Section 52.244–1 is removed and reserved.

15. Section 52.244–2 is revised to read as follows:

52.244–2 Subcontracts.

As prescribed in 44.204(a)(1), insert the following clause:

SUBCONTRACTS (AUG 1998)

(a) *Definitions.* As used in this clause—

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245–18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

_____

_____

_____

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

_____

_____

_____

(End of clause)

Alternate I (Aug 1998). As prescribed in 44.204(a)(2)(i), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

Alternate II (Aug 1998). As prescribed in 44.204(a)(2)(ii), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

52.244–3 [Removed and reserved]

16. Section 52.244–3 is removed and reserved.

17. Section 52.244–4 is amended by revising the section heading, introductory paragraph, and clause heading and date to read as follows:

52.244–4 Subcontractors and outside associates and consultants (Architect-engineer services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

* * * * *

(End of clause)

52.244–5 [Amended]

18. Section 52.244–5 is amended in the introductory paragraph by revising "44.204(e)" to read "44.204(c)".

[FR Doc. 98–16112 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 11, and 52

[FAC 97–05; FAR Case 97–034; Item II]

RIN 9000–AI00

Federal Acquisition Regulation; Availability of Specifications

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update information regarding the availability of specifications, standards, and item descriptions cited in Government solicitations and contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–05, FAR case 97–034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. New organization names, addresses, and telephone numbers, and a new method of obtaining information on the World Wide Web have been added. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 11, and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 9, 11, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 11, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.203 is amended by revising paragraphs (c)(1) and (d) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(c) * * *

(1) Federal Standardization Manual, FSPM–0001.

* * * * *

(d) The publications listed in paragraphs (b) and (c) of this section are sold to the public. The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the addressee in 11.201(d)(1). The publications in paragraphs (b)(2) and (c)(2) of this section may be obtained from the addressee in 11.201(d)(2).

PART 11—DESCRIBING AGENCY NEEDS

3. Section 11.102 is revised to read as follows:

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance

with the guidance contained in the Federal Standardization Manual, FSPM–0001, and, for DoD components, DoD 4120.3–M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.3–M may be obtained from DoD (see address in 11.201(d)(2)).

4. Section 11.201 is amended by revising paragraph (d) and the first sentence of paragraph (e) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d)(1) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, may be purchased from the—General Services Administration, Federal Supply Service, Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925.

(2) The DoDISS may be purchased from the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179.

(e) Agencies may generally obtain from the GSA Specifications Section or DoDSSP those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. * * *

5. Section 11.204 is amended by revising paragraphs (a) and (b) to read as follows:

11.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, in solicitations that cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12–L, in solicitations that cite specifications listed in the DoDISS or DoD 5010.12–L that are not furnished with the solicitation.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Sections 52.211–1 and 52.211–2 are revised to read as follows:

52.211–1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29.

As prescribed in 11.204(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101–29 (AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—GSA Federal Supply Service, Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925, Facsimile (202) 619–8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.211–2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12–L.

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12–L (AUG 1998)

(a) Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained for a fee by submitting a request to the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(b) Order forms, pricing information, and customer support information may be obtained—

(1) By telephone at (215) 697–2667/2179; or

(2) Through the DoDSSP Internet site at http://www.dodssp.daps.mil.

(End of provision)

7. Section 52.212–1 is amended by revising the date of the provision and paragraph (i) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (AUG 1998)

* * * * *

(i) *Availability of requirements documents cited in the solicitation.* (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925, Facsimile (202) 619–8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained—

(A) By telephone at (215) 697–2667/2179; or

(B) Through the DoDSSP Internet site at http://www.dodssp.daps.mil.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

* * * * *

(End of provision)

[FR Doc. 98–16113 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 19, 52, and 53

[FAC 97–05; FAR Cases 89–042 and 97–300; Item III]

RINs 9000–AD20 and 9000–AH53

Federal Acquisition Regulation; Liquidated Damages

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed and interim rules adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the proposed and interim rules to final with changes. This final rule amends the Federal Acquisition Regulation (FAR) to clarify policy on liquidated damages and commercial subcontracting plans and to implement OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published as FAR case 89–042 at 54 FR 30708, July 21, 1989, has been merged with this final rule. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–05, FAR case 97–300.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule, under FAR Case 89–042 (Liquidated Damages), was published on July 21, 1989 (54 FR 30708), to require a prime contractor to pay liquidated damages upon a finding of a lack of good faith effort to meet small business subcontracting goals. The rule implemented Section 304 of the Business Opportunity Development Reform Act of 1988, Pub. L. 100–656. The interim rule is hereby adopted as final with changes and merged with this final rule.

A proposed rule containing revisions to the interim rule was published on April 11, 1997 (62 FR 17960). The revisions in the proposed rule resulted from the public comments received on the interim rule, and from the requirements of OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items.

Eight sources submitted comments in response to the proposed rule. All comments were considered in developing this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business concerns are exempt from subcontracting plan requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11, 19, 52, and 53

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final with Changes

Accordingly, the interim rule published as FAR Case 89–042 amending 48 CFR Parts 19 and 52, which was published at 54 FR 30708, July 21, 1989, is hereby adopted as final and merged with this final rule with the following changes:

1. The authority citation for 48 CFR Parts 11, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.501 is revised to read as follows:

11.501 General.

This subpart provides policies and procedures for the use of liquidated damages clauses in solicitations and contracts for supplies, services, and construction, except for the Liquidated Damages—Subcontracting Plan clause at 52.219–16, which may be applied pursuant to 19.705–7.

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.701 is revised to read as follows:

19.701 Definitions.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Failure to make a good faith effort to comply with the subcontracting plan means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Small business subcontractor means any concern that—

(a) In connection with subcontracts of $10,000 or less, has a number of employees, including its affiliates, that does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000, has a number of employees or average annual receipts, including its affiliates, that does not exceed the size standard under 19.102 for the product or service it is providing on the subcontract.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

4. Section 19.702 is amended by revising paragraph (a) introductory text,

the first sentences of (a)(1) and (a)(2); and paragraph (b)(4) to read as follows:

19.702 Statutory requirements.

* * * * *

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan.

* * *

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. * * *

(b) * * *

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses, *e.g.*, contracts awarded before the enactment of Pub. L. 95–507).

* * * * *

5. Section 19.703 is amended in paragraph (a)(2) by removing "13 CFR 124.601—124.610" and inserting in its place "13 CFR 124.601 through 124.610"; and in paragraph (b) by revising the first sentence to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business concern, a small disadvantaged business concern, or a women-owned small business concern. * * *

6. Section 19.704 is amended—

(a) By redesignating paragraphs (a)(2) through (a)(6) as (a)(7) through (a)(11), respectively, and adding new paragraphs (a)(2) through (a)(6);

(b) In newly designated (a)(8) by removing the word "will" the second time it appears;

(c) By revising newly designated paragraphs (a)(9), 10) and (11), the first sentence of paragraph (b), and (c); and

(d) By adding paragraph (d). The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small, small disadvantaged and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small, small disadvantaged and women-owned small business concerns;

(4) A description of the method used to develop the subcontracting goals;

(5) A description of the method used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, small disadvantaged and women-owned small business concerns;

* * * * *

(9) Assurances that the offeror will include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (see 19.708(b));

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295; and

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see 19.701) that contains all the elements required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals.

* * *

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see 19.705–2(a)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. The contractor shall—

(1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period; and

(2) Submit a new commercial plan, 30 working days before the end of the fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan. When the new commercial plan is approved, the contractor shall provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan.

19.705–1 [Amended]

7. Section 19.705–1 is amended in the first sentence by removing "award fee" and inserting "award-fee" in its place.

8. Section 19.705–4 is amended—

(a) By revising the first and second sentences of paragraph (b);

(b) By revising paragraph (c);

(c) By revising paragraph (d)(1); and

(d) By redesignating paragraphs (d)(3) through (d)(6) as (d)(4) through (d)(7), respectively, and adding a new paragraph (d)(3); and by revising newly designated (d)(5). The new and revised text reads as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the 11 required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that incorporates the required elements within the time allotted, the bidder shall be ineligible for award. * * *

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the 11 elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged, and women-owned small business subcontractors to the maximum practicable extent. The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219–10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged or women-owned small businesses.

(d) * * *

(1) Obtain information available from the cognizant contract administration office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

* * * * *

(3) Ensure that the subcontracting goals are consistent with the offeror's cost or pricing data or information other than cost or pricing data.

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

* * * * *

9. Section 19.705–6 is amended by revising the introductory text and paragraphs (b) and (g) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

* * * * *

(b) Forwarding a copy of each commercial plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located.

* * * * *

(g) Taking action to enforce the terms of the contract upon receipt of a notice under 19.706(f).

10. Section 19.705–7 is amended by revising paragraphs (b) and (c); the last sentence of paragraph (d) and paragraph (f); and by adding paragraph (h) to read as follows:

19.705–7 Liquidated damages.

* * * * *

(b) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

(c) If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to meet its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly. If the contracting officer decides in accordance with paragraph (d) of this subsection that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(d) * * * However, when considered in the context of the contractor's total effort in accordance with its plan, the following, though not all inclusive, may be considered as indicators of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged or women-owned small business concerns; a failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan; a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; or the adoption of company policies or procedures that have as their objectives the frustration of the objectives of the plan.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not

made a good faith effort to comply with the plan, and document the results of the review;

(3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the contracting officer shall ask the contractor to provide—

(i) Contract numbers for the Government contracts subject to the plan;

(ii) The total Government sales during the contractor's fiscal year; and

(iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and

(4) When appropriate, assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts. For example: The contractor's total actual sales were $50 million and its actual subcontracting was $20 million. The Government's total payments under contracts subject to the plan contributing to the contractor's total sales were $5 million, which accounted for 10 percent of the contractor's total sales. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of $20 million, or $2 million. To continue the example, if the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of $2 million, or $20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan.

* * * * *

(h) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

11. Section 19.706 is amended in paragraph (a) by removing the paragraph designation "(a)"; by removing paragraph (b); by redesignating (a)(1) through (a)(6) as (a) through (f), respectively; in newly designated (e) by removing "and" at the end; in newly designated (f) by removing the period at the end and inserting "; and"; and by adding (g) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(g) Immediate notice that performance under a contract is complete, that the goals were or were not met, and, if not met, whether there is any indication of a lack of a good faith effort to comply with the subcontracting plan.

12. Section 19.708 is amended by revising paragraph (b)(2); in the first sentence of (c)(1) by removing "(see 19.702(a)(1))" and inserting in its place "(see 19.702)"; and in the second sentence of (c)(2) by removing "award fee" and inserting in its place "award-fee". The revised text reads as follows:

19.708 Solicitation provisions and contract clauses.

* * * * *

(b) ** * *

(2) The contracting officer shall insert the clause at 52.219–16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or the clause with its Alternate I or II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.219–9 is amended by revising the clause date and paragraphs (b), (d)(2)(i), (d)(9), (d)(10), the first sentence of (d)(11) introductory text, and the second sentence of (d)(11)(vi); in the second sentence of (e)(1) by revising "contractor's" to read "Contractor's"; and by revising (f) introductory text and (g). The revised text reads as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)

* * * * *

(b) *Definitions.* As used in this clause—

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

* * * * *

(d) * * *

(2) * * *

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

* * * * *

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. * * *

* * * * *

(vi) * * * Contractors having commercial plans need not comply with this requirement.

* * * * *

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan

required of the offeror by this clause; provided—

* * * * *

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

* * * * *

(End of clause)

* * * * *

14. Section 52.219–16 is amended by revising the clause date, paragraph (b), the first sentence of (c), and paragraph (d) to read as follows:

52.219–16 Liquidated Damages—Subcontracting Plan.

* * * * *

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (AUG 1998)

* * * * *

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. * * *

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

* * * * *

(End of clause)

PART 53—FORMS

53.219 [Amended]

15. Section 53.219 is amended in paragraphs (a) and (b) by removing "(REV. 10/96)" and inserting "(Rev. 8/98)", and by revising the citation "19.704(a)(5)" to read "19.704(a)(10)"

16. Section 53.301–294 is revised to read as follows:

53.301–294 Standard Form 294, Subcontracting Report for Individual Contracts.

BILLING CODE 6820–EP–P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED
4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU
☐ MAR 31 ☐ SEPT 30 YEAR
5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ GSA ☐ DOE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN
14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 8-98)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisiton Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV. 6-98) BACK

17. Section 53.301–295 is revised to read as follows:

53.301–295 Standard Form 295, Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 06/30/2000

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED
a. COMPANY NAME			
b. STREET ADDRESS			4. REPORTING PERIOD: ☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT
2. CONTRACTOR IDENTIFICATION NUMBER			☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ GSA ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one.)*	8. TYPE OF PLAN
☐ PRIME CONTRACTOR ☐ BOTH ☐ SUBCONTRACTOR	☐ INDIVIDUAL ☐ COMMERCIAL
	IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME	b. TITLE	c. TELEPHONE NUMBER AREA CODE	NUMBER

16. CHIEF EXECUTIVE OFFICER

a. NAME	c. SIGNATURE
b. TITLE	d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV. 8-98)
Prescribed by GSA - FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which the report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commerical item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 6-98) BACK

[FR Doc. 98–16114 Filed 6–19–98; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97–05; FAR Case 97–042; Item IV]

RIN 9000–AI01

Federal Acquisition Regulation; Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify fee limitations pertaining to cost-reimbursement contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–05, FAR case 97–042.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. Federal Acquisition Circular 97–02, FAR Part 15 Rewrite, published as a final rule on September 30, 1997 (62 FR 51224), eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming amendments to FAR Part 16.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–042), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 16 is amended as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

16.301–3 [Amended]

2. Section 16.301–3 is amended by removing paragraph (a)(3).

3. Section 16.306 is amended by revising paragraph (c) to read as follows:

16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 15.404–4(c)(4)(i) and 16.301–3.

* * * * *

16.405–2 [Amended]

4. Section 16.405–2 is amended at the end of paragraph (c)(1) by adding "and"; by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

[FR Doc. 98–16115 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–05; FAR Case 96–610; Item V]

RIN 9000–AH99

Federal Acquisition Regulation; Rehabilitation Act, Workers With Disabilities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective June 22, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.96–610@gsa.gov.

Please cite FAC 97–05, FAR case 96–610 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, rocurement Analyst, at (202) 501–3856. Please cite FAC 97–05, FAR case 96–610.

SUPPLEMENTARY INFORMATION:

A. Background

On May 1, 1996, the Department of Labor (DoL) issued a final rule (61 FR 19335) to revise its regulations (41 CFR 60–741) that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule was effective August 29, 1996. This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to conform to the DoL regulations.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements existing Department of Labor regulations, and imposes no new requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 96–610), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule amends the FAR to conform to Department of Labor regulations at 41 CFR 60–741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). Immediate publication is necessary to ensure that Government contractors take affirmative action required by statute to employ, and advance in employment, qualified individuals with disabilities. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.14—Employment of Workers With Disabilities

2. The heading of Subpart 22.14 is revised to read as set forth above.

3. Sections 22.1401 and 22.1402 are revised to read as follows:

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified individuals with disabilities, without discrimination based on their physical or mental disability.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of $10,000 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222–36, Affirmative Action for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

4. Section 22.1403 is amended by revising paragraph (a) introductory text; in (b)(1) by revising "Director of OFCCP" to read "Deputy Assistant Secretary"; in (b)(2) and the first sentence of (d) by revising "Director" to read "Deputy Assistant Secretary"; and in the last sentence of (d) by removing the word "calendar". The revised text reads as follows: –

22.1403 Waivers.

(a) The agency head, with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), may waive any or all of the terms of the clause at 52.222–36, Affirmative Action for Workers with Disabilities, for—

* * * * *

5. Section 22.1404 is revised to read as follows:

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

22.1405 [Amended]

6. Section 22.1405 is amended in the first sentence by replacing "Handicapped Workers" with "Workers with Disabilities".

22.1406 [Amended]

7. Section 22.1406 is amended by revising "OFCCP" to read "Deputy Assistant Secretary for Federal Contract Compliance" the first time it appears.

8. Section 22.1407 is amended by revising the introductory paragraph to read as follows:

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222–36, Affirmative Action for Workers with Disabilities. These sanctions (see 41 CFR 60–741.66) may include—

* * * * *

9. Section 22.1408 is amended by revising paragraph (a) introductory text and (a)(1) to read as follows:

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed $10,000 or are expected to exceed $10,000, except when—

(1) Work is to be performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, *United States* includes the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island); or

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212–5 is amended by revising the date of the clause and paragraphs (b)(8) and (e)(3) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jun 1998)

* * * * *

(b) * * *

(8) 52.222–36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

* * * * *

(e) * * *

(3) 52.222–36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

* * * * *

(End of clause)

11. Section 52.213–4 is amended by revising the clause date and paragraph (b)(1)(iv) of the clause to read as follows:

52.213–4 Terms and Conditions Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Jun 1998)

* * * * *

(b)(1) * * *

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over $10,000).

* * * * *

12. Section 52.222–36 is revised to read as follows:

52.222–36 Affirmative Action for Workers With Disabilities.

As prescribed in 22.1408(a), insert the following clause:

Affirmative Action for Workers With Disabilities (Jun 1998)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Jun 1998). As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract:

_____ [List term(s)].

[FR Doc. 98–16116 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–05; FAR Case 97–044; Item VI]

RIN 9000–AI02

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–05, FAR case 97–044.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the

meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–044), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.105 is amended by revising paragraph (e) to read as follows:

25.105 Evaluating offers.

* * * * *

(e) The evaluation in paragraph (a) of this section shall not be applied to offers of Canadian end products above $25,000 or Mexican end products above $53,150 (see 25.402(a)(3)(ii)). For the definitions of "Canadian end product" and "Mexican end product," see 25.401.

25.202, 25.207, 25.305, 25.402, 25.408, 25.1002, and 25.1003 [Amended]

3. In the list below, for each section listed in the left column, remove the dollar amount indicated in the middle column, and add the dollar amount indicated in the right column:

Section	Remove	Add
25.202(d)	$6,500,000	$6,909,500
	7,311,000 (twice)	7,143,000 (twice)
25.207(d)(1)	7,311,000	7,143,000
25.207(d)(2)	6,500,000	6,909,500
	7,311,000	7,143,000
25.305(c)(2)	6,500,000	6,909,500
25.402(a)(1)	190,000	186,000
	7,311,000	7,143,000
25.402(a)(3)(i)	6,500,000	6,909,500
25.402(a)(3)(ii)	50,000	53,150
25.402(g)	50,000	53,150
	6,500,000	6,909,500
25.408(a)(3)	50,000	53,150
25.408(a)(4)	50,000	53,150
25.1002(a)(1)	190,000	186,000
25.1002(a)(2)	7,311,000	7,143,000
25.1002(a)(3)(i)	190,000	186,000
25.1003(a)	190,000	186,000
25.1003(b)(1)	190,000	186,000

[FR Doc. 98–16117 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–05; FAR Case 97–301; Item VII]

RIN 9000–AI03

Federal Acquisition Regulation; Restrictions on Purchases From Sudan

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add Sudan to the list of countries from which Government acquisition of supplies and services is restricted. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–05, FAR case 97–301.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.701 and 52.225–11 by adding Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 1997 (62 FR 59989, November 5, 1997).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Section 25.701 is amended in paragraph (a)(4) by removing "or"; in (a)(5) by removing the period and inserting "; or" in its place; and by adding (a)(6) to read as follows:

25.701 Restrictions.

(a) * * *

(6) Sudan (Executive Order 13067).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

3. Section 52.213–4 is amended by revising the date of the clause to read "(Aug 1998)"; and in paragraph (a)(2)(i) of the clause by removing "(Oct 1996)" and inserting "(Aug 1998)" in its place.

4. Section 52.225–11 is amended by revising the date of the clause and paragraph (a) to read as follows:

52.225–11 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Aug 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

* * * * *

[FR Doc. 98–16118 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 27

[FAC 97–05; FAR Case 97–614; Item VIII]

RIN 9000–AI04

Federal Acquisition Regulation; Software Copyrights

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that computer software produced under Government contracts may be special works to which the Government may obtain copyright. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–05, FAR case 97–614.

SUPPLEMENTARY INFORMATION:

A. Background

The definition of "data" to which the FAR clause at 52.227–17, Rights in Data—Special Works, applies includes computer software. However, FAR 27.405, which provides guidance for use of the clause, does not include computer software among its examples of special works. This final rule clarifies that the Government may use the clause to retain copyright to certain computer software produced under Government contracts, when appropriate.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–614), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 27

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 27 is amended as set forth below:

PART 27—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for 48 CFR Part 27 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 27.405 is amended in paragraph (a)(1)(vii) by removing "or" at the end of (a)(1)(viii) by removing the period and inserting "; or" in its place; and adding paragraph (a)(1)(ix) to read as follows:

27.405 Other data rights provisions.

(a) *Production of special works.* (1)

* * *

(ix) The development of computer software programs, where the program—

(A) May give a commercial advantage; or;

(B) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

* * * * *

[FR Doc. 98–16119 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–05; FAR Case 97–007; Item IX]

RIN 9000–AH76

Federal Acquisition Regulation; Travel Reimbursement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item IX of Federal Acquisition Circular 97–03 at 62 FR 64932, December 9, 1997, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to increase from $25 to $75 the threshold at which contractor personnel must provide a receipt to support travel expenditures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–05, FAR case 97–007.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** on December 9, 1997 (62 FR 64932). The interim rule amended FAR 31.205–46 to increase from $25 to $75 the threshold at which contractor personnel must provide a receipt to support travel expenditures. Public comments were received from one source. All comments were considered in developing the final rule. The interim rule is converted to a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. Since the threshold at which contractor personnel must provide a receipt to support travel expenditures has been increased, a request to decrease the burden hours previously approved under Office of Management and Budget (OMB) Control Number 9000–0088 was submitted to OMB under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through **Federal Register** notice dated December 9, 1997 (62 FR 64932). No public comments were received.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 62 FR 64932, December 9, 1997, is adopted as a final rule without change.

The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 98–16120 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAC 97–05; FAR Case 96–011; Item X]

RIN 9000–AH37

Federal Acquisition Regulation; No-Cost Value Engineering Change Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective June 22, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.96–011@gsa.gov.

Please cite FAC 97–05, FAR case 96–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 96–011.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule clarifies that the no-cost VECP guidance at FAR 48.104–3 permits the use of no-cost settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings, and when, in the contracting officers judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule could reduce the number of no-cost VECP settlements negotiated between the Government and private entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule clarifies that the guidance at FAR 48.104–3, Sharing alternative—no-cost settlement method, permits use of no-cost VECPs settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat at the address above. Comments are invited. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR Case 96–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to preclude misinterpretation and misuse of existing guidance and resulting VECP settlements that do not provide the Government with appropriate consideration. However, pursuant to Pub. L. 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 48 is amended as set forth below:

PART 48—VALUE ENGINEERING

1. The authority citation for 48 CFR Part 48 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 48.104–3 is revised to read as follows:

48.104–3 Sharing alternative—no-cost settlement method.

In selecting an appropriate mechanism for incorporating a VECP into a contract, the contracting officer shall analyze the different approaches available to determine which one would be in the Government's best interest. Contracting officers should balance the administrative costs of negotiating a settlement against the anticipated savings. A no-cost settlement may be used if, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from concurrent contracts placed with other sources, savings from all future contracts, and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECPs.

[FR Doc. 98–16121 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 31, 45, and 53

[FAC 97–05; Item XI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 22, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 5, 8, 31, 45, and 53

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 8, 31, 45, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 31, 45, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.201 [Amended]

2. Section 5.201 is amended in paragraph (b)(2) by revising "(see 5.205(d))" to read "(see 5.205(e))".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

3. Section 8.404 is amended in the first sentence of paragraph (a) by revising "13.202(c)(3)" to read "13.303–2(c)(3)".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.002 [Amended]

4. Section 31.002 is amended by revising "Guidance for New Contractors" to read "Information for Contractors".

PART 45—GOVERNMENT PROPERTY

45.607–2 [Amended]

5. Section 45.607–2 is amended in the third sentence of paragraph (b) by revising "DLA:SIP" to read "DLSC–LC".

PART 53—FORMS

6. Section 53.101 is amended by revising the last sentence to read as follows:

§ 53.101 Requirements for use of forms.

* * * The specific location of each requirement is identified in subpart 53.2.

[FR Doc. 98–16122 Filed 6–19–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–05 which amends the FAR. Further information regarding these rules may be obtained by referring to FAC 97–05 which precedes this document. The FAC, including this document, may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97–05

Item	Subject	Far case	Analyst
I	Subcontract Consent	95–011	Klein
II	Availability of Specifications	97–034	DeStefano
III	Liquidated Damages	89–042/97–300	Moss
IV	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts	97–042	DeStefano
V	Rehabilitation Act, Workers With Disabilities (Interim)	96–610	O'Neill
VI	Trade Agreements Thresholds	97–044	Linfield
VII	Restrictions on Purchases from Sudan	97–301	Linfield
VIII	Software Copyrights	97–614	O'Neill
IX	Travel Reimbursement	97–007	Nelson
X	No-Cost Value Engineering Change Proposals (Interim)	96–011	Klein

Item I—Subcontract Consent (FAR Case 95–011)

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

Item II—Availability of Specifications (FAR Case 97–034)

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update addresses and other information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

Item III—Liquidated Damages (FAR Cases 89–042 and 97–300)

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84–50, FAR case 89–042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97–042)

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97–02 eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222–36 has been increased from $2,500 to $10,000.

Item VI—Trade Agreements Thresholds (FAR Case 97–044)

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

Item VII—Restrictions on Purchases From Sudan (FAR Case 97–301)

This final rule amends FAR 25.701 and the clause at 52.225–11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 1997.

Item VIII—Software Copyrights (FAR Case 97–614)

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

Item IX—Travel Reimbursement (FAR Case 97–007)

The interim rule published as Item IX of FAC 97–03 is converted to a final rule without change. The rule amends FAR 31.205–46 to increase from $25.00 to $75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

Item X—No-Cost Value Engineering Change Proposals (FAR Case 96–011)

This interim rule revises FAR 48.104–3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–16123 Filed 6–19–98; 8:45 am]

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federal register

Monday
June 22, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Interim Final Rules

VOL 63 ISS 119 JE 22 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0426]

Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts. This rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. These provisions of FDAMA supplement the petition process for nutrient content and health claims provided by section 403(r)(4) (21 U.S.C. 343(r)(4)) and §§ 101.69 and 101.70 (21 CFR 101.69 and 101.70, respectively) by providing an alternative for establishing the scientific basis for such claims by reliance on authoritative statements.

FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. The notification must contain specific information including: (1) The exact wording of the prospective nutrient content claim or health claim; (2) a concise description of the basis upon which the petitioner relied for determining that the requirements of section 403(r)(2)(G)(i) of the act for nutrient content claims or section 403(r)(3)(C)(i) for health claims have been satisfied; (3) a copy of the authoritative statement that serves as the basis for the claim; and (4) a balanced representation of the scientific literature relating to the nutrient level for a prospective nutrient content claim or relating to the relationship between the nutrient and the disease or health-related condition for a prospective health claim. For a prospective nutrient content claim, the authoritative statement must identify the nutrient level to which the claim refers. For a prospective health claim, the authoritative statement must be a statement about the relationship between a nutrient and a disease or health-related condition to which the claim refers. For both types of claims, the authoritative statement must be currently in effect and it must have been published either by a scientific body of the U.S. Government that has official responsibility for public health protection or research directly relating to human nutrition (e.g., the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC)) or by the National Academy of Sciences (NAS) or any of its subdivisions (hereinafter referred to as a "scientific body").

Under new section 403(r)(2)(H) and (r)(3)(D) of the act, such a claim may be made beginning 120 days after submission of the notification until: (1) FDA has issued an effective regulation that prohibits or modifies the claim; (2) the agency has issued a regulation finding that the requirements under section 403(r)(2)(G) for a prospective nutrient content claim or under section 403(r)(3)(C) for a prospective health claim have not been met; or (3) a district court of the United States in an enforcement proceeding under chapter III of the act has determined that the requirements under section 403(r)(2)(G) for a prospective nutrient content claim or under section 403(r)(3)(C) for a prospective health claim have not been met. During the 120 days following submission of a notification and before the claim may appear on a food, the agency may also notify any person who is making the claim that the notification did not include all of the required information.

Section 304 of FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and for dietary supplements because section 304 amended section 403(r)(2) of the act, which provides for nutrient content claims on both conventional foods and dietary supplements. Section 303 of FDAMA does not include provisions for health claims for dietary supplements based on authoritative statements, however. In particular, section 403(r)(5)(D) of the act (21 U.S.C. 343(r)(5)(D)) specifies that health claims for dietary supplements shall not be subject to section 403(r)(3) of the act, but rather to a procedure and standard that FDA establishes by regulation. In section 303 of FDAMA, Congress amended section 403(r)(3) of the act, which provides for procedures and standards for health claims for conventional foods, to allow for health claims based on authoritative statements for conventional foods, but Congress did not amend section 403(r)(5)(D) of the act.

Therefore, FDA believes that section 403(r)(3)(C) of the act authorizes use of a health claim based on an authoritative statement only on any conventional food that provides an appropriate level of the nutrient that is the subject of the health claim, that does not exceed the disqualifying levels identified in § 101.14(a)(5) (21 CFR 101.14(a)(5)), and that otherwise complies with section 403(r)(3)(C) and all other provisions of the act. Nevertheless, FDA has tentatively concluded that, for health claims authorized via the authoritative statement procedure provided by FDAMA, conventional foods and dietary supplements should be subject to the same standards and procedures. This position is consistent with the agency's final rule that made dietary supplements subject to the same general

requirements as apply to conventional foods with respect to health claims (59 FR 395, January 4, 1994). This approach is also consistent with the guidance of the Commission on Dietary Supplement Labels, which stated in its 1997 report (Ref. 1) that the process for the approval of health claims should remain the same for dietary supplements and conventional foods. Therefore, FDA intends to issue a proposed rule to provide for health claims based on authoritative statements for dietary supplements.

A. Authoritative Statements

Sections 303 and 304 of FDAMA authorize the use of a health or nutrient content claim based, in part, on an "authoritative statement." In particular, new section 403(r)(3)(C)(i) and (r)(2)(G)(i) of the act states that such claims are authorized and may be made when "a scientific body * * * has published an authoritative statement, which is currently in effect." For a health claim, section 403(r)(3)(C)(i) of the act requires that the statement must be "about the relationship between a nutrient and a disease or health-related condition to which the claim refers." For a nutrient content claim, section 403(r)(2)(G)(i) of the act requires that the statement must be one "that identifies the nutrient level to which the claim refers."

Section 403(r)(3)(C) and (r)(2)(G) of the act further requires that:

> * * * [a] statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include the statement of an employee of the scientific body made in the individual capacity of the employee.

Although Congress did not explicitly define the term "authoritative statement," section 403(r)(3)(C) and (r)(2)(G) of the act and the legislative history clarify several characteristics that Congress intended an "authoritative statement" to have. Most significantly, to be the basis for a health or nutrient content claim, a statement must: (1) Address certain subjects, namely, for a health claim, it must be about the relationship between a nutrient and a disease or health-related condition to which the claim refers, or, for a nutrient content claim, it must identify the nutrient level to which the claim refers; (2) be published by an appropriate scientific body and represent its official position, and may not be, for example, a statement of individual employees of the scientific body made in the individual capacities of the employees; (3) be based on a deliberative review of the scientific evidence on the subject of the statement and not indicate that the scientific evidence about the subject of the statement is preliminary or inconclusive; and (4) be currently in effect. The aspects of these requirements relevant to this rulemaking, and its companion rulemakings publishing elsewhere in this issue of the **Federal Register**, are discussed in greater detail in section I.A.1 of this document.

1. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Address One of Two Subjects

For a statement to be eligible for consideration as an "authoritative statement," it must address certain subjects. Section 403(r)(3)(C) of the act provides that, for a health claim, it must be "about the relationship between a nutrient and a disease or health-related condition to which the claim refers." Section 403(r)(2)(G) of the act provides that, for a nutrient content claim, it must "identify the nutrient level to which the claim refers."

There are several aspects to these requirements. First, a statement cannot be an "authoritative statement" under section 403(r)(2)(G) or (r)(3)(C) of the act if it identifies no nutrient level or if it is not about the relationship between a nutrient and a disease or health-related condition. For example, if a statement refers to no nutrient, to no disease or health-related condition, or to neither a nutrient nor a disease or health-related condition, it cannot be an authoritative statement under section 403(r)(3)(C) of the act. Second, if a statement is "about the relationship between a nutrient and a disease or health-related condition," or if it "identif[ies] the nutrient level," it must be about the relationship or nutrient "to which the claim refers." Moreover, the statement must be about the relationship between a nutrient and a disease or health-related condition in humans or it must identify a nutrient level for total daily consumption by humans.

When evaluating what relationship a statement is about, or what nutrient level a statement identifies, it may be necessary to consider the context in which the statement appears. It is likely that a submitter will identify excerpted sentences as an "authoritative statement." The context in which these excerpted sentences appears can be relevant when determining the subject of the statement. For example, sentences immediately adjoining the excerpted sentences or in a summary statement in the document may clarify the disease that is the subject of the excerpted sentences.

Accordingly, the statutory requirement in section 403(r)(3)(C)(ii)(II) and (r)(2)(G)(ii)(II) of the act that a notification include "a copy of the statement referred to in subclause (i) upon which [the] person [who submitted the notification] relied in making the claim," means that the entire document from which the statement is excerpted should be included in a notification. The agency notes that submission of the entire document is also relevant to other determinations under section 403(r)(3)(C) and (r)(2)(G), such as whether the scientific evidence about the relationship or nutrient level at issue is preliminary or inconclusive, as discussed in section I.A.3 of this document, and whether a health or nutrient content claim is "stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in subclause (i)," as required by section 403(r)(3)(C)(iv) and (r)(2)(G)(iv) of the act.

2. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Be Published by an Appropriate Scientific Body and Represent the Official Policy of That Body.

Section 403(r)(3)(C) and (r)(2)(G) of the act requires that an "authoritative statement" be "published." The agency understands the use of "published" in section 403(r)(3)(C)(i) and (r)(2)(G)(i) to mean that the statement must be publicly available in print form (paper or electronic).

The identical last sentence of section 403(r)(3)(C) and (r)(2)(G) of the act states that:

> * * * [a] statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include the statement of an employee of the scientific body made in the individual capacity of the employee.

"Published" as used in this sentence means that the scientific body can be considered to be the author of the statement, in that the statement represents the official policy of the scientific body. Of course, the statements of scientific bodies—indeed, of organizations generally—are authored by individuals. Yet statements that are merely those of individual employees made in the individual capacities of the employees are not statements that have been authored by, and so represent the official policy of, the scientific body. Similarly, in the case of Federal scientific bodies with subdivisions, such as NIH and CDC, section 403(r)(3)(C) and (r)(2)(G) indicates that the scientific body, and not merely the subdivision, can be considered to have "published" a statement within the

meaning of those sections only if, as the legislative history indicates, "statements issued by entities such as NIH and CDC reflect consensus within those institutions" (H. Conf. Rept. 105–399, at 98 (1997)). Accordingly, to be considered an "authoritative statement" under section 403(r)(3)(C) and (r)(2)(G), a statement must represent the official policy of a scientific body.

3. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Be Based on a Deliberative Review of the Scientific Evidence on the Subject of the Statement, and It Should Not Indicate That the Scientific Evidence Is Preliminary or Inconclusive

In section 403(r)(3)(C)(i) and (r)(2)(G)(i) of the act, Congress required that claims may be authorized only when "a scientific body * * * has published an *authoritative statement*," not merely when a scientific body has published a statement (emphasis added). The use of "authoritative" here indicates that a statement may not be the basis for a health or nutrient content claim merely because its source is a scientific body, an authority on the subject of the statement. A review of the legislative history of sections 303 and 304 of FDAMA indicates that, to be "authoritative," Congress intended that a statement must be the product of a deliberative review of the scientific evidence on the subject of the statement. In addition, the statement should not indicate that the scientific evidence about the subject of the statement is preliminary or inconclusive.

Congress intended both that claims based on authoritative statements should have "a presumption of validity" (H. Rept. 105–306, at 16 and 17 (1997)) and that "more *scientifically sound* nutrition information * * * be provided to consumers through health and nutrient content claims" based on authoritative statements (H. Conf. Rept. 105–399, at 98 (1997) (emphasis added); see also H. Rept. 105–306, at 16 (1997) and S. Rept. 105–43, at 49 (1997)).

When FDA authorizes a health claim by regulation under section 403(r)(3)(B) of the act or establishes a Daily Value that can serve as the basis for a nutrient content claim, it conducts a deliberative review of the scientific evidence about the relationship between a nutrient and a disease or health-related condition or about the nutrient level at issue and concludes that there is significant scientific agreement about the relationship or appropriate scientific consensus about the nutrient level. Congress intended that an "authoritative statement" published by a scientific body could be the basis for health and nutrient content claims because the "authoritative statement" is to serve as a presumptive surrogate for FDA's deliberative review of the scientific evidence.

Congress therefore intended that an "authoritative statement" must be the product of a deliberative review of the scientific evidence on the subject of the statement. For example, the House Report states that:

> [a]uthoritative scientific bodies, as part of their official responsibilities for public health protection, regularly undertake deliberative reviews of the scientific evidence to evaluate potential diet/disease relationships, and issue authoritative statements concerning such relationships.

(H. Rept. 105–306, at 16 (1997)). The Senate Report repeats this idea, noting that scientific bodies engage in:

> * * * deliberative processes * * * in issuing statements on matters of public health. Important Federal public health organizations, as part of their official responsibilities, routinely review the scientific evidence pertinent to diet and disease relationships, and publish statements developed through such reviews.

(S. Rept. 105–43, at 49 (1997)).

Moreover, only a statement that a relationship between a nutrient and a disease or health-related condition exists or that identifies a level of a nutrient—and not merely statements about a possible relationship or level—can serve as the basis for claims that will provide consumers with scientifically sound information. Only a claim based on such a statement can be accorded a presumption of validity.

Accordingly, a statement that indicates, for example, that research about a nutrient level or a relationship between a nutrient and a disease or health-related condition is preliminary or inconclusive, that indicates that such a relationship or a nutrient level is or should be the subject of ongoing scientific study, or that indicates the direction for future research about such a relationship or a nutrient level is not "authoritative." When evaluating whether a statement about a relationship or nutrient level indicates that the scientific evidence is preliminary or inconclusive, the agency intends to consider the context in which the statement appears, as discussed in section I.A.1 of this document. For example, a statement of excerpted sentences might not indicate that research is preliminary or that there are unresolved questions that require additional study, but such qualifiers could be found elsewhere in the document.

The agency notes that, even if a statement meets the criteria to be an "authoritative statement," Congress also provided under new section 403(r)(3)(D)(i) of the act that FDA have the authority to prohibit a health claim based on an authoritative statement when there is not significant scientific agreement that there is a relationship between the nutrient and the disease or health-related condition in question. As the Senate Report on the provision explains, in an agency rulemaking to prohibit or modify a health claim based on an authoritative statement, "the standards and criteria for health claims prescribed by section 403(r)(3) and implementing regulations, including the significan[t] scientific agreement standard, would be fully applicable" (S. Rept. 105–43, at 51 (1997); see also H. Rept. 105–306, at 15 (1997)).

With respect to nutrient content claims, Congress indicated that the agency is to determine "whether the authoritative statement upon which the notification is based is supported by scientific consensus to the extent * * * appropriate to allow the claim" (H. Rept. 105–306, at 17–18 (1997)), an evaluation that FDA would make under section 403(r)(2)(H) of the act, after the Federal scientific body that is the source of a statement determines that the statement reflects consensus within it, as discussed in section I.A.2 of this document.

B. Review Process

As allowed by sections 303 and 304 of FDAMA, health claims and nutrient content claims based on authoritative statements from Federal scientific bodies or NAS may be made on foods in interstate commerce as soon as 120 days after submission of a notification of the claim to FDA. Upon receipt of a notification, FDA intends to review the notification to determine whether the components specified in section 403(r)(2)(G) and (r)(3)(C) are present within the submission packet. When such components are missing, FDA intends to notify the submitter by letter identifying one or more of these components that is absent from the notification packet.

If the necessary components are present, FDA intends to determine, for a health claim, what relationship between a nutrient and disease or health-related condition is at issue, or, for a nutrient content claim, what nutrient is at issue. If, by regulation under section 403(r)(3)(B) of the act, the agency has already authorized a health claim about the relationship at issue, then the notification provisions of section 403(r)(3)(C) of the act may not be used to modify the existing health claim or to authorize the prospective health claim. Similarly, if by rulemaking the

agency has already established a Daily Value for the nutrient at issue, then the notification provisions of section 403(r)(2)(G) of the act may not be used to modify the existing Daily Value. Instead, a health claim about the relationship at issue or a nutrient content claim referring to the nutrient at issue may be made when the claim is consistent with the existing health claim regulation or with the established Daily Value and the authorized terms for nutrient content claims. Furthermore, if the prospective claim refers to a relationship or a nutrient that is not addressed by the statement that is identified as the "authoritative statement" on which the claim is based, then section 403(r)(3)(C) and (r)(2)(G) of the act does not authorize the health or nutrient content claim at issue. In each case, FDA intends to notify the submitter by letter that use of the claim is not authorized under section 403(r)(3)(C) or (r)(2)(G) of the act, as appropriate.

If, however, a prospective claim could be authorized based on an appropriate authoritative statement, and if the prospective claim refers to a relationship or nutrient that is addressed by the statement that is identified in the notification as the "authoritative statement," FDA then intends to evaluate further whether the statement is an "authoritative statement." In particular, FDA intends to determine for a statement, as a threshold matter, whether: (1) It may be attributable to a scientific body or to one or more of its employees; (2) it is publicly available in print form (paper or electronic); and (3) the statement indicates that the scientific evidence about the relationship between a nutrient and a disease or health-related condition or a nutrient level is preliminary or inconclusive. With respect to the first of these issues, FDA notes that it can determine that a statement from a non-Federal body or agency—such as a state university school of public health—is not an "authoritative statement," or that a statement from a scientist who was not an employee of an appropriate scientific body is not an "authoritative statement." As a general matter, however, only a scientific body can state whether a statement that is attributable to it or to one or more of its employees actually represents the official policy of the scientific body or not, and FDA would therefore consult with the scientific body if necessary.

If a statement fails to meet any of these criteria, FDA would normally conclude that the statement is not an authoritative statement. In any case the agency may, and, when a statement meets these three criteria, the agency would normally, consult with the scientific body to which the statement is attributed. FDA would request that the scientific body determine, for example, whether the statement is currently in effect; whether the statement represents the official policy of the scientific body, for example, by reflecting consensus within that body, as opposed to being the statement of individual employees made in the individual capacities of those employees; and whether the statement is based on a deliberative review of the scientific evidence.

If the statement is found to be issued by an appropriate scientific body and determined to be an "authoritative statement" under section 403(r)(2)(G) or (r)(3)(C) of the act, the agency intends to review the wording of the claim to determine if it is in accordance with section 403(r)(3)(C)(iv) or (r)(2)(G)(iv) of the act. These provisions of the act require that the claim be stated in a manner so that it is an accurate representation of the authoritative statement and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

For health claims, FDA also intends to consider the requirement of section 403(r)(3)(C)(iii) of the act that there be compliance with, for example, sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)), which require that the claim be truthful and not misleading, including compliance as appropriate with existing § 101.14. FDA would also determine whether there is significant scientific agreement concerning the authoritative statement, as provided for under new section 403(r)(3)(D)(i) of the act. For nutrient content claims, FDA intends to consider the requirements of section 403(r)(2)(G)(iii) of the act that there be compliance with, for example, section 403(r)(2)(A)(i) of the act, which requires that nutrient content claims use the terms defined in FDA's regulations, and sections 403(a) and 201(n) of the act, including compliance as appropriate with existing § 101.13 (21 CFR 101.13). If, after this review, FDA has no objections to the claim, then the statute provides that the claim may be used on food labels 120 days after submission of a complete notification.

By contrast, if the statement is not from an appropriate scientific body or is found not to be an "authoritative statement" from a Federal scientific body or NAS (or any of its subdivisions), the agency intends to determine that the notification does not meet the requirements of section 403(r)(3)(C) or (r)(2)(G) of the act in that the submitter has not submitted a statement from a Federal scientific body or NAS, or an authoritative statement from such a body. The agency may notify the submitter of this determination, and its basis, by letter. Alternatively, the agency may issue an interim final rule to prohibit the claim.

Generally, the agency would notify the submitter by letter when, for example, the notification is deficient on its face, and the agency would use the rulemaking process when substantial scientific or legal questions are presented by the notification. The agency intends to elaborate further on these issues in implementing regulations. The agency has chosen to respond with nine interim rules publishing in this issue of the **Federal Register** to a notification for nine claims to specify the approach used by the agency to review this notification in the absence of implementing regulations, and to provide opportunity for public comment. In the future, the agency anticipates that it may respond to similar notifications by letter. Whether FDA sends a letter or acts by rulemaking to prohibit a claim, the agency may begin an enforcement action under the act in a U. S. district court if such a claim is used in food labeling.

The agency notes that, when it sends such a letter or acts by regulation to prohibit the use of a claim, a person nonetheless may submit in the future a notification that bases the claim on a statement that meets the requirements of section 403(r)(3)(C) or (r)(2)(G) of the act. If there is no authoritative statement that may serve as a basis for the claim, an interested person may petition the agency under section 403(r)(4) of the act and § 101.70 to authorize the health claim by regulation under section 403(r)(3)(B) of the act. For a nutrient content claim, an interested person may submit a citizen petition under 21 CFR 10.30 that requests the agency to establish the Daily Value to which the claim would refer.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 2). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of

the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the first claim in the notification. The notification included six statements that the petitioner identified as authoritative statements on which the following claim is based: "Antioxidant vitamins C and E may reduce the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts. Sources of Vitamin C and E include fruits, vegetables, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. FDA notes that this claim describes the relationship between vitamins C and E and a number of different diseases and, thus, in point of fact, reflects several prospective health claims. The second sentence, "Sources of Vitamin C and E include fruits, vegetables, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act.

With respect to nutrient content claims, FDA concluded in comment 152 of its final rule for nutrient content claims (58 FR 2302 at 2345, January 6, 1993) that the term "source" alone merely connotes that a nutrient is present and does not provide consumers with meaningful information about the level of the nutrient. Therefore, FDA did not define the term "source," although it did define several other terms that include the word "source." For example, a food is defined as a "good source" of a nutrient if it contains 10 to 19 percent of the Reference Daily Intake (RDI) for that nutrient per reference amount customarily consumed (§ 101.54(c) (21 CFR 101.54(c))), or as an "excellent source" if it contains 20 percent or more of a nutrient's RDI per reference amount customarily consumed (§ 101.54(b)). In addition, "trivial source" is defined as a synonym for "free" and "low source" as a synonym for "low" (see, for example, 21 CFR 101.61(b)(1) and (b)(4)).

Information regarding the agency's position on nutrient content claims is included in the preamble to the proposed and final rules for nutrient content claims (56 FR 60421, November 27, 1991, and 58 FR 2302, January 6, 1993) and in the agency guidance document, "Food Labeling—Questions and Answers—Volume I—For Guidance to Facilitate the Process of Developing or Revising Labels for Foods Other than Dietary Supplements" (Ref. 3).

As for statements that constitute dietary guidance, such label information must be truthful and not misleading as discussed in section II.D.6 of the preamble to the final rule for general requirements for health claims (58 FR 2478 at 2487, January 6, 1993) and in the agency guidance document, "Food Labeling—Questions and Answers—Volume II—A Guide for Restaurants and Other Retail Establishments" (Ref. 4). The agency notes that in the case of the subject sentence, not all fruits, vegetables, and dietary supplements contain significant amounts of vitamins C and E, and therefore if the statement were intended to reflect dietary guidance it cannot be considered to be truthful and not misleading. In addition, to be truthful and not misleading when used on a particular food's labeling, that food must contain significant amounts of vitamins C and E.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "Antioxidant vitamins C and E may reduce the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts." The agency has determined that none of the six statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the six statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A published article authored by two employees of CDC; (2) public information provided on the Internet by an institute of NIH; (3) an electronic version provided on the Internet of "Nutrition and Your Health: Dietary Guidelines for Americans," (Home and Garden Bulletin No. 232, Fourth Edition, 1995) (hereinafter, referred to as "the dietary guidelines") recommendations developed by a group of Federal agencies and issued jointly by the Department of Health and Human Services (DHHS) and the United States Department of Agriculture (USDA); (4) public information provided on the Internet by CDC's Office of Women's Health; (5) a NIH press release provided on the Internet; and (6) an electronic version provided on the Internet of a quarterly report from USDA's Agricultural Research Service (ARS). Thus, the statements in the notification are attributable to NIH, CDC, and USDA/ARS, as well as a group of Federal agencies that included NIH, CDC, and USDA/ARS. Two of the scientific bodies identified, NIH and CDC, are highlighted in the statute as Federal scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. The group that developed the dietary guidelines included Federal agencies that are such scientific bodies. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the six statements discussed in A. through F. of this section of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Antioxidant micronutrients, especially carotenes, vitamin C, and vitamin E, appear to play many important roles in protecting the body against cancer. They block the formation of chemical carcinogens in the stomach, protect DNA and lipid membranes from oxidative damage, and enhance immune function." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in the conclusion section of an article published in *The Annual Review of Nutrition* (12:139–59:1992), entitled: "Dietary Carotenes, Vitamin C, and Vitamin E as Protective Antioxidants in

Human Cancers," and authored by two persons, T. Byers and G. Perry, who are identified in the article as employees of CDC at the time of publication of the article. *The Annual Review of Nutrition* is published periodically by Annual Reviews, Inc., in Palo Alto, CA. Editors for each volume serve as reviewers for the various articles included in the volume and contributors are asked to submit articles for consideration for publication. The subject article is 20 pages of a review of the literature that includes a section on the theoretical roles of dietary oxidants in cancer prevention and focuses on the outcomes of laboratory animal research and epidemiologic studies conducted since 1987. The subject statement appears in the conclusion section of the paper. The agency notes that the next sentence in the conclusion section states: "Nevertheless, many important questions need to be answered before either micronutrient supplements or food fortification can be recommended as a cancer prevention strategy to the general population."

The noted qualifying sentence, as well as the wording of the statement itself (i.e., "appear to play"), suggests that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of this document.

FDA asked CDC whether the statement is an "authoritative statement" under FDAMA. CDC responded to FDA that the statement is not an authoritative statement of CDC because it does not reflect consensus within CDC and was not published by CDC (Ref. 5). CDC indicated that the article was authored by individual employees made in the individual capacity of those employees. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement was not published by CDC and is instead the statement of individual employees of CDC made in their individual capacities, as discussed in section I.A.2 of this document.

B. Statement 2

Statement 2 reads: "[Antioxidants] may help prevent disease. Antioxidants fight harmful molecules called oxygen free radicals, which are created by the body as cells go about their normal business of producing energy * * * [Some] studies show that antioxidants may help prevent heart disease, some cancers, cataracts, that are more common as people get older." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece entitled "Life Extension: Science or Fiction?" that is provided on the Internet by the Administration on Aging and which includes statements from the "Age Page" of the National Institute on Aging (an Institute of NIH) ("http://www.aoa.dhhs.gov/aoa/pages/agepages/lifextsn.html" accessed on 12/2/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is dated 1994, is approximately two standard printed pages in length, and is described as being intended to inform the reader about chemicals being studied that may play a role in aging and what scientists have learned about them so far. Topics covered include antioxidants, deoxyribonucleic acid (DNA), dehydroepiandrosterone (DHEA), and other hormones. Ten tips for healthy aging are also included. The section on antioxidants is 14 sentences in length and includes the three sentences identified as the subject statement. The agency notes that the last sentence of the antioxidant section is: "More research is needed before specific recommendations can be made."

FDA asked NIH whether the statement is an "authoritative statement" under FDAMA. NIH responded to FDA that the statement is not an authoritative statement of NIH because it was prepared by an individual from the National Institute on Aging and is not based on a deliberative review of the scientific evidence regarding the nutrient-disease relationship in question (Ref. 6). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 of this document.

C. Statement 3

Statement 3 reads: "The antioxidant nutrients found in plant foods (e.g., vitamin C, carotenoids, vitamin E, and certain minerals) are presently of great interest to scientists and the public because of their potentially beneficial role in reducing the risk of cancer and certain other chronic diseases." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is from an electronic version of the dietary guidelines issued jointly by DHHS and USDA and provided on the Internet ("http:www.usda.gov/fcs/library/0102–1.txt" accessed on 12/5/97). The submitted material consists of selected pages reprinted from the Internet information, which identifies the seven dietary guidelines and gives background information on the use of, and reasons for, the guidelines. The dietary guidelines reflect the findings of a panel of scientists concerning the dietary recommendations to be made to the U.S. population, and the guidelines are based on a deliberative review of the scientific evidence about the nutrient/disease relationships that the guidelines address. The subject statement is found within the discussion that accompanies the recommendation to "Choose a diet with plenty of grain products, vegetables, and fruits."

The statement indicates that a relationship between antioxidant nutrients and cancer and other chronic disease is "of great interest" because of a "potentially beneficial role." The statement points to the need for future research and suggests that whether a relationship exists should be the subject of scientific study, but does not indicate that there exists a scientifically sound relationship that should be accorded a presumption of validity. This assessment is further supported by the fact that the subject of the dietary guidelines recommendation that the text is intended to clarify is the dietary importance of grain products, vegetables, and fruits, not the specific impact of antioxidant nutrients, vitamins C and E, per se. FDA notes that, consistent with the dietary guidelines, the agency has authorized a health claim for the relationship between cancer and fruits and vegetables that contain vitamin C (as well as vitamin A (as beta-carotene) and dietary fiber) (21 CFR 101.78).

On this basis, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement indicates that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of this document.

The dietary guidelines is the product of a periodic review by a group of Federal agencies, the most recent review having been completed in 1995. FDA did not attempt to reconvene this group of Federal agencies to consult with it about whether the statement is an authoritative statement because, as discussed previously, the wording and context of the statement show that it is not an authoritative statement under section 403(r)(3)(C) of the act.

D. Statement 4

Statement 4 reads: "A diet high in fiber, high in antioxidants, and low in fat may play an important role in

preventing the development of atherosclerosis, coronary heart disease, and some cancers." The notification identified Statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in information on "Health in Later Years" provided on the Internet by CDC's Office of Women's Health in a section entitled: "Health Problems among Older Women," and is included in the subsection "Improving Health and Quality of Life" ("http://www.cdc.gov/od/owh/whily.htm" accessed on 11/26/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is not dated, is approximately three standard printed pages in length, and covers the topics of coronary heart disease, cancer, stroke, and other diseases.

FDA asked CDC whether this statement is an "authoritative statement" under FDAMA. CDC responded that the statement is not an authoritative statement of CDC because, although it is a statement from CDC, it is not based upon a deliberative review of the scientific evidence regarding the nutrient-disease relationship in question; rather, it is a statement from an educational fact sheet developed by CDC's Office of Women's Health to convey information to the public (Ref. 5). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement is not based on a deliberative review of the scientific evidence.

E. Statement 5

Statement 5 reads: "[It] is likely that certain antioxidants, such as vitamins C and E, may destroy the oxygen radicals, retard molecular damage, and perhaps slow the rate of aging." The notification identified Statement 5 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in an undated press release from the National Institute on Aging at NIH, which was provided on the Internet ("http://www.nih.gov/nia/new/press/agingcau.htm" accessed on 12/1/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) states that it is a synopsis of a recent publication entitled: "Aging—Causes and Defenses," which had been authored by R. Martin, D. Danger, and N. Holbrook and published in *The Annual Review of Medicine* (44:419,429:1993). The press release indicates that it is providing a synopsis of the publication but does not clarify if the authors are associated with, or are staff of, NIH. *The Annual Review of Medicine* is published periodically by Annual Reviews, Inc., in Palo Alto, CA. Editors for each volume serve as reviewers for the various articles included in the volume and contributors are asked to submit articles to be considered for publication.

The statement is not "about the relationship between a nutrient and a disease or health-related condition" because aging, the absence of oxygen radicals, and the presence of molecular damage are not diseases or health-related conditions. FDA has therefore concluded that the statement does not address a disease or health-related condition and therefore, as discussed in section I.A.1 of this document, is not an "authoritative statement" under section 403(r)(3)(C) of the act.

F. Statement 6

Statement 6 reads: "Antioxidants are thought to help prevent heart attack, stroke and cancer." The notification identified Statement 6 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Do carotenoids—the bright red, yellow and orange pigments in fruits and vegetables—warrant a Recommended Dietary Allowance?" The paragraph describes the nature and outcome of two ARS studies and is attributed to Betty J. Burr at the USDA Western Human Nutrition Research Center in San Francisco. The agency notes that the last sentence of the paragraph is: "Further ARS studies will try to shed more light on whether a specific minimum daily intake of carotenoids is important for good health."

The context of the paragraph, as well as the wording of the statement (i.e., "are thought"), suggests that the scientific evidence about the relationship in question is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 7). USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and § 101.70 to authorize the health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of this document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act (21 U.S.C. 343(r)(7)(B)), added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet-disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Commission on Dietary Supplement Labels, "Report of the Commission on Dietary Supplement Labels," November 1997, p. vii.

2. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

3. "Food Labeling—Questions and Answers—Volume I—For Guidance to Facilitate the Process of Developing or Revising Labels for Foods Other than Dietary Supplements," August 1993, Questions C1–C54.

4. "Food Labeling—Questions and Answers—Volume II—A Guide for Restaurants and Other Retail Establishments," August 1995, Questions R117–R127.

5. Letter to Christine J. Lewis, CFSAN, FDA, from Dixie E. Snider, CDC, April 21, 1998.

6. Letter to Christine Lewis, CFSAN, FDA, from William R. Harlan, NIH, April 30, 1998.

7. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16454 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

VOL 63 ISS 119 JE 22 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0428]

Food Labeling: Health Claims; Antioxidant Vitamin A and Beta-Carotene and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, and Certain Cancers

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this interim final rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts" (hereinafter referred to as "Health Claims; Vitamins C and E"), which is published elsewhere in this issue of the **Federal Register**. In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the second claim in the notification. The notification included 11 statements that the petitioner identified as authoritative statements on which the following claim is based: "Antioxidant vitamin A and beta-carotene may reduce the risk in adults of atherosclerosis, coronary heart disease and certain cancers. Sources of Vitamin A and beta-carotene include red, yellow and green leafy vegetables, dairy products, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. FDA notes that this claim describes the relationship between vitamin A and beta-carotene and a number of different diseases and, thus, in point of fact, reflects several prospective health claims. The second sentence, "Sources of Vitamin A and beta-carotene include red, yellow and green leafy vegetables, dairy products, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "Antioxidant vitamin A and beta-carotene may reduce the risk in adults of atherosclerosis, coronary heart disease and certain cancers." The agency has determined that none of the 11 statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows:

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the 11 statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA); (2) an electronic version provided on the Internet of "Nutrition and Your Health: Dietary Guidelines for Americans,"

recommendations developed by a group of Federal agencies and issued jointly by DHHS and USDA; (3) electronic versions provided on the Internet of four quarterly reports from USDA's Agricultural Research Service (ARS) (statement 3, 7, 9, and 11); (4) electronic versions provided on the Internet of two interpretative summaries from USDA/ARS Technology Transfer Information Center (statements 4 and 10); (5) public information provided on the Internet by an institute of the National Institutes of Health (NIH); (6) public information provided on the Internet by USDA/ARS Beltsville Human Nutrition Research Center; and (7) public information provided on the Internet by the National Cancer Institute (NCI), an institute within NIH. Thus, nine statements in the notification are attributable to either NIH or USDA/ARS. A 10th statement is attributable to USDA and DHHS and is intended for use by Federal agencies including NIH, the Centers for Disease Control and Prevention (CDC), and USDA/ARS. An 11th statement from the Dietary Guidelines for Americans is attributable to a group of Federal agencies that included NIH, CDC, and USDA/ARS. Two of the agencies, NIH and CDC, are highlighted in the statute as Federal scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. The agencies that were identified as users of the "Nutrition Monitoring Report" as well as the group that developed the dietary guidelines included Federal agencies that are such scientific bodies, including NIH, CDC, and USDA/ARS. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the 11 statements discussed in sections III.A through III.K of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Beta-carotene and other pro-vitamin a carotenoids can be converted to vitamin A in the body. Interest in the carotenoids has increased in recent years because of the accumulation of a large body of evidence that foods high in carotenoids are protective against a variety of epithelial cancers." The notification identified statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on vitamins that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (SRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The statement indicates that there is interest in the relationship because of a growing body of evidence, but does not confirm that the relationship is considered scientifically valid or well established. Rather, the context suggests that further research would be worthwhile and that the scientific evidence about the relationship is preliminary or inconclusive, as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences (NAS). Contractual activities involved in the preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the Government agencies. A disclaimer that appears on the inside front cover of the report, which was not included in the notification, states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**, but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it indicates that the scientific evidence is preliminary or inconclusive, that it does not reflect the official policy of an appropriate scientific body, and that no appropriate scientific body has conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "The antioxidant nutrients found in plant foods (e.g., vitamin C, carotenoids, vitamin E, and certain minerals) are presently of great interest to scientists and the public because of their potentially beneficial role in reducing the risk of cancer and certain other chronic diseases." The notification identified statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is from an electronic version of "Nutrition and Your Health: Dietary Guidelines for Americans" (Home and Garden Bulletin No. 232, Fourth Ed., 1995), hereinafter referred to as the "dietary guidelines," issued jointly by DHHS and USDA and provided on the Internet ("http:www.usda.gov/fcs/library/0102-1.txt" accessed on 12/5/97). The submitted material consists of selected pages reprinted from the Internet information, which identifies the seven dietary guidelines and gives background

information on the use of, and reasons for, the guidelines. The dietary guidelines reflect the findings of a panel of scientists concerning the dietary recommendations to be made to the U.S. population, and the guidelines are based on a deliberative review of the scientific evidence about the nutrient/disease relationships that the guidelines address. The subject statement is found within the discussion that accompanies the recommendation to "Choose a diet with plenty of grain products, vegetables, and fruits."

The statement indicates that a relationship between antioxidant nutrients and cancer and other chronic disease is "of great interest" because of a "potentially beneficial role." The statement points to the need for future research and suggests that whether a relationship exists should be the subject of scientific study, but does not indicate that there exists a scientifically sound relationship that should be accorded a presumption of validity. This assessment is further supported by the fact that the subject of the dietary guideline is the dietary importance of grain products, vegetables, and fruits, not the specific impact of antioxidant nutrients, vitamin A and beta-carotene, per se. FDA notes that, consistent with the dietary guidelines, the agency has authorized a health claim for the relationship between cancer and fruits and vegetables that contain vitamins A (as beta-carotene) as well as vitamin C and dietary fiber (21 CFR 101.78).

On this basis, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement indicates that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of the **Federal Register** "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

The dietary guidelines is the product of a periodic review by a group of Federal agencies, the most recent review having been completed in 1995. FDA did not attempt to reconvene this group of Federal agencies to consult with it about whether the statement is an authoritative statement because, as discussed previously, the wording and context of the statement show that it is not an authoritative statement under section 403(r)(3)(C) of the act.

C. Statement 3

Statement 3 reads: "If the findings hold up in further research, eating more vegetables rich in beta-carotene and related carotenoids–lutein and lycopene–may help people ward off a cold or flu as well as protect from cancer * * *. The findings also suggest that carotenoid-rich vegetables also stimulate the immune system." The notification identified statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Daily servings of dark green and deep yellow vegetables and tomatoes boost immune response, a preliminary study suggests." The paragraph describes the nature and outcome of one ARS study and is attributed to Tim R. Kramer and Beverly Clevidence of the USDA Beltsville Human Nutrition Research Center in Beltsville, MD. The agency notes that the research is identified as a "preliminary study."

The context of the paragraph, as well as the wording of the statement (i.e., "if the findings hold up"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

D. Statement 4

Statement 4 reads: "This research involving cells provides data which supports the general hypothesis that beta-carotene and lutein protect cells by serving as antioxidants." The notification identified statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a one paragraph interpretative summary of a research report from Technology Transfer Information Center, TEKTRAN of USDA/ARS entitled "Beta-carotene and Lutein Protect the Plasma Membrane of HEPG2 Human Liver Cells Against Oxidant-induced Damage," and provided on the Internet ("http://www.nalusda.gov/ttic/tektran/data/000006/92/0000069264.html" accessed on 12/3/97) (ARS Report Number 69264). It describes the nature and outcome of one study, which is attributed to Keith J. Martin, Mark L. Failla, and James C. Smith, Jr.

The statement is not "about the relationship between a nutrient and a disease or health-related condition" because no disease is identified in the statement. Therefore, FDA has concluded that the statement does not address a disease or health-related condition and therefore is not an "authoritative statement" under section 403(r)(C)(3) of the act, as described in section I.A.1 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

E. Statement 5

Statement 5 reads: "[Antioxidants] may help prevent disease. Antioxidants fight harmful molecules called oxygen free radicals, which are created by the body as cells go about their normal business of producing energy * * *. [S]ome studies show that antioxidants may help prevent heart disease, some cancers, cataracts, and other health problems that are more common as people get older." The notification identified statement 5 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece entitled: "Life Extension: Science or Fiction?" that is provided on the Internet by the Administration on Aging and which includes statements from the "Age Page" of the National Institute on Aging (an Institute of the NIH) ("http://www.aoa.dhhs.gov/aoa/pages/agepages/lifextsn.html" accessed on 12/2/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is dated 1994, is approximately two standard printed pages in length, and is described as being intended to inform the reader about chemicals being studied that may play a role in aging and what scientists have learned about them so far. Topics

covered include: Antioxidants, DNA, DHEA, and other hormones. Ten tips for healthy aging are also included. The section on antioxidants is 14 sentences in length and includes the 3 sentences identified as the subject statement. The agency notes that the last sentence of the antioxidant section is: "More research is needed before specific recommendations can be made."

FDA asked NIH whether the statement is an "authoritative statement" under FDAMA. NIH responded to FDA that the statement is not an authoritative statement of NIH because it was prepared by an individual from the National Institute on Aging and is not based on a deliberative review of scientific evidence regarding the nutrient-disease relationship in question (Ref. 4). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

F. Statement 6

Statement 6 reads: "As potent antioxidants, [lutein and lycopene] are thought to contribute to the lower rates of heart disease, cancer and other diseases of aging among populations that eat a lot of fruits and vegetables." The notification identified statement 6 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece, "BHNRC Success Stories," provided on the Internet by USDA/ARS Beltsville Human Nutrition Research Center and entitled: "Carotenoids Show Their Real Colors" ("http://www.barc.usda.gov/bhnrc/success.htm" accessed on 12/4/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is undated. The section on carotenoids is three brief paragraphs in length and describes the nature and outcome of a single ARS study attributed to Tim Kramer and Beverly Clevidence. The same study was also referenced in ARS's *Human Nutrition* quarterly report as noted in the discussion of statement 3 in section III.C of this document.

The context of the section, as well as the wording of the statement (i.e., "are thought"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that the ARS "BHNRC Success Stories" describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

G. Statement 7

Statement 7 reads: "Researchers also found more evidence suggesting that carotenes act as antioxidants to protect the body from harmful oxidation. Antioxidants are thought to help prevent heart attack, stroke and cancer. During the low-carotene stints, researchers recorded several biochemical signs of oxidative damage." The notification identified statement 7 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Do carotenoids—the bright red, yellow and orange pigments in fruits and vegetables—warrant a Recommended Dietary Allowance?" The paragraph describes the nature and outcome of two ARS studies and is attributed to Betty Burri of the Western Human Nutrition Research Center in San Francisco, CA. The agency notes that the final sentence states: "Further ARS studies will try to shed more light on whether a specific minimum daily intake of carotenoids is important for good health."

The context of the paragraph, as well as the wording of the statement (i.e., "are thought"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

H. Statement 8

Statement 8 reads: "[H]igh dietary carotene and possibly vitamins C and E and folate are associated with reduced risk for cervical cancer." The notification identified statement 8 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in information provided on the Internet by the NCI, an institute of NIH, in an article entitled: "Prevention of Cervical Cancer" and disseminated as part of "PDQ—Detection & Prevention—Health Professionals" (PDQ stands for physicians data query) ("http://cancernet.nci.nih.gov/ clinpdq/screening/ Prevention__of__cervical__cancer__Physician.html" accessed on 12/1/97). This electronically available information (submitted as a hardcopy reprint from the Internet information) is undated, approximately nine standard printed pages in length, and is described as intended for use by doctors and other health care professionals. The subject sentence is one of several sentences summarizing research on the intake of micronutrients and the risk of squamous intraepithelial lesion (SIL) and cervical cancer.

FDA asked NIH whether this was an "authoritative statement" under FDAMA. NIH responded that the statement was not an authoritative statement of NIH and does not reflect consensus within NIH (Ref. 4). NIH explained that the evidence was reviewed by an editorial board for PDQ, and the majority of the members are not Federal employees. The statements contained in PDQ were reported by NIH to be "state of the art" educational statements developed by an editorial board that assesses the levels of scientific evidence supporting the statements. In this instance, the scientific evidence for the nutrient-disease relationship was not considered to be strong since it was based on observational studies. NIH reiterated that the statement is not the product of consensus process within the NCI and the statement has not undergone formal review and clearance by the Director of the National Institutes of Health.

Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of

the act because it does not reflect consensus within NIH, as discussed in section I.A.2 of "Health Claims: Vitamin C and E," which is published elsewhere in this issue of the **Federal Register**.

I. Statement 9

Statement 9 reads: "[B]eta carotene or vitamin A supplements have reversed pre-cancerous conditions in people's mouths." The notification identified statement 9 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3rd quarter 1995) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q395/hn395.htm" accessed on 12/3/97) in a description of research entitled: "A daily dose of blue-green algae Spirulina may help prevent cancer of the mouth, a study shows." The paragraph describes the nature and outcome of an ARS study and is attributed to Padmanabhan P. Nair of the Beltsville Human Nutrition Research Center, Beltsville, MD.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

J. Statement 10

Statement 10 reads: "Carotenoids or other plant components appear to boost the immune system." The notification identified statement 10 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a one-paragraph interpretative summary of a research report from Technology Transfer Information Center, TEKTRAN of USDA/ARS entitled: "Consumption of Carotenoid-Rich Vegetables Increases T-Lymphocyte Proliferation and Plasma Levels of Carotenoid Oxidation Products" and provided on the Internet ("http://www.nalusda.gov/ttic/tektran/data/000007/41/0000074185.html" accessed on 12/3/97) (ARS Report Number 74185). It describes the nature and outcome of one study, which is attributed to ten researchers, the first author being Beverly Clevidence.

FDA finds that the statement is not "about the relationship between a nutrient and a disease or health-related condition" because no disease is identified in the statement. Therefore, FDA has concluded that the statement does not address a disease or health-related condition and therefore is not an "authoritative statement" under section 403(r)(C)(3) of the act.

K. Statement 11

Statement 11 reads: "A wealth of epidemiological evidence has linked a high intake of green leafy and deep yellow vegetables—both rich in beta-carotene—with lower rates of many types of cancer * * *. Men over 65 who took a 50-milligram beta-carotene supplement every other day during the 12-year study had natural killer cells that were more active than their counterparts who got a placebo. Natural killer cells—or NK cells—are the immune system's sentinels, ever on watch for viruses and cancer cells." The notification identified statement 11 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Older people who get plenty of beta carotene may have a better chance of preventing virus infections or a cancerous growth." The paragraph describes the nature and outcome of a study and is attributed to Simin Nikbin Meydani of the USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statements published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) and 21 CFR 10.70 to authorize the health claim or claims by regulation under section 403(r)(3)(B).

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of this document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

As described previously in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim

final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim related to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this interim final rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P. C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii to vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

4. Letter to Christine Lewis, CFSAN, FDA, from William R. Harlan, NIH, April 30, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16455 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0427]

Food Labeling: Health Claims; B-Complex Vitamins, Lowered Homocysteine Levels, and the Risk in Adults of Cardiovascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the

petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the third claim in the notification. The notification included four statements that the submitter identified as authoritative statements on which the following claim is based: "B-complex vitamins-Folic Acid, Vitamin B_6, Vitamin B_{12}—may reduce the risk in adults of cardiovascular disease by lowering elevated serum homocysteine levels, one of the many factors implicated in that disease. Sources of B-complex vitamins include whole and enriched grains, green leafy vegetables, fish, dry beans, red meat, and dietary supplements."

The first sentence of this claim will be discussed in greater detail section III of this document. The second sentence, "Sources of B-complex vitamins include whole and enriched grains, green leafy vegetables, fish, dry beans, red meat, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "B-complex vitamins—Folic Acid, Vitamin B_6, Vitamin B_{12}—may reduce the risk in adults of cardiovascular disease by lowering elevated serum homocysteine levels, one of the many factors implicated in that disease." The agency has determined that none of the four statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the four statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites four statements from quarterly reports from the U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) from electronic versions provided on the Internet. Thus, the statements in the notification are all attributable to USDA's ARS. FDA believes that USDA/ARS is a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to an appropriate Federal scientific body or to its employees.

Finally, however, none of the four statements discussed in sections III.A through III.D of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "A research team's new evidence confirms earlier data that elevated levels of the amino acid homocysteine increase the odds for significant narrowing of the arteries * * * The Analysis also Showed that Insufficient Levels of Folate and, to a Lesser Extent, Vitamin B_6 contribute to increased risk of artery narrowing. Like a see-saw, homocysteine levels go up as the vitamins go down, and vice versa." The notification identified Statement 1

as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 1st quarter 1995) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q195/hn195.htm" accessed on 12/4/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Eating green vegetables, citric and other foods rich in folate (folic acid) may help keep the arteries open, reducing heart disease and stroke risks." The paragraph describes the nature and outcome of one ARS study and is attributed to Jacob Selhub and Paul Jaques of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts.

FDA asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that the ARS Quarterly Reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

B. Statement 2

Statement 2 reads: "When people don't have enough of these [vitamin B_{12} and folate] vitamins to metabolize homocysteine it accumulates in the blood and damages the vessels." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th Quarter 1996) (see discussion of statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm accessed" on 12/3/97) in a description of research entitled: "One or two alcoholic drinks a day can interfere with people's B vitamin levels, according to a study of 41 men and women." The paragraph describes the nature and outcome of one ARS study and is attributed to Judith Hallfrisch of the USDA Beltsville Human Nutrition Research Center on Aging.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

C. Statement 3

Statement 3 reads: "[T]he body needs [folate] to convert homocysteine into a nontoxic amino acid and thus prevent damage to blood vessels * * * Supplement users had the lowest homocysteine levels but not much lower than frequent consumers of fruits, vegetables and cereal." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th Quarter 1996) (see discussion of statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Eating more fruits, vegetables, and cold cereal fortified with folic acid—a form of folate—should significantly reduce the risk of heart disease and stroke that comes from having high blood levels of homocysteine, a new study shows." The paragraph describes the nature and outcome of one ARS study and is attributed to Katherine L. Tucker of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

D. Statement 4

Statement 4 reads: "Research has linked high homocysteine levels to increased risk of heart disease and stroke." The notification identified Statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d Quarter 1995) (see discussion of Statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q395/hn395.htm" accessed on 12/3/97) in a description of research entitled "Measuring blood levels of the amino acid homocysteine only after an overnight fast could miss nearly half of the people with elevated levels." The paragraph describes the nature and outcome of one ARS study and is attributed to Andrew G. Bostom and Jacob Selhub of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body of the U.S. Government as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the

agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C) of the act.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16456 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0423]

Food Labeling: Health Claims; Calcium Consumption by Adolescents and Adults, Bone Density and The Risk of Fractures

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this interim final rule to prohibit the use on foods of a claim relating to the relationship between calcium, bone density, and the risk of fractures. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA is prohibiting the claim because section 303 of FDAMA does not apply when FDA has an existing regulation authorizing a health claim about the relationship between the nutrient and the disease or health-related condition at issue. A health claim concerning the relationship between calcium and osteoporosis is already authorized. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998. Submit written comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document published elsewhere in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the fourth claim in the notification. The notification included five statements that the petitioner identified as authoritative statements on which the following claim is based: "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures. Sources of calcium include dairy products, broccoli, spinach, and dietary supplements."

As discussed in greater detail in section III of this document, FDA has determined that the claim in the first sentence addresses the same relationship as provided for by an existing authorized health claim, specifically § 101.72 (21 CFR 101.72), "Health claims: calcium and osteoporosis." The second sentence, "Sources of calcium include dairy products, broccoli, spinach, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

A. Section 303 of FDAMA as it Relates to Existing Authorized Health Claims

The claim at issue in this rulemaking raises the question of the relationship of the notification process established in section 403(r)(3)(C) of the act to the health claims authorization process provided by section 403(r)(4) and (r)(3)(B). In particular, when FDA has issued a regulation under section 403(r)(3)(B) of the act that authorizes claims that characterize the relationship of a nutrient to a disease or health-related condition, may the notification process of section 403(r)(3)(C) be used to make a health claim about the same relationship, thereby effectively modifying the claims already authorized by regulation?

Section 403(r)(3)(C) of the act, as added by section 303 of FDAMA, provides that a health claim "which is not authorized by the Secretary in a regulation promulgated in accordance with [section 403(r)(3)(B)], shall be authorized and may be made" if the requirements of section 403(r)(3)(C) of the act are met. When discussing the effect of section 303 of FDAMA, the Senate Report states: "Once FDA regulations governing health claims

concerning a particular diet/disease relationship (e.g., calcium and osteoporosis) have become effective, no claim concerning that diet/disease relationship based on the statement of an authoritative scientific body could be made unless it is consistent with the FDA regulation" (S. Rept. 105–43, at 51 (1997)). Therefore, when a claim about the relationship between a nutrient and a disease or health-related condition is authorized by a regulation issued under section 403(r)(3)(B) of the act, section 403(r)(3)(C) does not authorize a claim about that relationship based on an authoritative statement. Accordingly, the authoritative statement notification process for health claims under section 403(r)(3)(C) of the act does not apply when there is an existing regulation issued under section 403(r)(3)(B) of the act that authorizes claims about the relationship between a nutrient and a disease or health-related condition. However, such a health claim can be made without prior notification provided it is consistent with the existing health claim regulation.

Because of the nature of the health claim regulations issued under section 403(r)(3)(B) of the act, a health claim that is "consistent with" such a regulation, whether based on an authoritative statement or not, is authorized by the regulation itself and may be used on an appropriate food or dietary supplement without prior notification to FDA. Manufacturers can make health claims that are consistent with an existing health claim regulation, and use of health claims that are inconsistent with an existing health claim regulation would misbrand the product.

FDA's health claim regulations specify: (1) The relationship between the nutrient and the disease (e.g., calcium and osteoporosis); (2) the significance of the nutrient (e.g., calcium) in reducing the risk of the disease (e.g., osteoporosis); (3) the requirements of the health claim (i.e., information that must be included in the health claim and information that must not be included in the health claim); (4) the nature of foods that are permitted to display the health claim on their labels; and (5) optional information that may be included in the health claim. The regulations specify the elements that a health claim must contain, the elements that it may contain, and the elements that it may not contain; however, they do not specify the exact words to be used in a claim. Accordingly, claims with different wording may be consistent with a health claim regulation provided they meet the requirements of the regulation.

For example, to be consistent with the currently existing regulations relating to calcium intake and reduced risk of osteoporosis, a potential health claim must meet all of the requirements in § 101.72. If a potential claim meets all of the requirements in § 101.72 (i.e., it includes all required information, and it does not include prohibited information), then the health claim is permitted on appropriate foods and dietary supplements as specified in § 101.72(c)(2)(ii), and prior notification about the health claim is not required to use it on an appropriate food or dietary supplement. If the requirements of § 101.72 are not met, the claim would not be consistent with FDA's regulations for calcium and osteoporosis health claims, and such a claim would misbrand any food or dietary supplement on which it appears.

Accordingly, section 303 of FDAMA does not provide for modification of an existing health claim regulation through submission under section 403(r)(3)(C) of the act of a notification for a health claim based on an authoritative statement by a scientific body. A party interested in amending an existing regulation may instead submit a citizen's petition in accordance with the provisions in 21 CFR 10.30.

B. The Prospective Health Claim is a Calcium–Osteoporosis Health Claim that is Not Authorized under Section 403(r)(3)(C) of the Act and is Not Consistent with the Existing Calcium–Osteoporosis Health Claim Authorized by § 101.72

The first sentence in the prospective health claim as submitted in the subject notification, "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures," is a health claim relating to calcium intake and the bone disease, osteoporosis. The reference to the risk of fractures may relate to a number of bone diseases, but a review of the five statements identified in the notification as "authoritative statements" clarifies that the claim refers to the bone disease known as osteoporosis. As specified in § 101.72, the authorized health claim for calcium intake and the risk of osteoporosis is based on the importance of reducing fractures in older persons due to osteoporosis and on the importance of peak bone mass during critical developmental stages, notably adolescence.

Statement 1 in the notification includes three sentences, the first of which reads: "Although the precise relationship of dietary calcium to osteoporosis has not been elucidated, it appears that higher intakes of dietary calcium could increase peak bone mass during adolescence and delay the onset of bone fractures later in life." The other two sentences state: "Inadequate dietary calcium consumption in the first three to four decades of life may be associated with increased risk of osteoporosis in later life," and "[e]vidence shows that chronically low calcium intake especially during adolescence and early adulthood, may compromise development of peak bone mass." These three sentences are excerpted from the Summary and Recommendations section of the 1988 Surgeon General's Report on Nutrition and Health. The Summary and Recommendations section of the report in which these sentences appear makes no mention of any other type of bone disease except osteoporosis. Moreover, FDA notes that it included the recommendations from the report in its own deliberations in authorizing the health claim related to the relationship between calcium and osteoporosis.

Statement 2 is from a Department of Health and Human Services's press release from 1997, and states: "[S]ecretary Shalala noted that there is a 'window of opportunity' during adolescence to increase bone density through calcium intake. Bones grow and incorporate calcium most rapidly during the teen years, and establish approximately 90% of adult mass by age 17." The press release describes an educational program developed by a coalition of government, private sector, and medical groups. As stated in the press release, the education program "is designed to help prevent the next generation from suffering the devastating consequences of osteoporosis by reaching teens with the message of the importance of consuming calcium during the teen years." The context of this statement therefore makes it clear that the statement is about reducing the risk for osteoporosis.

Statement 3 is from a 1997 press release from the National Academy of Sciences, and states: "Calcium recommendations were set at levels associated with maximum retention of body calcium, since bones that are calcium rich are known to be less susceptible to fractures." FDA notes that the sentence that follows this statement reads: "In addition to calcium consumption, other factors that are thought to affect bone retention of calcium and risk of osteoporosis include high rates of growth in children during specific periods, hormonal status, exercise, genetics, and other diet components." The context of this

statement therefore makes it clear that the statement is about risk of fractures due to osteoporosis.

Statement 4 is from a 1997 press release from one of the institutes of the National Institutes of Health, and states: "Supplements of calcium and vitamin D can significantly reduce bone loss and the risk of fractures in older people, according to a new report from scientists at Tufts University." This statement is the first sentence of the press release. The second sentence reads: "The research, the first to show these supplements can help older men fight osteoporosis, also demonstrates that the benefits of these low-cost and easily-available supplements can be maintained over several years." The context of this statement, therefore, makes it clear that the statement is about risk of fractures due to osteoporosis.

Statement 5 is from a 1991 FDA Consumer article, and states: "Both women and men need enough calcium to build peak (maximum) bone mass during their early years of life. Low calcium intake appears to be one important factor in the development of osteoporosis." This statement is also clearly about osteoporosis.

Statements 1 and 5 explicitly refer to osteoporosis. Statements 2, 3, and 4 are adjacent to sentences that explicitly refer to osteoporosis, or, given their context, are about osteoporosis. Given that these statements are about osteoporosis, the agency concludes that this claim characterizes the relationship of calcium to osteoporosis.

Claims characterizing the relationship of calcium to osteoporosis are authorized under § 101.72, which was issued under section 403(r)(3)(B) of the act. As discussed in section III.A of this document, the prospective claim may be used only if it is consistent with the provisions of § 101.72, in which case it can be made on the label or labeling of appropriate foods and dietary supplements.

The prospective health claim, as stated, is not consistent with, and is therefore not authorized under, § 101.72. FDA reviewed the prospective health claim that was submitted with this notification—"Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures"—and determined that at least one key element required by § 101.72 is not included in the claim. The submitted claim mischaracterizes the mechanism by which calcium consumption reduces the risk of osteoporosis. Although calcium consumption increases bone density in adolescents and young adults, in older adults it instead reduces bone loss (see § 101.72(a)). In addition, the term "risk of fractures" is synonymous with neither osteoperosis nor fractures related to osteoperosis. Accordingly, the claim is not authorized by § 101.72.

In summary, FDA is issuing this interim final rule to prohibit use under section 403(r)(3)(C) of the act of the claim, "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures," because it addresses the same nutrient-disease relationship provided for in an existing health claim regulation (§ 101.72), and so its use cannot be authorized under section 403(r)(3)(C) of the act. The claim may be used if it is consistent with § 101.72, the regulation that authorizes use of a calcium-osteoporosis health claim, yet the agency finds that the claim is not consistent with § 101.72. Use of the prospective claim in the labeling of a product would, accordingly, misbrand the product.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in Section III of this document, FDA has determined that the prospective health claim that is the subject of this notification is a health claim about the relationship between calcium and osteoporosis. Because health claims about the relationship between calcium and osteoporosis are already authorized by regulation issued under section 403(r)(3)(B) of the act, FDA has determined that the prospective health claim is not subject to the authoritative statement procedure provided by section 403(r)(3)(C). FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

A health claim relating to the association between calcium and osteoporosis is authorized under existing regulations. Accordingly, firms can make a claim about calcium and

osteoporosis provided that the food is eligible for the claim and the claim is consistent with the current regulations. The prospective claim relating to the relationship between calcium and bone disease, specifically, increased bone density and the risk of fractures, is not consistent with the existing claim, and would misbrand any food on which it is used. Because firms can highlight the relationship between calcium and osteoporosis, that this prospective claim would misbrand foods does not create any lost opportunities for firms. Therefore, this interim final rule results in neither costs nor benefits.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between calcium and osteoporosis is authorized under existing regulations. This interim final rule results in no regulatory changes for firms, and therefore, this interim final rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16457 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0424]

Food Labeling: Health Claims; Chromium and the Risk in Adults of Hyperglycemia and the Effects of Glucose Intolerance

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D)), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the fifth claim in the notification. The notification included three statements

that the petitioner identified as authoritative statements on which the following claim is based: "In adults, chromium may reduce the risk of hyperglycemia and the effects of glucose intolerance. Sources of chromium include whole grains, brewer's yeast, cheese, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The agency notes that this claim describes the relationship between chromium and two diseases or health-related conditions, and thus reflects two prospective health claims. The second sentence, "Sources of chromium include whole grains, brewer's yeast, cheese, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by section 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, chromium may reduce the risk of hyperglycemia and the effects of glucose intolerance." The agency has determined that none of the three statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the three statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites: (1) Two statements from quarterly reports from the U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) from electronic versions provided on the Internet; and (2) one statement from a report issued by the U.S. Surgeon General. Thus, the statements in the notification are attributable to USDA's ARS or to the Surgeon General. FDA believes that USDA/ARS and the Surgeon General, who is housed within the U.S. Department of Health and Human Services (DHHS), are scientific bodies of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the three statements discussed in sections III.A through C of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Chromium supplements—in two different formulations—lowered blood pressure in rats bred to spontaneously develop hypertension * * * the supplements, chromium picolinate and chromium nicotinate, also reduced the formation of damaging free radicals in the animals' tissues, indicating that chromium can act as an antioxidant * * * chromium is essential for insulin to operate efficiently and has been shown to reduce diabetic symptoms and restore glucose tolerance in studies of humans and animals." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d quarter 1997) issued by USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q397/hn397.htm" accessed on 11/26/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Chromium supplements—in two different formulations—lowered blood pressure in rats bred to spontaneously develop hypertension." The paragraph, which describes the nature and outcome of one ARS study and which refers to previous studies, is attributed to Richard A. Anderson of the Beltsville Human Nutrition Research Center, Beltsville, MD.

The agency notes that the statement focuses first on hypertension in rats, then on the formation of free radicals in rats. The third component of the statement suggests that chromium has an effect in reducing diabetic symptoms and restoration of glucose tolerance in humans as well as animals.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that the ARS Quarterly Reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

B. Statement 2

Statement 2 reads: "In a 20-week ARS study, rats that daily consumed more than 2,000 times the estimated safe limit of chromium for people showed no sign of toxicity * * * [the findings] bring into question the relevance of a study done 2 years ago * * * that reported DNA damage."

The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d quarter 1997) (see discussion of statement 1 in section III.A of this document), which is issued by USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q397/hn397.htm" accessed on 11/26/97) in a description of research entitled: "There's good news for people concerned about the safety of taking chromium supplements." The paragraph describes the nature and outcome of one ARS study on rats and

is attributed to Richard A. Anderson of the Beltsville Human Nutrition Research Center.

FDA concludes that the statement focuses on levels of intake considered safe in rats and does not identify a relationship between a nutrient and a disease or health-related condition in humans, as described in section I.A.1 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. Thus, this statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not about the relationship between a nutrient and a disease or health-related condition.

C. Statement 3

Statement 3 reads: "Scientists must often draw inferences about the relationships between dietary factors and disease from animal studies or human metabolic and population studies that approach issues indirectly." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on the nature of scientific evidence contained in "The Surgeon General's Report on Nutrition and Health—Summary and Recommendations" that was published by the Public Health Service (PHS) of DHHS (1988).

FDA concludes that the statement focuses on a general principle of scientific inference and is not about the relationship between a nutrient and a disease or health-related condition. Thus, this statement is not an "authoritative statement" under section 403(r)(3)(C) of the act.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 10.70 to authorize a health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim related to the association between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612)

requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16458 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0419]

Food Labeling: Health Claims; Omega-3 Fatty Acids and the Risk in Adults of Cardiovascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this interim final rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts," hereinafter referred to as "Health Claims; Vitamins C and E", which is published elsewhere in this issue of the **Federal Register**. In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the sixth claim in the notification. The notification included two statements that the petitioner identified as authoritative statements on which the following claim is based: "In adults, Omega-3 Fatty Acids may reduce the risk of cardiovascular disease. Sources of Omega-3 Fatty Acids include fish, seafood, flaxseed, soybeans, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The second sentence, "Sources of Omega-3 Fatty Acids include fish, seafood, flaxseed, soybeans, and dietary supplements," is not a health claim. Given that the notification indicated that it was

intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, Omega-3 Fatty Acids may reduce the risk of cardiovascular disease." The agency has determined that neither of the two statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the two statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA); and (2) a USDA's Agriculture Research Service (ARS) press release provided on the Internet. Thus, one statement in the notification is attributable to USDA and DHHS and is intended for use by Federal agencies including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and USDA/ARS. The second statement is attributable to USDA/ARS. NIH and CDC are highlighted in the statute as scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, neither of the two statements discussed in section III.A and III.B of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Intake of particular polyunsaturated fats, the omega-3 fatty acids, may offer some protection against the development of clinical manifestations of atherosclerosis by decreasing platelet aggregation and clotting activity and preventing arterial thrombosis." The notification identified statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on coronary heart disease that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The wording and context of the statement indicates that arterial thrombosis as affected by omega-3 fatty acids is a preliminary, albeit promising, relationship, and does not yet constitute an established relationship between omega-3 fatty acids and heart disease. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences. Contractual activities involved in the preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the Government agencies. A disclaimer that appears on the inside front cover of the report, which was not included in the notification, states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**, but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it indicates that the scientific evidence is preliminary or inconclusive, that it does not reflect the official policy

of an appropriate scientific body, and that no appropriate scientific body has conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "In new soybean oil varieties developed by the USDA's Agriculture Research Service palmitic acid is replaced with oleic acid, which has some health benefits. In addition, omega-3 and omega-6 fatty acids, which can actually lower cholesterol levels, are at 7 and 60 percent respectively—essentially the same as regular soybeans." The notification identified statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in a press release from USDA's ARS, dated November 26, 1996, entitled: "New Soybeans Halve Saturated Fat, Keep Nutrition," which was provided on the Internet ("http://www.ars.usda.gov/is/pr/soyfat1196.htm" accessed on 12/4/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) is attributed to Jill Lee of ARS and suggests that Joseph W. Burton (USDA/ARS, Raleigh, NC) or James R. Wilcox (USDA/ARS, West Lafayette, IN) be contacted for details. It is approximately two standard printed pages in length and the subject sentence is one of several sentences that summarize the nutritional differences between two new varieties of soybeans compared with regular soybeans.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that informational pieces such as press releases describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include authoritative statements published by any scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 10.70 to authorize a health claim by regulation under section 403(r)(3)(B).

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between omega-3 fatty acids and the risk in adults of

cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii to vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16459 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0422]

Food Labeling: Health Claims; Garlic, Reduction of Serum Cholesterol, and the Risk of Cardiovascular Disease in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed the statement that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statement submitted as the basis of the claim is not an "authoritative statement" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims, and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the seventh claim in the notification. The

notification included one statement that the petitioner identified as an authoritative statement on which the following claim is based: "In adults, garlic may reduce serum cholesterol and the risk of cardiovascular disease." This claim will be discussed in greater detail in section III of this document.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, garlic may reduce serum cholesterol and the risk of cardiovascular disease." The agency has determined that the one statement submitted as a basis for this claim does not meet the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, the statement cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites a statement from a U.S. Department of Agriculture (USDA) press release provided on the Internet that refers to USDA's Agricultural Research Service (ARS) for further information. Thus, the statement in the notification is attributable to USDA's ARS. FDA believes that USDA/ARS is a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C). Accordingly, the statement provided in the notification in support of the claim may be attributable to an appropriate Federal scientific body or to its employees.

Finally, however, the statement discussed in this section of this document was not found to be an authoritative statement.

Statement

The statement reads: "Garlic is well-known for its medicinal benefits: Lowering blood cholesterol, fighting off infections and boosting the immune system." The notification identified the statement as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in a press release from USDA, dated February 7, 1995, entitled: "Nation's First Garlic from True Seed Produced by USDA Scientist" (Release No. 0102.95), which was provided on the Internet ("http://www.usda.gov/news/releases/1995/02/0102" accessed on 12/16/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) is attributed to Linda Cooke and Maria Bynum (affiliation unknown), but refers editors to Philip W. Simon at ARS for details. The press release summarizes the development of the first garlic seeds and is approximately two standard printed pages in length. The subject sentence is included in a description of garlic and its uses.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that informational pieces such as press releases describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as discussed in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of the document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statement submitted in support of the prospective health claim does not meet the requirements for an authoritative statement in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit–Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1996.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16460 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96N–0421]

Food Labeling: Health Claims; Zinc and the Body's Ability to Fight Infection and Heal Wounds in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between zinc and the body's ability to fight infection and heal wounds in adults. This rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA

amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document published elsewhere in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the eighth claim in the notification. The notification included two statements that the petitioner identified as authoritative statements on which the following claim is based: "In adults, zinc may increase the body's ability to fight infection and heal wounds. Sources of zinc include whole grains, fish, seafood, meat, poultry, eggs, legumes, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The agency notes that this claim describes the relationship between zinc and two diseases and, thus, in point of fact, reflects two prospective health claims. The second sentence, "Sources of zinc include whole grains, fish, seafood, meat, poultry, eggs, legumes, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, zinc may increase the body's ability to fight infection and heal wounds." The agency has determined that neither of the two statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on authoritative statements, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, the two statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA), and (2) an electronic version provided on the Internet of a quarterly report from USDA's Agricultural Research Service (ARS). Thus, one statement in the notification is attributable to USDA and DHHS and is intended for use by Federal agencies including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and USDA/ARS. The second statement is attributable to USDA/ARS. NIH and CDC are highlighted in the statute as scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, neither of the two statements discussed in sections III.A and III.B of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Zinc is an essential mineral in the diet and is a component of many enzymes. As such, it is involved in many metabolic processes including wound healing, immune function, growth and maintenance of tissues." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on minerals that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences. Contractual activities involved in preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the government agencies. A disclaimer that appears on the inside front cover of the report (which was not included in the

notification) states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**, but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it does not reflect the official policy of an appropriate scientific body, nor has an appropriate scientific body conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "Dietary zinc shortages—a bigger problem in developing countries than in the United States—may be linked to depressed growth in children, slower wound-healing and difficult births." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 1st quarter 1995) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q195/hn195.htm" accessed on 12/24/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled "Boosting a key amino acid in plants could help people get more zinc in their diets." The paragraph describes the nature and outcome of one ARS study using rats and is attributed to William House and Ross Welch of the United States Plant, Soil and Nutrition Laboratory, Ithaca, NY.

FDA asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question. USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of the document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii–vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16461 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0420]

Food Labeling: Health Claims; Vitamin K and Promotion of Proper Blood Clotting and Improvement in Bone Health in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a health claim relating to relationships between vitamin K and the promotion of proper blood clotting and improvement in bone health in adults. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed the notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim as a health claim because the claim does not characterize the relationship of the nutrient vitamin K to a disease or health-related condition, as required by section 303 of FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim as a health claim. Although the claim is not a health claim, it may be the type of claim permissible as a structure/function claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(3) and (r)(2) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risks in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

Provided certain conditions are met, section 403(r)(3)(C) of the act authorizes the use of claims "of the type described in subparagraph (1)(B)." Section 403(r)(1)(B) of the act describes claims that "characterize[ ] the relationship of a[ ] nutrient * * * to a disease or health-related condition." Accordingly, for a claim to be authorized as a health claim under section 403(r)(3)(C) of the act, it must characterize the relationship of a nutrient to a disease or health-related condition.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the ninth claim in the notification. The notification included one statement that the petitioner identified as an authoritative statement on which the following claim is based: "In adults, vitamin K promotes proper blood clotting and may improve bone health. Sources of Vitamin K include spinach, cabbage, turnip greens, broccoli, tomatoes, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The second sentence, "Sources of Vitamin K include spinach, cabbage, turnip greens, broccoli, tomatoes, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim. In adults, vitamin K promotes proper blood clotting and may improve bone health. In considering this claim, FDA notes that blood clotting does not constitute a disease or health-related condition. Proper blood clotting is a normal, physiological function and vitamin K has a well-established role in this function. Bone health, likewise, does not itself identify a disease or health-related condition. The formation of healthy bones is a normal developmental process to which a number of nutrients contribute. As such, the claim characterizes a relationship of the nutrient to normal body process and not a relationship of the nutrient to a disease or health-related condition, as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim about a relationship between vitamin K and the promotion of proper blood clotting and improvement in bone health is not authorized as a health claim under section 403(r)(3)(C) of the act and is, therefore, prohibited as a health claim.

However, the claim submitted, if truthful and not misleading and depending upon the context, may be of the type known as a structure/function claim and thus eligible to appear on the label or in labeling of products under the exception for such claims for foods in section 201(g)(1)(C) of the act or on dietary supplements under section 403(r)(6) of the act. The agency notes that the phrase "may improve bone health," if used in a labeling context that suggests disease or abnormality of the bone, would constitute an implied health claim and it would cease to be a permissible structure/function claim in that context.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the claim is not a health claim and therefore is not authorized by section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received

by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit–Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

Prohibiting a health claim about the association between vitamin K and blood clotting and bone health will not result in any regulatory changes for firms and thus, will not result in any costs to firms. Because the proposed claim may be permissible as a structure/function claim as discussed in section III of this document, firms may still be able to communicate the same or similar information to consumers. This prohibition will not result in either costs or benefits.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim related to the association between vitamin K and the promotion of proper blood clotting and improvement in bone health has not been authorized under existing regulations. The prohibition of this claim as a health claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16462 Filed 6–19–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 22, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

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- Imported cotton and cotton content of imported products; supplemental assessment calculation; published 5-21-98

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- Oregon and Washington; published 5-21-98

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- No-cost value engineering change proposals; published 6-22-98
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- Vermont; published 4-22-98
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  - National priorities list update; published 6-22-98

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- No-cost value engineering change proposals; published 6-22-98
- Technical amendments; published 6-22-98

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  - Antioxidant vitamin A and beta-carotene and risk in adults of atherosclerosis, coronary heart disease, and certain cancers; health claims; published 6-22-98
  - Antioxidant vitamins C and E and risk in adults of atherosclerosis, coronary heart disease, cancers, and cataracts; health claims; published 6-22-98
  - B-complex vitamins, lowered homocysteine levels, and risk in adults of cardiovascular disease; health claims; published 6-22-98
  - Calcium consumption by adolescents and adults, bone density, and fracture risk; health claims; published 6-22-98
  - Chromium and risk in adults of hyperglycemia and effects of glucose intolerance; health claims; published 6-22-98
  - Garlic, serum cholesterol reduction, and risk of cardiovascular disease in adults; health claims; published 6-22-98
  - Omega-3 fatty acids and risk in adults of cardiovascular disease; health claims; published 6-22-98
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  - Sodium phosphates oral solution package size limitation and oral and rectal sodium phosphates warning and direction statements for laxative use; published 5-21-98

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- No-cost value engineering change proposals; published 6-22-98
- Technical amendments; published 6-22-98

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- Supervising Inspector; references deleted; correction; published 6-22-98

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  - State supplementary payments administration fees; increase; published 6-22-98

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  - Great Britain; comments due by 6-22-98; published 4-21-98

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  - State and area classifications; comments due by 6-22-98; published 4-21-98

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  - Coastal sea-run cutthroat trout; comments due by 6-22-98; published 3-23-98

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  - Stone crab; comments due by 6-22-98; published 4-23-98

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 824/P.L. 105–179
To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180
Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

S. 1605/P.L. 105–181
Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

Last List June 11, 1998

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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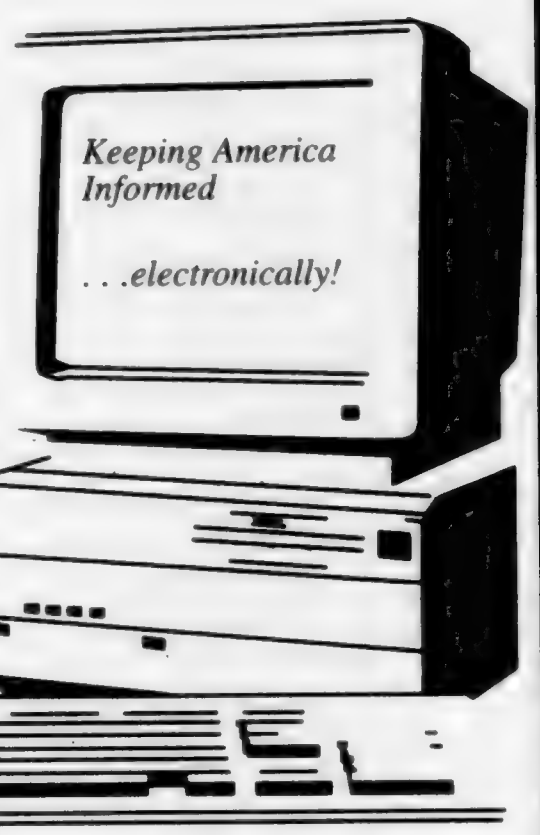

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Rules and Regulations

Federal Register
Vol. 63, No. 120
Tuesday, June 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AI31

Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (or up to 25 percent with OPM approval) to a group or category of employees in certain limited circumstances. This change is being made to address the desire of some agencies to waive the case-by-case determination requirement contained in current regulations in order to expedite the authorization of retention allowances for certain information technology employees. This change will have the effect of providing agencies with greater flexibility in responding to a possible increased need for retention incentives for computer programmers who must make the computer system changes needed to meet the year 2000 conversion requirements.

DATES: June 23, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415; FAX: (202) 606–0824; or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2858; FAX: (202) 606–0824; or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The regulatory change set forth below is necessary to provide agencies with discretionary authority to pay retention allowances of up to 10 percent of an employee's rate of basic pay (up to 25 percent with Office of Personnel Management approval) to a group or category of employees (excluding members of the Senior Executive Service (SES), employees in senior-level or scientific or professional (SL/ST) positions, Executive Schedule officials, and Presidential appointees).

The current retention allowance authority in 5 U.S.C. 5754 and 5 CFR part 575, subpart C, provides agencies with discretionary authority to pay a retention allowance of up to 25 percent of basic pay to an employee based on a determination that (1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and (2) the employee would be likely to leave Federal service without the allowance. It is the intent of the current retention allowance regulations that the determination that an employee is likely to leave the Federal service must be made on a case-by-case basis.

Recently, some agencies have expressed a desire to waive the case-by-case determination requirement in order to expedite the authorization of retention allowances for certain information technology employees. Specifically, agencies have indicated an increased need for recruitment and retention incentives for computer programmers and other employees who must make the required computer system changes to meet the year 2000 conversion requirements. Agencies believe it is essential to retain employees with programming and other information technology skills to meet the year 2000 conversion goals because some of the system changes are critical to agency missions. Some of these employees also have unique knowledge and skills in special programming languages or antiquated computer systems that are often necessary for making year 2000 modifications. Agencies believe employees with such programming skills are likely to leave Federal service for Government contractor or other private sector jobs with similar programming needs.

Currently, the compensation tool that is primarily used for resolving recruitment and retention problems for categories or groups of employees is the special salary rate authority under 5 U.S.C. 5305 and 5 CFR part 530, subpart B. However, special salary rates may not always be the most appropriate option for resolving temporary or immediate staffing needs such as the year 2000 conversion projects. For example, special rate schedules can be expensive and difficult to terminate when no longer needed because they are basic pay for all purposes. Higher rates of basic pay increase the cost of retirement, life insurance, premium pay, and certain other entitlements and have a continuing effect on the employee's future pay entitlements (for example, upon promotion).

Also, under current law, if a special rate schedule is terminated, each employee's special pay rate must be set at an equivalent rate in the basic General Schedule rate range for the employee's grade, or, if the rate exceeds the maximum rate for that grade, the employee becomes entitled to pay retention under 5 U.S.C. 5363. In both cases, the employee's pay rate would be increased by locality pay, providing an unnecessary windfall pay increase. Establishing special rate schedules with such long-term pay implications for temporary staffing needs can be very costly to agencies.

These interim regulations amend 5 CFR 575.305 by adding a new paragraph (d) to provide agencies with authority to authorize retention allowances of up to 10 percent of an employee's rate of basic pay for a group or category employees in certain limited circumstances. This authority does not apply to employees in senior-level and scientific or professional (SL/ST) positions, members of the Senior Executive Service, Executive Schedule officials, Presidential appointees, or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under section 575.302(c). For employees in these categories, retention allowances must continue to be approved on a case-by-case basis.

Retention allowances authorized for a category of employees must be based on a written determination that the

employees have unusually high or unique qualifications or the agency has a special need for the employees' services that makes it essential to retain the employees in that category and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance. The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the employees' knowledge and skills, significant disparities between Federal and private sector salaries, or other similar conditions. All other criteria and requirements for payment under 5 CFR part 575, subpart C, must be met before an agency may pay a retention allowance to an individual employee in the targeted category.

The new paragraph (d) also authorizes OPM to approve retention allowances in excess of 10 percent, but not to exceed 25 percent, of an employee's rate of basic pay for a category of employees upon the request of the head of an agency. (The regulations continue to provide agencies with authority to pay retention allowances of up to 25 percent of basic pay to employees on a case-by-case basis without OPM approval.) Such group retention allowance requests must include a description of the category and number of employees to be covered by the proposed retention allowance, a written determination that the group or category of employees meets the criteria for payment of an allowance to a group or category of employees, the proposed percentage retention allowance payment and a justification for that percentage, the expected duration of retention allowance payments, and any other information pertinent to the case at hand. OPM may require that requests be coordinated with other agencies having employees in the same category. This will ensure a level playing field among agencies with similar staffing needs and help avoid the escalation of payroll costs driven primarily by interagency competition for employees.

Agencies should be as specific as possible when identifying and defining the targeted category of employees for which a retention allowance is authorized. The employee category should be narrowly defined by a combination of factors such as occupational series, grade level, duties performed and unique qualifications required, organization or team designation, geographic location, the specific project the group is working on or service the group is providing, and the level of performance required. (Note that, while an employee's performance level may be one of the supporting factors that is considered in deciding whether to pay a retention allowance and in setting the allowance rate, it should not be the primary determining factor.)

The interim regulations will provide the retention allowance authority as an alternative to the special salary rate authority for resolving recruitment and retention problems related to the year 2000 conversion project and other agency staffing needs on a categorical basis. Retention allowances are more flexible and cost effective than special rates. For example, in the case of allowances approved for individual employees or groups of employees, agencies may vary the size of retention allowance payments based on such factors as the severity of the turnover problem and labor market conditions in a geographic area, the criticality of the particular project, the percentage of time the employee(s) must devote to a project, and special qualifications of the individual employee or group of employees.

Also, retention allowances are more suited for temporary staffing needs because agencies can reduce or terminate retention allowances at any time at no cost. Agencies may reduce or terminate an allowance if a lesser amount or none at all would be sufficient to retain an employee (or group of employees in the case of group-based allowances), if labor market conditions make it more likely to recruit candidates with needed qualifications, if the need for the services of the employee(s) has been reduced, or if budgetary considerations make it difficult to continue paying the allowance. Because retention allowances are not basic pay, reduction or termination of an allowance is not an adverse action under chapter 75 of title 5, United States Code.

Agencies should be aware that providing additional compensation is not the only, nor always the best, way to resolve recruitment and retention problems. Agencies should carefully analyze their staffing needs and employee work situations and explore non-pay human resources management alternatives, as well. For example, agencies should, as appropriate, investigate alternative recruitment strategies, use of temporary or term appointments, employment of experts and consultants, and appointments with varying work schedules, such as part-time, intermittent, and seasonal schedules. Agencies may redesign jobs so that a pool of candidates may more easily qualify for a position or to make a job more appealing to candidates by adding desirable duties or eliminating undesirable duties.

Other flexibilities include establishing alternative work schedules (i.e., flexible or compressed work schedules) and job sharing and telecommuting programs for employees. As appropriate, agencies may also pay or share the cost of employee training and higher education. Finally, agencies should ensure that the employee's work environment is safe and conducive to enhanced performance and retention. For example, modern equipment and a comfortable work space may be more of a retention incentive than additional compensation. Agencies should weigh the advantages and disadvantages of each of these and the many other human resources management flexibilities to ensure that the most responsive and cost effective staffing strategy is implemented.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. This regulation is needed to provide agencies with an alternative compensation tool to meet their staffing needs in time to successfully meet year 2000 computer system conversion requirements.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 575 of title 5 of the Code of Federal Regulations as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart C—Retention Allowances

2. Section 575.305 is amended by adding paragraph (d) to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(d) *Approval of retention allowances for groups or categories of employees.* (1) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance. The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not in excess of 25 percent, of an employee's rate of basic pay for a group or category of employees that meets the criteria specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group retention allowance requests must include—

(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category of employees meets the criteria specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other criteria and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under this paragraph (d).

[FR Doc. 98–16667 Filed 6–22–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM149, Special Conditions No. 25–138–SC]

Special Conditions: McDonnell Douglas DC–9–81,–82 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell Douglas DC–9–81, –82 airplanes modified by Midwest Express Airlines. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 11, 1998. Comments must be received on or before August 7, 1998.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM149, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM149. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beeane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–2796.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM149." The postcard will be date stamped and returned to the commenter.

Background

On March 12, 1998, Midwest Express Airlines applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC–9–81, –82 airplanes listed on Type Certificate A6WE. The modification incorporates the installation of electronic flight instrument system (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Midwest Express Avionics must show that the McDonnell Douglas DC–9–81, –82 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified McDonnell Douglas DC–9–81, –82 airplanes include 14 CFR part 25, dated February 1, 1965, with Amendments 1 through 40, as amended by TCDS A6WE.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas DC–9–81, –82 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Midwest Express Airlines apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified McDonnell Douglas DC–9–81, –82 will incorporate a new electronic flight instrument system (EFIS), which was not available at the time of certification of these airplanes, that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas DC–9–81, –82, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz ..	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz ...	50	50
2 MHz—30 MHz ...	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz ..	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz ..	2000	200
18 GHz—40 GHz ..	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above differ from those used in previous special conditions are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for earlier special conditions.

Applicability

As discussed above, these special conditions are applicable to McDonnell Douglas DC–9–81, –82 airplanes modified by Midwest Express Airlines. Should Midwest Express Airlines apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on McDonnell Douglas DC–9–81, –82 airplanes modified by Midwest Express Avionics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in

response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for McDonnell Douglas DC–9–81, –82 airplanes modified by Midwest Express Airlines.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16632 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–020]

RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the operating rules for five bridges over the Passaic River in New Jersey. This final rule will allow the bridge owners to operate their bridges on an advance notice basis. The Jackson Street Bridge at mile 4.6, the Bridge Street Bridge at mile 5.6, and the Clay Street Bridge at mile 6.0, will open on signal after a four hour advance notice is given. The New Jersey Transit Rail Operations (NJTRO) Bridge at mile 11.7, and the Route 3 Bridge at mile 11.8, will open on signal after a 24 hour notice is given. This final rule is expected to relieve the bridge owners of the burden of constantly having personnel available to open the bridges and still provide for the needs of navigation.

DATES: This final rule is effective July 23, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Ma. 02110–3350, 7 a.m. through 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 13, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations Passaic River, New Jersey, in the **Federal Register** (63 FR 7357). The Coast Guard did not receive any comments in response to the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background

The clearances at mean high water (MHW) and mean low water (MLW) for the five bridges affected by this rule change are as follows: Jackson Street 15′ MHW & 20′ MLW, Bridge Street 7′ MHW & 12′ MLW, Clay Street 8′ MHW & 13′ MLW, NJTRO 26′ MHW & 31′ MLW and Route 3 35′ MHW & 40′ MLW.

The Jackson Street, Bridge Street and Clay Street bridges presently open on signal, except that, notice must be given before 2:30 a.m. for openings between 4:30 p.m. and 7 p.m. This change to the operating regulations will require the bridges to open on signal after four hours notice is given.

The NJTRO Bridge presently opens on signal from 8 a.m. to 4 p.m., if at least six hours notice is given. From 4 p.m. to 8 a.m., the draw need not be open. The Route 3 Bridge presently opens on signal, if at least six hours notice is given. New Jersey Transit Rail Operations records indicate there has not been a request to open the NJTRO Bridge since December, 1991. The New Jersey Department of Transportation records indicate there have been only ten bridge openings during the last ten years for the Route 3 Bridge. All ten openings were test openings.

Discussion of Comments and Changes

No comments were received in response to the Notice of Proposed Rulemaking. The six month advance notice requirement for the NJTRO and Route 3 Bridge published in the Notice of Proposed Rulemaking has been changed to a 24 hour advance notice for openings. Upon further review the Coast Guard believes a 24 hour notice is a more reasonable time period than the six months in the original proposal. The Coast Guard believes that six months is too restrictive for mariners that may need to transit through the bridges. The bridge owners have been contacted and advised that a six month notice is too restrictive to navigation and so long as the respective bridges are movable bridges that they must continue to keep the operating machinery in good working condition. A 24 hour advance notice should still provide relief to the bridge owners by not requiring the bridges to be crewed and still provide for the needs of navigation that may desire to pass through the bridge.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This final rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of past experience with the roving drawtender crew operation and public comments. The Coast Guard believes this final rule achieves the requirement of balancing the navigational rights of boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on

a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to have a significant effect on the environment. A "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.739, paragraphs (d), (f), (i), (m) and (n) are revised to read as follows:

§ 117.739 Passaic River.

* * * * *

(d) The draw of the Jackson Street Bridge, mile 4.6, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(f) The draw of the Bridge Street Bridge, mile 5.6, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(i) The draw of the Clay Street Bridge, mile 6.0, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(m) The draw of the NJTRO Bridge, mile 11.7, shall open on signal after at least a 24 hour notice is given by calling the number posted at the bridge.

(n) The draw of the Route 3 Bridge, mile 11.8, shall open on signal after at least a 24 hour notice is given by calling the number posted at the bridge.

* * * * *

Dated: June 8, 1998.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–16666 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–044]

RIN 2115–AA97

Safety Zone: City of Yonkers Fireworks, New York, Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the City of Yonkers fireworks program located on the Hudson River, Yonkers, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 8:30 p.m. until 10 p.m. on Saturday, July 4, 1998, with a rain date of Sunday, July 5, 1998, at the same time and place.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4195.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the fact that plans for this event were recently finalized, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

Bay Fireworks has submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of the Hudson River at Yonkers, New York. The fireworks program is being sponsored by the City of Yonkers. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge located at approximate position 40°56′14″ N 073°54′28″ W (NAD 1983), approximately 350 yards northwest of the Yonkers Municipal Pier. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, July 4, 1998, with a rain date of Sunday, July 5, 1998, at the same time and place. The safety zone prevents vessels from transiting this portion of the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on

the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, that vessels may safely transit to the west of the zone, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–044 to read as follows:

§ 165.T01–044 Safety Zone: city of Yonkers Fireworks, New York, Hudson River.

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 360 yard radius of the fireworks barge at approximately position 40°56′14″ N 073°54′28″ W (NAD 1983), located approximately 350 yards northwest of the Yonkers Municipal Pier.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on Saturday, July 4, 1998, with a rain date of Sunday, July 5, 1998, at the same time and place.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels should comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 2, 1998.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98–16664 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay; 98–011]

RIN 2115–AA97

Safety Zone; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing a portion of the navigable waters of San Francisco Bay, CA, surrounding two barges used as a platform to launch fireworks for the San Francisco Chronicle's 4th of July Waterfront Festival, from 8 p.m. to 11:30 p.m., PDT. The launch barges, which will be tethered together, will be located approximately 1,000 feet northwest of Pier 39. Fireworks will also be simultaneously launched from land at the Northern-most point of the Aquatic Park.

This temporary safety zone is necessary to provide for the safety of participating technicians, waterborne and shore-side spectators, vessels, and other property during the fireworks display. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit this safety zone by contacting Vessel Traffic Service on Channel 14 VHF–FM.

DATES: This safety zone will be in effect on July 4, 1998 from 8 p.m. to 11:30 p.m., PDT. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice To Mariners.

ADDRESSES: U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501–5100.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Lesley F. Dion-Bow, U.S. Coast Guard Marine Safety Office San Francisco Bay; (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a Notice of Proposed Rule (NPRM) was not published for this temporary regulation and good cause exists for making it effective prior to, or less than 30 days after, **Federal Register** publication. Publication of an NPRM and delay of its effective date would be contrary to the public interest since the precise location of the event necessitating the promulgation of this safety zone, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date. Therefore, the event would be finished before the rulemaking process was complete if an NPRM was published, jeopardizing the safety of the lives and property of event participants and spectators.

Discussion of Regulation

The San Francisco Chronicle is sponsoring the 4th of July Waterfront Festival on the evening of July 4, 1998.

These fireworks will be launched from two barges which will be tethered and located approximately 1,000 feet northwest of Pier 39 in the San Francisco Bay.

The safety zone will be bounded by the following positions: commencing at 37°48′32″W, 122°25′46″W, thence to 37°48′52″N, 122°25′48″W, thence to 37°49′10″N, 122°24′30″W, thence to 37°48′42″N, 122°24′30″, thence returning to the point of origin. This safety zone is necessary to protect the participating technicians, the spectators, and vessels and other property from the hazards associated with the fireworks display. Entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the regulated area by contacting the Vessel Traffic Service on Channel 14 VHF–FM. For purposes of this temporary regulation, "commercial vessels" are defined as all vessels other than those used and registered/documented exclusively for recreational purposes.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the implementation of the safety zone, and because commercial traffic will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5.U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance For Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–437–3037.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq).*

Federalism

The Coast Guard has analyzed this temporary regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (35), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04.6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–080 is added to read as follow:

§ 165.T11–080 Safety Zone: San Francisco Bay, San Francisco, CA.

(a) *Location.* The area bounded by the following positions, located within the navigable waters of San Francisco Bay, constitutes a safety zone surrounding the two barges used as a platform to launch fireworks for the San Francisco Chronicle's 4th of July Waterfront Festival: commencing at 37°48′32″ N, 122°25′46″ W, thence to 37°48′52″ N, 122°25′48″ W, thence to 37°49′10″ N, 122°24′30″ W, thence to 37°48′42″ N, 122°24′30″ W, thence returning to the point of origin. All coordinates referred use Datum: NAD 83.

(b) *Effective Dates.* This safety zone will be in effect on July 4, 1998 from 8 p.m. to 11:30 p.m., PDT. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice To Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the safety zone by contracting Vessel Traffic Service on Channel 14 VHF–FM.

Dated: June 5, 1998.

H. Henderson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 98–16663 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI76

Criteria for Approving Flight Courses for Educational Assistance Programs

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the educational assistance and education benefit regulations of the Department of Veterans Affairs (VA). It revises the criteria to be used in approving flight courses for the education benefits programs VA administers. In large part, these amendments bring the approval criteria into agreement with various provisions of the Veterans' Benefits Improvements Act of 1996 and with the current regulations of the Federal Aviation Administration. Without the changes made by this document, VA would not be able to provide educational assistance for veterans to attend affected flight courses. This document also makes other changes for the purpose of clarification.

DATES: Effective Date: This rule is effective June 23, 1998.

Applicability Date: August 1, 1996, for provisions affecting approval of courses or enrollments at flight training centers certificated under 14 CFR part 142.

Comments: Comments must be received on or before August 24, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI76." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: VA administers education benefit programs, including benefit programs for flight training courses. This document amends subparts D and K of 38 CFR part 21, regarding criteria for flight training courses.

Flight training courses may be approved for individuals entitled to educational assistance under the Montgomery GI Bill—Active Duty (MGIB) (38 U.S.C. chapter 30) and the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) (38 U.S.C. chapter 32), as well as for certain individuals under the Montgomery GI Bill—Selected Reserve (MGIB-SR) (10 U.S.C. chapter 1606).

By statute, flight training courses are required to meet Federal Aviation Administration (FAA) standards and be FAA approved (10 U.S.C. 16136(c)(1)(c); 38 U.S.C. 3034(d)(3) and 3241(b)(3)). VA regulations are changed to reflect changes to FAA standards as follows:

- FAA is changing the requirements for approving flight courses at flight training centers using flight simulators or advanced flight training devices. These courses now may be approved at flight training centers certificated under the new FAA standards.
- FAA no longer will approve training for both an instrument rating and a commercial pilot's certificate as a single course.
- FAA established a maximum for the number of hours of training in a flight simulator that could be counted toward the required minimum number of hours of experience needed for each rating.
- FAA has reorganized various provisions and changed terminology.

Previously, by statute, VA could not approve the enrollment in a course offered by an educational institution when such course had been in operation for less than two years, subject to a number of exceptions. Public Law 104–275 repealed these statutory provisions (formerly at 38 U.S.C. 3689) and established new provisions at 38 U.S.C. 3680A which state:

> (e) The Secretary may not approve the enrollment of an eligible veteran in a course not leading to a standard college degree offered by a proprietary profit or proprietary nonprofit educational institution if—
>
> (1) The educational institution has been operating for less than two years;
>
> (2) The course is offered at a branch of the educational institution and the branch has been operating for less than two years; or
>
> (3) Following either a change in ownership or a complete move outside its original general locality, the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality (as determined in accordance with regulations the Secretary shall prescribe) unless the educational institution following such change or move has been in operation for at least two years.

The regulations regarding flight courses are amended to reflect changes in the "two-year" statutory provisions. Moreover, we are interpreting the term "branch" to include a flight school satellite base.

This document also amends the regulations regarding the "85–15 percent" requirement. Generally, VA is prohibited by statute (38 U.S.C. 3680A(d)) from approving an enrollment of a veteran in a course when more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by VA. Under the provisions of 38 U.S.C. 3680A(d)(1), the Secretary may waive the "85–15" requirement, in whole or in part, if the Secretary determines, pursuant to regulations, it to be in the interest of the eligible veteran and the Federal government. Pursuant to this authority, amended 38 CFR 21.4201(e)(3)(ii) provides for purposes of this enrollment computation that approved flight training under 14 CFR parts 141 and 142 at a flight school or flight training center will be considered as one course and all other approved training at a flight school or flight training center will be considered as one course. In many cases only one or two students will be enrolled in a particular flight course at a given flight school at any point in time. If all of the students were veterans, application of the "85–15" requirement for each course would produce in many instances the result of requiring disapproval of the enrollment of veterans in such courses. We believe that 38 CFR 21.4201, as amended, is a reasonable approach in keeping with the statutory purpose of requiring a training establishment to demonstrate that its training is of sufficient quality to attract a certain percentage of nonveterans before VA will approve education benefits for enrollment in that training. We also believe that the rule will protect the right of veterans to receive this type of training while assuring that these courses could stand the test of the marketplace.

Changes are also made regarding medical requirements. As amended, the regulations do not impose the medical requirements for a commercial pilot license on an individual enrolled in either a ground instructor certification course or a flight course which is pursued as a part of a standard college degree program. In our view, the VA statutory provisions were not intended to impose these stringent medical requirements for such individuals who would not be required to meet such medical requirements for FAA certification.

FAA certifies flight schools to offer courses that may be given at certified pilot schools or certified flight training

centers, which also meet the basic requirements needed for course approval for VA training; i.e., the training is offered at an educational institution and the courses are generally accepted as necessary to qualify for a vocational objective. However, FAA standards also authorize instruction for various courses from a flight instructor who is not affiliated with either a certificated pilot school or a certificated training center. That authorization would not meet the basic statutory requirements needed for approval for VA training, in that the training would not be offered by an "educational institution." Therefore, under 38 CFR 21.4263(e), instruction by a non-affiliated flight instructor would not be approved for VA purposes.

FAA standards require that a student either enroll in an instrument rating course before enrolling in a commercial pilot certification course, or that a student enroll in both courses simultaneously and finish the instrument rating course first. VA regulations are amended, with certain exceptions, to provide that, in order to receive VA educational assistance, a student must enroll in both courses simultaneously. By statute (38 U.S.C. 3452), an individual receiving VA educational assistance must be pursuing a vocational, educational, or professional objective. If the instrument rating course were allowed to be taken first, there would be no assurance that it was taken for purposes of reaching a vocational, educational, or professional objective. Instead, it could be taken merely to add a rating to a private pilot certificate, which is not considered evidence of such an objective. By requiring that both courses be taken simultaneously, VA is helping to ensure that a student has made a commitment and is using his or her benefits to achieve a vocational objective.

There are three exceptions to the requirement for enrollment in an instrument rating course simultaneously with the commercial pilot certification course. These exceptions apply to an individual who is pursuing a standard college degree and who is taking flight training as part of the degree program; to an individual who already has a commercial pilot certificate; and to an individual who is enrolling in a ground instructor certification course. The respective reasons for the exceptions are: an individual who is pursuing a college degree is pursuing an educational objective; an individual who adds an instrument rating to a commercial pilot certificate is following recognized and accepted industry requirements for an advanced vocational objective in the field of aviation; and an individual becoming a qualified ground instructor, by definition, is pursuing a vocational objective.

Nonsubstantive changes are made for purposes of clarification and consistency with FAA terminology.

Consistent with the effective date of the FAA regulations adding 14 CFR part 142, the date of applicability for provisions affecting approval of courses or enrollments at flight training centers certificated under 14 CFR part 142 is August 1, 1996.

Administrative Procedure Act

Many of the changes made by this interim final rule constitute nonsubstantive changes and interpretations of law. Those changes are not subject to the requirements of 5 U.S.C. 553 for notice and comment and 30-day delay of effective date. For the remainder of the changes, pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date and have found that notice and comment and a 30-day delay of its effective date would be unnecessary, impracticable, and contrary to the public interest. Those changes are based on the critical need to conform VA rules to FAA rules and practice to enable VA to provide educational assistance for training needed for certain educational objectives. In the absence of the amendments to VA regulations, VA is unable, due to changes in FAA rules and practice, to provide educational assistance for certain flight course enrollments.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Even so, the Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would permit VA to continue to pay educational assistance for veterans enrolled in flight courses at pilot schools, flight training centers, and institutions of higher education that offer flight courses. While changes caused by this rule would affect how many veterans would be enrolled in flight courses, the change in the number of veterans would not significantly affect the total number of students enrolled in flight courses, nor would this rule otherwise have more than a minuscule economic impact on any entity. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 12, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts D and K) is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4200, paragraphs (x) and (y) are added to read as follows:

§ 21.4200 Definitions.

* * * * *

(x) *State.* The term *State* has the same meaning as provided in § 3.1(i) of this chapter.

(Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate.* A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

3. In § 21.4201, paragraph (e)(3)(ii) is revised to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

* * * * *

(e) * * *

(3) * * *

(ii) The 85–15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All approved courses offered under 14 CFR parts 141 and 142 at a flight school will be considered to be one course for the purpose of making this computation. Similarly, all other approved courses offered at a flight school will be considered to be one course for the purpose of making this computation. In this computation hours of training or tuition charges for students enrolled—

(A) In the recreational pilot certification course and the private pilot certification course will be excluded;

(B) In a ground instructor certification course will be included;

(C) In courses approved under 14 CFR part 141, other than a ground instructor certification course, will be actual hours of logged instructional flight time or the charges for those hours; and

(D) In courses not approved under 14 CFR part 141, such as courses offered by flight simulator or courses for navigator or flight engineer, shall include ground training time or charges; actual logged instructional flight time or charges; and instructional time in a flight simulator or charges for that training.

* * * * *

4. In § 21.4233, paragraph (e) is revised; and an authority citation is added to paragraph (e) to read as follows:

§ 21.4233 Combination.

* * * * *

(e) *Contract.* All or part of the program of education of a school may be provided by another school or entity under contract. Such school or entity actually providing the training must obtain approval of the course from the State approving agency in the State having jurisdiction of that school or entity. If the course is a course of flight training, the school or entity actually providing the training must also obtain approval of the course from the Federal Aviation Administration. Measurement of the course and payment of an allowance will be appropriate for the course as offered by the school or entity actually providing the training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3202(4), 3241(b), 3452(c), 3501(a)(6), 3675, 3676)

5. Section 21.4235 is added to read as follows:

§ 21.4235 Programs of education that include flight training.

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See § 21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in § 21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must—

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) Hold a second-class medical certificate on the first day of training, and continuously during training unless the individual is enrolled in an Airline Transport Pilot (ATP) certification course; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(b) *Approval of program.* VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program—

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(c) *Pursuit of a program of education.* (1) Except as provided in paragraph (c)(2) of this section, an individual who is pursuing a program of education described in paragraph (b)(2)(i) of this section must first enroll in a commercial pilot certification course. If the individual wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously with the commercial pilot course.

(2) The provisions of paragraph (c)(1) of this section do not apply to an individual who—

(i) Already has a commercial pilot certificate; or

(ii) Wishes to become a ground instructor through an enrollment in a ground instructor certification course.

(3) Unless the provisions of paragraph (b)(1)(ii), (c)(2)(i), or (c)(2)(ii) of this section apply to an individual's enrollment, VA will not pay for any enrollment in a flight course that precedes enrollment in a commercial pilot certification course.

(4) Except for the enrollment described in paragraph (c)(1) of this section, the individual must enroll in only one flight course at a time.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(d) *Some individuals are already qualified for a flight course objective.* (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) *Some flight courses are refresher training.* The provisions of §§ 21.5230(c), 21.7020(b)(26),

21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

(f) *Flight training at an institution of higher learning.* (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

6. In § 21.4263, paragraphs (h), (i), (j), and (k) are redesignated as paragraphs (i), (j), (k), and (l), respectively; newly redesignated paragraph (i) introductory text is amended by removing "(g)(3)" and adding, in its place, "(e)" and by removing "(h)(1)" and adding, in its place, "(i)(1)'; newly redesignated paragraph (i)(1) introductory text is amended by removing "(h)(4)" and adding, in its place, "(i)(4)'; newly redesignated paragraph (i)(2) is amended by removing "H" and adding, in its place "J'; newly redesignated paragraph (i)(4)(i) is amended by removing "(h)(1)(ii)" and adding, in its place "(i)(1)(ii)'; the authority citation for newly redesignated paragraph (i)(4)(ii) is removed; newly redesignated paragraph (i)(4)(iii) is amended by removing "(h)(1)(i)" and adding, in its place, "(i)(1)(i)'; newly redesignated paragraph (j) introductory text is amended by removing "(h)(1)(i)" and adding, in its place, "(i)(1)(i)'; the section heading, paragraphs (a), (b), (c), (d), (e), (f), and (g), newly redesignated paragraphs (i)(1)(iii), and (l), and the authority citations for newly redesignated paragraphs (i) introductory text, (i)(1), (i)(2), (i)(3), (i)(4), (j)(3), (j)(4), and (k) are revised; and new paragraphs (h) and(i)(1)(iv), and authority citations for newly redesignated paragraphs (j)(1) and (j)(2) are added, to read as follows:

§ 21.4263 Approval of flight training courses.

(a) *A flight school or institution of higher learning are the only entities that can offer flight courses.* A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it. The provisions of § 21.4150 shall determine the proper State approving agency for approving a flight course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b), 3671, 3672, 3676)

(b) *Definition of flight school.* A *flight school* is a school, other than an institution of higher learning, or is an entity, such as an aero club; is located in a State; and meets one of the following sets of requirements:

(1) The Federal Aviation Administration has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141;

(2) The entity is either a flight training center or an air carrier that does not have a pilot school certificate or provisional pilot school certificate issued by the Federal Aviation Administration under 14 CFR part 141, but pursuant to a grant of exemption letter issued by the Federal Aviation Administration under 14 CFR part 61 is permitted to offer pilot training by a flight simulator instead of an actual aircraft; or

(3) The Federal Aviation Administration has issued the school or entity a training center certificate under 14 CFR part 142.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452(c))

(c) *Aero club courses.* An aero club, established, formed, and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal government. Consequently, VA has exclusive jurisdiction over approval of flight courses offered by such aero clubs.

(Authority: 38 U.S.C. 3671, 3672)

(d) *Approval of flight training as part of a degree program.* A State approving agency may approve a flight training course that is part of a program of education leading to a standard college degree provided the course and program meet the requirements of § 21.4253 or § 21.4254, as appropriate. The institution of higher learning offering the course need not be a flight school.

(Authority: 38 U.S.C. 3675, 3676)

(e) *Approval of flight training courses that are not part of a degree program.* A flight course is subject to the same approval requirements as any other course. In addition, the State approving agency must apply the following provisions to the approval of flight courses:

(1) The Federal Aviation Administration must approve the course; and

(2)(i) The course must meet the requirements of 14 CFR part 63 or 141, and a flight school described in paragraph (b)(1) or (b)(3) of this section must offer it; or

(ii) The course must meet the requirements of 14 CFR part 61, and either be offered—

(A) By a flight school described in paragraph (b)(3) of this section; or

(B) In whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the Federal Aviation Administration to the flight school offering the course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b), 3676, 3680A)

(f) *Application of 38 U.S.C. 3680A(e)(2) to flight training.* Notwithstanding the fact that the Federal Aviation Administration will permit flight schools to conduct training at a base other than the main base of operations if the requirements of either 14 CFR 141.91 or 14 CFR 142.17 are met, the satellite base is considered under 38 U.S.C. 3680A(e)(2) to be a branch of the principal school, and must meet the requirements of 38 U.S.C. 3680A(e)(2).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3680A))

(g) *Providing a flight course under contract between schools or entities.* When a school or entity offers all or part of a flight course under a contract with another school or entity, the State approving agency must apply § 21.4233 in the following manner:

(1) The requirements of § 21.4233(e) must be met for all contracted flight

instruction, instruction by flight training device, flight simulator instruction, and ground school training. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality; and

(2) The responsibility for providing the instruction lies with the flight school. The degree of affiliation between the flight school and the entity or other school that actually does the instructing must be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b))

(h) *Nonaccredited courses.* (1) *Application of § 21.4254 to flight training.* The provisions of § 21.4254 are applicable to approval of flight training courses.

(2) *Additional instruction requirements.* The State approving agency will apply the following additional requirements to a flight course:

(i) All flight instruction, instruction by flight training device, flight simulator instruction, preflight briefings and postflight critiques, and ground school training in a course must be given by the flight school or under suitable arrangements between the school and another school or entity such as a local community college.

(ii) All ground school training connected with the course must be in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction between the students and the instructor. Simply making provision for having an instructor available to answer questions does not satisfy this requirement.

(Authority: 38 U.S.C. 3676)

(i) * * *

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(1) * * *

(iii) The maximum number of hours of instruction by flight simulator or flight training device that a State approving agency may approve is the maximum number of hours of instruction by flight simulator or flight training device permitted by 14 CFR part 61 for that course when:

(A) A course is offered in whole or in part by flight simulator or flight training device conducted by a training center certificated under 14 CFR part 142; and

(B) 14 CFR part 61 contains a maximum number of hours of instruction by flight simulator or flight training device that may be credited toward the requirements of the rating or certificate that is the objective of the course.

(iv) If a course is offered in whole or in part by flight simulator or flight training device, and the course is not described in paragraph (i)(1)(iii) of this section, either because the course is offered by a flight training center with a grant of exemption letter, or because 14 CFR part 61 does not contain a maximum number of hours of instruction by flight simulator or flight training device, the maximum number of hours of instruction by flight simulator or flight training device that may be approved may not exceed the number of hours in the Federal Aviation Administration-approved outline.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3032(f), 3231(f))

(2) * * *

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(3) * * *

(Authority: 10 U.S.C. 16131(f)(4); 16136(c), 38 U.S.C. 3002(3), 3032(f)(4), 3202(2), 3231(f)(4), 3452(b))

(4) * * *

(Authority: 10 U.S.C. 16131(f)(4); 38 U.S.C. 3032(f)(4), 3231(f)(4))

(j) * * *

(1) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(k) * * *

(Authority: 10 U.S.C. 16136(b), 16136(c); 38 U.S.C. 3034(d), 3672(a))

(l) *Enrollment limitations.* A flight course must meet the 85–15 percent ratio requirement set forth in § 21.4201 before VA may approve new enrollments in the course. The contracted portion of a flight course must meet all the requirements of § 21.4201 for each subcontractor.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3680A(d))

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

7. The authority for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7220, paragraph (c) is amended by removing "Flight training when administering" and adding, in its place, "when approving'.

[FR Doc. 98–16579 Filed 6–22–98; 8:45 am]
BILLING CODE 8320–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI88

Veterans' Education: Effective Date for Awards of Educational Assistance to Veterans Who Were Voluntarily Discharged

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational-assistance and educational-benefit regulations of the Department of Veterans Affairs (VA). It establishes effective dates of awards of educational assistance to certain voluntarily discharged veterans who are eligible for the Montgomery GI Bill—Active Duty (MGIB). The effective dates correspond with a statutory mandate for the effective dates. The final rule also clarifies that these veterans may not receive educational assistance for training that occurs before they pay the Federal government $1,200.

DATES: *Effective Date:* July 23, 1998.

Applicability Dates: The effective dates are retroactive from the effective dates of the statutory provisions.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 18, 1997 (62 FR 66320), VA proposed to amend the "All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)" regulations as set forth in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments. No comments were received. Based on the rationale set forth in the proposed rule, we are

adopting the provisions of the proposed rule as a final rule.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set out above, 38 CFR part 21, subpart K, is amended as set forth below.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

2. In § 21.7131, paragraphs (l) and (m) are reserved, and paragraph (n) is added to read as follows:

§ 21 7131 Commencing dates.

* * * * *

(n) *Eligibility established under § 21.7045(c).* The effective date of an award of educational assistance when the veteran has established eligibility under § 21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority 38 U.S.C. 3018B)

[FR Doc. 98–16601 Filed 6–22–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6113–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion of the Pine Bend Sanitary Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Pine Bend Sanitary Landfill Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Timothy Prendiville at (312) 886–5122 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Dakota County Library System, Wescott Branch, 1340 Wescott Road, Eagan, MN 55123. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Pine Bend Sanitary Landfill Site located in Inver Grove Heights, Minnesota. A Notice of Intent to Delete for this site was published April 28, 1998 (63 FR 23256). The closing date for comments on the Notice of Intent to Delete was May 28, 1998. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site

warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 2, 1998.

David Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Pine Bend Sanitary Landfill, Dakota County, Minnesota."

[FR Doc. 98–16406 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 63, No. 120
Tuesday, June 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

Office of Personnel Management

5 CFR Part 532

RIN 3206–AI30

Prevailing Rate Systems; Redefinition of Philadelphia, PA, and New York, NY, Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage area to the area of application of the New York, NY, wage area. This redefinition will more accurately reflect the transportation facilities and commuting patterns criteria of Ocean County, NJ (excluding Fort Dix Military Reservation).

DATES: Comments must be received by July 23, 1998.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2848, or e-mail: maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected Federal Wage System (FWS) appropriated fund wage areas. The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has recommended by majority vote that OPM redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund FWS wage area to the area of application of the New York, NY, wage area.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria that OPM considers when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Ocean County is located in central New Jersey and is bordered by Burlington County to the West and Monmouth County to the North. The members of FPRAC studied the appropriate wage area definition of Ocean County exhaustively. Based on their analysis of the regulatory criteria, the management members of FPRAC found no compelling reason to change the wage area designation of Ocean County. The labor members of the Committee argued that the transportation facilities and commuting patterns criteria favor placing Ocean County in the New York wage area. After failing to reach consensus, the Committee voted to accept the labor recommendation. The management members of FPRAC filed a minority report in opposition to the FPRAC majority recommendation.

After careful consideration, OPM finds that it is appropriate to accept the FPRAC recommendation in this case. The distance, geographic features, and overall population, employment, and the kinds and sizes of private industrial establishments criteria do not clearly favor defining Ocean County to one wage area more than another. However, we find that the transportation facilities and commuting patterns criteria clearly favor defining Ocean County to the New York wage area rather than to the Philadelphia wage area.

The largest employer of FWS workers in Ocean County is Lakehurst Naval Air Station, although several other smaller employment sites would be affected by the redefinition of Ocean County to the New York wage area. Employees with official duty stations in the Fort Dix Military Reservation portion of Ocean County would remain in the Philadelphia wage area. Employees with official duty stations at Lakehurst Naval Air Station and other facilities in Ocean County would be redefined from the Philadelphia wage area to the New York wage area on the first day of the first applicable pay period beginning on or after 30 days after the issuance of a final regulation implementing this proposed change.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for the New York, New York, and Philadelphia, Pennsylvania, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

New York

Survey Area

New York:
- Bronx
- Kings
- Nassau
- New York
- Queens
- Suffolk
- Westchester

New Jersey:
- Bergen
- Essex

Hudson
Middlesex
Morris
Passaic
Somerset
Union

Area of Application. Survey Area Plus

New York:
Putnam
Richmond
Rockland
New Jersey:
Monmouth
Ocean (excluding the Fort Dix Military Reservation)
Sussex

* * * * *

Pennsylvania

* * * * *

Philadelphia

Survey Area

Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia
New Jersey:
Burlington
Camden
Gloucester

Area of Application. Survey Area Plus

Pennsylvania:
Lehigh
Northampton
New Jersey:
Atlantic
Cape May
Cumberland
Hunterdon
Mercer
Ocean (Fort Dix Military Reservation only)
Warren

* * * * *

[FR Doc. 98–16668 Filed 6–22–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–01–AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1 and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. This proposal would require replacing certain circuit breakers. This proposal is prompted by the manufacturer discovering, upon testing a circuit breaker installed in a helicopter, the loss of electrical continuity between the terminals of the installed circuit breaker. The actions specified by the proposed AD are intended to prevent loss of electrical power caused by improper installation of certain circuit breakers causing deterioration in the operation of the circuit breakers, loss of instrumentation, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, L1, and L2 helicopters. The DGAC advises of the loss of continuity on certain single-pole circuit breakers.

Eurocopter France has issued Service Bulletin No. 01.00–49, dated June 30, 1997, (SB) for Models AS 332C, L, L1, and L2 to inspect Crouzet single-pole circuit breakers, Part Number (P/N) 84 400 028 through 84 400 037, and to replace all circuit breakers that have any loss of electrical continuity. The DGAC classified this SB as mandatory and issued DGAC AD's 97–202–062(AB) and 97–201–007(AB), both dated August 27, 1997, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type design

registered in the United States, the proposed AD would require inspection of any Crouzet single-pole circuit breakers, P/N 84 400 028 through 84 400 037, and replacement of all circuit breakers that have any loss of electrical continuity. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that three helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately three work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,750 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,790.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 98–SW–01–AD.

Applicability: Eurocopter France Model AS 332C, L, L1, and L2 Helicopters, with Crouzet circuit breaker, Part Number (P/N) 84 400 028 through 84 400 037, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power, loss of instrumentation, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before 100 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first,

(1) For Model AS 332C, L, and L1, inspect the circuit breakers listed in paragraph 1.D.1) of the Planning Information in Eurocopter France Service Bulletin No. 01.00.49, dated June 30, 1997 (SB) according to the operational procedure in paragraph 2.B. of the Accomplishment Instructions of the SB;

(2) For Model AS 332L2, inspect the circuit breakers fitted to the DC power system, the 20 kVA and 30 kVA AC master box, the emergency flotation gear, and the second battery according to the operational procedure in paragraph 2.B. of the Accomplishment Instructions of the SB.

(b) On or before 500 hours TIS or 6 calendar months, whichever occurs first, inspect all remaining circuit breakers in accordance with paragraph 2.B. of the Accomplishment Instructions of the SB.

(c) Except for circuit breaker type 84–402(x), after compliance with paragraph (a) of this AD, any replacement circuit breaker installed, or any circuit breaker removed and reinstalled, must be inspected prior to further flight according to the operational procedure of paragraph 2.B. of the Accomplishment Instructions of the SB. Replacement of all circuit breakers with circuit breaker type 84–402(x) is terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–202–062(AB) and 97–201–007(AB), both dated August 27, 1997.

Issued in Fort Worth, Texas, on June 16, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–16613 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–41]

Proposed Modification of Class E Airspace; Bowman, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Bowman, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 29 has been developed for Bowman Municipal Airport. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the existing controlled airspace to the northeast, east, and southeast, for Bowman Municipal Airport.

DATES: Comments must be received on or before August 10, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–41, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–41." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a cop of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Bowman, ND, to accommodate aircraft executing the proposed GPS Rwy 29 SIAP at Bowman Municipal Airport by increasing the existing controlled airspace to the northeast, east, and southeast, for the airport. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Bowman, ND [Revised]

Bowman Municipal Airport, ND
(lat. 46°11'14" N, long. 103°25'43" W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Bowman Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°26'00" N, long. 103°38'00" W, to lat. 46°48'00" N, long. 102°53'00" W, to lat. 46°20'00" N, long. 102°53'00" W, to lat 45°38'00" N, long. 130°00'00" W, to lat. 45°43'00" N, long. 103°43'00" W, to lat. 45°48'00" N, long. 103°54'00" W, to lat. 46°17'30" N, long. 103°48'15" W, to the point of beginning, excluding Federal Airways, the Hettinger, ND, Dickinson, ND, and Baker, MT Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 10, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–16636 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–42]

Proposed establishment of Class E Airspace; Crosby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Crosby, ND. A Global Positioning System (GPS) Standard Instrument Approach

Procedure (SIAP) to Runway (Rwy) 30 has been developed for Crosby Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace at Crosby Municipal Airport to accommodate the approach.

DATES: Comments must be received on or before August 10, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket NO. 98–AGL–42, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–42." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Crosby, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Crosby Municipal Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Crosby, ND [New]

Crosby Municipal Airport, ND
(Lat. 48°55'42"N., long. 103°17'51"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Crosby Municipal Airport, excluding that airspace north of lat. 49°00'00.0"N (Canada/United States Boundary).

* * * * *

Issued in Des Plaines, Illinois on June 10, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–16635 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–117–C]

Notice of Public Meeting on Review of the Grain Handling Facilities Standard

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Notice of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the Grain Handling Standard in order to determine, consistent with Executive Order 12866 on Regulatory Planning and Review and Section 610 of the Regulatory Flexibility Act, whether this standard should be maintained without change, rescinded, or modified in order to make it more effective or less burdensome in achieving its objectives, to bring it into better alignment with the objectives of Executive Order 12866, or to make it consistent with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as few burdens as possible on small employers. Any revisions to the standard must be consistent with the Occupational Safety and Health Act, which requires employers to provide employees with a safe and healthy workplace.

Written public comments on all aspects of compliance with the Grain Handling Standard are welcomed. OSHA will also hold two stakeholder meetings to provide opportunities for interested parties to comment on whether the Grain Handling Standard should be eliminated, modified, or continued without exchange to achieve the objectives described above.

DATES: There will be two public meetings. The first public meeting will be held on July 28, 1998 in Chicago, Illinois. The second public meeting will be held on July 31, 1998 in Washington, D.C. Both meetings will begin at 9:00 a.m. and are scheduled to end at 5:30 p.m. Written comments should be submitted in quadruplicate to the OSHA Docket Office at the address given below. The deadline for submitting written comments is August 31, 1998.

ADDRESSES: The first public meeting will be held in the State of Illinois Building, 160 N. LaSalle, Chicago, Illinois, and the second will be held in the Frances Perkin Building, 200 Constitution Avenue, N.W., Washington, D.C.

Requests to Appear: OSHA requests that any person wishing to speak at the public meetings notify OSHA in writing. To assure that time is provided for oral comments, the request should be received by OSHA no later than July 21 for the meeting in Chicago, Illinois, and July 24, 1998 for the Washington, D.C. meeting and should identify the person and/or organization intending to appear, desired date of appearance, address and phone/fax number, the amount of time requested, audiovisual equipment required, and a brief summary of the comments to be presented. Please send written requests to appear to Tom Mockler at the following address: Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–4916, extension 136, Fax (202) 219–4383. Persons making timely written requests to speak at a public meeting will be given priority for oral comments, as time permits. Other persons wishing to speak should register at the meetings from 8:30 to 9:00. OSHA will make every effort to accommodate individuals wishing to speak at the public meetings.

Written Comments: OSHA welcomes the submission of written public comments on all aspects of the Grain Handling Standard. OSHA will review written public comments as part of the process of conducting this regulatory review of the Grain Handling Standard. All comments received will be received in Docket H–117–C and will be available for public review in the Docket Office at the address given below.

Written comments on the Grain Handling Standard should be submitted in quadruplicate to Elaine Bynum, Docket Officer, Docket No. H–117–C, OSHA Docket Office, Room N2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–7894, Fax (202) 219–5046. Comments 10 pages or fewer may be faxed to (202) 219–5046 as long as paper copies are subsequently sent. The deadline for submitting written comments is August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Mockler, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–4916, extension 136, Fax (202) 219–4383.

SUPPLEMENTARY INFORMATION: In 1987, OSHA promulgated the Grain Handling Standard (29 CFR 1910.272) (52 FR 49592, December 1, 1987). The standard applies to grain handling facilities in general industry and at marine terminals under 29 CFR Parts 1910 and 1917. It does not cover construction, shipyards, or agriculture. The standard addresses practices, procedures and equipment that are necessary to protect workers from fires, grain dust explosions, and other safety hazards associated with grain handling facilities.

The Grain Handling Standard requires that employers with grain handling operations utilize a multi-faceted approach to minimize the hazards associated with such operations. This entails the development of an emergency action plan, training for employees, permit procedures where hot work is performed, special procedures for entry into grain storage structures and flat storage structures, coordination with contractors, housekeeping requirements to minimize the accumulation of dust, requirements for filter collectors on pneumatic dust collection systems, requirements on grate openings for receiving pits, requirements for preventive maintenance, requirements for grain stream processing equipment, provisions for emergency escape, requirements for continuous-flow bulk raw grain dryers, and requirements for inside bucket elevators. These provisions are intended to minimize the possibility of igniting existing grain dust, to reduce the amount of grain dust present, or to minimize other risks such as the threat of engulfment to individuals who enter grain storage structures.

OSHA estimated in the Final Regulatory Impact Analysis for the Grain Handling Standard that the rule would prevent 18 fatalities and 394 injuries annually. OSHA also estimated that the standard would have annual costs of between $41 and $69 million (52 FR 49622; Dec. 1, 1987).

In a supplemental rulemaking in 1996 (61 FR 9578, March 8, 1996), the Agency modified the language of the standard to clarify its intent that certain employee protections be provided in all grain storage structures, regardless of their dimensions. This amendment was expected to have little or no impact on any grain elevators, regardless of size (61 FR 9583; March 8, 1996).

At the present time, OSHA has selected the Grain Handling Standard for review in accordance with the regulatorry review provisions at Section 5 of Executive Order 12866 (58 FR 51735, 51739, Oct. 4, 1993) and Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The purpose of the review is to determine whether the standard should be continued without

change, rescinded, or amended to make it more effective or less burdensome in achieving its objectives, to bring it into better alignment with the objectives of Executive Order 12866, or to make it more consistent with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as little burden as possible on small employers. In the event the Agency determines, based on the results of this review, that the rule should be rescinded or modified, appropriate rulemaking will be initiated.

An important step in the review process involves the gathering and analysis of information from affected persons about their experience with the rule and any material changes in circumstances since issuance of the rule. This notice requests written comments and announces public meetings to provide opportunities for interested parties to comment on the continuing need for, adequacy or inadequacy of, and small business impacts of this rule. Comment concerning the following subjects would assist the Agency in determing whether to retain the standard unchanged or to initiate rulemaking for purposes of revision or rescission:

1. The benefits and utility of the rule in its current form and, if amended, in its amended form;

2. The continued need for the rule;

3. The complexity of the rule;

4. Whether and to what extent the rule overlaps, duplicates, or conflicts with other Federal, State, and local governmental rules;

5. Information of any new developments in technology, economic conditions, or other factors affecting the ability of affected firms to comply with the Grain Handling standard; and

6. Alternatives to the rule or portions of the rule that would minimize significant impacts on small businesses while achieving the objectives of the Occupational Safety and Health Act.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–16643 Filed 6–22–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–052–F]

Notice of Public Meeting on Review of the Cotton Dust Standard

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Notice of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the Cotton Dust Standard in order to determine, consistent with Executive Order 12866 on Regulatory Planning and Review and Section 610 of the Regulatory Flexibility Act, whether this standard should be maintained without change, rescinded, or modified in order to make it more effective or less burdensome in achieving its objectives, to bring it into better alignment with the objectives of Executive Order 12866, or to make it more consistent with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as few burdens as possible on small employers.

Written public comments on all aspects of the Cotton Dust Standard are welcomed. OSHA will also hold two stakeholder meetings that will be open to the public to provide opportunities for interested parties to comment on whether the Cotton Dust Standard should be eliminated, modified, or continued without change to achieve the objectives described above.

DATES: The first public meeting will be held on July 24, 1998, in Atlanta, Georgia. The second public meeting will be held on July 30, 1998 in Washington, DC. Both meetings will begin at 9:00 a.m. and will end at approximately 5:30 p.m. Requests from members of the public to speak at these meetings should be received by OSHA no later than July 17, 1998, for the meeting in Atlanta, Georgia, and July 23, 1998, for the meeting in Washington, DC. Written comments must be postmarked by August 31, 1998.

ADDRESSES: The Atlanta meeting will be held at the Sheraton Gateway Hotel, Atlanta Airport, 1900 Sullivan Road, College Park, Georgia 30337, Telephone (770) 997–1100, Fax (770) 997–1921.

The Washington, DC meeting will be held in the Auditorium of the Frances Perkins Building at 200 Constitution Avenue, NW., Washington, DC 20210.

Requests to speak at these public meetings should be sent to Kathryn Condit, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627; 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–4916, extension 145, Fax (202) 219–4383.

Written comments on the Cotton Dust Standard should be submitted in quadruplicate to Elaine Bynum, Docket Officer, Docket No. H–052–F, OSHA Docket Office, Room N2625; 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–7894, Fax (202) 219–5046. Comments of 10 pages or fewer may be faxed to (202) 219–5046 as long as paper copies are subsequently sent.

FOR FURTHER INFORMATION CONTACT: Kathryn Condit, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, Room N3627, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–4916, extension 145, Fax (202) 219–4383.

SUPPLEMENTARY INFORMATION:

Additional Information Concerning Public Participation

Requests to Speak at the Public Meetings. Requests should identify the person and organization intending to appear, desired date of appearance, address and phone and fax number, the amount of time requested, audiovisual equipment required, and a brief summary of the comments to be presented. Persons making timely written requests to speak at the public meetings will be given priority for oral comments, as time permits. Other persons wishing to speak should register before the meetings from 8:30 to 9:00 a.m. OSHA will make every effort to accommodate individuals wishing to speak at the public meetings.

Written Comments. OSHA will review written public comments as part of the process of conducting this regulatory review of the Cotton Dust Standard. All comments received will be included in Docket H–052–F and will be available for public review in the Docket Office.

Additional Information on the Regulatory Review

OSHA has selected the Cotton Dust Standard for review in accordance with the regulatory review provisions at Section 5 of Executive Order 12866 (58 FR 51735, 51739; Oct. 4, 1993) and Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In the event the Agency determines, based on the results of this review, that the rule should be rescinded or modified, appropriate rulemaking will be initiated.

An important step in the review process involves the gathering and analysis of information from affected persons about their experience with the rule and any material changes in circumstances since issuance of the rule. Comment concerning the following subjects would assist the Agency in determining whether to retain the standard unchanged or to initiate rulemaking for the purposes of revision or rescission:

1. The benefits and utility of the rule in its current form and, if amended, in its amended form;
2. The continued need for the rule;
3. The complexity of the rule;
4. Whether and to what extent the rule overlaps, duplicates, or conflicts with other Federal, State and local governmental rules;
5. Information on any new developments in technology, economic conditions, or other factors affecting the ability of affected firms to comply with the Cotton Dust rule; and
6. Alternatives to the rule or portions of the rule that would minimize any significant impacts on small businesses while achieving the objectives of the Occupational Safety and Health Act.

Addtional Information on the Cotton Dust Standard

In 1978, OSHA promulgated a health standard for cotton dust (29 CFR 1910.1043) that set new permissible exposure limits for occupational exposure to cotton dust for the textile industry as well as permissible exposure limits for several other industries. The basis for this rulemaking was OSHA's determination that exposure to cotton dust presents a significant health hazard to employees. Exposure to cotton dust, which may contain a mixture of many substances, including ground-up plant matter, bacteria, fungi, soil, pesticides, and other contaminants, can lead to the chronic respiratory disease known as byssinosis ("brown lung"), as well as to production or aggravation of respiratory symptoms characteristic of chronic lung disease, e.g., chronic bronchitis, asthma, emphysema and other non-specific diseases.

Since its promulgation in 1978, the Cotton Dust Standard has been modified on several occasions to conform to court decisions (*AFL–CIO* v. *Marshall*, 617 F.2d 636 (D.C. Cir. 1979); *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981); (50 FR 51120; December 13, 1985). The Cotton Dust Standard § 1910.1043, currently applies to the control of employee exposure to cotton dust in all workplaces where employees engage in yarn manufacturing, engage in slashing and weaving operations, or work in waste houses for textile operations.

The standard establishes a permissible exposure limit (PEL) of 200 micrograms per cubic meter of air (μg/m³) as an 8-hour time weighted average (TWA) for yarn manufacturing and cotton washing operations, a PEL of 500 μg/m³ as an 8-hour TWA for textile mill waste house operations or exposure to dust from "lower grade washed cotton" during yarn manufacturing operations, and a PEL of 750 μg/m³ as an 8-hour TWA for exposure during slashing and weaving operations (43 FR 27350; June 23, 1978). The action levels established by the standard are: 100 μg/m³ as an 8-hour TWA for yarn manufacturing and cotton washing operations, 250 μg/m³ as an 8-hour TWA for textile mill waste house operations, and 375 μg/m³ as an 8-hour TWA for exposure during slashing and weaving operations. The Cotton Dust Standard also includes provisions covering exposure monitoring, engineering control use, written compliance and work practice programs, respirators, medical surveillance, training, and recordkeeping (43 FR 27350; June 23, 1978). In instances where an employer can demonstrate that employee exposures are below the appropriate action level, the employer is not obligated to comply with many of the requirements of the standard.

The Cotton Dust Standard also applies, in part, to cottonseed processing and cotton waste processing operations. Cottonseed processing operations are not subject to an OSHA 8-hour time-weighted average PEL. However, cottonseed processing operations are covered by certain medical surveillance provisions, recordkeeping provisions, and other requirements of § 1910.1043 as specified in § 1910.1043 as specified in § 1910.1043(a)(3). These requirements are included in the scope of this regulatory review. The cotton waste processing operations of waste recycling (sorting, blending, cleaning, willowing, etc.) and garnetting must comply with a PEL of 1 mg/m³ as an 8-hour time weighted average. This PEL is contained in § 1910.1000, rather than in § 1910.1043, and it is therefore not included in the scope of the current regulatory review effort. However, cotton waste processing operations are covered by certain medical surveillance, recordkeeping, and other requirements of § 1910.1043 as specified in § 1910.1043(a)(3). These requirements are included in the scope of this regulatory review.

The Cotton Dust Standard does not apply to the handling or processing of woven or knitted materials, or to maritime operations covered by 29 CFR Parts 1915 and 1918, or to harvesting or ginning of cotton, or to the construction industry. In addition, facilities processing washed cotton (as defined in paragraph (n) of § 1910.1043) may be exempt from all or part of the standard (see § 1910.1043 (n) for details).

In 1978, OSHA estimated that the Cotton Dust Standard would generate compliance costs of $656.5 million in capital costs and $206.1 million in annual costs. The bulk of these costs were attributed to the textile industry: $550.0 million in capital costs and $171.0 million in annual costs (43 FR 27380; June 23, 1978). the remaining estimated compliance costs were attributed to the waste processing, cottonseed processing, and warehousing industries. In 1978, OSHA also provided a benefits estimate for the yarn preparation industry alone of 4,904 cases of byssinosis avoided per year based on the new permissible exposure limit of 200 μg/m³ as an 8-hour TWA (43 FR 27379; June 23, 1978). Several years later, compliance cost estimates made by the American Textile Manufactures Institute, as well as compliance cost estimates made by Centaur Associates, an OSHA contractor, indicated that the actual cost to affected industries of complying with the standard was substantially lower than OSHA's original estimates (50 FR 51166–51167; December 13, 1985). Modifications to the scope and requirements of the Cotton Dust Standard occurring after 1978 also led OSHA to lower its estimates of the compliance costs associated with the standard (48 FR 26978; June 10, 1983).

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–16624 Filed 6–22–98; 8:45 am]

BILLING CODE 4510–26–M

VOL 63 ISS 120 JE 23 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6112–9]

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule and Filter Backwash Recycling Rule Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of public meeting.

SUMMARY: EPA is in the nascent stages of development for both the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) and the Filter Backwash Recycling Rule (FBRR). The Agency is holding these public meetings to share information with interested parties and to solicit feedback from them. The LT1ESWTR rule will primarily address microbial risks at systems serving under 10,000 people. Development of the rule's requirements will begin by considering the appropriateness of the Interim Enhanced Surface Water Treatment Rule (IESWTR) regulatory template. The rule is to be promulgated by November 2000.

The FBRR rule will provide, for the first time, federal regulatory requirements governing the recycle of filter backwash within the treatment process of public utilities. The rule will apply to utilities of all sizes that backwash filters. The Safe Drinking Water Act (SDWA) requires that the final regulation be promulgated by August of 2000.

In keeping with its open door policy for meetings with the public, EPA is inviting all interested members of the public to attend these meetings, with seating on a first-come, first-served basis.

DATES: The LT1ESWTR public meeting will be held on July 22, 1998, and will begin at 8:30 a.m. local time. The FBRR public meeting will begin at the same time on July 23, 1998. Both public meetings will conclude at approximately 4:30 p.m. local time.

ADDRESSES: The meeting will be held at U.S. EPA, Region 8 Office, 999 18th Street, Suite 500, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: For general information on the LT1ESWTR public meeting, please contact Steve Potts at (202) 260–5015. For the FBRR public meeting, please contact Bill Hamele at (202) 260–2584.

Dated: June 17, 1998

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Office of Water.

[FR Doc. 98–16671 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC13

Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft San Xavier talussnail conservation agreement.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a draft conservation agreement for the San Xavier talussnail (*Snorella eremita*) is available for review and comment. Comments will be accepted during the current public comment period on the proposal to list species as endangered under the Endangered Species Act of 1973, as amended, which closes July 21, 1998. This Conservation Agreement will provide guidance for the conservation and management of the species and its habitat.

DATES: All comments on the draft Conservation Agreement and information on the proposal to list the San Xavier talussnail will be accepted through July 21, 1998.

ADDRESSES: Written comments and materials should be sent to the Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Fish and Wildlife Biologist, or Jerry Brabander, Acting Field Supervisor, Arizona Ecological Services Field Office, at the above address (602) 640–2720.

SUPPLEMENTARY INFORMATION:

Background

The San Xavier talussnail was first proposed as endangered on March 23, 1994 (59 FR 13691). At that time, a 60-day public comment period was opened until May 23, 1994, and all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Public hearing requests were invited through May 9, 1994.

Considering the length of time that has elapsed since that initial proposal and a recent re-examination of property boundaries to clarify ownership of the talussnail habitat, the Service reopened the public comment period on May 22, 1998 (63 FR 28343). With the availability of the draft Conservation Agreement, the Service is seeking comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule and the draft Conservation Agreement.

The draft Conservation Agreement calls for restricting activities that would alter sediment runoff, vegetation, or moisture conditions. The draft Conservation Agreement was prepared by representatives from Federal and State agencies and is intended to be used as the basis for guiding the long-term protection of the species and its habitat.

Author

The primary author of this document is Debra Bills, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: June 17, 1998.

Geoffrey L. Haskett,

Regional Director, Fish and Wildlife Service, Region 2.

[FR Doc. 98–16678 Filed 6–22–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 120
Tuesday, June 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Nicholson Land Exchange, Boise National Forest, Boise and Elmore Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare environmental impact statement.

SUMMARY: The Boise National Forest has cancelled the preparation of an Environmental Impact Statement (EIS) on the proposed land exchange with Thomas T. and Diana R. Nicholson. The previously published Notice of Intent appeared in the October 10, 1997, **Federal Register**, Volume 62, Number 197, pages 52964–52965.

FOR FURTHER INFORMATION CONTACT: Questions concerning the cancellation of the EIS should be directed to Sharon Paris at (208) 373–4157. Written requests should be sent to the Boise National Forest, Attn: Sharon Paris, 1249 S. Vinnell Way, Boise, ID 83709.

Dated: June 4, 1998.

Jack G. Troyer,

Deputy Regional Forester, Intermountain Region Forest Service, USDA.

[FR Doc. 98–16654 Filed 6–22–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on July 11, 1998, at the Wyndham Garden Hotel, Phoenix Airport, 429 North 44th Street, Phoenix, Arizona 85008. The purpose of the meeting is to discuss followup to the Arizona Department of Transportation forum and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–16581 Filed 6–22–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on July 9, 1998, at the Crowne Plaza Northstar Hotel, 618 Second Avenue South, Minneapolis, Minnesota. The purpose of the meeting is to hold a press conference to release the Committee's report *Focus on Affirmative Action*, discuss civil rights issues, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Alan W. Weinblatt, 612–292–8770, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–16584 Filed 6–22–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/10/98–05/15/98

Firm name	Address	Date petition accepted	Product
Robertson Equipment Company, Inc.	1502 South Madison, Webb City, MO 64870.	05/27/98	Remanufactured Printing Press Equipment and Brakes and Brush Dampers.
Midwest Game Supply Company.	1119 North Jefferson Street, Kearney, MO 64060.	05/27/98	Dice, Casino Table Layouts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/10/98–05/15/98—Continued

Firm name	Address	Date petition accepted	Product
Prolon, Inc	305 Industrial Avenue, Port Gibson, MS 39150.	06/01/98	Compression Molded Dishes of Plastic.
Tri-Source, Inc	204 North Lynn Riggs Road, Claremore, OK 74027.	06/01/98	Optical Unmounted Lenses.
American Standard Company, Inc.	157 Water Street, Southington, CT 06479.	06/02/98	Pruning Shears, Pole Pruners, Loppers and Forestry Hoes.
Frost Controls, Inc	7 Industrial Drive South, Smithfield, RI 02917.	06/02/98	Photoelectric Control Systems and Light Curtains for Use as Machine and Workplace Safety Guards.
Hampden Automotive Sales Corporation.	117 Heath Street, Boston, MA 02130.	06/02/98	Brake Shoes, Disk Brake Calipers, Clutches, Water Pumps.
Selectek Corporation	6370 Nancy Ridge Drive, San Diego, CA 92121.	06/03/98	Wireless Communication Devices and Systems for Local Area Networks.
Action North America, Inc	6063 Janes Lane, Naples, FL 33942.	06/09/98	Motorcycles Fitted With an Auxiliary Motor with Internal Combustion Piston Engines & ATVs.
Varsity Sports, Inc	4361 NW 50th, Suite 100, Oklahoma, OK 73122.	06/15/98	Athletic Baseball Shirts.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 17, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–16619 Filed 6–22–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 984]

Grant of Authority for Subzone Status Cirrus Logic, Inc. (Integrated Circuit), Fremont, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of San Jose, California, grantee of FTZ 18, for authority to establish special-purpose subzone status at the integrated circuit distribution facility of Cirrus Logic, Inc., in Fremont, California, was filed by the Board on July 10, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 59–97, 62 FR 38972, 7/21/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the integrated circuit distribution facility of Cirrus Logic, Inc., located in Fremont, California (Subzone 18C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of June 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–16684 Filed 6–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–98]

Foreign-Trade Zone 40, Cleveland, Ohio, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 15, 1998.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 F.R. 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 F.R. 27579, 6/25/82); April 1992 (Board Order 574, 57 F.R. 13694, 4/17/92); and, February 1997 (Board Order 870, 62 F.R. 7750, 2/20/97). The zone project currently consists of 5 sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the "Cleveland Tank Plant"), in Brook Park, Ohio, adjacent to Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex, Cleveland; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland, and *Site 5* (97 acres)—within the Emerald Valley Business Park at the southeast corner of Cochran Road and Beaver Meadow Parkway, Glenwillow.

The applicant is now requesting authority to expand existing *Site 5* to include the entire Emerald Valley Business Park (298 acres, includes existing areas) in Glenwillow and to include 3 new sites (160 acres) in Cuyahoga County (Proposed Sites 6–8): *Proposed Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Proposed Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; and, *Proposed Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville. Proposed Sites 5, 6 and 8 are privately owned, while Proposed Site 7 is owned by the State of Ohio. No specific manufacturing requests are bing made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 24, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 8, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 600 Superior Avenue, East, #700 Cleveland, Ohio 44114

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 16, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–16683 Filed 6–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–98]

Foreign-Trade Zone 183—Austin, Texas, Application for Expansion and Request for Manufacturing Authority (Servers and Work Stations)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Foreign-Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand its zone in the Austin, Texas area, and requesting on behalf of Dell Computer Corporation, authority to manufacture servers and workstations under zone procedures within FTZ 183 (Austin Customs port of entry). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended, (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 11, 1998.

FTZ 183 was approved on December 23, 1991 (Board Order 550, 57 FR 42, 1/2/92). The zone currently consists of seven sites in the Austin, Texas area:

Site 1—Austin Enterprise site (317 acres), consisting of seven parcels within the Austin Enterprise Zone Area along Highway 290 and the Ben White Boulevard-Montopolis Drive area, Austin;

Site 2—Balcones Research site (50 acres), located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard;

Site 3—High Tech Corridor site (762 acres), consisting of ten parcels located along I–35, 14 miles north of downtown Austin (site straddles Austin-Round Rock city line);

Site 4—Cedar Park site (122 acres), some eight miles northwest of the Austin city limits, in Williamson County;

Site 5—Round Rock "SSC" site (246 acres), consisting of two parcels located along I–35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock;

Site 6—Georgetown site (246 acres), located along I–35 and U.S. 81, south of downtown Georgetown;

Site 7—San Marcos site (40 acres), located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line.

(An expansion request (Doc. 63–97) is currently pending with the FTZ Board to expand FTZ 183 to include the MET Center industrial park (200 acres) located between U.S. Highway 183 South and State Highway 71 East in southeast Austin.)

The applicant is now requesting authority to expand Site 3 to include 574 acres approximately two miles south of the High-Tech Corridor site, just east of I–35 on Parmer Lane in the City of Austin (Travis County) near the Williamson County border. This proposed expansion will expand the site to 1,336 acres.

The application also requests authority on behalf of Dell Computer Corporation to manufacture servers and workstations within FTZ 183 (within the proposed expansion area). Dell is already authorized to manufacture computers and related products, including servers and workstations, under zone procedures within Subzone 183A. Dell is building a 300,000 square foot facility (the "Enterprise Systems Facility") within the proposed Site 3 expansion area, and plans to transfer a portion of its manufacturing operations to the new facilities to meet requirements for additional capacity required by its growing server and workstation businesses. This proposal does not request any new manufacturing authority under FTZ procedures in terms of products or components, but it does involve a proposed increase in Dell's level of production under FTZ procedures within the FTZ 183 project overall corresponding to the proposed increase in facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 24, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 8, 1998).

A copy of the application and accompanying exhibits will be available

for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center 1700 Congress, 2nd Floor, Austin, TX 78711

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 12, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–16682 Filed 6–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–602]

Acetylsalicylic Acid From Turkey; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 30, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on acetylsalicylic acid from Turkey. This review covers one manufacturer/exporter of the subject merchandise during the period of review August 1, 1996, through July 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results; however, we received no comments. Therefore, these final results of review are the same as those presented in the preliminary results of review. The review indicates the existence of no dumping margin for the manufacturer/exporter during this period.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Tomlinson, David Dirstine, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations published on May 19, 1997 (62 FR 27296).

Background

On April 30, 1997, the Department published in the **Federal Register** (63 FR 23720) the preliminary results of the administrative review of the antidumping duty order on acetylsalicylic acid from Turkey (52 FR 32030, August 25, 1987). The review covers one company, Atabay Kimya Sanayi ve Ticaret A.S. (AKS), a Turkish manufacturer/exporter of the subject merchandise. The Department has now completed the administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is acetylsalicylic acid (aspirin) containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under the Harmonized Tariff Schedule (HTS) subheading 2918.22.10. The HTS item number is provided for convenience and customs purposes. The written descriptions of the scope of this proceeding remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results of review, but we received no comments. Therefore, the final results of review are the same as those presented in our preliminary results. As a result of the review, we determine that the weighted-average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
Atabay Kimya Sanayi ve Ticaret A.S	0.00

The Department will issue appraisement instructions directly to the Customs Service. We will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for AKS will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, any prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 32.98 percent. This is the "All Others" rate from the LTFV investigation. (*See Antidumping Duty Order; Acetylsalicylic Acid from Turkey*, 52 FR 32030 (August 25, 1987).) These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–16681 Filed 6–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On April 7, 1997, the Department of Commerce (the Department) published the preliminary results of its changed circumstances antidumpting duty administrative review of certain welded stainless steel pipe (WSSP) from Taiwan (63 FR 16982). The Department preliminarily determined that Chang Mein Industries Co., Ltd. (Chang Mein) is the successor-in-interest to Chang Tieh Industry Co., Ltd. (Chang Tieh) and is therefore, entitled to Chang Tieh's exclusion from the antidumping duty order or WSSP from Taiwan. We invited interested parties to comment on our preliminary results. We received no comments. We have now completed this review and determine that, for purposes of the antidumping duty law, Chang Mein is the successor firm to Chang Tieh and, as such, is subject to exclusion from the order.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0193 or (202) 482–3833.

Applicable Statute and Regulations Scope of the Review

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1996, Chang Mien requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether Chang Mein should properly be considered the successor firm to Chang Tieh. In the less-than-fair-value (LTFV) investigation, the Department excluded Change Tieh from the antidumping duty order on WSSP from Taiwan after calculating a margin of zero for Chang Tieh. *See Notice of Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipes from Taiwan*, 59 FR 6619 (February 11, 1994). Chang Mien maintained that, as Chang Mein and Chang Tieh were related at the time of the LTFV investigation, Chang Mein is entitled to Chang Tieh's exclusion from the order *ab initio*. Chang Mien further stated that, since publication of the order, Change Mien has absorbed Chang Tieh and, therefore, as the successor firm to Chang Tieh, is entitled to Chang Tieh's exclusion from

We preliminarily determined that Chang Mien is the successor-in-interest to Chang Tieh, since it essentially operates as the same entity as the former company; maintaining the same management, production facilities, and supplier relationships as did Chang Tieh prior to its merger with Chang Mien (63 FR 16982, April 7, 1998). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of the Review

The merchandise subject to this antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium nickel pipe designated ASTM A–312. The merchandise covered by the scope of this order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications include, but are not limited to, digester brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065 and 7306.40.5086. Although these subheadings include both pipes and tubes, the scope of this antidumping duty order is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Antidumping Duty Administrative Review

Based on the information that Chang Mien provided in its responses to the Department's questionnaires and on the data obtained at verification, we determine that Chang Mien is the successor to Chang Tieh and, accordingly, is excluded from the antidumping duty order on WSSP from Taiwan. For a complete discussion of the basis for this decision, see *Certain Welded Stainless Steel Pipe from Taiwan; Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, April 7, 1998, (63 FR 16982).

The Department, in accordance with 19 CFR 351.222, will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of WSSP manufactured by Chang Mien, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after November 1, 1993, the effective date of the absorption of Chang Tieh by Chang Mien.

The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of such WSSP entered, or withdrawn from warehouse, for consumption on or after November 1, 1993, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This changed circumstances administrative review and notice are in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act and sections

351.216(d) and 351.222(g) of the Department's regulations.

Dated: June 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–16680 Filed 6–22–98; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Request for Nominations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Request for nominations of members to serve on the Computer System Security and Privacy Advisory Board.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Computer System Security and Privacy Advisory Board (CSSPAB). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before July 31, 1998.

ADDRESSES: Please submit nominations to Edward Roback, CSSPAB Secretary, NIST, Building 820, Room 426, Gaithersburg, MD 20899. Nominations may also be submitted via fax to 301–948–1233, Attn: CSSPAB Nominations.

Additional information regarding the Board, including its charger and current membership list, may be found on its electronic home page at: < http://csrc.nist.gov/csspab/ >

FOR FURTHER INFORMATION CONTACT: Edward Roback, CSSPAB Secretary and Designated Federal Official, NIST, Building 820, Room 426, Gaithersburg, MD 20899; telephone 301–975–3696; telefax: 301–948–1233; or via e-mail at "edward.roback@nist.gov".

SUPPLEMENTARY INFORMATION:

I. CSSPAB Information

Objectives and Duties

The CSSPAB was chartered by the Department of Commerce pursuant to the Computer Security Act of 1987 (P.L. 100–235). The objectives and duties of the CSSPAB are:

1. The Board shall identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy.

2. The Board shall advise the National Institute of Standards and Technology (NIST) and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems.

3. To report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

4. The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

Membership

The CSSPAB is comprised of twelve members, in addition to the Chairperson. The membership of the Board includes:

(1) Four members from outside the Federal Government eminent in the computer or telecommunications industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) Four members from outside the Federal Government who are eminent in the fields of computer or telecommunications technology, or related disciplines, but who are not employed by or representative of a producer of computer or telecommunications equipment; and

(3) Four members from the Federal Government who have computer systems management experience, including experience in computer systems security and privacy, at least one of whom shall be from the National Security Agency.

Miscellaneous

Members of the CSSPAB are not paid for their service, but will, upon request, be allowed travel expenses in accordance with Subchapter I of Chapter 57 of Title 5, United States Code, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

Meetings of the Board take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland. Meetings are two to three days in duration and are held quarterly.

Board meetings are open to the public and members of the press usually attend. Members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

Nominations are sought in all three categories described above, including a small business representative in the first category.

Nominees should have specific experience related to computer security or electronic privacy issues, particularly as they pertain to federal information technology. The category of membership for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the CSSPAB, and will actively participate in good faith in the tasks of the CSSPAB. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their Board duties.

Selection of CSSPAB members will not be limited to individuals who are nominated. Nominees must be U.S. citizens.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse CSSPAB membership.

Dated: June 17, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–16620 Filed 6–22–98; 8:45 am]

BILLING CODE 3510-CN-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America Training and Technical Assistance Exchange

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of up to $950,000 for a period of 12 months to provide service-learning training and technical assistance to Learn and Serve America (hereinafter "LSA") grantees, AmeriCorps and Senior Corps programs,

and other service-learning and youth service programs through a Learn and Serve America Training and Technical Assistance Exchange (hereinafter "the Exchange"). Further funding may be available for a second and third year depending on performance, need, and availability of funds. The Corporation seeks proposals describing plans for activities to meet the service-learning technical assistance needs of LSA grantees, other Corporation programs, and, to the extent that resources allow, others in the field of service-learning and youth service.

DATES: Application guidelines will be available Tuesday, June 23, 1998. Applications must be submitted to the Corporation no later than 3:00 p.m. (EDT) on Wednesday, August 5, 1998. The target date for implementation is October 1, 1998.

ADDRESSES: Requests for applications must be submitted in writing to the Corporation for National and Community Service, Office of Training and Technical Assistance, Attn: Robert Seidel—Application Request, 1201 New York Avenue, N.W., Washington, DC 20525. Applications must be submitted to the Corporation for National and Community Service, Box XCH, 1201 New York Avenue, N.W., Washington, DC 20525. Applicants are requested to submit one unbound original and two copies of applications to facilitate the review process. The Corporation will not accept applications that are submitted by facsimile or e-mail transmission.

FOR FURTHER INFORMATION CONTACT: Submit all questions about the application in writing no later than 3:00 p.m. (EDT), Thursday, July 9, 1998, to the Corporation for National and Community Service, Office of Training and Technical Assistance, Attn: Robert Seidel, 1201 New York Avenue, N.W., Washington, DC 20525. Faxed questions are acceptable (fax number: 202–565–2781). A copy of all questions submitted as well as the answers will be forwarded to all parties requesting applications. This Notice may also be requested in an alternative format by calling 202–606–5000, extension 391.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. Administered by the Corporation, LSA is a federal grants program that promotes schools and students as resources in their communities through service-learning. Funds support service-learning programs for kindergarten through twelfth grade youth as well as for students in higher education and community-based programs.

B. Specific Functions of the LSA Exchange

The Corporation is soliciting applications from eligible applicants to administer the Exchange. It is anticipated that the successful applicant will have the requisite expertise and professional experience to:

1. Develop and implement a cost-effective plan for offering service-learning training and technical assistance (hereinafter "T/TA") to LSA grantees, other Corporation programs and, to the extent that resources allow, other programs across the country. The Exchange must develop a system for receiving and tracking requests for T/TA, matching the requests with likely providers, and ensuring that the T/TA is provided in a timely manner. Client and provider feedback should be solicited systematically to facilitate evaluation of specific T/TA activities as well as of the Exchange as a whole. We expect that the lead organization of the Exchange will recruit at least one partner organization in each of five regions covering the country to organize these activities. To be cost-effective, when a request for such support comes in, the Exchange will work with State Education Agencies, State Commissions on National and Community Service, Corporation State Offices, and LSA to assess whether other service programs in a given region should be invited to participate in the T/TA to be provided.

The Exchange must identify various areas of expertise likely to be important to support service-learning programs (for example, intergenerational service-learning, evaluation, discipline-specific curricula, literacy, teacher education, health, diversity, institutionalization, service-learning and school reform, etc.) and recruit expert trainers to be available to respond to requests for assistance on a regional or national basis without duplicating services offered by other Corporation national T/TA providers. The Corporation expects that the provider will need to recruit a roster of at least ten trainers per region plus ten national trainers, but that the actual number will reflect the provider's needs assessment. This team of experts together must be capable of addressing needs of kindergarten through twelfth grade (hereinafter "K–12") school-based and community-based programs as well as higher education programs. It should be used whenever the assistance required is too extensive to be provided on a voluntary basis through a peer network or when special expertise is required that is not available through a local or regional peer network.

In a recent six-month period (April-September 1997), the current provider reported conducting an average of about 60 events per month, including workshops, state and regional conferences, peer consulting sessions, state network meetings, and other activities for its K–12 program clients. In addition, the current provider reported providing T/TA through an average of about 400 telephone calls and 50 e-mail exchanges per month during the same period.

In addition to providing T/TA to LSA: K–12 school-based and community-based programs, the Exchange will need to be able to respond to requests for assistance from LSA: Higher Education and other Corporation programs. Consequently, the Corporation's minimum expectations for a 12-month period include:

- At least 25 regional or state-based workshops (each at least one-half day in length) organized by the Exchange;
- At least 100 technical assistance site visits to programs, State Education Agencies, or State Commissions;
- At least 500 peer or regional/national expert consulting sessions, which may be in person or by telephone; and
- Responsive on-line and telephone technical assistance.

While these are minimum expectations, the appropriate level of effort will likely be greater and will depend in part on actual needs assessments conducted by the Exchange.

2. Develop and implement a cost-effective plan for organizing T/TA on a regional basis, using practitioner peer assistance based on peer networks being developed by LSA school-based, community-based, and higher education grantees and drawing on former grantees, affinity groups, the National Service Leader Schools, and the Fund for the Advancement of Service-Learning (FASL) grantees. The Exchange must develop a system for recruiting and appraising the qualifications of candidates to be T/TA providers, identifying their particular areas of

expertise, and recommending them to clients. We do not assume that a program that has operated successfully will necessarily be able to provide effective trainers. The providers' services should be voluntary (non-compensated), but the Exchange should allocate resources for necessary travel and per diem. Voluntary non-compensated services and cost-share contributions (in-kind and/or cash) may not include funds or expenses and time and effort paid for by Corporation funds under LSA or any other Corporation grant. We encourage peer assistance from one region to another when the required support is not available within a region.

3. Develop and implement a management system for defining and monitoring the roles and responsibilities of the lead organization and all regional and other partners within the Exchange. This must include clear definition of the principles and mechanisms for allocating funds to all partners as well as for submitting activity and financial status reports to the Corporation.

4. Convene a meeting of all Exchange partners immediately upon execution of the cooperative agreement to facilitate implementation of T/TA by developing shared understanding of all participants' responsibilities, resources, and identities and roles of contact personnel.

5. In collaboration with the LSA National Service-Learning Clearinghouse, develop and implement a plan for conducting periodic technical assistance resource and needs assessments of all categories of LSA grantees and the service-learning field, including assessing the availability of current resources to meet those needs. The Corporation strongly encourages the Exchange to undertake an initial needs and resources assessment immediately upon signing the cooperative agreement.

6. Work with the LSA National Service-Learning Clearinghouse to identify selected materials and resources, developed and used successfully by the Exchange in the course of providing T/TA, for the Clearinghouse to catalog and make available to the field (using on-line access whenever practical).

7. Develop T/TA resources to make service-learning programs accessible to individuals with disabilities.

8. Coordinate the activities of the Exchange with appropriate entities to avoid duplication of effort, including but not limited to other National Service T/TA providers funded by the Corporation.

9. Collaborate with the Corporation Office of Public Affairs to develop, implement, and continuously improve an outreach and marketing plan to promote the services and resources of the Exchange.

10. Support related Federal initiatives, including the America Reads Challenge and Improving America's Schools Act, by developing relevant T/TA resources or making referrals to existing providers, whichever is more cost-effective.

11. Monitor and support the activities of LSA grantees' affinity groups.

12. Develop and implement the LSA kindergarten through higher education (hereinafter "K-H") publications plan in coordination with the LSA National Service-Learning Clearinghouse.

13. Facilitate the planning and implementation of two annual LSA program directors' meetings, one for school-based and community-based K–12 programs and the other for higher education programs, or possibly joint K-H grantees' meetings.

14. Carry out such other activities as the Corporation, normally represented by its Service-Learning Specialist in consultation with the Office of Learn and Serve America, determines to be appropriate.

C. Amount and Duration of Funding

The first year's award will total up to $950,000. The cooperative agreement may be funded each year for up to three years total based on performance, need, and the availability of funds. Applications proposing notable cost-sharing (in kind and/or in cash) will receive more favorable consideration.

D. Eligibility

Public or private nonprofit organizations that have extensive experience with service-learning (school-based, campus-based, and/or community-based, including use of adult volunteers to foster service-learning) are eligible to apply.

E. Applications

The Corporation will enter into only one cooperative agreement in this area. Based on related previous competitions and the Corporation's estimate of the number of eligible applicants, the Corporation expects nine or less applications to be submitted.

Dated: June 18, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–16685 Filed 6–22–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DoD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Services (SES) Performance Review Board (PRB) for the OIG, DoD, as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Deputy Director for Operations, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Management, OIG, DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 604–9716.

Charles W. Beardall—Deputy Assistant Inspector, General for Criminal Investigative Policy and Oversight, OAIG-for Investigations
C. Frank Broome—Director, Office of Departmental Inquiries
David M. Crane—Director, Office for Intelligence Review
Donald E. Davis—Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG-Auditing
Thomas F. Gimble—Director, Acquisition Management, OAIG-Auditing
Paul J. Granetto—Director, Contract Management, OAIG-Auditing
Michael G. Huston—Director, Audit Planning and Technical Support, OAIG-Auditing
John F. Keenan—Deputy Assistant Inspector General for Investigations
Frederick J. Lane—Director, Finance and Accounting, OAIG-Auditing
Joel L. Leson—Deputy Assistant Inspector General for Administration and Information Management
Robert J. Lieberman—Assistant Inspector General for Auditing
Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management
Carol L. Levy—Director, Investigative Operation, OAIG for Investigations
Donald Mancuso—Deputy Inspector General
David K. Steensma—Deputy Assistant Inspector General for Auditing
Shelton R. Young—Director, Logistics Support, OAIG-Auditing

Stephen A. Whitlock—Special Assistant for Ethics and Internal Programs, OAIG–A&IM
Robert L. Ashbaugh—Deputy Inspector General, Department of Justice
John J. Connors—Deputy Inspector General, Department of Housing and Urban Development
Joyce Fleischman—Deputy Inspector General, Department of Agriculture
Joel S. Gallay—Deputy Inspector General, General Services Administration
Nikki L. Tinsley—Deputy Inspector General, Environmental Protection Agency.

Dated: June 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 98–16625 Filed 6–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 24, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Directorate of Civil Works, ATTN: CEWRC–IWR–R (Stuart A. Davis). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Corps of Engineers Civil Works Questionnaires.

Needs and Uses: Information is needed to formulate and evaluate alternative water resources development plans in accordance with the Principles and Guidelines for Water Resources Implementation Studies, promulgated by the U.S. Water Resources Council; to determine the effectiveness and evaluate the impacts of Corps projects; and in the case of flood damage mitigation, to obtain information on flood damages incurred, with or without a flood damage reduction project. Surveys of the public are also essential to the Corps recreation research and management program.

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Annual Burden Hours: 10,817.

Number of Respondents: 112,400.

Responses Per Respondent: 112,400.

Average Burden Per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps of Engineers uses public surveys for collecting primary data for planning, program evaluation, and basic research to improve formulation and design of resource projects and the management of their operations.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–16641 Filed 6–22–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Chief, Human Resources Management, Defense Contract Audit Agency, Department of Defense, Ft. Belvoir, Virginia 22060–6219, 703–767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Earl Newman, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson.
Mr. Larry Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency member.
Mr. Kirk Moberley, General Counsel, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. James Lovelace, Director, Field Detachment, Defense Contract Audit Agency Chairperson
Mr. Richard Buhre, Regional Director, Eastern, Defense Contract Audit Agency, member.
Mr. David Dzivak, Deputy Regional Director, Northeastern, Defense Contract Audit Agency, member.

Dated: June 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16626 Filed 6–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the West Shore—Lake Pontchartrain, Louisiana, Hurricane Protection Feasibility Study

AGENCY: U.S. Army Corps of Engineers, New Orleans District, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District proposes to determine the feasibility of providing protection against hurricane-induced flooding for residents located in portions of St. Charles, St. John the Baptist, and St. James Parishes, Louisiana. The study area, with a population in excess of 25,000 residents, is bounded by the Bonnet Carré Spillway to the east, the Mississippi River to the south, Lakes Pontchartrain and Maurepas to the north, and the St. James/Ascension Parish line to the west. There are no Federal hurricane protection projects protecting the study area from a tidal surge coming from Lake Pontchartrain and Maurepas. The vulnerability of the study area to a hurricane tidal surge is demonstrated by the fact that there are an estimated 1,000 residential structures subject to flooding from the 25-year storm, 3,990 residential structures subject to flooding from the 100-year storm, and 4,020 residential structures subject to flooding from the 500-year storm. The equivalent annual flood damages for the without-project conditions are estimated at $9.4 million. A reconnaissance study completed in June 1997, evaluated two alternative alignments for providing hurricane protection to the study area at the 100-year and the standard project hurricane (SPH) levels of protection. Both alternative alignments were determined to be economically justified at both levels of protection. Hence, the reconnaissance report recommended that the study proceed to the feasibility phase, contingent upon the execution of a Feasibility Cost Sharing Agreement (FCSA) with a non-Federal Sponsor. An FCSA was executed with the Pontchartrain Levee District on March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action should be directed to the study manager, Mr. Brett H. Herr, CEMVN–PD–FG, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2495. Questions regarding the DEIS may be directed to Dr. William P. Klein, Jr., CEMVN–PD–RS, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2450.

SUPPLEMENTARY INFORMATION:

1. Authority

The study was authorized by a resolution adopted on July 29, 1971, by the Committee on Public Works of the U.S. House of Representatives; and by a resolution adopted on September 20, 1974, by the Committee on Public Works of the U.S. Senate.

2. Proposed Action

The U.S. Army Corps of Engineers, New Orleans District proposes to investigate the feasibility of providing hurricane protection to residents living west of the Bonnet Carré Spillway between the Mississippi River and Lakes Pontchartrain and Maurepas. The study area is located on the "east bank" of the Mississippi River and includes portions of St. Charles, St. John the Baptist, and St. James Parishes.

3. Study Alternatives

Two alternative alignments for providing hurricanes protection to the study area were evaluated during the reconnaissance study phase. The two alignments are identical except for a portion located west of Belle Terre Boulevard. Both alignments (Plan 1 and Plan 2) begin at the west guide levee of the Bonnet Carré Spillway, approximately 2 miles south of Lake Pontchartrain. Both alignments end at U.S. Highway 61 in the vicinity of the Reserve Relief Canal. The alignment for Plan 1 more closely follows the existing limits of development and encloses less wooded swamps and bottomland hardwoods than Plan 2. The alignment for Plan 2 parallels Interstate 10 for an additional 1.2 miles west of the Belle Terre Boulevard interchange before turning to the southwest and heading back towards U.S. Highway 61. The alignments for Plan 1 and Plan 2 do not follow the wetland/nonwetland interface. Plan 1 and Plan 2 would enclose approximately 3,269 acres and 4,614 acres of wooded swamps and bottomland hardwoods, respectively.

An alternative alignment (Plan 3), provided by the U.S. Fish and Wildlife Service (USFWS) will be evaluated during this study. This USFWS alignment more closely follows the existing wetlands/non-wetlands interface. These three alternative plans, along with other alternative plans developed during the feasibility phase, will be evaluated in more detail such that the level of protection provided by the proposed action will be optimized based on an economic analysis of the benefits and costs. Design features will be fully evaluated to ensure compliance with current Federal and state laws and regulations. Any adverse effects of the alternative plans will be identified and appropriate mitigation measures will be included in the plans. An Environmental Impact Statement (EIS) will be prepared during the feasibility phase because of the potential for significant direct and indirect impacts on the human environment in general, and on large tracts of forested wetlands, in particular.

4. Scoping Process

An intensive public involvement program will be initiated and maintained throughout the study to solicit input from affected Federal, state, and local agencies, Indian tribes, and interested private organizations and individuals. Scoping is a critical component of the overall public involvement program. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the DEIS.

5. Public Scoping Meeting

In the summer of 1998, the New Orleans District of the U.S. Army Corps of Engineers will hold at least one public meeting in the study area to receive oral and written comments on the proposed action. Notices will be mailed to the affected and interested public once the date of the public scoping meeting has been established. Comments received as a result of the scoping meeting will be compiled and analyzed; and a Scoping Document, summarizing the results, will be made available to all participants.

6. Interagency Coordination

The Department of Interior will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on threatened and endangered species. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the "Swampbuster" provisions of the Food Security Act. We will prepare a Section 404(b)(1) evaluation. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Streams. Application will be made to the Louisiana Department of Environmental Quality for a Water Quality Certificate.

7. Availability of DEIS

It is anticipated that the DEIS will be available for public review during the

summer of 2000. A 45-day review period will be allowed so that all interested agencies, groups and individuals will have an opportunity to comment on the draft report and EIS. In addition, a public meeting will be held during the review period to receive comments and address questions concerning the draft EIS.

Dated: June 9, 1998.

William L. Conner,

Colonel, U.S. Army, District Engineer.

[FR Doc. 98–16642 Filed 6–22–98; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on July 16, 1998, in Paducah, Kentucky, at the Executive Inn, 1 Executive Boulevard, Paducah, Kentucky, (Tel. 502–443–8000). Registration will begin at 9:30 AM and the meeting is scheduled to adjourn at 3:30 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, D.C. 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–16640 Filed 6–22–98; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Patent Application entitled "Ultra-High Resolution Liquid Crystal Display on Silicon-on-Sapphire," filed March 25, 1998, Navy Case No. 79043.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the Navy Case numbers.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: June 11, 1998.

Matthew G. Shirley,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–16582 Filed 6–22–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–30–NG]

Rock-Tenn Co., Mill Division, Inc; Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Rock-Tenn Company, Mill Division, Inc. (Rock-Tenn) long-term authorization to import up to 0.8 Bcf annually of natural gas from Canada. The authorization is for a 10-year term commencing November 1, 1998, through October 31, 2008. This gas may be imported from Canada at the international border point near Highgate Springs, Vermont (Phillipsburg, Quèbec).

This Order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 11, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–16657 Filed 6–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92–123–NG]

San Diego Gas & Electric; Order Amending Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 717–A on June 2, 1998, amending San Diego Gas & Electric's long-term authorization to import natural gas from Canada granted in DOE/FE Opinion and Order 717 (Order 717)(1 FE ¶ 70,674, November 13, 1992). Order 717 was amended to decrease the maximum import volume from 53,150 Mcf of natural gas per day to 31,500 Mcf per day.

This order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 11, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–16656 Filed 6–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Grand Junction Office; Notice of Floodplain/Wetlands Involvement for Site Characterization Activities at Shiprock, New Mexico, Uranium Mill Tailings Remedial Action (UMTRA) Site

AGENCY: Grand Junction Office, Department of Energy.

ACTION: Notice of Floodplain/Wetlands Involvement.

SUMMARY: The Department of Energy (DOE) hereby provides notice as required by 10 CFR Part 1022, to conduct site characterization activities within the 100-year floodplain of the San Juan River at the Shiprock, New Mexico UMTRA site, with possible impacts to wetlands. The site is located within the boundaries of the Navajo Indian Reservation. Activities are scheduled to occur in the late summer and fall of 1998. Characterization activities are required to determine ground water chemistry and flow patterns that will assist the DOE in selecting a ground water remedial action strategy for the site in accordance with 40 CFR 192, "Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings."

DATES: Written comments are due to the address below no later than July 8, 1998.

ADDRESSES: Written comments should be addressed to Audrey Berry, U.S. Department of Energy—Grand Junction Office, 2597 B3/4 Road, Grand Junction, Colorado; or transmitted electronically by E-mail via Internet to "Audrey.Berry@gjpomail.doegjpo.com;" or by facsimile at (970) 248–6040.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Don Metzler, Project Manager, U.S. Department of Energy, Grand Junction Office, 2597 B3/4 Road, Grand Junction, Colorado 81503, Telephone 1–970–248–7612 or 1–800–399–5618, E-mail Don.Meztler@gjpomail.doegjpo.com.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Under E.O. 11988, Floodplain Management, and 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements, notice is given that DOE is planning characterization activities in the San Juan River 100-year floodplain north and east of the Shiprock UMTRA site.

Site characterization activities will include the installation of additional monitoring wells and a surface water distribution system. A typical monitoring well can be installed in one to three days with an average disturbed area measuring 30′ × 30′. Access to the floodplain will be predominantly using already established roads and trails. Disturbances are expected to be less than two acres. The surface water distribution system will involve diverting some water that is feeding wetland areas. Because the activities are located within the Navajo reservation, all proposed activities will be coordinated through the Navajo Nation and other federal and state agencies including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the New Mexico State Historic Preservation Officer.

The area proposed for activities under this assessment was disturbed in the mid 1980s during excavation activities associated with the removal of mill tailings in the floodplain. Unimproved roads, grazing, and monitoring wells are activities that have historically occurred, or are ongoing, in the area of the proposed action. A floodplain/wetlands assessment was included as Appendix J, Volume 2, in the Environmental Assessment of Remedial Action at the Shiprock Uranium Mill Tailings Site, Shiprock, New Mexico (May 1984). The extent of disturbance addressed under the 1984 assessment is considerably more than the disturbance that would transpire under the proposed action. However, the 1984 assessment is not considered sufficient due to the age of the document and regulatory changes since it was completed. Consequently, an updated floodplain/wetlands assessment will be prepared.

Once all regulatory actions are complete, a Statement of Findings will be published in the **Federal Register**.

Issued in Albuquerque, New Mexico on June 12, 1998.

Constance L. Soden,

Director, Environmental Protection Division, U.S. Department of Energy, Albuquerque Operations Office.

[FR Doc. 98–16655 Filed 6–22–98; 8:45 am]

BILLING CODE 5450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL)

DATES: Tuesday, July 21, 1998 from 8 a.m. to 6 p.m., Mountain Standard Time (MST); Wednesday, July 22, 1998 from 8 a.m. to 5 p.m., MDT. There will be public comment sessions on Tuesday, July 21, 1998 from 9:45 a.m. to 10 a.m., 12 p.m. to 12:15 p.m., 4 p.m. to 4:15 p.m., and 5:30 p.m. to 5:45 p.m. MDT.

ADDRESSES: Cavanaugh's (formerly Holiday Inn Westbank), 475 River Parkway, Idaho Falls, Idaho 83402, (208) 523–8000.

FOR FURTHER INFORMATION CONTACT: INEEL Information (1–800–708–2680) or Wendy Green Lowe, Jason Associates Corp. (208–522–1662) or visit the Board's Internet homepage at http://www.ida.net/users/cab.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Presentations on the Draft Proposed Plan for Waste Area Group 3 (Idaho Nuclear Technology and Engineering Center), DOE-Idaho's approach to End—State Planning at the INEEL, and DOE-Idaho's approach to risk assessment.

Presentations and recommendations on the Draft Environmental Impact Statement for the Advanced Mixed Waste Treatment Facility and the Draft Resource Conservation and Recovery Act Part B Permit for the Waste Isolation Pilot Plant.

Status reports on the Argonne National Laboratory—West, Environmental Monitoring at the INEEL, INEEL's compliance with the Federal Facility Agreement/Consent Order, and the Natural Resources Institute.

Member reports on the National League of Women Voters' Intersite Discussions, and activities of CAB subcommittees.

The Board will also discuss the merits of policy level versus detailed technical level CAB recommendations and the CAB's roles and responsibilities regarding public input. For a most current copy of the agenda, contact Woody Russell, DOE—Idaho, (208) 526–0561, or Wendy Green Lowe, Jason Associates Corp., (208) 522–1662. The final agenda will be available at the meeting.

Public Participation: The two-day meeting is open to the public, with public comment sessions scheduled for Tuesday, July 21, 1998 from 9:45 a.m. to 10 a.m., 12 p.m. to 12:15 p.m., 4 p.m. to 4:15 p.m., and 5:30 p.m. to 5:45 p.m. MDT. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should

contact the INEEL Information line or Wendy Green Lowe, Jason Associates Corp., at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL Citizens' Advisory Board Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling Wendy Green Lowe, the Board Facilitator, at (208) 522–1662.

Issued at Washington, DC on June 18, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–16658 Filed 6–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Thursday, July 9, 1998, 8:30 am—3:00 pm.

ADDRESSES: The Rosemont Convention Center, Conference Rooms 12 & 13, 5555 North River Road, Rosemont, Illinois.

Note: The Rosemont Convention Center is located near the O'Hare International Airport.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Thursday, July 9, 1998

8:30–8:45 AM—Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman
8:45–10:15 AM—Working Session: Discussion of Draft Position Paper on State/Regional Issues in Transmission System Reliability—Facilitated by Philip Sharp
10:15–10:30 AM—Break
10:30–12:00 PM—Working Session: Discussion of Draft Position Paper on Incentives for Transmission Enhancement—Facilitated by Philip Sharp
12:00–1:00 PM—Lunch
1:00–2:45 PM—Working Session: Planning for the Final Report—Facilitated by Philip Sharp
2:45–3:00 PM—Public Comment Period
3:00 PM—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Rosemont, Illinois, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on June 18, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–16659 Filed 6–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

June 17, 1998.

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 362.

c. *Date filed:* June 2, 1998.

d. *Submitted By:* Ford Motor Company, current licensee.

e. *Name of Project:* Twin Cities Project.

f. *Location:* On the Mississippi River, in Hennepin and Ramsey Counties, Minnesota.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* July 1, 1980.

i. *Expiration date of current license:* June 6, 2003.

j. *The project consists of:* (1) a 160-foot-long, 74-foot-wide powerhouse integral with the U.S. Army Corps of Engineers Lock and Dam No. 1; (2) four generating units with a total installed capacity of 17,920 kW; (3) 36, 2-foot-high hinged flashboards on top of the spillway; (4) transmission facilities consisting of: (a) two 1,550-foot-long, 13.8–kV lines; (b) three 1,000-foot-long, 13.8–kV lines; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Ford Motor Company, Twin Cities Assembly Plant, Plant Engineering, 966 So. Mississippi River Blvd., St. Paul,

MN 55116, Mr. Dan Hagan, (612) 696–0628.

l. *FERC contract:* Tom Dean (202) 219–2778. Project No. 362

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 6, 2001.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16605 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2004–073]

Holyoke Water Power Company; Notice of Granting Extension of Time to Complete Response to Deficiency Letter for the Holyoke Project

June 17, 1998.

On February 23, 1998, the Director, Office of Hydropower Licensing (Director) informed Holyoke Water Power Company (HWP) of deficiencies in its license application. Among other things, the license application was deficient in information regarding project cost and financing, which is required in Exhibit D. The February 23 letter established a 90-day deadline from the date of the letter, until May 24, 1998, for HWP to correct the noted deficiencies.

On May 26, 1998, HWP filed its response to the Director's February 23 deficiency letter. In its filing, HWP provided most of the information, but did not provide the information requested with respect to Exhibit D. Rather, HWP filed a motion requesting an extension of time to complete this aspect of the February 23 deficiency letter.

HWP states that, as a result of the restructuring legislation enacted by the Commonwealth of Massachusetts in 1997, its property tax status has changed from a Massachusetts Manufacturing Corporation to a Massachusetts Business Corporation. Consequently, HWP expects its property tax liability to increase beyond that in fiscal year 1997. In light of these changes, as well as other changes presently occurring in the electric utility industry, HWP states that the continued use of the project cost and financing data provided in its license application is not justified. Moreover, HWP states that the aforementioned changes have made it difficult for the company to project cost and financing data in the future.

HWP states that it is currently developing the project cost and financing information requested by the Director, but that the results have not been completed and reviewed. HWP requests a 30-day extension, or until June 23, 1998, to complete and file the project cost and financing information. HWP does not believe that granting the requested extension of time will unduly delay the proceedings in this docket.

Based on the foregoing argument, as well as HWP's diligence in pursuing the licensing process, good cause has been shown for granting HWP's request. The motion filed by HWP was served on all parties in this proceeding, and no party filed a response or objected to granting the motion. Therefore, the deadline for HWP to file its project cost and financing information is extended to June 23, 1998. In making its filing, HWP should be sure that the information provided satisfies the Director's request of February 23. Refinements in the project's cost and financing, if necessary, can be filed any time in the future prior to Commission action in this proceeding.

Please be advised that any further requests for extension of deadlines that affect the schedule of this proceeding will be given careful scrutiny. Moreover, the Commission should be notified prior to a filing deadline if any party in this proceeding sees the need for an extension of time.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16607 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1998.

Take notice that on June 10, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 16, 1997:

Substitute Fifth Revised Sheet No. 11
Substitute Second Revised Sheet No. 11A
Substitute Third Revised Sheet No. 11B
Second Substitute Second Revised Sheet No. 50A
Second Substitute Original Sheet No. 50B
Second Substitute Second Revised Sheet No. 122

Iroquois states that this filing is made to comply with the Commission's June 1, 1998 Order in the above-referenced docket, which directed Iroquois to modify its recent negotiated rate tariff filing within 10 days of its Order, by filing revised tariff sheets to be effective November 16, 1997. Iroquois states that, in compliance with that order, it has (i) revised the definitions of "Negotiated Rate" and "Negotiated Rate Formula," (ii) removed references to capacity releases from Section 32.2 of its tariff, which deals with negotiated rates; and (iii) clarified how it will evaluate negotiated rates or bids at negotiated rates that use different rate designs.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16599 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000, ER98–1019–000, and ER98–2550–000; ER98–495–000, ER98–1614–000, and ER98–2145–000; ER98–496–000 and ER98–2160–000; ER98–441–001, and ER98–495–001, ER98–496–001 consolidated]

Southern California Edison Company, California Independent System Operator Corp., El Segundo Power, LLC, Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas & Electric Company, San Diego Gas & Electric Company; Notice of Informal Settlement Conference

June 17, 1998.

Take notice that an informal settlement conference will be convened

in the subject proceedings on Monday, June 29, 1998, at 9:00 AM, EDT, through Wednesday, July 1, 1998. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to Section 385.214 of the Commission's Regulations.

For additional information, please contact Paul B. Mohler at (202) 208–1240, or by e-mail at paul.mohler@ferc.fed.us.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16598 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–72–000]

Western Kentucky Energy Corp.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

June 17, 1998.

Take notice that on June 15, 1998, Western Kentucky Energy Corp. (WKEC), a Kentucky Corporation, with its principal place of business at P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission an amendment to its Application For Determination Of Exempt Wholesale Generator Stats which was filed with the Commission on April 30, 1998, as amended on May 7, 1998, (Application).

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before June 25, 1998, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16597 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1580–002, et al.]

Minnesota Power & Light Company, et al. Electric Rate and Corporate Regulation Filings

June 16, 1998.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER96–1580–002]

Take notice that on June 11, 1998, Minnesota Power & Light Company tendered filling a refund report in compliance with order issued on April 30, 1998, by the Commission in the above referenced docket.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corp. and Upper Peninsula Power Co.

[Docket No. ER96–1561–001]

Take notice that on June 11, 1998, Wisconsin Public Service Corporation tendered for filing revised Standards of Conduct and tariff sheets in compliance with the Commission's May 27, 1998, Order.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER98–2547–000]

Take notice that on June 11, 1998, Boston Edison Company (Boston Edison), tendered for filing an amendment of its true-up to actual for the Substation 402 Agreement (FPC Rate Schedule No. 149) between Boston Edison and Cambridge Electric Light Company (Cambridge) for calendar year 1996.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Pittsfield Hydropower Company Inc.

[Docket No. ER98–2579–000]

Take notice that on June 11, 1998, Pittsfield Hydropower Company, Inc., tendered for filing a Notice of Withdrawal of its filing made on April 20, 1998, in Docket No. ER98–2579–000.

Copies of the notice of withdrawal is being served upon Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER98–3294–000]

Take notice that on June 11, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements between CP&L and the following eligible buyers: NESI Power Marketing, Inc.; VTEC Energy, Inc.; NP Energy Inc.; North Carolina Electric Membership Corporation; Tennessee Power Company; Rainbow Energy Marketing Corporation; North American Energy Conservation, Inc.; and Delmarva Power & Light Company. Service to each eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98–3295–000]

Take notice that on June 11, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated June 5, 1998, with South Jersey Energy Company (SJEC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SJEC as an eligible customer under the Tariff.

PP&L requests an effective date of June 11, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SJEC and to the Pennsylvania Public Utility Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER98–3296–000]

Take notice that on June 11, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Commonwealth Edison Company

(ComEd). Wisconsin Electric respectfully requests an effective date of May 20, 1998, to allow for economic transactions.

Copies of the filing have been served on ComEd, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER98–3298–000]

Take notice that on June 11, 1998, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Southern Company Energy Marketing, LP (Southern). PNM requested waiver of the Commission's notice requirement so that service under the PNM/Southern netting agreement may be effective as of June 12, 1998.

Copies of the filing were served on Southern and the New Mexico Public Utility Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Bangor Hydro-Electric Company

[Docket No. ER98–3299–000]

Take notice that on June 11, 1998, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with NorAm Energy Services, Inc.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER98–3300–000]

Take notice that on June 11, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and Great Bay Power Corporation and Coral Power, L.L.C., Market-Based Power Sales Customers (collectively referred to herein as the Customers).

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date of May 19, 1998, as specified on each Service Agreement.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool

[Docket No. ER98–3301–000]

Take notice that on June 11, 1998, Southwest Power Pool (SPP), tendered for filing 10 executed service agreements for short-term firm point-to-point transmission service and non-firm point-to-point firm transmission service under the SPP Open Access Transmission Tariff.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER98–3302–000]

Take notice that on June 11, 1998, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing Atlantic City Electric Company (ACE), Cinergy Capital & Trading, Inc. (CCT), Coral Power, L.L.C. (CRLP), DuPont Power Marketing (DUPT), e' prime (EP), FirstEnergy Trading and Power Marketing Inc. (FET), LG&E Energy Marketing Inc. (LGEM), NorAm Energy Services, Inc. (NORA), Northern Indiana Public Service Co. (NIPS), and Water Works and Lighting Commission (WWLC), as a customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 3, 1998, for the service agreement and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of the filing was served on the affected customers and the Illinois Commerce Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98–3303–000]

Take notice that on June 11, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and City of Fairfax, MN.

NSP requests that the Commission accept the agreement effective May 15, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Company

[Docket No. ER98–3304–000]

Take notice that on June 11, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and ConAgra Energy Services, Inc., and between Idaho Power Company and Amoco Energy Trading Corporation.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–3305–000]

Take notice that on June 11, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated June 5, 1998 with First Energy Trading and Power Marketing, Inc. (FETPM), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds FETPM as an eligible customer under the Tariff.

PP&L requests an effective date of June 11, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to FETPM and to the Pennsylvania Public Utility Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER98–3306–000]

Take notice that on June 11, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Northern States Power Company. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreement is proposed to become effective May 18, 1998.

Copies of the filing were served upon Northern States Power Company and the Kansas Corporation Commission.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER98–3307–000]

Take notice that on June 11, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which LTV Steel Company, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1998.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER98–3308–000]

Take notice that on June 11, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Bridgestone/Firestone, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1998.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER98–3310–000]

Take notice that on June 11, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Southern Company Energy Marketing L.P. (Southern), Tenaska Power Services Company (Tenaska), Electric Clearinghouse, Inc. (ECI), Western Resources Generation Services (Western) and Entergy Power Marketing Corp., (Entergy) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also submitted notices of cancellation of various service agreements.

The CSW Operating Companies state that a copy of the filing has been served on Southern, Tenaska, ECI, Western and Entergy.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER98–3311–000]

Take notice that on June 11, 1998, Southern California Edison Company (Edison), tendered for filing a letter to the City of Anaheim (Anaheim), California, dated May 20, 1998 (Letter), regarding Loss Accounting Procedures for Existing Contracts.

The Letter sets forth certain understandings between Edison and Anaheim with respect to initial implementation of the Procedures. Additionally, Anaheim has requested, and Edison has agreed, to assume Anaheim's obligations to account for transmission losses in accordance with Sections 5.2 and 5.3 of the Procedures for the period of time Edison acts as Anaheim's scheduling coordinator. Edison is requesting that the Letter become effective on April 1, 1998, concurrent with the Procedures.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Heartland Energy Services Inc.

[Docket No. ER98–3327–000]

Take notice that on June 11, 1998, Heartland Energy Services, Inc. (HES), filed a Notification of Change in Status. In its filing, HES notified the Commission of its intention to participate in open access markets.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16600 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Shoreline Management and Land Use Plan

June 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Shoreline Management and Land Use Plan.

b. *Project No.:* 516–285.

c. *Date Filed:* April 13, 1998 and supplemented May 2, 1998.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Project.

f. *Location:* The proposed amendment would affect lands on Shull Island, Lake Murray in Lexington County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant contact:* Beth Trump, Land Department, South Carolina Electric & Gas Company, 1246 Main Street, Columbia, SC 29201, (803) 733–6912.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Comment date:* July 15, 1998.

k. *Description of the Application:* South Carolina Electric & Gas Company (licensee) requests Commission authorization to amend its Land Use and Shoreline and Management Plan (LUSMP) to reclassify 4 waterfront lots from "Recreation" to "Easement" (residential use). The licensee also requests authorization to sell 3 lots presently classified as "Future Development" to the 360-foot high water contour and within the 75-foot setback buffer zone.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16606 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Notice That the Application Is not Ready for Environmental Analysis; Notice of Solicitation of Interventions and Protests; and Notice of Scoping and Invitation for Written Scoping Comments

June 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 2620–005.

c. *Date filed:* March 9, 1998.

d. *Applicant:* Lockhart Power Company.

e. *Name of Project:* Lockhart Project.

f. *Location:* On the Broad River in Union, Chester, York, and Cherokee counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Leslie Anderson, General Manager, Lockhart Power Company, 420 River Street, Lockhart, South Carolina 29364, (864) 545–2211.

i. *FERC Contact:* Charles R. Hall at (202) 219–2853.

j. *Deadline Date:* August 18, 1998.

k. *Description of the Project:* The existing project consists of: (1) A 16-foot-high, concrete gravity dam; (2) a 7.5-mile-long, 300-acre reservoir; (3) a 7,497-foot-long canal; (4) a powerhouse containing five turbine-generator units with a total installed capacity of 15,200 kilowatts (kW), proposed for upgrading to 18,000 kW; (5) a 1,500-foot-long tailrace; and (6) appurtenant facilities.

l. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Lockhart Power Company, 420 River Street, Lockhart, South Carolina 29364, phone (864) 545–2211.

m. Status of Application and Environmental Analysis: This application has been accepted for filing, but it is not ready for environmental analysis. See attached paragraph E1.

n. Invitation to Intervene or Protest: Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. See attached paragraph B1.

o. Scoping and Invitation for Written Scoping Comments: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the environmental analysis once the application is determined ready for environmental analysis by submitting written scoping comments. To help focus these comments, a scoping document outlining subject areas which could be addressed in an environmental analysis will be mailed to all agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page: Lockhart Project, FERC No. 2620–005.

p. This notice contains the standard paragraphs B1 and E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the

application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16608 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

June 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor license.

b. *Project No.:* P–11616–000.

c. *Date Filed:* June 1, 1998.

d. *Applicant:* City of Portland, Michigan.

e. *Name of Project:* Portland Municipal Hydroelectric Project.

f. *Location:* On the Grand River in Ionia County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–824(r).

h. *Applicant Contact:* Robert Masselink, P.E., Glen Hendrix, Earth Tech, Inc., 5555 Glenwood Hills Pkwy, Grand Rapids, MI 49588, (616) 942–9600.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* 60 days from the date of filing of the application.

k. *Description of Project:* The constructed project consists of a dam and reservoir, a forebay and powerhouse located at the south abutment containing two turbine-generator units with a total installed capacity of 375 kilowatts, and appurtenant facilities. The project will generate about 1,572 megawatt-hours per year.

l. With this notice, we are initiating consultation with the MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16609 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1759]

Wisconsin Electric Power Company; Notice of Meetings

June 17, 1998.

From July 14 to July 16, 1998, the Federal Energy Regulatory Commission staff will be meeting with Wisconsin Electric Power Company (WE) and the Collaborative Team to identify and discuss non-project uses of project lands and waters and related issues concerning the Way Dam and Michigamme Reservoir Project (Project No. 1759), which is located on the Michigamme River near Crystal Falls, Michigan. The Way Dam impounds the approximate 6,400-acre Michigamme Reservoir. The Michigamme Reservoir operates as a storage basin for high spring and fall flows, which are released during periods of lower flow in the summer and winter. The meetings will be conducted at WE's office, located at 800 Industrial Park Drive, Iron Mountain, Michigan 49801. On July 14, the meeting will be conducted at 8 a.m., and on July 15 and 16, 1998, the meetings will be conducted at 9 a.m.

If you would like more information about the Upper Menominee River Basin Projects, in which the Way Dam and Michigamme Reservoir Project is part of, please contact one of the individuals:

Patti Leppert-Slack, Federal Energy Regulatory Commission, 888 First Street, NE Rm 72–33, Washington, DC 20426, (202) 219–2767, E-mail: patricia.leppertslack@ferc.fed.us

Rita Hayen, Wisconsin Electric Power Company, 333 W. Everett Street, Milwaukee, WI 53203, (414) 221–2413, E-mail: rita.hayen@wemail.wisenergy

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16610 Filed 6–22–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6113–5]

Solicitation of Additional Pilot Projects Under Project XL; June 12, 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; solicitation of additional pilot projects under project XL to "Reinvent" Environmental Regulations and Policies.

SUMMARY: Project XL, which stands for "eXcellence and Leadership," is a national pilot program that provides a unique opportunity to test innovative ways of achieving better and more cost-effective public health and environmental protection. Under Project XL, EPA offers flexibility in its regulations, policies, procedures, processes and guidance, as well as other benefits to encourage companies, communities and other project sponsors to develop and test "cleaner, cheaper and smarter" alternatives to the current system. As of May 1998, seven pilot projects are being implemented and 20 more are in development. Several project sponsors have already achieved a number of significant benefits by participating in XL, including substantial cost savings, increased operational flexibility, better stakeholder relationships, increased environmental protection, and the ability to adapt processes and products more quickly to changes in consumer demand.

One company, for example, in just the first year of its pilot project, was able to consolidate a number of routine reports into two per year and use alternative means to meet air pollution control technology requirements. In addition, the company was able to achieve substantial environmental improvements while saving nearly $176,000 in operating costs. The company is also expecting to avoid $10 million in future capital spending.

Another company—also just in its project's first year—has avoided millions of dollars worth of production delays by eliminating 30–50 permit reviews while substantially increasing recycling, reducing solid and hazardous

waste, and applying stricter air pollution controls. For other examples, please refer to Project XL's Web site at: www.epa.gov/ProjectXL

In developing innovative proposals, project sponsors, regulators, and stakeholders alike must be willing to make resource and time commitments commensurate with designing and implementing new approaches in a multi-stakeholder environment. For some projects, resource commitments have been significant. However, as current project sponsors are eager to attest, the reward lies in the outcome: superior environmental results for the facility and the community, and substantial operational and financial benefits for the project sponsor. The Agency, its co-regulators, and other XL partners have been and are continuing to work hard on streamlining the proposal development process and reducing "transaction costs." EPA has learned a great deal from the first set of proposals that has gone through the process, and as one of the lessons learned, urges potential project sponsors to discuss their idea with Agency and State staff as early as possible. Substantive and process issues can then be raised and addressed early before substantial time and resource investments have been made.

This **Federal Register** document is organized into four sections which have the following purpose: Section A—to clarify the role of regulatory and policy flexibility in XL pilot projects; Section B—to solicit additional ideas for experimental projects under XL (please note that no funding is associated with this solicitation); Section C—to stimulate ideas through a list of optional Project XL themes (note that the suggested themes are entirely optional, and have the sole purpose of conveying a sample of general areas of innovation EPA and others in the regulated and environmental community are interested in exploring under Project XL); and Section D—to describe key elements of good XL proposals that increase EPA receptivity and make the review process easier and faster.

EFFECTIVE DATE: June 23, 1998; an open solicitation with no set end date; project sponsors may submit more than one proposal.

FOR FURTHER INFORMATION CONTACT:

(1) For XL projects for private and federal facilities, states, and industrial sectors: Contact Christopher Knopes, Office of Reinvention Programs, United States Environmental Protection Agency, Room 1029, 401 M Street SW, Mail Code 1802, Washington, DC 20460. The telephone number for the Office is (202) 260–5754; the facsimile number is (202) 401–6637.

(2) For XL projects for communities: Contact Kristina Heinemann, Office of Sustainable Ecosystems and Communities, USEPA, 401 M Street SW, Mail Code 2182, Washington, DC, 20460. The telephone number is (202) 260–5355; the facsimile number is (202) 260–7875.

(3) Additional information on Project XL, including documents referenced in this document, other EPA policy documents related to Project XL, EPA regional contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet: For private and federal facilities, states, and sectors at "http:// www.epa.gov/ProjectXL"; and for communities at http:// www.epa.gov/ProjectXLC. Faxed information is also available via an automated fax-on-demand menu at (202) 260–8590 both for XL facilities and communities.

SUPPLEMENTARY INFORMATION: President Clinton announced on March 16, 1995, a portfolio of reinvention initiatives to be implemented by the Environmental Protection Agency as a part of its efforts to achieve greater public health and environmental protection at a more reasonable cost. Project XL is one of these reinvention priorities. Through a series of site-specific agreements with project sponsors, EPA expects to gather data and experiences that will help the Agency make improvements in the current system of environmental protection. Project XL conducts experiments in four areas: facilities, sectors, federal facilities, and communities. State projects are also welcome.

XL projects directly benefit the local environment, participating facilities—both public and private—and their communities. But the benefits of Project XL extend beyond its participants, because EPA, working with state environmental agencies, intends to incorporate successful approaches into the current system of environmental protection.

Much information on Project XL has been provided in previous **Federal Register** documents. In Project XL's first **Federal Register** document on May 23, 1995 (60 FR 27282), EPA described Project XL as a program that offers a balanced set of benefits to the environment, the regulated community and the public, and issued a general solicitation for proposals. In that document, Project XL also defined the following eight criteria by which proposals are selected for participation. The criteria help evaluate whether the project can:

- Produce superior environmental results;
- Produce benefits such as cost savings, paperwork reduction, and operational flexibility;
- Garner stakeholder involvement and support;
- Achieve innovation and multi-media pollution prevention;
- Be transferable to other facilities, sectors, communities, etc.;
- Be feasible (technically and administratively);
- Identify monitoring, reporting, accountability, and evaluation methods; and
- Avoid shifting the risk burden.

A successful project sponsor must also have a solid record of compliance. For more detailed descriptions and definitions of these criteria, please refer to the **Federal Register** documents of May 23, 1995 (60 FR 27282) and April 23, 1997 (62 FR19872).

Because community-based XL projects differ from projects sponsored by other public or private-sector facilities and sectors, EPA addressed the distinction in a separate **Federal Register** document on November 1, 1995 (60 FR 55569). In addition to the criteria listed above, the November 1, 1995, **Federal Register** document included several unique criteria for XL community-sponsored projects. XL for Communities encourages projects that:

- Build capacity for community participation;
- Create economic opportunity; and
- Promote community planning.

In another **Federal Register** document on September 11, 1996 (61 FR 47929), EPA supplemented the general solicitation with an invitation for projects specifically aimed at creating innovative environmental technologies. EPA retains a strong interest in proposals in this area.

An April 23, 1997, **Federal Register** document (62 FR 19872) more clearly defined the criteria of superior environmental performance, regulatory flexibility, and stakeholder involvement. In addition, the document identified several more potential project themes that are important to pursue in the context of testing innovations for 21st century environmental protection. It also included revisions to the process by which an idea becomes an XL project. Emphasis is placed on pre-proposal planning and communication with stakeholders, on EPA's improved internal management of project reviews, and on the need for a close partnership with the states.

Since Project XL is continuously evolving, EPA is always open to and

welcomes comments on the various aspects of the program.

(A) The Role of Flexibility in XL Pilot Projects

Flexibility is an important and essential component of Project XL. As an incentive to undertake an XL project, EPA is offering project sponsors flexibility in regulations, policies, guidance, procedures and processes, provided the flexibility does not violate statutory requirements. Please note that regulatory flexibility is only one kind of flexibility offered as a benefit. It can be granted through site-specific rules that replace otherwise applicable requirements; existing waiver mechanisms; alternative permits; and generally applicable interpretive statements. Other tools may be identified on a case by case basis as projects are developed. (For more details, please refer to the **Federal Register** document of April 23, 1997 (62 FR 19872). Cost savings and burden reduction are other examples of incentives and benefits to a project sponsor. Communities may be particularly interested in visibility and recognition for innovative ideas and superior environmental performance that can result from participation in Project XL. To date, XL has implemented projects that take advantage of each type of flexibility and benefit offered.

In summary, XL is about testing new approaches which:

—May require regulatory flexibility or involve changes to policy, guidance, procedures, or processes; and
—Test a different way of doing something, even if EPA already has the authority to do so under the current system, but is not doing it.

Whenever a project also meets the other applicable XL facility or community decision criteria, EPA will aggressively offer the necessary flexibility to produce superior environmental performance and promote greater accountability to stakeholders.

(B) Solicitation of Additional Ideas for Pilot Projects

EPA encourages private and public sector facilities, sectors, states, local governments, and communities to use this opportunity to sponsor projects that can truly reinvent the way they conduct environmental management. EPA is also interested in having stakeholders not directly connected with regulated facilities come forward with XL proposal ideas or co-sponsor projects with companies, local governments, or other community organizations. Project XL offers environmental leaders and average performers alike a tremendous opportunity to think "outside the box" of our current system and to find solutions to obstacles that limit environmental performance.

To stimulate new XL project ideas, EPA is publishing the optional project themes listed in the next section. Because the total number of projects is limited to 50, it is vital that each project test new ideas with potential for wide application and broad environmental benefits.

EPA is promoting XL projects, both for facilities and communities, which test the following:

- Broader concepts, e.g. projects defined on a geographic basis; projects involving a larger number of facilities; projects which demonstrate Community-Based Environmental Protection (CBEP); projects with a broader, more comprehensive scope. This does not exclude smaller, more incremental, yet significant ideas;
- New strategies, e.g., market-based incentives, paperwork reduction, and environmental information and management systems;
- New tools and technologies, e.g. performance measurement tools and innovative environmental technologies; and
- Approaches for dealing with new environmental challenges, such as control of non-point sources, urban sprawl, and ecosystem protection.

(C) List of Optional New Themes for XL Projects

The potential themes listed below are entirely optional and have the sole purpose of conveying which general areas of innovation EPA and others in the regulated and environmental community are interested in exploring under Project XL. In category I below, EPA is suggesting a number of fairly detailed, program-specific themes. In category II, several ideas are listed that have been suggested by outside organizations as worth testing under Project XL and are not explored at the same level of detail. This should in no way discourage consideration of these less developed themes.

In considering XL projects for selection, EPA makes a determination of whether a proposal presents a new approach that EPA wants to test. Proposals which address any of the themes in category I below have the advantage that the Agency has already made that determination. While these proposals must still meet the XL criteria for facilities or for communities and go through a review and negotiation process like other proposals, EPA is committed to streamlining the processing of proposals submitted under any of the themes in category I.

It is important to emphasize again, that this list of themes in no way precludes any other innovative ideas to be tested under Project XL facilities and XL communities, as long as they meet the XL criteria, have a solid compliance record, and can produce "cleaner, cheaper, and smarter solutions."

The themes are organized into two broad categories, as summarized below:

Category I: Themes Developed by EPA

Testing New Strategies

(in alphabetic order:)

1. Air: Existing Preconstruction Requirements for Major Sources of Air Pollution in Attainment Areas
2. Air: U.S.-Mexico Border Emissions Trading
3. Environmental Management Systems (EMS)
4. Hazardous Waste: Reduction of Persistent, Bioaccumulative, and Toxic (PBT) Chemicals in Hazardous Waste
5. Permitting
6. Superfund Cleanup: Innovative Contracting Approaches
7. Superfund Cleanup: Partnering with Industry to Enhance Completion of Cleanup at Hazardous Waste Sites
8. Superfund Cleanup: Sustainable Reuse—"Recycling" of Superfund Sites
9. Sustainability of Natural Ecosystems
10. Water: Environmental Performance Measures for Waste Water Pretreatment Programs

Developing New Tools and Technologies

(in alphabetic order)

11. Air: Continuous Monitoring Units for Radionuclides
12. Air: Leak Detection Technology
13. Air: Maximum Achievable Control Technology (MACT) for the Coke Oven Push and Quench Process
14. Multi-media Pollution Prevention: Using the Pollution Prevention (P2) Assessment Framework to Assess Manufacturing Processes

Category II: Themes Suggested by External Organizations

The first group of themes below include brief descriptions, while the ideas in the second group were suggested merely as topics to be explored: (in alphabetic order):

- Administrative Paperwork Reduction
- Community-Based Water Protection
- Concentrated Animal Feeding Operations

- Hazardous Waste: Land Disposal Restrictions Regulations
- Market-Based Approaches
- Multi-facility and Multi-media Projects
- Multi-media Pollution Prevention: Using "Green Chemistry" To Make Manufacturing Processes "Greener"

Other ideas suggested by external organizations that the Agency considers worthy of further exploration:

- Alternatives for reducing persistent toxins in the Great Lakes
- Conservation and sustainable use of biodiversity and ecosystem services
- Energy conservation
- Environmental consequences of urban sprawl
- Global warming/climate change
- Green spaces
- Habitat preservation
- Improved management of timberland
- Watershed management

The full write-ups of the themes follow:

Category I: Themes Developed by EPA

Testing New Strategies

The themes below would test strategies that could help EPA move toward a new system of environmental protection or make improvements in the current system.

1. Air: Existing Preconstruction Requirements for Major Sources of Air Pollution in Attainment Areas

Background: Currently, before beginning construction of a major new air pollution source or a major modification at an existing source in an attainment area, the source must undergo preconstruction review pursuant to the applicable Prevention of Significant Deterioration (PSD) program (see, e.g., 40 CFR 52.21). This review, which involves permitting, technology requirements, and air quality monitoring and analysis, is time and resource intensive. The monitoring responsibility imposes a significant time restriction on when a source can begin construction and, in turn, start operations. The impact of this delay can be of particular concern in northern areas where the construction season is limited.

Idea or approach to be tested: This idea is aimed at reducing the preconstruction waiting period in exchange for corresponding benefits to the environment. The premise is simple: to ascertain if the EPA and permitting agencies can predict whether certain types of construction will adversely impact air quality. This would allow for confirmatory monitoring rather than monitoring in advance of construction. At this time, EPA is only soliciting comment on the concept and determining the level of interest in such a study. If EPA determines that there is sufficient interest to proceed, it will issue a more detailed description of the study and solicit requests from sources wishing to participate. At that time, the Agency will discuss in more detail the possible mechanisms for implementing the study, including whether a rulemaking will be required. This XL concept is also discussed in more detail in a memorandum available on the Internet. For further information, please review the memorandum available on the XL homepage at "http://www.epa.gov/ProjectXL or at www.epa.gov/TTN/OARPG

Regulatory or other flexibility needed: By providing superior benefits to the environment and agreeing to offset any adverse impacts on air quality, a participant in the study could obtain a PSD permit and begin construction *prior* to completing all air quality analysis, which can take up to twelve months or more. This could occur as long as the source: (1) satisfied all other applicable PSD permitting requirements, including installation and operation of the best available control technology (BACT), as agreed to by EPA and the permitting authority; (2) agreed to purchase impact offsets if the completed monitoring or modeling demonstrated a violation of the National Ambient Air Quality Standards or exceedance of any applicable increments; and (3) agreed to superior environmental performance that would at a minimum include the installation and operation of continuous emissions monitors. Although the source would still be required to obtain the necessary monitoring data, it would not need to complete the monitoring prior to the permit issuance and beginning of construction. Thus, in exchange for undertaking some superior environmental performance and agreeing to offset any prohibited impacts on air quality through the purchase of offsets, a source could begin construction and start operations up to a year earlier than currently allowed under existing regulations. At this time, the Agency anticipates applying at least the following restrictions to participation: (1) the project would not extend to sources in nonattainment areas, areas considered unclassifiable, or sources that may require Class I impact analysis; (2) EPA would not select sources that are in violation of the PSD program; (3) EPA believes that the study should include only participants for which the relevant state and EPA agree that the proposed construction is not likely to improperly exceed available air quality increments or violate the National Ambient Air Quality Standards.

For more information on this particular theme, please refer to EPA's Project XL home page at http://www.epa.gov/ProjectXL.

2. Air: U.S.-Mexico Border Emissions Trading

Background: The border between the U.S. and Mexico runs through the center of the sister cities El Paso and Ciudad Juarez. This common airshed does not meet U.S. standards for ozone, PM and CO. The air pollution problem will not be solved by the U.S. side alone—significant reductions from Mexican sources will be required. Business, environmental and community groups from both sides of the border have been working together to develop solutions to the air pollution problem, including market incentives.

Idea/approach that could be tested: U.S.-Mexico Border emissions trading.

Technology that could be tested: Retrofit technologies (including conversions to natural gas) for older vehicles and brick making facilities.

Possible superior environmental performance: A source facing a pollution control requirement in El Paso could probably achieve far more reductions at lower cost and with greater environmental benefit to El Paso by cleaning up sources in Mexico.

Regulatory or other flexibility needed: The trading requirements that credits be surplus and enforceable would be the most difficult to comply with in a U.S.-Mexico emissions trading program. EPA's revised Economic Incentives Program will help with determination of surplus credits. Mexican environmental law contains provisions for enforcement. Work with our Mexican counterparts on enforcement is ongoing and would be further benefited by an XL project. (Legal analysis is available)

Possible candidate applicants: Utility companies along the U.S.-Mexico border.

3. Environmental Management Systems (EMS)

Background: EPA recently published a position statement on EMSs in the **Federal Register** (63 FR 10294, March 12, 1998), in which it encouraged the use of EMSs in general, and especially those that address overall environmental performance and compliance. It also encouraged the inclusion of stakeholders in EMS development. That statement described a data-gathering effort that EPA is

undertaking, along with a number of states, to evaluate the effect of EMSs.

Today's solicitation of XL proposals in the EMS area is distinct from the data-gathering effort described in the **Federal Register** mentioned above, although a facility participating in that effort could also participate in Project XL. As in all XL projects, EPA would expect a commitment not simply to adopt an EMS, but to attain environmental results better than those that would occur without the project. EPA would be most interested in proposals that involve an exceptionally high quality EMS that appears likely to provide substantial environmental improvements.

Idea/approach to be tested: The purpose of this initiative would be to test the use of comprehensive EMSs, including those based on the ISO 14001 International EMS Standard that can also meet the criteria for Project XL, such as superior environmental results and stakeholder involvement. Organizations or communities interested in these projects would be asked to collect information and report on implementation of the EMS in a number of key areas, like environmental performance for both regulated and unregulated activities, compliance, pollution prevention, EMS costs and benefits, and, where feasible, changes in environmental conditions. The value of third-party certification of EMSs and how certification relates to environmental performance may be another area to test.

Regulatory or other flexibility needed: An EMS must achieve compliance, but since XL projects are designed to test new approaches, EPA would consider streamlining or otherwise modifying existing regulatory requirements to achieve the superior environmental performance objectives established through an EMS. Any proposals for regulatory relief should be linked to exploring ways in which an EMS may create opportunities for transferable improvements in the regulatory system (e.g. by simplifying reporting or procedural requirements).

Possible superior environmental performance: A project might, for example, provide superior environmental results by committing to a reduction in emissions that was expected to result from implementation of the EMS.

4. Hazardous Waste: Reduction of Persistent, Bioaccumulative, and Toxic (PBT) Chemicals in Hazardous Waste

Background: The Agency is committed to working with the States and regulated community to reduce by the year 2005 50% of the most persistent, bioaccumulative, and toxic chemicals contained in industrial hazardous waste. Many of the approximately 25,000 companies regulated as large quantity generators under the RCRA hazardous waste laws have demonstrated that reduction of hazardous chemicals at the source of production, using pollution prevention and recycling technology, is in the long run more cost-effective than end-of-the-pipe waste treatment and disposal methods, and that pollution prevention rather than treatment and disposal provides more enhanced protection of human health and the environment and relief from liability than traditional end-of-pipe methods. EPA's Waste Minimization National Plan lays out a strategy for a voluntary program that carries these efforts to the 50% reduction goal by the year 2005.

Idea/approach that could be tested: EPA invites companies to explore experiments in regulatory reinvention that promote pollution prevention technologies over waste treatment and disposal technologies. For example, a company may wish to pursue process redesign, equipment modifications, or materials substitutions that would reduce PBT levels in hazardous waste to an extent that would render wastes non-hazardous, reduce the level of treatment needed, and/or reduce the amount of treatment capacity needed—however, compliance requirements for other regulations (e.g. permit modification schedules, effective dates for Land Disposal Restrictions standards, trial burns for combustion units) may impede or preclude achieving this objective.

Possible superior environmental performance: Earlier and more cost-effective methods for achieving compliance and reducing risks posed by hazardous waste.

Regulatory or other flexibility needed: We would be willing to consider changes to existing policies, procedures, and other requirements to make this possible.

Possible candidate applicants: "Good citizen" companies, preferably those managing or influencing numerous sites, who have provided leadership in cooperating with other companies and facilitating issue resolution on their own.

5. Permitting

Background: EPA believes that innovative technologies and alternative strategies are stepping stones to cleaner, cheaper, smarter environmental management. Elements of some permit programs may, however, impede use of innovative technologies or alternative pollution prevention strategies. Efforts to streamline permitting may be adding further complications by favoring "routine" permit actions that may be faster and easier to process over permit actions that involve innovative technologies or alternative strategies. The Agency is looking for approaches that create and maintain enough flexibility within the permitting process to support continued innovation. EPA has already tested some approaches to permit flexibility for innovative technologies, and some permit programs (e.g. the prevention of significant deterioration program for air pollutants, 40 CFR 52.21 (v)) already have approval processes for alternative technologies. The Agency is interested in testing additional techniques.

Idea/approach to be tested: EPA is interested in developing a menu of potential permit conditions that could encourage innovation and accommodate the possibility that an innovative or alternative strategy may not perform as expected. Adequate safeguards would be built in to fully protect human health and the environment, and stakeholders would have a role in the decision making.

Possible superior environmental performance: Development of more effective environmental technologies and strategies.

Regulatory or other flexibility needed: EPA would be willing to consider options, such as compliance schedules providing enough time to get new technologies up and running, offset by interim emissions reductions or decreased emissions over the long term; a reasonable time frame for reinstalling traditional controls if a new technology fails to perform; provisions for reopening the permit; or alternative strategies for sharing legal and financial risks. In return for a superior environmental outcome, EPA would also be willing to consider providing flexibility in areas such as consolidating or streamlining certain administrative requirements, expediting the permitting process, pre-approving certain process changes in lieu of permit modifications, or experimenting with alternative monitoring strategies.

Possible candidate applicants: Public and private sector permitted entities.

6. Superfund Cleanup: Innovative Contracting Approaches

Background: The FY 1998 House Appropriations Committee Report expressed interest in using fixed-price, "at-risk contracting" for the cleanup of an "orphan" Superfund site. ("Orphan sites" are sites where there are no viable

responsible parties able to do necessary cleanup. EPA uses money from the Superfund Trust Fund to clean up these sites.) The appropriations language indicated a belief that this type of contracting, once tested, holds potential for speeding up site cleanup and reducing related costs.

Idea/approach that could be tested: A cleanup contractor would submit to EPA a complete cost package based on completion of the Record of Decision, which identifies the cleanup remedy selected for a specific site. The contractor would guarantee a fixed price for implementing the remedy selected by EPA and would absorb any cost overruns.

To the extent permitted by law, EPA would select the cleanup contractor at a pilot site based on the best combination of reasonable cleanup costs and economic reuse of the site.

Possible superior environmental performance: Linking site cleanup and site economic reuse assures that cleanup decisions provide maximum protection of workers during cleanup and construction of the intended reuse of the site, and for the public living in proximity to the site and frequenting the site after development. Cleanup decisions are made up-front, with input from the developer, the community, local government, State government, as well as the Federal government. Controlling costs at individual sites will allow EPA to eliminate risks at more sites more quickly.

Regulatory or other flexibility needed: EPA would be willing to consider addressing potential Superfund liability concerns regarding waste existing at the site; participating in cleanup costs necessary for reuse which are not inconsistent with the cleanup specified in the Record of Decision, and modifying existing procurement procedures consistent with such a test of an alternate procurement process.

Anticipated future change in EPA's approach to environmental protection: The Congress, in the FY 1998 House Appropriations Committee Report, appears to encourage EPA's investigation of more fixed-price contracts in an effort to better contain cleanup costs, and the use of "at-risk contracting" where the government does not bear all the risks associated with hazardous site remediation. Both these efforts are intended to control the cost of Superfund cleanups and add an additional contracting mechanism.

Possible candidate applicants: Cleanup contractors, real estate developers, or a joint-venture of several companies would be likely candidates for this project. Eligible sites include those on the National Priority List which lack viable responsible parties to implement the necessary cleanup.

7. Superfund Cleanup: Partnering With Industry To Enhance Completion of Cleanup at Hazardous Waste Sites

Background: With sufficient funding from Congress, the President has committed to enhance protection of human health and the environment by completing cleanup construction at a greatly accelerated rate. More than two-thirds of Superfund sites are being cleaned up by potentially responsible parties (PRPs). The program is faster, fairer, and more efficient due in part to the administrative reforms instituted by the Agency. EPA must continue to find better ways to identify and resolve scientific and technical problems, legal and policy issues, or other potential impediments that may delay the completion of construction at National Priority List sites in order to expedite cleanups that protect human health and the environment.

Idea/approach that could be tested: Taking care not to interfere with ongoing enforcement, EPA would partner with companies and affected states to develop new mechanisms for early resolution of potential problems. EPA would also like to find ways to promote waste minimization strategies and innovative cleanup technologies, examine "batching of remedies" for certain technologies to enable larger-scale (and lower-priced) approaches to cleanup, and collaborate on research related to hazardous waste cleanup methodologies to facilitate cleanup.

Possible superior environmental performance: Earlier elimination of threats to human health and the environment related to risks posed by hazardous waste sites; "smarter cleanup solutions" which make treatment cost-effective by optimizing remedy costs over multiple sites, increasing the volume of waste to be treated, or blending waste from multiple sites to make treatment operations more efficient; and greater use of innovative and more effective cleanup technologies.

Regulatory or other flexibility needed: EPA would be willing to consider changes to existing policies, procedures, and other requirements to make this possible, being mindful of limitations posed by existing settlements or orders for the performance of work.

Anticipated future change in EPA's approach to environmental protection: More collaborative and efficient partnership with PRPs in getting Superfund sites cleaned up in a timely manner. This may have broader application to other environmental cleanup programs.

Possible candidate applicants: "Good citizen" companies, preferably those managing or influencing numerous sites who have provided leadership in cooperating with other companies and facilitating issue resolution that have resulted in expeditious site cleanup.

8. Superfund Cleanup: Sustainable Reuse-"Recycling" of Superfund Sites

Background: EPA has made substantial progress in speeding cleanup at Superfund sites, but until cleaned-up sites are put back into productive use, the nation will fail to reap the full benefits of the Superfund program. Brownfields programs have successfully leveraged resources from a wide range of stakeholders to clean up properties to facilitate their redevelopment, but these programs have been limited to sites that are not on the Superfund National Priority List.

Idea/approach that could be tested: EPA would consider offering procedural flexibility and addressing potential Superfund liability to facilitate redevelopment of cleaned-up Superfund National Priority List sites. EPA would also be willing to offer technical expertise to support local efforts, advice in involving the community, use of helpful information resources, and coordination of access to other agencies and resources.

Possible superior environmental performance: Converting cleaned-up, but otherwise underused properties into valuable community assets. In addition, incorporating redevelopment considerations into the cleanup process can (1) lead to faster cleanups with consequent faster environmental protection as parties take voluntary actions to achieve the desired redevelopment use; (2) ensure binding agreements are in place to monitor institutional controls that are necessary at sites with waste left on-site, and (3) in many cases, result in environmental enhancements that are associated with the reuse (e.g., cleanup of nearby creeks to support fishing and recreation).

Regulatory or other flexibility needed: EPA would be willing to consider changes to its existing policies, procedures, and guidance in order to minimize or eliminate, where appropriate, barriers to the redevelopment of cleaned-up Superfund National Priority List sites posed by the potential applicability of the Federal Superfund statute and regulations. EPA may also consider expediting the release of parts of sites from the Superfund process if they would be returned to productive use through redevelopment.

Cleanups consistent with the National Contingency Plan would still be required.

Anticipated future change in EPA's approach to environmental protection: Removal or minimization of barriers to returning cleaned-up Superfund sites to productive use. This may have broader application to other environmental cleanup programs.

Possible candidate applicants: Companies with expertise in redeveloping properties, communities interested in regional redevelopment opportunities or in combining multiple sites for economic and environmental master plans, and Community Development Corporations.

9. Sustainability of Natural Ecosystems

Sustainability is a concept that describes the balance between conservation of natural resources and economic development. The following is a possible project scenario for testing an approach that includes sustainability as a key feature.

Background: In an effort to address threats to ecosystem viability arising from sedimentation and non-point source runoff caused by local farming in river watersheds, EPA is interested in testing the idea of stakeholders developing and implementing resource plans for watersheds.

Idea/approach that could be tested: Restoration approaches through community planning and local involvement. A planning committee of local farmers, landowners, and environmentalists could be formed. That committee would develop a resource plan that identifies a vision for the restoration and protection of the area that includes the type of future conditions they want to obtain and target for restoration. They also could identify issues of concern including ecological diversity, erosion, open dumping, and ground and surface water quality, and seek to address these issues in a manner compatible with a healthy economy and high quality of life. Issues of concern could be identified through committee discussions, watershed assessment field trips, and public meetings. Representatives from conservation organizations and local universities could also support the committee. Ultimately, this effort could provide a model for partnerships between EPA and local communities to solve long-term ecosystem problems.

Technology that could be tested: Community visioning and long-term planning for preservation of local natural resources and a sustainable economy that integrates economic, social, and environmental goals. Planning that involves a diverse cross-section of the community. Citizen monitoring of water quality and tracking of results.

Possible superior environmental performance: Preservation of an ecosystem important to the local community both for quality of life and economic reasons.

Regulatory or other flexibility needed: The community may desire flexibility in an area being addressed by the project or in another area where federal or state regulations, policies, guidance or Agency standard operating procedure present obstacles to achieving better environmental results.

Possible candidate applicants: Communities—local governments, community organizations, regional planning associations, and any other interested public or private entity. Projects addressing this theme could also be implemented through regional or ecosystem-scale initiatives like some of the National Estuary Projects that have resulted in comprehensive conservation and management plans, and other efforts such as the work in EPA's Atlanta Office (Region IV) with the Southern Appalachia Project that could result in recommendations that could be implemented through XL.

10. Water: Environmental Performance Measures for Waste Water Pretreatment Programs

Background: The Pretreatment Program is a cooperative effort of federal, state, and local regulatory environmental agencies established to protect water quality. Generally, the Program is implemented by Publicly-Owned Treatment Works with the objective of reducing the amount of pollutants discharged by industry and other non-domestic wastewater sources into municipal sewer systems, and thereby, reducing the amount of pollutants released into the environment from wastewater treatment plants.

Idea or approach that could be tested: EPA is interested in exploring alternative environmental performance-based pretreatment programs on a pilot basis. The intent of this effort is to investigate ways of increasing the effectiveness of the pretreatment program and thus obtain greater environmental benefit. Please refer to a separate segment of this **Federal Register** Notice, in which the Agency announces and describes its interest in exploring alternatives in this area in much greater detail. It is also available from Patrick Bradley, telephone number 202–260–6963.

Regulatory or other flexibility needed: EPA would be willing to provide POTWs regulatory relief from certain programmatic requirements (e.g., specific monitoring frequencies, specific control mechanism issuance requirements, etc.), so that they could implement alternative programs that would increase the environmental benefits. EPA is willing to consider various concepts of what an adequate environmental performance-based program might be, what POTWs would qualify for administering such a program, and what existing pretreatment program requirements would not be applicable to approved pilot programs.

Developing New Tools and Technologies

The themes listed below suggest ways that could help EPA improve current monitoring, measurement, and assessment tools and technologies.

1. Air: Continuous Monitoring Units for Radionuclides

Background: DOE is planning to use mixed waste incinerators to process high BTU content waste. Process pollution control equipment, when operating properly, captures most of the radionuclides. To determine if there are any releases, a filter is examined and tested on a daily or weekly basis to gather data. Many gases (CO, NO_x, SO_x) are monitored real or near real time, but radionuclides are monitored periodically. Thus, incinerators may potentially expose individuals to radionuclides during the time elapsed between periodic testing and actions taken to shut down the incinerator.

Idea/approach that could be tested: Continuous monitoring units for radionuclides. On time reporting of this information to the public could be another dimension of this project.

Technology that could be tested: A real or near real time monitor for radionuclides.

Possible superior environmental performance: A rugged and reliable unit which provides continuous real time monitoring data would allow almost simultaneous shut down of the incinerator if radionuclides are emitted. Thus, potential exposure to radionuclides should be reduced.

Regulatory or other flexibility needed: Radionuclide emissions from DOE facilities are regulated under 40 CFR part 61, subpart H (radionuclides NESHAPs). Subpart H allows use of environmental measurements to demonstrate compliance under certain conditions and with prior EPA approval. The project would require EPA flexibility in granting prior

approval to test the units and possibly relaxing the criteria for approval.

12. Air: Leak Detection Technology

Background: The chemical and petroleum refinery industries have to deal with a large number of potential emission points and a personnel-intensive approach to monitoring them under the Leak Detection and Repair provisions of current air rules (CAAA section 111 and 112). The number of components requiring emissions monitoring at refineries can range from 60,000 at small facilities to 500,000 at large facilities. While these provisions were developed via regulatory negotiation with industry and environmentalists, there may be alternative approaches to reduce emissions from these sources that are less burdensome and potentially more productive.

Idea/approach that could be tested: The Consolidated Air Rule and the Petroleum Refinery subcommittee of EPA's Common Sense Initiative are both exploring the question of whether industry can demonstrate that certain valves, pumps or seals do not leak as much as others and thereby reduce the frequency that they must be monitored. However, there will always be some amount of monitoring required.

Independent studies conducted by the Petroleum Refining Common Sense Initiative (CSI) Subcommittee and the American Petroleum Institute (API) suggest that the incidence of leaks in the population of refinery equipment is "essentially random in well-controlled plants" and that chronic leakers of regulatory significance (>10,000 ppm) are difficult, if not impossible to identify.

This XL project would explore whether there are other monitoring technologies that may be equally or more effective at identifying leaks than EPA's rules require, but that may be cheaper and easier to use for industry. Another aspect of this project may be to verify the CSI and API studies by exploring how much a component may leak and use that information to target the big leakers.

Technology that could be tested: There are new advances in leak detection that could be explored for industry use. One leak detection technology currently under development is a periodically-poled lithium niobate (PPLN) laser imaging system which, if proven effective, could be used to identify Volatile Organic Compound emissions from groups of components. Based on information provided by the Petroleum CSI Subcommittee, the CSI Council has recommended that the Agency prepare to engage in a process to test, verify, and approve this new leak detection technology that might be proposed as an alternative to current monitoring requirements. Subcommittee members informed the Council that the U.S. Department of Energy has pledged financial support for the development of a PPLN laser imaging system prototype. Industry, through API, has pledged in-kind services in terms of facilities and personnel to field test the technology. The CSI Subcommittee plans to fund an evaluation of the pilot test.

Possible superior environmental performance: If leaking components can be more effectively identified, overall emissions to the environment can be reduced. At the same time, EPA could potentially reduce burden and cost to industry.

Regulatory or other flexibility needed: EPA would need to allow participating plants the flexibility to use monitoring approaches other than the prescribed rule approach.

Possible candidate applicants: Any of the Consolidated Air Rule participants in the chemical industry, American Petroleum Institute, or the National Petroleum Refiners Association may be interested.

13. Air: Maximum Achievable Control Technology (MACT) for the Coke Oven Push and Quench Process

Background: The coke oven push and quench process is a listed source category to be regulated under Title III. EPA is required to promulgate a final Maximum Achievable Control Technology (MACT) standard by November 2000. The push and quench operations deal with the removal and cooling of coke from coke ovens. Once the coal to coke conversion is complete inside of the coking ovens, the hot coke is pushed by a ram from the oven into a quenching car. The quenching car of hot coke is moved by rail to the quench tower, where several thousand gallons of water are used to cool the coke. The push and quench process at coke oven facilities is a very large source of fugitive dust (PM_{10}, $PM_{2.5}$) organic Hazardous Air Pollutants (HAPs) and waste water. Conventional control technologies (i.e., localized hooding and control) are only marginally successful due to technical and economical limitations. As such, the MACT for this significant source category, if based on conventional technologies, will result in minimal benefits.

Technology that could be tested: The Kress Indirect Dry Cooling (KIDC) System replaces the quenching car with a box that is slightly wider and deeper than the coke charge. A carrier positions the box flush against the coke oven where the box can receive the push. After the push is complete and the pusher ram is withdrawn, the KIDC box's guillotine door closes. Fugitive dust is nearly eliminated from the push operation. VOCs which continue to offgass from the coke are controlled by a flare at the rear of the box. Following the push, the carrier moves the box to the quench station, and onto a cooling rack. Cooling water runs over the box to cool the coke indirectly. In addition to the environmental benefits, the KIDC system is intended to improve coke quality due to the indirect cooling.

In 1990, EPA/ORD began a demonstration of KIDC system at the Bethlehem Steel Coke Plant at Sparrows Point, Maryland. Unfortunately, the demonstration was interrupted and not completed for reasons unrelated to the KIDC system. However, preliminary data received from the demonstration were promising. Based on visible emission observations, emissions of particulate from the pushing operations were reduced by roughly 75% while emissions during quenching were virtually eliminated.

Possible superior environmental performance: The KIDC system has the potential to greatly reduce the air and water pollution resulting from the coke oven push and quench processes.

Emissions, based on AP–42 emission factors and the preliminary data for KIDC, are as follows:

TSP	Conventional	KIDC
Coke Pushing	2.0 lb/ton	0.5 lb/ton.
Quenching	1.0 lb/ton	0.0 lb/ton.

VOC	Conventional	KIDC
Coke Pushing	0.2 lb/ton	0.15 lb/ton.
Quenching	Unknown	0.00 lb/ton.

Regulatory or other flexibility needed: Substantial capital and time would be required to modify an existing facility and install the demonstration equipment. There are no guarantees that the equipment will work as planned (although the design indicates that it would likely be superior to the technology upon which the MACT standard would be based) or that the demonstration would be complete by the MACT standard compliance date. For these reasons, the facility would need some guarantee of relief from the MACT standard for a defined period of time, in order to protect the facility's capital investment in the demonstration project.

Possible candidate applicants: Other integrated steel mills.

14. Multi-media Pollution Prevention: Using the Pollution Prevention (P2) Assessment Framework to Assess Manufacturing Processes

Background: When designing an industrial process and producing new chemicals (in the form of new products or waste), industry often does not have any guidance from EPA to help them assess the potential regulatory burden associated with products of a new process. The Pollution Prevention Assessment Framework (P2 Assessment Framework), developed by EPA, packages a number of hazard, exposure and risk assessment methodologies that EPA uses in evaluating chemicals for which there are little or no data. The goal of the P2 Assessment Framework is to provide industry with methodologies that can identify problematic chemicals early in the design or manufacturing stage, or to assess the risk of chemical options for a specific purpose. The P2 Assessment Framework can aid industry in fostering pollution prevention as well as saving time and money, as demonstrated by a pilot project with the Eastman Kodak Company. Kodak recently issued a press release describing the business benefits of using EPA's P2 Assessment Framework. Kodak's press release indicated that the P2 Framework ". . . saved Kodak tens of thousands of dollars in development costs . . . with each one tested." EPA is interested in doing further testing of the tool in addition to the Kodak pilot.

Idea or approach to be tested: The P2 Assessment Framework can help industry practice cost-effective pollution prevention by reducing the regulatory burden associated with the production or use of new or existing high-risk chemicals. A wide array of chemicals can be screened quickly, thereby saving time and money by identifying potentially problematic chemicals early in the process, and finding more benign substitutes for them.

Possible superior environmental performance: Prevention of the production of potentially more hazardous chemicals (either as product or waste) from a production facility.

Regulatory or other flexibility needed: We would consider changes to existing policies, procedures, or permitting requirements to make this possible.

Possible candidate applicants: Any company developing new chemical substances, reformulating existing products or processes, or choosing among competing chemical substances for product development and manufacturing.

Category II: Themes Suggested by External Organizations

To stimulate additional ideas, EPA is including some themes in this Notice that were suggested as good ideas for Project XL pilots by representatives of public and private sector organizations during numerous meetings around the country. These ideas are briefly described below and, based on Agency review, are considered worthy of further exploration.

Administrative Paperwork Reduction

Record-keeping and reporting-burden reductions could be achieved through projects that provide EPA with the same information but in formats and ways that are more useful to EPA and less burdensome to the regulated entity. For example, EPA might agree to drop requirements for hard copy reporting of data in exchange for electronic submission of data. Superior environmental performance could be achieved, for example, by reinvesting cost savings in other areas that produce such results.

Community-Based Water Protection

Municipalities are required to implement multiple water protection programs, most notably the operation of publicly-owned treatment works, the storm water program and pretreatment programs, and in some cases combined sewer overflow programs. In many cases, these programs are implemented independently with little or no coordination or communication between them. In some communities, non-point sources that are not addressed by these programs may pose significant threats to water quality. The suggestion is to explore possible ways of integrating multiple water protection programs.

Concentrated Animal Feeding Operations

Nationally there are approximately 7,000 concentrated animal feeding operations (CAFOs). Under the Clean Water Act, CAFOs are "point sources" and subject to the National Pollutant Discharge Elimination System (NPDES) permitting requirements. The largest operations are also subject to the feedlots requirements under the Effluent Limitation Guidelines. The current technology standard specifies "no discharge." The applicable NPDES and Effluent Guideline regulations have not kept pace with technology improvements nor the changing nature of the animal agriculture industry. Potential projects could test innovative approaches, such as watershed permits, or innovative technologies for the management of animal manure.

Hazardous Waste: Land Disposal Restrictions Regulations

Industry has often suggested that if they had more time to come into compliance with new land disposal restriction regulations that they would be able to make significant steps towards waste minimization, potentially even eliminating a particular waste stream. Companies may be able to develop approaches that allow complete elimination of a waste stream, specifically under the technology-based treatment standards that hazardous waste must meet before being placed in or on the land.

Market-Based Approaches

Economic and market incentives could be developed for better environmental performance, including exploring financial instruments; the insurance industry; lenders, (e.g. for the redevelopment of brownfields); ways to combine sources of funding to help pay for the development and testing of new technologies; and ways to provide economic incentives for environmentally beneficial behavior, e.g. credits for using solar power.

Multi-facility and Multi-media Projects

Projects might test strategies for large companies that have many site locations or manufacturing and supplier chains; or strategies for related industries in different geographic locations, such as hazardous waste disposal and treatment companies; or auto companies, body shops, and paint shops. An example might be: Establishing a network of preconstruction air monitoring for a group of facilities giving relief from individual monitoring requirements. Even though these types of projects are very broad and may pose considerable management and implementation challenges, EPA is eager to entertain ideas along these lines as opportunities for truly innovative environmental protection approaches.

Multi-media Pollution Prevention: Using "Green Chemistry" To Make Manufacturing Processes "Greener'

The Green Chemistry program is designed to foster chemical methods that reduce or eliminate the use or generation of toxic substances during the design, manufacturing, and use of chemical products and processes. A part of the Green Chemistry program promotes partnership with industry in developing green chemistry

technologies. A possible XL project may involve the use of green chemistry that would make a production process cleaner, and reduce the regulatory burden that would be required of the production facility.

Other Ideas Suggested by External Organizations that the Agency Considers Worthy of Further Exploration:

These ideas were proposed merely as topics that would need to be fleshed out. (in alphabetic order)

- Alternatives for reducing persistent toxins in the Great Lakes
- Conservation and sustainable use of biodiversity and ecosystem services (for example, pollination, natural pest control, natural water flow management, and natural filtering and breakdown processes of pollutants)
- Energy conservation
- Environmental consequences of urban sprawl
- Global warming/climate change
- Green spaces
- Habitat preservation
- Improved management of timberland
- Watershed management

(D) Key Elements of Good XL Proposals

A successful project sponsor must have a solid record of compliance and demonstrate that the proposed XL project meets the eight XL criteria, as discussed in previous **Federal Register** documents and summarized in the "Supplementary Information" section in the beginning of this document. The review process will be easier and EPA, States, and other stakeholders will be more receptive to proposals if they:

√ Clearly lay out what is innovative about the approach to be tested and the potential benefits of applying the approach to other facilities, sectors, or communities, i.e. its transferability;

√ Clearly identify the area(s) of flexibility needed in EPA regulations, policies, and/or procedures;

√ Be as clear as possible about the benefits the project sponsor will derive from implementing the project, such as environmental improvements at the facility and in the community, worker health protection improvements, time-to-market savings and/ or paperwork reductions. EPA is also very interested in measurements of resources and cost savings.

√ Avoid being focused primarily on the requirement the project sponsor wants to avoid, but focus instead on the new approach to be tested;

√ Have early stakeholder support and a well-developed plan for facilitated stakeholder involvement;

√ Plan your idea in pre-proposal discussions before the actual proposal is formally submitted; pre-proposal discussions with EPA, States and other stakeholders go a long way toward reducing "transaction costs" (i.e. time and resources) in the selection and negotiation of projects;

√ Lay out a plan for how environmental baselines will be measured and superior environmental performance achieved. For more information on baselines, please refer to the **Federal Register** document (62 FR 19872) issued on April 23, 1997.

√ Propose a workable schedule for the development of a final project agreement and a plan for how the project will be managed.

EPA encourages potential project sponsors to talk early to EPA before submitting a formal proposal. This allows the Agency to help develop the proposal and to explain the process. The Agency recognizes that community project sponsors may require special assistance from EPA in developing proposals and any resulting projects. This assistance could include working with community project sponsors to help identify additional resources to support development and implementation of XL projects.

Proposals, in brief, will go through the following process: EPA will evaluate all proposals with input from relevant EPA and State offices to determine whether a proposal has the potential of meeting Project XL's set of criteria for facilities and/or communities, and whether it contains environmental, regulatory, and policy concepts worth testing in Project XL. If the Agency and the relevant State(s) determine that it is appropriate to proceed with proposal development, the project sponsor then leads a process involving all affected stakeholders to develop an agreement on the project.

Conclusion

Project XL presents a unique opportunity for private and public sector facilities, states, sectors, and local communities to design and test alternative approaches, while deriving substantial benefits for themselves and the communities around them. 27 facilities, sectors, states, and communities are already implementing or developing such innovations. EPA has integrated many "lessons learned" into its regulatory and policy-setting system. In addition, the Agency has learned how to process XL proposals with greater efficiency and efficacy. EPA's goal of implementing 50 XL pilot projects will provide the Agency with a range of innovations that can create a better system of protecting our environment and our health in the 21st century.

Dated: June 11, 1998.

J. Charles Fox,

Associate Administrator, Office of Reinvention.

[FR Doc. 98–16398 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6113–8]

Pretreatment Program Reinvention Pilot Projects under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Solicitation of Local Pilot Pretreatment Program Proposals under Project XL.

SUMMARY: Publicly Owned Treatment Works (POTWs) regulated under the National Pretreatment Program are required to identify industrial users, issue permits to these users, monitor industrial user activities through on-site sampling and inspections, and carry out other administrative functions involving extensive recordkeeping and reporting.

Many POTWs have mastered the programmatic aspects of their pretreatment programs, and a number of these POTWs feel that their programs should be measured against environmental results rather than strict adherence to procedural and administrative requirements. These POTWs have expressed an interest in being allowed to focus their resources on activities that they believe will provide greater environmental benefits than are achieved by complying with the current requirements.

The Project XL program, which is discussed in greater detail in another document in today's **Federal Register**, was implemented to provide the flexibility to conduct innovative pilot projects to develop and test "cleaner, cheaper and smarter" programmatic alternatives that could yield greater environmental results than those achieved under the current regulatory system. EPA is interested in exploring alternative environmental performance-based pretreatment programs on a pilot basis under the Project XL program.

Today, EPA is requesting that POTWs interested in pursuing a program based on environmental performance measures submit preliminary, one to two page proposals explaining what they would include in their Local Pilot Pretreatment Programs. These short proposals must include a clear description of the alternative program the POTW plans to implement, the environmental benefits to be gained by

the program, the regulatory requirements that need to be revised, and how program resources would be modified. POTWs that are interested in participating must submit their proposals to their State Pretreatment Program Coordinator, EPA Regional Pretreatment Program Coordinator, and the Director of EPA's Office of Wastewater Management. EPA will review the preliminary proposals and choose those that are most likely to achieve measurable improvements in environmental performance.

The number of proposals selected will be based on available Approval Authority resources for reviewing and modifying Approved Pretreatment Programs and coordinating pilot program implementation.

EFFECTIVE DATES: POTWs interested in participating in this Project XL solicitation have until September 21, 1998 to submit a preliminary proposal for consideration.

ADDRESSES: POTWs must submit formal proposals to Mr. Michael B. Cook, Director, Office of Wastewater Management (MC 4201), U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Duplicate copies of your proposal should be sent, concurrently, to the appropriate EPA Regional Pretreatment Coordinator and the State Pretreatment Program Coordinator providing oversight of your pretreatment program. This **Federal Register** document has been placed on the Internet for review and downloading at the following location: "www.epa.gov/owm'.

FOR FURTHER INFORMATION CONTACT: Patrick Bradley, U.S. Environmental Protection Agency, Office of Wastewater Management (4203), 401 M Street, S.W., Washington, DC 20460, telephone number (202) 260–6963.

I. Introduction

In General, What is EPA Requesting?

EPA is interested in exploring alternative environmental performance-based pretreatment programs on a pilot basis under EPA's Project XL program. The intent of this effort is to investigate ways of increasing the effectiveness of the pretreatment program and thus obtaining greater environmental benefit.

Today, EPA is requesting that interested POTWs submit preliminary proposals for implementing Local Pilot Pretreatment Programs. EPA will choose the proposals that are most likely to achieve measurable improvements in environmental performance. The number of proposals selected will be based on available approval authority resources for reviewing and modifying approved pretreatment programs and coordinating pilot program implementation. EPA expects to implement no more than fifteen projects.

The process for reviewing and choosing acceptable pilot program candidates will include input from the POTW's State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. After opportunity for public participation at the local level and review of a pilot by the selected POTW's State and EPA Regional Office, EPA Headquarters will revise 40 CFR part 403, if necessary, to allow the selected Local Pilot Pretreatment Programs to be tested, and then the POTW's NPDES permit will be modified to authorize the POTW to implement its pilot program instead of its current Approved POTW Pretreatment Program. States might first need to revise their own regulations or statutes to authorize the pilot program.

What Are the Current Pretreatment Program Requirements?

The minimum requirements for an Approved POTW Pretreatment Program are currently found in 40 CFR 403.8(f). POTWs with Approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which are Significant Industrial Users under 40 CFR 403.3(t), and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply national standards to their industrial users. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. An environmental performance-based pilot program would replace certain programmatic requirements of the POTW's Approved Pretreatment Program.

How Do the Current Requirements Relate to Environmental Objectives?

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program must also maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs.

Why is EPA Considering Allowing POTW Local Pilot Pretreatment Programs at This Time?

Some POTWs have mastered the programmatic aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in being allowed to focus their resources on activities that they believe will provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefiting the environment and toward activities that can achieve measurable improvements in the environment.

The Project XL program was implemented to provide the flexibility to conduct innovative pilot projects. This current solicitation represents an attempt to spur innovation in the pretreatment program to increase environmental benefits and, in conjunction with the streamlining proposal, to determine if further streamlining of the program is needed,

and in what direction those future streamlining efforts should be directed.

II. Stakeholder Comments

How Have Stakeholders Been Involved in the Development of This Idea?

EPA has been working with stakeholders to learn how to direct the pretreatment program toward the achievement of environmental goals. In 1993, pursuant to a Cooperative Agreement with EPA, the Association of Metropolitan Sewage Agencies (AMSA) assembled a 16-member steering committee to explore environmental measures of performance of pretreatment programs. The committee consisted of federal and state approval authorities, local and state control authorities, industrial users, and environmental groups. This committee helped shape the original research and reviewed findings to identify appropriate measures of performance.

The Committee identified 18 measures for assessing the performance of a pretreatment program. Consistent with the committee's belief that an adequate program would need to be judged by environmental trends, compliance rates, and procedural or programmatic criteria, the measures were separated into the following three categories:

Measures of Trends in Pollutant Loadings and Concentrations

1. Trends in mass loadings of metal and other toxic compounds and nonconventional pollutants in POTW effluent; and comparisons to allowable levels in NPDES permits where such limits exist.

2. Trends in emissions of hazardous pollutants to the air, particularly for volatile pollutants from unit processes and metals from incineration.

3. Trends in mass loadings of metals and other toxic contaminants in POTW influent, as a total and where possible, divided into domestic, commercial, industrial, and storm water contributions to the total; and comparison to allowable loadings as calculated during the headworks analysis, where such an analysis is available.

4. Reductions in annual average metals levels in biosolids, with an indication of any trend towards or compliance with the most stringent nationwide biosolids standards.

Measures of Compliance With Requirements

5. Percent compliance with NPDES permit discharge requirements.

6. For each POTW, whether the POTW is failing Whole Effluent Toxicity (WET) tests due to industrial sources.

7. Percent compliance with non-pathogen biosolids quality limits for the management method currently used, with sites divided into categories based on applicable biosolids regulations.

8. Percent compliance at each Industrial User with categorical limits.

9. Percent compliance at each Industrial User with all permit limits.

10. Percent of Industrial users in compliance with reporting requirements.

11. For each control authority, the number and percent of Industrial Users in a significant noncompliance (SNC) for the current year that were also in SNC last year.

Procedural or Programmatic Measures

12. Whether an effective method is being used to prevent, detect, and remediate incidents of violations of the specific pretreatment prohibitions attributable to industrial or commercial sources (e.g., fire and explosion hazards).

13. Whether an effective procedure is being used to identify non-domestic users and to update the list of regulated users.

14. Number of sample events conducted by the control authority per significant industrial user (SIU) per year, and percent of all sample events that were conducted by the control authority.

15. Number of inspections per SIU per year.

16. Whether the control authority has site-specific, technically-based local limits, based on the most recent regulatory changes and latest NPDES permit requirements; or a technical rationale for the lack of such limits.

17. Whether the POTW or control authority has significant activities or accomplishments that demonstrate performance beyond traditional goals and standards.

18. Whether or not POTWs have an effective public involvement program in place.

EPA then funded a second multi-stakeholder peer review group assembled by AMSA to evaluate the extent to which POTWs were using or collecting data to support these measures. The evaluation consisted of site visits to five case study cities. During the site visits, the researchers collected data on the current status of performance measurement and investigated ways to redirect the pretreatment program using a broader array of environmental indicators. The final report (Case Studies in the Application of Performance for POTW Pretreatment Programs, May 1997), presented "preliminary conclusions regarding the use of environmental indicators within the broader context of streamlining the pretreatment program to meet objectives of the Clean Water Act while better serving the needs of local communities and the nation as a whole."

One of the principal findings of the May 1997 report was a recommendation for "Pilot Programs" to investigate performance measures. The report recommended pilot programs as a means to phase-in and promote reinvention efforts at low risk. Specifically, the Report suggested:

> Under such a strategy, only those wastewater utilities that could demonstrate readiness to manage locally directed programs would be eligible for a pilot. Once eligible, the exact dimensions of each local program would be negotiated with the public and the appropriate Approval Authority. Administrative orders or enforcement discretion could be used during the pilot to allow local priorities to shape local programs in place of strict compliance with national program regulations under 40 CFR part 403. Accountability would be sustained through agreed upon measures of performance.

The August 1996 WEF/AMSA Pretreatment Streamlining Workshop also recommended creating a fundamentally more innovative and results-oriented pretreatment program that focussed on environmental endpoints. The Workshop's final report recommends a national pretreatment program consisting of three different tiers or options for local programs. One option would be a performance approach that would provide POTWs with flexibility in administering various aspects of their pretreatment programs in exchange for evaluating the accomplishments of the programs based on a series of designated performance-based measures that had been agreed upon by all stakeholders.

Finally, AMSA hosted a 1997 stakeholder meeting in Chicago where more than 20 members of key stakeholder groups, including POTWs, federal and state regulators, and industrial users, discussed all of these previous efforts and portions of this proposal. The attendees at the meeting did not reach consensus on a methodology for addressing environmental performance measures, but one recommendation was to pursue a change to the regulations that would allow pilot programs to test some alternate approaches.

III. Today's Request for Project Proposals

What is EPA Requesting?

EPA is requesting that POTWs that are interested in pursuing a program based on environmental performance measures submit preliminary, one to two page proposals explaining what they would include in their Local Pilot Pretreatment Programs. These short proposals must include a clear description of the alternative program the POTW plans to implement, the environmental benefits to be gained by the program, the regulatory requirements that need to be revised, and how resources will be modified. POTWs that are interested in participating must submit their preliminary proposals within 90 days of the publication date of this **Federal Register** Notice to their State Pretreatment Program Coordinator, EPA Regional Pretreatment Program Coordinator, and the Director of EPA's Office of Wastewater Management. EPA will then contact the POTWs that submitted acceptable proposals and request detailed proposals within 90 days which outline exactly how the POTWs plan to implement their Local Pilot Pretreatment Programs and how they address the Project XL criteria. These proposals will be reviewed by EPA.

EPA encourages interested POTWs to contact EPA early—via their Regional Pretreatment Coordinator or their Regional XL Coordinator or their State Pretreatment Coordinator—to express their interest in submitting a proposal. EPA stands ready to discuss pilot ideas or to clarify principles, expectations or guidance for the Pretreatment Pilot Program or Project XL.

The following sections outline what EPA believes should be the criteria for determining which POTWs may qualify for administering a Local Pilot Pretreatment Program, what would be an adequate Local Pilot Pretreatment Program, and what existing pretreatment program requirements would not have to be part of an approved Local Pilot Pretreatment Program. They also discuss application, approval, withdrawal and reporting requirements.

How Would Local Pilot Pretreatment Programs be Selected?

After consultation with the POTW's State, EPA Regional Office, and other Offices in EPA Headquarters, the Director of EPA's Office of Wastewater Management will select the pilot projects from the proposals that best meet EPA's criteria. If more than fifteen (15) Local Pilot Pretreatment Programs meet the criteria generally, EPA will select the programs that are likely to achieve the greatest transferable environmental benefit.

Transferable environmental benefit means the methodology is such that other POTW programs may be likely to implement the method and also achieve increased environmental benefits. EPA will select a proposal for further consideration only if the POTW's State and EPA Regional Office agree to participate.

Which POTWs May Apply To Run a Pilot Program?

The pilot program is being limited to POTWs that have demonstrated that they have run successful Pretreatment Programs, have available significant amounts of environmental performance data (or demonstrated ability to collect the necessary data), and are most likely to achieve transferable environmental benefits greater than those achieved under the current requirements. EPA intends to apply the following criteria to determine which POTWs may be considered for a Local Pilot Pretreatment Program:

1. The POTW is administering an Approved POTW Pretreatment Program.

2. The POTW has a solid record of compliance. In general, this means that the POTW must not be the subject of a planned or ongoing judicial or administrative enforcement action, be in significant noncompliance with applicable requirements, or have outstanding obligations under (or be in violation of) an order or consent decree. Additionally, a POTW's history of compliance will also be considered; POTWs most likely to be included in the pilot program would be those which do not have a history or pattern of violations, violations resulting in serious threats or harms, or have other recent significant compliance problems.

3. The POTW has five years of influent, effluent, and sludge quality data, as well as three years of ambient water quality measurements for its receiving water or can demonstrate the ability to collect ambient data.

What Are the Project XL Criteria?

Since this pilot programis being administered under the Project XL program, the proposals must address the Project XL criteria:

1. Superior Environmental Performance

Projects that are chosen should be able to achieve environmental performance that is superior to what would have been achieved absent the XL project. EPA uses a two-part method of determining whether an XL project will achieve superior environmental performance: (1) Develop a quantitative baseline estimate of what would have happened to the environment absent the project and, then compare that baseline estimate against the project's anticipated environmental performance; and (2) Consider both quantitative and qualitative measures in determining if the anticipated environmental performance will produce a level of environmental performance superior to the baseline.

2. Cost Savings and Paperwork Reduction

The project should produce cost savings or economic opportunity, and/or result in a decrease in paperwork burden.

3. Stakeholder Support

The extent to which project proponents have sought and achieved the support of parties that have a stake in the environmental impacts of the project is an important factor. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities.

4. Innovation/Multi-Media Pollution Prevention

EPA is looking for projects that test innovative strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Projects should embody a systematic approach to environmental protection that tests alternatives to several regulatory requirements and/or affects more than one environmental medium. EPA has a preference for protecting the environment by preventing the generation of pollution rather than by controlling pollution once it has been created. Pilot projects should reflect this preference.

5. Transferability

The pilots are intended to test new approaches that could conceivably be incorporated into the Agency's programs or in other industries, or other facilities in the same industry. EPA is therefore most interested in pilot projects that test new approaches that could one day be applied more broadly.

6. Feasibility

The project should be technically and administratively feasible and the project proponents must have the financial capability to carry it out.

7. Monitoring, Reporting and Evaluation

The project proponents should identify how to make information about the project, including performance data, available to stakeholders in a form that is easily understandable. Projects should have clear objectives and requirements that will be measurable in order to allow EPA and the public to evaluate the success of the project and enforce its terms. Also, the project sponsor should be clear about the time frame within which results will be achievable.

8. Shifting of Risk Burden

The project must be consistent with Executive Order 12898 on Environmental Justice. It must protect worker safety and ensure that no one is subjected to unjust or disproportionate environmental impacts.

These criteria are described in detail in the following **Federal Register** documents: 60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997.

What Environmental Results Must a Local Pilot Pretreatment Program Achieve?

The POTW's Local Pilot Pretreatment Program would have to commit the POTW to achieve environmental results consistent with the XL program's expectations. As detailed in the **Federal Register** document of April 23, 1997, "In order to test innovative approaches to reinvent environmental protection for the 21st Century, Project XL offers potential project sponsors and co-sponsors the opportunity to develop and implement alternative strategies that produce superior environmental performance, replace specific regulatory requirements, and promote greater accountability to stakeholders. The May 23, 1995, **Federal Register** document defining the XL program stated EPA's intent to approve only those projects that 'achieve superior environmental performance relative to what would have been achieved through compliance with otherwise applicable requirements.' This document further refines the definition of superior environmental performance to assist future applicants, stakeholders and those evaluating the program." The system uses a two tiered approach. The first tier establishes an environmental performance benchmark for an XL project. This quantifies current performance levels and sets a baseline against which the project's anticipated environmental performance can be compared. The project benchmark will be set at either the current actual environmental loadings (historical environmental data) or the future allowable environmental loadings, whichever is more protective. Tier two is an examination of factors that lead EPA to judge that a project will produce truly superior environmental performance.

For local POTW Pretreatment Programs, Superior Environmental Performance may include:

(i) Reducing pollutant loadings to the environment or achieving some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit. Such information would include data on pollutant loadings to the environment, ambient environmental conditions and measures of the impact of these conditions on the health of ecosystems. The data should be able to support decisions concerning the future use of pretreatment program resources),

(ii) Reducing or optimizing costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and

(iii) Other environmental benefits gained by allowing pretreatment program flexibility.

EPA's ultimate objective is to gain information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance. This objective is consistent with the principles of the National Performance Review.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other programs may be able to implement the method and also achieve increased environmental benefits.

Collecting environmental performance data alone would not be enough to qualify as an objective. The data collected must be used to benefit the environment. For example, the data collected could help POTWs apply enforcement and compliance assistance resources more effectively.

If the focus of the Local Pilot Program is to reduce the cost of administering the Approved POTW Pretreatment Program without reducing the local program's environmental effectiveness, the resources saved must be dedicated to some other environmental application. In this situation, the resources might be used to integrate the Pretreatment Program with other local environmental protection programs such as storm water monitoring or collection system management or local pollution prevention initiatives. In all cases, the benefits of a trade-off of resources from existing pretreatment requirements to other activities will need to be quantified and tracked.

A Local Pilot Pretreatment Program could focus resources on program integration and then measure the environmental benefits of an integrated program. Environmental performance measures can foster increased integration of pretreatment programs with other local environmental programs and with broader environmental efforts, such as watershed or community-based environmental protection.

It is intended that Local Pilot Pretreatment Programs will provide clearer linkages between environmental goals and program implementation procedures. This will allow programs to identify the goals that are best for their specific situations and to design procedures to reach those goals.

To determine what the environmental focus should be, the POTW should conduct community outreach. Through a stakeholder dialogue, the POTW may gain additional perspective on what is important to the community and may help the POTW to make resource allocation decisions. Each pilot POTW would then set its own goals based upon input from the local community.

The POTW would then design a management program (the Local Pilot Pretreatment Program) to achieve the environmental goals. The alternate program would include specific measures to determine whether or not implementation procedures are achieving their desired results.

Which Existing Requirements Would not Have to be Part of Local Pilot Pretreatment Programs?

Local Pilot Pretreatment Programs may not have to implement certain currently required pretreatment program elements if they are not necessary for the achievement of the POTW's environmental objectives. The resources saved from not implementing these program elements could then be redirected to other means of achieving and measuring environmental performance.

EPA proposes that a Local Pilot Pretreatment Program would still need to include adequate legal authority to identify and control industrial users, and the authority to take appropriate and necessary enforcement actions.

These authorities would then be supported by a set of procedures. The legal authority and procedures must be clearly explained in the POTW's proposal.

Specifically, the Local Pilot Pretreatment Programs would still be required to develop/maintain legal authority and ensure compliance with categorical pretreatment standards and local limits, including taking necessary enforcement actions. The POTW would be required, at a minimum, to identify industrial users that are subject to categorical standards, receive and review reports from the categorical users, and take enforcement action as appropriate based on the reports received. The Local Pilot Pretreatment Programs would also be required to develop and implement procedures to operate their programs such as permitting, inspection and monitoring, and technically-based local limits. However, the procedures would not necessarily have to include the prescriptive permitting or reporting requirements in 40 CFR 403.8(f) or 403.12. The POTW may not necessarily be expected to permit a specific subset of industrial users designated by the federal regulations, but instead would have the latitude to decide which industrial users need permits. The POTW would be expected to monitor (sample and inspect) industrial users, but would be able to decide how often to monitor the users. These procedures would likely involve modifying existing program procedures rather than developing new procedures.

Industrial users would continue to be subject to all currently applicable requirements; except that, as described above, a Local Pilot Pretreatment Program may alter the timing of certain reports and may consider certain industrial users that are subject to national categorical standards to no longer be SIUs.

What Will Be the Duration of Local Pilot Pretreatment Programs?

Local Pilot Pretreatment Programs may be approved to operate for one five-year period. Prior to the end five-year period (at least 180 days), the POTW may apply for a renewal or extension of the project period. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Approval Authority may allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program will be met. The revised Local Pilot Pretreatment Program must be approved in accordance with the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority shall direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Approval Authority will ensure that the POTW's NPDES permit includes a reopener clause with this requirement.

The results of the pilots, including recommendations in POTW pilot reports, will be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

Will the Pilot Program POTW Be Required to Submit Periodic Progress reports?

The POTW will be required to periodically report the progress of its pilot program. The POTW's periodic report would describe its Local Pilot Pretreatment Program activities and accomplishments, including activities and accomplishments of any participating agencies and public involvement. The report should include an analysis of all environmental data collected over the reporting period and activities conducted to reduce pollutant loadings to the environment and any other activities that address the objectives of the Local Pilot Pretreatment Program.

The report following the fourth year of pilot program implementation must also include the findings of the pilot. This report must specifically address all objectives of the pilot program and provide measures related to the effectiveness of the program, as implemented, in meeting the objectives. The report should also include recommendations concerning the implementation of the pretreatment program at the local level.

The minimum report requirements will be detailed in the POTW's NPDES permit. This requirement will be similar to the current requirement for the POTW to annually report to the Approval Authority the status of its Pretreatment Program. See 40 CFR 403.12(i). At the discretion of the NPDES permitting authority, the report may be required more frequently than once per year.

What Should a Proposal to Implement a Pilot Program Include?

The POTW should discuss the pilot project with its State and EPA Regional Office early in the process of developing a proposal, and prior to submitting any proposal to EPA Office of Wastewater Management. This should save time for both the Approval Authority and the POTW.

A POTW seeking approval to implement a Local Pilot Program must first submit a preliminary, one to two page, written proposal to EPA Headquarters (Office of Wastewater Management—MC 4201) with copies to its Approval Authority and EPA Regional Office within 90 days of the publication of this document. These short proposals must include a clear description of the alternative program the POTW plans to implement, the environmental benefits to be gained by the program, the regulatory requirements that will be revised, and how resources will be modified. The request should be mailed to U.S. EPA, Office of Wastewater Management (MC 4201), 401 M Street, S.W., Washington, DC 20460. Telephone inquiries may be directed to Patrick Bradley at (202) 260–6963.

If EPA determines the POTW's preliminary proposal meets the criteria explained in this document, EPA will request that the POTW submit a more detailed proposal in 90 days. The detailed proposal shall include a complete draft of the POTW's proposed Local Pilot Pretreatment Program, including a description of the specific measures to determine whether or not the alternative management procedures are achieving their desired results. The proposal shall address all necessary modifications to the procedures, legal authority and resources of the POTW's existing Approved Pretreatment Program. It must also contain commitments from the appropriate municipal officials that the POTW will have the necessary legal authority, procedures, personnel and resources to implement the pilot program. The proposal should include a copy (or drafts) of any statutes, ordinances, regulations, agreements, or other authorities that the POTW will rely upon for its administration of the Local Pilot Pretreatment Program.

The POTW's draft pilot program should address all of the major pretreatment program elements. It should document how the POTW will continue to develop, implement, and enforce its Local Pilot Pretreatment Program. For example, it should identify the manner in which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.). It should also identify how the POTW intends to ensure compliance with Pretreatment Standards (including categorical Pretreatment Standards) and Requirements, and to enforce them in the event of noncompliance by Industrial Users. The detailed proposal should also address how the Local

Pretreatment Pilot Program would meet the eight Project XL criteria discussed earlier in this notice.

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs. Therefore, as part of the application, the POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance set out in the April 23, 1997, **Federal Register** document. The support of parties that have a stake in the program is very important.

Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders should finalize a Final Project Agreement (FPA). The FPA is a non-binding agreement that enumerates the conditions of the project. (In order to expedite this process, EPA will develop a FPA template for these projects that will contain the elements that are anticipated to be common among these projects and shall make this available to the candidates.) The actual regulatory flexibility will be granted by modifying 40 CFR part 403 to allow these specific POTWs to operate Local Pilot Pretreatment Programs.

After an opportunity for public participation at the local level and the development of the Final Project Agreement, a selected POTW's Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18. The POTW may implement its Local Pilot Pretreatment Program once its NPDES permit has been modified to incorporate the program as an enforceable permit element.

As with any XL Project, EPA intends to work cooperatively with the POTWs that submit applications for Local Pilot Pretreatment Programs to develop and fine tune the applications. Applicants must recognize that EPA retains the ultimate authority to select projects based on a qualitative consideration of the criteria described earlier. Since these are pilot projects and there are a limited number of pilots that can be approved, projects that satisfy many or all of the criteria may not be chosen for Local Pilot Pretreatment Programs status. The decision of which projects will be selected will be based on an Agency decision about which projects are expected to best serve the objectives of this program. No person is required to submit a proposal or obtain approval as a condition of commencing or continuing a regulated activity. Accordingly, there will be no formal administrative review available for proposals that are not selected, nor does EPA believe there will be a right to judicial review.

Dated: June 20, 1998.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 98–16399 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–813; FRL–5795–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–813, must be received on or before July 23, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mary Waller	Rm. 247, CM #2, 703–308–9354, e-mail:waller.mary@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James Tompkins	Rm. 239, CM #2, 703–305–5687, e-mail: tompkins.james@epamail.epa.gov.	
Stephanie Willett	Rm. 202, CM #2, 703-305-5419, e-mail:willett.stephanie@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–813] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 12, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company

PP 4F4380

EPA has received a pesticide petition (PP [4F4380]) from AgrEvo USA Company, 2711 Centerville Road, Wilmington, DE 19808 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of flutolanil in or on the raw agricultural commodity of rice grain at 2.0 parts per million (ppm), rice straw at 12.0 ppm and in or on the processed commodities of rice hulls at 7.00 ppm and rice bran at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism.* The metabolism of flutolanil in plants and animals is adequately understood for the purposes of this petition. Animal studies in rats, ruminants, and poultry indicate that flutolanil is metabolized primarily to desisopropylflutolanil and its conjugates. Plant metabolism studies have been conducted in rice, cucumber, and peanuts. The metabolic profile for flutolanil was similar in all three crops. The major route of degradation was 4'-0-dealkylation to desisopropylflutolanil, followed by conjugation. Other metabolites may occur at very low levels due to hydroxylation and oxidation of the side chain, hydroxylation of the aniline ring, and methylation of the hydroxyl groups. These minor metabolites were also subject to conjugation. The residues of concern are the parent flutolanil and desisopropylflutolanil.

2. *Analytical method.* The analytical method designated as AU-95R-04 has been independently validated and is adequate for enforcement purposes. A multi-residue method for flutolanil has been previously submitted. It has the following disclaimer: The method is for use only by experienced chemists who have demonstrated knowledge of the principles of trace organic analysis and have proven skills and abilities to run a complex residue analytical method obtaining accurate results at the part per million level (PPML). Users of this method are expected to perform additional method validation prior to using the method for either monitoring or enforcement. The method can detect gross misuse.

3. *Magnitude of residues.* 24 field trials consisting of foliar applications to rice were conducted in California, Louisiana, Texas, Arkansas, Arizona, Missouri, and Mississippi. Applications of flutolanil formulated as 50WP or 70WP were made at a total seasonal rate of 1.0 lb active ingredient (a.i) per acre resulted in flutolanil-derived residues ranging from below the limit of detection (<0.05 ppm) to 1.66 ppm in whole rice grain and hulled rice and from 0.95 ppm to 11.28 ppm in rice straw.

A processing study was also conducted in Louisiana in which the 50WP formulation of flutolanil was applied to rice following label directions at a total rate of 1.0 lb active ingredient per acre. Residues of flutolanil were observed in all processed commodities and ranged from <0.05 ppm in polished rice to 1.37 ppm in grain dust below 420 microns.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute studies was conducted: the acute oral LD_{50} in rat and mice were >10,000 milligram/kilograms (mg/kg), Toxicity category IV; acute dermal LD_{50} in rat was >2,000 mg/kg, Toxicity category III; and acute inhalation LC_{50} in rat was >5.98 milligram/liter (mg/l), Toxicity category III. There was slight eye irritation; no dermal irritation; and no dermal sensitization.

2. *Genotoxicty.* Flutolanil has been tested in a battery of *in-vitro* and *in-vivo* assays. No evidence of genotoxicity was noted in gene mutation assays with *Salmonella, E. coli,* or mouse lymphoma cells; a mouse micronucleus assay or in an *in-vitro* unscheduled DNA synthesis assay. A weak positive response was noted in an *in-vitro* cytogenetics assay in Chinese hamster lung cells but no evidence of clastogenicity was noted in an *in-vitro* cytogenetics assay in human lymphocytes. The overall weight of evidence indicates that flutolanil is not genotoxic.

3. *Reproductive and developmental toxicity.* A 3-generation rat reproduction study was conducted at dietary concentrations of 0, 1,000 and 10,000 ppm. The NOEL for this study is considered to be 1,000 ppm (63 milligram/kilograms/day (mg/kg/day), based on reduced pup weights late in lactation at 10,000 ppm. Because the Agency considered this study supplementary, a 2-generation rat reproduction study subsequently was conducted at dietary concentrations of 200, 2,000, and 20,000 ppm. No adverse findings were noted at any dose level and the NOEL was considered to be 20,000 ppm 1,936 mg/kg/day. The Agency, however, has concluded that the NOEL of the original study 63 mg/kg/day should continue to be used for risk assessment.

Developmental toxicity (teratology) studies were conducted in both rats and rabbits at dose levels of 0, 40, 200, and 1,000 mg/kg/day. No significant maternal or developmental toxicity was noted in either study. Thus, both the maternal and developmental NOEL's for both rats and rabbits were considered to be 1,000 mg/kg/day highest dose tested (HDT).

4. *Subchronic toxicity.* A 90-day rat feeding study was conducted at dose levels of 500, 4,000 and 20,000 ppm. The NOEL in this study was considered to be 500 ppm (37 mg/kg/day for males and 44 mg/kg/day for females) based on increased liver weights at 4,000 ppm and slightly decreased body weights at 20,000 ppm.

In a 90-day oral toxicity study in dogs, flutolanil was administered via capsule at dose levels of 0, 80, 400 and 2,000 mg/kg/day. The NOEL was determined to be 80 mg/kg/day based on enlarged livers and increased glycogen deposition at 400 and 2,000 mg/kg/day, and increased alkaline phosphatase and cholesterol levels and thyroid/parathyroid organ weights at 2,000 mg/kg/day.

In a 21-day dermal toxicity study, flutolanil was applied dermally to rats for 15-days over a 21-day interval at dose levels of 0 and 1,000 mg/kg/day. No evidence of dermal irritation or systemic toxicity was observed. Thus, the NOEL was considered to be 1,000 mg/kg/day.

5. *Chronic toxicity.* In a 2-year chronic toxicity/oncogenicity study, flutolanil was administered to rats at dietary levels of 0, 40, 200, 2,000 and 10,000 ppm. The NOEL was considered to be 2,000 ppm (86.9 mg/kg/day for males and 103.1 mg/kg/day for females) based on reduced body weight gain in males and increased liver weights in females at 10,000 ppm. No evidence of carcinogenicity was observed.

In a 78-week carcinogenicity study, flutolanil was administered to mice at dietary concentrations of 0, 300, 1,500, 7,000 and 30,000 ppm. The NOEL was considered to be 7,000 ppm (735 mg/kg/day for males) and 1,500 ppm (162 mg/kg/day for females) based on decreased body weight gains at the higher level(s). No evidence of carcinogenicity was observed.

A 2-year chronic toxicity study was conducted in beagle dogs at dose levels of 0, 50, 250, and 1,250 mg/kg/day. The NOEL was considered to be 250 mg/kg/day based on decreased weight gain at 1,250 mg/kg/day.

6. *Animal metabolism.* Studies in rats, ruminants, and poultry suggest that flutolanil is not well-absorbed following oral administration. Once absorbed, however, it is rapidly metabolized, primarily to desisopropylflutolanil and its conjugates, and rapidly excreted via urine and feces.

7. *Endocrine disruption.* No special studies have been conducted to investigate the potential of flutolanil to induce estrogenic or other endocrine effects. However, no evidence of such effects has been observed in the subchronic, chronic, or reproductive studies previously discussed. Thus, the potential for flutolanil to cause endocrine effects is considered to be minimal.

C. Aggregate Exposure

1. *Dietary exposure.* Includes food and drinking water—i. *Food.* Time-limited tolerances have been previously established for flutolanil in or on rice commodities, and tolerances with no time limitations are established for peanut commodities, meat, milk, and eggs. Potential dietary exposures to flutolanil from these food commodities were assessed using the exposure one software system (TAS, Inc.) and food consumption data from the 1977-1978 USDA Continuing Surveys of Food Consumption by Individuals (CSFCI). For the purposes of this assessment, it was assumed that 100% of all of the above commodities were at the existing tolerance levels for flutolanil.

ii. *Drinking water.* The potential for flutolanil to leach into groundwater has been assessed in two terrestrial field dissipation studies, a long-term terrestrial field dissipation study, and an aquatic field dissipation study. Under field conditions, the half-life of flutolanil varied from 101 to 123 days in the long-term field soil dissipation study, which was consistent with the other field studies, and was approximately 180 days in the aquatic environment. Flutolanil strongly adsorbs to soil following application and did not exhibit mobility under either terrestrial or aquatic conditions. The water solubility of flutolanil is quite low (5.0 ppm). Based on these environmental fate data and the conditions of use, the potential for movement of flutolanil into groundwater is very low, and as such the potential contribution of any such residues to the total dietary intake of flutolanil will be negligible. No maximum contaminant level (MCL) or Health Advisory Level for residues of flutolanil in drinking water has been established.

2. *Non-dietary exposure.* As prostar 50WP (EPA Reg No. 45639-153) is a professional turf and ornamental fungicide, flutolanil is used primarily (>95%) on golf courses for control of brown patch disease (Rhizoctonia solani). Very limited use of prostar 50WP may occur on commercial ornamental turf by professional lawn care applicators or on sod farms. The product is rarely, if ever, used on homeowner turf due to the fact that the diseases it controls (Brown patch, Fry ring, snow molds) occur in high-fertility, high-maintenance turf (e.g. golf courses), not in homeowner lawns. Thus, non-dietary exposure to flutolanil would be minimal. Furthermore, no dermal toxicity endpoints of concern have been identified for flutolanil. Thus, an assessment of non-dietary exposure and risk is not considered to be necessary.

D. Cumulative Effects

Flutolanil has demonstrated only minimal toxicity in animal studies. The mechanism of this toxicity is unknown. Furthermore, there are no available data to indicate that flutolanil has a common mechanism of toxicity with other substances. Thus, only the potential risks from flutolanil are being considered in this document.

E. Safety Determination

1. *U.S. population.* Based on the existing and proposed tolerances in rice, peanuts, and secondary commodities, the Theoretical Maximum Residue Contribution (TMRC) of the current action is estimated to be 0.001124 mg/kg/day for the U.S. population in general. This exposure would utilize less than 1% of the RfD. There is generally no concern for exposures below 100% of the RfD since the RfD represents the exposure level at or below which daily exposure over a lifetime will not pose any appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result to the U.S. population in general from aggregate exposure to flutolanil.

2 *Infants and children.* Data from reproductive and developmental toxicity studies are generally used to assess the potential for increased sensitivity of infants and children. No evidence of developmental toxicity was noted in rats or rabbits, even at the limit dose of 1,000 mg/kg/day. Reduced pup weights in the absence of parental toxicity were noted at the HDL (10,000 ppm) in a 3-generation rat reproduction study. However, no such effects were noted in a subsequent reproduction study, even at a HDT (20,000 ppm). Furthermore, the reduced weight gain in the first study began late in the lactation period, at a time when the pups were likely ingesting significant quantities of diet. Feed intake is much higher in young animals than in adults and the apparent increase in sensitivity may simply reflect the higher test material intake in these pups on a mg/kg basis compared to the adults. Thus, AgrEvo believes that the overall weight of evidence does not indicate any special concern for infants and children, and that no additional safety factor is necessary.

Based on the existing and proposed tolerances in rice, peanuts, and secondary commodities, the Theoretical Maximum Residue Contribution (TMRC) from the current petition is estimated to be 0.006218 mg/kg/day for the most highly exposed sub-population, non-nursing infants (less

than 1-year old).. This exposure would utilize less than 1 % of the RfD. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to flutolanil.

F. International Tolerances

No CODEX tolerances have been established or proposed for residues of flutolanil. (Mary Waller).

2. Bayer Corporation

PP 6F4631

EPA has received a pesticide petition (PP 6F4631) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.527 by establishing tolerances for inadvertent residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2- [[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide [hereafter referred to as flufenacet, the proposed common chemical name] and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the raw agricultural commodities of Crop Group 15 (cereal grains), Crop Group 16 (forage, stover and hay of cereal grains), Crop Group 17 (grass forage, and grass hay), alfalfa forage, alfalfa hay, alfalfa seed, clover forage, and clover hay at 0.1 parts per million (ppm) when present therein as a result of the application of flufenacet to field corn and soybeans as a herbicide. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in field corn, soybeans, livestock and rotational crops is adequately understood. The residues of concern for the tolerance expression are *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide parent and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of flufenacet on field corn and soybeans.

2. *Analytical method.* An adequate analytical method, gas chromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 119E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

3. *Magnitude of residues.* Time limited tolerances exist for the combined residues of flufenacet, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on field corn grain at 0.05 ppm, field corn forage at 0.4 ppm, field corn stover at 0.4 ppm, and soybean seed at 0.1 ppm. The petitioner, Bayer Corporation has amended its petition (PP 6F4631) to include tolerances for residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety at 0.1 ppm for residues in or on the raw agricultural commodities of Crop Group 15 (cereal grains), Crop Group 16 (forage, stover and hay of cereal grains), Crop Group 17 (grass forage and grass hay), alfalfa forage, alfalfa hay, alfalfa seed, clover forage, and clover hay. The proposed tolerance levels are adequate to cover residues likely to be present in rotational crops planted after corn or soybeans which were treated with flufenacet.

B. Toxicological Profile

1. *Acute toxicity.* A rat acute oral study with a LD_{50} of 1,617 milligrams/kilograms for males and 589 mg/kg for females.

2. *Genotoxicty.* Flufenacet was negative for mutagenic/genotoxic effects in a Gene mutation/*In vitro* assay in bacteria, a Gene mutation/*In vitro* assay in chinese hamster lung fibroblasts cells, a Cytogenetics/*In vitro* assay in chinese hamster ovary cells, a Cytogenetics/*In vivo* mouse micronucleus assay, and an *In vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

3. *Reproductive and developmental toxicity.* A two-generation rat reproduction study with a parental systemic no observed effect level (NOEL) of 20 ppm [1.4 mg/kg/day in males and 1.5 mg/kg/day in females] and a reproductive NOEL of 20 ppm [1.3 mg/kg/day] and a parental systemic lowest observed effect level (LOEL) of 100 ppm [7.4 mg/kg/day in males and 8.2 mg/kg/day in females] based on increased liver weight in F1 females and hepatocytomegaly in F1 males and a reproductive LOEL of 100 ppm [6.9 mg/kg/day] based on increased pup death in early lactation (including cannibalism) for F1 litters and the same effects in both F1 and F2 pups at the high dose level of 500 ppm [37.2 mg/kg/day in F1 males and 41.5 mg/kg/day in F1 females, respectively]. A rat developmental study with a maternal NOEL of 25 mg/kg/day and with a maternal LOEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on decreased fetal body weight, delayed development [mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages], and an increase in the incidence of extra ribs. A rabbit developmental study with a maternal NOEL of 5 mg/kg/day and a maternal LOEL of 25 mg/kg/day based on histopathological finds in the liver and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on increased skeletal variations.

4. *Subchronic toxicity.* A 84–day rat feeding study with a No Observed Effect Level (NOEL) less than 100 ppm [6.0 mg/kg/day] for males and a NOEL of 100 ppm [7.2 mg/kg/day] for females and with a Lowest Observed Effect Level (LOEL) of 100 ppm [6.8 mg/kg/day] for males based on suppression of thyroxine (T4) level and a LOEL of 400 ppm [28.8 mg/kg/day] for females based on hematology and clinical chemistry findings. A 13–week mouse feeding study with a NOEL of 100 ppm [18.2 mg/kg/day for males and 24.5 mg/kg/day for females] and a LOEL of 400 ppm [64.2 mg/kg/day for males and 91.3 mg/kg/day for females] based on histopathology of the liver, spleen and thyroid. A 13–week dog dietary study with a NOEL of 50 ppm [1.70 mg/kg/day for males and 1.67 mg/kg/day for females] and a LOEL of 200 ppm [6.90 mg/kg/day for males and 7.20 mg/kg/day for females] based on evidence that the bio-transformation capacity of the liver has been exceeded, (as indicated by increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen pigment in females, decreased T4 and

ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females. A 21–day rabbit dermal study with the dermal irritation NOEL of 1,000 mg/kg/day for males and females and a systemic NOEL of 20 mg/kg/day for males and 150 mg/kg/day for females and a systemic LOEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

5. *Chronic toxicity.* A 1–year dog chronic feeding study with a NOEL was 40 ppm [1.29 mg/kg/day in males and 1.14 mg/kg/day in females] and a LOEL of 800 ppm [27.75 mg/kg/day in males and 26.82 mg/kg/day in females] based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve and liver. A rat chronic feeding/carcinogenicity study with a NOEL less than 25 ppm [1.2 mg/kg/day in males and 1.5 mg/kg/day in females] and a LOEL of 25 ppm [1.2 mg/kg/day in males and 1.5 mg/kg/day in females] based on methemoglobinemia and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile. In a mouse carcinogenicity study the NOEL was less than 50 ppm [7.4 mg/kg/day] for males and the NOEL was 50 ppm [9.4 mg/kg/day] for females and the LOEL was 50 ppm [7.4 mg/kg/day] for males and the LOEL was 200 ppm [38.4 mg/kg/day] for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

6. *Animal metabolism.* A rat metabolism study showed that radio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces. A 55–day dog study with subcutaneous administration of Thiadone [flufenacet metabolite] supports the hypothesis that limitationsin glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

7. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect. The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

C. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*—i. *Food.* Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, varying consumption patterns of major identifiable subgroups of consumers, including infants and children is taken into account. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. Using tolerance levels and percent crop treated, the residues in the diet (food only) are calculated to be 0.0001 milligrams/kilogram of body weight per day (mg/kg bwt/day) or 2.6% of the RfD for the general U.S. population and 0.00023 mg/kg bwt/day or 5.8% of the RfD for children aged 1–6 years.

ii. *Drinking water.* Residues of flufenacet in drinking water may comprise up to 0.0039 mg/kg bwt/day (0.0040–0.0001 mg/kg bwt/day) for the U.S. population and 0.0038 mg/kg bwt/day (0.00400–0.00023 mg/kg bwt/day) for children 1–6 years old (the group exposed to the highest level of flufenacet residues in both food and water). The drinking water levels of concern (DWLOCs) for chronic exposure to flufenacet in drinking water calculated for the U.S. population was 136 parts per billion (ppb) assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day. The drinking water estimated concentration (DWECs) for groundwater (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old).

2. *Non-dietary exposure.* There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flufenacet is structurally a thiadiazole. EPA is not aware of any other pesticides with this structure. For flufenacet, EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include this chemical in a cumulative risk assessment. After EPA develops a methodology to address common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine these tolerance decisions. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions; therefore, EPA has not assumed that flufenacet has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* The acute endpoint for flufenacet and its metabolites is 75 mg/kg/day. The acute

exposure for flufenacet and its metabolites is 0.0015 mg/kg/day for the general U.S. population and 0.002 mg/kg/day for children 1–6 years of age. The DWLOC for acute exposure to flufenacet in drinking water calculated for the U.S. population was 2.87 ppm and for children (1–6 years old) was 813 ppb. These figures were calculated as follows. First, the acceptable acute exposure to flufenacet in drinking water was obtained by subtracting the acute dietary food exposures from the ratio of the acute LOEL to the acceptable margin of exposure (MOE) for aggregate exposure. Then, the DWLOCs were calculated by multiplying the acceptable exposure to flufenacet in drinking water by estimated body weight (70 kg for adults, 10 kg for children) and then dividing by the estimated daily drinking water consumption (2 L/day for adults, 1 L/day for children). The Agency's SCI-Grow model estimates peak levels of flufenacet and its metabolite thiadone in groundwater to be 15.3 ppb. PRZM/EXAMS estimates peak levels of flufenacet and its metabolite thiadone in surface water to be 17 ppb. EPA's acute drinking water level of concern is well above the estimated exposures for flufenacet in water for the U.S. population and subgroup with highest estimated exposure.

ii. *Chronic risk.* The chronic endpoint for flufenacet is 0.004 mg/kg bwt/day. Using tolerance levels and percent crop treated, the residues in the diet (food only) are calculated to be 0.0001 mg/kg bwt/day or 2.6% of the Reference dose (RfD) for the general U.S. population and 0.00023 mg/kg bwt/day or 5.8% of the RfD for children aged 1–6 years. Therefore, residues of flufenacet in drinking water may comprise up to 0.0039 mg/kg bwt/day (0.0040–0.0001 mg/kg bwt/day) for the U.S. population and 0.0038 mg/kg bwt/day (0.00400–0.00023 mg/kg bwt/day) for children 1–6 years old (the group exposed to the highest level of flufenacet residues in both food and water). The DWLOCs for chronic exposure to flufenacet in drinking water calculated for the U.S. population was 136 ppb assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day. The drinking water estimated concentration (DWECs) for groundwater (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old). EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to flufenacet residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Although there is no indication of increased sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptibility of the offspring in function/neurological development. Therefore, EPA has required that a developmental neurotoxicity study be conducted with flufenacet and a threefold safety factor for children and infants will be used in the aggregate dietary acute and chronic risk assessment. Although there is no indication of additional sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factor should not be removed but instead reduced because:

(i) There was no assessment of susceptibility of the offspring in functional/neurological developmental and reproductive studies.

(ii) There is evidence of neurotoxicity in mice, rats, and dogs.

(iii) There is concern for thyroid hormone disruption.

F. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for flufenacet. (James A. Tompkins).

3. FMC Corporation

PP 8F4970

EPA has received pesticide petitions (PP 8F4970) from FMC Corporation, 1735 Market Street,Philadelphia, PA 19103, proposing pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide zeta-cypermethrin (±α-Cyano(3-phenoxyphenyl)methyl (±) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate)in or on the raw agricultural commodity Brassica vegetables, head and stem at 2.0 ppm and Brassica vegetables, leafy at 14.0 ppm; and the leafy vegetables (except Brassica vegetables) group at 10.0 ppmn. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radio labelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for head and stem Brassica vegetables, leafy Brassica greens, and leafy vegetables (except Brassica vegetables) group, show that the proposed zeta-cypermethrin tolerances on Brassica vegetables, head and stemat 2.0 ppm and Brassica vegetables, leafy at 14.0 ppm; and the leafy vegetables (except Brassica vegetables) group at 10.0 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the no-observed-effected label (NOEL) of 3.8 mg/kg/day based on the NOEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/ oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study. This acute dietary end point is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis;CHO/HGPTT mutagen assay; weakly mutagenic: gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following pre- or postnatal exposure to zeta-cypermethrin.

i. A 2-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOEL of 7.0 mg/kg/day and a LOEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOEL for reproductive toxicity was considered to be > 45.0 mg/kg/day the highest dose tested (HDT).

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOEL of 12.5 mg/kg/day and a LOEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the higest dose level tested (HDLT).

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOEL of 100 mg/kg/day and a LOEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the HDLT.

4. *Subchronic toxicity— Short- and intermediate-term toxicity.* The NOEL of 3.8 mg/kg/day based on the NOEL 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short-and intermediate-term MOE calculations (as well as acute, discussed in (1) above). The LOEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study.

5. *Chronic toxicity.* The reference dose (RfD) of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOEL of 7.5 mg/kg/ day.

Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in femalemice; assignment of a Q* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep. For the purposes of assessing the potentialdietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

ii. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOEL of 3.8 mg/kg/ day based on the NOEL of 7.5 mg/kg/ day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.000708 mg/kg/day (MOE of 5364); 99th percentile 0.002677 mg/kg/day (MOE of 1420); and 99.9th percentile 0.012098 mg/kg/day (MOE of 314). The 95th percentile of exposure for all infants <1- year old was estimated to be 0.000264 mg/kg/day (MOE of 14394); 99th percentile 0.00189 mg/kg/day (MOE of 2011); and 99.9th percentile 0.018164 mg/kg/day (MOE of 209). The 95th percentile of exposure for nursing infants <1-year old was estimated to be 0.000026 mg/kg/day (MOE of 147540); 99th percentile 0.000484 mg/kg/day (MOE of 7843); and 99.9th percentile 0.002004 mg/kg/day (MOE of 1896).The 95th percentile of exposure for non-nursing infants < 1- year old was estimated to be 0.000367mg/kg/day (MOE of 10342); 99th percentile 0.005649 mg/kg/day (MOE of 673); and 99.9th percentile 0.019823 mg/kg/day (MOE of 192). The 95th percentile of exposure for children 1 to 6-years old (the most highly exposed population subgroup) and children 7 to 12-years old was estimated to be, respectively, 0.000742 mg/kg/day (MOE of 5120) and 0.00748 mg/kg/day (MOE of 5077); 99th percentile 0.003061 mg/kg/day (MOE of 1241) and 0.002638 (MOE of 1440); and 99.9th percentile 0.031769 mg/kg/day (MOE of 120) and 0.013432 (MOE of 283). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk.* RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOEL of 2.5 mg/kg/day from a cypermethrin rat reproduction

study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOEL of 7.5 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000098 mg/kg body weight/day (mg/kg/bwt/day) and utilize 0.8 % of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1-year) and nursing infants (<1-year) are estimated to be 0.00016 mg/kg/day and 0.00001 mg/kg/day and utilizes 1.3 % and 0.1 % of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000172 mg/kg bwt/day and 0.000092 mg/kg bwt/day and utilizes 1.4 % and 0.7 % of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 % of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<0.001 part per billion (PPB). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 PPB. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

3. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) (FRL 5734-6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology database, the RfD for zeta-cypermethrin is 0.0125 mg/kg/day, based on a NOEL of 2.5 mg/kg/day and a LOEL of 7.5 mg/kg/day from the cypermethrin rat reproduction study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000098 mg/kg/bwt/day and utilize 0.8 of the RfD or the overall U. S. population. The ARC for non-nursing infants (<1-year) and nursing infants (<1- year) are estimated to be 0.00016 mg/kg/day and 0.00001 mg/kg/day and utilizes 1.3 % and 0.1 % of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000172 mg/kg bwt/day and 0.000092 mg/kg bwt/day and utilizes 1.4 % and 0.7 % of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 % of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

For the overall U.S. population, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 5364; 1420 at the 99th percentile; and 314 at the 99.9th percentile. For all infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 14394; 2011 at the 99th percentile; and 209 at the 99.9th percentile. For nursing infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 147540; 7843 at the 99th percentile; and 1896 at the 99.9th percentile. For non-nursing infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 10342; 673 at the 99th percentile; and 192 at the 99.9th percentile. For the most highly exposed population subgroup, children 1- 6 years old, and for children 7-12 years old, the calculated MOEs at the 95th percentile were estimated to be, respectively, 5120 and 5077; 1241 and 1440 at the 99th percentile; and 120 and 283 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children—i. General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin in utero and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the HDT (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOEL in each study; the maternal NOEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study.* In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOEL was 7.0 mg/kg/day and the parental systemic LOEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, HDT.

iv. *Pre- and post-natal sensitivity*—a. *Pre-natal.* There was no evidence of developmental toxicity in the studies at the HDT in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

c. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1 % of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

3. *Subchronic toxicity— Short- and intermediate-term toxicity.* The NOEL of 3.8 mg/kg/day based on the NOEL 7.5 mg/kg/day from the cypermethrin toxicity/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (E.1.) above). The LOEL of this study of 50.0 mg/kg/day was based on neurological signs observed in the first week of the study.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on Brassica, head and stem vegetables; Brassica, leafy vegetables; and leafy vegetables (except Brassica vegetables) group. (Stephaine Willette).

[FR Doc. 98–16673 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6114–3]

Proposed CERCLA Prospective Purchaser Agreement and Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement Agreement for the Ingram-Richardson Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of CERCLA Prospective Purchaser Agreement and Proposal of CERCLA section 122(h)(1) Administrative Cost Recovery Settlement Agreement for the Ingram-Richardson site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, notification is hereby given that a proposed Agreement and Covenant Not to Sue (Agreement) for the Ingram-Richardson Site (the Site) located near Frankfort, in Clinton County, Indiana, has been executed by Clinton County, Indiana (the County), Frankfort Market Place, Inc. (Frankfort Market Place), and Kelly Strange (Mr. Strange). The proposed Agreement has been submitted to the Attorney General for approval. The proposed Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against the County, as the prospective purchaser of the Site. The proposed Agreement also would resolve the potential liability of Frankfort Market Place and Mr. Strange (who are alleged to be past and current owners and operators of the Site) under CERCLA section 107 for certain past response costs incurred in connection with the Site, pursuant to the administrative cost recovery settlement authority conferred by CERCLA section 122(h)(1), 42 U.S.C. 9622(h)(1).

The components of the proposed Agreement relating to the County would require the County to pay $7,500 to the United States and to demolish unusable buildings on the Site before redeveloping the Site for use as a residential treatment center for juveniles. The United States would remove the CERCLA lien currently placed on the Site property.

The components of the proposed Agreement relating to Frankfort Market Place and Mr. Strange provide that: (1) Frankfort Market Place and Mr. Strange will pay $7,500 to the United States, to be applied toward more than $2.789 million in unreimbursed past response costs incurred in connection with removal action undertaken at the Site; (2) Frankfort Market Place and Mr. Strange will convey their ownership interest in the Site to the County, at no cost to the County; and (3) the United States will grant Frankfort Market Place and Mr. Strange a covenant not to sue for past response costs incurred in connection with the removal action (and will dismiss without prejudice a pending, unanswered civil judicial complaint filed by the United States against Frankfort Market Place under CERCLA section 107), and those parties will obtain contribution protection as provided by CERCLA sections 113(f)(2) and 122(h)(4) upon satisfactory completion of their obligations under the Agreement.

The Site is not on the NPL, and no further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed Agreement must be received by July 23, 1998.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Karen Peaceman at (312) 353–5751 prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Karen Peaceman, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard, (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Karen Peaceman at (312) 353–3751 of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement. Comments should be sent to the addressee identified in this document.

Doug Ballotti,

Acting Director, Superfund Division, Region 5.

[FR Doc. 98–16670 Filed 6–22–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

June 16, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form No.: FCC 349.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 875.

Estimated Hours Per Response: 16 hours (4 hours respondent, 1.5 hours contract attorney, 10.5 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $2,492,000.

Estimated Total Annual Burden: 3,500.

Needs and Uses: FCC 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. The data is used by FCC staff to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services.

OMB Approval No.: 3060–0662.

Title: Section 21.930, Five year build-out requirements.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 493.

Estimated Hours Per Response: 4 hours (1 hour respondent, 3 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $184,975.

Estimated Total Annual Burden: 493.

Needs and Uses: A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area. Section 21.930(c) requires the Basic Trading Area (BTA) holder to file with the Commission a demonstration that the holder has met construction requirements. This demonstration must be filed sixty days prior to the end of the five year build-out period. These filings will not occur until FY 2001. (The certification of completion of construction (FCC 304–A) required by Section 21.930(a)(3) has separate OMB approval under control number 3060–0664.) The data is used by FCC staff to determine if the BTA holder has met its construction requirements and to ensure that service is promptly delivered to the public. The Commission will issue a declaration that the holder has met the construction requirements.

OMB Approval No.: 3060–0660.

Title: Section 21.937, Negotiated Interference Protection.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 75.

Estimated Hours Per Response: 30 hours (6 hours respondent, 8 hours contract attorney, 16 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $270,000.

Estimated Total Annual Burden: 450 hours.

Needs and Uses: Under Section 21.937, the level of acceptable electromagnetic interference that occurs at or within the boundaries of an adjacent Basic Trading Area (BTA), partitioned service area or an incumbent MDS station's protected service area, can be negotiated and established with the written consent of the affected licensee. Thus, Section 21.937 permits negotiated interference agreements among these parties. These written agreements must be submitted to the Commission within thirty days of ratification. (These agreements are often included with the submission of the FCC 304 attached as Exhibits.) These agreements allow the parties to establish acceptable levels of interference based on the design of their stations and service needs. These agreements are the most effective means of regulating interference and they provide flexibility in designing MDS systems.

OMB Approval No.: 3060–0657.

Title: Section 21.956, Filing of long-form applications or statements of intention.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 2.

Estimated Hours Per Response: 3.0 hours (1.0 hour respondent, 2 hours consulting engineer).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $900.

Estimated Total Annual Burden: 2 hours.

Needs and Uses: Where the Basic Trading Area (BTA) is so heavily encumbered that the winning bidder is unable to file a long-form application for a station within the BTA while protecting incumbents from harmful interference, the winning bidder must file a statement of intention of use of the BTA in accordance with Section 21.956. This statement of intention must identify all incumbents and describe in detail its plan for obtaining the authorized/proposed MDS stations within the BTA. This statement must also include the exhibits detailed in 21.956(b). The long-form application (FCC 304) has separate OMB approval under control number 3060–0654. The data is used by FCC staff to determine whether to grant a BTA authorization.

OMB Approval No.: 3060–0654.

Title: Application for a Multipoint Distribution Service Authorization.

Form No.: FCC 304.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 500.

Estimated Hours Per Response: 19 hours (1 hour respondent, 16 hours consulting engineer, 2 hours contract attorney).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $1,495,000.

Estimated Total Annual Burden: 500 hours.

Needs and Uses: The FCC 304 will be used by existing MDS operators to modify their stations or to add a signal booster station. It will also be used by some winning bidders in the competitive bidding process to propose facilities to provide wireless cable service over any usable MDS channels within their Basic Trading Area (BTA). The Commission has revised the FCC Form 304 to further streamline the application process and to accommodate electronic filing. This collection of information also includes the burden for the technical rules involving the interference or engineering analysis and service requirements under Sections 21.902, 21.913 and 21.938. These analyses will not be submitted with the application but will be retained by the operator and must be made available to the Commission upon request. The data is used by FCC staff to ensure that the applicant is legally, technically and otherwise qualified to become a Commission licensee. MDS/ITFS applicants/licensees will need this information to perform the necessary analyses of the potential for harmful interference to their facility.

OMB Approval No.: 3060–0664.

Title: Certification of Completion of Construction for a Multipoint Distribution Service Station.

Form No.: FCC 304A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 300.

Estimated Hours Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Estimated Total Annual Burden: 150 hours.

Needs and Uses: The FCC 304A will be used to certify that the facilities as authorized in the FCC 304 have been completed and that the station is now operational, ready to provide service to the public. The Commission has revised the FCC Form 304 to further streamline the application process and to accommodate electronic filing. Each license will specify as a condition that upon the completion of construction, the licensee must file with the Commission an FCC 304A, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public. The conditional license shall be automatically forfeited upon the expiration of the construction period specified in the license unless within 5 days after that date an FCC 304A has been filed with the Commission.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16629 Filed 6–22–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

June 17, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission.

OMB Control No.: 3060–0813.

Expiration Date: 6/30/2001.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Estimated Annual Burden: 194,457 annual hours; 15 minutes - 12 hours per response; 125,996 responses. This collection contains various reporting and third party requirements that range in estimated completion time.

Description: The Commission is placing several burdens on the wireless E911 industry and on government entities and phone systems. Most of these are one time rather than ongoing requirements, and are minimal to ensure the rapid implementation of the technologies needed to bring emergency help to wireless callers throughout the United States. In establishing these requirements, the Commission balanced consumers' need for dependable, speedy access to 911 services with carriers' need for flexibility in providing emergency services. The actions were taken in response to concerns raised by the initial Report and Order.

OMB Control No.: 3060–0690.

Expiration Date: 6/30/2001.

Title: Rules Regarding 37.0–38.6 GHz and 38.6–40.0 GHz Bands.

Form No.: FCC 402 and FCC 494.

Estimated Annual Burden: 210,318 annual hours; 30 minutes to 20 hours per respondent; 13,905 responses. The Commission estimates that approximately 25% of the respondents will hire consultants to prepare this information.

Description: The information is used by the Commission staff to provide adequate point-to-point microwave spectrum, which will facilitate provision of communications infrastructure for commercial and private mobile radio opeations and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16630 Filed 6–22–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Atlantic Oversees Express Inc., 2550 NW 72 Avenue, Suite 100, Miami, FL 33122, Officers: Jorge E. Gomez, President, Lourdes Leon, Vice President

Dated: June 17, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16631 Filed 6–22–98; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on August 27, 1998, from 8:00 am to 5:00 pm and on August 28, 1998 from 8:00 am to 3:00 pm. The meeting will take place in the Ticonderoga Room of the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey, NW., Washington, DC. 2001. The meeting will be entirely open to the public.

The Committee will consider potential barriers to the evolution from human- to recombinant-based blood products. On August 27, 1998 the committee will review information presented to it by representatives of consumers, industry and government agencies. At the conclusion of these presentations, the public will be invited to comment. Following these presentations, the Committee will consider what, if any, recommendations to make to the Department on this matter.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comment.

An attempt will be made to schedule future meetings of the Advisory Committee on Blood Safety and Availability on the last Thursday and Friday of January, April and August in 1999.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–6584 e-mail SNIGHTIN@osophs.dhhs.gov.

Dated: June 15, 1998.

Stephen D. Nightingale, MD.,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 98–16604 Filed 6–22–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Information Collection from applicants who will respond to Request for Applications for funding of 6 OCS competitive grants.

OMB No.: 0970–0062.

Description: The Office of Community Services is requesting approval to continue the use of its program announcements to collect information which will enable the agency to determine which projects to fund and the amount of the grant awards. The programs covered include: Community Food and Nutrition; Discretionary Grants Program; Low Income Home Energy Assistance Program; Job Opportunities for Low-Income Individuals; Training and Technical Assistance and Capacity Building; and Family Violence Prevention and Services Program.

Information collected from the requirements contained in these 6 program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants.

The applications forms that will be used contain information for competitive review in accordance with the program announcements' guidelines. The data provided is necessary to compute the amount of the grant in relation to proposed project activities by the ACF Grant Officers.

OMB recommended that ACF submit one information collection package covering all OCS program announcements, since the same application form is used in each announcement. This information collection was last approved in 1995 and is due to expire September 30, 1998. Since the last approval, the Demonstration Partnership Program no longer exists. Therefore, this request covers 6 programs, rather than the 7 programs previously covered.

Respondents: Not-for-profit institutions.

Instrument	Estimated number of respondents	Number of responses per respondent	Average burden hours per	Total burden hours
CFN Announcement	250	1	10	2500
LIHEAP Announcement	10	1	24	240
Community Economic Dev. Announcement	200	1	35	7000
JOLI Announcement	150	1	40	6000
CSBG T&TA Announcement	25	1	24	600
Family Violence Announcement	100	1	40	4000

Estimated Total Annual Burden: 20,340.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW,

Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–16627 Filed 6–22–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0436]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)2-ethylhexyl phosphite as an antioxidant and/or stabilizer in high density polyethylene articles intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–15), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4599) has been filed by Asahi Denka Kogyo K.K., c/o Japan Technical Information Center, Inc., 775 S. 23d St., Arlington, VA 22202. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)2-ethylhexyl phosphite as an antioxidant and/or stabilizer in high density polyethylene articles intended for contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 11, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–16622 Filed 6–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240]

Erythrityl Tetranitrate; Drug Efficacy Study Implementation; Revocation of Exemption; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption that has allowed single-entity coronary vasodilator drug products containing erythrityl tetranitrate to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. FDA is announcing that the products lack substantial evidence of effectiveness and is offering an opportunity for a hearing on a proposal to withdraw approval of any applicable new drug applications (NDA's) or abbreviated new drug applications (ANDA's).

DATES: The revocation of exemption is effective June 23, 1998; requests for hearings are due on or before July 23, 1998; data in support of hearing requests are due on or before August 24, 1998.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 1786 and directed to the attention of the appropriate office named below.

A request for a hearing, supporting data, and other comments are to be identified with Docket No. 77N–0240 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

A request for an opinion on applicability of this notice to a specific product should be directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Under the agency's Drug Efficacy Study Implementation (DESI) program, the National Academy of Sciences/National Research Council (NAS/NRC) evaluated the effectiveness of certain coronary vasodilators. Based on NAS/NRC's recommendations, FDA classified the coronary vasodilators as probably and possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks. This classification was announced in the **Federal Register** of February 25, 1972 (37 FR 4001).

In a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), FDA temporarily exempted the single-entity coronary vasodilators covered by the DESI program from the time limits established for completing the program (Paragraph XIV, Category I exemption). FDA granted this exemption to allow manufacturers additional time to conduct clinical studies to determine effectiveness of the drugs for prevention of anginal attacks. In the August 26, 1977, notice, FDA added certain dosage forms of erythrityl tetranitrate (not included in the Drug Efficacy Study but regarded as related drugs) to the Paragraph XIV, Category I exemption.

The exemption notices established conditions for marketing the single-entity coronary vasodilators pending FDA's conclusions about the products. FDA required that each manufacturer conduct bioavailability studies on its own product(s) and that at least one manufacturer conduct clinical effectiveness studies for each chemical entity to which the same effectiveness conclusions would ultimately apply. An

ANDA was required for marketing of products not the subject of an NDA; such products were to be conditionally approved, pending the results of ongoing studies. Conditionally approved ANDA's were given the same status as the "deemed approved" NDA's under review in the DESI program, i.e., safe but not proven effective (42 FR 43127 and 43129).

The following applications for erythrityl tetranitrate received conditional approval under the terms of the exemption notices:

1. ANDA 86–194; Cardilate Chewable Tablets containing 10 milligrams (mg) erythrityl tetranitrate per tablet; Glaxo Wellcome (formerly Burroughs Wellcome), 3030 Cornwallis Rd., P.O. Box 12700, Research Triangle Park, NC 27709–2700.

2. ANDA 86–203; Cardilate Tablets containing 5, 10, or 15 mg of erythrityl tetranitrate per tablet; Glaxo Wellcome.

In response to the exemption notices, the then Burroughs Wellcome Co. submitted efficacy data on its erythrityl tetranitrate products, but later requested in separate letters that FDA withdraw approval of ANDA's 86–194 and 86–203, stating that the marketing of the products had been discontinued. FDA withdrew approval of ANDA 86–194 in the **Federal Register** of February 13, 1996 (61 FR 5562 at 5563). FDA considers the requests for withdrawal of the ANDA's to also constitute requests for withdrawal of the efficacy data. Accordingly, FDA is now proposing to withdraw approval of the applications based on lack of substantial evidence of effectiveness.

II. Revocation of Exemption

According to FDA's records, no person other than Glaxo Wellcome has submitted data or expressed an intention to perform clinical studies on single-entity erythrityl tetranitrate, and it is now reclassified to lacking substantial evidence of effectiveness. The temporary exemption, as it pertains to the drug, is revoked.

No other single-entity coronary vasodilators remain exempt under the Paragraph XIV, Category I exemption, and Category I is now dissolved.

III. Notice of Opportunity for a Hearing

On the basis of all the data and information available to her, the Director of the Center for Drug Evaluation and Research is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 355) and 21 CFR 314.126, that demonstrates effectiveness of single-entity erythrityl tetranitrate.

Notice is given to the holder of any NDA or ANDA for single-entity erythrityl tetranitrate, to manufacturers or distributors of the drug, and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act withdrawing approval of any NDA or ANDA and all amendments and supplements thereto providing for single-entity erythrityl tetranitrate and its indication relating to the management, prophylaxis, or treatment of anginal attacks. The Director of the Center for Drug Evaluation and Research finds that new information before her with respect to the drug, evaluated together with the evidence available to her when applications were approved under the exempting notices, shows that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice applies to any person who manufactures or distributes a drug product containing single-entity erythrityl tetranitrate that is not the subject of an approved NDA and that is identical, related, or similar as defined in § 310.6 (21 CFR 310.6). It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Prescription Drug Compliance and Surveillance (address above).

This notice of opportunity for a hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in § 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962 (Pub. L. 87–781), or for any other reason.

In accordance with section 505 of the act and the regulations issued under it (21 CFR parts 310 and 314), an applicant and all other persons subject to this notice are hereby given a opportunity for a hearing to show why approval of any applicable NDA's or ANDA's should not be withdrawn.

An applicant or any other person subject to this notice who decides to seek a hearing shall file: (1) On or before July 23, 1998, a written notice of appearance and request for a hearing, and (2) on or before August 24, 1998, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing, as specified in § 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in §§ 314.150 and 314.200, and in 21 CFR part 12.

The failure of an applicant or any other person subject to this notice to file a timely written notice of appearance and request for a hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug product(s). Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the

Center for Drug Evaluation and Research (21 CFR 5.70 and 5.82).

Dated: May 28, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–16578 Filed 6–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 FR 34247, dated September 6, 1984, is amended to include the following delegation of authority from the Secretary to the Administrator, HCFA, for carrying out Title XXVII, of the Public Health Service Act, as amended.

• Section F.30., Delegations of Authority is amended by adding the following paragraph.

UU. The authority vested in the Secretary by Title XXVII of the Public Health Service Act, as amended by the Health Insurance Portability and Accountability Act of 1986, Public Law 104–191.

This delegation shall be exercised under the Department's policy on regulations. In addition, I hereby affirm and ratify any actions taken by the Administrator or other HCFA officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective immediately.

Dated: June 11, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16592 Filed 6–22–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Biologic Specimen-Based Study of Dietary Measurement Error for Nutritional Epidemiology and Surveillance

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Biologic specimen-based study of dietary measurement error for nutritional epidemiology and surveillance. *Type of Information Collection Request:* New. *Need and use of Information Collection:* The agency conducts and funds studies examining the relationship between diet and chronic diseases. The study will collect, on a sample of 400 free-living men and women, 40–69 years of age, two 24-hour dietary recalls, two food frequency questionnaires, a physical activity questionnaire, a dietary screener questionnaire, and an opinion form. Respondents will receive a dose of doubly labeled water and provide spot urine samples to measure energy expenditure, will collect two 24-hour urines to measure urinary nitrogen, and provide blood samples to measure biochemical measures of dietary intake. The data will be used to assess the magnitude and structure of dietary measurement error in dietary surveillance and nutritional epidemiologic studies. *Frequency of response:* One-time study. *Affected public:* Individuals or households. *Types of Respondents:* U.S. adults 40–69 years of age. The annual reporting burden is as follows:

Data collection	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total hour burden	Estimated total annual burden hours requested
Screener	400	1	0.167	67	67
24-hour recall #1	400	1	.5	200	200
24-hour recall #2	400	1	.5	200	200
Food frequency questionnaire #1	400	1	1	400	400
Food frequency questionnaire #2	400	1	1	400	400
Physical activity questionnaire	400	1	.25	100	100
Opinion forms	400	1	.25	100	100
Dietry screener questionnaire	400	1	.167	67	67
Dosing with DLW/initial urine collections	400	1	4	1600	1600
Spot urine collections	400	1	0.25	100	100
Spot hr urine collection #1	400	1	.167	67	67
24-hr urine collection #2	400	1	.167	67	67
Blood collection	400	1	.25	100	100
Total	400	1	.67	3,468	3,468

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Amy F. Subar, Ph.D., Project Officer, National Cancer Institute, EPN 313, 6130 EXECUTIVE BLVD MSC 7344, BETHESDA MD 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to amy__subar@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before August 21, 1998.

Dated: June 5, 1998.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 98–16586 Filed 6–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 1998.

Time: 1:00 PM to 2:00 PM

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Jean G. Noronha, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 22, 1998.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

(Catalogue of Federal Domestic Assistance Program No.s 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16585 Filed 6–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1998.

Time: 8:30 am to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel George, 15 E Street, NW., Washington, DC 20001.

Contact Person: Jean G. Noronha, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 23, 1998.

Time: 10:00 AM TO 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 26, 1998.

Time: 11:00 AM TO 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16587 Filed 6–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of

the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer on (301)443–7978.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This notice is a re-publication that reflects inclusion of a revised tobacco module that has been determined necessary since the initial publication of a 60-day public comment notice for the 1999 National Household Survey on Drug Abuse on June 3 (63 FR 30244).

Proposed Project

1999 National Household Survey on Drug Abuse—(0930–0110)—Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1999, the tobacco component of the core questionnaire will be revised and expanded to permit a more comprehensive set of data on tobacco product use, including information on usual brand.

The sample size of the survey will also be expanded to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 97,200 hours as shown below:

	No. of respondents	No. of responses per respondent	Average burden per response (hours)	Total burden (hours)
Household Screener	263,991	1	0.05	13,200
NHSDA Questionnaire	70,000	1	1.20	84,000
Total				97,200

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 15, 1998.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–16616 Filed 6–22–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that between August 20, 1997, and June 1, 1998, Region 1 of the Fish and Wildlife Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Each permit was granted only after the Service determined that the application had been submitted in good faith; that all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and that the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969. Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include a Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement.

Name of permittee	Permit No.	Issuance date
Kern Water Bank Authority	828086	10/2/97
Contra Costa County Public Works Department	833486	10/6/97
Kern County Waste Management Department	830963	10/24/97
John Laing Homes (California), Incorporated	835424	10/29/97
City of Sacramento	823773	12/31/97
SunCal Companies	839428	2/13/98
E.L. Yeager Construction Company	839580	2/23/98
San Diego County	840414	3/16/98
LAMCO, Incorporated	842272	5/6/98
Corrections Corporation of America	842781	5/17/98

ADDRESSES: Individuals wishing copies of any of the above permits and associated decision documents should contact the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, 4th Floor East, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Laura Hill, Fish and Wildlife Biologist, at the above address; telephone (503) 231–6241.

Dated: June 8, 1998.

Thomas J. Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–16621 Filed 6–22–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc	Exploration	June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specific Activities (58 FR 60402; November 26, 1993); modified and extended (60 FR 42805; August 17, 1995).

Dated: June 11, 1998.

David B. Allen,

Regional Director.

[FR Doc. 98–16306 Filed 6–22–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1620–00]

Closure of a Road on Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order for a road in Fremont County, CO.

SUMMARY: Notice is hereby given that, effective June 25, 1998, the BLM non-system road between the Upper and Lower Grape Creek Wilderness Study Areas will be closed to all types of motorized vehicle access and travel. The purpose of this closure is to prevent further disturbance to soils and vegetation in and near the riparian area, reduce sedimentation into Grape Creek and reduce the development of unauthorized user-created trails into the Upper and Lower Grape Creek Wilderness Study Areas. Authority for this action is found in 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976. The 3 mile (approximate) road closure is specifically identified as follows: Fremont County, Colorado.

Begin closure on the BLM system road 6227, located approximately 2/10 of a mile east of Grape Creek in T 20S, R71W Section 8. The road closure continues in a westerly direction along the BLM non-system road through section 7 and T 20S, R72W Sections 12 and 11, and ends at the public/private boundary on the north boundary of the NE of the NE of Section 11.

DATES: Effective June 25, 1998 and shall remain in effect unless revised, revoked, or amended.

ADDRESSES: Bureau of Land Management, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi Deike, Area Manager or Diana Kossnar, Outdoor Recreation Planner at the Royal Gorge Resource Area at the above address and phone number.

SUPPLEMENTARY INFORMATION: This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine and/or imprisonment as defined in 43 CFR 8340 and subparts thereof. A copy of this **Federal Register** Notice and a map of the road closure is posted in the Canon City District Office.

Donnie R. Sparks,

District Manager.

[FR Doc. 98–16660 Filed 6–22–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–05–3809–00; AZA 29237]

Notice of Availability of Draft Environmental Impact Statement for the Proposed Yarnell Mining Project, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability and Notice of Public Hearings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environment Policy Act of 1969, the Bureau of Land Management, Phoenix Field Office, has prepared a draft environmental impact statement (DEIS) that describes the impacts of a proposed surface gold mine and ore processing facility, known as the Yarnell Mining Project, that would be located on public, private, and state lands near the town of Yarnell in Yavapai County in central Arizona.

DATES: The DEIS is available for public review and comment for the next 60 days. Written comments on the DEIS must be postmarked on or before August 25, 1998. Public hearings will be held on July 28, 29, and 30, 1998, at the times and locations listed under Supplementary Information.

ADDRESSES: Written comments should be sent to the Project Manager for the Yarnell Mining Project EIS, Bureau of Land Management, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Connie Stone, EIS Project Manager, (602) 580–5517.

SUPPLEMENTARY INFORMATION: The DEIS was prepared in response to a proposed mining plan of operations submitted by the Yarnell Mining Company, a subsidiary of Bema Gold (U.S.) Inc. The impact analysis in the DEIS includes proposed mitigation measures and alternatives to the proposed project. The Environmental Protection Agency,

Region IX, is serving as a cooperating agency.

Description of the Proposed Action

The proposed project facilities would include an open pit mine, two waste rock dumps, ore crushing and cyanide heap leaching facilities, laboratories, an office, and a water supply system of four wells or well fields and two pipelines. Facilities would be constructed on 118 acres of BLM-administered land, 75 acres of private land, and 8 acres of state land that would be part of the water supply system. The mine would operate for 6 years, followed by a 7-year period of closure and reclamation.

Alternatives Analyzed

The following three alternatives to the proposed action were analyzed: (1) No Action alternative; (2) Alternative 2—Elimination of the South Waste Rock Dump and Consolidation of Waste Rock Into the North Waste Rock Dump; and (3) Alternative 3—Elimination of the North Waste Rock Dump and Consolidation of Waste Rock Into the South Waste Rock Dump.

Other Relevant Information

Copies of the DEIS have been mailed to all individuals and organizations that requested them, and executive summaries have been mailed to all on the project mailing list. A copy of the DEIS or summary may be obtained upon request by contacting Connie Stone at the BLM Phoenix Field Office. PublicUnited States reading copies are also being kept at the BLM Phoenix Field Office, the BLM Arizona State Office (222 N. Central Avenue in Phoenix), and the Public Libraries in Yarnell, Wickenburg, and Prescott.

Public Hearings

Three public hearings will be held, the location and schedules for which are as follows:

July 28, 1998, 6:00 to 9:00 p.m., at the Wickenburg Community Center, 160 N. Valentine St., Wickenburg, Arizona.

July 29, 1998, 4:00 to 8:00 p.m., at the Yarnell Senior Center, 136 Broadway St., Yarnell, Arizona.

July 30, 1998, 6:00 to 9:00 p.m., at the Prescott Resort Conference Center, 1500 Highway 69, Prescott, Arizona.

Public Input Requested

Comments on the alternatives and the adequacy of the impact analyses are most useful when they address one or more of the following:

- Errors in the analysis,
- New information affecting the analysis,
- Misinformation that could affect the outcome of the analysis,
- Requests for clarification,
- A substantive new alternative that differs from any of the existing alternatives.

Dated: June 17, 1998.

Michael A. Taylor,

Field Manager.

[FR Doc. 98–16617 Filed 6–22–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 86–128 for certain transactions involving employee benefit plans and securities broker-dealers. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 24, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

I. Background

Prohibited Transaction Class Exemption 86–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by the insurance companies. In the absence of the exemption, certain aspects of these transactions might be prohibited by section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because without the relief provided by this exemption, broker-fiduciaries who provide research and investment management services to accounts for which they also effect transactions for the purchase or sale of

securities, may be barred by ERISA from providing these combined services to employee benefit plans. Without this exemption, these sales could not continue, causing disruption of the existing business practices of plans and the businesses that service them.

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption two information collection requirements. The first requirement is to provide the independent fiduciary with either confirmation slips for each individual transaction or to provide quarterly reports. In the quarterly report the broker-fiduciary must provide certain financial information including the total of all transaction related charges incurred by the plan. The second requirement calls for the annual reporting of transaction charges incurred by the plan as the amount of such charges paid to other persons. Furthermore, the annual report must contain some measure of portfolio turnover.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Class Exemption 86–128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0059.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 163,562.

Average Time Per Response: 10 minutes to 15 minutes.

Total Responses: 286,232.

Frequency of Response: Quarterly; Annually.

Total Annual Burden: 64,743 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 16, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16644 Filed 6–22–98; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, June 25, 1998.

PLACE: Board Conference Room, Eighth Floor, 1120 Vermont Avenue, N.W., Washington, D.C., 20419.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Agency caseload and case processing.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: June 18, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–16729 Filed 6–18–98; 4:41 pm]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Visual Arts Section (Creation & Presentation Category) to the National Council on the Arts will be held on July 28–31, 1998. The panel will meet from 9:00 a.m. to 5:30 p.m. on July 28–30, and from 9:00 a.m. to 4:00 p.m. on July 31, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 3:00 to 5:30 p.m. on July 30, will be open to the public for a policy discussion on community, state, and field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on July 28 and 29, from 9:00 a.m. to 3:00 p.m. on July 30, and from 9:00 a.m. to 4:00 p.m. on July 31, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4)(6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 17, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–16595 Filed 6–22–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 30, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6899A Railroad Accident Report—Collision and Derailment between Union Pacific Railroad Freight Trains MKSNP–01 and ZSEME–29 near Delia, Kansas, July 2, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: June 19, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–16834 Filed 6–19–98; 3:28 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00018, License No. Kentucky 201–431–51 EA 98–021]

Ground Engineering and Testing Service, Inc.; Louisville, Kentucky; Order Imposing Civil Monetary Penalty

I

Ground Engineering and Testing Service, Inc. (Licensee) is the holder of Kentucky Materials License No. 201–431–51 which was amended on November 29, 1994. The license authorizes the Licensee to possess and use licensed sealed sources in portable gauges for measurement of the properties of construction materials at temporary job sites anywhere in the Commonwealth of Kentucky.

II

An inspection of the Licensee's activities was conducted by the NRC on December 12, 1997. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 25, 1998. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters dated April 22 and 23, 1998. In its responses, the Licensee admitted that the violation occurred, but denied that the violation was the result of careless disregard and requested that the civil penalty be mitigated based upon its prompt corrective action.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated, that the amount of the proposed civil penalty should be reduced by $2,750 based upon the Licensee's prompt corrective action, and that a civil penalty in the amount of $2,750 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* that:

The Licensee pay a civil penalty in the amount of $2,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Deputy Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia, 30303.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 15th day of June 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluation and Conclusion

On March 25, 1998, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection conducted on December 12, 1997. Ground Engineering and Testing Service, Inc. (Licensee) responded to the Notice in letters dated April 22 and 23, 1998. The Licensee admitted the violation, but contended that its actions did not represent careless disregard for regulatory requirements, and that its action in response to the violation constituted prompt corrective action warranting credit. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

Restatement of Violation

10 CFR 30.3 requires, in part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States and areas of exclusive federal legislative jurisdiction subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States or areas of exclusive federal legislative jurisdiction shall, at least three days before engaging in each activity, file four copies of NRC Form 241, "Report of Proposed Activities in non-Agreement States," with the Regional Administrator of the Appropriate NRC Regional Office.

10 CFR 150.20(b)(3) requires, in part, that any person engaging in activities in non-Agreement States or areas of exclusive federal legislative jurisdiction shall not, under the general license concerning activities in non-Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph 10 CFR 150.20(a), for more than 180 days in any calendar year.

Contrary to the above, between January 1, 1997 and December 18, 1997, the licensee used licensed materials for a total of 290 days at sites under NRC jurisdiction in West Virginia and Indiana, and in an area of exclusive federal jurisdiction at Fort Knox, Kentucky, without either a specific or general license issued by the NRC and without filing NRC Form 241, as required. The specific sites and periods of usage were as follows:

Month	Days used	Location	Cumulative days in 1997	
January	21	Fort Knox, KY	21	
March	9	Buffalo, WV		30
April	30	Buffalo, WV		60
May	31	Buffalo, WV		91

Month	Days used	Location	Cumulative days in 1997	
June	30	Buffalo, WV		121
July	31	Buffalo, WV		152
August	31	Buffalo, WV 31; Ft. Knox 3	183	
September	30	Buffalo, WV 30; Ft. Knox 7	213	
October	28	Buffalo, WV 28; Ft. Knox 9; Clarksville/Jeffersonville IN.	7	241
November	30	Buffalo, WV 30		271
December	19	Buffalo, WV 19; Ft. Knox 1	290	

This is a Severity Level III violation (Supplement VI).

Civil Penalty—$5,500.

Summary of Licensee's Request for Mitigation

The Licensee admitted that the violation occurred as stated in the Notice, but denied that the violation was the result of careless disregard for NRC requirements and protested the civil penalty of $5,500. In support of its assertion that the violation was not the result of careless disregard, the Licensee explained that the Louisville office, where the violation was identified, had been informed by the corporate office that licensing for non-Agreement States would be obtained prior to initiation of work. However, the corporate office person responsible for obtaining such licenses did not obtain the licenses. The Licensee asserted that this situation resulted from the fact that the corporate office was undergoing a troubled period, but that there had been no willful disregard for NRC requirements. Furthermore, the Licensee noted that any actions required by an NRC license had been completed, and that no effort was made to conceal the use of radioactive equipment at sites requiring an NRC license, and that its compliance in other ways refutes the claim of "careless disregard."

The Licensee also asserted that, contrary to the claim in the Notice that there had been delay in halting use of nuclear gauges, immediately upon determining that an NRC license had not been obtained, it halted all testing with portable nuclear gauges at sites under NRC jurisdiction. According to the Licensee, this constituted appropriate, prompt corrective action warranting credit.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee has provided no new information which would refute a finding of careless disregard. Ground Engineering was aware of the requirement of filing for reciprocity, as evidenced by its having done so in 1995. Moreover, the Licensee was notified by the Commonwealth of Kentucky on September 23, 1997, during a Kentucky inspection, of the need to file for reciprocity or obtain an NRC license prior to conducting operations in areas of NRC jurisdiction. Notwithstanding this notification, Ground Engineering continued to use licensed materials in areas under NRC jurisdiction without an NRC license until December 1997. The finding of careless disregard was based on the fact that Ground Engineering had been given this notice, but did not take sufficient steps to assure that a proper license was obtained. In addition, the Kentucky license was amended in September 1997 to clearly state that it did not authorize operations in areas under exclusive federal jurisdiction. This should have served as an additional reminder of the need to obtain reciprocity or a specific NRC license prior to conducting licensed activities in these areas.

The Licensee's contention that its failure to file for reciprocity resulted from its misplaced reliance upon the corporate office, which was undergoing a troubled period, does not excuse the Licensee from compliance with NRC requirements. If fact, its knowledge that the corporate office was undergoing a period of upheaval should have alerted it to the fact that it needed to confirm that the proper license for conducting licensed activities had been obtained.

With regard to the Licensee's claim that its corrective action warranted credit, the NRC's conclusion that the Licensee's corrective action was not prompt was based on the belief that the licensed material continued to be used until December 18, 1997. However, in its responses, the Licensee provided new information to the NRC which indicates that on December 12, 1997, after the Licensee was informed by the NRC of the violation, all operations at the Buffalo, West Virginia site were suspended and the gauge was placed in locked storage. Based upon this new information, the NRC has determined that the Notice should be revised to reflect that you used licensed material between January 1 and December 12, 1997, rather than the previously cited period of time, January 1 through December 18, 1997. In addition, we have also determined that credit is warranted for your prompt corrective action.

NRC Conclusion

The NRC has concluded that an adequate basis for retracting a finding of careless disregard was not provided. However, the NRC has determined that the Licensee provided an adequate basis for mitigating the civil penalty in light of its prompt corrective action. Consequently, the proposed civil penalty in the amount of $5,500 should be mitigated to $2,750 and should be imposed.

[FR Doc. 98–16646 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–22234–SP ASLBP No. 98–745–01–SP]

Randall L. Herring; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Randall L. Herring

(Denial of Reactor Operator's License Application)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2 Subpart L of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a denial by NRC Staff of Mr. Herring's reactor operator's license application and Mr. Herring's request for a hearing pursuant to 10 CFR Section 2.103.

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR § 2.722, the Presiding Officer has appointed Administrative Judge Richard F. Cole to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Cole in accordance with § 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 16th day of June 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–16639 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its August 4, 1995, application for proposed amendment to Facility Operating License No. DPR–58, for the Donald C. Cook Nuclear Plant, Unit Nos. 1, located in Berrien County, Michigan.

The proposed amendment would have revised the technical specifications to allow for repair of hybrid expansion joint sleeved steam generator tubes.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 29, 1997 (62 FR 4351). However, by letter dated January 6, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 4, 1995, and the licensee's letter dated January 6, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 15th day of June 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16650 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its November 16, 1994 application for proposed amendment to Facility Operating License Nos. DPR–58 and DPR–74, for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment would have revised the technical specifications to reduce the decay time required before refueling operations could begin.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 21, 1994 (59 FR 65816). However, by letter dated January 27, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 16, 1994, and the licensee's letter dated January 27, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 15th day of June 1998.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16651 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–31174, License No. 07–28386–01, EA NO. 98–061]

Koch Engineering Company, Inc., Newark, Delaware; Order Imposing a Civil Monetary Penalty

I

Koch Engineering Company, Inc. (Licensee) is the holder of Byproduct Materials License No. 07–28386–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on July 24, 1989, and most recently renewed by the NRC on August 28, 1995. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at its facilities in Newark, Delaware, Canton, Michigan, and temporary job sites anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction.

II

A special inspection of the Licensee's activities was conducted on September 15, 1997, to review the circumstances associated with an event involving the shipment of a package of radioactive material (3 cesium-137 sources) via Federal Express from the Licensee's facility in Newark, Delaware to Wilmington, North Carolina. The package was empty upon arrival in North Carolina, and the sources were later found at a Federal Express facility in Memphis, Tennessee. The NRC inspection was continued in the Region I office on January 20, 1998, to review evaluations of doses received by Federal Express workers as a result of the event. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 13, 1998. The Notice states the nature of the violations, the provisions of the NRC requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters, dated April 8 and 9, 1998. In its responses, the Licensee admits the violations, but disputes the Severity Level of the violation that resulted in the issuance of the civil penalty and requests that the proposed penalty of $4,400 be reconsidered.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee has not provided an adequate basis for reducing the Severity Level of the violation or for withdrawal of the civil penalty associated with this violation. Therefore, a civil penalty in the amount of $4,400 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $4,400 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Deputy Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, MD, this 12th day of June 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluations and Conclusion

On March 13, 1998, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Koch Engineering Company, Inc. (Licensee) for violations identified during NRC review of the circumstances associated with an event involving the shipment of a package containing 3 cesium-137 sources from the Licensee's facility in Newark, Delaware to Wilmington, North Carolina. The package was empty upon arrival in North Carolina, and the sources were later found at a Federal Express facility in Memphis, Tennessee. The Licensee responded to the Notice in letters, dated April 8 and 9, 1998. In its responses, the Licensee admits the violations, but disputes the Severity Level of the violation for which a civil penalty was assessed and requests the NRC reconsider the proposed civil penalty of $4,400. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of the Violation

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 173.475 requires, in part, that before each shipment of any radioactive materials package, the offeror must ensure, by examination or appropriate tests, that each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects.

Contrary to the above, prior to September 15, 1997, the licensee had failed to ensure, by examination or test, that each closure device was properly installed, secured, and free of defects before each shipment of packages containing radioactive material. Specifically, the licensee did not ensure that the Master Lock No. 175 padlock attached to the packages were examined or tested in that the individual responsible for installing the padlock did not pull on the lock after it was closed to ensure that it was secure.

This is a Severity Level II violation (Supplement VI). Civil Penalty—$4,400

Summary of the Licensee's Response

The Licensee admits the violation, but contends that the criteria used to classify the violation at Severity Level II are not applicable, because it believes that it is possible that the loss of control of radioactive material could have resulted from inappropriate handling by the carrier (Federal Express) and that the violation did not result in a clear potential for a member of the public to receive more than 100 mrem to the whole body.

The Licensee agrees that the violation may have been the probable cause for the "loss of control of radioactive material via a breach in the package's integrity," but it believes that the inappropriate handling by the carrier's hazmat personnel may have also been a contributing factor. The Licensee contends that the package was offered to the carrier with the lock and two electrical tie wraps installed and that inappropriate handling by the carrier, such as a substantial drop from a height of greater than 4 feet, may have resulted in the initial lock failure and subsequent loss of the three sealed sources from the container. Additionally, the Licensee contends that the carrier's hazmat employee, who first noticed the opened empty container, did not follow proper procedures when he/she placed the lid back on the container and allowed the container to proceed, rather than immediately reporting the incident to his/her supervisor.

Based on the regulatory criteria specified in 49 CFR, the Licensee contends that regulations required that its package should have only been in the care of individuals classified as "hazmat employees" during all stages of the shipping process. The Licensee also states that the regulations require that hazmat employees be trained concerning "methods and procedures for avoiding accidents, such as the proper procedures for handling packages of hazardous material." Therefore, the Licensee contends that, while the carrier is not regulated by the NRC, the carrier's actions should be considered when determining accountability.

The Licensee also contends that the violation did not result in a "clear potential for a member of the public to receive more than 100 mrem to the whole body," noting that the regulations required that their radioactive material shipment only be handled by trained hazmat employees. The Licensee contends that the carrier's hazmat employees are not considered members of the public while performing hazmat duties because they receive

"occupational dose." Additionally, the Licensee notes that the incident occurred at the end of the film badge reporting period and there is no supportive evidence that all of the 90 mrem received by the worker was the direct result of the incident. Therefore, the Licensee maintains that there was no clear potential for a member of the public to receive more than 100 mrem to the whole body.

Finally, the Licensee notes that while the NRC's March 13, 1998 Notice stated that the Licensee's corrective actions were prompt and comprehensive, it was not clear whether credit for such actions was considered in assessing the amount of the civil penalty.

NRC's Evaluation of the Licensee's Response

The NRC does not dispute the Licensee's contention that inappropriate handling by the carrier's hazmat personnel may have contributed to the loss of control of radioactive material. At a minimum, proper action when the lid was found unattached could have minimized the amount of time that the radioactive material was uncontrolled. However, the carrier's actions do not relieve the Licensee of its responsibility to ensure that each closure device on the radioactive materials package is properly installed and secure. Regardless of events that occurred after the package left the Licensee's control, the Licensee's failure to assure that the hasp on the lock was secure prior to shipment was the most probable cause of the loss of control of the radioactive material, and is considered a significant violation of NRC requirements.

In addition, the NRC does not dispute the Licensee's position that hazmat employees are not considered members of the public. However, the NRC disagrees that there was no clear potential for a member of the public to receive more than 100 mrem to the whole body as a result of the Licensee's failure to ensure that the lock on the package containing the sealed sources was properly installed and secure. The sources could have been lost at any time during the shipping process, such as on the aircraft or in the vehicle that were used to transport the package, and so the clear possibility existed that members of the public could have come in contact with the sources. Considering the configuration of the sources (the sealed sources were contained in approximately 4 inch long bolts) and the quantity of radioactive material in the package (the 3 sources contained 1, 18, and 100 millicuries of cesium-137 respectively), the NRC continues to conclude that there was a clear potential for a member of the public to unknowingly come in contact with the sources and receive an exposure greater than 100 mrem to the whole body.

Example B.1 of Supplement V of the NRC's Enforcement Policy provides that a "[f]ailure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem [100 mrem] to the whole body" be considered as a Severity Level II violation. Therefore, the NRC maintains that the violation was appropriately classified at Severity Level II.

With regard to the Licensee's argument concerning its corrective actions, as stated in our March 13, 1998 letter, credit was warranted for your corrective actions in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. Had the Licensee not taken prompt and comprehensive corrective actions, a civil penalty of $8,800 (twice the base amount) would have been proposed.

NRC Conclusion

The NRC has concluded that the Licensee did not provide a basis for reducing the Severity Level of the violation nor for reducing or withdrawing the civil penalty. Accordingly, a civil penalty in the amount of $4,400 should be issued.

[FR Doc. 98–16645 Filed 6–22–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443–LA ASLBP No. 98–746–05–LA]

North Atlantic Energy Service Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

North Atlantic Energy Service Corporation

Seabrook Station Unit No. 1

This Board is being established pursuant to the request for hearing submitted by Robert A. Backus on behalf of the Seacoast Anti-Pollution League. The petition opposes the issuance of a license amendment to North Atlantic Energy Service Corporation for Seabrook Station Unit No. 1 that would revise Technical Specifications on the frequency of steam generator inspections to accommodate a 24 month fuel cycle. A notice of the proposed amendment was published in the **Federal Register** at 63 FR 25101, 25113 (May 6, 1998).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Linda W. Little, 5000 Hermitage Drive, Raleigh, NC 27612

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 16th day of June 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–16638 Filed 6–22–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–388]

Pennsylvania Power and Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22 issued to Pennsylvania Power and Light Company for operation of the Susquehanna Steam Electric Station (SSES), Unit 2 located in Luzerne County, Pennsylvania.

The proposed amendment would amend the Susquehanna Steam Electric Station's Technical Specifications (TSs) to add notations to TSs 3.3.7.5, 4.3.7.5, 3.4.2, and 4.4.2 that the acoustic monitor for safety relief valve (SRV) "J" may be inoperable beginning June 15, 1998, until the next unit shutdown of sufficient duration to allow for containment entry, not to exceed the ninth refueling and inspection outage (spring 1999).

SSES Unit 2 is currently operating in Operation Condition 1 at 100% power. On June 13, 1998, at 1239 hours, the SSES Unit 2 control room personnel determined that the "J" SRV acoustic monitor was inoperable. They also determined that repair of this acoustic monitor would require unit shutdown and containment entry. The applicable TS action statements require this monitor to be restored to operable status or an initiation of a unit shutdown within 48 hours. The licensee sought and received, at 1145 hours on June 15, 1998, NRC's agreement to exercise its discretion to not enforce compliance with these TS shutdown requirements until this amendment could be processed. The licensee submitted this proposed license amendment on June 17, 1998. Therefore, the NRC staff has concluded that the licensee has made its best effort to make a timely application for this amendment and has not taken advantage of the exigent provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated. The acoustic monitors do not affect the operation of the safety/relief valves. The SRV safety-valve function (TS 3.4.2), safety-related ADS [automatic depressurization system] function (six selected valves—TS 3.5.1) and non-safety related automatic and manual relief functions are independent of the acoustic monitoring function. No failure or misoperation of the acoustic monitoring system can affect the ability of these valves to perform their design functions.

Failure of the acoustic monitoring system to actuate in the event of an actual valve actuation does not affect the consequences of that action. The consequences of an undetected SRV failure to close or to remain closed when desired or required are unacceptable; the purpose of the monitoring system is to increase the probability that a failure of the valve actuation mechanism is detected.

Operation without this detection system will not significantly increase vulnerability to an undetected, open SRV event. Operation without this detection system would also not create any condition where the reliability of the valve is reduced.

The SSES IPE [Individual Plant Examination] assigns a conservative 1% probability to the stuck open safety relief valve event. Susquehanna utilizes Crosby SRVs. This valve is specifically designed and specified for the intended function, and is operated and maintained in accordance with the requirements of the design. It is not experienced reliability problems that have occurred with other SRV designs. The lack of position monitoring will not affect the valve's ability to perform its intended operational and safety function.

Operation without the SRV acoustic monitor will not affect the plant response to the stuck open relief valve at power or hot shutdown conditions. The stuck open SRV transient as analyzed in the Design Assessment Report (DAR) indicates that the maximum pool transient temperature (185°F) does not approach the NUREG 0783 accepted limit (208°F bulk pool temperature). This is assured by using temperature data from SPOTMOS in accordance with off-normal procedure ON–283–001.

SRV tail pipe temperature rise above the alarm setpoint is a true indication of SRV actuation and a reliable indication of closure. Alarms generated by this sensor will alert the operator to the open SRV. The Suppression Pool Temperature Elements located closest to the "J" SRV discharge quencher will also indicate heat input to the pool from that line. Other indications can be used to infer an open relief valve and to confirm a closed valve (i.e. by demonstrating pressure integrity).

The probability of a Stuck Open SRV Event is not affected by the lack of position indication for the SRV. The ability to detect the stuck open SRV condition is adequately covered by the tail pipe temperature indication and secondary reactor vessel and steam cycle parameter indications, and will not result in an increase in the probability or consequences of an accident previously evaluated.

2. This proposal does not create the possibility of a new or different type of accident from any previously evaluated.

This proposal does not create the possibility of a new or different type of accident from any previously evaluated. The SRV Acoustic Monitor performs no control or active protective function other than indication. Failure or misoperation of this device will not cause an unanalyzed failure or misoperation of an engineered safety feature. Because of the diverse and redundant indication system described above, misoperation of this system will not cause the operator to take unanalyzed actions, nor will it cause the operator to commit errors of commission or omission, and as such will not create the possibility of a new or different type of accident.

3. This change does not involve a significant reduction in a margin of safety.

This change does not involve a significant reduction in a margin of safety. Operating without the "J" SRV position indication does not reduce the design or operating basis margin of safety. Primary Containment controls are in place that can effectively deal with the operating condition. In the unlikely event that the "J" SRV should cycle open and fail to fully close, sufficient indication would be available to identify and mitigate the occurrence. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30

a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 23, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 17, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 18th day of June 1998.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16652 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498/499; License Nos. NPF–76, 80 EA 97–341]

STP Nuclear Operating Company; STP Nuclear Generating Station; Confirmatory Order Modifying License (Effective Immediately)

I

STP Nuclear Operating Company (STP or the Licensee) is an NRC Licensee and the holder of Facility Operating License Nos. NPF–76 and NPF–80, issued by the Nuclear Regulatory Commission (NRC or

Commission) pursuant to 10 CFR Part 50 on March 22, 1988 and March 28, 1989 respectfully . The licenses authorize operation of the STP Electric Generating Station (the Station or facility) in accordance with the conditions specified in the license. The facility is located on the Licensee's site in Wadsworth, Texas.

II

NRC Office of Investigations (OI) Report Nos. 4–96–035 and 4–96–059 concluded that STP had subjected four employees to a hostile work environment created by the former Electrical/Instrumentation & Controls (E/I&C) division manager in retaliation for the employees' having engaged in protected activities, and had thus violated the Employee Protection requirements, 10 CFR 50.7. The NRC staff, by letter dated January 8, 1998, invited the Licensee to a predecisional enforcement conference (PEC) to discuss the apparent violation, which was fully detailed in that letter. On February 26, 1998, a PEC was held at the NRC offices of NRC Region IV in Arlington, Texas. By letter dated March 12, 1998, the Licensee submitted additional data and information requested by the NRC staff during the PEC.

The Licensee maintains that no violation of 10 CFR 50.7 occurred, and that it took prompt and effective corrective action in response to concerns raised by its employees regarding the behavior of the E/I&C division manager, including discipline in accordance with the STP Constructive Discipline Policy, appropriate reflection in annual performance appraisals of the E/I&C division manager, the provision of peer and management counseling to the E/I&C division manager and assistance from industrial psychologists. The actions culminated in the resignation of the E/I&C division manager from STP in mid-1996. In addition, the Licensee states that it took a number of specific steps to address concerns which arose in the E/I&C Division in 1996. These included the STP President's meetings with division personnel, similar meetings conducted by the Vice President, Nuclear Engineering, and the Design Engineering Department Manager, as well as one-on-one meetings between the new division manager and all division personnel. In these meetings, and in station-wide communications, the Licensee advised employees that it had settled the claims filed by four facility employees with the United States Department of Labor (DOL), which claim alleged violations of the Employee Protection requirements of Section 211 of the Energy Reorganization Act, and the fact that the NRC was considering escalated enforcement action. The Licensee states that it intends to keep station personnel apprised of the results of the NRC's consideration of this matter.

The Licensee maintains that employees have not been deterred from reporting safety concerns as a result of events in the E/I&C division. Specifically, the Licensee states that a 1994 Climate Assessment of employee attitudes in the E/I&C division does not suggest that employees were subject to harassment or are reluctant to use the routine systems for reporting concerns. The Licensee also maintains that annual surveys conducted between 1993 and 1997, both facility-wide and by department, by Behavioral Consultant Services, Inc., do not suggest the existence of a hostile work environment in the E/I&C division. In addition, the Licensee states that implementation of its new Corrective Action Program was reviewed by a team of NRC inspectors in early 1996. Specifically, the NRC team reviewed a sample of Condition Reports and interviewed various engineers regarding their roles and responsibilities to determine whether significant issues were being identified and corrected in a timely fashion and how those problems were documented. The NRC team found that all the interviewed engineers were aware of when and how to document identified problems. See NRC Inspection Report 50–498/96–11; 50–499/96–11 (April 12, 1996).

III

The Licensee has planned additional actions to assess the station environment and to enhance safety-consciousness, as described in Attachment D to the March 12, 1998, submission. Specifically, the Licensee plans: (1) "Comprehensive Cultural Assessments" to be performed by an independent consultant at 18 to 24 month intervals, and intermediate "mini" surveys in selected areas; (2) annual ratings of supervisors and managers by employees via the Licensee's "Leadership Assessment Tool'; and (3) a mandatory continuing training program for all supervisors and managers. The training program will have the objectives of reinforcing the importance of maintaining a safety-conscious work environment and of assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety-conscious work environment. The training program will also include a specific course entitled "Safety Speaking." During a telephone conversation with the NRC staff on May 29, 1998, the Licensee agreed to include in its mandatory training for all supervisors and managers training on the requirements of 10 CFR 50.7, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees.

IV

Since the Licensee settled the four employee protection complaints prior to an evidentiary hearing before, and prior to a finding that discrimination had occurred by, the United States Department of Labor; since the Licensee took corrective actions as outlined above; and since the Licensee has planned actions to monitor the safety environment and to promote an atmosphere conducive to the raising of safety concerns by employees without fear of retaliation, the NRC staff is satisfied that its concerns regarding employee protection at South Texas Project Electric Generating Station can be resolved by confirming the Licensee's plans for further corrective action by this Order. Accordingly, the staff is exercising its enforcement discretion pursuant to Section VII B.6 of the NRC Enforcement Policy and will not pursue a Notice of Violation or a civil penalty in this case.

By letter dated May 29, 1998, the Licensee consented to issuance of this Order with the commitments described in Section V, below, and to waive its right to a hearing on this Order. The Licensee further consented to the immediate effectiveness of this Order.

I find that the Licensee's commitments, as set forth in Section V, below, are acceptable and necessary and conclude that with these commitments, the Licensee's process for addressing employee protection and safety concerns will be enhanced. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It Is Hereby Ordered, Effective Immediately, That License Nos. NPF–76 and NPF–80 Are Modified As Follows:*

1. Beginning in 1998, the STP Nuclear Operating Company will integrate into

its overall program for enhancing the work environment and safety culture at the facility a "Comprehensive Cultural Assessment", as described in Attachment D to the Licensee's March 12, 1998, submission, to be performed by an independent contractor. The Cultural Assessment will include both a written survey of employees (including supervision and management) and baseline contractors, and confidential interviews of selected individuals. The first assessment is scheduled for the second quarter of 1998 and will be performed at least three more times at intervals of 18 to 24 months. Annual "mini" surveys will be conducted and shall include, but not be limited to, annual surveys through at least the year 2002. Before conducting each mini-survey, the Licensee will identify to the NRC Regional Administrator the departments and divisions to be surveyed. The Licensee will submit to the NRC for review all Cultural Assessment results, including all intermediate "mini" surveys. Within 60 days of receipt of the survey results, the Licensee will provide to the NRC Regional Administrator any plans necessary to address issues raised by the survey results.

2. The STP Nuclear Operating Company will conduct annual ratings of supervisors and managers by employees via the "Leadership Assessment Tool", as described in Attachment D to the Licensee's March 12, 1998, submission, through at least the year 2002.

3. The STP Nuclear Operating Company will conduct a mandatory continuing training program for all supervisors and managers. This program will include:

(a) Scheduled training on building positive relationships, as outlined in Attachment D to the Licensee's March 12, 1998, submission. The training program will have the objective of reinforcing the importance of maintaining a safety-conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safety-conscious work environment. The training program also will include a course entitled "Safely Speaking," as described in Attachment D to the Licensee's March 12, 1998, submission; and

(b) Annual training on the requirements of 10 CFR 50.7, through at least the year 2002, including, but not limited to, what constitutes protected activity and what constitutes discrimination, and appropriate responses to the raising of safety concerns by employees. Such training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

4. The licensee shall issue a site-wide publication to inform its employees and contractor employees of this Confirmatory Order as well as their rights to raise safety concerns to the NRC and their management without fear of retaliation.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 9th day of June 1998.

For the U.S. Nuclear Regulatory Commission.

Ashok A. Thadani,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98–16649 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338]

Virginia Electric and Power Company; North Anna Power Station, Unit 1; Confirmatory Order Modifying License Effective Immediately

I

Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Facility Operating License No. NPF–4, which authorizes operation of North Anna Power Station (NAPS), Unit 1, located in Louisa County, Viginia.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers" and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For NAPS, Unit 1, that had corrective action scheduled beyond 1997, the NRC reviewed with VEPCO the schedule of Thermo-Lag corrective actions described in the VEPCO submittal to the NRC dated December 18,1997. Based on the information submitted by VEPCO, the NRC staff has concluded that the schedules presented are reasonable. This conclusion is based

on the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by VEPCO must be completed in accordance with current VEPCO schedules. By letter dated May 14, 1998, the NRC staff notified VEPCO of its plan to incorporate VEPCO's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated May 22, 1998, VEPCO provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of December 19, 1997, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its December 18, 1997, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered*, effective immediately, that:

Virginia Electric and Power Company shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at North Anna Power Station, Unit 1, described in the VEPCO submittal to the NRC dated December 18, 1997. Overall work package closeout will be completed by the completion of the next refueling outage scheduled to begin in September 1998.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Md., this 15th day of 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16648 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; James A. FitzPatrick Nuclear Power Plant; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–59, issued to Power Authority of the State of New York (the licensee) also known as the New York Power Authority, for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, to designate responsible individuals for safety upon the sounding of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency. The proposed action is in accordance with the licensee's application for exemption dated April 24, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight

percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the James A. FitzPatrick Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption would not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the James A. FitzPatrick Nuclear Power Plant dated March 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on June 4, 1998, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 24, 1998, which is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Md., this 17th day of June 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16647 Filed 6–22–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in the PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of the PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be submitted by August 24, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved and issued control numbers for the collections of information, described below, in the PBGC's regulations relating to multiemployer plans. (The regulations may be accessed on the PBGC's web site at http://www.pbgc.gov.) The PBGC intends to request that OMB extend its approval of these collections of information for three years.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should identify the specific part number(s) of the regulation(s) they relate to.

The collections of information for which the PBGC intends to request extension of OMB approval are as follows:

1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB Control Number 1212–0020)

Section 4041A(f)(2) of ERISA authorizes the PBGC to prescribe reporting requirements for and other "rules and standards for the administration of" terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by the PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to the PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.

The PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. The PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

This collection of information is being revised to include certain items that were previously covered under OMB control number 1212–0032 (because they were in a different part of the PBGC's regulations) but that were moved into Part 4041A when the PBGC reorganized its regulations in 1996. As revised, control number 1212–0020 will cover all collection of information requirements in Part 4041A.

The PBGC estimates that plan sponsors each year (1) submit notices of termination for 20 plans, (2) distribute election notices to participants in 15 of those plans, and (3) submit requests to pay benefits or benefit forms not otherwise permitted for 1 of those plans. The estimated annual burden of the collection of information is 48 hours and $13,481.

2. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow the PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to the PBGC about the rules, the plan, and the industry in which the plan operates. The PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

The PBGC estimates that at most 1 plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $2,400.

3. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from the PBGC. Plans and the PBGC use the information to determine whether employers qualify for variances.

The PBGC estimates that 11 employers submit variance requests to plans, and 2 employers submit variance requests to the PBGC, each year. The estimated annual burden of the collection of information is 1 hour and $2,663.

4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)

Section 4207 of ERISA allows the PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that 100 employers apply to plans for abatement of complete withdrawal liability each year and that 1 plan sponsor requests approval of plan abatement rules each year from the PBGC. The estimated annual burden of the collection of information is 25.5 hours and $15,000.

5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes the PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that 1,000 employers apply to plans for abatement of partial withdrawal liability each year and that 1 plan sponsor requests approval of plan abatement rules each year from the PBGC. The estimated annual burden of the collection of information is 250.5 hours and $150,000.

6. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires the PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to the PBGC by a plan seeking such approval. The PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and the PBGC.

The PBGC estimates that 5 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 10 hours.

7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that the PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a "mass withdrawal." ERISA section 4209(c) deals with an employer's liability for *de minimis* amounts if the employer withdraws in a "substantial withdrawal."

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to the PBGC so that it can monitor the plan, and they help the PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

The PBGC estimates that there is at most 1 mass withdrawal and 1 substantial withdrawal per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to the PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to the PBGC that assessments have been made. (For a mass withdrawal, there are 2 assessments and 2 certifications that deal with 2 different types of liability. For a substantial withdrawal, there is 1 assessment and 1 certification (combined with the withdrawal notice to the PBGC).) The estimated annual burden of the collection of information is 4 hours and $3,939.

8. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, the PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting the PBGC's approval of an amendment. The PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

The PBGC estimates that 3 plan sponsors submit approval requests per year under this regulation. The estimated annual burden of the collection of information is 1.5 hours.

9. Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231) (OMB Control Number 1212–0022)

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give the PBGC 120 days' notice of the transaction and provides that if the PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

The PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The PBGC estimates that there are 20 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 5 hours and $2,500.

10. Notice of Insolvency (29 CFR Part 4245) (OMB Control Number 1212–0033)

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a "notice of insolvency" to the PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a "notice of insolvency benefit level" to the same parties.

This regulation establishes the procedure for giving these notices. The PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

The PBGC estimates that 9 plan sponsors give notices each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $7,633.

11. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB Control Number 1212–0032)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from the PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to the PBGC and to participants and beneficiaries and, if necessary, to apply to the PBGC for financial assistance.

The PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

This collection of information is being revised to exclude certain items that were previously covered under OMB control number 1212–0032 but that were moved into Part 4041A when the PBGC reorganized its regulations in 1996. As revised, control number 1212–0032 will cover only collection of information requirements in Part 4281.

The PBGC estimates that plan sponsors each year (1) give benefit reduction notices for 1 plan, (2) give notices of insolvency for 2 plans, (3) give notices of insolvency benefit level and annual updates for 23 plans, and (4) submit requests for financial assistance for 18 plans. The estimated annual burden of the collection of information is 1 hour and $66,900.

Issued in Washington, DC, this 18th day of June 1998.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–16679 Filed 6–22–98; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Facility Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of visit.

SUMMARY: Arrangements have been made for members of the Commission and certain advisory staff members to visit the World Headquarters and Technology Center of Pitney Bowes in Stamford, Connecticut. The purpose is to gain a better understanding of new and evolving technologies and their potential impact on the nature of the mailstream and postal operations. Information obtained during the visit will assist Commissioners and staff in the execution of their duties.

DATES: The tour is scheduled for Monday, July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Steven L. Sharfman, General Counsel, (202) 789–6820.

SUPPLEMENTARY INFORMATION: A report of the visit will be filed in the Commission's Docket Room.

(Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662)

Dated: June 17, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–16611 Filed 6–22–98; 8:45 am]

BILLING CODE 7710–FW–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, June 29, 1998; 8:30 a.m., Tuesday, June 30, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: June 29 (Closed); June 30 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 29—1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. R97–1.
2. Post Office Online.
3. Compensation Issues.

Tuesday, June 30—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 1–2, 1998.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Consideration of Board Resolution on Audit Committee Charter.
4. Capital Investments.
   a. Delivery Operations Information System (DOIS)—R&D.
   b. 546 Delivery Bar Code Sorter (DBCS) Output Subsystem Kits.
5. Tentative Agenda for the August 3–4, 1998, meeting in Harrisburg, Pennsylvania.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–16722 Filed 6–18–98; 4:19 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40096; File No. SR–CBOE–98–13]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change By the Chicago Board Options Exchange, Inc. Relating to the Automatic Execution of Small Retail Orders in Equity Options

June 16, 1998.

I. Introduction

On April 6, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation and Policy .02 under CBOE Rule 6.8 governing the operations of the Exchange's Retail Automatic Execution System ("RAES"). On May 13, 1998, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 21, 1998.[4] The Commission received no comments regarding the proposal. This order approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

Presently, under CBOE Rule 6.8(a)(ii), the execution price automatically attached to an equity option order executed in RAES is the prevailing market quote on the CBOE at the time the order is entered into the system. If at that same time another market is displaying a better quote for the option, under CBOE Rules the order is not automatically executed, but instead, pursuant to Interpretation and Policy .02 under CBOE Rule 6.8, is rerouted for non-automated handling. In most cases, especially where the market away from the CBOE is better by only one "tick" (*i.e.*, by one minimum quote interval), the order is usually manually executed on the CBOE at the better price.

The CBOE now proposes to amend Interpretation and Policy .02 to automate the process of filling equity option orders through RAES at any better price being quoted in another market, so long as the price is better by no more than one tick ("RAES Auto-Step-Up"). If the market away from the CBOE is better than the CBOE's quoted market by more than one tick, the existing procedure will continue to apply whereby the order is rerouted out of RAES to the Designated Primary Market Maker or Order Book Official for non-automated handling.

While the Exchange expects that eventually the Floor Procedure Committees will determine to apply the RAES Auto-Step-Up to all or nearly all option classes traded on the floor, the proposed rule change would permit the program to be initiated on a class by class or trading station by trading station basis.[5] To provide for the orderly introduction of this change to the Exchange's RAES procedures and to measure its effect before expanding it to equity options floor-wide, the Exchange intends to introduce the changed RAES procedure to selected classes of equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Kan Rosen, Attorney, Division of Market Regulation, Commission, dated May 11, 1998 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 39992 (May 14, 1998), 63 FR 28019.

[5] *See* Amendment No. 1.

options during an initial evaluation period, and then over time to expand the changed procedure to cover a larger number of equity options unless, upon evaluation, such expansion appears not to be warranted. Members will be given advance notice of each class of options to which these revised procedures apply.

In addition, the proposed rule change authorizes the Chairman of the appropriate Floor Procedure Committee or his or her designee to disable RAES Auto-Step-Up for specified classes or series of options or in respect of specified markets when "quotes in such options or markets are deemed not to be reliable." This authority would be expected to be exercised in circumstances such as communication or system problems, fast markets, and similar situations that could make quotes unreliable. For instance, the Exchange is infrequently faced with delays in the dissemination of quotes because of queues on the Options Price Reporting Authority ("OPRA"). When the Exchange is made aware of OPRA delays, it knows that there is a delay in the dissemination of quotes from the other exchanges. As a result, those quotes likely would be stale. Under that circumstance, the Chairmen of the Floor Procedure Committees might decide to exercise their exemptive authority under the proposal. The Exchange has represented to the Commission that it expects such authority to be exercised infrequently.[6]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act. In particular, the Commission believes the proposal is consistent with Section 3(f)[7] and Section 6(b)(5)[8] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

By automating the execution of eligible retail orders for equity options through the RAES Auto-Step-Up, the amended Interpretation and Policy .02 should help to insure that investors receive prompt, automatic execution of RAES orders at the best available prices, even if those prices are being quoted in a market other than the Exchange, when the better prices in other markets do not improve on the CBOE's market by more than one tick. This proposal should minimize the delay inherent in manually handling orders in this circumstance, and thereby reduce the risk to investors that, as a result of an adverse move in the market while their orders are being manually handled, they may receive an inferior execution.

Moreover, the amendment to Interpretation and Policy .02 is consistent with Section 3(f) of the Act. Among other things, that Section requires the Commission to consider whether proposed rule changes will promote competition. The RAES Auto-Step-Up feature, when activated, should enhance competition by requiring executions on the CBOE at better prices found on other exchanges.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit customers to receive the benefits of automatic price improvement under the proposed rule change more quickly. In addition, the Commission recognizes that orders are already eligible for manual price improvement when routed to the floor. This proposal merely automates that price improvement for those options to which the Auto-Step-Up feature applies. Moreover, the Commission notes that the full 21 day comment period has expired, and no adverse comments were received.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–98–13), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16583 Filed 6–22–98; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Amendment No. 1.

[7] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on (1) Incident and Annual Reports for Gas Pipeline Operators 2137–0522, was published on April 14, 1998 [63 FR 18251–18252]; (2) Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting 2137–0047, was published on April 14, 1998 [63 FR 18251–18252]; and (3) Reporting of Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities 2137–0578, was published on April 14, 1998 [63 FR 18251–18252].

DATES: Comments on this notice must be received on or before July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety Research and Special Programs Administration, U.S. Department of Transportation 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–6205, or fax (202) 36604566 or by electronic mail "marvin.fell@rspa.dot.gov".

SUPPLEMENTARY INFORMATION:

Research and Special Programs Administration (RSPA)

(1). Title: Incident and Annual Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Form(s): 7100.1, 7100.2, 7100.1–1, 7100.2–1.

Type of Request: Extension of a currently approved collection.

Affected Public: Gas pipeline operators.

Abstract: 49 CFR 191 requires that gas pipeline operators report certain pipeline incidents that involve injuries, fatalities, fires, property damage or environmental damage. Additionally, gas pipeline operators must submit annual reports on their operations to the Department of Transportation.

Estimated Annual Burden Hours: 6717 hours.

(2). Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

OMB Number: 2137–0047.

Form(s): DOT 7000–1.

Type of Request: Extension of a currently approved collection.

Affected Public: Hazardous Liquid Pipeline Operators.

Abstract: Federal statute requires that hazardous liquid pipeline operators prepare and maintain written records

and reports and to make them available to the Department of Transportation on request. Additional 49 CFR 195 requires hazardous liquid operators report accidents to the Department of Transportation.

Annual Estimate of Burden: 49,210 hours.

(3). Title: Reporting of Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Number: 2137–0578.

Type of Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Pipeline and Liquefied Natural Gas facility operators.

Abstract: 49 U.S.C. 60102 requires each operator of a pipeline facility (except master meter) to submit to the Department of Transportation a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facility or a condition that is a hazard to life, property or the environment.

Annual Estimated Burden Hours: 282.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention RSPA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on June 16, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–16662 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending June 12, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing..

Docket Number: OST–98–3951.

Date Filed: June 11, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC2 Telex Mail Vote 943, Algeria-Europe/Mideast/Western Africa, r1-Economy Class fares r2-Normal/First/Interm. Intended effective date: June 22, 1998

Cynthia Hatten,

Federal Register Liaison.

[FR Doc. 98–16602 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 12, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3946.

Date Filed: June 9, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 16, 1998.

Description

Application of United Parcel Service Co. pursuant to the Department's Notice served May 26, 1998, and Subpart Q, requests a certificate of public convenience and necessity authorizing it to engage in all-cargo foreign air transportation between any point or points in the United States via intermediate points to any point or points in Colombia and beyond.

Docket Number: OST–98–3955.

Date Filed: June 12, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 10, 1998.

Description

Application of United Parcel Service Co. pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 557 so as to authorize it to engage in the scheduled foreign air transportation of property and mail between any point or points in the United States and any point or points in the following countries, in addition to the points currently contained in UPS's Certificate for Route 557: Albania, Armenia, Aruba, Azerbaijan, Belarus, Bosnia, Botswana, Bulgaria, Cote d' Ivoire, Costa Rica, Croatia, Czech Republic, Dominican Republic, El Salvador, Estonia, Ethiopia, Georgia, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Jordan, Kuwait, Kyrgyz Republic, Latvia, Lithuania, Macao, Macedonia, Malawi, Malta, Moldova, Namibia, The Netherlands Antilles, Nicaragua, Poland, Peru, Qatar, Slovakia, Slovenia, Tajikistan, Tanzania, Trinidad and Tobago, Turkmenistan, Uganda, Uzbekistan, and Zaire.

Cynthia Hatten,

Federal Register Liaison.

[FR Doc. 98–16603 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an emergency clearance by July 14, 1998, in accordance with 5 CFR 1320.13. The following information describes the nature of the information collection and its expected burden.

SUPPLEMENTARY INFORMATION: .

Title: Inflight Medical Incident Report.

Need: The Aviation Medical Assistance Act of 1998 directs the Administrator of the Federal Aviation Administration to reevaluate the equipment in medical kits and emergency training requirements for flight attendants, and to determine whether automatic external defibrillators should be required equipment on air carriers and possibly at airports. To make this determination,

the Act directs, in part, that a major air carrier shall make a good faith effort to obtain, and submit quarterly reports to the Federal Aviation Administration on in-flight medical emergencies that result in death or the threat of death.

Respondents: Approximately 30 air carriers.

Frequency: On occasion over the course of one year.

Burden: 274 hours.

For Further Information: or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judi Citrenbaum at the: Federal Aviation Administration, Aeromedical Standards Branch, AAM–210, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above.

Issued in Washington, DC on June 17, 1998.

Patricia W. Carter,

Acting Manager, Corporate Information Division, ABC–100.

[FR Doc. 98–16633 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key Field Airport, Meridian, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comment must be received on or before July 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Tom Williams, Executive Director of the Meridian Airport Authority at the following address: Post Office Box 4351, Meridian, MS 39304–4351.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Meridian Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 15, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Meridian Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 3, 1998.

The following is a brief overview of the application.

PFC Application Number: 98–05–C–00–MEI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: 12–1–2000.

Proposed charge expiration date: 5–31–2000.

Total estimated net PFC revenue: $121,650.

Estimated PFC revenues to be used on projects in this application: $121,650.

Brief description of proposed projects: Airfield lighting rehabilitation; Taxiway A rehabilitation; Terminal canopy/rehabilitation design; Terminal canopy/rehabilitation; Construct equipment building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Meridian Airport Authority.

Issued in Jackson, Mississippi, on June 16, 1998.

Wayne Atkinson,

Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 98–16634 Filed 6–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 30186 (Sub–No. 3)]

Tongue River Railroad Company—Construction and Operation—in Rosebud and Big Horn Counties, MT

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Construction and Operation Application and Adoption of Initial Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the Tongue River Railroad Company (TRRC) seeking authority to construct and operate 17.3 miles of track, called the Western Alignment, to be built between Decker, MT, and a point 17.3 miles north of Decker, to connect with the rail line previously approved for construction in *Tongue River Railroad Company—Rail Construction and Operation—Ashland to Decker, Montana,* Finance Docket No. 30186 (Sub-No. 2) (STB served Nov. 8, 1996) (*Tongue River II*). The Western Alignment is proposed as an alternative to a routing called the Four Mile Creek Alternative (herein, the Four Mile Creek Route) approved in *Tongue River II*. The routing of the Western Alignment separates from TRRC's approved Four Mile Creek routing approximately 20.8 miles south of the point at which the line connects with TRRC's approved line routing between Ashland and Miles City, MT, and extends southwest to the Spring Creek/Decker area of southeastern Montana, terminating near Decker where it will connect with The Burlington Northern and Santa Fe Railway Company's Kennecott Spur.

The Board is issuing a procedural schedule establishing filing dates for comments and replies on whether this application meets the criteria of 49 U.S.C. 10901. The Board may subsequently issue another notice setting forth a procedural[1] schedule for the filing of any additional pleadings after completion of the necessary environmental analysis, if appropriate.

DATES: This notice is effective on June 23, 1998. Pleadings must be filed in accordance with the schedule set forth

in the Appendix to this notice. All filings, except notices of intent to participate, must be concurrently served on all parties of record and must be accompanied by a certificate of service.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 30186 (Sub-No. 3) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. A copy of each comment shall concurrently be served upon TRRC's representative: Betty Jo Christian, Esq., Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036, (202) 429–3000, FAX (202) 429–3902. One copy of each pleading must also be served upon: Peter Young, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, DC 20426.[1]

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695].

SUPPLEMENTARY INFORMATION: The Board's review of construction applications is governed by 49 U.S.C. 10901 and by the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d (NEPA), and related environmental laws. Along with its application, TRRC has submitted a renewed petition [2] to establish a procedural schedule for this proceeding.[3] The schedule proposed by TRRC would establish due dates for submissions and Board action, both in considering the transportation merits of the application and in carrying out the environmental review process. The Board is adopting only that portion of TRRC's procedural schedule that sets due dates for filing comments (including supporting or opposing evidence) on issues involving whether or not the application meets the statutory criteria of 49 U.S.C. 10901, and for filing replies to those comments. The Board will not, however, set a date for issuance of a final decision on the merits of the application. Nor will we establish a procedural schedule for our environmental review of the new application. Rather, as discussed below, we will initiate the environmental review process now, and establish a procedural schedule for submission of any additional pleadings and issuance of a final decision upon completion of that process.

We are not adopting TRRC's proposal that we set an environmental procedural schedule because the Board's environmental analysis depends on input from many sources, including Federal and state agencies, and at this point it is impossible to predict how long the environmental review process will take. Our experience has shown that the preparation of a NEPA document in a proceeding such as this, where a number of environmental issues may exist generally, does not lend itself to a structured time limit. Because we would be unable to assure compliance with TRRC's proposed schedule even if we adopted it, we see no point in seeking public comment on it. Rather, we will adopt a schedule for receiving comments and replies on whether the application meets the statutory criteria in 49 U.S.C. 10901. The schedule we are adopting here will accord all parties due process because it provides ample time for the submission of comments and replies. In short, the schedule we are adopting will allow for adequate public participation and the development of a sufficient record to allow the Board to determine whether the proposed construction meets the criteria of section 10901.

In this proceeding, we will not issue a decision determining whether the proposed construction meets the statutory criteria in 49 U.S.C. 10901 prior to completion of the environmental review process. TRRC has not requested this action. Our decision on the merits will follow completion of the environmental review process and we will address both transportation and environmental issues in that decision.

We are requiring TRRC to publish notices setting forth the schedule we are adopting here, and to certify to us that it has done so. In addition to setting forth the procedural schedule, the new notices must state that anyone who intends to participate as a party of record by filing comments must file with the Secretary of the Board an original and 10 copies of a notice of intent to participate in accordance with the attached schedule. In order to facilitate service of pleadings on parties of record, the Board will issue a list of those persons who have given notice of their intent to participate. Nonparties may obtain copies of pleadings through the Board's copy contractor, DC News & Data, Inc., 1925 K Street N.W., Suite 210, Washington DC 20006. Telephone (202) 289–4357.

Turning to the environmental review, the Board's Section of Environmental Analysis (SEA) shortly will issue a notice of intent to prepare a supplement to the Final Environmental Impact Statement issued in *Tongue River II* (herein, the Supplement) and in that document will seek comments regarding the environmental scope of, and potential environmental concerns and issues to be addressed in, this case. Under our rules implementing NEPA, and the rules of the Council on Environmental Quality, it appears that a Supplement is the appropriate means of reviewing TRRC's application for the Western Alignment. *See* 49 CFR 1105.10(a)(5); 40 CFR 1502.9(c). It is premature to determine the scope of the Supplement at this time. Before doing so, SEA will review any comments on the notice of intent, verify the information in TRRC's environmental report, and consult with the appropriate Federal and state agencies to identify the key environmental issues to be addressed in the Supplement.

Copies of the application, including the Environmental Report, are available for public inspection at the offices of either the Surface Transportation Board or the applicant, Tongue River Railroad Company, 550 North 31st Street, Suite 250, P.O. Box 1181, Billings, MT 59102.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 15, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

Appendix—Procedural Schedule

June 23, 1998—Publication of notice adopting procedural schedule.
June 30, 1998—Due date for publication by TRRC of newspaper notices announcing this procedural schedule.
July 13, 1998—Due date for notices of intent to participate as a party of record.

[1] Administrative Law Judge Young has been appointed to resolve all disputes on discovery issues.

[2] TRRC's initial request for establishment of a procedural schedule was denied by decision served March 24, 1998.

[3] Northern Cheyenne Tribe and Native Action, Inc., filed a reply to TRRC's request for a procedural schedule. Great Northern Properties Limited Partnership and Northern Plains Resource Council, Inc., also filed a reply to TRRC's petition. These replies are primarily directed to the environmental issues raised here and the schedule contemplated for their resolution. Since we are adopting a procedural schedule only for dealing with non-environmental issues, these petitions need not be addressed here. The United Transportation Union-General Committee of Adjustment and United Transportation Union-Montana State Legislative Board also replied jointly to TRRC's petition, raising concerns about technical compliance with our notification rules and the fairness or openness of our actions in this case. As discussed below, the procedural schedule we are adopting here provides adequate notice as well as ample opportunity for a full and thorough evaluation of all of the issues involved here.

September 16, 1998—Due date for comments in support of or opposition to the application.
November 2, 1998—Due date for replies to comments.

[FR Doc. 98–16530 Filed 6–22–98; 8:45 am]
BILLING CODE 4915–00–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.
SUBJECT: Board of Directors.
TIME AND DATE: 6:00 p.m., Friday, June 19, 1998.
PLACE: Telephonic meeting.
STATUS: The meeting will be closed to the public.
MATTER TO BE CONSIDERED: Privatization of the Corporation.
CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 18, 1998.
William H. Timbers, Jr.,
President and Chief Executive Officer.

[FR Doc. 98–16730 Filed 6–18–98; 4:55 pm]
BILLING CODE 8720–01–M

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting (Revised Notice of Meeting)

AGENCY: United States Enrichment Corporation.
SUBJECT: Board of Directors.
TIME AND DATE: 9:30 a.m., Saturday, June 20, 1998 (previously scheduled for June 19, 1998).
PLACE: Telephonic meeting.
STATUS: The meeting will be closed to the public.
MATTER TO BE CONSIDERED: Privatization of the Corporation.
CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 19, 1998.
William H. Timbers, Jr.,
President and Chief Executive Officer.

[FR Doc. 98–16806 Filed 6–19–98; 2:41 pm]
BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; System of Records

AGENCY: United States Information Agency.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the United States Information Agency (USIA) is issuing notice of our intent to amend the system of records entitled the Employee Payroll and Retirement System, USIA–20, to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.
DATE: Persons wishing to comment on the proposed routine use must do so by July 23, 1998.
EFFECTIVE DATES: The proposed routine use will become effective as proposed without further notice on [insert date 30 days from date of publication] unless comments dictate otherwise.
ADDRESSES: Interested individuals may comment on this publication by writing to Lola L. Secora, FOIA/PA Officer, USIA, 301 4th Street, SW, Room M–29, Washington, DC 20547; fax number (202) 205–0374; or email address: lsecora@usia.gov. All comments received will be available for public inspection at that address.
FOR FURTHER INFORMATION CONTACT: Lola L. Secora, FOIA/PA Officer, USIA, 301 4th Street, SW, Washington, DC 20547; telephone (202) 619–5499; fax number (202) 205–0374; or email address: lsecora@usia.gov.
SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the United States Information Agency will disclose data from its Employee Payroll and Retirement System of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and security support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the United States Information Agency, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each United States Information Agency employee, within one month of the end of the quarterly reporting period.

Information submitted by the United States Information Agency to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the United States Information Agency to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return. We are also making other changes required to update the Agency's system of records. From page 10659, FR Vol. 62, No. 45, Friday, March 7, 1997, Notices, change USIA–34 to read: USIA–41, System Name: Office of Civil Rights Complaint Files—OCR. Accordingly, the USIA–20. Employee Payroll and Retirement System—M/CF, originally published in the FR's Privacy Act Issuances, 1995 Compilation, and most recently amended at FR, Vol. 62, No. 45, March 7, 1997 is further amended by addition of the following routine use:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer

identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

Dated: June 17, 1998.

Les Jin,

General Counsel.

Narrative Statement

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 requires Federal agencies and instrumentalities to transmit information about employees newly hired and quarterly earnings to a National Directory of New Hires (NDNH) at the Department of Health and Human Services (DHHS). Pub. L. 104–193, SS316(f), codified at 42 U.S.C. 653.

Agencies must publish a notice in the **Federal Register** announcing that a new "routine use" will be added to the agency's Privacy Act system of records covering payroll information.

[FR Doc. 98–16589 Filed 6–22–98; 8:45 am]

BILLING CODE 8230–01–7

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Finding of No Significant Impact for the Construction of the New Fountain Green State Fish Hatchery

AGENCY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of Availability of the Finding of No Significant Impact (FONSI).

SUMMARY: On June 12, 1998, Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission signed the Finding of No Significant Impact (FONSI) which documents the decision to fund construction of the new Fountain Green State Fish Hatchery in Sanpete County, Utah. The hatchery will be reconstructed near the city of Fountain Green as a fish, wildlife and recreation feature of the Bonneville Unit of the Central Utah Project. The Mitigation Commission and the Utah Division of Wildlife Resources documented the environmental effects of constructing the new hatchery in an environmental assessment (EA). The Draft EA was developed with public input and the Final EA refined based upon public comment. The Commission has found the EA adequate for its decision to fund the new construction of the Proposed Action and has issued its FONSI in accordance with the Commission's NEPA Rule (43 CFR Part 10010.20).

The hatchery and associated features to be constructed are supported by the 1998 Revised Fish Hatchery Production Plan and its EA and FONSI, prepared in accordance with and in fulfillment of the Central Utah Project Completion Act of 1992 (Titles II through VI of Public Law 102–575).

Funding the Utah Division of Wildlife Resources to construct the new Fountain Green State Fish Hatchery continues the effort in meeting the sport fish recreation and native fish recovery and conservation needs identified in the Revised Fish Hatchery Production Plan. Of the alternatives analyzed under the EA, the Preferred Alternative, which this decision implements, increases fish production, reduces fish disease risks, increases educational opportunities, decreases effluent total suspended solids and increases employee and visitor safety.

The U.S. Fish and Wildlife Service's planning aid letter issued under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401; as amended, 16 U.S.C. 661 *et seq.*) stated that the Fish and Wildlife Service is supportive of the Preferred Alternative. Consultation with the U.S. Fish and Wildlife Service indicated that no threatened or endangered species will be impacted by the Preferred Alternative. No wetlands will be impacted by construction, and none of the environmental impacts of this action are considered significant or highly controversial.

The action is related to other potential future actions, specifically the improvement or construction of other State, Federal or Tribal fish hatcheries. The future construction projects will require separate NEPA compliance. The programmatic perspective has been considered in a separate NEPA document addressing fish hatchery improvement throughout the State.

FOR FURTHER INFORMATION: Copies of the FONSI, of the Final EA, or additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number below: Ms. Maureen Wilson, Project Coordinator, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101, Telephone: (801) 524–3146.

Dated: June 12, 1998.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 98–16580 Filed 6–22–98; 8:45 am]

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federal register

Tuesday
June 23, 1998

Part II

Department of Education

34 CFR Part 379
Projects With Industry; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820–AB45

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the performance indicators for the Projects With Industry (PWI) program (34 CFR Part 379). The PWI program is authorized by section 621 of the Rehabilitation Act of 1973, as amended (the Act). The purpose of the PWI program is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process, to identify competitive job and career opportunities and the skills needed to perform those jobs, to create practical job and career readiness and training programs, and to provide job placements and career advancement. The Secretary is proposing to change the performance indicators for this program in order to improve project performance, enhance project accountability, better reflect statutory intent, and reduce grantee burden.

DATES: Comments must be received by the Department on or before August 24, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments may also be sent through the Internet to: Comments@ed.gov. You must include the term "PWI" in the subject line of the electronic comment.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3038, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Overview of Proposed Changes

The Secretary proposes to amend the regulations governing the application content requirements and performance indicators for the PWI program in order to clarify statutory intent, enhance project accountability, and reduce grantee burden.

In a notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 22, 1996 (61 FR 1672), the Secretary invited comments on changes needed to improve the compliance indicators. The comments received in response to this solicitation, as well as comments provided by participants in focus group meetings held by the Rehabilitation Services Administration (RSA), were used to develop these proposed changes. In addition, the Secretary used a June 1994 report on the PWI program entitled "Assessment of Performance Indicators for the Projects With Industry Program," prepared for the Department by Research Triangle Institute (RTI), which identifies needed changes in the PWI performance indicators and scoring system. To assist in revising the compliance indicators and determining the proposed minimum performance levels, the Secretary also analyzed grantee performance on the current PWI compliance indicators.

Based on information from public comments, the 1994 report prepared by RTI, and experience in the implementation of the program, the Secretary is proposing one addition to the application content requirements and a number of changes in the compliance indicators. The Secretary believes that the additional application content requirement regarding the proposed cost per placement is needed in light of the proposed changes to the compliance indicators and to ensure that cost-effective projects are selected for funding. The Secretary proposes to reduce the number of indicators from nine to five, with an additional indicator to be established at a later date. These compliance indicators establish minimum performance levels in areas that the Secretary believes are the most critical and most closely related to the program's purpose and evaluation standards. To be eligible for continued funding under the proposed system, projects must meet or exceed the minimum performance level for each compliance indicator. However, projects have two opportunities to meet these criteria before funding is terminated. If, based upon the end-of-year data submission, a project fails any compliance indicator, the project may request that funding be continued for the first six months of the subsequent project year and agree to submit additional data. At the end of the six-month period the project must submit the data collected for those six months to demonstrate that it has passed *all* the compliance indicators. If the project passes all the indicators, funding will continue for the remainder of the project year.

In this NPRM, the Secretary proposes minimum performance levels for five indicators. The proposed compliance indicators measure a project's (a) placement rate; (b) average change in weekly earnings; (c) percentage of individuals placed who have severe disabilities; (d) percentage of individuals placed who were unemployed at least six months at project entry; and (e) variation between projected and actual average cost per placement. In addition, the Secretary proposes to collect data from projects on change in earnings and job retention. The Secretary will use these data to determine the need, and appropriate performance levels, for new indicators on change in earnings and job retention.

Section-by-Section Summary of the Proposed Changes

The following is a summary of the proposed changes contained in this NPRM.

- In § 379.21(a)(4), the Secretary proposes to add an application content requirement that would require a description of the factors that justify a project's projected cost per placement. These factors may include the objectives of the project, the types of services that will be provided, the population that is being targeted, and the proposed geographicservice area. This is the only proposed addition to the current application content requirements.

• In § 379.50, the Secretary proposes to remove the reference to minimum composite score and replace it with a reference to minimum performance levels on all compliance indicators. Under the proposed system, grantees must attain a minimum performance level on each of the indicators rather than achieve an overall composite score. Grantees must pass every indicator in order to receive continuation funding.

• In §§ 379.51 and 379.52, the Secretary proposes to delete all references to performance ranges in accordance with the proposed change to a system in which grantees must pass all compliance indicators. The proposed change deletes the reference to composite scores and requires grantees to pass each indicator by demonstrating performance at or above the established minimum levels.

• In § 379.53, the Secretary proposes to replace the current nine performance indicators with five compliance indicators. The major areas of change are outlined in the following sections entitled "Compliance Indicators to be Eliminated" and "Proposed Compliance Indicators and Performance Levels."

• In § 379.54, the Secretary proposes to make conforming changes to reflect the change from composite scoring to a pass/fail system. As under the current regulations, projects must submit data from the most recent complete project year to demonstrate compliance, but (if project performance during the most recent complete year does not meet minimum performance levels) may opt to submit data from the first six months of the current project year. In either case, projects must submit data to demonstrate compliance with minimum performance levels on all of the indicators.

Compliance Indicators To Be Eliminated

The Secretary proposes to replace the current nine indicators with five compliance indicators. In addition, the Secretary proposes to collect data that may lead to a modified indicator on change in earnings and data that may form the basis of a future indicator on job retention. Four compliance indicators would be eliminated, including cost per placement, projected placement rate, percent of persons served whose disabilities are severe, and percent of persons served who have been unemployed at least six months prior to project entry. The Secretary believes the proposed indicators better reflect the goals of the PWI program, place a greater emphasis on project outcomes, and reduce grantee information collection and reporting burden.

The Secretary proposes to eliminate the cost per placement indicator and modify the projected cost per placement indicator. The Secretary maintains the importance of serving and placing individuals at the lowest possible cost to the Federal Government, but believes it is not feasible to establish a cost per placement standard that is reasonable for all projects supported under the PWI program. The Secretary recognizes that some projects may not be able to achieve a low cost per placement, particularly projects that serve a high percentage of individuals with severe disabilities, provide extensive services, or serve rural areas. In addition, the Secretary is concerned that a uniform cost per placement standard may discourage projects from serving individuals who require extensive support services, job training, and other resources. Therefore, the Secretary believes it is more appropriate for grantees to determine an appropriate cost per placement and justify the proposed cost, based on the proposed project design and objectives, service population, and services to be provided. The proposed indicator would require that a project's actual cost per placement not exceed the projected cost per placement, as specified in the approved grant application, by more than 10 percent.

The Secretary also proposes to eliminate the indicator on projected placement rate. The Secretary believes it is more appropriate to focus on a project's actual, rather than projected, success in placing individuals in competitive employment.

Finally, the Secretary proposes to eliminate the two indicators that measure the extent to which projects serve individuals with severe disabilities and individuals who have been unemployed at least six months prior to project entry. While the Secretary believes that it is important to preserve the program's focus on individuals with severe disabilities and individuals who are unemployed, the Secretary believes it is more appropriate to judge projects based on the extent to which they are successful in assisting these individuals to achieve competitive employment. The Secretary therefore proposes to retain the two compliance indicators that measure the percentage of these individuals who are placed into competitive employment.

Proposed Compliance Indicators and Performance Levels

The proposed compliance indicators would measure grantee performance in five areas. The Secretary believes that the proposed indicators represent the most critical quantifiable aspects of project performance. In establishing minimum performance levels on each indicator, the Secretary reviewed project performance data, public comment in response to the NPRM published in the **Federal Register** on January 22, 1996, focus group discussions, and the RTI report.

Placement rate. The Secretary proposes to retain the current placement rate indicator and raise the minimum performance level. The primary goal of the PWI program is to place individuals into competitive employment. Therefore, the Secretary views placement rate as a critical indicator of project success. Under the proposed indicator, projects would be required to place a minimum of 55 percent of individuals served into competitive employment.

While higher than the current minimum placement rate of 40 percent, the Secretary believes the proposed performance level is both appropriate and realistic. Between 1990 and 1995, PWI projects reported an average placement rate of 61.2 percent. In comparison, in 1996 approximately 60.7 percent of individuals served by The State Vocational Rehabilitation Services Program achieved an employment outcome. The Secretary believes the partnerships with private industry and collaboration with State vocational rehabilitation agencies will enable every PWI project to achieve, at a minimum, the proposed placement rate of 55 percent. In addition, given the proposal to give more flexibility to projects on cost per placement (discussed in the following sections), the Secretary believes it is appropriate to raise performance expectations, particularly on this critical indicator.

Average change in earnings. The Secretary proposes to modify the current indicator that measures average change in earnings by raising the minimum performance level. The current minimum performance level requires an average increase of $75 per week. The proposed regulations would change the required minimum performance level to $150 per week for projects that do not use a school-to-work or supported employment service delivery model. That is, the earnings of individuals who are placed into competitive employment by the project must increase by an average of at least $150 a week over earnings at the time of project entry. Concurrently, the Secretary proposes to collect data to determine the need for additional changes to this indicator.

The Secretary believes that the proposed increase in the minimum performance level is appropriate given both inflation and increases in the minimum wage since the original performance level for this indicator was set in 1989. In addition, the Secretary believes this proposed performance level is realistic based on project performance data that demonstrate an overall average change in earnings of $183 and $195 per week in fiscal years 1993 and 1994, respectively.

The Secretary proposes to establish a lower performance level on this indicator for PWI projects that primarily serve secondary school students transitioning to work or that use a supported employment model. Based on a review of these types of projects, the Secretary has concluded that, by virtue of the individuals they serve and place, these projects might have difficulty meeting the change in earnings standard. The Secretary does not want to exclude these types of projects from the PWI program and, therefore, proposes a lower minimum performance level of $100 per week for these projects. Specifically, the Secretary proposes this lower standard for projects in which 75 percent or more of the individuals placed into competitive employment are students who are enrolled in secondary schools and who are working fewer than 30 hours per week and for projects in which at least 75 percent of individuals are placed into supported employment, as defined in 34 CFR 361(b)(45) and (46). All other projects will be subject to the higher standard.

In addition to these changes, the Secretary is proposing to collect data to assess the need to modify the change in earnings indicator to measure change in earnings for two groups: (1) individuals who entered a project without earnings and (2) individuals who entered a project with earnings. The Secretary believes such a two-tiered indicator may be a more accurate means of measuring a project's impact on individual earnings. This proposed data collection is discussed in more detail in the section entitled "Proposed Data Collection on Change in Earnings and Job Retention."

Percent of individuals placed who are individuals with severe disabilities and percent of persons placed who have been unemployed for six months prior to project entry. The Secretary proposes to retain these two indicators at the current minimum performance level, which requires that 50 percent of those placed into competitive employment are individuals with severe disabilities and 50 percent are individuals who have been unemployed continuously for six months prior to project entry. The Secretary believes that it is appropriate to preserve the program's emphasis on placing into competitive employment individuals with severe disabilities and individuals who are unemployed for at least six months prior to program entry.

Actual versus projected cost per placement. The Secretary proposes to revise the current indicator on projected cost per placement. The proposed indicator would require that a project's actual cost per placement not exceed the projected cost per placement, as specified in the approved grant application, by more than 10 percent. That is, the actual average cost per placement does not exceed 110 percent of the projected cost per placement.

The Secretary proposes to allow each project to determine what is a reasonable cost per placement, based on factors such as project objectives, population and geographic area to be served, and services to be provided. As part of its grant application, a project would be required to provide a description of those factors that justify its projected cost per placement, including, but not limited to, the project's objectives, types of services, target population, and service area. A project chosen for funding would not be permitted to exceed by more than 10 percent, the projected cost per placement in its approved grant application. The Secretary believes that this revised approach to cost per placement allows flexibility in project design while encouraging each project to consider cost effectiveness in the development of its grant application.

Proposed Data Collection on Change in Earnings and Job Retention

In addition to the five compliance indicators, the Secretary is concurrently proposing to collect data to determine the need to modify the change in earnings indicator and to add an additional indicator on job retention.

Change in earnings. While the current change in earnings indicator may demonstrate the average economic benefit of a project, the Secretary believes it does not measure the true extent to which the project improved the earnings of individual participants. The change in earnings as a result of project participation is likely to be significantly different for individuals who were unemployed at the time of project entry and who came to the project for job training and placement services than it is for individuals who held a wage-earning job at the time of project entry and who required career advancement services. The Secretary is considering the establishment of a two-tiered indicator to measure more adequately the effect of project services on the earnings of these two populations. However, the Secretary does not have sufficient data on which to base such a decision.

Concurrent with the proposed application content and compliance indicator changes, the Secretary proposes to collect data to determine the need for a modification to the change in earnings indicator to measure project performance for two groups: individuals who entered the project without earnings and individuals who entered with earnings. The Secretary proposes to require projects to report the following data for the next three years:

(1) For individuals with no earnings at the time of project entry, average hourly wage and average hours worked per week at placement.

(2) For individuals with earnings at the time of project entry, the average hourly wage and average hours worked per week, both at the time of project entry and at placement.

The Secretary plans to use these data to decide whether a two-tiered indicator would be a more accurate means of gauging the earnings impact of the job training and career advancement services provided through the PWI program, and what performance levels would be appropriate for such an indicator.

Job retention. The Secretary is concurrently proposing to collect data to determine the need to modify the change in earnings indicator and whether to add an additional indicator on job retention. The Secretary believes job retention is a critical indicator of project success because it demonstrates the *quality* of placements achieved by projects. A high job retention rate may indicate consumer satisfaction with the placement, appropriate job matching, and effective follow-up services.

In order to sample projects' job retention rates, the Secretary proposes that projects report the number of individuals who become unemployed within three months after placement, within six months after placement, and within nine months after placement.

In accordance with § 379.5(b)(7), placement occurs after the individual has held the job for 90 days. The intent of the 90-day period is to ensure that an individual is at least initially stabilized on a job. The proposed data collection would require projects to track each individual for up to nine months after placement or up to one year after the individual's initial job entry. At the end of the year, the project must report three separate figures:

- The number of individuals who were unable to maintain employment during the first three-month period after placement (the fourth through sixth months of employment).
- The number of individuals who were unable to maintain employment during the second three-month period after placement (the seventh through ninth month of employment).
- The number of individuals who were unable to maintain employment during the third three-month period after placement (the tenth through twelfth month of employment).

For the purpose of this data collection, an individual can change jobs and still be considered to be employed as long as there is no gap in employment.

In order to include all placements, projects may have to include individuals who were unable to maintain employment during the reporting year but who obtained placements in the previous reporting year. For example, if the reporting year is from October 1997 to September 1998, an individual who was placed in August 1997 but left the job in December 1997 would be reported as someone who was unable to maintain employment during the second three-month period after placement.

The Secretary does not believe this will be a significant burden to projects, since under section 621(a)(2)(E) projects are required to provide, as necessary, support and career advancement services to individuals after they are placed. In addition, as part of the annual evaluation plan, projects must provide information on the number of project participants who were terminated from project placements and the duration of those placements. The Secretary thus believes projects already track individuals after they are placed.

The job retention indicator would be established after the Secretary has collected and evaluated data for at least three years. Once collection and analysis of the data are completed, the Secretary would determine whether to establish a new indicator to measure job retention.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goals that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed regulations would further the objectives of this Goal by ensuring that only those projects that are successful in making persons with disabilities part of the global economy and in allowing them to exercise their rights as citizens to participate in the national labor market continue to receive Federal funding.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following headings: Overview of proposed changes, and Potential costs and benefits.

The Secretary believes the changes proposed in this NPRM would improve the PWI program regulations and would yield substantial benefits in terms of improved accountability and performance and reduced burden. As stated in the supplementary information section of this preamble, the Secretary believes the proposed regulations reduce grantee burden by reducing the number and complexity of the compliance indicators and improve accountability by focusing on the most critical areas of project performance. The Secretary has determined that the potential benefits of these proposed changes justify the potential costs to grantees.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 379.51 *What are program compliance indicators?*). (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are government, nonprofit, and for-profit organizations that receive Federal

funds under this program. However, the regulations would not have a significant economic impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. These regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 379.21 and 379.54 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Projects With Industry

These proposed regulations would affect entities eligible to apply for and receive grants under the PWI program, including for-profit and nonprofit agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities, designated State units, labor unions, employers, community rehabilitation program providers, trade associations, and Indian tribes and tribal organizations. These information collection requirements would affect applicants for new awards and organizations and entities already receiving assistance under the PWI program.

The Department needs to collect this information in order to fulfill statutory requirements regarding the compliance indicators (in section 621(f) of the Act). All information is to be collected and reported once a year, with the exception of that which is required of all applicants for new awards in § 379.21(a). This section requires responses from every organization or entity that applies for a new award under the PWI program. Annual reporting and recordkeeping burden for these collections of information is estimated to average 30 hours for each response for 105 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for these collections is estimated to be 3,150 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3330, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: February 5, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry)

The Secretary proposes to amend Part 379 of Title 34 of the Code of Federal Regulations as follows:

PART 379—PROJECTS WITH INDUSTRY

1. The authority citation for part 379 continues to read as follows:

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795(g), unless otherwise noted.

2. Section 379.21 is revised to read as follows:

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The proposed job training to prepare project participants for specific jobs in the competitive labor market for which there is a need in the geographic area to be served by the project, as identified by an existing current labor market analysis or other needs assessment or one conducted by the applicant in collaboration with private industry;

(2) The involvement of private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job training, job placement, and career advancement activities;

(3) The responsibilities of the BAC and how it will interact with the project in carrying out grant activities;

(4) The justification of the project's proposed cost per placement, including factors such as the project's objectives, types of services, target population, and service area;

(5) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program;

(6) A plan for evaluating annually the operation of the proposed project, which, at a minimum, provides for collecting and submitting to the Secretary the following information and any additional data needed to determine compliance with the program compliance indicators established in subpart F:

(i) The numbers and types of individuals with disabilities served.

(ii) The types of services provided.

(iii) The sources of funding.

(iv) The percentage of resources committed to each type of service provided.

(v) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(vi) The extent of capacity building activities, including collaboration with business and industry and other organizations, institutions, and agencies, including the State vocational rehabilitation unit.

(vii) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(viii) The number of project participants who were terminated from project placements and the duration of those placements;

(7) A description of the manner in which the project will address the needs of individuals with disabilities from minority backgrounds, as required by 34 CFR 369.21; and

(8) A description of how career advancement services will be provided to project participants.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required by § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will be given terms and benefits of employment equal to those that are given to similarly situated co-workers and will not be segregated from their co-workers; and

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes.

(Authority: Sections 621(a)(4), 621(a)(5), 621(b), and 621(e)(1)(B) of the Act; 29 U.S.C. 795g(a)(4), 795g(a)(5), 795g(b), and 795g(e)(1)(B))

3. Subpart F of Part 379 is revised to read as follows:

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet to Receive Continuation Funding?

379.50 What are the requirements for continuation funding?

379.51 What are the program compliance indicators?

379.52 How is grantee performance measured using the compliance indicators?

379.53 What are the minimum performance levels for each compliance indicator?

379.54 What are the reporting requirements for the compliance indicators?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet to Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

Beginning with fiscal year 1998, in order to receive a continuation award for the third or any subsequent year of a PWI grant, a grantee must adhere to the provisions of its approved application and must meet the minimum performance levels on the program compliance indicators contained in § 379.53.

(Authority: Section 621(f)(1)of the Act; 29 U.S.C. 795g(f)(1))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels in essential project areas to measure the effectiveness of individual grantees.

(Authority: Sections 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee does not pass the compliance indicator.

(c) A grantee must pass all the compliance indicators to meet the evaluation standards and qualify for continuation funding.

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

§ 379.53 What are the minimum performance levels for each compliance indicator?

(a) *Placement rate.* A minimum of 55 percent of individuals served by the project are placed into competitive employment.

(b) *Change in earnings.* (1) For projects in which at least 75 percent of individuals placed are placed into supported employment, as defined in 34 CFR 361.5(b)(45) and (46), the earnings of individuals placed by the project increase by an average of at least $100.00 a week over earnings at the time of project entry.

(2) For projects in which at least 75 percent of individuals placed into competitive employment are students enrolled in secondary schools working fewer than 30 hours per week, the earnings of individuals placed by the project increase by an average of at least $100.00 a week over earnings at the time of project entry.

(3) For all projects not covered under § 379.53(b)(1) or (2), the earnings of individuals who are placed into competitive employment by the project increase by an average of at least $150.00 a week over earnings at the time of project entry.

(c) *Percent placed who have severe disabilities.* At least 50 percent of individuals who are placed into competitive employment are individuals with severe disabilities.

(d) *Percent placed who were previously unemployed.* At least 50 percent of individuals who are placed into competitive employment are individuals who were continuously unemployed for at least six months at the time of project entry.

(e) *Cost per placement.* The actual average cost per placement does not exceed 110 percent of the projected average cost per placement in the grantee's application.

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) In order to receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit data for the most recent complete project year no later than 60 days after the end of that project year, unless the Secretary authorizes a later submission date, in order for the Secretary to determine if the grantee has met the program compliance indicators established in this Subpart F.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum performance required in § 379.53 to meet the program compliance indicators, the grantee may, at its option, submit data from the first 6 months of the current project year no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date, to demonstrate that its project performance has improved sufficiently to meet the minimum performance levels for all compliance indicators.

(Authority: Section 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

Note: A grantee receives its second year of funding (or the first continuation award) under this program before data from the first complete project year is available. Data from the first project year, however, must be submitted and is used (unless the grantee exercises the option in paragraph (b) of this section) to determine eligibility for the third year of funding (or the second continuation award).

[FR Doc. 98–16590 Filed 6–22–98; 8:45 am]
BILLING CODE 4000–01–P

VOL 63 ISS 120 JE 23 1998 UMI

federal register

Tuesday
June 23, 1998

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Applications for New Rehabilitation Research and Training Centers for Fiscal Year (FY) 1998; Notices

VOL 63 ISS 120 JE 23 1998 UMI

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects.

SUMMARY: The Secretary announces final funding priorities for five Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for five RRTCs related to disability and employment policy, State service systems, community rehabilitation programs (CRPs), workplace supports, and educational supports.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On April 14, 1998, the Secretary published a notice of proposed priorities in the **Federal Register** (62 FR 40422–40425). The Department of Education received five letters commenting on the notice of proposed priorities by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

General

Comment: NIDRR should identify a significant role for persons with disabilities in the RRTCs both from an employment and an advisory perspective.

Discussion: Involvement of individuals with disabilities is one of the general requirements that apply to all RRTCs. All RRTCs must "involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center. Applications for RRTCs are evaluated, in part, on the extent to which the applicant encourages individuals with disabilities to apply for employment.

Changes: None.

Comment: The priorities should place more emphasis on the development of studies measuring change or developing strategies for change.

Discussion: NIDRR provides applicants with the discretion to propose studies and methodologies to measure the impact of new strategies or interventions. An applicant could propose to place a special emphasis on the development of studies measuring change or developing strategies for change. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to place a special emphasis on the development of studies measuring change or developing strategies for change.

Change: None.

Comment: The role that culture plays in the development of employment opportunities for persons with disabilities should be part of the overall focus of the centers.

Discussion: NIDRR agrees that cultural variations may be an important contributing variable related to employment outcomes for persons with disabilities. An applicant for any of the centers could propose to include cultural factors in one or more activities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to include cultural factors in their investigations.

Changes: None.

Comment: The priorities do not include a sufficient focus on training. This may inadvertently limit the transition from research to practice.

Discussion: The minimum training requirements for an RRTC training are stated in the RRTC program description and general RRTC requirements section of the notice of final priorities. NIDRR believes that these requirements are sufficient to ensure that the research findings of the RRTC will be utilized by appropriate service providers. Having met these requirements, an applicant could propose to carry out additional training activities. The peer review process will evaluate the merits of the additional training activities. However, NIDRR has no basis for requiring all applicants to carry out additional training activities.

Changes: None.

Comment: One commenter suggested a number of specific studies that the RRTCs should carry out. These suggestions included investigating: how industry could be solicited to manage supplemental housing for employees with disabilities; modified voucher systems for parents or guardians of individuals with disabilities to serve as negotiators for service providers, job coaches, and transporters; enticing skilled crafts people to serve as mentors in their trades and provide persons with disabilities with opportunities to learn specific trade skills; creating alternate vocational opportunities, as opposed to the lock step endorsement placed on production and service type nonskilled work; and standardizing curricula for vocational training and trainers in community workshops and adult activity centers.

Discussion: An applicant could propose to carry out these suggested projects under the authority of one of the five employment RRTCs. The peer review process will evaluate the merits of the proposal. However, NIDRR prefers to provide applicants with the discretion to propose specific investigations and has no basis to determine that all applicants should be required to carry out these projects.

Changes: None.

Priority 1: Disability and Employment Policy

Comment: Civil rights issues are not well integrated into the overall policy direction of this center.

Discussion: In part, the sixth activity requires the RRTC to identify and analyze the effect of civil rights protections on significantly promoting or depressing the employment status of persons with disabilities. Applicants have the discretion to propose how this required activity, or any required activity, is integrated with the other activities of the RRTC.

Changes: None.

Comment: The RRTC should carry out the following projects: investigate broad workforce trends with an emphasis on benefits, worklife needs and issues, and the impact of national legislation such as the Family Medical Leave Act on the workforce and particularly the employee with a disability; investigate the relationship between health benefits and the needs of SSI and SSI beneficiaries who are candidates for returning to work; and coordinate the RRTC's data analysis activities with the analysis carried out in the RRTC on Improving the Effectiveness of State Service Systems, including data from State employment and support agencies as part of the analysis.

Discussion: An applicant could propose to carry out these suggested projects. The peer review process will evaluate the merits of the proposal. However, NIDRR prefers to provide applicants with the discretion to propose specific investigations and has no basis to determine that all applicants should be required to carry out these projects.

Changes: None.

Priority 2: State Service Systems

Comment: The definition of State systems should be revised to include: mental retardation/developmental disabilities programs, mental health programs, Workmen's Compensation programs, One Stop Career Centers, community rehabilitation providers, and local schools.

Discussion: The priority does not prescribe the entities that could be considered part of State service systems. An applicant could propose to include the entities listed in the comment as part of the State service system. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to consider all of these entities as part of the State service system.

Changes: None.

Comment: The RRTC should carry out the following projects: analyze emerging practices in reimbursement, including cash payments to individuals, employers, and others; and study the use and impact of natural and employer supports.

Discussion: An applicant could propose to carry out these suggested projects. The peer review process will evaluate the merits of the proposal. However, NIDRR prefers to provide applicants with the discretion to propose specific investigations and has no basis to determine that all applicants should be required to carry out these projects.

Changes: None.

Priority 3: Community Rehabilitation Programs (CRPs)

Comment: The RRTC should carry out the following projects: investigate the impact of consumer control on services and service delivery in the CRP system; and investigate the impact of choice on CRP system structurally, including the range of services offered and consumer outcomes realized.

Discussion: An applicant could propose to carry out these suggested projects. The peer review process will evaluate the merits of the proposal. However, NIDRR prefers to provide applicants with the discretion to propose specific investigations and has no basis to determine that all applicants should be required to carry out these projects.

Changes: None.

Priority 4: Workplace Supports

Comment: The RRTC should be required to address the relationship between quality of life and employment for persons with disabilities.

Discussion: The fourth and fifth activities require the RRTC to address quality of life issues related to employment. No further requirements are necessary.

Changes: None.

Comment: The priority should be expanded to require the RRTC to determine the extent to which workplace supports provided by human service agencies, such as supported employment job coaches or personal assistants, enhance or hinder employer productivity and the ability of employers to provide workplace accommodations.

Discussion: The sixth activity of the priority addresses employer perspectives and needs in order to facilitate the employment of persons with disabilities. Under the authority of the sixth activity, an applicant could propose to investigate the extent to which workplace supports provided by human service agencies enhance or hinder employer productivity and the ability of employers to provide workplace accommodations. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to investigate the extent to which workplace supports provided by human service agencies enhance or hinder employer productivity and the ability of employers to provide workplace accommodations.

Changes: None.

Priority 5: Educational Supports

Comment: The RRTC should address the needs of persons with cognitive disabilities.

Discussion: Unless noted otherwise in a priority, any NIDRR-funded project or center must address the needs of all persons with disabilities, including those with cognitive disabilities.

Changes: None.

Comment: The RRTC should address the impact of culture on outcomes of individuals entering or exiting postsecondary settings.

Discussion: NIDRR agrees that cultural variations may be an important contributing variable related to the use of educational supports and educational outcomes for persons with disabilities. An applicant for any of the centers could propose to include cultural factors in one or more activities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to include cultural factors in their investigations.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve

as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General Requirements

The following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process.

The RRTC must provide: (1) training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities.

Research Priorities in Employment of Persons with Disabilities

Issues in the Employment of Persons With Disabilities

Unemployment and underemployment among working-age Americans with disabilities are ongoing problems. Data from the U.S. Census Bureau on the labor force status of persons ages 16 to 64 in fiscal year 1996 highlight the magnitude of this problem (see Table 1). While four-fifths of working-age Americans were in the labor force and over three-fourths were working, less than one-third of persons with disabilities were in the labor force, and only one-quarter of them were working. Fully two-thirds of working-age persons with disabilities were not in the labor force, a statistic suggesting that many who may want to work have given up looking for a job. Finally, among those in the labor force, the unemployment rate for persons with disabilities is more than double that of nondisabled workers (12.6 percent versus 5.7 percent).

TABLE 1.—LABOR FORCE PARTICIPATION OF WORKING-AGE ADULTS WITH DISABILITIES

Working-age Americans	In labor force (percent)	Employed		Not in labor force (percent)
		Total (percent	Full time (percent)	
All working-age persons	81.3	76.7	62.6	18.7
Working-age persons with disabilities	31.8	27.8	17.7	68.2

Recent analyses of data from the Survey of Income and Program Participation (SIPP) (McNeil, J., Americans with Disabilities: 1994–99, Current Population Reports, P70–61, U.S. Census Bureau, 1997) describe earnings discrepancies among working adults based on disability status. As shown in Table 2, median monthly earnings of working males without a disability ($2,190) are nearly $1,000 higher than those of workers with a severe disability ($1,262). Working females without a disability earn $500 more in median monthly earnings than do females with a severe disability ($1,470 versus $1,000).

Recent trends in the nation's labor market exacerbate the difficulties experienced by persons with disabilities in their attempts to gain employment and even in their motivation to seek employment. Downsizing, for example, has led to a reduction in the percentage of individuals in the labor force with stable, long-term jobs that offer employee benefits. There has been an increase in the use of contingent labor as business and industry move to other configurations that fill labor needs without requiring a long-term commitment to workers. This contingent workforce takes many forms, including on-call workers, temporary help agency workers, workers provided by contract firms, and independent contractors paid wages or salaries directly from the company (Uchitelle, L., "More Downsized Workers Are

Returning as Rentals, *New York Times*, December 8, 1996; Clark, R., "Planning for the Future Environmental Scanning Forum: Final Report," Office of Special Education and Rehabilitative Services (OSERS), Washington, DC, 1997). Many of these types of jobs lack the security and benefits, particularly health insurance, that most persons with disabilities require in order to participate in the labor force. Further, some individuals believe that the nation's political climate is such that government supports for underemployed persons are likely to decline in the future (Clark, R., ibid.; Conlan, T., Planning for the Future Environmental Scanning Forum: Final Report, OSERS, Washington, DC, 1997).

TABLE 2.—MONTHLY EARNINGS OF NONDISABLED AND DISABLED WORKING ADULTS, 1994–95

Gender	Median monthly earnings		
	No disability	Nonsevere disability	Severe disability
Male	$2,190	$1,857	$1,262
Female	1,470	1,200	1,000

In addition, while many of the nation's business and education communities point to the need for highly educated, highly skilled workers if the nation is to succeed in the increasingly competitive global economy, the reality is more complex. On the one hand, availability of high-skilled jobs combined with rapid advances in technology may in fact improve the employment prospects of persons with disabilities as well as other workers, through such work arrangements as telecommuting and expanding the market for self-employment or small business. On the other hand, a sizable segment of the labor market includes low-skilled, low-paying jobs, in which persons with disabilities are disproportionally represented (Hayward, B., and Tashjian, M., "A Longitudinal Study of the Vocational Rehabilitation Service Program: Second Interim Report, "*Characteristics and Perspectives of Vocational Rehabilitation Consumers*," Research Triangle Institute, 1996).

Researchers have suspected a relationship between changes in the configuration of the nation's labor market and growth in the number of persons with disabilities who are recipients of disability benefits, but such a relationship is hard to demonstrate empirically (Rupp, K. and Stapleton, D., "Economic and Noneconomic Determinants of the Growth in the Social Security Administration's (SSA's) Disability Programs—Overview of Theories and Evidence," Social Security Bulletin, 58(4), pgs. 43–70, 1995). In the past ten years, the number of persons who receive cash benefits through Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) has increased by two-thirds, with SSA paying out approximately $72 billion annually to eight million recipients. Including Medicare and Medicaid benefits, the annual Federal expenditure exceeds $110 billion, and policymakers expect the costs of cash benefits alone will exceed $110 billion annually by the end of the current administration (Coelho, T., "Keynote Speech: Employment Post the Americans with Disabilities Act," Conference sponsored by the SSA, Washington, DC, 1997).

In addition to the changing macroeconomic work world, there are important changes in the conceptualization of disability. In this "new" disability paradigm, there is increased emphasis on the environment's role in creating barriers to an individual's with disability participation in society. NIDRR will support research that focuses on how the individual interacts with society. In terms of employment, this interaction may focus on environmental barriers to employment, including transportation, accommodations, attitudes, or programmatic barriers such as health insurance.

Recent investigations into the explosive growth of the disability benefit rolls and the inability of the existing service delivery system to return greater numbers of beneficiaries to employment have identified a wide variety of issues that merit further research. For example, data available from the Longitudinal Study of the Title I Vocational Rehabilitation Program indicate that the current structure of SSA benefits and work incentives is not adequate to address consumer concerns about income security (Hayward, B. and Tashjian, M., op. cit.). As shown in Table 3, when asked to identify reasons for not working, a substantially higher percentage of beneficiaries identified concern about a loss of total income or medical coverage than did nonbeneficiaries.

Addressing the issue of medical coverage is especially critical, since less than half (43.7 percent) of all persons aged 22 to 64 years old with a severe disability have private health insurance (McNeil, J., op. cit.). Under the current benefit structure, availability of medical benefits is tied to eligibility for cash benefits. Loss of medical coverage associated with a return to work is the major concern for many beneficiaries contemplating employment. As the data also suggest, many beneficiaries, who have little to no work history, are concerned that the income they might receive from available employment will not match the combined value of cash benefits and medical coverage they receive through SSA.

A number of public and private initiatives target employment for persons with disabilities. These include the State-Federal Vocational Rehabilitation Program, community rehabilitation program services, school-to-work programs, and employer sponsored programs primarily targeted at individuals already in the work force. For the past 75 years, the chief avenue of publicly

TABLE 3.—SELF-REPORTED REASONS FOR NOT WORKING

Issues preventing consumers from obtaining employment or working regularly	SSI/DI beneficiaries (percent)	Nonbeneficiaries with severe disabilities (percent)
I am afraid I would lose my medical insurance	48.3	26.5
I am afraid I could not get back on benefits if I lost the job	50.8	26.1
I do not think I could earn as much working as I get from my benefits	42.1	19.8

funded employment-related services to improve the employment status of persons with disabilities has been the State-Federal Vocational Rehabilitation Program, currently authorized under the Rehabilitation Act of 1973, as amended. Funded at $2.3 billion in Federal funds for fiscal year 1998 and a 22 percent State match for a total of an estimated $3 billion annually, the State-Federal Vocational Rehabilitation Program is designed to assist States in providing state-of-the-art, comprehensive and coordinated vocational rehabilitation services. State Vocational Rehabilitation agency staff assist persons with disabilities to establish vocational goals that are consistent with their strengths, resources, priorities, concerns, abilities, and capabilities in order that they may prepare for and engage in gainful employment. The program is authorized to provide an array of services that are intended to facilitate the employment of persons with disabilities, such as assessment, counseling and guidance, vocational or other training, physical and mental restoration, maintenance, and other necessary services and supports.

Reform of the current rehabilitation service delivery system is underway, and the possible effects of changes in the system require investigation. The State-Federal Vocational Rehabilitation Program is increasing consumers' control and expanding their role in policy development, implementing program performance standards, and streamlining the vocational rehabilitation process. In addition to these and other changes in the State-Federal Vocational Rehabilitation Program, a host of other ongoing reforms in the broader service delivery environment are occurring. In particular, the recent growth in the number of SSI/SSDI beneficiaries has sparked considerable Congressional interest in reforming the system of employment services that target persons with disabilities. Congressional interest includes revising existing SSA work incentives and expanding consumer choice in the selection of a vocational rehabilitation service provider through return-to-work tickets or vouchers for some or all recipients of disability benefits. Implementation of a return-to-work ticket program may have significant implications for current and future SSI/SSDI beneficiaries, including the level of control they will have over decisions about whether to participate in such a program, the selection of an employment goal and specific rehabilitation services, and changes in service providers or employers over time.

There are nearly 7,000 CRPs serving approximately 800,000 individuals with disabilities each day with funding from State vocational rehabilitation agencies, Job Training Partnership Act (JTPA) programs, Workman's Compensation, Medicaid, private insurance, and other sources (Menz, F., "Vocational Rehabilitation Research in the United States of America," *Vocational Rehabilitation in Europe*, p. 107, 1997). The role of CRPs in the overall service delivery environment may increase even further if Federal employment programs devolve to States and communities. CRPs may need to be prepared to offer a full range of vocational-related services, or highly specialized services to an increasingly heterogeneous consumer population. If return-to-work programs in which provider payments are based on successful consumer outcomes are among the new service delivery models implemented, new relationships between service providers and funding sources may emerge over the next few years. These new relationships are likely to require CRPs to adapt their current structure and operations in significant ways.

A number of questions about how these changes may potentially influence and affect CRPs remain unanswered. For instance, more needs to be known about the impact of consumer choice on different service delivery models and the efficacy of different models to maximize competitive employment outcomes for persons with severe disabilities or with specific types of disabilities. Finally, whether new funding mechanisms will promote increased competition and innovation in service delivery by CRPs is a major question. Knowledge about these and related areas is essential to validating assumptions around which pending reforms are predicated and to help shape the future direction of initiatives designed to increase the numbers of persons with severe disabilities who obtain and retain meaningful employment.

Workplace supports are programs or interventions provided in the workplace to enable persons with disabilities to be successful in securing and maintaining employment. Some workplace supports may be provided through formal mechanisms established by vocational rehabilitation programs, such as supported employment. Supported employment programs usually provide onsite assistance, provided by a job coach who works with the person with the disability as well as with co-workers and supervisors to ease the transition to the competitive employment setting ("Evaluating the Effectiveness and Efficiency of Supported Employment Programs," Policy Research Brief, Volume 5, No. 2, Center on Residential Services and Community Living, College of Education, University of Minnesota, 1993).

In addition, employers have developed a number of support mechanisms in the form of return-to-work programs and related disability management programs. These programs use case management strategies to ensure communication among medical providers, supervisors, and employees to prevent disability; or, when accidents or disease occur, to foster early return-to-work. Particularly important to these programs is the establishment of a framework that sends a clear message that the employer wants the employee to continue working or to return to work as quickly as appropriate. Workplace supports also include employer willingness to implement accommodations and to encourage supervisors to work to integrate the person with disability back into the workforce. Often the reintegration process requires that treatment personnel understand job requirements

and essential job functions in order to assess the ability of the employee to perform the job adequately. Finally, incentives embedded in employee benefit plans must be used to encourage the worker to maintain employment.

In addition to workplace supports, employees are protected under Title I of the Americans with Disabilities Act (ADA) which prohibits discrimination on the basis of disability in employment. This law requires that employers with 15 or more employees provide qualified persons with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. The ADA prohibits employers from discriminating against workers with disabilities and applies to individuals with disabilities who are seeking employment, as well as to those who are employed. Employers must provide reasonable accommodations to workers to overcome disability-related barriers to performing essential job functions. In addition, various government programs have experimented with strategies to improve employer receptivity to workers with disabilities, including tax credits and partial support of health benefits to encourage employers to hire persons with disabilities. Given the role that workplace supports can play in assisting employers to expand and improve employment opportunities for persons with disabilities, investigation of issues related to the development and implementation of innovative workplace supports is essential.

Over the past 20 years, changes in the nation's labor market have increased the importance of post-high school education in terms of employment success. Gingerich reported unemployment rates of persons with disabilities by level of education as follows: 12 percent among individuals with less than a high school diploma, 6.3 percent among those with a diploma, 4.2 percent among persons with some postsecondary education, and 2.5 percent among persons with at least four years of college. In 1992, earnings of college graduates were 50 percent higher than those of persons with only a high school diploma (Gingerich, J., "Vast Spaces and Stone Walls: Overcoming Barriers to Postsecondary Education for Rural Students with Disabilities," American Council on Rural Special Education Conference, 1996).

Concurrently, the percentage of postsecondary students reporting a disability has tripled, from less than 3 percent in 1978 to over 9 percent (about 140,000) in 1994. The largest growth has been students reporting a learning disability, representing about one-third of all postsecondary students reporting a disability, double the 1988 figure of 15 percent (Henderson, C., "College Freshmen with Disabilities: A Statistical Profile," American Council on Education, Washington, DC, 1995). Ongoing research sponsored by the Office of Special Education Programs (OSEP), U.S. Department of Education, is testing a methodology to determine the types of services youth exiting secondary school can be expected to require in their transition to adulthood ("Services Anticipated to Be Needed by Exiting Students with Disabilities: Results of the Second PASS Field Test," OSEP, 1996). While case management is the most frequently needed service (up to 80 percent of exiting youth require this service), over half will reportedly require services to support their participation in postsecondary education, including two- and four-year colleges and various forms of adult literacy programs (e.g., General Equivalency Diploma preparation, adult high schools, and adult basic education) (OSEP, ibid.).

Most of the nation's 3,000 postsecondary institutions offer support services to students with disabilities. Such services vary widely and may include: (1) individual academic accommodations (e.g., note taking, library and typing assistance, alternative testing arrangements, books on tape, readers, interpreters, tutors, and waivers of course requirements); (2) adaptive equipment (portable wheelchair-accessible desks, voice-activated computers, speech synthesizer-equipped computers); (3) case management and coordination (liaison with vocational rehabilitation, independent living, and other community resources); (4) advocacy; and (5) personal counseling, academic and career advising.

Given that such disability-related services are a relatively new addition to the postsecondary environment, a number of issues associated with their provision merit investigation, including: (1) whether the requirement that a person disclose his disability in order to obtain services is a deterrent to postsecondary enrollment and completion; (2) accessibility of vocational rehabilitation or other funding sources of funds for services not covered under ADA or Section 504 of the Rehabilitation Act of 1973, as amended, but necessary for a student's continued enrollment; (3) the impact of such services on students' completion of postsecondary education; and (4) the extent to which the institution provides transitional support to graduates as they attempt to enter the labor force.

To accommodate the changing nature of the nation's employment environment, along with anticipated policy changes that will affect all segments of the employment and training delivery system, NIDRR intends to apply new approaches and rigorous methods to research about the employment of persons with disabilities. Fundamental to these approaches and methods is NIDRR's intent to support research that is outcome based and has a high likelihood of making significant contributions to the advancement of knowledge and improved service delivery. NIDRR proposes a research agenda that emphasizes collaborative, interdisciplinary studies that contribute to knowledge about problems and issues related to the employment of persons with disabilities.

Priority 1: Disability and Employment Policy

Background

The effect of macroeconomic trends on the employment of persons with disabilities and public policy responses to these trends merit increased investigation. A coordinated research effort must examine issues, (e.g., the changing structure of the workforce, economic trends, labor market changes, new skill requirements, incentives and disincentives to work, devolution of responsibility for employment training to State and local levels, and new service delivery patterns that necessitate changes in Vocational Rehabilitation Program configurations) to improve employment and economic self-sufficiency for persons with disabilities. Of particular interest are implications of cross-agency and multiple agency developments and initiatives, including welfare reform, workforce development, changes in Social Security benefits and disability determination policies, Medicare and Medicaid changes, and the U.S. Department of Education—U.S. Department of Labor school-to-work program. Investigative studies that are national in scope and test alternative models for financing services, and infrastructure changes that may yield increased opportunities for persons with disabilities are essential.

Priority 1

The Secretary will establish an RRTC on disability and employment policy for the purpose of improving our understanding of public policy and its relationship to improving employment

outcomes for persons with disabilities. The RRTC shall:

(1) Develop predictive models for national macroeconomic trends affecting employment of persons with disabilities;

(2) Identify and analyze the relationship between select Federal and State policies including, but not limited to, welfare reform and innovations in Social Security programs affecting persons with disabilities, the Executive order on "Increasing Employment for Adults with Disabilities", and issues of contingent workforce and accompanying changes (e.g., part-time benefits and demands for new and flexible skills), upon the employment of persons with disabilities;

(3) Using existing data, conduct a comprehensive analysis of the employment status of persons with disabilities, identifying gaps in current data availability and collection methodologies;

(4) Identify and analyze the factors, such as pre- and post-disability earnings, education, type of job, personal assistance service, and benefit design, that predict return-to-work;

(5) Analyze the policy implications of outcome-based reimbursement on the delivery of employment and rehabilitation services to persons with disabilities;

(6) Identify and analyze the effect of civil rights protections and environmental factors (e.g., barriers to transportation and employer attitudes) on significantly promoting or depressing the employment status of persons with disabilities; and

(7) Identify and analyze policies and resource availability issues that foster or impede the participation of transitioning students in rehabilitation training or employment services programs.

Priority 2: State Service Systems

Background

The public vocational rehabilitation service system is in the midst of major reform. The 1992 amendments to the Rehabilitation Act mandated: (1) expanded consumer choice in the selection of goals, services, and providers; (2) implementation of program performance standards for State vocational rehabilitation agencies; and (3) an expanded consumer role in policy developed through the Rehabilitation Advisory Councils. The influence of these and other changes, such as a streamlined vocational rehabilitation process, on employment outcomes for persons with disabilities is unknown. Moreover, the current and future impact of recent reforms in the broader service delivery system, such as workforce development consolidation and return-to-work programs employing vouchers or "tickets," merit investigation.

Priority 2

The Secretary will establish an RRTC for the purpose of improving the effectiveness of State service systems on promoting employment outcomes for persons with disabilities. The RRTC shall:

(1) Describe the State systems that deliver employment services to persons with disabilities, including transitioning students. Identify how and to what extent the different components of the system, such as State vocational rehabilitation agencies, disability determination services, JTPA's Private Industry Councils, one-stop shops, and schools, coordinate their efforts;

(2) Analyze existing State and Federal data sets, including client and service provider characteristics, to determine different employment outcomes for persons with disabilities;

(3) Describe how State vocational rehabilitation agencies and other agencies within the State service delivery system overcome environmental barriers (e.g., using assistive technology, jobsite modifications, and personal assistance services) in order to improve employment outcomes;

(4) Evaluate the success of State service system efforts to address the unique employment-related needs of SSDI and SSI beneficiaries and identify State systems that have implemented demonstrably effective employment programs in assisting recipients of disability benefits to achieve a successful return-to-work; and

(5) Describe the progress of State and Federal initiatives to consolidate workforce development programs and identify policies and procedures that have been successful in ensuring the availability and provision of services to persons with the most severe disabilities.

Priority 3: Community Rehabilitation Programs

Background

Proposed restructuring of the financing of employment-related services for persons with disabilities assumes a major role for CRPs. The capacity and potential contributions of an estimated 7,000 CRPs across the nation require thorough investigation. Further, the potential of this system to assume greater responsibility for service delivery under contractual or other agreements (e.g., return-to-work "ticket" systems for SSDI and SSI recipients) merits study.

Priority 3

The Secretary will establish an RRTC on CRPs to improve their role in promoting employment outcomes for persons with disabilities. The RRTC shall:

(1) Describe the CRPs service delivery system, including the characteristics of providers, funding sources, nature and extent of the services provided, and individuals served, and identify the relative contributions of the programs to providing rehabilitation and employment services.

(2) Identify how services delivered by CRPs to State vocational rehabilitation agency consumers differ in quality, timeliness, quantity, costs, or outcomes from those delivered to consumers through other payor sources;

(3) Investigate the extent to which CRPs provide consumers with choices in the selection of employment goals and specific rehabilitation services;

(4) Analyze the impact of Federal and State policies on the structure and operation of CRPs, including management approaches, staffing configurations and staff training, outreach to underserved populations, and emerging service configurations; and

(5) Evaluate the nature and success of employment outcomes of persons who obtain services from CRPs.

Priority 4: Workplace Supports

Background

The work environment for persons with disabilities, including both the physical environment (as represented by job requirements, job site accommodations, and technological aids), and the roles of employers, supervisors, and co-workers, has received insufficient attention in past research. An improved understanding of the work environment and employer needs and preferences is necessary to improve employment outcomes. Employer disability management and return-to-work programs are one potential source of information on effective employer accommodation strategies for employees with disabilities. NIDRR will support research that investigates employer roles, collaboration between education and rehabilitation professionals and employers, strategies to improve employer receptivity to workers with disabilities, and the impact of incentives, such as tax credits and

partial support of health benefits, to encourage employers to hire persons with disabilities. In addition, this research will examine the viability of new work structures, including telecommuting, flexible work hours and self-employment, for persons with disabilities.

Priority 4

The Secretary will establish an RRTC on workplace supports for the purpose of identifying and evaluating effective workplace supports that improve employment outcomes for persons with disabilities. The RRTC shall:

(1) Analyze the potential of existing or new employer incentives, such as tax credits or Medicare buydowns to improve labor force participation of persons with disabilities;

(2) Develop and test financial analysis methodologies, such as return on investment or economic value added to measure effectiveness of employer workplace supports and their contribution to employer profitability;

(3) Identify and evaluate effective employer disability management, return-to-work, or other strategies that affect hiring, retention, and advancement of workers with disabilities;

(4) Evaluate the impact of workplace support on changes in the employment status of persons with disabilities in terms of job types, career advancement, and other outcomes important to meaningful employment of persons with disabilities;

(5) Conduct research to determine how changes in work structure will affect hiring, retention, advancement, and job satisfaction for persons with disability; and

(6) Examine perspectives of employers to determine their needs (e.g., for information, training, and resources) that will facilitate the employment of individuals with disabilities with necessary work support.

Priority 5: Educational Supports

Background

The U.S. Department of Education Strategic Plan, 1998–2002, describes postsecondary education as "America's traditional gateway to the professions, more challenging jobs, and higher wages." Insufficient information exists about the use and impact of educational supports for persons with disabilities in postsecondary environments. Of particular interest are the types of educational and transition assistance that postsecondary institutions make available to improve the educational and subsequent labor market success of students with disabilities. Systemic and environmental barriers to full participation in postsecondary programs by individuals with disabilities must be studied as well. In addition, promising postsecondary educational practices important to the career mobility and success of individuals with disabilities must be investigated, at a minimum, to determine whether educational supports are available as needed, and whether they are effective in improving the educational performance of individuals with disabilities.

Priority 5

The Secretary will establish an RRTC on educational supports to increase access and improve outcomes for individuals with disabilities in postsecondary education programs. The RRTC shall:

(1) Identify the nature and range of educational supports that are available to students with disabilities in postsecondary educational programs by type of program (e.g., colleges, vocational and technical institutes, adult educational programs) and type of disability;

(2) Examine the contributions of technological advances to the effectiveness of student support systems at the postsecondary level;

(3) Investigate the effectiveness of educational supports in terms of educational outcomes and labor force participation; and

(4) Investigate the extent to which institutional supports extend to the employment environment, with particular emphasis on the special needs of persons with severe disabilities.

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Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: June 17, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–16593 Filed 6–22–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Rehabilitation Research and Training Centers for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly *Rehabilitation Research and Training Centers* in Subpart C.

Program Title: Rehabilitation Research and Training Centers (RRTCs).

CFDA Number: 84.133B.

Purpose of Program: RRTCs conduct coordinated and advanced programs or

research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources and provide training for service providers, individuals with disabilities and their families and representatives, and rehabilitation researchers.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1998 REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Disability and Employment Policy	August 21, 1998	1	$800,000	60
State Service Systems	August 21, 1998	1	650,000	60
Community Rehabilitation Programs	August 21, 1998	1	700,000	60
Workplace Supports	August 21, 1998	1	800,000	60
Educational Supports	August 21, 1998	1	600,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RRTC Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for RRTCs on disability and employment policy, State service systems, community rehabilitation programs (CRPs), workplace supports, and educational supports under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are

accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(f) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(j) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals

with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary strongly recommends that applicants:

(1) Include a one-page abstract in their application;

(2) Limit Part III—Application Narrative to no more than 125 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides);

(3) Double-space (no more than 3 lines per vertical inch) all sections of text in the application narrative; and

(4) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The recommended application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the recommended page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

The recommendations for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: June 17, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More than One NIDRR Program Competition or More than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect cost rate of 15%.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I Assure That my Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I Find Out if It Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if my Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my Application is Successful, Can I Assume I Will get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will all Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED	Application Identifier
1. TYPE OF SUBMISSION ☐ Construction ☐ Non-Construction	Preapplication: ☐ Construction ☐ Nonconstruction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION	
Legal Name:	Organizational Unit:
Address (Give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. Employer Identification Number:	7. TYPE OF APPLICATION: (enter appropriate letter here) ☐ A. State F. Intermunicipal K. Indian tribe B. County G. Special District L. Individual C. Municipal H. Independent School Dist. M. Profit Org. D. Township I. State Cont. I of III. N. Other (Specify) E. Interstate J. Private University
8. TYPE OF APPLICATION ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) here: ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration (Other (specify)	9. NAME OF FEDERAL AGENCY
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84. Title:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date:	Ending Date:	a. Applicant:	b. Project:

15. ESTIMATED FUNDING:		16. IS APPLICANT SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES ☐ THIS PREAPPLICATION /APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
c. State	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes" attach an explanation ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title:	c. Telephone Number:
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicants control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matter related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12.	List the State and area (county, city, etc.) the applicant is applying to serve with this application.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

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U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

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succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

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OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

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EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--.

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

http://www.dnb.com/dbis/aboutdb/intlduns.htm

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

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[FR Doc. 98–16594 Filed 6–22–98; 8:45 am]
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

S. 1605/P.L. 105–181

Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

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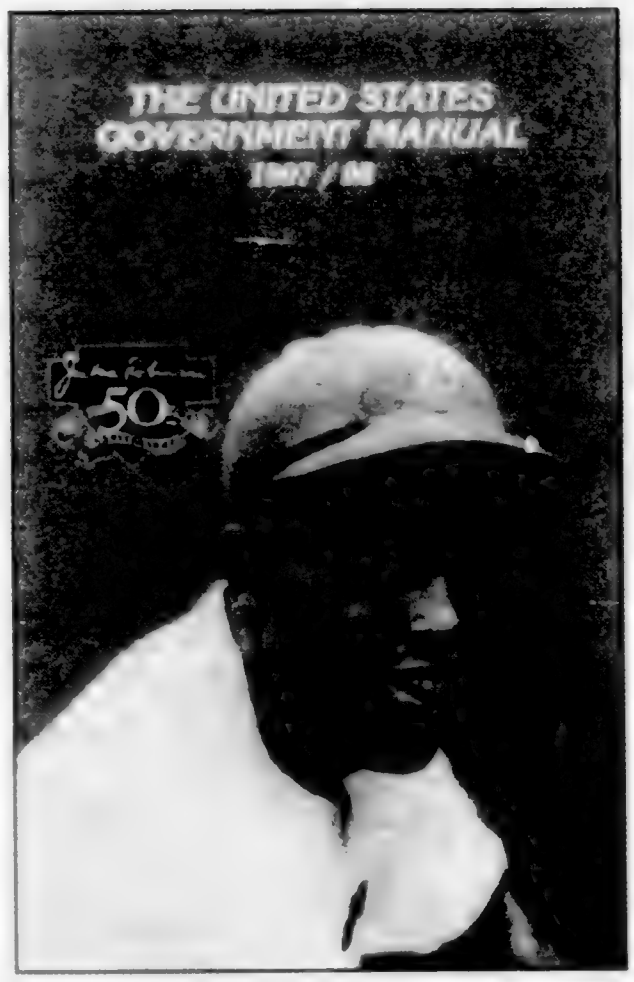

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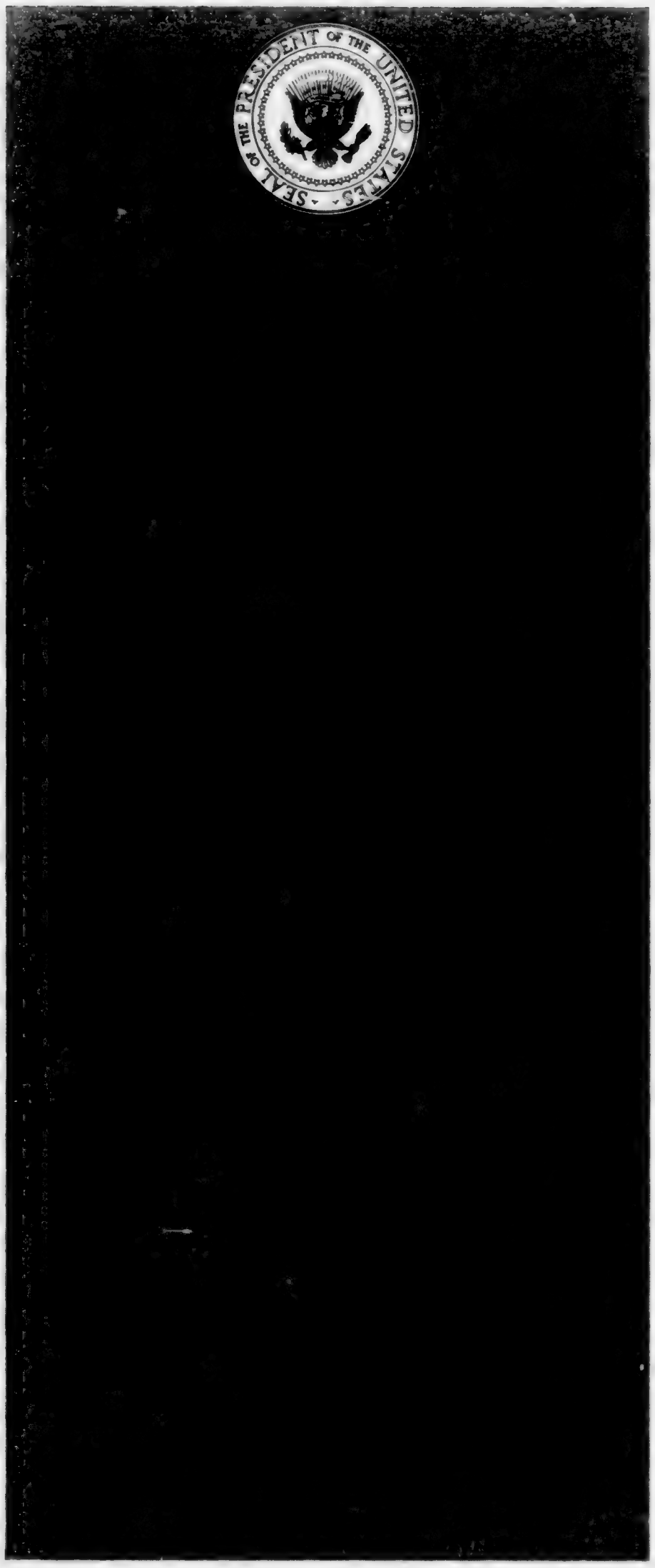

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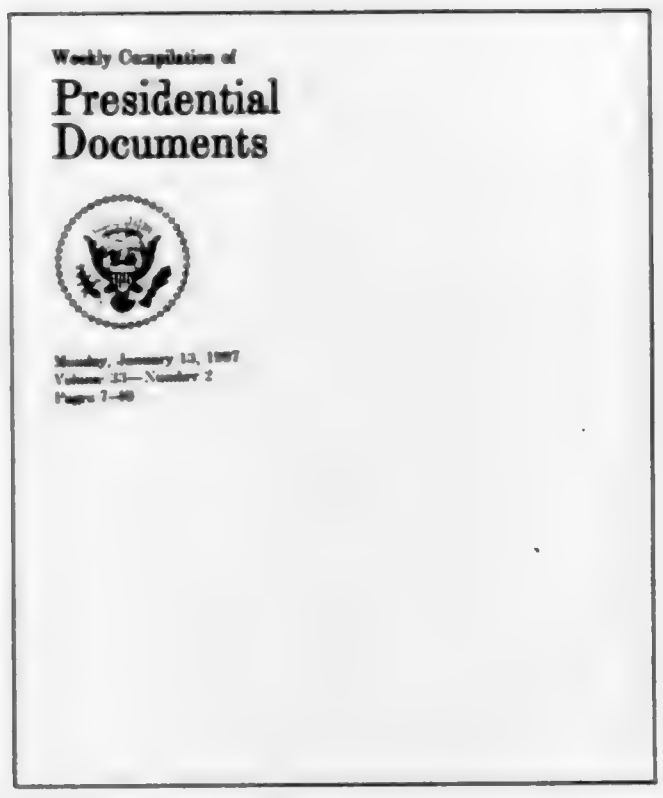

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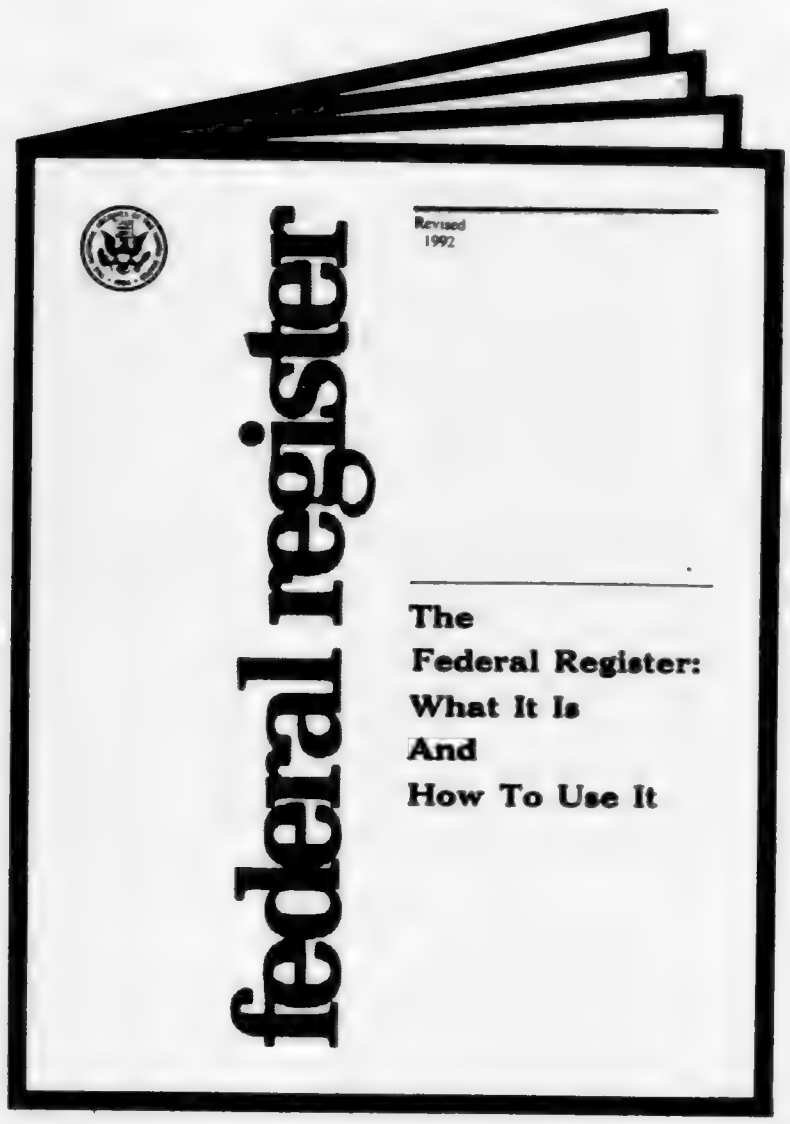

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Federal Register

Wednesday
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The President

Presidential Determination No. 98–30 of June 15, 1998

Report to Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress towards democratization in Burma;

2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

3) progress made in developing a comprehensive multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling this requirement to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 15, 1998.

[FR Doc. 98–16984
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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 335

RIN 3206–AH92

Employment in the Senior Executive Service; Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to correct existing regulations which are inconsistent with statutory provisions governing the 120-day moratorium on involuntary reassignments of career Senior Executive Service (SES) appointees following the appointment of a new agency head or a new noncareer immediate supervisor; and to authorize agencies to reinstate SES career appointees who have competitive service reinstatement eligibility to career appointments in any competitive service position for which qualified, including Senior Level (SL) positions.

EFFECTIVE DATE: July 24, 1998.

COMMENTS DUE: August 24, 1998.

ADDRESSES: Send or deliver comments to Ms. K. Joyce Edwards, Assistant Director for Executive Policy and Services, Office of Executive Resources, Room 6484, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mr. Bede Bender (202) 606–1784.

SUPPLEMENTARY INFORMATION:

120-Day Moratorium on Involuntary Reassignments

The law in 5 U.S.C. 3395(e)(1) provides for a 120-day moratorium on involuntary reassignments of SES career appointees following the appointment of a new agency head or the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance. The law also provides in § 3395(e)(2) for an exception to the moratorium by permitting involuntary reassignments during the 120-day period when the reassignment results from a final unsatisfactory performance rating issued prior to the appointment that triggered the moratorium. In situations which meet this criterion for exception, it does not matter if a new agency head or noncareer supervisor (with authority to make an initial performance appraisal) is appointed subsequently, i.e., after issuance of a final unsatisfactory performance rating, nor does it matter if there has been a change in the agency official responsible for taking the reassignment action (the language of the current regulation). The reassignment action may proceed if the conditions for the exception are met.

In instances where there is a change in agency head, it is possible that career appointees will be subject to more than one moratorium—which almost certainly will not run concurrently but may overlap to some degree, i.e., appointment of a new agency head often results in some turnover among noncareer appointees. When applying the regulation in these instances, it is important to look at the starting date of each moratorium independently, in relation to the date on which the unsatisfactory rating was issued. For example, if a final rating of unsatisfactory is issued after the appointment of a new agency head, the moratorium initiated by that appointment must be allowed to run its course before any involuntary reassignment action can be effected. If a new noncareer supervisor is appointed after the new agency head, and also after the issuance of the unsatisfactory rating (i.e., when the rating is issued between the appointment of the new agency head and the new noncareer supervisor), then the second moratorium (i.e., the moratorium triggered by the appointment of the new noncareer supervisor) does not apply to an involuntary reassignment resulting from the unsatisfactory rating.

Conversion From Career SES to Career SL Appointment

Senior Level (SL) positions established under 5 CFR Part 319 are in the competitive service and are covered by OPM regulations governing the competitive service generally. Currently, under 5 CFR 335.103(c)(1)(vi), agencies must follow competitive procedures in agency merit promotion plans in order to reinstate a person to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service. This means that career SES members may be reinstated to competitive service positions only at the same grade or pay level as the highest position they held previously in the competitive service.

By law, SES and SL positions are above the GS–15 level. In nearly all cases, career SES appointees have already competed at least Governmentwide. This regulatory change will recognize that fact by permitting reinstatement of career SES appointees to competitive service positions above the GS–15 level.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking for the following reasons: (1) The purpose of the interim regulations pertaining to the 120-day moratorium on involuntary reassignments is to correct existing regulations which are inconsistent with statutory provisions governing the involuntary reassignment of career Senior Executive Service appointees. Because this change is taken directly from statute, public comment is unnecessary. (2) The provision pertaining to conversion of SES career to Senior Level career appointments was originally incorporated in proposed Promotion and Internal Placement regulations published in the **Federal Register** on February 20, 1996, in Volume 61, Number 34, page 6327. No comments were received pertaining to the proposed regulatory change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities

because it pertains only to Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 317 and 335

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 317 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. In § 317.901, the text in paragraph (c) and (c)(1) is republished for the convenience of the reader, paragraph (c)(2) is revised to read as follows:

§ 317.901 Reassignments.

* * * * *

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430 of this chapter.

(1) *In this paragraph—*

(i) *Head of an agency* means the head of an executive or military department or the head of an independent establishment.

(ii) *Noncareer appointee* includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions do not apply to the involuntary reassignment of a career appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of "Unsatisfactory" that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

PART 335—PROMOTION AND INTERNAL PLACEMENT

2. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330, and E.O. 10577 (3 CFR 1957–58 Comp., p. 218).

3. In § 335.103(c)(3) the text is republished for the convenience of the reader, a new paragraph (c)(3)(vii) is added to read as follows.

§ 335.103 Agency Promotion Programs.

* * * * *

(c) * * *

(3) *Discretionary actions.* Agencies may at their discretion except the following actions from competitive procedures of this section:

* * * * *

(vii) Appointments of career SES appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 CFR Part 319—Employment in Senior-Level and Scientific and Professional positions.

[FR Doc. 98–16825 Filed 6–23–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF THE INTERIOR

5 CFR Part 3501

43 CFR Part 20

RINS 1090–AA38, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior and Residual Employee Responsibilities and Conduct Regulations

AGENCY: Department of the Interior (Department).

ACTION: Final rule.

SUMMARY: The Department of the Interior, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. This final rule is a necessary supplement to the Standards because it addresses ethical issues unique to the Department. The final rule adopts prior interim regulations as final, with amendments deleting the provision specifying the title of an employee to serve as the Designated Agency Ethics Official and a typographical correction. The portion of the interim rule concerning the Department's separate employee responsibilities and conduct regulation is being amended by this final rule by changing the reference to the Designated Agency Ethics Official as well and by making technical revisions to the authority citation.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mason Tsai or Linda T. Sullivan, Department Ethics Office, (202) 208–5916.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733), 61 FR 50689–50691 (interim rule revisions adopted as final at 62 FR 12531), and 62 FR 48746–48748, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch personnel.

On October 16, 1997, the Department, with OGE's concurrence, issued an interim rule with a request for comments, setting forth the Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior and revising the Department's employee responsibilities and conduct regulations at 43 CFR part 20. See 62 FR 53713–53726. The Department's separate employee responsibilities and conduct regulations at 43 CFR part 20 had previously been revised in a final rule published on June 10, 1993 at 58 FR 32446–32449. The interim rule prescribed a 60-day comment period and invited comments from all interested parties. The Department received no comments in response to its requests for comments on the interim rule. The comment period closed on December 15, 1997.

The Department, with OGE's concurrence, is now publishing as final, with a few minor technical amendments, the interim Supplemental Standards of Conduct for Employees of the Department of the Interior and the Department's separate employee responsibilities and conduct interim regulations. The Department has determined that these supplemental regulations are necessary to the success of its ethics program.

II. Analysis of Amendments

This final rule amends two provisions in the interim rule which are located at 5 CFR 3501.101(b)(3) and 43 CFR 20.201(a), respectively, dealing with the designation of the Department's Designated Agency Ethics Official. These two provisions in the interim rule state that "Designated Agency Ethics Official" (DAEO) means the Assistant Secretary—Policy, Management and Budget.

Because future administrations and reorganizations may change the position title of the Assistant Secretary—Policy, Management and Budget, or result in the DAEO responsibilities being assigned to an employee in a different position, the Department has determined that it is not practical or cost efficient to publish in this rule the title of the officer who has been assigned the responsibilities of the DAEO. As a result, the final rule in 5 CFR 3501.101(b)(3) has been amended to delete the provision specifying the title of the employee who serves as the DAEO. As the procedure for designation of the DAEO is already referenced in the definition section of the Standards at 5 CFR 2635.102(f), nc substitute for the deleted supplemental provision is necessary. In the Department's separate residual regulation at 43 CFR 20.201(a), the final rule has been amended to read that the DAEO means the official designated under 5 CFR 2638.201 to coordinate and manage the Department's ethics program. The authority citation to the Department's residual regulation is also being revised by adding a reference to 5 U.S.C. 7301 and by revising the citation to 43 U.S.C. 31 to 43 U.S.C. 31(a). Other than these amendments to the Department's residual regulation, the final rule adopts the revisions to the Department's residual regulation made in the interim rule without change.

III. Correction of Typographical Error

The Department is also correcting in this final rule a typographical error that appeared in the interim rule which was published in the **Federal Register** on October 16, 1997 (62 FR 53720). The citation mentioned in 5 CFR 3501.105(b)(4)(ii)(E) is incorrect and is being amended to read "(b)(4)(ii) (A) through (D) of this section."

IV. Matters of Regulatory Procedure

Executive Order 12886

In promulgating this final rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order since it deals with agency organization, management, and personnel matters and is not, in any event, deemed "significant" thereunder.

Administrative Procedure Act

The Department has found good cause, pursuant to 5 U.S.C. 553(d)(3), for waiving the 30-day delay in effectiveness as to this final rule. The reason for this determination is that it is important that these minor technical amendments effective as soon as possible.

Regulatory Flexibility Act

The Department has determined that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605).

Paperwork Reduction Act

The Department has determined that these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 5 CFR Part 3501 and 43 CFR Part 20

Conflict of interests, Government employees.

Dated: June 11, 1998.

John D. Leshy,

Solicitor, Department of the Interior.

Approved: June 17, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of the Interior, with the concurrence of the Office of Government Ethics, is adopting the interim rule adding 5 CFR chapter XXV, consisting of part 3501, and amending 43 CFR part 20 which was published at 62 FR 53713–53726 on October 16, 1997, as a final rule with the following changes:

CHAPTER XXV—DEPARTMENT OF THE INTERIOR

PART 3501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR

1. The authority citation for part 3501 continues to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803.

§ 3501.101 [Amended]

2. Section 3501.101 is amended by removing paragraph (b)(3) and redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively.

§ 3501.105 [Amended]

3. Section 3501.105 is amended by removing the cross-reference "(c)(4)(ii) (A) through (D)" in paragraph (b)(4)(ii)(E) and adding in its place the cross-reference "(b)(4)(ii)(A) through (D)".

TITLE 43—[AMENDED]

SUBTITLE A—[AMENDED]

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

4. The authority citation for part 20 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Reorganization Plan No. 3 of 1950); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); 5 CFR 2634.903, 2634.905.

5. Section 20.201 is amended by revising paragraph (a) to read as follows:

§ 20.201 Ethics officials.

(a) *Designated Agency Ethics Official* refers to the official designated under 5 CFR 2638.201 to coordinate and manage the Department's ethics program.

* * * * *

[FR Doc. 98–16688 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 98–033–1]

Tuberculosis in Cattle, Bison, and Captive Cervids; Indemnity for Suspects

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning animals destroyed because of tuberculosis to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been

classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Animal and Plant Health Inspection Service that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. We are also amending the regulations to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to this interim rule, owners of cattle, bison, and captive cervids could only receive Federal indemnity for affected and exposed animals destroyed because of tuberculosis, and animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. This interim rule is necessary to ensure continued progress toward eradicating tuberculosis in U.S. livestock.

DATES: Interim rule effective June 17, 1998. Consideration will be given only to comments received on or before August 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–033–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–033–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or e-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations at 9 CFR part 50, "Animals Destroyed Because of Tuberculosis" (the regulations), administered by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (the Department), provide for payment of Federal indemnity to owners of certain cattle, bison, captive cervids, and swine destroyed because of tuberculosis.

As part of the program to control and eradicate tuberculosis in cattle, bison, and captive cervids, the regulations have provided for the payment of indemnity for the destruction of cattle, bison, and captive cervids that are affected with or exposed to tuberculosis. Because the continued presence of tuberculosis in a herd seriously threatens the health of other animals in that herd and possibly other herds, the prompt destruction of tuberculosis-affected and -exposed animals is critical if tuberculosis eradication efforts in the United States are to succeed. Indemnity is intended to provide owners with an incentive for promptly destroying such cattle, bison, and captive cervids.

As set forth in § 50.4 of the regulations, cattle, bison, and captive cervids are classified as affected with tuberculosis on the basis of an intradermal tuberculin test applied by a Federal, State, or an accredited veterinarian, or by another diagnostic procedure approved in advance by the Administrator of APHIS. Cattle, bison, and captive cervids are classified as exposed to tuberculosis when such cattle, bison, and captive cervids (1) are part of a known affected herd, or (2) are found to have moved from an affected herd before the time infection was disclosed in the herd and after the time the herd had apparently become affected, or (3) are found to have been exposed by virtue of nursing from a reactor dam.

Cattle, bison, and captive cervids that respond to an intradermal tuberculin test are not always classified as affected with tuberculosis. Cattle, bison, and captive cervids are classified as affected with tuberculosis based on an intradermal test when they are classified as reactors to that test. The Uniform Methods and Rules—Bovine Tuberculosis Eradication (UMR) (incorporated into the regulations by reference in 9 CFR part 77) contains the requirements for classifying cattle and bison. In accordance with the UMR, in herds of unknown tuberculosis status, an initial response to an intradermal tuberculin test (specifically, the caudal fold test) causes an animal to be classified as a suspect. When an animal is classified as a suspect, the herd is quarantined and a second intradermal tuberculin test (the comparative cervical test) is scheduled. The animal's response to the comparative cervical test is plotted on a scattergram. If the animal's response indicates a suspect classification, another retest is scheduled. The testing schedule for captive cervids is similar to that for cattle and bison. Consequently, cattle, bison, and captive cervids in herds of unknown tuberculosis status are classified as reactors only after at least two, and in many cases three, responses to an intradermal tuberculin test.

Under this testing schedule, an animal may remain a suspect for between 12 and 120 days until the animal tests negative for tuberculosis or a reactor classification is achieved. If a suspect is infected with tuberculosis, this period provides opportunity for the spread of the disease to healthy animals in the herd. If the suspect were destroyed immediately instead of being retested, APHIS could perform a necropsy on the suspect to determine if the animal is infected. This would allow us to diagnose tuberculosis faster and to take other appropriate actions to ensure that the disease is not spread.

Immediate slaughter and necropsy of suspects would be especially valuable in herds that we believe are at an increased risk for tuberculosis infection, such as herds in an area where tuberculosis infection is known to exist in wild animal populations or herds adjacent to an affected herd. The program to eradicate tuberculosis in U.S. cattle, bison, and captive cervids is in its final stages, and we believe total eradication is possible by the year 2002. The most critical element of the program at this point is surveillance of herds that are at an increased risk for tuberculosis infection. Rapid diagnosis of tuberculosis in such herds, made possible by the immediate slaughter of suspects, will be a critical factor in allowing us to achieve our target eradication date of 2002.

Many herd owners elect to keep suspect animals in their herd until testing reveals them to be free of tuberculosis or they are classified as reactors. This is because the regulations have not provided for the payment of indemnity for the destruction of suspect cattle, bison, and captive cervids unless they are part of a known affected herd. We believe that offering indemnity for the destruction of suspects will encourage herd owners to promptly destroy suspect animals. For this reason, we believe it is appropriate at this time to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has

been determined by APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. We believe that the destruction of suspects would contribute to the tuberculosis eradication program if the suspects are in a herd that we consider to be at an increased risk for tuberculosis infection, such as herds in an area where tuberculosis infection is known to exist in wild animal populations or herds adjacent to an affected herd.

We will not offer the indemnity for the destruction of suspect cattle, bison, or captive cervids in all instances where they are found because the majority of suspect animals are not infected with tuberculosis. Typically, in herds of unknown tuberculosis status, we expect that between two and three percent of cattle and bison tested with the caudal fold intradermal tuberculin test will respond to that test, and subsequently will be classified as suspects. Greater than 95 percent of these responses are false positives, and subsequent testing with more specific tests shows these suspects not to be infected with tuberculosis. The response rate for captive cervids on the single cervical test (the primary intradermal tuberculin test used in captive cervid herds) is similar to that of the caudal fold intradermal tuberculin test for cattle and bison.

In herds that we do not consider to be at an increased risk for tuberculosis, we would expect this response rate and would not usually deem it advantageous to destroy the suspect animals. However, in herds that are at an increased risk of tuberculosis infection, the likelihood of a suspect animal actually being infected with tuberculosis is higher. In such herds, rapid diagnosis would significantly improve our ability to contain the disease. When this is the case, indemnity for destruction of the suspect animals may be offered.

Therefore, we are amending the regulations to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Administrator of APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. Indemnity will not exceed $450 per animal. Further, the joint State-Federal indemnity payments, plus salvage, may not exceed the appraised value of each animal. We are adding these provisions in a new paragraph (d) to § 50.3, "Payment to owners for animals destroyed." We are also adding a requirement in § 50.3(d) that payment of indemnity for suspects will be withheld until the tuberculosis status of the suspect has been determined and, if the suspect is found to be infected with tuberculosis, all cattle, bison, and captive cervids 2 years of age or over in the herd have been tested for tuberculosis under APHIS or State supervision. This requirement will help ensure that the remainder of the herd is tested for tuberculosis.

We are also adding a new paragraph (c) to § 50.4, "Determination of existence of or exposure to tuberculosis," to describe how cattle, bison, and captive cervids will be classified as suspects for tuberculosis. The new paragraph (c) will state that cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (incorporated into the regulations by reference in part 77); and that captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison. Because of the addition of suspect classification, we are revising the heading for § 50.4 to read "Classification of cattle, bison, and captive cervids as affected, exposed, or suspect."

We are also revising § 50.8, concerning payment of expenses for transporting and disposing of affected and exposed animals, to allow the same payments for suspect cattle, bison, and captive cervids. Some slaughtering establishments refuse to take suspect animals because, if the animals are found to be infected with tuberculosis, restrictions on the use of the meat increase slaughtering costs and reduce the value of the meat. Consequently, some herd owners may have to transport suspect animals long distances in order to find a slaughtering establishment willing to take them. In such cases, the Department may pay some of the expenses for transporting and disposing of the suspect animals, so that owners do not opt to keep their suspect animals in the herd for further testing, rather than pay for long-distance shipping.

Under § 50.8, as amended, the Department may pay herd owners one-half the expenses of transporting suspect cattle, bison, and captive cervids to slaughter or to the point where disposal will take place, and disposing of the animals, provided that the Department may pay more than one-half of the expenses when the Administrator of APHIS determines that doing so will contribute to the tuberculosis eradication program. The APHIS Veterinarian in Charge for the State in which the animals reside must approve the payment in advance in writing. For reimbursement to be made, the owner of the animals must present the APHIS Veterinarian in Charge with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner may not be greater than the normal fee charged by commercial haulers or renderers for similar services. These are the same provisions that currently apply to the transport and disposal of affected and exposed cattle, bison, and captive cervids. In conjunction with this change, we are revising the heading for § 50.8 to read "Payment of expenses for transporting and disposing of affected, exposed, and suspect animals."

We are also revising § 50.14, "Claims not allowed." Paragraph (b) of § 50.14 has provided that claims for compensation for cattle, bison, or captive cervids destroyed because of tuberculosis will not be allowed if all cattle, bison, and captive cervids 2 years of age or over in the claimant's herd have not been tested for tuberculosis under APHIS or State supervision. Paragraph (b) has further provided that cattle, bison, and captive cervids destroyed under §§ 50.3(b) and 50.3(c) are exempt from this requirement if the cattle, bison, and captive cervids are given a post-mortem examination for tuberculosis by a Federal or State veterinarian. Section 50.3(b) concerns cattle, bison, and captive cervids destroyed as part of a herd depopulation; 50.3(c) concerns cattle, bison, and captive cervids destroyed because of exposure to tuberculosis.

We are revising § 50.14(b) to also exempt cattle, bison, and captive cervids destroyed under new § 50.3(d) from the requirement that all cattle, bison, and captive cervids 2 years of age or over in the herd must be tested before indemnity may be claimed. Section 50.3(d) is added to the regulations by this document to provide indemnity for certain suspect cattle, bison, and captive cervids. The exemption is necessary in cases where all cattle, bison, and cervids in the herd have not been tested, but it is still advantageous to destroy the suspect animal. As in new § 50.3(d), revised § 50.14(b) will require that if the suspect is found to be infected with tuberculosis, the remainder of the herd must be tested for tuberculosis if indemnity is to be paid.

Miscellaneous Change

The regulations at 9 CFR part 50 provide for the payment of Federal indemnity to owners of certain cattle,

bison, cervids, and swine destroyed because of tuberculosis. On April 4, 1996, we published a proposed rule in the **Federal Register** (61 FR 14982–14999, Docket No. 92–076–1) to add interstate movement and testing requirements for cervids to 9 CFR part 77. Comments we received on the proposal for part 77 brought to our attention that the proposed regulations for interstate movement and testing of cervids could be interpreted to apply to wild cervids. While we have not published a final rule regarding part 77, we are adding the term "captive" before "cervid" each time it appears in part 50 to clarify our intent.

In § 50.1, a captive cervid is defined to mean "All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition." In the final rule for part 77, based on comments received, we are considering revising the definition for captive cervid to read: "All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by APHIS with which to trace the animal back to its herd of origin." If we do add this definition of captive cervid to part 77, we propose to revise the definition of captive cervid in part 50 to be consistent with part 77.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to facilitate the prompt removal and destruction of certain suspect cattle, bison, and captive cervids from U.S. livestock herds. Further, immediate action will give the agency time to utilize funds designated for tuberculosis indemnity purposes in fiscal year 1998 to pay indemnity for suspects before the end of the fiscal year. Prompt destruction of suspect animals will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule amends the regulations concerning animals destroyed because of tuberculosis to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. This rule also allows the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to this interim rule, owners of cattle, bison, and captive cervids could only receive Federal indemnity for affected and exposed animals destroyed because of tuberculosis, and for animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. This interim rule is necessary to ensure continued progress toward eradicating tuberculosis in U.S. livestock.

The U.S. livestock industry relies on healthy animals for its economic well being. The well being of the overall U.S. economy depends, in turn, partly on a healthy livestock industry. The industry's role in the economy is relatively significant. For example, the total value of U.S. livestock output in 1991 was $66.6 billion, about half of the value of all agricultural production in the United States that year. The value of live animal exports and exports of meat products totaled $4.3 billion in 1991, equivalent to 10 percent of the value of all U.S. agricultural exports that year. In 1997, the value of live cattle, beef, and veal exports alone was approximately $2.6 billion.

In 1997, there were 1,167,910 U.S. operations with cattle and bison, and the inventory of cattle and bison at the end of that year stood at 101.2 million head. The value of cattle and bison in the United States in 1997 was approximately $53 billion. Additionally, there were approximately 1600 cervid producers in the United States in 1997, raising about 125,000 deer and elk valued at about $150 million. Over 97 percent of the 1,167,910 cattle and bison operations in 1997 had a gross income of less than $500,000, classifying them as small businesses. For cervid operations, holdings vary in size and degree of commercialization, with many producers relying on other sources of income. Most, if not all, U.S. cervid operations earn less than $500,000 annually and would be considered small businesses.

Recent studies on the economic impact of a tuberculosis epidemic in U.S. livestock are not available. However, an earlier study indicates that the impact would be significant. A comprehensive computer model developed by Canada in 1979 indicates that, if the tuberculosis eradication program were discontinued, annual losses in the United States would amount to over $1 billion. Another study, conducted in 1972, concluded that the benefits of the tuberculosis eradication program exceeded costs by a 3.64 to 1 margin.

Under this interim rule, owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed will be eligible to receive up to $450 in indemnity per animal, when it has been determined by APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock.

Table 1 shows our expected indemnity payments under the tuberculosis eradication program for cattle, bison, and captive cervids for FY 1998 if we did not offer the indemnity for suspects provided by this interim rule.

TABLE 1.—FY 1998 PAYMENTS WITHOUT INDEMNITY FOR SUSPECTS

Indemnity paid for reactors (300 animals at $750 each)	$225,000
Indemnity paid for exposed animals for herd depopulation (300 animals at $450 each)	135,000
Total estimated indemnity for FY 1998 without indemnity for suspects	360,000

We estimate that the number of suspect animals that herd owners choose to slaughter as a result of being

able to receive indemnity will reduce the number of reactor animals by one half. This will result in a savings on the amount of indemnity paid for reactors. We estimate that approximately 250 suspect cattle, bison, and captive cervids will be eligible for indemnity under this interim rule in FY 1998. However, because of the reduced number of indemnity payments for destruction of reactors, we do not expect this interim rule to increase the total indemnity paid annually under the tuberculosis eradication program. Table 2 shows our expected indemnity payments in FY 1998 if we do offer the indemnity for suspects provided by this interim rule.

TABLE 2.—FY 1998 PAYMENTS WITH INDEMNITY FOR SUSPECTS

Indemnity paid for reactors (150 animals at $750 each)	$112,500
Indemnity paid for suspects (200–250 animals at $450 each)	90,000–112,500
Indemnity paid for exposed animals for herd depopulation (300 animals at $450 each)	135,000
Total estimated indemnity for FY 1998 with indemnity for suspects	337,500–360,000

These estimates are for FY 1998 only. However, we believe that costs will be even lower in succeeding years as the prevalence of tuberculosis declines in the United States.

The indemnity offered for suspects under this interim rule will be less than the indemnity currently offered for reactors (reactors qualify for $750 in indemnity; suspects will qualify for $450 in indemnity). Even so, there are other incentives that we believe will cause many herd owners to choose to slaughter their suspect animals and accept the lower indemnity. Foremost is that reactor animals are almost always condemned for public health reasons, whether or not they are found upon examination of the carcass to be infected with tuberculosis, and cannot be sold as meat. If a suspect animal is found upon examination of the carcass to be negative for tuberculosis, it can be sold as meat, so that the owner will get some value from the animal. Generally, cattle to be sold for meat are valued at about $750 per animal; bison and elk are valued at an average of $3500 per animal; good quality fallow does and bucks have an average value of $600.

Offering suspect indemnity will also reduce the amount of required testing, resulting in savings to herd owners. Normally, suspect animals are given additional testing to determine if they are reactors. This additional testing will be eliminated if owners choose to slaughter their suspect animals. Also, herds found to contain reactor animals must undergo additional testing to be released from quarantine. If owners choose to slaughter their suspect animals, the additional testing to release the herd from quarantine will be eliminated, provided that the slaughtered suspect is found negative for tuberculosis upon examination of the carcass. Herd owners incur costs for testing due to the need for extra handling for rounding up animals, and quarantines restrict owners from marketing their animals. The reduction in subsequent testing and extended quarantines will substantially reduce costs for herd owners who choose to slaughter their suspect animals and receive indemnity.

This rule also allows the U.S. Department of Agriculture to pay herd owners one-half the expenses of transporting suspect cattle, bison, and captive cervids to slaughter or to the point where disposal will take place, and disposing of the animals, provided that the Department may pay more than one-half of the expenses when the Administrator of APHIS determines that doing so will contribute to the tuberculosis eradication program. This is necessary in cases where an owner must transport a suspect animal a long distance to a slaughtering facility. The cost of transporting an animal from the quarantine site to a slaughtering facility ranges from $50 to $100 per animal, depending on the distance between the two locations. As stated previously, we estimate that approximately 250 suspect cattle, bison, and captive cervids will be eligible for indemnity under this interim rule in FY 1998. If we assume that the Department will pay one half of the expenses for the transport and disposal of every suspect animal eligible for indemnity in FY 1998, we estimate that APHIS' costs under this portion of the rule will not exceed $7,812.50 in FY 1998 (based on 75 percent of the payments at $25 per animal and 25 percent of the payments at $50 per animal). We expect the Department will rarely determine that it is necessary to pay more than one-half of transport and disposal costs. Further, we do not expect that it will be necessary to offer any transport expenses for the disposal of most suspect animals. We also expect that costs will be lower in succeeding years as the prevalence of tuberculosis in U.S. livestock declines.

Although the benefits of this interim rule (i.e., enhanced values for U.S. livestock, particularly in export markets) are difficult to quantify, those benefits should certainly exceed the cost of the program.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, 9 CFR part 50 is amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

§ 50.1 [Amended]

2. In § 50.1, the defined term *Cervid* is revised to read *Captive cervid*.

3. In § 50.1, the word "captive" is added before the word "cervids" in the following places:

a. The definition of *Herd depopulation*, each time it appears.

b. The definition of *Livestock*.

c. The definition of *Permit*.

d. The defined term *Reactor cattle, bison, and cervids*.

e. The defined term *Registered cattle, bison, or cervids*, and in the text of the definition.

4. In § 50.1, in the definition of *Reactor cattle, bison, and cervids*, the last sentence, the word "Cervids" is removed and the words "Captive cervids" are added in its place.

§ 50.2 [Amended]

5. In § 50.2, the word "captive" is added before the word "cervids".

§ 50.3 [Amended]

6. In § 50.3, the word "captive" is added before the word "cervids" in the following places:

a. Paragraph (a), in the heading and in the text.

b. Paragraph (b), in the heading and in the text each time it appears.

c. Paragraph (c), in the heading and in the text each time it appears.

7. In § 50.3, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 50.3 Payment to owners for animals destroyed.

* * * * *

(d) *Suspect cattle, bison, and captive cervids.* The Administrator may authorize the payment of Federal indemnity to owners of cattle, bison, and captive cervids destroyed because of tuberculosis not to exceed $450 for any animal that has been classified as a suspect in accordance with § 50.4(c) when it has been determined by the Administrator that the destruction of the suspect cattle, bison, or captive cervids will contribute to the Tuberculosis Eradication Program; but the joint State-Federal indemnity payments, plus salvage, must not exceed the appraised value of each animal: *Provided, however*, that payment of indemnity for the destruction of suspect cattle, bison, and captive cervids will be withheld until the tuberculosis status of the suspect has been determined and, if the cattle, bison, or captive cervid is found to be infected with tuberculosis, all cattle, bison, and captive cervids 2 years of age or over in the claimant's herd have been tested for tuberculosis under APHIS or State supervision.

* * * * *

8. In § 50.4, the word "captive" is added before the word "cervids" in the following places:

a. Paragraph (a).

b. Paragraph (b), the introductory text, each time it appears.

c. Paragraph (b)(3).

9. In § 50.4, the heading is revised and a new paragraph (c) is added to read as follows:

§ 50.4 Classification of cattle, bison, and captive cervids as affected, exposed, or suspect.

* * * * *

(c) Cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (incorporated into the regulations by reference in part 77). Captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison.

§ 50.5 [Amended]

10. In § 50.5, the word "captive" is added before the word "cervid".

§ 50.6 [Amended]

11. In § 50.6, the word "captive" is added before the word "cervids" in the following places:

a. The introductory text.

b. Paragraph (d), in the heading and in the text each time it appears.

c. Paragraph (e), in the heading and in the text each time it appears.

§ 50.7 [Amended]

12. In § 50.7, in paragraphs (a) and (b), the word "captive" is added before the word "cervids".

§ 50.8 [Amended]

13. In § 50.8, the heading is revised to read "Payment of expenses for transporting and disposing of affected, exposed, and suspect animals."

14. In § 50.8, the phrase "affected or exposed cattle, bison, and cervids" is removed both times it appears and the phrase "affected, exposed, or suspect cattle, bison, and captive cervids" is added in its place.

§ 50.9 [Amended]

15. In § 50.9, the word "captive" is added before the word "cervids" each time it appears.

§ 50.10 [Amended]

16. In § 50.10, the word "captive" is added before the word "cervids".

§ 50.11 [Amended]

17. In § 50.11, the word "captive" is added before the word "cervids" each time it appears.

§ 50.12 [Amended]

18. In § 50.12, the word "captive" is added before the word "cervids" each time it appears.

19. In § 50.14, the word "captive" is added before the word "cervids" in the following places:

a. The introductory text.

b. Paragraph (d), each time it appears.

c. Paragraph (e), the introductory text, each time it appears.

d. Paragraph (e)(2)(i).

e. Paragraph (e)(2)(ii).

f. Paragraph (f).

20. In § 50.14, paragraph (b) is revised to read as follows:

§ 50.14 Claims not allowed.

* * * * *

(a) * * *

(b) If all cattle, bison, and captive cervids 2 years of age or over in the claimant's herd have not been tested for tuberculosis under APHIS or State supervision: *Provided, however*, that:

(1) Cattle, bison, and captive cervids destroyed because of tuberculosis under § 50.3(b) or (c) are exempt from this requirement if the cattle, bison, or captive cervids are subjected to a post-mortem examination for tuberculosis by a Federal or State veterinarian; and

(2) Cattle, bison, and captive cervids destroyed because of tuberculosis under § 50.3(d) are exempt from this requirement if the cattle, bison, or captive cervids are subjected to a post-mortem examination for tuberculosis by a Federal or State veterinarian and found not to have tuberculosis.

* * * * *

Done in Washington, DC, this 17th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16747 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–068–1]

Brucellosis in Cattle; State and Area Classifications; Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class Free to Class A. We have determined that Louisiana no longer meets the standards for Class Free status. This action imposes certain restrictions on the interstate movement of cattle from Louisiana.

DATES: Interim rule effective June 16, 1998. Consideration will be given only to comments received on or before August 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–068–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Louisiana was classified as a Class Free State because there had been no known brucellosis in cattle in Louisiana for at least 12 consecutive months. However, as of May of 1998, two cattle herds in Louisiana were identified as infected with brucellosis.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain Brucella abortus, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) trace to the farm of origin at least 90 percent of all brucellosis reactors found in the course of MCI testing; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class A; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating a source herd or recipient herd.

After reviewing the brucellosis program records for Louisiana, we have concluded that this State meets the standards for Class A status. Therefore, we are removing Louisiana from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b). This action imposes certain restrictions on the interstate movement of cattle from Louisiana.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to prevent the interstate spread of brucellosis.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Louisiana from Class Free to Class A increases testing requirements governing the interstate movement of cattle. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Louisiana, as well as buyers and importers of cattle from this State.

There are an estimated 18,000 cattle herds in Louisiana that will be affected by this rule. Over 95 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified brucellosis-free herds must be tested for brucellosis under Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, the change to Class A status would cost approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Louisiana will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subject in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by removing "Louisiana,".

3. In § 78.41, paragraph (b) is amended by adding "Louisiana," immediately before "Mississippi,".

Done in Washington, DC, this 16th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16749 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–061–1]

Validated Brucellosis-Free States; Oklahoma

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding Oklahoma to the list of validated brucellosis-free States. We have determined that Oklahoma meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on the interstate movement of breeding swine from Oklahoma.

DATES: Interim rule effective June 24, 1998. Consideration will be given only to comments received on or before August 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–061–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–061–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m., and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), prescribe conditions for the interstate movement of cattle, bison, and swine.

Under the swine brucellosis regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the individual animal or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include Oklahoma. A State may apply for validated brucellosis-free status when: (1) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and (2) during the 2-year qualification period, the State has completed surveillance, annually, by either complete herd testing, market swine testing, or statistical analysis.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing its brucellosis program records, we have concluded that Oklahoma meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding Oklahoma to the list of States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Oklahoma.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of swine from Oklahoma.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action removes the requirement that breeding swine be tested for brucellosis prior to movement interstate from Oklahoma.

Ninety-nine percent of swine herd producers in Oklahoma are small businesses (defined by the Small Business Administration as having annual gross receipts of less than $500,000). Currently, these small producers have about 100,000 adult swine tested annually for brucellosis, at a cost to producers of approximately $5 per test. We are not able to determine exactly how many of these tests are

performed for the purpose of certifying breeding swine for movement interstate, but we estimate the number to be small.

We anticipate, therefore, that this action will have a minimal positive economic impact, if any, on swine producers in Oklahoma.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding "Oklahoma," immediately after "Ohio".

Done in Washington, DC, this 16th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16748 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 607

RIN 3052–AB83

Assessment and Apportionment of Administrative Expenses; Technical Change

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity for comment.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issues a direct final rule that makes technical amendments to its assessment regulations in order to conform to the recently adopted FCA Board policy statement on its financial institution rating system. The Financial Institution Rating System (FIRS) is the rating system used by FCA examiners for evaluating and categorizing the safety and soundness of Farm Credit System (System) institutions on an ongoing, uniform, and comprehensive basis. The FIRS modified the FCA Rating System (which had been referred to as the CAMEL rating system) by adding a separate rating factor for sensitivity to market risk. In accordance with the FIRS policy statement, these technical amendments replace the reference to "composite CAMEL rating" (the acronym CAMEL referred to the following five rating components: capital, asset quality, management, earnings, and liquidity), with "composite Financial Institution Rating System (FIRS) rating" and replace references to "CAMEL" with "FIRS." The technical amendments do not substantively change the FCA assessment process or adversely affect System institutions.

DATES: If no significant adverse comment is received on or before July 24, 1998, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received, the FCA will publish a timely notice of withdrawal of the regulations and indicate how the Agency expects to proceed with further rulemaking.

ADDRESSES: Comments may be submitted via electronic mail to "reg-comm@fca.gov" or facsimile transmission to (703) 734–5784. Comments also may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Andrew D. Jacob, Senior Financial Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444

or

Wendy R. Laguarda, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is making technical amendments to its assessment regulations to replace the reference to "composite CAMEL rating" with "composite Financial Institution Rating System (FIRS) rating" and to replace references to "CAMEL" with "FIRS." The technical amendments reflect the Board's adoption, at its April 9, 1998 Board meeting, of a policy statement on the FIRS. The policy statement establishes six rating factor components and a composite rating that reflect the condition and overall safety and soundness of a System institution. The FIRS policy statement differs from the previous CAMEL rating system by the addition of a sixth rating component—the "S" component for sensitivity to market risk. Hence, the six rating factor components of the FIRS are capital, assets, management, earnings, liquidity, and sensitivity ("S" component). The policy statement also sets forth the responsibility of the Chief Examiner to implement, maintain, and recommend to the FCA Board changes to the rating system and to establish appropriate evaluative criteria for determining FIRS composite and component ratings.

The FIRS is an internal rating system used by the FCA for evaluating the safety and soundness of System institutions on a uniform basis and for identifying those System institutions requiring special supervisory attention or concern. In addition, the FIRS also provides the Agency with valuable information for assessing risk and allocating resources based on the safety and soundness of regulated institutions. The FIRS is similar to the system known as the Uniform Financial Institutions Rating System (UFIRS), which is used by Federal and state supervisory

banking agencies for rating commerical banks and savings associations.

The FIRS policy statement was published in the **Federal Register** at 63 FR 19918, April 22, 1998. In addition, the evaluative criteria for determining FIRS composite and component ratings is set forth in the FCA Examination Manual at section EM 135. The examination manual is a public document and available for a fee upon request from the FCA or through the FCA's Internet Home Page (http://www.fca.gov).

II. Direct Final Rulemaking

The FCA is using a "direct final" procedure for this rulemaking. In a direct final rulemaking, an agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. Direct final rulemaking is justified under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA). Section 553(b)(B) is the APA's "good cause" exemption for omitting notice and comment on a rule where an agency finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), in a direct final rule, the FCA gives the public adequate opportunity to comment on or object to a rule. For a full explanation of direct final rulemaking, see 62 FR 63644 (December 3, 1997).

The FCA believes that the technical amendments to the assessment regulations fit the category of rules appropriate for direct final rulemaking. These changes merely conform the regulations to the FCA Board's policy statement on FIRS. The changes amend current regulatory references to "composite CAMEL rating" with an updated reference to "composite FIRS rating." As such, the changes are straightforward and noncontroversial.

This rule has a 30-day comment period. If, during that period, the FCA receives a significant adverse comment on the rule, the FCA will withdraw the rule and may either issue another direct final rule or promulgate the rule in proposed form. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the FCA in a notice-and-comment proceeding.

If no significant adverse comment is received, the FCA will publish its customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Farm Credit Act of 1971, as amended.

List of Subjects in 12 CFR Part 607

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

As stated in the preamble, part 607 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 607—ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES

1. The authority citation for part 607 is revised to read as follows:

Authority: Secs. 5.15, 5.17 of the Farm Credit Act (12 U.S.C. 2250, 2252) and 12 U.S.C. 3025.

2. Section 607.2 is amended by revising paragraph (c) to read as follows:

§ 607.2 Definitions.

* * * * *

(c) *Composite Financial Institution Rating System (FIRS) rating* means the composite numerical assessment of the financial condition of an institution assigned to the institution by the FCA based on its most recent examination of the institution. The FIRS factors are generally considered to be important indicators of an institution's financial health. Institutions are rated on each of the factors during an examination. The composite FIRS rating ranges from 1 to 5, with a lower number indicating a better financial condition than a higher number.

* * * * *

§ 607.3 [Amended]

3. Section 607.3 is amended by removing the acronym "CAMEL" and adding in its place "FIRS" each place it appears in paragraph (b)(2).

Dated: June 19, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–16809 Filed 6–23–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–302–AD; Amendment 39–10621; AD 98–13–30]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream Aerospace Corporation Model G–159 (G–I) airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: July 29, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A , FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–7337; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Gulfstream Aerospace Corporation Model G–159 (G–I) airplanes was published in the **Federal Register** on April 27, 1998 (63 FR 20556). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power

levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 143 Gulfstream Model G–159 (G–I) airplanes of the affected design in the worldwide fleet. The FAA estimates that 63 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,780, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–30 Gulfstream Aerospace Corporation (Formerly Grumman): Amendment 39–10621. Docket 97–NM–302–AD.

Applicability: All Model G–159 (G–I) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability or engine overspeed with consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) For turbopropeller-powered Gulfstream Model G–159 (G–1) airplanes: Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of the propeller flight fine pitch lock selector to the ground interlock position in flight is PROHIBITED. Such positioning may lead to loss of airplane control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 29, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16493 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–304–AD; Amendment 39–10620; AD 98–13–29]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane

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controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: July 29, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A , the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–7337; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on April 27, 1998 (63 FR 20550). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 235 EMBRAER Model EMB–120 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $14,100, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–29 Embraer: Amendment 39–10620. Docket 97–NM–304–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop in flight is prohibited. Such positioning may result in an engine overspeed condition with consequent loss of engine and potential excessive asymmetric propeller drag reducing aircraft controllability."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 29, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16492 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–178–AD; Amendment 39–10611; AD 98–11–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) T98–11–52 that was sent previously to all known U.S. owners and operators of Boeing Model 737–100, –200, –300, –400, and –500 series airplanes by individual telegrams. This AD requires removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of teflon sleeving over the electrical cable. This action is prompted by reports of severe wear of the fuel boost pump wiring due to chafing between the wiring and the surrounding conduit inside the fuel tank; pin-hole-sized holes in the conduit that appear to be the result of arc-through of the conduit; and exposure of the main tank boost pump wire conductor inside a conduit and signs of arcing to the wall of the conduit. The actions specified by this AD are intended to detect and correct chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit, which, if not corrected, could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: Effective June 29, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–11–52, issued on May 14, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Issuance of Telegraphic AD T98–10–51

On May 7, 1998, the FAA issued telegraphic AD T98–10–51, applicable to all Model 737–100, –200, –300, –400, and –500 series airplanes, to require removal of the fuel boost pump wiring in the conduits of the wing fuel tanks; a one-time detailed visual inspection to detect damage of the wiring; reinstallation of the wiring with teflon sleeving, or replacement of damaged wiring with new wiring and teflon sleeving; and submission of damaged parts to Boeing. Telegraphic AD T98–10–51 was prompted by reports of severe wear of the fuel boost pump wiring due to chafing between the in-tank fuel boost pump wiring and the surrounding conduit inside the fuel tank, and pin-hole-sized holes in two sections of the fuel boost pump conduit that appeared to be the result of arc-through of the conduit. The actions required by that telegraphic AD were intended to detect and correct such chafing, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

Issuance of Telegraphic AD T98–11–51

On May 10, 1998, the FAA issued telegraphic AD T98–11–51, which is applicable to all Model 737–100, –200, –300, –400, and –500 series airplanes. That AD superseded telegraphic AD T98–10–51 to continue to require removal of the fuel boost pump wiring in the conduits of the wing fuel tanks; a detailed visual inspection to detect damage of the wiring; and corrective action, if necessary. Additionally, that telegraphic AD required eventual installation of teflon sleeving over the electrical cable, which terminated the requirements of the telegraphic AD.

Telegraphic AD T98–11–51 was prompted by a report indicating that the left main tank boost pump power wire conductor was exposed at three areas inside the conduit. At least one of the areas exhibited signs of arcing to the wall of the conduit. In addition, several reports of severe chafing had been received since the issuance of telegraphic AD T98–10–51. The actions required by telegraphic AD T98–11–51 were intended to detect and correct chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit, which, if not corrected, could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

In telegraphic AD T98–11–51, the FAA required inspection of airplanes that had accumulated between 40,000 and 50,000 total flight hours based on the significance of the problems on the high-time airplanes reported at that time, and the lack of available data for airplanes that had accumulated between 40,000 and 50,000 total flight hours. However, the FAA indicated in that telegraphic AD that it would continue to monitor inspection reports to determine whether an adjustment to the compliance time was warranted.

Issuance of Telegraphic AD T98–11–52

Since the issuance of telegraphic AD T98–11–51, the FAA has received inspection results indicating that exposed copper wire and significant chafing was found on other Model 737–200 series airplanes that had accumulated flight hours below those specified in earlier reports.

The FAA has determined that it is necessary to expand the inspection requirement to airplanes that have accumulated less than 40,000 total flight hours. This is necessary to ensure that these airplanes have not also developed a problem with chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit.

When telegraphic AD T98–11–51 superseded telegraphic AD T98–10–51, the FAA had received inspection reports indicating that the center fuel tank boost pump wiring was not showing chafing and did not present a safety of flight problem on Model 737–100 and –200 series airplanes. (It should be noted that the center fuel tank boost pump wiring

is located in the main tanks, not within the center fuel tank itself.) As a result, the requirement for inspection of the center fuel tank boost pump wiring on Model 737–100 and –200 series airplanes was removed in telegraphic AD T98–11–51. Inspection results received since the issuance of telegraphic AD T98–11–51 indicate that chafing has occurred in the center fuel tank boost pump wiring of some Model 737–100 and –200 series airplanes. Telegraphic AD T98–11–52 restores the requirement to inspect the center fuel tank boost pump wiring on all affected models.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998. The alert service bulletin describes procedures for removal of the fuel boost pump wiring in the conduits of the wing fuel tanks and center fuel tanks; an inspection to detect damage of the wiring; and corrective action, if necessary. (The corrective actions include replacing the wiring or conduit with new or serviceable parts.) This alert service bulletin also describes procedures for eventual installation of teflon sleeving over the electrical cable. The NSC's provide information concerning optional parts and procedures.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T98–11–52 to detect and correct chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit, which, if not corrected, could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank. This AD supersedes telegraphic AD T98–11–51 to continue to require removal of the fuel boost pump wiring in the conduits of the wing fuel tanks; a detailed visual inspection to detect damage of the wiring; and corrective action, if necessary. Additionally, this AD continues to require eventual installation of teflon sleeving over the electrical cable, which terminates the requirements of the AD.

This AD requires inspection of airplanes that have accumulated less than 40,000 total flight hours. In addition, this AD adds a requirement for inspection of the fuel boost pump wiring in the conduits of the center fuel tanks on Model 737–100 and –200 series airplanes that have accumulated 40,000 or more total flight hours.

The actions are required to be accomplished in accordance with alert service bulletin and notices of status change described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 14, 1998, to all known U.S. owners and operators of all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–178–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–11–52 BOEING: Amendment 39–10611. Docket 98–NM–178–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit, which, if not corrected, could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank, accomplish the following:

(a) For all airplanes that have accumulated 50,000 or more total flight hours as of the effective date of this AD: Prior to further flight, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks #1 and #2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(b) For all airplanes that have accumulated less than 50,000 total flight hours as of receipt of telegraphic AD T98–11–51: Prior to the accumulation of 40,000 total flight hours, or within 14 days after the effective date of this AD, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks #1 and #2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(c) For all airplanes: Remove the fuel boost pump wiring from the in-tank conduit for the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998. Accomplish the inspection at the earliest of the times specified in paragraphs (c)(1), (c)(2), and (c)(3).

(1) For Model 737–300, –400, and –500 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 14 days after the effective date of this AD, whichever occurs later.

(2) For Model 737–100 and –200 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 10 days after the effective date of this AD, whichever occurs later.

(3) For all airplanes: Inspect prior to the accumulation of 50,000 total flight hours, or within 5 days after the effective date of this AD, whichever occurs later.

(d) For all airplanes: Prior to the accumulation of 30,000 total flight hours or within 45 days after the effective date of this AD, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks #1 and #2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(e) If red, yellow, blue, or green wire insulation cannot be seen through the outer jacket of the electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraph (e)(1), (e)(2), or (e)(3) of this AD in accordance with procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(1) Install teflon sleeving over the electrical cable, and reinstall the cable. Or

(2) Reinstall the electrical cable without teflon sleeving over the cable. Within 500 flight hours after accomplishment of the reinstallation, repeat the inspection described in paragraph (d) of this AD; and install teflon sleeving over the cable. Or

(3) Replace the electrical cable with new cable without teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection specified in paragraph (d) of this AD, and install teflon sleeving over the cable.

(f) If red, yellow, blue, or green wire insulation can be seen through the outer jacket of the electrical cable during any inspection required by this ad, but no evidence of electrical arcing is found: Prior to further flight, accomplish either paragraph (f)(1) or (f)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(1) Replace the damaged electrical cable with a new cable, install teflon sleeving over the cable, and reinstall the cable. Or

(2) Replace the electrical cable with a new cable without teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d) of this AD; and install teflon sleeving over the cable.

(g) If any evidence of electrical arcing but no evidence of fuel leakage is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (g)(1) and (g)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(1) Verify the integrity of the conduit in accordance with the instructions contained in NSC 03 to the alert service bulletin. And

(2) Accomplish either paragraph (g)(2)(i) or (g)(2)(ii) of this AD in accordance with the alert service bulletin.

(i) Replace the damaged electrical cable with a new cable, install teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d) of this AD; and install teflon sleeving over the cable.

(h) If any evidence of fuel is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (h)(1) and (h)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(1) Replace the conduit section where electrical arcing was found. And

(2) Accomplish either paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Replace the damaged electrical cable with a new cable, install teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d) of this AD; and install teflon sleeving over the cable.

(i) For Groups 1 and 2 airplanes, as identified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998: Concurrent with the first accomplishment of corrective action in accordance with paragraph (e), (f), (g), or (h) of this AD, as applicable, replace the case ground wire with a new wire in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998; as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998.

(j) Installation of teflon sleeving over any electrical cable that is new or has been inspected in accordance with paragraph (a), (b), (c), or (d) of this AD, constitutes terminating action for the requirements of this AD.

(k) If any damage specified in paragraph (f), (g), or (h) of this AD is found during any inspection required by this AD, within 10 days after accomplishing the inspection required by paragraph (a), (b), (c), or (d) of this AD, as applicable, accomplish paragraphs (k)(1) and (k)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Submit any damaged electrical cables and conduits to Boeing, in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998,

NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; include the serial number of the airplane, the number of total flight hours and flight cycles accumulated on the airplane, and the location of the electrical cable on the airplane.

(2) For airplanes that are inspected after the effective date of this AD, submit the serial number of the airplane, the number of total flight hours and flight cycles accumulated on the airplane, and the location of the electrical cable on the airplane to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(l)(2) Alternative methods of compliance, approved previously in accordance with telegraphic AD T98–10–51 or telegraphic AD T98–11–51 are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(m) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(n) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(o) This amendment becomes effective on June 29, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–11–52, issued on May 14, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 12, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16308 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–181–AD; Amendment 39–10625; AD 98–13–34]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–145 series airplanes. This action requires repetitive emergency extension (free-fall) functional tests of the nose landing gear (NLG), and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the NLG to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing.

DATES: Effective July 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–145 series airplanes. The DAC advises that it has received a report indicating that the nose landing gear (NLG) on a Model EMB–145 series airplane failed to extend and lock down upon landing, even after accomplishment of the procedures for abnormal emergency landing gear extension by the override switch and free-fall mechanism. As a result, the airplane landed with the NLG not fully locked in the down position, which resulted in minor damage to the airplane structure. The exact cause of the failure of the NLG to extend and lock down properly has not been determined at this time. This condition, if not corrected, could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–32-A029, dated April 15, 1998, which describes procedures for performing repetitive emergency extension (free-fall) functional tests of the NLG, and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. Corrective actions include performing a normal system functional test of the NLG for five cycles, and repeating the emergency extension functional test of the NLG.

EMBRAER Alert Service Bulletin 145–32-A029, dated April 15, 1998, references two chapters in the EMBRAER Aircraft Maintenance Manual (AMM) as additional sources of information to accomplish the functional test procedures. Chapter 32–34–00 of the AMM describes procedures for the emergency extension (free-fall) functional test, and Chapter 32–30–00 of the AMM describes procedures for the normal system functional extension test.

The DAC classified this alert service bulletin as mandatory and issued

Brazilian airworthiness directive 98–05–01, dated May 12, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the NLG to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between the AD and the Relevant Service Information

Operators should note that, although the alert service bulletin recommends accomplishment of the emergency extension functional test of the NLG and lubrication of the NLG within 100 flight hours (after the release of the alert service bulletin), the FAA has determined that an interval of 50 flight hours after the effective date of this AD is a more appropriate compliance time for this AD. In consonance with the DAC, the FAA has determined that, because of the safety implications and consequences of possible failure of the NLG to extend and lock down properly upon landing, it is necessary to require a shorter compliance time to ensure the continued operational safety of the fleet.

Operators also should note that the Brazilian airworthiness directive and the EMBRAER alert service bulletin specify that if any discrepancy is found on an airplane, it should be reported immediately to the manufacturer to await instructions before the airplane is returned to service. However, in light of the type of corrective action required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that for this AD, corrective action approved by either the FAA or the DAC (or its delegated agent) is acceptable for compliance with this AD.

In addition, operators should note that the alert service bulletin specifies that corrective actions be accomplished if the NLG extension time exceeds by more than 10 seconds the time limit specified in EMBRAER AMM, chapter 32–34–00. However, the FAA has determined that an additional 10-second time limit is not appropriate, and that it is necessary to limit the time allowed for the functional test to a 30-second total time limit to ensure continued operational safety of the fleet.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM–181-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–34 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–10625. Docket 98-NM–181-AD.

Applicability: All Model EMB–145 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing, accomplish the following:

(a) Within 50 flight hours after the effective date of this AD, perform an emergency extension (free-fall) functional test of the NLG, to ensure that the mechanism extends and locks down properly, in accordance with EMBRAER Alert Service Bulletin 145–32-A029, dated April 15, 1998. Repeat the functional test and lubrication procedures thereafter at intervals not to exceed every "A" check, but no later than 400 flight cycles.

Note 2: The alert service bulletin references EMBRAER Aircraft Maintenance Manual (AMM), Chapter 32–34–00, as an additional source of service information for accomplishment of the emergency extension functional test.

(1) If the extension time of the landing gear is within 30 seconds, prior to further flight, lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin.

(2) If the extension time of the landing gear exceeds 30 seconds, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin. And

(ii) Perform a normal system functional test of the NLG for five cycles, and repeat the emergency extension functional test specified by paragraph (a) of this AD. If the extension and locking time still exceeds 30 seconds, prior to further flight, repair in accordance with a method approved by either the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, or the Departmento de Aviacao Civil (DAC) (or its delegated agent).

Note 3: The alert service bulletin references EMBRAER AMM, Chapter 32–30–00, as an additional source of service information for accomplishment of the normal system functional test.

(3) If any malfunction other than that specified in paragraph (a)(2) of this AD is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO, or the DAC (or its delegated agent).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The tests and lubrication shall be done in accordance with EMBRAER Alert Service Bulletin 145–32–A029, dated April 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 98–05–01, dated May 12, 1998.

(e) This amendment becomes effective on July 9, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16497 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–13–U

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of suspension of applicability of certain requirements.

SUMMARY: The Agency is temporarily suspending the application of certain requirements governing program status and on-campus and off-campus employment for J–1 students whose means of financial support, as reflected on their Form IAP–66, Certificate of Eligibility for Exchange Visitor Status, is from Indonesia, South Korea, Malaysia, Thailand, or the Philippines. This action is necessary to mitigate the adverse impact upon these students due to the sharp and sudden drop in the value of the currencies of Indonesia, South Korea, Malaysia, Thailand, and the Philippines.

DATES: This action is effective June 24, 1998 and will remain in effect until rescinded.

FOR FURTHER INFORMATION CONTACT: Sally Lawrence, Program Designation Branch Chief, Office of Exchange Visitor Program Services, United States Information Agency, 301 4th Street, SW, Washington, DC 20547; Telephone (202) 401–9823.

SUPPLEMENTARY INFORMATION: Over the past several months, the currencies of Indonesia, South Korea, Malaysia, Thailand, and the Philippines have suffered a severe drop in value relative to the United States dollar. This economic crisis in their home countries has in turn affected Exchange Visitor Program college and university students studying in the United States. These students, many of whom are dependent upon financial support originating in their home country have found themselves without funds. To ameriolate the hardship arising from this lack of financial support and facilitate these students continued studies, the Agency is suspending the application of the full course of study requirement set forth at 22 CFR 514.23(e) and the application of the requirements governing student employment set forth at 22 CFR 514.23(g) effective June 24, 1998 until rescinded.

College and university students in J–1 status whose means of financial support comes from Indonesia, South Korea, Malaysia, Thailand, or the Philippines and whose financial support has been disrupted, reduced, or eliminated due to the economic crisis in their home country may be authorized to pursue full-time or part-time on-campus or off-campus employment by their responsible officers. A reduction in course load may be necessary for some students due to employment and accordingly, such students will be

deemed to be in valid J–1 Exchange Visitor Program student status if they are (i) an undergraduate student and enrolled for not less than six semester hours of academic credit or its recognized equivalent; or (ii) a graduate student enrolled for not less than three hours of academic credit or its recognized equivalent.

Responsible officers who authorize on-campus or off-campus employment for these students should type or print on the pink copy of the Form IAP–66 "Special Student Relief work authorization granted from (insert beginning date of employment) until (insert the earlier of the last day of the student's program or one year from the beginning date of employment)," and sign and date such notation. If a reduced course load is also authorized due to the employment, the responsible officer should type or print on the pink copy of the Form IAP–66 "reduced course load authorized," and sign and date such notation.

The Agency's suspension of the application of the requirements set forth in 22 CFR 514.23(e) and 22 CFR 514.23(g) for these identified students will continue until amended or rescinded by the Agency in a document published in the **Federal Register**.

Dated: June 16, 1998.

Joseph Duffey,

Director.

[FR Doc. 98–16588 Filed 6–23–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–034–FOR]

Missouri Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Missouri abandoned mine land reclamation plan (hereinafter referred to as the "Missouri plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the Missouri plan to allow the Missouri Department of Natural Resources, Land Reclamation Commission, Land Reclamation Program to assume responsibility for administering the abandoned mine land reclamation emergency program in Missouri on behalf of OSM.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Perry Pursell, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Missouri Plan

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. Background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and amendments to the plan can be found at 30 CFR 925.25.

II. Submission of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the abandoned mine land reclamation (AMLR) program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, OSM must follow the procedures set out in 30 CFR 884.14 for reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Missouri plan. Therefore, to assume the emergency program, Missouri must either revise its plan to include administering the AMLR emergency program, or demonstrate that its plan currently includes provisions for assuming and administering the emergency program.

By letter dated March 31, 1998 (Administrative Record No. AML–MO–103), Missouri submitted an amendment to its plan pursuant to SMCRA. Missouri submitted the amendment at its own initiative. The amendment is intended to demonstrate Missouri's capability to effectively undertake the AMLR emergency program on behalf of OSM. In its formal submittal, Missouri stated that a review of the Missouri plan indicates that the authority already exists for the Missouri Department of Natural Resources, Land Reclamation Commission, Land Reclamation Program (LRP) to assume responsibility for the AMLR emergency program. Missouri noted that the designation by the governor and the legal opinion of the State Attorney General that are included in its plan are applicable to all AML activities, including the emergency program, and that all other existing policies and procedures in its plan are adequate to cover the emergency program, with two minor exceptions. These exceptions were addressed in Missouri's technical capability to design and supervise the emergency works, and Missouri's amendment. The applicable parts of the existing Missouri plan and the revisions to the plan that would demonstrate that Missouri has the authority to undertake emergencies, Missouri's technical capacity to design and supervise the emergency work, and Missouri's administrative mechanisms to quickly respond to emergencies either directly or through contractors are discussed below.

A. The following information, taken from the approved Missouri plan, was included by reference in Missouri's formal submission to OSM in order to verify that the authority already exists for the LRP to assume AMLR emergency program responsibilities:

1. A letter from the Governor that designates the Missouri Department of Natural Resources, Land Reclamation Commission as the agency responsible for the Abandoned Mine Land Reclamation Program in Missouri.

2. A legal opinion from the Attorney General that the Missouri Department of Natural Resources, Land Reclamation Commission has the power to administer the Abandoned Mine Land Reclamation Program in Missouri.

3. A copy of sections 444.810, .825, .915, .920, .925, .930, and .940 of the Revised Statutes of Missouri (RSMo), the Missouri Land Reclamation Act.

RSMo section 444.915.1(5) authorizes the LRR to spend monies from the State Abandoned Mine Reclamation Fund for restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices when an emergency exists.

4. A copy of the Missouri Abandoned Mine Land Reclamation Program regulations (Code of State Regulations, 10 CSR 40–9.010, .020, .030, .040, .050, and .060). Missouri's regulations at 10 CFR 40–9.030(4) provide the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety or general welfare. Procedures are provided for this entry.

B. Missouri submitted a statement to demonstrate the LRP's technical capability to design and supervise the emergency work. The statement included references to work completed on non-emergency, high priority reclamation projects, the number of AML Section staff working on reclamation projects, and the ability of the staff members to prepare project designs and contract documents and to provide in-house resident inspection services.

C. Missouri updated its plan policy and procedures at sections 884.13(c)(6), rights of entry, and 884.13(d)(3), purchasing and procurement, to ensure that it has the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

D. After assuming the emergency program, Missouri would conduct investigations of potential emergency sites and perform remedial reclamation, following OSM's concurrence that an emergency situation exists. Missouri stated in its proposal that in administering the AMLR emergency program, it would follow procedures that are in compliance with the Federal Assistance Manual, Chapter 4–30, "Characteristics of Grantee-Administered Emergency Reclamation Activities."

OSM announced receipt of the proposed amendment in the April 22, 1998, **Federal Register** (63 FR 19874), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 22, 1998.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

A. Revisions to the Missouri Plan Policy and Procedure Sections

1. Section 884.13(c)(6), Rights of Entry

Missouri proposed to revise its policy concerning right of entry fro emergency purposes by removing the language that allowed emergency entries only upon request from the Office of Surface Mining. This revised paragraph reads as follows.

> In the event of an emergency, this agency may enter onto private property and perform whatever measures are necessary to protect the public health, safety, or welfare from past coal mining practices. If written consent cannot be obtained for the purpose of emergency reclamation, and if notice cannot be given prior to entry, notice will be given to the landowner as soon after entry as is practical.

The Director finds that the requirements of the revised policy in section 884.13(c)(6) are consistent with requirements in the Missouri regulation at 10 CSR 40–9.030(4) and the Federal regulation at 30 CFR 877.14, concerning entry for emergency reclamation.

2. Section 884.13(d)(3), Purchasing and Procurement

Missouri revised the procurement thresholds for services supplies and products contracts. The procurement thresholds that requires the use of formal sealed bids was raised from $10,000 to $25,000. The procurement threshold that requires compliance with State small purchase procedures was raised from $10,000 to $25,000. The negotiated procurement threshold was lowered from $10,000 to $3,000. Procurements in excess of $25,000 are to be recorded with the specified justification information.

The Director finds that a procurement threshold of $25,000 is adequate for implementation of an AMLR Emergency Program, and the proposed revisions are consistent with the requirements of 30 CFR 884.13(d)(3).

B. AMLR Emergency Program Demonstrations

OSM's guidelines, published in the September 29, 1982, **Federal Register** (47 FR 42729), outline three requirements for State assumption of the AMLR emergency program. To be granted emergency authority by OSM, the State agency must demonstrate that it has the: (1) statutory authority to undertake emergencies, (2) technical capability to design and supervise the emergency work, and (3) administrative mechanisms to respond quickly to emergencies either directly or through contractors.

1. Statutory Authority

The LRP has had statutory authority under RSMo section 444.915.1(5) to administer an emergency response program since approval of the Missouri plan on January 21, 1982. In order to implement this authority, Missouri's regulation at 10 CSR 40–9.030(4) provides for right of entry on any land where an emergency exists. In a letter dated January 25, 1980, the Governor of Missouri designated the Missouri Department of Natural Resources, Land Reclamation Commission as the State agency responsible for the Abandoned Mine Land Reclamation Program in Missouri. The Missouri Attorney General issued an official opinion on July 24, 1981, that the Missouri Department of Natural Resources, Land Reclamation Commission is authorized under State law to establish, administer and conduct a State reclamation program in accordance with the requirements of Title IV of the Federal Surface Mining Control and Reclamation Act of 1977, the regulations promulgated thereunder, and the State Reclamation Plan. Title IV of SMCRA covers both the regular AMLR program and the emergency reclamation program.

2. Technical Capability

The LRP has demonstrated through past performance that it has the technical capability to implement an AMLR emergency program. In its March 31, 1998, submission of the amendment, Missouri submitted the following statement to demonstrate the LRP's technical capability to design and supervise the emergency work.

> Over the past four years, Missouri has successfully completed several high priority shaft closure and four subsidence reclamation projects. Although these were non-emergency projects, they were completed in a timely manner and the scope of work was similar to Missouri's past AML emergency projects. With six Land Reclamation Specialists and a registered professional engineer on the AML Section staff, the LRP has the technical capability to respond rapidly to AML emergency situations. Project designs and contract documents can be prepared in-house, avoiding the usual time delays associated with procuring and coordinating consulting engineering services agreements. The AML Section can also provide in-house resident inspection services, since emergency reclamation projects are typically of short duration.

Missouri has conducted an AMLR Program since 1982. Technical capabilities utilized for emergency reclamation projects are the same as those used for normal, high priority reclamation projects; usually, only the project schedule is different. OSM's oversight reviews for the past 10 years have confirmed that the Missouri LRP has conducted subsidence abatement project design and construction work and has filled mine voids on many occasions with a high degree of competence and success. OSM's annual oversight reports also indicate that closure of shafts and mine portals and treatment of subsidence areas have been part of Missouri's high priority AMLR program for many years. As of the end of evaluation year 1997, the Missouri LRP had closed 125 vertical openings and 43 open mine portals and stabilized 634 acres of mine subsidence. These are the same types of abandoned mine land features that are likely to be encountered in the AMLR emergency program. OSM found in its review of the Missouri plan and OSM's annual oversight reports for 1991 through 1997 that Missouri has developed and refined the in-house investigation, design, and project administration abilities necessary to administer an AMLR program and an emergency response program.

3. Administrative Mechanisms

A review of Missouri's revised purchasing and procurement procedures at section 884.13(d)(3) found that the LRP has the authority to issue contracts for emergency work in amounts up to $25,000. The $25,000 limit is similar to the small purchase threshold for Federal agencies and will allow Missouri adequate flexibility to address emergency conditions. Other administrative processes required to implement the emergency program are the same as those already in place for the Missouri AMLR program.

In accordance with section 405 of SMCRA and 30 CFR 884.15, Missouri has submitted an amendment to its AMLR plan, and the Director has determined, pursuant to 30 CFR 884.14, that:

(1) The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

(2) Views of other Federal agencies have been solicited and considered.

(3) The State has the legal authority, policies and administrative structure necessary to implement the amendment.

(4) The proposed plan amendment meets all requirements of the Federal AMLR program regulations at 30 CFR Chapter VII, Subchapter R.

(5) The State has an approved State Regulatory Program.

(6) The amendment is in compliance with all applicable State and Federal laws and regulations.

Therefore, the Director finds that the proposed Missouri plan amendment allowing the State to assume responsibility for an emergency response reclamation program on behalf of OSM is in compliance with SMCRA and meets the requirements of the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), OSM solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Missouri plan (Administrative Record No. AML–MO–104). No comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed plan amendment and Missouri's request to assume the AMLR emergency program as submitted by Missouri on March 31, 1998.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri plan, are being amended to implement this decision.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof, since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule. Agency decision on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, Appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 16, 1998.

Kathy Karpan,

Director Office of Surface Mining.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
.	.	.
March 31, 1998	June 24, 1998 ..	AMLR plan sections 884.13(c)(6) and (d)(3); Emergency response reclamation program.

[FR Doc. 98–16811 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–112–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent regulatory program (hereinafter) referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises numerous provisions of the Virginia program concerning surface coal mining and reclamation operations. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated December 1, 1997 (Administrative Record No. VA–938), the Virginia Department of Mines, Minerals and Energy (DMME) submitted numerous amendments to the Virginia program. The DMME stated that the purpose of the amendments is to address issues identified by OSM in a letter dated May 30, 1997, pursuant to 30 CFR 732.17(d) (Administrative Record Number VA–955). The DMME also stated that the proposed amendments are intended to be materially consistent with the corresponding Federal standards.

The proposed amendment was published in the December 23, 1997, **Federal Register** (62 FR 67016), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1998. No one requested to speak at a public hearing, so no hearing was held.

By electronic mail dated March 6, 1998 (Administrative Record Number VA–953), OSM provided the State with comments on the proposed amendments. The DMME responded to those comments by electronic mail dated March 20, 1998 (Administrative Record Number VA–954).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program. Only the substantive changes will be discussed below.

1. 4 VAC 25–130–700.5 Definition of "Other Treatment Facilities"

This definition has been amended to add "neutralization" as an example of chemical treatments, and to add "precipitators" as an example of mechanical structures. In addition, a new subsection (b) has been added to provide that " other treatment facilities" will have to comply with all applicable State and Federal water quality laws and regulations. The Director finds that with the proposed changes, the Virginia program definition of "other treatment facilities" is substantively identical to and therefore no less effective than the counterpart Federal definition at 30 CFR 701.5.

4 VAC 25–130–700.5 Definition of "Previously mined area." This definition has been revised to state that " previously mined area" means land affected by surface coal mining operations prior to August 3, 1997, that has not been reclaimed to the standards of this Chapter. The Director finds that the proposed definition is substantively identical to and therefore no less effective than the counterpart Federal definition at 30 CFR 701.5.

2. 4 VAC 25–130–779.22 Land Use Information

This provision has been deleted. The counterpart Federal regulation at 30 CFR 779.22 was deleted on May 27, 1994 (59 FR 27932). In that final rule notice, OSM consolidated the land use information requirements of sections 30 CFR 779.22 and 30 CFR 780.23 into final 30 CFR 780.23. As discussed below in Finding 4, 4 VAC 25–130–780.23 concerning reclamation plans; land use information is being amended by the State, and is substantively identical to and therefore is less effective than the counterpart Federal regulations at 30

CFR 780.23. Therefore, the Director finds that the proposed deletion does not render the Virginia program less effective and can be approved.

3. 4 VAC 25–130–779.25 Cross Sections, Maps, and Plans

This provision is amended by deleting subsection (k) concerning slope measurements, and by revising the subsection's numbering system. The counterpart Federal provision at 30 CFR 779.25(a)(11) concerning slope measurements was deleted by May 27, 1994 (59 FR 27932). In that final rule notice, OSM explained that the provisions was deleted because it was redundant and provided no additional information beyond that already available to the regulatory authority under 30 CFR 777.14(a) and OSM's technical information processing system (TIPS). The Director notes that the Virginia program contains an approved counterpart to 30 CFR 777.14(a). Therefore, the Director finds that as amended, the deletion does not render the Virginia program less effective than the Federal regulations.

4. 4 VAC 25–130–780.23 Reclamation Plan; Land Use Information

The existing language of this subsection has been deleted and replaced in its entirety by new language. The Director finds that, as revised, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 780.23.

5. 4 VAC 25–130–780.25 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

This provision is amended by adding new subsection 780.25(a)(2) concerning impoundments that meet Class B and C criteria for dams as specified in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs." The Director finds that new subsection 780.25(a)(2) is substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 780.25(a)(2).

The provision is also amended in various locations to add references to the new language at subsection 780.25(a)(2), and to revise the provision to be consistent with the counterpart Federal regulations. The Director finds the revised language at 780.25(a), (a)(3), (b) and (f) to be substantively identical to and therefore no less effective than the counterpart Federal regulations with one exception. The revised language at subsection 780.25(c)(3) does not specify that any engineering design standards that may be established by the State must be approved by the Director through the State program amendment approval process.

However, Virginia already has approved engineering design standards at 4 VAC 25–130–816/817.49(a)(4)(ii). In addition, the DMME has informed OSM that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process (Administrative Record Number VA–954). Therefore, to the extent that any design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process, the Director finds the proposed provision to be no less effective than the counterpart Federal regulations at 30 CFR 780.25.

6. 4 VAC 25–130–780.35 Disposal of Excess Spoil

Subsection (b) is amended by adding the phrase "except for the disposal of excess spoil on preexisting benches" to the existing language. As amended, the requirements of subsection 780.35(b) do not apply to the disposal of excess spoil on preexisting benches. The Director finds that the amended language is substantively identical to and therefore no less effective than the counterpart language at 30 CFR 780.35(b).

7. 4 VAC 25–130–783.25 Cross Sections, Maps and Plans (Underground)

This provision is amended by deleting subsection (k) concerning slope measurements, and by revising the subsection's numbering system. The counterpart Federal provision at 30 CFR 783.25(a)(11) concerning slope measurements was deleted by May 27, 1994 (59 FR 27932). In that final rule notice, OSM explained that the provision was deleted because it was redundant and provided no additional information beyond that already available to the regulatory authority under 30 CFR 777.14(a) and OSM's technical information processing system (TIPS). The Director notes that the Virginia program contains an approved counterpart to 30 CFR 777.14(a). Therefore, the Director finds that as amended, the deletion does not render the Virginia program less effective the than the federal regulations. As amended, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at the 30 CFR 783.25.

8. 4 VAC 25–130–784.15 Reclamation Plan: Land Use Information (Underground)

The existing language of this section has been deleted and replaced in its entirety by new language. The Director finds that as revised, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.15.

9. 4 VAC 25–130–784.16 Reclamation Plan: Siltation Structure, Impoundments, Banks, Dams, and Embankments (Underground)

Subsections (a), (b), (c), and (f) are amended. Subsection (a) is amended by adding the requirements for detailed designed plans, and deleting and replacing the term sedimentation pond with the term siltation structure. The Director finds these changes render the Virginia language substantively identical to and therefore no less effective than the counterpart Federal provision at 30 CFR 784.16(a).

Subsection (a)(2) is amended by adding language concerning impoundments meeting the Class B or C criteria in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR–60). The Director finds the added language to be substantively identical to and therefore no less effective than the counterpart Federal requirements at 30 CFR 784.16(a)(2).

Subsection (a)(3) is amended to properly reference the amended subsection (a)(2). Subsection (b) has been amended by deleting language. The Director finds that as amended, the State provisions are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.16(a)(3) and (b).

New subsection (c)(3) is added to provide that the State may establish engineering design standards to ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified at subsection 817.49(a)(4)(ii). The director finds this new provision to be substantively identical to and therefore no less effective than the counterpart Federal provision at 30 CFR 784.16(c)(3) with one exception. The Federal provision also provides that the authorization for States to establish engineering design standards in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 must be

accomplished within the state program amendment approval process.

However, Virginia already has approved engineering design standards at 4 VAC 25–130–816/817.49(a)(4)(ii). In addition, the DMME has informed OSM that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process (Administrative Record Number VA–954). Therefore, to the extent that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process, the Director finds the proposed provision to be no less effective than to the counterpart Federal regulations at 30 CFR 784.16(c)(3).

Subsection 784.16(f) has been amended by deleting reference to structures 20 feet or higher or that impound more than 20 acre feet. In its place, language has been added concerning structures that meet Class B or C criteria for dams in TR–60 or meets the size or criteria of 30 CFR 77.216(a). The Director finds the amended language to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.16(f).

10. 4 VAC 25–130–784.23 Operation Plan; Maps and Plans

Subsection (c) is amended by adding a reference to subsection 784.23(b)(4) in addition to the references to (b)(5), (6), (10), and (11). The Director finds the added language to be substantively identical to and therefore no less effective than the Federal counterpart provision at 30 CFR 784.23(c).

11. 4 VAC 25–130–800.40 Requirements for Release of Performance Bond

New subsection (a)(3) is added to provide that the application for bond release shall include a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release. The Director finds the added language to be identical to and therefore no less effective than the counterpart Federal language at 30 CFR 800.40(a)(3).

12. 4 VAC 25–130–816/817.46 Hydrologic Balance; Siltation Structures

Subsections (a)(2) is amended by deleting the word "permittee" and replacing it with the word "operator." The Director finds that as amended, subsections (a)(2) are identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.46(a)(2).

Subsections (b)(3) have been amended by deleting the last sentence that provided that the certification of completion of the siltation structures shall be provided to the division within 30 days after completion of construction of the structure. The Director finds that as amended, subsections (b)(3) are substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.46(a)(3).

Subsection (b)(5) have been amended by deleting the words "growing seasons" and adding in their place the word "years." The Director finds that as amended, subsections (b)(5) are identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.46(b)(5).

Subsections (c)(2) have been amended to delete most of the existing language concerning spillways. As amended, subsections (c)(2) provide that a sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in 4 VAC 25–130–816.49(a)(9).

OSM revised the performance standards for impoundments on October 20, 1994 (59 FR 53022). For clarity, OSM moved the spillway design requirements of 30 CFR 816./817.46(c)(2)(i) through (iii) to sections 816/817.49(a)(9) and revised 816/817.46(c)(2) to reference sections 816/817.49(a)(9). The Director finds that as amended, Virginia subsection (c)(2) is substantively identical to and therefore no less effective than the revised Federal regulations at 30 CFR 816/817.46(c)(2) with one exception. 4 VAC 25–130–817.46(c)(2) concerning spillways contains an erroneous sentence fragment referencing Paragraph (c)(2)(i), a paragraph that does not exist.

In response to OSM's comment about the sentence fragment, the DMME stated that it will delete those additional words (Administrative Record Number VA–954). Therefore, to the extent that the DMME will delete the erroneous sentence fragment that references Paragraph (c)(2)(i), the Director finds the provisions to be no less effective than the counterpart Federal regulations at 30 CFR 816/817.46(c)(2).

13. 4 VAC 25–130–816/817.49 Impoundments

New subsections (a)(1) provide that impoundments meeting the Class B or C criteria in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR–60) shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 and the requirements of this section. The Director finds the added language to be substantively identical and therefore no less effective than tot he counterpart Federal requirements at 30 CFR 816/817.49(a)(1).

Subsections (a)(4)(i) concerning stability have been amended to delete the words "or located where failure would be expected to cause loss of life or serious property damage." In addition, the word "state" has been added between the words "steady" and 'seepage." OSM amended the counterpart Federal regulations on October 20, 1994 (59 FR 53022). In that amendment, OSM removed the phrase "or located where failure would be expected to cause loss of life or serious property damage" because it is redundant with the cited TR–60 reference. The Director finds that as amended, subsections (a)(4)(i) are identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(4)(i).

Subsections (a)(4)(ii) are amended by deleting the words "meeting the size or other criteria of 30 CFR 772.216(a)" and adding in their place the words "included in Paragraph (a)(4)(i). In addition, and in the same sentence, the words "and located where failure would not be expected to cause loss of life or serious property damage" have been deleted. OSM made similar changes to its counterpart regulations at 30 CFR 816/817.49(a)(4)(ii) to help clarify which safety factors are related to specific types of impoundment classification. The Director finds that amended language in subsections (a)(4)(ii) to be identical to and therefore no less effective than the amended language in the counterpart Federal regulations at § 816/817.49(a)(4)(ii).

Subsections (a)(5) are amended by adding a new last sentence that provides that "[i]mpoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60. This change renders subsections (a)(5) compatible with TR–60 standards added to subsections (a)(1). The Director finds the amended language in subsections (a)(5) to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(5).

Subsections (a)(6)(i) are amended by adding a reference to Class B or C criteria for dams in TR–60. The Director finds the amended language in subsections (a)(6) to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(6).

Subsections (a)(9)(ii)(A) have been amended to provide that for impoundments meeting the Class B or C criteria for dams in TR–60, the impoundments must meet the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 or greater as specified by the Division. The Director finds the amended language in subsections (a)(9)(ii)(A) to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(9)(ii)(A).

Subsections (a)(9)(ii)(B) have been amended by adding the words "or exceeding" between the word "meeting" and the words "the size." The Director finds the amended language to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(9)(ii)(B).

Subsections (a)(9)(ii)(C) have been amended by deleting the words "meeting the size or other criteria of 30 CFR 77.216(a)" and adding in their place the words "included in Paragraph (a)(9)(ii) (A) and (B). The Director finds the amendment to subsections (a)(9)(ii)(C) to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii)(C).

Subsections (a)(11) concerning examinations has been amended to provide that impoundments meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) must be examined in accordance with § 77.216(a). In addition, subsections (a)(11) have been amended to provide that impoundments not meeting such criteria shall be examined at least quarterly. Also, subsections (a)(11) have been amended to provide that a qualified person designated by the operator shall examine impoundments for appearance of structural weakness and other hazardous conditions. Finally, the last sentence concerning a written record has been deleted. The Director finds that as amended, subsections (a)(11) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(12).

Subsections (c)(2)(i) have been amended by deleting the words "[i]n the case of an impoundment meeting" and adding in their place the words [i]mpoundments meeting the SCS Class B or C criteria for dams in TR–060 or." In addition, the words "it is" are deleted and replaced by the words "shall be." The Director finds that as amended, subsections (c)(2)(i) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(i).

Subsections (c)(2)(ii) have been amended to provide that impoundments not included in Paragraphs (c)(2)(i) of these sections shall be designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the division. The Director finds that as amended, subsections (c)(2)(ii) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(ii).

14. 4 VAC 25–130–816/817.74 Disposal of Excess Spoil; Preexisting Benches

Subsections (a) through (g) have been amended to mirror the counterpart Federal regulations at 30 CFR 816/817.74. On December 17, 1991 (56 FR 65612) OSM revised the Federal regulations at 30 CFR 816/817.74 concerning the disposal of excess spoil on preexisting benches to conform those requirements with the backfilling and grading requirements of §§ 816/817.102. The Director finds that, as amended, 4 VAC 25–130–816/817.74 are substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.74.

15. 4 VAC 25–130–816/817.81 Coal Mine Waste; General Requirements

Subsections (a) have been amended to provide that all coal mine waste disposed of in an area other the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to comply with the identified provisions. The Federal Regulations at 30 CFR 816/817.81(a) were revised on December 17, 1991 (56 FR 65612) to provide that coal mine waste be "hauled or conveyed" instead of just requiring that it be "placed." Additional language was also added to allow the disposal of coal mine waste in mine workings or excavations and to specify that the waste be placed in a controlled manner to promote fill stability and inhibit combustibility. The Director finds that as amended, 4 VAC 25–130–816/817.81(a) is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.81(a). In addition, subsections (c)(3) have been deleted. This deleted subsection provided for specific numbers for thickness and compaction. There was no Federal counterpart to subsection (c)(3) and the deletion does not render the Virginia program less effective.

16. 4 VAC 25–130–816/817.89 Disposal of Noncoal Mine Wastes

These sections have been amended by deleting subsections (d). On December 17, 1991 (56 FR 65612) the Federal regulations at 30 CFR 816/817.89 were revised by deleting paragraphs (d), which required that any noncoal waste defined as hazardous under section 3001 of the Resource Conservation and Recovery Act (RCRA) be handled in accordance with subtitle C and any implementing regulations. This provision could have been interpreted as requiring OSM and State regulatory authorities to assume permitting, inspection and enforcement responsibilities that Congress assigned to the Environmental Protection Agency (EPA). Therefore, the Director finds that the deletion of subsections 4 VAC 25–130–816/817.89(d) does not render the Virginia program less effective than the counterpart Federal regulations at 30 CFR 816/817.89.

17. 4 VAC 25–130–816.104 Backfilling and Grading; Thin Overburden

The existing introductory paragraph is deleted and replaced by new language. On December 17, 1991 (56 FR 65612) OSM amended the Federal regulations at 30 CFR 816.104 concerning backfilling and grading, thin overburden. The Director finds that as amended, 4 VAC 25–130–816.104 is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816.104.

18. 4 VAC 25–130–816.105 Backfilling and Grading; Thick Overburden

The existing introductory paragraph is deleted and replaced by new language. On December 17, 1991 (56 FR 65612) OSM amended the Federal regulations at 30 CFR 816.105 concerning backfilling and grading, thick overburden. The Director finds that as amended, 4 VAC 25–130–816.105 is substantively identical to and therefore no less effective that the counterpart Federal regulations at 30 CFR 816/105.

19. 4 VAC 25–130–823.11 Applicability

Subsection (a) is amended by deleting the existing language and adding new language in its place. As amended, subsection (a) provides that the requirements of this Part shall not apply to coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of Part 816 for surface mining activities and of Part 817 for underground mining activities.

At the present time, the Federal regulation at 30 CFR 823.11(a) is suspended insofar as it relates to surface, as opposed underground, mining (February 21, 1985; 50 FR 7278). Therefore, Virginia's proposal to adopt 30 CFR 823.11(a), as applied to surface mining, is inconsistent with SMCRA, as interpreted by court decisions.

OSM informed DMME that this amendment copies language in the Federal regulations that has been suspended insofar as the language applies to surface mines. In response, the DMME stated that the proposed changes to 4 VAC 25–130–823.11(a) are hereby withdrawn (Administrative Record Number VA–954).

20. 4 VAC 25–130–840.11 Inspections by the Divisions

Subsection (f)(2) has been amended to provide that reclamation has been completed to the level established in 4 VAC 25–130–800.40 Phase II.

Subsection (g)(4) has been amended to delete the word "or" and add in its place the word "and." As amended, subsection (g)(4) applies to a site that is, or was, permitted and bonded. Subsection (g)(4) is further amended at (g)(4)(i) to delete language pertaining to permit revocation proceedings, and to add the word "either" so that the provision applies to a permit that has either expired or been revoked. Subsection (g)(4)(ii) has been amended to delete the word "the" and replace that word with the words "any available." As amended, the provision applies to any available performance bond.

Subsection (h) has been amended by deleting most of the existing language and replacing that language with new language. In addition, new language has been added concerning selecting an alternate inspection frequency, and concerning public notice.

The Federal regulations at 30 CFR 840.11(g) and (h) were amended on November 28, 1994 (59 FR 60876) to change the minimum inspection frequency for surface coal mining and reclamation operations that have been abandoned without completion of reclamation or abatement of violations. The change enables regulatory authorities to eliminate ineffective inspections to redirect resources to minesites where inspection and enforcement will achieve intended results. Before an abandoned site can qualify for a change in inspection frequency under this rule, the regulatory authority must make a written finding that a site is abandoned and that the change in inspection frequency is appropriate based on specified environmental and public health and safety criteria.

The Director finds the amendments to 4 VAC 25–130–840.11 to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 840.11 with one exception. The amendments to subsection 4 VAC 25–130–840.11(f)(2) differ from the counterpart Federal regulations at 30 CFR 840.11. The Federal provision provides that an inactive surface coal mining and reclamation operation is one for which reclamation Phase II as defined at 30 CFR 800.40 has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program. The counterpart State provision, however, provides that an inactive surface coal mining and reclamation operation is one for which reclamation has been completed to the level established in 4 VAC 25–130–800.40 as Phase II. That is, the Virginia provision makes reference to completion of the reclamation that is equivalent to Phase II, rather than Phase II bond release. In its submittal of this amendment, Virginia stated that the change is necessary to make the rule applicable to the operations using Virginia's approved alternate bonding system, which does not include provision for a bond release at the completion of Phase II type reclamation. The Federal regulations at 30 CFR 840.11 (applicable to State regulatory authorities) and 842.11 (applicable to State regulatory authorities) and 842.11 (applicable to Federal inspections and monitoring) were amended on August 16, 1982 (57 FR 35620). Discussion of 30 CFR 840.11(f) (what is an inactive operation under a State program) was cross-referenced to the discussion of 30 CFR 842.11(c) (what is an inactive operation under a Federal program). 57 FR 35621. At the discussion to 30 CFR 842.11(c)(2)(iii)(B), OSM agreed with commenters that "the determination of a mine's status as active or inactive should be based solely on the completion of Reclamation Phase II." Accordingly, OSM modified 30 CFR 842.11(c)(2)(iii)(B) to reflect this intention. Therefore, Virginia defining an inactive mine as one for which reclamation has been completed to the level established in 4 VAC 25–130–800.40 as Phase II, is consistent with OSM's intentions. The Director finds 4 VAC 25–130–840.11(f)(2) to be no less effective than the Federal regulations.

21. 4 VAC 25–130–843.12 Service of Notices of Violation, Cessation Orders, and Show Cause Orders

Subsection (a)(2) is amended by adding new language to the end of the first sentence. The added language provides that service may also be made by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Virginia has also added the word "certified" immediately before the word "mail." This latter change clarifies that the reference is to certified mail. In its submittal of this amendment, Virginia stated that the added reference to the Rules of the Supreme Court of Virginia is necessary since the State agency must follow State administrative procedures for service of documents. The Federal regulation at 30 CFR 840.13(c) states that the procedural requirements for enforcement provisions "shall be the same as or similar to those provided in" 518 and 521 of SMCRA and consistent with the applicable Federal regulations. Federal enforcement under 30 CFR 843.14(a) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. Therefore, the Director finds that the amended language is not inconsistent with the Federal regulations.

22. 4 VAC 25–130–845.17 Procedures for Assessment of Civil Penalties

Section (b) is amended by adding a reference to the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Subsection (b)(1) is amended replacing the word "mail" with the word "documents." New subsection (b)(2) is added to provide that failure of the Division to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been

assessed: (i) proves actual prejudice as a result of the delay; (ii) makes a timely objection to the day. An objection shall be timely only if made in the normal course of administrative review.

The Director finds that the amended language is substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 845.17 with one exception. The amended language at subsection (b) concerning reference to the Rules of the Supreme Court of Virginia governing service of a summons and complaint differs from the Federal regulations. As previously stated, the Federal rule at 30 CFR 840.13(c) states that the procedural requirements for enforcement provisions "shall be the same as or similar to those provided in" 518 and 521 of SMCRA and consistent with the applicable Federal regulations. Federal enforcement under 30 CFR 845.17(b) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. Therefore, the Director finds that the amended language is not inconsistent with the Federal regulations.

23. 4 VAC 25–130–845.18 Procedures for Assessment Conference

Subsection (a) is amended to change the time limit for requests for an assessment conference from 15 days to 30 days. Subsection (b)(1) is amended to provide that the assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later. Prior to this amendment, the conference was to be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. New language is added to subsection (b)(1) to provide that a failure by the Division to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Subsection (b)(2) has been amended to delete the words "and the Courthouse of the County is which [the mine] is located" and replace that language with "or field office located closest to [the mine]." In effect notices of assessment conferences will be posted at the Division's Big Stone Gap office, and the field office located closest to the mine. Subsection (b)(3) is amended by deleting the words "affirm, raise, lower, or vacate the penalty," and replace those words with the word "either" and the addition of new subsections (b)(3)(i) and (ii). The two new subsections provide that within 30 days after the conference is held, the conference officer shall either: (i) Settle the issue, in which case a settlement agreement shall be prepared and signed by the Division and by the person assessed; or (ii) affirm, raise, lower, or vacate the penalty.

New subsection (d) is added to provide that at (d)(1) if a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect. New (d)(2) provides that if full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

The Federal regulations at 30 CFR 845.18 were revised on March 8, 1991 (56 FR 10060). The revision extended by approximately 30 days the amount of time within which OSM may complete the necessary administrative actions to hold an assessment conference and by 15 days the amount of time within which a person charged with a violation may appeal an assessment conference officer's decision to the Office of Hearings and Appeals. The director finds that as amended, 4 VAC 25–130–845.18 is substantively identical to and consistent with the counterpart Federal regulations at 30 CFR 845.18.

24. 4 VAC 25–130–845.19 Request for Hearing

Subsection (a) is amended by changing from 15 days to 30 days the number of days that a person charged with a violation may contest the proposed penalty or the fact of the violation. On March 8, 1991 (56 FR 10060) the Federal regulations at 30 CFR 845.19 were similarly amended. The Director finds that as amended, the State provision is substantively identical to and consistent with the counterpart Federal regulations.

25. 4VAC 25–130–846.17 Assessment of an Individual Civil Penalty

Subsection (b)(3) is deleted and replaced by a new subsection (c). As amended, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules of the Supreme Court of Virginia governing service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept. On June 20, 1991 (56 FR 28442) the Federal regulations at 30 CFR 846.16(c) concerning service were amended. As amended, the Virginia provision is substantively identical to and therefore no less effective than the counterpart Federal provision with one exception. The Federal provision provides that service can be accomplished by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. The revised Virginia provision that service can be accomplished by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Federal enforcement under 30 CFR 846.17(c) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. therefore, the Director finds that the amended language is not inconsistent with the Federal regulation.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(I), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (USFWS) responded and stated that it appears that no impacts to Federally listed or proposed species or critical habitat will occur and, therefore, USFWS had no comments on the proposed amendments. The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded and stated that the proposed amendments seem to conform more closely to presently practiced reclamation goals and standards, and better suits their intended use. Therefore, the NRCS stated that the amendments should be accepted. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the proposed amendment does not contain any

information that would be conflicting to MSHA regulations.

Public Comments

There were no public comments submitted.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA. The EPA did not provide any comments.

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Virginia's amendment as submitted by Virginia on December 1, 1997, and clarified by letter dated March 6, 1998.

4 VAC 25–130–780.25(c)(3) is approved to the extent that any other design standard that DMME may accept in lieu of the engineering standards will be first be approved through the state program amendment process.

4 VAC 25–130–784.16(c)(3) is approved to the extent that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process.

4 VAC 25–130–817.46(c)(2) is approved to the extent that the DMME will delete the erroneous sentence fragment that references Paragraph (c)(2)(i).

The Director notes that the amendments to 4 VAC 25–130–823.11(a) were withdrawn by the DMME.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
December 1, 1997	June 24, 1998	VA Code Sections 701.5; 779.22 [deletion], .25(k) [deletion]; 780.23, .25(a), (a)(2)(a)(3), (b), (c)(3), (f), 35(b); 783.25(k) [deletion]; 784.15, .16(a), (a)(2), (a)(3), (b), (c)(3), (f), .23(c); 800.40(a)(3); 816.46(a)(2), (b)(3), (b)(5), (c)(2), .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion], .104, .105; 817.46(a)(2), (b)(3), (b)(5), (c)(2) .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion]; 840.11(f)(2) & (g)(4), (h); 843.14(a)(2); 845.17(b) through (b)(2)(ii), .18(a), (b) through (b)(3)(ii), (d)(1) & (2), .19(a) and 846.17(b)(3) [deletion] and (c).

[FR Doc. 98–16812 Filed 6–23–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–058]

RIN 2115–AA97

Safety Zone: Burlington Independence Day Fireworks, Burlington Bay, VT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Burlington Independence Day fireworks program located on Burlington Bay, Lake Champlain, Vermont. The safety zone is in effect from 9 p.m. until 10:30 p.m. on Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Burlington Bay on Lake Champlain, Vermont.

DATES: This rule is effective from 9 p.m. until 10:30 p.m. on Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this updated application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On May 18, 1998, the City of Burlington, VT submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of Burlington Bay on Lake Champlain, Vermont. The sponsor notified the Coast Guard they are using larger fireworks shells than the annual regulation in 33 CFR 165.166 was written for. This regulation increases the radius of the safety zone from 250 yards to 360 yards. This regulation establishes a safety zone in all waters of Burlington Bay within a 360 yard radius of the fireworks barge located in approximate position 44°28′30.5″ N 073°13′32″ W (NAD 1983), beside the Burlington Bay breakwater. The safety zone is in effect from 9 p.m until 10:30 p.m. Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place. The safety zone prevents vessels from transitting this portion of Burlington Bay, Lake Champlain, Vermont and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Public notification will be made prior to the event via the Local Notice to Mariners.

Regulations for a permanent Regulated Navigation Area have been published for this event in 33 CFR 165.166. If the annual regulation is enforced for this event the safety zone area will not be large enough to provide for the safety of life on navigable waters due to the larger fireworks shells being used. This final rule will close a portion of Burlington Bay for one hour less than the current regulations in 33 CFR 165.166.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following: this is an annual marine event currently published in 33 CFR 165.166, the event's date is the same, and the location is only 75 yards from the location in 33 CFR 165.166, this final rule will close a portion of Burlington Bay for less time than the current regulation will, the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, and advance notification which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operate and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–058 to read as follows:

§ 165.T01–058 Safety Zone: Burlington Independence Day Fireworks, Burlington Bay, Vermont.

(a) *Location*. The following area is a safety zone: all waters of Burlington Bay, Lake Champlain, Vermont, within a 360 yard radius of the fireworks barge in approximate position 44°28′30.5″ N 073°13′32″ W (NAD 1983), beside the Burlington Bay breakwater.

(b) *Effective period*. This section is effective from 9 p.m. until 10:30 p.m. on Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 5, 1998.

L.M. Brooks,

Captain, U.S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 98–16782 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay; 98–010]

RIN 2115–AA98

Safety Zone; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing a portion of the navigable waters of the Oakland Estuary, CA, surrounding the barge used as a platform to launch fireworks for Jack London Square's 4th of July Fireworks Celebration, from 8 p.m. to 11:30 p.m., PDT. The launch barge will be located approximately 1000 feet south of Jack London Square in the Oakland Estuary.

This temporary safety zone is necessary to provide for the safety of participating technicians, waterborne and shore-side spectators, vessels, and other property during the fireworks display. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit this safety zone by contacting Vessel Traffic Service on Channel 14 VHF–FM.

DATES: This safety zone will be in effect on July 4, 1998 from 8 p.m. to 11:30 p.m., PDT. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice To Mariners.

ADDRESSES: U.S. Coast Guard, Marine Safety Office, San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501–5100.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Lesley F. Dion-Bow, U.S. Coast Guard, Marine Safety Office, San Francisco Bay; (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a Notice of Proposed Rule (NPRM) was not published for this temporary regulation and good cause exists for making it effective prior to, or less than 30 days after, **Federal Register** publication. Publication of an NPRM and delay of its effective date would be contrary to the public interest since the precise location of the event necessitating the promulgation of this safety zone, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date. Therefore, the event would be finished before the rulemaking process was complete if an NPRM was published, jeopardizing the safety of the lives and property of event participants and spectators.

Discussion of Regulation

The Port of Oakland/Oakland Portside Associates are sponsoring the 4th of July Fireworks Celebration at Jack London Square on the evening of July 4, 1998. These fireworks will be launched from a barge located approximately 1,000 feet south of Jack London Square in the Oakland Estuary.

The safety zone will be bounded by a 350 yard radius surrounding the launch barge, the center of which will be approximately located at the following position: 37°–47.6′ N, 122°–16.4′ W. This safety zone is necessary to protect the participating technicians, the spectators, and vessels and other property from the hazards associated with the fireworks display. Entry into, transit through, or anchoring within this zone by all vessels prohibited, unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the regulated area by contacting the Vessel Traffic Service on Channel 14 VHF–FM. For purposes of this temporary regulation, "commercial vessels" are defined as all vessels other than those used and registered/documented exclusively for recreational purposes.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the

regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the implementation of the safety zone, and because commercial traffic will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (35), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule selected.

No state, local, or tribal government entities will be effected by the rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new § 165.T11–079 is added to read as follows:

§ 165.T11–079 Safety Zone: San Francisco Bay, San Francisco, CA.

(a) *Location.* The area described as follows, located within the navigable waters of the Oakland Estuary, constitutes a safety zone: a circular radius of 350 yards surrounding the barge used as a platform to launch fireworks for Jack London Square's 4th of July Fireworks Celebration, the center of which is approximately located at 37°47.6′ N, 122°16.4′ W. All coordinates referred use Datum: NAD 83.

(b) *Effective Dates.* This safety zone will be in effect on July 4, 1998 from 8 p.m. to 11:30 p.m., PDT. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice To Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transmit the safety zone by contacting Vessel Traffic Service on Channel 14 VHF–FM.

Dated: June 3, 1998.

H. Henderson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 98–16781 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 96–3B]

Notice and Recordkeeping for Digital Subscription Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations on the requirements by which copyright owners shall receive reasonable notice of the use of their works from digital subscription transmission services, and how records of such use shall be kept and made available to copyright owners. The Digital Performance Right in Sound Recordings Act of 1995 requires the Office to adopt the regulations.

EFFECTIVE DATE: The interim regulations are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Interim Rule in Docket No. RM 96–3B, adopted June 15, 1998. The full text of the Interim Rule is available for inspection and copying during normal business hours in the Public Information Office of the Copyright Office, Room LM–401, and in the Public Records Office of the

Licensing Division of the Copyright Office, Room LM–458, James Madison Memorial Building, First and Independence Avenue, S.E., Washington, D.C. 20559–6000. The full Interim Rule is also available via the Copyright Office homepage at http://www.loc.gov/copyright.

The regulations are issued on an interim basis due to the developing nature of the digital transmission service industry and of the technology which will be employed in accommodating the reporting requirements. In two years, the Office will provide another opportunity for comment before issuing final regulations.

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("the Act"). Public Law No. 104–39, 109 Stat. 336 (1995). The Act gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). Certain digital transmissions were exempted from the scope of the right, 17 U.S.C. 114(d)(1), while nonexempt digital subscription services were given the opportunity to qualify for a statutory license. 17 U.S.C. 114(d)(2). Congress directed the Librarian of Congress to establish regulations under which copyright owners may receive reasonable notice of the use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2).

The Sec. 114 License for Nonexempt Subscription Transmissions

A nonexempt digital subscription service transmission is subject to statutory licensing in accordance with 17 U.S.C. 114(f) if the transmission is not part of an interactive service, does not exceed the "sound recording performance complement," does not give an advance program schedule or prior announcement of titles to be performed, does not automatically cause the receiving device to switch from one program channel to another, and includes information encoded by authority of the copyright owner identifying the title, the featured artist, and related information. 17 U.S.C. 114(d)(2). The "sound recording performance complement" is a limit on the number of selections that can be played from one phonorecord, boxed set, or featured artist within a three-hour period. See 17 U.S.C. 114(j)(7).

Digital subscription transmission services that qualify for the statutory license may reach a voluntary agreement as to rates and terms with sound recording copyright owners, or may petition the Librarian of Congress to convene a copyright arbitration royalty panel (CARP) to set rates and terms for those entities that have not reached voluntary agreement. 17 U.S.C. 114(f)(1)–(2), and (4). On June 4, 1996, no voluntary agreement having been reached, the parties petitioned the Librarian to convene such a CARP.[1] Rates and terms set by the CARP will apply to all copyright owners and subscription services not subject to voluntary agreement. 17 U.S.C. 114(f)(2)–(3). However, Congress also directed the Librarian of Congress to establish regulations by which copyright owners may receive reasonable notice of the use of their sound recordings under statutory license, and under which records of such use shall be kept and made available by the entities performing the sound recordings. 17 U.S.C. 114(f)(2). Anyone performing a sound recording publicly by means of a nonexempt subscription transmission under section 114(f) may do so without infringing the exclusive right of the sound recording copyright owner by complying with the notice requirements that the Librarian prescribes by regulation and by paying royalty fees in accordance with the law. 17 U.S.C. 114(f)(5).

Rulemaking on Notice and Recordkeeping

On May 13, 1996, the Copyright Office published a Notice of Proposed Rulemaking in the **Federal Register** requesting comments on the requirements by which copyright owners should receive reasonable notice of the use of their works from subscription digital transmission services and how records of such use should be kept and made available to copyright owners. The Office asked commentators to consider both the adequacy of notice to sound recording copyright owners and the administrative burdens placed on digital transmission services in providing notice and maintaining records of use. 61 FR 22004 (May 13, 1996).

Initial Comments and Reply Comments

The Office received a total of four comments and three reply comments, as well as one surreply and one comment to the surreply. Comments were submitted by the Recording Industry Association of America (RIAA) (representing member companies who manufacture or distribute more than 90 percent of legitimate sound recordings sold in the United States), and three digital music subscription services operating in the United States: DMX, Inc. (DMX); Muzak, Inc. (Muzak); and Digital Cable Radio Associates/Music Choice (DCR) ("commenting parties"). The Initial and Reply Comments are fully summarized in the text of this Interim Rule and Order, and were also discussed in a second Notice of Proposed Rulemaking (NPRM), published on June 24, 1997. See 62 FR 34035 (June 24, 1997). The comments addressed a wide range of proposals for notice and records of use, including: an initial notice filed with the Copyright Office to indicate commencement of transmission under statutory license; quarterly reports of use including data to indicate which sound recordings were performed and the number of times (summary frequency data); whether reports should be served on a single collective rights organization ("Collective") such as RIAA's, rather than on individual copyright owners; data fields to identify sound recordings; and maintenance of records. The comments also addressed matters not prescribed in the Act, such as confidentiality, auditing, and statements of account.

Meetings To Facilitate Agreement on Notice and Recordkeeping Requirements; and Issues Identified in Discussions Among the Parties

On November 14, 1996, the Copyright Office met with the parties to facilitate agreement on notice and recordkeeping requirements under section 114, and to discuss the proper regulatory and recordkeeping role for the Office. In attendance were 15 individuals representing RIAA, DMX, Muzak, DCR, and the Copyright Office. The Office distributed at the meeting a list of principles it accepted: for example, Services would file with the Office an initial notice indicating transmission of sound recordings under statutory license. Following the meeting, the Office circulated a draft meeting summary, and received additional written comments in response. A

[1] On November 28, 1997, the CARP convened by the Librarian issued its report determining rates and terms for the license for the period from the effective date of the Act. Report of the Copyright Arbitration Royalty Panel, In re: Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmission of Sound Recordings, No. 96–5 (Nov. 26, 1997). The Librarian issued an order accepting in part the CARP Report, and establishing additional terms. See discussion infra, The 1997 CARP Proceeding Under Section 114.

second meeting with the parties took place on January 23, 1997.[2]

In the comments and meeting discussions, the parties considered how reports of use would be kept or made available for sound recording copyright owners who were not members of a Collective, who could not be located, or who refused delivery. While Services believed the Office should designate a Collective and not permit individual copyright owners not to join, RIAA expressed concern about its Collective administering rights for non-member copyright owners, due to contractual and fiduciary duties to its members. The commenting parties addressed whether Services should provide playlist samples or error logs to verify compliance with the sound recording performance complement, and whether the Act requires Services to affirmatively report compliance with the complement. Following the meetings, however, a Service proposal to produce each quarter the entire intended playlist, instead of summary frequency data or error logs, was deemed generally acceptable, provided an agreeable definition for "intended playlist" were reached. The commenting parties also continued to discuss data fields to identify sound recordings performed.

The Second NPRM and Request for Further Comments

On June 24, 1997, the Copyright Office published a second Notice of Proposed Rulemaking (NPRM), presenting certain preliminary decisions and asking the parties for further comments. See Notice of Proposed Rulemaking, 62 FR 34035 (June 24, 1997). For example, the Office announced that it would accept an optional initial notice from Services; concluded that Services should keep and make available records to permit monitoring of the performance complement; asked how Services would make records of use available to unaffiliated sound recording copyright owners; concluded that copyright owners whose identity and location is known should be served directly with reports of use; inquired whether Services planned to serve quarterly intended playlists on small and individual copyright owners, or if there were an alternative reporting mechanism; inquired whether copyright owners should be permitted to waive complement information in favor of summary frequency data for their recording only; sought comment on estimated costs for providing intended playlists to different parties; stated a requirement that Services maintain records of use for three years; and announced that it would issue no regulation on audits. The Office provided a 60-day comment period.

The Further Comments

In response to the request for Further Comments in the June 24, 1997, NPRM, the Office received comments from: RIAA; DMX; DCR; the National Music Publishers' Association, Inc. (NMPA); and Creative Engineering Concepts, Inc. (CECI). CECI is the developer of an automated signal recognition technology employed nationwide and internationally by Broadcast Data Systems, LP, to identify sound recordings and advertisements using features and characteristics of the audio patterns.

1. Initial Notice

RIAA argued that the single-page initial notice filed by Services with the Copyright Office should be mandatory, not optional, so that copyright owners can identify prospectively entities that will transmit under statutory license.

2. Reports of Use

The commenting parties agreed that Services should provide quarterly reports of use consisting of their "intended playlists" for the quarter.

a. Definition of intended playlist. All commenting parties agreed that the intended playlist should report every sound recording "scheduled" to be transmitted; in addition, RIAA recommended that the intended playlist report every sound recording "actually" transmitted. RIAA also recommended that the intended playlist be defined to include a detailed report of any Service system failures resulting in transmission of unscheduled sound recordings. DMX suggested that the definition prescribe data fields and sound recording identifiers to be included in the playlist.

b. Reporting system failures resulting in deviations from the intended playlist. RIAA said Services should report system failures, including time and duration, and titles of substitute sound recordings transmitted in place of those scheduled. DMX said it does not automatically generate error logs in event of system failure, and that errors causing deviations from intended playlists are rare. DMX noted that logs were proposed to evaluate summary frequency data and playlist samples; providing complete intended playlists vitiates their necessity.

c. Certification of reports. RIAA said reports of use should contain a certification signed by a Service representative attesting under notary or penalty of perjury to accuracy. DMX said at most the regulation should require a statement that the report reflects information believed to be accurate and maintained in ordinary course of business.

d. Reporting compliance with the performance complement. DCR reasserted that the Act does not impose an obligation on Services affirmatively to report compliance with the performance complement.

e. Data fields and sound recording identifiers. RIAA, DCR and DMX generally agreed that the intended playlist reports should include the following eight data fields: channel, sound recording title, featured artist, album title, record label, catalog number, transmission date, and transmission time. In addition, RIAA sought four other identifiers: the CD track number, the Service name, the International Sound Recording Code (ISRC), and the "sound recording identifier" used by Selector (the software program Services employ to generate their intended playlists). However, CECI also described its technology to automatically identify sound recordings "using features and characteristics of the audio patterns," and to monitor sound recording usage. CECI already administers a network of remote monitoring systems collecting channel number and other data; the technology is used by record companies, broadcasters and others, to verify airplay, generate statistics, control distribution and determine royalty payments. This could be adapted within about six months to automatically document use of sound recordings and other copyrighted works by Services, verify compliance with the performance complement, and generate reports of use.

f. Compilation albums and non-music and foreign programming. RIAA said the standard reporting requirements would clearly apply to retail compilation albums, such as movie soundtracks, and should also apply to non-retail but commercial compilation albums, such as disc jockey compilation albums, because in such cases Services possess and make available to their subscribers information regarding the retail album. RIAA said the regulations should not distinguish between foreign and domestic programming. In earlier comments, Services sought to limit regulation of non-stereo, retransmitted foreign-originated programming, or retransmitted programming consisting

[2] The comments, meeting summaries, and meeting handouts are available in the Public Information Office of the Copyright Office, Room LM–401, James Madison Memorial Building, Washington, D.C.

of less than one-half music, such as sports or talk radio, but in their Further Comments professed no plans for such programming.

3. Central Collective

The Further Comments urged the Office to designate a central Collective and not impose a requirement of direct service to small, independent copyright owners. Services argued severe costs and administrative burdens associated with the reporting scheme in the NPRM would cripple them, and that direct service would force them to mainstream programming. DMX said use of collectives is common practice internationally with respect to collection and distribution of royalties for performance of sound recordings.

a. Alternative reporting mechanism. Services did not wish to identify individual copyright owners and provide separate reports that would also permit complement monitoring. DCR said no alternative to the intended playlist would provide comparable information, and the only alternative was to designate an independent second Collective for copyright owners not wishing to join RIAA. CECI volunteered to be an alternative Collective for small independent copyright owners. DMX urged the Office to mandate a single Collective, but, recognizing burden and expense of providing independent copyright owners with either intended playlists or individually tailored summary reports, DMX suggested three alternative reporting methods, and five "safeguards" it sought if direct service were required. DMX said Services should be able to choose among the methods and vary them by agreement or according to recipient, and that unserved copyright owners should make their identity and location known to Services by registered letter.

b. RIAA Collective as central repository. In Further Comments, RIAA said it now agreed to become the central repository for all copyright owners, including non-RIAA members. RIAA said it would now agree to receive all reports of use and royalties from Services. Because it now sought to be the central Collective, it said many questions in the second NPRM were moot; for example, there is no need for an alternative to the intended playlist, and no need for separation of reports. Because the Collective now planned to identify and locate copyright owners of all sound recordings performed under the license and to distribute to all entitled copyright owners, there was no need to define copyright owners "whose identity and location is known" to trigger a direct service requirement. RIAA said it required complete and uniform data to operate a royalty distribution system. It rejected summary frequency data because it lacks complement information and said all copyright owners are entitled to the same notice of use. RIAA said it would deduct costs from royalties to cover administrative expenses. Royalties that could not be distributed for unlocated copyright owners would, after three years of escrow, be used to offset costs of locating non-members.

4. Details Relating to Records of Use

The Further Comments addressed a number of details relating to records of use, including formats of reports, access and confidentiality, audits, maintenance of records, costs of maintaining and providing records, and retroactivity of recordkeeping requirements.

a. Reporting and maintaining records of use; format. RIAA and DCR agreed that reports of use should be provided within 30 days of the close of each quarter; DMX preferred no later than 45 days following the end of the quarter. The commenting parties agreed that Services should be required to retain reports of use for three years, and that reports should be provided on a common machine-readable medium. DMX generally accepted the file format suggested by RIAA.

b. Confidentiality. The commenting Services agreed that provision of intended playlists may raise confidentiality concerns. One said Services should be able to elect to provide intended playlists, summary frequency data, or Internet-posted past playlists (in either a password-protected or publicly available area). RIAA said playlists are available to anyone willing to monitor programming, but suggested that instead of requiring a confidentiality agreement, the regulation should limit the information's dissemination and utilization.

c. Access and audits. While announcing that it would not promulgate audit regulations, the Office in the June 24, 1997, NPRM inquired whether some regulation on access were needed and how Services would make records available to copyright owners who had not been served. DMX suggested that audits of Services be limited to once a year, and that copyright owners be able to view information held by a Collective, subject to fees. NMPA urged the Office to expressly establish audit requirements in its forthcoming regulations on notice and recordkeeping under section 115.

d. Costs. RIAA said it would deduct costs from royalties to cover administrative expenses, while royalties that could not be distributed to unlocated copyright owners would be escrowed for three years before reverting to the general royalty account for distribution, or being used to offset costs to Collective members of trying to locate non-members. RIAA said costs of serving the Collective or copyright owners, and of retaining reports for three years, should be borne by Services. DMX said Services should bear costs of maintaining intended playlists, but the cost of preparing and delivering reports of use to a Collective or record company, including reasonable labor and computer time, should be deducted from royalty payments.

e. Effective date and transition period. DCR and DMX said reports of use should not be required from the license's creation on February 1, 1996, through adoption of regulations. DCR said retroactive recordkeeping would require millions of records. DCR and DMX said the Office should recognize a transition period of two years before full compliance with notice and recordkeeping rules is required. RIAA sought use data for periods preceding issuance of regulations, and said the regulation should not recognize a formal transition period.

The 1997 CARP Proceeding Under Section 114

As noted, following a period of voluntary negotiation concerning rates and terms for the section 114 statutory license, the parties petitioned the Librarian of Congress on June 4, 1996, to convene a copyright arbitration royalty panel (CARP). See 17 U.S.C. 114(f)(1)–(2); Initiation of Voluntary Negotiation Period, 60 FR 61655 (Dec, 1, 1995); Initiation of Arbitration, 62 FR 29742 (June 2, 1997). On November 28, 1997, the CARP convened by the Librarian issued its report determining rates and terms for the license for the period from the effective date of the Act. Report of the Copyright Arbitration Royalty Panel, In re: Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmission of Sound Recordings, No. 96–5 (Nov. 28, 1997) (Report). The Report established, *inter alia*, the following terms:

(1) Collective: The CARP determined that "any notices and payments required by the CARP 'should be submitted to a single private entity or government agency that will distribute the funds to sound recording copyright owners.'" Because RIAA requested that it be designated as the single entity and because Services did not object, the

Panel determined "that the RIAA Collective shall serve as that single private entity." Report ¶ 184. See also ¶ 205.

(2) Maintenance of certain records: The CARP said Services shall maintain accurate records on matters directly related to the payment of license fees for a period of three years. Report ¶¶ 192, 209.

(3) Audits: Interested parties may conduct a single audit of a Service during any given year. Report ¶¶ 193, 210.

(4) Confidentiality: RIAA must establish safeguards to avoid disclosure of confidential financial and business information. ¶¶ 191, 208.

On January 27, 1998, the Librarian concluded on the recommendation of the Register that he could not adopt the Report to the extent that certain of the findings and conclusions were arbitrary and contrary to law. Notice and Order, Docket No. 96–5 CARP DSTRA (Jan. 27, 1998). See 17 U.S.C. 802(f). Setting aside the Panel's final determination in part, to reject the Panel's rate and certain of the terms, the Librarian issued an Order published in the **Federal Register**, accepting each of the terms set forth above. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 FR 25394 (May 8, 1998). The Librarian's Order also established the following additional terms.

(5) Audits: Interested parties may conduct one audit of the RIAA Collective during any given year. 37 CFR 260.6.

(6) Costs: The RIAA Collective may deduct, from royalties it distributes, reasonable costs incurred in administration of the distribution of royalties, so long as the reasonable costs do not exceed actual costs incurred by the collecting entity. 37 CFR 260.3(d). The Collective also may use unclaimed funds to offset the cost of administering collection and distribution of royalties. 37 CFR 260.7.

The CARP proceeding and Librarian's final determination upon review of the CARP Report therefore resolved until at least the year 2001 some of the issues that were the subject of comment in the present rulemaking, including the establishment of a single Collective, auditing, confidentiality, and deduction of costs.

Discussion and Conclusions

The Act directs the Librarian to establish regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the license, and under which entities performing sound recordings shall keep and make available records of use. 17 U.S.C. 114(d)(2). Congress meant to inhibit neither the arrival of new technologies nor the operation of existing digital audio services. S. Rep. No. 128, 104th Cong., 1st Sess. 15 (1995); Cong. Rec. S950 (daily ed. Jan. 13, 1995) (statement of Sen. Feinstein). The Office has considered both adequacy of notice to copyright owners and administrative burden for Services providing notice and records. See 61 FR 22004 (May 13, 1996).

1. Initial Notice

Digital subscription services transmitting sound recordings under the statutory license will file an initial notice with the Copyright Office consisting of Service name, address, telephone number, and information on how to gain access to the online website or home page of the Service or entity, where information may be posted under these regulations concerning the use of sound recordings under statutory license. The notice will be placed in Copyright Office records where copyright owners may access the information concerning use of sound recordings under the license. The filing will be required to assist copyright owners and Collectives locate entities transmitting under the license. Services will file the initial notice any time prior to commencement of transmission under the license or within 45 days of the regulation's effective date, and update the filing within 45 days of a change in the information reported. The notices shall be accompanied by a filing fee.

2. Designation of a Single Collective

Digital subscription services will also be required to provide detailed reports of their use of sound recordings under the license, but will not be required to serve copyright owners individually. Although the Office suggested in its second NPRM that it did not have authority to designate a single Collective to serve as a central repository and might have to require Services to serve reports of use directly on copyright owners or their agents, the Services urged the Office to designate a single Collective. Services argued that the costs of direct service upon owners of the 10 million songs performed by each Service annually would cripple them and cause them to eliminate all but "mainstream" programming in order to limit the number of copyright owners served. One Service observed that use of collective administration for performance of sound recordings is common practice internationally.

The Office recognizes that collective administration may be preferable where a large number of works are used, no single use is of great value, and owners cannot be easily located. In such cases, a central clearinghouse creates efficiencies of scale. The Office continues to question whether it would be appropriate, as part of an isolated rulemaking on notice and recordkeeping pursuant to 17 U.S.C. 114(f)(2), to require that notice of use of sound recordings be served on a single Collective rather than on all sound recording copyright owners. However, a single Collective (the RIAA Collective) has now been designated by a CARP and confirmed by an Order of the Librarian for purposes of receiving royalty payments and statements of account. In this notice and recordkeeping proceeding, RIAA said that its Collective would serve as central repository for reports for all sound recording copyright owners, regardless of membership in RIAA; commenting Services accepted the RIAA Collective as suitable for this role. The purpose of the CARP proceeding was to determine reasonable terms and rates under the statutory license. See 17 U.S.C. 114(f). The CARP's designation of a single Collective to receive royalty payments and statements of account as a term of the license simplifies the Office's task in this notice and recordkeeping proceeding. Rates and terms determined in the CARP proceeding are binding on all Services and sound recording copyright owners. 17 U.S.C. 114(f)(2). Because Services will send royalty payments and statements of account to a single Collective rather than to individual copyright owners, records of use should be sent to the Collective, which will distribute royalties to copyright owners based on the information in the records of use.[3] As one Service noted, reports of use determine royalty payments and should logically accompany them.

The Librarian's Order of May 8, 1998, establishes rates and terms for the statutory license through December 31, 2000. See 17 U.S.C. 114(f)(1). The RIAA Collective will serve as the collective administration organization through

[3] While most copyright owners are likely to utilize the designated Collective, a copyright owner and Service may reach separate arrangements in place of requirements imposed by the CARP or Copyright Office for royalties and records of use. Section 114(f)(3) provides:

License agreements voluntarily negotiated at any time between one or more copyright owners of sound recordings and one or more entities performing sound recordings shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress. 17 U.S.C 114(f)(3).

that date. Negotiations on rates and terms for years 2001 through 2005 will commence in January 2000. 17 U.S.C. 114(f)(4)(B).[4]

In summary, the regulation directs Services to serve records of use upon the Collective or Collectives identified in Copyright Office records as having been designated through the CARP process or by settlement agreement. Because Services will serve records of use for all sound recording copyright owners upon the designated Collective(s), there is no need for a definition of sound recording copyright owners whose identity and location is known, or other regulations concerning a direct service requirement. As discussed below, in the event that no Collective is designated, or if all designated Collectives terminate collection and distribution operations, Services will be required to post records of use online, with appropriate safeguards to protect confidentiality. Interested parties will have an opportunity to comment on these issues before final regulations are issued in late 2000.

In order to effectuate the statutory mandate that "copyright owners" may receive reasonable notice of the use of their sound recordings under this section, 17 U.S.C. 114(f)(2), the Collective should make certain information publicly available. In order to receive records of use, designated collectives will file with the Copyright Office and post and make available online a notice containing the following information: the Collective name, address, and telephone number; a statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and information on how to gain access to the Collective's online website or home page, where information may be posted under these regulations concerning the use of sound recordings under statutory license. The address of the Collective website will be made available on the Copyright Office website. In addition, the Collective will post and make available online, for the duration of one year, an annual report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

[4] Because future negotiations or CARP proceedings may result in designation of more than one Collective, the regulations anticipate the possibility that there may be multiple Collectives. Of course, it is also possible that future negotiations or CARP proceedings result in some payment mechanism other than a Collective.

3. Reports of Use

Reports of use will be monthly, and shall consist primarily of the Service's Intended Playlists for each channel and each day of the month. Reports of use shall be due on the twentieth day after the end of each month, commencing with the month succeeding the month in which these regulations become effective. The commenting parties agreed that reports of use should consist of the Intended Playlists. Not all Services can produce an actual playlist or error log, and the proposal to provide samples to test playlist reports was not found acceptable. The Intended Playlists accomplish all of copyright owners' reporting objectives, including provision of information with which copyright owners can generally monitor compliance with the sound recording performance complement in section 114(j)(7).

The Office considered arguments of DCR and other Services that the Act imposes no obligation to affirmatively report compliance with the complement, but reaffirms its earlier judgment. The Office notes that conforming to the performance complement is a condition of the statutory license, and a Service that complies with the regulatory notice requirements and pays the statutory royalties thereby avoids infringing the copyright owners' exclusive rights. 17 U.S.C. 114(d)(2), (f)(5). The Office determines, therefore, that it is within its rulemaking authority under section 114(f)(2) to require reporting of complement information. *See Cablevision Sys. Dev.* v. *Motion Picture Ass'n*, 836 F.2d 599 (D.C. Cir. 1988)(Copyright Office had authority to issue regulations interpreting statute). The Office believes that the presence and specificity of the performance complement indicates Congress' intent that records of use include data to test compliance. While section 114(j)(7) provides that transmissions from multiple phonorecords exceeding the performance complement's numerical limitations will nonetheless conform to the complement if the programming of multiple phonorecords was not "wilfully intended" to avoid the numerical limitations, a pattern of regular conduct might provide evidence of the requisite intent.

The Intended Playlists shall consist of a consecutive listing of every sound recording scheduled to be performed, for each of the Service's channels and each day during the reported month. This definition reflects the true nature of the Intended Playlist, as a listing of sound recordings scheduled to be played. The regulation requires that the Intended Playlist include every recording scheduled to be transmitted, rather than those scheduled and actually transmitted, because the comments and facilitated discussions established that Services are not able to provide an actual playlist, and that Intended Playlists already include overscheduled recordings (about an extra song per hour) to assure continuity, and are therefore highly reflective of recordings actually transmitted. Services shall report system failures causing deviations from the Intended Playlists, including the date, time and duration of any such system failure, but during the interim regulatory period, will not be required to also report the titles of sound recordings transmitted in place of those scheduled on the intended playlist. The facilitated discussions indicated that not all Services can provide an error log, and that system failures causing deviations from the playlist are rare events occurring on a single channel for limited periods. Efforts during such events are likely focused more on repairing the malfunction than on recordkeeping of titles. However, if system failures appear to increase in frequency or duration, or become opportunities for wholesale complement violations, then the Office will reconsider its position.

The Reports of Use shall include the following data fields and sound recording identifiers that all commenting parties agreed to: channel, sound recording title, featured artist, album title, record label catalog number, transmission date, and transmission time. Although one Service argued that the Act creates no duty to report date and time, the Office believes that Congress intended Services to report complement information; moreover, given that Service's argument that only "willfully intended" transgressions will violate the complement, the Intended Playlists' scheduled dates and times would presumably help establish Service's intentions in this regard. In addition to the eight data fields, the Reports of Use will also include: Service name, because the source of the report should be clear independent of mailing labels or informal labeling of computer files; and, where feasible, the International Sound Recording Code (ISRC), because this identifier, when embedded in sound recordings, facilitates automatic identification and royalty administration worldwide. The required data fields will not include the Selector sound recording identifier, or any other identifiers relating to

particular private monitoring systems, because the Office does not wish to incorporate proprietary standards of a particular company while the transmission, reporting, and copyright management technologies are rapidly developing. There are no separate requirements for compilation albums, except that in the case of compilation albums created for commercial purposes, Services should report the name of the retail album identified by the Service for the sound recording. During the interim period, there are no separate requirements for non-music or retransmitted, foreign-originated programming, because the Services reported no current plans to transmit such programming. The Reports of Use should be provided on a common machine-readable medium, such as diskette, optical disc, or magneto-optical disc, in the ASCII delimited format set forth in the regulation, with all data for one record on a single line. Reports of Use must be accompanied by a statement by a Service representative, signed under penalty of perjury, that the Intended Playlist report reflects information believed to be accurate and maintained by the Service in its ordinary course of business.

4. Availability of Records

If no Collective is designated, or all designated Collectives have terminated collection and distribution operations, Services will be required to post their reports of use online on the 20th day after the end of each month and make them available to all sound recording copyright owners for a period of 90 days. The Office inquired whether Services consider their playlists to be confidential or trade secrets, and has given the matter considerable thought. The Office cannot state conclusively that there is no confidential trade secret interest in the programming details incorporated in an Intended Playlist but notes that past Intended Playlists are publicly performed and are historical fact. Realistically, the Office has had to weigh any confidentiality interest against the Services' own competing interests in minimizing administrative burdens and costs, as well as copyright owners' interest in receiving information concerning use of their works. The regulation requires Collectives and copyright owners not to disseminate information in the reports to persons not entitled to it, or to utilize it for any purpose other than those the Act permits, including royalty collection, distribution, and determining compliance with statutory license requirements, without express consent of the Service. Services may require use of passwords for access to electronically posted reports, and may predicate provision of a password upon information relating to identity, location and status as a sound recording copyright owner, and upon a "click-wrap" agreement not to use the reported information without the Service's consent for any purpose other than those contemplated under the Act; however, Services must make passwords available free of charge or of other restrictions. In the event that no Collective is designated, and in the absence of direct service to notify them of use of their copyrighted works, all sound recording copyright owners should be able to gain access online to records of use of their sound recordings under the statutory license. Services will be required to provide the Copyright Office with information on how to gain access to Services' online reports of use. That information will be made available on the Copyright Office website.

Because section 114(f)(2) mandates requirements by which "copyright owners" may receive reasonable notice of the use of their sound recordings, provision must be made for individual copyright owners to have access to the Reports of Use, even where there are designated Collectives. Accordingly, Collectives receiving the Reports of Use must make copies of the reports available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. Any copyright owner exercising the right to inspect the Reports of Use must agree in writing to certain confidentiality restrictions.

Because rates and terms of payment are to be addressed through industry-wide settlement or a CARP, this notice and recordkeeping regulation will not address how copyright owners will contact Services to demand payment based on records of use in the event that all designated Collectives have terminated operations or in the event that, in a future settlement or CARP proceeding, no Collective is designated. Similarly, the regulation will not include requirements for statements of account, which are properly addressed as a license term through negotiation or a CARP. Services will be required to maintain their reports of use for three years, the statutory period of limitations for copyright infringement actions. The regulation will not address the proposal for a yearly audit of records underlying the Reports of Use, which the Office generally sees as a matter of business and legal practice to be addressed through negotiation or a CARP.

The Office inquired about the costs of providing copyright owners with records of use. RIAA said that its Collective would deduct reasonable administrative costs as a percentage of royalties. The matter of costs is a question for resolution through negotiation or a CARP. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 FR 25394 (May 8, 1998). However, collectives typically deduct administrative expenses. See Recommendations of the Intergovernmental Committee of the Rome Convention, 1979 Copyright 103, 109.[5]

5. Effective Dates

These regulations will be adopted on an interim basis for a period of two years, and will become effective on July 20, 1998. The regulations will recognize a transition period through August 31, 1998, before Services are required to comply fully with the recordkeeping rules. For the period February 1, 1996, through August 31, 1998, Services must make available records of use, but will have the option of producing either summary frequency data or full Intended Playlists.

6. Regulatory Flexibility Act

Although the Copyright Office, as a department of the Library of Congress and part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of these interim regulations on small businesses. The Register has determined that the interim regulations would not have a significant economic impact on a substantial number of small entities that would require provision of special relief for small entities in the regulations, and that the interim regulations are, to the extent consistent with the stated objectives of applicable statutes, designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201

Copyright.

Interim Regulations

For the reasons set forth in the preamble, Part 201 of Title 37 of the Code of Federal Regulations is amended as follows:

[5] Arguably, the RIAA Collective's expenses would be lower than typical collectives' because it will not be negotiating licenses but will simply collect and distribute royalties.

PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Sections 201.35 through 201.37 are added to read as follows:

§ 201.35 Initial Notice of Digital Transmission of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which copyright owners shall receive initial notice of use of their sound recordings under statutory license under section 114(f) of title 17 of the United States Code, as amended by Public Law 104–39, 109, Stat. 336.

(b) *Definitions.* (1) An *Initial Notice of Digital Transmission of Sound Recordings under Statutory License* is a notice to sound recording copyright owners of the use of their works under section 114(f), and required under this regulation to be filed by a Service in the Copyright Office.

(2) A *Service* is an entity engaged in the digital transmission of sound recordings, pursuant to section 114(f) of title 17 of the United States Code.

(c) *Forms.* The Copyright Office does not provide printed forms for the filing of Initial Notices.

(d) *Content.* An "Initial Notice of Digital Transmission of Sound Recordings under Statutory License" shall be identified as such by prominent caption or heading, and shall include the following:

(1) The full legal name of the Service commencing digital transmission of sound recordings under statutory license;

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location;

(3) The telephone number and facsimile number of the Service; and

(4) Information on how to gain access to the online website or home page of the Service, or where information may be posted under these regulations concerning the use of sound recordings under statutory license.

(e) *Signature.* The Initial Notice shall include the signature of the appropriate officer or representative of the Service transmitting sound recordings under statutory license. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(f) *Filing.* A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound recordings under the license, or within 45 days of the effective date of this regulation. Each Notice shall be accompanied by a filing fee of $20. Initial Notices and amendments will be placed in the public records of the Licensing Division of the Copyright Office, and posted online where they will be accessible through the Copyright Office website. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, S.E., Washington, D.C. 20557–6400.

(g) *Amendments.* A Service shall file with the Licensing Division of the Copyright Office an amendment reporting a change in the information reported in the Initial Notice within 45 days of the change. An amendment shall be accompanied by a fee of $20, and shall:

(1) Be clearly and prominently identified as "An Amendment to an Initial Notice of Digital Transmission of Sound Recordings under Statutory License";

(2) Identify the specific Initial Notice intended to be amended, by Service name and filing date, so that it may be readily located in the records of the Copyright Office;

(3) Clearly specify the nature of the amendment to be made; and

(4) Be signed and dated in accordance with this section.

§ 201.36 Reports of Use of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which Services shall serve copyright owners with notice of use of their sound recordings, what the content of that notice should be, and under which records of such use shall be kept and made available.

(b) *Definitions.* (1) A Collective is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A *Report of Use of Sound Recordings under Statutory License* is a report required under this regulation to be provided by the Service transmitting sound recordings under statutory license.

(3) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Service.* Reports of Use shall be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f). Reports of use shall be served, by certified or registered mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with the month succeeding the month in which these regulations become effective.

(d) *Posting.* In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A "click-wrap" agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the Service providing the Report of Use.

(e) *Content.* A "Report of Use of Sound Recordings under Statutory License" shall be identified as such by prominent caption or heading, and shall include a Service's "Intended Playlists" for each channel and each day of the reported month.

(1) The "Intended Playlists" shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(i) The name of the service or entity;

(ii) The channel;

(iii) The sound recording title;
(iv) The featured recording artist, group, or orchestra;
(v) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);
(vi) The recording label;
(vii) The catalog number;
(viii) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;
(ix) The date of transmission; and
(x) The time of transmission.
(2) The Report of Use shall include a report of any system failure resulting in a deviation from the Intended Playlists of scheduled sound recordings. Such report shall include the date, time and duration of any such system failure.

(f) *Signature.* Reports of use shall include a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(g) *Format.* Reports of use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:
(1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;
(2) Carats should surround strings;
(3) No carats should surround dates and numbers;
(4) Dates should be indicated by: MM/DD/YYYY;
(5) Times should be based on a 24-hour clock: HH:MM:SS;
(6) A carriage return should be at the end of each line; and
(7) All data for one record should be on a single line.

(h) *Confidentiality.* Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(i) *Documentation.* All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the Service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission records of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

§ 201.37 Designated Collection and Distribution Organizations for Records of Use of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which records of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, as amended by Public Law 104–39, 109 Stat. 336, and under which records of such use shall be kept and made available.

(b) *Definition.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).
(2) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Notice of Designation as Collective under Statutory License.* A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a "Notice of Designation as Collective under Statutory License," which shall be identified as such by prominent caption or heading, and shall contain the following information:
(1) The Collective name, address, telephone number and facsimile number;
(2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and
(3) Information on how to gain access to the online website or home page of the Collective, where information may be posted under these regulations concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, S.E., Washington, D.C. 20557–6400.

(d) *Annual Report.* The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

(e) *Inspection of Reports of Use by Copyright Owners.* The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available records of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.

(f) *Confidentiality.* Copyright owners, their agents, and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(g) *Termination and dissolution.* If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Copyright Office, and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

Dated: June 15, 1998.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–16779 Filed 6–22–98; 8:45 am]
BILLING CODE 1410–30–P

VOL 63 ISS 121 JE 24 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI55–02–7263; FRL–6114–2]

Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking finalizes the Environmental Protection Agency's (EPA's) disapproval of the Michigan Department of Environmental Quality's site-specific State Implementation Plan (SIP) revision for Leon Plastics, Inc. A site-specific SIP revision request was made by the State of Michigan on behalf of Leon Plastics. This site-specific SIP would allow coating lines at the Leon Plastics facility in Grand Rapids, Michigan to demonstrate compliance with requirements based in the Clean Air Act through cross-line averaging over a 30-day period instead of on a line-by-line, daily basis. The EPA proposed to disapprove this request on February 3, 1998. During the comment period, comments were submitted and the EPA is responding to these comments.

DATES: This disapproval is effective July 24, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1998, EPA proposed to disapprove the site-specific SIP revision for Leon Plastics, Inc. (63 FR 5489). This proposed disapproval was based on the fact that the submittal did not contain adequate justification for a greater than daily averaging and, thus, did not warrant approving a greater than daily averaging approach combined with cross-line averaging.

Following are the comments submitted during the public comment period and EPA's response to those comments.

II. Public Comments/Response to Comments

General Comment: EPA has policy other than that cited which supports the requested SIP revision.

This general comment is broken down into the two comments that follow.

Comment 1: EPA Policy which authorizes the requested SIP revision.

The commentor states that, "EPA's January 20, 1984 policy memorandum entitled 'Averaging Times for Compliance with VOC Emission Limits' supports the SIP revision. This policy statement recognizes that application of RACT for each emission point taken individually may not be economically or technically feasible on a daily basis. One of the motivations for allowing more than daily averaging is 'variability or lack of predictability in a source's daily operation.'"

Response to Comment 1: The policy memorandum referred to by the commentor might be interpreted to allow greater than daily averaging due to "variability or lack or predictability in a source's operation," but a policy memorandum dated January 20, 1987 that modifies the 1984 memorandum states, "Long term averaging should never be employed to disguise the fact that a RACT emission limitation is being relaxed. Unless recordkeeping presents an insurmountable problem, adjustments should be made in the RACT number, not in the averaging time."

The January 20, 1987 memorandum was the basis for the proposed disapproval published in the **Federal Register** on February 3, 1998.

Comment 2: The EPA has granted monthly averaging to the very customers to whom Leon Plastics supplies flexible vinyl parts.

Response to Comment 2: EPA has not granted monthly averaging to the automotive industry. EPA believes that this comment refers the document entitled, "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-duty Truck Topcoat Operations" (EPA–450/3–88–018, December 1988). First, this protocol applies to a different source category than does Rule 632. Second, while this protocol allows recordkeeping of coating usage on a monthly basis, it requires the production usage records to be kept on a daily basis. This methodology will prorate the coating usage down to a daily basis to determine compliance with a daily limit. It does not allow an extended averaging time as the commentor indicates.

Comment 3: EPA has breached its duty of good faith; detrimental reliance. Specifically, the commentor states that Leon Plastics was told that the air use permit terms and conditions were being discussed with EPA. The commentor goes further to indicate that EPA indicated that a cross-line average with extended averaging time would be approvable.

Response to Comment 3: The EPA had no discussions regarding this site-specific SIP revision request prior to its submittal in September 1996. EPA never indicated that a cross-line average with extended averaging time could be approvable for this source. If there had been prior discussions, EPA would have expressed a preference for a site-specific SIP revision request that would not have involved cross-line averaging or extended averaging but simply a request for a higher VOC limit for the line experiencing difficulty in complying with the applicable limit of 5.0 lb/gal. This type of request was mentioned in the February 3, 1998 proposed disapproval.

Comment 4: Alternatively, EPA should approve a site-specific SIP amendment for the coating. Leon Plastics requests, as an alternative to the pending SIP revision, a 6.3 pounds of VOCs per gallon of coating, as applied, minus water, limit for its flexible vinyl coatings.

Response to Comment 4: EPA mentioned this as a potential resolution to this situation in lieu of the site-specific SIP revision that is being disapproved. In the February 3, 1998 proposed disapproval, EPA stated that, "an alternative RACT for the Finish Room seems justified."

While an alternative RACT limit would be a variance from the 5.0 lb/gal limit found in Michigan's Rule 632, EPA would compare the subsequent SIP submittal material to information relating to EPA's suggested limit that applies to "soft coatings." This limit, as found in EPA's Alternative Control Techniques (ACT) document for "Surface Coating of Automotive/ Transportation and Business Machine Plastic Parts" Table 4–1A, is 5.9 lb/gal. Judging from background materials included as part of the site-specific submittal that is being disapproved today, EPA is led to believe that the coating being used by Leon Plastics may be considered a "soft coating" which is a separate coating category unto itself in EPA's ACT, but a category not found in Michigan's Rule 632.

If the appropriate justification documenting the need for a higher VOC

limit as RACT was submitted as part of a site-specific SIP revision requesting a higher limit on the Finish Room line, EPA would approve such a request. However, this comment cannot be a substitute for a formal SIP revision request and the SIP revision request that has been made is not approvable.

Comment 5: The proposed disapproval categorically states that the vinyl coating operations performed by Leon Plastics Inc. are subject to Michigan's Rule 632 and to the 5.0 lbs. VOC per gallon limit on air dried interior coatings. Leon Plastics would note, however, that no Control Techniques Guidance (CTG) document supporting the 5.0 number was cited in the proposed disallowance. Leon Plastics is now seeking a clarification that Rule 632 does not apply to the coating of flexible vinyl automotive parts.

Response to Comment 5: Under Michigan's Rule 632, that has been approved into Michigan's federally enforceable SIP, the vinyl coating operations performed by Leon Plastics are considered under the general category of "Air-dried coating— interior parts" and are, therefore, subject to the 5.0 lb/gal limit.

A CTG was not cited as the basis for disapproval because CTGs and ACTs are only guidance documents used in the development of regulations. As discussed above, the basis for disapproval is that the revision proposing greater than daily averaging combined with cross-line averaging is not an acceptable alternative to the approved SIP.

EPA's ACT for Surface Coating of Automotive/Transportation and Business Machine Plastic Parts does have a limit for "soft coatings" of 5.9 lb/gal. This limit was not adopted by the State of Michigan. If it had been, it is possible that the coating used by Leon Plastics would be considered a "soft coating" and would then be subject to the 5.9 lb/gal limit rather than the 5.0 lb/gal limit.

Comment 6: No consideration was given to flexible vinyl parts in adopting Rule 632; therefore there is no technical basis for Rule 632 to apply. The proposed disapproval erroneously states that Rule 632 emission levels are based upon suggested VOC limits on EPA's control techniques document. However, Table 66 of Rule 632 was effective January 1, 1993 a full 13 months before the ACT was even issued.

Response to Comment 6: It is true there is no specific category referred to as "flexible vinyl parts" in Michigan's Rule 632. As previously mentioned, EPA's ACT for Surface Coating of Automotive/Transportation and Business Machine Plastic Parts may address the coating of these parts under the category of "soft coatings" which has a higher VOC limit than the more general category of "Air-dried coating— interior parts" which appears in Michigan's Rule 632.

The proposed disapproval did not state that Michigan's rule was based on EPA's ACT. It stated that, "Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating minus water. This limit reflects the suggested VOC content found in EPA's ACT for this category." The fact that Michigan's Rule 632 may have been adopted prior to EPA's issuance of an ACT for this category does not change EPA's rationale for approving Rule 632. The limits found in Rule 632 are considered comparable to (i.e., at least as stringent as) those found in EPA's ACT. Michigan's decision not to adopt the higher limit for "soft coatings" as described in EPA's ACT, does not make the rule disapprovable. Michigan's rule simply is more stringent because, under Rule 632, "soft coatings" are subject to the more general "Air-dried coating— interior parts" with a limit of 5.0 lb/gal rather than being subject to the 5.9 lb/gal limit.

Comment 7: It is believed the current Michigan rule and RACT standard do not address VOC content of air dried interior flexible vinyl coatings, but only coatings used for air dried interior rigid plastics.

Response to Comment 7: While EPA's ACT does not recognize "air dried interior flexible vinyl coatings" as a category, the coatings used at Leon Plastics may be considered "soft coatings" which are considered specialty coatings and have a higher VOC limit than do other "air dried interior automotive coatings." Michigan did not incorporate this higher limit into their Rule 632.

In any event, Leon Plastics may request a site-specific RACT limit for any coating line not meeting the general limit found in Michigan's rule. If there is adequate justification submitted with this request, a higher limit could be given to that coating line.

Comment 8: There is no definition of flexible vinyl as a plastic in Rule 632 or elsewhere. There is no definition of "plastic automotive parts." There apparently is no CTG on coating plastic automotive parts which would delineate whether or not EPA or MDEQ ever considered flexible vinyl substrates to be included or excluded from "plastic automotive parts." Therefore, Rule 632 should not be applied to the coating of flexible vinyl interior automotive parts with air dried coatings.

Response to Comment 8: Rule 632 states that the emission limits shall apply to the "coating of plastic parts of automobiles and trucks." In Michigan Rule R 336.1103 Definitions; C, the coating of plastic parts of automobiles and trucks means the coating of any plastic part that is or shall be assembled with other parts to form an automobile or truck.

The general definition of plastic is any of various nonmetallic compounds, synthetically produced, usually from organic compounds by polymerization, of which vinyl is a subset. Rules usually do not contain definitions for words or phrases that are commonly used or have generally accepted standard definitions, such as plastic and vinyl.

Since vinyl is considered a plastic and these coated parts are assembled with other parts to form an automobile or truck, Rule 632 does apply to the process line in question.

While it is true there is no CTG on coating of plastic automotive parts, EPA's ACT, which has been mentioned previously, does contain a coating category within which flexible vinyl substrates may be included. This coating category is called "soft coating" and has a limit of 5.9 lb/gal. While this category is not included in Michigan's Rule 632, EPA would approve a properly promulgated and supported SIP revision to include it or a site-specific SIP revision for source that apply "soft coatings" at a 5.9 lb/gal limit. However, since Michigan's Rule 632 does not have this specific category, the coating operations at Leon Plastics fall under the more general category of "air-dried coating—interior parts" with the lower limit of 5.0 lb/gal.

III. Final Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Michigan submittal in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated January 20, 1987 from G. T. Helms, Chief of EPA's control Programs Operations Branch, entitled, "Determination of Economic Feasibility". Upon completing this review, the EPA is disapproving Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in this document.

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IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because this disapproval only affects one source, Leon Plastics, Inc. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, as explained in this action, the request does not meet the requirements of the Clean Air Act and EPA cannot approve the request. EPA has no option but to disapprove the submittal.

EPA's disapproval of the State request under Section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this disapproval action does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result.

E. Small Business Regulatory Enforcement Fairness Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 891 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 12, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–16672 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–035–2–9815a; FRL–6115–1]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for a Transportation Control Measure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Georgia State Implementation Plan (SIP) submitted by the State through the Department of Natural Resources (DNR) on August 29, 1997, requesting the incorporation of several transportation control measures (TCMs) into the SIP and the deletion of two TCMs from the existing SIP. This action only addresses the incorporation of one of the five TCMs submitted for approval into the SIP. Action was taken on the other TCMs in a separate rulemaking. The subject of this action is an alternative fuel refueling station/park and ride transportation center project located in Douglas County.

DATES: This final rule is effective August 10, 1998 unless adverse or critical comments are received by July 24, 1998. Should the Agency receive such comments, it will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that this rule did not take effect.

ADDRESSES: Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA35–9807. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly A. Sheckler at 404/562–9042.

SUPPLEMENTARY INFORMATION:

I. Background

Section 108(e) of the Clean Air Act, as amended in 1990 (the Act), provides air quality planning guidance for the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Section 108(f)(1)(A) provides a list of transportation control measures (TCMs) with emission reduction potential. The USEPA has further provided guidance in the final report entitled Transportation Control Measures: State Implementation Plan Guidance dated September 1990; and in Transportation Control Measure Information Documents dated March 1992.

Section 108(f)(1)(A) of the Act lists sixteen TCMs for consideration by states and planning agencies to reduce emissions and maintain the national ambient air quality standards. Programs to reduce motor vehicle emissions consistent with title II of the Act are listed in section 108(f)(1)(A)(xii).

II. Evaluation of the State Submittal

On August 29, 1997, the State of Georgia through the DNR submitted to the EPA a request to approve five Atlanta TCMs into the SIP, specifically, the addition of a High Occupancy Vehicle (HOV) lane, an employer-based transit subsidy program, a university rideshare program, development of transportation management associations, and an alternative fuel refueling station/park and ride transportation center. In addition, the State requested the removal of two existing TCMs because they will not be implemented. These TCMs include five express bus routes on Cobb Community Transit and two park and ride lots on Cobb Community Transit routes. A public hearing on the proposed SIP revision was held on August 27, 1997. The SIP submission was found complete by EPA in a letter dated October 27, 1997.

The alternative fuel refueling station/park and ride transportation center TCM for the Atlanta Metropolitan Area is described below. An emissions analysis of this TCM was performed which demonstrated that an emission benefit would result from the implementation of this TCM. Although the State has requested that the TCM be approved in the SIP, no emissions credit is being claimed in the SIP for the measure. Therefore, the emissions analysis was reviewed only to determine that no further air quality degradation would result from the implementation of this TCM. EPA's review determined that the data assumptions and calculations provided reasonable assurance that an air quality benefit would occur.

Alternative Fuel Station/Multi-Modal Transportation Center. This project is referenced as DO–AR 211. A multi-modal/park and ride transportation center, which includes an alternative fuel refueling station, will offer service to the Douglas County vehicle fleets, buses and vanpools. The Douglas County Rideshare Program, that will manage the facility, currently operates 14 vanpools with 15 additional vanpools anticipated in the future. The Douglas County Board of Commissioners committed to implement the alternative fuel refueling station in conjunction with the construction of the multi-modal transportation center. An emissions analysis performed by the Atlanta Regional Commission (ARC) indicated that this project will result in reductions of emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the 13-county Atlanta ozone nonattainment area by reducing congestion, reducing use of single occupancy vehicles and improving traffic flow.

This project was formally endorsed by the Douglas County Board of Commissioners in letters dated April 15, 1997 and February 27, 1998. The primary funding sources for this project are congestion Mitigation and Air Quality funds and a grant from the Georgia Environmental Facilities Authority.

This project is included in the Atlanta Interim Transportation Improvement Program (ITIP) contingent upon approval in the SIP. Based upon the schedule provided for in the ITIP, the multi-modal center and alternative fuel refueling station will be implemented in a timely manner and given funding priority. The alternative fuel refueling station and park and ride lot are scheduled for completion in December 1999.

III. EPA Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 10, 1998 without further notice unless the Agency receives relevant adverse comments by July 24, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 10, 1998 and no further action will be taken on the proposed rule.

EPA has determined that today's rule falls under the good cause exemption in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding good cause, allows an agency to make a rule effective prior to the 30-day delayed effective date otherwise provided for in the APA. Today's rule simply approves non regulatory transportation control measures.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603

and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of August 10, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.582, is amended by adding paragraph (b)(5) to read as follows:

§ 52.582 Control strategy: Ozone.

* * * * *

(b) * * *

(5) *Alternative Fuel Refueling Station/ Park and Ride Transportation Center*—This project is referred to as DO–AR–211.

[FR Doc. 98–16801 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300654A; FRL–5797–3]

RIN 2070–AB78

Peroxyacetic Acid; Exemption From the Requirement of a Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of May 6, 1998, a final rule establishing an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid up to 100 parts per million (ppm), in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. The word "vegetables" was omitted from the specific tolerance exemption language which is reproduced in five places of the final rule. This document corrects the final rule by inserting the word "vegetables" into each place that contains the specific tolerance exemption language.

EFFECTIVE DATE: This correction is effective June 24, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300654A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests

filed with the Hearing Clerk identified by the docket control number, [OPP–300654A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300654A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobials Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703–308–6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 1998 (63 FR 24949) (FRL–5789–3), EPA, issued a final rule establishing an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid up to 100 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. The word "vegetables" was omitted from the specific tolerance exemption language which is reproduced in five places of the final rule. This document corrects the final rule by inserting the word "vegetables" into each place that contains the specific tolerance exemption language.

II. Correction

In FR Doc. 98–12036 published on May 6, 1998 (63 FR 24949), the word "vegetables, " should be inserted after "fruits," in the following places:

1. On page 24949, in the second column, in the **SUMMARY**, in the ninth line.

2. On page 24951, in the first column, the paragraph under **II. Aggregate Risk Assessment and Determination of Safety**, in the fifth line from the bottom.

3. On page 24952, in the second column, under *C. Exposures and Risks*, in the paragraph numbered 1., in the tenth line.

4. On page 24954, in the third column, the first paragraph under **IV. Conclusion**, in the eighth line.

III. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 1998

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1196 [Corrected]

2. On page 24955, in the third column, § 180.1196 is corrected by adding "vegetables," after "fruits," in the eighth line.

[FR Doc. 98–16676 Filed 6–23–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300655A; FRL–5797–4]

RIN 2070–AB78

Hydrogen Peroxide; Exemption From the Requirement of a Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of May 6, 1998, a final rule establishing an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hydrogen peroxide up to 120 parts per million (ppm), in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. The word "vegetables" was omitted from the specific tolerance exemption language which is reproduced in five places of the final rule. This document corrects the final rule by inserting the word "vegetables" into each place that contains the specific tolerance exemption language.

EFFECTIVE DATE: This correction is effective June 24, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300655A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300655A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300655A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobials Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703-308-6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 1998 (63 FR 24955) (FRL–5789–4), EPA, issued a final rule establishing an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. The word "vegetables" was omitted from the specific tolerance exemption language which is reproduced in five places of the final rule. This document corrects the final rule by inserting the word "vegetables" into each place that contains the specific tolerance exemption language.

II. Correction

In FR Doc. 98–12037 published on May 6, 1998 (63 FR 24955), the word "vegetables, " should be inserted after "fruits," in the following places:

1. On page 24956, in the first column, in the **SUMMARY**, in the seventh line.

2. On page 24957, in the third column, the paragraph under **II. Aggregate Risk Assessment and Determination of Safety**, in the fourth line from the bottom.

3. On page 24960, in the first column, under *C. Exposures and Risks*, in the paragraph numbered 1., in the tenth line.

4. On page 24962, in the third column, the first paragraph under **IV. Conclusion**, in the eighth line.

III. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1197 [Corrected]

2. On page 24963, in the third column, § 180.1197 is corrected by adding "vegetables," after "fruits," in the eighth line.

[FR Doc. 98–16675 Filed 6–23–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300676; FRL–5797–5]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of fludioxonil in or on apricots, nectarines, peaches and plums. This action is in response to EPA's granting of an emergency exemption under section 18

of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on stone fruit in California, Georgia and South Carolina. This regulation establishes a maximum permissible level for residues of fludioxonil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on December 31, 1999.

DATES: This regulation is effective June 24, 1998. Objections and requests for hearings must be received by EPA on or before August 24, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300676], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300676], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300676]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, hereafter referred to as fludioxonil, in or on apricots, nectarines, peaches and plums at 5.0 part per million (ppm). These tolerances will expire and are revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fludioxonil on Apricots, Nectarines, Peaches and Plums and FFDCA Tolerances

The California Department of Pesticide Regulation, South Carolina Department of Pesticide Regulation, and Georgia Department of Agriculture have requested the use of fludioxonil on stone fruit to control brown rot, gray mold rot and *Rhizopus* rot. These fungal pathogens cause latent infection during the period from shuck fall through harvest. When a fruit matures its disease resistance declines and a latent fungal infection turns into a fruit lesion. Lesioned fruit become unmarketable. Harvested fruit were treated with the systemic fungicide iprodione up until 1996, when the manufacturer canceled postharvest use on stone fruit. During 1997, left over iprodione stock was used; many packing houses packed the fruit without a fungicide treatment, which resulted in significant yield and quality losses of the produce. The only other registered alternative, dicloran, does not control these fruit diseases at a commercially acceptable level. Significant economic losses to growers are expected without the proposed use. EPA has authorized under FIFRA section 18 the use of fludioxonil on stone fruit for control of brown rot, gray mold rot, and *Rhizopus* rot in California, Georgia and South Carolina.

After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fludioxonil in or on apricots, nectarines, peaches and plums. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on apricots, nectarines, peaches and plums after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether fludioxonil meets EPA's registration requirements for use on apricots, nectarines, peaches and plums or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of fludioxonil by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California, Georgia and South Carolina to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fludioxonil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and

presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants (< 1 yr. old)) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of fludioxonil on apricots, nectarines, peaches and plums at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed below.

1. *Acute toxicity.* No endpoint was identified for acute dietary exposure. The EPA has concluded that the toxicology database does not suggest the need for this assessment, as no acute effects are expected to result from exposure to fludioxonil.

2. *Chronic toxicity.* EPA has established the RfD for fludioxonil at 0.03 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 3.3 mg/kg/day, taken from a chronic feeding study in dogs, and an uncertainty factor of 100. The effect observed at the LEL of 35.5 mg/kg/day was decreased body weight gain in females.

3. *Carcinogenicity.* Fludioxonil has been classified as a Group D- not classifiable as to human carcinogenicity-chemical by the Cancer Peer Review Committee.

B. Exposures and Risks

1. *From food and feed uses.* A tolerance has been established (40 CFR 180.516) for the residues of fludioxonil in or on potatoes at 0.02 ppm. Fludioxonil is currently registered for use as a seed treatment on potatoes, popcorn, field and sweet corn, and sorghum, as well as for use in greenhouses on nonfood crops. Since residues in corn and sorghum are non-quantifiable, these uses do not require tolerances. Risk assessments were conducted by EPA to assess dietary exposures and risks from fludioxonil as follows:

Chronic exposure and risk. Tolerance level residues and 100% crop treated were assumed to calculate TMRCs for the U.S. population and population subgroups from residues on potatoes and stone fruit. Chronic exposure from food uses of fludioxonil represents 6% of the RfD for the U.S. population and 52% of the RfD for non-nursing infants (<1yr), the subgroup most highly exposed.

2. *From drinking water.* In light of the use pattern, a post-harvest spray treatment for stone fruit which would occur indoors, along with the currently registered uses- seed treatments for potato and corn (field & sweet), popcorn, and sorghum, and ornamental plants grown in greenhouses, or other enclosed structures- fludioxonil is not expected to impact ground or surface waters. As a result, the likelihood of residues of fludioxonil in drinking water is negligible. Therefore, EPA concludes that a drinking water risk assessment is not required at this time. Therefore, there is no drinking water risk assessment to aggregate with the chronic dietary (food sources) risk assessment.

3. *From non-dietary exposure.* Fludioxonil is currently not registered for use on residential, non-food sites; therefore, no non-occupational, non-dietary exposure is expected. (Please remove all language in this section from this point on).

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative

effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 yr) (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Given that the proposed use pattern is a postharvest spray treatment for stone fruit which would occur indoors, and that currently registered uses are for seed treatments at a low application rate and for ornamental plants grown in greenhouses or other enclosed structures, fludioxonil is not expected to impact ground or surface water; the likelihood of residues in drinking water is negligible. Currently, there are no registered residential uses of fludioxonil. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fludioxonil residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fludioxonil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal (systemic) NOEL was 100 mg/kg/day, based on reduction in mean body weight gain in dams during gestation period at the lowest-observed-effect-level (LOEL) of 1,000 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on increased fetal and litter incidence of dilated renal pelvis and dilated ureter at the LOEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal (systemic) NOEL was 10 mg/kg/day, based on decreased body weight gains and food efficiency at the LOEL of 100 mg/kg/day. The developmental (pup) NOEL was 300 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the two-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on clinical signs and decreased body weight, body weight gain and food consumption at the LOEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females). The reproductive/developmental (pup) NOEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on reduced pup weights at the LOEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females).

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for fludioxonil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the two-generation rat reproductive toxicity study.

v. *Conclusion.* EPA concludes that reliable data support the removal of the additional uncertainty factor; the standard hundredfold uncertainty factor is adequate to protect the safety of infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fludioxonil

from food will utilize 52% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Exposure from drinking water and residential uses is not expected. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fludioxonil residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in stone fruit is adequately understood based on a metabolism study submitted for seed treatment use on potatoes. The residue of concern is the parent compound, fludioxonil, only. There are no livestock feed items associated with the proposed use on stone fruit. Therefore, the nature of the residue in animals is not germane to these section 18 requests or to the establishment of these tolerances.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (GC/NPD) was provided with the Applicants' submissions to enforce the tolerance expression (modifications to Methods AG-597B and AG-664).

C. Magnitude of Residues

Residues of fludioxonil are not expected to exceed 5.0 ppm in/on apricots, nectarines, peaches, and plums as a result of the proposed section 18 use. Secondary residues are not expected in animal commodities as there are no feed items associated with this section 18 use.

D. International Residue Limits

No CODEX, Canadian, or Mexican MRLs/tolerances have been established for residues of fludioxonil on stone fruit.

E. Rotational Crop Restrictions

The proposed post-harvest use does not involve application of fludioxonil to fields of growing crops. Therefore, rotational crop restrictions are not relevant to this discussion.

VI. Conclusion

Therefore, tolerances are established for residues of fludioxonil in apricots, nectarines, peaches and plums at 5.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 24, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300676] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(l)(6) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.516, by adding text to paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Apricots	5.0	12/31/99
Nectarines	5.0	12/31/99
Peaches	5.0	12/31/99
Plums	5.0	12/31/99

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[FR Doc. 98–16677 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300675; FRL 5796–9]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebufenozide in or on pecans and grapes, wine and a time-limited tolerance for residues of tebufenozide in or on pears. The time-limited tolerance for pears is being established to allow the use of tebufenozide on pears under an Experimental Use Permit. Rohm and Haas Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective June 24, 1998. Objections and requests for hearings must be received by EPA on or before August 24, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300675], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300675], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300675]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this

rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph M. Tavano, Registration Division, 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6411, e-mail: tavano.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 1998 (63 FR 4252) [FRL 5763–6]; March 6, 1998 (63 FR 11240) [FRL 5777–5] and March 27, 1998 (63 FR 14926) [5577–6]. EPA, issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) for tolerance by Rohm and Haas Company, 100 Independence mall west, Philadelphia, PA 19106–2399. These notices included a summary of the petitions prepared by Rohm and Haas Company, the registrant. There were no comments received in response to these notices of filing.

The petition requested that 40 CFR 180.482 be amended by establishing a tolerance for residues of the insecticide, tebufenozide, in or on pecans, grapes, wine and pears at 0.01, 0.5, and 1.0 part per million (ppm) respectively.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in

this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebufenozide on pecans, grapes, wine and pears at 0.01, 0.5, and 1.0 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide are discussed below.

1. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. In a 21–day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day Limit-Dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested 1,000 mg/kg/ during the 21–day study. Based on these results, the NOEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day highest dose tested (HDT). A lowest-observable-effect level (LOEL) for systemic toxicity and dermal irritation was not established.

3. A 1–year dog feeding study with a (LOEL) of 250 ppm, 9 mg/kg/day for male and female dogs based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no-observed effect level (NOEL) for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

4. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

5. A 2–year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group Tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOEL was 1,000 mg/kg/day.

7. In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOEL was 1,000 mg/kg/day.

8. In a 1993 two-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

9. In a 1995 two-generation reproduction study in rats Tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

10. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an in vivo cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

11. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3–6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in one of three positions (A-ring, B-ring or *N*-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

12. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30%[M] to 34%[F] of the administered dose while urinary excretion accounted for ≈ 5% of the administered dose and the carcass accounted for < 0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass] was 35%[M] to 39%[F]. The majority of the radioactivity in the bile (20% [M] to 24% [F]) of the administered dose] was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount [67%(F) to 70% (M)] of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified i.e. unabsorbed compound nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (F and/or M). Bile also contained the previously undetected (in the pharmacokinetics study] "A" Ring ketone and the "B" Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for > 5% of the total administered dose. Total bile radioactivity accounted for ≈ 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity.* Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of Tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus the risk from acute exposure is considered negligible.

2. *Short - and intermediate - term toxicity.* No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated (23% a.i) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21–day period (MRID 42991507). The HIARC noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the

compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligable.

3. *Chronic toxicity.* EPA has established the RfD for tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide at 0.018 mg/kg/day. This RfD is based on a NOEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOEL was established from the chronic toxicity study in dogs where the NOEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10 x factor to protect children and infants as required by FQPA should be removed. Therefore, the RfD remains the same at: 0.018 mg/kg/day. An UF of 100 is supported by the following factors.

(i) Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following *in utero* exposures in rats and rabbits.

(ii) Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

(iii) There are no data gaps.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm and apples at 1.0 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No Neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligable.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this exposure assessment, EPA has made very conservative assumptions 100% of pecans and wine and sherry and and pears and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment. The existing tebufenozide tolerances published, pending, and including the necessary section 18 tolerance(s) resulted in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD: U.S. Population (31% of RfD); Nursing Infants (<1 year old) (41% of RfD); Non-Nursing Infants (<1 year old) (80% of Rfd); Children (1–6 years old) (60% of RfD); Children (7–12 years old) (43% of Rfd); Females (13 + years old, nursing) (31% of RfD); Males (13–19 years old) (28% of RfD); Non-Hispanic Blacks (34% of RfD); Non Hispanic Others (42% of RfD) Western Region (35% of RfD). The subgroups listed above are: (1) the U.S. population (48 States); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

2. *From drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile.Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water.There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66–729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no chronic, short- or intermediate-term exposure scenario.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common

mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary (food only) exposure to tebufenozide will utilize 31% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

E. Aggregate Cancer Risk for U.S. Population

Since, tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," this risk does not exist.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*—a. *Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOEL was 250 mg/kg/day. The LOEL was 1,000 mg/kg/day, based on decreased body weight and food consumption. The developmental (pup) NOEL was ≤ 1,000 mg/kg/day (HGT)

b. *Rabbits.* In a developmental toxicity study in rabbits, the maternal and developmental NOELs were ≤ 1,000 mg/kg/day (HDT).

iii. *Reproductive toxicity study.* In a 1993 two-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively)

In a 1995 two-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous

epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

iv. *Pre- and post-natal sensitivity.* The toxicology data base for tebufenozide is complete and includes acceptable developmental toxicity studies in both rats and rabbits as well as a two two-generation reproductive toxicity studies in rats.

The EPA determined that the data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the two two-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

2. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide from food will utilize from 31% of the RfD for the U.S. population to 80% of the RfD for non-nursing infants less than 1 year old. The potential for exposure to tebufenozide in drinking water does not exceed EPA's level of concern. There are currently no tebufenozide residential or non-dietary exposure scenarios. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide residues.

4. *Short- or intermediate-term risk.* Since no short- and intermediate-term toxicological endpoints were established by EPA, no acute aggregate risk exists.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues of tebufenozide in/on plants is adequately understood. The residue of concern for both regulatory (tolerance expression) and risk assessment purposes is the parent compound, tebufenozide *per se.*

There are no animal feed items associated with pecans. According to information supplied by the petitioner, wine grapes and wine grape processing commodities are not items of animal feed in Europe. Therefore, a discussion of potential transfer of secondary residues to animal commodities is not germane to these actions.

B. Analytical Enforcement Methodology

A HPLC/UV analytical method, *Enforcement Residue Analytical Method for RH-5992 in Pecans with HPLC-MS Confirmation* is adequate for enforcement purposes in pecans. A successful Agency validation for an analytical method to detect residues of tebufenozide *per se* has been conducted by ACL/BEAD.

The method used in the analysis of the total residue of concern in the European field residue trials in wine, Method AL 013/92–0, was developed by Rohm and Haas and independently validated. In the validation of this method, at levels from 0.01 to 0.5 ppm in wine recoveries ranged from 84 to 109%; in grapes at levels of 0.02 to 1.0 ppm recoveries ranged from 77 to 128%. The limit of quantitation was given as 0.02 ppm for grapes and 0.01 ppm for wine. The method is different from those validated for domestic commodities but was determined to be adequate for data collection.

C. Magnitude of Residues

Adequate residue data were provided to support tolerances of 0.01 ppm for pecans and 0.5 ppm for grapes, wine and a time-limited tolerance for pears.

There are no pecan or pear processed comodities of regulatory concern. In those instances when treated grapes were vinified, residues of tebufenozide in the aged wine were a third to a half of those in the treated grapes. The maximum residue found in the wine treated at label rates was 0.3 ppm; therefore, a tolerance for wine grapes would suffice for the wine made from them.

Since there are no pecan or pear animal feed items and according to information supplied by the petitioner, wine grapes and wine grape processing commodities are not items of animal feed in Europe, no secondary residues in animals are expected.

D. International Residue Limits

There are currently no CODEX, Canadian, or Mexican listings for tebufenozide residues in or on pecans or pears, therefore there are no harmonization issues for these crops.

Maximum residue levels (MRL) of 0.5 ppm have been established for wine grapes in France, Italy, and Germany. The tolerance of 0.5 ppm in or on wine grapes is in harmony with these MRLs.

E. Rotational Crop Restrictions

Since pecans, grapes, and pears are not rotated to other crops, a discussion of tebufenozide accumulation in rotational crops is not germane to this action.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in pecans, grapes, wine, and pears at 0.01, 0.5, and 1.0 ppm respectively.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 24, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if

the Administrator determines that the material submitted shows the following:

There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300675] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of petitions under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:June 12, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.482, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§180.482 Tebufenozide; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * * *	
Grapes, wine [1]	0.5	NA
Pears	1.0	2001
Pecans	0.01	NA

Commodity	Parts per million	Expiration/Revocation Date
. . .	. . . .	

[1] There are no U.S. registrations on grapes as of June 24, 1998.

[FR Doc. 98–16822 Filed 6–23–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300627; FRL–5777–7]

RIN 2070–AB78

Recodification of Certain Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing this technical amendment to consolidate parts 185 and 186 pesticide tolerance regulations into part 180. This recodification is consistent with the Food Quality Protection Act which places all pesticide tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, thus eliminating the distinction between pesticide tolerances for raw and processed foods.

DATES: This regulation becomes effective June 24, 1998.

FOR FURTHER INFORMATION CONTACT: By mail, Joseph Nevola, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 3rd Floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8037; e-mail: nevola.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pesticide tolerance regulations promulgated under sections 408 and 409 of the Federal Food, Drug, and Costmetic Act (FFDCA), 21 U.S.C. 346a and 348, appear in parts 180, 185 and 186 of title 40 of the Code of Federal Regulations. Part 180 contains pesticide tolerance regulations for pesticide chemical residues in raw agricultural commodities. Such regulations were promulgated under FFDCA section 408. Parts 185 and 186 contain food additive regulations for pesticide chemical residues in processed food. These regulations were promulgated under FFDCA section 409.

The Food Quality Protection Act (FQPA) was signed into law in August of 1996. Under section 408(j) of the FFDCA, as amended by the FQPA, all pesticide tolerances established under FFDCA section 409 were deemed to be tolerances under FFDCA section 408. Since there is no longer a statutory reason for the separation of these tolerances into different parts of the CFR, as a part of the routine process of issuing new and revised tolerances, EPA is consolidating certain sections of the regulations in parts 185 and 186 into 40 CFR part 180. Although the tolerances are being restructured to fit into part 180, no substantive changes are being made. The tolerance regulations in parts 185 and 186 are being redesignated as follows:

Old CFR section	New CFR section
185.425	180.519
185.2900	180.520
185.3475	180.521
185.3480	180.522
185.4025	180.523
185.4200	180.524
185.5300	180.525
186.5400	185.526

This action is being taken pursuant to EPA's authority under FFDCA section 408(e)(1)(C) to issue regulations implementing the requirements of section 408. Because this regulation involves a technical change to existing regulations and has no substantive impact, EPA for good cause finds that it would be in the public interest to promulgate this regulations without issuing a notice of proposed rulemaking under section 408(e)(2).

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements technical amendments to the Code of Federal Regulations (CFR), by recodifying certain tolerances that have already been established under FFDCA section 408. Basically, this notice simply consolidates the tolerances, which currently appear in two separate parts of the CFR (i.e., 40 CFR parts 185 and 186), into a single part (i.e., 40 CFR part 180). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

II. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: June 3, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185 and 186 are amended as follows:

1. In part 180:

PART 180—[AMENDED]

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 185.425 [Redesignated as § 180.519]

b. Section 185.425 is redesignated as § 180.519. Newly designated § 180.519 is amended by revising the section heading, designating the introductory text as paragraph (a) introductory text, redesignating paragraphs (a), (b) and (c) as paragraphs (a)(1), (a)(2) and (a)(3) respectively, adding a heading to newly designated paragraph (a), and by adding and reserving paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.519 Bromide ion and residual bromine; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.2900 [Redesignated as § 180.520]

c. Section 185.2900 is redesignated as § 180.520. Newly designated § 180.520 is amended by revising the section heading, redesignating paragraphs (a), (b), and (c) as paragraphs (a)(1), (a)(2) and (a)(3), respectively, by designating the introductory text as paragraph (a) introductory text, adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.520 Ethyl formate; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.3475 [Redesignated as § 180.521]

d. Section 185.3475 is redesignated as § 180.521. Newly designated § 180.521 is amended by revising the section heading, redesignating paragraphs (a), (b), and (c) as paragraphs (a)(1), (a)(2) and (a)(3), respectively, by designating the introductory text as paragraph (a) introductory text, adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.521 Fumigants for grain-mill machinery; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.3480 [Redesignated as § 180.522]

e. Section 185.3480 is redesignated as § 180.522. Newly designated § 180.522 is amended by revising the section heading, redesignating paragraphs (a), (b), (c) and (d) as paragraphs (a)(1), (a)(2), (a)(3) and (a)(4), respectively, by designating the introductory text as paragraph (a) introductory text, adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.522 Fumigants for processed grains used in production of fermented malt beverages; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.4025 [Redesignated as § 180.523]

f. Section 185.4025 is redesignated as § 180.523. Newly designated § 180.523 is amended by revising the section heading, redesignating paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (a)(1), (a)(2), (a)(3), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively, by designating the introductory text as paragraph (a) introductory text, adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.523 Metaldehyde; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.4200 [Redesignated as § 180.524]

g. Section 185.4200 is redesignated as § 180.524. Newly designated § 180.524 is amended by revising the section heading, designating the existing text as paragraph (a), adding a paragraph heading to newly designated paragraph (a), and by adding and reserving paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.524 1-Methoxycarbonyl-1-propen-2-yl dimethylphosphate and its beta isomer; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 185.5300 [Redesignated as § 180.525]

h. Section 185.5300 is redesignated as § 180.525. Newly designated § 180.525 is amended by revising the section heading, designating the text as paragraph (a), adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.525 Resmethrin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 186.5400 [Redesignated as § 180.526]

i. Section 186.5400 is redesignated as § 180.526. Newly designated § 180.526 is amended by revising the section heading, designating the text as paragraph (a), adding a heading to newly designated paragraph (a), and by adding and reserving new paragraphs (b), (c) and (d) with headings. The revisions and additions read as follows:

§ 180.526 Synthetic isoparaffinic petroleum hydrocarbons; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–16674 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

VOL 63 ISS 121 JE 24 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6113–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion of the Berlin and Farro Liquid Incineration Superfund Site From the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Berlin and Farro Liquid Incineration Site in Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Michigan, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Gaines Township Hall, 9255 W. Grand Blanc Rd., Gaines, Michigan 48436. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Berlin and Farro Site located in Gaines, Michigan. A Notice of Intent to Delete for this site was published January 19, 1998 (63 FR 3061). The closing date for comments on the Notice of Intent to Delete was February 20, 1998. EPA received comments during the public comment period requesting an extension to the comment period. EPA extended the comment period to April 20, 1998.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 11, 1998.

David Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Berlin & Farro, Swartz Creek, Michigan."

[FR Doc. 98–16569 Filed 6–23–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[HCFA–3004–IFC]

RIN 0938–AI09

Medicare Program; Medicare Coverage of and Payment for Bone Mass Measurements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period provides for uniform coverage of, and payment for, bone mass measurements for certain Medicare beneficiaries for services furnished on or after July 1, 1998. It implements provisions in section 4106(a) of the Balanced Budget Act of 1997.

DATES: Effective date: These regulations are effective on July 1, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 24, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3004–IFC, P.O. Box 26585, Baltimore, MD 21207–0385.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA3004ifc@hcfa.gov. For e-mail and comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION**. For information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William Larson, (410) 786–4639. (Conditions for Coverage, and Frequency Standards) William Morse, (410) 786–4520. (Physician Fee Schedule Payments)

SUPPLEMENTARY INFORMATION: E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in

order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3004–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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I. Background

A. Current Medicare Coverage

In general, bone mass measurements, using bone mineral densitometers and bone sonometers, are considered to be the most valuable objective indicator of the risk of fracture and/or osteoporosis. The clinical use of these devices is based on the assumption that bone mass is an important determinant of osteoporotic fractures, and that bone mass measurements may help reduce the number of fractures by identifying high-risk individuals, who can then receive appropriate preventive measures. Because osteoporosis is generally considered preventable, but not reversible, we believe that early detection of at-risk individuals is a desirable health outcome.

Before the enactment of the Balanced Budget Act of 1997 (BBA), Medicare coverage of bone mass measurements and the related physician interpretation of those procedures were available for some beneficiaries under sections 1861(s)(1) and (s)(3) of the Social Security Act (the Act). Section 1861(s)(1) of the Act provides for general Medicare coverage of physician services, including a physician's interpretation of the results of tests performed. Section 1861(s)(3) of the Act provides for general Medicare coverage of diagnostic x-ray, clinical laboratory and other diagnostic tests. Furthermore, section 1862(a)(1)(A) of the Act provides that Medicare cover only services that are reasonable and necessary for the diagnosis or treatment of illness or injury. In developing the current Medicare policy on bone mass measurements, we determined, based on the advice of our medical consultants, that certain measurements were consistent with the provisions of section 1862(a)(1)(A) of the Act.

Medicare coverage policy on bone mass measurements is described in section 50–44 of the Medicare Coverage Issues Manual (CIM). Specifically, the CIM provides for coverage of single-photon absorptiometry (SPA) if it is used in assessing changes in bone density of beneficiaries with osteodystrophy or osteoporosis. In addition, a bone biopsy, a physiological test that is a surgically, invasive procedure, is covered if used for the qualitative evaluation of bone. Finally, the CIM provides for coverage of photodensitometry, a noninvasive radiological procedure that attempts to assess bone mass. The CIM also states that dual-photon absorptiometry (DPA), is a noncovered service.

In recent years, various new bone mass measurements have been developed and gained acceptance in the medical community. Since they have not been excluded from coverage under section 50–44 of the CIM, most Medicare contractors have begun to pay for the medically necessary use of these measurements, but some Medicare contractors have not. As a result, Medicare coverage of bone mass measurements has been inconsistent in its application with regard to the types of (1) beneficiaries eligible, (many Medicare contractors have considered bone mass measurements of estrogen-deficient women to be screening services and not covered under Medicare) and (2) bone mass measurements considered to be clinically effective.

B. Recent Legislation

Section 4106(a)(1) of the BBA adds section 1861(s)(15) to provide for uniform coverage of bone mass measurements under the Part B program for services furnished on or after July 1, 1998. The law defines a "bone mass measurement" to mean (1) a radiologic, radioisotopic, or other procedure approved by the Food and Drug Administration (FDA) for the purpose of identifying bone mass, detecting bone loss, or interpreting bone quality, and (2) it includes a physician's interpretation of the results of those bone mass measurement procedures. The law also authorizes Medicare coverage of those medically necessary approved measurements that are performed for a "qualified individual" that fall into at least one of five diagnostic categories. These include (1) an estrogen-deficient woman at clinical risk for osteoporosis, (2) an individual with vertebral abnormalities, (3) an individual receiving long-term glucocorticoid (steroid) therapy, (4) an individual with primary hyperparathyroidism, and (5) an individual being monitored to assess the response to, or efficacy of, an approved osteoporosis drug therapy.

Section 4106(a)(2) of the BBA also requires the Secretary to establish frequency standards governing the time period when qualified individuals will be eligible to receive covered bone mass measurements.

Section 4106(b)(2) of the BBA amended section 1848(j)(3) of the Act, which defines "physicians' services" to include a bone mass measurement as a physician service. Physicians' services as defined in section 1848(j)(3) are paid for under the physician fee schedule (42 CFR part 414).

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II. Rationale for Coverage of Bone Mass Measurements

We have consulted with appropriate Federal government organizations and reviewed medical literature regarding (1) the clinical efficacy of the various available bone mass measurement procedures that the FDA has approved or cleared for marketing for assessing bone density, (2) the medical indications for the five categories of Medicare beneficiary eligible to receive coverage under Medicare for the procedures, and (3) the frequency standards that the Secretary is required by law to establish under the new benefit. Based on review of the law and our research, we have reached the following conclusions on the various major issues raised by the coverage of bone mass measurements.

A. Clinically Effective Bone Mass Measurements

Section 1861(rr)(1) of the Act, as added by section 4106(a) of the BBA, defines the term "bone mass measurement" to mean, in part, "a radiological, radioisotopic, or other procedure approved by the Food and Drug Administration" that is "performed on a qualified person . . . for the purpose of identifying bone mass or detecting bone loss or determining bone quality. * * *" In addition, section 4106(b) of the BBA amended the law to provide that payment for bone mass measurements that are covered under this new benefit must be made under the Medicare physician fee schedule, as provided in section 1848(j)(3) of the Act. We have interpreted these provisions to mean that the scope of the bone mass measurement benefit includes bone densitometry or bone sonometry procedures that are performed with devices that have been approved or cleared for marketing by the FDA. We are not including payment for biochemical markers within this benefit at the present time. Even though biochemical markers have been approved for marketing by the FDA, they are, in fact, clinical laboratory tests that may be paid for under the Medicare clinical laboratory fee schedule (sections 1833(a)(1)(D) and 1833(h) of the Act), rather than under the Medicare physician fee schedule (many Medicare contractors currently pay for biochemical markers under the Medicare clinical laboratory fee schedule). We plan to raise the issue of coverage for biochemical markers used in measuring bone mass when we implement section 4554 of the BBA concerning national coverage and administrative policies for clinical laboratory tests. That section of the statute requires the use of a negotiated rulemaking process and was announced on June 3, 1998 (63 FR 30166).

The expansion of Medicare coverage to include additional preventive benefits for bone mass measurement reflects a Congressional intent to improve the overall health of qualified individuals that is consistent with medical science. There is a well-established causal relationship between reduced bone mass and the risk of fracture, particularly in the hip and spine. Although numerous risk factors exist for the development of fractures (Heaney, Robert P., M.D., "Bone Mass, Bone Loss, and Osteoporosis Prophylaxis," Annals of Internal Medicine, Volume 128, Number 4, pages 313–314 (February 15, 1998)), bone mass is the most extensively-studied fragility factor, in tandem with considerable therapeutic options for restoration of bone mass. From a public health perspective, it has been noted in the medical literature that bone loss is highly prevalent among elders (Genant, H.K., Guglielmi, G., Jergas, M., (Eds) "Bone Densitometry and Osteoporosis" (Epidemiology of Osteoporosis) Ross, P.D., pgs 23–25 (1998)), and that only about ten percent of women in the United States over age 65 have "normal" bone mass.

At present, the FDA has approved or cleared for marketing a number of different types of bone densitometry or bone sonometry devices (or techniques) that can be used to perform bone mass measurements on the human skeleton. According to the information we have reviewed, the older densitometry x-ray techniques of single photon absorptiometry (SPA) and dual photon absorptiometry (DPA), which use isotope sources, have largely been replaced by the newer x-ray techniques of single X-ray absorptiometry (SEXA) and dual-X-ray absorptiometry (DEXA), which are superior in terms of accuracy, precision, and shorter exam time. We understand that the current FDA-recognized, and generally available, bone densitometry techniques for measuring the peripheral skeleton include SEXA, peripheral dual-X-ray absorptiometry (pDEXA), radiographic absorptiometry (RA), and peripheral quantitative computed tomography (pQCT), all of which are limited to measurement of the peripheral skeleton, principally the forearm, heel, or fingers. Recently, the FDA has approved for marketing a bone sonometry device that estimates bone mass or strength of the heel using ultrasound measurements. For measurement of the central skeleton, the currently FDA-approved or cleared, and available techniques are DEXA and quantitative computed tomography (QCT), both of which can measure the spine or hip, and the DEXA can measure the peripheral skeleton or whole body as well.

Based on the medical information we have reviewed, all of the FDA-approved or cleared bone densitometry and sonometry devices are currently being used actively in clinical practice, except for the SPA and the DPA devices. With respect to the last two devices, we considered not covering bone mass measurements performed on either one of these devices because they are generally considered to be obsolete and no longer of any clinical value.

Generally, coverage of medical items or services performed with FDA-approved or cleared devices is available to Medicare beneficiaries unless the item or service is precluded from payment by the reasonable and necessary exclusion in section 1862(a)(1)(A) of the Act, or is otherwise precluded from payment by one of the other Medicare statutory exclusions.

Based on our review of the medical information, we have decided to continue with our present policy of coverage of bone mass measurements performed on SPA devices and our noncoverage of measurements performed on DPA devices. Our noncoverage of the DPA procedure was established in 1983, and was based on medical advice received from the Public Health Service, indicating that it was not demonstrated to be medically effective, and, thus, should be excluded from coverage by the statutory "reasonable and necessary" exclusion of section 1862(a)(1)(A) of the Act.

Our review of available Medicare claims data for 1995 and 1996 shows that the use of the SPA procedure under the Medicare program has declined significantly in recent years. However, the claims data appears to indicate that Medicare beneficiaries may still benefit from the use of this procedure in some parts of the country. In view of this evidence, however, we have decided to request comments on the possibility of withdrawing coverage of the SPA. We expect that certain remote rural areas may not have bone densitometry or bone sonometry devices available at present for use in testing Medicare beneficiaries. Therefore, we are soliciting comments on whether this is, in fact, a problem that merits the continued coverage of SPA. In assessing this issue, we request specific examples of problems, within particular localities, such as remote and rural areas, and details regarding how such a regulation

may adversely affect bone mass measurement services.

In regard to the clinical utility of peripheral versus central bone density devices, there is a consensus that measurements of the central skeletal sites is the preferred method of assessment. The American College of Radiology reports that central techniques are associated with relatively higher predictive relative risk ratios for hip fractures than peripheral techniques, and allow for more frequent evaluations because of their intrinsic ability to better assess bone metabolic activity. Although either central or peripheral techniques may be used for most bone mass measurement indications, experts representing the National Osteoporosis Foundation have suggested clinical situations in which only central studies should be performed (that is, vertebral abnormalities, glucocorticoid maintenance, and monitoring the response to osteoporosis drug treatment).

Ultimately, however, it is essential that the physician treating the beneficiary be afforded flexibility in ordering those diagnostic measurements that are best suited to the beneficiaries in their special circumstances. For example, our consultation with the FDA indicated that peripheral bone mass measurements may be used for monitoring osteoporosis drug treatment in some cases. Our interim final policy allows physicians discretion to use peripheral bone mass measurements in this manner. Given the differential access and convenience of various bone mass measurement techniques available to Medicare beneficiaries, the attending physician must be given the option to order the most appropriate bone mass measurement for a beneficiary in a particular set of circumstances. Emerging literature on both existing and new technologies shows that bone mass measurement exists within a highly dynamic clinical setting, which can only be successfully approached with flexibility. In other words, there will be a continual need to reexamine which are the most pertinent bone mass measurement techniques for generating useful diagnostic information.

In view of these uncertainties about the clinical role of the peripheral measurement, we plan to monitor the Medicare use of these measurements. Based on data on the effectiveness of these measurements, we will reconsider our coverage policy in this regard if warranted. Although peripheral bone mass measurements have some apparent advantages in terms of access and convenience, if, over time, these parameters become more relatively favorable for central bone mass measurement, then our policies will be correspondingly updated.

B. Medical Indications for Medicare Beneficiaries

As previously mentioned, section 1861(rr)(2) of the Act identifies five categories of "qualified individuals" who may receive Medicare coverage under the new bone mass measurement benefit. These include the following: (1) An estrogen-deficient woman at clinical risk for osteoporosis; (2) an individual with vertebral abnormalities; (3) an individual receiving long-term glucocorticoid (steroid) therapy; (4) an individual with primary hyperparathyroidism; or (5) an individual being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy. (For purposes of this interim final rule, we refer to these "qualified individuals" as those categories of Medicare beneficiaries who may receive covered bone mass measurements.) In addition, section 1861(rr)(2) of the Act provides authority for further clarification of these categories to help ensure uniform national standards "in accordance with regulations prescribed by the Secretary."

We have interpreted this section of the statute, and are clarifying the five categories of Medicare beneficiaries who may receive these covered services as follows:

- An estrogen-deficient woman at clinical risk for osteoporosis means a woman who has been determined by the physician (or a qualified nonphysician practitioner) treating her to be estrogen-deficient and at clinical risk for osteoporosis, based on her medical history or other findings.
- An individual with vertebral abnormalities as demonstrated by X-ray to be indicative of osteoporosis, low bone mass (osteopenia), or vertebral fracture.
- An individual receiving glucocorticoid (steroid) therapy equivalent to 7.5 mg of prednisone, or greater, per day for more than 3 months, or if the expected duration of such therapy is more than 3 months. (Review of medical literature has indicated that doses of steroid therapy lower than 7.5 mg of prednisone per day for periods shorter than 3 months usually do not result in significant bone loss.)
- An individual with primary hyperparathyroidism.
- An individual being monitored to assess the response to or efficacy of an FDA-approved osteoporosis drug therapy.

In regard to the definition of estrogen-deficient women at clinical risk for osteoporosis, there is agreement among medical experts in the United States regarding the efficacy of the use of estrogen-replacement therapy (ERT) in preventing and treating post-menopausal bone loss and osteoporosis. According to the American Association of Clinical Endocrinologists "Clinical Practice Guidelines for the Prevention and Treatment of Post-Menopausal Osteoporosis" (March 1996), ERT "is the standard of care for preventing and treating post-menopausal bone loss and should be considered for all estrogen-deficient women without contradictions." In addition, the guidelines provide that "for maximal skeletal protection, therapy should begin at the time of menopause or oophorectomy, although therapy can be initiated at any time after menopause. Studies indicate that correction of estrogen deficiency at any age prevents or slows bone loss in post-menopausal women with osteoporosis."

However, based on our review of the medical literature and other information, it appears that not every woman who has been prescribed ERT may be receiving an "adequate" dose of the therapy and, thus, may not be sufficiently protected against further bone loss. In view of the difficulty of trying to define the estrogen-deficient statutory category precisely, we have decided in this interim final rule to allow a woman's treating physician or other treating practitioner to determine whether she is estrogen-deficient and at clinical risk of osteoporosis, based on her medical history or other findings.

C. Frequency Standards

Section 1861(rr)(3) of the Act provides that "the Secretary shall establish such standards regarding frequency with which a qualified individual shall be eligible to be provided benefits" under the bone mass measurement provision. The American Association of Clinical Endocrinologists (AACE), the American College of Radiology, and National Osteoporosis Foundation appear to be generally in agreement with respect to the need to follow certain clinical guidelines for performing follow-up bone mass measurements to the initial bone mass measurement that is performed. In their 1996 clinical practice guidelines, the AACE indicated that with the use of the dual-x-ray absorptiometry, a change in bone mass "of 5 percent is considered clinically significant and is usually not observed in less than 2 years." For patients taking long-term steroids, or other drug therapies that have been demonstrated

to cause a more rapid rate of bone loss, the AACE and others in the medical community have recommended that Medicare patients should have more frequent assessment (for example, baseline and after 6 months).

In determining the appropriate frequency interval for follow-up serial bone mass measurements, we also believe it is necessary to consider the clinical role that biochemical markers may play in monitoring the effectiveness of osteoporosis drug therapy. Bone mass measurement imaging provides one type of skeletal assessment, compared to assaying biochemical markers that provide a profile of bone turnover. With respect to quantifying bone loss, multiple collagen crosslink tests for pyridinoline, deoxypyridinoline, and the telopeptides can provide adjunct diagnostic information in concert with bone mass measurement (Siebel, Markus J. and Gangberg, Caren M., "Basic Science and Clinical Utility of Biochemical Markers of Bone Turnover—A Congress Report", Volume 107, pages 125–133, (1997)).

We have been informed by the FDA that the use of biochemical markers may be useful in assessing the effectiveness of osteoporosis treatment. Although we believe that bone mass measurement and biochemical markers have complementary roles to play in monitoring osteoporosis drug therapy, there are not yet specific, evidence-based guidelines for performing both in tandem. However, proper management of osteoporosis patients, who are on long-term therapeutic regimens, may require reliance upon such clinical laboratory testing (for example, at intervals of less than 1 year) after therapy is initiated.

We have decided to establish the following frequency standards for coverage of bone mass measurements:

- In general, coverage for follow-up bone mass measurements will be limited to only one measurement every 2 years for beneficiaries who receive coverage of bone mass measurements.
- Follow-up bone mass measurements performed more frequently than once every 2 years may be covered when medically necessary. Examples of situations where more frequent bone mass measurements procedures may be medically necessary include, but are not limited to, the following medical circumstances: (1) Monitoring beneficiaries on long-term glucocorticoid (steroid) therapy of more than 3 months; and (2) allowing for a confirmatory baseline bone mass measurement (either central or peripheral) to permit monitoring of beneficiaries in the future if the initial test was performed with a technique that is different from the proposed monitoring method, (for example, if the initial test was performed using bone sonometry and monitoring is anticipated using bone densitometry, we will allow coverage of baseline measurement using bone densitometry).

III. Provisions of the Interim Final Rule

This interim final rule will implement section 4106 of the BBA by establishing conditions for coverage and frequency standards for bone mass measurements to ensure that they are paid for uniformly throughout the Medicare program and that they are reasonable and necessary for Medicare beneficiaries who are eligible to receive these measurements.

A. Coverage Conditions and Frequency Standards

We are establishing conditions for coverage and frequency standards for medically necessary bone mass measurements for five categories of Medicare beneficiaries in § 410.31.

We are defining "bone mass measurement" based on the statutory definition (§ 410.31(a)). We are setting forth conditions for coverage of all of the bone mass measurements that we will cover effective July 1, 1998. Under the "reasonable and necessary" provisions of section 1862(a)(1)(A) of the Act, we are establishing conditions under which we will cover bone mass measurements (§ 410.31(b)). Consistent with § 410.32 (Diagnostic x-ray tests, diagnostic laboratory tests, and diagnostic tests: Conditions), we are providing that coverage be available for the bone mass measurement only if it is ordered by the physician or a qualified nonphysician practitioner treating the beneficiary following an evaluation of the beneficiary's need for the test, including a determination as to the medically appropriate procedure to be used for the beneficiary. We believe that bone mass measurements are not demonstrably reasonable and necessary unless (among other things) they are ordered by the physician treating the beneficiary following a careful evaluation of the beneficiary's medical need, and they are employed to manage the beneficiary's care.

In addition, certain nonphysician practitioners who furnish services that would be physician services if furnished by a physician, and who are operating within the scope of the statutory benefit and their authority under State law or regulations, may also order bone mass measurements for their patients. Nonphysician practitioners who meet this definition are physician assistants (section 1861(s)(2)(K)(i) of the Act), nurse practitioners (section 1861(s)(2)(K)(ii) of the Act), clinical nurse specialists (section 1861(s)(2)(K)(iii) of the Act), and nurse-midwives (section 1861(s)(2)(L) and 1861(gg) of the Act).

To ensure that the bone mass measurement is performed as accurately and consistently in accordance with appropriate quality assurance guidelines as possible, we are requiring that it be performed under the appropriate supervision of a physician as defined in § 410.32(b)(3) of these regulations. To ensure that the bone mass measurement is medically appropriate for the five categories specified in the law, we are providing that it be reasonable and necessary for diagnosing, treating, or monitoring the condition of the beneficiary who meets the coverage requirements specified in § 410.31(d).

Furthermore, in § 410.31(c), we are setting forth limitations on the frequency for covering a bone mass measurement. Generally, we will cover a bone mass measurement for a beneficiary if at least 23 months have passed since the month the last bone mass measurement was performed. However, we will allow for coverage of follow-up bone mass measurements performed more frequently than once every 23 months when medically necessary. Examples of situations where more frequent bone mass measurements procedures may be medically necessary include, but are not limited to, the following medical circumstances: (1) Monitoring beneficiaries on long-term glucocorticoid (steroid) therapy of more than 3 months; and (2) allowing for a confirmatory baseline bone mass measurement (either central or peripheral) to permit monitoring of beneficiaries in the future if the initial test was performed with a technique that is different from the proposed monitoring method.

B. Beneficiaries Who May Be Covered

In § 410.31(d), we offer coverage for a bone mass measurement to the following Medicare beneficiaries:

- A woman who has been determined by the physician or a qualified nonphysician practitioner treating her to be estrogen-deficient and at clinical risk for osteoporosis, based on her medical history and other findings.
- An individual with vertebral abnormalities as demonstrated by an x-ray to be indicative of osteoporosis, osteopenia, or vertebral fracture.
- An individual receiving (or expecting to receive) glucocorticoid (steroid) therapy equivalent to 7.5 mg of

prednisone, or greater, per day, for more than 3 months.

- An individual with primary hyperparthyroidism.
- An individual being monitored to assess the response to or efficacy of an FDA-approved osteoporosis drug therapy.

C. Waiver of Liability

Under § 410.31(e), a beneficiary who did not know and could not reasonably have been expected to know that Medicare payment would be denied for a bone mass measurement under section 1862(a)(1)(A) of the Act receives protection from financial liability in accordance with §§ 411.400 through 411.406 under the limitation on liability provision of section 1879 of the Act. Existing regulations concerning limitation on liability in §§ 411.400 through 411.406 would apply to denial of bone mass measurements under §§ 410.31(b) through (d). Medicare payment may be made for certain claims for a bone mass measurement if the measurement was excluded from coverage in accordance with § 411.15(k) as not reasonable and necessary under section 1862(a)(1)(A) of the Act. Similarly, when the beneficiary is protected and the provider or supplier also did not know and could not reasonably have been expected to know that payment would be denied, the provider or supplier also receives protection from financial liability in accordance with the limitation on liability provision. Consequently, Medicare payment may be made to the provider or supplier.

D. Payments for Bone Mass Measurements

Medicare payments for covered bone mass measurements will be paid for under the physician fee schedule (42 CFR part 414) as required by statute. We are revising the definition of "physician services" in § 414.2 to include bone mass measurements. When bone mass measurement procedures are furnished to hospital inpatients and outpatients, the technical components of the procedures are payable under existing payment methods for hospital services. These methods include payments under the prospective payment system, on a reasonable cost basis, or under a special provision for determining pay rates for hospital outpatient radiology services.

The codes listed below are payable under this benefit.

76075—Dual energy x-ray absorptiometry (DEXA), bone density study, one or more sites; axial skeleton (e.g., hips, pelvis, spine)

76076—Dual energy x-ray absorptiometry (DEXA), bone density study, one or more sites; appendicular skeleton (peripheral) (e.g., radius, wrist, heel)

76078—Radiographic absorptiometry (photodensitometry), one or more sites

78350—Bone density (bone mineral content) study, one or more sites; single photon absorptiometry

G0130—Single energy x-ray (SEXA) absorptiometry bone density study, one or more sites, appendicular skeleton (peripheral) (e.g., radius, wrist, heel)

G0131—Computerized tomography bone mineral density study, one or more sites; axial skeleton (e.g., hips, pelvis, spine)

G0132—Computerized tomography bone mineral density study, one or more sites; appendicular skeleton (peripheral) (e.g., radius, wrist, heel)

G0133—Ultrasound bone mineral density study, one or more sites, appendicular skeleton (peripheral) (e.g., radius, wrist, heel)

The relative value units and payment amounts for CPT codes 76075, 76076, 76078, and 78350, including their component parts (professional component (PC) identified by a -26 modifier and technical component (TC) identified by a -TC modifier), are the same as published in the Medicare physician fee schedule final rule of October 31, 1997 (62 FR 59048). The payment amounts for G0130, G0132, and G0133 and their component parts are the same as determined for CPT 78350 and its components parts under that final rule. The amounts payable for G0131 and its component parts is the same as listed for CPT 76070 and its component parts under that final rule.

We are revising § 414.50(a), regarding physician billing for purchased diagnostic tests, to clarify that section does not apply to payment for bone mass measurements.

E. Conforming Changes

To allow for appropriate placement in the CFR of the bone mass measurement coverage requirements, we are redesignating § 410.31 (Prescription drugs used in immunosuppressive therapy) as § 410.30.

F. Manual Instructions

Currently, section 50–44 of the Coverage Issues Manual sets forth instructions for Medicare carriers concerning coverage of bone mass measurements. The provisions of this interim final rule supersede the current manual instructions. We intend to revise the instructions to conform them to this final rule.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms of the proposed rule or a description of the subjects and issues involved (5 U.S.C. 555(b)). This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, we ordinarily publish a rule not less than 30 days before the rule's effective date in order to afford persons affected a reasonable time to prepare for the effective date of the rule. The 30-day delay in the effective date can be waived for good cause found and published within the rule.

We find good cause to waive the notice and comment procedure for these rules implementing section 4106 of the BBA. This rule involves little exercise of agency discretion, but rather conforms the regulations to the revisions contained in section 4106 of the BBA. Notice-and-comment rulemaking is generally considered "unnecessary" so far as the public is concerned for such technical, conforming changes. Indeed, under both the Administrative Procedure Act and the Social Security Act, interpretative rules are generally exempt from notice and comment rulemaking (5 U.S.C. 553(b); 42 U.S.C. 1395hh(b)(2)(C)). While this rule interprets the statute, publication in the **Federal Register** is necessary to identify the categories of Medicare beneficiaries who may receive covered bone mass measurements under section 1861(rr)(2) of the Act and to promote uniform Medicare coverage of bone mass

measurements under section 1861(s)(15) of the Act.

We also find good cause to waive the notice and comment procedures and to waive the 30 day-delay in the effective date because those procedures would be contrary to the public interest. Section 4106 of the BBA of 1997 expands Medicare coverage to a larger group of beneficiaries, and it will enable these individuals to obtain timely treatment to prevent irreversible bone loss. The explicit provision of benefits in section 4106 that are implemented by these rules will provide a broader range of bone mass measurement procedures to a broader set of beneficiaries. The statute, however, requires the Secretary to issue regulations in order to implement this benefit. Thus, any delay in this rule's effective date to permit additional public participation in the rulemaking process would harm the intended beneficiaries of this statute. Moreover, although these rules expand Medicare coverage, the rules do not impose additional documentation requirements or alter the existing procedures for submitting Medicare claims. Because many individuals or entities affected by these rules are already familiar with these procedures, it is expected that the public would not require 30 days in order to prepare for changes necessitated by these rules. We will, of course, consider any public comments received on this interim final rule, and to the extent necessary, we will issue a final rule with additional clarifications or expansions.

We also note that in this preamble, we identify a number of interim 1998 codes for bone densitometry and bone sonometry procedures. Since technology in the bone mass measurement area is changing rapidly, as new techniques are being approved or cleared for marketing by the FDA, and as these techniques are being phased into clinical practice in the United States, there is a need to adopt new codes (or changes in existing codes) so that the new procedures performed with these techniques can be billed under Medicare.

For the above reasons, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment. Since we have referenced existing physician fee schedule relative value units (RVUs) to establish RVUs on bone mass measurement procedures, we are inviting comments on these linkages. We will consider comments when we establish the final RVUs that will be used to compute Medicare payments for the bone mass measurement codes in 1999. These final RVUs will be established by the physician fee schedule final rule scheduled for publication later this year.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Statement

We have examined the impacts of this interim final rule under Executive Order (E.O.) 12866, the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The benefit changes in this interim final rule due to section 4106 of BBA 1997 will result in additional expenditures of $10 million and $100 million for fiscal years 1998 and 1999, respectively.

Because the expenditures resulting from this interim final rule are expected to reach $100 million in FY 1999, it is considered a major rule, and, as required by law, this final rule is subject to congressional review. Therefore, this interim final rule is being forwarded to the Congress for a 60-day review period.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in annual expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The final rule has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below these thresholds, as well.

Consistent with the provisions of the Regulatory Flexibility Act, we analyze options for regulatory relief for small businesses and other small entities. We prepare a Regulatory Flexibility Analysis (RFA) unless we certify that rule will not have a significant economic impact on a substantial number of small entities. The RFA must include a justification of why action is being taken, the kinds and number of small entities the interim final rule will affect, and an explanation of any considered meaningful options that achieve the objectives and will lesson any significant adverse economic impact on the small entities.

For purposes of the Act, all physicians are considered to be small entities. Thus, we have prepared the following analysis, which, together with the rest of this preamble, meets all three assessment requirements. It explains the rationale for the purposes of this rule, details the costs of the rule, analyzes alternatives, and presents the measures to minimize the burden on small entities.

Section 4106 of the BBA 1997 provides for uniform coverage of certain bone mass measurements, effective July 1, 1998, subject to certain frequency and payment limits. Specifically, the revised coverage will allow periodic coverage of medically necessary bone mass measurements performed with (1) all of the FDA approved or cleared devices that are currently in clinical use in the United States, and for (2) five mandated categories of eligible Medicare beneficiaries, who meet certain medical indications, including estrogen-deficient women at clinical risk for osteoporosis. Before enactment of the BBA, periodic coverage of bone mass measurements was available to certain beneficiaries in at least four of the five categories in most parts of the country, but not uniformly throughout the Medicare program. In addition, coverage of some of the bone mass measurements—particularly several of the peripheral techniques—has not been available throughout the United States for imaging Medicare beneficiaries, even though these techniques have been approved or cleared for marketing by the FDA. In the case of the fifth category (estrogen-deficient women at clinical risk of osteoporosis), coverage of bone mass measurements has not been available in many parts of the country. We estimate that these changes in the coverage of bone mass measurements will result in an increase in Medicare payments. These payments will be made to a large number of physicians, mostly medical specialists such as gynecologists, radiologists, rheumatologists, and clinical endocrinologists, but also to certain primary care physicians and hospital outpatient departments who perform these services.

PROJECTED BUDGET IMPACT OF NEW BENEFIT
[In millions]

FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
$10	$100	$140	$180	$190

We believe that the effect of this rule on beneficiaries will be a very positive one. Medical experts agree that early detection and management of disease can lead to substantial reductions in life-threatening and serious illness. The National Osteoporosis Foundation estimates that there are over 10 million people in the United States who have osteoporosis and that another 18 million are at risk for the disease. Through earlier detection of low bone mass made possible under the new benefit and the use of appropriate prevention and treatment measures, our expectation is that the ravaging effects of this disease among the Medicare population will be reduced in the future.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VIII. Effect of the Contract With America Advancement Act of 1996 (Pub. L. 104–121)

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Ordinarily under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, a major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress, or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency determines if for good cause the agency finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. As explained above, for good cause we find that it was impracticable, unnecessary, or contrary to the public interest to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C. 808(2), these regulations are effective on July 1, 1998.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set out in the preamble, 42 CFR Chapter IV is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended to read as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. Section 410.31 is redesignated as § 410.30.

3. New § 410.31 is added to read as follows:

§ 410.31 Bone mass measurement: Conditions for coverage and frequency standards.

(a) *Definition.* As used in this section unless specified otherwise, the following definition applies:

Bone mass measurement means a radiologic, radioisotopic, or other procedure that meets the following conditions:

(1) Is performed for the purpose of identifying bone mass, detecting bone loss, or determining bone quality.

(2) Is performed with either a bone densitometer (other than dual-photon absorptiometry) or with a bone sonometer system that has been cleared for marketing for this use by the FDA under 21 CFR part 807, or approved for marketing by the FDA for this use under 21 CFR part 814.

(3) Includes a physician's interpretation of the results of the procedure.

(b) *Conditions for coverage.* Medicare covers a medically necessary bone mass measurement if the following conditions are met:

(1) Following an evaluation of the beneficiary's need for the measurement, including a determination as to the medically appropriate procedure to be used for the beneficiary, it is ordered by the physician or a qualified nonphysician practitioner (as these terms are defined in § 410.32(a)) treating the beneficiary.

(2) It is performed under the appropriate level of supervision of a physician (as set forth in § 410.32(b)).

(3) It is reasonable and necessary for diagnosing, treating, or monitoring the condition of a beneficiary who meets the conditions described in paragraph (d) of this section.

(c) *Standards on frequency of coverage*—(1) *General rule.* Except as allowed under paragraph (c)(2) of this section, Medicare may cover a bone mass measurement for a beneficiary if at least 23 months have passed since the month the last bone mass measurement was performed.

(2) *Exception.* If medically necessary, Medicare may cover a bone mass measurement for a beneficiary more frequently than allowed under paragraph (c)(1) of this section. Examples of situations where more frequent bone mass measurement procedures may be medically necessary include, but are not limited to, the following medical circumstances:

(i) Monitoring beneficiaries on long-term glucocorticoid (steroid) therapy of more than 3 months.

(ii) Allowing for a confirmatory baseline bone mass measurement (either central or peripheral) to permit monitoring of beneficiaries in the future if the initial test was performed with a technique that is different from the proposed monitoring method.

(d) *Beneficiaries who may be covered.* The following categories of beneficiaries may receive Medicare coverage for a medically necessary bone mass measurement:

(1) A woman who has been determined by the physician (or a qualified nonphysician practitioner) treating her to be estrogen-deficient and at clinical risk for osteoporosis, based on her medical history and other findings.

(2) An individual with vertebral abnormalities as demonstrated by an x-ray to be indicative of osteoporosis, osteopenia, or vertebral fracture.

(3) An individual receiving (or expecting to receive) glucocorticoid (steroid) therapy equivalent to 7.5 mg of prednisone, or greater, per day for more than 3 months.

(4) An individual with primary hyperparathyroidism.

(5) An individual being monitored to assess the response to or efficacy of an FDA-approved osteoporosis drug therapy.

(e) *Denial as not reasonable and necessary.* If HCFA determines that a bone mass measurement does not meet the conditions for coverage in paragraphs (b) or (d) of this section, or the standards on frequency of coverage in paragraph (c) of this section, it is excluded from Medicare coverage as not "reasonable" and "necessary" under section 1862(a)(1)(A) of the Act and § 411.15(k) of this chapter.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

B. Part 414 is amended to read as follows:

1. The authority citation for part 414 continues to read as follows:

Authority: Sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. In § 414.2, in the definition of "Physician services", a new paragraph (7) is added to read as follows:

§ 414.2 Definitions.

* * * * *

Physician services * * *

(7) Bone mass measurement.

* * * * *

§ 414.50 [Amended]

3. In § 414.50(a), in the first sentence, revise "If a" to read "For services covered under section 1861(s)(3) of the Act and paid for under this part 414 subpart A, if a".

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16783 Filed 6–19–98; 3:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AB52

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to amend its procedures regarding replacement of Indian tribal grantees. The change would add provisions to implement a new statutory provision that allows Indian tribes which are Head Start grantees to identify an agency, and request that the agency be designated by the Department as an alternative grantee, when the grantee is terminated or denied refunding.

EFFECTIVE DATES: The effective date of this final rule is July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. In addition, Section 645A of the Head Start Act provides authority to fund programs for families with infants and toddlers, known as Early Head Start programs. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997, Head Start served 793,809 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, the Head Start Act and implementing regulations permit up to 10 percent (and more for Indian tribes under certain circumstances) of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Final Rule

This final rule was published as a Notice of Proposed Rulemaking on December 16, 1997, in the **Federal Register** (62 FR 65778). We received no comments on the rule and therefore are issuing it as final with no changes.

The authority for this final rule is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Public Law 103–252, Title I of the Human Service Amendments of 1994. Section 646(e) directs the Secretary to specify a process by which an Indian tribe may identify an agency, and request that the agency identified be designated as the Head Start agency providing services to the tribe, if (a) financial assistance to the tribal grantee is terminated, and (b) the tribe would otherwise be precluded from providing Head Start services to its members because of the termination. The Act specifies that the regulation must prohibit the designation as Head Start grantee of an agency that includes an employee who served on the administrative or program staff of the terminated agency when that employee was responsible for a deficiency that was the basis for the termination.

The final rule:

- Adds a new definition for Indian tribe;
- Provides that an Indian tribe may identify an agency to serve as the alternative grantee at the time that it receives a notice of termination or a notice of denial of refunding;
- Allows the tribe to participate in the selection of the replacement grantee; and
- Allows the tribe a second opportunity to identify an alternative agency if the Department finds the first agency identified by the tribe is not an eligible agency capable of operating a Head Start program. If the second agency identified by the tribe is not selected as a Head Start grantee, a

replacement grantee will be designated under 45 CFR Part 1302.

III. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This final rule sets forth a process whereby an Indian tribe that is being terminated as a Head Start grantee may identify an alternative agency and request that the alternative agency be designated as the Head Start agency providing services to the tribe. The costs of implementing this rule are not significant.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Also, the rule will not have a significant economic impact because the only action called for is to nominate a successor grantee, which should not require more than a nominal expenditure of grant funds. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit collections of information contained in proposed and final rules published in the **Federal Register** to the Office of Management and Budget for review and approval. This final rule does not contain collection of information as defined in the Paperwork Reduction Act and implementing regulations.

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs, Selection of grantees.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: June 2, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the Preamble, 45 CFR Part 1302 is amended as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The Authority citation for part 1302 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. Section 1302.2 is amended by adding a definition for "Indian Tribe" to read as follows:

§ 1302.2 Definitions.

* * * * *

Indian tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

3. A new Subpart D, containing new sections 1302.30, 1302.31, and 1302.32, is added to read as follows:

Subpart D—Replacement of Indian Tribal Grantees

§ 1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§ 1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10 (b)(1) through (5) and 1302.11 of this part.

§ 1302.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management

standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

[FR Doc. 98–16826 Filed 6–23–98; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3968, Notice 1]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Response to petitions for reconsideration.

SUMMARY: This action denies four petitions for reconsideration of NHTSA's final rule and correcting amendments concerning air bag warning labels. The rule requires vehicles with air bags to bear three new, attention-getting warning labels. Two of the labels replace previous labels on the sun visor and the third is a new temporary (i.e., removable) label located on the vehicle dash.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection", on November 27, 1996 (61 FR 60206). The rule requires vehicles with air bags to bear three new, attention-getting warning labels. Two of the labels replace previous labels on the sun visor and the third is a new removable label located on the vehicle dash. Under the final rule, the labels on the sun visors in vehicles produced after February 25, 1997, are required to state:

WARNING: DEATH or SERIOUS INJURY can occur. Children 12 and under can be killed by the air bag. The BACK SEAT is the SAFEST place for children. NEVER put a rear-facing child seat in the front (unless air bag is off) [1]. Sit back as far as possible from the air bag. ALWAYS use SEAT BELTS and CHILD RESTRAINTS.

The removable label on the dash must state:

WARNING: Children May Be KILLED or INJURED by Passenger Air Bag. The back seat is the safest place for children 12 and under. Make sure all children use seat belts or child seats.

The rule excludes vehicles with smart passenger air bags, as those devices are defined in the regulatory text made part of the final rule.[2]

Subsequent to the final rule, NHTSA published three correcting or technical amendments. On December 4, 1996, the agency published a correcting amendment allowing manufacturers of vehicles without passenger-side air bags to omit the required warning language concerning hazards to children from air bags (61 FR 64297). A second correcting amendment was issued on December 11, 1996 that allowed manufacturers of vehicles with no back seat to omit the required warning language stating that children are safest in the back seat (61 FR 57187). On January 2, 1997, NHTSA published a technical amendment correcting a typographical error by changing the word "may" to "can" in the temporary warning label (62 FR 31).

II. Summary of Petitions

NHTSA received three petitions for reconsideration of the November 27, 1996 final rule. Meyercord, a label manufacturer, petitioned for a definition of the term "permanently affixed" as used in the standard. The Parent's Coalition for Air Bag Warnings asked for the definition of "smart passenger air bag" to be refined to include air bags that do not deploy if the passenger seat is occupied by an individual weighing 130 pounds or less rather than 66 pounds or less. AAMA requested an amendment allowing the new air bag warning label and the utility vehicle rollover warning label required under 49 CFR section 575.105 to be on the same side of the sun visor.

The agency received one petition for reconsideration of the December 11, 1996 correcting amendment. AAMA asked that the required warning language regarding children and the back seat be changed from "The BACK SEAT is the SAFEST place for children" to "If the vehicle has a BACK SEAT, that seat is the SAFEST place for children". Under AAMA's petition, all vehicles, including those without a back seat, would be required to use its proposed language in the warning labels.

III. Discussion of Issues

A. Petitions for Reconsideration of the November 27, 1996 Final Rule

1. Meyercord

Meyercord petitioned the agency to "require that the air bag warning graphics pass specifications to ensure that the important message does in fact remain "permanently affixed." Meyercord maintains that there is consensus in the automotive industry that labels which are "permanently affixed" "should last the life of the vehicle and that any attempt to remove it would result in the base material being cut or gouged in some way." According to Meyercord, only heat transfer graphics can meet this definition of "permanently affixed". Sticker graphics, Meyercord avers, can be peeled away. The company included in its petition a photograph of a sun visor with a peeling sticker graphic and Ford's 15-page Engineering Material Specification No. WSS–M7G7–B1, which it believes will assist the agency in defining a level of adhesiveness.

Meyercord's petition is denied. Following its practice in other NHTSA regulations where the term "permanently affixed" is also used, NHTSA did not define "permanently affixed" when it added the term to Standard No. 208. NHTSA has not found a definition necessary in those other regulations. When asked, NHTSA has issued an interpretation of the term.[3] Specifically, NHTSA has said that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions.

NHTSA does not know the context under which the label depicted in the photograph submitted by Meyercord began to peel away from the sun visor. NHTSA surmises that the vehicle was probably within its expected lifespan, given the time when such labels were first required on motor vehicles. Absent the existence of abnormal conditions in the history of the vehicle, the photograph might be an indication of a noncompliance with Standard No. 208. In such an instance, the existence of a performance test is not necessary to enforce the requirement for permanently affixing a label.

[1] Parenthetical text is only appropriate for vehicles with a factory-installed on-off switch.

[2] While the final rule includes a definition of "smart passenger air bags", the agency is currently working on a rulemaking which will replace this definition with a definition of "advanced air bags".

[3] *Cf.*, letter to Hank Thorp, Inc., August 7, 1973 (FMVSS No. 211); letter to Joseph Lucas North America, Inc., October 6, 1975 (FMVSS No. 106).

2. Parents' Coalition for Air Bag Warnings

The Parents' Coalition for Air Bag Warnings (Coalition) requested that NHTSA amend the provision which excludes a "smart passenger air bag" from the requirement for a warning label on the above sun visor. Currently, in order to qualify as a smart air bag, a passenger air bag must not deploy if the passenger seat is occupied by a child or child and car seat (if applicable) having a total mass of 30 kg (approximately 66 lbs) or less. The Coalition would like to revise the exclusion so that in order to qualify as a smart passenger air bag, an air bag must not deploy if the passenger seat is occupied by a child weighing 130 pounds or less. The Coalition notes that the average 12 year old boy weighs 99 pounds and the average 12 year old girl weighs 102 pounds. The Coalition also notes that 90th percentile male and female 12 year old children weigh 130 pounds and 133 pounds, respectively. The Coalition believes that amending the criteria for a smart passenger air bag is necessary to make them consistent with the warning label requirement that states all children 12 years and under should ride in the back seat.

The petition is denied. The warning label requirement and the smart passenger air bag exclusion serve two separate functions. The warning label advises parents and other adult drivers of the risks involved in allowing a child to ride in the front seat. The smart passenger air bag exclusion is intended to encourage the installation of smart passenger air bags by relieving a vehicle manufacturer from complying with some of the labeling requirements if the manufacturer installs such a passenger air bag. The criteria for a smart passenger air bag were selected to ensure that a qualifying air bag would not injure two specially at-risk groups of children (i.e., infants in rear facing child restraints or children weighing less that 30 kg). Most of the child deaths have involved children weighing less than 60 pounds and significantly younger than twelve. Smart air bag technology based on weight classifications is an absolute measure which would deactivate the air bag regardless of who is sitting in the front seat. The agency believes that the air bag should remain operable for occupants who do not fall within the narrowly prescribed risk group. An upper weight limit of 130 pounds would be overly broad since it would deactivate the air bag for a large portion of the adult population as well as most children.

Additionally, NHTSA noted in the preamble to the notice of proposed rulemaking issued in August 1996 that the definition of a smart passenger air bag was very general and would be refined in future rulemaking. In the more recent (November 1997) final rule permitting retrofit on-off switches for air bags, the agency stated that the definition would be addressed in the forthcoming proposal on advanced air bags (the current name of smart air bags).

3. AAMA

AAMA petitioned the agency to permit the new air bag warning labels and the utility vehicle rollover warning label required by 49 CFR section 595.105 to be on the same side of a utility vehicle's sun visor. As was the case prior to the publication of the final rule, the utility vehicle label is prohibited from being placed on the same side of the sun visor as the air bag warning label. The vehicle rollover warning label can be placed on the front of sun visors that have an air bag alert label with the actual air bag warning label on the back of the visor.

AAMA stated that the language proposed in the August 1996 NPRM did not include the prohibition against having the vehicle rollover warning label and the air bag warning label on the front side of the visor. This omission was corrected in the final rule. Additionally, AAMA noted that the size and number of the required air bag alert labels will lead many manufacturers to place an air bag warning label on the front of the visor only. AAMA contended that there is no good location for the utility vehicle label other than the front of the sun visor. It also maintained that the two labels, coexisting on the same side of the sun visor, will not distract people's attention from the air bag warning given "the number and prominence of those labels".

The petition is denied. NHTSA believes that AAMA may be correct that manufacturers will place a single warning label on the front of the visor and will discard the air bag alert label. The agency also acknowledges that the new air bag warning labels are more eye-catching than existing utility vehicle labels which only have a required text and not required size, color, or layout. However, on April 13, 1998, NHTSA proposed changes to the utility vehicle label that would make it nearly as eye catching as the air bag warning labels (63 FR 17974). That rulemaking specifically asks for comments on the location of the proposed label, including whether it should be allowed on the same side of the sun visor as the air bag label. Accordingly, NHTSA intends to address AAMA's concerns in that rulemaking.

B. Petition for Reconsideration of the December 11, 1996 Correcting Amendment

AAMA petitioned NHTSA to amend the warning label language applicable to children and a vehicle's rear seat. The current language states that "The BACK SEAT is the SAFEST place for children." AAMA suggested changing the language to read: "If the vehicle has a BACK SEAT, that seat is the SAFEST place for children." A corresponding change was suggested for the temporary dashboard label. AAMA also suggested that the current exclusion from the required language for vehicles with no back seat be eliminated.

AAMA maintained that the post-final rule amendments allow up to eight possible labels, a situation which it regards as confusing and expensive for manufacturers. It contended that its suggestion would eliminate the need for two separate labels (one for vehicles with a back seat and a different one for vehicles without a back seat). It also argued that absence of a labeling requirement for vehicles without a back seat may encourage adults to place children in those vehicles instead of in vehicles in which the children can be placed in the back seat, away from the passenger air bag.

The petition is denied. NHTSA finds no support for AAMA's contention that people would be more likely to transport their children in a vehicle without a back seat than in a vehicle with a back seat under the current labeling requirements. Accordingly, the agency believes that this contention is incorrect.

NHTSA notes that AAMA member companies were among the manufacturers recommending the amendments which allow for multiple labeling options, depending on vehicle type. The original warning label, without any exclusions based on vehicle type, is appropriate for any vehicle regardless of the existence of a back seat. Indeed, NHTSA is concerned that AAMA's suggested language could lead a consumer to believe that the front seat of vehicles without a back seat are somehow safer than the front seat of vehicles with a back seat. The original label clearly states that back seats are safest. Additionally, NHTSA notes that the AAMA's recommended language increases the length and wordiness of the warning label. Focus groups indicated that the messages on the label should be concise.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: June 18, 1998.

L. Robert Shelton,

Associate Administrator for Performance Standards.

[FR Doc. 98–16824 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–69–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 061898A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock inStatistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 19, 1998, until 1200 hrs, A.l.t., September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOAexclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC has been changed to 35 percent of the annual TAC (63 FR 31939, June 11, 1998) plus a proportionate amount of any unharvested first seasonal apportionment of TAC or minus a proportionate amount of TAC harvested in excess of the first seasonal apportionment (§ 679.20 (a)(5)(ii)(B)). This action was taken to limit potential impacts of pollock fishing on Stellar sea lions and their critical habitat during the fall months. The notice of Final 1998 Harvest Specifications (63 FR 12027, March 12, 1998) established a pollock TAC of 29,790 metric tons (mt) in Statistical Area 610 for the entire 1998 fishing year and apportioned 7,978 mt of that pollock TAC as the second seasonal apportionment. The Administrator, Alaska Region, NMFS (Regional Administrator), established a directed fishing allowance of 7,478 mt and set aside the remaining 500 mt as bycatch in support of other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator found that the directed fishing allowance would soon be reached and NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA on June 3, 1998 (63 FR 30644, June 5, 1998). The fishery was reopened on June 8, 1998 (63 FR 31938, June 11, 1998) to fully utilize a revised second seasonal apportionment equal to 35 percent of the annual of pollock TAC. The revised second seasonal apportionment of the pollock TAC in Statistical Area 610 is now 10,605 mt.

The Regional Administrator is establishing a directed fishing allowance of 10,105 mt and setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the second seasonal apportionment of pollock TAC in Statistical Area 610 will be reached. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 until 1200 hrs, A.l.t., September 1, 1998.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the Final 1998 Harvest Specifications for Groundfish for the GOA. It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 610 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 19, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16833 Filed 6–19–98; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 121
Wednesday, June 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–018–2]

RIN 0579–AA95

Licensing Requirements for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are considering several changes to the Animal Welfare regulations to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations. Specifically, we are considering revising the definition of "retail pet store" so that it includes only nonresidential, commercial retail stores, rather than any pet retailer. Retail pet stores are not required to be licensed and inspected under the Animal Welfare Act (AWA). If the definition were revised, many pet retailers now exempt from licensing and inspection requirements would have to be licensed and inspected. We are also considering regulating dealers of hunting, breeding, and security dogs in the same manner as other dealers of dogs. Because these changes could severely strain available Federal resources for carrying out inspections and other enforcement activities under the AWA, we are considering increasing the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and be exempt from licensing and inspection requirements. If this number were increased, some dealers who would no longer qualify as retail pet stores under the revised definition of "retail pet store" would continue to be exempt from licensing and inspection requirements, and some pet wholesalers who are currently required to be licensed would no longer have to be licensed. This advance notice solicits public comment on the maximum number of breeding female dogs and/or cats that a person should be able to maintain on his or her premises and be exempt from licensing and inspection requirements under the AWA.

We are also interested in obtaining information that would help us determine the impact of the regulatory changes that we are considering. Specifically, if we amend the definition of "retail pet store" as described earlier, how many dealers of dogs and cats would be covered by our regulations under different scenarios for increasing the number of breeding females that a person may maintain on his or her premises and be exempt from licensing. In addition, if we begin regulating dealers of hunting, breeding, and security dogs, how many dealers of hunting, breeding, and security dogs would be covered by our regulations under different scenarios for increasing the number of breeding females that a person may maintain on his or her premises and be exempt from licensing.

DATES: Consideration will be given only to comments received on or before August 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–018–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–018–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. Alternatively, comments may be submitted via the Internet on an electronic form located at http://comments.aphis.usda.gov. Comments submitted on the electronic form need only be submitted once.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye Walters, Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 sets forth the general requirements, and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities. Subpart A of part 3 contains the standards applicable to dogs and cats.

On March 25, 1997, we published in the **Federal Register** (62 FR 14044–14047, Docket No. 97–018–1) a petition for rulemaking, sponsored by the Doris Day Animal League, that requested two changes to the regulations in parts 1 and 3. The requested changes were: (1) To redefine the term "retail pet store" in part 1 as "a nonresidential business establishment used primarily for the sale of pets to the ultimate customer;" and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to dealers of other types of dogs in part 3.

We solicited comments on the petition for 60 days, ending May 27, 1997. By that date, we received 35,953 comments. They were from dealers of dogs and cats, representatives of industry, members of animal protectionist organizations, members of Congress, and other interested persons. Approximately 65 percent of the commenters supported the changes requested in the petition. The remaining 35 percent had concerns about the changes requested in the petition. Most of their concerns focused on the petition's suggested revision of the definition of retail pet store. The commenters stated that the proposed revision would require that many small, "hobby" breeders of dogs and cats be

licensed and inspected under the regulations. They expressed concern that this not only would be unnecessary, but would severely strain Federal resources available for carrying out inspection and other enforcement activities.

We share the concern about the potential strain on Federal resources, particularly because we do not know how many pet retailers not now subject to the AWA might be affected by the revised definition of "retail pet store." In addition, if we begin regulating dealers of dogs intended primarily for hunting, security, and breeding purposes under the AWA in the same manner as dealers of other types of dogs, many of these dealers would also be required to be licensed and inspected, and we do not know how many dealers of these types of dogs there are. Therefore, we are soliciting comments on an approach, discussed below, for amending the Animal Welfare regulations to ensure that only appropriate facilities are exempt from licensing as retail pet stores and to allow us to concentrate our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.

Definition of Retail Pet Store

In § 1.1, *retail pet store* is defined as "any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species." The definition of "retail pet store" goes on to describe certain establishments that do not qualify as retail pet stores, even if they sell animals at retail. Those establishments that do not qualify as retail pet stores are: (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.; (3) establishments or persons selling warm-blooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; (4) establishments wholesaling any animals (except birds, rats, and mice); and (5) establishments exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

In accordance with the AWA, retail pet stores are exempt from the licensing and inspection requirements in part 2. Other retail and wholesale pet dealers must be licensed in accordance with the regulations. The definition of retail pet store was established to ensure that the appropriate retail facilities were exempt from licensing requirements. However, that definition has prompted a regulatory interpretation of "retail pet store" that includes all retail outlets, regardless of volume, size, or location of business. As such, under the current definition of retail pet store, a very large number of facilities that are not traditional retail pet stores are exempt from licensing requirements.

To ensure that dogs and cats at these outlets receive humane handling, care, and treatment, we are considering amending the definition of "retail pet store" to limit retail pet stores to only traditional "stores"— nonresidential, commercial, retail businesses that sell primarily pets and pet products. If this change were adopted, many retail pet dealers would no longer be considered retail pet stores, and, unless otherwise exempt under the regulations, would have to be licensed and inspected in accordance with part 2.

We are also considering regulating dealers of dogs intended primarily for hunting, security, and breeding purposes under the regulations applicable to dealers of other types of dogs. This change, if implemented, would require both retail and wholesale dealers of hunting, security, and breeding dogs to be licensed and inspected under the AWA, unless exempt from licensing requirements based on the total number of breeding females maintained on a dealer's premises, in accordance with § 2.1(a)(3)(iii) of the regulations (see "Number of Breeding Females," below).

Because these changes could severely strain available Federal resources for carrying out inspections and other enforcement activities under the AWA, we are considering increasing the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and be exempt from licensing and inspection requirements. If this number were increased, some dealers who would no longer qualify as retail pet stores under the revised definition of "retail pet store" would continue to be exempt from licensing and inspection requirements, and some pet wholesalers who are currently required to be licensed would no longer have to be licensed. We are considering these changes to the regulations to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.

Number of Breeding Females

In § 2.1, paragraph (a)(3) lists those persons who are exempt from licensing requirements. In addition to retail pet stores, those who are exempt from licensing requirements include any person who maintains a total of three or fewer breeding female dogs and/or cats and who sells the offspring of these dogs or cats, which were born and raised on his or her premises, for pets or exhibition, and who is not otherwise required to obtain a license (see § 2.1(a)(3)(iii)).

The licensing exemption based on a total number of three or fewer breeding female dogs and/or cats maintained on a premises was established based on a determination that small facilities usually pose less risk to the welfare of animals than do large facilities. We still agree with that determination, but we believe that a facility does not necessarily have to maintain as few as three breeding females in order to be considered a low risk facility.

We also recognize that, if the revised definition of "retail pet store" discussed above were adopted, a significant number of retail pet dealers who are now exempt from the licensing requirements in part 2 would be required to be licensed and inspected. APHIS does not have unlimited resources for enforcing the Animal Welfare regulations. A reasonable increase in the number of breeding females that an exempt facility could maintain could help APHIS concentrate its regulatory resources on those facilities that present the greatest risk of noncompliance.

Therefore, we are soliciting public comment on amending § 2.1(a)(3)(iii) to increase the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and continue to be exempt from licensing requirements. We believe that the total number should fall between 3 and 60 breeding females. The low end of this range of numbers is based on our current regulations. The high end of this range of numbers is based on our experience enforcing the AWA. Through that experience, we have determined that the risk of noncompliance with the regulations significantly increases if facilities care for more than 60 breeding female dogs and/or cats. At this time, however, we would like to gather more data to support the proposal of a specified number. Therefore, we are seeking information that will help us

determine the appropriate total number of breeding female dogs and/or cats that a person may maintain on his or her premises and continue to be exempt from licensing requirements. We are most interested in receiving information that is in the form of published industry standards, published reports in peer-reviewed journals, studies, and objective data. For those issues on which data or published information is not available, we ask that commenters supply detailed information on why the number they have chosen is appropriate.

We are also interested in obtaining the following information to enable APHIS to target its resources on those facilities that present the greatest risk of noncompliance:

1. If we amend the definition of "retail pet store" as described earlier, how many dealers of dogs and cats would be covered by our regulations under different scenarios for increasing the number of breeding females that a person may maintain on his or her premises and be exempt from licensing.

2. If we begin regulating dealers of hunting, breeding, and security dogs, how many dealers of hunting, breeding, and security dogs would be covered by our regulations under different scenarios for increasing the number of breeding females that a person may maintain on his or her premises and be exempt from licensing.

Written comments should be submitted within the 60-day comment period specified in this document (see **DATES** and **ADDRESSES**).

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 19th day of June 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16807 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM–71–12]

Petition From International Energy Consultants, Inc.; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Extension of comment period.

SUMMARY: On February 19, 1998 (63 FR 8362), the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking filed by the International Energy Consultants, Inc. The petition requested that NRC amend its regulations that govern packaging and transportation of radioactive material to eliminate special requirements for plutonium. The comment period was to have expired on May 5, 1998. General Atomics submitted a comment on May 26, 1998, and requested that the comment period be extended so that their comment, and comments by other industry people, be considered. In view of this request, the NRC believes it is appropriate to extend the comment period, which now expires on July 31, 1998.

DATES: The comment period has been extended and now expires July 31, 1998. Comments received after this date will be considered if it is practical to do so but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). From the NRC home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum." This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield [telephone (301) 415–6196, e-mail MFH@nrc.gov] of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 17th day of June, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–16741 Filed 6–23–98; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 34 and 35

Concept Release Concerning Over-the-Counter Derivatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUMMARY: The Commodity Futures Trading Commission issued a Concept Release concerning over-the-counter derivatives on May 12, 1998 (63 FR 26114) with comments due by July 13, 1998. In response to requests from the Chicago Mercantile Exchange, the Futures Industry Association, and the Managed Funds Association, the Commission has determined to extend the comment period for an additional 60 days. The extended deadline for comments on the Concept Release is September 11, 1998.

Any person interested in submitting comments on the Concept Release should submit them by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before September 11, 1998.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

Issued in Washington, D.C., on this 18th day of June, 1998, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–16767 Filed 6–23–98; 8:45 am]

BILLING CODE 6351–01–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA—035—2—9815b; FRL–6115–2]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP) submitted through the Department of Natural Resources on August 29, 1997, requesting the incorporation of five transportation control measures (TCMs). This action only addresses the incorporation of one of the five TCMs submitted for approval into the SIP. Action was taken on the other four TCMs in a separate rulemaking action. The subject of this action is an alternative fuel refueling station/park and ride transportation center project located in Douglas County.

In the final rules section of this **Federal Register**, the EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comment, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based upon this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 24, 1998.

ADDRESSES: Written comments on this action should be addressed to Kelly Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA35–9807. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at 404/562–9042.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–16803 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6114–6]

RIN 2060–AH66

National Emission Standards for Hazardous Air Pollutants: Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments to final rule.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) promulgated in the **Federal Register** on December 7, 1995 for wood furniture manufacturing operations. This proposal offers amendments to the rule pursuant to three agreements reached in settlement of the following petitions for review: Chemical Manufacturers Association v. EPA, No. 96–1031 (D.C. Cir.); Halogenated Solvents Industry Alliance, Inc. v. EPA, No. 96–1036 (D.C. Cir.); and Society of the Plastics Industry, Inc., v. Browner, No. 96–1038 (D.C. Cir.). This proposal also offers clarifying amendments, as well as technical amendments to certain sections of the final rule.

DATES: Comments. Comments must be received on or before July 24, 1998, unless a hearing is requested by July 6, 1998. If a hearing is requested, written comments must be received by August 10, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than July 6, 1998. If a hearing is held, it will take place on July 9, 1998, beginning at 10:00 a.m.

ADDRESSES: Comments. Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5580.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Mr. Robert Marshall, Manufacturing Branch, Office of Compliance (2223A), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–93–10. No confidential business information should be submitted through e-mail. Electronic comments may be filed on-line at many Federal Depository Libraries.

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in wood furniture manufacturing operations and that are major sources as defined in 40 CFR part 63, subpart A, section 63.2. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities which are major sources of hazardous air pollutants (HAP) and manufacture wood furniture or wood furniture components.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that the EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in section 63.800 of the NESHAP for wood furniture manufacturing operations that was promulgated in the **Federal Register** on December 7, 1995 (60 FR 62930) and codified at 40 CFR 63 Subpart JJ. If you have questions regarding the applicability of this action to a particular entity, consult Mr. Robert Marshall at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented below is organized as follows:

I. Background
II. Summary of Proposed Changes
III. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act
F. Executive Order 13045
G. Executive Order 12875
H. National Technology Transfer and Advancement Act

I. Background

On December 7, 1995 (60 FR 62930), the EPA promulgated NESHAP for wood furniture manufacturing operations (Wood Furniture NESHAP). These standards were codified as subpart JJ in 40 CFR part 63. These standards established emission limits for, among other things, coating and gluing of wood furniture and wood furniture components. Three different parties, the Chemical Manufacturers Association (CMA), the Halogenated Solvents Industry Alliance, Inc. (HSIA), and the Society of the Plastics Industry, Inc. (SPI), petitioned for judicial review of the final rule under section 307(b) of the Clean Air Act (the Act).

The EPA executed settlement agreements with each of these petitioners on December 18, 1997. In accordance with section 113(g) of the Act, the EPA published notice of the petitions in the **Federal Register** on December 24, 1997 (62 FR 67360). The notice provided a 30-day opportunity for public comment. One comment, supporting the agreements, was submitted.

The settlement agreement between the EPA and the CMA requires the EPA to conduct notice and comment rulemaking proposing that certain glycol ethers be removed from the list of volatile hazardous air pollutants (VHAP) of potential concern in table 6 of the Wood Furniture NESHAP. The agreement also provides that the de minimis value in table 5 for 2-ethoxyethyl acetate be changed from 5.0 tons per year to 10.0 tons per year.

The settlement agreement between the EPA and the HSIA requires the EPA: (1) to conduct notice-and-comment rulemaking in accordance with section 307(d) of the Act proposing that perchloroethylene and trichloroethylene be deleted from the list of pollutants prohibited from use in cleaning and washoff solvents under § 63.803(e) of the regulations (table 4 of the Wood Furniture NESHAP); and (2) to give great weight to the recommendations of the Science Panel of the Joint Methylene Chloride Characterization Task Force regarding whether a reassessment of the cancer hazard for methylene chloride should be undertaken based on current scientific information. The settlement agreement also requires the EPA to conduct additional notice and comment rulemaking with respect to methylene chloride if methylene chloride is reassessed and certain findings are made as a result of that reassessment.

The settlement agreement between the EPA and the SPI requires the EPA to propose technical amendments to the Wood Furniture NESHAP that would remove the subheadings of "Nonthreshold Pollutants," "High-Concern Pollutants," and "Unrankable Pollutants" in table 6, and to remove footnote "a" to table 6 which relates to these hazard ranking classifications.

This action proposes changes to the Wood Furniture NESHAP to address the settlement agreements discussed above. This action also proposes clarifying changes and corrections which were identified after promulgation of the rule.

II. Summary of Proposed Changes

In order to affect the settlement agreement between the EPA and the CMA, and between the EPA and the SPI, the EPA is proposing to revise table 6 of the Wood Furniture NESHAP.

Table 6 lists those VHAP that are thought to pose a high concern for chronic toxicity. The regulations require affected sources to track the usage levels of these chemicals as part of their formulation assessment plans. The EPA, as a result of the negotiated rulemaking process for the final rule, included in the table 6 list only those chemicals with a toxicity composite score of 20 or higher.

The original table 6 excepted three glycol ether compounds from the list of VHAP of potential concern because of the relatively low toxicity of these compounds. In its challenge of the final rule, the CMA claimed that additional glycol ethers should be excluded from table 6, and asked that the EPA review toxicity data for other specified glycol ether compounds. The settlement agreement listed 17 other glycol ethers which the parties agreed should not, at this time, be considered VHAP of potential concern under this rule because either the EPA lacked sufficient toxicity information on the compound or subsequent data demonstrated a low toxicity for the compound. Since signing the settlement agreement, the EPA has completed a preliminary literature review of toxicity studies for all of the listed compounds to determine if any have evidence of relatively severe toxicity. As a result of this screening analysis, the EPA believes that the likely hazards posed by these compounds are probably well below the cutoff level for treating these compounds as VHAP of potential concern and for the purposes of this rule should not be listed in table 6.[1] Additional information on the EPA's toxicity review can be found in the docket listed in the preceding **ADDRESSES** section.

The original table 6 contained subheadings for "nonthreshold" pollutants, "high-concern" pollutants, and "unrankable" pollutants. These subheadings followed the hazard ranking classification scheme proposed in regulations to implement the offsetting provisions of section 112(g) of

[1] This review was conducted solely for this rule to confirm the reasonableness of the proposed changes based on the relative toxicity of these compounds. The EPA has conducted no peer review of these toxicity findings and has not developed a consensus position regarding the actual toxicity of these compounds.

the Act. The EPA now believes, however, that these subheadings, and footnote "a" which relates to these subheadings, serve no substantive function in this rule and should be removed from table 6. The definition of "VHAP of potential concern" is proposed to be revised to reflect this change in table 6.

Section 63.803(l)(6) is also being proposed to be revised to eliminate the reference to the 112(g) regulations. The formulation assessment plan provision in § 63.803(l)(6) requires that if, after November 1998, an affected source uses any VHAP of potential concern listed in table 6, it must keep track of the annual usage of that chemical and report to the permitting authority if the usage exceeds the relevant de minimis value for that chemical. Section 63.803(l)(6) currently references section 112(g) regulations to determine the relevant de minimis values. This cross-reference is not necessary because table 6 is proposed to be revised to include the de minimis value for each chemical. The de minimis values provided in table 6 are not changed from the current values extrapolated from the proposed section 112(g) regulations.

In order to implement the settlement agreement between the EPA and the CMA, the EPA is also proposing to revise table 5 to change the de minimis level for 2-ethoxyethyl acetate from 5.0 to 10.0 tons per year. The EPA has concluded that the toxicity for 2-ethoxyethyl acetate is relatively low and in the absence of a more quantitative assessment (i.e., an inhalation reference concentration) for this chemical, the EPA's hazard ranking guidelines provide a default de minimis value of 10.0 tons per year. The proposed change of the 2-ethoxyethyl acetate de minimis value is thus consistent with the EPA's methodology.

In order to implement the settlement agreement between the EPA and the HSIA, the EPA is proposing to revise table 4 of the Wood Furniture NESHAP by removing trichloroethylene and perchloroethylene from the list of prohibited cleaning and washoff solvents. The EPA intended to include in table 4 those pollutants classified under the EPA's hazard ranking methodology as Group A (known human carcinogen) or Group B (probable human carcinogen). The EPA currently considers both perchloroethylene and trichloroethylene as intermediately classified between a probable and possible human carcinogen(Group B/C). The EPA is in the process of revising its cancer risk assessment guidelines and is currently reassessing these pollutants. Since a definitive assessment of the carcinogenicity of these two chemicals has not been finalized by the EPA, and given the current carcinogenicity classifications of these chemicals, the EPA is proposing to remove them from table 4. Note, however, that this proposed change in Table 4 does not imply any change in the EPA's current scientific evaluation of these pollutants, nor does it carry any weight with respect to policies adopted toward these pollutants in other regulatory contexts.

The EPA is also taking this opportunity to propose additional technical and clarifying corrections to the final rule. The EPA is proposing to remove caprolactam from the list of VHAP in table 2 of the rule because this chemical has been delisted from the HAP list in section 112(b)(1) of the Act (61 FR 30816).

The EPA is proposing to revise the definition of "organic solvent" to reflect the EPA's intent in the final rule to regulate only those organic solvents considered HAP. Since the promulgation of the NESHAP there has been some confusion on what organic solvents are regulated by the rule. The work practice standards in § 63.803(d)of the NESHAP include requirements for each owner or operator of a wood furniture manufacturing facility to develop an organic solvent accounting system. In addition, § 63.803(f) requires that an affected source use no more than 1.0 gallon of organic solvent per booth to prepare the surface of the booth prior to applying the booth coating. The current rule defines organic solvent as "a volatile organic liquid that is used for dissolving or dispersing constituents in a coating or contact adhesive, adjusting the viscosity of a coating or contact adhesive, or cleaning equipment. When used in a coating or contact adhesive, the organic solvent evaporates during drying and does not become a part of the dried film." The definition in the final rule should be limited to those organic solvents which are HAP. Therefore, the EPA is proposing to add the term "hazardous air pollutant" to the definition of organic solvent (e.g., organic HAP solvent). Elsewhere in the text of the rule, the EPA is proposing to replace the term "organic solvent" with the term "organic HAP solvent."

III. Administrative Requirements

A. Docket

Docket A–93–10 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serve as the record for purposes of judicial review (except forCAA interagency review materials) (§ 307(d)(7)(A) of the Act, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in this proposal. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is not required.

C. Executive Order 12866

Under Executive Order 12866, the EPA is required to determine whether a regulation is "significant," and therefore, subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a "significant regulatory action" within the meaning of the Executive Order. The proposed rule, if promulgated, is expected to reduce the regulatory burden on facilities by relaxing requirements related to specified chemical compounds and by increasing one of the de minimis levels triggering regulatory action. The EPA has concluded that these changes will not significantly impact the environment or public health or safety.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the proposed amendments impose no new requirements on regulated entities. The proposed changes should actually ease the compliance burden of the Wood Furniture NESHAP. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or for the private sector in any one year. Nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments and imposes no obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

The economic impact analysis performed for the original rule showed that the economic impacts from implementation of the promulgated standards would not be "significant" as defined in Executive Order 12866. No changes are being made in these amendments that would increase the economic impacts.

F. Executive Order 13045

Executive Order 13045 applies to any rule that (1) has been determined to be "economically significant" as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not involve decisions on environmental health risks or safety risks that would have a disproportionate effect on children.

G. Executive Order 12875

Executive Order 12875 requires that, to the extent feasible and permitted by law, no Federal agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal government. The EPA has determined that the requirements of Executive Order 12875 do not apply to today's rulemaking, since no mandate is created by this action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wood furniture manufacturing.

Dated: June 18, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—National Emissions Standards for Wood Furniture Manufacturing Operations

2. Section 63.801 is proposed to be amended by revising the definitions for "Cleaning operations", "Disposed offsite", "Equipment leak", "Recycled onsite", "Strippable spray booth material", "VHAP of potential concern", and "Washoff operations" and by removing the definition of "Organic solvents", and adding a definition of "Organic HAP solvent" to read as follows:

§ 63.801 Definitions.

* * * * *

Cleaning operations means operations in which organic HAP solvent is used to remove coating materials or adhesives

from equipment used in wood furniture manufacturing operations.

* * * * *

Disposed offsite means sending used organic HAP solvent or coatings outside of the facility boundaries for disposal.

* * * * *

Equipment leak means emissions of VHAP from pumps, valves, flanges, or other equipment used to transfer or apply coatings, adhesives, or organic HAP solvents.

* * * * *

Organic HAP solvent means a HAP that is volatile organic liquid that is used for dissolving or dispersing constituents in a coating or contact adhesive, adjusting the viscosity of a coating or contact adhesive, or cleaning equipment. When used in a coating or contact adhesive, the organic HAP solvent evaporates during drying and does not become a part of the dried film.

* * * * *

Recycled onsite means the reuse of an organic HAP solvent in a process other than cleaning or washoff.

* * * * *

Strippable spray booth material means a coating that:

(1) Is applied to a spray booth wall to provide a protective film to receive overspray during finishing operations;

(2) That is subsequently peeled off and disposed; and

(3) By achieving (1) and (2) of this defintion reduces or eliminates the need to use organic HAP solvents to clean spray booth walls.

* * * * *

VHAP of potential concern means any VHAP from the list in table 6 of this subpart.

* * * * *

Washoff operations means those operations in which organic HAP solvent is used to remove coating from wood furniture or a wood furniture component.

* * * * *

3. Section 63.803 is proposed to be amended by revising paragraphs (c)(1), (d), (f), (i), (j), and (l)(6) to read as follows:

§ 63.803 Work practice standards.

* * * * *

(c) * * *

(1) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply coatings, adhesives, or organic HAP solvents;

* * * * *

(d) *Cleaning and washoff solvent accounting system.* Each owner or operator of an affected source shall develop an organic HAP solvent accounting form to record:

(1) The quantity and type of organic HAP solvent used each month for washoff and cleaning, as defined in § 63.801 of this subpart;

(2) The number of pieces washed off, and the reason for the washoff; and

(3) The quantity of spent organic HAP solvent generated from each washoff and cleaning operation each month, and whether it is recycled onsite or disposed offsite.

* * * * *

(f) *Spray booth cleaning.* Each owner or operator of an affected source shall not use compounds containing more than 8.0 percent by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, metal filters, or plastic filters unless the spray booth is being refurbished. If the spray booth is being refurbished (that is, the spray booth coating or other protective material used to cover the booth is being replaced), the affected source shall use no more than 1.0 gallon of organic HAP solvent per booth to prepare the surface of the booth prior to applying the booth coating.

* * * * *

(i) *Line cleaning.* Each owner or operator of an affected source shall pump or drain all organic HAP solvent used for line cleaning into a normally closed container.

* * * * *

(j) *Gun cleaning.* Each owner or operator of an affected source shall collect all organic HAP solvent used to clean spray guns into a normally closed container.

* * * * *

(l) * * *

(6) If after November 1998, an affected source uses a VHAP of potential concern listed in table 6 of this subpart for which a baseline level has not been previously established, then the baseline level shall be established as the de minimis level provided in that same table for that chemical. The affected source shall track the annual usage of each VHAP of potential concern identified in this paragraph that is present in amounts subject to material safety data sheet reporting as required by the Occupational Safety and Health Administration. If usage of the VHAP of potential concern exceeds the de minimis level listed in table 6 of this subpart for that chemical, then the affected source shall provide an explanation to the permitting authority that documents the reason for the exceedance of the de minimis level. If the explanation is not one of those listed in paragraphs (l)(4)(i) through (l)(4)(iv) of this section, the affected source shall follow the procedures in paragraph (l)(5) of this section.

4. Table 2 of subpart JJ is proposed to be revised to read as follows:

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2-Acetylaminofluorine	53963
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Bis(2-ethylhexyl)phthalate (DEHP)	117817
Bis(chloromethyl)ether	542881
Bromoform	75252
1,3-Butadiene	106990
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998
Cresols (isomers and mixture)	1319773
o-Cresol	95487
m-Cresol	108394
p-Cresol	106445
Cumene	98828
2,4-D (2,4-Dichlorophenoxyacetic acid, including salts and esters)	94757
DDE (1,1-Dichloro-2,2-bis(p-chlorophenyl)ethylene)	72559
Diazomethane	334883
Dibenzofuran	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene	106467
3,3′-Dichlorobenzidine	91941
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Dimethylaniline	121697
Diethyl sulfate	64675
3,3′-Dimethoxybenzidine	119904
4-Dimethylaminoazobenzene	60117
3,3′-Dimethylbenzidine	119937
Dimethylcarbamoyl chloride	79447
N,N-Dimethylformamide	68122
1,1-Dimethylhydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	534521
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2-Epoxybutane	106887
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylenethiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers[a]	-
Hexachlorobenzene	118741
Hexachloro-1,3-butadiene	87683
Hexachloroethane	67721
Hexamethylene-1,6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933
Methylhydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
4,4′-Methylenebis(2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
4,4′-Methylenediphenyl diisocyanate (MDI)	101688
4,4′-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
2-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Aroclors)	1336363
Polycyclic Organic Matter[b]	-
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluenediamine	95807
Toluene-2,4-diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixture)	1330207
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

[a] Includes mono- and di-ethers of ethylene glycol, diethylene glycols and triethylene glycol; $R-(OCH_2CH_2)_n$ RR-OR′ where:
n = 1, 2, or 3,
R = alkyl or aryl groups
R′ = R, H, or groups which, when removed, yield glycol ethers with the structure: $R-(OCH_2CH_2)_n$—OH.
Polymers are excluded from the glycol category.
[b] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

5. Table 4—Pollutants excluded from use in cleaning and washoff solvents is proposed to be revised to read as follows:

TABLE 4.—POLLUTANTS EXCLUDED FROM USE IN CLEANING AND WASHOFF SOLVENTS

Chemical name	CAS No.
4-Aminobiphenyl	92671
Styrene oxide	96093
Diethyl sulfate	64675
N-Nitrosomorpholine	59892
Dimethyl formamide	68122
Hexamethylphosphoramide	680319
Acetamide	60355
4,4'-Methylenedianiline	101779
o-Anisidine	90040
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
Beryllium salts	.....
Benzidine	92875
N-Nitroso-N-methylurea	684935
Bis(chloromethyl) ether	542881
Dimethyl carbamoyl chloride	79447
Chromium compounds (hexavalent)	.....
1,2-Propylenimine (2-Methyl aziridine)	75558
Arsenic and inorganic arsenic compounds	99999904
Hydrazine	302012
1,1-Dimethyl hydrazine	57147
Beryllium compounds	7440417
1,2-Dibromo-3-chloropropane	96128
N-Nitrosodimethylamine	62759
Cadmium compounds	.....
Benzo (a) pyrene	50328
Polychlorinated biphenyls (Aroclors)	1336363
Heptachlor	76448
3,3'-Dimethyl benzidine	119937
Nickel subsulfide	12035722
Acrylamide	79061
Hexachlorobenzene	118741
Chlordane	57749
1,3-Propane sultone	1120714
1,3-Butadiene	106990
Nickel refinery dust	.....
2-Acetylaminoflourine	53963
3,3'-Dichlorobenzidine	53963
Lindane (hexachlorcyclohexane, gamma)	58899
2,4-Toluene diamine	95807
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,2-Diphenylhydrazine	122667
Toxaphene (chlorinated camphene)	8001352
2,4-Dinitrotoluene	121142
3,3'-Dimethoxybenzidine	119904
Formaldehyde	50000
4,4'-Methylene bis(2-chloroaniline)	101144
Acrylonitrile	107131
Ethylene dibromide(1,2-Dibromoethane)	106934
DDE (1,1-p-chlorophenyl 1–2 dichloroethylene)	72559
Chlorobenzilate	510156
Dichlorvos	62737
Vinyl chloride	75014
Coke Oven Emissions	.....
Ethylene oxide	75218
Ethylene thiourea	96457
Vinyl bromide (bromoethene)	593602
Selenium sulfide (mono and di)	7488564
Chloroform	67663
Pentachlorophenol	87865
Ethyl carbamate (Urethane)	51796
Ethylene dichloride (1,2-Dichloroethane)	107062
Propylene dichloride (1,2-Dichloropropane)	78875
Carbon tetrachloride	56235
Benzene	71432
Methyl hydrazine	60344
Ethyl acrylate	140885
Propylene oxide	75569
Aniline	62533
1,4-Dichlorobenzene(p)	106467
2,4,6-Trichlorophenol	88062
Bis(2-ethylhexyl)phthalate (DEHP)	117817
o-Toluidine	95534

TABLE 4.—POLLUTANTS EXCLUDED FROM USE IN CLEANING AND WASHOFF SOLVENTS—Continued

Chemical name	CAS No.
Propoxur	114261
1,4-Dioxane (1,4-Diethyleneoxide)	123911
Acetaldehyde	75070
Bromoform	75252
Captan	133062
Epichlorohydrin	106898
Methylene chloride (Dichloromethane)	75092
Dibenz (ah) anthracene	53703
Chrysene	218019
Dimethyl aminoazobenzene	60117
Benzo (a) anthracene	56553
Benzo (b) fluoranthene	205992
Antimony trioxide	1309644
2-Nitropropane	79469
1,3-Dichloropropene	542756
7, 12-Dimethylbenz(a)anthracene	57976
Benz(c)acridine	225514
Indeno(1,2,3-cd)pyrene	193395
1,2:7,8-Dibenzopyrene	189559

6. Table 5—List of VHAP of Potential Concern Identified by Industry is proposed to be revised to read as follows:

TABLE 5.—LIST OF VHAP OF POTENTIAL CONCERN IDENTIFIED BY INDUSTRY

CAS No.	Chemical name	EPA de minimis, tons/yr
68122	Dimethyl formamide	1.0
50000	Formaldehyde	0.2
75092	Methylene chloride	4.0
79469	2-Nitropropane	1.0
78591	Isophorone	0.7
1000425	Styrene monomer	1.0
108952	Phenol	0.1
111422	Dimethanolamine	5.0
109864	2-Methoxyethanol	10.0
111159	2-Ethoxyethyl acetate	10.0

7. Table 6—VHAP of potential concern is proposed to be revised to read as follow:

TABLE 6.—VHAP OF POTENTIAL CONCERN

CAS No.	Chemical name	EPA de minimis, tons/yr *
92671	4-Aminobiphenyl	1.0
96093	Styrene oxide	1.0
64675	Diethyl sulfate	1.0
59892	N-Nitrosomorpholine	1.0
68122	Dimethyl formamide	1.0
680319	Hexamethylphosphoramide	0.01
60355	Acetamide	1.0
101779	4,4'-Methylenedianiline	1.0
90040	o-Anisidine	1.0
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	0.00000006
92875	Benzidine	0.00003
684935	N-Nitroso-N-methylurea	0.00002
542881	Bis(chloromethyl)ether	0.00003
79447	Dimethyl carbamoyl chloride	0.002
75558	1,2-Propylenimine (2-Methyl aziridine)	0.0003
57147	1,1-Dimethyl hydrazine	0.0008
96128	1,2-Dibromo-3-chloropropane	0.001
62759	N-Nitrosodimethylamine	0.0001
50328	Benzo (a) pyrene	0.001
1336363	Polychlorinated biphenyls (Aroclors)	0.0009
76448	Heptachlor	0.002
119937	3,3'-Dimethyl benzidine	0.001
79061	Acrylamide	0.002
118741	Hexachlorobenzene	0.004

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name	EPA de minimis, tons/yr *
57749	Chlordane	0.005
1120714	1,3-Propane sultone	0.003
106990	1,3-Butadiene	0.007
53963	2-Acetylaminoflourine	0.0005
91941	3,3'-Dichlorobenzidine	0.02
58899	Lindane (hexachlorocyclohexane, gamma)	0.005
95807	2,4-Toluene diamine	0.002
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)	0.006
122667	1,2-Diphenylhydrazine	0.009
8001352	Toxaphene (chlorinated camphene)	0.006
121142	2,4-Dinitrotoluene	0.002
119904	3,3'-Dimethoxybenzidine	0.01
50000	Formaldehyde	0.2
101144	4,4'-Methylene bis(2-chloroaniline)	0.02
107131	Acrylonitrile	0.03
106934	Ethylene dibromide(1,2-Dibromoethane)	0.01
72559	DDE (1,1-p-chlorophenyl 1-2 dichloroethylene)	0.01
510156	Chlorobenzilate	0.04
62737	Dichlorvos	0.02
75014	Vinyl chloride	0.02
75218	Ethylene oxide	0.09
96457	Ethylene thiourea	0.06
593602	Vinyl bromide (bromoethene)	0.06
67663	Chloroform	0.09
87865	Pentachlorophenol	0.07
51796	Ethyl carbamate (Urethane)	0.08
107062	Ethylene dichloride (1,2-Dichloroethane)	0.06
78875	Propylene dichloride (1,2-Dichloropropane)	0.1
56235	Carbon tetrachloride	0.1
71432	Benzene	0.2
140885	Ethyl acrylate	0.1
75569	Propylene oxide	0.5
62533	Aniline	0.1
106467	1,4-Dichlorobenzene(p)	0.3
88062	2,4,6-Trichlorophenol	0.6
117817	Bis(2-ethylhexyl)phthalate (DEHP)	0.5
95534	o-Toluidine	0.4
114261	Propoxur	2.0
79016	Trichloroethylene	1.0
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.6
75070	Acetaldehyde	0.9
75252	Bromoform	2.0
133062	Captan	2.0
106898	Epichlorohydrin	2.0
75092	Methylene chloride (Dichloromethane)	4.0
127184	Tetrachloroethylene (Perchloroethylene)	4.0
53703	Dibenz (ah) anthracene	0.01
218019	Chrysene	0.01
60117	Dimethyl aminoazobenzene	1.0
56553	Benzo (a) anthracene	0.01
205992	Benzo (b) fluoranthene	0.01
79469	2-Nitropropane	1.0
542756	1,3-Dichloropropene	1.0
57976	7,12-Dimethylbenz(a)anthracene	0.01
225514	Benz(c)acridine	0.01
193395	Indeno(1,2,3-cd)pyrene	0.01
189559	1,2:7,8-Dibenzopyrene	0.01
79345	1,1,2,2-Tetrachloroethane	0.03
91225	Quinoline	0.0006
75354	Vinylidene chloride (1,1-Dichloroethylene)	0.04
87683	Hexachlorobutadiene	0.09
82688	Pentachloronitrobenzene (Quintobenzene)	0.03
78591	Isophorone	0.7
79005	1,1,2-Trichloroethane	0.1
74873	Methyl chloride (Chloromethane)	1.0
67721	Hexachloroethane	0.5
1582098	Trifluralin	0.9
1319773	Cresols/Cresylic acid (isomers and mixture)	1.0
108394	m-Cresol	1.0
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.0

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name	EPA de minimis, tons/yr [a]
95487	o-Cresol	1.0
106445	p-Cresol	1.0
74884	Methyl iodide (Iodomethane)	1.0
100425	Styrene	1.0
107051	Allyl chloride	1.0
334883	Diazomethane	1.0
95954	2,4,5-Trichlorophenol	1.0
133904	Chloramben	1.0
106887	1,2-Epoxybutane	1.0
108054	Vinyl acetate	1.0
126998	Chloroprene	1.0
123319	Hydroquinone	1.0
92933	4-Nitrobiphenyl	1.0
56382	Parathion	0.1
13463393	Nickel Carbonyl	0.1
60344	Methyl hydrazine	0.006
151564	Ethylene imine	0.0003
77781	Dimethyl sulfate	0.1
107302	Chloromethyl methyl ether	0.1
57578	beta-Propiolactone	0.1
100447	Benzyl chloride	0.04
98077	Benzotrichloride	0.0005
107028	Acrolein	0.04
584849	2,4-Toluene diisocyanate	0.1
75741	Tetramethyl lead	0.01
78002	Tetraethyl lead	0.01
12108133	Methylcyclopentadienyl manganese	0.1
624839	Methyl isocyanate	0.1
77474	Hexachlorocyclopentadiene	0.1
62207765	Fluomine	0.1
10210681	Cobalt carbonyl	0.1
79118	Chloroacetic acid	0.1
534521	4,6-Dinitro-o-cresol, and salts	0.1
101688	Methylene diphenyl diisocyanate	0.1
108952	Phenol	0.1
62384	Mercury, (acetato-o) phenyl	0.01
98862	Acetophenone	1.0
108316	Maleic anhydride	1.0
532274	2-Chloroacetophenone	0.05
51285	2,4-Dinitrophenol	1.0
109864	2-Methyoxy ethanol	10.0
98953	Nitrobenzene	1.0
74839	Methyl bromide (Bromomethane)	10.0
75150	Carbon disulfide	1.0
121697	N,N-Dimethylaniline	1.0
106514	Quinone	5.0
123386	Propionaldehyde	5.0
120809	Catechol	5.0
85449	Phthalic anhydride	5.0
463581	Carbonyl sulfide	5.0
132649	Dibenzofurans	5.0
100027	4-Nitrophenol	5.0
540841	2,2,4-Trimethylpentane	5.0
111422	Diethanolamine	5.0
822060	Hexamethylene-1,6-diisocyanate	5.0
.....	Glycol ethers [a]	5.0
.....	Polycyclic organic matter [b]	0.01

[a] These values are based on the de minimis levels provided in the proposed rulemaking pursuant to section 112(g) of the Act using a 70-year lifetime exposure duration for all VHAP. Default assumptions and the de minimis values based on inhalation reference doses (RfC) are not changed by this adjustment.

[a] Except for ethylene glycol butyl ether, ethylene glycol ethyl ether (2-ethoxy ethanol), ethylene glycol hexyl ether, ethylene glycol methyl ether (2-methoxyethanol), ethylene glycol phenyl ether, ethylene glycol propyl ether, ethylene glycol mono-2-ethylhexyl ether, diethylene glycol butyl ether, diethylene glycol ethyl ether, diethylene glycol methyl ether, diethylene glycol hexyl ether, diethylene glycol phenyl ether, diethylene glycol propyl ether, triethylene glycol butyl ether, triethylene glycol ethyl ether, triethylene glycol methyl ether, triethylene glycol propyl ether, ethylene glycol butyl ether acetate, ethylene glycol ethyl ether acetate, and diethylene glycol ethyl ether acetate.

[b] Except for benzo(b)fluoranthene, benzo(a)anthracene, benzo(a)pyrene, 7,12-dimethylbenz(a)anthracene, benz(c)acridine, chrysene, dibenz(ah) anthracene, 1,2:7,8-dibenzopyrene, indeno(1,2,3-cd)pyrene, but including dioxins and furans.

[FR Doc. 98–16800 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6114–5]

RIN 2060–AG85

Quality Assurance and Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Environmental and Engineering Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on quality assurance and waste characterization programs applicable to transuranic (TRU) radioactive waste at the Idaho National Environmental and Engineering Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents include: "Idaho National Environmental and Engineering Laboratory Quality Assurance Project Plan For The Transuranic Waste Characterization Program" (dated August 31, 1997), "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste" (dated October 1997), and "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan" (dated December 1997). These documents are available for review in the public dockets listed in **ADDRESSES.** The EPA will use these documents to evaluate INEEL's quality assurance and waste characterization programs and processes for compliance with the WIPP compliance criteria. The EPA will conduct a review at DOE's Carlsbad Area Office the week of July 6, 1998, to verify the proper establishment of applicable nuclear quality assurance (QA) requirements and QA procedures of INEEL, and to review documents regarding the capability of INEEL to properly perform waste characterization. The EPA will perform an inspection at INEEL the week of July 27, 1998, for the purpose of evaluating the implementation of these programs. This notice of the inspection and comment period accords with the EPA's WIPP compliance criteria at 40 CFR Part 194.

DATES: The EPA is requesting public comment on these documents. Comments must be received by the EPA's official Air Docket on or before July 24, 1998.

ADDRESSES: Comments should be submitted to: Docket No. A–93–02, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

The DOE documents, "Idaho National Environmental and Engineering Laboratory Quality Assurance Project Plan For The Transuranic Waste Characterization Program" (dated August 31, 1997), "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste" (dated October, 1997), and "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan" (dated December 1997), are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–93–02, Category X-B, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10am-9pm, Friday-Saturday, 10am-6pm, and Sunday 1pm-5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday-Thursday, 8am-9pm, Friday, 8am-5pm, Saturday-Sunday, 1pm-5pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday-Thursday, 8am-12pm, Friday, 8am-5pm, Saturday, 9am-5pm, and Sunday, 1pm-9pm.

As provided in the EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Chuck Byrum, Office of Radiation and Indoor Air, (505) 665–7555, or call the EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102–579), as amended (Pub. L. No. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, the EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR Part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (condition 2 of Appendix A to 40 CFR Part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of the EPA's decision-making process, the DOE is required to submit to the EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, the EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

The documents submitted to the EPA for INEEL are: "Idaho National Environmental and Engineering Laboratory Quality Assurance Project Plan For The Transuranic Waste Characterization Program" (dated August 31, 1997), "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste," (dated October, 1997), and "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan," (dated December 1997). The "Idaho National Environmental and Engineering Laboratory Quality Assurance Project Plan For The Transuranic Waste Characterization Program" sets forth the waste characterization procedures for TRU wastes at INEEL. The "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste" sets forth the

procedures to certify contact-handled stored TRU waste. The "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan" sets forth the quality assurance program that the DOE purports to comply with the requirements of § 194.22. After the EPA reviews these documents for adequacy, the EPA will conduct an inspection of a DOE audit of the site to determine whether the requirements set out in these documents are being adequately implemented in accordance with Conditions 2 and 3 of the EPA's WIPP certification decision (Appendix A to 40 CFR Part 194). In accordance with § 194.8 of the WIPP compliance criteria, the EPA is providing the public 30 days to comment on the documents placed in the EPA's docket relevant to the site approval process.

If the EPA determines that the provisions in the documents are adequately implemented, the EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow the DOE to begin shipping TRU waste from INEEL. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: June 16, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–16798 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62155; FRL–5762–3]

Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed waiver.

SUMMARY: EPA has received from the Commonwealth of Massachusetts a request for a waiver from the requirements of 40 CFR part 763, subpart E, Asbestos-Containing Materials in Schools regulations. This document announces an opportunity for public review and comment on the Massachusetts waiver request.

DATES: Comments on the waiver request must be received by July 24, 1998.

ADDRESSES: Written comments must be sent in triplicate, identified by the docket control number OPPTS–62155 to: James M. Bryson, Regional Abatement Coordinator, Environmental Protection Agency, Office of Ecosystem Protection, CPT Region 1, John F. Kennedy Federal Building, Boston, MA 02203-0001. Copies of the Massachusetts waiver request are on file and may be reviewed at the EPA Region I Office.

Comments and data may also be submitted electronically to bryson.jamesm@epamail.epa.gov. Follow the instructions under SUPPLEMENTARY INFORMATION of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: James M. Bryson at 617–565–3836.

SUPPLEMENTARY INFORMATION: This document is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act (AHERA), Pub. L. 99-519. AHERA is the name commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools. For purposes of this document, EPA will use the AHERA designation.

In the **Federal Register** of October 30, 1987 (52 FR 41946), EPA issued a final rule as required in AHERA, the Asbestos-Containing Materials in Schools Rule (40 CFR part 763, subpart E), which requires all Local Education Agencies (LEAs) to identify Asbestos-Containing Building Materials (ACBMs) in their school buildings and to take appropriate actions to control the release of asbestos fibers. The LEAs are required to describe their asbestos control activities in management plans, which must be available to all concerned persons and submitted to the State Governor's Designee. The rule requires LEAs to use specially trained and accredited persons to conduct inspections for asbestos, develop management plans, and design and conduct actions to control asbestos. The recordkeeping and reporting burden associated with waiver requests was approved under OMB control number 2070-0091. This document merely announces the Agency's receipt of a waiver request and therefore, imposes no additional burden beyond that which was covered under existing OMB control number 2070-0091. Send any comments regarding the burden estimate or any other aspect of this collection to Chief, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, "Attention: Desk Officer."

Under section 203 of AHERA, EPA may, upon request of a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or in part the requirements of the rule promulgated under section 203, if the State has established and is implementing or intends to implement a program of asbestos inspection and management which is at least as stringent as the requirements of 40 CFR part 763, subpart E. The AHERA rule requires that specific information be included in a waiver request. The rule establishes a process for EPA to review waiver requests, and sets forth procedures for

oversight and rescission of waivers granted to the States.

The rule requires States seeking waivers to submit requests to the Regional Administrator for the EPA Region in which the State is located. EPA is hereby issuing a notice in the **Federal Register** announcing receipt of the request and soliciting written comments from the public pertaining to the Commonwealth of Massachusetts' AHERA waiver request. Comments must be submitted by August 24, 1998. If during the comment period, EPA receives a written objection to the State's request, EPA will schedule a hearing to be held in the affected State after the close of the comment period.

On September 26, 1997, Acting Governor Argeo Paul Cellucci submitted to John P. DeVillars, Regional Administrator, EPA Region I, a request for a waiver under 40 CFR 763.98. The request was received by the EPA Regional Office on September 27, 1997. The State's submittal requested a waiver from all requirements of 40 CFR part 763, subpart E.

The Massachusetts waiver request was deemed complete by EPA on October 14, 1997, in that it contained all of the following provisions which are required by the AHERA regulations.

1. A copy of the State provisions and proposed provisions relating to its program of asbestos inspection and management in schools for which the request is made.

2. The name of the State agency that is responsible for administering and enforcing the requirements for which a waiver is requested. The names and job titles of responsible officials in that agency, and telephone numbers whom the officials can be contacted.

3. Detailed reasons, supporting papers, and the rationale for concluding that the State's asbestos inspection and management program provisions, for which the request is made, are at least as stringent as the requirements of 40 CFR part 763, subpart E.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how the State intends to handle them.

5. A statement of the resources that the State intends to devote to the administration and enforcement of the provisions relating to the waiver request.

6. Copies of any specific or enabling State laws and regulations relating to the request, including provisions for assessing criminal and/or civil penalties.

7. Assurance from the Governor, Attorney General, or the legal counsel of the lead agency that has the legal authority necessary to carry out the requirements relating to the request.

EPA may waive some or all of the requirements of 40 CFR part 763, subpart E if:

1. The State has the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request. The Massachusetts Department of Labor and Workforce Development recognizes that asbestos exposure in schools (and elsewhere) is a serious concern. The Massachusetts General Assembly also recognized this, and during a 1987 legislative session a bill was passed—Mass Gen. Laws ch. 149, Sec. 6C-authorizing the Air Pollution Control Division, Massachusetts Department of Labor and Workforce Development, to implement State requirements under AHERA to establish a certification program for abatement contractors, develop and implement asbestos work practices and exposure standards, collect fees, and levy fines. Effective June 30, 1993, the revised Massachusetts asbestos regulation required the certification of all persons engaging in asbestos-related work. The requirement applies to all public and commercial buildings as well as schools. The revised regulation also contains more stringent work practices for asbestos abatement and expands the enforcement capabilities of the State in regards to false training documents submitted to obtain certification. The Massachusetts General Assembly has enacted authority for the Massachusetts Department of Labor and Work Force Development to enforce rules and regulations to minimize the risk to the public from exposure to asbestos, including requirements for asbestos management plans to be submitted and implemented by schools. All requisite legislative/legal authority to implement the AHERA waiver program has been adopted, and no problems are anticipated in meeting waiver objectives.

2. The State's program of asbestos inspection and management in schools relating to the waiver request and implementation of the program will be at least as stringent as the requirements of 40 CFR part 763, subpart E. On August 25, 1997, Massachusetts adopted the requirements of 40 CFR part 763, subpart E in their entirety, with the exception of §§ 763.97 and 763.98, into the Massachusetts Department of Labor and Workforce Development Regulation No. 453 CMR 6.00 "The Removal, Containment or Encapsulation of Asbestos School Requirements." The State indicated in its August 25, 1997 letter that it intends to administer these regulations in a manner that will be at least as stringent as the requirements of 40 CFR part 763, subpart E.

3. The State has an enforcement mechanism to allow it to implement the program described in the waiver request. The State conducts routine AHERA inspections and abatement inspections. Routine AHERA inspections result in a determination of compliance regarding the creation, maintenance and implementation of an adequate, updated management plan. Abatement inspections focus on assessing compliance with the AHERA and State asbestos requirements, including such things as implementation of appropriate work practices, compliance with accreditation (State Certification) requirements and proper recordkeeping.

Abatement inspections are initiated as a result of tips or complaints, to assess compliance with any applicable State or EPA asbestos rules. In addition, the State will continue to update its existing Neutral Administrative Inspection Scheme (NAIS) in support of targeting LEAs and other persons for AHERA compliance inspections. The NAIS will include a specific method or criteria for selecting inspection targets and will comply with EPA's National Compliance Monitoring Strategies for AHERA. The State also has completed an enforcement response policy to determine the most appropriate enforcement action for each violation of the State's laws and regulations.

4. The State has qualified personnel to carry out the provisions relating to the waiver request. The State has 18 employees trained to stringently enforce, the requirements of 40 CFR part 763, subpart E. The program will be carried out by staff in the Massachusetts Department of Labor and Workforce Development. Of these, four staff work full-time under the EPA TSCA Asbestos Enforcement Grant. These staff are fully-trained and certified as Building Inspector/Management Planners and Contractor/Supervisors. Two of four staff persons are conducting full AHERA inspections. One staff person is conducting Worker Protection Rule (40 CFR part 763, subpart E) inspections and is currently training to conduct full AHERA inspections. The fourth person administers the grant with EPA and works on case development resulting from inspections.

5. The State will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request. Based upon review by the EPA Region I Office, the Agency

feels that the resources developed by the Massachusetts Department of Labor and Workforce Development are adequate to effectively implement and administer the asbestos program in Massachusetts.

6. Final approval of the program by EPA will require effective implementation and continued use of the EPA-approved NAIS, logging and tracking system, enforcement strategy and standard operating procedures, enforcement response policy, and communication strategy. EPA's final approval of the State's program will require the State to continue to provide adequate resources to support the administration of the program.

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule at 40 CFR part 763 have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 and its implementing regulations at 5 CFR part 1320 and assigned OMB control number 2070–0091.

With this notice, EPA is hereby announcing receipt of the State's request and soliciting written comments from the public pertaining to the Commonwealth of Massachusetts' AHERA waiver request. Comments must be submitted by July 24, 1998. If during the comment period, EPA receives a written objection to the State's request, EPA will schedule a hearing to be held in the Commonwealth after the close of the comment period.

The official record for this document, as well as the public version, has been established for this document under docket control number "OPPTS–62155" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

bryson.jamesm@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption, Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–62155." Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects in Part 763

Environmental protection, Asbestos, Administrative practice and procedure, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: June 15, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–16770 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–3967; Notice 1]

RIN 2127–AG88

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on lighting to relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources in motor vehicle lamps. These are light emitting diodes (LEDs) and miniature halogen bulbs. The standard would be amended to add two paragraphs reflecting SAE specifications for measurement of photometrics in taillamps and in certain stop and turn signal lamps with more than one lighted section and for LED heat testing. The agency issued a proposal on these issues in 1994, but terminated rulemaking the following year. These issues are being revisited in response to a petition for rulemaking from Reitter & Schefenacker GmbH & Co. KG.

DATES: Comments are due on the proposal August 10, 1998. The proposed effective date is one year after publication of the final rule. However, the agency is soliciting comments on whether optional compliance should be allowed in advance of that date.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Chris Flanigan, Office of Safety Performance Standards (202–366–4918).

SUPPLEMENTARY INFORMATION:

Introduction

On April 8, 1994, the agency published a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment," to relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources in lamps (59 FR 16788). These new lamp technologies include light-emitting diodes (LEDs), miniature halogen bulbs, and other light sources with a limited luminous flux. Luminous flux is the total light emitted from a light source, in all directions. All these light sources will be referred to as "limited flux light sources" hereafter. Compared with light sources with traditional filaments, non-filament light sources such as LED and miniature halogen light sources emit only a fraction of the luminous flux of filament light sources. Consequently, to achieve the same performance as a single traditional filament light source, it is necessary to use multiple non-traditional light sources, hence their identification as "limited flux light sources." In the 1994 proposal, the agency asked for comment on how it might specify a means of determining the number of equivalent lighted sections for lamps equipped with these new lamp technologies. The agency wishes Standard No. 108 to be responsive to new technologies and to remove inadvertent impediments to their implementation. The notice also proposed a performance requirement to determine an LED lamp's ability to maintain photometric compliance under increased temperature conditions.

The requirements contained in Standard No. 108 for signal lamps are based on Society of Automotive Engineers (SAE) Standards and Recommended Practices that were developed to accommodate incandescent bulbs, i.e., those with filaments. These were developed many years before LEDs when incandescent bulbs were the only light sources in use at that time. New lighting source technologies have arisen that have fundamentally different characteristics than incandescent lamps. Thus, it is difficult to apply the specifications of Standard No. 108 to the new

technologies. Attempts to do so have revealed some ambiguities and inconsistencies with the design and method of performance of the new technologies. The SAE standards for taillamps, and for stop and turn signal lamps on vehicles with an overall width of less than 80 inches, treat a lamp having one bulb as a lamp with a single lighted section, a lamp having two bulbs as one with two lighted sections, and a lamp with three or more bulbs as one with three lighted sections. Thus, the standard requires that, if a lamp uses three or more light sources, it must meet the minimum photometric requirements of a three-compartment lamp. This becomes a problem when a manufacturer intends to make an LED lamp which is equal in size to a conventional incandescent lamp with one or two lighted sections. To make such an LED lamp, many more than three LEDs are needed. Typically, 15 or more are necessary. Thus, when there are three or more LEDs in one compartment, under current interpretations regarding the light output of one, two, and three-lighted section lamps, those LEDs must achieve the light intensity of a lamp with three lighted sections to comply with Standard No. 108. This results in a lamp which is overly bright in comparison with a similarly-sized single bulb/single lighted section incandescent lamp. This is because this lamp would be approximately one-third the size of a lamp with three lighted sections, and must achieve about 1.3 times the intensity of a lamp with a single lighted section. Further, it is unnecessarily expensive because a greater number of LEDs must be used to achieve the intensity of three lighted sections than would otherwise be used to achieve the intensity of a single lighted section.

In their comments on the 1994 NPRM, the American Automobile Manufacturers Association (AAMA), Ford Motor Company (Ford), and General Motors Corporation (GM) all indicated that they thought it was premature for the agency to specify unique requirements for lamps equipped with these light sources until studies could be completed to assess concerns regarding possible perceptions with respect to their brightness. AAMA wanted to gather data on intensity, brightness, and dimensional features (e.g., aspect ratio—the ratio of length to height) of signal and marker lamps of recent model vehicles. Other commenters could not reach a consensus on an appropriate specification.

Based on these comments, the agency concluded that, although the lighting industry had a solution acceptable to it, there was a great uncertainty within the vehicle industry about the best method of regulating the photometric requirements of non-traditional light sources for signal and marker lamps. In view of this uncertainty on the part of the automotive industry, the agency terminated the rulemaking on June 19, 1995 (60 FR 31939), stating that it might reinitiate it at a time when an outcome that would be more acceptable was a prospect. The termination also covered the proposed performance requirement to determine an LED lamp's ability to maintain photometric compliance under increased temperature conditions, as NHTSA anticipated that the industry, in a short time, would develop a test procedure more representative of the real world.

On February 6, 1997, Reitter & Schefenacker GmbH & Co. KG (Schefenacker), a lighting manufacturer, petitioned the agency to revisit this issue. Schefenacker stated that Standard No. 108 is design restrictive and a burden for vehicle and signal lamp manufacturers because it makes LED signal lamps unnecessarily expensive and, in certain cases, too large to fit on the vehicle. This is because, in nearly all cases, lamps which use LEDs must meet the requirements for a three-section lamp. This imposes design restrictions because the lamps must be made larger to accommodate the additional LEDs. According to Schefenacker, this can increase the cost of the lamp by 50 percent. The petitioner also stated that, due to the increased number of LEDs in the lamps, the brightness is increased and may cause discomfort glare to following drivers. Schefenacker argued that if Standard No. 108 were amended to account for the different characteristics of LEDs, the size of lamps would be comparable to conventional lamps and there would be no fundamental change in appearance. Based on these arguments, NHTSA has decided to reopen rulemaking.

The second issue addressed in the 1994 NPRM was the effect of heat on the luminous flux of LEDs. Unlike incandescent light sources, the luminous flux of LEDs drops rapidly as their temperature increases. This could be a problem if the lamps are illuminated for a long period of time, such as can occur with use of the hazard warning system or when stop lamps are applied in dense urban traffic. LEDs can also become heated if they are used in an environment with a relatively high ambient temperature. The agency's position on this issue has been that LEDs should conform at any temperature in the motoring environment. The SAE addresses this characteristic in SAE Recommended Practice J1889 JUN88 "L.E.D. Lighting Devices." This specification contains tests which test the performance of LEDs at higher temperatures.

Background

Limited Flux Light Sources

The adoption of requirements for a center high-mounted stop lamp (CHMSL) has resulted in some creative solutions to the problem of integration of the lamp into the overall vehicle design. To reduce the size and obtrusiveness of the lamp, while maintaining the photometric conformance called for by Standard No. 108, manufacturers began to resort to smaller light sources. Limited flux light sources have been used in CHMSLs (because the standard contains no light source specifications for CHMSLs, any light source is permissible).

However, the application of Standard No. 108 to lamps with limited flux light sources raises the question as to how to determine compliance with photometric requirements, specifically, how to define a lighted section. SAE Standards J586 FEB84 and J588 NOV84 incorporated by reference and applying to stop lamps and turn signal lamps on vehicles whose overall width is less than 2032 mm (80 inches), and SAE Standard J585e September 1977, applying to taillamps on all vehicles, specify requirements to be met by lamps with one, two, and three lighted sections. These standards are based upon incandescent bulb technology where requirements are generally met by using one bulb for each lighted section. The specification of 32 candela per lighted section is based upon the highest output of contemporary incandescent signal lamp bulbs. When requirements are intended to be met by limited flux light sources, the light output specification cannot be provided by a single light source, but must be provided by multiple light sources. However, current interpretations of what is necessary to comply with Standard No. 108 do not contain any differentiations based upon the type of light source, only upon the number of light sources, because the SAE standards have not contained any differentiations based on type of light source. Thus, if 20 LEDs provide the same illumination as a single filament bulb, a lamp equipped with the former is considered a lamp with three lighted sections for purposes of compliance, not a single-section lamp. To meet the photometric requirements for three-

section lamps, manufacturers must use an overly bright and costly array of LEDs.

Schefenacker suggested three ways to address the problem. The first is to require lamps which use limited flux light sources to meet the photometric requirements of lamps with one lighted section regardless of the size of those lamps. The second is to use luminous flux limits by summing the luminous flux of LED's, thereby providing some method of equating the number of LEDs to the equivalent number of lighted sections: lamps with up to 32 candlepower (cp) would be considered as having one section; between 32 cp and 64 cp, as having two sections; and greater than 64 cp, as having three sections. A lamp's candlepower would be determined by summing the rated candlepowers for each individual light source in a lamp. For example, if a lamp used 40 LEDs, each with a rated candlepower of one cp, the lamp's candlepower would be 40 cp. Under this approach to the problem, the lamp would be considered to be a lamp with two lighted sections because the sum of the rated candlepower is between 32 and 64 cp. The third way is to use size-dependent criteria for determining the equivalent number of lighted sections. A lamp would be regarded as having the equivalent of one lighted section if the maximum horizontal or vertical linear dimension of the effective projected luminous lens area of the lamp is less than 150 millimeters (mm), two lighted sections if the dimension is 150–300 mm, and three lighted sections if the dimension is greater than 300 mm. This is the specification which is contained in SAE J1889 and which was also proposed in the 1994 NPRM.

Hewlett-Packard, a manufacturer of LEDs, recommended another method to deal with this issue. Under this approach, which the agency proposed in the 1994 NPRM as an alternative, lamps using LEDs or other limited flux light sources need only meet the intensity specifications for single-section lamps, provided that: (a) the maximum horizontal or vertical distance between the apparent optical centers of the closest adjacent light sources within the lighted section of the lamp are not greater than 2.0 centimeters (cm); and (b), if there were more than one lighted section, there is not more than 2.0 cm between the edge of the closest adjacent lighted sections. Measuring the distance between the optical centers would therefore provide an objective method for determining whether there is more than one lighted section.

Arguing that the LED requirements in SAE J1889 were far too limiting from standpoints of cost and styling, Hewlett-Packard explained the rationale for its recommendation as follows:

> SAE's higher intensity requirements for multiple compartment lighting devices stems from the fact that the apparent "brightness" of any light emitting area is not solely dependent on the intensity measured, but also the area of the emitter. Any two light sources can exhibit the same intensity measurement, while the source with the smaller light emitting area will appear brighter to the human eye. This is due to the nature of the human eye's perception of light, and is frequently taken into account in the design of "sterance [or brightness] matched" displays in the information display industry. This effect is also demonstrated by the response of consumers who mention that LED high mount stop lamps are very bright, when in fact they are designed to meet the same intensity requirements as incandescent high mount stop lamps. The difference is in the light emitting area. The smaller the light emitting area for a given intensity, the brighter the appearance to the human eye.
>
> With this in mind, the proposed change in [Standard No. 108] will guarantee that at least a minimum level of brightness, or sterance, will be maintained regardless of length, area, or shape of the lighting device. This will allow lighting designers to fully realize all the benefits of styling and flexibility of LED lighting and provide a conspicuous and understandable signal device whether it be in tail, stop, or turn mode.

To the agency's knowledge, the vehicle industry has not come to a consensus on how to define the number of lighted sections in a lamp since NHTSA published the 1994 NPRM. Because of the multitude of lamp designs (different shapes, sizes, lens optics, etc.) installed in on today's vehicles, it may take more time to determine the best method. However, notwithstanding the absence of a consensus, the agency believes that it should move forward with rulemaking. Unlike 1994, when the agency issued a proposal on its own initiative, this time it is issuing a proposal in response to a petition from a member of the industry.

Agency Proposal Regarding Limited Flux Light Sources

This notice outlines the advantages and disadvantages of its proposed solution, as well as those of three alternative solutions suggested above. The public is invited to submit other recommendations. However, the agency wishes to make clear that if other recommendations are made and if they are substantially different from those which are proposed, their consideration could necessitate the issuance of a supplemental proposal and thereby prolong the rulemaking process. In any event, the agency plans to proceed to a final rule to resolve this issue.

The following is a discussion of possible solutions and their advantages and disadvantages:

1. At the present, the agency tentatively concludes that the most logical solution is the one that it is proposing: the adoption of size-dependent criteria for determining the equivalent number of lighted sections. A lamp would be regarded as having the equivalent of one lighted section if the maximum horizontal or vertical linear dimension of the effective projected luminous lens area of the lamp is less than 150 millimeters (mm), two lighted sections if the dimension is 150–300 mm, and three lighted sections if the dimension is greater than 300 mm. This is essentially the same specification contained in SAE J1889 and proposed by NHTSA in 1994. Schefenacker, too, recommended this solution. This specification was developed and accepted by the lighting industry for this very purpose. Further, adopting this specification would satisfy Federal requirements (i.e., National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities) concerning Federal agencies' use of industry consensus standards except where inconsistent with law or otherwise impractical . Adopting accepted industry consensus standards eases the regulatory burden on manufacturers since many of them are already meeting them. However, given that SAE J1889 was adopted in 1988, an important question is whether the parameters remain representative of lamp designs that are in use now and those that are contemplated in the foreseeable future. NHTSA invites comments on this issue.

2. Another possible solution suggested by Schefenacker is that all lamps which use limited flux light sources meet the photometric requirements of lamps with one section. This specification assumes that a cluster of these bulbs will be used to achieve the same effect as one incandescent bulb. If, however, these bulbs are grouped with the intention of achieving the same effect as a two-section lamp with two incandescent bulbs, the lamp may be too dim. If a lamp with two or more sections is intended, the number of limited flux light sources which would normally be used for a one-section lamp could be spread out over the area of the multisection lamp. Such a lamp would comply with SAE J1889 and be less costly, but it would appear to observers to be only about half as bright as lamps that use normal

incandescent bulbs. This could present a problem in fog because the already-diffuse light emitting from the lamp would be diffused further by the fog.

3. Another alternative suggested by Schefenacker would be to use the luminous flux limits to determine the number of lighted sections. Lamps with up to 32 candlepower (cp) would be considered as having one section; between 32 cp and 64 cp, as having two sections; and greater than 64 cp, as having three sections. A lamp's candlepower would be determined by summing the rated candlepower for each individual light source in a lamp. For example, if a lamp used 40 LEDs, each with a rated candlepower of one cp, the sum would be 40 cp. Under this suggested way of addressing the problem, the lamp would be considered to be a two-section lamp because the sum of the rated candlepower is between 32 and 64 cp. This is an easily enforceable specification for some light sources, typically miniature halogen bulbs, as the ratings of the bulbs could be easily determined. Thus, each lamp would be clearly defined by the bulbs it is designed to use.

However, there may be some problems with this approach for manufacturers which produce LED and neon light sources. If the summed numbers do not represent the real world, or because of a lack of standardization, it is possible that this approach would not be viable. NHTSA therefore requests comments as to the representativeness of the numbers. This approach may also cause problems in the design of lamps. For example, if the optimal design for a certain lamp calls for 33 LEDs, rated at one cp per LED, the lamp would be required to comply with the two-section specifications. This is because the sum of the candlepower of the LEDs would total 33 cp, which is between 32 and 64 cp. To comply with the two-section requirements, more LEDs may have to be added to achieve the required level of brightness. This may make the lamp overly bright and costly, the same situation that exists today. However, the agency is interested in having comments on all the suggestions made by Schefenacker as discussed above.

4. Another alternative submitted by Hewlett-Packard was also proposed in the 1994 NPRM. Under this alternative, lamps using LEDs or other limited flux light sources need only meet the intensity specifications for single-section lamps, provided that: (a) the maximum horizontal or vertical distance between the apparent optical centers of the closest adjacent light sources within the lighted section of the lamp are not greater than 2.0 centimeters (cm); and (b), if there were more than one lighted section, there is not more than 2.0 cm between the edge of the closest adjacent lighted sections.

This alternative would provide maximum flexibility for manufacturers who use LEDs because they could use many configurations. However, miniature halogen bulbs may be too large to put in some intricate configurations for lamp design, especially for manufacturers of LEDs such as Hewlett-Packard. Further, this approach may provide too much flexibility. For instance, it would allow a manufacturer to write its name in script form in lights, provided each light source was within 2.0 cm of another other, and thus have it considered a single-section lamp. A specification such as this could allow too much flexibility and result in lamps which are so unconventional in appearance that they would be likely to be misunderstood by the public. One goal of Standard No. 108 is to provide lamps which are fairly universal in appearance for assuring quick recognition of stop and turn signal lamps. This can be critical in many situations such as abrupt stops and turns. Nevertheless, the agency wishes to have informed opinion on this approach, and invites the public to comment on it.

Within the past year, the agency received a suggestion from the Chair and a member of the SAE Heavy Duty Lighting Standards Committee. Addressing the issue of LEDs and lighted sections, they recommended amending Standard No. 108's paragraph on definitions.
They would add a definition for "composite light source:"

> Composite light source means a device consisting of two or more adjacent light sources, with or without common or individual primary reflectors, integrated and powered by one electronic module or electric circuit designed to function as a single, independent unit providing single or multiple lighting functions. The device forms an indivisible joined unit which cannot be dismantle without rendering it completely unusable.

They would also change the current definition of "multiple compartment lamp" to read:

> Multiple compartment lamp means a lamp which provides its lighting function using two or more lighted areas, each of which is lighted by a separate, composite, or single light source, and which are joined by one or more common parts, such as a housing or lens.

While these definitions would help solve problems for lamps using LEDs, they would not resolve issues relating to miniature halogen lamps or other miniature light sources. The last sentence of the definition suggested for "composite light source" specifies that the unit be indivisibly joined and not able to be dismantled without rendering it useless. Lamps that use LEDs generally incorporate a circuit board with all the LEDs permanently attached to it. However, other miniature light sources use bulbs that can be individually replaced. NHTSA believes that its rulemaking should take into account all miniature light sources. However, the agency invites comments on the approach discussed above.

A GM safety office employee has asked a staff member of the agency to consider an issue that is related to this rulemaking. Standard No. 108 requires that failure of a turn signal lamp be indicated to the vehicle operator. In many turn signal systems, when a failure occurs, the turn signal indicator light ceases to flash and begins to operate in a steady-burning mode. The question arises as to how many LEDs in a turn signal lamp using LEDs must fail in order for the failure to be indicated to the driver. Certainly, a failure of one or two LEDs out of, say, 40 ought not to create a noticeable decrease in turn signal intensity. However, a level could be reached which could significantly affect the lamp's effectiveness, when 15, 20, or more LEDs cease to function. The agency views this rulemaking as an opportune and appropriate time to solicit comment on this issue, and asks that each person wishing to comment address it specifically.

Finally, there is the possibility of regulating the luminance of the lamp itself, without reference to the number of sections or light sources. Performance standards could be adopted that would assure the lamps would have a maximum and minimum luminance. While such a change might be difficult, with no enhancement of safety, this approach could allow design flexibility that could reduce lamp and vehicle costs. The agency, therefore, is inviting comments on this possibility and how it might be developed and implemented.

In accordance with the discussion above, NHTSA is proposing the addition of a new paragraph S5.1.1.23 to read:

> S5.1.1.23 Instead of being designed to conform to photometric requirements based on the number of lighted sections specified in SAE J586 FEB84, SAE J588 NOV84, and SAE J585e September 1977, as applicable, each stop lamp, turn signal lamp, and taillamp that is equipped with light-emitting diodes or other miniature light sources, and that needs more than one light source to achieve compliance with the photometric performance required of a single lighted

section, shall be designed to conform to photometric requirements based on the dimension of the effective projected luminous lens area for the function being tested. A lamp is regarded as having one lighted section if the maximum horizontal or vertical linear dimension of the effective projected luminous lens area of the lamp is less than 150 millimeters (mm), two lighted sections if the dimension is 150–300 mm, and three lighted sections if the dimension is greater than 300 mm.

Effective Projected Luminous Area

At numerous places in Standard No. 108, there are requirements for the "minimum effective projected luminous area" of signal and marker lamps. This area is defined by the standard as being the area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (½ degree radius around the test point). The rationale for area requirements is to ensure that the lamps' luminance is not too high, while reducing the light dispersion effect of dirt on the lens. This is especially important for larger vehicles that tend to be cleaned less often.

In the case of lamps which use LEDs or other types of miniature light sources, the individual light sources each produce a narrow beam of light. Because of this, the individual light sources illuminate very distinct areas of the entire lamp lens. For example, looking at a single, circular tail lamp which uses 25 LEDs as its light sources, the narrow beam of each LED creates an appearance of 25 small illuminated circles within the larger circular lens. The area surrounding these 25 illuminated circles appears to not be illuminated. However, based on informal conversations with a lamp manufacturer, on some lamps, if one were to cover the smaller circular areas on the lens where the LED beams are projected on the lens surface, there is a small amount of light that can be detected from the darker regions which are not covered. This small amount of light allows the lamp to comply with the minimum effective projected luminous area requirements, as the total light emitted is from the entire lamp surface.

While lamps using miniature light sources may technically comply with the minimum effective projected luminous area requirements of the standard, the agency is concerned that dirt on the lens could easily negate the light emission from these interstices such that the lamp becomes markedly smaller in lens area for emitted light. That is, the minuscule amount of light emitted from the areas outside the beams of the light sources may not be enough to be seen in some conditions, such as driving in very bright sunlight or with mildly dirty lenses.

The agency's concerns are even greater for some combination lamp designs using miniature light sources. In some lamp designs the stop, turn, and taillamp functions are incorporated into one lamp. For some of these lamps, only a fraction of the total number of light sources are illuminated for the taillamp signal. The taillamp function may utilize one-tenth of the miniature light sources that the stop or turn lamp uses. Again, industry testing of these turn signals has shown that there still is a small amount of light emitted from the entire lens surface. But, because of the smaller number of light sources being illuminated for some tail lamps, the likelihood is increased that the critical areas of the lamp could be reduced in output.

The agency would like to have comments on this issue. Specifically, NHTSA wishes to have the view of commenters on whether lamps which use miniature light sources with narrow beams are more likely to have performance degraded than those lamps where the light is more evenly distributed over the lens. NHTSA would like comments on the quantum of light emitted outside the narrow beams of light from the miniature light sources and whether it is sufficient for the lamp to retain some functionality in case it is impaired by road contaminants. In addition, commenters should address how the minimum effective projected luminous area should be measured to account for the narrow beams of LED's and similar sources, and whether there should be requirements to distribute the light more evenly over the lens surface.

Heat Performance of LEDs

In the 1994 NPRM, the agency proposed to adopt the text of SAE J1889 which specifies (paragraphs 3.1.5.2 and 3.1.5.3) a temperature condition for testing LED lamps to photometric maxima and minima. For measurements of the maximum photometrics, an unenergized test device is stabilized at the laboratory's ambient temperature, which is 23 ±5 degrees Celsius (°C). It is then energized. The maximum values within 60 seconds of the initial "on" time are recorded. For measurements of the minimum requirements, an energized device is also stabilized within the same temperature range until either the heat buildup saturation has occurred, or 30 minutes has elapsed, whichever first occurs. Measurements are then taken of the already-energized lamp. However, this test procedure does not cause LEDs to reach the temperatures they could experience in very hot climates. Because of this, the industry asked the agency to defer rulemaking on this issue so that it could develop a test procedure which represents real world conditions. However, the industry has not moved forward on this issue, and the agency has decided to repropose the procedure.

This procedure provides a simple method for testing the relationship between temperature and light intensity by having the lamps heat themselves. It does not replicate the environment in which lamps on motor vehicles must produce correct signals for the transmission of safety information. In the real world, lamps are heated by the environment, such as use on a hot day in Florida. It is conceivable that lamps could be placed in a heat chamber to simulate the environment and tested photometrically. However, this would not be practicable because of the expense of tests and their lack of repeatability. The SAE test represents a thoughtful and repeatable solution to this simulator. However, developing a practicable test procedure that replicated that environment would be problematic. NHTSA believes that a test procedure which represents real world conditions would be overly burdensome to the industry. Attempting to create such a procedure would require a heat chamber to heat the LEDs to a temperature that represents a very hot climate. If the lamp were to be placed in a heat chamber and heated, the lamp would have to be removed when it reached the desired temperature and mounted in the test device. During this interval, the temperature of the lamp would decrease, thus reducing the accuracy and repeatability of the test. To maintain the heat, the test device would have to be located in a large heat chamber. To create a test apparatus which could heat the LEDs, and also house the photometric equipment, would be very costly, assuming that the equipment would be accurate and reliable at such high temperatures. Also challenging is assuring that an optically correct window can be fitted to the chamber so that the lamp's beam can be projected to the intensity measuring equipment located outside the test chamber if that equipment cannot be located inside the chamber.

To the agency's knowledge, the industry has not developed a procedure for testing the effects of temperature on LED lamps that is more representative

than that which is contained in SAE J1889 and that avoids the practical testing problems described above. Therefore, NHTSA is proposing that Standard No. 108 be amended to include the test procedure contained in SAE J1889. Although it does not represent the worst case conditions of the driving environment, it is a standard which was created by the industry to test LEDs' ability to maintain their photometric compliance when heated. As stated previously, it is preferable for the agency to adopt industry standards whenever it is feasible to do so. Additionally, this procedure is presently under consideration for incorporation in European standards in Geneva.

The agency thus proposes to add a new paragraph S5.1.1.24 to read:

S5.1.1.24 Any lamp whose light is provided by light-emitting diodes shall be designed to conform to the photometric requirements appropriate for its type when the lamp is stabilized at 23±5 degrees C, energized, tested 60 seconds after being energized, and allowed to operate continuously until either the internal heat buildup has stabilized or for 30 minutes, whichever occurs first, and tested again.

Optical Combinations

Standard No. 108 contains requirements for lamps and lamp functions which are combined optically. Paragraphs S5.4(b) and (c) refer to "combined optically," which is defined in SAE J387, "Terminology—Motor Vehicle Lighting NOV87." This definition states in part that an optical combination is a single or two filament light source or two or more separated light sources that are operated in different ways. NHTSA asks readers for their opinion whether this definition includes LEDs. Because LEDs do not have filaments, they are not "filament light sources" within the meaning of the first part of the definition. However, they could be "two or more separated light sources operated in different ways" within the meaning of the second part of the definition. LEDs are sometimes operated at different duty cycles depending on the photometric needs of the lamp. For example, because the lamps need to be brighter for the stop lamp function, the duty cycle would have to be higher than for the taillamp function. NHTSA asks whether this would constitute the LEDs being "two or more separated light sources that are operated in different ways" or is it really a single light source operated in different ways? If each LED is operated in two or more ways, the definition of "combined optically" may not be adequate and in need of change to accommodate light sources such as LEDs that alone can operate in different ways just by changing the nature of the electric signal supplied to them, e.g. different duty cycles, a polarity reversal, or alternating current. In this event, NHTSA will adopt a revision of the SAE definition and include it in the text of Standard No. 108.

Effective Date

The agency is proposing that S5.1.1.23 and S5.1.1.24 become effective one year after issuance of the final rule. However, it does not know whether there are existing lamps using LEDs and other miniature light sources which would require redesign in order to comply. Therefore, based upon the comments, an effective date of later than one year is a possibility. Nor does NHTSA know whether there are manufacturers who wish to comply with the proposed amendments in advance of their effective date. Accordingly, based upon the comments, optional compliance with the amendments in advance of their effective date is also a possibility.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting for the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too later for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available to inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to adopt terminology more suitable to new technologies. It might require minimal redesign of stop lamps, turn signal lamps, and taillamps on vehicles in order to substitute LEDs and other miniature light sources. However, impacts of the cost of the proposed rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect motor vehicle and lighting equipment manufacturers. Under 15 U.S.C. Chapter 14A "Aid to Small Businesses," a small business concern is "one which is independently owned and operated and which is not dominant in its field of operation" (15 U.S.C. Sec. 632). Manufacturers of motor vehicles and lighting equipment are generally dominant in their fields of

operations and are not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected by the proposed rule as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This rule would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority section would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by adding paragraphs S5.1.1.23 and S5.1.1.24 to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.1.23 Instead of being designed to conform to photometric requirements based on the number of lighted sections specified in SAE J586 FEB84, SAE J588 NOV84, and SAE J585e September 1977, as applicable, each stop lamp, turn signal lamp, and taillamp that is equipped with light-emitting diodes or other miniature light sources, and that needs more than one light source to achieve compliance with the photometric performance required of a single lighted section, shall be designed to conform to photometric requirements based on the dimension of the effective projected luminous lens area for the function being tested. A lamp is regarded as having one lighted section if the maximum horizontal or vertical linear dimension of the effective projected luminous lens area of the lamp is less than 150 millimeters (mm), two lighted sections if the dimension is 150–300 mm, and three lighted sections if the dimension is greater than 300 mm.

S5.1.1.24 Any lamp whose light is provided by light-emitting diodes shall be designed to conform to the photometric requirements appropriate for its type when the lamp is stabilized at 23±5 degrees C, energized, tested 60 seconds after being energized, and allowed to operate continuously until either the internal heat buildup has stabilized or for 30 minutes, whichever occurs first, and tested again.

* * * * *

Issued: June 18, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16808 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980611156–8156–01; I.D. 060898A]

Pacific Halibut Fisheries; Control Date for the Halibut Charterboat Fishery

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Advance notice of proposed rulemaking; notice of control date for the halibut charterboat fishery

SUMMARY: NMFS announces that anyone entering the halibut charterboat fishery in convention waters off Alaska after June 24, 1998 will not be assured of future access to that fishery if a management regime that limits the number of participants is developed and implemented under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). For purposes of this notice, a person in the halibut charterboat fishery means the owner or operator of a vessel that carries passengers for hire to engage in recreational fishing for Pacific halibut (*Hippoglossus stenolepis*) in convention waters off Alaska. This notice is intended to promote awareness of potential eligibility criteria for future access to the halibut charterboat fishery in convention waters off Alaska and to discourage new entrants into this fishery based on economic speculation while the North Pacific Fishery Management Council (Council) contemplates whether and how access to the halibut charterboat fishery in convention waters off Alaska should be controlled. The potential eligibility criteria may be based on historical participation. Therefore, current participants in the halibut charterboat fishery in convention waters off Alaska should locate and preserve records that substantiate and verify their participation in that fishery.

DATES: Comments must be received by July 24, 1998.

ADDRESSES: Comments should be addressed to Susan J. Salveson, Assistant Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Section 5 of the Halibut Act (16 U.S.C. 773c(c)) provides that the Regional Fishery Management Council having authority for the geographical area concerned may develop regulations governing Pacific halibut catch in U.S. Convention waters, including limited access regulations, that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). The IPHC is the body authorized by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention) to promulgate regulations for the conservation and management of the Pacific halibut fishery. Section 5 of the

Halibut Act also provides that the Secretary of Commerce (Secretary) shall have the general responsibility for carrying out the Convention, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA.

The Council began consideration of management alternatives for the halibut charterboat fishery in September 1993 in response to a proposal from the Alaska Longline Fishermen's Association (ALFA). The proposal requested the Council to consider some type of limited access management for the halibut charterboat fishery, citing the recent and dramatic growth in that fishery and the consequential increase in halibut catch by that sector. Based on the ALFA proposal, the Council established the Halibut Charter Working Group (Work Group) to further develop management options for the halibut charterboat fishery.

The Work Group presented various management options to the Council for consideration. The Council, due to staffing priorities, deferred further action on the halibut charterboat issue until January 1995. In January 1995, the Council again reviewed the Work Group's findings, received public testimony, discussed further development of management options, and formulated a problem statement for analysis. Again, staffing priorities delayed formal analysis of the problem statement.

In June 1996, the Council revisited the halibut charterboat issue. The Council decided to narrow the alternatives for study by focusing on specific management alternatives. The specific alternatives were: (1) Status quo; (2) implement reporting requirements; (3) annually allocate the total allowable catch between guided sport and commercial fisheries; (4) a moratorium on new entries into the charterboat fishery; and (5) combine Alternatives 2, 3, and 4. In September 1996, a contract to analyze the specific alternatives was awarded to University of Alaska's Institute for Social and Economic Research.

In February 1997, a preliminary analysis was presented to the Council. The Council recommended several changes to the preliminary analysis. In April 1997, a revised analysis was presented to the Council for initial review. The Council recommended that the revised analysis be condensed prior to submission for public review. Also, the Council postponed final action on the halibut charterboat issue until September 1997.

In September 1997, the Council recommended that participants in the halibut charterboat fishery be required to complete performance reports and that guideline harvest levels (GHLs) be established for IPHC Areas 2C and 3A. Information collected by the performance reports was to include catch figures, location of catch, number of clients, residence information, ownership of vessel, and the identity of the operator. The GHLs would be based on the halibut charterboat fleet receiving 125 percent of its 1995 catch for IPHC Areas 2C and 3A.

In November 1997, NMFS informed the Council that the GHLs for the halibut charterboat fishery could not be published as a regulation until management measures, which would be employed if the GHLs were reached, were specified. In December 1997, the Council announced the formation of a Halibut GHL Committee (Committee). This Committee, made up of individuals representing the halibut charterboat fishery, the halibut non-guided sport fishery, the Council, and the Alaska Board of Fisheries, was tasked with developing management measures to employ if the halibut charterboat fishery exceeded the GHLs.

In February 1998, the Committee met and developed recommendations for management measures for the halibut charterboat fishery. The Committee presented its recommendations to the Council in April 1998. The recommendations included dropping the GHLs and developing local area management plans to resolve resource conflicts, converting the GHLs to allocations and allowing the "banking" of any uncaught portion of those allocations, and adopting the GHLs and employing a range of management measures to prevent the halibut charterboat fleet from exceeding the GHLs.

The Council approved the Committee's recommendations for analysis. Also, the Council requested that the analysis include a discussion on a rod permit program and further details on the proposed "banking" concept. Finally, the Council set a control date of April 27, 1998, or alternatively, the date of publication in the **Federal Register**. Previously, the Council had set control dates for the halibut charterboat fishery of September 23, 1993, and April 17, 1997. The Council requested that a discussion paper further describing the alternatives be presented to the Council in October 1998, and set initial review and final action for this issue for February 1999, and April 1999, respectively.

The Council intends to address whether and how to limit entry into the halibut charterboat fishery. The publication of this control date is to discourage speculative entry into the halibut charterboat fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help distinguish established participants from speculative entrants into the fishery. Although participants are notified that entering the halibut charterboat fishery after the control date will not assure them of future access to the fishery based on previous participation, additional or other qualifying criteria may be applied. The Council may choose different and variably weighted methods to qualify participants based on the type and length of participation in the fishery or other methods of determining dependence on the fishery.

This notification hereby establishes June 24, 1998 for potential use in determining historical of traditional participation in the halibut charterboat fishery. This action does not commit the Council or the Secretary to develop or adopt any particular management regime or to use any specific criteria for determining entry into the fishery. The Council may choose a different control date or management program that does not make use of such a date. The Council may also choose to take no further action to control entry or access to the halibut charterboat fishery. Any action by the Council will be taken pursuant to the requirements of the Halibut Act and the Magnuson-Stevens Fishery Conservation and Management Act.

Authority: 16 U.S.C. 773–773k and 16 U.S.C. 1801 *et seq.*

Dated: June 15, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16817 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

VOL 63 ISS 121 JE 24 1998 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061698D]

New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in Amendment 9 to the Fishery Management Plan (FMP) for the Northeast Multispecies Fishery, Amendment 7 to the Atlantic Sea Scallop FMP, the Atlantic Herring FMP, and in a single amendment that brings all Council FMPs (Multispecies, Sea Scallop, Herring, Monkfish and Atlantic Salmon) into compliance with essential fish habitat (EFH) requirements of the Sustainable Fisheries Act (SFA).

DATES: Written comments will be accepted through July 15, 1998, for Amendment 9 to the Northeast Multispecies FMP, through July 31, 1998, for the EFH amendment, and through August 3, 1998, for Amendment 7 to the Atlantic Sea Scallop FMP and the Atlantic Herring FMP. The hearings will begin June 29, 1998, and end July 22, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates.

ADDRESSES: Send comments to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097. Hearings will be held in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut; New Jersey, Virginia, and North Carolina. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422. For specific locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (781) 231–0422.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to address the new and revised requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the SFA of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in four separate public hearing documents. These documents have been prepared for amendments to the Northeast Multispecies and Sea Scallop FMPs, the Herring FMP, and an amendment for compliance with EFH, which will amend the previously mentioned plans as well as the Monkfish and Atlantic Salmon FMPs. Once it has considered public comments, the Council will approve final measures and prepare submission packages for NMFS. There will be additional opportunities for public comments when the proposed rules for these actions are published in the **Federal Register**.

Amendment 9 to the Northeast Multispecies FMP

The Council is presenting the following items for public review and comment: (1) Proposed new or revised overfishing definitions for 12 species in the Northeast Multispecies Fishery Management Unit (excluding silver hake and red hake, which the Council will address in a separate amendment); (2) a revised specification of optimum yield (OY) from the fishery; (3) the inclusion of Atlantic halibut in the Multispecies FMP, with measures to stop overfishing and rebuild the halibut stocks; (4) modification of the rules allowing the use of square mesh nets by otter trawl vessels; (5) a 1–inch increase in the minimum size for winter flounder; (6) a possession limit for the Southern New England/Mid-Atlantic winter flounder fisheries; (7) adjustments to trip limit management methods; (8) postponement of the Vessel Monitoring Systems requirement beyond the scheduled implementation date of May 1, 1999; (9) a prohibition on the use of "streetsweeper" trawl gear; and (10) a framework adjustment process for approval of aquaculture projects in the EEZ. The Council will consider all comments received on these proposals until the end of the comment period on July 15, 1998.

Amendment 7 to the Atlantic Sea Scallop FMP

The following proposals will be discussed in the public hearing document: (1) A new overfishing definition and rebuilding targets for Atlantic sea scallops; (2) a revised specification of OY from the fishery; (3) a 10-year rebuilding schedule as the preferred alternative and a 7-year schedule as a non-preferred alternative; (4) options for increasing the minimum mesh size of the twine top portion of scallop dredges to reduce the bycatch of finfish; (5) continuation of mid-Atlantic closed areas (unless opened under specific reopening criteria adopted as part of the amendment); (6) a system for closing areas to improve yield per recruit; (7) annual monitoring and adjustment of measures to rebuild the resource; and (8) a provision to allow the following measures to be implemented through the framework adjustment process: (a) leasing of scallop DAS; (b) scallop size restrictions; and (c) aquaculture enhancement measures. Measures to end overfishing and rebuild the scallop resource will require substantial reductions in fishing in the next several years. Although the proposals are expected to have positive long-term economic impacts, they also are expected to have severely negative short-term economic, social, and fishing community impacts. These impacts are summarized in the public hearing document, which will be available at the hearings. The Council will consider all comments received until the end of the comment period on August 3, 1998.

Atlantic Herring FMP

Major elements of the proposals in the public hearing document include (1) a definition of overfishing and establishment of a total allowable catch (TAC); (2) various options to distribute the TAC; (3) options for controlling the catch, either through mandatory days out of the fishery (an open access fishery) or through a controlled access system; (4) alternatives for addressing spawning restrictions; (5) the size of vessels in the fishery; (6) allowed uses for herring (such as for roe or meal); (7) regulations for joint venture and internal waters processing operations; and (8) administrative requirements such as vessel, dealer and operator permits, vessel and dealer reporting requirements, and observer/sea sampler provisions. These are joint Council/Atlantic States Marine Fisheries Commission (ASMFC) public hearings. The ASMFC measures will be adopted in state waters, while the Council measures will apply to vessels holding Federal permits to fish in the EEZ. The Council will consider all comments received until the end of the comment period on August 3, 1998.

Essential Fish Habitat Amendment

The Council will conduct hearings to consider public comment on management proposals to address the EFH requirements of the SFA and to submit measures to the Secretary of Commerce as an amendment to all Council FMPs. The following items will be available for public review and comment: (1) The identification and

description of EFH for Atlantic herring, sea scallops, Atlantic salmon, and 15 species of groundfish; (2) the identification of proposed habitat areas of particular concern (HAPC) for Atlantic cod and Atlantic salmon; (3) an assessment of fishing-related threats and impacts to EFH; (4) consideration of management measures to mitigate the adverse impacts of fishing activities on EFH and HAPC; (5) an assessment of non-fishing related threats and impacts to EFH; (6) conservation and enhancement measures and recommendations developed to mitigate the adverse impacts of non-fishing related activities on EFH and HAPC; (7) a provision to allow the revision of the EFH designations and additional management measures for the conservation of EFH to be implemented through the framework adjustment process; and (8) research and information requirements to improve the designation of EFH and better understand the impacts of fishing and non-fishing activities on EFH. The Council will consider all comments received until the end of the comment period on July 31, 1998.

Public Hearings

The dates, times, locations and telephone numbers of the hearings are scheduled as follows:

Amendment 9 to the Northeast Multispecies FMP–

Monday, June 29, 1998, 6:00 p.m.—Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281;

Tuesday, June 30, 1998, 6:00 p.m.—Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207) 775–2311;

Wednesday, July 1, 1998, 6:00 p.m.—Holiday Inn, US Route 1 & 3, Ellsworth, ME 04605; telephone (207) 667–9341;

Monday July 6, 1998, 6:00 p.m.—St. Peter's Club, 21–23 Main Street, Gloucester, MA 01930; telephone (978) 281–3160;

Tuesday, July 7, 1998, 3:00 p.m.—Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone (860) 443–7000;

Wednesday, July 8, 1998, 3:00 p.m.—Holiday Inn, 290 Highway 37 East, Tom's River, NJ 08753; telephone (732) 244–4000; and

Monday, July 13, 1998, 3:00 p.m.—Ramada Inn, 1127 Route 132, Hyannis, MA 02601; telephone (508) 775–1153.

Amendment 7 to the Atlantic Sea Scallop FMP–

Monday, June 29, 1998, 1:30 p.m.—Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281;

Wednesday, July 1, 1998, 1:00 p.m.—Holiday Inn, US Route 1 & 3, Ellsworth, ME 04605; telephone (207) 667–9341;

Monday, July 6, 1998, 3:00 p.m.—Department of Environment and Natural Resources, 943 Washington Square Mall, Washington, NC 27889; telephone (919) 946–6481;

Tuesday, July 7, 1998, 3:00 p.m.—Holiday Inn Executive Center, 5655 Greenwich Road, Virginia Beach, VA 23462; telephone (757) 499–4400; and

Wednesday, July 8, 1998, 1:00 p.m.—Grand Hotel, 1045 Beach Drive, Cape May, NJ 08204; telephone (609) 884–5611.

Atlantic Herring FMP–

Tuesday, June 30, 1998, 1:00 p.m.—Radisson Hotel, 2081 Post Road, Warwick, RI 03886; telephone (401) 739–3000;

Wednesday July 1, 1998, 1:00 p.m.—Sawyer Free Library, 2 Dale Avenue, Gloucester, MA 01930; telephone (978) 281–9763;

Monday, July 6, 1998, 1:00 p.m.—Maine Department of Marine Resources, 194 McKown Point Road, West Boothbay Harbor, ME 04575; telephone (207) 633–9500;

Wednesday, July 8, 1998, 6:00 p.m.—Grand Hotel, 1045 Beach Drive, Cape May, NJ 08204; telephone (609) 884–5611; and

Thursday, July 9, 1998, 2:00 p.m.—Holiday Inn Executive Center, 5655 Greenwich Road, Virginia Beach, VA.

Essential Fish Habitat Amendment–

Tuesday, July 14, 1998, 1:00 p.m.—Sawyer Free Library, 2 Dale Avenue, Gloucester, MA 01930; telephone (978) 281–9763;

Wednesday, July 15, 1998, 6:00 p.m.—Maine Department of Marine Resources, 194 McKown Point Road, West Boothbay Harbor, ME 04575; telephone (207) 633–9500;

Thursday, July 16, 1998, 1:00 p.m.—Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801; telephone (603) 436–9713;

Friday, July 17, 1998, 1:00 p.m.—Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA 02532; telephone (508) 830–5000;

Monday, July 20, 1998, 1:00 p.m.—Holiday Inn, 290 Highway 37 East, Tom's River, NJ 08753; telephone (732) 244–4000; and

Wednesday, July 22, 1998, 6:00 p.m.—Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone (401) 739–3000.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 19, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16785 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 121
Wednesday, June 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture Meeting

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the second meeting of the Commission on 21st Century Production Agriculture. The purpose of this meeting is to consider organizational matters and review of farm policy issues. This meeting will be open to the public.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held in Room 221–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, from 1:00—5:00 EST on July 9, 1998, and 8:00 am—12 noon EST on July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Keith J. Collins (202–720–5955), Chief Economist, Room 112–A, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–3810.

Dated: June 17, 1998.

Keith J. Collins,

Chief Economist.

[FR Doc. 98–16700 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Forms FNS–806–A, Claim for Reimbursement (National School Lunch and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program for Children)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the proposed Food and Nutrition Service (FNS) use of Forms FNS–806–A and FNS–806–B, Claims for Reimbursement. The Forms are used to collect data to determine the amount of reimbursement school food authorities participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Programs for Children (SMP) are eligible to receive.

DATES: Written comments must be submitted on or before August 24, 1998.

ADDRESSES: Send comments to Terry A. Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Titles: Forms FNS–806–A, Claim for Reimbursement, (National School Lunch, and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program).

OMB Number: 0584–0284.

Expiration Date of Approval: May 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: The NSLP, SBP and SMP claims for reimbursement forms, FNS–806–A and FNS–806–B, are used to collect meal and cost data from school food authorities whose participation in these programs are administered directly by FNS Regional Offices (Regional Office Administered Programs, or ROAP). In order to determine the amount of reimbursement school food authorities are entitled to receive for meals and milk served, they must complete these forms. The completed forms are submitted to FNS' Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the NSLP, SBP and SMP is based on performance, that is, an assigned rate per meal or half pint of milk served, with cost comparisons for free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in NSLP, SBP and SMP regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11, 215.10), the meal and cost data must be collected on forms FNS–806–A and FNS–806–B. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

This request is being made because FNS is implementing a new payment system for the ROAPs in the NSLP, SBP, and SMP. The current version of form FNS–806 is used to collect meal and cost data for all three (3) of these programs. In the new payment system, the data for the SMP will be collected and recorded separately from the data for the NSLP and SBP. The claims for reimbursement for the NSLP and SBP will be on the FNS–806–A and the claims for reimbursement for SMP will be on the FNS–806–B. The data elements are the same, but collection will be on two different forms.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average .5 hours per response.

Respondents: The respondents are school food authorities and facilities participating in the NSLP, SBP, and SMP under the auspices of the FNS ROAP.

Estimated Number of Respondents Form 806–A: 340.

Estimated Number of Respondents Form 806–B: 180.

Estimated Number of Responses per Respondent Form 806–A: 12.

Estimated Number of Responses per Respondent Form 806–B: 12.

Estimated Total Annual Burden on Respondents Form 806–A: 2040.

Estimated Total Annual Burden on Respondents Form 806–B: 1080.

Estimated Total Number of Respondents: 520.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 3120.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 308, Alexandria, Virginia 22302.

Dated: June 18, 1998.

George A. Braley,

Acting Administrator.

[FR Doc. 98–16750 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service.

ACTION: Notice of Determination of Existence of Price Conditions Necessary for Imposition of Temporary Duty on Frozen Concentrated Orange Juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was lower than the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term *daily price* means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term *trigger price* means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liter (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period June 2–8, the daily for frozen concentrated orange juice was less than the trigger price.

Issued at Washington, D.C. the 12th day of June, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–16701 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lincoln-Pipestone Rural Water; Existing System North/Lyon County Phase and Northeast Phase Expansion Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) will hold a public meeting at 6:00 p.m. on July 30, 1998, at Canby High School, 307 1st Street West, Canby Minnesota. In accordance with 40 CFR 1503.1, *Inviting Comments*, the purpose of the meeting will be to solicit comments from interested parties on the Draft Environmental Impact Statement (EIS) for the Lincoln-Pipestone Rural Water Existing System North/Lyon County Phase and Northeast Phase Expansion Project. The Draft EIS was published for public review and comment on February 23, 1998 (63 FR 8901).

The purpose of the EIS is to evaluate the potential environmental impacts of a project proposal located in southwestern Minnesota. The proposal to which the Agency is responding to involves providing financial assistance for the development and expansion of a public rural water system and a review of the environmental impacts from previous expansion phase activities. The applicant for this proposal is a public body named Lincoln-Pipestone Rural Water (LPRW). The LPRW's main offices are located in Lake Benton, Minnesota. Specific project activities are

and have included the development of groundwater sources and production well fields and the construction of water treatment facilities and water distribution networks. The counties in Minnesota affected by this proposal include Yellow Medicine, Lincoln, and Lyon Counties and Deuel County in South Dakota.

FOR FURTHER INFORMATION CONTACT: For further information please contact Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, Stop 1571, Washington, DC 20250, telephone (202) 720–1649, fax (202) 720–0820, or e-mail: mplank@rus.usda.gov or Jim Maras, RUS Program Director, USDA, Rural Development, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN, 55101–1853, telephone (612) 290–3842 or e-mail: jmaras@rdasun2.rurdev.usda.gov.

A copy of the Draft EIS or an Executive Summary can be obtained over the Internet at http://www.usda.gov/rus/water/ees/environ.htm. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from http://www.adobe.com/prodindex/acrobat/readstep.html

Dated: June 19, 1998.

Gary J. Morgan,

Director, Engineering and Environmental Staff.

[FR Doc. 98–16793 Filed 6–23–98; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights will convene at 9 a.m. and adjourn at 12:30 p.m. on July 10, 1998, at the Fleet Bank Building, Conference Room, 21 Armory Street, Augusta, Maine 02208. The purpose of the meeting is to plan for future events and to review a draft of the Committee's report, "Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities."

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 15, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–16755 Filed 6–23–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held July 9, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, call (202) 482–2583.

Dated: June 18, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–16702 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

International Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and Call for Applications for the FY 2000 International Buyer Program (October 1, 1999 through September 30, 2000).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's International Buyer Program (IBP), to support domestic trade shows. Selection is for the International Buyer Program for Fiscal Year 2000.

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in 70 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. The Department expects to select approximately 24 shows for FY2000 from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show organizer and the DOC. The MOU constitutes an agreement between the

DOC and the show organizer specifying which services are to be rendered by DOC as part of the IBP and, in turn, what responsibilities are agreed to be performed by the show organizer. *Anyone wishing to apply will be sent a copy of the MOU along with the application package.* The services to be rendered by DOC will be carried out by the Commercial Service.

DATES: Applications must be received on or before August 10, 1998. Contributions are for shows selected and promoted during the October 1, 1999 and September 30, 2000, period.

ADDRESSES: Export Promotion Services/ International Buyer Program, Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–0146 (Facsimile applications will not be accepted).

FOR FURTHER INFORMATION CONTACT: Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 482–0146 or Fax: (202) 482–0115.

SUPPLEMENTARY INFORMATION: The Commercial Service is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 1999 and September 30, 2000. A contribution of *$6,000* for shows of five days or less, or *$8,000* for shows more than five days in duration is required for the shows selected.

Under the IBP, the Commercial Service seeks to bring international buyers together with U.S. firms by selecting and promoting in international markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, *i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event.* If the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 24 events to support during this 12-month period. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's objective and selection criteria mentioned below.

Selection indicates that the Department has found the event to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of the show's success. Selection is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions

Trade shows will not be considered that are either first-time or horizontal (non-industry specific) events. Annual trade shows will not be selected for this program more than twice in any three-year period (e.g., shows selected for fiscal years 1998 and 1999 are not eligible for inclusion in this program in fiscal year 2000, but can be considered in subsequent years.).

The Office of Management and Budget has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 et seq.) (OMB control no. 0625–0151).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625–0151), Washington, DC 20503.

General Selection Criteria

Subject to Departmental budget and resource constraints, those events will be selected that, in the judgment of the Department, most clearly meet the following criteria:

(a) Export Potential

The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides.)

(b) International Interest

The trade show meets the needs of a significant number of overseas markets covered by the Commercial Services of the United States of America and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g. best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) Scope of the Show

The trade show offers a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of United States businesses as defined in 15 U.S.C. 4724 will be given preference.

(d) Stature of the show

The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or services in that industry.

(e) Exhibitor Interest

There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) Overseas Marketing

There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) Logistics

The trade show site, facilities, transportation services and availability of accommodations are in the stature of an international-class trade show.

(h) Cooperation

The applicant demonstrates a willingness to cooperate with the Commercial Service of the United States of America to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the event timetable, both of which are available from the program office (see "For Further Information on When, Where, and How to apply"). Past experience in the IBP will be taken into

account in evaluating current applications to the program.

Legal Authority

The Commercial Service has the legal authority to enter into the above-mentioned memorandum of understanding with the show organizer under the provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2455(f)). The statutory authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

John Klingelhut,

Director, Office of Public/Private Initiatives, The Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 98–16764 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Standing Scientific and Statistical Committee (SSC).

DATES: The meeting will begin at 1:00 p.m. on Tuesday, July 7, 1998 and conclude by 5:00 p.m. on Thursday, July 9, 1998.

ADDRESSES: The meeting will be held at the Crowne Plaza New Orleans, 333 Poydras Street, New Orleans, LA 70130; telephone: 504–525–9444.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Standing SSC will review the Draft Generic Essential Fish Habitat (EFH) Amendment. As mandated by the Sustainable Fisheries Act (SFA), the Council has developed a Generic EFH amendment that identifies essential fish habitat for all species currently under management by the Council. The amendment does not include any alternatives for management measures. Future management measures, if needed, will be developed through amendments to individual fishery management plans (FMPs). The SSC will also review reports of the Ad Hoc Crustacean and Finfish Stock Assessment Panels (SAP) that include alternatives for the overfishing criteria, as required by the SFA, and proxies for expressing maximum sustainable yield (MSY) and optimum yield (OY) in terms of spawning potential ratio (SPR), spawning stock biomass per recruit (SSBR), or other credible analyses as appropriate for the stocks or stock complexes of each FMP: shrimp, stone crab, and spiny lobster (Crustacean SAP Report) and for coastal migratory pelagics, reef fish, and red drum (Finfish SAP Report). Alternatives for rebuilding periods for stocks that have been classified as overfished by NMFS and modifications to the framework procedures for specifying acceptable biological catch (ABC) and total allowable catch (TAC) will be considered, where appropriate.

Although other issues not on the agenda may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The SSC's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 29, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16786 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061198D]

Advisory Committee to the United States Section to the International Commission for the Conservation of Atlantic Tunas Bluefin Tuna Rebuilding Workshop; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; correction.

SUMMARY: This document corrects the Notice of public meeting (63 FR 33054, June 17, 1998) that states the second bluefin tuna rebuilding workshop of the Advisory Committee to the United States section to the International Commission for the Conservation of Atlantic tunas will be open to the public. The first session of the workshop (9 a.m. to 12:30 p.m.) will be open to the public, but the second session (1:30 p.m. to 5:30 p.m.) will be closed. Also, registration for the workshop will start at 8:30 a.m. and the workshop will start at 9 a.m.

DATES: The workshop is scheduled for Friday, June 26, 1998, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The workshop will be held at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger,(301)713-2276.

SUPPLEMENTARY INFORMATION: After further consideration, it has been determined that the Advisory Committee will go into executive session from 1:30 p.m. to approximately 5:30 p.m. during the June 26 workshop. The Advisory Committee will be discussing information that relates to the U.S. negotiating position for the 1998 Annual Meeting of ICCAT. Technical Advisors to the Advisory Committee and other members of the public may not attend the closed executive session. The determination to close this portion of the meeting is consistent with the Atlantic Tunas Convention Act and the Advisory Committee's Statement of Operating Practices and Procedures.

Registration for the workshop will begin at 8:30 a.m., and the open session of the workshop will start at 9:00 a.m. and end at approximately 12:30 p.m.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: June 19, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16819 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a Joint Dogfish Committee meeting.

DATES: The meeting will be held on Wednesday, July 8, 1998, from 9:30 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn Logan Airport, 225 McClellan Highway, E. Boston, MA; telephone: 617–569–5250.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review analyses conducted by the Technical Committee concerning the stock rebuilding options, revised discard mortality estimates, and alternate minimum size limits. Management options to be included in the public hearing draft of the Spiny Dogfish Fishery Management Plan will be finalized.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16816 Filed 6–23–98; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061698A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in July, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between July 7 and July 29, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Saugus, Peabody and Mansfield, MA, and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, July 7, 1998, 9:30 a.m.—Aquaculture Committee Meeting

Location: New England Fishery Management Council Office conference room, 5 Broadway, Saugus, MA 01906; telephone (781) 231–0422.

Discussion of agency coordination procedures for applicants, project evaluation criteria and a review of the status of the American Norwegian Fish Farm project.

Wednesday, July 8, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

Discussion about presenting the essential fish habitat (EFH) information at public hearings and a briefing on NMFS recommendations concerning the Council's proposed EFH designations.

Thursday, July 9, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Preparation of formal comments on the Northeast Multispecies Fishery Management Plan (FMP) Amendment 9 public hearing document and Environmental Assessment; discussion of alternative management strategies for Gulf of Maine cod, an action that could be implemented through the annual framework adjustment process; comments on a proposal to include cusk and wolffish in the multispecies fishery management unit; and discussion of a proposal to allow the transfer of multispecies days-at-sea between vessels.

Wednesday, July 15, 9:30 a.m. and Thursday, July, 16, 8:30 a.m—Multispecies Committee Meeting

Location: Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–9700.

Review of comments on the Amendment 9 public hearing document and Environmental Assessment and development of recommendations to the Council for final measures; discussion of alternatives and a management strategy for management of Gulf of Maine cod fisheries; consideration of a proposal to include cusk and wolffish in the multispecies fishery management unit; and discussion of a proposal to the allow transfer of multispecies days-at-sea between vessels.

Monday, July 27, 1998, 9:30 a.m.—Whiting Committee Meeting

Location: Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–9700.

Review of the Draft Supplemental Environmental Impact Statement and approval of a draft public hearing document containing measures to manage whiting under the Northeast Multispecies FMP.

Tuesday, July 28, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

Discussion of comments received during the public hearing process.

Tuesday, July 28, 10:00 a.m.—Scallop Advisory Panel Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401)–732–9309.

Development of recommendations concerning proposed management measures to be included in Amendment 7 of the Sea Scallop FMP for final Council action at its August 10–11 meeting.

Wednesday, July 29, 9:30 a.m.—Scallop Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401)–732–9309.

Development of recommendations concerning proposed management measures to be included in Amendment 7 of the Sea Scallop FMP for final Council action at its August 10–11 meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 18, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16788 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061998A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for modification 6 to incidental take permit 844.

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game at Boise, ID (IDFG) has applied in due form for a modification to a permit that would authorize an incidental take of a threatened anadromous fish species.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 24, 1998.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400); and

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

Written comments or requests for a public hearing should be submitted to the Chief, PRD, in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch, PRD (503–230–5424).

SUPPLEMENTARY INFORMATION: IDFG requests a permit modification under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

Permit 844 authorizes IDFG an incidental take of adult and juvenile, threatened, naturally produced, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and adult, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the State of Idaho's sport-fishing programs. For modification 6, IDFG requests an additional incidental take of adult, threatened, Snake River spring/summer chinook salmon associated with a limited salmon sport fishery on the upper South Fork of the Salmon River. The fishery will target non-listed, artificially propagated, summer chinook salmon. The primary source of take would be the incidental catch, handling, and release of ESA-listed adult fish with an associated catch and release mortality. The specifics of the fishery, including season dates, duration, locations, and mitigative activities are tailored to provide the appropriate level of protection for ESA-listed fish in the watershed. The fishery is proposed to be terminated when quotas are reached or before the onset of spawning activities. The additional take of ESA-listed adult fish associated with the proposed upper South Fork Salmon River salmon fishery is requested in 1998 only. Permit 844 expires on December 31, 1998.

Those individuals requesting a hearing on the application should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 19, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–16784 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061898C]

Marine Mammals; File No. 684–1458

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Donald B. Siniff, Ph.D., Department of Ecology, Evolution and Behavior, University of Minnesota, College of Biological Sciences, 100 Ecology Building, 1987 Upper Buford Circle, St. Paul, MN 55108, has applied in due form for a permit to take Weddell seals (*Leptonychotes weddellii*), crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), southern elephant seals (*Mirounga leonina*), and Antarctic fur seals (*Arctocephalus gazella*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 24, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should

set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant seeks authorization to conduct research on Antarctic seals, primarily Weddell seals (*Leptonychotes weddellii*) in and around McMurdo Sound, Antarctica.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 18, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–16818 Filed 6–23–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of Futurecom for Designations as a Contract Market in Technology Stock Index Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: Futurecom, an electronic commodities exchange, has applied for designations as a contract market in technology stock index futures and option contracts. Futurecom has not been approved previously by the Commission as a contract market in any commodity. In connection with its application for designation as a contract market in live cattle futures and option contracts, which are pending at the Commission, Futurecom requested approval of trading rules and rules of government that it had submitted to meet the requirements for a board of trade seeking designations as a contract market.

The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before July 24, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the Futurecom technology stock index futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Tom Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5273. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by Futurecom in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff to the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by Futurecom, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 19, 1998.

Steven Manaster,

Director.

[FR Doc. 98–16814 Filed 6–23–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Thursday, July 2, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16854 Filed 6–19–98; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 10, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A.Webb,

Secretary of the Commission.

[FR Doc. 98–16855 Filed 6–19–98; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 17, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16856 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 24, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16857 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 31, 1998.

PLACE: 1155 21st St., NW, Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16858 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, July 6, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16859 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, July 13, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16860 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, July 20, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16861 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, July 27, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16862 Filed 6–19–98; 4:31 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Sunday, June 28, 1998, from 9:00 a.m. to 11:30 a.m.

PLACE: The meeting will be held at the Hyatt Regency, Burgundy A Room, 500 Poydras Plaza, New Orleans, Louisiana.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to (1) approve the minutes of the February 24, 1998, Board meeting, (2) review reports from Board Committees and Corporation staff regarding Corporation activities, (3) make decisions on applications for AmeriCorps*State Formula, Indian Tribes, and America Reads assistance, (4) discuss ongoing collaborations with the Points of Light Foundation, and (5) consider and act on other matters.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Associate Director, Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue NW., 8th floor, Washington, DC 20525. Telephone (202) 606–5000, ext. 282. T.D.D. (202) 565–2799.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend this meeting may notify Rhonda Taylor.

Dated: June 19, 1998.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 98–16875 Filed 6–19–98; 4:38 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98–2000; FERC Form 2]

Proposed Information Collection and Request for Comments

June 18, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 24, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael, miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 2 "Annual Report of Major Natural Gas Companies" (OMB No. 1902–0028) is used by the Commission to implement the statutory provisions of the Natural Gas Act (NGA), (15 U.S.C. 717). The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

The Commission's Office of Chief Accountant uses the information collected in its audit program and the continuous review of the financial condition of regulated companies. The Office of Pipeline Regulation uses the data in its various rate proceedings and supply programs, and the Offices of Economic Policy and General Counsel use the data in their programs relating to the administration of the NGA. Data on certain schedules of the FERC Form 2 is used to compute annual charges which are then assessed against natural gas companies to recover the Commission's annual costs. These annual charges are required by Section 3401 of the Budget Act.

The NGA mandates the collection of information needed by the Commission to perform it regulatory responsibilities in the setting of just and reasonable rates. The Commission could be held in violation of the NGA if the information was not collected.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 260.1, and Parts 158 and 201 and Section 385.2011.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
58	1	1,485	86,130

Estimated cost burden to respondents: 86,130 hours divided by 2088 hours per year times $109,889 per year equals $4,532,921. The cost per respondent is equal to $78,154.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclosure, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost of respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility: (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used: (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16712 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98–2A–000; FERC Form 2–A]

Proposed Information Collection and Request for Comments

June 18, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is

soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.millerferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 2–A "Annual Report of Nonmajor Natural Gas Companies" (OMB No. 1902–0030) is used by the Commission to implement the statutory provisions of the Natural Gas Act (NGA), (15 U.S.C. 717). The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Nonmajor means having total annual gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psia (60°F) in the previous calendar year and not classified as "Major."

The Commission's Office of Chief Accountant uses the information collected in its audit program and the continuous review of the financial condition of regulated companies. The Office of Pipeline Regulation uses the data in its various rate proceedings and supply programs, and the Office of Economic Policy and General Counsel use the data in their programs relating to the administration of the NGA. Data on certain schedules of the FERC Form 2–A is used to compute annual charges which are then assessed against natural gas companies to recover the Commission's annual costs. These annual charges are required by Section 3401 of the Budget Act.

The NGA mandates the collection of information needed by the Commission to perform its regulatory responsibilities in the setting of just and reasonable rates. The Commission could be held in violation of the NGA if the information was not collected.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 260.2, and Parts 158 and 201 ad Section 385.2011.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
65	1	30	1,950

Estimated cost burden to respondents: 1,950 hours divided by 2,088 hours per year times $109,889, per year equals $102,626. The cost per respondent is equal to $1,579.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16713 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM 98–2127–002]

Cove Point LNG Limited Partnership; Notice of compliance filing

June 18, 1998.

Take notice that on June 10, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for fling to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 99, to be effective July 10, 1998.

Cove Point states that this tariff sheet is being filed in order to comply with the Commission's letter order issued in the above captioned proceedings on June 1, 1998, to correct an error in reference to a Storage Turnover Provision.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested State Commissions.

Any person desiring to protest this filing should file a protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies if this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers.

Acting Secretary.

[FR Doc. 98–16721 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2494–001]

ESI Vansycle Partners, L.P.; Notice of Filing

June 18, 1998.

Take notice that on June 5, 1998, ESI Vansycle Partners, L.O., (Vansycle), in compliance with the Commission's order issued on June 2, 1998, submitted (1), a revised Code of Conduct with Respect to the Relationship between ESI Vansycle Partners, L.P., and its affiliates; and (2) an executed copy of the power purchase agreement filed with Vansycle's application for market based rate authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before June 29, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16706 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–201–001]

Gulf States Transmission Corporation; Notice of Compliance Filing

June 18, 1998.

Take notice that on June 12, 1998, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub First Revised Sheet No. 58G. Gulf States proposes that the foregoing tariff sheet be made effective on June 1, 1998.

Gulf States states that this filing is in compliance with the Commission's May 28, 1998 Letter Order in the above-referenced docket. Gulf States further states that the revised tariff sheet incorporates by reference the Gas Industry Standards Board Data Dictionaries for capacity release.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16718 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–53–001]

K N Interstate Gas Transmission Co.; Notice of Waiver Filing

June 18, 1998.

Take notice that on June 16, 1998, K N Interstate Gas Transmission Co. (KNI) filed to request waiver of Section 15 of Third Revised Volume No. 1–B and Section 15 of first Revised Volume No. 1–D of its FERC Gas Tariff in order to continue in effect its existing fuel and loss reimbursement percentages for an additional month through July 31, 1998, and revise its fuel and loss reimbursement percentages effective August 1, 1998 consistent with the methodology proposed in Docket No. RP98–117–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16720 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–175–006]

Mojave Pipeline Company; Notice of Compliance Filing

June 18, 1998.

Take notice that on June 15, 1998, Mojave Pipeline Company (Mojave) tendered for filing a compliance filing pursuant to the Commission's Order on Compliance. Filing and Rehearing issued June 3, 1998 in this proceeding.

Mojave states that the filing contains revised schedules that have been adjusted in accordance with the Commission's June 3 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16716 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2611–000]

Powerhouse Systems, Inc.; Notice of Withdrawal

June 18, 1998.

Take notice that on June 15, 1998, Powerhouse Systems, Inc., tendered for filing a Notice of Withdrawal of its filing made on April 20, 1998, in Docket No. ER98–2611–000.

A copy of the notice is being served on Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before June 30, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16705 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–070]

Public Utility District No. 2 of Grant County, Washington; Notice Establishing Comment Period for Complaint

June 18, 1998.

On May 28, 1998, Crescent Bar, Inc., Crescent Bar Homeowners Association, Crescent Bar Resort condominium Association, and Commercial Leaseholders (complainants) filed a document entitled "Complaint of Crescent Bar Residents." The complainants request, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find the Public Utility District No. 2 of Grant County, Washington (District) to be in violation of the Federal Power Act and the Commission's regulations and policies because the District has retained excessive lands containing private homes and businesses within the project boundary. Complainants also request that the project boundary be changed to exclude privately developed areas on the island of Crescent Bar from the project boundary.

Pursuant to Rule 213(d) of the Commission's regulations, answers to complaints are due within 30 days after filing or, if noticed, after publication of the notice in the **Federal Register**, unless otherwise ordered.[1] In general, the Commission's policy is to publish notice in the **Federal Register** of complaints against hydroelectric licensees.[2]

Any person may file an answer, comments, protests, or a motion to intervene with respect to the complaint in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214. In determining the appropriate action to take with respect to the complaint, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than 30 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16714 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 3721–001, 4270–001, 4282–001, 4312–001, 4628–001, 4738–002, and 9231–999]

Puget Sound Power & Light Company, Mountain Rhythm Resources, Mountain Water Resources, Watersong Resources, McGrew and Associates and City of Tacoma, Washington, McGrew, McMaster and Koch and City of Tacoma, Washington, and Scott Paper Company; Notice of Motion for Declaratory Order

June 18, 1998.

Public notice is given that on May 1, 1998, Mountain Rhythm Resources (Mountain Rhythm) filed a motion for declaratory order in the above-captioned proceedings, pursuant to Section 385.207(a)(2) of the Commission's regulation, 18 CFR 385.207(a)(2). Mountain Rhythm seeks a determination from the Commission to terminate a controversy as to the status of its certification of project consistency with the Washington Coastal Zone Management Program for the proposed Boulder Creek Project No. 4270, one of six pending hydropower projects proposing development in the Nooksack River Basin in Whatcom County, Washington.[1]

Mountain Rhythm submitted to the Washington Department of Ecology (Ecology) a certification of project consistency, in accordance with the Coastal Zone Management Act (CZMA)[2] in 1992.[3] Ecology responded by letter, stating that the proposed project would affect land uses, water uses, and natural resources of the state's coastal zone, and that Ecology could not concur that the project is consistent with the Washington Coastal Zone Management Program until Mountain Rhythm provides necessary information and data, including an approved Shoreline Management Act permit.[4] Most recently, in a letter dated March 13, 1998, Ecology reiterated its requirement that a shoreline permit is a prerequisite to the agency's concurrence and added that, as part of the state's Coastal Zone Management Program, Mountain Rhythm would need to conduct an Instream Flow Incremental Methodology Study to ensure that the state's water quality standards are met.[5]

[1] 18 CFR 385.213(d). See also 18 CFR 385.202.

[2] 18 CFR 2.1(a)(1)(iii)(J).

[1] Mountain Rhythm's application for license for the Boulder Creek Project was evaluated by Commission staff in a multiple project final environmental impact statement issued for the Nooksack River Basin on September 1, 1997.

[2] 16 U.S.C. 1456(c)(3)(A). Section 307(c)(3)(a) of the CZMA provides that any applicant for a Federal license proposing to conduct an activity within or affecting a state's coastal zone must furnish to the state or CZMA agency all necessary information and data and a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. No license can be issued by the Federal agency until the state or the designated CZMA agency concurs with the applicant's certification, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

[3] *See* Certification of Consistency, attached as Exhibit A of Mountain Rhythm's Motion for Declaratory Order.

[4] *See* Letter from Washington Department of Ecology to William Devine, dated October 1, 1992, attached as Exhibit B of Mountain Rhythm's Motion for Declaratory Order.

[5] *See* Letter from Washington Department of Ecology to Bill Devine, attached to Letter from Glacier Energy Company, on behalf of Mountain Rhythm, to the Secretary of the Federal Energy Regulatory Commission, dated March 29, 1998.

Mountain Rhythm requests a Commission order establishing either that the project is not subject to the CZMA consistency requirement or that Ecology is conclusively presumed to have concurred with Mountain Rhythm's certification of project consistency based on the following grounds:

1. The Boulder Creek Project is not located within the state's "coastal zone," as defined in the CZMA.[6]

2. The Project does not involve coastal zone impacts.

3. Ecology has provided no substantive objection to the content of Mountain Rhythm's certification of project consistency and is therefore conclusively presumed to have concurred with the certification.

4. A permit is not "information or data" and thus, Ecology's requirement that Mountain Rhythm obtain a state shoreline permit as a prerequisite to the agency's concurrence with the applicant's certification is inconsistent with the CZMA, the state regulations implementing the act, and the Commission's licensing authority under the Federal Power Act.

5. The project is consistent with the intent and purpose of the Washington Coastal Zone Management Program, and is not prohibited by the state program.

Any person desiring to be heard or to make any protest with reference to said motion should file comments, a protest, or a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.210, 385.211, 385.214). All such comments, protests, and motions should be filed by [the 30th day following publication of this notice in the **Federal Register**] In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only persons that file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Copies of the motion for declaratory order are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16715 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

[6] *See* 16 U.S.C. 1453(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–604–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

June 18, 1998.

Take notice that on June 11, 1998, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–604–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon and replace delivery facilities in Wayne County, Tennessee under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

In order to meet company specifications and codes, Tennessee proposes to modify existing interconnecting pipe at milepost 556–1+5.75 in Wayne County, Tennessee. To accomplish this upgrade, Tennessee proposes to remove and abandon approximately forty-five feet of existing one-inch diameter interconnecting pipe located at taps 556–101.1 and 556–101.2 and extending to the inlet of the Waynesboro Tennessee sales meter and to replace it with approximately forty-five feet of two-inch diameter interconnecting pipe. Tennessee also proposes to replace a deteriorated check valve with a new valve of the same size.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16709 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–140–001]

Tennessee Gas Pipeline Company; Notice of Filing

June 18, 1998.

Take notice that on June 12, 1998, Tennessee Gas Pipeline Company (Tennessee), filed pro forma Tariff Sheets 405C and 405D.

Tennessee states that the pro forma tariff sheets are being filed in response to the May 5, 1998 technical conference, in response to certain issues raised by Commission Staff and the customers in attendance, Tennessee proposed additional modifications to its currently effective tariff sheet, specifically to the tariff provision that allows Tennessee to reserve available capacity for future expansion projects. Tennessee further states that it committed to file these proposed modifications, in this docket and on pro forma tariff sheets, by June 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16717 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–53–000]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

June 18, 1998.

Take notice that on June 15, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the pro rata refund to its eligible firm customers of a June 10, 1998. Gas Research Institute (GRI) refund of $65,084.00.

Texas Gas states that this refund report is being made to comply with Commission Order issued February 22, 1995, in Docket No. RP95–124–000 requiring each pipeline to file a refund report with the Commission within fifteen (15) days of making the refunds.

Texas Gas states that copies of the refund report were included with the refunds made on June 10, 1998, and served upon Texas Gas's jurisdictional customers receiving refunds, and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16711 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–52–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 18, 1998.

Take notice that on June 12, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing a report of GRI refunds made to customers.

Williams states that this filing is being made in compliance with Commission order issued February 22, 1997, in Docket No. GT97–31. The February 22 order directed each pipeline receiving a refund from GRI to credit such refunds pro rata to its eligible customers, and within 15 days of making these credits, file a refund report with the Commission. Williams states that the refund report reflects refunds of $385,291 made by Williams to its eligible firm customers on June 12, 1998.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested states commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16710 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–208–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 18, 1998.

Take notice that on June 15, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of June 1, 1998:

Substitute Second Revised Sheet No. 268 Substitute Original Sheet Nos. 271B, 271C, and 271D.

Williams states that it made a filing on May 1, 1998, in Docket Nos. RP98–208–000, et al., to establish procedures to be used in conducting a reverse auction. By order dated May 29, 1998, the Commission directed Williams to file revised tariff sheets conforming to the order within 15 days after the order issued. Williams states that the instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16719 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3297–000]

Wisconsin Electric Power Company; Notice of Filing

June 16, 1998.

Take notice that on June 11, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Columbia Energy Power Marketing Corporation (Columbia). Wisconsin Electric respectfully requests an effective date of May 20, 1998 to allow for economic transactions.

Copies of the filing have been served on Columbia, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

and protests should be filed on or before July 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers.

Acting Secretary.

[FR Doc. 98–16707 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–61–000, et al.]

Long Beach Generation LLC, et al.; Electric Rate and Corporate Regulation Filings

June 17, 1998.

Take notice that the following filings have been made with the Commission:

1. Long Beach Generation LLC

[Docket No. EG98–61–000]

Take notice that on June 5, 1998, Long Beach Generation LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations (the Application). On April 14, 1998, Applicant amended (the Amended Application) its initial application to submit additional information. On June 5, 1998, Applicant filed an amendment to submit additional information regarding ancillary services to be provided by the Applicant.

In the Application, as amended, Applicant states that it is a limited liability company organized under the laws of the State of Delaware. Applicant will be engaged directly and exclusively in owning and operating an approximately 560 megawatt gas-fired electric generating facility located at 2665 West Seaside Boulevard, Terminal Island, Long Beach, CA 90902. Electric energy produced by the facility will be sold at wholesale into the California Power Exchange and to other wholesale customers.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Minnesota Agri-Power, L.L.C.

[Docket No. EG98–86–000]

Take notice that on June 11, 1998, Minnesota Agri-Power, L.L.C. (Applicant), with its principal place of business at 681 Prentice Street, P.O. Box 64, Granite Falls, MN 56241, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged in owning and operating a biomass fired power production facility with approximately 75 MW of installed capacity located at Granite Falls, Minnesota. The facility will be an eligible facility selling electric energy solely at wholesale. All of the facility's net output will be sold at wholesale to Northern States Power Company.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Citizens Utilities Company

[Docket No. EL98–49–000]

Take notice that on May 19, 1998, Citizens Utilities Company tendered for a petition for disclaimer of jurisdiction over corporate restructuring.

Comment date: July 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Colorado

[Docket No. ER98–496–000]

Take notice that on June 12, 1998, Public Service Company of Colorado (PS Colorado), on behalf of itself and the other jurisdictional entities in the Rocky Mountain Reserve Group (RMRG) namely Black Hills Corporation, doing business as and operating its electric utility under the name Black Hills Power and Light Company, and WestPlains Energy, a division of UtiliCorp United Inc., has filed (1) a response to the deficiency letter issued by the Division of Rate Applications on December 29, 1997, and (2) revised versions of RMRG Policies B and C, which have been clarified in response to the deficiency letter.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–2011–002]

Take notice that on June 11, 1998, pursuant the Order Accepting Compliance Filings, issued on May 14, 1998, by the Commission PECO Energy Company (PECO), submitted its compliance filing.

Comment date: July 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Co.

[Docket No. ER98–2584–000]

Take notice that on June 12, 1998, Portland General Electric Company (PGE), tendered for filing a revised Application for Order Accepting Revised Rate Schedule and Granting Waivers and Blanket Authority, to become effective April 21, 1998.

The proposed tariff revisions (FERC Electric Service Tariff First Revised Volume No. 10) provide the terms and conditions pursuant to which PGE will sell electric energy to the California Independent System Operator (ISO). In these transactions, PGE intends to charge market-based rates as determined by the auction settlement procedures prescribed by the ISO Operating Agreement and Tariff of the California Independent System Operator Corporation filed in FERC Docket No. ER96–1663.

Copies of this filing were served upon the Oregon Public Utility Commission and the California ISO.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER98–3103–000]

Take notice that on June 12, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing a request to amend the effective date for an executed service agreement under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff) with FirstEnergy Corporation from May 1, 1998 to April 8, 1998. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service as requested.

A copy of the filing was served upon FirstEnergy Corporation and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER98–3170–000]

Take notice that on June 12, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Wholesale Market Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for British Columbia Power Exchange Corporation and FirstEnergy Trading & Power Marketing, Inc., on April 1, 1998 as initially requested in Docket ER98–3170–000 and has requested an effective date of May 15, 1998, for the remaining service agreements.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER98–3312–000]

Take notice that on June 12, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Central Illinois Light Co., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER98–3313–000]

Take notice that on June 12, 1998, PECO Energy Company (PECO), filed a Service Agreement dated May 29, 1998 with Hydro Quebec (HQ), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HQ as a customer under the Tariff.

PECO requests an effective date of May 29, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to HQ and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER98–3314–000]

Take notice that on June 12, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and PG&E Energy Trading—Power, L.P. (PG&E). The Transmission Service Agreement allows PG&E to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on PG&E, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER98–3315–000]

Take notice that on June 12, 1998, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customer: Entergy Power Marketing Corporation.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–3317–000]

Take notice that on June 12, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing an Interconnection and Operating Agreement between Entergy Louisiana and Union Carbide Corporation.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER98–3319–000]

Take notice that on June 12, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated May 14, 1998, with Southern Company Energy Marketing L.P. (Southern), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Southern as an eligible customer under the Tariff.

PP&L requests an effective date of June 12, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Southern and to the Pennsylvania Public Utility Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER98–3320–000]

Take notice that on June 12, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Central and South West Services, Inc., and Western Resources and Entergy Services, Inc. Western Resources states that the purpose of the agreements is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreements are proposed to become effective May 18, 1998 and May 15, 1998, respectively.

Copies of the filing were served upon Central and South West Services, Inc., Entergy Services, Inc., and the Kansas Corporation Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER98–3321–000]

Take notice that on June 12, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Central Illinois Light Co., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Electric Power Company

[Docket No. ER98–3322–000]

Take notice that on June 12, 1998, Southwestern Electric Power Company (SWEPCO), tendered for filing the final return on common equity (Final ROE), to be used in establishing final redetermined formula rates for wholesale service in Contract Year 1997

to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

In accordance with the provisions of the formula rate contracts, SWEPCO seeks an effective date of January 1, 1997 and, accordingly, seeks waiver, to the extent necessary, of the Commission's notice requirements.

Copies of the filing were served on the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER98–3323–000]

Take notice that on June 12, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and the City of Columbia, MO (the City). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the City pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER98–3324–000]

Take notice that on June 12, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and MidAmerican Energy Company (MEC). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to MEC pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER98–3325–000]

Take notice that on June 12, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between ASC and DTE Energy Trading, Inc., (DTE). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to DTE pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services Company

[Docket No. ER98–3326–000]

Take notice that on June 12, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and DTE Energy Trading, Inc., and PG&E Energy Trading—Power, L.P. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–3328–000]

Take notice that on June 12, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements establishing Southwestern Public Service Company (SPS), and Ameren Services (Ameren), as customers under the CSW Operating Companies' market-based rate power sales tariff. The CSW Operating Companies request an effective date of May 20, 1998, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies states that a copy of the filing was served on SPS and Ameren.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power

[Docket No. ER98–3329–000]

Take notice that on June 12, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Allegheny Electric Cooperative, Inc., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to Allegheny Electric Cooperative, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of May 20, 1998, for the Service Agreement.

Copies of the filing were served upon Allegheny Electric Cooperative, Inc., Rural Utilities Service, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Virginia Electric and Power Company

[Docket No. ER98–3330–000]

Take notice that on June 12, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Tampa Electric Company under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to Tampa Electric Company under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of June 12, 1998, for the Service Agreement.

Copies of the filing were served upon Tampa Electric Company, the Florida Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Mid-Continent Area Power Pool

[Docket No. ER98–3331–000]

Take notice that on June 12, 1998, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e)

of the Federal Power Act, filed an amendment to MAPP Schedule F.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Company of Colorado

[Docket No. ER98–3347–000]

Take notice that on June 12, 1998, Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado (PS Colorado), and Southwestern Public Service Company (collectively New Century) has filed revisions to its open-access transmission tariff pending in this docket. New Century states that the primary purpose of the proposed revisions is to modify the priority of non-firm use on the PS Colorado system to accommodate PS Colorado's membership in the Rocky Mountain Reserve Group.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Indianapolis Power and Light Company

[Docket No. ES98–34–000]

Take notice that on May 29, 1998, Indianapolis Power and Light Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured short-term securities, from time to time, in an aggregate principal amount of not more than $500,000,000 outstanding at any one time, during the period of September 1, 1998 through August 31, 2000, with final maturities of one year or less from the date of issue.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16704 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–546–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed RIPX Project and Request for Comments on Environmental Issues

June 18, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Columbia Gas Transmission Corporation's (Columbia) proposal to abandon its Derricks Creek Storage Field in Kanawha County, West Virginia and replace it with working gas capacity and deliverability at the Ripley Storage Field in Jackson County, West Virginia.

The abandonment of the Derricks Creek Storage Field in Kanawha County, West Virginia includes 13.1 miles of pipeline. In addition, the project would require the construction and operation of 3.5 miles of various diameter storage pipeline at the Ripley Storage Field, drilling six new storage wells, improving the deliverability of nine existing wells, and increasing the capacity of the Ripley Storage Field in Jackson County, West Virginia. This EA on the RIPX Project [1] will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to abandon, construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Columbia seeks authorization for the following:

- Abandonment in place of the Derricks Creek Storage Field in its entirety consisting of 13.1 miles of various diameter pipeline and 20 active storage wells;
- Construction of approximately 3.5 miles of various diameter storage pipeline, drilling six new storage wells, and improving the deliverability of nine existing wells at the Ripley Storage Field;
- Increase the capacity of the Ripley Storage Field by 0.8 billion cubic feet (BCF) of gas;
- Conversion of two observation wells to active injection/withdrawal wells, and conversion of three very low performance wells to observation wells; and
- Abandonment by sale of up to 5.4 BCF of base gas within the two storage fields.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 66.2 acres of land. Following construction, about 18.8 acres would be maintained as permanent pipeline right-of-way and about 20.0 acres would be required for new well sites and aboveground facilities. The remaining 27.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of

[1] Columbia Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of about 18.9 acres of forest would be disturbed.
- The project would cross two perennial streams, eight intermittent streams and 4 wetlands.
- Blasting may be required in some areas.
- Three private water wells are located within 150 feet of the construction work area.
- Wells may need to be plugged at Derricks Creek Storage Field.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–546–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 20, 1998.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16708 Filed 6–23–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6115–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Small System Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Small System Survey, ICR # 1863.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 24, 1998.

ADDRESSES: U.S. Environmental Protection Agency; Office of Ground Water Drinking Water, Mail Code: 4607; 401 M Street, SW; Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting Kimberly Miller at (202) 260–1891, writing to her at the above address or sending her an e-mail at Miller.KimberlyD@epa.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, (202) 260–9535/ (202) 401–6135/Cunningham.Nancy @ epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are public drinking water systems that are supplied by surface water and serve fewer than 10,000 people.

Title: Small System Survey; EPA ICR No. 1863.01.

Abstract: The Environmental Protection Agency has developed three interrelated Supplemental Surveys as part of an ongoing, scientific research and information collection program

associated with the 1996 Information Collection Rule (ICR) that supports drinking water regulation development. The overall objective of this larger research and information collection program is to provide a sound scientific and technical basis for generating and evaluating strategies for reducing risks associated with microbial pathogens and disinfection byproducts in the US drinking water supply.

EPA must conduct a Regulatory Impact Analysis (RIA) for the upcoming Stage 2 Long Term Enhanced Surface Water Treatment Rule (LT2) that evaluates the potential impacts on all system sizes. This rule is scheduled for promulgation in May 2002. A major regulatory option being considered is to target treatment for protozoa as a means for controlling not only protozoa but other waterborne pathogens. Therefore, a critical element of the RIA is a characterization of the national distribution of protozoa in source waters for all size systems. Additional data are needed to better characterize these distributions because: (1) the ICR only targets systems serving 100,000 people or more, (2) the ICR protozoa method exhibits low recovery and a high detection limit, and (3) limited data are available for systems serving less than 100,000. As these protozoan concentration estimates are inputs to the Regulatory Impact Analysis for this next phase of rulemaking, the Regulatory Impact Analysis may underestimate the level of treatment required for protozoa removal along with the resulting cost impacts of these rules.

To address these remaining data needs, EPA has developed and funded the ICR Supplemental Surveys. Although the existing ICR method remains available for possible use in these surveys, a key component of the Supplemental Surveys will be reliance upon a new analytical method, Method 1622, to measure *Cryptosporidium* concentrations. Because of its anticipated higher recovery rate and lower detection limit, Method 1622 will provide a more accurate estimate of *Cryptosporidium* concentrations in source waters. The Supplemental Surveys will focus on gathering and analyzing data from a subset of large, medium and small systems. Today's notice focuses on the information collection burden associated with small systems only. The burden associated with the large and medium surveys was covered under the Information Collection Request for the 1996 ICR.

Participation in the Small System Supplemental Surveys will be voluntary. As is appropriate in survey design, the size of the initial sampling list (a simple random sample) will be large enough to allow for some expected declinations. 40 small systems will participate in the survey and will sample twice a month during a 12 month monitoring period. The first monthly analysis will include protozoa (*Cryptosporidium, Giardia*) and bacterial samples (total *coliform, E.coli*); wet chemistry samples for total organic carbon (TOC), alkalinity, calcium hardness, total hardness, UV254, bromide and ammonia; and water quality parameters including turbidity, pH and temperature. The second monthly analysis will include protozoa and bacterial samples and water quality parameters including turbidity, pH and temperature. Twenty percent of the sample events will collect an additional raw water sample for use as a matrix spike to assess how the water matrices may be affecting method performance. Additional parameters that will be measured during the matrix spike events include dissolved organic carbon (DOC), total suspended solids (TSS), total dissolved solids (TDS) and conductivity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The projected total cost for all respondents in the small system survey is $83,837. This is based on an hourly rate of $56/hr for a supervisor and $18/hr for the technician. The total reporting burden for the small system survey is 1280 hours. This figure is based on 40 utilities expending 32 hours each to respond to the survey. For each utility, the time required for all collection events is 2 hrs and 40 minutes per month. The following tasks are included in the burden estimate: reviewing sample procedures, receiving and unpacking sample equipment, sample collection including water quality parameter measurement, packing samples for shipment, completing traffic reports and completing Federal Express airbills. EPA is supplying the sample collection materials and paying the shipping costs. There is a burden of $114/month for the systems to analyze *E. coli* and total *coliform* samples. EPA is considering requesting that participating utilities analyze bacterial samples at the laboratories which they usually use, due to the short holding times for these samples. If EPA does not choose to request that participating utilities analyze bacterial samples, then the small utilities would not have the burden of $114/month to analyze E. coli and total coliform samples. There is no total capital and start-up cost component. There are no operation and maintenance costs associated with this survey. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 18, 1998.

Cynthia C. Dougherty,

Director, Office of Groundwater Drinking Water.

[FR Doc. 98–16768 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6115–6]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Monterey Bay Unified County Air Pollution Control District (MBUAPCD, or "District") in Monterey, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit the MBUAPCD to keep the financial assistance awarded to it by EPA for FY–97 under section 105(c) of the CAA.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by July 24, 1998.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the MBUAPCD to aid in the operation of its air pollution control programs. In FY–96 EPA awarded the MBUAPCD $272,869, which represented approximately 7% of the District's budget. In FY–97, EPA awarded the MBUAPCD $255,265, which represented approximately 8% of the District's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA § 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–97 § 105 application, which EPA reviewed in early 1997, the MBUAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $2,888,803. This MOE would have been sufficient to meet the MOE requirements of the CAA because it was not lower than the FY–96 MOE of $2,701,629. In October of 1997, however, the MBUAPCD submitted to EPA documentation which shows that its actual FY–97 MOE was $2,561,303. This amount represents a shortfall of $140,326 from the MOE for FY–96. In order for the District to be eligible to keep its FY–97 grant, EPA must make a determination under § 105(c)(2).

The MBUAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the MBUAPCD go directly to the district to fund its operations. It is the "unit of Government" for § 105(c)(2) purposes. The MBUAPCD submitted documentation to EPA which indicates that the reduction of actual expenditures is primarily composed of declining fee revenues. Due to shortfalls in revenues, the Board has directed the district to control costs and reduce the existing fund balance.

In summary, the MBUAPCD's MOE reductions resulted from budget cuts stemming from a loss of revenues due to circumstances beyond the District's control. EPA proposes to determine that the MBUAPCD's lower FY–97 MOE level meets the § 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the MBUAPCD to keep the funds received from EPA for FY97.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by July 24, 1998, on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by July 24, 1998.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: June 11, 1998.

David P. Howekamp,

Director, Air Division, U.S. EPA, Region 9.

[FR Doc. 98–16769 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6115–3]

Industrial Combustion Coordinated Rulemaking; Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR); Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for July 28–29, 1998. Also, most of the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in July, 1998. The dates of these Work Group meetings are summarized below. Further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT:**).

ADDRESSES: The Coordinating Committee meeting on July 28–29, 1998 will be held at the Renaissance Long

Beach Hotel, 111 East Ocean Boulevard, Long Beach, California. The telephone number for the Renaissance Long Beach Hotel is (562) 437–5900. The locations of the Work Group meetings are summarized below. Further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT:**).

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at the U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn/iccr
FTP: mountain.epa.gov

When accessing the WWW site, select Technical Sites which brings up the Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held July 28–29, 1998 at the Renaissance Long Beach Hotel, 111 East Ocean Boulevard, Long Beach, California from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their progress, testing needs and prioritization issues, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work group	Date	Location
Incinerators	July 7, 1997	Pittsburgh, PA.
IC Engines	July 30, 1998	Long Beach, CA.
	September 17, 1998	RTP, NC.
Boilers	July 30, 1998	Long Beach, CA.
	September 17, 1998	RTP, NC.
Stationary Combustion Turbines	July 30, 1998	Long Beach, CA.
	September 17, 1998	RTP, NC.
Process Heaters	July 30–31, 1998	Long Beach, CA.
	September 17, 1998	RTP, NC.
Economics Analysis	July 30, 1998	Long Beach, CA.
Testing and Monitoring Protocol	July 31, 1998	Long Beach, CA.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the ICCR Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in July, will be September 15–16, 1998 in Research Triangle Park, North Carolina.

Dated: June 17, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–16802 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42006D; FRL–5789–6]

Idaho Certification Plan for Certification of Restricted Use Pesticide Applicators; Amendment Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 11, 1998, EPA announced its intention to approve an amendment to the Idaho plan for the certification of restricted use pesticide applicators and solicited comments. The amendment adds a category for the certification of 1080 Livestock Protection Collar (1080 LPC) applicators. The amended plan also requires recertification every 2 years rather than the current 5 years, establishes a chemigation category, and combines its various classes of commercial applicators under a new classification of professional applicator. EPA announces its approval of the Idaho certification plan amendment.

DATES: This amendment is effective July 9, 1998.

ADDRESSES: Copies of the amended Idaho Certification Plan and its comments are available for viewing at the following locations during normal business hours, Monday through Friday, excluding legal holidays:

1. John R. MacDonald, Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Hwy., Rm. 1121, Arlington, VA, telephone: (703) 305-7370, e-mail: macdonald.john@epamail.epa.gov.

2. Allan Welch, Environmental Protection Agency, Region X, 1200 Sixth Ave., Eighth Floor, Seattle, WA, telephone: (206) 553-1980, e-mail: welch.allan@epamail.epa.gov.

3. Beth Williams, Idaho Department of Agriculture, Division of Agricultural Resources, P.O. Box 7723, 2270 Old Penitentiary Rd., Boise, ID, telephone: (208) 332-8605, e-mail: bwilliams@agri.state.id.us.

FOR FURTHER INFORMATION CONTACT: By mail, Allan Welch, Environmental Protection Agency, Region X, 1200 Sixth Ave., Eighth Floor, Seattle, WA 98101, telephone: (206) 553-1980, e-mail: welch.allan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 11, 1977 (42 FR 8692), a notice was published announcing the final approval of the Idaho plan for the certification of restricted use pesticide applicators. On February 11, 1998 (63 FR 6929) (FRL–5754–3), EPA announced its intention to approve an amendment to the Idaho plan and solicited comments. The Idaho amendment establishes a new category for the certification of 1080 LPC applicators. Idaho proposes to certify approximately 25 employees of the United States Department of Agriculture, Wildlife Services. Wildlife Services is one of the registrants of the 1080 LPC and will supply the 1080 LPC to their employees certified under this plan. Wildlife Services employees certified under this plan will only be applying 1080 LPCs in performance of their official duties. There is no provision for supervision of non-certified applicators of 1080 LPCs. Only applicators certified in 1080 LPC use will be permitted to apply the product. The amended plan will combine the license of a commercial applicator, a commercial operator, a limited applicator, and a consultant into a single license of professional applicator. The Idaho Certification Plan will under this amendment have only private and professional applicators. Chemigation will become a category under both the private- and -professional applicator license. Previously chemigation required a separate license. The recertification period is reduced to 2 years from the previous 5-year period. The training required for recertification eligibility also is reduced. This results in more frequent training with the average yearly training burden remaining relatively unchanged.

II. Discussion of Comments

Mr. Michael A. Guerry, President of the Idaho Wool Growers Association; Mr. Mark Collinge, State Director of Idaho Wildlife Services, United States Department of Agriculture; Ms. Judy Woodie, President of the Idaho Cattle Association; and Mr. Laird Noh of Noh Sheep Company were the four persons submitting comments on the amendment. All commenters confined their remarks to the predator control aspects of the amendment. All commenters expressed the opinion that 1080 LPCs were a valuable tool and supported the predator control provisions of the amendment. Mr. Collinge submitted attachments to his comments that addressed past studies and proposed future uses of predator-control measures. Some of Mr. Collinge's comments and attachments addressed programs and definitions of registration requirements that are related but not specific to this action. EPA will continue to work with Mr. Collinge and other concerned parties to clarify these questions. Comments are available for review at the addresses listed in "ADDRESSES" at the beginning of this document.

EPA approves the amendment to the Idaho plan for the certification of pesticide applicators.

List of Subjects

Environmental protection.

Dated: June 8, 1998.

Charles Findley,

Acting Regional Administrator, Region X.

[FR Doc. 98–16572 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34126; FRL–5796–3]

Bacillus thuringiensis; Availability of Reregistration Eligibility Document for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient *Bacillus thuringiensis*, and the start of a 60–day public comment period. The RED for *Bacillus thuringiensis* is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of *Bacillus thuringiensis* are eligible for reregistration.

DATES: Written comments on the RED must be submitted by August 24, 1998.

ADDRESSES: Three copies of comments identified with the docket number [OPP–34126] should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, deliver comments to: Room 119, CM2 1921 Jefferson Davis Highway, Arlington, VA. Comments and data may also be submitted electronically by following the instructions under "Public Record." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be

disclosed except in accordance with procedures set for in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII File avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format.

All comments and data in electronic form must be identified by the docket control number [OPP–34126]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

To request a copy of the above RED, or a RED Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 119 at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the Biopesticide Review Manager, William R. Schneider, PM 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th floor CM2 2100 Jefferson Davis Highway, Arlington, VA; (703–308–8683), e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents (RED) for the pesticidal active ingredient: *Bacillus thuringiensis*. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical *Bacillus thuringiensis* is substantially complete. EPA has determined that all currently registered products containing *Bacillus thuringiensis* as an active ingredient are eligible for reregistration.

All registrants of products containing *Bacillus thuringiensis* have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** notice announcing its availability.

List of Subjects

Environmental protection.

Dated: June 12, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–16777 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36192; FRL–5792–3]

Inert Ingredients No Longer Used In Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is removing certain chemicals from its list of pesticide product inert ingredients that are not currently used in pesticide products. Future use of these chemicals as inert ingredients in pesticide products will not be permitted unless a petitioner or registrant satisfies all data requirements as identified by the Agency, and the Agency is able to make a determination that the use of the inert ingredient will not pose unreasonable risk to human health or the environment. All tolerances or exemptions from the requirement of a tolerance for the use of these chemicals as inert ingredients in food-use pesticide formulations will be proposed for revocation at a later date in a separate **Federal Register** Notice.

DATES: This notice is effective on June 24, 1998. This notice is subject to revision if comments are received and revision is warranted. Comments must be received on or before August 24, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VII of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Minor Use, Inerts, and Emergency Response Branch (MUIERB), Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, (703) 308–8373, e-mail: alston.treva@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces those List 1, List 2 and List 3 inert ingredients that are no longer used in pesticide products.

I. Background

On April 22, 1987, EPA announced certain policies designed to reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients (52 FR 13305). In developing the policy, the Agency reviewed the available data on chemicals used as inert ingredients, and concluded that some inert ingredients had potentially significant long-term health and environmental hazards

associated with their use in pesticide products.

The 1987 notice categorized all inert ingredients into four lists, according to toxicity, as follows: List 1 inert ingredients, described as "inerts of toxicological concern," were so categorized on the basis of toxicological or adverse ecological effects which had been documented in studies subject to peer review. List 2 inert ingredients, "potentially toxic inerts/high priority for testing," are structurally similar to chemicals known to be toxic and may have data suggesting a basis for concern. List 3 inert ingredients, "inerts of unknown toxicity," do not have data supporting their inclusion on Lists 1 or 2 (or 4; see below). List 4 inert ingredinets, "minimal hazard or risk inerts," consists of ingredients which are generally regarded as innocuous.

In a susubsequent **Federal Register** notice, EPA further revised List 4, creating two subcategories: (1) List 4A, "inerts generally regarded as safe" and (2) List 4B, "inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment" (54 FR 48314, November 22, 1989). The Agency further revised List 4A in 1994 (59 FR 49400, September 28, 1994)(FRL–4872–5), and continues to evaluate the toxicity of inert ingredients. EPA's designation of inert ingredients according to list has been published as the "List of Pesticide Product Inert Ingredients" (May 17, 1995), and is available through the Office of Pesticide Program's Public Information and Record Integrity Branch at the address given above.

The criteria used for placement of inert ingredients on List 1 were discussed in detail in the November 22, 1989 **Federal Register** notice (54 FR 58314). In summary, the criteria for inclusion on List 1 included carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), adverse ecological effects or the potential for bioaccumulation. Inert ingredients which were placed on List 2 were considered to be structurally similar to chemicals known to be toxic or there existed data which suggested a basis for concern about the toxicity of the chemical.

II. Inert Ingredients no Longer Used in Pesticide Products

The Agency has identified certain List 1, List 2, and List 3 inert ingredients that are no longer used in pesticide products. Many List 1 inert ingredients are no longer used because of data call-in notices issued pursuant to section 3(c)(2)(B) of FIFRA. In response to the issuance of data call-in notices (DCIs) for List 1 inert ingredients, most registrants of products containing List 1 inert ingredients chose to respond to the DCI by canceling the registration or reformulating the product to remove the List 1 inert ingredient.

List 1 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers:

LIST 1 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

CAS Reg. No.	Chemical Name
56–23–5	Carbon tetrachloride
56–35–9	Tributyltin oxide
62–53–3	Aniline
67–66–3	Chloroform
68–12–2	Dimethylformamide
74–87–3	Methyl chloride
75–09–2	Methylene chloride
75–56–9	Propylene oxide
78–87–5	1,2–Dichloropropane
79–00–5	1,1,2–Trichloroethane
79–01–6	Trichloroethylene
90–43–7	*o*–Phenylphenol
106–46–7	*p*–Dichlorobenzene
106–89–8	Epichlorohydrin
107–06–2	Ethylene dichloride
109–86–4	Ethylene glycol monomethyl ether
110–54–3	*n*–Hexane
110–80–5	Ethylene glycol monethyl ether
111–15–9	Ethanol ethoxyacetate
123–91–1	Dioxane
127–18–4	Perchloroethylene
140–88–5	Ethyl acrylate
302–01–2	Hydrazine
569–64–2	Malachite green
591–78–5	Methyl n–butyl ketone
1330–78–5	Tri–orthocresylphosphate (TOCP)
1332–21–4	Abestos fiber
1588–01–9	Sodium dichromate
26471–62–5	Toluene diisocyanate
No CAS Number	Cadmium compounds
No CAS Number	Lead compounds
No CAS Number	Pyrethrins

List 2 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers:

LIST 2 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

CAS Reg. No.	Chemical Name
74–83–9	Methyl bromide
76–14–2	Dichlorotetrafluoroethane
95–50–1	*o*–Dichlorobenzene
95–76–1	3,4–Dichloroaniline
95–82–9	2,5–Dichloroaniline
101–84–8	Diphenyl ether
120–32–1	2–Benzyl–4–chlorophenol
554–00–7	2,4–Dichloroaniline
608–27–5	2,3–Dichloroaniline
608–31–1	2,6–Dichloroaniline
626–43–7	3,5–Dichloroaniline
25168–06–3	Isopropyl phenols

List 3 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers:

LIST 3 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

CAS Reg. No.	Chemical Name
70–55–3	*p*–Toluenesulfonamide
74–82–8	Methane
75–73–0	Carbon tetrafluoride
77–85–0	Trimethylolethane
79–07–2	2–Chloroacetamide
79–43–6	Dichloroacetic acid
80–15–9	Cumene hydroperoxide
88–58–4	2,5–Di(tert–butyl)hydroquinone
90–33–5	7–Hydroxy–4–methylcoumarin
91–44–1	2*H*-1-Benzopyran-2-one, 7-(diethylamino)-4-methyl-
92–68–2	Isopropylamine salt of stearoylisopropanolamide derivative of sulfosuccinic acid
93–69–6	o–Tolyl biguanide
95–13–6	1*H*-Indene
98–73–7	4-tert-Butyl benzoic acid
101–81–5	Benzylbenzene
103–60–6	Propanoic acid, 2-methyl-, 2-phenoxyethyl ester
107–68–6	2-(Methylamino)ethanesulfonic acid
107–70–0	4-Methoxy-4-methyl-2-pentanone
107–87–9	Methyl *n*-propyl ketone
109–66–0	Pentane
110–99–6	Diglycolic acid
111–92–2	Di-*n*-butylamine
112–38–9	10-Undecenoic acid
115–19–5	2-Methyl-3-butyn-2-ol
116–02–9	3,3,5-Trimethylcyclohexanol
119–64–2	1,2,3,4-Tetrahydronaphthalene
120–80–9	1,2-Benzenediol
122–39–4	Diphenylamine
123–28–4	Dilauryl thiodipropionate
136–23–2	Dibutyldithiocarbamic acid, zinc salt
136–44–7	Glyceryl p–aminobenzoate
140–31–8	1-Piperazineethanamine
142–58–5	*N*-(2-Hydroxyethyl)tetradecanamide
143–00–0	Diethanolammonium dodecyl sulfate
420–04–2	Hydrogen cyanamide
431–03–8	2,3-Butanedione
470–82–6	2-Oxabicyclo[2.2.2]octane, 1,3,3–trimethyl-
523–80–8	4,7-Dimethoxy-5-(2-propenyl)-1,3-benzodioxole
546–68–9	Tetraisopropyl titanate
548–62–9	Methylrosaniline chloride
630–08–0	Carbon monoxide
650–51–1	Sodium trichloroacetate
683–10–3	Dodecylbetaine
693–98–1	1*H*-Imidazole, 2-methyl-
822–06–0	Hexamethylene diisocyanate
872–10–6	1,1'-Thiobispentane
921–20–0	Methoxy-2,4-dihydroxypentane
1113–38–8	Ammonium oxalate
1118–92–9	*N,N*-Dimethylcaprylamide

LIST 3 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS—Continued

CAS Reg. No.	Chemical Name
1155–74–4	1-Tetradecylpyridinium bromide
1187–59–3	*N*-Methylacrylamide
1300–71–6	Xylenols, mixed
1313–27–5	Molybdenum trioxide
1314–23–4	Zirconium oxide
1323–47–3	(2-Heptadecenyl)-4-methyl-2-oxazolinemethanol
1332–77–0	Potassium tetraborate
1333–83–1	Sodium bifluoride
1344–08–7	Sodium sulfide
1393–03–9	Quillaja
1606–85–5	2,2'-[2-Butyne-1,4-diyl(oxy)]bisethanol
1760–24–3	*N*-[3-(Trimethoxysilyl)propyl]-1,2-ethanediamine
2050–60–4	Dibutyl oxalate
2050–99–9	Diisoamyl ketone
2156–56–1	Sodium dichloracetate
2224–49–9	Triethanolamine laurate
2386–87–0	3,4-Epoxycyclohexylmethyl 3,4-epoxycyclohexanecarboxylate
2571–88–2	*N,N*-Dimethyloctadecylamine oxide
2724–58–5	Methylheptadecanoic acid
2764–13–8	2-Hydroxyethyl dimethyl 3-octadecanamidopropyl ammonium nitrate
2991–51–7	Potassium *N*-ethyl-*N*-[(heptadecafluorooctyl)sulfonyl]glycinate
3006–13–1	*N*-Ethyl-*N,N*-dimethyl-1-dodecaminium ethyl sulfate
3287–06–7	Diphenyl decyl phosphite
3324–58–1	Picric acid, sodium salt
3380–34–5	2,4,4'-Trichlorc-2-hydroxy diphenyl ether
3424–21–3	Triisopropylamine
3614–12–8	*N*-Dodecyl-*N*-tetradecyl beta-alanine
3655–00–3	3,3'-(Dodecylimino)dipropionic acid, disodium salt
3921–30–0	Monodecyl acid phosphate
2620–53–3	*p*-Chlorophenyl *N*-methyl carbamate
3942–54–9	*o*-Chlorophenyl *N*-methyl carbamate
4110–50–3	Ethyl propyl thio ether
4130–35–2	Tri-*n*-decyl trimellitate
4175–37–5	Octyldiphenylamine
4568–28–9	Triethanolamine stearate
4654–26–6	Dioctyl terephthalate
4696–57–5	Barium laurate
4891–67–2	Isophthalic anhydride
5012–62–4	2,6-Bis(1-methylheptadecyl)-*p*-cresol
5145–99–3	Ethyl isopropyl sulfide
5394–36–5	5-Ethyl-5-methylhydantoin
5434–57–1	Hexyl neopentanoate
6001–97–4	Dihexyl*ester of sodium sulfosuccinate (* hexyl is 1–methylpentyl)
6144–28–1	Dilinoleic acid
6373–07–5	Rhodamine B stearate
6642–07–5	Trichlorophene
6843–97–6	Dodecyldi(aminoethyl)glycine
7360–53–4	Aluminum formate
7376–31–0	Triethanolamine sulfate
7446–09–5	Sulfur dioxide
7585–20–8	Zirconium acetate
7702–01–4	1*H*-Imidazolium, 1-(2-(carboxymethoxy)ethyl)-1-(carboxymethyl)-2-heptyl-4,5-dihydro-, hydroxide, disodium salt
7772–98–7	Sodium thiosulfate
7775–14–6	Sodium hydrosulfite
7778–50–9	Potassium dichromate
7783–18–8	Ammonium thiosulfate
7789–00–6	Potassium chromate
7790–62–7	Potassium pyrosulfate
8002–65–1	Neem oil
8043–44–5	Sodium sulforicinoleate
10039–54–0	Hydroxylamine sulfate
10107–99–0	Abietic acid, diethylene glycol ester
10361–37–2	Barium chloride
12002–51–6	Cresylic acid, potassium salt
12007–92–0	Sodium pentaborate
12379–45–2	Isothymyl 2–chloroethyl ether
12626–51–6	Dodecyl sulfate, *N,N*-diethylcyclohexylamine salt
12645–53–3	Phosphoric acid, isooctyl ester
13470–50–3	2-Heptadecyl-1-methyl-1-(2-stearoyl(amido)ethyl-2-midazolinium methyl sulfate
13477–36–6	Calcium perchlorate
13701–59–2	Barium metaborate

LIST 3 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS—Continued

CAS Reg. No.	Chemical Name
14408–42–5	2-(8-Heptadecenyl)-4-methyl-2-oxazoline-4-methanol
14433–76–2	*N,N*-Dimethylcapramide
16090–02–1	Disodium 4,4'-bis(4-anilino-6-morpholino-*s*-triazin-2-ylamino)stilbene-2,2-disulfonate
16455–61–1	Sodium ferric ethylene diamine di(*o*-hydroxyphenylacetate)
16940–66–2	Sodium borohydride
17123–43–2	*N,N*-Bis(2-hydroxyethyl)glycine, sodium salt
19529–38–5	Diethylenetriaminepentaacetic acid, disodium iron(III) salt
21041–93–0	Cobalt hydroxide
21129–18–0	Manganese propionate
23054–60–6	*N*-(2-Hydroxypropyl)octanamide
23054–61–7	*N*-(2-Hydroxypropyl)decanamide
25167–70–8	Diisobutylene
25307–17–9	2,2'(9-Octadecenylimino)ethanol
26628–22–8	Sodium azide
26761–64–8	1*H*-Benzimidazoledisulfonic acid, 2-heptadecyl-, disodium salt
26836–28–2	Bis(2-ethylhexyl)pyrophosphate
28855–27–8	(Dodecylmethylbenzyl) trimethyl ammonium chloride
30346–73–7	Xylenesulfonic acid, potassium salt
30399–84–9	Isooctadecanoic acid
30526–26–2	Nonylphenol dihydrogen phosphate
31711–50–9	Butylnaphthalene
31866–76–9	1-Oxyethyl-2-stearic imidazoline
35255–48–2	Cyclohexanone, cyclohexylidene–
39049–04–2	Zirconium neodecanoate
40766–31–2	1-Phenyl-1-xylylethane
53404–15–2	Aluminum hydroxybenzenesulfonate
53404–49–2	Ethylene glycol ether of pfhene
53404–62–9	*N*-[alpha-(Nitroethyl)benzyl]ethylenediamine, potassium salt
54585–68–1	1*H*-Benzimidazolesulfonic acid, 2-undecyl-, monosodium salt
56797–01–4	Cerium 2-ethylhexoate
60209–82–7	Isodecyl neopentanoate
60789–80–2	Citric acid, tris(triethylamine) salt
60840–86–0	Oleic tetraester of tetra(hydroxyethyl)ethylenediamine
60874–82–0	Propylammonium nitrite
61789–32–0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts
61789–52–4	Cobalt tallate
61791–32–0	*N*-(2-Cocoamidoethyl)-*N*-(2-hydroxyethyl)glycine, sodium salt
61791–33–1	*N*-(2-Aminoethyl)-*N*-(2-hydroxyethyl)glycine, *N*-coco acyl derivs
61792–08–3	Ethanol diglycine, disodium salt
64051–23–6	2-Butoxyethyl dihydrogen phosphate, diethylamine salt
64503–07–7	Benzyl dibromoacetate
64741–79–3	Coke, petroleum
67859–56–7	2,3-Dihydroxypropyl 3-(hexylthio)propionate
67859–60–3	Tris[(2-ethylhexyl)oxy]boroxin-
68153–99–1	Amines, *N*–tallow alkyltrimethylenedi–, dioleates
68298–14–6	Methyl epoxystearate, reaction products with tetraethylene pentamine
68334–32–7	Polyphosphoric acids,2-ethylhexyl esters, sodium salts
68442–99–9	Manganese boron neodecanoate
68476–95–9	Shale
68526–90–9	Decyl alcohol bottoms (higher M.W. alcohols, ethers, esters; isodecyl alcohol)
68609–97–2	Alkyl(mixed $C_{12}C_{14}$) glycidyl ether
68630–89–7	6-Carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, monopotassium salt
68877–34–9	*N*-(Nonyloxypropyl)-1,3-propanediamine
68917–09–9	Ocotea oil
68987–86–0	Isopropylated cresol
69867–70–5	Triethylamine nitrilotriacetate
70191–75–2	Decyl phenoxybenzenedisulfonic acid
70904–61–9	Amidosulfosuccinate
71113–21–8	[[[3-(Dimethylamino)propyl]imino]bis(methylene)] bisphosphonic acid, monohydrochloride
71487–01–9	Di(coco alkyl) dimethyl ammonium nitrite
74849–88–0	Dicyanoethyl diethylenetriamine
75212–49–6	Bis(2-ethylhexyl)pyrophosphate, disodium salt
77097–78–0	Pyrolysis gasoline
77500–13–1	Bis(2-hydroxyethyl)-3-(decyloxy)propylamine, *N*-oxide
78812–39–2	Carbamic acid, manganese salt
79660–25–6	Acetamide, 2,2-dichloro-*N*-(1,3–dioxolan-2-ylmethyl)-*N*-2-propenyl-
81099–36–7	3,4,4-Trimethyloxazolidine mixt. with 4,4-dimethyloxazolidine
85005–69–2	Oleic monoester of tetra(hydroxyethyl)ethylenediamine
85081–53–4	Dodecenylsuccinic acid, monotridecyl ester
89875–83–2	(Dodecylmethylbzyl) trimethyl ammonium chloride
92257–04–0	Amines, C_{12-14} tert-alkyl, bis-[4-[(5-chloro-2-hydroxyphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3*H*-pyrazol-3-onato(2-)]cobaltate(1-) (1:1)

LIST 3 INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS—Continued

CAS Reg. No.	Chemical Name
103112–35–2	1*H*-1,2,4-Triazole-3-carboxylic acid, 1-(2,4-dichlorophenyl)-5-(trichloromethyl)-, ethyl ester
103213–17–8	Coke, brown coal
108746–82–3	Oleic diester of tetra(hydroxyethyl)ethylenediamine
125972–19–2	*N,N*-Dimethylisooctadecanamine, *N*-oxide
No CAS Number	Dodecyl dimethyl benzyl ammonium napthenate
No CAS Number	Butanamide, 4-hydroxy-, *N*-C_{6-16}-alkyl-
No CAS Number	Sodium *n*-nonyldiphenyl ether sulfonate
No CAS Number	Oligoester derived by condensation of adipic acid, phthalic anhydride, ethylene glycol, n–octyl alcohol and n–decyl alcohol
No CAS Number	1*H*-Benzimidazole-6,3'-disulfonic acid, 2-octadecyl-1-(phenylmethyl)–, sodium salt
No CAS Number	Naphthenic acid soap of *N*-C_{16-18}-alkyl trimethylendiamine
No CAS Number	Nickel complex of diethyl hexyl acid phosphate
No CAS Number	Isopropylamine salt of oleoylisopropanolamide derivative of sulfosuccinic acid
No CAS Number	Isodecyl phenyl acid phosphate
No CAS Number	Tetrapropyl succinic acid

According to Agency records, none of the above chemicals have been used in any registered pesticide product for over two years, and in most cases, the above chemicals have not been used as inert ingredients in registered pesticide products for over five years. If a registrant disputes the Agency's determination concerning inert ingredients that are no longer used in pesticide products and still has an active registration for a pesticide product containing one of the chemicals identified as no longer used in pesticide products, the registrant should immediately notify the Agency as detailed in the "ADDRESSES" section of this notice. The registrant should include the inert ingredient name, CAS Reg. No. for the inert ingredient in question and the EPA Registration Number of the pesticide product containing the inert ingredient.

III. Policy Governing Future Use of Chemicals that are No Longer Permitted for Use as Inert Ingredients

Because of the toxicological and other concerns associated with List 1 and List 2 ingredients, EPA believes that registrants will have difficulty proving to the Agency that use of products containing such ingredients would not result in unreasonable adverse effects on human health and the environment. Therefore, the Agency does not normally expect to approve future applications involving the use of any of the above List 1 or List 2 chemicals as ingredients, except in those few cases where the applicant can clearly demonstrate through the submission of data that the proposed use will not adversely affect public health or the environment. Data requirements for any such future request will be determined by the Agency on a case–by–case basis. Use of any of the above List 3 chemicals will be considered by the Agency under the same procedures that apply to new inert ingredients specified in the April 22, 1987, Inert Inrgredient Policy Statement.

IV. Revocation of Exemptions from the Requirement of a Tolerance for Chemicals No Longer Permitted for Use as Inert Ingredients

The Agency has previously revoked most of the exemptions from the requirement of a tolerance for those List 1 inert ingredients identified above as no longer used in pesticide products. The Agency will propose future revocations of any remaining exemptions from the requirement of a tolerance for all chemicals identified above as no longer used in pesticide products.

V. List 1 and 2 Inert Ingredients Currently Used in Pesticide Products

There are 8 List 1 inert ingredients and 52 List 2 inert ingredients that, according to Agency records, are still used in pesticide products. Although the Agency stated in the November 1989 **Federal Register** Notice that the List 1 inert ingredient formaldehyde was no longer used in pesticide products as an inert ingredient, the Agency has now determined that, according to its records, formaldehyde is present in some pesticide products as an inert ingredient for use as a formulation preservative or as a component of certain proprietary mixtures.

Products containing formaldehyde as an inert ingredient will be included in the reregistration process of the active ingredient, formaldehyde since the registration standard entitled "Guidance for the Reregistration of Pesticide Products Containing Formaldehyde and Paraformaldehyde" published on May 31, 1988, stated that formaldehyde should be categorized as an active ingredient in all products in which it is used, including products containing formaldehyde as an inert ingredient.

The remaining List 1 and List 2 inert ingredients are as follows:

LIST 1 INERT INGREDIENTS CURRENTLY USED IN PESTICIDE PRODUCTS

CAS Reg No.	Chemical Name
50–00–0	Formaldehyde
78–59–1	Isophorone
81–88–9	Rhodamine B
103–23–1	Dioctyl adipate
108–95–2	Phenol
117–81–7	Diethylhexylphthalate
123–31–9	1,4–Benzendiol
25154–52–3	Nonyl phenol

LIST 2 INERT INGREDIENTS CURRENTLY USED IN PESTICIDE PRODUCTS

CAS Reg No.	Chemical Name
71–55–6	1,1,1-Trichloroethane
75–00–3	Chloroethane
75–05–8	Acetonitrile
75–37–6	1,1-Difluoromethane
75–43–4	Dichloromonofluoromethane
75–45–6	Chlorodifluoromethane
75–52–5	Nitromethane
75–68–3	1-Chloro-1,1-difluoroethane
75–69–4	Trichlorofluoromethane
75–71–8	Dichlorodifluoromethane
76–13–1	Trichlorotrifluoromethane
79–24–3	Nitroethane
80–62–6	Methyl methacrylate
84–66–2	Diethyl phthalate
84–74–2	Dibutyl phthalate
85–68–7	Butyl benzyl phthalate
88–04–0	*p*-Chloro-*m*-xylenol
95–14–7	1,2,3-Benzotriazole
95–49–8	2-Chlorotoluene
96–29–7	Methyl ethyl ketoxime
97–23–4	Dichlorophene
97–88–1	Butyl methacrylate
100–02–7	*p*-Nitrophenol
100–41–4	Ethyl benzene
102–71–6	Triethanolamine
106–88–7	Butylene oxide
108–10–1	Methyl isobutyl ketone
108–88–3	Toluene

LIST 2 INERT INGREDIENTS CURRENTLY USED IN PESTICIDE PRODUCTS—Continued

CAS Reg No.	Chemical Name
108–90–7	Monochlorobenzene
108–94–1	Cyclohexanone
111–42–2	Diethanolamine
111–76–2	2-Butoxy-1-ethanol
111–77–3	Diethylene glycol monomethyl ether
111–90–0	Diethylene glycol monoethyl ether
112–34–5	Diethylene glycol monobutyl ether
117–84–0	Dioctyl phthalate
107–98–2	1-Methoxy-2-propanol
124–16–3	1-Butoxyethoxy-2-propanol
131–11–3	Dimethyl phthalate
141–79–7	Mesityl oxide
149–30–4	Mercaptobenzothiazole
1330–20–7 ...	Xylene
5131–66–8 ...	1-Butoxy-2-propanol
25498–49–1	Tripropylene glycol monomethyl ether
29385–43–1	Tolyl triazole
29387–86–8	Propylene glycol monobutyl ether
34590–94–8	Dipropylene glycol monomethyl ether
No CAS Number.	Petroleum hydrocarbons
No CAS Number.	Xylene–range aromatic solvents

VI. Process for Future Removal of Inert Ingredients that are No Longer Used as Inert Ingredients

As a part of its ongoing inerts strategy, the Agency will perform future reviews of List 1, List 2, and List 3 inert ingredients to identify those inert ingredients which are no longer used. The Agency will issue future **Federal Register** notices removing those chemicals from its list of inert ingredients. Any associated exemptions from the requirement of a tolerance for such chemicals when used as inert ingredients will also be revoked. The Agency will not remove any List 4A or 4B inert ingredients from its list of inert ingredients since sufficient data have been presented to establish that the use of these chemicals as inert ingredients will not present a hazard to public health or the environment.

In an effort to identify inert ingredients which are no longer used, the Agency may contact registrants of pesticide products or manufacturers/suppliers of substances which are used as inert ingredients in pesticide formulations which contain specific inert ingredients the Agency believes may not actually be in use. This action may be necessary to verify the information currently contained in the Agency's database relative to product formulation information.

The Agency considers all alternate formulations valid for purposes of registration unless a registrant provides specific written notice to the Agency that a particular formulation will no longer be used. Therefore, the Agency wants to encourage registrants as part of their pesticide product stewardship program to provide the Agency with written notice identifying specific formulations that are no longer used as part of the pesticide product registration and amendment process. This action will assist the Agency in better identifying those inert ingredients that are no longer used in pesticide products as well as improving the overall accuracy of the Agency's product formulation information.

VII. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number [OPP-36192] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–36192]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 11, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–16571 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–815; FRL–5795–9]

Pesticide Temporary Tolerance Exemption Petition; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition proposing the extension of the exemption from the requirement of a temporary tolerance for residues of Trichodex (*Trichoderma harzianum* T-39) in and on all raw agricultural commodities as granted in Pesticide Petition 6G4622, concomitant with the extension of the Experimental Use Permit 11678–EUP–1. These extensions are requested to comply with the Food Quality Protection Act of 1997. The summary of the petition in this notice was prepared by the petitioner.

DATES: Comments, identified by the docket control number PF–815, must be received on or before July 24, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus (PM-90) Biopesticides and Pollution Prevention Division,

Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: 5th floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone number 703 308–8097, e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–815] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–815] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1998.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Makhteshim-Agan of North America Inc.

PP 6G4622

EPA has received a request to extend the pesticide petition (PP 6G4622) from Makhteshim-Agan of North America Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by extending the exemption from the requirement of a temporary tolerance for residues of the biofungicide Trichodex (*Trichoderma harzianum* T-39) in and on all raw agricultural commodities. According to the proposed extension request, 3,120 pounds (3,683 kg) of the microbial pesticide are to be applied to the sites previously described in the original Experimental Use Permit which has been in progress for 2 years.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408 (d) of the FFDCA, as recently amended by the Food Quality Protection Act, Makhteshim-Agan of North America Inc. included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of the receipt of the petition. The summary represents the views of Makhteshim-Agan of North America Inc.; EPA as mentioned above is in the process of evaluating the petition. As required by section 408 (d) (3) EPA is including the summary as part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

A. Proposed Use Practices

Recommended application method and rate(s), frequency of application, and timing of application. Trichodex may be applied with conventional spray equipment for control of Botrytis (gray mold) on fruit and vegetable crops. The rate of application is two to four pounds of Trichodex per acre in sufficient gallonage to insure adequate coverage. The frequency and timing of application vary with the crop being treated. For example, one to four applications are made to wine grapes in a rotational program with conventional chemical fungicides, while four to six applications may be applied to wine grapes when the product is used alone. Table grapes are treated with one to three applications during pre-bloom to fruit set. Treatments on strawberry may include up to eight applications (once per week) throughout the growing season from pre-bloom to harvest.

B. Product Identity/ Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient is *Trichoderma harzianum*, a fungus which occurs naturally in the environment worldwide, including in the U.S. The strain of *T. harzianum* used in Trichodex has been designated as "T-39." This strain has been characterized by colony and structural morphology, RFLP mapping and classified by intraspecific DNA primers. The strain is typical of *T. harzianum* and does not express characteristics of plant pathogenic strains. The organism does not persist in the environment and relies on repeated application to achieve plant protection. The organism degrades in the environment to natural organic constituents.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* Makhteshim-Agan of North America has requested waivers for these data requirements. The waiver requests were based on the known low toxicity of Trichodex, the natural occurrence of *T. harzianum* in the environment, the non-toxic mode of action, the submitted data and information available in the open literature.

3. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Makhteshim-Agan of North America has not proposed an analytical method, because residues of *T. harzianum* resulting from Trichodex

applications do not pose a hazard to humans, plants and animals. *T. harzianum* from naturally occurring strains is commonly found in the environment and can be reasonably expected to exist whether or not Trichodex has been applied to the growing crop.

C. Mammalian Toxicological Profile

Provide the following or rationale for waiver request.

1. *Acute toxicity.* The health effects data submitted in the Makhteshim-Agan of North America Inc. petition and all other relevant material have been fully evaluated by the EPA in their approval of an Experimental Use Permit for large scale field evaluation of Trichodex. The mammalian toxicological data considered in support of the extension of the exemption from the requirement of a temporary tolerance for Trichodex include: an acute oral toxicity study in rats, a primary eye irritation study in rabbits and an acute inhalation study in rats. All three studies were assigned Toxicity Category III. The submitted acute dermal toxicity study in rabbits, primary dermal irritation study in rabbits, and a dermal sensitization study in guinea pigs were assigned Toxicity Category IV.

The results of these studies indicated that Trichodex has an acute oral LD_{50} greater than 500 milligrams/kilograms (mg/kg) body weight in rats, an acute dermal LD_{50} greater than 1,150-1,570 mg/kg body weight in rabbits. Trichodex caused reversible eye irritation with complete clearance after 7 days. No dermal irritation in rabbits was observed, however, the product was found to be a delayed contact dermal sensitizer in guinea pigs (based on the modified Beuhler Assay). The acute pulmonary toxicity/ pathogenicity study in the rat showed no evidence of pathogenicity or Trichodex reproduction in the tissues examined. Although the study was of insufficient duration to achieve complete clearance in the lung, the study demonstrated clearance in brain, blood, lymph nodes, kidney, liver, spleen, and caecum. Toxicity Category III was assigned to pulmonary exposure mitigated by label instructions indicating personal protective equipment for applicators.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* The T-39 strain of *T. harzianum*, the active ingredient in Trichodex, does not produce fungal metabolites as its primary mode of action against target plant pathogens. Submitted studies using the Ames Test and Mouse Micronucleus test show no indication of genotoxic or reproductive effects.

D. Aggregate Exposure

1. *Dietary exposure.* i. *Food.* Trichodex is based on a naturally occurring organism normally found in the environment. For the purposes of assessing the potential dietary exposure under this exemption, it should be considered that *T. harzianum* may be present in all RACs. Submitted studies indicate that residues of Trichodex do not pose a hazard to humans by route of ingestion.

ii. *Drinking water.* Based on the available studies presented for use in the assessment of environmental risk, it is not anticipated that drinking water will provide a route of exposure to residues of Trichodex. The anticipated use pattern for Trichodex does not include use in or on waterways. Even though Trichodex can be washed off treated plants by rain and during processing of crops by water, it degrades in an aqueous environment into organic constituents by normal biological, physical, and chemical processes.

2. *Non-dietary exposure.* Based on label directions for use as a foliar applied biofungicide, he only non-dietary exposure is to applicators of the product. However, exposure to Trichodex resulting from its proper application according to label directions for the use of personal protective equipment is not expected to present any risk of adverse health effects.

E. Cumulative Exposure

Other than a possible allergic reaction to spores present in the product following repeated exposure, no cumulative adverse health effects are expected from long-term exposure to Trichodex. Risk of dermal sensitization is addressed on the label which specifies proper personal protective equipment to minimize exposure.

Exposure through other pesticides and substances with a common mode of toxicity with this pesticide. Consideration of a common mechanism of toxicity is not appropriate for several reasons: (1) Trichodex has a non-toxic mode of action, (2) Only a small number of pesticidal products containing *T. harzianum* as an active ingredient are currently registered, (3) The species is ubiquitous in nature, and, (4) The active ingredient has been demonstrated to be non-toxic in submitted acute studies.

F. Safety Determination

1. *U.S. population in general.* Trichodex is based on a naturally occurring organism normally found in the environment and on crop plants. The low toxicity of the subject active ingredients is demonstrated by the data summarized above. Based on this information, it has been determined that aggregate exposure to Trichodex over a lifetime will not pose appreciable risks to human health and there is a reasonable certainty that no harm will result from Trichodex residues. Since people are exposed to *T. harzianum* from natural sources, the incremental exposure from its use in pesticide products is expected to be negligible.

2. *Infants and children.* It has been determined that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of Trichodex. It is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to Trichodex residues.

G. Existing Tolerances

1. *Existing tolerances or tolerance exemptions.* A temporary tolerance exemption in conjunction with an Experimental Use Permit for Trichodex is currently in effect. EPA has also promulgated permanent exemptions from the requirement for a tolerance for strains of *T. harzianum* other than T-39.

2. *International tolerances or tolerance exemptions.* No maximum residue level has been established for Trichodex by the Codex Alimentarius Commission. Exemptions from the requirement of a tolerance have been granted for Trichodex in all international registrations.

[FR Doc. 98–16778 Filed 6–23–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51908; FRL–5794–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application

requests received, both pending and expired. The information in this document contains notices received from May 1, 1998 to May 8, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51908]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51908]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51908]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 30 Premanufacture Notices Received From: 05/01/98 to 05/08/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0768	05/04/98	08/02/98	CBI	(G) Petroleum product additive	(G) Alkyl polyoxyalkylpropanamine
P–98–0769	05/01/98	07/30/98	Ashland Chemical Company	(G) A binder component for the production of sand foundry shapes	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0770	05/01/98	07/30/98	Ashland Chemical Company	(G) A binder component for the production of sand foundry shapes	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0771	05/01/98	07/30/98	Ashland Chemical Company	(G) A binder component for the production of sand foundry shapes	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0772	05/01/98	07/30/98	Ashland Chemical Company	(G) A binder component for the production of sand foundry shapes	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0773	05/01/98	07/30/98	Ashland Chemical Company	(G) A binder component for the production of sand foundry shapes	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0774	05/01/98	07/30/98	Ciba Specialty Chemicals Corporation	(S) Chemical intermediate	(G) Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[(4,6-chloro-1,3,5-triazin-2-yl)amino]-disodium salt; substituted with dialkyl amines
P–98–0775	05/05/98	08/03/98	CBI	(S) Curing agent in epoxy powder coatings; curing agent in liquid epoxy adhesives	(G) Phenyl, alkyl, hydroxyalkyl substituted imidazole
P–98–0776	05/05/98	08/03/98	Applied power concepts, inc.	(S) Surfactant in hard surface cleaners or fabric softners or for mixing oil and water products	(S) Ethanaminium, 2-(hexadecyloxy)-*n,n,n*,-trimethyl-2-oxo,-chloride*
P–98–0777	05/05/98	08/02/98	Applied power concepts, inc.	(S) A detergent surfactant used for washing; application for unsecticide has also been applied for	(S) Mixture of: ,alpha-d-glucopyranoside, ,1-6-bis-o-(1-oxooctyl)-b-d-fructofuranosyl and alpha-d-glucopyranoside, 6-o-(1-oxooctyl)-b-d-fructofuranosyl*
P–98–0778	05/04/98	08/02/98	CBI	(G) Chemical intermediate	(G) Arylether sulfide
P–98–0779	05/06/98	08/04/98	CBI	(G) Zinc plating additive	(G) Metal carboxylic acid complex
P–98–0780	05/07/98	08/05/98	Clariant corporation	(S) Corrosion inhibitor for metal removing	(S) Hexanoic acid, 6–[(1-oxoisononyl)amino]-, cmpd. with 2,2′ 2″-nitrilotris[ethanol](1:1)*
P–98–0781	05/05/98	08/03/98	CBI	(G) Surfactant in chemical specialities highly dispersive use	(G) Fluorinated amine oxide
P–98–0782	05/05/98	08/03/98	CBI	(G) Open, non dispersive (dyestuff)	(G) Triazine azo dyestuff
P–98–0783	05/04/98	08/02/98	CBI	(G) Chemical intermediate	(G) Amine hydrochloride
P–98–0784	05/04/98	08/02/98	CBI	(G) Chemical intermediate	(G) Arylether sulfide
P–98–0785	05/04/98	08/02/98	CBI	(G) Chemical intermediate	(G) Arylether sulfide
P–98–0786	05/07/98	08/05/98	CBI	(S) Epoxy curing agent	(G) Amine fuctional epoxy curing agent
P–98–0787	05/05/98	08/03/98	CBI	(G) Lubricant	(G) Sulfited fatty amine¶
P–98–0788	05/04/98	08/02/98	CBI	(S) Intermediate	(G) Acid functional ester
P–98–0789	05/04/98	08/02/98	CBI	(G) Open, non-dispersive use	(G) Polyester oligomer
P–98–0790	05/04/98	08/02/98	CBI	(G) Open, non-dispersive use	(G) Polyester oligomer
P–98–0791	05/04/98	08/02/98	CBI	(G) Open, non-dispersive use	(G) Polyester oligomer
P–98–0792	05/04/98	08/02/98	CBI	(G) Open, non-dispersive use	(G) Polyester oligomer
P–98–0793	05/08/98	08/06/98	Bedoukian research, inc.	(G) Chemical intermediate	(G) Aliphatic-oxy-substituted, saturated pyranyl magnesium halide*
P–98–0794	05/08/98	08/06/98	Bedoukian research, inc.	(S) Chemical intermediate	(G) Mono-halo-substituted alkene¶
P–98–0795	05/08/98	08/06/98	CBI	(G) Coating components	(G) Modified petroleum distillate
P–98–0796	05/08/98	08/06/98	CBI	(S) Raw material/ reactant in the synthesis of an organic compound	(G) Methoxy substituted aliphatic amine
P–98–0797	05/08/98	08/06/98	CBI	(S) Intermediate in synthesis of another organic compound	(G) Dimethyl substituted heteromonocyclic amine

II. 12 Notices of Commencement Received From: 05/01/98 to 05/08/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–92–0555	05/05/98	04/17/98	(G) Polyester/polyamide
P–95–0682	05/05/98	03/31/98	(G) Acrylic modified styrene/butadiene rubber
P–97–0685	05/05/98	04/05/98	(G) Sodium sulfonate polymer
P–97–0951	04/30/98	04/05/98	(G) Polyurethane
P–97–1023	05/01/98	04/18/98	(G) Phosphonomethylated polyamine

II. 12 Notices of Commencement Received From: 05/01/98 to 05/08/98—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–1077	04/30/98	04/16/98	(G) Benzenesulfonamide, 3-[(3-substituted-4,5-dihydro-5-oxo-1-phenyl-1h-pyrazol-4-yl)azo]-*n*-*n*-bis[3-[[[3-(5,5-dimethyl-3-octadecyl-2-thiazolidinyl) 4-hydroxyphenyl]sulfonyl]aminopropyl]-*
P–97–1092	05/05/98	04/20/98	(G) Azo red pigment
P–98–0030	04/30/98	04/17/98	(G) 2-naphthalenesulfonamide, *n,n*-bis(3-substituted propyl)-1-hydroxy-5-[(methylsulfonyl)amino]-, sulfate (1:1)(salt)*
P–98–0263	05/05/98¶	04/16/98	(G) Mixture of unsaturated polyesters, polyethers, and polyamide salts
P–98–0273	05/05/98	04/16/98	(G) Alkylol ammonium salt of a high-molecular weight carboxylic acid
P–98–0288	05/01/98	04/24/98	(G) Polyamine polyester
P–98–0293	05/05/98	04/20/98	(G) Polyurethane/acrylic grafted copolymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 16, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16771 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51907; FRL–5794–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from April 27, 1998 to April 30, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51907]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51907]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51907]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper

record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify PMNs received.

17 Premanufacture Notices Received From: 04/27/98 to 04/30/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0744	04/27/98	07/26/98	CBI	(G) Plating solution additive	(G) Substituted pyridine metal complex
P–98–0745	04/27/98	07/26/98	CBI	(G) Printed circuit board immersion additive	(G) Aminocarboxylic acid, salts
P–98–0746	04/27/98	07/26/98	CBI	(G) Printed circuit board immersion additive	(G) Aminocarboxylic acid, salts
P–98–0747	04/27/98	07/26/98	CBI	(G) Printed circuit board immersion additive	(G) Aminocarboxylic acid, salts
P–98–0748	04/27/98	07/26/98	CBI	(S) Stabilizer for electroless nickel plating	(G) Metal carboxylic acid, salt
P–98–0749	04/27/98	07/26/98	CBI	(S) Stabilizer for electroless nickel plating	(G) Metal carboxylic acid, salt
P–98–0750	04/27/98	07/26/98	CBI	(S) Additive in electroless nickel process	(G) Substituted phenol, salt
P–98–0751	04/27/98	07/26/98	CBI	(S) Additive for copper plating	(G) Substituted benzimidazole, salt
P–98–0752	04/28/98	07/27/98	CBI	(G) Destructive use	(G) Alcohol butoxylate
P–98–0753	04/28/98	07/27/98	CBI	(S) Processing aid for industrial coating	(G) Organo silane ester

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 16, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16772 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51906; FRL–5793–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from April 20, 1998 to April 24, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51906]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental

Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51906]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51906]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

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I. 27 Premanufacture Notices Received From: 04/20/98 to 04/24/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0710	04/21/98	07/20/98	CBI	(S) Coating	(G) Oil-modified waterborne polyurethane dispersion
P–98–0712	04/21/98	07/20/98	Ciba Specialty Chemicals Corporation North America	(S) Latent catalyst for adhesive; latent catalyst for structural composites	(G) Aromatic substituted, 1-[(2-methyl-1*H*-imidazol-1-yl)methyl]-
P–98–0713	04/21/98	07/20/98	CBI	(G) Polyurethane intermediate	(G) Mixed polyhydroxyl/ adipate polyester polyol
P–98–0714	04/22/98	07/21/98	CBI	(S) Co reactant for coatings applications	(G) Silane urea/ hydantoin
P–98–0715	04/21/98	07/20/98	CBI	(G) Chemical intermediate	(G) Phenol alcohol
P–98–0716	04/20/98	07/19/98	Ciba Specialty Chemicals Corporation	(S) Textile whitening agent	(S) Benzenesulfonic acid, 2,2′–(1,2-ethenediyl)bis [5-[[4-[bis(2-hydroxypropyl)amino]-6–[(3-sulfophenyl) amino]-1,3,5-triazin-2-yl] amino]-, disodium salt, compound with 2,2′,2′-nitrilotris[ethanol] (1:2); benzenesulfonic acid, 5-[[4-bis(2-hydroxyethyl)amino]-6–[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl] amino]-2– [2–[4–[[4-[bis(2-hydroxypropyl)amino]-6-[(3-sulfophenyl) amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]ethenyl]-, disodium salt, compound with 2,′, 2″–nitrilotris[ethanol] (1:2)
P–98–0717	04/22/98	07/21/98	CBI	(G) Material is an intermediate which is totally consumed in the manufacture of a functionalized organic molecule	(G) Quaternary salt of a functionalized pyridine
P–98–0718	04/23/98	07/22/98	CBI	(S) Raw material used in the manufacture of photoresist	(G) Phenolic novolak resin
P–98–0719	04/23/98	07/22/98	CBI	(G) Component of manufactured consumer article - contained used	(G) 2-naphthalenesulfonamide, 4-(heteropolycycleazo)-T3N,N-bis[3-[[[3-(5,5-dimethyl-3-octadecyl-2-thiazolidinyl)-4-hydroxyphenyl]sulfonyl]amino] propyl]-1-hydroxy-5-[(methylsulfonyl)amino]-
P–98–0720	04/23/98	07/22/98	CBI	(S) Organic synthesis intermediate	(G) 2-Naphthalenesulfonamide, *N,N*-bis(3-aminopropyl)-4-(heteropolycycleazo)-1-hydroxy-5-[(methylsulfonyl)amino]-, sulfate (1:1)(salt)
P–98–0721	04/23/98	07/22/98	AKZO Nobel Resins	(S) Resin used to manufacture industrial coatings	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, dodecyl 2-methyl-2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate, methyl 2-methyl-2-propenoate and alpha-(2-methyl-1-oxo-2-propenyl)-omega-methoxypoly(oxy-1,2-ethanediyl), tert-bu 3,5,5-trimethylhexaneperoxoate-initiated, compounds with 2-(dimethylamino)ethanol
P–98–0722	04/23/98	07/22/98	E. I. duPont de Nemours & Company, Inc.	(G) Molding resin	(G) Aromatic and aliphatic polyamide
P–98–0723	04/23/98	07/22/98	Henkel Corporation-Chemical Group	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–98–0724	04/24/98	07/23/98	Dow Corning	(S) Silicone textile treatment	(G) Amino-functional siloxane
P–98–0725	04/22/98	07/21/98	Champion Technologies	(S) Corrosion inhibitor for oil and gas production and pipelines	(S) Amides, tall oil fatty, *N*-(2(2-hydroxyethyl)amino)ethyl), reaction products with sulfur dioxide; fatty acids, tall oil, reaction products with 1-piperazineethanamine and sulfur dioxide; fatty acids, tall-oil reaction products with sulfur dioxide and triethylenetetramine
P–98–0726	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester
P–98–0727	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester
P–98–0728	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester
P–98–0729	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester

I. 27 Premanufacture Notices Received From: 04/20/98 to 04/24/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0730	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester
P–98–0731	04/24/98	07/23/98	Hoechst Celanese Corporation	(G) Structural material for the production of articles	(G) Modified polyester
P–98–0732	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched olefin	(S) Tetradecene
P–98–0733	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched olefin	(S) Pentadecene
P–98–0734	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched olefin	(S) Hexadecene
P–98–0735	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched olefin	(S) Heptadecene
P–98–0736	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched alcohol	(S) Pentadecene, branched
P–98–0737	04/24/98	07/23/98	Shell Chemical Company	(S) Chemical intermediate for manufacture of branched alcohol	(S) Heptadecene, branched

II. 6 Notices of Commencement Received From: 04/20/98 to 04/24/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0845	04/23/98	03/24/98	(G) Preurethane prepolymer
P–97–1048	04/21/98	03/30/98	(G) Amine salts of fluoroalkyl phosphate acid mixtures
P–97–1049	04/21/98	03/30/98	(G) Amine salts of fluoroalkyl phosphate acid mixtures
P–97–1089	04/23/98	04/02/98	(G) Alkenyne acetal
P–98–0184	04/20/98	04/06/98	(G) Benzene sulfonic acid 4–[[1–[[(–2–(*R*) phenyl) amino carbonyl]-2 oxopropyl] azo]-3 nitro
P–98–0250	04/20/98	03/26/98	(G) Disubstituted phenyl azo phenyl *N*-methyl substituted polyheterocycle ester alanine

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 16, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16773 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51905; FRL–5793–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from April 13, 1998 to April 17, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51905]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51905]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention

and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51905]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 29 Premanufacture Notices Received From: 04/13/98 to 04/17/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0682	04/14/98	07/13/98	Bedoukian Research, Inc.	(S) Chemical intermediate for use in a pheromone synthesis. epa registration no: 52991–CT–7; chemical intermediate used in fragrance manufacture (FFDCA); chemical intermediate used in flavor manufacture (FFDCA); chemical intermediate. fragrance use (soaps, detergents, air fresheners, scented papers)	(G) Unsaturated alkyl grignard reagent
P–98–0683	04/13/98	07/12/98	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–98–0684	04/14/98	07/13/98	CBI	(G) Coating component	(G) Polymer of substituted carbomonocyclic diisocyanate, substituted alkanediols, 4,4′ isopropylidenedi[cyclohexanol], polyalkyl amine, and alkylenediamine
P–98–0685	04/13/98	07/12/98	Wacker Silicones Corporation	(S) Release agent for aluminum die casting	(G) Siloxanes and silicones, alkyl arylalkyl

I. 29 Premanufacture Notices Received From: 04/13/98 to 04/17/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0686	04/13/98	07/12/98	CBI	(G) Fuel additive intermediate	(G) Nitrobenzoic acid, polyolefin phenol ethoxylate
P–98–0687	04/13/98	07/12/98	CBI	(G) Fuel additive intermediate	(G) Polyolefin phenol ethoxylate
P–98–0688	04/13/98	07/12/98	CBI	(G) Fuel additive intermediate	(G) Aminobenzoic acid, polyolefin phenol ethoxylate
P–98–0689	04/14/98	07/13/98	CBI	(G) Additives for coating	(G) Acrylic resin
P–98–0690	04/14/98	07/13/98	NA Industries, Inc.	(S) A binder resin for plastic coating	(G) 2-propenoic acid, 2-methyl-, polymers with 2-hydroxypropyl acrylate, ethenyl benzen, alkyl 2-methyl-2-propenoate, alkyl 2-propenoate and chlorinated polypropylene
P–98–0691	04/14/98	07/13/98	NA Industries, Inc.	(S) A binder resin for industrial coating	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with alkyl 2-methyl-2-propenoate and alkyl 2-propenoate
P–98–0692	04/14/98	07/13/98	NA Industries, Inc.	(S) A binder resin for plastic coating	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with alkyl 2-methyl-2-propenoate and alkyl 2-propenoate
P–98–0693	04/14/98	07/13/98	Vianova Resins	(G) Binder for paints	(G) Modified carboxyfunctional polyurethane
P–98–0694	04/15/98	07/14/98	Ashland Chemical Company	(G) Additive in foundry binders	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–98–0695	04/16/98	07/15/98	CBI	(G) Open, non-dispersant use	(G) Hydroxy functional oligomer
P–98–0696	04/16/98	07/15/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–98–0697	04/16/98	07/15/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–98–0698	04/16/98	07/15/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–98–0699	04/16/98	07/15/98	CBI	(G) Open, non-dispersive use	(G) Amino functional polyamide
P–98–0700	04/15/98	07/14/98	CBI	(G) Stabilizers for plastics	(G) Mixed alkylmetallic mercaptoester sulfides
P–98–0701	04/15/98	07/14/98	CBI	(G) Stabilizers for plastics	(G) Mixed alkylmetallic mercaptoester sulfides
P–98–0702	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0703	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0704	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0705	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0706	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0707	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride
P–98–0708	04/16/98	07/15/98	Elementis Performance Polymers, Division of Harcos Chemicals	(S) Curing agent for epoxy adhesive; curing agent for electrical epoxy potting/encapsulation of electrical devices	(G) Modified acid anhydride

I. 29 Premanufacture Notices Received From: 04/13/98 to 04/17/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0709	04/17/98	07/16/98	Bedoukian Research, Inc.	(S) Chemical intermediate for use in a pheromone synthesis. epa registration no. 52991–CT–8; chemical intermediate for use in pheromone synthesis used for monitoring traps 40 CFR 152.10(b), (not a pesticide); chemical intermediate for use in synthesis of agricultural pheromone for use as sole active ingredient in traps to achieve pest control. 40 CFR 152.25(b)(4)	(G) Alkenyl grignard reagent
P–98–0711	04/16/98	07/15/98	CBI	(G) Ink component	(G) Isophthalic acid polymer with polyhydroxycycloalkane, aromatic acid anhydride, polyhydroxyalkanoic acid, aromatic anhydride, diethylene glycol, and alkanolamine and amine salts

II. 8 Notices of Commencement Received From: 04/13/98 to 04/17/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–0066	04/14/98	03/31/98	(G) Polyester isocyanate polymer
P–95–1490	04/13/98	04/01/98	(G) Polyester isocyanate prepolymer
P–97–0206	04/16/98	04/01/98	(S) Polymer of:poly(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-hydroxy-, C_{9-11}-alkyl ethers; *NAOH*
P–97–1010	04/13/98	03/17/98	(S) 2-Propenoic acid, 2-methyl-, polymer with dodecyl 2-methyl-2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-oxepanone
P–98–0106	04/13/98	04/02/98	(G) Allyl-polyalkylene oxide, acetal-capped
P–98–0110	04/16/98	03/25/98	(G) Acrylic resin
P–98–0292	04/14/98	03/31/98	(G) Polyurethane resin
P–98–0298	04/14/98	04/03/98	(G) Oil soluble barium petroleum sulfonate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 16, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16774 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51904; FRL–5793–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from April 6, 1998, to April 10, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51904]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51904]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for

each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51904]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 13 Premanufacture Notices Received From: 04/06/98 to 04/10/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0660	04/06/98	07/05/98	CBI	(G) Laminating adhesive	(G) Nco terminated polyurethane
P–98–0661	04/06/98	07/05/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modifier acrylic ester with dimethylamino groups
P–98–0662	04/06/98	07/05/98	CBI	(G) Additive, open, non-dispersive use	(G) Carboxylic acid alkyl ester modified polyalkylene amine, salt with polyether phosphate
P–98–0665	04/07/98	07/06/98	CBI	(G) Open, non-dispersive	(G) Complex salt of sulfonic acid and primary alkyl ether amine
P–98–0673	04/09/98	07/08/98	CBI	(G) Lubricant additive	(G) Alkyl benzene
P–98–0674	04/09/98	07/08/98	CBI	(G) Crosslinking monomer	(G) Acrylic monomer
P–98–0675	04/09/98	07/08/98	CBI	(G) Neutralizing agent for organic pretreatment	(G) Aqueous amine salt

I. 13 Premanufacture Notices Received From: 04/06/98 to 04/10/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0676	04/09/98	07/08/98	CBI	(S) Chemical intermediate for lubricant additives; chemical intermediate for fuel additives	(G) Tertiary alkyl primary amines
P–98–0677	04/09/98	07/08/98	CBI	(G) Neutralizing agent for organic pretreatment	(G) Aqueous amine salt
P–98–0678	04/09/98	07/08/98	CBI	(G)	()
P–98–0679	04/09/98	07/08/98	CBI	(G) Lubricant additive	(G) Alkyl benzenesulfonic acid
P–98–0680	04/09/98	07/08/98	CBI	(G) Lubricant additive	(G) Alkyl benzenesulfonic acid
P–98–0681	04/09/98	07/08/98	CBI	(G) Lubricant additive	(G) Alkyl benzenesulfonic acid

II. 6 Notices of Commencement Received From: 04/06/98 to 04/10/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0569	04/06/98	03/24/98	(G) Sodium salt of substituted copper phthalocyamine derivative
P–97–0795	04/10/98	03/30/98	(G) Hydroxy acrylic polymer
P–98–0092	04/07/98	03/30/98	(S) Cyclohexanemethanol 4-(methoxymethyl)-1
P–98–0236	04/08/98	03/25/98	(S) 2-Propenoic acid, (4-)hydroxymethyl)cyclohexyl) methyl ester
P–98–0245	04/07/98	03/18/98	(G) Modified acrylic resin
P–98–0246	04/07/98	03/18/98	(G) Modified acrylic resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 18, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16775 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51903; FRL–5792–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 26, 1997 to September 30, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51903]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51903]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA

is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51903]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 15 Premanufacture Notices Received From: 09/26/97 to 09/30/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1089	09/25/97	12/24/97	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Alkenyne acetal
P–97–1090	09/25/97	12/24/97	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Acetylenic-oxy-substituted, saturated pyran
P–97–1091	09/29/97	12/28/97	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Acetylenic substituted pyran
P–97–1092	09/25/97	12/24/97	Engelhard Corporation	(S) A colorant for plastics	(G) Azo red pigment
P–97–1093	09/25/97	12/24/97	Engelhard Corporation	(S) A colorant for plastics	(G) Organic yellow pigment
P–97–1094	09/25/97	12/24/97	CBI	(S) Curative for epoxy formulations	(G) Polyamide adduct
P–97–1095	09/26/97	12/25/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–1096	09/26/97	12/25/97	CBI	(G) Pressure sensitive adhesive	(G) Vinylpyrrolidone-acrylate copolymer
P–97–1097	09/26/97	12/25/97	Salsbury Chemicals, Inc.	(S) Used in the manufacture of a fine chemical	(S) Benzoic acid, 4-hydroxy-3-nitro-
P–97–1098	09/25/97	12/25/97	CBI	(G) Resin coating	(G) Difunctional aliphatic epoxide
P–97–1107	09/29/97	12/28/97	CBI	(G) Additive, open, non-dispersive use	(G) Ammonium salt of an acidic polymer
P–97–1108	09/29/97	12/28/97	CBI	(G) Plasticizer	(G) Polycarboxylic acid ester
P–97–1109	09/29/97	12/28/97	Engelhard Corporation	(S) A colorant for plastics	(G) Metallized azo yellow pigment
P–97–1110	09/29/97	12/28/97	Engelhard Corporation	(S) A colorant for plastics	(G) Metallized azo yellow pigment

I. 15 Premanufacture Notices Received From: 09/26/97 to 09/30/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1111	09/29/97	12/28/97	Engelhard Corporation	(S) A colorant for plastics	(G) Metallized azo yellow pigment

II. 8 Notices of Commencement Received From: 09/26/97 to 09/30/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0227	09/26/97	08/22/97	(G) Metalated alkylphenol copolymers
P–97–0037	09/26/97	09/06/97	(G) C_{25} monoester
P–97–0297	09/30/97	09/08/97	(G) Alkyl benzene sulfonic acids, amine salts
P–97–0550	09/26/97	09/17/97	(G) Acrylated silicones glycol copolymer
P–97–0644	09/30/97	09/16/97	(G) Partially fluorinated aliphatic ester
P–97–0686	09/30/97	08/19/97	(G) Polyurethane adhesive
P–97–0701	09/30/97	09/17/97	(G) Polyester acrylate
P–97–0760	09/30/97	09/10/97	(G) Tetraalkoxytitanate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 16, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16776 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1998

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Premier Financial Corp., Dubuque, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Dubuque, Iowa.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First National Bank of Nevada Holding Company, Laughlin, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Laughlin National Bank, Laughlin, Nevada.

Board of Governors of the Federal Reserve System, June 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16687 Filed 6–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Monday, June 29, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to the Voluntary Guide to Conduct for Federal Reserve System Officials. (This item was originally announced for a closed meeting on June 22, 1998.)
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 19, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–16839 Filed 6–19–98; 4:04 pm]
BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
27–APR–98	19982369	G	Paragon Health Network, Inc.
		G	Daniel G. Schmidt, III.
		G	Professional Rehabilitation, Inc.
		G	Professional Rehabilitation Agency, Inc.
		G	JDBK, Inc.
		G	Professional Rehabilitation of Georgia, Inc.
	19982506	G	Stronach Trust.
		G	TRIAM Automotive Inc.
		G	TRIAM Automotive Inc.
	19982558	G	Cambridge Capital Fund, L.P.
		G	Aviation Sales Company.
		G	Aviation Sales Company.
	19982559	G	Aviation Sales Company.
		G	Whitehall Corporation.
		G	Whitehall Corporation.
	19982566	G	Schottenstein Stores Corporation.
		G	Stephen I. Nacht.
		G	Shonac Corporation.
	19982568	G	Protective Life Corporation.
		G	United Dental Care, Inc.
		G	United Dental Care, Inc.
	19982569	G	ABRY Broadcast Partners III, L.P.
		G	Marshall W. Pagon.
		G	Pegasus Cable Television, Inc.
	19982573	Y	Kevin R. Burke.
		Y	Paul D. Showerman.
		Y	Showerman's Distributing Co., Inc.
	19982574	G	Code, Hennessey & Simmons II, L.P.
		G	Portec, Inc.
		G	Portec, Inc.
	19982576	G	Cintas Corporation.
		G	Edwin T. French, Jr.
		G	Mechanics Laundry & Supply, Inc. of Indiana.
	19982577	G	Century Telephone Enterprises, Inc.
		G	Ameritech Corporation.
		G	Wisconsin Bell, Inc.
	19982583	G	Compagnie Financiere de Paribas.
		G	Fruit of the Loom, Inc.
	19982583	G	Martin Mills, Inc.
	19982584	G	General Motors Corporation.
		G	Wells Fargo & Company.
		G	Wells Fargo Bank, N.A.,-Mortgage Servicing Division.
	19982585	G	Edison International.
		G	Toromont Industries Ltd.
		G	Kimmel-Motz Refrigeration Corp./ScottPolar Corporation.
	19982587	G	Time Warner Inc.
		G	Tele-Communications, Inc.
		G	TCI of Overland Park, Inc.
	19982593	G	American Industrial Partners Capital Fund II, L.P.
		G	Great Lakes Carbon Corp.
		G	Great Lakes Carbon Corp.
	19982594	G	CBT Group PLC.
		G	The ForeFront Group, Inc.
		G	The ForeFront Group, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19982595	G	Newport News Shipbuilding, Inc.
		G	Koninklike Van Ommeren NV.
		G	Delaware Tanker Holding I, Inc., Delaware Tanker Holding II.
	19982597	G	Richfood Holdings, Inc.
		G	Dart Group Corp.
		G	Dart Group Corp.
	19982600	G	NCS HealthCare, Inc.
		G	Walgreen Co.
		G	Walgreen Advance Care, Inc.
	19982606	G	OGE Energy Corp.
		G	Northern States Power Company.
		G	Oklahoma Loan Acquisition Corporation.
	19982611	G	Comfort Systems USA, Inc.
		G	Robert J. Seiler.
		G	Helm Corporation San Diego.
	19982613	G	Cypress Merchant Banking Partners L.P.
		G	The Clayton & Dubilier Private Equity Fund IV LP.
		G	CDW Holding Corporation.
	19982614	Y	Leggett & Platt, Incorporated.
		Y	John T. Walker.
	19982614	Y	St. Paul Metalcraft, Inc.
	19982642	G	Equilease Holding Corp.
		G	Timothy S. Reily.
		G	Reily Electrical Supply, Inc.
	19982643	G	The Clayton & Dubilier Private Equity Fund IV L.P.
		G	Equilease Holding Corp.
		G	Reily Electrical Supply, Inc.
28-APR-98	19973484	Y	Giant Cement Holding, Inc.
		Y	Solite Corporation.
		Y	Solite Corporation.
	19982359	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Chancellor Media Corporation.
		G	Petry Media Corporation.
		G	Chancellor Media License Corporation.
	19982360	G	Chancellor Media Corporation.
		G	Hicks, Muse, Tate & Furst Equity Fund, III, L.P.
		G	Capstar Broadcasting Corporation.
	19982443	G	Commercial Union plc.
		G	United Fire & Casualty Co.
		G	United Fire & Casualty Co.
	19982444	G	Commercial Union plc.
		G	General Accident plc.
		G	General Accident plc.
	19982521	G	Applied Power Inc.
		G	John W. Wajda.
		G	Premier Industries, Inc.
	19982524	G	Guarantee Life Companies, Inc., The
		G	Ohio Farmers Insurance Company.
		G	Westfield Life Insurance Company.
	19982557	G	Safeguard Scientifics, Inc.
		G	Computer Integration Corp.
		G	Computer Integration Corp.
	19982617	G	Kao Corporation.
		G	Bausch & Lomb Incorporated.
		G	Bausch & Lomb Incorporated.
	19982619	G	Telefonaktiebolaget L M Ericsson.
		G	General Electric Company.
		G	FTM Investments, Inc.
	19982621	G	Cumulus Media LLC.
		G	James D. Ingstad.
		G	Missouri River Broadcasting, Inc.
		G	JKJ Broadcasting, Inc.
	19982622	G	Harding Lawson Associates Group, Inc.
		G	ABB A.G.
		G	ABB Environmental Services, Inc.
	19982623	G	Harding Lawson Associates Group, Inc.
		G	ABB A.B.
		G	ABB Environmental Services, Inc.
	19982631	G	Texaco Inc.
		G	British-Borneo Petroleum Syndicate, PLC.
		G	British-Borneo Exploration, Inc.
	19982636	G	Recycling Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Lloyd B. and Sue Fletcher.
		G	Ferex Corporation.
29-APR-98	19982474	G	Warburg, Pincus Ventures, L.P.
		G	Coventry Health Care, Inc.
		G	Coventry Health Care, Inc.
	19982550	G	Philip F. Anschutz.
		G	LCI International, Inc.
		G	LCI International, Inc.
	19982567	G	Alltel Corporation.
		G	360 Communications Company.
		G	360 Communications Company.
	19982609	G	Mitel Corporation.
		G	Centigram Communications Corporation.
		G	Centigram Communications Corporation.
30-APR-98	19981871	G	Golder, Thoma, Cressey, Rauner Fund IV, L.P.
		G	Monroc, Inc.
		G	Monroc, Inc.
	19982507	Y	Tesoro Petroleum Corporation.
		Y	The Broken Hill Proprietary Co., Ltd. (an Australian corp.)
		Y	BHP Entities.
		Y	BHP Petroleum South Pacific Inc.
	19982599	G	The Williams Companies, Inc.
		G	British-Borneo Petroleum Syndicate, PLC.
		G	British-Borneo Exploration, Inc.
	19982618	G	NationsRent, Inc.
		G	Raymond E. Mason, Jr.
		G	The Bode-Finn Company.
01-MAY-98	19982429	G	Apollo Investment Fund III, LP.
		G	US Diagnostic Inc.
		G	Medical Diagnostics, Inc.
		G	US Diagnostic Inc.
	19982508	G	Textron Inc.
		G	Ring Screw Works.
		G	Ring Screw Works.
04-MAY-98	19928596	G	Ruben Griffin.
		G	Ultramar Diamond Shamrock Corporation.
		G	Ultramar Diamond Shamrock Corporation.
	19982633	G	Brintons Limited.
		G	Samuel H. Silver and Barbara L. Coveny.
		G	U.S. Axminster, Inc.
	19982634	G	Plains Cotton Cooperative Association.
		G	J. Lewis Partners, L.P.
		G	Mission Valley Textiles, Inc.
	19982635	G	BCE Inc.
		G	Stratos Global Corporation.
		G	Stratos Global Corporation.
	19982637	G	Koch Industries, Inc.
		G	Anglian Water plc.
		G	Fluid Systems.
	19982638	G	EBSCO Industries, Inc.
		G	Watley Family Partnership, Ltd.
		G	Modern Muzzleloading, Inc.
	19982645	G	Conseco, Inc.
		G	Green Tree Financial Corporation.
		G	Green Tree Financial Corporation.
	19982647	G	Gary Knisely.
		G	Andrew J. McKelvey.
		G	TMP Worldwide Inc.
	19982648	G	Andrew J. McKelvey.
		G	Gary Knisely.
		G	Johnson, Smith & Knisely Inc.
	19982649	G	Ontario Teachers' Pension Plan Board.
		G	Meditrust Corporation.
		G	Meditrust Corporation.
	19982650	G	Thomas M. Taylor.
		G	Meditrust Corporation.
		G	Meditrust Corporation.
	19982653	G	SYSCO Corporation.
		G	Jordan's Meats.
		G	Jordan's Meats.
	19982654	G	Steelcase Inc.
	19982654	G	Strafor Facom S.A.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Clestra Hauserman, Inc.
	19982655	G	Sunbelt Automotive Group, Inc.
		G	Alan K. Arnold.
		G	Wade Ford, Inc. and Wade Ford Buford, Inc.
	19982656	G	Everett R. Dobson Irrevocable Family Trust.
		G	Natubhai D. Patel.
		G	Santa Cruz Cellular Telephone, Inc.
	19982662	G	Sunbelt Automotive Group, Inc.
		G	Calvin Diemer.
		G	Day's Chevrolet, Inc.
	19982663	G	Sunbelt Automotive Group, Inc.
		G	Alvin Diemer.
		G	Day's Chevrolet, Inc.
	19982671	G	UNOVA, Inc.
		G	Amtech Corporation.
		G	Amtech Corporation.
	19982673	G	Guardian Life Insurance Corporation of American (The).
		G	Torchmark Corporation.
		G	Torchmark Corporation.
	19982674	G	The Cleveland Clinic Foundation.
		G	Ashtabula County Medical Center.
		G	Ashtabula County Medical Center.
	19982675	G	Dole Food Company, Inc.
		G	Novaco, Ltd.
		G	Sunburst Farms, Inc.
	19982676	G	Cinergy Corp.
		G	Apache Corporation.
		G	Producers Energy Marketing, LLC.
	19982677	G	Apache Corporation.
		G	Cinergy Corp.
		G	Cinergy Corp.
		G	Cinergy Corp.
		G	Cinergy Corp.
	19982680	G	Siebe plc.
		G	Simulation Sciences Inc.
		G	Simulation Sciences Inc.
	19982689	G	Claneil Enterprises, Inc.
		G	Wawa, Inc.
	19982689	G	Wawa, Inc.
	19982702	G	The News Corporation Limited.
		G	PLD Telekom Inc.
		G	PLD Telekom Inc.
05–MAY–98	19982468	G	Ultratech Stepper, Inc.
		G	Integrated Solutions, Inc.
		G	Integrated Solutions, Inc.
	19982538	G	Nedra Dee Roney.
		G	Nu Skin Asia Pacific, Inc.
		G	Nu Skin Asia Pacific, Inc.
	19982586	G	Jean-Charles Naouri.
		G	United Grocers, Inc.
		G	United Grocers, Inc.
	19982592	G	Houston Industries Incorporated.
		G	Edison International.
		G	Southern California Edison Company.
	19982607	G	Triton PCS Holdings, Inc.
		G	Vanguard Cellular Systems, Inc.
		G	Vanguard Cellular Systems of South Carolina, Inc.
	19982616	G	Everett R. Dobson Irrevocable Family Trust.
		G	Ronald W. Henriksen.
		G	American Telco, Inc.
		G	American Teleco Network Services, Inc.
	19982628	G	James P. McCready.
		G	Oglebay Norton Company.
		G	Oglebay Norton Engineered Materials, Inc.
	19982632	G	Medallion Financial Corp.
		G	Capital Dimensions, Inc.
		G	Capital Dimensions, Inc.
	19982651	G	Minnesota Power & Light Company.
		G	Edward L. Blakey.
		G	ARK LA TEX Auto Auction, Inc.
	19982658	G	Raycom Media, Inc.
		G	Malrite Communications Group, Inc.
		G	Malrite Communications Group, Inc.
	19982667	G	United States Filter Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Edwin G. O'Kelly.
		G	Fullman International, Inc.
	19982668	G	Edwin G. O'Kelly.
		G	United States Filter Corporation.
		G	United States Filter Corporation.
	19982670	G	V. Prem Watsa.
		G	Xerox Corporation.
		G	Crum & Forster Holdings, Inc.
	19982683	G	IBP, Inc.
		G	Steve Charton as Trustee of Steve Charton Trust.
		G	Don Miguel Mexican Food, Inc.
	19982687	Y	Recycling Industries, Inc.
		Y	Terry Brenner.
		Y	Cycle Systems, Inc.
	19982688	G	Willis Stein & Partners, L.P.
		G	Stanley R. Harris.
		G	Harris Publications, Inc.
	19982692	G	Applied Power Inc.
		G	Zero Corporation.
		G	Zero Corporation.
	19982694	G	Insurance Partners, L.P.
		G	Central Reserve Life Corporation.
		G	Central Reserve Life Corporation.
	19982695	G	Mr. Jay Alix.
		G	Joseph Littlejohn & Levy Fund II, L.P.
		G	Peregrine, Inc.
	19982703	G	Kenneth R. Thompson (a Canadian citizen).
		G	PRIMEDIA, Inc.
		G	Nelson Information, Inc.
	19982712	Y	Martek S.A.
		Y	Adwest Group plc.
		Y	Abbott Electronics, Inc., Conversion Devises, Inc.
	19982718	G	Ogden Newspapers, Inc., (The).
		G	Oshkosh Northwestern Company.
		G	Oshkosh Northwestern Company.
	19982725	G	Fleetwood Enterprises, Inc.
		G	Paul D. Treadwell.
		G	Factory Direct Homes, LLC.
		G	Eagle Ridge Manufactured Homes, Inc.
		G	Better Homes, LLC.
06-MAY-98	19982428	G	First Union Corporation.
		G	The Money Store Inc.
		G	The Money Store Inc.
	19982578	G	Fujisawa Pharmaceutical Co., Ltd.
		G	Patrick Soon-Shiong.
		G	VivoRx Pharmaceutical, Inc.
	19982579	G	Patrick Soon-Shiong.
		G	Fujisawa Pharmaceutical Co., Ltd.
		G	Fujisawa USA, Inc.
	19982601	G	Dean Foods Company.
		G	Garry A. Newman.
		G	Randolph Pickle Corporation.
	19982602	G	Dean Foods Company.
		G	Louis J. Schwartz.
		G	Randolph Pickle Corporation.
	19982627	G	Tele-Communications, Inc.
		G	Robert L. Johnson.
		G	BET Holdings, Inc.
	19982630	G	Derryll R. Wells.
		G	Chaswill United Corp.
		G	United Liberty Life Insurance Company.
	19982681	G	Patriot American Hospitality, Inc.
		G	S.F. Hotel Company, L.P.
		G	S.F. Hotel Company, L.P.
	19982684	G	John N. Irwin, III.
		G	Guernsey Bel, Inc.
		G	Guernsey Bel, Inc.
	19982697	G	Safeguard Scientifics, Inc.
		G	Dataflex Corporation.
		G	Dataflex Corporation.
	19982704	G	UNOVA, Inc.
		G	R&B Machine Tool Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	R&B Machine Tool Company.
	19982461	G	ATMI, Inc.
		G	NOW Technologies, Inc.
		G	NOW Technologies, Inc.
	19982640	G	Jack Miller.
		G	Staples, Inc.
		G	Staples, Inc.
	19982641	Y	Staples, Inc.
		Y	Jack Miller.
		Y	Quill Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–16820 Filed 6–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
11–MAY–98	19982591	G	USA Waste Services, Inc.
		G	Caramella-Ballardini, Ltd.
		G	Caramella-Ballardini, Ltd.
	19982598	G	The Geon Company.
		G	Earnest E. McClellan.
		G	Plast-O-Meric, Inc.
	19982679	G	Giant Industries, Inc.
		G	Kaibab Industries, Inc.
		G	Kaibab Industries, Inc.
	19982686	G	Smith International, Inc.
		G	Gary Dietzen.
		G	Safeguard Disposal Systems, Inc.
	19982699	G	BTR plc.
		G	Richard M. Hamlin.
		G	MB Manufacturing, Inc.
	19982701	G	Sun Company, Inc.
		G	AlliedSignal Inc.
		G	AlliedSignal Inc.
	19982714	G	Sysco Corporation.
		G	Hans Frisch.
		G	Beaver Street Fisheries, Inc.
	19982715	G	Marathon Fund Limited Partnership III.
		G	PrimeWood, Inc.
		G	PrimeWood, Inc.
	19982716	G	McCown De Leeuw & Co., III, L.P.
		G	International Data Response Corporation.
		G	International Data Response Corporation.
	19982721	G	Keane, Inc.
		G	Deborah Bricker.
		G	Bricker & Associates, Inc.
	19982722	G	Deborah A. Bricker.
		G	Keane, Inc.
		G	Keane, Inc.
	19982726	G	WSMP, Inc.
		G	Don Tyson.
		G	Hudson Foods, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19982728	G	Sunbelt Automotive Group, Inc.
	19982728	G	James G. Stelzenmuller, III.
		G	Jay Automotive Group, Inc.
	19982730	G	Capricorn Investors, L.P.
		G	The Cynara Company.
		G	The Cynara Company.
	19982736	G	W.C. Bradley Company.
		G	Donald W. Tendick, Sr., & Rosemary Tendick.
		G	Lamplight Farms Incorporated.
	19982737	G	Harron Communications Corp.
		G	Frederick R–L. Osborne.
		G	Auburn Cablevision, Inc.
	19982738	G	Canadian Pacific Limited.
		G	Ivarans Rederi ASA.
		G	Ivaran Lines AS.
		G	Ivaran Agencies, Inc.
	19982741	G	John M. Utley.
		G	Policy Management Systems Corporation.
		G	PMSI, LP.
	19982743	G	Grand Casinos, Inc.
		G	Lady Luck Gaming Corporation.
		G	Lady Luck Gaming Corporation.
	19982747	G	Jeffrey H. Smulyan.
		G	Barry Diller.
		G	SF Broadcasting of Honolulu, Inc.
	19982757	G	Hajoca Corporation.
		G	A.Y. McDonald Industries, Inc.
		G	A.Y. McDonald Supply Co., Inc.
	19982760	G	Brentwood Associates Buyout Fund II, L.P.
		G	Larry Clayton.
		G	City Truck and Trailer Parts, Inc.
	19982763	G	Applied Graphics Technologies, Inc.
		G	Lincolnshire Equity Fund, L.P.
		G	Color Control, Inc.
	19982765	G	George T. Lewis, Jr., and Betty Lewis (husband & wif.
		G	Bechtel Group, Inc.
		G	Palm Power Corp., Maple Power Corp. et. al.
	19982766	G	Rochester Gas & Electric Corporation.
	19982766	G	E. Philip Saunders.
		G	Sugar Creek Corporation.
	19982767	G	Barry Diller.
		G	Blackstar L.L.C.
		G	Blackstar L.L.C.
	19982772	G	Rembrandt Controlling Investments Limited.
		G	William McAlpine.
		G	Alpine Engineered Products, Inc.
	19982773	G	Golder, Thomas, Cressey, Rauner Fund V, L.P.
		G	Falconite, Inc.
		G	Falconite, Inc.
	19982774	G	Glen R. Jones.
		G	Ron Hartenbaum.
		G	Media America, Inc.
	19982775	G	Glen R. Jones.
		G	Gary Schonfeld.
		G	Media America, Inc.
	19982776	G	Nationwide Mutual Insurance Company.
		G	The Gibbens Co., Inc.
		G	The Gibbens Co., Inc.
		G	Reiser Consulting Group, Inc.
		G	W.R. Gibbens, Inc.
	19982777	G	Evangelos P.Proimos.
		G	Questor Partners Fund, LP.
		G	AP Parts Manufacturing Company.
	19982790	G	Publicker Industries Inc.
		G	Katy Industries, Inc.
		G	Katy Industries, Inc.
	19982784	G	HM/RB Partners, L.P.
		G	Home Interiors & Gifts, Inc.
		G	Home Interiors & Gifts, Inc.
	19982785	G	Specialty Teleconstructors, Inc.
		G	Arch Communications Group, Inc.
		G	Arch Communications Group, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Arch Capitol District, Inc.
		G	The Beeper Company of America, Inc.
		G	Q Media Company-Paging, Inc.
		G	Arch Connecticut Valley, Inc.
	19982785	G	Arch Southeast Communications, Inc.
		G	The Westlink Company, USA Mobile Communication Inc. II.
	19982786	G	Dover Corporation.
		G	Robert R. Corrion and Rhea B. Corrion.
		G	Koolant Koolers, Inc.
	19982790	G	Ronald S. Lauder.
		G	The Audio House, Inc., et al.
		G	Westinghouse Communications.
	19982791	G	Waterlink, Inc.
		G	Sutcliffe, Speakman PLC.
		G	Barnebey & Sutcliffe Corp.
	19982794	G	Aktiebolaget SKF.
		G	Russell T. Gilman, Sr. Family Trusts.
		G	Russell T. Gilman, Inc.
	19982802	G	GreenPoint Financial Corporation.
		G	BankAmerica Corporation.
		G	Housing Services, Inc.
	19982804	G	The Lubrizol Corporation.
		G	Carroll Scientific, Inc.
		G	Carroll Scientific, Inc.
	19982807	G	Eaton Corporation
		G	Charles Chupick.
		G	CBS Boring & Machines Company, Inc.
	19982809	G	APAC TeleServices, Inc.
		G	Golder, Thoma, Cressey, Rauner Fund IV, L.P.
		G	ITI Holdings, Inc.
	19982810	G	Roslyck Paxson.
		G	Lowell W. Paxson.
		G	Paxson Communications Corporation.
	19982812	G	BCE Inc.
		G	Avici Systems Inc.
		G	Avici Systems Inc.
	19982813	G	Enron Corp.
		G	Heartland Steel, Inc.
		G	Heartland Steel, Inc.
	19982826	G	Lucent Technologies Inc.
	19982826	G	Mr. Jeon H. Kim.
		G	Yurie Systems, Inc.
12-MAY-98	19981207	G	Dean Foods Company.
		G	Purity Dairies, Inc.
		G	Purity Dairies, Inc.
	19982696	G	Sony Corporation (a Japanese company).
		G	Peter Guber.
		G	Aqaba, Inc. and Mandalay Entertainment.
		G	Mandalay Entertainment.
		G	Oz Pictures, LLC.
	19982742	G	Republic Industries, Inc.
		G	Gary Fronrath.
		G	Gary Fronrath Jeep-Eagle, Inc.
	19982749	G	La-Van Hawkins.
		G	Tricon Global Restaurants, Inc.
		G	Pizza Hut of America, Inc./Pizza Hut of Detroit, Inc.
	19982751	G	USB AG.
		G	Advanced D.C. Motors, Inc.
		G	Advanced D.C. Motors, Inc.
	19982779	G	Monro Muffler Brake, Inc.
		G	Goldfarb Corporation (The).
		G	Bloor Automotive, Inc.
		G	Speedy Car-X, Inc.
13-MAY-98	19982571	G	InSight Health Services Corp
		G	Anthem Insurance Companies, Inc.
		G	Signal Medical Services, Inc.
	19982669	G	Ontario Teachers' Pension Plan Board.
		G	Browning-Ferris Industries, Inc.
		G	Browning-Ferris Industries, Inc.
	19982768	G	Resurrection Health Care Corporation.
		G	Westlake Health System.
		G	Westlake Health System.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19982787	N	Clayton Homes, Inc.
		N	Cargill, Incorporated.
		N	Access Financial Lending Corporation.
	19982805	G	American Industrial Partners Capital Fund II, L.P.
		G	SH Holdings Corp.
		G	SH Holdings Corp.
	19982816	G	Evans & Sutherland Computer Corporation.
		G	AccelGraphics, Inc.
		G	AccelGraphics, Inc.
14-MAY-98	19981139	G	American Radio Systems Corporation.
		G	American Tower Corporation.
		G	American Tower Corporation.
	19982620	G	Household International, Inc.
		G	Beneficial Corporation.
		G	Beneficial Corporation.
15-MAY-98	19981148	G	Clear Channel Communications, Inc.
		G	American Radio Systems Corporation.
		G	American Tower Systems Corporation.
	19981219	Y	The Chase Manhattan Corporation
		Y	American Radio Systems Corporation.
		Y	American Tower Systems Corporation.
	19982729	G	Sunbelt Automotive Group, Inc.
		G	Steve E. Grindstaff.
		G	Grindstaff, Inc.
	19982750	G	Dynatech Corporation.
		G	David 7 Susan Smout.
		G	Pacific Systems Corporation.
	19982758	G	Richard D. McCormick.
		G	U S WEST, Inc.
		G	U S WEST, Inc.
	19982764	G	Regal Equity Partners, L.P.
		G	KKR 1998 Fund L.P.
		G	Act Three Cinemas Inc.
	19982789	G	Piccadilly Cafeterias, Inc.
		G	Morrison Restaurants Inc.
		G	Morrison Restaurants Inc.
	19982795	G	International Comfort Products Corporation.
		G	Watsco, Inc.
		G	Watsco, Components, Inc.
		G	P.E./Del Mar, Inc.
	19982819	G	Besser Company.
		G	International Pipe Machinery Corp.
		G	International Pipe Machinery Corp.
	19982824	G	MagneTek, Inc.
		G	Abraham Bernstein.
		G	Omega Power Systems, Inc./Omega Power and Network Solutions.
	19982825	G	MagneTek, Inc.
		G	Josef Rabinovitz.
		G	Omega Power Systems, Inc./Omega Power and Network Solutions.
	19982828	G	Tech Data Corporation.
		G	Viag AG.
		G	Computer 2000, AG.
	19982829	G	Viag AG.
		G	Tech Data Corporation.
		G	Tech Data Corporation.
	19982832	G	Michael S. and Judy Ovitz.
		G	Livent Inc.
		G	Livent Inc.
	19982836	G	Simsmetal Limited.
		G	Leo Frankel.
		G	Frankel Iron & Metal Company.
		G	Ferromet, Inc.
	19982838	G	Group 1 Automotive, Inc.
		G	Richard A. Fleischman.
		G	Luby Chevrolet Co.
	19982839	G	United HealthCare Corporation.
		G	Principal Mutual Life Insurance Company.
		G	Principal Health Care of Texas, Inc.
	19982840	G	American Bureau of Shipping.
		G	Jerry B. Fussell.
		G	JBF Associates, Inc.
	19982841	G	Apartment Investment and Management Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Insignia Financial Group, Inc.
		G	Insignia Financial Group, Inc.
	19982844	G	Allied Waste Industries, Inc.
		G	Carmen Sepic.
		G	Waste Associates, Inc.
	19982846	G	Sentinel Capital Partners, L.P.
		G	O. Gene Bicknell.
		G	Romacorp, Inc.
	19982848	G	Maxxim Medical, Inc. a Texas Corporation.
		G	Winfield Medical, a California corporation.
		G	Winfield Medical, a California corporation.
	19982850	G	Allied Waste Industries, Inc.
		G	Warren J. Razore.
		G	Rabanco Ltd.
		G	Rabanco Intrmodal/B.C., Inc.
		G	WJR Environmental, Inc.
		G	United Waste Control Corp.
	19982850	G	Rabanco Recycling, Inc.
	19982852	G	Allied Waste Industries, Inc.
		G	Marie Schulze.
		G	MJS Associates, Inc.
	19982856	G	Brunswick Corporation.
		G	MarineMax, Inc.
		G	MarineMax, Inc.
	19982857	G	Esselte AB.
		G	CoStar Corporation.
		G	CoStar Corporation.
	19982860	G	Daisytek International Corporation.
		G	Michael Cullen.
		G	The Tape Company, Inc., an Illinois corporation.
		G	Tape Distributors of Minnesota, Inc., A Minnesota corporation.
		G	Tape Distributors, of Texas, Inc., a Texas corporation.
		G	The Tape Company, Inc. a Michigan corporation.
		G	The Tape Company, Inc. A Georgia corporation.
		G	The Tape Company, Inc. an Ohio corporation.
		G	Tape Distributors, Inc., a Pennsylvania corporation.
	19982861	G	Daisytek Internationl Corporation.
		G	Robert Daly.
		G	The Tape Company, Inc. a Michigan corporation.
		G	Tape Distributors of Minnesota, Inc., a Minnesota corporation.
		G	The Tape Company, Inc. a Georgia corporation.
		G	The Tape Company, Inc. an Ohio corporation.
		G	Tape Distributors, Inc., a Pennsylvania corporation.
		G	Tape Distributors, of Texas, Inc., a Texas corporation.
	19982863	G	Renters Choice, Inc.
		G	West Coast Private Equity Partners, L.P.
		G	Central Rents, Inc.
	19982867	G	Hicks, Musé, Tate & Furst Equity Fund III, L.P.
		G	Meyer Broadcasting Company.
		G	Meyer Broadcasting Company.
	19982885	G	James S. Frank.
		G	Charles E. Frank.
		G	Wheelco, Inc.
18-May-98	19982871	G	Mar-Ray Corporation.
		G	John A. McLendon.
		G	Nationwide Homes, Inc.
	19982875	G	Omnicare, Inc.
		G	IBAH, Inc.
		G	IBAH, Inc.
	19982911	G	Consolidation Capital Corporation.
		G	Jerald M. Taylor.
		G	Taylor Electric, Inc.
19-MAY-98	19982698	G	Prudential Private Equity Investors, III, L.P.
		G	StorMedia Incorporated.
		G	StorMedia Incorporated.
	19982778	G	Rice Partners II, L.P.
		G	Diethelm & Co. Ltd.
		G	Celestron International Inc.
	19982803	G	Laminates Acquisition Co.
		G	International Paper Company.
		G	International Paper Company.
	19982874	G	Robert F.X. Sillerman.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	David Falk.
		G	Falk Associates Management Enterprises, Inc.
	19982877	G	Eos Partners, L.P.
		G	Richard P. Hyland.
		G	Cross Con Transports, Inc.
	19982878	G	Horizon Health Corporation.
		G	Ramsay Health Care, Inc.
		G	FPM Behavioral Health, Inc.
	19982880	G	Ford Motor Company.
		G	Strawn Merchandise Company.
		G	Strawn Merchandise Company.
	19982884	G	FirstEnergy Corp.
		G	Thomas H. Lewis, Jr.
		G	Elliot-Lewis Corporation.
	19982887	G	Compagnie de Saint-Gobain.
		G	Annette Edwards.
		G	ENW, Inc.
	19982888	G	Compagnie de Saint-Gobain.
		G	Garry Wamsley.
		G	ENW, Inc.
	19982890	G	Atlantic Richfield Company.
		G	Union Texas Petroleum Holdings, Inc.
		G	Union Texas Petroleum Holdings, Inc.
	19982902	G	Elisabeth Badinter.
		G	Hal Riney & Partners, Inc.
		G	Hal Riney & Partners, Inc.
	19982908	G	Norton McNaughton, Inc.
	19982908	G	Leonard Schneider.
		G	Jeri-Jo Knitwear, Inc.
20-MAY-98	19982788	G	Eastern Environmental Services, Inc.
		G	Brambles Industries Limited.
		G	Atlantic Waste Disposal, Inc./Atlantic of New York, In.
		G	Atlantic of New York, Inc.
	19982792	G	Freedom Communications, Inc.
		G	W. Don Cornwell.
		G	Granite Broadcasting Corporation.
	19982853	G	Sun Healthcare Group, Inc.
		G	Retirement Care Associates, Inc.
		G	Retirement Care Associates, Inc.
	19982889	G	Thayer Equity Investors III, L.P.
		G	IESI Holding Corporation.
		G	IESI Holding Corporation.
21-MAY-98	19982761	G	HEALTHSOUTH Corporation.
		G	Columbia/HCA Healthcare Corporation.
		G	Columbia/HCA Healthcare Corporation.
	19982762	G	Mail-Well, Inc.
		G	Anderson Lithograph Holding Corp.
		G	Anderson Lithograph Holding Corp.
	19982820	G	Time Warner, Inc.
		G	Cablevision Systems Corporation.
		G	A-R Cable Services, Inc.
	19982821	G	Cablevision Systems Corporation.
		G	Time Warner, Inc.
		G	Time Warner Entertainment, L.P.
22-MAY-98	19982700	G	Oriental Chemical Industries.
		G	E.I. du Pont de Nemours and Company.
		G	E.I. du Pont de Nemours and Company.
	19982822	G	DLJ Merchant Banking Partners II, L.P.
		G	Insilco Corp.
		G	Insilco Corp.
	19982851	G	Louis A. Farris, Jr.
		G	Deluxe Corporation.
		G	Paper Direct, Inc. and Current, Inc.
	19982854	G	Stronach Trust.
		G	Creditanstalt AG.
		G	Steyr-Daimler-Puch Fahrzeugtechnik AG & Co. KG.
		G	AV Technology International LLC.
	19982864	G	David Falk.
		G	Robert F.X. Sillerman.
		G	SFX Entertainment, Inc.
	19982872	G	Family Golf Centers, Inc.
		G	Eagle Quest Golf Centers, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Eagle Quest Golf Centers, Inc.
	19982883	G	Telephone and Data Systems Inc. Voting Trust.
		G	Telephone and Data Systems Inc. Voting Trust.
		G	Crook County RSA Limited Partnership.
	19982898	G	Lumbermens Mutual Casualty Company.
		G	Thomas J. Stewart.
		G	Eagle Insurance Group, Inc.
	19982900	G	Racing Champions Corporation.
		G	Wheels Sports Group, Inc.
		G	Wheels Sports Group, Inc.
	19982907	G	The News Corporation Limited.
		G	TVSM, Inc.
		G	TVSM, Inc.
	19982910	G	Broughton Foods Company.
		G	LFD Holding Corp.
		G	LFD Holding Corp.
	19982915	G	Consolidation Capital Corporation.
		G	James C. Linford.
		G	G.S. Group, Inc.
	19982916	G	New England Business Service, Inc.
		G	Romo Corp.
		G	McBee Systems, Inc.
	19982919	G	National Oilwell, Inc.
		G	First Reserve Fund VI, Limited Partnership.
		G	Phoenix Energy Products Holdings, Inc.
	19982927	G	ABB A.G.
		G	Paradigm Technology, Inc.
		G	IXYS Corporation.
	19982928	G	ABB A.B.
		G	Paradigm Technology, Inc.
		G	IXYS Corporation.
	19982929	G	Thomas T. Gore, an individual.
		G	Highmark, Inc., A Pennsylvania non-profit corporation.
		G	Synertech Health System Solutions, Inc.
	19982936	G	Advance Voting Trust.
		G	Wired Ventures, Inc.
		G	Wired Ventures, Inc.
	19982940	G	Willis Stein & Partners, L.P.
		G	Gottlob Auwaerter GmbH & Co.
		G	International Automotive Products, Inc.
	19982941	G	Kamilche Company.
		G	Louisiana-Pacific Corporation.
		G	Louisiana-Pacific Corporation.
	19982957	G	Manufactures' Services Limited.
		G	International Business Machines Corporation.
		G	International Business Machines Corporation.
	19982962	G	NationsRent, Inc.
		G	Oliver H. Raymond.
		G	Raymond Equipment Company, Inc.
	19982963	G	Packerland Holdings, L.P.
		G	Paul J. Murray, Sr.
		G	Murco, Inc.
	19982968	G	Willis Stein & Partners, L.P.
		G	Larry Archibald.
		G	Stereophile, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–16876 Filed 6–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the

premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
26-MAY-98	19982739	G	Assa Abloy AB.
		G	Hillenbrand Industreis, Inc.
		G	Medeco Security Locks, Inc.
	19982746	G	Clear Channel Communications, Inc.
		G	Richard M. Fairbanks & Virginia B. Fairbanks.
		G	Fairbanks Communications, Inc.
	19982756	G	James C. Hilliard.
		G	Clear Channel Communications, Inc.
		G	Clear Channel Metroplex, Inc.
		G	Clear Channel Metroplex Licenses, Inc.
	19982770	G	Jeffrey H. Smulyan.
		G	Mari Hulman George.
		G	Wabash Valley Broadcasting Corporation.
	19982800	G	Thomas E. Baker (Dr.).
		G	Aspen Technology, Inc.
		G	Aspen Technology, Inc.
	19982801	G	Aspen Technology, Inc.
		G	Thomas E. Baker (Dr.)
		G	Chesapeake Decision Sciences, Inc.
	19982974	G	Sega Enterprises, Ltd.
		G	SGW Holding Inc.
		G	Sega GameWorks L.L.C.
	19982988	G	Kellstrom Industries, Inc.
		G	Carmel and Rosa Shashua.
		G	Aerocar Aviation Corp./Aerocar Parts, Inc.
		G	Aerocar Parts, Inc.
27-MAY-98	19982831	G	Able Telcom Holding Corp.
		G	WorldCom, Inc.
		G	MFS Network Technologeis, Inc.
	19982882	G	Journal Communications, Inc.
		G	AGM-Nevada, L.L.C.
		G	AGM-Nevada, L.L.C.
	19982891	G	Farm Family Holdings, Inc.
		G	Farm Family Life Insurance Company.
		G	Farm Family Life Insurance Company.
	19982899	G	Sidney B. DeBoer.
		G	Antonio Rodriguez.
		G	Rodway Chevrolet Co./Century Ford, Inc.
	19982921	G	AB Volvo.
		G	Samsung Heavy Industries Co., Ltd.
		G	Samsung Construction Equipment America Corp.
	19982923	G	William D. Morton.
		G	Mid Central Plastics, Inc.
		G	Mid Central Plastics, Inc.
	19982925	G	Kranson Industries, Inc.
		G	W. Braun Company.
		G	W. Braun Company.
	19982934	G	The Children's Hospital Foundation.
		G	The Children's Seashore House.
		G	The Children's Seashore House.
	19982938	G	Societe National d'Etude et de Construction.
		G	TI Group plc.
		G	Dowty Aerospace Corporation.
	19982939	G	Solectron Corporation.
		G	International Business Machines Corporation.
		G	International Business Machines Corporation.
	19982950	G	FS Equity Partners IV, L.P.
		G	Dennis C. Bearden.
		G	Century Maintenance Supply, Inc.
	19982989	G	Sisters of St. Joseph of Wichita, Kansas.
		G	Preferred Health Systems, Inc.
		G	Preferred Health Systems, Inc.
	19982990	G	Sisters of the Sorrowful Mother Generalate, Inc.
	19982990	G	Preferred Health Systems, Inc.
		G	Preferred Health Systems, Inc.
28-MAY-98	19982626	G	Windy Hill Pet Food Holdings, Inc.
		G	Gene W. Fickes and Sandra C. Fickes.
		G	Deep Run Packing Co., Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19982744	G	Cottingham Trust (1996).
		G	Douglas Monitto.
		G	Monitor Aerospace Corporation.
	19982914	G	Anacomp, Inc.
		G	First Data Corporation.
		G	First Financial Management Corporation.
		G	Employee Benefits Plans, Inc.
	19982944	G	Metals USA, Inc.
		G	Roger L. Krohn and Marilyn B. Krohn.
		G	Krohn Steel Service Center, Incorporated.
	19982952	Y	Denali Incorporated.
		Y	William I. Koch.
		Y	Fibercast Company.
29-MAY-98	19982894	G	Questor Partners Fund, L.P.
		G	IMPCO Technologies, Inc.
		G	IMPCO Technologies, Inc.
	19982980	G	Almanij N.V.
		G	Kredietbank N.V.
		G	Kredietbank N.V.
01-JUN-98	19982811	G	Lakshmi N. Mittal.
		G	Inland Steel Industries, Inc.
		G	Inland Steel Industries, Inc.
	19982837	G	Hafslund ASA.
		G	Chrysler Corporation.
		G	Pontook Operating Limited Partnership.
	19982895	G	Queensway Financial Holdings Limited.
		G	James G. Petcoff.
		G	North Pointe Financial Service Inc.
	19982896	G	James G. Petcoff.
		G	Queensway Financial Holdings Limited.
		G	Queensway Financial Holdings Limited.
	19982905	G	U.S. Industries, Inc.
		G	Clark Manufacturing, Inc.
		G	Clark Manufacturing, Inc.
	19982917	G	Sterling Commerce, Inc.
		G	XcelleNet, Inc.
		G	XcelleNet, Inc.
	19982918	G	Dennis M. Crumpler.
		G	Sterling Commerce, Inc.
		G	Sterling Commerce, Inc.
	19982951	G	Life Re Corporation.
		G	Delos H. Yancey, Jr.
		G	North American Financial Services, Inc.
	19982953	G	Tension Envelope Corporation.
		G	The Wolf Detroit Envelope Company.
		G	The Wolf Detroit Envelope Company.
	19982956	G	Gibraltar Steel Corporation.
		G	United Steel Products Company.
		G	United Steel Products Company.
	19982981	G	Almanij N.V.
		G	CERA Bank.
		G	CERA Bank.
	19982982	G	General Motors Corporation.
		G	Allied Signal, Inc.
		G	AlliedSignal Environmental Catalysts Inc.
	19982987	G	IMI plc (a British Company).
01-JUN-98.			
	19982987	G	Peter R. Fazzone.
		G	KIP, Inc.
	19982994	G	The Warnaco Group, Inc.
		G	Commerce Clothing Company LLC.
		G	Commerce Clothing Company LLC.
	19982997	G	Performance Food Group Company.
		G	Robert E. Keith.
		G	Affiliated Paper Companies, Inc.
	19982998	G	OEI International, Inc.
		G	W-Industries, Inc.
		G	W-Industries, Inc.
	19982999	G	Lubermens Mutual Casualty Company.
		G	Sid R. Bass.
		G	Pyramid Acquisition Corporation.
	19983002	G	Code, Hennessy & Simmons III, L.P.

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TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Tharco Containers Colorado, Inc.
		G	Tharco Containers Colorado, Inc.
	19983005	G	FPL Group, Inc.
		G	The Douglas Compton Trust.
		G	Cannon Power Corporation.
	19983006	G	FPL Group, Inc.
		G	Gerald W. Monkhouse.
		G	Cannon Power Corporation.
	19983007	G	Fortune Brands, Inc.
		G	Aktiebolaget Electrolux.
		G	Schrock Cabinet Company Division of White. Consolidated.
		G	Industries, Inc.
	19983022	G	Coinmach Laundry Corporation.
		G	Thomas L. and Dorothy E. Litwin.
		G	Gordon & Thomas Companies, Inc.
	19983057	G	Wheatley Partners, L.P.
		G	USWeb Corporation.
		G	USWeb Corporation.
	19983063	G	Integrated Electrical Services, Inc.
		G	Herbert R. Allen.
		G	H.R. Allen, Inc.
	19983064	G	Herbert R. Allen.
		G	Integrated Electrical Services, Inc.
		G	Integrated Electrical Services, Inc.
02-JUN-98	19982866	G	U S West, Inc.
		G	Time Warner Telecom, Inc.
		G	Time Warner Telecom, Inc.
	19982868	G	Time Warner Inc.
		G	Time Warner Telecom, Inc.
		G	Time Warner Telecom, Inc.
	19983012	G	Desc, S.A. de C.V.
		G	Authentic Specialty Foods, Inc.
		G	Authentic Specialty Foods, Inc.
	19983016	G	The Crown Fund.
		G	ALLTEL Corporation.
		G	ALLTEL Corporation.
	19983018	G	John Rutledge Partners II, L.P.
		G	W.R. Hambrecht/QIC, Inc.
		G	Quinton Instrument Company.
	19983019	G	Real Time Data, Inc.
		G	J. Richard Estey.
		G	The Estey Corporation.
		G	Vend Products Distributing of California, Inc.
	19983030	G	National-Oilwell, Inc.
		G	Estate of William A. Monteleone.
		G	Roberds-Johnson Industries, Inc.
	19983033	G	Group Maintenance America Corp.
		G	Giles C. Upshur, III.
		G	Atlantic Industrial Constructors, Inc
		G	Atlantic Industrial Maintenance, Inc.
		G	Atlantic Industrial Leasing Corporation, Inc.
	19983035	G	Group Maintenance America Corp.
		G	T. Evan Williams.
		G	I Maintenance, Inc.; and Atlantic Industrial Leasing Corp.
	19983036	G	Ocean Group plc.
		G	Mercury Holdings plc.
		G	Mercury Holdings plc.
	19983046	G	Commerical Union plc.
		G	Farmers Union Insurance Acquisition Corporation.
		G	Farmers Union Insurance Acquisition Corporation.
	19983048	G	ICM Equipment Company, L.L.C.
		G	Williams Bros. Construction, Inc.
		G	Williams Bros. Construction, Inc.
	19983058	G	Brentwood Associates Buyout Fund II, L.P.
		G	Stone Heavy Duty, Inc.
		G	Stone Heavy Duty, Inc.
	19983071	G	The Beacon Group III—Focus Value Fund, L.P.
		G	Robert Kern.
		G	Generac Corporation.
	19983082	G	General Motors Corporation.
		G	Edward J. Morse.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Morse Operations, Inc.
	19983089	G	Dartford Partnership L.L.C.
		G	MBW Investors L.L.C.
		G	NEWCO.
	19983090	G	McCown DeLeeuw & Co. III, L.P.
		G	MBW Investors L.L.C.
		G	NEWCO.
	19983095	Y	NE Restaurant Company, Inc.
		Y	Bertucci's Inc.
		Y	Bertucci's Inc.
03-JUN-98	19981604	Y	Compaq Computer Corporation
		Y	Digital Equipment Corporation.
		Y	Digital Equipment Corporation.
	19982893	G	Danaher Corporation.
		G	Fluke Corporation.
		G	Fluke Corporation.
	19982930	G	Ira Leon Rennert.
		G	ASARCO Incorporated.
		G	ASARCO Incorporated.
	19982933	G	Robert F.X. Sillerman.
		G	Mugar MLWLLC.
		G	Blackstone Entertainment, LLC.
	19982992	G	NGC Corporation.
		G	Dominion Resources, Inc.
		G	Dominion Energy, Inc.
		G	Dominon Cogen CA, Inc.
	19983001	G	Ford Motor Company.
		G	Big 4 Rents, Inc.
		G	Big 4 Rents, Inc.
	19983037	G	Gordon Gray, Jr. Trust.
		G	Roy P. Disney.
		G	The Apogee Companies, Inc.
	19983041	G	Navix Radiology Systems, Inc.
		G	Fresenius AG.
		G	Fresenius Medical Care Holdings, Inc.
	19983077	G	Gerald W. Schwartz.
		G	Silicon Graphics, Inc.
		G	Cray Research, Inc.
	19983091	G	McCown De Leeuw & Co. IV, L.P.
		G	MBW Investors L.L.C.
		G	NEWCO
		G	Aurora Foods, Inc.
	19983092	G	Fenway Partners Capital Fund, L.P.
		G	MBW Investors L.L.C.
		G	NEWCO
04-JUN-98	19982945	G	Partners HealthCare System, Inc.
		G	Newton-Wellesley Health Care System, Inc.
		G	Newton-Wellesley Health Care System, Inc.
	19983017	G	Henry Crown and Company (Not Incorporated).
		G	ALLTEL Corporation.
		G	ALLTEL Corporation.
	19983079	G	Northland Cranberries, Inc.
		G	Michael A. Morello.
		G	Minot Food Packers, Inc.
05-JUN-98	19982912	G	Larry Addington.
		G	Cyprus Amax Minerals Company.
		G	Cyprus Cumberland Coal Corporation.
		G	Cyprus Mountain Coals Corporation.
		G	Cyprus Southern Realty Corporation.
		G	Cyprus Kanawha Corporation.
		G	Amax Coal Company.
		G	Amax Coal Sales Company.
		G	Ayrshire Land Company.
		G	Beech Coal Company.
		G	Meadowlark, Inc.
		G	Cannelton, Inc.
		G	Roaring Creek Coal Company.
		G	Grassy Cove Coal Mining Company.
	19982993	G	General Electric Company.
		G	Kaynar Technologies, Inc.
		G	Kaynar Technologies, Inc.
	19983014	G	Engineered Support Systems, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	George W. Andrews and Mary Ann Andrews.
		G	KECO Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–16877 Filed 6–23–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 941–0095]

M.D. Physicians of Southwest Louisiana, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 24, 1998.

ADDRESSES: Comment should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374., Washington, D.C. 20580. (202) 326–2932.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 19, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from M.D. Physicians of Southwest Louisiana ("MDP"). The agreement settles charges by the Federal Trade Commission ("Commission") that MDP has violated Section 5 of the Federal Trade Commission Act by: (1) Fixing the prices and other terms on which its members would deal with third-party payers; (2) collectively refusing to deal with third-party payers; and (3) conspiring to obstruct the entry of managed care into Calcasieu Parish, Louisiana.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by MDP that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The allegations in the Commission's complaint are summarized below.

MDP is a physician organization based in Lake Charles, Louisiana. All of the members of MDP are physicians practicing in and around Calcasieu Parish, Louisiana, the parish in which Lake Charles is located. During the time period addressed by the allegations of the complaint, MDP members constituted a majority of all physicians practicing in Calcasieu Parish, Louisiana. In certain physician specialties, MDP members constituted all or most of the physician specialists practicing in Calcasieu Parish.

MDP was formed in 1987 as a vehicle for its members to deal concertedly with the impending entry into Calcasieu Parish of managed care. Beginning in 1987, and continuing until at least 1994, when MDP first learned that it was under investigation by the staff of the Commission, MDP conspired to fix the prices and other terms under which its members dealt with third-party payers. MDP also conspired to prevent or delay the entry into Calcasieu Parish of managed care.

Until 1994, MDP members refused to participate, either individually or collectively, in health care plans offered by Blue Cross and Blue Shield of Louisiana, the Louisiana State Employees Group Benefits Program, Aetna Insurance Company, Healthcare Advantage, Inc., and other third-party payers attempting to do business in Calcasieu Parish.

The members of MDP agreed that MDP would represent them in negotiations with third-party payers. MDP functioned as the exclusive representative of its members. Until 1994, the members of MDP dealt with third-party payers only though MDP.

MDP's members have not integrated their medical practices in any economically significant way, nor have they created any efficiencies that might justify this conduct.

MDP's actions have harmed consumers in Calcasieu Parish by, among other things, restraining competition among physicians,

depriving consumers of the benefits of competition among physicians, increasing the prices that consumers pay for physician services and medical insurance coverage, and depriving consumers of the benefits of managed care.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing MDP to engage in legitimate joint conduct. Section II of the proposed order contains the core operative provisions. It prohibits MDP from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) fixing prices, or any other terms, on which its members deal; and (4) encouraging or pressuring others to engage in any activities prohibited by the order.

Section II includes a proviso allowing MDP to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) provided MDP complies with the order's prior notification requirements, any 'qualified clinically integrated joint arrangement." The proviso addresses the arrangements that MDP may enter into, rather than the overall nature of the group, because a physician group may enter into legitimate arrangements with some third-party payers but engage in illegal conduct with respect to others. For the purposes of the order, a 'qualified risk-sharing joint arrangement" must satisfy two conditions. First, it must be one in which participating physicians share substantial financial risk. The order lists ways in which physicians might share financial risk. These track the four types of financial risk sharing set forth in the *Statements of Antitrust Enforcement Policy in Health Care,* issued jointly by the FTC and the Department of Justice.[1]

Second, to be a "qualified" risk sharing arrangement, the arrangement must also be non-exclusive, both in name and in fact. An arrangement that either restricts the ability of participating physicians to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitates refusals to deal outside the arrangement by participating physicians, does not fall within the proviso. Although exclusive physician joint arrangements are not necessarily anticompetitive, they can impair competition, particularly when they include a large portion of the physicians in a market. In light of MDP's large share of the physician market, this definition does not permit MDP to form exclusive arrangements.

A "qualified clinically integrated joint arrangement" includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangement reflects the analysis contained in the 1996 FTC/DOJ *Statements of Antitrust Enforcement Policy in Health Care.* In addition, as with risk-sharing arrangements, the arrangement must be non-exclusive in light of MDP's large share of the market. In drafting the definition of clinically integrated arrangements, the Agencies sought to be flexible due to the wide range of providers who may participate, types of clinical integration possible, and efficiencies available. Consequently, the definition of a clinically integrated arrangements is by necessity less precise than that of a risk sharing arrangement.

In order for a qualified clinically integrated joint arrangement to fall within the proviso, MDP must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact, in order to help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Section III requires that MDP notify its members and certain third-parties about the order. In addition, MDP must, for the next five years, distribute copies of the complaint and order to new members and annually publish the complaint and order in any annual report or newsletter sent to MDP members.

Sections IV, V, and VI consist of various reporting procedures, consistent with those found in other Commission consent orders, that are designed to assist the Commission in monitoring compliance with the order.

Finally, section VII terminates the order twenty years after the date it is issued, in accordance with Commission policy.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–16821 Filed 6–23–98; 8:45 am]

BILLING CODE 6750–01–M

[1] *Statements of Antitrust Enforcement Policy in Health Care,* issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

Submission for OMB Review; Comment Request Entitled Service Contracting

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0197).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Service Contracting. A request for public comments was published at 63 FR 19920, April 22, 1998. No comments were received.

DATES: Comment Due Date: July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090–0197, Service Contracting. This information collection is necessary to determine whether a prospective contractor is responsible by obtaining information regarding financial and other capabilities of the prospective contractor.

B. Annual Reporting Burden

Respondents: 2,200; annual responses: 2,200; average hours per response: 1; burden hours: 2,200.

Copy of proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–16724 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0200]

Submission for OMB Review; Comment Request Entitled Sealed Bidding

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0200).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Sealed Bidding. A request for public comments was published at 63 FR 19921, April 22, 1998. No comments were received.

DATES: Comment Due Date: July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3099–0200, Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

B. Annual Reporting Burden

Respondents: 20; annual responses: 20; average hours per response: .10; burden hours: 3.3.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3342.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–16727 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0227]

Submission for OMB Review; Comment Request Entitled Termination Liability Schedule

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0227).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Termination Liability Schedule. A request for public comments was published at 63 FR 19920, April 22, 1998. No comments were received.

DATES: Comment Due Date: July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090–0227, Termination Liability Schedule. This information would permit offers on contracts for the Information Technology Fund to submit a schedule of cancellation charges. Use of Termination Liability provisions, a standard industry practice, equalizes the interconnects competitive position relative to the carriers, saving money and increasing competition.

B. Annual Reporting Burden

Respondents: 60; annual responses: 60; average hours per response: 2.5; burden hours: 150.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–16722 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250]

Submission for OMB Review; Comment Request Entitled Zero Burden Information Collection Reports

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB Clearance 3090–0250, Zero Burden Information Collection Reports.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Zero Burden Information Collection Reports. GSA proposed to use a single, general control

number for information collections that impose no burden upon the public. A request for public comments was published at 63 FR 19264, April 17, 1998. No comments were received.

DATES: Comment Due Date: July 24, 1998.

ADDRESSES: Comments regarding this collection of information should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION: The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0250, Zero Burden Information Collection Reports. This information collection consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process. Since May 1992, GSA has published two rules that fall under Information Collection 3090–0250: "Implementation of Public Law 99–506" published at 56 FR 29442, June 27, 1991, and "Industrial Funding Fee" published at 62 FR 38475, July 18, 1997.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW, Washington, DC, 20405 or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–16728 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability of Record of Decision; Construction of the New Federal Courthouse, Seattle, WA

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council of Environment Quality, the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency and made available to other government and interest private parties, the Record of Decision concerning the construction of the new Federal Courthouse, Seattle, Washington.

The Record of Decision is available for review at the following location: Seattle Public Library, 1000 Fourth Avenue, Seattle, WA (Documents Desk). Additional copies are available by contacting Michael D. Levine, 400 15th St., SW., Auburn, WA 98001 or call 253/931–7263. The document is also available at the following Internet address: www.northwest.gsa.gov/pbs/eis.htm.

L. Jay Pearson,

Regional Administrator.

[FR Doc. 98–16737 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRAITON

Public Buildings Service; Notice of Availability of Draft Environmental Impact Statement Disposition of Governors Island, Upper New York Bay, NY

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency and made available to other government and interested private parties, the Draft Environmental Impact Statement (DEIS) for the disposition of surplus federal real property known as Governors Island, Upper New York Bay, New York.

The Draft EIS is on file at New York City Hall, Manhattan Community District #6, Brooklyn Community District #6, Andrew Heiskell Library for the Blind and Physically Handicapped, Mid-Manhattan Library, NY Public Library—New Amsterdam Branch, NY Public Library—Carroll Gardens Branch, NY Public Library—Red Hook Branch and General Services Administration.

Copies of the Executive Summary of the Draft EIS are available upon request. Additional information may be obtained from General Services Administration, Region 2, Attention: Peter A. Sneed, 26 Federal Plaza, New York, New York, 10278, (212) 264–3581.

Written comments regarding the DEIS may be submitted until July 27, 1998 and should be addressed to General Services Administration in care of the above noted individual. A public hearing is scheduled for June 24, 1998 at the U.S. Customs House, 1 Bowling Green, Lower Manhattan, New York; and for June 25, 1998 at the US District Court, 225 Cadman Plaza East, 1st Floor, Brooklyn, New York. Both hearings will be held from 6:00 pm to 8:00 pm.

Dated: June 1, 1998.

Robert Martin,

Acting Regional Administrator (2A).

[FR Doc. 98–16725 Filed 6–23–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Fiscal Year 1998 Program Announcement; Availability of Funds and Notice Regarding Applications: Extension of Application Deadline Date

AGENCY: Administration on Aging, HHS.

ACTION: Notice of extension of deadline date for applications to carry out research on Alzheimer's Disease Caregiving Options.

SUMMARY: This notice extends the deadline date for the submission of applications under Program Announcement AoA 98–6, Research on Alzheimer's Disease Caregiving Options, through July 17, 1998.

Dated: June 15, 1998.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98–16763 Filed 6–23–98; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98085]

Young People in Alternative Education Settings: Preventing HIV and Other Sexually Transmitted Diseases Notice of Availability of Fiscal Year 1998 Funds

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for cooperative agreements for the prevention of human immunodeficiency virus (HIV), and other sexually transmitted diseases (STDs) among young people in alternative educational

settings. Applied research programs that implement and evaluate promising, multicomponent interventions to reduce unprotected sexual intercourse among young people in alternative educational settings will be supported under this cooperative agreement.

Young people in high-risk situations for HIV and other STDs are served in alternative educational settings, which include: alternative schools, and school-based or school-linked dropout prevention programs, and dropout recovery programs. Alternative schools, dropout prevention programs, and dropout recovery programs serve students primarily who are at high risk of not progressing in regular high schools (or who have previously stopped attending school), and as a result, not graduating, as well as students who have already gotten into disciplinary trouble, usually related to illegal drug use or violence. Of particular interest are alternative educational settings targeting adjudicated young people (that is, young people in contact with the juvenile justice system), although interventions may target other young people in high risk situations served within alternative educational settings. (See Attachment 1 for the CDC's definition of young people in high risk situations.)

The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and death and improve the quality of life. This announcement is related to priority areas of Family Planning, HIV Infection, and Sexually Transmitted Diseases. (To order a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 51b.

Smoke-free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which educational, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official educational, juvenile corrections, public health, family planning, and substance abuse agencies of the State; the District of Columbia and Puerto Rico, as well as local governments, nonprofit organizations, academic institutions, and other nonprofit health, family planning, substance abuse, or social service providers. All applicants must provide evidence that demonstrates a successful history of working in partnership with interdisciplinary groups of health researchers and local racial and ethnic minority communities on applied social and behavioral science projects.

Residential programs in which participants receive interventions while institutionalized both weekdays and weekends are not eligible to avoid duplication of current CDC initiatives targeting incarcerated young people.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Availability of Funds

Approximately $600,000 is available in FY 1998 to fund up to two awards. It is expected that awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 4 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

CDC has prioritized programs reducing sexual risk behavior among young people in high risk situations, particularly among young men having sex with men, injection drug using young people, and adjudicated young people. High rates of HIV, STDs, and unintended pregnancies among young people point to a need for interventions that effectively address adolescent sexual and drug use behavior. Several "Healthy People 2000" objectives call for effective interventions in these areas. The 1992 National Health Interview Survey Youth Risk Behavior supplement revealed that sexual risk and drug-use behaviors among out-of-school young people are more common than among their in-school counterparts. Programs designed to reach students at risk for school dropout are an important strategy to provide health education and activities to prevent behavior that may put them at risk for HIV and STDs. Evaluating the effectiveness of prevention programs within these settings is important and has been rarely undertaken.

Alternative schools are one important avenue for reaching young people who have dropped out or who are at risk of dropping out of regular school programs. Within the United States there are over 1300 free-standing alternative schools that serve 280,000 young peoples in grades 8 or higher. The number of students enrolled in such programs is even greater when alternative school programs within regular schools, and after-school diploma and GED programs are included. Such educational services are

needed given the number of young people dropping out of schools: in 1994, 11.4 percent of young people aged 16–24 dropped out of school without obtaining a high school diploma or GED.

Studies of alternative school students in Texas, Montana, Minnesota, and Florida demonstrate high rates of sexual risk behaviors strongly correlated with HIV, STDs, and unintended pregnancy. Young people in drop-out prevention programs and alternative schools exhibit higher rates of sexual risk behavior than their counterparts in regular schools including higher prevalence of sexual activity (between 83 percent and 97 percent), lower prevalence of condom use at last intercourse (between 40 percent and 60 percent), and higher prevalence of sex with multiple partners (between 31 percent and 43 percent). Young people in drop-out prevention programs and alternative school settings are also more likely to report a prior pregnancy (between 25 percent and 40 percent) than their regular school counterparts. Further, alternative school students report a high prevalence of drug use, including alcohol, marijuana, and cocaine.

Low academic and occupational expectations, academic failure, and school dropout are strongly and persistently associated with contact with the juvenile justice system. Federal Bureau of Investigation arrest statistics reveal that criminal offenses for males and females increase in early adolescence, peak in late adolescence, and decrease thereafter, bringing a higher proportion of young people into contact with the justice system than other age groups. Alternative school and dropout prevention programs that serve adjudicated young people, are detailed in "Reaching Out to Youth Out of the Education Mainstream." (To order a copy of "Reaching Out to Youth Out of the Education Mainstream," see the section "Where To Obtain Additional Information.") Community-based follow-up programs for young people that reinforce risk reduction behaviors have been shown to be promising strategies, and could be implemented in alternative educational settings. Such programs vary in the timing with which they intervene as young people progress through the juvenile justice system. Some alternative educational programs are preventive and implemented at the time of first offense, some provide model school experiences for incarcerated young people, and some are implemented after juveniles are released from incarceration to reintegrate them with the mainstream educational system.

Although there is a clear need for interventions to reduce sexual risk behaviors among young people at risk for school dropout, little research has been conducted to determine intervention efficacy for this population. While alternative and dropout prevention program students have been exposed to mainstream school HIV and STD prevention programs at relatively high rates, these programs may not adequately meet the needs of young people at high risk. One study of students in a dropout recovery program in Illinois found that a lack of tailored interventions has resulted in low basic knowledge regarding sexual risk, as well as high levels of risk behavior.

Purpose

These awards will support evaluation of promising interventions to decrease sexual risk behaviors among young people in alternative educational settings. This cooperative agreement will support applied research that meets the following criteria:

1. Identifies a promising group-level intervention based on a sound theoretical foundation. Promising programs are those with demonstrated effectiveness based on preliminary evaluation data, expert appraisal, or favorable response by participants. A rationale should be provided that justifies use of the intervention in the current population and setting. Programs may be revised, improved, or updated for purposes of the current research.

2. Implements and evaluates intervention strategies among young people in alternative educational settings to reduce sexual risk behavior.

3. Collaborates with academic, program, and community partners in conducting, and evaluating the proposed intervention, and proposes to work with partners throughout the project period to sustain successful interventions beyond the project's duration.

Program Requirements

Studies will be quasi-experimental or experimental in design and should measure knowledge, attitudes, and behavior related to HIV and other STDs. Measures of behavior should include, but are not limited to, abstinence, correct and consistent condom use among sexually active young people, past sexual experience including victimization, measures of number of partners, and frequency of sexual intercourse. While the major focus of the cooperative agreement is to decrease HIV and STD related risk behaviors, interventions may include as a secondary focus reducing the prevalence of alcohol and drug use, or sexual behaviors related to unintended pregnancy, including increasing effective contraceptive use among sexually active young people.

Studies should include at least two sites in which the intervention will be implemented, and sites or individual participants (or some other justified sampling unit) should be randomized to the control or comparison condition or the experimental condition. Studies should be designed to follow-up participants at least 12 months after the end of the intervention. Extensive strategies to maintain an adequate response rate throughout the follow-up will be of critical importance. The overall evaluation of these programs will include both process and outcome evaluation components.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

1. Establish and maintain staff positions allocated to specific responsibilities, with at least a 50 percent time research director and a 100 percent time project director with training, experience, and authority sufficient to achieve the objectives of this program announcement.

2. Identify and implement a promising intervention designed to reduce sexual risk behavior among young people in alternative educational settings. Examples include, but are not limited to, the following:

(a) Increasing knowledge about HIV and other STDs, and promoting attitudes and behavioral intentions that support reductions in sexual risk behavior.

(b) Providing skill-based training that increases, through modeling and practice, decision-making and communication skills that support reduction of sexual risk behaviors.

(c) Identifying, creating, or mobilizing school, family, peer, and other social networks to support and reinforce sexual risk reduction through activities including, but not limited to, mentoring, peer-influence, familial involvement, increased communication with sexual partners, community involvement, or social diffusion.

(d) Promoting resiliency, social skills, and youth assets through a youth development approach.

(e) If alcohol and drug-related behavior is a secondary focus, then promoting knowledge, attitudes,

behavioral intentions, and behavior to reduce alcohol and illegal drug use, or to reduce harm associated with use.

(f) If pregnancy prevention is a secondary focus, then increasing knowledge, attitudes, and behavioral intentions and behavior to increase effective contraceptive use (which may include multiple methods of contraception) to prevent HIV, STD, and unintended pregnancy among sexually active young people.

3. Measure the success of interventions with targeted populations in comparison to a control/comparison group. Self-reported outcome measures may include, but are not limited to:

(a) Past sexual experience, including sexual victimization;

(b) Sexual initiation;

(c) Correct and consistent condom use among sexually active young people;

(d) Knowledge, attitudes, and behavioral intentions to reduce sexual risk behavior;

(e) Number of sexual partners and frequency of sexual intercourse;

(f) Number of STDs diagnosed;

(g) HIV testing reported by participants;

(h) Social assets, communication skills, perception of peer norms, increased integration in familial and community networks;

(i) If alcohol and drug-related behavior is a secondary focus, then knowledge, attitudes, behavioral intentions, and alcohol and drug use behavior, and the impact of alcohol and drug-use on sexual risk behaviors; and

(j) If pregnancy prevention is a secondary focus, then knowledge, attitudes, behavioral intentions, and behavior. Measures may include, but are not limited to, number of pregnancies in the sample, and effective contraception use (including multiple methods) among sexually active young people.

4. Develop and refine research questions and methods, conceptual frameworks, measurement and analysis strategies, and intervention protocols so that findings can be used to facilitate national efforts to prevent HIV and STDs among young people in alternative educational settings. This may require modifying conceptual frameworks, sampling plans, data collection instruments, intervention activities, and other elements of the applicant's proposal to meet the program goals.

5. Develop, revise, and submit a written justification package and other documentation necessary for obtaining Office of Management and Budget (OMB) clearance.

6. Collaborate and coordinate efforts with appropriate educational, corrections, health, substance abuse, youth-serving, community-based, and minority organizations who deliver services or interventions to the targeted populations. Include members of the targeted population in planning, developing, and revising the research and intervention activities whenever appropriate and feasible. Collaborate with service providers to sustain successful interventions beyond the duration of the project.

7. Develop a plan for disseminating results of the research to members of the scientific, programmatic, and targeted communities.

8. Disseminates evaluation findings through peer-reviewed publications and presentations.

B. CDC Activities:

1. Provide scientific and technical assistance in the design and development of the research, and evaluation protocols, selection of measures and instruments, operational plans and objectives, and data analysis strategies.

2. Provide scientific and technical coordination of the general operation of the research project, including data management support.

3. Participate in the analysis of data gathered from program activities and the reporting of results.

4. Conduct site visits to assess program progress.

5. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

Technical Reporting Requirements

An original and two copies of the progress report and financial status report must be submitted on an annual basis and are due 90 days after the end of the budget period. The progress report must include the following for each program, function, or activity involved: (1) a brief program description; (2) a comparison of actual accomplishments to goals and objectives established for the 12-month period; (3) explanations for all goals or objectives either delayed or not accomplished and a plan of corrective action; (4) data on participation in intervention and research activities, including numbers of completed baseline and follow-up interviews, and recruitment and retention rates (5) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance. All manuscripts supported in part or whole by the cooperative agreement will be required to go through CDC clearance before submission for publication.

A final financial report is required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 5161–1 (OMB Number 0937–0189), information contained in the program announcement, and the instructions and format provided below.

Applications should describe:

1. The identification of a promising program to reduce sexual risk behavior among young people in alternative educational settings, including a theoretical basis, rationale, and explanation of previous use.

2. Implementation and evaluation of an intervention to reduce unprotected sexual intercourse among young people in alternative educational settings, including the evaluation design, sampling plan, and analysis strategy.

3. A feasible and timely strategy for disseminating findings from this research to scientific, public health, and community partners, and efforts to be made throughout the project to ensure that the intervention will be sustained once Federal funding ends.

The application should include a general introduction, followed by one narrative subsection per application content element (A–H) in the order in which the elements appear below. Each narrative subsection should be labeled with the element title and contain all of the information needed to evaluate that element of the application (except for curriculum vitae, references, intervention descriptions and materials, and letters of support that are appropriate for the appendixes).

A. Intervention Plan

1. Provide a review of the relevant literature to provide a theoretical, empirical, and programmatic justification for the proposed research, and clearly describe how the proposed intervention will advance efforts to prevent HIV and STDs among young people in alternative educational settings.

Specifically, the application should include explicit models (with schematic drawings) that illustrate factors to be modified through the intervention and to explain the mechanisms by which outcome effects are produced.

2. Discuss why the intervention is promising, to include a discussion of

the settings and populations in which the intervention was previously implemented. Intervention descriptions and materials should be provided if possible. Discuss feasibility and acceptability of the intervention in the selected setting.

B. Research Plan

1. Specify a set of clear and testable research questions and hypotheses that are responsive to the intended purposes of the research sought under this cooperative agreement.

2. Describe all aspects of the study design and methods including the evaluation design (both process and outcome) and how threats to validity will be handled; a detailed description of the targeted population, including but not limited to age, grade, sex, race, socioeconomic status, HIV and STD risk factors, and how the population will be accessed; instrumentation; the sampling strategy (including a justification for the sampling unit), sample size, and power analysis justifying the sample size and including an indication of expected effect sizes, the randomization strategy; training plans for individuals collecting data, and data collection plans, including but not limited to, linking participants' responses between measurement periods.

3. Describe expected sample attrition. Describe how study participants will be tracked and what strategies will be used to increase retention.

4. Describe how the intervention implementation process will be measured and how the findings will be used to monitor implementation and provide feedback to staff, and to explicate other findings. Include plans to maintain detailed records of the costs involved in implementation such that cost-effectiveness estimates can be derived.

5. Describe the plans and quality assurance monitoring for data management, analysis, and interpretation.

6. Describe key dissemination products including peer-reviewed publications and presentations that can be used by program planners, policy makers, and other interested parties.

7. Describe the potential limitations of the results given the complexity of the research focus, the targeted population, and the applied nature of the evaluation; to whom the findings will be generalizable; and how they can be used to develop national recommendations for reducing unprotected sexual intercourse among young people in alternative educational settings.

8. As appropriate and necessary, provide for the inclusion of women and racial and ethnic minority groups as required by CDC/ATSDR policy, or, where inclusion is inappropriate or not feasible, provide an explanation for the exclusion of women and racial and ethnic minority groups from the research design. (See "Other Requirements" section of this announcement for details.)

C. Research and Intervention Capacity

1. Demonstrate the feasibility of the proposed research by providing a detailed timeline, with specific products, specifying which staff person will be responsible for which task.

2. Describe the research team and show that the proposed research staff for the project represent an interdisciplinary team of behavioral and social scientists with the scientific training and the previous scientific and practical experience needed to conduct and complete high quality research within the specified timeline, as evidenced by the successful completion of past research in the areas proposed in this application. Describe previous service or research conducted with this population.

3. Demonstrate the adequacy of the proposed staff, through curriculum vitae and position descriptions that detail responsibilities, to carry out all proposed activities (i.e., sufficient in number, percentage of time commitments, behavioral or social scientists in key project positions, and qualifications).

4. Describe the facilities, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

D. Collaboration and Sustainability

1. Describe how academic, program, and community partners will participate in developing, conducting, and evaluating the proposed research. Specifically, describe the involvement of appropriate key organizations and members of the targeted population and discuss previous work of the proposed collaborators. Include letters of support from proposed collaborating organizations indicating willingness to participate in the proposed research, including but not limited to, evidence of past successful collaboration, willingness to be randomized to a control/comparison or experimental condition, and containing information on the number and demographic characteristics of young people served.

2. Define the responsibilities of collaborating partners.

3. Discuss efforts to be made throughout the project period to ensure that the intervention will be sustained once Federal funding ends.

E. Dissemination

Provide a clear dissemination plan to include but not limited to, the timely sharing of findings with local partners; and include a plan to work with CDC and other sites to ensure that analysis and production of peer-reviewed papers, and reports give priority to findings that can be used to develop national prevention recommendations for young people in alternative educational settings to prevent HIV and STDs.

F. Budget with Justification

Provide a detailed budget request and complete line-item justification that is consistent with the proposed activities.

G. Human Subjects

Describe any risks to human subjects and the procedures that will be used to protect human subjects both through local institutional review boards. Involvement by the CDC in the design, analysis, and dissemination of research involving human subjects also requires the study to be cleared through the CDC human subjects review process. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Typing and Mailing

Applicants are required to submit an original and two copies of the application. The application may not exceed 60 single-spaced pages in length, excluding appendixes. Provide a one-page abstract of the proposal. Number all pages clearly and sequentially and include a complete Table of Contents to the application and its appendixes. The original and each copy of the application must be submitted unstapled and unbound. Print all material, single-spaced, in a 12-point or larger font on 8.5" by 11" paper, with at least 1" margins and printed on one side only.

Evaluation Criteria (Total 100 Points)

Objective Review panels evaluate the scientific and technical merit of applications and their responsiveness to the information requested in the "Application Content" section above. Applications will be reviewed and evaluated according to the following criteria:

A. Intervention Plan (20 Points)

1. The extent to which the research proposed will advance efforts to reduce the risk of HIV and other STDs among

young people in alternative educational settings. The extent to which the intervention represents a careful application of a theoretically, empirically, and programmatically justified prevention approach; can be expected to produce the intended effect; and can be evaluated by using a scientifically rigorous evaluation design and methods.

2. The extent to which the intervention is promising, and has the potential for use with young people in alternative educational settings or with populations served in alternative educational settings (such as interventions designed for adjudicated young people).

B. Research Plan (30 Points)

1. The clarity and testability of the research questions and hypotheses, and the extent to which the questions are responsive to the intended purposes of the research sought under this cooperative agreement.

2. The extent to which the study and evaluation design and methods are scientifically sound and capable of producing the intended results, and will result in the adequate recruitment of participants.

3. The adequacy with which study participants will be tracked, and the extent to which strategies presented are likely to produce adequate retention of participants.

4. The extent to which the intervention implementation process can be measured and findings used to replicate the intervention in other settings, including cost-benefit estimates.

5. The extent to which the plans for data management, analysis, and interpretation are clear, appropriate and are adequately monitored for quality.

6. The extent to which dissemination products will result in the generation of peer-reviewed papers and presentations.

7. The extent to which the evaluation will provide results that are scientifically sound, generalizable, and useful for developing national recommendations for reducing unprotected sexual intercourse among young people in alternative educational settings.

8. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women and ethnic and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

C. Research and Intervention Capacity (25 Points)

1. The feasibility of the proposed research plan and the adequacy of the timeline with specific products.

2. The extent to which the proposed research staff for the project represent an interdisciplinary team of behavioral and social scientists with the scientific training and the previous scientific and practical experience needed to conduct and complete high quality research within the specified timeline, as evidenced by the successful completion of past research in the areas proposed in this application. The extent of the applicant's familiarity with, access to, and good working relationships with young people in this setting, as evidenced by previous service or research with proposed population.

3. The adequacy of the proposed staff to conduct all proposed activities (i.e., sufficient in number, percentage of time commitments, behavioral scientists in key project positions, and qualifications).

4. The adequacy of facilities, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

D. Collaboration and Sustainability (15 Points)

The extent to which the applicant includes academic, program, and community partners in developing, conducting, and evaluating the proposed research, and to sustain the intervention after completion of the research as evidenced by inclusion of appropriate key organizations, members of the targeted population, and selected collaborators; defined responsibilities for organizations and individuals; and planned efforts to ensure that the intervention will be sustained once Federal funding ends.

E. Dissemination (10 Points)

The extent to which the dissemination plan is clearly articulated and includes the timely sharing of findings with local partners and a plan to work with appropriate others to ensure production of papers and presentations.

F. Budget (Not Weighted)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds.

G. Human Subjects (Not Weighted)

Whether or not exempt from the Department of Health and Human Services regulations, procedures must be adequate for the protection of human subjects. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Content of Noncompeting Continuation Applications

In compliance with 45 CFR 74.51(b)(d), 45 CFR 92.10(b)(4) and 92.40(b), annual noncompeting continuation applications submitted within the project period need only include:

A. A brief progress report that describes the accomplishments of the previous budget period.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, etc.) not included in the year 01 application.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items. Supporting justification should be provided where appropriate.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372, which sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of

SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharon P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

a. A copy of the face page of the application (SF 424).

b. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and include the following:

(1) A description of the population to be served;

(2) A summary of the services to be provided; and,

(3) A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.938.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minority Groups

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Pacific Islander, and White. There will be two categories for data on ethnicity: "Hispanic or Latino" and "Not Hispanic or Latino." Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment of scoring.

This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947-47951, dated Friday, September 15, 1995.

HIV/AIDS Requirements

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance for CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

An original and two copies of the application PHS Form 5161-1 (Revised 5/96, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–18, Atlanta, GA 30305, on or before August 3, 1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East

Paces Ferry Road, NE., Room 300, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6593, by fax (404) 842–6513, or by the Internet address: gld1@cdc.gov.

Programmatic technical assistance and information about studies cited in this announcement may be obtained from Leah Robin, Ph.D., Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4700 Buford Highway, NE., Mail Stop K–33, Atlanta, GA 30341-3717; telephone (770) 488–3210, or by the Internet address: ler7@cdc.gov.

You may obtain this announcement, and other CDC announcements, from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Please refer to Announcement Number 98085 when requesting information and submitting an application.

Potential applicants may obtain a copy of:

1. "Healthy People 2000" (Full Report, Stock No. 017–001-00474–0), or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1), referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

2. "Reaching Out to Youth Out of the Education Mainstream" (NCJ 163920), referenced in the section entitled "Background," through the Office of Juvenile Justice and Delinquency Prevention's Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, MD 20849–6000; telephone (800) 638–8736; E-mail: aksncirs@ncirs.org.

Dated: June 18, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

Attachment 1

Youth in High-Risk Situations

The following is the Centers for Disease Control and Prevention's definition of youth in high-risk situations. (From CDC, "Report of the Fourth Meeting of the CDC Advisory Committee on the Prevention of HIV Infection," November 7–8, 1990.)

Young people between the ages of 10 and 24 who fit at least one of the following categories are considered at high risk for HIV infection:

1. Homeless youth
2. Runaway youth
3. Youth not in school and unemployed
4. Youth requiring drug or alcohol rehabilitation
5. Youth who interface with the juvenile corrections system
6. Medically indigent youth
7. Youth requiring mental health services
8. Youth in foster homes
9. Migrant farm worker youth
10. Gay or lesbian youth
11. Youth with STDs, especially genital ulcer disease
12. Sexually abused youth
13. Sexually active youth
14. Pregnant youth
15. Youth seeking counseling and testing for HIV infection
16. Youth with signs and symptoms of HIV infection or AIDS without alternative diagnosis
17. Youth who barter or sell sex
18. Youth who use illegal injected drugs (including crack cocaine)

Some characteristics of youth who fit the definition of youth at high risk for HIV infection pose barriers to effective intervention. Those characteristics include:

1. feeling invulnerable to disease;
2. having little adult supervision, whether at home, having run away from home, or having been asked to leave home;
3. a history of emotional, sexual, and/or physical abuse;
4. distrust of adults;
5. serious emotional and personal problems;
6. disenfranchised from institutions that normally provide structure and support; and
7. difficulty filling basic human needs for food, shelter, money, and safety—consequently placing prevention of HIV infection a low priority.

[FR Doc. 98–16766 Filed 6–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0376]

Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem." The guidance, which is included in this notice, is a Level 1 guidance that is immediately effective in accordance with FDA's good guidance practices (GGP's) criteria, which allow immediate implementation of guidance that is necessary for public health reasons. FDA will receive comments on the guidance at any time and consider them in determining whether to amend the current guidance.

DATES: This guidance is effective June 24, 1998. Submit written comments by September 22, 1998. After the close of the comment period, written comments may be submitted at any time to Thomas B. Shope (address below).

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance in this notice.

Submit comments during the comment period to: Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Such comments will be considered when determining whether to amend the current guidance. Comments should be identified with the docket number found in brackets in the heading of this document.

Submit comments at any time after the close of the comment period to: Thomas B. Shope (address below). Comments may not be acted upon by the agency until the document is next revised or updated.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 32.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance entitled "Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem" reviews the legal responsibilities of device manufacturers under the Federal Food, Drug, and Cosmetic Act in ensuring the uninterrupted functioning of any medical device that might be impacted by the Year 2000 date problem. It also reviews legislative and regulatory requirements applicable to device manufacturers with regard to correcting potential Year 2000 problems, to indicate when corrective action is or is not required, to present recommendations for device assessment, and to encourage reporting on the status of devices that are adversely affected by the Year 2000 date problem.

II. Significance of Guidance

This guidance document represents the agency's current thinking on FDA's

expectations of medical device manufacturers concerning the Year 2000 date problem. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted GGP's that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the guidance entitled "Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 2000 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also use the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes guidances, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The guidance entitled "Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem" will be available at http://www.fda.gov/cdrh/yr2000/y2kguide.html.

A text-only version of the CDRH web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before September 22, 1998, submit to the Dockets Management Branch (address above) written comments regarding the guidance for medical devices. After the close of the comment period, comments may be submitted at any time to Thomas B. Shope (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 1998.

Linda S. Kahan,

Acting Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

The text of the guidance is set forth below:

BILLING CODE 4160-01-P

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Guidance for Industry

Guidance on FDA's Expectations of Medical Devices Manufacturers Concerning the Year 2000 Date Problem

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Devices and Radiological Health
Division of Electronics and Computer Science
Office of Science and Technology

June 1998

VOL
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ISS
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Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem

I. Background

Many medical devices employ or incorporate computer systems or microprocessor controls as aspects of their design. Some of these computer systems and software applications, including embedded microprocessors, may experience problems processing dates or date-related data due to their use of two digits to represent the year. This is becoming known as the ''Year 2000 date problem'' or the ''Year 2000 problem'' and is not unique to medical devices. These problems may be manifested on or after January 1, 2000, when the year 2000 is represented as ''00'' and the computer system or software cannot differentiate 1900 from 2000. Other date-related problems may occur, such as the failure to accurately address leap years (e.g., there will be a February 29, 2000) or the use of certain dates (e.g., September 9, 1999 [9/9/99]) as ''flags'' for specific computer actions. In addition to adversely affecting the functioning of some medical devices, the two-digit year format could also affect computer-controlled processes in device design, production or quality control activities, or studies to evaluate device performance.

During 1996, FDA reviewed the types of devices for which problems or potential risks to patients might arise due to the Year 2000 date problem. This review, based on FDA's knowledge of the function and design of all types of devices, did not identify many devices for which the use of a date is critical to the function of the device or for which incorrect date representation could have an adverse impact on patient safety. FDA experts are generally knowledgeable about the function and design of various devices; however, only the manufacturer has the detailed knowledge of the design of specific devices that is required to effectively evaluate the potential for risk to patients.

II. FDA's Goal Regarding Year 2000 Problems With Medical Devices

FDA is providing information regarding how manufacturers may meet regulatory requirements of FDA in addressing computer date representation problems. FDA's primary concern is focused on date-related problems that could pose a risk to health. While all manufacturers are responsible for ensuring the proper functioning of medical devices that they have manufactured, FDA is primarily concerned that manufacturers

correct date-related problems for those devices that, if unable to correctly process dates, could pose a risk to health.

As an example, little if any risk may be posed by devices whose only use of the date is to mark a record or record a date and where an error in date recording results only in an incorrect representation of the year. Records generated by a computerized device marked with a year of "00" to represent 2000 will not be confused with similar records from 1900 if the records are only intended for reading by humans. Human operators will know that there were no such computer-generated records in 1900. Of course, the risk would be different if the date record is intended for processing by another computerized device which might not correctly process a two-digit year representation. Similarly, if the date problem results in the Year 2000 being represented as some year other than 1900, say a base year for a computer, such as 1980, or represented in some other fashion, then the potential for confusion cannot be dismissed and such risks must be addressed.

Incorrect date representation or usage could present a risk when the date is used in a calculation or when records generated by a device are sorted automatically to present a patient's condition over a period of time to a physician for diagnosis and treatment. Specifically, when the records are sorted by the date of recording, with the oldest record presented first in the presentation queue, the failure of the sorting device could place a record made on January 1, 2000, in the queue before another record made on December 31, 1999, because the sorting device could mistake the Year "00" as occurring before the Year "99." Although the information contained in the records in the latter situation would be correct, the physician expects the records to be in chronological order, and this expectation could lead to a misdiagnosis or incorrect treatment. This potential patient risk must be addressed to eliminate any possibility of adverse health consequences.

Under the Quality Systems Regulation, device manufacturers must evaluate their entire line of medical equipment and software, not just currently produced or supported products, to identify and assess problems that could result from inaccurate date representation. This assessment should take into account date errors that might lead to device failure, such as failure to provide diagnosis or patient treatment, date

misrepresentation leading to incorrect records which might impact future treatment, or any process affected by the Year 2000 date problem that, if not corrected, has the potential to present a risk to health. Should the assessment indicate a risk to patient or public health by medical equipment unable to correctly process dates, device manufacturers must report corrective action taken in accordance with part 806 (21 CFR part 806), the regulation requiring reporting of device corrections and removals. Should the date-related failure present an unreasonable risk of substantial harm to the public health and the manufacturer fails to take corrective actions, section 518 of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) provides the authority for FDA to require the manufacturer to undertake corrective action at no charge to the device purchasers or owners. If the manufacturer's assessment reveals a date-related failure to conform to specifications or design, and the risk presented by the failure does not meet the threshold specified in section 518 of the act for a mandatory recall (i.e., the device presents an unreasonable risk of substantial harm to the public health), then FDA will not require a recall.

The agency has received inquiries as to the manufacturers' responsibilities under the act, with regard to actions they must take to correct or remedy products from past production that have a Year 2000 date problem and fail to function as designed. Section 518 of the act provides the agency with authority to require the mandatory notification of purchasers and recall of devices that, among other criteria, present an unreasonable risk of substantial harm to the public health. The agency notes that this authority has not been used often because manufacturers typically voluntarily correct problems that present risks which meet the criteria outlined in section 518 of the act. FDA anticipates that manufacturers will act responsibly to eliminate any risks to health posed by Year 2000 date problems.

For Year 2000 or other date-related problems that result in failure to meet specifications or to function as intended, but that do not present the risk to health contemplated in section 518 of the act, FDA has no mechanism to require correction of previously marketed devices. The agency encourages manufacturers to provide solutions where possible and economically feasible.

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III. Earlier FDA Letter to Device Manufacturers

As a result of the review of the possible impact of date problems on medical devices, FDA issued a letter on June 25, 1997, to all medical device manufacturers. The letter defined the Year 2000 date problem, reminded manufacturers of requirements under existing regulations, made recommendations for assessing the safety and effectiveness of medical devices, and provided guidance for future premarket submissions. It also notified manufacturers that they must assess the function of all of their devices (both currently and previously manufactured) and identify those that could pose a risk to patients by the processing of date information. The letter is posted in its entirety on the World Wide Web (WWW) at the FDA web site, http://www.fda.gov/cdrh/yr2000.html.

This letter recommended that manufacturers take the following actions:

— For future medical device premarket submissions, manufacturers should assure that the products can perform date operations correctly and that computations will be unaffected by the Year 2000 date change.

— For currently and previously manufactured medical devices, manufacturers should conduct hazard and safety analyses to determine whether device performance could be affected by the Year 2000 date problem. If these analyses show that device safety or effectiveness is affected, then appropriate steps should be taken to correct current and past production and to assist customers who have purchased such devices.

— For computer-controlled design, production, and quality control processes, manufacturers should assure that two-digit year formats or computations do not cause problems.

The letter also provided the following advice regarding premarket submissions for changes to existing devices:

— Manufacturers need not submit premarket approval application supplements for class III devices to document that they have addressed Year 2000 date problems, provided that the modifications made in the device do not change other aspects of its performance.

— Manufacturers need not submit a new 510(k) (premarket notification) for Year 2000 date changes to an existing device, provided that the changes do not affect safety and effectiveness. This is in keeping

with the information provided in the Office of Device Evaluation guidance document entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device," available from the Division of Small Manufacturers Assistance and the FDA web site. (Note that changes to correct Year 2000 date problems should be included in any future 510(k) submission for a significant change to the device.)

Manufacturers were also reminded of the current Quality System Regulation, under which they must investigate and correct problems with medical devices. This includes devices that do not meet specifications because of inaccurate date recording and/or calculations. The authority for requirements conveyed in the letter is found in section 518 of the act, which requires notification of users or purchasers when a device presents an unreasonable risk of substantial harm to public health.

IV. Regulatory Responsibilities

1. Quality System Regulation

Under the Quality System Regulation (21 CFR part 820), device manufacturers must ensure and document the quality of their design and manufacturing processes. This regulation places a continuing responsibility on manufacturers to investigate device malfunctions and to prevent potential malfunctions, including those that could be caused by incorrect processing or recording of dates.

2. Reports of Corrections and Removals Regulation

The Reports of Corrections and Removals regulation (part 806), which recently became effective, requires manufacturers and importers to report promptly to FDA any corrections or removals undertaken to reduce a risk to health posed by the device or to remedy a violation of the act caused by the device which may present a risk to health. This regulation requires the reporting of corrections and removals related to the Year 2000 date problem designed to avert or correct a potential risk to health.

3. Medical Device Reporting Requirements

In situations requiring remedial action to prevent an unreasonable risk of substantial harm to the public health, the manufacturer is required to submit a 5-day report under part 803 (21 CFR part 803), the Medical Device Reporting (MDR) regulation. Information concerning a correction or removal submitted in a 5-day MDR need not be resubmitted under part 806.

4. Classification of Recalls

A manufacturer's action to correct a Year 2000 date problem, which is undertaken and completed before January 1, 2000, will not be considered a recall for purposes of FDA's Voluntary Recall regulation (21 CFR part 7). The agency will not classify such actions as recalls, provided the action addresses only correction of a date-related problem and is completed prior to any actual device failure as a result of the problem. However, manufacturers must still report or maintain records of such corrections and removals under § 806.20.

V. Department of Health and Human Services' Letter to Device Manufacturers

The Department of Health and Human Services issued a letter to biomedical equipment manufacturers, dated January 21, 1998, requesting information on the products affected by the Year 2000 date problem. It stated concerns for the continued functioning of biomedical and laboratory equipment into the next century. The letter provided an opportunity for manufacturers to identify specific products that will be affected and to share this information with interested parties through a Government-operated WWW site. Further information concerning this web site and reporting product status with regard to date problems may be found on the WWW at the FDA web site, http://www.fda.gov/cdrh/yr2000/year2000.html. FDA urges manufacturers to use this mechanism to communicate the status of their products that are affected by the Year 2000 date problem to public and Government purchasers and users of these products. This information will assist healthcare facilities to identify any impacted products and assist them in planning and taking remedial actions.

VI. Reporting Under the MedWatch Program

Under the Medical Device Reporting Regulation (part 803), medical device user facilities and manufacturers must report deaths and serious injuries to which a device has or may have caused or contributed. Manufacturers are also required to report certain device malfunctions. In addition, medical device users and health professionals are encouraged to voluntarily report malfunctions or problems with devices under FDA's MedWatch Program. The program was established as a method of reporting adverse events by health professionals or other appropriate parties, and can be used to report devices that are

suspected or determined to fail and thereby present a risk to health due to the Year 2000 or other date problems.

Information on the MedWatch program, including procedures for reporting problems with medical devices, may be received by calling the MedWatch Office, 1–800–FDA–1088, or can be found on the WWW at the FDA web site, http://www.fda.gov/medwatch.

[FR Doc. 98–16736 Filed 6–23–98; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–320]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Corrective Action Plan (Medicaid Eligibility Quality Control) and Supporting Regulations 42 CFR 431.; *Form No.:* HCFA–320; *Use:* Medicaid eligibility quality control (MEQC) is a State-administered system designed to improve the management of the Medicaid program. States are required to submit a corrective action plan annually. The plan must detail the initiatives the State will implement in order to reduce the type of errors occurring in the Medicaid eligibility determination process. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 8,400.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16794 Filed 6–23–98; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4352–N–03]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* August 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Comprehensive Grant Program (CGP) Reporting Requirements.

OMB Control Number if applicable: 2577–0157.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) with 250

units or more of public housing will submit information to HUD to approve the PHAs annual Comprehensive Plan submission, to reserve its formula share of the national allocation for the CCP, certify resident consultation by the local government, to certify PHA's compliance with statutory and regulatory requirements by the governing body of the PHA, and to monitor performance of the projected activities of the CGP funds. PHAs submit this information to obtain a benefit for the Federal Government.

Agency forms, if applicable: Forms HUD–52832, HUD–52833, HUD–52834, HUD–52835, HUD–52836, HUD–52837, HUD–52840.

Members of affected public: State, Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 832 respondents, average 68 hours (7 forms one-time a year), total reporting burden 56,576 hours.

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 16, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

Executive Summary of Preliminary Estimated Costs

Physical and Management Needs
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 7/31/98)

HA Name

Federal Fiscal Year

Development Number/ Name	Total Current Units	Total Preliminary Estimated Hard Cost	Per Unit Hard Cost	Long-Term Viability (Y/N)	Percentage of Vacant Units

Total Preliminary Estimated Hard Cost for Physical Needs	$
Total Preliminary Estimated Cost for HA -Wide Management Needs	$
Total Preliminary Estimated Cost for HA-Wide Nondwelling Structures and Equipment	$
Total Preliminary Estimated Cost for HA-Wide Administration	$
Total Preliminary Estimated Cost for HA-Wide Other	$
Grand Total of HA Needs	$
Signature of Executive Director	Date

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

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Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information requires that each eligible applicant submit comprehensive plan information to HUD every six years in order to receive its annual formula grant. This information will be used by HUD to determine whether the comprehensive plan/annual submission meets statutory and regulatory requirements for the annual formula grant. Responses to the collection are required by Section 14(e)(1) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52831, Executive Summary of Preliminary Estimated Costs for Physical and Management Needs

Report Submission: Prepare one form HUD-52831 for the entire Housing Authority (HA) and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the CGP and every sixth year when a complete revision of the Comprehensive Plan is required. Use as many pages of this form as necessary to cover all developments within the HA's inventory.

Heading Instructions:

HA Name. Enter the HA name.

Federal Fiscal Year. Enter the FFY in which the Comprehensive Plan is being submitted.

Column Instructions:

Development Number/Name. Enter the State abbreviation, the HA number and the development number, which may be abbreviated as VA 36-1. Also enter the development name, if any.

Total Current Units. For each development, enter the total number of current units as identified in the ACC.

Total Preliminary Estimated Hard Cost. For each development, enter the Total Preliminary Estimated Hard Cost for Needed Physical Improvements from form HUD-52832, Physical Needs Assessment.

Per Unit Hard Cost. For each development, enter the Per Unit Hard Cost from form HUD-52832, Physical Needs Assessment.

Long-Term Viability. For each development, enter Yes or No as to whether the development has long-term physical and social viability from form HUD-52832, Physical Needs Assessment.

Percentage of Vacant Units. For each development, enter the percentage of vacant units from form HUD-52832, Physical Needs Assessment.

Total Preliminary Estimated Hard Cost for Physical Needs. Enter the total for all amounts entered in the column, Total Preminary Estimated Hard Cost.

Total Preliminary Estimated Cost for HA-Wide Management Needs. Enter the total preliminary estimated HA-wide cost from form HUD-52833, Management Needs Assessment.

Total Preliminary Estimated Cost for HA-Wide Nondwelling Structures and Equipment. Enter the total preliminary estimated cost for HA-wide nondwelling structures and equipment that are currently needed and will be needed within the next five years from form HUD-52832, Physical Needs Assessment.

Total Preminary Estimated Cost for HA-Wide Administration. Enter the total preminary estimated cost for HA-wide administration (Development Account 1410) that is currently needed and will be needed within the next five years.

Total Preminary Estimated Cost for HA-Wide Other. Enter the total preliminary estimated cost for HA-wide other costs (Development Accounts 1411, 1415, 1430, 1440, 1490, 1495) that are currently needed and will be needed within the next five years.

Grand Total of HA Needs. Enter the sum of preliminary estimated costs for Physical Needs, HA-Wide Management Needs, HA-Wide Nondwelling Structures and Equipment, HA-Wide Administration and HA-Wide Other.

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Physical Needs Assessment
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (exp. 7/31/98)

HA Name

☐ Original
☐ Revision Number _____

Development Number | Development Name | DOFA Date or Construction Date

Development Type:
- Rental ☐
- Turnkey III - Vacant ☐
- Turnkey III - Occupied ☐
- Mutual Help ☐
- Section 23, Bond Financed ☐

Occupancy Type:
- Family ☐
- Elderly ☐
- Mixed ☐

Structure Type:
- Detached/Semi-Detached ☐
- Row ☐
- Walk-Up ☐
- Elevator ☐

Number of Buildings

Number of Vacant Units

Current Bedroom Distribution
0 ____ 1 ____ 2 ____
3 ____ 4 ____ 5 ____
5+ ____

%

Total Current Units

General Description of Needed Physical Improvements

Urgency of Need (1-5)

Total Preliminary Estimated Hard Cost for Needed Physical Improvements	$
Per Unit Hard Cost	$
Physical Improvements Will Result in Structural/System Soundness at a Reasonable Cost	Yes ☐ No ☐
Development Has Long-Term Physical and Social Viability	Yes ☐ No ☐
Date Assessment Prepared	

Source(s) of Information:

form HUD-52832 (10/96)
ref Handbook 7485.3

Public reporting burden for this collection of information is estimated to average 252 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

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Instructions for Preparation of Form HUD-52832—Physical Needs Assessment

Report Submission: Prepare a separate form HUD-52832 for each development in the HA's inventory, which is eligible for Comprehensive Grant Program (CGP) funding, for all HA-wide nondwelling needs, e.g., maintenance equipment, and for any development needs. Submit these forms to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the CGP and every sixth year when a complete revision of the physical needs assessment is required. On an as-needed basis, submit a revised form where physical needs have significantly changed since the last needs assessment and the HA wishes to include these needs in the Five-Year Action Plan. Developments which are contiguous and treated as one development for management purposes may be grouped together on a single form.

Heading Instructions:

HA Name. Enter the HA name.

Original or Revision Number. Self Explanatory. Every sixth year a new original is prepared.

Development Number. Enter an 11-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing or B for Indian Housing; three-digit HA number (numeric); and three-digit development number (numeric). For example, VA05PO36001. In lieu of a development number, enter "HA-wide" for physical needs that are HA-wide in nature.

DOFA Date. Enter the Date of Full Availability (DOFA).

Construction Date. For acquired developments enter the actual date of construction or for scattered sites, the average date of construction of all buildings. **Note:** When the construction date is provided, this date will be used in lieu of the DOFA, subject to a 50-year cap.

General Characteristics. Check the appropriate box that describes the type of development, the type of occupancy, and the type of structure. CGP funds may be used to provide for modernization activities in Turnkey III units that are vacant or non-homebuyer occupied, or to provide for limited activities in homeowner-occupied units as long as the work is completed prior to conveyance.

If Turnkey III - Vacant is checked, indicate the number of vacant or non-homebuyer-occupied units planned for substantial rehabilitation next to the box and circle "V". By so doing, the HA indicates that: (1) the proposed modernization will result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and (2) the HA has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR Part 904 for PHAs or 24 CFR Part 950, Subpart G, for IHAs, and have demonstrated their intent to be placed into the Turnkey III units proposed to be substantially rehabilitated.

If Turnkey III - Occupied is checked, indicate the number of Turnkey III units which are paid off, where work will be performed to meet statutory or regulatory requirements next to the box and circle "O".

Number of Buildings. Enter the number of buildings containing dwelling units.

Current Bedroom Distribution. Enter the current number of units for each bedroom size.

Vacant Units. Enter the number of vacant units as of the date this form is prepared and the percentage of vacant units to the total number of units in the development.

Total Current Units. Enter the number of units in this development under ACC.

Column Instructions:

General Description of Needed Physical Improvements. Enter a general description of all unfunded physical improvements that must be undertaken to bring the development (dwelling and nondwelling structures, dwelling and nondwelling equipment, and site) up to a level at least equal to the modernization and energy conservation standards and to comply with other program requirements. Also, include any replacements of equipment, systems and structural elements that will be needed, assuming routine and timely maintenance, within the next five years. Enter only physical improvements that are eligible for CGP funding. Do not enter any physical improvements already funded by CIAP or other sources which the HA plans to complete. However, enter physical improvements currently funded under CIAP where the HA plans to reprogram CIAP funds for other work under the CGP.

On a separate form, include any unfunded physical improvement needs for HA-wide nondwelling structures and equipment. Also, include any replacements/rehabilitation of nondwelling structures and equipment that will be needed, assuming routine and timely maintenance, within the next five years.

Describe the proposed improvements in broad categories, such as kitchens, bathrooms, roofs, electrical systems, heating systems, landscaping, nondwelling structures, lead-based paint abatement, physical accessibility, maintenance facility, computer hardware, etc. Include all broad categories of needed work without regard to the availability and/or source of funds.

If there are no current needs and the HA does not anticipate any replacement needs within the next five years, enter a statement to that effect in this section. Such a statement does not preclude the HA from amending the needs assessment at any time within the five-year period if unforeseen needs arise or from identifying new needs which have occurred when the needs assessment is revised every sixth year.

Urgency of Need. For each broad category of work identified under the General Description of Needed Physical Improvements, enter a number that corresponds to the urgency of the need on a HA-wide basis, with "1" reflecting the most urgent need and "5" reflecting the least urgent need. Assign a "1" to activities required to correct emergency conditions and to meet statutory or other legally mandated requirements, such as physical accessibility.

Total Preliminary Estimated Hard Cost for Needed Physical Improvements. Enter the total preliminary estimated hard cost for the broad work categories listed in the General Description of Needed Physical Improvements; excluding any management improvements, administration, architectural/engineering fees, relocation or other soft costs.

Per Unit Hard Cost. Divide the Total Preliminary Estimated Hard Cost for Needed Physical Improvements by the total number of current units in the development and enter the per unit hard cost.

Physical Improvements Will Result in Structural/System Soundness at a Reasonable Cost. Check Yes or No. For cost reasonableness, the preliminary estimate of hard costs for work proposed at the development shall be 90 percent or less of Total Development Cost (TDC).

Development Has Long-Term Physical and Social Viability. Check Yes or No as to whether the HA has determined that the development has long-term physical and social viability. **Note:** If No is checked, attach the viability analysis and an explanation of what actions are proposed regarding the nonviable development.

Date Assessment Prepared. Self-explanatory.

Source(s) of Information. Identify the source(s) of information used to develop the General Description of Needed Physical Improvements. Retain such information in HA files (1) as supporting documentation for the needs assessment, (2) for post-review by HUD, or (3) for submission to HUD upon request.

Management Needs Assessment
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (exp. 7/31/98)

HA Name

☐ Original
☐ Revision Number _____

General Description of Management Needs	Urgency of Need (1- 5)	Preliminary Estimated HA-Wide Cost

Total Preliminary Estimated HA-Wide Cost	$
Date Assessment Prepared	

Source(s) of information

form HUD-52833 (10/96)
ref Handbook 7485.3

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Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information requires that each eligible applicant submit comprehensive plan information to HUD every six years in order to receive its annual formula grant. This information will be used by HUD to determine whether the comprehensive plan/annual submission meets statutory and regulatory requirements for the annual formula grant. Responses to the collection are required by Section 14(e)(1)(B) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52833, Management Needs Assessment

Report Submission: Prepare one form HUD-52833 for the entire HA and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the Comprehensive Grant Program (CGP) and every sixth year when a complete revision of the management needs assessment is required. On an as-needed basis, submit a revised form whenever management needs have significantly changed since the last needs assessment and the HA wishes to include those needs in the Five-Year Action Plan.

Heading Instructions:

HA Name. Enter the HA Name.

Original or Revision Number. Self-explanatory. Every sixth year a new original is prepared.

Column Instructions:

General Description of Management Needs. Enter a general description of all unfunded and no cost improvements needed to upgrade the management and operation of the HA and of each viable development so that decent, safe and sanitary living conditions will be provided. Enter only management improvements that are eligible for CGP funding, including any management needs anticipated over the next five years.

Do not enter any management improvements already funded by CIAP or other sources which the HA plans to complete. However, enter management improvements currently funded under CIAP where the HA plans to reprogram CIAP funds for other work under the CGP.

Identify all current needs related to the mandatory areas set forth in the CGP Guidebook 7485.3, as revised. To the extent that any of these needs are addressed in an existing document, cross-reference that document. For PHAs, an existing document includes a Memorandum of Agreement (MOA) developed in accordance with the provisions of the Public Housing Management Assessment Program (PHMAP) or an Improvement Plan (IP). For example, "improve rent collection, see MOA." If a particular work category is targeted to a specific development, enter the development number in parentheses.

In addition, at the HA's option, include other management and operations needs identified through a self-assessment or identified under the PHMAP for PHAs, but not set forth in an MOA or IP.

Describe the needs in broad categories, such as rent collection, preventive maintenance, security, etc. Enter all broad categories of needs without regard to the availability and/or source of funds.

If there are no current needs and the HA does not anticipate any management needs within the next five years, enter a statement to that effect in this section. Such a statement does not preclude the HA from amending the needs assessment at any time within the five-year period if unforeseen needs arise or from identifying new needs which have occurred when the needs assessment is revised every sixth year.

Urgency of Need. For each broad category of need identified under the General Description of Management Needs, enter a number that corresponds to the relative urgency of the need, with "1" reflecting the most urgent need and "5" reflecting the least urgent need.

Preliminary Estimated HA-Wide Cost. Enter the preliminary estimated HA-wide cost for each broad category of need described in the General Description of Management Needs.

Total Preliminary Estimated HA-Wide Cost. Enter the total preliminary estimated cost for the broad categories listed in the General Description on Management Needs.

Date Assessment Prepared. Self-explanatory.

Source(s) of Information. Identify the source(s) of information used to develop the General Description of Management Needs. Retain such information in HA files (1) as supporting documentation for the needs assessment, (2) for post-review by HUD, or (3) for submission to HUD upon request.

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JUN 24 1998
VOL 63 ISS 121 1 2 1

Five-Year Action Plan
Part I: Summary
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No: 2577--0157 (exp. 7/31/98)

HA Name: | Locality: (City/County & State) | ☐ Original ☐ Revision No:

A Development Number/Name	Work Stmt for Year 1 FFY:____	Work Statement for Year 2 FFY:____	Work Statement for Year 3 FFY:____	Work Statement for Year 4 FFY:____	Work Statement for Year 5 FFY:____
	See Annual Statement				
B. Physical Improvements Subtotal					
C. Management Improvements					
D. HA-Wide Nondwelling Structures and Equipment					
E. Administration					
F. Other					
G. Operations					
H. Demolition					
I. Replacement Reserve					
J. Mod Used for Development					
K. Total CGP Funds					
L. Total Non-CGP Funds					
M. Grand Total					

Signature of Executive Director & Date: | Signature of Public Housing Director & Date:

Page ___ of ___

form HUD-52834 (10/96)
ref Handbook 7485.3

Five-Year Action Plan
Part I: Summary (Continuation)
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (exp. 7/31/98)

A. Development Number/Name	Work Stmt. for Year 1 FFY:_____	Work Statement for Year 2 FFY:_____	Work Statement for Year 3 FFY:_____	Work Statement for Year 4 FFY:_____	Work Statement for Year 5 FFY:_____
	See Annual Statement				

Page ___ of ___

form HUD-52834 (10/96)
ref Handbook 7485.3

Five-Year Action Plan
Part II: Supporting Pages
Physical Needs Work Statement(s)
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No 2577--0157 (exp 7/31/98)

Work Statement for Year 1 FFY ____	Work Statement for Year ____ FFY _____			Work Statement for Year ____ FFY: ____		
	Development Number/Name/General Description of Major Work Categories	Quantity	Estimated Cost	Development Number/Name/General Description of Major Work Categories	Quantity	Estimated Cost
See Annual Statement						
	Subtotal of Estimated Cost			Subtotal of Estimated Cost		

Page ___ of ___

form HUD-52834 (10/96)
ref Handbook 7485.3

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Five-Year Action Plan
Part III: Supporting Pages
Management Needs Work Statement(s)
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No: 2577--0157 (exp. 7/31/98)

Work Statement for Year 1 FFY:____	Work Statement for Year ____ FFY:____			Work Statement for Year ____ FFY:____		
	General Description of Major Work Categories	Quantity	Estimated Cost	General Description of Major Work Categories	Quantity	Estimated Cost
See Annual Statement						
	Subtotal of Estimated Cost			Subtotal of Estimated Cost		

form HUD-52834 (10/96)
ref Handbook 7485.3

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Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information requires that each eligible applicant submit information to HUD in order to receive its annual formula grant. This information will be used by HUD to determine whether the annual submission meets statutory and regulatory requirements for the annual formula grant. Responses to the collection are required by Section 14(e)(1)(D) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52834, Five-Year Action Plan

Report Submission: Prepare one form HUD-52834 for the entire HA and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the Comprehensive Grant Program (CGP). Thereafter, submit annually an updated form to eliminate the previous year and to add a new fifth year so that the form always covers the present five-year period beginning with the current year. Use as many pages of this form as necessary to cover all proposed work.

Part I: Summary

Heading Instructions:

HA Name. Enter the HA name.

Locality (City/County & State). Enter the City/County and State where the HA Central Office is located.

Original/Revision No. Self-explanatory.

Year 1. Enter the current FFY.

Years 2 through 5. Enter each successive FFY.

A. **Development Number/Name.** Enter the abbreviated number (e.g. VA 36-1) and name, if any, of each development that will be allocated funding for physical improvements during the five-year period covered by this Action Plan.

Work Statement(s) Years 2 through 5

For each development entered in A., enter the estimated amount of CGP funds to be allocated for physical improvements (development accounts 1450 through 1475) during each year of years 2 through 5.

B. **Physical Improvements Subtotal.** Enter the estimated subtotal amount of CGP funds to be allocated for physical improvements during each year of years 2 through 5.

C. **Management Improvements.** Enter the estimated amount of CGP funds to be allocated for management improvements, including those that are HA-wide and/or development-specific, (development account 1408) during each year of years 2 through 5. **Note:** The estimated amount may not exceed 20% of the annual grant, except where approved by HUD or the PHA is both an overall high performer and a Mod-high performer under the PHMAP.

D. **HA-Wide Nondwelling Structures and Equipment.** Enter the estimated amount of CGP funds to be allocated for HA-wide nondwelling structures and equipment during each year of years 2 through 5.

E. **Administration.** Enter the estimated amount of CGP funds to be allocated for administration costs (development account 1410) during each year of years 2 through 5. **Note:** The estimated amount may not exceed 10% of the annual grant, excluding certain costs, except where approved by HUD.

F. **Other.** Enter the estimated amount of CGP funds to be allocated for other costs (development accounts 1411, 1415, 1430, 1440, 1495,) and for contingencies (development account 1502) for each year of years 2 through 5.

G. **Operations.** Enter the estimated amount of CGP Funds to be allocated to operations (may not exceed 10% of line K) for each year of years 2 through 5.

H. **Demolition.** Enter the estimated amount of CGP funds to be used for demolition activities (development account 1485) for each year of years 2 through 5.

I. **Replacement Reserve.** Enter the estimated amount of CGP funds to be allocated to the replacement reserve (development account 1490) in accordance with the requirements of Handbook 7485.3, for each year of years 2 through 5.

J. **Mod Used for Development.** Enter the estimated amount of CGP funds to be used for development activities (development account 1498) for each year of years 2 through 5.

K. **Total CGP Funds.** Enter the total amount of CGP funds that is estimated for each year of years 2 through 5. This is the sum of B through J and should equal the amount of the current year annual grant.

L. **Total Non-CGP Funds.** Enter the estimated amount of non-CGP funds (e.g., Community Development Block Grant funds, CIAP funds being reprogrammed for use under the CGP, etc.) to be allocated in support of the CGP for each year of years 2 through 5.

M. **Grand Total.** Enter the total of K and L.

Note: Enter all estimates as current cost; not trended for inflation.

Part II: Supporting Pages—Physical Needs Work Statement(s)

FFY:

Work Statement for Year 1. Enter the current FFY.

Work Statements for Years 2 through 5. Enter each successive FFY.

Development Number/Name.

Enter the abbreviated development number (e.g., VA 36-1) and name, if any, of each development which will be funded in each year of years 2 through 5 or enter "HA-wide."

General Description of Major Work Categories. For each development entered, list the major work categories for which CGP funding, including non-CGP funds, will be allocated in each year of years 2 through 5. The work categories should be described in broad terms, such as kitchens, bathrooms, electrical, site, etc. A work category may encompass various components; e.g., the major work category of kitchens may include ranges, refrigerators, cabinets, floors, range hoods, etc.

For "HA-Wide," list HA-wide non-dwelling structures and equipment that will be funded.

Quantity. Enter the quantity of the major work category to be undertaken as a percentage or whole number, e.g., 50 percent of the units, 125 units, etc.

Estimated Cost. For each major work category or HA-wide nondwelling structures and equipment listed, enter the estimated hard cost that will be allocated in each year of years 2 through 5. Mark with an asterisk the estimated cost of each work item that will be funded with non-CGP funds, including reprogrammed CIAP funds. Enter the subtotal of estimated costs for each year of years 2 through 5 that will be funded with CGP funds, excluding asterisked items. This subtotal should be reflected on line B in Part 1: Summary for each year of years 2 through 5.

Part III: Supporting Pages—Management Needs Work Statement(s)

FFY:

Work Statement for Year 1. Enter the current FFY.

Work Statements for Years 2 through 5. Enter each successive FFY.

General Description of Major Work Categories. In each year of years 2 through 5, enter the major work categories for which CGP funding, including non-CGP funds, will be allocated as well as those work categories that are no cost items. This includes work identified through the Public Housing Management Assessment Program (PHMAP) for PHAs, or through audits, HUD monitoring reviews, or HA self-assessments. The work categories should be described in sufficient detail for HUD to make a determination of eligibility. For example, training activities must describe how they relate to identified physical or management improvements, e.g., staff training to improve PHMAP scores on rent collection. If a particular work category is targeted to a specific development, e.g., conduct study to determine the feasibility of resident management, enter the development number in parenthesis.

Quantity. Where appropriate, enter the quantity of the major work category to be undertaken as a percentage or whole number, e.g., train 50 residents, train 10 percent of the staff, etc.

Estimated Cost. For each major work category entered, enter the estimated cost that will be allocated in each year of years 2 through 5 Mark with an asterisk the estimated cost of each work item that will be funded with non-CGP funds, including reprogrammed CIAP funds. Enter the subtotal for each year of years 2 through 5 that will be funded with CGP funds, excluding asterisked items. This subtotal should be reflected on line C in Part I: Summary for each year of Years 2 through 5.

Local Government Statement
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (exp. 7/31/98)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

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_____

As Chief Executive Officer of the unit of general local government known as _____,

_____

in which the (name of Public Housing Agency (PHA)) _____

_____ operates,

I certify to the following:

1. The HA developed the Comprehensive Plan/Annual Statement in consultation with local government officials/Indian tribal officials and with residents of the developments covered by the Comprehensive Plan/Annual Statement, in accordance with the requirements of the Comprehensive Grant Program;

2. For PHAs, the Comprehensive Plan/Annual Statement is consistent with the unit of general local government's assessment of its low-income housing needs (as evidenced by its Consolidated Plan under 24 CFR Part 91, if applicable), and that the unit of general local government will cooperate in providing resident programs and services; and

3. The HA's proposed drug and crime elimination activities are coordinated with and supportive of local strategies and neighborhood improvement programs, if applicable. Under the Cooperation Agreement, the local government is providing public services and facilities of the same character and to the same extent to Public housing as are furnished to other dwellings and residents of the locality. Where additional on-duty police are being funded under the Comprehensive Grant Program, such police will only provide additional security and protective services over and above those for which the local government is contractually obligated to provide under the Cooperation Agreement.

Note: The Comprehensive Plan includes the Action Plan.

Name of Chief Executive Officer:	Signature of Chief Executive Officer and Date:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form HUD-52826 (10/96)
ref Handbook 7485.3

VOL 63 ISS 121 JE 24 1998 UMI

HA Board Resolution Approving Comprehensive Plan or Annual Statement

Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (exp. 7/31/98)

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This collection of information requires that, as a condition to receive a CGP grant, each Housing Authority (HA) certify that it has complied or will comply with statutory, regulatory and other HUD requirements. This information is essential to determine HA compliance, or intent to comply, with CGP requirements. Responses to the collection are required by regulation. The information requested does not lend itself to confidentiality.

Acting on behalf of the Board of Commissioners of the below-named Housing Authority (HA), as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

☐ Comprehensive Plan Submitted on _____

☐ Action Plan / Annual Statement Submitted on _____

☐ Amendments to Comprehensive Plan Submitted on _____

☐ Amendments to Action Plan / Annual Statement Submitted on _____

I certify on behalf of the: (HA Name) _____ that:

1. The HA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;

2. The HA has established controls to ensure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;

3. The HA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;

4. The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 968.115 or 24 CFR 950.610;

5. The proposed activities, obligations and expenditures in the Annual Statement are consistent with the proposed or approved Comprehensive Plan of the HA;

6. The HA will comply with applicable nondiscrimination and equal opportunity requirements under 24 CFR 5.105(a) or 24 CFR 950.115;

7. The HA will take appropriate affirmative action to award modernization contracts to minority and women's business enterprises under 24 CFR 5.105(a) or 24 CFR 950.115(e); or the IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under 24 CFR 950.175;

8. The HA has provided HUD or the responsible entity with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m) or 24 CFR 950.120(a), (b), and (h), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the HA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

9. The HA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 950.120(c) and (d);

10. The HA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 968.108 or 24 CFR 950.117;

11. The HA will comply with the requirements for physical accessibility under 24 CFR 968.110(a) or 24 CFR 950.115(d);

12. The HA will comply with the requirements for access to records and audits under 24 CFR 968.145 or 24 CFR 950.120(e);

13. The HA will comply with the uniform administrative requirements under 24 CFR 968.135 or 24 CFR 950.120(f);

14. The HA will comply with lead-based paint testing and abatement requirements under 24 CFR 968.110(k) or 24 CFR 950.120(g);

15. The HA has complied with the requirements governing local/tribal government and resident participation in accordance with 24 CFR 968.315(b) and (c), 968.325(d) and 968.330 or 24 CFR 950.652(b) and (c), 950.656(d) and 950.658, and has given full consideration to the priorities and concerns of local/tribal government and residents, including any comments which were ultimately not adopted, in preparing the Comprehensive Plan/Annual Statement and any amendments thereto;

16. The HA will comply with the special requirements of 24 CFR 968.102 or 24 CFR 950.602 with respect to a Turnkey III development; and

17. The PHA will comply with the special requirements of 24 CFR 968.101(b)(3) with respect to a Section 23 leased housing bond-financed development.

18. The modernization work will promote housing that is modest in design and cost, but still blends in with the surrounding community.

Attested By: Board Chairman's Name:	(Seal)
Board Chairman's Signature & Date: X	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form HUD-53239 (10/96)
ref Handbook 7485.3

Annual Statement / Performance and Evaluation Report
Comprehensive Grant Program (CGP) **Part I: Summary**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 7/31/98)

HA Name:	Comprehensive Grant Number:	FFY of Grant Approval:

☐ Original Annual Statement ☐ Reserve for Disasters/Emergencies ☐ Revised Annual Statement/Revision Number _____
☐ Performance and Evaluation Report for Program Year Ending _____ ☐ Final Performance and Evaluation Report

Line No.	Summary by Development Account	Total Estimated Cost		Total Actual Cost [2]	
		Original	Revised [1]	Obligated	Expended
1	Total Non-CGP Funds				
2	1406 Operations (May not exceed 10% of line 19)				
3	1408 Management Improvements				
4	1410 Administration				
5	1411 Audit				
6	1415 Liquidated Damages				
7	1430 Fees and Costs				
8	1440 Site Acquisition				
9	1450 Site Improvement				
10	1460 Dwelling Structures				
11	1465.1 Dwelling Equipment—Nonexpendable				
12	1470 Nondwelling Structures				
13	1475 Nondwelling Equipment				
14	1485 Demolition				
15	1490 Replacement Reserve				
16	1495.1 Relocation Costs				
17	1498 Mod Used for Development				
18	1502 Contingency (may not exceed 8% of line 19)				
19	Amount of Annual Grant (Sum of lines 2-18)				
20	Amount of line 19 Related to LBP Activities				
21	Amount of line 19 Related to Section 504 Compliance				
22	Amount of line 19 Related to Security				
23	Amount of line 19 Related to Energy Conservation Measures				

Signature of Executive Director & Date:
X

Signature of Public Housing Director & Date:
X

[1] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[2] To be completed for the Performance and Evaluation Report.

form HUD-52837 (10/96)
ref Handbook 7485.3

Annual Statement / Performance and Evaluation Report
Comprehensive Grant Program (CGP) **Part I: Summary**

U.S. Department of Housing

OMB Approval No. 2577-0157 (exp. 7/31/98)

[1] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[2] To be completed for the Performance and Evaluation Report .

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

Annual Statement / Performance and Evaluation Report
Comprehensive Grant Program (CGP) **Part II: Supporting Pages**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp..7/31/98).

Development Number/Name HA-Wide Activities	General Description of Major Work Categories	Development Account Number	Quantity	Total Estimated Cost		Total Actual Cost		Status of Proposed Work [2]
				Original	Revised [1]	Funds Obligated [2]	Funds Expended [2]	

Signature of Executive Director & Date:

X

Signature of Public Housing Director & Date:

X

Annual Statement / Performance and Evaluation Report
Comprehensive Grant Program (CGP) **Part III: Implementation Schedule**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 7/31/98)

Development Number/Name HA-Wide Activities	All Funds Obligated (Quarter Ending Date)			All Funds Expended (Quarter Ending Date)			Reasons for Revised Target Dates [2]
	Original	Revised [1]	Actual [2]	Original	Revised [1]	Actual [2]	

Signature of Executive Director & Date:

X

Signature of Public Housing Director & Date:

X

[1] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[2] To be completed for the Performance and Evaluation Report.

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

Public reporting burden for this collection of information is estimated to average 75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining

[2] To be completed for the Performance and Evaluation Report.

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

Public reporting burden for this collection of information is estimated to average 75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This collection of information requires that each eligible applicant submit information to HUD in order to receive its annual formula grant. This information will be used by HUD to determine whether the annual submission meets statutory and regulatory requirements for the annual formula grant and during implementation. Responses to the collection are required by Section 14(e)(3) and (4) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52837, Annual Statement/Performance and Evaluation Report

Report Submission For the Annual Statement

Prepare a separate Form HUD-52837 (Parts I, II and III) for each annual formula grant, describing the activities which are planned to be undertaken with the current year's Comprehensive Grant Program (CGP) funds. Submit this form to HUD as part of each annual submission. On an as-needed basis, submit a revised form when prior HUD approval is required to amend the Annual Statement. When submitting a complete Form HUD-52837 (Parts I, II and III), only Part I shall be signed and dated. For revisions affecting individual pages, only the pages affected shall be signed, dated and submitted to HUD.

Prepare a separate Form HUD-52837 (Parts I, II and III) for each funding request from the $75 million reserve for natural and other disasters and emergencies.

Prepare a separate Form HUD-52837 (Parts I, II and III) for each emergency funding request under the annual formula grant where there is no approved Comprehensive Plan.

Report Submission For the Performance and Evaluation Report

At the end of the program year (6/30), complete the sections of Parts I, II and III as noted in footnotes 1 and 2 on a copy of the original or revised Annual Statement and mark the box, Performance and Evaluation Report for Program Year Ending _____. Submit the form(s) to HUD, together with the narrative report on resident and local/tribal government participation and other required items, by 9/30. Continue reporting at the end of each program year, until the program is completed or all funds are expended.

Revisions to the Annual Statement which do not require prior HUD approval, (e.g. expenditures for emergency work, revisions resulting from the HA's application of fungibility) shall be reported in the Performance and Evaluation Report. Revisions requiring prior HUD approval shall be submitted in a revised Annual Statement, on an as-needed basis, prior to submission of the Performance and Evaluation Report.

Upon completion or termination of the activities funded in a specific grant year, complete the sections of Parts I, II and III as noted in footnotes 1 and 2 on a copy of the original or revised Annual Statement and mark the box, Final Performance and Evaluation Report. Submit a Final Performance and Evaluation Report as soon as the program is completed or all funds are expended.

Part I: Summary

Heading Instructions

HA Name. Enter the HA name.

Comprehensive Grant Number. Enter the unique Comprehensive Grant number designated for the annual grant. This number is a 13-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing; three-digit HA number; three-digit Grant number; and two-digit Federal Fiscal Year identifier. The first Comprehensive Grant approved under the CGP shall be 701; e.g., VA05P03670193. The second Comprehensive Grant approved under the CGP shall be 702; e.g., VA05P03670294. Any funding from the $75 million reserve for natural and other disasters and emergencies shall be given a separate Comprehensive Grant number. Grant Numbers shall be sequential, e.g., the annual formula grant is funded first and numbered VA05P03670395; a grant from the $75 million reserve is funded next in the same FFY and numbered VA05P03670495.

FFY of Grant Approval. Enter the FFY in which the grant is being approved/was approved.

Type of Submission. Check the appropriate box and indicate whether the submission is the Original Annual Statement for the annual formula grant, the $75 million Reserve for Disasters and Emergencies, the Revised Annual Statement (and revision number), the Performance and Evaluation Report for Program Year Ending (enter date, e.g., 6/30/96), or the Final Performance and Evaluation Report.

Original Total Estimated Cost

Line 1. Enter the Original Total Estimated Cost for all work that will be undertaken from non-CGP funds, including CIAP funds being reprogrammed for CGP purposes. Enter zero if no work will be undertaken from non-CGP funds.

Lines 2 through 18. For each line, enter the Original Total Estimated Cost, for all work that will be undertaken from the annual formula grant or the $75 million reserve. Enter zero if no work will be undertaken in a particular development account. The sum total of lines 2 through 18 must equal the amount of the annual grant on line 19.

Note: Line 2 may not exceed 10 percent of line 19.
Line 3 may not exceed 20 percent of line 19 except where approved by HUD or the PHA is both an overall high performer and a Mod-high performer under the PHMAP.
Line 4 may not exceed 10 percent of line 19, excluding certain costs, except where approved by HUD.

Line 19. Amount of Annual Grant. Enter the sum of lines 2 through 18 in the Original Total Estimated Cost column.

Line 20. Amount of line 19 Related to Lead-Based Paint (LBP) Activities. Enter the amount of line 19 related to LBP activities (hard and soft costs) in the Original Total Estimated Cost column, as applicable. For example, if windows are being replaced, estimate the portion of the funding which is directly related to LBP abatement.

Line 21. Amount of line 19 Related to Section 504 Compliance. Enter the amount of line 19 related to Section 504 compliance (hard and soft costs) in the Original Total Estimated Cost column, as applicable.

Line 22. Amount of line 19 Related to Security. Enter the amount of line 19 related to Security (hard and soft costs) in the Original Total Estimated Cost column, as applicable.

Line 23. Amount of line 19 Related to Energy Conservation Measures. Enter the amount of line 19 related to Energy Conservation Measures (hard and soft costs) in the Original Total Estimated Cost column, as applicable.

Revised Total Estimated Cost

Lines 1 through 18. After initial approval by HUD, the HA shall track cost increases and decreases in lines 1 through 17 and cost decreases in line 18 of the Original Total Estimated Cost and report these revisions in the Revised Total Estimated Cost column at the end of each program year on the Performance and Evaluation Report. If revisions are reported in the Revised Total Estimated Cost column when a Performance and Evaluation Report is submitted, the revisions shall be reflected in the Original Total Estimated Cost column when the next Performance and Evaluation Report is submitted.

Where prior HUD approval is required to revise the Annual Statement (i.e., where a major work category is being added to the Annual Statement which was not included in the latest HUD-approved Five-Year Action Plan or a prior approved budget), enter the revisions to development accounts that are affected by the change in the Revised Total Estimated Cost column and submit only the pages of the form affected by the revision to HUD. Each page submitted for prior HUD approval of a revision shall be signed and dated by the HA and, where approved by HUD, a signed copy shall be returned to the HA.

Line 19. After initial approval by HUD, the sum of lines 2 through 18 in the Revised Total Estimated Cost column may not exceed the annual grant amount (line 19 in the Original Total Estimated Cost column).

Lines 20 through 23. After initial approval by HUD, the HA shall track cost increases and decreases in lines 20 through 23 of the Original Total Estimated Cost and report these revisions in the Revised Total Estimated Cost column when the Performance and Evaluation Report is submitted. If revisions are reported in the Revised Total Estimated Cost column when a Performance and Evaluation Report is submitted, the revisions shall be reflected in the Original Total Estimated Cost column when the next Performance and Evaluation Report is submitted.

Total Actual Cost

At the end of the CGP program year (6/30) for each grant with a separate Comprehensive Grant Number for which funds are still being expended, complete the section on Actual Cost on a copy of the original or revised Annual Statement, mark the box Performance and Evaluation Report for Program Year Ending _____ and submit to HUD by 9/30.

Upon completion or termination of the activities funded for each grant with a separate Comprehensive Grant Number, complete the section on Actual Cost as part of the submission of the Final Performance and Evaluation Report.

Lines 1 through 23. For each line, enter the Actual Cost of Funds Obligated and Expended at the end of the CGP program year (6/30) or upon completion or termination of the activities funded for each grant with a separate Comprehensive Grant Number. **Note:** Do not enter a dollar amount for obligated and expended for line 18 (Contingency). Funds from this account shall be shown as obligated and expended in another development account when funds from this account are used for cost overruns, contract modifications, or other work.

Line 19. Enter the sum of lines 2 through 17 for obligated and expended. The sum of lines 2 through 17 may not exceed line 19 in the Original Total Estimated Cost column.

Part II: Supporting Pages

Development Number/Name. Enter the abbreviated number (e.g., VA-36-1) and the name, if any, of each development where a major work category will be undertaken. Enter "HA-wide" for a major work category that relates to a HA-wide activity (e.g., management improvements; administration; physical improvements that are unpredictable, such as lead-based paint abatement, asbestos abatement, modernization of vacant units).

General Description of Major Work Categories. For each development listed, enter a general description of the major work categories, including those that will be funded with non-CGP funds and no cost items. Work categories should be described in broad terms, such as kitchens, bathrooms, electrical, site, etc. A work category may encompass various components; e.g., the major work category of kitchens may include ranges, refrigerators, cabinets, floors, etc. Do not specify the per unit cost or the quality of materials. Identify major work categories that will be accomplished by Force Account labor by entering (FA) in parenthesis next to the major work category. PHAs that are designated as both overall high performers and Mod-high performers under the PHMAP and IHAs do not have to identify major work categories that will be accomplished by FA. After listing all major work categories for all developments being funded, enter a general description of HA-wide activities such as; management improvements; administrative costs; nondwelling equipment; physical improvements that are unpredictable such as lead-based paint abatement, asbestos abatement, modernization of vacant units. When major work categories are subsequently deleted, draw a line through the General Description of Major Work Categories, Development Account Number, Quantity, and Estimated Cost. When major work categories are subsequently added, enter the General Description of Major Work Categories, Development Account Number, Quantity and Estimated Cost under the appropriate development number/name. **Note:** Describe administrative and management improvement costs in sufficient detail for HUD to make a determination of eligibility. Identify items excluded from the 10 percent limitation on administrative cost, such as in-house LBP testing; identify management improvements and how they relate to identified physical or management improvement needs.

Development Account Number. For each major work category and HA-wide activity, enter the appropriate development account which corresponds to the major work categories described under the General Description of Major Work Categories column. For appropriate development accounts, refer to the CGP Handbook 7485.3. Where funding will be provided from non-CGP sources, or the work is a no-cost item, enter "N/A" for not applicable.

Quantity. Enter the quantity of each major work category, and HA-wide activity, to be undertaken as a percentage or whole number; e.g., 50 percent of the units, 125 units, train 25 residents, etc.

Total Estimated Cost

Original. For each major work category and HA-wide activity, enter the Original Estimated Cost. Asterisk the estimated cost of each major work category that will be funded with non-CGP funds, including reprogrammed CIAP funds. **After listing the estimated cost for all major work categories at a particular development, enter a subtotal of the estimated cost of only the major work categories that will be funded from the current year's CGP grant. (Note:** Do not count costs that have been asterisked in this subtotal). **Enter a subtotal for each HA-wide activity.** Enter a grand total for Part II of only the major work categories and HA-wide activities that will be funded with the current year's CGP grant. The Grand Total may not exceed line 19 of the Original Total Estimated Cost column in Part I.

Revised. After initial approval by HUD, the HA shall track cost decreases or increases in

Part III: Implementation Schedule

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

Revised. After initial approval by HUD, the HA shall track cost decreases or increases in the Original Total Estimated Cost and report these revisions in the Revised Total Estimated Cost column at the end of each program year on the Performance and Evaluation Report. If revisions are reported in the Revised Total Estimated Cost column when a Performance and Evaluation Report is submitted, the revisions shall be reflected in the Original Total Estimated Cost column when the next Performance and Evaluation Report is submitted. Where prior HUD approval is required to revise the Annual Statement (i.e., where a major work category is being added to the Annual Statement which was not included in the latest HUD-approved Five-Year Action Plan or a prior approved budget), enter the revisions to development accounts that are affected by the change in the Revised Total Estimated Cost column and submit only the pages of the form affected by the revision to HUD.

Total Actual Cost. At the end of the CGP program year for each grant with a separate Comprehensive Grant Number for which funds are still being expended, complete the section on Actual Cost for the Performance and Evaluation Report. Upon completion or termination of the activities funded for each grant with a separate Comprehensive Grant Number, complete the section on Actual Cost for the Final Performance and Evaluation Report.

Funds Obligated. In this column, for each development listed, enter the cumulative dollar amount of all funds obligated for that development opposite the Original Estimated Cost subtotal. For each HA-wide activity listed, enter the cumulative dollar amount of all funds obligated opposite the Original Estimated Cost subtotal. Enter the cumulative dollar amount of all funds obligated opposite the Grand Total. The Grand Total may not exceed line 19 in the Original Total Estimated Cost column in Part I. This includes funds obligated by the HA for work to be performed by contract labor (i.e., contract award) and force account labor (i.e., work actually started). Funds that are recorded as being obligated shall remain obligated so that total funds obligated are always greater than or equal to total funds expended. Total funds obligated shall not exceed the amount of the annual grant. **Note:** Do not enter a dollar amount for obligated for line 18 (Contingency). Funds from this account will be shown as obligated in the appropriate development account when funds from this account are used for cost overruns, contract modifications or other work.

Funds Expended. In this column, for each development listed, enter the cumulative dollar amount of all funds expended for that development opposite the Original Estimated Cost subtotal. For each HA-wide activity listed, enter the cumulative dollar amount of all funds expended opposite the Original Estimated Cost subtotal. Enter the cumulative dollar amount of all funds expended opposite the Grand Total. The Grand Total may not exceed line 19 in the Original Total Estimated Cost column in Part I. Total funds expended means cash actually disbursed and does not include retainage. **Note:** Do not enter a dollar amount for expended for line 18 (Contingency). Funds from this account will be shown as expended in the appropriate development account when funds from this account are used for cost overruns, contract modifications or other work.

Status of Proposed Work. At the end of the CGP program year, complete this section for the Performance and Evaluation Report. For each major work category and HA-wide physical improvement listed, prepare a brief description of the status of the item, e.g., work completed or contract awarded on May 5, 1996. Explain the addition, deletion or modification of any major work category, such as the addition of any emergency work, or changes to the Annual Statement, by substituting major work categories from the Five-Year Action Plan or other approved modernization budgets. Where funds were budgeted for HA-wide physical improvements, indicate the actual developments/number of units where the funds were expended.

Part III: Implementation Schedule

Development Number/Name. Enter the abbreviated number (e.g., VA 36-1) and the name, if any, of each development listed on Part II. Enter "HA-wide" for major work categories that relate to HA-wide physical or management improvements.

Original - All Funds Obligated. Opposite each development and for each HA-wide physical or management activity, enter the estimated quarter ending date for obligation of all funds under the Original column. **Note:** Provide an implementation schedule only for HA-wide physical or management improvements, not for other HA-wide activities (e.g, administration).

Revised - All Funds Obligated. The HA may revise the target dates for fund obligation for delays outside of the HA's control. The revised dates shall be reported in this column at the end of the program year on the Performance and Evaluation Report. If revisions are reported in the Revised - All Funds Obligated column, the revised dates shall be reflected in the Original - All Funds Obligated column when the next Performance and Evaluation Report is submitted. When it is necessary for the HA to revise a target date for reasons within its control, the HA shall immediately submit a written request to the Field Office requesting approval of the new date. If the Field Office approves the revision, the revised dates shall be reflected in the Original - All Funds Obligated column when the next Performance and Evaluation Report is submitted.

Actual - All Funds Obligated. When all funds are obligated for a development or HA-wide activity, enter the quarter ending date that this occured in the Actual column.

Original - All Funds Expended. Opposite each development and for each HA-wide physical or management activity, enter the estimated quarter ending date for expenditure of all funds under the Original column. **Note:** Provide an implementation schedule only for HA-wide physical or management improvements, not for other HA-wide activities, (e.g., administration).

Revised - All Funds Expended. The HA may revise the target dates for funds expenditure for delays outside of the HA's control. The revised dates shall be reported in this column at the end of the program year on the Performance and Evaluation Report. If revisions are reported in the Revised - All Funds Expended column, the revised dates shall be reflected in the Original - All Funds Expended column when the next Performance and Evaluation Report is submitted. When it is necessary for the HA to revise a target date for reasons within its control, the HA shall immediately submit a written request to the Field Office requesting approval of the new date. If the Field Offices approves the revision, the revised dates shall be reflected in the Original - All Funds Obligated column when the next Performance and Evaluation Report is submitted.

Actual - All Funds Expended. When all funds are expended for a development or HA-wide activity, enter the quarter ending date that this occured in the Actual column. When all funds have been expended for a specific grant, the HA shall complete Parts I, II, and III, mark the box, Final Performance and Evaluation Report, and submit to the Field Office.

Reasons for Revised Target Dates. Explain any revisions to the target dates for fund obligation or expenditure by specifying the delay outside of the HA's control, where the HA has self-issued a time extension, or the date on which HUD approved a revised target due to delays within the HA's control.

Page ___ of ___

form HUD-52837 (10/96)
ref Handbook 7485.3

Actual Comprehensive Grant Cost Certificate

Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 7/31/98)

PHA/IHA Name	Comprehensive Grant Number
	FFY of Grant Approval

The PHA/IHA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of Modernization Cost (herein called the "Actual Modernization Cost") of the Comprehensive Grant, is as shown below:

A. Original Funds Approved	$
B. Revised Funds Approved	$
C. Funds Advanced	$
D. Funds Expended (Actual Modernization Cost)	$
E. Amount to be Recaptured (A–D)	$
F. Excess of Funds Advanced (C–D)	$

2. That all modernization work in connection with the Comprehensive Grant has been completed;

3. That the entire Actual Modernization Cost or liabilities therefor incurred by the PHA have been fully paid;

4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such modernization work on file in any public office where the same should be filed in order to be valid against such modernization work; and

5. That the time in which such liens could be filed has expired.

Signature of Executive Director	Date
X	

For HUD Use Only

The Cost Certificate is approved for audit.

Approved for Audit (Director, Public Housing Division)	Date
X	

The audited costs agree with the costs shown above.

Verified (Director, Public Housing Division)	Date
X	
Approved (Field Office Manager)	Date
X	

form HUD-52839 (2/92)
ref Handbook 7485.3

VOL 63 ISS 121 JE 24 1998 UMI

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This collection of information requires that each eligible applicant submit information to HUD in order to receive its annual formula grant. This information will be used by HUD to determine whether the annual submission meets statutory and regulatory requirements for the annual formula grant and during implementation. Responses to the collection are required by Section 14(e)(3) and (4) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52839—Actual Comprehensive Grant Cost Certificate

General Instructions:

Prepare and submit to the HUD Field Office an original and one copy of Form HUD-52839 for each terminated or completed annual grant under the Comprehensive Grant Program (CGP).

Heading Instructions:

PHA Name—Enter the Public Housing Agency (PHA) name.

Comprehensive Grant Number—Enter the unique Comprehensive Grant Number for the grant for which this form is being submitted. This number is the same number as on Form HUD-52837, Annual Statement, for the same grant.

Federal Fiscal Year of Grant Approval—Enter the FFY in which the annual grant was originally approved.

Line Instructions:

Line 1A, Original Funds Approved—For the identified grant, enter the total CGP funds originally approved by HUD through a CGP Amendment to the Consolidated Annual Contributions Contract(s).

Line 1B, Revised Funds Approved—For the identified grant, enter the total revised CGP funds approved by HUD. This amount will generally be the same as the amount on Line 1A. This amount will be less than the amount on Line 1A where HUD is terminating the grant or otherwise recapturing grant funds.

Line 1C, Funds Advanced—For the identified grant, enter the total funds advanced by HUD. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1D, Funds Expended—For the identified grant, enter the total funds expended (total cash disbursed) by the PHA. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1E, Amount To Be Recaptured (A minus D)—For the identified grant, enter the amount to be recaptured by subtracting Line 1D from Line 1A.

Line 1F, Excess of Funds Advanced (C minus D)—For the identified grant, enter the excess of funds advanced by subtracting Line 1D from Line 1C; this is the amount to be remitted by the PHA to HUD. If Line 1D is greater than Line 1C, enter the figure in brackets; this is the amount of funds owed by HUD to the PHA.

AnnualStatement/Performance and Evaluation Report on Replacement Reserve

Comprehensive Grant Program (CGP)

U. S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp.7/31/98)

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information requires that each eligible grantee submit information to HUD regarding use of all or a portion of its annual formula grant for a replacement reserve. This information will be used by HUD to determine whether the replacement reserve established with CGP funds meets HUD requirements. Responses to the collection are required by Section 14(e)(3) and (4) of the U.S. Housing Act of 1937, as amended. The information requested does not lend itself to confidentiality.

Part I: Summary

HA Name:

Submission: (mark one)
- ☐ Original Annual Statement
- ☐ Revised Annual Statement / Revision No. _____
- ☐ Performance & Evaluation for Program Year Ending: _____

Section 1: Replacement Reserve Status Must be completed each year there is a balance in the replacement reserve.	Estimated	Actual
1. Replacement Reserve Interest Earned (account 6200/1420.7; equals line 17 of section 2, below)		
2. Replacement Reserve Withdrawal (equals line 16 of section 2, below)		
3. Net Impact on Replacement Reserve (line 1 minus line 2; equals line 18 of section 2, below)		
4. Current FFY Funding for Replacement Reserve (line 15 of form HUD-52837)		
5. Replacement Reserve Balance at End of Previous Program Year (account 2830)		
6. Replacement Reserve Balance at End of Current Program Year (line 4 + line 5 + (or -) line 3) (account 2830)		

Section 2: Replacement Reserve Withdrawal Report Complete this section if there is withdrawal/expenditure activity.	Estimated Cost		Actual Cost
Summary by Account (6200 subaccount)	Column 1 Original	Column 2 Revised	Column 3 Expended
1. Reserved			
2. 1408 Operations			
3. 1408 Management Improvements			
4. 1410 Administration			
5. 1415 Liquidated Damages			
6. 1430 Fees and Costs			
7. 1440 Site Acquisition			
8. 1450 Sites Improvement			
9. 1460 Dwelling Structures			
10. 1465 Dwelling Equipment -Nonexpendaable			
11. 1470 Nondwelling Structures			
12. 1475 Nondwelling Equipment			
13. 1485 Demolition			
14. 1495 Relocation Costs			
15. 1498 Mod Used for Development			
16. Replacement Reserve Withdrawal (sum of lines 2 thru 15)			
17. 1420.7 Replacement Reserve Interest Income	( )	( )	( )
18. Net Withdrawal from Replacement Reserve (line 16 minus line 17)			
19. Amount of line 16 related to LBP Activities			
20. Amount of line 16 related to Section 504 Compliance			
21. Amount of line 16 related to Emergencies			

Signature of the Executive Director & Date:

X

Signature of the Field Office Manager & Date:

X

form HUD-52842 (10/96)
ref. Handbook 7485.3

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Annual Statement / Performance and Evaluation Report on Replacement Reserve
Part II: Supporting Pages
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Development Number/Name HA-Wide Activities	General Description of Major Work Categories	Development Account Number	Total Estimated Cost		Total Actual Cost		Status of Proposed Work 1/
			Original	Revised 1/	Funds Obligated 1/	Funds Expended 1/	

1/ To be completed at the end of the program year.

Page ___ of ___

form HUD-52842 (10/96)
ref. Handbook 7485.3

Instructions for completing form HUD-52842, Annual Statement/ Performance and Evaluation Report on Replacement Reserve

For the Performance and Evaluation Report:

The first report after a replacement reserve has been established is due by 9/30 of the FFY following approval of the Annual Statement establishing the reserve. Mark the box, Performance and Evaluation Report for Program Year Ending _____. Submit one form HUD-52842 annually with form HUD-52837, Annual Statement/ Performance and Evaluation Report, as long as the HA maintains a balance in the replacement reserve or has withdrawal/expenditure activity from the replacement reserve. At the end of each program year (6/30), complete Part I, Section 1; also, complete Part I, Section 2, and Part II if there has been withdrawal/expenditure activity. Where the replacement reserve has been funded from more than one grant, submit one combined form HUD-52842.

For the Annual Statement:

Submit form HUD-52482 with Section 2 of Part I and Part II completed, for prior HUD approval where the HA plans to withdraw/ expend funds from the replacement reserve.

Part I: Summary

HA Name - Enter the HA's name.

Type of Submission - Check the appropriate box to indicate whether the submission is the Original Annual Statement, the Revised Annual Statement (and revision number), or the Performance and Evaluation Report for Program Year Ending (enter date; e.g., 6/30/97).

Section 1 - Replacement Reserve Status:

Line 1 - Replacement Reserve Interest Earned (Account 6200/ 1420.7) - Enter the estimated amount of interest that the HA should have earned on the replacement reserve during the reporting period in the "Estimated" column. This amount should, at a minimum, equal interest at or above the operating budget TII rate (average 91-day Treasury Bill rate) for the reporting period (July 1 through June 30). If Section 2 is completed, this amount must equal Line 17, Column 1 (or 2, if applicable) of Section 2. Enter the actual interest earned during the reporting period in the "Actual" column. If Section 2 is completed, this amount must equal Line 17, Column 3 of Section 2.

Line 2 - Replacement Reserve Withdrawal - Enter the amount that was estimated to be withdrawn from the replacement reserve during the reporting period in the "Estimated" column. If Section 2 is completed, this amount must equal Line 16, Column 1 (or 2, if applicable) of Section 2. Enter the actual withdrawal amount in the "Actual" column. If Section 2 is completed, this amount must equal Line 16, Column 3 of Section 2.

Line 3 - Net Impact on Replacement Reserve - Enter the amount of Line 1 minus Line 2. If Section 2 is completed, this amount must equal Line 18, Column 3 of Section 2.

Line 4 - Current FFY Funding for Replacement Reserve - Enter the amount of the increase to the replacement reserve in the appropriate column. This amount must equal Line 15 of Part I of form HUD-52837 for the current FFY.

Line 5 - Replacement Reserve Balance at End of Previous Program Year - Enter the replacement reserve balance from the previous program year (Account 2830). This amount will be the same for the "Estimated" and "Actual" columns.

Line 6 - Replacement Reserve Balance at End of Current Program Year - Enter the sum of Lines 4 and 5, plus or minus Line 3. For the "Actual" column, the number entered must agree with the program year end closing balance of the replacement reserve.

Section 2 - Replacement Reserve Withdrawal Report

Once the replacement reserve has been established, prepare form HUD-52842 when the HA plans to withdraw funds from the reserve. Complete Section 2 of Part I and Part II and submit to HUD for approval. Complete this section for the annual Performance and Evaluation Report when the HA has withdrawn/expended funds from the reserve.

Line 1 - Reserved - Do not use at this time.

Lines 2 - 15 - Summary by Account

Column 1 - Original Estimated Cost -

For each line, enter the original current program year estimated cost for all work to be undertaken in a particular development account as a result of the withdrawal of funds from the replacement reserve.

Column 2 - Revised Estimated Cost -

For each line, enter any cost decrease or increase after initial approval by HUD. When the HA wishes to draw down additional funds from the reserve for expenditure activities, the HA shall reflect the cumulative dollar amount estimated to be expended and submit the form to HUD for approval. After HUD approves the revisions, the dollars in the revised column shall be reflected in the original column when the next Performance and Evaluation Report is submitted.

Column 3 - Expended Actual Cost -

For each line, enter the actual amount of funds expended as of the end of the program year (6/30). Mark the box Performance and Evaluation Report for Program Year Ending _____ and submit to HUD by 9/30. **Note:** If the amount expended in Column 3 is less than the budgeted amount in Column 1 (or 2, if applicable), then the HA shall include the unexpended amount in the subsequent years estimate or provide an explanation of the change from the estimate.

Line 16 - Replacement Reserve Withdrawal - Enter the sum of lines 2 through 15. The amount in Column 1 (or 2, if applicable) must equal the estimated amount entered on Line 2 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 2 of Section 1.

Line 17 - Replacement Reserve Interest Income - Enter the interest income earned on the replacement reserve (bracketed). The amount entered in Column 1 (or 2, if applicable) must equal the estimated amount entered on Line 1 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 1 of Section 1.

Line 18 - Net Withdrawal from Replacement Reserve - Subtract from Line 16, the amount inside the brackets on Line 17 and enter on Line 18. The amount in Column 1 (or 2, if applicable) must equal the estimated amount of Line 3 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 3 of Section 1.

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Sample:

Line 16 - Replacement Reserve Withdrawal. $10,000

Line 17 - Replacement Reserve Interest Income ..... (500)

Line 18 - Net Withdrawal from Replacement Reserve. $ 9,500

Line 19 - Amount of Line 16 Related to Lead-Based Paint (LBP) Activities. - Enter the amount of line 16 related to LBP activities in Column 1 (or 2, if applicable). At the end of the program year, enter the actual amount in Column 3.

Line 20 - Amount of Line 16 Related to Section 504 Compliance - Enter the amount of line 16 related to Section 504 compliance in Column 1 (or 2, if applicable). At the end of the program year, enter the actual amount in Column 3.

Line 21 - Amount of Line 16 Related to Emergencies - The HA shall exhaust its replacement reserve before being eligible to apply for funding for emergencies from the $75 million reserve. Where applicable, enter the amount of the replacement reserve to be used for emergencies in Column 1 (or 2, if applicable). At the end of the program year, enter the actual amount in Column 3.

Part II: Supporting Pages

Development Number/Name - Enter the abbreviated number (e.g., VA-36-1) and the name, if any, of each development where a major work category will be undertaken. Enter "HA-wide" for work categories that relate to a HA-wide activity (e.g., management improvements, administration, nondwelling equipment, operations).

General Description of Major Work Categories - For each development listed, enter a general description of the major work categories (physical or management, as applicable) that will be undertaken at that development, with replacement reserve funds, before listing major work categories to be undertaken at other developments. After listing all major work categories for all developments being funded from the replacement reserve, enter a general description of HA-wide activities, such as management improvements, administrative costs, equipment, etc. When a work category is subsequently deleted, draw a line through the General Description, Development Account Number, and Estimated Cost. When a major work category is subsequently added, enter the new work category under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Do not specify the per unit cost or the quality of materials.

Development Account Number - For each major work category and HA-wide activity that will be funded from replacement reserve funds, enter the appropriate development account which corresponds to the major work categories described under the General Description of Major Work Categories column. For appropriate development accounts, refer to CGP Handbook 7485.3.

Total Estimated Cost - For each major work category and HA-wide activity, enter the Original Estimated Cost. Then enter a subtotal for each development and a grand total. Where the estimated cost is revised, enter a Revised Estimated Cost as appropriate.

Total Actual Cost - For each major work category and HA-wide activity, enter the cumulative dollar amount of all funds obligated and all funds expended opposite the Original Estimated Cost. Then enter subtotals for each development and a grand total.

Status of Proposed Work - At the end of each program year, complete this section and submit to HUD for the Performance and Evaluation Report. For each work category listed, prepare a brief description of the status of the item, e.g., work completed, contract awarded on 5/2/96, etc. Explain the addition, deletion or modification of any work categories, such as the addition of any emergency work.

form HUD-52842 (10/96)
ref. Handbook 7485.3

[FR Doc. 98–16689 Filed 6–23–98; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–11]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, (202) 708–1694 X2144 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Default Status Report on Multifamily Housing Projects.

OMB Control Number, if applicable: 2502–0041.

Description of the need for the information and proposed use: This notice requests an amendment to HUD–92426, Default Status Report on Multifamily Housing Projects" hereinafter called the Default Notice) which will be completed and submitted electronically. HUD field and headquarters staff use this data to: (a) monitor mortgage compliance with HUD loan servicing procedures and assignments; and (b) avoid mortgage assignments.

Agency form numbers, if applicable: Form HUD–92426.

Estimate of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 2,000, 10 minutes per response, and the frequency of responses is 1.

Status of the proposed information collection: Revision of previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 11, 1998.

Ira G. Peppercorn,

General Deputy Assistant, Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 98–16690 Filed 6–23–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate an agreement among the Central Utah Water Conservancy District (CUWCD), Sanpete County Water Conservancy District, Sanpete County, and the Department of the Interior for implementation of the Sevier River Canals Improvement Projects, Sanpete County, Utah.

SUMMARY: Pub. L. 102–575, Section 206(a)(1) provides: "After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date." Sanpete County desires to pursue local water development through the Sevier River Canals Improvement Projects (Improvement Projects), and is requesting a rebate of a portion of the ad valorem taxes it has paid to CUWCD, plus interest, to provide the required 35 percent local funding for such projects and a Federal grant of up to 65 percent of the total costs as authorized by Section 206(b)(1) of CUPCA.

In a letter dated October 7, 1996, Sanpete County requested federal funding, as set forth in Section 206(b)(1), to implement the Improvement Projects. Section 206(b)(1) states: "Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2)."

Sanpete County is located within the Sevier River Basin in Central Utah. The main stem of the Sevier River passes through Sanpete County west of the towns of Centerfield and Gunnison. Four major canals divert water from the Sevier River and serve lands in Sanpete County—Piute, Gunnison-Fayette, Dover, and Westview. The Project consists of improving diversion dams on Westview, Gunnison-Fayette, and Dover Canals, and gates, culverts, and overchutes on Piute Canal. A detailed description of the project is contained in the "Sevier River Canals Improvement Project Feasibility Study" dated January 1998 and the associated Categorical Exclusion checklist No. I.B.20.051 dated March 12, 1998.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below:

Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, Internet: rmurray@uc.usbr.gov.

Dated: June 18, 1998.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 98–16735 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the Spatial Data Transfer Standard (SDTS) Computer Aided Design and Drafting (CADD) Profile

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is conducting a public review of the SDTS CADD Profile. The purpose of this public review is to provide software vendors, data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs. Specifically, the FGDC requests responses in identifying issues concerning: (1) The general and transfer module specifications; (2) the sample mapping to software vendor's data structures (Appendix A); and (3) the implementation of the standard by software vendors.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft SDTS CADD Profile. All participants who make comments during the public review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed.

After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before September 30, 1998.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Standards/SDTS__CADD/.

Requests for written copies of the standard should be addressed to "SDTS CADD Profile," FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; or telephone 703–648–5514; facsimile 703–648–5755; or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc-cadd@www.fgdc.gov. Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5×3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to general questions related to this standard, please contact the Federal Geographic Data Committee (FGDC) Facilities Working Group, U.S. Army Corps of Engineers, General Engineering Branch 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; voice telephone number: Nancy Blyler (202) 761–8893; facsimile telephone number: (202) 761–4002.

For answers to questions related to the content of this standard, please contact David Horner, Tri-Service CADD/GIS Technology, ATTN: CEWES-ID-C(Horner) Center 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199 voice telephone number: (601) 634–3106 Internet address: David.H.Horner@usace.army.mil.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "SDTS CADD Profile."

Project Title: Development of a Computer-Aided Design and Drafting (CADD) Profile for the Federal Information Processing Standard/Spatial Data Tansfer Standard (SDTS).

Submitting Organization: Federal Geographic Data Committee (FGDC) Facilities Working Group (FWG).

Objectives: To develop a profile for the SDTS to support the exchange and transfer of CADD spatial data.

Scope: This activity included identifying the common CADD elements and there equivalent SDTS elements. This activity also include identifying unique CADD elements not currently support within SDTS (e.g., curves, cells rays, 3D objects). This activity may require the development of additional SDTS modules or changes to existing modules.

Justification/Benefits: There are no non-proprietary standards that provide the capability to transfer and exchange spatial CADD data between dissimilar CADD systems and also with GIS. The SDTS currently does not support several of the common CADD spatial data elements (e.g., curves, cells, etc.) and common CADD data attributes (e.g., level, weight, color, style, etc.).

There is considerable interest from CADD system users that build spatial databases to have a standard that supports the ability to exchange this data in a non-proprietary format with other CADD systems and also export this data into GIS.

This CADD profile will benefit users of CADD spatial databases and the SDTS.

Approach: An SDTS CADD Profile project team will be established to guide and provide other support for the research and development of this profile. The USACE and Tri-Service CADD/GIS Technology Center has initiated several studies to analyze the translation of spatial data from common CADD formats into SDTS. This activity included identifying the common CADD elements and there equivalent SDTS elements. This activity also included identifying unique CADD elements not currently supported within SDTS (e.g., curves, cells, rays, 3D objects that may require additional SDTS modules or changes to existing modules. The CADD profile team will review the results of these studies (report due out by the end of FY 96) and also provided input to the Statement of Work a new task(s) to develop a CADD profile.

The project may require some technical support from the U.S. Geological Survey (USGS) SDTS Task Force. This project may use the services of several contractors to support this activity.

Related Standards: The primary related standard is the SDTS and its Topological Vector Profile. The SDTS Points Profile being developed by the FGDC Geodetic Control Subcommittee may also be related to this CADD profile.

Schedule: A CADD profile project team will be established and begin formal work on the development of this standard as soon as this project is approved by the FGDC Standards Working Group (SWG). The schedule to develop a working draft for a CADD profile will be completed once a formal task order is established with a support contractor(s). The development of this CADD profile should take between one year and eighteen months to complete.

Resources: The FWG has adequate resources to perform the research on what it will take to develop a CADD profile. Additional resources may be necessary to actually develop this standard profile and Tri-Service Center contractors are an option for completing this work.

Potential Participants: The primary participants will be the members of the FWG which includes representatives from federal agencies, municipalities, and private industry. Support from the USGS SDTS Task Force may also be required to develop this profile.

Target Authorization Body: The FWG proposes pursuing the development of this CADD profile as an FGDC standard activity. The FWG and the FGDC may consider pursuing (at a later date) the development of this CADD profiles to SDTS as an ANSI (American National Standards Institute) Profile. FGDC would serve as the Target Authorization Body until this CADD profile becomes an ANSI profile.

Dated: June 12, 1998.

Richard E. Witmer,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 98–16742 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–4210–01]

Extension of Approved Information Collection, OMB Number 1004–0060

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request an extension of its existing approval to collect certain information from entities desiring a right-of-way across public lands. These entities are required to use a consolidated form, which BLM and several other agencies use for several purposes, including to determine whether or not applicants are qualified to hold right-of-way grants across Federal lands.

DATES: Comments on the proposed information collection must be received by August 24, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to: Director (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WoComment@WOblm.gov. Please include ATTN: 1004–0060 and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record; Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452–7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Title XI of the Alaska National Interest Lands Conservation Act of December 2, 1980, requires the use of a consolidated form by the Department of Agriculture, Interior and Transportation in connection with applications for rights-of-way (R/W's) for transportation and utility systems. This form is called SF–299, "Application for Transportation and Utility System and Facility." BLM uses the same form for R/W's under the Federal Land Policy and Management Act of 1976 and the Mineral Leasing Act. The National Park Service requested that it be able to use the form for R/W applications across lands that it administers. The information collection package being sent to OMB will reflect this request.

The Federal agencies using this form use it to identify and communicate with applicants, to evaluate the applicant's qualifications, and to identify the project location. The project's location is needed to determine impacts, the project's compatibility with other existing and proposed land uses, and alternative routes and modes considered by the applicant. If the agencies do not have this information, they cannot determine if the applicant is qualified to hold a R/W authorization. Lack of information would also affect the Government's ability to determine cost reimbursement and rental amounts due. The result would be the loss of revenue due to the Government or excessive payments from private sector businesses and individuals.

Based on BLM's experience processing R/W applications and information from the other agencies using this form, there are an estimated 4,900 applications annually. The respondents are individuals, companies, and State and local government agencies, seeking a R/W across land administered by the federal government. The public reporting burden for the information collection is estimated to average 2 hours per response. The frequency of response is once. The estimated total annual burden on new respondents is about 9,800 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 12, 1998.

Carole J. Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–16739 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–1030–2–24–1A]

Request for Approval of a New Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to seek approval from the Office of Management and Budget (OMB) to collect certain information from visitors to the Wild Horse and Burro Internet Adoption Site. The information, which will be supplied on a voluntary basis, will be used to improve the website and the overall management of the wild horse and burro program.

DATES: Comments on the proposed information collection must be received by August 24, 1998 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group, Bureau of Land Management, 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240. Comments may be sent via Internet to: WOComment@blm.wo.gov. Please include "Attn.: 1004–NEW" and your name and address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L St., NW, Washington, DC.

Comments will be available for public review and inspection at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harry Moritz, (703) 440–1677, e-mail address: h35morit@es.blm.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on: (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments sent in response to this notice and include them with its request for approval from OMB under 44 U.S.C. 3501 et seq.

On December 5, 1971, the Wild, Free-Roaming Horse and Burro Act, commonly referred to as the Wild Horse and Burro Act, became a Federal law. In 1998, the twenty-seventh anniversary of the Act, the public plays a major role in preserving wild horses and burros as a cultural icon. Since 1973, over 140,000 wild horses and burros have been adopted throughout the United States. Each year as many as 9,000 wild horses and burros are adopted. More than half of these animals are placed through the efforts of BLM's Eastern States Office.

The Act requires the protection, management, and control of wild, free-roaming horses and burros on public lands at population levels that assure a thriving ecological balance and multiple-use relationship. BLM developed a Strategic Plan for the Management of Wild Horses and Burros on Public Lands that established long-term goals and objectives for the wild horse and burro program. The plan, approved in 1992, is a product of BLM's commitment to manage wild horses and burros as part of the natural ecosystem and recognizes the biological, social, and cultural attributes that these animals possess.

To address management goals and requirements, BLM's Eastern States Office conceived and implemented the Internet Wild Horse and Burro Adoption Pilot Project. Through the Pilot Project, BLM hopes to reach out and contact new potential adopters—people who have and use home computers and often have children living at home. These additions to our adopter base could potentially increase BLM's ability to place additional animals in safe, secure, and happy adoptive homes.

The Internet adoption site will contain a series of questions designed to solicit customer comments, feedback, and information. BLM will use these responses to determine whether or not to continue the pilot program, and, if the program is continued, what improvements to make.

The questions asked are: What state are you from? What city? How did you learn about this site? Will you be participating in the Internet adoption? What more could we do to make you want to adopt using the Internet? Have you adopted any BLM wild horses or burros before? Would you be more willing to adopt if you could pick up the horses closer to your home? How could we improve this site? Any other comments or suggestions? To respond to these questions, participants would use "Yes" or "No" radio buttons, drop down selection menus, or blank screens, depending upon the question.

The Wild Horse and Burro Internet Adoption Program could potentially be implemented with a general request for comments and suggestions, but a specific set of questions is more likely to generate responses useful to BLM's Eastern States Office in improving the website and the overall management of the adoption program.

BLM estimates that it will take an average of 3 minutes for each electronic response, and that the number of respondents will be 600 annually. The estimated annual burden hours is 30. Each response is voluntary. The respondents are potential adopters of wild horses and burros.

Anyone interested in the HTML code for the questions and format may obtain a copy from the individual named in the **FOR FURTHER INFORMATION CONTACT** section.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 15, 1998.

Carole J. Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–16740 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–8096–03]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for approximately 11,572 acres. The lands involved are in the vicinity of Icy Bay, Alaska.

Copper River Meridian, Alaska

T. 21 S., R. 24 E.,
T. 21 S., R. 25 E.,
T. 22 S., R. 25 E.,
T. 23 S., R. 25 E.,
T. 21 S., R. 26 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 24, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–16732 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP8–0233]

Cancellation of Eastern Washington Resource Advisory Council Tour and Meeting

AGENCY: Bureau of Land Management, Spokane District.

ACTION: The tour and meeting of the Eastern Washington Resource Advisory Council scheduled June 25, 1998, in Spokane, Washington has been canceled.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: June 19, 1998.

Joseph K. Buesing,

District Manager.

[FR Doc. 98–16901 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–08–1430–01; AZA–30391]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Maricopa County, Arizona have been examined and found suitable for classification for lease or conveyance to Maricopa County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Maricopa County Board of Supervisors proposes to use the lands for equestrian facilities.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,
Sec. 12, N½SE¼SE¼.
Containing 20 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Those rights for a switching station granted to the Bureau of Reclamation by Right-of-way PHX–086777.
5. Those rights for a flood control project granted to the Flood Control District by Right-of-way A–3959.
6. Those rights for the Salt River Project granted to the Bureau of Reclamation by Right-of-way A–12965.
7. Those rights for a power transmission line granted to the Salt River Project by Right-of-way A–23884.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Office Manager, Phoenix Field Office, at the above address.

Classification Comments

Interested parties may submit comments involving the suitability of the land for equestrian facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for equestrian facilities.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 16, 1998.

Michael A. Taylor,

Field Office Manager.

[FR Doc. 98–16751 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

Title: Production Accounting and Auditing System Oil and Gas Reports, OMB Control Number: 1010–0040.

Comments: This collection of information has been submitted to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs (OMB Control Number: 1010–0040), Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e-Mail address is RMP.comments@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis.C.Jones@mms.gov.

Dates: Written comments should be received on or before July 24, 1998.

Summary: The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian

lands. The Secretary is authorized to manage lands, to collect royalties due, and to distribute royalty funds. The Minerals Management Service (MMS) is responsible for the royalty management functions assigned to the Secretary and has developed the Production Accounting and Auditing System (PAAS) as a part of an overall effort to improve management of the Nation's resources.

PAAS is an integrated computer system based on production and processing reports submitted by lease operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. It is used in conjunction with MMS Auditing and Financial System (AFS), which provides payment and sales volumes and values as reported by payors. These data are compared to production and processing volumes reported on PAAS. The comparison enables MMS to verify that proper royalties are being received for the minerals produced.

MMS uses six forms for gathering oil and gas production data from industry. The production and disposition reports provide MMS with ongoing information on lease and facility production, sales volumes, and inventories. The reports summarize all operations on a lease or facility during a reporting period. They identify production by well number and sales by product. Data collected by PAAS are used as a method of cross-checking reported production with sales reported to the AFS. Failure to collect all of this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data are shared electronically with the Bureau of Land Management and MMS's Offshore Minerals Management so they can perform their lease management responsibilities.

Description of Respondents: Companies or individuals (operators) that operate leases to develop, produce, and dispose of minerals from Federal or Indian lands.

Forms Numbers: Form MMS–4051, Facility and Measurement Information Form; Form MMS–4054, Oil and Gas Operations Report; Form MMS–4055, Gas Analysis report, Form MMS–4056, Gas Plant Operations Report, Form MMS–3160, Monthly Report of Operations, and Form MMS–4058, Production Allocation Schedule Report.

Frequency of Response: Monthly.

Estimated Reporting Burden: 15 to 30 minutes per manually completed report, 7 to 15 minutes per electronically completed report.

Recordkeeping Burden: 12 hours annually for recordkeeping.

Annual Responses: 356,668.

Annual Burden Hours: 81,938 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 29, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–16723 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR Parts 764 and 822.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 24, 1998, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR Part 764; and Special permanent program performance standards—operations in alluvial valley floors, 30 CFR Part 822. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0030 for Part 764, and 1029–0049 for Part 822.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on April 6, 1998 (63 FR 16825). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: State processes for designating areas unsuitable for surface coal mining operations, 30 CFR Part 764.

OMB Control Number: 1029–0030.

Summary: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: The 5 individuals, groups or businesses who petition the States, and the 4 State regulatory authorities who must process the petitions.

Total Annual Responses: 5.

Total Annual Burden Hours: 7,324.

Title: Special permanent program performance standards—operations in alluvial valley floors, 30 CFR Part 822.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10)(F) of the Surface Coal Mining and Reclamation Act of 1977 (the Act) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique

hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 10 surface coal mining operators who operate on alluvial valley floors.

Total Annual Responses: 10.

Total Annual Burden Hours: 1,000.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer,725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated June 19, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–16810 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 12–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, July 31, 1998, 10:00 a.m.

SUBJECT MATTER:

A. Oral Hearings on Objections to Proposed Decisions on claims against Albania, as follows:

10:00 a.m. Claim No. ALB–247 Stephen J. Pantos

11:00 a.m. Claim No. ALB–117 James Elias

B. Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

1. Claim No. ALB–042 Xhani Femera, et al.
2. Claim No. ALB–072 Thomas M. Toma
3. Claim No. ALB–092 Thanas A. Laske
4. Claim Nos. ALB–137 Klementina Sevo ALB–138 Marianthi Fili
5. Claim No. ALB–153 Bibi Xhemal Bejleri
6. Claim No. ALB–173 Marigo Vasiliades,et al.
7. Claim No. ALB–187 Helena Liolin
8. Claim No. ALB–203 Stavri G. Buri
9. Claim No. ALB–220 Gjergji Gjeli

C. Issuance of Proposed Decisions on claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC June 19, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–16940 Filed 6–22–98; 11:37 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment and Training Administration

Grants and Cooperative Agreements; Availability, etc.: Postsecondary Education and School-to-Work Systems

ACTION: Notice inviting proposals to identify and develop intermediary entities that would serve as agents to connect schools, employers and other stakeholders involved in building School-to-Work (STW) systems.

SUMMARY: This notice contains all of the necessary information and forms to apply for grant funding. The Departments of Labor and Education jointly invite proposals for a new award in FY 98, as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). The Departments believe that the long term effectiveness of STW partnerships is enhanced when there are convenient and effective mechanisms for connecting school based learning and work based learning, as well as mechanisms for connecting the various STW stakeholders, particularly schools and employers. Further, the Departments believe that the capability of STW systems to be sustained beyond the life of the Act will be influenced by the identification, evaluation, and replication of intermediary entities that would serve as agents to connect schools, employers and other community stakeholders.

DATES: Applications will be accepted commencing June 24, 1998. The closing date for receipt of applications is August 10, 1998, at 4 P.M., (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to Ms. Laura Cesario, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210, Reference: SGA/DAA 98–013.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Ms. Laura Cesario, Division of Acquisition and Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (DAA 98–013) and a contact name and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Home Page.

SUPPLEMENTARY INFORMATION:

I. Definition of Intermediary

Any entity or organization which brokers and supports relationships between schools and employers for the purpose of providing students with real work experiences. Intermediary organizations may recruit employers for schools, match students with work-based learning opportunities, provide technical assistance to teachers, employers, parents or other stakeholders, and help students connect what they are learning on the job with their classroom activities. Intermediary organizations may include, but are not limited to nonprofit organizations, Chambers of Commerce, workforce development or employment entities, or schools.

II. Background

Status of Investments in STW Systems

Building the capacity of key stakeholders to participate in STW systems at the community level is critical for STW sustainability. The strength of the STW framework is the

foundation of voluntary partnerships comprising key stakeholders that cross traditional boundaries of association. By statute, most of the Federal funds that a State receives in its implementation grant go to local partnerships. The law also provides direct federal funding for local partnerships that are ready to implement STW but are located in States that have not received implementation funds or are in their first year of implementation. To date, 105 communities have received either Local Partnership grants or Urban/Rural Opportunities Grants (UROG) and more than 900 additional local partnerships have been formed and funded through State implementation grant roll-out strategies.

UROGs provide direct federal funding in high poverty communities for the purpose of addressing the specific challenges of implementing STW systems in urban and rural locales. These initiatives are funded for 5 years. In the first round of competition in FY 1994, $10 million was distributed to 21 partnerships. In FY 1995, $7.5 million was awarded for continuation grants and an additional $17 million was invested in 32 new partnerships. FY 1996 funds are being used to invest $35 million in 30–40 new partnerships and in continued funding to grantees from rounds one and two.

It is evident, however, that the broad range of work-based learning opportunities that are an essential component of STW are dependent on wide ranging participation of employers. A recent study indicates that employers are participating in greater numbers and that as many as 25% of the nation's employers are involved in some small way in STW. However, the same study indicates that most employers are participating in narrow areas of work-based learning such as job shadowing and mentoring. Employers can learn about and take advantage of STW initiatives. Schools, with dedicated personnel, can take better advantage of the employer resources necessary for the range of work-based learning opportunities appropriate for an effective STW system characterized by strong community partnerships.

Two other circumstances reinforce the urgency of investments in the formation and the long term effectiveness of community STW partnerships. First, early surveys of STW partnerships conducted through the National School-to-Work Evaluation revealed that only a small percentage of local STW partnerships were engaged in all three primary STW components: school-based learning, work-based learning, and connecting activities. Difficulties connecting these components was cited as a common theme, as was logistical problems associated with linking partners with diverse agendas and constrained available time to devote to establishing and nurturing these linkages. Second, the National School-to-Work Advisory Council, in its most recent meetings, strongly recommended that a greater emphasis needs to be placed on these connecting activities if sustainability is to be achieved in STW systems. The Council specifically recommended future investments in the identification, evaluation and replication of intermediary entities that would serve as agents to connect schools, employers and other community stakeholders.

Therefore, one new comprehensive, targeted investment for FY 97 is being funded that promotes, identifies, strengthens and informs STW partnership formation and sustainability through the use of intermediary entities.

III. Statement of Work

Required Areas of Effort

The successful applicant will assume the lead responsibility for coordination and technical support designed to build the capacity of local communities to: (1) identify intermediary connecting activities, and (2) identify the appropriate community resources to serve as intermediary connections to STW stakeholders. The applicant must provide evidence that the needs of all youth, as defined in the Act, are addressed. The Departments are particularly interested in intermediary relationships through which students participate in STW systems and are not limited by educational or categorical labels. Based on lessons learned from previous national investments, the status of STW systems development, and the urgency of sustaining STW systems, the Departments believe it is necessary to approach the enhancement of intermediary entities that connect STW community partners by requiring the successful applicant to demonstrate concerted effort in the following five activities:

1. *Identify, catalogue, and assess at least 50 examples of STW intermediary activities in established local partnerships.* The nature of intermediary connectors is potentially as varied as each of the communities in which STW systems have been implemented. The Departments are aware that these connectors include a range of diverse entities, including business driven organizations such as, chambers of commerce, existing nonprofit community based organizations, workforce development agencies, central labor councils, and specially created entities to address STW connecting activities. Thus, the Departments are interested in learning more about the nature of these entities: who governs them, how they relate to the community of STW stakeholders, how they gauge their own effectiveness, and what populations are served. Applicants should describe how they will organize the task of identifying and selecting effective STW intermediary activities, how effectiveness will be assessed, and how the critical common features of each will be identified to inform the development of a replicable intermediary framework (see Activity 2). In addition, the applicant should describe how the information will be categorized.

2. *Develop a replicable design of key components of intermediary operation.* Based on identified effective practices gleaned from the sample local partnerships described above, and the relevant literature in the field, the Departments are interested in the development of a replicable design framework from which communities can develop a plan for sustainable intermediary connecting activities in their STW systems. At minimum, this framework should include a description of participating intermediary connectors, a categorization of the qualities of effective intermediary entities, how they are administered, how STW stakeholders contribute to and interact with these entities, how they measure their effectiveness, and how the needs of diverse populations are addressed. The successful applicant will also be expected to actively disseminate the design framework including targeted training sessions, technical assistance institutes, electronic media, publications, conferences and other related means.

3. *Provide intensive Technical Assistance (T.A.) to established STW partnerships to develop effective intermediaries.* Through a well defined process, the successful applicant will be expected to select no fewer than 25 local partnerships that will receive targeted and concentrated technical assistance on intermediary establishment or enhancement. When selecting a local partnership the following factors need to be considered: (1) Are key STW stakeholders represented at the partnership level? (2) Are the needs of all students being addressed? (3) Are intermediaries present in the community and if so, do they offer the potential of connecting school and work? (4) If the intermediary is well established, clear delineations of the

enhancement activities also should be presented.

4. *Establish a framework to assist intermediaries in serving all students.* Based on information obtained and detailed through TASK #1, and the field at large, identify gaps in services to students not typically served by the intermediary. This could include populations such as students with disabilities, academically talented students, or youth who are out of school. The framework should reflect needed supports and accommodations, curricula modifications and other assistance as appropriate. This information should be packaged to assist those currently providing intermediary assistance, built into the TA activities with the 25 local partnerships identified in TASK #3 and be included in the development of a replicable design in TASK #2.

5. *Identify and convene community leaders/Community Based Organizations.* The Departments recognize that replicable and sustained intermediary connecting activities will require knowledgeable community leaders and respected, effective Community Based Organizations (CBOs). The successful applicant will therefore be expected to hold at least two national forums for the purposes of convening CBOs and other organizations in the community representing key STW stakeholders, such as local chambers of commerce, central labor councils, and boards of education. These forums should include an interactive format that uses key features of effective intermediaries identified in Activity 2 as an organizing framework. Opportunities should be provided for attendees to learn about communities where exemplary intermediary sites have been identified by the applicant. Key components to their success will be shared and barriers will be identified.

IV. Eligible Applicants

National non-profit organizations, business organizations, or associations experienced in building the capacity of STW systems nationally who can demonstrate the ability to enlist the support and active participation of key STW stakeholders such as education, business, organized labor, parents, and community based organizations. Potential applicants, however, should note the Departments' priority in seeking applications supported by a consortium of organizations. In preparing the proposal, please use the following headings and respond to the information in each of the following categories.

1. Project Description

Summarize the scope of the project, outline how its activities will relate to the five required areas of activity described in the previous section, and provide succinct and measurable project objectives.

2. Operational Plan

Provide a detailed workplan that includes a description of the proposed activities matched to the objectives presented in the Project Description, with accompanying time lines and individuals responsible. Provide an organizational structure and clear management plan detailing the staff and organizational resources to be devoted to the project. The applicant should clearly, and in detail, show how the proposed work will address each of the activities that are described in the section Required Effort. The time lines should indicate what activities and related results are anticipated for the 18 month funding period and, if continued, what activities and results would be anticipated for future optional funding.

3. Results

The applicant should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results to inform its ongoing operating plan.

4. Capability

The applicant should demonstrate the capability of the organization or consortium and the key staff assigned to undertake the workplan, including examples of prior related efforts that demonstrate accomplishment in developing, implementing, managing and/or researching, and evaluating intermediary relationships in STW. The offeror should also show knowledge of integrating categorical systems in the intermediary process, as well as, knowledge and experience with business/education partnership development and management.

V. Funding Availability and Period of Performance

The Departments expect to make one award for approximately $1,500,000. The period of performance will be for 18 months from the date the grant is awarded. The Departments may, at their option, provide additional funds beyond the 18 months, depending on funding availability and performance of the offeror.

VI. Application Submittal

Applicants must submit four (4) copies of their proposal, with original signatures. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, "Application for Federal Assistance, (Appendix A) and Budget Information Sheet," (Appendix B). All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funds. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

VII. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calender day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and federal holidays. The term "post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied

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or affixed on the date of mailing by an employee of the U.S. Postal Service.

VIII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address. TELEGRAPHED AND/FAXED APPLICATIONS WILL NOT BE HONORED. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

1. The extent to which the applicant outlines a clear and detailed plan of operation. (40 points)

- Does the plan provide clear strategies for addressing the tasks specified under required efforts?
- Is the plan likely to result in the identification of effective intermediary practices; result in the development and enhancement of intermediary activities in 25 STW communities; and establish a framework for serving all youth; and likely to engage key STW stakeholders?
- Are the outcomes proposed specific and replicable?
- Does the proposal provide an organizational structure and clear management plan detailing staff and organizational resources to be devoted to this project?
- Does the plan include a comprehensive dissemination strategy that reaches all key stakeholders.

2. The extent to which the applicant demonstrates the capability and capacity to meet the requirements of this solicitation. (30 points)

- Does the organization provide examples and documentation of prior related accomplishments in developing, implementing, managing, researching and evaluating intermediary relationships in STW?
- Do the organizations participating reflect a broad range of school-to-work stakeholders?
- Are the roles and activities of stakeholder organizations clearly defined?
- Does the organization possess the capability to develop and disseminate technical assistance?
- Does the organization demonstrate knowledge of integrating categorical systems in the intermediary process?

3. The extent to which the applicant demonstrates the willingness and ability to engage and convene other organizations that are critical to the success of engaging and developing intermediaries in School-to-Work system building efforts. (20 points)

- Does the applicant propose specific activities that are likely to result in strategic alliances with key STW stakeholders, including but not limited to business, organized labor, public and private sector entities and community based organizations?
- Does the applicant show relevant past experience in collaborating with national, state and local groups involved with education and workforce development efforts?
- Does the applicant possess a wide range of experience in convening conferences that bring together disparate groups?
- Does the organization demonstrate extensive knowledge with business/education partnership development and management?

4. The overall ability of the applicant's plan to evaluate its activities and use its results to inform the ongoing plan. (10 points)

- Is the plan for evaluation clearly tied to clear objectives and specific outcomes?
- Is there a clear mechanism for adjusting the work plan based on results?
- Are there clear descriptions of the type of data to be collected and a clear data collection plan?

The grants will be awarded based on the applicant response to the above mentioned criteria and that which is otherwise advantageous to the Departments.

XI. Reporting Requirements

Once a grant is awarded, the awardee will be required to submit reports on a quarterly basis; a Standard Form 269 (financial status report), and a narrative report (in a format to be determined). A final report will be required at the conclusion of the project. Location of model sites and sites to receive technical assistance are to be submitted to the Grant Officer's Technical Representative (GOTR), identified in the grant award document, for approval before commencing any activities. Conference plans and all products including publications shall be submitted for review to the National S–T–W Office to ensure alignment and collaboration with ongoing national activities.

Signed in Washington D.C., this 18th day of June, 1998.

Janice E. Perry,

Grant Officer.

Appendix A: SF Form 424—Application Form

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	☐ Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (Specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 17-249 TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 98-16761 Filed 6-23-98; 8:45 am]
BILLING CODE 4510-30-C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Ventilation System Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Mine Ventilation System Plan. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Better Information Contact section of this notice.

DATES: Submit comments on or before August 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Underground mines present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions.

II. Current Actions

A well planned mine ventilation system is necessary to ensure a fresh air supply to miners at all working places, to control the amounts of harmful airborne contaminants in the mine atmosphere, and to dilute possible accumulation of explosive gases.

The standard requires mine operators to prepare a written plan of the mine's ventilation system and to update the plan annually. The purposes are to insure that each operator routinely plans, reviews, and updates the plan; to insure the availability of accurate and correct information; and to provide MSHA with the opportunity to alert the mine operator to potential hazards.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Mine Ventilation System Plan.
OMB Number: 1219–0016.
Agency Number: MSHA 401.
Recordkeeping: 1 year.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 57.8520.
Total Respondents: 240.
Frequency: Annually.
Total Responses: 240.
Average Time per Response: 24 hours.
Estimated Total Burden Hours: 5,760.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): $46,080.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Theresa M. O'Malley,

Acting Director, Program Evaluation and Information Resources.

[FR Doc. 98–16758 Filed 6–23–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Operations Under Water

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before August 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-Mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 75.1716, 75.1716–1 and 75.1716–3 require operators of underground coal mines to notify MSHA of proposed mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. This is a statutory provision contained in Section 317(r) of the Federal Mine Safety and Health Act of 1977. The regulation is necessary to prevent the inundation of underground coal mines with water, which has the potential of drowning miners.

The coal mine operator submits an application for the permit to the District Manager in whose district the mine is located. Applications contain the name and address of the mine; projected mining and ground support plans; a mine map showing the location of the river, stream, lake or other body of water and its relation to the location of all working places; a profile map showing the type of strata and the distance in evaluation between the coal bed and the water involved.

II. Current Actions

Section 317(r) of the Federal Mine Safety and Health Act of 1977 requires that when a mine operator mines coal from a mine that requires construction, operation, and maintenance of tunnels under any river, stream, lake or other body of water that could potentially pose a hazard to miners, such operator is required to obtain a permit from the Secretary, which shall include such terms and conditions as deemed appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. This section of the Act is enforced through application 30 CFR 75.1716, which requires the underground mine operators to notify MSHA prior to mining under any body of water (30 CFR 75.1716–1) and to submit a permit application to mine under a body of water (30 CFR 75.1716–3), for the MSHA District Manager's approval prior to mining under the body of water. MSHA is obligated to respond in writing to the notice (30 CFR 75.1716–2) and to the permit application (30 CFR 75.1716–4). MSHA routinely receives the notice and the permit application as a single correspondence due to the annual review of the mine ventilation plan map one year mining projections [30 CFR 75.317(b)(14)] and the annual submittal of a certified mine map, which is required to show the locations of mines above and below and bodies of water above the active mine [30 CFR 75.1200–(I and j) and 30 CFR 75.1203). The annual review of these maps provide early detection of potential inundation hazards and as a result reduce or eliminate the need for a separate notice under 30 CFR 75.1716-1.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Operations Under Water.

OMB Number: 1219–0020.

Agency Number: MSHA 207.

Recordkeeping: The CFR does not mention whether or not a record of the permit should be kept and for how long. However, MSHA maintains a copy of the permit application and the correspondence granting the permit in the mine file through the active life of the mine. In addition, both the permitted mine workings and the location and extent of the body of water are a permanent part of the information required on the certified mine map. MSHA occasionally will require the conditions under which a permit application is approved to be included in the mine roof control plan (30 CFR 75.220) where the District Manager determines such information is necessary to adequately protect miners.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
75.1716	Included in 75.1716–3	Occasional	Included in 75.1716–3	5 hours	Included in 75.1716–3.
75.1716.1	.....	Included in 75.1716–3.	Included in 75.1716–3	5 hours	Included in 75.1716–3.
75.1716–3	14 new or revised notices/ permit appls.	On occasion	14	5 hours	70 hours.
Totals	14	On occasion	14	5 hours	70 hours.

Estimated Total Burden Cost: $3,010.00.

Total Burden Cost (capital/startup): Certified Mail $210.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 18, 1998.

Theresa M. O'Malley,

Acting Director, Program Evaluation and Information Resources.

[FR Doc. 98–16759 Filed 6–23–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Slope and Shaft Sinking Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts and preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Slope and Shaft Sinking Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before August 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The standard 77.1900 was enacted in 1971 and was amended in 1982 and again in 1995. The standard requires coal mine operators to develop a prudent engineered design plan to develop a slope or shaft whenever an operator decides to open such a coal mine. The plan is required by the standard and is to be reviewed and approved by MSHA before the actual hazardous work begins.

II. Current Actions

The average 25 slope or shaft development plans that MSHA receives on an annual basis, are reviewed to ensure that the required work is performed in a safe manner, and it protects those miners performing the work. Prudent engineering design does evolve along with improved machinery to perform the work, but there has not been any revision to the requirements for such a plan.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Slope and Shaft Sinking Plans.
OMB Number: 1219–0019.
Agency Number: MSHA–208.
Recordkeeping: 3 years.
Agency Number: MSHA–208.
Recordkeeping: Records are normally required to be kept for 3 years.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc.: 30 CFR 77.1900.
Total Respondents: 1,700.
Frequency: Whenever an operator decides to develop a slope or shaft.
Total Responses: 25.
Average Time per Response: 40 hours.
Estimated Total Burden Hours: 1,000.
Total Burden Cost (capital/startup): $43,000.
Total Burden Cost (operating/maintaining): $11,250.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Theresa M. O'Malley,
Acting Director, Program Evaluation and Information Resources.

[FR Doc. 98–16760 Filed 6–23–98; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of Results of Examinations of Self-Rescuers

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension. MSHA is particularly interested in comments which:

*evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*enhance the quality, utility, and clarity of the information to be collected; and

*minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the FOR FURTHER INFORMATION CONTACT section of this notice.

DATES: Submit comments on or before August 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvery, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT

Theresa M. O'Malley, Program Analysis Officer, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1948. Mrs. O'Malley can be reached at tomalley@msha.vog (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION

I. Background

The Self-Rescue devices are subjected to harsh in-mine conditions that may result in damage to the device which could cause the device to malfunction or provide less than adequate protection. The 90-day examination of the device is necessary in order to provide for early detection of potential problems that would otherwise go undetected. Requiring the mine operator to certify the examination was made and to record any identified defects gives credibility to the program and decreases the likelihood of a person being required to use a device that may not function as designed. In addition, this information is useful in determining how durable a device may be when subjected to the harsh conditions that are encountered during in-mine use. This allows for early detection of design problems that may require the manufacturer to make changes to a device in order to assure the device will continue to function as designed and provide adequate protection in the event of an emergency.

II. Current Actions

In 1997, a large number of problems were identified with self-rescue devices that indicated either the 90-day examinations were not being conducted, or defective devices were not being removed from service. As a result of these problems, MSHA issued a Program Information Bulletin reminding the industry of the standard requiring the 90-day examination and certification of the self-rescue devices, and requiring devices that fail the 90-day examination to be removed from service. In addition, MSHA increased the inspection effort to include quarterly evaluation of the mine operators records as well as a physical examination of a representative number of self-rescue devices. However, due to the large number of devices in use in the mining industry (approximately 50,000 devices), it is essential that mine operators continue to certify that the 90-day examination was conducted on each device, and record the results for devices that failed the 90-day examination. Although MSHA has increased the enforcement effort, the large number of devices in use in the mining industry make it impractical for MSHA to be able to examine each of the devices quarterly.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Records of Results of Examinations of Self-Rescuers.

OMB Number: 1219–0044.

Agency Number: MSHA 243.

Affected Public: Business or other for-profit.

Cite/Reference/Form/Etc: 30 CFR 75.1714–3.

Total Respondents: 1,284.

Frequency: Quarterly.

Total Responses: 4,000.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 2,000 hours.

Estimated Total Burden Cost:

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $86,000).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 19, 1998.

Theresa M. O'Malley,

Acting Director, Program Evaluation and Information Resources.

[FR Doc. 98–16805 Filed 6–23–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Pension Benefit Guaranty Corporation; Proposed Extension/Reinstatement of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (the Agencies), as part of their continuing efforts to reduce paperwork and respondent burden, conduct a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, the Agencies are soliciting comments concerning the proposed extension/reinstatement of approval of this collection of information—the Form 5500 Series, Annual Return/Report of Employee Benefit Plan—for the 1998 plan year. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice. Although the 1998 Form 5500 Series is not yet available, it is not expected at this time to differ materially from the 1997 Form 5500 Series.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 24, 1998. The Agencies are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected;
- Comment on estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782 (this is not a toll-free number). All comments will be shared among the Agencies.

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 1997, the Agencies published a Notice of Proposed Revision of Annual Information Return/Reports (September 3 Notice) in the **Federal Register** (62 FR 46556) to streamline and simplify the annual return/report forms filed for pension, welfare and fringe benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code).

The Agencies anticipate that the revision of the annual return/report form (Form 5500 Series) will be finalized and available for use for plan years which begin in 1999 (see the Agencies' notice concerning their submission of the revised Form 5500 Series to OMB for review and approval, also published in today's **Federal Register**). OMB approval for the existing Form 5500 Series will expire prior to implementation of the proposal to revise the Form 5500 Series. As a result, the Agencies are requesting an extension/reinstatement of the current ICR through the filing period for the 1998 Form 5500 Series.

The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 is a compliance and research tool for the Agencies, and a source of information for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Agencies solicited comments on the ICR included in the September 3 Notice, and specifically requested comments on the Agencies' estimates of burden hours and burden estimation methodologies. The Agencies received comments indicating that estimates of the time required to collect the information and prepare the forms and related schedules were unrealistically low. In an effort to respond to those comments, the Agencies are currently in the process of evaluating the existing burden estimation methodologies to develop a revised and uniform burden estimation methodology. However, the burden hour estimates in this Notice are based on the methodologies described in the September 3 Notice, pending the availability of revised burden estimates.

To avoid unnecessary duplication of public comments, the supplementary Paperwork Reduction Act information published in the September 3 Notice is incorporated herein by this reference in its entirety, and comments submitted thereon addressing the Agencies' burden estimates will be treated as comments on this Notice of Proposed Extension/Reinstatement of Information Collection Request.

II. Current Actions

The Agencies intend to request an extension/reinstatement of the currently approved ICR through the filing period for the 1998 Form 5500 Series because the new forms are not scheduled to be implemented until 1999 plan years.

Although the 1998 Form 5500 Series is not yet available, it is not expected at this time to differ materially from the 1997 Form 5500 Series. However, the following limited changes have been made to the 1997 Form 5500 Series as of the date of this notice.

Schedule B: Technical revisions to reflect requirements for 1998 plan years (e.g., elimination of the box for "condition code" on line 12a in Part II of Schedule B, resulting from an amendment to the Code).

Schedule F: The Taxpayer Relief Act of 1997 amended Code section 6039D to include adoption assistance programs. As a result, a checkbox was added to line 2 of Schedule F to indicate that the fringe benefit plan is an adoption assistance program.

Agencies: Department of Labor, Pension and Welfare Benefits Administration (DOL, PWBA); Department of the Treasury, Internal Revenue Service (IRS); Pension Benefit Guaranty Corporation (PBGC).

Title: Form 5500, Form 5500–C/R and Schedules.

Type of Review: Extension of a currently approved collection for Pension and Welfare Benefits Administration and Internal Revenue Service; reinstatement without change of an expired collection for Pension Benefit Guaranty Corporation.

OMB Numbers: 1210–0016 (Pension and Welfare Benefits Administration); 1545–0710 (Internal Revenue Service); 1212–0026 (Pension Benefit Guaranty Corporation).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Form Number: Form 5500, Form 5500–C/R and Schedules.

Total Respondents: 801,934 for PWBA and PBGC; 901,400 for IRS.

Total Responses: 801,934 for PWBA and PBGC; 901,400 for IRS.

Frequency of Response: Annually.

Estimated Burden Hours, Total Annual Burden: 1.68 million burden hours (using the PWBA methodology) to 56.4 million burden hours (using the IRS methodology) for preparing the Form 5500 Series and filing it with the government. This total burden is shared among the Agencies. See the September 3 Notice for detailed information on the burden estimation methodology.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 18, 1998.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

Garrick R. Shear,

IRS Reports Clearance Officer.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–16790 Filed 6–23–98; 8:45 am]

BILLING CODE 4510–29–P

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration, the price regulation and a proposed interim procedural rule.

DATES: The meeting is scheduled for Wednesday, July 1, 1998 to commence at the close of the Proposed Rulemaking Public Hearing beginning at 9:00 a.m. as previously noticed at 63 FR 31943–31945.

ADDRESSES: The meeting will be held at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, NH.

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Commission will consider matters relating to administration and the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also consider a proposed interim procedural rule regarding rulemaking procedures and procedures for conducting producer referenda.

Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.

Kenneth Becker,

Executive Director.

[FR Doc. 98–16615 Filed 6–23–98; 8:45 am]

BILLING CODE 1650–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 21, "Reporting of Defects and Noncompliance."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services to NRC licensed facilities or activities.

6. An estimate of the number of responses: 230 responses.

7. The estimated number of annual respondents: 100 respondents.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 17,093 (13,480 reporting hours and 3,613 recordkeeping hours).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by July 24, 1998.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of June 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–16744 Filed 6–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its May 23, 1997, application for proposed amendment to Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have reduced the short-term limit for Dose Equivalent I-131 activity in the reactor coolant from 4.0 microcuries/gram to 3.0 microcuries/gram.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 30, 1997 (62 FR 40847). However, by letter dated April 17, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 23, 1997, and the licensee's letter dated April 17, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College

Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 17th day of June 1998.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16743 Filed 6–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2); Confirmatory Order Modifying License Effective Immediately

I

Tennessee Valley Authority (TVA, or the Licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorizes operation of Sequoyah Nuclear Plant, Units 1 and 2 located in Hamilton County, Tennessee.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers" and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, including Sequoyah Nuclear Plant, Units 1 and 2, the NRC staff has met with the licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

TVA was one of the licensees with which the NRC staff held meetings. At the May 30, 1997, meeting, the NRC staff reviewed with TVA the schedule of Thermo-Lag corrective actions for the Sequoyah units described in the handout presented to the NRC during that meeting. Based on the information provided during the meeting, as well as a subsequent letter dated June 25, 1997, the NRC staff has concluded that the schedules presented by TVA are reasonable. This conclusion is based on (1) the amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant, but unrelated issues that TVA is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by TVA must be completed in accordance with current schedules. By letter dated April 29, 1998, the NRC staff notified TVA of its plan to incorporate TVA's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated May 13, 1998, TVA provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of May 13, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured.

To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its May 13, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, It Is Hereby Ordered, effective immediately, that:

The Tennessee Valley Authority (TVA) shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at the Sequoyah Nuclear Plant, Units 1 and 2 as described in the TVA submittal dated June 25, 1997. Walkdowns, evaluations, and upgrades will be completed by June 30, 1999.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II at the Atlanta Federal Center, 23 T85, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3415, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 18th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 98–16745 Filed 6–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc., et al.; Vogtle Electric Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to Southern Nuclear Operating Company, Inc., et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, respectively, located in Burke County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the common VEGP Technical Specifications to allow an increase in the Unit 1 spent fuel storage capacity from 288 to 1476 fuel assemblies. The increase in spent fuel storage capacity is achieved by replacing the existing spent fuel storage racks, a process referred to herein as "reracking." The proposed action is in accordance with the licensee's application for license amendments dated September 4, 1997, as supplemented by letters dated November 20, 1997, May 19 and June 12, 1998.

The Need for the Proposed Action

The VEGP spent fuel pools (SFPs) are operated as a single facility and accept spent fuel from both Units 1 and 2. The VEGP Unit 2 spent fuel pool has a storage capacity of 2098 fuel assemblies. Under current conditions, the SFPs will lose the capacity for a full-core off-load (193 fuel assemblies) in the year 2005. There are no independent commercial spent fuel storage facilities operating in the U.S., nor are there any domestic reprocessing facilities; therefore, the projected loss of storage capacity in the VEGP SFPs would affect the licensee's ability to operate VEGP. The proposed amendments are needed to ensure the capability of full-core off-load until the year 2015.

Environmental Impacts of the Proposed Action

Radiological Impacts

VEGP has waste treatment systems designed to collect and process waste that may contain radioactive material. The radioactive waste treatment systems were evaluated in the "Final Environmental Statement Related to the Operation of Vogtle Electric Generating Plant," NUREG–1087, March 1985. The SFP cooling and purification system is designed to remove the decay heat generated by stored spent fuel assemblies and to clarify and purify the water to permit unencumbered access to the plant fuel storage area and maintain optical clarity of the SFP water.

Liquid Radioactive Waste

It is not expected that there will be a significant increase in the liquid release of radionuclides from the plant as a result of the SFP reracking modifications. The SFP cooling and purification system operates as a closed system. The SFP demineralizer resin removes soluble radioactive materials from the SFP water. A small increase in activity on the filters and demineralizers may occur during the installation of the new racks because of the more frequent fuel shuffling and underwater pressure washing of the old racks during removal. However, the amount of radioactivity released to the environment as a result of the proposed reracking is expected to be negligible.

Solid Radioactive Waste

The existing spent fuel racks in the VEGP Unit 1 SFP will be removed from the site by a salvage company. After usable material has been salvaged, the remainder will be volume reduced and disposed of at the Barnwell, South Carolina, facility. In a worst-case scenario, with no salvageable material and no volume reduction, the resulting material would represent 44 percent of the expected solid waste volume associated with VEGP Units 1 and 2 for 1998; however, this volume is not significant when viewed over the 40-year operational lifetime of the VEGP facility.

In addition to the spent fuel assemblies themselves, the only other solid radioactive waste generated by the SFP is the SFP polisher resin, which is used for water clarity. As indicated in the licensee's submittal of September 4, 1997, these resins are replaced approximately once per refueling cycle. No additional spent resins are expected to be generated by the pool cleanup system as a result of the expanded spent fuel storage capability; therefore, no significant increase in the volume of solid radioactive waste associated with these resins is expected with the proposed amendments.

Radioactive Material Released to the Atmosphere

The only radioactive gas of significance that could be attributable to storing additional spent fuel assemblies for a longer period of time, made possible as a result of the proposed reracking, would be the noble gas radionuclide krypton-85 (Kr-85). Experience has demonstrated that after spent fuel has decayed 4 to 6 months, there is no longer a significant release of fission products, including Kr-85, from stored spent fuel containing cladding defects. The licensee has stated that in the past 2 years, the Kr-85 concentrations measured from the fuel storage area ventilation release point have been negligible and the licensee expects that enlarging the storage capacity of the SFP will have no effect on the average annual quantities of Kr-85 released to the atmosphere.

Iodine-131 released from spent fuel assemblies to the SFP water will not be significantly increased as a result of the expansion of the fuel storage capacity since the iodine-131 inventory in the fuel will decay to negligible levels between refuelings.

Most of the tritium in the SFP water results from activation of boron and lithium in the primary coolant during power operation. A relatively small amount of tritium is produced during reactor operation by the fission process within the reactor fuel. The subsequent diffusion of the tritium through the fuel and cladding represents a small contribution to the total amount of tritium in the SFP water. Tritium releases from the fuel assemblies occur mainly during reactor operation and, to a limited extent, shortly after shutdown. Thus, expanding the SFP capacity will not increase the tritium concentration in the SFP.

Most airborne releases of tritium and iodine from nuclear power plants result during refuelings from evaporation of reactor coolant, which contains tritium and iodine in higher concentrations than in the SFP. The storage of additional spent fuel assemblies in the SFP is not expected to significantly increase the SFP bulk water temperature, and, therefore, evaporation rates from the SFP are not expected to significantly increase. Consequently, it is not expected that there will be any significant change in the annual release of tritium or iodine as a result of the proposed modifications from that previously evaluated in NUREG–1087.

Occupational Doses

The licensee estimates that the increased number of fuel assemblies stored in the Unit 1 SFP may result in a small increase in doses in the areas adjacent to the sides of the SFP, although it will not be enough to change any existing radiation zone designations. To minimize any potential dose rate increases from the increased storage of spent fuel, the licensee plans to control the placement of freshly discharged fuel so that it is not placed in SFP rack positions adjacent to the sides of the SFP. Dose rates on the fuel pool level are primarily due to radionuclides in the pool water. During normal operations, dose rates in this area are generally 2.5 mrem/hr or less. The staff finds these dose rates to be acceptable and in accordance with SFP dose rates at other plants.

The licensee will constantly monitor the doses to the workers during the reracking operation using electronic personnel dosimetry. Each diver will be monitored using multiple teledosimetry devices. These teledosimetry devices will transmit diver dose and dose rate data that will be continuously monitored adjacent to the SFP. Cameras will be used to monitor the movements of the divers. The licensee will use continuous air samplers when there is a potential for airborne activity in the SFP area during the modifications. In addition, the plant effluent radiation monitoring system will monitor any gaseous releases.

The total occupational dose to plant workers as a result of the reracking operation is estimated to be approximately 4.3 person-rem. This dose estimate is based on the licensee's detailed review of the anticipated work activities, their duration, and expected dose rates associated with each of the activities related to the SFP reracking. The upcoming reracking operation at Vogtle Unit 1 will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles. On the basis of its review of the proposed action, the staff concludes that the Vogtle Unit 1 SFP rerack modification can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 4.3 person-rem to perform the proposed SFP rerack is a small fraction of the annual collective dose accrued at Vogtle and, therefore, the staff finds this dose to be acceptable.

Uranium Fuel Cycle and Transportation

The environmental impacts on the uranium fuel cycle and transportation resulting from the use of higher enrichment fuel and extended irradiation were published in NUREG/CR–5009, "Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors," February 1988, and discussed in the staff's Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on February 29, 1988 (53 FR 6040). The staff concluded that no significant adverse effects will be generated by increasing the burnup levels as long as the maximum rod-average burnup level of any fuel rod is no greater than 60 Gwd/MtU. The staff also stated that the environmental impacts summarized in Tables S–3 and S–4 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 weight percent. Since the proposed amendment does not involve an increase in the enrichment or burnup of fuel utilized at VEGP, the staff concludes that there is no significant radiological environmental impact associated with the proposed expansion of the spent fuel storage capacity at VEGP Unit 1 or with the uranium fuel cycle or transportation.

Accident Considerations

In the Vogtle Final Safety Analysis Report, the licensee evaluated the possible consequences of the following three hypothetical accidents involving fuel in the SFP: a fuel-handling accident in the fuel-handling building; a fuel-handling accident in the containment with the airlock closed; and a fuel-handling accident in the containment with the airlock open. The licensee reevaluated these hypothetical accidents to determine the thyroid and whole-body doses at the exclusion area boundary, in the low-population zone, and in the control room.

On the basis of the review of the licensee's reevaluation, the NRC staff concludes that the proposed reracking of the Vogtle Unit 1 SFP will not result in an increase in the doses from any of these hypothetical accidents.

Nonradiological Impact

The proposed amendments do not modify land use at the site; no new facilities or laydown areas are needed to support the rerack or operation after rerack; therefore, the proposed amendments do not affect land use or land with historical or archeological sites.

The increased spent fuel inventory results in a minor bulk pool temperature increase. This minor increase in temperature results in a minor increase in the pool water evaporation rate. The licensee's submittal of September 4, 1997, indicates that the effects of the increased temperature and evaporation rates are within the capacity of the existing fuel-handling building heating, ventilation, and air conditioning system. The total heat load from spent fuel cooling dissipated to the environment represents 2.5 percent of the total rejected plant heat.

The proposed action does not affect nonradiological plant effluents, and no changes to the National Pollution Discharge Elimination System permit are needed. The proposed action does not result in any significant changes to land use or water use, or result in any significant changes to the quantity or quality of effluents; no effects on endangered or threatened species or on their habitat are expected.

The proposed action will not change the method of generating electricity or the method of handling any influents from the environment or nonradiological effluents to the environment. Therefore, no changes or different types of nonradiological environmental impacts are expected as a result of the amendments.

Summary

The Commission has completed its evaluation of the proposed action. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of

the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources not previously considered in NUREG–1087.

Agencies and Persons Consulted

In accordance with its stated policy, on May 26, 1998, the staff consulted with the Georgia State official, Mr. J. Setzer of the Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 4, 1997, as supplemented by letters dated November 20, 1997, May 19 and June 12, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 19th day of June 1998.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16746 Filed 6–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 22, 29, July 6, and 13, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 22

Thursday, June 25

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

2:00 p.m.—Briefing on EEO Program (Public Meeting).

Week of June 29—Tentative

Tuesday, June 30

10:00 a.m.—Meeting with Commonwealth Edison (Public Meeting) (Contact: Stewart Richards, 301–415–1395).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

2:00 p.m.—Briefing on Performance Assessment Progress in HLW, LLW, and ADMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285).

Week of July 6—Tentative

Thursday, July 9

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of July 13—Tentative

There are no meetings scheduled for the week of July 13.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 19, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–16827 Filed 6–19–98; 4:06 pm]

BILLING CODE 7590–01–M

DEPARTMENT OF LABOR

Office of the Secretary

DEPARTMENT OF THE TREASURY

Pension Benefit Guaranty Corporation; Submission for OMB Review; Comment Request

The Department of Labor (DOL), the Department of the Treasury, and the Pension Benefit Guaranty Corporation (PBGC) have submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Todd R. Owen at (202)219–5096, ext. 143 or by E-Mail at Owen-Todd@dol.gov. Individuals who use a telecommunication device for the deaf (TTY/TDD) may call (202)219–4720 between 1:00 p.m. and 4:00 p.m. Eastern Time, Monday–Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Desk Officer for Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202)395–7316) within 30 days of the date of this publication in the **Federal Register**.

OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Comment on estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Description: Under part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV of ERISA, and the Internal Revenue Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively employee benefit plans) subject to those provisions, and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations. This ICR is for the revised Form 5500 Series as proposed by the Department of Labor, Pension and Welfare Benefits Administration (PWBA), Department of the Treasury, Internal Revenue Service (IRS), and PBGC (collectively the Agencies) in a Notice of Proposed Forms Revision on September 3, 1997 (62 FR 46556) and as subsequently revised in response to public comment. The Agencies anticipate that the revised Form 5500 Series will be finalized and available for use for plan years which begin in 1999.

Also published in today's **Federal Register** is the Agencies' notice concerning the proposed extension/reinstatement of the ICR for the 1998 Form 5500 Series. The ICR for the existing Form 5500 Series is approved under OMB Numbers 1210–0016 (PWBA) and 1545–0710 (IRS). PBGC's ICR for the Form 5500 Series was previously approved under OMB Number 1212–0026.

Agencies: Department of Labor, Pension and Welfare Benefits Administration; Department of the Treasury, Internal Revenue Service; Pension Benefit Guaranty Corporation.

Title: Form 5500 Series.

Form Number: Form 5500 and Schedules.

OMB Numbers: 1210–NEW; 1545–NEW; 1212–NEW.

Frequency: Annually.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.

Total Respondents: 801,934 for PWBA and PBGC; 901,400 for IRS.

Total Responses: 801,934 for PWBA and PBGC; 901,400 for IRS.

Estimated Burden Hours, Total Annual Burden: 1.7 million burden hours (using the PWBA methodology) to 48.7 million burden hours (using the IRS methodology) for preparing the revised Form 5500 Series and filing it with the government. This total burden is shared among the Agencies. See the September 3 Notice for detailed information on the burden estimation methodologies. In the September 3 Notice, the Agencies requested comments on the burden hour estimates and the methodologies used to estimate burden for preparing and filing the Form 5500, and received comments generally indicating that the estimates were too low. In an effort to respond to those comments, the Agencies have undertaken an evaluation of the burden estimation methodologies for the purpose of developing a revised and uniform methodology. The Agencies will modify these burden estimates based on a revised methodology prior to the date the revised Form 5500 Series comes into use.

A computerized processing system (the ERISA Filing and Acceptance System, or EFAST) is being developed to simplify and expedite the processing of the revised Form 5500 Series by relying on computer scannable forms and electronic filing technologies. The Agencies intend to publish a **Federal Register** notice announcing the opportunity to comment on the electronic filing options and computer scannable version of the revised Form 5500 Series, which will be designed as part of the EFAST project. The EFAST project is described in detail in the Request for Proposal issued in final form on January 6, 1998. The final computer scannable version of the forms, which will be required to be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments.

Total annualized capital/start-up costs: $1,266,905 (PWBA estimate).

Total annual cost (operating and maintenance): $20,843,860 (PWBA's estimate of its allocated share); $2,600,000 (PBGC's estimate of its allocated share).

Dated: June 18, 1998.

Todd R. Owen,

Departmental Clearance Officer, Department of Labor.

Dated: June 18, 1998.

Lois K. Holland,

Departmental Reports Management Officer, Department of the Treasury.

Dated: June 18, 1998.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–16791 Filed 6–23–98; 8:45 am]

BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon written request, copy available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension:
- Form N–2, SEC File No. 270–21, OMB Control No. 3235–0026
- Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169
- Form N–8A, SEC File No. 270–135, OMB Control No. 3235–0175
- Rule 17f–5, SEC File No. 270–259, OMB Control No. 3235–0269

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office Management and Budget for extension and approval.

Form N–2—Registration Statement of Closed-end Management Investment Companies

Form N–2 is the form used by closed-end management investment companies ("closed-end funds") to register as investment companies under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act") and to register their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). Section 5 of the Securities Act [15 U.S.C. 77e] requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

A closed-end fund is required to register as an investment company under Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)]. Form N–2 permits a closed-end fund to provide investors with a prospectus covering essential information about the fund when the fund makes an initial or additional offering of its securities. More detailed information is provided

to interested investors in the Statement of Additional Information ("SAI"). The SIA is provided to investors upon request and without charge.

The Commission uses the information provided in Form N–2 registration statements to determine whether closed-end funds have complied with the requirements of the Investment Company Act.

The Commission estimates that closed-end funds file 44 initial registration statements and 39 amendments to registration statements—a total of 83 filings—on Form N–2 each year. Based on consultations with a sample of recent filers, it is estimated that the hour burden to prepare and file an initial Form N–2 filing is 500 hours and the hour burden to prepare an amendment is 100 hours. The total hour burden for all closed-end funds filing Form N–2 is 25,900 hours per year.

Form N–5—Registration Statement of Small Business Investment Companies

Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Administration and has been notified by the Administration that the company may submit a license application, to register its securities under the Securities Act and to register as an investment company under section 8 of the Investment Company Act. The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission reviews the registration statements for the adequacy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is two and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 704 hours.

Form N–8A—Notification of Registration of Investment Companies

Form N–8A is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act, the company is then subject to the provisions of the Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state or organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the Investment Company Act with respect to those companies. Each year approximately 266 investment companies file a notification on Form N–8A. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately one hour so that the total burden of preparing Form N–8A for all affected investment companies is 266 hours.

Rule 17f–5—Custody of Investment Company Assets Outside the United States

Rule 17f–5 under the Investment Company Act permits registered management investment companies ("funds") to maintain their assets in custody arrangements outside the United States. The Commission adopted comprehensive amendments to rule 17f–5 on May 12, 1997.[1] The amendments became effective on June 16, 1997, but funds are not yet required to comply with most of the amendments.[2] Funds may comply with either prior rule 17f–5 or with the rule as amended in 1997 until February 1, 1999.[3]

Before rule 17f–5 was amended in 1997, the rule permitted funds to maintain their assets with certain foreign banks and securities depositories subject to certain conditions. The funds's board of directors had to approve (i) each country where fund assets were maintained, (ii) each foreign bank or depository that held the assets, and (iii) a written contract that had to contain specified provisions governing each foreign custody arrangement. Notes to the rule listed factors that the board was required to consider when investing assets in foreign countries and placing them with foreign custodian. The rule also required the fund board to monitor each foreign custody arrangement and to approve it at least annually.

As amended in 1997, rule 17f–5 permits a fund's board of directors to play a more traditional oversight role by delegating its responsibilities for foreign custody arrangements to a U.S. or foreign bank custodian or the fund's investment adviser or officers (collectively with the board, the "foreign custody manager"). The board can delegate different responsibilities to different persons. The board must find that it is reasonably to rely on each delegate it selects. The delegate must agree to exercise reasonably care, prudence, and diligence or to adhere to a higher standard of care in performing the delegated responsibilities. The board must require the delegate to provide, at times that the board deems reasonable and appropriate, written reports that notify the board when the fund's assets are placed with a particular foreign custodian and when any material change occurs in the fund's foreign custody arrangements.

When the foreign custody manager selects a particular "eligible foreign custodian,"[4] the foreign custody manager must determine that, based on its consideration of specified factors, the

[1] See Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)].

[2] The original compliance date for the 1997 amendments was June 16, 1998. The Commission has extended this compliance date for most of the amendments to February 1, 1999. The extension does not apply to the amended definitions of "eligible foreign custodian," "qualified foreign bank," and "U.S. bank," for which the compliance date remains June 16, 1998.

[3] Certain amended definitions would apply under either version of the rule. See supra note 2.

[4] "Eligible foreign custodians" under the rule generally include foreign banks and trust companies, national or transnational securities depositories, and majority-owned subsidiaries of U.S. banks or bank holding companies. The compliance date for this amended definition of eligible foreign custodian remains June 16, 1998.

fund's assets will be subject to reasonable care if maintained with that custodian. The foreign custody manager also must determine that, based on the same factors, the written contract that governs each custody arrangement with the foreign custodian (or the set of depository rules or practices or the combination of a contract and rules or practices) will provide reasonable care for fund assets. The written contract (or equivalent rules or practices) must contain either certain specified provisions, or other provisions that provide the same or a greater level of care for fund assets. In addition, the foreign custody manager must establish a system to monitor the contract that governs each custody arrangement and the appropriateness of maintaining the fund's assets with a particular foreign custodian.

The collections of information required under rule 17f–5 are intended to further the protection of fund assets held in foreign custody arrangements permitted under the rule, which are more flexible than the foreign custody arrangements permitted under the Act. The requirements that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board considers carefully each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight.

The requirement that each custody arrangement by governed by a written contract (or equivalent rules or practices) that contains specified provisions or other provisions that provide an equivalent level of care is intended to ensure that each arrangement is subject to certain minimal contractual safeguards.[5] The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the foreign custody manager periodically reviews each custody arrangement and takes any action necessary or appropriate when changes in circumstances could threaten fund assets.

The Commission estimates that during the first year when funds are required to comply with the 1997 amendments to rule 17f–5, the boards of directors of approximately 3,690 portfolios that use foreign custody arrangements will delegate responsibility for their arrangements to approximately 15 U.S. bank custodians and approximately 650 investment advisers.[6]

The Commission estimates that the board of each portfolio will expend approximately 2 burden hours during the first year in determining that the board may reasonably rely on each of two delegates to evaluate the portfolio's foreign custody arrangements, for a total 7,380 burden hours for all, 3,690 portfolios. The Commission estimates that each U.S. custodian bank will expend approximately (i) 400 burden hours in determining for some 250 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 96 burden hours in establishing a system for monitoring custody arrangement and contracts; and (iii) 400 burden hours in providing periodic reports to fund boards; for a total of 13,440 burden hours for all 15 U.S. bank custodians. The Commission estimates that each investment adviser will expend approximately (i) 10 burden hours in determining for some 6 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 24 burden hours in establishing a system for monitoring certain arrangements and contracts; and (iii) 10 burden hours in providing periodic reports to fund boards; for a total of 28,600 burden hours for all 650 investment advisers.

The total annual burden of the rule's paperwork requirements for all portfolios, U.S. bank custodians, and investment advisers therefore is estimated to be 49,420 hours. This estimate represents an increase of 40,680 hours from the prior estimate of 8,740 hours. Approximately 30,680 hours of the increase are attributable to updated information about the number of affected portfolios and other entities, and to a more accurate calculation of the component parts of some information burdens. Approximately 10,000 hours of the increase are attributable to the adoption of rule amendments not fully addressed in the prior estimate.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Dated: June 17, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16754 Filed 6–23–98; 8:45 am]

BILLING CODE 8010–01–M

[5] The requirement that the foreign custody manager determine that the custody contract (or equivalent rules or practices) will provide reasonable care for fund assets is intended to ensure that the foreign custody manager weighs the adequacy of contractual obligations when it determines whether the foreign custodian will maintain the fund's assets with reasonable care.

[6] The Commission estimates that these 3,690 portfolios are divided among approximately 1,327 registered funds within approximately 650 fund complexes that may share the same board of directors, U.S. bank custodian, investment adviser, or all of thee entities. The board of directors and its foreign custody delegates for a fund complex could therefore meet rule 17f–5's requirements by making similar arrangements for an average of 6 portfolios at the same time. The Commission also estimates that each portfolio has foreign custody arrangements with an average of 10 foreign custodians (*i.e.*, 1 bank and 1 security depository in each of 5 countries).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23262; 812–10336]

SEI Liquid Asset Trust, et al.; Notice of Application

June 18, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit SEI Liquid Asset Trust ("SLAT"), SEI Tax Exempt Trust ("STET"), SEI Daily Income Trust ("SDIT"), SEI Institutional Managed Trust ("SIMT"), SEI International Trust ("SIT"), SEI Asset Allocation Trust ("SAAT"), and SEI Institutional Investments Trust ("SIIT") (each a "Trust," and together, the "Trusts") and certain other existing or future registered open-end management investment companies to deposit their daily uninvested cash balances in joint

accounts investing in short-term repurchase agreements with maturities of no more than seven days.

APPLICANTS: Trusts, SEI Investments Management Corporation ("SIMC"), SEI Fund Management ("SEI Management"), SEI Fund Resources ("Fund Resources"), SEI Investments Distribution Co. ("SIDCo."), and Wellington Management Company, LLP ("Wellington Management").

FILING DATES: The application was filed on September 17, 1996, and amended on February 12, 1997, July 18, 1997, and June 1, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Freedom Valley Drive, Oaks, Pennsylvania 19456.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Staff Attorney, at (202) 942–0578, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549, or by telephone at (202) 942–8090.

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. Each Trust offers multiple portfolios (the "Portfolios"), each of which has its own investment adviser and its own investment objectives and policies. Wellington Management, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser for each of the existing Portfolios of SLAT and SDIT. SIMC, an investment adviser registered under the Advisers Act, serves as investment adviser for certain Portfolios of SIT, SIMT, SAAT, SIIT, and STET. For the purposes of this application, Wellington Management and SIMC are collectively the "Advisers," and each individually is an "Adviser." SIDCo., a broker-dealer registered under the Securities Exchange Act of 1934, serves as principal underwriter and distributor for the Trusts.

2. Applicants request that any relief granted on the application apply to each Trust, each Portfolio, and any other existing or future registered open-end management investment company (or series of such investment company) which is or in the future becomes part of the Trusts' "ground of investment companies" as defined in rule 11a–3 under the Act and for which an Adviser, or a person directly or indirectly controlling, controlled by, or under common control with an Adviser, serves as investment adviser (each such investment company, Trust, and Portfolio, a "Fund," and collectively, the "Funds").[1]

3. Each Fund has, or may have, uninvested cash balances at the end of each trading day. In order to earn additional income, an Adviser ordinarily would invest such cash balances in short-term investments authorized by that Fund's investment policies. Such short-term instruments may include repurchase agreements with an overnight, over-the-weekend, or over a holiday maturity, and in no event a term of more than seven days ("Overnight Investments"). The investment policies of each Fund permit investments in Overnight Investments.

4. Applicants propose that the Funds establish one or more joint trading accounts or subaccounts ("Joint Accounts") with one or more custodians ("Custodians") to deposit some or all of their uninvested cash balances for the purpose of investing in Overnight Investments. It currently is expected that each Trust will establish a single Joint Account with The Bank of New York as Custodian.

5. All investments in Overnight Investments through the Joint Accounts will be effected only compliance with (a) standards and procedures established by the board of trustees or directors ("Board") of each Fund with respect to Overnight Investments, and (b) guidelines set forth in Investment Company Act Release No. 13005 (February 2, 1983) and any other existing and future positions taken by the SEC or its staff by rule, release, letter, or otherwise, relating to joint Overnight Investment transactions.

6. Each list of approved repurchase agreement counterparites ("Approved Counterparties") for a Fund is monitored by its Adviser on an ongoing basis and reviewed by the relevant Board on a quarterly basis. Each of the Custodians may be an Approved Counterparty, but a Fund will only enter into "hold-in-custody" repurchase agreement with that Custodian if cash is received late in the day and would otherwise be unavailable for investment.

7. The Advisers will be responsible for investing amounts in the Joint Accounts, establishing accounting and control procedures, and ensuring the equal treatment of each participating Fund. While the Advisers will be entitled to their advisory fees on assets invested by the Funds in the Joint Accounts, they will have no monetary participation in the Joint Accounts and will receive no additional fee for administering the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act make it unlawful for a affiliated person of a registered investment company, acting as principal, to participate in, or effect any transaction in connection with, any joint arrangement in which the registered investment company is a joint or a joint and several participant unless an application regarding the joint arrangement has been filed with an approved by the SEC. In passing on such applications, the SEC must consider whether the participation of the registered investment company in the joint arrangement, as proposed, is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Under section 2(a)(3) of the Act, any two or more Funds may be deemed "affiliated persons" from time to time under a variety of circumstances. Funds with a common Adviser may be deemed to be "affiliated persons" of one another because they may be deemed to be under the common control of the Adviser. Each Fund, by participating in a Joint Account, and the Adviser, by managing the Joint Account, could be deemed to be a "joint or a joint and several participant" in a transaction within the meaning of section 17(d). In addition, the proposed Joint Accounts could be deemed to be a "[j]oint

[1] Each Fund that currently intends to rely on the requested relief is named as an applicant. Any existing Funds and future Funds that rely on the requested relief in the future will do so only in accordance with the terms and conditions of the application.

enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants believe that no participating Fund will receive fewer relative benefits from effecting its transaction through the proposed Joint Accounts than any other participating Fund. Applicants also believe that the proposed method of operating the Joint Accounts will not result in any conflicts of interest between any of the Funds or between any Fund and an Adviser. Each Fund's liability on any Overnight Investment invested in by the Joint Accounts will be limited to its own interest in such Overnight Investment.

4. Applicants believe the Joint Accounts could result in certain benefits to the Funds. The Funds may earn a higher return on Overnight Investments through the Joint Accounts relative to the returns they could earn individually. Under normal market conditions, it is possible to negotiate a higher rate of return on larger Overnight Investments than can be negotiated for small Overnight Investments. In addition, the Funds would collectively save significant transactions fees and expenses by reducing the number of transactions that would be engaged in, as contrasted with the number engaged in through separate accounts for each Fund individually.

5. Under the circumstances and for the reasons set forth above applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order.

Applicants' Conditions

Applicants will comply with the following procedures as express conditions to any order granting the requested relief:

1. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Funds at a custodian bank. Each Fund may deposit daily all or a portion of its uninvested cash balances into the Joint Accounts. Each Fund whose regular Custodian is a custodian other than the bank at which a proposed Joint Account would be maintained, and that wishes to participate in the Joint Account, would appoint the latter bank as a sub-custodian for the limited purposes of: (1) receiving and disbursing cash; (2) holding any Overnight Investments; and (3) holding any collateral received from a transaction effected through the Joint Account. All Funds that appoint such sub-custodians will have taken all necessary actions to authorize such bank as their legal custodian, including all actions required under the Act.

2. Cash in the Joint Accounts will be invested solely in Overnight Investments that are "collateralized fully," as defined in rule 2a–7 under the Act, and that comply with the investment policies of all Funds participating in that Overnight Investment.

3. All Overnight Investments invested in through the Joint Accounts would be valued on an amortized costs basis to the extent permitted by applicable SEC releases, rules, letters, or orders. Each Fund that relies on 2a–7 under the Act would use the dollar-weighted average maturity of a Joint Account's Overnight Investments for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in that Joint Account on that day.

4. To assure that there will be no opportunity for one Fund to use any part of a balance of any Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its pro rata share of the entire balance at any time. Each Fund's decision to invest through the Joint Accounts shall be solely at the option of that Fund and its Adviser, and no Fund will, in any way, be obligated to invest through, or to maintain any minimum balance in, the Joint Accounts. In addition, each Fund will retain the sole rights of ownership of any of its assets, including interest payable on such assets, invested through the Joint Accounts. Each Fund's investments effected through the Joint Accounts will be documented daily on the books of that Fund as well as on the books of the Custodian. Each Fund, through the Adviser and/or Custodian, will maintain records (in conformity with section 31 of the Act and the rules thereunder) documenting for any given day, the Fund's aggregate investment in a Joint Account and its pro rata share of each Overnight Investment made through such Joint Account.

5. Each Fund will participate in and own its proportionate share of an Overnight Investment, and receive the income earned on or accrued in such Overnight Investment, based upon the percentage of such investment purchased with amounts contributed by such Fund, and each Fund will participate in a Joint Account on the same basis as every other Fund in conformity with its respective fundamental investment objectives, policies, restrictions. Any future Funds that participate in a Joint Account would do so on the same terms and conditions as the existing Funds.

6. The Advisers will administer, manage, and invest the cash balances in the Joint Accounts in accordance with the terms of their management contracts with the Funds, and will not collect any additional or separate fee for the administration of the Joint Accounts.

7. The administration of the Joint Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Board for each Fund investing in Overnight Investments through the Joint Accounts will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that the requirements of the applications will be met. The Board will make and approve such changes that they deem necessary to ensure that such procedures are followed. In addition, not less frequently than annually, the Boards will evaluate the Joint Account arrangements, determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and authorize a Fund's continued participation in the Joint Accounts only if there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

9. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with a custodian bank, except that monies from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence with indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way to aggregating individual transactions that would otherwise require daily management and investment by each Fund of its uninvested cash balances.

10. Investments held in a Joint Account generally will not be sold prior to maturity except: (a) if the Adviser believes that the investment no longer presents minimal credit risk; (b) if, as a result of a credit downgrading of otherwise, the investment no longer satisfies the investment criteria of all Funds participating in the investment; or (c) if the counterparty defaults. A Fund may, however, sell its fractional portion of an investment in a Joint Account prior to the maturity of the investment in such Joint Account if the cost of such transaction will be borne solely by the selling Fund and the transaction would not adversely affect the other Funds participating in that Joint Account. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds

participating in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating in such Joint Account will be deemed to have consented to such sale and partition of the investment in such Joint Account.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16753 Filed 6–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Golden Eagle International, Inc.; Order of Suspension of Trading

June 19, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Eagle International, Inc. ("Golden Eagle") because of questions regarding the accuracy and adequacy of assertions by Golden Eagle and by others concerning, among other things, the basis for its claims of proven gold reserves on its Bolivian mineral concessions.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, June 22, 1998, through 11:59 p.m. EST, on July 6, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16950 Filed 6–22–98; 1:09 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3089]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on June 8, 1998, I find that Allegheny, Berks, Somerset, and Wyoming Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred May 31, 1998 through June 2, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 7, 1998, and for loans for economic injury until the close of business on March 8, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Armstrong, Beaver, Bedford, Bradford, Butler Cambria, Chester, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Montgomery, Schuylkill, Sullivan, Susquehanna; Washington, and Westmoreland Counties in Pennsylvania, and Allegany and Garrett Counties in Maryland.

The interest rates are:

	Percent
Physical damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 308911. For economic injury the numbers are 988600 for Pennsylvania, and 988700 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–16738 Filed 6–23–98; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Disability Determination and Transmittal—0960–0437. The information collected on form SSA–831 is used by the Social Security Administration (SSA) to document the State Disability Determination Services (SDDS) decision about whether an individual who applies for disability benefits is eligible for those benefits based on his or her alleged disability. SSA also uses this form for program management and evaluation. The respondents are SDDS employees who make disability determinations for SSA.

Number of Respondents: 3,578,210.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 894,553.

2. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title XVI—0960–0443. The information collected on form SSA–832 is used by the SDDS to document for SSA whether an individual's disability benefits should be terminated or continued based on the recipient's impairment. SSA also uses this form for program management and evaluation. The respondents are SDDS employees adjudicating Title XVI disability claims.

Number of Respondents: 656,567.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 328,284.

3. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title II—0960–0442. The information collected on form SSA–833 is used by the SDDS to prepare for SSA determinations of whether individuals receiving Title II disability or blindness benefits continue to be unable to engage in substantial gainful work due to their impairments and are still eligible for benefit payments. SSA also uses this form for program management and evaluation. The respondents are SDDS employees.

Number of Respondents: 627,973.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 313,987.

Written comments and recommendations regarding the

information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Certificate of Coverage Request—0960–0554. The information collected is used by the Social Security Administration (SSA) to provide to an individual working in a foreign country, a certificate of coverage from the United States Social Security system. This certification exempts the individual from paying taxes into a foreign Social Security system. The respondents are workers and employers whose work is performed in a foreign country. The hour burden may vary, because the information may be collected in writing, by telephone or electronically.

	Telephone/mail	Electronic
Number of Respondents	33,500	500.
Frequency of Response	1	1.
Average Burden Per Response	30 minutes	20 minutes.
Estimated Annual Burden	16,750 hours	167 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: June 18, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–16815 Filed 6–23–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3350]

Public Workshops for Response Plan Equipment Caps: Scheduled Increases in Mechanical Recovery and Potential Changes to Dispersant Planning Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard is holding three public workshops to solicit comments on potential changes to the equipment requirements within the response plan regulations (33 CFR 154 and 155) for mechanical recovery, dispersants, and other oil spill removal technologies. These workshops are intended to serve as forums for the discussion of issues relevant to establishing new integrated equipment requirements, which address all necessary spill removal technologies. The Coast Guard specifically wishes to solicit comments on how to cost effectively incorporate high-rate removal technologies, such as the use of dispersants, into the resource requirements contained within the vessel response plan regulations. Federal, state, and local agencies, industry, oil spill removal organizations, environmental groups and the public are encouraged to participate and provide oral or written comments. This notice announces the dates, times, locations, and format for the workshops.

DATES: The public workshops are scheduled for the following times and locations. The workshops will convene at the times indicated below; however, they may be concluded early if their business is finished: (1) Friday, July 24, 1998, from 9:30 a.m. to 3 p.m., at the Oakland Airport Hilton, One Hegenberger Road, Oakland, California 94621. (2) Wednesday, August 19, 1998, from 9:30 a.m. to 3 p.m. at the Houston Marriott West Loop—by the Galleria, 1750 West Look South, Houston, Texas 77027. (3) Wednesday, September 16, 1998, from 9:30 a.m. to 3 p.m. at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street S.W., Washington, DC 20590.

ADDRESSES: You may mail comments to the Docket Management Facility (USCG–98–3350), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also access the public docket on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT:

For questions on this **Federal Register** notice, or persons interested in presenting information at the workshop, please contact Lieutenant Commander John Caplis, Plans and Preparedness Division, Office of Response, telephone 202–267–6922, fax 202–267–4065, or at e-mail address jcapliscomdt.uscg.mil. A conceptual document has been developed by the Coast Guard in order to facilitate discussion during the workshop. The document identifies key issues and elements relating to dispersant planning, and can be obtained prior to the workshops through the Vessel Response Plan Status-line or the Vessel Response Plan Program Internet site (http://www.uscg.mil/vrp). Document requests can be placed on the VRP Status-line (voice mail system) at 202–267–0434, or by accessing the VRP

Internet site, which will have the document posted.

Summaries will be prepared at the conclusion of each workshop by the Coast Guard which will be made available to interested parties upon their request. Summaries may be obtained by calling VRP Status-line at 202–267–0434 or may be accessed through the Vessel Response Plan Program Internet site (http://www.uscg.mil/vrp).

For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) contained provisions that were intended to increase the preparedness of tank vessel owners or operators to respond to a spill, as well as increase the oil spill response capability in the United States. To achieve these goals, minimum on-water oil-removal capability requirements (often referred to as "caps") were set out in 33 CFR 154.1045(m) and 33 CFR 155.1050(o). These equipment caps were established in 1993 based on available equipment and technology levels.

These caps were scheduled to increase by 25% in 1998 as a planning target for increasing response capabilities within the United States. 33 CFR 154.1045(n) and 33 CFR 155.1050(p) requires the Coast Guard to review the proposed increases to determine if they are practicable prior to implementing any new requirements. The Coast Guard is charged with evaluating other spill removal technologies as part of that review. The Coast Guard intends to review the proposed increases with a holistic approach to oil spill removal, evaluating our national response capability in light of all available technologies.

The Coast Guard published a "Request for Comment" with regard to the cap review in the **Federal Register** on January 27, 1998. The Coast Guard received 21 written comments which were entered into the public docket, as well as numerous verbal comments from interested stakeholders at various public forums.

Raising the equipment requirements for mechanical recovery systems appears to be a controversial item, with numerous comments received both for and against such as increase. Many comments suggested that the increase was not necessary because the equipment already exists. Other comments agreed that the equipment already exists, but argued that it was obtained in anticipation of the scheduled increase, and that a failure to implement the new requirements will result in equipment being sold off or put out of service.

In order to ascertain whether existing equipment stocks are able to meet the scheduled 25% increase, the Coast Guard National Strike Force Coordination Center (NSFCC) reviewed the availability of mechanical recovery systems throughout the United States. The NSFCC looked at the private sector resources available to respond to a spill in each Captain of the Port (COTP) zone using the data compiled in the Regional Response Inventory (RRI). The NSFCC review indicates that mechanical recovery systems are available in quantities sufficient to meet the proposed increase. The Coast Guard will present a summary of this report at the public workshops. While the NSFCC report establishes that mechanical recovery equipment is available to meet the scheduled increases, the Coast Guard must still determine whether implementing such as increase is practicable, which must include an examination of the expected benefits in comparison to the associated costs.

Most of the comments received strongly supported developing new requirements for other removal technologies as part of any cap increase. Many comments suggested that high-rate removal technologies are a more cost-effective or capacity-enhancing method of increasing overall response preparedness than mechanical recovery. Other comments suggested that the use of these technologies offers positive net environmental benefits for many response situations, and are a necessary tool for today's response infrastructure. The use of dispersants was the most widely supported means for increasing the existing requirements, and was generally preferred to increases in mechanical recovery [in the comments that were received].

The Coast Guard is reviewing dispersants and other oil spill removal technologies with regard to their potential for inclusion in a proposed cap increase. The Coast Guard is evaluating a range of alternatives, including mandatory requirements /and/ or credits for dispersants, in situ burning, and oil spill tracking resources. The Coast Guard will present these alternatives for discussion and comment during these workshops. The Coast Guard solicits public comment regarding appropriate performance dimensions for these technologies, including: areas of applicability, response times, ensured levels of capability, application equipment, application rates, monitoring, anticipated costs and other applicable planning requirements. Interested persons are encouraged to submit any pertinent written views, data, or arguments, either prior to or during the workshops, to the Coast Guard.

Agenda for the Workshops

Equipment Cap and Dispersant Planning Public Workshop

The agenda includes the following short information presentations, each followed by an open discussion period:

(1) Introduction and presentation on concept of Integrated Equipment Cap Review.

(2) Presentation of National Strike Force Coordination Center Report on OSRO Resource Information.

(3) Presentation of summary of comments received in response to Request for Comment, Review of Cap Increases, 63 FR 3861, January 27, 1998.

(4) Presentation and discussion of potential changes to regulations as part of integrated cap increase:

(a) Increases to Mechanical Recovery

(b) Required Dispersant Capabilities

Note: The Coast Guard will present a concept position to facilitate discussion during the workshop. The document identifies key elements and issues for dispersant planning. The concepts contained within are mainly for discussion purposes and are likely to change as a result of public involvement and further regulatory analysis to be performed at a later date. Participants may obtain a copy of this document prior to the workshop [see **FOR FURTHER INFORMATION**].

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact LCDR John Caplis at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 17, 1998.

Robert North,

Rear Admiral, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–16780 Filed 6–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 8, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 24, 1998 to be assured of consideration.

Special Request: In order to conduct the surveys described below at the end of May 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by May 20, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–009–G.
Type of Review: Revision.
Title: 1999 Filing Season TeleFile Customer Satisfaction Survey.
Description: The IRS is planning to conduct a three question automated TeleFile customer satisfaction survey in 1999 administered to a sample of taxpayers who successfully use TeleFile. This survey will build on the 1998 data. In 1998 a six question automated customer satisfaction survey of taxpayers who had successfully used TeleFile was developed with the Bureau of Labor Statistics Behavioral Science Research Center (BLS BSRC) to gather data on the taxpayers' satisfaction and use of TeleFile.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,746.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 192 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 98–16765 Filed 6–23–98; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–57]

Revocation of Marine Chemist Service Inc. Customs Gauger Approval and Laboratory Accreditations

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of Revocation of Customs Gauger Approval and Laboratory Accreditations.

SUMMARY: Marine Chemist Service, Inc. of Newport News, Virginia, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revoke its gauger approval and laboratory accreditations. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accrediations of Marine Chemist Service, Inc. has been revoked without prejudice.

EFFECTIVE DATE: June 9, 1998.
FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: June 11, 1998.
George D. Heavey,
Director, Laboratories and Scientific Services.
[FR Doc. 98–16757 Filed 6–23–98; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–58]

Revocation of I.N.C. Surveys Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of Revocation of Customs Gauger Approval.

SUMMARY: I.N.C. Surveys of Houston, Texas, a Customs approved gauger under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revokes its gauger approval. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of I.N.C. Surveys has been revoked without prejudice.

EFFECTIVE DATE: June 4, 1998.
FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: June 9, 1998.
George D. Heavey,
Director, Laboratories and Scientific Services.
[FR Doc. 98–16756 Filed 6–23–98; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information on the insured's eligibility to change his/her insurance plan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 24, 1998.
ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0179" in any correspondence.
FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5038.
SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Application for Change of Permanent Plan (Medical), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value. The information on the form is required by law, 38 CFR, Sections 6.48 and 8.36.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: April 30, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–16692 Filed 6–23–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0507]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal Register agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed from the veteran for reinstatement of insurance and/or Total Disability Income Provision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 24, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0507" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Medical Information for Reinstatement, VA Form Letter 29–762.

OMB Control Number: 2900–0507.

Abstract: The form letter is used by the veteran's attending physician to supply medical information that is required to determine eligibility for reinstatement of insurance and/or Total Disability Income Provision. The information on the form is required by 38 CFR Section 8.12.

Affected Public: Individuals or households.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 480.

Dated: April 30, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–16693 Filed 6–23–98; 8:45 am]

BILLING CODE 8320–01–P

VOL
63
ISS
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24
1998
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federal register

Wednesday
June 24, 1998

Part II

Department of Transportation

Federal Transit Administration

FTA Transit Program Changes and Final Funding Levels for Fiscal Year 1998 Under the Transportation Equity Act for the 21st Century; Notice

VOL
63
ISS
121
JE
24
1998
UMI

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Transit Program Changes and Final Funding Levels for Fiscal Year 1998 Under the Transportation Equity Act for the 21st Century

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This Notice announces the availability of the remaining fiscal year 1998 funding for the Federal transit programs that was not available previously due to the lack of a full year authorization of the transit program. The Transportation Equity Act for the 21st Century (TEA–21), signed into law by President Clinton on June 9, 1998, provides a six-year reauthorization of the Federal transit program and the necessary contract authority needed to fully fund the fiscal year 1998 obligation limitations contained in the fiscal year 1998 Department of Transportation Appropriations Act. In addition to announcing the remaining fiscal year funding, this Notice also revises the apportionment of funding for the Section 5307 Urbanized Area Formula Program in compliance with new provisions which require a one percent set-aside for transit enhancements, and $4,849,950 to be set aside for financing the Alaska Railroad. Additionally, this Notice revises the apportionment of funds for the Section 5309 Fixed Guideway Modernization Program to reflect the new allocation formula established in TEA–21. It also revises the Section 5309 Bus Allocations to comply with new provisions in TEA–21 to fund a Bus Test Facility in the amount of $3,000,000 and a Fuel Cell Bus Program in the amount of $4,850,000 in fiscal year 1998. These two programs were not provided for in the original Bus Allocations.

This Notice updates and expands on the December 5, 1997, Federal Register Notice entitled "FTA Fiscal Year 1998 Apportionments, Allocations and Program Information." It also contains information regarding the changes made by TEA–21 to the various Federal transit programs, as well as the FTA policy on pre-award authority and other new program information.

The new programs are the Clean Fuels Formula Program, the Job Access and Reverse Commute Program, the Over-the-Road Bus Accessibility program, the Single State Pilot Program for Intercity Rail Infrastructure Investment, and the State Infrastructure Banks Pilot Program. The funding level for the Over-the-Road Bus Accessibility Program is subject to a pending technical correction bill which would decrease the $6.8 million a year for operators of other over-the-road service to a total of $6.8 million for the four years, 2000–2003.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, or the Capital Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program and the State Planning and Research Program.

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I. Background

The fiscal year 1998 apportionments and allocations for the formula, capital, and transit planning and research programs were published in a Federal Register Notice on December 5, 1997, entitled "FTA Fiscal Year 1998 Apportionments, Allocations and Program Information." That Notice contained apportioned funds based on the 1998 Appropriations Act and Federal transit laws, as well as funds available under the Surface Transportation Extension Act of 1997. Because the Surface Transportation Extension Act of 1997 only provided contract authority through March 31, 1998, FTA published (1) a listing of the full amount of the fiscal year 1998 apportionments and allocations for the formula, capital, and transit planning and research programs, based on the 1998 Appropriations Act and Federal transit laws; and (2) a listing of the partial amount of the apportionments and allocations, based on the fiscal year 1998 available funds for these programs, in accordance with the 1998 DOT Appropriations Act and the Surface Transportation Extension Act of 1997. Now that full year contract authority is provided under TEA–21, the full amount of the fiscal year 1998 apportionments and allocations is available for obligation.

II. FTA Fiscal Year 1998 Funds Available for Obligation

The total fiscal year 1998 apportionments and allocations for the formula, capital investment, and transit planning and research programs in the amount of $4,547,737,724 were

published in the Federal Register Notice of December 5, 1997. Full obligational authority for each of the amounts listed in the December 5, 1997, Notice is now provided for the following programs:

Section 5307 Urbanized Area Formula Program;

Section 5311 Nonurbanized Area Formula Program;

Section 5310 Elderly and Persons with Disabilities Program;

Section 5309 Capital Investment Program: Fixed-Guideway Modernization Program, and the Bus Capital Program.

Obligational authority for the following programs is not affected by this Notice because they received the full year's funding pursuant to the December 5, 1997, Federal Register Notice:

Section 5311(b) Rural Transit Assistance Program Funds;

Section 5309 New Starts Program;

Section 5303 Metropolitan Planning Program;

Section 5313(b) State Planning and Research Program.

Table 1 displays the amount of appropriations and funds available for each of the programs listed in this Notice.

III. Fiscal Year 1998 Revised Section 5307 Urbanized Area Formula Apportionments

The new law provides that, of the funds apportioned each fiscal year under the Urbanized Area Formula Program to urbanized areas of 200,000 or more in population, at least one percent shall be used for transit enhancement activities. It also requires that $4,849,950 shall be available annually to the Alaska Railroad for improvements to its passenger operations. Accordingly, the fiscal year 1998 Urbanized Area Formula apportionment has been revised to accommodate these two provisions.

The fiscal year 1998 funds appropriated and made available for Urbanized Area Formula grants total $2,303,702,677. After a deduction of .32343056 of one percent for Project Management Oversight ($7,450,879), $2,296,251,798 is available for apportionment to the urbanized areas and states. Of this amount, $4,834,264 ($4,849,950 less $15,6896 for PMO) is set aside for the Alaska Railroad. In addition to the balance of $2,291,417,534 of the appropriated funds, the revised apportionment also includes $7,162,381 in deobligated funds which have become available for reapportionment for the Urbanized Area Formula Program, leaving a balance of $2,298,579,915 to be apportioned to urbanized areas and states. Table 2 shows a revised apportionment of $2,303,414,179, which includes the Alaska Railroad.

There is no longer an operating assistance limitation for areas under 200,000 in population. TEA–21 eliminates Federal financing of operating expenses for areas 200,000 and above effective immediately.

Also indicated on Table 2 is the amount set aside for transit enhancements as provided in TEA–21. See Section VII.D of this Notice for a further discussion of transit enhancement funds. This transit enhancement provision is effective immediately.

IV. Fiscal Year 1998 Revised Section 5309 Fixed Guideway Modernization Apportionments

TEA–21 modifies the formula for allocating the Fixed Guideway Modernization funds. The new formula contains seven tiers rather than four. The allocation of funding under the first four tiers has been modified slightly and, through fiscal year 2003, will be allocated based on data used to apportion the funding in fiscal year 1997. Funding in the three new tiers will be apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old as reported to the National Transit Database, rather than on route miles and revenue vehicle miles on entire systems which are seven years old.

TEA–21 specifically required the FTA to revise the fiscal year 1998 Fixed Guideway Modernization funds using the new formula. This has resulted in generally minor changes in the amounts available. However, one area, Worcester, Massachusetts, is no longer eligible, because the fixed guideway segment attributable to that urbanized area was not in place as of October 1, 1990. For the fiscal year 1998 revised apportionments, sufficient funds were available to allocate only to the first five tiers. The revised apportionments are contained in Table 3. For the reapportionment of fiscal year 1998 funds, Tier 5 uses Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion the fiscal year 1998 Fixed Guideway allocations in the December 5, 1997, Federal Register Notice. Any fixed guideway segment that is less than seven years old has been deleted from this data base.

For fiscal year 1998, there is an $800,000,000 obligation limitation for fixed guideway modernization. After a deduction of .32343056 of one percent for Project Management Oversight ($2,587,445), $797,412,555 is available for apportionment to the specified urbanized areas.

Each year, the new fixed guideway modernization formula will allocate funds by seven tiers as follows:

Tier 1

The first $497,700,000 shall be apportioned to the following urbanized areas as follows: Baltimore $8,372,000; Boston $38,948,000; Chicago/Northwestern Indiana $78,169,000; Cleveland $9,509,500; New Orleans $1,730,588; New York $176,034,461; Northeastern New Jersey $50,604,653; Philadelphia/Southern New Jersey $58,924,764; Pittsburgh $13,662,463; San Francisco $33,989,571; Southwestern Connecticut $27,755,000.

Tier 2

The next $70,000,000 shall be apportioned as follows: Tier 2B: 50 percent to areas identified in Tier 1; and Tier 2B: 50 percent to other urbanized areas with fixed guideway in operation at least seven years. Funds for both Tiers 2A and 2B are apportioned using the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the Fixed Guideway Modernization Program in fiscal year 1997.

Tier 3

The next $5,700,000 shall be apportioned to the following urbanized areas as follows: Pittsburgh, 61.76 percent; Cleveland, 10.73 percent; New Orleans, 5.79 percent; the remaining 21.72 percent is apportioned to areas in Tier 2B using the fixed guideway tier formula factors used in fiscal year 1997.

Tier 4

The next $186,600,000 shall be apportioned to all eligible areas using the fixed guideway tier formula factors used in fiscal year 1997.

Tier 5

The next $70,000,000 shall be apportioned as follows: 65 percent to the eleven areas specified in Tier I, and 35 percent to all other urbanized areas using the most current urbanized area formula program fixed guideway tier formula factors. Any segment this is less than seven years old has been deleted from this data base.

Tier 6

The next $50,000,000 shall be apportioned as follows: 60 percent to the eleven areas specified in Tier I, and 30 percent to the other urbanized areas with fixed guideway system segments in

revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

Tier 7

Any remaining amounts shall be apportioned as follows: 50 percent to the eleven urbanized areas specified in Tier I, and 50 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

V. Fiscal Year 1998 Revised Section 5309 Bus Allocations

TEA–21 provides funding for a Bus Testing Facility in the amount of $3,000,000 and a Fuel Cell Bus Program in the amount of $4,850,000 in fiscal year 1998. These two programs were not provided for in the original allocations; therefore, all bus allocations have been reduced on a prorated basis to accommodate these two additional activities. Table 4 displays the revised allocations.

VI. Transit Authorization Levels Under TEA–21

TEA–21 provides a combination of trust and general fund authorizations that total $42.0 billion over the six year period, fiscal years 1998—2003. However, $36 billion is guaranteed funds included under the discretionary spending cap. TEA–21 includes $6 billion above the guaranteed level. See Table 5 for the guaranteed funding levels by program, and Table 5A for the guaranteed and nonguaranteed levels by program.

TEA–21 authorizes 191 New Starts projects. Of this number, 108 projects are authorized for final design and construction funding and 68 projects are authorized for alternatives analysis and preliminary engineering funding. Of these, 34 projects have specific dollar amounts associated with them. An additional 15 projects have specific dollar amounts but are not included in the first two lists. All earmarks are listed in Table 6 by area and project, including the dollar amount if specified. Projects authorized for alternatives analysis and preliminary engineering also become authorized for final design and construction as of October 1, 2000.

TEA–21 contains a provision that makes $10,400,000 available from Section 5309 New Starts funds in fiscal years 1999—2003 for ferry boat capital projects in Alaska or Hawaii. These projects may be ferry boats or ferry terminal facilities or approaches to ferry terminal facilities. TEA–21 also authorizes an additional $3,600,000 from Section 5309 New Start nonguaranteed funds in fiscal years 1999—2003 for ferry projects as defined above.

It should be noted that projects earmarked in TEA–21 are subject to Congressional actions in later appropriations bills.

Also authorized are project specific allocations in fiscal years 1999 and 2000 for 158 Capital Investment Bus projects totaling $539,637,000. These projects by amount and area are displayed on Table 7.

Information regarding estimates of funding levels for 1999—2003 by state and urbanized area is available on the FTA home page at www.fta.dot.gov. These numbers are for planning purposes only as they will be revised in the future but may be used for programming metropolitan transportation improvement programs and statewide transportation improvement programs.

VII. Changes Affecting FTA Formula, Capital Investment, and Planning Programs

A. Capital Project Definitions

TEA–21 amends the definition of a capital project placing several new items in the general definition and formally codifying in the FTA authorizing statute several items that had been modified in the past through appropriations acts.

Following is the definition of a capital project contained in TEA–21. The term 'capital project' means a project for:

1. Acquiring, constructing, supervising or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights of way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;
2. Rehabilitating a bus;
3. Remanufacturing a bus;
4. Overhauling rail rolling stock;
5. Preventive maintenance;
6. Leasing equipment or a facility for use in mass transportation subject to regulations the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than acquisition or construction;
7. Joint development: a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a mass transportation project and is related physically or functionally to that mass transportation project or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation—

(a) Including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications), facilities that incorporate community services such as daycare and health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(b) Excluding construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation;

8. The introduction of new technology, through innovative and improved products, into mass transportation; or

9. The provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient's annual formula apportionment under sections 5307 and 5311."

B. Operating Assistance

Operating assistance for urbanized areas with populations under 200,000 continues to be available, at the Federal/local share ratio of 50/50, with no limitation on the amount of a grantee's

apportionment that may be used for operating assistance. Operating assistance funds for urbanized areas with populations of 200,000 and above are no longer available as of effective date of TEA–21.

For fiscal year 1999 and thereafter, operating assistance is available only to nonurbanized and urbanized areas with populations under 200,000. For these smaller areas, there is no limitation on the amount of the apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50. However, for both categories of urbanized areas, many of the activities formerly funded by FTA with operating assistance are now eligible capital items under the category of preventive maintenance. Operating assistance as a capital project with an 80 percent federal match ratio will continue for fiscal year 1998 for areas under 200,000. Operating assistance at the 80/20 match will not be available in fiscal year 1999 or thereafter.

C. Preventive Maintenance

Preventive maintenance, an expense that became eligible for FTA capital assistance with the DOT 1998 Appropriations Act, is now eligible for FTA capital assistance under TEA–21, so that fiscal year 1998 funds and subsequent fiscal year appropriations may be used for preventive maintenance. Preventive maintenance costs, as in fiscal year 1998, are defined as all maintenance costs. For general guidance as to the definition of eligible maintenance costs, the grantee should refer to the definition of maintenance in the most recent National Transit Database reporting manual. A grantee may continue to request assistance for capital expenses under the FTA policies governing associated capital maintenance items (spare parts), maintenance of vehicles leased under contract, and vehicle overhauls; or a grantee may choose to capture all maintenance under preventive maintenance. If a grantee purchases service instead of operating service directly, and maintenance is included in the contract for that purchased service, then the grantee may apply for preventive maintenance capital assistance for the actual maintenance costs of the purchased service.

For accounting purposes, the grantee is cautioned not to confuse the fact that an item generally considered to be an operating expense is now eligible for FTA capital assistance. Generally accepted accounting principles and the grantee's accounting system determine those costs that are to be accounted for as operating costs. The National Transit Database Reporting System (NTD) follows generally accepted accounting principles, and so a grantee reporting to the NTD must report the operating costs the grantee has incurred as operating costs regardless of grant eligibility as capital. Nevertheless, under provisions of the fiscal year 1998 Appropriations Act, and now under provisions of TEA–21, some of those operating costs, while continuing to be accounted for as operating costs in the grantee's accounting records, are now eligible for FTA capital assistance. Grantees may not count the same costs twice.

D. Transit Enhancements

TEA–21 establishes a one percent set-aside for transit enhancements under the Urbanized Area Formula Program for areas 200,000 and above in population. The term "transit enhancement" includes projects that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Eligible projects are: (1) historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities); (2) bus shelters; (3) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights; (4) public art; (5) pedestrian access and walkways; (6) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles; (7) transit connections to parks within the recipient's transit service area; (8) signage; and (9) enhanced access for persons with disabilities to mass transportation.

One percent of the urbanized area formula apportionment in urbanized areas with a population of 200,000 and above shall be available only for transit enhancements. Table 2 indicates the amount set aside for enhancements in urbanized areas of 200,000 and above. If these funds are not obligated for transit enhancement projects by three years following the fiscal year in which the funds are apportioned, the funds shall be reapportioned under the urbanized area formula program.

The project budget for each urbanized area formula grant application which includes enhancement funds shall include a scope code for transit enhancements and specific budget line activity items for transit enhancements. Transit enhancements may exceed the one percent set-aside. However, items that are only eligible as enhancements such as operating costs for historic facilities may only be funded with the enhancement funds.

Recipients of the one percent set-aside enhancement funds shall submit a report to the appropriate FTA regional office listing the projects carried out during the fiscal year with those funds. This report shall be part of the recipient's annual certification to the FTA. If at all possible, the report should be submitted electronically and should utilize the budget line item codes used in the approved project budget.

Under a related provision, projects providing bicycle access to mass transportation funded with the enhancement set-aside shall be funded at a 95 percent Federal share.

E. Proceeds From Sale of Assets

TEA–21 provides an additional option for handling proceeds from the sale of federally-funded assets. This new provision allows the recipient, with FTA approval, to sell, transfer, or lease real property, equipment, or supplies acquired with FTA assistance and no longer needed for transit purposes. The net proceeds of the transaction may then be used to reduce the gross project cost of other Federally-assisted capital transit projects.

If the asset is identified as no longer needed by the grantee for public transportation purposes, and determined by FTA as eligible for disposition, then the new requirements would apply. That is, the proceeds could be retained by the grantee and used to reduce the gross project costs of another Federally-assisted capital transit project prior to applying for Federal financial assistance.

If the asset is to be retained in transit use after being transferred, sold, or leased, such as by another transit provider or in a joint development project, then existing requirements would apply.

Previous provisions continue to allow the recipient of assistance to transfer assets to another public agency to be used for a public purpose. Additional information is available from the appropriate FTA Regional Office.

F. Revenue Bond Proceeds as Local Share

Beginning with fiscal year 1999, and permissible thereafter, a recipient of assistance under the Urbanized Area Formula Program (Section 5307) and the Capital Program (Section 5309), may use as the local share for capital projects the proceeds from the issuance of bonds that are backed by future revenue from the farebox. This provision of TEA–21 is expected to help reduce borrowing costs for transit authorities. Under this

provision, using the proceeds of the revenue bonds as matching share will be approved only if the aggregate amount of financial support from the State and affected local governmental authorities in the urbanized area during the next three fiscal years is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding three fiscal years (as is made evident in the State Transportation Improvement Program).

G. Notice of Pre-Award Authority To Incur Project Costs

Since fiscal year 1994, FTA has provided pre-award authority to cover certain planning and capital costs prior to grant award. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees are strongly encouraged to consult with the appropriate regional office where there could be any question regarding the eligibility of the project for future FTA funds.

Authority to incur costs for fiscal year 1998 Fixed Guideway Modernization, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, and State Planning and Research Programs in advance of possible future Federal participation was provided in the December 5, 1997, Federal Register Notice. This pre-award authority now also extends to future formula funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Bus funds identified in the December 5, 1997, notice. This pre-award authority also applies to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal year 1998. This pre-award authority for STP or CMAQ funds is now extended for the 1998–2003 authorization period of TEA–21. Pre-award authority applies to FTA funds and flexible funds provided the conditions in paragraphs (1) and (2) below are met. The pre-award authority does not apply to Capital New Start funds, or to Capital Bus projects not specified in this or previous notices. Pre-award authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

1. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

a. This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

e. The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

f. For funds to which this authority applies, the authority expires with the lapsing of the fiscal year funds.

2. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in the December 5, 1997, Federal Register Notice, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

H. Metropolitan Planning

TEA–21 retains much of the basic structure of the metropolitan and statewide planning process, as established by ISTEA, with a few significant changes. The set of sixteen metropolitan planning factors has been reduced to seven factors: economic vitality; safety and security; accessibility and mobility; environment, energy conservation and quality of life; integration and connectivity; efficient operation and management; and preservation of existing transportation resources. Freight shippers and users of public transit are added to the explicit set of stakeholders to be given opportunities to comment on metropolitan plans and transportation improvement programs (TIPs).

Metropolitan planning organizations (MPOs) may include in their TIPs an "illustrative" list of projects that could be implemented if additional resources were made available. MPOs will also be encouraged to coordinate the planning for Federally-funded non-emergency transportation services as part of the metropolitan planning process. FTA and FHWA will be revising the Joint Planning Regulations (23 CFR part 450 and 49 CFR part 613) to formally

incorporate changes to the planning program.

I. New Starts Evaluation and Criteria

TEA–21 includes several changes to the evaluation process and criteria for New Starts fixed guideway projects. The Secretary shall consider several additional factors in the Department's review and evaluation of candidate New Starts projects. FTA will be required to evaluate each project authorized for New Starts funding by each criterion, as well as provide an overall project rating of "highly recommended," "recommended," and "not recommended." In addition to its annual report to Congress on Funding Levels and Allocations of Funds for Transit Major Capital Investments, FTA will be required to issue a supplemental report in August of each year which rates all projects that have completed alternatives analysis and preliminary engineering since the date of the last report. FTA must also approve candidate New Starts project's entry into final design. FTA also continues its prior approval authority for entrance into preliminary engineering.

TEA–21 requires that no less than 92 percent of the annual New Starts program must be used for final design and construction.

FTA will issue regulations implementing the New Starts provision of TEA–21.

VIII. New Programs Authorized by TEA–21

A. Clean Fuels Formula Program

1. Definition and Eligible Projects

The Clean Fuels Formula Program will finance the purchase or lease of clean fuel buses and facilities and the improvement of existing facilities to accommodate clean fuel buses. Clean fuel buses include those powered by compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alchohol-based fuels, hybrid electric, fuel cell and certain clean diesel, and other low or zero emissions technology, and which the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions. Eligible projects include:

a. purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;

b. constructing or leasing clean fuel buses or electrical recharging facilities and related equipment;

c. improving existing mass transportation facilities to accommodate clean fuel buses;

d. repowering pre-1993 engines with clean fuel technology that meets the current urban bus emission standards;

e. retrofitting or rebuilding pre-1993 engines if before half life to rebuild; and may,

f. at the discretion of the FTA, projects relating to clean fuel, biodiesel, hybrid electric or zero emissions technology vehicles that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

2. Application and Apportionment Deadlines

Any designated recipient seeking to apply for a grant under this section shall submit an application to FTA no later than January 1 of each fiscal year. No later than February 1 of each fiscal year FTA shall apportion funds to designated recipients who submitted applications. FTA is required to issue regulations to implement this program.

3. Formula for Apportioning Funds

a. Areas 1,000,000 and above. Two thirds of the funds available shall be apportioned to designated recipients with eligible projects in urban areas with a population of 1,000,000 and above. Of this, 50 percent shall be apportioned so that each designated recipient receives a grant in an amount equal to the ratio between:

(1) the number of vehicles in the bus fleet of the eligible project, weighted by the severity of nonattainment for the area in which the eligible project is located; and

(2) the total number of vehicles in the bus fleets of all eligible projects in areas with a population of 1,000,000 and above funded, weighted by the severity of nonattainment for all areas in which those eligible projects are located as provided in c. below. The remaining 50 percent shall be apportioned such that each designated recipient receives a grant in an amount equal to the ratio between:

(a) the number of bus passenger miles of the eligible project of the designated recipient, weighted by the severity of nonattainment of the area in which the eligible project is located as provided in c. below.

(b) the total number of bus passenger miles of all eligible projects in areas with a population of 1,000,000 and above funded, weighted by the severity of nonattainment of all areas in which those eligible projects are located as provided in c. below.

b. Areas under 1,000,000 Population. The formula for areas under 1,000,000 is the same as for areas 1,000,000 and above, except that in areas 1,000,000 and above the formula uses a pool of all eligible projects in areas with a population of 1,000,000 and above and the formula for areas under 1,000,000 uses a pool of all eligible project for areas under 1,000,000.

c. Weighting Factors. The number of clean fuel vehicles in the fleet or the number of passenger miles shall be multiplied by a factor of:

(1) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone or carbon monoxide;

(2) 1.1 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area or a marginal carbon monoxide nonattainment area;

(3) 1.2 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area or a moderate carbon monoxide nonattainment area;

(4) 1.3 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area or a serious carbon monoxide nonattainment area;

(5) 1.4 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area or a severe carbon monoxide nonattainment area;

(6) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area or an extreme carbon monoxide nonattainment area;

(7) The fleet and passenger miles for an eligible project shall also be multiplied by a factor of 1.2 in those areas that are both nonattainment for carbon monoxide and are also classified as nonattainment or maintenance for ozone.

Note: Certain of the carbon monoxide categories are inconsistent with the categories established by the Clean Air Act, as amended.

d. Limitation on Use of Funds and Maximum Grant Amounts. The amount of a grant to a designated recipient shall not exceed the lesser of $15,000,000 in areas under 1,000,000 population, or $25,000,000 in areas with a population of 1,000,000 and above, or 80 percent of the total project cost.

No more than $50,000,000 of the amount made available each year may be available to fund clean diesel buses.

No more than five percent of the amount made available may be available to fund retrofitting or replacement of the engines of buses that do not meet the clean air standards of the EPA.

At least five percent of the total program funding must be used for the

purchase or construction of hybrid electric or battery-powered buses or facilities designed to service those buses.

4. Availability of Funds

TEA–21 authorizes $200,000,000 each year for the Clean Fuels Formula Program. However, only $100,000,000 each year is within the guaranteed funding level. Any amount made available shall remain available to a project for one year after the fiscal year for which the amount is made available and any funds that remain unobligated at the end of the second fiscal year shall be added to the amount made available in the following fiscal year.

FTA will issue guidance and application instructions for this program.

B. Job Access and Reverse Commute Program

1. Definition and Eligible Projects

The Job Access and Reverse Commute Program, to develop additional transportation services needed to connect welfare recipients and other low income persons to jobs and needed support services, is authorized at $150 million annually. However, the amounts under the guaranteed funding level start at $50 million in fiscal year 1999 and increases to $150 million in fiscal year 2003.

A Job Access project is a project designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. The grants may finance capital projects and operating cost of equipment, facilities, and associated capital maintenance items related to providing access to jobs; promote the use of transit by workers with nontraditional work schedules; promote the use by appropriate agencies of transit vouchers for welfare recipients and eligible low-income individuals; and promote the use of employer provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986.

A Reverse Commute project is a project related to the development of transportation services designed to transport residents from urban areas, urbanized areas and nonurbanized areas to suburban employment opportunities. Eligible projects include projects which subsidize the costs associated with adding reverse commute bus, train, carpool, van routes or service from urbanized and nonurbanized areas to suburban work places; subsidize the purchase or lease by a nonprofit organization or public agency of a bus or bus dedicated to shuttling employees from their residences to a suburban work place; or otherwise facilitate the provision of mass transportation services to suburban employment opportunities. Planning and coordination are not eligible activities under this program.

2. Factors for Consideration

There will be a competitive grant selection process and TEA–21 contains specific factors for consideration in awarding grants under this program. Factors include:

a. The percentage of the population in the area to be served by the applicant that are welfare recipients;

b. The need for additional transportation services in the area to be served;

c. The extent to which the applicant demonstrates:

(1) Coordination with and the financial commitment of existing transportation service providers; and

(2) Coordination with the State agency that administers the State program funded under part A of Title IV of the Social Security Act;

d. Maximum utilization of existing transportation service providers and expanded transit networks or hours of service,

e. Innovative approach that is responsive to identified service needs;

f. The extent to which the applicant for a Job Access project:

(1) Presents a regional transportation plan for addressing the transportation needs of welfare recipients and eligible low income individuals, and

(2) Identifies long-term financing strategies to support the services;

g. The extent to which the applicant demonstrates that the community to be served has been consulted in the planning process; and

h. For Reverse Commute projects, the need for additional services identified in a regional transportation plan to transport individuals to suburban employment opportunities and the extent to which the proposed services will address these needs.

3. Availability of Funds and Grant Requirements

Of the funds made available under this program, 60 percent shall be allocated for eligible projects in urbanized areas with populations of 200,000 and above. Twenty percent shall be allocated for eligible projects in urbanized areas with populations under 200,000. Twenty percent shall be allocated for eligible projects in nonurbanized areas.

The program has a 50 percent federal share. Certain other Federal funds may be used to meet the 50 percent local match requirement. The requirements of Section 5307, the Urbanized Area Formula Program, apply to these grants. All planning requirements apply to these grants.

FTA will issue further guidance and application instructions for this program.

C. Over-the-Road Bus Accessibility Program

TEA–21 establishes the Rural Transportation Accessibility Incentive Program, hereinafter referred to as the Over-the-Road Bus Accessibility Program. This program is designed to assist operators of over-the-road buses to finance the incremental capital and training costs of complying with the Department of Transportation's anticipated final rule regarding accessibility of over-the-road buses required by the Americans with Disabilities Act.

Beginning in fiscal year 1999, funding will be available for operators of over-the-road buses in intercity fixed route service, starting with $2 million in fiscal year 1999 and increasing to $5.25 million in fiscal year 2003. In addition, beginning in fiscal year 2000, an additional $6.8 million each year will also be available for operators of other over-the-road bus service, including local commuter service and charter or tour service. Total funding authorized through fiscal year 2003 is $17,500,000 for fixed route over-the-road bus operators and $27,200,000 for operators of other over-the road bus services. (Note: The pending technical correction bill decreases the $6.8 million a year for operators of other over-the-road service to a total of $6.8 million for the four years, fiscal years 2000–2003.)

TEA–21 directs FTA to conduct a national solicitation for applications. FTA must select the recipients of grants on a competitive basis, considering the following criteria:

1. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the operator;

2. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

3. The extent to which the over-the-road bus operator acquires equipment required by the final rule prior to any required timeframe in the final rule;

4. The extent to which financing the costs of complying with the DOT's final rule regarding accessibility of over-the-

road buses presents a financial hardship for the applicant; and

5. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

The Federal share shall not exceed 50 percent of the project cost. The grants under this new program will be subject to all of the terms and conditions applicable to intercity bus operators assisted under the nonurbanized formula program and any other terms and conditions FTA prescribes.

FTA will issue implementing guidance.

D. Single State Pilot Program for Intercity Rail Infrastructure Investment

TEA–21 establishes a pilot program to determine the benefits of using transit funds to support intercity passenger rail service in the State of Oklahoma. Any assistance provided to the State of Oklahoma under Sections 5307 and 5311 during fiscal years 1998–2003 may be used for capital improvements to, and operating assistance for, intercity passenger rail service. The Secretary must submit to the House Transportation and Infrastructure Committee and Senate Banking, Housing and Urban Affairs Committee by October 1, 2002, a report which evaluates the pilot program. The evaluation must address the effect of the pilot program on alternative forms of transportation within the State, the effects on operators of mass transportation and their passengers; a calculation of the amount of Federal assistance provided for intercity passenger rail service; and an estimate of the benefits to intercity passenger rail service.

E. State Infrastructure Banks Pilot Program

The State Infrastructure Bank program was first authorized as a pilot program under the National Highway System Designation Act of 1995. TEA–21 provides for a revised pilot program in four states, California, Florida, Missouri and Rhode Island. These four states may enter into new or revised cooperative agreements that specify procedures and guidelines for establishing, operating and providing assistance from the infrastructure bank. These four states may capitalize the infrastructure bank with funds from Section 5307, 5310 and 5311 as well as with Federal highway funds. There is no limitation on the amount of Federal funds that may be used to capitalize the bank as there was under the original pilot program.

TEA–21 specifies that the requirements of Titles 23 and 49, United States Code, shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such repayment shall be considered to be Federal funds. Repayments from Federal sources will also be subject to the requirements of Titles 23 and 49. In addition, for transit projects, the requirements for Sections 5307 and 5309 projects will apply.

IX. General Information

For technical assistance purposes, the Fiscal Years 1998–2003 Apportionment Formula for Sections 5307 and 5311 are contained in Table 8. Table 9 displays the FTA Fiscal Years 1998–2003 Apportionment Formula for the Section 5309 Fixed Guideway Modernization Funding. The FTA Fiscal Years 1999–2003 Apportionment Formula for the Section 5308 Clean Fuels Formula Program is shown on Table 10. Displayed on Table 11 are the dollar unit values of data derived from the computations of the fiscal year 1998 revised Urbanized Area Formula Apportionment and the Fixed Guideway Modernization Apportionment.

This Notice is included on the FTA Home Page and may be accessed at www.fta.dot.gov.

Issued on: June 18, 1998.

Gordon J. Linton,

Administrator.

BILLING CODE 4910-57-P

TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED APPROPRIATIONS AND FUNDS AVAILABLE FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1998 APPROPRIATIONS/ FUNDS AVAILABLE
SECTION 5307 URBANIZED AREA FORMULA PROGRAM AND SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$2,437,780,611
SECTION 5307 URBANIZED AREA FORMULA PROGRAM	$2,303,702,677
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs	
Less Oversight (.32343056 of 1 percent of total)	(7,450,879)
Set-Aside for Alaska Railroad ($4,849,950 less $15,686 for Oversight)	(4,834,264)
Reapportioned Funds Added	*7,162,381*
Total Apportioned	$2,298,579,915
Alaska Railroad	4,834,264
Total Section 5307	$2,303,414,179
SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$134,077,934
5.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs	
Less Oversight (.32343056 of 1 percent)	(433,649)
Reapportioned Funds Added	*1,174,760*
Total Apportioned	$134,819,045
SECTION 5311(b) RTAP PROGRAM	$4,500,000
Reapportioned Funds Added	178,778
Total Apportioned	$4,678,778
SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM	$62,219,389
Reapportioned Funds Added	2,272
Total Apportioned	$62,221,661
SECTION 5309 CAPITAL PROGRAM	$2,000,000,000
SECTION 5309 FIXED GUIDEWAY MODERNIZATION	$800,000,000
Less Oversight (.32343056 of 1 percent)	(2,587,445)
Total Apportioned	$797,412,555
SECTION 5309 NEW STARTS	$800,000,000
Less Oversight (.32343056 of 1 percent)	(2,587,445)
Total Allocated	$797,412,555
SECTION 5309 BUS	$400,000,000
Less Oversight (.32343056 of 1 percent)	(1,293,722)
Reprogrammed Funds	975,000
Total Allocated	$399,681,278
SECTION 5303 METROPOLITAN PLANNING PROGRAM	$39,500,000
Reapportioned Funds Added	125,587
Total Apportioned	$39,625,587
SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM	$8,250,000
Reapportioned Funds Added	222,086
Total Apportioned	$8,472,086
TOTAL APPROPRIATIONS (Above Grant Programs)	$4,552,250,000

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TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 ONE PERCENT TRANSIT ENHANCEMENT	FY 1998 REVISED APPORTIONMENT
OVER 1,000,000 IN POPULATION	16,915,485	$1,691,548,492
200,000-1,000,000 IN POPULATION	3,860,366	386,036,619
50,000-200,000 IN POPULATION		225,829,068
NATIONAL TOTAL	$20,775,851	$2,303,414,179

URBANIZED AREA/STATE	FY 1998 ONE PERCENT TRANSIT ENHANCEMENT	FY 1998 REVISED APPORTIONMENT
Amounts Apportioned to Urbanized Areas Over 1,000,000 in Population:		
Atlanta, GA	$334,930	$33,493,001
Baltimore, MD	279,074	27,907,447
Boston, MA	638,661	63,866,105
Chicago, IL-Northwestern IN	1,522,302	152,230,242
Cincinnati, OH-KY	114,004	11,400,403
Cleveland, OH	198,520	19,852,012
Dallas-Fort Worth, TX	309,500	30,949,974
Denver, CO	205,394	20,539,442
Detroit, MI	275,688	27,568,753
Ft Lauderdale-Hollywood-Pompano Beach, FL	156,565	15,656,545
Houston, TX	340,340	34,033,956
Kansas City, MO-KS	78,320	7,831,983
Los Angeles, CA	1,551,560	155,155,958
Miami-Hialeah, FL	300,216	30,021,632
Milwaukee, WI	144,271	14,427,089
Minneapolis-St. Paul, MN	206,959	20,695,944
New Orleans, LA	129,044	12,904,375
New York, NY-Northeastern NJ	4,919,344	491,934,425
Norfolk-Virginia Beach-Newport News, VA	100,956	10,095,642
Philadelphia, PA-NJ	874,764	87,476,360
Phoenix, AZ	182,638	18,263,751
Pittsburgh, PA	249,265	24,926,498
Portland-Vancouver, OR-WA	186,261	18,626,103
Riverside-San Bernardino, CA	138,401	13,840,060
Sacramento, CA	106,213	10,621,336
San Antonio, TX	150,993	15,099,333
San Diego, CA	317,163	31,716,311
San Francisco-Oakland, CA	896,465	89,646,535
San Jose, CA	236,699	23,669,888
San Juan, PR	251,421	25,142,051
Seattle, WA	427,397	42,739,668
St. Louis, MO-IL	196,932	19,693,219
Tampa-St. Petersburg-Clearwater, FL	134,799	13,479,853
Washington, DC-MD-VA	760,426	76,042,598
TOTAL	$16,915,483	$1,691,548,492

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TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 ONE PERCENT TRANSIT ENHANCEMENT	FY 1998 REVISED APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population:		
Akron, OH	$48,310	$4,831,036
Albany-Schenectady-Troy, NY	54,098	5,409,805
Albuquerque, NM	43,406	4,340,612
Allentown-Bethlehem-Easton, PA-NJ	37,264	3,726,366
Anchorage, AK	18,901	1,890,085
Ann Arbor, MI	28,692	2,869,196
Augusta, GA-SC	14,473	1,447,316
Austin, TX	97,953	9,795,312
Bakersfield, CA	28,448	2,844,765
Baton Rouge, LA	24,070	2,407,003
Birmingham, AL	33,480	3,347,977
Bridgeport-Milford, CT	50,003	5,000,337
Buffalo-Niagara Falls, NY	97,728	9,772,805
Canton, OH	14,564	1,456,355
Charleston, SC	23,320	2,332,023
Charlotte, NC	47,032	4,703,240
Chattanooga, TN-GA	19,683	1,968,330
Colorado Springs, CO	32,522	3,252,161
Columbia, SC	21,932	2,193,173
Columbus, GA-AL	13,589	1,358,890
Columbus, OH	88,768	8,876,807
Corpus Christi, TX	30,765	3,076,548
Davenport-Rock Island-Moline, IA-IL	23,180	2,317,969
Dayton, OH	92,374	9,237,379
Daytona Beach, FL	26,650	2,664,984
Des Moines, IA	20,577	2,057,734
Durham, NC	26,063	2,606,340
El Paso, TX-NM	70,024	7,002,439
Fayetteville, NC	13,406	1,340,597
Flint, MI	30,546	3,054,570
Fort Myers-Cape Coral, FL	17,619	1,761,935
Fort Wayne, IN	15,683	1,568,287
Fresno, CA	42,501	4,250,142
Grand Rapids, MI	32,146	3,214,573
Greenville, SC	14,590	1,458,960
Harrisburg, PA	17,894	1,789,394
Hartford-Middletown, CT	69,489	6,948,867
Honolulu, HI	166,775	16,677,525
Indianapolis, IN	73,957	7,395,703
Jackson, MS	15,974	1,597,449
Jacksonville, FL	63,246	6,324,563
Knoxville, TN	19,323	1,932,290
Lansing-East Lansing, MI	25,969	2,596,937
Las Vegas, NV	113,267	11,326,725
Lawrence-Haverhill, MA-NH	26,329	2,632,923
Lexington-Fayette, KY	15,536	1,553,575
Little Rock-North Little Rock, AR	23,106	2,310,607
Lorain-Elyria, OH	$10,789	$1,078,858
Louisville, KY-IN	82,663	8,266,281
Madison, WI	37,283	3,728,264

TABLE 2

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 ONE PERCENT TRANSIT ENHANCEMENT	FY 1998 REVISED APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population (Continued):		
McAllen-Edinburg-Mission, TX	11,176	1,117,649
Melbourne-Palm Bay, FL	27,953	2,795,295
Memphis, TN-AR-MS	73,959	7,395,899
Mobile, AL	17,011	1,701,090
Modesto, CA	23,295	2,329,490
Montgomery, AL	10,780	1,077,956
Nashville, TN	43,568	4,356,814
New Haven-Meriden, CT	79,668	7,966,809
Ogden, UT	24,829	2,482,937
Oklahoma City, OK	40,171	4,017,053
Omaha, NE-IA	45,872	4,587,183
Orlando, FL	112,780	11,277,956
Oxnard-Ventura, CA	57,422	5,742,242
Pensacola, FL	15,572	1,557,185
Peoria, IL	15,601	1,560,098
Providence-Pawtucket, RI-MA	129,256	12,925,564
Provo-Orem, UT	23,995	2,399,506
Raleigh, NC	24,305	2,430,500
Reno, NV	28,311	2,831,102
Richmond, VA	47,851	4,785,067
Rochester, NY	57,639	5,763,858
Rockford, IL	14,842	1,484,223
Salt Lake City, UT	102,074	10,207,372
Sarasota-Bradenton, FL	31,709	3,170,934
Scranton-Wilkes-Barre, PA	26,562	2,656,153
Shreveport, LA	21,860	2,186,047
South Bend-Mishawaka, IN-MI	17,952	1,795,191
Spokane, WA	48,177	4,817,707
Springfield, MA-CT	49,911	4,991,120
Stockton, CA	29,179	2,917,921
Syracuse, NY	37,772	3,777,219
Tacoma, WA	81,548	8,154,822
Toledo, OH-MI	40,518	4,051,783
Trenton, NJ-PA	40,383	4,038,250
Tucson, AZ	68,177	6,817,668
Tulsa, OK	36,881	3,688,140
West Palm Beach-Boca Raton-Delray Bch, FL	114,610	11,460,999
Wichita, KS	25,638	2,563,834
Wilmington, DE-NJ-MD-PA	49,733	4,973,257
Worcester, MA-CT	35,695	3,569,542
Youngstown-Warren, OH	20,172	2,017,172
TOTAL.....	$3,860,367	$386,036,619

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TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population:	
ALABAMA:	$4,146,301
Anniston, AL	399,939
Auburn-Opelika, AL	320,871
Decatur, AL	366,213
Dothan, AL	307,590
Florence, AL	428,521
Gadsden, AL	378,741
Huntsville	1,202,290
Tuscaloosa, AL	742,136
ALASKA:	$4,834,264
Alaska Railroad	4,834,264
ARIZONA:	$1,085,318
Flagstaff, AZ	426,966
Yuma, AZ-CA (AZ)	658,352
ARKANSAS:	$1,584,185
Fayetteville-Springdale, AR	437,207
Fort Smith, AR-OK (AR)	595,158
Pine Bluff, AR	402,196
Texarkana, TX-AR (AR)	149,624
CALIFORNIA:	$24,266,106
Antioch-Pittsburg, CA	1,372,307
Chico, CA	599,177
Davis, CA	727,363
Fairfield, CA	883,409
Hemet-San Jacinto, CA	737,024
Hesperia-Apple Valley-Victorville, CA	940,228
Indio-Coachella, CA	445,659
Lancaster-Palmdale, CA	1,581,489
Lodi, CA	619,145
Lompoc, CA	380,251
Merced, CA	676,012
Napa, CA	706,359
Palm Springs, CA	880,005
Redding, CA	508,833
Salinas, CA	1,339,007
San Luis Obispo, CA	634,106
Santa Barbara, CA	2,071,506
Santa Cruz, CA	1,071,152
Santa Maria, CA	974,545
Santa Rosa, CA	1,889,534
Seaside-Monterey, CA	1,269,728
Simi Valley, CA	1,201,888
Vacaville, CA	729,634
Visalia	833,402
Watsonville, CA	459,136

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
CALIFORNIA (Continued):	
Yuba City, CA	732,599
Yuma, AZ-CA (CA)	2,608
COLORADO:	$4,471,268
Boulder, CO	994,924
Fort Collins, CO	828,677
Grand Junction, CO	471,816
Greeley, CO	662,789
Longmont, CO	603,993
Pueblo, CO	909,069
CONNECTICUT:	$14,671,901
Bristol, CT	704,740
Danbury, CT-NY (CT)	2,455,481
New Britain, CT	1,319,620
New London-Norwich, CT	1,061,907
Norwalk, CT	2,602,463
Stamford, CT-NY (CT)	3,311,389
Waterbury, CT	3,216,301
DELAWARE:	$337,324
Dover, DE	337,324
FLORIDA:	$10,280,902
Deltona, FL	341,836
Fort Pierce, F	818,861
Fort Walton Beach, FL	793,779
Gainesville, FL	1,017,278
Kissimmee, FL	473,817
Lakeland, FL	1,039,968
Naples, FL	684,440
Ocala, FL	459,770
Panama City, FL	689,989
Punta Gorda, FL	451,211
Spring Hill, FL	344,927
Stuart, FL	601,839
Tallahassee, FL	1,159,646
Titusville, FL	331,958
Vero Beach, FL	420,412
Winter Haven, FL	651,171
GEORGIA:	$4,501,240
Albany, GA	557,535
Athens, GA	534,548
Brunswick, GA	307,614
Macon, GA	999,295
Rome, GA	313,596
Savannah, GA	1,307,471
Warner Robins, GA	481,181

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TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
HAWAII:	$1,196,310
Kailua, HI	1,196,310
IDAHO:	$2,367,713
Boise City, ID	1,448,837
Idaho Falls, ID	519,380
Pocatello, ID	399,496
ILLINOIS:	$10,845,318
Alton, IL	586,114
Aurora, IL	1,641,532
Beloit, WI-IL (IL)	74,910
Bloomington-Normal, IL	944,231
Champaign-Urbana, IL	1,332,493
Crystal Lake, IL	535,011
Decatur, IL	750,065
Dubuque, IA-IL (IL)	17,472
Elgin, IL	1,184,121
Joliet, IL	1,369,188
Kankakee, IL	537,367
Round Lake Beach-McHenry, IL-WI (IL)	779,770
Springfield, IL	1,093,044
INDIANA:	$6,325,458
Anderson, IN	511,277
Bloomington, IN	762,951
Elkhart-GosheN, IN	764,670
Evansville, IN-KY (IN)	1,416,545
Kokomo, IN	514,874
Lafayette-West Lafayette, IN	1,023,600
Muncie, IN	752,475
Terre Haute, IN	579,066
IOWA:	$3,443,507
Cedar Rapids, IA	1,070,127
Dubuque, IA-IL (IA)	520,871
Iowa City, IA	616,580
Sioux City, IA-NE-SD (IA)	569,473
Waterloo-Cedar Falls, IA	666,456
KANSAS:	$1,671,930
Lawrence, KS	633,125
St. Joseph, MO-KS (KS)	5,226
Topeka, KS	1,033,579
KENTUCKY:	$1,317,754
Clarksville, TN-KY (KY)	160,793
Evansville, IN-KY (KY)	197,450
Huntington-Ashland, WV-KY-OH ((KY)	393,748
Owensboro, KY	565,763

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
LOUISIANA:	$3,902,650
Alexandria, LA	569,508
Houma, LA	400,591
Lafayette, LA	985,386
Lake Charles, LA	791,544
Monroe, LA	752,638
Slidell, LA	402,983
MAINE:	$1,698,504
Bangor, ME	349,014
Lewiston-Auburn, ME	405,549
Portland, ME	867,157
Portsmouth-Dover-Rochester, NH-ME (ME)	76,784
MARYLAND:	$1,898,818
Annapolis, MD	615,191
Cumberland, MD-WV (MD)	327,192
Frederick, MD	443,891
Hagerstown, MD-PA-WV (MD)	502,544
MASSACHUSETTS:	$7,480,587
Brockton, MA	1,366,481
Fall River, MA-RI (MA)	1,332,763
Fitchburg-Leominster, MA	540,095
Hyannis, MA	385,685
Lowell, MA-NH (MA)	1,691,488
New Bedford, MA	1,465,758
Pittsfield, MA	349,135
Taunton, MA	349,182
MICHIGAN:	$6,383,634
Battle Creek, MI	533,154
Bay City, MI	595,618
Benton Harbor, MI	430,826
Holland, MI	483,524
Jackson, MI	595,291
Kalamazoo, MI	1,285,504
Muskegon, MI	784,104
Port Huron, MI	516,035
Saginaw, MI	1,159,578
MINNESOTA:	$2,274,940
Duluth, MN-WI (MN)	553,591
Fargo-Moorhead, ND-MN (MN)	328,091
Grand Forks, ND-MN (MN)	70,153
La Crosse, WI-MN (MN)	34,365
Rochester, MN	624,395
St. Cloud, MN	672,345
MISSISSIPPI:	$1,953,082
Biloxi-Gulfport, MS	1,209,209
Hattiesburg, MS	376,875

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
MISSISSIPPI (Continued):	
Pascagoula, MS	366,998
MISSOURI:	$2,691,374
Columbia, MO	531,346
Joplin, MO	373,152
Springfield, MO	1,253,505
St. Joseph, MO-KS (MO)	533,371
MONTANA:	$1,791,651
Billings, MT	690,968
Great Falls, MT	644,341
Missoula, MT	456,342
NEBRASKA:	$1,991,766
Lincoln, NE	1,905,605
Sioux City, IA-NE-SD (NE)	86,161
NEVADA:	$0
NEW HAMPSHIRE:	$2,418,722
Lowell, MA-NH (NH)	4,951
Manchester, NH	1,013,966
Nashua, NH	810,836
Portsmouth-Dover-Rochester, NH-ME (NH)	588,969
NEW JERSEY:	$1,832,628
Atlantic City, NJ	1,320,904
Vineland-Millville, NJ	511,724
NEW MEXICO:	$997,966
Las Cruces, NM	554,374
Santa Fe, NM	443,592
NEW YORK:	$5,537,029
Binghamton, NY	1,389,815
Danbury, CT-NY (NY)	18,838
Elmira, NY	570,703
Glens Falls, NY	392,463
Ithaca, NY	396,104
Newburgh, NY	514,354
Poughkeepsie, NY	1,080,468
Stamford, CT-NY (NY)	128
Utica-Rome, NY	1,174,156
NORTH CAROLINA:	$8,988,841
Asheville, NC	693,824
Burlington, NC	503,310
Gastonia, NC	736,967
Goldsboro, NC	382,725
Greensboro, NC	1,585,070
Greenville, NC	440,666

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
NORTH CAROLINA (Continued):	
Hickory, NC	420,274
High Point, NC	708,738
Jacksonville, NC	684,259
Kannapolis, NC	493,976
Rocky Mount, NC	394,874
Wilmington, NC	645,870
Winston-Salem, NC	1,298,288
NORTH DAKOTA:	$1,746,517
Bismarck, ND	503,622
Fargo-Moorhead, ND-MN (ND)	728,366
Grand Forks, ND-MN (ND)	514,529
OHIO:	$4,802,112
Hamilton, OH	992,554
Huntington-Ashland, WV-KY-OH (OH)	252,757
Lima, OH	542,463
Mansfield, OH	523,726
Middletown, OH	682,435
Newark, OH	415,800
Parkersburg, WV-OH (OH)	61,570
Sharon, PA-OH (OH)	40,601
Springfield, OH	789,393
Steubenville-Weirton, OH-WV-PA (OH)	283,994
Wheeling, WV-OH (OH)	216,819
OKLAHOMA:	$747,423
Fort Smith, AR-OK (OK)	13,112
Lawton, OK	734,311
OREGON:	$3,897,790
Eugene-Springfield, OR	1,834,775
Longview, WA-OR (OR)	12,202
Medford, OR	567,030
Salem, OR	1,483,783
PENNSYLVANIA:	$10,189,517
Altoona, PA	696,086
Erie, PA	1,790,665
Hagerstown, MD-PA-WV (PA)	6,134
Johnstown, PA	641,900
Lancaster, PA	1,618,993
Monessen, PA	440,592
Pottstown, PA	418,098
Reading, PA	1,889,891
Sharon, PA-OH (PA)	292,708
State College, PA	609,195
Steubenville-Weirton, OH-WV-PA (PA)	2,128
Williamsport, PA	510,669
York, PA	1,272,458

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
PUERTO RICO:	$9,412,961
Aguadilla, PR	823,507
Arecibo, PR	769,464
Caguas, PR	2,015,118
Cayey, PR	595,796
Humacao, PR	515,649
Mayaguez, PR	1,107,872
Ponce, PR	2,465,353
Vega Baja-Manati, PR	1,120,202
RHODE ISLAND:	$599,161
Fall River, MA-RI (RI)	137,353
Newport, RI	461,808
SOUTH CAROLINA:	$2,537,384
Anderson, SC	341,258
Florence, SC	351,010
Myrtle Beach, SC	368,100
Rock Hill, SC	390,843
Spartanburg, SC	681,326
Sumter, SC	404,847
SOUTH DAKOTA:	$1,259,884
Rapid City, SD	401,254
Sioux City, IA-NE-SD (SD)	11,250
Sioux Falls, SD	847,380
TENNESSEE:	$1,949,898
Bristol, TN-Bristol, VA (TN)	182,257
Clarksville, TN-KY (TN)	444,373
Jackson, TN	336,348
Johnson City, TN	512,704
Kingsport, TN-VA (TN)	474,216
TEXAS:	$18,054,256
Abilene, TX	640,536
Amarillo, TX	1,188,051
Beaumont, TX	$817,120
Brownsville, TX	1,187,656
Bryan-College Station, TX	795,538
Denton, TX	429,728
Galveston, TX	455,843
Harlingen, TX	583,701
Killeen, TX	1,116,459
Laredo, TX	1,410,048
Lewisville, TX	496,084
Longview, TX	488,084
Lubbock, TX	1,390,037
Midland, TX	609,045
Odessa, TX	675,652
Port Arthur, TX	737,034

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
TEXAS (Continued):	
San Angelo, TX	633,331
Sherman-Denison, TX	317,023
Temple, TX	359,909
Texarkana, TX-AR (TX)	290,418
Texas City, TX	771,986
Tyler, TX	603,672
Victoria, TX	418,479
Waco, TX	911,669
Wichita Falls, TX	727,153
UTAH:	$360,848
Logan, UT	360,848
VERMONT:	$633,181
Burlington, VT	633,181
VIRGINIA:	$4,203,025
Bristol, TN-Bristol, VA (VA)	129,754
Charlottesville, VA	604,352
Danville, VA	343,200
Fredericksburg, VA	402,925
Kingsport, TN-VA (VA)	24,497
Lynchburg, VA	574,951
Petersburg, VA	728,880
Roanoke, VA	1,394,466
WASHINGTON:	$3,971,930
Bellingham, WA	467,971
Bremerton, WA	906,548
Longview, WA-OR (WA)	395,979
Olympia, WA	705,301
Richland-Kennewick-Pasco, WA	735,786
Yakima, WA	760,345
WEST VIRGINIA	$3,052,631
Charleston, WV	1,228,023
Cumberland, MD-WV (WV)	14,687
Hagerstown, MD-PA-WV (WV)	3,709
Huntington-Ashland, WV-KY-OH (WV)	689,460
Parkersburg, WV-OH (WV)	443,412
Steubenville-Weirton, OH-WV-PA (WV)	190,775
Wheeling, WV-OH (WV)	482,565
WISCONSIN:	$8,356,695
Appleton-Neenah, WI	1,530,258
Beloit, WI-IL (WI)	328,014
Duluth, MN-WI (WI)	143,679
Eau Claire, WI	599,382
Green Bay, WI	1,162,241
Janesville, WI	441,111
Kenosha, WI	803,178

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 REVISED APPORTIONMENT
WISCONSIN (Continued):	
La Crosse, WI-MN (WI)	637,630
Oshkosh, WI	556,472
Racine, WI	1,240,509
Round Lake Beach-McHenry, IL-WI (WI)	465
Sheboygan, WI	524,297
Wausau, WI	389,459
	$874,864
WYOMING:	401,322
Casper, WY	473,542
Cheyenne, WY	
TOTAL	$225,829,068

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

AREA	FY 1998 REVISED APPORTIONMENT
AZ Phoenix	$887,899
CA Los Angeles	11,547,934
CA Sacramento	1,243,297
CA San Diego	3,611,481
CA San Francisco	51,503,932
CA San Jose	4,930,084
CO Denver	869,435
CT Hartford	596,259
CT Southwestern Connecticut	32,379,650
DE Wilmington	420,810
DC Washington	22,127,637
FL Ft. Lauderdale	1,481,500
FL Jacksonville	48,569
FL Miami	4,331,551
FL Tampa	36,644
FL West Palm Beach	1,159,570
GA Atlanta	9,555,673
HI Honolulu	337,024
IL Chicago/Northwestern Indiana	107,422,925
LA New Orleans	2,181,084
MD Baltimore	3,348,633
MD Baltimore Commuter Rail	13,587,812
MA Boston	53,922,300
MA Lawrence-Haverhill	641,111
MI Detroit	190,384
MN Minneapolis	2,025,018
MO St. Louis	1,395,477
NJ Northeastern New Jersey	67,917,222
NJ Trenton	679,377
NY Buffalo	544,733
NY New York	271,981,250
OH Cleveland	11,432,982
OH Dayton	2,013,320
PA Philadelphia/Southern New Jersey	76,425,562
PA Pittsburgh	18,804,966
PR San Juan	812,274
OR Portland	1,462,315
RI-MA- Providence	1,173,919
TN Chattanooga	36,803
TX Dallas	357,512
TX Houston	2,825,004
VA Norfolk	464,097
WA Seattle	7,909,822
WA Tacoma	464,764
WI Madison	322,940
TOTAL	$797,412,555

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1998 REVISED ALLOCATIONS
ALABAMA		
Birmingham/Jefferson County	Buses	$2,931,588
Birmingham	Downtown intermodal transportation facility, phase 2	5,863,178
Gadsden	Buses and vans	97,745
Huntsville	Intermodal center, phase 1	4,885,981
Mobile	Southern market historic intermodal center	977,196
Mobile	Municipal pier intermodal waterfront access rehabilitation project	977,196
Mobile	Bus replacement	1,465,794
Mobile	Intermodal facility	5,374,579
Montgomery	Bus replacement	1,465,794
Tuscaloosa	Bus replacement	977,196
ARIZONA		
Phoenix	Buses and bus facilities	4,397,383
Tucson	Intermodal center	977,196
CALIFORNIA		
Folsom	Multimodal facility	1,465,794
Foothill	Transit bus maintenance facility	8,794,766
I-5 Consortium Cities Joint Powers Authority	Facilities	4,885,981
Inglewood	Transit center project	488,598
Lake Tahoe	Intermodal center	977,196
Long Beach	Buses and bus facilities	1,465,794
Marina/Ft. Ord	Buses and multimodal center	977,196
Mendocino County	Buses	781,757
Modesto	Bus maintenance facility	1,710,093
Rialto	Metrolink depot	1,074,916
Riverside County	Buses and bus facility	2,296,411
Riverside County	Transit vehicle ITS communications	977,196
Sacramento	Bus facility	977,196
San Joaquin (Stockton)	Bus facilities	1,954,393
Santa Clara	Buses	2,442,991
Santa Cruz Metropolitan Transit District	Buses and bus facility	977,196
San Ysidro Border	Intermodal center	488,598
Solano County	Buses and bus-related equipment	1,172,636
Sonoma County	Bus facilities	977,196
Unitrans	Maintenance facility	977,196
Woodland	Transfer facility	195,439
Yolo County	Buses and paratransit vehicles	977,196
Yosemite area	Regional transportation solution	488,598
COLORADO	Buses and bus facilities	5,374,579
CONNECTICUT		
Bridgeport	Buses and bus facilities	1,954,393
Bridgeport	Intermodal center	3,664,486
New Haven	Bus facility	1,172,636
DELAWARE	New Castle bus facility	1,465,794
FLORIDA		
Daytona Beach	Intermodal facility	1,954,393
Florida Citrus Connection	Buses	1,465,794
Lakeland	Transit buses	977,196
Lakeworth	Buses and bus facilities	977,196
LYNX	Buses and bus facilities	2,931,589
Metro-Dade County	Buses and bus facilities	4,885,981
Orlando	Intermodal facility	977,196
Palm Beach County	Buses and bus facilities	1,954,393
Tampa (Hillsborough County)	HARTline buses and bus facilities	1,465,794
Volusia County	Buses and bus facilities	1,954,393

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1998 REVISED ALLOCATIONS
GEORGIA		
Chatham	Bus facility	$3,908,785
MARTA	Buses	4,885,981
HAWAII: Honolulu	Buses and bus facilities	4,885,981
ILLINOIS	Buses and bus facilities	4,397,383
INDIANA		
Indianapolis	Buses	1,954,393
South Bend	Intermodal facility	1,954,393
IOWA		
Statewide	Buses and bus facilities	2,687,290
Sioux City	Park and ride facility	1,221,495
KANSAS	Johnson County bus maintenance/operations facility	977,196
LOUISIANA	Statewide buses and bus facilities	
Baton Rouge	Bus related facilities	586,318
Jefferson Parish	Buses	1,172,636
Lafayette	Bus-related facility	732,897
Lake Charles	Buses	146,579
LA DOTD	Vans and equipment	684,037
Monroe	Buses and bus-related equipment	781,757
New Orleans	Buses and bus-related facilities	8,794,766
Shreveport	Buses and bus-related facility	390,879
St. Tammany Parish	Bus and bus-related facility	293,159
MARYLAND	Buses and bus facilities	7,817,570
MASSACHUSETTS		
Franklin RTA	Buses	488,598
Greenfield Montague Transportation Area	Buses	684,037
South Station	Intermodal transportation center	977,196
Springfield	Intermodal center	977,196
Worcester	Union station	2,931,589
MICHIGAN	Buses and bus facilities	7,328,971
MINNESOTA		
Metropolitan Council transit Operations	Buses and bus facilities	8,794,766
St. Paul	Snelling bus garage	1,465,794
MISSISSIPPI	Jackson bus facility	1,954,393
MISSOURI		
Kansas City	Buses and fare box collection system	3,420,187
Kansas City	Union Station intermodal center	4,397,383
State of Missouri	Buses and bus facilities	7,817,570
NEVADA		
Clark County	Buses	7,817,570
Reno, Washoe County Regional Transportation Commission	Buses and bus facilities	1,465,794
NEW JERSEY	NJ Transit alternative fuel buses	5,863,178
NEW MEXICO		
Albuquerque	Uptown transit center	977,196
	Demo of universal electric transportation subsystems (DUETS)	977,196
Las Cruces, Santa Fe and Albuquerque	Park and ride	977,196
Santa Fe	Buses and bus facilities	977,196
Statewide	Buses and bus facilities	3,664,486
NEW YORK		
Nassau County and Long Island	Buses and bus facilities (Goodwill Games)	977,196
Nassau County	Natural gas buses	4,885,981
New Rochelle	Intermodal facility	1,465,794
New York City	Natural gas buses	7,328,971
NFTA	HUBLINK program	977,196
Poughkeepsie	Intermodal facility	1,954,393
Rensselaer County	Intermodal facility	1,832,243
Staten Island/Brooklyn	Mobility project	977,196

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1998 REVISED ALLOCATIONS
NEW YORK (cont'd)		
Suffolk County	Buses	$2,100,972
Syracuse	Buses	4,201,944
Westchester County	Buses	4,885,981
Yonkers	Intermodal facility	1,954,393
NORTH CAROLINA		
Chapel Hill University of North Carolina	Buses	977,196
Statewide	Buses and bus facilities	4,885,981
OHIO	Buses and bus facilities	12,214,953
OREGON		
Eugene-Springfield-Land County	Buses and bus facilities	977,196
Lane Transit District	Bus system	977,196
Salem and Corvallis	Buses and bus facilities	977,196
PENNSYLVANIA		
Allegheny County	Buses	977,196
Armstrong Mid-County	Buses and bus facility	195,439
Berks Area Reading	Transit intermodal facility	488,598
Cambria County	Buses and bus facilities	781,757
Fayette and Somerset	Buses, vans, and bus facilities	586,318
Indiana County	Buses	488,598
Lackawanna County	Paratransit vans	293,159
Lawrence County	Buses	977,196
Lehigh and Northampton	Buses	977,196
Mid Mon Valley transit authority	Buses	732,897
New Castle area transit authority	Buses	732,897
North Philadelphia	Intermodal facility	977,196
Philadelphia Eastwick	Intermodal center	977,196
Schuylkill County	Buses	195,439
Scranton	Buses and bus facility	1,465,794
SEPTA	Buses	7,328,972
Towanda Borough	Intermodal bus facility	1,954,393
Wilkes-Barre	Intermodal facility	1,465,794
Williamsport	Buses and bus facility	1,221,495
Statewide	Bus and bus facilities projects	3,908,785
SOUTH CAROLINA		
Columbia	Buses and facility	1,954,393
Pee Dee Regional Planning Authority	Buses and facilities	2,931,588
Virtual Transit Enterprise	Integration of transit information processing systems	977,196
SOUTH DAKOTA	Statewide bus and bus facilities	2,198,692
TENNESSEE	Buses and bus facilities	7,817,570
TEXAS		
Austin	Buses	2,931,588
Brazos Transit Authority	Transit facilities and buses	2,931,588
Corpus Christi	Bus facilities	1,905,533
El Paso	Buses	977,196
Fort Worth	Buses	1,465,794
Galveston	Alternatively fueled vehicles	1,954,393
Rural Texas	Bus replacement program	2,442,991
UTAH		
Utah Transit Authority Olympic	Park and ride lots	1,954,393
Park City Transit	Buses	390,879
Utah Transit Authority	Bus acquisition	1,954,393
Utah Transit Authority Olympic	Intermodal transportation centers	2,442,991
Statewide	Buses and bus facilities	1,954,393

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FEDERAL TRANSIT ADMINISTRATION

FY 1998 REVISED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1998 REVISED ALLOCATIONS
VERMONT		
Burlington	Multimodal center	$1,465,794
Statewide	Bus and bus facilities	977,196
VIRGINIA		
Clarendon canopy project		244,299
Falls Church	Electric buses	390,879
Dulles corridor	Buses and bus facilities	2,442,991
Richmond	Multimodal center	2,442,991
WASHINGTON		
Bremerton	Buses and transportation center	977,196
Chelan- Douglas	Multimodal center	977,196
Community Transit	Knock Park facility	1,465,794
Everett	Intermodal center	2,442,991
King County	Multimodal facility	977,196
King County	Metro commuter intermodal connector	1,465,794
King County	Park and ride lots	4,885,981
Olympic Peninsula International Gateway	Transportation Center	977,196
Snohomish County	Buses	2,442,991
Tacoma Dome station project		1,465,794
Thurston County	Intercity buses	977,196
Whatcom Transportation Authority	Facilities	1,465,794
WEST VIRGINIA		
Huntington	Intermodal Facility and buses	6,840,374
Statewide	Buses and bus facilities, communications and computer systems	9,039,066
WISCONSIN		
Milwaukee	Rail station rehabilitation	977,196
Wisconsin Transit System	Buses	12,703,550
	Fuel cell powered transit bus program and Intermodal transportation fuel cell bus maintenance facility	4,850,000
	Bus testing facility	3,000,000
TOTAL		$399,681,278

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	18-Jun-98 Total
Urbanized Area Formula (Section 5307)	2,298,852,727	2,548,190,791	2,768,237,551	2,992,663,351	3,215,948,776	3,441,286,876	17,265,180,070
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,288,098	208,958,298	224,548,873	240,282,773	1,179,079,635
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,824,401	78,728,401	84,602,401	90,530,401	455,940,595
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program (new)	0	2,000,000	8,800,000	9,800,000	12,050,000	12,050,000	44,700,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program (new)	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,498,800	44,668,800	47,977,600	52,940,800	54,595,200	59,558,400	299,239,600
State Planning & Research (Section 5313(b))	8,251,200	9,331,200	10,022,400	11,059,200	11,404,800	12,441,600	62,510,400
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	4,643,738,000	5,316,000,000	5,795,000,000	6,272,000,000	6,746,000,000	7,225,000,000	35,997,738,000

The FY 1998 total excludes $250,000 provided in Section 3032 of TEA-21.
The FY 1999 Clean Fuels Formula Program does not include $50,000,000 from Bus and Bus Related category.

Table 5 - revised

TABLE 5A

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	18-Jun-98 Total
Urbanized Area Formula (Section 5307)	2,298,852,727	2,698,190,791	2,918,237,551	3,142,663,351	3,365,948,776	3,591,286,876	18,015,180,072
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,288,098	208,958,298	224,548,873	240,282,773	1,179,079,634
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,824,401	78,728,401	84,602,401	90,530,401	455,940,594
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program (new)	0	2,000,000	8,800,000	9,800,000	12,050,000	12,050,000	44,700,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,502,800,000	1,590,400,000	1,678,400,000	1,766,400,000	1,844,400,000	9,182,400,000
Job Access and Reverse Commute Program (new)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,498,800	71,139,200	75,275,200	81,065,600	83,547,200	89,337,600	439,863,600
State Planning & Research (Section 5313(b))	8,251,200	14,860,800	15,724,800	16,934,400	17,452,800	18,662,400	91,886,400
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	4,643,738,000	6,542,000,000	7,008,000,000	7,475,000,000	7,936,000,000	8,393,000,000	41,997,738,000

The FY 1998 total excludes $250,000 provided in Section 3032 of TEA-21.
The FY 1999 Clean Fuels Formula Program does not include $50,000,000 from Bus and Bus Related category.

Table 5A - revised

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Table 6

FEDERAL TRANSIT ADMINISTRATION

TEA-21 - NEW START PROJECT AUTHORIZATIONS

TPM-18

I- AUTHORIZED FOR FINAL DESIGN & CONSTRUCTION

	State	Area	Project	Amount
1	AK	Hollis-Ketchikan	Hollis-Ketchikan Ferry	
2	AZ	Phoenix	Fixed Guideway	
3	AR	Little Rock	River Rail	
4	CA	Sacramento	Placer County Corridor	
5	CA	San Jose	Tasman Corridor Light Rail	
6	CA	Los Angeles	Metrolink [Union Station-Fullerton]	
7	CA	Sacramento	Folsom Extension	
8	CA	San Francisco	Bayshore Corridor	
9	CA	Los Angeles	MOS-3	
10	CA	Stockton	Altamont Commuter Rail	
11	CA	Los Angeles	Santa Monica Busway	
12	CA	Monterey County	Monterey County Commuter Rail	
13	CA	San Francisco	BART to San Francisco International Airport Extension	
14	CA	San Diego	Oceanside-Escondido Corridor	
15	CA	Orange County	Fullerton-Irvine Corridor	
16	CA	San Joaquin	Regional Transit Corridor	
17	CA	Sacramento	South Corridor	
18	CA	Los Angeles	Metrolink San Bernardino Line	
19	CA	San Diego	Mission Valley East	325,000,000
20	CA	San Diego	Mid-Coast LRT Corridor	
21	CO	Denver	Southwest LRT	
22	CO	Colorado	Roaring Fork Valley Rail	40,000,000
23	CO	Denver	East Corridor [Airport]	
24	CO	Denver	Southeast LRT [I-25 between 6th & Lincoln]	10,000,000
25	CO	Denver	West Corridor LRT	
26	CT	Hartford	Griffin Line	33,000,000
27	DC/MD	Washington, DC	Largo Extension	
28	FL	Tampa Bay	Regional Rail	2,000,000
29	FL	Miami	Palmetto Metrorail	8,000,000
30	FL	Fort Lauderdale	Fort Lauderdale-West Palm Beach- Miami Tri-County Commuter Rail	20,000,000
31	FL	Orlando	Central Florida Light Rail System	100,000,000
32	FL	Miami	East-West Multimodal Corridor	20,000,000
33	FL	Miami	North 27th Avenue Corridor	
34	FL	Miami	South Busway Extension	
35	GA	Atlanta-Griffin	Atlanta-Griffin Commuter Rail	
36	GA	Atlanta-Athens	Atlanta-Athens Commuter Rail	
37	GA	Atlanta	North Line Extension	
38	IL	Chicago	Douglas Branch	315,000,000
39	IL	Chicago	Navy Pier-McCormick Place Busway	
40	IL	Chicago	North Central Upgrade Commuter Rail	
41	IL	Chicago	Ravenswood Line Extension	

I- AUTHORIZED FOR FINAL DESIGN & CONSTRUCTION *CONTINUED*

	State	Area	Project	Amount
42	IL	Chicago	Southwest Extension	
43	IL	Chicago	West Line Extension	
44	IL	E. St. Louis-St. Clair County	Mid-America Airport Corridor	
45	IN	Northern Indiana	Westlake Commuter Rail Link	
46	KY	Louisville	Jefferson County Corridor	
47	LA	New Orleans	Canal Streetcar	
48	MD	Maryland	Light Rail Double Track	
49	MD	Baltimore/Wash	MARC Commuter Rail Improvements	185,000,000
50	MD	Baltimore	Central LRT Extension to Glen Burnie	
51	MA	Boston	Massport Airport Intermodal Transit Connector	
52	MA	Boston	South Boston Piers Transitway	
53	MA	Boston	North-South Rail Link	
54	MA	Boston	North Shore Corridor & Blue Line Extension to Beverly	50,000,000
55	MN	Twin Cities	Northstar Corridor [Downtown Minneapolis - Anoka County-St. Cloud]	6,000,000
56	MN	Twin Cities	Transitways Corridors	120,000,000
57	MO	St. Louis	Cross County Corridor	
58	MO	Kansas City	Southtown Corridor	
59	MO/KS	Kansas City	I-35 Commuter Rail	30,000,000
60	NV	Las Vegas	Las Vegas Corridor	155,000,000
61	NJ	New Jersey	Urban Core	
62	NJ	New Jersey	New York, Susquehanna & Western Commuter Rail	
63	NJ	West Trenton-Newark	West Trenton Line [West Trenton-Newark]	
64	NJ	Northwest NJ	Northeast Rail Corridor	
65	NM	Albuquerque	High Capacity Corridor	
66	NY	New York	Long Island Railroad East Side Access	353,000,000
67	NY	New York	New York-Staten Island Ferry-Whitehall Intermodal Terminal	40,000,000
68	NY	New York	8th Avenue Subway Connection	
69	NY	New York	New York-Brooklyn-Staten Island Ferry	
70	NH/MA	Nashua,NH/Lowell,MA	Nashua,NH-Lowell, MA Commuter Rail	
71	NC	Southeast North Carolina	Southeastern North Carolina Corridor	
72	NC	Raleigh-Durham	Regional Transit Plan	
73	NC	Charlotte	South Corridor Transitway	
74	OH	Cleveland	Cleveland-Akron-Canton Commuter Rail	
75	OH	Cleveland	Waterfront Line Extension	
76	OH	Cleveland	I-90 Corridor to Ashtabula County	
77	OH	Cleveland	Berea Metroline Extension	
78	OH	Cleveland	Euclid Corridor Extension	
79	OH	Cleveland	Blue Line Extension	
80	OR	Portland	Westside-Hillsboro Corridor	
81	OR	Portland	South-North Corridor	25,000,000
82	PA	Pittsburgh	North Shore-Central Business District	20,000,000
83	PA	Pittsburgh	MLK Busway Extension	
84	PA	Pittsburgh	Airborne Shuttle System	
85	PA	Philadelphia	Schuylkill Valley Metro	75,000,000
86	PA	Pittsburgh	Stage II Light Rail	
87	PR	San Juan	Tren Urbano Extension to Minillas	

I- AUTHORIZED FOR FINAL DESIGN & CONSTRUCTION *CONTINUED*

	State	Area	Project	Amount
88	PR	San Juan	Tren Urbano	
89	TN	Nashville	Commuter Rail	
90	TN	Memphis	Medical Center Extension	
91	TX	Houston	Regional Bus Plan- Phase I	
92	TX	Austin	NW/North Central/SE - Airport LRT	
93	TX	Dallas/Fort Worth	RAILTRAN [Phase II]	
94	TX	Galveston	Trolley Extension	
95	TX	Dallas	North Central Extension	200,000,000
96	UT	Santa Cruz	Fixed Guideway	
97	UT	Salt Lake City	Light Rail [Airport to University of Utah]	
98	UT	Salt Lake City	Salt Lake City-Ogden-Provo Commuter Rail	
99	UT	Salt Lake City	South LRT	
100	VA	Wash,DC-Richmond,VA	Washington-Richmond Rail Corridor Improvements	
101	VA	Wash,DC/VA	Dulles Corridor Extension	100,000,000
102	VA	Norfolk	Norfolk-Virginia Beach Corridor	
103	WA	Spokane	South Valley Corridor Light Rail	
104	WA	Seattle	Sound Move Corridor [Earmarked funds for Commuter Rail]	40,000,000
105	WA	Seattle	Southworth High Speed Ferry	
106	WV	Morgantown	Personal Rapid Transit	
107	WI	Milwaukee	East-West Corridor	
108	WI	Kenosha-Racine- Milwaukee	Kenosha-Racine-Milwaukee Rail Extension	
		Total- Final Design & Construction		**2,272,000,000**

II- A

	Stat
1	AL
2	CA
3	CA
4	CA
5	CA
6	CA
7	CA
8	CA
9	CA
10	CA
11	CO
12	DC
13	FL
14	FL
15	FL
16	FL
17	GA
18	GA
19	GA
20	GA
21	GA
22	IL
23	IL
24	IN
25	LA
26	LA
27	ME
28	MD
29	MD
30	MD
31	MA
32	MN
33	NJ
34	NJ
35	NJ
36	NY
37	NY
38	NY
39	NY
40	NY
41	NY
42	NY
43	NY
44	NY
45	NY
46	NY
47	NY

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II- AUTHORIZED FOR ALTERNATIVES ANALYSIS & PRELIMINARY ENGINEERING

	State	Area	Project	Amount
1	AL	Birmingham	Transit Corridor	87,500,000
2	CA	Oakland	Oakland Airport-BART Corridor	
3	CA	Los Angeles	MOS-4 East Side Extension (II)	
4	CA	Los Angeles	MOS-4 San Fernando Valley East-West	
5	CA	Los Angeles	LOSSAN- [Del Mar - San Diego]	
6	CA	Fremont	South Bay Corridor	
7	CA	Marin/Sonoma Counties	North Bay Commuter Rail	
8	CA	Los Angeles Area	Riverside-Perris Rail Passenger Service	
9	CA	Los Angeles Area	Redlands-San Bernardino Transportation Corridor	
10	CA	San Francisco-San Jose	Caltrain Extension to Hollister	
11	CO	Colorado	North Front Range Corridor [Fort Collins-Denver]	
12	DC	Washington, DC	Georgetown-Ft. Lincoln	
13	FL	St. Petersburg	Pinellas County- Mobility Initiative	
14	FL	Miami	Northeast Corridor	
15	FL	Miami	Kendall Corridor	
16	FL	Jacksonville	Fixed Guideway Corridor	
17	GA	Atlanta	MARTA Extension [S. DeKalb - Lindbergh]	
18	GA	Atlanta	Georgia 400 Multimodal Corridor	
19	GA	Atlanta	MARTA I-285 Transit Corridor	
20	GA	Atlanta	MARTA Marietta-Lawrenceville Corridor	
21	GA	Atlanta	MARTA South DeKalb Comprehensive Transit Program	
22	IL	Chicago	Comisky Park Station	
23	IL	Chicago	Inner Circumferential Commuter Rail	
24	IN	Indianapolis	Northeast Indianapolis Corridor	
25	LA	New Orleans	Desire Streetcar	
26	LA	New Orleans	Airport- CBD Commuter Rail	
27	ME	Maine	High Speed Ferry Service	
28	MD	Wash,DC/MD	Maryland Route 5 Corridor	
29	MD	Baltimore	People Mover	
30	MD	Baltimore	Metropolitan Rail Corridor	
31	MA	Boston	Urban Ring	
32	MN	Twin Cities	Washington County Corridor [Hastings-St. Paul]	
33	NJ	Northern NJ	Union Township Station [Raritan Valley Line]	
34	NJ	Bergen County	Bergen County Cross County Light Rail	5,000,000
35	NJ	North. NJ	Trans-Hudson Midtown Corridor	5,000,000
36	NY	New York	St. George's Ferry Intermodal Terminal	20,000,000
37	NY	New York	Queens West Light Rail Link	
38	NY	Philadelphia	Lower Merion Township	
39	NY	Newburgh	LRT System	
40	NY	New York	Midtown West Intermodal [Ferry] Terminal	16,300,000
41	NY	New York	Nassau Hub	10,000,000
42	NY	New York	North Shore Railroad	
43	NY	New York	Manhattan East Side Link [Second Avenue Subway]	5,000,000
44	NY	New York	Lower Manhattan Access	
45	NY	New York	Brooklyn-Manhattan Access	
46	NY	New York	Broadway-Lafayette & Bleeker Street Transfer	
47	NY	New York	Astoria-East Elmhurst Extension	

II- AUTHORIZED FOR ALTERNATIVES ANALYSIS & PRELIMINARY ENG. *CONTINUED*

	State	Area	Project	Amount
48	OH	Cleveland	Northeast Ohio- Commuter Rail	
49	OH	Toledo	CBD to Zoo	
50	OH	Cleveland	Lorain-Cleveland Commuter Rail	
51	OH	Dayton	Regional Riverfront Corridor	
52	OH/KY	Cincinnati	Cincinnati/Northern Kentucky Corridor	65,000,000
53	PA	Philadelphia	Broad Street Line Extension	
54	PA	Philadelphia	Cross County Metro	
55	PA	Scranton	Laurel Line Intermodal Corridor	
56	PA	Harrisburg	Cumberland/Dauphin County Corridor 1 Commuter Rail	20,000,000
57	RI	Providence	Providence-Pawtucket Corridor	
58	SC	Charleston	Monobeam	
59	TN	Knoxville	Electric Transit	
60	TN	Memphis	Regional Rail Plan	
61	TX	Dallas	DART LRT Extensions	
			Southeast Extension	20,000,000
			Northeast Extension	12,000,000
62	TX	Dallas	Las Colinas Corridor	
63	TX	El Paso	International Fixed Guideway [El Paso-Juarez]	
64	TX	Houston	Advanced Transit Program	
65	UT	Salt Lake City	Draper Light Rail Extension	
66	UT	Salt Lake City	West Jordan Light Rail Extension	
67	VA	Tidewater Virginia	Williamsburg-Newport News-Hampton LRT	
68	WA		SEATAC- Personal Rapid Transit	
		Total- Alternatives Analysis & Preliminary Engineering		**265,800,000**

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III- AUTHORIZED [*]

	State	Area	Project	Amount
1	CT	Bridgeport	Intermodal Corridor	34,000,000
2	CT	New London	Waterfront Access	15,000,000
3	CT	Hartford	Old Saybrook-Hartford Rail Extension	5,000,000
4	CT	Stamford	Fixed Guideway Connector	18,000,000
5	IN	Indianapolis	Indianapolis Region Commuter Rail	10,000,000
6	IA	Sioux City	Light Rail	10,000,000
7	MD	Baltimore	Light Rail Double Track	120,000,000
9	NM	Santa Fe	Santa Fe-El Dorado Rail Link	10,000,000
10	NM	Albuquerque	Albuquerque Alvarado Intermodal Center	5,000,000
12	PA	Allegheny County	Allegheny County Stage II Light Rail	100,200,000
12	PA	Philadelphia-Pittsburgh	Philadelphia-Pittsburgh High Speed Rail	10,000,000
13	RI	Providence	Providence-Boston Commuter Rail	10,000,000
14	NM	Albuquerque	Albuquerque Light Rail	90,000,000
15	RI	Rhode Island	Integrated Intermodal Transportation	25,000,000

[*] Lists those projects not also included in the (1) Final Design & Construction; and (2) Alternatives Analysis & Preliminary Engineering lists

Total- Authorized	**462,200,000**

Total Specified Amounts Authorized for New Starts Projects	**3,000,000,000**

IV- SPECIFIC AMOUNTS TO BE MADE AVAILABLE- FERRY PROJECTS

	State		Amount
1	AK/HI	New Systems- Ferry Projects [$10.4 million per year- FY 1999 thru FY 2003]- Guaranteed	52,000,000
2	AK/HI	New Systems- Ferry Projects [$3.6 million per year- FY 1999 thru FY 2003] - Non-Guaranteed	18,000,000

Total Specific Amounts to be made Available- Ferry Projects	**70,000,000**

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TABLE 7

FEDERAL TRANSIT ADMINISTRATION

TEA 21 AUTHORIZED BUS CAPITAL PROJECTS

STATE	PROJECT	FY 1999	FY 2000
1 AL	Birmingham-Jefferson County, buses	1,250,000	1,250,000
2 AL	Pritchard, bus transfer facility	500,000	
3 AL	Tuscaloosa, AL Intermodal Center	1,000,000	
4 AR	Arkansas Highway and Transit Department buses	200,000	2,000,000
5 AR	Fayetteville, University of Arkansas Transit System buses	500,000	500,000
6 AR	Hot Springs, Transportation Depot and Plaza	560,000	560,000
7 AR	Little Rock, Central Arkansas Transit buses	300,000	300,000
8 CA	Culver City, CityBus buses	1,250,000	1,250,000
9 CA	Davis, Unitrans transit maintenance facility	625,000	625,000
10 CA	Healdsburg, Intermodal Facility	1,000,000	1,000,000
11 CA	Humboldt, Intermodal Facility	1,000,000	
12 CA	Livermore, automatic vehicle locator	1,000,000	1,000,000
13 CA	Los Angeles County, Foothill Transit buses	1,625,000	1,250,000
14 CA	Los Angeles, San Fernando Valley smart shuttle buses	300,000	
15 CA	Los Angeles, Union Station Gateway Intermodal Transit Center	1,250,000	1,250,000
16 CA	Modesto, bus maintenance facility	625,000	625,000
17 CA	Monterey, Monterey-Salinas buses	625,000	625,000
18 CA	Morango Basin, Transit Authority bus facility	650,000	
20 CA	Perris, bus maintenance facility	1,250,000	1,250,000
21 CA	Sacramento, CNG buses	1,250,000	1,250,000
22 CA	San Francisco, Islais Creek Maintenance Facility	1,250,000	1,250,000
23 CA	Santa Clarita, facilities and buses	1,250,000	1,250,000
24 CA	Santa Cruz, bus facility	625,000	625,000
25 CA	Santa Rosa/Cotati, Intermodal Transportation Facilities	750,000	750,000
26 CA	Ukiah, Transportation Center	500,000	
27 CA	Windsor, Intermodal Facility	750,000	750,000
28 CA	Woodland Hills, Warner Center Transportation Hub	325,000	625,000
29 CO	Boulder/Denver, RTD buses	625,000	625,000
30 CO	Denver, Stapleton Intermodal Center	1,250,000	1,250,000
31 CT	Hartford, Transportation Access Project	800,000	
32 CT	New Haven, bus facility	2,250,000	2,250,000
33 CT	Norwich, buses	2,250,000	2,250,000
34 CT	Waterbury, bus facility	2,250,000	2,250,000
35 DC	Washington, D.C. Intermodal Transportation Center	2,500,000	2,500,000
36 FL	Broward County, buses	1,000,000	
37 FL	Daytona, Intermodal Center	2,500,000	2,500,000
38 FL	Lakeland, Citrus Connection transit vehicles and related equipment	1,250,000	1,250,000
39 FL	Miami Beach, Electric Shuttle Service	750,000	750,000
40 FL	Miami-Dade, buses	2,250,000	2,250,000
41 FL	Orlando, Downtown Intermodal Facility	2,500,000	2,500,000
42 GA	Atlanta, MARTA buses	9,000,000	13,500,000
43 HI	Honolulu, bus facility and buses	2,250,000	2,250,000
44 IA	Fort Dodge, Intermodal Facility (Phase II)	885,000	885,000

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

TEA 21 AUTHORIZED BUS CAPITAL PROJECTS

STATE	PROJECT	FY 1999	FY 2000
45 IA	Iowa/Illinois Transit Consortium bus safety and security	1,000,000	1,000,000
46 IL	Illinois statewide buses and bus-related equipment	6,800,000	8,200,000
47 IN	Gary, Transit Consortium buses	1,250,000	1,250,000
48 IN	Indianapolis, buses	5,000,000	5,000,000
49 IN	South Bend, Urban Intermodal Transportation Facility	1,250,000	1,250,000
50 MA	New Bedford/Fall River Mobile Access to health care	250,000	
51 MA	Springfield, Union Station	1,250,000	1,250,000
52 MA	Worcester, Union Station Intermodal Transportation Center	2,500,000	2,500,000
53 MD	Maryland statewide bus facilities and buses	7,000,000	11,500,000
54 MI	Lansing, CATA bus technology improvements	600,000	
55 MI	Michigan statewide buses	10,000,000	13,500,000
56 MN	Duluth, Transit Authority community circulation vehicles	1,000,000	1,000,000
57 MN	Duluth, Transit Authority intelligent transportation systems	500,000	500,000
58 MN	Duluth, Transit Authority Transit Hub	500,000	500,000
59 MN	Northstar Corridor, Intermodal Facilities and buses	6,000,000	10,000,000
60 MO	St. Louis, Bi-state Intermodal Center	1,250,000	1,250,000
61 NC	Greensboro, Multimodal Center	3,340,000	3,339,000
62 NC	Greensboro, Transit Authority buses	1,500,000	1,500,000
63 NC	Greensboro, Transit Authority small buses and vans	321,000	
64 NJ	New Jersey Transit jitney shuttle buses	1,750,000	1,750,000
65 NJ	Newark, Morris & Essex Station access and buses	1,250,000	1,250,000
66 NJ	South Amboy, Regional Intermodal Transportation Initiative	1,250,000	1,250,000
67 NM	Albuquerque, buses	1,250,000	1,250,000
68 NV	Clark County, Regional Transportation Commission buses	1,250,000	1,250,000
69 NV	Washoe County, transit improvements	2,250,000	2,250,000
70 NY	Babylon, Intermodal Center	1,250,000	1,250,000
71 NY	Brookhaven Town, elderly and disabled buses and vans	225,000	
72 NY	Brooklyn-Staten Island, Mobility Enhancement buses	800,000	
63 NY	Buffalo, Auditorium Intermodal Center	2,000,000	2,000,000
74 NY	Buffalo, Crossroads Intermodal Station	1,000,000	
75 NY	Dutchess County, Loop System buses	521,000	521,000
76 NY	East Hampton, elderly and disabled buses and vans	100,000	
77 NY	Ithaca, TCAT bus technology improvements	1,250,000	1,250,000
78 NY	Long Island, CNG transit vehicles and facilities	1,250,000	1,250,000
79 NY	Mineola/Hicksville, LIRR Intermodal Centers	1,250,000	1,250,000
80 NY	Rensselaer, C108NY Rensslaer Intermodal Bus Facility	1,000,000	6,000,000
81 NY	Riverhead, elderly and disabled buses and vans	125,000	
82 NY	Rome, Intermodal Center	400,000	
83 NY	Shelter Island, elderly and disabled buses and vans	100,000	
84 NY	Smithtown, elderly and disabled buses and vans	125,000	
85 NY	Southampton, elderly and disabled buses and vans	125,000	
86 NY	Southold, elderly and disabled buses and vans	100,000	
87 NY	Suffolk County, elderly and disabled buses and vans	100,000	

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TABLE 7

FEDERAL TRANSIT ADMINISTRATION

TEA 21 AUTHORIZED BUS CAPITAL PROJECTS

STATE	PROJECT	FY 1999	FY 2000
88 NY	Utica and Rome, bus facilities and buses	500,000	
89 NY	Utica, Union Station	2,100,000	2,100,000
90 NY	Westchester County, Bee-Line transit system fareboxes	979,000	979,000
91 NY	Westchester County, Bee-Line transit system shuttle buses	1,000,000	1,000,000
92 NY	Westchester County, DOT articulated buses	1,250,000	1,250,000
93 NY	New York, West 72nd St. Intermodal Station	1,750,000	1,750,000
93 NY	Cleveland, OH Triskett Garage bus maintenance facility	625,000	625,000
94 OH	Dayton, OH Multimodal Transportation Center	625,000	625,000
95 OK	Oklahoma statewide bus facilities and buses	5,000,000	5,000,000
96 OR	Lane County, Bus Rapid Transit	4,400,000	4,400,000
97 OR	Portland, Tri-Met buses	1,750,000	1,750,000
98 PA	Allegheny County, PA buses	0	1,500,000
99 PA	Altoona, Metro Transit Authority buses and transit system improvements	842,000	842,000
100 PA	Altoona, Metro Transit Authority Logan Valley Mall Suburban Transfer Center	80,000	
101 PA	Altoona, Metro Transit Authority Transit Center improvements	424,000	
102 PA	Altoona, Pedestrian Crossover	800,000	
103 PA	Armstrong County-Mid-County, PA bus facilities and buses	150,000	150,000
104 PA	Bradford County, Endless Mountain Transportation Authority buses	1,000,000	
105 PA	Cambria County, bus facilities and buses	575,000	575,000
106 PA	Centre Area, Transportation Authority buses	1,250,000	1,250,000
107 PA	Chambersburg, Transit Authority buses	300,000	
108 PA	Chambersburg, Transit Authority Intermodal Center	1,000,000	
109 PA	Chester County, Paoli Transportation Center	1,000,000	1,000,000
110 PA	Crawford Area, Transportation buses	500,000	
111 PA	Erie, Metropolitan Transit Authority buses	1,000,000	1,000,000
112 PA	Fayette County, Intermodal Facilities and buses	1,270,000	1,270,000
113 PA	Lackawanna County, Transit System buses	600,000	600,000
114 PA	Mercer County, buses	750,000	
115 PA	Monroe County, Transportation Authority buses	1,000,000	
116 PA	Philadelphia, Frankford Transportation Center	5,000,000	5,000,000
117 PA	Philadelphia, Intermodal 30th Street Station	1,250,000	1,250,000
118 PA	Philadelphia, Regional Transportation System for Elderly and Disabled	750,000	
119 PA	Reading, BARTA Intermodal Transportation Facility	1,750,000	1,750,000
120 PA	Red Rose, Transit Bus Terminal	1,000,000	
121 PA	Robinson, Towne Center Intermodal Facility	1,500,000	1,500,000
122 PA	Somerset County, bus facilities and buses	175,000	175,000
123 PA	Towamencin Township, Intermodal Bus Transportation Center	1,500,000	1,500,000
124 PA	Washington County, Intermodal Facilities	630,000	630,000
125 PA	Westmoreland County, Intermodal Facility	200,000	200,000
126 PA	Wilkes-Barre, Intermodal Facility	1,250,000	1,250,000
127 PA	Williamsport, Bus Facility	1,200,000	1,200,000

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

TEA 21 AUTHORIZED BUS CAPITAL PROJECTS

STATE	PROJECT	FY 1999	FY 2000
128 PR	San Juan, Puerto Rico Intermodal access	600,000	600,000
129 RI	Providence, RI buses and bus maintenance facility	2,250,000	3,294,000
130 SC	South Carolina statewide Virtual Transit Enterprise	1,220,000	1,220,000
131 SD	South Dakota statewide bus facilities and buses	1,500,000	1,500,000
132 TX	Austin, buses	1,250,000	1,250,000
133 TX	Texas statewide small urban and rural buses	4,000,000	4,500,000
134 UT	Ogden, Intermodal Center	800,000	800,000
135 UT	Utah Transit Authority, UT Intermodal Facilities	1,500,000	1,500,000
136 UT	Utah Transit Authority/Park City Transit, UT buses	6,500,000	6,500,000
137 VA	Alexandria, bus maintenance facility	1,000,000	1,000,000
138 VA	Alexandria, King Street Station access	1,100,000	
139 VA	Harrisonburg, buses	200,000	
140 VA	Lynchburg, buses	200,000	
141 VA	Richmond, GRTC bus maintenance facility	1,250,000	1,250,000
142 VA	Roanoke, buses	200,000	
143 WA	Everett, Multimodal Transportation Center	1,950,000	1,950,000
144 WA	Grant County, buses and vans	600,000	
145 WA	Mount Vernon, Multimodal Center	1,750,000	1,750,000
146 WA	Seattle, Intermodal Transportation Terminal	1,250,000	1,250,000
147 WI	Milwaukee County, buses	4,000,000	6,000,000
148 WI	Wisconsin statewide bus facilities and buses	8,000,000	12,000,000
149 WV	Huntington, Intermodal Facility	8,000,000	12,000,000
150 WV	West Virginia statewide Intermodal Facility and buses	5,000,000	5,000,000
151	Fuel cell bus and bus maintenance facility	4,850,000	4,850,000
152	Bus testing facilities program	3,000,000	3,000,000
	SUBTOTAL	**239,247,000**	**256,390,000**
1 NY	Broome County, Buses and Related Equipment	2,700,000	2,700,000
2 NY	Long Beach, Central Bus Facility	750,000	750,000
3 NY	Long Island, Vehicles and Facilities	3,050,000	3,050,000
3 NY	Rennslear, Intermodal Bus Facility	4,000,000	
4 NY	Rochester, Central Bus Facility	12,500,000	12,500,000
6 WA	Everett, Multimodal Transportation Center	1,000,000	1,000,000
	SUBTOTAL	**24,000,000**	**20,000,000**
	TOTAL	**263,247,000**	**276,390,000**

TABLE 8

FEDERAL TRANSIT ADMINISTRATION - Fiscal Years 1998-2003
Apportionment Formula for Sections 5307 and 5311 Formula Programs

Percent of Funds and Weighting Factors

Section 5311 — Non-urbanized Areas (Allocated to states based on each state's nonurbanized area population)
5.50%

Section 5307 — Urbanized Areas
94.50%

(UZA) Population

50,000-199,000 — 9.32%
(Apportioned to Governors)
- 50% - population
- 50% - population x density
  [density = inhabitants / square mile]

>200,000 — 90.68%
(Apportioned to UZAs)

33.29% ("Fixed Guideway" Tier*)
- 95.61% [at least 0.75% of these funds for each UZA with commuter rail & pop. > 750,000]
  - 60% - fixed guideway revenue vehicle miles
  - 40% - fixed guideway route miles
- 4.39% ("Incentive" Portion of Tier)
  [at least 0.75% of these funds for each UZA with commuter rail & pop. > 750,000]
  -- fixed guideway passenger miles x
  fixed guideway passenger miles / operating cost

66.71% ("Bus" Tier)
- 90.8%
  - 73.39% for UZAs with pop. >1,000,000
    - 50% - bus revenue vehicle miles
    - 25% - population
    - 25% - population x density
  - 26.61% for UZAs pop. < 1,000,000
    - 50% - bus revenue vehicle miles
    - 25% - population
    - 25% - population x density
- 9.2% ("Incentive" Portion of Tier)
  -- bus passenger miles x
  bus passenger miles / operating cost

[FOR.MIT.SW(64A)]

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

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TABLE 9

FEDERAL TRANSIT ADMINISTRATION - Fiscal Years 1998-2003
Apportionment Formula for Section 5309 Fixed Guideway Modernization Program

Tier 1 — First $497,700,000 to the following areas:

Baltimore	$ 8,372,000
Boston	38,948,000
Chicago/N.W. Indiana	78,169,000
Cleveland	9,509,500
New Orleans	1,730,588
New York	176,034,461
N. E. New Jersey	50,604,653
Philadelphia/So. New Jersey	58,924,764
Pittsburgh	13,662,463
San Francisco	33,989,571
SW Connecticut	27,755,000

Tier 2 — Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1 and Tier 2(B): 50 percent to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 — Next $5,700,00 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79% and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 — Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 — Next $70,000,000 as follows: 65 % to the 11 areas identified in Tier 1, and 35 % to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

Tier 6 — Next $50,000,000 as follows: 60 % to the 11 areas identified in Tier 1, and 40 % to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

Tier 7 — Remaining amounts as follows: 50 % to the 11 areas identified in Tier 1, as and 50 % to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

TABLE 10
FEDERAL TRANSIT ADMINSTRATION - Fiscal Years 1999-2003
Apportionment Formula for the Section 5308 Clean Fuels Formula Program

Percent of Funds and Factors:

2/3 to areas ≥ 1,000,000 population

50% apportioned to each eligible applicant based on an amount equal to the ratio between:

Number of vehicles in bus fleet of eligible applicant
(weighted by severity of nonattainment area), and

Total number of vehicles in bus fleets of all eligible projects (weighted by average severity of nonattainment of all areas with eligible projects)

50% apportioned to each eligible applicant in an amount based on the ratio between :

Number of bus passenger miles of eligible applicant
(weighted by severity of nonattainment area), and

Total number of bus passenger miles of all eligible projects (weighted by severity of nonattainment of all areas with eligible projects)

1/3 to areas < 1,000,000 population

50% apportioned to each eligible applicant in an amount equal to the ratio between:

Number of vehicles in bus fleet of eligible applicant
(weighted by severity of nonattainment area), and

The number of vehicles in bus fleets of all eligible projects
(weighted by severity of nonattainment of all areas with eligible projects)

50% apportioned to each eligible applicant in an amount equal to the ratio between:

Number of bus passenger miles of designated recipient
(weighted by severity of nonattainment area), and

Total number of passenger miles of all eligible projects
(weighted by severity of nonattainment of all areas)

Weighting Severity Factors

1.0	maintenance area for ozone or carbon monoxide
1.1	marginal ozone nonattainment area or marginal carbon monoxide nonattainment area
1.2	moderate ozone nonattainment area or moderate carbon monoxide nonattainment area
1.3	serious ozone nonattainment area or serious carbon monoxide nonattainment area
1.4	severe ozone nonattainment area or severe carbon monoxide nonattainment area
1.5	extreme ozone nonattainment area or extreme carbon monoxide nonattainment area

Additional adjustment for carbon monoxide:

1.2	If nonattainment or maintenance for ozone *and* nonattainment for carbon monoxide

Additional formula limitation

Areas ≥ 1,000,000 population, grants cannot exceed $25,000,000
Areas < 1,000,000 population, grants cannot exceed $15,000,000
5% must be apportioned for purchase or construction of hybrid electric or battery-powered buses, or facilities designed to service them.

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TABLE 11

FEDERAL TRANSIT ADMINISTRATION - Unit Values of Data
Fiscal Year 1998 Revised Formula Grant Apportionments

	FY 1998 REVISED APPORTIONMENTS
Section 5307 Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population	$2.43230127
Population x Density	$0.00062384
Bus Revenue Vehicle Mile	$0.34399714
Urbanized Areas Under 1,000,000:	
Population	$2.19812693
Population x Density	$0.00096805
Bus Revenue Vehicle Mile	$0.42187650
Bus Incentive (PM denotes Passenger Mile):	
Bus PM x Bus PM = Operating Cost	$0.00412001
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile	$0.46437788
Fixed Guideway Route Mile	$26,371
- Commuter Rail Floor $4,975,646	
Fixed Guideway Incentive:	
Fixed Guideway PM x Fixed Guideway PM = Operating Cost	$0.00039880
- Commuter Rail Incentive Floor $228,460	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000	
Population	$3.96867133
Population x Density	$0.00198314
Section 5311 Nonurbanized Area Formula Program	
Areas Under 50,000	
Population	$1.46340428

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5
Legislatively Specified Areas:			All Areas:	
Revenue Vehicle Mile	$0.03043443		$1.13683131	$0.02123520
Route Mile	$2,122.43		$7,832.52	$1,511.88
Other Areas:				
Revenue Vehicle Mile	$0.16377360	$0.00579309		$0.08319803
Route Mile	$4,772.78	$168.83		$3,123.10

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LIST OF PUBLIC LAWS

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S. 423/P.L. 105–182

To extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason. (June 19, 1998; 112 Stat. 516)

S. 1244/P.L. 105–183

Religious Liberty and Charitable Donation Protection Act of 1998 (June 19, 1998; 112 Stat. 517)

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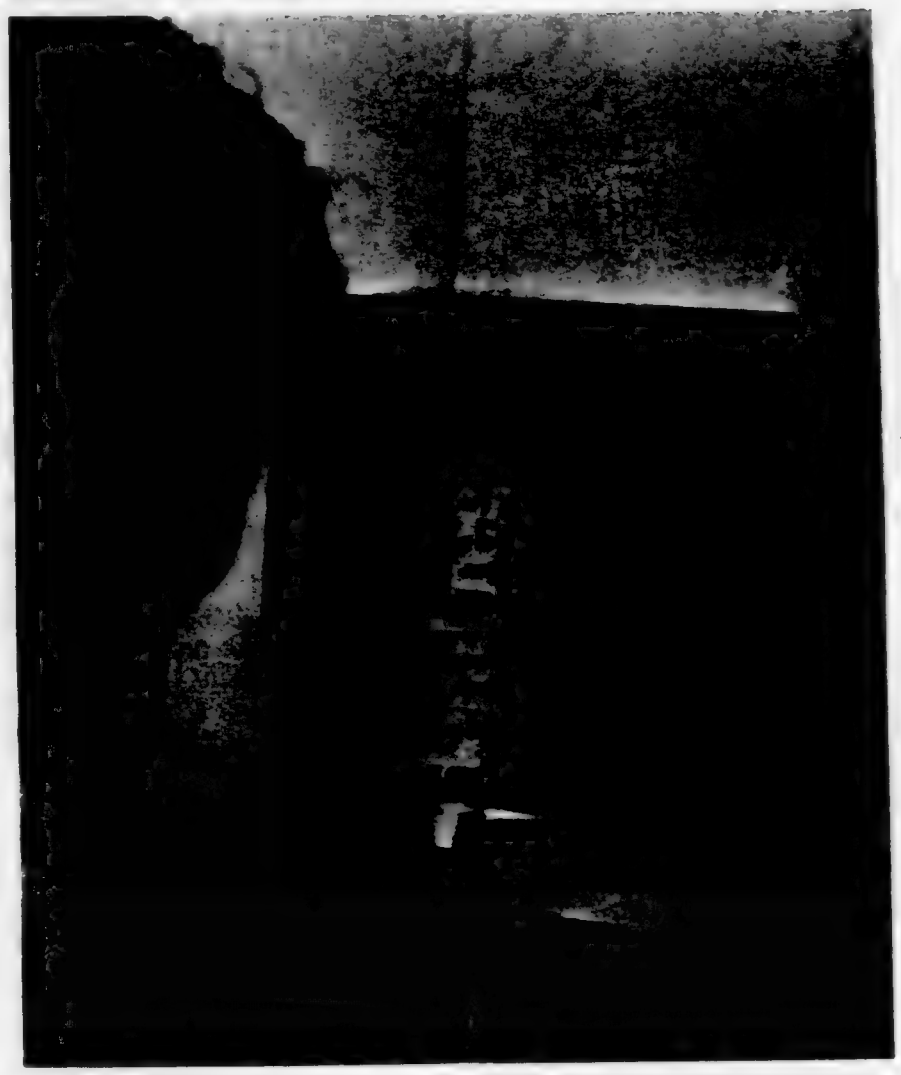

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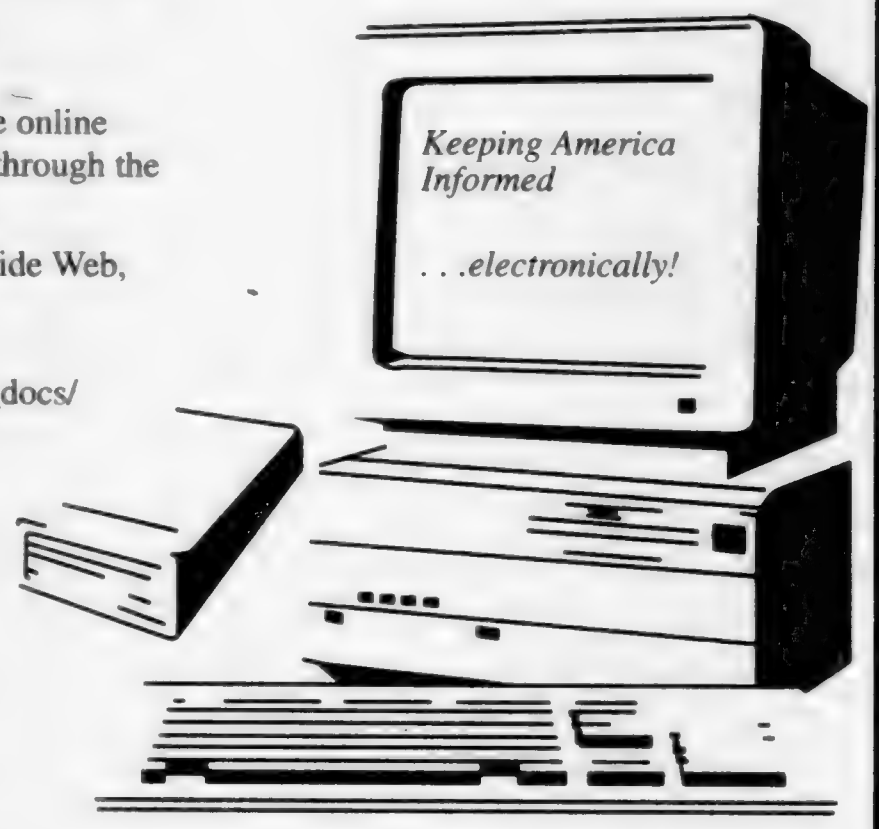

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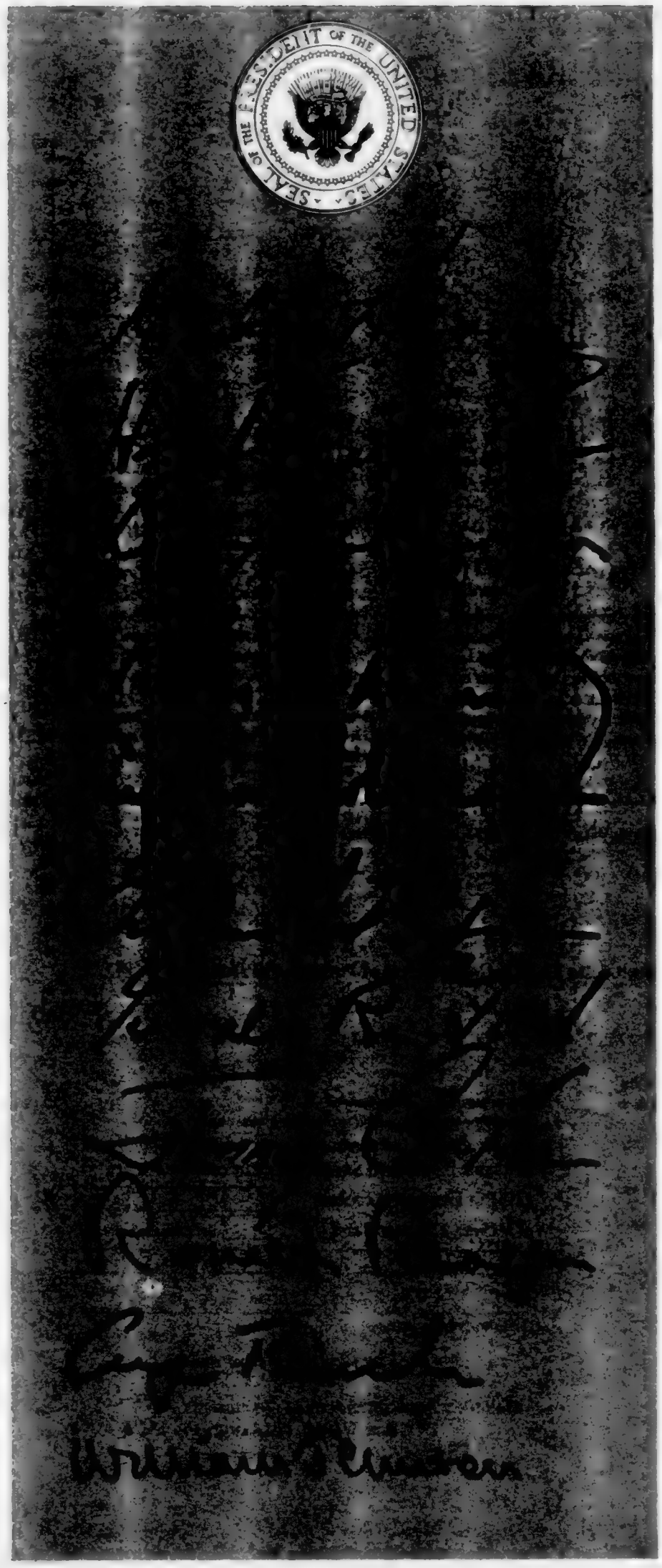

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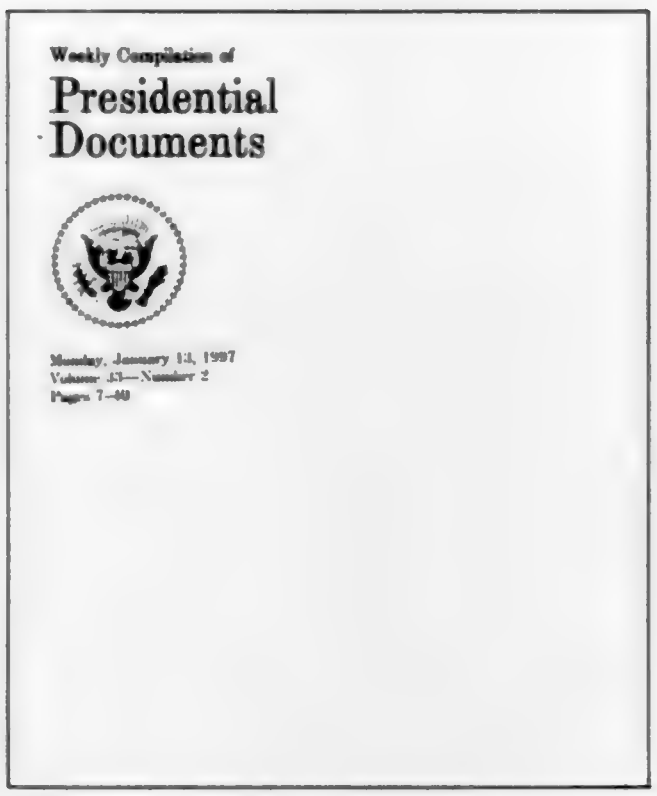

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ISS
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JE
25
1998
UMI

6-25-98
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Pages 3

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Vol. 63 No. 122
Pages 34549–34776

federal register

Thursday
June 25, 1998

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WHEN: July 14, 1998 at 9:00 am

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AA84

General Crop Insurance Regulations, Tobacco (Guaranteed Plan) Endorsement; and Common Crop Insurance Regulations, Guaranteed Tobacco Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of guaranteed tobacco. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current tobacco (guaranteed plan) endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current tobacco (guaranteed plan) endorsement to the 1998 and prior crop years.

EFFECTIVE DATE: July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131 telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The amount of work required of insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. The rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, June 16, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 32544 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.136, Guaranteed Tobacco Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring guaranteed tobacco found at 7 CFR 401.129 (Tobacco (Guaranteed Plan) Endorsement). FCIC also amends 7 CFR

part 401 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 88 comments were received from reinsured companies and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that FCIC either revise or delete the definition of "approved yield." The commenter mentioned that since guaranteed tobacco currently is not an actual production history (APH) crop, the definition will be questioned by insureds who do not receive a copy of the Code of Federal Regulations with their crop insurance policies.

Response: "Approved yield" is referenced in section 3 of the Crop Provisions, so it must be defined. Section 3 clearly indicates that an approved yield is not necessary unless required by the Special Provisions. As written, if the FSA guaranteed tobacco support price program is discontinued and guaranteed tobacco becomes an APH crop in the future, the Special Provisions could be amended easily to require an approved yield. Therefore, no changes have been made.

Comment: A reinsured company and an insurance service organization expressed concern with the definition of "good farming practices," which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices exist that are not recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters also indicated that the term "county" in the definition of "good farming practices" should be changed to "area."

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing guaranteed tobacco. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties. The term "area" is less definitive than the term "county" and would cause insurance providers to make determinations more subjective in nature. Therefore, no change has been made except that the definition of "good farming practices" has been moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization recommended revising the definition of "harvest" to include the requirement that at least 20 percent of the production guarantee must be cut on each acre to qualify as harvested. Commenters also recommended that a minimum appraisal of 35 percent of the production guarantee be established to encourage producers to harvest damaged tobacco. In some cases, it will be difficult to verify unharvested production due to deterioration of the leaves before an adjuster works the final claim. The commenters believe that removal of these requirements from the current crop provisions will result in a significant increase in premium rates. Commenters expressed concern that FCIC may have overreacted if the changes were made because of one lawsuit.

Response: FCIC has determined that at least 20 percent of the production guarantee be cut on each acre to qualify as harvested and the 35 percent minimum appraisal for unharvested acreage is too severe. Producers should not be forced to incur the costs associated with harvesting tobacco acres that may not be marketable. In addition, FCIC cannot ignore a court ruling that such provisions are unenforceable. Therefore, no change has been made.

Comment: An insurance service organization asked if the phrase "if not available" means the season average price is not available at all or is not available when a claim for an indemnity is processed. The commenter stated that the market price is never available when the tobacco is harvested, only when it is marketed.

Response: The term "if not available" means that the market price is not available because no marketings of the applicable insured type of tobacco grown in the area have occurred. The provision has been clarified accordingly.

Comment: An insurance service organization recommended deleting "marketing window" from the definition of "practical to replant." The commenter stated that guaranteed tobacco is unlike other crops, such as processor and fresh market crops, where the producer only has a certain amount of time to market the crop.

Response: FCIC agrees that the concept of a "marketing window" is most applicable to processor and fresh market crops and recognizes that guaranteed tobacco is unlike these crops. However, the Federal Agriculture Improvement and Reform Act of 1996 mandated that FCIC consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore no change has been made except that the definition of "practical to replant" has been moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization expressed concern about the terms "replace" and "replacing" in the definition of "replanting." Commenters stated that the terms, as used, seem awkward and cumbersome.

Response: FCIC believes that the definition of "replanting" clearly describes the steps required to replant the crop. However, FCIC has replaced the phrase "growing a successful tobacco crop" with "producing at least the guarantee," for clarity.

Comment: An insurance service organization and a reinsured company recommended the unit division guidelines in the proposed rule remain the same in the final rule.

Response: FCIC has not changed the unit division guidelines.

Comment: A reinsured company and an insurance service organization recommended removing any references to "annual production reports" for the APH plan. The commenters contend that if the FSA guaranteed tobacco support price program is changed or eliminated, it will be necessary to revise several provisions of the policy.

Response: Section 3(b) of these provisions requires annual production reports only when required by the Special Provisions. The current method for establishing yields will continue for the 1998 crop year. If the guaranteed tobacco support price program is discontinued or modified in future years, these provisions provide an alternative method for establishing the production guarantee. Therefore, no change has been made. However, FCIC has amended the definition of "support price" to include the possibility that the tobacco support program may be changed. If there is not a tobacco support program, FCIC will announce the average price per pound for the type of tobacco.

Comment: A reinsured company and an insurance service organization recommended deleting the word "carryover" in section 6. Commenters stated that the basic premise of Multiple Peril Crop Insurance coverage is to insure actual planted acreage of the crop. Subtracting the carryover poundage would take coverage away from a planted crop which is legally insurable (i.e., the carryover poundage has value and is exposed to perils). This could have additional unwanted

consequences by making the insurance providers responsible for tracking and placing value on carryover poundage.

Response: Although producers normally reduce the number of acres grown in the current crop year to account for carryover production from the prior year, they may instead elect to reduce inputs (fertilizer, etc.), thereby producing fewer pounds per acre. Further, to reduce the opportunity to falsely report the amount of carryover tobacco at time of loss adjustment, the amount of any carryover production must be reported on the acreage report. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization asked if the provisions in section 8(c) are intended to allow written agreement requests for a type not rated in the actuarial documents.

Response: Section 8(c) only references a method of planting. Therefore, section 8(c) does not authorize written agreements for types not rated.

Comment: A reinsured company and an insurance service organization question why section 9(a) is not as precise as section 11(a) of the Basic Provisions, which specifies "total destruction * * * on the unit."

Response: FCIC has revised section 9(a) to refer to the total destruction of the tobacco on the unit.

Comment: A reinsured company and an insurance service organization asked if the current requirement that notice be given without delay if any tobacco is damaged and will not be sold through an auction warehouse was removed intentionally from section 11.

Response: Section 14(a)(2) of the Basic Provisions states that "* * * you must * * * give us notice within 72 hours of your initial discovery of damage * * *" FCIC believes this requirement is substantially the same as requiring a notice "without delay," so the latter requirement of section 11 was removed in the proposed rule.

Comment: Two reinsured companies and an insurance service organization recommended adding the phrase "containing at least two rows" after the phrase "at least 5 feet wide" in section 11(a). Commenters stated that a representative sample of 5 feet could have only one row in a sample where tobacco is planted in greater than 30 inch rows.

Response: FCIC has amended the provision accordingly.

Comment: Two reinsured companies and an insurance organization recommended that the word "resulting" be added in section 12(b)(2) and the reference "section 12(b)(2)" be deleted from section 12(b)(3) because reference to the previous item by number is unnecessary.

Response: The recommendations do not add any additional clarification to the provision. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization recommend removing the words "acceptable production records" from section 12(c)(1)(D), if these words relate to other APH references in these provisions.

Response: As stated in earlier responses, section 12(c)(1)(D) will only apply if annual production reports are required by the Special Provisions and the provision has been so clarified.

Comment: Two reinsured companies and an insurance service organization expressed concern that section 12(c)(1)(iii) of these provisions allows the insured to defer settlement and wait for a later, generally lower appraisal.

Response: Section 12(c)(1)(iii) allows deferment of a claim only if the insurance provider agrees that representative samples can be left or if the insured elects to continue to care for the entire crop. In either case, if the insured does not provide sufficient care for the remaining crop, the original appraisal will be used. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization are opposed to any reference to the word "carryover" in section 12(g).

Response: Section 12(g) eliminates the adjustment of next year's production when the insurance provider agrees that any carryover or current years' tobacco has no market value due to an insured cause of loss. It also eliminates the opportunity to falsely report that the carryover and current years' tobacco have no value and thus increase the indemnity payment. This provision is consistent with the Farm Service Agency's requirement that tobacco having no value be destroyed. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization suggested that the requirement to renew a written agreement each year should be removed in section 13(d). Terms of the agreement should be stated in the agreement to fit the particular situation for the policy; or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are temporary and intended to address unusual situations. If the condition creating a need for written agreement remains from year to year, it should be incorporated into the policy, the Special Provisions, or the actuarial documents. Therefore, no change has been made except that the provisions for written agreements have been moved to the Basic Provisions.

Comment: Two reinsured companies and an insurance service organization asked: (1) Why the Late Planting Agreement Option is no longer available; and (2) Why the late and prevented planting language provisions are not included in the proposed rule as they have been in other crops.

Response: A new section 13 has been added to provide for late planting coverage. Under section 14, prevented planting coverage will not be provided for guaranteed tobacco as set out in the Basic Provisions because the high cash value per acre and the hand labor required to transplant tobacco on relatively small acreage enables producers to plant sufficient acreage to maintain their production levels even under extremely adverse weather conditions that would prevent planting of most other crops.

In addition to the changes indicated above, FCIC has made the following changes:

1. Section 1—Removed definitions of "days," "FSA," "final planting date," and "USDA," because these definitions were moved to the Basic Provisions. Changed the definition of "unit" to "basic unit."

2. Section 12(b)—Revised for clarification. Also, added an example of an indemnity calculation for illustration purposes.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Guaranteed tobacco, Tobacco (guaranteed plan) endorsement.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Section 401.129 introductory paragraph is revised to read as follows:

§ 401.129 Tobacco (guaranteed plan) endorsement

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance

Endorsement for the 1990 through the 1998 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.136 is added to read as follows:

§ 457.136 Guaranteed tobacco crop insurance provisions

The Guaranteed Tobacco Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Guaranteed Tobacco Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Adequate stand. A population of live plants per unit of acreage that can be expected to produce at least your production guarantee.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by section 3(b) of these provisions.

Average value. For appraised production, the estimated value of all such production divided by the appraised pounds. For harvested production, the total value of such production divided by the harvested pounds.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Fair market value. The current year's tobacco season average market price for the applicable type of tobacco obtained from the average sale of tobacco through a market other than an auction warehouse.

Harvest. Cutting or priming and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price.

(a) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55:

(1) The support price per pound for the insured type of tobacco as announced by the USDA for its tobacco price support program; or

(2) The current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type tobacco grown in the area for any crop year a tobacco price support program is not in effect.

(b) For types 32, 41, 51, 52, and 61, the current year's season average market price, when available; if not available because the insured type of tobacco has not been marketed in the area, the previous year's season average market price for the applicable insured type of tobacco grown in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which each leaf is severed from the stalk as it matures.

Production guarantee (per acre). Either the number of pounds of tobacco for the tobacco type and classification shown on the county actuarial table, or the approved yield as provided in the Special Provisions, multiplied by the coverage level percentage you elect.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the guarantee.

Season average market price. The simple average price paid by buyers for a tobacco type for all days sales occur at public markets during the tobacco sales season in the area in which the farm is located.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division.

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You must select only one price election and coverage level for each guaranteed tobacco type designated in the Special Provisions that you elect to insure.

(b) A production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report any carryover tobacco from previous years on the acreage report.

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the insured crop will be any of the tobacco types designated in the Special Provisions, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

(a) Planted to a discount variety;

(b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;

(c) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(d) Damaged before the final planting date to the extent that most producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, insurance ceases at the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) Weighing-in at the tobacco warehouse;

(c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or

(d) The calendar date for the end of the insurance period, which is:

(i) Types 11 and 12—November 30;

(ii) Type 13—October 31;

(iii) Type 14—October 15;

(iv) Types 31 and 36—February 28;

(v) Types 21, 35 and 37—March 15;

(vi) Types 22 and 23—April 15;

(vii) Type 32—May 15;
(viii) All other types—April 30.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;
(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption; or
(h) Failure of the irrigation water supply, if caused by a peril specified in section 10(a) through (g) that occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If tobacco types 11, 12, 13, or 14 are insured and you have filed a notice of damage, you also must leave all tobacco stalks and stubble intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4), if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have 100 percent share in 1 acre of type 35 (dark air cured) guaranteed tobacco in the unit, with a 2,000 pounds per acre guarantee and a price election of $2.00 per pound. You are only able to harvest 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre × 2,000 pounds = 2,000 pounds guarantee;

(2) 2,000 pounds × $2.00 price election = $4,000.00 value of guarantee;

(4) 500 pounds × $2.00 price election = $1,000.00 value of production to count;

(6) $4,000.00 − $1,000.00 = $3,000.00 loss; and

(7) $3,000 × 100 percent = $3,000 indemnity payment.

(c) The total production to count (pounds of appraised or harvested production multiplied by the applicable price) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for the unit for any acreage:

(A) That is abandoned;
(B) Put to another use without our consent;
(C) That is damaged solely by uninsured causes;
(D) For which you fail to provide production records, if required by the Special Provisions, that are acceptable to us; or
(E) Of types 11, 12, 13, or 14 when the stalks and stubble have been destroyed without our consent;

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage that you intend to put to another use or abandon with our consent, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The value of production to count for such acreage will be the number of pounds harvested or appraised production multiplied by the support price taken from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type if it has an average value less than the market price, as follows:

(1) Divide the average value of the damaged appraised and/or harvested production by the market price;

(2) Multiply the result in section 12(d)(1) (not to exceed 1.0) by the number of pounds of damaged appraised and/or harvested tobacco; and

(3) Multiply the product by your price election.

If no market price has been established for the grade of the damaged tobacco, a market price will be imputed by reducing the lowest available market price by 20 percent for each grade that the production falls below the grade for which such lowest market price is available.

(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for any such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the support price.

13. Late Planting.

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for each type planted during the late planting period will be reduced by:

(1) One percent (1%) for the 1st through the 10th day; and

(2) Two percent (2%) for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

14. Prevented Planting.

The prevented planting provisions in the Basic Provisions are not applicable to guaranteed tobacco.

Signed in Washington, D.C., on June 19, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–16967 Filed 6–24–98; 8:45 am]

BILLING CODE 3401–08–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 801

RIN 0580–AA60

Tolerances for Moisture Meters

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending regulations under the United States Grain Standards Act (USGSA) by revising tolerances for moisture meters used in official grain inspection services. GIPSA is making this revision to reflect tolerances for both the current official moisture meter, the Motomco Model 919, and the Dickey-john GAC 2100, which will be phased in as the new official moisture meter beginning on August 1, 1998.

DATES: This interim rule is effective August 1, 1998. To be assured of consideration, written comments must be filed before August 24, 1998.

ADDRESSES: Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, D.C. 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, D.C., during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades, address as above, telephone (202) 720–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The Administrator of GIPSA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601). GIPSA is making this revision to reflect tolerances for the current official moisture meter, the Motomco Model 919, and the Dickey-john GAC 2100, which is being phased in as the new official moisture meter beginning on August 1, 1998. The revised tolerances will be applied to moisture meters owned and used by GIPSA, 8 delegated States, and the 57 official agencies (49 private entities and 8 State agencies) to perform official grain inspection services. Most of these agencies would be considered small entities under Small Business Administration criteria. Although the check testing procedure for the new meter is simpler than that for the current meter, the tolerance on the new moisture meter used for official inspection is being neither tightened nor relaxed as compared to the tolerances for the current meter. There is, therefore, little impact of making these tolerance changes in the regulations on small or large entities engaged in the inspection of grain.

Information Collection and Recordkeeping Requirements.

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Part 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

Background

GIPSA has selected a new official moisture meter for the national grain inspection system. This was announced in the **Federal Register** on April 9, 1998 (63 FR 17356). In a separate notice document published in the **Federal Register** on this date, GIPSA announces that as of August 1, 1998, all official moisture content measurements of corn, soybeans, and sunflower seed inspected under the USGSA will be made with the GAC 2100. Transition dates for other grains will be announced separately at a later time. Use of the new instruments for official moisture measurements will be phased in over a 2-year period. The maintenance tolerances for moisture meters are stated for low, mid, and high moisture ranges for both direct comparison and sample exchange testing. These tolerances have been and will continue to be applied to the Motomco 919 moisture meters used for official inspection until such time as they are replaced by the GAC 2100.

Differences in technology between the GAC 2100 and the Motomco 919 have necessitated the development of a new procedure for checking the performance of individual GAC 2100 meters against standard meters to determine whether they are in tolerance. The current three moisture range tolerances and the direct comparison method for checking meters, other than Headquarters meters, used for the Motomco 919 will not be needed to determine if the GAC 2100 meters are in tolerance. The current mid range moisture tolerance for Headquarters, and all other than Headquarters meters, will be used to determine if the GAC 2100 is within tolerance. Further, for the meters other than Headquarters, only the sample exchange method will be used.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) the tolerance for the new moisture meter is being neither tightened nor relaxed as compared to the tolerance for the current meter; (2) the 1999 grain market year begins August 1, 1998, and the changes should be in effect to allow the use of the new moisture meter at the beginning of the marketing year for corn, soybeans and sunflower seed; (3) this rule provides a 60-day opportunity for comment, and all written comments timely received will be considered prior to finalization of the rule.

List of Subjects in 7 CFR Part 801

Grains, Scientific equipment.

For reasons set forth in the preamble, 7 CFR Part 801 is amended as follows:

1. The authority citation for Part 801 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat 2867, as amended (7 U.S.C. 71 et seq.).

2. Section 801.6 is revised to read as follows:

§ 801.6 Tolerances for moisture meters.

(a) The maintenance tolerances for Motomco 919 moisture meters used in performing official inspection services shall be:

(1) Headquarters standard meters:

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	
Mid	± 0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	
High	± 0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat	

(2) All other than Headquarters standard meters:

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	± 0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	± 0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.
Mid	± 0.10 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	± 0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.
High	± 0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat	± 0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.

(b) The maintenance tolerances for GAC 2100 moisture meters used in performing official inspection services shall be:

(1) Headquarters standard meters. By direct comparison using mid-range Hard Red Winter wheat, ± 0.05% mean deviation for the average of the Headquarters standard moisture meters.

(2) All other than Headquarters standard meters. By sample exchange using mid-range Hard Red Winter wheat, ± 0.15% mean deviation from the standard meter.

Dated: June 19, 1998.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–16964 Filed 6–24–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–143–AD; Amendment 39–10597; AD 98–13–09]

RIN 2120–AA64

Airworthiness Directives; AERMACCHI S.p.A. Models F.260, F.260B, F.260C, and F.260D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain AERMACCHI S.p.A. (AERMACCHI) Models F.260, F.260B, F.260C, and F.260D airplanes. This AD requires marking the airspeed indicator to indicate the correct flap operation range and stall speed of the airplane. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent the airplane from stalling at an airspeed higher than anticipated, which could result in loss of control of the airplane.

DATES: Effective August 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 1, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from AERMACCHI, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–143–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain AERMACCHI Models F.260, F.260B, F.260C, and F.260D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 13, 1998 (63 FR 17969). The NPRM proposed to require marking the airspeed indicator with a black arc to indicate the correct stall speed and flap operation range of the airplane. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 260B54, dated May 28, 1993.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 60 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Materials for marking the airspeed indicator can be obtained locally at minimal cost. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–09 AERMACCHI S.P.A.: Amendment 39–10597; Docket No. 97–CE–143–AD.

Applicability: Models F.260, F.260B, F.260C, and F.260D airplanes, serial numbers 001 through 848, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the airplane from stalling at an airspeed higher than anticipated, which could result in loss of control of the airplane, accomplish the following:

(a) Mark the airspeed indicator with a black arc between the numbers 0 and 63.5 in accordance with the Instructions section of SIAI Marchetti S.p.A Service Bulletin No. 260B54, dated May 28, 1993. All other operating ranges on the airspeed indicator are correct.

Note 2: Although the SIAI Marchetti S.p.A. service bulletin referenced above calls out all of the operating ranges indicated on the airspeed indicator, it is the FAA's intent in this AD to focus only on the flap operating range.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to SIAI Marchetti Service Bulletin No. 260B54, dated May 28, 1993, should be directed to AERMACCHI, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with SIAI Marchetti Service Bulletin No. 260B54, dated May 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AERMACCHI, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Italian AD 93–220, dated July 29, 1993.

(f) This amendment becomes effective on August 1, 1998.

Issued in Kansas City, Missouri, on June 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16021 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–250–AD; Amendment 39–10602; AD 98–13–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive rotating probe inspections of fastener holes and/or the adjacent tooling hole of a former junction of the aft fuselage, and corrective action, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the aft fuselage caused by fatigue cracking of the former junction at frame 68.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on April 20, 1998 (63 FR 19421). That action proposed to require repetitive rotating probe inspections of fastener holes and/or the adjacent tooling hole of a former junction of the aft fuselage, and corrective action, if necessary. That action also provided for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 Airbus Model A320 series airplanes of U.S. registry will be affected by this AD.

Should an operator be required to accomplish the inspection of the fastener holes and the adjacent tooling hole, it will take approximately 8 work hours per airplane to accomplish this inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

Should an operator be required to accomplish the inspection of only the tooling hole, it will take approximately 3 work hours per airplane to accomplish this inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in this AD, it would take approximately 9 work hours to cold work the fastener holes and tooling hole, or 3 work hours to cold work (only) the tooling hole. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the optional terminating action would be $540 per airplane for cold working the fastener hole and tooling holes, or $180 per airplane for cold working (only) the tooling hole.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–14 Airbus Industrie: Amendment 39–10602. Docket 97–NM–250–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Service Bulletins A320–53–1089 and A320–53–1090, both dated November 22, 1995; on which Airbus Modifications 21780 and 21781 (reference Airbus Service Bulletin A320–53–1090) have not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the former junction at frame 68, which could result in reduced structural integrity of the aft fuselage, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a rotating probe inspection for fatigue cracking of the fastener holes and/or the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at frame 68, in accordance with Airbus Service Bulletin A320–53–1089, dated November 22, 1995.

(1) If no crack is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles.

Or

(ii) Prior to further flight following the accomplishment of the inspection required by paragraph (a) of this AD, cold work the fastener holes and/or the adjacent tooling hole of the right- and left-hand former junctions at frame 68, as applicable, in accordance with Airbus Service Bulletin A320–53–1090, dated November 22, 1995. Accomplishment of this cold working constitutes terminating action for the repetitive inspections required by this AD.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–53–1089, dated November 22, 1995 and Airbus Service Bulletin A320–53–1090, dated November 22, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–298–093(B)R1, dated January 29, 1997.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16053 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–65–AD; Amendment 39–10604; AD 98–13–16]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires replacement of the horizontal stabilizer anti-icing valve with a new anti-icing valve. This amendment also requires reinforcement of the insulation over the anti-icing ducts of the horizontal stabilizer thermal anti-icing system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the horizontal stabilizer anti-icing valve, which could cause the horizontal stabilizer thermal anti-icing system to be inoperative, and could result in reduced controllability of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19673). That action proposed to require replacement of the horizontal stabilizer anti-icing valve with a new anti-icing valve. That action also proposed to require reinforcement of the insulation over the anti-icing ducts of the horizontal stabilizer thermal anti-icing system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,040, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–16 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–10604. Docket 98–NM–65–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145027 inclusive, equipped with horizontal stabilizer anti-icing valve having part number (P/N) 329445; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the horizontal stabilizer anti-icing valve, which could cause the horizontal stabilizer thermal anti-icing system to be inoperative, and could result in reduced controllability of the airplane, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, replace the horizontal stabilizer anti-icing valve with a new anti-icing valve, and reinforce the insulation over the anti-icing ducts of the horizontal stabilizer thermal anti-icing system; in accordance with EMBRAER Service Bulletin 145–30–0007, dated November 13, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane a horizontal stabilizer anti-icing valve having part number 329445.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–30–0007, dated November 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–01–04, dated January 15, 1998.

(f) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16051 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–66–AD; Amendment 39–10605; AD 98–13–17]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER EMB–145 series airplanes, that requires modification of the windshield heating system in the flight compartment. This amendment is prompted by reports of overheating and delamination of the windshield because the windshield heating system failed to shut off during flight. The action specified by this AD is intended to prevent failure of the windshield heating system, which could result in reduced pilot visibility, structural degradation of the windshield, and depressurization of the airplane during flight.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER EMB–145 series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19677). That action proposed to require modification of the windshield heating system in the flight compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD. It will take approximately 12 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $12,240, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–17 EMPRESA BRASILEIRA dE AERONAUTICA S.A. (EMBRAER): Amendment 39–10605. Docket 98–NM–66–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145029 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the windshield heating system, which could result in reduced pilot visibility, structural degradation of the windshield, and depressurization of the airplane during flight, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the windshield heating system in accordance with EMBRAER Service Bulletin 145–30–0008, dated November 10, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with EMBRAER Service Bulletin 145–30–0008, dated November 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16050 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–102–AD; Amendment 39–10607; AD 98–13–19]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires a one-

time detailed visual inspection of the forward fuel feed lines in the left- and right-hand engine nacelles for chafing; replacement of damaged parts with serviceable parts; and modification of the supports and improved routing for the high- and low-tension leads of the inboard ignition units. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing on the forward fuel feed lines, which could result in fuel leakage and consequent increased risk of fire in the engine nacelles.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on April 23, 1998 (63 FR 20141). That action proposed to require a one-time detailed visual inspection of the forward fuel feed lines in the left- and right-hand engine nacelles for chafing; replacement of damaged parts with serviceable parts; and modification of the supports and improved routing for the high- and low-tension leads of the inboard ignition units.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. The cost of required parts would be minimal. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $8,160, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–19 Fokker Services B.V.: Amendment 39–10607. Docket 98–NM–102–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing on the forward fuel feed lines, which could result in fuel leakage and consequent increased risk of fire in the engine nacelles, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time detailed visual inspection of the left- and right-hand engine nacelles for chafing of the forward fuel feed lines by the high- and low-tension leads of the inboard ignition units, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–62, dated September 1, 1997. If any chafing is detected, prior to further flight, replace the fuel line with a new fuel line in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Within 6 months after the effective date of this AD, modify the supports and reroute the high- and low-tension leads of the inboard ignition units, in accordance with Part 2 of the Accomplishment Instructions of

Fokker Service Bulletin F27/28–62, dated September 1, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Fokker Service Bulletin F27/28–62, dated September 1, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1997–094 (A), dated September 30, 1997.

(f) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16049 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–75–AD; Amendment 39–10606; AD 98–13–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A321–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319 and A321–100 series airplanes, that requires adjustment of the landing gear unlocked-stop screw; replacement of the shear pins in the reduction gear box and the landing gear pulley assembly with new or serviceable shear pins; a one-time inspection to detect discrepancies of the landing gear cut-out valve; an operational test of the uplock mechanical control system; and follow-on corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent non-extension of one or more landing gears, consequent damage to the airplane structure, and possible injury to passengers and crewmembers.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A321–100 series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19678). That action proposed to require adjustment of the landing gear unlocked-stop screw; replacement of the shear pins in the reduction gear box and the landing gear pulley assembly with new or serviceable shear pins; a one-time inspection to detect discrepancies of the landing gear cut-out valve; an operational test of the uplock mechanical control system; and follow-on corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,400, or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–18 Airbus Industrie: Amendment 39–10606. Docket 98–NM–75–AD.

Applicability: Model A319 series airplanes, manufacturer's serial numbers 578 through 625 inclusive; and Model A321–100 series airplanes, manufacturer's serial numbers 385 through 620 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent non-extension of one or more landing gears, consequent damage to the airplane structure, and possible injury to passengers and crewmembers, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Airbus Industrie A319/A321 All Operator Telex (AOT) 32–15, dated July 1, 1997.

(1) Adjust the landing gear unlocked-stop screw.

(2) Replace the shear pins in the reduction gear box and the landing gear pulley assembly with new or serviceable shear pins.

(3) Inspect the cut-out valve for discrepancies. If any discrepancy to the cut-out valve is detected, accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD at the time specified in the AOT.

(i) Replace the cut-out valve with a new or serviceable part within the time specified in the AOT.

(ii) After replacing the cut-out valve, perform a functional test of the normal extension and retraction of the landing gear and of the free-fall extension system. If any discrepancy is detected during the accomplishment of either of the functional tests, prior to further flight, repair in accordance with the AOT.

(4) Perform an operational test of the gear uplock and door uplock mechanical control system. If any discrepancy is detected during the accomplishment of the operational test, prior to further flight, repair in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus Industrie A319/A321 All Operator Telex (AOT) 32–15, dated July 1, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–177–101(B), dated August 13, 1997.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16048 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–86–AD; Amendment 39–10599; AD 98–13–11]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This action requires modifying the airplane by incorporating Raytheon Kit No. 129–5200–1, "Ground Fine Switch Installation Kit". This action is the result of design analysis during certification of 5.5 degree approach landings of the Model 1900D airplanes. The actions specified by this AD are intended to prevent a loose or misrigged ground fine switch, which could result in very hard landings causing structural damage to the airplane and possible passenger injury.

DATES: Effective August 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone: (316) 946–4145; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Model 1900D

airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 3278). The NPRM proposed to require modifying the airplane by incorporating Raytheon Kit No. 129–5200–1, "Ground Fine Switch Installation Kit". Accomplishment of the proposed action as specified in the NPRM would be in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997.

The NPRM was the result of design analysis during certification of 5.5 degree approach landings of the Model 1900D airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comments received on the proposed rule have been given due consideration.

The manufacturer, Raytheon Aircraft Company, states that the "Ground Fine Switch Installation Kit" number is wrong. The kit number cited in the NPRM was P129–5200–1. Raytheon states that the "P" in front of the number was used to indicate "prototype" during the approval process. The actual kit number should be 129–5200–1. The FAA concurs and will remove the "P" on all references to Raytheon Kit No. P129–5200–1 in the preamble and body of the AD.

The other comment received was from the Air Line Pilots Association (ALPA). ALPA concurs with the actions in the proposed AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the corrections mentioned above and minor editorial corrections. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 271 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Raytheon is providing the kit and labor at no cost to the owners/operators under their Warranty Credit program for 12 months after the last day of the month that the manufacturer's service bulletin was issued. If there were no warranty on the parts and labor to accomplish this action, the cost for U.S. operators is estimated to be $65,040 or $240 per airplane. This figure is based on the assumption that no affected operators have accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–11 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–10599; Docket No. 97–CE–86–AD.

Applicability: Model 1900D airplanes, serial numbers UE–1 through UE–271, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 800 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent a loose or misrigged ground fine switch, which could result in very hard landings causing structural damage to the airplane and possible passenger injury, accomplish the following:

(a) Modify the ground idle low pitch stop system on the airplane by incorporating Raytheon "Ground Fine Switch Installation Kit" No. 129–5200–1 in accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on August 3, 1998.

Issued in Kansas City, Missouri, on June 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16166 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–40–AD; Amendment 39–10608; AD 98–11–01 R1]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 98–11–01, which currently requires replacing the fuel tank vent valves and drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 98–11–01 also requires inserting a temporary revision in the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This AD maintains the requirements of AD 98–11–01, and adds the option of modifying the fuel tank vent valves instead of the drilling and POH requirements carried over from AD 98–11–01. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to continue to prevent moisture from entering the fuel tank inward vent valve and then freezing after a cold soak at altitude, which could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

DATES: Effective September 22, 1998.

The incorporation by reference of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997, as listed in the regulations, was previously approved by the Director of the Federal Register as of December 1, 1997 (62 FR 59993, November 6, 1997).

The incorporation by reference of Pilatus Service Bulletin No. 28–004, dated March 27, 1998, as listed in the regulations, was previously approved by the Director of the Federal Register as of June 7, 1998 (63 FR 27195, May 18, 1998).

The incorporation by reference of Pilatus Service Bulletin No. 28–005, dated May 4, 1998, is approved by the Director of the Federal Register as of September 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

On October 29, 1997, the FAA issued AD 97–23–04, mendment 39–10192 (62 FR 5993, November 6, 1997), which applies to certain Pilatus Models PC–12 and PC–12/45 airplanes. AD 97–23–04 was the result of a report from the Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, of an instance of abnormal automatic engagement of the fuel booster pumps during normal operation of a Pilatus Model PC–12 airplane. The FOCA's investigation revealed that the fuel tank inward vent valves may fail in the closed position under certain conditions. Moisture ingestion, followed by cold soak, can lead to the fuel tank inward vent valve freezing.

AD 97–23–04 required replacing the fuel tank vent valves with modified fuel tank vent valves before the FAA superseded it with AD 98–11–01, Amendment 39–10528 (63 FR 27195, May 18, 1998). AD 98–11–01 currently requires the fuel tank vent valves replacement required by AD 97–23–04, and requires drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap.

This AD also requires inserting the following temporary revision to the POH that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects:

"PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Fuel Filler Cap, dated March 27, 1998."

Accomplishment of the replacement is required in accordance with Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997. Accomplishment of the drilling and POH insertion is required in accordance with Pilatus Service Bulletin No. 28–004, dated March 27, 1998.

AD 98–11–01 was the result of a report of an incident where the inward vent valve of the fuel tank froze closed on one of the affected airplanes that was in compliance with the fuel tank vent valves replacement requirement of AD 97–23–04. This resulted in permanent structural damage to the wing skins and ribs.

This condition, if not corrected, could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities.

Relevant Service Information

Pilatus has issued Service Bulletin No. 28–005, dated May 4, 1998, which specifies procedures for modifying the fuel tank vent valves. This modification, when incorporated, would eliminate the need for the drilling and POH requirements of AD 98–11–01.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 98–126, dated May 15, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the referenced service information; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Models PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA

is issuing an AD to revise AD 98–11–01. This AD:

—Maintains the requirements in AD 98–11–01 of replacing the fuel tank vent valves, drilling a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap, and inserting a temporary revision in the POH that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects; and

—Adds the option of modifying the fuel tank vent valves instead of the drilling and POH requirements carried over from AD 98–11–01.

Accomplishment of the actions specified in this AD would be required in accordance with the following:

—Replacement: Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997;

—Drilling: Pilatus Service Bulletin No. 28–004, dated March 27, 1998; and

—Modification: Pilatus Service Bulletin No. 28–005, dated May 4, 1998.

Cost Impact

The FAA estimates that 100 airplanes in the U.S. registry will be affected by this AD. The only difference between this AD and AD 98–11–01 is the provision of accomplishing the modification instead of the drilling and POH insertion requirements carried over from AD 98–11–01. This replacement takes approximately 8 workhours per airplane to accomplish at an average labor rate of approximately $60 per work hour. Parts will be provided at no cost to the owner/operator of the affected airplanes. Based on these figures, the cost impact of this AD on U.S. operators that choose to incorporate the modification option instead of the drilling and POH requirements carried over from AD 98–11–01 is estimated to be $48,000, or $480 per airplane.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with § 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–40–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–11–01, Amendment 39–10528 (63 FR 27195, May 18, 1998), and by adding a new AD to read as follows:

98–11–01 R1 Pilatus Aircraft, LTD.: Amendment 39–10608; Docket No. 98–CE–40–AD; Revises AD 98–11–01, Amendment 39–10528.

Applicability: Models PC–12 and PC–12/45 airplanes; serial numbers 101 through 230, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the

effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent moisture from entering the fuel tank inward vent valve and then freezing after a cold soak at altitude, which could result in wing airfoil distortion and structural damage with consequent degradation of the airplane's handling qualities, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after December 1, 1997 (the effective date of AD 97–23–04), replace the fuel tank vent valves with modified fuel tank vent valves in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997.

(b) Within the next 10 hours TIS after June 7, 1998 (the effective date of AD 98–11–01), accomplish the following:

(1) Drill a 4.8 millimeter (0.1875 inch) hole in each fuel filler cap in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–004, dated March 27, 1998.

(2) Insert a temporary revision (as referenced in Pilatus Service Bulletin 28–004, dated March 27, 1998) into the Pilot's Operating Handbook (POH) that specifies checking to assure that the fuel filler cap hole is clear of ice and foreign objects. This document is entitled "PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Fuel Filler Cap, dated March 27, 1998."

(c) Inserting the POH revision, as required by paragraph (b)(2) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) As an alternative method of compliance to the actions required in paragraphs (b)(1) and (b)(2) of this AD, modify the fuel tank vent valve system in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 28–005, dated May 4, 1998.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–11–01 (superseded by this action) and with AD 97–23–04 (superseded by AD 98–11–01) are considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information to the service information referenced in this document should be directed to Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The replacement required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997. The drilling required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–004, dated March 27, 1998. The modification required by this AD shall be done in accordance with Pilatus Service Bulletin No. 28–005, dated May 4, 1998.

(1) The incorporation by reference of Pilatus Service Bulletin No. 28–003, Revision 1, dated September 30, 1997, was previously approved by the Director of the Federal Register as of December 1, 1997 (62 FR 59993, November 6, 1997).

(2) The incorporation by reference of Pilatus Service Bulletin No. 28–004, dated March 27, 1998, was approved by the Director of the Federal Register as of June 7, 1998 (63 FR 27195, May 18, 1998).

(3) The incorporation by reference of Pilatus Service Bulletin No. 28–005, dated May 4, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(4) Copies of these service bulletins may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 97–432A, dated October 3, 1997; Swiss AD HB 98–086, dated March 31, 1998; and Swiss AD HB 98–126, dated May 15, 1998.

(i) This amendment revises AD 98–11–01, Amendment 39–10528; which superseded AD 97–23–04, Amendment No. 39–10192.

(j) This amendment becomes effective on September 22, 1998.

Issued in Kansas City, Missouri, on June 11, 1998.

Ronald K. Rathgeber,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16163 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–12–AD; Amendment 39–10609; AD 98–13–20]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A., Olympus 593 Series Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A, Olympus 593 series turbojet engines. This action requires a radiological inspection of the combustion chamber No. 2 outer cooling ring scoop circumferential and axial weld for weld quality, and reweld and reinspection, if necessary; and an inspection of the combustion chamber No. 2 inner and outer cooling ring web length, marking acceptable components with the letter "T" adjacent to the part number, and replacement of unacceptable components with serviceable parts. This amendment is prompted by reports of circumferential cracks at the No. 2 outer and inner rings of the combustor chamber, resulting in a section of the combustion chamber detaching and causing significant ignitor and low pressure turbine damage. The actions specified in this AD are intended to prevent combustion chamber detachment, which could result in an inflight engine shutdown or an engine fire.

DATES: Effective July 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce, PO Box 3, Filton, Bristol BS12 7QE, England; telephone 01–17–979–1234, fax 01–17–979–7575. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce Limited (R–R), Aero Division-Bristol, S.N.E.C.M.A., Olympus 593 Mk. 610–14–28 turbojet engines. The CAA advises that they have received reports of circumferential cracks at the No. 2 outer and inner rings of the combustor chamber, resulting in a section of the combustion chamber detaching and causing significant ignitor and low pressure turbine damage. The investigation revealed that the length of the web is under minimum drawing dimension, resulting in inadequate weld penetration, causing cracks to initiate and propagate along the weld joint. There are currently no affected engines operated on aircraft of U.S. registry. This AD, then, is necessary to require accomplishment of the required actions for engines installed on aircraft currently of foreign registry that may someday be imported into the US or aircraft that are currently operated in the U.S. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days. This condition, if not corrected, could result in combustion chamber detachment, which could result in an inflight engine shutdown or an engine fire.

R–R has issued Service Bulletin (SB) No. OL.593–72–9038–417, dated June 26, 1996, that specifies procedures for a radiological inspection of the combustion chamber No. 2 outer cooling ring scoop circumferential and axial weld for weld quality, and reweld and reinspection, if necessary; and SB No. OL.593–72–9048–424, dated April 25, 1997, that specifies procedures for an inspection of the combustion chamber No. 2 inner and outer cooling ring web length, marking acceptable components with the letter "T" adjacent to the part number, and replacement of unacceptable components with serviceable parts. The CAA classified these SBs as mandatory and issued ADs 008–06–96 and 004–04–97 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires, at the next combustor exposure after the effective date of this AD, a radiological inspection of the combustion chamber No. 2 outer cooling ring scoop circumferential and axial weld for weld quality, and reweld and reinspection, if necessary; and an inspection of the combustion chamber No. 2 inner and outer cooling ring web length, marking acceptable components with the letter "T" adjacent to the part number, and replacement of unacceptable components with serviceable parts. The actions would be required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–12–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–20 Rolls-Royce Limited, Aero Division-Bristol, N.E.C.M.A.: Amendment 39–10609. Docket 98–ANE–12–AD.

Applicability: Rolls-Royce Limited (R–R), Aero Division-Bristol, S.N.E.C.M.A., Olympus 593 Mk. 610–14–28 turbojet engines, installed on but not limited to British Aerospace/Aerospatiale Concorde series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent combustion chamber detachment, which could result in an inflight engine shutdown or an engine fire, accomplish the following:

(a) At the next combustor exposure after the effective date of this AD, accomplish the following in accordance with the Accomplishment Instructions of R–R Service Bulletin (SB) No. OL.593–72–9038–417, dated June 26, 1996:

(1) Perform a radiological inspection of the combustion chamber No. 2 outer cooling ring scoop circumferential and axial weld for weld quality.

(2) If the weld quality does not meet the standards described in the SB, reweld and then perform an additional radiological inspection for weld quality prior to return to service.

(b) At the next combustor exposure after the effective date of this AD, accomplish the following in accordance with the Accomplishment Instructions of R–R SB No. OL.593–72–9048–424, dated April 25, 1997:

(1) Perform an inspection of the combustion chamber No. 2 inner and outer cooling ring for web length.

(2) If the web length is acceptable within the limits described in the SB, mark the letter "T" adjacent to the part number.

(3) If the web length is not acceptable within the limits described in the SB, remove the combustion chamber from service and replace affected components with serviceable parts prior to return to service.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be performed in accordance with the following R–R SBs:

Document No.	Pages	Date
OL.593–72–9038–417. Total pages: 3.	1–3	June 26, 1996.
OL.593–72–9048–424. Total pages: 4.	1–4	April 25, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, PO Box 3, Filton, Bristol BS12 7QE, England; telephone 01–17–979–1234, fax 01–17–979–7575. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 10, 1998.

Issued in Burlington, Massachusetts, on June 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16270 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–16–AD; Amendment 39–10616; AD 98–13–25]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that currently requires an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. This amendment adds a one-time inspection to determine the residual strength of the servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement of the actuator with a new or serviceable actuator, if necessary; and eventual replacement of the horizontal stabilizer actuator with an improved actuator. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer, and consequent reduced controllability of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of Fokker Service Bulletin F28/27–183, dated November 21, 1994, as listed in the regulations, is approved by the Director of the Federal Register as of July 30, 1998.

The incorporation by reference of Fokker Service Bulletin F28/27–180, dated July 3, 1992, as listed in the regulations, was approved by the Director of the Federal Register as of September 9, 1992 (57 FR 38432, August 25,1992).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–18–04, amendment 39–8348 (57 FR 38432, August 25, 1992), which is applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, was published in the **Federal Register** on April 27, 1998 (63 FR 20554). The action proposed to continue to require an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. The action proposed to add a one-time inspection to determine the residual strength of the servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement of the actuator with a new or serviceable actuator, if necessary; and eventual replacement of the horizontal stabilizer actuator with an improved actuator.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 27 airplanes of U.S. registry that will be affected by this AD.

The inspection that is currently required by AD 92–18–04 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required inspection on U.S. operators is estimated to be $1,620, or $60 per airplane.

The inspection that is required in this new AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection requirements of this AD on U.S. operators is estimated to be $3,240, or $120 per airplane.

The replacement required in this new AD action will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $12,960, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8348 (57 FR 38432, August 25, 1992), and by adding a new airworthiness directive (AD), amendment 39–10616 to read as follows:

98–13–25 Fokker: Amendment 39–10616. Docket 98-NM–16-AD. Supersedes AD 92–18–04, Amendment 39–8348.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes; equipped with Menasco horizontal stabilizer actuators having part number (P/N) 11100-( ); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 20 days after September 9, 1992 (the effective date of AD 92–18–04, amendment 39–8348), perform an inspection of the servo-valve sub-assembly rod-end bearing and servo-valve sub-assembly for movement, in accordance with Fokker Service Bulletin F28/27–180, dated July 3, 1992.

(1) If the servo-valve sub-assembly rod-end bearing and servo-valve sub-assembly move freely within the load limits specified in the service bulletin, reassemble and conduct a functional test, in accordance with the service bulletin.

(2) If the servo-valve sub-assembly rod-end bearing or servo-valve sub-assembly require higher loads for movement than specified in the service bulletin, prior to further flight, remove and replace the horizontal stabilizer control unit with a serviceable control unit that has been inspected and found to be within the load limits of the service bulletin, or that has been inspected and repaired in accordance with Chapter 27–42–4 of the Menasco Overhaul Manual (OHM), as revised by Temporary Revision Number 3, dated July 10, 1992.

(b) Within 6 months after the effective date of this AD, perform a one-time inspection to determine the residual strength of the servo-valve sub-assembly of the horizontal stabilizer actuator, in accordance with Part 1 of the Accomplishment Instructions of

Fokker Service Bulletin F28/27–183, dated November 21, 1994. If any discrepancy is found, prior to further flight, replace the actuator with a new or serviceable actuator in accordance with the service bulletin.

(c) Within 3 years after the effective date of this AD, replace the horizontal stabilizer actuator with an actuator that has been modified and re-marked in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F28/27–183, dated November 21, 1994.

(d) As of the effective date of this AD, no person shall install a horizontal stabilizer control unit on any airplane, unless the horizontal stabilizer actuator has been modified and re-marked in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F28/27–183, dated November 21, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Fokker Service Bulletin F28/27–180, dated July 3, 1992, and Fokker Service Bulletin F28/27–183, dated November 21, 1994.

(1) The incorporation by reference of Fokker Service Bulletin F28/27–183, dated November 21, 1994, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker Service Bulletin F28/27–180, dated July 3, 1992, was approved previously by the Director of the Federal Register as of September 9, 1992 (57 FR 38432, August 25, 1992).

(3) Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1992–007/2(A), dated January 31, 1995.

(h) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16451 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–51–AD; Amendment 39–10617; AD 98–13–26]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires repetitive detailed visual inspections to detect cracking in the trunnion fittings located in the nose landing gear (NLG) bay of the forward fuselage; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking in the trunnion fittings of the NLG, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flight crew and passengers.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19682). That action proposed to require repetitive detailed visual inspections to detect cracking in the trunnion fittings located in the nose landing gear (NLG) bay of the forward fuselage; and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,520, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–26 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–10617. Docket 98–NM–51–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the trunnion fittings of the nose landing gear (NLG), which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flight crew and passengers, accomplish the following:

(a) Perform a detailed visual inspection for cracking on the left- and right-hand trunnion fittings of the NLG, in the area of the trunnion cap attachment holes, in accordance with British Aerospace Alert Service Bulletin 53–A–PM6035, Revision 1, dated March 7, 1996; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which British Aerospace Modification PM5308 has not been accomplished: Perform the inspection within 6 years after the effective date of this AD, or within 11 years after the last inspection accomplished in accordance with the alert service bulletin, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 11 years.

(2) For airplanes on which British Aerospace Modification PM5308 has been accomplished: Perform the inspection within 30 months after the effective date of this AD, or within 5 years after the last inspection accomplished in accordance with the alert service bulletin, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 6 years.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with British Aerospace Alert Service Bulletin 53–A–PM6035, Revision 1, dated March 7, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–03–96, dated April 26, 1996.

(f) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16450 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–89–AD; Amendment 39–10618; AD 98–13–27]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection to detect discrepancies of circuit breaker panels 10VE and 11VE; follow-on corrective actions; modification of the contact points; and installation of a high capacity fuse. This amendment also requires replacement of power relays 32HB and 36HB on relay panel 22VE with new parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical short circuits of the contact points and power relays on the circuit breaker panels, which could result in increased risk of smoke and fire damage in the flight compartment.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19689). That action proposed to require a one-time inspection to detect discrepancies of circuit breaker panels 10VE and 11VE; follow-on corrective actions; modification of the contact points; and installation of a high capacity fuse. That action also proposed to require replacement of power relays 32HB and 36HB on relay panel 22VE with new parts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection and application of sealant to the contact points, at an average labor rate of $60 per work hour. The cost of the sealant will be minimal. Based on this figure, the cost impact of the required inspection and modification on U.S. operators is estimated to be $120 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required installation of a high capacity fuse on the circuit breaker panels, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on this figure, the cost impact of the required installation on U.S. operators is estimated to be $60 per airplane.

It will take approximately 5 work hours per airplane to accomplish the required replacement of the relays, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on this figure, the cost impact of the required replacement on U.S. operators is estimated to be $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–27 Dornier Luftfahrt GmbH: Amendment 39–10618. Docket 98-NM–89-AD.

Applicability: Model 328–100 series airplanes equipped with circuit breaker panels 10VE up to and including serial number 131, and 11VE up to and including serial number 133; and Model 328–100 series airplanes, serial numbers 3005 through 3095 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical short circuits of the contact points and power relays on the circuit breaker panels, which could result in increased risk of smoke and fire damage in the flight compartment, accomplish the following:

(a) For Model 328–100 series airplanes equipped with circuit breaker panels 10VE up to and including serial number 131, and 11VE up to and including serial number 133: Within 14 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of circuit breaker panels 10VE and 11VE at the back lighting contact points, in accordance with Dornier Alert Service Bulletin ASB–328–31–016, dated April 2, 1997.

(1) If no discrepancy is detected, prior to further flight, modify the contact points by applying additional sealant in accordance with the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, replace the damaged circuit breaker panel with a new or serviceable panel and modify the contact points by applying additional sealant, in accordance with the alert service bulletin.

(b) For Model 328–100 series airplanes, serial numbers 3005 through 3095 inclusive: Within 90 days after the effective date of this AD, install a jiffy junction fitted with a high capacity fuse on circuit breaker panels 10VE and 11VE, in accordance with version 1 or version 2, as applicable, of the Accomplishment Instructions of Dornier Service Bulletin SB–328–31–226, dated June 16, 1997, including Price/Material Information Sheet.

(c) For Model 328–100 series airplanes, serial numbers 3005 through 3089 inclusive: Within 90 days after the effective date of this AD, replace relays 32HB and 36HB, part

number (P/N) DON405M520U5NL, on relay panel 22VE with new relays, P/N 2504MY1, in accordance with Dornier Service Bulletin SB–328–21–218, dated July 2, 1997, including Price/Material Information Sheet.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–31–016, dated April 2, 1997; Dornier Service Bulletin SB–328–31–226, dated June 16, 1997, including Price/Material Information Sheet; or Dornier Service Bulletin SB–328–21–218, dated July 2, 1997, including Price/Material Information Sheet, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 97–136, dated May 22, 1997; 97–330, dated November 20, 1997; and 97–323, dated November 20, 1997.

(g) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16449 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–83–AD; Amendment 39–10615; AD 98–13–24]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative. That AD also requires installation of an associated placard. This amendment adds requirements for replacement of the horizontal stabilizer trim control unit (HSTCU) with a new HSTCU, and reactivation of the mach trim engage/disengage switch/light (if deactivated). Accomplishment of these actions terminates the requirements of the existing AD. This amendment also limits the applicability of the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent deficiencies of the HSTCU, which could result in a nose-up trim runaway when a single component in the mach trim circuit fails.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–13–04, amendment 39–9325 (60 FR 38668, July 28, 1995), which is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes, was published in the **Federal Register** on April 14, 1998 (63 FR 18160). The action proposed to continue to require a revision to the AFM to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative, and to require installation of an associated placard. The action proposed to add requirements for replacement of the horizontal stabilizer trim control unit (HSTCU) with a new HSTCU, and reactivation of the mach trim engage/disengage switch/light (if deactivated). Accomplishment of these actions would terminate the requirements of the existing AD. That AD also proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Corrections to the Proposal

In paragraph (b) of the proposed rule, the FAA inadvertently referenced Bombardier Service Bulletin S.B. 601R–27–053, dated May 27, 1996; and Revision A, dated August 26, 1996; for accomplishment of the proposed actions. Paragraph (b) of this final rule has been revised to reference only Bombardier Service Bulletin S.B. 601R–27–053, Revision B, dated February 21, 1997. In addition, NOTE 3 has been added to reference the original issue and Revision A of the service bulletin as acceptable means of compliance for operators that have accomplished the applicable actions prior to the issuance of this AD.

The FAA has become aware of a typographical error that appeared in paragraph (d)(2) of the proposal. The AD

number referenced in that paragraph appeared incorrectly as AD 93–13–04. Paragraph (d)(2) of this final rule has been revised to correctly specify that AD number as AD 95–13–04.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 54 Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–13–04, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,480, or $120 per airplane.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures; the cost impact of the new requirements of this AD on U.S. operators is estimated to be $9,720, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9325 (60 FR 38668, July 28, 1995), and by adding a new airworthiness directive (AD), amendment 39–10615, to read as follows:

98–13–24 Bombardier, Inc. (Formerly Canadair): Amendment 39–10615. Docket 97–NM–83–AD. Supersedes AD 95–13–04, Amendment 39–9325.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) airplanes, serial numbers 7003 through 7112 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deficiencies of the horizontal stabilizer trim control unit (HSTCU), which could result in a nose-up trim runaway when a single component in the mach trim circuit fails, accomplish the following:

Restatement of Requirements of AD 95–13–04

(a) Within 24 hours after August 14, 1995 (the effective date of AD 95–13–04, amendment 39–9325), accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Install a placard adjacent to the primary flight display next to the airspeed limitation placard, to read:

"USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH."

(2) Revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD, or Canadair Regional Jet Temporary Revision No. TR RJ/43, into the AFM.

"USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH."

Note 2: When the temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Canadair Regional Jet Temporary Revision No. TR RJ/43.

(3) Revise the Limitations section of the FAA-approved AFM to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD into the AFM.

"Prior to the accomplishment of Bombardier Alert Service Bulletin S.B. A601R–27–054, dated June 12, 1995, when the Mach trim system is disengaged, the "MACH TRIM" caution message will be displayed on the Engine Indication and Crew Alerting System (EICAS), and the Mach trim engage/disengage switch "INOP" legend will be illuminated. The EICAS message may be scrolled out of view prior to takeoff, but the switch "INOP" light will remain illuminated."

New Requirements of This AD

(b) Within 18 months after the effective date of this AD, replace the HSTCU with a new HSTCU having part number 601R92301–9, and reactivate the mach trim switch/light (if deactivated), in accordance with Bombardier Service Bulletin S.B. 601R–27–053, Revision B, dated February 21, 1997. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (a) of this AD; after the modification has been accomplished, the previously required AFM limitation may be removed.

Note 3: Accomplishment of paragraph (b) of this AD, prior to the effective date of this AD, in accordance with Bombardier Service Bulletin S.B. 601R–27–053, dated May 27, 1996; or Revision A, dated August 26, 1996; is considered acceptable for compliance with the applicable actions specified in this amendment.

(c) As of the effective date of this AD, no person shall install on any airplane any

HSTCU having part number 601R92301–5, 601R92301–7, or 601R92301–951.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(d)(2) Alternative methods of compliance approved previously in accordance with AD 95–13–04, amendment 39–9325, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Bombardier Service Bulletin S.B. 601R–27–053, Revision B, dated February 21, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–95–08R2, dated July 23, 1996.

(g) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16448 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–78–AD; Amendment 39–10614; AD 98–13–23]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires inspections to detect corrosion and cracking of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the outer skin; and repair, if necessary. This amendment is prompted by cracking found at the lower corner of the horizontal stabilizer cutout longeron during a full scale fatigue test. The actions specified by this AD are intended to prevent such cracking, which could result in reduced structural integrity of the horizontal-stabilizer cutout longeron.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on December 12, 1995 (60 FR 63665). That action proposed to require repetitive visual and eddy current inspections to detect corrosion and fatigue cracking of the lower horizontal stabilizer cutout longeron, the corner fitting, the skin strap, and the skin between FR87 and FR89 and between STGR24 and STGR27, left-hand and right-hand. That action also proposed to require repetitive rotating probe inspections to detect cracks in the fastener holes at the same locations; and repair or certain follow-on actions, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter has no objection to the proposed rule.

Request to Revise Compliance Time to Permit "Adjustment of Range"

One commenter, the manufacturer, requests that the compliance times for the inspection threshold and the repetitive intervals proposed be revised to follow the recommendations of the Airbus service bulletin specified in the proposed rule. That service bulletin specifies that inspection thresholds and intervals may be adjusted based on certain average flight operations of the airplane. The commenter states that this approach was approved by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, in its approval of the service bulletin.

The FAA does not concur that the compliance times should be revised. As explained in the proposal, the FAA has determined that such adjustments may not address the unsafe condition in a timely manner. In developing appropriate compliance times for the proposed rule, the FAA considered not only the manufacturer's recommendation, but the safety implications involved with cracking of the horizontal stabilizer cutout longeron and the number of landings that had been accumulated when cracking was detected. Therefore, this AD does not permit such adjustments, and no change to the compliance times of the final rule has been made. However, operators may request approval of an adjustment of the compliance time under the provisions of paragraph (f) of this AD, provided that such adjustment provides an acceptable level of safety.

Remove Touch-and-Go Landings From the Total Number of Landings

This same commenter requests that touch-and-go landings not be included in calculating the total number of

airplane landings. The commenter points out that most of the relevant fatigue parameters for touch-and-go flights are less significant than for conditions of normal flight. Further, the commenter states that including touch-and-go's in the total landing count for an individual airplane is too conservative, considering the high penalty of counting each touch-and-go.

The FAA does not concur. Fatigue cracking has been found at the lower corner of the horizontal stabilizer cutout longeron. Since fatigue cracking in that area is aggravated by landing, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between consecutive inspections.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 Airbus Model A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 268 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $32,160, or $16,080 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–23 Airbus Industrie: Amendment 39–10614. Docket 95–NM–78–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification No. 6146 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer cutout longeron due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later: Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Areas 1 and 2 of the lower horizontal stabilizer cutout longeron, as defined in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995. Perform the inspections in accordance with the service bulletin.

(b) Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Area 3 of the lower horizontal stabilizer cutout longeron, as defined in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995. Perform these inspections in accordance with the service bulletin, at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 24,000 total landings, but not before the accumulation of 18,000 total landings; or

(2) Prior to the accumulation of 2,000 landings after the effective date of this AD.

(c) If no cracking is detected during any inspection required by this AD: Prior to further flight, cold work and ream the vacated fastener holes, in accordance with Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995; and perform the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which no cracking is found in Area 1 or 2: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes on which no cracking is found in Area 3: Perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include installing a new corner fitting, installing a new longeron, and performing a cold working procedure.) After accomplishment of these follow-on actions, no further action is required by this AD.

(d) If any cracking is detected during any inspection required by this AD, perform the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If any cracking is found in Area 1 or 3 that is within the limits specified in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995: Prior to further flight, repair in accordance with the service bulletin.

(2) If any cracking is found in Area 2, or if any cracking is found in any area and that cracking is beyond the limits described in Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(e) If any corrosion is detected during any inspection required by this AD, prior to further flight, repair the corrosion in accordance with Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) Except as provided by paragraph (d)(2) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–6042, Revision 1, dated February 20, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 94–269–171(B)R1, dated March 29, 1995.

(i) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16472 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–15–AD; Amendment 39–10612; AD 98–13–21]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A Olympus 593 Series Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A Olympus 593 series turbojet engines. This action requires initial and repetitive visual inspections of the low pressure (LP) shaft signal system for cable wear and refurbishment of the LP shaft signal system at when the cable is found frayed, or at every engine shop visit, whichever occurs first. This amendment is prompted by reports of frayed rear cables in the LP shaft signal system. The actions specified in this AD are intended to prevent LP shaft signal system failure, which could result in an LP turbine overspeed, burst, uncontained engine failure, and damage to the aircraft in the event of a LP shaft failure.

DATES: Effective July 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce, PO Box 3, Filton, Bristol BS12 7QE, England; telephone 01–17–979–1234, fax 01–17–979–7575. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce Limited (R–R), Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 turbojet engines. The CAA advises that they have received reports of frayed rear cables in the low pressure (LP) shaft signal system. The LP shaft signal system prevents the LP turbine disk from bursting in the event of LP shaft failure by cutting off the fuel when excess twist is detected in the shaft. The rear cable activates the fuel shut-off valve. This condition, if not corrected, could result in LP shaft signal system failure, which could result in an LP turbine overspeed, burst, uncontained engine failure, and damage to the aircraft in the event of a LP shaft failure.

There are currently no affected engines operated on aircraft of U.S. registry. This AD, then, is necessary to require accomplishment of the required actions for engines installed on aircraft currently of foreign registry that may someday be imported into the U.S or which may be operated in U.S. airspace. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days.

R–R has issued Service Bulletin (SB) No. OL.593–76–9039–71, Revision 2, dated July 23, 1997, that specifies procedures for visual inspection of the LP shaft signal system for cable wear and refurbishment of the LP shaft signal system. The CAA classified this SB as mandatory and issued AD 009–09–97 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires initial and repetitive visual inspections of the LP shaft signal system for cable wear and refurbishment of the LP shaft signal system when the cable is found frayed, or at every engine shop visit, whichever occurs first. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not

preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–21 Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A: Amendment 39–10612. Docket 98–ANE–15–AD.

Applicability: Rolls-Royce Limited (R–R), Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 turbojet engines, installed on but not limited to British Aerospace/Aerospatiale Concorde series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent low pressure (LP) shaft signal system failure, which could result in an LP turbine overspeed, burst, uncontained engine failure, and damage to the aircraft in the event of a LP shaft failure, accomplish the following:

(a) Perform initial and repetitive visual inspections of the LP shaft signal system rear cable for wear, and refurbish the LP shaft signal system, if necessary, in accordance with R–R Service Bulletin (SB) No. OL.593–76–9039–71, Revision 2, dated July 23, 1997, as follows:

(1) Within 30 cycles in service after the effective date of this AD, perform the initial in-service inspection.

(2) Thereafter, inspect at intervals not to exceed 800 hours time in service (TIS) since last inspection or refurbishment, whichever occurs first.

(3) If rear cable wear is detected beyond the limits described in the SB, refurbish the LP shaft signal system.

Note 2: Guidance on performing the initial in-service inspection can be found in the Maintenance Manual (76–21–01, 76–21–02), and guidance on performing a refurbishment of the LP shaft signal system can be found in the Overhaul Manual.

(b) Refurbish the LP shaft signal system as follows:

(1) Perform the initial refurbishment at the next engine shop visit after the effective date of this AD.

(2) Thereafter, refurbish at intervals not to exceed each engine shop visit, or 200 hours TIS since last refurbishment, whichever occurs later.

(c) For the purpose of this AD, an engine shop visit is defined as an engine entering the shop for work in accordance with the refurbishment or repair workscope. A maintenance related task would not be considered a shop visit.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be performed in accordance with the following R–R SB:

Document No.	Pages	Revision	Date
OL.593–76–9039–71	1–5	2	July 23, 1997.
Total pages: 5.			

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This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, PO Box 3, Filton, Bristol BS12 7QE, England; telephone 01-17-979-1234, fax 01-17-979-7575. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 10, 1998.

Issued in Burlington, Massachusetts, on June 12, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-16467 Filed 6-24-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-257-AD; Amendment 39-10624; AD 98-13-33]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300, A300-600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A300-600, and A310 series airplanes, that requires repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary. For certain airplanes, this AD also requires repetitive inspections to detect cracking of the rudder attachments, and repair, if necessary; or modification of the rudder attachments. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct desynchronization of the rudder servo actuators, which could result in reduced structural integrity of the rudder attachments and reduced controllability of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A300-600, and A310 series airplanes was published in the **Federal Register** on March 6, 1998 (63 FR 11169). That action proposed to require repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary. For certain airplanes, this AD also requires repetitive inspections to detect cracking of the rudder attachments, and repair, if necessary; or modification of the rudder attachments.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revise the Cost Information

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the cost estimate presented in the proposal be revised. The ATA states that the data contained in the proposal does not take into consideration the costs required for actions that may be required as a result of certain inspection findings.

The FAA does not concur that the cost estimate information should be revised. The economic analysis of the AD is limited only to the cost of actions that are actually required by the rule. It does not consider the costs of "on condition" actions, such as adjustments or replacement of parts if a discrepancy is detected during a required inspection. Such "on condition" actions would be required to be accomplished—regardless of AD direction—in order to correct an identified unsafe condition, and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 103 Airbus Model A300, A300-600, and A310 series airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 1 work hour per airplane to accomplish the proposed test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $60 per airplane, per test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–33 Airbus Industrie: Amendment 39–10624. Docket 97–NM–257–AD.

Applicability: All Model A300, A300–600, and A310 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct desynchronization of the rudder servo actuators, which could result in reduced structural integrity of the rudder attachments and reduced controllability of the airplane, accomplish the following:

(a) Prior to accumulation of 1,300 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,300 flight hours: Perform a test to detect desynchronization of the rudder servo actuators in accordance with Airbus Service Bulletin A300–27–0188, Revision 2, dated October 1, 1997 (for Model A300 series airplanes); A300–27–6036, Revision 2, dated October 1, 1997 (for Model A300–600 series airplanes); or A310–27–2082, Revision 2, dated October 1, 1997 (for Model A310 series airplanes); as applicable. If any desynchronization (rudder movement) is detected, prior to further flight, either adjust or replace, as applicable, the spring rod of the affected rudder servo actuator in accordance with the applicable service bulletin.

Note 2: A test to detect desynchronization of the rudder servo actuators, if accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–27–0188, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A300 series airplanes); A300–27–6036, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A300–600 series airplanes); or A310–27–2082, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A310 series airplanes); is considered acceptable for compliance with the initial test required by paragraph (a) of this AD.

(b) Except as provided by paragraph (c) of this AD, if any desynchronization (rudder movement) greater than the limit specified in Paragraph B of the Accomplishment Instructions of the applicable service bulletin is detected during any test required by paragraph (a), prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A300–55–0044, dated October 22, 1996 (for Model A300 series airplanes); A300–55–6023, dated October 22, 1996 (for Model A300–600 series airplanes); or A310–55–2026, dated October 22, 1996 (for Model A310 series airplanes); as applicable.

(1) Conduct a visual inspection, high frequency eddy current inspection, or ultrasonic inspection, as applicable, to detect cracking of the rudder attachments; and repeat the inspection thereafter, as applicable, at the intervals specified in the applicable service bulletin. Or

(2) Modify the rudder attachments to cold expand the rivet holes.

(c) If any crack is found during any inspection or modification required by paragraph (b) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair the affected structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or in accordance with a method approved by the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided in paragraph (c) of this AD, the repetitive inspections and repair shall be done in accordance with Airbus Service Bulletin A300–55–0044, dated October 22, 1996; Airbus Service Bulletin A300–55–6023, dated October 22, 1996; or Airbus Service Bulletin A310–55–2026, dated October 22, 1996, as applicable. Testing for desynchronization shall be done in accordance with Airbus Service Bulletin A300–27–0188, Revision 2, dated October 1, 1997; Airbus Service Bulletin A300–27–6036, Revision 2, dated October 1, 1997; or Airbus Service Bulletin A310–27–2082, Revision 2, dated October 1, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–242–208(B) R2, dated November 19, 1997.

(g) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16491 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–329–AD; Amendment 39–10623; AD 98–13–32]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0100 series airplanes, that requires interim inspections to detect discrepancies of the main fitting subassembly of the main landing gear, and follow-on corrective actions, if necessary. This amendment also requires a one-time inspection to detect discrepancies of the fitting, repair of the fitting, if necessary, and application of new surface protection on the fitting, which would terminate the interim inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the main fitting subassembly of the main landing gear, which could result in collapse of the main landing gear.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands; or from Messier-Dowty Ltd., Cage: K0654, Cheltenham Road, Gloucester, GL2 9QH, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0100 series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16165). That action proposed to require interim inspections to detect discrepancies of the main fitting subassembly of the main landing gear, and follow-on corrective actions, if necessary. That action also proposed to require a one-time inspection to detect discrepancies of the fitting, repair of the fitting, if necessary, and application of new surface protection on the fitting. Accomplishment of these actions would terminate the interim inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request to Cite Earlier Revision of Service Information

One commenter requests that provisions be added to allow accomplishment of inspection and rework required by paragraph (b) of the proposed AD in accordance with Revision 1 of Messier-Dowty Service Bulletin F100–32–86 in addition to Revision 2, as proposed in the NPRM. The FAA concurs. Since Revision 2 of the service bulletin contains no substantive differences from Revision 1, the FAA has determined that the actions required by paragraph (b) of this AD may be accomplished in accordance with Messier-Dowty Service Bulletin F100–32–86, including Appendix A and Appendix B; all Revision 1, all dated November 1, 1996. A "NOTE" has been added to the final rule to give credit to operators who may have previously accomplished the required actions in accordance with the earlier revision of the service bulletin.

Explanation of Changes Made to Proposal

In the proposal, the FAA inadvertently omitted references to Appendices A and B, both Revision 1, both dated November 1, 1996, of Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997. Therefore, the FAA has revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 127 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required interim inspections. Based on an average labor rate of $60 per work hour, the cost impact of the required interim inspections on U.S. operators is estimated to be $15,240, or $120 per airplane, per inspection cycle.

It will take approximately 14 work hours per airplane to accomplish the required terminating actions. Based on an average labor rate of $60 per work hour the cost impact of the required terminating actions on U.S. operators is estimated to be $106,680, or $840 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–32 Fokker: Amendment 39–10623. Docket 97–NM–329–AD.

Applicability: Model F.28 Mark 0100 series airplanes, equipped with Messier-Dowty main landing gear units having the part numbers and serial numbers specified in Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997, including Appendix A, Revision 1, dated November 1, 1996, and Appendix B, Revision 1, dated November 1, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the main fitting subassembly of the main landing gear, which could result in collapse of the main landing gear, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a visual and an eddy current inspection to detect discrepancies (paint damage, corrosion or cracking) of the main fitting subassembly of the main landing gear, in accordance with Appendix B, Revision 1, dated November 1, 1996, of Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997.

(1) If no discrepancy is detected, or if any discrepancy is detected that is within the limits specified in Appendix B of the service bulletin: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days.

(2) If any discrepancy is detected that is outside the limits specified in Appendix B of the service bulletin: Prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Within 6 months after the effective date of this AD, perform a one-time eddy current inspection and a one-time visual inspection to detect discrepancies (paint damage, corrosion, or cracking) of the main fitting subassembly of the main landing gear, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997, including Appendix A, Revision 1, dated November 1, 1996, and Appendix B, Revision 1, dated November 1, 1996. Accomplishment of the actions required by this paragraph constitutes terminating action for the requirements of this AD.

(1) If no discrepancy is detected, prior to further flight, apply a protective treatment to the main fittings in accordance with the service bulletin.

(2) If any discrepancy is detected that can be repaired within the limits specified in the service bulletin, prior to further flight, repair the discrepancy, and apply a protective treatment to the main fittings, in accordance with the service bulletin.

(3) If any discrepancy is detected that cannot be repaired within the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 2: Accomplishment of the terminating actions required by paragraph (b) of this AD in accordance with Messier-Dowty Service Bulletin F100–32–86, including Appendix A and Appendix B; all Revision 1, all dated November 1, 1996; prior to the effective date of this AD, is acceptable for compliance with the requirements of this paragraph.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (b)(3) of this AD, the actions shall be done in accordance with Messier-Dowty Service Bulletin F100–32–86, Revision 2, dated July 3, 1997, including Appendix A, Revision 1, dated November 1, 1996, and Appendix B, Revision 1, dated November 1, 1996, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 5, 6	2	July 3, 1997.
2–4, 7–17	1	November 1, 1996.
Appendix A		
1–3	1	November 1, 1996.
Appendix B		
1–5	1	November 1, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands; or from Messier-Dowty Ltd., Cage: K0654, Cheltenham Road, Gloucester, GL2 9QH, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1996–133/2(A), dated January 31, 1997.

(f) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16498 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–145–AD; Amendment 39–10622; AD 98–13–31]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires repetitive visual inspections to detect discrepancies of the bushing installation of the aileron actuation fitting, and eventual installation of staked bushings in the fitting. Accomplishment of such installation terminates the repetitive inspections. This amendment also provides for an optional temporary preventive action, which, if accomplished, would allow the repetitive inspection intervals to be extended until the terminating action is accomplished. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the fitting lugs due to vibration caused by loose bushings in the fittings, and consequent reduced controllability of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

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Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on December 11, 1997 (62 FR 65231). That action proposed to require repetitive visual inspections to detect discrepancies of the bushing installation of the aileron actuation fitting, and eventual installation of staked bushings in the fitting. Accomplishment of such installation terminates the repetitive inspections. That action also proposed to provide for an optional temporary preventive action, which, if accomplished, allows the repetitive inspection intervals to be extended until the terminating action is accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter, the manufacturer, requests that the repair specified in paragraph (c) of the proposed rule be accomplished in accordance with Saab Service Bulletin 2000–57–014 or the commenter's Repair Statements. The commenter states that its Repair Statements are approved based on privileges granted by Luftfartsverket (LFV), which is the airworthiness authority for Sweden, as part of the production certificate for Model SAAB 2000 series airplanes.

The FAA concurs partially. The FAA does concur that it is appropriate to allow repairs in accordance with the service bulletin, since no repair is specified in the service bulletin for the condition specified in paragraph (c) of this AD. However, in light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that a repair approved by the FAA, the LFV, or the LFV's delegated agent is acceptable for compliance with the AD.

Additionally, the FAA has included the phrase "prior to further flight" in paragraph (c) of the final rule. This phrase was omitted inadvertently from the proposal.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 1 work hour to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspection on the single U.S. operator is estimated to be $60 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 4 work hours to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the required installation on the single U.S. operator is estimated to be $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional temporary preventive action provided by this AD, it would take approximately 1 work hour to accomplish it, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the optional temporary preventive action would be $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–31 SAAB Aircraft: Amendment 39–10622. Docket 97-NM–145-AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers -002 through -023 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fitting lugs, due to vibration caused by loose bushings in the aileron actuation fittings, which could result in reduced controllability of the airplane; accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, inspect the bushing installations of the left-hand and right-hand aileron actuation fittings to detect any discrepancies, in accordance with Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997.

(1) If no discrepancy is found, repeat the inspection thereafter at intervals not to exceed 300 flight hours until the requirements of paragraph (b) of this AD have been accomplished. Accomplishment of the

temporary preventive action specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin allows the repetitive inspections to be accomplished at intervals of 600 flight hours until the requirements of paragraph (b) of this AD have been accomplished.

(2) If any discrepancy is found, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD in accordance with the service bulletin.

(i) Except as specified in paragraph (c), accomplish the installation required by paragraph (b) of this AD. Accomplishment of this installation constitutes terminating action for the requirements of this AD. Or

(ii) Accomplish the temporary preventive action specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours until the requirements of paragraph (b) of this AD have been accomplished.

(b) Except as specified in paragraph (c) of this AD, within 3,000 flight hours after the effective date of this AD, install the new staked bushings in the aileron actuation fitting in accordance with Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997. Accomplishment of this installation terminates the requirements of this AD.

(c) If, during the accomplishment of the installation required by paragraph (a)(2)(i) or paragraph (b) of this AD, the diameter of the small hole of the fitting lug is found to be outside the limits specified in Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997, prior to further flight, repair it in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (or its delegated agent).

(d) As of the effective date of this AD, no person shall install on any airplane an aileron having part number, 7357995–843 (left-hand) or 7357995–844 (right-hand), unless it has been modified in accordance with paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided in paragraph (c) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive (SAD) No. 1–102R1, dated November 8, 1996.

(h) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16499 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–203–AD; Amendment 39–10626; AD 98–13–35]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, that requires repetitive high frequency eddy current inspections of certain areas of the fuselage to detect cracks of the skin and/or longeron, and various follow-on actions. This amendment also requires installation of a preventative modification, which terminates the repetitive inspections. This amendment is prompted by reports indicating that, due to material fatigue caused by installation preload and cabin pressurization cycles, fatigue cracks were found in the skin and longerons of the fuselage. The actions specified by this AD are intended to prevent such fatigue cracks, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes was published in the **Federal Register** on March 7, 1997 (62 FR 10492). That action proposed to require repetitive high frequency eddy current (HFEC) inspections of the external areas of the fuselage skin to detect cracks of the skin and/or longeron between stations Y=160.000 and Y=218.000, and various follow-on actions. That action also proposed to require the installation of a preventative modification, which would constitute terminating action for the repetitive inspection requirements.

Explanation of Changes Made to Proposed AD

Since issuance of the NPRM, the FAA has received a report indicating that, during inspection of a McDonnell Douglas Model DC–9–32 series airplane, fatigue cracking was found in additional structure that is within the subject area of the proposed AD (i.e., between stations Y=160.000 and Y=218.000). The additional area is approximately 10 inches by 6 inches and is directly between areas subject to the proposed inspection required by this AD. Because

of the small size of the additional area and its location, the FAA finds that adding this area to the existing requirements of the final rule will not increase significantly the inspection burden on operators. Therefore, in addition to the area between stations Y=160.000 and Y=218.000 (as specified in McDonnell Douglas DC–9 Service Bulletin 53–235, which was referenced in the proposed AD as the appropriate source of service information), the FAA has determined that the repetitive HFEC inspections also must be conducted in the entire area between stations Y=160.000 and Y=180.000, longeron 4 left and longeron 5 left. The FAA has revised paragraph (a) of the final rule accordingly, and has added one work hour to the cost impact information below, to account for the additional time necessary to accomplish the required inspection. In addition, McDonnell Douglas is planning on revising the referenced service bulletin to coincide with the requirements of this final rule.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

Request to Allow Credit for Inspections Performed Previously

One commenter requests that the compliance time for paragraph (a) of the proposed AD be revised to allow credit for internal visual inspections performed previously in accordance with Task C46–53300 of the Corrosion Prevention and Control Program (CPCP) [required by AD 92–22–08 R1, amendment 39–8591 (58 FR 32281, June 9, 1993)]. The commenter states that, since the primary failure mode is a cracked longeron or shear clip, the internal visual inspection will have a crack detection threshold lower than that of the initial external eddy current inspection specified in paragraph (a) of the proposed AD. The FAA concurs. The FAA finds that the structure and area specified in this AD are identical to the structure and area being inspected in accordance with the CPCP AD 92–22–08 R1. The FAA has determined that, for airplanes that have been inspected previously in accordance with Task C46–53300 of the CPCP (required by AD 92–22–08 R1) within 6,000 landings prior to the effective date of this AD, the initial HFEC inspection required by this AD shall be accomplished within 12,000 landings. The FAA finds that a 12,000-landing compliance time represents an appropriate interval of time allowable for these affected airplanes to continue to operate without compromising safety. The FAA has revised paragraph (a) of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,728 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,152 airplanes of U.S. registry will be affected by this AD.

It will take approximately 17 work hours per airplane to accomplish the required HFEC inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection required by this AD on U.S. operators is estimated to be $1,175,040, or $1,020 per airplane, per inspection cycle.

It will take approximately 89 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. The cost of required parts will range from $13,771 to $15,292 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be between $22,015,872 ($19,111 per airplane) and $23,768,064 ($20,632 per airplane).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–35 McDonnell Douglas: Amendment 39–10626. Docket 96–NM–203–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the skin and longerons of the fuselage, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection of the external areas of the fuselage to detect cracks of the skin and/or longeron between stations Y=160.000 and Y=218.000, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993; and of the entire area between stations Y=160.000 and Y=180.000, longeron 4 left and longeron 5 left. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: Where there are differences between this AD and the referenced service bulletin, the AD prevails.

(1) For airplanes other than those identified in paragraph (a)(2) of this AD: Inspect prior to the accumulation of 30,000 total landings, or within 8,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected previously in accordance with Task C46–53300 of the Corrosion Prevention and Control Program (CPCP), as required by AD 92–22–8–R1, amendment 39–8591, within 6,000 flight cycles prior to the effective date of this AD: Inspect within 12,000 landings after the effective date of this AD.

(b) *Condition 1 (No Cracks).* If no crack is detected during any inspection required by this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993.

(1) *Condition 1, Option I (Repetitive Inspection).* Repeat the HFEC inspection required by paragraph (a) of this AD, and the aided visual inspection specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin, at intervals not to exceed 10,000 landings.

(2) *Condition 1, Option II (Terminating Action Modification).* Accomplish the preventative modification installation of clips and doublers between stations Y=160.000 and Y=218.000, in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) *Condition 2 (Skin Cracks).* If any skin crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(d) *Condition 3 (Longeron Cracks).* If any longeron crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(e) Prior to the accumulation of 100,000 total landings, or within 4 years after the effective date of this AD, whichever occurs later, accomplish the preventative modification specified in paragraph 2.J. of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16695 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–212–AD; Amendment 39–10627; AD 98–13–36]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes, that requires repetitive operational tests of the pitch trim system of the elevator trim-tab of the flight control unit to ensure that the system operates correctly, and repair if necessary. This amendment is prompted by a report of uncommanded movement of the right-hand elevator trim-tab to a maximum deflection position, which was apparently due to a failure in the aircraft harness and a fault in the pitch trim synchronizer. The actions specified by this AD are intended to prevent such uncommanded movement of the elevator trim-tab, which could lead to structural overload of the horizontal stabilizers at speeds above 180 knots, and consequent reduced controllability of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes was published in the Federal Register on May 9, 1997 (62 FR 25566). That action proposed to require repetitive operational tests of the pitch trim system of the elevator trim-tab of the flight control unit to ensure that the system operates correctly, and repair, if necessary.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed AD.

Requests to Withdraw the AD

Two commenters suggest that the proposed AD is no longer required because the proposed action already is being performed by the operators in accordance with their usual maintenance procedures. One commenter states that it is redundant to issue an AD that would require the operational tests to be performed when those checks are already a mandatory task in its maintenance program. The manufacturer states that procedures for these tests have been included in the Saab Maintenance Review Board (MRB) Document (task 27–3210), which specifies repetitive checks every 150 flight hours. In addition, commenters state that Saab Service Bulletin 340–27–079, dated December 22, 1995, which describes procedures for the tests required by the proposed AD, has been canceled.

The FAA acknowledges that the operator's maintenance program and manufacturer's MRB document may include the same information as the proposed AD and service bulletin. However, the FAA has determined that such programs and documents are not the appropriate means to address the unsafe condition; an airworthiness directive is issued to address an unsafe condition. In addition, the FAA has determined that allowing each operator to determine whether and how often operational tests should be conducted will not ensure an acceptable level of safety, and that allowing this degree of operator discretion is not appropriate in this case. Therefore, this AD is necessary to ensure that operators accomplish operational tests in a common manner and at common intervals to ensure compliance and public safety.

Request to Limit the Applicability of the AD

The manufacturer states that, on all Saab Model SAAB 2000 series airplanes, the mechanical elevator control system (MECS) has been replaced by the powered elevator control system (PECS). For this reason, the manufacturer maintains that operational tests for the pitch trim system on these airplanes are no longer required.

The FAA infers that the manufacturer requests that the FAA limit the applicability of the proposed AD to exclude Model SAAB 2000 series airplanes equipped with PECS. The FAA concurs with this request and agrees that, for Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes equipped with PECS, the actions required by the proposed AD are no longer required. Therefore, the FAA has removed such airplanes from the applicability of the final rule.

Requests to Incorporate the Manufacturer's Repair Instructions Into the Final Rule

Two commenters request that the proposed AD be revised to incorporate the manufacturer's repair instructions into the final rule. In support of these requests, the manufacturer has provided repair instructions in its comments. The commenters state that, if a problem is encountered during an inspection, the requirement to contact the FAA for repair instructions could cause operators to incur long down times while waiting for such instructions.

Although the FAA does not concur with the requests to incorporate the manufacturer's repair instructions into the final rule, it has taken into account the commenters' concerns about potential delays in receiving repair instructions. The FAA has been advised by the manufacturer that it has developed a repair procedure to isolate the fault and has developed a repair for the elevator trim synchronizer system in the event that the operational test fails. The FAA also has been advised that this repair procedure now has been included in the Saab 340 Aircraft Maintenance Manual (AMM) 27–32–30, dated January 1, 1998. The FAA has reviewed this procedure and finds that it may be used as an acceptable means of compliance for the repair required by paragraph (a)(2) of this AD. Accordingly, the FAA has revised this final rule to include a new NOTE specifying that the repair may be accomplished in accordance with the Saab 340 AMM.

In addition, the FAA has revised paragraph (a)(2) of the final rule to specify that repairs may be accomplished in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV), which is the airworthiness authority for Sweden. In light of the type of repair required to ensure that the pitch trim system operates correctly, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, such a repair approved by either the FAA or the LFV (or its delegated agent) would be acceptable for compliance with this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 235 Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry will be affected by this AD. Currently, there are no Model SAAB 2000 series airplanes of U.S. registry that would be affected by this AD. The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $14,100, or $60 per airplane, per operational test.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–36 SAAB Aircraft AB: Amendment 39–10627. Docket 96–NM–212–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159, inclusive; Model SAAB 340B series airplanes, serial numbers –160 and subsequent; and SAAB 2000 series airplanes, serial numbers –005 and –007 through –009, inclusive; equipped with a mechanical elevator control system (MECS); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the right-hand elevator trim-tab to a maximum deflection position, which could lead to structural overload of the horizontal stabilizers at speeds above 180 knots, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 150 hours time-in-service after the effective date of this AD, perform an operational test of the pitch trim system that moves the elevator trim-tab of the flight control unit to ensure that the system operates correctly, in accordance with Saab Service Bulletins 340–27–079 (for Model SAAB SF340A and SF340B series airplanes); or 2000–27–018 (for Model SAAB 2000 series airplanes); both dated December 22, 1995; as applicable.

(1) If no discrepancy is found, repeat the operational test of the pitch trim system thereafter at intervals not to exceed 150 hours time-in-service.

(2) If any discrepancy is found, prior to further flight, accomplish repairs in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV), or its delegated agent.

Note 2: Accomplishment of the repair required by paragraph (a)(2) of this AD, in accordance with Saab 340 Aircraft Maintenance Manual 27–32–30, dated January 1, 1998, is considered acceptable for compliance with the applicable action specified in this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The operational test shall be done in accordance with Saab Service Bulletin 340–27–079, dated December 22, 1995, or Saab Service Bulletin 2000–27–018, dated December 22, 1995, as applicable. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–083, Revision 1, dated January 2, 1996.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16697 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–81–AD; Amendment 39–10628; AD 98–13–37]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and all Model A300–600 series airplanes, that requires a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking of the gantry lower flanges in the MLG bay area, which could result in decompression of the airplane.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 and all Model A300–600 series airplanes series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19684). That action proposed to require a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD. It will take approximately 4 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $16,080, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–37 Airbus Industrie: Amendment 39–10628. Docket 98–NM–81–AD.

Applicability: Model A300 series airplanes on which Airbus Modification 3474 has been accomplished, and all Model A300–600 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the gantry lower flanges in the main landing gear (MLG) bay area, which could result in decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 16,300 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time ultrasonic inspection for cracking of the gantry lower flanges in the MLG bay area, in accordance with Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997.

(1) If any cracking is detected, prior to further flight, repair in accordance with the AOT.

(2) If no cracking is detected, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and repair shall be done in accordance with Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–372–236(B), dated December 3, 1997.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16699 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–115–AD; Amendment 39–10629; AD 98–13–38]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires installation of a warning placard for the fire extinguisher exhaust port located in the rear baggage bay. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent blockage of the fire extinguisher exhaust port, which could result in reduced fire protection in the rear baggage bay and consequent injury to the passengers and crewmembers.

DATES: Effective July 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19688). That action proposed to require installation of a warning placard for the fire extinguisher exhaust port located in the rear baggage bay.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts cost will be minimal. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–13–38 British Aerospace [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10629. Docket 98–NM–115–AD.

Applicability: Model 4101 airplanes, constructor's numbers 41004 through 41100 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of the fire extinguisher exhaust port, which could result in reduced fire protection in the rear baggage bay and consequent injury to the passengers and crewmembers, accomplish the following:

(a) Within 4 months after the effective date of this AD, install a warning placard near the fire extinguisher exhaust port in the rear baggage bay, in accordance with British Aerospace Regional Aircraft Service Bulletin J41–11–020, dated November 10, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with British Aerospace Regional Aircraft Service Bulletin J41–11–020, dated November 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–11–97.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16703 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule with request for comments.

SUMMARY: This final rule amends the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. During the nineteen years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has amended the premerger notification rules several times to improve the program's effectiveness and to lessen the burden of complying with the rules. This final rule amends Rule 802.70, which exempts from the reporting requirements acquisitions of stock or assets required to be divested by an order of the Federal Trade Commission or of any Federal court in an action brought by the Commission or the Department of Justice. As amended the Rule will exempt as well divestitures pursuant to consent agreements that have been accepted by the Commission for public comment or have been filed with a court by the Commission or the Department of Justice and are subject to public comment, but are not yet final orders. These transactions are adequately reviewed for potential antitrust concerns during the approval process under the consent agreement, in which the antitrust agencies determine that the divestiture to that party does not raise antitrust concerns. The Commission has thus made this change to Section 802.70 because such acquisitions are unlikely to raise antitrust concerns.

The Commission has made this final rule without notice and comment because notice and comment would be unnecessary and the delay in implementing the rule would be contrary to the public interest. Section 802.70 already exempts from the reporting requirements transactions that satisfy divestiture requirements under Commission or Court orders in cases brought by the Commission or the Department of Justice. The amendment merely extends the exemption to transactions entered into before the relevant order has been made final. Whatever delay and cost result from the HSR reporting requirements are contrary to the public interest where the antitrust agencies already have notice of the transaction and have completed their review.

Notice and comment in this matter are unnecessary because the Commission has already exempted acquisitions pursuant to a final divestiture order, and there is no relevant difference between the two situations. The agencies in each case already have all the notice and information they would otherwise obtain under HSR. No other person has access to or interest in the information provided under HSR, and therefore no other person has an interest in ensuring a filing in these circumstances.

DATES: This final rule is effective on June 25, 1998. The Commission will, however, accept comments on the revised rule that are received on or before July 27, 1998, and may reevaluate the rule in light of those comments.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 159, Washington, D.C. 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Deputy Assistant Director, Bureau of Competition, Room S–2115, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2687.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendment on small businesses.

The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 provides, however, that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Furthermore, the amendment will merely exempt companies from Hart-Scott-Rodino reporting requirements for certain transactions. Accordingly, pursuant to the Regulatory Flexibility Act provisions of the Administrative Procedure Act, 5 U.S.C. 605(b), the Federal Trade Commission has certified that this rule will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of these rules; is therefore, inapplicable.

Paperwork Reduction Act

The premerger notification rules and report form contain information collection requirements that have been reviewed and approved by the Office of Management and Budget under OMB Control Number 3084–0005. The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit requirements for "collections of information" to OMB and obtain

clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The proposed amendment does not impose any such requirements beyond those that have already been approved by OMB. The amendment will exempt reporting requirements for transactions that have been made pursuant to consent agreements that have been accepted by the Commission for public comment or that have been filed with a court by the Commission or the Department of Justice for public comment, but that are not yet final orders. This revision will eliminate an unnecessary burden in connection with these acquisitions and will generally provide some reduction of the Paperwork Reduction Act burden currently associated with the Rule.

Background

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by §§ 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the act" or "HSR"), requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of § 7A. This amendment to the Clayton Act did not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress expressly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful.

Thus, the act requires that the antitrust agencies receive prior notification of certain acquisitions; provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of those acquisitions; and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to: (a) define the terms used in the act; (b) exempt additional classes of persons or transactions which are not likely to violate the antitrust laws from the act's notification and waiting period requirements; and (c) prescribe such other rules as may be necessary and appropriate to carry out the purposes of § 7A.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules. Changes of a substantive nature have been made in the premerger notification rules or Form on nine occasions since they were first promulgated.

The Commission recognizes that the premerger notification obligations can create delay and impose the cost of the filing fee even for acquisitions that do not raise competitive concerns, and that this delay and cost can impose burdens on buyers and sellers. The delay that occurs is the necessary consequence of preventing consummation while the antitrust agencies assess the likelihood that proposed transactions will violate the antitrust laws. The special treatment of cash tender offers in section 7A(b)(1)(b) of the Act illustrates congressional concern to avoid unnecessary disruption of the operation of the market for corporate control. *See* 122 Cong. Rec. H. 10,293 (daily ed. Sept. 16, 1976). In addition, the Commission has tried to minimize any unnecessary disruptive effect of premerger review by the design of its procedures and the speed with which it reviews proposed transactions and in a majority of transactions grants early termination of the waiting period. Moreover, whenever the Commission can determine that a class of transactions is unlikely to violate the antitrust laws, it has sought, with the concurrence of the Assistant Attorney General for Antitrust, to exempt such transactions from all notification obligations and the delay and cost inherent in premerger review.

Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules

The Commission, with the concurrence of the Assistant Attorney General, promulgates this amendment pursuant to 15 U.S.C. 18a(d).

Section 802.70 of the Rules exempts from the reporting requirements acquisitions of assets or voting securities from an entity required to divest such assets by order of the Federal Trade Commission or of any Federal Court in an action brought by the Federal Trade Commission or the Department of Justice. The agencies have recognized that there is no need for filing under HSR in these circumstances. Under existing procedures the agencies already review divestitures required by final orders. This review gives the agencies the full opportunity to weigh the competitive impact of the proposed transaction prior to consummation and to prevent the transaction if appropriate, the same goal that HSR was designed to accomplish.

Both the Commission's Rules of Practice and the Antitrust Procedures and Penalties Act require a proposed settlement to be published in the **Federal Register** for a 60-day public comment period. Proposed orders thus do not become final until at least 60 days following their acceptance by the parties and the antitrust agencies, and therefore the exemption created by section 802.70 of the Rules does not apply to any divestiture that might be made during the period between acceptance of a settlement and issuance of a final order, even if such divestiture were to an acquirer and according to a

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contract that is specified in the proposed settlement.

Recently, the Commission has been shortening the time period in which divestiture is to take place and has more frequently included specific approved acquirers and reference specific divestiture agreements in proposed orders when the Commission accepts proposed orders for public comment. This trend has increased the likelihood that the divestiture transaction will occur before there is a final order requiring divestiture. In these circumstances, Rule 802.70 as written, because it applies only to final orders, does not provide an exemption. Nevertheless, the same reasons to exclude from the HSR filing requirements divestitures after the order is entered also apply in cases where the proposed order identifies the acquirer and the divestiture contract. The agencies have already had an opportunity comparable to that which HSR provides to weigh the competitive impact of proposed transaction and to approve or disapprove the transaction. There is therefore no need for a separate HSR filing.

The Federal Trade Commission believes that an acquisition of assets or voting securities pursuant to the terms of a proposed order of divestiture is unlikely to violate the antitrust laws and that exempting such acquisitions is necessary and appropriate to carry out the purposes of the act. Accordingly, the Commission has amended § 802.70 of its premerger notification rules to exempt such acquisitions from premerger reporting requirements.

The following section outlines briefly the rationale for this rulemaking. Subsequent sections discuss certain key issues concerning the Commission's authority to promulgate § 802.70, and the nature of the new rule.

Statement of the Underlying Problem

The purpose of section 7A of the Clayton Act is clear: to give the antitrust agencies an opportunity to determine whether a proposed acquisition might violate the antitrust laws and an opportunity to challenge any such transaction prior to consummation. At the same time, the program is not without cost, including the cost of filling out the form, filing fees, delaying transactions and otherwise. For transactions that do not rise significant issues under the antitrust laws these costs can be particularly burdensome. The Commission has continually reviewed the premerger notification program in an effort to increase its efficiency and decrease the burden on filing parties. This rulemaking proceeding is part of this effort.

Analysis of Proposed Revised Rule 802.70

Revised rule 802.70 exempts completely from HSR premerger notification requirements acquisitions pursuant to a divestiture order once the order is accepted by the Commission for public comment or is filed with the Federal court for public comment. It does so because the Commission believes that such transactions, having received a full review and been accepted by the Commission or the Antitrust Division, are not likely to violate the antitrust laws and because exempting such acquisitions is necessary and appropriate to carry out the purposes of the act.

In deciding to revise rule 802.70, the Commission relied upon its own extensive merger enforcement experience, as well as that of the Antitrust Division of the Department of Justice.

Congress expressly has authorized the Commission, with the concurrence of the Assistant Attorney General, to "exempt from requirements of [the act], classes of * * * transactions which are not likely to violate the antitrust laws." Section 7A(d)(2)(B) of the Act. The finding required by the statute can be demonstrated in different ways. The Commission can exempt a class of transactions because that class of transactions is inherently unlikely to be anticompetitive. Acquisitions pursuant to divestiture orders are inherently unlikely to be anticompetitive. Such transactions are already subject to the approval of the agencies and such approval would not be granted if the transaction would be anticompetitive. This is true whether or not the divestiture order is final. Accordingly, there is no need for a separate HSR filing.

List of Subjects in 16 CFR Part 802

Antitrust.

Final Rule

The Commission amends Title 16b Chapter I, Subpart H, The Code of Federal Regulations as follows:

PART 802—EXEMPTION RULES

1. *Authority.* The authority citation for Part 802 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94–435, 90 Stat. 1390.

2. Section 802.70 is revised to read as follows:

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if the voting securities or assets are to be acquired from an entity pursuant to and in accordance with:

(a) An order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice;

(b) An Agreement Containing Consent Order that has been accepted by the Commission for public comment, pursuant to the Commission's Rules of Practice; or

(c) A proposal for a consent judgment that has been submitted to a Federal court by the Federal Trade Commission or the Department of Justice and that is subject to public comment.

Donald S. Clark,

Secretary.

[FR Doc. 98–16954 Filed 6–24–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8773]

RIN 1545–AV62

EIC Eligibility Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The temporary regulations apply to taxpayers claiming the EIC for taxable years beginning after December 31, 1997, where the taxpayer's EIC claim was denied for a taxable year beginning after December 31, 1996. The text of these temporary regulations also serves as the text of proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date:* June 25, 1998.

Applicability dates: For dates of applicability, see § 1.32–3T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1575. Responses to this collection of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) providing guidance relating to the requirement that taxpayers who are denied the EIC for a taxable year demonstrate their eligibility to claim the EIC in a subsequent taxable year. This requirement is described in section 32(k)(2), which was added by section 1085(a)(1) of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788).

Section 32(k)(2) pertains to taxpayers who are denied the EIC as a result of the deficiency procedures under subchapter B of chapter 63 (the deficiency procedures). A taxpayer who has been denied the EIC for any taxable year as a result of the deficiency procedures is ineligible to claim the EIC for a subsequent taxable year unless the taxpayer provides information required by the Secretary demonstrating eligibility for the EIC. If the taxpayer demonstrates eligibility for the EIC, the taxpayer is not required to provide this information in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

If the taxpayer fails to provide the required information or the information provided does not demonstrate eligibility for the EIC, the requirements of section 32(k)(2) are not satisfied. In such circumstances, the IRS can treat the failure to meet these requirements as a mathematical or clerical error.

In the case of deficiencies attributable to certain mathematical and clerical errors, enumerated in section 6213(g), the IRS is authorized to make a summary assessment, without following the normal deficiency procedures. In the case of EIC claims, mathematical and clerical errors can include both errors that apply generally to all returns and certain errors specific to the EIC. For example, mathematical and clerical errors include situations in which (1) a taxpayer fails to provide a correct taxpayer identification number required under section 32, or (2) a taxpayer who claims the EIC with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on the net earnings. As noted above, the IRS is now authorized to treat failure to meet the requirements of section 32(k)(2) as a mathematical or clerical error.

Ineligibility for the EIC under these new rules is subject to review by the courts.

The new provision applies to taxpayers who are denied the EIC on their return for any taxable year beginning after 1996.

Explanation of Provisions

A taxpayer who has been denied the EIC, in whole or in part, as a result of deficiency procedures is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer provides evidence of eligibility for the EIC. Deficiency procedures include administrative procedures (other than procedures related to mathematical or clerical errors) that result in an assessment of a deficiency in tax, whether or not a notice of deficiency is issued. To demonstrate current eligibility, the regulations require the taxpayer to complete Form 8862, *Information To Claim Earned Income Credit After Disallowance*. Form 8862 contains a series of questions designed to assist the IRS in determining whether the taxpayer is eligible to claim the EIC under section 32 for the subsequent taxable year. A taxpayer fails to demonstrate eligibility if, for example, the form is incomplete or any item of information on the form is incorrect or inconsistent with any item on the return. If the taxpayer properly demonstrates eligibility for the EIC, the taxpayer is not required to submit Form 8862 in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

The regulations require the taxpayer to attach Form 8862 to the first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures. The EIC is denied as a result of the deficiency procedures when an assessment of a deficiency is made (other than as a mathematical or clerical error under section 6213(b)(1)).

The Treasury Department and the IRS anticipate that the Commissioner of Internal Revenue may require taxpayers to provide documentary evidence in addition to Form 8862. Whether or not the Commissioner requires taxpayers to provide documentary evidence in addition to Form 8862, the Commissioner may choose to examine any return claiming the EIC for which Form 8862 is required.

The regulations provide that if the taxpayer fails to properly complete Form 8862 or does not demonstrate eligibility for the EIC, the provisions of section 32(k)(2) are not satisfied. In such circumstances, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)] (relating to the omission of information required by section 32(k)(2)). If a taxpayer's claim for the EIC is denied under section 6213(g)(2)(J) [(K)], the taxpayer must attach Form 8862 to the next return for which the EIC is claimed.

The regulations provide that if two individuals marry after one has been denied the EIC as a result of the deficiency procedures, the eligibility requirements apply when they file a joint return and claim the EIC. For example, two unmarried taxpayers have qualifying children and claim the EIC. The taxpayers subsequently marry. For a taxable year preceding the marriage, one of the taxpayers was denied the EIC under the deficiency procedures and has not established eligibility for a subsequent year. In this situation, if they claim the EIC for the taxable year in which they marry, the demonstration of eligibility rules will apply.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f), these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.32–3T is added to read as follows:

§ 1.32–3T Eligibility requirements (temporary).

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures.* For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility.* In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner, no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, *Information To Claim Earned Income Credit After Disallowance,* demonstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must attach Form 8862 to the taxpayer's first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures.

(d) *Failure to demonstrate eligibility.* If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)].

(e) *Special rule where one spouse denied EIC.* The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date.* This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows;

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.32–3T	1545–1575
. . . . .	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 18, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–16840 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC45

Redesignation of 30 CFR Part 250—Oil And Gas And Sulphur Operations In The Outer Continental Shelf; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; Corrections.

SUMMARY: MMS published in the **Federal Register** of May 29, 1998 (63 FR 29478) a final rule commonly known as the "Redesignation" rule which assigns new section numbers to each section in part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf). The purpose was so that MMS can logically format the subparts in the future without further renumbering. The MMS needs to make several minor corrections to the published document.

EFFECTIVE DATE: The rule is effective on June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division at (703) 787–1600.

SUPPLEMENTARY INFORMATION: The final regulations contain several errors in the redesignation table showing the redesignated section containing references to other regulation citations. These may prove to be misleading and are in need of correction. Only the lines being corrected are included in the following.

Correction of Publication

Accordingly, the publication on May 29, 1998 of the final regulations which were the subject of FR Doc. 98–13249, is corrected as follows:

1. On pages 29486 and 29487, in the table of redesignation, the entries in the

second and third columns for the following redesignated sections in the first column are corrected to read:

Redesignated section	Old reference	New reference
250.906(b)(2)(iii)	250.137	250.907.
250.1000(c)	250.150 through 250.158	250.1000 through 250.1008.
250.1009(a)(1)	250.150 through 250.158	250.1000 through 250.1008.
250.1500(a)	250.211 through 250.216	250.1502 through 250.1507
250.1500(b)	250.217 through 250.222	250.1508 through 250.1513.
250.1500((c)	250.223 through 250.229	250.1514 through 250.1520.
250.1500(c)	250.233	250.1524.
250.1500(d)	250.230 through 250.232	250.1521 through 250.1523.
250.1505(c)	250.214	250.1505.
250.1505(f)	250.214	250.1505.
250.1605(a)	250.260 through 250.274	250.1605 through 250.1619.
250.1627(a)	250.290 through 250.297	250.1627 through 250.1634.

Dated: June 18, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–16969 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS–014–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Mississippi regulatory program (hereinafter referred to as the "Mississippi program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Mississippi Surface Coal Mining and Reclamation Law pertaining to the small operator assistance program, variances from performance standards, enforcement, and administrative and judicial review proceedings. The amendment is intended to revise the Mississippi program to be consistent with SMCRA.

EFFECTIVE DATE: June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homeward, Alabama 35209, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior conditionally approved the Mississippi program. Background information on the Mississippi program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the conditions of approval amendments can be found at 30 CFR 924.10, 924.16, and 924.17.

II. Submission of the Proposed Amendment

By letter dated March 26, 1998 (Administrative Record No. MS–0354), Mississippi submitted an amendment to its program pursuant to SMCRA. Mississippi proposed to amend the Mississippi Surface Coal Mining and Reclamation Law (MSCMRL) in response to the required amendments codified at 30 CFR 924.16(b), (c), and (d).

OSM announced receipt of the proposed amendment in the April 14, 1998, **Federal Register** (63 FR 18172), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 14, 1998. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment.

1. § 53–9–26, Small Operator Assistance Program

Mississippi proposed to change the word "operation" to the word "operator" in the phrase "at all locations of surface coal mining operation."

The Director finds that the revision satisfies the requirement placed on the Mississippi program at 30 CFR 924.16(b)(1) on January 9, 1998 (63 FR 1342), and that Mississippi's revised provision at section 53–9–26 is no less stringent than section 507(c) of SMCRA. Therefore, the Director is approving the revision and removing the required amendment.

2. § 53–9–45, Variances From Performance Standard

At section 53–9–45(4)(b), Mississippi proposed to remove the reference to subsection (2) from the phrase "a variance from the requirement to restore to approximate original contour set forth in subsection (2) or (3) of this section."

The Director finds that the revision satisfies the requirement placed on the Mississippi program at 30 CFR 924.16(b)(2) on January 9, 1998 (63 FR 1342), and that Mississippi's revised provision at section 53–9–45 is no less stringent than section 515(e)(2) of SMCRA. Therefore, the Director is approving the revision and removing the required amendment.

3. § 53.9–69, Enforcement and Administrative and Judicial Review Proceedings

a. At section 53–9–69(1)(c)(i), Mississippi proposed to change the word "may" to the word "shall" in the phrase "the commission, executive director or the executive director's authorized representative may issue an order to the permittee or agent of the permittee."

The Director finds that the revision satisfies the requirement placed on the Mississippi program at 30 CFR 924.16(c) on January 9, 1998 (63 FR 1342), and that Mississippi's revised provision at section 53–9–69(1)(c)(i) is no less stringent than section 521(a)(3) of SMCRA. Therefore, the Director is approving the revision and removing the required amendment.

b. Mississippi proposed to add the following new provision at section 53–9–69(4):

> When an order is issued under this section, or as a result of any administrative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the commission to have been reasonably incurred by that person for or in conjunction with that person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the commission, resulting from administrative proceedings deems proper.

The Director finds that the addition of this new provision satisfies the requirement placed on the Mississippi program at 30 CFR 924.16(d)(1) on January 9, 1998 (63 FR 1342), and that Mississippi's provision at section 53–9–69(4) is no less stringent than section 525(e) of SMCRA. Therefore, the Director is approving the new provision and removing the required amendment.

4. § 53–9–77, Formal Hearings

Mississippi proposed to add the following new provision at section 53–9–77(5):

> Except as provided in Section 53–9–67, the availability of judicial review under this section shall not limit any rights established under Section 53–9–67.

The Director finds that the addition of this new statutory provision satisfies the requirement placed on the Mississippi program at 30 CFR 924.16(d)(2) on January 9, 1998 (63 FR 1342), and that Mississippi's provision at section 53–9–77(5) is no less stringent than the counterpart Federal provision at section 526(e) of SMCRA. Therefore, the Director is approving the new provision and removing the required amendment.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record No. MS–0357). On April 29, 1998, the U.S. Army Corps of Engineers commented that a review of the proposed amendment found it to be satisfactory (Administrative Record No. MS–0363).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. MS–0357). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. MS–0357). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Mississippi on March 26, 1998.

The Federal regulations at 30 CFR Part 924, codifying decisions concerning the Mississippi program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
March 26, 1998	June 25, 1998	MSCMRL 53–9–26; 45(4)(b); 69(1)(c)(i) and (4); 77(5).

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (b), (c), and (d).

[FR Doc. 98–16813 Filed 6–24–98; 8:45 am]
BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Service Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends United States Postal Service regulations concerning conduct on postal property to: prohibit smoking in postal buildings; prohibit soliciting of signatures on petitions, polls, or surveys on postal property except as otherwise authorized by Postal Service regulations; prohibit impeding ingress to or egress from post offices; add regulations for voter registration activities on postal property to reflect current postal policy; prohibit unauthorized leafleting, picketing, demonstrating, public assembly, and public address in lobbies and other interior areas of postal buildings open to the public; prohibit placement of tables, chairs, freestanding signs or posters, structures, or furniture of any type on postal property except as part of postal activities or as otherwise permitted by these regulations; permit, in addition to guide dogs, other animals used to assist persons with disabilities on postal property; prohibit the storage of weapons and explosives on postal property except for official purposes; clarify the meaning of terms; change references to other postal directives; and provide that Office of Inspector General Criminal Investigators and other persons designated by the Chief Postal Inspector may also enforce Postal Service property regulations.

EFFECTIVE DATE: This final rule is effective June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Independent Counsel, Postal Inspection Service, (202) 268–4415.

SUPPLEMENTARY INFORMATION: On November 18, 1997, the Postal Service published a proposed rule to amend its conduct on postal property regulations, 62 FR 61481. Comments concerning the proposed rule were received from one organization, the National Newspaper Association (NNA), before the comment period closed on December 18, 1997. NNA objected to the language in proposed § 232.1(h)(1) prohibiting the vending of newspapers on postal property. NNA believes the language is too broad and may be misinterpreted in the future as prohibiting the placement of newspaper racks in nonpostal property locations that are contiguous to postal property. NNA also objected to the language in proposed § 232.1(h)(1) prohibiting the impeding of ingress to or egress from post offices. NNA recommended deleting the language, stating there are certain post offices in which the sidewalks leading to and from the postal property are public walkways that would qualify as public fora exempt from Postal Service regulation under United States v. Kokinda. Finally, NNA suggested the proposed amendments should be changed to make clear that they apply only to postal property.

In response to the NNA comments, the Postal Service acknowledges that it has no authority to regulate conduct on nonpostal property, including public property that is contiguous to postal property. Current § 232.1(a) provides that the regulations apply only to real property under the charge and control of the Postal Service. In those cases where post offices are accessible only through nonpostal public or private property, state and local laws and regulations apply to the nonpostal public or private property. These final regulations do not extend, nor is it the intent to extend, Postal Service conduct on property regulations to nonpostal property.

List of Subjects in 39 CFR Part 232

Federal buildings and facilities, Penalties, Postal Service.

Accordingly, 39 CFR part 232 is amended as set forth below.

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 is revised to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; Pub. L. 104–208, 110 Stat. 1060.

2. Section 232.1(b) is amended by revising the phrase "section 115 of the Domestic Mail Manual" to read "section 274 of the Administrative Support Manual."

3. Section 232.1 is amended by revising the heading of paragraph (g) and designating its existing text as (g)(1), revising the first sentence of paragraph (g)(1), and adding paragraph (g)(2) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(g) *Alcoholic beverages, drugs, and smoking.*

(1) A person under the influence of an alcoholic beverage or any drug that has been defined as a "controlled substance" may not enter postal property or operate a motor vehicle on postal property. * * *

(2) Smoking (defined as having a lighted cigar, cigarette, pipe, or other smoking material) is prohibited in all postal buildings and office space, including public lobbies.

* * * * *

4. Section 232.1(h)(1) introductory text is revised to read as follows:

(h) * * *

(1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications), displaying or distributing commercial advertising, soliciting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations), and impeding ingress to or egress from post offices are prohibited. These prohibitions do not apply to:

* * * * *

5. Section 232.1(h)(1)(i) is amended by adding the phrase "or nonprofit" after the word "Commercial."

6. Section 232.1(h)(3), (4), and (5) are added to read as follows:

(h) * * *

(3) Leafleting, distributing literature, picketing, and demonstrating by members of the public are prohibited in lobbies and other interior areas of postal buildings open to the public. Public assembly and public address, except when conducted or sponsored by the Postal Service, are also prohibited in lobbies and other interior areas of postal building open to the public.

(4) *Voter registration.* Voter registration may be conducted on postal premises only with the approval of the postmaster or installation head provided that all of the following conditions are met:

(i) The registration must be conducted by government agencies or nonprofit civic leagues or organizations that operate for the promotion of social welfare but do not participate or intervene in any political campaign on behalf of any candidate or political party for any public office.

(ii) Absolutely no partisan or political literature may be available, displayed, or distributed. This includes photographs, cartoons, and other likenesses of elected officials and candidates for public office.

(iii) The registration is permitted only in those areas of the postal premises regularly open to the public.

(iv) The registration must not interfere with the conduct of postal business, postal customers, or postal operations.

(v) The organization conducting the voter registration must provide and be responsible for any equipment and supplies.

(vi) Contributions may not be solicited.

(vii) Access to the workroom floor is prohibited.

(viii) The registration activities are limited to an appropriate period before an election.

(5) Except as part of postal activities or activities associated with those permitted under paragraph (h)(4) of this section, no tables, chairs, freestanding signs or posters, structures, or furniture of any type may be placed in postal lobbies or on postal walkways, steps, plazas, lawns or landscaped areas, driveways, parking lots, or other exterior spaces.

* * * * *

7. Section 232.1(j) is revised to read as follows:

(j) *Dogs and other animals.* Dogs and other animals, except those used to assist persons with disabilities, must not be brought upon postal property for other than official purposes.

* * * * *

8. Section 232.1(l) is revised to read as follows:

(l) *Weapons and explosives.* No person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.

* * * * *

9. Section 232.1(q)(3) is revised to read as follows:

(q) * * *

(3) Postal Inspectors, Office of Inspector General Criminal Investigators, and other persons designated by the Chief Postal Inspector may likewise enforce regulations in this section.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–16971 Filed 6–24–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 048–1048a; FRL–6113–1]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Iowa State Implementation Plan (SIP) submitted by the state of Iowa. This approval incorporates Iowa rule revisions which are necessary to meet the requirements of the Clean Air Act (CAA) and the Code of Federal Regulations (CFR). These revisions improve the state's permitting programs and strengthen the SIP with respect to attainment and maintenance of established air quality standards, and with respect to control of hazardous air pollutants (HAP).

DATES: This direct final rule is effective on August 24, 1998 without further notice, unless the EPA receives adverse comment by July 27, 1998. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: The state of Iowa requested approval of its SIP revisions under the authority and signature of the Governor's designee, Larry J. Wilson, Director, Iowa Department of Natural Resources (IDNR). Two separate requests, dated October 21, 1997, and January 3, 1998, were received by the EPA. All of the submittals were determined complete in accordance with the criteria specified in 40 CFR Part 51, Appendix V. The state provided evidence of the lawful adoption of regulations, public notice, and relevant public hearing requirements for each submittal.

The rule revisions adopted by the state are discussed in general terms below. Additional detail and supporting information relevant to the state's actions are contained in the EPA Technical Support Document (TSD) which is included in the docket for this action. Persons interested in obtaining a copy of the TSD should contact the EPA contact above.

Certain portions of the state rule revisions are not part of the SIP (e.g., new source performance standards, national emission standards for HAPs, and emission guidelines). While these updated regulations are an important component of the state's air quality program, they are excluded from this action because they are not intended to meet the SIP requirements of section 110 of the Act. Therefore, the EPA is not taking action on those portions.

Rules adopted April 15, 1996, and effective June 12, 1996. The definition of volatile organic compounds (VOC) in rule 20.2, Definitions, was updated to be consistent with the EPA definition in § 51.100(s). Rule 22.8(1), Permit by rule for spray booths, was revised to correct rule references within the rule. The voluntary operating permit rule at 22.202 was revised to allow sources the opportunity to obtain a permit under rule 22.300, as discussed below, and a clarification was made to rule 22.203 regarding the date to apply for a voluntary permit.

A new permitting program was established by rule 22.300 series, Operating permit by rule for small sources. These rules establish an optional voluntary permit program for small sources (sources which emit less than 50 percent of the major source threshold levels) otherwise subject to the Title V permitting program. Sources meeting the eligibility requirements and submitting the necessary documentation will be exempted from applying for a Title V operating permit and from paying the Title V fees.

Establishment of the operating permit by rule for small sources provides a mutual benefit to the state, the regulated community, and the public. Sources have an incentive to maintain low levels of emissions, thereby reducing their own and the state's administrative requirements while the public's exposure to pollutants is decreased. The rules require specific and enforceable operating restrictions which meet the EPA guidance for Federal enforceability. Because the rules limit emissions of HAPs as well as VOCs, the EPA is approving the rules under sections 110 and 112(l) of the Act.

Finally, rules 23.3 and 29.1 related to opacity limits in construction permits and observer qualifications were revised.

The IDNR also revised rule 22.1(2) pertaining to permit exemptions. However, the EPA is deferring action on this revision pending action on an earlier revision.

Rules adopted August 19, 1996, effective October 16, 1996. New definitions for "country grain elevator" and "potential to emit" were added to rule 20.2. These revisions, in conjunction with existing rules, allow the IDNR the opportunity to issue non-Title V permits to affected sources which accept operating capacity restrictions, and thus restricted emissions. This action is consistent with the EPA guidance memorandum of November 14, 1995.

Rules adopted October 21, 1996, effective December 25, 1996. Minor revisions were made to clarify and simplify certain provisions of rule 22.300(4), Stationary Sources With De Minimis Emissions, and 22.300(8), Registration and Reporting Requirements.

Rules adopted March 17, 1997, effective May 14, 1997. Definitions rule 20.2 was revised to add a new definition for "emergency generator," and the definition of "potential to emit" was revised. Rule 22.2 was revised to allow a source 60 days, rather than 30, to provide additional information prior to a permit denial. Voluntary operating permit rules, 22.201–22.203, were revised to clarify eligibility requirements for sources. Rules 22.300(3) "b" and "c" were clarified regarding the permit deferral date and applicability requirements, and 22.300(8)"a" was clarified regarding the application shield. Rule 22.1(2) was also revised by the IDNR in this rulemaking, but for the reason noted above, the EPA is deferring approval action on this revision at this time.

Rule adopted June 16, 1997, effective August 20, 1997. This minor revision consisted of renumbering rule 23.1(5), Calculation of emission limitations based upon stack height, to 23.1(6).

I. Final Action

In summary, the EPA is taking final action approving the revisions to the Iowa SIP as described above. These revisions meet the requirements of the Act and ensure that the SIP remains consistent with Federal regulations.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 24, 1998 without further notice unless the Agency receives relevant adverse comments by July 27, 1998.

If the EPA receives such comments, then the EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 24, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 26, 1998.

William Rice,

Acting Regional Administrator, Region VII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(67) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(67) In correspondence dated October 21, 1997, and January 21, 1998, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan.

(i) Incorporation by reference.

(A) "Iowa Administrative Code" sections 567–22.8(1) "b," "c," and "e," 567–22.203(1) "a," 567–22.300, 567–22.300(1) throu gh 567–22.300(11), 567–23.3(2) "d," and 567–29.1, effective June 12, 1996.

(B) "Iowa Administrative Code" section 567–20.2, effective October 16, 1996.

(C) "Iowa Administrative Code" sections 567–22.300(4) "b"(1), 567–22.300(8) "a"(1), and 567–22.300(8) "b"(2), effective December 25, 1996.

(D) "Iowa Administrative Code" sections 567–20.2, 567–22.2(1), 567–22.201(1) "a," 567–22.201(2) "b," 567–22.202, 567–22.203(1), 567–22.300(3) "b" and "c," 567–22.300(8) "a," effective May 14, 1997.

(ii) Additional material.

(A) "Iowa Administrative Code" section 567–23.1(5), Calculation of emission limitations based upon stack height, was renumbered to section 567–23.1(6), effective August 20, 1997.

[FR Doc. 98–16797 Filed 6–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA61–7136, WA64–7139; FRL–6110–7]

Approval and Promulgation of State Implementation Plans: Washington; Correcting Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: This action corrects a paragraph numbering error in the Identification of Plan section found in the Washington State Implementation Plan (SIP) revision published on August 6, 1997.

EFFECTIVE DATE: June 25, 1998.

ADDRESSES: Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: Environmental Protection Agency (EPA), Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the State of Washington, Department of Ecology, 300 Desmond Drive, Lacey, WA 98503.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: Christine Lemmé, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–0977.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1997 (62 FR 42216), EPA approved several minor revisions to the Washington State Implementation Plan (SIP) which revised certain regulations of the Puget Sound Air Pollution Control Agency (PSAPCA). An error occurred in the paragraph number cited in the Identification of Plan section. The incorrect paragraph number published was (73), this action corrects the paragraph number to (74).

Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Fees, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: June 5, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2470 is amended by adding paragraph (c) (74) to read as follows:

Subpart WW—Washington

§ 52–2470 Identification of plan.

* * * * *

(c) * * *

(74) On November 26, 1996 and April 7, 1997, the Director of the Washington State Department of Ecology (Washington) submitted to the Regional Administration of EPA revisions to the State Implementation Plan consisting of minor amendments to Puget Sound Air Pollution Control Agency (PSAPCA) Regulations I and III.

(i) Incorporation by reference.

(A) PSAPCA Regulations approved—Regulation I, Sections 3.11, 3.23, 5.02, 5.05, 5.07, 6.03, 7.09—State-adopted 9/12/96. Regulation III, Section 4.03—State-adopted 9/12/96. Regulation I, Sections 5.03 and 6.04—State-adopted 12/12/96. Regulation III, Sections 1.11, 2.01 and 2.05—State-adopted 12/12/96.

[FR Doc. 98–16795 Filed 6–24–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[CC Docket No. 96–149; FCC 96–489]

Non-Accounting Safeguards; Correction

AGENCY: Federal Communications Commission

ACTION: Correcting amendments.

SUMMARY: This document contains a corrections to a final regulation in *Implementation of Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended* that was published in the **Federal Register** of January 21, 1997, (62 FR 2927). The regulation related to the definition of a successor or assign of a Bell operating company.

EFFECTIVE DATES: June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Common Carrier Bureau, (202) 418–1384.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1998, the Common Carrier Bureau released an erratum to the First Report and Order and Further Notice of Proposed Rulemaking, DA 98–1107, in CC Docket No. 96–149. This correction reflects the change included in that erratum. The full text of the erratum is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M. St., NW, Washington, DC.

Need for Correction

As published, the final regulation contains language that could be misleading.

List of Subjects in 47 CFR Part 53

General information, Bell operating company entry into InterLATA services, Separate affiliate, Safeguards, Manufacturing by Bell operating companies, Electronic publishing by Bell operating companies, Alarm monitoring services.

Accordingly, 47 CFR part 53 is corrected by making the following correcting amendment:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

1. The authority citation for part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

§ 53.207 [Corrected]

2. In § 53.207, in the first sentence, remove the word "unaffiliated" and add, in its place "affiliated."

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16931 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–225; RM–8894, RM–9004]

Radio Broadcasting Services; Canton, Normal, and Heyworth, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WSHY, Inc., allots Channel 252A at Canton, Illinois, as its third local FM transmission service; and Channel 264A at Normal, Illinois, as its second local commercial FM transmission service (RM–8894). *See* 61 FR 60068, November 26, 1996. At the request of Atlantis Broadcasting, Co., L.L.C., we also allot Channel 250A at Heyworth, Illinois, as its first local aural transmission service (RM–9004). Channel 252A can be allotted to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) west to avoid a short-spacing to the licensed site of Station WIVR(FM), Channel 253A, Eureka, Illinois. The coordinates for Channel 252A at Canton are North Latitude 40–32–46 and West Longitude 90–04–59. *See* Supplementary Information, *infra*.

EFFECTIVE DATE: August 3, 1998. A filing window for Channel 252A at Canton, Illinois, Channel 264A at Normal, Illinois, and Channel 250A at Heyworth, Illinois, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–225, adopted June 10, 1998, and released June 19, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 264A can be allotted to Normal with a site restriction of 11.1 kilometers (6.9 miles) southwest to avoid short-spacings to the licensed sites of Station WRVY–FM, Channel 263A, Henry, Illinois, and Station WMGI(FM), Channel 264B, Terre Haute, Indiana. The coordinates for Channel 264A at Normal are North Latitude 40–27–38 and West Longitude 89–06–06. Channel 250A can be allotted to Heyworth with a site restriction of 3.8 kilometers (92.4 miles) north to avoid short-spacings to the licensed sites of Station WHMS–FM, Channel 248B, Champaign, Illinois, and Station WLUJ(FM), Channel 249A, Petersburg, Illinois. The coordinates for Channel 250A at Heyworth are North Latitude 40–20–55 and West Longitude 88–58–56. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 252A at Canton; Channel 264A at Normal; and Heyworth, Channel 250A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16918 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–30; RM–9228]

Radio Broadcasting Services; Shenandoah, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Daryl A. Alligood, allots Channel 296A to Shenandoah, VA, as the community's first local aural transmission service. *See* 63 FR 13027, March 17, 1998. Channel 296A can be allotted to the community in compliance with the Commission's minimum distance separation requirements, at coordinates 38–30–00 NL; 78–36–33 WL, which represents a site restriction of 2.1 kilometers (1.3 miles) northeast to avoid a short-spacing to Station WCHG(FM), Channel 296A, Hot Springs, Virginia. Since the reference coordinates for this allotment are located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, the petitioner and any other applicants will be required to comply with the notification requirement of Section 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

DATES: Effective July 27, 1998. A filing window for Channel 296A at Shenandoah, VA, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–30, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Shenandoah, Channel 296A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16917 Filed 6–24–98; 8:45 am]

BILLING CODE 8712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 97–D002]

Defense Federal Acquisition Regulation Supplement; Streamlined Research and Development Contracting

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement streamlined solicitation and contracting procedures for research and development acquisitions. The streamlined procedures are expected to reduce the time and cost required to obtain proposals and award research and development contracts.

DATES: *Effective date:* June 25, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 24, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 97–D002 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D002 in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

In October 1994, the Director of Defense Procurement authorized a test of certain streamlined solicitation and contracting procedures for research and development acquisitions at certain DoD laboratories. The test results demonstrated the benefits of standardizing the format of solicitations and contracts issued by various contracting activities, and of using the standard format to streamline the solicitation and contracting process. However, to facilitate maintenance of an accurate and timely standard format, to move towards a paperless solicitation and contracting process, and to leverage available information technology, the standard format has been moved from the DFARS to a World Wide Web site. Similarly, solicitations issued using these procedures will be published exclusively on the World Wide Web. This final rule supersedes the interim rule published under DFARS Case 96–D028 on April 4, 1997 (62 FR 16099).

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely provides an implementation of electronic contracting procedures already authorized by the Federal Acquisition Regulation. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D002 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule provides streamlined procedures, and a standard solicitation and contract format, for acquisition of research and development. Streamlined procedures and use of the World Wide Web will substantially reduce the time and cost required to obtain proposals and award research and development contracts. Any delay in implementing these procedures will result in the loss of potential savings, thus reducing the Department's buying power. Implementation of these procedures will also help the Department achieve its paperless contracting goal by the year 2000. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Subpart 235.70 is revised to read as follows:

Subpart 235.70—Research and Development Streamlined Contracting Procedures

Sec.

235.7000 Scope.
235.7001 Definitions.
235.7002 Applicability.
235.7003 Research and development streamlined solicitation and contract.
235.7003–1 General.
235.7003–2 RDSS process.
235.7003–3 Proposal evaluation and contract award.
235.7003–4 Additional provisions and clauses.

235.7000 Scope.

This subpart prescribes streamlined procedures for acquiring research and development, using a standard solicitation and contract format and the capabilities of the World Wide Web.

235.7001 Definitions.

As used in this subpart—

(a) *Research and development streamlined contract (RDSC)* means—

(1) A contract that results from use of the research and development streamline solicitation; or

(2) Any other contract prepared in the standard format published at the RDSS/C website.

(b) *Research and development streamlined solicitation (RDSS)* means a solicitation issued in accordance with 235.7003.

(c) *RDSS/C website* means the site on the World Wide Web at "http://www.rdss.osd.mil/" where research and development streamlined solicitation and contracting information is published.

235.7002 Applicability.

(a) Except as provided in paragraph (b) of this section, consider using the procedures in this subpart for acquisitions that—

(1) Will result in the award of a cost-reimbursement contract; and

(2) Meet the criteria for research and development as defined in 235.001 and FAR 35.001.

(b) Do not use the procedures in this subpart for—

(1) Contracts to be performed outside the United States and Puerto Rico;

(2) Contracts denominated in other than U.S. dollars;

(3) Acquisitions using simplified acquisition procedures;

(4) Acquisition of engineering and manufacturing development, management support, or operational system development, as defined in 235.001; or

(5) Acquisition of laboratory supplies and equipment, base support services, or other services identified in paragraphs (a) through (h) of the definition of "service contract" at FAR 37.101.

(c) Regardless of whether the RDSS is used, the RDSC may be used for any acquisition that meets the criteria in paragraph (a) of this section.

235.7003 Research and development streamlined solicitation and contract.

235.7003–1 General.

The procedures and standard format are published at the RDSS/C website. The RDSS/C Managing Committee is responsible for updating the website.

235.7003–2 RDSS process.

(a) *Synopisis.* The Commerce Business Daily synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) Statements that—

(i) A paper solicitation will not be issued; and

(ii) The solicitation will be published at the RDSS/C website.

(b) *Solicitation.* (1) The solicitation—

(i) Shall be published in its entirety at the RDSS/C website;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

(c) *Amendments.* Amendments shall be published at the RDSS/C website.

235.7003–3 Proposal evaluation and contract award.

(a) Evaluate proposals in accordance with the evaluation factors set forth in the RDSS.

(b) *RDSC.* (1) The RDSC shall include—

(i) Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract; and

(ii) Sections B through J of the RDSS or other solicitation, with applicable fill-in information inserted.

(2) When an RDSC is awarded to an educational or nonprofit institution—

(i) Remove provisions and clauses that do not apply to educational or nonprofit institutions; and

(ii) As necessary, insert appropriate replacement provisions and clauses.

235.7003–4 Additional provisions and clauses.

Use of FAR and DFRAS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the RDSS/C standard format, shall be approved in accordance with agency procedures.

[FR Doc. 98–16935 Filed 6–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971208294–8154–02; I.D. 103097B]

RIN 0648–AJ20

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers; Sorting Catch by Species; Retention of Fish Tickets

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures that restrict the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect on the first day of a cumulative landings limit period. This rule also requires the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines at the point of landing, and the retention of landings receipts on board the vessel that has made those landings. This rule is intended to constrain the introduction of new fishing effort into the Pacific Coast groundfish fisheries, and to improve the enforceability of Federal and state fisheries regulations.

DATES: Effective July 27, 1998.

ADDRESSES: Copies of the Environmental Assessments/Regulatory Impact Reviews (EA/RIRs) for these issues are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier at 206–526–6140, Svein Fougner at 562–980–4000, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: This rule implements three separate regulatory changes: (1) Restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a cumulative landings limit period; (2) providing Federal regulatory support for existing state requirements that require the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines; and (3) providing consistent regulatory requirements on the retention of landings receipts throughout the management area. These regulatory changes were recommended by the Council at its June 1995 and October 1996 meetings. The notice of proposed rulemaking for this action (62 FR 67610, December 29, 1997) fully described the background and rationale for the Council's recommendations. NMFS requested public comments on this action through February 12, 1998. NMFS received one comment during the comment period, which is addressed later in the preamble to this final rule.

Restrictions on Permit Transfer Frequency

This rule implements Council recommendations to constrain groundfish fleet effort expansion by restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a major cumulative limit period. The major cumulative limit periods are the cumulative limit periods that govern all gears in the groundfish fishery. These are generally 1– or 2–month periods. The major cumulative limit periods will be announced each

year in the **Federal Register** with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed. Cumulative limit periods that govern just a portion of the groundfish fisheries, such as the fixed gear regular sablefish season, are not considered "major" cumulative limit periods. For permit holders participating in the "B" delivery platoon, transfer effectiveness dates will align with "B" platoon cumulative limit period dates, and the new holder of the "B" platoon permit will be required to participate in "B" platoon deliveries for the remainder of the calendar year.

This action is expected to constrain effort expansion in two ways: (1) It should prevent two or more vessels from sharing a limited entry permit during a single cumulative limit period and thereby landing more than one limit on that permit, and (2) it should discourage increased fishing effort in the fishery by preventing limited entry permit holders from temporarily transferring their permits during times when the vessel is undergoing repairs, operating in other fisheries, or otherwise idle.

If a permit holder suffers one of two specified hardships, NMFS may allow transfer of a permit within 12 months of a prior transfer. Hardship exemptions for this issue are either death of the permit holder or total loss of the permitted vessel. An application for a hardship transfer must include documents demonstrating that the transfer meets the exceptions of death of the permit holder or loss of the vessel. Hardship exemptions may not be used to waive the requirement that transfers take effect only on the first day of a cumulative limit period.

Total loss of vessel is defined in the Pacific Coast groundfish regulations at § 660.302, "Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel." Death of a permit holder would be documented by a copy of the death certificate of the permit holder. If the permit is owned by a partnership or a corporation, a transfer within 12 months of the last transfer will be allowed if a person or persons owning 50 percent or more of the ownership interest in the partnership or corporation have died.

If a request for transfer is denied, the Sustainable Fisheries Division (SFD), NMFS Northwest Region, will explain in writing why the transfer request has been denied. Further, if the transfer is denied, the permit holder may appeal that decision within 30 days to the Regional Administrator, explaining the basis for the appeal. The Regional Administrator will decide upon the appeal within 45 days in a final agency action.

Sorting of Groundfish Catch by Species

This measure requires the sorting of all species managed by trip limits, size limits, quotas, or harvest guidelines. This requirement will facilitate enforcement because agents will not have to examine unsorted catches. Compliance should also be enhanced if fishers sort at sea because fishers will be more aware of the harvest amount of individual species.

Retaining Fish Tickets on Board the Vessel

This action requires that all West Coast groundfish fishers retain landings receipts on board their vessels throughout the cumulative trip limit period of the landings and for 15 days thereafter. This rule also clarifies that the fish tickets must be provided to an authorized officer upon request. This is a minor regulatory change that is expected to eliminate confusion among fishers as to which state's landings receipts should be kept on board for what length of time.

Changes from the Proposed Rule

NMFS has made one change from the proposed rule, which is explained under "Comment of Clarification."

Comments and Responses

NMFS received one comment on the proposed rule during the 45-day comment period. NMFS also received comments on the proposal to restrict the frequency of limited entry permit transfers outside the comment period and subsequent to the Council's recommendation on this issue. Because those comments spoke directly to the intent of this rule, they will be summarized and addressed in this section.

Comment of Clarification

If a permit owner leases out his permit for a period of time, and then receives the permit back from the lessee without immediately registering the permit for use with a specific vessel, the vessel registration for that permit is listed as "Unidentified" until the permit owner specifies the vessel that will be registered with his or her permit. The proposed changes to the regulations at § 660.333(f)(2) read in part, "Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permit is totally lost." How would this provision apply to cases where a permit is transferred off one vessel and from one permit holder to another permit holder and yet not registered for use with a new vessel?

Response: NMFS has clarified the regulatory language § 660.333(f)(2) to address this comment as follows: "When a permit transferred from one holder to another holder is initially registered as 'unidentified' with regard to vessel association, or when a permit's vessel registration is otherwise —unidentified', the transaction is not considered a —transfer' for purposes of this restriction until the permit is registered for use with a specific vessel." Because a permit may not be used unless it is registered for use with a particular vessel, NMFS does not expect that this change will alter the effectiveness of the rule in restricting the frequency of limited entry permit transfers. The result of this clarification is that a permit may be transferred to a different owner within 12 months, but it may not be registered for use with a vessel until the end of the 12–month period. In addition, a permit owner may remove a permit from a vessel within the 12-month period, but may not register it for use with another vessel until the end of the 12-month period.

Comments Opposing the Rule

As stated in the proposed rule, some members of the at-sea component of the whiting fishery oppose this action, because their participation in Pacific coast groundfish fisheries is limited to the whiting fishery and depends upon their ability to have short-term use of limited entry permits. Some permit owners wish to retain the flexibility to transfer their permits between vessels appropriate for the whiting fishery and vessels appropriate for the cumulative limit groundfish complex fishery occurring outside the whiting fishery. At and subsequent to the October 1996 Council meeting where these changes were first proposed, interested members of the public suggested that transfers made for the purpose of operating in the whiting fishery should not be subject to the restrictions described above.

Response: When making its recommendation on this issue, the Council determined that the benefits to the groundfish fishery that could be gained from restricting the entrance of new effort into the fishery as a whole

outweighed the concerns of the at-sea whiting sector. NMFS concurs with the Council's determination. When the limited entry program was implemented in 1994, NMFS and the Council expected that requirements associated with permit ownership would change over time. Permits were viewed as allowing a permit holder to operate the permitted vessel in the Pacific coast groundfish fishery, in conformance with the Pacific Coast Groundfish Fishery Management Plan (FMP), and to use the gear(s) for which the permit is endorsed. The Council and NMFS specifically retained the right to revise the FMP in the future, and to change or abolish the requirements associated with limited entry permits. NMFS finds that the restriction on permit transfers to once every 12 months is acceptable within the scope and intentions of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 18, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set forth in the preamble, 50 CFR part 660 is amended as follows:

PART 660 —FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definition of "Fisheries Management Division" is removed and a definition of "Sustainable Fisheries Division" is added to read as follows:

§ 660.302 Definitions.

* * * * *

Sustainable Fisheries Division (SFD) means the Chief, Fisheries Management Division, Northwest Regional Office, NMFS, or a designee.

3. In § 660.303, paragraph (c) is added to read as follows:

§ 660.303 Reporting and recordkeeping

* * * * *

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

4. In § 660.306, paragraph (h) is revised and paragraph (x) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline or quota applied.

* * * * *

(x) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

5. In § 660.333, paragraphs (c)(1) and (c)(2) are revised; paragraphs (c)(3) and (c)(4) are redesignated as (c)(4) and (c)(5) respectively and a new (c)(3) is added; paragraph (d) introductory text is revised; paragraphs (f)(2) and (f)(3) are redesignated as (f)(3) and (f)(4) respectively and a new (f)(2) is added to read as follows:

§ 660.333 Limited entry fishery - general.

* * * * *

(c) * * *

(1) Upon transfer of a limited entry permit, the SFD will reissue the permit in the name of the new permit holder, with such gear endorsements, and, if applicable, species endorsements as are eligible for transfer with the permit. Permit transfers will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer. Transfers of permits designated as participating in the "B" platoon will become effective on the first day of the next "B" platoon major limited entry cumulative limit period following the date of the transfer. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the SFD and placed on board the vessel before it is used under the permit. Registration of a permit to be used with a new vessel will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer.

(3) The major limited entry cumulative limit periods will be announced in the **Federal Register** each year with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed.

* * * * *

(d) Evidence and burden of proof. A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

* * * * *

(f) * * *

(2) Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permitted vessel is totally lost, as defined at § 660.302. The exception for death of a permit holder applies for a permit held by a partnership or a

corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies. When a permit transferred from one holder to another holder is initially "unidentified" with regard to vessel registration, or when a permit's vessel registration is otherwise "unidentified", the transaction is not considered a "transfer" for purposes of this restriction until the permit is registered for use with a specific vessel.

* * * * *

[FR Doc. 98–16789 Filed 6–24–98; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 122
Thursday, June 25, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. 29247; Notice No. 98–4]

RIN 2120–AF33

Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards for normal category rotorcraft. This proposal would increase the maximum weight limit from 6,000 to 7,000 pounds and add a passenger seat limitation of nine. The increase in maximum weight is proposed to compensate for the increased weight resulting from additional regulatory requirements, particularly recent requirements intended to improve occupant survivability in the event of a crash. These changes are intended to update current airworthiness standards to provide the safety standards for normal category rotorcraft of 7,000 pounds or less.

DATES: Comments must be received on or before September 23, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. , Room 915G, 800 Independence Avenue SW, Washington, DC 20591. Comments submitted must be marked Docket No. 29247. Comments may also be sent electronically to the following internet address: 9-nprm-cmts@faa.dot.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lance Gant, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5114, fax 817–222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Specifically, the FAA invites comments and data relating to the top hatch emergency exit proposed in new section 14 CFR 27.805(a). Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket at the address specified under the caption **ADDRESSES.**

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered before taking action on this proposal. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29247." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee (ARAC) bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** webpage at http://www.access.gpo.gov/su_docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, that describes the application procedure.

Background

Operational and design trends for normal category rotorcraft are approaching the current maximum weight limitations. This proposal would increase the maximum weight limitation from 6,000 to 7,000 pounds and would add a passenger seat limit of nine.

History

Since 1956, the FAA has based the distinction between normal and transport category rotorcraft certification requirements on the certificated maximum weight of the aircraft. Initially, the FAA set the upper weight limit for normal category rotorcraft at 6,000 pounds, based on the spectrum of existing and anticipated designs at that time. The 6,000-pound weight threshold and associated airworthiness standards have served the industry well for over 40 years.

In the 1970's, manufacturers began certificating new light twin-engine rotorcraft in the 4,000 to 6,000 pound weight class. Some single-engine models were also converted to twin-engines. This trend continues. Meanwhile, the FAA certification regulations evolved, gradually adding more stringent safety requirements that ultimately caused permanent increases in empty weight. The high cost of certification of transport category rotorcraft, the increased stringency of the current 14 CFR part 27 (part 27) regulations, and the trend toward modification of existing models have resulted in several normal category

helicopters nearing the current 6,000-pound maximum weight limitation.

Increasing the 6,000-pound weight limit for normal category rotorcraft was not formally discussed with the FAA until November 1991. At that time, a manufacturer petitioned the FAA for a regulatory exemption to allow a rotorcraft to exceed the 6,000-pound maximum weight limit specified for normal category rotorcraft. A summary of the petition was subsequently published in the **Federal Register** (57 FR 4508, February 5, 1992) for public comment. Comments were few and divided. While some commenters were in favor of the petition, others expressed the view that a weight change should not be permitted without considering increased regulatory stringency and/or a limit on the number of passengers. The FAA determined that the petition did not provide adequate justification nor did it show that a grant of exemption would be in the public interest. The FAA denied the petition but stated in the denial that a further study of the issues would be in the public interest.

The diversity of comments prompted the FAA to investigate the general issue of a future rule change in more detail. By letter dated April 1992 to rotorcraft manufacturers and trade associations, the FAA asked interested parties to comment on the advisability of increasing the current 6,000-pound maximum weight limitation. They were also asked to comment on safety criteria that should be associated with a weight limitation increase. Approximately 30 commenters responded to the request. Although these responses contained no specific objections to a future regulatory increase in the maximum allowable weight, the commenters articulated a wide range of views regarding the scope of such a revision.

Due to the level of interest in this issue, the FAA held a public meeting on February 2, 1994, immediately following the Helicopter Association International (HAI) Convention in Anaheim, California. All interested parties were given the opportunity to present their views to help determine a course of action that would be in the best interest of the rotorcraft aviation community. Consequently, the FAA and the Joint Aviation Authorities (JAA) determined that there was a need to review the maximum weight and passenger seat limitation for normal category rotorcraft.

Although not a part of this proposal, the FAA Rotorcraft Directorate identified a need to reevaluate the certification standards for rotorcraft at the low end of the maximum weight spectrum as a result of information gathered at this meeting. A joint FAA/JAA/Industry Working Group was tasked to reevaluate the maximum weight and seat limitation issues for all rotorcraft, including requirements for the low passenger capacity rotorcraft.

ARAC Involvement

By notice in the **Federal Register** (60 FR 4221, January 20, 1995), the FAA announced the establishment of the Gross Weight and Passenger Issues for Rotorcraft Working Group (GWWG). The GWWG was tasked to "Review Title 14 Code of Federal Regulations part 27 and supporting policy and guidance material to determine the appropriate course of action to be taken for rulemaking and/or policy relative to the issue of increasing the maximum weight and passenger seat limitations for normal category rotorcraft."

The GWWG includes representatives from all parties that have expressed an interest in this subject through submittal of comments to the FAA or through the public meeting process. The GWWG includes representatives from Aerospace Industries Association of America (AIA), Association Europeene des Constructeurs de Material Aerospatial (AECMA), the European JAA, Transport Canada and the FAA Rotorcraft Directorate. Additionally, representatives from the small rotorcraft manufacturers were consulted for their views by the GWWG. This broad participation is consistent with FAA policy to involve all known interested parties as early as practicable in the rulemaking process. The GWWG first met in February 1995 and has subsequently met for a total of six meetings.

Statement of the Issues

Members of the GWWG agreed that there is a valid need to increase the normal category weight limitation and that nine passengers is appropriate for the normal category rotorcraft passenger seat limitation. A nine-passenger seat limitation is consistent with the passenger seat limitation of normal category airplanes certificated under part 23. The decision to include a nine-passenger seat limitation to § 27.1 is not a new idea. Based on the results of FAA Public Meetings held in 1979 and 1980, NPRM 80–25 (45 FR 245, December 18, 1980) included a proposal to limit part 27 rotorcraft to nine passengers. This passenger seat limitation was not adopted in the final rule because there were no projections for rotorcraft with a maximum weight of 6,000 pounds or less to have more than nine passenger seats.

Considerable discussions during initial GWWG meetings concerned whether additional regulatory requirements should be promulgated to accommodate the increased maximum weight limitations. Although part 27 has always permitted rotorcraft to be certificated to carry up to nine passengers, the current weight limitation has limited practical designs to seven passengers. No normal category rotorcraft to date has been certified and manufactured to carry more than seven passengers. The proposed increase in maximum weight will allow the practical design and production of helicopters that will carry nine passengers. Several sections of part 27 were reviewed to evaluate the possible need for additional regulatory requirements to support this potential increase of two passengers.

The GWWG considered the possible need for additional regulatory requirements if the proposed change to part 27:

1. Related to safety for addition of passengers beyond 7;
2. Related to safety for increased weight; or
3. Resulted in little or no increase in cost or weight.

Based on these criteria, necessary changes were identified.

Industry estimates of the maximum weight necessary to accommodate nine passengers were in the range of 8,000 to 8,500 pounds. Nevertheless, the GWWG agreed to the new limit as 7,000 pounds based on several considerations. Increasing the limit to 7,000 pounds would address the problem of some current normal category rotorcraft remaining within the part 27 weight limitation while complying with the recent increases in part 27 regulatory requirements. In addition, the GWWG agreed that, with possible incorporation of technological advances, a 7,000-pound limit may be adequate to accommodate a nine-passenger capacity in the future.

The proposed additional regulatory requirements included here were prompted by this potential increase in passenger capacity. Therefore, the GWWG recommended a limit of seven passengers for previously certificated rotorcraft (regardless of maximum weight) unless the certification basis is revised and the rotorcraft complies with part 27 at the amendment level of this proposal. The GWWG also agreed that an applicant may apply for an amended or supplemental type certificate to increase maximum weight above 6,000 pounds without complying with this proposed amendment (other than §§ 27.1 and 27.2) provided that the

original seating capacity of the rotorcraft is not increased above that certificated on [insert date 30 days after date of publication of the final rule in the **Federal Register**].

The GWWG presented its recommendation to ARAC. The ARAC subsequently recommended that the FAA revise the normal category rotorcraft airworthiness standards. The Joint Aviation Authorities (JAA) proposes to harmonize the Joint Aviation Requirements (JAR) concurrently with this NPRM.

FAA Evaluation of ARAC Recommendation

The FAA has reviewed the ARAC recommendation and proposes that the maximum weight limitation be increased to 7,000 pounds and that a passenger seat limitation of nine be added to § 27.1

Section-by-Section Discussion of the Proposals

This NPRM contains proposals to amend part 27. The FAA proposes the following changes to accommodate an increase in the current maximum weight and passenger carrying capability. The proposal also includes additional safety standards identified as imposing little or no increase in cost or weight.

Section 27.1 Applicability

This proposal would revise § 27.1(a) to increase the current maximum weight from 6,000 to 7,000 pounds and to add a nine-passenger seat limitation for normal category rotorcraft. The increase in maximum weight is intended to compensate for increased weight resulting from additional regulatory requirements, particularly recent requirements intended to improve occupant survivability in the event of a crash.

Section 27.2 Special Retroactive Requirements

This proposal would add a new paragraph (b) to § 27.2 requiring compliance with the part 27 amendments, up to and including this amendment, at the time of application for any normal category rotorcraft for which certification for more than seven passengers is sought. This would only apply to changes in type design for already type certificated rotorcraft, since newly type certificated rotorcraft would be required to meet the current part 27 requirements. Additionally, the proposal would allow a previously certificated rotorcraft to exceed the 6,000-pound maximum weight limit provided that no increase in passenger capacity is sought beyond that for which the rotorcraft was certificated as of (insert date 30 days after date of publication of the final rule in the **Federal Register**). Compliance with all the requirements of the existing certification basis, plus any other amendments applicable to the change in type design, would have to be demonstrated at the increased maximum weight.

Section 27.610 Lightning and Static Electricity Protection

This proposal would add to § 27.610 the requirement to provide electrical bonding of all metallic components of the rotorcraft. Bonding is necessary to provide an electrical return path for grounded electrical systems, to minimize the accumulation of static charge, to minimize the risk of electric shock to occupants as well as service and maintenance personnel, and to minimize interference with the operation of electrical and avionic systems caused by lightning and the discharge of static electricity.

Section 27.805 Flight Crew Emergency Exits

This proposal would add a new § 27.805 requirement for flight crew emergency exits, similar to § 29.805, to facilitate rapid evacuation of the flight crew after an emergency ground or water landing.

Section 27.807 Passenger Emergency Exits

Section 27.807 would be revised to clarify the provisions on emergency exits to ensure that each passenger has ready access to an emergency exit on each side of the fuselage. The proposal also clarifies that normal-use doors may serve as emergency exits but must meet the requirements for emergency exits. This is not stated in the current rule. The proposal adds requirements that emergency exits must open from both inside and outside the rotorcraft and that opening the exit must not require exceptional effort.

Section 27.853 Compartment Interiors

This proposal enhances the requirements of § 27.853 for fire protection of compartment interiors by replacing the current provision that allows limited use of materials that are only flash resistant with a requirement that all materials be at least flame-resistant. This change is necessary to ensure safety in the larger passenger cabins and is consistent with the existing requirements for normal category airplanes.

Section 27.1027 Transmissions and Gearboxes: General

This proposal would add to § 27.1027 the requirement that the lubrication system for components of the rotor drive system (that require continuous lubrication) must be sufficiently independent of the engine lubrication system to ensure adequate lubrication during autorotation. This requirement already exists in § 29.1027(a)(2). The lubrication systems of the engines and of the rotor drive system are usually designed to be independent, but this independence is not specifically required by current regulations. This proposal would require sufficient independence to ensure adequate lubrication during autorotation.

Section 27.1185 Flammable Fluids

This proposal would add to § 27.1185 the requirement that absorbent materials be covered or treated to prevent absorption of hazardous quantities of flammable fluids when such materials are installed close to flammable fluid system components that might leak. This requirement is necessary to minimize fire hazards in rotorcraft that may have absorbent material for insulation of the passenger cabin, some of which will be adjacent to fuel or hydraulic fluid lines, and already exists in § 29.1185(d).

Section 27.1187 Ventilation and Drainage

This proposal would add to § 27.1187 a requirement for drainage of powerplant installation compartments. Section 27.1187 currently requires these compartments to be ventilated, but there is no requirement for them to be provided with drains as exists in § 29.1187(a)(1) and (2). Drainage of powerplant compartments is necessary to minimize fire hazards by ensuring that leakage of flammable fluids does not result in hazardous accumulations of those fluids near potential ignition sources.

Sections 27.1305 Powerplant Instruments and 27.1337 Powerplant Instruments

This proposal adds to §§ 27.1305 and 27.1337 a requirement that chip detectors fitted in the rotor drive system also provide an indication to the flight crew when magnetic particles are detected. The present rule requires a chip detector to be fitted in the rotor drive system but does not require an in-flight indication of magnetic particle detection to the flight crew. This proposal is necessary to provide early indications of drive system deterioration allowing appropriate flight crew

responses; this requirement exists in part 29. The proposal also adds a requirement that a means be provided to the flight crew to check the function of each chip detector electrical circuit so that proper function of the system can be easily determined.

Paperwork Reduction Act

There are no requirements for information collection associated with this proposed rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal Agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order 12866, (2) is not "significant" as defined in DOT's Regulatory Policies and Procedures, (3) would not have a significant impact on a substantial number of small entities, and (4) would lessen restraints on international trade. These analyses, available in the docket, are summarized below:

This proposed rule would impose no or negligible compliance costs on rotorcraft manufacturers or users because the proposed changes would codify current industry practices. In addition, it would eliminate an applicant's need to apply for an exemption to the maximum weight requirement for a future part 27 type certificate and thereby save between $10,000 and $18,000 in paperwork costs for each eliminated exemption application.

Safety benefits would arise as manufacturers develop new, heavier part 27 rotorcraft (that would be based on the most recent part 27 standards) to replace some older part 27 rotorcraft certificated to earlier standards. For example, these safety benefits would accrue to some Emergency Medical Service (EMS) operators. The increased weight would allow some EMS's to increase their fuel loads and effective ranges to carry all of the necessary medical equipment and passengers. The EMS's must now limit fuel loads and their effective ranges to remain under the current 6,000-pound maximum weight.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. The proposed rule is expected to produce annualized incremental cost savings of $10,000 to $18,000 per applicant. While this would be beneficial to rotorcraft manufacturers, it would be unlikely to affect either the competitiveness or solvency of small businesses. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact

The proposed rule would not constitute a barrier to international trade, including the export of U.S. rotorcraft into the United States. Instead, the changes would maintain harmonized certification procedures of the FAA with those of the JAA and thereby have no appreciable effect on trade.

Federalism Implications

The proposed regulations herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, October 4, 1993, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

List of Subjects in 14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 27 as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 27.1(a) is revised to read as follows:

§ 27.1 Applicability.

(a) This part prescribes airworthiness standards for the issue of type certificates, and changes to those certificates, for normal category rotorcraft with maximum weights of 7,000 pounds or less and nine or less passenger seats.

* * * * *

3. Section 27.2 is amended by redesignating the introductory text and paragraphs (a), (b), (c), (d) introductory text, (d)(1), and (d)(2) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, and (a)(4)(i) and (a)(4)(ii), respectively.

§ 27.2 Special retroactive requirements.

* * * * *

(b) For rotorcraft with a certification basis established prior to (insert date 30 days after date of publication of the final rule in the **Federal Register**)—

(1) The maximum passenger seat capacity may be increased to eight or nine provided the applicant shows compliance with all the airworthiness requirements of this part in effect (insert date 30 days after date of publication of the final rule in the **Federal Register**).

(2) The maximum weight may be increased to greater than 6,000 pounds provided—

(i) The number of passenger seats is not increased above the maximum number previously certificated on [insert date 30 days after date of publication of the final rule in the **Federal Register**], or

(ii) The applicant shows compliance with all of the airworthiness requirements of this part in effect on [insert date 30 days after date of publication of the final rule in the **Federal Register**].

4. Section 27.610 is amended by revising the section heading and by adding paragraph (d) to read as follows:

§ 27.610 Lightning and static electricity protection.

* * * * *

(d) The electrical bonding and protection against lightning and static electricity must—

(1) Minimize the accumulation of electrostatic charge;

(2) Minimize the risk of electric shock to crew, passengers, and service and maintenance personnel using normal precautions;

(3) Provide an electrical return path, under both normal and fault conditions, on rotorcraft having grounded electrical systems; and

(4) Reduce to an acceptable level the effects of lightning and static electricity on the functioning of essential electrical and electronic equipment.

5. Section 27.805 is added to read as follows:

§ 27.805 Flight crew emergency exits.

(a) For rotorcraft with passenger emergency exits that are not convenient to the flight crew, there must be flight crew emergency exits, on both sides of the rotorcraft or as a top hatch, in the flight crew area.

(b) Each flight crew emergency exit must be of sufficient size and must be located so as to allow rapid evacuation of the flight crew. This must be shown by test.

(c) Each flight crew emergency exit must not be obstructed by water or flotation devices after an emergency landing on water. This must be shown by test, demonstration, or analysis.

6. Section 27.807 is revised to read as follows:

§ 27.807 Emergency exits.

(a) *Number and location.*

(1) There must be at least one emergency exit on each side of the cabin readily accessible to each passenger. One of these exits must be usable in any probable attitude that may result from a crash;

(2) Doors intended for normal use may also serve as emergency exits, provided that they meet the requirements of this section; and

(3) If emergency flotation devices are installed, there must be an emergency exit accessible to each passenger on each side of the cabin that is shown by test, demonstration, or analysis to:

(i) Be above the waterline; and

(ii) Open without interference from flotation devices, whether stowed or deployed.

(b) *Type and operation.* Each emergency exit prescribed by paragraph (a) of this section must—

(1) Consist of a movable window or panel, or additional external door, providing an unobstructed opening that will admit a 19- by 26-inch ellipse;

(2) Have simple and obvious methods of opening, from the inside and from the outside, which do not require exceptional effort;

(3) Be arranged and marked so as to be readily located and opened even in darkness; and

(4) Be reasonably protected from jamming by fuselage deformation.

(c) *Tests.* The proper functioning of each emergency exit must be shown by test.

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, the markings required by paragraph (b)(3) of this section must be designed to remain visible if the rotorcraft is capsized and the cabin is submerged.

§ 27.853 [Amended]

7. Section 27.853 is amended in paragraph (a) by removing the word "flash" and inserting the word "flame" in its place and by removing and reserving paragraph (b).

8. Section 27.1027 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e); in redesignated paragraph (c)(2), by removing "(b)(3)" and adding "(c)(3)" in its place; in redesignated paragraph (d), by removing "(b)" each place it appears and adding "(c)"; and by adding a new paragraph (a) to read as follows:

§ 27.1027 Transmissions and gearboxes: General.

(a) The lubrication system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure lubrication during autorotation.

* * * * *

9. In § 27.1185, a new paragraph (d) is added to read as follows:

§ 27.1185 Flammable fluids.

* * * * *

(d) Absorbent materials close to flammable fluid system components that might leak must be covered or treated to prevent the absorption of hazardous quantities of fluids.

10. Section 27.1187 is revised to read as follows:

§ 27.1187 Ventilation and drainage.

Each compartment containing any part of the powerplant installation must have provision for ventilation and drainage of flammable fluids. The drainage means must be—

(a) Effective under conditions expected to prevail when drainage is needed, and

(b) Arranged so that no discharged fluid will cause an additional fire hazard.

11. In § 27.1305, paragraph (v) is added to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(v) Warning or caution devices to signal to the flight crew when ferromagnetic particles are detected by the chip detector required by § 27.1337(e).

12. Section 27.1337(e) is revised to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors must—

(1) Be designed to provide a signal to the device required by § 27.1305(v); and be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

(2) [Reserved]

Issued in Washington, DC, on June 9, 1998.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 98–15961 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116608–97]

RIN 1545–AV61

EIC Eligibility Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations pertaining to the eligibility requirements for certain taxpayers denied the earned income credit (EIC) as a result of the deficiency procedures. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 23, 1998. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, October 21, 1998, must be received by September 30, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116608–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116608–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karin Loverud, 202–622–6060; concerning submissions or the hearing, LaNita VanDyke, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by August 24, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.32–3. This information is required to conform with the statute and to permit the taxpayer to claim the EIC. This information will be used by the IRS to determine whether the taxpayer is entitled to claim the EIC. The collection of information is mandatory. The likely respondents are individuals.

The burden is reflected in the burden of Form 8862.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 1.32–3T to the Income Tax Regulations.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, October 21, 1998; at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by September 23, 1998, and want to present oral comments at the hearing must submit, not later than September 30, 1998, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.32–3 is added to read as follows:

§ 1.32–3 Eligibility requirements.

[The text of this proposed section is the same as the text of § 1.32–3T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–16853 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104641–97]

RIN 1545–AV48

Equity Options Without Standard Terms; Special Rules and Definitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on the application of the rules governing qualified covered calls. The new rules address concerns that were created by the introduction of new financial instruments after the enactment of the qualified covered call rules. The proposed regulations will provide guidance to taxpayers holding qualified covered calls. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments must be received by September 23, 1998. Requests to speak (with outlines of oral comments) at the public hearing scheduled for November 4, 1998, must be submitted by October 14, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–104641–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104641–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Pamela Lew, (202) 622–3950; concerning submissions and the hearing, Michael L. Slaughter, Jr., (202) 622–7190, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a qualified covered call option and owning the optioned stock is not treated as a straddle for purposes of section 1092.

The special treatment for qualified covered calls was created because Congress believed that, in certain limited circumstances, a taxpayer who grants a call option does not substantially reduce his or her risk of loss with respect to the optioned stock. Congress established a mechanical test to determine whether a written call option could substantially reduce a taxpayer s risk of loss and, therefore, should be subject to treatment as one leg of a straddle. In order to be classified as a qualified covered call under this test, a call option must, among other things, be exchange-traded and not be deep in the money.

Section 1092(c)(4)(C) defines a deep-in-the-money option as an option whose strike price is lower than an allowed bench mark. Under section 1092(c)(4)(D), this bench mark is generally the highest available strike price for an option that is less than the applicable stock price, as defined in section 1092(c)(4)(G). The Internal Revenue Code provides other bench marks under specified circumstances.

At the time the qualified covered call definition was written, listed options were available only at standardized maturity dates and strike price intervals. This fixed-interval system was a basic assumption of the Congressional plan for qualified covered calls and, more specifically, was the foundation for the definition of a deep-in-the-money option.

Certain options exchanges have begun to trade put and call equity options with flexible terms. The terms that are flexible include strike price, expiration date, and exercise style (that is, American, European, or capped). Except

as noted below, the strike price is denominated in the smallest interval available on the options exchanges, which is currently ⅛ of one dollar. To minimize the market impact of options contract expirations, equity options with flexible terms may not expire within 2 business days of equity options with standardized terms. Equity options with flexible terms are generally intended for institutional and other large investors.

Questions have been raised as to whether the strike prices established by equity options with flexible terms might establish the lowest qualified benchmark under section 1092(c)(4)(D) for all equity options, including those with standardized terms. The following example illustrates this concern. If a stock is currently selling for $62, equity options with flexible terms and option periods of not more than 90 days could have a strike price of $61 ⅞. If the strike prices from equity options with flexible terms were taken into account in determining if a 90-day equity option with standardized terms is deep in the money, any option being sold for less than $61 ⅞ would be deep in the money. Because the strike prices for an equity option with standardized terms are set in $5 intervals, the highest strike price less than the current selling price for an equity option with standardized terms would be $60. Thus, any in-the-money equity option on the stock that had standardized terms would be deep in the money (for purposes of section 1092(c)(4)).

Explanation of Provisions

The proposed regulations provide that the strike prices established by equity options with flexible terms are not taken into account in determining whether equity options that are not equity options with flexible terms are deep in the money. Thus, the existence of strike prices established for equity options with flexible terms does not affect the lowest qualified bench mark, as determined under section 1092(c)(4)(D), for an equity option with standardized terms. The proposed regulations define equity options with flexible terms as those equity options described in certain specified SEC releases, including any changes approved by the SEC to these releases.

The regulations will allow some taxpayers, primarily institutional and other large investors, to engage in certain exchange-based transactions that are currently unavailable to them and will permit other investors to continue doing business under section 1092 without regard to the existence of the institutional product.

The proposed regulations do not address whether an equity option with flexible terms is eligible for qualified covered call treatment under section 1092(c)(4). Comments are requested on the following issues: (1) whether equity options with flexible terms should be eligible for qualified covered call treatment under section 1092(c)(4); (2) whether there should be uniform rules governing the bench marks for equity options with flexible terms and standardized options; and (3) if uniform rules are not appropriate, what bench marks should apply to equity options with flexible terms.

Proposed Effective Date

These regulations apply to equity options with flexible terms entered into on or after the date that the Treasury Decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, November 4, 1998, beginning at 10:00 a.m. The hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by September 23, 1998 and submit an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 14, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1092(c)–1 also issued under 26 U.S.C. 1092(c)(4)(H). * * *

Par. 2. Section 1.1092(c)–1 is added to read as follows:

§ 1.1092(c)–1 Equity options with flexible terms.

(a) *Effect on lowest qualified bench mark for other options.*

The existence of strike prices established by equity options with flexible terms does not affect the determination of the lowest qualified bench mark, as defined in section 1092(c)(4)(D), for any option that is not an equity option with flexible terms.

(b) *Definitions.* For purposes of this section:

(1) *Equity option with flexible terms* means an equity option—

(i) That is described in the following Securities Exchange Act Releases—

(A) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities

Exchange Act Release No. 34–36841 (Feb. 21, 1996); or

(B) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34–37336 (June 27, 1996); or

(C) Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options, Securities Exchange Act Release No. 34–39549 (Jan. 23, 1998); or

(D) Any changes to the SEC releases described in paragraphs (b)(1)(i)(A) through (C) of this section that are approved by the Securities and Exchange Commission; or

(ii) That is traded on any national securities exchange which is registered with the Securities and Exchange Commission (other than those described in the SEC Releases set forth in paragraph (b)(1)(i) of this section) or other market which the Secretary determines has rules adequate to carry out the purposes of section 1092 and is—

(A) Substantially identical to the equity options described in paragraph (b)(1)(i) of this section; and

(B) Approved by the Securities and Exchange Commission in a Securities Exchange Act Release.

(2) *Securities Exchange Act Release* means a release issued by the Securities and Exchange Commission. To determine identifying information for releases referenced in paragraph (b)(1) of this section, including release titles, identification numbers, and issue dates, contact the Office of the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. To obtain a copy of a Securities Exchange Act Release, submit a written request, including the specific release identification number, title, and issue date, to Securities and Exchange Commission, Attention Public Reference, 450 5th Street, NW., Washington, DC 20549.

(c) *Effective date.* These regulations apply to equity options with flexible terms entered into on or after the date that the Treasury Decision adopting these regulations is published in the **Federal Register**.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–16848 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 048–1048b; FRL–6113–2]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa. These revisions are necessary to meet the requirements of the Clean Air Act (Act) and the Code of Federal Regulations and to improve the state's permitting program. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to control of hazardous air pollutants.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 27, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 26, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–16796 Filed 6–24–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 18

[ET Docket 98–80; FCC 98–102]

Conducted Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: By this *Notice of Inquiry*, the Commission is reviewing the conducted emission limits. This action is taken by the Commission, on its own motion, as part of an ongoing program of regulatory review. It is intended to examine whether these regulations continue to be necessary, and if so, whether any changes to the limits may be appropriate.

DATES: Comments are due July 27, 1998. Reply comments are due August 10, 1998.

FOR FURTHER INFORMATION CONTACT: Office of Engineering and Technology, Anthony Serafini at (202) 418–2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, ET Docket No. 98–80, adopted May 29, 1998 and released June 8, 1998. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Inquiry

1. Many radio frequency devices obtain their electrical energy from the AC power line (i.e., 110 volt household electrical line). Such devices include personal computers, personal computer peripherals, TV and FM receivers, video cassette recorders, cordless telephone base stations, wireless security alarm systems, RF lighting devices, microwave ovens, induction cooking ranges and ultrasonic equipment. The radio

frequency energy that these devices generate can be conducted back onto the AC power line. The conducted radio frequency energy can cause interference to radio communications via two possible paths. First, the radio frequency energy may be carried along the electrical wiring to another device that is also connected to the electrical wiring. Second, the AC electrical wiring can act as an antenna to radiate signals over the airwaves. At frequencies below 30 MHz, where wavelengths are greater than 10 meters, the long stretches of electrical wiring can act as very efficient antennas. Further, the signals radiating onto the airwaves can cause interference to operations at considerable distances because propagation losses are low at these frequencies.

2. Parts 15 and 18 of the rules control the potential for such interference by limiting the levels of RF voltage that devices may conduct onto the AC power line. Part 15 of the Commission's rules specifies conducted emissions limits for radio frequency devices, including unintentional and intentional radiators. Part 18 specifies conducted emissions limits for industrial, scientific, and medical (ISM) equipment. Industrial, scientific and medical equipment is equipment or appliances designed to generate and use locally RF energy for industrial, scientific, medical, domestic or similar purposes, excluding applications in the field of telecommunication. Compliance is usually determined by connecting the device to a line impedance stabilization network, or LISN, which allows measurement of RF voltage under standard conditions. Most products are subject to conducted emissions limits that cover the frequency range 450 kHz to 30 MHz. The sole exception is induction cooking ranges, which are subject to conducted emissions limits beginning at 10 kHz because these products generate high levels of radio emissions at very low frequencies.

3. Certain devices or systems use carrier current techniques to deliberately couple RF energy to the AC electrical wiring for purposes of communication. Many AM campus radio systems use carrier current technology. Electrical utilities often use carrier current technology for monitoring and control of the electrical grid. A variety of devices intended for home use, such as intercom systems and remote controls for electrical appliances and lamps, also use carrier current technology. Interference from carrier current systems is controlled primarily by requiring compliance with radiated emissions limits. These standards provide system operators and equipment manufacturers the flexibility they need to adjust the signal levels they couple to the electrical wiring to take into account local variations, such as differences in impedance and layout of the wiring. Carrier current systems that contain their fundamental emission within the standard AM broadcast band of 535–1705 kHz and are intended to be received using standard AM broadcast receivers have no limit on conducted emissions. All other carrier current systems are subject to a conducted emission limit only within the AM broadcast band.

4. By this action, the Commission is reviewing the conducted emissions limits in Parts 15 and 18 of the Commission's rules. The conducted emissions limits control the levels of radio frequency (RF) voltage that equipment may conduct onto the (AC) power line. The purpose of these limits is to protect against interference to radio services operating below 30 MHz. The Commission is initiating this proceeding on its own motion as part of an ongoing program of regulatory review. The conducted emissions limits apply to a wide variety of products, including various consumer electronic devices and radio transmitters. We seek to examine whether these regulations continue to be necessary, and if so, whether any changes to the limits may be appropriate. In this regard, we seek information as to the costs of complying with these regulations. We are also interested in determining whether the regulations may impede new technologies. Further, we will examine our general regulations for carrier current systems. Upon review of the responses to this inquiry, we will determine whether to propose any changes to these regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16628 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–87; RM–9278]

Radio Broadcasting Services; Kaycee, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 222C1 at Kaycee, Wyoming, as the community's first local aural transmission service. Channel 222C1 can be allotted to Kaycee in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.9 kilometers (24.2 miles) southwest to avoid short-spacings to the licensed site of Station KLZY(FM), Channel 223C, Powell, Wyoming, and to the application site for Channel 222C at Rapid City, South Dakota. The coordinates for Channel 222C1 at Kaycee are North Latitude 43–27–55 and West Longitude 106–58–40.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–87, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16925 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–88; RM–9265]

Radio Broadcasting Services; Wright, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 268C at Wright, Wyoming, as the community's first local aural transmission service. Channel 268C can be allotted to Wright in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) east to avoid a short-spacing to the application site for Channel 269C1, Thermopolis, Wyoming. The coordinates for Channel 268C at Wright are North Latitude 43–45–08 and West Longitude 105–26–33.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–88, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16924 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–89; RM–9279]

Radio Broadcasting Services; Hanna, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 277C at Hanna, Wyoming, as the community's first local aural transmission service. Channel 277C can be allotted to Hanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to avoid a short-spacing to the construction permit site for Station KQLT(FM), Channel 279C, Casper, Wyoming. The coordinates for Channel 277C at Hanna North Latitude 41–49–13 and West Longitude 106–34–54.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–89, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16923 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–90; RM–9270]

Radio Broadcasting Services; Dayton, WA and Weston, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dayton Broadcasting Company proposing the substitution of Channel 270C2 for Channel 272A at Dayton, Washington, the reallotment of Channel 270C2 from

Dayton to Weston, Oregon, and the modification of Station KZZM(FM)'s license accordingly. Channel 270C2 can be allotted to Weston, Oregon, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 270C2 at Weston are North Latitude 45–47–12 and West Longitude 118–15–46. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 270C2 at Weston, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–90, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16922 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–86; RM–9284]

Radio Broadcasting Services; Wamsutter, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 266C at Wamsutter, Wyoming, as the community's first local aural transmission service. Channel 266C can be allotted to Wamsutter in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) southeast to avoid a short-spacing to the licensed site of Station KPIN(FM), Channel 266A, Pinedale, Wyoming. The coordinates for Channel 266C at Wamsutter are North Latitude 41–32–17 and West Longitude 107–47–30.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–86, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16921 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–85; RM–9286]

Radio Broadcasting Services; Meeteetse, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Windy Valley Broadcasting proposing the allotment of Channel 273C at Meeteetse, Wyoming, as the community's first local aural transmission service. Channel 273C can be allotted to Meeteetse in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 273C at Meeteetse are North Latitude 44–09–24 and West Longitude 108–52–24.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: A. Wray Fitch, III, Esq., Gammon & Grange, P.C., 8280 Greensboro Drive, McLean, Virginia 22102–3807 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–85, adopted June 3, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16920 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–75, RM–9264]

Radio Broadcasting Services; Pauls Valley and Healdton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wright & Wright, Inc. seeking the reallotment of Channel 249C3 from Pauls Valley, OK, to Healdton, OK, as the community's first or second local aural service, and the modification of Station KGOK's license to specify Healdton as its community of license. Channel 249C3 can be allotted to Healdton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) north, at coordinates 34–17–28 North Latitude; 97–29–23 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitkin, L.C., 908 King Street, Suite 300, Alexandria, VA 22314 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–75, adopted May 20, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16919 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–107; RM–9023]

Radio Broadcasting Services; Potts Camp and Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Olvie E. Sisk, licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi, requesting the reallotment of Channel 240C3 from Potts Camp to Saltillo, Mississippi, and modification of the license for Station WCNA(FM), accordingly. *See* 62 FR 15871, April 3, 1997. The reallotment proposal is denied as it would remove the sole local service at Potts Camp, Mississippi. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–107, adopted June 3, 1998, and released June 19, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16916 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–83, RM–9280]

Radio Broadcasting Services; Questa, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Metro Broadcasters-Texas, Inc. seeking the allotment of Channel 279C1 to Questa, NM, as the community's first local aural service. Channel 279C1 can be allotted to Questa in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.8 kilometers (3.6 miles) southeast, at coordinates 36–40–33 NL; 105–32–27 WL, to avoid a short-spacing to both the allotment reference coordinates and the transmitter site specified in the pending application of Idaho Broadcasting Consortium, Inc. (BPH–971126MD), for Channel 279C2 at Silverton, Colorado.

DATES: Comments must be filed on or before August 3, 1998, and reply comments on or before August 18, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209–3801 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–83, adopted May 27, 1998, and released June 12, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–16915 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–98–3902]

RIN 2127–AG65

Vehicle Certification; Contents of Certification Labels for Multipurpose Passenger Vehicles and Light Duty Trucks

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend NHTSA's regulations on vehicle certification that specify the contents of the certification labels that manufacturers are required to affix to new motor vehicles. The amendment would require the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. Under the existing regulations, the certification labels on these vehicles need only state that the vehicles comply with all applicable Federal motor vehicle safety standards. The proposed amendment would conform the certification requirements to legislation making the theft prevention standard applicable to MPVs and trucks rated at 6,000 pounds or less.

DATES: *Comments.* Comments must be received on or before August 10, 1998. If adopted, the proposed amendment would apply to MPVs and trucks with a GVWR of 6,000 pounds or less that are manufactured on or after January 1, 1999.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 10:00 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–5238).

SUPPLEMENTARY INFORMATION: In June 1996, NHTSA received a letter from American Honda Motor Co., Inc. (Honda) seeking clarification of certain vehicle certification requirements in 49 CFR Part 567. The letter noted that section 567.4(g)(5)(ii) of those regulations requires the certification label on 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986, to state that the vehicle "conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture * * *." Honda's letter further noted that under a provision of the Anti Car Theft Act of 1992 now codified at 49 U.S.C. 33101, the definition of vehicles subject to the major parts marking requirements of the theft prevention standard was expanded to include "a multi-purpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight." This prompted Honda to observe that the language prescribed for certification labels at 49 CFR 567.4(g)(5) may have to be amended to reflect these vehicles' conformity with the theft prevention standard.

In its response to Honda's letter, NHTSA noted that although the Anti Car Theft Act of 1992 contains no explicit requirement for such an amendment to the vehicle certification regulations, the agency agreed that this amendment should be made so that the certification requirements for MPVs and trucks with a GVWR of 6,000 pounds or less are consistent with those in sections 567.4(g)(5)(i) and (ii) that apply specifically to passenger cars.

Accordingly, NHTSA is proposing to amend the certification regulations to require the certification label for MPVs and trucks with a GVWR of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. So that affected manufacturers have adequate lead time to exhaust their existing inventory of certification labels and have new labels printed, if the proposed amendment is adopted, this requirement would apply to vehicles manufactured on or after January 1, 1999.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Motor vehicle manufacturers who are likely to be affected by the proposed amendment typically would not qualify as small entities. This amendment would also have no effect on small businesses, small organizations, and small governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. It would modify an existing Federal regulation to make it consistent with a statutory requirement. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this proposed rule. This proposed rule does not preempt the states from adopting laws or regulations on the same subject, except that if adopted, the resulting Federal regulation would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Comments will also be available on line at www.dms.dot.gov.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, the agency proposes to amend § 567.4, *Requirements for manufacturers of motor vehicles,* in Title 49 of the Code of Federal Regulations at Part 567 as follows:

PARTS 567—[AMENDED]

1. The authority citation for Part 567 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50

2. Section 567.4 would be amended by adding a new paragraph (g)(5)(iii), to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(iii) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after January 1, 1999, the expression "and theft prevention" shall be included in the statement following the word "safety".

* * * * *

Issued: June 19, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16849 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980602143–8143–01; I.D. 040197B]

RIN 0648–AI99

High Seas Fishing Compliance Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement vessel identification and reporting requirements under the High Seas Fishing Compliance Act (HSFCA). This rule would require vessels with permits issued under the HSFCA to be marked for identification purposes and to report their catches and effort when fishing on the high seas. This action is necessary to comply with the HSFCA.

DATES: Comments must be received by July 27, 1998.

ADDRESSES: Send comments on the proposed rule and on the collection-of-information requirements to Gary C.

Matlock, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Also send comments on the collection-of-information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget; Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, (301) 713–2337.

SUPPLEMENTARY INFORMATION: The HSFCA (16 U.S.C. 5501 *et seq.*), among other things, implements the United Nations Food and Agriculture Organization (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Agreement) and requires that U.S. vessels fishing on the high seas possess a permit issued under the HSFCA. As used in the HSFCA, the term "high seas" means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States. Additional information on the Agreement and the HSFCA is published at 61 FR 11751, March 22, 1996, and 61 FR 35548, July 5, 1996.

Regulations at 50 CFR part 300, subpart B, govern permit application and issuance procedures under the HSFCA. NMFS is proposing to amend these regulations to include provisions for vessel identification and reporting requirements.

Pursuant to guidance contained in the HSFCA, NMFS is attempting to minimize duplication of reporting requirements and to ensure that, to the extent practicable, the proposed regulations are consistent with regulations implementing fishery management plans (FMPs) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). Additionally, NMFS proposes to ensure that regulations implementing HSFCA vessel identification and reporting requirements are, to the extent practicable, consistent with regulations implementing other Federal fishery management statutes (e.g., regulations implementing the Antarctic Marine Living Resources Convention Act).

The HSFCA prescribes that licensed U.S. vessels operating on the high seas be marked (1) in accordance with regulations issued under the Magnuson-Stevens Act to implement a FMP, or (2) in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. NMFS proposes that vessels operating on the high seas with a permit issued under the HSFCA be considered appropriately marked for purposes of identification if marked in accordance with either of the preceding manners of marking. NMFS also proposes to consider vessels marked in accordance with regulations implementing other Federal fishery management statutes as appropriately marked for purposes of the HSFCA.

The HSFCA also prescribes that permit holders be required to report their catches on the high seas.

NMFS has identified three groups of vessel operators that fish, or have the potential to fish, on the high seas under the HSFCA. The first group consists of vessel operators already required to report their catch and effort when on the high seas based on existing reporting requirements in regulations under the Magnuson-Stevens Act or other Federal fishery management statutes. NMFS proposes to consider such operators in compliance with HSFCA reporting requirements if they continue to maintain and submit such logs as may be required by regulations promulgated under the Magnuson-Stevens Act or other Federal fishery management statutes. There will be no requirement for vessels already appropriately reporting their catch and effort on the high seas to maintain a separate high seas log.

The second group consists of operators of vessels with HSFCA permits that participate in the albacore fishery of the Pacific Ocean. Vessel operators in this fishery have had the option of participating in a voluntary reporting system to record their catch and effort by using the "U.S. Pacific Albacore Logbook," which has been available since 1961 through the NMFS Southwest Regional Office and the NMFS Southwest Fisheries Science Center. A valuable time series of data on the fishery has been amassed over the years. NMFS proposes that the log used in the voluntary reporting system be the mandatory log for reporting catch and effort on the high seas by all operators of HSFCA-permitted vessels in the albacore fisheries. This action will maintain some continuity of the database developed under the voluntary system and will avoid the potential for a duplicative reporting requirement.

The third group consists of all other operators of vessels licensed under the HSFCA who fish on the high seas (i.e., who will not be reporting their catch and effort on the high seas based on existing regulations or the "U.S. Pacific Albacore Logbook"). NMFS proposes that these vessel operators use gear-specific logs, to be available from NMFS Regional Administrators, to report their catch and effort on the high seas. These logs will collect the basic information typically collected for each gear type. Logs have been prepared to record catches on the high seas for the following gear types: Longline/gillnet, purse seine, troll/pole and line, trawl, trap, mothership and "other." Samples of the logs are available from NMFS (see **ADDRESSES**). The actual logs will be available from the Regional Administrator of the NMFS Regional Office from which a vessel's HSFCA permit was issued.

NMFS also proposes to revise the existing regulations to clarify the conditions under which a U.S. vessel is eligible for a permit and the scope of permit sanction authority under the HSFCA.

Operators of U.S. vessels fishing on the high seas are reminded of their responsibility under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) to report all incidental injuries and mortalities of marine mammals that occur as a result of commercial fishing operations. MMPA reporting forms and additional information about the MMPA can be obtained through NMFS Regional Offices.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. It is estimated this action will affect approximately 5 percent of HSFCA permit holders at a total annual cost of $7,600.00. Neither the agency standard for "substantial number of small entities" nor any of the agency criteria for "significant economic impact" are met. As a result, a regulatory flexibility analysis was not prepared.

This rule contains two collection-of-information requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been submitted to the Office of Management and Budget for approval.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork

Reduction Act unless that collection-of-information displays a currently valid OMB control number.

The first collection-of-information requirement is the vessel marking requirement. The burden of this collection of information is estimated to be about 45 minutes per year for each vessel not already marked for identification purposes in accordance with the implementing regulations of a FMP or Federal fishery management statute. The second collection-of-information requirement is the requirement for vessels not otherwise required to report high seas catches and effort to report such catches and effort. The burden of this collection of information is estimated to be an average of 3 minutes per day. Send comments regarding these burden estimates or any other aspect of the collection-of-information, including suggestions for reducing this burden, to Gary C. Matlock, NMFS, or to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

Public comment is sought regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 50 CFR Part 300

Exports, Fisheries, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 18, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 5501 *et seq.*

2. In § 300.13, paragraph (a)(1) introductory text is revised to read as follows:

§ 300.13 Vessel permits.

(a) * * *

(1) Any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and —

* * * * *

3. In § 300.14, the section heading is revised, and text is added to read as follows:

§ 300.14 Vessel identification.

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its IRCS, or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit;

(ii) The markings must be displayed at all times on the vessel's side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 25 meters (m) and over in length, the height of letters and numbers must be not less than 1.0 m; for vessels 20 m but less than 25 m in length, the height of letters and numbers must be not less than 0.8 m; for vessels 15 m but less than 20 m in length, the height of letters and numbers must be not less than 0.6 m; for vessels 12 m but less than 15 m in length, the height of letters and numbers must be not less than 0.4 m; for vessels 5 m but less than 12 m in length, the height of letters and numbers must be not less than 0.3 m; and for vessels under 5 m in length, the height of letters and numbers must be not less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be not less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of not less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

4. In § 300.15, paragraph (c) is added to read as follows:

§ 300.15 Prohibitions.

* * * * *

(c) Use a high seas fishing vessel on the high seas that is not marked in accordance with section 300.14.

5. In § 300.16, the section is revised to read as follows:

§ 300.16 Penalties.

(a) Any person, any high seas fishing vessel, the owner or operator of such vessel, or any person who has been issued or has applied for a permit, found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

(b) Permits under this subpart may be subject to permit sanctions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws if any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue.

6. In § 300.17, the section heading is revised, and text is added to read as follows:

§ 300.17 Reporting.

(a) *General.* The operator of any vessel permitted under this subpart must report high seas catch and effort information to the NMFS in a manner set by this section. Reports must include: identification information for vessel and operator; operator signature;

crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles or birds.

(b) *Reporting options.* (1) For the following fisheries, a permit holder must maintain and submit the listed reporting forms to the appropriate address and in accordance with the time limits required by the relevant regulations:

(i) Antarctic—CCAMLR Logbook (50 CFR 300.107);

(ii) Atlantic—Fishing Vessel Log Reports (50 CFR 648.7(b));

(iii) Atlantic Pelagic Longline—Longline Logbook (50 CFR 630.5);

(iv) Atlantic Purse Seine—Purse Seine Logbook (50 CFR 285.54);

(v) Pacific Pelagic Longline—Longline Logbook (50 CFR 660.14(a));

(vi) Eastern Pacific Purse Seine—IATTC Logbook (50 CFR 300.22); or

(vii) Western Pacific Purse Seine—South Pacific Tuna Treaty Logbook (50 CFR 300.34).

(2) For the albacore troll fisheries in the North and South Pacific, a permit holder must report high seas catch and effort by maintaining and submitting the log provided by the Regional Administrator, Southwest Region, NMFS.

(3) For other fisheries, a permit holder must report high seas catch and effort by maintaining and submitting records, specific to the fishing gear being used, on forms provided by the Regional Administrator of the NMFS Region which issued the permit holder's HSFCA permit.

(c) *Confidentiality of statistics.* Information submitted pursuant to this subpart will be treated in accordance with the provisions of 50 CFR part 600 of this title.

[FR Doc. 98–16787 Filed 6–24–98; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 122
Thursday, June 25, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–066–1]

Horse Protection Certified Designated Qualified Person (DQP) Programs and Licensed DQP's

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the general public and the horse industry of the Designated Qualified Person (DQP) programs currently certified by the Department of Agriculture, and the currently licensed DQP's under each certified program.

FOR FURTHER INFORMATION CONTACT: Dr. Dick Watkins, Initiatives Coordinator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7712; or e-mail: ace@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses.

In 1979, in response to an amendment to the Act, we established regulations under which show management must, to avoid liability for any sore horses that are shown, appoint individuals trained to conduct preshow inspections to detect or diagnose sored horses. The individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry sponsored DQP programs that we certify and monitor. The requirements for DQP programs and licensing of DQP's are set forth in § 11.7 of the regulations.

Section 11.7 also requires that, at least once each year, we publish in the **Federal Register** a current list of certified DQP programs and licensed DQP's. Following is that list:

Heart of America Walking Horse Association, Route 2, Box 6B, Barry, IL 62312
Licensed DQP's: Chadwick Campbell, Jennifer Campbell, Larry Carriger, William H. Cox, A.L. Fogey, Lawanda Foust, R. Dewey Foust, Robert Foust, Fred Gebbany, Billy Grooms, Floyd Hampsmire, Phillip Manker, Steve Mullins, Ted Nichols, Wendell Pig, Billie Schafer, Linda Scrivner, Scott Skopec, Charlie Smartt, Robert H. Smith, William Stotler, John Williams

Horse Protection Commission, Inc., P.O. Box 1330, Frazier Park, CA 93225
Licensed DQP's: Donna Benefield, Larry Connelly, Kathy Hester, Tom Hester, Sebastian Kolbusz, Robert Lauer, Donna Moore, Cherie Pitts, Chad Shepherd

Missouri Fox Trotting Horse Breed Association, Inc., P.O. Box 1027, Ava, MO 65608
Licensed DQP's: Richard Carr, Daryl L. Caswell, Pat Harris, Edward Lee, Ken Williams, Lee Yates,

National Horse Show Commission, Inc., P.O. Box 167, Shelbyville, TN 37160
Licensed DQP's: Lonnie D. Adkins, Melanie Allen, Nolan Benton, Johny Black, Ray Cairnes, Ronnie Campbell, Rick Carl, Richard Carr, Harry Chaffin, John Cordell, Joe L. Cuningham, Sr., Eddie Ray Davis, Jessie Davis, Jerry Eaton, William Edwards, Robert Estes, Anthony Eubanks, James Fields, Bob Flynn, Kathy Givens, Iry Gladney, Grover Hatton, Jimmy House, Dave Jividen, Gary Kimmons, Dana Kyte, Larry R. Landreth, William (Bill) Lones, Malcom G. Lutrell, John Marsee, G. K. Mease, Earl Melton, Andy Messick, Lonnie Messick, Richard Messick, Percy Moss, Cary C. Myers, Harlan Pennington, Curtis Pittman, Ted Poland, Barney Porter, Dickey Reece, Ricky D. Rutledge, Vernon Shearer, Ronnie Slack, Ricky L. Statham, Don Steen, J. N. Syrcle, Charles Thomas, Mark Thomas, Steven Thomas, Virginia Wagner, Arnold "Sarge" Walker, Doug Watkins, Tommy Willett, Willie Gene Williams, John F. Wilson

Spotted Saddle Horse Breeders and Exhibitors Association, P.O. Box 1046, Shelbyville, TN 37162
Licensed DQP's: Earl M. "Marty" Coleman, Danny Ray Davis, Boyd Melton, Lucky Thornton, Don Woodson

Western International Walking Horse Association 18525 SE 346, Auburn, WA 98092,
Licensed DQP's: Larry Corbett, Don Douglas, Ross Fox, Dennis Izzi, Terry Jerke, Dave Swingley, Kim Swingley.

Done in Washington, DC, this 19th day of June 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16962 Filed 6–24–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Solicitation of Input From Stakeholders Regarding the Initiative for Future Agriculture and Food Systems; Public Meeting

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Research, Extension, and Education Reform Act of 1998, creates a new research, education, and extension program called the Initiative for Future Agriculture and Food Systems (the Initiative). By this notice, the Cooperative State Research, Education, and Extension Service (CSREES), acting on behalf of the Secretary of Agriculture, is soliciting public comment from persons who conduct or use agricultural research, extension or education regarding the priorities to be addressed by this new program as required by Section 401(f)(1)(D) of the Act. The Initiative is authorized with mandatory funds at the level of $120 million per year from fiscal year 1999 through fiscal year

2003. This funding will support competitive research, education, and extension grants as well as activities carried out under the Alternative Agricultural Research and Commercialization Act of 1990.

The Secretary of Agriculture is soliciting public comment regarding establishing priorities for the research, education, and extension grant purposes of the Initiative. Statutory purposes of the grant program are defined as "critical emerging agricultural issues related to:

(i) Future food production;

(ii) Environmental quality and natural resource management; or

(iii) Farm income" which also address "priority mission areas related to:

(A) Agricultural genome;

(B) Food safety, food technology, and human nutrition;

(C) New and alternative uses and production of agricultural commodities and products;

(D) Agricultural biotechnology;

(E) Natural resource management, including precision agriculture; and

(F) Farm efficiency and profitability, including the viability and competitiveness of small- and medium-sized dairy, livestock, crop, and other commodity operations."

The meeting is open to the public. Written comments and suggestions on issues that may be considered in the meeting may be submitted to the CSREES Docket Clerk at the address below.

DATES: The meeting will be held on Thursday, July 9, 1998, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Persons wishing to orally present comments at this meeting are requested to pre-register by contacting Ms. Sarah Poythress at (202) 720–4423, by fax at (202) 720–8987 or by e-mail to spoythress@reeusda.gov. Participants may reserve a 5-minute comment period when they register. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions, following the presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting or mailed to Ms. Sarah Poythress, USDA/CSREES, Room 305A, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–2201. Please provide three copies of the comments. Written comments must be received by Friday, July 24, 1998, to be considered. All comments and the official transcript of the meeting, when it becomes available, will be available for review for six months at the address listed above from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Participants who require a sign language interpreter or other special accommodations should contact Ms. Poythress as directed above.

Done in Washington, DC, on this 23rd day of June, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–17109 Filed 6–24–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Official Moisture Meter for Corn, Soybeans, and Sunflower Seeds

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that as of August 1, 1998, and thereafter, all official moisture content measurements of corn, soybeans, and sunflower seed inspected under the United States Grain Standards Act will be made with the Grain Analysis Computer Model 2100 (GAC 2100). Official moisture content measurements of other grains and agricultural commodities will continue to be made with the Motomco Model 919 Moisture Meter until the changeover date for those grains is announced.

EFFECTIVE DATE: August 1, 1998.

FOR FURTHER INFORMATION CONTACT: Steven N. Tanner, Director, Technical Services Division, GIPSA, USDA, 10383 N. Executive Hills Boulevard, Kansas City, Missouri 64153; telephone (816) 891–0401; fax (816) 891–0478.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) announced the selection of the Grain Analysis Computer Model 2100 (GAC 2100), manufactured by Dickey-john Corporation, Auburn, Illinois, to replace the Motomco Model 919 Moisture Meter for official moisture content measurements in the **Federal Register** (63 FR 17356) on April 9, 1998. Implementation of the new instruments for official measurements of grains, oilseeds, and processed commodities will be phased in, product by product, over a period of at least 2 years. For any given product, all official moisture measurements will be performed using the Motomco Model 919 until the transition date for that product; the GAC 2100 will be used exclusively thereafter. Transition dates for each product will be selected to minimize the impact of the changes on the value of carry-over stocks and will be announced by GIPSA through a Notice in the **Federal Register** prior to the transition.

The transition date for corn, soybeans, and oil-type sunflower seeds is hereby designated as August 1, 1998. The GAC 2100 will be used for all official moisture determinations on these grains after July 31, 1998. Official calibrations for the GAC 2100 to be used with corn (8% to 20% moisture), high moisture corn (19% to 40% moisture), soybeans (6% to 24% moisture), and oil-type sunflower seeds (4% to 20% moisture) are provided in GIPSA Directive 9180.61, dated May 5, 1998.

The tentative transition date for barley, oats, rough rices, sorghum, and all wheats is May 1, 1999. Transition dates for peas, beans, lentils, and other commodities may lie beyond 1999.

GIPSA's decision to use the GAC 2100 for official moisture measurements does not mean that the Agency endorses or recommends this instrument for unofficial purposes over other similar instruments that are not approved for the official system. The Agency's selection of this instrument was based on GIPSA's unique operational needs. Other instrument models may be as suitable or more suitable for a commercial entity's needs.

In addition, this document corrects the authority citation as published in the April 9, 1998, **Federal Register**, 63 FR 17356, in the first column of page 17357, in a notice concerning implementation of a new official moisture meter. That notice inadvertently omitted reference to the Agricultural Marketing Act of 1946 in the authority citation. The April 9, 1998, citation should read the same as the authority citation for this document.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*); and Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: June 19, 1998.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–16963 Filed 6–24–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Minnkota Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by two electric utilities: Minnkota Power Cooperative, Inc., (MPC) of Grand Forks, North Dakota, and Otter Tail Power Company (OTPC) of Fergus Falls, Minnesota. These two utilities are collectively referred to as the Partners for the purpose of this project. MPC is a RUS borrower and anticipates to requesting financing assistance for its portion of the proposed transmission line. MPC and OTPC have proposed to construct and operate a transmission line and associated facilities between Oslo in Walsh County, North Dakota and Thief River Falls in Pennington County, Minnesota. The line will originate at an existing substation located approximately two miles west of Oslo in Walsh County, North Dakota. The line will terminate at an existing substation located in Pennington County, Minnesota.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250—1571, telephone (202)-720–1784.

SUPPLEMENTARY INFORMATION: The RUS, in accordance with its environmental policies and procedures, required that the MPC prepares a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER which includes input from the Federal, state, and local agencies, has been adopted as RUS's Environmental Assessment for the project in accordance with § 1794.61.

The RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project will not affect any known properties listed or eligible for listing in the *National Register of Historic Places*. The project will be constructed on an existing right-of-way for about 24.5 miles. Of the 56 mile total length of the proposed route, 54 miles share rights-of-way with existing highways or roadways. Two miles will be along entirely new rights-of-way. However, if previously unknown resources are discovered during construction, the Partners will halt construction while the significance of the finding and proper mitigation is determined. Construction of the line should have no impact on floodplains, air quality, and formally classified areas. The project should also have no significant impact on farmlands, water quality, wetlands, aesthetics, federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, power purchase from other sources, localized generating facilities, load management and energy conservation, alternative routes, construction method alternatives, design alternatives, and voltage alternatives. RUS has considered these alternatives and concluded that the project as proposed will meet the needs of the MPC to provide adequate service in the project area with a minimum of adverse impact.

Copies of the BER and FONSI are available for review at, or may be obtained from RUS at the address provided above or from the office of MPC, P.O. Box 13200, Grand Forks, North Dakota 58208–3200, telephone (701) 795–4000 during normal business hours.

Dated: June 19, 1998.

Blaine D. Stockton, Jr.

Assistant Administrator—Electric Program.

[FR Doc. 98–16946 Filed 6–24–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Logbook Family of Forms.

Agency Form Number: NOAA 88–30 and 88–140.

OMB Approval Number: 0648–0212.

Type of Request: Revision of a currently approved collection.

Burden: 6,348 hours.

Number of Respondents: 5,875 with multiple responses.

Avg. Hours Per Response: 5 minutes for vessel logbooks and 12.5 minutes for shellfish logbooks. These estimates do not include the time for entries that respondents would make to their own logbooks as normal business practice.

Needs and Uses: Under the Magnuson Fishery Conservation and Management Act, the Regional Fishery Management Councils have developed fishery management plans to conserve and manage marine resources in the exclusive economic zone. Participants in the summer flounder, scup, black seas, bass, Northeast multispecies, Atlantic sea scallop, Atlantic mackerel, squid, butterfish or surf clam and ocean quahog fisheries in the Northeast must submit logbooks containing catch and effort data about their fishing trips. The information is used in the development of management measures to control fishing effort, as well as to enforce the measures once they are in effect.

Affected Public: Businesses or other for-profit organizations.

Frequency: Weekly, monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16864 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. Fishermen Fishing in Russian Waters.

Agency Form Number: None.

OMB Approval Number: 0648–0228.

Type of Request: Extension of a currently approved collection.

Burden: 75 hours.

Number of Respondents: 10 with multiple responses.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: In support of the Agreement between the U.S. and the Government of the Russian Federation, the National Marine Fisheries Service (NMFS) requires certain information to honor this Agreement. First, U.S. fishermen must apply for a Russian permit by submitting the application to NMFS for transmittal to Russian authorities. When received, fishermen must notify NMFS of the approved permit and then they must report when entering and exiting the U.S. Exclusive Economic Zone. This information will be used in conjunction with landings data by "enforcement" staff to determine illegal catch.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Office, Office of Management and Organization.

[FR Doc. 98–16865 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Subsequent Purchaser Report.

Agency Form Number: None.

OMB Approval Number: 0648–0079.

Type of Request: Extension of a currently approved collection.

Burden: 150 hours.

Number of Respondents: 150 with 2 responses each.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: Under the Endangered Species Act (ESA), it is illegal to engage in interstate or foreign commerce of products comprised of endangered fish or wildlife. Certificates of Exemption (CE) were issued to persons holding inventories of such items before the effective date of the law. Only those persons who hold CE's are allowed to engage in interstate or foreign commerce. When selling an item, CE holders are responsible for telling purchasers that they must file a report if they plan to sell the item. This information is used by NOAA's enforcement officers to identify legal items from illegal items in the marketplace.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16866 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Certificate of Exemption.

Agency Form Number: None.

OMB Approval Number: 0648–0078.

Type of Request: Extension of a currently approved collection.

Burden: 41 hours.

Number of Respondents: 10 with multiple responses.

Avg. Hours Per Response: Ranges between 30 minutes and one hour depending on the requirement.

Needs and Uses: Under the Endangered Species Act (ESA), it is illegal to engage in interstate or foreign commerce of products comprised of endangered fish or wildlife. Certificates of Exemption (CE), however, were issued to those persons holding inventories of such items before the effective date of the Act. CE holders must renew their certificates periodically and are required to report on transfer of parts. The information is used by law enforcement personnel to track the movement of such items and to differentiate legal items from illegal ones.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly, every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16867 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Albacore Logbook.

Agency Form Number: None.

OMB Approval Number: 0648–0223.

Type of Request: Revision of a currently approved collection.

Burden: 200 hours.

Number of Respondents: 100 with two responses each.

Avg. Hours Per Response: One hour.

Needs and Uses: Fishermen participating in the Pacific albacore tuna fishery are requested to complete and submit a logbook on their catch and effort. In addition, persons holding permits under the High Seas Fishing Compliance Act will be required to submit such logbooks. The collected information will be used by the National Marine Fisheries Service to assess the status of Pacific albacore stocks and monitor the fishery.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16868 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Tagging Report.

Agency Form Number: NOAA 88–162.

OMB Approval Number: 0648–0009.

Type of Request: Extension of a currently approved collection.

Burden: 104 hours.

Number of Respondents: 1,250.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The Cooperative Marine Game Fish Tagging Program attempts to determine the migratory patterns and gathers other biological information on billfishes. When anglers tag billfish they are asked to report the date and location of the tagging, the species tagged, and their name and address. Persons that recovered the tags are asked to return the tag. The information is used in assessing the health of the billfish resources.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16869 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administration Grants.

Agency Form Number: None.

OMB Approval Number: 0648–0119.

Type of Request: Revision of a currently approved collection.

Burden: 6,598 hours.

Number of Respondents: 34 with multiple responses.

Avg. Hours Per Response: Ranges between 5 and 240 hours depending on the requirement.

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement Federally-approved Coastal Zone Management Programs and to develop assessment documents and multi-year strategies. NOAA is requesting OMB approval of related performance and annual report requirements, state requests for amendments to their approval coastal zone management programs, and for program management and assessment/strategy documents. The information provided is used by NOAA to determine if the activities help achieve national coastal one management objectives, and if the states are adhering to their approved plans.

Affected Public: State Government.

Frequency: Semi-annually, annually, every 5 years.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16870 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: U.S. Census—Age Search.

Form Number(s): BC–600, BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Extension of a currently approved collection.

Burden: 1,903 hours.

Number of Respondents: 11,899.

Avg Hours Per Response: BC–600 (12 minutes), BC–649(L) (6 minutes), BC–658(L) (6 minutes).

Needs and Uses: The Age Search is a service provided by the Census Bureau for persons who need transcripts of personal data as proof of age for pensions, retirement plans, medicare, or Social Security benefits. Transcripts are also used as proof of citizenship to obtain passports or to provide evidence of family relationship for rights of inheritance. The Age Search forms gather information necessary for the Census Bureau to make a search of its historical population census records in order to provide the requested transcript.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13, USC, Section 8.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16874 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Export of Parcels Through the Postal Service.

Agency Form Number: None.

OMB Approval Number: 0694–0095.

Type of Request: Extension of a currently approved collection of information.

Burden: 11,332 hours.

Average Time Per Response: 5 seconds.

Number of Respondents: 8,000,000 respondents.

Needs and Uses: Exporters are required to use the information as an adjunct to completion of their Shipper's Export Declarations (SED). The information provided is the declaration to the Government that the shipment is allowed and is used for enforcement purposes. The United States Postal Service (USPS) reviews the information collected to help assure compliance with the Export Administration Act and Regulations all the way through USPS processing of the parcel to the foreign destination.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Victoria Baecher-Wassmer (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16907 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Licensing of Private Remote-Sensing Space Systems.

Agency Form Number: None.

OMB Approval Number: 0648–0174.

Type of Request: Extension of a currently approved collection.

Burden: 96 hours.

Number of Respondents: 6.

Avg. Hours Per Response: 16 hours.

Needs and Uses: Title II of the Land Remote Sensing Act of 1992 requires that anyone who operates a private remote-sensing space system must obtain a license. The information provided in the application is used by NOAA to determine if U.S. security and international obligations are protected. Although NOAA is working on revising the implementing regulations, the current requirements need to remain in force until the revised requirements take effect.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Office, Office of Management and Organization.

[FR Doc. 98–16908 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999 American Community Survey—Group Quarters Screening—Form ACS–2(GQ)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Paletta, Bureau of the Census, Room 3715–3, Washington, DC 20230, (301) 457–4269.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 1999 the American Community Survey (ACS) will be conducted in 53 counties. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining characteristic information from the GQs will ensure that we include the necessary people residing at GQs in the 1999 ACS.

A GQ screening operation is being conducted in conjunction with 1998 ACS activities. This request revises the existing GQ clearance for use in the 1999 ACS. Major changes are in the estimated number of respondents and in the estimated time per response. In 1998 we are screening a sample of the GQs in eight counties. In 1999 we will screen a sample of the GQs in 53 counties. After completing one-third of the 1998 screening, we have learned that screening averages about 20 minutes per response instead of 10 minutes as originally estimated. In 1999 we will use the same questionnaire for screening that we are using in 1998, Form ACS–2(GQ), ACS GQ Screening.

We will telephone a sample of GQs in the 53 counties where the 1999 ACS will be conducted. We will verify/update information such as GQ name, address, type, and phone number. We will screen to determine if the residents stay for less than 30 days and have another place to live. If so, the GQ will be classified as out-of-scope for ACS interviewing. If the GQ is in-scope, we will screen to determine if we can complete ACS interviews of the GQ residents by mail, thus saving the expense of personal visits. We will obtain a list of rooms and/or residents from which we can select a sample. All ACS interviewing will be conducted under OMB clearance number 0607–0810.

II. Method of Collection

Telephone interviews will be conducted from Census Bureau's National Processing Center in Jeffersonville, Indiana.

III. Data

OMB Number: 0607–0836.
Form Number: ACS–2(GQ).
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
Estimated Number of Respondents: 900 GQs in the 1999 ACS.
Estimated Time Per Response: 20 minutes (.33 hours).
Estimated Total Annual Burden Hours: 300 hours.
Estimated Total Annual Cost: The group quarters screening is part of the 1999 American Community Survey, the cost of which is estimated to be 38.8 million dollars.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, USC, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16873 Filed 6–24–98; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty changed circumstances review.

SUMMARY: On May 8, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of its antidumping duty changed circumstances review of certain fresh cut flowers from Colombia (63 FR 25447). We have now completed this review and determine that Flores El Talle S.A. is a member of the Flores Colombianas Group. Therefore, we will apply the revocation of the antidumping duty order with respect to the Flores Colombianas Group to Flores El Talle S.A.

EFFECTIVE DATE: June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Hoffman, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4198.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless

otherwise indicated, all citations to section 351 of the regulations of the Department of Commerce ("the Department") are to the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1998, the Department published in the **Federal Register** the preliminary results of its antidumping duty changed circumstances review on fresh cut flowers from Colombia (63 FR 25447). We have now completed this changed circumstances review in accordance with section 751(b) of the Act and 19 CFR 351.216(d).

Scope of Review

The scope of the order under review is shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Results of Review

This review covers one producer of the subject merchandise, Flores El Talle S.A. ("Flores El Talle"), an entity created by members of the Flores Colombianas Group, a group of producers and exporters. The Department revoked the order with respect to that group on May 31, 1994 (*see*, 59 FR 15159). In this changed circumstances review, the Department examined the question of whether Flores El Talle should be assigned a cash deposit rate equal to the "all others" rate, or whether it is covered by the revocation granted to the Flores Colombianas Group.

We received no comments on the preliminary results of review. Therefore, for the reasons stated in the preliminary results of review and based on the facts on the record, we find that it is appropriate to treat Flores El Talle and the Flores Colombianas Group as a single entity in the production and sale of the subject merchandise. Consequently, the revocation of the antidumping duty order with respect to the Flores Colombianas Group extends to Flores El Talle.

This revocation applies to all unliquidated entries of this merchandise produced by Flores El Talle, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after May 31, 1994 (the effective date of the revocation from the order for the Flores Colombianas Group). We will instruct the U.S. Customs Service to release any cash deposit or bond and liquidate the entries without regard for antidumping duties (see, 19 CFR 351.222(g)(4)).

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(b) and 771(i)(1) of the Act.

Dated: June 18, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–16977 Filed 6–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service; Office of the Secretary; DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 24, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Finance Directorate, ATTN: Mr. Faafiti Malufau, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Faafiti Malufau, 703–607–5061.

Title, Associated Form, and OMB Number: Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces.

Needs and Uses: Per DoD Financial Management Regulation 7000.14R, Volume 7B, Chapter 5, paragraph 90503a(1), annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The annuity cannot be paid until the custodian certified that he/she has the care and custody of the child(ren).

Affected Public: Individuals.

Annual Burden Hours: 120 hours.

Number of Respondents: 300.

Responses Per Respondent: 1.

Average Burden Per Response: 24 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The form is used by the Directorate of Annuity Pay, Defense Fiance and Accounting Service—Denver Center (DFAS-DE), in order to pay the annuity to the correct person on behalf of a child under the age of majority. If the form with the completed certification is not received, the annuity payments are suspended. Since the funds for annuity are paid by members there are no consequences to the Federal Government.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16905 Filed 6–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 24, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Finance Directorate, ATTN: Mr. Faafiti Malufau, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Faafiti Malufau, 703–607–5061.

Title, Associated Form, and OMB Number: Child Annuitant's School Certification form.

Needs and Uses: In accordance with 10 USC 1435 and 10 USC 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals.

Annual Burden Hours: 720 hours.

Number of Respondents: 3,600.

Responses per Respondent: 1 each semester.

Average Burden per response: 12 minutes.

Frequency: Once each semester of full time school, ages 18 to 22.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Child Annuitant's School Certification form is submitted to the child for completion and return to this agency. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. By not obtaining school certification, overpayment of annuities to children would exist. This information may be collected from some schools which are non-profit institutions such as religious institutions. If information is not received after the end of each school enrollment, over-disbursements of an annuity would be made to a child who elected not to continue further training or study.

Dated: June 19, 1998.

Patricia L. Toppings.

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16906 Filed 6–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission For OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Repatriation Automated Tracking System; DD Form 2585; OMB Number 0704–0334.

Type of Request: Reinstatement.

Number of Respondents: 5,000.

Responses Per Respondent: 1.

Annual Responses: 5,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 1,667.

Needs and Uses: Executive Order 12656 (E.O. 12656) establishes the responsibilities for the Department of Health and Human Services (DHHS) and the Department of Defense (DoD) to take care of any American citizen and family member that is evacuated from any country and ensure their personal needs are met. This information collection provides evacuation information necessary to account for any military and civilian regardless of nationality. The DD Form 2885, "Repatriation Processing Center Processing sheet," is used to collect the necessary data which is entered into the Repatriation Automated Tracking System to produce a series of reports generated for and made available to the Department of Defense, Federal and State agencies.

Affected Public: Individuals or households; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 19, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16904 Filed 6–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.317]

Office of Elementary and Secondary Education; Notice Inviting Applications From Local Educational Agencies in Oklahoma and Montana; Application Deadline Date Extension

AGENCY: Department of Education.

ACTION: Notice extending the application deadline date.

SUMMARY: On April 9, 1998 (63 FR 17630), the Department of Education published in the **Federal Register** a notice inviting applications from local educational agencies in Oklahoma and Montana for fiscal year 1997 and 1998 funds under the Goals 2000: Educate America Act. The deadline for transmittal of applications was May 27, 1998.

On May 24, 1998, the area surrounding Deer Creek and Lamont, Oklahoma was struck by numerous tornadoes that caused significant

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damage. The school district suffered damage to its facilities and was without electricity and water for days. During this period, school facilities served as a temporary shelter and a center for local assistance efforts. As a result of this disaster, district officials were unable to tend to usual business. The district has requested that the U.S. Department of education extend by one day the deadline for submission of its application for Goals 2000 funding. In light of the information provided by the district, the Assistant Secretary has extended until May 28, 1998 the deadline by which the Deer Creek—Lamont School District may file an application for fiscal years 1997 and 1998 Goals 2000 funding.

DATES: The new deadline for the applications from the Deer Creek—Lamont School District is May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Cindy Cisneros, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Room 4000, Washington, DC 20202–21110, Telephone: (202) 401–0039, Fax: (202) 204–0303. These contacts may also be reached via e-mail at cindy__cisneros@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ww.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511, or, toll free, 1–800–222–4922. The documents are located under Option G—Files Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: June 16, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–16823 Filed 6–24–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–31–NG, 98–33–NG, 98–32–NG, 98–34–NG, 97–59–NG, 98–36–NG, 97–109–NG, 98–38–NG, 98–37–NG, and 98–35–NG]

Office of Fossil Energy; Orders Granting, Amending and Transferring Authorizations To Import and/or Export Natural Gas and Liquefied Natural Gas

H.Q. Energy Services (U.S.) Inc., The Washington Water Power Company, Chevron U.S.A. Inc., AEC Storage and Hub Services Inc., PG&E Texas VGM, L.P., The Montana Power Trading & Marketing Company, USGEN New England, Inc. (Successor to New England Power Company), West Texas Gas, Inc., Burlington Resources Trading Inc., and Applied LNG Technologies USA, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and transferring various natural gas and liquefied natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, AMENDING AND TRANSFERRING IMPORT/EXPORT AUTHORIZATION

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1380	05/06/98	H.Q. Energy Services (U.S.) Inc., 98–31-NG	100 Bcf	100 Bcf	Import and export each from both Canada and Mexico.
1381	05/07/98	The Washington Water Power Company, 98–33-NG.	100 Bcf		Import from Canada beginning on first delivery after June 25, 1998.
1383	05/08/98	Chevron U.S.A. Inc., 98–32-NG	73 Bcf		Import from Canada beginning July 1, 1998, through June 30, 2000.
1384	05/18/98	AEC Storage and Hub Services Inc., 98–34-NG.	200 Bcf		Import and export up to a combined total from and to Canada and Mexico beginning on the date of first import or export.
1297–A	05/20/98	PG&E Texas VGM, L.P. (Formerly Valero Gas Marketing, L.P.), 97–59-NG.			Name changed.
1386	05/28/98	The Montana Power Trading & Marketing Company, 98–36-NG.		30 Bcf	Export to Canada beginning on date of the first delivery.
1348–A	05/28/98	USGen New England, Inc. (Successor to New England Power Company), 97–109-NG.			Transfer of authority.

APPENDIX—ORDERS GRANTING, AMENDING AND TRANSFERRING IMPORT/EXPORT AUTHORIZATION—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1387	05/28/98	West Texas Gas, Inc., 98–38-NG	.....	50 Bcf	Export to Mexico beginning June 1, 1998, through May 31, 2000.
1388	05/28/98	Burlington Resources Trading Inc., 98–37-NG.	.....	100 Bcf	Import and export up to a combined total from and to Mexico beginning on June 1, 1998, through May 31, 2000.
1389	05/29/98	Applied LNG Technologies USA, L.L.C., 98–35-LNG.	.....	5.2 Bcf	Export of LNG to Mexico beginning on the date of first truck delivery.

[FR Doc. 98–16948 Filed 6–24–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 98–04—Certification Notice—159]

Office of Fossil Energy; Androscoggin Energy LLC Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On June 4, 1998, Androscoggin Energy LLC submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Androscoggin Energy LLC.

Operator: Polsky Services, Inc.

Location: Riley Road, near the city of Jay, Maine.

Plant Configuration: Combined-Cycle, Cogeneration.

Capacity: 145 megawatts.

Fuel: Natural gas.

Purchasing Entities: Retail and wholesale markets connected to New England Power Pool.

In-Service Date: Mid to late 1999.

Issued in Washington, D.C., June 19, 1998.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–16947 Filed 6–24–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–73–000 FERC Form No. 73]

Proposed Information Collection and Request for Comments

June 19, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 24, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 73 "Oil Pipelines Service Life Data" (OMB No. 1902–0019) is used by the Commission to implement the statutory provisions of Sections 306 and 402 of the Department of Energy Organization Act 42 U.S.C. § 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977). From these statutory sections the Commission assumed jurisdictional responsibility for oil pipelines from the Interstate Commerce Act, 49 U.S.C. § 6501 et. al. As part of the information necessary for the subsequent investigation and review of the oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide service life data as part of their data submission if the proposed depreciation rates are based on remaining physical life calculations. This service life data is collected and submitted on FERC Form No. 73.

Data submitted by an oil pipeline company during an investigation may be either initial data or it may be an update to existing data already on file. These data are then used by the Commission as input to several computer programs know collectively as the Depreciation Life Analysis System (DLAS) to assist in the selection of appropriate service lives and book depreciation rates.

Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating

expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. Staff's recommended book depreciation rates become legally binding when issued in an order by the Commission. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 347 and 357.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
5	1	40	200

Estimated cost burden to respondents: 200 hours divided by 2,088 hours per year times $110,000 per year equals $11,000. The cost per respondent is equal to $2,200.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to acitivites which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16878 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98–6–000; FERC Form 6]

Proposed Information Collection and Request for Comments

June 19, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 24, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 6 "Annual Report of Oil Pipeline Companies" (OMB NO. 1902–0022) is used by the Commission to implement the statutory Provisions of the Interstate Commerce Act (ICA), (49 U.S.C.). The ICA authorizes the Commission to make investigations and to collect and record data and to prescribes rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Every pipeline carrier subject to the provisions of Section 20 of the ICA must file with the Commission copies of FERC Form 6.

The Commission's Office of Chief Accountant uses the information collected in its audit program and the continuous review on the financial condition of regulated companies. The Office of Pipeline Regulation uses the data in its various rate proceedings and supply programs, and the Offices of Economic Policy and General Counsel use the data in their programs relating to the administration of the ICA. Data on certain schedules of the FERC Form 6 is used to compute annual charges which are then assessed against oil pipeline companies to recover the Commission's annual costs. These annual charges are required by Section 3401 of the Budget Act.

The ICA mandates the collection of information needed by the Commission to perform it regulatory responsibilities in the setting of the just and reasonable rates. The Commission could be held in violation of the ICA if the information was not collected.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 260.2 and Parts 351; 352; 356 and 357.2.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondents (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
159	1	*111	17,649

* Rounded off

Estimated cost burden to respondents: 17,649 hours divided by 2088 hours per year times $109,889 per year equals $928,848. The cost per respondent is equal to $5,842.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16879 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–574–000 FERC–574]

Proposed Information Collection and Request for Comments

June 19, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 24, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC-574 "Gas Pipeline Certificates: Hinshaw Exemption" (OMB No. 1902–0116) is used by the Commission to implement the statutory provisions of Sections 1(c), 4 and 7 of the Natural Gas Act (NGA) Pub. L. 75–688) (15 U.S.C. 717–717w). Natural Gas Pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for an exemption from the provisions of the Natural Gas Act (Section 1(c). If the exemption is granted, the pipeline is not required to file certificate applications, rate schedules, or any other applications or forms otherwise prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale or natural gas in interstate commerce if: (a) it receives gas at or within the boundaries of the state from another person; (b) such gas is transported, sold, consumed within such state; and (c) the rates, service and facilities of such company are subject to regulation by a State Commission. The data required to be filed by pipeline companies for an exemption is specified by 18 Code of Federal Regulations (CFR) Part 152.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
1	1	245	245

The estimated total cost to respondents is $12,907, (245 hours divided by 2,088 hours per year per employee times $110,000 per year per average employee=$12,907). The cost per respondent is $12,907.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16895 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–550–000 FERC–550]

Proposed Information Collection and Request for Comments

June 19, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 24, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NW., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.millerferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–550 "Oil Pipeline Rates: Tariff Filings" (OMB No. 1902–0089 is used by the Commission to implement the statutory provisions of Part I, Sections 1, 6, and 15, of the Interstate Commerce Act (ICA) (Pub. L. No. 337, 34 Stat. 384). Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or the establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission to the Commission, pursuant to Section 306 and 402 of the Department of Energy Organization Act (DOS Act), 42 U.S.C. 7155 and § 7172, and Executive Order No. 12009, 42 FR 46267 (September 15, 1977).

The filing requirement provide the basis for analysis of all rates, fares, or charges whatsoever demanded, charged or collected by any common carrier or carriers in connection with the transportation of crude oil and petroleum products and are used by the Commission to establish a basis for determining the just and reasonable rates that should be charged by the regulated pipeline company. Based on this analysis, a recommendation is made to the Commission to take action whether to suspend, accept or reject the proposed rate. The data required to be filed for pipeline rates and tariff filings is specified by 18 Code of Federal Regulations (CFR) Chapter I Parts 340–348.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
170	3.06	10.9	5,668

The estimated total cost to respondents is $298,100 (5,668 hours divided by 2,088 hours per year per employee times $110,000 per year per average employee=$298,100). The cost per respondent is $1,754.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16896 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2591–000]

Avery Hydroelectric Associates; Notice of Withdrawal

June 19, 1998.

Take notice that on June 16, 1998, Avery Hydroelectric Associates tendered for filing a notice of withdrawal of its filing made on April 20, 1998, in Docket No. ER98–2591–000.

A copy of this notice is being served upon the Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16881 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–017]

CNG Transmission Corporation; Notice of Compliance Filing

June 19, 1998.

Take notice that on June 16, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

2nd Sub. 2nd Revised Sheet No. 250

CNG requests an effective date of January 5, 1998 for its revised tariff sheet.

CNG states that the purpose of this filing is to comply with the Commission's directive to refile Sheet No. 250 to reflect CNG's correction of the tariff sheet containing Section 25 in its March 30, 1998 filing. CNG states that Sheet No. 250 contains the Table of Contents for the General Terms and Conditions of CNG's tariff. CNG has revised the pagination of its Table of Contents to reflect the tariff sheets previously approved by the Commission in this docket.

CNG states that copies of its filing have been mailed to parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16893 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–605–000]

Columbia Gulf Transmission Co., Columbia Gas Transmission Corp., and Texas Gas Transmission Corp.; Notice of Application

June 19, 1998.

Take notice that on June 11, 1998, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, STE 125, P.O. Box 683, Houston, Texas, 77001–0683, Columbia Gas Transmission Corporation (Columbia Gas), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky, 42304, (jointly referred to as Applicants) filed in Docket No. CP98–605–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon an exchange service authorized in Docket No. CP–74–80, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to abandon an exchange service provided pursuant to Columbia Gulf's Rate Schedule X–16, Columbia Gas' Rate Schedule X–38, and Texas Gas' Rate Schedule X–51. Applicants have mutually agreed to the proposed abandonment, and no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16886 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–610–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

June 19, 1998.

Take notice that on June 12, 1998, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–610–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to operate an existing metering facility located at the discharge side of the Chaco Compressor Station in San Juan County, New Mexico, as a jurisdictional delivery point for the delivery of natural gas pursuant to Subpart G, Part 284 of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that by order issued March 31, 1998 in Docket No. CP94–183–005, Applicant was granted permission and approval to abandon and transfer to El Paso Field Services Company (Field Services) the Chaco Compressor Station, with appurtenances. Applicant further states that the abandonment and transfer of facilities occurred on April 30, 1998.

Applicant asserts that prior to April 30, 1998, fuel for the daily operation of the Chaco Station was provided by Applicant at an existing point on Applicant's interstate transmission system downstream of the Chaco Station. Applicant further asserts that it now seeks authorization to utilize the existing metering facility at the Chaco Station as a jurisdictional delivery point to accommodate a request by Field Services for pipeline quality gas as fuel at the Chaco Plant/Compressor Station on an emergency basis. Applicant states that the fuel gas will be delivered pursuant to an effective Transportation Service Agreement between Applicant and Field Services and that Applicant has sufficient capacity to accomplish the deliveries specified herein without detriment or disadvantage to Applicant's other customers.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the National Gas act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16887 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–55–000]

Great Lakes Gas Transmission Partnership; Notice of Refund Report

June 19, 1998.

Take notice that on June 16, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing a Report of Gas Research Institute Tier 1 (GRI) Refunds for 1997 calendar year overpayments.

Great Lakes states that the refund report is filed in accordance with the Commission's Order issued February 22, 1995 in Docket No. RP95–124–000 (70 FERC ¶ 61,205).

Great Lakes states that a refund amount of $183,701 was received from GRI on May 29, 1998. Great Lakes further states this amount was subsequently refunded to eligible firm transportation customers on a pro-rata basis. The report filed by Great Lakes reflects the GRI refund amounts allocated to each eligible firm transportation customer for the 1997 calendar year.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16890 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2594–000]

Hadley Falls Associates; Notice of Withdrawal

June 19, 1998.

Take notice that on June 16, 1998, Hadley Falls Associates, tendered for filing Notice of Withdrawal of its filing made on April 20, 1998, in Docket No. ER98–2594–000.

A copy of the notice is being served upon New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16882 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–84–000]

Inter-American Energy Corporation; Notice of Petition for Adjustment

June 19, 1998.

Take notice that on June 16, 1998, Inter-American Energy Corporation (Inter-American) filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978, for relief from making the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order, in Docket No. RP97–369–000 *et al* [80 FERC ¶ 61,264 (1997); rehearing denied January 28, 1998, 82 FERC ¶ 61,058 (1998)], on remand from the D.C. Circuit Court of Appeals,[1] that directed First Sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Inter-American states that it received a $99,878.06 refund claim ($35,771.02 in principal and $64,107.04 in interest) form Colorado Interstate Gas Company (CIG), that it is a small oil and gas company owned predominantly by one 76 year old man who's sole means of support comes from this small company, and that Inter-American's financial status cannot absorb the refund claimed by CIG, even if amortized over five years. Therefore, Inter-American requests to be relieved from making the refund to CIG. Inter-American's petition is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 204526, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16892 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *Public Service Company of Colorado* v. *FERC;* 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2600–000]

Lakeport Hydroelectric Associates, Lakeport Hydroelectric Corp.; Notice of Withdrawal

June 19, 1998.

Take notice that on June 16, 1998, Lakeport Hydroelectric Associates & Lakeport Hydroelectric Corp., tendered for filing Notice of Withdrawal of its filing made on April 20, 1998, in Docket No. ER98–2600–000.

A copy of the notice is being served upon Public Service Company of New Hampshire and New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16883 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–221–001]

Northern Border Pipeline Company; Notice of Compliance Filing

June 19, 1998.

Take notice that on June 17, 1998, Northern Border Pipeline company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 15, 1998:

Substitute Second Revised Sheet Number 138
Substitute First Revised Sheet Number 262A

Northern Border states that the purpose of this filing is to comply with the Commission's letter order issued June 10, 1998 in Docket No. RP98–221–000. The Commission's June 10, 1998 letter order acquired certain housekeeping changes which have been reflected in this filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16894 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–37–000]

James E. Silver; Notice of Petition for Clarification

June 19, 1998.

Take notice that, on June 15, 1998, James E. Silver (Silver) filed a letter petitioning the Commission to clarify whether the Commission will direct Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams) to return certain Kansas ad valorem tax refunds that Silver paid to Williams on behalf of certain royalty interest owners, where Silver has since been unable to recover the refunds he paid on behalf of certain royalty owners, from those royalty owners. Silver's petition is on file with the Commission and open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988.

Silver indicates that he is the Managing Partner of Olympic Petroleum Company (Olympic), and that Williams notified him that Olympic owed $85,787.27 in Kansas ad valorem tax refunds to Williams ($34,877.98 in principal and $50,909.29 in interest). Silver states that he paid this sum to Williams, in full. Silver also indicates that $15,453.64 of this total represents refunds attributable to royalty owners that he paid on behalf of the royalty owners. Silver states that he has been unable to recover $10,281.37 from certain royalty owners, and sets forth the amount of unrecovered refunds, along with the reason he has been unable to recover those refunds from the royalty owners, as follows: (1) $8,441.53 represents ten (10) royalty owners that have failed to respond to letters and phone calls; (2) $210.32 represents a single royalty owner who's address is unknown; (3) $818.57 represents a single royalty owner who has petitioned the Commission (in Docket No. SA98–79–000) for relief from the refund requirement; and $810.95 represents five (5) royalty owners who are deceased and their estates closed. In review of this, Silver requests the Commission to clarify whether the Commission will consider returning (i.e., whether the Commission will consider directing Williams to return):

(1) The $810.95 Silver paid on behalf of deceased royalty owners and, if so, what the procedures are for requesting such consideration;

(2) the $210.32 Silver paid on behalf of the royalty owner whose address is unknown; and

(3) the $818.57, in the event that the Commission grants the royalty owner's appeal in Docket No. SA98–79–000 and, if so, what the procedure is for doing so.

In addition, Silver requests the Commission to clarify whether the Commission's September 10, 1997 refund order affords Silver any authority or legal power to recover the $8,441.53 in refunds that he paid on behalf of the 10 royalty owners who have since refused to respond to his requests to be reimbursed for the refunds he made on their behalf.

Any person desiring to comment on or make any protest with respect to the above-referenced petition should, on or before July 10, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16888 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–043]

Susquehanna Power Company and Philadelphia Electric Company; Notice of Petition for Declaratory Order

June 19, 1998.

On May 12, 1998, the Mayor and City Council of Baltimore, Maryland (Baltimore) filed a petition for declaratory order and supporting memorandum, seeking a Commission order declaring: (1) That the Commission has exclusive jurisdiction over pool elevations and pool operations of the Conowingo Project No. 405; (2) that the Licensees for the project must comply with all orders of this Commission concerning the project; and (3) such further and other relief as the Commission may deem appropriate.

Baltimore's petition is prompted by concerns that water withdrawals it makes from the project reservoir may be restricted as a result of certains actions being taken by the Susquehanna River Basin Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by July 27, 1998; must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and Project No. 405–043. Send the filings (original and 8 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any filing must also be served on each representative of the petitioner named in its petition.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16891 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–54–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund

June 19, 1998.

Take notice on June 15, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report of Gas Research Institute (GRI) refunds made to its customers.

Transco states that refunded amounts were made to eligible shippers via Mail or wire transfer based on non-discounted GRI demand amounts paid during the year ended December 31, 1997. The amounts refunded by Transco resulted from refunds made to Transco by the GRI.

Transco states that copies of this filing are being served to each affected customer.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rule sand Regulations. All such motions or protests must be filed on or before June 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16889 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CO98–600–000]

Tuscarora Gas Transmission Company; Notice of Request Under Blanket Authorization

June 19, 1998.

Take notice that on June 9, 1998, Tuscarora Gas Transmission Company (Tuscarora), 1575 Delucchi Lane, Suite 225, Post Office Box 30057, Reno, Nevada 89520–3057, filed in Docket No. CP98–600–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to operate an existing tap, meter station and appurtenant facilities constructed under the authorization of Section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Washoe County, Nevada, for transportation services by Tuscarora, under Tuscarora's blanket certificate issued in Docket No. CP93–685–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tuscarora proposes to operate the existing 6-inch tap, meter and appurtenant facilities to serve U.S. Gypsum Company's (USGC) Empire plant. It is stated that USGC has recently converted its Empire plant to burn natural gas rather than fuel oil as the primary fuel in its wallboard manufacturing process. Tuscarora states that it has been transporting up to 1,550 Dt equivalent of natural gas per day to USGC under its Section 311 authorization. The cost of the proposed facilities is estimated at $134, 000. It is stated that USGC has constructed approximately 64 miles of 6-inch pipeline to connect its Empire plant to Tuscarora's pipeline, and that Tuscarora plans to purchase up to 26 miles of this line and will seek Commission authorization for acquisition and operation. It is further asserted that no customers of Tuscarora have been or will be adversely affected by the proposed authorization for the facilities and that such authorization will have no effect on Tuscarora's ability to make deliveries to its existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 1547.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16885 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–809–000, et al. and CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Maritimes Phase II Project

June 19, 1998

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. in the above-references dockets and referred to as the Maritimes Phase II Project.

The staff prepared the FEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as proposed and recommended, would have limited adverse environmental impact.

The FEIS assesses the potential environmental effects of construction and operation of the following facilities in Maine:

- A total of about 347.0 miles of pipeline, consisting of 200.1 miles of 24– and 30–inch-diameter mainline between Westbrook in York County and Woodland (Baileyville) in Washington County, and five laterals totaling 146.9 miles of 4– to 16–inch-diameter pipeline;
- About 31,160 horsepower of new compression at two new compressor stations;
- Twelve new meter stations; and
- Associated aboveground facilities, including 35 block valves and remote blow-off valves.

The purpose of the proposed facilities would be to transport 440,000 thousand cubic feet per day of natural gas to existing and new natural gas markets in Maine and the northeast. These natural gas supplies would come from new reserves being developed in offshore Nova Scotia, Canada.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1371.

A limited number of copies are available at this location.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

In accordance with Council of Environmental Quality (CEQ) regulations implementing National Environmental Policy Act, no agency decision on the proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of the FEIS. However, the CEQ regulations provide an exception to this rule on timing when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time that the notice of the FEIS is published, allowing both

appeal periods to run concurrently. Should the Commission issue Maritimes a Certificate for the proposed action, it would be subject to a 30-day rehearing period.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16897 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–153–004]

Southern Natural Gas Company; Notice of Availability of the Draft Supplement to the Final Environmental Impact Statements for the Proposed Amended North Alabama Pipeline Project

June 19, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft Supplement to the Final Environmental Impact Statement (Supplement) for the North Alabama Pipeline Project and it addresses the environmental impact of the amended natural gas pipeline project proposed by Southern Natural Gas Company (Southern) in the above-referenced docket.

The staff prepared the Supplement to satisfy the requirements of the National Environmental Policy Act. The staff concludes that the Amended North Alabama Pipeline Project would result in limited adverse environmental impact if it is constructed as planned and with the additional mitigation recommended in this Supplement. This document supplements the *North Alabama Pipeline Project Final Environmental Impact Statement* (FEIS) that was noticed by the U.S. Environmental Protection Agency in the **Federal Register** on May 30, 1997. The Supplement only examines the route changes north of milepost 95.25 (about milepost 91.2 of the route previously studied in the FEIS). There are no changes in the facilities south of milepost 95.25.

The Supplement assesses the potential environmental effects of construction and operation of the following Southern facilities:

- About 27.1 miles of interstate natural gas pipeline (26.9 miles of 16-inch-diameter pipeline and 0.2 mile of 12-inch-diameter pipeline); and
- Two new meter stations, and related facilities.

Facilities required by two local distribution companies to receive natural gas from Southern are also examined.

The purpose of Southern's proposed facilities would be to transport a total of 69,000 thousand cubic feet per day of natural gas to one existing and two new customers in northern Alabama.

Comment Procedure

Written Comments

Any person wishing to comment on the Supplement may do so. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Reference *Docket No. CP96–153–004;*
- Send *two* copies of your comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR 11.2; and
- Mail your comments so that they will be received in Washington, D.C. on or before *August 10, 1998.*

Public Meeting Schedule

A public meeting to receive comments on the Supplement will be held on July 30, 1998 at 7:00 p.m. at the: Hartselle Civic Center, 406 Nanceford Road, Hartselle, AL 35640.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the Supplement. Anyone who would like to speak at the public meeting may get on the speakers list by signing up at the public meeting. Priority will be given to persons representing groups. A transcript will be made of the meeting.

After these comments are reviewed, any significant new issues are investigate, and modifications are made to the draft Supplement, a final Supplement will contain the staff's responses to timely comments received on the draft Supplement.

The Supplement has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

A limited number of copies are available at this location.

Copies of the Supplement have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding. Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person may file a timely motion to intervene during the comment period on the basis of the Commission staff's draft Supplement (see 18 CFR 380.106 and 385.214). *You do not need intervenor status to have your comments considered.*

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16884 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2699–001, 2019–017, 11452–000, 11563–002, and 11477–000 California]

Utica Power Authority and Northern California Power Agency; Notice of Intent to Conduct Public Scoping Meetings and Site Visit

June 19, 1998.

The Federal Energy Regulatory Commission (Commission) received applications from Utica Power Authority and Northern California Power Agency (applicants) to relicense the Angels, Utica, and Upper Utica Projects as follows:

Project No.	Project name	Applicant
—2699–001	Angels	Utica Power Authority.
—2019–017	Utica	Utica Power Authority.
11452–000	Angels	Northern California Power Agency.
11477–000	Utica	Northern California Power Agency.

Project No.	Project name	Applicant
11563–000	Upper Utica	Northern California Power Agency.

The projects are located in Calaveras, Alpine, and Toulumne Counties, California. The Commission will hold agency and public scoping meetings on July 22, and 23, 1998, for preparation of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the issuance of licenses for the projects.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and two public meetings. The agency scoping meeting will focus on resource agencies and non-governmental organizations (NGO) concerns, while the public scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or all the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Meeting

Wednesday, July 22, 1998, 10:00 am, Bret Harte High School, Music Room, 364 Murphys Grade Road, Angels Camp, California

Public Meetings

Wednesday, July 22, 1998 7:00 pm, Bret Harte High School Music Room, 364 Murphys Grade Road, Angels Camp, California

Thursday, July 23, 1998, 7:00 pm, Bear Valley Lodge, 3 Bear Valley Road, Bear Valley, California

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed at the meetings to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicants and Commission staff will conduct project site visits as follows:

Angels and Utica Projects

Tuesday, July 21, 1998 9:00 am.

Meet in front of the Utica Power Authority Building, 1168 Booster Way, Angels Camp, California.

Those interested in participating should contact Mr. Dennis Dickman at (209) 754–4230 in advance.

Upper Utica Project

Thursday, July 23, 1998 10:00 am.

Meet in front of the Bear Valley Lodge, 3 Bear Valley Road, Bear Valley, California.

Those interested in participating should contact: Mr. Hari Modi at (916) 781–4204 in advance.

All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to the sites.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resources issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the projects. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, not later than August 24, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page the project names(s) and project number(s).

For further information, please contact Hector M. Perez at (202) 219–2843.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16880 Filed 6–24–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6116–6]

Notice of National Strategy for the Development of Regional Nutrient Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of National Strategy for the Development of Regional Nutrient Criteria, and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a National Strategy for the Development of Regional Nutrient Criteria. The Strategy describes the asppproach the Agency is taking to develop scientific information relating to nutrient overenrichment of the Nation's surface waters and to working with States to assure that State water quality standards reflect this nutrient information.

This Strategy has been through Agency review and external peer review. If you have comments on this document please provide them to the address below. They will be addressed in future updates of the Strategy.

DATES: Written comments should be submitted to the person listed by August 24, 1998.

Comments should be sent to: Nicholas A. Baer, Health and Ecological Criteria Division (4304), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

ADDRESSES: This notice contains a summary of the National Strategy for the Development of Regional Nutrient Criteria. Copies of the complete document or a fact sheet summarizing the Strategy may be obtained from the U.S. Environmental Protection Agency,

National Center for Environmental Publication and Information, 11029 Kenwood Road, Bldg. 5, Cincinnati, Ohio 45242; fax 1–513–489–8695 or 1–800–490–9198. The fact sheet and the Strategy are also available on the Internet at http://www.epa.gov/ncepihom/orderpub.html.

FOR FURTHER INFORMATION CONTACT: Robert Cantilli, Health and Ecological Criteria Division (4304), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 260–5546, Fax (202) 260–1036, email: cantilli.robert@epamail.epa.gcv

SUPPLEMENTARY INFORMATION:

Background

Nutrients are essential to the health and diversity of surface waters. In excess amounts, however, nutrients cause hypereutrophication resulting in an overabundance of primary producers and decline of the biological community as well as potential human health risks. The National Water Quality Inventory 1996 Report to Congress cites nutrients (nitrogen and phosphorus) as one of the leading causes of water quality impairment in our Nation's rivers, lakes and estuaries. Nutrients have also been implicated with the large hypoxic zone in the Gulf of Mexico, and *Pfiesteria*-induced fish kills and human health problems in the coastal waters of several East Coast States as well as events in the Gulf States.

Nutrient Strategy

A number of States have identified the specific concentration levels at which nutrient overenrichment occurs in their waters, but many States have not adopted such nutrient criteria into their State water quality standards. As a result, nutrient overenrichment problems are underestimated and the response authorities of the Clean Water Act and other laws are not fully engaged. This Strategy describes the approach EPA will take for development of scientific information relating to nutrients (i.e., water quality criteria pursuant to Section 304(a) of the Clean Water Act) and to working with States to assure adoption of nutrient criteria into State water quality standards pursuant to Section 303(c) of the Clean Water Act.

The major elements of this strategy include:

- Use of regional and waterbody-type approach for the development of nutrient water quality criteria.
- Development of technical guidance documents that will serve as "user manuals" for assessing trophic state and developing nutrient criteria specific to a region and waterbody-type. These guidance documents will establish nutrient water quality criteria in the form of numerical regional target ranges. EPA expects States and Tribes to use these criteria as a basis for the development of nutrient provision of water quality standards. These water quality standards will provide a basis for a range of pollution control activities including NPDES permits and total maximum daily loads (TMDLs).
- Establishment of a EPA National Nutrient Team with Regional Nutrient Coordinators to development regional databases and to promote State and Tribal involvement.
- Monitoring and evaluation of the effectiveness of nutrient management programs as they are implemented.

Regional and Waterbody-Type Approach

There is a great deal of variability in nutrient levels and nutrient responses throughout the country. This natural variability is due to differences in geology, climate and waterbody type. For these reasons, EPA's custom of developing water quality criteria guidance in the form of single numbers for nationwide application is not appropriate for nutrients. EPA believes that distinct geographic regions and types of aquatic ecosystems need to be evaluated differently and that criteria specific to those regions and ecosystems need to be developed.

Waterbody-Type Technical Guidance

An essential technical element of this strategy will be waterbody-type guidance documents describing the techniques for assessing the trophic state of a waterbody and methodologies for developing regional nutrient criteria. In addition, each technical document will provide criteria guidance under section 304(a) of the Clean Water Act in the form of Regional numerical target ranges for phosphorus, nitrogen, and other nutrient endpoints. EPA expects States and Tribes to use these target ranges as the basis for adopting nutrient criteria into water quality standards in the absence of more site-specifically developed water quality criteria and standards. EPA intends to use State databases to develop these regional target ranges, supplemented with new regional case studies and demonstration projects to provide additional information. EPA intends to complete these technical guidance documents by the end of the year 2001.

Revision of State Water Quality Standards

As technical guidance is developed and regional nutrient ranges are established, EPA expects States and Tribes to revise water quality standards to include appropriate regional nutrient criteria by waterbody type. Once adopted as part of State or Tribal water quality standards, the nutrient values become the basis for making many management decisions to reduce the overenrichment of our nation's waters, e.g., through the TMDL and NPDES permitting processes. These values used together with best management practices (BMPs) and other management techniques should form the basis of a State management program for nutrients.

EPA expects all States and Tribes to adopt and implement numerical nutrient criteria into their water quality standards by December 31, 2003. States and Tribes may accomplish this by developing their own regional criteria values in watersheds where applicable data are available or by using the EPA target nutrient ranges. EPA will review the new or revised standards under Section 303(c)(3) of the Clean Water Act. If EPA disapproves the new or revised standard submitted by a State or Tribe (e.g., because EPA determines that it is not scientifically defensible or is not protective of designated uses), or if EPA determines that a new or revised nutrient standard is necessary for a State or Tribe (e.g., because EPA determines that the State or Tribe has not demonstrated reasonable progress toward developing numerical nutrient standards), EPA will initiate rulemaking to promulgate nutrient criteria appropriate to the region and waterbody types. Any resulting water quality standard would apply until the State or Tribe adopts and EPA approves a revised standard.

National and Regional Nutrient Teams

EPA will provide additional technical and financial assistance to the Regions and States to accelerate the development of nutrient criteria. This will include the establishment of a National Nutrient Team which includes coordinators from each EPA Region. The Regional Coordinator will foster the development and implementation of State projects, databases, nutrient criteria and standards, and the award of financial assistance to States and Tribes to support these endeavors. Each coordinator will be responsible for nutrient management activities for her/his Region and its member States and Tribes consistent with decisions of the

national nutrient program. It is expected that each Regional coordinator will form their own teams which include State and Tribal representatives and other federal and local representatives, as needed, to develop nutrient databases and nutrient target ranges.

Monitoring and Evaluation

Once regulatory controls are in place, EPA and the States/Tribes will need to evaluate their effectiveness. The databases and monitoring systems, together with the derived criteria, should be used to assess actual progress toward eliminating overenrichment conditions.

Dated: June 18, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98–16941 Filed 6–24–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections; Comments Requested

June 18, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commissions burden estimates; ways to enhance the quality, utility, and clarity of the information collected and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before August 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Jerry Cowden Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jcowden@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Jerry Cowden at 202–418–0447 or via internet at jcowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0228.

Title: Section 80.59 Compulsory ship station.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit, individuals or households, non-profit institutions, state and local governments.

Number of Respondents: 200.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 400 hours.

Frequency of Response: On occasion.

Total Annual Cost: 0.

Needs and Uses: The requirement contained in this rule section is necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amended, which permits the Commission to waive the required annual inspection of certain oceangoing ships for up to 30 days beyond the expiration date of a vessel's radio safety certificate, upon a finding that the public interest would be served. The information is used by the Engineer in Charge of FCC Field Offices to determine the eligibility of a vessel for a waiver of the required annual radio station inspection.

OMB Approval Number: 3060–0265.

Title: Section 80.868 Card of instructions.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit, state, local or tribal government, not-for-profit institutions.

Number of Respondents: 3,000.

Estimated Time Per Response: 1 hour per response.

Total Annual Burden: 300 hours.

Frequency of Response: On occasion.

Needs and Uses: The recordkeeping requirement contained in this rule section is necessary to insure that radiotelephone distress procedures are readily available to the radio operator on board certain vessels (300–1600 gross tons) required by the Communications Act of 1934, as amended, or the International Convention for Safety of Life at Sea to be equipped with a radiotelephone station. The information is used by a vessel radio operator during an emergency situation, and is designed to assist the radio operator to utilize proper distress procedures during a time when he or she may be subject to considerable stress or confusion.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16829 Filed 6–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:31 a.m. on Monday, June 22, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Julie L. Williams (Acting Comptroller of the Currency), and concurred in by Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 22, 1998.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 98–17024 Filed 6–22–98; 4:57 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–200993–001

Title: Oakland-Yang Ming Terminal Use Agreement

Parties:

Port of Oakland Yang Ming Marine Transport Corporation

Synopsis: The proposed amendment allows Yang Ming's cargo handled at Howard Terminal to and from Cosco vessels to be treated as Yang Ming's cargo being handled at Seventh Street Terminal to and from Yang Ming vessels. Cosco's cargo handled at Seventh Street Terminal to and from Yang Ming vessels will be treated as Cosco cargo being handled at Howard Terminal. The term of the agreement continues to run through May 1, 2001.

Dated: June 19, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16903 Filed 6–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freights forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

IFS Film Services, Inc., 6521 NW 87th Avenue, Miami, FL 33178, Officer: Mayde C. Montesano, Director.

Dated: June 22, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16902 Filed 6–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community Bank Minnesota Employee Stock Ownership Plan, Owatonna, Minnesota; to become a bank holding company by acquiring an additional 9.57 percent, for a total of 29.70 percent, of the voting shares of Owatonna Bancshares, Inc., Owatonna, Minnesota, and thereby indirectly acquire Community Bank Minnesota, Owatonna, Minnesota.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Star Bancshares, Inc., Austin, Texas, and thereby indirectly acquire Star Bancshares of Nevada, Inc., Carson City, Nevada, and First State Bank, Austin, Texas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Independent Bankshares, Inc., Abiliene, Texas; to acquire 100 percent of the voting shares of Azle Bancorp, Azle, Texas, and thereby indirectly acquire Azle Holdings, Inc., Azle, Texas, and Azle State Bank, Azle, Texas.

2. McLaughlin Bancshares, Inc., Ralls, Texas; to acquire 100 percent of the voting shares of First Petersburg Bancshares, Inc., Petersburg, Texas, and thereby indirectly acquire First State Bank, Petersburg, Texas.

Board of Governors of the Federal Reserve System, June 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16836 Filed 6–24–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–16–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Breast Cancer Incidence in an Occupational Cohort Exposed to Ethylene Oxide and in an Occupational Cohort Exposed to Polychlorinated Biphenyls (0920–0366)—National Institute for Occupational Safety and Health (NIOSH)—Extension—Breast cancer is the most common incident cancer among U.S. women, and the second leading cause of cancer mortality in U.S. women. Increasing numbers of women are employed outside the home, yet few studies of breast cancer etiology have addressed occupational and environmental chemical exposures, and

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many cancer studies of industrial cohorts have excluded women. This study will provide information concerning: (1) the incidence of breast cancer in a cohort of women exposed to ethylene oxide (ETO), and (2) the incidence of breast cancer in a cohort of women exposed to polychlorinated biphenyls (PCBs). Both compounds are suspected breast carcinogens. These two cohorts have been previously assembled by NIOSH, and each represents the largest and best defined female study cohort in the U.S. for the respective exposure.

All women in the existing NIOSH ethylene oxide cohort (n=9,929) and PCB cohort (13,736) will be enrolled in the study. For both cohorts, data from personnel records has been coded into a computer file containing demographic, and work history information. This information will be used to estimate workplace exposures. Vital status has been determined through automated data sources. Questionnaires are currently being mailed to each living cohort member to obtain information on breast cancer incidence and risk factors for breast cancer. For deceased cohort members, next-of-kin will be asked to provide this information. Other record sources such as death certificates and population-based cancer incidence registries will also be used to identify cancer cases. The diagnosis will be confirmed by medical records. Each questionnaire will take approximately 30 minutes to complete. Total annual burden hours are 12,500.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hours)	Total burden (in hours)
Workers	23,000	1	.50	11,500
Medical providers	2,000	1	.50	1,000

2. Tests and Requirements for Certification and Approval of Respiratory Protective Devices—42 CFR 84—Regulation—(0920-0109)—Extension—The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 et seq., and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters. In addition to benefitting industrial workers, the improved testing requirements also benefit health care workers implementing the current CDC Guidelines for Preventing the Transmission of Tuberculosis. Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators.

NIOSH, in accordance with implementing regulations 42 CFR 84: (1) Issues certificates of approval for respirators which have met improved construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification, and (5) establishes approval labeling requirements. Total annual burden hours are 177,968.

Respondents (section/data type)	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
84.11/Applications	56	14.0	63.56	49,831
84.33/Labeling	56	14.0	1.54	1,207
84.35/Modifications	56	14.0	79.45	62,289
84.41/Reporting	56	14.0	22.70	17,797
84.43/Record keeping	56	14.0	56.75	44,492
84.257/Labeling	56	14.0	1.50	1,176
84.1103/Labeling	56	14.0	1.50	1,176

Dated: June 18, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-16752 Filed 6-24-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0429]

Constantine I. Kostas; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies a request for a hearing and issues a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Constantine I. Kostas, Nine Cedar Mill Rd., Lynnfield, MA 01940, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on its finding that Dr. Kostas was convicted of felonies under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and conduct relating to

the regulation of a drug product under the act.

EFFECTIVE DATE: June 25, 1998.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Constantine I. Kostas, a former clinical investigator retained by a pharmaceutical drug manufacturer to conduct two investigational drug studies, pled guilty and was sentenced on October 13, 1988, to one count of mail fraud and one count of making false statements to a governmental agency. These are Federal felony offenses under 18 U.S.C. 1341 and 1001, respectively. These convictions were based upon Dr. Kostas' submission of fabricated patient case report forms to the sponsor of investigational drug studies from whom Dr. Kostas received, via the U.S. Postal Service, payments for conducting the clinical studies.

On December 14, 1992, Dr. Kostas received a certified letter from FDA offering Dr. Kostas an opportunity for a hearing on the agency's proposal to issue an order under the Generic Drug Enforcement Act (GDEA), section 306(a)(2) of the act (21 U.S.C. 335a(a)(2)). Under section 306(a)(2) of the act, an individual who has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, or conduct relating to the regulation of a drug product, shall be debarred from providing services in any capacity to a person that has an approved or pending drug product application. FDA found that Dr. Kostas was subject to debarment under section 306(a)(2) of the act because he had been convicted of Federal felony offenses for conduct related to drug product development, approval, and regulation.

The certified letter informed Dr. Kostas that his request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The certified letter further notified Dr. Kostas that if it conclusively appeared from the face of the information and factual analysis in his request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing in accordance with procedures set forth at part 12 (21 CFR part 12).

Dr. Kostas requested a hearing in a letter dated February 12, 1993, based upon three grounds. His request, in its entirety, states:

> Dr. Kostas, by his attorney, requests a hearing on the following grounds:
>
> (1) The law, as applied to Dr. Kostas, violates the expost facto clause of the Constitution of the United States. Art. I, Sec. 9, cl. 3 of the Constitution. Debarment is, in effect, a criminal forfeiture and an increased punishment which could not have been imposed at the time of Dr. Kostas' conviction.
>
> In addition, Dr. Kostas' offer of plea of guilty to the criminal charges was tendered and accepted with no mention of P.L. 102–282 [GDEA]; and
>
> (2) The pleas of guilty which prompted your letter of December 9, 1992, were based upon conduct last occurring in 1985. The conduct was not discovered by the government, but was reported voluntarily by Dr. Kostas. In addition, Dr. Kostas immediately, that is in 1985, returned all funds to [the pharmaceutical company]. The pleas of guilty did not result in any incarceration and Dr. Kostas did not lose his license to practice. Since in excess of seven years has passed, application of 21 U.S.C. § 335a would be violative of both the ex post facto and due process clauses of the Constitution.
>
> (3) Dr. Kostas hereby incorporates all of the reasons in the preceding paragraph and states additionally that precepts of constitutional law require statutes such as 21 U.S.C. § 335a to be applied prospectively and with the rule of lenity.
>
> For all of the foregoing reasons, pursuant to 21 C.F.R. § 12.22, Dr. Kostas requests a hearing on the above issues. Undersigned contemplates that briefing of issues and argument may be necessary, insofar as the facts are not in dispute.

Although Dr. Kostas concedes that he was convicted of felonies under Federal law and that no facts are in dispute, he argues that FDA's proposal to debar him is unconstitutional. The Deputy Commissioner for Operations has considered Dr. Kostas' claims and, for the reasons discussed below, concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Dr. Kostas' Claims in Support of His Hearing Request

A. The Ex Post Facto Argument

In his hearing request, Dr. Kostas argues that the ex post facto clause of the U.S. Constitution prohibits FDA from retrospectively applying section 306(a)(2) of the act to him. He states that "debarment is, in effect, a criminal forfeiture and an increased punishment which could not have been imposed at the time of Dr. Kostas' conviction."

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 497 U.S. 37 (1990).)

Dr. Kostas' argument that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive, because the intent of debarment is remedial, not punitive. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is "to restore and ensure the integrity of the abbreviated new drug application approval process and to protect the public health." (See section 1, Pub. L. 102–282, GDEA of 1992.) In a suit challenging a debarment order issued by FDA (58 FR 69368, December 30, 1993), the constitutionality of the debarment provision was upheld against a challenge under the ex post facto clause. The reviewing court affirmed the remedial character of debarment:

> Without question, the GDEA serves compelling governmental interests unrelated to punishment. The punitive effects of the GDEA are merely incidental to its overriding purpose to safeguard the integrity of the generic drug industry while protecting public health.

(*Bae* v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995); see also *DiCola* v. *Food and Drug Administration*, 77 F.3d 504 (D.C. Cir. 1996).) Because the intent of the GDEA is remedial rather than punitive, Dr. Kostas' argument that the GDEA violates the ex post facto clause must fail. (See *Bae* v. *Shalala*, 44 F.3d at 496–497.)

Dr. Kostas also states that his "offer of plea of guilty to the criminal charges was tendered and accepted with no mention or contemplation of [debarment]." It is not the function of the plea agreement to provide notice of any subsequent civil or administrative actions. Nor do the terms of the plea agreement preclude subsequent civil or administrative actions against Dr. Kostas. Therefore, Dr. Kostas' claim that the plea agreement does not mention debarment fails to raise a genuine and substantial issue of fact.

B. The Due Process Argument

Dr. Kostas argues that, because his debarment is based upon conduct

occurring over 7 years before the agency proposed to debar him, and because of other mitigating factors, his debarment also violates the due process clause (presumably the fifth amendment) of the U.S. Constitution. Under the fifth amendment, no person shall be deprived of life, liberty, or property without due process of law. Dr. Kostas' due process claim appears grounded upon an alleged retroactive deprivation of future employment.

The Supreme Court has said that retroactive legislation must be supported by "a legitimate legislative purpose furthered by rational means." (*Pension Benefit Guar. Corp.* v. *R. A. Gray & Co.*, 467 U.S. 717, 729 (1984).) The "judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Id.* As discussed above, Congress intended the GDEA to be remedial. The GDEA prohibits certain individuals from providing services to a person who has an approved or pending drug application in order to meet the legitimate regulatory purpose of restoring the integrity of the drug approval and regulatory process and protecting the public health. In addition, the remedial nature of the GDEA is not diminished simply because the GDEA deters debarred individuals from future misconduct. (*U.S.* v. *Halper*, 109 S.Ct. 1892, 1901, n.7 (1989); *Bae* v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995).)

Dr. Kostas argues that because he was not incarcerated and did not lose his "license to practice," and because he voluntarily reported his conduct and provided restitution to the pharmaceutical company, debarment under the GDEA would violate the due process clauses of the Constitution. This list of mitigating circumstances suggests a "takings" argument based upon an expectation of future employment. However, the expectation of employment is not recognized as a protected property interest under the fifth amendment. (*Hoopa Valley Tribe* v. *Christie*, 812 F.2d 1097, 1102 (9th Cir. 1986); *Chang* v. *United States*, 859 F.2d 893, 896–897 (Fed. Cir. 1988).) One who voluntarily enters a pervasively regulated industry, such as the pharmaceutical industry, and then violates its regulations, cannot successfully claim that he has a protected property interest when he is no longer entitled to the benefits of that industry. (*Erikson* v. *United States*, 67 F.3d 858 (9th Cir. 1995).) Thus, debarment for a 1985 felony conviction does not violate the ex post facto or due process clauses of the Constitution. In addition, Dr. Kostas' list of mitigating circumstances does not raise a genuine or substantial issue of disputed fact.

C. Prospective Application and the Rule of Lenity Arguments

Finally, Dr. Kostas argues that constitutional law requires that the GDEA be applied "prospectively" and with "the rule of lenity." Again Dr. Kostas' arguments are unpersuasive. The GDEA, as remedial legislation, was intended by Congress to be applied, in part, to conduct that occurred before enactment of the legislation. The express language of section 306(a)(1) of the act requires that mandatory debarment apply only prospectively to a person "other than an individual" who has been convicted of a Federal felony offense "after the date of enactment of this section [section 306(a)(1)]." By contrast, section 306(a)(2) of the act, which applies only to individuals, omits the limiting language regarding prospective application, indicating a legislative intent to apply this provision retrospectively. When one of two closely related subsections within the same act contains particular language that is omitted from the other subsection, "it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion." (*Russello* v. *U.S.*, 464 U.S. 16, 24 (1983) (citations omitted); *USA* v. *Olin Corp.*, 107 F.3d 1506, 1513 (11th Cir. 1997).) Such retrospective remedial legislation is not unlawful so long as the "retroactive application of the legislation is itself justified by a rational legislative purpose." (*Pension Benefit Guar. Corp.* v. *R. A. Gray & Co.*, 467 U.S. at 730.) As discussed previously, debarment under the GDEA meets the legitimate regulatory purpose of restoring the integrity of the drug review process and protecting the public health.

Dr. Kostas also states that constitutional law requires that the "rule of lenity" apply to his case. The rule of lenity applies in criminal cases and requires a sentencing court to impose the lesser of two penalties where there is an actual ambiguity over which penalty should apply. (*U.S.* v. *Canales*, 91 F.3d 363 (2nd Cir. 1996).) The rule of lenity is not applicable here because debarment under the GDEA is neither a criminal law nor a penalty. It is a civil, remedial law intended to protect the drug review process and the public health. Moreover, section 306(a)(2) of the act requires debarment in this case and does not provide the agency with discretion to implement a different remedy.

None of Dr. Kostas' arguments raises a genuine and substantial issue of fact regarding his conviction. Instead, Dr. Kostas concedes that there are no facts in dispute. Moreover, Dr. Kostas' constitutional arguments are without merit. Accordingly, the Deputy Commissioner for Operations denies Dr. Kostas' request for a hearing under 21 CFR 12.28.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act and under authority delegated to him (21 CFR 5.20), finds that Dr. Constantine I. Kostas has been convicted of felonies under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of a drug product (section 306(a)(2)(A) of the act); and (2) relating to the regulation of a drug product (306(a)(2)(B)) of the act)).

As a result of the foregoing findings, Dr. Kostas is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective June 25, 1998 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Kostas in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Kostas, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by Dr. Kostas or with his assistance during his period of debarment (section 306(c)(1)(B) of the act).

Dr. Kostas may file an application to attempt to terminate his debarment under section 306(d)(4)(A) of the act. Any such application, if filed, will be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (D) of the act. Any such application should be identified with Docket No. 92N–0429 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions

may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 18, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

[FR Doc. 98–16850 Filed 6–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 29, 30, and 31, 1998, 8 a.m. to 5 p.m.

Location: Gaithersburg Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ermona B. McGoodwin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss documents on "Guidance to Industry" being developed by the Office of Drug Evaluation IV's Division of Anti-Infective Drug Products and the Division of Special Pathogens and Immunologic Drug Products. Copies of these draft guidance documents can be obtained from the Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, or requested by FAX at 301–827–4577. Electronic versions of these guidance documents will be available via Internet using the World Wide Web (www). To access the documents on the www, connect to CDER Home Page at http://www.fda.gov/cder/guidance.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 22, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on July 29, 30, and 31, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 22, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–16934 Filed 6–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on August 7, 1998, 8 a.m. to 5 p.m.

Location: Bethesda Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application 20–905 Arava (leflunomide, Hoechst Marion Roussel, Inc., Germany) for the treatment of rheumatoid arthritis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 15, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–16837 Filed 6–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–961, Vitravene® (fomivirsen sodium intravitreal injection, ISIS Pharmaceuticals), for treatment of cytomegalovirus (CMV) retinitis in patients with acquired immune deficiency syndrome (AIDS).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 17, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m., and between approximately 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 17, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 12, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–16851 Filed 6–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; Altered System of Records

AGENCY: National Institutes of Health, HHS.

ACTION: Notification of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the National Institutes of Health (NIH) is publishing a notice of proposal to alter an existing system of records 09–25–0036, "Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO." The system is altered by including contractor past performance information as a new category of records; adding consultants and contractors as individuals covered by the system; and including a new routine use which allows NIH to share information it collects on contractor past performance information with other Federal agencies.

DATES: The NIH invites interested parties to submit comments on the proposed internal and routine uses on or before July 27, 1998. The NIH sent a Report of the Altered System to the Congress and to the Office of Management and Budget (OMB) on June 19, 1998. The alteration of this system of records will be effective 40 days from the date submitted to the OMB, unless NIH receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, 301–496–2832. (This is not a toll free number.)

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, 301–496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to alter an existing system of records 09–25–0036, "Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/DRG and HHS/NIH/CMO." The system is altered by including contractor past performance information as a new category of records; adding consultants and contractors as individuals covered by the system; including a new routine use which allows NIH to share information it collects on contractor past performance information with other Federal agencies; and editorial changes to accommodate normal updating changes.

The purposes of this system of records are to (1) support centralized grant programs of the Public Health Service by providing services in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting; maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program; maintain current and historical information pertaining to the establishment of chartered advisory committees of the National Institutes of Health and the appointment or designation of their members; and maintain current and historical information pertaining to contracts awarded by the National Institutes of Health, and performance evaluations on NIH contracts and contracts awarded by other Federal agencies that participate in the NIH Contractor Performance System.

This system will comprise records that contain names, applications, grant or contract ID number, contractor tax ID number, awards, trainee appointments, current and historical information pertaining to chartered advisory committees, and past performance information pertaining to contractors.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH and contractor staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act regulations. The System Managers will control access to the data. Authorized users will be granted access only to those records within their specific area of responsibility. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are NIH extramural and committee management staff, NIH contract management staff, and Federal acquisition personnel. One-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System Manager. Records may be stored on hard copy, discs and magnetic tapes, and in other machine-readable format, regardless of physical form or characteristics. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf:45–13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other

authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, and similar limited access systems. Access to the contractor performance files is restricted through the use of secure socket layer encryption and through an IBM password protection system. Physical access to work areas is restricted to employees or authorized contractors with a valid "need-to-know."

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use allows disclosure to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards. The second routine use allows disclosure to the cognizant audit agency for auditing. The third routine use allows disclosure to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The forth routine use allows disclosure to qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process. The fifth routine use allows disclosure to a Federal agency, in response to its request, in connection with the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter. The sixth routine use allows disclosure of contractor past performance information to a Federal agency upon request and allows routine access to contractor past performance information to Federal agencies that subscribe to the NIH Contractor Performance System. The seventh routine use allows disclosure for a research purpose as authorized by the Department or required by law. The eighth routine use allows disclosure to a private contractor or Federal agency for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The ninth routine use allows disclosure to a grantee or contract institution in connection with performance or administration under the conditions of the particular award or contract. The tenth routine use allows disclosure to the Department of Justice, or to a court or other adjudicative body, from this system of records when HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

We have also made editorial changes throughout the System Notice to enhance clarity and specificity and to accommodate normal updating changes.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: June 5, 1998.

Anthony L. Itteilag,

Deputy Director for Management.

SYSTEM NAME:

Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Rockledge Centre II, 6701 Rockledge Drive, Bethesda, MD 20817

Building 12, NIH Computer Center, 9000 Rockville Pike, Bethesda, MD 20892

Building 31, Room 3B–59, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators; program directors; program and projects staff and others named in the application; National Research Service Awards (NRSA) trainees and fellows; research career awardees; chartered advisory committee members; contractor personnel; subcontractor personnel; and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Funding applications, awards, associated records, trainee appointments, current and historical information pertaining to chartered advisory committees, and past performance information pertaining to contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 217a, 241, 282(b)(6), 284a, and 288. 48 CFR Subpart 15.3 and Subpart 42.15.

PURPOSE(S) OF THE SYSTEM:

(1) To support centralized grant programs of the Public Health Service. Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The database is used to provide complete, accurate, and up-to-date reports to all levels of management.

(2) To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program.

(3) To maintain current and historical information pertaining to the establishment of chartered advisory committees of the National Institutes of Health and the appointment or designation of their members.

(4) To maintain current and historical information pertaining to contracts awarded by the National Institutes of Health, and performance evaluations on NIH contracts and contracts awarded by other Federal agencies that participate in the NIH Contractor Performance System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).

2. Disclosure may be made to the cognizant audit agency for auditing.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

6. Disclosure of past performance information pertaining to contractors may be made to a Federal agency upon request. In addition, routine access to past performance information on contractors will be provided to Federal agencies that subscribe to the NIH Contractor Performance System.

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the

research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) justifies the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining that information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private contractor or Federal agency for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The contractor or Federal agency will be required to maintain Privacy Act safeguards with respect to these records.

9. Disclosure may be made to a grantee or contract institution in connection with performance or administration under the conditions of the particular award or contract.

10. Disclosure may be made to the Department of Justice, or to a court or other adjudicative body, from this system of records when (a) HHS, or any component thereof; of (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or employee in his or her individual capacity when the Department of Justice (or HHS, where it is authorized to do so) his agreed to represent the officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would held in the effective representation of the governmental party.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on hard copy, discs and magnetic tapes, and in other machine-readable format, regardless of physical form or characteristics.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number, and contractor tax ID number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to NIH extramural and committee management staff, NIH contract management staff, and Federal acquisition personnel. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System Manager.

2. *Physical Safeguards:* Physical access to Office of Extramural Research (OER) work areas is restricted to OER employees. Physical access to Office of Contracts Management (OCM) work areas is restricted to OCM employees. Physical access to Committee Management Office (CMO) work areas is restricted to CMO employees. Access to the contractor performance files is restricted through the use of secure socket layer encryption and through an IBM password protection system. Only authorized government contracting personnel are permitted access. Access is monitored and controlled by permitted access. Access is monitored and controlled by OCM.

3. *Procedural Safeguards:* Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, and similar limited access systems.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records," item 4000–A–2, which allows records to be destroyed when no longer needed for administrative purposes. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS AND ADDRESSES:

For extramural awards:
Director, Extramural Information Systems, OD/OER/OPERA, Rockledge II, Room 2172, Bethesda, MD 20892
For chartered Federal advisory committees of the National Institutes of Health:
NIH Committee Management Officer, Building 31, Room 3B–59, 31 Center Drive, Bethesda, MD 20892
For contracts:
Office of Contracts Management, 6100 Executive Boulevard, Room 6D01, Rockville, MD 20892

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicant institution, individual, individual's educational institution and references, and participating Federal acquisition personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–16914 Filed 6–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant Award to the Department of Community Medicine and Health Care, University of Connecticut

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of grant funds for the Department of Community Medicine and Health Care, University of Connecticut.

SUMMARY: This notice is to inform the public that CSAT is making available approximately $200,000 for an award in FY 1998 to the University of Connecticut Department of Community Medicine and Health Care to develop knowledge concerning the effectiveness of primary care referral and behavioral health treatment for alcohol dependence in managed care. Eligibility for this program is limited to the Department of Community Medicine and Health Care, University of Connecticut. Using Robert Wood Johnson funding, the University of Connecticut has already implemented an experimental design research program on the cost effectiveness of alcohol screening and brief intervention in six managed care settings. This cross-site study in managed care settings is unique in its design and scope. However, none of the study settings are testing the cost effectiveness of Motivational Enhancement Therapy (MET) vs. standard alcoholism treatment. SAMHSA/CSAT, by means of this relatively small investment in this existing University of Connecticut program, will be able to capitalize on this unique opportunity to test the cost effectiveness on different models of alcoholism treatment for primary care vs. non primary care referred patients in managed care settings within the context of the existing Robert Wood Johnson funded study protocol. It is for these reasons, and in order to obtain the benefits of the additional information for the affected provider communities, that only the University of Connecticut is invited to apply. The application will be considered for funding on the basis of its overall technical merit as determined through the peer and CSAT National Advisory Council review processes.

Funding from CSAT will support supplemental evaluation activities in three Robert Wood Johnson supported screening and brief intervention (SBI) study sites. These sites will extend their current evaluation studies, to include the following: (l) implement data information systems to track patients who are referred by the primary care practices into treatment; (2) evaluate the cost effectiveness of primary care physician vs. primary care intervention specialist referrals for alcohol dependence and (3) evaluate the cost effectiveness of MET vs. standard treatment for alcohol dependent patients.

Authority: The award will be made under the authority of Section 501(d)(5) of the Public Health Service Act, as amended (42 U.S.C. 290aa). The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.230.

Contact: Dr. Mady Chalk, Director, Office of Managed Care, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th floor, 5600 Fishers Lane, Rockville, MD 20857, 301) 443–8796.

Dated: June 19, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–16932 Filed 6–24–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in July 1998.

Summaries of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individuals named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: July 22, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: July 22, 1998, 8:30 a.m.–10:00 a.m.

Panel: Center for Mental Health Services Minority Fellowship Program SM98–008.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: July 22, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway , Arlington, VA 22202.

Closed: July 22, 1998, 10:30 a.m.–12:00 p.m.

Panel: Center for Mental Health Services Cooperative Agreement for a Technical Assistance Center SM 98–011.

Contact: Kenneth D. Howard, 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: July 27–30, 1998, 9:00 a.m.–5:00 p.m., July 31, 1998, 9:00 a.m.—adjournment

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: July 27–30, 1998, 9:00 a.m.–5:00 p.m., July 31, 1998, 9:00 a.m.—adjournment.

Panel: Statewide Consumer and Consumer Supporter Networking Grants SM 98–013.

Contact: Clark K. Lum, Room 17–89, Parklawn Building, Telephone 301–443–9919, FAX: 301–443–3437.

Dated: June 22, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–16978 Filed 6–24–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: George Hogan, Jr., Okeechobee, FL, PRT–844074

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvaucelli*) and Arabian oryx (*Oryx leucoryx*) from his captive herd for the purpose of enhancement of survival of the species. This notice shall cover a period of three years. Permittee must apply for renewal annually.

Applicant: End of the Road Bird Ranch, Millington, MI, PRT–844072

The applicant requests a permit to authorize the import of one male Elliot's pheasant (*syrmaticus ellioti*) and two female brown eared pheasants (*Crossoptilon mantchuricum*) from Old House Bird Gardens, Reading, England, for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office by July 27, 1998: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 19, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–16871 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan (EA/HCP) and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on 0.75 Acre of the 18.79 acres on Spicewood Springs Road in Travis County, TX

SUMMARY: Daniel O. Shelley (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers PRT–840322. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of one single family residence on Spicewood Springs Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10c of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 27, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30), U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number PRT–840322 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Daniel O. Shelley plans to construct a single family residence on Spicewood Springs Road Austin, Travis County, Texas. This action will eliminate less than one acre of land and will indirectly impact less than eight additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Dated: June 16, 1998.

Renne Lohoefener,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 98–16852 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On March 4, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 43, Page 10931, that an application had been filed with the Fish and Wildlife Service by John Kloosterman, Tucson, AZ, for a permit (PRT–839518) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Baffin Bay population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on June 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 19, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 53, Page 13423, that an application had been filed with the Fish and Wildlife Service by Fred D. Rich, Portland, TX, for a permit (PRT–840250) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on June 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 19, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 53, Page 13423, that an application had been filed with the Fish and Wildlife Service by Robert L. Zachrich, Holgate, OH, for a permit

(PRT–840287) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken prior to April 30, 1994, from the Lancaster Sound population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on June 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 4, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 43, Page 10931, that an application had been filed with the Fish and Wildlife Service by the Jacksonville Field Office, USFWS, Jacksonville, FL, for renewal and amendment of a permit (PRT–770191) for enhancement of West Indian manatees (*Trichechus manatus*) through recovery, rehabilitation and release.

Notice is hereby given that on May 13, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 9, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 63, Page 17436, that an application had been filed with the Fish and Wildlife Service by the Long Beach Aquarium of the Pacific, Long Beach, CA, for a permit (PRT–840350) for enhancement of two southern sea otters (*Enhydra lutris nereis*) through public education.

Notice is hereby given that on June 1, 1998, the application request was withdrawn. The Service has authorized the Long Beach Aquarium to maintain these sea otters for continued rehabilitation under section 109(h) of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*).

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 19, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–16872 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1220–00]

Emergency Closure of the Lordsburg Playa to Off-Highway Vehicles (OHV), Hidalgo County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces Field Office is implementing emergency closure of an existing OHV area known as the Lordsburg Playa. The area is closed to all vehicle use except for administrative purposes. This closure extends to both motorized and non-motorized vehicles, including landsail craft. This action is taken to aid in reducing the blowing dust from the Lordsburg Playa across Interstate Highway 10 west of Lordsburg, New Mexico. The dust storms have caused four fatalities on this portion of the Interstate and resulted in closure of the Interstate on 5 consecutive days since June 13. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders.

The following public land is affected by the closure:

T.23 S., R.20 W., NMPM
Sections 3, 4, 5, 6, 7, 8, 9, 10, all;
Section 11, W½;
Sections 14, 15, 17, 18, 19, 20, 21, 22, 23, all;
Section 26, N½;
Section 27, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sections 28, 29, 30, 31, 33, all;
Section 34, W½.
T.24 S., R.20 W., NMPM
Section 5, N½, N½S½, SW¼SW¼;
Section 6, all.

DATES: This closure is effective June 19, 1998 and shall remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Jim C. McCormick, Assistant Field Office Manager for Renewable Resources, or Dwayne Sykes, Multi-Resource Staff Chief, 1800 Marquess, Las Cruces, New Mexico or call (505) 525–4300.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed one year.

The purpose of this action is to reduce impacts to the soil on the Lordsburg Playa. Once the soil surface is disturbed, it is highly susceptible to wind erosion. Windy conditions this year have produced heavy dust storms in the area resulting in low visibility on nearby Interstate Highway 10. These conditions have caused 4 fatal accidents on the highway and required that the highway be closed for up to 9 hours per day for 5 consecutive days since June 13.

Copies of this closure order and maps showing the location of the area are available from the Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico, 88005 during normal business hours, Monday through Friday, 7:45 a.m. to 4:30 p.m.

Dated: June 19, 1998.

Josie Banegas,

Acting Field Manager, Las Cruces.

[FR Doc. 98–16899 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01; NMNM99245]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Las Cruces Public Schools under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). Las Cruces Public Schools propose to use the land for the K–2 Sunrise Elementary School and playgrounds.

T. 22 S., R. 3 E., NMPM
Sec. 18, Part of lot 11.
Containing 30 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before August 13, 1998.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before August 13, 1998, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Field Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for the K–2 Sunrise Elementary School. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the K–2 Sunrise Elementary School.

Dated: June 18, 1998.

Linda S.C. Rundell,

Field Manager, Las Cruces.

[FR Doc. 98–16900 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service; Sequoia and Kings Canyon National Parks.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) is proposing in 1998 to conduct a survey of community residents in one gateway community near Sequoia and Kings Canyon National Parks to refine those issues related to fire management and associated smoke that are most important to people who live there. This information collection will support ongoing fire management planning at Sequoia and Kings Canyon National Parks. Study packages that include the proposed survey questionnaires for these three proposed park studies have been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to obtain park neighbors' perceptions of the existing fire management program and its effect on residents, the community, and the ecosystem. Results of the survey will assist NPS fire managers in their management decisions by providing information about the knowledge, needs and desires of the affected publics living in the community that is closest to the two parks. The intended effect of this information collection is to better inform park managers about issues important to park neighbors, to assist them in developing citizen education and involvement programs, and to help them formulate fire management decision making criteria for fires in the parks.

There were no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this survey.

DATES: Public comments will be accepted on or before July 27, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: William Kaage, Fire Management Officer, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271–9700, phone: 209–565–3160.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before July 27, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: William Kaage, Fire Management Officer, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271–9700, phone: 209–565–3160; e-mail: <william__kaage@nps.gov>.

SUPPLEMENTARY INFORMATION:

Title: Fire Management Planning Survey at Sequoia and Kings Canyon National Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information concerning perceptions of residents who live near Sequoia and Kings Canyon National Parks regarding forest fire, fire ecology, regional fire management history and the effects of fire management practices on their community and the ecosystem. The proposed information to be collected from park neighbors is not available from existing records, sources, or observations either regularly or comprehensively.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking gateway community residents about their perceptions of fire management in the region.

Description of Respondents: A sample of adult householders living in one gateway community near Sequoia and Kings Canyon National Parks.

Estimated average number of respondents: Each respondent will respond only one time, so the number

of responses will be the same as the number of respondents.

Estimated average burden hours per response: 25 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: The total burden for 1998 will be approximately 210 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–16830 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service; Great Egg Harbor National Scenic and Recreation River.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) is proposing in 1998 to conduct mail and on-site surveys of visitors and landowners within the Great Egg Harbor River corridor to identify characteristics, use patterns, expectations, preferences, and perceptions of the area and its management.

	Estimated numbers of	
	Responses	Burden hours
Great Egg Harbor River Visitor and Landowner Mail Survey	1000	500
Great Egg Harbor River On-Site Visitor Survey	750	125
Total	1750	625

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to incorporate survey information into a General Management Plan to be used by local municipalities to guide planning and alternative management strategies for the Great Egg Harbor River.

There were no public comments received as a result of publishing in the Federal Register a 60 day notice of intention to request clearance of information collection for these two surveys.

DATES: Public comments will be accepted on or before July 27, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Troy Hall, Ph.D., Department of Forestry, Virginia Tech, Blacksburg, VA 24061–0324.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before July 27, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT:

Troy Hall. Voice: 540–231–7264, Email: <tehall@vt.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Great Egg Harbor River Visitor and Landowner Mail Survey. Great Egg Harbor River On-Site Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information to incorporate into the General Management Plan for the Great Egg Harbor National Scenic and Recreation River which will guide future management and planning for the Great Egg Harbor River.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking visitors and landowners about their perceptions, expectations, and preferences in the Great Egg Harbor River corridor area.

Description of respondents: A sample of individuals who use the Great Egg Harbor River for recreation purposes (mail and on-site surveys) or who own riverfront property (mail survey only) along the River.

Estimated average number of respondents: 1000 (mail survey); 750 (on-site survey).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 30 minutes (mail survey); 10 minutes (on-site survey).

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 500 hours (mail survey); 125 hours (on-site survey).

Diane M. Cooke,

Inforamtion Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–16831 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning National Park Service Wildland Fire Management Activities

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, the information is made available for public review and comment. Director's Order #18 establishes new policies and procedural guidance concerning

wildland fire management activities for units of the National Park System.

Copies of the proposed guidance document will be made available upon request by writing: Fire Policy, National Park Service, National Interagency Fire Center, 3833 So., Development Avenue, Boise, Idaho 83705, or on the Internet at: http://www.nps.gov/fire/fmpc/policy.htm.

DATES: Written comments will be accepted until August 24, 1998.

ADDRESSES: Comments should be addressed to: Fire Policy, National Park Service, National Interagency Fire Center, 3833 So. Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Linda Swain at the above address or by calling 208–376–5202.

SUPPLEMENTARY INFORMATION: NPS is revising the policies and procedures that guide its fire management activities. To accomplish this,the fire management policies included in "National Park Service Management Policies" (1988), are being revised and the *Wildland Fire Management Guidelines* (NPS–18, 1990) is being rescinded. The new policies will be issued as Director's Order #18, in conformance with the NPS's new system of internal guidance documents. Director's Order #18 will contain: (1) new policy statements to replace those now contained in the "Management Policies", and (2) new fire management procedures and standards that will be adhered to.

The 1994 wildland fire season created a renewed awareness and concern among Federal land management agencies and their constituents about the impacts of wildland fire. A Federal Wildland Fire Management Policy and Program Review was chartered by the Departments of Interior and Agriculture to ensure that uniform Federal policies and cohesive interagency and

Inter-governmental fire management programs existed.

Early in the review process, internal and external ideas were sought and broad program management issues were identified. The review was announced and input was requested in the Federal Register on January 3, 1995 (60 FR 95). The input received was used to develop a draft report. The draft report was published in its entirety in the **Federal Register** on June 22,1995 (60 FR 32485), and a 30-day public comment period was announced. The full report was also available on the Internet. Because of numerous requests to extend the comment period, the comment period did not end until September 25, 1995. A total of 308 comments were received on the draft report. The final report was accepted by the Secretaries of Interior and Agriculture on December 18, 1995. From this report, uniform policies and cohesive fire management programs have been developed by the Federal land management agencies.

Director's Order #18 *Wildlife Fire Management*, will establish fire management policy throughout the NPS in concert with cooperating agencies. Director's Order #18 will be considered for adoption by the NPS after the comment period closes.

Dated: June 15, 1998.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 98–16832 Filed 6–24–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 22, 1998.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen (202) 210–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be send to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Employment Information Forms.

OMB Number: 1215–0001 (revision).

Form Numbers: WH–3 and WH–3 Spanish.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 37,000.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 12,333 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Forms WH–3 and WH–3 Spanish are optional forms used to obtain information from individuals about alleged violations of various laws enforced by the Wage and Hour Division. It is also used as a screening device to determine whether the Division has jurisdiction in handling the alleged violations.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–16937 Filed 6–24–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 81–8 for investment of plan assets in certain types of short-term investments. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written must be submitted to the office listed in **ADDRESSES** section below on or before August 24, 1998. The Department of Labor is particularly interested in comments which:

- Evalaute whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–56457, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 81–8 permits the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments. These include investments in banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. In absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because without the relieve provided by this exemption, plans would not be able to continue to invest plan assets in certain short term investments in debt obligations issued by certain persons who provide services to the plan or who are affiliated with such service providers. In most instances, the service providers engaging in such transactions with the plans are already providing services to the plan. Without this exemption, these types of transactions could not continue, causing disruption of the existing business practices of the plan and the businesses that service them.

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. These repurchase agreements cover a period of one year or less and may be in the form of a blanket agreement for one year. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as the statements are issued. The seller must also represent, either in the repurchase agreement or prior to each repurchase agreement transaction, that as of the time the transaction is negotiated, there has been no material adverse change in the seller's financial condition since the date the most recent financial statement was furnished that has not been disclosed to the plan fiduciary with whom the written agreement is made. This requirement may be met by the seller stating in the repurchase agreement that by making the sale they are representing that there is no material or adverse change their financial condition.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.

Type of Review: Extension of currently approved collection.

OMB Number: 1210–0061.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 18,245.

Total Responses: 91,225.

Frequency of Response: On occasion.

Total Annual Burden: 15,204 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 19, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16936 Filed 6–24–98; 8:45 am]

BILLING CODE 4570–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information included in rules regarding participant directed individual account plans under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA)

(29 CFR § 2550.404c–1). A copy of the proposed information collection request can be obtained by contacting the individual listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before August 24, 1998.

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–4782 (not a toll-free number), FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Section 404(c) of ERISA provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over assets in his account and that participant or beneficiary in fact exercises such control, that the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control, and that no person otherwise a fiduciary shall be liable for any loss or breach which results from this exercise of control.

II. Current Actions

The Office of Management and Budget's approval of the ICR included in 29 CFR § 2550.404c–1 will expire on September 30, 1998. This regulation describes circumstances under which ERISA section 404(c) applies to a transaction involving a participant's exercise of control over this or her individual account. The opportunity to exercise control includes the opportunity to obtain sufficient information to make informed decisions with respect to investment alternatives. This regulation describes the type and extent of information required to be made available to participants and beneficiaries for this purpose. In the absence of such disclosures, participants might not be able to make informed decisions about the investment of their individual accounts, and persons who are otherwise fiduciaries with respect to these plans would not be afforded relief from the fiduciary responsibility provisions of Title I of ERISA with respect to these transactions. For these reasons, the Department intends to request an extension of the ICR.

Type of Review: Extension.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Regulation Regarding Participant Directed Individual Account Plans (ERISA section 404(c) Plans).

OMB Number: 1210–0090.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 55,747.

Frequency: On occasion.

Total Responses: 11,000,050.

Estimated Total Burden Hours: 303,249.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 22, 1998.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 98–16938 Filed 6–24–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: None.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the employee benefit plan claims procedure regulation issued pursuant to section 503 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 CFR 2560.503–1). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 24, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 503 of ERISA provides that, pursuant to regulations promulgated by the Secretary of Labor, each employee benefit plan must provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied. This notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Each plan must also afford a reasonable opportunity for any participant or beneficiary whose claim has been denied to obtain a full and fair review of the denial by the appropriate named fiduciary of the plan.

The Department previously issued a regulation pursuant to section 503 that establishes certain minimum requirements for employee benefit plan procedures pertaining to claims. The ICR included in the claims procedure regulation generally requires timely written disclosures to participants and beneficiaries of employee benefit plans of information concerning the plan's claims procedures, the basis for the denial of a claim, and time limits for addressing or appealing the denial of a claim. These requirements are intended to ensure that plan administrators provide for a full and fair review of claims, and that plan participants and beneficiaries have information which is sufficient to allow them to exercise their rights under the plan.

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. On September 8, 1997, the Department published a Request for Information (September 8 RFI) (62 FR 47261) concerning the advisability of amending the existing regulation that establishes minimum requirements for employee benefit plan claims procedures. In the Department's Semiannual Regulatory Agenda published on April 27, 1998, the Pension and Welfare Benefits Administration indicated its intention to publish a Notice of Proposed Rulemaking with respect to employee benefit plan claims procedures in June, 1998 (63 FR 22240). While certain modifications to the claims procedure ICR may be anticipated in connection with proposed revision of these rules, estimates of burden associated with modifications currently under consideration are not yet available. The burden estimates shown in this notice are, therefore, based on the existing ICR.

To avoid unnecessary duplication of public comments, however, those comments received in response to the September 8 RFI that address burden associated with the claims procedure regulation will be treated as comments on this ICR.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Benefit Claims Procedure regulation pursuant to 29 CFR 2560.503–1.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0053.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 23,454.

Total Responses: 23,454.

Frequency of Response: On occasion.

Total Annual Burden: 7,063 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 22, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16939 Filed 6–24–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Dates: July 27–29, 1998 and August 3–5, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Closed.

Contact Person: Mike McCloskey, Program Director, Division of Social, Behavioral, and Economic Research, National Science Foundation, 4201 Wilson Blvd., Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Knowledge and Distributed Intelligence (KDI) Program Solicitation as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 22, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16926 Filed 6–24–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Central Hudson Gas & Electric Corporation (Nine Mile Point Nuclear Station, Unit 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a transfer of control of possessory rights held by Central Hudson Gas & Electric Corporation (Applicant) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The transfer would be to a holding company, not yet named, to be created over Applicant in accordance with a New York State Public Service Commission order, issued and effective February 19, 1998 (Case 96–E–0909), and related documents entitled "Amended and Restated Settlement Agreement" dated January 2, 1998, and "Modifications to Amended and Restated Settlement Agreement" dated February 26, 1998 (see Exhibits G–G2 in the application). Applicant is licensed by the Commission to own and possess a 9 percent interest in NMP2, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the license to the extent effected by Applicant becoming a subsidiary of the newly formed holding company in connection with a proposed plan of restructuring. Under the restructuring plan, the outstanding shares of Applicant's common stock are to be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of Applicant. In addition, the holding

company will own, directly or indirectly, the stock of any current non-utility subsidiaries of applicant except that Applicant will continue to own one unregulated subsidiary. Under this restructuring, Applicant will sell at auction its fossil-fueled electric generation facilities at its Danskammer Steam Generating Plant and its partial interest in the Roseton Electric Generation Plant (hereafter, collectively referred to as "Generation Assets"). However, Applicant will continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution, and generation of electricity at NMP2, combustion turbine facilities, hydroelectric facilities, and (until structurally separated or divested), the Generation Assets. Applicant would retain its ownership interest in NMP2 and continue to be a licensee of NMP2. No direct transfer of the operating license or ownership interests in the station will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation, which is responsible for operating and maintaining NMP2 and is not involved in the restructuring of Applicant. The proposed action is in accordance with Applicant's application dated April 8, 1998, as supplemented April 22, 1998.

The Need for the Proposed Action

The proposed action is required to enable Applicant to restructure as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that it is an administrative action unrelated to plant operation; therefore, there will be no resulting physical or operational changes to NMP2. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain the facility, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the restructuring of NYSEG.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental impacts that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

Agencies and Persons Contacted

In accordance with its stated policy, on June 19, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see Applicant's application dated April 8, as supplemented by letter dated April 22, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 19th day of June 1998.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16909 Filed 6–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–010]

Commonwealth Edison Co.; Dresden Nuclear Power Station, Unit 1; Notice of Public Meeting

The NRC will conduct a public meeting at Grundy County Administration Center, 1320 Union Street, Morris, Illinois, on July 23, 1998, to discuss plans developed by Commonwealth Edison Company (ComEd, the licensee) to decommission the Dresden Nuclear Power Station, Unit 1, near Morris, Illinois. The meeting is scheduled for 7:00–9:00 p.m. and will be chaired by Mr. Donald Kauffman, Chairman, Grundy County Board. The meeting will include a short presentation by the NRC staff on the decommissioning process and NRC programs for monitoring decommissioning activities, with attention being given to the licensee's updated Post-Shutdown Decommissioning Activities Report (PSDAR) dated June 1, 1998. There will be a presentation by ComEd on their planned decommissioning activities, and there will be an opportunity for members of the public to make comments and question the NRC staff and ComEd representatives. The meeting will be transcribed.

The licensee's update to the PSDAR provides a short discussion of the plant history, and a description and schedule of planned decommissioning activities. The PSDAR update also comments briefly on anticipated decommissioning costs and environmental impacts.

The PSDAR update is available for public inspection at the local public document room, located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450, and the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C. 20037. The NRC document accession number is 9806080055.

For more information, contact Mr. Ronald A. Burrows, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–

0001, telephone number (301) 415–2497.

Dated at Rockville, Maryland, this 17th day of June 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16910 Filed 6–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Utility/NRC Interface Licensing Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission and the American Nuclear Society (ANS) are co-sponsoring a workshop involving senior NRC staff and key licensing officials representing the nuclear industry. The purpose of the meeting is to provide a forum for constructive dialogue on a number of important licensing issues. The workshop will consist of three sessions; each session will consist of three separate working groups discussing one of the following topics: (1) Communications between NRR Projects and Industry, (2) Licensing Submittals and Expectations, (3) Licensing Restart Issues after Prolonged Outages, (4) Notice of Enforcement Discretion, (5) Project Management Workload and Prioritization of Licensing Actions, (6) Using PRA in Licensing Decisions, (7) Public Interaction, (8) Standard Technical Specifications, and (9) Commitment Management. The working groups will be co-facilitated by NRC and industry experts and will report back to the entire group following each session. The meeting is open to the public and all interested parties may attend. The fees for ANS members are $375 and the fees for nonmembers are $425. Please contact Dave Slaninka of ANS at (708) 579–8255 for additional information regarding registration and fees.

Dates: July 20, 1998, from 7:00 a.m. to 5:30 p.m.; July 21, 1998, from 8:00 a.m. to 3:00 p.m.

Location: Bethesda Marriott Hotel, 5151 Pooks Road, Bethesda, Maryland 20814, Telephone (301) 897–9400, Toll Free (800) 228–9290.

FOR FURTHER INFORMATION CONTACT:

Marsha Gamberoni, Mail Stop O–13–H3, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852–2738; Telephone: (301) 415–3024; Internet: MKG@NRC.GOV

or

Jeff Jeffries, Paradigm Consulting, 104 Torrey Pines Dr., Cary, NC 27513; Telephone: (800) 481–4508; Internet: jdejeffries@worldnet.att.net

Dated at Rockville, Maryland the 16th day of June 1998.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Associate Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16911 Filed 6–24–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of June 1, 1998, of 24 rescission proposals and eight deferrals contained in two special messages for FY 1998. These messages were transmitted to Congress on February 3 and February 20, 1998.

Rescissions (Attachments A and C)

As of June 1, 1998, 24 rescission proposals totaling $20 million had been transmitted to the Congress. Congress approved 21 of the Administration's rescission proposals in P.L. 105–174. A total of $17.3 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of June 1, 1998, $3,187 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1998.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 7004, Wednesday, February 11, 1998

63 FR 10076, Friday, February 27, 1998

Jacob J. Lew,

Acting Director.

Attachments

ATTACHMENT A—STATUS OF FY 1998 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	20.1
Rejected by the Congress	
Amounts rescinded by P.L. 105–174, the FY 1998 Supplemental Appropriations and Rescissions Act	–17.3
Currently before the Congress	2.8

ATTACHMENT B—STATUS OF FY 1998 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	4,833.0
Routine Executive releases through June 1, 1998 (OMB/Agency releases of $1,645.8 million, partially offset by cumulative positive adjustment of $0.3 million)	– 1,645.5
Overturned by the Congress	.....
Currently before the Congress	3,187.5

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ATTACHMENT C

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ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of June 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R98-1		223	2-20-98	223	4-28-98	223	P.L. 105-174
Animal and Plant Health Inspection Service								
Salaries and expenses	R98-2		350	2-20-98	350	4-28-98	350	P.L. 105-174
Food Safety and Inspection Service								
Salaries and expenses	R98-3		502	2-20-98	502	4-28-98	502	P.L. 105-174
Grain Inspection, Packers and Stockyards Administration								
Salaries and expenses	R98-4		38	2-20-98	38	4-28-98	38	P.L. 105-174
Agricultural Marketing Service								
Marketing services	R98-5		25	2-20-98	25	4-28-98	25	P.L. 105-174
Farm Service Agency								
Salaries and expenses	R98-6		1,080	2-20-98	1,080	4-28-98	1,080	P.L. 105-174
Natural Resources Conservation Service								
Conservation operations	R98-7		378	2-20-98	378	4-28-98	378	P.L. 105-174
Rural Housing Service								
Salaries and expenses	R98-8		846	2-20-98	846	4-28-98	846	P.L. 105-174
Food and Nutrition Service								
Child nutrition programs	R98-9		114	2-20-98	1/			
Forest Service								
National forest systems	R98-10		1,094	2-20-98	1,094	4-28-98	1,094	P.L. 105-174
Reconstruction and construction	R98-11		30	2-20-98	30	4-28-98	30	P.L. 105-174
Forest and rangeland research	R98-12		148	2-20-98	148	4-28-98	148	P.L. 105-174
State and private forestry	R98-13		59	2-20-98	59	4-28-98	59	P.L. 105-174
Wildland fire management	R98-14		148	2-20-98	148	4-28-98	148	P.L. 105-174

ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of June 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R98-15		1,188	2-20-98			1,188	P.L. 105-174
Oregon and California grant lands	R98-16		2,500	2-20-98			2,500	P.L. 105-174
Bureau of Reclamation								
Water and related resources	R98-17		532	2-20-98	1/			
Bureau of Mines								
Mines and minerals	R98-18		1,605	2-20-98			1,605	P.L. 105-174
United States Fish and Wildlife Service								
Construction	R98-19		1,188	2-20-98			1,188	P.L. 105-174
National Park Service								
Construction	R98-20		1,638	2-20-98			1,638	P.L. 105-174
Bureau of Indian Affairs								
Construction	R98-21		737	2-20-98			737	P.L. 105-174
DEPARTMENT OF TRANSPORTATION								
Office of the Secretary								
Payments to air carriers	R98-22		2,499	2-20-98			2,499	P.L. 105-174
Payments to air carriers (Airport and airway trust fund)	R98-23		1,000	2-20-98			1,000	P.L. 105-174
Maritime Administration								
Maritime guaranteed loan (Title XI) program account	R98-24		2,138	2-20-98	1/, 2/			
TOTAL, RESCISSIONS		0	20,060		4,921		17,276	

1/ Funds were never withheld from obligation.

2/ GAO's report to the Congress, dated May 11, 1998, indicated that agency officials stated that funds were being withheld from obligation, but not on an apportionment schedule. Subsequent discussions between OMB and agency officials confirm that there has been no withholding of funds. Rather, the lower demand in recent years for these loan guarantees has resulted in large available balances. For this reason, no withholding was required, either by OMB or by the agency.

[FR Doc. 9
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ATTACHMENT D

[FR Doc. 98–16835 Filed 6–24–98; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT D
Status of FY 1998 Deferrals - As of June 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-98
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D98-1	2,330,096		2-3-98	1,423,435			326	906,991
International military education and training	D98-2	43,300		2-3-98	41,900				1,400
Foreign military financing program	D98-3	1,483,903		2-3-98	160,253				1,323,650
Foreign military financing loan program	D98-4	60,000		2-3-98					60,000
Foreign military financing direct loan financing account	D98-5	657,000		2-3-98					657,000
Agency for International Development									
International disaster assistance, Executive	D98-6	135,697		2-3-98	20,250				115,447
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D98-7	115,640		2-3-98					115,640
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D98-8	7,369		2-3-98					7,369
TOTAL, DEFERRALS		**4,833,007**	**0**		**1,645,838**			**326**	**3,187,496**

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OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

AGENCY: Office of Personnel Management (OPM)

ACTION: Notice of a computer matching program between OPM and the Social Security Administration (SSA) for comment.

SUMMARY: OPM is publishing notice of its computer matching program with SSA to meet the reporting and publication requirements of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988. The purpose of this match is to identify beneficiaries who have remarried and not reported the remarriages to OPM. Generally, remarriage terminates benefits for survivor annuitants 55 years of age or younger. A recent amendment creates an exception based on a marriage that lasted 30 years or more. In this match, OPM will provide SSA with surnames, dates of birth, and Social Security Numbers to identify survivor beneficiaries who have not reported remarriages to OPM and are improperly receiving benefits under the Civil Service Retirement and Federal Employees' Retirement Systems (CSRS and FERS). The match will be conducted with SSA's Numident file, a source of beneficiaries' current surnames.

DATES: This proposed action will become effective 40 days after the agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget (OMB), unless either the Congress or OMB objects thereto. Any public comment on this matching program must be submitted within the 30-day public notice period, which begins on the publication date of this notice.

ADDRESSES: Any interested party may submit written comments to Kathleen M. McGettigan, Assistant Director for Systems, Finance, and Administration, Retirement and Insurance Service, Office of Personnel Management, Room 4316, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA have concluded an agreement to conduct a computer matching program between the two agencies. The purpose of this agreement is to establish the conditions under which SSA agrees to the disclosure of information from the Numident file to OPM. The legal authority for this matching program can be found in 5 U.S.C. sections 8341, 8347, 8442 and 8461.

Office of Personnel Management.

Janice R. Lachance

Director.

Report of Computer Matching Agreement Between the Office of Personnel Management (OPM) and the Social Security Administration (SSA)

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.) provide the basis for paying a survivor annuity to widows, widowers, former spouses, or children. The purpose of this match is to identify beneficiaries who have remarried and not reported the remarriage to OPM. A surviving widow, widower, or former spouse loses entitlement to a survivor annuity upon remarrying before becoming 55 years of age. OPM has been required to terminate the survivor annuity. A recent amendment creates an exception to the termination requirement, under certain conditions, for marriages that have lasted 30 or more years. This allows eligibility for a survivor annuity based on a 30-or-more-year marriage to continue, and terminate only upon the death of the survivor annuitant (or in the case of a former spouse, as specified by the terms of the court order).

In this match, OPM will provide SSA with surnames, dates of birth, and Social Security Numbers for a sample of beneficiaries to identify survivor beneficiaries who have not reported remarriages to OPM and are improperly receiving benefits under the Civil Service Retirement and Federal Employees Retirement Systems (CSRS and FERS). The match will be conducted with SSA's Numident file, a source of beneficiaries' current surnames.

C. Authority for Conducting the Matching Program

5 U.S.C., Sections 8341, 8347, 8442, 8461 and 552a (Privacy Act).

D. Categories of Records and Individuals Covered by the Match

The SSA file used in the match is contained in SSA System of Records 09–60–0058, Master Files of Social Security Number holders, last published at 60 FR 2144, January 6, 1995. OPM's records consist of annuity data from its system of records entitled OPM.Central-1-Civil Service Retirement and Insurance Records, last published in the **Federal Register** at 60 FR 63075, December 8, 1995.

E. Description of Matching Program

OPM will disclose to SSA the Social Security Numbers, dates of birth, sex codes, and names of beneficiaries under CSRS and FERS whose benefits could be affected by remarriage. SSA will identify and provide OPM with an extract of the Numident record for each record that SSA matches. OPM will only use those data elements pertinent to the purpose of the match.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Congress and the Office of Management and Budget (OMB). OPM's report to these parties must be at least 40 days prior to the initiation of any matching activity. If no objections are raised by either Congress or OMB, and the mandatory 30-day public notice period for comment for this **Federal Register** notice expires, with no significant receipt of adverse public comments resulting in a contrary determination, then this computer matching program becomes effective. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 98–16933 Filed 6–24–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40102; File No. SR–NASD–98–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

June 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 29, 1998, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES"). Specifically, under the proposal, 520 NNM securities will be reclassified into a different SOES tier size effective July 1, 1998. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements and copy of the Notice-to-Members may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 998, pursuant to the following established criteria.[2]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and two or more market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 520 NNM securities will be reclassified effective July 1, 1998. These 520 NNM securities are set out in the NASD's Notice to Members 98–44 (June 1998).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[3] Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of Nasdaq be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that the reassignment of NNM securities within SOES tier size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and subparagraph (e)(1) of Rule 19b–4 thereunder.[5]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[2] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD rule 4710(g).

[3] 15 U.S.C. 78o–3.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1).

[6] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–39 and should be submitted by July 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16951 Filed 6–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40097; File No. SR–PCX–98–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Identification of Broker-Dealer Orders on the Options Floor

June 17, 1998.

I. Introduction

On January 23, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to amend PCX Rule 6.66(c), Rule 6.2, and Rule 6.77 to require the broker-dealer status of an order to be identified by public outcry to the trading crowd prior to execution, regardless of whether the order is to be executed at the trading crowd's dissemiated bid or offering price, and to add certain violations of Rule 6.66(c) as amended to the list of those violations that may cause a transaction to be nullified or adjusted. Notice of the proposal was published for comment and appeared in the **Federal Register** on February 24, 1998.[3] Not comment letters were received on the proposal. On June 1, 1998, the PCX filed an amendment to the proposed rule change ("Amendment No. 1").[4] This order approves the Exchange's proposal. In addition, the Commission hereby publishes notice to solicit comments from interested persons on Amendment No. 1 on the proposal and approves that amendment to an accelerated basis.

II. Description of the Proposal

PCX is proposing to amend its rules on the identification of broker-dealer orders by requiring that, if an order is for an account in which a broker-dealer has an interest, the broker-dealer status of the order must be disclosed to the trading crowd prior to execution, regardless of whether the order is to be executed at the trading crowd's disseminated bid or offering price.

On July 21, 1994, the Commission approved an Exchange proposal to adopt new Rule 6.66(c), which currently states: "Prior to executing an order in which a broker-dealer has an interest, a member must indicate by public outcry that such order is for a broker-dealer if the order is to be executed at the trading crowd's disseminated bid or offering price. This rule applies regardless of whether such broker-dealer is an Exchange member."[5] The Exchange is now proposing to expand the scope of Rule 6.66(c) by striking the words "if the order is to be executed at the trading crowd's disseminated bid or offering price" from the text of Rule 6.66(c). Accordingly, under the amended rule, prior to executing an order in which a broker-dealer has an interest, a Floor Broker would be required to indicate by public outcry that the order is for a broker-dealer.

The proposal is intended to facilitate transactions in option contracts by making the member in the trading crowd and the Order Book Official staff aware of the nature of orders being represented on the Floor, thereby assuring that broker-dealer orders will not be represented inadvertently as public customer orders. In that regard, the Exchange notes that only non-broker-dealer orders are entitled to be placed in the public limit order book and to be given priority over broker-dealer orders under certain circumstances.[6] The Exchange further notes that only non-broker-dealers are entitled to receive a guaranteed minimum of 20 contracts at the disseminated bid or offering price.[7]

The Exchange believes their proposal will make the existing rule less complicated and easier to follow by removing the distinction between broker-dealer orders to be executed at the bid or offering price, and those that are not. In that regard, the Exchange notes that there is no such distinction applicable to Market Maker orders, the identification of which is governed by Rule 6.66(b), which requires Floor Brokers to verbally identify Market Maker orders as such prior to their execution.[8] Thus, removing the subject distinction from Rule 6.66(c) will make the Exchange's option rule disclosure rules uniform, consistent, and easier to follow.

The Exchange is also proposing to amend Rules 6.2 and 6.77 by adding certain violations of Rule 6.66(c) as amended to the list of those violations that may give rise to a circumstance in which two Floor Officials may nullify a transaction or adjust its terms.[9] Specifically, such action could be taken if a Floor Broker failed to identify a broker-dealer order for 20 contracts or less. The reason for the limitation on the number of contracts is that, under Rule 6.86, only non-broker-dealer orders are eligible for a guaranteed execution of 20 contracts at the displayed price. If a Floor Broker does not disclosure that an order for 20 contracts or less is for a broker-dealer (under the proposed rule), the members in the trading crowd may incorrectly assume that the order is for a public customer and provide an execution at the displayed price, without having an opportunity to update their quotes.[10] The Exchange believes that adding this provision is simply a logical extension of the existing Commentary .05(v) to Rule 6.2, which permits two Floor Officials to nullify, or adjust the terms of, any order

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39649 (February 11, 1998), 63 FR 9276.

[4] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Ann L. Vlcek, Division of Market Regulation, Commission, dated June 1, 1998.

[5] *See* Exchange Act Release No. 34426 (July 21, 1994), 59 FR 38497 (July 28, 1994) (order approving SR–PSE–92–14).

[6] *See* PCX Rules 6.52(a) and 6.75.

[7] *See* PCX Rule 6.86(a).

[8] Rule 6.66(b) states: "A Floor Broker holding an order for the account of a Market Maker shall verbally identify the order as such prior to consummating a transaction, and shall, after effecting the trade, supply the name of the Market Maker concerned, by public outcry, upon the request of any member or members in the trading crowd."

[9] Specifically, the Exchange proposes to move Commentary .05 from Rule 6.2 to Rule 6.77 and renumber it as Commentary .01. The existing subparagraphs will then be relettered and a new subparagraph, (f), added to address violations of Rule 6.66(c) as amended.

[10] *See* PCX Rule 6.37(d) and Rule 6.37, Commentary .05 (Market Makers are required to make a market for, at a minimum, one contract for broker-dealer orders; they must also lower their bids or raise their offers if they do not satisfy an order in its entirety).

executed in violation for Rule 6.86, which states that only non-broker-dealer orders are eligible for a guarantee of up to 20 option contracts at the disseminated market price.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5)[11] in that they are designed to facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest.[12]

Specifically, the Commission believes that the proposal will facilitate transactions in option contracts and afford greater protection of investors and the public interest by making the members in the trading crowd and the Order Book Official staff aware of the nature of the orders being represented on the Floor, thereby assuring that broker-dealer orders will not be represented inadvertently as public customer orders. The Commission notes that only non-broker-dealer orders are entitled to be placed in the Exchange's public limit order book and to be given priority over broker-dealer orders under certain circumstances, and that only non-broker-dealers are entitled to receive a guaranteed minimum of 20 contracts at the disseminated bid or offering price. In view of these existing constraints upon broker-dealer orders and of the added protection afforded public customers by the proposal, the Commission does not believe that requiring all broker-dealer orders to be identified as such public outcry will cause any unnecessary burden upon a member.

The Commission agrees with the Exchange that the proposal will make the existing rule less complicated and easier to follow by removing the distinction between broker-dealer orders to be executed at the bid or offering price, and those that are not. The Commission notes that there is no such distinction applicable to Market Maker orders, which must be verbally identified as such prior to their execution. Thus, the Commission believes that removing the subject distinction from Rule 6.66(c) will facilitate transactions in option contracts by making the Exchange's option order disclosure rules uniform, consistent, and easier to follow.

The Commission also believes that it is appropriate for the Exchange to amend Rule 6.2 by deleting Commentary .05 from that rule, which relates to the member's overall conduct and manner of dress on the options trading floor, and adding it as Commentary .01 to Rule 6.77, which relates to the issue of when bids and offers constitute binding contracts. In view of the proposed amendment of Rule 6.66(c), the Commission believes it appropriate for the Exchange to add a new subparagraph (f) to this Commentary, which would add certain violations of Rule 6.66(c) as amended to the list of those violations that may rise to a circumstance in which two Floor Officials may nullify a transaction or adjust its terms. Specifically, such action could be taken if a Floor Broker failed to identify a broker-dealer order for 20 contracts or less. The Commission agrees with the Exchange that adding this provision is simply a logical extension of the existing Commentary .05(v) of Rule 6.2, which permits two Floor Officials to nullify, or adjust the terms of, any order executed in violation of Rule 6.86, which states that only non-broker-dealer orders are eligible for a guarantee of up to 20 option contracts at the disseminated market price. The Commission believes that enabling Floor Officials to nullify or adjust the terms of a transaction that would violate Rule 6.66(c) as amended will afford greater protection of investors and the public interest.

For the foregoing reasons, the Commission finds that PCX's proposal to require the broker-dealer status of an order to be identified by public outcry to the trading crowd prior to execution, regardless of whether the order is to be executed at the trading crowd's disseminated bid or offering price, and to add certain violations of rule 6.66(c) as amended to the list of those violations that may cause a transaction to be nullified or adjusted, is consistent with the requirements of the Act and with the rules and regulations thereunder.

In addition, the Commission finds good cause consistent with the Act for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 simply corrects certain typographical errors in the text of the rule proposal and repharases the new subparagraph (f) being added to Commentary .01 of Rule 6.77. The amendment does not substantively change the proposal as originally filed. Accordingly, the Commission approves Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, including whether the submission is consistent with the Act, concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–04 and should be submitted by July 14, 1998.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX 98–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16952 Filed 6–24–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst,

Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Application Form for SDB Program".

Type of Request: Revision of a currently approved collection.

Form No: 2065.

Description of Respondents: Small Businesses applying for SDB Certification.

Annual Responses: 30,000.

Annual Burden: 90,000.

Comments: Send all comments regarding this information collection to Brenda Washington, General Business & Industry Specialist, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street S.W., Suite 8000, Washington, D.C. 20416, Phone No: 202–205–7663.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Application for Business Loans".

Type of Request: Revision of a currently approved collection.

Form No.'s: 4,4SCH A, 4–I, 4–L, 4–SHORT, EIB–SBA–84–1.

Description of Respondents: Applicants for an SBA Business Loan.

Annual Responses: 60,000.

Annual Burden: 1,187,400.

Comments: Send all comments regarding this information collection to Keith Lucas, Program Support Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street S.W., Suite 8300, Washington, D.C. 20416 . Phone No: 202–205–6486. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–16838 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before July 27, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Financial statement of debtor.

Form No: 770.

Frequency: On Occasion.

Description of Respondents: Recipients of SBA Loans.

Annual Responses: 161,000.

Annual Burden: 281,750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–16970 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Berthel SBIC, LLC (License No. 07/07/0100); Notice of Issuance of a Small Business Investment Company License

On May 15, 1997, an application was filed by Berthel SBIC, LLC, at 100 2nd Street, SE, Cedar Rapids, Iowa, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended; after having considered the application and all other pertinent information, SBA issued License No. 07/07–0100 on May 4, 1998, to Berthel SBIC, LLC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–16976 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Bluestem Capital Partners II, L.P. (License No. 08/78–0153); Notice of Request for Exemption

On May 22, 1998, Bluestem Capital Partners II, L.P. (the "Licensee"), a Delaware limited partnership and SBIC Licensee number 08/78–0153 filed a request to the SBA pursuant to Section 107.730(a) of the Regulations governing small business investment companies (13 CFR 107.730(a)(1998)) for an exemption allowing the Licensee to invest in Hat World, Inc.("Hat World"), of Sioux Falls, South Dakota. Hat World received prior financial assistance from an Associate (as defined by Section 107.50 of the SBA Regulations) of the Licensee, and has itself become an Associate of the Licensee.

Hat World is currently in need of additional capital, however, the Licensee can only offer this assistance to Hat World upon receipt of a prior written exemption from SBA. The exemption requested is the basis for this notice, and is required pursuant to § 107.730(g) of the Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Sioux Falls, South Dakota.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 8, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–16972 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Midwest Mezzanine Fund II, L.P. (License No. 05/05–0234); Notice of Issuance of a Small Business Investment Company License

On November 14, 1997, an application was filed by Midwest Mezzanine Fund, II, L.P., at 208 South LaSalle Street, 10th Floor, Chicago, Illinois 60604–1003, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0234 on May 4, 1998, to Midwest Mezzanine Fund II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–16975 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Sundance Venture Partners, L.P. II (License No. 09/79–0416); Notice of Issuance of a Small Business Investment Company License

On November 20, 1997, an application was filed by Sundance Venture Partners, L.P. II at 400 E. Van Buren, Suite 750, Phoenix, Arizona 85004, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0416 on May 4, 1998, to Sundance Venture Partners, L.P. II, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–16974 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3091]

State of Mississippi (and Contiguous Counties in Alabama)

Lowndes and Perry Counties and the contiguous Counties of Clay, Forrest, George, Greene, Jones, Monroe, Noxubee, Oktibbeha, Stone, and Wayne in Mississippi, and Lamar and Pickens Counties in Alabama constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on June 5 and 6, 1998. Applications for loans for physical damages may be filed until the close of business on August 17, 1998 and for economic injury until the close of business on March 16, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.000
Homeowners without Credit Available Elsewhere	3.500
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damages are 309112 for Mississippi and 309212 for Alabama. For economic injury the numbers are 988900 for Mississippi and 989000 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 16, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–16973 Filed 6–24–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on July 14, 1998, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Noreen Hannigan, Regulations Analyst, Office of Rulemaking (ARM–106), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–7476; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on July 14, 1998, at 10:00 a.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

The agenda for this meeting will include:

(1) A status report on the Part 103 (Ultralight Vehicles) Working Group's Notice of Proposed Rulemaking (NPRM) on "Sport Pilot Certification Requirements" (and possible request for ARAC approval of draft for submission to the FAA for legal and economic review (copies may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**));

(2) Discussion of overflights of national parks;

(3) Other general aviation topics (open discussion).

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by

contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on June 22, 1998.

Katherine Hakala,

Acting Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–16955 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 98–03–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Aviation Director, Des Moines International Airport, at the following address: Des Moines International Airport, 5800 Fleur Drive, Suite 201, Des Moines, Iowa 50321–2854.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Des Moines, Des Moines International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 8, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the dity of Des Moines, Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December, 2001.

Proposed charge expiration date: June, 2005.

Total estimated PFC revenue: $8,458,474.

Brief description of proposed project(s): Terminal lobby restroom renovation; terminal passenger skywalk; terminal passenger skywalk lobby; terminal passenger holdroom expansion; and terminal ticket counter reconfiguration and replacement.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri on June 9, 1998.

James W. Brunskill,

Acting Manager, Airports Division, Central Region.

[FR Doc. 98–16961 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (98–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 1998 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 1998 RCAF (Unadjusted) is 0.998. The third quarter 1998 RCAF (Adjusted) is 0.629. The third quarter 1998 RCAF–5 is 0.626.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16928 Filed 6–24–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33616]

Union Pacific Railroad Company—Trackage Rights Exemption—Central California Traction Company

Central California Traction Company (CCT) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over 2.9 miles of CCT's rail line between milepost 41.9 near Eldercreek Road and milepost 44.8, near Polk Junction, in the Sacramento Industrial Park and Fruitridge, in and near the City of Sacramento, Sacramento County, California. CCT is jointly owned by UP and The Burlington Northern and Santa Fe Railway Company (BNSF), and, after the trackage rights are effective, UP will handle rail cars as the operating agent for BNSF.

The transaction was scheduled to be consummated on or after June 12, 1998.

The purpose of the local trackage rights is to permit UP to serve customers on the line, which UP expects to result

in an efficient and economical route for the shippers in the City of Sacramento.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33616, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16804 Filed 6–24–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Depositor's Application To Withdraw Postal Savings

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Depositor's Application to Withdraw Postal Savings."

DATES: Written comments should be received on or before August 24, 1998.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Morris, Credit Accounting Branch, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–7801.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the financial Management Service solicits comments on the collection of information described below.

Title: Depositor's Application to withdraw Postal Savings.

OMB Number: 1510–0034.

Form Number: POD 315.

Abstract: This form is used as an application for payment of Postal Savings account to depositor or other legal representatives. The information on this form is used to identify the depositor or legal recipient thereby insuring payment is made to the appropriate agency.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,075.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 538.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 19, 1998.

Diane E. Clark,

Assistant Commissioner, Management.

[FR Doc. 98–16863 Filed 6–24–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8396

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8396, Mortgage Interest Credit.

DATES: Written comments should be received on or before August 24, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Credit.

OMB Number: 1545–0930.

Form Number: 8396.

Abstract: Form 8396 is used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage credit certificate. Internal Revenue Code section 25 allows the credit and Code section 163(g) provides that the mortgage interest deduction will be reduced by the credit. The IRS uses the information on the form to verify the mortgage interest credit taken and to verify that the mortgage interest deducted on Schedule A (Form 1040) has been reduced by the allowable credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 1 hr., 49 min.

Estimated Total Annual Burden Hours: 54,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16841 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

DATES: Written comments should be received on or before August 24, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Number: 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit and individuals.

Estimated Number of Responses: 117,611,875.

Estimated Time Per Response: 15 min.

Estimated Total Annual Burden Hours: 29,402,969.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16842 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–96–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–96–88 (TD 8435), Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations (§ 301.9100–8).

DATES: Written comments should be received on or before August 24, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room

5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: IA–96–88.

Abstract: Regulation section 301.9100–8, formerly section 5h.6, provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 24,305.

Estimated Time Per Respondent: 17 minutes.

Estimated Total Annual Burden Hours: 6,712.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 17, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16844 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–399–88]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–399–88 (TD 8434), Treatment of Dual Consolidated Losses (§ 1.1503–2).

DATES: Written comments should be received on or before August 24, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Dual Consolidated Losses.

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88.

Abstract: Internal Revenue Code section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. This regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 2 hr., 23 min.

Estimated Total Annual Burden Hours: 1,195.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 17, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16846 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86; INTL–656–87; INTL–704–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86; INTL–656–87; INTL–704–87, Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291–1, 1.1291–2, 1.1291–3, 1.1291–6, and 1.1291–8).

DATES: Written comments should be received on or before August 24, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1304.

Regulation Project Number: INTL–941–86; INTL–656–87; INTL–704–87.

Abstract: This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 17, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16847 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 9:30 a.m., Saturday, June 20, 1998.

PLACE: Telephonic meeting.

STATUS: This meeting was canceled.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 22, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–17046 Filed 6–23–98; 9:43 am]

BILLING CODE 8720–01–M

federal register

Thursday
June 25, 1998

Part II

Environmental Protection Agency

40 CFR Part 442

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category; Proposed Rule

VOL 63 ISS 122 JE 25 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 442

[FRL–6100–6]

RIN 2040–AC23

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation establishes technology-based effluent limitations guidelines for the discharge of pollutants into waters of the United States and into publicly owned treatment works (POTWs) by existing and new facilities that perform transportation equipment cleaning operations. Transportation equipment cleaning (TEC) facilities are defined as those facilities that generate wastewater from cleaning the interior of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, inland tank barges, closed-top hopper barges, ocean/sea tankers, and other similar tanks (excluding drums and intermediate bulk containers) used to transport materials or cargos that come into direct contact with the tank or container interior. Facilities which do not engage in cleaning the interior of tanks are not considered within the scope of this proposal.

EPA is proposing to subcategorize the TEC Point Source Category into 11 subcategories based on types of cargos carried and transportation mode. EPA is proposing to establish effluent limitations for existing facilities and new sources discharging wastewater directly to surface waters in the following subcategories: Truck/Chemical, Rail/Chemical, Barge/Chemical & Petroleum, Truck/Food, Rail/Food and Barge/Food Subcategories.

EPA is proposing to establish pretreatment standards for existing facilities and new sources discharging wastewater to POTWs in the following subcategories: Truck/Chemical and Rail/Chemical Subcategories. Additionally, EPA is proposing to establish effluent limitations for new sources discharging wastewater to POTWs in the Barge/Chemical & Petroleum Subcategory.

EPA is proposing not to establish effluent limitations or pretreatment standards for existing or new facilities in the Truck/Petroleum, Rail/Petroleum, Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories. Also, EPA is proposing not to establish pretreatment standards for existing or new sources in the Truck/Food, Rail/Food, and Barge/Food Subcategories because the pollutants generated by these subcategories are amenable to treatment in a Publicly Owned Treatment Works (POTW).

This proposal would not apply to wastewater discharges from cleaning operations located at industrial facilities regulated under other Clean Water Act effluent guidelines, provided that the facility cleans only tanks containing cargos or commodities generated or used on-site, or by a facility under the same corporate structure.

The wastewater flows covered by the rule include all contact washwaters which have come into direct contact with the tank or container interior including pre-rinse cleaning solutions, chemical cleaning solutions, and final rinse solutions. Additionally, the rule covers wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC contaminated wastewater at those facilities subject to the TEC guidelines and standards. Compliance with this proposal is estimated to reduce the discharge of priority pollutants by at least 100,000 pounds per year and result in recreational benefits of $1.8 million to $6.3 million in 1997 dollars. Additional non use benefits are projected to range from $ 885,000 to $3.2 million. Compliance with this proposal is expected to result in a total pretax compliance cost of $37.5 million annually.

DATES: Comments on the proposal must be received by September 23, 1998.

In addition, EPA will conduct a public hearing on Tuesday, August 18, 1998, from 9:00 a.m. to 11:00 a.m.

ADDRESSES: Send written comments and supporting data on this proposal to: John Tinger, US EPA, (4303), 401 M St. SW, Washington, D.C. 20460.

The public hearing covering the rulemaking will be held at the EPA headquarters auditorium, Waterside Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

The public record is available for review in the EPA Water Docket, 401 M St. SW, Washington, D.C. 20460. The public record for this rulemaking has been established under docket number W–97–25, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. John Tinger at (202) 260–4992. For additional economic information contact Mr. George Denning at (202) 260–7374.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Facilities that clean the interiors of tank trucks, rail tank cars, or barges that have been used to transport cargos and that are not already covered by Clean Water Act effluent guidelines.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in Section III of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA–821–B–98–011). Hereafter referred to as the Technical Development Document, the document

presents EPA's technical conclusions concerning the proposal. EPA describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. "Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA–821–B–98–012).

3. "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA–821–B–98–013).

4. "Statistical Support Document of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA–821–B–98–014).

5. "Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category" (EPA–821–B–98–015).

How to Obtain Supporting Documents: All documents are available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, D.C. 20460; telephone (202) 260–7786 for the voice mail publication request. The Technical Development Document can also be obtained through EPA's Home Page on the Internet, located at WWW.EPA.GOV/OST/RULES. The preamble and rule can also be obtained at this site.

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Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the guidelines for an industry category, EPA defines BPT effluent limits for conventional, priority,[1] and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best existing economically achievable performance of direct discharging plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost and economic impact of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. BAT limitations may be based upon effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may be based upon technology transferred from a different subcategory within an industry or from another industrial category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the "classical" pollutants (e.g., TSS pH, BOD_5). However, nothing on the face of the statue explicitly restricted BPT limitation to such pollutants. Following passage of the Clean Water Act of 1997 withits requirement for point sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority toxic pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology (BDAT). New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In determining the BADT, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines") and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Transportation Equipment Cleaning Industry.

In 1992, EPA entered into a Consent Decree requiring proposal and final agency action of effluent limitations guidelines and standards final rule for the Transportation Equipment Cleaning Industry (*NRDC* v. *Browner* D.D.C. 89–2980). In December of 1997, the Court modified the decree revising the deadlines for proposal to May 15, 1998 and a deadline of June 15, 2000 for final action.

C. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, "review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). This effluent guideline was reviewed for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

EPA has evaluated pollution prevention related activities involving the management of heels (residual material) in the Transportation Equipment Cleaning (TEC) Industry. During the data collection phase of the development of the proposed rule, a number of potential pollution prevention practices and technology applications were identified. Discussion of the pollution prevention technologies and practices and their uses with respect to this proposed rule are contained in Section VI of this preamble and in the Technical Development Document.

III. Scope of the Proposed Regulation

EPA is today proposing effluent limitations guidelines and pretreatment standards for wastewater discharges from facilities engaged in cleaning the interiors of tanks including, but not limited to: tank trucks; rail tank cars; intermodal tank containers; inland tank barges; and ocean/sea tankers used to transport commodities that come into direct contact with the tank or container interior. Facilities which do not engage in cleaning the interior of tanks are not considered within the scope of this proposal.

EPA is proposing to subcategorize the TEC point source category into 11 subcategories based on types of cargos carried and transportation mode. The subcategories proposed for the TEC point source category are set forth below. Further details and definitions of EPA's subcategorization approach are in Section VI of this notice.

- Subcategory A: Truck/Chemical;
- Subcategory B: Rail/Chemical;
- Subcategory C: Barge/Chemical & Petroleum;
- Subcategory D: Truck/Petroleum;
- Subcategory E: Rail/Petroleum;
- Subcategory F: Truck/Food;
- Subcategory G: Rail/Food;
- Subcategory H: Barge/Food;
- Subcategory I: Truck/Hopper;
- Subcategory J: Rail/Hopper; and
- Subcategory K: Barge/Hopper.

EPA is proposing to establish effluent limitations for existing facilities and new sources discharging wastewater

directly to surface waters in the following subcategories: Truck/Chemical, Rail/Chemical, Barge/Chemical & Petroleum, Truck/Food, Rail/Food and Barge/Food.

EPA is proposing to establish pretreatment standards for existing facilities and new sources discharging wastewater to POTWs in the Truck/Chemical and Rail/Chemical Subcategories. Additionally, EPA is proposing to establish effluent limitations for new sources discharging wastewater to POTWs in the Barge/Chemical & Petroleum Subcategory. The following table presents the regulatory approach proposed in today's notice.

TABLE 1.—SUBCATEGORIES PROPOSED FOR REGULATION

Subcategory	BPT or BCT	BAT	NSPS	PSES	PSNS
A: Truck/Chemical	X	X	X	X	X
B: Rail/Chemical	X	X	X	X	X
C: Barge/Chemical & Petroleum	X	X	X	.....	X
D: Truck/Petroleum	.....	.....	.....	.....	.....
E: Rail/Petroleum	.....	.....	.....	.....	.....
F: Truck/Food	X	.....	X	.....	.....
G: Rail/Food	X	.....	X	.....	.....
H: Barge/Food	X	.....	X	.....	.....
I: Truck/Hopper	.....	.....	.....	.....	.....
J: Rail/Hopper	.....	.....	.....	.....	.....
K: Barge/Hopper	.....	.....	.....	.....	.....

The wastewater flows covered by the proposed rule include all washwaters which have come into direct contact with the tank or container interior including pre-rinse cleaning solutions, chemical cleaning solutions, and final rinse solutions. Additionally, the rule would cover wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC contaminated wastewater at those facilities subject to the TEC guidelines and standards.

EPA is proposing not to establish effluent limitations or pretreatment standards for existing or new facilities in the following subcategories: Truck/Petroleum and Rail/Petroleum. Initially, in its assessment of the industry, EPA analyzed the removals, benefits and costs of establishing guidelines for the Truck/Petroleum and Rail/Petroleum Subcategories. EPA has determined that very few pounds of toxic pollutants are being discharged by existing facilities in the Truck/Petroleum and Rail/Petroleum Subcategories. The pollutant loads and technology options analyzed for these subcategories are further discussed in Section VIII of today's notice. The low pollutant loadings associated with these subcategories are, in part, due to the small volumes of wastewater discharged by these facilities, which range from 900 to a maximum of 175,000 gallons per year. Based on this analysis, EPA preliminarily concluded that there is no need to develop nationally applicable regulations for these subcategories. Rather, direct dischargers will remain subject to effluent limitations established on a case by case basis using best professional judgement, and indirect dischargers may be subject to local pretreatment limits as necessary to prevent pass-through or interference.

EPA recognizes the limitations of currently available data and the impact of assumptions on the subsequent conclusions, especially due to the lack of available data on raw wastewater characteristics on the Truck/Petroleum and Rail/Petroleum Subcategories, as described in Section VII of this notice. EPA solicits data and comments which may support or refute the Agency's conclusion that wastewater generated in the petroleum subcategories does not contain significant toxic loadings. EPA is also concerned about the difficulty of determining whether particular cargos fall into the chemical or petroleum subcategories. As explained below, and in EPA's proposed subcategorization approach, EPA is soliciting comment on an alternative subcategorization approach that would combine the petroleum and chemical subcategories.

EPA realizes that much of the TEC industry is characterized by each facility accepting and cleaning a wide range of commodities and cargos which may vary on a daily, seasonal, or yearly basis. EPA raises the issue that it may be difficult to determine the limits appropriate to a particular facility due to the changing nature of the cargos being accepted by a facility. In this notice, EPA has provided definitions of each subcategory and each type of cargo. EPA believes it has established definitions that are most applicable to the industry, and has subsequently modeled wastewater treatment performance and developed effluent limitations applicable to each subcategory. However, EPA also acknowledges that there may be some difficulties associated with implementing this rule as proposed. Specifically, EPA is concerned that there may be difficulties associated with the determination of whether a facility is cleaning transportation equipment that contained "petroleum" or "chemical" commodities. EPA recognizes that there are many products, especially petrochemical products, being transported by the industry which may not clearly be defined as a "chemical" or a "petroleum" product. Additionally, according to the proposed subcategorization approach, there may be significant overlap of the two subcategories.

EPA notes from its data collection activities that 92 percent of not previously regulated facilities classified in the Rail/Chemical Subcategory also accept commodities characterized as "petroleum," and that 52 percent of facilities classified in Truck/Chemical Subcategory also accept commodities characterized as "petroleum." EPA solicits comment on the difficulty of defining petroleum and chemical products from a regulatory standpoint.

Because of potential difficulty in defining petroleum and chemical products, in order to ease implementation of this rule, EPA considered establishing one set of effluent limitations for each mode of transportation (e.g., truck, rail, barge) which cleans chemical and/or petroleum cargos. The rationale for the proposed subcategories is further discussed in Section VI of this notice. EPA is soliciting comment on potential applicability issues associated with the proposed subcategorization, and on the feasibility of establishing one set of effluent limitations for facilities

accepting chemical and/or petroleum products.

EPA's assessment of the industry indicates, however, that there is little overlap of cleaning facilities among transportation modes. EPA's survey demonstrated that TEC facilities are almost exclusively involved in cleaning equipment from only one mode of transportation: either highway, railway, waterway, or ocean-going. The one exception is intermodal containers. Intermodal containers are completely enclosed storage vessels which may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport, and are approximately the same size as tank trucks. EPA found that these containers are almost exclusively cleaned at facilities which clean tank trucks. Based on EPA's survey of the industry, intermodals typically account for one to 10 percent of the tanks cleaned at individual tank truck facilities, although at one facility intermodals accounted for up to 94 percent of the tanks cleaned. Therefore, EPA proposes that wastewater generated from cleaning intermodal tanks be handled according to the regulations established for the truck transportation subcategories.

EPA is proposing to establish effluent limitations for existing and new facilities discharging directly to surface waters in the following subcategories: Truck/Food, Rail/Food, and Barge/Food. However, EPA is proposing not to establish pretreatment standards for facilities discharging to POTWs in the following subcategories: Truck/Food, Rail/Food, and Barge/Food Subcategories. EPA is proposing effluent limitations for the food subcategories to control discharges of conventional pollutants which may adversely affect waterways when discharged directly to surface waters. However, because few priority toxic pollutants were found in food wastewaters and POTWs have the ability to treat conventional pollutants, EPA concluded that it was unnecessary to propose pretreatment limits for the food subcategories.

EPA is also proposing not to establish effluent limitations or pretreatment standards for existing or new facilities in the remaining subcategories: Truck/Hopper, Rail/Hopper and Barge/Hopper. Closed-top hopper trucks, rails, and barges are generally used to transport dry bulk materials such as coal, grain, and fertilizers. Raw wastewater generated from cleaning the interiors of hoppers was found to contain very few priority toxic pollutants at treatable levels. This is likely due to the fact that the residual materials (heels) from dry bulk goods are easily removed prior to washing and that relatively little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. This results in low pollutant loadings present in the wastewater discharges from hopper tank cleaning. Based on the low pollutant loads associated with wastewater discharge from the hopper subcategories, the Agency concluded that it need not establish nationally-applicable effluent limitations for these subcategories. Rather, direct dischargers will remain subject to effluent limitations established on a case by case basis using best professional judgement, and indirect dischargers may be subject to local pretreatment limits as necessary to prevent pass-through or interference. EPA solicits comments on the appropriateness of not regulating hopper facilities. EPA also solicits data on pollutant levels in wastewater from hopper facilities.

The proposed regulation would not apply to wastewaters generated from cleaning the interiors of drums or intermediate bulk containers (IBCs). In 1989, EPA conducted an analysis on the pollutant loadings associated with the drum reconditioning industry. Drum reconditioning operations generate wastewater from cleaning the interiors of drums before the drum is reconditioned, scrapped, or recycled. The Preliminary Data Summary for the Drum Reconditioning Industry (EPA 440/1–89/101 September 1989) estimated that there were 450 facilities which accepted approximately 50 million drums in 1985. These drums contained approximately 124 million pounds of residue. This study of the industry concluded that wastewater generated from drum reconditioning operations did not merit national regulation at that time because of the low pollutant loads associated with this industry. Since this study was conducted, the reconditioning industry has grown to include other forms of transportation containers which were not initially considered in EPA's study, namely IBCs. IBCs are portable containers with 450 liters (119 gallons) to 3,000 liters (793 gallons) capacity. In comparison, drums typically have 208 liters (55 gallons) capacity. Facilities cleaning IBCs generate wastewater from cleaning the interior of the IBC prior to re-using the container. Based on data collected in EPA's questionnaire, there are approximately 173 TEC facilities which accept IBCs for cleaning. The Association of Container Reconditioners estimates that there are approximately 600,000 IBCs manufactured each year. By comparison, they estimate that there are over 40 million drums manufactured and recycled each year.

Although EPA does not have data on the pollutant loadings associated with the cleaning of IBCs, EPA has concluded that IBCs are used by industries as an interchangeable replacement for drums and are therefore used for the storage and transport of cargos similar to drums. Because of this, EPA expects that wastewater generated from cleaning the interiors of IBCs may be similar to the wastewater generated from cleaning the interiors of drums. For this reason, EPA is proposing not to regulate wastewater generated from cleaning IBCs. EPA is soliciting comment and data on the pollutant loads associated with IBC cleaning wastewater, and on the initial decision not to include IBC wastewater within the scope of this guideline.

The focus of this proposed rule is on transportation equipment cleaning facilities that function independently of other industrial activities that generate wastewater. This proposal would therefore not apply to wastewater discharges from transportation equipment cleaning operations located at industrial facilities regulated under other Clean Water Act effluent guidelines, provided that the facility cleans only tanks containing cargos or commodities generated or used on-site, or by a facility under the same corporate structure.

EPA has identified TEC wastewaters at facilities subject to guidelines which include Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR part 414); Centralized Waste Treatment (CWT) (proposed 40 CFR part 437, 60 FR 5464, January 27,1995); Dairy products processing point source category (40 CFR part 405); Inorganic chemicals manufacturing point source category (40 CFR part 415); Petroleum refining point source category (40 CFR part 415); Industrial Waste Combusters (proposed 40 CFR part 444, 63 FR 6325, February 6, 1998); and Metal Products and Machinery (MP&M) (new regulation to be proposed in 2000). Most such facilities commingle tank cleaning wastewater with wastewater from other processes for treatment. For example, the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR part 414) effluent guidelines specifically list tank car washing as a covered process wastewater.

The promulgated and proposed regulations for these industries typically include on-site washwaters. The general regulatory definition of process wastewater includes water that comes in contact with raw materials (40 CFR 401.11(q)), which would include wastewater generated from cleaning the

interiors of tanks containing those raw materials. For those facilities where on-site washwaters are not specifically covered by the applicable guideline, EPA believes that facilities will commingle and treat washwaters with other process wastewater because an industrial facility will clean tanks that have transported commodities similar in nature to the products produced at that facility. Therefore, the wastewater generated from cleaning the tank interiors will contain contaminants similar in treatability to process wastewater at that facility.

Not previously regulated facilities are those facilities whose major process wastewater streams are not already covered or proposed to be covered by other Clean Water Act effluent guidelines. In order to prevent an industrial facility from accepting tank cargos which may generate wastewater inconsistent with treatment in place at the facility, EPA proposes that the exclusion for industrial facilities be allowed only if that facility is cleaning tanks containing materials which have been generated at, or used by, that facility. This would prevent an industrial facility that accepts tanks for commercial cleaning purposes from being excluded from the TEC guideline.

The rule also does not apply to facilities that are commercial treaters of wastewater that only clean tanks and containers as a part of the off-loading process of the wastes. The categorical limitations and standards to be established for the Centralized Waste Treatment Category and codified at 40 CFR part 429, would specifically cover tank washings at CWT facilities (60 FR 5464.) EPA currently intends to repropose CWT limitations and standards in 1998 and take final action in 1999.

Although EPA believes that it has clearly defined what operations are intended to be covered by this regulation, EPA expects that there are some facilities engaged in operations which may be difficult to define, especially with regard to repair and maintenance. An example of a facility which would be regulated under the TEC effluent guidelines would be a site which only engages in the cleaning of the interiors of railcars after the transportation of chemicals. The site would clearly be considered an affected facility under the TEC effluent guidelines. An example of a site engaged in operations which could potentially overlap with other effluent guidelines and cause confusion for permitting authorities would be a facility which cleans the interiors of railcars prior to performing maintenance and rebuilding operations on the railcar.

EPA is currently developing effluent limitations guidelines and standards for the Metal Products and Machinery (MP&M) industry. The MP&M category applies to industrial sites engaged in the manufacturing, maintaining or rebuilding of finished metal parts, products or machines. This regulation will apply to process wastewater discharges from sites performing manufacturing, rebuilding or maintenance on a metal part, product or machine to be used in one of the following industrial sectors: Aerospace; Aircraft; Electronic Equipment; Hardware; Mobile Industrial Equipment; Ordnance; Stationary Industrial Equipment; Bus and Truck; Household Equipment; Instruments; Motor Vehicle; Office Machine; Printed Wiring Boards; Job Shops; Precious Metals; Railroad; and Ships and Boats.

Typical MP&M unit operations which may overlap with TEC operations include abrasive blasting, acid and alkaline cleaning, chemical conversion coating, corrosion preventive coating, and associated rinsing.

There may be instances where facilities which predominately engage in cleaning operations perform ancillary MP&M operations on the barges, railcars, or tankers they are cleaning as a part of their TEC operations. EPA proposes that the process wastestreams from those ancillary MP&M activities be regulated solely by the TEC effluent guideline. Likewise, facilities which are predominately engaged in MP&M operations and clean barges, railcars, or tankers as part of those activities are proposed to be regulated by the MP&M guideline and are excluded from this guideline.

EPA is soliciting comment from any industrial site which has the potential to be covered by TEC and MP&M but is uncertain as to their appropriate classification. Such facilities may supply information detailing what operations they are performing, and the volume and nature of wastewater generated from those operations. The Agency does recognize that the approach listed above requires the permitting authority to decide whether a facility is predominately engaged in either TEC or MP&M operations. The general pretreament regulations do set forth a procedure by which an industrial user may request that EPA or the State, as appropriate, provide a written certification as to whether the industrial user falls within a particular pretreatment subcategory (40 CFR 403.6) EPA is also soliciting comment from permitting authorities as to whether the approach outlined above will result in easier, or more difficult, implementation of the TEC and MP&M regulations, and on alternative applicability approaches.

EPA also has considered establishing a minimum flow level for defining the scope of the regulation in order to ensure appropriate regulatory requirements for small businesses. EPA focused its analysis on the Truck/Chemical, Rail/Chemical and Barge/Chemical & Petroleum Subcategories because of the large population of facilities potentially affected by this proposal. The Agency's analysis found that 54 small facilities (about 7.8 percent of all regulated facilities) in the Truck/Chemical Subcategory have a wastewater flow of 8,000 gallons or less per day. These 54 small facilities (18.7 percent of the total facilities in the subcategory) discharge 56,900 toxic pounds or 14 percent of the total discharge for the subcategory at the 8,000 gallons per day flow level. The Agency notes that the discharge of pollutants from small facilities constitutes a proportional amount of the pollutant loadings discharged in the subcategory. The Agency has also looked at 2,000, 4,000, and 6,000 gallons per day flow levels for this subcategory, in addition to conducting a similar analysis for the Truck/Food, Rail/Food, and Barge/Food Subcategories.

In each case where EPA examined a potential flow cut off, the pollutant loadings discharged by smaller facilities were proportional to the loadings discharged by the subcategory as a whole. EPA concluded that there was no obvious breakpoint that could be used to establish an exclusion for small facilities that would not also exclude a proportional amount of pollutants discharged to the nation's waterways. For comparison, in the MP&M effluent guideline, EPA proposed a flow exclusion for small facilities. In this case, EPA demonstrated that 80 percent of the total industry loadings were discharged by only 20 percent of the MP&M facilities. EPA concluded that a minimum flow level was reasonable because excluding 80 percent of the facilities in the industry only excluded 20 percent of the pollutant loadings. However, in the case of the TEC industry, EPA has identified no similar rationale for providing such a low flow exclusion for small facilities. EPA is therefore not proposing to establish a minimum regulatory flow level for the TEC point source category.

At the request of the Small Business Advocacy Review Panel, EPA also estimated the effects of excluding all small businesses, defined as those with revenues under $5 million annually.

This would eliminate an estimated 191 of 692 facilities (28%) from coverage by the proposed rule, while eliminating 20 to 25 percent of the baseline toxic loadings. Thus, as with the flow based facility exclusion discussed above, this option would remove roughly a proportionate amount of both loadings and facilities from coverage. EPA is therefore not proposing to establish an exclusion for small businesses, but is soliciting comment on this option, or on any alternative approaches that the Agency may use to minimize impacts on small businesses.

IV. Profile of the Transportation Equipment Cleaning Industry

A. Transportation Equipment Cleaning Facilities

The TEC industry includes facilities that generate wastewater from cleaning the interiors of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, inland tank barges, closed-top hopper barges, ocean/sea tankers, and other similar tanks or containers used to transport cargos or commodities that come into direct contact with the tank or container interior. Transportation equipment cleaning is performed in order to prevent cross-contamination between products or commodities being transported in the tanks, containers, or hoppers, and to prepare transportation equipment for repair and maintenance activities such as welding. The cleaning activity is a necessary part of the transportation process.

Based upon responses to EPA's 1994 Detailed Questionnaire for the Transportation Equipment Cleaning Industry (see discussion in Section V.B of this notice), the Agency estimates that there are approximately 2,405 TEC facilities in the United States. This includes approximately 1,166 previously regulated TEC facilities and 1,239 not previously regulated TEC facilities. Of the TEC facilities not previously regulated, EPA estimates that 692 facilities discharge to either a POTW or to surface waters. The remaining 547 facilities are considered zero discharging.

TEC facilities are located in at least 37 states and in all 10 EPA regions. By state, the largest number of facilities are in Illinois. By EPA region, the largest concentration of facilities is in Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin). Most TEC facilities are located in the industrial portions of the United States.

The TEC industry consists of facilities that vary in size from one-or two-person shops to large corporations that operate many facilities nationwide. The TEC industry shows a correspondingly wide range of annual number of tanks cleaned by facilities, from less than 10 tanks per year to more than 10,000 tanks per year.

Tank cleaning may be performed as a commercial activity or as an in-house cost of doing business. Additionally, the tanks being cleaned may be owned by the facilities performing cleaning or may be owned by their customers. Overall, the TEC industry is characterized by a large number of facilities that clean relatively few tanks and a small number of facilities that clean a relatively large number of tanks.

The TEC industry consists of distinct transportation sectors: the trucking sector, the rail sector, and the barge shipping sector. Each one of these sectors may have different technical and economic characteristics. The transportation industry transports a wide variety of commodities, and TEC facilities therefore clean tanks and containers with residues (heels) from a broad spectrum of commodities such as food-grade products, petroleum-based commodities, organic chemicals, inorganic chemicals, soaps and detergents, latex and resins, hazardous wastes, and dry bulk commodities. TEC facilities also vary greatly in the level of wastewater treatment that they currently have in place. Treatment at existing TEC facilities ranges from no treatment to advanced tertiary treatment. The majority of TEC facilities discharging to surface waters currently employ primary treatment such as oil water separation or gravity separation followed by biological treatment. Indirect discharging facilities typically employ some form of primary treatment, such as oil water separation, gravity separation, dissolved air flotation, or coagulation and flocculation. A relatively small number of direct and indirect currently facilities currently employ advanced tertiary treatment such as activated carbon adsorption.

In 1994, approximately 2,440,000 tanks and containers were cleaned in the U.S by not previously regulated TEC facilities. Of all tanks cleaned commercially, tank trucks account for approximately 87 percent, intermediate bulk containers account for three percent, closed-top hopper trucks account for three percent, intermodal tank containers account for three percent, and rail tank cars account for two percent. The remaining tank types each account for less than one percent of all tanks cleaned. Approximately 52 percent of TEC facilities clean a variety of cargo types. Approximately 31 percent clean only food grade products, beverages, and animal and vegetable oils (food grade facilities), approximately eight percent clean only petroleum and coal products (petroleum facilities), and approximately two percent clean only dry bulk cargos.

The majority of TEC facilities discharge their wastewater indirectly to a publicly owned treatment works (POTW). EPA estimates that there are 669 indirect discharging TEC facilities. A smaller number, approximately 23, discharge wastewater directly to surface waters of the United States.

EPA estimates that there are approximately 547 facilities which are considered zero or alternative dischargers and do not discharge wastewater directly to surface waters or indirectly to a POTW. Methods of zero or alternative discharge in use by the TEC industry include applying wastewater to land, hauling wastewater off-site to qther treatment works (e.g., Centralized Waste Treatment Works (CWT) or hazardous waste Treatment Storage and Disposal Facilities (TSDFs)), deep well injecting wastewater, sending wastewater to an on-site evaporation pond or mat, or employing total recycle/reuse of wastewater.

B. Transportation Equipment Cleaning Processes

Interior cleaning of cargo tanks and containers is conducted for two primary reasons: to prevent contamination between cargos and to facilitate internal inspection and repair. An additional purpose of tank cleaning is to render the tank interior nonexplosive and nonflammable to provide a safe environment for manual cleaning and for tank repairs that require "hot work" (e.g., welding or cutting).

Although different types of tanks are cleaned in various manners, the basic cleaning process for each tank is similar. A typical tank cleaning process is as follows:

- Identify the cargo last transported in the tank;
- Determine the next cargo to be transported;
- Drain the tank heel (residual cargo) and, if necessary, segregate the heel for off-site disposal;
- Rinse the tank (pre-rinse);
- Wash the tank using one or more cleaning methods and solutions;
- Rinse the tank; and
- Dry the tank.

The cleaning facility determines the cargo last transported in the tank to: (1) Assess the facility's ability to clean the tank efficiently; (2) determine the appropriate cleaning sequence and

cleaning solutions; (3) evaluate whether the residue cleaned from the tank will be compatible with the facility's wastewater treatment system; and (4) establish an appropriate level of health and safety protection for the employees who will clean the tank. The next cargo to be transported in the tank is identified to determine if the available level of cleaning at the facility is adequate to prevent contamination of the next cargo. The facility may decide to not clean a tank based on any of the preceding concerns.

Once a tank has been accepted for cleaning, the facility checks the volume of heel (residual cargo) in the tank and determines an appropriate heel disposal method. Any water-soluble heels that are compatible with the facility's treatment system and the conditions of the facility's wastewater discharge permit are usually combined with other wastewater for treatment and discharge at the facility. Incompatible heels are segregated into drums or tanks for disposal or re-use by alternative means, which may include re-use onsite, return to consignee, sale to a reclamation facility, landfilling, or incineration. The TEC facility may re-use heels such as soaps, detergents, solvents, acids, or alkalis as tank cleaning solutions or as neutralizers for future heels and for wastewater treatment.

Cleaning processes vary among facilities depending on available cleaning equipment, the cargos last transported in the tanks to be cleaned, and the state of the product last transported in the tank. Some residuals require only a water rinse (e.g., sugar), while others require a detergent or strong caustic solution followed by a final water rinse (e.g., latex or resins). Hardened or caked-on products sometimes require extended processing time or special cleaning equipment. Typical cleaning equipment includes low- or high-pressure spinner nozzles or hand-held wands and nozzles. Spinner nozzles, which are operated through the main tank hatch, are designed to rotate in an overlapping spray pattern that cleans the entire interior of the tank. Operating cycles range from rinse bursts to 20 minutes or longer caustic washes. Washing with hand-held wands and nozzles achieves the same result as with high-pressure spinner nozzles, but requires facility personnel to manually direct the wash solution across the interior surface of the tank. After cleaning, tanks are usually dried and inspected.

Section 4.0 of the Technical Development Document contains a more detailed description of the TEC industry and the unique cleaning processes used for different types of tanks and cargos.

C. Regulatory History for the Transportation Equipment Cleaning Industry

In 1986, EPA published the Domestic Sewage Study "Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works" (EPA–503/SW–86–004, February 1986), which identified TEC facilities as potentially contributing large amounts of hazardous wastes to POTWs.

In response to the Domestic Sewage Study, EPA conducted a sampling program to obtain and analyze wastewater and wastewater treatment sludge samples at eight TEC facilities. During this program, EPA sampled one aircraft, three tank truck, two rail tank car, and two tank barge cleaning facilities. Raw TEC wastewater samples and, where appropriate, treated effluent and sludge samples were collected at each facility. In addition, EPA's Toxicity Characteristic Leaching Procedure was used to obtain extracts of sludge samples for analysis. The samples were analyzed for analytes in the 1987 Industrial Technology Division List of Analytes. This list contains conventional pollutants and EPA's priority toxic pollutants (excluding fecal coliform bacteria and asbestos) as well as 285 other organic and inorganic nonconventional pollutants or pollutant characteristics. These additional pollutants were derived from other EPA lists, including the Superfund Hazardous Substance List, RCRA Appendix VIII and Appendix IX, and the list of analytes proposed to be added to RCRA Appendix VII by the Michigan Petition (49 FR 49793).

EPA also investigated the size of the TEC industry by identifying TEC facilities from several sources, including trade publications, Dun & Bradstreet, EPA's Permit Compliance System, trade associations, state regulatory agencies, and the U.S. Coast Guard. Using the wastewater sampling data and industry size data, EPA estimated the total discharge of pollutants from the TEC industry and performed an environmental impact analysis.

In 1989, EPA published the "Preliminary Data Summary for the Transportation Equipment Cleaning Industry" (EPA 440/1–89/104, 1989) which summarized the findings of the 1986–87 study and forms the basis for EPA's decision to develop effluent guidelines specifically for the TEC point source category. A description of EPA's data gathering efforts on the TEC industry since completion of the 1986–1987 study is provided in Section V below.

V. Summary of Data Collection Activities

EPA collected data necessary to develop effluent limitations guidelines and standards for the TEC point source category from many sources, including questionnaires and EPA's sampling program. This section of the preamble summarizes these data-collection activities, which are further discussed in Section 3.0 of the Technical Development Document.

A. Preliminary Data Summary

Prior to 1992, EPA conducted two studies of the TEC industry. The first study was performed during the 1973–1974 period for the Transportation Industry Point Source Category. Information was obtained from only a few TEC facilities and was limited to conventional pollutants. The study was not specific to TEC processes and wastewaters and did not result in any regulations for the TEC industry. The second study was performed during the 1986–87 period in response to the Domestic Sewage Study (DSS), which found that TEC facilities discharged high levels of conventional, toxic, and nonconventional pollutants in raw and treated wastewaters. The study focused on characterizing raw wastewater at eight TEC facilities, and, where appropriate, treated effluent and sludge samples. The second study also included a preliminary investigation to determine the size of the TEC industry by identifying TEC facilities. The resulting TEC wastewater sampling data and industry size data were used to estimate the total discharge of priority toxic pollutants from the TEC point source category and to perform an environmental impacts analysis. The results of the study were published in the Preliminary Data Summary for the Transportation Equipment Cleaning Industry in September of 1989 (EPA 44/1–89/104), which formed the basis for EPA's decision to develop effluent guidelines specifically for the TEC industry.

B. Development of the TECI Site Identification Database

The first phase of data collection for development of effluent limitation guidelines for the TEC industry entailed a comprehensive search to identify facilities that potentially perform TEC operations. EPA identified all potential segments within the TEC industry and then attempted to identify all facilities or a statistical sample of all facilities that potentially perform TEC operations

within each industry segment. The TEC industry is characterized by industry segments based on tank type cleaned and business operational structure. Tank types initially considered within the potential scope of the TEC industry include tank trucks, closed-top hopper tank trucks, intermodal tank containers, intermediate bulk containers, rail tank cars, closed-top hopper rail cars, inland tank barges, closed-top hopper barges, ocean/sea tankers, and other similar tanks (excluding drums). Business operational structures include independents, carriers, shippers, and builders/leasers.

EPA was unaware of any single source or set of sources that specifically identify facilities that perform TEC operations. Likewise, there is no single Standard Industrial Classification (SIC) code or set of SIC codes that specifically identify facilities that perform TEC operations. Therefore, EPA performed an exhaustive search to identify all available sources listing facilities that potentially perform TEC operations. These sources included transportation industry directories, Dun & Bradstreet's Information Services, several Agency databases, state and local authorities, trade journals, and trade associations. Some sources specifically identified facilities that perform TEC operations. Other sources identified potential TEC facilities by one or more of the following criteria: (1) They own, operate, or maintain transportation equipment; (2) they own, operate, or maintain equipment used by the transportation segments applicable to the TEC industry; or (3) they report under an SIC code that includes facilities that have the potential to own, operate, or maintain transportation equipment.

Listings of facilities that potentially perform TEC operations were entered into the TECI Site Identification Database. The database contains information for 7,940 facilities that represent a total potential industry population of 30,280 facilities (for some sources, only a portion (i.e., a statistical sample) of the total available records were received and entered into the database). This database formed the basis of EPA's statistical sample frame for subsequent data-gathering activities.

C. Survey Questionnaires

Industry responses to questionnaires administered by EPA under the authority of Section 308 of the Clean Water Act were a major source of information and data used in developing the proposed TEC industry effluent limitations guidelines and standards. EPA administered two questionnaires to the TEC industry—the 1993 screener questionnaire and the 1994 detailed questionnaire.

1. 1993 Transportation Equipment Cleaning Industry Screener Questionnaire

EPA developed a screener questionnaire to distribute to a statistical sample of all facilities that potentially perform TEC operations. The objectives of the questionnaire were to: (1) Identify facilities that perform TEC operations; (2) evaluate TEC facilities based on wastewater, economic, and/or operational characteristics; (3) develop technical and economic profiles of the TEC industry; (4) select a statistical sample of screener respondents to receive a detailed questionnaire; and (5) select facilities for EPA's TEC industry engineering site visit and sampling program.

EPA developed the screener questionnaire for the TEC industry based on experience with previous screener questionnaires from other point source categories. The Agency requested site-specific 1992 calendar year information in the four-page screener questionnaire. Information requested included facility name, address, contact person, owner, number of employees, annual revenues, and operational structure (e.g., carrier, independent). Also included were questions concerning TEC operations such as whether the facility performs TEC operations, generates TEC process wastewater, discharge information (type and daily volume), number of tank interior cleanings performed by tank type, percentage of tank interior cleanings performed by cargo type, types of cleaning processes performed, and treatment technologies or disposal methods on-site.

The screener questionnaire was sent to a stratified random sample of 3,240 facilities identified from the TECI Site Identification Database. The Agency did not mail screener questionnaires to all 7,940 potential tank interior cleaning facilities in the TECI Site Identification Database; however, the Agency believed that a sample size of 3,240 would sufficiently represent the variety of technical and economic characteristics of the TEC industry and meet the objectives of the screener questionnaire while minimizing the burden to both industry and government. EPA used facility type (e.g., tank truck cleaning, rail tank car cleaning, tank barge cleaning, and transfer facilities) and level of assurance (i.e., the probability that the facility performs TEC operations) as criteria to select facilities to receive a screener questionnaire. These criteria were chosen to account for both the diverse nature of the TEC industry and the varying reliability of the sources used to develop the TECI Site Identification Database. Additional detail concerning selection of the statistical sample of facilities to receive a screener questionnaire is included in Section V.D of this preamble.

EPA received responses from 730 of these facilities that indicated that they performed TEC operations and generated TEC wastewater (i.e., in scope responses). These facilities represent an estimated TEC industry population of 2,739 facilities. The distribution of estimated industry population by industry segment are as follows:

TABLE 2.—POPULATION ESTIMATES

Industry segment	Estimated total number of facilities
Barge	72
Truck	2,432
Rail	189
Transfer Stations	46
Total	2,739

2. 1994 Transportation Equipment Cleaning Industry Detailed Questionnaire

EPA developed a detailed questionnaire for distribution to a statistical sample of facilities that perform TEC operations and generate TEC wastewater. The objectives of the questionnaire were to: (1) Develop an industry profile; (2) characterize TEC processes, industry production (i.e., number and type(s) of tanks cleaned), and water usage and wastewater treatment; (3) perform an industry subcategorization analysis; (4) develop pollutant loadings and reductions estimates; (5) develop compliance cost estimates; and (6) determine the impacts of the rulemaking on the TEC industry.

The Agency developed the detailed questionnaire to collect information necessary to develop effluent limitations guidelines and standards for the TEC point source category. The detailed questionnaire included two parts: (1) Part A: Technical Information and (2) Part B: Financial and Economic Information. Technical information collected was specific to calendar year 1994. Financial and economic information collected was specific to calendar years 1992 through 1994. In part A, EPA requested information necessary to identify the facility and to determine wastewater discharge locations. It also requested information necessary to develop an industry profile, characterize TEC processes and

production, and perform an industry subcategorization analysis. Information regarding wastewater generation, wastewater recycle/reuse, treatment technologies currently in place, the availability of wastewater stream characterization data and/or treatability data, use of pollution prevention, and water conservation activities were also requested. In part B, EPA requested information necessary to identify the facility and facility's corporate hierarchy, to develop an industry economic profile, and to assess facility-level, business entity-level, and corporate parent-level economic impacts associated with TEC industry effluent guidelines.

The Agency sent the Detailed Questionnaire to a stratified random sample of 275 facilities that perform TEC operations and generate TEC wastewater as identified from responses to the TECI screener questionnaire. The following four variables were considered (although not necessarily directly selected as basis for sample stratification) in selecting facilities to receive a detailed questionnaire: tank type, operational structure, number of employees, and treatment in place. Each of the potential detailed questionnaire recipients was classified based on these four variables. Facilities with multiple classifications were assigned a primary classification. The sampling strategy was designed to meet two objectives most effectively: (1) to ensure that at least one facility was sampled from most cells (i.e., combinations of the four variables listed above), and (2) to ensure the variance around the national estimates would not be grossly inflated in attempting to meet the first objective.

EPA received responses from 176 of these facilities that were used in subsequent analyses. During review of the detailed questionnaire responses, EPA classified each facility into one of the following categories:

(1) Direct or Indirect Discharge: TEC facilities that discharge wastewaters directly to surface waters or indirectly to a POTW that are not located at industrial facilities covered under existing effluent guidelines.

(2) Zero or Alternative Discharge: TEC facilities that do not discharge wastewater to U.S. surface waters or to a POTW, including facilities that haul TEC wastewater off site to a Centralized Waste Treatment facility, practice total wastewater recycle/reuse, or land apply TEC wastewater.

(3) Previously Regulated Facilities: Industrial facilities that are covered by existing or upcoming effluent guidelines which also generate transportation equipment cleaning wastewaters. TEC operations are a very small part of their overall operations. These include facilities subject to the Organic Chemicals, Plastics, and Synthetic Fibers Effluent Guidelines, Dairies Effluent Guidelines, Centralized Waste Treaters Effluent Guidelines, and Metals Products and Machinery Effluent Guidelines.

TABLE 3.—NATIONAL ESTIMATES OF TEC INDUSTRY POPULATION BY FACILITY TYPE

Facility type	Estimated number of facilities in total population
Direct or Indirect Discharge	692
Zero Discharge	547
Previously regulated	1,166

TABLE 4.—NATIONAL ESTIMATED TEC INDUSTRY POPULATION BY SUBCATEGORY FOR ALL TEC FACILITIES NOT PREVIOUSLY REGULATED

Subcategory	Estimated number of facilities in total population [a]
Truck/Chemical	288
Rail/Chemical	38
Barge/Chemical & Petroleum	15
Truck/Food	173
Rail/Food	86
Barge/Food	2
Truck/Petroleum	34
Rail/Petroleum	3
Truck/Hopper	34
Rail/Hopper	5
Barge/Hopper	12
Total	692

[a] Differences occur due to rounding.

As evidenced by the data collection activities undertaken by EPA, the Agency has attempted to develop accurate population estimates for each subcategory. The Agency solicits comment and sources of data which may provide additional information on the population of affected facilities.

D. Development of National Population Estimates

As discussed previously, EPA distributed screener questionnaires to a statistical sample of all facilities that potentially perform TEC operations. EPA then distributed detailed questionnaires to a statistical sample of facilities that perform TEC operations and generated TEC wastewater as identified by responses to the screener questionnaires. This section describes EPA's approach in developing national population estimates for the TEC industry based on these statistical samples. Section 3.0 of the Technical Development Document and the Statistical Support Document contained in the administrative record for this rule contain additional detail concerning development of national population estimates.

EPA considered each source used to develop the TEC industry Site Identification Database to be a statistical "stratum." EPA selected a simple random sample of facilities from each stratum to receive a screener questionnaire. Following this approach, each sampled facility can be used to characterize other facilities within the same stratum. For example, if a sampled facility falls within stratum "A" and the "weight" of that stratum is five, the responses received from that facility represent a total of five facilities in the overall TEC industry population. Following receipt of the screener questionnaire responses (to account for non-respondents), EPA determined a weight associated with each stratum using the following equation:

$$\text{Stratum Weight} = N_h/n_h$$

Where:

N_h = Total number of facilities in stratum.

n_h = Number of facilities that responded to the screener questionnaire.

Note that several screener quesuionnaire strata with similar weighting factors were collapsed into a single stratum, and assigned a conglomerated weighting factor for the entire collapsed stratum, to reduce the variability of the population estimates.

The approach used to develop TEC industry population estimates based on the detailed questionnaire responses is similar to that used for the screener questionnaire, with two differences. One, EPA developed additional strata to ensure selection of adequate sample populations within the following four variables: tank type, operational structure, number of employees, and wastewater treatment in place. Two, the statistical methodology used to account for non-respondents was based on facility subcategory rather than stratum.

E. Site Visits and Wastewater Sampling Program

EPA conducted 39 engineering site visits at 38 facilities from 1993 through 1996 to collect information about TEC processes, water use practices, pollution prevention practices, wastewater treatment technologies, and waste disposal methods. These facilities were also visited to evaluate them for potential future sampling. In general, EPA visited facilities that encompass

the range of TEC facilities, including tank type cleaned, cargo cleaned, operational structure, discharge status, and wastewater treatment in place.

EPA conducted 20 sampling episodes at 18 facilities (two facilities were sampled twice) from 1994 through 1996. Sampling episodes were conducted to: (1) Characterize the pollutants in the wastewater being discharged directly to surface waters and indirectly to POTWs; and (2) generate pollutant treatment system performance data from facilities with well-operated wastewater treatment systems. The Agency used the same general criteria to select facilities for sampling as those used to select facilities for site visits. Of these sampling episodes, 12 were conducted to obtain untreated TEC process wastewater and treated final effluent characterization data from facilities representative of the variety of TEC facilities. Wastewater treatment sludge was also characterized at two of the 12 facilities to determine whether the sludge was hazardous. Each of these "characterization" sampling episodes comprised one sampling day.

EPA conducted eight additional sampling episodes to obtain both untreated TEC process wastewater characterization data and to evaluate the effectiveness and variability of wastewater treatment units used to treat TEC wastewater. Of these eight sampling episodes, one was conducted for one day, two were conducted for three days each, four were conducted for four days each, and one was conducted for five days.

At several facilities, sampled waste streams included TEC wastewater commingled with other wastewater sources including exterior cleaning wastewater, boiler wastewater, and contaminated storm water. At one facility, boiler condensate was sampled to characterize this waste stream. Waste stream samples were typically analyzed for volatile organics, semivolatile organics, organo-halide pesticides, organo-phosphorus pesticides, phenoxy-acid herbicides, dioxins and furans, metals, and classical wet chemistry parameters. The analytes typically found in TEC wastewaters are discussed in Section VII of this preamble and in the Technical Development Document.

VI. Industry Subcategorization

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry, or whether different limitations and standards were appropriate for subcategories within the industry. In reaching its decision that subcategorization is required, EPA considered various factors. The Clean Water Act (CWA) requires EPA, in developing effluent limitations, to assess several factors including manufacturing processes, products, the size and age of the facility, wastewater use, and wastewater characteristics. The TEC industry, however, is not typical of many of the other industries regulated under the CWA because it does not produce a product. Therefore, EPA developed additional factors that specifically address the characteristics of TEC operations. Similarly, several factors typically considered for subcategorization of manufacturing facilities were not considered applicable to this industry. The factors considered for subcategorization are listed below:

(1) Cleaning processes (production processes);
(2) Tank type cleaned;
(3) Cargo type cleaned;
(4) Water use practices;
(5) Wastewater characteristics;
(6) Facility age;
(7) Facility size;
(8) Geographical location;
(9) Water pollution control technologies;
(10) Treatment costs; and
(11) Non-water quality impacts.

A. Factors Considered for Basis of Subcategorization

EPA considered a number of potential subcategorization approaches for the TEC industry. EPA used information collected during 39 engineering site visits, the 1993 screener questionnaire for the TEC industry, and the 1994 Detailed Questionnaire for the TEC industry to develop potential subcategorization approaches. EPA considered eleven factors in developing its subcategorization scheme for the TEC industry. A discussion of each is presented below.

1. Cleaning Processes

EPA considered subcategorizing the TEC industry based on the cleaning process used. Cleaning processes vary among facilities depending on the type of tank cleaned and the type of cargo last transported in the tank. Cleaning can be performed using many types of cleaning equipment including low or high pressure spinner nozzles, hand-held wands and nozzles, steam cleaning equipment, or manual cleaning with scouring pads or shovels. Typical cleaning solutions include detergents, acids, caustics, solvents, or other chemical cleaning solutions. The cleaning process used depends greatly on the type of cargo last hauled in the tank. Certain residual material (e.g., sugar) only require a water rinse, while other residual materials (e.g., latexes or resins) require a detergent or strong caustic solution followed by a final water rinse. The state of the product last contained in the tank also affects the cleaning process. Hardened or caked-on products sometime require additional processing time, or may require manual cleaning. For each type of tank cleaned and cargo hauled, the selection of cleaning processes among available alternatives can affect the volume of wastewater generated and the constituents of that wastewater. Flow restriction and the availability of less harmful cleaning solutions as methods of pollution prevention and source control should be considered pollutant control technologies, rather than a defining production characteristic. EPA has decided that subcategorizing the TEC industry based on cleaning processes is not an appropriate means of subcategorization, and considered subcategorization based on either type of tank cleaned or type of cargo transported.

2. Tank Type Cleaned

EPA considered subcategorizing the TEC industry based on the type of tank cleaned. Facilities responding to the TEC industry Detailed Questionnaire reported cleaning nine primary tank types. The tank types reported by respondents are: (1) Tank truck; (2) intermediate bulk container; (3) intermodal tank container; (4) closed-top hopper truck; (5) rail tank car; (6) ocean/sea tanker; (7) closed-top hopper barge; (8) closed-top hopper rail car; and (9) inland tank barge. Based on data obtained in the TEC industry Detailed Questionnaire, approximately 87 percent of all tanks cleaned are tank trucks. Intermediate bulk containers, intermodal tank containers, and closed-top hopper trucks each account for three percent of all tanks cleaned. Rail tank cars comprise two percent and inland tank barges, ocean/sea tankers, closed-top hopper rail cars, and closed-top hopper barges each comprise less than one percent of all tanks cleaned. Seventy-four percent of all facilities responding to the TEC industry Detailed Questionnaire clean only one primary tank type. An additional 12 percent of facilities clean both tanks and closed-top hoppers within the same mode of transport. Only one percent of responding facilities clean tank types with multiple modes of transport and an additional 13 percent of responding facilities clean miscellaneous combinations of tank types within the same mode of transport.

For each type of tank cleaned, the heel volume and availability of

wastewater flow minimization techniques vary, which may affect wastewater treatment efficiency.

EPA has preliminarily concluded that subcategorizing the TEC industry based, in part, on the type of tank cleaned is an appropriate means of subcategorization due to these differences. Additionally, the vast majority of facilities clean tanks within the same mode of transport and are thus easily identified according to the tank type cleaned.

3. Cargo Type Cleaned

EPA considered subcategorizing the TEC industry based on the cargo type cleaned. Respondents to the TEC industry Detailed Questionnaire reporting cleaning tanks which transported 15 general cargo types. The reported cargo types are listed below:

- Group A—Food Grade Products, Beverages, and Animal and Vegetable Oils;
- Group B—Petroleum and Coal Products;
- Group C—Latex, Rubber and Resins;
- Group D—Soaps and Detergents;
- Group E—Biodegradable Organic Chemicals;
- Group F—Refractory (Nonbiodegradable) Organic Chemicals;
- Group
- G—Inorganic Chemicals;
- Group H—Agricultural Chemicals and Fertilizers;
- Group I—Chemical Products;
- Group J—Hazardous Waste (as defined by RCRA in 40 CFR Part 261);
- Group K—Nonhazardous Waste;
- Group L—Dry Bulk Cargos (i.e., hopper cars); and
- Group M, N, and O—Other (Not Elsewhere Classified).

Of all responding TEC facilities not previously regulated, 48 percent clean only one cargo type while 52 percent clean a variety of cargo types. Of the facilities that reported cleaning only one cargo type, 65 percent reported cleaning food grade products, beverages, and animal and vegetable oils (Group A), 16 percent reported cleaning petroleum and coal products (Group B), and 10 percent reported cleaning "other cargos" (Groups M, N and O). A review of the data for facilities that clean two or more cargos suggests that no apparent trend in cargo types cleaned, but rather a wide variety of combinations of "chemical-type" cargos.

There are several reasons to consider subcategorization based on type of cargo. Facilities that clean tanks which contained only food grade products (Group A), petroleum grade products (Group B), or dry bulk goods (Group L) represent distinct and relatively large segments of the TEC industry that differ significantly from facilities that clean tanks containing a wide variety of cargos. The type of cargo transported and the type of cleaning processes utilized influences wastewater characteristics. EPA therefore concluded that subcategorization of the TEC industry based, in part, on cargo type may be an appropriate means of subcategorization.

EPA was not able to identify any other distinct segments of the TEC industry among the remaining groups which included Latex, Rubber and Resins (Group C), Soaps and Detergents (Group D), Biodegradable Organic Chemicals (Group E), Refractory (Nonbiodegradable) Organic Chemicals (Group F), Inorganic Chemicals (Group G), Agricultural Chemicals and Fertilizers (Group H), Chemical Products (Group I), Hazardous Waste (Group J), Nonhazardous Waste (Group K), and Groups M, N, and O consisting of cargos not elsewhere classified. EPA concluded that facilities which do not clean primarily food grade products (Group A), petroleum grade products (Group B), or dry bulk goods (Group L) are likely to clean a wide variety of cargos types consisting of various combination of cargos types products. EPA has therefore created a subcategory termed "chemical" for any facility that cleans a wide variety of cargos and commodities.

EPA has then defined a "chemical" cargo as including Latex, Rubber and Resins, Soaps and Detergents, Biodegradable Organic Chemicals, Refractory (Nonbiodegradable) Organic Chemicals, Inorganic Chemicals, Agricultural Chemicals and Fertilizers, Chemical Products, Hazardous Waste, Nonhazardous Waste, and any other cargo not elsewhere classified. In summary, the "chemical" classification includes any cargo or commodity not defined as a food grade product, petroleum grade product, or dry bulk good. EPA has placed any facility in a Chemical Subcategory if 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos or commodities.

EPA originally considered developing separate subcategories for barge chemical and barge petroleum facilities. However, based on raw wastewater characterization data collected in support of this proposed rule, EPA concluded that the wastewater characteristics and treatability of wastewaters generated from barge chemical and barge petroleum facilities were similar, and thus it was reasonable to combine these subcategories. As mentioned previously in Section III, EPA is soliciting comments and data that would address whether the Truck/Chemical and Truck/Petroleum Subcategories should be combined; and whether the Rail/Chemical and Rail/Petroleum Subcategories should also be combined.

As described in Section VII of this notice, Wastewater Use and Characterization, the data collected from the Truck/Chemical and Truck/Petroleum Subcategories, and the Rail/Chemical and Rail/Petroleum Subcategories did not conclusively support combining these subcategories. However, sampling data obtained from the Centralized Waste Treatment Industry was used to characterize TEC wastewater for the Truck/Petroleum and Rail/Petroleum Subcategories. Therefore, the Agency is soliciting comment and data on this preliminary conclusion that the Truck/Chemical and Truck/Petroleum Subcategories; and Rail/Chemical and Rail/Petroleum Subcategories, should not be combined.

Additionally, while the Agency has proposed definitions for "petroleum" and "chemical" cargos, the Agency realizes that there may be cargos, especially various "petrochemical" cargos, which may not obviously be categorized as one type or the other. The determination of whether a facility is accepting "petroleum" or "chemical" cargos may be critical, due to the fact that the Agency has not proposed regulation for the petroleum subcategory. The Agency is concerned that this determination may be difficult and burdensome for the permitting authority and the affected facility. The Agency solicits comment from permitting authorities and affected facilities on the implementation issues surrounding the proposed subcategorization approach, especially with regard to the chemical and petroleum subcategories.

In order to address these concerns, the Agency has considered combining the petroleum and chemical subcategories and establishing one set of effluent limitations for facilities accepting chemical or petroleum cargos. EPA solicits comment on this alternative approach.

As part of today's proposal, the Agency calculated pollutant loadings for each option in each subcategory, as described in section VIII of this notice. The loadings calculations were used as a parameter for evaluating technology options in each subcategory. The Agency notes that a substantial amount of the toxic pounds-equivalent of pollutants removed in several subcategories are due to the removals of

a few pesticides found in the raw wastewater at one or two facilities. Specifically, about 90% of the toxic removals estimated for 288 indirect dischargers in the truck chemical subcategory are accounted for by 6 pesticides (Azinphos Ethyl, Coumaphos, Disulfoton, EPN, 4,4'-DDT, and Dieldrin—note that the latter three have been banned for a number of years); and about 80% of the toxic removals estimated for the 38 indirect dischargers in the rail chemical subcategory are accounted for by 3 pesticides (Dieldrin, Simazine, and Strobane). Pesticides are fairly toxic and generally have high toxic weighting factors. Relatively small removals in terms of loadings can result in significant reductions in toxic impacts. Because most of the projected toxic removals for indirect dischargers in the truck and rail chemical subcategories come from a few pesticides, the Agency solicits comment on an alternative regulatory approach that would establish separate subcategories for such facilities which accept tanks containing pesticide-containing cargos for cleaning.

This approach was discussed at some length by the Small Business Advocacy Review (SBAR) Panel in its consideration of options that might provide relief to small businesses, and was specifically endorsed by SBA. If the Agency were to pursue this approach, it might decide to establish a set of effluent limitations guidelines for a variety of pesticides for any facility that accepts, or potentially accepts, cargos which have transported pesticides. The Agency is concerned, however, that it may be difficult to define a subcategory for pesticide-containing cargos, because the exact source of pesticides found in TEC wastewater samples has often been difficult to establish. Furthermore, if the Agency were to set limits for pesticides, it would need to require monitoring for pesticides, which is generally more expensive than monitoring for the parameters regulated under the current approach. (Note that although pesticides are among the pollutants of concern, the Agency is not currently proposing to establish limits for pesticides; rather the Agency is establishing limits for other pollutants of concern, which it believes will also ensure that treatment adequate to control pesticides is adopted.) Thus, the Agency does not know how many of the estimated 326 indirect dischargers in the truck chemical and rail chemical subcategories would actually benefit from such an approach, and how many might incur higher monitoring costs because they clean some tanks with pesticide residues. EPA requests comment on this issue. EPA would specifically be interested to know whether indirect dischargers in these two subcategories believe such an approach would be workable, and whether there is a significant number of such facilities that do not handle any tanks that might contain pesticide residues. For those facilities that do handle tanks containing pesticide residues, EPA would like to know what percentage of tanks cleaned might contain such residues. EPA might use this information to define a subcategory for facilities with more than a certain percentage of such tanks, in the same way that it is currently defining the chemical subcategories as including facilities for which more than 10% of tanks cleaned had chemical cargos.

This approach may also result in the Agency pursuing a less stringent regulatory technology option for those facilities which do not accept pesticide containing cargos. The SBAR Panel recommended that EPA request comment on whether the remaining loadings of non-pesticide chemicals for indirect dischargers in the truck and rail subcategories warrant regulation. The Agency is thus soliciting comment on the loading reduction estimates, cost-effectiveness and benefits to the environment and POTWs of non-pesticide chemical removals. Note that in these subcategories in today's notice, EPA is not proposing effluent limitations guidelines and standards for any pesticide, nor is it proposing to establish a subcategory for pesticide cargos. Concern has also been expressed about the representativeness of the samples on which the pesticide removal estimated are based. Because pesticides are highly toxic and thus of particular concern, the Agency modified its screening criteria for including samples in which pesticides were detected in its loadings and removals analysis. In general, in order to ensure that detections are representative of the industry and present at treatable concentrations, contaminants are only included in the analysis if they show up in samples from at least two facilities at concentrations of 5 times the minimum detection level or greater, and are at least 50% removed by the proposed treatment. In contrast, all pesticides that were detected even once, at any level, were included in the analysis. Most of the pesticides accounting for the bulk of estimated toxic removals from indirect dischargers in the truck and rail chemical subcategories would not have been included in the analysis under the standard screening criteria, either because they were detected at only one facility or because they were only detected at close to the minimum detection level, or both. EPA believes, however, that the modified screening criteria for pesticides are appropriate for several reasons. First of all, as already noted, pesticides are highly toxic and thus of particular concern. Second, a relatively small amount of sampling data is available for this industry. In the truck chemical subcategory, for example, only ten samples of raw wastewater were analyzed, so that even a single detect represents 10% of samples, which EPA believes is a significant fraction. Finally, wastes from TEC facilities are highly variable, so that one might expect that many of the contaminants that are potentially of concern would only show up in a single sample, and others might not show up in any samples at all. For these reasons, EPA believes that its modified screening criteria for pesticides are appropriate, its loadings and removals analysis is based on the best available data, and the regulatory limits it has proposed for indirect dischargers in these subcategories, based partly on this analysis, is also appropriate. However, the Agency requests comments on this issue, and any data commenters may be able to provide on the loadings of pesticides, or any other contaminant, and TEC facilities.

4. Water Use Practices

TEC facilities use water for cleaning and rinsing as well as for a number of ancillary purposes such as hydrotesting, air pollution control, and process cooling water. Water use varies based on a number of factors including type of tank cleaned, type of cleaning solution utilized, type of cargo last contained in the tank, type of cargo to be transported, and tank capacity. Facilities which clean predominantly tank trucks typically use significant volumes of water for exterior cleaning, whereas facilities which clean rail and barge tanks frequently do little exterior washing. Facilities which clean rail tanks frequently use large volumes of water for tank hydrotesting, whereas tank truck cleaning facilities generate substantially less hydrotesting wastewater. Based on these variations in water use practices among different types of facilities, EPA concluded that the most appropriate method of subcategorization that encompasses water use practices is subcategorization based on the type of tank cleaned and type of cargo cleaned at a facility.

5. Wastewater Characteristics

The volumes and pollutant concentrations contained in TEC tank

interior cleaning wastewater show a large degree of variation among different types of facilities. Wastewater volumes vary greatly based on a number of factors including those cited above. Likewise, the concentration of pollutants present in tank interior cleaning wastewater can vary depending on the type of cargo last hauled, the tank size, the cleaning process utilized and the amount of water used per cleaning operation. Since all of these factors, with the exception of type of tank cleaned and type of cargo cleaned, have been rejected, EPA has concluded that the most appropriate method of subcategorization that encompasses wastewater characteristics is subcategorization based on the type of tank cleaned and type of cargo cleaned at a facility.

6. Facility Age

EPA evaluated the age of facilities as a possible means of subcategorization. EPA evaluated the treatment technologies in place as related to the year in which the facility first conducted TEC operations. Based on this evaluation, the Agency concluded that there is little difference in the treatment technologies in use by older facilities (defined as beginning TEC operations before 1980) as compared to those of newer facilities (defined as beginning TEC operations in or after 1980). EPA has tentatively concluded that subcategorization based on age of facilities is not an appropriate means of subcategorization.

7. Facility Size

EPA considered subcategorization of the TEC industry on the basis of facility size. Four parameters were identified as relative measures of facility size: number of employees, number of tanks cleaned, wastewater flow and revenue. EPA found that facilities of varying sizes generate similar wastewaters and use similar treatment technologies within the proposed subcategorization approach. EPA is not proposing to subcategorize the industry based on facility size.

8. Geographical Location

EPA evaluated the distribution of TEC facilities based on geographic location. In general, TEC facilities tend to be located within the industrialized regions of the country, with relatively high concentrations in the area between Houston and New Orleans and within specific urban areas such as Los Angeles, Chicago, and St. Louis. The major concentrations of rail, truck, and barge cleaning facilities are along the major thoroughfares by rail, road, and inland waterways, respectively. There are no apparent trends of geographic distribution of TEC facilities as related to wastewater characteristics. Based on these analyses, geographic location is not an appropriate means of subcategorization.

9. Water Pollution Control Technologies

There are a number of water pollution control technologies in use in the TEC industry. This variety of technologies results from the wide range of pollutants present in TEC wastewater. As discussed previously, the pollutants present in TEC wastewater are based on factors such as the tank type cleaned and the cargos last contained in the tanks. EPA did not consider subcategorization of the industry based solely on the water pollution control technologies in use as a reasonable method of subcategorization. These control technologies are appropriately considered in evaluation technology options and determining effluent limitations.

10. Treatment Costs

Treatment costs are dependent upon facility water pollution control technologies and facility wastewater flow rates and facility size. These costs vary with the specific treatment technologies and waste disposal methods employed, and therefore do not apply uniformly across a particular segment of the industry. EPA has tentatively determined that subcategorization of the TEC industry based solely on treatment costs is not an appropriate means of subcategorization.

11. Non-Water Quality Impacts

Non-water quality impacts of TEC operations include, among others, impacts from transporting wastes, impacts from disposal of solid wastes, and impacts due to emissions of volatile organics to the air. These impacts vary with the specific treatment technologies and waste disposal methods employed, and therefore do not apply uniformly across a particular segment of the industry. EPA has concluded that subcategorization of the TEC industry based on non-water quality impacts is not an appropriate means of subcategorization.

B. Selection of Subcategorization Approach

Based on its evaluation of above factors, EPA determined that subcategorization of the TEC industry is necessary and that different effluent limitations and pretreatment standards should be developed for subcategories of the industry. EPA concluded that the most appropriate basis for subcategorization of the industry be based on tank type and cargo type cleaned.

EPA solicits comment on the appropriateness of this subcategorization approach. As mentioned previously, EPA believes it has developed a subcategorization approach which addresses the complexities inherent in this industry. Of particular concern to the Agency is the potential difficulty associated with implementing this rule due to potentially overlapping subcategories. EPA solicits comment regarding the proposed subcategorization and on other subcategorization approaches which may be appropriate.

EPA realizes that there may be some overlap between transportation sectors, although this is not a great concern because 99 percent of the facilities surveyed cleaned tanks belonging to only one transportation sector.

EPA also realizes that determining the applicable subcategory of a facility may be somewhat complex, given that many facilities accept a wide range of cargos and commodities which may vary on a daily, monthly, seasonal, or yearly basis.

EPA is proposing that the definition of each subcategory include a production cutoff. In developing this subcategorization approach, EPA has attempted to strike a balance between several divergent factors. On the one hand, EPA's data collection activities indicate that the wastewater generated from cleaning certain cargos and tank types do not discharge significant quantities of toxic pollutants. This includes wastewater generated from cleaning tank trucks, rail tank cars, and barges containing food cargos; closed top hopper trucks, rail cars, and barges containing dry bulk goods; and rail tank cars and tank trucks containing petroleum cargos. On the other hand, EPA has identified wastewaters that contain toxic pollutants in significant quantities from tank trucks and rail tank cars which transport chemical cargos, and barges which transport chemical and petroleum cargos.

EPA is proposing to establish effluent limitations guidelines and pretreatment standards for toxic parameters in the Truck/Chemical, Rail/Chemical, and Barge/Chemical & Petroleum Subcategories. In its subcategorization approach, EPA has attempted to establish guidelines and pretreatment standards for toxic parameters for those facilities that generate wastewater containing toxic pollutants. However, EPA also realizes that a facility may generate wastewater from a variety of cargos which do not all belong to one

classification of food, petroleum, chemical, or dry bulk goods.

In order to address these concerns, EPA has attempted to classify a facility into one subcategory by establishing a hierarchy of applicability as follows: if 10 percent or more of the tanks cleaned on a yearly basis at a tank truck or rail car facility contain chemical cargos, then that facility is placed in the Truck/Chemical or Rail/Chemical Subcategory, and subject to the effluent limitations and pretreatment standards proposed for the Truck/Chemical or Rail/Chemical Subcategory. For a barge facility, if 10 percent or more of the tanks cleaned on a yearly basis contain chemical or petroleum cargos, then that facility is placed in the Barge/Chemical & Petroleum Subcategory and is subject to the effluent limitations proposed for the Barge/Chemical & Petroleum Subcategory.

If a truck or rail facility does not clean more than 10 percent of tanks containing chemical cargos, but does clean more than 10 percent of tanks containing food grade cargos on a yearly basis, then that facility is placed in the Truck/Food or Rail/Food Subcategory. There are no effluent limitations proposed for indirect discharging Truck/Food or Rail/Food facilities, but EPA is proposing effluent limitations for conventional pollutants for direct discharging Truck/Food and Rail/Food facilities.

Similarly, if a barge facility does not clean more than 10 percent of tanks containing chemical and/or petroleum cargos, but does clean more than 10 percent of tanks containing food grade cargos on a yearly basis, then that facility is placed in the Barge/Food Subcategory. There are no effluent limitations proposed for indirect discharging Barge/Food facilities, but EPA is proposing effluent limitations for conventional pollutants for direct discharging Barge/Food facilities.

Remaining rail and truck facilities which clean more than 80 percent of tanks containing petroleum cargos on a yearly basis have been placed in the Truck/Petroleum and Rail/Petroleum Subcategories. Facilities which clean hopper tanks have been placed in the Truck/Hopper, Rail/Hopper, or Barge/Hopper Subcategories. EPA is not proposing to regulate wastewater discharged from the Truck/Petroleum and Rail/Petroleum, and Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories.

EPA is not proposing to regulate toxic parameters for facilities that clean tanks that have transported only petroleum, food, or dry bulk cargos, with the exception of barge facilities that clean tanks containing petroleum cargos.

The Agency believes that this proposed subcategorization approach would allow a facility in a subcategory which is not subject to regulation of toxic parameters the flexibility to accept a variety of cargos without necessarily needing to be re-classified in a different subcategory, and therefore, be subject to a different set of effluent limitations. By establishing such a production cutoff, EPA believes that the toxic characteristics of the wastewater will not vary considerably from facilities that perform 80 to 100 percent of its operations within the confines of one subcategory. In this manner, EPA believes that a facility within one subcategory will be allowed the flexibility to clean transportation equipment that contained different types of cargos without discharging substantial quantities of toxic pollutants. EPA solicits comment on the hierarchy of applicability that EPA is proposing as the basis for subcategorization.

From the possible combinations of tank types and cargos last hauled, EPA proposes subcategorization of the TEC industry into 11 subcategories. The tank type classifications include: (1) tank trucks and intermodal tank containers (2) rail tank cars (3) inland tank barges and ocean/sea tankers (4) closed-top hopper trucks (5) closed-top hopper rail cars and (6) closed-top hopper barges. A description of each of these tank type classifications is presented in Appendix A of this notice. Containers defined as drums or Intermediate Bulk Containers (IBCs) are proposed not to be covered by this guideline.

The cargo type classifications used as a basis for subcategorization include: (1) petroleum; (2) food grade; (3) dry bulk; and (4) chemical. A description of the cargo type classifications is provided below.

Petroleum

Petroleum cargos include the products of the fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other refining processes. Petroleum cargos also include products obtained from the refining or processing of natural gas and coal. Specific examples of petroleum products include but are not limited to: asphalt; benzene; coal tar; crude oil; cutting oil; ethyl benzene; diesel fuel; fuel additives; fuel oils; gasoline; greases; heavy, medium, and light oils; hydraulic fluids, jet fuel; kerosene; liquid petroleum gases (LPG) including butane and propane; lubrication oils; mineral spirits; naphtha; olefin, paraffin, and other waxes; tall oil; tar; toluene; xylene; and waste oil.

Food Grade

"Food grade" cargos include edible and non-edible food grade products such as corn syrup, sugar, juice, soybean oil, beverages, and animal and vegetable oils.

Dry Bulk

The dry bulk classification includes closed-top hoppers that transport dry bulk products such as fertilizers, grain, and coal.

Chemical

Chemical cargos are defined to include but are not limited to the following cargos: latex, rubber, plastics, plasticizers, resins, soaps, detergents, surfactants, agricultural chemicals and pesticides, hazardous waste, organic chemicals including: alcohols, aldehydes, formaldehydes, phenols, peroxides, organic salts, amines, amides, other nitrogen compounds, other aromatic compounds, aliphatic organic chemicals, glycols, glycerines, and organic polymers; refractory organic compounds including: ketones, nitriles, organo-metallic compounds containing chromium, cadmium, mercury, copper, zinc; and inorganic chemicals including: aluminum sulfate, ammonia, ammonium nitrate, ammonium sulfate, and bleach. In the development of this regulation, EPA has considered any cargo not specifically defined as food, petroleum, or dry bulk good as a "chemical" cargo.

Based on tank type and cargo type classifications described above, EPA is proposing to subcategorize the TEC industry into the following 11 subcategories. A detailed explanation of each of these subcategories is provided below:

Subcategory A: Truck/Chemical

Subcategory A would apply to TEC facilities that clean tank trucks and intermodal tank containers where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos.

Subcategory B: Rail/Chemical

Subcategory B would apply to TEC facilities that clean rail tank cars where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos.

Subcategory C: Barge/Chemical & Petroleum

Subcategory C would apply to TEC facilities that clean tank barges or

ocean/sea tankers where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical and/or petroleum cargos.

Subcategory D: Truck/Petroleum

Subcategory D would apply to TEC facilities that clean tank trucks and intermodal tank containers where 80 percent or more of the total tanks cleaned at that facility in an average year contained petroleum cargos, so long as that facility is not in Subcategory A: Truck/Chemical or Subcategory F: Truck/Food.

Subcategory E: Rail/Petroleum

Subcategory E would apply to TEC facilities that clean rail tank cars where 80 percent or more of the total tanks cleaned at that facility in an average year contained petroleum cargos, so long as that facility is not in Subcategoy B: Rail/Chemical or Subcategory G: Rail/Food.

Subcategory F: Truck/Food

Subcategory F would apply to TEC facilities that clean tank trucks and intermodal tank containers where 10 percent or more of the total tanks cleaned at that facility in an average year contained food grade cargos, so long as that facility does not clean 10 percent or more of tanks containing chemical cargos. If 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos, then that facility is in Subcategoy A: Truck/Chemical.

Subcategory G: Rail/Food

Subcategory G would apply to TEC facilities that clean rail tank cars where 10 percent or more of the total tanks cleaned at that facility in an average year contained food grade cargos, so long as that facility does not clean 10 percent or more of tanks containing chemical cargos. If 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos, then that facility is in Subcategoy B: Rail/Chemical.

Subcategory H: Barge/Food

Subcategory H would apply to TEC facilities that clean tank barges or ocean/sea tankers where 10 percent or more of the total tanks cleaned at that facility in an average year contained food grade cargos, so long as that facility does not clean 10 percent or more of tanks containing chemical cargos. If 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical and/or petroleum cargos, then that facility is in Subcategory C: Barge Chemical & Petroleum.

Subcategory I: Truck/Hopper

Subcategory I would apply to TEC facilities that clean closed-top hopper trucks which transport dry bulk commodities.

Subcategory J: Rail/Hopper

Subcategory J would apply to TEC facilities that clean closed-top hopper rail cars which transport dry bulk commodities.

Subcategory K: Barge/Hopper

Subcategory K would apply to TEC facilities that clean closed-top hopper barges which transport dry bulk commodities.

VII. Wastewater Generation and Characteristics

Wastewater generated by the industry includes water and steam used to clean the tank interiors, prerinse solutions, chemical cleaning solutions, final rinse solutions, tank exterior washing wastewater, boiler blowdown, tank hydrotesting wastewater, safety equipment cleaning rinsate, and TEC-contaminated storm water. Of the facilities that discharge TEC wastewater, the majority (97 percent) discharge their wastewater to publicly owned treatment works (POTWs). The majority of the barge facilities (77 percent) discharge directly to U.S. surface waters.

Primary sources of pollutants in TEC wastewater include heels and cleaning solutions. Heel is residual cargo remaining in a tank or container following unloading, delivery, or discharge of the transported cargo and is the primary source of pollutants in TEC wastewater. Water-soluble heels that are compatible with the facility's wastewater treatment system and the conditions of the facility's wastewater discharge permit are often combined with other wastewater for treatment and discharge at the facility. Incompatible heels are drained and segregated into drums or tanks for disposal or reuse by alternate means, which may include reuse onsite, return to consignee, sale to a reclamation facility, land filling, or incineration. However, even when the heel is drained, residual cargo adheres to the tank or container interior, and is removed by tank cleaning operations and ultimately discharged in TEC wastewater.

Pollutants contained in heels are dependent upon the constituents contained in the cargos transported. Based on responses to the Detailed Questionnaire, tank truck cleaning facilities reported cleaning at least 429 unique cargos, rail tank car cleaning facilities reported cleaning at least 159 unique cargos, and tank barge cleaning facilities reported cleaning at least 111 unique cargos.

Cleaning solutions are another primary source of pollutants in TEC wastewater. TEC facilities commonly use the following four types of chemical cleaning solutions: (1) acid solution; (2) caustic solution; (3) detergent solution; and (4) presolve solution. Acid solutions typically comprise hydrofluoric and/or phosphoric acid and water. Acid solutions are also used as metal brighteners on aluminum and stainless steel tank exteriors. Caustic solutions typically comprise sodium hydroxide and water. The most common components of detergent solutions are sodium metasilicate and phosphate-based surfactants. Some facilities use off-the-shelf brands of detergent solutions such as Tide®, Arm & Hammer®, and Pine Power®. Often, concentrated detergents ("boosters"), such as glycol ethers and esters, are added to acid and caustic solutions to improve their effectiveness. Presolve solutions usually consist of diesel fuel, kerosene, or other petroleum-based solvent. Other miscellaneous cleaning solutions used by the TEC industry include passivation agents (oxidation inhibitors), odor controllers such as citrus oils, and sanitizers.

Some TEC facilities commingle spent cleaning solutions with TEC wastewater, while other facilities dispose of spent cleaning solutions off site. However, even when spent cleaning solutions are not discharged with TEC wastewater, residual cleaning solution adheres to the tank or container interior and is removed during tank rinses and ultimately discharged in TEC wastewater.

TEC operations or control technologies that minimize the amount of heel remaining in the tank prior to starting TEC operations or that reduce the use or toxicity of chemical cleaning solutions significantly reduce the pollutant loading in TEC wastewater. EPA estimates, based on data collected during EPA's sampling program, that facilities implementing heel and cleaning solution pollution prevention practices generate one half to an order of magnitude less wastewater pollutant loadings than facilities that do not implement these practices.

EPA conducted 20 sampling episodes at 18 facilities representative of the variety of facilities in the TEC industry (2 facilities were sampled twice). As part of this sampling program, EPA routinely analyzed wastewater samples for conventional, priority toxic, and

nonconventional pollutants. Raw wastewater streams sampled typically comprised TEC wastewater commingled with tank exterior cleaning wastewater, TEC-contaminated storm water, tank hydrotesting wastewater, and other wastewater streams. Additional details concerning EPA's sampling program, including the types of facilities sampled, are provided in Section V.E.

EPA detected 330 of 478 pollutants analyzed for in TEC wastewaters. Ninety of the 126 priority toxic pollutants analyzed were detected. Detected pollutants vary by subcategory and include the conventional pollutants oil and grease (analyzed as hexane extractable materials (HEM)), 5-day biochemical oxygen demand (BOD_5), total suspended solids (TSS), and pH; certain priority toxic pollutants; and certain nonconventional pollutants.

In its analysis of the industry, EPA sampled one facility in the Truck/Petroleum Subcategory. This facility treated only final rinse wastewater on-site. Initial rinses and other TEC wastewaters were contract hauled for off-site treatment and were therefore not included in the sampling performed by EPA. There was no additional data provided by the industry on raw TEC wastewater characteristics. EPA therefore reviewed other sources of raw wastewater characterization data in order to determine whether data could be transferred from other sources to characterize TEC wastewater for the Truck/Petroleum and Rail/Petroleum Subcategories. One facility sampled in support of the Centralized Waste Treatment effluent guideline accepted only oily wastewater for treatment. The wastewater consisted of wastewater contaminated with lube oils and other petroleum products. Additionally, the sources of oily wastewater which comprised the sampled wastestream closely matched the types of commodities cleaned by the sampled TEC facility. Therefore, the sampling data obtained from the Centralized Waste Treatment Industry was used to characterize TEC wastewater for the Truck/Petroleum and Rail/Petroleum Subcategories in addition to the TEC sampled facility.

Listed below are pollutants identified in all TEC raw wastewater characterization samples collected and analyzed by EPA for each subcategory or subcategory grouping. These pollutants have been found in raw wastewater but have not necessarily been identified as pollutants of concern for the industry. See Section 6.0 of the Technical Development Document for a more comprehensive summary of the specific pollutants detected and the mean and range of pollutant concentrations by subcategory.

Truck/Chemical Subcategory

- Conventional pollutants: BOD_5, TSS, Oil and Grease, and pH;
- Priority toxic pollutants: methylene chloride, copper, nickel, and zinc; and
- Nonconventional pollutants: acetone, benzoic acid, aluminum, barium, boron, calcium, iron, magnesium, manganese, molybdenum, phosphorus, potassium, sodium, strontium, sulfur, titanium, octachlorodibenzo-p-dioxin, adsorbable organic halides (AOX), ammonia as nitrogen, chemical oxygen demand (COD), chloride, fluoride, nitrate/nitrite, surfactants (MBAS), total dissolved solids (TDS), total organic carbon (TOC), total phosphorus, and volatile residue.

Rail/Chemical Subcategory

- Conventional pollutants: BOD_5, TSS, Oil and Grease, and pH;
- Priority toxic pollutants: toluene, arsenic, chromium, copper, nickel, zinc, tetrachlorodibenzo-p-dioxin and tetrachlorodibenzofuran.
- Nonconventional pollutants: n-eicosane, n-octadecane, aluminum, barium, boron, calcium, cobalt, iron, magnesium, manganese, phosphorus, potassium, silicon, sodium, strontium, sulfur, titanium, AOX, ammonia as nitrogen, COD, chloride, fluoride, silica-gel hexane extractable material (SGT–HEM), MBAS, TDS, TOC, total phenols, total phosphorus, and volatile residue.

Barge/Chemical and Petroleum Subcategory

- Conventional pollutants: BOD_5, TSS, Oil and Grease, and pH;
- Priority toxic pollutants: benzene, ethylbenzene, toluene, naphthalene, copper, nickel, zinc, tetrachlorodibenzo-p-dioxin and tetrachlorodibenzofuran.
- Nonconventional pollutants: acetone, o-+ p-xylene, 2-methylnaphthalene, n-docosane, n-dodecane, n-eicosane, n-hexadecane, n-octadecane, n-tetradecane, styrene, malathion, parathion (ethyl), aluminum, barium, boron, calcium, hexavalent chromium, iron, magnesium, manganese, potassium, sodium, strontium, sulfur, AOX, ammonia as nitrogen, COD, chloride, fluoride, nitrate/nitrite, SGT–HEM, MBAS, TOC, total phenols, total phosphorus, and total sulfide.

Food Grade Subcategories

- Conventional pollutants: BOD_5, TSS, and pH;
- Priority toxic pollutants: none; and
- Nonconventional pollutants: aluminum, barium, calcium, europium, iron, magnesium, manganese, neodymium, niobium, silicon, sodium, strontium, ammonia as nitrogen, COD, chloride, fluoride, MBAS, TDS, TOC, total phenols, total phosphorus, total sulfide, and volatile residue.

Petroleum Subcategories

- Conventional pollutants: BOD_5, Oil and Grease, TSS, and pH;
- Priority toxic pollutants: bis(2-ethylhexyl)phthalate, and zinc; and
- Nonconventional pollutants: acetone, n-eicosane, n-octacosane, n-octadecane, n-tetradecane, aluminum, barium, boron, calcium, holmium, iron, magnesium, manganese, molybdenum, phosphorus, potassium, silicon, sodium, strontium, sulfur, tantalum, ammonia as nitrogen, COD, chloride, fluoride, TDS, TOC, and total phosphorus.

Hopper Subcategories

- Conventional pollutants: BOD5, TSS, and pH;
- Priority toxic pollutants: bis(2-ethylhexyl)phthalate, arsenic, beryllium, cadmium, chromium, copper, nickel, silver, and zinc; and
- Nonconventional pollutants: aluminum, calcium, iron, magnesium, phosphorus, potassium, sodium, sulfur, ammonia as nitrogen, COD, chloride, fluoride, TDS, TOC, and total phosphorus.

VIII. Development of Effluent Limitations Guidelines and Standards

A. Description of Available Technologies

There are three major approaches currently used by the TEC industry to improve effluent quality: (1) cleaning process technology changes and controls to prevent or reduce the generation of wastewater pollutants; (2) flow reduction technologies to increase pollutant concentrations and the efficiency of treatment system pollutant removal; and (3) end-of-pipe wastewater treatment technologies to remove pollutants from TEC wastewater prior to discharge. These approaches and specific available technologies within these approaches are described in the following subsections.

1. Pollution Prevention Controls

EPA has defined pollution prevention as source reduction and other practices that reduce or eliminate the formation of pollutants. Source reduction includes any practices that reduce the amount of any hazardous substance or pollutant entering any waste stream or otherwise released into the environment, or any practices that reduce the hazards to public health and the environment associated with the release of such

pollutants. The principal pollution prevention controls applicable to the TEC industry are the use of dedicated tanks, heel reduction techniques, and reduction in the amount or toxicity of chemical cleaning solutions.

a. Use of dedicated tanks. Tanks dedicated to hauling a single cargo (e.g., gasoline) do not require, or require less frequent, tank cleaning between loads. Use of dedicated tanks eliminates the generation of tank cleaning wastewater and associated pollutant loading.

b. Heel reduction. Heel (residual cargo remaining in tanks following unloading) is the primary source of pollutants in TEC wastewater. Heel reduction techniques include the following: (1) refusal to accept tanks with excess heel; (2) assessment of fees for excess heel; (3) use of steam in tank interiors to lower the viscosity of heels for improved draining; (4) manual use of squeegees to move heel toward valve openings; (5) cold or hot water prerinses to enhance heel removal; (6) heel recycle or reuse; and (7) heel disposal rather than commingling and discharging with TEC wastewater.

c. Reduction in the amount and toxicity of chemical cleaning solutions. Chemical cleaning solutions are the second major source of pollutants in TEC wastewater. Chemical cleaning solution reduction techniques include the following: (1) recirculation and reuse of solutions; (2) use of prerinses to extend cleaning solution effectiveness; (3) increased use of steam cleaning and other cleaning processes that do not include chemical cleaning solutions; (4) solution disposal rather than being commingled and discharged with TEC wastewater; and (5) substitution with less toxic cleaning solutions.

2. Flow Reduction Technologies

Flow reduction technologies applicable to the TEC industry reduce the amount of fresh water required for tank cleaning through cleaning process modifications and/or recycle and reuse of process wastewaters to TEC or other processes. Flow reduction technologies applicable to the TEC industry include the use of high-pressure/low-volume cleaning equipment, TEC water use monitoring, equipment monitoring programs, dry cleaning, cascading tank cleaning, and wastewater recycle and reuse.

a. High-pressure/low-volume cleaning equipment. High-pressure (up to 1,000 psi) delivery of water washes, cleaning solutions, and rinses can clean as efficiently as low-pressure delivery while requiring significantly less volume of water or cleaning solutions.

b. TEC water use monitoring. Careful monitoring of TEC water use can ensure that the minimum adequate amount of water is used to clean tank interiors. Visual inspection may be used to determine an appropriate duration and amount of water required for cleaning. Alternatively, cleaning personnel can use predetermined cleaning times and amounts of water to clean specific tank type and cargo type combinations based on experience.

c. Equipment monitoring program. Preventative maintenance and periodic inspection of cleaning equipment such as pumps, hoses, nozzles, and water and cleaning solution storage tanks can significantly reduce fresh water requirements by eliminating water waste.

d. Cleaning without use of water. Cleaning personnel may enter the tank to shovel or sweep dry-bulk cargos or mop or squeegee liquid cargos. Mechanical devices are also used to vibrate hoppers to improve heel removal. Depending on the effectiveness of these dry cleaning processes, the need for subsequent tank cleaning with water may be eliminated. At a minimum, these techniques will reduce the amount of water and cleaning solutions required to clean the tank interior.

e. Cascade tank cleaning. "Cascade" tank cleaning processes involve the use of fresh water for final tank rinses with recycle and reuse of final rinse wastewater in initial rinses. This technique uses water at least twice prior to discharge or disposal.

f. Wastewater recycle and reuse. Water recycle and reuse techniques reduce or eliminate the need for fresh process water. Wastewater streams most commonly recycled and reused in TEC processes include tank interior cleaning wastewater, hydrotesting wastewater, uncontaminated storm water, and non-contact cooling water. These water sources typically do not require extensive treatment prior to recycle and reuse. Tank interior cleaning wastewater generated by cleaning tanks used to transport petroleum products can be recycled and reused in TEC processes after treatment by oil/water separation and activated carbon treatment. Wastewater generated by cleaning tanks that last transported chemical products generally requires more extensive treatment prior to recycle and reuse in TEC processes.

3. End-of-Pipe Wastewater Treatment Technologies

End-of-pipe wastewater treatment includes physical, chemical, and biological processes that remove pollutants from TEC wastewater prior to discharge to a receiving stream or POTW. Typical end-of-pipe treatment currently used by the TEC industry includes pretreatment and primary treatment. Facilities that practice extensive water and wastewater recycle and reuse or that discharge TEC wastewater directly to surface waters may also operate biological and/or advanced treatment units. Use of treatment technologies by the TEC industry is presented as the percentage of direct or indirect discharging facilities that use the technologies.

a. Oil/water separation. Approximately 36 percent of TEC facilities use oil/water separation to remove oil and grease. The most common type of oil/water separator used by TEC facilities is an oil skimmer. Coalescing and corrugated plate separators are also used.

b. Gravity settling. Gravity settling or sedimentation removes suspended solids from TEC process wastewater. Approximately 57 percent of TEC facilities use gravity settling.

c. Equalization. Equalization provides wastewater retention time to homogenize wastewater to control fluctuations in flow and pollutant characteristics, reduce the size and cost of subsequent treatment units, and improve the efficiency of subsequent treatment units. Approximately 42 percent of TEC facilities use equalization.

d. pH adjustment. Many treatment technologies used by the TEC industry are sensitive to pH. For example, chemical precipitation requires a relatively high pH while biological treatment requires a neutral pH. In addition, pH adjustment may also be required to meet permit conditions for wastewater discharge. Approximately 44 percent of TEC facilities use pH adjustment.

e. Grit removal. Grit removal involves the use of a settling chamber to remove heavy, suspended material from wastewater. This is typically used at the headworks of a treatment system to remove larger particles which may damage pumps or treatment equipment. Approximately four percent of TEC facilities use grit removal.

f. Coagulation/Flocculation. Coagulation involves the addition of a "coagulant," such as an electrolyte or polymer, to destabilize colloidal and fine suspended matter. Flocculation involves the agglomeration of destabilized particles into flocs for subsequent removal by gravity settling in a clarifier. Approximately 24 percent of TEC facilities use coagulation/flocculation.

g. Chemical precipitation/separation. Chemical precipitation removes dissolved pollutants from wastewater. Precipitation agents, such as polyaluminum chloride, ferric chloride, and lime, work by reacting with pollutant cations (e.g., metals) and some anions to convert them into an insoluble form for subsequent removal by gravity settling in a clarifier. The pH of the wastewater also affects how much pollutant mass is precipitated, as pollutants precipitate more efficiently at different pH ranges. Coagulation/flocculation may also be used to assist particle agglomeration and settling. Approximately six percent of TEC facilities use chemical precipitation/separation.

h. Clarification. Approximately 23 percent of TEC facilities use clarification as either a pre- or post-treatment step to remove settleable solids, free oil and grease, and other floating material. Primary clarifiers remove settleable solids from raw wastewater or wastewater treated by coagulation/flocculation; secondary clarification is used in activated sludge systems to remove biomass. Clarifiers consist of settling tanks commonly equipped with a sludge scraper mounted on the floor of the clarifier to rake sludge into a sump for removal to sludge handling equipment. The bottom of the clarifier may be sloped to facilitate sludge removal.

i. Filtration. Filtration removes solids from wastewater by passing the wastewater through a material that retains the solids on or within itself. A wide variety of filter types are used by the TEC industry including media filters (e.g., sand, gravel, charcoal), bag filters, and cartridge filters. Approximately 24 percent of TEC facilities use filtration technologies.

j. Sludge dewatering. Sludge dewatering reduces sludge volume by decreasing its water content, thereby substantially reducing sludge disposal costs. Sludge dewatering technologies used by TEC facilities include sludge drying beds, filter presses, rotary vacuum filters, and centrifuges. Approximately 28 percent of TEC facilities use sludge dewatering.

k. Dissolved air flotation. Dissolved air flotation devices introduce gas bubbles into wastewater which attach to suspended particles such as free and dispersed oil and grease, suspended solids, and some dissolved pollutants, causing them to float. Floating material is removed from the surface by rakes. Approximately 25 percent of TEC facilities use dissolved air flotation.

l. Biological oxidation. Biological oxidation involves the biological conversion of dissolved and colloidal organics into biomass, gases, and other end products. Activated sludge systems, consisting of an aeration basin, a secondary clarifier, and a sludge recycle line, are the most commonly used biological oxidation systems in the TEC industry. Aerated stabilization basins and anaerobic technologies are also used. Approximately nine percent of TEC facilities use biological oxidation.

m. Chemical oxidation. Chemical oxidation involves the addition of oxidants such as hydrogen peroxide to chemically oxidize toxic pollutants to form less toxic constituents. Approximately two percent of TEC facilities use chemical oxidation.

n. Activated carbon adsorption. Activated carbon removes pollutants from wastewater by physical and chemical forces that bind the constituents to the carbon surface. In general, pollutants with low water solubility, high molecular weight, and those containing certain chemical structures such as aromatic functional groups are most amenable to treatment by activated carbon adsorption. Less than one percent of TEC facilities use activated carbon adsorption.

o. Membrane filtration. Membrane filtration uses a pressure-driven, semipermeable membrane to separate suspended, colloidal, and dissolved solutes from wastewater. The size of pores in the membrane is selected based on the type of contaminant to be removed. Types of membrane filtration technologies used by the TEC industry include microfiltration, ultrafiltration, and reverse osmosis. A relatively large pore size is used to remove precipitates or suspended materials, whereas a relatively small pore size is used to remove inorganic salts or organic molecules. Less than one percent of TEC facilities use membrane filtration.

B. Technology Options Considered for Basis of Regulation

This section explains how EPA selected the effluent limitations and standards proposed today for each of the TEC subcategories proposed for regulation. To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily influent and effluent data collected during EPA's wastewater sampling program. This database is used to support the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards.

The effluent limitations and pretreatment standards EPA is proposing to establish today are based on well-designed, well-operated treatment systems. Below is a summary of the technology bases for the proposed effluent limitations and pretreatment standards in each subcategory. When final guidelines are promulgated, a facility is free to use any combination of wastewater treatment technologies and pollution prevention strategies at the facility so long as the numerical discharge limits are achieved.

In developing the regulatory options for proposing limitations and pretreatment standards for the TEC industry, EPA utilized technology bases from the wastewater treatment technologies and the pollution prevention technologies described in Section VIII.A.

EPA incorporated the utilization of two common practices into the technology options for all subcategories. The first is good heel removal and management practices which prevent pollutants from entering waste streams. These practices may reduce wastewater treatment system capital and annual costs due to reduced wastewater pollutant loadings and may provide a potential to recover/reuse valuable product. The majority of TEC facilities currently operate good heel removal and management practices. Because of the many benefits of these practices, and a demonstrated trend in the TEC industry to implement these practices, EPA believes that the TEC industry will have universally implemented good heel removal and management practices prior to implementation of TEC effluent guidelines.

The second common element is good water conservation practices which reduce the amount of wastewater generated. Good water conservation will improve wastewater treatment performance efficiency, reduce wastewater treatment system capital and annual costs, and reduce water usage and sewer fees. EPA considered good water conservation practices to be represented by the median tank interior cleaning wastewater volume discharged per tank cleaning (including commingled non-TEC wastewater streams not easily segregated) for each subcategory. This volume is referred to as the "regulatory flow" for each subcategory. For the 50 percent of facilities not currently meeting the regulatory flow, a flow reduction technology was costed. Flow reduction technologies include operator training, new spinners, and new cleaning systems.

In assessing the costs and loads for each regulatory option, EPA considered the treatment in place at each facility potentially affected by the regulation. In cases where the facility had treatment in place, that facility was "given credit"

for each treatment unit currently in place that was a part of EPA's proposed treatment option. That facility was then assumed not to incur additional costs for the installation of that particular unit. Often, a facility had in place a treatment unit that was similar, but not identical to, the treatment option proposed. In these cases, EPA evaluated the existing treatment and gave credit for similar treatment systems.

The following subsections discuss the regulatory options that were considered for BPT, BCT, BAT, NSPS, PSES and PSNS. The Agency solicits comment on alternative treatment technologies not considered by EPA which may attain similar treatment removal efficiencies but that may be less expensive to install and operate.

1. BPT Technology Options Considered and Selected

a. Introduction. EPA today proposes BPT effluent limitations for the following subcategories for the TEC Point Source Category: Truck/Chemical, Rail/Chemical, Barge/Chemical & Petroleum, and Truck/Food, Rail/Food, and Barge/Food. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from TEC facilities. For further discussion on the basis for the limitations and technologies selected see the Technical Development Document.

As previously discussed, Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." See *Legislative History*, op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978).

EPA identified relatively few direct discharging facilities for most subcategories in the TEC industry as compared to the number of indirect discharging facilities. However, the Agency concluded that direct discharging facilities are similar to indirect discharging facilities in terms of types of tanks cleaned, types of commodities cleaned, water use, and wastewater characteristics. With respect to existing end-of-pipe wastewater treatment in place, direct discharging facilities typically operate biological treatment in addition to physical/chemical treatment technologies typically operated by indirect discharging facilities.

b. Truck/Chemical Subcategory. The Agency's engineering assessment of BPT consisted of the following options:

• Option I: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, and Sludge Dewatering. Option I demonstrated treatment efficiency of 57 percent or greater for all organic pollutants, 57 percent or greater for all metals, and 92 percent or greater for all conventional pollutants present in Truck/Chemical Subcategory wastewater. All existing Truck/Chemical Subcategory facilities received credit in EPA's costing model for equalization, coagulation/clarification, and biological treatment in-place, sixty-six percent received credit for existing sludge dewatering, and no facilities received credit for existing oil/water separation. (Oil/water separation was characterized at an indirect discharge Truck/Chemical Subcategory facility).

• Option II: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, Activated Carbon Adsorption, and Sludge Dewatering. Option II is equivalent to Option I with the addition of activated carbon adsorption for wastewater polishing following biological treatment. Option II removed 85 percent or greater of organics, 79 percent or greater of metals and 98 percent or greater of conventional pollutants present in Truck/Chemical Subcategory wastewater. All Truck/Chemical Subcategory facilities received credit for existing activated carbon adsorption treatment.

EPA is proposing to establish BPT effluent limitations based on Option II for the Truck/Chemical Subcategory. Agency data indicate that a treatment train consisting of physical/chemical treatment for the removal of metals and toxics, biological treatment for the removal of decomposable organic material and activated carbon adsorption for removal of residual organics and toxics represents the average of the best treatment in the industry. As noted above, all existing direct discharging facilities in this subcategory currently employ equalization, coagulation/clarification, biological treatment and activated adsorption. Although no direct discharging facilities were given credit in EPA's costing model for a coelescing plate oil/water separator, this technology is common and demonstrated practice in the industry to improve the overall efficiency of the treatment system. EPA has included the use of oil/water separation in its cost estimates to the industry in order to ensure that the biological system performs optimally.

EPA's decision to base BPT limitations on Option II treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the proposed treatment technologies in relation to the effluent reductions achieved.

No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the TEC facility will directly affect the treatability of the TEC wastewaters. For Truck/Chemical

facilities, the most pertinent factors for establishing the limitations are costs of treatment and the level of effluent reductions obtainable.

EPA estimates that implementation of Option II will cost $0.43 per pound of pollutants removed, and has found that cost to be reasonable. Finally, EPA also looked at the costs of all options to determine the economic impact that this proposal would have on the TEC industry. EPA anticipates that the economic impact, in terms of facility closures and employment losses, due to the controls established by BPT would be comparable to that estimated in EPA's assessment for indirect dischargers, which resulted in no facility closures or employment losses. EPA therefore projects that implementation of BPT Option II will result in no facility closures and no employment losses. Therefore, EPA has concluded that the total costs associated with the proposed BPT option are achievable and are reasonable as compared to the removals achieved by this option. Further discussion on the economic impact analysis can be found in Section X of today's notice.

c. Rail/Chemical Subcategory. The Agency's engineering assessment of BPT consisted of the following options:

- Option I: Flow Reduction, Oil/Water Separation, Equalization, Biological Treatment, and Sludge Dewatering. Option I removed 64 percent or greater of organic pollutants, 95 percent or greater of BOD_5, and 98 percent or greater of oil and grease. All Rail/Chemical Subcategory facilities received credit in EPA's costing model for existing biological treatment and sludge dewatering. No Rail/Chemical Subcategory facilities received credit for existing oil/water separation treatment. (Oil/water separation was characterized at a zero discharge Rail/Chemical Subcategory facility that recycled/reused 100 percent of TEC wastewater.)
- Option II: Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment and Sludge Dewatering. Option II is equivalent to Option I with the addition of Dissolved Air Flotation for the removal of oil and grease and the organic and metallic compounds contained in the oily fraction. Option II removed 81 percent or greater of organic pollutants, 84 percent or greater of metals, 99 percent or greater of oil and grease, and 92 percent or greater of TSS present in Rail/Chemical Subcategory wastewater. All Rail/Chemical Subcategory facilities received credit for existing equalization and pH adjustment. No Rail/Chemical Subcategory facilities received credit for existing dissolved air flotation. (Dissolved air flotation was characterized at a zero discharge Rail/Chemical Subcategory facility that recycled/reused 100 percent of TEC wastewater.)
- Option III: Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment, Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering. Option III is equivalent to Option II with the addition of an organo-clay/activated carbon adsorption system for wastewater polishing following biological treatment. Option III removed 84 percent or greater of organic pollutants, and 99 percent or greater of TSS present in Rail/Chemical Subcategory wastewater. No Rail/Chemical Subcategory facilities received credit in EPA's costing model for existing organo-clay/activated carbon adsorption treatment. (Organo-clay/activated carbon adsorption treatment was characterized at a zero discharge Rail/Chemical Subcategory facility that recycled/reused 100 percent of TEC wastewater.)

EPA is proposing to set BPT regulations for the Rail/Chemical Subcategory based on technology Option I. EPA's decision to base BPT limitations on Option I treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the proposed treatment technologies in relation to the effluent reductions achieved.

No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the TEC facility will directly affect the treatability of the TEC wastewaters. For Rail/Chemical facilities, the most pertinent factors for establishing the limitations are costs of treatment and the level of effluent reductions obtainable.

EPA has selected Option I based on the comparison of the three options in terms of total costs of achieving the effluent reductions, pounds of pollutant removals, economic impacts, and general environmental effects of the reduced pollutant discharges.

EPA estimates that implementation of Option I will cost $103 dollars per pound of pollutants removed. Although this projected cost per pound appears to be high, EPA has used a very conservative cost approach to project costs to the industry. The one facility in EPA's cost model is already projected to meet the proposed effluent limitations due to the low effluent levels achieved at this facility, which average 8 mg/l of BOD_5. However, because EPA's proposed treatment technology includes oil/water separation, the cost model has assumed that this facility will incur additional costs to install this treatment. Additionally, EPA has given no credit to any facility for current monitoring practices. Therefore, EPA has assumed that all monitoring requirements will result in an increase in costs to the industry. In reality, this facility will likely not need to install additional treatment to meet the proposed limits, and some of the monitoring costs assumed by EPA will not be an additional cost burden to the industry.

The technology proposed in Option I represents the average of the best performing facilities due to the prevalence of biological treatment and sludge dewatering. Although no direct discharging facilities were given credit in EPA's costing model for oil/water separation, this technology is common and demonstrated practice in the industry to improve the overall efficiency of the wastewater treatment system. EPA has included the use of oil/water separation in its cost estimates to the industry in order to ensure that the biological system performs optimally.

Finally, EPA also looked at the costs of all options to determine the economic impact that this proposal would have on the TEC industry. EPA expects the financial and economic profile of the direct dischargers to be comparable to that of the estimated 38 indirect dischargers. EPA anticipates that the economic impact, in terms of facility closures and employment losses, due to the additional controls at BPT Option II and III levels would be comparable to that estimated in EPA's assessment for indirect discharges, potentially leading to six facility closures and the associated loss of over 400 employees. The annual cost per facility for BPT Option I is projected to be $12,900 less than the technology evaluated for PSES which caused six facility closures. Therefore, EPA has concluded that the costs of BPT Option I are achievable and are reasonable as compared to the removals achieved by this option. Further discussion on the economic impact analysis can be found in Section X of today's notice.

d. Barge/Chemical & Petroleum Subcategory. The Agency's engineering assessment of BPT consisted of the following options:

- Option I: Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, and Sludge Dewatering. Option I removed 81 percent or greater

of organic pollutants, 82 percent or greater of metals and 96 percent or greater of conventional pollutants present in Barge/Chemical & Petroleum wastewater.

Approximately 79 percent of Barge/Chemical & Petroleum Subcategory facilities received credit in EPA's costing model for existing oil/water separation, 21 percent for dissolved air flotation, 74 percent for biological treatment and 42 percent for sludge dewatering. Although at least one Barge/Chemical & Petroleum facility is known to have filter press treatment in place, no facilities received credit for filter press treatment in EPA's cost and pollutant removal estimates. (Filter press treatment was characterized at a direct discharging facility).

• Option II: Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering. Option II is equivalent to Option I with the addition of reverse osmosis for wastewater polishing following biological treatment. Option II removed 99 percent or greater of organic pollutants, 88 percent or greater of metals and 99 percent or greater of conventional pollutants present in Barge/Chemical & Petroleum wastewater. Although at least one Barge/Chemical & Petroleum facility is known to have reverse osmosis treatment in place, no facilities received credit for existing reverse osmosis in EPA's cost and pollutant removal estimates. (Reverse osmosis treatment was characterized at a direct discharging Barge/Chemical & Petroleum Subcategory facility.)

EPA's decision to base BPT limitations on Option I treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the proposed treatment technologies in relation to the effluent reductions achieved.

EPA estimates that implementation of Option I will cost $0.35 per pound of pollutants removed, and has found that cost to be reasonable. Additionally, the Agency concluded that reverse osmosis is not commonly used in the industry, and therefore Option II does not represent the average of the best treatment. Finally, EPA also looked at the costs of all options to determine the economic impact that this proposal would have on the TEC industry. EPA's assessment showed that implementation of BPT is projected to result in no facility closures and no employment losses. Therefore, EPA has concluded that the total costs associated with the proposed BPT option are achievable and are reasonable as compared to the removals achieved by this option. Further discussion on the economic impact analysis can be found in Section X of today's notice.

e. Truck/Food, Rail/Food, and Barge/Food Subcategories. EPA considered the following BPT options for these subcategories:

• Option I—Flow Reduction and Oil/Water Separation.

• Option II—Flow Reduction, Oil/Water Separation, Equalization, Biological Treatment and Sludge Dewatering. Option II is equivalent to Option I with the addition of biological treatment for biological decomposition of organic constituents. (All facilities have biological treatment in place.)

Based on screener survey results, EPA estimates that there are 19 direct discharging facilities in the Truck/Food, Rail/Food, and Barge/Food Subcategories. However, EPA's survey of the TEC industry did not initially identify any direct discharging facilities through the Detailed Questionnaire sample population.

Because all types of facilities in the food subcategories accept similar types of cargos which generate similar types of wastewater in terms of treatability and toxicity, EPA has tentatively determined that the same BPT can be applied to all three (truck, rail and barge) food subcategories. The wastewater generated by the food subcategories contains high loadings of biodegradable organics, and few toxic pollutants. EPA conducted sampling at a direct discharging barge food-grade facility which EPA believes to be representative of the entire population.

Based on the data collected by EPA, raw wastewater contained significant levels of organic material in the raw wastewater, exhibiting an average BOD^5 concentration of 3500 mg/l. Therefore, EPA concluded that some form of biological treatment is necessary to reduce potential impacts to receiving waters from direct-discharging facilities and EPA anticipated that all direct discharging facilities in these subcategories would have some form of biological treatment in place. All existing facilities which responded to the screener survey questionnaire indicated that they did, in fact, have a biological treatment system in place. Therefore, EPA proposes to establish BPT based on Option II for the Truck/Food, Rail/Food, and Barge/Food Subcategories

EPA projects no additional pollutant removals and no additional costs to the industry based on EPA's selection of Option II because all facilities identified by EPA currently have the proposed technology in place.

f. Truck/Petroleum and Rail/Petroleum Subcategories. EPA did not develop or evaluate BPT Options for these subcategories for the following reasons: (1) All direct discharging facilities previously identified by the Agency are no longer in operation; (2) EPA is not aware of any new facilities that have recently begun operations; and (3) EPA currently believes permit writers can more appropriately control discharges from these facilities, if any, using best professional judgement.

g. Truck/hopper, Rail/hopper, and Barge/hopper Subcategories. EPA is not proposing to establish BPT regulations for any of the hopper subcategories. EPA concluded that hopper facilities discharge very few pounds of conventional or toxic pollutants. This is based on EPA sampling data, which found very few priority toxic pollutants at treatable levels in raw wastewater. Additionally, very little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. Therefore, nationally-applicable regulations are unnecessary at this time and direct dischargers will remain subject to limitations established on a case by case basis using best professional judgement.

2. BCT Technology Options Considered and Selected

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

In today's proposal, EPA is proposing to establish BCT effluent limitations guidelines equivalent to the BPT guidelines for the conventional pollutants for the following subcategories: Truck/Chemical, Rail/Chemical, Barge/Chemical & Petroleum, Truck/Food, Rail/Food, and Barge/Food. In developing BCT limits, EPA

considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. In each subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines for all subcategories. The detailed results of EPA's assessment of candidate technologies, and the results of the cost test, are presented in the Technical Development Document.

3. BAT Technology Options Considered and Selected

a. Truck/Chemical Subcategory. EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to Truck/Chemical facilities in this industry, and is therefore proposing that BAT be established equivalent to BPT for toxic and nonconventional pollutants. Further, EPA anticipates, based on the economic analysis for indirect dischargers, that implementing this level of control will result in no facility closures or employment losses. EPA found this Option to be economically achievable. Therefore, EPA is establishing BAT for the Truck/Chemical Subcategory equal to BPT for the priority and non-conventional pollutants.

b. Rail/Chemical Subcategory. EPA evaluated BPT Options II and III as a basis for establishing BAT more stringent than the BPT level of control being proposed today. EPA anticipates that the financial and economic profile of the direct dischargers in this subcategory is similar to that of the estimated 38 indirect dischargers. EPA anticipates that the economic impact due to the additional controls at Option II and III levels would be comparable to that estimated in EPA's assessment for indirect discharges, potentially leading to six facility closures and the associated loss of over 400 employees. Although these options result in improved pollutant reductions, the cost of implementing the level of control associated with Options II and III are disproportionately high, making these options no longer economically achievable for this Subcategory as a whole. Option I is projected to result in no facility closures and no associated employment losses. Additionally, Option I was demonstrated to achieve a high level of pollutant control, treating all priority pollutants to very low levels, often at or near the analytical minimum level.

Therefore, EPA is establishing BAT for the Rail/Chemical Subcategory equivalent to BPT for the priority and non-conventional pollutants.

c. Barge/Chemical & Petroleum Subcategory. EPA evaluated BPT Option II as a basis for establishing BAT more stringent than the BPT level of control being proposed today. Although BPT Option II results in the removal of an estimated additional 167 toxic pounds equivalent of priority and non-conventional pollutants over Option I (a one percent increase in removals achieved by BPT), no additional water quality benefits are projected to result. At both Option I and Option II level of control, EPA predicts that there will remain three water quality excursions nationally. This excursion is caused by a TEC facility modeled to discharge treated effluent to a very low flow stream, and is therefore not projected to be eliminated by either treatment option.

The Agency also concluded that reverse osmosis may not represent the best available treatment because cost-effective disposal methods for the concentrate (the wastewater containing the concentrated pollutants, compared to the permeate) may not be available for all facilities. Concentrate may account for 10 to 30 percent of the original wastewater flow, depending on the efficiency of the reverse osmosis system, and may result in significant disposal costs for large flow facilities.

Additionally, Option I was demonstrated to achieve a high level of pollutant control, treating all priority pollutants to very low levels, often at or near the analytical minimum level. For these reasons, EPA has determined that BPT Option I represents the best available technology. BPT Option I is also economically achievable. Therefore, EPA is proposing BAT for the Barge/Chemical & Petroleum Subcategory equivalent to BPT for the priority and non-conventional pollutants.

d. Truck/Food, Rail/Food, and Barge/Food Subcategories. EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to Food Subcategory facilities in this industry. Based on EPA sampling data, EPA found that food grade facilities discharge very few pounds of toxic pollutants. Therefore, EPA is proposing not to establish BAT for the Food Subcategories.

e. Truck/Petroleum and Rail/Petroleum Subcategories. EPA did not develop or evaluate BAT Options for these subcategories for the following reasons: (1) All direct discharging facilities previously identified by the Agency are no longer in operation; (2) EPA is not aware of any new facilities that have recently begun operations; and (3) EPA currently believes permit writers can more appropriately control discharges from these facilities, if any, using best professional judgement.

f. Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories. EPA is not proposing to establish BAT regulations for any of the hopper subcategories. EPA concluded that hopper facilities discharge very few pounds of toxic pollutants. EPA estimates that nine hopper facilities discharge 21 pound equivalents per year to surface waters, or about two pound equivalents per year per facility. The loadings calculations are based on EPA sampling data, which found very few priority toxic pollutants at treatable levels in raw wastewater. Additionally, very little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. Therefore, nationally-applicable regulations are unnecessary at this time and direct dischargers will remain subject to limitations established on a case by case basis using best professional judgement.

4. NSPS Technology Options Considered and Selected

a. Introduction. As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new sources could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA, in establishing NSPS, to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

New direct discharging facilities have the opportunity to incorporate the best available demonstrated technologies, including process changes, in-plant controls, and end-of-pipe treatment technologies. The general approach followed by EPA for developing NSPS options was to evaluate the best demonstrated processes for control of priority toxic, nonconventional, and

conventional pollutants. Specifically, EPA evaluated the technologies used as the basis for BPT (BCT and BAT are equivalent to BPT). The Agency considered these options as a starting point when developing NSPS options because the technologies used to control pollutants at existing facilities are fully applicable to new facilities.

b. Truck/Chemical Subcategory. EPA has not identified any more stringent treatment technology option which it considered to represent NSPS level of control applicable to Truck/Chemical facilities in this industry. Further, EPA has made a finding of no barrier to entry based upon the establishment of this level of control for new sources. Therefore, EPA is proposing that NSPS for the Truck/Chemical Subcategory be established equivalent to BPT for conventional, priority, and nonconventional pollutants.

c. Rail/Chemical Subcategory. EPA evaluated BPT Options II and III as a basis for establishing NSPS more stringent than the BAT level of control being proposed today. The cost implications anticipated for new sources are not as severe as those projected for existing sources. By utilizing good heel removal and management practices which prevent pollutants from entering waste streams, and good water conservation practices in the design of new facilities, treatment unit size can be substantially reduced and treatment efficiencies improved. As a result, costs of achieving BPT Options II and III can be significantly reduced by new sources. BPT Options II and III technologies have been demonstrated at an existing zero discharge rail/chemical facility. EPA anticipates no barrier to entry for new sources employing these technologies at lower cost. Furthermore, based on an analysis of benefits for existing sources, significant environmental differences would be anticipated between Options I and II and Option III for new sources. Therefore, EPA is proposing to establish new source performance standards for the Rail/Chemical Subcategory based on BPT Option III. Option III consists of flow reduction, oil/water separation, equalization, dissolved air flotation (with flocculation and pH adjustment), biological treatment, organo-clay/activated carbon adsorption, and sludge dewatering.

d. Barge/Chemical & Petroleum Subcategory. EPA evaluated BPT Option II as a basis for establishing NSPS more stringent than the BAT level of control being proposed today. EPA rejected BPT Option II as a basis for NSPS for the same reasons this additional technology was rejected for BAT. Even though the cost implications for new sources are not as severe as those projected for existing sources, the cost and economic implications of BPT Option II do bear upon the determination that reverse osmosis technology as inappropriate for consideration as part of the best available technology for the control of pollutants for this subcategory.

Reverse osmosis was not considered to be the best available technology due to the small incremental removals achieved by this option, the lack of additional water quality benefits potentially achieved by this option, the potential issue of disposing the liquid concentrate created by treatment, and the high level of pollutant control achieved by the proposed BAT option.

Therefore, EPA is proposing that NSPS for the Barge/Chemical & Petroleum Subcategory be established equivalent to BPT for conventional, priority, and nonconventional pollutants.

e. Truck/Food, Rail/Food, and Barge/Food Subcategories. EPA has not identified any more stringent treatment technology option which it considered to represent NSPS level of control applicable to Food Subcategory facilities in this industry. Further, EPA has made a finding of no barrier to entry based upon the establishment of this level of control for new sources. Therefore, EPA is proposing that NSPS for the Food Subcategories be established equivalent to BPT for conventional pollutants.

f. Truck/Petroleum and Rail/Petroleum Subcategories. EPA did not develop or evaluate BAT Options for these subcategories for the following reasons: (1) all direct discharging facilities previously identified by the Agency are no longer in operation; (2) EPA is not aware of any new facilities that have recently begun operations; and (3) EPA currently believes permit writers can more appropriately control discharges from these facilities, if any, using best professional judgement. EPA is therefore proposing not to establish NSPS for the Truck/Petroleum and Rail/Petroleum Subcategories.

g. Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories EPA is not proposing to establish NSPS regulations for any of the hopper subcategories. EPA concluded that hopper facilities discharge very few pounds of toxic pollutants, and contain very few priority toxic pollutants at treatable levels in raw wastewater. Additionally, very little wastewater is generated from cleaning the interiors of hopper tanks due to the dry nature of bulk materials transported. Therefore, nationally-applicable regulations are unnecessary at this time and direct dischargers will remain subject to limitations established on a case by case basis using best professional judgement.

5. PSES Technology Options Considered and Selected

a. Introduction. Section 307(b) of the Act requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. After a thorough analysis of indirect discharging facilities in the EPA database, EPA has decided to propose PSES in several subcategories for the reasons explained in more detail below.

b. Pass-Through Analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by an industry pass through a POTW or interfere with the POTW . In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that wastewater treatment performance for indirect dischargers be equivalent to that for direct dischargers and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BAT facility, EPA compares the percentage of the pollutants removed by the proposed treatment system with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For past effluent guidelines, a study of 50 representative POTWs was used for

the pass-through analysis. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate low influent concentration levels. For analytes that included a combination of high and low influent concentrations, the data was edited to eliminate all influent values, and corresponding effluent values, less than 10 times the minimum level. For analytes where no influent concentrations were greater than 10 times the minimum level, all influent values less than five times the minimum level and the corresponding effluent values were eliminated. For analytes where no influent concentration was greater than five times the minimum level, the data was edited to eliminate all influent concentrations, and corresponding effluent values, less than 20 ug/l. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant was determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the Risk Reduction Engineering Laboratory (RREL) database was used to augment the POTW database for the pollutants for which the 50 POTW Study did not cover. For a more detailed description of the pass-through analysis, see the Technical Development Document.

c. Truck/Chemical Subcategory. In the Agency's engineering assessment of the best available technology for pretreatment of wastewaters from the Truck/Chemical Subcategory, EPA considered two options comprised of technologies currently used by facilities in the Truck/Chemical Subcategory.

- Option I—Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, and Sludge Dewatering. Option I removed 57 percent or greater of organic pollutants and 57 percent or greater of metals. Approximately 56 percent of Truck/Chemical Subcategory facilities received credit in EPA's costing model for existing equalization, nine percent for oil/water separation, 27 percent for coagulation/clarification, and 28 percent for sludge dewatering.
- Option II—Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Activated Carbon Adsorption, and Sludge Dewatering. Option II is equivalent to Option I with the addition of activated carbon adsorption for wastewater polishing following clarification. Option II removed 80 percent or greater of organics and 79 percent of metals. No Truck/Chemical Subcategory facilities received credit for existing activated carbon adsorption treatment. (Activated carbon adsorption treatment was characterized at two indirect discharging Truck/Chemical Subcategory facilities that were not selected to receive a detailed questionnaire.)

EPA is proposing to establish pretreatment standards based on Option II based on the additional removals achieved by this option. EPA has determined that Option II is economically achievable and results in no facility closures or projected employment losses. EPA notes that Option II removes 22,000 pound equivalents more than Option I. Additionally, the cost per pound equivalent removed is $114, which is within the range of other effluent guidelines promulgated by EPA.

EPA conducted a pass-through analysis on the pollutants proposed to be regulated under BPT and BAT for Truck/Chemical facilities to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as BOD_5 and TSS.) Several pollutants were determined to pass-through a POTW and are therefore proposed for PSES regulation in the Truck/Chemical Subcategory.

d. Rail/Chemical Subcategory. In the Agency's engineering assessment of the best available technology for pretreatment of wastewaters from the Rail/Chemical Subcategory, EPA considered three options comprised of technologies currently used by facilities in the Rail/Chemical Subcategory.

- Option I—Flow Reduction, Oil/Water Separation. Approximately 16 percent of Rail/Chemical Subcategory facilities received credit in EPA's costing model for existing oil/water separation.
- Option II—Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), and Sludge Dewatering. Approximately 61 percent of Rail/Chemical Subcategory facilities received credit in EPA's costing model for existing equalization, 15 percent for dissolved air flotation, 30 percent for pH adjustment, and 17 percent for sludge dewatering.
- Option III—Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering. Option III is equivalent to Option II with the addition of an organo-clay/activated carbon adsorption system for wastewater polishing following the dissolved air flotation unit. No Rail/Chemical Subcategory facilities received credit for existing organo-clay/activated carbon adsorption treatment. (Organo-clay/activated carbon adsorption treatment was characterized at a zero discharge Rail/Chemical Subcategory facility that recycled/reused 100 percent of TEC wastewater.)

Option I removed entrained oil and grease with incidental removal of 61 percent or greater of organic pollutants, Option II removed 72 percent or greater of organic pollutants and 84 percent of metals, and Option III removed 84 percent or greater of organic pollutants.

EPA is proposing to establish pretreatment standards for the Rail/Chemical Subcategory based on Option I. EPA estimates that this option does not result in any facility closures or employment losses to the industry. Option II, however, was projected to result in six facility closures and is not economically achievable.

The Small Business Advocacy Review Panel commented extensively on the difference in the proposed treatment options for indirect dischargers in the truck chemical and rail chemical subcategories and on the related costs and pollutant removals. Based on current data, the proposed option for the Truck/Chemical Subcategory is estimated to remove about 49 percent of toxic loading, at an average cost of about $70,000 per facility, while the proposed option for the Rail/Chemical Subcategory is estimated to remove about 59 percent of toxic loadings, at an average cost of $33,000 per facility. The panel recognized that a direct comparison of the costs and removals between the two types of facilities may not be appropriate, because facilities in the truck chemical subcategory may discharge a different mix of pollutants. Nonetheless, the Panel recommended that EPA give serious consideration to proposing treatment technology for the truck chemical subcategory closer to that proposed for the rail chemical subcategory. After serious consideration of the record, the Agency continues to believe that it is appropriate to propose the more stringent technology for

indirect dischargers in the truck chemical subcategory at this time.

Intuitively, it is reasonable to assume that the characteristics and treatability of raw wastewater generated from the truck and rail sectors will be similar because similar types of commodities are generally transported by tank trucks and rail cars. However, wastewater volumes per tank are much larger for rail cars than for tank trucks (approximately 605 gallons compared to 2,091 gallons). This difference in wastewater flow volumes has a direct impact on the costs that must be incurred to install and maintain wastewater treatment due to the larger treatment system necessary.

The difference in treatment technology selected for the rail and truck subcategories is primarily due to the economic characteristics of the rail facilities as compared to the chemical facilities. EPA's economic assessment of the industry found that there was a significant difference in the economic characteristics of the two subcategories. This resulted in the preliminary conclusion that the Rail/Chemical facilities were not able to absorb the cost of installing high levels of treatment without incurring significant economic impacts. The economic impacts associated with this option is described in Section X of this notice.

Due to time constraints, the Agency has not had time to conduct an analysis of the cost and effectiveness of applying flow reduction and oil/water separation only to indirect dischargers in the truck chemical subcategory. However, the Agency intends to conduct such an analysis prior to promulgating the final rule. If it turns out that this technology is nearly as effective at removing toxic pollutants for facilities in the truck chemical subcategory as the currently proposed technology but at considerably lower cost, the Agency will consider basing the limits in the final rule on the alternate technology, or some technology closer to it. The Agency requests comment on this issue, as well as any data relating to the effectiveness of flow reduction and oil/water separation only for indirect dischargers in the truck chemical industry.

EPA conducted a pass-through analysis on the pollutants proposed to be regulated under BPT and BAT for Rail/Chemical facilities to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as BOD5 and TSS.) Several pollutants were determined to pass-through a POTW and are therefore proposed for PSES regulation in the Rail/Chemical Subcategory.

e. Barge/Chemical & Petroleum Subcategory. In the Agency's survey of the industry, EPA identified only one facility discharging to a POTW in this subcategory. Therefore, EPA does not propose to establish PSES limitations for the Barge/Chemical & Petroleum Subcategory. EPA did, however, evaluate technologies for PSNS, as described in section VIII.B.6

f. Truck/Food, Rail/Food, and Barge/Food Subcategories. In the Agency's engineering assessment of pretreatment of wastewaters for the Truck/Food, Rail/Food, and Barge/Food Subcategories, EPA considered the types and concentrations of pollutants found in raw wastewaters in this subcategory. As expected, food grade facilities did not discharge significant quantities of toxic pollutants to POTWs. In addition, conventional pollutants present in the wastewater were found at concentrations that are amenable to treatment at a POTW. As a result, EPA is proposing not to establish pretreatment standards for any of the Food Subcategories.

g. Truck/Petroleum and Rail/Petroleum Subcategories. In the Agency's engineering assessment of the best available technology for pretreatment of wastewaters from the Truck/Petroleum and Rail/Petroleum Subcategories, EPA considered two options comprised of technologies currently used by facilities in these subcategories.

- Option I—Flow Reduction, Equalization, Oil/Water Separation, and Chemical Precipitation.
- Option II—Flow Reduction, Equalization, Oil/Water Separation, and Activated Carbon Adsorption Followed by Total Wastewater Recycle/Reuse.

Approximately 47 percent of Truck/Petroleum Subcategory facilities and 100 percent of Rail/Petroleum Subcategory facilities received credit in EPA's costing model for existing oil/water separation. No Truck/Petroleum Subcategory or Rail/Petroleum Subcategory facilities received credit for existing equalization or activated carbon adsorption. Total recycle/reuse of TEC wastewater following treatment using activated carbon is practiced by an estimated seven petroleum subcategory facilities. (An additional estimated 22 petroleum facilities practice 100 percent recycle/reuse of TEC wastewater following treatment by technologies different than Option II.)

Due to the similarity of cargos cleaned at Rail/Petroleum and Truck/Petroleum facilities, EPA considered wastewater from Truck/Petroleum facilities to be similar to that from Rail/Petroleum facilities. In evaluating these subcatogories for potential regulation, EPA conducted wastewater characterization sampling at one Truck/Petroleum facility and combined this data with data transferred from the CWT effluent guideline to evaluate wastewater characteristics for the subcategory, as described in section VII of this notice.

EPA estimates that there are 38 facilities in the Truck/Petroleum and Rail/Petroleum subcategories. EPA estimates that these facilities discharge a total of 28 pound equivalents to the nation's waterways, or less than one pound equivalent per facility. Additionally, EPA estimates that the total cost to the industry to implement PSES would be greater than $600,000 annually. The estimated costs to control the discharge of these small amounts of pound equivalents were not considered to be reasonable. Based on this analysis, EPA preliminarily concluded that there is no need to develop nationally applicable regulations for these subcategories due to the low levels of pollutants discharged by facilities in this subcategory.

Based on these factors, EPA proposes not to establish pretreatment standards for the Truck/Petroleum or Rail/Petroleum Subcategories. EPA recognizes that limited data were collected which characterizes the pollutants present in wastewater from these facilities. As a result, the Agency solicits data which can either substantiate or refute its tentative conclusions regarding raw wastewater from Truck/Petroleum and Rail/Petroleum Subcategories, and also any data which characterizes pollutants present in wastewaters from these facilities.

h. Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories. In the Agency's engineering assessment of the best available technology for pretreatment of wastewaters from the Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories, EPA considered one option comprised of technologies currently used by facilities in these subcategories.

- Option I—Flow Reduction and Gravity Separation. EPA selected these technologies as Option I because they remove 69 percent or greater of metals present in Truck/Hopper Subcategory, Rail/Hopper Subcategory and Barge/Hopper Subcategory wastewaters. Approximately 84 percent of Truck Hopper Subcategory facilities, 100 percent of Rail Hopper Subcategory facilities, and 100 percent of Barge

Hopper Subcategory facilities received credit for existing gravity separation.

EPA conducted wastewater characterization sampling at one Barge/Hopper facility. The Agency did not conduct sampling at any Rail/Hopper or Truck/Hopper facilities. The Agency believes that wastewater from all Hopper facilities are similar because the same types of cargos are hauled by each of the three segments.

EPA estimates that there are 42 indirect discharging hopper facilities. EPA estimates that these facilities discharge a total of 3.5 pound equivalents to the nation's waterways, or less than one pound equivalent per facility. Additionally, EPA estimates that the total cost to the industry to implement PSES would be greater than $350,000 annually. The estimated costs to control the discharge of these small amounts of pound equivalents were not considered to be reasonable.

EPA is not proposing to establish BAT limits for any priority pollutant in the hopper subcategories. EPA did, however, look at the levels of pollutants in raw wastewaters and concluded that none were present at levels that are expected to cause inhibition of the receiving POTW.

Based on these factors, EPA proposes not to establish pretreatment standards for the Truck/Hopper, Rail/Hopper, or Barge/Hopper Subcategories. EPA recognizes that limited data were collected which characterizes the pollutants present in wastewater from these facilities. As a result, the Agency solicits data which can either substantiate or refute its tentative conclusions regarding raw wastewater from hopper facilities, and also any data which characterizes pollutants present in wastewaters from these facilities.

6. PSNS Technology Options Considered and Selected

a. Introduction. Section 307 of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies including: process changes, in-facility controls, and end-of-pipe treatment technologies.

The general approach followed by EPA for developing PSNS options was to evaluate the best demonstrated processes for control of priority toxic and nonconventional pollutants. Specifically, EPA evaluated the technologies used as the basis for PSES. The Agency considered the PSES options as a starting point when developing PSNS options because the technologies used to control pollutants at existing facilities are fully applicable to new facilities. With respect to good heel removal and management practices, water conservation, and end-of-pipe wastewater treatment technologies, EPA has not identified any technologies or combinations of technologies that are demonstrated for new sources that are different from those used as the basis for the PSES options. Therefore, EPA has analyzed the same set of control technologies in selecting PSNS as were analyzed for PSES.

b. Truck/Chemical Subcategory. In today's rule, EPA proposes to establish pretreatment standards for new sources in the Truck/Chemical Subcategory equivalent to the PSES standards. In developing PSNS limits, EPA considered whether there are technologies that achieve greater removals than proposed for PSES which would be appropriate for PSNS. In this subcategory, EPA identified no technology that can achieve greater removals than PSES. Therefore, EPA is proposing pretreatment standards for those pollutants which the Agency has determined to pass through a POTW equal to PSES.

c. Rail/Chemical Subcategory. EPA evaluated PSES Options II and III as more stringent levels of control that may be appropriate for new indirect sources. The cost implications anticipated for new sources are not as severe as those projected for existing sources. By utilizing good heel removal and management practices which prevent pollutants from entering waste streams, and good water conservation practices in the design of new facilities, treatment unit size can be substantially reduced and treatment efficiencies improved. As a result, costs of achieving PSES Option II and III can be significantly reduced at new facilities. All of the technologies considered have been demonstrated at an existing zero discharge rail/chemical facility. EPA anticipates no barrier to entry for new sources employing these technologies at lower cost.

Therefore, EPA is proposing PSNS for those pollutants which the Agency has determined to pass through a POTW based on PSES Option III. EPA is soliciting comment on whether or not it is appropriate to establish PSNS based on a more stringent regulatory control option than PSES.

d. Barge/Chemical & Petroleum Subcategory. Although the Agency is not proposing to establish PSES for the Barge/Chemical & Petroleum Subcategory, EPA did evaluate best available technologies for PSNS.

- Option I—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, and In-Line Filter Press. All Barge/Chemical & Petroleum Subcategory facilities received credit in EPA's costing model for existing oil/water separation and dissolved air flotation. No Barge/Chemical & Petroleum Subcategory facilities received credit for existing in-line filter press treatment. (In-line filter press treatment was characterized at a direct discharging Barge/Chemical & Petroleum Subcategory facility.)
- Option II—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, In-Line Filter Press, Biological Treatment, and Sludge Dewatering. Option II is equivalent to Option I with the addition of biological treatment for biological decomposition of organic constituents. No Barge/Chemical & Petroleum Subcategory facilities received credit for existing biological treatment or sludge dewatering. (Biological treatment was characterized at two direct discharging Barge/Chemical & Petroleum Subcategory facilities.)
- Option III—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, In-Line Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering. Option III is equivalent to Option II with the addition of reverse osmosis for wastewater polishing following biological treatment. No Barge/Chemical & Petroleum Subcategory facilities received credit for existing reverse osmosis treatment. (Reverse osmosis treatment was characterized at a direct discharging Barge/Chemical & Petroleum Subcategory facility.)

Option I removed 55 percent or greater of organic pollutants and 61 percent or greater of metals, Option II removed 82 percent or greater of organic pollutants and 82 percent or greater of metals, and Option III removed 99 percent or greater of organic pollutants and 89 percent or greater of metals present in Barge/Chemical & Petroleum wastewater.

EPA is not proposing to establish PSNS based on Option III because reverse osmosis was not considered to be the best demonstrated technology due to the small incremental removals achieved by this option, the lack of additional water quality benefits potentially achieved by this option, the potential issue of disposing the liquid concentrate created by treatment, and the high level of pollutant control achieved by the proposed BAT option.

EPA is proposing to establish PSNS based on Option II because of the removals achieved through this option.

The raw wastewater in this subcategory contains significant amounts of decomposable organic materials. These materials may not be treated as efficiently as the proposed technology option in a conventional POTW because a POTW may not be acclimated to this particular wastewater stream. In this instance, pretreatment based on biological treatment may be appropriate because the pollutant parameters that pass through, or which may be present at levels that cause interference, will receive additional treatment not achieved by the POTW. While EPA considers this to be the best treatment available that does not impose a significant barrier to entry, EPA is soliciting comment on the technology selected as the basis for regulation. Several pollutants were determined to pass-through a POTW and are therefore proposed for PSNS regulation in the Barge/Chemical & Petroleum Subcategory.

EPA has also considered establishing PSNS based on Option I. EPA believes that organic loadings in raw wastewater at barge chemical facilities may be present at levels which are amenable to biological treatment at POTW. However, EPA may not have sufficient data to support this assumption because EPA identified only one barge chemical facility currently discharging to a POTW. EPA solicits comments and data which would support or refute the assumption that a POTW may accept effluent, without causing pass-through or interference, treated by Option I that has not been treated biologically, as is proposed in Option II.

e. Truck/Food, Rail/Food, and Barge/Food Subcategories. EPA has not identified any more stringent treatment technology option which it considered to represent PSNS level of control applicable to Food Subcategory facilities in this industry. In addition, conventional pollutants present in the wastewater were found at concentrations that are amenable to treatment at a POTW. As a result, EPA is proposing not to establish PSNS for any of the Food Subcategories.

f. Truck/Petroleum and Rail/Petroleum Subcategories. Based on the PSES analysis, EPA preliminarily concluded that there is no need to develop nationally applicable regulations for these subcategories due to the low levels of pollutants discharged by facilities in this subcategory.

EPA proposes not to establish PSNS for the Truck/Petroleum or Rail/Petroleum Subcategories.

g. Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories. Based on the PSES analysis, EPA preliminarily concluded that there is no need to develop nationally applicable regulations for these subcategories due to the low levels of pollutants discharged by facilities in this subcategory.

EPA proposes not to establish PSNS for the Truck/Hopper, Rail/Hopper, and Barge/Hopper Subcategories.

C. Development of Effluent Limitations

EPA based the proposed effluent limitations and standards in today's notice on widely-recognized statistical procedures for calculating long-term averages and variability factors. The following presents a summary of the statistical methodology used in the calculation of effluent limitations.

Effluent limitations for each subcategory are based on a combination of subcategory-specific regulatory flows, long-term average effluent values, and variability factors that account for variation in day-to-day treatment performance within a treatment plant. The long-term averages are average effluent concentrations that have been achieved by well-operated treatment systems using the processes described in the above section (Technology Options Considered for Basis of Regulation). The variability factors are values that represent the ratio of a large value that would be expected to occur only rarely to the long-term average. The purpose of the variability factor is to allow for normal variation in effluent concentrations. A facility that designs and operates its treatment system to achieve a long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

The variability factors and long term averages were developed from a data base composed of individual measurements on treated effluent based on EPA sampling data. EPA sampling data reflects the performance of a system over a three to five day period, although not necessarily over consecutive days.

The long-term average concentration of a pollutant for a treatment system was calculated based on either an arithmetic mean or the expected value of the distribution of the samples, depending on the number of total samples and the number of detected samples for that pollutant at that facility. A delta-lognormal distributional assumption was used for all subcategories except the Truck/Chemical subcategory where the arithmetic mean was used. The pollutant long-term average concentration for a treatment technology was the median of the long-term averages from the sampled treatment systems within the subcategory using the proposed treatment technology.

EPA calculated variability factors by fitting a statistical distribution to the sampling data. The distribution was based on an assumption that the furthest excursion from the long term average (LTA) that a well operated plant using the proposed technology option could be expected to make on a daily basis was a point below which 99 percent of the data for that facility falls, under the assumed distribution. The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value of the distribution of the daily values. The pollutant variability factor for a treatment technology was the mean of the pollutant variability factors from the facilities with that technology.

There were several instances where variability factors could not be calculated directly from the TEC database because there were not at least two effluent values measured above the minimum detection level for a specific pollutant. In these cases, the sample size of the data is too small to allow distributional assumptions to be made. Therefore, in order to assume a variability factor for a pollutant, the Agency transferred variability factors from other pollutants that exhibit similar treatability characteristics within the treatment system.

In order to do this, pollutants were grouped on the basis of their chemical structure and published data on relative treatability. The median pollutant variability factor for all pollutants within a group at that sampling episode was used to create a group-level variability factor. When group-level variability factors were not able to be calculated, groups that were similar were collected into analytical method fractions and the median group-level variability factor was calculated to create a fraction-level variability factor. Group-level variability factors were used when available, and fraction-level variability factors were used if group-level variability factors could not be calculated. For the sampling episodes in the Truck/Chemical Subcategory, there were not enough data to calculate variability factors at any level and therefore variability factors were transferred from similar treatment technologies sampled in the Rail/Chemical Subcategory.

Limitations were based on actual concentrations of pollutants measured in wastewaters treated by the proposed

technologies where such data were available. Actual measured value data was available for pollutant parameters in all subcategories with the exception of pollutants regulated for direct dischargers in the Truck/Chemical and Rail/Chemical Subcategories. Due to the small number of direct discharging facilities identified by EPA, all of EPA's sampling was conducted at indirect discharging facilities in these subcategories. In the case of BPT regulation for conventional, priority, and non-conventional pollutants, EPA concluded that establishing limits based on indirect discharging treatment systems was not appropriate because indirect discharging treatment systems are generally not operated for optimal control of pollutants which are amenable to treatment in a POTW. In other words, treatment systems at indirect discharging facilities generally do not require biological treatment to control organic pollutants because a POTW will control these pollutants. Therefore, in establishing limits for direct discharging facilities, EPA is proposing to establish BPT limitations based on the treatment performance demonstrated during the sampling of two direct discharging Barge/Chemical & Petroleum facilities that utilized biological treatment systems.

For this industry, EPA is proposing to establish mass-based rather than concentration based limits. The limits are specified as grams per tank cleaned. EPA envisions that permit writers would use these limits, in combination with data on annual number of tanks cleaned and annual facility wastewater flow, to calculate facility-specific concentration based limits for wastewater flows leaving the treatment plant, and then incorporate these limits into the permit. EPA is proposing this approach because it is concerned that if it proposed concentration based limits directly, facilities might be able to comply with these limits be increasing their water usage rather than installing and properly operating appropriate treatment, thereby diluting rather than removing pollutants of concern. EPA is soliciting comment on the appropriateness of this approach and the burden on the permitting and pretreatment authorities. Based on comments received, EPA may decide to convert the mass based limits in the proposed regulation to concentration based limits for the final rule.

The daily maximum limitation is calculated as the product of the pollutant long-term average concentration, the subcategory-specific regulatory flow, and the variability factor. The monthly maximum limitation is also calculated as the product of the pollutant long-term average, the subcategory-specific regulatory flow, and the variability factor, but the variability factor is based on the 95 percentile of the distribution of daily pollutant concentrations instead of the 99th percentile.

By accounting for these reasonable excursions above the LTA, EPA's use of variability factors results in standards that are generally well above the actual LTAs. Thus if a facility operates its treatment system to meet the relevant LTA, EPA expects the plant to be able to meet the standards. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations.

The proposed limitations, as presented in today's notice, are provided as daily maximums and monthly averages for conventional pollutants. Monitoring was assumed to occur four times per month for conventional pollutants. Monitoring was assumed to occur once per month for all priority and nonconventional pollutants. This has the result that the daily maximums and monthly averages for priority and nonconventional pollutants are the same.

Although the monitoring frequency necessary for a facility to demonstrate compliance is determined by the local permitting authority, EPA must assume a monitoring frequency in order to assess costs and to determine variability of the treatment system.

Monitoring four times per month for conventional and classical pollutants is proposed to ensure that facility TEC processes and wastewater treatment systems are consistently and continuously operated to achieve the associated pollutant long term averages. Monitoring once per month for toxic pollutants is proposed to provide economic relief to regulated facilities while ensuring that facility TEC processes and wastewater treatment systems are designed and operated to control the discharge of toxic pollutants.

EPA is proposing to establish effluent limitations for existing facilities and new sources discharging wastewater directly to surface waters in the following subcategories: Truck/Chemical, Rail/Chemical, Barge/Chemical & Petroleum, Truck/Food, Rail/Food and Barge/Food Subcategories.

EPA is proposing to establish BPT, BCT, BAT and NSPS limitations for the Truck/Chemical Subcategory. EPA is proposing limitations for BOD_5, TSS, Oil and Grease, Chromium, Zinc, COD, Bis (2-ethylhexyl) pthalate, di-N-octyl phthalate, N-Dodecane, N-Hexadecane, Styrene, and 1,2-dichlorobenzene. For the Rail/Chemical Subcategory, EPA is proposing to establish BPT, BCT, BAT and NSPS limitations. EPA is proposing to regulate BOD_5, TSS, Oil and Grease, COD, N-Dodecane, N-Hexadecane, N-Tetradecane, Anthracene, Pyrene, Fluoranthene, and Phenanthrene. For the Barge/Chemical & Petroleum Subcategory, EPA is proposing to establish BPT, BCT, BAT and NSPS limitations. EPA is proposing to regulate BOD_5, TSS, Oil and Grease, COD, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, 1-Methylphenanthrene, Bis (2-ethylhexyl) Phthalate, Di-N-Octyl Phthalate, N-Decane, N-Docesane, N-Dodecane, N-Eicosane, N-Octadecane, N-Tetracosane, N-Tetradecane, P-Cymene, and Pyrene.

Additionally, EPA is proposing to establish BPT, BCT, and NSPS limitations for the Truck/Food, Rail/Food, and Barge/Food Subcategories for BOD_5, TSS, Oil and Grease.

The analytical method for Oil and Grease and Total Petroleum Hydrocarbons (TPH) is currently being revised to allow for the use of normal hexane in place of freon 113, a chlorofluorocarbon (CFC). Method 1664 (Hexane Extractable Material) will replace the current Oil and Grease Method 413.1 found in 40 CFR 136. In anticipation of promulgation of method 1664, data collected by EPA in support of the TECI effluent guideline utilized method 1664. Therefore, all effluent limitations proposed for Oil and Grease and TPH in this effluent guideline are to be measured by Method 1664.

Regulated facilities can meet the proposed limitations through the use of any combination of physical, chemical or biological treatment, or implementation of pollution prevention strategies (good heel removal and water conservation). Additional information on the development of effluent limitations and the technology options considered for regulation is included in Section VIII.A and VIII.B of this proposed rule.

EPA based its decision to select specific pollutants to establish effluent limitations on a rigorous evaluation of available sampling data. This evaluation included factors such as the concentration and frequency of detection of the pollutants in the industry raw wastewater, the relative toxicity of pollutants as defined by their toxic weighting factors, the treatability of the pollutants in the modeled treatment systems, and the potential of the pollutants to pass through or interfere with POTW operations. Particular attention has been given to priority pollutants which have been

detected at treatable levels. Due to the inherent variability of TEC wastewater, EPA does not have sufficient analytical data to establish effluent limitations for each specific pollutant which may be present in the industry wastewater on any given day. EPA has therefore attempted to select several pollutants which have been detected frequently at sampled facilities, which are a possible indicator of the presence of similar pollutants, and whose control through some combination of physical, chemical and biological treatment will be indicative of a well-operated treatment system capable of removing a wide range of pollutants.

EPA determined the regulatory flows to be used in the calculation of mass based limits from information provided in the Detailed Questionnaire. EPA analyzed the average wastewater flow generated per tank on a facility by facility basis by dividing the annual wastewater volume by the number of tanks cleaned at that facility. The regulatory flow for each subcategory was then determined by taking the median of the average flow per tank values of each facility in the subcategory. Because each facility in the TEC database represents a statistical population of facilities, EPA used the bootstrap method to account for the facility survey weights in order to determine the median subcategory flow. A more detailed explanation of the bootstrap method and the calculation of regulatory flow can be found in the "Statistical Support Document of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category".

The pollutants for which limits are proposed include volatile organics, semi-volatile organics, metals, and classical pollutants. EPA does not propose to establish effluent limitations for any pesticides or herbicides for two reasons. One, the cost associated with monitoring for these parameters is very high; and two, EPA's sampling data that has shown that the discharge concentrations of pesticides and herbicides are generally treated by the proposed technology options. EPA also does not propose to establish effluent limitations for dioxins/furans, although 2,3,7,8 TCDD and 2,3,7,8-TCDF were detected in samples collected at several barge and rail facilities. Based on an evaluation of the sampling data from facilities where dioxins were detected, EPA has determined that the detection of 2,3,7,8 TCDD and 2,3,7,8-TCDF were isolated, site-specific instances, and as a general rule dioxins should not be detected in wastewaters from this segment of the industry. Therefore, effluent limitations for dioxins are not proposed for inclusion in this regulation.

Although the wastewater treatment systems sampled by EPA to establish effluent limitations are not designed specifically for metals control, EPA believes that establishing numeric limitations for metals based on these technologies is still appropriate. Based on an evaluation of TECI wastewater characterization and treatment performance data, EPA has concluded that metals present in TECI wastewater are predominantly associated with solids as opposed to being in solution. Since the modeled treatment systems used to establish effluent limitations are designed for solids removal, EPA believes that incidental removals of metals will occur, and therefore effluent limitations for certain metals are justified.

Finally, EPA conducted a pass-through analysis on the pollutants proposed to be regulated under BPT and BAT to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as BOD_5 and TSS.) EPA is proposing pretreatment standards for those pollutants which the Agency has determined to pass through a POTW.

EPA is proposing to establish pretreatment standards for existing facilities and new sources discharging wastewater to POTWs in the following subcategories: Truck/Chemical and Rail/Chemical Subcategories. Additionally, EPA is proposing to establish pretreatment standards for new sources discharging wastewater to POTWs in the Barge/Chemical & Petroleum Subcategory.

Based on the pass-through analysis, EPA is proposing to set PSES and PSNS standards in the Truck/Chemical Subcategory for Chromium, Zinc, COD, Bis (2-ethylhexyl) pthalate, di-N-octyl phthalate, N-Dodecane, N-Hexadecane, Styrene, and 1,2-dichlorobenzene. Based on the pass-through analysis, EPA is proposing to set PSES and PSNS standards in the Rail/Chemical Subcategory for SGT–HEM, COD, N-Hexadecane, N-Tetradecane, and Fluoranthene. Based on the pass-through analysis, EPA is proposing to set PSNS standards in the Barge/Chemical & Petroleum Subcategory for SGT-HEM, COD, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, 1-Methylphenanthrene, Bis (2-ethylhexyl) Phthalate, Di-N-Octyl Phthalate, N-Decane, N-Docesane, N-Dodecane, N-Eicosane, N-Octadecane, N-Tetracosane, N-Tetradecane, P-Cymene, and Pyrene.

EPA solicits comments on the appropriateness of the pollutants selected for regulation, including the decision to establish effluent limitations for metals using modeled treatment systems not specifically designed for metals control. The Agency also solicits data which will support or refute the ability of TEC facilities to meet the proposed effluent limitations using the modeled treatment systems.

IX. Costs and Pollutant Reductions Achieved by Regulatory Alternatives

A. Methodology for Estimating Costs

EPA estimated industry-wide compliance costs and pollutant loadings associated with the effluent limitations and standards proposed today using data collected through survey responses, site visits, and sampling episodes. Cost estimates for each regulatory option are summarized in Section X of today's notice, and in more detail in the Technical Development Document.

EPA developed industry-wide costs and loads based on 176 facility responses to the Detailed Questionnaire. The statistical methodology for this selection is further explained in the Statistical Support Document. EPA calculated costs and loads for questionnaire recipients and then modeled the national population by using statistically calculated survey weights.

EPA evaluated each of the 176 Detailed Questionnaire recipients to determine if the facility would be subject to the proposed limitations and standards and would therefore incur costs as a result of the proposed regulation. Eighty-three facilities were not modeled to incur costs because:

- 34 facilities were located at industrial sites subject to other Clean Water Act final or proposed categorical standards and thus would not be subject to the limitations and standards under the proposed approach for this guideline.
- 49 facilities indicated that they were zero or alternative dischargers (i.e., did not discharge their TEC generated wastewaters either directly or indirectly to a surface water).

Each of the 93 Detailed Questionnaire recipients, plus four direct discharging facilities which did not receive the questionnaire, were assessed to determine TEC operations, wastewater characteristics, daily flow rates (process flow rates), operating schedules, tank cleaning production (i.e., number of tanks cleaned), and wastewater treatment technologies currently in place at the site.

Facilities that did not have the proposed technology option already in-place were projected to incur costs as a result of compliance with this guideline. A facility which did not have the technology in-place was costed for installing and maintaining the technology.

A computer cost model based on vendor quotes and validated through Questionnaire responses was used to estimate compliance costs for each of the technology options after taking into account treatment in place and wastewater flow rates for each facility. The computer cost model was programmed with technology-specific modules which calculated the costs for various combinations of technologies as required by the technology options and the facilities' wastewater characteristics. The model calculated the following costs for each facility:

- Capital costs for installed technologies.
- Operating and maintenance (O&M) costs for installed wastewater treatment technologies; including labor, electrical, and chemical usage costs.
- Solids handling costs; including capital, O&M, and disposal.
- Monitoring costs

Additional cost factors were developed and applied to the capital costs in order to account for site work, interface piping, general contracting, engineering, buildings, site improvements, legal/administrative fees, interest, contingency, and taxes and insurance. Other direct costs associated with compliance included retrofit costs associated with integrating the existing on-site treatment with new equipment and monitoring costs.

The capital costs (equipment, retrofit and permit modification) were amortized over 16 years and added to the O&M costs (equipment and monitoring) to calculate the total annual costs incurred by each facility as a result of complying with this guideline. The costs associated with each of the 97 facilities in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

For many low-flow facilities, EPA concluded that contract hauling wastewater for off-site treatment was the most cost effective option. Where applicable, EPA calculated costs for hauling wastewater to a Centralized Waste Treatment facility for treatment in lieu of installing additional treatment on-site.

All cost models, cost factors, and cost assumptions are presented in detail in the Technical Development Document. The Agency solicits comments on the cost models and the assumptions used to project the cost of compliance to the industry as a result of today's proposed regulation.

B. Methodology for Estimating Pollutant Reductions

The proposed BPT, BCT, BAT, and PSES limitations will control the discharge of conventional, priority toxic, and nonconventional pollutants from TEC facilities. The Agency developed estimates of the post-compliance long-term average (LTA) production normalized mass loadings of pollutants that would be discharged from TEC facilities within each subcategory. These estimates were calculated using the long-term average effluent concentrations of specific pollutants achieved after implementation of the proposed BPT, BCT, BAT, and PSES technology bases in conjunction with the subcategory-specific regulatory flow per tank cleaned. Long-term average effluent concentrations were statistically derived using treatment performance data collected during EPA's sampling program. Development of these long-term average effluent concentrations is discussed in more detail in Section VIII of this preamble and in the Statistical Support Document. The subcategory-specific regulatory flows were statistically derived based on facility flow data provided in response to the 1994 TEC industry Detailed Questionnaire. The Statistical Support Document also discusses development of subcategory-specific regulatory flows.

BPT, BCT, BAT, and PSES pollutant reductions were first estimated on a site-specific basis for affected facilities that responded to the Detailed Questionnaire and for four additional affected facilities identified from responses to the Screener Questionnaire. Site-specific pollutant reductions were calculated as the difference between the site-specific baseline pollutant loadings (i.e., estimated pollutant loadings currently discharged) and the site-specific post-compliance pollutant loadings (i.e., estimated pollutant loadings discharged after implementation of the regulation). The site-specific pollutant reductions were then multiplied by statistically derived survey weighting (scaling) factors and summed to represent pollutant reductions for the entire TEC industry.

Baseline pollutant loadings (in mass per day) represent the pollutant loading currently discharged by TEC facilities after accounting for removal of pollutants in untreated wastewater by treatment technologies currently in place. To estimate the site-specific baseline pollutant loadings, EPA estimated the untreated pollutant loadings generated by TEC facilities based on data collected during EPA's TEC industry sampling program. For each facility sampled, data on the facility production (i.e., number of tanks cleaned per day), cargo types cleaned, TEC wastewater flow rate, operating hours per day, and operating days per year were collected. These data were then used in conjunction with the analytical data to calculate average untreated pollutant loadings per tank cleaned for each TEC industry subcategory. Although some facilities provided self-monitoring data in response to the Detailed Questionnaire, these data were not useable for the following reasons: (1) Respondents provided different types of data for a nonstandard set of pollutants, (2) the data represented samples collected at a variety of treatment system influent and effluent points, (3) the data were provided as an average estimated by the facility over one or more sampling days, and/or (4) analytical QA/QC data were not provided.

EPA calculated the site-specific untreated pollutant loadings (in mass per day) by multiplying the subcategory-specific untreated pollutant loadings per tank cleaned estimates by the number of tanks cleaned at each facility. For facilities with production in multiple subcategories, estimated pollutant loadings from each subcategory were summed to estimate the site-specific untreated pollutant loadings. Additionally, for some facilities, loadings of pollutants in incidental waste streams loadings (such as bilge and ballast water) were estimated from other EPA program sampling data and other sources. These incidental stream pollutant loadings were also summed to estimate the site-specific untreated pollutant loadings.

The site-specific untreated pollutant loadings were converted to untreated wastewater pollutant concentrations by dividing by the facility daily wastewater discharge flow rate (including TEC wastewater and commingled non-TEC wastewater streams not easily segregated) provided in responses to the Detailed Questionnaire. For each site, the untreated pollutant wastewater concentrations were then compared to the long-term average effluent concentrations achieved by the treatment technologies currently in place (if any). The lower of these concentrations represents the site-specific baseline effluent concentration. The site-specific baseline effluent concentrations were then multiplied by the facility daily wastewater discharge

flow rate (described above) to determine the site-specific baseline pollutant loadings.

Post-compliance pollutant loadings (in mass per day) represent the estimated pollutant loadings that will be discharged after implementation of the regulation. For each site, the baseline pollutant effluent concentrations (described above) were compared to the long-term average effluent concentrations achieved by the technology bases for BPT, BCT, BAT, or PSES. The lower of these concentrations represents the site-specific post-compliance effluent concentrations. The site-specific post-compliance pollutant effluent concentrations were then multiplied by the facility daily wastewater discharge flow rate to determine the site-specific post-compliance pollutant loadings.

Finally, pollutant reductions were calculated at each facility as the difference between the baseline pollutant loadings and the post-compliance pollutant loadings. The pollutant reductions were then multiplied by statistically derived survey weights and summed to represent pollutant reductions for the entire TEC point source category.

X. Economic Analysis

A. Introduction

This section describes the costs, economic impacts, and benefits associated with today's proposal. The economic analysis uses the engineering cost estimates (described in Section IX.A.) to analyze the economic impacts of various technology options. EPA's economic assessment is summarized here; details are available in the "Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Point Source Category," hereinafter referred to as the EA, which is included in the rulemaking record. The EA estimates the economic impacts of compliance costs on facilities, firms, employment, domestic and international markets, inflation, distribution, environmental justice, and transportation equipment cleaning customers. EPA also prepared an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which estimates the impacts of the proposal on small entities (details in the EA). In addition, a cost-effectiveness analysis of all technology options for eleven subcategories is presented in the "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Point Source Category," hereinafter referred to as the CE document.

B. Economic Impact Methodology

1. Introduction

The TECI is a service industry with modest capital assets in comparison to manufacturing industries. Many of the businesses in this industry are single, stand alone facilities in which the facility, business entity, and firm are the same. There are some multi-facility firms or business entities that own several tank cleaning facilities; a small number of firms own a relatively large number of facilities. The TECI provides a service that is a "derived demand" for overall transportation services. As the demand for transportation services in general increases, the demand correspondingly increases for transportation equipment cleaning services.

The EA consists of eight major components: (1) an assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annual aggregate cost for these facilities to comply with the rule using facility-level capital and operating and maintenance (O&M) costs; (3) an evaluation, using a discounted cash flow (DCF) model, to analyze compliance cost impacts on each TECI facility's cash flow (closure analysis); (4) an evaluation, using a financial model, of compliance costs impacts on the financial health of facilities in the industry (financial stress analysis); (5) an evaluation of secondary impacts such as those on employment, markets, inflation, distribution, environmental justice and transportation equipment cleaning customers; (6) an assessment of the potential for impact on new sources (barrier-to-entry); (7) an analysis of the effects of compliance costs on small entities; and (8) a cost-benefit analysis.

All costs reported in this notice are expressed in 1997 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The primary source of data for the economic analysis is the "1994 Detailed Questionnaire for the Transportation Equipment Cleaning Industry, Part B—Financial and Economic Information," hereinafter referred to as the Detailed Questionnaire (the section 308 survey conducted in April 1995; see Section V.C.). Other sources include the Bureau of the Census, industry trade journals, preliminary surveys of the industry, and the "U.S. Environmental Protection Agency Tank and Container Cleaning Screener Questionnaire." All costs were inflated to 1997 dollars using the *Engineering News Record* Construction Cost Index.

2. Methodology Overview

Central to the EA is the cost annualization model, which uses facility-specific capital, operating and maintenance (O&M), and monitoring costs data described in Section IX.A, to determine the total annualized compliance costs. The total annual costs described in Section IX.A (and in the Technical Development Document) are an approximation of the costs of the proposed rule. The refinements to annualization described below provide a more accurate basis for estimating financial impacts to each facility. This model uses these costs and facility specific costs of capital (discount rate), or if not available, the industry average costs of capital, over a 16-year analytic time frame to generate the annual cost of compliance for each technology. EPA chose the 16-year time frame for analysis based on the depreciable life for equipment of this type, 15 years according Internal Revenue Service (IRS) rules, plus approximately one year for purchasing and installing the equipment. The model generates the annualized cost for each option for each facility in the survey, which is then used in the facility impact analyses, discussed below. The annualized compliance costs for each facility are totaled at the national level to provide aggregate annualized costs for each technology option.

For each facility in the transportation equipment cleaning industry, EPA estimated the present value of baseline cash flow using three forecasting methods. EPA used three different scenarios to help address the uncertainty associated with predicting future income streams. The forecasts are based on the three years of financial data provided by each facility in the Detailed Questionnaire, assuming no-real-growth. One forecasting method uses 1994 cash flow as the best predictor of future cash flow. The second method uses the average of 1992, 1993, and 1994 cash flow as the expected cash flow for each year over the sixteen year project life. The third method uses the variation between 1992, 1993, and 1994 cash flow to mimic business cycle fluctuations in cash flow for the period (see EA, Appendix C for details on cash flow forecasting methods).

EPA then calculated the present value of the stream of each facility's post-tax

compliance costs (including the initial capital purchase and each year's operating and maintenance costs) over the sixteen year project life using each of the three forecasting methods. The present value of compliance costs is adjusted downward by a cost pass through factor that is calculated from EPA's TECI market model (see the EA, Appendix B). The market model for the TECI, which quantifies the impact of the proposed effluent guideline on equilibrium price and quantity in each TECI subcategory of the proposed rule, shows that the facilities in the regulated subcategories will be able to pass some portion of the compliance costs of the proposed rule through to their customers. The market model calculates the percentage that can be passed through for each subcategory. The adjusted present value of compliance costs represents the estimated change in facility cash flow caused by the proposed regulation.

For each of the subcategories in this industry, the estimated change in the present value of cash flow is subtracted from the projected present value of baseline facility cash flow to estimate the present value of post compliance cash flow. If the present value of post compliance cash flow is negative under two of the three forecasting methods, EPA considers the facility likely to close (i.e., liquidate) as a result of the regulation.

In the firm financial stress analysis, EPA uses the annualized costs to estimate changes to the balance sheets and income statements for each firm. This analysis estimates changes in financial information of each firm such as earnings, assets, liabilities, and working capital at the firm level (accounting for multiple facilities, where applicable). These postcompliance financial figures are used in a computerized model of financial health on a firm-by-firm basis. The model uses an equation known as Altman's Z″, which was developed using empirical data to characterize the financial health of firms, specifically for service industries such as the TECI. This model calculates one value, using financial data from the Detailed Questionnaire, that can be compared to index numbers that define "good" financial health, "indeterminate" financial health, and "poor" financial health. All firms whose Altman's Z″ value changes such that the firm goes from a "good" or "indeterminate" baseline category to a "poor" postcompliance category are classified as likely to have significant difficulties raising the capital needed to comply with the proposed rule, which can indicate the likelihood of firm bankruptcy, or loss of financial independence. To complement the Altman Z″ financial analysis, EPA uses two financial ratios: the current ratio (compares current assets to current liabilities) and the times interest earned ratio (compares annual interest obligations to annual cash flow). In most of the firm analyses, the current ratio and the time interest earned ratio tend to verify the Altman Z″ results.

In the employment analysis, EPA uses input-output analysis and market analysis. Using input-output analysis, EPA conducts a national-level analysis for estimating employment changes (gains and losses) throughout the U.S. economy in all non-TECI sectors of the economy. In this analysis, EPA uses both compliance costs and employment losses driven by facility closures to determine a range of possible gross and net (losses minus gains) impacts at the national level. Using market analysis, EPA's estimates market-determined production losses to derive an estimate of direct, net employment losses in the transportation equipment cleaning industry alone. Market analysis is undertaken to determine losses within the transportation equipment cleaning industry alone; while closure losses can be considered the immediate impact of the proposed rule on the industry, production-driven losses might be greater or less than closure losses over time, as equilibrium in the market is attained. Furthermore, closure losses do not account for the fact that some portion of production might transfer wholly or in part to operating pollution control equipment, thus accounting for some employment gains within the industry.

EPA investigates secondary impacts qualitatively and quantitatively. These impacts include impacts on international markets, impacts on substitutes for transportation equipment cleaning services, impacts on inflation, distributional impacts, and impacts on environmental justice. EPA also investigates the impact of the rule on domestic markets. The rule will affect domestic markets to the extent that zero discharge or excluded facilities have a competitive advantage over affected facilities.

EPA also looks at impacts on customers. The Agency analyzed the increase in prices that could be anticipated on a postcompliance basis. For the long term price equilibrium, the Agency determined the change in the number of tanks that would be cleaned. The analysis indicates a very modest decrease in the number of tanks cleaned. In many instances, this will probably occur as a slight decrease in the frequency of tank cleanings. In other cases, some customers could decide to buy "dedicated" tanks which would need infrequent or no cleaning.

Another key analysis EPA performs is an analysis to determine impacts on new sources, which is primarily a "barrier-to-entry" analysis to determine whether the costs of the PSNS or NSPS would prevent a new source from entering the market. This analysis looks at whether new transportation equipment cleaning facilities would be at a competitive disadvantage compared to existing sources. Market effects and barrier-to-entry results associated with zero discharge and small facility exclusion (if any) also are qualitatively investigated.

The EA also includes a cost-benefit analysis. This analysis looks at the social costs of the regulation measured as the pretax costs of compliance plus government administrative costs plus the costs of administering unemployment benefits (if any). Total social costs are compared to total social benefits in the analysis. See Section XI of this notice for a discussion of the benefit analysis.

EPA solicits comment on the methodologies described above. In particular, the Agency requests comment on the assumptions used in the analyses. Details of the methodologies and assumptions are available in the EA and the CE documents.

C. Summary of Costs and Economic Impacts

1. Number of Facilities Incurring Costs

EPA estimated that there are 1,239 facilities in the TEC industry not regulated under other effluent guidelines. Of these, 547 facilities are considered zero or alternative discharging facilities and are not expected to incur costs to comply with the TEC effluent guideline. EPA estimates that there are approximately 692 discharging facilities which may incur costs to comply with this proposal and upon which EPA conducted its analysis. Not all of these facilities are expected to incur costs because EPA is proposing not to regulate certain subcategories. Of the 1,239 facilities, 437 facilities meet the definition of small businesses. Of the 692 discharging facilities, 184 facilities meet the definition of small businesses. EPA used the Small Business Administration's (SBA) definition of small for the SIC codes that cover the TECI to develop a small business definition proposal. About 40 percent of the TECI facilities

have an SIC code that uses $5 million in annual revenue as the criterion for a small business.

2. Total Costs and Impacts of the Proposed Rule

a. Introduction.

The capital investment costs for all facilities total about $66 million. Total annualized costs of the proposed regulation for all facilities are estimated to be about $23.1 million, which includes about $5 million of annualized capital costs and $18 million in annual operation and maintenance costs.

The total annual costs are estimated using the capital investment, annual operation and maintenance costs, and monitoring costs. Capital costs are annualized by spreading them over the life of the project (much like a home mortgage). These annualized capital costs are then added to the annual operation and maintenance costs and to the monitoring costs. The result is the total annualized costs for each technology option.

Table 5 summarizes the total annualized costs for direct and indirect discharger requirements. Table 6 presents additional detail on the costs for direct dischargers, and Table 7 presents a similar level of detail for indirect dischargers.

TABLE 5.—COSTS OF PROPOSED TEC RULE

Rule	Posttax annualized costs ($1997 thousand)
PSES	$21,470
BPT/BAT	1,630
Total	23,100

Note: Totals may not sum due to rounding.

TABLE 6.—COSTS OF IMPLEMENTING BPT, BCT, AND BAT

[In thousands of 1997 Posttax dollars]

Subcategory	Total capital investment	Total annualized costs
Truck/Chemical	$144	$80
Rail/Chemical	122	40
Barge/Chemical & Petroleum	3,400	1,500
Truck/Food	0	0
Rail/Food	0	0
Barge/Food	0	0

TABLE 7.—COSTS OF IMPLEMENTING PSES

[In thousands of 1997 Posttax dollars]

Subcategory	Total capital investment	Total annualized costs
Truck/Chemical	$57,700	$20,200
Rail/Chemical	$4,700	$1,300

When final guidelines are promulgated, a facility is free to use any combination of wastewater treatment technologies and pollution prevention strategies at the facility so long as the numerical discharge limits are achieved. In some cases, a facility might choose flow reduction or some combination of capital investment or additional operation and maintenance expenditures may be required. In its cost estimates, EPA has assumed that all of the facilities in the Truck/Chemical and Rail/Chemical Subcategories and most in the Barge/Chemical & Petroleum Subcategories will need to make capital improvements or perhaps modify operation and maintenance practices. For the Food subcategories, all existing facilities which responded to the screener survey questionnaire indicated that they currently have in place the technology that the Agency has identified as the basis for limitations. Therefore, the Agency believes that they will incur no costs to comply. (See Section VIII.B)

b. Impacts From PSES. EPA estimates that the total compliance costs for PSES will be approximately $21.5 million per year. These costs include compliance with PSES for the Truck/Chemical and Rail/Chemical Subcategories. Total annual compliance costs for the Truck/Chemical Subcategory are based on technology Option II; for Rail/Chemical, on technology Option I.

EPA estimates that the proposed technology options would result in no facility closures. However, EPA predicts that the proposed PSES may cause some financial stress on 29 facilities and could affect the capability of these facilities to raise capital needed to purchase and install pollution control equipment. All of these facilities are in the Truck/Chemical Subcategory and most are in-house facilities. This impact does not mean that these facilities will close; all of these facilities are economically viable and are thus considered likely to be of interest to other firms for acquisition and operation. They may also be successful at improving their financial health and become attractive to lenders in the future.

Within non-TEC industries, EPA's economic analysis indicates that some industries that provide materials and equipment to the TEC industry may experience revenue increases as a result of the proposed regulation. However, some of these industries could incur revenue losses. EPA's economic analysis indicates that the proposed regulation would result in net losses of about 300 to 500 jobs in these industries (i.e., non-TEC industries). These impacts were estimated using the input-output methodology. Details of this analysis are available in the EA.

Within the TEC industry itself, EPA determined that many financially healthy facilities might actually experience gains in production (and thus gains in output and employment). Financially healthy facilities in the local market area might expand to take over

a portion of production from a facility having financial difficulties. In addition, some employment gains are anticipated for installation and operation of wastewater treatment facilities.

EPA determined that most facility financial stress will result in a maximum change in a community's unemployment rate of no more than 0.5 percent. Because the methodology assumes that all of the community impacts would occur in one State, the more probable impact is considerably lower. Thus, the community impact from the transportation equipment cleaning industry regulation is estimated to be negligible. EPA solicits comments on whether this approach is overly conservative.

EPA expects the proposed rule to have a minimal impact on international markets. Domestic markets might initially be slightly affected by the rule, because tank cleaning facilities will absorb a portion of the compliance costs and will pass a portion of the costs through to their customers. For the portion of compliance costs passed through to cleaning facilities' customers, EPA's market model estimates that prices will increase from about 2.1 percent to about 5.7 percent. Output, or the number of tanks cleaned, will decrease from about 0.1 percent to about 1.1 percent. Because tank cleaning is an essential service and is a very small part of total transportation services costs, customers may not be as sensitive to tank cleaning prices as they are to larger cost elements. Customers may accept marginally higher tank cleaning prices if the whole industry is subject to higher costs. An individual facility would have difficulty independently increasing prices in the absence of industry wide price increases.

EPA expects the proposed rule to have minimal impacts on inflation, insignificant distributional effects, and no major impacts on environmental justice.

EPA also investigated the likelihood that customers might use methods other than installing additional on-site wastewater treatment in order to comply with the proposed regulations. Substitution possibilities, of operating on-site facilities or purchasing dedicated tanks, are associated with potential negative impacts on customers that might deter them from choosing these potential substitutes. On-site tank cleaning capabilities require capital investment, operation and maintenance, and monitoring costs. The decision to build an on-site tank cleaning capability is more likely determined by non-pricing factors such as environmental liability, tank cleaning quality control, and internal management controls.

EPA's analysis does not indicate that transportation service companies (i.e., TEC customers) would likely decide to build a tank cleaning facility as a result of EPA's proposal. Further, because of the high initial costs to install equipment on-site ($1.0 million to $2.0 million for a tank cleaning facility) and the small increase in price of transportation equipment cleaning services discussed earlier, on-site transportation equipment cleaning could require years before any cost savings might be realized. Also, EPA's market model provides a means for estimating price increases and reductions in quantity demanded for transportation equipment cleaning services at the higher price. This analysis shows a very small decrease in the number of tanks cleaned as a result of the proposed rule, from about 0.1 percent to about 1.1 percent of baseline production across the subcategories. Given the disincentives towards substitutes indicated above, EPA does not expect the proposed rule to cause many customers to substitute on-site facilities for transportation equipment cleaning services or to substitute dedicated tanks. The small reduction in production is more likely to occur from customers delaying cleaning (rather than cleaning tanks after delivery of every load) or dropping certain services such as handling toxic wastes heels. This decline in production is negligible compared to the approximate 10 to 20 percent per year revenue growth for the industry between 1992 and 1994, according to data in the Detailed Questionnaire.

c. Impacts From BPT, BCT, BAT. As described in Section VIII.B of today's notice, EPA is proposing effluent limitations based on BPT, BCT, and BAT for the Truck/Chemical, Rail/Chemical, and Barge/Chemical & Petroleum Subcategories. The proposed limitations are the same for all levels of direct discharge requirements. The summary of costs and economic impacts is presented here for all levels. For BPT and BCT, additional information on cost and removal comparisons is presented in the Technical Development Document.

EPA estimates that the total annual compliance costs for BPT, BCT, and BAT will be $1.6 million. This estimate includes BPT, BCT, and BAT costs for the Truck/Chemical, Rail/Chemical, and Barge/Chemical & Petroleum Subcategories. For the Food Subcategories, although EPA is proposing effluent limitations based on BPT and BCT, EPA projects no compliance costs because all facilities identified by EPA were determined to already have the proposed treatment technology in place. (See Section VIII.B). EPA based its analysis on Option II for the Truck/Chemical Subcategory, Option I for the Rail/Chemical Subcategory, and Option I for the Barge/Chemical & Petroleum Subcategory. EPA based its analysis for the Truck Food, Rail Food, and Barge Food Subcategories on Option II.

As explained in Section X.b.1, EPA used economic and financial data obtained through the Detailed Questionnaire to evaluate economic impacts that would occur as a result of compliance with today's proposal. Certain segments of the TEC industry, especially in the Truck/Chemical and Rail/Chemical Subcategories, consist mainly of facilities discharging to a POTW. Due to the limited number of direct discharging facilities identified by EPA in these subcategories, EPA did not obtain detailed economic information from direct discharging facilities in the Truck/Chemical or Rail/Chemical Subcategories. EPA is, however, aware of at least three Truck/Chemical facilities and one Rail/Chemical facility that are discharging wastewater directly to surface waters.

For the economic analysis in these subcategories, EPA relied on the economic data collected for the indirect discharging Truck/Chemical facilities and the indirect discharging Rail/Chemical facilities. EPA assumed that the economic profile of direct discharging facilities is similar to that of indirect discharging facilities. EPA believes this is a reasonable approach because the Agency does not believe there is any correlation between annual revenue or facility employment and the method that a facility chooses to discharge its wastewater. Rather, the decision on whether to discharge wastewater directly or indirectly is determined by such considerations as cost, proximity to a POTW, permitting requirements, and wastewater treatment technology options.

EPA therefore assumed that the direct discharging Truck/Chemical and Rail/Chemical facilities were similar to indirect discharging facilities in terms of annual revenue, facility employment, and the number of tanks cleaned. Information on each of these indices was provided to EPA by the four direct discharging facilities in the Screener Questionnaire. EPA then identified facilities in the Detailed Questionnaire database which were similar to each of the direct dischargers in terms of revenue, employment, and tanks cleaned. EPA then simulated the

financial and economic profile for the direct discharging facilities based on data provided by similar indirect discharging facilities in the same subcategory. Based on this analysis, EPA determined that implementation of BPT would result in no facility closures, and thus no revenue losses or employment losses are expected to occur. The Agency solicits data and comment on the assumptions used for the economic achievability analysis for the Truck/Chemical and Rail/Chemical Subcategories.

For the Barge/Chemical & Petroleum Subcategory, EPA estimated total annualized compliance costs for the 14 facilities based on responses to the Detailed Questionnaire. EPA has projected no facility closures, employment losses or revenue losses for these facilities.

In addition to the costs of the effluent guideline discussed in this section, the Barge/Chemical & Petroleum Subcategory may be subject to incremental costs under new Clean Air Act regulations. For these facilities, EPA has reviewed the economic analysis prepared for the 1995 Clean Air Act (CAA) regulation (National Emission Standards for Shipbuilding and Ship Repair, 60 FR 64336). EPA identified only one Tank Barge and Petroleum facility that overlaps with the facilities covered by this CAA regulation. In the economic analysis for today's proposal, EPA includes a sensitivity analysis and assumed that all Tank Barge and Petroleum facilities that indicate that they perform repair, painting, or related activities will be subject to the CAA regulation. EPA's sensitivity analysis of the CAA incremental costs suggests little or no change in economic impacts for the Barge/Chemical & Petroleum facilities. EPA solicits comment on the relevance of CAA costs to comply with this proposal. EPA also solicits data on the magnitude of these costs and on the number of facilities affected by today's proposal which are in ozone non-attainment areas.

d. Impacts From PSNS. As described in Section VIII.B, EPA is proposing PSNS equivalent to PSES for the Truck/Chemical and Barge/Chemical & Petroleum Subcategories. For the Rail/Chemical Subcategory, EPA is proposing PSNS based on a more stringent technology control option than proposed for PSES. For Truck/Chemical, Option II was selected, for Rail/Chemical Option III was selected, and for Barge/Chemical & Petroleum, Option II was selected.

EPA assesses impacts on new indirect sources by determining whether the proposed rule would result in barrier-to-entry into the market. EPA has determined that overall impacts from the proposed TECI effluent guidelines on new sources would not be any more severe than those on existing sources. Generally, the costs faced by new sources will be the same as, or less than, those faced by existing sources. It is typically less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant; no demolition is required, and space constraints, which can add to costs if specifically designed equipment must be ordered, are not an issue in new construction.

For the Truck/Chemical Subcategory, average facility assets are over $2.8 million. In its economic analysis, EPA determined that the average facility compliance capital costs for this subcategory would be $0.2 million. The ratio of average facility compliance capital costs to average facility assets would be approximately seven percent. EPA concluded that the capital costs to comply with the standards are modest in comparison to total facility costs and would not pose a barrier-to-entry.

For the Rail/Chemical Subcategory, responses to the Detailed Questionnaire indicate that the average facility assets total about $6.4 million. For this subcategory, average facility compliance capital costs total about $0.1 million, or about two percent of average facility assets. EPA concluded that the average annual incremental facility costs are low in comparison to average facility assets and that PSNS would therefore not pose a barrier-to-entry.

EPA also examined whether there would be barrier-to-entry for new sources. EPA investigated facilities in the Detailed Questionnaire that indicated they were new or relatively new at the time of the survey. Over a three year period (1992, 1993, 1994), according to the Detailed Questionnaire, about 60 facilities began transportation equipment cleaning operations, although it is not absolutely clear from the data whether these facilities were actually new dischargers or were existing dischargers acquired in that year by a different firm. Over the 3-year period, this amounts to about 20 new sources a year, or about three percent of the number of existing facilities. EPA believes that new sources are replacing production from closing facilities that exist in the market and are also adding modest additional tank cleaning capacity in the TECI.

EPA concludes that new small facilities will not experience a barrier-to-entry to the transportation equipment cleaning industry.

e. Impacts From NSPS. As described in Section VIII.B, EPA is proposing NSPS equivalent to BPT, BCT, and BAT for the Truck/Chemical and Barge/Chemical & Petroleum Subcategories. For the Rail/Chemical Subcategory, EPA is proposing NSPS based on a more stringent technology control option than proposed for existing sources. EPA assesses impacts on new direct sources by determining whether the proposed rule would result in barrier-to-entry into the market.

For the Barge/Chemical & Petroleum Subcategory, the average facility assets for a barge chemical cleaning facility are about $2.1 million. The average compliance capital cost for the proposed regulation for a barge chemical cleaning facility is about $0.2 million or about 11 percent of average facility assets. This is a relatively small amount of average capital assets. This percentage is expected to be lower for new facilities, because they can include pollution control equipment in the design of new facilities.

In an analysis of the Detailed Questionnaire, EPA determined that about 20 new tank cleaning businesses were established per year during 1992, 1993, and 1994 timeframe. Although EPA has not determined the number of new facilities that are direct dischargers, the Agency assumes that the number of new direct discharging facilities is small. EPA concludes this, because the number of existing direct dischargers is small (based on screener data).

Similar to PSNS, EPA concludes that no barrier-to-entry exists for new direct discharge sources to construct, operate, and maintain these technologies.

3. Economic Impacts of Accepted and Rejected Options

The options selected as the basis for regulation are associated with no facility closures; 29 indirect discharge facilities are projected to experience some financial stress (but not close) and thus possibly lose their financial independence. A net direct total of no FTEs would be lost in the transportation equipment cleaning industry (direct, production-driven losses) with these options, and other secondary impacts (effects on trade, inflation, and customers) would be negligible.

As discussed in section VIII, EPA considered several technology options for each subcategory. A summary of costs and impacts for all BPT, BCT, BAT, NSPS, PSES, and PSNS options are shown in Table 8.

TABLE 8.—SUMMARY OF IMPACTS FOR PROPOSED BPT, BAT, NSPS, PSES, AND PSNS OPTIONS

Subcategory	Option	Posttax annualized costs ($ 1997 thousands)	Facility closures	Financial stress	Employment losses
Truck/Chemical (Direct)	Option I	$78	0	0	0
	Option II (Proposed for BPT, BCT, BAT, NSPS).	78	0	0	0
Truck/Chemical (Indirect)	Option I	13,200	0	22	0
	Option II (Proposed for PSES, PSNS)	20,206	0	29	0
Rail/Chemical (Direct)	Option I (Proposed for BPT, BCT, BAT)	39	0	0	0
	Option II	74	0	0	0
	Option III (Proposed for NSPS)	89	0	0	0
Rail/Chemical (Indirect)	Option I (Proposed for PSES)	1,262	0	0	0
	Option II	1,953	6	0	421
	Option III (Proposed for PSNS)	2,630	6	0	421
Barge/Chemical & Petroleum (Direct)	Option I (Proposed for BPT, BCT, BAT, NSPS).	1,508	0	0	0
	Option II	1,774	0	0	0
Barge/Chemical & Petroleum (Indirect)	Option I	122	0	0	0
	Option II (Proposed for PSNS)	187	0	0	0
	Option III	215	0	0	0
Truck/Food (Direct)	Option I.				
	Option II (Proposed for BPT, BCT, BAT, NSPS).				
Truck/Food (Indirect)	Option I	3,236	0	17	0
	Option II	8,022	8	17	153
Rail/Food (Direct)	Option I.				
	Option II (Proposed for BPT, BCT, BAT, NSPS).				
Rail/Food (Indirect)	Option I	2,098	0	0	0
	Option II	6,218	0	0	0
Barge/Food (Direct)	Option I.				
	Option II (Proposed for BPT, BCT, BAT, NSPS).				
Barge/Food (Indirect)	Option I	19	0	0	0
	Option II	41	0	0	0
Truck/Hopper (Indirect)	Option I	334	5	0	38
Rail/Hopper (Indirect)	Option I	16	0	0	0
Barge/Hopper (Direct)	Option I	411	0	0	0
Barge/Hopper (Indirect)	Option I	21	0	0	0
Truck/Petroleum (Indirect)	Option I	536	0	0	0
Rail/Petroleum (Indirect)	Option I	87	0	0	0

4. Small Business Analysis

EPA estimated that there are 1,239 TEC facilities not regulated by other CWA effluent guidelines. Of these, 437 facilities meet the definition of small businesses. There are 692 TEC discharging facilities which may incur costs to comply with today's proposal. Of these, 184 facilities meet the definition of "small" under the Small Business Administration's (SBA) definition of $5 million in annual revenue for many of the SIC codes that cover the TECI. The 184 small facilities are about 27 percent of the discharging facilities in the industry. Not all of these facilities will be affected by today's proposal because EPA is not proposing effluent limitations for all subcategories.

EPA's small business analysis satisfies the requirements of an Initial Regulatory Flexibility Analysis (as required by the Regulatory Flexibility Act; see section XIII.B of today's notice) and also documents the Agency's findings of economic achievability for the small business segment of the regulated community. The small business analysis, in its entirety, is in Chapter VI of the EA.

A key aspect of the small business analysis was an attempt to identify a means to minimize economic impacts for small businesses. Among the Agency's considerations was an exclusion for small facilities, where the exclusion could be based on criteria such as the number of tanks cleaned, gallons of wastewater generated per day, employment, or annual revenues. EPA evaluated alternative levels for each of these criteria as potential bases for excluding small businesses. For each potential exclusion, EPA considered the projected economic impacts, both in absolute terms and in relative terms (i.e., whether the impacts were higher, proportionately, for the small businesses). The economic impacts that EPA considered for small facilities include those described in section X.B.2, such as closures, and other impacts, such as a comparison of compliance cost to annual revenues. EPA projects no facility closures among small businesses. EPA projects that 14 small businesses will experience financial stress.

For the preliminary comparison of costs to revenues, EPA relied on a conservative set of assumptions such as zero cost pass through. EPA relied on these results to determine whether there might be any potential need to prepare an IRFA. Subsequently, EPA also compared cost to revenue using other assumptions from the market model described in X.B.2. All of these results are presented in the IRFA. Using both sets of assumptions related to cost pass through, EPA estimates that either 75 or 50 small businesses would incur costs

exceeding one percent of revenues, and either 64 or 17 small businesses would incur costs exceeding three percent of revenues.

Small facilities are not concentrated in any one market area and the competitive advantages, if those facilities were excluded, might be limited. EPA's analysis shows that there is a very slight increase in tank cleaning prices as a result of the proposed rule. For example, the price per tank cleaned in the Truck/Chemical Subcategory would be expected to increase from $279 per tank cleaned to $295 per tank cleaned, a 5.7 percent increase. Based on an industry-wide market analysis that includes zero discharge facilities, with this increase in tank cleaning prices, the number of tanks cleaned in the Truck/Chemical Subcategory would decrease from about 770,000 tanks cleaned to about 762,000 tanks cleaned, a 1.1 percent decrease in the number of tanks cleaned. Because tank cleaning is an essential service and is a very small component of transportation services, customers do not appear to be as sensitive to price changes as they would be to a service which is a larger component of overall transportation services; therefore, dischargers subject to the proposed rule would be able to compete with zero discharge facilities. The analysis suggests that an exclusion from the rule may provide small businesses with a modest comparative cost and price advantage over facilities subject to the regulation. However, that comparative cost advantage may be slight; overall price changes are projected to be modest and small facilities may not have the market power of larger facilities.

The analysis of potential small business exclusions also includes a comparison of economic impacts and pollutant loadings; this type of comparison is especially helpful for identifying regulatory alternatives that would provide economic relief without removing a significant portion of the pollutant loading or other benefit of the rule. This analysis shows that small facilities contribute a proportional amount of the pollutant loads discharged into surface waters.

EPA evaluated more than 20 potential small business exclusions, but has not identified an exclusion consistent with the CWA that minimizes the economic impacts while still preserving the benefits of the proposed rule. Hence, no small business exclusion is incorporated into today's proposal. EPA solicits comments on a small business exclusion that would minimize the impacts on those small firms for which projected compliance costs represent a significant share of costs or net income, or more generally, any regulatory alternative that would minimize the economic impacts on small businesses.

D. Cost-Benefit Analysis

Table 9 presents a comparison of the costs and benefits of the proposed transportation equipment cleaning industry regulation. The proposed options are expected to have a total annual social cost of $37.5 million in 1997 dollars, which includes a $36.9 million in pretax compliance costs, $0.6 million in administrative costs, and almost zero costs for administering unemployment benefits. Annual benefits are expected to range from $2.7 million to $9.3 million in 1997 dollars, which includes $1.8 million to $6.2 million for recreational benefits and $0.9 million to $3.1 million associated with nonuse values benefits. The derivation of annual benefits is discussed in Section XI.

TABLE 9.—SUMMARY OF THE COST-BENEFIT ANALYSIS

Category	Costs and benefits ($ 1997 millions)
Costs	
Compliance Costs	$36.9
Administrative Costs	0.6
Administrative Costs of Unemployment	0.0–0.006
Total Social Costs	37.5
Benefits	
Human Health Benefits	
Recreational Benefits:	
Truck/Chemical	1.6–5.6
Barge/Chemical & Petroleum	0.2–0.6
Nonuse Benefits	0.9–3.1
Total Monetized Benefits	2.7–9.3

There are a number of additional use and nonuse benefits associated with the proposed standards that could not be monetized. The monetized recreational benefits were estimated only for fishing by recreational anglers, although there are other categories of recreational and other use benefits that could not be monetized. Examples of these additional benefits include: reduced noncancer health effects, enhanced water-dependent recreation other than fishing, reduced POTW operating and maintenance costs, and reduced administrative costs at the local level to develop and defend individually derived local limits for transportation equipment cleaning facilities. There are also nonmonetized benefits that are nonuse values, such as benefits to wildlife, threatened or endangered species, and biodiversity benefits. Rather than attempt the difficult task of enumerating, quantifying, and monetizing these nonuse benefits, EPA calculated nonuse benefits as 50 percent of the use value for recreational fishing. This value of 50 percent is a reasonable approximation of the total nonuse value for a population compared to the total use value for that population. This approximation should be applied to the total use value for the affected population; in this case, all of the direct uses of the affected reaches (including fishing, hiking, and boating). However,

since this approximation was only applied to recreational fishing benefits for recreational anglers, it does not take into account non-use values for non-anglers or for the uses other than fishing by anglers. Therefore, EPA has estimated only a portion of the nonuse benefits for the proposed standards.

E. Cost-Effectiveness Analysis

In addition to the foregoing analyses, EPA has conducted cost-effectiveness analyses for the multiple options considered for each of the subcategories in the transportation equipment cleaning industry. The methodologies, details, and results of these analyses are presented in the report "Cost Effectiveness Analysis for Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Industry Point Source Category," which is included in the rulemaking record. The CE analysis evaluates the relative efficiency of technology options in removing toxic pollutants. The costs evaluated include the pretax direct compliance costs, such as capital expenditures and O&M costs, which are annualized and compared to incremental and total pollutant removals.

Cost-effectiveness results are expressed in terms of the incremental and average costs per "pound equivalent" (PE) removed. PE is a measure that addresses differences in the toxicity of pollutants removed. Total PEs are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor (TWF). EPA calculates TWFs for priority pollutants and some additional nonconventional pollutants using ambient water quality criteria and toxicity values. The TWFs are then standardized by relating them to a particular pollutant, in this case, copper. PEs are calculated only for pollutants for which TWFs have been estimated, thus they do not reflect potential toxicity for some nonconventional pollutants and any conventional pollutants. EPA calculates incremental cost-effectiveness as the ratio of the incremental annual costs to the incremental PE removed under each option, compared to the previous option. Average cost-effectiveness is calculated for each option as the ratio of total costs to total PE removed. In the case of pretreatment standards, EPA does not include pollutant removals if those pollutants could be removed at the POTW, but only includes the removal of pollutants that would pass through the POTW. EPA reports annual costs for all cost-effectiveness analyses in 1981 dollars, to enable limited comparisons of the cost-effectiveness among regulated industries.

EPA calculated cost-effectiveness ratios for the technology options for each of the five regulated subcategories. Detailed results are presented in the CE document. EPA estimates that the incremental cost-effectiveness of the proposed options for direct dischargers is about $108 per PE removed; for indirect dischargers, the incremental cost effectiveness is about $185 per PE removed.

XI. Water Quality Impacts of Proposed Regulations

A. Characterization of Pollutants

EPA evaluated the environmental benefits of controlling the discharges of toxic pollutants from facilities in three subcategories of the Transportation Equipment Cleaning industry to surface waters and POTWs. The detailed assessment can be found in the "Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Category". EPA's evaluation was done in a national analysis of direct and indirect discharges. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, EPA evaluated whether these pollutants being discharged to POTWs by TEC facilities may interfere with POTW operations in terms of inhibition of activated sludge or biological treatment, and evaluated whether they may cause contamination of sludges, thereby limiting available methods of disposal. Many of these pollutants have at least one toxic effect (human health carcinogen or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency's analysis focused on the effects of toxic pollutants and did not evaluate the effects of three conventional pollutants and five nonconventional pollutants including total suspended solids (TSS), five-day biochemical oxygen demand (BOD_5 chemical oxygen demand (COD), oil and grease (measured as hexane extractable material), total dissolved solids (TDS), total organic carbon (TOC), and total phenolic compounds. Although the Agency did not monetize the benefits associated with reductions of these non-toxic parameters, discharges of these parameters can have adverse effects on human health and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of sludge particles that alter benthic spawning grounds and feeding habitats. Oil and grease, including animal fats and vegetable oils, can have lethal effects on fish by coating gill surfaces and causing asphyxia, by depleting oxygen levels due to excessive biological oxygen demand, or by reducing stream aeration because of surface film. Oil and grease can also have detrimental effects on water fowl by destroying the buoyancy and insulation of their feathers. High COD and BOD_5 levels can deplete oxygen levels, which can result in mortality or other adverse effects on fish. High TOC levels may interfere with water quality by causing taste and odor problems and mortality in fish. The environmental and human health benefits associated with reducing the discharge of these parameters are generally associated with wastewater discharged directly to surface waters. The majority of facilities in the TEC industry discharge to POTWs, which have the ability to treat and control many of these parameters before they reach surface waters.

B. Truck/Chemical Subcategory

1. Indirect Dischargers

EPA evaluated the potential effect on aquatic life and human health impacts of a representative sample of 40 indirect wastewater dischargers of the 288 facilities in the Truck/Chemical indirect subcategory to receiving waters at current levels of treatment and at proposed pretreatment levels. These 40 modeled facilities discharge 80 modeled pollutants in wastewater to 35 POTWs, which then discharge to 35 receiving streams. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria. For those chemicals for which EPA has not published water quality criteria, concentrations were compared to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration). Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were also estimated for recreational and subsistence anglers and their families as well as the general

population. Model results were then extrapolated to the national level.

At the national level, 288 facilities discharge wastewater to 264 POTWs, which then discharge into 264 receiving streams. Current loadings (in pounds) of the 80 pollutants evaluated for water quality impacts are reduced 80 percent by the proposed pretreatment regulatory option. EPA projects that in-stream concentrations of one pollutant will exceed human health criteria (for both water and organisms) in 14 receiving streams at current discharge levels. The proposed pretreatment regulatory option eliminates excursions of human health criteria in all 14 streams. EPA also projects 49 receiving streams with in-stream concentrations for one pollutant projected to exceed chronic aquatic life criteria or toxic effect levels at current discharge levels. At the proposed pretreatment, 37 of the 49 streams still show excursions for one pollutant. The remaining 12 streams will no longer have excursions of either kind under the proposed pretreatment. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $ 1.6 to 5.7 million annually (1997 dollars). In addition, the nonuse value (e.g. option, existence, and bequest value) of the improvement is estimated to range from $ 0.8 to $2.9 million (1997 dollars).

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated for both the results from the representative sample and those extrapolated to the national level. A monetary value of this benefit to society is, therefore, not projected. The risk to develop systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for 14,173 subsistence anglers in 39 receiving streams for one pollutant at current discharge levels. The risk to develop systemic toxicant effects are projected at the proposed pretreatment for 3,492 subsistence anglers fishing in 16 receiving streams for the same pollutant, reducing the exposed population by 75 percent. Monetary values for the reduction of systemic toxic effects cannot currently be estimated.

2. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the 35 modeled POTWs that receive wastewater from the Truck/Chemical Subcategory. Inhibition of POTW operations (impairment of microbial activity) is estimated by comparing predicted POTW influent concentrations to available inhibition levels. Inhibition values were obtained from *Guidance Manual for Preventing Interference at POTWs* (U.S. EPA, 1987) and *CERCLA Site Discharges to POTWs: Guidance Manual* (U.S. EPA, 1990). Potential contamination of sewage sludge (concentrations of pollutants above the levels permitted for land application) was estimated by comparing projected pollutant concentrations in POTW sewage sludge to available EPA criteria. The *Standards for the Use or Disposal of Sewage Sludge* (40 CFR Part 503) contain limits on the concentrations of pollutants in sewage sludge that is used or disposed. For the purpose of this analysis, contamination is defined as the concentration of a pollutant in sewage sludge at or above the limits presented in 40 CFR Part 503. Model results were then extrapolated to the national level, which included 264 POTWs.

EPA evaluated pollutants for potential POTW operation inhibition and potential sewage sludge contamination. At current discharge levels, EPA projects no inhibition or sludge contamination problems at any of the POTWs at current loadings. Therefore, no further analysis of these types of impacts was performed.

C. Rail/Chemical Subcategory

1. Indirect Dischargers

EPA evaluated the potential effect on aquatic life and human health of a representative sample of 12 indirect wastewater dischargers of the 38 facilities in the Rail/Chemical Subcategory to receiving waters at current levels of treatment and at proposed pretreatment levels. These 12 modeled facilities discharge 103 modeled pollutants in wastewater to 11 POTWs, which discharge to 11 receiving streams. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria. For those chemicals for which EPA has not published water quality criteria, concentrations were compared to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration). Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were also estimated for recreational and subsistence anglers and their families as well as the general population. Model results were then extrapolated to the national level.

At the national level, 38 facilities discharge wastewater to 37 POTWs, which then discharge into 37 receiving streams. Current loadings (in pounds) of the 103 pollutants evaluated for water quality impacts are reduced 46 percent by the proposed pretreatment regulatory option. EPA projects that in-stream pollutant concentrations will exceed human health criteria (for both water and organisms) in 16 receiving streams at both current and proposed pretreatment discharge levels. Since the proposed pretreatment is not expected to eliminate all occurrences of pollutant concentrations in excess of human health criteria at any of the receiving streams, no increase in value of recreational fishing to anglers is projected as a result of this pretreatment. EPA projects eight receiving streams with in-stream concentrations of four pollutants to exceed chronic aquatic life criteria or toxic effect levels at current discharge levels. Proposed pretreatment discharge levels will reduce projected excursions to three pollutants in six receiving streams. There are expected to be excursions of acute aquatic life criteria or toxic effects levels by one pollutant in six receiving streams. All of these excursions will be eliminated by the proposed pretreatment option.

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated for both the results from the representative sample and those extrapolated to the national level. Monetary value of this benefit to society is, therefore, not projected. No systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for anglers fishing the receiving streams at current discharge levels. Therefore, no further analysis of these types of impacts was performed.

2. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the 11 modeled POTWs that receive wastewater from the rail chemical indirect subcategory. Model results were then extrapolated to the national level, which included 37 POTWs.

EPA evaluated pollutants for potential POTW operation inhibition and potential sewage sludge contamination through wastewater modeling. At current discharge levels, the EPA model projects inhibition problems at 21 of the POTWs, caused by four pollutants. At the proposed pretreatment regulatory option, EPA projects continued inhibition problems at 13 POTWs. Inhibition was prevented at eight POTWs; however, the EPA is currently unable to monetize these benefits. The Agency projects sewage sludge contamination at none of the POTWs at current loadings. Therefore, no further analysis of these types of impacts was performed.

The POTW inhibition values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. EPA used these values to determine whether the pollutants interfere with POTW operations. The pretreatment standards proposed today are not based on these values; rather, they are based on the performance of the selected technology basis for each standard. However, the values used in this analysis help indicate the potential benefits for POTW operations that may result from the compliance with proposed pretreatment discharge levels.

D. Barge/Chemical and Petroleum Subcategory

1. Direct Dischargers

EPA evaluated the potential effect on aquatic life and human health of a representative sample of six direct wastewater dischargers of the 14 facilities in the Barge/Chemical & Petroleum Subcategory to receiving waters at current levels of treatment and at proposed pretreatment levels. These six modeled facilities discharge 60 modeled pollutants to six receiving streams. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria. For those chemicals for which EPA has not published water quality criteria, concentrations were compared to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration). Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were also estimated for recreational and subsistence anglers and their families as well as the general population. Model results were then extrapolated to the national level.

At the national level, 14 facilities discharge wastewater directly to 14 receiving streams. Current loadings (in pounds) of the 60 pollutants evaluated for water quality impacts are reduced 95 percent by the proposed BAT regulatory option. EPA projects that in-stream concentrations of two pollutants will exceed human health criteria (for both water and organisms) in six receiving streams at current discharge levels. The proposed BAT regulatory option eliminates excursions of human health criteria in three of these streams. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $169,000 to $604,000 annually (1997 dollars). In addition, the nonuse value (e.g. option, existence, and bequest value) of the improvement is estimated to range from $84,500 to $302,000 (1997 dollars).

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated for both the results from the representative sample and those extrapolated to the national level. A monetary value of this benefit to society is, therefore, not projected. No systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for anglers fishing the 14 receiving streams at current discharge levels. Therefore, no further analysis of these types of impacts was performed.

2. Indirect Dischargers

EPA evaluated the potential effect on aquatic life and human health of a single indirect wastewater discharger (there was only one facility which received the Detailed Questionnaire, although several additional facilities were identified in the Screen Questionnaire) to receiving waters at current levels of treatment and at proposed pretreatment levels. This facility discharges 60 modeled pollutants in wastewater to a POTW, which discharges to a receiving stream. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria. For those chemicals for which EPA has not published water quality criteria, concentrations were compared to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration). Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were also estimated for recreational and subsistence anglers and their families as well as the general population. Model results were then extrapolated to the national level.

EPA projects that in-stream concentrations of none of the pollutants will exceed human health criteria (for both water and organisms) at current discharge levels. EPA also projects that no receiving streams will show in-stream concentrations exceeding chronic aquatic life criteria or toxic effect levels at current discharge levels. No carcinogenic effects or systemic toxicant effects (non-cancer adverse health effects such as reproductive toxicity) are projected for drinking water or ingesting fish taken from the single receiving stream at current discharge levels. Therefore, no further analysis of these types of impacts was performed.

3. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the one POTW that receives wastewater from the barge chemical indirect subcategory. Inhibition of POTW operations (impairment of microbial activity) is estimated by comparing predicted POTW influent concentrations to available inhibition levels. Model results were not extrapolated to the national level, which included only the single POTW.

EPA evaluated pollutants for potential POTW operation inhibition and potential sewage sludge contamination. At current discharge levels, EPA projects no inhibition or sludge contamination problems at this POTW. Therefore, no further analysis of these types of impacts was performed.

XII. Non-Water Quality Impacts of Proposed Regulations

As required by sections 304(b) and 306 of the Clean Water Act, EPA has considered the non-water quality environmental impacts associated with the treatment technology options for the transportation equipment cleaning industry. Non-water quality impacts are impacts of the proposed rule on the environment that are not directly associated with wastewater. Non-water

quality impacts include changes in energy consumption, air emissions, and solid waste generation of oil and sludge. In addition to these non-water quality impacts, EPA examined the impacts of the proposed rule on noise pollution, and water and chemical use. Based on these analyses, EPA finds the relatively small increase in non-water quality impacts resulting from the proposed rule to be acceptable.

A. Energy Impacts

Energy impacts resulting from the proposed regulatory options include energy requirements to operate wastewater treatment equipment such as aerators, pumps, and mixers. However, flow reduction technologies (a component of the regulatory options) reduce energy requirements by reducing the number of operating hours per day and/or operating days per year for wastewater treatment equipment currently operated by the TEC industry. For some regulatory options, energy savings resulting from flow reduction exceed requirements for operation of additional wastewater treatment equipment, resulting in a net energy savings for these options.

EPA estimates a net increase in electricity use of approximately 6 million kilowatt hours annually for the TEC industry as a result of the proposed rule. According to the U.S. Department of Commerce, the total U.S. industrial electrical energy purchase in 1990 was approximately 756 billion kilowatt hours. EPA's proposed options would increase U.S. industrial electrical energy purchase by 0.0008 percent. Therefore, the Agency concludes that the effluent pollutant reduction benefits from the proposed technology options exceed the potential adverse effects from the estimated increase in energy consumption.

B. Air Emission Impacts

TEC facilities generate wastewater containing significant concentrations of volatile and semivolatile organic pollutants, some of which are also on the list of Hazardous Air Pollutants (HAPs) in Title 3 of the Clean Air Act Amendments of 1990. These waste streams pass through treatment units open to the atmosphere, which may result in the volatilization of organic pollutants from the wastewater.

Emissions from TEC facilities also occur when tanks are opened and cleaned, with cleaning typically performed using hot water or cleaning solutions. Prior to cleaning, tanks may be opened with vapors vented through the tank hatch and air vents in a process called gas freeing. At some facilities, tanks used to transport gases or volatile material are filled to capacity with water to displace vapors to the atmosphere or a combustion device. Some facilities also perform open steaming of tanks.

Other sources of emissions at TEC facilities include heated cleaning solution storage tanks as well as emissions from TEC wastewater as it falls onto the cleaning bay floor, flows to floor drains and collection sumps, and conveys to wastewater treatment.

In order to quantify the impact of the proposed regulation on air emissions, EPA performed a model analysis to estimate the amount of organic pollutants emitted to the air. EPA estimates the increase of air emissions at TEC facilities as a result of the proposed wastewater treatment technology to be approximately 153,000 kilograms per year of organic pollutants (volatile and semivolatile organics), which represents approximately 35 percent of the total organic pollutant wastewater load. EPA's estimate of air emissions reflects the increase in emissions at TEC facilities, and does not account for baseline air emissions that are currently being released to the atmosphere at the POTW.

EPA's model analysis was performed based on the most stringent regulatory options considered for each subcategory in order to create a "worst case scenario" (i.e., the more treatment technologies used, the more chance of volatilization of compounds to the air). For some subcategories, EPA is not proposing the most stringent regulatory option; therefore, for these subcategories, air emission impacts are overestimated. In addition, to the extent that facilities currently operate treatment in place, the results overestimate air emission impacts from the regulatory options. Additional details concerning EPA's model analysis to estimate air emission impacts are included in "Estimated Air Emission Impacts of TEC Industry Regulatory Options" in the rulemaking record.

Based on the sources of air emissions in the TEC industry and limited data concerning air pollutant emissions from TEC operations provided in response to the 1994 Detailed Questionnaire (most facilities did not provide air pollutant emissions estimates), EPA estimates that the incremental air emissions resulting from the proposed regulatory options are a small percentage of air emissions generated by TEC operations. For these reasons, air emission impacts of the regulatory options are acceptable.

C. Solid Waste Impacts

Solid waste impacts resulting from the proposed regulatory options include additional solid wastes generated by wastewater treatment technologies. These solid wastes include wastewater treatment residuals, including sludge, waste oil, spent activated carbon, and spent organo-clay.

Regulations pursuant to the Resource Conservation and Recovery Act (RCRA), require companies/facilities which generate waste (including waste generated from the cleaning of the interiors of tanks) to determine if they generate a hazardous waste (the applicable regulations are found in 40 CFR part 261). This determination is made by answering two questions: (1) Is the material a listed hazardous waste; or (2) is the material hazardous because it exhibits one of the four hazardous waste characteristics (ignitability, corrosivity, reactivity or toxicity). If the material is determined to be a hazardous waste, the waste must be managed according to the regulations found in 40 CFR parts 262–265, 268, 270, 271 and 124.

1. Wastewater Treatment Sludge

Wastewater treatment sludge is generated in two forms: dewatered sludge (or filter cake) generated by a filter press and/or wet sludge generated by treatment units such as oil/water separators, chemical precipitation/clarification, coagulation/clarification, dissolved air flotation, and biological treatment. Many facilities that currently operate wastewater treatment systems do not dewater wastewater treatment sludge. Storage, transportation, and disposal of greater volumes of un-dewatered sludge that would be generated after implementing the TEC industry regulatory options is less cost-effective than dewatering sludge on site and disposing of the greatly reduced volume of resulting filter cake. However, in estimating costs for today's proposal, EPA has included the costs for TEC facilities to install sludge dewatering equipment to handle increases in sludge generation. For these reasons, EPA estimates net decreases in the volume of wet sludge generated by the industry and net increases in the volume of dry sludge generated by the industry.

EPA estimates that the proposed rule will result in a decrease in wet sludge generation of approximately 17 million gallons per year, which represents an estimated 90 percent decrease from current wet sludge generation. In addition, EPA estimates that the proposed rule will result in an increase in dewatered sludge generation of approximately 33 thousand cubic yards per year, which represents an estimated 170 percent increase from current dewatered sludge generation.

Compliance cost estimates for the TEC industry regulatory options are based on disposal of wastewater treatment sludge in nonhazardous waste landfills. EPA sampling of sludge using the Toxicity Characteristic Leaching Procedure (TCLP) test verified the sludge as non-hazardous. Such landfills are subject to RCRA Subtitle D standards found in 40 CFR parts 257 or 258.

The Agency concludes that the effluent benefits and the reductions in wet sludge generation from the proposed technology options exceed the potential adverse effects from the estimated increase in wastewater treatment sludge generation.

2. Waste Oil

EPA estimates that compliance with the proposed regulation will result in an increase in waste oil generation at TEC sites based on removal of oil from wastewater via oil/water separation. EPA estimates that this increase in waste oil generation will be approximately 1.5 million gallons per year, which represents an estimated 122 percent increase from current waste oil generation. EPA assumes, based on responses to the detailed questionnaire, that waste oil disposal will be via oil reclamation or fuels blending on or off site. Therefore, the Agency does not estimate any adverse effects from increased waste oil generation.

3. Spent Activated Carbon

Spent activated carbon is generated by the following regulatory options:

- Truck/Chemical Subcategory—BPT Option II.
- Truck/Chemical Subcategory—PSES Option II.
- Rail/Chemical Subcategory—BPT Option III.
- Rail/Chemical Subcategory—PSES Option III.
- Truck/Petroleum Subcategory—PSES Option II.
- Rail/Petroleum Subcategory—PSES Option II.

Treatment of TEC wastewater via these technology options will generate 8,470 tons annually of spent activated carbon. EPA assumes that the spent activated carbon will be sent off site for regeneration rather than disposed of as a waste. Possible air emissions during regeneration are minimal. Therefore, the Agency does not estimate any adverse effects from activated carbon treatment technologies.

4. Spent Organo-Clay

Spent organo-clay is generated by the following options:

- Rail/Chemical Subcategory—BPT Option III.
- Rail/Chemical Subcategory—PSES Option III.

Treatment of TEC wastewater via these technology options will generate 118 tons annually of spent organo-clay. EPA assumes that the spent organo-clay will be disposed as a non-hazardous waste. The Agency concludes that the effluent benefits from the proposed technology options exceed any potential adverse effects from the generation and disposal of spent organo-clay.

XIII. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Summary of Public Participation

During all phases of developing the proposed rule, EPA sought to maintain communications with the regulated community and other interested parties. The Agency met with representatives from the industry, the National Tank Truck Carriers (NTTC), the Railway Progress Institute, and the National Shipyard Association (formerly the American Waterways Shipyard Conference). In addition, NTTC and the National Shipyard Association set up the earliest site visits for EPA staff at TECI facilities. All three trade associations provided comments and suggestions on the industry screener and detailed questionnaires prior to distribution to the industry. EPA also attended six NTTC conferences in between 1994 and 1997 to provide information on the progress of the rule to the industry, to provide assistance to the industry in completing the detailed questionnaire, and to obtain information related to industry trends.

Because most (approximately 95 percent) of the facilities in the TECI are indirect dischargers, the Agency has made a concerted effort to consult with State and local entities that will be responsible for implementing the regulation. EPA has spoken with pretreatment coordinators from around the nation and discussed the technology options with these pretreatment coordinators.

In addition, on May 8, 1997, EPA sponsored a public meeting, where the Agency presented information about the content and the status of the proposed regulation. The meeting was announced in the **Federal Register**, and agendas and meeting materials were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas on key issues to the Agency. EPA's intent in conducting the public meeting was to elicit input that would improve the quality of the proposed regulation. At the public meeting the Agency clarified that the public meeting would not replace the notice and comment process, nor would the meeting become a mechanism for a negotiated rulemaking. While EPA promised to accept information and data at the meeting and make good faith efforts to review all information and address all issues discussed at the meeting, EPA could not commit to fully assessing and incorporating all comments into the proposal. EPA will assess all comments and data received at the public meeting prior to promulgation.

B. Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities. Under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA.

Based on its preliminary assessment of the economic impact of regulatory options being considered for the proposed rule, EPA had concluded that the proposal might significantly affect a substantial number of small entities. Accordingly, EPA prepared an IRFA pursuant to section 603(b) of the RFA addressing:

- The need for, objectives of, and legal basis for the rule;
- A description of, and where feasible, an estimate of the number of small entities to which the rule would apply;
- The projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that would be subject to the requirements and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;
- A description of any significant regulatory alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of the CWA, the analysis discusses significant alternatives such as—

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) The use of performance rather than design standards; and

(4) An exclusion from coverage of the rule, or any part thereof, for such small entities.

The IRFA is presented in Chapter VI of the EA and summarized in Section X.C.4 of this notice. EPA's analysis indicates that no small businesses would close as a result of the proposed effluent guideline. Using two sets of assumptions related to the ability of a business to pass the additional costs to customers, EPA projects that either 75 or 50 small businesses would incur costs exceeding one percent of revenues and 64 or 17 small businesses would incur costs exceeding three percent of revenues. Based on the data presented in the IRFA, EPA now believes that the proposal, if promulgated, may not have a significant economic impact on a substantial number of small entities. Consequently, there is a possibility, after evaluation of comments and data received in response to today's proposal, that the Agency may not be required to prepare a final regulatory flexibility analysis.

Nonetheless, EPA convened a Small Business Advocacy Review (SBAR) Panel on July 17, 1997, in compliance with the RFA, as amended by SBREFA. The Panel was comprised of representatives from three federal agencies: EPA, the Small Business Administration, and the Office of Management and Budget. The Panel reviewed materials EPA prepared in connection with the IRFA, and collected the advice and recommendations of small entity representatives. For this proposed rule, the small entity representatives included trade association officials from the National Tank Truck Carriers, Railway Progress Institute, Short Line Railroad Association, National Shipyard Association, The Association of Container Reconditioners and National Oil Recovery Association. The Panel prepared a report (available in the public docket for this rulemaking) that summarizes its outreach to small entities and the comments submitted by the small entity representatives. The Panel's report also presents their findings on issues related to the elements of an IRFA and recommendations regarding the rulemaking.

In addition to the activities discussed in XIII.A, EPA and the other members of the Panel sought to gather small business advice and recommendations by meeting and consulting with the small entity representatives listed above. On July 2, 1997, EPA convened a meeting for the small entity representatives to describe EPA's regulatory process and alternative technology options for the TEC effluent guideline. While the Panel was in session, they met with the small entity representatives, provided more than 200 pages of analysis results and background information to the small entity representatives, and carefully reviewed the written comments submitted by the small entity representatives.

Some of the key issues discussed by the Panel and the small entity representatives were potential exclusions for small businesses. EPA, through extensive analysis and documentation for the Panel members and the small entity representatives, supported this effort to identify regulatory alternatives that would minimize the economic impacts on small businesses while preserving the environmental benefits associated with the treatment technologies. EPA evaluated alternative breakpoints in four variables (flow, employment, annual revenue, and number of tanks cleaned) to determine possible exclusions for small entities. For numerous potential exclusion scenarios, EPA provided comparisons of financial characteristics, economic impacts, and pollutant loadings. The Agency also provided background information on the engineering models, compliance cost calculations, pollutant loadings estimations, financial models, and economic impact methodologies. Thus, EPA provided to the Panel and the small entity representatives a thorough description of the data and techniques, thereby facilitating the Panel's task to prepare and submit recommendations to EPA's Administrator.

Throughout this notice the Agency has discussed issues raised by the Panel and the small entity representatives, and has attempted to address the recommendations made to EPA's Administrator. Specifically, as recommended by the Panel, EPA has solicited data and comment on the following: the population of affected facilities; the cost models and assumptions; alternative treatment technologies not considered by EPA; the subcategorization approach, and specifically on an alternative regulatory approach that would establish a separate subcategory for any facility which accepts tanks containing pesticide-containing cargos; the cost-effectiveness of removing non-pesticide chemicals, and information on the impacts to receiving streams and POTWs by non-pesticide pollutants; approaches for minimizing the regulatory impacts for small facilities; pollutant loads associated with IBC cleaning wastewater; the economic methodologies and assumptions; and the burdens associated with compliance of the Clean Air Act for barge facilities.

Additionally, as recommended by the Panel, EPA has included a clear discussion on the following: the monitoring frequency used in determining limits and associated costs of compliance; a discussion of the costs, impacts, and the technology options considered for proposal; and the reasons for the apparent discrepancy in the levels of treatment technology proposed for the Truck/Chemical Subcategory and the Rail/Chemical Subcategory. Additionally, EPA has clearly described its intention for coverage for those facilities potentially affected by more than one Clean Water Act effluent guideline, and has documented all cost models, costing assumptions, and cost projections in the Technical Development Document and the regulatory record.

There are several instances where the Agency has re-evaluated earlier thinking based on comments received from the Panel and the small entity representatives. At times, the Panel produced supporting data which was used to re-evaluate certain aspects of what EPA intended to propose. For example, after small entity representatives provided the Agency with additional information on the cleaning of IBCs, the Agency decided not to include facilities which clean IBCs within the scope of this proposed rule. In other instances, where the Agency has received comments from a Panel member or a small entity representative, but has not received data that would support changing the scope of the proposal or requirements contained therein, EPA has identified these areas of concern in today's notice and has solicited comment from the regulated community, permit writers, POTW operators and other stakeholders.

C. Executive Order 12866 (OMB Review)

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments, in the aggregate, or the private sector in any one year. The total cost of the rule is not expected to exceed $23 million (1997$) in any given year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirement of section 203 of UMRA. EPA recognizes that small governments may own or operate POTWs that will need to enter into pretreatment agreements with the indirect dischargers of the TEC industry that would be subject to this proposed rule. However, the costs of this are expected to be minimal. Additionally, the additional requirements of today's proposal are not unique because POTWs must enter into pretreatment agreements for all significant industrial users and all industrial facilities regulated under categorical standards of the Clean Water Act.

E. Paperwork Reduction Act

The proposed transportation equipment cleaning effluent guidelines and pretreatment standards contain no information collection activities and, therefore, no information collection request will be submitted to OMB for review under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not proposing any new analytical test methods as part of today's proposed effluent limitations guidelines and standards. The Agency does not believe that this proposed rule addresses any technical standards subject to the NTAA. A commenter who disagrees with this conclusion should indicate how the notice is subject the Act and identify any potentially applicable voluntary consensus standards.

G. The Edible Oil Regulatory Reform Act

The Edible Oil Regulatory Reform Act, Public Law 104–55, requires most federal agencies to differentiate between and establish separate classes for (1) animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin and (2) other greases and oils, including petroleum, when issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil or grease.

The Agency believes that vegetable oils and animal fats pose similar types of threats to the environment as petroleum oils when spilled to the environment (62 FR 54508, Oct. 20, 1997).

The deleterious environmental effects of spills of petroleum and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources (via smothering or coating) as well as toxic contamination (62 FR 54511). However, the permitted discharge of TEC process wastewater containing residual and dilute quantities of petroleum and non-petroleum oils is significantly different than an uncontrolled spill of pure petroleum or non-petroleum oil products.

EPA has grouped facilities which clean transportation equipment that carry vegetable oils or animal fats as cargos into separate subcategories (food) from those facilities that clean equipment that had carried petroleum products for the following reasons.

First, food grade and petroleum facilities operate different tank interior cleaning processes and unique water use practices. Food grade cleaning processes are typically performed using computer operated and controlled dedicated stainless steel washing systems which regulate flow rate, pressure, temperature, and cleaning sequence duration. Final water rinses

are performed using fresh rather than recycled water. In contrast, petroleum facilities comprise approximately 70 percent of all facilities that practice 100 percent recycle/reuse of TEC process wastewater to TEC processes. In addition, 43 percent of food grade facilities use chemical cleaning solutions such as caustic or detergent as compared to only four percent of petroleum facilities.

Second, food grade and petroleum facilities generate TEC wastewater with different characteristics. Both petroleum and non-petroleum oils are comprised of hydrocarbon mixtures. However, petroleum oils contain alkanes, cycloalkanes, and aromatic hydrocarbons of which many are included in EPA's list of priority pollutants. In contrast, vegetable oils and animal fats contain esters of glycerol and fatty acids which are not included in EPA's list of priority pollutants and are relatively non-toxic in dilute concentrations. In addition, food grade facilities generate from 4 to 14 times more wastewater per tank cleaning on average than petroleum facilities. These differences in cargo composition, together with differences in cleaning processes and water use, result in the generation of TEC wastewater which differs significantly in volume, pollutants generated, and pollutant concentration.

In spite of the relatively high toxicity of TEC wastewater generated by petroleum facilities as compared to food grade facilities, less than one percent of the tanks cleaned in the TECI are petroleum tanks cleaned by direct dischargers. Additionally, less than one percent of wastewater generated by the TECI is generated by direct dischargers cleaning petroleum tanks. Because very few pounds of toxic pollutants are being discharged by facilities in the Truck/Petroleum and Rail/Petroleum Subcategories, EPA preliminarily concluded that no nationally applicable limitations should be established for these subcategories.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that (1) is likely to be "economically significant" as defined under Executive Order 12866, and (2) concerns environmental health or safety risk that the Agency has reason to believe may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" because this is not an "economically significant" regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

XIV. Regulatory Implementation

A. Applicability

Today's proposal represents EPA's best judgment at this time as to the appropriate technology-based effluent limits for the TEC industry. These effluent limitations and standards, however, may change based on comments received on this proposal, and subsequent data submitted by commentors or developed by the Agency. Therefore, while the information provided in the Technical Development Documents may provide useful information and guidance to permit writers in determining best professional judgment permit limits for TEC facilities, the permit writer will still need to justify any permit limits based on the conditions at the individual facility.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority toxic, conventional and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA may develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitation or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority toxic and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n v. NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of

one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request modification of a permit be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

3. Removal Credits

The CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW (*See* 40 CFR 403.7). EPA has promulgated removal credit regulations as part of its pretreatment regulations.

The following discussion provides a description of the existing removal credit regulations. However, EPA is considering proposing a rule which would expand the universe of pollutants for which removal credits may be authorized. Under EPA's existing pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[2] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to Part 403 regulations (58 FR 9382–9383), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all

[2] Under § 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(i), (ii), and (iii).

those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

EPA is considering a proposal amending Part 403 to make removal credits available for those pollutants that are not now listed in Appendix G as eligible for removal credits provided a POTW seeking removal credit authority studies the impact that granting removal credits would have on the concentration of the pollutant in the POTW's sewage sludge and establishes that the pollutants will not interfere with sewage sludge use or disposal. These changes would provide POTWs and their industrial users with additional opportunities to use removal credits to efficiently allocate treatment.

The proposal would address the availability of removal credits for pollutants for which EPA has not developed a Part 503 pollutant limit or determined through a national study a concentration for the pollutant in sewage sludge below which public health and the environment are protected when the sewage sludge is used or disposed. Because EPA is only considering two additional pollutants for regulation under Part 503, the proposal would provide a mechanism for evaluating other pollutants for removal credit purposes. As noted above, EPA has interpreted the Court's decision in *NRDC* v. *EPA* as only allowing removal credits for a pollutant if EPA had either regulated the pollutant or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed. The proposal would allow the POTW to perform the study that would establish that allowable concentration. The POTW analysis would need to establish that the granting of removal credits will not increase the level of pollutants in the POTW's sewage sludge to a level that would fail to protect public health and the environment from reasonably anticipated adverse effects of the pollutant.

D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for this proposed rule to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants) the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

Another important component of the monitoring requirements established by the permitting authority is the frequency at which monitoring is required. In costing the various technology options for the TEC industry, EPA assumed monthly monitoring for toxic priority and nonconventional pollutants and weekly monitoring for conventional pollutants. For this reason, the proposed daily and monthly limitations for toxic priority and nonconventional pollutants are the same. These monitoring frequencies may be lower than those generally imposed by some permitting authorities, but EPA believes these reduced frequencies are appropriate due to the relative costs of monitoring when compared to the estimated costs of complying with the proposed limitations. This issue was also discussed by the Small Business Advocacy Panel. In the Panel report, EPA indicated its intention to issue guidance to local permitting authorities recommending that they use the reduced monitoring frequencies when issuing permits to facilities in this industry and explaining the rationale for the recommended frequencies.

E. Best Management Practices (BMPs)

Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant. Dikes, curbs, and other control measures are being used at some TEC sites to contain leaks and spills as part of good "housekeeping" practices. However, on a facility-by-facility basis a permit writer may choose to incorporate BMPs into the permit.

XV. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the "For Further Information" section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Please submit an original and two copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to "Tinger.John@epamail.epa.gov". Electronic comments must be submitted as an ASCII or Wordperfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–25 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates

each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. In addition, EPA particularly requests comments and data on the following issues:

1. EPA is soliciting comment and data on the pollutant loads associated with IBC cleaning wastewater, and on the initial decision not to include IBC wastewater within the scope of this guideline. (Refer to Section III)

2. EPA is soliciting comment from any industrial site which has the potential to be covered by TEC and MP&M but is uncertain as to their appropriate classification. EPA is also soliciting comment from permitting authorities as to whether the approach outlined above will result in easier, or more difficult, implementation of the TEC and MP&M regulations, and on alternative applicability approaches. (Refer to Section III)

3. The Agency solicits comment and sources of data which may provide additional information on the population of affected facilities. (Refer to Section V)

4. EPA solicits comment on the appropriateness of the proposed subcategorization approach which addresses the complexities inherent in this industry, and on other subcategorization approaches which may be appropriate. (Refer to Sections III and VI)

5. The Agency solicits comment from permitting authorities and affected facilities on implementation and applicability issues surrounding the proposed subcategorization approach. (Refer to Sections III and VI)

6. EPA solicits comment on the difficulty of defining petroleum and chemical products from a regulatory standpoint. (Refer to Sections III and VI)

7. The Agency is soliciting comment and data on the preliminary conclusion that the Truck/Chemical and Truck/Petroleum Subcategories; and Rail/Chemical and Rail/Petroleum Subcategories, should not be combined. (Refer to Sections III and VI)

8. EPA is soliciting comment and data on an alternative subcategorization approach that would combine the petroleum and chemical subcategories. (Refer to Sections III and VI)

9. The Agency solicits comment on an alternative regulatory approach that would establish a subcategory for any facility which accepts tanks containing pesticide-containing cargos for cleaning, and on the cost-effectiveness of removing non-pesticide chemicals, and information on the impacts to receiving streams and POTWs by these pollutants. (Refer to Section VI)

10. EPA solicits comment on the hierarchy of applicability that EPA is proposing as the basis for subcategorization. (Refer to Section VI)

11. The Agency solicits comment on alternative treatment technologies not considered by EPA which may attain similar treatment removal efficiencies but that may be less expensive to install and operate. (Refer to Section VIII.B)

12. The Agency solicits data which can either substantiate or refute its tentative conclusions regarding raw wastewater from Truck/Petroleum and Rail/Petroleum Subcategories, and also any data which characterizes pollutants present in wastewaters from these facilities. EPA solicits data and comments which may support or refute the Agency's conclusion that wastewater generated in the petroleum subcategories does not contain significant toxic loadings. (Refer to Sections III and VIII.B)

13. The Agency solicits data which can either substantiate or refute its tentative conclusions regarding raw wastewater from hopper facilities, and also any data which characterizes pollutants present in wastewaters from these facilities. EPA solicits comments on the appropriateness of not regulating hopper facilities. EPA also solicits data on pollutant levels in wastewater from hopper facilities. (Refer to Sections III and VIII.B)

14. The Agency solicits comment on the cost and effectiveness of flow reduction and oil/water separation as an option for indirect dischargers in the Truck/Chemical Subcategory.

15. For PSNS in the Barge/Chemical & Petroleum Subcategory, EPA is soliciting comment on the technology selected as the basis for regulation. Specifically, EPA solicits comments and data which would support or refute the assumption that a POTW may accept effluent, without causing pass-through or interference, that has not been treated biologically.(Refer to Section VIII.B)

16. EPA solicits comments on the appropriateness of the pollutants selected for regulation, including the decision to establish effluent limitations for metals using modeled treatment systems not specifically designed for metals control. The Agency also solicits data which will support or refute the ability of TEC facilities to meet the proposed effluent limitations using the modeled treatment systems. (Refer to Section VIII.C)

17. The Agency solicits comments on the cost models and the assumptions used to project the cost of compliance to the industry as a result of today's proposed regulation. (Refer to Section IX)

18. EPA solicits comment on the economic methodologies described in today's proposal. In particular, the Agency requests comment on the assumptions used in the analyses. (Refer to Section X)

19. The Agency solicits information available that could be useful to determining an approach for minimizing the regulatory impacts for small facilities. (Refer to Sections III, X, and XIII.A)

20. EPA solicits comments on changes in the economic/financial condition of facilities in the Barge/Chemical & Petroleum Subcategory affected by the Clean Air Act National Emission Standards for Ship Building and Ship Repair (Surface Coating) promulgated in 1995. (Refer to Section X.C)

XVI. Guidelines for Comment Submission of Analytical Data

EPA requests that commentors to today's proposed rule submit analytical, flow, and production data to supplement data collected by the Agency during the regulatory development process. To ensure that commentor data may be effectively evaluated by the Agency, EPA has developed the following guidelines for submission of data.

A. Types of Data Requested

EPA requests paired influent and effluent treatment data for each of the technologies identified in the technology options, as well as any additional technologies applicable to the treatment of TEC waste waters. This includes end-of-pipe treatment technologies, heel management practices, and water conservation technologies. Submission of effluent data only is not sufficient for full analysis; the corresponding influent data must be provided.

For submissions of paired influent and effluent treatment data, a minimum of four days of data are required for EPA to assess variability. Submissions of paired influent and effluent treatment data should include: a process diagram of the treatment system; treatment chemical addition rates; sampling point locations; sample collection dates; influent and effluent flow rates for each treatment unit during the sampling period; sludge or waste oil generation rates; a brief discussion of the treatment technology sampled; and a list of unit operations contributing to the sampled wastestream. EPA requests data for systems that are treating only process waste water. Systems treating non-process waste water (e.g., sanitary waste

water or non-contact cooling water) will not be evaluated by EPA. If available, information on capital cost, annual (operation and maintenance) cost, and treatment capacity should be included for each treatment unit within the system.

B. Analytes Requested

EPA considered for regulation under the TEC category 330 metal, organic, conventional, and other nonconventional pollutant parameters detected in TEC process wastewater. Based on analytical data collected by the Agency, 180 pollutant parameters were identified as TEC "pollutants of concern". Complete lists of pollutant parameters considered for regulation and pollutants of concern (as well as the criteria used to identify each of these pollutant parameters) are available in the Technical Development Document for this proposal. The Agency requests analytical data for any of the pollutants of concern and for any other pollutant parameters which commentors believe are of concern in the TEC industry. Commentors should use these methods or equivalent methods for analyses, and should document the method used for all data submissions.

C. Quality Assurance/ Quality Control (QA/QC) Requirements

Today's proposed regulations were based on analytical data collected by EPA using rigorous QA/QC checks. These QA/QC checks include procedures specified in each of the analytical methods, as well as procedures used for the TEC sampling program in accordance with EPA sampling and analysis protocols. The Agency requests that submissions of analytical data include documentation that QA/QC procedures similar to those listed below were observed.

EPA followed the QA/QC procedures specified in the analytical methods listed in Table 10. These QA/QC procedures include sample preservation and the use of method blanks, matrix spikes, matrix spike duplicates, laboratory duplicate samples, and Q standard checks (e.g., continuing calibration blanks). EPA requests that sites provide detection limits for all non-detected pollutants. EPA also requests that composite samples be collected for all flowing waste water streams (except for analyses requiring grab samples, such as oil and grease), sites collect and analyze 10% field duplicate samples to assess sampling variability, and sites provide data for equipment blanks for volatile organic pollutants when automatic compositors are used to collect samples.

TABLE 10.—EPA ANALYTICAL METHODS FOR USE WITH TEC

Parameter	EPA method	Sample type
Metals	1620	Composite/Grab.
Volatile Organics	1624C	Grab.
Semivolatile Organics	1625C	Composite/Grab.
pH	150.1	Composite/Grab.
Total Dissolved Solids (TDS)	160.1	Composite/Grab.
Total Suspended Solids (TSS)	160.2	Composite/Grab.
Chloride, Fluoride, and Sulfate	300.0, 325.2 or 325.3, 340.2, and 375.4	Composite/Grab.
Cyanide, Total	335.3	Grab.
Nitrogen, Ammonia	350.2	Composite/Grab.
Phosphorus, Total	365.4	Composite/Grab.
Chemical Oxygen Demand	410.1 or 410.2	Composite/Grab.
Hexavalent Chromium	218.4	Composite/Grab.
Biochemical Oxygen Demand	405.1	Composite/Grab.
Total Organic Carbon	415.1	Composite/Grab.
Dioxins and Furans	1613A	Composite/Grab.
Organo-Halide Pesticides	1656	Composite/Grab.
Organo-Phosphorus Pesticides	1657	Composite/Grab.
Phenolics, Total Recoverable	420.1 or 420.2	Composite/Grab.
Phenoxy-Acid Herbicides	1658	Composite/Grab.
Oil and Grease and Total Petroleum Hydrocarbons (Hexane Extractable Materials and Silica Gel Treated Hexane Extractable Materials).	1664	Grab.

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

AGENCY—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as described in Sec. 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in Sec. 304(b)(4) of the CWA.

BOD_5—Five Day Biochemical Oxygen Demand. A measure of biochemical decomposition of organic matter in a water sample. It is determined by measuring the dissolved oxygen consumed by microorganisms to oxidize the organic matter in a water sample under standard laboratory conditions of five days and 70° C, see Method 405.1. BOD_5 is not related to the oxygen requirements in chemical combustion.

BMP—Best Management Practice—Section 304(e) of the CWA gives the Administrator the authority to publish regulations to control plant site runoff, spills, or leaks, sludge or waste disposal, and drainage from raw material storage.

BPT—The best practicable control technology currently available, as described in Sec. 304(b)(1) of the CWA.

CARGO—Any chemical, material, or substance transported in a tank truck, closed-top hopper truck, intermodal tank container, rail tank car, closed-top hopper rail car, inland tank barge, closed-top inland hopper barge, ocean/sea tanker, or a similar tank that comes in direct contact with the chemical, material, or substance. A cargo may also be referred to as a commodity.

CLOSED-TOP HOPPER BARGE—A self-or non-self-propelled vessel constructed or adapted primarily to carry dry commodities or cargos in bulk through inland rivers and waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. Closed-top inland hopper barges are not designed to carry liquid commodities or cargos and are typically used to transport corn, wheat, soy beans, oats, soy meal, animal pellets, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. The basic types of tops on closed-top inland hopper barges are telescoping rolls, steel lift covers, and fiberglass lift covers.

CLOSED-TOP HOPPER RAIL CAR—A completely enclosed storage vessel pulled by a locomotive that is used to transport dry bulk commodities or cargos over railway access lines. Closed-top hopper rail cars are not designed or contracted to carry liquid commodities or cargos and are typically used to transport grain, soybeans, soy meal, soda

ash, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. Closed-top hopper rail cars are typically divided into three compartments, carry the same commodity or cargo in each compartment, and are generally top loaded and bottom unloaded. The hatch covers on closed-top hopper rail cars are typically longitudinal hatch covers or round manhole covers.

CLOSED-TOP HOPPER TRUCK—A motor-driven vehicle with a completely enclosed storage vessel used to transport dry bulk commodities or cargos over roads and highways. Closed-top hopper trucks are not designed or constructed to carry liquid commodities or cargos and are typically used to transport grain, soybeans, soy meal, soda ash, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. Closed-top hopper trucks are typically divided into three compartments, carry the same commodity or cargo in each compartment, and are generally top loaded and bottom unloaded. The hatch covers used on closed-top hopper trucks are typically longitudinal hatch covers or round manhole covers. Closed-top hopper trucks are also commonly referred to as dry bulk hoppers.

COD—Chemical oxygen demand—A bulk parameter that measures the oxygen-consuming capacity of refractory organic and inorganic matter present in water or wastewater. COD is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test, see Method 410.1.

COMMODITY—Any chemical, material, or substance transported in a tank truck, closed-top hopper truck, intermediate bulk container, rail tank car, closed-top hopper rail car, inland tank barge, closed-top inland hopper barge, ocean/sea tanker, or similar tank that comes in direct contact with the chemical, material, or substance. A commodity may also be referred to as a cargo.

CONSIGNEE—Customer or agent to whom commodities or cargos are delivered.

CONVENTIONAL POLLUTANTS—The pollutants identified in Sec. 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, fecal coliform, and pH).

CWA—CLEAN WATER ACT—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended, inter alia, by the Clean Water Act of 1977 (Public Law 95–217) and the Water Quality Act of 1987 (Public Law 100–4).

CWT—Centralized Waste Treaters Effluent Guideline.

DIRECT DISCHARGE—A facility that conveys or may convey untreated or facility-treated process wastewater or nonprocess wastewater directly into waters of the United States, such as rivers, lakes, or oceans. (See United States Surface Waters definition.)

DISCHARGE—The conveyance of wastewater: (1) to United States surface waters such as rivers, lakes, and oceans, or (2) to a publicly-owned, privately-owned, federally-owned, combined, or other treatment works.

DRUM—A metal or plastic cylindrical container with either an open-head or a tight-head (also known as bung-type top) used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the container interior. Drums typically range in capacity from 30 to 55 gallons.

EFFLUENT—Wastewater discharges.

EFFLUENT LIMITATION—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

FACILITY-SPECIFIC LONG-TERM AVERAGE—Either an arithmetic average or the expected value of the distribution of daily samples, depending on the number of total samples and the number of detected samples for that pollutant at that facility.

FACILITY-SPECIFIC MONTHLY VARIABILITY FACTOR—The ratio of the estimated 95th percentile of the distribution of the monthly pollutant concentration values divided by the expected value of the distribution of monthly values.

FACILITY-SPECIFIC VARIABILITY FACTOR—The ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value of the distribution of daily values.

FDF—FUNDAMENTALLY DIFFERENT FACTOR—Section 301(n) of the Water Quality Act of 1987. This section authorizes modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified at 40 CFR 403.13.

FOOD GRADE CARGO—Food grade cargos include edible and non-edible food products. Specific examples of food grade products include but are not limited to: alcoholic beverages, animal by-products, animal fats, animal oils, caramel, caramel coloring, chocolate, corn syrup and other corn products, dairy products, dietary supplements, eggs, flavorings, food preservatives, food products that are not suitable for human consumption, fruit juices, honey, lard, molasses, non-alcoholic beverages, salt, sugars, sweeteners, tallow, vegetable oils, vinegar, and water.

FRACTION-LEVEL VARIABILITY FACTOR—The median of group-level variability factors for the groups within each fraction.

GROUP-LEVEL VARIABILITY FACTOR—The median of all calculable pollutant variability factors for the pollutants within each group.

HEEL—Any material remaining in a tank or container following unloading, delivery, or discharge of the transported cargo. Heels may also be referred to as container residue, residual materials or residuals.

HEXANE EXTRACTABLE MATERIAL (HEM)—A method-defined-parameter that measures the presence of relatively nonvolatile hydrocarbons, vegetable oils, animal fats, waxes, soaps, greases, and related materials that are extractable in the solvent n-hexane. The analytical method for Oil and Grease is currently being revised to allow for the use of normal hexane in place of freon 113, a chlorofluorocarbon (CFC). Method 1664 (Hexane Extractable Material) will replace the current Oil and Grease Method 413.1 found in 40 CFR 136.

INDIRECT DISCHARGE—A facility that discharges or may discharge pollutants into a publicly-owned treatment works.

INLAND TANK BARGE—A self-or non-self-propelled vessel constructed or adapted primarily to carry commodities or cargos in bulk in cargo spaces (or tanks) through rivers and inland waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. The commodities or cargos transported are in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

INTERMEDIATE BULK CONTAINER (IBC OR TOTE)—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the tank interior. Intermediate bulk containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. IBCs are portable containers with 450 liters (119 gallons) to 3000 liters (793 gallons) capacity. IBCs are also commonly referred to as totes or tote bins.

INTERMODAL TANK CONTAINER—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the tank interior. Intermodal tank containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. Containers larger than 3000 liters capacity are considered intermodal tank containers. Containers smaller than 3000 liters capacity are considered IBCs.

LTA—LONG-TERM AVERAGE—For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's proposed regulation.

MONTHLY AVERAGE LIMITATION—The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during the calendar month divided by the number of "daily discharges" measured during the month.

NEW SOURCE—"New source" is defined at 40 CFR 122.2 and 122.29(b).

NON-CONVENTIONAL POLLUTANT—Pollutants that are neither conventional pollutants nor priority toxic pollutants listed at 40 CFR Section 401.

NON-DETECT VALUE—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

NONPROCESS WASTEWATER—Wastewater that is not generated from industrial processes or that does not come into contact with process wastewater. Nonprocess wastewater includes, but is not limited to, wastewater generated from restrooms, cafeterias, and showers.

NPDES—The National Pollutant Discharge Elimination System authorized under Sec. 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards.

OCEAN/SEA TANKER—A self-or non-self-propelled vessel constructed or adapted to transport commodities or cargos in bulk in cargo spaces (or tanks) through oceans and seas, where the commodity or cargo carried comes in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Effluent Guideline, see 40 CFR part 414.

OFF SITE—"Off site" means outside the bounds of the facility.

OIL AND GREASE—A method-defined parameter that measures the presence of relatively nonvolatile hydrocarbons, vegetable oils, animal fats, waxes, soaps, greases, and related materials that are extractable in Freon 113 (1,1,2-tricholoro-1,2,2-trifluoroethane). The analytical method for Oil and Grease and Total Petroleum Hydrocarbons (TPH) is currently being revised to allow for the use of normal hexane in place of freon 113, a chlorofluorocarbon (CFC). Method 1664 (Hexane Extractable Material) will replace the current Oil and Grease Method 413.1 found in 40 CFR part 136. In anticipation of promulgation of method 1664, data collected by EPA in support of the TECI effluent guideline utilized method 1664. Therefore, all effluent limitations proposed for Oil and Grease and TPH in this effluent guideline are to be measured by Method 1664.

ON SITE—"On-site" means within the bounds of the facility.

OUTFALL—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

PETROLEUM CARGO—Petroleum cargos include the products of the fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other refining processes. For purposes of this rule, petroleum cargos also include products obtained from the refining or processing of natural gas and coal. For purposes of this rule, specific examples of petroleum products include but are not limited to: asphalt; benzene; coal tar; crude oil; cutting oil; ethyl benzene; diesel fuel; fuel additives; fuel oils; gasoline; greases; heavy, medium, and light oils; hydraulic fluids, jet fuel; kerosene; liquid petroleum gases (LPG) including butane and propane; lubrication oils; mineral spirits; naphtha; olefin, paraffin, and other waxes; tall oil; tar; toluene; xylene; and waste oil.

POLLUTANTS EFFECTIVELY REMOVED—Non-pesticide/herbicide pollutants that meet the following criteria are considered effectively removed: detected two or more times in the subcategory influent, an average subcategory influent concentration greater than or equal to five times their analytical method detection limit, and a removal rate of 50 percent or greater by the treatment technology option. Pesticide/herbicide pollutants that meet the followjng criteria are considered effectively removed: detected in the subcategory influent one or more times at a concentration above the analytical method detection limit, and a removal rate of greater than zero by the treatment technology option. All pollutants effectively removed were used in the environmental assessment and cost effectiveness analyses.

POTW—Publicly-owned treatment works, as defined at 40 CFR 403.3(o).

PRERINSE—Within a TEC cleaning process, a rinse, typically with hot or cold water, performed at the beginning of the cleaning sequence to remove residual material from the tank interior.

PRESOLVE WASH—Use of diesel, kerosene, gasoline, or any other type of fuel or solvent as a tank interior cleaning solution.

PRETREATMENT STANDARD—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA Section 307(b).)

PRIORITY POLLUTANTS—The pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

PROCESS WASTEWATER—"Process wastewater" is defined at 40 CFR 122.2.

PSES—Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Sec. 307(b) and (c) of the CWA.

RAIL TANK CAR—A completely enclosed storage vessel pulled by a locomotive that is used to transport liquid, solid, or gaseous commodities or cargos over railway access lines. A rail tank car storage vessel may have one or more storage compartments and the stored commodities or cargos come in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976, as amended.

SIC—STANDARD INDUSTRIAL CLASSIFICATION—A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

SILICA GEL TREATED HEXANE EXTRACTABLE MATERIAL (SGT–HEM)—A method-defined parameter that measures the presence of mineral oils that are extractable in the solvent n-hexane and not adsorbed by silica gel. The analytical method for Total Petroleum Hydrocarbons (TPH) and Oil and Grease is currently being revised to allow for the use of normal hexane in place of freon 113, a chlorofluorocarbon (CFC). Method 1664 (Hexane Extractable Material) will replace the current Oil and Grease Method 413.1 found in 40 CFR part 136. In anticipation of promulgation of method 1664, data collected by EPA in support of the TECI effluent guideline utilized method 1664. Therefore, all effluent limitations proposed for Oil and Grease and TPH in this effluent guideline are to be measured by Method 1664.

SOURCE REDUCTION—Any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Source reduction can include equipment or technology modifications, process or procedure modifications, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

TANK—A generic term used to describe any closed container used to transport commodities or cargos. The commodities or cargos transported come in direct contact with the container interior, which is cleaned by TEC facilities. Examples of containers which are considered tanks include but are not limited to: tank trucks, closed-top hopper trucks, intermodal tank containers, rail tank cars, closed-top hopper rail cars, inland tank barges, closed-top inland hopper barges, ocean/sea tankers, and similar tanks (excluding drums and intermediate bulk containers). Containers used to transport pre-packaged materials are not considered tanks, nor are 55-gallon drums or pails.

TANK TRUCK—A motor-driven vehicle with a completely enclosed storage vessel used to transport liquid, solid or gaseous materials over roads and highways. The storage vessel or tank may be detachable, as with tank trailers, or permanently attached. The commodities or cargos transported come in direct contact with the tank interior. A tank truck may have one or more storage compartments. There are no maximum or minimum vessel or tank volumes. Tank trucks are also commonly referred to as cargo tanks or tankers.

TEC industry—Transportation Equipment Cleaning Industry.

TOTES OR TOTE BINS—A completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the vessel interior. Totes may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. There are no maximum or minimum values for tote volumes, although larger containers are generally considered to be intermodal tank containers. Totes or tote bins are also referred to as intermediate bulk containers or IBCs. Fifty-five gallon drums and pails are not considered totes or tote bins.

TPH—Total Petroleum Hydrocarbons. A method-defined parameter that measures the presence of mineral oils that are extractable in Freon 113 (1,1,2-tricholoro-1,2,2-trifluoroethane) and not adsorbed by silica gel. The analytical method for TPH and Oil and Grease is currently being revised to allow for the use of normal hexane in place of freon 113, a chlorofluorocarbon (CFC). Method 1664 (Hexane Extractable Material) will replace the current Oil and Grease Method 413.1 found in 40 CFR 136. In anticipation of promulgation of method 1664, data collected by EPA in support of the TECI effluent guideline utilized method 1664. Therefore, all effluent limitations proposed

for Oil and Grease and TPH in this effluent guideline are to be measured by Method 1664.

TSS—TOTAL SUSPENDED SOLIDS—A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed, see Method 160.2.

TWF—Toxic Weighting Factor.

UNITED STATES SURFACE WATERS—Waters including, but not limited to, oceans and all interstate and intrastate lakes, rivers, streams, mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds.

VARIABILITY FACTOR—The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

VOLATILE ORGANIC COMPOUNDS (VOCs)—Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. See 40 CFR 51.100 for additional detail and exclusions

WATERS OF THE UNITED STATES—The same meaning set forth in 40 CFR 122.2.

ZERO DISCHARGE FACILITY—Facilities that do not discharge pollutants to waters of the United States or to a POTW. Also included in this definition are discharge of pollutants by way of evaporation, deep-well injection, off-site transfer to a treatment facility, and land application.

List of Subjects in 40 CFR Part 442

Environmental protection, Barge cleaning, Rail tank cleaning, Tank cleaning, Transportation equipment cleaning, Waste treatment and disposal, Water pollution control.

Dated: May 15, 1998.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR Part 442 is proposed to be added as follows:

PART 442—TRANSPORTATION EQUIPMENT CLEANING POINT SOURCE CATEGORY

General Provisions

Sec.

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442.2 Applicability.

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442.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
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Subpart B—Rail/Chemical Subcategory

442.20 Applicability; description of the Rail/Chemical Subcategory.
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442.24 New source performance standards (NSPS).
442.25 Pretreatment standards for existing sources (PSES).
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Subpart C—Barge/Chemical & Petroleum Subcategory

442.30 Applicability; description of the Barge/Chemical & Petroleum Subcategory.
442.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
442.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
442.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
442.34 New source performance standards (NSPS).
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Subpart D—Truck/Food Subcategory

442.40 Applicability; description of the Truck/Food Subcategory.
442.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
442.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
442.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
442.44 New source performance standards (NSPS).
442.45 Pretreatment standards for existing sources (PSES).
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Subpart E—Rail/Food Subcategory

442.50 Applicability; description of the Rail/Food Subcategory.
442.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
442.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
442.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
442.54 New source performance standards (NSPS).
442.55 Pretreatment standards for existing sources (PSES).
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Subpart F—Barge/Food Subcategory

442.60 Applicability; description of the Barge/Food Subcategory.
442.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
442.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
442.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
442.64 New source performance standards (NSPS).
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Tables to Part 442

Table 1 to Part 442.—Truck/Chemical Subcategory: BPT, BCT, BAT, and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters
Table 2 to Part 442.—Truck/Chemical Subcategory: PSES and PSNS Proposed Mass Based Limitations for Discharges to POTWs

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Table 3 to Part 442.—Rail/Chemical Subcategory: BPT, BCT, BAT, and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters
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Table 5 to Part 442.—Barge/Chemical & Petroleum Subcategory: BPT, BCT, BAT, and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters
Table 6 to Part 442.—Barge/Chemical & Petroleum Subcategory: PSES and PSNS Proposed Mass Based Limitations for Discharges to POTWs
Table 7 to Part 442.—Truck/Food Subcategory: BPT, BCT and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters
Table 8 to Part 442.—Rail/Food Subcategory: BPT, BCT and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters
Table 9 to Part 442.—Barge/Food Subcategory: BPT, BCT and NSPS Proposed Mass Based Limitations for Discharges to Surface Waters

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

General Provisions

§ 442.1 Specialized definitions.

In addition to the definitions set forth in 40 CFR 401.11 and 403.3, the following definitions apply to this part:

(a) *Chemical cargos* are defined to include but are not limited to the following cargos: latex, rubber, plastics, plasticizers, resins, soaps, detergents, surfactants, agricultural chemicals and pesticides, hazardous waste, organic chemicals including: alcohols, aldehydes, formaldehydes, phenols, peroxides, organic salts, amines, amides, other nitrogen compounds, other aromatic compounds, aliphatic organic chemicals, glycols, glycerines, and organic polymers; refractory organic compounds including: ketones, nitriles, organo-metallic compounds containing chromium, cadmium, mercury, copper, zinc; and inorganic chemicals including: aluminum sulfate, ammonia, ammonium nitrate, ammonium sulfate, and bleach. Cargos which are not considered to be food-grade, petroleum, or dry bulk goods are considered to be chemical cargos.

(b) *Closed-top hopper* is a completely enclosed storage vessel used to transport dry bulk commodities or cargos. Closed-top hoppers are not designed or constructed to carry liquid commodities or cargos and are typically used to transport grain, soybeans, soy meal, soda ash, fertilizer, plastic pellets, flour, sugar, and similar commodities or cargos. The commodities or cargos transported come in direct contact with the hopper interior. Closed-top hoppers include truck, rail, and barge vessels.

(c) *Drums* are metal or plastic cylindrical containers with either an open-head or a tight-head (also known as bung-type top) used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the container interior. Drums typically range in capacity from 30 to 55 gallons.

(d) *Food grade cargos* are defined to include edible and non-edible food products. Specific examples of food grade products include but are not limited to: alcoholic beverages, animal by-products, animal fats, animal oils, caramel, caramel coloring, chocolate, corn syrup and other corn products, dairy products, dietary supplements, eggs, flavorings, food preservatives, food products that are not suitable for human consumption, fruit juices, honey, lard, molasses, non-alcoholic beverages, sweeteners, tallow, vegetable oils, vinegar, and water.

(e) *Inland tank barge* is a self- or non-self-propelled vessel constructed or adapted primarily to carry liquid, solid or gaseous commodities or cargos in bulk in cargo spaces (or tanks) through rivers and inland waterways, and may occasionally carry commodities or cargos through oceans and seas when in transit from one inland waterway to another. The commodities or cargos transported are in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

(f) *Intermediate bulk container* ("IBC" or "Tote") is a completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which are in direct contact with the tank interior. IBCs may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. IBCs are portable containers with 450 liters (119 gallons) to 3000 liters (793 gallons) capacity. IBCs are also commonly referred to as totes or tote bins.

(g) *Intermodal tank container* is a completely enclosed storage vessel used to hold liquid, solid, or gaseous commodities or cargos which come in direct contact with the tank interior. Intermodal tank containers may be loaded onto flat beds for either truck or rail transport, or onto ship decks for water transport. Containers larger than 3000 liters capacity are considered intermodal tank containers. Containers smaller than 3000 liters capacity are considered IBCs.

(h) *Ocean/sea tanker* is a self- or non-self-propelled vessel constructed or adapted to transport liquid, solid or gaseous commodities or cargos in bulk in cargo spaces (or tanks) through oceans and seas, where the commodity or cargo carried comes in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

(i) *Petroleum cargos* are defined to include the products of the fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other refining processes. For purposes of this rule, petroleum cargos also include products obtained from the refining or processing of natural gas and coal. For purposes of this rule, specific examples of petroleum products include but are not limited to: asphalt; benzene; coal tar; crude oil; cutting oil; ethyl benzene; diesel fuel; fuel additives; fuel oils; gasoline; greases; heavy, medium, and light oils; hydraulic fluids, jet fuel; kerosene; liquid petroleum gases (LPG) including butane and propane; lubrication oils; mineral spirits; naphtha; olefin, paraffin, and other waxes; tall oil; tar; toluene; xylene; and waste oil.

(j) *Rail tank car* is a completely enclosed storage vessel pulled by a locomotive that is used to transport liquid, solid, or gaseous commodities or cargos over railway access lines. A rail tank car storage vessel may have one or more storage compartments and the stored commodities or cargos come in direct contact with the tank interior. There are no maximum or minimum vessel or tank volumes.

(k) *Tank truck* is a motor-driven vehicle with a completely enclosed storage vessel used to transport liquid, solid or gaseous materials over roads and highways. The storage vessel or tank may be detachable, as with tank trailers, or permanently attached. The commodities or cargos transported come in direct contact with the tank interior. A tank truck may have one or more storage compartments. There are no maximum or minimum vessel or tank volumes. Tank trucks are also commonly referred to as cargo tanks or tankers.

(l) *Transportation equipment cleaning (TEC) process wastewater* is identified to include all wastewaters associated with cleaning the interiors of tanks including, but not limited to: tank trucks; rail tank cars; intermodal tank containers; inland tank barges; and ocean/sea tankers used to transport commodities or cargos that come into direct contact with the tank or container interior. TEC process wastewaters include wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC contaminated wasetwater.

§ 442.2 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, the provisions of this part apply to wastewater discharges of transportation equipment cleaning process wastewater. Facilities that do not engage in cleaning the interiors of tanks are not subject to the provisions of this part.

(b) The provisions of this part do not apply to wastewater discharges from transportation equipment cleaning operations located at industrial facilities regulated under other Clean Water Act effluent guidelines, provided that the facility cleans only tanks containing cargos or commodities generated or used on-site or by a facility under the same corporate structure.

(c) The provisions of this part do not apply to wastewater discharges from cleaning the interiors of drums or intermediate bulk containers.

Subpart A—Truck/Chemical Subcategory

§ 442.10 Applicability; description of the Truck/Chemical Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC process wastewater discharged from facilities that clean tank trucks and intermodal tank containers where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos.

§ 442.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 442.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease and pH listed in Table 1 of this part.

§ 442.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 442.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 442.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 2 of this part.

§ 442.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 2 of this part.

Subpart B—Rail/Chemical Subcategory

§ 442.20 Applicability; description of the Rail/Chemical Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC wastewater discharged from facilities that clean rail tank cars where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical cargos.

§ 442.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 442.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease, and pH listed in Table 3 of this part.

§ 442.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 442.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 442.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 4 of this part.

§ 442.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 4 of this part.

Subpart C—Barge/Chemical & Petroleum Subcategory

§ 442.30 Applicability; description of the Barge/Chemical & Petroleum Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC wastewater discharged from facilities that clean tank barges or ocean/sea tankers where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical and/or petroleum cargos.

§ 442.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 5 of this part.

§ 442.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease, and pH listed in Table 5 of this part.

§ 442.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 5 of this part.

§ 442.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 5 of this part.

§ 442.35 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Barge/Chemical & Petroleum facilities.

§ 442.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 6 of this part.

Subpart D—Truck/Food Subcategory

§ 442.40 Applicability; description of the Truck/Food Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC wastewater discharged from facilities that clean tank trucks and intermodal tank containers where 10 percent or more of the total tanks cleaned at that facility in an average year contain food grade cargos. The provisions of this part do not apply to those facilities subject to the provisions established in § 442.10 for the Truck/Chemical Subcategory.

§ 442.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 7 of this part.

§ 442.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease, and pH listed in Table 9 of this part.

§ 442.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 442.44 New source performance standards (NSPS).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 7 of this part.

§ 442.45 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Truck/Food facilities.

§ 442.46 Pretreatment standards for new sources (PSNS).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Truck/Food facilities.

Subpart E—Rail/Food Subcategory

§ 442.50 Applicability; description of the Rail/Food Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC wastewater discharged from facilities that clean rail tank cars where 10 percent or more of the total tanks cleaned at that facility in an average year contain food grade cargos. The provisions of this part do not apply to those facilities subject to the provisions established in § 442.20 for the Rail/Chemical Subcategory.

§ 442.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 8 of this part.

§ 442.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease, and pH listed in Table 8 of this part.

§ 442.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 442.54 New source performance standards (NSPS).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 8 of this part.

§ 442.55 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Rail/Food facilities.

§ 442.56 Pretreatment standards for new sources (PSNS).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Rail/Food facilities.

Subpart F—Barge/Food Subcategory

§ 442.60 Applicability; description of the Barge/Food Subcategory.

Except as provided in § 442.2, the provisions of this subpart apply to TEC wastewater discharged from facilities that clean barges and ocean/sea tankers where 10 percent or more of the total tanks cleaned at that facility in an average year contain food grade cargos. The provisions of this part do not apply to those facilities subject to the provisions established in § 442.30 for the Barge/Chemical & Petroleum Subcategory.

§ 442.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 9 of this part.

§ 442.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, Oil and Grease, and pH listed in Table 9 of this part.

§ 442.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 442.64 New source performance standards (NSPS).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 9 of this part.

§ 442.65 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Barge/Food facilities.

§ 442.66 Pretreatment standards for new sources (PSNS).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR part 403. There are no additional pretreatment requirements established for Barge/Food facilities.

Tables to Part 442

TABLE 1 TO PART 442.—TRUCK/CHEMICAL SUBCATEGORY: BPT, BCT, BAT, AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/monthly average	Daily maximum	Monthly average
BOD_5	145	67.6	145	67.6	N/A	145	67.6
TSS	281	115	281	115	N/A	281	115
Oil and Grease (HEM)	25.3	16.1	25.3	16.1	N/A	25.3	16.1
Chromium	0.16	0.16	N/A	N/A	0.16	0.16	0.16
Zinc	0.09	0.09	N/A	N/A	0.09	0.09	0.09
COD	3760	3760	N/A	N/A	3760	3760	3760
Bis (2-ethylhexyl) pthalate	0.12	0.12	N/A	N/A	0.12	0.12	0.12
di-N-octyl phthalate	0.12	0.12	N/A	N/A	0.12	0.12	0.12
N-Dodecane	0.12	0.12	N/A	N/A	0.12	0.12	0.12
N-Hexadecane	0.12	0.12	N/A	N/A	0.12	0.12	0.12
Styrene	0.20	0.20	N/A	N/A	0.20	0.20	0.20
1,2-dichlorobenzene	0.12	0.12	N/A	N/A	0.12	0.12	0.12

TABLE 2 TO PART 442.—TRUCK/CHEMICAL SUBCATEGORY: PSES AND PSNS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO POTWS

[Grams/tank]

Pollutant or pollutant property	PSES		PSNS	
	Daily maximum	Monthly average	Daily maximum	Monthly average
Chromium	0.20	0.20	0.20	0.20
Zinc	0.12	0.12	0.12	0.12
COD	3760	3760	3760	3760
Bis (2-ethylhexyl) pthalate	0.23	0.23	0.23	0.23
di—N-octyl phthalate	0.15	0.15	0.15	0.15
N-Dodecane	0.19	0.19	0.19	0.19
N-Hexadecane	0.19	0.19	0.19	0.19
Styrene	0.40	0.40	0.40	0.40
1,2-dichlorobenzene	0.15	0.15	0.15	0.15

TABLE 3 TO PART 442.—RAIL/CHEMICAL SUBCATEGORY: BPT, BCT, BAT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/monthly average	Daily maximum	Monthly average
BOD_5	3,840	1,790	3,840	1,790	N/A	3,840	1,790
TSS	338	141	338	141	N/A	338	141
Oil and Grease (HEM)	470	286	470	286	N/A	130	83
COD	42,200	42,200	N/A	N/A	42,200	42,200	42,200
N-Dodecane	0.63	0.63	N/A	N/A	0.63	0.43	0.43
N-Hexadecane	0.43	0.43	N/A	N/A	0.43	0.43	0.43

TABLE 3 TO PART 442.—RAIL/CHEMICAL SUBCATEGORY: BPT, BCT, BAT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS—Continued

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/monthly average	Daily maximum	Monthly average
N-Tetradecane	0.43	0.43	N/A	N/A	0.43	0.43	0.43
Anthracene	2.20	2.20	N/A	N/A	2.20	2.20	2.20
Pyrene	0.68	0.68	N/A	N/A	0.68	0.68	0.68
Fluoranthene	0.74	0.74	N/A	N/A	0.74	0.74	0.74
Phenanthrene	1.96	1.96	N/A	N/A	1.96	1.96	1.96

TABLE 4 TO PART 442.—RAIL/CHEMICAL SUBCATEGORY: PSES AND PSNS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO POTWS

[Grams/tank]

Pollutant or pollutant property	PSES		PSNS	
	Daily maximum	Monthly average	Daily maximum	Monthly average
Total Petroleum Hydrocarbons (SGT–HEM)	942	942	207	207
COD	42,200	42,200	42,200	42,200
N-Hexadecane	2.56	2.56	2.56	2.56
N-Tetradecane	3.98	3.98	0.66	0.66
Fluoranthene	0.60	0.60	0.60	0.60

TABLE 5 TO PART 442.—BARGE/CHEMICAL & PETROLEUM SUBCATEGORY: BPT, BCT, BAT, AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/monthly average	Daily maximum	Monthly average
BOD_5	18,300	8,600	18,300	8,600	N/A	18,300	8,600
TSS	9,540	6,090	9,540	6,090	N/A	9,540	6,090
Oil and Grease (HEM)	558	294	558	294	N/A	558	294
COD	74,300	74,300	N/A	N/A	74,300	74,300	74,300
Cadmium	0.19	0.19	N/A	N/A	0.19	0.19	0.19
Chromium	1.82	1.82	N/A	N/A	1.82	1.82	1.82
Copper	2.17	2.17	N/A	N/A	2.17	2.17	2.17
Lead	1.93	1.93	N/A	N/A	1.93	1.93	1.93
Nickel	15.3	15.3	N/A	N/A	15.3	15.3	15.3
Zinc	153	153	N/A	N/A	153	153	153
1-Methylphenanthrene	2.04	2.04	N/A	N/A	2.04	2.04	2.04
Bis (2-ethylhexyl) Phthalate	1.88	1.88	N/A	N/A	1.88	1.88	1.88
Di-N-Octyl Phthalate	2.68	2.68	N/A	N/A	2.68	2.68	2.68
N-Decane	5.96	5.96	N/A	N/A	5.96	5.96	5.96
N-Docosane	3.02	3.02	N/A	N/A	3.02	3.02	3.02
N-Dodecane	16.7	16.7	N/A	N/A	16.7	16.7	16.7
N-Eicosane	6.67	6.67	N/A	N/A	6.67	6.67	6.67
N-Octadecane	7.45	7.45	N/A	N/A	7.45	7.45	7.45
N-Tetracosane	2.19	2.19	N/A	N/A	2.19	2.19	2.19
N-Tetradecane	7.30	7.30	N/A	N/A	7.30	7.30	7.30
P-Cymene	0.29	0.29	N/A	N/A	0.29	0.29	0.29
Pyrene	1.20	1.20	N/A	N/A	1.20	1.20	1.20

TABLE 6 TO PART 442.—BARGE/CHEMICAL & PETROLEUM SUBCATEGORY: PSES AND PSNS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO POTWS

[Grams/tank]

Pollutant or pollutant property	PSES		PSNS	
	Daily maximum	Monthly average	Daily maximum	Monthly average
Total Petroleum Hydrocarbons (SGT–HEM)	N/A	N/A	347	347
COD	N/A	N/A	74,300	74,300
Cadmium	N/A	N/A	0.51	0.51
Chromium	N/A	N/A	0.61	0.61
Copper	N/A	N/A	79.9	79.9
Lead	N/A	N/A	5.04	5.04
Nickel	N/A	N/A	39.1	39.1
Zinc	N/A	N/A	241	241
1-Methylphenanthrene	N/A	N/A	9.70	9.70
Bis (2-ethylhexyl) Phthalate	N/A	N/A	2.05	2.05
Di-N-Octyl Phthalate	N/A	N/A	7.69	7.69
N-Decane	N/A	N/A	7.26	7.26
N-Docesane	N/A	N/A	3.67	3.67
N-Dodecane	N/A	N/A	20.3	20.3
N-Eicosane	N/A	N/A	8.13	8.13
N-Octadecane	N/A	N/A	9.07	9.07
N-Tetracosane	N/A	N/A	5.51	5.51
N-Tetradecane	N/A	N/A	8.90	8.90
P-Cymene	N/A	N/A	2.21	2.21
Pyrene	N/A	N/A	2.94	2.94

TABLE 7 TO PART 442.—TRUCK/FOOD SUBCATEGORY: BPT, BCT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/ monthly average	Daily maximum	Monthly average
BOD_5	166	72.4	166	72.4	N/A	166	72.4
TSS	673	256	673	256	N/A	673	256
Oil and Grease (HEM)	60.4	26.3	60.4	26.3	N/A	60.4	26.3

TABLE 8 TO PART 442.—RAIL/FOOD SUBCATEGORY: BPT, BCT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/ monthly average	Daily maximum	Monthly average
BOD_5	945	412	945	412	N/A	945	412
TSS	3,830	1,460	3,830	1,460	N/A	3,830	1,460
Oil and Grease (HEM)	344	150	344	150	N/A	344	150

TABLE 9 TO PART 442.—BARGE/FOOD SUBCATEGORY: BPT, BCT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/ monthly average	Daily maximum	Monthly average
BOD_5	945	412	945	412	N/A	945	412
TSS	3,830	1,460	3,830	1,460	N/A	3,830	1,460

TABLE 9 TO PART 442.—BARGE/FOOD SUBCATEGORY: BPT, BCT AND NSPS PROPOSED MASS BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS—Continued

[Grams/tank]

Pollutant or pollutant property	BPT		BCT		BAT	NSPS	
	Daily maximum	Monthly average	Daily maximum	Monthly average	Daily maximum/ monthly average	Daily maximum	Monthly average
Oil and Grease (HEM)	344	150	344	150	N/A	344	150

[FR Doc. 98–13792 Filed 6–24–98; 8:45 am]
BILLING CODE 6560–50–P

VOL 63 ISS 122 JE 25 1998 UMI

federal register

Thursday
June 25, 1998

Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Supplemental Designation; Notice

VOL
63
ISS
122
JE
25
1998
UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4372–N–01]

Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Supplemental Designation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised and supplemental designations of "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development ("HUD"). The new Qualified Census Tract designations are for Puerto Rico and for the metropolitan areas and the nonmetropolitan areas of States affected by changes in metropolitan area definitions since the last designation of Qualified Census Tracts on May 1, 1995 (60 FR 21246). The designations are based on 1990 census data. For the metropolitan areas and the nonmetropolitan areas of States *not listed in this Notice*, the corrected designations of "Qualified Census Tracts" published May 1, 1995 (60 FR 21246) remain in effect. These revisions are made necessary by: the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference; the need for Qualified Census Tract designations in Puerto Rico; and changes in the definitions of metropolitan areas since the last designation of Qualified Census Tracts.

FOR FURTHER INFORMATION CONTACT: With questions on how tracts are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0426, e-mail Kurt_G._Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3260, e-mail H._JERRY_GROSS@hud.gov. For questions about the "HUBZones" program, Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail michael.mchale@sba.gov. A telecommunications device for deaf persons (TTY) is available at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice is available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUDUser." A complete revised list of all Qualified Census Tracts including the tracts designated by this Notice and the previously-designated tracts which continue to be in effect will be posted at this site.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub.L. 99–514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub.L. 100–647], as amended by the Omnibus Budget Reconciliation Act of 1989 [Pub.L. 101–239], as amended by the Omnibus Budget Reconciliation Act of 1990 [Pub.L. 101–508], as amended by the Tax Extension Act of 1991 [Pub.L. 102–227], and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub.L. 103–66]. The Secretary of HUD is required to designate Qualified Census Tracts and Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low income housing building owners applying for the credit.

The credit is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20% of units must be rent-restricted and occupied by tenants with incomes no higher than 50% of the Area Median Gross Income ("AMGI"), or 40% of units must be rent restricted and occupied by tenants with incomes no higher than 60% of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30% of the tenant's imputed income limitation (i.e., 50% or 60% of AMGI). The rental restrictions remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized or financed with tax-exempt bonds, or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects involving federal subsidies or financing with tax-exempt bonds. The actual credit rates were fixed at 9 percent (70 percent present value) and 4 percent (30 percent present value) for 1987, and are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6% maximum

marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also use the losses from the project.

The qualified basis represents a fraction of the "eligible basis," based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition cost plus the amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis is increased to 130% of what it otherwise would be. This means that the available credit will also be increased by 30%; if the 70% credit is available, it will effectively be increased to 91%.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income less than 60% of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20% of the total population of the MSA/PMSA. For purposes of this rule, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. An amendment to section 42 made by section 11701(a)(2) of the Omnibus Budget Reconciliation Act of 1990 specifies that the income test for designation of Qualified Census Tracts should be based on the most recent census data.

In the last designation of Qualified Census Tracts published May 1, 1995 (60 FR 21246), no tract designations were made in Puerto Rico because the entire island was designated a "Difficult Development Area" under section 42 of the Internal Revenue Code making the designation of Qualified Census Tracts superfluous. Because the current designation of section 42 Difficult Development Areas, published October 21, 1997 (62 FR 54732), no longer names all of Puerto Rico a Difficult Development Area, updated designations of Qualified Census Tracts are required. The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts.

New MSA (MSA No.)	Component counties
Flagstaff, AZ–UT MSA (2620).	Coconino County, AZ.
	Kane County, UT.
Grand Junction, CO MSA (2995).	Mesa County, CO.
Hattiesburg, MS MSA (3285).	Forrest County, MS.
	Lamar County, MS.
Jonesboro, AR MSA (3700).	Craighead County, AR.
Pocatello, ID MSA (6340).	Bannock County, ID.

In addition, Chester County, Tennessee was added to the Jackson, TN MSA (3580). With this addition, the MSA now comprises Chester and Madison Counties, Tennessee.

Finally, the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997 [Pub.L. 105–135] incorporate section 42 Qualified Census Tracts by reference making necessary these revisions to ensure legal compliance with this new program.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget that applied as of June 30, 1996. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area ("BNA"). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50% of its households with incomes below 60% of the AMGI to be eligible. HUD has defined 60% of AMGI income as 120% of HUD's Very Low Income Limits, that are based on 50% of area median family income, adjusted for high cost and low income areas. The income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.

2. For each census tract, the percentage of households below the 60% income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. Qualified Census Tracts are those in which 50% or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20% of the total population of the respective area.

4. In areas where more than 20% of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20% limit is exceeded. If a census tract is excluded because it raises the percentage above 20%, then subsequent census tracts are considered to determine if a census tract with a smaller population could be included without exceeding the 20% limit.

B. Application of Caps to Qualified Census Tract Determinations

In identifying Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of eligible census tracts within a metropolitan area cannot exceed 20% of the population of that metropolitan area. Similarly, for census tracts/BNAs located outside metropolitan areas, the population of eligible census tracts/BNAs cannot exceed 20% of the population of the non-metropolitan counties in a State.

In applying these caps, HUD established procedures to deal with two issues: (1) how to proceed when the next logical choice for inclusion causes the cumulative area population to exceed the cap, and (2) how to treat small overruns of the caps. The remainder of this section explains the procedures.

1. Next choice causes cumulative population to exceed the cap. In applying the 20% cap to Qualified Census Tracts, HUD did not attempt to break a borderline census tract into smaller areas. Instead HUD looked tract-by-tract down the ranking beyond the excluded tract to see if a smaller tract could be included without exceeding the cap. Section 42(d)(5)(C)(ii)(I) of the Code sets a simple test for eligibility for Qualified Census Tracts. If a tract's low income population exceeds 50% of its total population, then the tract is eligible *unless* it becomes necessary to eliminate the tract to satisfy the cap. There are many metropolitan areas and

States in which the population of eligible areas falls short of 20%. When HUD had to eliminate tracts to satisfy the 20% cap, it was choosing among tracts that were otherwise eligible.

2. Anomalous results. For Qualified Census Tracts, HUD applied the caps strictly unless a strict application produced an anomalous result. Specifically, HUD stopped selecting areas when it was impossible to choose another area without exceeding the applicable cap. The only exception to this policy was when an excluded area contained either a large absolute population or a large percentage of the total population *and* its inclusion resulted in only a minor overrun of the cap. There were some cases where the inclusion of an area would result in a minimal overrun of the cap; but, in all of these cases, the exclusion of the area resulted in neither a large absolute loss of population nor a large short-fall below 20%. HUD believes the designation of these areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to really determine whether the 20% cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20% cap. In circumstances where a strict application of a 20% cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20% limit.

Future Designations

Qualified Census Tracts will not be redesignated until year 2000 census data become available unless further changes in metropolitan area definitions occur.

Effective Date

The revisions to the list of Qualified Census Tracts are effective for allocations of credit made after December 31, 1998. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1998. The corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) for the metropolitan areas and nonmetropolitan parts of States not listed in this Notice remain in effect. The list of Difficult Development Areas published October 21, 1997 (62 FR 54732) remains in effect. Effective dates with respect to the HUBZones program will be established separately by the Small Business Administration.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. Section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" for use by political subdivisions of the States in allocating the LIHTC, as required by section 42 of the Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Qualified Census Tracts" for the use by political subdivisions of the States in allocating the LIHTC, as required under section 42 of the Internal Revenue Code, as amended. The notice also details the technical methodology used in making such designations.

Dated: June 18, 1998.

Andrew Cuomo,

Secretary.

BILLING CODE 4210-32-P

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IRS SECTION 42(D)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1998)

METROPOLITAN AREA: Aguadilla, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguadilla Municipio	4001.00	4008.00	4009.00	4010.00	4011.00	4013.00	4206.98					
METROPOLITAN AREA: Arecibo, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arecibo Municipio	3001.00	3004.00	3005.00	3013.00	3018.00	3019.00	3021.00	3023.00				
Camuy Municipio	3205.00											
METROPOLITAN AREA: Caguas, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Caguas Municipio	2009.00	2010.00	2012.00	2019.00	2029.00							
Cayey Municipio	2606.00	2607.00	2609.00									
Cidra Municipio	2402.00											
Gurabo Municipio	2103.00											
San Lorenzo Municipio	2202.00	2205.00	2206.00	2207.00								
METROPOLITAN AREA: Flagstaff, AZ-UT												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Coconino County	10.00	22.00	24.00	25.00								
METROPOLITAN AREA: Grand Junction, CO												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mesa County	1.00	2.00										
METROPOLITAN AREA: Hattiesburg, MS												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Forrest County	1.00	4.00	5.00	6.00	9.00							
METROPOLITAN AREA: Jackson, TN												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County	5.00	8.00	9.00	10.00	11.00	12.00						
METROPOLITAN AREA: Mayaguez, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anasco Municipio	8101.00											
Cabo Rojo Municipio	8305.00											
Mayaguez Municipio	801.00	803.00	804.00	805.00	806.00	807.00	809.00	810.00	811.00	812.01	812.02	812.03
Sabana Grande Municipio	9605.00	9606.00										
San German Municipio	8406.98											

IRS SECTION 42(D)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1996)

METROPOLITAN AREA: Pocatello, ID COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bannock County	9.00	16.01										
METROPOLITAN AREA: Ponce, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Juana Diaz Municipio	719.02	7102.00	7109.01									
Ponce Municipio	702.02	703.00	704.00	706.01	708.00	709.00	710.00	713.00	716.02	721.01	726.00	728.00
	730.02											
Villalba Municipio	7201.00	7203.00										
METROPOLITAN AREA: San Juan-Bayamon, PR												
MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguas Buenas Municipio	2303.00	2304.98										
Barceloneta Municipio	5902.00	5903.00										
Bayamon Municipio	305.00	307.00	321.00									
Canovanas Municipio	1001.98	1004.00										
Catano Municipio	201.00	202.00	203.00	204.04								
Comerio Municipio	9517.00	9518.00	9519.00	9521.00								
Corozal Municipio	5301.00	5303.00	5305.00	5306.00								
Dorado Municipio	5407.00											
Florida Municipio	5802.00											
Guaynabo Municipio	401.01	401.02	401.03									
Juncos Municipio	5004.00											
Loiza Municipio	1101.00	1102.00	1104.00	1106.00								
Manati Municipio	5701.00	5703.00	5707.00									
Morovis Municipio	9553.00	9554.00	9555.00									
Naguabo Municipio	1703.00											
Naranjito Municipio	5201.00	5202.00	5203.00									
San Juan Municipio	2.00	6.00	13.00	14.00	27.00	28.00	29.00	31.00	33.00	34.00	35.01	35.02
	36.00	37.00	38.00	40.00	41.00	42.01	43.00	44.00	45.00	46.00	47.00	48.00
	49.00	50.00	51.03	52.23	54.02	60.00	82.01	89.00	90.00	92.00	93.00	95.00
	103.00											
Toa Alta Municipio	5107.98											
Toa Baja Municipio	1217.00	1218.01	1221.00	1222.00	1224.00							
Vega Alta Municipio	5501.00	5503.00										
Vega Baja Municipio	5606.00	5609.00										
Yabucoa Municipio	9507.00	9508.00	9513.00									

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1998)

STATE: ARIZONA COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Apache County	9760.00	9771.00	9772.00	9773.00	9774.00	9775.00	9778.00					
Cochise County	9.00											
Gila County	9850.00											
Graham County	9950.00											
La Paz County	201.00											
Navajo County	9651.00	9652.00	9653.00	9660.00	9671.00	9672.00	9674.00	9675.00	9676.00			

STATE: ARKANSAS COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chicot County	9802.00	9804.00										
Desha County	9503.00											
Garland County	106.00	107.00	108.00	115.00								
Lee County	9704.00											
Phillips County	9804.00	9805.00	9806.00									

STATE: COLORADO COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Conejos County	9746.00	9747.00	9748.00									
Costilla County	9827.00											
Delta County	9648.00											
Elbert County	9911.00											
Huerfano County	9808.00											
Las Animas County	9832.00											
Montezuma County	9695.00											
Otero County	9880.00											

STATE: IDAHO COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bingham County	9508.00											
Bonneville County	9701.00	9712.00										
Kootenai County	9.00											
Latah County	54.00											
Twin Falls County	9811.00											

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IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1996)

STATE: MISSISSIPPI COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	3.00	4.00										
Bolivar County	9501.00	9502.00	9503.00	9504.00								
Coahoma County	9501.00	9506.00	9507.00									
Holmes County	9502.00	9503.00	9504.00	9505.00								
Humphreys County	9503.00											
Jefferson County	9501.00	9502.00										
Jones County	9507.00											
Lafayette County	9503.00											
Lauderdale County	1.00	2.00	4.00	6.00	7.00							
Leflore County	9502.00	9508.00	9509.00									
Lowndes County	7.00	8.00	11.00									
Pike County	9503.00											
Sunflower County	9503.00	9505.00										
Tallahatchie County	9504.00											
Tunica County	9501.00	9502.00										
Warren County	9503.00	9504.00										
Washington County	4.00	5.00	6.00	10.00	11.00	18.00	20.00					
Wilkinson County	9502.00											
Yazoo County	9505.00											

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1998)

STATE: PUERTO RICO MUNICIPO	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adjuntas Municipio	9563.00	9564.00	9565.00	9566.00	9567.00	9568.00						
Aibonito Municipio	2503.00	2504.00										
Arroyo Municipio	2801.00											
Barranquitas Municipio	9523.00	9524.00										
Ciales Municipio	9557.00	9559.00										
Coamo Municipio	9540.00	9541.00	9546.00									
Guanica Municipio	9609.00	9610.00	9611.00	9612.00	9614.00	9615.00						
Guayama Municipio	2701.98	2702.98	2704.00	2706.00	2707.00							
Isabela Municipio	4102.00	4106.00										
Jayuya Municipio	9560.00	9561.00	9562.00									
Lares Municipio	9577.00	9578.00	9579.00	9583.00	9584.00							
Las Marias Municipio	9597.98	9599.00										
Maricao Municipio	9601.98											
Maunabo Municipio	9514.00	9515.00										
Orocovis Municipio	9549.00	9550.98	9551.00									
Patillas Municipio	2901.00	2903.00	2904.00									
Quebradillas Municipio	3303.00											
Rincon Municipio	9596.00											
Salinas Municipio	9526.98	9527.00	9529.00	9532.00								
San Sebastian Municipio	9585.00	9586.00	9588.00	9591.00	9593.00	9598.00	9686.00	9691.00				
Santa Isabel Municipio	9533.00	9534.00	9535.00	9537.00								
Utuado Municipio	9569.00	9571.00	9572.00	9574.00	9575.00	9576.00						
Vieques Municipio	9501.00	9502.00	9504.00									

STATE: TENNESEE COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bradley County	104.00	107.00	108.00									
Campbell County	9503.00											
Fentress County	9651.00											
Hamblen County	1003.00											
Hancock County	9601.00	9602.00	9603.00									
Haywood County	9807.00											
Henry County	9693.00											
McMinn County	9702.00											
Marshall County	9553.00											
Maury County	105.00											
Putnam County	8.00											

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IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1996)

STATE: UTAH COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cache County	16.00											
Carbon County	9716.00											
Juab County	9732.00											
San Juan County	9783.00	9784.00										
Wasatch County	9925.00											

federal register

Thursday
June 25, 1998

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: In a Notice of Proposed Rulemaking, 61 FR 60440 (November 27, 1996) (NOPR), concerning one through 200 horsepower electric motors that are covered under the Energy Policy and Conservation Act, as amended (EPCA), the Department of Energy (DOE or the Department) proposed to adopt test procedures (including those in Institute of Electrical and Electronics Engineers, Inc. Standard 112–1991 ["IEEE 112–1991"]), sampling plans for compliance and enforcement testing, efficiency labeling requirements, and standards and procedures under which DOE would classify an accreditation organization or a certification program as "nationally recognized." The Department is now considering several additional options in these areas, which were either not set forth or not clearly described in the NOPR. Specifically, the Department is considering adoption of (1) revised sampling plans for compliance and enforcement, (2) revisions to the IEEE test procedures, (3) alternative requirements where a motor's efficiency is established under EPCA through a certification program, (4) verifying the validity of labeled efficiency by use of the proposed enforcement procedures, and (5) withdrawal of recognition from an accreditation organization or certification program that deviates from the standards for recognition. The purpose of this notice is to reopen the comment period to solicit comments on these options.

DATES: Written comments in response to this notice must be received by July 27, 1998.

ADDRESSES: Ten copies (no telefacsimilies) of written comments should be labeled "Electric Motor Rulemaking" (Docket No. EE–RM–96–400), and submitted to: U.S. Department of Energy, Office of Codes and Standards, EE–43, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585–0121. Telephone: (202) 586–2945.

Copies of the Institute of Electrical and Electronics Engineers standards may be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE.

A copy of the document, "Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431; Title 10, Code of Federal Regulations," NISTIR 6092, by K.L. Stricklett and M. Vangel, January 1998, may be obtained from the National Institute of Standards and Technology (NIST).[1] Information regarding availability of the report, NISTIR 6092, may be obtained from the NIST Inquiries Office at 301–975–3058. A copy of NISTIR 6092 is available through the NIST World Wide Web site http://www.eeel.nist.gov/811/div/811__pubs__ps.html#nistir6092. NISTIR 6092 is also available from the National Technical Information Service (NTIS), and may be ordered through the NTIS Sales Desk at 703–605–6000, or by telefax at 703–321–8547, or by electronic mail at orders@ntis.fedworld.gov. A copy of the document is also available at the Office of Codes and Standards World Wide Web site http://www.eren.doe.gov/buildings/codes__standards/rules/emenfpol/index.htm.

Copies of the proposed rule, a transcript of the January 15, 1997 public hearing, the public comments received (including the NEMA proposal), and NISTIR 6092 may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, telephone (202) 586–8654, telefax (202) 586–4617, or: jim.raba@ee.doe.gov

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507, telefax (202) 586–4116, or: edward.levy@hq.doe.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy and Conservation Act (EPCA or the Act), 42 U.S.C. 6311, *et seq.*, establishes energy efficiency standards and test procedures for certain commercial and industrial electric motors. Section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), requires that "each [such] electric motor manufactured (alone or as a component of another piece of equipment) * * * shall have a nominal full load efficiency of not less than [the prescribed level]." The Act requires generally that the test procedures be "reasonably designed to produce test results which reflect energy efficiency," yet not be "unduly burdensome" to conduct, EPCA section 345(a)(2), 42 U.S.C. 6316(a)(2), and prescribes specific test methods for electric motors, EPCA section 343(a)(5), 42 U.S.C. 6314(a)(5). The Act also directs the Department to require, subject to certain conditions, that a motor's energy efficiency be displayed on its permanent nameplate and in material used to market the motor. EPCA section 344(d), 42 U.S.C. 6315(d). Finally manufacturers must certify "through an independent testing or certification program nationally recognized in the United States," that each covered motor complies with the applicable efficiency standard. EPCA section 345(c), 42 U.S.C. 6316(c).

On November 27, 1996, the Department published a proposed rule on test procedures for the measurement of energy efficiency, efficiency labeling, and compliance and enforcement procedures for these electric motors. The proposed rule incorporated the Institute of Electrical and Electronics Engineers (IEEE) Standard 112–1991 Test Method B as one method for measuring energy efficiency, 61 FR 60446 (November 27, 1996). Other proposed provisions included two statistical sampling plans—one for compliance and labeling and another for enforcement, 61 FR 60446–49, 60459–60 (November 27, 1996), requirements that a motor's energy efficiency be stated on its nameplate and in marketing materials, 61 FR 60451–52 (November 27, 1996), and procedures as to recognition of a testing or certification program used to certify that an electric motor complies with EPCA efficiency standards, 61 FR 60457–58.

On January 15, 1997, a public hearing was held on the proposed rule, and thereafter the Department received numerous written comments on the

[1] Appendix D of NISTIR 6092 contains the sampling proposals submitted by the NEMA Motor and Generator Section, April 18, 1997, in response to the NOPR.

proposal. The hearing and written comments, as well as the Department's further review of the proposed rule, have given rise to the issues addressed in today's reopening notice. The Department seeks comments at this time only on those issues.

II. Discussion

A. Modifications to the IEEE 112–1996 Method B Test Procedures

Section 343(a)(5)(A) of EPCA requires that the test procedures to determine the efficiency of electric motors under EPCA shall be the test procedures specified in NEMA MG1–1987 and IEEE Standard 112 Test Method B (IEEE 112) for motor efficiency, as in effect on the date of the enactment of the Energy Policy Act of 1992. If the test procedures in NEMA MG1 and IEEE 112 are subsequently amended, the Secretary of Energy is required to revise the regulatory test procedures for electric motors to conform to such amendments, "unless the Secretary determines by rule, * * * supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in" sections 343(a)(2) and (3) of EPCA.

NEMA MG1–1987 was revised and superseded by NEMA MG1–1993, which was published in October 1993. Revision 1 to NEMA MG1–1993, was added on December 7, 1993. In the NOPR, the Department stated that it would adopt the test procedure provisions of NEMA MG1–1993 with Revision 1. IEEE 112–1991 was revised and superseded by IEEE 112–1996, which was published May 8, 1997. A minor revision was made in IEEE 112–1996 on January 20, 1998, when IEEE issued a notice of correction for the calculation at item (28) in section 10.2 Form B-Method B: "Calculation form for input-output test of induction machine with segregation of losses and smoothing of stray-load loss." Under EPCA, DOE must now adopt the test procedures in IEEE 112–1996 with the minor revision, unless clear and convincing evidence supports a conclusion that such test procedures are not reasonably designed to produce test results which reflect energy efficiency, and or unduly burdensome to conduct.

The Department compared IEEE 112–1991 to IEEE 112–1996 to determine whether there were differences in Test Method B, which applies here, and, if so, whether to adopt Test Method B in IEEE 112–1996 into the final rule for electric motors. As a result of its analysis, the Department believes Test Method B in IEEE 112–1996 improves upon the version of that test method in IEEE 112–1991, because IEEE 112–1996 includes: tightened tolerances on metering instrumentation (IEEE 112, clause 4), a more comprehensive and consolidated verbal description of the components of test method B (IEEE 112, clause 6.4), and specific formulae provided for calculation of stator I^2R losses (IEEE 112, clause 5.1).

After publication of IEEE 112–1996 in May 1997, however, the Department became aware, through information submitted by a testing laboratory that has gained experience using the test procedure, that Test Method B in IEEE 112–1996 contains (1) typographical errors, (2) statements of procedure that are open to interpretation, and (3) incorrect information. For a given motor, these defects could cause varying measurements of efficiency, or errors ranging from plus or minus one half to one and one half percentage points in measured efficiency. Subsequently, the Department confirmed the existence of these types of problems with IEEE 112–1996 through contacts with other testing laboratories, a certification organization, and manufacturers, each known to have experience with IEEE 112, and discussions with the Chairman of the IEEE Induction Power Subcommittee. Indeed, the Department is aware that one testing laboratory applied the test procedure to a single motor, tested the motor four times, and arrived at a different result each time based upon various interpretations of the language in the test procedure.

Even a half percentage point error in the measured efficiency could throw a motor into the next higher or lower level of nominal efficiency, effectively rendering it in compliance with the applicable EPCA efficiency standard, or out of compliance. Thus, for example, an error in IEEE 112–1996 could cause a manufacturer to incorrectly measure the efficiency of a motor that is actually in compliance, conclude that it is below the required efficiency level, and unnecessarily redesign all or part of its product line. (IEEE corrected one such error in its January 1998 notice of correction.) Also, the provisions of IEEE 112–1996 that are subject to interpretation leave room for a manufacturer to intentionally bias the measured efficiency of a motor that is actually out of compliance, so that the motor will be found to meet the applicable level required under the statute.

In sum, Test Method B in IEEE 112–1996 has several advantages, discussed above, as well as typographical errors, provisions subject to interpretation, and incorrect information. The Department's intention, therefore, is that the final rule will prescribe IEEE 112–1996 Test Method B, with the January 1998 correction, as the test procedure under EPCA for determining the energy efficiency of electric motors, but with certain modifications.[2] The following sets forth those modifications, as well as a few potential problems as to which the Department has tentatively decided not to make changes:

1. Typographical Errors

a. *Page 17, subclause 6.4.1.3, "No-load test,"* currently reads: "See 5.3 including 5.33, * * *" This is an incorrect reference in the standard, because there is no subclause 5.33. The Department proposes to change the reference to read: "See 5.3 including 5.3.3, * * *" to point to the proper subclause dealing with the separation of core loss from friction and windage loss.

b. *Page 48, item (24), the formula for shaft power in watts,* currently reads: "Is equal to [(23) • (11)]/k_2", but the constant k_2 is not defined. In IEEE 112 section 10.2 Form B-Method B, the constant "k" is defined in terms of torque for the formula in item (22); and the constant "k_1" is defined in terms of conductivity for the formula in item (16). Upon examination of the test procedure and through inquiries made to the aforementioned organizations experienced with IEEE 112, the Department has determined that use of "k_2" in item (24) is a typographical error for the constant "k", since the torque constant ("k"), from item (22), is necessary to calculate shaft power in item (24). The Department proposes to correct the constant "k_2" in item (24) to the constant "k". The formula in item (24) would then read: "Is equal to [(23) • (11)]/k".

2. Provisions Subject to Interpretation

a. *Page 8, subclause 5.1.1, "Specified temperature"* provides three methods, listed in order of preference, to determine the specified temperature used in making resistance corrections: (a) measured temperature rise by resistance from a rated load temperature test; (b) measured temperature rise on a duplicate machine; and (c) use of a temperature correction table when rated load temperature has not been measured. The Department understands that, although subclause 5.1.1 applies generally to the testing of motors under IEEE 112, part "c" of that subclause does not apply to Test Method B. Part

[2] It should be noted that the Department is not purporting to alter IEEE 112–1996. Rather, the Department is proposing only to mandate certain modifications to IEEE 112–1996 Test Method B *when it is used for purposes of measuring efficiency under EPCA.*

"c" is a calculation procedure, for use when the rated load temperature has not been measured. The first test to be performed under Method B, however, per subclause 6.4.1.1, requires a measurement of rated load temperature. Hence, only options "a" or "b" in subclause 5.1.1 are applicable to Method B. Information provided to the Department indicates, however, that option "c" is being misapplied to Test Method B.

Such misapplication of option "c" can distort efficiency values. The Department understands that use of a prescribed temperature value from option "c" would result in a higher value of efficiency in circumstances where the measured full load (1.0 service factor) temperature is greater than such prescribed temperature, and a lower value of efficiency in circumstances where the measured full load (1.0 service factor) temperature for a motor is less than the prescribed temperature. The Department believes that to achieve consistency under EPCA, the best approach is to always use a measured winding temperature for the efficiency calculation, as is contemplated by Test Method B.

The Department's final rule could incorporate into subclause 5.1.1, "Specified temperature," the following language: "(Method B only allows the use of preference a) or b).)" The Department seeks comment on whether such a change is warranted in 5.1.1, although it currently believes that the proposed change is unnecessary, because it would be redundant with the provisions of Test Method B. It would be warranted only by reading the general information section of IEEE 112 in isolation from Test Method B. As stated above the Department understands that, under Test Method B, the first test to be performed is a rated load temperature test. This test determines the values for the rated load heat run stator winding resistance between terminals, items (3) and (4), on 10.2 Form B, per subclause 6.4.1.1, *Rated load temperature test*. The values are then used to calculate stator I^2R loss, item (27) in 10.2 Form B. Per this requirement, only options "a" or "b" in the referenced section 5.1.1 are applicable to Method B. Option "c" is not a "measurement procedure" and cannot be used with Method B; it is applicable only to other IEEE 112 test methods. Moreover, if a manufacturer or testing laboratory uses option "c", it is not following Test Method B and cannot say the motor has been tested according to Method B.

b. *Page 47, the procedure to measure temperature* in item (4) *Rated Load Heat Run Stator Winding Temperature* is not defined. Item (4) is used in item (27), *Stator I^2R Loss, in Watts, at (t_s) °C*, to correct the stator loss corresponding to item (16), *Stator I^2R Loss, in Watts, at (t_l) °C*, which is based on the temperature recorded for item (7). Information in the footnote at the bottom of page 47, 10.2 Form B, indicates that the temperature for item (7) can be either determined from a temperature detector or derived from measurement of the stator resistance during the test. Because items (4) and (7) are used to calculate stator loss at different temperatures, it is preferred that the method of measuring both items be consistent. In addition, per subclause 4.2.3 Note 2 and subclause 4.3.2.2 Note 2, the values for t_s and t_l, which are used for correction to a specified temperature, are to be based on the same method of measurement. Therefore, the Department proposes to add a second sentence to the footnote at the bottom of page 47, 10.2 Form B, to read: "The values for t_s and t_l shall be based on the same method of temperature measurement, selected from the four methods in subclause 8.3."

c. *Page 48, item (27) defines Stator I^2R Loss, in W, at (t_s) °C, and item (29) defines Corrected Slip, in r/min*, on IEEE 112–1996 10.2 Form B. Page 48, item (29) currently reads: "See 4.3.2.2, Eq 4." The Department believes that such reference, without explanation, to equation (4) in subclause 4.3.2.2, *Slip correction for temperature*, can cause confusion and errors, since the terms in equation (4) used to correct slip measurements to the specified stator temperature, are defined differently from similar terms used in 10.2 Form B.

Subclause 4.3.2.2 equation (4) defines "k" in terms of conductivity for copper or aluminum. The term "k" in 10.2 Form B, however, is defined in terms of torque. Item (29) should be defined in terms of conductivity using the term "k_1", to be consistent with the definition of "k_1" in 10.2 Form B item (16).

Also, calculating "S_t" and "t_t" for subclause 4.3.2.2 equation (4) would cause unnecessary recalculations and possible errors, because these values were already derived elsewhere on Form B. Equation (4) defines "S_t" as "the slip measured at stator winding temperature, t_t," whereas the actual value of slip speed would have already been measured and entered at item (10) on Form B. Similarly, in equation (4) "t_t" is defined as "the observed stator winding temperature during load test, in °C," whereas the actual value of stator winding temperature would have already been measured and entered at item (7) on Form B.

Subclause 4.3.2.2 equation (4) also defines "t_s" as the specified temperature for resistance correction, in °C. However, Form B, does not define "t_s". While "t_s" appears to be used in item (27), Form B, the use of "t_s" is incorporated by providing the equation for the adjustment of the resistance corresponding to "t_s", rather than by defining "t_s" itself. However, the relationship representing "t_s" in item (27) on page 48 appears to differ from the definition of "t_s" given in 4.2.3. The Department is concerned about the various definitions given for "t_s" in the body of IEEE 112 and in 10.2, Form B and the correction of the stator and rotor losses. Examination of 10.2 Form B and the supporting sections of IEEE–112 indicate the following:

1. The stator loss for item (16) is based on correcting the cold resistance in item (1) at the cold temperature in item (2) to a resistance as if the complete winding is at the test temperature in item (7) for each test point. Generally, this means that 6 different values of resistance are used in calculating the initial stator loss.

2. The rotor loss for item (18) is calculated using the measured slip item (10) which already directly includes the effect of temperature so no equation involving temperature is needed.

3. For item (27) it is indicated on the test form that the corrected stator loss is to be based on a temperature identified as "t_s". In IEEE 112–1991 no formula for this correction of the resistance to determine the loss was provided, so the counterpart of 5.1.1, IEEE 112–1996, was used in conjunction with the counterpart of equation [1] in 4.2.3, IEEE 112–1996. (The section references from IEEE 112–1996 are used instead of the actual section numbers in IEEE 112–1991 to minimize confusion with the rest of the discussion.) To do this the reference resistances and temperatures were again the cold readings as in paragraph 1 above and the hot temperature was the specified temperature from 5.1.1. In IEEE–1996 a formula was added to item (27) stating that the reference resistance to be used is to be the hot resistance measured after the heat run and the reference temperature to be used is the temperature measured at the conclusion of the heat run. Now the temperature to be used for correcting the stator loss is not the specified temperature given in 5.1.1 if the temperature in item (4) is measured directly by a temperature sensor, but instead is the reference temperature from the heat run adjusted for the difference between the heat run

ambient and an ambient of 25 °C [i.e., (4) − (5) + 25]. This change is described in 6.4.3.2. If the temperature in item (4) is instead derived from the hot resistance measured after the heat run as per 8.3.3 then the relationship of [(4) − (5) + 25] is equal to the specified temperature per 5.1.1. However, in 6.4.3.2 it is assumed that item (4) is from a direct temperature measurement and should not be a value derived from the resistance of the heat run. In this case the corrected resistance used in determining the corrected stator loss for each of the six test points is the same.

4. In item (31) on the test form it is also indicated that the rotor loss is corrected to the temperature t_s. This is accomplished by temperature correction of the slip in item (29). For item (29) one is referred to 4.3.2.2, Eq. 4. In 4.3.2.2 it is indicated that t_s is to be the specified temperature from 5.1.1. However, in 6.4.3.3 it is stated that t_s is to be equal to the "hottest winding temperature during the temperature test corrected to an ambient of 25 °C." This definition of t_s corresponds to the definition given in 6.4.3.2 for the correction of the stator loss, which leads one to the formula for item (27) and the relationship that the value to be used for t_s is to be that given by [(4) − (5) + 25] and not the specified temperature as given by 5.1.1. For the correction of the slip a different value of correction may be necessary for each of the six test points since the correction is based on the temperature at the time each test point is taken.

In conclusion, section 6.4.3.2 for the correction of the stator loss and 6.4.3.3 for the correction of the rotor loss define the correction to be to a temperature t_s which is not the specified temperature t_s given by 5.1.1. In fact, the specified temperature per 5.1.1 does not appear to be used in any of the calculations performed for Method B.

To clarify the temperatures to be used for correcting the stator and rotor loss the Department proposes the following modifications: (1) insert a new line at the top of 10.2 Form B and below the line that defines "rated load heat run stator winding resistance," which will define "t_s" as it is defined in 6.4.3.2 and 6.4.3.3: "Temperature for Resistance Correction (t_s) = ____ °C (See 6.4.3.2);" (2) add a note at the bottom of 10.2 Form B to read: "NOTE: The temperature for resistance correction (t_s) is equal to [(4) − (5) + 25 °C];" (3) add the reference "see 6.4.3.2" to the end of item (27) on page 48; and (4) change item (29) on page 48 which presently states "See 4.3.2.2, eq. 4" to state "Is equal to (10) • [k_1 + (4) − (5) + 25 °C] / [k_1 + (7)], see 6.4.3.3".

d. *Page 48, item (32), the equation to correct stray-load loss* currently reads: "Is equal to AT^2 where A = slope of the curve of (26) vs. $(23)^2$ using a linear regression analysis, see 6.4.2.7," and "T = corrected torque = (23)." The Department understands that the slope A is that of the aforementioned curve corresponding to a plot using item (26) as the dependent variable on the y axis, and the square of item (23) as the independent variable on the x axis. The Department also understands that reference to subclause 6.4.2.7, *Smoothing of the stray-load loss,* provides tutorial information with respect to the determination of the slope A using linear regression analysis. The Department understands that under ideal test conditions the linear regression line should intercept the y axis at zero stray load loss for zero torque squared, since the only losses which should remain will be stator I^2R, friction, and core losses previously accounted for by the no-load test.

The Department has been advised that typically ideal test conditions do not exist, and that either the y-intercept is above zero, indicating that some apparent measured loss should be subtracted; or the y-intercept is below zero, indicating that some undetected loss should be added. The Department has also been advised that it is possible, at the same time, to have a positive slope, a correlation equal to or greater than 0.9, and a sizable intercept with the stray load loss axis at zero load conditions. The Department is concerned that, when this is the case, a large portion of losses could be incorrectly subtracted off yielding an artificially high efficiency or incorrectly added on yielding an artificially low efficiency.

It also appears, however, that the purpose of the stray load loss correction in 10.2 Form B item (32), is to detect possible errors in measurement and correct for them, without repeating the test. Also, repeating a load test when the intercept is large in order to obtain a test for which the intercept is smaller, might not result in a significant change in the final determination of efficiency at 100 percent load. The Department understands that the value of the intercept must be viewed in the context of the remainder of the test workup. Thus, in 10.2 Form B, when the stray load loss is corrected in item (32), then the final torque, or shaft power in item (34), is also corrected after using item (23) in the formula AT^2 where "T = corrected torque = (23)." Instructions are provided, in IEEE 112, at the bottom of page 48 under *Motoring,* for interpolation of the test results to complete the *Summary of Characteristics* on page 47, at the bottom of 10.2 Form B, in order to determine the efficiency at the actual 100 percent rated load point.

Also, the nominal full load efficiency identified on the nameplate of an electric motor is selected from a prescribed nominal efficiency in NEMA Standards Publication MG1–1993, section 12.58.2, Table 12–8, which is not greater than the average efficiency of a large population of motors of the same design. Moreover, the nominal efficiency of a covered electric motor must equal or exceed the efficiency values in section 342(b)(1) of EPCA. Consequently, unless there are significant differences in the final determination of nominal efficiency for a particular electric motor, it appears that use of a prescribed nominal full load efficiency value would tend to "wash out" small variations in individual motor losses and errors in test equipment calibration.

Therefore, at this time, the Department intends to adopt IEEE 112–1996, subclause 6.4.2.7, *Smoothing of the stray-load loss,* without change. However, the Department is still considering the option of making the following changes to add a restriction on the allowable value of the intercept, and will do so if the Department determines, in the final rule, that the evidence warrants such a change. The restriction would replace the paragraph after the definition of variables for equation (21), in subclause 6.4.2.7, and would be worded as follows (emphasis added to indicate changes):

"If the slope is negative, or if the correlation factor, r, is less than 0.9, delete the worst point and repeat the regression. If this increases r to 0.9 or larger, use the second regression; *if this does not increase r to 0.9 or larger,* or if the slope is still negative, the test is unsatisfactory. Errors in the instrumentation or test readings, or both, are indicated. *In addition, the value of B must not exceed 10 percent of the uncorrected total loss at rated load; higher values indicate procedural or power supply problems. If a test fails to meet the above criteria,* the source of the error should be investigated and corrected, and the test should be repeated."

The Department requests comments on this issue, and is interested in receiving data that would show if any significant differences [3] do occur

[3] Oftentimes what appears as a large intercept is the result of improperly performing the dynamometer correction part of the test. By

Continued

between the final determined value of efficiency at 100 percent rated load for various values of the stray-load loss intercept for repeated tests of the same motor.

e. *Page 17, subclause 6.4.1.3,* "No-load test," second sentence currently reads: "Prior to making this test, the machine shall be operated at no-load until both the temperature and the input have stabilized." Information provided to the Department indicates that the requirements for temperature and input stabilization during the no-load test appear to be undefined and could cause confusion. To provide clarity for locating the pertinent subclause for temperature stabilization, the Department proposes to modify the second sentence in 6.4.1.3 to read: "Prior to making this test, the machine shall be operated at no-load until both the temperature has stabilized (see 8.6.3) and the input has stabilized." The Department finds that an additional modification for input stabilization is not necessary, since that is covered by previous reference to subclause 5.3 that, in turn, refers to subclause 4.3.1.1, *Bearing loss stabilization.*

3. Incorrect Information

Page 40, subclause 8.6.3, Termination of test, currently reads: "For continuously rated machines, readings shall be taken at intervals of ½ h[our] or less." One reason for taking these readings during the efficiency test of a motor is to show when the motor's temperature rise has ended, and so that the test can be terminated. As written, however, subclause 8.6.3 allows temperature readings to be taken at intervals of, for example, five seconds. If such short intervals were used, there could be little or no rise in temperature between any two consecutive readings, even if the motor temperature was actually still rising. Consequently, the motor's temperature could be misconstrued as being stable. As a result, the measured efficiency would appear to be two to three percentage points higher than it actually is, since efficiency goes down as temperature goes up. In view of the need to correctly determine the leveling of temperature rise for measuring efficiency, as the Department believes is intended in subclause 8.6.3, the Department proposes to change the third sentence in subclause 8.6.3. Subclause 8.6.3 currently reads: "For continuous rated machines, the temperature test shall continue until there is 1°C or less change in temperature rise between two successive readings." The Department proposes to change that subclause to read: "For continuous rated machines, the temperature test shall continue until there is 1°C or less change in temperature rise over a 30-minute time period."

In sum, the Department believes that use of IEEE 112–1996 Test Method B, without corrections, could produce results that provide an inaccurate measurement of the energy efficiency of the motor being tested, and that vary from one test to the next of the same motor or comparable motors. In addition, manufacturers would be burdened by having to resolve its typographical errors and unclear provisions, and deal with unnecessary references to other parts of IEEE 112. Therefore, the Department intends to adopt, in the final rule for electric motors, the test procedures in IEEE 112–1996 Test Method B, and the correction to the calculation at item (28) in section 10.2 Form B-Method B issued by IEEE on January 20, 1998, but with the aforementioned corrections and modifications. The Department seeks comments on the technical merits of, and the need for, the aforementioned corrections and modifications to the IEEE 112. If the record should indicate that any of these changes is unwarranted, the Department will decline to adopt such modification. Thus, the Department might still adopt IEEE 112–1996 Test Method B, and the correction to the calculation at item (28) in section 10.2 Form B-Method B, without modification, or with only a portion of the above modifications.

Finally, interested parties are also invited to identify other problems they believe exist in IEEE 112 Test Method B and section 10.2 Form B. The Department requests that such other problems, and changes to correct them, be clearly identified, and that evidence be provided that substantiates the need for these changes.

B. Sampling Plans for Compliance and Enforcement

1. Background

As per the proposed rule at 10 CFR 431.24, the efficiency of each basic model of electric motor would initially be established either by testing ("compliance testing") or by application of an Alternative Efficiency Determination Method (AEDM), for purposes of determining whether the motor complies with the applicable efficiency standard, and of labeling the motor. 61 FR 60466–67 (November 27, 1996). As per the proposed rule at 10 CFR 431.127, the Department would ascertain in any enforcement proceeding, which could include testing ("enforcement testing"), whether a motor complies with the applicable EPCA standard and with the labeled value for efficiency.[4] 61 FR 60472 and 60474–75 (November 27, 1996). Each of these sections incorporates a sampling plan for testing a motor. The sampling plans are intended to provide statistically meaningful sampling procedures for conducting tests, so as to reduce the testing burden while giving sufficient assurance (1) that the true mean energy efficiency of a basic model (i.e., the average efficiency of all units manufactured) meets or exceeds the applicable energy efficiency standard established in EPCA, and (2) that an electric motor found to be in noncompliance will actually be in noncompliance. The November 27, 1996 **Federal Register** notice, at section XIII.C.3. and 8., *Issues for Public Comment,* requested comments on the proposed sampling plans for compliance and enforcement testing.

During the January 15, 1997, public hearing on the proposed rule for electric motors, the National Electrical Manufacturers Association (NEMA) and motor manufacturers raised issues concerning the Department's proposed sampling plans for electric motors. They asserted that the sampling plan for compliance testing would, for example: (1) be inconsistent with current industry practice under NEMA Standards Publication MG1–1993, "Motors and Generators," (2) place a high burden on manufacturers because the risk of a false determination of noncompliance is not less than 50 percent for motors that are in compliance, and (3) require covered equipment to be engineered to *exceed* the nominal energy efficiency levels for electric motors established by EPCA; they also claimed the sampling plan for enforcement testing was not in harmony with the sampling plan for compliance testing. (Public Hearing, Tr. pgs. 64–111).[5] Thereafter, NEMA submitted to the Department a proposed sampling

definition the dynamometer correction adjusts all data points by the same amount of torque which is basically the same thing that occurs when the intercept of the stray load loss curve is adjusted to go through zero. Should there be a great discrepancy between the values for the intercept obtained for testing the same motor several times using the same equipment, then this would suggest a more fundamental problem of following the procedure correctly than just errors in the measurements.

[4] Part II–D below addresses the issue of whether the proposed enforcement procedures apply to alleged labeling violations.

[5] "Public Hearing, Tr. pgs. 64–111," refers to the page numbers of the transcript of the "Public Hearing on Energy Efficiency Standards, Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors," held in Washington, DC, January 15, 1997.

plan for compliance testing and a proposed plan for enforcement testing.[6] NISTIR 6092 "Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431; Title 10, Code of Federal Regulations," January 1998, (the NIST analysis) compares the DOE's proposed rule and NEMA proposals through model calculations of their operating characteristics, i.e., the estimated probability of demonstrating compliance for a given true average of efficiency.

Although the Department continues to consider adoption of the sampling plans in the NOPR, it is now also considering adoption of the NEMA proposals, or variants of these proposals, in place of the sampling proposals in the NOPR. It is also considering adoption of a modified version of the NOPR sampling plan for enforcement. The Department seeks comment on these alternatives to the NOPR's sampling plans.

2. The Proposals Under Consideration

In the NOPR, the Department proposes that when a manufacturer tests a basic model of an electric motor[7] to establish its efficiency, a sample of units of the motor, comprised of production units or representative of production units, shall be selected at random and tested. The proposed rule does not specify a particular sample size, but provides that the sample must be of sufficient size so that any represented value of energy efficiency is no greater than the lower of (A) the mean of the sample or (B) the lower 90 percent confidence limit of the mean of the entire population of that basic model, divided by a coefficient applicable to the represented value. The coefficient applicable to a given represented value is derived from NEMA MG1–1993, Table 12–8.

In the NOPR, the Department proposed to establish a sampling plan for enforcement testing based on NEMA MG1–12.58.2, Efficiency of Polyphase Squirrel-cage Medium Motors with Continuous Ratings, and NEMA MG1 Table 12–8, Efficiency Levels, which establish a logical series of nominal motor efficiencies and a minimum associated with each nominal. The minimum efficiency is based on 20 percent loss difference. Under this proposed sampling plan, the motor would be found in compliance provided (1) the mean of the sample is not less than a lower confidence limit and (2) the sample is of sufficient size to provide a statistical confidence that is not less than 90 percent. The lower confidence limit is found within the sampling plan by calculation and is based on the EPCA efficiency standard that is applicable to that basic model, the sample standard deviation for the initial sample, and the *t* value corresponding to the 10th percentile for the initial sample. In all cases, the lower confidence limit lies below the EPCA standard efficiency. DOE's proposed sampling plan for enforcement testing assumes that the true mean full load efficiency and standard deviation of the motor efficiencies are not known. The proposed sampling plan establishes benchmarks for the standard error in the mean, based on the existing NEMA guidelines for identifying motor efficiency levels at NEMA MG1–12.58, and NEMA Table 12–8. Under the NEMA guidelines, no single unit can have energy losses more than 20 percent greater than the average losses for that type of motor, i.e., a 20 percent loss tolerance is permitted for a given unit but the average must still be met. The NOPR states the Department's belief that the 20 percent loss tolerance is reasonable and meaningful. 61 FR 60459–60, 60474–75 (November 27, 1996).

The NEMA proposal, as stated above, contains a sampling plan for compliance testing as well as one for enforcement testing. The plan for compliance testing provides that two conditions must be met to establish that a motor meets a particular nominal efficiency level. First, according to DOE's understanding, the average full load efficiency of the sample of units tested must not be less than the value of efficiency that equals the applicable nominal efficiency reduced by an amount equivalent to a 5 percent increase in losses at full load, i.e., the value given by

$$\frac{100}{1+1.05\left(\frac{100}{NE}-1\right)}$$

Second, DOE understands, the full-load efficiency of each motor in the sample must be greater than the value of efficiency equal to the applicable nominal efficiency reduced by an amount reduced by an amount equivalent to a 15 percent increase in losses at full load, i.e., the value given by

$$\frac{100}{1+1.15\left(\frac{100}{NE}-1\right)}$$

NEMA's plan for enforcement testing is very similar, and provides that the same conditions must be met to establish that a motor complies with the applicable EPCA standard, except that the percentages are based on the total variation in energy efficiency permitted by NEMA MG–1.[8] The NEMA plans neither specify nor suggest sample sizes.

In support of these plans, the NEMA proposal discusses a number of issues, including: the analyses of testing samples from a total and from a limited population of motors, the implications of overlapping nominal efficiency distributions, and NEMA's proposed sampling schemes for compliance and enforcement. The NEMA proposal claims to balance the manufacturer's and consumer's risks and to streamline sampling schemes for compliance testing and enforcement testing.

The NIST analysis examines each of the sampling plans contained in the NOPR and the NEMA proposal, and certain variations of those sampling plans. NISTIR 6092 assumes that a basic model of an electric motor satisfies the applicable energy efficiency requirement in EPCA if the mean full load efficiency of the entire population of motors of that basic model equals or exceeds the applicable nominal efficiency. It compares the NOPR and NEMA proposals through model calculations of their operating characteristics, i.e., by estimating the probability of demonstrating compliance for a model of electric motor where the true average efficiency of that model is known. NISTIR 6092 seeks to clarify the issues raised from testimony and comments given during the public hearing, January 15, 1997. It provides both a qualitative comparison of the operating characteristics of the NOPR

[6] "Proposal for the Method of Determining Compliance and Enforcement for Electric Motors Under the Efficiency Labeling Program of DOE 10 CFR Part 431," NEMA Motor and Generator Section, Friday, April 18, 1997 (Docket No. EE–RM–96–400, No. 23) (the "NEMA proposal").

[7] For electric motors, *basic model* would mean all units of an electric motor that are manufactured by a single manufacturer, and which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For purposes of this definition, "rating" means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 prescribes nominal full load efficiency standards. 61 FR 60465 (November 27, 1996).

[8] Thus, for enforcement testing DOE understands the conditions for establishing compliance to be as follows: (1) the average full load efficiency of the sample of units tested must not be less than the value of efficiency that equals the applicable nominal efficiency prescribed by EPCA, reduced by an amount equivalent to a 15 percent increase in losses at full load, i.e., the value given by 100/[1+1.15(100/NE − 1)], and (2) the full-load efficiency of each motor in the sample must be greater than the value of efficiency equal to the applicable nominal efficiency prescribed by EPCA, reduced by an amount equivalent to a 20 percent increase in losses at full load, i.e., the value given by 100/[1+1.20(100/NE − 1)].

and NEMA proposals and a quantitative estimate of the risk, or statistical confidence, associated with testing under such proposals.

Based on the NIST analysis the Department is considering the following with respect to the final rule for electric motors:

(1) DOE could adopt the NEMA proposal for compliance testing rather than the method given in DOE's proposed rule. Alternatively, DOE could adopt the NEMA proposal, but could substitute a coefficient of 1.03 or 1.01 for the 1.05 coefficient in the formula above. DOE could also adopt the NEMA proposal, with or without a change in the 1.05 coefficient, but with a requirement that the number of sample units to be tested be fixed, at five motors for example.

The Department understands the advantages in simplicity and reduced burden on manufacturers presented by the NEMA sampling proposal for compliance testing, but believes there is a higher risk, relative to the NOPR criteria, of overly optimistic estimates of efficiency. The Department believes that the 1.05 coefficient proposed by NEMA could be changed to 1.01, for example, and this would substantially reduce the risk under the NEMA proposal that a motor failing to meet the energy efficiency standard prescribed in EPCA would nevertheless be found in compliance. Also, the Department understands that the performance of the NEMA proposal for compliance testing depends on the sample size. It appears to DOE that a fixed sample size of 5 motors would not be unduly burdensome and would provide the statistical confidence needed for determining whether an electric motor complies with the applicable EPCA standard, for labeling that motor, and for using test results as a basis for substantiating alternative methods used to determine the efficiencies of other motors.

(2) With regard to enforcement testing, DOE could adopt NEMA's proposal, with or without modification of the coefficient, or could retain the NOPR Sampling Plan for Enforcement Testing with the statistical confidence level increased from 90 percent to 99 percent, or to some other value higher than 90 percent.

NEMA asserts that the NOPR sampling plan for enforcement is not consistent with the NOPR sampling plan for compliance, claiming the possibility is too great that a motor found in compliance under the enforcement plan would have been found in non-compliance under the compliance plan. The NIST analysis indicates, however, that the sampling criteria proposed by NEMA for enforcement testing make little distinction between efficiencies that are at and significantly below the EPCA nominal values. Also, the NEMA sampling plan for enforcement could produce draconian results. Under the NEMA criteria, the efficiency performance of a *single unit* could cause a basic model to fail the entire test, without recourse.

As proposed, the NOPR Sampling Plan for Enforcement Testing establishes that testing be consistent with a statistical confidence of not less than 90 percent. This statistical confidence implies that the likelihood of falsely concluding that a product is not in compliance may be as high as 10 percent. According to the NIST analysis, the NOPR Sampling Plan for Enforcement Testing could be modified to increase the confidence level from 90 to 99 percent. Although this modification could require testing a larger sample of motors, it would reduce the risk that a manufacturer would be falsely found in non-compliance. NIST believes it is highly unlikely that a product that is labeled in accordance with the NEMA MG1 guidelines would require testing beyond the initial sample of five, and that any risk of additional testing is more than offset by the increased value of the test in assuring that a manufacturer's interest is protected. Moreover, the Department understands that, in contrast to the NEMA sampling plan for enforcement testing, the *t*-test used in the NOPR is a widely accepted basis for a testing protocol and is not strongly influenced by the exact form of the underlying distribution of energy efficiency measurement data.

The Department of Energy is interested in receiving comments and data concerning the accuracy and workability of the NEMA Motor and Generator Section proposals for sampling electric motors for compliance and enforcement, and would welcome recommendations regarding improvements to NEMA's suggested approaches, particularly in the following respects:

(1) *Compliance.* The Department seeks comments on variations to NEMA's proposed sampling plan for compliance, such as requiring the sample size to be fixed at five units and setting the coefficient at 1.01 or 1.03. Are further clarifications needed in the plan? For example, if a sample of five units of a basic model of electric motor is selected and fails compliance after being tested, under what circumstances, if any, would additional samples of the same basic model be selected and retested?

(2) *Enforcement.* Would the absolute pass/fail nature of the NEMA Motor and Generator Section proposal create an undue burden on motor manufacturers? What is an appropriate level of confidence for enforcement testing? If the NEMA Motor and Generator Section proposal for enforcement testing was to be adopted, should the 1.15 and 1.2 coefficients for the mean and the extreme criteria, respectively, be modified? If so, what other values are recommended?

C. Sampling Requirements Where a Motor's Efficiency Is Established Through a Certification Organization

Section 345(c) of EPCA, 42 U.S.C. 6316(c), directs the Department to require motor manufacturers to certify compliance with the applicable energy efficiency standards through an independent testing or certification program nationally recognized in the United States and, as is further discussed below, EPCA requires that, subject to certain conditions, a motor's nameplate and marketing materials include its efficiency. Accordingly, the proposed rule, at sections 431.24, 431.25(a), 431.82, and 431.123(b), 61 FR 60466–67, 60470–71, requires manufacturers to certify and label the efficiency level of each basic model of electric motor based on use of either (i) a third party independent testing laboratory accredited by a nationally recognized accrediting body, such as the National Voluntary Laboratory Accreditation Program (NVLAP), (ii) the manufacturer's own testing laboratory, if it is accredited by a nationally recognized accrediting body, such as NVLAP, or (iii) a nationally recognized third party certification program.

Under section 431.24(a) of the proposed rule, the energy efficiency of each basic model of electric motor must be determined by compliance testing or by application of an alternative efficiency determination method (AEDM) which calculates the energy efficiency of an electric motor. Use of an AEDM is permitted, however, only if the efficiency of at least five basic models, selected in accordance with criteria specified in section 431.24(b)(1)(i)–(ii), is determined through compliance testing. For each basic model selected for testing, section 431.24(b)(1)(iii) in the proposed rule provides, as discussed above, a sampling procedure for selecting units to be tested. Moreover, to use a particular AEDM, it must (1) meet certain general criteria specified in section 431.24(b)(2), and (2) be applied to at least five basic models that have

been selected and tested in accordance with the criteria in proposed section 431.24(b)(1), with the total power loss predicted for each of these models by the AEDM being within plus or minus ten percent of the mean total power loss determined from the testing (section 431.24(b)(3)). Finally, section 431.24(b)(4) requires subsequent periodic verification of an AEDM by (1) testing by an accredited laboratory, (2) a nationally recognized certification organization or (3) an independently state-registered professional engineer.

As currently written, the proposed regulations impose these requirements both when a manufacturer seeks to establish a motor's efficiency without using a certification program (i.e., solely through testing and AEDMs) and also when efficiency is established through a certification program.

In its comments following the NOPR, Reliance Electric recommends that the Department not impose DOE's sampling plan for compliance testing when a manufacturer establishes compliance through a third party certification program. Reliance asserts that the testing and sampling procedures of a certification program, such as the Canadian Standards Association (CSA) in Canada, are reliable and fulfill the Department's intent that a sampling plan give assurance that the nominal full load efficiency reported is correct. (Reliance, No. 11 at pg. 7.) NEMA also recommends that the Department's sampling plan requirements not apply when compliance is certified through a recognized certification program. NEMA asserts, however, that the certification program's specific criteria and plan for testing should be reviewed and approved by the Department as part of the process of reviewing its petition to become a "nationally recognized" certification program, as described in section 431.27(b)(4) of the proposed rule. (NEMA, No. 18 at pgs. 8 & 9.)

It appears to the Department that these comments from Reliance Electric and NEMA have substantial merit. Therefore, although it continues to consider the approach in the proposed rule, the Department also proposes for consideration that the final rule provide as follows: when a manufacturer establishes a motor's efficiency under EPCA through a certification organization, the certification organization would not be required to (1) select basic models for testing in accordance with the final rule's criteria for making such selections,[9] or (2) follow the sampling provisions that the final rule requires for compliance testing.[10] The other requirements in proposed section 431.24(b) for testing and for use of an AEDM would still have to be met. For example, the certification organization would be required to establish the efficiency of at least five basic models through compliance testing. By way of further example, an AEDM could not be used unless it had been applied to at least five basic models that had been tested, and the results of such application were within the bounds prescribed in the proposed rule. Furthermore, the Department proposes that the final rule provide that the criteria used by a certification program to select basic models for testing, as well as its sampling plan for choosing the units to be tested, will be reviewed and approved by the Department as part of the evaluation for national recognition under section 431.27(b) of the proposed rule. Finally, proposed section 431.24(b)(4)(i)(B) requires verification of an AEDM subsequent to its use, stating that one way to achieve such verification is for a certification organization to certify the efficiency of a basic model to which the AEDM was applied. To provide the independent AEDM verification that this provision contemplates, the Department proposes that, when a manufacturer has used a certification organization to establish a motor's efficiency rating, and the rating is based on an AEDM, the AEDM cannot be subsequently verified by having that same certification organization certify the efficiency of the motor.

The Department seeks comments on whether it should adopt the foregoing proposals, or whether it should adopt the approach in the proposed rule, i.e., that certification organizations be required to adhere to the provisions specified in the rule for the selection and sampling of basic models. In particular, the Department seeks comment on the following:

1. *Sampling for compliance testing.* The Department seeks comments on whether a certification organization should be required to select basic models for compliance testing in accordance with criteria such as those in proposed section 431.24(b)(1)(i)–(ii). Once a basic model is selected, should a certification organization select specimens to be tested in accordance with a prescribed sampling plan? The Department of Energy is also interested in receiving comments and data concerning the workability of sampling plans used by certification organizations, and how such sampling plans could be evaluated.

2. *Substantiation and Verification of an AEDM.* To substantiate the accuracy and reliability of an AEDM, five basic models must be tested. When this is done through a certification program, should the certification program be required to select and test the basic models in accordance with criteria such as those proposed in section 431.24(b)(1)? Should the same certification organization, used to initially substantiate an AEDM under section 431.24(b)(3), be prohibited from subsequently verifying an AEDM under section 431.24(b)(4)(i)(B)?

D. Enforcement Testing Where Violation of a Labeling Representation Is Alleged

Section 344(f) of EPCA provides for the Secretary to prescribe rules for electric motor labeling, including requirements that the energy efficiency be on the permanent nameplate and be displayed prominently in catalogs and other marketing materials. Section 431.82 of the proposed rule incorporates and implements these provisions, by requiring each electric motor's nominal full load efficiency to be marked clearly on its permanent nameplate and to be prominently displayed in marketing materials for the motor. Section 431.127(a) in the proposed rule, which sets forth enforcement procedures, provides that the Department may conduct enforcement testing, subject to certain conditions, to ascertain the accuracy of the efficiency rating disclosed on the nameplate or in marketing materials for an electric motor, as well as to determine whether the motor is in compliance with the applicable energy efficiency standard.

Other provisions of the proposed rule, however, as well as language in the preamble, can be read as suggesting that the enforcement provisions apply only in determining compliance with the applicable standard, and not to whether a labeling representation is accurate. Under proposed section 431.127(a)(1), for example, enforcement testing is pursued after a manufacturer has had an opportunity to "verify compliance with the applicable efficiency standard." 61 FR 60472. Verification of a label's accuracy is not mentioned. Moreover, the sampling procedures for enforcement testing set forth steps to assess compliance with the "applicable statutory full load efficiency," and refer to whether a basic model being tested is in "compliance" or "noncompliance." 61 FR 60474–75. But no language in these sampling procedures indicates that they are to be used to assess the accuracy of a labeling representation as

[9] In the proposed rule, such criteria are in section 431.24(b)(1)(i)–(ii).

[10] In the proposed rule, such sampling provisions are in section 431.24(b)(1)(iii).

to efficiency. The preamble indicates that the purpose of the enforcement sampling plan is to ascertain whether the mean efficiency of a basic model is equal to or exceeds the statutory full load efficiency. 61 FR 60459.

In response to the proposed rule, Mr. W. Treffinger asserts that testing and sampling should ensure that the published and nameplate data represent the actual efficiency of a motor in use. (Treffinger, No. 4 at 5.) NEMA asserts that certification programs for motors currently verify the nameplate efficiency. (NEMA, No. 18 at pg. 8.)

In proposing the enforcement procedures in section 431.127, the Department intended that they would apply to allegations that the labeled efficiency rating for a motor is erroneous. Moreover, the Department continues to believe that these procedures, including the proposed sampling plan at section 431.127(c), should be used to determine the validity of labeling representations for an electric motor, and not just whether the motor meets or exceeds the regulatory standard for efficiency. The Department intends to make clear in the final rule that the provisions of section 431.127 apply to labeling representations. However, because the NOPR was not clear on this point, the Department seeks comments whether the proposed enforcement procedures should be used to determine the validity of labeling representations, or should only be used only to determine if the motor meets the applicable efficiency level prescribed by EPCA. If the latter, on what basis would a determination be made, during an enforcement investigation, as to the validity of labeling representations?

E. National Recognition

Section 345(c) of EPCA requires that compliance be certified through a testing or certification program that is "nationally recognized." The proposed rule provides that this requirement would be met (1) by a testing facility that has been accredited either by NVLAP or by an accrediting body that DOE classifies as nationally recognized to accredit facilities to test motors for efficiency, or (2) by a certification program that DOE has classified as nationally recognized. In the proposed rule at section 431.26, *Department of Energy recognition of accreditation bodies*, and section 431.27, *Department of Energy recognition of nationally recognized certification programs*, the Department proposes criteria and procedures under which it would make such classifications.

Neither section 431.26 nor 431.27 addresses a situation where DOE has classified an organization as an accreditation body, or as a nationally recognized certification program, and the organization subsequently ceases to comply with the conditions for such classification. Therefore, the Department proposes that the final rule would provide that the Department will notify such an accreditation body or a certification organization if the Department believes the entity is failing to comply with the conditions of section 431.26 or 431.27, respectively, and at the same time the Department will request that appropriate corrective action be taken. The rule would also provide that the accreditation body or certification organization would be given an opportunity to respond, and if, after receiving such response, the Department believes satisfactory correction has not been made, the Department would withdraw its recognition from that organization. If an accreditation body or certification organization wishes to withdraw itself from recognition by the Department, it could do so by advising the DOE in writing. The Department seeks comments on whether the Department should adopt the foregoing approach for corrective action, and for revocation of an organization's classification as an accreditation body or nationally recognized certification program under sections 431.26 and 431.27.

III. Conclusion

The Department seeks comments only on the aforementioned issues arising from possible changes in the NOPR concerning test procedures, sampling for compliance and enforcement, verification of labeled efficiency, and recognition of accreditation bodies and certification organizations.

Issued in Washington, DC, on June 9, 1998.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 98–15831 Filed 6–24–98; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday
June 25, 1998

Part V

Department of the Interior

Office of Surface Mining and Reclamation and Enforcement

30 CFR Parts 707 and 874

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation; Proposed Rule

VOL 63 ISS 122 JE 25 1998 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

RIN 1029–AB89

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing revisions to its rules regarding the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal. Projections of receipts to the AML fund through the year 2004, when the authority to collect fees will expire, strongly indicate that there will be insufficient money to address all problems currently listed in the Abandoned Mine Land Inventory System. Given these limited AML reclamation resources, OSM is seeking an innovative way for AML agencies, working with contractors, to maximize available funds to increase AML reclamation.

The first revision would amend the definition of *government-financed construction* to allow less than 50 percent government funding when the construction is an approved AML project under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The existing definition requires a minimum government contribution of 50 percent to exempt government-financed construction from regulation under SMCRA.

The second revision would add a new section which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. These consultations and concurrences are intended to ensure the appropriateness of the project being undertaken as a Title IV AML project and not under the Title V regulatory program.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on July 27, 1998.

Public hearings: Upon request, we will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** before the hearings. We will accept requests for public hearings until 5 p.m., Eastern time, on July 6, 1998. Individuals wishing to attend, but not testify at, any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of several methods. You may mail or hand deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also comment via the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. The address, date and time for any public hearing held will be announced prior to the hearings. Any disabled individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: D.J. Growitz, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; *Telephone:* 202–208–2634. E-Mail: dgrowitz@osmre.gov.

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I. Public Comment Procedures

Thirty (30) Day Comment Period

In view of the extensive outreach activity for this rulemaking and in order to expedite the rulemaking, OSM will allow a 30-day comment period in lieu of the usual 60 days. In October 1997, OSM prepared a preproposal draft of the AML Enhancement Rule. The draft proposal, similar to this proposed rule, was distributed extensively. We mailed the draft to over 200 parties, including industry, State agencies, environmental groups, and individuals. We also announced the availability of the document through a press release, notice in the **Federal Register**, OSM web site and fax-on-demand, and we provided for a 30-day comment period. Twenty-four people submitted written comments. In addition to seeking comments through our normal process, we will mail a copy of this proposed rule to each of the earlier commenters.

Written Comments

Written or electronic comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than listed above (see **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

Public Hearings

We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Mr. Growitz (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on July 6, 1998. If no one has contacted Mr. Growitz to express an

interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, we request that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1029–AB89" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–2847.

We will make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations of businesses, available for public inspection in their entirety.

II. Background

A. What is the AML Reclamation Program?

Title IV of SMCRA established the AML Reclamation Program in response to concern about extensive environmental damage caused by past coal mining activities. The program is funded primarily from a fee collected on each ton of coal mined in the country. This fee is deposited into a special fund, the Abandoned Mine Land Fund (Fund), and is appropriated annually to address abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under State or Federal law. Under Title IV, the funding of reclamation projects is subject to a priority schedule with emphasis first focused on sites affecting public health, safety, general welfare and property. In contrast, Title V establishes a program for regulating active mining and reclamation.

In most cases, the implementation of both Title IV and Title V authority has been delegated to States. Depending upon each State's internal organizational structure, the Title IV and Title V programs in many cases are carried out by separate State authorities.

Currently, 23 States and 3 Indian Tribes (the Hopi, the Navajo and the Crow) have authority to receive grants from the Fund and are implementing Title IV reclamation programs in accordance with 30 CFR Subchapter R and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). In States and on Indian lands that do not have a Title IV program, reclamation is carried out by OSM.

B. How Do States and Indian Tribes Implement Their Programs?

State and Indian Tribe AML programs are funded at 100 per cent by OSM from money appropriated annually from the AML Fund. The States and Indian Tribes must submit grant applications in accordance with procedures established by OSM and existing grant regulations found at 30 CFR 886. They must certify with each grant that the requirements of all applicable laws and regulations are met, including the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, and the Endangered Species Act. They may only undertake projects that are eligible for funding as described in either section 404 or section 411 of SMCRA and which meet the priorities established in section 403 of SMCRA. OSM requires that the State Attorney General or other chief legal officer certify that each reclamation project to be undertaken is an eligible site.

Certain environmental, fiscal, administrative and legal requirements must be in place in order for a program to receive grants for reclamation. An extensive description of these requirements can be found at 30 CFR 884, but certain of those are mentioned here to highlight the safeguards the AML program has in place. For example, the agency must have written policies and procedures which outline how they will comply with the requirements of SMCRA and implementing regulations in conducting a reclamation program, how projects will be ranked for reclamation priority, how the public will be given an opportunity to comment on proposed reclamation projects and how it will comply with all applicable Federal and State laws and regulations.

The State or Indian Tribe chooses individual projects based upon the selection criteria in its reclamation program. While these criteria differ among programs, they all consider the priority of the problem, public opinion regarding the project, cost effectiveness, technical feasibility and how the area will be used once reclaimed.

State and Tribal programs seek public input in several ways. For example, some AML programs require that a notice requesting comments on proposed reclamation be published in newspapers of general circulation in the area to be reclaimed. Some publish newspaper notices asking the public to identify potential reclamation sites. Others have public meetings to discuss upcoming reclamation or to identify potential sites. Still other programs seek public input about reclamation activities or potential sites through **Federal Register** notices.

OSM does not approve individual projects, but before construction begins on any project, OSM must ensure that all requirements of the National Environmental Policy Act of 1969 (NEPA) are met. Once OSM assures that the project complies with NEPA, it provides an authorization to proceed on the project.

OSM annually reviews the State and Tribal AML programs to ensure that all program requirements are properly met, including site eligibility, proper financial policies and procedures, and reclamation accomplishments. State and Tribal agencies and OSM also review completed projects to determine the success of AML reclamation. Completed projects may be revisited as part of a site-specific contract, as part of an annual post-construction evaluation, or as otherwise specified under the State or tribal AML reclamation program's maintenance plan.

Further, AML reclamation programs evaluate selected completed AML reclamation projects to determine how effective the overall reclamation program has been. Normally, these evaluations are annual, random samples of many types of reclamation, such as reclaimed subsidence areas, eliminated landslides, sealed openings and removed refuse piles. State and tribal programs would be responsible to prevent abuse of this proposal and could use a monitoring program such as this on all projects completed with less than 50 percent government-financing

to ensure that no problems arise after construction. As warranted in the judgment of the State or tribal AML authority, the frequency of these post-construction evaluations could be reduced.

C. Why Is the Rule Being Proposed?

In some States, there will never be enough public money to abate all of the most serious AML sites—those which present an extreme danger to human health, safety and welfare. The Abandoned Mine Land Inventory estimates the cost to reclaim these most serious sites to be over 2.6 billion dollars. Beyond these highest priority sites, there are thousands of other AML sites which meet the AML eligibility requirements and pose a serious environmental threat. This proposal would facilitate the reclamation of some of these sites at less cost to the government by allowing the sale of coal extracted as an incidental part of the reclamation project to offset the overall cost of reclamation.

D. What is the Statutory Authority for This Rulemaking?

Three sections in SMCRA outline the eligibility requirements for sites being considered for funding under the AML program. They are sections 404, 402(g)(4)(B)(i), and 402(g)(4)(B)(ii). Section 403 of SMCRA establishes priorities for the expenditures from the AML Fund on eligible sites. An otherwise eligible site must meet one of the five priorities of Section 403(a)(1)–(5) in order to be funded.

Section 413(a) of SMCRA provides the Secretary with the "power and the authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this [Title IV]."

This proposed rule change is limited in its application to the AML program and is necessary and expedient for OSM and the States and Tribes to more efficiently and effectively carry out the reclamation mandate established by Congress. This statutory authority allows OSM to propose revisions to the AML program that will provide States and Tribes the authority to reduce project costs to the maximum extent practical on abandoned mine sites which have deposits of coal or coal refuse remaining. Thus, the proposed rule change would allow for more program-wide reclamation for the same level of program funding.

In addition, Congress specifically provided under section 528(2) of SMCRA that SMCRA would not apply to activities involving the "extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority." Thus, Title V permitting requirements do not apply to areas from which coal is extracted as an incidental part of a government-financed operation. Because AML reclamation projects are government financed, they qualify as government-financed construction under section 528(2).

E. How Would This Proposal Work?

In many cases eligible AML sites contain recoverable coal that was either left in the ground when the site was abandoned or that remains at the site in the form of coal refuse or other waste. While this coal may have some market value, it is often sufficiently marginal that coal mine operators are not willing to assume the financial burden of mining and reclaiming the site as a permitted Title V operation.

To the extent that the extraction of coal would be necessary to accomplish the reclamation of an approved AML project, the extraction would be incidental to that project. This concept conforms to existing regulation at 30 CFR 707.5. Coal extracted outside the predetermined boundaries or whose extraction is not necessary for reclamation will be subject to Title V permitting provisions. Both the boundaries for reclamation projects, and the amount of coal which must be removed for the prescribed reclamation will be decided by the AML agency and will be clearly identified in the reclamation contract.

Under current regulations and guidelines, proceeds from the sale of incidental coal must be applied to offset the contract price. Coal extraction must be monitored carefully because proceeds must be kept below half the original total price since no more than 50 percent of the total contract can come from non-government sources. In many cases, when the amount gained from the sale of incidental coal exceeds more than 50 percent of the contract, the contract can not be executed and the reclamation is not done. Under the proposal, contractors would be allowed to sell incidental coal and keep the proceeds from the sale of incidental coal. Contractors would reflect this anticipated sale of coal in the bid price for the contract.

Under the proposed rule, less public funds would be required to accomplish the same level of AML reclamation. This would result in the availability of more AML Fund monies for a greater number of AML reclamation projects. Further discussion as to how the proposed rule would facilitate increased reclamation under Title IV can be found in Part II. G. in this preamble.

This proposal would not have any effect on existing AML program requirements. The eligibility for AML projects, the procurement systems which States and Indian Tribes use to contract for AML reclamation, and all Federal or State requirements that otherwise pertain to AML projects would all remain the same. The proposal would not be mandatory for the States or Indian Tribes if they choose not to approve AML projects with less than 50% government-financing.

F. What is the Relationship Between the AML Agency and the AML Contractor?

The relationship between the AML agency and the AML contractor under the proposed rule would remain the same as for any approved reclamation project. Actual construction is usually done under a site-specific contract between the reclamation agency and third-party contractors. These contracts clearly outline the scope of work for each project, the cost, the time frames involved, how the contractor will be paid and penalties for failure to meet the contractual obligations by either party. The content of the contracts, along with bidding and selection procedures, performance bonding requirements and other contractual matters are established within each program in accordance with State or Tribal laws.

The AML agency ensures the contractor's conformance with applicable procedures through site visits and other monitoring techniques. If the contractor does not meet the terms of the contract, the AML agency invokes the penalties contained in the contract and allowed by law.

Each contract sets forth any unique features for the project to be reclaimed and any site-specific criteria for that project. For example, a project to address water quality problems will outline the acceptable pH or sediment levels for the water or sediment, the monitoring period associated with the treatment, whether wetlands will be created, any projected effects on wildlife and any particular environmental impacts at the site or on adjacent properties. Sediment and water quality control plans are to provide for adequate environmental protection during the construction phase of the reclamation project as well as after its completion.

When contracts are written, the AML reclamation agency can require that a project pass specific requirements after

reclamation. For example, a contract could specify that a retaining wall provide protection for a highway for a three-year period. The contract could also specify that, should the highway fail, the contractor must return to repair the damage. The frequency and extent of follow-up by the AML reclamation agency is written into the contract.

The reclamation contract would set forth the amount and extent of incidental coal which could be extracted. AML contractors removing coal outside those contract parameters could be subject to immediate termination of their AML contracts, forfeiture of any performance and reclamation bonds, and all other remedies provided by law for breach of contract.

G. How Would This Proposed Rule Facilitate More Reclamation Under Title IV?

The rule would decrease the cost to the public for reclaiming many abandoned problem sites where reclamation requires the incidental extraction of coal. This coal may be in the form of previously undisturbed coal formations or coal refuse. While the overall cost for the reclamation of these sites would remain the same, in each case the public cost would be reduced under this proposal because a larger percentage of the total project cost, *i.e.*, over 50 percent, would be financed by the AML contractor through sale of the coal recovered from the site.

Also, because certain government-financed AML construction projects would cost the AML agencies less under this proposal than under the current definition of government-financed construction, which requires at least 50 percent government funding, the savings could be allocated to funding additional AML projects. Thus, the AML agency could accomplish more reclamation with the same amount of program funding.

The following example, for illustrative purposes only, outlines the process by which extraction of incidental coal under our proposal could reduce the cost for Title IV reclamation at an AML eligible site.

Example: After the requisite consultation and concurrences with the Title V regulatory authority, the AML agency announces a contract solicitation to receive bids for the reclamation of a refuse pile contributing sediment and acid mine drainage to local streams. Prior to the solicitation, the AML agency estimates the total cost of reclaiming the refuse pile (removing it to another site and revegetating both sites) at $500,000. This figure would include a $50,000 allowance for administrative expenses such as project design and project monitoring. Based on existing chemical analysis of the refuse pile, including BTU information, estimates place the net market value of the incidental coal in the refuse pile (after transportation, cleaning, royalty costs, etc.) at $400,000. The estimated net cost for the project would then be $100,000 ($500,000–$400,000). Based on these estimates, project bids from contractors would be in the $100,000 range subject to the condition that the extracted incidental coal would become the property of the contractor. Thus reclamation of a project that would ordinarily cost the AML agency $500,000 without contractor sale of incidental coal, or that would cost the agency at least $250,000 under the existing rule requiring at least 50 percent government funding, would cost only about $100,000 under our proposal.

If the contract is awarded, the contractor would be fully responsible for the completion of the work regardless of his return on the sale of incidental coal.

This proposal should result in the reclamation of certain AML sites which commonly contribute acid mine drainage (AMD) or other environmental problems far beyond their realty boundaries and which have little likelihood of otherwise being reclaimed under current Title IV regulations or being mined under Title V of SMCRA. These sites would not likely be reclaimed under the Title IV program because limited AML funds would ordinarily be directed to higher priority reclamation. Nor would these sites likely be mined under the Title V regulatory program due to their marginal coal reserves and/or potential for significant long-term liability for the ever-present AMD or other problems which may exist at the site. Beyond the refuse piles discussed above, other examples of AML sites where reclamation could involve the extraction of incidental coal include previously deep-mined areas needing to be daylighted to remove remaining pillars and highwalls needing a second cut to remove acid-producing coal deposits.

H. Could Private Organizations (e.g., Watershed Groups) Assist in AML Reclamation Efforts?

Yes. AML agencies can form partnerships with industry, private citizens and other government agencies to help address AML problems. Partnerships such as those developed under the Clean Stream's Initiative are an example of how these outside groups can assist in reclaiming lands. Outside funds can also be contributed for specific AML projects as allowed by law.

I. Will This Proposal Result in Environmental Abuses?

We do not believe that this proposal will result in environmental abuses. Under the AML program the percentage of government funding for reclamation of an eligible site does not adversely impact the quality of the reclamation of that site. The AML agency selects individual sites from the Abandoned Mine Land Inventory using its priority system. The AML agency then develops the reclamation parameters for that site and includes them in its reclamation contract. The AML agency, not the AML contractor or the owner of the coal, establishes these parameters. The AML agency oversees the reclamation and ensures adherence to the contract requirements. These requirements would dictate or stipulate that any coal extraction that occurs be incidental to the construction work, *i.e.*, is limited to only that which is necessary to carry out the prescribed reclamation in order to address the identified health, safety or environmental problem.

J. How Would an AML Agency Approve Reclamation Projects Under the Proposed Rule?

Like any other AML project, reclamation projects involving the incidental extraction of coal and reduced government funding levels would have to meet the requirements specified in 30 CFR Subchapter R. AML projects are not selected by the contractor. The AML agency has total control over every project specification from design, to bidding, to final reclamation completion. The selection of reclamation sites by the AML agency is based on the need to protect the public health and safety or environment from the adverse effects of past mining activities. A particular site could be selected only after the AML agency has determined that private industry was unable or unwilling to remine and reclaim the site as a Title V operation, and the State Attorney General or other legal officer has certified that the project meets the eligibility requirements specified in State or Indian Tribe counterparts to Title IV.

OSM is expressly prescribing certain procedures to be followed to prevent potential abuses of the reduced funding level provisions. First, the AML agency, in consultation with the Title V regulatory authority, would determine whether the site would be appropriate for AML reclamation activities based on the likelihood of extracting the coal under a Title V permit. In addition, the Title V regulatory authority and the Title IV AML agency would concur on the boundaries of the AML project and on the extent and amount of the coal to be incidentally extracted during the reclamation project. This delineation of coal would include only that portion of the total coal at the site that must be extracted in order to remediate the particular hazard or environmental problem caused by past mining.

Through this proposal we hope to target long-standing AML problem sites. The proposal is not designed to address

sites involving redisturbance and subsequent reclamation of abandoned mine lands, such as highwalls and outslopes that have become environmentally stable over the years and pose no other problems.

K. What Would be the Consequence of AML Contractors Removing Coal Outside the Limits Authorized by the AML Project?

AML contractors removing coal outside those contract parameters could be subject to immediate termination of their AML contracts, forfeiture of any performance and reclamation bonds, and all other remedies provided by law for breach of contract.

III. Discussion of Proposed Rule

A. What Would Be the Change in definition of Government-Financed Construction at Section 707.5?

OSM is proposing to amend the definition of *government-financed construction* in § 707.5 of the permanent program regulations by allowing for a lower percentage of financing from OSM or other AML reclamation agencies for government construction sites under Title IV reclamation which involve the incidental extraction of coal. A government agency includes a State or Indian Tribe with an approved Title IV program under the definition of agency found at 30 CFR 870.5. For those States and Indian Tribes that do not have approved Title IV programs, a government agency means OSM or its designated State agent.

Reclamation projects are funded from several sources. Some of these sources include private individuals who donate time and money, environmental groups, utilities, industry and government funding under the AML program. Under the current definition of *government-financed construction*, the government's financial share of the AML reclamation must be at least 50 percent of the total project cost. This percentage restriction limits the ability of AML agencies to undertake certain reclamation projects because there may be insufficient AML funds to accomplish all necessary reclamation in a State or on Tribal land and funds must be prioritized for maximum impact. By reducing the government share required for AML projects, OSM and the States and Indian Tribes would maximize existing AML funds and work cooperatively and in partnership with industry, citizens, and the environmental community to bring about reclamation that otherwise might never be accomplished. In addition to reducing the required government share for AML projects, we have rewritten the definition of government-financed construction in the "Plain English" style in order to improve its clarity. The "Plain English" rewriting is not intended to effect any substantive changes to the existing definition.

B. What is the Change in Information Collection for Section 707.10?

OSM proposes to revise section 707.10 which contains the information collection requirements for Part 707. The proposed revision changes the justification for the current exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The revised basis for this exemption is that the information required to be maintained in section 707.12 consists only of information that would be provided by persons in the normal course of their business activities.

C. What are the Information Collection Requirements for Section 874.10?

OSM also proposes to add a § 874.10 which contains the information collection requirements for Part 874 and the Office of Management and Budget (OMB) clearance number. The proposed addition includes the estimated reporting burden per project for complying with the new information collection requirements contained in this proposed rulemaking.

D. What is the Purpose Behind Proposed Section 874.17?

This new section would outline the procedures an AML agency would need to follow in approving AML projects receiving less than 50 percent government funding because of planned coal extraction incidental to the reclamation.

E. How Would the Consultation in Section 874.17(a) Work?

The consultation process under proposed 874.17(a) would require the AML agency to consult with the regulatory authority to determine the likelihood of the coal being mined under a Title V permit. The purpose of this consultation would be to ensure that the AML program and funds are not used for activities that should properly be permitted and regulated under Title V. Through this consultation process OSM intends that AML funds be directed only to eligible sites.

OSM believes the information upon which the "likelihood of the coal being mined under a Title V permit" determination is made should be information that is reasonably available. We have listed certain kinds of information that we believe would be available and also helpful in reaching a decision on whether or not to proceed with the project under the AML program. These examples of "available" information are not exhaustive. Each site will present a different set of circumstances and problems which are best addressed on a case-by-case basis. We are leaving it to the experience and technical and professional judgment of the Title IV and Title V officials within each jurisdiction to decide if an abandoned mine land site should be mined under a Title V permit or reclaimed under the Title IV AML program. Those decisions will continue to be monitored by OSM through its oversight of the respective programs.

Under this section, the AML agency would also consult with the regulatory authority to determine the likelihood for potential problems and impacts arising between Title IV reclamation projects and adjacent or nearby Title V operations when such Title V operations are present. The purpose of this provision is to identify problems at an early stage and to establish the reclamation responsibility. An example is where there might be a hydrologic connection between nearby or adjacent Title IV and Title V activities. In such cases, OSM believes it is essential to ensure that responsibility for environmental problems, such as acid mine drainage arising from a permitted Title V activity but impacting a Title IV activity, remains with the Title V permittee. Conversely, a Title V permittee would not be responsible for any environmental problems stemming from a Title IV reclamation activity.

F. What Types of Concurrences Between the AML Agency and the Regulatory Authority Would Be Required in § 874.17(b)?

If the AML agency decides to proceed with the reclamation project after consulting with the Title V regulatory authority, then the two must concur in determinations as to: (1) the extent and amount of any coal refuse, coal waste, or other coal deposits, the extraction of which would be covered by the Part 707 exemption or counterpart State and Tribal laws and regulations, and (2) the delineation of the boundaries of the AML project. These determinations are intended to ensure that only the amount of coal needed to accomplish the reclamation is covered by the Part 707 exemption. This coal would be exempt from the reclamation fee payment.

G. Under § 874.17(c) How Would the AML Agency Document the Results of the Consultation and the Concurrences With the Title V Regulatory Authority?

The AML agency would document in the AML case file the determinations as to the likelihood of coal at the site being mined under a Title V permit and the likelihood of interactions between AML activities and nearby or adjacent Title V activities that might create new environmental problems or adversely affect existing situations. Furthermore, the AML agency would document the information used for making these determinations and the names of the responsible agency officials.

H. What Special Requirements Would Apply for Qualifying § 874.17(d) Reclamation Projects?

Proposed paragraph 874.17(d)(2) would expressly require that qualifying AML reclamation projects comply with provisions for State and Tribal reclamation plans and grants found at 30 CFR Subchapter R. The required compliance with Subchapter R is intended to ensure that the incidental coal extraction projects authorized under this rulemaking would be accomplished in accordance with the substantial safeguards of the AML program. These safeguards include such things as: public participation and involvement; environmental evaluation to achieve compliance with the National Environmental Policy Act of 1969; and use of appropriate State or Tribal procurement procedures and regulations as authorized under the grant common rule at 43 CFR 12.76.

Further, to provide increased protections to the AML fund and to citizens or landowners who might be affected by the project, we are including three additional requirements to qualifying § 874.17(d) reclamation projects. Paragraph (d)(1) would require the AML agency to characterize the site in terms of existing hydrologic and other environmental problems. Paragraph (d)(3) would require the AML agency to develop site-specific reclamation and contractual provisions such as performance bonds to ensure that the reclamation is completed. Paragraph (d)(4) would require the contractor to provide documents that authorize the extraction of the coal and payment of royalties to the mineral owner or other applicable party. The purpose of these requirements is to ensure that before a contract is awarded, there is a valid coal lease authorizing the contractor to extract the coal. The lease would identify the party responsible for paying the royalty, the amount of the royalty, and the party receiving the royalty.

I. What Must the Contractor Do if He or She Extracts More Coal Than Is Specified in § 874.17(b)?

Section 874.17(e) would require the contractor to obtain a permit under Title V for the extraction of any coal not included in the paragraph (b)(1) Part 707 exemption. Such coal extraction would not be incidental to the AML reclamation project and thus would be subject to all the Title V requirements. The reclamation contract between the AML agency and the contractor therefore should clearly set forth the extent and amount of coal covered by that exemption, as concurred in by the Title V regulatory authority under paragraph 874.17(b)(1).

IV. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. It would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation. Participation under the rule change is strictly voluntary and those participating are expected to do so because of the economic benefit.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers, and State and Indian AML program administration is funded at 100 percent by the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. The administration of the AML program by a State or Indian Tribe is funded at 100 percent by the Federal Government and the decision by a State or Indian Tribe to participate is voluntary. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and record keeping requirements of 30 CFR Part 874 to the Office of Management and Budget (OMB) for review and approval.

Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. This proposal would add a new section at 30 CFR 874.17 titled "AML Agency Procedures for Reclamation Projects Receiving Less than 50 percent government funding." This section would require consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project. This section would also require compliance with 30 CFR Subchapter R and related provisions to insure that adequate environmental safeguards are considered and followed during AML reclamation project.

Need for and Use: OSM, State and Tribal regulatory authorities use the information collected under 30 CFR Part 874 to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards.

Respondents: The 26 State regulatory authorities and Indian Tribes who will be reviewing and consulting on between 20 and 80 plus reclamation projects involving the incidental removal of coal that OSM and State regulatory authorities are expected to initiate each year.

Total Annual Burden: For each project OSM estimates that two persons will need a total average of 16 hours to review information during the consultation phase of section 874.17 (a)(1) and (2); that two persons will need a total average of 4 hours to make the determinations required during the concurrence phase of section 874.17(b)(1) and (2); that one person will need an average of 1 hour for the file documentation requirement of section 874.17(c) and that one person will need an average of 6 hours to determine the special environmental and site reclamation requirements. The total burden for each project is estimated to be 27 hours. The estimated total annual burden for 30 CFR 874.17 ranges from a low of 540 hours to a maximum of more than 2,160 hours, averaging 1,500 hours annually. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents. Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and record keeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. The control number will appear in section 874.10. To obtain a copy of OSM's information collection clearance request, explanatory information, and related form, contact John A. Trelease at (202) 208–2783 or by e-mail at jtreleas@osmre.gov.

By law, OMB must submit comments to OSM within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and record keeping requirements by July 27, 1998, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

9. National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final rule.

10. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.). (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

11. Authors

D.J. Growitz and Danny Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

List of Subjects

30 CFR Part 707

Highways and roads, Incidental mining, Reporting and recordkeeping

requirements, Surface mining, Underground mining.

30 CFR Part 874

Reclamation, Surface mining, Underground mining.

Dated: June 19, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 707 and 874 as set forth below:

PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

1. The authority citation for Part 707 continues to read as follows:

Authority: Secs. 102, 201, 501, and 528 of Pub. L. 95–87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

2. In § 707.5, the definition of *Government-financed construction* is revised to read as follows:

§ 707.5 Definitions.

* * * * *

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

3. Section 707.10 is revised to read as follows:

§ 707.10 Information collection.

Since the information collection requirement contained in 30 CFR 707.12 consists only of expenditures on information collection activities that would be incurred by persons in the normal course of their activities, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C.3501 *et seq.*) and does not require clearance by OMB.

PART 874—GENERAL RECLAMATION REQUIREMENTS

4. The authority citation for Part 874 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

5. Section 874.10 is added to read as follows:

§ 874.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029–XXXX. This information is needed to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 27 hours per project, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control Number 1029–XXXX in any correspondence.

6. Section 874.17 is added to read as follows:

§ 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V Regulatory Authority.* In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V Regulatory Authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the extent and amount of any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts more coal than specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA.

[FR Doc. 98–16898 Filed 6–24–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

S. 423/P.L. 105–182

To extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason. (June 19, 1998; 112 Stat. 516)

S. 1244/P.L. 105–183

Religious Liberty and Charitable Donation Protection Act of 1998 (June 19, 1998; 112 Stat. 517)

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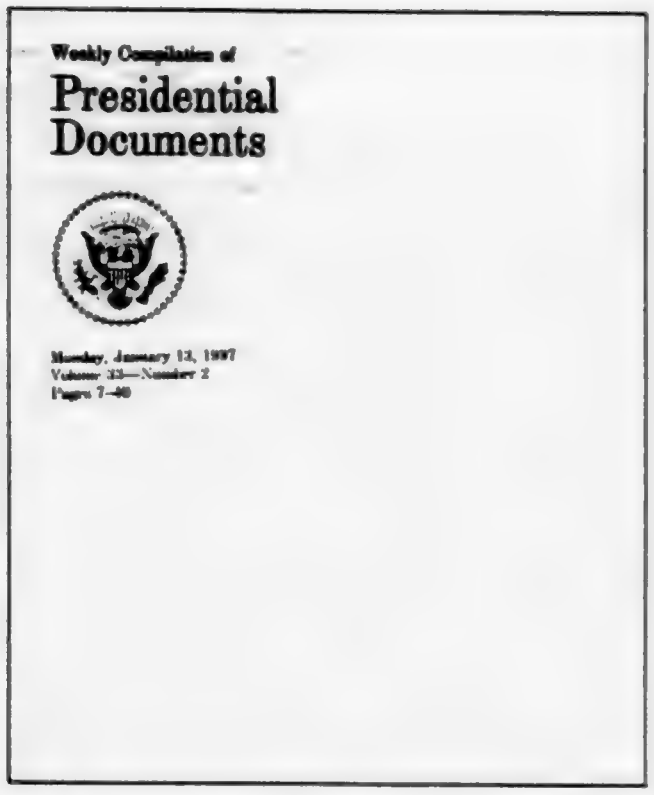

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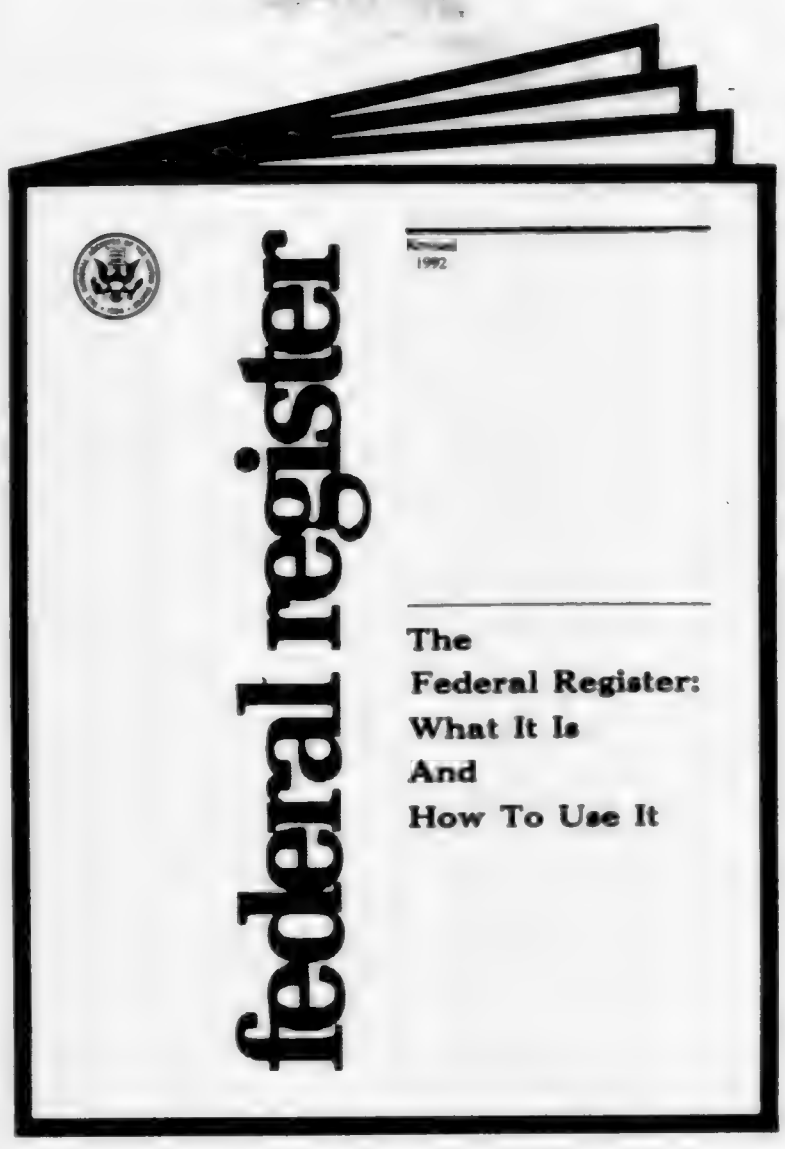

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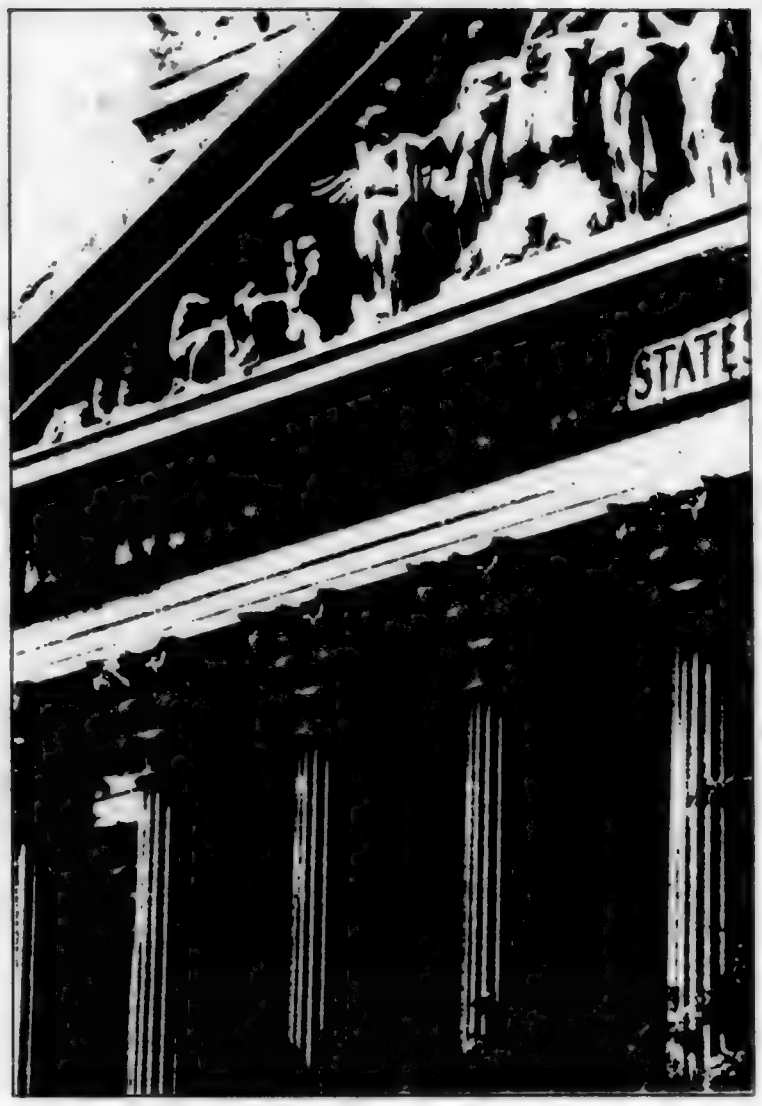

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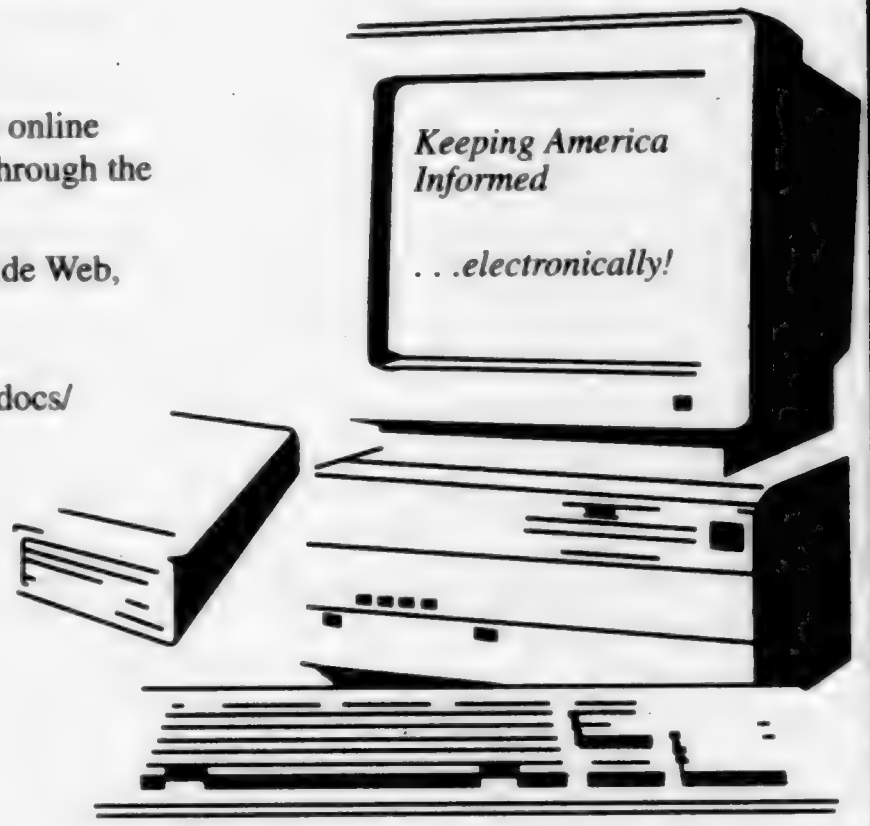

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Rules and Regulations

Federal Register
Vol. 63, No. 123
Friday, June 26, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AH43

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors that appeared in the list of agents designated to accept legal process for child support and alimony and the list of agents designated to facilitate the service of legal process on Federal employees (Appendices A and B to Part 581) that were published on March 26, 1998 (63 FR 14756).

EFFECTIVE DATE: The final regulations were effective on April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1700.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM amends 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND ALIMONY

1. The authority citation for Part 581 continues to read as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262).

2. The listing for the Department of Agriculture's Marketing and Regulatory Programs, including the Agricultural Marketing Service (except for employees of the Milk Marketing Administration); the Animal and Plant Health Inspection Service; and the Grain Inspection, Packers and Stockyards Administration, on page 14760, column 1, is corrected as follows:

Marketing and Regulatory Programs
  Agricultural Marketing Service (except for employees of the Milk Marketing Administration)
  Animal and Plant Health Inspection Service
  Grain Inspection, Packers and Stockyards Administration
Chief, Human Resources, USDA, APHIS, Butler Square West, 5th Floor, 100 North 6th Street, Minneapolis, MN 55403, (612) 370–2107

3. The listing for what were formerly the Department of Agriculture's Rural Economic and Community Development, the Rural Housing and Community Development Service, and the Rural Business and Cooperative Development Service, on page 14760, column 2, is corrected as follows:

Rural Development
  Rural Housing Service
  Rural Business-Cooperative Service
  Rural Utilities Service
Chief, Human Resources Programs Branch, Human Resources, Rural Development, 1400 Independence Avenue, SW., Stop 0730, Washington, DC 20250–0730, (202) 692–0194

4. The listing for the Department of Agriculture's Research, Education, and Economics, including the Agricultural Research Service; the Cooperative State Research, Education, and Extension Service; the National Agricultural Statistics Service; and the Economic Research Service, on page 14763, column 2, is corrected as follows:

Research, Education, and Economics
  Agricultural Research Service
  Cooperative State Research, Education, and Extension Service
  Economic Research Service
  National Agricultural Statistics Service
Director, Human Resources Division, Administrative and Financial Management Staff, Agricultural Research Service, 5601 Sunnyside Avenue, Room 3–1145A, Beltsville, MD 20705–5101, (301) 504–1478

5. The listing for the Federal Bureau of Investigation of the Department of Justice on page 14766, column 2, is corrected as follows: Chief, Payroll Administration and Processing Unit, Room 1885, 935 Pennsylvania Avenue, NW., Washington, DC 20535, (202) 324–5881.

6. The listing for the Department of Veterans Affairs' Huntington Regional Office, on page 14774, column 3, is corrected as follows: Fiscal Officer, Huntington Regional Office, 640 Fourth Avenue, Huntington, WV 25701, (304) 529–5477.

7. The listing for the International Trade Commission is added in alphabetical order on page 14775, column 3, as follows:

International Trade Commission

Director, Office of Finance and Budget, 500 E Street, SW., Suite 316, Washington, DC 20436, (202) 205–2678

8. The listing for the Trade and Development Agency is added in alphabetical order on page 14777, column 2, as follows:

Trade and Development Agency

Effective August 3, 1998, garnishment orders for employees of the United States Trade and Development Agency should be sent to: Chief, Payroll Operations Division, Attn.: Code D–2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739.

9. The listing for the Executive Office of the President, on page 14777, column 3, is corrected as follows:

Garnishment orders for civilian employees of the Executive Office of the President should be sent to: Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center—Code L (DFAS–CL/L), P.O. Box 998002, Cleveland, OH 44199–8002, (216) 522–5301.

10. The listing for the Federal Bureau of Investigation of the Department of Justice on page 14778, column 3, is removed.

[FR Doc. 98–17134 Filed 6–25–98; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 435 and 457

RIN 0563–AB47

Tobacco (Quota Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations; Quota Tobacco Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of quota tobacco. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current tobacco (quota plan) crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current tobacco (quota plan) crop insurance regulation to the 1998 and prior crop years.

EFFECTIVE DATE: July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The amount of work required of insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. The rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, May 13, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 26248–26252 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.156, Quota Tobacco Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring quota tobacco found at 7 CFR part 435 (Tobacco (Quota Plan) Crop Insurance Regulations). FCIC also amends 7 CFR part 435 to limit its effect to the 1985 through 1998 crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 510 signed petitions were received from North Carolina and Virginia tobacco producers, and 88 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

Comment: Two reinsured companies and an insurance service organization recommended that the definition of "amount of insurance" be revised to read, "the dollar amount determined by multiplying the insured poundage quota by the current year's support price or the percentage of the current year's support price you select." This revision addresses the possibility of insureds selecting price elections of less than 100 percent.

Response: FCIC agrees with the comment and has amended the definition accordingly. FCIC also has revised this definition to address the possible reduction in the amount of

insurance for late planted acreage in accordance with section 14.

Comment: An insurance service organization recommended that FCIC either revise or delete the definition of "approved yield." The commenter mentioned that since quota tobacco currently is not an Actual Production History (APH) crop, the definition will be questioned by insureds who do not receive a copy of the Code of Federal Regulations with their crop insurance policies.

Response: "Approved yield" is referenced in section 3 of the crop provisions, so it must be defined. Section 3 clearly indicates that an approved yield is not necessary unless required by the Special Provisions. As written, if the FSA quota tobacco support price program is discontinued and quota tobacco becomes an APH crop in the future, the Special Provisions could be amended easily to require an approved yield. Therefore, no changes have been made.

Comment: A reinsured company and an insurance service organization made the following recommendations to revise the definition of "effective poundage marketing quota": (1) Remove the words "minus the amount of any carryover tobacco" because crop insurance is designed to cover the tobacco crop actually grown the current crop year, and the restriction of yield times acres in the definition of "insured poundage quota" would take care of any allowance the producer made for carryover tobacco; (2) Clarify whether any additional poundage the producer intends to produce must be leased or if it can be grown without any marketing quota; (3) Add language to the definition of "effective poundage marketing quota" from section 7(b), which states that effective poundage marketing quota may not include any tobacco that would be subject to a marketing quota penalty under the United States Department of Agriculture (USDA) Tobacco Marketing Quota Regulations; and (4) Revise the definition to exclude the word "county" because the farm marketing quota is established by the Farm Service Agency (FSA) on a Farm Serial Number (FSN) basis.

Response: (1) Although, producers will normally reduce the number of acres grown in the current crop year to account for carryover production from the prior years, they may instead elect to reduce inputs (fertilizer, etc.), thereby producing fewer pounds per acre. To maintain the appropriate relationship between the number of planted acres and the effective poundage marketing quota, the amount of any carryover production should be removed from the effective poundage marketing quota. Therefore, no change has been made. (2) FCIC agrees with the recommendation and has clarified the definition of "effective poundage marketing quota" to include any additional (above quota) poundage as allowed by the USDA Tobacco Marketing Quota Regulations. Under current (FSA) procedures, a minimal percentage of additional poundage is allowed to be marketed. (3) FCIC agrees and has revised the definition of "effective poundage marketing quota" accordingly. (4) The definition has been clarified to refer to the FSA office for the county and the effective poundage marketing quota for the FSN.

Comments: A reinsured company and an insurance service organization expressed concerns with the definition of "good farming practices," which makes reference to "cultural practices generally in use in the county * * *" recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices exist that are not necessarily recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters also indicated that the term "county" in the definition of "good farming practices" should be changed to "area."

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing quota tobacco. If a producer is following practices currently not recognized as acceptable by CSREES, there is no reason why such recognition cannot be sought by interested parties. The term "area" is less definitive than the term "county" and would cause insurance providers to make determinations more subjective in nature. Therefore, no change has been made in response to this comment, except that the definition of "good farming practices" has been moved to the Basic Provisions.

Comments: A reinsured company and an insurance service organization recommended revising the definition of "harvest" to include a requirement that at least 20 percent of the production guarantee must be cut on each acre to qualify as harvested. Commenters also recommended that a minimum appraisal of 35 percent of the amount of insurance be established to encourage producers to harvest damaged tobacco. In some cases, it will be difficult to verify unharvested production due to deterioration of the leaves before the adjuster works the final claim. The commenters believe that removal of these requirements from the current crop provisions will result in a significant increase in premium rates. Commenters expressed concern that FCIC may have overreacted if the changes were made because of one lawsuit.

Response: FCIC has determined that the requirement that at least 20 percent of the production guarantee be cut on each acre to qualify as harvested and the 35 percent minimum appraisal for unharvested acreage is too severe. Producers should not be forced to incur the costs associated with harvesting tobacco acres that may not be marketable. In addition, FCIC cannot ignore a court ruling that such provisions are unenforceable. Therefore, no change has been made in the final rule provisions.

Comments: A reinsured company and an insurance service organization noted that the definition of "harvest" refers to the phrase "removing tobacco from the field." They believe this is a determination of when coverage ceases, which is already included in section 9(c) of these provisions.

Response: Definitions are included in the crop provisions for clarification of policy provisions. The definition of harvest is needed because this term and its opposite "unharvested" are used repeatedly in section 12 (Settlement of Claim) (redesignated as section 13). The insurance period is defined in section 9 (redesignated as section 10). When the crop is harvested does not solely determine when coverage ceases. Therefore, no change has been made.

Comments: An insurance service organization asked why the phrase "the average auction price * * *" in the definition of "market price" was changed to "the previous years' season average price published by National Agricultural Statistics Service * * *"

Response: The phrase was changed for clarification. In practice the "average auction price" has been interpreted consistently as the previous years" season average price published by National Agriculture Statistics under the current crop provisions. Therefore, no change has been made.

Comments: An insurance service organization recommended deleting "marketing window" from the definition of "practical to replant." The commenters stated that quota tobacco is unlike other crops, such as processor and fresh market crops, where the producer only has a certain amount of time to market the crop.

Response: FCIC agrees that the concept of a "marketing window" is

most applicable to processor and fresh market crops and recognizes that quota tobacco is unlike these crops. However, the Federal Agriculture Improvement and Reform Act of 1996 mandated that FCIC consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore, no change has been made, except that the definition of "practical to replant" has been moved to the Basic Provisions.

Comments: A reinsured company and an insurance service organization expressed concern about the terms "replace" and "replacing" in the definition of "replanting." Commenters stated that the terms, as used, seem awkward and cumbersome.

Response: FCIC believes that the definition of "replanting" clearly describes the steps required to replant the crop. However, FCIC has replaced the phrase "growing a successful tobacco crop" with "producing at least the quota," for clarity.

Comments: An insurance service organization recommended that the definition of "support price" be amended to read "type 31 tobacco" since type 31 is the only type of tobacco that is insurable under these provisions.

Response: FCIC believes that the definition is clearly stated. The term "type" is written for the flexibility of insuring other types of tobacco if designated in the Special Provisions.

Comment: A reinsured company and an insurance service organization recommended moving the definition of "unit" to section 2 for consistency.

Response: All policy definitions are contained in section 1 for uniformity. Therefore, no change has been made in this regard. FCIC has changed the term "unit" to "Basic Unit," however, to conform to recent changes in the Basic Provisions.

Comments: An insurance service organization and 510 growers recommended that the unit division guidelines of these provisions be the same as currently specified for Guaranteed Tobacco. Those provisions define basic units by share and optional units by Farm Serial Number (FSN). Commenters believe that this change would resolve the current conflict between basic units (by share) as defined for Catastrophic Risk Protection (CAT) and basic units (by FSN) for buy-up policyholders.

Response: FCIC acknowledges that adopting the unit division rules contained in the Common Crop Insurance Policy for quota tobacco would resolve the conflict between unit definition for catastrophic coverage and additional coverage that now exists. However, the current unit definition for quota tobacco was adopted beginning with the 1985 crop year to resolve a vulnerability that exists in this program. Prior to that time, units were defined similarly for guaranteed and quota tobacco. Consider a landlord who share rents a portion of the quota to a tenant and also produces quota tobacco on the Farm Serial Number (FSN). Under the basic unit definition of the Common Crop Insurance Policy, two basic units are established for the landlord (a 100 percent share and the share with the tenant). One basic unit is established for the tenant. Under the definition contained in the Quota Tobacco Crop Provisions, one basic unit is established for each producer by FSN.

The insured quantity under these provisions is the insured marketing quota, a quantity that is independent of acreage if a sufficient number of acres are planted. Premium is charged only on the amount of insured marketing quota. Under the "Basic unit" definition contained in the Quota Tobacco Crop Provisions, the landlord's share of all production from the FSN is counted against the landlord's share of the quota. Under the "Basic unit" definition contained in the Common Crop Insurance Provisions, there is greater opportunity to plant additional acreage and manipulate production within the FSN so that the entire quota may be produced and sold, yet a loss be paid on one unit. However, premium will not be collected on the additional acreage.

Due to a large number of comments on this particular issue, FCIC will review any additional information that may support a different approach to establishing units for quota tobacco. All such information must specifically address the concern described herein and demonstrate how it will be alleviated by the proposed unit definition. Pending the submission of such information, FCIC will implement the basic unit definition contained in the proposed rule and will consider any changes at such date as the information may be available. If warranted, the unit definition can be changed for the 2000 or a subsequent crop year.

Comment: A reinsured company and an insurance service organization recommended removing any references to "annual production reports" for the APH plan. The commenters contend that if the FSA quota tobacco support program is changed or eliminated, it will be necessary to revise several provisions of the policy.

Response: Section 3 of these provisions requires annual production reports only when required by the Special Provisions. The current method of establishing farm yields will continue for the 1998 crop year. If the quota tobacco support price program is discontinued or modified in future years, these provisions provide an alternative method for establishing the production guarantee. Therefore, no change has been made. However, FCIC has amended the definition of "support price" to include the possibility that the tobacco support program may be changed. If there is no tobacco support program, FCIC will announce the average price per pound for the type of tobacco.

Comments: A reinsured company and an insurance service organization recommended deleting the word "carryover" in section 6(a). Commenters stated that the basic premise of multiple peril crop insurance coverage is to insure actual planted acreage of the crop. Subtracting the carryover poundage would take coverage away from a planted crop which is legally insurable (i.e., the carryover poundage has value and is exposed to perils). This could have additional unwanted consequences by making the insurance providers responsible for tracking and placing value on carryover poundage.

Response: Although producers normally reduce the number of acres grown in the current crop year to account for carryover production from the prior year, they may instead elect to reduce inputs (fertilizer, etc.), thereby producing fewer pounds per acre. Further, to maintain the appropriate relationship between the number of planted acres and the effective poundage marketing quota, the amount of any carryover production should be removed from the effective poundage marketing quota. Therefore, no change has been made.

Comments: A reinsured company and an insurance service organization recommended that section 6(a) be revised to remove the phrase, "once submitted, you may not revise the acreage report," because section 6(c), now 6(d), of the Basic Provisions already states, "* * *you may not revise this report after the acreage reporting date without our consent." The commenter inquired about the impact of changes in information between the time an acreage report is submitted and the actual acreage reporting date. The commenter stated that, if this sentence remains in the crop provisions, tobacco insureds will wait until the last day to report acreage.

Response: FCIC agrees that section 6(d) of the Basic Provisions is adequate and has deleted this language from the Crop Provisions.

Comments: A reinsured company and an insurance service organization recommended revising section 7(a) to read "type 31 tobacco designated in the Special Provisions, in which you have a share." Commenters noted that the current quota policy refers to only type 31 tobacco.

Response: FCIC agrees that the current quota tobacco policy only refers to type 31 tobacco. However, section 7(a) (redesignated as section 8(c)) is intended to allow the flexibility of insuring other types of tobacco if they are designated in the Special Provisions. Therefore, FCIC has not revised section 7(a). FCIC has changed section 12(d) (redesignated as section 13(d)) to refer to "U.S. Official Standard Grades for the insured type of tobacco," rather than "U.S. Official Standard Grades, Burley Tobacco, U.S. Type 31," for consistency.

Comments: A reinsured company and an insurance service organization asked if the provisions in section 8(c) are intended to allow written agreement requests for a type not rated in the actuarial documents.

Response: Section 8(c) (redesignated as section 9(c)) only references a method of planting. Therefore, section 9(c) does not authorize written agreements for types not rated.

Comments: A reinsured company and an insurance service organization questioned why section 9(a) is not as precise as section 11(a) of the Basic Provisions, which specifies "total destruction * * * on the unit."

Response: FCIC has revised section 9(a) (redesignated as section 10(a)) to refer to total destruction of the tobacco on the unit.

Comment: A reinsured company and an insurance service organization asked if the current requirement that notice be given without delay if any tobacco is damaged and will not be sold through an auction warehouse was removed intentionally from section 11.

Response: Section 14(a)(2) of the Basic Provisions states "* * *you must * * *give us notice within 72 hours of your initial discovery of damage* * *" FCIC believes this requirement is substantially the same as requiring a notice "without delay," so the latter requirement of section 11 was removed in the proposed rule.

Comment: Two reinsured companies and an insurance service organization recommended that section 12(b)(1) reference price elections less than 100 percent of the support price. The commenters indicated that the language as written could be taken to mean that the insured poundage quota will be multiplied by 100 percent of the support price even for CAT policies.

Response: FCIC agrees with the recommendation and has amended section 12(b)(1) (redesignated as section 13(b)(1)) to read "multiplying the insured poundage quota by your elected percentage of the current year's support price."

Comments: Two reinsured companies and an insurance service organization recommended the following: (1) Add the word "resulting" in section 12 (b)(2); and (2) Remove the reference to "section 12(b)(2)" from section 12(b)(3) because it is not necessary to reference the previous item by number.

Response: The recommendations do not add any additional clarification to the provision. Therefore, no changes have been made.

Comments: Two reinsured companies and an insurance service organization recommend removing the words "acceptable production records" from section 12(c)(1)(D), if these words relate to other APH references in these provisions.

Response: As stated in earlier responses, section 12(c)(1)(D) (redesignated as section 13(c)(1)(D)) will only apply if annual production reports are required by the Special Provisions, and the provision has been so clarified.

Comments: Two reinsured companies and an insurance service organization expressed concern that section 12(c)(1)(iii) of these provisions allows the insured to defer settlement and wait for a later, generally lower appraisal.

Response: Section 12(c)(1)(iii) (redesignated as section 13(c)(1)(iii)) allows deferment of a claim only if the insurance provider agrees that representative samples can be left or if the insured elects to continue to care for the entire crop. In either case, if the insured does not provide sufficient care for the remaining crop, appraisals for uninsured causes of loss may be made. Therefore, no change has been made.

Comments: Two reinsured companies and an insurance service organization expressed concern that there are no instructions in section 12(c) and (d) on how to value appraised production.

Response: Section 12(c)(1)(iv) (redesignated as section 13(c)(1)(iii)(A)) has been rewritten to more clearly specify the valuation of harvested and appraised production.

Comments: Two reinsured companies and an insurance service organization opposed any reference to the word "carryover" in section 12(h).

Response: Section 12(h) (redesignated as section 13(h)) eliminates the adjustment of next year's quota when the insurance provider agrees that any carryover or current years' tobacco has no market value due to an insured cause of loss. It also eliminates the opportunity to falsely report that carryover and current years' tobacco has no value and thus increase the indemnity payment. This provision is consistent with FSA's requirement that tobacco having no value be destroyed. Therefore, no change has been made.

Comments: Two reinsured companies and an insurance service organization suggested that requiring a written agreement to be renewed each year should be removed in section 14(d). Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are temporary and intended to address unusual situations. If the condition creating a need for written agreement remains from year to year among producers it should be incorporated into the policy, the Special Provisions, or the actuarial documents. Therefore, no change has been made, except the provisions for written agreements have been moved to the Basic Provisions.

Comments: Two reinsured companies and an insurance service organization asked: (1) Is the Late Planting Agreement Option no longer available; and (2) Why are the late and prevented planting language provisions not included in the proposed rule as they have been in other crops?

Response: A new section 14 has been added to provide for late planting coverage. Under the new section 15, prevented planting coverage will not be provided for quota tobacco as set out in the Basic Provisions because the high cash value per acre and the hand labor required to transplant tobacco on relatively small acreage enables producers to plant sufficient acreage to maintain their effective poundage marketing quota even under extremely adverse conditions that would prevent planting of most other crops.

In addition to the changes indicated above, FCIC has made the following changes:

1. Section 1. Removed definitions of "days," "FSA," "final planting date," and "USDA," because these definitions were moved to the Basic Provisions. Changed the definition of "unit" to "basic unit."

2. Section 7 (Annual Premium). Added to modify section 7 of the Basic Provisions to calculate premium, in part, based on the producer's amount of insurance. As defined in these crop provisions, the definition of "amount of insurance" takes into consideration the insured poundage quota, current year's

support price, and late planting adjustments unique to quota tobacco.

3. Section 12(b) (redesignated as Section 13(b)). Revised for clarification. Also, added an example of an indemnity calculation for illustration purposes.

List of Subjects in 7 CFR Parts 435 and 457

Crop insurance, Quota tobacco, Tobacco (quota plan) crop insurance regulations.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR part 435) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 435—TOBACCO (QUOTA PLAN) CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1985 THROUGH 1998 CROP YEARS

1. The authority citation for 7 CFR part 435 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised as set forth above.

Subpart Heading [Removed]

3. The subpart heading "Subpart—Regulations for the 1985 and Succeeding Crop Years" is removed.

4. Section 435.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 435.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1985 through 1998 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.156 is added to read as follows:

§ 457.156 Quota tobacco crop insurance provisions.

The Quota Tobacco Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Quota Tobacco Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Amount of insurance. The dollar amount determined by multiplying the insured poundage quota by the current year's support price or the percentage of the current year's support price you select less any adjustments for late planting as specified in section 14.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G, if required by the Special Provisions.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is identified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Carryover tobacco. Any tobacco produced on the land identified by a FSA farm serial number in previous years that remained unsold at the end of the most recent marketing year.

County. In lieu of the definition in the Basic Provisions, county is defined as the county or other political subdivision of a state shown on your accepted application including any land identified by a FSA farm serial number for such county but physically located in another county.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Effective poundage marketing quota. The farm marketing quota as established and recorded by the local FSA office for the land identified by the FSA farm serial number plus any additional poundage, as allowed by the USDA Tobacco Marketing Quota Regulations, that you intend to produce for each unit in that crop year minus the amount of any carryover tobacco. The term may not include any tobacco that would be subject to a marketing quota penalty under USDA Tobacco Marketing Quota Regulations. For any crop year in which there are no effective USDA Tobacco Marketing Quota Regulations, the effective poundage marketing quota will be the pounds obtained by multiplying the applicable approved yield per acre by the lower of the reported or insured acreage on the basic unit, unless otherwise provided by the actuarial documents.

Fair market value. The current year's tobacco season average price for the applicable type of tobacco obtained from the sale of the tobacco through a market other than an auction warehouse.

Farm yield. The yield per acre used by FSA to establish the effective poundage marketing quota for land identified by a FSA farm serial number, unless we have estab lished a yield for that land in the actuarial documents.

Harvest. Cutting and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Insured poundage quota. The lesser of:

(1) The product (in pounds) obtained by multiplying the effective poundage marketing quota for the land identified by a FSA farm serial number by your selected coverage level; or

(2) The farm yield or approved yield, as applicable, adjusted for late planting in accordance with section 14, if applicable, multiplied by the appropriate number of insured acres and by your selected coverage level.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Market price. The previous years' season average price published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Marketing year. The marketing year published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Replanting. In lieu of the definition in section 1 of the Basic Provisions, performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of producing at least the quota.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program, or, if there is no such program, as announced by FCIC.

Tobacco bed. An area protected from adverse weather, in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

2. Unit Division.

A unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. The provision in the Basic Provisions regarding optional units are not applicable, unless specified by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to section 3 of the Basic Provisions, a production report, if required by the Special Provisions, must be filed in accordance with section 3(c) of the Basic Provisions.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions:

(a) You must report the effective poundage marketing quota and specify any amount of carryover tobacco, if applicable.

(b) You must provide a copy of any written lease agreement between you and any landlord or tenant showing the amount of the effective poundage marketing quota allocated to you. The written lease agreement must:

(1) Identify all other persons sharing in the effective poundage marketing quota; and

(2) Be submitted to your local insurance provider's office on or before the acreage reporting date.

(c) In the event of a loss, if the written lease agreement has been submitted timely, we will distribute the effective poundage marketing quota in accordance with the terms of the written lease agreement. If the written lease agreement is not submitted timely, we will prorate the effective poundage marketing quota across the FSA farm serial number to all insured and uninsured persons based on planted acres within land identified by the FSA farm serial number.

7. Annual Premium.

In lieu of paragraph (c) of section 7 of the Basic Provisions, your annual premium amount is determined by either:

(a) Multiplying the amount of insurance by the rate, your share, and any premium adjustment percentages that may apply; or

(b) If no support price program exists, multiplying the approved yield by the coverage level, the support price, the acres, your share, and any premium adjustment percentages that may apply.

8. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be any of the tobacco types designated in the Special Provisions for the county, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial documents.

(b) In addition to section 8 of the Basic Provisions, the crop insured will not include any poundage above the effective poundage marketing quota or the insured poundage quota.

9. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage under these crop provisions that is:

(a) Planted to a discount variety;

(b) Planted to a tobacco type for which no premium rate is provided by the actuarial documents;

(c) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions or by written agreement; or

(d) Damaged before the final planting date to the extent that most of the producers of tobacco acreage with similar characteristics in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

10. Insurance Period.

In accordance with the provisions of section 11(b) of the Basic Provisions, insurance ceases at the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) Weighing-in at the tobacco warehouse;

(c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or

(d) The February 28 immediately following the normal harvest period.

11. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by a peril specified in section 11 (a) through (g) that occurs during the insurance period.

12. Duties In The Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide (at least two rows) and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

13. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured poundage quota by your elected percentage of the current year's support price.

(2) Subtracting the total value of the production to be counted (see section 13(c)) from the amount of insurance; and

(3) Multiplying the result in section 13(b)(1) by your share. For example:

You have 100 percent share of type 31 quota tobacco in the unit, with an insurable poundage quota of 1,000 pounds and a support price of $1.73 per pound. The amount of insurance equals $1730.00 (1,000 insurable poundage quota × $1.73 support price). You are only able to harvest 600 pounds. The value of the total production to count equals $1038.00 (600 harvested pounds × $1.73 support price). Your indemnity would be calculated as follows:

(1) $1730.00 (amount of insurance) − $1038.00 (value of the total production to count) = $692.00 loss

(2) $692.00 loss x 100 percent = $692.00 indemnity payment

(c) The value of the total production to count (pounds of appraised or harvested production) for all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per insured acre for the unit for any acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records, if required by the Special Provisions;

(ii) The value of production lost due to uninsured causes which is the number of pounds of such production multiplied by the support price;

(iii) The value of potential production on unharvested insured acreage that you intend to put to another use with our consent, if you and we agree on the number of pounds of such production to count which will be multiplied by the support price. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may allow you to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The value of production to count for such acreage will be the number of pounds of harvested or appraised production taken from samples at the time harvest should have occurred multiplied by the support price. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, the value of production to count will be our appraisal made prior to giving you consent to put the acreage to another use multiplied by the support price); or

(B) If you elect to continue to care for the crop, the value of production to count for the acreage will be the harvested production, or our reappraisal multiplied by the support price if additional damage occurs and the crop is not harvested;

(2) All harvested production from insurable acreage multiplied by:

(i) The average price for any tobacco sold on a warehouse floor; and

(ii) Fair market value for all other tobacco sold or not sold.

(d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality based on the USDA Official Standard Grades for the insured type of tobacco.

(e) To enable us to determine the fair market value of tobacco not sold through auction warehouses, you must give us the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed. Failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(f) If we consider the best offer you receive for such tobacco to be inadequate, we may obtain additional offers on your behalf.

(g) Once we agree that any carryover or current year's tobacco has no market value

due to insured causes, you must destroy it. If you disagree and refuse to destroy the tobacco with no value, we will determine the value and count it as production to count.

14. Late Planting.

(a) In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(1) For each acre or portion thereof planted during the first 10 days after the final planting date, the farm yield will be reduced by 1 percent per day; and

(2) For each acre or portion thereof planted during the 11th through the 15th day after the final planting date, the farm yield will be reduced by 2 percent per day.

(b) If you plant enough acreage to fulfill the effective poundage marketing quota, there will be no reduction in the insured poundage quota as a result of any late planted acreage.

15. Prevented Planting.

The prevented planting provisions in the Basic Provisions are not applicable to quota tobacco.

Signed in Washington, D.C., on June 19, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–16968 Filed 6–25–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW002; Special Condition No. 29–002–SC]

Special Conditions: Eurocopter France Model AS–365 N3 "Dauphin" Helicopters, Full Authority Digital Engine Control (FADEC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Eurocopter France Model AS–365 N3 "Dauphin" helicopters. These helicopters will have a novel or unusual design feature associated with the Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical functions from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is June 17, 1998. Comments must be received on or before August 25, 1998.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. SW002, Fort Worth, Texas 76193–0007 or deliver in duplicate to the Office of the Regional Counsel, Southwest Region, at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW002. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111; telephone 817–222–5120, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Special Condition must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Rules Docket No. SW002" The postcard will be date stamped and returned to the commenter.

Background

On September 1, 1997, Eurocopter France applied for an amendment to Type Certificate (TC) No. H10EU to include the new Model AS–365 N3 "Dauphin" helicopter. The Model AS–365 N3 "Dauphin" helicopter, which is a derivative of the Model AS–365 N2 helicopter that is currently approved under TC No. H10EU, is a transport category A and B helicopter powered by two Turbomeca Arriel 2C engines with FADEC. The Turbomeca Arriel 1C2 engine has been replaced with the Turbomeca Arriel 2C engine, which includes a digital engine control system.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Eurocopter France must show that the Model AS–365 N3 "Dauphin" helicopter meets the applicable provisions of the regulations incorporated by reference in TC No. H10EU or the applicable regulations in effect on the date of application for the change to the Model No. AS–365 N3. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in H10EU are as follows: § 21.29 and 14 CFR part 29, effective February 1, 1965, plus Amendments 29–1 through 29–11. In addition, the applicant elected to comply with 14 CFR part 29 amendments 29–12 through 29–16, except for 14 CFR part 29.397 concerning the rotorbrake. The certification basis also includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model AS–365 N3 helicopter must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Eurocopter France Model AS–365 N3 "Dauphin" helicopter will incorporate the following novel or unusual design features: Electrical, electronic, or combination of electrical electronic (electrical/electronic) systems, such as FADEC, that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the functions of engine control.

Discussion

The Eurocopter France Model AS–365 N3 "Dauphin" helicopter, at the time of application, was identified as having modifications that incorporate one and possibly more electrical/electronic systems, such as FADEC. After the design is finalized, Eurocopter France will provide the FAA with a preliminary hazard analysis that will identify any other critical functions required for safe flight and landing that are performed by the electrical/ electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/ electronic systems that perform critical functions. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/ electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of 14 CFR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of HIRF transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/ electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency transmitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high-priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment to which a helicopter could be exposed, one environment for VFR operations and a different environment for IFR operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency transmitters. This special condition will require the helicopters' electrical/ electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, computer models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require the systems that perform critical control functions, or provide critical displays as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/ electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/ electronic systems that perform critical control, or provide critical displays, can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical displays systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO–160D Section 20, the test levels are defined as the peak of the root mean square (rms) envelope. As a minimum, the modulations required for RTCA/ DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected for the signal most

likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—VFR ROTORCRAFT FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	150	150
100–500	200	200
500–2000	200	200
2–30 MHz	200	200
30–100	200	200
100–200	200	200
200–400	200	200
400–700	730	200
700–1000	1400	240
1–2 GHz	5000	250
2–4	6000	490
4–6	7200	400

TABLE 1.—VFR ROTORCRAFT FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
6–8	1100	170
8–12	5000	330
12–18	2000	330
18–40	1000	420

TABLE 2.—IFR ROTORCRAFT FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	50	50
500–2000	50	50
2–30 MHz	100	100
30–70	50	50
70–100	50	50
100–200	100	100
200–400	100	100
400–700	700	50
700–1000	700	100
1–2 GHz	2000	200
2–4	3000	200
4–6	3000	200
6–8	1000	200
8–12	3000	300
12–18	2000	200
18–40	600	200

Applicability

As previously discussed, this special condition is applicable to Model AS–365 N3 helicopters. Should Eurocopter France apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopters.

The substance of this special condition has been subjected to the notice and comment procedures in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows: 42 USC 7572; 49 USC. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Eurocopter France Model AS 365 N3 "Dauphin" helicopters.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on June 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service, ASW–100.

[FR Doc. 98–16960 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. SW001; Special Conditions No. 27–001–SC]

Special Conditions: Eurocopter Model AS–350 B3 "Ecureuil" Helicopters, Full Authority Digital Engine Control (FADEC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Eurocopter Model AS–350 B3 "Ecureuil" helicopters. These helicopters will have a novel or unusual design feature associated with the Full Authority Digital Engine Control

(FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is April 30, 1998. Comments must be received on or before August 25, 1998.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket No. SW001, Fort Worth, Texas 76193–0007 or deliver in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW001. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111; telephone 817–222–5120, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Rules Docket No. SW001." The postcard will be date stamped and returned to the commenter.

Background

On June 18, 1997, Eurocopter applied for an amendment to Type Certificate (TC) No. H9EU to include the new Model AS–350 B3 "Ecureuil" helicopter. The Model AS–350 B3 "Ecureuil" helicopter, which is a derivative of the AS–350 B/B1/B2 versions currently approved under TC No. H9EU, is a normal category five-passenger helicopter powered by a Turbomeca Arriel 2B engine with FADEC. The Model AS–350 B3 is derived from the Model AS–350 B2 with the following main modifications: (1) Turbomeca Arriel 2B engine with digital engine control system; (2) Powerplant instruments on Liquid Crystal Display; and (3) AS–355 N type tail rotor.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Eurocopter must show that the Model AS–350 B3 "Ecureuil" helicopter meets the applicable provisions of the regulations incorporated by reference in TC No. H9EU or the applicable regulations in effect on the date of application for the change to the Model AS–350 B3. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in H9EU are as follows: § 21.29 and 14 CFR part 27, effective February 1, 1965, plus Amendments 27–1 through 27–10. In addition, the certification basis includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model AS–350 B3 must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Eurocopter Model AS–350 B3 "Ecureuil" helicopters will incorporate the following novel or unusual design features: Electrical, electronic, or combination of electrical electronic (electrical/electronic) systems, such as FADEC, that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the functions of engine control.

Discussion

The Eurocopter Model AS–350 B3 "Ecureuil" helicopter, at the time of application, was identified as having modifications that incorporate one and possibly more electrical/electronic systems, such as FADEC. After the design is finalized, Eurocopter will provide the FAA with a preliminary hazard analysis that will identify any other critical functions, required for safe flight and landing, performed by the electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical functions. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/ electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 27.1309(a).

Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment that a helicopter could be exposed to, one environment for VFR operations and a different environment for IFR operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical control functions, or provide critical displays. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require the systems that perform critical control functions, or provide critical displays as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment.

The FAA has determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical control, or provide critical displays can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected for the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—VFR ROTORCRAFT FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	150	150

TABLE 1.—VFR ROTORCRAFT FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
100–500	200	200
500–2000	200	200
2–30 MHz	200	200
30–100	200	200
100–200	200	200
200–400	200	200
400–700	730	200
700–1000	1400	240
1–2 GHz	5000	250
2–4	6000	490
4–6	7200	400
6–8	1100	170
8–12	5000	330
12–18	2000	330
18–40	1000	420

TABLE 2.—IFR ROTORCRAFT FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	50	50
500–2000	50	50
2–30 MHz	100	100
30–70	50	50
70–100	50	50
100–200	100	100
200–400	100	100
400–700	700	50
700–1000	700	100
1–2 GHz	2000	200
2–4	3000	200
4–6	3000	200
6–8	1000	200
8–12	3000	300
12–18	2000	200
18–40	600	200

Applicability

As previously discussed, this special condition is applicable to the Model AS–350 B3 helicopter. Should Eurocopter apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of this special condition has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Eurocopter Model AS–350 B3 "Ecureuil" helicopters.

Protection for Electrical and Electronic Systems from High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on April 30, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–16959 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–39–AD; Amendment 39–10630; AD 98–13–39]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, and L1 helicopters that requires initial and repetitive inspections of the tail rotor shaft flapping hinge retainers (retainers) for cracks. This amendment is prompted by a report of high vibrations occurring on a helicopter while in service due to a cracked retainer. The actions specified by this AD are intended to detect cracks on the retainers that could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A prpposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters was published in the **Federal Register** on April 1, 1998 (63 FR 15791). That action proposed to require initial and repetitive inspections of the retainers for cracks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts, if replacement of the retainers on the tail rotor blades is necessary, would cost approximately $56,900 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $252,080, assuming that the retainers on the tail rotor blades are replaced on all 4 helicopters and each helicopter is dye penetrant inspected 200 times per year.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–13–39 Eurocopter France: Amendment 39–10630. Docket No. 97–SW–39–AD.

Applicability: AS 332C, L, and L1 helicopters, with tail rotor shaft flapping hinge retainer, part number 330A33.3165.00, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks on a tail rotor shaft flapping hinge retainer (retainer) that could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Prior to further flight, and thereafter before the first flight of each day, perform a dye penetrant inspection of each retainer for cracks.

(b) If a crack is found on any retainer, replace it with an airworthy retainer.

Note 2: Eurocopter Service Bulletin No. 05.00.41, dated January 29, 1996, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 31, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–074–057(B), dated March 27, 1996.

Issued in Fort Worth, Texas, on June 18, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17041 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–11–AD; Amendment 39–10633; AD 98–06–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 and Model SA330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–06–04 which was sent previously to all known U.S. owners and operators of Eurocopter France Model AS332C, L, and L1 and Model SA330F, G, and J helicopters by individual letters. This AD requires performing a procedure to determine the angular play of the tail rotor gearbox, and repeating the procedure at certain intervals. This amendment is prompted by an accident involving a Model SA330 helicopter which resulted from the loss of the tail rotor drive. An investigation determined that the loss of the tail rotor drive was caused by excessive play between the tail rotor gearbox bevel gear and the bevel wheel. This condition, if not corrected, could result in failure of the tail rotor gearbox, loss of tail rotor drive, and subsequent loss of control of the helicopter.

DATES: Effective July 13, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–06–04, issued on March 4, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On March 4, 1998, the FAA issued priority letter AD 98–06–04, applicable to Eurocopter France Model AS332C, L, and L1 and Model SA330F, G, and J helicopters, which requires performing a procedure to determine the play of the tail rotor gearbox within 25 hours time-in-service (TIS), and repeating the procedure at intervals of 100 hours TIS or 520 hours TIS depending on the amount of play that is detected. That action was prompted by an accident involving a Model SA330 helicopter that occurred on October 21, 1997, which resulted from the loss of the tail rotor drive. An investigation determined that the loss of tail rotor drive was caused by excessive play between the tail rotor gearbox bevel gear and the bevel wheel. This condition, if not corrected, could result in failure of the tail rotor gearbox, loss

of tail rotor drive and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Eurocopter France Model AS332C, L, and L1 and Model SA330F, G, and J helicopters of the same type design, the FAA issued priority letter AD 98–06–04 to prevent failure of the tail rotor gearbox, loss of tail rotor drive and subsequent loss of control of the helicopter. The AD requires, within 25 hours TIS after the effective date of this AD, and thereafter at specified intervals, performing a procedure to determine the angular play of the tail rotor gearbox and replacing the tail rotor gearbox with an airworthy gearbox if the specified angular play limit is exceeded. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspections of the tail rotor gearbox for excessive play is required within 25 hours TIS or upon or before attaining 520 hours TIS and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 4, 1998 to all known U.S. owners and operators of Eurocopter France Model AS332C, L, and L1 and Model SA330F, G, and J helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. However, the FAA has made several nonsubstantive editorial changes since the issuance of Priority Letter AD 98–06–04; the word "excess" was changed to "excessive," the incorrect placement of the number "12" in Figure 1 has been corrected, and a new paragraph was added to clarify that brackets and mounts installed during the required inspection are to be removed between inspections. The FAA has determined that these changes will neither increase the economic burden on an operator nor increase the scope of the AD.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $100 per helicopter to create the necessary tools and $45,000 to replace the gearbox, if necessary. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,280 per helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–11–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–06–04 Eurocopter France: Amendment 39–10633. Docket No. 98–SW–11–AD.

Applicability: Model AS332C, L, and L1 and Model SA330F, G, and J helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within the next 25 hours time-in-service (TIS) for tail rotor gearboxes (TGB) with 495 or more hours TIS since manufacture or overhaul; or, for TGB with less than 495 hours TIS since manufacture or overhaul, required upon or before attaining 520 hours TIS, unless accomplished previously.

To detect excessive play between the splines of the TGB bevel gear and the bevel wheel and to prevent failure of the TGB, which could result in loss of tail rotor drive and subsequent loss of control of the helicopter, accomplish the following:

(a) For TGB that are not equipped with a tail rotor blade deicing system as shown in Figure 1, fabricate a steel angle bracket (angle bracket) (No. 1 of Figure 1) and an aluminum mount (No. 2 of Figure 1).

(1) Place a tail rotor blade in the horizontal position with the blade's tip facing forward.

(2) Immobilize the TGB input flange by placing a wooden block between the TGB input flange and the deck.

(3) Secure the angle bracket on the TGB output casing with a nut (No. 3 of Figure 1) and a washer (No. 5 of Figure 1).

(4) Secure the mount on the rotor shaft.

(5) Secure the dial indicator gage (No. 4 of Figure 1) on the angle bracket.

(6) Install the feeler of the dial indicator on the mount at the index mark which is 120 mm from the rotor shaft center line.

(7) Using a dynamometer, apply a 1 daN (2.25 lbs.) load in both directions (indicated by letter "F" in Figure 1), 30 mm from the blade tip, to measure the total play.

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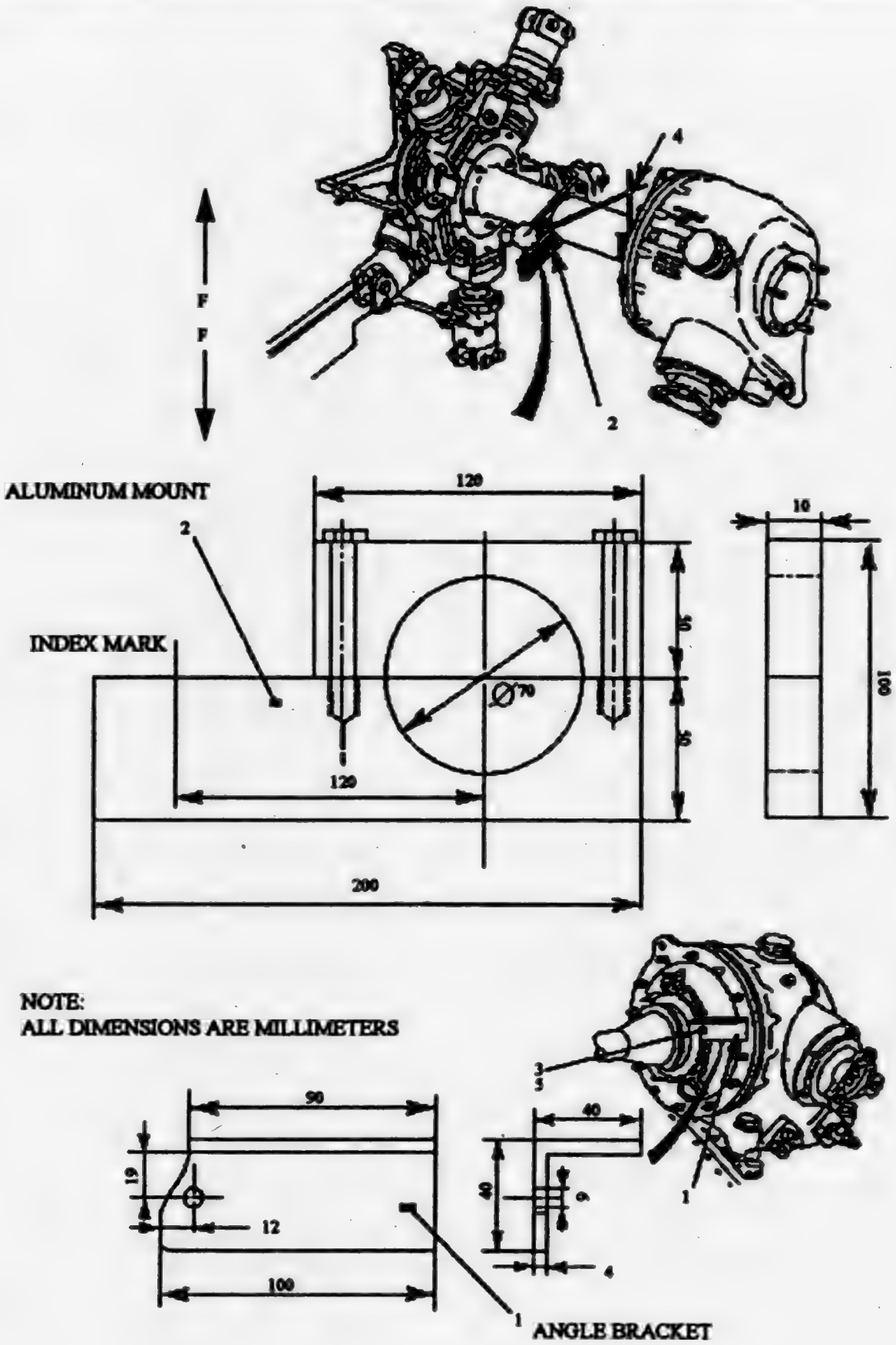
F
F
4
2
ALUMINUM MOUNT
2
INDEX MARK
120
Ø70
55
35
120
200
10
100
NOTE:
ALL DIMENSIONS ARE MILLIMETERS
3
5
90
19
12
100
40
40
6
4
1
1
ANGLE BRACKET

FIGURE 1

(b) For TGB that are equipped with a tail rotor blade deicing system as shown in Figure 2, fabricate a steel angle bracket (angle bracket) (No. 6 of Figure 2) from a 90° formed steel sheet.

(1) Place a tail rotor blade in the horizontal position with the blade's tip facing forward.

(2) Immobilize the TGB input flange by placing a wooden block between the TGB input flange and the deck.

(3) Secure the angle bracket on the TGB output casing with a nut (No. 7 of Figure 2) and a washer (No. 8 of Figure 2).

(4) Secure the dial indicator gage (No. 9 of Figure 2) on the angle bracket.

(5) Install the feeler of the dial indicator on the tail rotor hub, 5 mm from the spindle attachment bolt (Item A of Figure 2).

(6) Using a dynamometer, apply a 1 daN (2.25 lbs.) load in both directions (indicated by letter "F" in Figure 1), 30 mm from the blade tip, to measure the total play.

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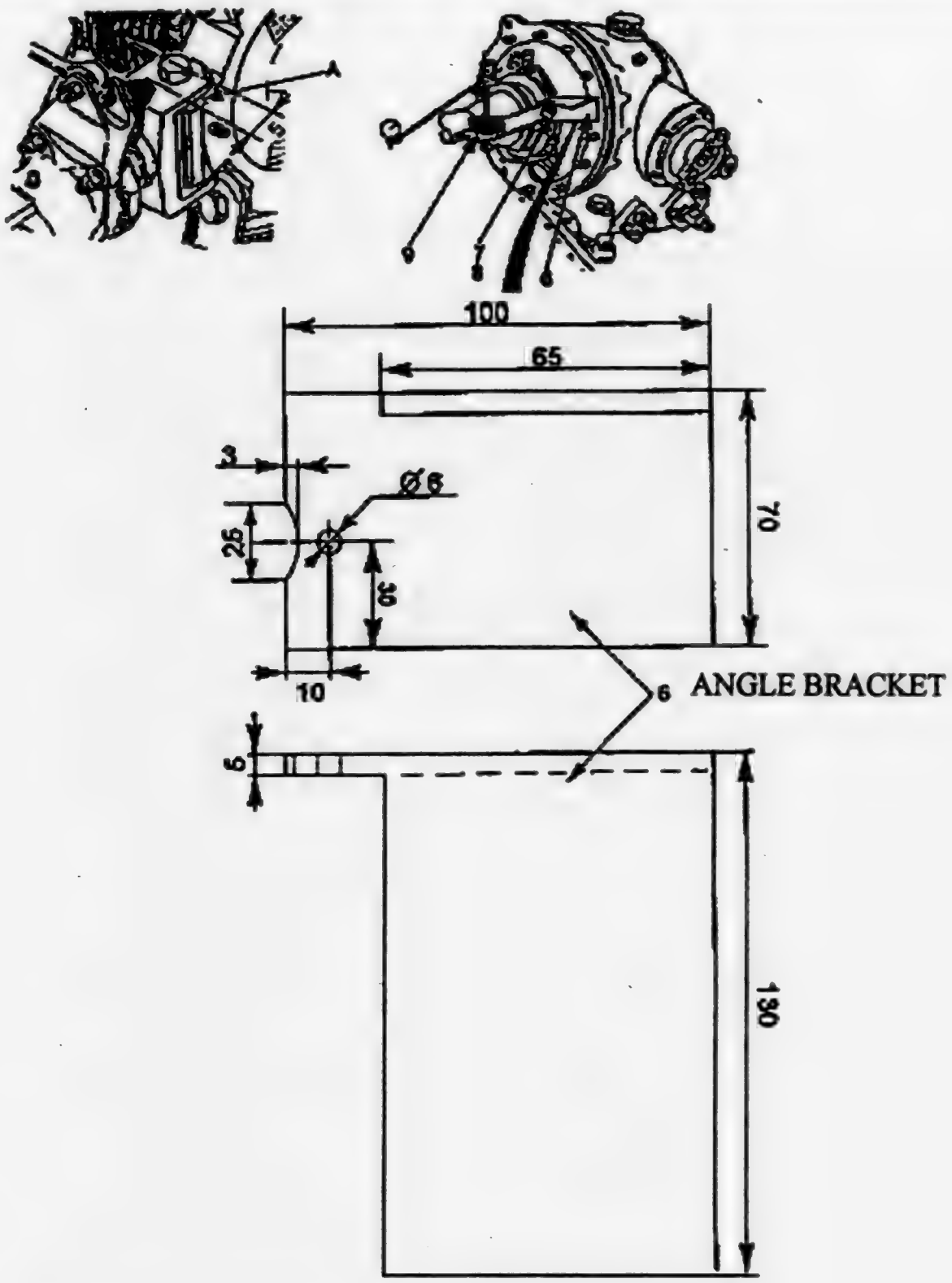

NOTE:
ALL DIMENSIONS ARE MILLIMETERS

FIGURE 2

BILLING CODE 4910-13-C

(c) Record the play measurement on the equipment log card or equivalent record.

(1) If the play is 0.37 mm or less, comply with paragraphs (a) or (b) of this AD, as applicable, at intervals not to exceed 520 hours TIS.

(2) If the play is greater than 0.37 mm and less than 0.52 mm, comply with paragraphs (a) or (b) of this AD, as applicable, at intervals not to exceed 100 hours TIS.

(3) If the play is equal to or greater than 0.52 mm, remove the TGB and replace it with an airworthy TGB.

(d) Brackets and mounts installed to perform the requirements of this AD, as applicable, are to be removed prior to flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on July 13, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–06–04, issued March 4, 1998, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–322–067(AB) and AD 97–323–079(AB), both dated November 19, 1997.

Issued in Fort Worth, Texas, on June 18, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17043 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–18–AD; Amendment 39–10632; AD 98–09–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–09–11 which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (Eurocopter) Model EC 135 helicopters by individual letters. This AD requires, before further flight, a review of aircraft records to determine if a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit have been accomplished; before further flight, and thereafter at intervals not to exceed 15 hours time-in-service, inspecting the tail rotor drive shaft bearing (bearing) attaching lock plates for bent-open tabs, and broken or missing slippage marks; and visually inspecting each bearing support for cracks. This amendment is prompted by three reports of loose bearings and attachment bolts, and one report of a cracked bearing support. Excessive vibrations in the tail rotor drive shaft can loosen attachment bolts or cause cracking in the bearing supports. This condition, if not corrected, could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective July 13, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–09–11, issued on April 17, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–18–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On April 17, 1998, the FAA issued priority letter AD 98–09–11, applicable to Eurocopter Model EC 135 helicopters, which requires, before further flight, a review of aircraft records to determine if a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit L 535M3002 882 have been accomplished. If a tail rotor vibration survey has not been accomplished or if a Fenestron Shaft Retrofit Kit has not been installed, the FAA must be contacted. Also, before further flight, and thereafter at intervals not to exceed 15 hours time-in-service, the AD requires inspecting the bearing attaching lock plates at each bearing support for bent-open tabs, and inspecting for broken or missing slippage marks. If a bearing attaching lock plate tab is bent open, or if a slippage mark is broken or missing, the FAA must be notified. Finally, the AD requires visually inspecting each bearing support for cracks, and if a crack is found, replacing the bearing support with an airworthy bearing support. That action was prompted by three reports of loose bearings and attachment bolts, and one report of a cracked bearing support. Excessive vibrations in the tail rotor drive shaft can loosen attachment bolts or cause cracking in the bearing supports. This condition, if not corrected, could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter.

The Luttfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Eurocopter Deutschland GmbH (ECD) Model EC 135 helicopters. The LBA advises that the loosening of bolt connections at the bearing supports may lead to a tail rotor failure and thus to the loss of the helicopter. The LBA issued AD 1998–033/5, dated April 6, 1998, applicable to ECD Model EC 135 helicopters.

The FAA has reviewed Eurocopter EC 135 Alert Service Bulletin No. EC 135–53A–002, dated December 12, 1997, which describes procedures for visually inspecting the bearing supports, and Eurocopter EC 135 Alert Service Bulletin No. EC 135–53A–005, Revision 1, dated April 6, 1998, which describes procedures for measuring vibrations on the tail rotor drive shaft and replacement of roller bearing attaching hardware at bearing locations.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provision of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Model EC 135 helicopters of the same type design, the FAA issued priority letter AD 98–09–11 to detect loose bearing attachment bolts, or cracked bearing supports, which could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter. The AD requires, before

further flight, a review of aircraft records to determine if a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit L 535M3002 882 have been accomplished. If a tail rotor vibration survey has not been accomplished or if a Fenestron Shaft Retrofit Kit has not been installed, the FAA must be contacted. Also, before further flight, and thereafter at intervals not to exceed 15 hours time-in-service, the AD requires inspecting the bearing attaching lock plates at each bearing support for bent-open tabs, and inspecting for broken or missing slippage marks. If a bearing attaching lock plate tab is bent open, or if a slippage mark is broken or missing, the FAA must be notified. Finally, the AD requires visually inspecting each bearing support for cracks, and if a crack is found, replacing the bearing support with an airworthy bearing support.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, reviewing aircraft records, inspecting the bearing attaching lock plates, and visually inspecting each bearing support for cracks are required before further flight and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 17, 1998 to all known U.S. owners and operators of Eurocopter Model EC 135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 6 helicopters of U.S. registry will be affected by this AD, that it will take approximately .5 work hour per helicopter to review aircraft records and 1 work hour per helicopter to conduct the required inspections, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $540 to review the aircraft records and perform the inspections once on each helicopter in the U.S. fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–18–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–09–11 Eurocopter Deutschland GmbH: Amendment 39–10632. Docket No. 98–SW–18–AD.

Applicability: Model EC 135 helicopters, serial numbers 0005 through 0048, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect loose tail rotor drive shaft bearing (bearing) attachment bolts, or cracked bearing supports, which could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the helicopter's historical records to determine if a tail rotor drive shaft vibration survey and the installation of Fenestron Shaft Retrofit Kit L 535M3002 882 have been accomplished. If either action has not been accomplished, contact the Manager, Rotorcraft Standards Staff, FAA, telephone (817) 222–5110, fax (817) 222–5961.

(b) Before further flight, and thereafter at intervals not to exceed 15 hours time-in-service (TIS), at each bearing support:

(1) Inspect each bearing attaching lock plate that was installed with the Fenestron Shaft Retrofit Kit L 535M3002 882 for bent-open tabs.

(2) Inspect for broken or missing slippage marks that may indicate looseness or rotation of attaching hardware.

(3) If a lock plate tab is bent open on bearing supports A, B, or C (shown in Figure 1), or if slippage marks are broken or missing, contact the Manager, Rotorcraft Standards Staff.

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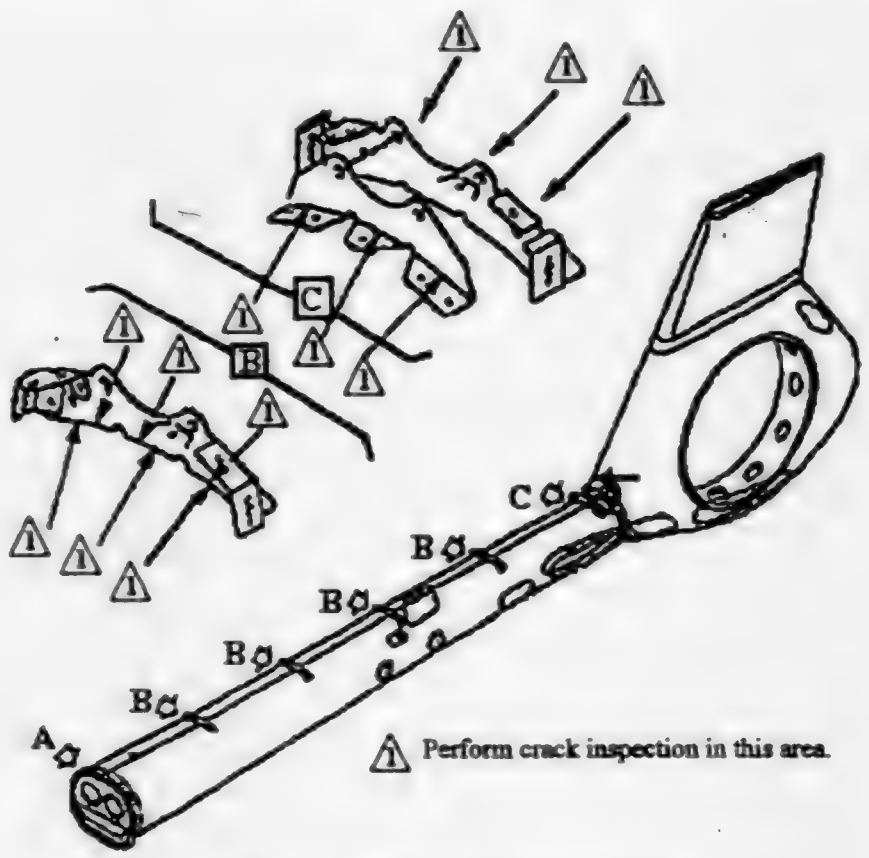

Inspection of Bearing Supports
Figure 1

BILLING CODE 4910–13–C

(c) Before further flight, and thereafter at intervals not to exceed 15 hours TIS, using a 6-power or higher magnifying glass and a bright light, visually inspect bearing supports B and C as shown in Figure 1 for cracks. If a crack is found, replace the bearing support with an airworthy bearing support.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on July 13, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–09–11, issued April 17, 1998, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 1998–033/5, dated April 6, 1998.

Issued in Fort Worth, Texas, on June 18, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17023 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–65–AD; Amendment 39–10619; AD 98–13–28]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109C and A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta S.p.A. (Agusta) Model A109C and A109K2 helicopters. This action requires a one-time inspection of each tail rotor blade (blade) for debonding, and if debonding exists which exceeds certain limits,

replacement of the blade with an airworthy blade. This amendment is prompted by two incidents in which helicopters lost a blade tip fairing during ground run-up. The actions specified in this AD are intended to prevent loss of the tip fairing on a blade, which could result in increased vibrations, loss of the tail rotor assembly, and subsequent loss of control of the helicopter.

DATES: Effective July 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–65–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI) which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta Model A109C and A109K2 helicopters. The RAI advises that a number of blades may have been incorrectly manufactured.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A109C and A109K2 of the same type design registered in the United States, this AD is being issued to prevent loss of the tip fairing on the blade, which could result in increased vibrations, loss of the tail rotor assembly, and subsequent loss of control of the helicopter.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspection of the blades is required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 22 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 hours to accomplish the inspection and replacement, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $11,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $245,960.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–65–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–13–28 AGUSTA S.p.A.: Amendment 39–10619. Docket No. 97–SW–65–AD.

Applicability: Model A109C and A109K2 helicopters, with tail rotor blades (blades), part number (P/N) 109–8132–01–107, serial number A5-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent loss of the tip fairing on the blade, which could result in increased vibrations, loss of the tail rotor assembly, and subsequent loss of control of the helicopter, accomplish the following:

(a) Perform a one-time inspection of each tail rotor blade for debonds. The area to be inspected is located in a spanwise band from 620.0 mm to 670.0 mm (24.4 to 26.4 inches), as measured outboard from the blade retention bolt centerline. Inspect the entire blade surface on both sides of each blade within this band (see Figure 1).

Note 2: Agusta Bollettino Tecnico (Technical Bulletin) Number 109K–15, Revision A, dated April 18, 1997, pertains to the subject of this AD.

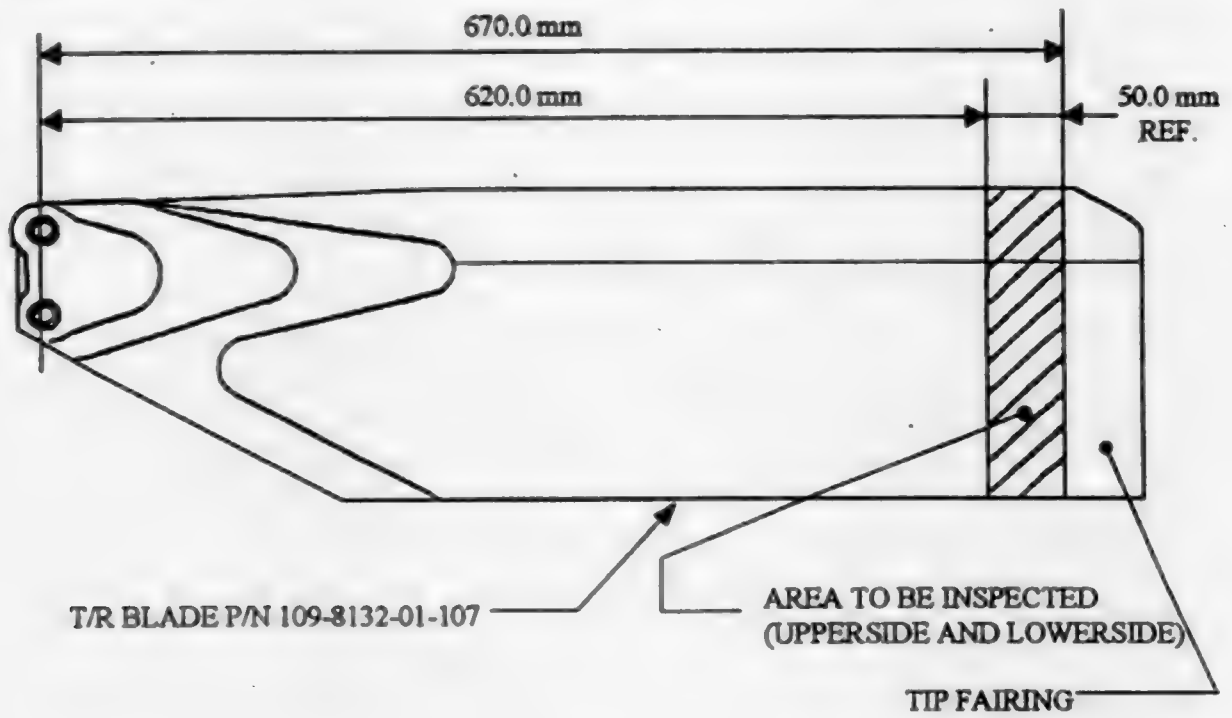

Figure 1

(b) Perform a tapping inspection to detect debonds within the blade surface area identified in paragraph (a) of this AD, using an aluminum hammer, P/N 109–3101–58–2, or equivalent. The presence of paint cracks on the tail rotor blade upper or lower surface in the tip fairing area at the 670.0 mm spanwise location (see Figure 1) may indicate that debonds exist.

(c) Any blade that does not meet the allowable debond criteria specified in the applicable maintenance manual must be replaced with an airworthy blade before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on July 13, 1998.

Note 4: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–124 and AD 97–125, both dated April 30, 1997.

Issued in Fort Worth, Texas, on June 15, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–16612 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–60–AD; Amendment 39–10634; AD 98–13–41]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 172R airplanes. This action requires: inspecting for incorrectly routed aileron control cables in the center console area; inspecting for incorrectly routed aileron control cables in the right-hand (RH)

wing area; inspecting for a loose or improperly installed center lock clamp on the forward aileron control cable drum; and inspecting for loose or missing elevator trim actuator mounting screws, loose rudder circuit pulleys, missing rudder cable guard pins, incorrect elevator trim cable routing, aileron control cable clearance, and flight control cable tension or rigging outside specification. If any of the above conditions are found, this AD requires correcting, repairing, or replacing any damaged or missing part, and reporting any of the above conditions found to the Wichita Aircraft Certification Office. Notification by the manufacturer, service difficulty reports (SDR's), and an FAA surveillance audit at the manufacturing facility identifying potential deficiencies on the affected airplanes prompted the action. The actions specified by this AD are intended to prevent loss of aileron and elevator control, which could result in loss of directional control of the airplane.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone: (316) 941–7550, facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joel M. Ligon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4138; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has recently been notified by Cessna Aircraft Company of a quality control problem in the aileron and elevator control systems on certain Cessna Model 172R airplanes. In addition to this disclosure, the FAA has received service difficulty reports (SDR's) from the field regarding aileron cable control malfunction. The FAA also completed a surveillance audit revealing airplanes having incorrectly routed aileron cables, mis-rigged aileron and elevator control cables, and missing parts in the aileron and elevator systems.

Relevant Service Information

Cessna has issued the following service bulletins applicable to certain Cessna Model 172R airplanes:

—SB98–27–02, dated May 11, 1998, which specifies procedures for inspecting for incorrect routing of the aileron cable over the cable guard in the center console area, or fraying of the cable. If incorrect routing is found and the cable is frayed, the service bulletin specifies replacing the cable with a new cable. If incorrect routing is found, but no evidence of fraying is found, the service bulletin specifies re-routing the cable to its correct position;

—SB98–27–05, dated June 1, 1998, which specifies procedures for inspecting the aileron control cable in the right-hand (RH) wing for routing over an aileron autopilot actuator pulley instead of the aileron flight control pulley in the adjacent location and contains instructions to remove the aileron autopilot actuator pulley. If the aileron control cable is routed over the autopilot actuator pulley and the cable is frayed or damaged, replace the aileron control cable. If mis-routing is found, but no evidence of fraying is found, the service bulletin specifies re-routing the cable to its proper position;

—SB98–27–03, dated June 1, 1998, which specifies procedures for inspecting for a loose or incorrectly installed aileron control cable centering and retainer lock clamp on the forward aileron control cable drum. This condition can result in the primary aileron cable dislodging on the drum which could cause damage to the drum and/or partial or complete loss of aileron control. If this condition is found, repair or replace any damaged part; and,

—SB98–27–06, dated June 15, 1998, which specifies procedures for inspecting for loose or missing elevator trim actuator mounting screws, loose rudder circuit pulleys, missing rudder cable guard pins, incorrect routing of the elevator trim cable, incorrect aileron crossover cable clearance, and incorrect specifications of the flight control cable tension and rigging. If any of the above conditions are found, the service bulletin specifies repairing, replacing, or correcting the part that is damaged, out of alignment, or mis-rigged.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent loss of aileron and elevator control, which could result in loss of directional control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 172R airplanes of the same type design, this AD requires:

—Inspecting for incorrectly routed aileron control cable in the center console area;

—Inspecting for incorrectly routed aileron control cable in the right-hand (RH) wing area;

—Inspecting for a loose or incorrectly installed center lock clamp on the forward aileron control cable drum;

—Inspecting for loose or missing elevator trim actuator mounting screws, loose rudder circuit pulleys, missing rudder cable guard pins, improper elevator trim cable routing, aileron control cable clearance, and flight control cable tension rigging outside specification; and

—If any of the above conditions are found, this AD would require correcting the condition, repairing or replacing any damaged or missing part, and reporting any condition found to the Wichita Manufacturing Inspection Office.

The inspections are to be done in accordance with the Accomplishment Instructions contained in Cessna Service Bulletins (SB) SB98–27–02, dated May 11, 1998, SB98–27–03, dated June 1, 1998, SB98–27–05, dated June 1, 1998, and SB98–27–06, dated June 15, 1998, whichever is applicable.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment

hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–60–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–41 Cessna Aircraft Company: Amendment 39–10634; Docket No. 98–CE–60–AD.

Applicability: Model 172R airplanes with serial numbers 17280001 through 17280475 and 17280506, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS), after the effective date of this AD, unless already accomplished.

To prevent loss of aileron and elevator control, which could result in loss of directional control of the airplane, accomplish the following:

Note 2: Some airplane serial numbers may appear in all of the actions required by this AD and some airplane serial numbers may only appear in one action required by this AD. It is recommended to look at each group of serial numbers closely.

(a) For Cessna Model 172R airplanes with serial numbers 17280001 through 17280326, 17280328, 17280330 through 17280335, 17280337, 17280339 through 17280342, 17280345, 17280346, 17280350, 17280353 through 17280359, 17280361 through 17280364, 17280366, 17280367, 17280371, 17280377, 17280380 through 17280383, 17280385, 17280387,17280390, 17280391, 17280393, 17280395, 17280423, 17280432 through 17280434, 17280440, 17280441, 17280457, 17280460, 17280461, 17280465 through 17280470, and 17280474:

(1) Inspect the aileron control cables in the center console area for incorrect routing over the cable guard, fraying or damage in accordance with the Accomplishment Instructions in Cessna Service Bulletin (SB) No. SB98–27–02, dated May 11, 1998.

(2) Prior to further flight, re-route any aileron control cable found out of place, and replace any aileron control cable found frayed or damaged in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–02, dated May 11, 1998.

(b) For Cessna Model 172R airplanes with serial numbers 17280002, 17280004, 17280021, 17280024, 17280069 through 17280073, 17280075, 17280077, 17280079 through 17280081, 17280083, 17280086, 17280092, 17280095, 17280109, 17280114, 17280120 through 17280124, 17280127, 17280133, 17280136, 17280147, 17280148, 17280150, 17280159, 17280163, 17280171, 17280207, 17280214, 17280224, 17280234, 17280239, 17280242, 17280248, 17280251, 17280253, 17280257, 17280262, 17280275, 17280281, 17280282, 17280285, 17280287, 17280292, 17280301, 17280305, 17280329, 17280337, 17280338, 17280341, 17280342, 17280343, 17280345, 17280351, 17280354, 17280356, 17280357, 17280359, 17280365, 17280429, and 17280506 that were not factory equipped with an autopilot:

(1) Inspect the right-hand wing for an incorrectly routed aileron control cable in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–05, dated June 1, 1998.

(2) If the aileron control cable is mis-routed, prior to further flight, correct the routing, and if there is fraying or damage to the aileron control cable, prior to further flight, replace the control cable in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–05, dated June 1, 1998.

(c) For Cessna Model 172R airplanes with serial numbers 17280001 through 17280349:

(1) Inspect for a loose or incorrectly installed center lock clamp on the forward aileron control cable drum in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–03, dated June 1, 1998.

(2) If the center lock clamp is loose or is installed incorrectly, prior to further flight, correct and adjust appropriately in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–03, dated June 1, 1998.

(d) For Cessna Model 172R airplanes with serial numbers 17280001 through 17280475:

(1) Inspect for loose or missing elevator trim actuator mounting screws, loose rudder circuit pulleys, missing rudder cable guard pins, incorrect elevator trim cable routing, aileron control cable clearance, and flight control cable tension or rigging outside the design specifications in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–06, dated June 15, 1998.

(2) If any condition in paragraph (d)(1) of this AD is found, prior to further flight, repair, replace, or correct in accordance with the Accomplishment Instructions in Cessna SB No. SB98–27–06, dated June 15, 1998.

(e) If any of the conditions noted above in paragraphs (a), (b), (c), or (d) of this AD are found within 10 days of the inspection, report the condition found, date of inspection, and the serial number of the airplane to Doyle M. King, Jr., Manager, Wichita Manufacturing Inspection, Office, 1801 Airport Road, Rm. 101, Mid-Continent Airport, Wichita, Kansas, 67209. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(f) Special flight permits may be issued in accordance with sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(h) The inspections, repairs, replacements, adjustments, and corrections required by this AD shall be done in accordance with Cessna Service Bulletins No. SB98–27–02, dated May 11, 1998, No. SB98–27–03, dated June 1, 1998, No. SB98–27–05, dated June 1, 1998, and No. SB98–27–06, dated June 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on August 18, 1998.

Issued in Kansas City, Missouri, on June 19, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.,

[FR Doc. 98–17020 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–06–AD; Amendment 39–10631; AD 98–13–40]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA 330F, G, and J helicopters, that requires verifying the torque on the nut that secures the two transformer-rectifiers' common ground; and subsequently installing a modification to separate the grounds of the two transformer-rectifiers. This amendment is prompted by a report from the airworthiness authority of France about an unsafe condition resulting from the loss of the common ground of the two transformer-rectifiers. The actions specified by this AD are intended to prevent loss of the common ground of the two transformer-rectifiers, which could result in a complete electrical failure (essential and secondary), loss of electrically-powered instrumentation, and subsequent loss of control of the helicopter.

DATES: Effective July 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 31, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J helicopters was published in the **Federal Register** on March 5, 1998 (63 FR 10783). That action proposed to require verifying the torque on the nut that secures the two transformer-rectifiers' common ground; and subsequently installing a modification to separate the grounds of the two transformer-rectifiers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour to verify or accomplish the retorque of the nut, 2 work hours per helicopter to accomplish the proposed modifications, and that the average labor rate is $60 per work hour. Required parts for the modification would cost approximately $70 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–13–40 Eurocopter France: Amendment 39–10631. Docket No. 97–SW–06–AD.

Applicability: Model SA 330F, G, and J helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the common ground of the two transformer-rectifiers, which could result in a complete electrical failure (essential and secondary), loss of electrically-powered instrumentation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), ensure that the nut, part number (P/N) 22541N080, that secures the common ground of the transformer-rectifiers is properly torqued in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 01.53R1, dated March 13, 1997.

(b) Within 500 hours TIS, install Eurocopter France Modification No. 0725580 or 0725681, as applicable, in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 01.53R1, dated March 13, 1997. Installation of Modification No. 0725580 or 0725681, as applicable, is considered a terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 01.53R1, dated March 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 31, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–173–077(B)R1, dated April 23, 1996.

Issued in Fort Worth, Texas, on June 18, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17042 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–22]

Modification of Class E Airspace; Griffith, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Griffith, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26, has been developed for Griffith-Merrillville Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds an extension to the east for the existing controlled airspace for Griffith-Merrillville Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 22, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Griffith, IN (63 FR 19857). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Griffith, IN, to accommodate aircraft executing the proposed GPS Rwy 26 SIAP at Griffith-Merrillville Airport by adding an eastern extension to the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL in E5 Griffith, IN [Revised]

Griffith-Merrillville Airport, IN
(Lat. 41°31'11" N., long. 87°24'04" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Griffith-Merrillville Airport; and within 2.0 miles either side of the 080° bearing from the airport, extending from the 6.4-mile radius to 7.8 miles east of the airport, excluding that area within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 16, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–17050 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–23]

Modification of Class E Airspace; Fort Atkinson, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fort Atkinson, WI. A Global Positioning System (GSP) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 03 has been developed for Fort Atkinson Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for Fort Atkinson Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 22, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fort Atkinson, WI (63 FR 19856).

The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fort Atkinson, WI, to accommodate aircraft executing the proposed GPS Rwy 03 SIAP at Fort Atkinson Municipal Airport by increasing the radius of the existing controlled airspace for the airport. The area will be depicted on appropriated aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significantly regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 72 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Fort Atkinson, WI [Revised]

Fort Atkinson Municipal Airport, WI
(Lat. 42°57'48" N, long. 88°49'03" W)

That airspace extending upward from 700 feet above the surface within a 8.6-mile radius of Fort Atkinson Municipal Airport, excluding that airspace within the Watertown, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 16, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–17049 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–m

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–24]

Modification of Class E Airspace; Youngstown Elser Metro Airport, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Youngstown Elser Metro Airport, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Youngstown Elser Metro Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds an extension to the east for the existing controlled airspace for Youngstown Elser Metro Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 22, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Youngstown Elser Metro Airport, OH (63 FR 19855). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1, the Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Youngstown Elser Metro Airport, OH, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP at Youngstown Elser Metro Airport by adding an extension to the east for the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 208454, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward form 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Youngstown Elser Metro Airport, OH [Revised]

Youngstown Elser Metro Airport, OH
(lat. 40°57′38″ N., long. 80°40′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Youngstown Elser Metro Airport; and within 4.0 miles either side of the 108° bearing from the airport, extending from the 6.4-mile radius to 8.8 miles east of the airport, excluding that airspace within the Youngstown-Warren Regional Airport, OH, Class E airspace area, and excluding that airspace within the New Castle, PA, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 16, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–17051 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–5]

Amendment of Class E Airspace; Roxboro, NC

AGENCY: Fedeal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Roxboro, NC. A Global Positioning System (GPS) Runway (RWY) 6 Standard Instrument Approach Procedure (SIAP) has been developed for Person County Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Person County Airport. The Class E airspace has been increased from a 6.4 to a 6.6-mile radius.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 6, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Roxboro, NC, (63 FR 16718). This action provides adequate Class E airspace for IFR operations at Person County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Roxboro, NC. A GPS RWY 6 SIAP has been developed for Person County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Person County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Roxboro, NC [Revised]

Person County Airport, NC
(lat. 36°17'08" N, long. 78°59'00" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Person County Airport.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16957 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 14

Amended Enforcement Policy Statement Concerning Clear and Conspicuous Disclosure in Foreign Language Advertising and Sales Materials

AGENCY: Federal Trade Commission.

ACTION: Final rule; Statement of policy.

SUMMARY: The Commission has determined that it would be appropriate to amend its Enforcement Policy Statement regarding clear and conspicuous disclosures in foreign language advertising and sales materials. The amended policy statement is intended to clarify the 1973 Enforcement Policy Statement.

EFFECTIVE DATE: June 26, 1998.

FOR FURTHER INFORMATION CONTACT: Linda K. Badger or Matthew D. Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission ("Commission") has noted that some advertisements appearing in foreign language publications feature advertising copy in both English and a foreign language, but include the required disclosure only in English. Because the target audience for these ads is non-English speaking, the Commission believes that the required disclosure should be provided in the language of the target audience, rather than English. This policy statement clarifies the Commission's policy under these circumstances.

The Commission, on two occasions, has addressed the issue of disclosures in foreign language advertising. On August 9, 1973, the Commission issued an Enforcement Policy Statement dealing with disclosures in foreign language advertising. That policy statement, which is codified at 16 CFR 14.9, reads in pertinent part: "(a) Where cease-and-desist orders as well as rules, guides and other statements require 'clear and conspicuous' disclosure of certain information, that disclosure must be in the same language as that principally used in the advertisements and sales materials involved.[1] Staff has been informed that some companies have interpreted the 1973 Enforcement Policy Statement to mean that a disclosure must be in English, regardless of the target audience of the advertisement, if the number of English words in an advertisement exceeds the number of foreign language words.

On November 4, 1986, the Commission issued its Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986.[2] Those regulations address, *inter alia*, the language in which the Surgeon General's health warning must appear in advertisements for smokeless tobacco products. The smokeless tobacco regulations require that:

In the case of an advertisement for a smokeless tobacco product in a newspaper, magazine, periodical, or other publication that is not in English, the warning statement shall appear in the predominant language of the publication in which the advertisement appears. In the case of any other advertisement, the warning statement shall appear in the same language as that principally used in the advertisement.[3]

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[1] 38 FR 21494 (Aug. 9, 1973).
[2] 16 CFR 307 (1997).
[3] 16 CFR 307.5

While the policy statement focuses on the principal language of the advertisement, the smokeless tobacco regulation looks to the predominant language of the publication in determining the language in which the Surgeon General's health warning must appear.

The Commission believes that, for advertisements in publications, the smokeless tobacco language is better calculated to ensure compliance with the original intent of the 1973 Enforcement Policy Statement—that disclosures be communicated effectively to the advertisement's target audience.

By amending the policy statement as proposed, the Commission would not be creating a new regulation. The policy statement amendment merely would clarify the original intent of the 1973 Enforcement Policy Statement—that all American consumers, regardless of the language they speak, have access to important information regarding the products they purchase.

List of Subjects in 16 CFR Part 14

Trade practices.

Accordingly, for the reasons set forth in the preamble, the Commission hereby amends Title 16, Part 14 of the Code of Federal Regulations as follows:

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

1. The authority citation for part 14 continues to read as follows:

Authority: 15 U.S.C. 41–58

2. Section 14.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

* * * * *

(a) Where cease-and-desist orders as well as rules, guides and other statements require "clear and conspicuous" disclosure of certain information in an advertisement or sales material in a newspaper, magazine, periodical, or other publication that is not in English, the disclosure shall appear in the predominant language of the publication in which the advertisement or sales material appears. In the case of any other advertisement or sales material, the disclosure shall appear in the language of the target audience (ordinarily the language principally used in the advertisement or sales material).

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty or other law enforcement proceeding for violating the terms of a Commission cease-and-desist order or rule.

By direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 98–16953 Filed 6–25–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 24, 111, 113, 143, 162, 163, 178, and 181

(T.D. 98–56)

RIN 1515–AB77

Recordkeeping Requirements

AGENCY: Customs Service; Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** which set forth final amendments to the Customs Regulations to reflect changes to the Customs laws regarding recordkeeping and related requirements. The correction involves an incorrect citation within § 163.6 of the final regulatory texts.

EFFECTIVE DATE: This correction is effective July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Francis W. Foote, Regulations Branch, Office of Regulations and Rulings (202–927–0163).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1998, Customs published in the **Federal Register** (63 FR 32916) as T.D. 98–56 a final rule document setting forth final amendments to the Customs Regulations to reflect changes to the Customs laws regarding recordkeeping requirements, examination of records and witnesses, regulatory audit procedures, and judicial enforcement contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). The majority of those final regulatory texts are contained in new part 163 (19 CFR part 163) which reflects general recordkeeping requirements applicable to persons who engage in specified types of customs transactions.

Within new part 163, § 163.6 includes requirements concerning the production and examination of entry records and prescribes the monetary penalty assessment and additional actions that Customs may take for a failure to comply with those requirements. Within § 163.6, paragraph (b)(2)(i) specifies the additional actions that Customs may take and paragraph (b)(2)(ii) sets forth an exception to the paragraph (b)(2)(i) general rule. However, the text of paragraph (b)(2)(ii), as published, improperly included a reference to paragraph "(b)(2)(ii)(B)" which should have read "(b)(2)(i)(B)". This document corrects this typographical error.

Correction to the Final Regulations

§ 163.6 [Corrected]

On page 32948, in the third column, in § 163.6, in paragraph (b)(2)(ii), the reference "(b)(2)(ii)(B)" is corrected to read "(b)(2)(i)(B)".

Dated: June 22, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–17060 Filed 6–25–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule.

SUMMARY: The Agency adopts a fee sufficient for it to recover the full cost of its administrative processing of requests for waiver of the two-year return to the home country requirement set forth in Section 212(e) of the Immigration and Naturalization Act (8 U.S.C. 1182(e)).

DATES: This interim rule is effective June 26, 1998. The specified fee will be assessed for all waiver applications post-marked after July 27, 1998. Written comments must be submitted on or before July 27, 1998.

ADDRESSES: Written comments should be submitted to: Public Comment Clerk, Office of General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619–6531.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Fulbright-Hays Act of 1961 (Pub. L. 87–256) the Agency administers the Exchange Visitor Program by facilitating the entry of over

200,000 program participants each year. The Exchange Visitor Program is a component of the public diplomacy efforts of the United States Government and fosters mutual understanding and peaceful relations between the United States and other countries through educational and cultural exchange activities. Program participants enter the United States in nonimmigrant J-visa status. A statutory requirement has been imposed to ensure that certain program participants return to their home country and share with their countrymen the education, skills, and understanding of the United States acquired as a program participant.

Commonly referred to as the Section 212(e) return to the home country requirement, this statutory provision applies to a program participant who has entered the United States and received government funding to participate in an exchange activity, or who has pursued graduate medical education or training as a participant, or who has pursued study or training in a field of interest to his or her home government as evidenced by such field's inclusion on the identified "skills list" for that country. If subject to the provisions of Section 212(e), a program participant may not adjust his or her nonimmigrant status to that afforded under the provisions of 8 U.S.C. 1101 (h) or (l) or to legal permanent resident unless the participants has been either physically present in his or her home country for a period of two years following completion of his or her Exchange Visitor Program or has received a waiver of this requirement.

Based upon the statutory and administrative authorities set forth below, the Agency has determined that its review of and recommendation regarding requests for the waiver of the two year return to the home country requirement confers a specific benefit to the requesting individual. Accordingly, a fee sufficient to recoup the costs of conferring this specific benefit is appropriate.

Legislative Authority

The Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (Pub. L. 105–119) authorizes the Agency to collect fees related to its provision of Exchange Visitor Program services. Specifically, this appropriations statute authorizes the Agency to charge a fee and recycle such monies by providing "* * * That not to exceed $6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, library, motion pictures, and publication programs as authorized by section 810 of such Act of 1948 (22 U.S.C. 1475e) and, notwithstanding any other law, fees from educational advising and counseling, and exchange visitor program services * * *."

In adopting a fee for exchange visitor program services provided to the public, the Agency is also guided by the provisions of the Independent Offices Appropriations Act of 1952 (Pub. L. 82–137), 31 U.S.C. 9701. This statute permits an agency to prescribe regulations establishing the charge for a service or thing of value provided by the agency. Such regulations so adopted are subject to policies prescribed by the President. The statute directs that any charge adopted shall be (i) fair; and (ii) based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The Agency has determined that an application to the Agency for a waiver recommendation is a request for a service within the meaning of these statutes that confers a specific benefit upon an identifiable beneficiary. Further, the Agency also relies upon the decisions in *Auyda, Inc.* v. *Attorney General*, 661 F. Supp. 33 (1987); and *Engine Manufacturers Association* v. *E.P.A.*, 20 F.3d 1177 (1994) in adopting a fee for the review of such applications.

Finally, the Agency's adoption and implementation of a fee for review of waiver applications will be subject to the provisions of the Chief Financial Officers Act of 1990 (Pub. L. 101–576.) Section 205(a)(8) of this Act requires the Agency's Chief Financial Officer to "review, on a biennial basis, the fee, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." (31 U.S.C. 902(a)(8))

Office of Management and Budget Circular No. A–25

Pursuant to Circular No. A–25, The Office of Management and Budget (OMB) has established the Federal policy governing fees assessed for Government services and for the sale or use of Government goods or resources. OMB Circular No. A–25 sets forth the general policy that a "user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." To determine whether a "special benefit" has accrued, Circular No. A–25 offers the following guidance:

For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service: (a)(E)nables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) (P)rovides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) (I)s performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours.)

(OMB Circular A–25, section 6.a.(1))

In calculating the amount of the fee to be charged for the Agency's review of an application for a Section 212(e) waiver and recommendation thereon, the Agency will rely upon the guidance set forth in OMB Circular A–25. Agencies are directed to recoup the "full costs" of providing a service or specific benefit. Full cost is defined as including all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Directed and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost account systems need not be established solely for this purpose.

(OMB Circular A–25 Section 6.d)

Circular A–25 further directs the federal agencies to adopt user charges by promulgating regulations, to ensure that proper internal control systems and

appropriate audit standards are in place, and to review user charges biennially to ensure adjustment of such charges to reflect unanticipated changes in costs or market values.

Fee Calculation

Having determined that imposition of a user fee for Agency review of waiver requests is a lawful exercise of Agency authority, the amount of such fee must be calculated. In calculating the amount of this fee, the Agency is guided by the provisions of OMB Circular No. A–25, User Charges and the Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government. These standards direct that an agency identify and recoup the full cost of providing a benefit or service. Full cost is defined to mean both the direct and indirect costs of providing said service or benefit. The Agency's organizational structure facilitates the calculation of the full cost associated with review of waiver applications as performance of this function is centralized in the Agency's Office of General Counsel Waiver Review Branch (Waiver Branch).

The Waiver Branch is headed by a branch chief who supervises five waiver officers, four waiver assistants and two program assistants. These twelve employees process some 6,000 waiver applications each year. This processing is broken dawn along geographic lines with each officer responsible for specific countries with the waiver and program assistants providing necessary support services. In addition, the Waiver Branch receives general management oversight from the Agency's General Counsel and Deputy General Counsel and legal oversight and assistance from an Agency Assistant General Counsel.

In processing waiver applications, the Waiver Branch unit is required to perform the following tasks:

Receive waiver applications, which includes the tasks of receiving, opening, and screening applications;

Record fee, which includes, in cooperation with the Agency's Management Bureau, the task of receipting fees, reconciling registers, preparing and making deposits, and recording information into program and financial systems;

Input application data, which includes the tasks of entering data from applications into program systems, verifying data, and printing system data;

Manage records, which includes the tasks of creating files; connecting requested information and documents with application files; putting, storing, and moving files; and archiving inactive files;

Adjudicate application, which includes the tasks of distributing workload; reviewing, examine, and adjudicating applications; making and recording adjudicative decisions; requesting and reviewing additional information as needed; and consulting with supervisors and legal counsel on non-routine adjudications;

Prepare outgoing correspondence, which includes the tasks of preparing decision letters, copying, and mailing;

Respond to inquiries, which includes the tasks of receiving and responding to inquiries on the status of a waiver application or the request for an advisory opinion regarding whether an alien is subject to the two year return to the home country requirement. These inquiries may be from applicants, legal representatives, or members of Congress and are received by both telephone and in writing.

As stated above, these identified tasks are performed on a full-time basis by the twelve members of the Waiver Branch with three additional Agency employees providing supervision and legal services on a less than full-time basis. Through application of FASAB Federal Financial Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, the Agency has identified $632,872 in direct costs attributable to the performance of the tasks set forth above. Based upon direct and indirect costs of $816,232, and 6,000 waiver application per year, the Agency has determined that the per unit cost of processing a waiver application is $136 and adopts this amount as the fee to be collected for the future processing of waiver applications.

Public Comment

The Agency invites comments from the public on this interim final rule notwithstanding the fact that it is under no legal requirement to do so. The Designation of exchange visitor sponsors and the administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. 553(a)(1)(1989) specifically exempts such functions from the rulemaking requirements of the Act.

The Agency will accept comments for thirty days following publication of this interim final rule. In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the Preparation of a Federalism Assessment in accordance with E.O. 12612. This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 nor is it considered an economically significant regulatory action as defined by E.O. 12866. This rule does not impose any new reporting or record keeping requirements.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: June 18, 1998.

Les Jin,

General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101 (a)(15)(j), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Part 514 is amended by adding a new subpart H consisting of § 514.90 to read as follows:

Subpart H—Fees.

§ 514.90 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 shall be submitted as directed by the Agency and shall be in the amount prescribed by law or regulation. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency and shall be made payable to the "United States Information Agency." A charge of $25.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. If an applicant is residing outside the United States at the time of application, remittance may be made by bank international money order of foreign draft drawn on an institution in the United States and payable to the United States Information Agency in United States currency.

(b) *Amounts of Fees.* The following fees are prescribed:

Request for waiver review and recommendation—$136.

[FR Doc. 98–16653 Filed 6–25–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that a prior certification of noncompliance for USS CONSTELLATION (CV 64) should be amended to reflect compliance with 72 COLREGS. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400 Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has determined that certain navigation lights on USS CONSTELLATION (CV 64), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements. Specifically, the ship now has a single forward anchor light and a single aft anchor light, as required by Rule 30(a)(i). Furthermore, the forward anchor light and the aft anchor light have been relocated to comply with Annex I, paragraph 2(k), and Rule 30(a)(ii).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Two of 706.2 is amended by revising the entry for USS CONSTELLATION as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), annex I	Forward anchor light, number of; rule 30(a) (i)	AFT anchor light, distance below flight dk in meters; rule 21(e), rule 30(a)(ii)	AFT anchor light, number of; rule 30(a) (ii)	Side lights, distance below flight dk in meters; § 2(g), annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), annex I
USS CONSTELLATION	CV–64	28.2	.....	1	.....	1	0.4	.....	.....

* * * * *

Approved: June 15, 1998.

W.T. Storz,

Commander, JAGC, U.S. Navy, Acting Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 98–17017 Filed 6–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–98–025]

RIN 2115–AE46

Special Local Regulations; Independence Day Celebration Cumberland River Miles 190–191, Nashville, TN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Independence Day Celebration. This event will be held on July 4, 1998 from 12 p.m. until 11 p.m. at the Riverfront in Nashville, Tennessee along the Cumberland River, miles 190.0 to 191.0. The event will include a boat parade beginning at 5 p.m. and a fireworks display beginning at 8:45 p.m. These regulations are needed to provide for the safety of life on navigable waters during the boat parade and fireworks display that will be part of the event.

DATES: These regulations are effective from 4 p.m. until 10 p.m. on July 4, 1998.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection and copying at Marine Safety Office, Paducah, 225 Tully Street, Paducah, Kentucky, 42003 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 Stephen L. Jones, Marine Safety Office, Paducah, KY., Tel: (502) 442–1621.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less then 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or so provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is an Independence Day

celebration including a boat parade and fireworks display. The event is sponsored by the Nashville Metropolitan Board of Parks and Recreation. Spectators will be able to view the event from areas designated by the sponsor. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not a significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 USC 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100–T08–025 is added to read as follows:

§ 100.35–T08–025 Cumberland River at Nashville, Tennessee

(a) *Regulated Area:* Cumberland River Miles 190.0–191.0.

(b) *Special Local Regulation:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectator shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessel shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call signal "PATCOM".

(b) *Effective Date:* This section is effective from 4 p.m. and 10 p.m to July 4, 1998.

Dated: June 19, 1998.

A.L. Gerfin, Jr.

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 98–17072 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–037]

RIN 2115–AE46

Special Local Regulations; Cellular One Offshore Cup; San Juan Bay and North of Old San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the 1998 Cellular One Offshore Cup. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on June 28, 1998, in San Juan Bay and North of Old San Juan, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters because of the expected number of spectator craft in the vicinity of the racecourse.

DATES: These regulations become effective at 12:30 p.m. and terminate at 3 p.m. AST on June 28, 1998.

ADDRESSES: Documents as indicated in the preamble may be made available for inspection or copying at La Puntilla Finale, San Juan, PR 00902 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT D.L. Garrison at (787) 729–6800, extension 227.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On June 28, 1998, there will be 20 high speed offshore power boats racing on a fixed course in San Juan Bay, the bay entrance around Punta El Morro, east 2 n.m. along the coast to Penon San Jorge, then back around into the bay. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the running of the 1998 Cellular One Offshore Cup.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as the exact date of the race

was only established less than 3 weeks prior to the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses San Juan Bay, the bay entrance, and the waters extending to ½ n.m. offshore of Old San Juan from Punta El Morro East to Penon San Jorge, entry into which is only prohibited for 2½ hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, as these regulations will only be in effect in a limited area in the vicinity of San Juan for three hours on the day of the event.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with figure 2–1, paragraph 34(h), of Commandant Instruction M16475.1C. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available for inspection and copying in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. A new temporary § 100.35T–07–037 is added as follows:

§ 100.35T–07–037 Cellular One Offshore Cup; San Juan, Puerto Rico

(a) *Regulated Area:* A regulated area is established for the waters north of Old San Juan beginning at 18–28.24N, 066–08W, then North to 18–28.54N, 066–08W, then East to 18–28.4N, 066–05.30W, then South to 18–28.12N, 066–05.30W, then directly South to the shore, and including all of San Juan Bay, except San Antonio Approach Channel, San Antonio Channel, Army Terminal Channel, Army Terminal Turning Basin, and Puerto Nuevo Channel, and Graving Dock Channel. All coordinates referenced use Datum: NAD 1983.

(b) *Special Local Regulations:*

(1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor southeast of La Puntilla. After termination of the race, all vessels may resume normal operations. Traffic may be permitted to resume normal operations between scheduled racing events, at the discretion of the Patrol Commander.

(2) Temporary buoys will be used delineate the course.

(c) Dates: This section becomes effective at 12:30 and terminates at 3 p.m. AST on June 28, 1998.

Dated: June 17, 1998.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 98–17070 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–024]

RIN 2115–AE46

Special Local Regulations; Deerfield Beach Super Boat Race, Deerfield Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Deerfield Super Boat Grand Prix powerboat race. This event will be held annually during the third Sunday of July, between 12:30 p.m. and 4 p.m. Eastern Daylight Time (EDT). The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule becomes effective June 26, 1998.

ADDRESSES: Documents as indicated in the preamble are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday except Federal holidays. Telephone (305) 535–4448.

FOR FURTHER INFORMATION CONTACT: AMCS T. Kjerulff, Coast Guard Group Miami, FL at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 7, 1998, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 25187), seeking comments on the establishment of permanent special local regulations for the Deerfield Super Boat race. No comments were received during the comment period.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high speed power boat race that will take place annually on the third Sunday in July in the Atlantic Ocean off Deerfield Beach, Florida. Approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately two

hundred (200) spectator craft. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterways. These regulations will create a regulated area offshore Deerfield Beach that will only allow participant vessels to enter, and a spectator craft area.

In accordance with 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after **Federal Register** publication. Delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as the sponsors only recently determined that the event would be held on the third Sunday of July each year and there was not sufficient time remaining for a full comment period and delayed effective date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 4.5 hours on the day of the event year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, non-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, as the regulations would only be in effect in a limited area offshore Deerfield Beach for approximately 4.5 hours one day each year.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemkaing does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Add section 100.733 to read as follows:

§ 100.733 Annual Deerfield Beach Super Boat Race; Deerfield Beach, Florida.

(a) *Regulated Areas.* (1) A regulated area is established by a line joining the following points:

Corner point 1: 26 17.7′N–080 04.4′W
Corner point 2: 26 19.7′N–080 03.9′W
Corner point 3: 26 15.7′N–080 04.4′W
Corner point 4: 26 15.7′N–080 04.9′W. All coordinates reference Datum NAD: 83.

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a line joining the following points:

Corner point 1: 26 15.7′N–080 03.9′W
Corner point 2: 26 15.7′N–080 04.1′W
Corner point 3: 26 19.7′N–080 03.7′W
Corner point 4: 26 19.7′N–080 03.5′W. All coordinates reference Datum NAD: 83.

(3) A buffer zone of 406 yards separates the racecourse and the spectator fleet.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, traffic may be permitted to resume normal operations between scheduled racing events.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the racecourse at all times.

(c) *Effective Date.* This section becomes effective annually on the third Sunday of July at 12 p.m. and terminates at 4:30 p.m. EDT.

Dated: June 17, 1998.

R.C. Olsen, Jr.,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 98–17071 Filed 6–25–98; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–97–014]

RIN 2115–AA98

Special Anchorage Area: Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will extend the boundaries of the special anchorage area currently existing off Groton, Connecticut, between Pine Island and Avery Point. This action is taken at the request of the City of Groton, and is intended to make space available within the special anchorage area for approximately 20 additional moorings.

DATES: This final rule is effective July 27, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the First Coast Guard District (oan), 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 617–223–8337.

FOR FURTHER INFORMATION CONTACT: LT Matthew Stuck, Aids to Navigation Branch, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, (617) 223–8347.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 6, 1998, the Coast Guard published a notice of proposed rulemaking entitled "Special Anchorage Area: Groton, CT" in the **Federal Register** (63 FR 6141). The Coast Guard received no letters commenting on the propose rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The rule is in response to a request made by the City of Groton to accommodate the increased number of vessels mooring in this area. The final rule will expand the existing special anchorage near Groton, Connecticut, described in 33 CFR 110.51, to allow its use by approximately 20 additional boats. Vessels not more than 65 feet in length when at anchor in any special anchorage shall not be required to carry or exhibit the white anchor lights required by the Navigation Rules. The rule will provide approximately twenty additional moorings in which vessel owners may enjoy the convenience of a special anchorage. The existing anchorage, located near Pine Island and Avery Point, is split into two areas by a 210-foot wide fairway channel. The change will reduce the width of the existing fairway to approximately 135 feet and extend the western boundary of the southern section of the anchorage by 75 feet. The note following section 33 CFR 110.51 is also updated to indicate the decrease in fairway channel width.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. No person will be required to spend any money in order to comply with this regulation. The regulation will exempt persons operating in the expanded area from complying with the more stringent vessel lighting regulations they would ordinarily be obliged to follow.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard expects that this rule will not have a significant impact on a substantial number of small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 34(f) Coast Guard Commandant Instruction M16475.1C that this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" and Environmental Analysis Checklist are available in the docket for inspection and copying where indicated under **ADDRESSES** in this final rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

2. Revise § 110.51 to read as follows:

§ 110.51 Groton, Conn.

The waters between an unnamed cove and Pine Island.

(a) Beginning at a point on the shoreline of Avery Point at latitude 41°19′01.4″, longitude 072°03′42.8″; thence to a point in the cove at latitude 41°19′02.5″, longitude 72°03′36.2″; thence southeasterly to a point at latitude 41°18′56.2″, longitude 072°03′34.2″; thence northeasterly to latitude 41°19′02.5″, longitude 072°03′19.2″ thence terminating at the tip of Jupiter Point at latitude 41°19′04.4″, longitude 072°03′19.7″. DATUM: NAD 83

(b) Beginning at a point on the shoreline of Pine Island at latitude 41°18′47.1″, longitude 072°03′36.8″; thence northerly to latitude 41°18′54.1″, longitude 072°03′35.4″; thence northeasterly to a point at latitude 41°19′01.2″, longitude 072°03′19.3″; thence terminating at a point at latitude 41°18′54.0″, longitude 072°03°17.5″. DATUM: NAD 83

Note: The areas designated by (a) and (b) are principally for the use of recreational vessels. Vessels shall be anchored so that part of the vessel obstructs the 135 foot wide channel. Temporary floats or buoys for marking the location of the anchor of a vessel at anchor may be used. Fixed mooring pilings or stakes are prohibited.

Dated: June 11, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–17073 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC45

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

VOL 63 ISS 123 JE 26 1998 UMI

SUMMARY: The Secretary amends the William D. Ford Federal Direct Loan Program regulations to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved and affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, Room 3045, Washington, DC 20202, telephone 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Final regulations for the William D. Ford Federal Direct Loan Program were published in the **Federal Register** on November 28, 1997 (62 FR 63428). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1995. OMB approved the information collection requirements in the regulations on December 4, 1997. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1998.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

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List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 19, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.212 [Amended]

2. Section 685.212, is amended by adding the OMB control number following the section to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0672)"

[FR Doc. 98–17131 Filed 6–25–98; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OR–2–0001; FRL–6115–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the Section 111(d) State Plan submitted by Oregon on May 14, 1997, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills.

DATES: This action is effective on August 25, 1998 unless significant, material, and adverse comments are received by July 27, 1998. If significant, material, and adverse comments are received a timely withdrawal will be published in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and at Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1996, pursuant to Section 111 of the Clean Air Act (Act), the EPA promulgated new source performance standards (NSPS) applicable to new MSW Landfills and EG applicable to existing MSW Landfills. The NSPS and EG are codified at 40 CFR Part 60, Subparts WWW and Cc, respectively. *See* 61 FR 9905 (March 12, 1996). Under Section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under Section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants), but to which a standard of performance for new sources applies under Section 111. Under Section 111(d), emission standards are to be adopted by the States and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the NSPS. Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in 40 CFR Part 60,

Subpart B. According to Subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified in Subpart Cc for existing MSW Landfills. The EG specified limits for landfill gas requires affected facilities to operate a control system designed to reduce collected non-methane organic compounds (NMOC) concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, using the test methods specified in 40 CFR 60.754(d).

II. Discussion

On May 14, 1997, the Oregon Department of Environmental Quality (ODEQ) submitted to EPA their 111(d) State Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State. The Plan contained Emission Standards and Limitations, Compliance Schedule, Emission Inventory, Source Surveillance, Compliance Assurance and Enforcement, and applicable State regulations (OAR 340–025–0740, and OAR 340–025–0745).

The approval of ODEQ's State Plan is based on finding that: (1) ODEQ provided adequate public notice of public hearings for the proposed rulemaking which allows Oregon to implement and enforce the EG for MSW Landfills, and (2) ODEQ also demonstrated that it has the legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

ODEQ's regulations adopt 40 CFR Part 60, Subpart WWW and require existing MSW Landfills to comply with the Subpart WWW emission standards and limitations. In its State Plan submittal, ODEQ affirms that MSW Landfills subject to OAR 340–025–0740 must comply with 40 CFR Part 60, Subpart WWW. Attachment 3a summarizes all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. This approach is approved because the NSPS Subpart WWW requirements are at least as protective as the Federal requirements contained in Subpart Cc for existing MSW Landfills.

ODEQ also submitted Oregon Administrative Rule (OAR) 340-025–00745, which adopts 40 CFR Subpart WWW. Thus, the compliance schedules and increments of progress specified in Subpart WWW are part of the State Plan and apply to each existing MSW Landfill as stipulated in Subpart WWW. The State Rule's requirement that existing MSW Landfills comply with the compliance schedule and legally enforceable increments of progress as stated in Subpart WWW has been reviewed and is approved as being at least as protective as Federal requirements for existing MSW Landfills in Subpart Cc.

Oregon included in its Plan, under Attachment 3b, emission inventories for all its applicable sources. There are approximately 91 existing landfills in Oregon's inventory, including several closed facilities subject to the initial reporting requirements of the EG. In these inventories, all designated pollutants have been identified and data provided for each.

Oregon cites its legal authority (ORS468.095, 468A.050(2), and 468A.070) to determine the compliance status by requiring owners and operators of designated facilities to maintain records and report to ODEQ the nature and amount of emissions from the facilities. Oregon also cites it legal authority (468.055(1)&(2)) to conduct periodic inspection and testing, as necessary, of designated facilities. The State's ability to provide emission data correlated with the emission standards to the public is referenced in its State Plan submittal as well as in OAR 340–025–0740 and OAR 340–025–0745. Finally, Oregon will provide reports on progress of plan enforcement as required by 40 CFR 60.25.

All measures and other elements in the State Plan must be enforceable by ODEQ. (See Sections 111(d) and 40 CFR Part 60.) During EPA's review of a previous State Implementation Plan revision, a problem was detected concerning the State's ability to adequately enforce point source permits. EPA determined that, because a five-day advance notice provision required by Oregon Revised Statute (ORS) 468.126(1) (1991) can bar civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain State Plan submittal, required by the Clean Air Act for program approval.

However, following EPA notification to Oregon, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from Federal approval or delegation. ODEQ responded to EPA's interpretation of the application of 468.126(2)(e) and agreed that, if Federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of the State Plan requirements. Because the five-day notice provision in ORC 468.126(1) could preclude enforcement of the State Plan in some instances, application of the notice provision would preclude approval of the State MWC Plan. Accordingly, pursuant to ORS 468.126(2)(e), the five-day notice will not be required for permit violations of the State Plan.

Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's audit privilege and penalty immunity law ORS 468.963, Oregon Audit Privilege Act, or its impact upon any approved provision in the State Plan, including any subsequent revisions. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA has included a parallel proposal to approve the ODEQ

State Plan. If no significant, material, and adverse comments are received by July 27, 1998, this action will be effective August 25, 1998.

If the EPA receives significant, material, and adverse comments by the above date, this action will be withdrawn before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. All public comments received will be addressed in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 25, 1998.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Emission guidelines, Intergovernmental relations, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: June 8, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Section 62.9350 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.9350 Identification of plan.

* * * * *

(b) * * *

(5) Control of landfill gas emission from existing Municipal Solid Waste Landfill plan was submitted by Oregon Department of Environmental Quality on May 14, 1997.

(c) * * *

(5) Existing municipal solid waste landfills.

3. Subpart MM is amended to add § 62.9510 and a new undesignated heading to read as follows:

Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.9510 Identification of sources.

The plan applies to all existing MSW landfill facilities in Oregon meeting the requirements as stated in their State regulations.

[FR Doc. 98–17119 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6114–4]

Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending certain requirements of the reformulated gasoline (RFG) regulations which are applicable to California gasoline refiners, importers and oxygenate blenders. These amendments

add flexibility with regard to test methods, sampling and testing requirements, and the use of gasoline that does not meet the oxygen requirement for Federal RFG in California areas that are not Federal RFG areas. EPA is taking this action in order to reduce the burden associated with overlapping California and Federal regulations. There is no expected adverse environmental impact from this final action.

EFFECTIVE DATE: This rule becomes effective on July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers and oxygenate blenders in California

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. RFG Standards and California Covered Areas

Section 211(k) of the Clean Air Act (the Act) requires EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas (Federal areas), as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The federal RFG covered areas in California are Los Angeles, San Diego, and Sacramento. The Act requires that RFG reduce ozone forming volatile organic compounds (VOCs) and toxic emissions from motor vehicles, not increase emission of oxides of nitrogen (NO_x), and meet certain content standards for oxygen, benzene and heavy metals. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR part 80, subparts D, E, and F.[1]

B. Exemptions Specifically Related to California Gasoline

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline. The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NOx, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles.[2] The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively)—applicable starting March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.[3]

During the Federal RFG rulemaking, and in response to comments by California refiners, EPA concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or more stringent than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would in practice be equivalent to the Federal content standards,[4] and (3) that the CARB's compliance and enforcement program is designed to be sufficiently rigorous.[5] While the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in most cases from various enforcement-related provisions.[6] California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover gasoline exported from California.

C. Issues Raised by WSPA & EPA's Response

In letters of June 15, August 3, and November 10, 1995, the Western States Petroleum Association (WSPA), on behalf of California refiners, petitioned EPA to revise the enforcement-related exemption provisions at 40 CFR 80.81. The three principal areas discussed in the petition are the gasoline testing methods, the standard for Reid vapor pressure (RVP), and use of California certification methods without minimum oxygen content requirements. (These certification methods, the predictive model and the vehicle emissions testing model, are discussed in greater detail below.) In February 1996, EPA notified WSPA that EPA would initiate rulemaking to address these issues.[7] Since the California Phase 2 program was scheduled to begin March 1, 1996, EPA announced that it would grant California refiners temporary relief through specific exemptions from enforcement-related test methods, oxygen content of gasoline not used in the RFG areas, and RVP. This temporary relief would remain in place until the rulemakings could be completed.

A final rule related to the RVP standard was published as a direct final rule in the **Federal Register** on May 8,

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[1] See 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

[2] See Title 13, California Code of Regulations sections 2250–2272 (as amended January 26, 1996).

[3] *Id.*, sections 2265 and 2266.

[4] As is discussed in section entitled "Oxygen Standard," below, however, this is not now the case.

[5] See 59 FR 7758, 7759 (February 16, 1994) and 40 CFR 80.81.

[6] Specifically, the Federal RFG regulations at § 80.81 provide that, subsequent to March 1, 1996 (the start of the California Phase 2 program), the specified parties are exempt from meeting the enforcement requirements dealing with: compliance surveys (§ 80.68), independent sampling and testing (§ 80.65(f)), designation of gasoline (§ 80.65(d)), marking of conventional gasoline (§§ 80.65(g) and 80.82), downstream oxygenate blending (§ 80.69), record keeping (§§ 80.74 and 80.104), reporting (§§ 80.75 and 80.105), product transfer documents (§ 80.77), parameter value reconciliation requirements (§ 80.65(e)(2)), reformulated gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) compliance requirements (§ 80.65(c)), annual compliance audit requirements (§ 80.65(h)), and compliance attest engagement requirements (subpart F). Various restrictions apply to the exemptions, and the exemptions do not apply after December 31, 1999.

[7] See letter from Mr. Steve Herman, Assistant Administrator for Enforcement and Compliance Assurance, EPA, to Mr. Douglas Henderson, Executive Director, Western States Petroleum Association, dated February 29, 1996. A copy of this letter has been placed in the docket at the location listed in the **ADDRESSES** section.

1996, and became effective on July 8, 1996.[8]

III. Description of Today's Action

On April 16, 1997 EPA published a proposal addressing the remaining two issues: gasoline testing methods and the use (in conventional gasoline areas) of gasoline certified by California methods not meeting the Federal RFG standard for oxygen content.[9] Some additional issues were addressed in the proposal, including sampling and testing, and these are discussed in greater detail below. EPA proposed changes very similar to the temporary enforcement exemptions granted to the California refiners in its February 1996 letter.

A. Test Methods

Both the Federal RFG and the California Phase 2 programs specify testing methods to demonstrate compliance with the standards applicable under each program. However, in the case of the tests for four parameters (benzene, sulfur, oxygen, and aromatics) the methods [10] specified under the two programs are different.

The applicable exemption in the Federal RFG regulation at 40 CFR 80.81(h) allows California refiners to use the California test methods prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, instead of the Federal test methods prescribed at 40 CFR 80.46, when producing California Phase 2 gasoline that is used in California. However, California refiners are still required to use the Federal test methods prescribed at 40 CFR 80.46 for gasoline that is used outside California, including conventional gasoline subject to the anti-dumping standards specified at 40 CFR 80.101.[11]

WSPA, on behalf of California refiners, requested that EPA extend the test method exemption at 40 CFR 80.81(h) to cover the conventional gasoline produced by California refiners that is exported from California to other states. WSPA asked for this change because a refiner who is utilizing the flexibility of the CARB testing methods for gasoline sold within California, would have to also use the Federal test methods to certify the same gasoline for export to surrounding states.

After considering the issues raised, EPA believed that, under certain conditions, it may be appropriate to allow the use of non-Federal test methods for conventional gasoline exported from California. Absent relief, a California refiner that chooses to utilize the flexibility of the CARB testing methods would have to implement the Federal test methods in order to certify its conventional gasoline for distribution outside California.

EPA further believes that the standards under the California Phase 2 program are expected to result in emissions decreases at least as great as with Federal Phase I RFG and emissions levels of conventional gasoline and CARB is expected to enforce the California standards in a comprehensive, aggressive manner that will result in high compliance. The Agency does not believe that any environmental detriment would be likely to occur from allowing the use of the CARB test methods for conventional gasoline produced in California, but shipped out of state for use in non-RFG areas.

In its February 29, 1996 response to WSPA, EPA indicates its intention to change the Federal RFG regulations to allow additional testing flexibility for California refiners and immediately gave California refiners additional flexibility for a limited time. In that letter, EPA states that if certain conditions are met it will not enforce the requirement at 40 CFR 80.65(e)(1) and 40 CFR 80.101(i)(1)(i)(A) to test conventional gasoline using the Federal test methods specified under 40 CFR 80.46 for benzene, sulfur, oxygen or aromatics, with regard to gasoline that is produced in or imported into California but that is used outside California.

In order to qualify for this enforcement relief, the refiner or importer was required to meet certain conditions, as described in great detail in the February 29, 1996 letter and in the notice of proposed rulemaking.[12] Furthermore, equivalency between CARB and Federal test method results must be established, since the methods themselves are not necessarily equivalent and therefore different methods (if not correlated) would yield different results.

Thus, to qualify for the relief, EPA proposed that the gasoline must be produced at a refinery located in California at which gasoline meeting the California Phase 2 standards and requirements is produced, or the gasoline must be imported into California from outside the United States as California Phase 2 gasoline (i.e., gasoline that meets the standards and requirements of the California Phase 2 program). When exported from California, such gasoline may not be classified as Federal RFG. Furthermore, the refiner must correlate the results from any non-Federal test method to the method specified under 40 CFR § 80.46 for any gasoline that is used outside California, and such correlation must be demonstrated to EPA upon request.

EPA proposed to amend 40 CFR 80.81 to incorporate the flexibility regarding test methods that EPA temporarily granted in its February 29, 1996 letter to WSPA. EPA proposed this action because the Agency believes that it may result in lower compliance costs and greater flexibility for California refiners and because there is no expected adverse environmental impact from this proposed action.

B. Oxygen Standard

Section 211(k) of the Clean Air Act requires that the RFG standard of 2.0 weight percent (wt%) minimum oxygen must be met in each Federal RFG area. When EPA promulgated the California enforcement exemptions at 40 CFR 80.81, it was intended that the statewide standards for California Phase 2 gasoline would be equal to or more stringent than all Federal RFG standards. With regard to oxygen content, the California Phase 2 standards included a statewide flat limit of 1.8 to 2.2 wt% oxygen that EPA considered, in practice, to be equivalent to the Federal standard of 2.0 wt% minimum. As a result, EPA did not need to distinguish between California Phase 2 gasoline used in the Federal RFG areas within California, from the California Phase 2 gasoline used in the other areas of California, in order to have confidence that RFG standards would be met in each Federal RFG area in California.

The final California Phase 2 requirements were changed, however, and now allow gasoline that does not meet the Federal RFG standard for oxygen. Under two alternative California certification methods, the California predictive model and the vehicle emissions testing method, there is no minimum oxygen content requirement for summertime California Phase 2 gasoline.[13] Under 40 CFR

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[8] "Fuels and Fuel Additives—Reformulated Gasoline Sold in California; Reid Vapor Pressure lower limit adjustment— Direct Final Rule," 61 FR 20736 (May 8, 1996).

[9] "Fuels and Fuel Additives—Amendments to the Enforcement Exemptions for California Gasoline Refiners—Proposed Rule," 62 FR 18696 (April 16, 1997).

[10] See 40 CFR 80.46(a), (e), (f) and (g) for Federal RFG test method requirements.

[11] EPA estimates that the portion of gasoline exported from California and used in neighboring states is about twelve percent of the total California gasoline production and imports.

[12] A copy of the letter has been placed in the public docket at the location listed in the ADDRESSES section. See also, 62 FR 18696 (April 16, 1997).

[13] See Title 13, California Code of Regulations, section 2262.5 for the oxygen standards, section

80.81(e)(2), certain enforcement exemptions are withdrawn if a California refiner uses one of the alternative California certification methods, unless within 30 days of receiving the California certification it notifies EPA and demonstrates that its gasoline meets all Federal RFG per-gallon standards, including the 2.0 weight % oxygen standard.

Therefore, in order to retain the enforcement exemptions, 40 CFR 80.81(e)(2) required that all California Phase 2 gasoline produced by a refiner, regardless of whether it is sold in a Federal RFG area, meet the Federal RFG standard for oxygen content. Because neither of the two alternative California certification methods ensure that the Federal oxygen content standard will be met, except during designated winter months, a refiner that uses an alternative California certification method would have to provide notification and demonstrate to EPA that its gasoline meets the Federal RFG standard for oxygen content or lose its eligibility for certain Federal exemptions under 40 CFR 80.81. This loss of eligibility would apply even if the gasoline not meeting the Federal RFG standard for oxygen content is being distributed only to those areas of California that are not Federal RFG areas.

In its petition, WSPA asked EPA to amend the enforcement exemption provisions to allow California refiners to supply California Phase 2 gasoline containing less than 2.0 wt% oxygen to markets within California that are not Federal RFG areas without having to comply with the notification and demonstration requirements of 40 CFR 80.81(e)(2) and without losing the Federal enforcement exemptions. In its February 29, 1996 response to WSPA, EPA said it may be appropriate to amend 40 CFR 80.81, provided that annual gasoline quality surveys for oxygen content are conducted in each Federal RFG area, in order to ensure the gasoline sold there is in compliance with the Federal oxygen content standard.

Consistent with, and as described in, the February 29, 1996 letter, EPA proposed to amend 40 CFR 80.81 to allow refiners to produce California Phase 2 gasoline containing less than 2.0 wt% oxygen for use outside the Federal RFG areas in California, provided appropriate annual gasoline quality surveys for oxygen are conducted in each Federal RFG area in California. These surveys must show an average oxygen content in each covered area of at least 2.0 wt%. While EPA could require that all gasoline batches being produced for the Federal RFG areas be tested for oxygen content at the refinery, or prior to importation as applicable, such testing would not ensure that all gasoline being sold in the Federal RFG areas contains at least 2.0 wt% oxygen.

As in the Federal RFG program areas outside of California, the compliance surveys appear to be the most practical method to assure that, on average, Federal RFG standards are met for each covered area. The Federal RFG program at 40 CFR 80.67 allows refiners, importers, and oxygenate blenders to meet certain Federal RFG standards on average, rather than on a per-gallon basis for each batch of gasoline. The requirement must then be met on average, over the entire production, without any averaging for each specific covered area to which the gasoline is distributed. The following paragraphs describe how the general RFG survey requirements (i.e. those surveys required by § 80.68 and applicable outside California) and how the more limited California oxygen surveys are designed. For general RFG surveys, the discussion here will focus on oxygen surveys.

C. General Survey Requirements

Refiners, importers and oxygenate blenders producing gasoline to meet the Federal RFG standards on average are allowed to produce some batches of gasoline that are less stringent than the averaging standards (within the limits of a per-gallon minimum or maximum standard, as applicable). But they must also produce some batches of gasoline that are more stringent than the averaging standards, such that on average, the applicable averaging standard is met. The averaging standards are somewhat more stringent than the per-gallon standard (e.g., the oxygen content averaging standard is 2.1 wt%, and the per-gallon standard is 2.0 wt%). It is expected that, if all refiners meet either the per-gallon standards or the averaging standards, the covered areas receiving their gasoline should achieve an average oxygen content no lower than would occur without the allowance for such averaging, based on the extensive fungible distribution system for gasoline products. Even though each refinery might meet its refinery gate standard for oxygen on average, there is a risk that some areas might actually receive RFG with relatively low oxygen content while others might receive RFG with relatively high oxygen content. The surveys are designed to lessen this risk and ensure that all Federal RFG program areas at any given time receive RFG that meets the required oxygen standard.

More specifically, because many gasoline distribution systems are fungible, some uncertainty exists as to where each batch of gasoline from each supplier is ultimately distributed, and what batches, or portions of batches, from each supplier that each covered area actually receives. For example, under the averaging program, the possibility still exists that one or more covered areas may receive too many batches of RFG that have a relatively low oxygen content (e.g. greater than or equal to 1.5 wt%, but less than 2.0 wt%), so that the required oxygen levels will not have been achieved in that area.

Consequently, the Federal RFG program at 40 CFR 80.67 requires compliance surveys under 40 CFR 80.68 for refiners that elect to meet the standards on average under 40 CFR 80.41(b), (d) or (f), as applicable, rather than to meet the per-gallon standards for each batch of gasoline under 40 CFR 80.41(a), (c), or (e), as applicable. In general, the compliance surveys are to ensure that each covered area receives gasoline that cumulatively (from all suppliers and across time) has the same oxygen content it would have if averaging was not allowed. However, the Federal RFG regulations at 40 CFR 80.81(b)(1) exempted refiners of California gasoline (with respect to California gasoline) from the compliance survey provisions at 40 CFR 80.68, for the reasons described earlier.

D. Limited Oxygen Surveys for California

In response to the WSPA request concerning oxygen content requirements in California and the changes in California Phase 2 standards regarding oxygen content, EPA considered a limited application of the compliance survey provisions. EPA believes that a yearly series of oxygen surveys, similar to 40 CFR 80.68 surveys for averaging under the Federal RFG program, but limited in their scope, provides the most flexible alternative to refiners and the most assurance to EPA that complying gasoline is actually being sold in the Federal RFG areas.

In its February 29, 1996 response to WSPA, EPA decided to allow California refiners to produce gasoline that contains less than 2.0 wt% oxygen for use outside the Federal RFG areas, until today's amendments to the RFG requirements could be published in the **Federal Register** and become effective. In particular, EPA said it will not

2265 for the alternative predictive model method, and section 2266 for the alternative vehicle emission testing method.

enforce the requirement at 40 CFR 80.81(e)(2) that California refiners must demonstrate that Federal RFG per-gallon standards are met on each occasion California Phase 2 gasoline is certified under Title 13, California Code of Regulations, section 2265 (dealing with gasoline certification based on the California predictive model), provided that two conditions are met. The conditions are: first, a program of gasoline quality surveys must be conducted in each RFG covered area in California each year to monitor annual average oxygen content. Second, the surveys must be conducted in accordance with each requirement specified under 40 CFR 80.68(b) and (c), dealing with surveys for RFG quality, and 40 CFR 80.41(o) through (r), dealing with the effects of survey failures, except that the surveys need only evaluate for oxygen content and a minimum of four surveys (a survey series) must be conducted in each covered area each calendar year.

In its April 16, 1997 proposal, EPA announced its intention to retain the existing 30-day notification and demonstration provisions at 40 CFR 80.81(e)(2) as an option. EPA further proposed that the oxygen surveys conducted in California should not be considered for the purposes of determining the required number of surveys that must be conducted for compliance with the general survey provisions under the Federal RFG program at 40 CFR 80.68.[14] A fixed number of surveys (i.e. a minimum of four per year) was proposed for California, consistent with the temporary enforcement position announced in the February 29, 1996 letter. As with the surveys required under 40 CFR 80.68 for Federal areas outside of California, EPA will determine when these optional surveys conducted in California under 40 CFR 80.81(e)(2) shall be conducted.

The February 29, 1996 letter to WSPA did not address the consequences of passing and failing an optional survey series in a Federal RFG area in California under 40 CFR 80.81(e)(2). The April 16, 1997 document proposed that, for the limited oxygen survey option included in today's rule, failing a survey would result in a "ratcheting" of (i.e., increasing) the minimum oxygen content standard, for each gallon of averaged gasoline, by an additional 0.1%. Only one year of passing the survey series in a covered area will be needed to initiate relaxation of the minimum oxygen content standard for the following year. EPA proposed that the minimum oxygen content standard be relaxed by 0.1 wt% for each year following a year in which the survey series passes in a Federal RFG area in California. However, EPA will not allow the minimum oxygen content standard to be less than 1.5 wt%, the minimum oxygen content standard for Federal RFG under averaging. As with failures of survey series required under 40 CFR 80.68 in Federal RFG areas outside of California in accordance with 40 CFR 80.41(q)(4), adjusted standards under the compliance survey option of 40 CFR 80.81(e)(2) apply to all averaged gasoline produced by a refiner for use in any Federal RFG area.

The procedures and consequences of the oxygen surveys set forth in the April 16, 1997 notice or proposed rulemaking differed somewhat from the general survey consequences under 40 CFR 80.68, because surveys applicable in California are much smaller in scope. EPA proposed that the ultimate consequence of multiple failures of the optional compliance surveys be withdrawal of the survey option, rather than the effective withdrawal of the averaging option, as with the required compliance surveys conducted under 40 CFR 80.68 for Federal RFG areas outside of California. EPA proposed this consequence because the compliance survey option provides refiners of California gasoline additional flexibility under the Federal exemption provisions, conditioned on the premise that those refiners will control the oxygen content of the gasoline being distributed to the Federal RFG areas within California. If the refiners do not control the oxygen content of the gasoline going to those areas as determined by the results of the surveys, EPA believes that it may be reasonable to remove the flexibility provided under this option. Consequently, if EPA proposed that a failure of a survey series in one Federal RFG area in California for three consecutive years occurs, or an equivalent "net" failure of three years over any number of years (i.e., number of years the survey series failed subtracted from the number of years the survey series passed), the compliance survey option will no longer be applicable for any Federal RFG area in California. In practice, this situation will occur if a survey series fails for a covered area in a year in which the minimum oxygen content standard had been raised to 1.7 wt% due to a survey series failure in that covered area the previous year.

It is important to realize that successive oxygen survey failures might be an indication of the inability or unwillingness of California refiners to meet RFG standards. As such, EPA noted in the April 16, 1997 notice of proposed rulemaking that future rulemaking to remove some or all California enforcement exemptions might be appropriate. If a survey does not occur, then all refiners electing to use an alternative certification method must follow the notification requirements at § 80.81(e)(2)(i), including the requirement to demonstrate that all their gasoline meets each of the complex model standards listed in § 80.41(c). Furthermore, in accordance with § 80.81(e)(2)(i), the California enforcement exemptions will not apply to a refiner who chooses an alternative certification method, but fails to meet these notification and demonstration requirements.

Consistent with the existing compliance survey requirements for Federal RFG areas outside of California, EPA proposed to allow the optional compliance survey under 40 CFR 80.81(e)(2) to be conducted either by individual refiners under 40 CFR 80.68(a) or as a group of refiners under 40 CFR 80.68(b).[15] The temporary enforcement position announced by the February 29, 1996 response to WSPA omitted the individual survey option of 40 CFR 80.68(a), because that survey option is not currently being used and is not expected to be used for practical reasons. The consequences of any survey failure will apply to all suppliers [16] who comply on an averaging basis and who serve the failed area.

Consistent with the existing RFG regulations at 40 CFR part 80, the February 29, 1996 letter to WSPA, and the April 16, 1997 notice of proposed rulemaking, California Phase 2 gasoline that does not meet the Federal RFG standards, including the oxygen standard, is classified under the Federal regulations as conventional gasoline. In addition, today's amendments do not alter the prohibitions under section

[14] Under 40 CFR 80.68(b), the required number of compliance surveys required in a year for Federal RFG areas outside of California depends partly on the number of areas required to be surveyed in the year, the number of surveys conducted the previous year, and the survey results from the previous year.

[15] Refiners, importers, and blenders have formed a survey association which funds the survey program. In accordance with § 80.68(c)(13), the survey program is administered by an independent surveyor.

[16] There is an exception for "low volume" parties under 40 CFR 80.41(q)(iii). Specifically, if a refiner or oxygenate blender is able to show that the volume of RFG supplied to a covered area is less than one percent of the RFG produced at its refinery or oxygenate blending facility during the failed year, or 100,000 barrels, whichever is less, he may be exempt from the more stringent standards.

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211(k)(5) of the Clean Air Act, and 40 CFR 80.78(a)(1) against selling or dispensing conventional gasoline to ultimate consumers in Federal RFG areas, and against selling conventional gasoline for resale in Federal RFG areas unless the gasoline is segregated and marked as "conventional gasoline, not for sale to ultimate consumers in a covered area." Nothing in today's action would change the requirement that refiners and importers in California meet all other Federal RFG standards, including the oxygen standard, for gasoline produced or imported for use in Federal RFG covered areas in California. These standards must be met separately for each refinery and by each importer.

The amendments to 40 CFR 80.81 as set forth in today's notice are consistent with the February 29, 1996 letter to WSPA and the April 16, 1997 notice of proposed rulemaking. Comments related to this provision are summarized in section IV, "Response to Comments," below.

E. Correction to § 80.81(e)(1)

EPA proposed to correct 40 CFR 80.81(e)(1), which erroneously omits one provision, paragraph (f), from the list of enforcement exemption provisions that would not apply under the conditions of paragraphs (e)(2) or (e)(3). Paragraph (e)(2) specifies that the exemption provisions listed in paragraph (e)(1) do not apply if a refiner certifies California gasoline under one of the alternative California certification procedures, unless the refiner notifies EPA of that alternative certification and demonstrates to EPA that its gasoline meets all Federal per-gallon standards. (Today's rule adds a compliance survey option to paragraph (e)(2)(ii).) Paragraph (e)(3) specifies that the exemption provisions listed in paragraph (e)(1) do not apply in the case of a refiner of California gasoline that has been assessed a civil, criminal or administrative penalty for certain violations of Federal or California regulations, except upon a showing of good cause.

Paragraph (f) specifies that for California phase 2 gasoline (California gasoline that is sold or made available for sale after March 1, 1996) the following Federal RFG enforcement requirements are waived: the oxygenated fuels provisions of § 80.78(a)(1)(iii), the product transfer provisions of § 80.78(a)(1)(iv), the oxygenate blending provisions contained in § 80.78(a)(7), and the segregation of simple and complex model certified gasoline provision of § 80.78(a)(9). Under the conditions of either paragraph (e)(2) or (e)(3), EPA would need those enforcement provisions to ensure that gasoline being used in Federal RFG areas in California complies with the Federal standards. Therefore, EPA proposed to amend paragraph 40 CFR 80.81(e)(1) to include paragraph (f) in the list of enforcement exemptions that would become inapplicable under the conditions of paragraphs (e)(2) or (e)(3). No comments were received on this aspect of the April 16, 1997 proposal and the proposed corrections are finalized in today's rule.

F. Sampling and Testing Requirements for California Refiners

Under 40 CFR 80.65(e)(1), a refiner must determine the properties of each batch of RFG it produces prior to the gasoline leaving the refinery.[17] Under the California RFG program, refiners may obtain approval to sample and test gasoline for compliance with California RFG standards at off-site "production" tankage. This approval would have to be obtained under Title 13, section 2260(a)(28) of the California Code of Regulations, which states:

(28) "Production facility" means a facility in California at which gasoline or CARBOB is produced. Upon request of a producer, the executive officer [of CARB] may designate, as part of the producer's production facility, a physically separate bulk storage facility which (A) is owned or leased by the producer, and (B) is operated by or at the direction of the producer, and (C)is not used to store or distribute gasoline or CARBOB that is not supplied from the production facility."

It is EPA's understanding that the third requirement, (C), is interpreted by CARB to require that the gasoline must be transported to the off-site tankage via a dedicated pipeline.

On April 16, 1997, EPA proposed amendments to 40 CFR 80.81(h), which would allow California refiners who have obtained approval from the State of California to conduct sampling and testing at off-site tankage served by a dedicated pipeline to use this approach under the Federal RFG program as well. Specifically, EPA proposed to allow a California refiner who has obtained approval from the State of California to conduct sampling and testing at off-site tankage under California Code of Regulations Title 13, section 2260(a)(28), to conduct sampling and testing at such approved off-site tankage for purposes of the Federal RFG program. The gasoline must be sampled and tested under the terms of a current, valid protocol agreement between the refiner and CARB. The refiner must provide a copy of the current, valid protocol agreement specifying the off-site tankage as part of the production facility, to the EPA Administrator or the Administrator's designated agent, upon request. No comments were received on this issue and the sampling and testing provisions are finalized in today's rule as proposed.

[17] Under 40 CFR 80.2 (h), a "refinery" is "a plant where gasoline or diesel fuel is produced."

IV. Response to Comments

A. Consequences of Successive Survey Failures

As discussed above, EPA proposed that successive survey failures for three years, or an equivalent "net" failures of three years over any number of years (i.e. number of years the survey series failed subtracted from the number of years the survey series passed), would result in the elimination of the survey option. Elimination of the survey option would mean that all California gasoline of each refiner, including gasoline certified under an alternative certification method and sold in non-RFG cities, would have to meet Federal oxygen standards. Each refiner certifying under an alternative certification would have no option but compliance with the notification and demonstration requirements at 40 CFR 80.81(e)(1).

If successive oxygen survey failures were to occur, EPA would be forced to consider whether some or all of the California enforcement exemptions in 40 CFR 80.81 should be revoked via rulemaking. Successive survey failures might well indicate a widespread problem with the quality of California gasoline and may call into question the equivalency of such gasoline with respect to Federal Phase I RFG. Such a revocation would apply to all California refiners, importers, and blenders.

One commenter disagreed and stated that the result of successive survey failures should not be removal of the survey option and the possible revocation of some or all of the California enforcement exemptions. Rather, the commenter believes that the result of successive survey failures should be the requirement that all gasoline in Federal RFG areas meet the per-gallon 2.0 weight % minimum.

EPA disagrees with the commenter. Today's rule, which matches the proposal, is designed to add a flexibility—i.e., the flexibility to utilize a survey option and produce gasoline not meeting Federal oxygen standards in non-Federally covered areas—where such flexibility did not exist before. Nothing in today's action alters the

applicability of Federal standards in RFG areas in California. Specifically, each gallon of gasoline in RFG areas was, and is, required to meet a 2.0 weight % minimum for parties complying on a per gallon basis. Each gallon of gasoline for an averaging party is required to meet a minimum of 1.5 weight %. All gallons produced by an averaging refiner during a given compliance period must average to 2.1 weight%. Since Federal oxygen standards continue to apply in RFG areas, the consequence for survey failure suggested by the commenter, in fact, amounts to no consequence at all.

As discussed above and in the April 16, 1997 proposal, successive or excessive survey failures would raise serious concerns about the expected equivalency between Federal Phase I RFG and California Phase 2 gasoline sold in Federally covered areas. EPA would need to assess the impact of these failures, should they occur, on the program, and would initiate a notice-and-comment rulemaking procedure, if such action is in the public interest.

B. Use of GC/FTIR Method (ASTM 5986)

EPA proposed that California gasoline refiners, importers, and blenders be permitted to substitute California-approved analytical techniques or test methods for Federal test methods when producing gasoline used in California and for conventional gasoline used outside of California. California test methods could not be utilized for gasoline intended for "export" to markets in states outside California as Federal RFG.

One commenter stated that EPA should allow all refiners the option of using the GC/FTIR method (ASTM 5986) for aromatics, benzene, and oxygen content, independent of this rulemaking. Further, the commenter urges EPA to allow the use of California test methods for not just California gasoline sold within the state or exported as conventional, but for all RFG that is produced by California refiners for the purpose of exportation to other states as Federal Phase I RFG. At this time, EPA does not believe that adoption of California test methods for Federal RFG destined to be sold outside California is appropriate without further study. Therefore, gasoline produced by California refiners for the purpose of exportation to other states as Federal RFG remains subject to the Federal test methods. However, EPA intends to fully consider the larger issue of RFG test methods as part of a separate action related to performance-based test methods.

V. Statutory Authority

Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

VI. Environmental Impact

This rule is expected to have no negative environmental impact. These amendments are intended to eliminate duplicative enforcement requirements, and do not relax the Federal standards. The additional testing flexibility allowed certain refiners of California gasoline under today's regulation may, in fact, result in an environmental benefit because it would give California refiners flexibility to sell gasoline meeting California Phase 2 standards as Federal conventional gasoline in other areas. It is reasonable to expect that such gasoline would be "cleaner" than other conventional gasoline and could result in an environmental benefit to the areas receiving it.

VII. Economic Impact and Impact on Small Entities

EPA has determined that this final rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it give refiners of California gasoline additional operational flexibility and is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VIII. Executive Order 12866

Under Executive Order 12866,[18] the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[19]

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this rule does not include a Federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

[18] 58 FR 51736 (October 4, 1993).

[19] *Id.* at section 3(f)(1)-(4).

the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

XI. Children's Health Protection

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental protection, California exemptions, Fuel additives, Gasoline, Reformulated gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 17, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 80 is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.81 is amended by revising paragraphs (e)(1), (e)(2) and (h) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(e)(1) The exemption provisions contained in paragraphs (b)(2), (b)(3), (c), and (f) of this section shall not apply under the circumstances set forth in paragraphs (e)(2) and (e)(3) of this section.

(2) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline with regards to any gasoline formulation that it produces or imports is certified under Title 13, California Code of Regulations, section 2265 or section 2266 (as amended July 2, 1996), unless:

(i) *Written notification option.* (A) The refiner, importer, or oxygenate blender, within 30 days of the issuance of such certification:

(1) Notifies the Administrator of such certification;

(2) Submits to the Administrator copies of the applicable certification order issued by the State of California and the application for certification submitted by the regulated party to the State of California; and

(3) Submits to the Administrator a written demonstration that all gasoline formulations produced, imported or blended by the refiner, importer or oxygenate blender for use in California meets each of the complex model per-gallon standards specified in § 80.41(c).

(B) If the Administrator determines that the written demonstration submitted under paragraph (e)(2)(i)(A) of this section does not demonstrate that all certified gasoline formulations meet each of the complex model per-gallon standards specified in § 80.41(c), the Administrator shall provide notice to the party (by first class mail) of such determination and of the date on which the exemption provisions specified in paragraph (e)(1) of this section shall no longer be applicable, which date shall be no earlier than 90 days after the date of the Administrator's notification.

(ii) *Compliance survey option.* The compliance survey requirements of § 80.68 are met for each covered area in California for which the refiner, importer or oxygenate blender supplies gasoline for use in the covered area, except that:

(A) The survey series must determine compliance only with the oxygen content standard of 2.0 weight-percent;

(B) The survey series must consist of at least four surveys a year for each covered area;

(C) The surveys shall not be included in determining the number of surveys under § 80.68(b)(2);

(D) In the event a survey series conducted under this paragraph (e)(2)(ii) fails in accordance with § 80.68(c)(12), the provisions of §§ 80.41(o), (p) and (q) are applicable, except that if the survey series failure occurs in a year in which the applicable minimum oxygen content is 1.7 weight percent, the compliance survey option of this section shall not be applicable for any future year; and

(E) Not withstanding § 80.41(o), in the event a covered area passes the oxygen content series in a year, the minimum oxygen content standard for that covered area beginning in the year following the passed survey series shall be made less stringent by decreasing the minimum oxygen content standard by 0.1%, except that in no case shall the minimum oxygen content standard be less than that specified in § 80.41(d).

* * * * *

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1)and § 80.101(i)(1)(i)(A), any refiner, importer or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.* (as amended July 2, 1996), in lieu of any applicable methodology specified in § 80.46, with regards to

(i) Such gasoline; or

(ii) That portion of its gasoline produced or imported for use in other areas of the United States, provided that:

(A) The gasoline must be produced by a refinery that is located in the state of California that produces California gasoline, or imported into California from outside the United States as California Phase 2 gasoline;

(B) The gasoline must be classified as conventional gasoline upon exportation from the California; and

(C) The refiner or importer must correlate the results from the applicable sampling and /or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.* (as amended July 2, 1996), with the method specified at § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) Nothwithstanding the requirements of § 80.65(e)(1) regarding when the properties of a batch of reformulated gasoline must be determined, a refiner of California gasoline may determine the properties of gasoline as specified under § 80.65(e)(1) at off site tankage provided that:

(i) The samples are properly collected under the terms of a current and valid protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with requirements prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*(as amended July 2, 1996); and

(ii) The refiner provides a copy of the protocol agreement to EPA upon request.

* * * * *

[FR Doc. 98–16669 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300638; FRL–5783–6]

RIN 2070–AB78

Recodification of Certain Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing this technical amendment to consolidate parts 185 and 186 pesticide tolerance regulations into part 180. This recodification is consistent with the Food Quality Protection Act which places all pesticide tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, thus eliminating the distinction between pesticide tolerances for raw and processed foods.

DATES: This regulation becomes effective June 26, 1998.

FOR FURTHER INFORMATION CONTACT: By mail, Joseph Nevola, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 3rd Floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8037; e-mail: nevola.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pesticide tolerance regulations promulgated under sections 408 and 409 of the Federal Food, Drug, and Costmetic Act (FFDCA), 21 U.S.C. 346a and 348, appear in parts 180, 185 and 186 of title 40 of the Code of Federal Regulations. Part 180 contains pesticide tolerance regulations for pesticide chemical residues in raw agricultural commodities. Such regulations were promulgated under FFDCA section 408. Parts 185 and 186 contain food additive regulations for pesticide chemical residues in processed food. These regulations were promulgated under FFDCA section 409.

The Food Quality Protection Act (FQPA) was signed into law in August of 1996. Under section 408(j) of the FFDCA, as amended by the FQPA, all pesticide tolerances established under FFDCA section 409 were deemed to be tolerances under FFDCA section 408. Since there is no longer a statutory reason for the separation of these tolerances into different parts of the CFR, as a part of the routine process of issuing new and revised tolerances, EPA is consolidating certain sections of the regulations in parts 185 and 186 into 40 CFR part 180. Although the tolerances are being restructured to fit into part 180, no substantive changes are being made. The tolerance regulations in parts 185 and 186 are being redesignated as follows:

Old CFR section	New CFR section
185.410	180.163(a) table
185.1450	180.142(a)(13)
185.1975(a)	180.528
185.1985	180.529
185.2150	180.530
185.2225	180.531(a)(1)
185.3450	180.276(a)(2)
185.5475	180.174(a)
186.1875	180.274(a)(2)
186.1975(a) and (b)	180.528
186.1985	180.529
186.2150(a) and (b)	180.530
186.2225	180.531(a)(2)
186.2775	180.345(a)(2)
186.4050	180.289(a) table

This action is being taken pursuant to EPA's authority under FFDCA section 408(e)(1)(C) to issue regulations implementing the requirements of section 408. Because this regulation involves a technical change to existing regulations and has no substantive impact, EPA for good cause finds that it would be in the public interest to promulgate this regulations without issuing a notice of proposed rulemaking under section 408(e)(2).

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements technical amendments to the Code of Federal Regulations (CFR), by recodifying certain tolerances that have already been established under FFDCA section 408. Basically, this notice simply consolidates the tolerances, which currently appear in two separate parts of the CFR (i.e., 40 CFR parts 185 and 186), into a single part (i.e., 40 CFR part 180). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

II. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: June 3, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

1. Section 180.163 is revised to read as follows:

§ 180.163 1,1-Bis(p-chlorophenyl)-2,2,2-trichloroethanol; tolerances for residues.

(a) *General.* Tolerances for residues of the insecticide 1,1-bis(*p*-chlorophenyl)-2,2,2-trichloroethanol in or on raw agricultural commodities are established as follows:

Commodity	Parts per million
Apples	5
Apricots	10
Beans (dry form)	5
Beans, lima (succulent form)	5
Beans, snap (succulent form)	5
Blackberries	5
Boysenberries	5
Bushnuts	5
Butternuts	5
Cantaloupe	5
Cherries	5
Chestnuts	5
Cottonseed	0.1
Crabapples	5
Cucumbers	5
Dewberries	5
Eggplants	5
Figs	5

Commodity	Parts per million
Filberts	5
Grapefruit	10
Grapes	5
Hay, peppermint	25
Hay, spearmint	25
Hazelnuts	5
Hickory nuts	5
Hops	30
Kumquats	10
Lemons	10
Limes	10
Loganberries	5
Melons	5
Muskmelons	5
Nectarines	10
Oranges	10
Peaches	10
Pears	5
Pecans	5
Peppers	5
Pimentos	5
Plums (fresh prunes)	5
Pumpkins	5
Quinces	5
Raspberries	5
Spearmint hay	25
Strawberries	5
Summer squash	5
Tangerines	10
Tea, dried	45
Tomatoes	5
Walnuts	5
Watermelons	5
Winter squash	5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

2. Section 180.174 is revised to read as follows:

§ 180.174 Tetradifon; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tetradifon (2,4,5,4'-tetrachlorodiphenyl sulfone) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apples	5
Apricots	5
Cherries	5
Citrus citron	2
Crabapples	5
Cucumber	1
Figs	6
Figs, dried	10
Grapefruit	2
Grapes	5
Hops, dried	120
Hops, fresh	30
Lemons	2
Limes	2
Meat	0
Melons	1
Milk	0
Nectarines	5
Oranges	2
Peaches	5
Pears	5
Peppermint	100
Plums (fresh prunes)	5
Pumpkins	1
Quinces	5
Spearmint	100
Strawberries	5
Tangerines	2
Tea, dried	8
Tomatoes	1
Winter squash	1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

3. Section 180.274 is revised to read as follows:

§ 180.274 Propanil; tolerances for residues.

(a) *General.* (1)Tolerances are established for combined residues of the herbicide propanil (3',4'-dichloropropionanilide; CAS Reg. No. 709–98–8) and its metabolites (calculated as propanil) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	.2
Barley, straw	.75
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)
Eggs	0.05(N)
Goats, fat	0.1(N)
Goats, mbyp	0.1(N)
Goats, meat	0.1(N)
Hogs, fat	0.1(N)
Hogs, mbyp	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, mbyp	0.1(N)
Horses, meat	0.1(N)
Milk	0.05(N)
Oats, grain	.2
Oats, straw	.75
Poultry, fat	0.1(N)
Poultry, mbyp	0.1(N)
Poultry, meat	0.1(N)
Rice	2
Rice bran	10
Rice hulls	10
Rice mill fractions	10
Rice polishings	10
Rice, straw	75(N)
Sheep, fat	0.1(N)
Sheep, mbyp	0.1(N)
Sheep, meat	0.1(N)
Wheat, grain	0.2
Wheat, straw	0.75

(2) Tolerances are established for the combined residues of the herbicide propanil (3',4'-dichloropropionanilide; CAS Reg. No. 709–98–8) and its metabolites (calculated as the parent compound) in or on the following processed feeds when present therein as a result of application of the herbicide to the growing crops:

Commodity	Parts per million
Rice bran	10
Rice hulls	10
Rice mill fractions	10
Rice polishings	10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

4. Section 180.276 is revised to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apples	3
Grapefruit	4
Lemons	4
Limes	4
Nectarines	4
Oranges	4
Peaches	5
Pears	3
Plums (fresh prunes)	2
Tangerines	4

(2) A tolerance of 8 parts per million is established for residues of the insecticide formetanate hydrochloride (*m*-[(dimethylamino) methylene amino] phenyl methyl-carbamate hydrochloride) in dried prunes when present therein as a result of the application of the insecticide to growing plums (fresh prunes).

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. Section 180.289 is revised to read as follows:

§ 180.289 Methanearsonic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide methanearsonic acid (calculated as As_2O_3) from application of the disodium and monosodium salts of methanearsonic acid in or on raw agricultural commodities as follows:

Commodity	Parts per million
Citrus fruit	0.35
Cottonseed	0.7
Cottonseed hulls	0.9

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

6. Section 180.345 is revised to read as follows:

§ 180.345 Ethofumesate; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the following raw agricultural commodities:

Commodity	Parts per million
Beets, sugar, roots	0.1
Beets, sugar, tops	1.00
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Grass, straw	1
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

(2) Tolerances are established for combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate; CAS Reg. No. 26225–79–6) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate, (both calculated as the parent compound) in or on the following processed feeds when present therein as a result of application of the herbicide to the growing crops:

Commodity	Parts per million
Sugar beet molasses	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

7. Section 180.528 is added to read follows:

§ 180.528 Dihydro-5-heptyl-2(3H)-furanone; tolerances for residues.

(a) *General.* The food additive/feed additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(1) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

(2) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

8. Section 180.529 is added to read as follows:

§ 180.529 Dihydro-5-pentyl-2(3H)-furanone.

(a) *General.* The food additive/feed additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(1) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

(2) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Enviornmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

9. Section 180.530 is added to read as follows:

§ 180.530 2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate; tolerances for residues.

(a) *General.* (1) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-ol methylcarbamate may be safely used in spot and/or crack and crevice treatments in animal feed handling establishments, including feed manufacturing and processing establishments, such as stores, supermarkets, dairies, meat slaughtering and packing plants, and canneries.

(2) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-ol methylcarbamate may be safely used in spot and/or crack and crevice treatments in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries.

(3) To ensure safe use of the additive, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

10. Section 180.531 is added to read as follows:

§ 180.531 O,O-Dimethyl S-[4-oxo-1,2,3-benzotriazin-3 (4H)-ylmethyl] phosphorodithioate.

(a) *General.* (1) A tolerance of 1 part per million is established for residues of the insecticide *O,O-* dimethyl *S*-[4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate in soybean oil resulting from application of the insecticide to the raw agricultural commodity soybeans.

(2) The following tolerances are established for residues of the insecticide *O,O-* dimethyl *S*-[4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate in the indicated commodities when used for the feed of cattle, goats, and sheep. Such residues may be present therein only as a result of the application of the insecticide to the growing agricultural crop.

Commodity	Parts per million
Citrus pulp, dried	5

Commodity	Parts per million
Sugarcane bagasse	1.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

2. In part 185:

PART 185—[AMENDED]

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.410 [Removed]

b. Section 185.410 is removed.

§ 185.1450 [Partially Redesignated and Removed]

c. The text of § 185.1450 is transferred to § 180.142 and redesignated as follows:

i. Paragraph (a) introductory text is redesignated as § 180.142(a)(13).

ii. Paragraphs (a)(1) and (a)(2) are redesignated as § 180.142(a)(13)(i) and (a)(13)(ii).

iii. Paragraphs (a)(3) introductory text, (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) are redesignated as § 180.142(a)(13)(iii) introductory text, (a)(13)(iii)(A), (a)(13)(iii)(B) and (a)(13)(iii)(C), respectively. The remainder of § 185.1450 is removed.

§ 185.1975 [Removed]

d. Section 185.1975 is removed.

§ 185.1985 [Removed]

e. Section 185.1985 is removed.

§ 185.2150 [Removed]

f. Section 185.2150 is removed.

§ 185.2225 [Removed]

g. Section 185.2225 is removed.

§ 185.3450 [Removed]

h. Section 185.3450 is removed.

§ 185.5475 [Removed]

i. Section 185.5475 is removed.

3. In part 186:

PART 186—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.1875 [Removed]

b. Section 186.1875 is removed.

§ 186.1975 [Removed]

c. Section 186.1975 is removed.

§ 186.1985 [Removed]

d. Section 186.1985 is removed.

§ 186.2150 [Removed]

e. Section 186.2150 is removed.

§ 186.2225 [Removed]

f. Section 186.2225 is removed.

§ 186.2775 [Removed]

g. Section 186.2775 is removed.

§ 186.4050 [Removed]

h. Section 186.4050 is removed.

[FR Doc. 98–16942 Filed 6–25–98; 8:45 am]
BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 123
Friday, June 26, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB20, and TB21 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Models TB20 and TB21 airplanes. The proposed action would require repetitively inspecting the main landing gear (MLG) attachment bearing (using a dye penetrant method) for cracks, and if cracks are found, replacing the bearing. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent cracks in the MLG attachment bearing, which could result in collapse of the main landing gear during taxi and landing operations.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–64–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Socata Models TB20 and TB21 airplanes. The DGAC reports that some MLG's have collapsed due to failed MLG attachment bearings. Further analysis of the failed MLG attachment bearings revealed cracks which are due to fatigue.

These conditions, if not detected and corrected, could result in collapse of the airplane's main landing gear during taxi or landing operations.

Relevant Service Information

Socata has issued Service Bulletin No. SB 10–080 57, Amdt. 2, dated November 1995, which specifies procedures for repetitively inspecting (using a dye penetrant method) the MLG attachment bearing for cracks. If cracks are found in the attachment bearing, the service information specifies procedures for replacing the bearing.

The DGAC classified this service bulletin as mandatory and issued French AD 94–266(A)R2, dated December 6, 1995, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Socata Models TB20

and TB21 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting (using a dye penetrant method) for cracks on the MLG attachment bearing. If cracks are found, the proposed AD would require replacing the cracked attachment bearing. Accomplishment of the proposed inspections and replacement would be in accordance with Socata Service Bulletin No. SB 10–080 57, Amdt. 2, dated November 1995.

Cost Impact

The FAA estimates that 199 airplanes in the U.S. registry would be affected by the proposed AD.

Accomplishing the proposed inspection would take approximately 4 workhours per airplane, and the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $47,760, or $240 per airplane.

The proposed replacement would take approximately 1 workhour to replace the bearing, if necessary, at an average labor rate of $60 per hour. Parts cost approximately $800 per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $171,140 or $860 per airplane.

The FAA has no way to determine the number of repetitive inspections that would be incurred over the life of the airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe Aerospatiale: Docket No. 95–CE–64–AD.

Applicability: Models TB20 and TB21 airplanes, serial numbers 1 through 9999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracks in the main landing gear (MLG) attachment bearing, which could result in collapse of the MLG during taxi and landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.5.

(a) Upon the accumulation of 6,000 landings, upon the accumulation of 4,000 hours total TIS, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, inspect (with a dye penetrant method) the main landing gear (MLG) attachment bearing for cracks in accordance with the Accomplishment Instructions in SOCATA Service Bulletin (SB) No. SB 10–080 57, Amdt. 2, dated November 1995;

(1) If no cracks are found, continue to inspect the MLG attachment bearing for cracks at intervals not to exceed 1,500 landings or 1,000 hours TIS, whichever occurs later, until cracks are found, in accordance with the Accomplishment Instructions in the SOCATA SB No. SB 10–080 57, Amdt. 2, dated November 1995;

(2) If cracks are found in the MLG attachment bearing during any inspection required by this AD, prior to further flight, replace the MLG attachment bearing in accordance with the Accomplishment Instructions in the SOCATA SB No. SB 10–080 57, Amdt. 2, dated November 1995; and

(3) Upon the accumulation of 6,000 landings or 4,000 hours TIS after the date of any MLG attachment bearing replacement, whichever occurs later, and thereafter at intervals not to exceed 1,500 landings or 1,000 hours TIS, inspect the MLG attachment bearing for cracks as specified in paragraph (a) of this AD.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Socata Service Bulletin No. SB 10–080 57, Amdt. 2, dated November 1995, should be directed the SOCATA—Groupe AEROSPATIALE, Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 33.5.62.41.73.58; facsimile: 33.5.62.41.74.18; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1160; facsimile: (954) 964–4141. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in French AD 94–266(A)R2, dated December 6, 1995.

Issued in Kansas City, Missouri, on June 19, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17019 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes. This proposal would require a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary. This proposal is prompted by reports of corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, apparently due to the improper brushing of cadmium on the hinge plates during manufacture. The actions specified by the proposed AD are intended to detect and correct corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by August 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of corrosion on the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer on certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 airplanes. This corrosion occurred on airplanes that had accumulated between 15,000 and 30,000 total flight hours. Investigation has revealed that the hinge plates were apparently brushed with cadmium during the assembly drill out and line ream processes. During these manufacturing processes, it appears that the cadmium material became trapped between the mating hinge plates. Consequently, chemical action caused corrosion to occur around the lug bores. The corrosion has been attributed to the cadmium-brushed plates, which were not part of the approved type design. Such corrosion, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998, which describes procedures for a one-time visual inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary. Corrective actions include removal of corrosion that is within the limits specified in the Structural Repair Manual; and replacement of the hinge plates with new parts, if the corrosion exceeds the limits specified in the Structural Repair Manual. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer; and corrective actions, if necessary. The proposed AD also would require that operators report results of inspection findings (positive or negative) to the FAA.

Cost Impact

There are approximately 1,059 airplanes of the affected design in the worldwide fleet. The FAA estimates that 706 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 117 work hours per airplane (which includes removal and installation) to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,956,120, or $7,020 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–166–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a one-time visual inspection to detect corrosion of the lug bores and the surface of the hinge plates of the vertical-to-horizontal stabilizer, in accordance with McDonnell Douglas Service Bulletin MD80–55–054, dated March 3, 1998.

(1) *Condition 1:* If no corrosion is detected, no further action is required by this paragraph.

(2) *Condition 2:* If any corrosion is detected that is within the limits specified in the Structural Repair Manual, prior to further flight, remove the corrosion in accordance with the service bulletin.

(3) *Condition 3:* If any corrosion is detected that exceeds the limits specified in the Structural Repair Manual, prior to further flight, replace the hinge plates with new parts, in accordance with the service bulletin.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17007 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–130–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 180 and 185 Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–10–01, which is applied to certain Cessna Aircraft Company 180 and 185 series airplanes that are equipped with Airglas Engineering Company, Inc., (AECI) Model LW3600–180 single position or Model LW3600–180A two position fixed penetration wheel ski installations. AD 80–10–01 currently requires: modifying the ski bungee assemblies, safety cables, and check cables; limiting the maximum airspeed to 160 knots with skis installed; and installing an airspeed limitation placard. The proposed AD would retain the actions required in AD 80–10–01, and would require marking the maximum airspeed limits on the airspeed indicator; placing a supplemental airplane flight manual (AFM) and AFM supplement in the cockpit; and adding the Cessna Model 180K airplane to the applicability. Reports that certain airspeeds cause the skis to rotate into a nose-down position during flight prompted the AD action. The actions specified by the proposed AD are intended to prevent one or both wheel skis from rotating into a nose-down position during flight, which could result in loss of control of the airplane and/or possible airplane damage during flight or landing operations.

DATES: Comments must be received on or before August 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–138–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Airglas Engineering Company, Inc., P.O. Box 190107, Anchorage, Alaska 99519–0107; telephone: (907) 344–1450; facsimile: (907) 349–4938. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon K. Mandell, Aerospace Engineer, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, #14, Annex G, Room A18, Anchorage, Alaska 99513–7587; telephone: (907) 271–2670; facsimile: (907) 271–6365.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–138–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 80–10–01, Amendment 39–3762, applies to Cessna 180 and 185 series airplanes that are equipped with AECI Model LW3600–180 or Model LW3600–180A wheel ski installations in accordance with supplemental type certificate (STC) SA213AL. This AD currently requires modifying the ski bungee assemblies and their attachments to the airplane and the skis, safety cables, and check cables and their attachments to the airplane and the skis; and installing a placard adjacent to the airspeed indicator that limits the knots indicated airspeed (KIAS) to never exceed 160 knots with the skis installed.

Actions Since Issuance of Previous Rule

Since the issuance of AD 80–10–01, additional field reports of incidents occurring on the affected airplanes with these wheel skis installed has prompted the FAA to review the actions required in AD 80–10–01. The manufacturer and the FAA have decided that additional measures are needed to ensure that the airspeed limitations are followed.

Relevant Service Information

Airglas Engineering Company, Inc., has issued Service Bulletin No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997, which specifies modifying the ski bungee assemblies, safety cables, and check cables and their attachments to the airplane and the skis in accordance with the procedures specified in AECI Drawing No. LW3600–180A–1 and –2, Revision "B", dated September 21, 1979; AECI Drawing No. LW3600–180A–3, Revision "A", dated April 30, 1979; and AECI Drawing No. LW3600–180, Revision "F", dated September 21, 1979 (for single position wheel ski installations) or AECI Drawing No. LW3600–180A, Revision "E", dated September 21, 1979 (for two position wheel ski installations).

AECI Service Bulletin No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997, also specifies:

- Reducing the maximum structural cruising speed to 139 knots indicated air speed (KIAS) with the skis installed;
- Reducing the never exceed speed to 160 KIAS with the skis installed;
- Installing a placard near the airspeed indicator with words prohibiting flight over 160 KIAS when the wheel skis are installed in accordance with AECI Drawing No. LW3600–180A–11, originally issued: September 21, 1979;
- Marking the airspeed indicator so that these maximum KIAS limitations are clear to the pilot; and
- Placing AECI Document AE97–13FM, "Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement", dated October 10, 1997, in the airplane cockpit.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent one or both wheel skis from rotating into a nose-down position during flight, which could result in loss of control of the airplane and/or possible airplane damage during flight or landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 180 and 185 series airplanes of the same type design, that are equipped with AECI Model LW3600–180 or Model LW3600–180A wheel ski installations in accordance with STC SA213AL, the proposed AD would supersede AD 80–10–01 with a new AD. The proposed AD would require the following:

—Modifying the ski bungee assemblies and their attachments to the airplane and the skis, the safety cables, and the check cables and their attachments to the airplane and the skis;

—Installing a placard adjacent to the airspeed indicator limiting the never exceed speed to 160 knots and the maximum structural cruising speed to 139 knots with the skis installed;

—Marking the airspeed indicator to reflect the never exceed speed (160 KIAS) and the maximum structural cruising speed (139 KIAS) with the skis installed; and,

—Placing AECI Document No. AE97–13FM, "Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement", dated October 10, 1997, in the airplane cockpit.

Cost Impact

The FAA estimates that 170 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $350 per airplane. Based on these figures, the total cost impact of

the proposed AD on U.S. operators is estimated to be $100,300, or $590 per airplane.

Airglas Engineering Company, Inc. has informed the FAA that approximately 12 of the affected airplanes have incorporated the proposed actions. Owners/operators of the affected airplanes that have already completed the proposed actions would reduce the estimated total cost impact by $7,080 from $100,300 to $93,220.

AD 80–10–01 currently requires most of the same actions on the affected airplanes as are proposed in this NPRM. The only differences between the proposed AD and AD 80–10–01 are the addition of the Cessna Model 180K airplane to the applicability and the requirements for marking the airspeed indicator and for placing a supplemental AFM and AFM supplement in the cockpit. These proposed actions can be accomplished for an airplane used under Part 91 of the Federal Aviation Regulations (14 CFR 91) by an owner/operator who holds at least a private pilot's certificate, and for an airplane used under Part 135 of the Federal Aviation Regulations (14 CFR 135) by an operator who holds an operating certificate issued under Part 135 of the Federal Aviation Regulations (14 CFR 135), as authorized by sections 43.3, 43.7, and 43.9 of the Federal Aviation Regulations (14 CFR 43.3, 43.7, and 43.9), if the airspeed indicator is re-marked by painting the outside of the glass. The only cost impact upon the public for airplanes other than affected Cessna Model 180K airplanes, is the time it will take the affected airplane owners/operators to incorporate these actions. Therefore, the proposed AD has additional cost impact over that already required by AD 80–10–01 only for affected Cessna Model 180K airplanes.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–10–01, Amendment 39–3762, and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 97–CE–138–AD; Supersedes AD 80–10–01, Amendment 39–3762.

Applicability: The following airplane models, all serial numbers, certificated in any category, that are equipped with Airglas Engineering Company, Inc., Model LW3600–180 (single position wheel ski installation) or Model LW3600–180A (two position fixed penetration wheel ski installation) in accordance with supplemental type certificate (STC) SA213AL:

Models: 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent one or both wheel skis from rotating into a nose-down position during flight, which could result loss of control of the airplane and/or possible airplane damage during flight or landing operations, accomplish the following:

(a) Modify the wheel ski bungee assemblies, safety cables, and check cables and their attachments to the airplane and the skis, in accordance with Airglas Engineering Company, Inc. (AECI) Drawing No. LW3600–180A–1 and –2, Revision "B", dated September 21, 1979; AECI Drawing No. LW3600–180A–3, Revision "A", dated April 30, 1979; and AECI Drawing No. LW3600–180, Revision "F", dated September 21, 1979 (for single position wheel ski installations) or AECI Drawing No. LW3600–180A, Revision "E", dated September 21, 1979 (for two position wheel ski installations).

Note 2: Airglas Engineering Company, Inc. Service Bulletin (SB) No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997, specifies following the procedures provided in the drawings referenced in paragraph (a) of this AD.

(b) Fabricate and install a placard adjacent to the airspeed indicator with words at least 1/8-inch in height in accordance with AECI Drawing No. LW3600–180A–11, originally issued: September 21, 1979, and referenced in AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(c) Mark the airspeed indicator to reflect the never exceed airspeed (160 knots indicated airspeed (KIAS)) and the maximum structural cruising speed (139 KIAS) in accordance with Airglas Engineering Company, Inc. Service Bulletin (SB) No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(d) Place AECI Document AE97–13FM, "Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement", dated October 10, 1997, in the airplane cockpit in accordance with the Accomplishment Instructions section in AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(e) The actions required in paragraphs (b), (c), and (d) of this AD can be accomplished for an airplane used under Part 91 of the Federal Aviation Regulations (14 CFR part 91) by an owner/operator who holds at least a private pilot's certificate, and for an airplane used under Part 135 of the Federal Aviation Regulations (14 CFR part 135) by an operator who holds an operating certificate issued under Part 135 of the Federal Aviation Regulations (14 CFR part 135), as authorized by sections 43.3, 43.7, and 43.9 of the Federal Aviation Regulations (14 CFR 43.3, 43.7, and 43.9), if the airspeed indicator is re-marked by painting the outside of the glass.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Anchorage Aircraft Certification Office (ACO), 222 West 7th Avenue, #14, Annex G Room A18,

Anchorage, Alaska 99513–7587. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Anchorage ACO. Alternative methods of compliance approved for AD 80–10–01 are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Anchorage ACO.

(h) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Airglas Engineering Company, Inc., P.O. Box 190107, Anchorage, Alaska 99519–0107 or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 80–10–01, Amendment 39–3762.

Issued in Kansas City, Missouri, on June 15, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16591 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–098]

Proposed Amendment of Class E Airspace; Johnstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Class E airspace at Johnstown, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Conemaugh Valley Memorial Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–08, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–08". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace extending upward from 700 feet above the surface (AGL) at Johnstown, PA. A GPS Point In Space Approach has been developed for the Conemaugh Valley Memorial Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Johnstown, PA [Revised]

Johnstown-Cambria County Airport, PA
(Lat. 40°19′00″ N., long. 78°50′04″ W.)
The Conemaugh Valley Memorial Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°18′15″ N., long. 78°54′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Johnstown-Cambria County Airport and within a 6-mile radius of the Point In Space serving Conemaugh Valley Memorial Hospital Heliport.

* * * * *

Issued in Jamaica, New York, on June 16, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17053 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–13]

Proposed Establishment of Class E Airspace; Fairfax, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Fairfax, VA. A Global Positioning System (GPS), Standard Instrument Approach Procedure (SIAP), 100° helicopter point in space approach has been developed for the Mobil Business Resources Corporation (MBRC) heliport at Fairfax, VA. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the approach and to provide adequate controlled airspace for instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–13". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Fairfax, VA. A GPS Point In Space Approach has been developed for the MBRC Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the enticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71 [AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Fairfax, VA [New]

Mobil Business Resources Corporation Heliport, VA
Point In Space Coordinates
(Lat. 38°51'41" N., long. 77°14'31" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving the Mobil Business Resources Corporation Heliport excluding that portion that coincides with the Washington, DC and Chantilly, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 16, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17052 Filed 6–25–98; 8:45 am]

BILLING CODE 4819–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–7]

Proposed Amendment of Class E Airspace; Savannah, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Class E airspace at Savannah, TN. A Non-Directional Beacon (NDB) Runway (RWY) 19 Standard Instrument Approach Procedure (SIAP) has been developed for Savannah-Hardin County Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Savannah-Hardin County Airport. The Class E airspace would be increased from a 6.4 to a 6.5-mile radius of Savannah-Hardin County Airport and the width of the airspace each side of the 009° bearing from the Pinhook NDB extending from the 6.5-mile radius to 7 miles north of the NDB would be increased from 2.4 to 3.2 miles.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–7, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Intersted parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Savannah, TN. A Non-Directional Beacon (NDB) RWY 19 SIAP has been developed for Savannah-Hardin County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Savannah-Hardin County Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surfaced are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulaged; will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Savannah, TN [Revised]

Savannah-Hardin County Airport
(Lat. 35°10'13"N, long 88°12'57" W)

That airspace extending upward from 700 feet or more above the surface of the earth within 6.5-mile radius of Savannah-Hardin County Airport and within 3.2 miles each side of the 009 degree bearing from the Pinhook, NDB, extending from the 6.5-mile radius to 7 miles north of the NDB.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16956 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–10]

Proposed Establishment of Class E Airspace; Hartford, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace at Hartford, KY. Global Positioning System (GPS) Runways (RWY) 3–21 and a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME)—A Standard Instrument Approach Procedures (SIAP's) have been developed for Ohio County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP's and for Instrument Flight Rules (IFR) operations at Ohio County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP's.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–10, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Hartford, KY. GPS RWY's 3–21 and a VOR/DME A SIAP's have been developed for Ohio County Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP's and for IFR operations at Ohio County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface republished in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration on the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Hartford, KY [New]

Ohio County Airport
(lat. 37°27'30" N, long. 86°50'59" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.4-mile radius of Ohio County Airport.

* * * * *

Issued in College Park, Georgia, on June 18, 1998.

John R. Schroeter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16958 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OR–2–0001; FRL–6116–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Section 111(d) State Plan submitted by Oregon on May 14, 1997. The State Plan was submitted by Oregon to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by July 27, 1998.

ADDRESSES: Written comments should be addressed to Catherine Woo, Environmental Protection Specialist, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: June 8, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–17120 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR 197

[USCG–1998–3786]

RIN 2115–AF64

Commercial Diving Operations

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard requests comments on the type and scope of needed revisions to the commercial diving operations regulations. The regulations are over 20 years old and do not include current safety and technology standards and industry practices. At this early stage of the rulemaking process we need information on current safety practices, diving technology, and industry standards to help us identify the scope of any necessary regulatory revisions.

DATES: Comments must reach the Docket Management Facility on or before September 24, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1998–3786], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

A copy of the Association of Diving Contractors' (ADC) proposed changes to the Coast Guard commercial diving regulations and of its Consensus Standards are available in the public docket at the above address or on the Internet at http://dms.dot.gov, or you may obtain a copy by contacting the project manager at the number in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: For questions on this advance notice of rulemaking, contact Lieutenant Diane Kalina, Project Manager, Vessel and

Facility Operating Standards Division, Coast Guard, telephone 202–267–1181. For questions on viewing, or submitting material to the docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this advance notice [USCG–1998–3786] and the specific section or question in this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period when developing its proposed changes to the regulations.

The Coast Guard plans no public meetings. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a meeting should be held, we will announce the time and place in a later notice in the **Federal Register**.

Purpose

The Coast Guard needs your comments and information on the issues contained in this advance notice to help us define the scope of any necessary revisions to the commercial diving operations regulations in 46 CFR 197, Subpart B. The regulations are over 20 years old and do not include current safety and technology standards and industry practices. At this early stage of the rulemaking process we need information on current safety practices, diving technology, and industry standards to help us identify necessary regulatory revisions.

Background

The existing commercial diving regulations were published in 1977 and only minor changes have been made to them since then. In 1994, the Association of Diving Contractors (ADC), a diving industry trade organization, submitted proposed regulatory changes to the Coast Guard and requested that the Coast Guard revise its regulations accordingly. A copy of their proposed changes is available in the public docket. ADC's proposal was reviewed by over 140 General Members (operating companies) of ADC; their Technical and their Safety, Medical and Education Committees; and their Board of Directors. ADC also suggested that we adopt their Consensus Standards, possibly through incorporation by reference. A copy of the Consensus Standards is also available in the public docket. The Coast Guard will consider ADC's proposed changes when developing its proposed revisions to the commercial diving operations regulations, but would like to receive your comments on the ADC proposal. A copy of ADC's proposal is also available by contacting the Coast Guard point of contact under **FOR FURTHER INFORMATION CONTACT**.

Preliminary Regulatory Assessment

This rulemaking is not likely to be classified as a significant regulatory action under section 3(f) of Executive Order 12866 and is not likely to be significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation would be prepared to support any future Notice of Proposed Rulemaking (NPRM).

The Coast Guard is not yet able to prepare a benefit-cost analysis assessing the impact of potential changes to the commercial diving operations regulations because specific changes have not been identified. However, the Coast Guard would like your comments on the cost estimate provided by ADC. According to a 1995 estimate by ADC, their proposed regulatory changes would likely not cost more than $300,000 to implement on an industry-wide basis. ADC also estimates that annualized costs would be minimal. We would like your comments on whether or not ADC's cost estimate is reasonable given the scope of ADC's recommendations.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether a potential rulemaking would have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not domfnant in their fields, and governmental jurisdictions with populations of less than 50,000.

Some commercial diving companies subject to our regulations may be small entities. Because we have not yet proposed specific revisions and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. As part of the required 5 U.S.C. 610 review of regulations affecting small entities, we are requesting information at this early stage about the aspects of this rulemaking which may affect small entities, so we can evaluate and minimize the impact of proposed changes on small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–21], the Coast Guard wants to assist small entities to understand this advance notice so they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking process. If you believe that your small business, organization, or agency may be affected by this rulemaking, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you while promoting commercial diving safety. If you have questions concerning this advance notice, you may call the Coast Guard point of contact designated in **FOR FURTHER INFORMATION CONTACT**. We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.htm that has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, the Coast Guard will mail copies of this advance notice to Small Business Development Center (SBDC) State Directors nationwide for distribution to local SBDC offices and interested small businesses.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. As defined in 5 CFR 1320.3(c), "collection of

information" includes reporting, record-keeping, monitoring, posting, labeling, and other, similar actions. The Coast Guard will review the existing information collection requirements in 46 CFR 197.480 through 46 CFR 197.488 to either validate existing burdens or to reduce or eliminate burdens that are no longer necessary.

Questions

We request your comments and any data or information that would answer the following questions, as well as comments on any other part of the current regulations that should be revised. In responding to a question, please explain your reasons for each answer so that we can carefully weigh the consequences and impacts of any future requirements we may propose. In addition, please provide relevant data (accident data would be particularly useful), if possible, that will support the need for a revision to the commercial diving operations regulations.

1. Based on your review of the ADC submission to the Coast Guard, which revisions should the Coast Guard include in its proposed rule, not include in a proposed rule, or revise and include in a proposed rule? Why?

2. Should the Coast Guard adopt the ADC Consensus Standards or any other written industry standards? If so, which ones and why?

3. Is ADC's cost estimate of $300,000.00 for implementing their proposed regulatory changes reasonable? If not, please explain why and, if possible, provide your own cost estimate.

4. What definitions in the existing regulations should be updated or deleted? Please explain. Are there other terms that the Coast Guard should define in the regulations? Please explain.

5. Should dynamically positioned vessels (vessels with an installed system that automatically maintains the position of the vessel within a specified tolerance by controlling onboard thrusters to counter the forces of the wind, waves and currents) and remotely operated vehicles be addressed in the regulations? If so, what particular issues should the Coast Guard propose to regulate?

6. Should the Coast Guard propose regulations concerning diving in contaminated waters? If yes, how should it be addressed?

7. Should the Coast Guard propose regulations concerning one atmosphere observation bells, suits or submersibles? If yes, how should it be addressed?

8. Should the Coast Guard propose regulations concerning bell bounce (a diving procedure whereby a diving bell is used to transport divers under atmospheric pressure to a work site, and subsequently to transport the divers back to the surface in a decompression status)? If yes, how should it be addressed?

9. Should the Coast Guard propose regulations concerning saturation diving in more detail? If yes, how should it be addressed?

10. Should the Coast Guard propose regulations concerning requirements for back-up equipment at the dive site? If yes, how should it be addressed?

11. Should the Coast Guard propose regulations concerning minimum training requirements for divers? If yes, how should it be addressed?

12. If you think the regulations should include minimum training requirements, please answer the following questions:

a. What courses or information should the training include?

b. What should be the minimum number of hours required for training?

c. What would be the benefits of establishing minimum training requirements?

d. Should training organizations or providers meet certification requirements? If so, what organization should certify the training organizations or providers?

13. Should diving supervisors be licensed by the Coast Guard to ensure compliance with federal regulations? Please explain the reason for your choice and, if your answer is "yes", provide examples, if possible, of situations in which a licensed diving supervisor would have improved a situation.

14. If you are a small entity as defined under "Small Entities" and believe you will be affected by potential changes to the commercial diving regulations, please explain what flexibility or compliance options the Coast Guard should consider and how these options would minimize the burden on small entities, while promoting commercial diving safety.

Dated: June 19, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–17069 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980608151–8151–01; I.D.122497B]

RIN 0648–AK43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Golden Crab Fishery of the South Atlantic Region; Gear and Vessel Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a regulatory amendment prepared by the South Atlantic Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP). For the golden crab fishery in the South Atlantic exclusive economic zone (EEZ), the regulatory amendment would revise the vessel size limitations applicable when a vessel permit is transferred to another vessel and would extend through January 31, 1999, the authorized use of wire cable for a mainline attached to a golden crab trap. In addition, NMFS proposes to remove from the regulations the eligibility criteria and procedures for obtaining initial commercial vessel permits in the South Atlantic golden crab fishery. Such criteria and procedures are no longer applicable. The intended effects of this proposed rule are to allow for additional evaluation of cable used as mainlines for traps, to provide greater flexibility for fishermen to fish with vessels of different lengths without adversely affecting the FMP's cap on fishing effort, and to simplify the regulations.

DATES: Written comments must be received on or before July 13, 1998.

ADDRESSES: Comments on the proposed rule must be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and a social impact assessment/fishery impact statement, should be sent to the South

Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: 843-571-4366; Fax: 843-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: The golden crab fishery in the EEZ of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council has proposed to adjust management measures for the South Atlantic golden crab fishery. The Council has submitted this regulatory amendment to NMFS for its review, approval, and implementation. These measures were developed and submitted to NMFS under the FMP's framework procedure for adjustments in gear regulations and permit requirements.

Use of Cable for Mainlines

The Council proposes that the use of cable for mainlines be allowed through January 31, 1999, to allow for additional evaluation of cable in the golden crab fishery. Under current regulations at 50 CFR 622.40(d)(2)(ii), rope is the only material allowed for a buoy line or mainline attached to a golden crab trap, except that wire cable is allowed for these purposes through January 31, 1998. The Council heard extensive discussion of the issue at the joint Golden Crab Advisory Panel/Committee meeting June 16, 1997, in Key West. The Council considered extending the authorized use of cable for buoy lines but declined to do so based on safety issues raised by the Coast Guard. The Council will reexamine the use of cable in the golden crab fishery when it reviews the status of the fishery in June 1998.

Vessel Size Limitations

The Council proposes to ease the limitations on vessel size that apply when NMFS transfers a permit from one vessel to another. To obtain a vessel permit by transfer of an existing permit under current regulations, the owner of the receiving vessel must acquire a permit from a vessel with documented length overall, or permits from vessels with aggregate lengths overall, of at least 90 percent of the documented length overall of the receiving vessel. However, some owners want to use temporarily a shorter vessel (i.e., downsize) and subsequently return to a longer vessel. Current regulations may prevent them from doing so, because the permit NMFS transfers to a shorter vessel cannot be transferred again to a vessel that is more than 11.1 percent longer than that smaller-sized vessel.

To provide fishermen with greater flexibility in their choice of vessel length, the Council and this rule propose that, when NMFS has transferred a golden crab limited access permit to a smaller vessel, a subsequent transfer to a longer vessel will be limited based on the length of the vessel permitted prior to downsizing. For example, if NMFS transfers a permit issued to a vessel that is 90 ft (27.4 m) long to a vessel that is 50 ft (15.2 m) long, NMFS could subsequently transfer the permit to a vessel that is 100 ft (30.5 m) long. Such a transfer would be allowed because the length of the permitted vessel prior to downsizing is 90 percent of the length of the replacement vessel. The Council concluded that limiting vessel length based on the length of the permitted vessel prior to downsizing meets the Council's intent to cap fishing effort while at the same time providing greater flexibility for fishermen to use shorter vessels temporarily.

Changes Proposed by NMFS

NMFS proposes to remove from the regulations the eligibility criteria and procedures for obtaining initial commercial vessel permits for the South Atlantic golden crab fishery. All initial permits have been issued, and no additional permits are being issued. Therefore, the criteria and procedures are no longer applicable. This change would be accomplished by moving from § 622.17 to § 622.4 the permit requirement for the fishery and by removing from § 622.17 the paragraphs on initial eligibility, documentation of eligibility, application procedure, issuance, and appeals. The paragraph on display of a permit, which is adequately covered in § 622.4, would also be removed.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's regulatory impact review (RIR) that assesses the economic impacts of the management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

> * * * the provisions extending use of cable for mainlines and easing the restrictions on vessel size that would apply when NMFS transfers a permit from one vessel to another would not have adverse economic effects on a substantial number of the firms that own and operate fishing vessels for golden crabs in the South Atlantic Region. All such firms are considered small entities for purposes of the Regulatory Flexibility Act. These actions would not be expected to cause any reduction in revenue or force fishermen to modify their fishing operations. No increase in production cost would be expected as a result of these actions. The proposed actions would not require any existing fishing entity to acquire new equipment or to completely refit existing equipment for compliance purposes. The economic analyses do not indicate that any entity would be forced out of business. On the contrary, the actions would enable permitted fishermen to participate actively in the fishery and contribute toward developing the market for golden crab.

As a result, a regulatory flexibility analysis was not prepared.

This rule repeats a collection-of-information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under control number 0648–0205. Permit applications involving transfers are estimated to take 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 19, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (a)(2)(x) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(x) For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.17 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

* * * * *

§ 622.5 [Amended]

3. In § 622.5, in paragraph (a)(1)(v), the reference to "§ 622.17(a)" is removed and "§ 622.4(a)(2)(x)" is added in its place.

§ 622.6 [Amended]

4. In § 622.6, in paragraph (a)(1)(i) introductory text, the phrase "or § 622.17" is removed.

§ 622.7 [Amended]

5. In § 622.7, in paragraphs (a) and (b), the phrase "or § 622.17" is removed, in paragraph (c), the phrase "or § 622.17(g)" is removed, and in paragraph (z), the reference to "§ 622.17(h)" is removed and "§ 622.17(b)" is added in its place.

§ 622.8 [Amended]

6. In § 622.8, in paragraph (a), the reference to "§ 622.17(a)" is removed and "§ 622.4(a)(2)(x)" is added in its place.

7. Section 622.17 is revised to read as follows:

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial vessel permits have been issued for the fishery. No additional permits may be issued.

(b) *Fishing zones.* (1) The South Atlantic EEZ is divided into three fishing zones for golden crab. A permitted vessel may fish for golden crab only in the zone shown on its permit. A vessel may possess golden crab only in that zone, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (813–570–5344) in advance and does not fish in an unpermitted zone. The designated fishing zones are as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 25° N. lat. to 28° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) An owner of a permitted vessel may request that NMFS change the zone specified on a permit from the middle or southern zone to the northern zone. A request for such change and the existing permit must be submitted from an owner of a permitted vessel to the RD.

(c) *Transfer.* (1) An owner of a vessel with a valid golden crab permit may request that NMFS transfer the permit to another vessel by returning the existing permit(s) to the RD with an application for a permit for the replacement vessel.

(2) To obtain a commercial vessel permit via transfer, the owner of the replacement vessel must submit to the RD a valid permit for a vessel with a documented length overall, or permits for vessels with documented aggregate lengths overall, of at least 90 percent of the documented length overall of the replacement vessel.

(3) In addition to the provisions of paragraph (c)(2) of this section, the owner of a permitted vessel who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized), may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(d) *Renewal.* In addition to the procedures and requirements of § 622.4(h) for commercial vessel permit renewals, for a golden crab permit to be renewed, the SRD must have received reports for the permitted vessel, as required by § 622.5(a)(1)(v), documenting that at least 5,000 lb (2,268 kg) of golden crab were landed from the South Atlantic EEZ by the permitted vessel during at least one of the two 12-month periods immediately prior to the expiration date of the vessel permit.

§ 622.31 [Amended]

8. In § 622.31, in paragraph (a) the phrase "or § 622.17" is removed.

§ 622.35 [Amended]

9. In § 622.35, in paragraph (f), the reference to "§ 622.17(h)" is removed and "§ 622.17(b)" is added in its place.

10. In § 622.40, in paragraph (c)(3)(ii), the reference to "§ 622.17(h)" is removed and "§ 622.17(b)" is added in its place and paragraph (d)(2)(ii) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(d) * * *

(2) * * *

(ii) Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap, except that wire cable is allowed for a buoy line through January 31, 1998, and for a mainline through January 31, 1999.

§ 622.45 [Amended]

11. In § 622.45, in paragraph (f)(2), the reference to "§ 622.17(a)" is removed and "§ 622.4(a)(2)(x)" is added in its place.

[FR Doc. 98–17129 Filed 6–25–98; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 123
Friday, June 26, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Development of the Land and Resource Management Plan for the Midewin National Tallgrass Prairie; Will County, IL

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for the development of the Midewin National Tallgrass Prairie Land and Resource Management Plan (Prairie Plan) (pursuant to 16 U.S.C. 1604 and 36 CFR 219.12).

We are now soliciting comments and suggestions from individuals, organizations, Federal agencies, State and local governments, and the Native American community on the scope of the analysis to be included in the Draft Environmental Impact Statement for the Prairie Plan (40 CFR 1501.7). To be most useful, comments should (1) consider the purposes for which Midewin was established as outlined in the Illinois Land Conservation Act of 1995 (PL 104–106, section 2914); (2) identify specific concerns about the Prairie Plan Proposal, and; (3) offer possible alternatives for addressing issues associated with the proposal.

Forest Service Land and Resource Management Plans set forth goals, objectives, advisable courses of action, and limitations to actions for National Forest System lands. The advisable courses of action and limitations to actions are called standards and guidelines. Some standards and guidelines will apply prairie-wide, while others will apply only to specific subdivisions, or management areas, of the prairie. The Prairie Plan will include a framework for monitoring and evaluation to determine whether progress is being made toward reaching the goals, objectives, standards, and guidelines established in the plan. Monitoring and evaluation allows for adaptive management so adjustments can be made to the Prairie Plan as needed. There are six primary decisions that are made in Forest Service Land and Resource Management Plans as follows:

1. Unit-wide multiple-use goals and objectives (36 CFR 219.11 (b))
2. Unit-wide management requirements (36 CFR 219.27)
3. Management Area direction (36 CFR 219.11 (c))
4. Monitoring and evaluation requirements (36 CFR 219.11 (d))
5. Lands suited/not suited for timber production (36 CFR 219.14)
6. Recommendations to Congress (if any) (36 CFR 219.17)

For purposes of writing the Prairie Plan versus those plans written for National Forests, items 1–4 above will serve as the primary decisions to be made. With reference to item 5, the Midewin National Tallgrass Prairie does not contain lands suited for timber production because "the land is not forest land * * * (36 CFR 219.14 (a) (1))." The reference for item 6 specifically mentions recommendations of "potential wilderness areas" which, given the cultural history, existing roads and railroad beds, is not relevant to Midewin lands.

In addition, project and activity level decisions may be made so long as they are specifically identified in the Record of Decision and site specific environmental effects are disclosed in the Environmental Impact Statement as required by the National Environmental Policy Act (NEPA).

In June, 1992, the U.S. Army confirmed its intentions to decommission the Joliet Army Ammunition Plant (JAAP) located just north of Wilmington, Illinois, and 40 miles southwest of Chicago, Illinois. As a result of the issues and attention the closure of the JAAP generated, the Joliet Arsenal Citizen Planning Commission (JACPC), comprised of 24 members representing various conservation organizations and State and local governments, was formed and assigned the task of developing a concept plan that would outline a strategy for the future ownership and management of the decommissioned arsenal. The plan was a concept map that provided for the conversion of 3,000 acres into two industrial parks, the development of a 910-acre National Veterans Cemetery, the creation of a 455-acre County landfill, and the establishment of a 19,000-acre prairie. The concept map was unanimously approved by the JACPC on May 30, 1995.

Legislation was drafted based on the JACPC concept map and signed as the Illinois Land Conservation Act of 1995 on February 10, 1996, adopting the JACPC concept map and establishing the Midewin National Tallgrass Prairie (MNTP). MNTP is a unit of the National Forest System and will be managed in cooperation with the State of Illinois in accordance with the Illinois Land Conservation Act of 1995 and the "laws, rules, and regulations pertaining to the National Forest System * * * (Section 2914 (b) (1))."

That portion of the Illinois Land Conservation Act of 1995 that is most significant to the planning process is Section 2914(c) which states that "(t)he Midewin National Tallgrass Prairie (MNTP) is established to be managed for National Forest System purposes, including the following:

I. To manage the land and water resources of the MNTP is a manner that will conserve and enhance the native populations and habitats of fish, wildlife, and plants.

II. To provide opportunities for scientific, environmental, and land use education and research.

III. To allow the continuation of agricultural uses of lands within the MNTP consistent with section 2915(b).[1]

IV. To provide a variety of recreation opportunities that are not inconsistent with the preceding purposes.

This is the public's opportunity to get involved with the planning process for a new unit for the Forest Service that has been closed to public access for more than 50 years. The site has had little or no established uses other than agricultural leases and some hunting

[1] No agricultural special uses authorization shall be issued for agricultural purposes which has a term extending beyond the date 20 years from the date of the enactment of this title, except that nothing in this title shall preclude the Secretary of Agriculture from issuing agricultural special use authorizations or grazing permits * * * after twenty years * * * for purposes primarily related to * * * resource management activities consistent with the purpose of the Midewin National Tallgrass Prairie (*Section 2915 [b][3]*).

opportunities. The MNTP is in its infancy of development and, within the parameters of the Illinois Land Conservation Act of 1995 and the laws and regulations that guide Forest Service programs, the Forest Service needs to know how the public would like to see the MNTP developed and managed.

Numerous site tours, presentations, displays, Focus Group Sessions, meetings, and a Trails Working group have already taken place to provide information regarding Midewin, its history, the legislation, and the Forest Service planning process to individuals and organizations that have expressed an interest in the development and management of the MNTP. The meetings included two pre-Notice of Intent public workshops hosted by Midewin, in May, 1998, to review a draft Notice of Intent. Information gathered from these opportunities has been used to identify an initial set of significant issues that will need to be addressed in the Environmental Impact Statement. Those issues include: automobiles, bison and/or elk reintroduction, camping, cultural resources, dog trialing, emergency response, environmental education and interpretation, fishing, herbicide treatment, hunting, internal transportation system, prescribed fire, recreation facilities, trail systems, wetland restoration, and woody vegetation management.

Based on the issues identified to date, the purposes for the management of the MNTP as outlined in the Illinois Land Conservation Act of 1995 and listed in this Notice of Intent, and the JACPC concept map, Medewin has developed a Prairie Plan proposal. This proposal will serve as the basis upon which individuals and organizations may comment regarding issues, concerns, or opportunities provided or not provided by the proposal. Issues, concerns, and opportunities already identified (listed above) and others raised through the comment period for this Notice of Intent will be evaluated and used to develop alternatives to the proposal for the Environmental Impact Statement.

The primary activities that would occur under the proposal include: development of seed-producing nursery beds; reintroduction of bison and elk; integrated pest management; gradual conversion of cultivated row crops to prairie habitats; prescribed fire; wetland restoration; woody vegetation management; environmental education and interpretation programs; research opportunities; use of domestic livestock; designated access points; fishing for educational programs; hunting; internal transportation system (e.g., bus or tram); rail line access; recreation facilities (e.g., shelters picnic areas); an automobile loop; and a system of trails.

The environmental analysis and decision-making process leading to the Prairie Plan will include opportunities for public participation and comment, so that individuals interested in this proposal may contribute to the decision-making process:

Tentative date	Step	Public involvement
June 1998	Notice of Intent, Plan proposal	60-day formal comment period, written comments, open house meeting.
Fall, 1998	Alternative Development	Public workshops.
February, 1999	Draft Environmental Impact Statement, Proposed Plan	90-day formal comment period, written comments, open house meetings.
August, 1999	Final Environmental Impact Statement, Final Plan	Informational meetings to explain Plan decisions.

We will provide the public with general notices of opportunities to participate through mailings, news releases, an public meetings, various organizational newsletters, and the internet. Midewin's internet address is http://www.fs.fed.us/mntp/. In addition to formal opportunities for public comment, we will consider comments received at any time throughout the planning process. Midewin will host open house meetings to: 1) explain the planning process; 2) provide clarification of the proposal for the Prairie Plan; 3) describe ways that individuals can respond to this Notice of Intent; and 4) accept comments from the public on the propsoal for the Prairie Plan.

The following open house meetings will be held from 5 PM to 8PM:

July 21, 1998—Beverly Bank, Wilmington, IL

July 23, 1998—Morton Arboretum, Lisle, IL

July 28, 1998—Governor State University, University Park, IL

July 29, 1998—Evanston Public Library, Evanston, IL

July 30, 1998—Morris Public Library, Morris, IL

DATES: Comments on this Notice of Intent should be received in writing by August 31, 1998.

ADDRESSES: Send written comments to: Prairie Planning, Midewin National Tallgrass Prairie, 30071 South State Route 53, Wilmington, Illinois 60481.

FOR FURTHER INFORMATION CONTACT: Karen Nash, Planning Team Leader, at (815) 476–3135 or, to leave a message, (815) 423–6370. E-mail address: knash/r9__midewin@fs.fed.us.

SUPPLEMENTARY INFORMATION: Additional detail on this propsoal is provided in the "Notice of Intent to Prepare an Environmental Impact Statement, Description of the Proposal for the Prairie Plan, and Supplementary Information" and is available upon request. Those interested in Midewin and the planning process are encouraged to review this additional document prior to commenting on the Notice of Intent.

The DEIS and the proposed Prairie Plan are expected to be be published early in 1999. The public comment period for the DEIS and proposed Prairie Plan will be 90 days from the date the U.S. Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.**

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217.

Additional, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and, where the requester is denied, the agency will return the submission and notify the requester that the comments

may be resubmitted with or without name and address within 10 days.

The Forest Service believes that, at this early stage, it is important to give notice to those intending to review the DEIS of court rulings related to public participation in the environmental review process. First, reviewers of a DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC* U.S. 519, 533 (1978)). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period on the DEIS, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Control on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (at 40 CFR 1503.3) in addressing these points.

The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Dated: June 22, 1998.

Robert T. Jacobs,

Regional Forester.

[FR Doc. 98–17093 Filed 6–25–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 9, 1998, in Tillamook, Oregon, at the Shilo Inn, 2515 N. Main Street (Highway 101), Tillamook, OR. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Reports from PAC Subcommittees (Adapative Management Area and Water Quality/Fish); (2) flood analyses by State of Oregon and other agencies, (3) road management, and (4) landscape level research. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 10 a.m. and 2:15 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: June 18, 1998.

James R. Furnish,

Forest Supervisor.

[FR Doc. 98–16987 Filed 6–25–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Cochgalechee Creek Watershed, Russell County, AL; Availability of No Significant Impact

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cochgalechee Creek Watershed, (Russell County, Alabama).

FOR FURTHER INFORMATION CONTACT: Ronnie D. Murphy, State Conservationist, Natural Resources Conservation Service, 3381 Skyway Drive, Auburn, Alabama, 36830, (334) 887–4535.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie D. Murphy, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The planned works of improvement include: selective clearing and snagging, and sediment removal in Cochgalechee Creek from 1000 feet downstream of Brickyard Road to Seale Road (2 miles), and selective placement of riprap around bridges.

The notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronnie D. Murphy, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Ronnie D. Murphy,

State Conservationist.

[FR Doc. 98–16988 Filed 6–25–98; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 27, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 8, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (63 F.R. 25445) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, Dyess Air Force Base, Texas
Base Supply Center, Bangor Submarine Base, Bangor, Washington
Base Supply Center, Naval Air Station, Whidbey Island, Washington
Operation of Individual Equipment Element, Dyess Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–17105 Filed 6–25–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 27, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services

General Services Administration, Federal Protective Services, 255 East Temple, Los Angeles, California
NPA: Goodwill Industries of Southern California, Los Angeles, California

Administrative Services

Department of Veterans Affairs Medical Center, 4100 West Third Street, Buildings 315 and 330, Dayton, Ohio
NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio
Base Supply Center, Malmstrom Air Force Base, Montana,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin
Base Supply Center, U.S. Naval Station, Roosevelt Roads, Building 1207, Ceiba, Puerto Rico
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Food Service Attendant, Holloman Air Force Base, New Mexico
NPA: Tresco, Inc., Las Cruces, New Mexico
Grounds Maintenance, Franklin D. Roosevelt Library, Hyde Park, New York
NPA: Dutchess County Chapter, NYSARC, Inc., Poughkeepsie, New York
Janitorial/Custodial, United States Geological Survey Building, Colorado School of Mines, 1711 Illinois Street, Golden, Colorado
NPA: Bayaud Industries, Inc., Denver, Colorado
Janitorial/Custodial, Pentagon Building, 3rd and 4th Floor, Arlington, Virginia
NPA: Ability Unlimited, Inc., Washington, DC
Switchboard Operation, Davis-Monthan Air Force Base, Arizona
NPA: Tucson Association for the Blind and Visually Impaired, Tucson, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Tray, Fiberboard, Three-Sided
P.S. #D–3915

P.S. #136
Tag, Cattle, Ear
9905–00–NSH–0027
9905–00–NSH–0028
9905–00–NSH–0029
(60% of the Government's requirement for the Department of Agriculture, Minneapolis, Minnesota)

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–17106 Filed 6–25–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of binational panel and notice of completion of panel review.

SUMMARY: Pursuant to the third panel decision issued on April 13, 1998 that affirmed SECOFI's second Determination on Remand, the binational panel review in Secretariat File No. MEX–94–1904–01 was completed on May 25, 1998.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The binational panel review in this matter was conducted in accordance with these Rules.

Background and Final Decision

The panel in Secretariat File No. 94–1904–01 was convened to review the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial (SECOFI) with respect to Imports of Cut-to-Length Plate, Covered by Customs Tariff Classifications 7208.32.01, 7208.33.01 7208.42.01 and 7208.43.01 of the Tariff Schedule of the General Tax Import Law, Originating in and Exported from the United States of America.

On September 15, 1997 the Panel issued a decision affirming in part and remanding in part the first Remand Determination of SECOFI for further action. On January 13, 1998 SECOFI submitted its second Remand Determination, which was challenged on February 2, 1998 under the Rules by New Process Steel Corporation. On April 13, 1998 after review of all documents filed in this action on remand, the Panel denied New Process's challenge to SECOFI's second Remand Determination dated January 13, 1998 and affirmed the second Remand Determination in all its parts.

The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective on May 25, 1998.

Dated: June 4, 1998.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 98–17110 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Phoenix (Formerly Automated Business Enterprise Locator System (ABELS)) and Opportunity Databases

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub.L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 25, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita Berry, Minority Business Development Agency (MBDA), Room 5084, Washington, D.C. 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Phoenix database constitutes the Minority Business Development Agency's (MBDA) listing of ethnic minority-owned businesses doing business in the United States. Phoenix information is gathered on-line via the Internet's World Wide Web (WWW). The information entered in the Phoenix database will be used to assist minority enterprises with marketing of goods and services. The Opportunity database is a listing of contract and other business opportunities posted on the MBDA Website (*www.mbda.gov*) by public and private entities. Using a database engine and special software, the system will match contract opportunities with eligible minority companies listed in the Phoenix database. The purpose for collecting this information will be to enable entities with an interest in contracting with a minority firm to identify and qualify potential minority contractors according to various criteria. MBDA will use the Phoenix database in conjunction with the Opportunity database to refer listed minority companies contract and other business opportunities via email and fax. Specific information on the Opportunity form, such as "key words" and NAICS (North American Industrial Code Standards) codes, will be compared with like information contained in the Phoenix database of minority companies. When a match is made, the eligible minority companies will be notified of any contract opportunity and the offeror of the opportunity will be notified of any eligible minority companies.

II. Method of Collection

The system resides on Y2K (year 2000) compliant platform connected to the service-provider network via the Internet and virtual private network.

III. Data

OMB Number: 0640–0002.
Type of Review: Regular.
Burden: 5,000.
Affected Public: Individuals, State or local government, Federal agencies, and profit and non-profit institutions.
Estimated Number of Respondents: 20,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 5,000.
Estimated Total Annual Cost Per Respondent: $0—no capital expenditures are necessary to respond.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 22, 1998.

Wilson D. Haigler,

Chief, Management Control Division, Office of Management and Organization.

[FR Doc. 98–17044 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation for Sea Grant Review Panelists

AGENCY: National Oceanic and Atmospheric Administration, Office of Oceanic and Atmospheric Research (OAR), National Sea Grant Review Panel.

ACTION: Notice of Solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to Section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received on or before July 27, 1998.

ADDRESS: Dr. Ronald C. Baird, Director; National Sea Grant College Program; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448 or fax number (301) 713–1031.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice of such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts award under section 205 and section 205 of the Sea Grant Program Improvement Act of 1976 as amended (33 U.S.C. 1124);

(c) The designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 204(a) and (c)(1) (33 U.S.C. 1123 (a) and (c)(1)); and

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under Section 205 (33 U.S.C. 1124) or (c) a full-time officer or employee of the United States. The Director of the National sea grant College Program and one Director of a sea grant Program also serve as non-voting members. Positions on the panel will become vacant during 1998. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: June 22, 1998.

Elbert W. Friday, Jr.,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 98–16986 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042398D]

Vessel Registration and Fisheries Information System

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: The Sustainable Fisheries Act, passed in October 1996, added various amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Section 401 of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to deliver an implementation plan for a national fishing vessel registration and fisheries information system (System) in a Report to Congress. NMFS has developed, in consultation with interested parties, a draft of the implementation plan.

DATES: Written comments on the implementation plan must be received on or before August 25, 1998.

ADDRESSES: Address all comments concerning this notice to: Fisheries Statistics and Economic Division (F/ST1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; (301) 713–2328; fax (301) 713–4137. The implementation plan is available for public comment by mail from the address here, or in electronic form (pdf format) via the world wide web at http://www.nmfs.gov/sfa.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, (301) 713–2328.

SUPPLEMENTARY INFORMATION: Section 401 of the Magnuson-Stevens Act, amended in 1996, directs the Secretary

to deliver a report to Congress on the implementation of a national fishing vessel registration and information management system.

NMFS, the U.S. Coast Guard, coastal states, the three regional commissions (Pacific States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and Atlantic States Marine Fisheries Commission), and the eight regional Fishery Management Councils (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Pacific, North Pacific, and Western Pacific) play various roles in commercial fishing vessel registration and marine fisheries data collection. Consistent with previous directions from the Assistant Administrator of NMFS, NMFS has been engaged in collaborative processes to develop joint regional data collection and planning activities with these organizations. Section 401 of the Magnuson-Stevens Act directs the Secretary to create a plan that will coordinate the techniques used to collect and disseminate data and to integrate these vessel registration and fisheries information systems on a national basis. This is to be accomplished while taking into account the unique characteristics of regional fisheries.

Section 401 of the Magnuson-Stevens Act sets a number of benchmarks for a national vessel registration and fisheries information system. It also defines several principles that should guide the system's development. These include the reduction of duplicative information reporting burdens on the fishing industry and the integration of existing data collection and information management systems to the furthest extent possible.

NMFS organized the implementation plan into two components: the Vessel Registration System and the Fisheries Information System (FIS). Within these components, the proposed System addresses information management architecture, integration and harmonization of data collection programs, and the institutional arrangements and accountability issues.

Vessel Registration System

Vessel registration, licensing, and permitting systems among the coastal states, territories, tribal entities and the U.S. Coast Guard have been reviewed. The Magnuson-Stevens Act requests a plan for a national system that contains the following information for each fishing vessel: (1) The name and official number or other identification, together with the address of the owner or operator or both; (2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation, and other such pertinent information with respect to vessel characteristics as the Secretary may require; and (3) identification of the fisheries in which the fishing vessel participates. Currently, no vessel registration system at any level fully satisfies these criteria.

Fisheries Information System

State and Federal data collection programs and information management systems have developed over time to meet specific regional needs and reflect varying degrees of integration and management efficiency. These efforts, often state-Federal partnerships, have definite time frames and outcomes. NMFS has relied on these processes to support development of the section 401 FIS.

Process

The creation of the proposed system has targeted the highest level of detail possible in the draft report to produce specific and justifiable estimates of implementation steps and resource requirements. NMFS has consulted many major stakeholders, and has gathered input through a series of presentations and meetings with stakeholders, using a "discussion draft" paper to highlight critical issues and options. These stakeholders included internal NMFS organizational units as well as external entities. NMFS has, to the extent possible, reconciled the comments of the various stakeholders in the draft implementation plan.

Authority: Pub. L. 104–297.

Dated: June 22, 1998.

William W. Fox, Jr.,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–17128 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel; Public Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program management and evaluation, national strategic investments, education and extension, technology problems, legislative changes and other matters as described below.

DATES: The announced meeting is scheduled during two days: Wednesday, July 8, 8:30 a.m. to 5 p.m.; Thursday, July 9, 8:30 a.m. to 3 p.m.

ADDRESSES: National Oceanic and Atmospheric Administration Silver Spring Metro Center III; 1315 East-West Highway, Room 11836; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director; National Sea Grant College Program; National Oceanic and Atmospheric Administration 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910;301) 713–2448 extension 163.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is as follows:

Wednesday, July 8, 1998

8:30 a.m.—Welcoming and Opening Formalities
9:00 a.m.—NOAA and National Sea Grant Office Update
10:30 a.m.—Sea Grant Association Update
12:00 p.m.—Working Lunch
1:30 p.m.—Program Evaluation
3:45 p.m.—Historically Black Colleges and Universities Evaluation Report
4:15 p.m.—Recognition Ceremony for Outgoing Review Panel Members
5:00 p.m.—Adjourn

Thursday, July 9, 1998

8:30 a.m.—National Strategic Initiatives Discussion
10:30 a.m.—Technology Update
11:30 a.m.—30th Anniversary Committee Update
11:45 a.m.—Working Lunch
1:30 p.m.—Sea Grant Review Panel Liaison Reports
2:00 p.m.—Sea Grant Review Panel Comments

2:30 p.m.—Summarization and Action Items
3:00 p.m.—Adjourn

This meeting will be open to the public.

Dated: June 22, 1998.

Elbert W. Friday, Jr.,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 98–16985 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062298A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1160).

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife at Vancouver, WA (WDFW) has applied in due form for a permit that would authorize takes of an ESA-listed anadromous fish species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 27, 1998.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400); and

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

Written comments or requests for a public hearing should be submitted to the Chief, PRD, in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch, PRD (503–230–5424).

SUPPLEMENTARY INFORMATION: WDFW requests a permit under the authority of section 10 of the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

WDFW requests a 5-year permit (1160) that would authorize annual takes of adult and juvenile, threatened, lower Columbia River steelhead (*Oncorhynchus mykiss*) associated with scientific research designed to monitor steelhead genetic and biological parameters in the Wind River Basin in WA. The monitoring effort is an integral part of the Wind River Watershed Project, a federally funded watershed recovery program intended to rebuild depressed populations of Wind River summer steelhead. The scientific research is essential to contain risks associated with conservation actions proposed in the Wind River and to detect both desired and unintended consequences. ESA-listed adult fish are proposed to be observed/harassed during redd counts and snorkel surveys. ESA-listed adult fish are also proposed to be captured, handled (examined, sampled for tissues and/or scales, and/or marked/tagged), and released. ESA-listed juvenile fish are proposed to be observed during snorkel surveys or captured, handled (examined, sampled for tissues and/or scales, and/or marked/tagged), and released. ESA-listed juvenile fish indirect mortalities associated with the scientific research activities are also requested.

To date, protective regulations for threatened lower Columbia River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of lower Columbia River steelhead. The initiation of a 30-day public comment period on the application, including its proposed takes of lower Columbia River steelhead, does not presuppose the contents of the eventual protective regulations. Those individuals requesting a hearing on this application should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 22, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–17130 Filed 6–25–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Patent Application entitled "Force Discrimination Assay," filed January 20, 1998, Navy Case No. 78183.

Patent Application entitled "Apparatus and Method for Measuring Intermolecular Interactions By Atomic Force Microscopy," filed May 8, 1998, Navy Case No. 78838.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, and must include the Navy Case numbers.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S C. 207, 37 CFR Part 404)

Matthew G. Shirley,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–17018 Filed 6–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Closed Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Meeting.

SUMMARY: The Naval Research Advisory Committee Panel on Information Technology Interoperaility will meet to assess technologies and interoperability implications associated with information transfer and interaction among systems as well as between systems, especially among and between NATO and coalition forces. All sessions of this meeting will be closed to the public.

DATES: The meeting will be held on Tuesday, July 7, 1998 from 8:00 a.m. to

5:30 p.m., and on Wednesday, July 8, 1998 from 8:00 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at Lockheed Martin Federal Systems, 9500 Godwin Drive, Building 250, Room 1GG18, Manassas, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to briefings and discussions involving technical examination of information related to interoperability among and between command, control, communications, computers and information systems/ combat systems. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1).

Matthews G. Shirley,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–17016 Filed 6–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 27, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 22, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: Progress Measures.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1,157
Burden Hours: 11,000
Abstract: The National School-to-Work Office collects information from funded local partnerships (n=1,157) to gather evidence on state and local progress in implementing school-to-work. Data elements include student, school, and employer involvement in school-to-work; graduation and postsecondary transition rates for students; and funds leveraged by partnerships to sustain their school-to-work systems. Information is used to provide an annual school-to-work report to Congress, as well as to building state's capacity to collect and analyze information for their own system improvement purposes.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Children with Disabilities Exiting Special Education During the 1998–99 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 58
Burden Hours: 53,244
Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under the Individuals with Disabilities Education Act (IDEA–B) exiting special education. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state educational agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Children with Disabilities Receiving Special Education under Part B of Individuals with Disabilities Education Act (IDEA), As Amended.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 30,624.
Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA-B receiving special education and related

services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Early Intervention Services of Individualized Family Service Plans (IFSPs) Provided to Infants, Toddlers and Their Families in Accordance with Part C and Report of Number and Type of Personnel Employed and Contracted to Provide Early Intervention Services.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 5,187.
Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of Part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs
Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 5,472.
Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: a) are served under the Individuals with Disabilities Education Act (IDEA), Part C; b) are served in different program settings; and c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Office of Special Education and Rehabilitative Services.

Type of Review: Reinstatement.
Title: Personnel (In Full-Time Equivalency of Assignment) Employed to Provide Special Education and Related Services for Children with Disabilities.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 7,685.
Abstract: This package provides instructions and a form necessary for States to report the number of personnel employed and contracted in the provision of special education and related services. Data are obtained from state and local educational agencies, and are used to assess the implementation of the Individuals with Disabilities Education Act (IDEA) and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Report of Children with Disabilities Subject to Unilateral Changes in Placement, Change in Placement Based on a Hearing Officer Determination, or Long-term Suspension-Explusion.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 149,350.
Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Education Act (IDEA) involving a unilateral change in placement, change in placement based on a hearing officer determination, or long-term suspension/explusion. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state educational agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Part B, Individuals with Disabilities Education Act (IDEA) Implementation of Free Appropriate Public Education (FAPE) Requirements 1998–99 School Year
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 257,752.
Abstract: This package provides instructions and a form for States to report the settings in which children with disabilities served under IDEA-B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state educational agencies and for Congressional reporting.

[FR Doc. 98–17045 Filed 6–25–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No.: 84.063]

Federal Pell Grant Program

AGENCY: Department of Education.
ACTION: Notice of deadline dates for receipt of applications, reports, and other documents for the 1998–99 award year.

SUMMARY: The Secretary announces the deadline dates for receiving documents from persons applying for grants under, and from institutions participating in, the Federal Pell Grant Program in the 1998–99 award year.

SUPPLEMENTARY INFORMATION: The Federal Pell Grant Program, administered by the U.S. Department of Education (Department), provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. The program supports priority three of the Department's Seven Priorities, which states that all students should be prepared for and able to afford at least two years of college by age 18, and be able to pursue lifelong learning as adults. Authority for the Federal Pell Grant Program is contained in section 401 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070a.

DEADLINE DATES: The following tables provide the deadline dates for the Federal Pell Grant Program for the 1998–99 award year. Please note that the Department may impose an adverse action, such as a fine or other penalty, for an institution's failure to report Federal Pell Grant payment data within the required 30-day timeframe as outlined in Table B. Also, failing to report within the required 30-day

timeframe may result in a program review or audit finding for an institution.

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)			
Student	A paper original Free Application for Federal Student Aid (FAFSA) or renewal application (Renewal FAFSA).	The address indicated on the FAFSA, Renewal FAFSA, or envelope provided with the form.	June 30, 1999.
Student	Free Application for Federal Student Aid (FAFSA) in pdf obtained from http://www.fafsa.ed.gov.	The address indicated on the FAFSA.pdf.	June 30, 1999.
Student	FAFSA Express electronic application	Electronically to the Central Processing System using the FAFSA Express software and a modem.	June 30, 1999.[1]
	Signature Page	The address printed on the signature page.	August 16, 1999.
Student	Free Application for Federal Student Aid (FAFSA) on the Web or Renewal FAFSA on the Web.	Electronically to the Central Processing System using the Internet http://www.fafsa.ed.gov.	June 30, 1999.[1]
	Signature Page (if required)	The address printed on the signature page.	August 16, 1999.
Student through institution.	An electronic original or renewal application through EDExpress.	Electronically to the Central Processing System through Title IV Wide Area Network.	June 30, 1999.[1]
Student	SAR corrections and duplicate requests.	The address indicated on the SAR	August 16, 1999.
Student through institution.	Electronic corrections and duplicate requests.	Electronically to the Central Processing System through Title IV Wide Area Network.	August 25, 1999.[1]
Student	Change of address or change of institutions.	The address indicated on the SAR; or	August 16, 1999.
		The Federal Student Aid Information Center by calling (319) 337–5665.	August 25, 1999.
Student	Valid SAR	Institution	The earlier of: —the student's last date of enrollment; or —August 31, 1999.
Student through Central Processing System.	Valid ISIR	Institution	The earlier of: —the student's last date of enrollment; or —August 31, 1999.
Student	Verification documents	Institution	The earlier of:[2] —90 days after the student's last date of enrollment; or —August 31, 1999.
Student	Verified SAR	Institution	The earlier of:[3] —90 days after the student's last date of enrollment; or —August 31, 1999.
Student through Central Processing System.	Verified ISIR	Institution	The earlier of:[3] —90 days after the student's last date of enrollment; or —August 31, 1999.

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
B. Deadline Dates for Reporting Federal Pell Grant Payment Data			
Institution	At least one acceptable student Payment Data record must be submitted for each Federal Pell Grant recipient at the institution by: Recipient Data Exchange; or Floppy Disk Data Exchange;[4] or Electronic Data Exchange (EDE)[5].	1. Institutions transmitting student Payment Data using Recipient Data Exchange or Floppy Disk Data Exchange submit through: Regular Mail: U.S. Department of Education, Student Aid Origination Team, PSS, P.O. Box 6565, Rockville, Maryland 20850–6565 or Commercial Couriers or Hand Deliveries to: U.S. Department of Education, Student Aid Origination Team, PSS, c/o Computer Data Systems, Inc., RFMS, Federal Pell Grant Program, Mail Stop 3200, One Curie Court, Rockville, Maryland 20850–4389.	An institution is required to submit student Payment Data not later than the earlier of: (a) 30 calendar days after the institution —makes a payment; or —becomes aware of the need to make an adjustment to previously reported student Payment Data or expected student Payment Data; or (b) September 30, 1999. An institution may submit student Payment Data after September 30, 1999 only if there is: —a downward adjustment of a previously reported award; or —an initial audit or program review finding per 34 CFR Part 690.83.
		2. Institutions transmitting student Payment Data using Electronic Data Exchange submit through: Title IV Wide Area Network.	
	Requests for year-to-date Processed Payment Data.	Pell Grant User Support Hotline and the Institutional Access System#: (800) 474–7268 (Requests also may be made using the information provided in items #1 and #2 above).	August 16, 1999.[6]
	Requests for Student Payment Summary (SPS) Data		
	Request for administrative relief based on an administrative error by the Department or departmental contractors.	U.S. Department of Education, Institutional Financial Management, Division, AFMS, P.O. Box 23791, Washington, DC 20026–0791.	February 1, 2000.

[1] The deadline for submitting electronic transactions is prior to 7:00 pm (Central Time) on the deadline date. Transmissions must be completed and accepted by 7:00 pm to meet the deadline. If transmissions are started before 7:00 pm but are not completed until after 7:00 pm, those transmissions will not meet the deadline. In addition, any transmission picked up on the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejected transmission.

[2] Although the Department has set this deadline date for the submission of verification documents, if corrections to the SAR or ISIR are required, the above deadline dates for submission of paper or electronic corrections still must be met.

[3] For those students completing verification while no longer enrolled, the institution must have already received a SAR or ISIR with an eligible Expected Family Contribution (EFC) while the student was enrolled and eligible for payment. These students will be paid based on the higher of the two EFCs.

[4] The 1998–99 award year is the last year the Department will accept Disk Operating System (DOS) floppy diskette or DOS electronic submissions.

[5] An institution that transmits its student Payment Data information must ensure that its transmission is completed before midnight (local time at the institution's EDE destination point) on September 30, 1999.

[6] Year-to-date or SPS data files may be requested after this date. However, there may not be sufficient time for institutions to receive the file, create a payment data batch, and submit it to the Department by the September 30, 1999 deadline date for receipt of all 1998–99 requests for payment.

Proof of Delivery for Federal Pell Grant Payment Documents

If the documents were submitted by mail or by non-U.S. Postal Service courier, the Department accepts as proof of delivery one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *1998–99 Student Guide, Funding Your Education*, the *1998–99 Counselor's Handbook for High Schools*, the *1998–99 Counselor's Handbook for Postsecondary Schools, A Guide to 1998–99 SARs and ISIRs*, and the *1998–99 Federal Student Financial Aid Handbook*. A more detailed discussion of the institutional reporting requirement for student Payment Data for the Federal Pell Grant Program is also contained in the *Federal Student Financial Aid Handbook*.

Applicable Regulations

The following regulations apply:

(1) Federal Pell Grant Program, 34 CFR Part 690.

(2) Student Assistance General Provisions, 34 CFR Part 668.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3045, ROB–3), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Vicki Wilson, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3030, ROB–3), Washington, D.C. 20202–5352. Telephone: (202) 708–8619.

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http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1070a)

Dated: June 19, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–17125 Filed 6–25–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Wednesday, August 19, 1998; 7:00 p.m.–9:00 p.m.

ADDRESSES: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Updates on Supplemental Standards and project status; and reports from subcommittees on local hiring and training, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC, on June 23, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17055 Filed 6–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, July 15, 1998; 6:00 p.m.–9:00 p.m. Mountain Daylight Time).

ADDRESSES: Citizens' Advisory Board Office, 924 Park Avenue SW–PH #9, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Board will conduct a business meeting. A final agenda will be available at the meeting Wednesday, July 15, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will

be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorksi, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, MN 87185, or by calling (505) 845–4094.

Issued at Washington, DC on June 23, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17056 Filed 6–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, July 16, 1998: 5:30 p.m.–10:00 p.m.

ADDRESS: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Myrna E. Redfield, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6815.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30 p.m.—Call to Order
5:45 p.m.—Approve Meeting Minutes
6:00 p.m.—Public Comment/Questions
6:30 p.m.—Presentations
7:30 p.m.—Break
7:45 p.m.—Presentations
9:00 p.m.—Public Comment
9:30 p.m.—Administrative Issues
10:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Myrna E. Redfield at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC, on June 23, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17058 Filed 6–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response times proposed frequency of response per year times estimated number of likely respondents.)

DATES: Comments must be filed on or before July 27, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. FE–329R, "Powerplant and Industrial Fuel Use Act of 1978; Final Rule".

2. Fossil Energy; OMB No. 1901–0297, Extension of Currently Approved Collection; Mandatory.

3. FE–329R Final Rule (1) incorporates Public Law No. 100–42 Fuel Use Act amendments into regulations, (2) revises and updates cost test fuel price and inflation indices, (3)

clarifies how to calculate fuel price when using natural gas, and (4) revises and updates oil/gas savings estimates for cogenerators.

4. Business or other for-profit.

5. 240 hours (8 hours per response times 1 response per year times 30 respondents).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, June 18, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–17057 Filed 6–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–242–000]

CNG Transmission Corporation; Notice of Section 4 Filing

June 22, 1998.

Take notice that on June 3, 1998, CNG Transmission Corporation (CNGT), tendered for filing, pursuant to section 4 of the Natural Gas Act, a notice of termination of service on certain specified uncertificated gathering pipeline facilities in Calhoun County, West Virginia. CNGT states that it will sell these facilities to Dominion Appalachian Development, Inc. (Dominion Appalachian).

CNGT states that no contract for transportation of service with CNGT will be terminated because Dominion Appalachian will continue to delivery gas to CNGT at a delivery point further downstream of the line. CNGT further states that Hope Gas, Inc., has made arrangement with Dominion Appalachian for continued service to its three residential consumers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under section 154.210 of the Commission's regulation, all such motions or protests should be filed on or before June 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17037 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–251–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 22, 1998.

Take notice that on June 17, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 1998.

CIG states that the purpose of this compliance filing is to conform CIG's tariff to requirements of Order No. 587–G that interstate pipelines transporting pursuant to Section 284.223 of the commissions regulations conform their tariffs to include Version 1.2 of the GISB standards and to make minor housekeeping changes by capitalizing defend terms.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17038 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP91–229–027, RP92–166–020]

Panhandle Eastern Pipeline Company; Notice of Refund Report

June 22, 1998.

Take notice that on June 18, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report pursuant to the Commission's Order on Rehearing dated June 3, 1998 (June 3, 1998 Order).

Panhandle states that concurrently with the filing of this report it made a refund to Omega Gas PipeLine Company, OPC Gas Company, Vesta Energy Company, d.b.a. Edisto Resources Inc., d.b.a. Forcenergy, Inc., pursuant to Ordering Paragraph (B) of the June 3, 1998 Order, related to the pre-restructuring rate periods in this proceeding.

Panhandle states that it also submitted schedules setting forth the calculation of the refund due Forecenergy, Inc. including additional carrying charges and the amount of refunds used to offset amounts due Panhandle.

Panhandle further states that a copy of this filing is being served on all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17035 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–609–000]

Sabine Pipe Line Company; Notice of Request Under Blanket Authorization

June 22, 1998.

Take notice that on June 12, 1998, Sabine Pipe Line Company (Sabine), P.O. Box 4781, Houston, Texas 77210–4781, filed in Docket No. CP98–609–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install and operate a sales tap to deliver gas to Warren Petroleum Company L. P. (Warren), under Sabine's blanket certificate issued in Docket No. CP83–199–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The proposed sales tap will interconnect Sabine's 16-inch low-pressure mainline to Warren's Lake Charles Fractionation Plant near Lake Charles, Calcasieu Parish, Louisiana.

Sabine states that it will construct and pay for the interconnection, including a meter station and approximately 1,500 feet of 12-inch pipeline, that will connect Warren's facilities and Sabine's existing mainline piping. Sabine states that it will own and operate instrumentation and telemetry for flow control, the control valve assemblies and the connections to Sabine's mainline piping. Sabine also states that the maximum quantity of gas that will be delivered through the proposed interconnect is 10,000 D.H. per day. Sabine adds that the proposed delivery point will be available to all existing and potential shippers receiving service under Sabine's FT–1 and IT–1 rate schedules set forth in its FERC Gas Tariff. Sabine states the cost to construct the proposed facilities is $195,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17031 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–343–004]

Sea Robin Pipeline Company; Notice of Petition for Waiver

June 22, 1998.

Take notice that on June 17, 1998, Sea Robin Pipeline Company (Sea Robin) filed a petition for an interim waiver of the Section 5.10 of the General Terms and Conditions of its Tariff to extend the date on which it implements pooling service on its system to the date the SoNet Premier System is implemented. Such implementation date is expected to be on or before September 1, 1998.

Sea Robin states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17036 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–252–000]

Southern Natural Gas Company; Notice of Filing

June 22, 1998.

Take notice that on June 18, 1998, Southern Natural Gas Company (Southern) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service that will apply to gathering service provided by Sonat Exploration Company (SEC) upon the transfer by Southern to SEC of certain gathering facilities located in Bear Creek Field, Bienville Parish, Louisiana.

Southern proposes the effective date of such termination of gathering services to be August 31, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17039 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–618–000]

Texas Eastern Transmission Corporation; Notice of Application

June 22, 1998.

Take notice that on June 16, 1998, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–618–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act to own, operate and maintain on a permanent

basis replacement facilities in Monroe County, Ohio constructed pursuant to Part 284, Subpart I of the Commission's Regulations, and abandon in place the facilities which were replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that on May 6, 1998, its Main Line No. 10 ruptured in a rural area approximately one mile south of Beallsville, Ohio. It is stated that the rupture occurred near the bottom of a steep hillside. Texas Eastern indicates that after the rupture, Texas Eastern closed valves on both sides of the rupture and dispatched crews to assess damage and evaluate further actions. It is further stated that its 30-inch Line 15, which is parallel to Line 15 in the same right of way was taken out of service as a safety measure.

Texas Eastern states that it installed replacement facilities under the terms of the emergency regulations set forth in Subpart I of the Commission's Regulations. Specifically, Texas Eastern has installed approximately 933 feet of 30-inch pipeline as part of its Main Line No. 10 and 928 feet of 30-inch pipeline as part of its Main Line No. 15. Texas Eastern indicates that the replacement facilities were offset approximately 280 feet south of Texas Eastern's existing Main Line Nos. 10 and 15 following a route around a steep hillside and proceeding up a less severe slope to reconnect with Lines Nos. 10 and 15 on the top of the hill.

Texas Eastern states that it cut, capped and filled the replaced segments of Lines 10 and 15 with water and proposes to permanently abandon these segments in place.

Texas Eastern estimates a total cost of the replacement project at $4,400,000, which is being financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17032 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–997–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 18, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–997–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Midway Sunset Cogeneration Company for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Cataula Generating Company, L.P.

[Docket Nos. EC98–44–000 and ER98–3316–000]

Take notice that on June 11, 1998, Cataula Generating Company, L.P. (Cataula), on behalf of itself and Black Hawk I Power Corporation and Peach II Power Corporation tendered for filing an application for approval pursuant to Section 203 of the Federal Power Act for approval of a change in ownership. Cataula also filed a notification of change in status pursuant to Section 205 of the Federal Power Act.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Energy, Inc.

[Docket Nos. ER95–590–001 and ER96–1497–000]

Take notice that on June 12, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission a report of refunds pursuant to the terms of the Stipulation and Agreement approved by order of the Commission issued on April 30, 1998 in Docket Nos. ER95–590–000 and ER96–1497–000.

A copy of the refund report was served on the Kansas Corporation on each party listed on the Commission official service list for Docket Nos. ER95–590–000 and ER96–1497–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1500–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for ISO Metered Entities between Midway Sunset Cogeneration Company and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER98–1569–001]

Take notice that on June 15, 1998, PP&L, Inc. (PP&L), filed a compliance filing pursuant to Ordering Paragraph (A) of the Commission's May 14, 1998, Order in Potomac Electric Power Company, *et al.*, 83 FERC ¶61,162 (1998).

PP&L states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–1911–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for ISO Metered Entities between Long Beach Generation and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–1913–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for ISO Metered Entities between El Segundo Power, LLC and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. AES Huntington Beach, L.L.C., AES Alamitos, L.L.C. and AES Redondo Beach, L.L.C.

[Docket Nos. ER98–2184–002, ER98–2185–002, ER98–2186–002 (Not consolidated)]

Take notice that on June 15, 1998, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C. (AES Companies), pursuant to the Commission's order of June 12, 1998, in these dockets, submitted for filing a long-term service agreement between the AES Companies and Williams Energy Services Company. The AES Companies request confidential treatment of the agreement pursuant to 18 CFR 388.112.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Electricity Inc.

[Docket No. ER98–3048–000]

Take notice that on June 15, 1998, Northeast Electricity Inc. (NEI), petitioned the Commission for acceptance of NEI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and the waiver of certain Commission Regulations.

NEI intends to engage in wholesale electric power and energy purchases and sales as a marketer. NEI is not in the business of generating or transmitting electric power. NEI is a wholly owned and privately held company, with no affiliates.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PowerSource, Corp.

[Docket No. ER98–3052–000]

Take notice that on June 15, 1998, PowerSource, Corp. (PSC), tendered for filing an amended application for acceptance of PSC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

PSC intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER98–3333–000]

Take notice that June 15, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated June 9, 1998 with Entergy Power Marketing Corp., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Entergy Power Marketing Corp., as a customer under the Tariff. DLC requests an effective date of June 9, 1998, for the Service Agreement.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER98–3334–000]

Take notice that on June 15, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated June 9, 1998, with First Energy Trading and Power Marketing, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds First Energy Trading and Power Marketing, Inc., as a customer under the Tariff. DLC requests an effective date of June 9, 1998, for the Service Agreement.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER98–3335–000]

Take notice that on June 12, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Central Valley Electric Cooperative, Inc. (Central Valley), filed in Docket No ER97–3904–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER98–3336–000]

Take notice that on June 15, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service Company of Colorado required in its agreement with Lea County Electric Cooperative, Inc. (Lea County), filed in Docket No ER97–3905–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER98–3337–000]

Take notice that on June 15, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service

Agreement between RG&E and the Rochester Gas and Electric Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 10, 1998, for the Rochester Gas and Electric Corporation Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER98–3338–000]

Take notice that on June 15, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which City of Sikeston will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 8, 1998.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New York State Electric & Gas Corporation

[Docket No. ER98–3339–000]

Take notice that on June 15, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Cinergy Operating Companies, PG&E Energy Trading, VTEC Energy and Plum Street Energy Marketing (Customers). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of June 15, 1998, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duquesne Light Company

[Docket No. ER98–3340–000]

Take notice that on June 15, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated June 9, 1998, with ConAgra Energy Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds ConAgra Energy Services, Inc., as a customer under the Tariff. DLC requests an effective date of June 9, 1998, for the Service Agreement.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER98–3341–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Gardner Energy Group, Inc. (Gardner), for acceptance by the Commission.

The ISO states that this filing has been served on Gardner and the California Public Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Docket No. ER98–3342–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Hafslund Energy Trading L.L.C. (Hafslund), for acceptance by the Commission.

The ISO states that this filing has been served on Hafslund and the California Public Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER98–3343–000]

Take notice that on June 15, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Gardner Energy Group, Inc. (Gardner), for acceptance by the Commission.

The ISO states that this filing has been served on Gardner and the California Public Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Omni Energy

[Docket No. ER98–3344–000]

Take notice that on June 15, 1998, Omni Energy, tendered for filing a petition to the Commission for acceptance of Omni Energy's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to purchase and resell electricity at negotiated, market-based rates; and the waiver of certain Commission Regulations.

Omni Energy will engage in wholesale electric power and energy transactions as a marketer. Omni Energy is engaged presently as a broker of electricity, natural gas and petroleum products. Omni Energy is a wholly owned and privately held company.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Electric Power Company

[Docket No. ER98–3345–000]

Take notice that on June 15, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Upper Peninsula Power Company (UPPCO). The Transmission Service Agreement allows UPPCO to receive multi-year firm point-to-point transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. New York State Electric & Gas Corporation

[Docket No. ER98–3346–000]

Take notice that on June 15, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.13, a Supplement to its September 28, 1993, Marcy-South 345 kV Transmission Facilities-Transmission Reinforcement Agreement (Agreement) with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would decrease revenues for

the ten month period ending April 30, 1999.

This rate filing is made pursuant to Article No. 2, of the Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1997.

NYSEG requests an effective date of July 1, 1998, and therefore, requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the New York Power Authority and on the Public Service Commission of the State of New York.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas & Electric Corporation

[Docket No. ER98–3348–000]

Take notice that on June 15, 1998, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its development of actual costs for 1997 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison), in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost amounted to $286,523 for 1997 and will be the basis on which estimated charges for 1998 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1998, as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Central Hudson Gas & Electric Corporation

[Docket No. ER98–3349–000]

Take notice that on June 15, 1998, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its development of actual costs for 1997 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1997 amounted to $0.9898 per Mw.-day to Con Edison and $3.2838 per Mw.-day to Niagara Mohawk and are the basis on which charges for 1998 have been estimated.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1998, as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Montaup Electric Company

[Docket No. ER98–3350–000]

Take notice that on June 15, 1998, Montaup Electric Company (Montaup) filed (1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. 3; and (2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. 4. The service agreements under both tariffs are between Montaup and the following companies (Buyers):

1. Cinergy Capital & Trading, Inc. (CCT)
2. SCANA Energy Marketing, Inc. (SCANA)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of June 15, 1998. No transactions have occurred under any of the agreements.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Black Hills Corporation

[Docket No. ER98–3351–000]

Take notice that on June 15, 1998, Black Hills Corporation, doing business as and operating its electric utility under the name Black Hills Power and Light Company, tendered for filing revised tariff sheets to its open access transmission tariff.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–3352–000]

Take notice that on June 15, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume. No. 10, with Northern/AES Energy, LLC. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Northern/AES Energy, LLC, pursuant to the tariff and for the sale of capacity and energy by Northern/AES Energy, LLC to Missouri Public Service pursuant to Northern/AES Energy, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Northern/AES Energy, LLC.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–3353–000]

Take notice that on June 15, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Northern/AES Energy, LLC. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Northern/AES Energy, LLC pursuant to the tariff, and for the sale of capacity and energy by Northern/AES Energy, LLC to WestPlains Energy-Kansas pursuant to Northern/AES Energy, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Northern/AES Energy, LLC.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–3354–000]

Take notice that on June 15, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Northern/AES Energy, LLC. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Northern/AES Energy, LLC pursuant to the tariff, and for the sale of capacity and energy by Northern/AES Energy, LLC to WestPlains Energy-Colorado pursuant to Northern/AES Energy, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Northern/AES Energy, LLC.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Electric Power Company

[Docket No. ER98–3355–000]

Take notice that on June 15, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Coral Power, L.L.C., (Coral). Wisconsin Electric respectfully requests an effective date of May 28, 1998, to allow for economic transactions.

Copies of the filing have been served on Coral, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Wisconsin Electric Power Company

[Docket No. ER98–3357–000]

Take notice that on June 15, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Rainbow Energy marketing Corporation (Rainbow). Wisconsin Electric respectfully requests an effective date of May 20, 1998, to allow for economic transactions.

Copies of the filing have been served on Rainbow, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. UtiliCorp United Inc.

[Docket No. ER98–3358–000]

Take notice that on June 15, 1998, UtiliCorp United Inc. (UtiliCorp), on behalf of its WestPlains Energy-Colorado division (WestPlains-Colorado), filed revisions to WestPlains-Colorado's open-access transmission tariff pending in this docket. UtiliCorp states that the primary purpose of the proposed revisions is to modify the priority of non-firm use on the WestPlains-Colorado system to accommodate WestPlains-Colorado's membership in the Rocky Mountain Reserve Group.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Florida Power & Light Company

[Docket No. ER98–3359–000]

Take notice that on June 15, 1998, Florida Power & Light Company (FPL), filed a Service Agreement with Cinergy Capital & Trading, Inc., for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed a Service Agreement with Cinergy Capital & Trading, Inc., for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on June 3, 1998.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Southwestern Public Service Company

[Docket No. ER98–3360–000]

Take notice that on June 15, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with New Corp Resources, Inc. (New Corp), filed in Docket No. ER97–3903–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Southwestern Public Service Company

[Docket No. ER98–3361–000]

Take notice that on June 15, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service Company of Colorado required in its agreement with Lyntegar Electric Cooperative, Inc. (Lyntegar), filed in Docket No. ER97–3906–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Duke Energy Corporation

[Docket No. ER98–3362–000]

Take notice that on June 15, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA) between Duke and Constellation Power Source, Inc., dated as of June 2, 1998. The parties have not engaged in any transactions under the MRSA as of the date of filing. Duke requests that the MRSA be made effective as of June 2, 1998.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Sithe Mystic LLC; Sithe New Boston LLC, Sithe Edgar LLC, Sithe Framingham LLC, and Sithe West Medway LLC

[Docket Nos. ER98–3364–000]

Take notice that on June 15, 1998, Sithe Mystic LLC, Sithe New Boston LLC, Sithe Edgar LLC, Sithe Framingham LLC, and Sithe West Medway LLC (Project LLCs), tendered for filing with the Federal Energy Regulatory Commission Service Agreements between Sithe Power Marketing, Inc., and each of the Project LLCs, for service provided under the Project LLCs' respective FERC Electric Tariffs No. 1. The Project LLCs request that the Service Agreements become effective as of May 16, 1998.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Public Service Electric and Gas Company

[Docket No. ER98–3365–000]

Take notice that on June 15, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to El Paso Energy Marketing Company (El Paso), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 18, 1998.

Copies of the filing have been served upon El Paso and the New Jersey Board of Public Utilities.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Public Service Electric and Gas Company

[Docket No. ER98–3366–000]

Take notice that on June 15, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Florida Power & Light Company (FP&L), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 18, 1998.

Copies of the filing have been served upon FP&L and the New Jersey Board of Public Utilities.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Public Service Electric and Gas Company

[Docket No. ER98–3367–000]

Take notice that on June 15, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Potomac Electric Power Company (PEPCO), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 18, 1998.

Copies of the filing have been served upon PEPCO and the New Jersey Board of Public Utilities.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Public Service Electric and Gas Company

[Docket No. ER98–3368–000]

Take notice that on June 15, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to The Dayton Power and Light Company (Dayton), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 18, 1998.

Copies of the filing have been served upon Dayton and the New Jersey Board of Public Utilities.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. Public Service Electric and Gas Company

[Docket No. ER98–3369–000]

Take notice that on June 15, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Avista Energy, Inc. (Avista), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 18, 1998.

Copies of the filing have been served upon Avista and the New Jersey Board of Public Utilities.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Pacific Gas and Electric Company

[Docket No. ER98–3370–000]

Take notice that on June 15, 1998, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) (collectively the California Companies), tendered for filing a Rate Schedule change in the form of an amendment to the August 1, 1967, contract between the California Companies and Sacramento Municipal Utility District for Extra High Voltage Transmission and Exchange Service (the EHV Contract).

The Amendment submitted seeks to: (1) provide for a change from the existing loss factors to utilize transmission loss factors derived from those established in Appendix C of the Coordinated Operations Agreement (COA) for the period March 1, 1994 through March 30, 1998; (2) adopt the ISO Loss Methodology effective as of March 31, 1998, the ISO Operations Date; (3) modify certain definitions in Article 8 of the EHV Contract; and (4) incorporate contract language into the EHV Contract to establish that the California Companies have certain rights under Section 205 and Sacramento Municipal Utility District has certain rights under Section 206 of the Federal Power Act to make unilateral changes or to seek changes to losses and loss methodology.

Copies of this filing have been served upon the parties on the service list and the California Public Utilities Commission.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Southwestern Public Service Company

[Docket No. ER98–3371–000]

Take notice that on June 15, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Roosevelt Electric Cooperative, Inc. (Roosevelt), filed in Docket No. ER97–3902–000.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Minnesota Power & Light Company

[Docket No. ER98–3372–000]

Take notice that on June 15, 1998, Minnesota Power & Light Company tendered for filing a signed Service Agreement with Constellation Power Source Inc., Interstate Power Company and Wisconsin Public Service Corporation under its market-based Wholesale Coordination Sales Tariff (WCS–2), to satisfy its filing requirements under this tariff.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Bonneville Power Administration

[Docket No. NJ97–7–000]

Take notice that on May 26, 1998, Bonneville Power Administration (Bonneville), filed a motion to withdraw its January 2, 1997, standards of conduct and substitute revised standards of conduct.

Bonneville states that it served a copy of its motion and revised standards of conduct on each party on the official service list in this proceeding.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. Big Rivers Electric Corporation

[Docket No. NJ98–5–000]

Take notice that on May 29, 1998, Big Rivers Electric Corporation filed standards of conduct under Order Nos. 889 *et seq.*[1]

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *reh'g denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17054 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3199–000, et al.]

PacifiCorp, et al., Electric Rate and Corporate Regulation Filings

June 19, 1998.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER98–3199–000]

Take notice that on June 16, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, umbrella Service Agreements with City of Mesa, Arizona; Morenci Water & Electric Co.; Nautilus Energy Company, LLC; and New Energy Ventures, L.L.C., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2497–000]

Take notice that on June 16, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Amendment No. 1, to Allegheny Power's Open Access Transmission Tariff, Supplement No. RT–1, to fulfill the requirements of the Commission's letter order dated May 19, 1998.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER98–3332–000]

Take notice that on June 16, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Arizona Public Service Company and Western Resources and NP Energy Inc. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective June 15, 1998.

Copies of the filing were served upon Arizona Public Service Company, NP Energy Inc., and the Kansas Corporation Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Company

[Docket No. ER98–3356–000]

Take notice that on June 15, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credits resulting from its merger with Public Service company of Colorado required in its agreement with Golden Spread Electric Cooperative, Inc. (Golden Spread), filed in Docket No. ER97–47–000.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER98–3363–000]

Take notice that on June 16, 1998, Southwestern Public Service Company (Southwestern), tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Farmers' Electric Cooperative, Inc. (Farmers'), filed in Docket No. ER97–3901–000.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket ER98–3373–000]

Take notice that on June 16, 1998, PECO Energy Company (PECO), tendered for filing three agreements between PECO and Sun Company Inc. (R&M), (Sun), each entitled Authorization for Parallel Operation of Customer Owned Generation Equipment, dated November 26, 1997, December 31, 1997 and March 18, 1998.

PECO requests waiver of the Commission's Regulations to permit the agreements to be effective as of December 1, 1997, January 1, 1998 and April 1, 1998, respectively.

Copies of the filing were served on Sun and the Pennsylvania Public Utility Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Metropolitan Edison Company

[Docket No. ER98–3374–000]

Take notice that on June 16, 1998, Metropolitan Edison Company (Met-Ed) (d/b/a GPU Energy), filed executed Retail Transmission Service Agency Agreements between GPU and mc2, Inc., dated May 29, 1998.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997 through December 31, 1998, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Electric Company

[Docket No. ER98–3375–000]

Take notice that on June 16, 1997, Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Retail Transmission Service Agency Agreements between GPU Energy and mc2, Inc., dated May 29, 1998.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98–3376–000]

Take notice that on June 16, 1998, Public Service Company of New Mexico (PNM), submitted for filing an executed copy of the Interim Resolution of PNM's September 18, 1997, Section 211 request

for Transmission Service from the Western Area Power Administration (Western), as a supplement to the two existing contracts for reserved transmission capacity (i.e. Contracts Number 14–06–400–2425 and 8–07–40-PO695) between PNM and Western.

PNM requests waiver of the Commission's notice requirements to permit the Interim Resolution to become effective as of June 4, 1998.

Copies of the filing have been provided to Western, Plains Electric Generation and Transmission Cooperative, Inc., Southwestern Public Service Company, and the New Mexico Public Utility Commission, and are available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER98–3377–000]

Take notice that on June 16, 1998, the Washington Water Power Company tendered for filing a Termination of Contract, to be canceled by mutual agreement, for Firm Energy Exchange Agreement with Enron Power Marketing, Inc., under FERC Rate Schedule No. 232, in Docket No. ER96–2606–000.

Washington Water Power requests that this termination become effective October 1, 1998.

Copies of the filing have been served upon Enron Power Marketing, Inc.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Astra Power, Inc.

[Docket No. ER98–3378–000]

Take notice that on June 16, 1998, Astra Power, LLC (Astra Power), petitioned the Federal Energy Regulatory Commission for acceptance of Astra Power's FERC Electric Rate Schedule No. 1; the granting of certain blanket authorizations; and the waiver of certain of the Commission's Regulations.

Astra Power intends to engage in power marketing transactions, purchasing and reselling electricity at wholesale, at rates and on terms and conditions that are negotiated with the purchasing party. Astra Power may engage in reassignment of transmission capacity. Astra Power does not own or control electric generating or transmission facilities or have any franchised electric service territories.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER98–3379–000]

Take notice that on June 16, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for firm point-to-point transmission service to Virginia Electric and Power Company (Virginia Power), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on June 17, 1998.

Florida Power respectfully requests Commission waiver of the notice requirements in order to allow the Agreements to become effective June 17, 1998.

Copies of the notice have been served upon Virginia Power, and the Florida Public Service Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER98–3380–000]

Take notice that on June 16, 1998, Carolina Power & Light Company (CP&L), tendered for filing an un-executed Service Agreement between CP&L and ConAgra Energy Services, Inc. Service to the eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Energetix, Inc.

[Docket No. ER98–3381–000]

Take notice that on June 16, 1998, Energetix, Inc. (Energetix), submitted an Application for amendment to its Market-Based Rate Tariff, FERC Electric Rate Schedule No. 1, and the Corporate Policies and Guidelines for Transactions Between Energetix and Rochester Gas and Electric Corporation (RG&E). Energetix states that the purpose of these proposed revisions is to permit Energetix to engage in energy and/or capacity transactions with its affiliate, RG&E, in a manner consistent with the precedent of the Federal Energy Regulatory Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER98–3382–000]

Take notice that on June 16, 1998, Rochester Gas and Electric Corporation (RG&E), submitted an Application for amendment to its Market-Based Rate Tariff, Market-Based Power Sales Tariff No. 3. RG&E submitted revised tariff sheets, as well as a revised form of Service Agreement.

In addition RG&E filed a service agreement between RG&E and its affiliate, Energetix, Inc. (Energetix), for approval of the Federal Energy Regulatory Commission (Commission). RG&E states that the purpose of the proposed revisions to its tariff and the Service Agreement is to permit RG&E to engage in energy and/or capacity transactions with Energetix, in a manner consistent with the precedent of the Commission.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER98–3383–000]

Take notice that on June 16, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with PG&E Energy Trading-Power, L.P.

Main Public requests waiver of the Commission's 60-day notice requirements so that the service agreement can become effective on May 29, 1998.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Boston Edison Company

[Docket No. ER98–3384–000]

Take notice that on June 16, 1998, Boston Edison Company (Boston Edison), tendered for filing (a) a firm point-to-point transmission service agreement and (b) a non-firm point-to-point transmission service agreement with Merchant Energy Group of the Americas, Inc. Both agreements provide for service pursuant to Boston Edison's open access transmission tariff.

Boston Edison requests that the service agreements become effective August 16, 1998.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. American Electric Power Service Corporation

[Docket No. ER98–3399–000]

Take notice that on June 16, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing

executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Wholesale Market Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements submitted with this filing to be made effective for Oklahoma Gas & Electric Company on April 23, 1998; PP&L, Inc., on May 19, 1998; Puget Sound Energy, Inc., on May 4, 1998; Southern Company Energy Marketing, Inc., on May 19, 1998; Sempra Energy Trading Corporation on May 19, 1998; and Williams Energy Services Company on May 19, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. FirstEnergy System

[Docket No. ER98–3400–000]

Take notice that on June 16, 1998, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for Constellation Power Source, Inc., Commonwealth Edison Company, Entergy Power Marketing Corp., FirstEnergy Corp—Bulk Power, Illinois Power Company, Morgan Stanley Capital Group, Inc., Northeast Utilities Service Company, PECO Energy Company, Rainbow Energy Marketing Corp., Sonat Power Marketing L.P., Southern Company Energy Marketing L.P., Virginia Electric and Power Company, Williams Energy Services Co., Amoco Energy Trading Corp., Engage Energy US, L.P., NorAm Energy Services, Inc., and Wisconsin Electric Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under these Service Agreements are May 18, 1998, June 1, 1998 and June 15, 1998, respectively, for the above mentioned Service Agreements in this filing.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Kansas City Power & Light Company

[Docket No. ER98–3407–000]

Take notice that on June 16, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 26, 1998, between KCPL and Entergy Power Marketing Corporation. KCPL proposes an effective date of May 27, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17030 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659–011]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment and Conduct Public Scoping Meetings and a Site Visit

June 22, 1998.

The Federal Energy Regulatory Commission (Commission) is reviewing the hydropower application for a new license for the 6-megawatt Powerdale Hydroelectric Project, No. 2659–011. The project, owned and operated by PacifiCorp, is located on the Hood River, near the town of Hood River, in Hood River County, Oregon.

The Commission staff intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. In the EA, we will consider reasonable alternatives to PacifiCorp's proposed action, and analyze both site-specific and cumulative environmental impacts of the project, as well as economic and engineering impacts.

A draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the Project Coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address by August 24, 1998: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings should clearly show the following on the first page: Powerdale Hydroelectric Project, FERC No. 2659–011.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

In addition to asking for written comments, we are holding two scoping meetings to solicit any verbal input and comments you may wish to offer on the scope of the EA. An agency scoping meeting will begin at 9:00 a.m. on July 22, 1998, at the Hood River Inn, 1108 East Marina Way, Hood River, OR 97031. A public scoping meeting will begin at 7:00 p.m. on July 22, 1998, at the Hood River Inn, 1108 East Marina Way, Hood River, OR 97031. The public and agencies may attend either meeting. There will also be a visit to the project site on July 23, 1998, to become more familiar with the project area. More information about these meetings and site visit is available in the scoping document.

Any questions regarding those notice may be directed to Mr. Bob Easton, Project Coordinator, at (202) 219–2782.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17033 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2674—Vermont Vergennes Hydroelectric Project]

Green Mountain Power Corporation; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 22, 1998.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a Restricted Service List for a particular phase or issue in a proceeding.[1] The Restricted Service List should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Vermont State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2674.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the Programmatic Agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

Green Mountain Power Corporation, as prospective Licensee for Project No. 2674, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2674 as follows:

Don L. Klima, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 809, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

Emily Wadhams, State Historic Preservation Officer, Vermont Division for Historic Preservation, National Life Building, Drawer 20, Montpelier, VT 05620–0501

Giovanna Peebles, Vermont Division for Historic Preservation, National Life Building, Drawer 20, Montpelier, VT 05620–0501

Craig T. Myotte, Green Mountain Power Corporation, 25 Green Mountain Drive, South Burlington, VT 05402

Melvin S. Hawley, City Manager, City of Vergennes, P.O. Box 35, Vergennes, VT 05491

Jeffrey R. Cueto, Vermont Agency of Natural Resources, 103 South Main Street, Building 10 North, Waterbury, VT 05671–0408

Any person on the official service list for the above-captioned proceeding may request inclusion on the Restricted Service List, or may request that a Restricted Service List not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the Restricted Service List will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17034 Filed 6–25–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5493–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 08, 1998 Through June 12, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–FHW–E50290–NC Rating EO2, Mid-Currituck Sound Bridge, between U.S. 158 on the Currituck County Mainland and end at NC 12 on the Currituck Outer Banks, US Coast Guard Bridge Permit and COE Section 404 Permit, Currituck County, NC.

Summary: EPA expressed environmental objections due to degraded water quality, lost of submerged aquatic vegetation and the projects impact on efforts improve fishery resources. EPA requested that these and other issues be clarified and other less damaging alternative be fully assessed.

ERP No. D–FHW–K40231–AZ Rating LO, ed Mountain Freeway (Loop 202) Construction and Operation, between AR 87 (County Club Drive) and US–60 (Superstition Freeway), Funding, NPDES Permit and COE Section 404 Permit, City of Mesa, Maricopa County, AZ.

Summary: EPA expressed a lack of objections with the FHWA's Red Mountain Freeway (Loop) 202 project.

Final EISs

ERP No. F–AFS–K65200–CA San Juan Fuels and Wildlife Project, Implementation, Tahoe National Forest,

Nevada City Ranger District, Nevada County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–URC–J39024–UT Provo River Restoration Project (PRRP), Riverine Habitat Restoration, Reconstruction and Realignment of the existing Provo River Channel and Floodplain System between Jordanell Dam and Deer River Reservoir, Wasatch County, UT.

Summary: Review of the Final EIS was not deemed ncessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USA–C11014–NY Seneca Army Depot Activity Disposal and Reuse, Implementation, Seneca County and the City of Geneva, Ontario County, NY.

Summary: EPA commented that provided that more effective wetlands mitigation measures are developed and incorporated into the ROD, the proposed project should not result in significant adverse environmental impacts.

Dated: June 23, 1998.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 98–17111 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5463–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 15, 1998 Through June 19, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980236, FINAL EIS, FHW, NC, US 64 Bypass Transportation Improvements Project, from I–440 to US 64 west of Wendell and Eastern Wake Expressway from existing US 64 to NC–1007 (Poole Road), Funding and COE Section 404 Permit, Wake County, NC, Due: July 27, 1998, Contact: Tom Kendig (919) 733–7842.

EIS No. 980237, DRAFT EIS, FHW, IL, Fox River Bridge Crossings, To Construct up to Five-Bridges across the Fox River, NPDES Permit, COE Section 10 and 404 Permits, Kane County, IL, Due: August 10, 1998, Contact: Ronald C. Marshall (217) 492–4600.

EIS No. 980238, FINAL EIS, BLM, AZ, Yarnell Gold Mining Project, Construction and Operation on Open-pit Gold Mine and Ore Processing Facility, Yavapai County, AZ, Due: July 27, 1998, Contact: Ms. Shela McFarlin (602) 417–9568.

EIS No. 980239, DRAFT EIS, BLM, AZ, Yarnell Gold Mining Project, Construction and Operation an Open-pit Gold Mine and Ore Processing Facility, Yavapai County, AZ, Due: August 25, 1998, Contact: Connie Stone (602) 580–5517.

EIS No. 980240, DRAFT EIS, NPS, AK, Sitka National Historical Park, General Management Plan, Implementation, City and Borough of Sitka, AK, Due: August 26, 1998, Contact: Gary Garthier (907) 747–6281.

EIS No. 980241, DRAFT SUPPLEMENT, NOAA, Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan (FMP), Updated and Additional Information, Amendment No. 7, Due: August 10, 1998, Contact: Andrew Rosenberg (978) 281–9300.

EIS N6. 980242, DRAFT EIS, NOA, ME, Atlantic Herring (Clupea harengus harengus) Fishery Management Plan (FMP), Management Measures, Exclusive Ecosystem Zone (EEZ), Gulf of Maine, George Bank, ME, Due: August 10, 1998, Contact: Andrew Rosenberg (978) 281–9300.

EIS No. 980243, DRAFT EIS, AFS, WA, Sand Ecosystem Restoration Project, Implementation, Wenatchee National Forest, Leavenworth Range District, Chelan County, WA, Due: August 10, 1998, Contact: Bob Stoehr (509) 548–6977.

EIS No. 980244, DRAFT SUPPLEMENT, FRC, AL, North Alabama Pipeline Facilities, Additional Information, To Amended Natural Gas Pipeline, Construction and Operation, COE Section 10 and 404 Permits, Right-of-Way and NPDES Permits, Morgan, Limestone and Madison, AL, Due: August 10, 1998, Contact: Paul McKee (202) 208–1088.

EIS No. 980245, FINAL EIS, FRC, ME, Maritimes Phase II Project, Construct and Operate on Interstate Natural Gas Pipeline, COE Section 10 and 404 Permits, Endangered Species Act (ESA) and NPDE's permits, US Canada border at Woodland (Burleyville) Maine and Westbrook Maine, Due: July 27, 1998, Contact: Paul McKee (202) 208–1088.

Amended Notices

EIS No. 980176, DRAFT EIS, FHW, MD, US–301 Transportation Study, Improvements, from US–301 North of US–301/MD–5 Interchange at T.B. to US 50 in Bowie, Northern Corridor Tier I, Prince George's County, MD, Due: July 15, 1998, Contact: George Frick (410) 962–4440. Published FR 05–15–98—Review Period extended.

Dated: June 23, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–17112 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6116–2]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Environmental Information and Public Access Committee; Environmental Capital Markets Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92–463, EPA gives notice of a meeting of the following committees of the National Advisory Council for Environmental Policy and Technology (NACEPT) which provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues.

The Reinvention Criteria Committee (RCC) has been asked to help the Agency understand how incentives can be used most successfully to inspire firms, companies, communities, and individuals to go beyond mere compliance with existing regulations and to begin the process of addressing outstanding environmental problems. In particular, the committee will focus on the following questions:

—What opportunities exist for EPA to use incentives to promote environmental stewardship in industry? In local communities? In the general public?

—How can EPA evaluate the effectiveness of incentives to encourage environmental stewardship that leads to improved environmental results? How can EPA measure the impact that incentives have on public confidence? What criteria should be used to decide whether the use of incentives is appropriate?

—How can the concept of performance ladders be used to tailor incentives most effectively?

The Environmental Information and Public Access Committee (EIPAC) will discuss issues relating to the newly created Center for Environmental and Information Statistics; workgroups will discuss data quality, public access and use, and intergovernmental relations needed for the Center.

The Environmental Capital Markets Committee (ECM) will provide stakeholder inputs on the potential utility of using Environmental Management Systems as an investment service. The ultimate goal of the committee is to identify concrete actions EPA can take, on its own or in cooperation with other Federal and State agencies, to help the financial services industry incorporate environmental information into its decision-making process.

These meetings are being held to provide the EPA with perspectives from representatives of state, local, and tribal governments, environmental, business, and financial organizations, academia, industry, and NGOs.

DATES: The RCC and EIPAC will hold a two-day public meeting at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, D.C. 20037, on Tuesday, July 7, and Wednesday, July 8, 1998 from 8:30 am to 5:00 pm.

The ECM will hold a one-day public meeting at the same location on Wednesday, July 8, 1998 from 8:00 am to 5:00 pm.

ADDRESSES: Materials or written comments may be transmitted to the committees through Gwendolyn Whitt, Designated Federal Officer, NACEPT, U.S. EPA, Office of Cooperative Environmental Management (1601F), 401 M Street, SW, Washington, D.C. 20460. There will also be an opportunity for the public to make comments directly to the committees during the first day of the meetings. Requests to make public comments must be submitted no later than June 30, 1998 to Gwendolyn Whitt, at the address above or faxed to (202) 260–6882.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202) 260–9484.

Dated: June 16, 1998.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 98–16944 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–7]

National Advisory Council for Environmental Policy and Technology, Title VI Implementation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) now gives notification of a meeting of the Title VI Implementation Advisory Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT).

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities.

The purpose of the Title VI Implementation Advisory Committee is to advise the Administrator and Deputy Administrator of EPA on techniques that may be used by EPA funding recipients to operate environmental permitting programs in compliance with Title VI. The Title VI Implementation Advisory Committee is one of several standing committees of NACEPT.

The Committee consists of 23 independent representatives drawn from among state and local governments, industry, the academic community, tribal and indigenous interests, and grassroots environmental and other non-governmental organizations.

DATES: The Committee will meet on July 27, 1998 from 1:30 p.m. to 8:30 p.m. and July 28, 1998 from 8:30 a.m. to 6:30 p.m. The public comment session will be held on July 27 from 6:30 p.m. to 8:30 p.m.

Members of the public who wish to make brief oral presentations should contact Jannell Young at (202) 260–1888 by July 21, 1998 to reserve time during the public comment session. The Committee is particularly interested in receiving public comments on how a state permitting agency can effectively identify and address Title VI concerns early in the permitting process. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: The Penn Tower Hotel, Civic Center Boulevard at 34th Street, Philadelphia, Pennsylvania. The meeting is open to the public. However, seating will be limited and available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Kenyon, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone (202) 260–8169.

Dated: June 24, 1998.

Gregory Kenyon,

Designated Federal Officer, NACEPT Title VI Implementation Advisory Committee.

[FR Doc. 98–17284 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6116–7]

Proposed 42 U.S.C. Section 122(b) De Minimis Settlement; MIG/DeWane Landfill, Belvidere, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed section 122(g) *de minimis* settlement.

SUMMARY: This document is provided pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* and section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k. U.S. EPA proposes settlement of a claim under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* with Gunite Corporation for past costs and costs that will be incurred during removal and remedial activities at the MIG/DeWane Landfill Site in Belvidere, Illinois. Respondent Gunite Corporation, a *de minimis* potentially responsible party, has agreed to pay a total of $30,476.00. The money will be used to reimburse the U.S. EPA for past costs and oversight costs that will be incurred during actions taken at the site. The proposed action is being taken to settle all liability related to the MIG/DeWane Landfill Site for this Respondent under sections 106 and 107(a) of CERCLA and section 7003 of RCRA.

DATES: Comments on this proposed settlement must be submitted to U.S. EPA on or before July 27, 1998.

ADDRESSES: Comments on the proposed settlement should be addressed to Diana Embil, (C–14J), Assistant Regional Counsel, U.S. Environmental Protection Agency, 77 West Boulevard, Chicago,

Illinois 60604–3590, (312) 886–7889. Comments should refer to: In the Matter of: MIG/DeWane Landfill Administrative Order on Consent. Please submit an original and three copies of any comments, if possible.

A copy of the proposed settlement is available at the following address for review: U.S. Environmental Protection Agency, Region V, Office of Superfund, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Please telephone Diana Embil, at (312) 886–7889, before visiting the Region V Office.

PUBLIC MEETING: A public meeting in the affected area may be held upon request.

FOR FURTHER INFORMATION CONTACT: Diana Embil, (C–14J), Assistant Regional Counsel, U.S. Environmental Protection Agency, 77 West Boulevard, Chicago, Illinois 60604–3590, (312) 886–7889.

SUPPLEMENTARY INFORMATION: From 1969 to 1988, the MIG/DeWane Landfill received industrial and solid wastes, some of which contained hazardous substances. On August 30, 1990, U.S. EPA placed the Landfill on the National Priorities List. On March 29, 1991, U.S. EPA issued an administrative consent order concerning various responsible parties for a removal action at the Site. On May 15, 1995, U.S. EPA reached a *de minimis* settlement with other responsible parties. Gunite Corporation was not a signatory to either agreement.

Gunite Corporation is a potentially responsible party that may have arranged for the disposal of hazardous substances at the MIG/DeWane Landfill Site. Gunite Corporation's share of the waste delivered to the site is believed not to exceed 0.05% of the total waste delivered to the site.

Pursuant to section 122(i) of CERCLA, the 30-day period for comments on the proposed settlement with this Respondent begins on the date of publication of today's notice.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–16945 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–M

ENVRIONMENTAL PROTECTION AGENCY

[FRL–6117–1]

Characterization of Municipal Solid Waste in the United States: 1997 Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In recent years, community officials and the general public have increased their attention to the waste generated by households, institutions, and commercial businesses. They have used information about municipal solid waste (MSW) to plan for programs to reduce and recycle this waste and to properly dispose of the remainder. The "Characterization of Municipal Solid Waste in the United States" report was first prepared by EPA in 1986 in order to determine the amounts of waste generated, recovered, and discarded in the nation, and to project amounts of waste which will be managed in the future. The report has been updated six times since its initial publication in 1986. Planners nation-wide use this special study to estimate the amount and types of MSW that may be generated in their communities, and thus are able to plan more effectively for the management of the wastes generated, recovered, and/or discarded.

The Characterization of Municipal Solid Waste in the United States: 1997 Update report is now available. The 1997 Update is similar to the 1996 Update, but it contains updated information on the types and amounts of municipal solid waste generated, recovered, and discarded in the United States through 1996. Some new informational categories are also included in the 1997 Update. These include an expanded discussion of the markets for recovered recyclable materials.

Finally, due to sustained interest in tracking national generation, recovery, and discard rates for MSW, EPA plans to continue providing annual updates of this Report as a service to its stakeholders from State and local governments, industry, environmental groups, and the public.

DATES: June 26, 1998.

FOR FURTHER INFORMATION CONTACT:

A paper copy of Characterization of Municipal Solid Waste in the United States: 1997 Update (EPA Publication Number EPA530–98–R–007) or the Report's Executive Summary (EPA Publication Number EPA530–S–98–007) may be obtained by calling the RCRA Hotline at 1–800–424–9346. The Report is also available in electronic format on the Internet System through the EPA Public Access Server at www.epa.gov.

Dated: May 5, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–17123 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6114–7]

Massachusetts Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination of the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal regions of the town of Harwich, State of Massachusetts, to qualify as a "No Discharge Area" (NDA). The areas covered under this petition include the major harbors and contiguous beaches between and including Allen , Wychmere and Saquatucket harbors and to the Herring River. The latitudes and longitude defining the boundaries are Town line of Dennis 70°07′03″, 41°39′16″, Herring River 70°06′33″, 41°40′08″, Allens Harbor 70°05′22″, 41°40′04″, Wychmere Harbor 70°03′56″, 41°40′04″, Saquatucket Harbor 70°03′31″, 41°40′09″, Town line of Chatham 70°02′17″, 41°39′58″, and the water boundaries are 70°02′55″, 41°39′52″,—70°04′38″, 41°39′46″,—70°06′00″, 41°39′35″.

The State of Massachusetts has certified that there are two facilities to service the town of Harwich. A stationary shore side pump-out facility at the Saquatucket Municipal Marina has a 60 gallon per cycle capacity with discharge to a 2,500 gallon tight tank. This facility provides access for vessels with 6 feet draft at mean low water. This facility is available daily from May 1st through November 15th, weather permitting and open during daylight hours. Harbormaster personnel will be available to demonstrate the self-service system Tuesday through Sunday, from 9 a.m, to 3 p.m. The Harwich Harbormaster's office number is (508) 430–7532. The second facility is a pump-out boat typically docked at Saquatucket Municipal Marina, unless the private marinas request it for a short period of time. This pump-out boat will come to individual boats by appointment, which can be made by calling the Harwich Harbormaster on channel VHF 68 or calling the office at (508) 430–7532. The pump-out boat will be available May 1st through November 15th , and service is normally available

Tuesday through Sunday, 9 a.m to 3 p.m., weather permitting.

In addition to these pump-out facilities, there is a town comfort station located on the Allen harbor town boat ramp parking area, and the Saquatucket Municipal Marina has on-shore bathroom and shower facilities available 24 hours a day. There are also private facilities at the Allen Harbor Yacht Club.

The waste from stationary shore side pump-out facility at the Saquatucket Municipal Marina and the pump-out boat is collected and stored in a Department of Environmental Protection approved, 2,500 gallon tigh tank. This tank is fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The town of Harwich has an annual agreement with a licensed waste hauler to pump-out, on demand by the Harbormaster, and then transport the septage to the Town of Yarmouth's Sewage Treatment Facility. The Town Harwich has a contract with the Town of Yarmouth for the use of the Yarmouth-Dennis Septage Treatment Facility.

There are approximately 753 boats either moored or docked within Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket Harbor and are primarily "parking lot" harbors where the majority of boats are under 27 feet. Of these 735 boats there are 35 commercial fishing vessels, and an estimated transient population of 68 vessels.

The resources of the Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket Harbor are recreational and commercial. Wychmere Harbor is used by both recreational and commercial shell fishermen for the harvest of quahogs, clams, oysters, and bay scallops. Saquatucket Harbor is also used by both recreational and commercial shell fishermen for the harvest of quahogs, clams, oysters and is the site of the Town's commercial aquaculture operations. The beaches are located on the contiguous boundary with Nantucket Sound.

Comments and reviews regarding this request for action may be filed on or before July 27, 1998. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, Water Quality Unit (CWQ), JFK Federal Building, Boston, MA 02203. Telephone: 617–565–4885. E-Mail: RODNEY.ANN@EPAMAIL.EPA.GOV.

Dated: June 17, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–16799 Filed 6–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6116–3]

National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges From Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of NPDES general permits.

SUMMARY: Proposed reissuance of NPDES general permits for discharges from concentrated animal feeding operations (CAFOs) in (1) EPA Region 6 States of New Mexico (NMG800000), Oklahoma (OKG800000), and Texas (TXG800000); (2) all Indian Country Lands in Oklahoma, Texas, and New Mexico without certification authority; and (3) the following Indian Pueblos in New Mexico that have certification authority: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque.

Also proposed in this action are watershed-specific NPDES general permits for CAFOs located in watersheds that have been impaired by CAFO-related activities in EPA Region 6 States of (1) New Mexico (NMG810000), Oklahoma (OKG810000), and Texas (TXG810000); (2) all Indian Country lands in Oklahoma, Texas, and New Mexico without certification authority; and (3) the following Indian Pueblos in New Mexico that have certification authority: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque.

EPA Region 6 today proposes to (1) reissue NPDES general permits authorizing limited discharges from CAFOs in New Mexico, Oklahoma, and Texas; and (2) issue new NPDES general permits for all CAFOs within these States that are located in watersheds impaired by CAFO-related activities. The permits' requirements are based on NPDES regulations (40 CFR Parts 122 and 412). As proposed, the general permits prohibit discharges of process wastewater pollutants from CAFOs to waters of the United States except during catastrophic or chronic rainfall events. When effective, these permits will replace the general permits published at 58 FR 7610 (February 8, 1993). The requirements of the watershed-specific permits are designed to protect nutrient-impaired watersheds against further degradation and nutrient pollution resulting from CAFO-related activities, such as manure and wastewater land application activities and offsite land disposal of manure at rates that exceed crop agronomic requirements.

DATES: Written comments on this proposal may be submitted to EPA Region 6 until August 25, 1998.

ADDRESSES: Comments to EPA should be mailed to Ms. Wilma Turner (6WQ–CA), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. The public record is located at the EPA Region 6 office, and is available upon request. Requests for copies of the public record should be addressed to Ms. Wilma Turner at the address provided above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed draft permits or to request for a complete copy of the entire fact sheet and draft general permits, contact Ms. Wilma Turner at the address provided above or by telephone at (214) 665–7513. Also, the draft permits and the fact sheet can be obtained from the Internet at the following website address: www.epa.gov/region6/6wq/npdes/publicnotice.htm.

SUPPLEMENTARY INFORMATION:

Public Hearings

Informal Public Meetings and formal Public Hearings will be held in New Mexico, Oklahoma, and Texas to provide information on the draft permit conditions and to allow for public comment on the draft permits. Informal public meetings with question and answer sessions are scheduled, prior to each of the formal Public Hearings, to allow the public to make informal statements and comments before the formal Public Hearing sessions begin. The schedule for informal meetings and formal public hearings are as follows:

Monday August 3, 1998: Informal Public Meeting with question and answer session from 9:00 a.m. to 11:00 a.m., followed by a formal Public Hearing from 1:30 p.m. to 4:30 p.m., in the Oklahoma/Texas Rooms on the 12th floor of the EPA office, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Thursday August 13, 1998: Informal Public Meeting with question and answer session from 3:00 p.m. to 5:00

p.m., followed by a formal Public Hearing from 7:00 p.m. to 10:00 p.m., in the Cherokee Room of the Clarion Hotel and Conference Center, 4345 N. Lincoln Blvd., Oklahoma City, OK 73105.

Thursday August 20, 1998: Informal Public Meeting with question and answer session from 3:00 p.m. to 5:00 p.m., followed by a formal Public Hearing from 7:00 p.m. to 10:00 p.m., in the Corbett Center Auditorium, Corbett Center Student Union, New Mexico State University Campus, South Jordan Street, P.O. Box 30004, Las Cruces, New Mexico 88003.

Information in this Notice is organized as follows:

I. General Statutory and Regulatory Background
II. Permit Coverage
III. Permit Conditions
IV. Best Management Practices
V. Discharge Monitoring and Reporting Requirements
VI. Pollution Prevention Plan Requirements
VII. Other Permit Requirements
VIII. Economic Impact
IX. Compliance With Other Federal Regulations

I. General Statutory and Regulatory Background

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits, including NPDES permits. CWA 402, 33 USC 1342, authorizes EPA (or EPA-approved states) to issue NPDES permits allowing such discharges on condition they will comply with requirements implementing CWA sections 301, 304, and 401 (33 U.S.C. 1311, 1314 and 1341). Among those requirements are effluent limitations reflecting levels of technological capability, water quality standards, and other more stringent requirements states may adopt under CWA 510, 33 U.S.C. 1370. Violation of a condition contained in an NPDES permit, whether an individual or general permit, is a violation of the Act and subjects the owner or operator of the permitted facility to the penalties specified in section 309 of the Act.

Most NPDES permits EPA issues are individual permits; i.e., they apply only to one facility and authorize discharges of pollutants only from that facility. EPA may also use "general permits" to regulate numerous facilities which have similar discharges and are subject to the same conditions and limitations within a geographic area. See 40 CFR 122.28; *NRDC* v. *Costle*, 568 F.2d 1369 (D.C. Cir. 1977). Using general permits conserves EPA resources and reduces the paperwork burden associated with obtaining discharge authorization for the regulated community. In issuing general permits, EPA does not use the procedural rules (40 CFR Part 124) it uses in individual permitting actions; instead, it uses procedures that are more commonly associated with rulemaking, i.e., publication in the **Federal Register**. General permits are not rules, however, and are subject to the same substantive requirements that apply to individual NPDES permits, many of which are found in 40 CFR Part 122. The draft CAFO general permits proposed here are general permits.

To control discharges of "conventional pollutants", such as pH, biochemical oxygen demand (BOD), oil and grease, total suspended solids (TSS) and fecal coliform, CWA 301(b)(1)(E) requires that NPDES permits include effluent limitations based on "best conventional pollutant control technology" (BCT). To regulate nonconventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require that NPDES permits include effluent limitations based on "best available technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or sub-category. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on "best practicable control technology currently available" (BPT), a standard generally applicable to similar discharges prior to March 31, 1989, under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable "effluent limitations guidelines" identifying the BCT and BAT standards to which specific industrial categories and subcategories are subject. Until such guidelines are published, however, CWA section 402(a)(1) requires that EPA establish appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment (BPJ). As further explained below, the permits proposed here include some effluent limitations based on effluent limitation guidelines codified at 40 CFR Part 412 and some limitations based on BPJ.

Pursuant to CWA 301(b)(1)(C), NPDES permits must include "water quality based" effluent limitations if BAT and BCT limitations which would otherwise be applied are not stringent enough to avoid discharges causing exceedances of applicable water quality standards adopted by states, Indian Tribes, and sometimes EPA. EPA is proposing additional requirements for CAFOs located in watersheds that have been impaired by CAFO-related activities to prevent further releases of nutrients, particularly phosphorus, from impacting these watersheds.

In addition to effluent limitations, NPDES permits frequently require that permittees implement "best management practices" (BMPs). NPDES permits may include BMPs to control toxic pollutants in accordance with CWA 304(e), when numeric effluent limitations are infeasible and/or when reasonably necessary to assure compliance with effluent limitations or standards or to carry out the purpose and intent of CWA. See 40 CFR 122.44(k). As explained below, the proposed CAFO general permits contain a number of BMPs.

What are CAFOs? CAFOs are facilities used to confine animals, including poultry, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement. *See* 40 CFR 412.11(b).

What pollutants are associated with CAFOs. The characteristics of waste from different CAFOs are substantially similar [*Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category* (Development Document), January 1974]. The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and plant nutrients (nitrogen and phosphorus compounds). EPA encourages the proper utilization of such plant nutrients for agricultural production of crops and forage, but their improper storage and use may cause significant harm to the quality of surface and ground waters. The effluent limitations and requirements for all CAFOs covered by these general permits are intended to avoid water quality problems.

II. Permit Coverage

Who needs to be covered by these permits? As noted in Part I.B. of the draft permits, "a permit is required for discharges from operations classified as CAFOs." All facilities with more than 1000 animal units [or the number and types of animals specified in 40 CFR part 122, Appendix B(a)] are eligible for coverage under the terms of these permits.

What constitutes a discharge? A discharge of pollutants is any addition of any pollutant or combination of pollutants from a point source to waters of the United States. *See* CWA section 502(12); 40 CFR 122.2. This includes, but is not limited to, contaminated runoff from corrals, stock piled manure, or silage piles; overflow from storage

ponds; overflow from animal watering systems which are contaminated by manure; drainage of wastewater from land application areas; contaminated runoff from land application fields in which wastewater is applied at greater than the agronomic rate, runoff from fields on which manure has been applied by placement on or in the soil if such runoff results in a direct discharge of manure to waters of the U.S.; and discharge of wastewater from retention structures to surface water via a hydrologic connection. "Waters of the United States" is a very broad term (defined at 40 CFR 122.2) which includes almost all surface water bodies in the United States.

In accordance with Part II.A of the draft permits, a CAFO may discharge waste or process wastewater only when rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed, and operated to hold all process wastewater plus the runoff from a 25-year, 24-hour rainfall event for the location of the CAFO. All other discharges are prohibited.

What are AFOs? Not all animal feeding operations (AFOs) are CAFOs. Storm water discharges from other types of animal feeding operations are generally exempt from NPDES regulation as point sources by CWA section 502(14). Discharges from such facilities may nevertheless be regulated under state laws.

Parts I.B. and VII.I. of the draft permits define "CAFO" in accordance with 40 CFR 122.23 and 40 CFR part 122, Appendix B. For an operation to be a CAFO, the facility must first qualify as an animal feeding operation (AFO). A facility is an AFO if:

(1) Animals are kept onsite for a total of 45 days or more during any 12-month period, and (2) crops, vegetation forage growth, or post-harvest residues are not sustained on the facility during the normal growing season.

The first part of this definition means that animals must be fed or maintained on the lot or facility for a minimum of 45 days. It does not mean that the *same* animals must remain on the lot for 45 days or more; only that *some* animals are fed or maintained on the lot 45 days out of any 12- month period. The 45 days do not have to be consecutive, nor does the 12-month period have to correspond to the calendar year. For example, the 12-month period may be counted from June 1 to the following May 31.

The second part of this definition distinguishes feedlots from pastures; pastures are not regulated as CAFOs. Feedlots with constructed floors, such as solid concrete or metal slats, clearly satisfy this part of the definition. Other feedlots may have open dirt areas. These "open dirt" feedlots may have some vegetation growth along the edges while animals are present or during months when animals are kept elsewhere, but such marginal growth does not render them pastures. *Pastures are themselves not generally CAFOs, but wastewater overflows from pastures used as land application sites for CAFO waste are discharges and operation of such a site is subject to the requirements of these permits.*

CAFO Criteria. An AFO is a CAFO if:

(1) It is used to confine more than the number of animal units listed at 40 CFR part 122, Appendix B(a) and Part VII.I(a) of the permit. For example, dairies with more than 700 mature dairy cows or feedlots with more than 1000 feeders are always CAFOs. These large CAFOs are "new sources" and must provide additional information for EPA to use in reviewing their operations for compliance with the National Environmental Policy Act of 1969 (NEPA) before obtaining coverage under these permits.

(2) It is used to confine the number of animal units listed in 40 CFR part 122, Appendix B(b) and Part VII.I(b) of the permit and it discharges through a manmade conveyance or discharges directly to surface waters. Conveyance of wastewater from the property to waters of the United States through a pipe, ditch, lateral, channel gully, etc., is a discharge through a manmade conveyance. Direct discharge occurs when a stream, creek, wetland or other water body runs through the facility where it may contact CAFO waste. If confined animals have direct access to such waters, a direct discharge is presumed. It should be noted that even intermittent conveyed or direct discharges render a facility in this category a CAFO. If an AFO has discharged in the past and/or may discharge in the future, it is a CAFO.

(3) It is designated a CAFO by the Regional Administrator of EPA Region 6 as a significant contributor of pollutants (SCP) in accordance with 40 CFR 122.23(c)(2). This allows case-by-case regulation of smaller, problem facilities which would not otherwise be considered CAFOs under the criteria described above. Such designations occur only after an onsite inspection and the facility must be notified before the designation is effective.

What are "animal units?" "Animal unit" is a term defined in 40 CFR Part 122, Appendix B and the number of animals constituting a unit varies according to animal type: one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; one dairy cow produces more waste than one sheep. Conversion to animal units is also used in determining whether facilities with more than one animal type onsite are CAFOs. Animal units are incorporated in the CAFO criteria described above. Facilities with greater than 1000 animal units (large facilities) are CAFOs. Facilities with between 300 and 1000 animal units (medium-sized facilities) that discharge through a man-made conveyance or discharge directly into waters of the United States are also CAFOs.

Is there an exception to CAFO status? 40 CFR Part 122, Appendix B excludes AFOs which discharge *only* during a 25-year, 24-hour or greater storm event from CAFO status. Experience has shown that this exclusion has little practical effect, however. Even a facility properly designed to retain all the storm water generated by that statistical storm event plus all the waste accumulated at the facility may have to discharge as a result of less but longer duration storm events. It is also very difficult to show that a 25-year, 24-hour storm event has actually occurred at most AFOs. Unless it is authorized to discharge by an NPDES permit, even a properly designed and operated facility may thus be subject to enforcement action under CWA. *See Carr* v. *Alta Verde Industries,* 931 F.3d 1055 (5th Cir. 1991).

How do CAFOs obtain coverage under these general permits? Facility operators must submit a "Notice of Intent (NOI) to be covered" to obtain discharge authorization under these general permits to EPA Region 6 and to any State/Tribal agency with regulatory jurisdiction over the CAFO. *See* 40 CFR 122.28(b)(i). NOI submission requirements are outlined in Part I.E. of the permits.

Who is eligible for coverage? Facilities with 1,000 animal units or the number and types of animals specified in 40 CFR part 122, Appendix B(a) are eligible for coverage under these draft permits. Specific coverage requirements for existing, new, and expanding CAFOs are specified in Part I.C (1), (2), and(3) of the proposed general permits. Offsite operators wanting to dispose of manure at rates that exceed phosphorus agronomic needs of crops in impaired watersheds must apply for separate permit coverage in accordance with Part I.C (4) of the watershed-specific draft permits.

Are there limitations on obtaining permit coverage? In accordance with 40 CFR 122.28, EPA may determine that

providing coverage under a general permit is inappropriate for a particular CAFO and EPA may require such a facility to apply for an individual NPDES permit. Such an individual permit might be required, for example, to assure that applicable water quality standards are protected by imposing additional conditions on authorized discharges. Part I.F of the draft permits lists circumstances in which an individual permit (instead of a general permit) may be appropriate.

EPA conducts a NEPA review of all new CAFOs with more than 1000 AUs before providing them coverage under the CAFO NPDES general permit. The operator of such a proposed facility must submit an environmental information document to EPA with its NOI. EPA will then conduct a NEPA review to determine whether to provide permit coverage for the proposed facility. EPA's decision will be subject to public participation and documentation. Permittees must obtain documentation of the Agency's final NEPA decision (e.g., a record of decision or finding of no significant impact) before operating the CAFO and must maintain that documentation onsite.

New CAFOs that will be located within one mile of the Texas Coastal Zone Management Area are not eligible for coverage under the proposed permits. Such CAFOs must apply for individual permits.

When will these permits expire? Since the terms of all NPDES permits are limited to five years, pursuant to CWA section 402(b)(1)(B) and 40 CFR 122.46(a), these permits will expire five years after they are issued. If the permits are not reissued before they expire, however, discharge authorization for CAFOs which obtained coverage before the expiration date will continue until the agency makes final decision on reissuance.

III. Permit Conditions

Today, EPA is proposing to reissue general permits originally issued on February 3, 1993 (see 58 FR 7610). Most of the effluent limitations and conditions of the reissued draft permits are the same ones contained in those original permits and are based on the same factors considered and described in the 1993 final publication. Though these "carryover" conditions of the draft permits are nevertheless subject to reconsideration in this action, EPA may impose less stringent conditions only for reasons listed at CWA section 402(o) and 40 CFR 122.44(l). Some new record-keeping requirements have been added to the draft permits to better assure compliance with the effluent limitations and BMPs of the permits.

EPA is also proposing to issue watershed-specific general permits for all CAFOs located in watersheds that have been impaired by CAFO-related activities. The watershed-specific general permits include requirements that are designed to protect the impaired watersheds against further degradation resulting from manure and wastewater land application fields.

The following water bodies and associated watersheds have been impaired by CAFO-related activities and have been reported to EPA by the States of Oklahoma and Texas in accordance with Section 303(d) of the Clean Water Act:

State	Segment no.	Segment name
Texas	1255	Upper North Bosque River.
Oklahoma	OK120400010060	Arkansas River.
	OK220200020010	Arkansas River.
	OK120400010010	Arkansas River.
	OK621010010160	Arkansas River, Salt Fork.
	OK121700020310	Baron Fork.
	OK121700050010	Baron Fork.
	OK121700050170	Baron Fork.
	OK121700060040	Battle Creek.
	OK311210000010	Beaver Creek.
	OK410600010010	Blue Ridge.
	OK410600020010	Blue Ridge.
	OK220100030010	Brazil Creek.
	OK520600010010	Canadian River.
	OK121600030360	Carey Bay, Grand Lake.
	OK121600030340	Cave Springs Branch.
	OK121600030220	Chigger Cove, Grand Lake.
	OK620920020010	Cimmaron River.
	OK120410010100	Cloud Creek.
	OK310830060010	Cobb Creek.
	OK121600030260	Court House Hollow Cove, Grand Lake.
	OK520620010080	Deer Creek.
	OK520620060010	Deer Creek.
	OK121600030300	Dillar Cove.
	OK121600030080	Duck Creek Cove, Grand Lake.
	OK620920040010	Eagle Chief Creek.
	OK121600030350	Echo Bay, Grand Lake.
	OK121600050070	Eucha Lake.
	OK121600070110	Fivemile Creek.
	OK121700060010	Flint Creek.
	OK220100040010	Fourche Maline Creek.
	OK410210080010	Glover Creek.
	OK621010010020	Great Salt Plains Lake.
	OK121600030170	Horse Creek Cove.
	OK121700030010	Illinois River.
	OK121700030080	Illinois River.
	OK121700030280	Illinois River.
	OK121700030350	Illinois River.
	OK310820010160	Ionine Creek.
	OK310820010200	Ionine Creek East.

State	Segment no.	Segment name
	OK310820010210	Ionine Creek West.
	OK410310010020	Jackfork Creek.
	OK410300010010	Kiamichi River.
	OK410300020010	Kiamichi River.
	OK310830060040	Lake Creek.
	OK121600030020	Lake O' of the Cherokees (Grand).
	OK121600030060	Lake O' of the Cherokees (Grand).
	OK121600030290	Lake O' of the Cherokees, Honey Creek.
	OK121600030150	Lake O' of the Cherokees, Lower Middle.
	OK121600030280	Lake O' of the Cherokees, Middle.
	OK311210000050	Little Beaver Creek.
	OK121600070120	Little Fivemile Creek.
	OK410210020010	Little River.
	OK410400050010	Muddy Boggy Creek.
	OK121600030010	Neosho (Grand) River.
	OK121600030050	Neosho (Grand) River.
	OK121600030140	Neosho (Grand) River.
	OK121600030270	Neosho (Grand) River.
	OK620910040260	Northwood Lake.
	OK121700050120	Peacheater Creek.
	OK220100020010	Poteau River.
	OK121600050150	Spavinaw Creek.
	OK620900040010	Stillwater Creel.
	OK310800010050	Texoma Lake, Washita.
	OK620910020030	Turkey Creek.
	OK620910060010	Turkey Creek.
	OK310800020010	Washita River.
	OK310820010010	Washita River.
	OK310830010010	Washita River.
	OK310830020010	Washita River.
	OK310830030010	Washita River.

EPA is requesting comments from the public on whether the watershed-specific general permits should be applicable to all nutrient-impaired watersheds irrespective of the source of the nutrients.

Effluent limitations. Part II.A of the draft permits prohibits discharges of CAFO wastewater except as a result of catastrophic or chronic rainfall events. This "no discharge" effluent limitation is based on the effluent limitations guidelines for the feedlot category promulgated at 39 FR 5704 (February 14, 1994) and codified at 40 CFR Part 412. CWA § 402(a)(1)(A) requires that EPA include this limitation in NPDES permits for CAFOs with more than 1,000 animal units. In the 1993 permit proceedings, EPA Region 6 found it appropriate to apply the same effluent limitations to smaller CAFOs on the basis of BPJ exercised under CWA Section 402(a)(1)(B).

Under the "no discharge" effluent limitation, permitted CAFOs may discharge only during catastrophic or chronic rainfall conditions. A catastrophic event is generally equivalent to a 25-year, 24-hour storm event, but may also include tornadoes, hurricanes, or other catastrophic conditions that would cause an overflow from a properly designed and operated waste retention structure. Chronic rainfall is a series of wet weather conditions that preclude dewatering of properly maintained retention structures.

In most cases, the technology to achieve the "no discharge" limit is containment of all contaminated liquid runoff resulting from rainfall and subsequent application of these liquids, along with the generated solid wastes, to productive crop land at agronomic rate, i.e., a rate which will provide adequate moisture and nutrients that can be utilized by the crops. To implement this technology requires a wastewater retention structure, such as a lagoon, and provisions for land application of the wastes to cropland, such as sprinklers.

Part II.B(1) of the draft permits prohibits the discharge of process wastewater from retention structures to waters of the United States by means of a hydrologic connection through ground water. This prohibition is required to assure compliance with the "no discharge" effluent limitation and the purposes of CWA. Different federal courts have reached different conclusions on whether EPA may regulate such discharges, but the EPA Region 6 position is reflected by such cases as *Quivera Mining Co.* v. *USEPA*, 765F. 2d 126(10th Cir. 1985); *McClellan Ecological Seepage* v. *Weinberger*, 707 F. Supp. 1182, 1194 (E.D. Cal. 1988); *Sierra Club* v. *Colorado Refining Co.*, Civ. No. CIV.A.93–K–1713 (D. Col. Dec. 8, 1993). Although this prohibition on discharging through a groundwater connection is included in the broader "no discharge" limitation at Part II.A of the draft permits, Region 6 also includes it separately at Part II.B(1) to make its intentions clear in this area.

The control of discharges through hydrologic connection is best handled in the design phase of the control facility. The draft NPDES general permits require the use of procedures recommended by the Natural Resource Conservation Service of the U.S. Department of Agriculture (USDA–NRCS) when designing control facilities. Installation of liners is required as a part of facility construction.

Part II.B(2) of the draft permits prohibits the discharge of contaminated runoff or drainage of land applied wastewater from land application areas to waters of the United States. Wastewater must not be applied at such a rate or under conditions that it runs off from the application fields to waters of the U.S. Wastewater may not, for example, be applied when the soil is saturated or frozen. Where process-generated wastewater is used for irrigation of crops, application rates shall not exceed the nutrient uptake of the crops being produced on the land application areas.

Part II.B(3) of the draft permits prohibits the discharge of contaminated runoff from land application areas where manure has been placed on the soil surface, if such runoff will result in a direct discharge of pollutants to waters of the United States. Manure should be incorporated into the soil to minimize runoff, and edge-of-field grass strips should be used to separate water courses from runoff. Timing and rate of application must be in response to crop needs, weather conditions, and soil conditions. Manure will not be applied to land when the ground is frozen or saturated or during rainfall.

Part II.B(4) of the watershed-specific draft permits prohibits the direct discharge of contaminated runoff from offsite land disposal areas where manure is land applied at rates that exceed phosphorus agronomic rates. Operators of facilities that intend to land apply CAFO-generated manure or wastewater offsite at non-agronomic rates must submit a separate NOI for coverage under these permits.

IV. Best Management Practices

Part II.D of the draft permits requires that all permittees develop and implement site-specific BMPs specifically designed to assure compliance with the permits' "no discharge" limitations. There are two types of BMPs that must be implemented by all CAFOs: those BMPs for management and control of wastes and wastewaters generated at the animal confinement and maintenance areas of the CAFO, and BMPs for properly disposing of waste/wastewater by land application at rates based on agronomic needs of crops. The BMP requirements for the confinement and maintenance areas and land application areas are described below.

1. BMPs for Animal Confinement and Maintenance Areas

Part II.D(1) of the draft permits includes a description of BMPs for (1) minimizing wastewater volumes generated from animal confinement and maintenance areas, (2) management of precipitation runoff from animal confinement and maintenance areas, and (3) ensuring that control structures for wastewater containment are adequately designed, constructed, operated, and maintained. The following are the BMPs that must be implemented at the animal confinement and maintenance areas: (1) all control structures must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event for the particular location of the CAFO; calculations must include allowances for surface retention, infiltration, and other site-specific factors; (2) wastewater control and retention structures or holding pens for new CAFOs may not be located in the 100-year flood plain; wastewater control and retention structures or holding pens for existing CAFOs that are located within the 100-year flood plain must be protected by berms to prevent inundation and damage that may occur during that flood event; (3) CAFOs must not expand their operations prior to expanding their retention control structures or holding pens; (4) no waters of the U.S. shall come into direct contact with animals confined on the CAFO; open lots must be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25-year, 24-hour rainfall event occurs; (5) CAFO-related activities must not cause water quality impairment to public or private drinking water wells; waste handling, treatment, and management shall not create an environmental or a public health hazard and shall conform with State/Tribal guidelines and/or regulations for the protection of surface water quality; (6) potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the waters of the U.S.; (7) all discharges to containment structures shall be composed entirely of wastewaters from the proper operation of a CAFO and the precipitation runoff from the CAFO areas; (8) dead animals must be disposed of in a manner to prevent contamination of waters of the U.S. or create a public health hazard; and (9) appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutants shall be taken; any spills that may occur must be reported to EPA and State/Tribal agencies as specified in Parts III.A and IV.D of the draft permits.

2. BMPs for Onsite Land Application of Waste/Wastewater

(a) Introduction

Numerous studies have shown that continued land application of manure at rates based on nitrogen agronomic rates results in a build up of soil phosphorus levels (Sharpley, et al, 1994). A recent publication by the USDA–NRCS and EPA (Lander et. al., 1998) indicates that AFOs produce more manure nutrients (nitrogen and phosphorus) than can be utilized by crops in many parts of the U.S., suggesting that there is a potential for nutrients, particularly phosphorus, to accumulate in soils and eventually impact the surrounding water bodies. Information submitted to EPA Region 6, in accordance with Section 303(d) of the CWA and recent studies conducted by the Texas Institute for Applied Environmental Research (TIAER) indicate that many watersheds in Region 6 have been impaired by CAFO-related activities. For example, the surface water monitoring study conducted by TIAER (1997) showed a strong correlation between the concentration of phosphorus in the upper North Bosque River and the acreage of land application fields in the watershed, upstream of the surface water monitoring stations. Based on these data, the TIAER report concluded that the upper North Bosque River watershed in Erath County, Texas, has been impaired by land application activities.

EPA's objective, as specified in a recent draft of the EPA Strategy for AFOs which was released in March 1998, is to include adequate controls in NPDES permits to reduce the quantities of nutrients entering water bodies. Several EPA Region 6 States, including Texas and Oklahoma, have already established soil phosphorus concentration limits in their State permits for CAFOs as a means of controlling nutrient pollution. Texas, for example, has established a critical soil phosphorus concentration of 200 mg/kg above which manure must be applied based on phosphorus agronomic rates. Research has demonstrated that a concentration of about 200 mg/kg phosphorus in the surface soil is the critical level above which the concentration of phosphorus in the runoff becomes environmentally significant. Sharpley and others (1996) demonstrated that a soil phosphorus concentration of 200 mg/kg (as determined by the Mehlich 3 Method) resulted in a phosphorus concentration of 1,000 micrograms per liter in the runoff. According to Wood (1998), the proposed allowable dissolved phosphorus limit for agricultural runoff is 1000 micrograms per liter.

Another approach for determining when to switch from the nitrogen-based manure application rate to a phosphorus-based rate is to determine the percentage of phosphorus saturation in the land application area soil. Dutch scientists have demonstrated that a soil phosphorus saturation of 25% is the critical level above which the phosphorus concentration in the soil is considered to be environmentally unacceptable, because at this concentration, the concentration of

phosphorus in the runoff increases and may exceed 1,000 micrograms per liter. The phosphorus saturation index provides an indication of how much of the phosphorus sorption capacity of a particular land application area soil has been used up.

Hence, the phosphorus saturation measurement provides information on both the potential of a soil to enrich runoff with dissolved phosphorus (high degree of phosphorus saturation) and also helps to predict how much of the phosphorus added to the land application area soil as manure may be retained by the soil in a form that is relatively resistant to be released into the runoff (low degree of phosphorus saturation). However, the procedures for determining the soil phosphorus saturation percentage have not been widely tested in the United States.

The USDA–NRCS is currently developing a procedure for identifying environmentally sensitive land application fields that could promote phosphorus enrichment in water bodies when manure or wastewater is applied to such fields (Lemunyon and Gilbert, 1993). The USDA–NRCS procedure uses site-specific characteristics of the land application site, including (1) potential soil erosion rates, potential runoff, soil phosphorus concentration, and (2) manure management practices (i.e., application rates and application methods) to assess the capacity of the land application site to adsorb the phosphorus and prevent it from impacting any surrounding water bodies. However, before the USDA–NRCS completes its research, EPA Region 6 is proposing, as specified in Part II.D(2)(d) of the watershed-specific general permits, that rates of manure application in impaired watersheds be based on phosphorus agronomic requirements of crops. Also, EPA Region 6 is proposing to regulate offsite disposal of manure by land application at rates that exceed phosphorus needs of crops as specified in Part II.D(4) of the watershed-specific general permits.

(b) Waste Management Plan

Part II.D(2) of the draft permits requires all CAFOs that dispose of wastes by land application to develop and implement a waste management plan as specified in Part II.D(2). All wastes, including Solids, sludges, manure, and other pollutants generated at the facility shall be managed and disposed of in accordance with procedures specified in such a site-specific waste management plan. Each waste management plan shall describe the methods for, and account for, the disposal of all manure and wastewater generated by the facility. If the proposed methods of disposal include onsite or offsite land application of manure and wastewater, the facility must develop a site-specific nutrient utilization plan as described in Part II.D(2)(b).

(c) Nutrient Utilization Plan

If the waste management plan developed by the CAFO provides for land application of the manure and wastewater generated at the facility, the permittee must develop and implement a nutrient utilization plan to minimize release of nutrients into waters of the U.S. Such a plan must include the following information: (1) a site map showing the proposed land application areas, including the major soil types within the proposed land application areas; (2) crop rotations to be implemented during the permit term; (3) methods and procedures for analyzing nutrients in the land application area soils, manure, and wastewater; (4) predicted yield goals for the particular crops that will be grown; (5) procedures for calculating nutrient budgets that must be used to determine waste application rates based on phosphorus crop needs; equipment to be used during land application of manure and wastewater and the procedures for inspecting and maintaining such equipment; (6) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that may be applied to the land application areas to supplement the manure.

The permittee must maintain records of the actual rates and dates of application of the manure, wastewater, or other nutrients applied to the land application areas throughout the entire permit term. If the manure and wastewater are to be sold or given away or disposed of in areas that are not described in the facility's nutrient utilization plan, the facility must keep records of landowner agreements for the lands that will receive the manure and wastewater, and the nutrient contents of the manure and wastewater applied to such lands.

The nutrient utilization plan must include (1) specific details for nutrient sampling and testing of the land application soils, manure, and wastewater [Part II.D(2)(c)], and (2) the basis and procedures for determining agronomic rates of manure and wastewater application rates [Part II.D(2)(b)].

Existing CAFOs must develop and implement a nutrient utilization plan within one year following reissuance of the CAFO general permit. New CAFOs must develop and implement a nutrient utilization plan immediately following reissuance of the CAFO general permit. Designated CAFOs must develop and implement a nutrient utilization plan within two years following designation.

(d) Nutrient Sampling and Testing

Each permittee must conduct analytical tests to determine the nutrient contents of the (1) manure and wastewater generated by the facility, and (2) soils within the land application areas prior to the first land application event at new CAFOs and the first seasonal land application event at existing facilities, then once per quarter thereafter. Frequencies can be increased when significant variations in nutrient levels are experienced at a facility between sampling events, or if there are identified or suspected water quality standards violations. The permittee must then compare the nutrient contents of the manure and wastewater with the nutrient contents of the land application area soils to determine the needed fertility and application rates for pasture production or production of other targeted crop yields. The permittee must maintain records of all nutrient sampling and analyses data, calculations, application rates and utilized acreage of the land application area.

(e) Basis for Determining Agronomic Rates Outside of Impaired Watersheds

According to Part II.D(2)(d) of the draft CAFO general permits, manure and wastewater application rates must be based on agronomic crop requirements for nitrogen or phosphorus, as determined from results of nutrient sampling and testing. Application rates should be based on nitrogen until the concentration of phosphorus in the soil increases to the critical (threshold) level established by the State/Tribe in which the CAFO is located or by the USDA–NRCS. Once the phosphorus threshold is reached, the application rate must be based on phosphorus requirements of the crop. The threshold phosphorus holding capacity of the soil is the maximum concentration of phosphorus in the soil that will not create an unacceptable risk of water quality impairment. The CAFO operator must use the approach outlined below for determining agronomic rates of waste/wastewater application:

(i) Apply manure and wastewater at rates based on the agronomic crop needs of nitrogen if soil tests demonstrate that the concentration of phosphorus in the surface soil (0 to 6 inch-depth) is or will be consistently below the threshold level established by the State/Tribe during the permit term. The threshold

soil phosphorus level for Texas is 200 mg/kg, as determined by using procedures developed by Texas A&M University. If there is no threshold soil phosphorus concentration limit established by the State/Tribe or the USDA–NRCS, then continue to apply manure/wastewater at rates based on nitrogen requirements of crops.

(ii) Apply manure and wastewater at rates based on the agronomic crop needs of phosphorus if soil tests demonstrate that the concentration of phosphorus in the surface soil exceeds the threshold level recommended by the State/Tribe where the CAFO is located.

(iii) If soil tests indicate that the soil phosphorus concentration will exceed the threshold phosphorus level during the permit term, the permittee should begin to seek access to additional cropland or make other adjustments that are necessary to comply with the phosphorus limit established by the State/Tribe in which the CAFO is located.

(f) Basis for Determining Agronomic Rates in Impaired Watersheds

As specified in Part II.D(2)(d) of the watershed-specific general permits, manure and wastewater must be land applied at rates based on phosphorus agronomic requirements of crops to minimize risks of further water quality impairments due to phosphorus. The CAFO operator must develop and implement a phosphorus nutrient budgeting system to monitor and balance the quantities of manure phosphorus added to the soil and those removed in the harvestable portions of the crops produced on the land application areas during the growing season. The quantities of the phosphorus added to the land application area as manure should be approximately equal to the quantities of phosphorus removed in the harvestable portions of the crops if the CAFO operator is applying the manure at phosphorus agronomic requirements of the crops being produced on the land application areas.

3. Offsite Land Application

According to Part II.D(3) of both the reissued draft permits and the proposed watershed-specific draft general permits, offsite land application of manure at agronomic rates is not regulated. However, whenever CAFO-generated manure is to be sold or given away for offsite disposal by land application at agronomic rates, the CAFO operator must provide current and accurate manure testing data that can be used by the offsite applicator to establish agronomic rates of manure application. The CAFO operator must provide information to the offsite applicator concerning the voluntary measures and procedures for applying the manure based on agronomic rates. The CAFO operator should obtain, from the offsite applicator, information concerning the location and acreage of the proposed offsite land application areas. The CAFO operator must keep all records, including the information provided by the offsite applicator, the dates, and the quantities of the manure sold or given away. These records must be kept at the facility. The CAFO operator must provide this information to the Director whenever requested.

4. Offsite Disposal of Waste/Wastewater at Non-Agronomic Rates

When CAFO-generated manure or wastewater is land applied offsite at non-agronomic rates, i.e., rates that exceed phosphorus agronomic requirements of crops, pollutants are likely to be discharged to waters of the United States as precipitation runoff. CAFO operators and third-party operators of privately owned treatment works that land apply CAFO-generated manure or wastewater offsite at non-agronomic rates are, therefore, required to obtain permit coverage as specified in Part I.C.(4) of the general permits for CAFOs in impaired watersheds, unless they certify that the manure/wastewater will be applied at rates based on phosphorus agronomic requirements of crops and that the agronomic rates will be calculated by using a nutrient budgeting system.

5. Pollution Prevention Plan (PPP)

A site-specific PPP that includes a manure management plan, and a nutrient utilization plan must be developed by each CAFO. Each PPP must describe measures and practices to assure compliance with the limitations and conditions of this permit. Large CAFOs with more than 1000 animal units must have, on site, and must implement a PPP immediately following the effective date of the proposed general permits. Medium-size CAFOs with less than 1000 animal units shall have, on site, and must implement a PPP immediately following the effective date of the general permits. Small CAFOs (with less than 300 animal units) that have been designated by EPA as CAFOs shall have, on site, and must implement a PPP within one year following designation.

V. Discharge Monitoring and Reporting Requirements

Monitoring and discharge requirements are included in Part III of the draft permits. Monitoring data serve a number of functions under the NPDES program. Discharge monitoring data can be used to assist in the evaluation of the risk of the discharge by indicating the types and the concentrations of pollutant parameters in the discharge. Discharge monitoring data can be used in evaluating the potential of the discharge to cause or contribute to water quality impacts and water quality standards violations.

Discharge monitoring data can also be used to evaluate the effectiveness of controls on reducing pollutants in discharges. This function of monitoring can be important in evaluating the effectiveness of source control or pollution prevention measures as well as evaluating the operation of end-of-pipe treatment units. Where numeric or toxicity effluent limits are incorporated into permits, discharge monitoring data play a critical role by providing EPA and authorized NPDES States with data to evaluate compliance with effluent limits. The use of discharge monitoring data to determine permit compliance greatly enhances the ability of EPA and authorized NPDES States to enforce permit conditions.

Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as permit conditions. Monitoring reports for these discharges provide a direct indication of whether the discharge complies with permit conditions. However, the proposed general permits for CAFOs will require no discharge of pollutants into waters of the U.S. Therefore, monitoring data will be required only in case of a discharge from the retention system.

1. Discharge Notification

If there is a discharge, Part II.A of the draft permits requires the permittee to notify the Director and the State/Tribe within 24 hours of the discharge from the retention facility, and to provide a written notification to the Director and the State/Tribe within 14 working days of the discharge. The standard notification requirements are specified in 40 CFR 122.44(i), 122.41(l)(4), and 122.41(l)(6). A copy of the notification must be kept together with the PPP. The discharge notification report should include the following:

(a) Description of the Discharge

A description and cause of the discharge, including an estimate of the discharge volume; the period of discharge, including exact dates and times, and, if not corrected, the anticipated time the discharge is

expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge; and if caused by a precipitation event, information from the facility and the nearest National Weather Service station concerning the size and duration of the precipitation event.

(b) Analysis of the Discharge

The discharge must be analyzed for all conventional pollutants associated with feedlot operation, including pH, biochemical oxygen demand (BOD), total suspended solids (TSS), oil and grease, and fecal coliform as well as nonconventional pollutants, including nutrients such as phosphorus and nitrogen. High numbers of Fecal Coliform bacteria are an indicator of the amount of pathogenic bacteria that are being discharged to the receiving water. TSS is a common pollutant found in discharges that can have significant impacts on receiving waters. The biochemical oxygen demand measurement will help the permitting authority evaluate the oxygen depletion potential of the discharge. Five day Biochemical Oxygen Demand (BOD5) is the most commonly used indicator of oxygen demand. The pH will provide important information on the potential availability of metals to the receiving flora, fauna, and sediment. In some cases it will provide information regarding material management. In addition to conventional pollutants, nutrients, such as total phosphorus, total Kjeldahl nitrogen (TKN), and nitrate plus nitrite nitrogen must be measured because nutrients can significantly impact water quality. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge. Discharge monitoring and reporting requirements also include the need to monitor for any pollutants the facility uses or stores on site which have a potential to be in the discharge; for example, frequently used cleaning agents and pesticides.

2. Discharge Reporting Requirements

All discharge information and data shall be made available to the Director upon request as specified in Part III.B of the draft permits. Signed copies of monitoring reports shall be submitted to EPA and the State/Tribe, if requested. Signatory requirements are specified in Part III.H of the draft permits. Penalties for falsification of data are specified in Part III.C of the draft permits. The permittee shall retain copies of all records of discharge monitoring for at least three years from the date reported as specified in Part III.D of the draft permit.

The permittee must also notify EPA and the State/Tribe within 30 days of a change in facility ownership or operational control. The permittee must give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The permittee must also report all instances of noncompliance within 24 hours to the Director and State/Tribe in accordance with the notification requirements of these draft permits. The draft general permits have an "adverse climatic conditions" provision in Part III.A(b) allowing a discharger to submit a description of why samples could not be collected (in lieu of sampling data) when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples, including weather conditions that create dangerous conditions for personnel, such as flooding, high winds, hurricane, tornadoes, and electrical storms.

The requirements for the type of samples taken vary, depending on the nature of the retention structure. A minimum of one grab sample must be taken to characterize discharges from overflow structures, such as ponds or other impoundments.

CAFOs are not required to submit discharge monitoring reports unless specifically requested by the Director. However, these facilities must maintain records of sampling data collected during the term of the permit as specified in Part III.D of the draft permits. The permittee is required to retain records of all monitoring information, copies of all reports required by these permits, and records of all data for a period of at least three years from the date of the measurement, report, or application. This period may be extended by the Director.

VI. Pollution Prevention Plan Requirements

Part VI of the draft permits includes requirements for pollution prevention plans (PPPs). Each CAFO covered by the draft general permits must prepare, retain, and implement a PPP developed to allow the implementation of site-specific measures for controlling pollutants associated with CAFOs. At a minimum, the following requirements should be addressed in the PPP to reduce pollutants in runoff from the facility: (1) Identification of potential pollutant sources, (2) waste management controls, (3) employee training, (4) inspection and recordkeeping, (5) preventive maintenance, (6) discharge reporting and notification procedures, (7) housekeeping procedures, (8) sedimentation and erosion prevention measures, and (9) spill response procedures. The key elements of the PPP are described below:

(a) Identification of Pollutant Sources

PPPs must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the potential sources of pollution at the site. The permittee must identify all activities and significant materials which may potentially be significant pollutant sources. The PPP must include a site or topographic map showing the drainage pattern at the facility; arrows indicating the direction of surface water flow from the facility; each existing structure to control precipitation runoff; and surface water bodies which could receive the runoff.

(b) Wastewater Retention Facilities

The permittee shall keep documentation at the facility supporting the adequacy of waste management control structures used to contain wastewaters and storm waters from the animal confinement and maintenance areas. The documentation must include all calculations used to support design, construction, and the size of retention structures, as well as all factors and calculations used in determining land application rates, acreage, and crops. This documentation may be developed by the NRCS or a professional consultant. This information will allow the EPA to determine if the containment structure is adequately designed to contain the required 25-year, 24-hour storm event and whether waste is being land applied at agronomic rates. CAFOs located in impaired watersheds must provide additional waste/wastewater retention capacity to protect water quality. All CAFOs in impaired watersheds must redesign their retention structures to include a top freeboard of three feet and in no case the top freeboard must not be less than two feet.

(c) Liner Requirement

In general, surface water flow in most of EPA Region 6 States is sustained throughout much of the year by ground water inflow. As a result, contaminants from containment structures may leak into the ground water and eventually move toward local streams and rivers. Therefore, the permittee must maintain, on site, documentation indicating that no hydrologic connection exists between the contained wastewater and surface waters of the United States. The permittee is given two options to

demonstrate the lack of hydrologic connection: (1) Document that there can be no significant leakage from the retention structure; or (2) document that leakage from the retention structure would not migrate to surface waters. These two options allow the permittee to take into account the natural situation beneath the retention structure (such as natural materials or isolated ground waters). Man made connections from ground waters to surface waters via wells and irrigation must be taken into account when determining hydraulic connections. If the permittee cannot document the absence of a hydrologic connection, the containment structure must have a liner (constructed of either man-made or natural materials or a combination of the two) which will prevent the potential contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices and must be certified by a certified professional scientist with knowledge and experience in hydrogeology. Liner maintenance shall include inspection at least once every two years. Liner design may be in accordance with a NRCS plan.

Although the requirement in these draft permits for liner installation is to protect surface waters, the permittee is strongly encouraged to provide a liner for any containment structures to comply with existing Federal, State or Tribal regulations for ground water protection.

(d) Manure and Pond Solids Handling and Land Application

Requirements of the draft permits and the PPP do not allow the storage of wastes where there is the potential for inadvertent release to any surface water. Storage areas cannot be placed so as to be threatened by flood waters. Wastes cannot be applied to land during or immediately preceding rain events to avoid contaminated runoff. Land application rates and procedures that are developed for the facility in accordance with State/Tribe guidelines, may be made part of the PPP. The PPP must include documentation indicating that the procedures for the handling and disposal of wastewater, manure and pond solids comply with permit requirements. Documentation of waste storage protocol, land application procedures, and manure handling activities is a requirement of the draft general permits to ensure that pollutants are not discharged to waters of the United States. Permittees may use the wastewater or manure as fertilizer. However, the permittee must limit the application rate to the crop uptake rate of (1) phosphorus in watersheds that have been impaired by CAFO-related activities, and (2) nitrogen or phosphorus in non-impaired watersheds, depending on whether the soil phosphorus concentration is below or above the phosphorus threshold level for that State/Tribe.

(e) Preventive Maintenance

A preventive maintenance program involves inspection and maintenance of all management devices as well as inspecting and testing equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. A good preventive maintenance program includes identifying equipment or retention systems used; periodically inspecting or testing equipment and retention systems; adjusting, repairing, or replacing items; and maintaining complete records on the equipment and retention systems.

(f) Good Housekeeping

Good housekeeping requires the maintenance of a clean, orderly facility. Good housekeeping includes establishing housekeeping protocols to reduce the possibility of mishandling chemicals or equipment and training of employees in housekeeping techniques. Pollutants that may enter retention structures at CAFO sites due to poor housekeeping include oils, grease, paints, gasoline, truck washdown, solvents, litter, debris, pesticides, insecticides, and sanitary wastes. Good housekeeping protocol will include: (1) designating areas for equipment maintenance and repair; (2) providing waste receptacles at convenient locations for waste collection and disposal; (3) locating equipment washdown areas on site and providing appropriate control of washwaters; (4) providing protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials; and (5) providing adequately maintained sanitary facilities.

(g) Spill Prevention and Response Procedures

Areas where potential spills can occur, and their accompanying drainage points should be identified in the PPP. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills should be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available. Spill response procedures should avoid discharging to retention structures unless necessary because of immediate safety considerations. The following information should be included in the PPP: (1) A written description of materials that are used, stored, or disposed of at the CAFO (such as pesticides, cleaning agents, fuels, etc.), (2) information on spills, including a list of spills and leaks of toxic or hazardous pollutants that occurred at the facility beginning one year prior to the effective date of these permits and have the potential to contribute pollutants to runoff waters, (3) a summary of any existing sampling data describing pollutants in previous discharges, (4) other information to consider, if applicable, include the manner and frequency in which pesticides, herbicides, fertilizers or soil enhancers are applied at the site and an evaluation of significant spills or leaks of conventional, toxic and hazardous pollutants based on a description of the materials released, an estimate of the volume of the release, the location of the release, and any remediation or cleanup measures taken.

(h) Sediment and Erosion Prevention

The PPP shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion and measures to limit erosion.

(i) Employee Training

Employee training programs are necessary to inform personnel, at all levels, of the responsibility of the requirements of the permit and of the procedures outlined in the PPP. Training should address topics such as spill response, good housekeeping and material management practices. A PPP should identify periodic dates for such training.

(j) Inspections and Recordkeeping

The facility operator or a responsible person will be named in the PPP to develop the plan and to conduct the required inspections and reporting. This person will assist the facility manager in the implementation, maintenance, and revision of the PPP. The activities and responsibilities of the designated person should include all aspects of the facility's PPP. However, the facility manager, not the employee, should have overall responsibility and accountability for the quality and implementation of the PPP.

Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of discharges should be included in the records. Inspections and

maintenance activities such as cleaning oil and grit separators or catch basins should be documented and recorded.

Typical inspections should include visual examination of pipes, pumps, tanks, supports, foundations, dikes, and drainage ditches. Material handling areas should be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow up procedure must be used to ensure that appropriate and adequate response and corrective actions have been taken. Records of inspections are required to be maintained.

It is important that permittees conduct annual site inspections to verify that the description of potential pollutant sources is accurate, the site drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the PPP to reduce pollutants are being implemented and are adequate. Records documenting significant observations made during the site inspection must be retained as part of the PPP for a minimum of three years. This allows EPA access to records of permit compliance much the same as all self-reported information required in other NPDES permits.

(k) Consistency With Other Plans

Facilities which have requirements for retention capacity and land application of wastes provided in site specific plans developed by NRCS, or BMP programs developed by a professional consultant may incorporate any part of such plans into the PPP by reference.

VII. Other Permit Requirements

1. Standard Permit Conditions

The draft permits include all of the standard conditions used in NPDES permitting to insure proper implementation of the permit requirements. Part IV of the proposed permit includes standard conditions and requirements.

2. State Certification

Under CWA Section 401(a)(1), EPA may not issue an NPDES permit until the State/Tribe in which the discharge originates grants or waives certification to ensure compliance with appropriate requirements of the Act and State or Tribal law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable State/Tribal water quality standards or limitations. The proposed permits contain limitations intended to ensure compliance with State/Tribal water quality standards and has been determined by EPA Region 6 to be consistent with the applicable State or Tribal water quality standards and the corresponding implementation plans. EPA Region 6 has requested that the (1) New Mexico Environmental Department provide certification of general permits Nos. NMG80000 and NMG810000, (2) Oklahoma Department of Agriculture provide certification of general permits Nos. OKG8000 and OKG810000, and (3) Texas Natural Resources Conservation Commission provide certification of general permits Nos. TXG80000 and TXG810000. EPA has also requested the following Pueblos in New Mexico: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque to provide certification of general permits Nos. NMG80000 and NMG810000.

3. Reopener Clause

EPA reserves the right to revise, revoke or modify the draft permits to meet any applicable water quality standards if (1) effluent limitations or guidelines are established or modified in an approved State/Tribe Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in these permits or control a pollutant not listed in these permits; (2) a total daily maximum load (TDML) is developed to address pollution from CAFOs in a particular watershed. Permittees in that watershed may be required to obtain individual permits or to obtain coverage under an alternative general permit or the permits may be modified to include different limitations and/or requirements; (3) a particular watershed is identified by the State/Tribe as having been impaired by CAFO-related activities. Permittees in that watershed may be required to obtain individual permits or to obtain coverage under watershed-specific general permits or the permits may be modified to include different limitations and/or requirements.

The proposed permits are no discharge permits. In addition, the BMPs specified in Part II.D, when implemented as specified in the draft permits, will ensure that the State/Tribal water quality standards are protected. Any CAFO that is determined to be contributing to a violation of a water quality standard will not be eligible for coverage under this permit and may be required to apply for an individual or alternative general permit in accordance with Part I.F of these draft permits.

If and when a particular watershed is identified by the State/Tribe as having been impaired by CAFO-related activities, permittees in that watershed may be required to obtain individual permits or to obtain coverage under the watershed-specific general permits or the permits may be modified to include different limitations and/or requirements. Also, the watershed-specific general permits may be reopened or modified to reflect changes in the State/Tribe's listing of CAFO-impaired watersheds. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, and 122.64.

VIII. Economic Impact

EPA believes that the proposed general permits will be economically beneficial to the regulated community. The proposed general permits provides an economic alternative to the individual NPDES permit application process that facilities covered by these permits would otherwise be required to follow. The requirements are consistent with those already imposed by effective Federal regulations and State/Tribal requirements. The suggested management practices and PPPs give the regulated facilities guidelines and options which may save them time and money.

IX. Compliance With Other Federal Regulations

1. NEPA Finding of No Significant Impact

For each new CAFO with more than 1000 animal units or the number and types of animals specified in Part VII.I(a) of the permit [40 CFR part 122, Appendix B(a)] and any existing CAFO planning to expand to the number and types of animals specified in Part VII.I(a), EPA will conduct a preliminary environmental review pursuant to the requirements of CWA Section 511(c) and the environmental review procedures found at 40 CFR Part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for NPDES New Source Program. Therefore, new CAFOs and existing CAFOs subject to National Effluent Guidelines (40 CFR part 412) will be required to complete the form included in Addendum C of the proposed general permits and submit this information to EPA prior to coverage under the permits. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement in accordance with an environmental

review conducted by EPA as a condition of permit coverage. This documentation must be retained on site.

2. Endangered Species Act

The proposed general permits will authorize no discharge, other than during catastrophic or chronic rainfall events which are relatively infrequent occurrences. Therefore, reissuance of these general permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA will conduct an environmental review for each new CAFO with 1000 or more animal units and all existing CAFOs planning to expand to the numbers of animals specified in Part VII.I(a) of the draft permits [40 CFR part 122, Appendix B(a)]). This review will include an evaluation of the potential impact on endangered species due to the proposed activities.

EPA Region 6 has submitted copies of the proposed permits to the U.S. Fish & Wildlife Service. During the comment period of these proposed permits, EPA will seek the Fish & Wildlife Service's concurrence in its "unlikely to adversely affect" determination. In the absence of such concurrence, EPA will initiate formal consultation in accordance with Section 7(a)(2) of the Endangered Species Act.

3. National Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not eligible for coverage under these draft permits. During the application process, EPA will conduct an environmental review for each new CAFO with 1000 or more animal units and all existing CAFOs planning to expand to the number and types of animals specified in Part VII.I(a) of the draft permits [40 CFR Part 122, Appendix B(a)]). This review will include an evaluation of the potential effects on historic sites and properties due to the proposed activities. If, at any time during the operation of the CAFO, a permittee becomes aware that historic properties may be affected by CAFO-related activities not identified during the application process, the permittee must contact the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) to determine whether additional actions are required to meet the eligibility requirements of the draft permits. This may result in initiation of consultation with the SHPO or THPO and the development or modification of a written agreement or the PPP. Therefore, reissuance of these general permits will not adversely affect any listed properties or properties that are eligible for listing in the National Register of Historical Places.

All existing CAFOs with less than 1000 AUs will not be eligible for coverage under the reissued permit if such facilities are already affecting properties that are listed in the National Register of Historic Properties. Existing CAFOs must comply with Part I.D(3) of the draft permit.

4. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements related to the NOI and discharge monitoring activities under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (OMB Nos. 2040–0086 and 2040–0004, respectively). EPA is currently developing the information collection request (ICR) (EPA ICR no.1868.01) for the PPP-related activities and will submit the ICR to OMB for approval.

5. Coastal Zone Management Act Reauthorization Amendment

Pursuant to Section 307 of the Coastal Zone Management Act (CZMA), federal agency activities that affect the coastal zone of a state with an approved coastal zone management plan must be carried out in a manner consistent, to the maximum extent practable, with the enforceable policies of that plan. To assure such consistency, EPA is proposing to require individual permits for CAFOs located within a mile of the Texas Coastal Zone Management Area. Applications for such individual permits will be subject to CZMA Section 307(c)(3)(A) and will receive the same type of review by the Coastal Coordination Council of the Texas General Land Office (Administrator of Texas' approved Coastal Zone Management Program) as corresponding permits issued by the Texas Natural Resources Conservation Commission receive under 31 Texas Administrative Code Section 505(11)(a)(6).

6. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (*See*, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)).

UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *"

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes but are treated with rule-like procedures.

Signed this 18, day of June, 1998.

Oscar Ramirez, Jr.,

Deputy Director, Water Quality Protection Division (6WQ), EPA Region 6.

[FR Doc. 98–16943 Filed 6–23–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval

June 18, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 27, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0214 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0072.

Title: Airborne Mobile Radiotelephone License Application.

Form Number: FCC 409.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 3,000.

Estimated Time Per Response: 5 minutes.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $135,000 ($45.00 filing fee).

Total Annual Burden: 252 hours.

Needs and Uses: The FCC Form 409 is used in applying for authority to operate an airborne mobile radio telephone by individual users who intend to become subscribers to a common carrier service. The form is subsequently used for modification and renewal of such licenses.

Form 409 is required by 47 CFR Part 22. The applicant may be subject to requirements in addition to those specified on the form.

The form has been redesigned to remove the fee filing data. FCC Form 159, Fee Remittance Advice, is required to be submitted with any payment to the FCC. Thus, we are removing the duplicative data collection from the FCC Form 409. This change will not affect the average estimated completion time of the form.

OMB Approval Number: 3060–0640.

Title: Construction of SMR Stations Request for Additional Information.

Form Number: FCC 800–I.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business and other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 300.

Estimated Time Per Response: 2 hours 30 minutes.

Frequency of Response: On occasion reporting requirement; Others as requested.

Cost to Respondents: $0.

Total Annual Burden: 750 hours.

Needs and Uses: This data collection (letter format) is used as a method of verifying if licensee has placed station into operation and for notifying the Commission of the actual number of mobile units placed in operation after license grant. When a licensee provides conflicting information regarding the construction or operational status of radio facilities authorized to it, the Commission requires clarification/validation/explanation to substantiate the facilities' status so that it may enforce its regulatory responsibilities.

Such responsibilities include the allocation and assignment of radio frequency spectrum and determining the viability of the underlying radio license authorizations which provide for use of that spectrum.

The data requested in this collection are being revised to include requesting purchase order/invoices for the base station, transmitter(s) and antenna; Work order/invoices demonstrating completion of station construction; Name, address and phone number of individual(s) performing the station construction; model and serial numbers of mobiles in operation; and a list of users and phone numbers on this system at the time of construction.

The Commission's requirement that systems be permanently constructed and placed in operation is contained in 47 CFR, Rule Section 90.155, 90.313, 90.631, 90.633, 90.651, 90.725 and 90.737.

OMB Approval Number: 3060–XXXX.

Title: Application for DTV Broadcast Station License.

Form Number: FCC 302–DTV.

Type of Review: New collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 50.

Estimated Time Per Response: 19 hours (1.5 hours for applicant; 17.5 hours for engineer consultant).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $163,625 (Consulting engineers and $210.00 license application fee).

Total Annual Burden: 75 hours.

Needs and Uses: Licensees and permittees of DTV broadcast stations are required to file FCC Form 302–DTV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

The data are used by Commission staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data are then extracted from FCC Form 302–DTV for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17078 Filed 6–25–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1194]

Notice of Telecommunication Relay Services (TRS) Certification; CC Docket No. 90–571

Released: June 19, 1998.

Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once review of those states' applications has been completed. On the basis of the states applications, the Commission has determined that:

(1) The TRS program of the listed states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604;

(2) The TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and,

(3) The TRS programs of the listed states in no way conflict with federal law.

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with

section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services (TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 1998, and ending July 25, 2003, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2002, the states may apply for renewal of their TRS program certifications by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

Copies of certification letters are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, NW, Washington, DC, Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, daily, from 9:00 AM to 4:30 PM.

Fourth Group of States Approved for Certification

File No. TRS–97–07.
Applicant: Virginia Public Service Commission.
State of: Virginia.
File No. TRS–97–23.
Applicant: Department of Public Utilities.
State of: Massachusetts.
File No. TRS–97–38.
Applicant: North Carolina Department of Health and Human Services.
State of: North Carolina.
File No. TRS–97–44.
Applicant: Wisconsin Department of Administration.
State of: Wisconsin.
For further information contact: Al McCloud, (202) 418–2499, amccloud@fcc.gov: Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.
Geraldine A. Matise,
Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–17077 Filed 6–25–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 10, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Sam Bryan Cook, St. Louis, Missouri, and Robert Marion Robuck, Jefferson City, Missouri, both individually and jointly through a trust; to acquire additional voting shares of Central Bancompany, Inc., Jefferson City, Missouri, and thereby indirectly acquire Central Trust Bank, Jefferson City, Missouri .

Board of Governors of the Federal Reserve System, June 22, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 98–16981 Filed 6–25–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MetroCorp Bancshares, Inc., Houston, Texas, and Metro-Corp Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of MetroBank, N.A., Houston, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. InterWest Bancorp, Oak Harbor, Washington; to merge with Kittitas Valley Bancorp, Ellensburg, Washington, and thereby indirectly acquire Kittitas Valley Bank, N.A., Ellensburg, Washington.

Board of Governors of the Federal Reserve System, June 22, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 98–16982 Filed 6–25–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.[1]

TIME AND DATE: 2:30 p.m., Wednesday, July 1, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Issues relating to potential litigation.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: June 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17236 Filed 6–24–98; 12:40 pm]

BILLING CODE 6210–01–P

[1] The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

FEDERAL RESERVE SYSTEM

[Docket No. R–0987]

Policy Statement on Privately Operated Multilateral Settlement Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: As part of its payment system risk reduction program, the Board of Governors is adopting a policy statement on Privately Operated Multilateral Settlement Systems, which integrates its existing policies on Privately Operated Large-Dollar Multilateral Netting Systems and Private Small-Dollar Clearing and Settlement Systems into one comprehensive policy.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360) or Paul Bettge, Assistant Director (202/452–3174); Oliver Ireland, Associate General Counsel (202/452–3625); for the hearing impaired only, Telecommunications Device for the Deaf, Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. The Proposed Policy Statement

In November, 1997, the Board issued for public comment a proposal to adopt a policy statement on Privately Operated Multilateral Settlement Systems (62 FR 60713, Nov. 12, 1997). The proposed policy statement was designed to integrate several of the Board's existing policies on payment system risk into a more comprehensive and consistent framework. The proposed policy statement addressed risks in multilateral settlement arrangements for both "small-dollar" payments, such as clearinghouses for checks and automated clearing house (ACH) payments and systems for settlement of "large-dollar" payments, which are typically used for interbank and financial market transactions. The proposal was intended to provide a flexible, risk-based approach to risk management in these systems and not mandate uniform, rigid requirements for all systems.

The proposed policy statement identified fundamental categories of risk, including credit, liquidity, operational, legal, and systemic risk, that may arise in different types of multilateral settlement arrangements. Systems would be expected to address any material risks in each category. For each type of risk, the policy statement included first, a discussion of risk factors designed to identify those multilateral settlement systems where risks may be heightened relative to other means of settlement. Second, threshold criteria were intended to identify more clearly systems in which these risk factors were not likely to arise. These criteria were intended to simplify administration of the policy and reduce potential regulatory burden on systems where the Board's analysis suggests that risks may be minimal. (An Appendix published with the proposed policy statement also provided examples of the likely application of the policy statement to specific types of systems.) Third, the proposed policy statement provided illustrations of the types of risk management measures that may be appropriate given the particular risk factors identified. Particularly for multilateral settlement systems that are not likely to raise systemic risk concerns, these illustrations were intended to provide flexible guidance rather than an exhaustive or prescriptive set of requirements, such that systems would be encouraged to implement risk management measures commensurate with the scale and scope of risks.

For multilateral settlement systems that were considered sufficiently large to raise potential systemic risk concerns, the proposed policy statement would have imposed higher risk management standards. Those larger systems that met proposed systemic risk criteria would have been expected to demonstrate robust policies and procedures for addressing settlement failures and disruptions. Certain of those larger multilateral settlement systems would also have been required to meet the same requirements of the Board's existing policy statement on Privately Operated Large-Dollar Multilateral Netting Systems (Large-Dollar Policy Statement), including meeting the Lamfalussy Minimum Standards.[1]

The Board also proposed to repeal its existing risk policies for certain "small-dollar" payments clearing and settlement arrangements. The earlier policies were designed to address specific situations that arose in the Federal Reserve's provision of net settlement services to depository institutions. The proposed policy statement would eliminate the need for such policies.

II. The Final Policy Statement

The Board is adopting a final policy statement that retains the structure and analytical approach of the original proposal. The policy statement replaces two existing components of the Board's Policy Statement on Payments System Risk, namely those for "Privately Operated Large-Dollar Multilateral Netting Systems" and "Private Small-Dollar Clearing and Settlement Systems," which are being repealed concurrently with the effective date of this policy statement. As in the proposal, multilateral settlement systems subject to the policy would be required to address risk factors using a set of basic analytical risk categories. The final policy statement reflects important modifications to the original proposal designed to improve the clarity and effectiveness of the policy and to address concerns identified by commenters.

Scope and Administration of the Policy

The final policy statement includes a general threshold for application of the policy in order to eliminate potential administrative burden on those smaller

[1] *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* (Bank for International Settlements, November 1990) presented a set of minimum standards for netting schemes (Lamfalussy Minimum Standards).

systems that are not likely to pose systemic risks or other significant risk concerns. Specifically, the policy will apply to those multilateral settlement systems that settle payments with an aggregate gross value of more than $5 billion on any day. The Board believes that systems with activity below this threshold and their members may nonetheless find the framework and analysis of the policy statement helpful in evaluating and managing risks.

Risk Factors and Risk Management Measures

The final policy statement largely retains the discussions of credit, liquidity, operational, and legal risk factors and risk management measures in the proposal. Technical modifications have been made in a number of areas, however, to clarify the policy and address concerns of commenters, as discussed further below. In conjunction with the limitation on the scope of the policy discussed above, the final policy has been simplified by elimination of the proposed separate Systemic Risk category.

As in the proposed policy statement and the Board's existing Policy Statement on Payments System Risk, certain systems are required to meet the Lamfalussy Minimum Standards. However, under the final policy, the Board will use several factors to determine whether a system should meet the Lamfalussy Minimum Standards. These factors include the settlement of predominantly large-value, interbank or other financial market transactions, such as foreign exchange transactions, or the existence of credit or liquidity exposures that have the potential to raise significant systemic risk concerns. These factors should ensure that the Lamfalussy Minimum Standards will be applied where systemic risks exist, but allow for more flexible risk management in other systems. The Board may be required to make infrequent case-by-case determinations in this regard. In addition, the final policy strongly encourages systems, in meeting the Lamfalussy Minimum Standards, to establish real-time risk controls and other specific risk management measures, as currently described in the Board's existing Large-Dollar Policy Statement. However, alternative risk management measures that provide an equivalent level of assurance that the Lamfalussy Minimum Standards will be met will also be considered. The final policy also includes modified terminology in restating the Lamfalussy Minimum Standards to reflect the policy's broader application to "settlement" systems rather than to "netting" systems only.

III. Summary of Comments

The Board received 26 public comment letters on its proposed policy statement.[2] The commenters included nine commercial banking organizations, seven clearing organizations and associations, seven retail payment networks, and three trade associations.

General Comments

Commenters generally supported the policy's flexible approach to addressing risks in multilateral settlement arrangements. Many also supported the integration of the Board's existing policy statements within a unified, analytical framework. However, a number of commenters expressed concerns about the inclusion of clearinghouses for small-dollar or traditionally retail-oriented payments, such as checks, ACH payments, and automated teller machine (ATM) and credit card transactions, within a comprehensive policy on settlement risk. Many of these commenters focused on the requirements for real-time risk controls associated with the Lamfalussy Minimum Standards (discussed further below) and on the implication that small-dollar payments settlement arrangements may pose systemic risk. Three commenters felt that there was no rationale for unifying the large-and small-dollar policies for settlement arrangements.

A number of commenters described risk management measures used in their system and requested exemptions from the policy based on those measures. Several commenters requested that particular types of systems or payments be exempt from the policy altogether, such as credit card or ATM card settlement arrangements. Several commenters felt that the policy was too vague and did not provide sufficient guidance regarding measures that would be adequate for compliance with the policy.

The limitation on the scope of the policy to systems with daily payment activity above $5 billion should address concerns expressed by commenters about the potential burden of the policy statement on smaller, retail-oriented systems. Under the policy, only the largest systems will need to complete an analysis of credit, liquidity, operational, and legal risks.

For systems subject to the policy statement, the Board believes that the flexible approach set out in the policy, while requiring more careful analysis on the part of the clearinghouses than would a more rigid set of requirements, is the most likely to lead to appropriate risk management measures commensurate with the level and nature of risks in different systems. The Board emphasizes that the policy does not necessarily imply that any particular system needs to make changes to its policies or procedures. In particular, for some systems covered by the policy, the risk factors described in the policy statement may not be significant. For systems that do exhibit one or more risk factors, the types of risk management measures described by a number of commenters are likely to be sufficient to meet the requirements of the policy statement. Moreover, the new policy is likely to be less burdensome than the Board's existing payment system risk policies for small-dollar payments arrangements because it does not contain specific risk management requirements for these systems. The final policy also clarifies that, in general, the Board does not believe that retail-oriented systems need to meet fully the Lamfalussy Minimum Standards and implement real-time risk controls.

Six commenters requested that the Board reference and endorse other reports on payment system risk, including one report on settlement risk issued by a private-sector task force (the NACHA/NOCH Report) and a General Accounting Office report.[3] These reports include useful background information and insights on certain aspects of payment system risk. Although many of the findings of the NACHA/NOCH Report are consistent with those in this policy statement, the Board does not believe that it would be appropriate to attempt to incorporate these findings within this policy statement.

Specific Issues on Which the Board Sought Comment

1. Identification of Material Risks; Threshold Criteria

Most commenters felt that the risk categories and descriptions of risk factors and risk management measures reasonably captured the features of multilateral settlement systems likely to lead to greater settlement risk (with the exception of the Systemic Risk category, discussed below). Two commenters requested that definitions of major risks

[2] This total does not include comment letters from Federal Reserve Banks.

[3] National Organization of Clearing Houses and National Automated Clearing House Association, *Report of the Settlement Risk Management Task Force: Findings and Recommendations*, 1996; General Accounting Office, *Payments, Clearance, and Settlement: A Guide to the Systems, Risks, and Issues*, June 1997, GAO/GGD–97–73.

be included in the policy. The final policy includes brief definitions of credit, liquidity, operational, and legal risks in the context of settlement risk management.

As noted above, the proposed policy statement included "threshold criteria" for each risk category to distinguish systems not likely to pose material risk factors. Many commenters requested clarification of the definition of certain of the thresholds. A number of commenters described certain features of their system and requested that systems with these features be exempt from the policy. Others noted that certain risk factors, such as loss-sharing arrangements, would in many cases not give rise to material risks for participants given the small size of potential losses. A number of participants felt that the netting factor was not a useful indication of liquidity risk.

The original intent of the threshold criteria was to provide simple, de *minimis* exclusions for systems where risks were not likely to be material. Questions raised by commenters indicate that these criteria may not prove to be as simple to implement as originally intended. The limitation on the scope of the policy to systems with daily payment activity above $5 billion should address many of the concerns of commenters. The final policy thus does not include separate threshold criteria, although it retains the closely related discussion of risk factors.

Some commenters requested that the Board clarify that not all risk management measures listed under the discussion of risk management measures are required to address a particular risk factor. The final policy clarifies that this is the case.

Some commenters, such as ATM networks, requested greater specificity on which risk management measures would be required for their systems in order to be considered in compliance with the policy statement. Others requested that the Board confirm that certain risk measures used by their system would be considered sufficient to address a particular risk factor in all cases. For example, two commenters requested that the Board confirm that credit card systems do not exhibit legal risk by virtue of their operating rules; other commenters requested that use of the Federal Reserve's net settlement service be considered adequate protection against legal risk. Some commenters requested clarification on the acceptability of gross versus net recasts of payments in a settlement failure situation.

As noted above, the limitation on the scope of the policy to the largest systems should address many of the concerns of commenters. Even for these larger systems, the Board believes that because different systems may implement different risk management measures appropriate to the scale of risks and the nature of their operations, additional prescriptive requirements would not be appropriate for all systems and would undermine the flexible approach of the policy. Moreover, the Board is not in a position to confirm that particular measures adopted by particular systems, such as specific time frames for settlement, provisions of system rules, or use of any particular settlement services, would be sufficient to address particular risk factors independent of detailed knowledge of the operations and other features of the particular system on an ongoing basis. However, the final policy clarifies that a system that exhibits one or more risk factors does not necessarily need to enhance its risk management policies and procedures if existing arrangements are adequate to address the particular risk factor.

2. Systemic Risk Criteria and Risk Management Measures

The proposed policy set out dollar thresholds for identifying systems that have the potential to pose systemic risk. The Board requested comment on the thresholds used to identify those systems with the potential to pose systemic risk, as well as on the risk management measures specified for such systems. Commenters suggested a range of different criteria that may be indicative of systemic risk, including gross and net settlement volumes, settlements relative to individual participants' capital, and the characteristics of underlying payments. Some commenters noted that a uniform threshold was inappropriate, as systemic risk could depend on many factors. Commenters also requested clarification on risk management measures, including the application of the Lamfalussy Minimum Standards.

To simplify the analysis and assessment of risks and address concerns expressed by commenters, the final policy does not include a separate component for "Systemic Risk." As noted earlier, the overall scope of the policy has also been limited to systems with aggregate gross daily payment activity above $5 billion. This threshold is also consistent with suggestions made by some commenters for identifying systems that may pose systemic risk. The Board considered other thresholds, such as those based on settlement exposures relative to the capital of participants, but concluded that such thresholds would be overly complex and burdensome as a means of identifying systems that are subject to the policy statement (as well as those that are not).

The Board continues to believe that the Lamfalussy Minimum Standards provide important guidance for addressing settlement risk in multilateral settlement systems where failure to settle net obligations as and when expected could have systemic consequences. However, the requirement that a system be capable of settling all positions in the event of the default of the largest single participant may not be necessary for certain systems. Although large check, ACH, and credit card settlement arrangements, for example, should demonstrate sound risk management measures, the Board does not believe that all of the requirements of the Lamfalussy Minimum Standards are generally necessary for these systems. Settlement obligations for individual participants are not of the same magnitude as in traditional large-value payment systems, and credit and liquidity exposures are typically diversified over large numbers of participants. In many cases, there are reliable and timely alternatives to settlement through the clearinghouse, particularly for check and ACH clearing and settlement arrangements.

The Board will, therefore, apply additional factors to determine whether systems must meet the Lamfalussy Minimum Standards. These factors include settlement of high volumes of large-value, interbank or other financial market transactions, such as foreign exchange transactions, or significant systemic credit or liquidity risks.

The proposed policy enumerated the five implementation measures, including real-time controls and net debit caps, required of systems currently subject to the Lamfalussy Minimum Standards. Many commenters felt that real-time interbank risk controls and bilateral credit limits were generally not feasible or desirable for retail payment systems.

The modifications to the proposal discussed above should obviate these concerns. In addition, to provide additional flexibility, the final policy has been modified to permit alternative risk management controls that provide an equivalent level of certainty that the Lamfalussy Minimum Standards can be met. The final policy also clarifies that, as in the Board's existing policy for large-dollar multilateral netting systems, centrally managed limits between the

system and each participant would be considered equivalent to bilateral limits when the system itself acts as a central counterparty or otherwise guarantees settlement. This is also consistent with the Board's approach under Regulation F, where institutions are required to set bilateral limits on credit and liquidity exposures to correspondents and other counterparties.

3. Usefulness of an Appendix

Most commenters felt that the Appendix to the proposed policy containing examples of application of the policy was useful, although several commenters disagreed. Given the limitation on the scope of the final policy, the Board does not believe that such examples are necessary. Thus, the final policy does not include an Appendix.

Other Comments

1. Administration and Enforcement of the Policy Statement

A number of commenters raised questions about the administration and enforcement of the policy statement. Two commenters stated that the Board should not apply or enforce the policy through provision of Federal Reserve net settlement services. Several commenters encouraged the development of interagency supervisory examination procedures to provide a consistent, objective approach to enforcement of the policy statement. A few commenters requested that the legal status of the policy statement be clarified, and that an appeals process be specified for actions taken under the policy statement.

Like other components of the Board's Policy Statement on Payments System Risk, this policy statement is not a regulation, but rather provides the framework that the Board expects to use when taking action on matters within its jurisdiction. The Board expects to administer the policy statement through its existing authority, including its supervisory jurisdiction over institutions such as state member banks and bank holding companies, as well as Federal Reserve service relationships, where appropriate. The assessment of compliance with the policy statement will not be based on the use of any particular type of Federal Reserve net settlement service, but rather on systems' risk factors and risk management policies. The avenues for appealing actions under the policy would be the same as in the Board's existing supervisory or service relationships. Given the limited scope of the final policy, the Board does not believe that interagency examination procedures are needed at this time.

Two commenters asked that the Board clearly specify any reporting requirements for gross and net settlement data and position data. The final policy includes a clarification as to the type of data that may be requested.

2. Repeal of Existing Small-Dollar Policies

Five commenters objected to the perceived withdrawal of the Board's approval under the Board's existing payment system risk policies for small-dollar systems. Some of these commenters requested that a program of certification of compliance with the policy statement be developed in lieu of these "approvals."

The "approvals" referred to by commenters represent previous determinations by the Board that particular systems may use the Fedwire-based net settlement services across multiple Federal Reserve Districts. In 1990, the Board established a set of conditions, embodied in the current Payments System Risk policy for "small-dollar" systems, for the use of this service. Subsequent applications for cross-District net settlement services have been reviewed under this policy. The conditions in the policy were designed in large part to address specific concerns about risk to the Federal Reserve in providing cross-District net settlement services.

Although the Board is repealing its existing small-dollar policies concurrently with the issuance of this policy statement, the Board is not repealing the prior approval of any system to use the Fedwire-based, cross-District net settlement service in conjunction with issuance of this policy. In general, such cross-District systems may continue to use the Fedwire-based net settlement service. As with any system subject to this policy, regardless of whether it uses the Fedwire-based net settlement service, another Federal Reserve net settlement service, or another settlement method, appropriate enforcement actions will be considered if the system is found to be not in compliance with the policy. The Board also notes that approval to use the cross-District net settlement service or any other Federal Reserve service does not imply Federal Reserve endorsement of a particular system or of its risk management arrangements, and should not be used to communicate any such endorsement to participants or potential participants. Moreover, the Board does not anticipate formally certifying compliance of systems under the policy, as this would be likely to reduce the normal incentives for participants to monitor and manage the risk in systems in which they participate.

Effective Date

The policy statement will be effective January 4, 1999 to permit systems subject to the policy a six-month period to assess and ensure their compliance. Although the Board does not expect that compliance with the policy statement will necessitate operational changes for the few systems that will fall within its scope, the Board recognizes that systems may currently have other critical efforts underway, such as preparation for the century date change. As a result, the Board will consider extending the effective date on a case-by-case basis for systems that can demonstrate significant resource demands due to other critical efforts.

Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[4] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The Board does not believe that the adoption of this policy statement will have a direct and material adverse impact on the ability of other service providers to compete effectively with the Reserve Banks' payments services. The repeal of the Board's existing policies for small-dollar payments clearing arrangements, together with the Board's proposal for an enhanced net settlement service, should reduce costs and other potential barriers for private check and ACH clearing and settlement arrangements that compete with the Federal Reserve. While the Reserve Banks are not subject to this policy statement, the Board notes that settlement risk exposures arising from services provided by central banking organizations are inherently different than for private-sector organizations. In

[4] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

addition, the Reserve Banks are subject to Part I of the Policy Statement on Payments System Risk, which requires them to implement an extensive program of risk controls, including ongoing monitoring of all depository institution customers, net debit caps, and fees that are charged to depository institutions for the use of intraday credit.

Federal Reserve System Policy Statement on Payments System Risk

The Board is amending its "Federal Reserve System Policy Statement on Payments System Risk" (57 FR 40455, September 3, 1992) under the heading "II. Policies for Private-Sector Systems" by removing "A. Privately Operated Large-Dollar Multilateral Netting Systems" in its entirety and adding in its place "A. Privately Operated Multilateral Settlement Systems" and removing "C. Private Small-Dollar Clearing and Settlement Systems" in its entirety.

II. Policies for Private-Sector Systems

A. Privately Operated Multilateral Settlement Systems

Introduction

Multilateral settlement systems, such as clearinghouses and similar arrangements, may produce important efficiencies in the clearance and settlement of payments and financial contracts. Participants in such systems, typically depository institutions, exchange payments for their own account or the accounts of their customers in a coordinated fashion and settle the resulting obligations on a multilateral, often net, basis.

A variety of credit, liquidity, and other risks can arise in the clearing and settlement process that institutions must manage in the normal course of business, regardless of the method of clearing and settlement. Existing supervisory standards are generally directed at ensuring that institutions establish appropriate policies and procedures to manage such risks. For example, Federal Reserve Regulation F directs insured depository institutions to establish policies and procedures to avoid excessive exposures to any other depository institutions, including exposures that may be generated through the clearing and settlement of payments.[18]

However, the use of multilateral settlement systems introduces the risk that a failure of one participant in the system to settle its obligations when due could have credit or liquidity effects on participants that have not dealt with the defaulting participant. Multilateral settlement may, in some cases, also have the effect of altering the underlying bilateral relationships that arise between institutions during the clearing and settlement process. As a result, the incentives for, or ability of, institutions to manage and limit the risk exposures to other institutions, as required under Regulation F, may be reduced. In addition, in some cases, there may be no timely or feasible alternative to settlement through the multilateral system in the event that the system fails to complete settlement, due, for example, to a participant default. These factors may create added risks to participants in certain multilateral settlement systems relative to other settlement methods. As a result, a number of multilateral settlement systems and their participants have implemented a variety of risk management measures to control these risks.

Clearinghouses also may generate systemic risks that could threaten the financial markets or the economy more broadly. The failure of a system to complete settlement as and when expected could generate unexpected credit losses or liquidity shortfalls that participants in the system are not able to absorb. Thus, the inability of one participant to meet its obligations within the system when due could lead to the illiquidity or failure of other institutions. Further, the disruption of a large number of payments and the resulting uncertainty could lead to broader effects on economic activity. In addition, as the Federal Reserve has established net debit caps and fees for daylight overdrafts, along with other risk management measures for Federal Reserve payment services, the potential exists for intraday credit risks to be shifted from the Federal Reserve to private, multilateral settlement arrangements, either domestically or in other countries, that have inadequate risk controls.

The Board believes that these concerns warrant the application of a risk management policy to those multilateral settlement systems that have the potential to raise systemic risks, particularly in cases where risks may not be adequately addressed by existing supervisory guidance on management of exposures to other depository institutions. The Board recognizes that multilateral settlement systems differ widely in terms of form, function, scale, and scope of activities. Thus, risk management measures may be designed differently for different systems. This policy statement, therefore, is designed to permit market participants to determine the best means of addressing risks, within the guidelines provided. As a general rule, risk management measures should be commensurate with the nature and magnitude of risks involved.

The Board's adoption of this policy in no way diminishes the primary responsibilities of participants in, and operators of, multilateral settlement systems to address settlement and other risks that may arise in these systems. In addition, the Board encourages all multilateral settlement systems to consider periodically cost-effective risk management improvements, even if not specifically required under this policy. Insured depository institutions participating in multilateral settlement systems are also expected to limit any significant bilateral credit and liquidity exposures to other institutions as required under Federal Reserve Regulation F.

Scope and Administration of the Policy

This policy statement applies to privately operated multilateral settlement systems or arrangements with three or more participants that settle U.S. dollar payments, including but not limited to systems for the settlement of checks, automated clearinghouse (ACH) transfers, credit, debit, and other card transactions, large-value interbank transfers, or foreign exchange contracts involving the U.S. dollar where the aggregate gross value of payments is expected to exceed $5 billion on any day during the next 12 months.[19] Further, the policy does not apply to clearing and settlement systems for securities or exchange-traded futures and options, and is not intended to apply to bilateral relationships between financial institutions, such as those involved in traditional correspondent banking. The Board may also apply this policy to any non-U.S. dollar system based, or operated, in the United States that engages in the multilateral settlement of non-dollar payments among financial institutions and that would otherwise be subject to this policy.

[18] *See* 12 CFR 206.

[19] The gross value of payments settled refers to the total dollar value of individual payments or transactions that are settled in the system, which represents the sum of total debits or total credits to all participants *prior to* any netting of settlement obligations. "On-us" transactions that do not require interbank settlement, but may in some cases be processed by the system, may be excluded for purposes of these calculations. Where a system conducts multiple settlements per day, these settlements should be aggregated for purposes of this calculation if they are conducted among the same group of participants subject to the same rules and procedures.

The Board expects to be guided by this policy statement in taking action in its supervisory and operational relationships with state member banks, bank holding companies, and clearinghouse arrangements, including, for example, the provision of net settlement services and the implementation of the Bank Service Company Act.[20] Systems subject to this policy may be asked to provide to the Federal Reserve peak and daily average aggregate gross and net settlement data for the most recent 12-month period or calendar year, as well as peak and daily average settlement position data for individual participants.

Risk Factors and Risk Management Measures

An analysis of settlement risks in any multilateral settlement system should begin with the identification of key risks and exposures. For purposes of this policy, the general categories of settlement risk include credit risk—the risk to participants or to the system that a participant will be unable to meet fully its settlement obligation; liquidity risk—the risk that participants or the system will have insufficient funds available to meet settlement obligations as and when expected; operational risk—the risk that operational factors in the settlement process may cause or exacerbate these credit or liquidity risks or disrupt the settlement of payments; and legal risk—the risk that legal uncertainties in the settlement process may cause or exacerbate these credit and liquidity risks.

Systems subject to the policy that exhibit one or more risk factors should assess whether their policies and procedures adequately address those specific risks, including consideration of the risk management measures listed below. In general, risk management controls should be proportional to the nature and magnitude of risks in the particular system. The Board does not expect that all of the specific risk management measures listed below will be necessary or appropriate for all systems; moreover, there may be other risk management measures that will address a particular risk factor. Systems that exhibit one or more risk factors may not need to implement any additional risk controls as a result of this assessment if existing risk controls adequately address the particular risk.

If necessary, the Board and its staff will work with systems to determine whether changes in their policies or operations are required and, if so, whether steps proposed by the system would adequately address the risk factor. In some cases, an operational change may mitigate a particular risk factor. In other cases, systems may need to develop or modify written rules, policies, and procedures that specify the rights and obligations of participants, as well as other relevant parties, such as settlement agents for the system, in the event that a settlement cannot be completed as and when expected. Such rules and procedures should be disclosed to all participants and their primary regulatory authorities.

To facilitate the analysis under this policy, systems may need to develop the capability to simulate credit and liquidity effects on participants and on the system resulting from one or more participant defaults, or other possible sources of settlement disruption.[21] Systems may also need to test the operational capability to execute settlement failure procedures, where these differ from normal settlement procedures. Documentation of any significant legal analysis or agreements relevant to risk management may also be appropriate.

(1) Credit risk. Risk factors: A multilateral settlement system would give rise to credit risk if its rules or practices significantly increase or shift the bilateral obligations or credit exposures between participants in the clearing and settlement process. For example, a clearinghouse operator or agent that provides an implicit or explicit guarantee of settlement could shift bilateral exposures. Such a guarantee might be implemented through the establishment of a central counterparty for all transactions, or through other provisions in the system's rules, such as a guarantee of members' settlement obligations, third-party credit arrangements, or the system's ability to recover settlement-related losses from participants. Additionally, a system may expose participants to credit risk to one another, due for example, to agreements to mutualize any settlement losses.

Risk management measures: Measures that are commonly used to mitigate credit risk in a multilateral settlement system and provide support for settlement guarantees include monitoring of participants' financial condition, caps or limits on some or all participants' positions in the system, and requirements for collateral, margin, or other security from some or all participants. Systems in which participants have significant bilateral exposures to one another or to the system, such as through loss-sharing agreements, may need to implement mechanisms for participants to control these exposures if they are significant. Use of settlement methods with same-day finality may also shorten the duration of credit risk exposure in a system.

(2) Liquidity risk. Risk factors: A multilateral settlement system would give rise to liquidity risk for its participants if a delay, failure, or reversal of settlement would be likely to cause a significant change in settlement amounts to be paid or received by participants on the settlement date. The degree of liquidity risk in a particular system is likely to be greater (1) the larger are gross payment flows relative to netted amounts to be settled; (2) the larger are participants' settlement positions relative to their available funding resources; (3) the later that participants would be notified of a settlement disruption relative to the timing of activity in the money markets and other funding channels, and (4) the greater the likelihood that a settlement failure of the particular system would be accompanied by abnormal market conditions.

Risk management measures: One approach to mitigating liquidity risk is to implement measures to reduce significantly both the probability and the effect of a settlement disruption. For example, many of the measures described above that are commonly used to mitigate credit risk may reduce the probability and effect of a participant's inability to meet its settlement obligations when due. External liquidity resources available to the system and adequate operational contingency arrangements may also mitigate liquidity risk.

Some systems anticipate performing a recast of settlements in the event of a participant default, by recalculating multilateral net settlement obligations among participants. These systems are expected to assess, and where necessary address, the liquidity impact on participants of such a procedure.[22] For example, timely notification of settlement failure before or during the period of active money market trading should permit participants readily to borrow funds to cover any shortfalls due

[20] 12 U.S.C. 1861–67.

[21] Such simulations may include, if appropriate, the effects of changes in market prices, volatilities, or other factors.

[22] For example, in a "recast" of settlements, some or all transactions involving the defaulting participant would be removed from the system's settlement process, to be settled or otherwise resolved outside the system. A revised multilateral settlement with recalculated settlement obligations would then be conducted among the remaining participants. In an "unwind," transactions or settlement obligations to be settled on the day of the default for all participants would be removed from the system.

to the recast. Individual participants may also take steps to limit their own liquidity exposures in the system or increase available liquidity resources.

(3) Operational risk. Risk factors: Operational risks, such as those relating to the reliability and integrity of electronic data processing facilities used in the clearing and settlement process, are addressed in standard supervisory guidance for depository institutions and their service providers. Operational risk factors for purposes of this policy statement include those that could hinder the timely completion of settlement or the timely resolution of a settlement disruption in a multilateral settlement system. For example, for a system that anticipates recasting settlement obligations in the event of a participant default, operational obstacles could make it difficult or impossible for participants to arrange settlement outside the system on a timely basis in the event of a settlement failure. As a result, those participants expecting to receive funds could face significant liquidity risk. In addition, in some cases, failure to complete settlement on a timely basis could change the rights of participants with respect to the underlying payments, creating potential credit or liquidity risks. For example, institutions that are unable either to return or to settle for checks presented to them on the same day may lose the right to return the checks for insufficient funds.

Further, certain risk control procedures implemented by a particular system may themselves entail operational risks. The ability of a system to execute a recast of settlements, implement guarantee provisions, or access lines of credit may depend on the operational reliability of the system's facilities.

Risk management measures: Multilateral settlement systems and their participants typically mitigate the risk of operational failure in their daily processing activities through standard techniques, such as contingency plans, redundant systems, and backup facilities. For purposes of this policy statement, systems should ensure the reliable operational capability to execute procedures used to resolve a participant default or other settlement disruption as well as to implement other risk management measures.

For example, if a system anticipates recasting settlements by excluding transactions of a defaulting participant, it should ensure that the system can perform any required processing, generate the necessary information, and provide the information to participants in a timely manner. To the extent that payments would be expected to be settled outside the system, procedures should be established to notify participants such that they have adequate time, settlement information, and operational capabilities to complete such settlements before the close of critical funds transfer systems. A system that does not anticipate recasting settlements but plans to settle all positions as and when expected should ensure that operational procedures to implement risk management measures are in place, such as means of access to lines of credit in a timely manner.

(4) Legal risk. Risk factors: Legal risk may exist in a multilateral settlement system if there is significant uncertainty regarding the legal status of settlement obligations or of the underlying transactions in the event of a settlement failure. Significant legal uncertainty could exacerbate efforts to achieve an orderly and timely resolution and could expose participants to significant credit and liquidity risks. For example, if the obligations of participants with respect to underlying transactions exchanged in the system have no enforceable legal status in the event of a system settlement failure, the ability of the participants to revert to other methods of settlement on a timely basis may be in doubt. Legal risk would also arise if the legal enforceability of any significant risk management measures, netting agreements, or related arrangements, is not well supported.

Risk management measures: Systems should address legal risk factors, where significant exposures may arise, by ensuring that operating rules or other agreements between participants will be enforceable in the event of a settlement failure. As part of this process, systems may wish to obtain legal opinions as to the enforceability of its rules and agreements under applicable legal regimes. Additionally, when the transactions settled through the system are not otherwise covered by an established body of law, the system should ensure that the rights and obligations of the participants are adequately addressed through the system's rules or participant agreements.

Application of the Lamfalussy Minimum Standards

Certain multilateral settlement systems are also required to meet the Lamfalussy Minimum Standards.[23] These standards were designed to address the main risk factors that may be present in multilateral settlement systems and to provide confidence that such systems can settle all positions as and when expected in the event that a participant cannot meet its settlement obligations, thereby reducing substantially the risk that a default by one participant will cause defaults by others. To determine whether a system is also required to meet the Lamfalussy Minimum Standards, the Board will consider additional factors that include the following: settlement of a high proportion of large-value, interbank or other financial market transactions, such as foreign exchange transactions; very large liquidity exposures that have potentially systemic consequences, such as by virtue of a high ratio of gross payments to net settlement obligations; or systemic credit exposures relative to participants' financial capacity.

Lamfalussy Minimum Standards for the Design and Operation of Privately Operated Large-Dollar Multilateral Settlement Systems: 1. Multilateral settlement systems should have a well-founded legal basis under all relevant jurisdictions.

2. Multilateral settlement system participants should have a clear understanding of the impact of the particular system on each of the financial risks affected by the netting process.

3. Multilateral settlement systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.

4. Multilateral settlement systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net debit position.

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[23] The *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* (Bank for International Settlements, November 1990), known as the Lamfalussy Report, recognized that netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of costs along with credit and liquidity risks, provided certain conditions are met. That Report developed and discussed "Minimum Standards for Netting Schemes" (Lamfalussy Minimum Standards) and "Principles for Co-operative Central Bank Oversight" of such arrangements. These standards have been adopted by the central banks of the G–10 and European Union countries. The text included in this policy statement includes editorial modifications to the original standards.

5. Multilateral settlement systems should have objective and publicly-disclosed criteria for admission which permit fair and open access.

6. Multilateral settlement systems should ensure the operational reliability of technical systems and the availability of backup facilities capable of completing daily processing requirements.

Risk management measures: For systems that the Board has determined are required to meet the Lamfalussy Minimum Standards, systems and their participants should consider the following risk management measures: (1) to the extent that participants have significant credit and liquidity exposures to other participants, establish bilateral net credit limits vis-ă-vis each other participant in the system; (2) establish and monitor in real-time system-specific net debit limits for each participant; (3) establish real-time controls to reject or hold any payment or foreign exchange contract that would cause a participant's position to exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position; and (5) establish rules and procedures for the sharing of credit losses among the participants in the netting system.[24]

Alternative risk management measures may provide an equivalent level of assurance that the Lamfalussy Minimum Standards are met, depending on the nature and scope of the system. However, the Board strongly encourages systems to develop real-time risk management controls where necessary to provide an appropriate level of risk control. The Board may also encourage or require higher risk management standards, such as the ability to ensure timely multilateral settlement in the event of multiple defaults, of individual systems that present a potentially high degree of systemic risk, by virtue of their high volume of large-value transactions or central role in the operation of the financial markets.

Offshore Systems

The Board has a long-standing concern that steps taken to reduce systemic risk in U.S. large-dollar payments systems may induce the further development of multilateral systems for settling U.S. dollar payments that are operated outside the United States. Such systems, if implemented with inadequate attention to risk management, may increase risks to the international banking and financial system. In addition, offshore arrangements have the potential to operate without sufficient official oversight.

As a result, the Board has determined that offshore, large-dollar multilateral settlement systems and multicurrency clearing and settlement systems should at a minimum be subject to oversight or supervision, as a system, by the Federal Reserve, or by another relevant central bank or supervisory authority. The Board recognizes that central banks have common policy objectives with respect to large-value clearing and settlement arrangements. Accordingly, the Board expects that it will cooperate, as necessary, with other central banks and foreign banking supervisors in the application of the Lamfalussy Minimum Standards to offshore and multicurrency systems. In this regard, the Principles for Co-operative Central Bank Oversight outlined in the Lamfalussy Report provide an important international framework for cooperation.

By order of the Board of Governors of the Federal Reserve System, June 18, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–16694 Filed 6–25–98; 8:45 am]

BILLING CODE 6210–01–P

[24] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

GENERAL SERVICES ADMINISTRATION

Environmental Considerations in Decisionmaking and Compliance With the National Environmental Policy Act

SUMMARY: The General Services Administration (GSA) has rewritten its Orders establishing policy and assigning responsibilities for implementing the National Environmental Policy Act (NEPA), its implementing regulations, related laws, executive orders, and regulations in the decisionmaking process of the GSA GSA. Order ADM 1095.1E, "Environmental Preparation of Environmental Assessments and Environmental Impact Statements," July 24, 1985, have been revised and are to be reissued as GSA Order ADM 1095.1F and GSA PBS 1095.4C. Few changes were made to GSA Order ADM 1095.1E. Revisions to this document are mainly in the Responsibility section. Substantial changes were made to PBS P 1095.4B. The revision, PBS 1095.4C, was reduced to an overview of GSA's NEPA procedural requirements. The instructional step-by-step portion of the document has been removed and expanded into a new comprehensive PBS NEPA Desk Guide. The PBS NEPA Desk Guide, used in conjunction with PBS 1095.4C, is intended to provide an increased level of NEPA guidance to GSA.

WRITTEN COMMENTS/FURTHER INFORMATION: As part of the public review process required prior to the implementation of new orders by Title 40 CFR 1507.3, "Agency Procedures", GSA solicits your written comments on the revised orders at the following address: Colin Wagner, NEPA Liaison, GSA, PBS, PXSC, room 2312, 1800 F Street, Washington, DC 20007. Written comments should be received no later than July 27, 1998. Requests for the PBS NEPA Desk Guide and/or further information may also be forwarded to this address. Both the Orders and the accompanying PBS NEPA Desk Guide can be found and downloaded from the GSA NEPA CALL-IN web site at www.gsa.gov/pbs/pt/call-in/nepa.htm.

MAILING LIST: If you wish to be placed on the project mailing list to receive the final Orders and Desk Guide, contact Colin Wagner at the address noted above.

Dated: June 11, 1998.

Wm. Colin Wagner,

GSA NEPA Liaison.

ADM 1095.1F

GSA ORDER

SUBJECT: Environmental considerations in decisionmaking

1. Purpose. This order establishes policy and assigns responsibility for implementing the National Environmental Policy Act (NEPA), its implementing regulations, and related laws, executive orders, and regulations in the decisionmaking processes of the General Services Administration (GSA).

2. Cancellation. ADM 1095.1E, dated December 8, 1995, is canceled.

3. Background. The National Environmental Policy Act (NEPA) and the Government wide implementing regulations of the Council on Environmental Quality (40 CFR 1500–1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment, and prescribes procedures to be followed in doing so. Other laws, executive orders, and regulations provide related direction. Each Federal agency is required to implement internal procedures to ensure that the requirements of NEPA are met. Existing orders are out of date and do not provide for current requirements.

4. Nature of revision. This revision reflects a thorough internal review of GSA's systems for implementing NEPA. It replaces an interim order, ADM 1095.1E, which was adopted to govern GSA's compliance with NEPA while this review took place. This revised order is issued in coordination with

PBS 1095.4C and an explanatory desk guide to NEPA review, which together provide GSA with an efficient, up-to-date NEPA compliance system that is consistent with principles of accountability, flexibility, and environmental responsibility.

5. Policy: In all its decisionmaking, GSA will attend carefully to the National Environmental Policy set forth in Section 101 of NEPA. To the maximum extent practicable, GSA will ensure that its actions protect and where possible improve the quality of the human environment, including the built and sociocultural environments of the nation's urban areas. GSA decisionmakers will use the NEPA review process prescribed in the CEQ regulations as a practical planning tool, and integrate both the NEPA review process and the Section 101 National Environmental Policy into decisionmaking in an efficient, cost-effective manner. The NEPA review process will be initiated at the earliest possible stage in planning any GSA action, and will be carried forward in coordination with other planning activities. Decisionmakers will ensure that they have reviewed and fully understand the environmental impacts of each decision, before making any such decision. All managers responsible for decisionmaking on GSA actions will be accountable for being knowledgeable about, and attendant to, the requirements of NEPA and the National Environmental Policy that these requirements are designed to advance.

6. Responsibilities.

6.a. Commissioner, Public Buildings Service (PBS). The Commissioner acts for the Administrator, GSA, on matters relating to NEPA implementation, and oversees implementation of this order. PBS orders and related direction governs GSA compliance with NEPA and related legal authorities.

6.b. Assistant Commissioner, Office of Business Performance (PX).

6.b.(1) Is the principal GSA advisor on NEPA-related requirements, including but not limited to compliance with NEPA and the coordination of NEPA compliance with the requirements of the laws and regulations listed in Appendix 1 of the NEPA Desk Guide.

6.b.(2) Provides expert advise on NEPA-related matters to GSA Heads of Services, Business Lines, and Regional Administrators.

6.b.(3) Provides intra-agency and interagency liaison and coordination on NEPA-related matters on a national basis.

6.b.(4) Provides and periodically updates GSA program guidance, after consultation with the General Counsel, Heads of Services, Business Lines, and Regional Administrators.

6.b.(5) Provides education and training within GSA pertinent to implementation of NEPA and related authorities.

6.b.(6) Coordinates with the Office of Business Performance's (PX) Environmental Executive regarding areas of shared or related responsibility, in maintaining a record of GSA's environmental activities, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.b.(7) Serves as GSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

6.c. Regional Administrators.

6.c.(1) Are accountable for execution of GSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

6.c.(2) Serve as the responsible agency official under CEQ regulations with respect to the environmental effects of actions under their jurisdiction.

6.c.(3) Maintain NEPA Regional Environmental Quality Advisors (REQA) within their staffs, augmented as necessary through interagency agreements and contracts, to ensure regional interdisciplinary competence in environmental matters. To promote nationwide consistency, the REQA should reside in Portfolio Management (PT), although each business line should maintain its own environmental expertise for project development and execution.

6.c.(4) In consultation with PT, ensure that all regional staff with responsibility for planning, approving, and implementing construction, repair, alteration, site and facility acquisition, real property management, maintenance, and real property disposal receive appropriate training in how to carry out GSA's responsibilities under NEPA and related authorities.

6.d. GSA Environmental Executive.

6.d.(1) Serves as GSA's Environmental Executive under Executive Order 12873.

6.d.(2) Coordinates with PT Liaison to ensure agency-wide consistency in areas of shared or related responsibility, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.e. Heads of Services and Business Lines.

6.e.(1) Serve as the responsible agency officials under CEQ regulations for actions subject to their approval.

6.e.(2) Ensure accountability for implementation of the policy set forth in this order.

6.e.(3) In consultation with PT, ensure that staff responsible for supporting the functions of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out GSA's responsibilities.

6.f. The Office of General Counsel.

6.f.(1) Is responsible for legal interpretation of NEPA and related authorities, and represents GSA in litigation under such authorities.

6.f.(2) Advises PT during the development and delivery of guidance and training.

7. Administrative Guidance.

7.a. Central Office, Office of Business Performance (PX) is the Agency center of expertise for NEPA and, as such, has overall program responsibility for establishing procedures, training, and professional standards, and for maintaining interagency administrative responsibilities and relationships. These functions will be carried out at the working level by a professional NEPA Liaison staff.

7.b. Heads of Services and Business Lines will assist and cooperate with PT in the development and delivery of training, as well as procedural and program guidance, and act as coordinators for program needs of the Services and Business lines on a national basis.

7.c. Regional Business Lines have responsibility for ensuring that NEPA compliance responsibilities are satisfied, and the policy articulated in paragraph 5 of this order is followed, with respect to their programs and projects. In consultation with the REQA, the Business Lines will utilize interdisciplinary professional expertise in their implementation of NEPA responsibilities.

8. Implementation of NEPA and related authorities.

8.a. In accordance with applicable regulations and standards, and with program guidance provided by PT, the responsible agency official shall:

8.a.(1) Ensure that the applicable requirements of NEPA and related authorities are met in a timely manner during planning for any GSA action, in a manner consistent with the policy articulated in paragraph 5 of this order.

8.a.(2) Ensure that mitigation measures established through review of actions under NEPA and related authorities are carried out as part of implementing the actions.

8.a.(3) Ensure that the means by which GSA has met its responsibilities, and the costs involved in doing so, are fully documented.

8.b. The procedures set forth in PBS Order P 1095.4C shall be followed in implementing NEPA and related authorities.

9. Effective Date. Every effort shall be made to implement the provisions of this order immediately.

Administrator

PBS 1095.4C

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

1. Purpose. This order provides direction for carrying out the procedural requirements of the National Environmental Policy Act (NEPA) and related legal authorities, in furtherance of the policy and direction provided in ADM 1095.1F.

2. Background. NEPA establishes as policy that the Federal government will: "use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum

attainable recycling of depletable resources." (42 U.S.C. 4321(a))

As an important means of carrying out this policy, NEPA requires Federal agencies to analyze the impacts of their proposed actions (activities, programs, projects, legislation) on the environment, and on the relationship of people with the environment. This analysis is to be undertaken early in planning any such action, as an aid to deciding whether or not the action will go forward, and if so how. Consideration must be given to practicable alternative means of achieving the purpose and need for the proposed action, and to the alternative of not taking any action. The analysis is to be completed, and used to inform the decisionmaker and make the public aware of the action's potential impacts, before the decision is made about whether and how to proceed with the action.

Analysis of environmental impacts must:

"utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment" (42 U.S.C. 4322(2)(A))

NEPA also requires that, to the fullest extent possible, analyses and consultations required by other environmental laws be coordinated with those required under NEPA, to reduce redundancy, paperwork, time, and cost.

Requirements for compliance with the procedural provisions of NEPA are set forth in regulations issued by the Council on Environmental Quality (40 CFR 1500–11508, hereinafter the CEQ regulations). ADM 1095.1.F contains GSA's general policy regarding NEPA implementation, and assigns responsibilities to the Administrator, the Regional Administrators, Heads of Services and Business Lines, the Commissioner, Public Buildings Service (PBS), and the Office of Business Performance (PX) in PBS. This order provides further detail regarding the conduct of NEPA impact analyses.

3. Responsibilities

3.a. Assistant Commissioner, Office of Business Performance (PX)

3.a.(1) Advises the Commissioner, other Heads of Services and Business Lines, Regional Administrators, and other GSA managers and staff regarding NEPA implementation and related matters.

3.a.(2) Maintains a professional NEPA Liaison staff to carry out this responsibility.

3.b. NEPA Liaison

3.b.(1) Coordinates compliance with NEPA and related authorities throughout GSA on a day-to-day basis.

3.b.(2) Provides advice and assistance to Regional Office NEPA Regional Environmental Quality Advisor (REQA).

3.b.(3) With the cooperation of Services, Business Lines, and Regional Offices, provides guidance, education and training, and advice about education and training standards and opportunities to GSA personnel who have responsibilities to which NEPA requirements may pertain.

3.b.(4) Coordinates with the Council on Environmental Quality (CEQ) and other national oversight bodies;

3.b.(5) Represents GSA in interagency coordination on NEPA and related matters on a national basis.

3.b.(6) Routinely solicits and acts upon the advice of REQAs in developing program direction and carrying out the responsibilities of the NEPA Liaison.

3.b.(7) Promulgates, maintains, and when necessary updates a "NEPA Desk Guide" providing detailed direction and advice regarding NEPA implementation.

3.c. Regional Administrators.

3.c.(1) Are the responsible officials for compliance with NEPA on actions under their jurisdiction.

3.c.(2) Maintain a NEPA Regional Environmental Quality Advisor (REQA) as described below.

3.c.(3) Ensure that the REQA is empowered to advise and assist in planning and decisionmaking on actions that could affect the human environment, in a way and at a time in the planning and decisionmaking process that maximizes the effectiveness of the REQA's advice and assistance.

3.c.(4) Ensure that all Regional program staff involved in planning and decisionmaking about actions that could affect the human environment are made aware of GSA's responsibilities under NEPA and related authorities, are acquainted with this order, ADM 1095.1F, and the NEPA Desk Guide, are held accountable for the quality of their actions and decisions, and are required to coordinate effectively with the REQA.

3.d. NEPA Regional Environmental Quality Advisor (REQA).

3.d.(1) Is the center of expertise maintained at the Regional Office (RO) in which expertise in NEPA and related authorities such as the National Historic Preservation Act and the Endangered Species Act is maintained.

3.d.(2) Is located within PT or elsewhere in the RO organizations where it can influence decisionmaking early in GSA's planning or preparation for any action subject to review under NEPA and related authorities.

3.d.(3) Is responsible for participation in GSA planning and decisionmaking, for advising the Regional Administrator (RA), Assistant Regional Administrator (ARA), and other decisionmakers, and for providing training and technical assistance to all pertinent GSA employees and contractors.

3.d.(4) Maintains interdisciplinary expertise in environmental matters, through the employment of qualified staff and/or by interagency agreement or under contract.

3.d.(5) Reviews all documentary products of GSA NEPA analyses, and assists program staff in ensuring that such products, and the analyses they report, are adequate and defensible.

3.d.(6) Maintains records of GSA NEPA compliance activities.

3.d.(7) Routinely interacts with and is assisted by, the NEPA Liaison.

3.d.(8) Maintains an up-to-date NEPA Desk Guide and other needed guidance material.

3.d.(9) Develops and maintains an up-to-date checklist for use in determining whether an action requires an environmental assessment or impact statement (the CATEX Checklist; see paragraph 4.b.(2)(a).

3.e. Program Staff.

3.e.(1) For the purposes of this order, include all GSA employees responsible for the management and implementation of program actions, such as project planning and development, project management, leasing, and disposal of real property.

3.e.(2) Are responsible for:

3.e.(2)(a) With the assistance of the NEPA Liaison and REQAs, developing and maintaining a thorough understanding of NEPA requirements and the requirements of related authorities, and of the policy articulated in ADM 1095.1F, as these pertain to their program areas.

3.e.(2)(b) Ensuring that NEPA and related authorities are complied with to the best of their abilities, as early as possible in planning any action within their program areas.

3.e.(2)(c) Coordinating their programs, activities, and projects with REQAs.

3.e.(2)(d) Implementing all mitigation and other commitments resulting from NEPA compliance for actions under their authority.

4. Implementation of NEPA and related authorities.

4.a. Classification of GSA actions.

4.a.(1) All GSA actions fall into one of the following three classes, in terms of requirements for review under NEPA: categorical exclusions, environmental assessments, and environmental impact statements.

4.a.(2) Program staff, in consultation with the REQA, are responsible for classifying actions and undertaking the level of analysis, consultation, and review appropriate to each.

4.b. Categorical Exclusions (CATEX)

4.b.(1) A categorical exclusion (CATEX) is a category of actions which do not individually or cumulatively have a significant effect on the human environment, except under extraordinary circumstances (42 CFR 1508.4). Because they lack the potential for effect, they do not require detailed analysis under NEPA.

4.b.(2) GSA recognizes two types of CATEX:

4.b.(2)(a) The Automatic CATEX: a category of action that is so unlikely to have an effect on the environment that an action falling into this category may be automatically assumed to require no further review under NEPA, unless the responsible program staff determine that an extraordinary circumstance may exist, whereupon a CATEX Checklist must be prepared (see below). The likelihood of such a circumstance is judged to be so low that no specific environmental analysis is required.

4.b.(2)(b) The Checklist CATEX: a category of action that is generally very unlikely to have a significant effect on the environment, but that requires a cursory review to ensure that no extraordinary circumstances exist. For an action falling into such a category, a CATEX Checklist is completed, leading to a conclusion by program staff, concurred in by the REQA, as to whether the action needs further review under NEPA. The CATEX Checklist is developed and maintained by the REQA, based on a model in the NEPA Desk Guide.

4.b.(3) Both Automatic and Checklist CATEXs are listed in Appendix 1 and in the NEPA Desk Guide.

4.c. Environmental Assessment (EA).

4.c.(1) An Environmental Assessment (EA) is a concise public document prepared by or on behalf of GSA that assists GSA in deciding whether there may be significant effects requiring a more detailed Environmental Impact Statement is necessary, and where such a Statement is not necessary, supports GSA's compliance with the requirements of NEPA and related authorities.

4.c.(2) The analysis required for an EA leads either to a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an Environmental Impact Statement.

4.c.(3) Directions for preparing an EA are found in the NEPA Desk Guide.

4.d. Environmental Impact Statement (EIS).

4.d.(1) An Environmental Impact Statement (EIS) is a detailed analysis and report, meeting standards set forth in the CEQ regulations, that details the environmental effects of a proposed action and its alternatives. An EIS is prepared for any GSA action that may have significant effects on the quality of the human environment.

4.d.(2) Certain actions always are likely to have significant effects on the quality of the human environment, and hence always require an EIS. These classes of action are listed in Appendix 2.

4.d.(3) Where an action does not fall into one of the classes listed in Appendix 2, the responsible GSA official shall ensure that an EIS is prepared if it appears that the action is likely to have significant effects on the quality of the human environment. An EA may be prepared to aid in deciding whether an EIS is needed, or the responsible official may decide to prepare an EIS without preparing an EA.

4.d.(4) Direction for preparing, circulating, finalizing, and using an EIS in decisionmaking are found in the NEPA Desk Guide, and in the CEQ regulations.

4.e. Using NEPA in decisionmaking.

4.e.(1) Each Head of Service, Business Line, and Regional Office shall establish internal systems to ensure that the requirements of NEPA, related authorities, the CEQ regulations, ADM 1095.1F, and this order are carried out.

4.e.(2) Each such system shall ensure that:

4.e.(2)(a) Compliance with NEPA and related authorities begins at the earliest point in planning any action, when the widest reasonable range of alternatives is open for consideration.

4.e.(2)(b) The NEPA review process is carried out in coordination with continued planning.

4.e.(2)(c) All personnel involved in planning actions should view NEPA review as part of effective planning, not as a mere documentation requirement.

4.e.(2)(d) Outside agencies, state and local governments, Indian tribes, and the public are afforded reasonable opportunities to participate in NEPA review, and to influence GSA decisions.

4.e.(2)(e) The results of NEPA review are fully considered by each GSA decisionmaker before making a decision on an action subject to such review.

4.e.(2)(f) Executives and other employees responsible for aspects of NEPA review are held accountable for the performance of such responsibilities, through performance reviews and other administrative mechanisms.

5. Coordination with other authorities.

5.1. To the maximum extent feasible, NEPA review shall be coordinated with review of proposed actions under other environmental legal authorities, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), Executive Orders 11988 and 13006, and other authorities listed in the NEPA Desk Guide.

5.2. In effecting such coordination, responsible GSA officials will ensure that the substantive and procedural requirements of each other authority are met, together with the requirements of NEPA. It will be explicitly understood that compliance with NEPA does not substitute for compliance with another authority, nor does compliance with such other authority substitute for compliance with NEPA.

6. Public involvement.

6.1. As part of its system for NEPA compliance, each Head of Service, Business Line, and Regional Office shall provide for levels and kinds of public involvement appropriate to the class of action and its likely effects, taking into account the recommendations regarding public involvement found in the NEPA Desk Guide.

6.2. Where a related authority provides specific procedures for public involvement, the responsible GSA official shall ensure that such procedures are addressed in the process of NEPA review.

6.3. Public involvement in GSA decisionmaking shall have as its purpose the full disclosure of GSA actions and alternatives to the public, within the constraints of GSA program authorities, and giving the public a full opportunity to influence GSA decisions, subject to the same constraints and the requirements of the Federal Advisory Committees Act (FACA).

6.4. Pursuant to Executive Order 12898, special efforts will be made to involve members of potentially affected low-income and minority communities in NEPA review and decisionmaking. Such efforts may include, but are not limited to, special programs of community outreach, including cross-cultural programs, translations of pertinent documents, and ensuring that translators are available at public meetings.

7. Cooperating agencies.

7.1. The responsible GSA official may invite other agencies to serve as cooperating agencies in the conduct of NEPA review on a GSA action.

7.2. At a minimum, GSA will invite agency customers for GSA services to participate as cooperating agencies. Other agencies with jurisdiction by law or expertise may also be invited to serve as cooperating agencies.

8. GSA Participation in NEPA compliance by other agencies.

8.1. GSA may participate in the NEPA process as a cooperating agency for another lead agency's project, or as a commenter / reviewer of another agency's NEPA document. GSA may also participate in environmental studies carried out by non-federal parties (for example, a local government conducting studies under a State environmental policy law) where such studies are relevant to GSA's interests or may be incorporated by GSA into its own studies under NEPA. Where GSA will be responsible for a decision on a project that is the subject of such a study, and has the authority to do so, GSA will require that the study and its resulting documents meet the standards set forth in the NEPA Desk Guide and related GSA standards.

8.2. As a cooperating agency, GSA participates in the NEPA process as requested by the lead agency, in accordance with 40 CFR 1501.6 of the CEQ regulations. Tasks may include participating in meetings and providing specific information relevant to the matters over which it has jurisdiction by law or expertise.

8.3. The responsible GSA official (Head of Service, Business Line, or Regional Office) may provide comments and/or reviews of another agency's NEPA documents, and/or other Federal and State environmental documents. Such comments or reviews shall be provided where the other agency so requests and the responsible official determines that GSA has jurisdiction by law or special expertise, and may be provided in other cases where the responsible official or designee determines that GSA has an interest in the action covered by the environmental document.

8.4. GSA has jurisdiction by law or expertise on the following topics, as listed in 40 CFR Ch. V, Appendix II of the CEQ regulations: Federal land management, Community development, Historic, architectural, and archaeological resources.

8.5. GSA comments shall be in provided in accordance with 40 CFR 1503.3 of the CEQ regulations.

8.6. GSA comments shall be prepared in consultation with, or by, the pertinent REQA and/or the Central Office NEPA Liaison.

9. NEPA Desk Guide.

All Heads of Service, Business Lines, and Regional Offices will employ the NEPA Desk Guide issued and periodically updated by the NEPA Liaison as guidance in carrying out this order and ADM 1095.1F.

Robert Peck,

Commissioner.

Appendix 1: Categorical Exclusions

1.1 PURPOSE

The stated purpose of Categorical Exclusions (CATEXs) is to limit extensive NEPA analysis to those actions that may be major Federal actions significantly affecting the quality of the human environment, thus streamlining the NEPA process, saving time, effort, and taxpayer dollars.

1.2 DEFINITION

An action is categorically excluded from the requirement to prepare an EA or an EIS if it meets the following definition:

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been

found to have no such effect in procedures adopted by a Federal agency [. . .] and for which, therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required. 40 CFR 1508.4

GSA has identified two types of CATEXs: (1) the "automatic" CATEX, that by its very nature cannot be a major Federal action significantly affecting the quality of the human environment, and (2) the "checklist" CATEX, which requires completion of an environmental checklist to ensure no "extraordinary circumstances" exist indicating the need for an EA or EIS.

1.3 AUTOMATIC CATEXs

The following are automatic CATEXs, requiring no checklist.

(a) Issuance of easements, licenses, or outleases for use of space in existing Federal office buildings, where consistent with local planning and zoning, provided Section 106 of the NHPA is complied with where applicable.

(b) Acquisition of space within an existing structure, either by purchase or lease, where no change in the general type of use and only minimal change from previous occupancy level is proposed (previous occupant need not have been a Federal tenant).

(c) Relocation of employees into existing Federally controlled space, that does not involve a substantial change in the number of employees or motor vehicles.

(d) Reductions in force or other personnel, administrative, or ministerial actions, including bargaining with employee unions and managing routine activities normally conducted to protect or maintain GSA-controlled properties (e.g., security and custodial services).

(e) Lease extensions, renewals, or succeeding leases.

(f) Outlease or license of government-controlled space, or sublease of government-leased space to a non-Federal tenant when the use will remain substantially the same.

(g) Acquisition of land or easements that result in no immediate change in use and where subsequent compliance with NEPA and other applicable laws and regulations will take place as needed.

(h) Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices. Such activities include, but are not limited to:

(1) Site characterization and environmental monitoring activities under RCRA and CERCLA;

(2) Geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks;

(3) Installation and operation of field instruments, such as streamgauging stations or flowmeasuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools;

(4) Drilling of wells for sampling or monitoring of groundwater, well logging, and installation of waterlevel recording devices in wells;

(5) Aquifer response testing;

(6) Installation and operation of ambient air monitoring equipment;

(7) Sampling and characterization of water, soil rock, or contaminants;

(8) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(9) Sampling of flora or fauna; and

(10) Archeological, historic, and cultural resource identification and evaluation studies in compliance with 36 CFR part 800 and 43 CFR part 7.

(i) Administrative actions such as procurement of consultant services for appraisal or environmental analysis.

(j) Repair and alteration projects involving, but not adversely affecting, properties listed on or eligible for the National Register of Historic Places, when there is no evidence of community controversy or other environmental issues. The process required by Section 106 of the National Historic Preservation Act (NHPA) must be followed; see ADM 1020.2.

(k) Repairs and alterations or modernization conducted in accordance with applicable plans, such as Facility Master Plans, where such plans have been reviewed under NEPA and there is no evidence of community controversy or unresolved environmental issues. The process required by Section 106 of the NHPA must be followed; see ADM 1020.2.

(l) Repair to or replacement in kind of equipment or components in GSA-controlled facilities without change in location, e.g. HVAC, electrical distribution systems, windows, doors or roof.

(m) Facility maintenance, custodial, and groundskeeping activities not involving environmentally sensitive areas (such as eroded areas, wetlands, cultural sites, etc.), including window washing, lawn mowing, trash collecting, and snow removal.

(n) Procurement contracts for professional services and supplies not addressed elsewhere here.

(o) Preparation of implementation guidance.

(p) Studies that involve no commitment of resources other than manpower and funding.

(q) Assisting Federal agencies in public utilities management (excluding communications), negotiating for public utility services on behalf of Federal agencies, and providing expert testimony before public utility regulatory bodies.

r. Federal real property utilization surveys in accordance with Executive Order 12348.

s. Real property inspections for compliance with deed restrictions.

t. Administrative action by GSA to remove clouds on titles.

u. Disposal of real property required by public law wherein Congress has specifically exempted the action from the requirements of NEPA.

1.4 CHECKLIST CATEXs

The following are categorical exclusions that require preparation of a checklist to ensure that no extraordinary circumstances exist that would require preparation of an EA or EIS.

a. Acquisition of land which is not in a floodplain or other environmentally sensitive area and does not result in condemnation.

b. Acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility where all of the following conditions are met:

1. The structure and proposed use are substantially in compliance with local planning and zoning and any applicable State or Federal requirements;

2. The proposed use will not substantially increase the number of motor vehicles at the facility;

3. The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and

4. There is no evidence of community controversy or other environmental issues.

c. Property disposal actions undertaken for another Federal agency, where that agency has already documented compliance with applicable legal requirements such as NEPA, NHPA, CERCLA, Endangered Species Act. (See ADM 1095.1d.)

d. Transfers of real property to Federal, State, and local agencies, and Indian Tribes.

e. Assignments of real property to another Federal agency for subsequent conveyance to a State or local agency, or to eligible non-profit institutions for health, educational, or park and recreation uses.

f. Disposal of real property to State or local agencies for wildlife conservation and historic monument purposes.

g. Disposal of real property required by public law wherein Congress has not specifically exempted the action from the requirements of NEPA.

h. Issuance of easements, licenses, or outleases for use of space in Federal facilities other than existing office buildings.

i. Disposal of related personal property, demountable structures, transmission lines, utility poles, railroad ties, and track.

j. Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

k. Abrogation of use restrictions contained in the conveyance documents of previous disposals when:

l. Upon request of another Federal agency for concurrence, GSA only provides concurrence subject to the requesting agency's compliance with NEPA, or

m. GSA has no reason to believe that the abrogation will result in a significant change in property use, or

n. The abrogation is for a reduction in time only.

o. Sale of improvements to underlying property fee owner and disposal of fee ownership to parties who have had possession and/or use of the property for five years or more through permit, lease, license, or easement.

Appendix 2: Actions Requiring Environmental Impact Statement

The following actions are considered to be major Federal actions significantly affecting the quality of the human environment, and therefore must be the subjects of Environmental Impact Statements (EIS), as

must any other action that an Environmental Assessment (EA) indicates may have significant environmental effects:

• Master plans for Federally owned major buildings, building complexes, and sites (Note: EIS should be designed so that subsequent EISs and EAs can be tiered off it).

• Acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility, where one or more of the following applies:

—The structure and/or proposed use are not substantially consistent with local planning and zoning or any applicable State or Federal requirements.

—The proposed use will substantially increase the number of motor vehicles at the facility.

—The site and scale of construction are not consistent with those of existing adjacent or nearby buildings.

—There is evidence of current or potential community controversy about environmental justice or other environmental issues.

• Space acquisition programs projected for a substantial geographical area (e.g., a metropolitan area) for a 3-to-5-year period or greater (Note: a PEIS is often appropriate here, off which subsequent EISs and EAs can be tiered).

[FR Doc. 98–16304 Filed 6–25–98; 8:45 am]

BILLING CODE 6820–BR–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1) The protection of the rights and welfare of human subjects in research including research involving persons with mental disorders affecting decisionmaking capacity, (2) issues in the research use of human biological materials, and (3) a proposed project on the ethical and legal issues in international research supported and/or conducted by the United States. The Commission also plans to hear presentations on the ethical principles expressed in the seminal Belmont Report, the Inspector General's Report on Institutional Review Boards, and research concerns in Native American communities. The meeting is open to the public and opportunities for statements by the public will be provided on July 15, 1998 from 11:30 am to 12 Noon.

Dates/Times:

July 14, 1998, 1:00 pm–5:00 pm and July 15, 1998 8:00 am—5:00 pm.

Location:

Oregon Ballroom, Salon F, Portland Marriott, and 1401 Naito Parkway, Portland, Oregon.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research and makes its recommendations available to the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below at least 4 days before the meeting and as soon as possible. The Chair will reserve time for presentations by persons requesting to speak and requests that oral statements be limited to five minutes . The order of persons wanting to make a statement will be assigned on a first come, first serve basis. Individuals unable to make oral presentations can mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–16623 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98046]

National Comprehensive Cancer Control Program; Notice of Availability of Funds for Fiscal Year 1998; Amendment

A notice announcing the availability of Fiscal Year 1998 funds for cooperative agreements to implement comprehensive cancer control plans was published in the **Federal Register** on May 13, 1998, (63 FR 26614). The notice is amended as follows:

On page 26614, in the announcement title, Announcement number is changed to 99046.

On page 26614, third column, under the heading Availability of Funds the first paragraph should read: Approximately $1.5 million is available in FY 1999 to fund approximately 5 awards * * * Line seven should read: on or about October 30, 1998 * * *.

On page 26619, under the heading Application Submission and Deadline the first paragraph should read: The original and two copies of the completed CDC 0.1246 must be submitted to * * * on or before July 27, 1998.

On page 26619, under the heading Where to Obtain Additional Information, the third paragraph should read: Please refer to Program Announcement Number 99046 when requesting information and submitting an application.

On page 26620, under the heading Eligibility Assurance Form, the third subparagraph, on the third line should read: an up-to-date detailed final draft ready for implementation by October 30, 1998.

All other information and requirements of the notice remain the same.

Dated: June 22, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17089 Filed 6–25–98; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98037]

Initiatives by Organizations To Strengthen National Tobacco Control Activities in the United States; Notice of Availability of Funds for Fiscal Year 1998; Second Amendment

A notice announcing the availability of Fiscal Year 1998 funds for cooperative agreements for Initiatives by Organizations to Strengthen National Tobacco Control Activities in the United States was published in the **Federal Register** on April 23, 1998 [63 FR 20197]. The notice is amended as follows:

On page 20197, first paragraph, under the heading "Introduction," the seventh line of the paragraph is amended to read:populations; African-Americans, Native Americans, * * *. On page 20198, second paragraph under the heading "Availability of Funds," the fourth line is amended to read: African Americans, Native Americans, * * *.

All other information and requirements of the April 23, 1998, **Federal Register** notice remain the same.

Dated: June 22, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17088 Filed 6–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee and the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and Date: 9 a.m.-3 p.m., July 16, 1998.

Place: CDC, Building 16, Room 5126, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters to be Discussed: Agenda items will include updates from the Associate Director for Science, Dixie E. Snider, M.D., M.P.H., a discussion on CDC's pandemic influenza plan, and ethical consultation on blinded HIV serosurveys.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–3 p.m., July 17, 1998.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters to be Discussed: Agenda items will include updates from CDC Acting Director, Claire V. Broome, M.D., a report from the Ethics Subcommittee, a discussion on counter terrorism and the public health infrastructure, and the agency's prevention research agenda.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7060.

Dated: June 22, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17090 Filed 6–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 9, 1998, 9 a.m. to 5:30 p.m., and July 10, 1998, 9 a.m. to 12 m.

Location: National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bethesda, MD.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 419–259–6211, or John M. Treacy (HFD–21), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 9, 1998, the committee will review new drug application (NDA) 20–863 Pletal® (cilostazol) (Otsuka America Pharmaceutical Inc.) to be indicated for intermittent claudication. On July 10, 1998, the committee will discuss and review trade secret and/or confidential information.

Procedure: On July 9, 1998, from 9 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 2, 1998. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 2, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 10, 1998, 9 a.m. to 12 m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion on pending investigational new drug application issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17211 Filed 6–24–98; 11:16 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 23, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) Premarket approval application (PMA) for a toric intraocular lens for primary implantation for the visual correction of aphakia, and (2) PMA for an excimer laser for the surgical correction of hyperopia, sphere only, using photorefractive keratectomy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 15, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. An additional 30-minute time period will be given for public comment at the end of committee discussion and prior to voting on each PMA. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17075 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that published in the **Federal Register** of June 11, 1998 (63 FR 32014). The notice announced a meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee, which is scheduled for June 29 and 30, 1998. The notice published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Anita Prout, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5503.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1998 (63 FR 32014), in FR Doc. 98–15602, FDA announced that a meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee would be held on June 29 and 30, 1998. The notice incorrectly published the agenda for June 30, 1998.

Beginning on page 32014, in the 2d column, under the *Agenda* portion of the meeting, the agenda for June 30, 1998, should be corrected to read: "On June 30, 1998, the committee will discuss and make recommendations on clinical issues related to antimicrobial coatings on permanent cardiovascular implants, such as heart valves and vascular grafts."

Dated: June 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17143 Filed 6–23–98; 5:02 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 28 and 29, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Rhonda W. Stover or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 28, 1998, the committee will discuss class labeling for over-the-counter (OTC) vaginal antifungal drug products. In the **Federal Register** of February 27, 1997 (62 FR 9024), the agency published a proposed rule intended to enable consumers to better read and understand OTC drug product labeling and to better apply this information in the labeling to the safe and effective use of such products. An important element of FDA's proposed rule is a standardized labeling format for OTC drug products. The agency has developed class labeling for OTC vaginal antifungal drug products in accordance with the February 27, 1997, proposed rule. The committee will also discuss the agency's draft guidance document for industry entitled "Class Labeling of OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)" and other related issues. The draft guidance document is intended to provide guidance for both the carton and the educational brochure. In the next several weeks after publication of this notice, a copy of the draft guidance

document for industry will be on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. A copy of the draft guidance document will also be available on the Internet at "http://www.fda.gov/cder/guidance/index.htm".

On July 29, 1998, the committee will discuss effectiveness testing for final formulations of health-care antiseptic drug products relative to performance expectations for these OTC drug products. In the **Federal Register** of June 17, 1994 (59 FR 31402 through 31452), the agency published a proposed rule for OTC health-care antiseptic drug products, i.e., patient preoperative skin preparations, surgical hand scrubs, and health-care personnel and antiseptic handwashes. Included in the proposed rule are key characteristics for each drug product class of health-care antiseptic drug products (i.e., definitions), a requirement for final formulation testing, effectiveness standards, and labeling of each of the drug product categories. In response to the proposed rule, the agency received comments to consider six drug product categories (preoperative skin preparation, surgical hand scrub, health-care personnel handwash, food handler handwash, antimicrobial handwash, and antimicrobial bodywash). Comments also proposed alternate: (1) Testing requirements, (2) key characteristics, and (3) labeling for each of the categories. FDA is seeking the recommendations of the committee and experts on appropriate performance expectations for OTC health-care antiseptic drug products and how these final formulations should be tested.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 21, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on July 28 and 29, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 21, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17074 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–224]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Collection of Managed Care Data Using the Uniform Institutional Providers Form (HCFA–1450/UB–92) and Supporting Statute Section 1853(a)(3) of the Balanced budget Act of 1997; *Form No.:* HCFA–R–224 (OMB No. 0938–0711); *Use:* Section 1853(a)(3) of the Balanced Budget Act (BBA) requires Medicare+Choice organizations, as well as eligible organizations with risk-sharing contracts under section 1876, to submit encounter data. Data regarding inpatient hospital services are required for periods beginning on or after July 1, 1997. These data may be collected starting January 1, 1998. Other data (as the Secretary deems necessary) may be required beginning July 1, 1998.

The BBA also requires the Secretary to implement a risk adjustment methodology that accounts for variation in per capita costs based on health status. This payment method must be implemented no later than January 1, 2000. The encounter data are necessary to implement a risk adjustment methodology.

Hospital data from the period, July 1, 1997–June 30, 1998, will serve as the basis for plan-level estimates of risk adjusted payments. These estimates will be provided to plans by March, 1999. Encounter data collected from subsequent time periods will serve as the basis for actual payments to plans for CY 2000 and beyond.

In implementing the requirements of the BBA, hospitals will submit data to the managed care plan for enrollees who have a hospital discharge using the HCFA–1450 (UB–92), Uniform Institutional Provider Claim Form. Encounter data for hospital discharges occurring on or after July 1, 1997 are required. While submission from the hospital to the plan is required, plans are provided with an alternate submission route for the start-up year.

Special procedures have been identified to ensure that hospital encounter data are submitted for discharges occurring between July 1, 1997 and June 30, 1998, the start-up year. HCFA has identified three alternatives for the submission of hospital encounter data for discharges during the star-up year, including the following:

Option 1: The Plan will have a hospital submit UB–92s or Medicare Part A ANSI ASC X12 837 (ANSI 837) records using the traditional HMO "No Pay" bill method.

Option 2: The Plan can currently produce a complete UB–92/ANSI 837 and will hold the data until the fiscal intermediary (FI) can accept it.

Option 3: The Plan will submit an abbreviated UB–92 data set via an alternative route.

During the start up year, the plan is expected to establish an electronic data linkage to a FI to be determined by HCFA. HCFA will assist Plans in initiating discussions with their FI. By July 15, 1998, the Plan is expected to have completed this linkage, including testing of the linkage, and to be capable of transmitting hospital encounter data to a FI. Data for the start-up year must be transmitted to the plan's FI by September, 18, 1998. All data with discharge dates after July 1, 1998 will be transmitted using this linkage. (See Appendix III for additional information on the transmission of data to HCFA.) Each plan and/or contract will use a single FI. HCFA will establish a series of interim deadlines to ensure that plans are making sufficient progress toward

accomplishing this linkage no later than July 15, 1998.

After plans have established linkages to a FI, hospitals will submit HCFA–1450 (UB–92) forms to the managed care plan. The HCFA–1450 (UB–92) form is identical to the one used by hospitals in billing for Medicare fee-for-service claims. After receiving the pseudo claim from the hospital, the plan attaches the plan identifier, which is the HCFA assigned managed care organization (MCO) Contract Number, and submits the pseudo-claim electronically to the fiscal intermediary (FI). The data processing flow by the FI is very similar to current claims processing for the fee-for-service system, except that no payment is authorized to the plan. Pseudo claims will flow though the FI to our Common Working File (CWF) and will be retained by HCFA.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 1.9 million; *Total Annual Responses:* 1.9 million; *Total Annual Hours:* 32,833.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16989 Filed 6–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–243]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan; *Form No.:* HCFA–R–243; *Use:* An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare 1833 agreement. The application is the collection form used to obtain information from an organization that would allow HCFA staff to determine compliance with the regulations. This form includes requests for information about: the management of the applicant organization; arrangements for providing health care to beneficiaries; meeting Medicare requirements for appeals, hearings, advance directives, health benefits; risk sharing with other entities; the fiscal soundness of the applicant; the cost budget, which forms the basis for HCFA payment; prevention of duplicate payment; and the applicant's marketing strategy. Frequency: One time ; *Affected Public:* Business or other for-profit institutions, Not-for-profit institutions, and State, Local or Tribal Governments.; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 1,125.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–16999 Filed 6–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Study of Health Care Services to Children in Foster Care Homes—New

The Maternal and Child Health Bureau of HRSA is planning to conduct a survey of health care services for children in foster care and other out-of-home care in the United States. This project is aimed at identifying the contributing factors affecting the delivery of health care services to these children.

The project will be carried out in two stages. In the first stage a survey will be conducted of the directors of child welfare programs and the directors of maternal and child health programs in all 50 States and the District of Columbia, in 5 counties in each of seven States with county administered child welfare systems, and in 30 large municipalities. The purpose of this initial data collection is to document the range of institutional arrangements, policies, and activities being undertaken to address the issue of health care for children in foster care and other out-of-home care.

The second stage will include a detailed follow-up survey of child welfare, maternal and child health, Medicaid, and juvenile court officials in a subset of 20 States (13 with State administered child welfare systems and 7 with county administered child welfare systems), 35 counties (5 from each of the 7 States with county administered child welfare systems), and 10 municipalities. The second stage will document (a) demographic characteristics of children in foster care, (b) health care policies, (c) characteristics of health assessments and ongoing care, (d) standards of care, (e) financial arrangements, and (f) interagency collaborations.

The second stage will also include a written survey sent to 220 advocacy, provider, and professional organizations in the subset of States and counties being surveyed. This component will collect information on the same 6 categories noted above from organizations with a broad base of experience working on health care issues for children in foster care and other out-of-home care.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Child welfare and maternal and child health directors	232	1	1	232
Child welfare, maternal and child health, Medicaid, and juvenile court officials	260	1	2.4	624
Advocacy and professional organizations	220	1	1.5	330
Total	712	1	1.67	1186

Send comments to HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 19, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–17064 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration (HRSA)

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration publishes abstracts of information collection requests under review by the Office of Management and Budget. These data collection requirements are authorized by section 241 of the PHS Act (42 USC 238j). To request a copy of the clearance request submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthy Schools, Healthy Communities Data System (OMB No. 0915–0188)

Extension—This is a request for extension of approval of the Healthy Schools Data System, which contains the annual reporting requirements for the Healthy Schools, Healthy Communities grantees funded by the Bureau of Primary Health Care (BPHC), HRSA. Authorizing legislation is found in Pub. L. 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

The BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives with respect to the Healthy Schools, Healthy Communities grant program, BPHC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. This data system, "School Health Care Online (SHO)", includes information on such specific program elements as:

—Student patient characteristics (e.g., age, grade level, gender, pre-existing conditions, disease chronicity, and insurance status.
—Service utilization (e.g., immunization rates, health screening, referrals).
—Referrals to the Women, Infant and Children (WIC) nutritional program and other social services providers.
—Information on provider productivity.
—Use of emergency rooms for non-emergency care.

There are to be no revisions to the data collection instruments.

The reporting burden has decreased slightly because reporting has been changed from quarterly to annually. Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Data Entry	30	0.2	3,600
User Profile	30	0.5	15
Data Export	30	0.5	15

Type of report	Number of respondents	Hours per response	Total burden hours
Total	30		3,630

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 19, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–17065 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 5, 1998, through March 31, 1998.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Acting Associate Administrator for Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Stephanie and John Hatzenbuhler, on behalf of John Ross Hatzenbuhler Bismark, North Dakota, Court of Federal Claims Number 98–0008V
2. Basmah Zamrik and Mohammad Ramez Chawki on behalf of Hedaya Chawki, Broken Arrow, Oklahoma, Court of Federal Claims Number 98–0010V
3. Dennis Foster on behalf of Felisha Foster, Rockford, Illinois, Court of Federal Claims Number 98–0033V
4. Dolores Cohen-Lowry, Phoenixville, Pennsylvania, Court of Federal Claims Number 98–0034V
5. Pamela S. and Andrew L. Wilson on behalf of Daniel J. Wilson, Beaver, Pennsylvania, Court of Federal Claims Number 98–0040V
6. Christine E. Kramer, Mayfield Heights, Ohio, Court of Federal Claims Number 98–0053V
7. Thuy Yang on behalf of Chandra Ly, Deceased, Philadelphia, Pennsylvania, Court of Federal Claims Number 98–0054V

8. Susan and Leonard Queen on behalf of Maura Queen, Douglasville, Georgia, Court of Federal Claims Number 98–0055V
9. Vanya Seiss on behalf of Lola Seiss, Los Angeles, California, Court of Federal Claims Number 98–0062V
10. Rosemary J. Browne, Columbia, Maryland, Court of Federal Claims Number 98–0070V
11. Cathleen and Donald Marcelli on behalf of David Marcelli, Deceased, Burlington, Massachusetts, Court of Federal Claims Number 98–0103V
12. Eva D. Libby Smith on behalf of Aaron Lee Smith, Portsmouth, Oregon, Court of Federal Claims Number 98–0106V
13. UnMi and Jerry Tufo on behalf of Jerry Joseph Tufo, Jr., Eglin AFB, Florida, Court of Federal Claims Number 98–0108V
14. Gerald M. Taylor on behalf of Jennifer Sandoval, Ruskin, Florida, Court of Federal Claims Number 98–0113V
15. Erin and John Liable on behalf of Sierra Liable, Salem, New Jersey, Court of Federal Claims Number 98–0120V
16. Bernard Bisson, Bradford, Vermont, Court of Federal Claims Number 98–0121V
17. Sheena Ackley on behalf of Tabitha Ackley, Livingston, Texas, Court of Federal Claims Number 98–0122V
18. Marano Maldonado Ramirez on behalf of Maxl Maldonado Vasquez, Corocal, Puerto Rico, Court of Federal Claims Number 98–0133V
19. Blanca Buchno, Stockton, California, Court of Federal Claims Number 98–0134V
20. Robert D. Lovinger, M. D., Richmond, Virginia, Court of Federal Claims Number 98–0138V
21. Margaret Nichols on behalf of Elishama Nichols, Chicago, Illinois, Court of Federal Claims Number 98–0141V
22. Jason Ridgway on behalf Creighton Ridgway, Round Rock, Texas, Court of Federal Claims Number 98–0149V
23. Juli Levesque on behalf of Alex Levesque, Pleasant Hill, California, Court of Federal Claims Number 98–0162V
24. Carrie Snyder on behalf of Kayla Ann Snyder, Allentown, Pennsylvania, Court of Federal Claims Number 98–0163V
25. Francine and Emanuel Chaconis on behalf of Alyssa Chaconis, Pamona, New York, Court of Federal Claims Number 98–0165V
26. Irma L. Lopez, Long Branch, New Jersey, Court of Federal Claims Number 98–0189V
27. Daisy Rivera Rodriguez, Ponce, Puerto Rico, Court of Federal Claims Number 98–0202V
28. Jill Boehler, Lincoln, Nebraska, Court of Federal Claims Number 98–0205V
29. Janice A. Trygg (Simonsen) and Clifford G. Simonsen on behalf of Harriet A. Simonsen, Deceased, Portland, Oregon, Court of Federal Claims Number 98–0206V
30. Madeleine and Marcelo Guilis on behalf of Sage Guilis, Katonah, New York, Court of Federal Claims Number 98–0305V
31. Elias Tebcherani on behalf of Lena Marie Tebcherani, San Diego, California, Court of Federal Claims Number 98–0317V

Dated: June 19, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–17063 Filed 6–25–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: August 6–7, 1998.

Time: August 6, 1998, 8:00 am to 6:00 pm—August 7, 1998, 8:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPN 643A, Rockville, MD 20892–7405, (301) 496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; 93.392, Cancer Construction, National Institutes of Health, HHS)

Dated: June 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17003 Filed 6–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee H–Clinical Trials.

Date: July 28–29, 1998.

Time: July 28–8:00 a.m. to recess; July 29–8:00 a.m. to adjournment.

Place: Hyatt Regency—Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: Deborah R. Jaffee, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 611C, Bethesda, MD 20892–7403, Telephone: 301/496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: June 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17004 Filed 6–25–98; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 31, 1998.

Time: 12:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd, Suite 400C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17000 Filed 6–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 14–16, 1998.

Time: 7:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Mark R. Green, PhD., Chief, Extramural Division Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17001 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Committee.

Date: June 29–July 1, 1998.

Time: June 29, 1998, 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Land, Room 10–42, Rockville, MD 20857, (301) 443–2620.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Committee.

Date: June 29, 1998.

Time: 5:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Land, Room 10–42, Rockville, MD 20857, (301) 443–2620.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Rodent and Monkey Testing for NIDA Medication Discovery Program.

Date: June 30, 1998.

Time: 10:30 am to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse, 5600 Fishers Land, Room 10–49, Rockville, MD 20857, (301) (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: July 8–9, 1998.

Time: July 8, 1998, 8:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS,

5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Research Dissemination.

Date: July 8, 1998.

Time: 9:30 am to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: Parklawn Bldg., 3rd Floor, Conference B, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Treatment.

Date: July 9, 1998.

Time: 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William Grace, Phd, Deputy Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2755.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: July 9–10, 1998.

Time: July 9, 1998, 1:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Center Review Committee.

Date: July 15, 1998.

Time: 8:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Drug Abuse Prevention and Communication Research.

Date: July 21–22, 1998.

Time: July 21, 1998, 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Susan L. Coyle, PhD, Chief, Clinical, Epidemiological/Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Science Education Development Program.

Date: July 22, 1998.

Time: 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions Drug Abuse Research Development Program.

Date: July 27, 1998.

Time: 9:00 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: William Grace, PhD, Deputy Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, HBCU Research Scient.

Date: July 27–28, 1998.

Time: July 27, 1998, 3:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: William Grace, PhD, Deputy Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs; 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, National Institutes of Health, HHS)

Dated: June 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17002 Filed 6–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, NINR Career Transition Award Applicaitons.

Date: July 27, 1998.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Room 3AN–18B, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, PhD, Scientific Review Administrator, Natcher Building, Room 3AN–18B, National Institute of Nursing Research, Bethesda, MD 20892, 301–594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17006 Filed 6–25–98; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.
Date: July 7, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Bruce Maurer, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, LRG–5 AARR–4 (01)S.
Date: July 7, 1998.
Time: 8:30 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mohindar Poonian, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–4 (02).
Date: July 7, 1998.
Time: 4:30 pm to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, Bethesda, MD.
Contact Person: Mohindar Poonian, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–2 (02).
Date: July 8, 1998.
Time: 7:30 pm to 10:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami Mayyasi, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.
Date: July 9–10, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–5 (01).
Date: July 9, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Woodfin Suites Hotel, Conference Room, 1380 Piccard Drive, Rockville, MD 20850.
Contact Person: Bruce Mauer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–02 (04).
Date: July 10, 1998.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, Bethesda, MD.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–1 (02).
Date: July 12, 1998.
Time: 7:30 p.m. to 9:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.
Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center fcr Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–01 (01).
Date: July 13–14, 1998.
Time: 8:30 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW Washington, DC 20037.
Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–2 (03).
Date: July 16–17, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–7 (01).
Date: July 21–22, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gilbert W. Meier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–7 (02).
Date: July 21, 1998.
Time: 1:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–7 (02).
Date: July 22, 1998.
Time: 8:30 am to 10:30 am.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gilbert W. Meier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.

Date: July 23–24, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7850, Bethesda, MD 20892, (301) 435–1177.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 26–27, 1998.
Time: 7:30 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Eileen Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179

Name of Committee: Cell Development and Function Initial Review Group, International and Cooperative Projects Study Section.
Date: July 27, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NEW, Washington, DC 20037.
Contact Person: Sandy Warren, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–8 (01).
Date: July 28–29, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gilbert W. Meier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG–5 AARR–8 (02).
Date: July 29, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gilbert W. Meier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.
Date: July 29, 1998.
Time: 11:30 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William C. Branche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel, Special Emphasis Panel—Nutrition/Metabolism.
Date: July 30–31, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: July 31, 1998.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

(Catalogue of Federal Domestic Assistance Program Nos. 93.333, Clinical Research 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893; 93.306, Comparative Medicine, 93,306, National Institutes of Health, HHS)

Dated: June 19, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–17005 Filed 6–25–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4351–N–06]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: August 25, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Stacy Jordan, Economist, Office of Policy Development and Research, telephone (202) 708–0426 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: A survey of Low-Income Housing Tax Credit Developers and Owners.

Description of the need for the information and proposed use: The Low-Income Housing Tax Credit (LIHTC) program is the Federal government's most important but least well-understood affordable housing production program. This national survey will contribute to the now-limited but growing body of knowledge about how the program works and who is participating in it. It consists of a national probability sample of developer/owner entities that placed at least one LIHTC rental property in service between January 1992 and December 1994. Information will be gathered about: the types and characteristics of developer/owner entities that produce affordable rental housing in conjunction with the LIHTC

program; factors that were important to their decisions to develop affordable rental housing using the LIHTC; factors that were considered when deciding upon the location, scale, resident composition, and other characteristics of their properties; their post-development experiences with respect to the performance of their properties; and their longer-term plans with respect to their properties.

HUD is responsible for assessing the housing needs of low-income households and administering a variety of housing assistance programs to meet those needs. The LIHTC program operates in conjunction with and in the context of ongoing HUD programs. Although HUD is not directly responsible for the LIHTC program, it is important to an overall understanding of the affordable housing delivery system to know more about this program, including who develops, owns, and operates properties benefiting from LIHTCs, what affects their investment and development decisions, and their longer-term plans with respect to their properties. This information will assist the Department in better assessing and meeting the affordable housing needs of the Nation's low-income households.

Members of the affected public: A probability sample of development/ ownership entities that placed at least one LIHTC property in service between January 1, 1992 and December 31, 1994 will be surveyed.

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response: Information will be collected by a one-time telephone survey with 800 spokespersons representing developer/owner entities. Each interview will take an average of 30 minutes to complete, resulting in a total of approximately 400 hours of response time for the information collection.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 19, 1998.

Paul L. Leonard,

Deputy Assitant Secretary for Pollicy Development.

[FR Doc. 98–17026 Filed 6–25–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–12]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 25, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Albany Financial Operations Center, telephone number (518) 464–4200 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Title I Financial Statement.

OMB Control Number, if applicable: 2502–0098.

Description of the need for the information and proposed use: The form is used by HUD to obtain information about a debtor's ability to pay the debt in full, pay in installments and/or compromise the debt. Failure to collect this information would result in uneducated decisions in respect to the handling of debtor's accounts.

Agency form numbers, if applicable: HUD–56142.

Members of affected public: Individuals.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 1,258.

Frequency of Response: On occasion.

Total hours of response requested: 1.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 19, 1998.

Ira G. Peppercorn,

General Deputy Assistant, Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–17027 Filed 6–25–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C.

11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available fror use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342. (These are not toll-free numbers.)

Dated: June 18, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 06/26/98

Suitable/Available Properties

Buildings (by State)

Hawaii

Facility No. 227
Naval Station
South Ave. & 7th St.
Pearl Harbor Co: Honolulu HI 96701–
Landholding Agency: Navy
Property Number: 779820128
Status: Excess
Comment: 23,200 sq. ft., possible asbestos, termite damage, most recent use—warehouse, off-site use only

Washington

747 Building Complex
805 Goethals Drive
Richland Co: Benton WA 99352–
Landholding Agency: GSA
Property Number: 549820005
Status: Surplus
Comment: 4 bldgs. (2 bldgs. utilized w/lease provisions), most recent use—labs/offices, presence of asbestos/lead paint
GSA Number: 9–B–WA–1145

Unsuitable Properties

Buildings (by State)

Florida

Quarters 9
Naval Air Station
Pensacola Cp: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820124
Status: Unutilized
Reason: Extensive deterioration Secured Area

Quarters 10
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820125
Status: Unutilized
Reason: Secured Area Extensive deterioration

Tennessee

15 Bldgs.
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Location: 329, 400–408, 1585, S–159, S–160, S–163, 1278
Landholding Agency: Navy
Property Number: 779820126
Status: Unutilized
Reason: Secured Area Extensive deterioration

18 Bldgs.
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Location: 2001–2002, 2048–2051, 2064–2070, 2107–2111
Landholding Agency: Navy
Property Number: 779820127
Status: Unutilized
Reason: Secured Area

[FR Doc. 98–16691 Filed 6–25–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance officer at the address and/or phone numbers listed below.

DATES: Consideration will be given to all comments received on or before July 27, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, 703/358–2171.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) has submitted the following information collection clearance requirements to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1995, Pub. L. 104–13. A previous 60 day notice on this information collection requirement was published in the **Federal Register** on January 6, 1998 (63 FR 1490–91) inviting public comment. No comments on the previous notice were received as of March 10, 1998. Emergency approval for this information collection requirement was cleared on January 29, 1998 under OMB control number 1018–0096. Pursuant to this renewal, comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Experimental populations established under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended, require information collection and reporting to the Service. Section 9 of the ESA describes prohibited acts involving threatened or endangered species (16 U.S.C. section 1538 (a)(1)(B)). There are three major categories of information collected under the already issued experimental population rules. To date these categories have encompassed information relating to: (1) The general taking or removal of individuals of an experimental population, and (2) the authorized taking of individuals related to reports of depredation on livestock or pets caused by individuals that are part of an experimental population and (3) the collection of specimens or the recovery of dead animals that are part of an experimental population. These three categories have adequately described the types of information needed to evaluate the efficacy of the program and are expected to continue to accurately describe activities under the program.

Because individuals of designated experimental populations for species listed as threatened or endangered under the ESA are categorically protected, documentation of human-related mortalities, recovery of dead specimens and other types of take related to the status of experimental populations is important to the Service in order to monitor the success of reintroduction efforts, and recovery efforts in general. In order to minimize potential conflict with humans which could undermine recovery efforts, livestock depredations connected with experimental populations of listed species require prompt attention for purposes of determining the location, timing, and nature of the predatory behavior involved, accurate determination of the species responsible for a livestock kill, and the timely application of necessary control measures.

The Service, in cooperation with the USDA/APHIS Division of Wildlife Services or other cooperating State or Federal agencies, relies on prompt public reporting of depredation in order to resolve livestock related problems, and therefore a time sensitive requirement for reporting problems (generally within 24 hours) to the appropriate Service office is necessary. Information collection is achieved primarily by means of telephone calls by members of the public to Service offices specified in the individual rules (some may choose to use facsimile or electronic mail). Information required is limited to the identity of the caller, species involved, time and place of an incident, the type of incident, and circumstances related to the incident described. The vast majority of the information supplied to the Service as a result of experimental population regulations, is provided by cooperating State and Federal agencies under cooperative agreement. However, some of the information collected by the Service under the experimental population rules is provided by the public.

The collected information can be separated into three categories; general take or removal, depredation related take, and specimen collection. General take or removal information refers to human related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized) or take in the form of authorized harassment. Most contacts related to this type of information collection are in regard to sightings of experimental animals, or the inadvertent discovery of an injured or dead individual. Depredation related take refers to the reporting of take for management purposes, where livestock depredation has been documented or may include authorized harassment or lethal take of experimental animals in the act of attacking livestock. The information collection required by the rules for this type of take include the necessary follow-up reports after the Service has authorized harassment or lethal take of experimental animals in relation to confirmed instances of livestock depredation or in defense of human life. Specimen collection is for the purpose of documenting incidental or authorized scientific collection. Most of the information collection requirement for this take pertains primarily to the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual. Information collection is required for necessary follow-up reports when the Service has authorized take of experimental animals for specimen collection.

The standard information collection includes the name, address, and phone number of the reporting party, location and time of the reported incident, species of experimental population involved. Reporting parties include, but are not limited to, individuals or households, farms, businesses, and other non-profit organizations. The reporting of specimen collections, recovery, or even the reporting of dead individuals from experimental populations is important to the Service's efforts in monitoring these individuals and for other scientific purposes.

Because the number of reports generated annually by the general public (rather than cooperating agencies or separately permitted individuals) under these rules is extremely small (far less than one report per year, per rule) and to assure thorough documentation of results, the Service is estimating the number of expected reports to assume a maximum number per year based on allowance for increased population size and public awareness of this experimental population.

The following nonessential experimental population rule for the Mexican wolf is described under Title 50 of the Code of Federal Regulations and contains information collection requirements:

50 CFR section	Species (scientific name)	Type of reporting
17.84(k) (63 FR1752).	Mexican wolf (Canis lupus baileyi).	Take in defense of human life, incidental take, take related to livestock depredation.

Title: Endangered and Threatened Wildlife, 50 CFR 17.84, Experimental populations.

Description of respondents: private individuals and households, businesses, not-for-profit organizations, and farms.

Bureau number: N/A.

Frequency of Collection: On occasion.

BURDEN ESTIMATES FOR REPORTING REQUIREMENTS FOR THE NONESSENTIAL EXPERIMENTAL POPULATION OF THE MEXICAN WOLF-ENDANGERED SPECIES

Type of report	Number of reports annually	Average time required per report (minutes)	Burden hours
General take or removal[a]	2	15	½
Depredation related take[b]	8	15	2
Specimen collection[c]	2	15	½

[a] General take or removal includes human related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized) or take in the form of authorized harassment.

[b] Depredation related take is take for management purposes where livestock depredation has been documented and may include authorized harassment or authorized lethal take of experimental animals in the act of attacking livestock.

[c] Specimen collection, recovery, or reporting of dead individuals from experimental populations for documentation purposes or authorized scientific collection purposes.

Dated: May 14, 1998.

Richard Hannan,

Acting Assistant Director—Ecological Services.

[FR Doc. 98–16980 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal and Revision To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Information Collection Clearance Officer of the U.S. Fish and Wildlife Service at the address and/or phone numbers listed below.

DATES: Consideration will be given to all comments received on or before July 27, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, 703/358–2171

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) has submitted the following information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. A previous 60 day notice on this information collection requirement was published in the **Federal Register** on January 6, 1998 (63 FR 1490–91) inviting public comment. No comments were received as a result of this notice. Emergency approval for this information collection requirement was cleared on January 29, 1998 under OMB control number 1018–0095. Pursuant to this renewal, comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Experimental populations established under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended, require information collection and reporting to the Service. Section 9 of the ESA describes prohibited acts involving threatened or endangered species (16 U.S.C. section 1538 (a)(1)(B)). There are three major categories of information collected under the already issued experimental population rules. To date these categories have encompassed information relating to: (1) The general taking or removal of individuals of an experimental population, and (2) the authorized taking of individuals related to reports of depredation on livestock or pets caused by individuals that are part of an experimental population and (3) the collection of specimens or the recovery of dead animals that are part of an experimental population. These three categories have adequately described the types of information needed to evaluate the efficacy of the program and are expected to continue to accurately describe activities under the program.

Because individuals of designated experimental populations for species listed as threatened or endangered under the ESA are categorically protected, documentation of human-related mortalities, recovery of dead specimens and other types of take related to the status of experimental populations is important to the Service in order to monitor the success of reintroduction efforts, and recovery efforts in general. In order to minimize potential conflict with humans which could undermine recovery efforts, livestock depredations connected with experimental populations of listed species require prompt attention for purposes of determining the location, timing, and nature of the predatory behavior involved, accurate determination of the species responsible for a livestock kill, and the timely application of necessary control measures. The Service, in cooperation with the USDA/APHIS Division of Wildlife Services or other cooperating State or Federal agencies, relies on prompt public reporting of depredation in order to resolve livestock related problems, and therefore a time sensitive requirement for reporting problems (generally within 24 hours) to the appropriate Service office is necessary. Information collection is achieved primarily by means of telephone calls by members of the public to Service offices specified in the individual rules (some may choose to use facsimile or electronic mail). Information required is limited to the identity of the caller, species involved, time and place of an incident, the type of incident, and circumstances related to the incident described. The vast majority of the information supplied to the Service as a result of experimental population regulations, is provided by cooperating State and Federal agencies under cooperative agreement. However, some of the information collected by the Service under the experimental population rules is provided by the public.

The collected information can be separated into three categories; general take or removal, depredation related take, and specimen collection. General take or removal information refers to human related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized) or take in the form of authorized harassment. Most contacts related to this type of information collection are in regard to sightings of experimental animals, or the inadvertent discovery of an injured or dead individual. Depredation related take refers to the reporting of take for management purposes, where livestock depredation has been documented or may include authorized harassment or lethal take of experimental animals in the act of attacking livestock. The information collection required by the rules for this type of take include the necessary follow-up reports after the Service has authorized harassment or lethal take of experimental animals in relation to confirmed instances of livestock depredation or in defense of human life. Specimen collection is for the purpose of documenting incidental or authorized scientific collection. Most of the information collection requirement for this take pertains primarily to the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual. Information collection is required for necessary follow-up reports when the Service has authorized take of experimental animals for specimen collection.

The standard information collection includes the name, address, and phone number of the reporting party, location and time of the reported incident, species of experimental population involved. Reporting parties include, but are not limited to, individuals or households, farms, businesses, and other non-profit organizations. The reporting of specimen collections, recovery, or even the reporting of dead individuals from experimental populations is important to the Service's efforts in monitoring these individuals and for other scientific purposes.

Because the number of reports generated annually by the general public (rather than cooperating agencies or separately permitted individuals) under these rules is extremely small (far less than one report per year, per rule) and to assure thorough documentation of results, the Service is estimating the number of expected reports to assume a maximum number per year based on allowance for increased population size and public awareness of experimental populations.

The following experimental populations described under Title 50 of the Code of Federal Regulations contain information collection requirements:

50 CFR section	Species (scientific name)	Type of reporting
17.84(c)	Red Wolf (Canis rufus)	Take in defense of human life, incidental take. Take related to livestock depredation.
17.84(g)	Black footed ferret (Mustela nigripes)	Incidental take, specimen collection/reporting.
17.84(h)	Whooping crane (Grus americana)	Specimen collection/reporting.
17.84(i)	Gray wolf (Canis lupus)	Take in defense of human life, incidental take. Take related to livestock depredation.
17.84(j)	California condors (Gymnogyps californianus)	Specimen collection/reporting, incidental take.
Proposed rules: 17.84(l) (62 FR 35762)	Grizzly bear (Ursus horribilis)	Take in defense of human life, incidental take. Take related to livestock depredation.

Title: Endangered and threatened Wildlife, 50 CFR 17.84, Experimental populations.

Description of respondents: private individuals and households, businesses, not-for-profit organizations, and farms.

Bureau form number: N/A.

Frequency of collection: On occasion.

BURDEN ESTIMATES FOR REPORTING REQUIREMENTS FOR EXPERIMENTAL POPULATIONS—ENDANGERED SPECIES

Type of report	Number of respondents	Average time required per report (minutes)	Total Annual burden (hours)
General take or removal[a]	16	15	4
Depredation related take[b]	12	15	3
Specimen collection[c]	16	15	4

[a] General take or removal includes human related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized) or take in the form of authorized harassment.
[b] Depredation related take is take for management purposes where livestock depredation has been documented and may include authorized harassment or authorized lethal take of experimental animals in the act of attacking livestock.
[c] Specimen collection, recovery, or reporting of dead individuals from experimental populations for documentation purposes or authorized scientific collection purposes.

The number of expected reports and thus total burden hours is being revised to reflect expected increases due to the growth of existing experimental populations, and to accommodate additional releases of black-footed ferrets (under 50 CFR 17.84(g)) and grizzly bears (under 50 CFR 17.84 (l)) when final rules are published in the near future.

Dated: May 14, 1998.

Richard Hannan,

Acting Assistant Director, Ecological Services.

[FR Doc. 98–16983 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–7313).

Specific public comments are requested as to:

1. whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:
3. the quality, utility, and clarity of the information to be collected; and
4. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Qualify of life in southwestern Colorado and northwestern New Mexico.

OMB Approval Number: New Collection.

Abstract: This study is one part of an integrated study of public knowledge of, preferences for, and responses to tourism and recreation development on the Colorado Plateau. The correlated information is designed to assist Federal, state, and local land and resource managers in their management decisions by providing information about the knowledge, needs, and desires of the affected publics surrounding public lands. Natural resource land managers and county government officials in seven counties, working as partners in this research, ran adjust management practices in response to citizens' knowledge and perceived values. The intended effect is to better inform managers and assist land managers in developing citizen involvement programs. This study is being conducted in partnership with the U.S. Forest Service, Bureau of Land Management, National Park Service, and as part of the Colorado Plateau Ecosystem Partnership Program (CPEPP). This study is part of a peer-reviewed research study plan of the Midcontinent Ecological Science Center in Fort Collins, Colorado and is part of the study plan of the CPEPP.

To build a picture of quality of life on the Colorado Plateau, we will measure the perceptions and preferences for the environment held by diverse residents at several locations in the region. Our objectives are to describe what resident populations perceive as the most salient elements of the region's natural landscapes, ecosystems, and human communities; what would have to be maintained, protected, or restored to attain conditions of community and ecosystem quality that residents desire. The first iteration of this research approach has been conducted by Utah State University for the Utah State Travel Council in partnership with the Canyon Country Partnership. The goal of that study was to help achieve the Travel Council's specific directive to relate tourism planning to local residents' quality of life. For this second iteration, surveys will be administered to a stratified random sample of citizens living in two counties in Colorado (Montezuma, an La Plata) and in San Juan County, New Mexico. The sampling design is being developed in partnership with the combined U.S. Fortes Service and Bureau of Land Management office in Durango, Colorado, and Fort Lewis College.

Respondents will be given 12 exposure, one-time use, 35mm cameras and will be asked to photograph areas of their community that either add to or detract from their quality of life. Respondents will receive complete sets of their photographs, accompanied by a short follow-up, mail survey instrument for the purposes of collecting demographic data and cross-checking the quality of life factors reflected in the photographs.

Bureau Form Number: None.

Frequency: One time.

Description of Respondents: Individuals or households.

Number of respondents: 420.

Burden hours: 1714 hours. (The burden hour estimate is based on a 70% return rate, with an average of 15 minutes to 4 hours to take the photographs and fill out the photo log plus an additional 10 minutes to complete the follow-up questionnaire plus any additional time to travel.) We estimate one-third of the 420 will not use any optional travel time to complete the survey; one-third will take 1 hour, and one-third will use up to 10 hours of optional travel time to complete the survey.

Dated: June 22, 1998.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 98–17047 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–18290–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0119

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of land Management (BLM) announces its intention to request renewal of existing approval to collect certain information for recreation visitors to areas of the public lands, and related waters, where special recreation permits are required. This information allows BLM to authorize requested use, determine appropriate fees, and will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

DATES: BLM must receive comments on the proposed information a collection by August 25, 1998, to assure its consideration of them.

ADDRESSES: If you wish to comment, you may submit your comments by one of several methods. You may mail comments to Bureau of land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "ATTN: 1004–0119" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact at us directly on (202) 452–5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m.to 4:15 p.m), Eastern Time, Monday through Friday, except holidays.

Finally, you may hand-deliver comments to BLM at 1620 L. Street, NW, Room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shirlean Beshir, Regulatory Affairs Group (WO–630), Bureau of land Management, Mail Stop 402LS, 1849 C Street, NW, Washington, DC 20240; telephone (202) 452–5033 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 8370–1. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.* We specifically request your comments on: (a) Whether the proposed collection of information is necessary for the pro per performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of collecting the information, including he validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the BLM to authorize requested use, determine appropriate fees, and will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Based on BLM's experience administering the activities descried above, the public reporting burden for the information collected is estimated to average about 27 minutes per response. The respondents are recreation visitors to areas of the public lands, an related waters, where special recreation permits are required. The frequency of response is on occasion. The number of responses per year is estimated to total 18,000. The estimated total annual burden on new respondents is bout 8,100 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: June 19, 1998.

Carole Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–16995 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–130–1820–00–241A]

Extension of Approved Information Collection, OMB Number 1004–0133

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of existing approval to collect certain information for individuals desiring to use the campground. This information allows BLM to determine if all users have paid the required fee, the umber of users, and their State of origin.

DATES: BLM must receive comments on the proposed information collection by August 25, 1998, to assure its consideration of them.

ADDRESSES: If you wish to comment, you may submit your comments by one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "ATTN: 1004–0133" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we

have received your Internet message, contact us directly on (202) 452–5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Eastern Time, Monday through Friday, except holidays.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shirlean Beshir, Regulatory Affairs Group (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW, Washington, DC 20240; telephone (202) 452–5033 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 1370–36. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.* We specifically request your comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents supply identifying information and data on the campsite number, data camping, number in party, ZIP Code, fee paid, vehicle license number, and primary purpose of visit. This information allows the BLM to determine if all users have paid the required fee, the number of users, and their State or origin.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average about 3 minutes per response. The respondents are individuals desiring to use the campground. The frequency of response is occasionally. The number of responses per year is estimated to total 108,000. The estimated total annual burden on new respondents is about 5,400 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: June 18, 1998.

Carole Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–16996 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1150–04: GP8–0196]

Closure of Public Lands; Oregon

AGENCY: Prineville District, Deschutes Resource Area, Interior.

SUMMARY: Notice is hereby given that, effective immediately, the area described below is closed to motor vehicle use.

EFFECTIVE DATE: June 16, 1998.

LEGAL DESCRIPTION: This closure applies to the area located in Township 15 South, Range 13 East, Section 15, Northeast quarter; Section 15, Northeast quarter of the Southeast quarter; Section 15, Lots 3 and 7. The area comprises 254.80 acres. The property is located south of antler Ave. and east of SE 9th Street.

The purpose of this closure is to deter the illegal dumping of trash and to minimize the public health risks associated with this activity. The extensive problem of illegal dumping in this area was recognized by the State Department of Environmental Quality as a hazard to public health. The Bureau of Land Management and Deschutes County have recently completed a major effort, at considerable expense, to remove trash and debris that has accumulated at the site. Deschutes County proposes to fence the perimeter of the property to curtail the continued dumping on the property. The tract is expected to be conveyed to Deschutes County by land exchange in 1998. The authority for this closure is 43 CFR 8364.1: Closure and Restriction Orders.

FOR FURTHER INFORMATION CONTACT: Philip Paterno, Realty Specialist, BLM Prineville District, PO Box 550, Prineville, Oregon 97754, telephone 541–416–6724.

Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: June 16, 1998.

Shaaron Netherton,

Acting District Manager.

[FR Doc. 98–17029 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 28631]

Notice of Availability of Final Environmental Impact Statement and Record of Decision for the Proposed Leach Facility Expansion Project, Cyprus Miami Mining Corporation, Miami, Arizona

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Availability, Final Environmental Impact Statement (FEIS) and Record of Decision (ROD).

SUMMARY: The Bureau of Land Management (BLM) Arizona State Office and Phoenix Field Offices (PFO), jointly with the Tonto National Forest, have prepared an Environmental Impact Statement (EIS) in response to a Mine Plan of Operations (MPO) filed by Cyprus Miami Mining Corporation (CMMC). The EIS was prepared in compliance with the Federal Land Policy and Management Act of 1976, as amended, 43 CFR 3809, and Section 102(2)(c) of the National Environmental Policy Act of 1969. The proposed action involves development of three leach pad facilities, one waste rock disposal site and associated facilities including access and utility corridors. This action will affect 350 acres administered by the BLM, PFO along with 420 acres of Tonto National Forest. Based on 57 comments received on the Draft EIS issued in April 1997, the agencies have prepared an abbreviated Final EIS. The Final EIS is to be read in conjunction with the Draft EIS. The agencies selected Alternative A—Modified Development Sequence to the Proposed Action—as the preferred alternative. The Final EIS is now available to the public as is the Record of Decision (ROD).

The ROD is issued as a separate document prepared and signed jointly by the BLM and Tonto National Forest. Filing the FEIS with EPA completes the environmental documentation process. Publication of the ROD through this NOA constitutes public notice of the decision. The BLM decision may be appealed to the Interior Board of Land

Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 (see information below).

FOR FURTHER INFORMATION CONTACT: Copies of the Final EIS and ROD may be requested from: Shela McFarlin, Project Manager, BLM, Arizona State Office, 222 North Central, Phoenix, AZ 85004, or telephone (602) 417–9568. For information on the Tonto National Forest lands decision or appeal process, contact Paul Stewart, Tonto National Forest, 2324 East McDowell Road, Phoenix, AZ 85006 or telephone (602) 225–5200. Copies of the Final EIS are available for public use/review at the above offices and these additional locations: BLM, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027; Globe Ranger District, Six Shooter Canyon, Globe, AZ 85501; Cyprus Miami Mining Corporation Land Department 4342 East U.S. Highway 60/70, Claypool, AZ 85532; Mesa Public Library 64 East 1st Street, Mesa, AZ 85201; Globe Public Library, 339 South Broad, Globe, AZ 85501; Miami Memorial Library, 1052 Adonis Avenue, Miami, AZ 85539; and Arizona State University, Hayden Library, Government Documents, Tempe, AZ 85287–1006.

DATES AND APPEAL INFORMATION: If you choose to appeal BLM's decision, your notice of appeal must be filed in this office (BLM, Arizona State Office, 222 North Central Avenue, Phoenix, AZ 85004) within 30 days from this NOA. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition for a stay of the effectiveness of this decision, pursuant to regulation 43 CFR 4.21, during the time that your appeal is being reviewed by the IBLA, the petition for stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office.

The Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and,

(4) Whether the public interest favors granting the stay.

Dated: June 18, 1998.

Gary Bauer,

Associate State Director, Arizona.

[FR Doc. 98–16734 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Thursday and Friday, July 16–17, at the Wattenberg Community Center, Walden, Colorado.

DATES: Thursday, July 16, and Friday, July 17, 1998.

ADDRESSES: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3037.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on Thursday, July 16 and Thursday July 17, 1998, at the Wattenberg Community Center in Walden, Colorado. The Wattenberg Community Center is located on State Highway 125 approximately 1 mile northeast of Walden near the airport.

The two-day meeting will begin at 1:00 p.m. on Thursday, July 16 at the Wattenberg Center. On July 17, a morning meeting at the Wattenberg Center will begin at 7:30 a.m. and will be followed by a field trip to North Sand Hills. The field trip should conclude by 1:30 p.m. on Friday at which time the Council will adjourn. Agenda items include discussions on the roadless area review, proposed statewide recreation guidelines, and subcommittee reports.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: June 12, 1998.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 98–16998 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1040–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on July 13, 1998 in Salida, Colorado.

The meeting is scheduled to begin at 9 a.m. at the Chaffee County Fairgrounds, 10165 County Road 120, Salida, Colorado. RAC members will tour the Badger Creek Ecosystem Management Area. As part of the tour they will also review and comment on the latest Draft of the Colorado Recreation Guidelines. They will return to the Fairgrounds by 4 p.m. to adjourn.

All Resource Advisory Council meetings are open to the public, however anyone wanting to go on the tour may need to provide their own transportation.

Interested persons may make oral statements to the Council at 9:15 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Monday, July 13, 1998 from 9 a.m. to 4 p.m.

ADDRESS: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269-8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public

inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 98–17124 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–08–1310–00–P; MTM 82796]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease MTM 82796, Richland County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16–⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 12, 1998.

Karen L. Johnson,

Chief, Fluids Adjudication Unit.

[FR Doc. 98–16991 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1310–01; OKNM 84747]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of Oil and Gas Lease OKNM 84747, for lands in Roger Mills County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from April 7, 1998, the date of termination. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective April 7, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Angela Trujillo, BLM, New Mexico State Office, (505) 438–7592.

Dated: June 17, 1998.

Angela Trujillo,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 98–17025 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(MT–930–1430–01; MTM 40641)

Public Land Order No. 7346; Partial Revocation of Executive Order Dated July 9, 1910; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order insofar as it affects approximately 310 acres of National Forest System land withdrawn for the Bureau of Land Management's Coal Reserve Montana No. 1. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of the land through a Forest Service exchange. The land has been open to metalliferous mining and mineral leasing under the withdrawal, but is temporarily closed to surface entry and mining, by the Forest Service exchange proposal.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order dated July 9, 1910, which withdrew public lands for the Bureau of Land Management's Coal Reserve Montana No. 1, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 6 S., R. 2 E.,
Sec. 26, W½E½NE¼NE¼, W½NE¼NE¼, NW¼NE¼, N½SW¼NE¼, N½S½SW¼NE¼, W½NE¼SE¼NE¼, NW¼SE¼NE¼, NW¼SW¼SE¼NE¼, N½NW¼, N½S½NW¼, S½SW¼NW¼, N½S½SE¼NW¼, SW¼SW¼SE¼NW¼, NE¼NE¼NW¼SW¼, W½E½NW¼SW¼, W½NW¼SW¼, NW¼NE¼SW¼SW¼, and N½NW¼SW¼SW¼.

The area described contains approximately 310 acres in Madison County.

2. At 9 a.m. on July 13, 1998, the above described land will be relieved of the segregative effects of Coal Reserve Montana No. 1 and will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: June 18, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–17087 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–016–1430–00, COC61284]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification and Application for Recreation Site Lease, COC61284; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public land in Moffat County, Colorado have been examined and found suitable for classification for lease only under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The purpose of the classification and application for R&PP lease is to allow recreational development on the public land by the Colorado Division of Parks and Outdoor Recreation (CDPOR) for use as

recreation sites primarily for river access for boaters.

Sixth Principal Meridian

T.5N., R. 93W., sec. 6, a metes and bounds description located in the northeast portion of Lot 8, containing approximately 3 acres; and

T.6N., R. 97W., sec. 7, a metes and bounds description located in the southeast portion of Lot 21 and the northeast portion of lot 22.

Containing approximately 2 acres.

Maps depicting the actual locations of the sites are available at this office. Leasing the land for recreation purposes is consistent with current BLM land use plans and would be in the public interest. Although the lands are withdraw for water power resources, leasing the lands for recreation purposes will not interfere with the intent of the withdrawals or future water projects.

If issued, the lease would be subject to valid existing rights and the following conditions:

1. The lease would terminate upon notice that construction of a reservoir or hydroelectric development will commence.

2. The lessee will remove, at their expense, all structures or improvements to eliminate interference with the reservoir or hydroelectric development.

FOR FURTHER INFORMATION CONTACT: Craig Haynes, Little Snake Resource Area Office, 455 Emerson Street, Craig, Colorado, 81625–1129, (970) 826–5000.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease only under the R&PP Act. For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed lease or classification to the Little Snake Resource Area Manager, 455 Emerson Street, Craig, CO 81625–1129.

Classificaiton Comments: Interested parties may submit comments involving the suitability of the land for recreational purposes for river access sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or nay other factor not directly related to the suitability of the land for the proposed use. Any adverse comment will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 17, 1998.

Robert W. Schneider,

Associate District Manager,

[FR Doc. 98–16997 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–076–1492–00–241A]

Notice of Intent To Amend the Grand Junction Resource Management Plan

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to amend the Grand Junction Resource Area Resource Management Plan, 1987.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, is proposing to amend the Grand Junction Resource Management Plan, approved in January 1987. The amendment will consider a mineral withdrawal in the Unaweep Seep/West Creek area. The effect of this change will be analyzed in an environmental assessment (EA). The amendment is being developed in concert with a revision of the Unaweep Seep Natural Area Management Plan.

FOR FURTHER INFORMATION CONTACT: Bruce Fowler, Grand Junction Resource Area, (970) 244–3036.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 1440 acres of public land in Mesa County located about 6 miles northeast of Gateway, Colorado. The lands include the Unaweep Seep Research Natural Area and portions of West Creek and the North Fork of West Creek.

Mark Morse,

District Manager.

[FR Doc. 98–16992 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–08–1420–00]

Arizona; Filing of Plats of Survey

June 17, 1998.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat, in four sheets, representing the dependent resurvey of a portion of the west boundary and the subdivisional lines; and the subdivision of Sections 5, 8, and 18, and metes-and-bounds surveys in Sections 3, 5, 7, 8, 9, 17, and 18, Township 20 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted April 13, 1998, and was officially filed April 24, 1998.

This plat was prepared at the request of the Navajo-Hopi Relocation Commission.

A supplemental plat showing amended lotting necessary to correct lotting shown on sheets 1 and 3, in section 7, Township 20 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted May 6, 1998, and was officially filed May 14, 1998.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing the dependent resurvey of a portion of the First Standard Parallel South through Range 1 East, and a portion of the subdivisional lines, and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 5 South, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 11, 1998, and was officially filed May 22, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 7, Township 6 South, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 11, 1998, and was officially filed May 22, 1998.

This plat was prepared at the request of the Bureau of Land Management, hoenix Field Office.

A plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines; and the subdivision of section 34, Township 6 South, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted April 8, 1998, and was officially filed April 17, 1998.

This plat was prepared at the request of the Bureau of Land Management, Safford Field Office.

A plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines; and the subdivision of sections 3, 4, and 9, Township 24 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted March 13, 1998, and was officially filed March 26, 1998.

This plat was prepared at the request of the Bureau of Land Management, Safford Field Office.

A plat, in 4 sheets, representing the dependent resurvey of a portion of the Principal Meridian through Township 5 South, and a portion of the subdivisional lines; and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 5 South, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted March 31, 1998, and was officially filed April 10, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in 2 sheets, representing the dependent resurvey of a portion of the Principal Meridian through Township 6 South, and a portion of the south boundary; and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 6 South, Range 1 West, Gila and Salt River Meridian, Arizona, was acceptedMay 11, 1998, and was officially filed May 22, 1998.

This plat was prepared at the request of the Bureau of Land Management, hoenix Field Office.

A plat representing the dependent resurvey of a portion of the Principal Meridian through Township 7 South, and a portion of the subdivisional lines; and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 7 South, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted May 11, 1998, and was officially filed May 22, 1998.

This plat was prepared as the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in 2 sheets, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 19 and 20, Township 5 South, Range 2 West, Gila and Salt River Meridian, Arizona, was accepted March 30, 1998, and was officially filed April 10, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in 2 sheets, representing the dependent resurvey of a portion of the First Standard Parallel South through Range 2 West, and a portion of the west boundary; the survey of a portion of the east boundary, and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 6 South, Range 2 West, Gila and Salt River Meridian, Arizona, was accepted May 11, 1998, and was officially filed May 22, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat representing the dependent resurvey of a portion of the east boundary, and the metes-and-bounds survey of the South Maricopa Mountains Wilderness Area Boundary, Township 5 South, Range 3 West, Gila and Salt River Meridian, Arizona, was accepted March 30, 1998, and was officially filed April 10, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A supplemental plat showing amended tracts in sections 25, 26, and 31, necessary to correct the duplication of tract numbers in Township 8 South, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted June 1, 1998, and was officially filed June 5, 1998.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat showing an amended tract in section 6 necessary to correct the duplication of tract numbers in Township 8 South, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted June 1, 1998, and was officially filed June 5, 1998.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona

[FR Doc. 98–17009 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

June 17, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 am., June 17, 1998. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of portions of the south boundary T. 10 S., R. 76 W., (Second Standard Parallel South), a portion of the subdivisional lines, and the subdivision of certain sections, T. 10 S., R. 76 W., Sixth Principal Meridian, Colorado, Group 1150, was accepted May 12, 1998.

The plat representing the dependent resurvey of portions of the east boundary T. 11 S., R. 76 W., a portion of the subdivisional lines, and the subdivision of certain sections, T. 11 S., R. 76 W., Sixth Principal Meridian, Colorado, Group 1150, was accepted May 12, 1998.

These surveys were requested by the State of Colorado for administrative purposes.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds surveys of Tracts 37 and 38 in sections 21 and 22, T. 42 N., R. 4 E., New Mexico Principal Meridian, Colorado, Group 1178, was accepted June 9, 1998.

The plat (in two sheets) representing a dependent resurvey of portions of the subdivisional lines and certain mineral claims, the metes-and-bounds survey of public land tract 52 in section 27 and public land tract 53 in section 22, and the entire survey record of a metes-and-bounds survey in the northeast quarter of section 28, Township 42 North, Range 9 West, New Mexico Principal Meridian, Colorado, Group 1181, was accepted May 26, 1998.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the entire survey record of the dependent resurvey of the 38th mile of the boundary between the states of Colorado and Wyoming through T. 12 N., R. 66 W., Sixth Principal Meridian, Colorado, Group 1194, was accepted May 18, 1998.

The plat representing the entire survey record of the dependent resurvey of the 45th mile of the boundary between the states of Colorado and Wyoming through T. 12 N., R. 67 W., Sixth Principal Meridian, Colorado, Group 1194, was accepted May 18, 1998.

These surveys were requested by the Colorado Department of Transportation for administrative purposes.

The plat representing the dependent resurvey of portions of the First Correction Line North, (south boundary), the line between sections 35 and 36, and the restoration of a portion of the metes-and-bounds survey of School Section 36 in Township 5 North, Range 92 West, Sixth Principal Meridian, Colorado, Group 1058, was accepted June 10, 1998.

The plat (in six sheets) representing the dependent resurvey of portions of the First Standard Parallel North, east boundary, west boundary, subdivisional lines and certain tract lines, and the subdivision of certain sections in Township 5 North, Range 91 West, Sixth Principal Meridian, Colorado, Group 1058, was accepted June 10, 1998.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines in sections 5 and 8 and a portion of Tract 39, Township 2 South, Range 82 West, Sixth Principal Meridian, Colorado, Group 1169, was accepted May 28, 1998.

The plat representing the entire survey record of the dependent resurvey of portions of the boundaries of M.S. 2468, Kendall Mountain Placer, and M.S. 15314, The Lackawanna Placer, and the survey of Tracts 39 and 40, Township 41 North, Range 7 West, New Mexico Principal Meridian, Colorado, Group 1164, was accepted May 14, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections in Township 10 North, Range 91 West, Sixth Principal Meridian, Colorado, Group 1143, was accepted May 13, 1998.

The supplemental plat creating new lots Z and AA from original lot C by projecting line 3–4 of Mineral Survey No. 17952, Silverton Cemetery, northeasterly to an intersection with the north and south center line of Tract 38, T. 41 N., R. 7 W., New Mexico Principal Meridian, Colorado, was accepted May 14, 1998.

These plats were requested by BLM for administrative purposes.

Carl F. Nagy,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 98–16994 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–990–0777–68; GP8–0221; OR–54087]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 80 acres of public land to protect the vegetative material to be planted at the Desert Springs Seed Orchard, the proposed investment of federal funds, and related facilities at the site. Jurisdiction over this parcel will be transferred from the Bureau of Land Management to the U.S. Forest Service. This notice closes the land for up to 2 years from surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by September 24, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

SUPPLEMENTARY INFORMATION: On December 12, 1997, the U.S. Forest Service filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

T. 33 S., R. 18 E.,
Sec. 11, E½SE¼.

The area described contains 80 acres in Lake County.

Administrative jurisdiction over the land will be transferred from the Department of Interior, Bureau of Land Management, to the Department of Agriculture, Forest Service, upon approval of the withdrawal.

The purpose of the proposed withdrawal is to protect the vegetative material to be planted in the orchard, the improvements and facilities, and the future investments of federal funds for the Desert Springs Seed Orchard.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: June 11, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–17040 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Approval of Record of Decision; Final Environmental Impact Statement for Ala Kahakai National Trail Study, Hawaii County, Hawaii

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the regulations promulgated by the Council of Environmental Quality at 40 CFR Part 1505.2, the Department of Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the Ala Kahakai

National Trail Study, Hawaii (FEIS/NTS).

The National Park Service recommends a continuous historic trail management strategy for this trail along and near the coast of Hawaii. This strategy (described as the Proposed Action, Alternative B) and three other alternatives were detailed and analyzed in the Final Environmental Impact Statement issued in April, 1998. The findings in the FEIS/NTS include: (1) the Ala Kahakai meets all three criteria for a national historic trail (as outlined in the National Trails System Act); (2) establishing a continuous trail is physically feasible; (3) local communities, landowners, and native Hawaiians must be involved in planning and implementing the trail, should it be designated by Congress.

The National Park System Advisory Committee has corroborated the national historical significance of the Ala Kahakai. The FEIS/NTS and Record of Decision (ROD) will be transmitted to Congress by the Secretary of the Interior. Copies of the ROD may be obtained from the Superintendent, Pacific Great Basin Support Office, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, (415) 427–1438.

Dated: June 15, 1998.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–17086 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Servcie

Cuyahoga Valley National Recreation Area

AGENCY: National Park Service, Interior Department.

ACTION: Availability of Plan of Operations for Old Trail School Well #1.

FOR FURTHER INFORMATION CONTACT: Superintendent John P. Debo, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141 or call (440) 546–5903.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Bass Energy Company, Incorporated, a Plan of Operation to drill one oil/gas well in Cuyahoga Valley National Recreation Area, located within Summit County, Ohio.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. The documents can be viewed during normal business hours at the Office of the Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio. Copies can be requested from the Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141.

Dated: June 12, 1998.

John P. Debo,

Superintendent, Cuyahoga Valley National Recreation Area.

[FR Doc. 98–16496 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan; National Park of American Samoa; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement/General Management Plan, National Park of American Samoa.

The National Park Service will implement the selected plan (identified as the proposed action in the Final Environmental Impact Statement for the General Management Plan issued in February 1998) as soon as practical. This option and three other alternatives were detailed and analyzed in the Final and Draft Environmental Impact Statements (latter issued in December, 1996).

Copies of the approved Record of Decision may be obtained either from the Superintendent, National Park of American Samoa, Pago Pago, American Samoa 96799, or by phone request at (684) 633–7083; or from the Superintendent, Pacific Islands Support Office, 300 Ala Moana Boulevard, Box 50165, Honolulu, Hawaii 96850, or by phone request at (808) 541–2693.

Dated: June 15, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–17085 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft General Management Plan/ Environmental Impact Statement for Sitka National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Draft General Management Plan/ Environmental Impact Statement for Sitka National Historical Park.

SUMMARY: The National Park Service announces the availability of a draft General Management Plan/ Environmental Impact Statement (GMP/EIS) for Sitka National Historical Park, in the City and Borough of Sitka, Alaska. The document describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management of the park. A no action alternative also is evaluated. This notice announces that public meetings will be held to solicit comments on the draft GMP/EIS.

DATES: There will be a 60-day public review period for comments on this document. Comments on the draft GMP/EIS must be received no later than August 24, 1998. Public meetings will be held in Sitka, Alaska, on July 20, 1998, at 2:00 p.m. and 7:00 p.m. at the Shee Atika Hotel.

ADDRESSES: Comments on the draft GMP/EIS should be submitted to the Superintendent, Sitka National Historical Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835. A limited number of copies of the draft GMP/EIS are available by request from the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ron Johnson, Job Captain, National Park Service, Denver Service Center. Telephone: (303) 969–2342 FAX: (303) 987–6679.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service has prepared a GMP/EIS with proposed guidance for management of Sitka National Historical Park for the next 15–20 years. This document was developed in consultation with The Sitka Tribe of Alaska and the Southeast Alaska Indian Cultural Center.

The draft GMP/EIS describes and analyzes the environmental impacts of a proposed action, two other action alternatives, and a no action alternative. The proposed action, alternative 1, would balance resource management and visitor use. It would improve visitor

access and safety and the accuracy of information available to potential park and city visitors. It also would better protect cultural resources and enhance existing park partnerships. Alternative 2, the no-action alternative, would continue current management direction. Benefits would continue for visitors in information and interpretation, but crowding in the visitor center unit would result in adverse visitor safety conditions. In addition, the uses of adjacent lands would continue to have adverse effects on visual resources and land use. Alternative 3 would emphasize resource preservation. This alternative would increase protection of cultural and natural resources, moderately benefit visual resources and the visitor experience, and improve park administration and operation. Alternative 4 would accommodate more visitors during peak visitation times. It would lead to some improvement in visitor access and circulation in and near the park, improvements in opportunities for information about Sitka attractions, and a better visitor experience.

Dated: June 18, 1998.

Paul R. Anderson,

Regional Director, Alaska.

[FR Doc. 98–17084 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Salton Sea Project, Riverside and Imperial Counties, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) for the improvement of the Salton Sea, California and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) and the Salton Sea Authority (Authority), State of California, in accordance with the California Environmental Quality Act, will be preparing an EIR/EIS document to assess the impacts of alternative solutions for restoring the Salton Sea (Sea) located in Riverside and Imperial Counties, California.

DATES: Written comments on the scoping issues will be accepted until September 30, 1998. Public scoping meetings will be held at the following locations:

July 15, 1998, 5 PM—8 PM, Veterans of Foreign Wars Hall, West Shores Post 3251, 50 Desert Shores Drive, Desert Shores, California.

July 16, 1998, 5 PM—8 PM, Imperial Irrigation District Board Room, 81–600 Avenue 58, La Quinta, California.

July 17, 1998, 10 AM—1 PM, El Centro Board of Supervisors Chambers, 940 Main Street, Suite 212, El Centro, California.

ADDRESSES: Comments should be sent to Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Boulder City, NV, 89006–1470, ATTN: Salton Sea Program Manager or to the Salton Sea Authority, Tom Kirk, Executive Director, 46–209 Oasis Street, 2nd Floor, Indio, CA 92201.

FOR FURTHER INFORMATION CONTACT: Mr. William Steele, Salton Sea Program Manager (Reclamation), at (702) 293–8129; or Mr. Tom Kirk, Salton Sea Authority Executive Director, at (760) 863–7942.

SUPPLEMENTARY INFORMATION: Pub. L. 102–575, 1992, directs the Secretary of the Interior to "conduct a research project for the development of a method or combination of methods to reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect human recreational values * * * in the area of the Salton Sea * * *" In addition to this authority, Reclamation and the Authority have entered into an agreement, Salton Sea Planning and Research Program, to jointly study problems associated with the Sea.

The Authority is a public agency formed under the provisions of Articles I and II, Chapter 5, Division 7, Title 1 of the Government Code of the State of California for the purpose of "directing and coordinating actions relating to improvement of water quality and stabilization of water elevation and to enhance recreational and economic development potential of the Sea and other beneficial uses, recognizing the importance of the Sea for the continuation of the dynamic agricultural economy of Imperial and Riverside Counties."

The Sea is a hypersaline lake located in a closed basin of the southern California desert; it is the largest body of water within California. The Sea was initially formed in 1905–1907 by flooding on the Colorado River which breached an irrigation control structure allowing virtually the full flow of river water into the Salton Basin. The Sea's current existence is primarily due to agricultural drainage from the Imperial, Coachella, and Mexicali Valleys; smaller volumes of municipal effluent and storm water runoff also flow to the Sea.

The Sea is home to a highly eutrophic ecosystem and a productive sport fishery. The Sea, and wetlands along its shoreline, are a critical part of the Pacific flyway providing seasonal and migratory habitat to millions of birds of varying species. Several endangered species, including the desert pupfish, Yuma clapper rail, brown pelican, peregrine falcon, and bald eagle, inhabit the Sea and/or adjacent habitats.

The Sea ecosystem is under stress. Increasing salinity, currently about 43 parts per thousand, is threatening the reproductive ability of some parts of the biota. Other potential issues include high nutrient loading, heavy metals, DDT residues, and discharges of agricultural chemicals to irrigation drains leading to the Sea. At the scoping meetings, participants will be requested to identify other potentially significant issues as well as potential alternative solutions.

The purpose of the project is to identify a plan that improves the human environment and ecological conditions of the Sea. Based on past studies, various alternatives to control salinity in the Sea have been investigated. These alternatives include diked impoundments, pump-out, a combination of impoundment and pump-out alternatives, and salt removal from inflow to the Sea. Other options may surface during the scoping process. Opportunities to address other environmental issues facing the Sea, including issues related to wildlife resources, will be investigated and considered for implementation as we increase our understanding of the Sea's ecology.

The objective of this effort is to evaluate alternatives (1) capable of maintaining the Sea as a reservoir of agricultural drainage, (2) provide a safe, productive environment for resident and migratory birds and endangered species, (3) restore recreational uses, (4) maintain a viable sport fishery, and (5) identify opportunities for economic development.

The analysis will address the current issues of (1) accumulation and concentration of salts, nutrients, and organic compounds and other constituents, (2) water elevation stabilization, (3) reduced recreational use of the Sea, and (4) reduced ecological values. The environmental document will also address any Indian Trust Assets (ITA) of the Torres-Martinez Desert Cahuilla Indians and assets of any other Tribe(s).

Environmental and engineering baseline data have been collected over

the past several years and the project is now ready to move forward under the CEQA/NEPA process. The Secretary of the Interior has identified this as a high priority project and action is being expedited due to the worsening conditions at the Sea. Over 200,000 birds have died at the Sea over the past six years as a result of the current conditions. Reclamation and the Authority will be working closely with interested Congressional members and other stakeholders to develop possible solutions.

A Research Management Committee (Committee) has been established of high-level managers from the U.S. Department of the Interior, Authority, State of California, and the Torres Martinez Desert Cahuilla Indians. This Committee makes funding and other relevant decisions regarding science to be funded to support the CEQA/NEPA process. A Science Subcommittee (Subcommittee) has been established to serve as an advisory committee to provide scientific evaluations and recommendations to the Committee. The Subcommittee functions as a coordinated body to determine information gaps, identify science/information needs, and provide the Committee with recommendations for funding priorities regarding the science activities.

The draft EIR/EIS is expected to be completed by the end of December 1999.

Dated: June 16, 1998.

LeGrand Neilson,

Acting Regional Director, Lower Colorado Region.

[FR Doc. 98–17022 Filed 6–25–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–98–012]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 14, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–768 (Final) (Fresh Atlantic Salmon from Chile)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 22, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17258 Filed 6–24–98; 12:57 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–98–011]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 10, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Kazakstan, Russia, and Ukraine)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 22, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17259 Filed 6–24–98; 12:57 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. 9601, et seq.

Notice is hereby given that on, June 8, 1998 a proposed Consent Decree ("Decree") in *United States* v. *Asarco Incorporated, et al.*, Civil Action No. 2:98CVO415B was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, et seq., to recover the past and future response costs incurred at or in connection with the Murray Smelter Site in the City of Murray, Utah.

The proposed Consent Decree resolves claims against: Asarco Incorporated; Murray City Corporation; SALS Investors Partnership; Utah Transit Authority; Monroc Inc.; TB Warehouse L.L.C.; Timothy Buehner; Paul Buehner; Alma Utah Company, Otto Buehner and Company; Buehner Salt Lake Properties,. L.C.; Buehner Corp.; Hi–Ute Investment Company; Murray Land Trust L.C.; W.R. White Company; Ash Grove Cement; and Paragon Properties. This proposed Consent Decree recovers response costs of $109,547.37, and requires Asarco, and the other settling defendants, to implement EPA's selected remedy for the Site. The Decree also settles potential claims against the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Asarco Incorporated, et al.*, Civil Action No. 2: 98CVO415B, and D.J. Ref. #90–11–3–1729.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S.; EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, Co. 80202, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $32.00 for the Decree, without attachments (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 98–17011 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on May 29, 1998, a proposed consent decree in *United States* v. *Commercial Metals, Company, et al.*, Civil Action No. 3:98–CV–1265X, was lodged with the United States District Court for the Northern District of Texas, Dallas Division. The proposed Consent Decree resolves the liability of the Settling Defendants under Sections 106 and 107 of CERCLA at the RSR Superfund Site ("Site") located in Dallas, Texas. Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a remedial action at the Site in accordance with the Operable Unit Number 4 Record of Decision ("ROD") for the site, and to pay EPA oversight costs. The ROD estimate of performing the remedy is $11.5 million.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commercial Metals Company, et al.*, DOJ #90–11–3–1613.

The proposed consent decree may be examined at the offices of the United States Attorney for the Northern District of Texas, Dallas Division, 1100 Commerce St., 3rd Floor, Dallas, Texas, 75242–16996, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Mike Barra, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $18.50 (25 cents per page reproduction charge for decree, without attachments) payable to "Consent Decree Library". When requesting copies, please refer to *United States* v. *Commercial Metals Company, et al.*, #90–11–3–1613.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17013 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is herby given that on June 5, 1998, a proposed Consent Decree in *United States* v. *Erie Coatings & Chemicals, Inc. et al.*, Civil No. 95–75842, was lodged with the United States District court for the Eastern District of Michigan. This Consent Decree resolves claims against two parties, Chem-Met Services, Inc ("Chem-Met") and Cousins Waste Control Corporation ("Cousins"), under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA") relating to the Erie Coatings & Chemicals, Inc. Superfund Site ("Site") in Erie, Michigan.

The Consent Decree requires Chem-Met to reimburse the Superfund in the amount of $25,000 and it requires Cousins to reimburse the Superfund in the amount of $40,000 for the United States' past costs incurred in conducting a removal action at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer in *United States* v *Erie Coatings & Chemicals, Inc. et al.*, D. J. Ref. 90–11–2–1070.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, and at the Consent Decree Library, 120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17012 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Lewis Frame and Ruth Frame*, Civil Action No. 98–CV–2844, was lodged on June 3, 1998, with the United States District Court for the Eastern District of Pennsylvania. A complaint was filed simultaneously with the lodging of the consent decree.

The consent decree pertains to the A.I.W. Frank Superfund Site ("Site"), located in Exton, Chester County, Pennsylvania. It resolves the claims of the plaintiff, the United States of America, filed against defendants, Lewis Frame and Ruth Frame, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* arising out of the defendants' past ownership of a portion of the Site. The consent decree requires the defendants to pay $1.1 million in past response costs, complete remedial work estimated to cost $1 million and provide EPA with access to the Site. The consent decree also includes covenants not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. § 9601 *et seq.*, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and provides the defendants with contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lewis Frame and Ruth Frame*, Civil Action No. 98–CV–2844, DOJ Ref. *#90–11–3–1604*. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the body of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $69.75 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17014 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *General Diesel, Inc.*, (D.S.C.) Civil Action No. 2 98–1595 23 was lodged on June 2, 1998, with the United States District Court for the District of South Carolina.

In this action the United States sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 32 U.S.C. §§ 9606(a) and 9607, with respect to the Koppers Charleston Superfund Site Site") in Charleston, Charleston County, South Carolina.

Under a proposed Consent Decree, General Diesel, Inc., has agreed to pay the sum of $500 in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for existing contamination at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Diesel, Inc.* (D.S.C.) and DOJ #90–11–2–1012A.

The proposed consent decree may be examined at the office of the United States Attorney, 1st Union Bldg, 1441 Main Street, Suite 500, Columbia, South Carolina 29201; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW. 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17015 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Membership of the 1998 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1998 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–6788.

Department of Justice, 1998 Senior Executive Service Performance Review Board Members

Antitrust Division

Gail Kursh, Chief, Professions and Intellectual Property Section
Anthony V. Nanni, Chief, Litigation I Section
Catherine G. O'Sullivan, Chief, Appellate Section
George A. Rozanski, Chief, Economic Regulatory Section

Civil Division

Sharon Y. Eubanks, Deputy Director, Commercial Litigation Branch
Mark B. Stern, Appellate Litigation Counsel, Appellate Staff

Civil Rights Division

Irva D. Greene, Executive Officer
John L. Wodatch, Chief, Disability Rights Section

Criminal Division

Terry R. Lord, Chief, Child Exploitation and Obscenity Section
Julie E. Samuels, Chief, Office of Policy and Management Analysis

Environment and Natural Resources Division

James J. Clear, Chief, Indian Resources Section
Phyllis A. Gardner, Executive Officer
Pauline H. Milius, Chief, Policy, Legislation and Special Litigation Section
Steven P. Solow, Chief, Environmental Crimes Section

Justice Management Division

Richard B. Chapman, Director, Telecommunications Service Staff
Robert F. Diegelman, Director, Management and Planning Staff
James W. Johnston, Director, Procurement Services

Tax Division

Milan D. Karlan, Chief, Office of Review
Robert E. Lindsay, Chief, Criminal Appeals and Tax Enforcement Policy Section
Mildred L. Seidman, Chief, Court Claims Section
Joseph E. Young, Executive Officer

Bureau of Prisons

Wallace H. Cheney, General Counsel
Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs Division
Robert J. Newport, Senior Deputy Assistant Director for Administration
Steven B. Schwalf, Assistant Director, Industries, Education and Vocational Training Division
Salvador Seanez, Jr., Assistant Director, Community Corrections and Detention Division
Ronald G. Thompson, Assistant Director, Human Resource Management Division

Immigration and Naturalization Service

John P. Chase, Director of Internal Audit
Joan C. Higgins, Assistant Commissioner, Detention and Deportation

Winona H. Varnon, Director of Security
Jeffrey M. Weber, Assistant Commissioner, Budget
Jeffrey L. Weiss, Director, Asylum Division
David A. Yentzer, Assistant Commissioner, Administration

United States Marshals Service

Deborah C. Westbrook, General Counsel

Office of Justice Programs

Lawrence A. Greenfeld, Supervisory Statistician
Richard H. Ward, III, Deputy Director for Operations

Executive Office for United States Attorneys

Frank M. Kalder, Deputy Director for Resource Management and Planning Staff

Executive Office for United States Trustees

Jeffrey M. Miller, Associate Director

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

[FR Doc. 98–17010 Filed 6–25–98; 8:45 am]

BILLING CODE 4410–AR–M

PAROLE COMMISSION

Sunshine Act Meeting

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 1:30 p.m., Tuesday, June 30, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Consideration of Proposed Interim Regulations and Guidelines for District of Columbia prisoners to take effect August 5, 1998.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: June 23, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–17208 Filed 6–24–98; 9:58 am]

BILLING CODE 4410–31–M

PAROLE COMMISSION

Sunshine Act Meeting

Pursuant to The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, June 30, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeal to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operation, United States Parole Commission, (301) 492–5962.

Dated: June 23, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–17020 Filed 6–24–98; 9:58 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume cause procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI980001 (Feb. 13, 1998

Volume II

Pennsylvania
PA980001 (Feb. 13, 1998)
PA980004 (Feb. 13, 1998)
PA980006 (Feb. 13, 1998)
PA980014 (Feb. 13, 1998)
PA980039 (Feb. 13, 1998)

Volume III

Mississippi
MS980055 (Feb. 13, 1998)
MS980058 (Feb. 13, 1998)

Volume IV

Minnesota
MN980005 (Feb. 13, 1998)
MN980007 (Feb. 13, 1998)
MN980008 (Feb. 13, 1998)
MN980015 (Feb. 13, 1998)
MN980017 (Feb. 13, 1998)
MN980027 (Feb. 13, 1998)
MN980031 (Feb. 13, 1998)
MN980035 (Feb. 13, 1998)
MN980039 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)
Wisconsin
WI980010 (Feb. 13, 1998)

Volume V

Louisiana
LA980004 (Feb. 13, 1998)
LA980005 (Feb. 13, 1998)
LA980009 (Feb. 13, 1998)
LA980014 (Feb. 13, 1998)
LA980018 (Feb. 13, 1998)
Nebraska
NE980003 (Feb. 13, 1998)
NE980007 (Feb. 13, 1998)
NE980009 (Feb. 13, 1998)
NE980010 (Feb. 13, 1998)
NE980011 (Feb. 13, 1998)
Texas
TX980018 (Feb. 13, 1998)
TX980060 (Feb. 13, 1998)

Volume VI

Wyoming
WY980009 (Feb. 13, 1998)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 19th day of June 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–16733 Filed 6–25–98; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–25]

Grain Handling Facilities (29 CFR 1910.272); Information Collection Requirements

ACTION: Notice; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Grain Handling Facilities (29 CFR 1910.272). The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before August 25, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–25, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and

copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Grain Handling Facilities (29 CFR 1910.272), contact OSHA's WebPage on the Internet at http://www.osha-slc.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupatioal Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safety or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The standard requires employers to develop and implement a written housekeeping plan, to develop and implement an emergency action plan, to implement procedures for the use of tags and locks to prevent inadvertent operation of equipment being prepared, serviced or adjusted, and to prepare certification records after scheduled inspections of the mechanical and safety control equipment associated with dryers, grain stream processing equipment, and dust collection equipment.

The purpose of the housekeeping program is to require employers to have a planned course of action for the control and reduction of dust in grain handling facilities reducing the fuel available in a grain facility. The housekeeping program must specify in writing the frequency that housekeeping will be performed and the dust control methods that the employer believes will best reduce dust accumulations in the facility.

The written housekeeping program is used by employers in understanding their duties and responsibilities as an integral part of an overall program to control dust; and, what specific actions they are to take to reduce dust accumulations at the facility. The written housekeeping program is also used by compliance officers as a measure of compliance to compare the planned actions specified in the housekeeping program to those actually implemented to maintain an effective dust control program.

Failure to have a written housekeeping program would result in the absence of a formalized policy on the part of the employer regarding the importance of the facility dust control program, what actions are to be taken during certain circumstances, and the duties and responsibilities of employees in removing dust accumulations. The absence of these factors could adversely impact the effectiveness of the facility dust control program.

Additionally, if an incident occurs, employees must be aware of the appropriate actions in advance that need to be taken during the emergency. The standard also requires that employers issue hot work permits when hot work is performed, that employers issue permits for entry into grain storage structures and that all mechanical, electrical, hydraulic, and pneumatic equipment which represents a danger to employees entering these structures be deenergized.

The hot work permit is to assure that the employer is aware of the hot work being performed and that appropriate safety precautions have been taken prior to beginning the work. The permit for entering bins, silos, or tanks is to assure that employers and employees know if these spaces are safe to enter, and the requirement to deenergize equipment which presents a danger to employees entering these bins, silos, or tanks is to assure that employees are not injured due to accidental energization of equipment.

The procedures for the use of tags and locks while servicing equipment is meant to prevent inadvertent injury to employees servicing equipment. Finally, the requirement for certification records of maintenance inspections confirms for the employer and employees that scheduled inspections have been performed.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Grain Handling Facilities standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Grain Handling Facilities (29 CFR 1910.272).

OMB Number: 1218–0206.

Agency Number: Docket Number ICR–98–25.

Affected Public: Business or other for-profit.

Number of Respondents: 23,770.

Frequency: Varies.

Average Time per Response: Varies from two minutes to 3 hours.

Estimated Total Burden Hours: 138,921.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, D.C., this 2nd day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–17100 Filed 6–25–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–29]

Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111); Information Collection Requirements

ACTION: Notice; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on the Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111). The Agency is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before August 25, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–29, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on the Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111), contact OSHA's WebPage on the Internet at http://www.osha-slc.gov/.

SUPPLEMENTARY INFORMATION:

1. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The Storage and Handling of Anhydrous Ammonia standard requires the identification of anhydrous ammonia containers and systems through the use of permanent nameplates. The purpose of the information is to insure that only properly designed and tested anhydrous ammonia containers and systems are used. This will help to prevent any accidental release of (employee exposure to) anhydrous ammonia, which is a highly corrosive and toxic material.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Storage and Handing of Anhydrous Ammonia standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111).

OMB Number: 1218–0208.

Agency Number: Docket Number ICR–98–29.

Affected Public: Business or other for-profit; Farms; State, local or tribal government.

Number of Respondents: 300.

Frequency: On occasion.

Average Time per Response: 5 minutes (.08 hr).

Estimated Total Burden Hours: 24.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, D.C., this 22nd day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–17101 Filed 6–25–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–26]

Walking-Working Surfaces; Information Collection Requirements

ACTION: Notice; Opportunity for Public Comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Walking-Working Surfaces (29 CFR 1910.21–30). The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before August 25, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–26, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625,

200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Walking-Working Surfaces (29 CFR 1910.21–30), contact OSHA's WebPage on the Internet at http://www.osha-slc.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. the statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The information collected is used by employers and employees to be aware of load limits of the floors of newly constructed buildings, the location of permanent aisles and passageways in these buildings, and defective portable metal ladders. Once the floor loading signs are posted, there is no need to change them unless structural conditions change or if the signs become lost, removed, or defaced. Once a portable metal ladder is marked as defective, it must be removed from service and either repaired or destroyed. Repaired portable metal ladders may be returned to service and the markings removed. The tags or signs used to mark the defective ladders may be used over and over again.

Further, a copy of the drawings and specifications of an outrigger scaffold not constructed and erected in accordance with table D–16 of the standard and designed by a licensed professional engineer must be maintained by the employer. The drawings and specifications are used by the employer and OSHA compliance officers to show the sizes and spacing of members.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Walking-Working Surfaces standards (29 CFR 1910.21–30).

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Walking-Working surfaces (29 CFR 1910.21–30).

OMB Number: 1218–0199.

Agency Number: Docket Number ICR–98–26.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 60,500.

Frequency: Initially, On Occasion.

Average Time per Response: Varies from 0.5 to 2 hours.

Estimated Total Burden Hours: 33,837.

Total Annualized Capital/Startup Costs: 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, D.C., this 22nd day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–17102 Filed 6–25–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration (OSHA)

[OSHA Docket Number H–122]

Meeting on Risk Assessment Methodology for Occupational Exposure to Environmental Tobacco Smoke

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is sponsoring a scientific workshop to evaluate risk assessment methodology for developing estimates of risk due to occupational exposure to environmental tobacco smoke (ETS). This workshop will be organized and hosted by the Johns Hopkins University, School of Hygiene and Public Health. The workshop proceedings will be published by a peer reviewed journal, to be selected by Johns Hopkins.

DATES: The workshop will be held on July 9 and 10, 1998, beginning at 8:30 a.m. each day and ending at approximately 5:30 p.m. Applications to attend the workshop must be submitted by July 6, 1998.

ADDRESSES: The workshop will be held at the Admiral Fell Inn, 888 South Broadway, Baltimore, Maryland 21231; phone: 410–522–7377. Send applications to attend the workshop and requests by individuals with disabilities for special accommodations to Ms. Charlotte Gerczak, Department of Epidemiology, Johns Hopkins University, School of Hygiene and Public Health, 615 North Wolfe Street, Suite W6041, Baltimore, Maryland 21205–2179; phone: 410–614–0903.

FOR FURTHER INFORMATION CONTACT: Ms. Charlotte Gerczak.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1994, OSHA published a Notice of Proposed Rulemaking on Indoor Air Quality (59 FR 15968). The ETS provisions of the proposed rule were supported by a preliminary finding of significant risk for lung cancer and heart disease due to workplace exposure to ETS.

This workshop will attempt to resolve issues raised in the public record pertaining to OSHA's ETS quantitative risk assessment (e.g., data sources, analytical methodology, dose-response risk models) and further scientific knowledge in this area. OSHA needs additional information on these issues to develop a risk assessment upon which a final rule can be based. To address OSHA's concerns, Johns Hopkins has assembled a group of experts to identify issues and discuss appropriate quantitative methodologies for estimating occupational risks from ETS exposures in the workplace. It is the intent of OSHA that the workshop results will be published in a peer reviewed journal.

Public Attendance

Interested persons are invited to attend the ETS risk assessment workshop. Because of the limited amount of seating available, interested persons are encouraged to contact Johns

Hopkins as soon as possible. If there are more requests to attend than space available, Johns Hopkins will give preference to scientists with expertise in risk assessment issues. No organization will be permitted more than one observer unless there is space available after all admissions requests are filled. Admittance to the workshop will be limited to those duly registered.

The Workshop

The workshop participants will consist of experts in the fields of risk assessment, epidemiology, and mathematical modeling. The panel discussions will be chaired by Jonathan M. Samet, M.D., Chairman, Department of Epidemiology, Johns Hopkins University, School of Hygiene and Public Health. The workshop participants have been chosen for their scientific expertise and experience in this area. This workshop is scientific in nature. The public is invited to observe the proceedings, but participation in the discussion is limited to workshop participants.

Workshop Objectives

Under the direction of Jonathan Samet, M.D., the workshop participants will address key issues related to ETS risk assessment methodology. Specifically, the participants will:

1. Consider various health end points to be included in the ETS risk assessment and make recommendations with regard to these specific health end points.

2. Consider all available studies addressing the recommended health end points and evaluate the quality of data for estimating occupational risk.

3. Review and evaluate available mathematical models for estimating occupational risk due to ETS exposure.

4. Examine properties of dose-response risk models and characterize the models with regard to validity and uncertainty and their applicability to estimating occupational risk attributable to ETS exposure in the workplace.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1594, 29 U.S.C. 655).

Signed at Washington, DC this 22nd of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16949 Filed 6–25–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the procedure for applications for exemption from the prohibited transaction provisions of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 CFR § 2570.30, *et seq.*). The Department is particularly interested in comments which evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the basis for any suggested alternative burden estimates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 25, 1998.

The Department of Labor is particularly interested in comments which:

- Evalute whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 408(a) of ERISA provides that the Secretary may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA and directs the Secretary to establish an exemption procedure with respect to such provisions. In this regard, the Department previously issued a regulation which describes the procedures that must be followed in filing for such exemptions (29 CFR 2570.30. *et seq.*). Under section 408(a) of ERISA, in order for the Secretary to grant an exemption, it must be determined that such exemption is "(1) administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and (3) protective of the rights of participants and beneficiaries." In order to make such determination, the Department requires full information regarding all aspects of the transaction, including the specific circumstances surrounding the transaction, and the parties and assets involved. Thus, sections 2570.34 and 2570.35 of the exemption procedures regulation lists the information that must be supplied by the applicant. This information includes: identifying information (name, type of plan, EIN number, etc.); an estimate of the number of plan participants; a detailed description of the transaction and the parties for which an exemption is

requested; statements regarding what section ERISA is thought to be in violation and whether the transaction(s) involved have already been entered into; a statement of whether the transaction is customary in the industry; a statement of the hardship or economic loss, if any, which would result if the exemption were denied; a statement explaining why the proposed exemption would be administratively feasible, in the interests of the plan and protective of the rights of plan participants and beneficiaries; and several other statements. In addition, the applicant must certify that the information supplied is accurate and complete.

Section 408(a) of ERISA requires that before granting an exemption from 406(a) the Secretary "shall require that adequate notice be given to interested parties, and shall afford interested persons opportunity to present views." Thus, section 2570.43 of the exemption procedures regulation requires that the applicant for an exemption provide interested persons with a copy of the **Federal Register** notice containing the proposed exemption and a statement which informs them of their right to comment on the proposed exemption.

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because the requirement that an applicant for an exemption disclose information regarding their application is necessary in order for the Department to make an informed decision regarding the application. Further, the requirement of the notice to interested parties ensures that participants and beneficiaries are informed of the application for exemption and have the opportunity to respond.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Procedure for Application for Prohibited Transaction Exemption Regulation pursuant to 29 CFR 2570.30, *et seq.*

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0060.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 207.

Total Responses: 207.

Frequency of Response: On occasion.

Total Annual Burden: 5,708 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 22, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–17103 Filed 6–25–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–081)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Boundary Layer Research, Inc., a corporation of the State of Washington having its principal place of business at 3125 100th St. SW, Hangar C75–5, Everett, Washington 98204, has applied for an exclusive license to practice the inventions disclosed in U.S. Patent No. 5,209,430, entitled "HELICOPTER LOW SPEED YAW CONTROL," and U.S. Patent No. 4,708,305 entitled "ANTI-TORQUE SYSTEM FUSELAGE STRAKES," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by August 25, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3227; fax (757) 864–9190.

Dated: June 10, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17126 Filed 6–25–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–082)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that GP:50 New York LTD of Grand Island, NY 14072, has applied for a partially exclusive license to practice the invention described and claimed in NASA Case Numbers LAR 15280–2–SB and LAR 15280–3–SB, both entitled "CRYOGENIC HIGH PRESSURE SENSOR," for which U.S. Patent Applications were filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by August 25, 1998.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3230; fax (757) 864–9190.

Dated: June 10, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17127 Filed 6–25–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Establishment of the Information Security Policy Advisory Council

This notice is published to announce the establishment of the Information Security Policy Advisory Council (ISPAC). The ISPAC will advise the President, the Assistant to the President for National Security Affairs, the Archivist of the United States, and such other executive branch official as it deems appropriate, on policies established under Executive Order 12958 or its implementing directives, including recommended changes to those policies. The ISPAC shall also provide recommendations to agency heads for specific subject areas for systematic declassification review and serve as a forum to discuss policy issues in dispute.

If you have any questions regarding the establishment of the ISPAC, please contact Mary Ann Hadyka, NARA's Committee Management Officer, at (301) 713–7360 x222.

Dated: June 22, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–16979 Filed 6–25–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Field Hearing

Establishment of the Medicare Commission is included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register.**

The National Bipartisan Commission on the Future of Medicare will hold a public field hearing on Monday, July 13, 1998 at the Minneapolis Convention Center, 1301 Second Avenue South, Minneapolis, Minnesota. Please check the Commission's web site for additional information: http://Medicare.Commission.Gov

Date of hearing: Monday, July 13, 1998, 12:30 PM-3:30 PM.

Tentative Agenda: Members of the Commission to hear from witnesses testifying before the Commission.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register.**

Julie Hasler,

Office Manager, Bipartisan Medicare Commission.

[FR Doc. 98–17152 Filed 6–25–98; 8:45 am]

BILLING CODE 1132–00–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting

AGENCY: National Council on Disability

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: August 3–5, 1998, 8:30 a.m. to 5:00 p.m.

LOCATION: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California; 415–392–7755.

FOR INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107, 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability, and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session
Youth Leadership Development Conference Update
Unfinished Business
New Business
Announcements
Adjournment
Hearing on Minority Issues

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 19, 1998.

Ethel D. Briggs,

Executive Director.

[FR Doc. 98–17214 Filed 6–24–98; 10:52 am]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater, Section A (Creation & Presentation Category) to the National Council on the Arts will be held on July 27–31, 1998. The panel will meet from 9:30 a.m. to 6:30 p.m. on July 27–29, from 10:00 a.m. to 6:00 p.m. on July 30, and from 9:30 a.m. to 5:30 p.m. on July 31, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on July 30, will be open to the public for a policy discussion on field issues and needs, Leadership initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 27–29, from 12:00 p.m. to 6:00 p.m. on July 30, and from 9:30 a.m. to 5:30 p.m. on July 31, are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: June 22, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–17092 Filed 6–25–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, July 15, 1998, 4:00 p.m. to 9:00 p.m. Thursday, July 16, 1998, 8:00 a.m. to 6:00 p.m., Friday, July 17, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James R. Oglesby, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, Room 885, 4201 Wilson Boulevard, Arlington, VA 22230, Tel. (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Informal Science Education Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 55b(c), the Government in the Sunshine Act.

Dated: June 22, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–17061 Filed 6–25—98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Research, Evaluation and Communication (#1210).

Date and time: July 16–17, 1998 and 8:30 a.m.–6:00 p.m.; July 20–21, 1998 and 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Anthony E. Kelly, Program Director, Research, Evaluation and Communication, Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1650.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Research on Education, Policy and Practice (REPP) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 22, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–17062 Filed 6–25–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 474, "Simulation Facility Certification".

3. The form number if applicable: NRC Form 474.

4. How often the collection is required: One-time requirement for initial certification and quadrennial thereafter.

5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 20.

7. The estimated number of annual respondents: 20.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,400.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Licensed power facilities that propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are required to submit NRC Form 474.

The information on the form consists of the results of performance testing completed on the subject simulation facility and a schedule for the conduct of performance tests for the subsequent four-year period. NRC uses this information to ascertain the acceptability of simulation facilities for use in the conduct of operating tests for nuclear power plant operator and senior operator candidates and to determine whether to initiate a simulation facility inspection at a specific site due to concerns about their suitability for use in operating tests.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by July 27, 1998.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0138), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 19th day of June 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–17099 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 60–334 and 50–412]

Duquesne Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–66 and NPF–73 issued to Duquesne Light Company, et al. (the licensee) for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) located in Beaver County, Pennsylvania.

The proposed amendment would revise the BVPS–1 and BVPS–2 Technical Specification (TS) definition of a channel calibration to add two sentences stating that (1) the calibration of instrument channels with resistance temperature detector or thermocouple sensors may consist of an inplace qualitative assessment of sensor behavior and normal calibration of the remaining adjustable devices in the channel and (2) whenever a sensing element is replaced, the next required channel calibration shall include an inplace cross calibration that compares the other sensing elements with the recently installed sensing element. This proposed change would make the BVPS–1 and BVPS–2 TS definition of channel calibration consistent with the definition of a channel calibration contained in the NRC's improved Standard Technical Specifications for Westinghouse Plants (NUREG–1431, Revision 1).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is administrative in nature. It does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident nor alter the conditions or assumptions in any of the Updated Final Safety Analysis Report [UFSAR] accident analyses. The revised definition would eliminate unnecessary and potentially damaging removal of resistance temperature detector (RTD) or thermocouple sensors in order to perform calibrations that are not technically possible. Therefore, it can be concluded that the proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. There will be no change in the requirement to assess the entire RTD or thermocouple channel behavior including the sensor, alarm, display, and/or trip function. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change is administrative in nature. Assessment of channel behavior, including sensors, will continue to be required. The addition to the Channel Calibration definition will provide greater flexibility in the use of the provision for surveillance testing, and will have no adverse effect on safety. Also, the inplace qualitative assessment obviates the need to remove the RTDs or thermocouples from their installed location, thereby eliminating the possibility of damaging them during removal. Therefore, it can be concluded that the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request

and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 19, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 22nd day of June 1998.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17096 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, (Peach Bottom Atomic Power Station, Units 2 and 3); Exemption

I

PECO Energy Company (the licensee) is the holder of Facility Operating License Nos. DPR–44 and DPR–56, which authorize operation of Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling-water reactors at the licensee's site located in York County, Pennsylvania.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel

qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at PBAPS, Units 2 and 3, is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at PBAPS, Units 2 and 3, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only three new fuel assemblies are allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated March 18, 1998, the licensee requested an exemption from 10 CFR 70.24.

In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittal and has determined that PBAPS, Units 2 and 3, meet the applicable criteria. Criteria 2 and 3 are not applicable to PBAPS, Units 2 and 3, since Technical Specification Section 4.3.1.2 specifically states, "The new fuel storage racks shall not be used for fuel storage. The new fuel shall be stored in the spent fuel storage racks." The reference to General Design Criterion (GDC) 63 was initially incorporated to ensure that licensees receiving an exemption to 10 CFR 70.24 would not erroneously view the exemption as the basis for removing from the spent fuel pool area radiation monitors that were meeting other monitoring requirements, such as those contained in GDC 63. However, Criterion 63 is not applicable to PBAPS because the units were evaluated against the draft GDCs current when PBAPS was licensed rather than the current GDCs proposed in July 1967. Thus, even though PBAPS is not required to meet GDC 63, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling and storage areas at PBAPS, Units 2 and 3. Additionally, PBAPS, Units 2 and 3, have area radiation monitors (ARMs) that meet the requirements of 10 CFR 70.24(a)2, and function as a monitoring system capable of detecting criticality in the only area (the refuel floor) where accidental criticality is possible.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. The low probability of an inadvertent criticality constitutes good cause for granting an exemption from the requirements of 10 CFR 70.24(a).

IV.

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants PECO Energy Company, an exemption from the requirements of 10 CFR 70.24(a) for Peach Bottom Atomic Power Station, Units 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (63 FR 33735).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17095 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company, et al.; (Davis-Besse Nuclear Power Station, Unit 1); Confirmatory Order Modifying License, Effective Immediately

I

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the Licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees using Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers," and subsequent requests for additional information that asked licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all such corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. The NRC staff has met with licensees of plants that have completion action scheduled beyond 1997 to

discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

The NRC staff met with the Licensees for Davis-Besse on April 3, 1997. At this meeting, the NRC staff reviewed the schedule of Thermo-Lag corrective actions described in the Licensees' submittals to the NRC dated February 20, April 24, June 26, and November 5, 1996, as documented in the NRC meeting summary dated April 16, 1997. On the basis of the information submitted by the Licensees (including an additional letter dated September 10, 1997), the NRC staff has concluded that the schedules presented are reasonable. This conclusion is based on (1) the amount of installed Thermo-Lag; (2) the complexity of the plant-specific fire barrier configurations and issues; and (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by the Licensees must be completed in accordance with their current schedule. By letter dated May 4, 1998, the NRC staff notified the Licensees of its plan to incorporate their schedule commitment into a requirement by issuance of an order and requested consent from the Licensees. By letter dated June 11, 1998, the Licensees provided their consent to issuance of a Confirmatory Order.

III

The Licensees' commitment as set forth in their letter of June 11, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule delay and to ensure public health and safety, the NRC staff has determined that the Licensees' commitment in their June 11, 1998, letter be confirmed by this Order. The Licensees have agreed to this action. On this basis, and the Licensees' consent, this Order is immediately effective upon issuance.

IV.

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered*, effective immediately, that

The Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at the Davis-Besse Nuclear Power Station, Unit No. 1, by December 31, 1998, as described in the licensees' submittals to the NRC dated February 20, 1996, April 24, 1996, June 26, 1996, November 5, 1996, and September 10, 1997, and as presented at the licensees' meeting with the NRC staff on April 3, 1997, as documented in the NRC meeting summary dated April 16, 1997.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensees of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensees, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, D.C. 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensees. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 22nd day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17098 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8502]

Cogema Mining, Inc.; Environmental Statements; Availability, etc

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact and Notice of Opportunity for Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1341 to authorize the licensee, COGEMA Mining, Inc. (COGEMA), to continue the commercial operation of its in-situ leach (ISL) uranium mines and processing facilities, located in Campbell and Johnson Counties, Wyoming. This license currently authorizes COGEMA to receive, acquire, possess, and transfer uranium at its Irigaray and Christensen Ranch Facilities, which are located approximately 10 miles northeast of Sussex, Wyoming, and 30 miles north-northeast of Midwest, Wyoming, respectively. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of COGEMA's license renewal request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Lambert, Uranium Recovery Branch, Mail Stop TWFN 7-J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6710. E-mail: JAL@NRC.GOV

SUPPLEMENTARY INFORMATION:

Background

The Irigaray Project was licensed for commercial operation in August 1978,

under ownership of Westinghouse Electric Corporation. In 1982, operations ceased at the Irigaray plant and wellfields, and the facility was placed on standby status pending improvements in the uranium market. In June 1987, Malapai Resources Company (MRC) purchased the Irigaray site from Westinghouse and resumed operations. In 1988, MRC was granted an amendment to the SUA–1341 Irigaray license to include the Christensen Ranch satellite ion exchange (IX) plant and associated mine units (MUs). The Irigaray site was then upgraded to include facilities for processing IX resin from Christensen Ranch. In April 1993, following other ownership changes, COGEMA acquired ownership of the Irigaray and Christensen Ranch Uranium Projects. Since then operations have continued under COGEMA management.

At the Irigaray and Christensen Ranch facilities, the ISL mining method involves: (1) the injection of native groundwater, with added sodium carbonate/bicarbonate and oxygen or hydrogen peroxide, into a uranium-bearing orebody through injection wells; (2) the chemical mobilization of the uranium through oxidation and then complexation with the carbonate species; and (3) the extraction of the uranium-bearing solution from the subsurface through a pattern of pumping wells. The uranium is separated from the leach solution by conventional ion exchange (IX) methods in the processing facilities. The resulting uranium-poor solution is recharged with carbonate and oxygen and returned to the mining zone for additional uranium recovery. This cycle continues until the ore zone is depleted or recovery of the uranium is no longer economically feasible.

Once saturated with uranium, the resin in the IX columns is stripped of the uranium through an elution process. The recovered uranium solution is processed further by using ammonia or hydrogen peroxide to precipitate the uranium into a slurry. The resulting slurry is thickened by gravity settling, and then washed and de-watered in a filter press to about 50 percent solids. The filter press solids (cake) are then dried in a natural gas vacuum dryer, to produce uranium oxide, which is commonly known as "yellowcake." The dried yellowcake is packaged in steel drums for storage and eventual shipment to a fuel processing facility.

The Irigaray processing plant has the capability to perform all of the previously described processing steps. However, the Christensen Ranch plant does not contain the uranium elution circuit for removing and concentrating the uranium from the IX resin. For this reason, resin from the Christensen Ranch processing plant is transferred via truck to the Irigaray facility for elution and concentration into yellowcake. The eluted resin is then returned to the Christensen Ranch plant for reuse.

All wellfields at the Irigaray site are in the restoration phase. Previous operations at Christensen Ranch have included production from Mine Units (MU) 2, 3, 4, 5, and 6, with MU 3 in the groundwater restoration phase. Remaining reserves on the entire Irigaray property controlled by COGEMA total approximately seven million pounds. Reserves remaining on the Christensen Ranch property total approximately 13 million pounds in the current, low-value uranium market.

The proposed action is to renew Source Material License SUA–1341 to authorize the continued commercial operation of the Irigaray and Christensen Ranch facilities. In its renewal application, COGEMA has proposed many changes to the operations and procedures at the facilities. One of the major changes proposed by COGEMA is to combine the mine and development plans for Irigaray and Christensen Ranch into one plan. In addition, the renewed license would authorize the facilities to be operated such that the annual average yellowcake production does not exceed 1,133,980 kg (2,500,000 pounds) of U_3O_8 annually. The EA discusses the environmental aspects of the COGEMA proposal. Additional information concerning the safety aspects of the proposed renewal will be contained in the safety evaluation report (SER) that will accompany the license renewal action.

The Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the COGEMA ISL facility, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following information: (1) COGEMA's license renewal application, as amended; (2) previous environmental evaluations of the COGEMA facility; (3) COGEMA's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of these requests; (4) data contained in required semiannual environmental monitoring reports; (5) results of NRC staff site visits and inspections of the COGEMA facility; and (6) consultations with the U.S. Fish and Wildlife Service, the State of Wyoming Department of Environmental Quality, and the State Historic Preservation Officer for the State of Wyoming. The results of the staff's appraisal are documented in the EA.

Environmental Assessment Conclusions

The NRC staff has re-examined actual and potential environmental impacts associated with continued operation of the Irigaray and Christensen Ranch facilities, and has determined that renewal of Source Material License SUA–1341 will: (1) be consistent with requirements of 10 CFR Part 40; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. The proposed groundwater monitoring program is sufficient to detect excursions (vertical or horizontal) of mining solutions. Furthermore, aquifer testing and the previous history of operations indicate that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions;

2. Liquid process wastes will be disposed in accordance with approved waste disposal options. Monitoring programs are in place to ensure appropriate operation of the deep disposal well and to detect potential leakage from the solar evaporation ponds;

3. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to continue to remain below the regulatory limits;

4. All radioactive wastes generated by facility operations will be disposed offsite at a licensed byproduct disposal site;

5. Groundwater impacted by mining operations will be restored to baseline conditions on a mine-unit average, as a primary goal. If baseline conditions cannot be reasonably achieved, the R&D operations have demonstrated that the groundwater can be restored to applicable class-of-use standards; and

6. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently,

further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1341, for continued operation of the Irigaray and Christensen Ranch ISL facilities, as requested by COGEMA. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license as requested by the licensee, with conditions considered necessary or appropriate to protect public health and safety and the environment; or

(2) Renew the license, with conditions considered necessary or appropriate to protect public health and safety and the environment, but not allow COGEMA to expand its operations beyond those previously approved; or

(3) Deny renewal of the license.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of COGEMA's future operations or the denial of the license renewal. Additionally, in the SER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for license issuance specified in 10 CFR Part 40, Section 40.32, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–1341. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building (lower level), 2120 L Street NW, Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, COGEMA Mining, Inc., 935 Pendell Boulevard., P.O. Box 730, Mills, WY 82644;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing request that is granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 18th day of June 1998.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Assistant Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–16913 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259.50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2 and 3 Environmental Assessment and Finding of No Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated September 6, 1996 as supplemented June 6 and December 11, 1996; April 11, May 1, August 14, October 15, November 5 and 14, December 3, 4, 15, 22, 23, 29, and 30, 1997; January 23, March 12 and 13, April 16, 20, and 28, May 7, 14, 19 and 27, June 5 and 10, 1998. The proposed amendments will replace the current BFN Units 1, 2 and 3 Technical Specifications (CTS) in their entirety with Improved Technical Specifications (ITS) based on Revision 1 to NUREG–1433, "Standard Technical Specifications General Electric Plants BWR/4," dated April 1995.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (52 FR 3788, February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (58 FR 39132, July 22, 1993), formalized this need. To facilitate the development of individual improved TS, each reactor vendor owners group (OG) and the NRC staff

developed standard TS (STS). For General Electric plants, the STS are published as NUREG–1433, and this document was the basis for the new BFN Units 1, 2 and 3 TS. The NRC Committee to Review Generic Requirements reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1433 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1433, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the OG.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the BFN Unit Nos. 1, 2 and 3 TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1433 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which include items that were in the existing BFN Units 1, 2 and 3 TS. The TS that are being relocated to licensee-controlled documents are not required to be in the TS under 10 CFR 50.36 and do not meet any of the four criteria in the Commission's Final Policy Statement for inclusion in the TS. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to the public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the BFN Units 1, 2 and 3 TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the General Electric STS (NUREG–1433). Once these items have been relocated by removing them from the TS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed BFN Units 1, 2 and 3 ITS items that are either more conservative than corresponding requirements in the existing BFN Units 1, 2 and 3 TS, or are additional restrictions that are not in the existing BFN Units 1, 2 and 3 TS but are contained in NUREG–1433. Examples of more restrictive requirements include: placing a Limiting Condition of Operation on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing BFN Units 1, 2 and 3 TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for BFN Units 1, 2 and 3 as will be described in the staff's Safety Evaluation (SE) to be issued with the license amendment, which will be noticed in the **Federal Register**.

In addition to the changes described above, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1433. These additional proposed changes are described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing (61 FR 55026, 63 FR 29763, and 63 FR 32252). Where these changes represent a change to the current licensing basis for BFN Units 1, 2 and 3, they have been justified on a case-by-case basis and the environmental impacts of these changes will be addressed in the staff's SE to be issued with the license amendment.

Environmental Impacts of the Proposed

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1433 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for BFN Units 1, 2 and 3. Generic relaxations contained in NUREG–1433 as well as proposed deviations from NUREG–1433 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for the amendment. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the BFN Units 1, 2 and 3 Electric Generating Plants.

Agencies and Persons Consulted

In accordance with its stated policy, on June 18, 1998, the staff consulted with the State official, Mr. David Walter, of the Department of Environment and Natural Resources, Division of Radiation Protection. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendments dated September 6, 1996 as supplemented June 6, and December 11, 1996; April 11, May 1, August 14, October 15, November 5 and 14, December 3, 4, 15, 22, 23, 29, and 30, 1997; January 23, March 12 and 13, April 16, 20, and 28, May 7, 14, 19 and 27, and June 5 and 10, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 18th day of June 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17097 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

The Role of Industry Stakeholder Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objective of the meeting is to obtain stakeholder insights into potential approaches or options the NRC could implement to more efficiently and effectively utilize consensus standards, industry initiatives that would be substitutes for regulatory action, and improvements to the regulatory framework. Plenary and breakout sessions will be held. Concurrent breakout sessions will provide a forum for discussion and feedback on (1) Consensus Codes and Standards Development and Endorsement/Use, (2) Industry Initiatives as Substitutes for Regulatory Action, and (3) Improvements to the Regulatory Framework.

DATES: Pre-registration will be August 31, 1998. The stakeholder meeting will be held on September 1, 1998.

ADDRESSES: The stakeholder meeting will be held at the Hyatt Regency O'Hare Hotel, 9300 West Bryn Mawr Avenue, Rosemont, Illinois, 60018. Telephone: (847) 696–1234, Facsimile: (847) 698–1039. (Refer to NRC Meeting for special conference rate.)

SUPPLEMENTARY INFORMATION: For additional information contact: Thomas N. Cerovski, USNRC, Telephone: (301) 415–8099; FAX: (301) 415–5151; Internet: tnc@nrc.gov.

Participation

This conference is open to the general public; however, advance registration by August 1, 1998 is recommended. To register, contact: Thomas N. Cerovski, USNRC, Telephone: (301) 415–8099; Facsimile: (301) 415–5151; Internet: tnc@nrc.gov.

Program

Following is the preliminary program for the meeting:

August 31, 1998

Pre-Registration 5:00 p.m.–8:00 p.m.

September 1, 1998

Registration—7:00 a.m.–8:00 am.
Plenary Session—Opening and Welcome—8:00 a.m.–9:00 a.m.
Morning Breakout Sessions (I, II, and III)—9:00 a.m.–11:30 a.m.
Lunch—11:30 a.m.–1:00 p.m.
Afternoon Breakout Sessions (I, II, and III)—1:00 p.m.–4:00 p.m.
Plenary Session—Closing and Summary—4:00 p.m.–5:00 p.m.

* * * * *

The agenda for each breakout session is as follows:

Breakout Session I: Codes and Standards Development and Endorsement/Use

Open discussion is invited on the following topics:

(1) Actions the NRC is taking to implement PL 104–113, "National Technology Transfer and Advancement Act of 1995," March 7, 1996, (2) Options for NRC participation in the development of consensus codes and standards organizations,

(3) Whether the NRC should make greater use of available codes and standards in its regulations and regulatory guides,

(4) Options for endorsement/use of codes and standards, including potential changes regarding requirements for licensees to upgrade every 120-months to the latest ASME Code edition and addenda incorporated by reference in § 50.55a,

(5) Options for a process to interact with standards development organizations to discuss potential needs for new codes, standards, and guides and recommendations for areas of emphasis,

(6) Impediments to the adoption of updated codes and standards.

Breakout Session II: Industry Initiatives as Substitutes for Regulatory Action

Open discussion is invited on the proposed NRC review process of industry initiatives as substitutes for regulatory action:

A. Proposed process to be used by the NRC for review of industry initiatives:

(1) Industry submittal: defines parameters of issue, schedule, resources, end products,

(2) Acceptance review by NRC: resources, public access, fees, monitoring activities, enforcement policy,

(3) Detailed technical review by NRC: maintenance of desired level of safety and boundary conditions relative to agency policy.

B. Discussion of the process:

(1) Process will be used to determine whether an industry initiative can be relied on as an adequate and effective substitute for NRC regulatory activities:

a. Is the process workable from a conceptual perspective?

b. Should it be refined or more clearly defined?

(2) Are there similar processes which have been developed by public agencies or the governments of other countries from which the NRC could learn?

(3) How should NRC assure that public access is maintained in the following areas:

a. In the agency's review of the industry initiatives?

b. To information related to the bases for the agency's acceptance of the initiative?

Breakout Session III: Improvements to Regulatory Framework

Open discussion is invited on the following topics:

A. Reactor event reporting requirements. 10 CFR § 50.72, "Immediate notification requirements for operating nuclear power reactors," and 10 CFR § 50.73, "Licensee event report system" are currently the subject of a rulemaking effort to: (a) update the current rules, including reducing the reporting burden associated with events of little or no safety significance, and (b) better align the rules with the NRC's current needs, including (i) obtaining information better related to risk and (ii) reconsidering the required reporting times in relation to the need for prompt NRC action.

(1) Other reporting requirements applicable to nuclear power plants. Are there additional areas (outside of § 50.72 and § 50.73) where event reporting requirements can be risk-informed and/or simplified?

(2) What changes should be made in those areas? For example, the time limit for reporting could be adjusted based on the safety significance of the event and the need for NRC's immediate action. The burden associated with reporting events or conditions with little or no safety or risk significance should be minimized.

(3) What would be the change in reporting burden associated with such changes?

B. Development of a systematic process and identification of candidate issues for improving the effectiveness and efficiency of rules, standards, regulatory guidance, and their application.

(1) NRC Process Development. The staff will discuss and seek comments from stakeholders on the staff process of (i) candidate issue identification utilizing a variety of readily available sources and databases; (ii) the analysis of the candidate issue for generic applicability, risk, effectiveness and efficiency; (iii) issue prioritization and disposal, and (iiii) the initiative to achieve more performance-based regulation.

(2) Candidate Issue Proposals. The staff welcomes the proposal of candidate issues for improving rules, standards, regulatory guidance, and their application. This will include consideration of issues that may improve safety, as well as issues that may reduce regulatory impact. Candidate issues will be most seriously addressed if they are provided with a discussion of (i) resource impact on the industry and the NRC, (ii) a quantitative or qualitative assessment of their impact on risk, and (iii) options of ways to address the issue.

Dated in Rockville, Maryland this 23rd day of June, 1998.

For the Nuclear Regulatory Commission.

Frank C. Cherny,

Acting Chief, Generic Safety Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 98–17094 Filed 6–25–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23263; 812–10804]

The Lipper Funds, Inc.; Notice of Application

June 22, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) of the Act to permit a former director (Mr. Biderman) of the Company to rejoin the Company's board of directors.

APPLICANTS: The Lipper Funds, Inc. and Prime Lipper Asset Management.

FILING DATES: The application was filed on October 1, 1997, and amended on June 2, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Lipper Funds, Inc. and Prime Lipper Asset Management, 101 Park Avenue, New York, N.Y. 10178.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Mary Kay Frech, Branch Chief at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 8090).

Applicant's Representations

1. The Lipper Funds, Inc. (the "Company") is an open-end management investment company registered under the Act. The Company consists of three investment portfolios, one of which is the Prime Lipper Europe Equity Fund (the "Europe Equity Fund"). Prime Lipper Asset Management ("PLAM"), a New York general partnership and an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for the Europe Equity Fund.

2. PLAM is a joint venture owned equally by its two general partners, Lipper Europe L.P. and Prime U.S.A. Inc. ("Prime USA"). Lipper Europe L.P. ("Lipper Europe") is a Delaware limited partnership controlled by Lipper & Company, Inc. ("Lipper Inc."). Prime USA, a Delaware corporation, is a wholly-owned subsidiary of Prime S.p.A., an asset management firm. Prime S.p.A. currently is controlled by Assicurazioni Generali ("Generali"), an Italian insurance company. Generali acquired control of Prime S.p.A. on December 20, 1996, when Fiat S.p.A. sold to Generali 95.1% of the outstanding stock of Prime S.p.A. (the "Transaction"). The Transaction was deemed to result in an assignment of PLAM's investment advisory agreement with the Europe Equity Fund under the Act.

3. PLAM is governed by a management committee of four individuals. Each general partner appointed two members to the management committee. Mr. Biderman is an employee of Lipper Inc. and serves on the management committee on PLAM as one of the two Lipper Europe representatives.

4. Mr. Biderman previously served as a director on the board of directors of the Company (the "Board"), including the Europe Equity Fund, but resigned effective as of the closing of the Transaction to enable the Transaction to remain subject to the safe harbor provisions of section 15(f) of the Act (described below). Applicants would like Mr. Biderman to rejoin the Board without removing the Transaction from the safe harbor.

Applicant's Legal Analysis

1. Section 15(f) of the Act is a safe habor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to receive "any amount or benefit" in connection with a sale of securities of, or sale of any other interest in, the investment adviser that results in an "assignment" of the advisory contract with the investment company, if certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company.

2. Section 2(a)(4) of the Act defines "assignment" to include: "any direct or indirect transfer * * * of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor." Applicants state that the Transaction was deemed to result in an assignment of PLAM's investment advisory agreement with the Europe Equity Fund. Applicants further state that the parties to the Transaction sought to rely on the safe harbor in section 15(f) in connection with that assignment. Because Mr. Biderman may be deemed an interested person of PLAM, Mr. Biderman resigned from the Company's Board as the closing of the Transaction in order for the Company's Board to meet the requirements of section 15(f)(1)(A).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under section 6(c) to permit Mr. Biderman to rejoin the Board without causing the Transaction to fall outside the safe harbor of section 15(f) of the Act. Applicants state that Mr. Biderman was not affiliated with any party to the Transaction, except indirectly as a representative of Lipper Europe, a joint venturer with Prime USA in PLAM. Applicants further state that neither Mr. Biderman nor Lipper Inc. has any ownership interest in Prime USA, Prime S.p.A., Fiat or Generali and derived no economic interest from the Transaction. Applicants also state that the advisory fees received by Lipper Inc. and Prime S.p.A. through their respective ownership interests in PLAM are not a material portion of the revenues of either Lipper Inc. or Prime S.p.A.

5. Applicants further state that the disinterested directors of the company unanimously approved the filing of the application for exemptive relief as in the best interests of the Company's shareholders to permit Mr. Biderman to rejoin the Board. Mr. Biderman has served on the Board since its initial organization in 1995 and has been intimately involved in the operations of the Europe Equity Fund. Applicants assert that Mr. Biderman's inability to serve on the Board also deprives the Company's other portfolios of his services.

6. Applicants state that the Board could meet the requirements of section 15(f)(1)(A) if, in addition to Mr. Biderman, three disinterested directors were added to the Board. Applicants contend, however, that reconstituting the Board in this manner would result in a disproportionately large Board and would impose additional expenses on the Company. Applicants note that if Mr. Biderman rejoins the Board, the Board still will have a majority of directors who are not interested persons of PLAM.

7. Applicants assert that the conditions by which they would abide as long as they are relying on the requested order will assure that the safeguards embodied in section 15(f)(1)(A) are maintained. These conditions require, among other things, that during the period covered by the requested order, the fees paid by the Europe Equity Fund to PLAM will not increase and that applicants take all appropriate actions to ensure that the scope and quality of services provided by PLAM to the Europe Equity Fund will be at least equivalent to that which PLAM has provided since the Transaction.

8. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will take all appropriate actions to ensure that the scope and quality of investment advisory services that PLAM provides to the Europe Equity Fund will be at least equivalent to that which has been provided by PLAM since the Transaction.

2. The investment advisory fees payable by the Europe Equity Fund to PLAM under its investment advisory agreement with PLAM will not be increased.

3. If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Company, that director will be replaced by a director who is not an "interested person" of PLAM within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of PLAM.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17081 Filed 6–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26888]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 19, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 14, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(s) and/or declaration(s) at the address(es) specified below. Proof of service by affidavit or, in case of an attorney at

law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 14, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Maine Power Company, et al.

Central Maine Power Company ("Central Maine"), a public utility holding company exempt from regulation under the Act, in accordance with rule 2 under the Act, and HoldCo, Inc. ("Holdco"), a wholly owned subsidiary of Central Maine (together, "Applicants"), both located at 83 Edison Drive, Augusta, Maine 04336, have filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Central Maine is an investor-owned public utility company primarily engaged in the business of generating, transmitting and distributing electricity to wholesale customers, principally other utilities, and to retail customers in Maine. Central Maine is the largest electric utility in Maine and serves approximately 528,000 customers in its 11,000 square mile service area. Central Maine had $954 million in consolidated electric operating revenues in 1997. Central Maine is subject to the regulatory authority of the Maine Public Utilities Commission.

Central Maine currently has three utility subsidiaries: Maine Electric Power Company, Inc. ("MEPCO"), Aroostook Valley Electric Company ("AVEC"), and NORVARCO. MEPCO owns and operates a 345-kV transmission interconnection between Wiscasset, Maine and the Maine-New Brunswick international border at Orient, Maine. AVEC owns and operates a 31 MW wood-fired generating plant in Fort Fairfield, Maine, the output of which is sold to Central Maine.[1] NORVARCO is one of two general partners in Chester SVC Partnership, a general partnership which owns certain transmission assets in Chester, Maine, adjacent to MEPCO's transmission interconnection.[2]

Central Maine's nonutility subsidiaries include: CMP International Consultants ("CMPI"), Central Securities Corporation ("Central"), Cumberland Securities Corporation ("Cumberland"), Kennebec Hydro Resources ("Hydro"), The Merimil Limited Partnership ("Merimil"), MaineCom Services, Inc. ("MainCom"), TeleSmart ("Telesmart"), The Union Water-Power Company ("Union Water"), Androscoggin Reservoir Company ("Androscoggin"), Kennebec Water Power Company ("Kennebec Water"), and the Gulf Island Pond Oxygenation Project ("GIPOP"). These subsidiaries are engaged in utility support services (such as training, research, project management and technical consulting), telecommunications, river facilities management, administrative services, and real estate activities. In 1997, they provided total revenues of $21,238,000, or approximately 2% of Central Maine's total consolidated electric operating revenues for that year.

Holdco and Central Maine seek authority for Holdco to acquire all of the outstanding common stock of Central Maine and, indirectly, of its utility subsidiaries. In addition, Holdco and Central Maine seek an order under section 3(a)(1) of the Act exempting Holdco and Central Maine from all provisions of the Act, except section 9(a)(2).

Holdco intends to form a subsidiary company, Merger Sub, for the sole purpose of consummating the acquisition of Central Maine by Holdco ("Acquisition"). In accordance with an agreement ("Merger Plan") to be entered into by Holdco, Central Maine and Merger Sub, Merger Sub will merge with and into Central Maine. In addition each issued and outstanding share of Central Maine common stock ("CM Common Stock") will be converted into one share of Holdco common stock ("Holdco Common Stock").[3] The outstanding shares of Merger Sub common stock will be automatically converted into a number of shares of CM Common Stock equal to the number of shares of CM Common Stock before the Merger. The shares of Holdco Common Stock owned by Central Maine before the Merger will be canceled. All debt securities and series of Central Maine preferred stock will be unaffected by the Merger Plan and will remain securities of Central Maine.

Upon consummation of the Acquisition, each person that held shares of CM Common Stock before the Acquisition, will hold an equal number of shares of Holdco Common Stock, and Holdco will hold all of the issued and outstanding shares of CM Common Stock.

Applicants state that concurrently with the Acquisition, or shortly thereafter, Central Maine will transfer by dividend its existing equity interests in CMPI, MaineCom, Telesmart, Union Water and Androscoggin to Holdco.[4]

Applicants assert that they will each satisfy the requirements for an exemption under section 3(a)(1) upon consummation of the Merger. They state that they and their public utility subsidiaries currently are, and will continue to be, predominately intrastate in character and will continue to carry on their business substantially in Maine.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17082 Filed 6–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 29, 1998.

A closed meeting will be held on Wednesday, July 1, 1998, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

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[1] Central Maine has reached an agreement with a third party, FPL Group ("FPL"), to sell its interests in AVEC, as part of a sale to FPL of all of its nonnuclear generating assets.

[2] Central Maine also owns a 38% common stock interest in Maine Yankee Atomic Power Company ("Maine Yankee"), which owns the Maine Yankee nuclear electric generating plant in Wiscasset, Maine. The Maine Yankee plant is not currently operating. On August 6, 1997, the board of directors of Maine Yankee voted to shut down permanently and begin to decommission the Maine Yankee plant.

[3] Central Maine's shareholders approved the Merger Plan at their annual meeting on May 21, 1998.

[4] Central Maine expects to sell its interests in Hydro, Merimil and GIPOP as part of the planned sale of its nonnuclear generation assets. Central Maine has offered for sale its interest in Kennebec Water. If Central Maine does not receive an acceptable bid for this interest, it will retain the interest and not transfer it to Holdco. Cumberland and Central will remain subsidiaries of Central Maine.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The closed meeting scheduled for Wednesday, July 1, 1998, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 23, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17149 Filed 6–23–98; 4:11 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40105; File No. SR–NASD–98–28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Approval of Research Reports

June 22, 1998.

I. Introduction

On April 27, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 2210, "Communications with the Public," of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"). The proposed rule change will permit the approval of research reports by a supervisory analyst acceptable to the New York Stock Exchange ("NYSE") under NYSE Rule 344, "Supervisory Analysts,"[3] to satisfy the requirement under NASD Rule 2210 that research reports be approved by a registered principal.

The proposed rule change was published for comment in the **Federal Register** on May 19, 1998.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

Currently, NASD Rule 2210(b)(1) requires each item of advertising and sales literature to be approved by signature or initial of a registered principal of an NASD member prior to use or filing with NASD Regulation. Under NASD Rule 2210(a)(2), "sales literature" includes research reports. A joint NASD/NYSE member asked the NASD whether the approval of research reports by a supervisory analyst approved by the NYSE under NYSE Rule 344 could satisfy the requirement under NASD Rule 2210 that a registered principal approve research reports prior to use or filing with NASD Regulation.

In order to become a supervisory analyst under NYSE Rule 344, an applicant may present evidence of appropriate experience and either (i) pass an NYSE Supervisory Analyst Examination, or (ii) successfully complete a specified level of the Chartered Financial Analysts Examination prescribed by the NYSE and pass only that portion of the NYSE Supervisory Analysts Examination dealing with NYSE rules on research standards and related matters.[5] The NASD Regulation staff reviewed the NYSE content outline for the NYSE's Supervisory Analysts Examination and found that the particular categories of securities addressed in the "securities analysis" section of the content outline are fixed income securities and equity securities. The NASD Regulation staff concluded that the coverage of the NYSE communication rules in NYSE's Supervisory Analysts Examination is comparable to the communication materials covered in the NASD principal examination.[6] Accordingly, NASD Regulation believes that, with respect to the level of training and experience necessary for review of research reports on debt and equity securities, the level of supervisory analyst registration is comparable to the level of NASD principal registration. Given that the scope of approval authority is limited to research reports on debt and equity securities and that the material in the NYSE's Supervisory Analysts Examination and the NASD's principal examination is comparable, the NASD Regulation staff concluded that the investor protection goals that the NASD's principal review requirement are designed to serve could be satisfied by the NYSE's requirements in this area.

Accordingly, the proposed rule change amends NASD Rule 2210(b)(1) to state that the requirement that advertising and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in NYSE Rule 472, "Communications with the Public,"[7] by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other material requiring supervisory approval would continue to require approval by an NASD registered principal.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[8] of the Act, which require that the rules of the Association be designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal amends NASD Rule 2210(b)(1) to state that the requirement that advertising and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports, as defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. NASD Regulation staff states that it has reviewed the content outline for the NYSE Supervisory Analysts Examination and concluded that the coverage of the NYSE communication rules in the Supervisory Analysts Examination is comparable to the communication materials covered in the NASD principal examination. Additionally, the NASD Regulation staff has represented that any change to NYSE Rule 344 or the NYSE Supervisory Analysts Examination would be cause for the NASD to review NASD Rule 2210 to ensure that NASD and NYSE requirements for approval of research reports remain comparable.[9] Given that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Rule 344 states that supervisory analysts must be acceptable to, and approved by, the NYSE. NYSE Rule 344, Supplementary Material .10 sets forth examination and other requirements for supervisory analysts.

[4] *See* Securities Exchange Act Release No. 39985 (May 12, 1998), 63 FR 27608.

[5] *See* NYSE Rule 344, Supplementary Material .10.

[6] The NASD principal examination referred to here is the Series 24 Qualification Examination for Principals.

[7] NYSE Rule 472, Supplementary Material .10 defines "research reports" as "* * * an analysis of individual companies, industries, market conditions, securities or other investment vehicles which provide information reasonably sufficient upon which to base an investment decision."

[8] 15 U.S.C. 78o–e.

[9] This representation was made by Robert J. Smith of the Office of General Counsel, NASD Regulation,

the proposed rule change permits the approval of research reports by a supervisory analyst approved pursuant to NYSE Rule 344 in limited circumstances and according to standards comparable to current NASD requirements, the Commission believes that the proposed rule change preserves the investor protection goals of the NASD principal review requirement rules and eliminates duplicative regulatory requirements.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10] that the proposed rule change (SR–NASD–98–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17080 Filed 6–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40103; File No. SR–NASD–98–04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Mandatory Arbitration of Claims Involving Exempted Securities.

June 19, 1998.

I. Introduction

On January 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the interpretation of the NASD's Code of Arbitration Procedure ("Code") such that all claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution ("Office") for arbitration under the Code without limitation. Accordingly, when such claims arise involving public customers, Rule 10301 of the code will require member firms and associated persons to arbitrate them at the request of the customer. In addition, when such claims arise between members and other members or associated persons, Rule 10201 (which governs intra-industry disputes) will require them to be arbitrated at the request of one of the parties. Finally, when such claims arise between a member firm and a customer, customers can be required under the terms of a predispute arbitration agreement to arbitrate the claims.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39880 (April 16, 1998), 63 FR 20230 (April 23, 1998). No comments were received on the proposal.

II. Description

Since at least 1989, the Office had declined to accept claims for mandatory arbitration involving transactions in government securities naming member firms that were registered solely under Section 15C of the Act as government securities broker/dealers.[3] By contrast, if a claim involves a government securities transaction by a general securities broker/dealer member firm, the Office will accept the claim for mandatory arbitration. If the claim involves a municipal securities transaction by a member firm,[4] the Office will accept the claim for arbitration.[5] In addition, the Office will accept claims where both parties agree to submit the claim to arbitration.

Rule 10101 of the Code provides that disputes "arising out of or in connection with the business of any member" are eligible for submission to arbitration under the Code. The definition of "investment banking or securities business" in Article I, paragraph (l) of the By-Laws means "the business carried on by a broker, dealer, or municipal securities dealer * * *." Rule 10301(a) provides that eligible disputes "arising in connection with the business of [a] member or in connection with the activities of [an] associated person" must be arbitrated pursuant to any enforceable arbitration agreement or upon the demand of a customer. While these rules (and the definition) sweep in a very broad range of disputes, Rule 10301(b) permits the Office to decline to arbitrate certain matters.

In reliance on Rule 10301(b), and the NASD's limited regulatory jurisdiction over government securities-only member firms the Office has for many years declined to accept for arbitration claims that involved transactions in government securities by member firms engaged only in activities involving government securities unless both parties voluntarily agreed to submit the claim. The Office's position means that these claims cannot be compelled into arbitration under either a demand for arbitration or a presidpute arbitration agreement. The Office's decision to decline to mandate arbitration of government securities claims was based on the following rationale: (1) the NASD only regulated the exempted securities activities of member firms to the limited extent permitted in Section 15A(f)(2) of the Act; and, (2) the subject matter jurisdiction of the arbitration forum should not be significantly different from the NASD's regulatory jurisdiction over its members and associated persons.

In response to the passage of the Government Securities Act Amendments of 1993, which amended Section 15A(f)(2) of the Act and granted the NASD the authority to regulate broadly the business practices of members with respect to government securities,[6] NASD Regulation amended its rules to consolidate the Government Securities Rules it had adopted pursuant to Section 15A(f)(2) of the Act with its more generally applicable

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to Heidi Pilpel, Special Counsel, Division of Market Regulation, on May 12, 1998.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section 15C of the Act, 15 U.S.C. 78*o*–5, governs the registration of government securities broker/dealers. Since 1986, when Section 15C was adopted as part of the Government Securities Act, government securities broker/dealers have been required to become members of an exchange or the NASD.

[4] Section 15B of the Act, 15 U.S.C. 78*o*–4, governs the registration of municipal securities dealers. Municipal securities dealers are not required to become members of an exchange or the NASD. Nevertheless, some NASD members which are engaged in a general securities business are registered as municipal securities dealers, and some firms which are exclusively municipal securities dealers have become members of the NASD.

[5] The NASD previously asked claimants in these cases if they wanted the claim referred to the Municipal Securities Rulemaking Board ("MSRB") for arbitration. However, the Commission recently approved an MSRB proposed rule change terminating the MSRB's arbitration program and requiring the financial institutions that are subject to its rules to submit to arbitration in the NASD's forum as if they were NASD members. *See* Securities Exchange Act Release No. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997). The Commission believes that compelling NASD members to arbitrate municipal securities claims would be consistent with the intent of the MSRB's rule filing eliminating its arbitration program and sending its arbitration cases to the NASD. The Commission notes that NASD members engaged in municipal securities transactions already are required to arbitrate their claims because they are either general securities broker/dealers that are otherwise required to arbitrate all of their other claims, or because they voluntarily became NASD members. The Commission notes that this filing does not affect the arbitration of municipal securities.

[6] The NASD is still barred from establishing regulations covering the municipal securities activities of broker/dealers; that authority is reserved to the MSRB.

Conduct Rules. NASD Regulation now regulates the activities of members engaged in government securities activities that are both general securities broker/dealers and limited purpose government securities broker/dealers.

Under the new policy, a member that is registered solely as a government securities broker/dealer and that has a dispute with a customer over a transaction in exempted securities shall be required to submit the dispute to arbitration upon the demand of the customer.[7] Such disputes also may be compelled to arbitration pursuant to a valid predispute arbitration agreement. Intra-industry disputes involving exempted securities also will be subject to mandatory arbitration upon the request of one of the parties.

NASD Regulation also believes the policy should permit any claim involving exempted securities to be submitted for arbitration without regard to when the transaction occurred; however, if more than six years have elapsed from the transaction, occurrence, or event giving rise to the claim, under Rule 10304 of the Code, the claim will not be eligible for submission to arbitration.[8] All claims involving general securities broker/dealers will continue to be accepted for arbitration consistent with past practice. Claims previously submitted that the Office has already declined to arbitrate under the old policy cannot be resubmitted under the new policy.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that eliminating a barrier to the arbitration of disputes involving exempted securities will allow public customers and members access to the arbitration forum for the resolution of such disputes. The Commission believes it is reasonable, given the broadening of NASD Regulation's regulatory jurisdiction over government securities and the recent adoption of amendments to the NASD's rules in recognition of the broader jurisdiction,[10] for NASD Regulation to amend its arbitration policy to include claims involving government securities by members engaged exclusively in exempted securities activities[11] within the scope of those claims that are subject to mandatory arbitration under the Code.[12]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–98–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17063 Filed 6–25–98; 8:45 am]

BILLING CODE 8010–01–M

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[7] NASD Regulation notes that few government securities claims involving public customers have been filed or attempted to be filed with the Office. Most of the claims involving government securities have involved member-to-member claims.

[8] NASD Regulation proposed an amendment to Rule 10304, rule filing SR–NASD–97–44, pending approval with the SEC. Under the proposed rule change all claims are presumed to be eligible; however, the presumption could be overcome if the respondent challenges the claim on the basis that more than six years have elapsed since the act or occurrence giving rise to the claim.

[9] 15 U.S.C. 78*o*–3.

[10] In Notice to Members 96–66, published in October 1996, the NASD announced the consolidation of its Government Securities Rules into the Conduct Rules, ending the regulatory distinction between the activities of general securities broker/dealers and government securities broker/dealers. *See* Securities Exchange Act Release No. 37588 (August 20, 1996) 61 FR 44100 (August 27, 1996).

[11] As noted above, general securities broker/dealers are already required to arbitrate all their claims, including those involving government securities.

[12] As required by Section 19(b)(5) of the Act, the Commission has consulted with the Treasury Department on this proposal.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #2843]

Determination on Export-Import Bank Support for the Sale to Venezuela of Defense Articles or Services To Be Used Primarily for Counter-Narcotics Purposes

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12660 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank financial guarantees, parts and services for the refurbishment of seventeen (17) OV–10 aircraft, are being sold primarily for anti-narcotics purposes;

(2) the sale of such defense articles and services would be in the national interest of the United States;

(3) The requirement for a determination that the Government of Venezuela has complied with all restrictions imposed by the United States on the end-use of defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)(6) of the Export-Import Bank Act is inapplicable because the pending financing will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act;

(4) the requirement for a determination that the Government of Venezuela has not used defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)(6) of the Export-Import Bank Act to engage in a consistent pattern of gross violations of internationally recognized human rights is inapplicable because the pending transaction will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act.

The determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: June 12, 1998.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 98–17021 Filed 6–25–98; 8:45 am]

BILLING CODE 4710–19–M

DEPARTMENT OF STATE

[Public Notice No. 2842]

United States International Telecommunications Advisory Committee (ITAC) Development Sector (ITAC–D); Notice of Meeting

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of Study Groups 1 and 2 of the Telecommunications Development Sector (ITAC–D). The meeting will be held on Wednesday, July 8, 1998, 10:00 a.m.–12:00 noon, in Room 1207 of the Department of State, 2201 "C" Street, NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The purpose of this meeting is to develop U.S. positions for the upcoming ITU–D meetings. The meeting agenda will include preparation for planned ITU–D meetings of Study Group 1 (Telecommunications & Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services, including Spectrum Management). Questions regarding the agenda or ITAC–D Sector activities in general may be directed to Doreen

McGirr, Department of State (202–647–0201), fax number (202–647–7407).

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following photo IDs will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: June 15, 1998.

Doreen F. McGirr,

Chair, U.S. ITAC for Telecommunications Sector.

[FR Doc. 98–17028 Filed 6–25–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 30, 1998 [63 FR 15257].

DATES: Comments must be submitted on or before July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office Engineering, Federal Highway Administration, U.S. Department of Transportation, HNG–10, Room 3134, 400 7th St., SW. Washington, DC 20590–0001, telephone (202) 366–4104. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Eligibility Statement for Utility Adjustments.

OMB Number: 2125–0515.

Type of Request: Extension of a currently approved collection.

Affected Public: State highway agencies and local highway agencies.

Abstract: The FHWA requires State (and in some cases local) highway agencies to submit to the FHWA a statement which establishes the highway agency's legal authority or obligation to pay for utility adjustments. The FHWA reviews this statement for acceptability. If the statement is found to be suitable, it then forms a basis for Federal-aid participation in utility relocation costs under the provisions of 23 U.S.C. 123. The State highway agencies have previously submitted statements covering the extent to which utility adjustments may be legally reimbursed under State law. These statements have previously been reviewed by the FHWA and a determination of suitability has been made. Hence, the only submissions required now would be for those instances where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local highway agency's legal basis for payment of utility adjustments differs from that of the State.

Estimated Total Annual Burden: 180 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 22, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17066 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on April 6, 1998 [63 FR 16854–16856].

DATES: Comments must be submitted on or before July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Robinson, NHTSA Information Collection Clearance Officer at (202) 366–9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

(1) Title: Procedures for Selecting Lines to be Covered by the Theft Prevention Standard (49 CFR 542).

OMB Control Number: 2127–0539.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The Anti Car Theft Act of 1992 (amended the Motor Vehicle Theft Law Enforcement Act of 1984 (P.L.98–547) requires this collection of information. One component of the theft prevention package requires the Secretary of Transportation (delegated to the National Highway Traffic Safety Administration (NHTSA) to promulgate a theft prevention standard for the designation of high-theft vehicle lines. Provisions delineating the information collection requirements include section 33104, which requires NHTSA to promulgate a rule for the identification of major component parts for vehicles

having or expected to have a theft rate above the median rate for all new passenger motor vehicles (cars, MPVs, and light-duty trucks—6000 lbs GVWR and below) sold in the United States, as well as with major component parts that are interchangeable with those having high-theft rate.

The specific lines and parts to be identified are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment. The procedures, contained in Part 542 (1) and (2) will be applied to those lines introduced before or after the 1997 model year (MY).

Estimated Annual Burden: 1,600 hours.

(2) Title: Petitions for Exemption from the Vehicle Theft Prevention Standard, 49 CFR Part 543.

OMB Control Number: 2127–0542.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. section 33106 provides for an exemption to this identification process by petitions from manufactures who equip covered vehicles with standard original equipment anti theft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as the identification system.

Estimated Annual Burden: 192 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 22, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation

[FR Doc. 98–17067 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 17, 1998 [63 FR 7849–7850].

DATES: Comments must be submitted on or before July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene Kennedy, Office of Information Services, (202) 366–9458, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Certification of Enforcement of the Heavy Vehicle Use Tax.

OMB Number: 2125–0541.

Type of Request: Extension of a currently approved collection.

Form(s): N/A

Affected Public: State highway agencies.

Abstract: Title 23, United States Code, Section 141(d), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification of collection of the heavy vehicle use tax submitted by each State serves as the primary means of determining State compliance with 23 U.S.C. 141(d) by the FHWA. Under the rulemaking authority granted to the Secretary of Transportation by 23 U.S.C. 315, the FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate.

Evidence of compliance with 23 U.S.C. 141(d) is comprised of two elements: reporting and recordkeeping. The reporting element consists of a simple certification submitted to FHWA on an annual basis by the State's Governor or designated official. The recordkeeping element consists of a one-year retention of Schedule 1, Form 2290, by the States (or other suitable alternative provided by regulation).

Compliance reviews are periodically conducted by FHWA to determine if the certification is adequate to ensure effective administration of 23 U.S.C.141(d).

The certification requirement is the critical factor in establishing a manageable and reasonable procedure for determining State compliance with the statute. Without annual certification and supporting records, determinations of compliance would involve frequent reviews of State registration procedures and practices and would clearly be an obtrusive Federal presence in State programs.

Estimated Annual Burden Hours: 612.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 22,1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation

[FR Doc. 98–17068 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Broad Agency Announcement: Funds Availability for Research Projects and Technology Advancements Under the Next Generation High-Speed Rail Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funds availability: Broad Agency Announcement (BAA) for research projects and technology advancements under the next generation high-speed rail program.

Introduction

The Federal Railroad Administration (FRA) is soliciting pre-proposal concept papers for various research projects, technology advancements and/or demonstrations directed at enhancing the deployment of high-speed rail service in the United States. Technologies most likely to enhance the deployment of high-speed rail service in the U.S. are those which will—(a) enhance the revenue-generating capability of high-speed operations; (b) bring about capital cost reductions and economy in producing equipment and facilities; (c) reduce operating costs of high-speed rail service; (d) improve the reliability of equipment and infrastructure components; (e) improve safety; and/or (f) enhance the social benefits and/or environmental aspects of high speed rail.

Eligible Participants

This is an unrestricted solicitation. Any responsible source may submit a pre-proposal concept paper for consideration including, but not limited to, states or local governments, or organizations of state or local governments, institutions of higher education, hospitals or other non-profit organizations, private individuals, corporations, businesses or commercial organizations, except that any business owned in whole or in part by the Federal Government is not eligible. Although businesses owned in whole or in part by the Federal Government are not eligible for funding under the Program, they may contract with eligible participants. Cooperative arrangements (e.g., joint ventures, limited partnerships, teaming arrangements, or collaboration and consortium arrangements) are permitted and encouraged. Small, Small Disadvantaged (SD), and Women-Owned (WO) Business Concerns, and Historically Black Colleges and Universities (HBCU) and Minority Institutions (MIs) are encouraged to submit pre-proposal concept papers on their own and/or in collaboration with others. However, no portion of this BAA will be set aside exclusively for Small, SD, or WO Business Concerns, or for HBCU and MIs. Attention: Minority, Women-Owned and Disadvantaged Business Enterprises (DBEs)! The Department of Transportation (DOT), Short-Term Lending Program (STLP) offers working capital financing in the form of lines of credit to finance accounts receivable for transportation related contracts. Maximum line of credit is $500,000 with interest at the prime rate. For further information call (800) 532–1169. Internet address: *http://osdbuweb.dot.gov*.

Exchanges and Points of Contact

Exchanges of information between interested parties and the Government, prior to submission of pre-proposal concept papers, are strongly encouraged. Such informal exchanges may provide would-be offerors with preliminary information on the Government's level of interest in prospective works or projects or on the availability of funds. Any exchanges of information must be consistent with procurement integrity requirements of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423, as amended) (see Federal Acquisition Regulation (FAR) 3.104). For technical inquires, interested parties may contact the BAA primary technical point of contact, Mr. Robert McCown (Tel: 202/632–3250, Fax: 202/632–3854), or one of the other, secondary technical points of contact identified in Appendix A of the BAA 98–01 Pre-Proposal Preparation Package (BAA 98–01 Package), available from the FRA. All non-technical inquiries should be directed to the Grants/Contracting Officer, Mr. Thomas Riddle (Tel: 202/632–3391, Fax: 202/632–3846). Please note that FRA anticipates changing its telephone service on or about July 10, 1998. New telephone numbers will be assigned during this change over. For the first 30 days after the change over, there will be a automatic bridge/link in which the service provider will furnish callers with the new number of the party they are trying to reach when an old [replaced] number is dialed. After 30 days, a caller who dials an old number will be routed to the DOT operator for assistance/new number, or the caller may dial the DOT information line direct at 202/366–4000. As of the date this announcement/notice was submitted for publication, the following numbers have been tentatively assigned for the points of contact identified above, for *usage on or after July 10, 1998:* Mr. McCown—Tel: 202/493–6350, RDV–30 Fax: 202/493–6333. Mr. Riddle—Tel: 202/493–6149.

BAA Time Line

BAA 98–01 is being published in both the Commerce Business Daily (CBD) and the **Federal Register** (FR) in June 1998. (Note: BAA 98–01 is a single broad agency announcement of the FRA, that is being advertised and published in these two different media to reach a broad base of prospective applicants. The description of BAA 98–01 may different slightly in form between the two publications, but each will be substantially the same as the other in all material respects.) FRA will accept pre-proposal concept paper submissions, inquiries and requests for the BAA 98–01 Package under BAA 98–01, immediately upon its announcement and appearance in either the CBD, or FR, or June 22, 1998, whichever single date/event occurs first. However, to allow interested parties adequate time to prepare pre-proposal concept papers, FRA will not begin its technical evaluations before July 22, 1998. Unless BAA 98–01 is superceded or canceled, FRA will continue to accept concept submissions, inquiries and package requests, through April 30, 1999; however, fiscal year 1999 (FY 99) awards are subject to the availability of FY 99 appropriations or the continued availability of unobligated prior no-year funds. Although the BAA is open for an extended period, interested parties would be well advised to submit proposals as early as possible.

Funding Authority and Related Information

Funds for this program are authorized in the Department of Transportation and Related Agencies Appropriations Act 1998, Public Law 105–66 (October 27, 1997). FRA will make available up to $4.3 million for awards under the BAA during fiscal year 1998 for research project and technology advancements in areas of research interest to the FRA, that are evaluated favorably and determined by the FRA to be consistent with the objectives of this BAA and of interest to the Government, and for which adequate funding exist. Awards

may be of any dollar value within the maximum amounts allowed for each area of interest (so long as those amounts do not exceed the total amount available under the BAA), but it is anticipated that most, if not all, individual awards (or that part of the Government's portion in a cost sharing arrangement) will have dollar values ranging between $25,000 and $500,000 each. Prospective offerors are advised that awards greater than $500,000 will generally require the awardee (except a small business concern) to already have in place or prepare, at or before the time of award, an acceptable plan to maximize the participation of minority, women-owned and disadvantaged business enterprises. Because the range and diversity of activities that may be proposed under the BAA does not permit a common work statement, no single Standard Industrial Classification (SIC) code will be issued for the BAA. SIC codes will be specific to each individual contract award as determined by the type of activity in which the actual offeror will be engaged, and as a function of the ownership characteristics of the prospective offeror. Cost sharing by awardees is not mandatory under this BAA, however because of the potential for long-term benefits to those firms or institutions involved in these research and development activities, offerors are strongly encouraged to consider sharing the cost of their proposed projects.

Awards

Research projects, technology advancements, and/or demonstrations proposed under this BAA will be considered for award through a two-step process. In the first step, interested parties must submit a pre-proposal concept paper for each research project, technology advancement or demonstration (by area of interest) the applicant wishes the FRA to consider. The purpose of the pre-proposal concept paper is to preclude unwarranted and possibly costly effort on the part of interested parties whose proposed work may not be of interest to the FRA under this BAA. Pre-proposal concept papers submitted under this BAA will be subject to technical review in accordance with the established evaluation criteria. Based upon its evaluations, the FRA will subsequently notify each respondent who submits a pre-proposal concept paper as to whether the Government encourages or does not encourage the submission of a full proposal. In the second step, respondents whose pre-proposal concept papers are evaluated favorably and determined by the FRA to be consistent with the objectives of the BAA and of interest to the Government, may be requested to submit a full technical and cost proposal or other information relative to the initial submission for further consideration. Such a request will NOT guarantee the applicant that an award will be forthcoming for the offered work or project, nor otherwise create an obligation on the part of the Government. Awards may take the form of contracts, grants or cooperative agreements. Contracts will be used when the principal purpose is the acquisition of supplies or services (including research and development) for the direct benefit or use of the Federal Government. Grants or cooperative agreements will be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

Areas of Technology Interest

Technologies which are high-priority research candidates for evaluation pursuant to this announcement include: (1) Grade crossing hazard mitigation systems. (2) Innovative, low cost technologies to improve track and structures. (3) Advance train control systems. (4) Non-electric locomotives and passenger equipment systems. (5) Other scientific study, technology adaptation, or demonstration directed toward advancing the state-of-the-art or increasing the knowledge or understanding of high-speed passenger rail service in the U.S.

Pre-Proposal Concept Papers and Preparation Instructions

Pre-proposal concept papers should be ten (10) pages or less (except as otherwise noted). Pre-proposal concept paper submissions must contain a Technical Concept Section and a Cost or Pricing Section, and when applicable, should contain a Phased or Follow-on Research Project Section. Specific content and format requirements and additional instructions for preparing submissions, as well as further information on the areas of interest themselves and the evaluation/selection process, are provided in the BAA 98–01 Package. Interested parties may obtain a copy of the BAA 98–01 Package by submitting a written request to U.S. Department of Transportation, Federal Railroad Administration, Office of Acquisition and Grants Services, RAD–30, 400 7th Street, SW, Mail Stop 50, Washington, DC 20590, or via tele-facsimile request (Fax No. 202/632–3846), to the attention of the Grants/Contracting Officer, Mr. Riddle. The request should also reference the Solicitation No. BAA 98–01. The BAA 98–01 Package should also be available on the Internet in July 1998.

Evaluation Criteria

Pre-proposal concept papers (and later full proposals or other submissions, if and when requested) will be evaluated using the following criteria, which are listed in descending order of relative importance: (1) The overall scientific merit and/or technical merits of the proposal. (2) The degree to which the overall proposed technical effort will advance U.S. high-speed rail technology, and the extent to which its application to railroad operations would improve intercity passenger operations through improved railroad capital equipment or infrastructure, traffic control centers, interfaces among these, or operating methods, and/or its potential for performance improvement in one or more qualities such as, cost effectiveness, reliability, safety, availability, or maintainability. (3) The technical qualifications and demonstrated experience of key personnel proposed to perform the technical efforts. (4) The administrative qualifications and demonstrated experience of the proposing organization to support projects such as those proposed. (5) The reasonableness and realism of the proposed costs and fee (if any). (6) The degree to which Federal funds are leveraged by private, non-Federal, and/or Federal funds available from sources other than FRA programs. (7) The availability of funds. THIS ANNOUNCEMENT CONSTITUTES THE ONLY SOLICITATION. NO OTHER REQUEST FOR PROPOSALS OR ANNOUNCEMENT WILL BE ISSUED.

Dated: June 18, 1998.

James T. McQueen,

Associate Administrator for Railroad Development.

[FR Doc. 98–16762 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 5 in STB Finance Docket No. 33556; Request for Comments on Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is inviting comments from interested persons on a proposed procedural schedule for this proceeding. On February 12, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),[1] and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),[2] filed a notice of intent (CN/IC–1)[3] to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11321–26 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.[4]

DATES: Written comments on the Board's proposed schedule must be filed with the Board no later than July 16, 1998. Applicants' reply is due by July 27, 1998.

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2514; FAX: (202) 219–3289] and to each of Applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036–1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710. Comments should contain the name and address of the commenting party, any recommendations for changes to the attached proposed procedural schedule and support for any such changes.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.[5]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On May 20, 1998, Applicants filed a petition (CN/IC–5) to establish a proposed procedural schedule[6] as follows:

Applicants' Proposed Procedural Schedule[7]

F Primary Application and any related applications filed.

F + 30 Board notice of acceptance of primary application (and any related applications) published in the **Federal Register**.

F + 30 Environmental Report and Safety Integration Plan due.

F + 45 Notification of intent to participate in proceeding due. Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.

F + 60 Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due. Comments by U.S. Department of Justice ("DOJ") and U.S. Department of Transportation ("DOT") due.

F + 75 Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.

F + 90 Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.

F + 105 Rebuttal in support of inconsistent and responsive applications due.

F + 125 Briefs due, all parties (not to exceed 50 pages).

F + 145 Oral argument.

F + 150 Voting conference (at Board's discretion).

F + 180 Date of service of final decision.

The proposed schedule contains substantially shorter time periods than those provided for in the statute at 49 U.S.C. 11325. For instance, pursuant to 49 U.S.C. 11325(b)(1), written comments about an application may be filed with the Board within 45 days after Board notice of acceptance of the primary application (and any related applications) is published in the **Federal Register**. Applicants propose that comments be filed within 30 days of publication in the **Federal Register**. The proposed schedule also suggests that inconsistent and responsive applications be filed 30 days following acceptance of the primary application rather than the 90 days noted in the statute.

Comments in opposition to the Applicants' proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMWE), on June 2, 1998, and the United Transportation Union (UTU), on June 8, 1998. Both BMWE and UTU state that the proposed schedule is too short and urge the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urges the Board to adopt a 350-day schedule modeled upon the procedural

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[1] CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

[2] IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as Applicants.

[3] CN/IC–1 reflected Applicants' expectation that they would file the Primary Application on or before June 12, 1998. In view of the need to take account of subsequent developments, Applicants state that they now expect to file in July.

[4] In Decision No. 2 (served March 13, 1998, and published that day in the **Federal Register** at 63 FR 12574), we found that the transaction contemplated by Applicants is a major transaction, as that term is defined at 49 CFR 1180.2(a); we assigned the proceeding to Administrative Law Judge David Harfeld for handling of all discovery matters and the initial resolution of discovery disputes; and we advised the parties that they will be required to submit all pleadings both in the required paper form and also as computer data contained on diskettes (disks) or compact discs (CDs).

In Decision No. 4 (simultaneously being served with this decision today), we address Applicants' petition (CN/IC–4) for waiver or clarification of certain filing requirements.

[5] In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the **Federal Register** at 63 FR 28442–44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

[6] Applicants' proposed schedule is similar to the 180-day schedule proposed to the Interstate Commerce Commission by applicants in Finance Docket No. 32549, *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (BN/SF).*

[7] The term "F" designates the date of filing of the application and "F + n" means "n" days following that date.

schedule issued by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 6 (STB served May 30, 1997).

We do not at this time see any compelling reason to adopt a 6-month procedural schedule for this proceeding. The statute allows 16 months for the processing of major consolidation proceedings. Under 49 U.S.C. 11325(b)(3), the Board must conclude the evidentiary stage of the proceeding within 13 months of the application's filing date,[8] and must issue the final decision by the 90th day after the conclusion of the evidentiary stage. We believe that a 10-month procedural schedule would be sufficiently expeditious so as not to delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems, while at the same time allowing sufficient time to develop the record upon which the Board's decision would be based. We propose to modify Applicants' proposed procedural schedule so as to conclude the evidentiary stage of this proceeding approximately 8 months after the application is filed, and to issue the final decision approximately 2 months thereafter.

Given the importance of the safe implementation of major rail consolidations, we propose to require Applicants to file Safety Integration Plans on Day (F + 30) as they have proposed. Also, we propose to require inconsistent and responsive applicants to file their Responsive Environmental Reports and Environmental Verified Statements on Day (F + 100), which is 20 days in advance of when inconsistent and responsive applications would be due.

Specifically, as for the remainder of the procedural schedule, we propose to modify Applicants' proposed schedule to allow 30 more days for parties intending to file comments, protests, requests for conditions, and any other opposition evidence and argument, so that these filings would not be due until 90 days after the application is filed [Day (F + 90)]. Comments from the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) would be due 120 days after the application is filed. Responses to comments, protests, requested conditions, and other opposition (except DOJ and DOT), and also rebuttal in support of the primary application and related applications would be due on Day (F + 120). We propose to keep inconsistent and responsive applications due 120 days after the application is filed [Day (F + 120)] as provided for under 49 U.S.C. 11325(b)(2). Response to comments of DOJ and DOT would be due on Day (F + 150). Descriptions of anticipated inconsistent and responsive applications and petitions for waiver or clarification due with respect to such applications would be due on Day (F + 60) (rather than Day (F + 45)).

In addition, we propose adding 5 days for responses to inconsistent and responsive applications (which would be due Day (F + 155)), and adding 15 days for rebuttals for inconsistent and responsive applications (which would be due Day (F + 185)). Briefs would be due on Day (F + 205), and we are proposing page limitations for briefs for all parties to promote useful, focused filings, with Applicants permitted to file somewhat longer briefs, as they would have more points to address at that time than would other parties. We propose, however, adding 10 days to Applicants' proposed period of time for parties to prepare for oral argument, so that oral argument would occur on Day (F + 235). The oral argument would close the record. We propose (as did the Applicants) a 5-day interval between the oral argument and the voting conference, so that a voting conference would occur on Day (F + 240). We also propose allowing 60 days after the voting conference for the service of the Board's final decision on Day (F + 300).

Proposed Procedural Schedule as Modified by The Board

F Primary application and any related applications filed.

F + 30 Board notice of acceptance of primary application (and any related applications) published in the **Federal Register**.

F + 30 Safety Integration Plan due.

F + 45 Notification of intent to participate in proceeding due.

F + 60 Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.

F + 90 All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due (except filings by U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT)).

F + 100 Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.

F + 120 Inconsistent and responsive applications due. Comments by DOJ and DOT due. Response to comments, protests, requested conditions, and other opposition (except DOJ and DOT) due. Rebuttal in support of primary application and related applications due.

F + 140 Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.

F + 150 Response to comments of DOJ and DOT due.

F + 155 Response to inconsistent and responsive applications due.

F + 185 Rebuttal in support of inconsistent and responsive applications due.

F + 205 Briefs due, all parties (not to exceed 50 pages for Applicants and not to exceed 25 pages for all other parties).

F + 235 Oral argument (close of record).

F + 240 Voting conference (at Board's discretion).

F + 300 Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted.[9] Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

Environmental Review Process

Based on consultations with Applicants, the Board's Section of Environmental Analysis (SEA) has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1105.6 (b)(4), which call for an EA in a merger or acquisition such as this proceeding. Also, in making its determination to prepare an EA, SEA considered the nature of the transaction, including the projected changes in train traffic, the

[8] Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the **Federal Register** notice accepting the application. That publication is due no later than 30 days after the application is filed.

[9] In Decision No. 1 (served February 26, 1998), a protective order was issued in this proceeding.

anticipated changes at rail yards and intermodal facilities, and the number, type, and location of proposed construction projects. However, if SEA determines that this proceeding has the potential for significant environmental impacts, then SEA may prepare an Environmental Impact Statement, as required by the National Environmental Policy Act (NEPA).

Applicants originally proposed to file an environmental report 30 days after they filed their application. In a letter dated June 18, 1998, however, Applicants requested that SEA conduct a modified environmental review process in this proceeding. SEA concurs with this approach. Under this approach, Applicants will provide, with their application and operating plan, an environmental overview rather than an environmental report. This is consistent with the Board's environmental rules at 49 CFR 1105.10 (d), which waive the requirement for an environmental report for applicants that retain an independent third-party contractor to work under SEA's direction to prepare the necessary environmental documentation. For this proceeding, Applicants have retained the requisite independent third-party contractor.

With direction and guidance from SEA, Applicants will prepare and submit to SEA a Preliminary Draft Environmental Assessment (PDEA). Preparation of a PDEA is consistent with the Council on Environmental Quality regulations at 40 CFR 1506.5(b) that permit preparation of an environmental assessment by an applicant. Upon receipt of Applicants' PDEA, SEA will review and verify the environmental information provided by Applicants in this document. SEA will then prepare a Draft Environmental Assessment (Draft EA) for public review and comment. The Draft EA will include SEA's independent preliminary recommendations for mitigation to address potentially adverse environmental impacts.

As part of the environmental review process, Applicants also propose to submit a safety integration plan, which will fully describe the extensive plans they have for maximizing the safe operation of the combined system.

After reviewing all of the public comments on the Draft EA and conducting additional analyses, SEA will prepare a Final Environmental Assessment (Final EA). The Final EA will include SEA's final recommendations for environmental mitigation. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental recommendations in making its final decision in this proceeding.

Other Matters

Applicants recommend that, in addition to noting that new evidence may not be filed with briefs, the Board should further clarify that cross-examination depositions of rebuttal witnesses cannot be used as a vehicle for adding to the evidentiary record any documents not filed with the Board as part of the application or one of the rounds of evidentiary filings specifically provided for by the Board's schedule.

Applicants suggest that the Board include in its procedural schedule language which reminds parties that, in discovery and in submissions to the Board, they focus strictly on relevant issues.

Applicants request that the Board direct that parties wishing to engage in discovery consult with the ALJ designated to handle all discovery matters and to resolve initially all discovery disputes, and that the Board give the ALJ authority to adopt discovery guidelines and rule on discovery matters but not to modify the procedural schedule.

Applicants also suggest that the Board require appeals of ALJ decisions to be filed within 3 working days of the date of a bench ruling, or in its absence the date of a written ruling, with replies to appeals or to any motion filed with the Board to be filed within 3 working days.

We invite all interested persons to submit written comments on the procedural schedule we are proposing here. Comments must be filed by July 16, 1998. Applicants may reply by July 27, 1998.[10]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17132 Filed 6–25–98; 8:45 am]

BILLING CODE 4915–00–P

[10] The comments of BMWE and UTU will be considered along with any other comments received in response to this notice.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33585]

RailTex, Inc.—Control Exemption—Central Properties, Inc., The Central Railroad Company of Indianapolis, and The Central Railroad Company of Indiana

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 the acquisition of control by RailTex, Inc., of The Central Railroad Company of Indianapolis and The Central Railroad Company of Indiana, Class III rail carriers, through the purchase of all of the stock of their noncarrier parent holding company, Central Properties, Inc.

DATES: The exemption will be effective July 26, 1998. Petitions to stay must be filed by July 13, 1998, and petitions to reopen must be filed by July 21, 1998.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 33585 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioner's representative: Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: June 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17133 Filed 6–25–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 563X)]

CSX Transportation, Inc.—Abandonment Exemption—In Harrison County, WV

On June 8, 1998, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 0.87-mile portion of its line of railroad known as the WVA&P Subdivision, extending between milepost 1.23 and milepost 2.1, in Clarksburg, Harrison County, WV. The line traverses U.S. Postal Service Zip Code 26301 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 25, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 16, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 563X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before July 16, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 18, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16929 Filed 6–25–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Determination of Origin of Goods Processed in a Qualifying Industrial Zone or in Israel and the West Bank or Gaza Strip

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General policy statement.

SUMMARY: This document expands upon T.D. 96–58 by notifying the public that in determining the country of origin of textile and apparel products processed in a designated qualifying industrial zone Customs will exclusively apply the rules of origin for textile and apparel products set forth in section 102.21, Customs Regulations (19 CFR 102.21), which were promulgated pursuant to the authority of section 334, Uruguay Round Agreements Act (19 U.S.C. 3592). A qualifying industrial zone is defined in General Note 3(a)(v)(G), Harmonized Tariff Schedule of the United States (HTSUS), in part, as an area that encompasses portions of the territory of Israel and Jordan or Israel and Egypt.

In addition, this document advises the public that, in accordance with the principles and policy set forth in T.D. 96–58, Customs determines the origin of a textile or apparel product processed both in Israel (outside of a qualifying industrial zone) and in the West Bank or Gaza Strip by first applying the Customs rulings and administrative practices in effect prior to December 8, 1994. If the application of those rulings and practices results in Israel not being the origin of the good, Customs applies the rules in section 102.21 to determine the country of origin, with no further consideration being given to the processing performed in Israel.

Finally, this document reminds the public that section 102.21 is not used to determine whether foreign materials have undergone a "double substantial transformation" for purposes of determining whether their cost or value may be counted toward the value-content requirement of various special tariff treatment programs, such as the U.S.-Israel Free Trade Implementation Act.

EFFECTIVE DATE: The portion of this policy statement concerning the origin of textile and apparel products processed in a qualifying industrial zone shall apply to goods entered or withdrawn from warehouse for consumption on or after March 13, 1998. The remainder of this policy statement shall apply to goods entered or withdrawn from warehouse for consumption on or after July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings, (202) 927–1116.

SUPPLEMENTARY INFORMATION:

Background

Section 334 of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3592) established rules of origin for textiles and textile products. Section 102.21, Customs Regulations (19 CFR 102.21), implemented the provisions of section 334, which became effective July 1, 1996.

T.D. 96–58

T.D. 96–58, published in the **Federal Register** on July 31, 1996 (61 FR 40076), gave notice of Customs interpretation and application of section 334(b)(5) of the URAA. That subsection excepts from the rules of origin governing textiles and textile products set forth in section 334, goods which under rulings and administrative practices in effect immediately before the enactment of section 334 (December 8, 1994) would have originated in, or been the growth, product, or manufacture of, Israel. Section 334(b)(5) further provides that those rulings and administrative practices in effect prior to December 8,

1994, will continue to be applied in determining whether goods originate in Israel, "unless such rulings and practices are modified by the mutual consent of the parties to the [the U.S.-Israel Free Trade Agreement]."

After analyzing the wording in section 334(b)(5) and the implementing Customs Regulations (19 CFR 102.21), Customs concluded in T.D. 96–58 that in determining whether goods originate in, or are the growth, product, or manufacture of Israel, Customs will first apply the rulings and administrative practices in effect prior to December 8, 1994. If that determination results in Israel not being the country of origin of the goods, then Customs will apply the rules in 19 CFR 102.21 to determine the country of origin, with no consideration being given to assembly or manufacturing processes performed in Israel. In other words, if a good is determined not to be a product of Israel under the rulings and administrative practices in effect prior to December 8, 1994, the application of the rules in section 102.21 cannot result in Israel being the country of origin of the good. The statement of policy in T.D. 96–58 was effective July 1, 1996.

Qualifying Industrial Zones

On October 2, 1996, the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note), was amended, creating a new section 9, to authorize the President to proclaim the elimination of duties for articles produced in the West Bank, Gaza Strip, and a "qualifying industrial zone." Pursuant to that authority, the President issued Proclamation No. 6955 dated November 13, 1996 (published in the **Federal Register** on November 18, 1996 (61 FR 58761)), which modified General Note 3(a), Harmonized Tariff Schedule of the United States (HTSUS), to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone ("QIZ"), provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a QIZ entered or withdrawn from warehouse for consumption on or after November 21, 1996. In Proclamation 6955, the President delegated to the U.S. Trade Representative the authority to designate QIZs.

Under General Note 3(a)(v)(A), HTSUS, articles the product of the West Bank, Gaza Strip or a QIZ which are imported directly to the U.S. from the West Bank, Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, Gaza Strip, a QIZ or Israel, plus (2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a product of the West Bank, Gaza Strip or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas. General Note 3(a)(v)(C), HTSUS, states that "[t]he term "new or different article of commerce" means that articles must have been substantially transformed in the West Bank, the Gaza Strip or a qualifying industrial zone into articles with a new name, character or use."

General Note 3(a)(v)(G), HTSUS, defines a *qualifying industrial zone* as any area that: "(1) Encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been designated by the U.S. Trade Representative in a notice published in the **Federal Register** as a qualifying industrial zone."

By letters dated June 30, 1997, and July 1, 1997, to the U.S. Trade Representative, the Governments of Jordan and Israel, respectively, requested the designation of the industrial zone in Irbid, Jordan, as a QIZ. Pursuant to subsequent consultations among the three Governments, the Governments of Israel and Jordan entered into a written agreement dated November 16, 1997, relating to the establishment of the Irbid QIZ, which included the following provision, entitled "Rules of Origin":

> The [Governments of Israel and Jordan] agree that the origin of any textile or apparel product that is processed in the Irbid Qualifying Industrial Zone, regardless of the origin or place of processing of any of its imputs or materials prior to entry into, or subsequent to withdrawal from, the zone, will be determined solely pursuant to the rules of origin for textile and apparel products set out in Section 334 of Uruguay Round Agreements Act, 19 U.S.C. 3592.

By notice published in the **Federal Register** on March 13, 1988 (63 FR 12572), the Office of the U.S. Trade Representative formally designated the Israeli-Jordanian Irbid Qualifying Industrial Zone as a QIZ, effective upon publication of the notice in the **Federal Register**. To date, this is the only QIZ designated by the U.S. Trade Representative.

Thus, pursuant to the agreement between the Governments of Israel and Jordan, and by the mutual consent of the U.S. and Israel, Customs will exclusively apply the textile and apparel rules of origin set forth in 19 CFR 102.21 in determining the country of origin of a textile or apparel product processed in the Irbid QIZ. This means that the section 102.21 rules will be used not only with regard to processing performed with respect to a textile or apparel article in the Jordanian and/or Israeli portion of the Irbid Zone, but also with regard to processing, if any, performed outside of the Zone in Israel or in any other country either prior to the article's entry into the Zone for processing or subsequent to its withdrawal from the Zone after processing.

Example

The following example is set forth to illustrate the application of the 19 CFR 102.21 rules of origin to determine the origin of articles processed in the Irbid QIZ from imputs processed in Israel:

> Fabric woven in China is cut in Israel (outside of the Irbid QIZ) into components for a simple shirt. Those components are assembled into the completed shirt in the Jordanian portion of the Irbid QIZ by sewing.
>
> Pursuant to section 334(b)(5) of the URAA, the U.S. and Israel have determined by mutual consent that the section 102.21 rules of origin rather than the rulings and administrative practices in effect prior to December 8, 1994, shall be used to determine the country of origin of textile and apparel products processed in the Irbid QIZ. Therefore, Customs must apply section 102.21 to determine the origin of the shirt.
>
> (a) Section 102.21 requires that the General Rules, found in section 102.21(c), be applied in sequential order. Section 102.21(c)(1) states that the country of origin of a good is the single country, territory, or insular possession in which the good was wholly obtained or produced. Since the shirt in the above example was not wholly obtained or produced in a single country, that section is not applicable.
>
> (b) Section 102.21(c)(2) requires that the good comply with the applicable tariff shift rule in section 102.21(e). The applicable tariff shift rule for the shirt in the above example is a change to the heading in which that garment is classified from any other heading, provided that the change is the result of the garment being wholly assembled in a single country, territory, or insular possession. The shirt in the above example meets this requirement because it was wholly assembled in the Jordanian portion of the Irbid QIZ. Therefore, the shirt is considered to be the "growth, product or manufacture" of the QIZ for purposes of obtaining duty-free treatment under General Note 3(a)(v), HTSUS. It should also be noted that, because the country of origin marking statute (19 U.S.C. 1304) provides that, unless excepted, every imported foreign article (or its container) shall be marked with the "name of the country of origin of the article" (emphasis

added), merely marking the shirt to indicate that it is a product of the Irbid QIZ would not satisfy the requirements of 19 U.S.C. 1304. Therefore, since the processing which determines the origin of the shirt under 19 CFR 102.21 takes place in the Jordanian portion of the QIZ, the country of origin of the shirt for marking purposes is Jordan, and it must be so marked.

West Bank and Gaza Strip

As previously stated, articles produced in the West Bank or Gaza Strip which meet the requirements set forth in General Note 3(a)(v), HTSUS, are entitled to duty-free treatment when imported into the U.S., effective for articles entered on or after November 21, 1996.

Example

The following example illustrates how a determination is made as to the country of origin of a textile or apparel product which is processed in the West Bank or Gaza Strip from imputs processed in Israel (outside of the Irbid QIZ):

Fabric woven in country A is cut in Israel (outside the Irbid QIZ) into components for men's boxer shorts of the underwear type. The components are assembled into the completed boxer shorts in the West Bank or Gaza Strip.

In this example, no processing is performed in the Irbid QIZ. Therefore, pursuant to section 334(b)(5) of the URAA and the statement of policy set forth in T.D. 96–58, Customs must first apply the rulings and administrative practices in effect prior to December 8, 1994, to determine whether Israel is the country of origin of the good. It is only when the first determination results in Israel not being the country of origin of the good that resort is made to the section 102.21 rules of origin to determine the good's country of origin, with no further consideration being given to the processing performed in Israel.

With regard to the example, Customs has a long line of administrative rulings predating December 8, 1994, holding that the cutting of fabric into garment components results in a substantial transformation of the fabric, while the assembly of those components into a simple garment does not. Thus, in this example, since the cutting of the garment parts is performed in Israel, Israel is the country of origin of the boxer shorts, and there is no application of the section 102.21 rules.

Double Substantial Transformation

In addition to the North American Free Trade Agreement ("NAFTA") (General Note 12, HTSUS), there are a number of special tariff preference programs which Congress has implemented to promote economic development in certain parts of the world by permitting duty-free entry of certain products from designated countries, provided certain requirements are met. These include the Generalized System of Preferences ("GSP") (19 U.S.C. 2461 *et seq.*), the Caribbean Basin Economic Recovery Act ("CBERA") (19 U.S.C. 2701 *et seq.*), the Andean Trade Preference Act ("ATPA") (19 U.S.C. 3201 *et seq.*), the U.S.-Israel Free Trade Area Implementation Act ("IFTA") (19 U.S.C. 2112 note), General Note 3(a)(iv), HTSUS (relating to products from U.S. insular possessions), and General Note 3(a)(v), HTSUS (relating to products from the West Bank, Gaza Strip or a QIZ).

To receive duty-free treatment under these programs, an eligible article must be a "product of" the beneficiary country, it must be imported directly to the U.S., and it must satisfy a value-content requirement. The value content requirements in the GSP, CBERA, ATPA, IFTA, and General Note 3(a)(v), HTSUS, are nearly identical and provide that the sum of (1) the cost or value of the materials produced in the beneficiary country (or countries), plus (2) the direct costs of processing operations performed in the beneficiary country (or countries), must represent at least 35% of the appraised value of the article at the time it is entered into the U.S.

The value-content requirement set forth in General Note 3(a)(iv), HTSUS, is somewhat different. It provides that products of a U.S. insular possession must not contain foreign materials which represent more than 70% of the goods' total value, or in the case of goods ineligible for duty-free treatment under the CBERA, more than 50% of their total value.

In determining whether products meet the value-content requirements in the above programs, a concept known as "double substantial transformation" is used. According to this concept, the value of foreign material (that is, material that does not originate in the applicable country, territory or possession) may be considered as part of the value of materials produced in that country, territory or possession for purposes of the value-content requirement only if it undergoes two substantial transformations in the country, territory or possession. That is, the foreign material must be substantially transformed in the beneficiary country, territory or possession into a new and different intermediate article of commerce, which is then transformed a second time during production of the final article which is exported to the U.S.

Customs application of the double substantial transformation requirement in the context of the GSP received judicial approval in *The Torrington Company* v. *United States*, 596 F.Supp. 1083 (CIT 1984), aff'd. 764 F.2d 1563 (Fed.Cir. 1985). See also *Azteca Milling Co.* v. *United States*, 703 F.Supp. 949 (CIT 1988), aff'd 890 F.2d 1150 (Fed. Cir. 1989), and *F.F. Zuniga*, a/c *Refractarios Monterrey, S.A.* v. *United States*, 16 CIT 459 (1992), aff'd 996 F.2d 1203 (Fed.Cir. 1993). T.D. 88–17, published in the **Federal Register** on April 13, 1988 (53 FR 12143), applied the double substantial transformation concept to products of U.S. insular possessions for purposes of determining whether the products meet the foreign value limitation under General Note 3(a)(iv), HTSUS.

The GSP, CBERA, and ATPA statutes specifically exclude most textile and apparel articles from eligibility for duty-free treatment under those programs. However, all textile and apparel articles are eligible for duty-free treatment under the IFTA, General Note 3(a)(iv), HTSUS, and General Note 3(a)(v), HTSUS, provided that they meet the applicable requirements of those programs.

In T.D. 95–69 (the Final Rule document promulgating 19 CFR 102.21), which was published in the **Federal Register** on September 5, 1995 (60 FR 46189), Customs responded to certain comments received in response to the Notice of Proposed Rulemaking concerning the effect of the section 102.21 rules of origin on existing Customs rulings holding that the cutting of garment parts and the assembly of those parts into garments constitute a double substantial transformation for purposes of the foreign value limitation in General Note 3(a)(iv), HTSUS. Customs stated that:

[s]ince section 334 deals with the country of origin of textile and apparel products and not with value requirements for purposes of duty preferences, section 334 will not affect either foreign material value determinations required under General Note 3(a)(iv) or value-added requirements contained in other statutory provisions. Accordingly, Customs intends to continue its current tariff treatment of garments which are cut and assembled in insular possessions.

Consistent with the above response, Customs wishes to remind the public that the section 102.21 rules of origin are not used to determine whether foreign materials have undergone a double substantial transformation for purposes of determining whether their cost or value may be considered as part of the value of materials produced in the beneficiary country, territory or possession under the tariff preference programs referenced above.

Conclusion

In determining the country of origin of textile and apparel products processed in a designated QIZ, Customs will exclusively apply the rules of origin for textile and apparel products set forth in 19 CFR 102.21. However, pursuant to the principles and policy set forth T.D. 96–58, Customs determines the origin of a textile or apparel product processed both in Israel (outside of a QIZ) and in the West Bank or Gaza Strip by first applying the rulings and administrative practices in effect prior to December 8, 1994. If that determination results in Israel not being the origin of the good, Customs applies the rules in section 102.21 to determine the country of origin, with no further consideration being given to the processing performed in Israel.

Finally, section 102.21 is not used to determine whether foreign materials have undergone a double substantial transformation so that their cost or value may be considered as part of the value of materials produced in the beneficiary country, territory or possession for purposes of the value-content requirements set forth in the above-specified tariff preference programs.

Dated: June 22, 1998.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 98–17059 Filed 6–25–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8824

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8824, Like-Kind Exchanges.

DATES: Written comments should be received on or before August 25, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Like-Kind Exchanges

OMB Number: 1545–1190

Form Number: 8824

Abstract: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 200,000

Estimated Time Per Respondent: 1 hr., 46 min.

Estimated Total Annual Burden Hours: 353,884

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16843 Filed 6–25–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–939–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–939–86, Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986 (§§ 1.953–2(e)(3)(iii), 1.953–4(b), 1.953–5(a), 1.953–6(a), 1.953–7(c)(8), and 1.6046–1).

DATES: Written comments should be received on or before August 25, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.

OMB Number: 1545–1142.

Regulation Project Number: INTL–939–86.

Abstract: This regulation relates to the definition and computation of the insurance income of a controlled foreign corporation, and it also contains rules applicable to certain captive insurance companies. The information collection is required by the IRS in order for taxpayers to elect to locate risks with respect to moveable property by reference to the location of the property in a prior period; to allocate investment income to a particular category of insurance income; to allocate deductions to a particular category of insurance income; to determine the amount of those items, such as reserves, which are computed with reference to an insurance company's annual statement; to elect to have related person insurance income treated as income effectively connected with the conduct of a United States trade or business; and to collect the information required by Code section 6046 relating to controlled foreign corporations as defined in Code section 953(c).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Time Per Respondent/ Recordkeeper: 28 hr., 12 min.

Estimated Total Annual Burden Hours: 14,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16845 Filed 6–25–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 15, 1998, at 2 p.m.

Wednesday, August 12, 1998, at 2 p.m.

Wednesday, August 26, 1998, at 2 p.m.

Wednesday, September 9, 1998, at 2 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue NW, Washington, DC 20420.

Dated: June 16, 1998.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–17008 Filed 6–25–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 123
Friday, June 26, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket Number: 970724177–8057–02]

RIN 0693–AB43

Procedures for Implementation of the Fastener Quality Act

Correction

In rule document 98–9397 beginning on page 18260 in the issue of Tuesday, April 14, 1998, make the following corrections:

§ 280.2 [Corrected]

1. On page 18272, in the second column, in § 280.2, in the definition of *Fastener Quality Assurance System (QAS)*, paragraph (2)(iii), in the ninth line, "of" should read "or".

§ 280.6 [Corrected]

2. On page 18274, in the first column, in § 280.6(c)(5)(vi), in the second line, "conform" and "do not conform" should read "*conform*" and "*do not conform*".

§ 280.602 [Corrected]

3. On page 18275, in the second column, in § 280.602(o), in the second line, "*FOA*" should read "*FQA*".

§ 280.1010 [Corrected]

4. On page 18278, in the second column, in § 280.1010(b)(3)(vi), in the first line, "authority of" should read "authority to".

§ 280.1011 [Corrected]

5. On page 18280, in the third column, § 280.1011(c)(2)(v) should be added above § 280.1011(c)(2)(vi) read as follows:

"(v) Be able to communicate effectively, both in writing and orally, in the required languages;"

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Attorney General Order No. 2156–98]

RIN 1105–AA20

Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

Correction

In rule document 98–14341 beginning on page 29591, in the issue of Monday, June 1, 1998, make the following corrections:

1. On page 29593, in the first column, under the heading *Regulatory Flexibility Act*, in the third line, "U.S.C. 605 ())," should read "U.S.C. 605 (b)), ".

2. On page 29593, in the first column, under the heading *Regulatory Flexibility Act*, in the third line from the bottom, " indiidual" should read "individual".

§ 16.11 [Corrected]

3. On page 29598, in the first column, in § 16.11(b)(7), in the fourth line from the bottom, after time remove "include" and insert "includes time spent considering any formal objection to disclosure made by a business submitter under § 16.8, but does not".

4. On page 29599, in the third column, in § 16.11(k)(3)(i), in the fourth line, "*furthred*"should read "*furthered*".

§ 16.41 [Corrected]

5. On page 29600, in the third column, in § 16.41(a), in the 29th line, "make" should read "'mark".

§ 16.42 [Corrected]

6. On page 29601, in the second column, in § 16.42(e), in the fourth line from the bottom, "regrading" should read "regarding".

§ 16.51 [Corrected]

7. On page 29603, in the second column, in § 16.51(a), in the last line, " that." should read "that:".

§ 16.54 [Corrected]

8. On page 29603, in the third column, in §16.54(c), "individuals" should read "individual".

Appendix to Part 16 [Corrected]

9. On page 29604, in the first column, in the 10th line, "2053" should read "20530".

10. On page 29604, in the second column, under the heading **C**, in the 12th line, "20503" should read "20530".

11. On page 29604, in the second column, under the heading **C**, in the 19th line, "20503" should read "20530".

BILLING CODE 1505–01–D

VOL
63
ISS
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federal register

Friday
June 26, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, et al.

Medicare Program; Establishment of the Medicare+Choice Program; Final Rule

VOL 63 ISS 123 JE 26 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 403, 410, 411, 417, and 422

[HCFA–1030–IFC]

RIN 0938–AI29

Medicare Program; Establishment of the Medicare+Choice Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: The Balanced Budget Act of 1997 (BBA) establishes a new Medicare+Choice (M+C) program that significantly expands the health care options available to Medicare beneficiaries. Under this program, eligible individuals may elect to receive Medicare benefits through enrollment in one of an array of private health plan choices beyond the original Medicare program or the plans now available through managed care organizations under section 1876 of the Social Security Act. Among the alternatives that will be available to Medicare beneficiaries are M+C coordinated care plans (including plans offered by health maintenance organizations, preferred provider organizations, and provider-sponsored organizations), M+C "MSA" plans, that is, a combination of a high deductible M+C health insurance plan and a contribution to an M+C medical savings account (MSA), and M+C private fee-for-service plans.

The introduction of the M+C program will have a profound effect on Medicare beneficiaries and on the health plans and providers that furnish care. The new provisions of the Medicare statute, set forth as Part C of title XVIII of the Social Security Act, address a wide range of areas, including eligibility and enrollment, benefits and beneficiary protections, quality assurance, participating providers, payments to M+C organizations, premiums, appeals and grievances, and contracting rules. This interim final rule explains and implements these provisions.

In addition, we are soliciting letters of intent from organizations that intend to offer M+C MSA plans to Medicare beneficiaries and/or to serve as M+C MSA trustees.

DATES: *Effective date:* This interim final rule is effective July 27, 1998.

Comment period: Comments will be considered if received at the appropriate address, as provided below, no later than September 24, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1030–IFC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1027–IFC Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT:

Provider Sponsored Organizations, Aaron Brown, 410–786–1033.

M+C Private Fee-For Service Plans, Anita Heygster, 410–786–4486.

M+C MSA Plans, Cindy Mason, 410–786–6680.

Applications, Robert King, 410–786–7623.

Quality Assurance, Brian Agnew, 410–786–5964.

Payment/ACRs, Al D'Alberto, 410–786–1100.

Encounter Data, Cynthia Tudor, 410–786–6499.

Federal/State, Rebecca Cardozo, 410–786–0300.

Beneficiary Appeals, Valerie Hart, 410–786–6690.

Enrollment, Debe McKeldin, 410–786–9159.

Information Campaign, Jan Drass, 410–786–1354.

Contracts, Chris Eisenberg, 410–786–5509.

General Issues, Tony Hausner, 410–786–8290.

General Issues, Dorothea Musgrave, 410–786–8290.

SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Health care benefits covered under the Medicare program are divided into two parts: hospital insurance, also known as "Part A," and supplementary medical insurance, also known as "Part B." Health care services covered under Part A include: inpatient hospital care, skilled nursing facility care, home health agency care, and hospice care. Part B coverage is optional and requires payment of a monthly premium. Part B covers physician services (in both hospital and nonhospital settings) and services furnished by certain nonphysician practitioners. It also covers certain other services, including: clinical laboratory tests, durable medical equipment, medical supplies, diagnostic tests, ambulance services, prescription drugs that cannot be self-administered, certain self-administered anti-cancer drugs, some other therapy services, certain other health services, and blood not covered under Part A.

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted August 5, 1997, added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the "Medicare+Choice Program." Note that hereinafter, unless otherwise indicated references to the statute are references to the Act. (The existing Part C of the statute, which included provisions in section 1876 governing existing Medicare health maintenance organization (HMO) contracts, has been redesignated as Part D.) Under section 1851(a)(1), every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, may elect to receive benefits through either the existing Medicare fee-for-service program or a Part C M+C plan.

The introduction of the M+C program represents what is arguably the most significant change in the Medicare program since its inception in 1965. As its name implies, the primary goal of the M+C program is to provide Medicare beneficiaries with a wider range of health plan choices to complement the Original Medicare option. Alternatives available to beneficiaries under the M+C program include both the traditional managed care plans (such as HMOs) that have participated in Medicare on a capitated payment basis under section 1876 , as well as a broader range of plans comparable to those now available through private insurance. Specifically, effective January 1, 1999, section 1851(a)(2) provides for three types of M+C plans:

- M+C coordinated care plans, including HMO plans (with or without point of service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.

- M+C medical savings account (MSA) plans (that is, combinations of a high deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

In addition to expanding the types of available health plans, the M+C program introduces several other fundamental changes to the private health plan sector of the Medicare program. These changes include:

- Establishment of an expanded array of quality assurance standards and other consumer protection requirements.
- Introduction of an annual coordinated election period. This election period, to be conducted in November for a January effective date, will feature a phased in lock-in of enrollees to the plan they have elected during this coordinated election period. In addition, the annual coordinated election period will include the distribution by HCFA of uniform, comprehensive information about participating plans that is needed to promote informed choices by beneficiaries.
- Revisions in the way we calculate payment rates to the plans that will narrow the amount of payment variation across the country and increase incentives for plans to operate in diverse geographic areas.
- Establishment of requirements concerning participation procedures for physicians and other health care professionals in M+C plans, including prohibitions on interference with advice to enrollees.

These requirements will bring about changes for beneficiaries, for physicians and other health care providers, for managed care organizations that now contract with Medicare as well as those that will be able to contract with Medicare for the first time, and for HCFA and the States. The specific areas addressed by the different sections of the statute are as follows:

- Section 1851—Eligibility, election and enrollment
- Section 1852—Benefits and beneficiary protections
- Section 1853—Payments to M+C organizations
- Section 1854—Premiums
- Section 1855—Organizational and financial requirements for M+C organizations
- Section 1856—Establishment of standards
- Section 1857—Contracts with M+C organizations
- Section 1859—Definitions and miscellaneous provisions

As provided for in section 1856(b)(1), this interim final rule (1) incorporates the new M+C provisions into the Medicare regulations, (2) interprets the new statutory provisions in Part C, and (3) establishes by regulation new standards under the M+C program. Other provisions of the BBA addressed in this interim final rule include:

- Section 4002—Transitional rules for current HMO Medicare program.
- Section 4003—Conforming changes in the Medigap program.
- Section 4006—M+C MSAs.

We note that in February, 1998, the President issued an Executive Order directing the Secretary to comply to the extent possible through administrative activities with the standards contained in the Consumer Bill of Rights and Responsibilities. Therefore, as discussed in several sections of this preamble, we have taken these standards into consideration in developing the regulations contained in this interim final rule. We have also incorporated conforming provisions consistent with other parts of the Medicare statute, such as exempting services under M+C coordinated care plans from the anti-referral provisions in section 1877.

In several places in this preamble, we indicate that HCFA intends to develop additional policy guidance or instructions. In doing so, we will use a formal rulemaking process and allow for review by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act of 1995, wherever it is appropriate to do so.

B. Codification of Regulations

The regulations text set forth in this interim final rule is codified in 42 CFR Part 422—Medicare+Choice Program. (Note that new part 422 was established in our April 14, 1998 interim final rule on PSOs (63 FR 18124).) The current Medicare regulations for managed care organizations that contract with HCFA under section 1876, or for health care prepayment plans (HCPPs) that are paid under section 1833(a)(1)(A), will continue to be located in 42 CFR part 417, Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans. Although the part 422 provisions will eventually supersede the regulations in part 417 for contracts with risk-bearing HMOs and competitive medical plans (CMPs), there are some purposes for which the part 417 provisions will continue in effect for a transitional period. Also, various provisions of section 4002 of the BBA provide for the continuation of cost-based contracts under section 1876 and of agreements with HCPPs under section 1833(a). Thus, the part 422 regulations cannot entirely replace the part 417 regulations at this time. (Both transitional provisions and those relating to cost-based contracts and HMOs are discussed in detail below in the appropriate sections of this interim final rule.)

For the convenience of organizations that contract with HCFA only under the M+C program, we are including in part 422 both new requirements that implement newly enacted provisions in Part C and existing requirements from part 417 that also will be imposed under Part C. For transitional requirements, which could logically appear in both parts, we are setting forth the full requirements in part 422 and referencing them in part 417. Requirements that apply to organizations that contract with HCFA, or are paid by HCFA, only under section 1876 or 1833(a) will remain in part 417. Regulations implementing the provisions of section 1310 of the Public Health Service Act concerning Federally-qualified HMOs also remain in part 417.

C. Organizational Overview of Part 422

The major subjects covered in each subpart of part 422 are as follows:

- Subpart A—Definitions, including definition of types of plans, application process, and user fees.
- Subpart B—Requirements concerning beneficiary eligibility, election, enrollment and disenrollment procedures, and plan information and marketing materials.
- Subpart C—Requirements concerning benefits, point of service options, disclosure of information, access to services, confidentiality of enrollee records, advance directives, and beneficiary protection against liability.
- Subpart D—Quality assurance standards, external review, and deeming of accredited organizations.
- Subpart E—Organizational relationships with participating entities including the prohibition against interference with health care professionals' advice to enrollees, physician incentive requirements, and special rules for M+C private fee-for-service plans and private contracts with health care professionals.
- Subpart F—Payment methodology for M+C organizations, coverage that begins or ends during inpatient hospital stays, hospice care, and encounter data requirements.
- Subpart G—Requirements concerning terms and conditions for receiving capitated payments, limits on premiums and cost sharing, determination of adjusted community rate, and prohibition of State-imposed premium taxes.

- Subpart H—Requirements concerning provider-sponsored organizations (PSOs).
- Subpart I—Organization compliance with State law and preemption by Federal law.
- Subpart K—General contract and enrollment requirements, administration and management, and procedures for nonrenewal or termination of contracts.
- Subpart L—Effect of change of ownership or leasing of facilities during term of contract.
- Subpart M—Requirements concerning beneficiary grievances and organization determinations and appeals.
- Subpart N—Requirements and procedures for contractor appeals of nonrenewals or terminations of contracts.
- Subpart O—Procedures for imposing intermediate sanctions.

Each of these subparts is discussed below in section II of this preamble. Sections III and IV consist of separate discussions of provisions of the part 422 regulations that specifically concern M+C MSA plans and M+C private fee-for-service plans, respectively.

II. Provisions of the Interim Final Rule

A. General Provisions—Subpart A

1. Overview

Subpart A begins with a brief section (§ 422.1) that specifies the general statutory authority for the ensuing regulations and indicates that the scope of part 422 is to establish standards applicable to the M+C program. Under § 422.2, we then set forth definitions for terms used in part 422 that we believe need clarification. These definitions provide the generally applied meaning for terms that are used throughout part 422. Where necessary, we have included in specific subparts of part 422 definitions for terms used primarily in those subparts. In § 422.4, we define the three different types of M+C plans, consistent with section 1851(a)(2)—M+C coordinated care plans, M+C MSA plans and M+C private fee-for-service plans.

Sections 422.6 and 422.8 then detail the application process for an entity seeking an M+C contract and HCFA's application evaluation procedures.

Section 422.10 adopts, for purposes of the M+C program, the user fee provisions now set forth at § 417.472(h).

2. Definitions (§ 422.2)

For the most part, the definitions presented here are taken directly from the statute or are essentially self-explanatory. Below, we discuss some notable exceptions to this, including cases where we have clarified the exact meaning and context of certain terms. Please keep in mind that the definitions set forth in subpart A reflect general meanings for the terms as they are used in part 422 unless otherwise indicated; the definitions apply strictly for purposes of part 422. For example, the term "provider" has a more inclusive meaning under part 422 than it does for other Medicare purposes, as discussed below. Similarly, when we define a term anywhere in part 422 other than in subpart A, it can be assumed that the definition of the term is limited to a specified purpose in the relevant subpart or section. Thus, as specified in the relevant sections of the regulations, the term "substantial financial risk" has a different meaning for purposes of the physician incentive provisions under § 422.208 than it does in the PSO provisions under § 422.356.

Benefits and Benefit Categories

In § 422.2, we have defined both the term "benefits" as well the different categories under which benefits are provided: basic benefits, additional benefits, mandatory supplemental benefits, and optional supplemental benefits. "Benefits" consist of the health care services delivered or covered by an M+C organization. (Note that "services," under the long-standing Medicare definition at § 400.202, encompass medical care, services, and items.) The definition of benefits is relevant both for purposes of the process of determining adjusted community rates (ACRs) for M+C plans and for purposes of a new provision in Part C that "pre-empts" State laws relating to "benefits."

When we refer to one of the categories under which benefits are provided, however, we generally are referring not only to the actual health services that a beneficiary receives or is eligible to receive, but also to the pricing structure applied to these benefits. For example, the definition of "additional benefits" includes both the health care services covered under a plan that are in addition to regularly covered Medicare services, as well as any reductions in premiums or cost-sharing for Medicare covered services. Thus, the amount of deductibles or copayments that an M+C plan enrollee must expend to receive services would fall within the scope of the term "additional benefits."

We wish to note that we have defined "basic benefits" in this regulation to include *both* the Medicare-covered benefits required under section 1852(a)(1)(A) *and* required "additional benefits" under section 1852(a)(1)(B). Both Medicare benefits and required additional benefits are: (1) Coupled together in section 1852(a)(1), in the first paragraph under subsection (a), titled "Basic Benefits"; (2) benefits that an M+C has an obligation to provide (in contrast to supplemental benefits, which may be provided totally at the M+C organization's discretion); (3) benefits paid for with Medicare trust fund money; and (4) benefits that are covered by the basic premium, if any, that counts towards the limit based on the actuarial value of original Medicare coinsurance and deductible amounts.

For all of these reasons, we have decided to divide benefits into the two categories of the "basic benefits" including all required benefits, and "supplemental benefits," including both mandatory and optional supplemental benefits provided at the discretion of the M+C organization. We note that while Congress did not include a "definition" of "basic benefits" in Part C, it appears to use the term "basic" to refer only to the Medicare-covered service package. (See, for example, section 1851(b)(1)(B) or section 1854(e)(1).) Although Congress did not actually include additional benefits in the term "basic benefits," in almost all cases, it coupled these benefits together, and treated them the same. (See sections 1852(a)(1), and 1854(a)(2)(A), (3)(A), (4)(A), and (e)(1).) We accordingly believe that it is appropriate in this regulation to include these two categories together in the definition of "basic benefits" that applies for purposes of part 422. We note, however, that where a statutory provision refers only to the Medicare benefit component of our part 422 definition of "basic benefits," we will similarly limit the regulation implementing that provision.

M+C Organization and M+C Plan

The definitions of "M+C organization" and "M+C plan" set forth in § 422.2 are based on the BBA's use of these terms, which is not always compatible with the way the terms "organization" and "plan" have been used in the past. In previous HCFA documents, the term "managed care organization" frequently has been used interchangeably with the term "managed care plan" or "health plan." Section 422.2 addresses this area of potential confusion by clarifying the distinction between an M+C organization and an M+C plan. Succinctly stated, an M+C "organization" is an entity that contracts with HCFA to offer an M+C plan; the "plan" consists of the specific health benefits, terms of coverage, and pricing structure.

Section 1857(a) specifically states that HCFA contracts with an M+C organization. Thus, for requirements that we would normally think of as contractual requirements, we use the term "M+C organization." In § 422.2 then, an M+C organization is defined as a public or private entity organized and licensed under State law as a risk-bearing entity (with the exceptions of PSOs receiving waivers) that is certified by HCFA as meeting the M+C contract requirements. Under various BBA provisions, the requirements M+C organizations are responsible for meeting include: processing the enrollment and disenrollment of beneficiaries within a plan; transmitting information such as enrollment information and encounter data to HCFA; submitting marketing materials; providing all Medicare-covered benefits and other benefits covered under the contract in a manner consistent with specified access standards; performing quality assurance; creating and carrying out all plan procedures for grievances, organization determinations, and appeals; maintaining necessary records; providing advance directives; establishing procedures related to provider participation; setting medical policies; notifying beneficiaries of any "Conscience Protection" exceptions; disclosing physician incentive plans; receiving payment; reporting financial information; paying user fees; making prompt payments to providers; receiving any sanctions invoked by HCFA on any of the organization's plans; and fulfilling other contract requirements as specified in regulation.

Again, in contrast, an M+C plan is merely the health benefits coverage and pricing structure that the organization offers to beneficiaries. An M+C plan may include the basic benefits only (basic benefits include Medicare-covered benefits and additional benefits) or basic benefits combined with mandatory and/or optional supplemental benefits.

An M+C organization may select which providers furnish services under the plan, as long as the benefit package meets all the requirements for access within the area, and outside of the area for specific services. As discussed in detail below, service areas and benefit packages generally are associated with individual plans; uniform premium requirements and the need for an ACR proposal also apply at the plan level.

Service Area

The service area designation of an M+C plan is an important element of the structure and design of a particular plan. A plan's service area—

- Determines the payment rate to the organization for enrollees of the plan, based on the counties included in the service area;
- Affects what benefits will be provided, since benefits and premiums must be uniform under an M+C plan, throughout that plan's defined service area;
- Determines which beneficiaries are able to elect the plan, because organizations are obligated to enroll any eligible resident of the service area who elects the plan; and
- For network plans, is the area in which the plan is required to make covered services available and accessible; and determines the boundaries beyond which the plan assumes liability for urgently needed care and may offer enrollment continuation options.

As explained below, we will exercise discretion in reviewing and approving service areas requested by M+C plans. For network plans, we will use our knowledge of how service areas have been designated in the past in the Medicare managed care program and in the Federally-qualified HMO program, which we have administered since 1986, to ensure availability and accessibility of services. We will attempt to ensure that service areas of M+C network plans are consistent with community patterns of care and/or rating practices—that is, service area designations are not artificially delineated in such a way that usual sources of care, in terms of geographic location, are not available to beneficiaries; or in such a way that the service area designation allows "gaming" of the community rate that forms the basis of M+C premiums and benefits, to the disadvantage of Medicare beneficiaries. A nondiscrimination standard will also apply to both network and non-network plans. To the extent possible, we will attempt to ensure a "level playing field" among plans operating in the same geographic area (for example, if one plan in an area is subject to the county integrity rule discussed below, a new plan may also be subject to the same standard in determining a new service area). These standards will also be applied in evaluating requests for M+C service area expansions and service area reductions. Consistent with the goals of the new M+C program, we will attempt to maximize the number of choices available to Medicare beneficiaries and maximize the availability of low-cost plans offering additional benefits.

The regulations at § 422.2 provide that an M+C organization may propose a specified service area for each M+C plan, and HCFA will determine whether the proposed area can be approved. The regulatory definition of service area is slightly different from the current service area definition at § 417.401. The latter regulation defines the term geographic area (which we used interchangeably with service area with respect to section 1876 contracts) as "the area found by the Secretary to be the area in which an HMO is able to deliver the full range of services," a definition that was essentially common to both the Medicare program and the Federally qualified HMO program (§ 417.1, "service area"). The earlier definition emphasizes the role of the Secretary (HCFA) in the designation of service areas, and incorporates one of the standards applicable to network plans (which continue to apply to such plans in these regulations). Statutory references to a service area or geographic area under Medicare, including references in the BBA, do not offer a definition of the term or an indication of how the area is to be determined.

We have modified the wording of the earlier regulatory definition of "service area" to recognize that organizations will propose specific areas for M+C plans. Pursuant to section 1856(b)(1), which provides for establishing M+C standards by regulation, and section 1856(b)(2), which provides for basing the standards on standards under section 1876, we have retained our authority to approve or deny service area configurations that organizations propose. This reflects what has been the actual past practice of the agency in administering the Medicare HMO/CMP program and the Federally-qualified HMO program. The new definition also recognizes that service areas designated by organizations for non-network plans are designated for the purpose of determining who is eligible to enroll in the plan.

Consistent with current and past regulatory and statutory standards, we will evaluate proposed service areas of network plans to determine whether covered services are available and accessible, under the standards of § 422.112, to any resident of the area eligible to elect enrollment in the plan. We will also examine the proposed service area of any plan, including non-network plans, to ensure that the delineation of the area does not result in discrimination against beneficiaries through "gerrymandering" or "red-lining" to deliberately avoid particular areas (e.g., to prevent the enrollment of poorer Medicare beneficiaries, or those known to be in poorer health). An example of such a practice would be an

urban area network plan's exclusion of poorer inner-city areas, leaving obvious "holes" in the service area where residents would not have any problem gaining access to care through the plan's providers had the area been included in the proposed service area. Although we would not ordinarily dictate the inclusion of particular areas in the service area of a plan—for example, a multi-county commercial plan could include only some of its counties in a Medicare contract—we would seek to prevent clear cases of discrimination against, or disadvantaging of, particular groups or populations.

Prior to the BBA, contracting HMOs and CMPs (virtually without exception) all had existing, defined service areas prior to entering into a Medicare contract. These were areas in which the entities offered comprehensive health care services to non-Medicare enrollees of the specified geographic area. As noted above, Medicare's statutory language did not clearly define the terms service area or geographic area, but it was assumed that each organization would have a specific service area in which it operated and provided coverage to any enrollee from the community (including any Medicare enrollee). The Medicare premiums and benefits are a function of the community rate of the plan, the rate applicable to any covered group within the community covered by the plan. Hence, until the mid-1980s, we required that the service area for Medicare be the same as the service area for the non-Medicare population. Subsequently, we changed our policy to permit HMOs and CMPs to limit the Medicare service area to a subset of the non-Medicare (commercial) area, breaking the link between commercial service areas and Medicare service areas (though the Medicare premiums and benefits continue to be based on the community rate for the entire non-Medicare community). We applied a "county integrity" standard in determining how HMOs could reduce their service areas for Medicare; whole counties could be excluded, but partial counties could only be excluded if the organization operated (for commercial purposes) only in a portion of the county.

Because the BBA provisions on waiver of minimum enrollment and composition of enrollment requirements permit organizations to have M+C plans with no prior enrollment, there will be plans that do not have designated service areas and do not have a commercial service area that can be used as a reference point for the designation of a Medicare service area. In the case of network plans, we would work with such organizations to determine an appropriate service area for the plan's provider network, taking into consideration the patterns of medical care in the community (e.g., where people obtain care, the types of providers available in the community, reasonable travel times to obtain care). We would also use our knowledge of how plan service areas generally have been determined and approved in the past, as well as how other organizations in the same area, or a similar area, have established their service areas. There could be concerns both with a proposed area that is too wide, offering limited availability of services for outlying areas, and with a proposed area that is too small, which would limit choices available to beneficiaries or might raise the concerns discussed above regarding discrimination.

We believe that basing our decisions on community patterns of care and the practices of other organizations in the same area, or in similar areas, is consistent with our past approach to the issue of service area designations, and consistent with the BBA. The BBA requires a similar approach in developing elements of the adjusted community rate for new plans (e.g., 1854(f)(4), referring to "enrollment experience of other contracts entered into under this part and * * * data in the general commercial marketplace").

With respect to another issue related to service areas, our policy that permitted HMOs and CMPs under 1876 to vary premium and benefit offerings by county within a service area (the "flexible benefits" policy) will no longer apply under M+C. The flexible benefits policy permitted organizations to use non-Medicare revenue to offer extra benefits or reduced premiums ("free benefits") to residents of a particular county or counties rather than in the entire service area, as long as all Medicare beneficiaries in the entire service received at least the level of benefits required under the statute as determined through the adjusted community rate process. With the requirement that premiums and benefits be uniform throughout an M+C service area, it is not possible to continue the flexible benefits policy. However, an organization may be able to offer multiple plans and propose different service areas for the plans in order to achieve a similar result as the flexible benefits policy. This presents us with an issue of how to deal with the proposals for service areas, or the carving up of existing non-Medicare service areas, when it is done in order to have different premiums and benefits in different counties. In the case of network plans, a carving up of an existing service area, and the offering of multiple plans across what may be a single service area for the non-Medicare population, is only possible if each of the plans with different service areas is able to "stand alone" in terms of meeting all the requirements applicable to plans. The designation of multiple service areas in such cases should also be consistent with community practices in patterns of care, and/or consistent with rating practices, and service are designations, for other purchasers.

Except in the case of non-network MSA plans, as discussed below, the fact that Medicare pays different capitation rates by county is not a sufficient reason to establish service areas consisting of individual counties. For example, a staff-model HMO operating in a multi-county area, that has a service delivery network consisting of only one hospital and a group of physicians employed by the organization, cannot designate each county as a separate service area. Although services are accessible and available in each county, we do not believe there is a valid reason to charge different premiums by county, for example, when all Medicare beneficiaries enrolled in the organization will be using the same providers.

On the other hand, some organizations that operate with very large service areas may be justified in breaking up larger service areas for Medicare contracting purposes. This would be similar to what Federally-qualified HMOs do in designating distinct service areas as "regional components," which are sub-areas with an autonomous provider network and with different community rating for the regional component. Some HMOs, although they do not identify distinct service areas, require enrollees to obtain services from a particular subset of providers within the broader network (as Federally-qualified HMOs are permitted to do (see 45 FR 28655 (April 29, 1980)). Some HMOs offer large employers a statewide service area consisting of different provider networks in geographically distinct areas in which there is no crossing of boundaries, or very little crossing of boundaries, to receive services. The large employer may be offered one rate for all areas, but the same HMO may have smaller designated service areas for smaller regional employers, in which different rates apply.

In evaluating proposals requesting approval of multiple service areas in a contiguous geographic area, we would consider the patterns of care in the community; and the rating and service

area practices of the individual organization, of other organizations in the area, and of other organizations in similar areas. The commercial service area will continue to be a reference point in that we would be likely to approve a proposal if what is proposed for Medicare contracting is similar to what is done in the commercial marketplace. Similarly, we would take into consideration any determination, or approval, of service areas by State regulatory bodies.

At a minimum, each proposed M+C service area must be an area in which the full range of covered services are available and accessible to all Medicare enrollees primarily through providers located in the service area. We would also evaluate proposals on the basis of the criteria we discuss above relating to discrimination against, or disadvantaging of, particular beneficiaries in the community. These criteria would also be used in evaluating the proposed service areas of non-network plans. Using the inner-city example, an entity could request an area consisting only of the poorer inner-city area, where residents would be required to pay a relatively high premium, while other areas were charged a much lower premium. We would view this practice as discouraging enrollment within a particular area. Although the statute does not expressly provide for evaluation of service area designations to determine whether they are discriminatory, we believe that it is consistent with statutory requirements relating to discrimination and discouraging enrollment (at 1852(a)(3), with respect to the pricing of mandatory supplemental premiums, and 1852(b), with respect to limiting enrollment based on a health status factor, including claims experience or insurability). We have included the above criteria for service area approval in the definition of "service area" in § 422.2.

As noted above, we are providing for a special exception for service areas for non-network MSA plans. In the case of M+C MSA plans, differences in payment rates for a given county affect not just the amount the M+C organization offering the MSA plan is paid, but the amount that is deposited in MSA accounts. (See section III of this preamble.) We have decided that in the case of M+C non-network MSA plans, under which enrollees are not limited to receiving services in a defined area, we will permit M+C organizations to offer a different M+C plan in each county in which they wish to enroll beneficiaries. This would mean that a uniform amount would be deposited in the M+C MSA account of every enrollee in the M+C MSA plan, and the M+C organization could file a separate premium amount for each county to ensure that the proper amount is deposited in accounts in that county.

Emergency and Urgently Needed Services

The definitions of emergency services and urgently needed services in § 422.2 are based on section 1852(d) and thus differ from those in existing § 417.401. In accordance with section 1852(d)(3) of the statute, we are codifying the concept that an "emergency medical condition" exists if a "prudent layperson" could reasonably expect the absence of immediate medical attention to result in serious jeopardy or harm to the individual. In addition, the new definition of "emergency services" includes emergency services provided both within and outside of the plan, while the definition of "urgently needed services" continues to encompass only services provided outside of the plan's service area (or continuation area, if applicable), except in extraordinary circumstances such as those discussed below.

Under section 1852(d)(1)(C)(i), M+C organizations are required to pay for nonemergency services provided other than through the organization where the services are immediately required because of unforseen illness, injury or condition, and it is not reasonable given the circumstances to obtain the services through the organization. We believe that except in the rarest and most extraordinary of circumstances, the only situation in which it would not be reasonable to receive nonemergency services through the organization would be when the enrollee is absent from the service area of the M+C plan in which he or she is enrolled. It is possible, however, albeit extremely unlikely, that there might be other situations in which this standard would be met by an enrollee who is in the plan service area.

For example, there could be some temporary disruption of access to the M+C plan's provider network, such as a strike, or possibly some temporary physical impediment to traveling to M+C plan providers that are otherwise readily accessible. Under such circumstances, an individual might not need emergency services, but still may warrant immediate attention. Because we do not believe that we can say that the statutory standard could *never* be met by an individual who is in the plan service area, we believe it is appropriate to provide for an exception in the definition of urgently needed services to the rule that the enrollee be out of area. We are thus providing for such an exception in extraordinary cases in which the network is unavailable or inaccessible due to an unusual event.

Other Definitions

In our April 14, 1998 interim final rule setting forth the definition of a PSO and related requirements, we established under § 422.350(b) a definition for "health care provider" that is based on the PSO requirements in section 1855(d)(5). In this interim final rule, we are adopting the identical definition for general purposes of the M+C program. Under this definition, as discussed in greater detail in our April 14 interim final rule (63 FR 18126), the term "provider" applies both to individuals licensed or certified by a State to engage in the delivery health care services (such as physicians, nurse practitioners, clinical social workers), as well as to entities engaged in the delivery of health care services (such as hospitals, nursing homes, home health agencies).

Another clarification contained in this subpart involves the definition of "copayment." We have defined copayment as a fixed amount that can be charged for a service. This is to distinguish copayment from "coinsurance," which is a fixed percentage of the total cost of a service that can be charged. Copayments, coinsurance, and deductibles represent the three forms of cost-sharing under a plan.

Finally, we have included a general definition of the term "balance billing," indicating that balance billing refers to an amount billed by a provider that represents the difference between the amount the provider charges an individual for a service and the sum of the amount the individual's health insurer (for example, the original Medicare program) will pay for the service plus any cost sharing by the individual. We note that there is significant variation within both original Medicare and the M+C program regarding the extent to which balance billing is permissible. For example, under original Medicare, no balance billing is permitted for providers of services (such as hospitals and home health agencies), while for nonparticipating physicians, balance billing is permissible only up to the difference between the Medicare allowed amount and the Medicare limiting charge. Different rules apply under original Medicare for other nonparticipating suppliers (such as ambulance or durable medical equipment suppliers, for which there are currently no limits on balance

billing). Similarly, under the M+C program, different balance billing restrictions apply depending on the type of M+C plan and the contracting status of the provider. These restrictions are discussed in detail in the appropriate sections of this preamble, particularly in section IV regarding M+C private fee-for-service plans.

3. Types of M+C Plans (§ 422.4)

The creation of the M+C program allows beneficiaries access to a much wider array of private health plan choices than the existing alternatives to the original Medicare program. Moreover, this new program will enable Medicare to use innovations from the commercial sector that have helped the private market contain costs and expand health care delivery options.

The BBA provides for several different types of M+C plans to be available for beneficiaries. As noted above, these various M+C plans can be classified into three general categories: M+C coordinated care plans, M+C MSA plans (that is, a combination of a high deductible M+C health insurance plan and a contribution to an M+C MSA), and M+C private fee-for-service plans. Within each of these three categories, M+C organizations may offer a variety of plans to Medicare beneficiaries.

Since these are the only legally significant categories of plans under the M+C program, we do not believe it is necessary to define all of the different entities that accept prepaid, capitated payment for delivering health services. Thus, examples of these entities, such as PPOs, HMOs, or health insurance organizations, are not defined for purposes of this regulation. Essentially, all entities that apply to offer an M+C plan must conform to the requirements for either an M+C coordinated care plan, an M+C MSA plan, or an M+C private fee-for-service plan.

M+C Coordinated Care Plans (§ 422.4(a)(1))

Under the M+C program, beneficiaries may choose from among a variety of coordinated care plans. Coordinated care plans include, but are not limited to, HMO plans (with or without point of service options) (HMOs), plans offered by PSOs (as defined in section 1855(d) and in our April 14, 1998 interim final rule), and PPO plans. In addition, certain beneficiaries may be able to choose another type of coordinated care plan, the Religious Fraternal Benefit Society plan, which is defined in section 1859(e).

Except in the case of a PSO granted a waiver under subpart H of part 422, all organizations offering M+C coordinated care plans must meet the State licensure requirements in section 1855 (and § 422.400). Thus, an M+C coordinated care plan must be offered by an entity that is (1) appropriately licensed by the State to bear risk and (2) eligible to offer health insurance or health benefits coverage in each State in which it offers an M+C plan.

In addition, an M+C coordinated care plan must meet the definition of a coordinated care plan set forth in § 422.4. That is, an M+C coordinated care plan is a type of plan offered by an M+C organization that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by HCFA. The network must be approved by HCFA to ensure that all applicable requirements are met including access and availability standards, service area requirements, and quality standards. A coordinated care plan may include mechanisms to control utilization, such as referrals from a gatekeeper to receive services within the plan, and financial arrangements that offer incentives to providers to furnish high quality and cost-effective care.

Except for PSOs that have obtained a waiver of the State licensure requirement, and thus are subject to the additional requirements set forth in subpart H of part 422, distinctions among HMOs, PSOs, PPOs, and other coordinated care plans are not relevant for the purpose of applying to offer an M+C plan. The distinctions among the various types of coordinated care plans may be relevant for purposes of State licensure. However, for the purpose of an M+C application, we are not concerned with what type of coordinated care plan an applicant intends to offer. In fact, an entity may offer an M+C coordinated care plan even though it is not specifically licensed as an HMO, PSO, or PPO. As long as the entity is licensed as a risk-bearing entity in accordance with section 1855 of the statute and the plan being offered meets the definition of a coordinated care plan under § 422.4, the entity does not need to be licensed specifically as an HMO, PSO, or PPO to offer an M+C coordinated care plan.

For example, like an HMO or a PSO, a PPO may offer an M+C plan. Any organization that is licensed as a risk-bearing entity in a State may offer an M+C plan that is structured in the form of a PPO. We are not requiring that an organization applying to offer an M+C PPO plan be operating as a PPO in the non-Medicare marketplace. In that sense, the BBA imposes a distinct change from prior law, because it does not require that organizations with Medicare prepaid health plan contracts meet certain conditions imposed on their structure and their commercial business. Under section 1876, a PPO generally could not obtain a Medicare risk contract because most PPOs have members that are enrollees of an indemnity insurance product, and would not meet the requirements under section 1876 to be an "eligible organization" entitled to contract under that section. The BBA only requires that an organization be providing health benefits and insurance to enrollees (regardless of whether on an indemnity or prepaid, capitated status) and that it be licensed by the State as a risk-bearing entity.

The majority of the PPOs that are currently operating are plans being offered by State-licensed indemnity carriers or State-licensed HMOs. However, where the State does license the PPO as a risk-bearing entity, the PPO may be eligible to become an M+C organization in and of itself. Conversely, where the State does not allow the PPO to bear risk, the PPOs in those States would not be eligible to become an M+C organization on their own. These PPOs that are not allowed to bear risk may partner with a licensed risk-bearing entity or contract with a licensed risk-bearing entity to "rent out" their PPO network of providers. Consistent with our policy of deferring to the State as to which entities constitute licensed risk-bearing entities eligible for the M+C program, HCFA will defer to the State in terms of whether the PPOs can accept partial capitation from the licensed indemnity carrier or licensed HMO.

An entity offering a PPO plan must still comply with the requirements in 1854(e), which limit enrollee financial liability under a PPO plan in the same manner that liability is limited under an HMO plan or any other type of M+C coordinated care plan. That is, the sum of the premium for basic benefits and the actuarial value of all out-of-pocket expenses for such benefits (including the actuarial value of all cost-sharing for non-participating providers in a PPO) cannot exceed the actuarial value of the deductibles and coinsurance in original fee-for-service Medicare. Therefore, if a PPO expects a high level of utilization of non-participating providers, it must have a very low premium or it must have a significantly reduced level of cost-sharing for such services.

Religious Fraternal Benefit Society Plans

One specific type of coordinated care plan authorized by the BBA is a religious fraternal benefit society plan

(RFB plan), which is defined in section 1859(e). An RFB plan is an entirely new type of plan that may be offered under the M+C program.

As with the other types of coordinated care plans, an entity offering an RFB plan must be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers an M+C plan. Essentially, an RFB society must meet the state licensing requirements outlined in section 1855. As discussed above, the States define the criteria for licensure, including any fiscal solvency standards that apply.

Also, an organization offering an RFB plan under the M+C program must do more than merely pay health care claims on behalf of their beneficiaries. Rather, RFB plans that constitute M+C coordinated care plans must meet the definition of a coordinated care plan included in this regulation. That is, they must have a network of health professionals and meet the applicable access, availability, service area, and quality assurance requirements.

Section 1859(e) defines and describes the requirements for RFB plans. Section 1859(e)(2) describes an M+C RFB plan as a coordinated care plan that: (A) Is offered by a religious fraternal benefit society only to members of the church, convention, or affiliated group; and (B) permits all members to enroll without regard to health status-related factors. Section 1859(e)(3) states that the RFB plan must be offered by a religious fraternal benefit society that: (A) is described under section 501(c)(8) of the Internal Revenue Code and is exempt from taxation under section 501(a) of that Act; (B) is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches; (C) offers, in addition to an M+C religious fraternal benefit society plan, at least the same level of health coverage to individuals not entitled to Medicare benefits who are members of such church, convention, or group; and (D) does not impose any limitation on membership in the society based on any health status-related factor.

Section 501(c) of the Internal Revenue Code generally describes the rules applicable to those organizations which are not subject to Federal income tax under section 501(a) of the code. Section 501(c)(8) describes one type—fraternal beneficiary societies, orders or associations that (a) operate under the lodge system for the exclusive benefit of a Fraternity itself operating under the lodge system; (b) provide for the payment of life, sick or accident or other benefits for the members of such society or association or their dependents.

RFB Plans have two distinguishing factors from other types of M+C coordinated care plans. The first is that RFB plans are allowed to limit their enrollment to members of the church. Section 1859(e)(1) indicates that a religious fraternal benefit society offering an M+C plan may restrict the enrollment of individuals in the plan to individuals who are members of the church, convention, or group with which the society is affiliated.

In addition to this ability to limit enrollment strictly to members of the church, RFB plans are distinct from other M+C coordinated care plans in that RFB plans may be subject to possible payment adjustments to ensure an "appropriate payment level." Specifically, section 1859(e)(4) indicates that the Secretary shall provide for such adjustment to the payment amounts otherwise established under section 1854 as may be appropriate to assure an appropriate payment level, taking into account the actuarial characteristics and experience of such individuals.

M+C MSA Plans (§ 422.4(a)(2))

The definition of an M+C MSA plan, as well as other requirements that apply solely or in a different manner to M+C MSA plans, are discussed in full in section III. of this preamble. Note that in section III.K. of this preamble, we solicit letters of intent from organizations that intend to offer M+C MSA plans to Medicare beneficiaries and/or to serve as M+C MSA trustees.

M+C Private Fee-For-Service Plans (§ 422.4(a)(3))

The definition of an M+C private fee-for-service plan, as well as other requirements that apply solely or in a different manner to M+C private fee-for-service plans, are discussed in full in section IV of this preamble.

Multiple Plans (§ 422.4(b))

Section 422.4(b) establishes that an M+C organization may offer multiple plans, including plans of different types, under a single contract with HCFA, provided that the organization is licensed or approved under State law to offer the applicable types of plans. We believe that this policy should prove to be less administratively burdensome for both prospective M+C organizations and for HCFA than other alternatives, such as requiring separate contracts between HCFA and an M+C organization for each plan, or type of plan, being offered by the organization. We also specify under this section that if an M+C organization has received a waiver of the licensing requirement to offer a PSO plan, the waiver does not apply to the licensing requirement for other types of plans. Other issues associated with the ability of an M+C organization to offer multiple plans under a single contract with HCFA are discussed below, in the section of the preamble that deals with the contract requirements contained in subpart K of part 422.

4. Applications (§§ 422.6 and 422.8)

Sections 422.6 and 422.8 set forth the application requirements for entities seeking to contract with HCFA to offer M+C plans, as well as HCFA's application evaluation procedures. For the most part we have retained the contracting requirements from §§ 417.143 and 417.144 as authorized by section 1856(b)(2). This section of the law allows HCFA to use past contracting standards applied to contracts under section 1876 or to create new standards as needed to implement the M+C program. The application requirements and evaluation procedures are almost identical to the current application procedures.

The primary change to our previous process is the additional requirement that organizations wishing to contract with HCFA must submit documentation of their appropriate State licensure, or submit documentation of State certification that the entity is, in fact, able to offer health insurance or health benefits coverage meeting State fiscal solvency standards and authorized to accept prepaid capitation for providing, arranging, or paying for comprehensive health care services. (Entities meeting the definition of a PSO can be exempted from this requirement if they meet conditions for a waiver, which can be granted by HCFA—see subpart H of part 422.) This requirement is necessitated by the fact that HCFA will no longer have primary responsibility for determining the fiscal solvency of new contractors. We intend to rely for the most part on State certification to insure that the entities that we contract with are indeed fiscally solvent and have the ability to handle and afford risk payments for health care coverage, although we will if necessary "look behind" State certifications for validation purposes.

In one addition to existing rules, § 422.8(b) specifies that HCFA may deny an entity's application to offer an M+C plan if the entity has failed to complete a corrective action plan during the term of its previous contract with HCFA, regardless of whether the contract was under the section 1833, 1876, or the new Part C provisions of the law. We

believe that this provision explicitly ensures that the proven performance problems of entities that apply to contract with HCFA under the M+C program are taken into consideration in the application evaluation process.

5. User Fees (§ 422.10)

The last section of subpart A contains regulations implementing the user fees provided for in section 1857(e)(2). Section 1857(e)(2) directs the Secretary to collect user fees from M+C organizations, with each paying its pro rata share, for the purpose of paying for costs associated with enrollment and information activities under section 1851 and subpart B, and counseling and assistance programs under section 4360 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 103–66).

Under section 1876(k)(4)(D), the user fees provided for in section 1857(e)(2) apply in 1998 to HMOs and CMPs with risk contracts under section 1876. On December 2, 1997, we published regulations in § 417.472(h) implementing the user fee authority in section 1857(e)(2), and setting forth a methodology for determining an organization's "pro rata share" of these fees. (62 FR 63669).

In this interim final rule, we are simply adopting at § 422.10, for purposes of the M+C program, the user fee provisions now set forth at § 417.472(h). Our reasons for adopting the methodology reflected in these regulations are set forth in the preamble to the December 2, 1997 rule. We intend to respond to comments received on the December 2 interim final rule, as well as comments on this rule, in a future rulemaking document.

B. Eligibility, Election, and Enrollment

1. Eligibility to Elect an M+C Plan (§ 422.50)

Section 1876 background: The provisions that have in the past applied to managed care entities (and continue to apply until these entities become M+C organizations) are in section 1876 and part 417 of this chapter. Section 1876(d) provides that Medicare beneficiaries who are entitled to benefits under Part A and enrolled in Part B, or enrolled under Part B only, except those with ESRD, residing in the service area of the plan are eligible to receive all their Medicare benefits through an HMO or CMP that has a contract with HCFA. Regulations at § 417.423(b) excluded beneficiaries who elect hospice care from enrolling in an HMOs or CMPs as long as the hospice election remains in effect. Existing regulations at § 417.460(f) require that HMO or CMP disenroll individuals who move out of their geographic areas, except that § 417.460(f)(2) allows enrollees to remain enrolled in an HMO or CMP under the following circumstances: (1) During a temporary move from the service area for up to 90 days, or (2) during a move to a new area for as long as 1 year if the HMO or CMP has elected to offer this option under § 417.460(f)(2).

a. Eligibility. The BBA established a new section 1851(a) that includes the eligibility criteria an individual must meet in order to enroll in an M+C plan, as defined in § 422.4. Accordingly, except as discussed below at section B.1.b. regarding the transition of Part B only individuals, § 422.50 states that individuals who are entitled to Part A and enrolled in Part B are eligible to enroll in an M+C plan. These individuals are referred to as "M+C eligible individuals."

Individuals with end stage renal disease (ESRD) are not permitted to be new enrollees of an M+C organization offering an M+C plan. Section 1851(a)(3)(B) excludes individuals with ESRD from enrolling in an M+C plan generally, but provides that an individual who develops ESRD while an enrollee in an M+C plan may "continue to be enrolled" in that plan. For purposes of this provision only we are considering individuals who are enrolled in a private health plan offered by the M+C organization to have been enrollees of the M+C plan when they developed ESRD. In section 422.50(a)(2), therefore, we provide that an individual who develops end-stage renal disease while enrolled in an M+C plan, or in a private health plan offered by the M+C organization offering an M+C plan, may continue to be enrolled in the M+C organization as an M+C plan enrollee.

We take this position because we believe that Congress intended in section 1851(a)(3)(B) to permit individuals with ESRD who are enrolled with an M+C organization to remain enrolled with that organization. If an individual develops ESRD as an enrollee of the organization *after* becoming Medicare eligible, he or she clearly would be permitted under section 1851(a)(3)(B) to remain enrolled with the organization. We do not believe that enrollees of an M+C organization should be penalized because they develop ESRD prior to becoming Medicare eligible rather than after. This position is consistent with our existing policy implementing a similar ESRD exclusion under section 1876, and therefore is supported by section 1856(b)(2), which provides for the retention of "standards established under section 1876 to carry out analogous provisions of such section."

We are not continuing the § 417.423(b) exclusion policy on hospice; individuals who elect hospice coverage may elect an M+C plan. Unlike ESRD patients, individuals who elect hospice care are not specifically excluded from participating in the M+C program. In fact, section 1853(h) contains special rules for M+C organizations that enroll hospice patients.

Section 1851(b) states that, except as the Secretary may otherwise provide, individuals must live in the geographic area served by the M+C plan in order to enroll in that plan. We have exercised the discretion provided in this provision to provide that those individuals converting from health plans in which they were enrolled prior to Medicare entitlement who reside out of the plan's service area may also continue enrollment in the M+C organization if they reside in the continuation area of the plan.

An M+C organization must disenroll beneficiaries who permanently move from the service area, unless the plan has chosen to provide a continuation of enrollment option in the area to which the enrollee moved, as allowed in section 1851(b)(1)(B) and the enrollee chooses to remain with the plan. We discuss continuation of enrollment in detail in section b.2., "Continuation of Enrollment." Section 4002 enrollment transition for 1876 risk contracts.

Section 1876 risk contracts cannot be renewed for a contract year beginning on or after January 1, 1999. Current risk contractors that remain in compliance with current standards and that demonstrate compliance with new requirements established by this regulation will be able to transition into the M+C program by entering into an M+C contract, as an M+C organization, with a contract effective date of January 1, 1999.

Section 4002(c) of the BBA provided for a seamless transition of enrolled membership. An individual who is enrolled on December 31, 1998 with an eligible organization under section 1876 shall be considered to be enrolled with that organization on January 1, 1999 under the M+C program if that organization has a contract under Part C of title XVIII for providing services on January 1, 1999, unless the individual has disenrolled effective on that date.

In addition, section 4002(b) provides that an individual who is enrolled in Part B only and is enrolled in an eligible organization with a risk-sharing contract under section 1876 on December 31, 1998, may continue to be enrolled in the

organization in accordance with our regulations. This means that on January 1 there will be a small population of "grandfathered Part B only" enrollees retained in organizations formerly with risk contracts that now hold contracts under the M+C program. However, this is a one time opportunity, and an individual who is enrolled in Part B and not entitled to Part A and who disenrolls from the M+C organization is not eligible to elect a plan offered by another M+C organization.

In summary, we are interpreting the statute to allow an individual to transition enrollment from the 1876 program without regard to location of residence or whether the individual has end-stage renal disease and to choose to enroll in any plan offered by the M+C organization into which they are transitioning.

2. Continuation of Enrollment (§ 422.54)

As stated previously, section 1851(b)(1)(B) allows M+C organizations to offer enrollees the option of continued enrollment in the M+C plan when enrollees leave the plan's service area to reside elsewhere, we have to interpieted this to mean on a permanent basis.

M+C organizations that choose the continuation of enrollment option must explain it in marketing materials and make it available to all enrollees in the service area. Enrollees may choose to exercise this option when they move or they may choose to disenroll.

Before an M+C organization may offer a continuation of enrollment option to Medicare beneficiaries, the organization must obtain HCFA approval of the continuation area, its marketing materials, and the organization's assurances that it will meet access requirements. Under section 1851(b)(1)(B), the organization must provide enrollees with reasonable access within the continuation area to the Medicare covered benefits described in section 1852(a)(1)(A).

The payment rate at which the M+C organization will receive payment from HCFA will be based on the rate and adjustment factors that correspond to the beneficiary's permanent residence. The M+C organization must, at a minimum, provide or arrange for the provision of Medicare covered benefits in the continuation area as described in the first sentence of § 422.100(b)(1), and the plan must meet access and cost-sharing requirements for all basic benefits.

Because the rate that we pay to M+C organizations includes amounts that ordinarily must be used to provide additional benefits (see preamble for subpart G), we believe that M+C organizations should be required to provide additional benefits in the continuation area. As noted above, however, section 1851(b)(1)(B) requires only that Medicare benefits be provided to continuation enrollees. We accordingly are considering a legislative proosial to require M+C organizations to provide all services in section 1852(a)(1), including required additional benefits under section 1852(a)(1)(B).

Section 1851(b)(1)(B) requires that "reasonable access" be provided in the continuation area, and that enrollees be subject to "reasonable cost-sharing." We are requiring that M+C organizations satisfy the access requirements in § 422.112, and provide services either through written agreements with providers or by making payments that satisfy the requirements in § 422.100(b)(2).

We are defining "reasonable cost-sharing" in the continuation area to be limited to (1) the cost-sharing amounts required in the M+C plan's service area (in which the enrollee no longer resides) if provided by contract providers; (2) the cost-sharing amounts required by the continuation area plan if provided through agreements with another M+C plan; or (3) the amount for which a beneficiary would be liable under original Medicare if noncontracting providers furnish the services.

We have included two items in these regulations that reflect our prior experience with similar situations. They are: (1) that plans may require prior notification from members of their intention to use the continuation of enrollment option, but this requirement must be in their marketing materials, and (2) appeals and grievances in the continuation area must be handled in the same timely fashion as in the service area, but the ultimate responsibility for the appropriate handling of appeals and grievances is with the organization that is receiving payment from HCFA.

3. Limitations on Enrollment in an M+C MSA Plan (§ 422.56)

While most M+C eligible individuals can choose to receive benefits through one of the M+C plans defined in § 422.4, the statute places limitations on eligibility to enroll in M+C MSA plans.

Sections 1851(b)(2) and (b)(3) specifically exclude certain individuals from enrolling in M+C MSA plans. We have specified at § 422.56(b) of this section, that individuals who are enrolled in a Federal Employees Health Benefit program (FEHB) plan, or who are eligible for health care benefits through the Veterans Administration (VA) or the Department of Defense (DoD) may not enroll in an M+C MSA plan. The statute provides that the restrictions on FEHB enrollment may be eliminated if the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted polices that will ensure that the enrollment of FEHB participants in M+C MSA plans will not result in increased expenditures for the Federal government. The Office of Personnel Management has indicated to HCFA that they would not be able to certify that FEHB costs would not increase at this time. Under our authority in section 1851(b)(2)(B), we intend to apply the same rules for enrollment restriction to individuals who are eligible for health benefits through the VA and DoD. Additionally, in § 422.56(c) we have incorporated the statutory requirement under section 1851(b)(3) that individuals who are entitled to Medicare cost-sharing under a State plan under title XIX are not eligible to enroll in M+C MSA plans. In addition, an individual who receives health benefits that cover all or part of the annual deductible under an M+C MSA plan may not enroll in an M+C MSA plan.

Note that M+C MSA plans are described in detail in Section III of this preamble.

4. Limited Enrollment Under M+C RFB Plans (§ 422.57)

Section 1859(e)(1) states that Religious Fraternal Benefit Society (RFB) plans may limit the enrollment of individuals to those who are members of the church, convention or group with which the society is affiliated. We have included the restrictions on enrollment in RFB plans at § 422.57.

5. Election Process (§ 422.60)

Under section 1851(c)(1) the Secretary is required to establish a process through which elections in M+C plans are made and changed, including the form and manner in which they are done. In § 422.60, we describe the election process for enrollment with the M+C organization. Where applicable we have included existing rules from 42 CFR § 417.430 with conforming changes.

As stated at § 422.66(a), M+C eligible individuals who wish to elect an M+C plan may do so by filing the appropriate election form with the M+C organization. At § 422.60(a), we specify that M+C organizations must accept without restriction, except as specified in § 422.57 for RFB plans, individuals who enroll in an M+C plan during the

election periods described in section 1851(e)(6) and set forth at § 422.62 of the regulation.

As provided by section 1851(e)(6), and stated at § 422.60(a), and displayed in the following chart, M+C organizations are required to accept enrollments during the initial coverage election period, the annual election period, and special election periods, but M+C organizations are not required to be open for enrollment during open enrollment periods.

WHEN ELECTIONS MAY BE MADE OR CHANGED*

Coverage Election Periods	When: § 422.62	M+C Plans Required to Accept Enrollments: § 422.60	Effective Date of Coverage: § 422.68
Initial Coverage Election Period	3 months before entitlement to Part A and Part B.	Yes	1st day of month of entitlement to Part A and Part B.
Annual Election Period	Annually in November	Yes	January 1.
Special Election Period	Starting 2002, if beneficiary moves, plan terminates, etc.	Yes	To Be Determined—depends on situation.
Special Election Period at Age 65	Starting 2002, in first 12 months after initial election of M+C plan.	No—Election is original Medicare	1st day of the month after month of election.
Open Enrollment Periods	Anytime 1998–2001 Jan–Jun 2002 Jan–Mar 2003+.	No—Plans have option of accepting enrollments.	1st day of the month after month of election.

*Refer to referenced regulation text for detail.
Note that different rules apply to M+C MSA plans.

As provided at § 422.306(a)(2) to reflect the requirements in section 1854(a)(1)(B), M+C organizations must submit by May 1 of each year the enrollment capacity of each plan they offer. Section 422.60(b) then provides that if HCFA determines that the M+C plan has a capacity limit, the plan may limit the enrollment of M+C eligible individuals if the plan accepts first those individuals who elected the plan prior to the HCFA determination and then accepts others in a manner that does not discriminate on the basis of health status.

We note that we have not included regulation text to address the last sentence of section 1851(g)(2) regarding "nonrepresentative" enrollment. As written, the sentence disallows a capacity limit if enrollment would become substantially nonrepresentative of the Medicare population in the plan's service area, as determined in accordance with regulations of the Secretary. We cannot envision circumstances under which the imposition of a capacity limit on enrollment would by itself lead to an enrollment "substantially non-representative" of the Medicare population in an M+C plan's service area. We particularly cannot envision circumstances under which the non-representativeness of enrollment would be so "substantial" as to justify possible risks to patient access and quality of services as the result of overloaded capacity. We accordingly are not promulgating regulations at this time implementing the authority in the last sentence in section 1851(g)(2). We invite comments on this provision, and would consider including guidance on this matter in a final regulation based upon comments received.

At § 422.60(c) we indicate requirements for the election form. The form must comply with HCFA instructions regarding content and format, must be completed and signed by the beneficiary (or the individual who will soon be entitled to Medicare benefits), and must include authorization for disclosure and exchange of necessary information between HCFA and the M+C organization. Persons who assist beneficiaries in completing forms must sign the form and indicate their relationship to the beneficiary. The forms must also be filed and retained by the M+C organization.

In general, and as indicated by our requirement that the beneficiary complete and sign the form, we believe that an M+C eligible individual should personally complete and sign any election form or disenrollment request (referenced at § 422.66(b)) whenever possible. If for some reason a beneficiary is unable to sign for himself or herself, we recognize and defer to state laws on who may sign for other persons, which is also the policy in the Section 1876 program.

In § 422.60(d), we specify that an election is considered to have been made on the date it is received by the M+C organization. We believe it is necessary that we define "when an election is made" because it is a determining factor in establishing the effective date of M+C plan coverage. Note that HCFA's liability for payment is not as of the election date, but rather, is as of the effective date of coverage. Effective dates of coverage are specified at § 422.68.

We have also set forth at § 422.60(e) a process for handling of forms, including for providing written notification of acceptance or denial in the M+C plan.

6. Election of Coverage Under an M+C Plan (§ 422.62)

Section 1876 background: Section 1876(c)(3)(A)(i) requires that HMOs and CMPs hold an open enrollment period for Medicare beneficiaries of at least 30 consecutive days during each contract year to qualify for a Medicare contract. For Medicare beneficiaries who enroll during the open enrollment period, § 417.450(a)(2) states that the effective date of coverage cannot be earlier than the first month, nor later than the third month, after the month in which HCFA received the information necessary to include the beneficiary in its records. In § 417.450(b), HCFA reserves the option to approve a later month if requested by the organization and the beneficiary. HMOs and CMPs can also offer continuous open enrollment outside of the 30-day period.

In the M+C program under section 1851(a)(1), M+C eligible individuals may elect to receive Medicare benefits under original Medicare or through election of an M+C plan. Section 1851(e) describes the various election periods available to M+C eligible individuals. Many of these provisions allow the individual to "change the election under subsection (a)(1)" during these periods. If section 1851(a)(1) were read narrowly, it arguably would only allow an eligible individual to change between original Medicare or the M+C program under Part C. We have taken a broader approach in interpreting section (a)(1) to allow eligible individuals to not only make a change between the original Medicare program and an M+C plan, but also among M+C plans. Therefore, an M+C eligible individual

who changes his or her election may change from an M+C plan to original Medicare, from an M+C plan to another M+C plan or from original Medicare to an M+C plan.

The BBA establishes specific parameters in which elections can be made and/or changed. Individuals who wish to elect an M+C plan or subsequently change their election, must do so during the periods established under section 1851(e). That section requires that elections or changes in election be made during the following periods: The initial coverage election period, continuous open enrollment periods, an annual coordinated election period or special election periods. Note that the Medigap implications of a change of election to original Medicare are discussed at section II.B.12 (Extended Period of Guaranteed Access to Medigap Plans) of this preamble.

a. Initial Coverage Election Period. Section 1851(e)(1) requires that the Secretary specify an initial coverage election period during which an individual who is initially entitled to Part A and enrolled in Part B may elect an M+C plan. The statute further stipulates that if an individual elects an M+C plan during that period, coverage under the plan will become effective as of the first day on which the individual may receive that coverage. We believe that Congress intended that we give a newly eligible individual the opportunity to be enrolled in an M+C plan as soon as he or she would be entitled to actually receive both Medicare Part A and Part B coverage.

In other contexts, we have interpreted the concept of "entitled" to mean that an individual has met all of the necessary requirements for a benefit (that is, is eligible for the benefit), and has actually applied for and been granted coverage. An individual is considered to be "enrolled" under section 1837, on the other hand, when he or she has applied for Part B coverage (or is deemed to have applied). Under some situations, an individual may apply for or be deemed to have applied for Part B before he or she is actually entitled to receive coverage. For example, if an individual applies for Part B coverage and becomes "enrolled" after he or she reaches age 65, the individual may not actually be entitled to Part B coverage under section 1838 until one or several months after the month of application and enrollment. If we were to interpret section 1851(e)(1) to give effect to an M+C plan election when an individual has only enrolled in Part B, he or she could be entitled to the benefits of the M+C plan before actually being entitled to Medicare Part B coverage. In order to avoid such a result, we have interpreted "enrolled" in Part B as "entitled" to Part B.

We believe our interpretation is consistent with section 1851(e)(1), which requires the Secretary to specify an initial coverage election period that would result in coverage under the plan becoming effective as of the first day on which the individual may receive that coverage.

In establishing the initial coverage election period we considered the statutory process of entitlement to Part A and enrollment in Part B. Section 226 of the Act provides that individuals who are age 65 and entitled to retirement benefits under title II or the Railroad Retirement Board Act and those who are under age 65 and have been entitled (or deemed entitled) to disability benefits under title II or the Railroad Retirement Board Act for 24 months shall be entitled to Part A under the Medicare program and eligible to enroll in Part B. Part A coverage is effective the month an individual attains age 65, or the 25th month he or she is entitled to disability benefits. If an individual is entitled to disability or retirement benefits at least 3 months before reaching age 65 or, in the case of a disabled individual, three months before the 25th month in which he or she is entitled to disability benefits, the individual is deemed enrolled in Part B at that time. Under section 1838, Part B is effective with the month an individual reaches age 65 or in the 25th month he or she is entitled to disability benefits.

In order for an individual to have coverage under an M+C plan effective as of the first day on which the individual may receive such coverage, the individual must elect an M+C plan before he or she is actually entitled to Part A and Part B coverage. We have therefore defined the initial coverage election period as the 3-month period that begins 3 months prior to the month the individual is first entitled to both Part A and Part B and ends the last day of the month preceding the month of entitlement.

This approach also permits individuals who do not enroll in Part B at initial eligibility (i.e. at age 65 or in the 25th month of disability entitlement) to elect an M+C plan at the time of subsequent enrollment in Part B. Section 1837(i) provides for a special enrollment period for individuals who defer enrollment in Part B because they are covered under a group health plan based on their own employment or that of a spouse (in the case of the disabled, the employment may be that of any family member). Enrollment in Part B may occur during any month the individual is covered under the group health plan based on current employment or during the 8-month period that begins the first full month the individual is no longer covered under the group health plan based on current employment. Under section 1838(e), Part B coverage is effective the first day of the month the application is filed or, at the individual's option, the first day of any of the following three months when enrollment occurs while the individual is covered under the group health plan based on current employment or during the first full month when not so covered. Therefore, an individual may file an application for Part B up to three months in advance of entitlement. Consequently, individuals who enroll in Part B during the special enrollment period may elect an M+C plan during the 3-month period prior to entitlement to Part B.

Additionally, section 1837(e) allows individuals who fail to enroll for Part B during their initial enrollment period (3 months before they are entitled to Part A or within 3 months after the month they are entitled to Part A) to enroll for Part B during a general enrollment period, which runs from January through March of every year, with coverage effective July 1 of the year of enrollment. In this case, the Part B application may be filed up to 6 months in advance of the month of entitlement. (Individuals who enroll in a general enrollment period are subject to an increased premium under section 1839(b), measured by the length of the delay in enrollment.)

In order to be consistent with the 3 month periods that can occur between timely enrollment for Part B and actual entitlement in existing sections of the Medicare statute, we have limited the period during which an individual may elect an M+C plan to the 3-month period prior to actual entitlement to Part B. We believe that this correlation with the 3-month period will be administratively more efficient than a shorter or longer time period.

b. Annual Coordinated Election Period. Section 1851(e)(6) establishes that organizations offering M+C plans in January, 1999 must open enrollment to Medicare beneficiaries in November, 1998. In addition, section 1851(e)(3) establishes the month of November of each year beginning in 1999 as the annual coordinated election period.

During the month of November, an M+C eligible individual may elect an M+C plan or change his or her election. Thus, the section 1876 requirement that plans be open any 30-day period is replaced by a requirement that plans

have to be open for enrollment during the month of November.

c. Open Enrollment Periods. Section 1851(e)(2) establishes open enrollment periods during which M+C eligible individuals may elect an M+C plan, if it is open to new enrollees, or change their elections. M+C individuals may not, however, as provided in section 1851(e)(5), elect an M+C MSA plan during open enrollment periods.

Note that as provided by section 1851(e)(6) and stated at § 422.60(a)(2), M+C organizations may, but are not required, to offer continuous open enrollment during open enrollment periods. This is similar to the section 1876 policy which also allowed, but did not require, continuous open enrollment outside of a 30-day period.

Section 1851(e)(2)(A) establishes that at any time during calendar years 1998 through 2001, there will be no limit on the number of elections or changes that an M+C eligible individual can make.

Section (e)(2)(B) establishes the first six months of 2002, (January through June) as the open enrollment period for that year. An M+C eligible individual may elect an M+C plan or change his or her election, but only once during the first six months of the calendar year.

Section (e)(2)(C) establishes the first three months of each year (January through March) beginning 2003, as the open enrollment period. An M+C eligible individual may elect an M+C plan or change his or her election, but only once during the first three months of the calendar year.

Section 1851(e)(2)(B)(i) allows that an individual who becomes an M+C eligible individual in 2002 and elects an M+C plan or original Medicare, to change that election once during the first 6 months of M+C eligibility in 2002. Beginning in the year 2003 and thereafter, a newly eligible individual who has made an election may change that election once during the first 3 months of M+C eligibility in that year. Consequently, those who become M+C eligible individuals late during the year may not have a full 6-month or 3-month open enrollment period. For example, an individual who becomes eligible in August 2002 has an open enrollment period of 5 months, August through December. The sixth month, January, does not occur during 2002 and cannot qualify as part of the open enrollment period.

The limit to one change during the open enrollment periods in the first six months of 2002 and the first three months of subsequent years does not apply to changes in elections that an individual makes during an annual coordinated election period or during a special election period.

In § 422.62, paragraphs (a)(4)(ii) and (5)(ii), we have interpreted the 6 and 3 month periods "in which the individual is an M+C eligible individual" in section 1851, paragraphs (e)(2)(B)(i) and (e)(2)(C)(i), as the periods that begin with the month the individual is first "entitled to both Part A and Part B." The statute defines "eligible for Medicare+Choice" as eligible for Part A and enrolled in Part B, a definition that we have reflected in § 422.50(a)(1); however, this definition could cause problems for newly eligible individuals during the open enrollment period.

For example, individuals who are newly eligible for M+C in the year 2002 under section 1851(e)(2)(B) will have 6 months, beginning with their eligibility for M+C, to change their election. If we start counting this period from the time individuals enroll in Part B, some will have little or no opportunity to change. Some of these individuals may not actually be entitled to receive benefits for a delayed period, which can be up to 6 months after they have enrolled if they have enrolled during a general election period. Hence, the opportunity to change could have no meaning, with the open enrollment period expiring before the individuals have actually received any M+C coverage.

d. Special Election Periods. Section 1851(e)(4) establishes special election periods beginning in 2002, during which M+C eligible individuals may disenroll from an M+C plan or elect another M+C plan. Special election periods are available if: (1) The service area or continuation area is reduced or the plan terminates or is terminated in the area in which the individual resides; (2) the individual moves out of the plan's service area and the plan does not offer, or the individual does not elect, the continuation of enrollment feature, or there is some other change of circumstances specified by HCFA; (3) the individual demonstrates to HCFA, in accordance with guidelines established by HCFA, that the M+C organization offering the plan substantially violated a material provision of its contract with regard to the individual or the organization, its agent, representative, or plan provider materially misrepresented the plan's provisions in marketing the plan to the individual; or (4) the individual meets such other exceptional conditions specified by HCFA.

The last paragraph in section 1851(e)(4) provides that, effective January 1, 2002, an individual who, upon first becoming eligible for benefits under Part A at age 65, enrolls in an M+C plan (other than an M+C MSA plan), may discontinue the election and elect original Medicare at any time during the 12 month period beginning on the effective date of the M+C election. We have interpreted this provision to apply to individuals who elect an M+C plan (other than an M+C MSA plan) during the initial enrollment period, as defined under section 1837(d), that surrounds their 65th birthday. This period begins 3 months before and ends 3 months after the month of an individual's 65th birthday. We believe that this interpretation fulfills the intention of the statute, which is to provide this special election period to individuals who, upon turning 65 and first becoming entitled to Medicare, elect an M+C plan. Our interpretation takes into account the fact that many, if not most, individuals will be making an election during an initial enrollment period, rather than during the month that they turn 65.

e. Special Enrollment and Disenrollment Rules for M+C MSA Plans. Section 1851(e)(5) establishes special rules for individuals enrolling in M+C MSAs. M+C eligible individuals may elect the M+C MSA option only during an initial coverage election period or during November of any year, beginning in 1998. M+C MSA enrollees may discontinue their election only during November of 1998, during annual coordinated election periods in November of each subsequent year, and during special election periods described in the first sentence of section 1851(e)(4). Individuals who elect an M+C MSA for the first time during the annual coordinated election periods that begin in November of 1999 may revoke their election if they do so before December 15 of the year in which they make the election, i.e., before the M+C MSA coverage begins. M+C MSA plans are described in detail at the end of this preamble.

7. Information about the M+C Program (§ 422.64)

Once these regulations are effective and M+C plans are approved by HCFA, eligible Medicare beneficiaries will be able to choose to receive their Medicare benefits from a new array of health care options. New options will include coordinated care plans such as Health Maintenance Organizations, Preferred Provider Organizations, Provider Sponsored Organizations, as well as Private Fee for Service Plans and Medical Savings Accounts. Medicare beneficiaries will still be able to choose to remain in original Medicare. These choices are designed to offer Medicare beneficiaries a marketplace of options

similar to those available to the non-Medicare population.

Under section 1851(d)(2), the Secretary is obligated to mail an "open season notification" at least 15 days before the beginning of each annual coordinated election period to each M+C eligible individual residing in an area and, to the extent practicable, to a newly eligible individual not later than 30 days before the individual's initial coverage election period. The notice must include certain general information listed in section 1851(d)(3) and a list of plans and certain plan comparisons as described in section 1851(d)(4). Section 1851(d)(1) requires that HCFA provide for activities to broadly disseminate information to beneficiaries and prospective beneficiaries on their coverage options under M+C, and section 1851(d)(5) requires HCFA to maintain a toll-free line for M+C inquiries and an Internet site through which individuals can obtain electronic information.

To promote informed choice, HCFA will provide access, via the Internet and through distribution of print materials, to information about original Medicare and M+C options. In accordance with section 1851(d)(3) and reflected in § 422.64(c), HCFA will provide general information to M+C eligible individuals with respect to benefits available under Part A and Part B of original Medicare, including covered services, beneficiary cost-sharing, such as deductibles, coinsurance, and copayment amounts, including any beneficiary liability for balanced billing. Such general information will also include instructions on how to exercise election options under M+C; procedural rights including the grievance and appeals procedures for original Medicare and M+C and the individual's right to be protected against discrimination based on health status related factors under section 1852(b), including the fact that an M+C organization may terminate its contract, refuse to renew its contract, or reduce the service area included in its contract and the effect this may have on the individuals enrolled in the M+C plan. Finally, a general description of the benefits, enrollment rights, and other requirements applicable to Medicare supplemental policies under section 1882, including Medicare Select, will be included.

Under section 1851(d)(4) and reflected in § 422.64(c)(6), HCFA will also provide information to M+C eligible individuals comparing M+C plan options, including the benefits covered under the M+C plan; covered services beyond those provided under original Medicare; and beneficiary cost-sharing including maximum limitations on out-of-pocket expenses and, in the case of an MSA plan or M+C private fee-for-service plan, differences in cost-sharing, premiums, and balance billing as compared to other M+C plans and whether the organization offering the plan includes mandatory supplemental benefits in addition to its base benefit package or offers optional supplemental benefits and the premiums and other terms and conditions for such coverage. The M+C monthly basic beneficiary premium and M+C monthly supplemental beneficiary premium, if any for the plan or, in the case of an MSA plan, the M+C monthly MSA premium, will also be included. M+C eligible individuals will also be informed about the extent to which they may obtain benefits through out-of-network health care providers; the extent to which they may select among health care providers and the types of providers participating in the plan's network. M+C eligible individuals will be informed of the M+C organization's coverage of emergency and urgently needed care, service area of the plan, and, to the extent available, M+C plan quality and performance indicators.

The information comparing plan options is crucial to empowering beneficiaries with the knowledge that will help them evaluate M+C options and make informed decisions based on their individual needs. We wish to make clear that our provision of comparative data is intended neither to encourage or discourage beneficiaries from choosing one health care plan over another nor to favor a choice of an M+C plan over original Medicare.

We invite the public to comment or to provide specific guidance on the types of information that should be made available to beneficiaries. Once we have worked out what specific information we will require within the above categories, we will post these at our Internet site.

The Internet site, www.Medicare.gov, is a Medicare beneficiary-centered consumer website designed to provide a broad array of information on program benefits, health system performance, health care choices, healthy behaviors and health promotion. This site will be continuously improved to meet the mandate in section 1851(d)(2)(C) that we provide information in a style and format that is easy to understand. If necessary, we will publish regulations and allow for OMB review, pursuant to the requirements of the Paperwork Reduction Act of 1995.

HCFA's "Medicare Compare," the Managed Care Plans Comparison Database, will be available on the Internet for public use. "Medicare Compare" provides a wealth of information on health care plans, allowing users to "comparison shop" for plans. Users can look up information in different areas, by state, county or zip code. They can also compare costs for premiums and types of services offered. The information in the database will be updated quarterly. Plan specific quality performance measures from the HEDIS information set and the Consumer Assessment of Health Plans Survey (CAHPS) will be incorporated into information provided to beneficiaries once the data and results have been validated and determined to be accurate and reliable. HCFA is committed to using a public process to determine information and data specifications, including the details of what information will need to be collected and the methods of collection to determine the remaining unspecified data elements that organizations are required to submit. HCFA will work collaboratively with organizations involved with quality and performance standards and measurements, including performance measurement experts, public and private purchasers, and beneficiary representatives in this process. In addition, HCFA will hold public meetings to invite interested parties to comment and provide input in the process of determining the data specifications for additional performance information, e.g., data about appeals or health outcome measures. Finally, HCFA will publish a notice regarding plan data elements to be collected and a summary of public processes used to determine the data elements in question and this document would be available at the discretion of the requestor. Educational information will be made available on the Internet site to prepare consumers on how to use this information when comparing plans and in making decisions about their health care.

In support of efforts to promote informed choice, HCFA will also maintain a toll-free line for M+C information.

Under section 1851(e)(3)(D), we are required to provide in the fall of 1998 for a "Special Information Campaign" in the form of an educational and publicity campaign that informs M+C eligible individuals about the availability of M+C plans offered in different areas, and about the election process. Section 1851(e)(3)(C) requires that we provide for a nationally coordinated educational and publicity campaign about M+C plans and the election process in November of each year, beginning in 1999. We may conduct these campaigns

using health fairs, as well as other methods for distributing information.

8. Coordination of Enrollment and Disenrollment Through M+C Organizations (§ 422.66)

a. Enrollment. Section 1851 (c)(1) and (c)(2) provide that individuals who wish to elect an M+C plan may do so through filing an appropriate election form with the organization during an election period specified in section 1851(e), and reflected in § 422.62. Section 1851(c)(1) requires that the Secretary establish a process through which elections in M+C plans are made. Therefore, we reserve the right to develop and provide additional mechanisms for electing an M+C plan. We have provided instructions on how M+C organizations must process elections at § 422.60(e). If necessary, we will publish regulations and allow for OMB review, pursuant to the requirements of the Paperwork Reduction Act of 1995.

b. Disenrollment. Section 1876 background: Under section 1876(c)(3)(B), which covers disenrollment from HMOs and CMPs, a Medicare beneficiary can disenroll from an HMO or CMP at any time. Under the HMO and CMP regulations in § 417.461(a), an enrollee who wishes to disenroll may, at any time, give the organization a signed, dated request in the form and manner we specify. The beneficiary can request a certain disenrollment date, but it can be no earlier than the first day of the month following the month in which the organization receives the disenrollment request. Under section 9312(h) of the Omnibus Budget Reconciliation Act of 1986, Medicare beneficiaries are also permitted to disenroll from an eligible organization under Section 1876 at a local Social Security office.

Section 417.461(b) describes the responsibility of the HMO or CMP to promptly submit a disenrollment notice to HCFA and provide the enrollee with a copy of the request for disenrollment and, in the case of a risk HMO or CMP, an explanation of the date of disenrollment. Section 417.461(c) provides that HMOs and CMPs must reimburse HCFA in cases where a disenrollment notice is not submitted timely to HCFA.

Currently, when an individual enrolls in one HMO or CMP while still enrolled in another, we regard this action as a disenrollment from the first HMO or CMP, and automatically amend our enrollment records to reflect the disenrollment. We do this so that the beneficiary does not have to both submit a disenrollment request to the first HMO or CMP, and an enrollment request to the new HMO or CMP.

To reflect these current policies, § 422.66(b)(1) provides that an individual who wishes to disenroll may change his or her election in the following manner: (i) Elect a different M+C plan during an election period specified in § 422.62 or (ii) submit a signed and dated request for disenrollment to the M+C organization during an election period specified in § 422.62. HCFA also reserves the right to develop and provide additional mechanisms for disenrollments in accordance with section 1851(c). Note that the Medigap implications of a change of election to original Medicare are discussed at section II.B.12 (Extended Period of Guaranteed Access to Medigap Plans) of this preamble.

At § 422.66(b)(2) we specify that a disenrollment request is considered to have been made on the date it is received by the M+C organization. Note that HCFA's liability for payment ends not on the date the disenrollment request is received by the M+C organization, but rather, as of the date of disenrollment. The date of disenrollment is determined at § 422.68 for changes made by enrollees during coverage election periods and at § 422.74 for disenrollments made by M+C organizations.

At § 422.66(b)(3) and (4) we are continuing the § 417.461(b) and (c) requirements for M+C organizations to provide timely notice of disenrollment to HCFA and to provide the enrollee with a copy of the disenrollment request with information on the date of disenrollment and any lock-in requirements of the plan that apply until the effective date of disenrollment. We also state that disenrollment requests must be filed and retained as specified in HCFA instructions.

The regulation also provides that if the M+C organization fails to submit a correct and complete disenrollment notice to us promptly, the M+C organization must reimburse us for any capitation payments it has received after the month in which we would have stopped payment, had the M+C organization met the requirement.

c. Retroactive Disenrollment. Section 1876 background: In the case of section 1876 contractors, HCFA has permitted beneficiaries to be retroactively disenrolled from an HMO or CMP if it determines that there never was a legally valid enrollment, or a valid request for disenrollment was properly made but not processed or acted upon.

In the M+C program, HCFA will continue to consider retroactive disenrollments in cases in which we determine that there never was a legally valid enrollment, or a valid request for disenrollment was made but not processed or acted upon. We have reflected this provision in § 422.66(b)(5).

d. Fee-for-Service Election by Default. Section 1851(c)(3)(A)(i) establishes that newly eligible enrollees who do not choose an M+C plan during the initial coverage election period are deemed to have chosen original Medicare. We have reflected this provision in § 422.66(c).

e. Seamless Continuation of Coverage (Conversions). Section 1876 background: In regulations at § 417.432, an HMO/CMP is required to accept any individual who was already enrolled in the HMO/CMP for the month immediately prior to the month in which he or she was entitled to both Part A and Part B, or entitled to Part B only. HCFA refers to such enrollments as "conversions" or "age-ins." The individual's effective month of enrollment in the HMO or CMP as a Medicare enrollee is effective the month in which he or she is entitled to both Medicare Parts A and B, or Part B only.

With the enactment of BBA, a new section 1851(c)(3)(A)(ii) is added to the statute that gives the Secretary discretion to establish procedures under which individuals who are enrolled in a health plan offered by an M+C organization at the time of their initial coverage election periods will "default" to or be deemed to have elected an M+C plan offered by the M+C organization, unless these individuals elect a different option. We have chosen not to have individuals default to the M+C plan offered by the organization. At this time we do not have a mechanism in place to capture the information we would need to implement such a process. A default process would require that M+C eligible individuals as well as their relevant health plan information be identified and captured prior to the individual's initial coverage election period. At present, we do not have access to information on which health plans individuals are enrolled in because such plans are private health plans. In addition, we are not given any information if individuals have not previously filed for title II (Social Security) and/or title XVIII (Medicare) benefits.

One option that we may consider would be to specify that M+C organizations which have individuals enrolled in private health plans must notify such individuals 4 months preceding the month in which the individual becomes an M+C eligible individual of their opportunity to "age-in" to the M+C plan or to select another option. This would give the individual

the opportunity to select from a range of health care options in a manner that would facilitate seamless continuation of coverage. M+C organizations would be required to transmit to us the necessary plan information for those individuals who are interested in exercising their opportunity to "age-in". HCFA would then have the information necessary to "deem" or "default" M+C eligible individuals into the appropriate M+C plan. We request public comments on this issue and will issue further clarification in the final rule. In the interim, we have retained the conversion of enrollment process described in § 417.432 with conforming changes.

In § 422.66(d) we specify that M+C plans must accept any individual who is enrolled in a health plan (other than an M+C plan) offered by the same M+C organization, during the month immediately preceding the month in which the individual is entitled to both Part A and Part B. Conversion may occur if the individual resides in the service area or continuation area of the plan and regardless of whether an individual has ESRD. We limit conversions to individual in a service area and continuation area in order to ensure that enrollees have access to the full range of services offered by the plan. This policy is also reflected in the section describing eligibility to elect a plan (§ 422.50(a)(2) and (a)(3)). Therefore, an M+C organization's obligation to accept current enrollees extends to enrollees in a service area or a continuation area, or who developed ESRD while enrolled with the organization under a private health plan. Converted beneficiaries who reside out of the plan's service area or who have ESRD cannot, however, later elect to enroll in a plan offered by another M+C organization unless they meet the statutory requirements at sections 1851(b)(1)(A) and 1851(a)(e)(B).

In addition, we allow M+C organizations to reserve vacancies for their plans to accommodate conversions in recognition that M+C organizations must accept conversions. We require the individual who is converting to file an election form in accordance with § 422.60(c)(1). We also stipulate that the M+C organization may not disenroll the individual except under the conditions described in § 422.74.

f. Maintenance of Enrollment. The statute provides at section 1851(c)(3)(B) that an individual who has made an election or is deemed to have made an election is considered to have continued to make that election until the individual changes it or the M+C plan is discontinued or no longer serves the area in which the individual resides. We have stated this rule at § 422.66(e).

9. Effective Dates of Coverage and Change of Coverage (§ 422.68)

Section 1851(f) establishes the effective dates for elections and changes to elections made during the various enrollment periods. Note that the Medigap implications of a change of election to original Medicare are discussed at section II.B.12 (Extended Period of Guaranteed Access to Medigap Plans) of this preamble.

Section 1851(f)(1) states that an election made during the initial coverage election period will take effect on the date the individual becomes entitled to Part A and enrolled under Part B, but gives the Secretary discretion to interpret this provision in a manner, consistent with section 1838, that prevents retroactive coverage. We are interpreting "enrolled in Part B" as "entitled to Part B" in order to avoid retroactive coverage in an M+C plan that an individual might receive after enrolling in Part B but prior to the time the individual is actually entitled to Part B benefits. Therefore, we have established that an election made during the initial coverage election period is effective the first day of the month of entitlement to both Part A and Part B.

Under section 1851(f)(3), an election or change of election made during an annual coordinated election period is effective the first day of the following calendar year. We have reflected this provision in § 422.68(b).

Under section 1851(f)(2), an election or change of election made during an open enrollment period is effective the first day of the first calendar month following the month in which the election is made. We have reflected this provision in § 422.68(c).

Under section 1851(f)(4), an election that occurs as the result of a special election period is effective, to the extent practicable, in a manner determined by HCFA to promote continuity of coverage. We have reflected this provision in § 422.68(d).

At § 422.68(e) we are stating that an election of original Medicare made during a special election period by an individual age 65 as provided at § 422.62(c) is effective the first day of the first calendar month following the month in which the election is made.

10. Disenrollment by the M+C Organization (§ 422.74)

Section 1851(g)(3) specifies that M+C organizations may only disenroll individuals from an M+C plan for the following reasons: the individual fails to pay any basic and supplemental premiums on a timely basis; the individual engages in disruptive behavior; or the M+C organization terminates its coverage of all M+C eligible individuals in the area in which the individual resides.

In § 422.74, we have set forth the conditions under which M+C organizations can disenroll individuals. Section 1851(g)(3)(A) provides that, except as provided in section 1851(g)(3)(B), "a Medicare+Choice organization *may not for any reason terminate*" an individual's enrollment in "a Medicare+Choice plan it offers." [Emphasis added.] We have included the three grounds for termination set forth in section 1851(g)(3)(B) in § 422.74. With respect to the ground in section 1851(g)(3)(B)(ii), under which an enrollee can be disenrolled for "disruptive behavior" as specified in standards established in regulations, we have implemented this ground for termination in two separate provisions. First, under § 422.74(b)(1)(ii), we refer to an individual who meets general standards for disruptiveness set forth in § 422.74(d)(2). Section 422.74(d)(2) refers to behavior of an individual that is "disruptive, unruly, abusive, or uncooperative to the extent that his or her continued enrollment * * * seriously impairs the M+C organization's ability to furnish services. * * *" We also separately refer to a different kind of "disruption" or failure to "cooperate"; namely, fraud or abuse of the enrollee's enrollment card. This ground for termination is also based on section 1851(g)(3)(B)(ii), and standards for disenrollment on this basis are also included in § 422.74(d), in a separate paragraph (3).

In addition to implementing the grounds in section 1851(g)(3)(B), we also provide in § 422.74 for the termination of individuals who are no longer eligible for enrollment in the M+C plan, because they have left the area, lost entitlement to Medicare, or died. We believe that the prohibition in section 1851(g)(3)(A) on terminating an enrollee on grounds other than those set forth in paragraph (B) applies only to individuals who are otherwise *eligible* for enrollment in the plan. Clearly, if an individual does not meet the threshold requirements for eligibility, disenrollment is not only permissible but required.

We have established specific guidelines in § 422.74(d)(1) that the M+C organization must follow when disenrollment is based on failure to pay basic and supplemental premiums, including the requirement to send a notice of nonpayment within 20 days after the date that delinquent charges

are due. The notice must alert the individual that he or she is delinquent on a premium payment, provide the individual with an explanation of the disenrollment procedures and any lock-in provisions of the plan, and advise the individual that failure to pay the premiums within the 90-day grace period will result in termination of M+C coverage.

Note that in the section 1876 program, disenrollment for non-payment of premiums is treated differently. At § 417.460(c)(2), if a beneficiary pays the basic premium and other charges, but fails to pay the premium for optional supplemental benefits, the organization can discontinue the optional benefits, but cannot disenroll the beneficiary. However, under section 1851(g)(3)(B)(i), an M+C organization may terminate an election of a plan if any M+C monthly basic and supplemental beneficiary premiums are not paid on a timely basis.

We have retained the current processes described in § 417.460 for disenrollment for disruptive behavior and fraud and abuse. In the case of disenrollment for disruptive behavior, the M+C organization must ascertain that the individual's behavior is not related to the use of medical services or to diminished mental capacity. If an individual is disenrolled for disruptive behavior, HCFA will review the documentation submitted by the M+C organization and the beneficiary to determine whether the disenrollment requirements have been met.

We have included a qualifier for disenrollment when the individual no longer resides in the M+C plan's service area to conform to section 1851(b)(1)(B), which permits plans to offer a continuation of enrollment feature if the individual moves out of the service area. We have modified the existing regulatory text at § 417.460(h) which requires disenrollment when the individual loses entitlement to Part B benefits, to require disenrollment when an individual loses entitlement to Part A or Part B benefits. We have also addressed the process for disenrollment for plan termination or area reduction.

For all disenrollment situations, except those due to the death of the individual or loss of Part A or Part B benefits, we require M+C organizations to provide the individual with a written notice of the disenrollment that includes an explanation of why the M+C organization is planning to disenroll the individual and a description of the individual's right to a hearing under the M+C organization's grievance procedures.

The statute provides at section 1851(g)(3)(C) that individuals who are disenrolled from an M+C plan due to disruptive behavior or failure to pay basic or supplementary premiums will be deemed to have elected original Medicare. We have treated fraud and abuse by the enrollee in the same manner as other forms of disruptive behavior, with the individual being disenrolled into the original Medicare program. We believe that the result should be comparable because, in both cases, the individual's disruptive behavior has given the organization cause for the disenrollment. Individuals who lose entitlement to Part A or Part B benefits default to original Medicare because they no longer meet the requirements to receive Medicare benefits through an M+C plan, which requires entitlement to Part A and enrollment in Part B.

As previously discussed, special election periods are available to individuals who are disenrolled (or who disenroll) because of plan termination or service area or continuation area reduction or because they no longer reside in the M+C plan's service area or continuation area. Section 1851(g)(3)(C)(ii), however, stipulates that individuals who are disenrolled and who do not make an election during the special election period are deemed to have elected original Medicare.

11. Approval of Marketing Materials and Application Forms (§ 422.80)

Section 1851(h) contains requirements related to marketing by M+C organizations. These provisions are implemented in § 422.80. Section 422.80(a) implements the requirement in section 1851(h)(1) that all marketing material and application forms be submitted to HCFA for approval 45 days before distribution, and that such materials may only be used if HCFA does not disapprove such use by the end of this 45 day period. In section 422.80(b), we define "marketing materials" which must be submitted for approval under § 422.80(a).

Section 1851(h)(2) requires that M+C standards under section 1856 include guidelines for review of marketing materials under section 1851(h)(1) and § 422.80(a). Section 422.80(c) contains guidelines for HCFA's review of marketing materials under § 422.80(a). As provided for in section 1852(b)(2), these guidelines include existing marketing guidelines for HMOs and CMPs in § 417.428, which have been in effect since the inception of the existing Medicare risk contracting program.

Section 1851(h)(3) provides that, if HCFA has not disapproved the distribution of marketing materials or forms with respect to an M+C plan in an area, HCFA is deemed not to have disapproved the distribution in all other areas covered by the M+C plan and organization except with regard to any portion of the material or form that is specific to the particular area. This "deemed approval," or "1 stop-shopping," provision is included in the statute to address the needs of M+C organizations that operate in multiple states and within multiple HCFA Regional Office (RO) regulatory districts. Under the section 1376 program, a marketing piece submitted for HCFA review in multiple ROs was often susceptible to different regulatory interpretations by different RO staff; this occurrence could result in approval by one RO and a request for revisions by another RO. This phenomenon was primarily the result of RO staffs working within the environment of either an "emerging" market area or a "mature" area. The speed of review and approval of marketing materials should be enhanced by implementation of this statutory requirement.

Section 1851(h)(4) provides that M+C organizations shall conform to "fair marketing standards" included in the "standards under section 1856," and requires that these standards prohibit an organization from providing cash or other monetery inducements for enrollment. Standards under section 1854(h)(4) are set forth in § 422.80(e). Again, as provided in section 1856(b)(2), these standards include existing section 1876 standards.

Section 1851(h)(4)(B) indicates that the fair marketing standards "may include a prohibition against an M+C organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual." However, we have decided at this time not to prohibit an M+C organization (or agent of such an organization) from assisting beneficiaries in completing the election form. We recognize and understand that we must provide accommodations for persons with disabilities and for situations in which such a prohibition could represent a potential physical burden to beneficiaries. However, in general, we believe that it is good practice that the M+C eligible individual should complete and sign the election form. Currently, we have no way to check for any plan impropriety, especially in situations where beneficiaries require help in completing the enrollment form, except beneficiary allegations and requests for disenrollment. While we cannot

quantify the amount of inappropriate behavior, we know that some plans have completed election forms for beneficiaries fraudulently or have convinced beneficiaries to sign forms without explaining to them the contents and telling them the form is for enrollment (U.S. General Accounting Office report: "HCFA Should Release Data To Aid Consumers, Prompt Better HMO Performance", HS–97–23, October 1996.) Therefore, we request public comment on this issue and will provide further guidance in the final rule.

In the interim, we are providing at § 422.60(c) that persons who assist beneficiaries in completing forms should sign the form and indicate their relationship to the beneficiary. In addition, we encourage M+C organizations to use neutral parties such as family members, ombudsmen or counseling programs for those individuals who require assistance in completing forms.

Finally, in § 422.80(f), we specify that HCFA may permit M+C organizations to develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the M+C organization, and to furnish these materials only to such group members. While such materials must be submitted for approval under paragraph (a), HCFA will only review portions of these materials that relate to M+C plan benefits.

12. Medigap

Prior to the enactment of the BBA, Federal law provided only one opportunity for a Medicare beneficiary to purchase a Medicare supplement (Medigap) policy on a "guaranteed issue" basis. (Generally this means that the insurance company cannot deny the application, or charge extra, based on the individual's health experience.) This opportunity was during the 6-month period beginning with the date a beneficiary is both age 65 or over, and enrolled in Medicare Part B. Amendments made by the BBA now specify additional situations in which beneficiaries will, after July 1, 1998, be guaranteed access to certain types of Medigap policies on a guaranteed issue basis *if* they apply within 63 days after losing other coverage, and submit evidence of the date the prior coverage terminated. The law also requires the entity that provided the prior coverage to notify beneficiaries of these rights.

Therefore, while this regulation does not implement the Medigap provisions of the BBA, it is important to be aware of the implications for M+C organizations, since some of the situations covered by the Medigap provisions involve beneficiaries who leave M+C plans and return to original Medicare. The situations that will give rise to the obligation to notify the beneficiary will include, for example, termination of coverage by an M+C plan, or loss of coverage under an M+C plan due to a change in the individual's place of residence. The beneficiary also will have the right to guaranteed issue of a Medigap policy if he or she either enrolls in an M+C plan upon first becoming eligible for Medicare at age 65, or enrolls after previously being covered under a Medigap policy, and later disenrolls from the M+C plan within 12 months of the effective date of the M+C enrollment.

Because the Medigap provisions establish specific time deadlines for beneficiaries who wish to take advantage of these new rights, prompt action by M+C organizations to notify beneficiaries of their rights, and by HCFA to provide accurate evidence of recently terminated coverage, will be essential. CFA is committed to providing beneficiaries whose M+C coverage terminates under the specified circumstances with timely and accurate evidence of the recently terminated coverage. There are a number of ways in which we are considering providing the necessary evidence, including enabling Medigap insurers to query HCFA systems, if privacy and security issues can be resolved. HCFA is seeking comments on the most effective way to coordinate with Medigap insurers in order to protect beneficiaries' rights under the statute, and promote continuity of care.

We also urge M+C organizations to keep in mind that they will be obligated to notify beneficiaries whose coverage terminates of their rights under the Medigap provisions. Those provisions are complex—only certain beneficiaries will be entitled to guaranteed issue of Medigap policies, and their choice of policies will depend on the precise reason for termination of their coverage under the M+C plan. Further guidance is available from the National Association of Insurance Commissioners (NAIC), which on April 29, 1998 issued a revised Model regulation that incorporated the Medigap changes made by the BBA.

C. Benefits and Beneficiary Protections

1. General Requirements (§ 422.100)

Subpart C of these regulations details the scope of benefits a Medicare beneficiary is entitled to receive when electing coverage through an M+C plan. The statutory authority for most of the provisions of subpart C is found in section 1852, which outlines benefit requirements and provides authority for beneficiary protections under Medicare Part C. Many of the statutory provisions are the same as, or similar to, benefit provisions of section 1876. Therefore, much of the regulatory language of part 417 is retained for purposes of establishing M+C standards, as provided for in section 1856(b)(2) (which directs that the M+C standards be based on the analogous standards established under section 1876).

A principal difference between section 1876 provisions and the newly enacted law is that the new law permits a wider range of types of entities to assume risk for the coverage of benefits for Medicare enrollees. Section 1876 limited the Medicare contract option to organizations that operated as entities accepting full-risk, prepaid capitation for the provision of a comprehensive range of services and defined "eligible organizations" as a Federally qualified HMO (under title XIII of the Public Health Service Act) or a competitive medical plan (CMP). Except in a very few instances where waivers were granted during years when such waivers were authorized, the organizations had to offer such a product in the commercial marketplace in order to have a Medicare contract. From the point of view of benefit requirements imposed on plans, the new types of network plans are subject to the same benefit requirements applicable to organizations that would have met the definition of "eligible organization" under section 1876 (HMOs and CMPs). The requirements under the new law for network plans are in many cases identical to the requirements under section 1876.

While adding PPOs, indemnity insurers, and provider-sponsored organizations to the range of entities eligible for Medicare contracts, the BBA also permits non-network plans, such as private fee-for-service plans and M+C non-network MSA plans, to assume prepaid, capitated risk for services used by enrollees of these organizations. Medicare beneficiaries who elect these plans are not subject to the same constraints in use of providers that exist in network plans. Therefore, the benefit requirements applicable to these plans, and cost-sharing requirements, may be very different from those that apply to network plans. This section of the preamble mainly discusses the requirements for network plans. Sections III and IV of the preamble provide more extensive information about benefit requirements applicable to non-network M+C MSA plans and to

private fee-for-service plans, respectively.

All M+C organizations are required to cover the full range of Medicare benefits that enrollees would otherwise have been able to receive under original Medicare, subject to certain rules regarding available networks of providers. M+C organizations are further required to cover Medicare preventive benefits with the same frequency that they are covered under original Medicare (e.g., annual screening mammography examinations). Beneficiaries may be required to contribute to the cost of covered services in the form of cost-sharing provided for under the M+C plan. Beneficiaries may have to cover all costs until a deductible is met (including the high deductible provided for under an MSA plan (see section III of this preamble)), a percentage of costs in the form of coinsurance, or a fixed amount for services, in the form of a copayment. As discussed in subpart G below, there are limits that apply to the cost-sharing that can be imposed on beneficiaries under M+C plans. For benefits that are covered under original Medicare, the benefits must be obtained through providers meeting the conditions of participation of the Medicare program.

Organizations with network plans, which include coordinated care plans and network M+C MSA plans, are required to provide these services directly or through arrangements (i.e., written agreements with providers) in order to meet the availability and accessibility requirements of section 1852(d)(1) and § 422.112, discussed below.

In some situations, an M+C organization, for its network plan or plans, may be required to assume liability for services provided to Medicare enrollees through noncontracting providers. Under § 422.100(b), the organization is required to assume financial responsibility for the following items and services obtained from a provider that does not contract with the M+C organization:

- Emergency services as defined in § 422.2;
- Urgently needed services as defined in § 422.2;
- Renal dialysis services provided while the enrollee was temporarily outside the M+C plan's service area;
- Post-stabilization care as described in § 422.100(b)(iv); and
- For both network and non-network plans, services denied by the M+C organization and found upon appeal (under subpart M of this part) to be services the enrollee was entitled to have furnished or paid for by the M+C organization.

The requirements that the M+C organization assume financial liability for renal dialysis services, and post-stabilization care are new requirements introduced by the BBA that were not included in section 1876 requirements. The BBA also revised the definition of emergency services, as discussed elsewhere in the preamble.

"Post-stabilization care" (also referred to in the Act as "maintenance care") means medically necessary, non-emergency services needed to ensure that the enrollee remains stabilized from the time that the treating hospital requests authorization from the M+C organization until—

- The enrollee is discharged;
- A plan physician arrives and assumes responsibility for the enrollee's care; or
- The treating physician and plan agree to another arrangement.

Section 422.100(b)(1)(iv) provides that an M+C organization is responsible for the cost of post-stabilization care provided outside the plan if they were pre-approved, if they were not pre-approved because the organization did not respond to the request by the provider of post-stabilization care services for pre-approval within 1 hour after the organization was asked to approve post-stabilization care, or if the M+C organization could not be contacted for pre-approval. M+C organization liability will extend until the organization has contacted the hospital to arrange for discharge or transfer. These requirements reflect comments we received on post-stabilization care in response to the **Federal Register** notice of January 20, 1998. The majority of commenters advocated that we establish a timeframe for an M+C organization's response to a request for approval. Because we agree that an untimely response to a request for approval would unduly delay the delivery of the post-stabilization care services, thereby compromising their effectiveness, we have established a 1-hour timeframe in the regulation as an enrollee protection. Because a completely accurate assessment of an enrollee's need for post-stabilization care services cannot be made until the enrollee is stabilized, we expect that the provider of the post-stabilization care services will not request the M+C organization's approval of the services until after the enrollee is stabilized, at which time enough details about the enrollee's condition should be known to allow the organization to make an informed decision on whether to approve the care almost immediately. We welcome comments on this issue.

In the case of payments to noncontracting providers for covered items and services, the M+C organization's obligation is met when it provides for payment in an amount the provider would have received under original Medicare (including payment from the organization and beneficiary cost-sharing under the plan).

The benefits offered by an M+C plan may be divided into two major components, "basic benefits" and "supplemental benefits." Basic benefits in an M+C plan include all Medicare-covered services (except hospice) and additional benefits. Basic benefits are discussed below, and special rules for M+C enrollees electing hospice are set forth in § 422.266 and discussed in section II.F.9. of this preamble. Supplemental benefits include both mandatory and optional supplements, which we also discuss below.

Section 1852(a)(1) stipulates that M+C organizations offering an M+C plan (or plans) must offer it to all Medicare beneficiaries eligible to elect the plan who reside in the service area of the M+C plan at a uniform premium with uniform cost sharing. An organization may offer more than one plan in the same service area. The premium and cost-sharing may vary among plans within the same organization. We will review each M+C plan offered by the same organization to ensure that it is not designed to promote discrimination, discourage enrollment, steer specific subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services.

2. Requirements Relating to Basic Benefits (§ 422.101)

With the exception of special rules concerning hospice care and M+C coverage that begins during an inpatient hospital stay (described in §§ 422.266 and 422.264, respectively), a Medicare enrollee is entitled to have the M+C organization provide all Medicare-covered services that are available in the geographic area in which services are covered under the plan.

M+C organizations are required to provide their enrollees with services covered under original Medicare and available to beneficiaries residing in the geographic area in which services are covered under the plan, as we provide at § 422.101(a). Organizations must also abide by our national coverage decisions, as well as specific written policies of the Medicare carrier or intermediary with jurisdiction for claims (if the encounter had occurred under original Medicare) in the

geographic area served by the plan. (These policies are sometimes called "local medical review determinations.") In cases where services are covered under the plan in an area that includes jurisdictions of more than one contractor for original Medicare, and the contractors have different medical review policies, the plan must apply the medical review policies of the contractor in the area where the beneficiary lives.

In addition, the organization is required to provide "additional benefits," which include health care services not covered by Medicare, as well as reductions in premiums or cost sharing for covered services. As discussed in section II.A of this preamble, we use the term "basic benefits" to encompass all Medicare-covered benefits (except hospice services) and additional benefits. These benefits are determined by our approval of an M+C organization's Adjusted Community Rate (ACR) proposal for a given M+C plan and must be provided uniformly to all Medicare enrollees electing that plan. Additional benefits are generated when the average payment rate for a plan exceeds the adjusted community rate, thereby producing a surplus known as the "excess amount." (See section II.F of this preamble for a more thorough discussion of the requirements that apply to additional benefits, which are set forth under § 422.312.)

In the case of an M+C private fee-for-service plan or a non-network M+C MSA plan, the obligation to cover Medicare services is not limited to services available in the plan's approved service area. Rather, in this context, we interpret "geographic area served by the plan" in section section 1852(a)(1)(A) to mean the area within which the M+C private fee-for-service or non-network M+C MSA plan enrollee has the right to receive covered services under the plan.

Under our authority in section 1856(b)(1) to establish standards under the M+C program, § 422.100(h) establishes special rules for influenza vaccine, pneumococcal vaccine, and screening mammography. Section 422.100(h)(2) prohibits enrollee cost-sharing for influenza vaccine and pneumococcal vaccine. Under original Medicare, there is no cost-sharing imposed on these items, and we believe congressional intent is for Medicare beneficiaries to have maximum possible access to both vaccines. We note that original Medicare provides for beneficiary payment of coinsurance for mammography screening; therefore, a plan may also impose copayment or coinsurance for this service.

Also note that beneficiaries under original Medicare may "self-refer" and directly access screening mammography and influenza vaccine. We have established a similar standard in § 422.100(h)(1) for M+C enrollees.

3. Supplemental Benefits (§ 422.102)

Section 1852(a)(3) provides for supplemental benefits. These benefits are health care items and services beyond the basic benefits described above and are categorized as either mandatory or optional.

Mandatory supplemental benefits are benefits not included in basic benefits which must be purchased by all beneficiaries who enroll in the M+C plan under which they are included. Mandatory supplemental benefits may be offered under coordinated care plans and fee-for-service plans only, and must be approved by HCFA. HCFA will approve such benefits unless we determine that they would substantially discourage enrollment in the plan. Specifically, we will determine whether the inclusion of the mandatory supplemental benefits would discourage particular subcategories of Medicare beneficiaries from enrolling (e.g., those residing in certain parts of a plan service area). These benefits are addressed in § 422.102(a).

Section 1852(a)(3)(C) provides that nothing in paragraph (3) of section 1852(a), addressing supplemental benefits, shall be construed to prevent a fee-for-service plan from offering supplemental benefits covering the balance billing permitted under section 1852(k)(2)(A)(i) and § 422.216(b)(1) and additional services. See discussion of M+C private fee-for-service plans in section IV of this preamble. The only provision in section 1852(a)(3) that could possibly be construed to prevent a private fee-for-service plan from offering such benefits would be the right of the Secretary, and of HCFA under these regulations, to disapprove mandatory supplemental benefits. We accordingly wish to make it clear that HCFA will not disapprove such benefits in the case of a private fee-for-service plan. (As discussed below in subpart G, HCFA does not have the right to review or approve the amount that a private fee-for-service plan charges for supplemental benefits.) We believe that the foregoing statement is sufficient to give effect to section 1852(a)(3)(C).

Optional supplemental benefits are benefits beyond basic benefits that may be purchased by an M+C plan enrollee at his or her option. If a plan offer optional supplemental benefits, it must offer those benefits to all enrollees in the M+C plan. While optional supplemental benefits may be offered under all types of plans, in the case of MSA plans, there are limits, discussed in section III of the preamble, on the nature of optional supplemental benefits that can be offered.

Under mandatory supplemental benefits for coordinated care plans, an M+C organization may require an enrollee who elects an M+C plan to accept and pay for items and services beyond basic benefits if he or she wants to enroll in a particular M+C plan. If an organization requires supplemental benefits, it must do so uniformly for all Medicare beneficiaries enrolled in that plan. As provided for at section 1852(a)(3)(A), we will approve such offerings unless we determine that would substantially discourage enrollment in the plan. We will determine whether the mandatory supplemental benefits would discourage subcategories of Medicare beneficiaries from enrolling (e.g., those residing in certain parts of a plan's service area).

An organization may also offer optional supplemental benefits within an M+C plan. In this case, the beneficiary is free to choose to accept or decline the supplement. In the case of both mandatory and optional supplemental benefits, the benefits are paid for by (or on behalf of) the individual electing the M+C plan.

Sections 422.103 and 422.104, addressing benefits under MSA plans generally, and optional supplemental benefits under an MSA plan, are discussed in section III. below.

4. Special Rules for Point-of-Service (POS) Option (§ 422.105)

This section of the rule codifies our existing policy for point-of-service plans. Because these policies have not previously appeared in regulations, we welcome comments.

A POS benefit is an option that an M+C organization may offer through an M+C coordinated care plan or network M+C MSA plan to provide Medicare enrollees with additional choice in obtaining specified health care items and services from entities that do not have a contract with the M+C organization. A coordinated care plan may offer a POS option as an additional benefit, a mandatory supplemental benefit, or an optional supplemental benefit. A network MSA plan may only offer a POS option as a supplemental benefit.

Under POS, the health plan generally provides partial reimbursement to enrollees for items and services obtained from non-network providers. The enrollee may be required to pay a premium for the benefit unless the

benefit is offered as an additional benefit. The Act contains two mentions of the term "point of service" as it relates to M+C plans. Section 1851(a)(1)(A) states that an HMO may include a POS option, and section 1852(c)(1)(C), requires disclosure to enrollees of "any point-of-service option (including the supplemental premium for such option)." Therefore, the Act indicates that HMOs could offer POS products, and that there could be a supplemental enrollee premium for such a product.

We currently permit HMOs and CMPs to offer POS products. There is no specific statutory reference to such a product in section 1876; the statutory basis for allowing Medicare HMOs to provide POS products lies in the additional and supplemental benefit offerings an HMO may have under section 1876. We believe that under the structure of the M+C program, any coordinated care plan or network M+C MSA plan may offer a POS product.

The regulations at § 422.105 governing the POS benefit are largely a restatement of our previously issued guidelines. In issuing the guidelines, we were particularly concerned with assuring the continued accessibility and availability of medically necessary care within the Medicare plan's approved network. We also emphasized that organizations are responsible for: members' continuity of care; ensuring beneficiaries are fully informed about how the POS benefit would be implemented; and the potential financial liability of the individual. We also required organizations to provide data to us about the POS benefit, including expenditures and levels of POS utilization, and the effect on the financial status of the organization. Moreover, the guidelines required the plans to maintain a record-keeping system to make information on utilization of the POS benefit available to plan providers. These previous operational policy requirements are carried over into § 422.105.

There are some changes in § 422.105 to the guidelines we issued under section 1876, however. One has to do with POS coverage available for in-network items and services. Under the guidelines, we permitted HMOs and CMPs to include network providers who could be paid through the POS option. These regulations eliminate that option. Additionally, under § 422.105, we will now require plans to place a cap on a beneficiary's total annual financial liability under a POS benefit. In another change, we are eliminating separate solvency standards for POS products. Each of these changes is discussed below.

Although HCFA guidelines did permit a Medicare beneficiary to use a POS option to seek, for example, "direct access" to a specialist within the plan's network, and thereby avoid any prior authorization requirement or other plan rules relating to access to particular providers, we believe such a feature of a POS option is inconsistent with the concept of a network plan and not a desirable feature of a POS option. The basic access and availability requirements both of sections 1876 and 1852(d) require that benefits be made available, through providers selected by the M+C organization, in a manner that ensures availability, accessibility and continuity of care. If the care an individual seeks from a network provider is necessary care, the individual should be able to obtain that care through the network, following network rules. Although the enrollee might not receive treatment from the particular provider he or she prefers, the organization and its contractors are obligated to make covered services available to all enrollees through network providers. We do not believe it is appropriate to use the POS benefit to circumvent network rules.

In § 422.105 we also specify that an M+C organization offering a POS benefit establish an annual limit on a beneficiary's maximum financial liability when using a POS benefit. We require a financial limit to alert beneficiaries to their maximum potential financial liability in using their POS benefit. We consider it a critical part of beneficiary information that enrollees are clearly informed about all of their potential costs when enrolling in an M+C plan.

Another change from existing policy in § 422.105 is the elimination of the additional solvency requirements that have been imposed under the POS guidelines (though reporting requirements relating to solvency remain). The Act gives the States primary responsibility for setting and enforcing solvency standards for M+C plans (other than a provider-sponsored organization with a waiver of the State licensure requirement), and our imposition of additional solvency requirements on POS products is inconsistent with the States' responsibility. (In fact, because of solvency concerns, many States require licensure as an indemnity insurer if an HMO wishes to offer a POS product.) We will continue to require M+C organizations to comply with this reporting requirement, as was the case with Medicare contractors under section 1876. This reporting requirement is not superseded by the Act's preemption provision relating to benefits in section 1856(b)(3)(B).

5. Special Arrangements With Employer Groups (§ 422.106)

An M+C organization may negotiate with an employer group to provide benefits to Medicare members of the employer group who are enrolled in an M+C plan offered by the organization and these benefits must be provided uniformly to members of the group. While these negotiated employer group benefits may be designed to complement benefits available to Medicare beneficiaries enrolled in the plan, they are offered by the employer group independently as the product of private negotiation. These benefits may include contributions on the employee group member's behalf toward M+C plan premiums or cost-sharing for which the Medicare eligible group member is responsible, or benefits not covered by the M+C plan, for which premiums and cost-sharing may be charged. We do not review such employer group benefits, premiums, or cost-sharing amounts.

6. Medicare Secondary Payer (MSP) Procedures (§ 422.108)

As specified in section 1852(a)(4), if a Medicare enrollee receives covered items and services from an M+C organization for which the enrollee is entitled to benefits under a State or Federal workers' compensation law or plan, any no-fault insurance, or any liability insurance policy or plan (including a self-insured plan), the M+C organization may charge the insurance carrier, employer or other entity that is responsible to pay for the provision of those items and services. The M+C organization may also charge the Medicare enrollee to the extent that the enrollee has been paid by the carrier, employer, or other entity for those items and services. In addition, an M+C organization may charge a group health plan or large group health plan for items and services for which Medicare is a secondary payor.

In this area, pursuant to section 1856(b) (1) and (2), we are retaining for M+C organizations the requirements that applied to HMOs and CMPs under part 417.

7. Effect of National Coverage Determinations (NCDs) (§ 422.109)

This provision implements section 1852(a)(5). Under this rule, M+C organizations are not required to assume risk for the costs of certain "significant cost" NCDs until an adjustment has

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been made in the per capita rate to reflect the NCD. A national coverage determination is a national policy statement regarding the coverage status of a specified service that HCFA makes as a program memorandum or manual instruction. The term does not include coverage changes mandated by statute. Past NCDs have included items such as heart transplants.

On February 22, 1994 HCFA published a notice of proposed rule making (NPRM) to define "significant cost" and other requirements for NCDs as they applied to section 1876 risk contracting plans. With one exception discussed below, we are including in this rule the policies included in the February 22, 1994 proposed rule. For example, we have maintained the definition of "significant cost" as $100,000 for a single NCD service for calendar years 1998 and 1999. We are providing for an automatic adjustment of a single service threshold amount to reflect rising costs, and will adjust the dollar threshold by the national per capita growth percentage used to calculate the annual capitation rates to pay M+C organizations. We are also providing an alternative definition for lower cost services that will affect a large number of beneficiaries. For the cost of all of the services furnished nationwide as a result of a particular NCD, we have redefined significant cost as 0.1 percent of the national standardized annual capitation rate (which is used in calculating the annual capitation rates used to pay M+C organizations) multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

This rule also describes how the NCD will be provided to M+C plan enrollees during the period the M+C organization is not at risk for the new or expanded benefit established by the NCD, including procedures to pay M+C organizations and the policies affecting beneficiary liability. It is in this area that this rule differs from the February 22, 1994 proposed rule. That proposed rule reflected the NCD provision that applied to HMOs with risk contracts under section 1876. There is one key difference between the NCD provision in section 1876 and the NCD provision under the new M+C. Like the new NCD provision in section 1852(a)(5), section 1876(c)(2)(B) provided that services required under certain mid-year NCDs were excluded from risk contracts until the first year in which payment for the services is reflected in capitation payments. However, under Section 1876(a)(6), original Medicare coverage of such NCD services was identified as an exception to the rule that only the risk-contracting HMO could receive Medicare payment on behalf of one of its enrollees. Therefore, an HMO enrollee was not required to receive NCD services excluded from the HMO's contract through the HMO, and could receive the services either from the HMO or from any other Medicare provider, and Medicare would pay. This was reflected in the February 2, 1994 proposed rule.

Under the M+C program, however, there is no similar exception for excluded NCD services providing that only an M+C organization may be paid by Medicare on behalf of an enrollee in an M+C plan offered by that organization. We believe that this difference reflects Congress' intent that beneficiaries be required to receive services through their M+C organization, under the same rules that apply to any other non-urgent and non-emergency services. Under the new NCD provision, only the method that HCFA pays the organization for the services, and the cost-sharing that applies to such services differs from other services. If the excluded NCD services are received from, or through, the M+C organization, the organization will be paid on a fee-for-service basis for those services. If the services are not available from the plan, the organization will pay the authorized provider after receiving fee-for-service from the intermediaries or carriers.

Pursuant to our authority under section 1856(b)(1), we are expressly requiring that the M+C organization provide the NCD services in question on a fee-for-service basis.

8. Discrimination Against Beneficiaries Prohibited (§ 422.110)

The current rule reflects section 1852(b), and the details provided in § 422.110 are consistent with existing policy and regulation. In general, M+C organizations may not discriminate among Medicare beneficiaries based on health-related factors with the exception that organizations may not enroll new beneficiaries with end-stage renal disease. For further discussion of discrimination provisions affecting M+C enrollees with ESRD, see the discussion in section II.B.1 of this preamble.

9. Disclosure Requirements (§ 422.111)

In section 1852(c), the Act lists several areas where an M+C organization must disclose specific information to each M+C plan enrollee. These requirements are, in large part, a codification of existing program administration requirements under section 1876, and we detail these requirements in § 422.111 of the regulations. In general, an M+C organization is required to provide in a clear, accurate, and standardized form information relating to: service area; benefits access; out-of-area coverage; emergency coverage; supplemental benefits; prior authorization rules; plan grievance and appeals procedures; disenrollment rights and responsibilities; and information about the M+C organization's quality assurance program.

M+C organizations are also required to provide further information on a beneficiary's request, which we also detail in § 422.111 of the regulation text. These "upon request" requirements include: general coverage and comparative plan information; information on utilization control procedures; information on grievances and appeals; information on the financial condition of the M+C organization; and a summary of physician compensation arrangements.

10. Access to Services (§ 422.112)

The requirements of section 1852(d) of the Act (concerning access to services) are being implemented through this rule, in part, by applying existing regulations and policies pursuant to our authority in section 1856(b)(1) to establish standards under the M+C program. We are also addressing recommendations from the President's "Consumer Bill of Rights and Responsibilities" (CBRR), and incorporating the "Quality Improvement System for Managed Care" (QISMC) standards.

For example, our existing policy shaped the language in § 422.112(a)(1)(i) requiring M+C organizations to maintain and monitor a network of appropriate providers, supported by written agreements sufficient to certify beneficiary access to covered services. The CBRR shaped the access to (and continuity of) specialist services text in § 422.112(a), as well as provisions for provider credentialing and timeliness of access, among other consumer protections. We also include a provision at § 422.112(a)(4)(vii)for M+C organizations to ensure "cultural competency" in the provision of health care. This provision reflects CBRR recommendations that M+C organizations make a particular effort to ensure that enrollees with limited English proficiency, limited education, or other socioeconomic disadvantages receive the health care to which they are entitled.

The Consumer's Bill of Rights and Responsibilities also recommends that women be able to choose a women's

health care specialist within network for the provision of routine and preventive women's health care services. In support of this recommendation, § 422.112(a)(1)(iii)(A) requires M+C network plans to provide direct access to a women's health specialist within the network for routine and preventive women's health care services provided as basic benefits, as defined in § 422.2. We note that coverage of routine and preventive health services under original Medicare is limited. For example, original Medicare covers a screening pap smear and a screening pelvic exam, including a clinical breast exam, once every 3 years under normal circumstances. M+C plans must cover routine and preventive health services with at least the same frequency as they are covered under original Medicare and may offer expanded services in these areas as additional benefits.

M+C plans satisfy the requirement in § 422.112(a)(1)(iii)(A) by providing direct access to gynecologists, certified nurse midwives, and other qualified health care providers for provision of routine and preventive women's health services. At the same time, M+C plans are required to provide women enrollees with continued access to their primary care physician to ensure continuity of care. We welcome comments on this issue.

In § 422.112(a)(1)(iii)(B), we require that plans have HCFA-approved procedures—

• To identify Medicare enrollees with complex or serious medical conditions;

• For assessment of those conditions, including medical procedures to diagnose and monitor them on an ongoing basis; and

• For establishment and implementation of a treatment plan appropriate to those conditions, with an adequate number of direct access visits to specialists to accommodate the treatment plan. To meet these requirements and those of § 422.112(a)(5)(v)(A), M+C plans must conduct a baseline and establish a treatment plan for people with complex or serious medical conditions. This assessment should be completed within timeframes deemed appropriate by M+C plans based on the needs of its enrollees, but, in general, should occur within 90 days of the effective date of enrollment.

Section 422.112(a)(5)(v)(A) also requires M+C plans to conduct a baseline health assessment for all new Medicare enrollees (i.e., not limited to those with complex or serious medical conditions) in a timely manner. We believe that this initial assessment should also be performed based on timelines deemed appropriate by the plan, but not later than 90 days after the effective date of enrollment. We welcome comments regarding timely baseline assessments both for new enrollees and those with complex or serious medical conditions.

Note that, as indicated in the heading of § 422.112(a), some access provisions apply only to network organizations, (i.e., coordinated care plans and network MSAs), while others (§ 422.112(b)) apply to all M+C organizations.

Section 422.112(b) states that M+C organizations must provide coverage of emergency services and urgently needed services even in the absence of the organization's prior approval and without regard to the provider's contractual relationship with the M+C organization. For definitions of emergency and urgently needed services, see § 422.2.

This section continues the prohibition at § 417.414(c)(1) on prior authorization requirements for emergency services as explicitly provided by 1852(d) and continues the § 417.414(c)(1) regulatory prohibition on prior authorization requirements for urgently-needed services. This section also establishes a prohibition on prior authorization requirements for emergency services provided within the plan because the prohibition on prior authorization at section 1852(d) applies to services provided both within and outside the organization.

Consistent with the new definition of "emergency medical condition" in section 1852(d)(3)(B), we are codifying longstanding *HMO/CMP Manual* policy (§ 2104) of prohibiting retrospective denial for services which appeared, to the prudent layperson, to be emergencies, but which turn out to be nonemergency in nature.

We are establishing that when a physician or other representative affiliated with the organization instructs the enrollee to seek emergency services within or outside the organization, the organization is responsible for payment for medically necessary emergency services provided to the enrollee.

We are codifying in regulation an *HMO/CMP Manual* policy (§ 2104) specifying that the decision of the examining physician treating the individual enrollee prevails regarding when the enrollee may be considered stabilized for discharge or transfer.

We are establishing limits on cost-sharing for emergency services obtained outside of the M+C plan's provider network equal to of the lesser of $50 or what the organization may charge for emergency services provided within the plan's provider network. We are imposing this requirement in order to facilitate and ensure access to covered emergency services provided other than through the organization. We do not view this requirement as overly burdensome. A review of 1997 data on what Medicare HMOs and CMPs charged for emergency services found that 93 percent of contracts charged $50 or less. We believe that it may be appropriate to lower this limit or eliminate cost-sharing altogether, and would welcome comments on this subject.

Note that an M+C organization's failure to provide medically necessary emergency services could result in intermediate sanctions for failing to provide coverage, or payment, or through actions (such as a prospective refusal of payment) that could result in discharge or transfer of an unstabilized patient. The new coverage requirements for M+C enrollees do not affect the rights of all persons (whether or not they are Medicare beneficiaries) to receive emergency services at any Medicare-participating hospital that offers emergency services (under the patient "anti-dumping" statute in section 1867).

11. Access to Services Under an M+C Private Fee-for-Service plan (§ 422.114)

In the case of an M+C organization that offers an M+C private fee-for-service plan, that organization must demonstrate that it has a sufficient number and range of providers willing to furnish items and services under the plan. An M+C organization meets this requirement if, with respect to a particular category of providers, the organization has:

• Payment rates that apply under original Medicare for the provider and service in question;

• Contracts or agreements with a sufficient number and range of providers to furnish the items and services covered under the M+C private fee-for-service plan; or

• A combination of the two.

Additionally, an M+C private fee-for-service plan must permit enrollees to obtain items and services from any entity that is authorized to provide items and services under Medicare Parts A and B and agrees to provide services under the terms of the M+C private fee-for-service plan. For a fuller discussion of M+C private fee-for-service plans, see section IV of this preamble.

12. Confidentiality and Accuracy of Enrollee Records (§ 422.118)

M+C organizations are required to safeguard the confidentiality and

accuracy of enrollee records that identify a particular enrollee, including both medical documents and enrollment information. An M+C organization may circulate this information within the organization to coordinate care for a Medicare enrollee. The M+C organization may not, however, circulate this information outside the organization without specific authorization from the Medicare enrollee. M+C organizations are prohibited from selling (or circulating outside the organization) names and addresses of enrollees for any purpose, including scientific study.

Additionally, the M+C organization must maintain records in an accurate and timely manner and ensure timely access to enrollees who wish to examine their records. Moreover, the M+C organization must abide by all Federal and State laws regarding confidentiality and disclosure for mental health records, medical records, other health information, and enrollee information.

13. Information on Advance Directives (§ 422.128)

Advance directives are documents signed by a patient that explain the patient's wishes concerning a given course of medical care should a situation arise where he or she is unable to make these wishes known. The M+C organization is responsible for documenting advance directives in a prominent part of the Medicare beneficiary's medical record. Accordingly, pursuant to our authority in section 1856(b)(1) and (2) to establish M+C standards, we are retaining for M+C organizations the requirements that applied to HMOs and CMPs under part 417.

14. Protection Against Liability and Loss of Benefits (§ 422.132)

Each M+C organization must adopt and maintain satisfactory arrangements to protect Medicare enrollees from incurring liability for payment of any fees that are the legal obligation of the M+C organization. By reference in § 417.407(f) (implementing regulations for section 1876), enrollee protections described in § 417.122 are unchanged by the BBA, and their application to M+C organizations are carried forward in this section.

Medicare law requires that Medicare contracting M+C organizations make Medicare covered services "available and accessible." Section 1852(d)(1), in describing access to services, allows M+C organizations to select the providers from whom benefits may be obtained so long as "the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness * * *" We believe these sections require health plans to provide the same accessibility afforded by HCFA to beneficiaries under original Medicare.

D. Quality Assurance

1. Overview

Subpart D of part 422 contains the quality assurance requirements for M+C organizations. These requirements implement and are based on the provisions of section 1852(e) of the Act. They also incorporate the requirements of section 1851(d)(4)(D), which provides that the information made available to Medicare beneficiaries for plan comparison purposes should include plan quality and performance indicators, to the extent available. Section 1852(e)(1) sets forth the general rule that each M+C organization must establish an ongoing quality assurance program, consistent with implementing regulations, for the health care services it provides to enrollees in the organization's M+C plans. The rest of section 1852(e) contains the required elements of the quality assurance program, requirements for external review, and provisions concerning the use of accreditation organizations to determine compliance with the quality assurance requirements.

The provisions of section 1852(e) represent a significant expansion in the scope of the statutory quality assurance provisions applicable to managed care organizations that contract with the Medicare program. Existing section 1876(c)(6) contains a general requirement similar to that of section 1852(e)(1) that an organization must have a quality assurance program, but it provides very limited guidance as to the nature of this program. The only required elements of a quality assurance program under section 1876(c)(6) are that it stress health outcomes and include physician review of the procedures used in the provision of health care services. Like section 1876(c)(6), existing quality assurance regulations (§ 417.418 and, by reference, § 417.106(a)) contain few detailed requirements concerning quality assurance. The regulations basically restate the statutory requirements relating to health outcomes and physician review and then add two broad requirements regarding data collection and the need for written procedures for taking remedial action.

In contrast, section 1852(e) sets forth a series of specific elements that now must be addressed in an M+C organization's quality assurance program. As discussed in detail below, these requirements focus on the need for an M+C organization, with respect to each M+C plan that it offers, to operate an outcome-oriented quality assessment and performance improvement program that achieves demonstrable improvements, across a broad spectrum of care and services, in the health, functional status, and satisfaction of its enrollees. (Note that some of the specific performance improvement requirements of the statute do not apply to M+C non-network MSA plans or PFFS plans, as addressed under § 422.152(e).) The collection, evaluation, and reporting of the data necessary to demonstrate quality improvements are also critical elements of each M+C organization's quality-related responsibilities.

2. Origins of the Quality Assessment and Improvement Requirements

The regulations to implement sections 1852(e)(1) and (2) and section 1851(d)(4)(D) incorporate each of the explicit statutory requirements into new subpart D. Consistent with our explicit statutory authority under section 1851(e), these regulations include additional detail to clarify how an M+C organization can meet the statutory requirements. Like Congress, we recognize that the state of the art in quality assurance has evolved from a problem-focused approach, with an emphasis on remedial action, to a proactive approach aimed at achieving continuous, systemic quality improvement. In recent years, HCFA, the States, and other managed care purchasers have been involved in a series of initiatives aimed at improving the quality of care and services provided to managed care enrollees. Examples of such efforts include:

- The Quality Assurance Reform Initiative (QARI), which developed and tested standards for States to use in monitoring and improving quality in Medicaid contractors, with a particular emphasis on plans' own internal quality improvement efforts.
- Uniform data collection and reporting instruments, such as the Health Plan Employer Data and Information Set (HEDIS 3.0), which was developed by the National Committee for Quality Assurance (NCQA). Use of HEDIS 3.0 is now a contract requirement for Medicare risk-based managed care plans, under section 1876 and is intended to allow assessment and comparison of plan performance.
- Projects to enhance the role of Medicare Peer Review Organizations (PROs) in evaluating and improving managed care plan quality, including

the development and testing of a minimum set of performance evaluation measures and quality improvement projects developed through collaboration between PROs and managed care organizations. States have undertaken similar efforts through Medicaid External Quality Review Organizations (EQROs).

Among the most comprehensive of recent quality-related initiatives is the Quality Improvement System for Managed Care (QISMC). During the past 2 years, HCFA has been working closely with other Federal and State officials, as well as representatives of beneficiary advocacy groups and the managed care industry, to develop quality standards that can better ensure that managed care organizations that contract with HCFA protect and improve the health and satisfaction of their enrollees. QISMC is the product of these efforts. Originally drafted based on the authority of section 1876, it builds on a variety of recent HCFA and State efforts, like those mentioned above, to promote the assessment and improvement of managed care quality. The QISMC standards are in the final stages of development at this time and are being modified to reflect the quality-related requirements under the BBA. Once QISMC is complete, we believe it will offer a uniform set of quality standards that can be used by HCFA and the State Medicaid agencies to determine whether a managed care organization can meet the quality assurance requirements necessary to become and remain eligible to enter into a Medicare or Medicaid contract.

The QISMC initiative is substantially in accord with the quality assurance requirements of new section 1851(e). For example, both the statutory requirements and the QISMC quality standards emphasize measurement of health outcomes, consumer satisfaction, the accountability of managed care organizations for achieving ongoing quality improvement, the need for intervention to achieve this improvement, and the importance of data collection, analysis, and reporting. Moreover, as noted above, representatives of all segments of the managed care community have contributed to the development of QISMC, and generally support HCFA's intention to eventually require managed care organizations to meet the QISMC standards. Given the shared goals of the BBA and QISMC standards, and HCFA's implementation plans for QISMC, we believe it is appropriate to establish new M+C quality assurance regulations that reflect those QISMC standards that mirror the intent of the statute. Although we have not included in the regulations the level of detail embodied in QISMC, we have attempted to build into the regulations some principles from QISMC that can guide M+C organizations in meeting the quality requirements established by the statute. For example, § 422.152(d) establishes objective standards concerning the improvement projects that are required of M+C organizations, in accordance with the statutory requirements concerning an organization's responsibility to take action to improve quality (such as section 1852(e)(2)(A)(xi) of the Act.

Although QISMC remains an evolving document, several of the discussions below of the ways in which organizations can meet the M+C quality requirements are informed to some degree by the underlying details contained in QISMC. Also, as discussed below, we anticipate that requirements pertaining to a plan's quality assessment and performance improvement responsibilities may be implemented as part of the M+C contracting process. QISMC standards may be a guide in implementing the requirements in the BBA and these regulations. Eventually, we believe QISMC can serve to define what HCFA's expectations are with regard to an M+C organization's quality assessment and improvement responsibilities. (A copy of the most recent version of QISMC is available at HCFA's website, www.hcfa.gov/quality/qlty-3e.htm.)

3. Quality Assessment and Performance Improvement Requirements (§ 422.152)

This section of the regulation implements paragraphs (e)(1) and (2) of section 1852. Subject to certain exceptions for M+C PFFS and non-network MSA plans, which are discussed below, the statute requires that an organization's quality assurance program meet the following requirements with respect to each plan that it offers:

(i) Stress health outcomes and provide for the collection, analysis, and reporting of data (in accordance with a quality measurement system that HCFA recognizes) that will permit measurement of outcomes and other quality indices.

(ii) Monitor and evaluate high-volume and high-risk services and the care of acute and chronic conditions.

(iii) Evaluate the continuity and coordination of the care that enrollees receive.

(iv) Be evaluated on an ongoing basis as to its effectiveness.

(v) Include measures of consumer satisfaction.

(vi) Provide HCFA access to the information it needs to monitor and ensure the quality of the care provided.

(vii) Provide for physicians and other health care professionals to review the process followed in providing health care services.

(viii) Establish written protocols for utilization review, based on current standards of medical practice.

(ix) Have mechanisms to detect both underutilization and over utilization of services.

(x) Establish or alter practice parameters when areas needing improvement are identified.

(xi) Take action to improve quality and assess the effectiveness of that action through systematic follow-up.

(xii) Make available to HCFA information on quality and outcomes measures to facilitate beneficiary comparisons and choice of health care options (in such form and on such quality and outcomes measures as HCFA determines is appropriate).

As noted above, section 1852(e)(1) also requires that the organization's quality assurance program be consistent with any regulation developed by HCFA. Therefore, § 422.152 reflects the statutory requirements listed above, as well as those implementing requirements that are consistent with, and necessary to accomplish, the intent of the Act. While certain requirements in section 1852(e)(2) that expressly refer to "improvement" in quality do not apply to all types of M+C plans, we believe that all of the requirements in section 1852(e) are geared toward improving quality, not simply monitoring it. For this reason, we are using the term "quality assessment and performance improvement program" to refer to the program that is required of all M+C plans, which section 1852(e)(1) refers to as a "quality assurance program." We accordingly use the term "quality assessment and performance improvement program" in the heading of § 422.152 and in the general rule at § 422.152(a).

a. Requirements for M+C Coordinated Care Plans and Network MSA Plans. Sections 422.152(b) through (d) set forth requirements that M+C organizations must meet with respect to M+C coordinated care plans and network MSA plans. As alluded to above, as directed by section 1852(e), these requirements reflect a departure from the problem-focused approach to ensuring quality that was prevalent in the past. Thus, under these regulations, it will no longer be sufficient for organizations to identify and correct problems in their operations—they must now focus on systemic quality

improvement as well. This approach is also consistent with HCFA's responsibility to demand value in the form of positive outcomes from the organizations with which we contract.

To implement this approach, § 422.152(b) establishes two basic quality assessment and performance improvement requirements: (1) measurement and reporting of performance; and (2) conducting performance improvement projects that achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of both clinical care and nonclinical care areas that can be expected to affect health outcomes and member satisfaction. The specific requirements associated with the measurement and reporting of performance and the execution of performance improvement projects are set forth under § 422.152(c) and (d), as discussed in detail below. Before turning to that discussion, however, we note that § 422.152 also incorporates statutory requirements from section 1852(e)(2)(viii), (ix), and (xii), as listed above, concerning written utilization review protocols, the identification of underutilization and overutilization of services, and the availability of information on quality and outcome measures as needed to facilitate beneficiary comparisons and choices among M+C plans.

b. Performance Measurement and Reporting. Section 422.152(c) elaborates on paragraph (b)(1) by requiring that the organization: (1) measure and report its performance to HCFA using measures required by HCFA, and (2) for M+C coordinated care plans, achieve any minimum performance levels that may be established locally, regionally, or nationally by HCFA. The first requirement is based directly on the requirement under section 1852(e)(2)(A)(i) of the Act concerning outcome measurement and reporting. Thus, it applies both to M+C coordinated care plans and network MSA plans (as well as to M+C non-network MSA plans and PFFS plans, as discussed below in section II.D.2.d of the preamble). The second requirement enables HCFA to evaluate a plan's ability to meet the objectives of sections 1852(e)(2)(A)(x) and (xi) of the Act concerning quality assessment and improvement. It also reflects HCFA's responsibility to require that the services we purchase meet minimum quality standards. (We note that although the requirements of sections 1852(e)(2)(A)(x) and (xi) of the Act apply to M+C network MSA plans as well as to M+C coordinated care plans, we are not requiring in this interim final rule that M+C network MSA plans achieve minimum performance levels. In keeping with the demonstration status of the M+C MSA plans, we intend to evaluate the performance of these plans in the context of the evaluation provisions of section 1851(b)(4)(B) of the Act.)

Health plan performance measurement and reporting is in its early stages. Consensus regarding what aspects of plan performance can and should be measured, how this information should be reported, how it should be audited, and which measures are collectible for which types of organizations, is only now being developed. HCFA, large private purchasers, managed care organizations, and others have made important progress in defining and measuring health plan performance. This regulation must move us toward enhancing health plan accountability while leaving flexibility for the specific reporting and performance requirements to progress as we learn more about performance measurement. We want to be able to respond rapidly to new developments in the state of the art of quality measurement and improving performance levels.

We do not intend to adopt a "one size fits all" approach that assumes that reporting under all types of M+C plans will be possible in the same manner for all measures. We will balance our efforts to increase uniformity to facilitate consumer comparison of plans with sensitivity to the different organizational structures of plans and their different abilities to affect provider behavior.

In general, an M+C organization should not be held accountable for improving services that it does not promise to provide under a plan, nor for reporting information to which it does not reasonably have access under a plan. At the same time, an organization should be held accountable for improving plan performance with respect to the benefits provides under the M+C program and all applicable M+C standards, and for having the information needed to maintain and improve the quality of the services it delivers or arranges for. Organizations should be expected to improve their capacity to collect and analyze information about the delivery of M+C benefits, consistent with changes that are occurring in the health plan market place. We believe that Congress intended us to take the actions that any prudent purchaser would take to hold M+C organizations accountable for the benefits they promise to provide under a plan.

For these reasons, we are not specifying the particular measures for which reporting will be required or the minimum performance levels that M+C coordinated care plans will be expected to achieve. Instead, the regulation clarifies the general clinical and nonclinical areas to be addressed by the performance reporting, such as effectiveness of care, use of services, and access to services. The performance measures to be reported and the minimum performance standards that the M+C plan or plans offered by an organization will be required to meet will be addresses on an organization and plan-specific basis, as described below.

Section 422.152(c)(1) establishes that standard performance measures may be specified in data collection and reporting instruments required by HCFA. For example, as mentioned earlier, HCFA has already begun requiring reporting of standardized quality measurement data through instruments such as HEDIS © 3.0, as well as reporting of standardized consumer satisfaction data through the Consumer Assessment of Health Plans Study (CAHPS). We expect that in contract year 1999, the standard performance measures for M+C organizations will include most HEDIS measures and a member survey, with the possibility of additional measures. (Where data on particular measures are not reasonably available with respect to a given plan, organizations can report "not available". HCFA will work with M+C organizations to identify those measures for which data are and are not reasonably available for a given plan.) To the extent that we do include HEDIS measures, we will use the HEDIS measurement specifications. Before the beginning of the next contract year, we will decide on the measures on which reporting will be required for contract year 1999 and will notify organizations of those measures through the contracting process.

We expect to develop a core set of measures on which reporting will be required under all plans. We also expect to identify additional reporting requirements to reflect the plan's characteristics (such as supplemental benefits, type of delivery system) and past performance.

In adopting minimum performance requirements for coordinated care plans, we intend to ensure that the targets are achievable, meaningful, and equitable. We intend to move toward minimum uniform national performance standards

based on what plans across the nation are able to achieve.

We expect to start with standards that are adjusted to reflect performance in the plan's region and the individual plan's or organization's historical performance (or performance in Medicare fee-for-service where the plan has no history). Performance requirements will be established only for measures for which there are sufficient historical data available to establish regional standards based on actual performance of a number of plans. (We will therefore require reporting on measures for which performance standards have not been established.) Other criteria will also guide the selection of measures for which minimum performance levels will be established, including their significance for the health of the enrolled population under a plan and the likelihood that they fairly reflect the organization's performance.

Because the process of identifying achievable, meaningful and equitable minimum performance levels will require a significant amount of data collection and analysis, we expect that it will be several years before a full complement of minimum performance levels can be established. At this point, it is uncertain whether any minimum performance levels will be established for the 1999 contract year. We will identify minimum performance levels on a measure by measure basis, after evaluating baseline data and the distribution of organization performance and considering potential opportunities for improvement. The process of identifying minimum performance levels will evolve as new methods of performance measurement develop.

HCFA is committed to public involvement in the selection of measurement topics. HCFA will also work collaboratively with organizations involved with quality and performance standards and measurements, including performance measurement experts, health plans, public and private purchasers and beneficiary representatives in the selection of specific measures and setting of minimum performance levels. As we develop minimum performance standards, we will consider how our goal of maintaining maximum consumer choice in the M+C program should affect our expectations concerning plan performance.

When we have identified minimum performance levels, we plan to establish them prospectively upon contract initiation and renewal, so that an organization will have the entire contract year in which to take action to meet them. By the end of the contract year, the organization must meet any identified minimum performance levels. In some cases, we believe that the next contract year will have already begun by the time HCFA learns whether the organization has met the minimum performance levels established for the previous year. Therefore, we specify that HCFA may decline to renew an organization's contract in the year that HCFA determines that the organization failed to meet the minimum performance levels, even if the failure itself was in the prior contract year.

c. Performance Improvement Projects. Section 422.152(d) establishes the requirements for performance improvement projects, beginning with the requirement that performance improvement projects focus on specified areas of clinical and nonclinical services. It also explains that HCFA will set M+C organizational and plan-specific requirements for the number and distribution of these projects among the required areas. In addition, it authorizes HCFA to direct an M+C organization to undertake specific performance improvement projects and participate in national and State-wide performance improvement projects. Section 422.152(d) reflects many of the provisions of section 1852(e)(2) of the statute, including for example the requirements for projects in areas such as high-volume and high-risk services and continuity and coordination of care (sections 1852(e)(2)(A)(ii) and (iii), respectively).

Section 422.152(d)(1) explains what is meant by a project. All projects must involve the measurement of performance, system interventions (including the establishment or alteration of practice parameters), improving performance, and systematic follow-up on the effect of the interventions.

Section 422.152(d)(2) requires that projects address the entire population to which the performance measure is relevant. Thus, once a topic has been selected, the organization must assure that its measurement and improvement efforts are at least plan-wide. (Note that we do not intend to prohibit an M+C organization from conducting performance improvement projects that would cut across plans.) We expect that, to the extent feasible, each project should reach all enrollees and providers in the plan network who are involved in the aspect of care or services to be studied. This does not mean that a project must involve review of the performance of each provider who furnishes the services that are the subject of the project, or that it must survey every affected enrollee. Sampling is acceptable if the organization can demonstrate that its samples are genuinely random. An organization could do so by showing, for example that:

- Each relevant provider and enrollee has a chance of being selected; no provider or enrollee is systematically excluded from the sampling.
- Each provider serving a given number of enrollees has the same probability of being selected as any other provider serving the same number of enrollees.
- Providers and enrollees who were not included in the sample for the baseline measurement have the same chance for being selected for the follow-up measurement as providers and enrollees who were included in the baseline.

Section 422.152(d)(3) states that HCFA will establish M+C organizational and M+C plan-specific obligations for the number and distribution of projects among the required clinical and non-clinical areas. Sections 422.152(d)(4) and (5) then specify the minimum clinical and nonclinical focus areas that must be addressed through these projects. These minimum focus areas are:

- Clinical areas—prevention and care of acute and chronic conditions; high volume services and high risk services; continuity and coordination of care.
- Nonclinical areas: appeals, grievances, and other complaints; access and availability of services.

Note that these areas represent minimum requirements, and organizations are likely to carry out projects in other areas in order to meet their contractual performance improvement obligations. The length of the performance improvement cycle, that is, the period of time during which an organization must conduct a project that demonstrates improvement in each of the required focus areas, will be one of the contractual performance improvement obligations. Within each clinical and nonclinical focus area, an organization will have considerable freedom to select its own particular topics for measurement and improvement, so that it can initiate projects relating to aspects of care and services that are significant for its plan-specific population. Our goal is to achieve a balance between encouraging flexibility and innovation and ensuring that every organization conducts meaningful projects over a broad spectrum of care and services. As noted above, however, there may be instances where it is necessary for HCFA to direct the organization to address a specific

topic within a given focus area. Thus, § 422.152(d)(6)(i) provides that, in addition to requiring that an organization initiate its own performance improvement projects, HCFA may direct an organization to conduct particular performance improvement projects that are specific to the organization. We believe this could be necessary, for example, when an organization demonstrates a significant weakness in a particular performance area, but the area is not addressed in the organization's own performance improvement projects. Similarly, § 422.152(d)(6)(ii) provides that HCFA may require an organization to participate in national or statewide performance improvement projects. These performance improvement projects would focus on aspects of care that we believe are of high priority, and would be designed by HCFA (or possibly by other entities, such as the external quality review organizations affiliated with Medicaid managed care organizations).

In general, we believe that when an organization initiates a project, the clinical or nonclinical issue selected for study should affect a substantial portion of the plan's M+C enrollees (or a specified subpopulation of enrollees) and have a potentially significant impact on enrollee health, functional status, or satisfaction. There may be instances in which less frequent conditions or services warrant study, as when data show a pattern of unexpected adverse outcomes; however, the prevalence of a condition or volume of services involved should be sufficient to permit meaningful study.

A project topic may be suggested by patterns of inappropriate utilization—for example, frequent use of the emergency room by enrollees with a specific diagnosis. However, the project should be focused clearly on identifying and correcting deficiencies in care or services that might have led to this pattern, such as inadequate access to primary care, rather than on utilization and cost issues alone. This is not to say that an organization may not make efforts to address overutilization, but only that such efforts may not meet the requirements of § 422.152, unless the primary objective is to improve outcomes. Thus, it would be acceptable for a project to focus on patterns of overutilization that present a clear threat to health or functional status, for example, a high risk of iatrogenic problems or other adverse outcomes.

Because the achievement of demonstrable improvement is a central criterion in the evaluation of projects, the projects should necessarily address areas in which meaningful improvement can be effected through system interventions by the organization. Thus, organizations should focus on areas in which there is significant variation in practice and resulting outcomes within a plan, or in which performance as a whole falls below acceptable benchmarks or norms.

Organizations are encouraged to undertake complex projects or innovative projects that have a high risk of failure but that offer potential for making a significant difference in the health or functional status of enrollees. We recommend that M+C organizations look to the independent quality review and improvement organizations with which they have agreements (see the discussion below about the external review requirements of § 422.154) for assistance in designing and executing performance improvement projects.

Section 422.152(d)(7) requires that an organization assess performance for each project using one or more quality indicators, that are objective, clearly defined, and based on current clinical knowledge or health services research. In accordance with the emphasis section 1852(e)(2)(A)(i) places on outcomes, the regulation requires that the quality indicators measure outcomes such as changes in health status, functional status, and enrollee satisfaction, or measure valid proxies of these outcomes. We recognize that relatively few existing standardized performance measures actually address outcomes. For example, of the 16 effectiveness measures in HEDIS 3.0, only one (health of seniors) is truly outcome-based. Even when outcome measures are available, their utility as quality indicators for projects may be limited if the outcomes are dictated largely by factors outside the organization's control.

Therefore, we do not require that quality indicators be limited to outcome measures. Process measures are acceptable so long as the plan can show that they are valid proxies, that is, there is strong clinical evidence that the process being measured is meaningfully associated with outcomes. To the extent possible, this determination should be based on published guidelines that support the association and that cite evidence from randomized clinical trials, case control studies, or cohort studies. An M+C organization may furnish its own similar evidence of association between a process and an outcome, as long as this association is not contradicted by a published guideline. Although published evidence is generally required, there may be certain areas of practice for which empirical evidence of process/outcome linkage is limited. At a minimum, an organization should be able to demonstrate that there is a consensus among relevant practitioners as to the importance of a given process.

While we consider enrollee satisfaction an important aspect of care, improvement in satisfaction may not be the sole demonstrable outcome of a project in any clinical focus areas. Some improvement in health or functional status must also be measured. (Note that this measurement can rely on enrollee surveys that address topics in addition to satisfaction. For example, self-reported health status may be an acceptable indicator.) For projects in the nonclinical areas, use of health or functional status indicators is generally preferred, particularly for projects addressing access and availability. However, there may be some nonclinical projects for which enrollee satisfaction indicators alone are sufficient.

Section 422.152(d)(8) requires that performance assessment be based on systematic, ongoing collection and analysis of valid and reliable data. Data will most commonly be derived from administrative data generated by an organization's health information system or from review of medical records. (In assessing nonclinical services, other sources such as enrollee or provider surveys may be appropriate.) When data are derived from the health information system, their reliability is obviously a function of the general reliability of the system. When data are derived from direct review of medical records or other primary source documents, steps must be taken to assure that the data are uniformly extracted and recorded. Appropriately qualified personnel must be used; this will vary with the nature of the data being collected and the degree of professional judgment required. We expect there to be clear guidelines or protocols for obtaining and entering the data; this is especially important if multiple reviewers are used, or if data are collected by multiple subcontractors. Inter-reviewer reliability should be assured through, for example, repeat reviews of a sample of records.

Section 422.152(d)(9) requires that interventions achieve improvement that is significant and sustained over time. In general, we will judge improvement to be significant when a benchmark level of performance is achieved in the percentage of enrollees who exhibit a negative outcome defined by the indicator.

Again, specific acceptable performance measures will be defined for each M+C organization and M+C

plan. Currently, we are considering requiring a 10 percent reduction in negative outcomes as evidence of significant improvement. An organization would meet this requirement if, for example, its flu immunization rate under a plan is 80 percent in the baseline and increases to 82 percent, because the percentage of enrollees *not* immunized has dropped from 20 percent to 18 percent, a 10 percent reduction. A plan whose baseline rate was 60 percent would have to reach 64 percent (a reduction in nonimmunized enrollees from 40 percent to 36 percent).

We are considering requiring a 10 percent reduction in adverse outcomes as evidence of significant improvement for several reasons. First, the use of a constant percentage reflects the likelihood that change is harder to achieve when an organization's baseline performance is already superior. Thus, under a plan with an 80 percent immunization rate, we would expect a 2 percentage point improvement, while under a plan with a 60 percent rate, a 4 percentage point improvement would be expected. Second, the 10 percent level is consistent with results HCFA has observed in successful improvement projects sponsored by the agency. Finally, we believe that smaller improvements would generally be of little clinical significance. We invite comment on the issue of whether § 422.152(d)(9) should be revised to provide for a 10 percent reduction in adverse outcomes.

Note that improvement in an *indicator* is not necessarily the same as improvement in the health or functional status of enrollees. For example, the "health of seniors" indicator under HEDIS 3.0 will track, over time, changes in the functional status of elderly enrollees. Each enrollee's functional status may remain stable or actually decline. However, an organization would demonstrate improvement on the indicator if it slowed the rate of decline, whether or not it actually improved enrollees' functional status. HCFA is considering judging improvement to be sustained under a plan if it can be demonstrated through continued measurement that performance gains have endured for at least one year.

We recognize that many organizations still have limited experience in conducting well-designed performance improvement projects, and that any given project may take some time to produce measurable improvement. Therefore, we intend to permit a gradual phase-in of the number of focus areas for which improvement must be demonstrated consistent with the individual circumstances of an M+C organization.

Section 422.152(d)(10) concludes the performance improvement requirements by providing explicitly that an organization must report the status and results of each project to HCFA upon request. This requirement is necessary to implement the reporting requirements embodied in sections 1852(e)(2)(A)(vi) and (xii) and 1851(d)(4)(D) and (d)(7), which call for HCFA to make available to M+C eligible individuals information comparing M+C plan options, including information on quality and performance.

d. Requirements for M+C Private Fee-for-Service and Non-Network MSA Plans. In enacting the quality assurance provisions of the BBA, Congress recognized that not all of the quality assessment and performance improvement activities that are appropriate for a plan with a defined provider network would be appropriate for an M+C non-network MSA plan or an M+C private fee-for-service plan. (Section 1852(e)(2)(C) defines a non-network MSA plan as an MSA plan that does not provide any of the covered benefits through a defined set of providers under contract to the organization or under arrangements made by the organization, and we have incorporated this provision into § 422.4(a)(2)(ii).) As a result, section 1852(e)(2)(B) establishes different required elements of a quality assessment and performance improvement program depending on the type of plan involved. Specifically, the Act exempts M+C non-network MSA and PFFS plans from the requirements of paragraphs (e)(2)(A)(vii) through (xii) of section 1852, which include the utilization review requirements discussed above as well as the explicit requirement to take action to improve quality and assess the effectiveness of such action through systematic follow-up. However, the statute continues to require that organizations offering these types of plans stress outcomes, provide for the data collection, analysis, and reporting necessary to measure outcomes, and monitor and ensure the quality of care they provide.

Consistent with the statute, the specific requirements to achieve minimum performance levels and undertake performance improvement projects will not apply to M+C non-network MSA and PFFS plans. Both requirements are derived primarily from the statutory requirements from which these types of plans have been exempted (that is, sections 1852(e)(2)(A)(x) and (xi). Instead, we have established separate requirements that apply for these types of plans under § 422.152(e). These requirements parallel the requirements for other types of plans to the extent permitted under the statute. For example, § 422.152(e)(1) requires that under these plans, an organization must measure its performance, using standard measures established or adopted by HCFA. These measures will focus on the prevention and care of acute and chronic conditions, high-volume and high-risk services, and enrollee satisfaction. We invite comment on whether additional areas for standard measures should be added to § 422.152(e)(1). Section 422.152(e)(2) requires evaluation of the continuity and coordination of care that enrollees receive. Together, the requirements under § 422.152(e)(1) and (2) reflect the requirements of paragraphs (e)(2)(A)(i), (ii), (iii), and (v) of section 1852.

Sections 1852(e)(2)(B)(ii) and (iii) specify that if an M+C non-network MSA or PFFS plan has written protocols for utilization review, those protocols must be based on current standards of medical practice, and have mechanisms to evaluate utilization services and inform providers and enrollees of the results of such evaluation. These requirements are incorporated into § 422.152(e)(3).

e. Requirements for All Plans: Health Information. In order to support the measurement of performance levels and the conduct of its performance improvement projects, if applicable, all plans must maintain a health information system that collects, analyzes, integrates, and reports data. This requirement is covered at § 422.152(f). Although an encounter data system may often be the most efficient means of meeting the requirements of this standard, the plan may use any methods or procedures for the collection of quality data, so long as it can demonstrate that its system achieves the objectives of the requirement.

The strategy of relying on performance measurement and performance standards to assess and improve quality is heavily dependent on the validity of the data collected and reported by plans. Therefore, § 422.152(f)(1)(ii) requires that an organization ensure that the information received from its providers is reliable and complete. If the organization receives individual encounter data directly from providers, it must have a system for comparing reported data to a sample of medical records, to verify the accuracy and timeliness of reporting or transmission. The objective is to assure that, to the extent feasible, there is a

one-to-one correspondence between items included in an organization's summary data and specific services entered in medical records or equivalent source documents. (That is, no reported service was not performed, and no service performed was not reported.) If the organization receives aggregate information, instead of individual patient encounter reporting, from any provider, under a plan the organization must approve the provider's own system for collecting, recording, aggregating, and reporting the data, and must assure that the provider has its own mechanisms for validation. Identified deficiencies in reported data should be addressed through provider education or other corrective action. The organization's process for recredentialing or recontracting with practitioners and providers should specify the actions to be taken in the event of ongoing failure by a contractor to meet the organization's health information standards.

In addition to requiring that the information collected be accurate and complete, § 422.152(f)(1)(iii) requires that the organization make all information collected available to HCFA. This requirement reflects section 1852(e)(2)(A)(vi), which recognizes that HCFA cannot adequately monitor and ensure the quality of health care services without access to appropriate information. For example, access to this information will allow HCFA to validate the accuracy and completeness of the information and to evaluate performance improvement projects. Note that although HCFA may disclose whether an organization has met its requirements for performance improvement, we will not make public the results of an organization's performance improvement projects, as these results may involve enrollee-specific information.

f. *Program Review.* Section 422.152(f)(2) requires that for each plan an organization have a process for formal evaluation, at a minimum annually, of the impact and effectiveness of the quality assessment and performance improvement program strategy. The evaluation should assess both the progress in implementing the strategy and the extent to which the strategy is in fact promoting the development of an effective quality assessment and performance improvement program. It should consider whether quality-related activities in the organization's workplan are being completed on a timely basis or whether commitment of additional resources is necessary. The evaluation should include recommendations for needed changes in program strategy or administration. These recommendations should be forwarded to and considered by the policymaking body of the organization. These requirements reflect the evaluation provisions of section 1852(e)(2)(A)(iv).

4. External Review (§ 422.154)

Section 1852(e)(3) requires, subject to the exceptions discussed below, that each M+C organization, for each M+C plan it operates, have an agreement with an independent quality review and improvement organization (review organization) approved by HCFA to perform functions of the type described in part 466 of chapter 42, which establishes review responsibilities for utilization and quality control Peer Review Organizations (PROs). This requirement appears in § 422.154(a).

PROs are physician-sponsored or physician-access organizations that review services ordered or furnished by other practitioners in the same professional field for the purpose of determining whether such services are or were reasonable or medically necessary, and whether the quality of such services meets professionally recognized standards of health care. Because PROs generally are already accomplished at the activities the statute requires of review organizations, HCFA will approve as review organizations the PROs and PRO-like entities who are currently under contract with HCFA to perform the functions of part 466. The current PRO contract will expire on March 31, 1999. The entities awarded the next contract, known as the Sixth Scope of Work, will be approved to serve as review organizations as of April 1, 1999.

An important element of both the current and next contract is a strategy to continuously improve quality of care and strengthen the ability of health care organizations and practitioners to assess and improve their own performance. Under this strategy, known as the Health Care Quality Improvement Program, part 466 contractors use statistical information to examine medical processes and outcomes of health care and provide feedback to providers so that this information can be used to benchmark progress toward improved practice and outcomes.

HCFA will establish guidelines for the agreements between M+C organizations and review organizations modeled on the guidelines found in part 466. The guidelines will specify that an M+C organization must allocate adequate space for the review organization to carry out its review (during the period of the review); and that the organization must provide enrollee care data and other pertinent data to the review organization on a timely basis as needed to facilitate making its determinations. These requirements appear in § 422.154(b)(1).

With respect to M+C non-network MSA and PFFS plans, for which utilization review is not a requirement, section 1852(e)(3)(A) of the statute exempts organizations from the requirement that there be an agreement with a review organization. Section 1852(e)(3)(B) also provides an exemption for review organization activities with respect to accredited plans that HCFA determines would be duplicative of activities conducted as part of the accreditation process. In the case of review of quality complaints, this exemption does not apply, however, and the requirement for investigation by the review organization would apply even with respect to an accredited plan. This exemption appears in § 422.154(b)(2). While the statute only mandates that the Secretary exempt accredited plans from the duplicative review by review organizations, we believe that the same logic extends to review activities that would be duplicative of HCFA monitoring review. Thus, pursuant to our general authority under section 1856(b)(1) to establish standards under Part C, we are providing in § 422.154(b)(2) that M+C organizations are also exempt from review by a review organization that would be duplicative of HCFA monitoring review.

Under section 1852(e)(3)(C), HCFA may waive the requirement that an M+C organization have an agreement with a review organization if HCFA determines that an organization has consistently maintained an excellent record of quality assessment and performance improvement and compliance with the other requirements of this part. As discussed in detail above, § 422.152 establishes requirements for a plan's quality assessment and performance improvement (QAPI) program. After the rule is effective, and HCFA has had the opportunity to assess QAPI implementation, we will be in a position to establish waiver criteria, which we intend to promulgate through notice and comment rulemaking.

5. Deemed Compliance Based on Accreditation (§§ 422.156 Through 422.158)

a. *Compliance Deemed on the Basis of Accreditation (§ 422.156).* Section 1852(e)(4) gives HCFA the authority to deem that an M+C organization meets certain requirements if the M+C organization is accredited and

periodically reaccredited by a private organization under a process that HCFA has determined ensures that the M+C organization, as a condition of accreditation, meets standards that are no less stringent than the applicable HCFA requirements. We do not believe that HCFA could effectively determine whether a potentially unlimited number of small, regional accreditation organizations meet the standard in section 1852(e)(4). Section 422.156 accordingly limits the deeming provided for under section 1852(e)(4) to national accreditation organizations. National accreditation organizations are those that offer accreditation services that are available in every State to every organization wishing to obtain accreditation status.

The process that HCFA will use to deem compliance with M+C requirements will mirror the process used for deeming compliance with fee-for-service requirements, because that process is equally applicable to the managed care setting. Therefore, many of the requirements of this section, as well as those in §§ 422.157 and 422.158, are essentially restatements of their fee-for-service equivalents in subpart A of part 488 of existing Medicare regulations.

Section 422.156(a) specifies the conditions under which an M+C organization may be deemed to meet the HCFA requirements permitted to be deemed under section 1852(e)(4). (These requirements are identified in the regulations at § 422.156(b).) The first condition is that the M+C organization be fully accredited (and periodically reaccredited) by a private, national accreditation organization approved by HCFA. Only full accreditation offers HCFA adequate assurance that the M+C organization meets the applicable HCFA requirements. M+C organizations that are conditionally or provisionally accredited (or the equivalent thereof) by their accreditation organization do not meet all of their accreditation organization's requirements, and for this reason, will not be deemed to meet the HCFA requirements. The second condition is that the M+C organization be accredited using the standards approved by HCFA for the purposes of assessing the M+C organization's compliance with Medicare requirements. Given that certain accreditation organizations have multiple accreditation processes (for example, other product lines aside from their Medicare product line), this requirement is necessary to ensure that only M+C organizations with the appropriate accreditation are deemed to meet HCFA requirements.

Section 422.156(b) specifies the requirements that may be deemed. In accordance with the statute, these include the quality assessment and performance improvement requirements of § 422.152, and the requirements of § 422.118 related to confidentiality and accuracy of enrollee records. An M+C organization accredited by an approved accreditation organization may be deemed to meet any or all of these requirements, depending on the specific requirements for which its accreditation organization's request for approval was granted.

Given the complexity and breadth of the benefits and services offered under the M+C program, we believe that we should analyze the standards applied by accreditation organizations on a standard-by-standard basis. In the past, in the context of original fee-for-service Medicare, we have taken an "all or nothing" approach in approving accreditation organizations. If an organization was approved, it was approved for purposes of all requirements, and all requirements were accordingly deemed. Since section 1852(e)(4) refers to deeming of "the requirements involved," however, we intend under this authority to determine on a standard-by-standard basis whether an accreditation organization applies and enforces requirements no less stringent than those in part 422 with respect to the standard at issue. We will determine the scope of the accreditation organization's approval (and thus the extent to which M+C organizations accredited by the organization are deemed to meet HCFA requirements) based on a comparison of the accreditation organization's standards, and its procedures for assessing compliance, with the deemable HCFA requirements and our own decision-making standards.

As mentioned above, the requirements that may be deemed are the quality assessment and performance improvement requirements of § 422.152, and the confidentiality and accuracy of enrollee records requirements of § 422.118. We will approve an accreditation organization only for those requirements for which it applies and enforces standards that are as least as stringent as the HCFA requirements. For instance, § 422.152(e) requires that an M+C organization conduct performance improvement projects that achieve significant and sustained improvement. An accreditation organization will not be approved for this requirement unless we determine that, as a condition of accreditation, the accreditation organization's requirements concerning the conduct of performance improvement projects are as rigorous as the HCFA requirements, with a similar emphasis on outcomes. We will make such determinations on the basis of the application materials submitted by accreditation organizations seeking HCFA approval in accordance with § 422.158. We would also do surveys to validate the accreditation organization's enforcement on a standard-by-standard basis.

Section 422.156(c) establishes when deemed status is effective. Deemed status is effective on the later of the following dates: the date on which the accreditation organization is approved by HCFA, or the date that the M+C organization is accredited by the accreditation organization.

Section 422.156(d) establishes the obligations of deemed M+C organizations. An M+C organization deemed to meet Medicare requirements must submit to surveys to validate its accreditation organization's accreditation process, and authorize its accreditation organization to release to HCFA a copy of its most current accreditation survey, together with any information related to the survey that HCFA may require (including corrective action plans and summaries of unmet HCFA requirements.) These two activities are part of HCFA's ongoing oversight strategy for ensuring that the accreditation organization applies and enforces its accreditation standards in a manner comparable to HCFA's.

Section 422.156(e) addresses removal of deemed status. HCFA will remove part or all of an M+C organization's deemed status if: (1) HCFA determines, on the basis of its own survey or the results of the accreditation survey, that the M+C organization does not meet the Medicare requirements for which deemed status was granted; (2) HCFA withdraws its approval of the accreditation organization that accredited the M+C organization; or (3) the M+C fails to meet the requirements of paragraph (d) of this section.

The final paragraph, § 422.156(f), explains that HCFA retains the authority to initiate enforcement action against any M+C organization that it determines, on the basis of its own survey or the results of the accreditation survey, no longer meets the Medicare requirements for which deemed status was granted. We expect the accreditation organization to have a system in place for enforcing compliance with its standards, perhaps sanctions for motivating correction of deficiencies, but HCFA cannot delegate to the accreditation organization the authority to impose the intermediate

sanctions established by section 1857(g) or termination of the M+C contract.

b. *Accreditation organizations (§ 422.157).* This section of the regulation discusses three conditions for HCFA approval of an accreditation organization. HCFA may approve an accreditation organization if the organization applies and enforces standards for M+C organizations that are at least as stringent as Medicare requirements (as discussed above); the organization complies with the application and reapplication procedures set forth in § 422.158, "Procedures for approval of accreditation as a basis for deeming compliance;" and, the organization is not controlled by the managed care organizations it accredits, as defined at 42 CFR 413.17. Control exists if the accredited organizations have the power, directly or indirectly, to significantly influence or direct the activities or policies of the accreditation organization. We have included this requirement to preclude any conflict of interest that should compromise the integrity of the accreditation process.

Section 422.157(b) describes notice and comment procedures. Because the approval of an accreditation organization could have broad impact upon large numbers of organizations, providers, and consumers, we are providing notice and comment opportunities similar to those provided in the fee-for-service arena. HCFA will publish a proposed notice in the Federal Register whenever it contemplates approving an accreditation organization's application for approval. The proposed notice will specify the basis for granting approval; describe how the accreditation organization's accreditation program meets or exceeds all of the Medicare requirements for which HCFA would deem compliance on the basis of accreditation; and provide opportunity for public comment. HCFA will publish a final notice in the Federal Register whenever it grants an accreditation organization's request for approval. Publication of the final notice will occur after HCFA has reviewed the public comments received in response to the proposed notice. The final notice will specify the effective date of the approval, and the term of approval, which will not exceed 6 years.

Section 422.157(c) establishes ongoing accreditation organization responsibilities. These responsibilities largely parallel those currently imposed upon accreditors under original Medicare. One exception is the requirement at § 422.157(c)(4) that an accreditation organization notify HCFA in writing within 3 days of identifying, with respect to an accredited M+C organization, a deficiency that poses immediate jeopardy to the M+C organization's enrollees or to the general public. Although the existing counterpart for this requirement under original Medicare (§ 488.4(b)(3)(vii)) allows an accreditation organization 10 days to provide this notice, we believe that a 3-day time period will better enable HCFA to take any necessary action to protect the health and safety of enrollees or the general public in a situation that poses immediate jeopardy. (Note that we also intend to address this issue in our planned comprehensive revision of the deeming requirements under original fee-for-service Medicare.)

Section 422.157(d) establishes specific criteria and procedures for continuing oversight and for withdrawing approval of an accreditation organization. Oversight consists of equivalency review, validation review, and onsite observation.

Equivalency review. HCFA compares the accreditation organization's standards and its application and enforcement of those standards to the comparable HCFA requirements and processes when HCFA imposes new requirements or changes its survey process; an accreditation organization proposes to adopt new standards or changes in its survey process; or the term of an accreditation organization's approval expires.

Validation review. HCFA or its agent may conduct a survey of an accredited organization, examine the results of the accreditation organization's own survey, or attend the accreditation organization's survey, in order to validate the organization's accreditation process. At the conclusion of the review, HCFA identifies any accreditation programs for which validation survey results indicate (1) a 20 percent rate of disparity between certification by the accreditation organization and certification by HCFA or its agent on standards that do not constitute immediate jeopardy to patient health and safety if unmet; or (2) indicate any disparity at all on standards that constitute immediate jeopardy to patient health and safety if unmet. Our beneficiary-centered approach to managed care oversight dictates zero tolerance of accreditation organization failures to identify noncompliance that expose beneficiaries to such serious risks. At the conclusion of a validation review, HCFA also identifies any accreditation programs for which validation survey results indicate, irrespective of the rate of disparity, that there are widespread or systematic problems in an organization's accreditation process such that accreditation no longer provides assurance that the Medicare requirements are met or exceeded. Accreditation programs identified as noncompliant through validation review may be subject to withdrawal of HCFA approval.

Onsite observation. HCFA may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing meetings concerning the accreditation process, evaluating survey results or the accreditation status decision making process, and interviewing the organization's staff.

Notice of intent to withdraw approval. If a comparability review, validation review, onsite observation, or HCFA's daily experience with the accreditation organization suggests that an accreditation organization is not meeting the requirements of this subpart, HCFA gives the organization written notice of its intent to withdraw approval.

HCFA may withdraw its approval of an accreditation organization at any time if we determine that deeming based on accreditation no longer guarantees that the M+C organization meets the Medicare requirements, and failure to meet those requirements could jeopardize the health or safety of Medicare enrollees or constitute a significant hazard to the public health; or the accreditation organization has failed to meet its obligations under §§ 422.156, 422.157, 422.158.

The final provision of § 422.157(d) addresses reconsideration. An accreditation organization dissatisfied with a determination to withdraw HCFA approval may request a reconsideration of that determination in accordance with subpart D of part 488 of this chapter.

c. *Application and reapplication procedures for accreditation organizations (§ 422.158).* As mentioned, the process that HCFA will use to deem compliance with M+C requirements is virtually identical to the process that is being used for deeming compliance with fee-for-service requirements. This section of the regulation is modeled on § 488.4, "Application and reapplication procedures for accreditation organizations." One requirement that appears in § 422.158 does not appear in § 488.4 is the requirement that an

accreditation organization applying for approval of deeming authority submit the name and address of each person with an ownership or control interest in the accreditation organization. Such information will be used to determine whether the accreditation organization is controlled by the organizations it accredits, for the purposes of § 422.157. The remaining requirements of this section, which pertain to other required information and materials, the mechanics of the approval process, and the reconsideration of an adverse determination, are essentially restatements of the requirements of § 488.4.

E. Relationships With Providers

Subpart E focuses on requirements for relationships between M+C organizations and health care professionals with whom they contract or enter agreements to provide services to Medicare beneficiaries enrolled in an M+C plan. These requirements encourage communication, coordination, and cooperation between organizations and health care professionals on plan rules and policies. This subpart also includes other new provider protections enacted as part of the BBA; incorporates provisions affecting health professionals that are consistent with the recommendations contained in the Consumer Bill of Rights and Responsibilities, as recommended by the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, the model act adopted by the National Association of Insurance Commissioners, credentialing standards of nationally accepted accrediting bodies, and QISMC standards; and incorporates policies already applicable to provider and plan relationships included in the current part 417 or other policy issuances. In February 1998, an executive order was issued directing the Secretary to comply to the extent possible through administrative activities with the standards contained within the Consumer Bill of Rights presented to the President in November 1997. Many of the issues were addressed in the BBA and implementation of the regulations will expand compliance with the directive.

1. Participation Procedures (§ 422.202)(a))

Section 1852(j)(1) requires an M+C organization that offers benefits under an M+C plan through agreements with physicians to establish reasonable procedures relating to their participation under the plan. This is a new federal requirement for Medicare contracting managed care organizations. Current rules in part 417 do not mandate that HMOs/CMPs adopt provider participation rules. However, some Medicare contractors have adopted provider participation policies in response to state laws or plan policies.

We are interpreting this provision to apply to all M+C organizations that operate M+C plans providing benefits through a limited network of contracting health care professionals or groups of health care professionals, that is, all types of M+C coordinated care plans, such as HMOs, PPOs, etc., as well as network M+C MSA plans. In the case of M+C private fee-for-service plans and non-network M+C MSA plans, there are no limits on the number of health professionals who may provide services covered under the M+C plan, as long as they accept the plan's terms and conditions for payment. These plans in essence operate on an "any willing provider" approach to which the procedures in section 1852(j)(1) would not be relevant. Since any provider has the right to participate, rules requiring a notice of adverse participation decisions, and appeals from such decisions could have no applicability. It also would not be feasible to provide the notices required under section 1852(j)(1) and § 422.202(a) (discussed below) to the virtually unlimited number of providers who would be entitled to provide services to a M+C private fee-for-service or non-network M+C MSA plan enrollees.

The statutory requirements in section 1852(j)(1) focus on three procedural aspects—ensuring that providers are aware of the plan participation rules; requiring written notice when participation decisions are adverse; and affording the provider an opportunity to appeal adverse plan participation decisions. The statute specifies that these procedures apply to plan relationships with physicians. In reviewing the model act of the National Association of Insurance Commissioners (NAIC), QISMC standards, and many state laws and regulations, we found that these procedural protections generally have been applied to all health care professionals who are responsible for delivering services to beneficiaries of the plan, not just physicians. Since Medicare payments can be made to practitioners other than physicians and since M+C organizations may furnish services utilizing a range of licensed health care professionals, we believe it is appropriate to apply these requirements to all health care professionals if coverage for their services is provided under the M+C plan. For purposes of § 422.202 and § 422.204, these include, but are not limited to, a physician, podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist, speech-language pathologist, audiologist, nurse practitioner, clinical nurse specialist, certified nurse anesthetist, and certified nurse-midwife and licensed certified social worker. Thus, under our authority under section 1856(b)(1) to establish standards for M+C organizations, § 422.202 requires that all professionals as listed above should be provided with rules of participation, written notices of participation decisions and an appeal process.

With regard to types of procedures that are subject to disclosure, written notification and appeal requirements, we are adopting a broad definition of procedures that might affect participation in the plan or network. In § 422.202 we specify that procedural requirements should include any rules that affect the process of direct delivery of services by a health professional to a Medicare beneficiary. The examples include terms of payment, utilization review, quality improvement programs, credentialing, data reporting, confidentiality, guidelines or criteria for furnishing services, and other rules related to administrative policy. All of these procedures affect how a health care professional would participate in a plan and should therefore be divulged up front prior to a health care professional's agreement to participate in the plan. In addition, we believe that full disclosure in advance, to potential participating health care professionals, of the broad range of procedures relating to participation should reduce subsequent challenges or appeals. While the disclosure requirement in § 422.202(a)(1) does not apply directly to M+C private fee-for-service plans, as discussed below, M+C organizations offering such plans will be required to make the information described in § 422.202(a)(1) available to providers treating enrollees of the plan.

Section 1852(j) requires the provision of written notice of the participation rules. We are requiring in § 422.202 that any material changes in rules must be provided in writing in advance of implementation. Such advance communication would enable health care professionals to evaluate their continued participation prior to instituting a formal appeal process regarding any rules they believe are adverse. This benefits M+C organizations and providers in allowing the health care professional to judge what is adverse as this can vary among

individual health care professionals; what is adverse to one physician or health care professional may not be adverse to another.

2. Consultation (§ 422.202(b))

Consistent with section 1852(j)(2), § 422.202(b) requires an M+C organization to consult with physicians or relevant health care professionals who have entered into participation agreements/contracts with the organization regarding the organization's medical policy, quality and medical management procedures. Pursuant to our authority in section 1856(b)(1) to establish standards under the M+C program, in addition to requiring consultation on any aspect of clinical policy, we have included three specific standards relating to the development of practice guidelines—(1) practice guidelines and utilization management guidelines must be based on reasonable medical evidence or consensus of relevant practitioners, developed in consultation with participating practitioners, and reviewed and updated periodically; (2) the guidelines must be communicated to practitioners and, as appropriate, enrollees; and (3) decision making in utilization management, enrollee education, interpretation of covered benefits, and other areas to which the guidelines are applicable must be consistent with the guidelines. These three standards are taken from QISMC discussed in section II.D. of this preamble. These national standards also are consistent with the NAIC model act and language adopted for state laws regarding managed care. We believe these standards ensure that practitioners are fully consulted in all aspects of the use of practice guidelines from development to application.

3. Treatment of Subcontracted Networks (§ 422.202 (c))

In today's business environment, managed care organizations delegate not only the provision of services to subcontracted networks, but also a variety of policy making and implementation responsibilities. Each health care professional is an integral part of the organization's health care delivery system, whether he contracts directly with the organization or through an intermediary entity, such as an Independent Practice Association (IPA). Therefore, under our authority in section 1856(b)(1) to establish M+C standards, in § 422.202(c) we require provider protections not only for direct contracting physicians and health care professionals but also for all subcontracted arrangements. Extension of the BBA provisions to subcontracts means that providers within subnetworks (e.g. an IPA) receive the rules of participation, written notices, and have an opportunity to appeal. Thus, health care professionals within the subcontracted groups should be included in the procedures established for participation appeals and in the formulation of medical policy for the organization. In cases where subnetworks maintain most of the medical records for the Medicare beneficiaries they serve, it is essential that the formulation of policy includes all of the resources that contribute to fair and equitable treatment for beneficiaries. We also believe that subnetworks should have the ability to grieve or appeal decisions for the providers within their subnetworks.

4. Provider Credentialing and Provider Rights (§ 422.204)

Section 422.204(a), "Basic Requirements," states that the M+C organization must have a system for credentialing physicians and other health care professionals. The M+C organization must ensure that providers meet applicable State and Federal requirements. Basic benefits must be provided through, or payments must be made to, providers that meet applicable requirements of title XVIII and part A of title XI of the Act. Also, in the case of providers meeting the definition of "provider of services" in section 1861(u), basic benefits may only be provided through such providers if they have a provider agreement with HCFA permitting them to provide services under original Medicare. An M+C organization may not employ or contract with providers excluded from participation in Medicare. M+C organizations, at a minimum, should check the OIG website at http://www.dhhs.gov/progorg/oig for the listing of excluded providers and entities. These requirements are promulgated pursuant to our authority under section 1856(b)(1) to establish M+C standards by regulation, and are based on (1) the requirement in section 1852(a)(1) of the Act that Medicare covered services be furnished through Medicare qualified providers, (2) existing requirements in § 417.416, and (3) detailed standards developed under QISMC, discussed in section D. above.

Section 422.204(b), "Discrimination Prohibited," prohibits M+C organizations from discriminating with respect to provider participation, provider reimbursement, or provider indemnification to any provider acting within the scope of his license or certification under applicable State law, solely on the basis of such license or certification. These requirements are based on section 1852(b)(2). This does not prohibit plans from including providers only to the extent necessary to meet the needs of the plan's enrollees, ensure quality and control costs, and does not prohibit an organization from reimbursing different specialty providers differing fees for their services. It is however, the responsibility of the organization to adopt policies related to participation, reimbursement, and indemnification based on reasonable criteria. Organizations may want to consider such measures as health outcomes, satisfaction surveys, market saturation of the provider type or other legitimate reasons.

Under § 422.204(c), "Denial, suspension, or termination of a contract," organizations offering coordinated care or network MSA plans are required to provide information on their plan participation criteria and an appeals process for participation decisions, including decisions involving denial, suspension or termination of contracts. We have incorporated the timeframes for contract termination notification between the M+C organization and its providers contained within the NAIC model act. As discussed in section C. above, we have incorporated similar timeframes for notice to enrollees about changes in the provider network, including changes that result from a termination covered under § 422.204(c).

The notice and appeals requirements in this part are based on the requirement in section 1852(j)(1)(C), requiring a process for appealing adverse participation decisions, and, as noted above, on the NAIC model act, and our authority under section 1856(b)(1) to establish standards under Part C.

5. Interference With Health Care Professionals' Advice to Enrollees Prohibited (§ 422.206)

Section 422.206 (a) incorporates the requirements set forth in section 1852(j)(3)(A). This section prohibits an M+C organization from interfering with the advice of a health care professional to an enrollee who is his or her patient. Thus the health professional may act within his or her scope of practice in advising the enrollee about their health status, all relevant medical or treatment options available regardless of whether care or treatment is provided under the plan. For purposes of § 422.206, the term health care professional includes those listed in section 1852(j)(3)(D) of the Act. Pursuant to our authority in section 1852(b)(1) to establish standards

under the M+C program, § 422.206(a) includes standards from the Consumer Bill of Rights that further delineate the types and mode of communication between patients and health care providers regarding health care treatment options within which interference is prohibited. While the scope of this section governs communication regarding care or treatment advice, we recognize that patients seek advice from physicians regarding insurance coverage choices as well as treatment option choices. Physicians can disclose their participation in M+C organizations, however, we are concerned about any inappropriate steerage based on knowledge of a beneficiary's health status or the physician's financial interest. Program instructions will be issued as HCFA continues to clarify policy in the area of provider marketing and the role of physicians and other health care professionals in disseminating M+C information to beneficiaries.

6. Conscience Protection (§ 422.206)

Section 422.206(b) incorporates the requirements of section 1852(j)(3)(B). The regulations state that the prohibition against interference with the content of advice a health care provider gives to enrollees regarding medical treatment should not be construed as requiring counseling by a professional or a referral to a service by that professional, if there is an objection based on moral or religious grounds, and the M+C organization fulfills certain notification requirements to prospective and current enrollees. The regulation incorporates the notification process and time frames included in the law and clarifies that the plan must also notify HCFA at the time of application and within 10 days of submitting its ACR proposal. With respect to current enrollees, the organization is eligible for the exception to the rule in § 422.206(a)(1) if it provides notice within 90 days after adopting the policy at issue; however, under § 422.111(d), notice of such a change must be provided in advance.

7. Physician Incentive Plans (§§ 422.208 and 422.210)

Consistent with section 1852(j)(4), regulations at §§ 422.208 and 422.210 outline the limitations on the operation of physician incentive plans. The provisions in this section are the same as those previously included in § 417.479 with some reduction in the amount of data that must be disclosed by the organization. HCFA has determined that the capitated data is no longer required because other sources of data, such as encounter data required by the Act and the National Data Reporting Requirements (NDRR) are available. The provisions are consistent with the provisions under section 1852(j)(4) which prohibit specific payments as a disincentive to provide services to an individual enrollee and which place limits on the transfer of substantial financial risk for referral services to physicians or physician groups contracting with the M+C organization. The provisions in these sections apply to all coordinated care and network MSA plans. M+C private fee-for-service plans are prohibited from having a physician incentive plan because they may not place their providers at financial risk. The physician incentive plans regulations require that M+C organizations conduct customer satisfaction surveys of both enrollees and disenrollees if any physician or physician group in an M+C organization's network is placed at substantial risk for referral services as defined in § 422.208. (Please note that there are at least two other uses of the term "substantial financial risk" contained in legislation or regulation. Specifically, section 216 of the Health Insurance Portability and Accountability Act of 1996 addressing safe harbors from the anti-kickback statute and the determination of substantial financial risk related to PSOs (63 FR 18124, April 14, 1998)) M+C organizations may satisfy their requirement for enrollee surveys either by their mandated inclusion in HCFA's national administration of the Consumer Assessments of Health Plans Study (CAHPS) or, if the organization is excluded from CAHPS due to not having contracted with us for at least one year, by conducting their own surveys.

8. Limitation on Provider Indemnification (§ 422.212)

Section 422.212 prohibits an M+C organization from having a provider, or group of providers, indemnify the organization against any liability arising from the organization's denial of medically necessary care. This prohibition is a very narrow exception for a civil action brought by, or on behalf of, an enrollee where the damage is due to a determination by the M+C organization to deny medically necessary care. The regulation includes the statutory language from section 1852(j)(5) without elaboration.

9. Special Rules for Services Provided by Noncontract Providers (§ 422.214)

Consistent with section 1852(k) and section 4002(e), the regulations in § 422.214 require any health care provider that does not have a contract establishing payment amounts for services furnished to a beneficiary enrolled in an M+C coordinated care plan to accept as payment in full, the amounts that could have been collected if the beneficiary were enrolled in original Medicare. An M+C organization (other than an M+C MSA plan) satisfies its liability for Medicare covered services if the provider receives the total amount that would have been received if the beneficiary were enrolled in original Medicare. This amount equals the total of Medicare's payment (including any applicable deductible and coinsurance amounts) and any balance billing amount that would have been allowed by original Medicare. In the case of a participating physician or supplier, this amount would equal the Medicare fee schedule amount for the service. For a nonparticipating physician, this amount would equal 115 percent of the fee schedule amount for nonparticipating physicians (which is 95 percent of the fee schedule amount applicable to participating physicians). Of these amounts, the provider could collect from the M+C plan enrollee the cost sharing amount required under the M+C plan, as approved by HCFA under subpart G of part 422 and the remainder from the M+C organization.

Section 1866(a)(1)(O) places a limitation on what a provider of services (as defined in section 1861(u)) must accept as payment in full for services furnished to an M+C plan enrollee. The limit is applicable to those institutional type providers of service that do not have in effect a contract with the M+C organization establishing payment amounts for services furnished to an enrollee. The limitation equals the amount that would have been payable for a beneficiary enrolled in original Medicare less any payments that could be collected directly from Medicare representing graduate medical education (both direct and indirect).

10. Special Rules for M+C Private Fee-for-Service Plans

Special rules for M+C private fee-for-service plans are discussed in section IV of this preamble.

11. Exclusion of Services Furnished Under a Private Contract (§ 422.220)

Section 422.220 prohibits an M+C organization offering an M+C plan from paying for services furnished to an

enrollee by a physician or other health care professional who has signed a private contract as described in section 1802(b). Section 4507 of the BBA specifies that nothing in title XVIII of the Act shall prohibit a physician or practitioner from privately contracting with a beneficiary to furnish services for which no claim shall be submitted to Medicare and no Medicare payment shall be made directly or indirectly or by any organization paid by Medicare where the physician or practitioner has opted out of Medicare for 2 years. Therefore, no payment may be made by an M+C organization for services furnished to Medicare enrollees by a physician or practitioner who opts out of Medicare where he or she has signed a private contract with an enrollee. There is one exception: the physician or practitioner who has opted out of Medicare may not ask a beneficiary who requires emergency or urgent care to sign a private contract. Therefore, where a physician or practitioner who has opted out of Medicare provides emergency or urgent care to an enrollee of an M+C organization, the organization must pay for the emergency or urgent care the enrollee required. For purposes of this provision, we consider "urgent care" to mean urgently needed services as defined in § 422.2.

12. M+C Plans and the Physician Referral Prohibition

One other item that relates to M+C organizations but is not contained within the part 422 regulations is the physician referral prohibition.

a. *The prepaid health plan exception:* Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity (through an ownership interest or a compensation relationship), the physician may not refer Medicare patients to that entity for any of 11 designated health services, unless an exception applies. Under an exception in section 1877(b)(3), the prohibition on referrals does not apply to services furnished by certain prepaid health plans. To qualify for the exception, the services must be furnished by one of the following organizations to its enrollees:

- Organizations with a contract under section 1876, which authorizes us to enter into contracts with HMOs and competitive medical plans (CMPs) to furnish covered items and services on a risk-sharing or reasonable cost basis.
- Organizations with health care prepayment plans, as described in section 1833(a)(1)(A), which authorizes payment for Medicare Part B services to prepaid health plans on a reasonable cost basis.
- Organizations receiving payments on a prepaid basis under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972.
- Qualified health maintenance organizations, within the meaning of section 1310(d) of the Public Health Service Act.

As discussed in section I. of this preamble, beginning in January 1999, the new M+C program replaces the HMO and CMP risk contracting program provided for in section 1876.

In enacting the BBA, Congress failed to revise section 1877(b)(3) to except the services furnished under M+C coordinated care plans. We believe that this must have been an oversight, since Congress expressed no intention in the legislative history for the BBA of subjecting existing managed care entities to the self-referral law. In addition, subjecting physicians who have an ownership interest in an M+C organization offering a coordinated care plan in which the physicians participate, to the self-referral rules would be contradictory to Congress' purposes in establishing PSOs as coordinated care plans. PSOs are defined in the BBA provisions as entities that must be organized and operated by a provider (which may be a physician) or a group of affiliated health care providers (which may include physicians). These providers must share a substantial financial risk for the provision of items and services and have at least a majority financial interest in the entity. The self-referral provisions, on the other hand, are specifically designed to discourage physician ownership of entities that provide a broad range of services to Medicare beneficiaries.

b. *No risk of program or patient abuse exception—Coordinated Care Plans:* Although there is no statutory exception for services furnished under coordinated care plans, section 1877(b)(4) allows us to create an exception to the referral prohibition for a financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse. An example of program abuse is Medicare payment for unnecessary services. We will pay M+C organizations for enrollees in coordinated care plans on a capitated basis and beneficiaries will be responsible for premiums and cost sharing. Section 1854 limits HCFA's capitation amount and the total amount of beneficiary premiums and cost-sharing. Because M+C organizations offering coordinated care plans will not be paid for each additional service they provide, we believe that there is no risk of over-utilization of services. Because HCFA's capitation amount and the total amount of beneficiary premiums and cost sharing is limited, we believe that there is no risk of program or patient abuse.

Therefore, we are excluding from the physician referral prohibition services furnished under a coordinated care plan to an enrollee. This exception applies in all cases in which a physician has an ownership interest in or a compensation relationship with the M+C organization offering the coordinated care plan. We are making a change in the regulation text at § 411.355(c)(5).

c. *No risk of program or patient abuse exception—M+C MSA Plans:* M+C organizations offering an M+C MSA plan are paid a fixed capitation amount for beneficiaries enrolled in the plan, and section 1853(a) limits HCFA's capitation amount and section 1859(a)(3)(A) limits the amount that M+C organizations under M+C MSA plans will pay entities for furnishing covered services. Section 1859(a)(3)(B) limits the annual deductible amount. However, the Act does not similarly limit the amount that a beneficiary will have to pay as premiums and costsharing; that is, there is no limit on beneficiary balance billing by the entities that furnish health care services. *See* section IV. below. Thus, although there is no risk of program abuse, there is a risk of patient abuse. Therefore, we are not excluding from the physician referral prohibition services furnished under an M+C MSA.

d. *No risk of program or patient abuse exception—Private fee-for-service plans:* Section 1853(a) also limits HCFA's capitation amount to be paid to M+C organizations under private fee-for-service-plans. Because there will not be excessive payments by the Medicare program, there is no risk of program abuse. However, section 1859(b)(2)(A) provides that the plans will pay an individual or entity furnishing services on a fee-for-service basis. Since beneficiaries are responsible for coinsurance amounts, copayments, and balance billing amounts under private fee-for-service plans (*see* section IV. of this preamble), beneficiaries are subject to added out-of-pocket liability if physicians providing services under a fee-for-service plan order additional unneeded services in order to obtain additional fee-for-service payments from the M+C organization offering the private fee-for-service plan. Thus,

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although there is no risk of program abuse in this case, excessive Medicare payment, there is a risk of patient abuse. Therefore, we are not excluding from the physician referral prohibition services furnished under a private fee-for-service plan.

F. Payments to M+C Organizations

1. General Provisions (§ 422.250)

Subpart F of part 422 sets forth rules that govern Medicare payment to M+C organizations, including the methodology used to calculate M+C capitation rates. These rules also apply for 1998 under section 1876 risk contracts.

Payments and Adjustments: We provide in § 422.250(a)(1) that, with the exception of payments under M+C MSA plans and payments for ESRD enrollees in all other plans, which we discuss below, we will pay M+C organizations for each enrollee in an M+C plan they offer, a monthly payment that is equal to 1/12th of the county-wide (or, in the case of ESRD enrollees, 1/12th of the State rate) "capitation rate" under § 422.252 that applies for the county in which the enrollee lives, adjusted by demographic factors applicable to that enrollee. Effective January 1, 2000, however, section 1853(a)(3)(C) directs us to implement a risk adjustment methodology that accounts for variation in per capita cost based on health status and demographic factors. Implementation of health status risk adjusters has implications for M+C plan data submissions, and we discuss this issue further below.

In addition to health status and demographic risk adjustments, we make an adjustment, under § 422.250(a)(2)(i)(A), to the payment rate for M+C enrollees with end-stage renal disease (ESRD). Under § 422.250(a)(2)(i)(B), we make an adjustment that is the equivalent to a 50 cent reduction for each renal dialysis treatment that we will use to help pay for the ESRD network program in the same manner as other reductions are used in original Medicare. Finally, under § 422.250(b), we provide for making retroactive adjustments to the aggregate monthly payment to an M+C organization to reflect any difference between the actual number of enrollees and the number upon which we had based the organization's advance monthly payment.

Under § 422.250(a)(2)(ii) for M+C MSA plan enrollees, we make a monthly payment to the M+C organization as described above less the amount (if any) identified in § 422.262(c)(1)(ii) to be deposited in the M+C MSA. In addition, we deposit in the M+C MSA the lump sum amounts (if any) determined in accordance with § 422.262(c). See section III. below for a more complete discussion of payments under M+C MSA plans.

In § 422.250(a)(2)(iii), we provide for adjustments to be made to payments under RFB plans (which are limited to members of a religious and fraternal benefit plan) to ensure that the payment level is appropriate for the actuarial characteristics and experience of [RFB plan] enrollees.

Payment Areas: In § 422.250(c)(1), we reflect the general rule, under section 1853(d) of the Act, that the M+C payment area is a county or equivalent area specified by HCFA. Under § 422.250(c)(2), in the case of beneficiaries with ESRD, the payment area is the State or equivalent area we specify. Additionally, in a significant change to payment area policy from the section 1876 program, section 1853(d)(3) permits Governors of States to request that we approve alternative geographic areas for payment rates. These alternatives are either a single State-wide M+C payment area or a metropolitan-based system in which all nonmetropolitan areas within the State constitute a single payment area, and any of the following constitutes a separate M+C payment area:

- All portions of each single metropolitan statistical area within the State.
- All portions of each primary metropolitan statistical area within each consolidated metropolitan statistical area within the State.
- A consolidation of noncontiguous counties.

Section 1853(d)(3) directs us to approve a Governor's request; however, this section of the Act also directs us to subject these requests to a budget neutrality requirement, and any payment for alternative geographic areas cannot exceed the aggregate payments for that State absent the adjustment. Additionally, the Governor's request must be submitted to us no later than February 1 of the year preceding the contract year. This provision is implemented in § 422.250(e).

2. Annual Capitation Rates (§ 422.252)

Among the more significant payment changes in section 1853 is the incremental separation of capitated Medicare payments from local fee-for-service rates. Previously, Medicare had paid risk contractors according to the Adjusted Average Per Capita Cost (AAPCC) payment methodology. The AAPCC was based on Medicare fee-for-service expenditures by county and was used to pay risk contractors through December 31, 1997. These fee-for-service expenditures were adjusted for demographic factors (that is, age; sex; institutional, welfare, and employment status).

The AAPCC had been legitimately criticized for its wide range of payment rates among geographic regions—in some cases it varied by over 20 percent between adjacent counties. It was also criticized for its poor risk adjustment capabilities and inappropriate provision of graduate medical education funds to some Medicare risk plans. Moreover, the AAPCC was criticized for setting erratic annual payment updates, which often made it difficult for contracting health plans to engage in long-term business planning. The BBA introduces a new payment methodology that addresses these and other concerns, and we discuss them in detail below.

"Greater of" Payment Rate: Since January 1, 1998, Medicare capitation rates paid to section 1876 risk contractors for each calendar year have been the greater of a blended capitation rate, a minimum amount rate, or a minimum percentage increase. This same methodology will apply to payments under M+C contracts.

- The blended capitation rate is a blend of the area-specific (local) rate and the national rate, with the latter adjusted for input prices. The blended capitation rate is then adjusted by a budget neutrality factor.
- The minimum amount rate will equal $367 per month per enrollee in 1998 for all areas in the 50 States and the District of Columbia. Outside the 50 States and the District of Columbia, the rate is not to exceed 150 percent of the 1997 AAPCC for those areas. The minimum amount rate will be adjusted each year using the update factors described below. (On an individual basis, our monthly payment may be more or less than the minimum amount due to the demographic or other risk factors applicable to that individual used to adjust the minimum amount rate.)
- The minimum percentage increase is 2 percent. The minimum percentage increase rate for 1998 is 102 percent of the 1997 AAPCC. Thereafter, it is 102 percent of the prior year's rate.

3. Calculation and Adjustment Factors (§ 422.254)

Blend of Area-Specific and National Percentages: The 1997 AAPCC capitation rates serve as the base for both the area-specific rates in the blend and the minimum percentage increase rates. Section 1853(c)(2) stipulates that the blended area-specific/national rate

(discussed further below) will be implemented over a 6 year transition period from 1998 through 2002 according to the following schedule:

- 90 percent area-specific/10 percent national in 1998
- 82 percent area-specific/18 percent national in 1999
- 74 percent area-specific/26 percent national in 2000
- 66 percent area-specific/34 percent national in 2001
- 58 percent area-specific/42 percent national in 2002
- 50 percent area-specific/50 percent national in 2003 and thereafter.

Section 1853(c)(6) also provides for a "national per capita M+C growth percentage." Each year, from 1998 through 2002, this national growth percentage is applied to the national and local components of the blended rate and to the floor rate (discussed below). The national per capita growth percentage is HCFA's projection of per capita expenses, reduced by the following amounts established in section 1853(c)(6): 0.8 percentage points in 1998 and 0.5 percentage points each year from 1999 through 2002. After 2002, the reduction amount is zero. This provision is implemented in § 422.254(d).

As indicated above, the blended rates are adjusted by a budget neutrality factor. Section 1853(c)(5) provides for a "budget neutrality" adjustment to the blended capitation rate under § 422.252(a), designed to ensure that the aggregate amount paid under the M+C payment methodology equals the amount that would have been paid if payments were based entirely on area-specific rates (as they were under section 1876(a)). The statute requires that this budget neutrality adjustment apply only to the blended capitation rate under § 422.252(a), rather than to the final capitation rate under § 422.252. Since the capitation rate is based upon the *highest* of the blended capitation rate, the minimum payment, and the prior year's payment plus 2 percent, the budget neutrality adjustment cannot produce any further savings once the blended capitation rate is reduced to the point where it is lower than the other two amounts in every county. This is what happened for 1998 and 1999. For these years, the budget neutrality adjustment reduced the blended rate to the point where no county's payment rate is based upon the blended rate, since one of the two other rates is higher in every county. Yet, even with this reduction, the goal of the budget neutrality provision in section 1853(c)(5) was not met for 1998 and 1999. We are considering seeking a statutory change to address this problem.

Area-Specific Component of the Blended Capitation Rate: Above we discussed the relationship between area-specific and national rates and how they are intended to develop into a 50/50 balance by the year 2003. Here we discuss features of the area-specific (local) rate and, directly below, features of the national rate.

In 1998, the base for the area-specific rate is the 1997 AAPCC, adjusted for 20 percent of the indirect medical education/direct graduate medical education (GME) carve-out. This is a significant change to payment policy under section 1876 Medicare "risk" contracts. In accordance with section 1853(c)(3)(B), under § 422.254(e)(2), we will remove all graduate medical education payments in the base rate between 1998 and 2002 on the following schedule: 20 percent in 1998; 40 percent in 1999; 60 percent in 2000; 80 percent in 2001; and 100 percent in 2002 and thereafter. These GME funds will be removed from the area-specific portion of the blended rate. Since the national portion of the blend is computed based on the adjusted local rates, it also reflects removal of these GME funds. Teaching hospitals will be paid directly for the GME costs associated with Medicare managed care enrollees under § 412.322.

Additionally, pursuant to section 1853(c)(3)(C)(ii), in § 422.254(e)(3), to the extent we estimate that the 1997 per capita base rate reflects payments to State hospitals under section 1814(b)(3), we will make appropriate adjustments to the M+C payment rate. Payments are made to hospitals located in Maryland under this provision.

Finally, pursuant to section 1853(c)(3)(D), in § 422.254(e)(4), we provide that HCFA may substitute a rate for the 1997 capitation rate a rate that is more representative of the costs of the enrollees in the area if the 1997 rate varied by more than 20 percent from the 1996 rate.

National Component of the Blended Capitation Rate: The national component of the blended capitation rate has two major features: (1) the national standardized annual capitation rate; and (2) the national input-price-adjusted capitation rate.

The national standardized annual capitation rate is a weighted average of all area-specific rates adjusted for risk factor weights used to calculate payments as though all eligible individuals were members of an M+C plan. The calculation for the national standardized annual capitation rate is described at § 422.254(f).

The input-price-adjusted annual national capitation rate is adjusted for geographic variation in the prices of goods and services used to produce medical services and is the sum of the products of three amounts:

- The national standardized annual capitation rate for the year, which consists of the weighted average of all area-specific capitation rates.
- The proportion of the rate that is attributable to each type of service.
- An index that reflects (for that year and that type of service) the relative input price of services in the area, as compared to the national average input price for these services.

The input-price-adjusted annual national capitation rate is described in § 422.254(g).

4. Adjustments to Capitation Rates and Aggregate Payments (§ 422.256)

Beginning with 1999 payment rates, we will adjust all area-specific and national capitation rates (and beginning with the 2000 payment rates, the minimum amount rate) for the previous year to reflect any differences between the projected national per capita growth percentages and the current estimates of those percentages.

We will also adjust for national coverage determinations (NCD) that were significant cost as defined in § 422.109 and defined above. An NCD is a national policy statement regarding the coverage status of a specified service that we make under administrative authority and publish in the **Federal Register** as a notice of HCFA Ruling. (The term does not include coverage changes mandated by statute.)

If we determine that the cost of furnishing a service subject to an NCD is "significant," we will adjust capitation rates for the next calendar year to take into account the cost of that service. Until the new capitation rates are in effect, the M+C organization would be paid through original Medicare for the provision of such services.

Risk Adjustment: Section 1853(a)(3) requires us to develop and submit to the Congress, by March 1, 1999, a report on a proposed method of risk adjustment of M+C payment rates. We are also required to implement a risk-adjustment methodology for payment periods beginning on or after January 1, 2000. We provide for such risk adjustment in § 422.256(d). Under the previous payment methodology, the AAPCC, we used a demographic risk adjuster that has been criticized as an inadequate predictor of health care costs.

Nonetheless, until the new risk adjustment methodology is implemented in 2000, we will be using the same demographic adjusters used under the AAPCC method to make demographic adjustments under § 422.256(c) to the capitation rate determined under § 422.252. Section 1853(a)(3)(C) specifically directs HCFA to implement health-status based risk adjusters, as well as "other demographic factors." Section 1853(a)(3)(D) requires that, with the exception of enrollees in M+C RFB plans, the same risk adjustment methodology be used for all enrollees in M+C plans, regardless of plan type. The implementation of health-status based risk adjusters has major implications for M+C organizations' data requirements, as discussed directly below.

5. Encounter Data (§ 422.257)

Section 1853(a)(3)(B) addresses the collection of encounter data from M+C organizations needed to implement the risk adjustment methodology. The Act requires that the collection of inpatient hospital data for discharges beginning on or after July 1, 1997 and allows the collection of other data no earlier than July 1, 1998. The statutory language is tied to the creation of risk-adjusted payment rates, as defined at § 422.256(c) and (d) of this rule. Requirements concerning collection of encounter data apply to M+C organizations with respect to all their M+C plans, including and private fee-for-service plans.

There are two different ways encounter data are used for risk-adjustment purposes. To calculate payment rates, encounter data are necessary to tie payment to expected patient resource use using diagnosis codes. The initial risk-adjusted payment will be based on inpatient hospital encounter data. However, use of an inpatient-based system in the long run has two major weaknesses: (1) It provides M+C organizations with an incentive to hospitalize their enrollees in order to receive additional payment; and (2) a risk-adjustor system based only on inpatient hospital diagnosis codes will not allow more accurate payment for the chronically-ill-but-not-hospitalized. For both of these reasons, we have developed a more comprehensive risk-adjustment methodology that uses diagnosis data from physician services and hospital outpatient department encounters. In addition, physician services data include data from limited license practitioners, such as clinical psychologists and nurse midwives who provide services independently, but do not include nonprofessional services ordered by physicians as a result of the initial physician services furnished, such as laboratory services and durable medical equipment.

Encounter data are also necessary to "recalibrate" any risk-adjusted payment model. Recalibration is necessary to adjust the payment models for improved coding. For example, upcoding may occur if plans improve coding of beneficiary diagnoses and, as a result, the average use of resources for enrollees in a particular category may be less than when the relative payment rates were determined. When this happens, the average actual expenditures per enrollee for these diagnoses are less than the average expenditures used to assign the original payment weights. The result is overpayment for some diagnoses in the risk adjustment model. To account for possible coding changes, all risk adjustor payment model diagnosis weights would be recalculated, or "recalibrated" based on encounter data gathered after implementation of risk adjustment. A preferred method for full recalibration requires that all services provided to each M+C plan enrollee be priced and the total cost of care determined for each enrollee. This approach would require that organizations submit encounter data for all services provided to each enrollee. An alternative approach would require the organizations to submit to HCFA the cost of providing medical care for each Medicare enrollee, but organizations might oppose such a requirement as too intrusive.

While the purpose of collecting the encounter data will be to calculate risk-adjusted payments, there are a wide variety of other uses of whatever data we collect. Quality improvement targets can be identified using encounter data. Our ability to monitor the care received by M+C enrollees through targeted special studies (such as an examination of post-acute care utilization patterns) will be greatly enhanced by the availability of encounter data. Encounter data will also be useful for program integrity functions, both by providing additional utilization norms for original Medicare billing and by providing additional information regarding M+C organizations' behavior.

Timing of Encounter Data Collection: The first issue to address with regard to data collection is the ability of the organizations to generate the necessary data and to ensure accurate transmission. While some organizations will be able to transmit encounter data quickly and with little difficulty, others will be further behind in their internal information systems development. To the extent that organizations have capitated arrangements with their providers, they may not currently require encounter-type data from those providers. The ability to generate encounter data may well vary by type of service provided as well as by type of organization submitting the data. All organizations will have to conform to the HIPAA information system standards regarding encounter data formats by 24 months (36 months for small organizations) after the effective date of the final rule (currently estimated to be published in the fall of 1998), so the main issues with regard to the organizations should be transition issues rather than long run implementation issues.

HCFA has issued instructions delineating a specific timetable for M+C organizations to submit inpatient hospital data. M+C organizations will be required to select a fiscal intermediary designated by HCFA to transmit data.

Given any start date, comprehensive risk-adjusted payments will be made about 3 years after the year of the initial collection of outpatient hospital and physician encounter data. Similarly, recalibration of the risk-adjusted payments to reflect managed care practice patterns could occur about 3 years after the complete data are collected. In order to minimize the period for which payments are determined based on inpatient hospital data only, we will provide advance notice to M+C organizations to collect and submit physician, outpatient hospital, SNF, and HHA data beginning no earlier than October 1, 1999; and all other data HCFA deems necessary beginning no earlier than October 1, 2000.

Because M+C organization payments will depend on the data transmitted and because M+C organizations are the entities with which HCFA contracts, we will hold the M+C organization responsible for transmission of the data. If the M+C organization is held responsible, it follows that they should transmit the data directly, rather than monitoring the transmission by their providers. We will allow organizations to hire third party data transmitters, but the M+C organization will be responsible for the accuracy and completeness of the data transmitted.

Data Format: The format of the data we will require will be identical to the data we require of original Medicare providers of similar services, because pricing of the data using original Medicare's methods is necessary for recalibration. The data will be processed using designated HCFA contractors. Providers are familiar with the HCFA

1500 (or its electronic equivalent) and the electronic UB–92 (or other electronic equivalent) through their original Medicare billings. In addition, organizations will have mechanisms in place to receive UB–92 data from hospitals and send it to fiscal intermediaries by July 1, 1998, because of the requirements for submission of inpatient encounter data. It would clearly be beneficial to all parties to use the UB–92 and this transmission format for any other required data that is currently submitted on the UB–92 in original Medicare. There are no current organization-to-carrier links for data HCFA currently processes on the electronic version of the HCFA 1500. From the provider, contractor, and HCFA point of view, it is clear that use of the electronic version of the HCFA 1500 would minimize any data collection burden.

Data Accuracy: Audit of the data will be necessary to ensure accuracy; any audit efforts will include medical record review for a portion of the submitted data. Statistical analysis (for example, examination of hospitalization rates for various organizations and inquiry into outliers) will be combined with traditional audit methods in order to maximize our examination of the data while managing the amount of contractor resources used for audit.

6. Announcement of Annual Capitation Rates and Methodology Changes (§ 422.258)

Previously, under section 1876, we were required to announce Medicare risk contractor payment rates by the first week in September, no later than 45 days after publishing for comment our mid-July announcement of payment methodology changes. This schedule was designed to allow HMOs and CMPs time to consider the coming year's payment rates, decide about their continued participation in the Medicare program, calculate their Adjusted Community Rate (ACR) proposal, and, finally, afford us the time to approve or disapprove the ACR proposal prior to the January 1 contract effective date.

Under section 1853(b)(1), starting in 1998, we must announce rates by March 1 of the year prior to the year the rates apply. We must include in this announcement a description of the risk and other factors and explain the methodology in sufficient detail to enable M+C organizations to compute monthly adjusted capitation rates for individuals in each of their payment areas.

The March 1 announcement will ensure that subsequent events can occur to meet the November annual coordinated election period stipulated in section 1851(e)(3). As under prior law, 45 days prior to announcing payment rates on March 1, section 1853(b)(2) requires us to provide notice of changes in the methodology and assumptions used in the previous year.

7. Special Rules for Beneficiaries Enrolled in M+C MSA Plans (§ 422.262)

The BBA establishes special rules for beneficiaries enrolled in M+C MSA plans, and we discuss them in detail under section III. below.

8. Special Rules for Coverage That Begins or Ends During an Inpatient Hospital Stay (§ 422.264)

The BBA contains special payment rules for situations where an M+C enrollee's coverage begins or ends while the Medicare beneficiary is a hospital inpatient. Section 1853(g) provides that, where a beneficiary is receiving inpatient hospital services from a hospital covered under original Medicare's prospective payment system (PPS) or another M+C organization on the effective date his or her M+C election of a new M+C plan, payment for inpatient services (up until the date of discharge) would continue to be the responsibility of the original Medicare program or previous M+C organization. The M+C organization offering the newly elected M+C plan would not be responsible for inpatient hospital service payment until the date of discharge, and original Medicare or the previous M+C organization would pay the full amount for that beneficiary for that inpatient episode, even if it extends beyond the effective date of a beneficiary's M+C election.

In the case of a beneficiary's M+C plan election ending while he or she is a hospital inpatient, the M+C organization remains responsible for payment for inpatient hospital services furnished by a hospital after expiration of enrollment up until the date of discharge. Payment for these services would not be made under Medicare's PPS system, and the responsible M+C organization would not receive any payment from us for the hospitalized individual during the period the individual was not enrolled.

9. Special Rules for Hospice Care (§ 422.266)

Section 1853(h) of the BBA contains special provisions for Medicare beneficiaries who elect hospice care concurrent with their enrollment in an M+C organization. Specifically, an M+C organization must inform each Medicare enrollee eligible to elect hospice care under section 1812(d)(1) about Medicare hospice programs within the M+C plan's service area. If it is common practice to refer patients to hospice areas outside the service area, the organization must inform the M+C enrollee of that as well. This information must be provided to beneficiaries in a manner that objectively presents all available hospice providers, including a statement of any ownership interest held by the M+C organization or a related entity. If the M+C organization has an ownership or other financial interest in one or more of the available hospice providers, M+C plan enrollees cannot be required to use that hospice provider.

BBA payment provisions for hospice care state that our monthly payment to the M+C organization will be reduced to an amount equal to the adjusted excess amount in the M+C plan's approved ACR. Beyond the adjusted excess amount, we pay through original Medicare for hospice care furnished to the M+C plan enrollee. We also pay through original Medicare (to the M+C organization), for other Medicare-covered services furnished to the hospice patient.

Unless the individual disenrolls from the M+C plan, an M+C enrollee electing hospice continues his or her enrollment in the plan and is entitled to receive through the plan any benefits, other than those that are the responsibility of the Medicare hospice.

10. Source of Payment (§ 422.268)

As under the section 1876 risk program, we will determine which proportion of payments to M+C organizations comes from the Hospital Insurance Trust Fund (Part A) and which proportion of payments comes from the Supplementary Medical Insurance Trust Fund (Part B). We determine these proportions based on the actuarial value of total benefits under both parts.

G. Premiums and Cost-Sharing

Subpart G of part 422 details provisions found in section 1854 for the M+C program. In this subpart we discuss how limits on M+C plan enrollee premiums and other cost sharing are established through the ACR approval process. The ACR process is applicable to all M+C plans except M+C MSA plans. M+C MSA plans are not required to submit an ACR, but other information must be submitted for HCFA's review (see discussion below). We discuss limitations that the process imposes on other cost-sharing that M+C organizations may impose on Medicare enrollees for the M+C plan they elect.

Note that there are a number of terms pertinent to the following discussion, and they are defined in § 422.302 of this rule. ACR and APR are terms that were used under section 1876 risk program. Section 1854(b) discusses the definition of the terms relating to beneficiary premiums. The term additional revenues is discussed in detail in section 5 below.

As under the section 1876 risk program, the ACR process under the BBA serves three important purposes. First, HCFA examines an M+C organization's ACR proposal for each M+C plan to determine whether Medicare payments in excess of the amount the organization would charge commercially for Medicare-covered benefits are passed on to beneficiaries in the form of added additional benefits. Second, we review ACR proposals to determine whether the structure of premiums, deductibles, copayment, and coinsurance charged to beneficiaries are within the limits established by law as required under section 1854(f)(1)(A). Third, benefit package information is reviewed to determine whether the benefit package is in compliance with the principles contained in subpart C.

We have taken into account that the M+C program is a significant departure from the section 1876 risk contracting program it replaces. Therefore, we are allowing a special period during which organizations will be able to add benefits (at no additional cost to the M+C plan enrollee) or lower premiums or cost-sharing mid-year. We also are providing for the submission of ACRs on a date other than May 1 if a contract will begin on a date other than January 1. The transition rules for this period are found in § 422.300(b). This special period will end on December 31, 2001.

1. Rules Governing Premiums (§ 422.304)

This section of the regulation implements provisions of the BBA relating to premiums paid by (or behalf of) beneficiaries. Each Medicare enrollee must be afforded the opportunity to pay the M+C plan premium on a monthly basis and, as under the section 1876 risk program, pursuant to Section 1128B(b) of the Act, the M+C organization may not provide for cash or other financial rebate as an inducement for enrollment (or for any other reason).

As discussed in above, section 1852(a)(1) requires an M+C organization to include in its M+C plan all services covered under original Medicare (except hospice care) that are available to Medicare beneficiaries in the area in which services are covered under the M+C plan. In addition, additional benefits must be provided to all enrollees electing the M+C plan (see section 1854(f)(1)). Section 1852(a)(3) allows an M+C organization to add supplemental benefits to the M+C plan either at the M+C organization's discretion (with our approval) or at the enrollee's election. For these benefits offered through a coordinated care plan, section 1854(e) does not allow the M+C organization in total, for the year, to impose a total average cost to the beneficiary, with an actuarial value greater than the actuarial value of original Medicare's deductibles and coinsurance for items and services covered by original Medicare plus the actuarial value approved through the ACR process for supplemental services. For M+C PFFS and M+C MSA plans, see discussion below.

Section 1854(c) provides that M+C basic and supplemental beneficiary premiums and M+C MSA premiums may not vary among individuals enrolled in the plan. This means that all enrollees in a given M+C plan must be charged the same premium amount for basic benefits and for any supplemental benefits the M+C organization may choose to offer. In the case of coordinated care plans, this uniform premium counts toward an overall limit on the actuarial value of beneficiary liability in section 1854(e) (discussed further below). Thus, in the case of coordinated care plans, the actuarial value of any cost-sharing imposed under the plan would also be uniform, since a uniform premium would be subtracted from a uniform overall limit to determine the amount that can be charged in cost-sharing.

We believe that section 1854(c) reflects congressional intent that all beneficiaries enrolled under a particular M+C plan pay the same amount. While cost-sharing amounts are not expressly mentioned, in the case of coordinated care plans, there is a uniform limit on the actuarial value of cost-sharing. Accordingly, pursuant to our authority in section 1856(b)(1) to establish M+C standards, we are providing in § 422.304(b) that M+C organizations may not vary the level of copayments, coinsurance, or deductibles charged for basic benefits or supplemental benefits among individuals enrolled in an M+C plan.

2. Submission of Proposed Premiums and Related Information (§ 422.306)

Section 1854(a) requires each M+C organization to submit no later than May 1 information about the M+C plan the organization wants to offer in the subsequent year. As under the Medicare section 1876 risk program, except in the case of M+C MSA plans, such information includes a complete description of the services included in the M+C plan, ACR and service area information, premium amounts, and descriptions of enrollee cost sharing. For M+C MSA plans, organizations have to submit the MSA premium that is used to determine the MSA deposit. No ACRs are required for M+C MSA plans. Pursuant to our authority in section 1856(b)(1), we have added a new requirement that M+C organizations also submit information on amounts collected in the previous contract period for basic benefits. We have done this to assure Medicare enrollees are not being charged cost-sharing that exceeds the limits in section 1854(e)(see § 422.308).

Section 422.306(a) reflects the requirement in section 1854(a)(1) that the information in paragraphs (b), (c), and (d) of § 422.306 be submitted by May 1 of the year prior to the year for which the information is submitted. This information is needed timely in order for HCFA to comply with the requirement in subpart B that comparative information on M+C plans be provided to Medicare enrollees. As noted above, during the transition period prior to 2002 provided for in § 422.300(b), M+C organizations may be permitted, at HCFA's discretion, to submit applications and ACR information on a flow basis and as discussed in section K below, under § 422.504(d) contracts could begin on a date other than January 1. In such a case, benefit package and pricing structures must be approved before the contract can take effect. Beginning with the 2002 calendar year, however, anyone wishing to offer an M+C plan in that year *must* submit an ACR by May 1 of the previous year (May 1, 2001 in the case of 2002).

If the information submitted is not complete, accurate, or timely, HCFA has the authority to impose sanctions under subpart O or may choose not to renew the contract.

We will review and approve all information submitted except for any amounts submitted by M+C MSA plans and premiums submitted by M+C private fee-for-service plans. Premiums and cost sharing will be reviewed in accordance with the rules established in § 422.310. Benefits offered under the M+C plan will reviewed in accordance with the rules established in Subpart C.

3. Limits on Premiums and Cost-Sharing Amounts (§ 422.308)

The rules in this section set the limits on the amount an M+C organization may charge a Medicare enrollee of an M+C plan. Section 1854(b) specifies that

the premium that a beneficiary is charged under an M+C plan other than an M+C MSA plan is the M+C monthly basic premium, plus any M+C supplemental premium. In the case of an M+C MSA plan, the beneficiary is charged only any M+C supplemental premium that may apply. The limits of Medicare enrollee liability are:

- For M+C basic benefits (Medicare covered services and additional benefits) offered by coordinated care plans: 12 times the basic monthly premium, plus the actuarial value of plan cost-sharing (copayments, coinsurance, and deductibles) for the year, cannot exceed the actuarial value of original Medicare's deductibles and coinsurance for the year or, if less, the amount authorized to be charged in the ACR (see § 422.310).
- For M+C basic benefits (Medicare covered services and additional benefits) offered by M+C private fee-for-service plans: the actuarial value of plan cost sharing (copayments, coinsurance, and deductibles) for the year, cannot exceed the actuarial value of original Medicare's deductibles and coinsurance for the year or, if less, the amount authorized to be charged in the ACR (see § 422.310).
- For supplemental benefits offered by a coordinated care plan: 12 times the M+C monthly supplemental premium plus the actuarial value of plan cost sharing (copayments, coinsurance, and deductibles) cannot exceed the ACR for such benefit or, if less, the amount authorized to be charged in the ACR (see § 422.310).

It is possible for an M+C organization to have M+C plan enrollees that are entitled to Medicare Part B benefits only. Section 1876(k)(2) specifies that existing Part B enrollees under section 1876 risk contracts on December 31, 1998 may remain as enrollees of the organization in accordance with regulations under section 1856(b)(1) if the organization enters into an M+C contract on January 1, 1999. Pursuant to sections 1876(k)(2) and 1856(b)(1), this final rule provides for such continued Part B-only enrollment, and § 422.308 provides that the limit on enrollee charges is the same as the limit that applies to other enrollees, except that the limit is based only on the actuarial value of cost sharing paid under Part B of original Medicare.

Also pursuant to our authority in sections 1876(k)(2) and 1856(b)(1), in § 422.308(a)(3), we impose a limit on the liability of Part B-only enrollees for an M+C organization's coverage of services that would be covered by Medicare Part A if the enrollee had Part A coverage. Specifically, we provide that the premium and cost sharing charged for such coverage may not exceed the lesser of what Medicare would pay an M+C plan in capitation for the services, plus the actuarial value of Medicare Part A deductibles and coinsurance, or the ACR for such services.

The above-described limits on enrollee liability apply to enrollee costs incurred for services furnished by noncontracting providers as well as providers that contract with the M+C organization offering the M+C plan in which the beneficiary is enrolled. In the case of contracting providers, limits on enrollee liability would generally be delineated in the contract between the provider and the M+C organization. Also, in the case of most coordinated care plans (for example, HMOs), it could be assumed that most nonemergency services will be obtained through contract providers.

Thus, to the extent an M+C coordinated care plan provides for different cost sharing in the case of noncontracting providers, it is not difficult to estimate the percentage of services that will be obtained at that level of cost sharing, when making the overall projection of the actuarial value of the cost sharing structure. In the case of M+C private fee-for-service plans, it is less clear to what extent noncontracting providers will be used, and the information on actual cost sharing from the prior year will be particularly valuable in assessing the accuracy of actuarial projections by the M+C organization. We note that in all cases, beneficiary liability is limited to the cost sharing provided for under the plan in the case of noncontract provider services. While sections 1852(k) and 1866(a)(1)(O) require noncontracting providers to accept as payment in full the amounts that they would be required to accept under original Medicare, balance billing to the beneficiary may be permitted under original Medicare but it is not permitted under the M+C plan in question. The M+C organization must hold beneficiaries harmless against any such balance billing. *See* section IV. below for a discussion of this issue in connection with M+C private fee-for-service plans and section III in connection with M+C MSA plans.

4. Incorrect Collections of Premiums and Other Cost Sharing (§ 422.309)

This section contains procedures to be used in situations where an M+C organization collects more than the amount that is allowed to be charged to the Medicare enrollee. These procedures were developed using the rules previously applied under section 1876 and promulgated under our authority in section 1856(b)(1) to establish standards under Part C.

Section 1857(d) requires that at least ⅓ of the M+C organizations be audited for, among other things, data used in the submitted ACR and all charges to the M+C plan enrollee for benefits covered under the M+C plan. These audits may reveal that the M+C organization has been overcharging the M+C plan enrollees. Section 422.309 requires the M+C organization to refund these over collections through an adjustment to current and future premiums allowed to be charged across all M+C plan enrollees.

We note that in addition to the above requirements for refunding amounts incorrectly collected, an M+C organization that collects amounts in excess of those permitted is subject to intermediate sanctions and civil money penalties under subpart O. *See* section 422.752(a)(2) and discussion below in section II. O. of the preamble. Refunding amounts improperly collected, at a minimum, would be a prerequisite to the lifting of such sanctions.

5. ACR Approval Process (§ 422.310)

Section 1854 requires that an ACR proposal be submitted each year for each M+C coordinated care plan or M+C private fee-for-service plan, and that premiums be filed for MSA plans. Section 422.310 of this rule sets forth the rules M+C organizations must follow to determine the limits placed on an M+C plan's price structure (premiums, copayments, coinsurance, deductibles, etc.). Since this regulation was not published until after May 1, 1998, new requirements under this rule discussed below will apply to contract periods beginning on or after January 1, 2000. For contract periods beginning before January 1, 2000, M+C organizations shall use the rules promulgated in accordance with section 1876 for risk contractors to determine the limits placed on M+C plan's price structure.

Under the existing ACR process, a M+C organization must establish an initial rate for non-Medicare enrollees for each M+C plan offered. This rate is determined through a community rating method (defined in section 1308 of the Public Health Service Act) or an aggregate premium method. The initial rate is then modified by the relative difference in utilization characteristics of the Medicare population compared to the non-Medicare population included in the initial rate. Additional adjustments may be made with our agreement. Those M+C organizations that do not have a non-Medicare

population cannot establish an initial rate. These M+C organizations will be allowed to use an estimate of the ACR value for a service or services offered using generally accepted accounting principles. These estimated values will be treated as additional adjustments for our review.

The ACR computation places a limit on the beneficiary premiums and cost-sharing amounts of an M+C plan, and we will only approve the beneficiary premiums and cost-sharing amounts proposed by an M+C organization for a specific M+C plan if they do not exceed the ACR limits.

As noted above, § 422.310 contains new requirements for calculating ACRs that will require existing section 1876 contractors to change the methodology they have used to calculate their ACRs under section 1876. We recognize that section 1856(b)(2) provides that consistent with the requirements of Part C, standards established under Part C should be based on standards established under section 1876 to carry our analogous provisions of that section. The requirements in § 422.310 are based on, and fully consistent with, the existing section 1876 requirements in § 417.594. An M+C organization following the methodology set forth in § 422.310 would fully comply with the existing ACR provisions in § 417.594.

However, based upon our years of experience under the section 1876 program, we have determined that the language in § 417.594 permitted HMOs and CMPs to use methods for calculating their ACRs that produced ACRs that we do not believe accurately reflected the statutory standard implemented in that section. Indeed, the existing methodology has been criticized by the General Accounting Office and the Office of the Inspector General as inaccurate, and subject to modification by organizations. The existing methodology also did not provide for necessary adjustments (for example, based upon changes in utilization assumptions in anticipation of changes in cost sharing structures, or changes in Medicare coverage) that we provide for in § 422.310. Also, as discussed below, some of these changes accommodate the fact that some organizations do not maintain data used under the old methodology (service statistics) but do maintain data (cost data) used under the new methodology in § 422.310. Finally, the existing ACR form necessarily has to be changed to adapt to the new options under the M+C program.

For all of the above reasons and others discussed below, pursuant to our authority in section 1856(b)(1) to establish standards for M+C organizations, and consistent with the provision in section 1865(b)(2) that such standards be based on section 1876 standards, we have built on the existing ACR methodology in § 417.594 but refined this methodology in order to ensure the accuracy of ACRs under the M+C program.

Specifically, we have added the following new requirements to the provisions in § 417.594:

1. Revision of data requirements used to develop differences in utilization characteristics of the Medicare population from a relative service ratio to a relative cost ratio (for additional revenue, a relative excess revenue ratio) experienced in a prior period.

2. Separation of the administrative component into two parts—an administrative cost component and a component that reflects revenues collected in excess of costs.

3. Provision for an M+C organization to adjust for relative differences that the organization expects to encounter in the period covered by the ACR that were not reflected in the prior period. Below we discuss each in turn, including where the new process diverges from the former ACR methodology.

Revision of Data Requirements Used to Develop Differences in Utilization Characteristics of the Medicare Population from a Service Ratio to a Cost Ratio Experienced in a Prior Period: Currently, risk contracting plans (HMOs) under section 1876 of the Act use a relative volume/complexity (V/C) factor to modify commercial premiums for each health care component (e.g. inpatient hospital, physician) to account for differences in utilization characteristics between commercial members and Medicare members. The modified commercial premium is the ACR value for that health care component applicable to the Medicare enrollee.

Currently, HMOs are directed to develop the V/C factors using comparative service statistic ratios on a health care component basis. Service ratios require HMOs to supply a large amount of service statistics.

Risk contractors assert that they, as a rule, do not keep service statistics in the same manner, format, and/or detail needed to compute these ratios. Some HMOs have resorted to using statistics gathered from one commercial package to be compared to all Medicare enrollee statistics. Others have used estimations of service statistics (especially for those services not offered by the HMO in the past).

Managed care organizations keep detailed records on the cost of care included in the benefit packages sold. Since the cost of providing medical care is a function of both volume (number of services) and complexity (price of the service), M+C organizations could compare the direct cost of medical care (incurred in a previous period) between the organization's commercial and Medicare populations on an average per enrollee basis to account for differences in utilization characteristics of the respective populations. For those services not offered in the past, the M+C organization could use an estimate of the cost to establish an ACR value for the new service.

We believe this modification of data requirements will make the ACR more accurate, easier to process, and ultimately, easier to verify. Costs could be compared from year to year to establish the reasonableness of the data provided. In addition, cost data as reported could be compared to other required reports and the organization's financial statements. Later, during monitoring visits, costs could be compared to the organization's financial records.

This approach is justified in view of the expanded participation of different types of M+C plans authorized in the BBA. BBA provisions include organizations offering new types of M+C plans that may not have an enrolled commercial population and, without an enrolled commercial population, these organizations would be unable to complete the current ACR. Under the new method, these M+C organizations would be allowed to develop a cost estimate for the purpose of establishing an ACR value for the Medicare population.

Separation of Administrative Component into Two Components—an Administrative Cost Component and a Component that Reflects Revenues Collected in Excess of Costs: Currently, HMOs are directed to bundle that part of the commercial premium that represents any excess revenue over expenses with administration into one component. In § 422.302, we refer to the component of the premium that represents revenue in excess of costs incurred as "additional revenues." Specifically, we define "additional revenues" to mean revenues collected or expected to be collected from charges for M+C plans offered by an M+C organization in excess of costs actually incurred or expected to be incurred. Additional revenues would include such things as revenues in excess of expenses of an M+C plan, profits, contribution to surplus, risk margins, contributions to risk reserves, assessments by a related entity that do

not represent a direct medical or related administrative cost, and any other premium component not reflected in direct medical care costs and administrative costs.) The combined component representing administrative and excess revenues was then converted to a Medicare value using the same method the HMO used to compute the amount for commercial enrollees. HMOs have consistently claimed they use a percentage method (For example, administration is calculated as a specific percentage of health care components). In effect, this increases the administration and additional revenues anywhere from 300 percent to 500 percent for Medicare. In addition, this bundling assumes that both administration and additional revenues are similar in nature and should be treated the same.

Under the new ACR, we are requiring M+C organizations to divide the administrative component into two parts and modify each part with a factor that is consistent with each part. We believe this will provide HCFA with data that is both more accurate and more useful.

Administrative costs will be included in the ACR computation in the same manner as they are incurred in commercial premiums. M+C organizations will be required to reveal projected amounts of additional revenues to HCFA for each population group (commercial and Medicare). M+C organizations would be required to justify larger additional revenues projected for the Medicare population in relation to their commercial population.

Construction of a Method for an Organization to Adjust for Relative Differences the Organization Expects to Encounter in the Period Covered by the ACR that Were not Reflected in the Prior Period: Section 1876 allowed for modification of the initial rate by a relative factor of services furnished in a prior period. Implementing regulations did not allow for any other modifications to the initial rate in establishing the ACR for a service or services, and we have since recognized that additional modifications to the initial rate may be necessary. For example, Medicare coverage may be increased from one year to the next. If the organization did not provide the service in the past and no additional modifications to the initial rate were allowed, the organization could not adjust for the new service in its ACR. Organizations also had no method for making adjustments to take into account projected changes in utilization patterns that would result from changes in cost sharing amounts. We have included a provision in this rule to allow for such changes.

M+C organizations will be allowed to further reduce the ACR values so that the ACR values equal the actuarial value of the charge structure of the M+C plan.

6. Requirement for Additional Benefits (§ 422.312)

If the ACR calculation for an M+C plan produces an excess amount (the difference between the average of the M+C per capita rates of payment (APR) and the ACR value (less the actuarial value of original Medicare's deductibles and coinsurance)) for Medicare covered services, the M+C organization is required to use that amount as follows:

- First, the M+C organization may elect to contribute part or all of the excess amount to a stabilization fund;
- Second, the M+C organization may use the remainder to fund additional services not covered by Medicare; and
- Third, the M+C organization must use any remainder to reduce the premium and/or cost sharing allowed for services covered by original Medicare.

A number of rules contained in this section were developed using the rules under section 1876, though certain changes to those rules were made to comply with new provisions in the BBA. For example, the rules for the stabilization fund under section 1876 were largely incorporated in this section. However, section 1854(f)(2) revised the time period and disposition of those funds at the end of that time period. We have incorporated these changes in § 422.312(c).

H. Provider-Sponsored Organizations

This interim final rule makes certain technical and conforming changes to existing subpart H of part 422. These changes are discussed in section II.R. of this preamble.

I. Organization Compliance With State Law and Preemption by Federal Law

1. State Licensure (§ 422.500)

Among the organizational and financial requirements for M+C organizations, section 1855 of the Act requires that an organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers an M+C plan. (An exception to the licensure requirement is made for PSOs, as provided for in part 422 subpart H.) Section 1855(b) specifies the level of risk that an organization assumes under an M+C contract (i.e., full risk for the M+C benefit package), and the extent to which the organization may insure against such risk or may pass off all or part of the risk to subcontracting providers. The requirements of the statute result in a two-pronged test of appropriate licensure, consisting of the licensure requirement itself and a scope of licensure requirement.

Licensure and Scope of Licensure: With regard to the licensure requirement, although the BBA uses the term "licensure," we have interpreted the provision as requiring a license or some other type of certification (such as a certificate of authority) that represents permission granted by the appropriate State authority for the organization to operate within the State as a risk-bearing entity offering health insurance or health benefits. Having met the State licensure requirement, an organization must also show that the ability to offer an M+C plan of the type they wish to offer is within the scope of its State licensure or State authorization. For example, an organization that offers only a prepaid dental plan in a State could be licensed as a risk-bearing entity, but its licensure status may not permit the organization to offer a health benefits plan that includes a comprehensive range of services, as would be necessary under an M+C contract. Similarly, a State may require an organization that is a licensed HMO to obtain separate licensure as an indemnity insurer in order to offer an M+C point-of-service (POS) plan, on the basis that the HMO scope of licensure does not include the ability to offer what is considered an indemnity product. (A State's requirement that an organization have an indemnity license in order to offer a POS product is not superseded by the Federal preemption provisions discussed below.)

In some States, a Medicaid HMO may operate without a license from the department of insurance or other State agency that licenses organizations offering health benefits or health insurance in the commercial and Medicare markets. The Medicaid plans operate under the authority of the State Medicaid agency, which may be the agency establishing solvency standards for such organizations, as required by section 1903(m)(1)(A)(ii). The State authorization for these plans may be viewed as a limited scope licensure, enabling plans to operate as Medicaid contractors only, and not in other segments of the health insurance market.

To establish the licensure status of organizations, and in particular to determine compliance with scope of licensure requirements, we will require, as part of the application process for

new applicants, documentation that both the licensure and scope of licensure requirements are met. Organizations must provide verification from the appropriate State regulatory body authorized to license Medicare risk products demonstrating that the licensure status of the organization enables it to offer the M+C plan, or plans, it intends to offer. This would ensure that, in the case of an organization only authorized to offer a Medicaid plan, for example, solvency standards appropriate to an M+C product are met. In the case of non-commercially licensed entities, we are requiring that they obtain a special certification from the State that they meet appropriate solvency standards.

As noted in the BBA, "The fact that an organization is licensed in accordance with paragraph [1855(a)](1) does not deem the organization to meet other requirements imposed under this part" (1855(a)(3)). That is, while the State licensure requirement is imposed on all plans as a prerequisite for contracting as an M+C organization, licensure in and of itself does not guarantee that an organization will be able to obtain an M+C contract. The organization must meet other applicable requirements of this part in order for us to grant an M+C contract.

2. Federal Preemption of State Law (§ 422.502)

Section 1856(b)(3)(A) of the Act provides for a Federal preemption of State laws, regulations, and standards affecting any M+C standard if the State provisions are inconsistent with Federal standards (a preemption policy we refer to below as a general preemption). There is also a specific preemption of State laws (1856(b)(3)(B)) in three areas where Federal standards "preempt the field"; that is, regardless of whether State laws are inconsistent or not, Federal standards preempt State law, regulations, and standards. The general and specific preemption of State law applies to "Medicare benefits and Medicare beneficiaries," as stated in the conference report that accompanied the BBA. The BBA preemption provisions do not extend to non-Medicare enrollees or activities or non-Medicare "lines of business" of organizations that have M+C contracts.

Prior to the BBA, section 1876 of the Act (governing Medicare risk and cost contracts with HMOs and competitive medical plans) did not contain any specific preemption provisions. However, section 1876 requirements could preempt a State law or standard based on general constitutional Federal preemption principles, consistent with the provisions of Executive Order 12612 on Federalism. Under the guidelines of the Executive Order, section 1876 requirements did not preempt a State law or standard unless the law or standard was in direct conflict with the Federal law, or it prevented the organization from complying with the Federal law. Put another way, if Federal law permitted the HMO to do what State law required, there was no preemption. In practice, rarely, if ever, did Federal law preempt State laws affecting Medicare prepaid plans. For example, Medicare risk plans operating in States with mandated benefit laws were generally required to comply with such State laws. Compliance with the State mandated benefit law was not viewed as interfering with the ability of plans to function as Medicare risk contractors under Federal standards. (Because the BBA preemption applies only to M+C plans, this approach to preemption issues will continue to apply to cost contracts governed by section 1876 rules.)

General Preemption: The general preemption provision of the BBA will be applied in the same way that the Executive Order has been applied, in that State laws or standards will be preempted only when they are inconsistent with M+C standards, as clearly indicated in the statute. Because the BBA requires that PSOs operating under a waiver of the State licensure requirement must comply with State quality and consumer protection standards, it seems clear that the Congress expected States, in some cases, to have more rigorous or more comprehensive standards for quality and consumer protection which would enhance, rather than duplicate or be subsumed under, the M+C standards for quality and consumer protection. Thus, unless one of the specific preemptions discussed below applies, State laws or standards that are more strict than the M+C standards would not be preempted unless they prevented compliance with the M+C requirements. This is consistent with the BBA conference report language that notes that State laws apply if they provide "consumer protections in addition to, or more stringent than" the BBA. The BBA also provides that the quality and consumer protection standards with which PSOs must comply include only those requirements "generally applicable to M+C organizations and plans in the State" which are "consistent with the standards" of the BBA. That is, there are likely to be quality and consumer protection standards imposed by States that all M+C plans must comply with, and for which there is no Federal preemption.

Specific Preemption: Though the general preemption provision will be applied in the same way that the Executive Order has been applied, for the three areas in which the Congress provided for a specific preemption of State laws, the M+C standards supersede any State laws and standards. These three areas are:

- Benefit requirements:
- Requirements relating to inclusion or treatment of providers; and
- Coverage determinations ("including related appeals and grievance processes").

We are adopting a narrow interpretation of the applicability of the three areas of specific preemption, which we believe is justified by the conference report language and the overall structure of the BBA in its delineation of the relative roles of the State and Federal governments. Under the BBA, States have exclusive authority (other than in the case of PSOs) to make the determination of whether organizations are eligible to enter into M+C contracts, while under section 1876 of the Act, it was the Federal Government that designated "eligible organizations" (HMOs under title XIII of the Public Health Service Act (a Federal designation) or competitive medical plans (also a Federal designation)). Under section 1876, the Federal Government also determined solvency standards for organizations, while under the BBA this becomes a State responsibility (other than for PSOs). The conference report (p. 638) also clarifies the intended scope of preemption in the three specific areas. The report indicates the conferees seek to put M+C on a par with "original fee-for-service," where the "Federal government alone set legislative requirements regarding reimbursement, covered providers, covered benefits and services, and mechanisms for resolving coverage disputes." The conferees wish to "[extend] the same treatment to private M+C plans providing Medicare benefits to Medicare beneficiaries."

Using the analogy of original Medicare, Federal law preempts State laws and standards in certain specific areas. Under original Medicare: States cannot specify what must be included as a Medicare benefit; States do not specify the conditions of participation of Medicare providers (though they license providers and practitioners and determine their scope of practice); States may not specify how a coverage determination is to be made with respect to whether or not the Medicare program covers a benefit; and a State

does not determine the type of appeal mechanism that is to be used to appeal a coverage decision made by a Medicare carrier or intermediary with respect to a Medicare benefit. For M+C plans, the specific preemption of State laws in the three areas would prevent, for example, the application of mandated benefits laws; "any willing provider" laws and other laws mandating the inclusion of specific types of providers or practitioners; or laws that supplant or duplicate the Medicare coverage determination and appeal process as it relates to coverage of benefits under the M+C contract. However, States may have various laws and requirements that could still apply to

- Benefits (for example, a plan could be required to have a toll free number to answer benefit questions),
- Providers and practitioners generally in the State (e.g., they must all be licensed by the State and comply with scope of practice laws), and
- Laws and standards which could apply to disputes between members and health plans, as discussed below.

Under our narrow construction of the specific preemptions, and consistent with our definition of the term "benefits" at § 422.2, the specific preemption of benefit laws does not extend to State laws and standards relating to cost sharing or other financial liability standards for enrollees of health plans, though we are inviting comments on our position, outlined below, that cost sharing should not fall under the benefits preemption, as well as comments on whether there are types of cost sharing that should or should not be included in the benefits preemption.

Thus, a State law prescribing limits on cost sharing generally, or limits on cost sharing that can be imposed for specific benefits, would not be preempted. If the benefit to which the State cost sharing limits apply is not a Medicare covered benefit, however, the limits on cost sharing would only apply if the M+C organization *chooses* to offer the benefit in question. Thus, to the extent that limits on cost sharing are linked to a benefit mandate, the cost sharing limits could be seen to be *indirectly* "preempted" in that the obligation to provide the benefit to which they apply is preempted. If the M+C organization chooses not to provide the benefit that would otherwise be mandated under a preempted benefit mandate, the cost sharing limits that apply to that benefit would never come into play. We note that while cost sharing limits are not specifically preempted under the benefits preemption in section 1856(b)(3)(B)(i) and § 422.402(b)(1), cost sharing limits are still subject to the general preemption in section 1856(b)(3)(A) and § 422.402(a). Thus, to the extent the cost sharing limit would be inconsistent with M+C provisions, it would be preempted. An example of State cost-sharing requirements being preempted because they are inconsistent with M+C provisions would be a State requirement that requires all insurers and health plans to pay 100 percent of the cost of a particular service (e.g., mammography screening or other preventive care). In the case of an M+C MSA plan, we would argue that the general preemption provision applies, because the State requirement is inconsistent with the basis structure of a high-deductible plan under which covered services are not payable under the plan until the deductible is met.

To address a specific question that has arisen, State laws requiring direct access to particular providers (either contracted by the M+C organization or not under contract), and State laws requiring, for example, a second opinion from non-contracted physicians, would be superseded by the benefit and provider participation preemptions (though M+C standards in these regulations dealing with access to particular providers may have an effect that is similar to that of State laws that are superseded). This is because these requirements in essence mandate the "benefit" of access to a particular provider's services even where the services of that provider would not otherwise be a covered benefit.

We are also adopting a narrow interpretation of the scope of preemption of coverage determinations. Coverage determinations are made initially by M+C organizations and may be appealed as provided for under subpart M of these regulations. Our view is that the types of decisions related to coverage included in this specific preemption are only those determinations that can be subject to the appeal process of subpart M. These are decisions about whether an item or service is covered under the M+C contract and the extent of financial liability beneficiaries have for the cost of covered services under their M+C plan. The Medicare appeal process applies to basic benefits, mandatory supplemental benefits, and optional supplemental benefits offered under an M+C contract. The specific preemption makes the Medicare appeal process the exclusive remedy for disputes over coverage determinations, displacing any State grievance or appeal process that might otherwise be available in such cases. However, the specific preemption does not preempt State remedies for issues other than coverage under the Medicare contract (i.e. tort claims or contract claims under State law are not preempted). The same claim or circumstance that gave rise to a Medicare appeal may have elements that are subject to State remedies that are not superseded. For example, an M+C organization's denial of care that a beneficiary believes to be covered care is subject to the Medicare appeals process, but under our interpretation of the scope of the specific preemption on coverage decisions, the matter may also be the subject of a tort case under State law if medical malpractice is alleged, or of a state contract law claim if an enrollee alleges that the M+C organization has obligated itself to provide a particular service under State law without regard to whether it is covered under its M+C contract.

We are seeking public comments on our interpretation of the applicability of the three areas of pre-emption specifically the exclusion of cost sharing and financial liability standards from the federal pre-emption and the exclusion of direct access to particular providers.

As noted above, where the BBA preempts State laws and standards, any Federal preemption based on the BBA applies only to the Medicare "line(s) of business" of an M+C organization (i.e., Medicare enrollees). As such, there would be no Federal preemption of State laws which are applicable to other enrollees of the organization. Additionally, there would be no Federal preemption of State laws which are applicable to arrangements outside the scope of the BBA, such as arrangements between employers and M+C plans for the provision of negotiated employer group benefits discussed at § 422.106 of these regulations. Neither the specific nor the general preemption would apply to any aspect of such arrangements.

3. Prohibition on State Premium Taxes (§ 422.404)

Section 1854(g) of the Act, introduced in the BBA, provides that "No State may impose a premium tax or similar tax with respect to payments to M+C organizations under section 1853." Section 4002(b)(4) of the BBA makes the prohibition on premium taxes applicable to risk-sharing contracts operating under section 1876 effective the date of enactment of the BBA. This prohibition does not apply to enrollee premium payments made to M+C plans, which are authorized under section 1854.

The regulations provide clarification on the applicability of the prohibition of State premium taxes. The BBA does not

define the term "State," but elsewhere in the Medicare statute (1861(x), referring to 210(h) of the Act), the term "State" is defined to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The regulations include this definition of State for purposes of the scope of the premium tax prohibition.

The BBA is also silent as to whether the prohibition of premium taxes includes county taxes or taxes by other governmental entities within a State. The Federal Employees Health Benefits Program (FEHBP) statute, on the other hand, has more specific language on the applicability of the exemption from premium taxes. The FEHBP statute specifically extends the prohibition to "any political subdivision or other governmental authority" of a State (5 U.S.C. 8909(f)(1)).

The BBA conference report does not provide any clarification on this issue. However, a July 31, 1997 summary of the provisions of the BBA prepared by the Senate Finance Committee ("Summary: Health and Welfare Provisions in the Balanced Budget Act of 1997"), stated that "[t]he current law on federal preemption of state premium taxes or fees on Federal payments from the FEHBP to health plans will be extended to Federal payments to M+C plans and other health plans receiving capitated payments from the Medicare Trust Funds." Although the language of the BBA prohibition is not as specific as the FEHBP language, we are clarifying in these regulations that the prohibition does apply to any political subdivision or other governmental authority within a State. We believe such an interpretation is necessary because counties and other State authorities derive their powers from the State. Thus, any prohibition of State actions contained in a Federal statute should be interpreted as prohibitions on actions at any level of State government or any State or local governmental body within a State.

The BBA does not define the phrase "premium tax or other similar tax," other than by reference to the applicability of such a tax to revenue received from the Federal Government for health plan enrollees. Relying again on the FEHBP statute, we have included a provision in the regulations (§ 422.404(b) that serves to clarify the scope of what constitutes a prohibited premium tax. The FEHBP statute expressly permits States to impose taxes on the profits arising from participation as an FEHBP plan, to the extent that the tax on profits, or other taxes or fees, are general business taxes. We have included a similar exception because such taxes are not taxes applied directly and exclusively to premium revenues, and therefore should not be prohibited under section 1854(g).

The BBA premium tax prohibition does not provide for any exception to the prohibition based on the purpose of the tax. For example, some States are using a broadly applicable premium tax to fund health care coverage for individual State residents who might otherwise be uninsured (e.g., financing a State high-risk pool), or to fund a State guaranty fund that could potentially benefit enrollees of an M+C plan in the event of insolvency. Although such premium taxes do provide a social good, and may yield a direct benefit to M+C organizations and their enrollees, there are no exceptions to the premium tax prohibition included in the BBA or in these regulations. By not having allowed any exceptions, we would note that, to the extent participation in a State guaranty fund is used as means of satisfying State (or Federal) requirements for protections in the event of insolvency, M+C organizations that would otherwise have participated in the guaranty fund by paying the premium tax are likely to be required to meet alternative insolvency requirements. An M+C organization may also choose to voluntarily pay premium taxes in order to participate in such a fund.

J. Subpart J of Part 422

Subpart J of part 422 is being reserved.

K. Contracts with M+C Organizations

1. Definitions (§ 422.500)

Section 422.500 of subpart K contains definitions germane to subpart K that address provisions pertaining to contracts with M+C organizations. These definitions, for the most part, have been imported from part 417 under our authority from section 1856(b)(2). The lone exception, *Party of Interest* has been clarified in paragraph (3) to include non-profit entities.

2. General Provisions (§ 422.501)

Section 1857(a) provides that the Secretary will not permit an organization to operate as an M+C organization unless it has entered into a contract with HCFA. The statute also provides that the contract may cover more than one M+C plan.

An applicant, however, must meet certain requirements before HCFA can consider entering into a contract with it. First, in accordance with section 1855(a)(1), the applicant must be licensed (or if the state does not license such entities, hold a certificate of authority/operation) as a risk-bearing entity in the State in which it wishes to operate as an M+C organization; section 1855(a)(2), however, allows for a waiver of this requirement for Federally-waivered PSOs under certain circumstances. Second, the applicant must meet the minimum enrollment requirements specified at section 1857(b). These requirements provide that the organization must have at least 5,000 (or 1,500 if it is a Federally-waivered PSO) individuals receiving health benefits from the organization or at least 1,500 (or 500 if it is a PSO) individuals receiving benefits in a rural area. Section 1857(b)(3) gives the Secretary the authority to waive the minimum enrollment requirements for the first 3 contract years.

Third, an M+C organization must demonstrate certain administrative and managerial capabilities that we believe are essential for HCFA to examine prior to agreeing to contract with any applicant as an M+C organization. For this reason, pursuant to section 1856(b)(2) which provides for the adoption of regulations implementing section 1876, we have adopted the administration and management requirements from §§ 417.120 and 417.124 and have applied them to M+C organizations. In addition, pursuant to our authority in section 1856(b)(1) to establish standards under Part C by regulation, we will require that all M+C organizations establish a plan for complying with all applicable Federal and State standards. The compliance plan must include written policies, procedures, and standards of conduct, the designation of a compliance officer accountable to senior management of the organization, provisions for internal monitoring, auditing, accountability, and an adhered to process for reporting violations of law by the organization or their subcontractors.

Further, pursuant to our authority in section 1856(b)(1) to establish standards for M+C organizations by regulation, we are in this rule establishing an additional condition for entering into an M+C contract. Under this rule, an entity that is accepting new enrollees under a section 1876 cost contract will be ineligible to enter into an M+C contract covering the area it serves under its cost contract. Our reason for establishing this rule is to eliminate the potential for an organization to encourage higher cost enrollees to enroll under its cost contract while healthy enrollees are enrolled in its risk-based M+C plan. This rule is consistent with our longstanding policy that entities not

have both a risk and cost contract under section 1876 in the same area.

Further, we provide at § 422.501(b) that in order to be eligible to contract as an M+C organization, an applicant organization that held a prior contract terminated by HCFA under § 422.510 within the past five years.

Section 1857(c)(5) authorizes the Secretary to enter into contracts with organizations without regard to provisions of law or regulations that the Secretary determines to be inconsistent with the furtherance of the purpose of Title XVIII of the Act. Based on this authority, we provide in § 422.501(c) that HCFA may enter into contracts under part 422 without regard to the Federal and Departmental acquisition regulations set forth in title 48 of the CFR.

Further, section 1857(d)(1) and (2) provide for the auditing of the financial records of at least one third of M+C organizations annually, and the inclusion of specified inspection and auditing rights in M+C contracts. We have incorporated these requirements in § 422.501(d). We likewise specify related requirements that enable HCFA to do so.

Since section 1857(a) allows that an M+C contract may cover more than one M+C plan, we have added paragraph (e), "Severability of contracts," through our authority in section 1856(b)(1). The contract provides that upon HCFA's request (1) the contract will be amended to exclude any M+C plan or State-licensed entity specified by HCFA, and (2) a separate contract for any such excluded plan or entity would be deemed to be in place when such a request is made.

National Contracting

The BBA does not specifically define or otherwise address the issue of national contracting. While we are interested in national contracting, we have not specified it in the regulations and welcome comment on this concept. One option we are considering would allow an M+C applicant to request that HCFA enter into a national contract with the applicant if the applicant holds license as a risk-bearing entity in each state where it operates or has a waiver as provided in § 422.370. The applicant M+C organization would have the option of having a uniform premium and benefit plan across the country, with one service area and a national ACR proposal.

We are considering a different concept of a national agreement with national chain organizations. This concept would apply to those chain organizations that enter into separate contracts in multiple States. The agreement would allow for the chain organization to establish a uniform policy across all of its states as to marketing, quality assurance, utilization review, claims processing, etc. HCFA would have to approve the national policy procedures. HCFA would continue to contract separately with individual, albeit related, M+C organizations affiliated through common ownership or control. We would continue to monitor operational activities for each organization in each State, but having approved national policy, our review at the State and local level would be reduced.

3. Contract Provisions (§ 422.502)

Section 422.502 of this rule sets forth the provisions and related requirements for contracts between HCFA and M+C organizations. In general, Medicare beneficiaries may not elect to enroll in an M+C plan offered by an M+C organization, and no payment will be made to the M+C organization, unless the Secretary enters into a contract with the organization. The provisions that describe this relationship between the Secretary and the M+C organization are based on Part C of title XVIII of the Act and on Medicare contract requirements derived from subparts C and L of part 417.

The provisions of the Act as added by the BBA are generally silent with regard to the specific provisions that must be included in the contract between the M+C organization and HCFA. The Act does, however, specify at section 1857(a) that the contract must provide that the organization agrees to comply with the applicable requirements, standards, and terms and conditions of payment of Part C of title XVIII of the Act. In addition, section 1857(e) provides that the contract shall contain such other terms and conditions not inconsistent with Part C of title XVIII of the Act that the Secretary may find necessary and appropriate. Included in § 422.502(a), "Agreement to comply with regulations and instructions," are the following contract conditions:

- The M+C organization must agree to accept new enrollments, make enrollments effective, process voluntary disenrollments, and limit involuntary disenrollments. The M+C organization agrees that it will comply with the prohibition in § 422.108 on discrimination in beneficiary enrollment.
- The M+C organization must agree to provide the basic benefits as required under § 422.101 and to the extent applicable, supplemental benefits under § 422.102.
- The M+C organization must agree to provide access to benefits as required under subpart C of part 422. All benefits covered by Medicare must be provided in a manner consistent with professionally recognized standards of health care.
- The M+C organization agrees to disclose information to beneficiaries as required under § 422.110.
- The M+C organization must agree to operate a quality assurance and performance improvement program, and to have an agreement for external quality review as required under subpart D of part 422.
- The M+C organization must agree to comply with all applicable provider requirements in subpart E of part 422, including provider certification requirements, anti-discrimination requirements, provider participation and consultation requirements, the prohibition on interference with provider advice, limits on provider indemnification, rules governing payments to providers, and limits on physician incentive plans.
- The M+C organization will agree to comply with all requirements in subpart M governing coverage determinations, grievances, and appeals.
- The M+C organization will comply with the reporting requirements in § 422.516 and the requirements for submitting encounter data to HCFA in § 422.257.
- The M+C organization agrees that it will be paid under the contract in accordance with the payment rules under subpart F of part 422.
- The M+C organization will develop annual adjusted community rate proposals and submit all required information on premiums, benefits, cost sharing by May 1, as provided in subpart G of part 422.
- The M+C organization agree that its contract may be terminated or not renewed in accordance with subparts K and N of part 422.
- The M+C organization will agree to comply with all requirements that are specific to a particular type of M+C plan, such as the special rules for private fee-for-service plans in §§ 422.114 and 422.216 and the M+C MSA requirements in §§ 422.56, 422.103, and 422.262.
- The M+C organization will agree to comply with the confidentiality and enrollee accuracy requirement in § 422.118.
- The M+C organization agrees that complying with the aforementioned contract conditions is material to performance of the contract.

Contract requirements that were either not required of HMOs and CMPs

under section 1876, or have been modified to implement the M+C program follow:

• The M+C organization must possess the capabilities to communicate with HCFA electronically.

• The M+C organization is required to provide prompt payment of covered services if these services are not furnished by a provider under contract or agreement in an M+C plan's health services delivery network. Under section 1876, the prompt payment requirement was limited to noncontracting providers. Section 1857(f) duplicates this requirement and adds to it the requirement that if the Secretary determines that an M+C organization fails to pay claims promptly, the Secretary may provide for direct payment of the amounts owed providers. When this occurs, the Secretary reduces the amount of the M+C organization's monthly payment to account for payments to these providers. We explain the full implications of this requirement in the discussion below pertaining to § 422.520.

• Pursuant to our authority in section 1856(b)(1) to establish standards under Part C, we are requiring that M+C organizations maintain records for 6 years. The standard for retention of records for HMO and CMPs was 3 years. We are changing the retention period from 3 years to 6 years so as not to prematurely foreclose our ability to address fraudulent or other abusive activities.

• Pursuant to our authority at section 1856(b)(1) to establish standards under Part C, we specify requirements relating to M+C organizations providing access to facilities and records at § 422.502(e). In this section we assert that M+C organizations allow HHS, the Comptroller General, or their designees to evaluate, through inspection or other means, all aspects of medical services furnished to Medicare beneficiary enrollees, the facilities of M+C organizations, and enrollment and disenrollment records of M+C organizations. We further provide that HHS, the Comptroller General, or their designees may audit, evaluate, or inspect all facilities and records as the Secretary may deem necessary to enforce an M+C contract. HHS's, the Comptroller General's, and designee's right to inspect such facilities and records extends through 6 years from the date of the contract period or completion of any inspection or audit activity, whichever is later. Exceptions to this 6-year inspection timeframe can occur in instances when: (1) HCFA determines there is a special need to retain particular records or a group of records for a longer period and notifies the M+C organization at least 30 days before the normal disposition date, (2) there has been a termination, dispute, or fraud or similar fault by the M+C organization, in which case the retention may be extended to 6 years from the date of any resulting final solution of the termination, dispute, or fraud or similar fault, or (3) HCFA determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate, and audit the M+C organization at any time.

• Pursuant to our authority in section 1856(b)(1) to establish standards under Part C, and the provision in section 1856(b)(2) for adopting section 1876 standards, we have included certain disclosure requirements from § 417.486 in § 422.502(f). We have also included additional disclosure requirements to reflect new reporting requirements in § 422.516.

• At § 422.502(f)(2), we add the requirement that M+C plans submit to HCFA specific information necessary to evaluate and administer the program and to enable beneficiaries to exercise informed choice in obtaining Medicare services. Section 1851(d) authorizes the Secretary to obtain this information to enable HCFA to fulfill its responsibility to develop activities to disseminate broadly information to current and prospective Medicare beneficiaries in order to promote an active, informed selection among such options.

• Pursuant to section 1851(b)(4)(B), we have specified requirements at § 422.502(b)(2)(vii) that M+C organizations offering MSA plans disclose to HCFA information that will enable HCFA to evaluate the impact of permitting enrollment in MSA plans.

• Enrollee financial protection provisions are addressed at § 422.502(g). The first item protects beneficiary enrollees from incurring liability for payment of any fee that M+C organizations are legally obligated to bear. Section 422.502(g) contains the enrollee financial protection that has applied to HMO and CMP enrollees under § 417.122 (a)(1), which was made applicable to all section 1876 contractors under § 417.407(f). The beneficiary protection at 422.502(g)(1) is designed to protect beneficiary enrollees from being held financially responsible for fees for which the M+C organization is legally liable. Under the provision, we assert that M+C organizations protect beneficiary enrollees in two ways. First, through inclusion, hold harmless language in its written agreements with the providers that comprised the M+C plan's Medicare provider network. And pursuant to our rulemaking authority at section 1856(b)(1), we also specify that M+C organizations must indemnify beneficiary enrollees for the organization's legal obligations that are derived from health care services provided to enrollee beneficiaries by providers that have not entered into a written agreement to participate in the M+C organization's Medicare provider network. The beneficiary protection at 422.502(g)(2) afford beneficiaries protection against loss of benefits for which the M+C organization is legally obligated to pay. Except in the case of PSOs that have been awarded Federal waivers (see subpart H), States have the primary responsibility under Part C for determining whether an M+C organization has sufficient reserves to assume the risk it takes on under an M+C contract. The State that licenses the entity under applicable State law determines whether an entity has sufficient financial reserves to enter into an M+C contract.

Congress has given HCFA some ongoing responsibility concerning solvency, however. In section 1857(d)(4)(A)(i), M+C organizations are required to provide the Secretary with such information "as the Secretary may require demonstrating that the organization has a fiscally sound operation." Accordingly, we believe that it is appropriate, under our authority in section 1856(b)(1) to establish standards under Part C to require (in § 422.502(g)) that an entity that already has an M+C contract demonstrate to HCFA that it has protections in place ensuring that beneficiaries will not be held liable for the entity's debts. We believe that this can be seen as part of having a fiscally sound operation as provided for in section 1857(d)(4)(A)(i).

• The subsection entitled "Requirements of Other Laws and Regulations" at § 422.502(h) requires that contracts reflect the M+C organization's obligations under other laws, specifically, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act, other laws applicable to recipients of Federal funds, and all other applicable laws and rules.

• Pursuant to our authority under section 1856(b)(1) to establish standards under Part C, paragraph (i) of § 422.502 contains requirements that apply to related entities, contractors, and subcontractors of an M+C organization. These requirements promote an M+C organization's accountability and program integrity.

The requirements in paragraph (i) recognize that organizations that are likely to apply for M+C contracts commonly enter into business

relationships with entities that they placed under contract to perform certain functions that otherwise would be the responsibility of the organization to perform including management and provision of services. This section therefore addresses these relationships and establishes requirements that the M+C organizations must adhere to in order to provide HCFA assurances that the M+C organization will be accountable for all contract requirements.

Specifically, this section gives HHS, the Comptroller General or their designee, the authority to audit, evaluate and/or inspect documents, papers, records of all of the organizations mentioned in § 422.502(i); and to obtain information from the M+C organization and other entities described here, six years following the close of a contract or audit. Paragraph (i)(3) of § 422.502 describes provisions that must be included in contracts and other written arrangements between M+C organizations and other entities described in this section.

• Section 422.502(j), which is derived from section 1857(e), states that the contract will contain other terms and conditions consistent with this part as HCFA may find necessary and appropriate.

• Under § 422.502(k), we require that all M+C contracts be severable as discussed previously.

Finally, pursuant to our authority in section 1856(b)(1) to establish standards under Part C by regulation, we are requiring in paragraphs (l) and (m) that an M+C organization request payment on document that certify the accuracy and completeness of relevant data as a condition for receiving its capitation payment and, in the case of the ACR, for retaining the portion of capitation payment associated with the ACR amount (rather than providing additional benefits). Section 422.502(b) also states that the M+C organization's CEO or CFO certify the accuracy of encounter data, and, in instances when encounter data are generated by a related entity, contractor, or subcontractor, such entity likewise certifies the accuracy of the encounter data.

In all of these cases, when an M+C organization submits the data in question to HCFA, we believe that it is making a "claim" for capitation payment in the amount dictated by the data submitted, or in the case of the ACR submission, a "claim" to retain the portion of the capitation payment that is under the ACR amount, rather than providing additional benefits. We believe it is important that when an M+C organization is claiming payment (or the right to retain payment) in a particular amount based upon information it is submitting to HCFA, it should be willing to certify the accuracy of this information. We believe that these certifications will help ensure accurate data submissions, and assist HCFA and the Office of Inspector General in anti-fraud activities.

4. Effective Date and Term of Contract (§ 422.504)

Section 1857(c) provides that each contract under section 1857 will be for a term of at least 1 year, as determined by the Secretary. This section also provides that the effective date and term of the contract will be specified in the contract, except that in no case will a contract under this section that provides for coverage under an M+C MSA plan be effective before January 1999 with respect to such coverage. Based on these provisions, § 422.504(b) of this rule provides that beginning in 2002, contracts will be for a period of 12 months beginning on January 1 and ending on December 31. We include an exception at § 422.504(d) which indicates that prior to January 1, 2002, HCFA may at its discretion approve contracts for periods longer than 12 months, that begin on a date other than January 1.

HCFA has decided not to exercise the discretion provided in section 1857(a)(1) to make contracts automatically renewable (section 1857(a)(1) provides that contracts "may" be automatically renewable from term to term.) Instead, we specify at § 422.504(c) that the contract may be renewed annually only if HCFA affirmatively authorizes a renewal, and the M+C organization has not given HCFA a notice of nonrenewal. We believe that this approach is consistent with HCFA's role as a prudent purchaser and is in the best interest of the tax payer, the Medicare beneficiary and the Medicare program.

Under the current 1876 risk contract program, HCFA receives applications on a continuous basis and also awards contracts on a continuous basis as soon as the review process is complete, and a decision for approval has been reached. We have decided to maintain this process for the next few years under the M+C program. The BBA, however, provides a framework that has encouraged us to consider changing this in the future. The requirements for a coordinated open enrollment policy and printed plan comparison charts and the advent of the lock-in periods starting in 2002 suggests that HCFA move toward a policy of establishing a cutoff date for awarding contracts annually. This cutoff date would be timed to ensure that all new plans are included in the printed plan comparison charts. If we established a cutoff phase, HCFA would implement this change to the application and award processes in the year 2001 in time for the first year of the lock-in. We invite comments on this issue.

5. Nonrenewal of Contract (§ 422.506)

Section 422.506(a) discusses the process that an M+C organization must follow if it decides not to renew its contract. If the M+C organization does not want to renew its contract, it must notify HCFA in writing by May 1 of the year preceding the year that the M+C organization intends to no longer contract with HCFA. In addition, the M+C organization must notify each Medicare enrollee by mail at least 90 days before the effective date of the nonrenewal. It must also notify the general public at least 90 days before the end of the current calendar year by publishing a notice in one or more of the newspapers of general circulation located in the M+C's geographic area.

We also provide that HCFA may accept a nonrenewal notice of an M+C organization's decision not to renew its contract submitted after May 1 if the M+C organization complies with the requirements concerning enrollee and public notification and acceptance would not otherwise jeopardize the effective and efficient administration of the Medicare program. The May 1 deadline is timed to coincide with the ACR submission and internal HCFA timelines that require the timely submission of information necessary for developing annual health fair/open enrollment materials that will be made available to new and already-enrolled Medicare beneficiaries. We believe that the conference committee reports make it clear that the Congress intends for Medicare beneficiaries to make informed choice based on accurate, comparative M+C plan information. The Conferees further make it clear that the Secretary must take all steps necessary to ensure that all Medicare beneficiaries are provided the information needed to make informed choices about health coverage. We assert that the date-specific deadlines by which an M+C organization must notify HCFA of its decision not to renew its contract is a necessary step that promotes and represents the best intent of the law.

Section 1857(c)(4) provides that the Secretary cannot enter into an M+C contract with an M+C organization if, within the preceding five years, that organization has had an M+C contract

that was "terminated at the request of the organization," except "in circumstances that warrant special consideration, as determined by the Secretary." While Congress used the word "terminated" rather than "nonrenewed," the only way that a contract could end solely "at the request of the organization" would be as the result of a notice of nonrenewal of the contract. In the case of a termination by mutual consent, discussed below, this only occurs if *HCFA* agrees that a termination of the contract is in the best interests of beneficiaries. Even in the case of a termination by the M+C organization under § 422.512 (discussed below), an organization does not have the right simply to "request" termination of the contract. Rather, it must show HCFA noncompliance with HCFA's obligations. This has never happened under the Part 417 counterpart of this authority for an organization to terminate its contract (§ 417.494(c)). Thus, we have always interpreted similar language in section 1876 to apply when an organization *nonrenews* its contract. We therefore make this interpretation explicit in § 422.506(a)(4).

HCFA decision not to authorize renewal. In accordance with § 422.506, contracts are renewed annually only if (1) HCFA informs the M+C organization that it authorizes a renewal and (2) the M+C organization has not provided HCFA with a nonrenewal notice. Section 422.506(b)(1) provides that HCFA may decline to authorize a renewal of a contract for any of the following reasons:

- The M+C organization has not fully implemented or shown discernable progress in implementing quality improvement projects;
- The M+C organization demonstrates insufficient enrollment growth. As participation in the M+C program grows it is inevitable that some contracting entities will not enroll sufficient numbers of Medicare beneficiaries to justify the administrative costs associated with regulating meet the applicable minimum enrollment requirements at § 522.514.
- For any of the reasons listed in § 422.510(a) which would also permit HCFA to terminate the contract.
- The M+C organization has committed any of the acts in § 422.752(a) which would support the imposition of intermediate sanctions or civil money penalties under Subpart O.

We believe that these aforementioned reasons for not authorizing renewal of a contract are consistent with HCFA's intent to fulfill its role as a prudent purchaser of health care services.

Section 422.506(b)(2) provides that if HCFA decides not to authorize the renewal of a contract, HCFA gives written notice to—

- The M+C organization by mail by May 1 of the current calendar year;
- The M+C organization's enrollees at least 90 days before the end of the current calendar year; and
- The general public, by publishing a notice in one or more newspapers of general circulation in each community or county located in the M+C organization's service area, at least 90 days before the end of the current calendar year.

Section 422.506(b)(3) provides that HCFA give the M+C organization written notice of its right to appeal the nonrenewal decision in accordance with subpart N.

6. Modification or Termination of a Contract by Mutual Consent (§ 422.508)

We provide guidance at § 422.508(a) that allows for contract termination by mutual consent. If a contract is terminated by mutual consent, except as provided in the § 422.508(b), the M+C organization must provide notice to its Medicare enrollees and the general public as provided in § 422.512(b) (2), and (3). If the contract terminated by mutual consent is replaced on the following day by a new M+C contract, the notice specified above does not need to be provided.

We have developed a mutual consent termination policy because we believe that there are circumstances under which an M+C organization may agree to a mutual termination by consent. This policy gives HCFA the option to offer this alternative to affected M+C organizations. Further, HCFA may decide that it is in the best interests of tax payers, Medicare beneficiaries and the Medicare program to agree to let an M+C organization terminate its contract midyear. Finally, we believe this policy accommodates M+C organizations that may wish to terminate their contract by mutual consent at the end of a calendar year and enter into a new 12 month contract year on January 1 during the years prior to 2002. We invite comment on this proposed policy.

In § 422.508, with some modifications, we have retained the provision for contract modification or termination by mutual consent that applies to contracts under section 1876. As under § 417.494(a), contracts may be modified or terminated at any time by written mutual consent. The two changes we have made are that (1) we have changed the obligation to provide enrollees and the public with notice of a termination to conform to the 60-day notice requirement in § 422.512(b) (2) and (3) (which retained the enrollee notice requirement in § 417.484(c)(2)); and (2) we have provided for an exception to the notice requirement for cases in which a contract being terminated by mutual consent is being replaced by a new contract on the day the termination becomes effective. We continue to require that M+C organizations notify their Medicare beneficiary enrollees of any changes that may occur pursuant to a contract modification by mutual consent within timeframes specified by HCFA.

7. Termination of a Contract by HCFA (§ 422.510)

Section 1857(c)(2) provides that the Secretary may at any time terminate an M+C organization contract if the Secretary determines that the M+C organization—

- Failed substantially to carry out the contract;
- Is carrying out the contract in a manner inconsistent with the efficient and effective administrative of Medicare Part C; or
- No longer substantially meet the applicable conditions of Medicare Part C.

In addition to repeating the above statutory language, we are implementing this language by identifying specific circumstances that we believe constitute examples of an M+C organization substantially failing to carry out either its contract, or carrying out its contract in a manner that is inconsistent with the effective and efficient administration. Specifically, we have identified the following circumstances: The M+C organization commits or participates in fraudulent or abusive activities affecting the Medicare program; the M+C organization substantially fails to comply with requirements in Subpart M relating to grievances and appeals; the M+C organization fails to provide HCFA with valid encounter data as required under § 422.257; the M+C organization fails to implement an acceptable quality assessment and performance improvement program as required under Subpart D; the M+C organization substantially fails to comply with the prompt payment requirements in § 422.520; the M+C organization substantially fails to comply with the service access requirements in § 422.112 or § 422.114; the M+C organization fails to comply with the requirements of § 422.208 regarding physician incentive plans.

Section 1857(h)(2)provides authority for the Secretary to immediately terminate a contract with an M+C organization in instances where the

Secretary determines that a delay in termination resulting from compliance with the procedures in section 1857(h)(1) discussed below would pose an imminent and serious risk to the health of enrolled Medicare beneficiaries.

We have implemented this authority as follows. First, § 422.510(a)(5) provides for termination when an M+C organization experiences financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or when the organization otherwise fails to make services available to the extent that such a risk to health exists. Second, § 422.510(b)(2) provides that a termination based on § 422.510(a)(5) takes effect immediately. Third § 422.510(c) provides that the opportunity for corrective action does not apply to a termination based upon § 422.510(a)(5). And fourth, subpart N of part 422 provides that in the case of a termination based on § 422.510(a)(5), a hearing is not provided until after the termination takes effect.

Section 1857(h)(1) specifies procedures that must be followed before a termination by HCFA can take effect (unless the exception for an imminent and serious risk to health applies, as discussed above). We specify these requirements at § 422.50(b)(1). Section 1857(h)(1)(A) requires that the M+C organization be provided with a "reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies" that were the basis for a decision that grounds for termination existed under section 1857(c)(2). Section 422.510(c) provides for such a corrective action opportunity, consistent with time frames specified in Subpart N, except in cases in which the termination is based upon § 422.510(a)(5), and the "imminent and serious" risk to health exception in section 1857(h)(2) applies.

Section 1857(h)(1)(B) requires that the Secretary provide the M+C organization with "reasonable notice and opportunity for hearing," including "the right to appeal an initial decision * * * *before* terminating the contract." (Emphasis added.) Section 422.510(d) implements this provision by requiring that a notice of appeal rights under Subpart N be provided when a termination notice is sent to an M+C organization. This notice would specify that the termination would not be effective until after the hearing and appeal, except in the case of a termination under § 422.510(a)(5).

Also, in instances where it is necessary for HCFA to immediately terminate its contract with an M+C organization for violations prescribed in § 422.510(a)(5), we specify in § 422.510(b)(2) that if a termination notice is sent and takes effect in the middle of the month, HCFA has the right to recover a prorated share of its payment made to the M+C organization at the beginning of the month following notice of said termination.

8. Termination of a Contract by the M+C Organization (§ 422.512)

Paragraph (a) of § 422.512 provides that the M+C organization may terminate the contract if HCFA has failed substantially to carry out the terms of the contract. The paragraph (b) through (d) establishes requirements for giving notice, specifies when the termination is effective, and establishes when HCFA's liability for payment to the M+C organization ends. Paragraph (e) states that organizations that terminate their contract with HCFA cannot enter into an agreement with the Secretary for five years unless there are circumstances that warrant special consideration.

9. Minimum Enrollment Requirements (§ 422.514)

The newly-created section 1857(b) of the Act specifies that HCFA may not enter into a contract with an M+C organization unless the organization has at least 5,000 enrollees (or 1,500 if it is a PSO), or at least 1,500 enrollees (or 500 if it is a PSO) if the organization primarily serves individuals residing outside of urbanized areas. We specify these requirements in § 422.514(a).

Section 1857(b) refers to individuals "who are receiving health benefits through the organization." We considered interpreting receiving health "benefits" to mean more than simply receiving health *services*. A hospital or doctor can furnish health services on a fee-for-service basis, or an organization can *administer* health benefits offered by an employer without actually providing "benefits" in the form of covered costs. We also recognize that some new organizations, both federally waivered PSOs and new state licensed entities, will apply to enter the M+C program. Thus, such an interpretation would allow some new entities to achieve the minimum enrollment requirement without having any or very little enrollment.

The minimum enrollment requirement is an indicator that the organization applying for an M+C contract can handle risk and capitated payments and also is able to effectively manage a health care delivery system including the enrollment and disenrollment of beneficiaries and the timely payment of claims, provide quality assurance, and have systems to handle grievances and appeals. While having experience with risk based payments indicates the organization can handle risk, it does not provide any assurance that the organization can manage all the contractual requirements of an M+C organization.

We realize that through the waiver process for federally waivered PSOs and the application process for all new entities we require reasonable assurance that the organization will be able to manage their contract. We do not want to add an additional barrier to entry for those organizations that have gone through the waiver process or state licensure but are still start-up organizations.

We have decided to require that the minimum enrollment requirement can only be met counting enrollees in the particular organization. This will show the organization can handle risk and manage their system.

Section 1857(b)(2) contains the statement that the term "covered lives" should be substituted for "individuals" in applying the minimum enrollment rule to MSA plans. As such, we will count covered lives for MSAs for purposes of meeting the minimum enrollment requirements.

As stated earlier, section 1857(b)(3) allows M+C organizations to request a waiver of minimum enrollment requirements during the first 3 contract years. Therefore, under § 422.514(b) HCFA may waive the minimum enrollment requirement for 1 year to those organization that need a waiver provided such organizations satisfactorily demonstrate: prior experience with risk-based payment arrangements; the ability to bear financial risk under the M+C contract; and marketing and enrollment activities necessary to meet enrollment requirements specified at § 422.514 (a)(1) and (a)(2). Both HCFA actuaries and the National Association of Insurance Commissioners recommend against entering into an contract with a applicant who does not project reaching 500 members within a short timeframe. HCFA will monitor closely the progress of organizations in meeting at least this goal during the first contract year.

If the organization does not meet the applicable minimum enrollment requirement by the end of its first year of operation we may waive the requirements for an additional year if the organization meets the requirement specified in § 422.514(b)(2):

- Requests an additional minimum enrollment waiver at least 120 days before the end of the year;
- Continues to demonstrate an ability to meet its contractual obligations and bear financial risk; and,
- Demonstrates an acceptable marketing and enrollment process. The organization's enrollment projections for the second year of the waiver will become its enrollment standard.

In paragraph § 422.514(b)(3) we state that we will only approve a third and final waiver year if the organization has achieved the transitional enrollment standard that the organization projected in their marketing and enrollment plan required to receive a waiver for their second year.

Finally, if an organization does not achieve the minimum enrollment requirement and is not operating with a minimum enrollment waiver, HCFA may elect not to renew the M+C organization's contract, we specify this at § 422.514(c).

10. Reporting Requirements (§ 422.516)

This M+C regulation contains a number of sections that specify information requirements for M+C organizations. This information is to be provided from organizations to HCFA (see §§ 422.64, 422.502, and 422.512), from HCFA to beneficiaries (see § 422.64), and from the organizations to the beneficiaries (see §§ 422.80 and 422.110).

The following listing summarizes all the information required to be disclosed either to HCFA, to beneficiaries, or to both:

- Benefits
- Premiums
- Service area
- Quality and Performance: Outcomes, HEDIS, Disenrollment, satisfaction
- Supplemental benefits
- Access: Number, mix, and distribution of providers
- Out of area coverage
- Emergency care coverage
- Supplemental premiums
- Prior authorization rules
- Grievances and appeals procedures and data
- Quality assurance program
- Utilization controls
- Compensation methods
- Financial reports
- Encounter data
- Claims
- Enrollment

These represent an extensive amount of information to be disclosed both to HCFA and to beneficiaries. M+C organizations need to be particularly aware of the many requirements to disclose information to beneficiaries as seen in §§ 422.80 and 422.110. They will have to develop management information systems that meet these disclosure requirements. As it is, these sections specify the basic requirements as to information to be disclosed. HCFA will provide more detailed policy guidance on specific contents required for each of these data elements. These additional requirements will be developed with input from the public, such as plans, consumer groups, etc.

M+C organizations also need to take into consideration in the development of these management information systems, that they will soon have to meet the requirements of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996. This act will result in regulations for data standards that effect all components of the health care system. The act will specify standards for the following types of transactions: claims, enrollment and disenrollment, eligibility, payments and remittances, premiums, first report of injury, claim status, referral, providers, patient identifiers, health plan identifiers, and code sets. The organizations will also need to be in compliance with year 2000 changes.

Furthermore, M+C organizations will need to address the confidentiality and privacy provisions of these regulations and related regulations, meet the validation requirements associated with several of the data sets incorporated into this regulation, e.g, encounter data will need to be validated, and be capable of electronically transmitting this information to HCFA in the future, when such is so specified.

Section 1857(d) contains several provisions involving the financial records and financial status of M+C organizations. As discussed above, paragraphs (1) and (2) of section 1857(d) provide for auditing and inspection of M+C organizations' financial records. The paragraph (4) in section 1857(d) specifically requires that organizations "in accordance with regulations of the Secretary, report to the Secretary financial information," which "shall include" such information as the Secretary may require demonstrating that the organization has a fiscally sound operation. Under our authority at section 1856(b)(2) to adopt section 1876 standards, we have decided to implement this authority in part by requiring that M+C organizations comply with financial reporting requirements currently set forth in § 417.126. These requirements are set forth in § 422.516(a) and (b). We believe that requirements specified in section 1857(d)(1), which require HCFA to conduct annual audits of the financial records of M+C organizations, compel M+C organizations to provide all required information described at § 422.516(a) and (b). Included in these requirements are—

- Requirement that M+C organizations develop and maintain a system for reporting information to HCFA, its enrollees and the general public, information described elsewhere in the regulation.
- A requirement that each M+C organization report to HCFA a description of significant business transactions.
- A requirement that each M+C organization submit combined financial statements to HCFA on a timely basis, as defined by HCFA.
- A requirement that for any employees' health benefits plan that includes an M+C organization in its offering, the M+C organization must furnish, upon request, the information the organization needs to fulfill its reporting and disclosure obligations (with respect to the particular M+C organization) under the Employee Retirement Income Security Act of 1974 (ERISA).
- A requirement that the organization notify HCFA regarding any loans or other special financial arrangements.
- A requirement that each M+C organization must make financial information available to enrollees upon request.

11. Prompt Payment Requirements (§ 422.520)

Under § 422.520, contracts with M+C organizations must specify that the M+C organization agrees to provide prompt payment of claims that have been submitted by providers for services and supplies rendered to Medicare enrollees when these services and supplies are not furnished by an organization-contracted provider. While this requirement closely follows requirements already in place for section 1876 contractors, (including provisions pertaining to interest to be paid if timely payment is not made), section 1857(f) extends similar prompt payment requirements to claims submitted by Medicare beneficiaries enrolled in M+C private fee-for-service plans. Section 422.520(a) contains this new section 1857(f) requirement, as well as the requirement that applies to non-contracting providers. Further, pursuant to our authority under section 1856(b)(1) to establish standards under Part C, we require organizations to act upon (either approve or deny, not

necessarily pay) all claims within 60 calendar days from the date of request. These claims include the remaining 5 percent of the clean claims not paid within 30 days as well as all other claims.

In addition, pursuant to our authority in section 1856(b)(1) to establish standards under Part C, we are requiring in § 422.520(b) that contracts or other written agreements between M+C organizations and providers and suppliers contain a "prompt payment" provision, the terms of which are developed and agreed to by the M+C organization and the relevant provider.

Section 1857(f)(2) also contains another new provision that specifies that if the Secretary determines that the organization fails to make payments promptly to non-contracting providers and suppliers as required under section 1857(f)(1) (and § 422.520(a)), the Secretary may provide for direct payments to affected providers and suppliers. We articulate these requirements in § 422.520(c).

Special Rules for RFB Societies

Enrollment restriction rules may be imposed by religious fraternal benefit society M+C organizations, provided the restriction of enrollment is consistent with the requirements identified in section 1859(e) of the Act. The RFB M+C organizations must still meet the requirements for financial solvency. Moreover, the Secretary may adjust the M+C organization's payment to account for the unique actuarial characteristics of the individuals enrolled in the RFB M+C organization. We specify these requirements in § 422.250(a).

L. Effect of Change of Ownership or Leasing of Facilities During Term of Contract

This interim final rule applies to M+C organizations the provisions concerning the effect of change of ownership or leasing facilities during the term of the contract that are currently set forth with regard to HMOs and CMPs in subpart M of part 417 to M+C organizations. This is accomplished by designating §§ 417.520 through 417.523 as §§ 422.550 through 422.533 in a new subpart L in part 422 and making certain nomenclature changes. (A cross-reference to subpart L of part 422 is included in subpart M of part 417 in order that these provision may continue to apply to Medicare contracts with HMOs and CMPs under section 1876.) We also revise redesignated § 422.550 (formerly § 417.520) to add that an M+C organization that has Medicare contract in effect and is considering or negotiating a change in ownership must provide to HCFA updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization. We also add this requirement to redesignated § 422.552 (formerly § 417.522), which contains requirements relating to novation agreements.

M. Subpart M—Grievances, Organization Determinations, and Appeals (§§ 422.560 Through 622)

1. Introduction

Subpart M of part 422 implements sections 1852(f) and (g), which set forth the procedures M+C organizations must follow with regard to grievances, organization determinations, and reconsiderations and other appeals. Under section 1852(f), an M+C organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any other entity or individual through which the organization provides health care services) and enrollees in its M+C plans. Section 1852(g) addresses the procedural requirements concerning coverage ("organization") determinations and reconsiderations and other appeals. As discussed in detail below, only disputes concerning "organization determinations" are subject to the reconsideration and other appeal requirements under section 1852(g). In general, organization determinations involve whether an enrollee is entitled to receive a health service or the amount the enrollee is expected to pay for that service. All other disputes are subject to the grievance requirements under section 1852(f). For purposes of this regulation, a reconsideration consists of a review of an adverse organization determination (a decision that is unfavorable to the M+C enrollee, in whole or in part) by either the M+C organization itself or an independent review entity. We use the term "appeal" to denote any of the procedures that deal with the review of organization determinations, including reconsiderations, hearings before administrative law judges (ALJs), reviews by the Departmental Appeals Board (DAB) and judicial review.

For the grievance, organization determination, and appeal requirements, an M+C organization must establish procedures that satisfy these requirements with respect to each M+C plan that it offers. These requirements generally are the same for each type of M+C plan—including M+C non-network MSA plans and M+C PFFS plans.

The grievance, organization determination, and appeal requirements for M+C organizations that are set forth in this interim final rule are largely based on the existing rules for managed care organizations under part 417, Subpart Q, Beneficiary Appeals. This is in accord with section 1856(b)(2), which directs that the M+C standards be based on the analogous standards established under section 1876, as long as they are consistent with the requirements in part C. Moreover, we note that to some extent the statutory requirements themselves reflect policies contained in the existing part 417 requirements. For example, the requirements under section 1852(g)(3) concerning expedited organization determinations and reconsiderations essentially incorporate the expedited review procedures that were issued in HCFA's April 30, 1997 final rule with comment (62 FR 23368). (That final rule established expedited review processes for organization and reconsidered determinations, and clarified that the definition of an organization determination includes discontinuations of service.)

Thus, the significant differences between the grievance and appeal requirements that apply under the M+C program and the existing requirements in subpart Q of part 417 are: (1) changes that are explicitly mandated under the statute, such as the requirement under section 1852(g)(4) that HCFA contract with an independent outside entity to review coverage denials; and (2) changes that implement statutory intent, such as the reduced timeframe for reconsiderations, which is consistent with both the discretion provided under section 1852(g)(2)(A) and Congress' expectations as stated in the BBA conference report. (As discussed below, the conference report states that the Conferees "* * * assume that the Secretary will address the issue of [reconsideration] timeframes in the Part C regulations" and intend that the Secretary adopt timeframes that are shorter than those in existing regulations. See H.R. Rep. No. 105–217, pg. 605 (1997).) The only other substantive changes contained in these requirements are the incorporation into the regulations of several limited policy clarifications that have been issued by HCFA as implementing instructions pursuant to our April 30, 1997 final rule. These changes are discussed in detail below.

In addition to these limited substantive changes, we have also taken the opportunity to make numerous editorial and organizational changes in adopting the part 417 regulation language on beneficiary appeals for

purposes of the M+C program. For example, we have added material that summarizes the rights of M+C enrollees, and we have established distinct sections that clearly explain the timeframe and notice requirements for standard and expedited organization determinations. These types of changes do not affect the rights of beneficiaries or the responsibilities of M+C organizations with regard to grievances, organization determinations, and appeals, but we believe they can help to ensure that these rights and responsibilities are more clearly understood within the managed care community.

2. General Provisions (§§ 422.560–522.562)

Subpart M begins with an introductory section (§ 422.560) that simply sets out the statutory basis and scope for the requirements that follow. Although this material is generally shorter and more concise than the similar provisions of subpart Q in part 417, we are now specifying under § 422.560(b) that the rules concerning notice of noncoverage on inpatient hospital care and immediate peer review organization (PRO) review procedures for noncoverage determinations fall within the scope of the M+C subpart M requirements.

Section 422.561 then sets forth several definitions for terms used in the subpart. Note that some definitions previously located in subpart Q of part 417 (such as "ALJ") have now been included in § 400.200, rather than in part 422, since they constitute definitions that apply for all Medicare and Medicaid purposes. Terms included here that are not defined in existing part 417 include "appeal," "authorized representative," "enrollee," "grievance," and "physician." For the most part, these definitions are self-explanatory; they do not impose any new requirements on M+C organizations. For example, we clarify that an "authorized representative" is an individual authorized by an enrollee to act on his or her behalf in obtaining an organization determination, or in dealing with any levels of the appeal process, subject to the Social Security regulations in 20 CFR part 404, subpart R. We also specify that, for purposes of subpart M, the term "enrollee" includes an enrollee's authorized representative. Together, these definitions should clarify that the rights of enrollees with respect to grievance and appeal procedures can consistently be exercised for them by their authorized representatives, except where specifically proscribed in the regulations. We also establish that "physician" is defined according to section 1861(r), which is the standard definition for both original Medicare and the M+C program.

Section 422.562, General Provisions, provides an overview of the rights and responsibilities of M+C organizations and M+C enrollees with respect to grievances, organization determinations, and appeals. The responsibilities of M+C organizations, under § 422.562(a), essentially parallel those in existing § 417.604(a). We have added a provision stating that if an M+C organization delegates any of its responsibilities under subpart M to another entity or individual through which the organization provides health care services, the M+C organization is ultimately responsible for ensuring that the applicable grievance and appeal requirements are still met. This concept is explicitly stated in section 1852(f) concerning grievance procedures, and we believe it is equally germane for purposes of organization determinations and appeals. An M+C organization's responsibility for functions that it delegates is also established under the contract requirements set forth in § 422.502(i). (Although we do not encourage M+C organizations to delegate their grievance, organization determination or appeal responsibilities, we recognize that particularly for an M+C non-network MSA plan or an M+C PFFS plan, an organization offering such a plan may choose to delegate some of these responsibilities to local entities that can meet the applicable subpart M requirements.)

Section 422.562(b) explains the basic rights of M+C enrollees under subpart M and provides regulatory references to the sections that fully explain the relevant rights. This section does not establish any rights beyond those now available under the part 417 rules, but consolidates general information about enrollees' rights into a central location in the regulations.

Like the part 417 regulations, the general provisions section concludes with brief sections addressing the applicability of requirements in subpart M and the applicability of other regulations under title II of the Act.

3. Grievance Procedures (§ 422.564)

As noted above, section 1852(f) requires that each M+C organization provide "meaningful procedures for hearing and resolving grievances." There is no explicit indication in the statute of what constitutes a grievance; however, given the provision in section 1856(b)(2) for basing Part C standards on standards under section 1876, we have retained the meaning of grievance used in part 417. We have defined this term in § 422.561 as any complaint or dispute other than one that involves an "organization determination" (as described under § 422.566(b)).

An enrollee might file a grievance if, for example, the enrollee received a service but believed that the demeanor of the person providing the service was insulting or otherwise inappropriate. Also, as specified under §§ 422.570(d)(2)(ii) and 422.584(d)(2)(ii), grievance procedures would apply when an enrollee disagrees with an M+C organization's decision not to comply with an enrollee's request to expedite an organization determination or a reconsideration. Under § 422.564(a), we are requiring that an M+C organization must resolve grievances in a timely manner and that procedures for doing so must comply with any guidelines established by HCFA. This guidance would include forthcoming instructions, rulemaking, and requirements built into HCFA's Quality Improvement System for Managed Care (QISMC). (See section II.D of this preamble for more information about QISMC.) Section 422.564(b) then clarifies that grievance procedures are separate and distinct from appeal procedures, which address organization determinations. We also clarify under § 422.564(c) that the PRO complaint process under section 1154(a)(14) addresses quality issues, but is separate and distinct from the M+C organization's grievance procedures.

Although we have not in the past outlined detailed requirements for a plan's grievance procedures, we considered doing so in this interim final rule as a means of implementing the requirement under section 1852(f) for meaningful grievance procedures. Accordingly, we consulted with the managed care industry as well as beneficiary advocacy groups, reviewed comments we received from the public, and looked to recent standards in this area, such as those developed by the National Association of Insurance Commissioners (NAIC). (NAIC has developed and adopted a Model Grievance Act setting forth standards for grievance procedures that include timeframes for the resolution of quality-related issues.) We also recognize that section 1852(c)(2)(C) requires organizations to provide data on the number of grievances and their disposition in the aggregate upon an enrollee's request, and we believe timely processing of grievances is necessary to assist in consistent data reporting. Thus, we considered requiring certain timeframes for

addressing grievances and contemplated further clarification of the definition of a grievance.

However, due to limited time for rulemaking, input we received from the public opposing mandated grievance procedures, and our understanding that extensive research is underway concerning State grievance requirements (the results of which should be available in the very near future), we have decided not to prescribe specific timeframes for grievances in this rule and instead to consider doing so through proposed rulemaking. We plan to address such issues through a future proposed rule. At this time, we welcome comments on the necessary elements of a meaningful grievance procedure, including recommended timeframes, the types of issues that should be considered grievances, an expedited grievance process, independent review of grievances, reconsideration of grievances, and the type of notification enrollees should receive concerning the outcome of their grievance.

4. Organization Determinations (§§ 422.566 Through 422.576)

Section 1852(g) requires an M+C organization to establish procedures for hearing and resolving disputes between the organization and its Medicare enrollees concerning organization determinations. These rights are similar to those available to beneficiaries under original Medicare, except that under the M+C program the initial level of review is typically conducted by the organization itself rather than by a PRO, intermediary, or carrier.

(For the convenience of the reader, we are presenting below a chart offering a sequential overview of the available procedures and related timeframes associated with service-related organization determinations and appeals. This chart is for illustrative purposes only, and certain details (such as when extensions are permissible and timeframes for requests for payment) have been omitted for ease of presentation. For a full description of the applicable requirements, please consult the preamble material that follows and the regulations set forth in subpart M of part 422. Although the chart reflects the maximum allowable timeframes available to an M+C organization under the M+C regulations (for service requests), we emphasize that the primary applicable requirement, as discussed in detail below, is that an M+C organization make a determination as expeditiously as the enrollee's health condition requires. In addition, note that maximum timeframes for an M+C organization to make a payment-related determination are somewhat longer than for service-related determinations, as is also discussed below.)

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M+C ORGANIZATION DETERMINATION AND APPEAL PROCESS FOR SERVICE-RELATED REQUESTS

M+C Organization

Organization Determinations
- Standard (NTE 14 days*)
- Expedited (NTE 72 hours*)

Reconsideration by the M+C Organization
- Standard (NTE 30 days*)
- Expedited (NTE 72 hours*)

Reconsideration by Independent Entity
- Timeframes identical to those for M+C organizations**

Administrative Law Judge Hearing

Departmental Appeals Board Review

Judicial Review

* For all service-related requests, an M+C organization must render determinations "as expeditiously as the enrollee's health condition requires," but not to exceed (NTE) the timeframes noted above.

** As discussed below, the timeframe requirements for standard and expedited reconsiderations by the independent entity will be established through contract.

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In accordance with section 1852(g)(1), § 422.566 begins by specifying that an M+C organization must have a procedure for making timely organization determinations regarding the benefits an enrollee is entitled to receive and the amount, if any, that an enrollee must pay for a health service. We note that under section 1852(g)(1), the issues that must be addressed through an organization determination include an enrollee's entitlement to "receive a health service *under this section.*" (Emphasis added.) Section 1852(a) describes basic benefits that M+C organizations must offer, as well as supplemental benefits that organizations may offer. Supplemental benefits may either be provided to all enrollees on a mandatory basis (with the Secretary's approval) or provided at the enrollee's option. In both cases, the enrollee pays for supplemental benefits. Disputes involving supplemental benefits that are mandatory for all enrollees in a plan will be organization determinations and subject to the appeal process, as similar benefits were under part 417. We believe, however, that optional supplemental benefits should also be included in the meaning of "health services under [section 1852]" and disputes involving these types of benefits should be the subject of organization determinations and the appeal process. This policy, which is incorporated into § 422.566(a), represents a departure from existing part 417 requirements, where disputes concerning optional supplemental benefits are not the subject of organization determinations and must be resolved only through grievance procedures. Section 422.566(b) then lists actions that are organization determinations, consistent with existing § 417.606(a) (except for new language to reflect the inclusion of optional supplemental benefits and the explicit mention of payment for post-stabilization care, along with payment for emergency or urgently needed services, which appear already in § 422.606(a)).

Section 422.568 includes the standard timeframe and notice requirements for organization determinations. Note that this section, in conjunction with §§ 422.570 and 422.572, reflect a major reorganization of the requirements in existing §§ 417.608 and 417.609. This reorganization was necessary both to help clarify the different timeframe and notice requirements that apply for expedited determinations as well as to facilitate the addition of several new BBA requirements (which are discussed below).

The primary substantive change in § 422.568 is the requirement under § 422.568(a) that an M+C organization must make a determination with respect to an enrollee's request for service as expeditiously as the enrollee's health status requires, and in no case later than 14 calendar days after the organization receives the request. As discussed in detail below in section II.M.6 of this preamble, this new requirement emphasizes making determinations consistent with an enrollee's health needs, while also providing for a reduction in the maximum time allowed to make a determination from 60 days, as reflected in § 417.608(a), to 14 days. In conjunction with the reduced timeframe for making an organization determination, we are also providing that the M+C organization may extend the timeframe by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an M+C organization's decision to deny). The M+C organization must include written justification for the extension in the case file. The length of the extension period is consistent with the extensions currently allowed under part 417 for expedited organization determinations.

We note that the maximum timeframes for both organization determinations and for reconsiderations are now reckoned in "calendar days," as opposed to "working days," in order to be unambiguous and consistent with the statute. In addition, under § 422.568(b), we have specified that timeframes for requests for organization determinations on payment issues are identical to the "prompt payment" requirements set forth under § 422.520. Thus, for issues relating to payment, the requirements are as follows: (1) For "clean claims," an M+C organization must make a determination regarding the claim within HCFA's current "clean claim" rules, that is, 95 percent of clean claims must be paid within 30 calendar days after receipt of the request for payment. (As defined in § 422.500, "clean claims" are claims that have no defect, impropriety, lack of any required substantiating documentation, or particular circumstances requiring special treatment that prevents timely payment.) (2) For all other claims, an M+C organization must make a determination regarding the claim within 60 calendar days after receipt of the request for payment.

Consistent with section 1852(g)(1)(B), § 422.568(c) and (d) require that an M+C organization issue written notification for all denials, including the specific reasons for the denial in understandable language, information regarding the enrollee's right to either an expedited or standard reconsideration, and a description of both the expedited and standard review processes, as well as the rest of the appeal process.

Sections 422.570 and 422.572 set forth the requirements for M+C organizations with respect to expedited determinations. Section 1852(g)(3)(A) specifically allows either an enrollee or a physician to request an expedited organization determination or reconsideration, regardless of whether the physician is affiliated with the M+C organization. We have reflected this provision in §§ 422.570(a) (for expedited organization determinations) and 422.584(a) (for expedited reconsiderations). We have also addressed the issue of the circumstances under which a physician can request expedited review for an enrollee. HCFA currently allows any physician to request an expedited organization determination without being appointed as an enrollee's authorized representative. In contrast, HCFA requires that a physician be an enrollee's authorized representative in order for the physician to request an expedited reconsideration on the enrollee's behalf. We have made this distinction because, in the context of an organization determination, we regard the physician as a provider who is requesting a service for his or her patient. In the context of a reconsideration, on the other hand, we believe the physician is serving as the enrollee's representative in the first level of the appeal process.

We have decided to continue this current policy, and have reflected in § 422.570(a) that any physician can request an expedited organization determination, while § 422.584(a) provides that a physician who requests an expedited reconsideration must be acting on behalf of the enrollee as an authorized representative. We would also like to make it clear that, in any case in which a physician is only supporting an enrollee's request for expedited review, the physician does not need to be the enrollee's authorized representative.

As mentioned above, the requirements for expedited organization determinations and the like requirements for expedited reconsiderations were the subject of HCFA's April 30, 1997 final rule. Section 1852(g)(3) is modeled to a large extent on our existing requirements. For example, section 1852(g)(3)(B)(ii)

explicitly states that an M+C organization must expedite its determination (or its reconsideration of a determination) if a physician has requested the expedited review and has indicated, either orally or in writing, that the application of a standard timeframe for a determination (or reconsideration) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function. This new statutory provision reflects the current provisions in part 417. Sections 417.609(c)(4) and 417.617(c)(4) require that an HMO or CMP grant a physician's request for expedited review; however, they do not require that the physician make any statements about the enrollee's health, as the physician must under section 1852(g)(3)(B)(ii). In effect, the statute now requires that an M+C organization must expedite a determination at the physician's request, that is, providing that the physician's request indicates the possibility of serious jeopardy to the enrollee.

Section 422.570(b)(2) specifies that a physician may provide written or oral support for a request for expedition, and under § 422.570(c)(2)(ii), we clarify that when requests for expedited organization determinations are made or supported by a physician, the M+C organization must grant the request if the physician indicates that the enrollee's health could be jeopardized. In any case in which a physician has not initiated the request, but supports it, we regard the physician as having joined in the request and, in effect, as being a co-requestor. (We note that in a case when an enrollee submitted a request for an expedited organization determination but did not know that physician support could automatically expedite a determination, an enrollee or a physician may submit a subsequent request, including the physician's statement of support, for an expedited organization or reconsidered determination.)

These sections also incorporate several details necessary to clarify current policy, such as the provision in § 422.568(d)(1) that an M+C organization automatically transfer a denied request for an expedited organization determination to the standard 14-day timeframe described in § 422.568(a), and the requirement under § 422.570(d)(2)(ii) that an M+C organization inform the enrollee of the right to file a grievance if he or she disagrees with the M+C organization's decision not to expedite. We also require under § 422.570(c)(1) that an organization establish an efficient and convenient means for individuals to submit oral or written requests for expedited organization determinations and document any oral requests. Generally, in accordance with the provisions of § 422.570(b)(1), we would expect that such requests would be submitted directly to the M+C organization. However, because we recognize that some organizations may already have established or may wish to establish other convenient procedures for accepting oral and written requests for expedited review, we clarify under § 422.570(b)(1) that procedures may involve submitting a request to another entity responsible for making the determination, as "directed by the M+C organization."

Under section 1852(g)(3)(B)(iii), an M+C organization must notify the enrollee (and the physician involved, as appropriate) of an expedited determination. The requirement to notify the physician is similar to one in § 417.609(c)(3), which requires of an HMO or CMP "notification of the enrollee, and the physician as appropriate." This requirement is set forth in § 422.572(a). Section 1852(g)(3)(B)(iii) also requires that the M+C organization notify the enrollee and physician of an expedited determination under time limits established by the Secretary, but not later than 72 hours after receiving the request (or receiving the information necessary to make the determination), or such longer period as the Secretary may permit in specified cases. Under this authority, we are able to retain in § 422.572(a) the existing 72-hour timeframe for expedited review that appears in § 417.609(c)(3). Also, we have exercised our discretion to allow in § 422.572(b) an M+C organization to extend the 72-hour deadline for expedited review by up to 14 calendar days if the enrollee requests the extension or if the organization finds that additional information is needed and the delay is in the interest of the enrollee.

Thus, the authority in section 1852(g)(3)(B) has allowed us to retain the recently promulgated regulations on expedited determinations with only a few clarifications and minor technical changes (for example, we have changed the 10 working day extension in § 417.609(c)(3) to 14 calendar days, to be consistent with how we are counting days under the other section 1852 provisions). We have added to the regulation an example of the type of reason for which an extension may be granted, and we have specified that an M+C organization must notify an enrollee of a determination as expeditiously as the enrollee's health care needs require but no later than upon expiration of the extension.

We have also added a provision in both §§ 422.570(f) and 422.584(f) to prohibit an M+C organization from taking or threatening to take any punitive action against a physician acting on behalf or in support of an enrollee in requesting an expedited organization determination or reconsideration. Since publication of our April 30, 1997 final rule, several national organizations (including the American Medical Association and the American Association of Retired Persons) have expressed strong support for a general prohibition that would prevent retaliation against physicians who act on behalf of or in support of enrollees to expedite reviews. Moreover, we believe that this prohibition complements the anti-gag rules incorporated into subpart E of this interim final rule.

Section 422.574 identifies the parties to an organization determination. The statute does not specify who can ask for an organization determination involving the rights of an M+C enrollee to certain health services. Section 1852(g) does specify that an M+C organization must reconsider a determination upon the request of the enrollee, and either the enrollee or a physician can request an expedited reconsideration. The enrollee specifically has the right to appeal a reconsidered determination under section 1852(g)(5), a provision that is almost identical to the appeal provision in section 1876(c)(5)(B) for HMO and CMP enrollees.

We are interpreting these provisions in the same manner as we interpreted them in part 417 to include not just the enrollee, but also to allow other parties to exercise those rights. Section 417.610 lists as parties to an organization determination not just the enrollee, but certain physicians and other providers who are assignees of the enrollee, legal representatives of a deceased enrollee's estate, and the broad category of any other entity determined to have an appealable interest in the proceeding. These parties can continue to have an interest in the proceedings throughout each level of an appeal. We have retained this provision in § 422.574, except that we have modified § 417.610(d) to include any *provider* or entity determined to have an appealable interest. We have also specifically excluded the M+C organization, since we believe that this entity constitutes the decision maker, and as such is not a party to an organization determination.

5. Reconsiderations by an M+C Organization (§§ 422.578 Through 422.590)

If a decision regarding a request for payment or service is unfavorable (in whole or in part) to the enrollee, the enrollee or any other party to an organization determination as listed in § 422.574 who is dissatisfied with the organization determination may request that the M+C organization reconsider the decision. Reconsiderations represent the first step in the appeal process. The reconsideration process encompasses both standard and expedited reconsiderations, as described under §§ 422.582 and 422.584. The timeframe and notice requirements for reconsiderations are set forth under § 422.590.

One important distinction between organization determinations and reconsiderations is that an M+C organization issues a reconsidered determination only if the reconsideration is entirely favorable to the enrollee. As discussed in detail below, § 422.590(a)(1) now requires that with respect to standard reconsiderations concerning requests for service, an M+C organization must issue any determination that is entirely favorable to the enrollee as expeditiously as the enrollee's health condition requires but no later than 30 calendar days after it receives the request for reconsideration. (As with organization determinations, we are also providing under § 422.590(a) that the M+C organization may extend the timeframe by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee.) Under § 422.590(b)(1), for standard reconsiderations involving requests for payment, the M+C organization must issue any fully favorable determination no later than 60 calendar days from the date it receives the request for the reconsideration. In the case of expedited reconsiderations (which involve only requests for services), § 422.590(d)(1) requires that an M+C organization issue any determination that is entirely favorable to the enrollee as expeditiously as the enrollee's health condition requires but no later than 72 hours after it receives the request for expedited reconsideration, again with the possibility of a 14-day extension as described in § 422.590(d)(2). If, however, the M+C organization's reconsideration results in an affirmation, in whole or in part, of its original adverse organization determination, this decision is automatically subject to further review by an independent entity contracted by HCFA. (Again, the timeframe within which an M+C organization must reconsider a standard or expedited case has been tied to the enrollee's health needs for service requests, subject to either a 30-day or 72-hour maximum (with a possible 14-day extension), while the timeframe remains at 60 days for reconsideration requests involving payment.)

Section 1852(g)(4) of the Act requires HCFA to contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm, in whole or in part, an M+C organization's denial of coverage. Thus, unless an organization completely reverses its coverage denial, the M+C organization must prepare a written explanation and refer the case to the independent review entity for a new and impartial determination concerning the payment or service at issue. This requirement is consistent with existing policy. Under § 417.620, an HMO or CMP that recommends partial or complete affirmation of its adverse determination must prepare a written explanation and send the entire case to HCFA, so that HCFA can make the reconsidered determination. We have in the past contracted with an independent outside entity, the Center for Health Dispute Resolution (CHDR), to perform this function.

For standard requests for services, § 422.590(a)(2) requires that the M+C organization send the case to the independent review entity as expeditiously as the enrollee's health requires, but no later than 30 calendar days from the date it receives the request for a standard reconsideration (or the date of an expiration of an extension). For standard requests for payment, § 422.590(b)(2) allows the M+C organization 60 calendar days from the date it receives the request to send the case to the independent review entity. In instances involving expedited requests for reconsideration, § 422.590(d)(5) requires that the M+C organization forward its decision to the independent entity as expeditiously as the enrollee's health condition requires, but not later than within 24 hours of its affirmation of the adverse organization determination.

Section 1852(g)(2)(B) requires that any reconsideration that relates to a determination to deny coverage based on a lack of medical necessity must be made only by "a physician with appropriate expertise in the field of medicine which necessitates treatment." We have interpreted this requirement in § 422.590(g)(2) to refer to a physician with an expertise in the field of medicine that is appropriate for the services at issue. The statute also requires that the physician be one other than the physician involved in the initial determination. We believe this requirement is implicit in the provision in § 422.590(g)(1) that the reconsideration be conducted by a person not involved in making the organization determination.

For the most part, the procedures outlined above are consistent with the existing part 417 requirements and are carried over into subpart M of part 422—all significant discretionary changes (such as the timeframe reductions) as well as statutory requirements (such as required physician review of certain coverage denials) are discussed in this preamble. We also are implementing several changes in the reconsideration requirements that are analogous to those described for organization determinations, such as the requirement under § 422.584(d)(1) that an M+C organization automatically transfer a denied request for an expedited reconsideration to the standard 30-day timeframe described in § 422.590(a). In addition, § 422.590(e) requires that if an M+C organization refers a case to the independent entity, it must concurrently notify the enrollee of that action.

6. Reduction of Timeframes for Standard Organization Determinations and Reconsidered Determinations

As noted above, section 1852(g)(1)(A) requires that M+C organizations make organization determinations "on a timely basis." For standard (non-expedited) reconsiderations, section 1852(g)(2)(A) specifies that a decision must be made no later than 60 days after the enrollee's request, but the Act provides the Secretary with discretion to reduce the timeframe. Again, the BBA conference report (H.R. Rep. No. 105–217, at pg. 605 (1997)) indicates Congress' understanding that HCFA was developing proposed regulations that would reduce existing timeframes and that these efforts could instead be incorporated into the regulations implementing the M+C program. Consequently, we have decided to exercise such discretion and to reduce the timeframes within which M+C organizations must render both standard organization and reconsidered determinations involving requests for service.

In researching this issue, we found widespread support for reducing timeframes for standard determinations in both medical journals and reports

from other independent entities. For example, the Physician Payment Review Commission's (PPRC) 1996 Annual Report to Congress listed "the timeliness of the process, especially for pre-service denials" as one of the areas requiring improvement in the current appeal process. PPRC reported that "[c]onsiderable delays are built into the [appeal] process." Likewise, the Medicare Rights Center (MRC) recently recommended that HCFA require health plans to make non-expedited organization determinations within 10 days of receiving the request. The MRC also recommended that HCFA require health plans to make non-expedited reconsiderations within 20 days.

The 60-day timeframes in part 417 for organization and reconsidered determinations were based on the original fee-for-service Medicare appeal process. However, this process is mostly retrospective. In coordinated care plans, preservice requests for organization determinations exceed the number of retrospective requests. Reduced timeframes often are of critical importance—particularly when an individual is awaiting prior authorization for a service. Therefore, we believe there is a compelling need to reduce the current timeframe of 60 days for determinations regarding the provision of services in M+C organizations.

Options Considered

In developing this rule, we consulted with beneficiary advocacy groups and the managed care industry concerning several policy options, and reviewed comments received from the public. The groups agreed that the current 60-day timeframe to issue organization and reconsidered determinations was too long. A representative of HCFA's independent contractor, the Center for Health Dispute Resolution (CHDR), also agreed that 60 days was too long for processing determinations.

Beneficiary advocacy groups indicated that the timeframe for rendering standard service-related organization determinations and reconsiderations should be no more than a total of 20–30 days. Advocates reported (and our research supports) that many States require determinations within 30 days. Additionally, beneficiary advocates indicated strong support for the judgment of the United States District Court for the District of Arizona in *Grijalva, et al.* v. *Shalala* (Civ. 93–711, 1997). That case involved the appeal rights of Medicare beneficiaries who were members of HMOs and had their requests for services denied. The court's judgement in *Grijalva* prescribes various procedures to be used for beneficiary appeals in Medicare managed care programs, including the requirement that the HMO make a decision within 5 days, with an opportunity for a 60-day extension if there are exceptional circumstances.

Representatives of the managed care industry recommended that we adopt the National Committee for Quality Assurance's (NCQA) standard of 10 working days (or 14 calendar days) for organization determinations—with an opportunity for an extension. It was also noted that decisions on reconsiderations often take more time than organization determinations. The industry representatives agreed that, in many cases, plans process reconsiderations in less than 30 days, but that often times, additional time is needed to gather information (e.g., medical records). The industry representatives noted that in some instances, allowing extra time to collect information is advantageous to the beneficiary.

Based on all of this information, we are implementing revised requirements from those in part 417 for an M+C organization when it issues standard organization determinations or reconsiderations. These revised requirements include a reduction in the maximum timeframes from 60 days to 14 days for standard organization determinations involving requests for service, and from 60 days to 30 days for standard reconsiderations involving requests for service. (In both cases, 14-day extensions would be permissible under certain circumstances, as discussed above.) More important, §§ 422.568 and 422.590 establish for the first time the requirement that M+C organizations make both their organization and reconsidered determinations as expeditiously as the enrollee's health condition requires. We believe that this emphasis on the health needs of the individual enrollee is consistent with the statutory requirement that determinations be made on a timely basis. Thus, the fact that an organization makes a determination on a service-related issue within 14 days does not necessarily constitute compliance with the regulations if there is evidence that an earlier determination was necessary to prevent harm to the enrollee's health.

7. Reconsiderations by an Independent Entity (§§ 422.592 and 422.594)

Section 1852(g)(4) requires the Secretary to contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm denial of coverage, in whole or in part. HCFA has held such a contract for services from an independent review entity for 9 years. Section 422.592 reiterates the statutory requirement. It also articulates the principle that the independent entity must conduct reviews as expeditiously as the enrollee's health requires, but not to exceed the deadlines specified in its contract with HCFA.

For standard reconsiderations, the contractor historically has been able to process most cases within 30 days. We will require the contractor to meet the standard articulated for M+C organizations at section 422.590; that is, subject to considerations of medical exigency, the contractor must process standard reconsiderations within 30 days, with the possibility of an extension. As part of our new requirement to collect and report information regarding beneficiary appeals, we will monitor all exceptions to deadlines and reasons for delay. In cases in which the delay is due to the failure of the M+C organization to supply the contractor with requested information in a timely manner, we will generally instruct the contractor to find in the beneficiary's favor on any issue that it cannot decide without the information in question. (When an M+C organization has conducted a reconsideration, it presumably will have already collected all the relevant documents and other information needed to make the decision. However, our experience demonstrates that the independent reviewer must sometimes request additional material in order to have a complete record of the dispute.)

For expedited cases, we will require the contractor to make a decision as quickly as the enrollee's condition requires, or within 72 hours (with the possibility of an extension under certain circumstances), in accordance with the expedited reconsideration requirements for M+C organizations under § 422.590(d). As with standard reconsiderations, we will monitor cases that exceed this deadline along with the reasons for the delay. If any delay is due to the failure of the M+C organization to supply the contractor with requested information in a timely manner, we will generally instruct the contractor to find in the beneficiary's favor on any issue that it cannot decide without the information in question.

In order to provide more guidance to both our contractor and the M+C organizations with which we will contract, we will work with them and other interested parties to develop common guidelines for identifying those cases that require immediate attention due to the enrollee's health condition.

These guidelines will build upon, but not be limited to, the criteria that M+C organizations must use to evaluate whether a case should be expedited, currently contained in § 422.570(c)(2). We will issue this information as part of forthcoming manual instructions.

8. Administrative Law Judge (ALJ) Hearings, Departmental Appeals Board (DAB) Hearings, and Judicial Review (§§ 422.600 Through 422.612)

If the independent reviewer's reconsidered determination is not fully favorable to the enrollee, any of the parties listed in § 422.574 has a right to request a hearing before an ALJ of the Social Security Administration if the amount remaining in controversy is $100 or more. (Note that the M+C organization does not have a right to request a hearing before the ALJ.) If the ALJ hearing does not result in a fully favorable determination, any party (including the M+C organization) may request that the Appeals Council of the DAB review the ALJ decision. Following the administrative review process, any party (including the M+C organization) is entitled to judicial review of the final determination if the amount remaining in controversy is $1,000 or more. In establishing the requirements for M+C organizations, we have clarified and adopted the existing requirements in part 417, with one exception. That is, consistent with section 1852(g)(5), we require under § 422.612(a) that a party who wishes to request judicial review of an ALJ's decision must notify the other parties involved.

9. Effectuation of a Reconsidered Determination or Decision (§ 422.618)

Based on public reaction to our April 30, 1997 final rule, we believe there may be a need for explicit regulatory requirements concerning an M+C organization's effectuation of (that is, an organization's compliance with) an appeal determination or decision. Therefore, we are including at § 422.618 (and referencing at § 422.590(a)(1) and (b)(1)) several requirements that constitute a restatement of HCFA's longstanding policy in this regard (with a corresponding timeframe reduction from 60 to 30 days in the case of service-related reconsiderations). (See sections 2405.4 and 2405.5 of the HMO/CMP Manual Transmittal 6, issued in March, 1991.) Specifically, § 422.618(a)(1) requires that if, on reconsideration of a request for service, an M+C organization reverses its adverse organization determination, the organization must authorize or provide the service under dispute as expeditiously as the enrollee's health requires, but no later than 30 calendar days after the date the M+C organization receives the request for reconsideration (or no later than upon expiration of an extension described in § 422.590(a)(1)). For reconsideration of requests for payment, § 422.618(a)(2) requires that if an M+C organization reverses its adverse organization determination, the organization must pay for the service no later than 60 calendar days after the date the M+C organization receives the request for reconsideration. Similarly, under § 422.618(b), if an M+C organization's adverse organization determination is reversed in whole or in part by the independent entity's reconsideration or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date the M+C organization receives notice reversing its organization determination. The M+C organization must also inform the independent, outside entity that it has effectuated the decision.

10. Noncoverage of Inpatient Hospital Care—Notice and PRO Review (§§ 422.620 and 422.622)

Under § 422.620, we are largely incorporating the existing requirements under § 417.440(f) concerning notice of noncoverage of inpatient hospital care. Section 417.440(f) requires that if an enrollee in an HMO or CMP is a hospital inpatient, the enrollee remains entitled to inpatient care until he or she receives notice that the care is no longer covered. We have revised this provision, however, to make it clear that inpatient services only continue to be covered until there is a notice of noncoverage in situations in which the hospital admission was authorized in the first instance by the M+C organization or in which the admission constituted emergency or urgently needed care, as described in §§ 422.2 and 422.112(b). This clarification is warranted in light of the fact that an M+C organization offering an M+C non-network MSA or private fee-for-service plan has the right to deny coverage retroactively for a hospital stay involving nonemergency or nonurgently needed care on the grounds that it was not medically necessary. Also, this would make it clear that an M+C organization does not have to make payment under an MSA plan if the deductible has not been satisfied.

Section 422.622 explains our requirements with respect to an enrollee's right to PRO review of a determination by an M+C organization or a hospital that inpatient care is no longer necessary.

Under existing § 417.605, Medicare managed care enrollees have two protections available to them when they believe they are being discharged prematurely from a hospital—immediate PRO Review or an HMO or CMP's internal expedited appeal process. Under § 417.604(b), enrollees may elect one appeal right or the other; exercising one right eliminates the right to the other.

We believe that the PRO review process offers significant advantages to enrollees, most significantly the protection from financial liability for a continued hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination. Additionally, PROs generally communicate directly with the Medicare enrollee (or authorized representative) during the review, conduct their reviews of an alleged premature discharge within 3 days, and use nurses and physicians to conduct the reviews. In contrast, enrollees who file for an expedited review with the managed care organization are not protected from financial liability during an appeal. The HMO or CMP has 72 hours to conduct the review. If the organization is unable to issue a fully favorable decision to the enrollee, the case file will be forwarded to the independent contractor.

In developing the M+C requirements with respect to this issue, we considered whether the regulations should require enrollees of M+C organizations to exercise their right to immediate PRO review. We consulted with representatives of both the managed care industry and beneficiary advocates. The groups with which we consulted indicated that the immediate PRO review process appears to be a better option for the enrollee. As noted previously, PRO review provides financial protection, direct communication between the PRO and the enrollee, and a decision that is generally rendered more quickly than a managed care plan's determination. However, we were not certain whether we should limit beneficiaries to one option. Particularly in the event that an enrollee misses the deadline for filing with the PRO, we believe that the enrollee should retain the option of filing an expedited appeal with the M+C organization.

Based on this review, we have concluded that the appropriate course is to draft the M+C requirements so as to make it clear that it is in the best interest of an M+C enrollee to request PRO review if the individual believes that he

or she is being discharged from a hospital prematurely. Thus, § 422.622(a)(1) specifies that: "An enrollee who wishes to appeal a determination by an M+C organization or hospital that inpatient care is no longer necessary must request immediate PRO review. * * * An enrollee who requests immediate PRO review may remain in the hospital without further financial liability [subject to the provisions of § 422.622(c)]" (until PRO review is completed). Section 422.622(a)(2) then provides that an enrollee who fails to make a timely request for PRO review still has the option of requesting an expedited reconsideration from the M+C organization, although the financial liability protections associated with the PRO review process do not apply. We believe that this regulatory construction makes it clear that enrollees are expected, for their own benefit, to avail themselves of the PRO review process, but does not eliminate the fall-back option of the M+C organization's expedited review process for those enrollees who fail to request PRO review on a timely basis.

We have made further revisions to the language in § 417.605 to adapt this provision to the new M+C MSA and private fee-for-service plan options. As discussed above in connection with the notice of non-coverage requirement in § 422.620, under these plan options, an M+C organization may not be aware that an enrollee has been hospitalized, and has the right to deny coverage of such a hospitalization on the grounds that the stay was not medically necessary. Also, in the case of an enrollee in an M+C MSA plan, the individual may not have reached the deductible under the plan, and therefore payment for medically necessary hospital services shall be applied to the deductible. We thus have made it clear in § 422.622(c)(1) that if an M+C organization did not authorize coverage of a hospital admission, and notifies the enrollee that a continued stay is not covered, the organization is not required to pay for services while the enrollee pursues an appeal with a PRO (that is, unless and until it is determined on appeal that the hospital stay should have been covered under the M+C plan). We have qualified this statement to provide that the M+C organization is obligated to pay for continued services if the enrollee was hospitalized in order to receive emergency services or urgently needed care as described in §§ 422.2 and 422.112(b), since these services do not require prior authorization.

In cases in which the *hospital* makes a determination that hospital services are no longer needed, section 1154(e)(4)(B) of the Act expressly precludes the hospital from charging a Medicare beneficiary for services during the period that a PRO is reviewing an appeal under section 1154(e). We have reflected this statutory provision in § 422.622(c)(2).

11. Conclusion

In developing the organization determination, appeal and grievance requirements for M+C organizations, we have undertaken a broad review of the existing Medicare managed care requirements. We have consulted with representatives of beneficiary advocacy groups and the managed care industry concerning several policy options. We believe that we have included in this interim final rule those improvements that were practical within the short timeframe allotted for rulemaking. In addition to the changes made in this rule, we intend to publish a notice of proposed rulemaking in the near future to implement a variety of other improvements in the M+C dispute resolution process.

Therefore, we welcome comments, concerns, and ideas on all issues discussed in this interim final rule, as well as on the overall organizational changes incorporated into these regulations. In particular, as noted above, we would appreciate comments on whether HCFA should specify requirements (such as timeframes) for meaningful grievance procedures. We also are seeking additional comments on establishing effective and efficient parameters as to when a reduction in services (for example, a reduction in prescription dosage, skilled nursing facility coverage, home health care or outpatient visits) constitutes a denial that gives rise to an obligation to provide written notice. Comments are also welcome on whether notification requirements should apply in all instances of service discontinuations, as opposed to only when an enrollee indicates that he or she disagrees with such a discontinuation, as provided under § 422.566(b)(4). Finally, we would appreciate input on categories of meaningful data elements for reporting plan-level grievances and appeals. We believe such comments can assist with our data collection and reporting efforts (as required by the BBA) and in promoting consistency at the plan level in data collection and reporting. We welcome all suggestions for other improvements to the M+C grievance, organization determination and appeal processes.

N. Medicare Contract Appeals

Subpart N of this interim final rule sets forth procedures for making and reviewing the following contract determinations: (1) A determination that an entity is not qualified to enter into a contract with HCFA under Part C of title XVIII of the Act; (2) a determination to terminate a contract with an M+C organization; and (3) a determination not to authorize a renewal of a contract with an M+C organization. Pursuant to at section 1856(b)(2), which provides for the adoption of standards under section 1876 to implement analagous provisions in the new Part C, the procedures set forth in subpart N of part 422 are for the most part modeled after the contract appeal procedures currently in place with regard to HMO and CMP contracts under section 1876, which are set forth at 42 CFR part 417 subpart R. We describe below the provisions of new subpart N of part 422 that are not identical to 42 CFR part 417.

Section 422.641 sets forth the contract determinations that are subject to the reconsideration and appeals procedures in subpart N.

Section 422.644(a) specifies that when HCFA makes a contract determination, it provides the M+C organizations written notice specifying reasons for the determination and M+C organization rights pursuant to a reconsideration.

Under, § 422.644(d) a HCFA notice that it has decided not to authorize an M+C organization contract renewal is sent to the M+C organization by May 1 of the current contract year. (Note that while this notice informs an M+C organizations of its right to appeal a decision not to authorize a renewal, a contract will not be renewed unless an affirmative notice *authorizing* renewal is sent by HCFA. *See* § 422.506(b)(2).) The May 1 deadline specified above should afford HCFA enough time to consider any M+C organization's request for reconsideration and still afford adequate time for HCFA to ensure the accuracy of its printed and electronic material utilized in the annual health fair.

If HCFA decides to terminate a contract under § 422.644(c) for reasons other than those specified at 422.510(a)(5) it must provide notice to the M+C organization by mail at least 90 days before the intended date of the termination. Consistent with section 1857(h)(2), which provides for immediate termination where there is an "imminent and serious risk" to enrollee health and pursuant to our rulemaking authority at section 1856(b)(1), in § 422.644(c) we also provide a separate notice timeframe for immediate terminations discussed in

§ 422.510(a)(5). See section K of this preamble. Pursuant to violations described in § 422.510(a)(5), HCFA will notify the M+C organization in writing that its contract has been terminated effective the date of the termination decision by HCFA. We believe that in instances where the life and physical well being of beneficiaries is in jeopardy, HCFA must have the ability to immediately sever its relationship with an M+C organization in order to protect beneficiaries and to safeguard taxpayer confidence in HCFA's administration of the Medicare program.

Section 422.646 states that initial contract determinations are final and binding unless the determination is reconsidered in a manner consistent with applicable requirements described in § 422.648. In § 422.650(b) we have shortened the deadline for filing a request for reconsideration to 15 days from the sixty days allowed for HMOs and CMPs under § 417.650(b), and have eliminated the provision made in § 417.650(c) for a deadline extension for good cause. We believe the time frames afforded under § 422.650 still provide M+C organizations sufficient time to prepare a request for reconsideration of the contract determination at issue, should the organization decide to do so.

As in the case of the deadline for requesting reconsideration, and based on our rulemaking authority at section 1856(b)(1), in § 422.662(b), we have shortened the 60 day time period for requesting a hearing under § 417.662(b) to 15 days. We also have again eliminated "good cause" extension authority that was found in § 417.662(c).

Like § 417.664(a), § 422.664(a) provides that the effective date of a determination to terminate a contract will be postponed until after a final decision is rendered on any M+C organization appeal. Section 422.664(b) also follows § 417.664(b) in providing that a request for a hearing will *not* postpone a decision not to authorize a contract renewal unless HCFA finds an extension of the contract past its expiration date consistent with the purposes of Part C. There are two significant differences between § 417.664 and § 422.664, however. First, as discussed below, § 417.664 provides that in the case of a termination only, the general rule is that the termination will be postponed until after an additional post-hearing decision level of review required under section 1857(h)(1)(B). Second, § 422.664(c) implements the "imminent and serious risk to health" exception in section 1857(h)(2), under which a termination can take effect immediately, and will not be postponed while an appeal is pursued. Specifically, when a contract termination decision is based upon § 422.510(a)(5), discussed in section K above, the termination is effective immediately. While the M+C organization still has the right to appeal the termination, this appeal will not prevent the termination from taking effect.

In § 422.670, pursuant to our rulemaking authority at section 1856(b)(1), we have added a requirement that the hearing officer establish a time and place for the hearing within 30 days of the date of their receipt of the request for a hearing. Again, this time constraint has been added because we believe it is necessary to impose time-weighted discipline on the reconsideration process that strengthens HCFA's enforcement capabilities while simultaneously enhancing beneficiary protections. Changing the time frame from the open-ended language provided under § 417.670 to the 30-day time frame provided at § 422.670 accomplishes these goals.

In § 422.692, we provide in the case of termination decisions only for an appeal from the hearing decision, as required under section 1857(h)(2) before a termination can take effect. We have provided for review of a hearing officer's decision by the Administrator, under similar procedures to those used for the Administrator's review of decisions of the Provider Reimbursement Review Board pursuant to § 405.1875.

O. Intermediate Sanctions

The M+C organization actions subject to intermediate sanctions and civil money penalties are substantially the same as those established at § 417.500 for section 1876 contracting plans. However, there are some exceptions. Since the 50/50 enrollment requirement has been dropped, so have the accompanying intermediate sanctions.

The BBA also contains additional sanction authority not found in § 417.500, which we are implementing in subpart O. First, the BBA retains and modifies new section 1876 intermediate sanction and civil money penalty authority originally enacted in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This authority has not been implemented in § 417.500. Under this new authority (in section 1876(i)(1) for HMOs and CMPs and in section 1857(g)(3) for the M+C program), intermediate sanctions and civil money penalties can be imposed on the same grounds upon which a contract could be terminated. *See* discussion of contract termination in sections K. and N. above. Under the section 1876 provision, the procedures now found in section 1857(h)(1), discussed in section N. above, applied to the new HIPAA sanction authority, and had to be followed before sanctions based upon this new HIPAA authority could be imposed. Under the BBA, however, sanctions based on the grounds for termination in section 1857(c)(2) can be imposed on the same terms as the sanctions in § 417.500. *See* section 1857(g)(3). As discussed above in section K., in § 422.510(a)(4) through (a)(11), we have identified specific M+C organization behaviors that we believe meet one of the broad grounds for termination in section 1857(c)(2). Under the authority in section 1857(g)(3) to impose sanctions where the grounds in section 1857(c)(2) exist, intermediate sanctions can be imposed for any of the violations identified in § 422.510(a), and we so provide in § 422.752(b).

Finally, private fee for service plans are subject to intermediate sanctions if they fail to enforce the balance billing limit that applies to charges to plan members by contracting providers. See discussion of these provisions in section IV. of this preamble.

The process for imposing all of the M+C intermediate sanctions will largely be the same as established under § 417.500. Under this process, when HCFA determines that a sanctionable violation has occurred, it notifies the M+C organization that enrollment and marketing must be suspended (or, alternatively, in the case of some violations, payment for new enrollees will be suspended) in 15 days, unless the organization provides evidence that HCFA's determination is incorrect. There is an exception to this 15 day delay in the effective date of the sanctions if HCFA determines that the M+C organization's conduct poses a serious threat to an enrollee's health and safety. *See* § 422.756(d)(2). In addition to or in place of these intermediate sanctions, civil money penalties may be imposed for the same underlying violations. For any of the violations that were previously set forth in § 417.500, and are now in § 422.752(a), the Office of Inspector General imposes civil money penalties in accordance with 42 CFR part 1003. In the case of the new HIPAA sanction authority discussed above, HCFA imposes civil money penalties, with the exception of a determination under § 422.510(a)(4), based upon fraudulent behavior by an M+C organization. In this latter case, OIG imposes civil money penalties.

P. Technical and Conforming Changes

This interim final rule makes a number of technical and conforming changes to part 422 subpart H (which was established by an interim final rule published on April 14, 1998 (63 FR 18124) and amended by an interim final rule published on May 7, 1998 (63 FR 25360) For example, we remove the definition of "health care provider" from subpart H. We do this because this rule establishes a definition of "provider" in subpart A of part 422 for purposes of the entire part that is exactly the same as the definition of "health care provider" appearing in subpart H. Further, as a conforming change, we then change "health care provider" wherever it appears in subpart H to "provider."

In addition to the additions and revisions to part 422 of our regulations discussed throughout this document, this interim final rule also makes a number of technical and conforming changes to the following parts of 42 CFR: 400, 410, 411, and 417. These changes, which are generally in the form of redesignations and nomenclature changes, are made in order to bring our regulations into conformity with the provisions of the section 4001 through 4006 of the BBA.

We have also made a conforming change to 42 CFR part 403 "Special Programs and Projects," with regard to Medicare supplemental policies. As Medicare does not cover the total cost of providing medical care, approximately 75 percent of Medicare beneficiaries purchase or have available through their own, or a spouse's employment or former employment, some type of private supplemental health insurance coverage. This kind of insurance helps to pay for expenses, services, and supplies that Medicare either does not cover or does not pay in full such as coinsurance or deductible charges, prescription drugs, and some long term care services. This coverage is ordinarily referred to as Medicare supplemental (Medigap) insurance. The BBA, in section 4003, provides that an M+C plan is not considered a Medicare supplementary policy. Therefore, we are revising § 403.205 to specify that a Medicare supplemental policy does not include a M+C plan. We are aware of other provisions in that statute affecting the Medigap area, but those are included or will be covered under the National Association of Insurance Commissioners (NAIC) Model Standards in line with existing § 403.210. NAIC works with us to annually update the Model Standards with regard to changes to the Medicare supplemental insurance area.

Q. Transition Information for Current Medicare Program

Section 4002 of the BBA included a number of provisions that were effective upon enactment for eligible organizations with section 1876 contracts or section 1833 agreements or that would alter the requirements for those contractors that remained in force following the implementation of the M+C program. The provisions that were effective upon enactment were conveyed to current contractors through operational policy letters (OPLs) numbered 61, 63, and 65 and available to the public on HCFA's Internet homepage. Most of the provisions convey automatically with the publication of the Part C regulations, either contained in the newly-established part 422 or contained in conforming changes to part 417, while others simply created operational impacts during the transition year of 1998.

The BBA in section 4002(a) immediately changed the required enrollment composition of 50 percent Medicare and Medicaid, and 50 percent commercial under section 1876 to: (1) Consider only Medicare members for 50 percent of the enrollment, and (2) permit waiver of the requirement when it is "in the public interest." All enrollment composition requirements for Medicare contractors are eliminated beginning with contract periods on or after January 1, 1999.

The BBA in section 4002(j) changed the definition of a health care prepayment plan (HCPP) to mean: (1) An organization that is Union or Employer sponsored; or (2) an organization that does not provide; or arrange for the provision of any inpatient hospital services. Current HCPPs must meet this definition on January 1, 1999 and new 1998 applicants must meet the definition as of the effective date of the HCPP agreement. Also, as of January 1, 1999, HCPPs are not required to meet Medigap requirements.

The BBA also affected section 1876 cost contracts. Upon enactment of the BBA (August 5, 1997), the Secretary may not enter into new section 1876 cost contracts, except for current HCPPs that converted to section 1876 cost contracts. Also, 1876 cost contracts may not be extended or renewed beyond December 31, 2002.

III. Medicare+Choice MSA Plans

A. Background

As noted above, among the type of M+C options available under section 1851(a)(2) of the Act is an M+C MSA plan, that is, a combination of a high deductible M+C insurance plan and a contribution to an M+C MSA. Section 1859(b)(3)(A) of the Act defines an MSA plan as an M+C plan that:

- Provides reimbursement for at least all Medicare-covered items and services (except hospice services) after an enrollee incurs countable expenses equal to the amount of the plan's annual deductible.
- Counts for purposes of the annual deductible at least all amounts that would have been payable under original Medicare if the individual receiving the services in question was a Medicare beneficiary not enrolled in an M+C plan, including amounts that would be paid by the beneficiary in the form of deductibles or coinsurance.
- After the annual deductible is reached, provides a level of reimbursement equal to at least the lesser of actual expenses or the amount that would have been paid under original Medicare if the individual receiving the services in question was a Medicare beneficiary not enrolled in an M+C plan, including amounts that would be paid by the beneficiary in the form of deductibles or coinsurance.

Eligible individuals may enroll in M+C MSA plans effective January 1, 1999. Section 1859(b)(3)(B) sets the maximum annual deductible under an M+C MSA plan for 1999 at $6,000, with changes for future years to be based on the national per capita M+C growth percentage established under section 1853(c)(6). (See section II.F of this preamble.) In this interim final rule, we are seeking comment regarding establishing, pursuant to our general authority under section 1856(b)(1), a minimum deductible under an M+C MSA plan. As discussed below, one possibility would be to establish a minimum deductible equal to the projected actuarial value of the average per capita copayment under original Medicare, rounded to the nearest $50.

Section 4006 of the BBA adds new section 138 of the Internal Revenue Code of 1986 containing Internal Revenue Service (IRS) rules concerning M+C MSAs. In general, an M+C MSA is a tax-exempt trust created solely for the purpose of paying the qualified medical expenses of the account holder. The account may be established only in connection with an M+C MSA plan, and must consist only of contributions from HCFA under the M+C program or of

transfers from another M+C MSA, if an enrollee has set up more than one M+C MSA. Section 138 also sets forth IRS rules concerning the distribution of MSA funds and tax penalties associated with the distribution of funds from an M+C MSA for purposes other than paying the qualified medical expenses of the account holder. (These provisions are discussed below in section III.J of this preamble.)

In establishing the M+C MSA option, Congress specified under section 1851(b)(4) of the Act that the opportunity to enroll in an M+C MSA plan was available on a demonstration basis to up to 390,000 enrollees through December 31, 2002. The Secretary is charged with regularly evaluating the impact of permitting enrollment in M+C MSA plans and with submitting a report to Congress by March 1, 2002, concerning the effects of the M+C MSA program and whether it should be extended beyond 2002.

The introduction of M+C MSAs builds upon the private market MSA demonstration program now available to small employers and the self-employed under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Like the HIPAA demonstration, the BBA conference report (H.R. 105–217, pg. 585) indicates that the introduction of M+C MSAs is premised on the need for beneficiaries to play a greater role in the health care purchasing decision. M+C MSAs offer beneficiaries incentives to ensure that the health care resources they need are allocated in an efficient manner. This increased consumer control is believed to have potential for discouraging the overutilization of health services.

In implementing the BBA provisions concerning the M+C MSA demonstration, our primary objective is to allow a true test of the potential benefits of the MSA concept to the Medicare program and its beneficiaries. Thus, as with other parts of the M+C regulations, an underlying design principle has been to preserve as much flexibility as possible for organizations and providers in terms of service delivery arrangements, while still building in the protections intended under the BBA for M+C MSA enrollees and the Medicare trust fund. For the convenience of the reader, all portions of the M+C regulations that specifically concern M+C MSA plans and accounts are discussed below in this preamble; however, the M+C MSA regulations do not constitute a separate subpart of new part 422. This is because, except as noted below, the general M+C requirements throughout part 422 apply equally to M+C organizations that offer M+C MSA plans; thus it would be redundant to repeat all applicable requirements in a separate M+C MSA subpart.

B. General Provisions (Subpart A)

Sections 422.2 and 422.4 set forth several definitions for terms connected with M+C MSA plans, including "M+C MSA," "M+C MSA plan," and "MSA trustee." As noted in section II.D of this preamble, we also distinguish between a "network" and a "non-network" M+C MSA plan. The definitions consist of general meanings for these terms as used in the BBA and do not impose specific requirements. Thus, the definition for an MSA references the applicable requirements of sections 138 and 220 of the Internal Revenue Code, and the M+C MSA plan definition references the applicable requirements of new part 422:

The theory behind the new M+C MSA option is that a beneficiary will pay a lower monthly premium for a "catastrophic" insurance policy with a high deductible, and use the money deposited in his or her M+C MSA account to cover expenses during the extended period prior to this high deductible being reached. This concept is reinforced by the fact that Congress excluded from eligibility for M+C MSA plans individuals with "first dollar" health care coverage (such as, Medicaid-eligible individuals'—see discussion below), who would not be required to incur expenses during the significant period of time expected to transpire before the high M+C MSA plan deductible is met. This is also the reason that Congress amended the Medigap statute to preclude insurers from selling policies to enrollees in M+C MSA plans that would cover costs incurred before the high deductible is met. Indeed, the legislative history expressly refers to "[p]rohibit[ing] the sale of certain [Medigap] policies to a person electing a *high deductible* plan," meaning an MSA plan. (H.R. Rep. No. 105–217, pg. 654 (1997). Emphasis added).

Although Congress did not include a minimum deductible amount, we believe that the statutory scheme, and the above-quoted reference to a "high deductible plan" in the Conference report, clearly *imply* that MSA plans would have a higher deductible than other plans. As noted above, we are seeking comment on providing for a minimum deductible based on the actuarial value of the average per capita cost-sharing under original Medicare rounded to the nearest $50. For 1999, this amount is $1,000. (Clearly, any deductible *lower* than the actuarial value of what original Medicare beneficiaries pay is *not* a "high" deductible.) We believe that a minimum deductible amount could ensure that M+C MSA plans comport with the "high deductible" design envisioned by Congress, without inappropriately limiting organizations' flexibility in designing M+C MSA plans. Without such a deductible, however, we are concerned that an organization could purport to offer an "M+C network MSA plan" that had such a low deductible that it would be impossible to distinguish from a coordinated care plan, although the plan would not be subject to the rules that Congress intended be applied to coordinated care plans. Therefore, in deciding whether to institute a minimum deductible for M+C MSA plans, we intend to examine any evidence that such abuses may be taking place, in addition to our review of public comments on the issue.

The only other general requirement concerning M+C MSA plans is the incorporation under § 422.4(a)(2) of the statutory provision (section 1851(a)(2)(B)) that one of the available alternatives under the M+C program is the combination of an M+C MSA plan with a contribution into an M+C MSA. Consistent with the statute, any State-licensed risk-bearing entity could offer an M+C MSA plan, whether it is an HMO offering an "M+C network MSA plan" under which beneficiaries are limited to a limited network of providers for covered services after the deductible is met, or an indemnity plan covering services on a fee-for-service basis after the deductible is met.

C. Eligibility, Election and Enrollment Rules (Subpart B)

1. Eligibility and Enrollment (§ 422.56)

Any individual who is entitled to Medicare under Part A, is enrolled under Part B, and is not otherwise prohibited (such as an ESRD patient), is eligible to enroll in an M+C plan. However, the statute places several limitations on eligibility to enroll in an M+C MSA plan. These limitations are set forth at § 422.56 of the regulations. Section 422.56(a) indicates that M+C MSA plans are established on a demonstration basis and incorporates the statutory provisions of section 1851(b)(4), that is:

- No more than 390,000 individuals may enroll in M+C MSA plans.
- No individual may enroll on or after January 1, 2003, unless the enrollment is a continuation of an enrollment already in effect as of that date.
- No individual may enroll or continue enrollment for any year unless

he or she can provide assurances of residing in the United States for at least 183 days during that year.

The 390,000 limit represents approximately 1 percent of the Medicare population. We do not intend to apply any State or regional limits on enrollment in M+C MSA plans, although we will monitor the number of enrollees on an ongoing basis. We believe it is unlikely that the number of applications for M+C MSAs will reach 390,000 in the first enrollment period, November, 1998. If necessary, however, we will accept applications for enrollment in M+C MSA plans on a first-come, first-served basis, with the first 390,000 applicants being allowed to enroll. We will notify organizations offering M+C MSA plans directly should the enrollment cap be reached.

The only restrictions on enrollment in M+C MSA plans under § 422.56(b) and (c) are those directly contemplated under section 1851(b)(2) and (3) of the statute. Specifically, § 422.56(b) states that an individual who is enrolled in a Federal Employee Health Benefits Program (FEHBP) plan, or is eligible for health care benefits through the Veterans Administration (VA) or the Department of Defense (DoD), may not enroll in an M+C MSA plan. The statute provides that the restriction on FEHBP enrollment may be eliminated if the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies to ensure that the enrollment of FEHBP participants will not result in increased expenditures for health benefit plans. We intend to apply this same test for the enrollment restrictions that apply to VA and DoD-eligible individuals. In addition, § 422.56(c) incorporates the statutory prohibition under section 1851(b)(3) on enrollment in M+C MSA plans by individuals who are eligible for Medicare cost-sharing under Medicaid State plans.

Section 422.56(d) sets forth several additional restrictions on enrollment in M+C MSA plans that we believe are clearly consistent with statutory intent. These restrictions are discussed in detail below in section III.D.2 of this preamble, in the discussion of supplemental benefits under an M+C MSA plan.

2. Election (§ 422.62)

Section 1851(e) of the Act establishes general rules concerning the time periods when a beneficiary may elect to enroll in an M+C plan, with special rules for M+C MSA plans set forth at section 1851(e)(5). Based on these provisions, § 422.62(d) specifies that an individual may elect an MSA plan only during one of the following periods;

- An initial election period, that is, the 7-month period beginning 3 months before the individual is first entitled to parts A and B of Medicare.
- The annual coordinated election period in November of each year.

Unlike for other M+C plans, an individual may discontinue election of an M+C MSA plan only during the annual coordinated election period. Thus, effective January 1, 1999, enrollees in M+C MSA plans are "locked in" for 1 year, or for the remainder of the calendar year for elections during an initial election period that take effect other than on January 1. This lock-in rule contrasts sharply with the rules for other types of M+C plans, which provide for continuous open enrollment and disenrollment through December 31, 2001.

There are two exceptions to this lock-in rule. First, as specified under section 1851(e)(5)(C) and codified at § 422.62(d)(2)(ii), an individual who elects an M+C MSA plan during an annual election period in November of a given year, and has never before elected an M+C MSA plan, may revoke that election by submitting to the organization offering the plan a signed request or by filing the appropriate disenrollment form by December 15 of that year. In addition, we are providing at § 422.58(d)(2) that an individual may disenroll from an M+C MSA plan during the special election periods prompted by circumstances such as termination of the plan, change in the individual's place in residence, etc., as spelled out under § 422.62(b). As discussed in detail in section II.B of this preamble, section 1851(e)(4) provides that these special election periods are to take effect on January 1, 2002, in concert with the initial effective date for the lock-in rules for M+C plans other than MSA plans. Given that the lock-in rule for M+C MSA plans takes effect on January 1, 1999, we believe it is appropriate that the protections afforded by the special election period should be applicable at that time to individuals who elect M+C MSA plans.

3. Information About the M+C Program (§ 422.64)

Section 1851(d) and § 422.64 address the requirement that M+C organizations must provide the information that HCFA needs to help beneficiaries make informed decisions with respect to their available choices for Medicare coverage. The only M+C MSA-specific requirement involved here (also applicable for M+C private fee-for-service plans) is that the description of an M+C MSA plan's benefits should include differences in cost-sharing, premiums, and balance billing, as compared to other types of M+C plans (see § 422.64(c)(7)(iv)). We believe that the purpose of this requirement is to make sure that beneficiaries are aware of the fundamental differences between M+C MSA or private fee-for-service plans and other types of M+C plans, rather than to present detailed information concerning the benefits, premiums, and copayments for all other *specific* M+C plans in the area. For compliance purposes, then we intend to evaluate the information submitted by organizations for MSA plans in these terms. We note that we would apply the same standard in determining compliance with the requirement of § 422.110(b)(2)(ii) concerning an organization's responsibility to disclose to its enrollees a description of the benefits available under other types of plans.

D. Benefits (Subpart C)

1. Basic Benefits Under an M+C MSA Plan (§ 422.102)

Section 422.102 incorporates the statutory requirements for M+C MSA plans defined under section 1859(b)(3) of the Act, as outlined above. Thus, § 422.102(a) specifies that an MSA organization offering an MSA plan must make available to an enrollee, or provide reimbursement for, at least all Medicare-covered services (except for hospice services) after the enrollee's countable expenses reach the plan's annual deductible. We note that section 1859(b)(3)(A)(i) only uses the phrase "provides reimbursement for" the covered services, but the intent of the statute clearly includes situations where a network M+C MSA plan would either furnish the services directly or arrange for provision of the services. We believe that the phrase "make available to the enrollee" accounts for either of these situations.

Section 422.102(b) then indicates that countable expenses must include the lesser of actual costs or all the amounts that would have been paid under original Medicare if the services were received by a Medicare beneficiary not enrolled in an M+C plan, including the amount that would have been paid by the beneficiary under his or her deductible and coinsurance obligation. In accordance with section 1859(b)(3)(A)(ii) of the statute, under each MSA plan, an organization would have the discretion to define what it considers countable expenses, subject to the statutory threshold of the Medicare

payable amount. We would envision that M+C organizations offering MSA plans could provide that countable expenses would include a considerably broader range of services than does Medicare, including expenses for services that often would constitute supplemental health care benefits under other M+C plans, such as prescription drugs, dental services, or preventative care services. (As discussed below, section 1852(a)(3)(B)(ii) prohibits an M+C MSA plan from providing most supplemental health care benefits before an individual reaches the annual deductible. However, counting the expenses for such services towards the annual deductible is permissible.) An M+C organization could also choose to provide that countable expenses under an M+C MSA plan would include a provider's full charges, rather than just the amount payable under the Medicare payment rate schedules.

Section 422.102(c) provides that after the deductible is met, an M+C MSA plan pays the lesser of 100 percent of either the actual expense of the services or of the amounts that would have been paid under original Medicare if the services were received by a Medicare beneficiary not enrolled in an M+C plan, including the amount that would have been paid by the beneficiary under his or her deductible and coinsurance obligation. As discussed below in section III.F., M+C balance billing protections do not apply in this situation. Thus, unless explicitly included in the terms of the M+C MSA plan, any amounts billed in excess of 100 percent of this Medicare allowed amount would be the responsibility of the enrollee. In this provision, we have interpreted the language in section 1859(b)(3)(A)(iii)(II) referring to the "amounts that would be paid (without regard to any deductibles and coinsurance) under parts A and B" to mean the amount that would be paid if there *were no* beneficiary liability provided for in the form of deductibles and coinsurance—in other words, the full amount of the Medicare rate. We have put this a different way in § 422.102(c), providing that the amount in question *includes* the amounts that the beneficiary would pay in deductibles and coinsurance. We considered interpreting "without regard to any deductibles and coinsurance amounts" to mean without *counting* the amounts original Medicare beneficiaries would pay in deductibles and coinsurance. We decided, however, that after a deductible of up to $6000, and with balance billing permitted, M+C MSA plans should be required to pay the full Medicare payment rate once the deductible is met. Again, an organization would be free to offer expanded benefits under an M+C MSA plan beyond the minimum requirements after the deductible is met, including supplemental benefits that it could not offer before the deductible is met.

Section 422.103(d), concerning the annual deductible, is based on section 1859(b)(3)(B). As the statute specifies, the maximum annual deductible for an MSA plan for contract year 1999 is $6,000. In subsequent contract years, the maximum deductible may not exceed the maximum deductible for the previous contract year increased by the national per capita M+C growth percentage for the year. In calculating the maximum deductible for future years, HCFA will round the amount to the nearest multiple of $50.

Another issue we examined in developing the regulations concerning the annual deductible for M+C MSA plans was whether to establish specific requirements on deductibles for individuals who enroll in M+C MSA plans effective other than on January 1 of a given year, that is, individuals who turn 65 and make midyear elections of an M+C MSA plan within their initial enrollment periods. Our primary alternatives on this issue were to: (1) require all M+C MSA plans to "prorate" the deductible, that is, reduce the amount of the deductible for midyear enrollees in proportion to the amount of the calendar year remaining or (2) allow insurers the flexibility to decide for themselves how to deal with partial year enrollees. Although the prorating alternative would reduce the cost-sharing burden on beneficiaries during the first partial year, and thus possibly make it more likely that an individual whose initial election period occurs late in the year would choose an M+C MSA plan, this option has several drawbacks. Few if any insurance carriers now prorate their deductibles for midyear enrollees, and we are reluctant to implement such an approach unilaterally, particularly since we have no evidence that the costs of implementing a prorated system would be exceeded by the benefits to beneficiaries in terms of reduced risk. Such a requirement could limit interest in establishing M+C MSA plans, if insurers believed that they could be placed at risk of the enrollment of individuals with low prorated deductibles who anticipate high cost short-term health care needs.

Instead, we decided to allow insurers to decide for their M+C MSA plans how to deal with partial year enrollees. This should foster flexible approaches to this situation, with organizations making decisions based on their perceptions of the cost of implementation and the benefits to them in terms of attracting prospective enrollees. For example, an organization's plans could include a "carry-over" procedure. Under such a procedure, bills incurred during a specified period of one calendar year could be carried over to the following year and applied to the next year's deductible.

2. Supplemental Benefits (§§ 422.102 and 422.103)

Section 422.102 addresses the general M+C rules on supplemental benefits. Unlike other M+C plans, MSA plans are not permitted to include any mandatory supplemental benefits and are limited in terms of the optional supplementary benefits that can be offered. In accordance with section 1852(a)(3)(B)(ii), § 422.103(a) specifies that an M+C MSA plan generally may not provide supplemental benefits that cover expenses that count toward the annual deductible. In addition, section 4003(b) of the BBA added new section 1882 to the Act to prohibit the sale of most supplementary health insurance policies to individuals enrolled in M+C MSA plans. The only exceptions to this rule are spelled out in section 1882(u)(2)(B). These exceptions apply both for purposes of the prohibition on selling freestanding supplementary health insurance (or "Medigap" insurance), and for purposes of "optional supplemental benefits" offered under M+C MSA plans. These exceptions are reflected in § 422.103(a)(2). Under § 422.103(a)(2), the only types of policies that an enrollee in an M+C MSA plan may purchase that cover expenses that may count toward the annual deductible are as follows:

- A policy that provides coverage for accidents, disability, dental care, vision care, or long-term care.
- A policy in which substantially all coverage relates to liabilities incurred under workers' compensation laws, tort liabilities, or liabilities relating to use or ownership of property.
- A policy that provides coverage for a specified disease or illness or pays a fixed amount per day (or other period) for hospitalization. (Note that the fact that an organization offering an M+C MSA plan permits a particular expense to count toward the plan's annual deductible does not necessarily mean that such expenses are considered "qualified medical expenses" by the IRS.)

The above restrictions on optional supplemental benefits and Medigap

coverage under section 1882, combined with Congress' explicit exclusion of individuals with "first dollar" health coverage under government programs (Medicaid, VA benefits, and FEHBP benefits—see section 1851(b)(2) and (3) and discussion above), make it clear that Congress intended that individuals enrolled in M+C MSA plans would be required to use the money in their M+C MSA accounts to pay for services until the "high deductible" under the plan is met. While Congress addressed government programs under which expenses during the deductible would be covered, and prohibited the *sale* of *new* private supplemental insurance that would cover such deductible amounts (whether an optional supplemental benefit offered under an M+C MSA plan, or a freestanding "Medigap" policy), some categories of individuals with first dollar coverage that would cover expenses that would count toward an M+C MSA plan deductible would remain eligible to enroll in M+C MSA plans absent a regulatory prohibition.

We believe that it would give effect to clear congressional intent to expand the categories of individuals ineligible to enroll in M+C MSA plans to include the additional categories that Congress neglected to include. For example, while Congress prohibited the *sale* of private insurance covering expenses that count toward an M+C MSA deductible, it did not address individuals who may already *have* such coverage, including those who have first dollar Medigap coverage through their employer. In addition, individuals who have elected hospice coverage are also eligible for first dollar Medicare payment, without any qualification in the case of MSA plans. (See section 1853(h)(2)(A).) This is also inconsistent with Congress' intended design for the M+C MSA option. Pursuant to our authority under section 1856(b)(1) to establish M+C standards by regulation, we accordingly are providing in § 422.56(d) that individuals with such health benefits are ineligible to elect an MSA plan.

As mentioned above, M+C MSA plans may not provide any supplemental benefits, except those exempted, covering expenses that count towards the annual deductible. Once the deductible is reached, however, there are no limitations on the supplemental benefits a plan may offer, as long as the plan satisfies the requirements concerning making available basic part A and B Medicare services. We believe that a market may emerge for supplemental insurance policies in connection with M+C MSA high deductible insurance policies. We considered the possibility of establishing one or more sample benefit plans for use in conjunction with M+C MSA plans, similar to the limited number of standardized Medigap plans that are now offered. Although we are not doing so at this time, we welcome comments on the need for such uniform plans.

E. Quality Assurance (Subpart D)

Like for other M+C plans, an organization offering an MSA plan must have an ongoing quality assessment and performance improvement program for the services furnished to M+C enrollees under the plan. As discussed in detail above, the quality assurance requirements that apply to an M+C MSA plan depend on whether the plan is a network model plan, that is, a plan that provides benefits either through contracting providers or under arrangements made by the plan, or a non-network plan. Consistent with section 1852(e)(2) of the Act, a network model M+C MSA plan must meet requirements similar to those that apply to all other M+C coordinated care plans (with the exception of the achievement of minimum performance levels); the statute and regulations establish different requirements for non-network M+C MSA plans. See section II.D of this preamble, and § 422.152 of the regulations, for more information on this subject. Also, see section II.D. of the preamble and § 422.154 for information on the external review requirements that apply to network M+C MSA plans. Under § 422.154(b)(1), the external review requirements do not apply to non-network M+C MSA plans.

F. Relationships Between Plans and Participating Physicians (Subpart E)

For the most part, subpart E of new part 422 does not establish any requirements that are specific to MSA plans. However, § 422.214, "Special rules for services furnished by noncontract providers," does have implications for enrollees in MSA plans. The provisions of this section are based on section 1852(k) of the Act, beginning with the requirement under section 1852(k)(1) that for enrollees in M+C coordinated care plans, a physician that does not have a contract with the plan must accept as payment in full an amount no greater than the amount the physician could collect if the individual were under the fee-for-service Medicare program, including any applicable deductibles, coinsurance, or balance billing permitted by the plan. (See section 1848(g) concerning the Medicare fee-for-service rules on limiting charges.) Section 1852(k)(2) then establishes balance billing limits for M+C private fee-for-service plans, as discussed in detail in section IV of this preamble and § 422.216; however, the statute contains no balance billing protections for enrollees in M+C MSA plans.

It is clear from the legislative history of the provisions imposing balance billing limits that the omission of any limits under M+C MSA plans was not inadvertent. Page 609 of the Conference Report (H.R. Rep. No. 105–217) refers to the House bill, which included across the board limits on what could be collected. The Senate amendment is described as including a "[similar provision except that it *excepts from the requirement* * * * a[ ] fee-for-service plan as well as *an MSA plan*." The "conference agreement" is then described as "including] the Senate provision with an amendment to provide for application of the provision to Medicare+Choice *fee for service plans*. * * *" Thus, Congress clearly indicates that it provided for a balance billing limit for M+C coordinated care plans and private fee-for-service plans (albeit a different limit), but *not* for M+C MSA plans. On page 611, the Conference Report expressly states that the House bill provided that an "MSA plan * *. * would not be subject to the * * * limitations on balance billing." The conference agreement indicates that it "includes" this "House bill" position. In light of the absence of any statutory provision for a limit on balance billing under M+C MSA plans, and these clear statements of congressional intent that there be no such limits, we have not provided for any limits on balance billing under M+C MSA plans in these regulations.

G. Payments Under MSA Plans (Subpart F)

Section 1853 describes the method to be used to calculate the annual M+C capitation rate for a given payment area (see section II.F of this preamble and § 422.254). We apply the same methodology in determining the annual capitated rate associated with each M+C MSA plan enrollee. Thus, for calendar year 1999, the capitated rate will continue to be adjusted for the age, gender, Medicaid-eligibility, disability, institutional status, and employment of the individual beneficiary, with risk adjustment scheduled to begin on January 1, 2000, as also discussed in detail in section II.F of this preamble.

The special rules concerning the allocation of the M+C capitated amount for individuals enrolled in M+C MSA plans are set forth at section 1853. In

general, HCFA will allocate the capitated amount associated with each M+C MSA enrollee as follows:

- On a lump-sum basis at the beginning of the calendar year, pay into a beneficiary's M+C MSA an amount equal to the difference between the annual M+C capitation rate for the county in which the beneficiary resides and the M+C MSA premium filed by the organization offering the MSA plan (this premium is uniform for all enrollees under a single M+C MSA plan.) This results in a uniform amount being deposited in an M+C MSA plan enrollee's M+C medical savings account(s) in a given county, since the uniform premium amount will be subtracted from the uniform county-wide capitation rate for every enrollee in that county.
- On a monthly basis, pay to the M+C organization an amount equal to one-twelfth of the difference, either positive or negative, between the annual M+C capitation payment for the individual and the amount deposited in the individual's M+C MSA.

Section 422.262 contains the regulations concerning the allocation of Medicare trust funds for enrollees in M+C MSA plans. First, under § 422.262(a), an enrollee must establish an M+C MSA with a qualified trustee or custodian. An enrollee may establish more than one account, consistent with section 1853(e)(2)(B) of the Act, but must designate the particular account to which payments by HCFA are to be made. As specified under § 422.262(b), a trustee can be a bank, insurance company, or anyone approved by the IRS to be a trustee of Individual Retirement Accounts. Section 422.262(b) also requires that M+C MSA trustees must register with HCFA, agree to comply with IRS rules concerning MSAs, and provide organizational information that HCFA may require.

The specific requirements concerning the amount that HCFA pays into an individual's M+C MSA are spelled out at § 422.262(c). We calculate the payment by first comparing the monthly premium for the M+C MSA plan to the county-wide capitation rate under § 422.252 that is used in making payments to M+C organizations under other types of M+C plans (final payment to M+C organizations is based on this county-wide capitation rate, adjusted by demographic factors). If the monthly premium is less than the monthly capitation rate for the county, HCFA deposits into the individual's M+C MSA a lump sum equal to the annual difference between these two amounts, that is, the monthly difference multiplied by 12, or by the number of months remaining in the calendar year when the individual becomes covered under the M+C MSA plan.

The lump-sum payment is made in the first month of coverage under the M+C MSA plan, but HCFA makes no payment until the individual has not established an M+C MSA before the beginning of the month. Should an individual's coverage under an M+C MSA plan end before the end of a calendar year, HCFA will recover the excess portion of the lump-sum deposit attributable to the remaining months of that year.

In summary, Medicare's contributions to an individual's M+C MSA are equal to the difference between the unadjusted county-wide capitation rate for the county in which the enrollee lives and the premium filed by the individual's high deductible M+C MSA plan. For example, if the annual Medicare payment rate for a county is $6,000 ($500 per month), and the annual premium for an M+C MSA insurance plan is $4800 ($400 multiplied by 12), HCFA would deposit $1,200, in January, into the M+C MSA of each plan enrollee residing in that county. It would pay to the insurer (generally divided into 12 equal monthly payments) the difference between the demographically adjusted M+C payment amount for that individual and the MSA contribution. (See the example below.) The annual payment by HCFA represents the only permissible deposit into the individuals's M+C MSA, with the exceptions of transfers from another M+C MSA established by the same individual or interest or income that accrues to the account.

Example of Payments Under an M+C MSA Plan

Monthly premium for an M+C MSA plan	$400
Monthly M+C county-wide capitation rate	500
Monthly demographically adjusted M+C payment for an individual beneficiary:	
Individual A (65-year old beneficiary)	450
Individual B (85-year old beneficiary)	700

A. Annual contribution to enrollee's M+C MSA =
(M+C county-wide capitation rate − M+C MSA plan monthly premium) × 12. ($500 − $400) × 12 = $1,200

B. Monthly payment to an M+C organization under an M+C MSA plan for an enrollee =
Demographically adjusted M+C payment rate for an enrollee − Monthly contribution to the enrollee's M+C MSA plan
Individual A: $450 − $100 = $300
Individual B: $700 − $100 = $600

In theory, payments to the plan for an individual enrollee could be positive or negative, depending on the relationship between a plan's premium and the capitation rate for a given county. If, in the example above, the M+C MSA plan premium were only $25 (rather than $400), the monthly contribution to an enrollee's M+C MSA would be $475 ($500 − $25 = $475). For the 65-year old beneficiary (Individual A), the resultant payment to the plan would be a negative $25 ($450 − $475 = (−$25)). Given that organizations offering M+C MSA plans likely will carefully assess payment ranges and demographic factors within their market areas before proposing a premium, we believe that a negative payment would be rare, but not impossible.)

H. Premiums (Subpart G)

Section 1854 establishes the requirements for determination of the premiums charged to enrollees by M+C organizations. Like other M+C organizations, organizations offering M+C MSA plans in general must submit by May 1 of each year information concerning enrollment capacity and premiums. For M+C MSA plans, the information to be submitted includes the monthly M+C MSA plan premium for basic benefits and the amount of any beneficiary premium for supplementary benefits. These requirements are set forth under section 1854(a)(3) of the act and § 422.306(c) of the regulations.

Unlike for M+C coordinated care plans, section 1854(a)(5) Act expressly exempts M+C MSA plan premiums from review and approval by the Secretary. Section 1854(b)(1)(B) merely states that for M+C MSA plans, the monthly amount of the premium charged to an enrollee equals the M+C monthly supplemental beneficiary premium, if any. Although this provision effectively

precludes an organization offering an M+C MSA plan from charging an additional premium to an enrollee for basic Medicare benefits paid for through the capitated payment made by HCFA, the plan is free to set the basic and supplemental premium at whatever levels the market place will bear.

The only statutory limitation placed on an M+C MSA plan's ability to establish premiums is the "uniform premium" requirement of section 1854(c). The effect of this provision is that the monthly basic and supplementary premiums may not vary among individuals enrolled in an M+C MSA plan. (See the discussion of service area in section II.A. of this preamble.) Thus, insurers that want to charge different amounts for different benefits, according to geographic areas for example, could do so only by establishing multiple M+C MSA plans. Within a plan, however, payments into the M+C MSAs of individuals residing in the same county will be uniform; payments to the plans will vary for each individual.

I. Other M+C Requirements

The remaining requirements under subpart 422 have few if any implications specific to M+C MSA plans. For example, the organizational and financial requirements, provisions on compliance with State law, contracting rules, and grievance and appeal requirements generally apply in equal measure to MSA plans as to other types of plans. More accurately, perhaps, these requirements primarily apply to the M+C organization, rather than the plan; thus, an organization offering any type of M+C plan must meet the applicable requirements.

One issue that may require clarification, however, involves the provision of section 1856(b)(3)(B)(i) (and § 422.402(b)) that any State standards relating to benefit requirements are superseded. We recognize that this provision means that State benefit rules will not apply (such as State laws that mandate first dollar coverage for particular benefits such as mammograms or other preventative services). Some States may not license entities to offer catastrophic coverage, and it is possible that M+C MSA plans could not be offered in that State. We welcome public comment on this issue.

The only other sections of these regulations that contain requirements that are specific to M+C MSA plans are found in Subpart K—Contracts with M+C Organizations. First, in accordance with section 1857(c)(3), § 422.504(a) specifies that the effective date for a contract providing coverage under an M+C MSA plan may be no earlier than January 1, 1999.

We note that § 422.500(b)(2) authorizes HCFA to include in a contract any requirements that we find "necessary and appropriate" that are not inconsistent with the M+C statute and regulations. Given the demonstration basis of M+C MSA plans under section 1851(b)(4), and the corollary requirements for an evaluation and a report to Congress, we believe it may be necessary and appropriate to require that organizations offering M+C MSA plans provide HCFA with data that will enable us to evaluate M+C MSA plans in terms of selection, use of preventive care, access, and impact on the Medicare trust fund. We are now in the process of determining what, if any, specific data will be required with respect to M+C MSA plans (beyond the encounter data to be collected with respect to all M+C plans) to facilitate HCFA's evaluation. In § 422.502(f)(2)(vii), we provide authority for HCFA to request data from M+C organizations offering MSA plans related to selection, use of preventive care, and access to services.

J. Tax Rules

As mentioned earlier, section 4006 of the BBA added new section 138 to the Internal Revenue Code (IRC) of 1986 concerning M+C MSAs. The regulations set forth in this interim final rule do not incorporate the IRC provisions on M+C MSAs. However, for the convenience of the reader, we are presenting here a brief summary of the tax rules associated with M+C MSAs. For a full explanation of the tax consequences of establishing a M+C MSA, we refer readers to sections 138 and 220 of the IRC and to the relevant IRS publications. (For more information, contact the IRS at (888) 477–2778 or through its website at www.irs.ustreas.gov.)

When an individual joins an M+C MSA plan, HCFA makes a specified contribution, as explained above, into the M+C MSA designated by the individual. No other contribution may be made into the M+C MSA, and the contribution is not included in the taxable income of the account holder. Any income earned on amounts held in the M+C MSA are not currently included in taxable income, similar to an individual retirement account.

Withdrawals from an M+C MSA are not considered taxable income if used for the "qualified medical expenses" of the account holder, regardless of whether the account holder is still enrolled in an M+C MSA plan at the time of the distribution. In general, "qualified medical expenses" are defined the same as under the IRS rules relating to itemized deductions for medical expenses. (See sections 213(d) and 220(d)(2)(A) of the IRC and IRS publication 502, Medical and Dental Expenses.) For M+C MSA purposes, however, most health-related insurance premiums do not constitute qualified medical expenses, nor do amounts paid for the medical expenses of any individual other than the account holder. Also, keep in mind that the IRS definition of qualified medical expenses encompasses a broader range of items and services than are covered by Medicare, including for example prescription drugs and dental services. Thus, items that are considered qualified medical expenses by the IRS do not necessarily constitute countable expenses toward an M+C MSA plan's annual deductible.

An enrollee in an M+C MSA plan may make withdrawals from an M+C MSA that are not used to pay for the qualified medical expenses of the account holder, but these withdrawals are included in the account holder's taxable income and may be subject to additional tax penalties under section 138(c)(2) of the IRC. The additional tax provisions do not apply to distributions following the disability (as defined in section 72(m)(7) of the IRC) or death of the account holder. Finally, under section 138(d) of the IRC a surviving spouse of an M+C MSA holder may continue the M+C MSA upon the death of the account holder, including making nontaxable withdrawals for the qualified medical expenses of the spouse or the spouse's dependents, but may not make new contributions to the M+C MSA. Again, we recommend contacting the IRS for further details.

K. Letters of Intent

In closing, we wish to solicit letters of intent from organizations that intend to offer high deductible M+C MSA insurance plans to Medicare beneficiaries and/or to serve as M+C MSA trustees or custodians. A letter of intent to offer an M+C MSA plan should include basic information about the plan, the geographic area in which the plan intends to operate, the name, address, and telephone number of a contact person, so that beneficiaries can call the plan to verify whether the plan did, in fact, submit an application and receive our approval. This letter of intent must be received no later than July 31, 1998.

For prospective M+C MSA trustees, the letter of intent must include the name of the organization, the address, a contact person and telephone number,

funds routing number, Federal tax identification number, the geographic area the trustee will serve, a public information number for publication, and attestation that the organization is a chartered bank, licensed insurance company, or other entity qualified under section 408(a)(2) or section 408(h) of the Internal Revenue Code to act as a trustee or custodian of an individual retirement account. For trustees, no further application to us will be required if the organization appears to be qualified based upon submitted information. Trustees that decide at a later date to participate will have to notify us before offering M+C MSAs.

Statements of intent should be submitted to—Health Care Financing Administration, CHPP, Attn: Cynthia Mason, Room C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244.

A letter of intent in no way commits an organization to submit an application to offer an M+C MSA plan or serve as an M+C MSA trustee, nor does it preclude the submission of an application if a letter of intent is not submitted to us. As part of our information campaign, we plan to publish and disseminate the information we receive to inform beneficiaries of the plans that may be participating in the M+C MSA plan demonstration project.

IV. M+C Private Fee-for-Service Plans

1. Background and Definition of M+C Private Fee for Service Plans (§ 422.4(a)(3))

As noted above, among the type of M+C options available under section 1851(a)(2) is an M+C private fee for service plan. An M+C private fee for service plan is an M+C plan like any other except where there are special rules and exceptions that apply to them. The effect of these special rules and exceptions is that we believe that M+C plans will function much like a traditional health insurance plan rather than a coordinated care plan nor a medical savings account. The law provides considerable flexibility in the creation of this M+C option and therefore, it is likely that M+C private fee for service plans will vary widely in how they function. Moreover, the law does not limit the premiums that an M+C organization may charge for an M+C private fee for service plan, thus making it very sensitive to market forces in its pricing, its benefits and its function.

We propose to define an M+C private fee-for-service plan as being an M+C plan that pays providers of services at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk, does not vary the rates for a provider based on the utilization of that provider's services, and does not restrict enrollees' choice among providers who are lawfully authorized to provide the services and agree to accept the plan's terms and conditions of payment. This is the statutory definition of M+C private fee-for-service plan at 1859(b)(2)(A). The requirements these plans must meet to contract with HCFA as an M+C private fee-for-service plan are incorporated into the relevant sections of this regulation. An M+C private fee-for-service plan must meet all of the requirements for any other M+C plan, except to the extent that there are special rules for M+C private fee-for-service plans.

2. Quality Assurance (§§ 422.152 and 422.154)

The law exempts M+C private fee for service plans and non-network MSAs from some of the quality assurance requirements of the law. Moreover, the law exempts M+C private fee for service plans and non-network MSAs from external quality review if they do not have written utilization review protocols. Specific discussion of the statute and the regulations that implement these provisions that apply to both M+C private fee for service plans and non-network MSAs are found in subpart D at sections 422.152 and 422.154. As with all other requirements for M+C organizations and M+C plans, those provisions of regulations that are not specific to coordinated care plans and MSAs also apply to M+C private fee for service plans.

3. Access to Services (§ 422.214)

In § 422.214 we implement the special requirements for access to health services that are contained in section 1852(d)(4). The law requires that the Secretary must assure that the M+C private fee-for-service plan offers sufficient access to health care. Specifically, in § 422.114(a) we require that an M+C organization that offers an M+C private fee-for-service plan must demonstrate to HCFA that it has sufficient number and range of health care providers willing to furnish services under the plan. Pursuant to the specific instructions of the law, under § 422.114(a) HCFA will find that an M+C organization meets this requirement if, with respect to a particular category of provider, the plan has—

- Payment rates that are not less than the rates that apply under original Medicare for the provider in question;
- Contracts or agreements with a sufficient number and range of providers to furnish the services covered under the plan; or
- A combination of the above.

Hence, an M+C private fee-for-service plan will be found to have met the access requirements for a category of services if it has sufficient numbers of providers under direct contract in its service area or, if not, it has payment rates that are equal to or higher than the original Medicare payment for the service. This access test must be met for each category of service established by HCFA on the M+C organization application. Clearly, if an M+C private fee-for-service plan has payment rates that are no lower than Medicare, it need not address if it has a sufficient number of providers of services. However, where the plan has payment rates that are less than the Medicare payment for that type of provider, the plan must demonstrate that it has sufficient number of providers of that type under direct contract. For purposes of making this judgement of sufficiency, HCFA will use the same standards for M+C private fee-for-service plans as for coordinated care plans. We see no basis to use different standards.

In § 422.114(b) we specify that the plan must permit the enrollees to receive services from any provider that is authorized to provide the service under original Medicare. This implements that part of section 1852(d)(4) that says that the access requirements cannot be construed as restricting the persons from whom enrollees of the M+C private fee-for-service plan may obtain covered services.

4. Physician Incentive Plans (§§ 422.208 and 422.210)

In § 422.208(e) we specify that an M+C private fee-for-service plan may not use capitated payment, bonuses, or withholds in the establishment of the terms and conditions of payment. This is necessary to implement that part of the definition of an M+C private fee-for-service plan that specifies that the plan must pay without placing the provider at financial risk. We believe that these physician incentives place the physician at financial risk and thus are not permitted by the law for M+C private fee-for-service plan payments. Capitation places physicians at risk because of the uncertainty of the extent to which the beneficiary will require the physician's time and services to provide an adequate level of service. Withholds from payment place the physicians at financial risk because of the uncertainty of what the ultimate payment for the

services furnished will be. Bonuses are essentially the same as withholds. In both the case of bonuses and withholds, the physicians knows the least amount that could be paid but in both cases, they face uncertainty about what the total payment from the plan would be for the services furnished.

5. Special Rules for M+C Private Fee-for-Service Plans (§ 422.216)

In § 422.216(a) we address payment to providers. Specifically in 422.216(a)(1) we state that the M+C organization offering an M+C private-fee-for-service plan pays contract providers (including those that are deemed to have contract under § 422.216(f)) on a fee-for-service basis at a rate, determined under the plan, that does not place the provider at financial risk. This reflects the statutory definition of an M+C private fee-for-service plan.

We also specify in § 422.216(a)(1) that the payment rate includes any deductibles, coinsurance, and copayment imposed under the plan and must be the same for all providers paid pursuant to a contract whether or not the contract is signed or deemed to be in place as discussed below. This reflects our understanding of the meaning and use of these terms in common insurance use. It also reflects our belief that the plan rate (on which balance billing discussed below is based) is intended to be analogous to the Medicare allowed amount for a service, of which the deductible, coinsurance or copayment is a part. We think the deductible, and coinsurance or copayment is a part of the plan payment rate because deductibles have to be subtracted from that plan payment and because coinsurance is a percentage of the plan payment rate, thus being included within the rate by definition. We believe that the payment rate does not include balance billing because the common definition of balance billing under both original Medicare and common insurance is an amount above and beyond the payment rate established for the service. Balance billing is discussed in more detail below in (c) as a provider charge to enrollees.

As noted above, we specify in § 422.216(a)(1)(i) that a uniform payment rate must be established for a given item or service furnished under a contract, whether the contract is signed or deemed to exist (*see* discussion of deemed contracts below). In § 422.216(b)(1)(i), we also require that the plan deductible, coinsurance or copayments and other beneficiary liability be uniform for services furnished by all contracting providers, whether contracts are signed or deemed to be in place. These two requirements are closely related, since permissible enrollee liability is linked by statute to the plan's payment rate. The balance billing limitation in section 1852(k)(2)(A) that applies to M+C private fee-for-service plans is based on the plan payment rate, which has deductible, copayment and coinsurance amounts built into it. In our view, therefore, the uniform cost-sharing rule in § 422.216(b)(1)(i) follows from the uniform payment rate rule in § 422.216(a)(1)(i).

We believe that the uniform rate requirement in § 422.216(a)(1)(i) is implicit in the definition of private fee-for-service plans in section 1859(b)(2), which refers in the singular to reimbursing, hospitals physicians and other providers at "a rate" determined under the plan. The balance billing limit in section 1852(k)(2)(A) even more explicitly supports a uniformity rule, in referring in the singular to "a" prepayment "rate" that is established under "a contract (including [a deemed contract]). * * *" Section 1852(k)(2)(A) thus makes clear that Congress contemplated that a *single* "rate" would be established for a given service, or for a service in a given area, under "a contract," and that this rate would apply under the contract, "including" a contract deemed "through the operation of subsection (j)(6)" of section 1852 (discussed below).

Even if the statute did not refer to a single rate that applies under a contract, and expressly include a deemed contract in this statement, we would exercise our authority under section 1852(b)(1) to impose a uniform rate and cost-sharing requirement. We understand from oral presentations and written comments received in response to the January 20, 1998 **Federal Register** notice (63 FR 2920), that some entities would like to establish different payment rates and enrollee cost-sharing for providers that sign contracts than those which would apply to providers deemed to have a contract. These entities indicated that they wanted to establish incentives to use the network of providers with signed contracts. We believe that it would be inconsistent with the scheme established by Congress to permit this.

Under such an approach, the M+C organization would in essence be establishing a defined and limited network of preferred providers. Congress has applied a different set of rules to plans that employ provider networks, and exempted M+C private fee-for-service plans from these requirements. Indeed, a "preferred provider organization" (PPO) plan and "point of service" option are each expressly mentioned as examples of "coordinated care plans" subject to the quality assurance rules that apply to network plans, including network MSA plans. We believe that permitting private fee-for-service plans to have different cost-sharing amounts for providers with signed contracts would create a "loophole" permitting organizations from offering network type PPO plans without complying with the quality assurance requirement that Congress intended to apply to network plans.

In § 422.216(a)(1)(ii) we specify that contracting providers must be paid on a fee-for-service basis. This is required by the definition of M+C private fee-for-service plans contained in 1859(b)(2)(A).

In § 422.216(a)(1)(iii) we specify that the M+C organization must make the payment rate available to providers that furnish items or services that may be covered under the M+C private fee-for-service plan offered by the organization. We require this to ensure that the contracting providers will be advised or be able to acquire the amount of payment for the services they furnish to plan enrollees. This is particularly important given the plan's flexibility to set and change payment rates.

In § 422.216(a)(2) we specify that the M+C organization must pay a contract provider (including one deemed to have a contract) an amount that is equal to the payment rate described above less any applicable deductible, coinsurance or copayment. The M+C plan's share of the payment is the payment rate (which includes deductible, coinsurance and copayment as discussed above) less that enrollee's cost-sharing.

In § 422.216(a)(3) we also specify that the plan pays for services of noncontract providers in accordance with § 422.100(b)(2).

Section 1852(k)(2)(B)(i) specifies that the minimum payment rate for noncontracting providers of M+C private fee-for-service plans must be the payment rate set in 1852(a)(2)(A), the same payment rate that applies when coordinated care plans pay noncontracting providers for approved services. The provisions of 1852(a)(2)(A) are set in regulations at § 422.100(b)(2) and thus that provision applies to the payment to noncontracting providers by M+C private fee-for-service plans. Thus, the plan must pay the provider at least the amount that the provider would have received under original Medicare, including any allowed balance billing amounts. The provider must accept this amount, together with allowable cost

sharing paid by the enrollee, as payment in full.

In § 422.216(b) we address provider charges to enrollees. Specifically in § 422.216(b)(1) we state that a contract provider (including one that is deemed to have a contract under paragraph (f) (discussed below) may charge the enrollee no more than the deductible, coinsurance, copayment, and balance billing amounts permitted under the plan, that the plan must have the same cost-sharing for deemed contract providers as for contract providers and that the plan may permit balance billing no greater than 15 percent of the payment rate for the service.

The provisions regarding what enrollees may be charged are based on our interpretation of section 1852(k)(2)(A)(i) that says that a provider shall accept as payment in full "* * * an amount not to exceed (including any deductibles, coinsurance, copayments, or balance billing otherwise permitted under the plan) an amount equal to 115 percent of such payment rate." We believe that the intent of this provision is that the plan may, but is not required to, permit the provider to collect balance billing equal to but not in excess of 15 percent of the plan payment rate. We believe that the intent of the section was to permit a balance billing provision that mirrors that which currently exists section 1848(g) with respect to services paid under the Medicare fee schedule for physician services for beneficiaries who are enrolled in original Medicare.

We recognize, however, that the inclusion of the words "balance billing otherwise permitted under the plan" in the second parentheses in section 1852(k)(2)(A)(i) could be construed, if read literally, to permit the 115 percent limit on enrollee liability for balance billing to be applied to a payment "rate" that already included balance billing "otherwise provided for" in the plan.

This interpretation would in effect have created two balance billing amounts: one balance billing amount within the payment rate (that would be above and beyond the deductible, coinsurance and copayment) and another balance billing amount based upon the payment rate (effectively a balance billing amount as a percentage of another balance billing amount). This is a convoluted result that we do not believe was intended. In addition to producing a convoluted result, the above reading of the reference to balance billing in the second parenthetical in section 1852(k)(2)(A)(i) would permit M+C organizations to avoid the limitation on enrollee liability in section 1854(e)(4), which applies only to deductibles, coinsurance, and copayments. *See* section G. below. If an M+C organization offering a private fee-for-service plan could "provide for" balance billing amounts in its payment rate, such amounts would not count towards the overall limit on enrollee liability in section 1854(e)(4). This could result in unlimited enrollee liability if such unlimited "plan" balance billing amounts were coupled with balance billing of 115 percent of rates that include the plan balance billing.

The provision that requires that the plan establish the same cost-sharing for the services of deemed contract providers as for contract providers is discussed above in its relationship to § 422.216(a)(1).

In § 422.216(b)(1)(iii) we specify that the M+C organization must specify in the contract the deductible, coinsurance, copayment, and balance billing permitted under the plan for services furnished by a contracting provider (including a deemed contract under paragraph (f)). We believe it is important to ensure that the providers who furnish services are explicitly aware of the amounts they can collect from enrollees since there are potential penalties for violation of these limits.

In § 422.216(b)(1)(iv) we specify that an M+C organization is subject to intermediate sanctions under § 422.752(a)(7), under the rules in subpart O of part 422, for failing to enforce limits on beneficiary liability that apply to contract (including deemed contract) providers. This implements section 1852(k)(2)(A)(i).

In § 422.216(b)(2) we specify that a noncontract provider may charge the enrollee no more than the cost-sharing established under the M+C private fee-for-service plan limited as specified in § 422.308(b). This requirement implements section 1852(a)(2), which applies to all M+C plans other than MSA plans, and which is referenced in section 1852(k)(2)(B)(i), which applies specifically to payments to non-contract providers under M+C private fee-for-service plans. Section 1852(a)(2) requires that M+C organizations provide for payment to non-contracting providers of an amount, representing the sum of payment from the organization and any cost-sharing provided for under the M+C plan, that is at least equal to the total dollar amount of payment that would be authorized to be paid under parts A and B, including any balance billing permitted under such parts. We have defined "cost-sharing" in section 422.2 as including only deductibles, copayments and coinsurance, and not balance billing amounts. Because section 1852(a)(2)(A)(i) uses the term cost-sharing, we believe that it requires that M+C organizations make payment in an amount that, when combined with deductible amounts, coinsurance or copayments provided for under the M+C plan, at least equals the amount the individual or entity would be able to collect under original Medicare, as we have provided in section § 422.216(b)(3). This means that enrollees must be held harmless against any balance billing by non-contracting providers.

While § 1852(a)(2) thus limits enrollee liability to deductible, coinsurance, and copayment amounts (and does not permit enrollee liability for balance billing in the case of non-contracting individuals or entities), it does not contain any limit on the *amount* of enrollee liability that can be imposed under a M+C private fee-for-service plan for services furnished by a non-contracting provider. While section 1854(e)(4) limits the actuarial value of cost-sharing overall, it does not limit the amount that can be charged for a particular service, except as specified elsewhere in this rule, for example limits for emergency services as established in section 422.112(b). Hence, except for limits specified elswhere in this rule, M+C organizations that offer M+C private fee-for-service plans will be able to establish cost-sharing for services of non-contracting providers without regard to a specific limit per service.

In § 422.216(c)(1) we specify that an M+C organization that offers an M+C private fee-for-service plan must enforce the limit specified in paragraph (b)(1) of this section. We also specify in § 422.216(b)(1)(iv) that if the M+C organization fails to enforce the limit as required by paragraph (c)(1) of this section, the organization is subject to intermediate sanctions under subpart O of this part. We intend to leave to the organization's discretion the means by which it will enforce the limits on charges to enrollees. However, through the ongoing monitoring of the M+C private fee-for-service plan, HCFA will review the means by which the plan is enforcing the limits on charges to enrollees by looking at the extent of complaints from enrollees and the action the M+C organization takes to resolve them, both systematically and individually.

In § 422.216(c)(2) we specify that an M+C organization that offers an M+C private fee for service plan must monitor the amount collected by non-contract providers to ensure that those amounts do not exceed the amounts

permitted to be collected under paragraph (b)(2) of this section. The M+C organization must develop and document violations specified in instructions and must forward documented cases to HCFA. HCFA may impose the sanctions provided in section 1848(g)(1)(B). These are the penalties that apply to nonparticipating physicians who fail to abide by the limiting charge under original Medicare.

In § 422.216(d) we specify that the M+C organization that offers an M+C private fee-for-service plan must provide to plan enrollees an appropriate explanation of benefits that includes a clear statement of the enrollee's liability, including any liability for balance billing consistent with this section. Section 1852(k)(2)(C)(i) requires that the plan must notify the enrollee of balance billing that can be collected by the provider. We believe that it would be misleading for this notice to be limited to the balance billing that can be collected by the provider since the provider may also be able to collect deductible, coinsurance and or a copayment from the enrollee (depending upon the plan's policy) and that therefore the plan should notify the enrollee of all cost-sharing and balance billing that can be collected by the provider so that there is no confusion.

We also specify that, in its terms and conditions of payment to hospitals, the M+C organization must require a hospital, if it imposes balance billing, to provide to the enrollee, before furnishing any services for which balance billing could amount to $500 or more, notice that balance billing is permitted for those services and a good faith estimate of the likely amount of balance billing, based on the enrollee's presenting condition. Section 1852(k)(2)(C)(ii) requires that such a notice be furnished by a hospital for inpatient services and permits the Secretary to require such a notice for other hospital services at a tolerance to be set by the Secretary. We believe that this requirement was included in the law because of the potential for the balance billing provisions that apply to contracting providers to create quite large liability for enrollees of these plans. For example, if an M+C private fee-for-service plan permits a hospital to balance bill up to the 115 percent of plan payment rate that the law would permit, and the plan payment is $10,000 for the hospital stay, the enrollee would be liable for $1500 in balance billing in addition to the deductible, coinsurance and copayment the plan permits the hospital to collect.

We specify that the advance notice requirements applies to all services furnished by a hospital because of the trend towards furnishing services on an outpatient basis that would previously have been furnished on an inpatient basis. These services can be very expensive and we believe that the enrollee has a need to know the cost-sharing for these services in advance of receiving the services as for inpatient hospital services.

We have set the tolerance at which the hospital must provide this advance notice at $500, which is the tolerance for nonparticipating physicians to provide advance notice of the nonparticipating physician's actual charge under section 1842(m)(1) for purposes of Part B of original Medicare.

In § 422.216(e) we specify that the M+C organization must comply with the coverage decisions, appeals, and grievances procedures of subpart M. This requires that the M+C organization, offering the M+C private fee-for-service plan, make coverage determinations on all services and that it must make a determination before the service is furnished if the enrollee or provider requests it. We believe that this requirement is necessary to enforce the provisions contained in section 1852(g)(1)(A), which apply to all M+C organizations. Specifically, section 1852(g)(1)(A) requires that "A Medicare+Choice organization shall have a procedure for making determinations regarding whether an individual enrolled with the plan of the organization under this part is entitled to receive a health service under this section and the amount (if any) that the individual is required to pay with respect to such services. Subject to paragraph (3), such procedures shall provide for such determinations to be made on a timely basis." Paragraph (3) is the expedited decision process.

We recognize that providing advance determinations of coverage has not been a common feature of commercial fee-for-service plans in the past. However, the law's use of the present tense with regard to the requirement for coverage determinations and its reference to the expedited appeals process (which is intended to obtain a quick appeal of a denial of a service not yet furnished) clearly anticipates that there will be the opportunity for an advance determination of coverage for all M+C plans. Moreover, the opportunity to acquire an advance determination of coverage is particularly important since there is no protection from retroactive denial for enrollees in an M+C private fee-for-service plan. This is a source of great risk for enrollees in M+C private fee-for service plans, who, unlike enrollees in coordinated care plans, may seek treatment from any licensed provider that agrees to accept the terms and conditions of the plan.

While the opportunity for advance determinations of coverage presents the opportunity to minimize the risk by giving the enrollee and provider the opportunity to determine whether the plan will pay for the service and the amount for which the enrollee will be liable, it does not provide protection to the enrollee that is comparable to the protection provided by original Medicare under the provisions of section 1879 (which apply to assigned claims) and under 1842(l) (which apply to unassigned physician claims). These provisions hold the beneficiary without fault when a services is denied as not medically necessary to treat illness or injury unless the beneficiary was advised by the provider in advance of the service that Medicare would not pay and the beneficiary accepted liability if Medicare did not cover the service. These provisions also permit a physician to take assignment on a claim for Medicare services to be found to be not at fault and to be paid by Medicare for the noncovered service if he can demonstrate that he did not know and could not reasonably have known that the service was not covered.

We considered and rejected imposing several requirements that would have provided Medicare beneficiaries with protection like that available under original Medicare. Specifically, we considered requiring that the M+C organization must require that contracting providers (including deemed contractors) submit claims for the services they furnish to enrollees. We also considered but rejected requiring the M+C organization to require that contracting providers (including deemed contractors) assume the responsibility for acquiring an advance determination of coverage from the plan or risk being unable to charge the enrollee if they did not notify the enrollee in advance of the service if the plan does not cover the care. This approach would have provided enrollees protection from the liability of full payment in the case of retroactive denials and would have given providers an opportunity to minimize their risk by acquiring advance approval of coverage.

However, we decided that it would be contrary to the spirit and intent of the M+C fee-for-service legislation to impose these requirements on providers and plans, since they would make the plan much more like a coordinated care plan than like a traditional fee-for-service plan. Moreover, such a construction would place the provider at financial risk, contrary to the

definition of an M+C private fee-for-service plan.

Our silence in regulations on the claims filing requirements of M+C private fee-for-service plans and the absence of any explicit mechanism for providing protection to enrollees from retroactive denials of coverage does not foreclose the possibility that an M+C private fee-for-service plan may choose to address these issues. For example, the M+C private fee-for-service plan may choose to include in its terms and conditions of payment a requirement that the provider must bill the plan for payment. Similarly, the M+C private fee-for-service plan may choose to provide some level of payment for services subject to retroactive denials as an additional benefit or as a supplemental benefit under the plan. This could be an attractive feature of the plan and a valuable benefit to enrollees.

Although we are silent on these issues, we remain concerned about the absence of protections for beneficiaries who enroll in private-fee-for-service plans. We are soliciting comments on these issues, and we are particularly interested in comments on whether to apply the protections discussed above as a requirement or how otherwise to protect the beneficiary from being financially at risk, while not creating undue burdens on providers and insurers.

In § 422.216(f) we specify that any provider that does not have a contract will be treated as having a contract in effect with the M+C organization offering the M+C private fee-for-service plan if the provider furnishing services (1) is aware that the beneficiary receiving the services is enrolled in the plan, and (2) before furnishing the services, has a reasonable opportunity to be informed about the terms and conditions of payment and coverage under the plan. Section 1852(j)(6) requires that we deem a noncontracting provider to be a contracting provider when these criteria are met. In § 422.216(f) we further specify three general criteria, each of which must be met for a provider to be deemed to have a contract with the plan and which are discussed further in § 422.216(g) and (h).

In § 422.216(f) we specify that for the deemed contract provision to apply the services must be covered under the plan and must be furnished to an enrollee of an M+C private fee-for-service plan, by a provider that does not have in effect a signed contract with the M+C organization. We also specify in § 422.216(f)(2) that the provider must have been informed of the individual's enrollment in the plan and must have been informed or given a reasonable opportunity to obtain information about the terms and conditions of payment under the plan in a manner reasonably designed to effect informed agreement. The information must include the information described in § 422.202(a)(1).

In § 422.216(g) and (h) we further clarify that the requirements of paragraph (f) of this section are met (and the noncontract provider is subject to the provisions for contracting entities) if the following conditions are met.

Enrollment information must be provided by one of the following methods or a similar method:

- Presentation of an enrollment card or other document attesting to enrollment.
- Notice of enrollment from HCFA, a Medicare intermediary or carrier, or the M+C plan itself.

We considered how best to ensure that the noncontracting provider would be advised that the enrollee is enrolled in the M+C private fee-for-service plan. However, since there is no direct contract between the provider and the M+C private fee-for-service plan, it becomes incumbent upon the enrollee to advise the provider of the enrollment. Even where the provider had previously been notified of the beneficiary's enrollment in the M+C private fee-for-service plan (e.g. at the time of a previous service), the provider cannot automatically assume that the beneficiary is enrolled in the plan and may not be able to learn the beneficiary's enrollment status prior to providing services. This occurs because, before 2002, beneficiaries can disenroll from M+C plans at any time, either voluntarily or involuntarily by moving out of the service area. After that date, the beneficiary can disenroll within the first 3 months of the year or at any time if they move out of the service area. Hence, there are very few times that a noncontracting provider can know with certainty that the beneficiary remains enrolled in the M+C private fee-for-service plan based on previous knowledge of enrollment. If the provider fails to acquire current enrollment information from the enrollee or the plan at the time of each service, we do not see how he or she can be held to have met the first test of "deemed contract status": knowing that the beneficiary is enrolled in the plan.

To be a deemed contractor, the provider or supplier who knows that the patient is enrolled in the plan must either have been given information on payment terms and conditions or must have had a reasonable opportunity to learn such terms and conditions of plan payment. Under that circumstance, treatment of the patient implies consent to the terms and conditions of plan payment.

To meet the requirement of having been given information on payment terms and conditions, we specify in paragraph (h)(1) that the information must have been communicated to one of the following:

- The provider of the services.
- The provider's employer or billing agent.
- A partnership of which the provider is a member.
- Any party to which the provider makes assignment or reassigns benefits.

We expanded the list of parties to whom the information must be provided beyond those of providers themselves in recognition that providers, and in particular, individual physicians and practitioners, seldom receive the insurance information that is sent to them and seldom complete and submit their own claims. By reassigning insurance benefits to other parties and by delegating the responsibility to complete and submit claims to other parties, they are, effectively, also delegating the authority to make decisions governing their payment for which they remain responsible.

We also specify in paragraph (h)(1) that the information must have been transmitted via mail, FAX, electronic mail or telephone. Announcements in newspapers, journals, or magazines or on radio or television are not considered communication of the terms and conditions of payment. We specify how the information must have been provided because we have been asked if general distribution of information to the public (e.g. annual newspaper notice) is an acceptable notice to bind the provider to being considered to be a deemed contractor. We do not believe that it is reasonable for a plan to do a general public notice since the provider may not see it and has no way of relating that information to itself. However, where the plan has transmitted the information directly to the provider by mail, FAX, electronic mail or telephone, the statute's test of having been furnished the information to the provider has clearly been met.

However, the law also provides that a provider that has a reasonable opportunity to acquire the terms and conditions of plan payment must be treated as if it were a contract provider. To implement this provision of the law, we further specify in paragraph (h)(2) that a provider that does not have a contract with the plan is deemed to have a contract with the plan if the plan has an acceptable procedure under which the provider could acquire the

terms and conditions of plan payment before providing services to the enrollee. Specifically, we say that this test is met where the M+C plan has in effect a procedure under which noncontract providers are advised how to request the payment information and the plan responds to the request before the provider furnishes the service. This procedure could be the inclusion of a toll free telephone number or E-mail address on the enrollment card for the provider's use in acquiring the terms and conditions of payment. Where the plan responds to the provider's request before the service is furnished, the provider would be treated as a contract provider if the provider subsequently furnishes the service to the enrollee, regardless of whether the provider agrees to accept the terms and conditions of the plan.

The effect of these statutory provisions is that there are very few circumstances in which a provider would not be treated as if it had a contract with the plan. These would include but not be limited to the following:

- Where the beneficiary did not notify the provider of enrollment in the plan.
- Where the provider requested but was not furnished terms and conditions of payment in advance of the provision of services to a known enrollee.
- Where the plan did not have a process that provided terms and conditions of payment.

We think that in most cases, plans will ensure that there is a procedure in place for providing this information before services are furnished. We think that the most likely circumstances in which a provider will be considered to be a noncontracting provider will be in cases of emergency where the provider has not previously been mailed the terms and conditions of payment under the plan or where the provider does not know that the beneficiary is enrolled in the plan.

In § 422.216(h)(2)(iii) we specify that the plan must include the following in the terms and conditions of plan payment that it must furnish to providers of services:

- Billing procedures.
- The amount the plan will pay towards the service.
- The amount the provider is permitted to collect from the enrollee.
- The information described in § 422.202(a)(1).

V. Regulatory Impact Statement

A. Introduction

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

The Unfunded Mandates Reform Act (Public Law 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

Summary of the Interim Final Rule

As discussed in detail above, this rule implements the M+C program as directed by the BBA of 1997. The primary objective of the M+C program is to increase the number and types of health plan choices available to Medicare beneficiaries.

Since the implementation of section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA 82) (Public law 97–248), the Medicare program has offered beneficiaries a prepaid capitated option through HMOs and CMPs paid on a full risk basis. Enrollment by Medicare beneficiaries in Medicare managed care risk plans has grown to over 4.5 million enrollees. The number of plans increased 31 percent in CY 1995, 36 percent in CY 1996, and 31 percent in CY 1997. With the implementation of the M+C program, we expect that the rate of growth of beneficiaries enrolling in capitated plans will continue.

The M+C program authorizes HCFA to contract with several new types of entities not previously available to Medicare beneficiaries such as provider sponsored organizations, preferred provider organizations, entities offering an "MSA plan" and a contribution into an M+C medical savings account (MSA), and M+C private fee-for-service plans. These new options will provide Medicare beneficiaries with a broad range of health insurance alternatives like those available in the private sector. Based on current growth rates and other information discussed later, we estimate that anywhere from 160 to 800 new entities may apply to contract with HCFA as M+C organizations.

By expanding choices and providing extensive educational materials through a coordinated open enrollment period, it is expected that beneficiaries will choose plans and health delivery systems that will maximize the benefits to these individuals.

The BBA also revamped the payment methodology for entities receiving capitated payments from Medicare. These payment changes were intended primarily to insure that the amounts paid to M+C organizations were fair and equitable to both the Medicare Trust Funds and to the participating organizations. Although Medicare's capitation rates had been set at 95 percent of expected costs based on actual fee-for-service costs, there is significant evidence that Medicare has paid more for enrollees in the managed care program than it would have paid in the fee-for-service program. This is due primarily to the favorable selection that these plans have experienced. The new payment rules slow the annual increase M+C organizations would have received under the old payment methodology. In addition, there has long been concern regarding the regional variation in payment rates, particularly between urban and rural counties. Because the capitated payment rates had been based upon the fee-for-service payments, the capitated rates not only included the variation in local prices, they also reflected different fee-for-service practice patterns in each region. To level out the variation in payment rates, the new methodology uses a blend of local and national rates and input price adjustments to insure the payments more closely reflect the different prices in the region while giving less weight to the different utilization rates. Finally, to insure that the new options would be

viable in all parts of the country a floor on capitated payments was introduced.

Summary of Discussion of Impact

We believe that the overall impact of this regulation should be beneficial to Medicare beneficiaries by providing them with more options to receive health care. However, although many of the provisions in this regulation are intended to assist beneficiaries by providing them with comparative information, we are concerned that the many new choices and types of plans may prove confusing even for the most knowledgeable consumers. Reductions in capitated payment amounts in what are now relatively higher payment areas may result in reduced benefits for beneficiaries. Providers (especially rural providers) should benefit from this regulation because they can contract directly with HCFA under the PSO provisions. New contracting entities will benefit as the Medicare statute has not previously permitted entities that were not state licensed HMOs or CMPs to participate in the Medicare managed care program. Providers could be negatively impacted if they contract with M+C organizations by the degree that any reduction in the rate of growth in payments to M+C organizations will be passed on to them. We also recognize that existing contractors and States may be adversely affected but cannot quantify to what degree. This impact analysis will focus on the provisions of the BBA and this regulation that significantly alter the risk program we have been administering since 1985. The major differences between the section 1876 risk program and the M+C program are:

The coordinated open enrollment and public education campaign:

New payment methodology for contracting plans

Introduction of New Contracting Entities

Provider Sponsored Organizations

Medicare Savings Account Plans

Private Fee-for-Service Plans

New Quality Standards

Our analysis will assess the impact these changes will have on Medicare beneficiaries, the Medicare Trust Funds, providers, managed care entities, and States. Whenever possible, we will use appropriate methods for assessing the impact quantitatively. However, because of the large number of unknowns—such as the prospective number of contracting organizations—this analysis relies upon many simplifying assumptions.

B. Coordinated Open Enrollment and Public Education Campaign

Section 1851 directs HCFA to hold annual coordinated open enrollment periods beginning in November 1999 (all plans will also be open to enrollment in November 1998) to allow eligible beneficiaries the opportunity to enroll in M+C organizations. It also directs HCFA to broadly disseminate information to current and prospective Medicare beneficiaries on the coverage options available in order to promote an active, informed selection among such options. At least 15 days before each annual, coordinated election period, HCFA will send to each eligible individual a notice containing information in order to assist the individual in making an election. This information describes M+C options as well as original Medicare. In addition, M+C organizations are directed to provide plan-specific information.

The public education campaign will include information on covered benefits, cost sharing and balance billing liability under the original Medicare program; election procedures; grievance and appeals rights under the original Medicare fee-for-service program and the new M+C program; information on Medigap and Medicare SELECT; and the beneficiary's right to be protected against discrimination based on health status.

The costs of the coordinated open enrollment and public education campaign will be borne primarily by the participating M+C plans. Section 4001 of the BBA added a new section 1857(e)(2) to the Social Security Act that establishes a fee requirement under which M+C organizations and section 1876 contractors must contribute their pro rata share, as determined by the HCFA, of costs related to enrollment, dissemination of information, and the counseling and assistance programs.

The annual fee will be assessed by HCFA on all participating organizations. The amount of the user fee will vary year to year as determined through the appropriations process. The BBA authorized ceiling amounts of $200 million in FY 98, $150 million in FY 99, and $100 million annually in FY 2000 and beyond. However, in FY 1998 HCFA was authorized to collect only $95 million through the appropriations process.

On December 2, 1997 HCFA gave notice of our methodology of assessing current contractors for their pro rata share of the expenses associated with the CY 1998 information campaign. To determine each organization's share, we divided the total amount appropriated for the information campaign by the total projected revenues for the first 9 months of CY 98. The resulting percentage was deducted from the payments to contracting organizations.

We explored several alternatives to this methodology. One option was to assess each organization on a per capita basis (by number of Medicare enrollees). Another option was to assess each organization on the percentage of revenue they received from capitated Medicare payments, but have a cap on the highest amount any organization would pay.

We rejected both of these methodologies as not consistent with the goals of the BBA. One of the primary effects of the reformed payment methodology of the BBA was to even out variation between high and low payment areas. By charging a per capita amount, those organizations that are located in areas that have a high payment rate would pay a reduced percentage of their revenue. Or put another way, we deemed that if an organization received a higher payment per person, it should pay a correspondingly higher user fee for its share of the education campaign. We also decided not to put a cap on the assessment any organization would receive based on the premise that only large organizations would receive the benefit of a cap and smaller organizations would have to pay more to make up the difference. This did not seem fair or consistent with our intention of encouraging the creation of new contracting entities and spurring competition in areas with lower payment rates.

As stated in the interim final rule (M+C Program: Collection of User Fees from M+C Plan and Risk-Sharing Contractors (42 CFR 417.470–417.472)), we will establish a fee percentage rate and collect the fees over nine consecutive months beginning with January until the assessment limit has been reached. The following table illustrates the method by which we will calculate the fee percentage rate, provides the rate for FY 1998, and sets forth projections for FY 1999–2002.

TABLE 1.—COLLECTION OF CONTRIBUTIONS FROM ORGANIZATIONS FOR COSTS RELATING TO INFORMATION DISSEMINATION

	Projected fiscal year total medicare payment to organizations (in millions of dollars) [1]	Projected medicare payment to organizations per month (in millions of dollars) [2]	Projected medicare payment to organizations over 9 months (in millions of dollars) [3]	Authorized assessment amount (in millions of dollars) [4]	Fee amount secretary is directed to collect (in millions of dollars) [5]	percentage of projected 9-month payment
FY 1998	30,000	2,465	22,181	200	95	.428
FY 1999	38,000	3,167	28,500	150	150	.526
FY 2000	47,000	3,917	35,250	100	100	.284
FY 2001	63,000	5,250	47,250	100	100	.212
FY 2002	64,000	5,333	48,000	100	100	.208

[1] Source: Congressional Budget Office, The Economic and Budget Outlook: Fiscal Year 1999–2008. January 1998.
[2] Projected total fiscal year payment divided by 12 (months).
[3] Projected monthly payment amount multiplied by 9 (months).
[4] New Section 1857(e)(2)(D) of the Social Security Act, as added by the BBA (Public Law 105–33).
[5] For purposes of these projections, we have assumed that Congress will include the full amount authorized under the BBA.

As noted in the interim final rule published on December 2, 1997, we believe that assessing the fees to reflect an organization's pro rata share of the expenses associated with the information campaign will require the deduction of only a very small percentage of any organization's total annual Medicare payments. For example, in FY 1998 the percentage fee assessment is 0.428 percent—less than one-half of one percent. In subsequent fiscal years the fees as a percentage of Medicare payments will likely represent an even smaller percentage of the Medicare payments as the number of eligible organizations increase and the existing organizations experience enrollment growth.

Information Campaign

In general, we believe that this investment in new forms of information dissemination should be beneficial to Medicare beneficiaries, contracting organizations, and the Medicare program. By providing extensive educational materials, it is expected that beneficiaries will choose organizations and health delivery systems that will maximize the benefits for them. Finally, while organizations face an assessment fee to support information campaign activities, it comprises a very small proportion of their revenue from the Medicare program and could serve to enhance their marketing efforts and to save marketing expenditures.

HCFA's information dissemination activities provided for under this regulation encompass a variety of interventions, including mailings of standardized, comparative information about coverage options, an Internet web site with such information, and a toll-free telephone line for beneficiary inquiries. In addition, the regulation provides for information dissemination activities to be undertaken by M+C organizations, including mailings to Medicare enrollees of plan-specific information and the provision of additional information upon request by Medicare eligible individuals.

In order for market competition to work effectively, consumers must have information about their choices in order to make good decisions. The information dissemination efforts provided for under this regulation will give Medicare beneficiaries information about the Medicare market, enabling them to compare fee-for-service coverage to managed care coverage, as well as coverage under different M+C organizations.

The Medicare program and managed care arrangements are inherently complex subjects, and it is challenging to communicate information that is meaningful and accurate. Many studies have shown that Medicare beneficiaries' level of understanding of how the Medicare program works today is very low (GAO, 1996) and this lack of understanding could be compounded by the introduction of a new array of choices if beneficiaries lack sufficient information or lack the skills or understanding necessary to use available information.

For example, studies have found that many individuals who disenrolled from Medicare risk HMOs misunderstood the nature of the plan, such as the lock-in feature. (OIG, 1997; GAO, 1996; IOM, 1996). As Medicare beneficiaries become better informed about the Medicare program generally and their options under M+C specifically, they will be able to make more informed decisions about meeting their health care needs, leading to fewer disenrollments based on misunderstandings. Disenrollment can be costly for plans. In 1996, a GHAA study estimated that disenrollment costs plans close to $1,300 per Medicare disenrollee. (GHAA, 1996)

While enhancing beneficiary choice is positive and providing beneficiaries with information on their choices is necessary, we are concerned that Medicare beneficiaries, especially in areas where several M+C organizations are operating, may experience information overload. Beneficiaries may have great difficulty in understanding the different types of plans available to them in their area or understanding the different benefit packages plans may offer. Beneficiaries will be required to assess their health needs in relation to the benefits being offered and they may well have to choose among a wide array of different benefit packages. These will be difficult choices and some beneficiaries may not choose the option best suited to their individual needs.

We believe important secondary effects may ensue as well. To date, plans have competed primarily on the basis of price and benefits. Broad dissemination of plan-specific information, including quality measures, should encourage competition among organizations based on quality factors, in addition to price and benefits. As Medicare beneficiaries become more familiar with health plans, their expectations of plan performance and quality services will increase. Enhanced beneficiary awareness will provide an incentive to plans to improve in areas that beneficiaries demonstrate are important to their decision making, such as the availability of certain providers and positive customer service experiences.

Moreover, beneficiaries will be better health care consumers in general if they understand their rights under managed

care and how to make a plan work for them. As Medicare enrollees receive more information and become more active decision makers on plan options, we believe they will also become more informed and active decision makers with respect to meeting their personal medical needs. More informed and active decision making on the part of enrollees will, in turn, facilitate plans' efforts to manage the delivery of appropriate, high quality health care services.

In addition, it should be noted that the information campaign is designed to reach all Medicare beneficiaries, and it is likely that, to the extent that this encourages growth in the M+C program, organizations will be well positioned to take advantage of the expanding market. Since the number of organizations and total revenues over which the BBA fee collections will be spread is likely to continue to rise with increased participation in the M+C program in future years, we believe the regulatory impact of the selected option for imposition of fees on M+C organizations will not be significant. Moreover, M+C organizations will benefit from the increased visibility they will receive through the focused information campaign each open enrollment season.

Aside from the benefits of the public education campaign there are benefits derived from the coordinated open enrollment for contracting organizations, beneficiaries, and to a lesser degree the Medicare Trust Funds, as discussed below.

Coordinated Open Enrollment and Beneficiary Lock-In

We anticipate that the transition into a coordinated open enrollment period and the beneficiary lock-in will be beneficial to M+C organizations in their efforts to attract and retain Medicare enrollees. It also will allow them to maximize their visibility as beneficiaries focus on information about plans during a single, coordinated period. An annual open enrollment period may present a challenge for start-up organizations that did not have the benefit of adding enrollment during continuous open enrollment periods available before 2002. However, the M+C beneficiary lock-in will provide a more stable enrollment base for all participating organizations.

Current contractors have conveyed that continuous open enrollment, which was prevalent prior to passage of the BBA, provided an incentive for beneficiaries that exhaust extra benefits offered by one HMO/CMP to switch to another HMO/CMP or back to traditional fee-for-service Medicare. This behavior provides a disincentive for M+C organizations to offer extra benefits, and we anticipate that M+C organizations will be more likely to offer extra benefits if concerns about enrollees disenrolling upon exhausting a benefit are diminished.

Moreover, as the lock-in is phased in, organizations offering M+C plans will operate within a framework that supports their efforts to manage the delivery of health care services. For example, if beneficiaries are not moving in and out of a plan, the M+C organization offering the plan will be better able to track a beneficiary's utilization of services over time. The lock-in will encourage plans to invest more in preventive health services or screening of new enrollees, because it increases the likelihood that the plan will retain its members long enough to benefit from eventual savings due to reduced morbidity. (PPRC, 1996)

We also note that M+C organizations will have to address the potential staffing and administrative requirements associated with a lock-in and a compressed enrollment period, such as how to staff appropriately to handle inquiries during the open enrollment period, how to process new enrollees when enrollment begins, and how to conduct initial physical histories and review medications for new enrollees. Therefore, there will be added burdens on the M+C organizations as they experience administrative and clinical burdens in implementing the lock-in. M+C organizations may have to hire temporary staff and this would be a cost to them (PPRC, 1996)

Although beneficiaries will have less flexibility with a lock-in period, they will also benefit from a coordinated open enrollment period because it provides a framework conducive to informed decision making. Similar to the experience of many individuals in the private sector, beneficiaries will receive extensive information each year, allowing them to compare all options simultaneously. By receiving standardized, comparative information during an annual, coordinated period, beneficiaries will find it easier to make appropriate choices among competing plans and between these plans and traditional Medicare fee-for-service. An annual coordinated open enrollment period will maximize the opportunity for all beneficiaries to make decisions that best meet their own needs.

Some beneficiaries may be more reluctant to enroll in an M+C organization if they must remain enrolled for extended length of time. The Office of Inspector General surveyed a two-stage random sample of 4,065 enrollees and disenrollees from 40 Medicare risk HMOs to compare their responses and to gain greater insight into HMO issues. The majority of beneficiaries surveyed stated that their most important reason for joining an HMO was their desire for more affordable health care. Only 17 percent of beneficiaries said they would be more hesitant to join an HMO if they did not have the option to disenroll at will. (OIG 1998) (see Table 2).

TABLE 2.—EFFECT OF MANDATORY ONE-YEAR ENROLLMENT—1996

[In percent]

	All	Enrollees	Disenrollees
If beneficiary had to stay in HMO for one year, the effect on the enrollment decision would be:			
—more likely to join	34	34	22
—less likely to join	17	16	33
—no effect on decision	49	49	45

Source: U.S. Department of Health and Human Services, Office of the Inspector General, Beneficiary Perspectives of Risk HMOs 1996, OEI–06–95–00430 (March 1998).

Beneficiaries retain the protection of the right to disenroll where the M+C organization's misrepresentation or the beneficiary's misunderstanding results in an enrollment that should not have occurred. In addition, the year-long opportunity for newly eligible aged individuals to disenroll and return to original Medicare is a particularly valuable protection for many beneficiaries who may be just beginning to understand the implications of new

options. (Newly eligible disabled beneficiaries are not afforded this option.) Beneficiary protections are enhanced by guaranteed issue of Medigap policies for first-time M+C enrollees who gave up supplemental coverage upon enrolling in an M+C organization and disenroll within 12 months, and for newly eligible aged beneficiaries who enroll in an M+C organization at age 65 and disenroll within twelve months of becoming eligible for Medicare.

Finally, we believe the lock-in will benefit the Medicare Trust Funds. The General Accounting Office found that the flexibility for beneficiaries to disenroll at will can cause problems for the Medicare program. (GAO, 1997) For example, beneficiaries could decide to use an M+C plan or other private plans while in relatively good health but disenroll to fee-for-service when their health care needs increased. The result could be a disproportionate number of less healthy beneficiaries in the fee-for-service sector, excess payments to HMOs, and unnecessary Medicare spending. We believe that the nine-month lock-in period will help reduce risk selection and, consequently, reduce the current problem of paying monthly premiums for beneficiaries while they are healthy but paying traditional claims when they become ill and disenroll from a managed care plan.

C. New Payment Methodology for M+C Plans

Section 1853 directs HCFA to modify the payment methodology for entities receiving capitated payments from Medicare. These payment changes are intended to: promote savings, reduce geographic variation in the rates, and stimulate the growth of new entities to serve Medicare beneficiaries in historically underserved areas. As described above, beginning in 1998, monthly county rates are the greatest of: (1) a minimum payment amount (of $367 in 1998); (2) a minimum percentage increase of 2 percent over the preceding year's payment for the area; and (3) a blend of the area-specific rate and an input-price adjusted national rate, further adjusted by a budget neutrality adjustment. The area-specific portion of the blended rates and the minimum payment amount are updated each year by the national average per capita Medicare growth rate (with specified reductions from 1998–2002).

Payment changes to M+C organizations figure prominently in reducing overall Medicare spending and postponing the depletion of the Medicare Trust Fund from 2001 to 2010. The CBO estimates that the BBA reduces Medicare spending by $116.4 billion dollars between 1998 and 2002. An estimated $22.5 billion, or almost 20 percent of total Medicare savings under the BBA, is attributable to payments to M+C organizations. Much of the savings is attributable to lower payment rates in the original Medicare program. Additionally, removal of GME and IME from the capitated payments to M+C organizations represents a redirection of $4 billion, which would be paid directly to providers. All told, the BBA payment changes are estimated to reduce annual spending increases for both the M+C program and original Medicare from 8.5 percent to about 5 percent a year between 1997 and 2002.

The new payment methodology will lessen the significant geographic variation in payments by reducing the influence of factors that cannot be explained by geographic differences in medical input prices. Under the pre-BBA methodology, capitation amounts were based on actual per capita costs for original Medicare in each enrolled's county of residence. Under the BBA formula, adjustments for input prices is specifically included in the computation of blended rates, but the influence of practice pattern differences is gradually minimized through the payment blending. Over the period 1998–2002, each county's blended payment amount is increasingly based upon a standardized rate that reflects practice patterns across the country. In this way, the new methodology attempts to achieve a more equitable distribution of payments, and will hopefully encourage plans to focus on implementation of quality-based, cost-effective treatment methods.

One of the chief considerations in restructuring the payment methodology was evidence that Medicare managed care organizations have attracted healthier and therefore less expensive enrollees than fee-for-service organizations. In its 1996 Annual Report to Congress the PPRC reported on a study of enrollees in Medicare risk plans between 1989 and 1994. This study showed that those enrolled in managed care plans cost the Medicare program only 63 percent as much as the average Medicare beneficiary during the six months preceding enrollment when both groups were enrolled in traditional Medicare. In contrast, persons who disenrolled and returned to traditional fee-for-service Medicare cost the program 160 percent as much as the average beneficiary in the six months following disenrollment. In its December, 1997 study, the Congressional Budget Office estimated that Medicare paid 6–8 percent more for enrollees in risk-based HMOs than it would have paid for those enrollees under fee-for-service Medicare. Although prior law did set Medicare capitation rates 5 percent below fee-for-service payments under original Medicare, this reduction was not enough to compensate for favorable risk selection. The new methodology mandated by the BBA requires risk adjustment beginning in the year 2000.

Medicare managed care enrollment has grown steadily in recent years. However, most of the growth has been concentrated in urban areas. Between December of 1990 and December of 1997, enrollment in risk contracts grew from 3.3 percent of Medicare beneficiaries to 14.0 percent. Twenty-four percent of beneficiaries residing in large urban areas with a population of 1 million or more were enrolled in a Medicare risk plan in June of 1997. Twelve percent of beneficiaries residing in areas adjacent to large urban areas and smaller metropolitan areas, and less than 3 percent of Medicare beneficiaries residing in rural areas, were enrolled in a Medicare risk plan. Approximately thirty-three percent of Medicare beneficiaries reside in an area that is not served by any Medicare managed care organization.

We assessed the impact of the payment methodology by first considering the overall impact and then considering the impact of changes in payment on specific entities. The potential overall impacts of changes in payment are: reductions in spending; redistribution of payments; increases in enrollment in M+C plans; changes in the distribution of enrollment in M+C plans; and the creation of a more competitive market offering a wider range of choices for Medicare beneficiaries.

We have identified the types of entities and individuals that will be directly affected by changes in payment. They include: beneficiaries, M+C organizations offering coordinated care plans (including current Medicare managed care contractors), and M+C organizations offering private fee-for-service plans or MSA plans, States, providers, and the Medicare Trust Funds.

One clear impact of the revised payment methodology is decreased spending relative to estimates of spending under prior law. In its BBA analysis, CBO estimated that changes in payments to managed care plans save $22.5 billion between 1998–2002. As stated earlier, these savings contribute significantly toward efforts to extend the long-term solvency of the Medicare Part

A Trust Fund. Table 3 provides more recent alternative projections of $30 billion in savings between 1998–2003. (HCFA Office of the Actuary, 3/98.)

TABLE 3.—PROJECTED IMPACT DUE TO CHANGES IN PAYMENT METHODOLOGY

Fiscal year	Savings (in billions of dollars)
1998	0.3
1999	0.7
2000	4.4
2001	6.6
2002	8.1
2003	9.2

*Includes risk adjustment.
Source: HCFA Office of the Actuary, 3/98.

As noted above, projected savings due to the change in the M+C payment methodology are also tied in part to the overall savings in Medicare created by BBA changes in payments to Medicare fee-for-service providers. Specifically, since the National Per Capita M+C growth factor (NGP) is defined as the "projected per capita rate of growth in Medicare expenditures" reduced by the BBA's specified percentage reduction, the NGP will include the impact of reductions and/or slower increases to provider payments in the original Medicare program.

Another factor that affects the amount of savings is the minimum payment amount and the minimum percentage increase. Because the payment methodology does not allow for reduction of the floor and minimum payment increases, budget neutrality, which is achieved by reducing or increasing the blended rates, may not be achieved in all years where the computation requires a reduction in the blended rates. This situation occurred in the calculation of the 1998 and 1999 rates, when no county received the blended rate because the budget neutrality adjustment brought all rates to an amount below the amount of the minimum 2 percent increase. See discussion in Section II.F. above.

It is clear that one aspect of the new payment methodology, the floor, actually increases spending compared to prior law. CBO estimates that increasing payments to the floor counties will cost $2.2 billion more than expected under previous law over the 5-year period of 1998–2002. However, increasing payment to floor counties meets important policy objectives in that by reducing payment disparities it is hoped that more choices will become available in under-penetrated areas.

The payment methodology has removed some of the variation in payment rates by increasing payment rates in lower payment counties through use of a minimum payment amount. In the future, blending will further reduce variation by reducing the influence of local fee-for-service costs in the blended rates. Table 4 shows the impact of the payment methodology by location. The floor rate increased payments significantly in rural areas and in some urban counties as well.

TABLE 4.—AVERAGE AND RANGE OF MEDICARE COUNTY PAYMENT RATES, BY LOCATION, 1997–1998

	1997 Average	1998 Average	1997 Range (Low:High)	1998 Range (Low:High)
All Counties	470	484	221:767	367:783
Central Urban	546	557	349:767	367:783
Other Urban	440	452	256:728	367:742
Urban Fringe	394	413	231:693	367:707
Other Rural	371	397	221:647	367:660

Source: MEDPAC, March 1998 Report to Congress: Medicare Payment Policy.

A further change in the methodology is the graduate medical education (GME) carve-out. While the removal of GME does not generate savings for the Medicare trust fund or Medicare GME, it does reduce capitation rates in counties that historically received GME payments (except in counties where the minimum payment amounts apply). In general, GME carve-outs disproportionately affect urban managed care organizations because urban counties house more teaching hospitals. Table 5 shows the 1995 GME percentages in urban and rural counties.

TABLE 5.—ESTIMATED GRADUATE MEDICAL EDUCATION PAYMENT REDUCTIONS AS A PROPORTION OF MEDICARE RISK PAYMENT RATES BY URBAN AND RURAL LOCATION (PERCENTAGE), 1995

Location	GME percentage
All Counties	3.4
Urban Counties	3.8
Central Urban	5.3
Other Urban	3.1
Rural Counties	2.1
Urban Fringe	2.2
Other Rural	1.9

Source: PPRC, 1997 Annual Report to Congress, Chapter 3, p. 62.

We anticipate that these changes to the variations payment will affect the enrollment distribution of M+C enrollees.

The methodology has already increased capitation levels in rural areas now receiving the payment floor, in some counties significantly. HCFA's Office of the Actuary currently predicts that the blended rates will begin in CY 2000, which should increase rates in some rural areas that received the 2 percent increase in 1998 and 1999. In fact, to the extent that blended rates are eventually applied under the budget neutrality rules, the blended rate will gradually elevate payments to counties that have an area-specific payment that is below the national average as adjusted for input prices.

The improved incentives in rural counties should prompt M+C organizations to contract in these areas. Greater participation of managed care plans in rural counties should spur increases in M+C enrollment in the long run. CBO expects an incremental gain of 3 percent market share for coordinated care plans by 2002. This growth occurs, for the most part, in non-urban areas. It

is expected that higher payments in rural areas will encourage M+C organizations to offer plans in these areas. In particular, PSOs were included as an M+C option in part because of the belief that rural providers might organize M+C organizations in their areas which, because of their smaller population bases, generally have not been as attractive to managed care plans for commercial or Medicare business.

Table 6 provides a profile of the distribution of risk contractors and enrollment prior to passage of the BBA.

TABLE 6.—DISTRIBUTION OF MEDICARE RISK ENROLLMENT, AND RISK CONTRACTORS

Location	Percent of beneficiaries in risk plans (6/97)	Percent of counties offering 0 risk plans (6/97)	Percent of counties offering 1 risk plan (6/97)	Percent of counties offering 2–4 risk plans (6/97)	Percent of counties offering more than 5 risk plans (6/97)
Urban (MSA of 1 million or more)	24	0	2	19	79
Other Urban (surrounding counties or smaller MSA)	11.8	27	12	34	27
Fringe Urban (rural areas bordering MSA)	2.6	71	18	11	1
Other rural areas	1.1	91	6	3	0

Source: MEDPAC 1997 Chartbook.

It is expected that as more M+C organizations enter the Medicare market, competitive pressures will increase. As the payment changes are implemented and geographic variation in payment levels is reduced, the profitability of M+C organizations will be driven less by where they deliver services, and more by how well they deliver services. An organization's success will depend on the quality of services offered, the extent and clarity of an organization's communications with beneficiaries, the ability of a plan to effectively manage the provision of care to Medicare beneficiaries, and the satisfaction levels of Medicare enrollees in a plan, as well as the benefits offered and the premiums charged. These competitive forces should provide increased access to high quality services under capitated plans for Medicare beneficiaries.

For beneficiaries in rural areas we believe the overall impact of these changes should make participation in the M+C program a more viable option. Conversely, as payment rates become less robust in urban areas and margins decrease, some coordinated care plans may choose to reduce benefits, or increase premiums. Reductions in benefits or increases in premiums would have a negative impact on beneficiaries.

We should also note here that oftentimes we look at payment as a driving force in the Medicare program as a whole. While the increased payment to rural counties should on its face provide an incentive for organizations to offer their services and products in rural areas, that may not always be the case. That is, some may assume that when Medicare pays coordinated care plans considerably more than the average per capita fee-for-service cost in a geographic area, as it does in many of the payment floor counties, this would cause organizations to rush to enter into contracts in these areas. However, plans may decide that the smaller pool of potential enrollees (and hence the smaller pool over which to spread risk) do not justify either their added financial risk or the proportionally larger start up and marketing costs associated with launching a plan in a rural area.

We believe and Congress intended that these increases for rural counties would stimulate the growth of capitated plans in these areas. However, there still is a large degree of uncertainty over the actual effects of the BBA changes for rural areas. In the end only M+C organizations can really determine if the payment levels justify their costs.

D. Introduction of New Contracting Entities

In general, we believe that new entities will be formed to serve the Medicare market. As discussed above, the new payment methodology and the availability of PSO and MSA plans should stimulate the private sector's development of entities to compete for Medicare beneficiaries. While estimates of the development of new entities are somewhat speculative, the following are our best estimates based on currently available information, enrollment projections, informal surveys and discussions with industry representatives.

Provider Sponsored Organizations: The Congressional Budget Office projects that PSO enrollment will reach a 3 percent share of Medicare beneficiaries, or about 1 million beneficiaries, by 2002 and that a significant portion of the PSO enrollment will be in rural areas (CBO, 1997).

Currently, there are approximately 5.5 million beneficiaries enrolled in 307 Medicare risk products, which is an average of approximately 8,000 enrollees per Medicare risk plan. We believe that CBO's projections, presented in the following table, represent a good estimate of the approximate number of new PSO plans that will be established. Some industry analysts have projected a higher level of certified PSOs than projected by CBO. While we believe it is highly unlikely that as many as 25 PSOs will be certified by the end of 1998, we believe that CBO's projections for 1999 and thereafter are reasonable.

Enrollment estimate	Year	New PSOs
100,000	1998	25
400,000	1999	50
600,000	2000	75
800,000	2001	100
1,000,000	2002	125

Source of enrollment estimate: CBO, 1997.

As a secondary impact, the M+C program could result in expanded availability of PSOs, particularly in rural areas. That is, PSOs that are successful in their Medicare contracts may decide to expand into the commercial market. In turn, if commercial payers learn of their success in serving the Medicare population, they may have more confidence in the ability of PSOs to assume and manage risk and may, therefore, be more interested in contracting with them.

Private Fee-For-Service Plans: The Congressional Budget Office projected that no Medicare beneficiaries will enroll in private fee-for-service plans, and no reliable estimates for the number of likely private fee-for-service market entrants are available. However, we have received some expressions of

interest from insurance carriers and others regarding how these plans will work and whether there is an opportunity to serve Medicare beneficiaries. If offered, we would expect them to be most attractive to wealthier beneficiaries because of their anticipated higher premiums and other out-of-pocket costs. While private fee-for-service plan providers are allowed to engage in limited balance billing, there is no statutory limit on premiums that a plan may charge beneficiaries.

Medical Savings Account Plans: The Congressional Budget Office estimated that 390,000 Medicare beneficiaries will enroll in M+C MSA plans by 2000. This is the statutory limit for the total number of beneficiaries that can enroll in the MSA demonstration. While there are no reliable estimates on the number of organizations that will offer M+C MSAs, we expect that many organizations offering MSA plans in the commercial marketplace will offer MSA plans in the Medicare market as well.

According to a recent General Accounting Office study, 57 carriers, including three HMOs, offered MSA plans in the commercial market as of the summer of 1997. Blue Cross & Blue Shield plans represented almost one-third of the plans offered in the market. At that time, an additional fifteen carriers and eight HMOs indicated an interest in offering MSA plans. However, commercial enrollment in MSA plans has been considerably lower than had been anticipated. While the demonstration project under the Health Insurance Portability and Accountability Act allowed for 750,000 MSAs to be sold, as of June 30, 1997, only 17,145 individuals had enrolled in these new products, according to the Internal Revenue Service.

The GAO found that the complexities surrounding the tax implications of an MSA product, increased time necessary to explain the product to customers, and lower commissions to brokers/agents for selling a high deductible product have contributed to the low number of plans sold. However, some of these complexities may be mitigated under the BBA, as beneficiaries are barred from contributing their own money to the medical savings account, and they will receive extensive information about MSA plans as part of the annual information campaign on their M+C options.

Impact of New Contracting Entities

Beneficiaries may benefit from competitive pressures on M+C organizations to compete on such factors as reduced premiums, extra benefits, and quality. However, the difference between out-of-pocket costs under managed care plans and the traditional fee-for-service program may decrease as M+C payments moderate. Under the Medicare risk program, beneficiaries enrolled in risk HMOs generally have had lower out-of-pocket costs than beneficiaries in the traditional Medicare fee-for-service sector. For example, a recent study by the American Association of Retired Persons projected that beneficiaries enrolled in a Medicare managed care plan will spend an average of 16 percent of their annual income, or $1,775, on out-of-pocket health care costs, in 1997. This is compared to the estimated out-of-pocket expenses for Medicare fee-for-service beneficiaries, which were projected on average to be 21 percent of their annual income, or $2,454, on out-of-pocket costs. (AARP, 1997).

We also anticipate that many providers will have new opportunities to serve Medicare beneficiaries, such as through provider sponsored organizations or through strategic partnerships with other coordinated care plans seeking to enter new markets. As M+C enrollment grows, providers will find it increasingly important to their business to participate in an M+C network as many of their patients will be locked into these networks. In turn, we believe M+C organizations will seek to contract with providers that are capable of serving both their commercial and Medicare populations.

Finally, the M+C program will most affect those states in which the greatest market opportunities for newly created M+C organizations exist. Oversight and licensing responsibilities will likely increase for such states as newly created M+C organizations, such as PSOs, seek to serve the Medicare market. The BBA increases the workload for States only to the extent that new organizations will begin operating in the State. It is likely that States will also have to monitor the compliance of PSOs that have a waiver of State licensure in the case of quality and consumer protection standards. This constitutes an additional workload of partial monitoring of plans that are not subject to State solvency requirements.

Many states will be confronted with issues on licensing of PSOs, whether by bringing such entities under existing HMO laws and regulations or establishing separate PSO licensing provisions. In a recent report, the National Association of Insurance Commissioners reported that ten states have already enacted state-level PSO regulation (NAIC, 1997), and the National Council for State Legislatures reports that thirteen states currently are considering PSO legislation.

States will also have to integrate PSOs into their state guaranty fund or other mechanism for protecting beneficiaries against insolvent plans. While this will not be a new function, it is expected to increase the amount of regulatory oversight necessary due to new market entrants and could place burdens on a state's ability to protect consumers if PSOs become insolvent.

Finally, the preemption of state mandated benefit and provider participation laws will lead to mandated benefits being applied to a smaller number of State residents. However, states may still enforce any laws relating to cost-sharing for a benefit included in an M+C contract as well as any laws restricting balance billing practices by providers. Moreover, we believe that few states will be impacted by the BBA's prohibition on state imposition of premium taxes on payments to Medicare risk contracts/M+C organizations. While almost all states impose premium taxes on insurers generally (and nineteen states have specific premium tax schedules for HMOs), it is our understanding that most states have not subjected Medicare revenue to a premium tax and that many states specifically exempt Medicare payments to HMOs from any premium tax.

E. New Quality Standards

Each M+C organization must have arrangements for an ongoing quality assessment and performance improvement program for health care services it provides to Medicare beneficiaries enrolled in the M+C plans. The quality assurance program for an M+C organization must, among other things: (1) stress health outcomes and provide for the collection, analysis, and reporting of data to permit measurement of outcomes and other indices of the quality of M+C organizations and organizations; (2) include measures of consumer satisfaction; (3) provide the Secretary with such access to information collected as appropriate to monitor and ensure the quality of care; (3) provide review by physicians and other health care professionals of the process followed in the provision of health care services; (4) provide for the establishment of written protocols for utilization review, based on current standards of medical practice; (5) have mechanisms to detect both underutilization and overutilization of services; (6) take action to improve quality and assess the effectiveness of that action through systematic follow-up; and (7) make available information

on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options.

An M+C organization is deemed to have met the quality assessment and performance improvement requirements if the organization is accredited (and periodically reaccredited) at a level acceptable to the Secretary by a national, private accrediting organization approved by the Secretary. Deemed M+C organizations must meet certain requirements, including submitting to surveys to validate its accreditation organization's process and authorizing its accreditation organization to release to HCFA a copy of its most current accreditation survey and any information related to the survey as required by HCFA.

Accrediting organizations will have to meet certain requirements in order to receive approval as well as ongoing requirements to maintain its approved status.

The quality assurance and performance improvement requirements under this regulation provide that each M+C organization achieve minimum performance levels on standardized quality measures. They also require that organizations conduct performance improvement projects that achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of clinical care and non-clinical services that can be expected to affect health outcomes and member satisfaction. This approach to ensuring quality reflects the expansion in recent years of the problem-focused approach that was prevalent in the past to include a focus on systematic quality improvement as well.

We believe that the quality assessment and performance improvement requirements under this regulation will not impose significantly new burdens on most M+C organizations.

First, as discussed in detail in section III D of this preamble, requirements under this regulation build on a variety of HCFA and State Medicaid agency efforts to promote the assessment and improvement of quality in plans contracting with Medicare and Medicaid, including:

- The Quality Improvement System for Managed Care (QISMC), an initiative with state and federal officials, beneficiary advocates, and the managed care industry to develop a coordinated quality oversight system to reduce duplicative or conflicting efforts and that has an emphasis on demonstrable and measurable improvement.
- Initiatives to improve accountability by requiring uniform collection and reporting of data to allow assessment of plan performance and to facilitate comparisons among plans, such as the Health Plan Employer Data and Information Set (HEDIS 3.0).
- Projects to enhance the role of Medicare Peer Review Organizations (PROs) in evaluating and improving managed care plan quality, including the development and testing of a minimum set of performance evaluation measures and quality improvement projects developed through collaboration between PROs and the managed care industry.

Second, we anticipate that many new M+C organizations will be offered by organizations currently participating as Medicare risk contractors. While we acknowledge that many organizations have not developed the capacity to fully meet the pre-BBA requirements, we believe that this regulation does not create substantially new demands for building new administrative and information systems necessary to meet the quality assessment and performance improvement requirements for M+C products, as such organizations already are subject to similar requirements as section 1857 contractors. Moreover, we will build into the contract process a gradual phase-in of the number of focus areas for which a plan must demonstrate improvement to allow sufficient time for a plan to implement and conduct well-designed improvement projects.

Third, we anticipate that many organizations seeking to offer M+C products will have had to invest in administrative and information systems to meet the requirements of other purchasers and State regulators, diminishing burdens this regulation might otherwise have imposed. This is true even for provider-sponsored organizations that seek a federal waiver from state solvency requirements, as such entities are still subject to other state requirements, including a state's quality assessment and improvement requirements.

We have built on efforts in other sectors in developing these quality assessment and performance improvement requirements in order to minimize the burden that these activities place on plans. (GAO, September 1996; NCQA, 1997), such as:

- Many employers and cooperative group purchasing groups and some States already require that organizations be accredited by the National Committee on Quality Assurance, the Joint Commission on Accreditation of Healthcare Organizations, the American Healthcare Accreditational Commission, or other independent bodies.
- Many also require that organizations report their performance on HEDIS, FACCT, or other measures and conduct enrolled surveys using the CAHPS or other instruments. For example, NCQA estimates that more than 90 percent of plans are collecting some or all of HEDIS data for their commercial population. (NCQA, 1997)
- States have heightened their regulatory efforts through insurance or licensing requirements, and the National Association of Insurance Commissioners has developed model acts on network adequacy, quality assessment and improvement, and utilization review.

Another important mechanism in avoiding duplication of effort and unnecessary administrative burdens with respect to internal quality assurance requirements is the "deemed" status afforded organizations for each standard that is accredited by a national, private accrediting organization.

Fourth, we have worked closely with private-sector leaders in health plan performance and quality measurement to avoid duplication of effort and promote standardization in measurement approaches. (GAO, September 1996) For example, we convened advisory groups of managed care organizations, State and Federal purchasers and regulators, beneficiary advocates, and experts in mental health and substance abuse services and relied heavily on the insight and expertise of these groups in refining standards and guidelines.

Fifth, measuring and reporting plan- and provider-specific information will allow plans and networks to compare themselves to competitors, track their own performance over time, and so drive their own internal quality improvement programs. (Palmer, 1997). Moreover, plans will have added incentives to initiate performance improvement projects that will lead to more cost-effective delivery of health care services, such as influenza immunization outreach efforts which lead to lower complications and treatment of influenza-related conditions or improving access to primary care to reduce inappropriately frequent use of the emergency room by enrollees. This regulation allows plans the freedom to select its own particular topics for measurement and improvement so that each plan can conduct projects relating to aspects of care and services that are significant for its own population.

Although the quality standards under this regulation are not substantially

different from requirements already in place, we recognize that some M+C organizations may need to invest in administrative and/or information systems necessary to comply with the existing as well as the M+C standards. Additionally, while some plans may be tempted to invest their resources into the areas in which they must measure and demonstrate improved performance at the expense of other parallel quality initiatives, we have designed the quality assessment and performance improvement requirements under this regulation to be as flexible as possible and encourage plans to work with HCFA in developing long-range goals for projects.

Our role in overseeing compliance with the quality standards interrelates with our efforts to sponsor an annual information campaign that coincides with the open enrollment period for M+C organizations and is an important augmentation to those efforts. These efforts are designed to ensure that all organizations in the M+C program have the organizational structure and operational capacity to provide quality health care to Medicare beneficiaries and to ensure that beneficiaries have accurate information on quality to guide their health plan selections.

F. Conclusion

We expect that this rule overall will have a positive impact on the Medicare program, Medicare beneficiaries, providers, rural providers and suppliers, and entities that have not previously contracted with us. However, some current managed care contractors will experience a decrease in the capitated payments they otherwise would have received without passage of the BBA, possibly resulting in reduced benefits for Medicare enrollees. States will also have to develop mechanisms to license new risk bearing entities known as provider sponsored organizations after 3-year waivers.

VI. Collection of Information Requirements

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the statutory requirement, as set forth in section 1856 of Balanced Budget Act of 1997, to implement these requirements on June 1, 1998.

HCFA is requesting OMB review and approval of this collection within 11 working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, within 10 working days of publication of this document in the **Federal Register**.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements summarized and discussed below.

Application Requirements (§ 422.6)

In order to obtain a determination on whether it meets the requirements to become an M+C organization and is qualified to provide a particular type of M+C plan, an entity, or an individual authorized to act for the entity (the applicant) must complete an application, in the form and manner required by HCFA, including all of the requirements set forth in § 422.6.

In order to contract with us under the M+C program, organizations are required to complete an application to demonstrate their capability of carrying out the requirements of the Medicare program. Completing an application requires the capability of organizations to adhere to Medicare program guidelines and demonstrate to HCFA by in-house documentation that such capability exists. In prior years, applicants were required to complete applications forms (HCFA 901–903) to obtain a Medicare contract under section 1876 of the program. The application having OMB clearance #0938–0470 estimated that approximately 100 hours would be required to complete an application. We believe the new applications are quite similar and therefore estimate that 100 hours will be required to complete an application under the Medicare + Choice program. We project approximately 100 applications a year requiring 10,000 hours of time by all applicants on an annual basis.

Eligibility To Elect an M+C Plan (§ 422.50)

A beneficiary must complete and sign an election form and gives information required for enrollment.

The burden associated with this requirement is the time it takes for a beneficiary to complete an enrollment form. The enrollment form varies for each organization, but similar identifying information is collected. It is estimated that it will take 2,000,000 beneficiaries (based on 2,012,025 enrollments in calendar year 1997) 10 minutes for an annual burden of 20,000,000 minutes = 333,000 hours.

Continuation of Enrollment (§ 422.54)

An M+C organization that wishes to offer a continuation of enrollment option must submit their marketing materials to HCFA for approval, which meet the requirements set forth in this section, that describe the option and the M+C organization's assurances of access to services as set forth in this section and, an M+C organization that offers a continuation of enrollment option must convey all enrollee rights conferred under this rule.

The burden associated with this requirement is captured below in § 422.64.

Election Process (§ 422.60)

The election form must be completed and signed by the M+C eligible individual beneficiary (or the individual who will soon become entitled to Medicare benefits) and include authorization for disclosure and exchange of necessary information between HCFA and the M+C organization.

The burden associated with this requirement is captured above in the § 422.50 discussion.

The M+C organization must file and retain M+C plan election forms for the period specified in HCFA instructions, and submit beneficiary M+C plan and optional supplemental benefit elections to HCFA.

The burden associated with this requirement is the time required for each organization to perform record

keeping on each application filed. It is estimated that it will take each organization 5 minutes for each of 2,000,000 beneficiaries (based on 2,012,025 enrollments in calendar year 1997). The total annual burden is estimated at 10,000,000 minutes = 167,000 hours. On average, M+C organizational level burden is 167,000/450 (100 new/350 current) = 371 annual hours. In addition, it is estimated to take each M+C organization 4 hours per month to electronically submit a subset of beneficiary M+C plan and optional supplemental benefit election information to HCFA, for a total annual burden of 21,600 hours.

The M+C organization must give the beneficiary prompt written notice of acceptance or denial in a format specified by HCFA that meets the requirements set forth in this section.

The burden associated with each organization providing the beneficiary prompt written notice, performed by an automated system, is estimated at 1 minute per application processed. The annual total burden is estimated at 2,000,000 minutes = 33,000 hours. On average, M+C organizational level burden is 33,000/450 (100 new/350 current) = 73 annual hours.

Within 30 days from receipt of the election form (or from the date a vacancy occurs for an individual who was accepted for future enrollment), the M+C organization must transmit the information necessary for HCFA to add the beneficiary to its records as an enrollee of the M+C organization.

The burden associated with electronic submission of information to HCFA is estimated at 1 second per application processed, for an annual burden of 2,000,000 minutes = 33,000 hours. On average, M+C organizational level burden is 33,000/450 (100 new/350 current) = 73 annual hours.

Election of Coverage Under an M+C Plan (§ 422.62)

Except as provided in paragraph (d)(2)(ii) of § 422.62, an individual may disenroll from an M+C MSA plan only during an annual election period or the special election period described in paragraph (b) of this section. However, an individual who elects an M+C MSA plan during an annual election period and had never before elected an M+C MSA plan may revoke that election, no later than December 15 of that same year, by submitting to the organization that offers the M+C plan a signed and dated request in the form and manner prescribed by HCFA or by filing the appropriate disenrollment form through other mechanisms as determined by HCFA.

The burden associated with this requirement is the time required for each beneficiary to complete a disenrollment form. It is estimated that about 5 percent of the maximum number of beneficiaries permitted to choose an MSA (390,000) would disenroll (19,500) and each disenrollment form would take 4 minutes to complete, for an annual burden of 78,000 minutes = 1,300 hours.

Information About the M+C Program (§ 422.64)

Each M+C organization must provide, on an annual basis and in a format and using standard terminology that may be specified by HCFA, the information necessary that meets the general and content requirements set forth in § 422.6, to enable HCFA to provide to current and potential beneficiaries the information they need to make informed decisions with respect to the available choices for Medicare coverage.

The burden associated with this requirement is the time required for the organization to provide the information to HCFA. It is estimated that it will take 450 (100 new/350 current) organizations 12 hours for an annual burden of 5,400 hours. In addition, it is estimated that on an annual basis it will take 4 hours for an estimated 50 organizations to modify and submit their revised materials to HCFA for review for a annual burden of 200 hours.

Coordination of Enrollment and Disenrollment Through M+C Organizations (§ 422.66)

An individual who wishes to elect an M+C plan offered by an M+C organization may make or change his or her election during the election periods specified in § 422.62 by filing the appropriate election form with the organization or through other mechanisms as determined by HCFA.

An individual who wishes to disenroll from an M+C plan may do so by (1) electing a different M+C plan by filing the appropriate election form with the M+C organization or through other mechanisms as determined by HCFA, (2) submitting a signed and dated request for disenrollment to the M+C organization in the form and manner prescribed by HCFA or, (3) filing the appropriate disenrollment form through other mechanisms as determined by HCFA.

The burden associated with electing a different plan is included in 422.50. The burden associated with disenrolling is the time to complete a disenrollment form. It is estimated that 720,000 disenrollments (based on the number of disenrollments in calendar 1997) will take 2 minutes each for an annual burden of 1,440,000 minutes = 2,400 hours. On average, M+C organizational level burden is 2,400/450 (100 new/350 current) = 5 annual hours.

The M+C organization must submit each disenrollment notice to HCFA promptly.

The burden associated with electronic submission of information to HCFA is estimated at 1 second per disenrollment processed, for an annual burden of 1,200 minutes = 20 hours.

On average, M+C organizational level burden is 1,200/450 (100 new/350 current) = 3 annual hours.

In the case of a plan where lock-in applies, the M+C organization must provide the enrollee with a statement explaining that he or she remains enrolled until the effective date of disenrollments, and until that date, neither the M+C organization nor HCFA pays for services not provided or arranged for by the M+C plan in which the enrollee is enrolled.

The burden associated with each organization providing the beneficiary prompt written notice of disenrollment and lock-in, produced by an automated system, is estimated at 1 minute per disenrollment processed, for an annual burden of 720,000 minutes = 1,200 hours. On average, M+C organizational level burden is 1,200/450 (100 new/350 current) = 3 annual hours.

The M+C organization must file and retain disenrollment requests for the period specified in HCFA instructions.

The burden associated for each disenrollment request is the time required for each organization to perform recordkeeping on each disenrollment request filed. It is estimated that it will take 5 minutes for 720,000 disenrollments processed for an annual burden of 3,600,0000 minutes = 60,000 hours. On average, M+C organizational level burden is 6,000/450 (100 new/350 current) = 13 annual hours.

Disenrollment by the M+C Organization (§ 422.74)

If the disenrollment is for any of the reasons specified in paragraphs (b)(1) through (b)(2)(i) and (b)(3) of § 422.74, that is, other than death or loss of entitlement to Part A or Part B, the M+C organization must give the individual a written notice of the disenrollment with an explanation of why the M+C organization is planning to disenroll the individual. The notice must be mailed to the individual before submission of the disenrollment notice to HCFA and include an explanation of the individual's right to a hearing under the

M+C organization's grievance procedures.

There is a burden associated with the requirement for the organization to notify the beneficiary about an involuntary disenrollment, and to separately notify the beneficiary of the effective date of the disenrollment. It is estimated that less than 100 such notices will be issued and that each notice will take 1 minute for an annual burden of less than 100 minutes = or less than 1.5 hours.

A M+C organization may disenroll an individual from the M+C plan for failure to pay any basic and supplementary premiums if the M+C organization sends a written notice of nonpayment to the enrollee within 20 days of the date that the delinquent charges were due stating that nonpayment of premiums will not automatically result in disenrollment and information about the lock-in requirements of the M+C plan.

There is a burden associated with the requirement for the organization to notify the beneficiary and it is estimated that less than 500 of these requests occur annually at 1 minute per notification, resulting in an estimated burden of 500 minutes, or approximately 80 hours.

A M+C organization may disenroll an individual from the M+C plan if the individual's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continued enrollment in the plan seriously impairs the M+C plan's ability to furnish services to either the particular individual or other individuals enrolled in the plan. The M+C organization must document the enrollee's behavior, its own efforts to resolve any problems, and any extenuating circumstances, as described in paragraphs (d)(2)(i) through (d)(2)(iii) of this section. And, a M+C organization must submit documentation related to the proposed disenrollment and any information submitted by the beneficiary, to HCFA for review to determine whether the M+C organization has met the disenrollment requirements.

The burden associated with this requirement is the time for the organization to document the behavior of the beneficiary and document the efforts of the organization to resolve any problems and provide information to HCFA concerning the involuntary disenrollment request. The burden reflects documentation and transmission of documentation to HCFA by the managed care plans. It is estimated that less than 100 such requests occur annually (based on estimate of regional office collection of such information), and it is estimated that each request will take 1 hour to manually collect the data and 15 minutes to transmit the data to HCFA, for a burden of 125 hours.

A M+C organization must report to the Office of the Inspector General of the DHHS any disenrollment based on fraud or abuse by the individual.

There is a burden associated with the requirement for the organization to report to the Office of the Inspector General any disenrollment based on fraud or abuse by the individual. It is estimated that only 1% of all involuntary disenrollments, or 10 involve fraud or abuse, and the reporting burden would be 1 minute each, for a total burden of less than 1 hour.

If a M+C organization terminates or is terminated or the service area or continuation area are reduced with respect to all M+C enrollees in the area in which they reside, the M+C organization must give each Medicare enrollee a written notice of the effective date of the plan termination or area reduction and a description of alternatives for obtaining benefits under the M+C program. The notice must be sent before the effective date of the plan termination or area reduction.

The burden associated with this requirement is captured below in § 422.506.

Approval of Marketing Materials and Election Forms (§ 422.80)

At least 45 days before the date of distribution the M+C organization must submit any marketing material or election form to HCFA for review. The materials must be in a format and using standard terminology specified by HCFA, that meet the requirements specified in this section.

The burden associated with this requirement is captured above in § 422.64.

A M+C organization must notify the general public of its enrollment period (whether time-limited or continuous) in an appropriate manner, through appropriate media, throughout its enrollment area.

We anticipate notification to the general public would be through a general circulation newspaper and would require 8 hours of burden per organization to modify their enrollment period bulletin and seek publication in a local newspaper, for an annual burden of 3,600 hours.

Special Rules for Point of Service Option (§ 422.105)

M+C organizations must maintain written rules on how to obtain health benefits through the POS benefit. While the maintenance of written rules is a recordkeeping requirement subject to the PRA, the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2) and (b)(3).

The M+C organization must provide to beneficiaries enrolling in a plan with a POS benefit an "evidence of coverage" document, or otherwise provide written documentation, that specifies all costs and possible financial risks to the enrollee, including the requirements set forth in (d)(2)(i) through (d)(2)(iv) of this section.

The burden associated with this requirement is captured above in § 422.64.

An M+C organization that offers a POS benefit must report data on the POS benefit in the form and manner prescribed by HCFA.

The special rules for M+C organizations offering a POS benefit as stipulated in § 422.105 requires that M+C organizations provide to HCFA POS data relating to the utilization of the POS benefit by plan members. This is not a new data requirement since M+C organizations that offer a POS benefit would need to have this data in the normal course of business in order to pay POS claims. We estimate that providing this data to HCFA would require 1 hour per quarterly submission. Thus, the annual burden would be 1 hour × 4 = 4 hours per MCO in providing the required POS data.

Disclosure Requirements (§ 422.111)

An M+C organization must disclose the information specified in § 422.64 and in paragraph (b) of § 422.111 to each enrollee eligible for or electing an M+C plan it offers. The information must be in clear, accurate, and standardized form, and provided at the time of enrollment and at least annually thereafter. The burden associated with this requirement is captured above in § 422.64.

If an M+C organization intends to change its rules for an M+C plan, it must submit the changes for HCFA review under the procedures of § 422.80. The burden associated with this requirement is reflected in § 422.80 above.

The plan must also give notice to all enrollees 30 days before the intended effective date of the changes. The burden associated with this requirement is reflected above in § 422.80.

The M+C organization must make a good faith effort to provide written notice of a termination of a contracted provider within 15 working days of receipt or issuance of a notice of termination, as described in

§ 422.204(c)(4), to all enrollees who are patients seen on a regular basis by the provider whose contract is terminating, irrespective of whether the termination was for cause or without cause. When a contract termination involves a primary care professional, all enrollees who are patients of that primary care professional must also be notified.

HCFA has no basis to calculate the burden impact imposed by these requirements. Therefore, we explicitly seek comment on the impact of this notification requirement.

Access to Services (§ 422.112)

In the case of involuntary termination of an M+C plan or specialist(s) for a reason other than for cause, the M+C organization must inform beneficiaries of their right to maintain access to specialists and provide the names of other M+C plans in the area that contract with specialists of the beneficiary's choice, as well as an explanation of the process the beneficiary would need to follow should he or she decide to return to original Medicare.

The requirements imposed by this section would be pursuant to an administrative action and therefore are exempt from the PRA as defined in 5 CFR 1320.4.

An M+C plan seeking a service area expansion must demonstrate that the number and type of providers available to plan enrollees are sufficient to meet projected needs of the population to be served. The burden associated with meeting this requirement is captured above in 422.6.

An M+C plan must demonstrate to HCFA that its providers are credentialed through the process set forth at § 422.204(a). The burden associated with meeting this requirement is captured above in 422.6.

Plans must have procedures approved by HCFA for (1) identification of individuals with complex or serious medical conditions; (2) assessment of those conditions, including medical procedures to diagnose and/or monitor them on an ongoing basis; and (3) establishment of a treatment plan appropriate to those conditions, with an adequate number of direct access visits to specialists to accommodate the treatment plan. Treatment plans must be time-specific and updated periodically by the PCP.

Plans must also; (1) establish written standards for the timeliness of access to care and member services that meet or exceed standards established by HCFA, (2) continuously monitor and document the timely access to care and member services within a plan's provider network to ensure compliance with these standards, and take corrective action as necessary, (3) establish written policies and procedures (coverage rules, practice guidelines, payment policies, and utilization management) that allow for individual medical necessity determinations, and (4) ensure that providers consider and document beneficiary input into the provider's proposed treatment plan.

Plans must maintain written procedures to ensure that; (1) the M+C organization and its provider network have the information required for effective and continuous patient care and quality review, including procedures to ensure that, each provider, supplier, and practitioner furnishing services to enrollees maintains an enrollee health record in accordance with standards established by the M+C organization, taking into account professional standards; appropriate and confidential exchange of information among provider network components, (2) written procedures to ensure that enrollees are informed of specific health care needs that require follow-up and receive, as appropriate, training in self-care and other measures they may take to promote their own health; and (4) documentation demonstrating that systems to address barriers to enrollee compliance with prescribed treatments or regimens.

HCFA's believes these requirements are reasonable and customary business practices and the burden associated with these requirements is exempt from the PRA as defined in 5 CFR 1320.3(b)(2). Therefore, we are assigning one token hour of burden for these requirements. HCFA invites comment on the burden estimate associated with these requirements.

Confidentiality and Accuracy of Enrollee Records (§ 422.118)

For any medical records or other health and enrollment information it maintains with respect to enrollees, an M+C organization must establish and maintain procedures set forth in (a) through (c) of this section.

While the maintenance of health records is a recordkeeping requirement subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2) and (b)(3), and assigning 1 token hour of burden for this requirement. We solicit comment on the burden associated with this requirement.

Information on Advance Directives (§ 422.128)

Each M+C organization must maintain written policies and procedures that meet the requirements for advance directives, as set forth in 43 CFR part 489 subpart I.

An M+C organization must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care by or through the M+C organization.

An M+C organization must provide written information to those individuals with respect to the requirement set forth in this section.

These requirements are identical to the requirements currently approved under OMB# 0938–0610, with an expiration date of July, 31, 1999. Since the currently approved requirements encompass a larger universe of provider types then just managed care organizations it is difficult to estimate the burden on the M+C organizational level. However, the per beneficiary encounter burden is estimated to be 3 minutes. In the near future, HCFA will revise this collection to capture this new provider type and resubmit the collection to OMB for approval.

Protection Against Liability and Loss of Benefits (§ 422.132)

Each M+C organization must adopt and maintain arrangements satisfactory to HCFA to protect its enrollees from incurring liability for payment of any fees that are the legal obligation of the M+C organization. The burden associated with demonstrating this requirement is captured below under § 422.306.

Each M+C organization must have an insolvency protection plan that provides for continuation of benefits. Each plan must submit a insolvency plan to HCFA for approval. The reporting requirements are similar to the insolvency plan reporting requirements submitted by 1876 plans. The burden associated with completing and submitting an insolvency plan is estimated to be 40 hours per plan on an annual basis. Therefore, the total annual burden associated with this requirement is 18,000 hours (40 hours x 450 plans (100 new/350 current)). In the near future, HCFA will revise this collection to capture this new provider type and resubmit the collection to OMB for approval.

Quality Assessment and Performance Improvement Program (§ 422.152)

The organization offering the plan must measure performance under the

plan, using standard measures required by HCFA, and report its performance to HCFA.

All Medicare+Choice organizations and an organization offering an M+C non-network MSA plan or an M+C private fee-for-service plan will be required to measure performance under their plans, using standard measures required by HCFA, and report their performance to HCFA. Reporting will be required annually. The standard measures that will be required will most likely be those already captured in HEDIS and CAHPS, approved under OMB # 0938–0701. The currently approved annual per plan burden is estimated to be 400.53 hours. Therefore, the total burden associated with this requirement is 180,239 hours (400.53 hours × 450 plans (100 new/350 current)). In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

The organization must report the status and results of each performance improvement project to HCFA as requested.

All Medicare+Choice organizations offering coordinated care plans will be required to undertake performance improvement projects relative to those plans. Each organization must report the status and results of each project to HCFA as requested. We expect that, in any given year, each organization will complete two projects, and will have two others underway, relative to each plan. We expect that we will request the status and results of each organization's projects annually. We estimate that it will take an organization 5 hours to prepare its report for each project. Therefore, we estimate that the total annual hours involved per plan to be 20 and an overall annual burden for all plans of 9,000 hours.

For all types of plans that it offers, an organization must: (1) Maintain a health information system that collects, analyzes, and integrates the data necessary to implement its quality assessment and performance improvement program, (2) Ensure that the information it receives from providers of services is reliable and complete, and (3) Make all collected information available to HCFA.

All M+C organizations must maintain a health information system, and must make all collected information available to HCFA. The requirement guarantees our access to organization information: it does not impose an obligation for routine organization submission of information. At this time, we do not anticipate requesting information other than that relating to the standard measures and performance improvement projects discussed above.

External Review (§ 422.154)

Except as provided in paragraph (c) of § 422.154, each M+C organization must, for each M+C plan it operates, have an agreement that meets the provisions of this section, with an independent quality review and improvement organization (review organization) approved by HCFA to perform functions of the type described in 42 CFR part 466 of this chapter.

Most M+C organizations must have an agreement with a review organization approved by HCFA to perform functions of the type described in 42 CFR part 466. A similar requirement already exists for Medicare contracting HMOs, at § 466.72. The burden estimate prepared for OMB submission #0938–0445 would also apply to the new requirement. The currently approved burden associated with this requirement on the organizational level is 10 hours every three years.

In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

Compliance Deemed on the Basis of Accreditation (§ 422.156)

An M+C organization deemed to meet Medicare requirements must: (1) Submit to surveys by HCFA to validate its accreditation organization's accreditation process, and (2) authorize its accreditation organization to release to HCFA a copy of its most recent accreditation survey, together with any survey-related information that HCFA may require (including corrective action plans and summaries of unmet HCFA requirements).

The burden associated with this requirement is captured below in § 422.158.

Accreditation Organizations (§ 422.157)

An accreditation organization approved by HCFA must undertake the following activities on an ongoing basis: (1) Provide to HCFA in written form and on a monthly basis all of the information required in paragraphs (c)(1)(i) through (c)(1)(v) of § 422.157, (2) Within 30 days of a change in HCFA requirements, submit to HCFA all of the information required in paragraphs (c)(2)(i) through (c)(2)(iii) of § 422.157, (4) Within 3 days of identifying, in an accredited M+C organization, a deficiency that poses immediate jeopardy to the organization's enrollees or to the general public, give HCFA written notice of the deficiency, and (5) Within 10 days of HCFA's notice of withdrawal of approval, give written notice of the withdrawal to all accredited M+C organizations. The burden associated with this requirement is captured below in § 422.158.

Procedures for Approval of Accreditation as a Basis for Deeming Compliance (§ 422.158)

A private, national accreditation organization applying for approval must furnish to HCFA all of the information and materials referenced in this section. However, when reapplying for approval, the organization need furnish only the particular information and materials requested by HCFA.

The BBA allows HCFA to deem that a M+C organization meets certain Medicare requirements if that organization is accredited by an accreditation organization approved by HCFA. We expect that four national accreditation organizations will eventually be approved. The application and oversight procedures that we have developed for deeming in the managed care arena mirror those already in place in the fee-for-service arena as currently approved under OMB # 0938–0690. Therefore, much of the burden estimate prepared for the fee-for-service deeming regulations in 42 CFR part 488, Subpart A, would also apply here. The initial application burden associated with obtaining deeming authority is 96 hours every six years. Since we anticipate that four organizations will apply, the total burden is 386 hours over a six year period. The ongoing burden of supplying HCFA with data on the status of its deemed facilities is estimated to be 48 annual hours per deeming organization for a total annual burden of 192 hours. In the near future HCFA will resubmit this collection to OMB for approval of deeming in the managed care arena use.

Participation Procedures (§ 422.202)

An M+C organization that operates a coordinated care plan or network MSA must provide for the participation of individual health care professionals and of the management and members of groups through reasonable written procedures that include the following: (1) written notice of rules of participation such as terms for payment, utilization review, quality improvement programs, credentialing, data reporting, confidentiality, guidelines or criteria for the furnishing of particular services, and other rules related to administrative policy, (2) written notice of material changes in participation rules before the changes are put into effect, (3) written notice of participation decisions that are adverse to health care professionals, (4) a process for appealing adverse

decisions, including the right of physicians and other health care professionals to present information and their views on the decision.

The M+C organization must maintain documentation demonstrating that: (1) practice guidelines and utilization management guidelines meet the requirements of (1)(i) through (iv) of this section, (2) the guidelines have been communicated to providers and, as appropriate, to enrollees, (3) decisions with respect to utilization management, enrollee education, coverage of services, and other areas in which the guidelines apply are consistent with the guidelines, and (4) an M+C organization that operates an M+C plan through subcontracted physician groups or other subcontracted networks of health care professionals provided that the participation procedures in this section apply equally to physicians and other health care professionals within those subcontracted groups.

The burden associated with these requirements is the time required to maintain documentation demonstrating that the requirements have been met and, as necessary, the time necessary to communicate the guidelines to providers and enrollees. HCFA believes that these requirements are reasonable and customary business practices and the burden of meeting these requirements is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2). Therefore, we are assigning one token hour of burden to these requirements. We explicitly solicit comments on the burden associated with meeting these requirements.

Participation Contracts: Requirements and Prohibitions (§ 422.204)

An M+C organization that operates a coordinated care plan or network MSA plan that provides benefits through contracting health care professionals must provide notice to contracting professionals when the organization denies, suspends, or terminates their agreement with the professional and include (1) the reason for the action, (2) the standards and the profiling data the organization used to evaluate the professionals, (3) the numbers and mix of health care professionals needed for the organization to provide adequate access to services, and (4) the professional's right to appeal the action and the timing for requesting a hearing. This is a new requirement.

The burden associated with this requirement is the time required for organization to prepare a written notification of the denial, suspension, or termination of their agreement with the organization. In discussions with HCFA plan managers, it was predicted that .5 percent of all organizations (approximately 2 organizations) would find it necessary to take such action for about 1 percent of their contracted professionals within a single year and if the organization was already established and doing business. The range of number of contracted professionals extends from 3 contracted professionals to 67,000. Excluding outliers on both ends of the range, we estimate that an organization contracts with an average of 3,000 health care professionals. Using an estimate of 10 minutes per instance to generate and furnish a notice of such action, the total burden on known contractors (350) would be 2 organizations * 30 * 10 minutes = 600 minutes or 10 hours annually.

In addition, HCFA expects to receive approximately 100 additional applications for contracts with new entities to be processed in 1998 for 1999. For organizations creating new networks, they would probably all have at least one instance of denial the first year affecting approximately 1 percent of the number of contracting professionals. Using an estimate of 10 minutes per instance to generate and furnish a notice of such action, the total burden on new contractors would be 100 organizations * 30 * 10 minutes = 30,000 minutes or 500 hours. The total burden with current applications and expected applications for contracts would be 510 hours annually.

The number of new organizations is expected to increase by 100, on an annual basis creating an expected burden for current contracts [350(*.005(organization-rounded to the nearest whole number) *30*10)/60 =]10 hours + new contracts [100*30*10 /60 =]500 hours = 510 hours.

An M+C organization is required to notify any licensing or disciplinary bodies or other appropriate authorities when it suspends or terminates a contract with a health care professional because of deficiencies in the quality of care provided by the professional.

The burden associated with this requirement is the time required for the organization to prepare a written notification to the appropriate authorities. No exact data is available to estimate how often this situation might occur. HCFA estimates that this situation might occur in 3 percent of the M+C organizations once during an annual period. The amount of time estimated to prepare the written notification is 10 minutes. The annual burden associated with this requirement is estimated to be [450 * .03 * 1 *10/ 60] = 2.25 hours.

Interference With Health Care Professionals' Advice to Enrollees Prohibited (§ 422.206)

Section 422.206 prohibits the M+C organization from restricting the provision of treatment advice by health care professionals to enrollees. However, the prohibition against interference is not construed as requiring counseling by a professional or a referral to a service by that professional, if there is an objection based on moral and religious grounds. Section 422.206 implements a new disclosure requirement and requires M+C organizations to notify HCFA during the application process, and later to all current and prospective enrollees, through appropriate written means, if the organization has such a conscience protection policy regarding counseling in effect or if the policy is changed subsequent to the application. The expected number of M+C organizations exercising this option is not expected to exceed 10 in any given year. The amount of burden imposed in the application process, which is captured in the application burden and in the preparation of the contents of the subscriber agreement or member handbook or a subsequent written notice to enrollees is reflected above in § 422.6 and § 422.64.

Physician Incentive Plans: Requirements and Limitations (§ 422.208)

An M+C organization must conduct periodic surveys of current and former enrollees where substantial financial risk exists.

The burden associated with this requirement is captured below in § 422.210.

Disclosure of Physician Incentive Plans (§ 422.210)

Each M+C organization must provide to HCFA descriptive information about its physician incentive plan in sufficient detail to enable HCFA to determine whether that plan complies with the requirements of § 422.208. Reporting should be on the HCFA PIP Disclosure Form (OMB No. 0938–0700). An M+C organization must disclose annually to HCFA the physician incentive arrangements that are effective at the start of each year.

Sections 422.208 and 422.210 require disclosure of physician incentive plan information to HCFA or to States and to Medicare beneficiaries and the enrollee surveys required when plans put providers at substantial risk. This collection of information, Incentive Arrangement Form HCFA–R–201 and supporting regulations, used to monitor

physician incentive plans on an annual basis, is approved under OMB # 0938–0700. In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

Special Rules for M+C Private Fee-for-Service Plans (§ 422.216)

The M+C organization must make information on its payment rates available to providers that furnish services that may be covered under the M+C private fee-for-service plan.

We expect the M+CPFFS plan to provide written information to contracting providers and to make the information available via a website or toll free number to noncontracting providers who inquire. 50 M+CPFFS plans (estimate of M+CPFFS plans in out years; in first year we may have none) will be required to provide 20,000 annual responses (about 1 million providers nationwide divided by 50 M+CPFFS plans) at an estimated 5 minutes per disclosure (average of phone calls, website time, mailing time for hard copies to contracting providers) for a total annual burden of 1,667 hours per provider and an overall annual burden of 83,350 hours.

An M+C organization that offers an M+C fee-for-service plan must enforce the limit specified in paragraph (b)(1) of this section. Specifically, an M+C organization that offers an M+C private fee-for-service plan must monitor the amount collected by non-contract providers to ensure that those amounts do not exceed the amounts permitted to be collected under paragraph (b)(2) of this section. The M+C organization must develop and document violations specified in instructions and must forward documented cases to HCFA.

M+C private fee-for-service plans must investigate and send to HCFA documentation of excessive charges by providers. It is estimated that 50 M+C private fee-for-service plans will have 10 cases per year, at 20 hours per case (to contact the enrollee who complained, acquire and review documents, contact the provider, prepare report to HCFA). Therefore, the total burden associated with this requirement is 10 cases × 20 hours = 200 annual hours per plan, for a total annual burden of 10,000 hours.

An M+C organization that offers an M+C private fee-for-service plan must provide to plan enrollees, for each claim filed by the enrollee or the provider that furnished the service, an appropriate explanation of benefits. The explanation must include a clear statement of the enrollee's liability for deductibles, coinsurance, copayment, and balance billing.

This requirement is akin to the Medicare EOMB or summary statement and must be furnished on a regular basis for every claim paid or denied by the M+C private fee-for-service plan. It is estimated that 3 million notices will be disseminated by M+C private fee-for-service plans. This estimate is determined by; multiply 5000 enrollees per plan by 12 (one notice per month) or 60,000, multiplied by an estimated 50 plans for a total of 3 million notices. At an estimated 3 minutes of burden per notice, the total burden is 9 million minutes or 150,000 burden hours. On a plan level the average annual burden is estimated to be 3,000 hours.

In its terms and conditions of payment to hospitals, organization the hospital is required, if it imposes balance billing, to provide to the enrollee, before furnishing any services for which balance billing could amount to not less than $500: (1) Notice that balance billing is permitted for those services; (2) a good faith estimate of the likely amount of balance billing, based on the enrollees presenting condition; and (3) the amount of any deductible, coinsurance, and copayment that may be due in addition to the balance billing amount.

It is estimated that 20,000 of 25,000 estimated hospitalizations will require these notices. The $500 tolerance will be exceeded each time the plan payment rate for the inpatient stay would exceed $3333.33—which is probably almost all of them—if the plan lets the hospital balance bill. At 5 minutes of burden per notice times 20,000 annual notices, the total burden is 100,000 minutes or 1,667 hours of burden.

Encounter Data (§ 422.257)

Each M+C organization must submit to HCFA (in accordance with HCFA instructions) all data necessary and as stipulated under this section to characterize the context and purpose of each encounter between a Medicare enrollee and a provider, supplier, physician, or other practitioner.

The Act requires that the collection of inpatient hospital data for discharges beginning on or after July 1, 1997 and allows the collection of other data no earlier than July 1, 1998. The statutory language is clearly tied to the creation of risk-adjusted payment rates, as defined at § 422.256 (c) and (d) of this rule. Requirements concerning collection of encounter data apply to M+C organizations with respect to all their M+C plans, including medical savings accounts (MSAs) and private fee-for-service plans.

M+C organizations must submit data as follows: (1) Beginning on a date determined by HCFA, inpatient hospital care data for all discharges that occur on or after July 1, 1997.

These requirements are approved under OMB # 0938–0711, with an expiration date of July 31, 1998. The burden associated with submitting data for inpatient hospital care data for all discharges that occur on or after July 1, 1997, is currently .5 minutes per EMC bill and 1 minute per hard copy bill. Although there are currently three options for submitting bills, on average the total annual burden per plan is 46.5 hours, with an overall burden of annual 32,833 hours.

HCFA will provide advance notice to M+C organizations to collect and submit: (1) Physician, outpatient hospital, SNF, and HHA data beginning no earlier than October 1, 1999; and (2) all other data HCFA deems necessary beginning no earlier than October 1, 2000. We estimate the following burden for each category based on a projection of 15 seconds per claim: Physician: 72 million claims = 300,000 hours Outpatient hospital: 12 million claims = 50,000 hours HHA, Hospice, SNF: 2.4 million claims = 10,000 hours All other: 24 million claims = 100,000 hours

We will implement this provision by providing for direct transmission from the provider to HCFA with common PC-based technology. It should be noted that prior to implementing the requirement for M+C organizations to collect and submit physician, outpatient hospital, SNF, and HHA data HCFA will amend OMB # 0938–0711 and seek OMB PRA approval. As part of the PRA process the public will be given several opportunities to comment, via **Federal Register** notification, on the proposed collection prior to OMB approval and implementation.

M+C organizations and their providers and practitioners will be required to submit medical records for the validation of encounter data, as prescribed by HCFA.

Currently HCFA plans on implementing this requirement pursuant to an administrative action or audit, based on data submitted to HCFA or one of its agents. Therefore, these requirements are currently not subject to the PRA as defined in 5 CFR 1320.4.

However, if HCFA were to implement these requirements on a prospective basis, as part of a program oversight activity, we will amend OMB # 0938–0711 and seek OMB PRA approval. As part of the PRA process the public will be given several opportunities to comment, via **Federal Register** notification, on the proposed collection prior to OMB approval and implementation.

Special Rules for Beneficiaries Enrolled in M+C MSA Plans (§ 422.262)

An entity that acts as a trustee for an M+C MSA must: (1) Register with HCFA, (2) certify that it is a licensed bank, insurance company, or securities broker, or other entity qualified, under sections 408(a)(2) or 408(h) of the IRS Code, to act as a trustee, (3) agree to comply with the M+C MSA provisions of section 138 of the IRS Code of 1986; and (4) Provide any other information that HCFA may require.

An M+C organization offering an M+C MSA plan will have to register with HCFA for each beneficiary enrolled. This will require a short form that would take no more than five minutes to fill out. The Act limits the number of MSA enrollees to 390,000; therefore, with maximum participation, registration with HCFA would take 32,500 hours. (i.e., 390,000 registration forms at 5 minutes each.)

Items 2 and 3, above, are IRS requirements and entail no reporting requirements for HCFA. Under item 4, above, we anticipate no further M+C MSA reporting requirements at this time.

Special Rules for Hospice Care (§ 422.266)

An M+C organization that has a contract under Subpart K of part 422 must inform each Medicare enrollee eligible to elect hospice care under section 1812(d)(1) of the Act about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity) if: (1) A Medicare hospice program is located within the organization's service area, or (2) It is common practice to refer patients to hospice programs outside that area.

At present, one-twentieth of one percent (three thousand) of Medicare managed care enrollees have elected the hospice option. We estimate that informing beneficiaries about their hospice choices would take about ten minutes. For three thousand beneficiaries, this represents a total burden of 500 hours. On a organizational level the annual burden would be 500 hours / 450 M+C organizations (100 new/350 current) = 1.2 annual burden hours per entity.

Submission of Proposed Premiums and Related Information (§ 422.306)

Not later than May 1 of each year, each M+C organization and any organization intending to contract as an M+C organization in the subsequent year must submit to HCFA, in the manner and form prescribed by HCFA, for each M+C plan it intends to offer in the following year: (1) The information specified in paragraph (b), (c), or paragraph (d) of this section for the type of M+C plan involved, and (2) The enrollment capacity (if any) in relation to the M+C plan and area.

This collection effort will require the submission of benefit and pricing forms that will be used to price the benefit package sold and describe the benefit package being priced to Medicare beneficiaries. Both collection efforts will be completed at the same time, in order to approve both the benefit and pricing structure of a particular benefit package.

Organizations submitting benefit and pricing forms would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization.

The estimate of the hour burden of this collection of information is as follows:

Pricing portion of the Adjusted Community Rate Proposal; 1 response per year per respondent × 450 (350 current/100 new) annual respondents × 100 hours of estimated burden per response = 45,000 total annual burden hours.

The Plan Benefit Package portion of the Adjusted Community Rate Proposal; 1 response per year per respondent × 450 (350 current/100 new) annual respondents × 20 hours of estimated burden per response = 9,000 total annual burden hours.

Requirement for Additional Benefits (§ 422.312)

An M+C organization's request to make a withdrawal from the stabilization fund established for an M+C plan to be used during a contract period must be made in writing when the M+C organization notifies HCFA under § 422.306 of its proposed premiums, other cost-sharing amounts, and related information in preparation for its next contract period.

The burden associated with this requirement is captured above in § 422.306.

State Licensure Requirement (§ 422.400)

Except in the case of a PSO granted a waiver under Subpart H of part 422, each M+C organization must: (1) Be licensed under State law, or otherwise authorized to operate under State law, as a risk-bearing entity (as defined in § 422.2) eligible to offer health insurance or health benefits coverage in each State in which it offers one or more M+C plans; (2) If not commercially licensed, obtain certification from the State that the organization meets a level of financial solvency and such other standards as the State may require for it to operate as an M+C organization; and (3) Demonstrate to HCFA that—(i) The scope of its license or authority allows the organization to offer the type of M+C plan or plans that it intends to offer in the State; and (ii) If applicable, it has obtained the State certification required under § 422.400(b).

The regulations at § 422.400 require health plans to demonstrate to HCFA that they meet the State licensure requirement of section 1855(a)(1) of the Social Security Act. As explained in the preamble, organizations must meet both the basic requirement of State licensure as a risk-bearing entity, as well as the requirement that the scope of licensure be consistent with the type (or types) of M+C plan(s) the organization will be offering. We are asking new organizations (i.e., other than current contractors) to submit, as part of the process of applying for an M+C contract, a written certification showing the organization's licensure status. As of the date of publication of this interim final regulation, we are working with the National Association of Insurance Commissioners to develop a form that may be used to satisfy this requirement. A written statement containing the same type of information that is requested in the form we are developing would also suffice to show compliance with the statutory requirement.

The written certification is a combination of information provided by the organization proposing to enter into an M+C contract, and information to be provided by the appropriate State regulatory body (e.g. the State department of insurance). This is necessary because the written certification serves two purposes. First, it provides us with written evidence of compliance with the State licensure requirement for all M+C plans an organization may wish to offer. Second, it serves to inform State regulators of the intention of organizations doing business within the State with regard to M+C offerings. The certification process enables the State to ensure that the organization is complying with the State's standards for licensure (for example, as noted in the preamble, an HMO that proposes to offer a Medicare point-of-service (POS) product may be informed by the State that HMO licensure does not allow an organization to offer POS products, and that licensure as an indemnity insurer is required in that State in order to offer a POS product).

The certification will have to be completed (or other written

documentation provided) only once by each M+C organization, unless the nature of the M+C plan(s) offered by the organization differ from the original certification (e.g., an HMO may decide at some later date, after its initial application to offer a POS product—though even in such a case, a new certification may not be necessary to the extent that we are aware that applicable State law does not require a different licensure status). We estimate that the time burden for the M+C organization is 10 minutes or less for completion of the certification form, or preparation of alternative written documentation. Similarly, we would estimate, that the time burden for the State regulatory body should be 15 minutes or less (including time necessary to verify information from electronic or paper files).

Because we are estimating that there will be an average of 100 new applicants per year for M+C contracts over the next 5 years, and because this requirement will be imposed for nearly all organizations on a one-time basis, we estimate the annual total burden to be 25 minutes per respondent × 100 annual responses for a total of 42 annual hours.

General Provisions (§ 422.501)/Contract Provisions (§ 422.502)

In order to qualify as an M+C organization, enroll beneficiaries in any M+C plans it offers, and be paid on behalf of Medicare beneficiaries enrolled in those plans, an M+C organization must enter into a contract with HCFA.

Since the contract requirements associated with these sections are reflective the requirements and associated burden set forth in other sections of Part 422, the remaining burden associated with the requirements of these sections is the time required for a M+C organizations to read and sign the contract. It is estimated that it will take 100 M+C organizations on an annual basis, 2 hours each for a total annual burden of 200 hours. However, we solicit comment on the burden associated with these sections as it relates to the burden of meeting the requirements of the contract as reflected elsewhere in this regulation.

Nonrenewal of Contract (§ 422.506)

An M+C organization that does not intend to renew its contract, must notify HCFA, each Medicare enrollee, and the general public, before the end of the contract. Based on current experience HCFA receives 10 notifications of non-renewal on an annual basis. We estimate that the burden of notifying HCFA is 2 hours per notification for an annual burden of 20 hours.

We estimate the burden associated with notifying enrollees would take 16 hours per plan to draft and disseminate through mass mailings information of changes to affected beneficiaries for an annual burden of 160 hours.

We anticipate notification to the general public would be through the same notice published in a general circulation newspaper and would be an additional burden of 4 hours per organization for an annual burden of 40 hours.

Modification or Termination of Contract by Mutual Consent (§ 422.508)

An M+C organization that modifies or terminates it contract by written mutual consent must notify HCFA, each Medicare enrollee, and the general public, within timeframes specified by HCFA. Based on current experience HCFA receives less then 10 notifications of Modification or termination on an annual basis that would require notification of Medicare enrollees or the general public. However, we estimate that the burden of notifying HCFA is 2 hours per notification for an annual burden of 20 hours.

Termination of Contract by HCFA (§ 411.510)

If HCFA decides to terminate a contract for reasons other than the grounds specified in § 422.510(a)(5), the M+C organization notifies its Medicare enrollees and the general public by publishing a notice in one or more newspapers of general circulation in each community or county located in the M+C organization's geographic area of the termination by mail and at least 30 days before the effective date of the termination. Based upon current experience this requirement is imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.4 and 5 CFR 1320.3(c).

Termination of Contract by the M+C Organization (§ 422.512)

The M+C organization may terminate the M+C contract if HCFA fails to substantially carry out the terms of the contract. The M+C organization must give advance notice as follows as required in paragraphs (a)(1) through (a)(3) of § 422.512. In summary, an M+C organization that does not intend to renew its contract, it must notify HCFA, each Medicare enrollee, and the general public, before the end of the contract.

Based upon current experience this requirement is imposed on fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c).

Reporting Requirements (§ 422.516)

Each M+C organization must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the requirements in § 422.516 (b)(1) through (b)(3). The burden associate with these requirements is currently captured under form HCFA–906, OMB #0938–0469. Although the burden associated with the completion of the HCFA–906 differs by provider type, on average, the annual burden per provider is 17 annual hours, for a total burden of 3,130 hours. In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

For any employees' health benefits plan that includes an M+C organization in its offerings, the M+C organization must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations under the Employee Retirement Income Security Act of 1974 (ERISA). The M+C organization must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

These reporting requirements are currently imposed by the Department of Treasury and therefore impose no addition burden.

Each M+C organization must make the information reported to HCFA under § 422.502(f)(1) available to its enrollees upon reasonable request. This burden associated with this requirement is imposed pursuant to the dissemination of enrollment/disenrollment information referenced in Subpart B of this regulation.

Each organization must notify HCFA of any loans or other special financial arrangements it makes with contractors, subcontractors and related entities.

The burden associate with these requirements is currently captured under form HCFA–906, OMB #0938–0469. In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

Change of Ownership (§ 422.550)

§ 422.550 is amended to require in paragraph (b) that an M+C organization must provide updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving

organization. The burden associated with these requirements, which is estimated to take 10 hours per respondent × 10 annual respondents, is currently captured under National Data Reporting Requirements, form HCFA–906, OMB #0938–0469. In the near future HCFA will resubmit this collection to OMB for approval for use by M+C organizations.

§ 422.562 General provisions.

An M+C organization, with respect to each M+C plan that it offers, must establish and maintain written procedures related to; (1) the grievance procedures as described in § 422.564, (2) making timely organization determinations, (3) an appeal process that meets the requirements of this Subpart for issues that involve organization determinations.

In addition, an M+C organization must ensure that all enrollees receive written information about the grievance and appeal procedures that are available to them through the M+C organization and complaint process available to the enrollee under the PRO process as set forth under section 1154(a)(14) of the Act.

While we believe the initial burden associated with meeting these requirements is captured elsewhere in this regulation, we solicit comment on the ongoing burden associated with maintaining and disseminating the information requirements set forth in this section.

Standard Timeframes and Notice Requirements for Organization Determinations (§ 422.568)

When a party has made a request for a service, the M+C organization must notify the enrollee of its determination as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days after the date the organization receives the request for a standard organization determination.

If an M+C organization decides to deny service or payment in whole or in part, it must give the enrollee written notice of the determination.

The burden associated with this requirement is discussed below in § 422.572.

Expediting Certain Organization Determinations (§ 422.570)

To ask for an expedited determination, an enrollee or a health care professional must submit an oral or written request directly to the M+C organization or, if applicable, to the entity responsible for making the determination, as directed by the M+C organization. A physician may provide oral or written support for a request for an expedited determination.

If an M+C organization denies a request for expedited determination, it must give the enrollee prompt oral notice of the denial and follow up, within 2 working days, with a written letter that: (1) Explains that the M+C organization will process the request using the 30-calendar-day timeframe for standard determinations, (2) informs the enrollee of the right to file a grievance if he or she disagrees with the M+C organization's decision not to expedite; and (3) provides instructions about the grievance process and its timeframes.

If an M+C organization grants a request for expedited determination, it must make the determination and give notice in accordance with § 422.572.

The burden associated with this requirement is discussed below in § 422.572.

Timeframes and Notice Requirements for Expedited Organization Determinations (§ 422.572)

Except as provided in paragraph (b) of § 422.572, an M+C organization that approves a request for expedited determination must make its determination and notify the enrollee (and the physician as warranted by the patient's medical condition or situation) of its decision, whether adverse or favorable, as expeditiously as the enrollee's health condition requires, but not later than 72 hours after receiving the request.

The M+C organization may extend the 72-hour deadline by up to 14 calendar days if the enrollee requests the extension or if the organization finds that it needs additional information and the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence may change an M+C organization's decision to deny). The M+C organization must notify the enrollee of its determination before or immediately upon expiration of the extension.

If the M+C organization first notifies an enrollee of its expedited determination orally, it must mail written confirmation to the enrollee within 2 working days of the oral notification.

Organizations that contract with HCFA under the M+C program are required to implement procedures for making timely organization determinations and for resolving reconsiderations and other levels of appeals with respect to these determinations. In general, organization determinations involve whether an enrollee is entitled to receive a health service or the amount the enrollee is expected to pay for that service. A reconsideration consists of a review of an adverse organization determination (a decision by an M+C organization that is unfavorable to the M+C enrollee, in whole or in part) by either the M+C organization itself or an independent review entity. We use the term "appeal" to denote any of the procedures that deal with the review of organization determinations, including reconsiderations, hearings before administrative law judges (ALJs), reviews by the Departmental Appeals Board (DAB) and judicial review. As discussed in detail in section II.M of this preamble, the organization determination and appeal requirements for M+C organizations that are set forth in this interim final rule are largely based on the existing rules for managed care organizations under Part 417, Subpart Q, Beneficiary Appeals.

Sections 422.568, 422.570, and 422.572 contain the applicable requirements for initial organization determinations, which include submission of an oral or written request from an enrollee, and notification procedures that the M+C organization must follow when it makes a determination. We estimate that approximately 20 percent of the approximately 1 million M+C enrollees may make a request for an organization determination in a year, with an estimated burden of 2 minutes per request. Estimated notification burden associated with these requests is 5 minutes per request. The total overall annual burden for enrollee requests and organizational notification burden is 33,333 hours and 83,333 hours respectively.

Request for a Standard Reconsideration (§ 422.582)

A party to an organization determination must ask for a reconsideration of the determination by filing a written request with: (1) The M+C organization that made the organization determination; (2) an SSA office; or (3) in the case of a qualified railroad retirement beneficiary, an RRB office.

If the 60-day period in which to file a request for a reconsideration has expired, a party to the organization determination may file a request for reconsideration with the M+C organization, SSA, or an RRB office. If SSA or RRB receives a request, it forwards the request to the M+C organization for its reconsideration. The request for reconsideration and to extend the timeframe must: (1) Be in writing; and(2) state why the request for reconsideration was not filed on time.

The party who files a request for reconsideration may withdraw it by filing a written request for withdrawal at one of the places listed in paragraph (a) of this section.

The burden associated with this requirement is discussed below in § 422.602.

Expediting Certain Reconsiderations (§ 422.584)

To ask for an expedited reconsideration, an enrollee or a health care professional (on behalf of an enrollee) must submit an oral or written request directly to the M+C organization or, if applicable, to the entity responsible for making the reconsideration, as directed by the M+C organization. A physician may provide oral or written support for a request for an expedited reconsideration.

If an M+C organization denies a request for expedited reconsideration, it must take the following actions: (1) Automatically transfer a request to the standard timeframe and make the determination within the 45-day timeframe established in § 422.590(a); (2) give the enrollee prompt oral notice, and follow up, within 2 working days, with a written letter that—(i) Explains that the M+C organization will process the enrollee's request using the 45-day timeframe for standard reconsiderations, (ii) informs the enrollee of the right to file a grievance if he or she disagrees with the organization's decision not to expedite, and (iii) provides instructions about the grievance process and its timeframes.

If an M+C organization grants a request for expedited reconsideration, it must conduct the reconsideration and give notice in accordance with § 422.590(d).

The burden associated with this requirement is discussed below in § 422.602.

Timeframes and Responsibility for Reconsiderations (422.590)

If the M+C organization makes a reconsidered determination that affirms, in whole or in part, its adverse organization determination, it must prepare a written explanation and send the case file to the independent entity contracted by HCFA as expeditiously as the enrollee's health condition requires, but no later than 45 calendar days from the date it receives the request for a standard reconsideration. The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

If the M+C organization affirms, in whole or in part, its adverse organization determination, it must prepare a written explanation and send the case file to the independent entity contracted by HCFA no later than 60 calendar days from the date it receives the request for a standard reconsideration. The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

If the M+C organization fails to provide the enrollee with a reconsidered determination within the timeframes specified in paragraph (a) or paragraph (b) of this section, or to obtain a good cause extension described in paragraph (e) of this section, this failure constitutes an affirmation of its adverse organization determination, and the M+C organization must submit the file to the independent entity in the same manner as described under paragraphs (a)(2) and (b)(2) of this section.

The M+C organization may extend the 72-hour deadline by up to 14 calendar days if the enrollee requests the extension or if the organization finds that it needs additional information and the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence may change an M+C organization's decision to deny). The M+C organization must notify the enrollee of its determination before or immediately upon expiration of the extension.

If the M+C organization first notifies an enrollee orally of a completely favorable expedited reconsideration, it must mail written confirmation to the enrollee within 2 working days.

If, as a result of its reconsideration, the M+C organization affirms, in whole or in part, its adverse expedited organization determination, the M+C organization must submit a written explanation and the case file to the independent entity contracted by HCFA within 24 hours. The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

If the M+C organization refers the matter to the independent entity as described under this section, it must concurrently notify the enrollee of that action.

If the M+C organization fails to provide the enrollee with the results of its reconsideration within the timeframe described in paragraph (d) of this section, this failure constitutes an adverse reconsidered determination, and the M+C organization must submit the file to the independent entity within 24 hours of expiration of the timeframe set forth in paragraph (d) of this section.

The burden associated with this requirement is discussed below in § 422.602.

Notice of Reconsidered Determination by the Independent Entity (§ 422.594)

When the independent entity makes the reconsidered determination, it is responsible for mailing a notice of its reconsidered determination to the parties and for sending a copy to HCFA.

See discussion below.

Request for an ALJ Hearing (§ 422.602)

A party must file a written request for a hearing at one of the places listed in § 422.582(a) or with the independent, outside entity. The organizations listed in § 422.582(a) forward the request to the independent, outside entity, which is responsible for transferring the case to the appropriate ALJ hearing office.

Sections 422.582, 422.584, and 422.590 contain the applicable requirements for reconsiderations by an M+C organization of adverse organization determinations. The required procedures generally involve a written request from an enrollee, preparation of a brief written explanation and case file by the M+C organization, and notification of the decision by the M+C organization. Only about 0.5 percent of organization determinations, [that is, about 20,000 cases per year], ever reach the reconsideration stage. For these cases, we estimate a burden on the requesting enrollee of approximately 20 minutes per case and a burden on the M+C organization of approximately 4 hours, including both information collection and notification. Note that § 422.590 specifies that if an M+C organization affirms, in whole or in part, its adverse organization determination, it must forward the case to an independent entity contracted by HCFA for further review. We estimate that approximately 50 percent (10,000) of reconsidered cases result in a decision that is adverse to the enrollee, and thus review by the independent entity. For these cases, we estimate an additional burden on the M+C organization of approximately 2 hours per case. Thus, the estimated total annual burden on M+C organizations associated with reconsiderations is 100,000 hours (4 hours times 20,000 cases plus 2 hours times 10,000 cases).

About 30 percent of reconsideration requests that reach the independent entity level are resolved fully in favor of the enrollee. For the other 7,000 cases, an enrollee may pursue additional appeals, beginning with an appeal to an ALJ. Only about 10 percent of these cases are appealed to the ALJ, and for these 700 cases, we estimate an

incremental burden of 20 minutes on the enrollee to make the request for an appeal under § 422.602, and 2 hours on the M+C organization for additional information collection associated with the appeal. Finally, under §§ 422.608 and 422.612, enrollees or M+C organizations may appeal ALJ decisions to the Departmental Appeal Board, and subsequently request judicial review. We would estimate an incremental burden of an additional 2 to 4 hours per case, with only about 20 DAB cases and 10 judicial review cases per year.

How M+C Organizations Must Notify Enrollees of Noncoverage of Inpatient Hospital Care (§ 422.620)

The M+C organization must give the enrollee written notice that includes the following: (1) The reason why inpatient hospital care is no longer needed, (2) the effective date of the enrollee's liability for continued inpatient care, and (3) the enrollee's appeal rights. If the M+C organization allows the hospital to determine whether inpatient care is necessary, the hospital obtains the concurrence of the contracting physician responsible for the enrollee's hospital care or of another physician as authorized by the M+C organization, and notifies the enrollee, following the procedures set forth in § 412.42(c)(3) of this chapter.

The burden associated with this requirement is discussed below in § 422.622.

Requesting Immediate PRO Review of Noncoverage of Inpatient Hospital Care (§ 422.622)

For the immediate PRO review process, the enrollee must submit the request for immediate review in writing or by telephone to the PRO that has an agreement with the hospital under § 466.78 of this chapter by noon of the first working day after he or she receives written notice that the M+C organization or hospital has determined that the hospital stay is no longer necessary.

Under § 422.620, an M+C organization is required to provide an M+C enrollee, before a hospital discharge, with a written notice of noncoverage if it decides that inpatient care is no longer necessary. Section 422.622 provides the procedures that are to be followed if an enrollee by the enrollee and the M+C organization if the enrollee wishes to request PRO review of the M+C organization's decision. We estimate that there will be no more than 1,000 of these type of cases per year under the M+C program. We estimate that the reporting burden for an M+C organization to provide written notice of noncoverage to be approximately 10 minutes per notice; for an M+C enrollee to complete a request for immediate PRO review to be approximately 10 minutes per request; and for the M+C organization to submit requested medical information to the PRO, to be approximately 2 hours per response.

In response to a request from the M+C organization, the hospital must submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the organization makes its request.

Given that this requirement is imposed pursuant to an administrative action against an organization, this requirement is not subject to the PRA as defined in 5 CFR 1320.4.

Request for Reconsideration (§ 422.650)

A request for reconsideration must be made in writing and filed with any HCFA office within 15 days from the date of the notice of the initial determination. Based upon current experience this requirement is imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

The M+C organization or M+C contract applicant who filed the request for a reconsideration may withdraw it at any time before the notice of the reconsidered determination is mailed. The request for withdrawal must be in writing and filed with HCFA. Based upon current experience this requirement is imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Request for Hearing (§ 422.662)

A request for a hearing must be made in writing and filed by an authorized official of the applicant entity or M+C organization that was the party to the determination under appeal. The request for a hearing must be filed with any HCFA office within 15 days after the date of receipt of the notice of initial or reconsidered determination.

Based upon current experience this requirement is imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Disqualification of Hearing Officer (§ 422.668)

A hearing officer may not conduct a hearing in a case in which he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.

If the hearing officer does not withdraw, the objecting party may, after the hearing, present objections and request that the officer's decision be revised or a new hearing be held before another hearing officer. The objections must be submitted in writing to HCFA.

Based upon current experience these requirements are imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Time and Place of Hearing (§ 422.670)

The hearing officer fixes a time and place for the hearing, which is not to exceed 30 days from the receipt of the request for the hearing, and sends written notice to the parties. The notice also informs the parties of the general and specific issues to be resolved and information about the hearing procedure.

Based upon current experience these requirements are imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Record of Hearing (§ 422.686)

A complete record of the proceedings at the hearing is made and transcribed and made available to all parties upon request. Based upon current experience these requirements are imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Notice and Effect of Hearing Decision (§ 422.690)

As soon as practical after the close of the hearing, the hearing officer issues a written decision that: (1) Is based upon the evidence of record, and (2) contains separately numbered findings of fact and conclusions of law. And, the hearing officer provides a copy of the hearing decision to each party. Based upon current experience these requirements are imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are

not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

Effect of Revised Determination (§ 422.698)

The revision of an initial or reconsidered determination is binding unless a party files a written request for hearing of the revised determination in accordance with § 422.662. Based upon current experience these requirements are imposed pursuant to an administrative action against fewer than 10 organizations on an annual basis. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c) and 5 CFR 1320.4.

As a note, the public will be afforded several subsequent comment periods in future publications of **Federal Register** notices announcing our intention to seek OMB approval of standardized information collection requirements such as the ACR and contractor application forms that will be submitted to OMB in the near future.

We have submitted a copy of this rule to OMB for its review of the information collection requirements above. To obtain copies of the supporting statement for these collection requirements and any currently approved forms that are related to the proposed paperwork collections referenced above, E-mail your request, including your address, phone number and HCFA regulation identifier HCFA–1011, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

As noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below, within ten working days of publication of this collection in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–1030, Fax Number: (410) 786–1415

And

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer, Fax Number: (202) 395–6974 or (202) 395–5167

VII. Responses to Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. We will, however, consider all comments that we receive by the date specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in that document.

VIII. Waiver of Proposed Rulemaking and Waiver of Delayed Effective Date

Because the Secretary is exercising discretion in implementing sections 1851 through 1857 and section 1859 of the Act, ordinarily we would publish a notice of proposed rulemaking and afford a period for public comments. Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause to waive the delay. However, section 1856(b)(1) of the Act requires that these regulations be published by June 1, 1998, and provides that in order to carry out this requirement we may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

On January 20, 1998, we published a notice in the **Federal Register** in which we requested public comments on the implementation of the M+C program. We received approximately 90 items of correspondence in response to that notice. Further, on February 4, 1998, we held a public meeting to discuss issues and concerns from plans, providers, beneficiaries, and other interested parties on the requirements and implementation of the Medicare+Choice program. Approximately 600 individuals representing managed care organizations, local governmental agencies, and advocacy groups attended that meeting.

Because of the need to publish regulations timely and in light of the fact that we previously provided opportunity for public comment, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 90-day comment period for public comment. We also find good cause to waive the delay in the effective date of this rule.

IX. Effect of the Contract With America Advancement Act of 1996 (Public Law 104–121)

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Ordinarily under 5 U.S.C. 801, as added by section 251 of Public Law 104–121, a major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress, or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency determines if for good cause the agency finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. As explained above, for good cause we find that it was impracticable, unnecessary, or contrary to the public interest to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C. 808(2), these regulations are effective on July 27, 1998.

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42 CFR Chapter IV is amended as set forth below.

A. Part 400

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

2. In § 400.200, the definition for "PRO" is revised and the following definitions are added in alphabetical order to read as follows.

§ 400.200 General definitions.

* * * * *

ALJ stands for administrative law judge.

* * * * *

NCD stands for national coverage determination.

* * * * *

Peer review organization means an organization that has a contract with HCFA, under part B of title XI of the Act, to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare beneficiaries.

PRO stands for peer review organization.

* * * * *

RRB stands for Railroad Retirement Board.

* * * * *

3. In § 400.202 a definition of "national coverage determination" is added in alphabetical order to read as follows.

§ 400.202 Definitions specific to Medicare.

* * * * *

National coverage determination (NCD) means a national policy determination regarding the coverage status of a particular service, that HCFA

makes under section 1862(a)(1) of the Act, and publishes as a Federal Register notice or HCFA Ruling. (The term does not include coverage changes mandated by statute.)

* * * * *

B. Part 403

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 403.205, paragraph (d) introductory text is revised to read as follows:

§ 403.205 Medicare supplemental policy.

* * * * *

(d) Medicare supplemental policy does not include a Medicare+Choice plan or any of the following health insurance policies or health benefit plans:

* * * * *

C. Part 410

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Part 410 is amended as set forth below.

a. Section 410.57 is revised to read as follows:

§ 410.57 Pneumococcal vaccine and flu vaccine.

(a) Medicare Part B pays for pneumococcal vaccine and its administration when reasonable and necessary for the prevention of disease, if the vaccine is ordered by a doctor of medicine or osteopathy.

(b) Medicare Part B pays for the influenza virus vaccine and its administration.

b. Section 410.152 is amended to add a paragraph (1) to read as follows:

§ 410.152 Amounts of Payment.

* * * * *

(1) *Amount of payment: Flu vaccine.* Medicare Part B pays 100 percent of the Medicare allowed charge.

D. Part 411

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.15 [Amended]

2. In § 411.15, in paragraph (e), the following changes are made:

a. The "and" at the end of paragraph (e)(2) is removed.

b. A semicolon and the word "and" are added at the end of paragraph (e)(3).

c. A new paragraph (e)(4) is added, to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(e) * * *

(4) Influenza vaccinations that are reasonable and necessary for the prevention of illness.

* * * * *

3. In § 411.355, a new paragraph (c)(5) is added, to read as follows:

§ 411.355 General exceptions to referral prohibitions related to both ownership/investment and compensation.

* * * * *

(c) * * *

(5) A coordinated care plan (within the meaning of section 1851(a)(2)(A) of the Act) offered by an organization in accordance with a contract with HCFA under section 1857 of the Act and part 422 of this chapter.

* * * * *

E. Part 417

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1308, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. Section 417.402 is revised to read as follows:

§ 417.402 Effective date of initial regulations.

(a) The changes made to section 1876 of the Act by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 became effective on February 1, 1985, the effective date of the initial implementing regulations.

(b) The changes made to section 1876 of the Act by section 4002 of the Balanced Budget Act (BBA) of 1997 are incorporated in section 422 except for 1876 cost contracts. Upon enactment of the BBA (August 5, 1997) no new cost contracts or service area expansions are accepted by HCFA except for current Health Care Prepayment Plans that may convert to 1876 cost contracts. Also, 1876 cost contracts may not be extended or renewed beyond December 31, 2002.

3. In § 417.413, paragraphs (d)(1) and (d)(2) introductory text are revised and new paragraphs (d)(2) (iii) and (d)(8) are added to read as follows:

§ 417.413 Qualifying condition: Operating experience and enrollment.

* * * * *

(d) *Standard: Composition of enrollment.* (1) *Requirement.* Except as specified in paragraphs (d)(2) and (e) of this section, not more than 50 percent of an HMO's or CMP's enrollment may be Medicare beneficiaries.

(2) *Waiver of composition of enrollment standard.* HCFA may waive compliance with the requirements of paragraph (d)(1) of this section if the HMO or CMP has made and is making reasonable efforts to enroll individuals who are not Medicare beneficiaries and it meets one of the following requirements:

* * * * *

(iii) The HMO or CMP requests waiver of the composition rule because it is in the public interest. The organization provides documentation that supports one of the following:

(A) The organization serves a medically underserved rural or urban area.

(B) The organization demonstrates a long-term business and community service commitment to the area.

(C) The organization believes that a waiver is necessary to promote managed care choices in an area with limited or no managed care choices.

* * * * *

(8) *Termination of composition standard.* The 50 percent composition of Medicare beneficiaries terminates for all managed care plans on December 31, 1998.

* * * * *

4. In § 417.426, a new paragraph (a)(4) is added to read as follows:

§ 417.426 Open enrollment requirements.

(a) *Basic requirements.* * * *

(4) An HMO or CMP with a risk contract must accept applications from eligible Medicare beneficiaries during the month of November 1998.

* * * * *

5. Section 417.428 is revised to read as follows:

§ 417.428 Marketing activities.

The requirements and prohibitions set forth in § 422.80 of this chapter, for M+C organizations, apply also to HMOs and CMPs with contracts under section 1876 of the Act.

6. In § 417.472, paragraph (h) is revised to read as follows:

§ 417.472 Basic contract requirements.

* * * * *

(h) *Collection of fees from risk HMOs and CMPs.* (1) The rules set forth in § 422.10 of this chapter for M+C plans also apply to collection of fees from risk HMOs and CMPs.

(2) In applying the part 422 rules, references to "M+C organizations" or "M+C plans" must be read as references to "risk HMOs and CMPs".

Subpart M—[Amended]

7. Sections 417.520, 417.522 and 417.523 of subpart M are redesignated as §§ 422.550, 422.522 and 422.553 in a new subpart L in part 422, and the heading for the new subpart L to part 44 is added to read "Change of Ownership and Leasing of Facilities: Effect on Medicare Contract, under part 422, Medicare+Choice Program".

8. A new § 417.520 is added to subpart M to read as follows:

§ 417.520 Effect on HMO and CMP contracts.

(a) The provisions set forth in subpart L of part 422 of this chapter also apply to Medicare contracts with HMOs and CMPs under section 1876 of the Act.

(b) In applying these provisions, references to "M+C organizations" must be read as references to "HMOs and CMPs".

(c) In § 422.550, reference to "subpart K of this part" must be read as reference to "subpart L of part 417 of this chapter".

(d) In § 422.553, reference to "subpart K of this part" must be read as reference to "subpart J of part 417 of this chapter".

9. In § 417.584, a new paragraph (e) is added to read as follows:

§ 417.584 Payment to HMOs or CMPs with risk contracts.

* * * * *

(e) *Determination of rate for calendar year 1998.* For calendar year 1998, HMOs or CMPs with risk contracts will be paid in accordance with principles contained in subpart F of part 422 of this chapter.

Subpart Q—[Amended]

10. In subpart Q, §§ 417.600 through 417.638 are removed.

11. A new § 417.600 is added to subpart Q as follows:

§ 417.600 Beneficiary appeals and grievances.

(a) The rights, procedures, and requirements relating to beneficiary appeals and grievances set forth in subpart M of part 422 of this chapter also apply to Medicare contracts with HMOs and CMPs under section 1876 of the Act.

(b) In applying those provisions, references to section 1852 of the Act must be read as references to section 1876 of the Act; and references to M+C organizations as references to HMOs and CMPs.

12. In § 417.800 paragraph (a) introductory text is republished and the definition for "Health care prepayment plan" is revised to read as follows:

§ 417.800 Payment to HCPPs: Definitions and basic rules.

(a) *Definitions:* As used in this subpart, unless the context indicates otherwise—

* * * * *

Health care prepayment plan (HCPP) means an organization that—

(1) Is union or employer sponsored;

(2) Does not provide, or arrange for the provision of any in patient hospital services. Current HCPPs must meet this definition on January 1, 1999 and 1998 applicants must meet the definitions as of the effective date of the HCPP agreement. As of January 1, 1999, HCPPs are not required to meet Medigap requirements.

(3) Is responsible for the organization, financing and delivery of covered Part B services to a defined population on a prepayment basis;

(4) Meets the conditions specified in paragraph (b) of this section; and

(5) Elects to be reimbursed on a reasonable cost basis.

* * * * *

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F. Part 422

PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–21 through 1395w–27, and 1395hh).

2. Subparts A through G are added as follows:

Subpart A—General Provisions

Sec.
422.1 Basis and scope.
422.2 Definitions.
422.4 Types of M+C plans.
422.6 Application requirements.
422.8 Evaluation and determination procedures.
422.10 Cost-sharing in enrollment-related costs.

Subpart B—Eligibility, Election, and Enrollment

422.50 Eligibility to elect an M+C plan.
422.54 Continuation of enrollment
422.56 Limitations on enrollment in an M+C MSA plan.
422.57 Limited enrollment under M+C RFB plans.
422.60 Election process
422.62 Election of coverage under an M+C plan.
422.64 Information about the M+C program.
422.66 Coordination of enrollment and disenrollment through M+C organizations.
422.68 Effective dates of coverage and change of coverage.
422.74 Disenrollment by the M+C organization.
422.80 Approval of marketing materials and application forms.

Subpart C—Benefits and Beneficiary Protections

422.100 General requirements.
422.101 Requirements relating to basic benefits.
422.102 Supplemental benefits.
422.103 Benefits under an M+C MSA plan.
422.104 Special rules for supplemental benefits for M+C MSA plans.
422.105 Special rules for point of service option.
422.106 Special arrangements with employer groups.
422.108 Medicare secondary payer (MSP) procedures.
422.109 Effect of national coverage determinations (NCDs).
422.110 Discrimination against beneficiaries prohibited.
422.111 Disclosure requirements.
422.112 Access to services.
422.114 Access to services under an M+C private fee-for-service plan.
422.118 Confidentiality and accuracy of enrollee records.
422.128 Information on advance directives.
422.132 Protection against liability and loss of benefits.

Subpart D—Quality Assurance

422.152 Quality assessment and performance improvement program.
422.154 External review.
422.156 Compliance deemed on the basis of accreditation.
422.157 Accreditation organizations.
422.158 Procedures for approval of accreditation as a basis for deeming compliance.

Subpart E—Relationships With Providers

422.200 Basis and scope.
422.202 Participation procedures.
422.204 Provider credentialing and provider rights.
422.206 Interference with health care professionals' advice to enrollees prohibited.

422.208 Physician incentive plans: requirements and limitations.
422.210 Disclosure of physician incentive plans
422.212 Limitations on provider indemnification.
422.214 Special rules for services furnished by noncontract providers.
422.216 Special rules for M+C fee-for-service plans.
422.220 Exclusion of services furnished under a private contract.

Subpart F—Payments to Medicare+Choice Organizations

422.249 Terminology
422.250 General provisions.
422.252 Annual capitation rates.
422.254 Calculation and adjustment factors.
422.256 Adjustments to capitation rates and aggregate payments.
422.257 Encounter data.
422.258 Announcement of annual capitation rates and methodology changes.
422.262 Special rules for beneficiaries enrolled in M+C MSA plans.
422.264 Special rules for coverage that begins or ends during an inpatient hospital stay.
422.266 Special rules for hospice care.
422.268 Source of payment and effect of election of the M+C plan election on payment.

Subpart G—Premiums and Cost-Sharing

422.300 Basis and scope.
422.302 Terminology.
422.304 Rules governing premiums and cost-sharing.
422.306 Submission of proposed premiums and related information.
422.308 Limits on premiums and cost-sharing amounts.
422.309 Incorrect collections of premiums and cost-sharing.
422.310 Adjusted community rate (ACR) approval process.
422.312 Requirement for additional benefits.

Subpart A—General Provisions

§ 422.1 Basis and scope.

(a) *Basis.* This part is based on the indicated provisions of the following sections of the Act:

1851—Eligibility, election, and enrollment.
1852—Benefits and beneficiary protections.
1853—Payments to Medicare+Choice (M+C) organizations.
1854—Premiums.
1855—Organization, licensure, and solvency of M+C organizations.
1856—Standards.
1857—Contract requirements.
1859—Definitions; enrollment restriction for certain M+C plans.

(b) *Scope.* This part establishes standards and sets forth the requirements, limitations, and procedures for Medicare services furnished, or paid for, by Medicare+Choice organizations through Medicare+Choice plans.

§ 422.2 Definitions.

As used in this part—

ACR stands for adjusted community rate.

Additional benefits are health care services not covered by Medicare, and reductions in premiums or cost-sharing for Medicare covered services, funded from adjusted excess amounts as calculated in the ACR.

Adjusted community rate (ACR) is the equivalent of the maximum amount allowed under § 422.310.

Arrangement means a written agreement between an M+C organization and a provider or provider network, under which—

(1) The provider or provider network agrees to furnish for a specific M+C plan(s) specified services to the organization's M+C enrollees;

(2) The organization retains responsibilities for the services; and

(3) Medicare payment to the organization discharges the enrollee's obligation to pay for the services.

Balance billing generally refers to an amount billed by a provider that represents the difference between the amount the provider charges an individual for a service and the sum of the amount the individual's health insurer (for example, the original Medicare program) will pay for the service plus any cost-sharing by the individual.

Basic benefits means all Medicare-covered benefits, except hospice services, and additional benefits.

Benefits are health care services that are intended to maintain or improve the health status of enrollees, for which the M+C organization incurs a cost or liability under an M+C plan, and that are approved in the Benefit/ACR process.

Coinsurance is a fixed percentage of the total amount paid for a health care service that can be charged to an M+C enrollee on a per-service basis.

Copayment is a fixed amount that can be charged to an M+C plan enrollee on a per-service basis.

Cost-sharing includes deductibles, coinsurance, and copayments.

Emergency medical condition means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(1) Serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of the woman or her unborn child;

(2) Serious impairment to bodily functions; or

(3) Serious dysfunction of any bodily organ or part.

Emergency services means covered inpatient and outpatient services that are—

(1) Furnished by a provider qualified to furnish emergency services; and

(2) Needed to evaluate or stabilize an emergency medical condition.

Licensed by the State as a risk-bearing entity means the entity is licensed or otherwise authorized by the State to assume risk for offering health insurance or health benefits coverage, such that the entity is authorized to accept prepaid capitation for providing, arranging, or paying for comprehensive health services under an M+C contract.

M+C stands for Medicare+Choice.

M+C eligible individual means an individual who meets the requirements of § 422.50.

M+C organization means a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by HCFA as meeting the M+C contract requirements.

M+C plan means health benefits coverage offered under a policy or contract by an M+C organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the M+C plan.

M+C plan enrollee is an M+C eligible individual who has elected an M+C plan offered by an M+C organization.

Mandatory supplemental benefits are services not covered by Medicare that an M+C enrollee must purchase as part of an M+C plan that are paid for directly by (or on behalf of) Medicare enrollees, in the form of premiums or cost-sharing.

MSA stands for medical savings account.

MSA trustee means a person or business with which an enrollee establishes an M+C MSA. A trustee may be a bank, an insurance company, or any other entity that—

(1) Is approved by the Internal Revenue Service to be a trustee or custodian of an individual retirement account (IRA); and

(2) Meets the requirements of § 422.262(b).

Original Medicare means health insurance available under Medicare Part A and Part B through the traditional fee-for service payment system.

Optional supplemental benefits means health benefits normally not covered by Medicare purchased at the option of the M+C enrollee and that are

paid for directly by (or on behalf of) the Medicare enrollee, in the form of premiums or cost-sharing. These services may be grouped or offered individually.

Point of service (POS) is a benefit option that an M+C coordinated care plan can offer to its Medicare enrollees as an additional, mandatory supplemental, or optional supplemental benefit. Under the POS benefit option, the M+C plan allows members the option of receiving specified services outside of the M+C plan's provider network. In return for this flexibility, members typically have higher cost-sharing requirements for services received and, where offered as a mandatory or optional supplemental benefit, may also be charged a premium for the POS benefit option.

Provider means—

(1) Any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and

(2) Any entity that is engaged in the delivery of health care services in a State and is licensed or certified to deliver those services if such licensing or certification is required by State law or regulation.

Provider network means the providers with which an M+C organization contracts or makes arrangements to furnish covered health care services to Medicare enrollees under an M+C coordinated care or network MSA plan.

Religious and Fraternal (RFB) Society means an organization that—

(1) Is described in section 501(c)(8) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Act; and

(2) Is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches.

RFB plan means a coordinated care plan that is offered by an RFB society.

Service area means a geographic area approved by HCFA within which an M+C eligible individual may enroll in a particular M+C plan offered by the organization. For coordinated care plans and network medical savings account (MSA) plans only, the service area also is the area within which a network of providers exists that meets the access standards in § 422.112. The service area also defines the area where a uniform benefit package is offered. In deciding whether to approve a service area proposed by an M+C organization for an M+C plan, HCFA considers the M+C organization's commercial service area for the type of plan in question (if applicable), community practices generally, whether the boundaries of the service area are discriminatory in effect, and, in the case of coordinated care and network MSA plans, the adequacy of the provider network in the proposed service area. HCFA may approve single county M+C non-network MSA plans even if the M+C organization has a different commercial service area.

Urgently needed services means covered services provided when an enrollee is temporarily absent from the M+C plan's service (or, if applicable, continuation) area (or, under unusual and extraordinary circumstances, provided when the enrollee is in the service or continuation area but the organization's provider network is temporarily unavailable or inaccessible) when such services are medically necessary and immediately required—

(1) As a result of an unforeseen illness, injury, or condition; and

(2) It was not reasonable given the circumstances to obtain the services through the organization offering the M+C plan.

§ 422.4 Types of M+C plans.

(a) *General rule.* An M+C plan may be a coordinated care plan, a combination of an M+C MSA plan and a contribution into an M+C MSA established in accordance with § 422.262, or an M+C private fee-for-service plan.

(1) *A coordinated care plan.* A coordinated care plan is a plan that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by HCFA.

(i) The network is approved by HCFA to ensure that all applicable requirements are met, including access and availability, service area, and quality.

(ii) Coordinated care plans may include mechanisms to control utilization, such as referrals from a gatekeeper for an enrollee to receive services within the plan, and financial arrangements that offer incentives to providers to furnish high quality and cost-effective care.

(iii) Coordinated care plans include health maintenance organizations (HMOs), provider-sponsored organizations (PSOs) and preferred provider organizations (PPOs), RFBs, and other network plans (except network MSA plans).

(2) *A combination of an M+C MSA plan and a contribution into the M+C MSA established in accordance with § 422.262.* (i) *M+C MSA plan* means a plan that—

(A) Pays at least for the services described in § 422.101, after the enrollee has incurred countable expenses (as specified in the plan) equal in amount to the annual deductible specified in § 422.103(d); and

(B) Meets all other applicable requirements of this part.

(ii) An M+C MSA plan may be either a network plan or a non-network plan.

(A) *M+C network MSA plan* means an MSA plan under which enrollees must receive services through a defined provider network that is approved by HCFA to ensure that all applicable requirements are met, including access and availability, service area, and quality.

(B) *M+C non-network MSA plan* means an MSA plan under which enrollees are not required to receive services through a provider network.

(iii) *M+C MSA* means a trust or custodial account—

(A) That is established in conjunction with an MSA plan for the purpose of paying the qualified expenses of the account holder; and

(B) Into which no deposits are made other than contributions by HCFA under the M+C program, or a trustee-to-trustee transfer or rollover from another M+C MSA of the same account holder, in accordance with the requirements of sections 138 and 220 of the Internal Revenue Code.

(3) *M+C private fee-for-service plan.* An M+C private fee-for-service plan is an M+C plan that—

(i) Pays providers of services at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk;

(ii) Does not vary the rates for a provider based on the utilization of that provider's services; and

(iii) Does not restrict enrollees' choices among providers that are lawfully authorized to provide services and agree to accept the plan's terms and conditions of payment.

(b) *Multiple plans.* Under its contract, an M+C organization may offer multiple plans, regardless of type, provided that the M+C organization is licensed or approved under State law to provide those types of plans (or, in the case of a PSO plan, has received from HCFA a waiver of the State licensing requirement). If an M+C organization has received a waiver for the licensing requirement to offer a PSO plan, that waiver does not apply to the licensing requirement for any other type of M+C plan.

§ 422.6 Application requirements.

(a) *Scope.* This section sets forth application requirements for entities that seek a contract as an M+C organization offering an M+C plan.

(b) *Completion of an application.* (1) In order to obtain a determination on whether it meets the requirements to become an M+C organization and is qualified to provide a particular type of M+C plan, an entity, or an individual authorized to act for the entity (the applicant) must complete a certified application, in the form and manner required by HCFA, including the following:

(i) Documentation of appropriate State licensure or State certification that the entity is able to offer health insurance or health benefits coverage that meets State-specified standards applicable to M+C plans, and is authorized by the State to accept prepaid capitation for providing, arranging, or paying for the comprehensive health care services to be offered under the M+C contract; or

(ii) Federal waiver as described in subpart H of this part.

(2) The authorized individual must describe thoroughly how the entity and M+C plan meet, or will meet, the requirements described in this part.

(c) *Responsibility for making determinations.* HCFA is responsible for determining whether an entity qualifies as an M+C organization and whether proposed M+C plans meet the requirements of this part.

(d) *Resubmittal of application.* An application that has been denied by HCFA may not be resubmitted for 4 months after the date of the notice from HCFA denying the application.

(e) *Disclosure of application information under the Freedom of Information Act.* An applicant submitting material that he or she believes is protected from disclosure under 5 U.S.C. 552, the Freedom of Information Act, or because of exceptions provided in 45 CFR part 5 (the Department's regulations providing exceptions to disclosure), should label the material "privileged" and include an explanation of the applicability of an exception described in 45 CFR part 5.

§ 422.8 Evaluation and determination procedures.

(a) *Basis for evaluation and determination.* (1) HCFA evaluates an application for an M+C contract on the basis of information contained in the application itself and any additional information that HCFA obtains through on-site visits, public hearings, and any other appropriate procedures.

(2) If the application is incomplete, HCFA notifies the entity and allows 60 days from the date of the notice for the entity to furnish the missing information.

(3) After evaluating all relevant information, HCFA determines whether the entity's application meets the applicable requirements of § 422.6.

(b) *Use of information from a prior contracting period.* If an entity has failed to comply with the terms of a previous year's contract with HCFA under title XVIII of the Act as an HMO, competitive medical plan, health care prepayment plan, or M+C organization or an entity has failed to complete a corrective action plan during the term of the contract, HCFA may deny an application based on the entity's failure to comply with that prior contract with HCFA even if the entity meets all of the current requirements.

(c) *Notice of determination.* HCFA notifies each entity that applies for an M+C contract under this part of its determination and the basis for the determination. The determination may be approval, intent to deny, or denial.

(d) *Approval of application.* If HCFA approves the application, it gives written notice to the M+C organization, indicating that it meets the requirements for an M+C contract.

(e) *Intent to deny.* (1) If HCFA finds that the entity does not appear to meet the requirements of an M+C organization and appears to be able to meet those requirements within 60 days, HCFA gives the entity notice of intent to deny qualification and a summary of the basis for this preliminary finding.

(2) Within 60 days from the date of the notice, the entity may respond in writing to the issues or other matters that were the basis for HCFA's preliminary finding and may revise its application to remedy any defects HCFA identified.

(f) *Denial of application.* If HCFA denies the application, it gives written notice to the M+C organization indicating—

(1) That the M+C organization does not meet the contract requirements under part C of title XVIII of the Act;

(2) The reasons why the M+C organization does not meet the contract requirements; and

(3) The M+C organization's right to request reconsideration in accordance with the procedures specified in subpart N of this part.

(g) *Oversight of continuing compliance.* (1) HCFA oversees an entity's continued compliance with the requirements for an M+C organization.

(2) If an entity no longer meets those requirements, HCFA terminates the contract in accordance with § 422.510.

§ 422.10 Cost-sharing in enrollment-related costs.

(a) *Basis and scope.* This section implements that portion of section 1857 of the Act that pertains to cost-sharing in enrollment-related costs. It sets forth the procedures that HCFA follows to assess the required fees on M+C plans offered by M+C organizations.

(b) *Purpose of assessment.* Section 1857(e)(2) of the Act authorizes HCFA to charge and collect from each M+C plan offered by an M+C organization its pro rata share of fees for administering section 1851 of the Act, relating to dissemination of enrollment information; and section 4360 of the Omnibus Budget Reconciliation Act of 1990, relating to the health insurance counseling and assistance program.

(c) *Applicability.* The fee assessment also applies to those demonstrations for which enrollment is effected or coordinated under section 1851 of the Act.

(d) *Collection of fees*—(1) *Timing of collection.* HCFA collects the fees over nine consecutive months beginning with January of each fiscal year.

(2) *Amount to be collected.* The aggregate amount of fees for a fiscal year is the lesser of the following:

(i) The estimated costs to be incurred by HCFA in that fiscal year to carry out the activities described in paragraph (b) of this section.

(ii) The amount authorized in the DHHS appropriation for the fiscal year.

(e) *Assessment methodology.* (1) The amount assessed is a percentage of the total Medicare payments to each organization. HCFA determines the percentage rate using the following formula:

A times B divided by C where—

A is the total of the estimated January payments to all organizations subject to assessment;

B is the nine-month (January through September) assessment period; and

C is the total assessment amount authorized for the particular fiscal year in accordance with paragraph (d)(2) of this section.

(2) HCFA determines each organization's pro rata share of the annual fee on the basis of that organization's calculated monthly payment amount during the nine consecutive months beginning with January. HCFA calculates each organization's monthly pro rata share by multiplying the established percentage rate by the total monthly calculated Medicare payment amount to the organization as recorded in HCFA's payment system on the first day of the month.

(3) HCFA deducts the organization's fee from the amount of Federal funds otherwise payable to the organization for that month under the M+C program.

(4) If assessments reach the amount authorized for the year before the end of

September, HCFA discontinues assessment.

(5) If there are delays in determining the amount of the annual aggregate fees specified in paragraph (d)(2) of this section or the fee percentage rate specified in paragraph (e), HCFA may adjust the assessment time period and the fee percentage amount.

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Supbart B—Eligibility, Election, and Enrollment

§ 422.50 Eligibility to elect an M+C plan.

(a) an individual is eligible to elect an M+C plan if he or she—

(1) Is entitled to Medicare under Part A and enrolled in Part B (except that an individual entitled only to Part B and who is (or was) enrolled in an HMO or CMP with a risk contract under part 417 of this chapter on December 31, 1998 may continue to be enrolled in the M+C organization may continue to be enrolled in the M+C organization as an M+C plan enrollee);

(2) Has not been medically determined to have end-stage renal disease, except that an individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by the M+C organization offering an M+C plan in the service area or continuation area in which the individual resides may continue to be enrolled in the M+C organization as an M+C plan enrollee;

(3) Resides in the service area of the plan, except that an individual who resides in a continuation area of an M+C plan while enrolled in a health plan offered by the M+C organization may continue to be enrolled in the M+C organization as an M+C plan enrollee;

(4) Completes and signs an election form and gives information required for enrollment; and

(5) Agrees to abide by the rules of the M+C organization after they are disclosed to him or her in connection with the election process.

(b) An M+C eligible individual may not be enrolled in more than one M+C plan at any given time.

§ 422.54 Continuation of enrollment.

(a) *Definition. Continuation area* means an additional area (outside the service area) within which the M+C organization furnishes or arranges for furnishing services to its continuation-of-enrollment enrollees. Enrollees must reside in a continuation area on a permanent basis. A continuation area does not expand the service area of any plan.

(b) *Basis rule.* An M+C organization may offer a continuation of enrollment option to enrollees when they no longer reside in the service area of a plan and permanently move into the geographic area designated by the M+C organization as a continuation of enrollment area. The intent to no longer reside in an area and permanently live in another area is verified through documentation that establishes residency, such as, driver's license, voter registration.

(c) *General requirements.* (1) An M+C organization that wishes to offer a continuation of enrollment option must meet the following requirements:

(i) Obtain HCFA's approval of the continuation area, the marketing materials that describe the option, and the M+C organization's assurances of access to services.

(ii) Describe the option(s) in the member materials it offers and make the option available to all enrollees residing in the continuation area.

(2) An enrollee who moves out of the service area and into the geographic area designated as the continuation area has the choice of continuing enrollment or disenrolling from the plan.

(d) *Specific requirements*—(1) *Basic benefits.* The M+C organization must, at a minimum, provide or arrange for the Medicare-covered benefits described in § 422.101(a).

(2) *Reasonable access.* The M+C organization must ensure reasonable access in the continuation area—

(i) Through contracts with providers, or through direct payment of claims that satisfy the requirements in § 422.100(b)(2), to other providers who meet requirements in subpart E of this part; and

(ii) By ensuring that the access requirements of § 422.112 are met.

(3) *Reasonable cost-sharing.* For services furnished in the continuation area, an enrollee's cost-sharing liability is limited to—

(i) The cost-sharing amounts required in the M+C plan's service area (in which the enrollee no longer resides) if provided by contract providers;

(ii) The cost-sharing amounts required by the continuation area plan if provided through agreements with another M+C plan; or

(iii) The amount for which a beneficiary would be liable under original Medicare if noncontracting providers furnish the services.

(4) *Protection of enrollee rights.* An M+C organization that offers a continuation of enrollment option must convey all enrollee rights conferred under this rule, with the understanding that—

(i) The ultimate responsibility for all appeals and grievance requirements remain with the organization that is receiving payment from HCFA; and

(ii) Organizations that require enrollees to give advance notice of intent to use the continuation of enrollment option, must stipulate the notification process in the marketing materials.

(e) *Capitation payments.* HCFA's capitation payments to all M+C organizations, for all Medicare enrollees, are based on rates established on the basis of the enrollee's permanent residence, regardless of where he or she receives services.

§ 422.56 Limitations on enrollment in an M+C MSA plan.

(a) *General.* An individual is not eligible to elect an M+C MSA plan—

(1) If the number of individuals enrolled in M+C MSA plans has reached 390,000;

(2) Unless the individual provides assurances that are satisfactory to HCFA that he or she will reside in the United States for at least 183 days during the year for which the election is effective; or

(3) On or after January 1, 2003, unless the enrollment is the continuation of an enrollment in effect as of that date.

(b) *Individuals eligible for or covered under other health benefits program.* An individual who is enrolled in a Federal Employee Health Benefit plan under 5 U.S.C. chapter 89, or is eligible for health care benefits through the Veteran's Administration under 10 U.S.C. chapter 55 or the Department of Defense under 38 U.S.C. chapter 17, may not enroll in an M+C MSA plan.

(c) *Individuals eligible for Medicare cost-sharing under Medicaid State plans.* An individual who is entitled to coverage of Medicare cost-sharing under a State plan under title XIX of the Act is not eligible to enroll in an M+C MSA plan.

(d) *Other limitations.* An individual who receives health benefits that cover all or part of the annual deductible under the M+C MSA plan may not enroll in an M+C MSA plan. Examples of this type of coverage include, but are not limited to, primary health care coverage other than Medicare, current coverage under the Medicare hospice benefit, supplemental insurance policies not specifically permitted under § 422.103, and retirement health benefits.

§ 422.57 Limited enrollment under M+C RFB plans.

An RFB society that offers an M+C RFB plan may offer that plan only to members of the church, or convention or group of churches with which the society is affiliated.

§ 422.60 Election process.

(a) *Acceptance of enrollees: General rule.* (1) Except for the limitations on enrollment in an M+C MSA plan provided by § 422.62(d)(1) and except as specified in paragraph (a)(2) of this section, each M+C organization must accept without restriction (except for an M+C RFB plan as provided by § 422.57) individuals who are eligible to elect an M+C plan that M+C organization offers and who elect an M+C plan during initial coverage election periods, annual election periods, and special election periods specified in § 422.62 (a)(1), (a)(2), and (b).

(2) M+C organizations must accept elections during the open enrollment periods specified in § 422.62(a)(3), (a)(4), and (a)(5) if their M+C plans are open to new enrollees.

(b) *Capacity to accept new enrollees.* (1) M+C organizations must submit information on enrollment capacity of plans they offer by May 1 of each year as provided by § 422.306(a)(2).

(2) If HCFA determines that an M+C plan offered by an M+C organization has a capacity limit, and the number of M+C eligible individuals who elect to enroll in that plan exceeds the limit, the M+C organization offering the plan may limit enrollment in the plan under this part, but only if it provides priority in acceptance as follows:

(i) First, for individuals who elected the plan prior to the HCFA determination that capacity has been exceeded, elections will be processed in chronological order by date of receipt of their election forms.

(ii) Then for other individuals in a manner that does not discriminate on the basis of any factor related to health as described in § 422.110.

(c) *Election forms.* (1) The election form must comply with HCFA instructions regarding content and format and have been approved by HCFA as described in § 422.80. The form must be completed and signed by the M+C eligible individual beneficiary (or the individual who will soon become entitled to Medicare benefits) and include authorization for disclosure and exchange of necessary information between the U.S. Department of Health and Human Services and its designees and the M+C organization. Persons who assist beneficiaries in completing forms must sign the form and indicate their relationship to the beneficiary.

(2) The M+C organization must file and retain election forms for the period specified in HCFA instructions.

(d) *When an election is considered to have been made.* An election in an M+C plan is considered to have been made on the date the election form is received by the M+C organization.

(e) *Handling of election forms.* The M+C organization must have an effective system for receiving, controlling, and processing election forms. The system must meet the following conditions and requirements:

(1) Each election form is dated as of the day it is received.

(2) Election forms are processed in chronological order, by date of receipt.

(3) The M+C organization gives the beneficiary prompt written notice of acceptance or denial in a format specified by HCFA.

(4) In a format specified by HCFA, a notice of acceptance—

(i) Promptly informs the beneficiary of the date on which enrollment will be effective under § 422.68; and

(ii) If the M+C plan is enrolled to capacity, explains the procedures that will be followed when vacancies occur.

(5) A notice of denial explains the reasons for denial in a format specified by HCFA.

(6) Within 30 days from receipt of the election form (or from the date a vacancy occurs for an individual who was accepted for future enrollment), the M+C organization transmits the information necessary for HCFA to add the beneficiary to its records as an enrollee of the M+C organization.

§ 422.62 Election of coverage under an M+C plan.

(a) *General: Coverage election periods—(1) Initial coverage election period.* The initial coverage election period is the period during which a new M+C eligible individual may make an initial election. This period begins 3 months prior to the month the individual is first entitled to both Part A and Part B and ends the last day of the month preceding the month of entitlement.

(2) *Annual election period.* (i) Beginning in 1999, the month of November is the annual election period for the following calendar year. Organizations offering M+C plans in January 1999 must open enrollment to Medicare beneficiaries in November 1998.

(ii) During the annual election period, an individual eligible to enroll in an M+C plan may change his or her election from an M+C plan to original Medicare or to a different M+C plan, or from original Medicare to an M+C plan.

(3) *Open enrollment and disenrollment opportunities through 2001.* From 1998 through 2001, the number of elections or changes that an M+C eligible individual may make is not limited (except as provided for in paragraph (d) of this section for M+C MSA plans). Subject to the M+C plan being open to enrollees as provide under § 422.60(a)(2), an individual eligible to elect an M+C plan may change his or her election from an M+C plan to original Medicare or to a different M+C plan, or from original Medicare to an M+C plan.

(4) *Open enrollment and disenrollment during 2002.* (i) Except as provided in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section, an individual who is eligible to elect an M+C plan in 2002 may elect an M+C plan or change his or her election from an M+C plan to original Medicare or to a different M+C plan, or from original Medicare to an M+C plan, but only once during the first 6 months of the year.

(ii) *Newly eligible M+C individual.* An individual who becomes an M+C eligible individual during 2002 may elect an M+C plan or original Medicare and then change his or her election once during the period that begins the month the individual is entitled to both Part A and Part B and ends on the last day of the 6th month of such entitlement, or on December 31, whichever is earlier. The individual can change the election from an M+C plan to original Medicare or to a different M+C plan, or from original Medicare to an M+C plan during this period.

(iii) The limitation to one election or change in paragraphs (a)(4)(i) and (a)(4)(ii) of this section does not apply to elections or changes made during the annual election period specified in (a)(2) of this section or during a special enrollment period specified in paragraph (b) of this section.

(5) *Open enrollment and disenrollment beginning in 2003.* (i) For 2003 and subsequent years, except as provided in paragraphs (a)(5)(ii) and (a)(5)(iii) of this section, an individual who is eligible to elect an M+C plan may elect an M+C plan or change his or her election from an M+C plan to original Medicare or to a different M+C plan, or from original Medicare to an M+C plan, but only once during the first 3 months of the year.

(ii) *Newly eligible M+C individual.* An individual who becomes an M+C eligible individual during 2003 or later may elect an M+C plan or original Medicare and then change his or her election once during the period that begins the month the individual is entitled to both Part A and Part B and ends on the last day of the 3rd month of such entitlement, or on December 31, whichever is earlier. The individual can change the election from an M+C plan to original Medicare or to a different

M+C plan, or from original Medicare to an M+C plan during this period.

(iii) The limitation to one election or change in paragraphs (a)(5)(i) and (a)(5)(ii) of this section does not apply to elections or changes made during the annual election period specified in paragraph (a)(2) of this section or during a special election period specified in paragraph (b) of this section.

(b) *Special election periods.* Effective as of January 1, 1999 for M+C plans, and as of January 1, 2002, for all MSA other types of M+C MSA plans, an individual may at any time (that is, not limited to the annual election period) discontinue the election of an M+C plan offered by an M+C organization and change his or her election, in the form and manner specified by HCFA, from an M+C plan to original Medicare or to a different M+C plan under any of the following circumstances:

(1) HCFA has terminated the organization's contract for that plan or the organization has terminated or discontinued offering the plan in the service area or continuation area in which the individual resides.

(2) The individual is not eligible to remain enrolled in the plan because of a change in his or her place of residence to a location out of the service area or continuation area or other change in circumstances as determined by HCFA but not including terminations resulting from a failure to make timely payment of an M+C monthly or supplemental beneficiary premium, or from disruptive behavior.

(3) The individual demonstrates to HCFA, in accordance with guidelines issued by HCFA, that—

(i) The organization offering the plan substantially violated a material provision of its contract under this part in relation to the individual, including, but not limited to the following:

(A) Failure to provide the beneficiary on a timely basis medically necessary services for which benefits are available under the plan.

(B) Failure to provide medical services in accordance with applicable quality standards; or

(ii) The organization (or its agent, representative, or plan provider) materially misrepresented the plan's provisions in marketing the plan to the individual.

(4) The individual meets such other exceptional conditions as HCFA may provide.

(c) *Special election period for individual age 65.* Effective January 1, 2002, an M+C eligible individual who elects an M+C plan during the initial coverage election period, as defined under section 1837(d) of the Act, that surrounds his or her 65th birthday (this period begins 3 months before and ends 3 months after the month of the individual's 65th birthday) may discontinue the election of that plan and elect coverage under original Medicare at any time during the 12-month period that begins on the effective date of enrollment in the M+C plan.

(d) *Special rules for M+C plans*—(1) *Enrollment.* An individual may enroll in an M+C plan only during an initial or annual election period described in paragraphs (a)(1) and (a)(2) of this section or during November 1998.

(2) *Disenrollment.* (i) Except as provided in paragraph (d)(2)(ii) of this section, an individual may disenroll from an M+C plan only during—

(A) November 1998;

(B) An annual election period; or

(C) The special election period described in paragraph (b) of this section.

(ii) *Exception.* An individual who elects an M+C MSA plan during an annual election period and has never before elected an M+C MSA plan may revoke that election, no later than December 15 of that same year, by submitting to the organization that offers the M+C MSA plan a signed and dated request in the form and manner prescribed by HCFA or by filing the appropriate disenrollment form through other mechanisms as determined by HCFA.

§ 422.64 Information about the M+C program.

(a) *Source of information.* Each M+C organization must provide, on an annual basis and in a format and using standard terminology that may be specified by HCFA, the information necessary to enable HCFA to provide to current and potential beneficiaries the information they need to make informed decisions with respect to the available choices for Medicare coverage.

(b) *Timing and recipients of the information.* HCFA mails a notice containing the information described in paragraph (c) of this section—

(1) At least 15 days before each annual election period, to each individual eligible to elect an M+C plan; and

(2) To the extent practicable, not later than 30 days before his or her initial coverage election period to each individual who will become eligible to elect an M+C plan.

(c) *Content of notice*—(1) *Benefits under original Medicare.* (i) Covered services.

(ii) Beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts.

(iii) Any beneficiary liability for balance billing.

(2) *Enrollment procedures.* Information and instructions on how to exercise election options under this subpart.

(3) *Rights.* A general description of procedural rights (including grievance and appeals procedures) under original Medicare and the M+C program and the right to be protected against discrimination based on factors related to health status in accordance with § 422.110.

(4) *Medigap and Medicare Select.* A general description of the benefits, enrollment rights, and requirements applicable to Medicare supplemental policies under section 1882 of the Act, and provisions relating to Medicare Select policies under section 1882(t) of the Act.

(5) *Potential for contract termination.* The fact that an M+C organization may terminate or refuse to renew its contract, or reduce the service area included in its contract, and the effect that any of those actions may have on individuals enrolled in that organization's M+C plan.

(6) *Comparative information.* A list of M+C plans that are or will be available to residents of the service area in the following calendar year, and, for each available plan, information on the aspects described in paragraphs (c)(7) through (c)(11) of this section, presented in a manner that facilitates comparison among the plans.

(7) *Benefits.* (i) Covered services beyond those provided under original Medicare.

(ii) Any beneficiary cost sharing.

(iii) Any maximum limitations on out-of-pocket expenses.

(iv) In the case of an M+C MSA plan, the amount of the annual MSA deposit and the differences in cost-sharing, enrollee premiums, and balance billing, as compared to M+C plans.

(v) In the case of a M+C private fee-for-service plan, differences in cost-sharing, enrollee premiums, and balance billing, as compared to M+C plans.

(vi) The extent to which an enrollee may obtain benefits through out-of-network health care providers.

(vii) The types of providers that participate in the plan's network and the extent to which an enrollee may select among those providers.

(viii) The coverage of emergency and urgently needed services.

(8) *Premiums.* (i) The M+C monthly basic beneficiary premiums.

(ii) The M+C monthly supplemental beneficiary premium.

(9) *The plan's service area.*

(10) *Quality and performance indicators* for benefits under a plan to

the extent they are available as follows (and how they compare with indicators under original Medicare):

(i) Disenrollment rates for Medicare enrollees for the 2 previous years, excluding disenrollment due to death or moving outside the plan's service area, calculated according to HCFA guidelines.

(ii) Medicare enrollee satisfaction.

(iii) Health outcomes.

(iv) Plan-level appeal data.

(v) The recent record of plan compliance with the requirements of this part, as determined by the Secretary.

(vi) Other performance indicators.

(11) *Supplemental benefits.* Whether the plan offers mandatory supplemental benefits or offers optional supplemental benefits and the premiums and other terms and conditions for those benefits.

(d) *Format and updating.* The information is written and formatted using language that is easily understandable, and is updated at least annually.

(e) *Mailing.* The mailing is coordinated, to the extent practicable, with the mailing of the annual notice of Medicare benefits under section 1804 of the Act.

§ 422.66 Coordination of enrollment and disenrollment through M+C organizations.

(a) *Enrollment.* An individual who wishes to elect an M+C plan offered by an M+C organization may make or change his or her election during the election periods specified in § 422.62 by filing the appropriate election form with the organization or through other mechanisms as determined by HCFA.

(b) *Disenrollment*—(1) *Basic rule.* An individual who wishes to disenroll from an M+C plan may change his or her election during the election periods specified in § 422.62 in either of the following manners:

(i) Elect a different M+C plan by filing the appropriate election form with the M+C organization or through other mechanisms as determined by HCFA.

(ii) Submit a signed and dated request for disenrollment to the M+C organization in the form and manner prescribed by HCFA or file the appropriate disenrollment form through other mechanisms as determined by HCFA.

(2) *When a disenrollment request is considered to have been made.* A disenrollment request is considered to have been made on the date the disenrollment request is received by the M+C organization.

(3) *Responsibilities of the M+C organization.* The M+C organization must—

(i) Submit a disenrollment notice to HCFA within 15 days of receipt;

(ii) Provide the enrollee with a copy of the request for disenrollment; and

(iii) In the case of a plan where lock-in applies, also provide the enrollee with a statement explaining that he or she—

(A) Remains enrolled until the effective date of disenrollment; and

(B) Until that date, neither the M+C organization nor HCFA pays for services not provided or arranged for by the M+C plan in which the enrollee is enrolled; and

(iv) File and retain disenrollment requests for the period specified in HCFA instructions.

(4) *Effect of failure to submit disenrollment notice to HCFA promptly.* If the M+C organization fails to submit the correct and complete notice required in paragraph (b)(3)(i) of this section, the M+C organization must reimburse HCFA for any capitation payments received after the month in which payment would have ceased if the requirement had been met timely.

(5) *Retroactive disenrollment.* HCFA may grant retroactive disenrollment in the following cases:

(i) There never was a legally valid enrollment.

(ii) A valid request for disenrollment was properly made but not processed or acted upon.

(c) *Election by default: Initial coverage election period.* An individual who fails to make an election during the initial coverage election period is deemed to have elected original Medicare.

(d) *Conversion of enrollment (seamless continuation of coverage)*—(1) *Basic rule.* An M+C plan offered by an M+C organization must accept any individual (residing in the service area or continuation area of the M+C plan) who is enrolled in a health plan offered by an M+C organization (regardless of whether the individual has end-stage renal disease) during the month immediately preceding the month in which he or she is entitled to both Part A and Part B as provided by § 422.50(a)(2) and (a)(3).

(2) *Reserved vacancies.* Subject to HCFA's approval, an M+C organization may set aside a reasonable number of vacancies in order to accommodate enrollment of conversions. Any set aside vacancies that are not filled within a reasonable time must be made available to other M+C eligible individuals.

(3) *Effective date of conversion.* Unless the individual chooses to disenroll from the health plan offered by the M+C organization, the individual's conversion to an M+C enrollee is effective the month in which he or she is entitled to both Part A and Part B.

(4) *Prohibition against disenrollment.* The M+C organization may disenroll an individual who is converting under the provisions of paragraph (a) of this section only under the conditions specified in § 422.74.

(5) *Election form.* The individual who is converting must complete and sign an election form as described in § 422.60(c)(1).

(6) *Submittal of information to HCFA.* The M+C organization must transmit the information necessary for HCFA to add the individual to its records as specified in § 422.60(e)(6).

(e) *Maintenance of enrollment.* An individual who has made or is deemed to have made an election under this section is considered to have continued to have made that election until either of the following, whichever occurs first:

(1) The individual changes the election under this section.

(2) The elected M+C plan is discontinued or no longer serves the service area in which the individual resides, and the organization does not offer or the individual does not elect the option of continuing enrollment, as provided in § 422.54.

422.68 Effective dates of coverage and change of coverage.

(a) *Initial coverage election period.* An election made during an initial coverage election period as described in § 422.62(a)(1) is effective as of the first day of the month of entitlement to both Part A and Part B.

(b) *Annual election periods.* For an election or change of election made during an annual election period as described in § 422.62(a)(2), coverage is effective as of the first day of the following calendar year.

(c) *Open enrollment periods.* For an election or change of election made during an open enrollment period as described in § 422.62(a)(3) through (a)(5), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

(d) *Special election periods.* For an election or change of election made during a special election period as described in § 422.62(b), the effective date of coverage shall be determined by HCFA, to the extent practicable, in a manner consistent with protecting the continuity of health benefits coverage.

(e) *Special election period for individual age 65.* For an election of coverage under original Medicare made during a special election period for an individual age 65 as described in

§ 422.62(c), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

§ 422.74 Disenrollment by the M+C organization.

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, an M+C organization may not—

(1) Disenroll an individual from any M+C plan it offers; or

(2) Orally or in writing, or by any action or inaction, request or encourage an individual to disenroll.

(b) *Basis for disenrollment*—(1) *Optional disenrollment.* An M+C organization may disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) Any monthly basic and supplementary beneficiary premiums are not paid on a timely basis, subject to the grace period for late payment established under paragraph (d)(1) of this section.

(ii) The individual has engaged in disruptive behaviors specified at paragraph (d)(2) of this section.

(iii) The individual provides fraudulent information on his or her election form or permits abuse of his or her enrollment card as specified in paragraph (d)(3) of this section.

(2) *Required disenrollment.* An M+C organization must disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) The individual no longer resides in the M+C plan's service area as specified in paragraph (d)(4) of this section, and optional continued enrollment has not been offered or elected pursuant to § 422.54.

(ii) The individual loses entitlement to Part A or Part B benefits as described in paragraph (d)(5) of this section.

(iii) Death of the individual as described in paragraph (d)(6) of this section.

(3) *Plan termination or reduction of service area or continuation area.* An M+C plan offered by an M+C organization that terminates with respect to all M+C individuals in the area where the individual resides or is terminated or reduces service area or continuation area must comply with the process for disenrollment set forth at paragraph (d)(7) of this section.

(c) *Notice requirement.* If the disenrollment is for any of the reasons specified in paragraphs (b)(1) through (b)(2)(i) and (b)(3) of this section, that is, other than death or loss of entitlement to Part A or Part B, the M+C organization must give the individual a written notice of the disenrollment with an explanation of why the M+C organization is planning to disenroll the individual.

(1) The notice must be mailed to the individual before submission of the disenrollment notice to HCFA.

(2) The notice must include an explanation of the individual's right to a hearing under the M+C organization's grievance procedures.

(d) *Process for disenrollment*—(1) *Monthly basic and supplementary premiums are not paid timely.* An M+C organization may disenroll an individual from the M+C plan for failure to pay any basic or supplementary premiums if the M+C organization—

(i) Makes a reasonable effort to collect unpaid premium amounts by sending a written notice of nonpayment to the enrollee within 20 days after the date that the delinquent charges were due—

(A) Alerting the individual that the premiums are delinquent;

(B) Providing the individual with an explanation of the disenrollment procedures and any lock-in requirements of the M+C plan; and

(C) Advising that failure to pay the premiums within the 90-day grace period will result in termination of M+C coverage;

(ii) Only disenrolls a Medicare enrollee when the organization has not received payment within 90 days after the date it has sent the notice of nonpayment to the enrollee; and

(iii) Gives the individual a written notice of disenrollment that meets the requirements set forth in paragraph (c) of this section.

(2) *Disenrollment for disruptive behavior*—(i) *Basis for disenrollment.* An M+C organization may disenroll an individual from the M+C plan if the individual's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continued enrollment in the plan seriously impairs the M+C plan's ability to furnish services to either the particular individual or other individuals enrolled in the plan.

(ii) *Effort to resolve the problem.* The M+C organization must make a serious effort to resolve the problems presented by the individual, including the use (or attempted use) of the M+C organization's grievance procedures. The beneficiary has a right to submit any information or explanation that he or she may wish to submit to the M+C organization.

(iii) *Consideration of extenuating circumstances.* The M+C organization must establish that the individual's behavior is not related to the use of medical services or to diminished mental capacity.

(iv) *Documentation.* The M+C organization must document the enrollee's behavior, its own efforts to resolve any problems, and any extenuating circumstances, as described in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(v) *HCFA review of the M+C organization's proposed disenrollment.* (A) HCFA decides after reviewing the documentation submitted by the M+C organization and any information submitted by the beneficiary (which the M+C organization must forward to HCFA) whether the M+C organization has met the disenrollment requirements.

(B) HCFA makes the decision within 20 working days after receipt of the documentation and notifies the M+C organization within 5 working days after making its decision.

(vi) *Effective date of disenrollment.* If HCFA permits an M+C organization to disenroll an individual for disruptive behavior, the termination is effective the first day of the calendar month after the month in which the M+C organization gives the individual written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(3) *Individual commits fraud or permits abuse of enrollment care.* (i) *Basis for disenrollment.* An M+C organization may disenroll the individual from an M+C plan if the individual—

(A) Knowingly provides, on the election form, fraudulent information that materially affects the individual's eligibility to enroll in the M+C plan; or

(B) Intentionally permits others to use his or her enrollment card to obtain services under the M+C plan.

(ii) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(iii) *Report to HCFA.* The M+C organization must report to HCFA any disenrollment based on fraud or abuse by the individual.

(4) *Individual no longer resides in the M+C plan's service area*—(i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual who moves out of a plan's service area if the M+C organization establishes, on the basis of a written statement from the individual, or other evidence acceptable to HCFA, that the individual has moved out of a plan's service area for over 12 months.

(ii) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that

meets the requirements set forth in paragraph (c) of this section.

(5) *Loss of entitlement to Part A or Part B benefits.* If an individual is no longer entitled to Part A or Part B benefits, HCFA notifies the M+C organization that the disenrollment is effective the first day of the calendar month following the last month of entitlement to Part A or Part B benefits.

(6) *Death of the individual.* If the individual dies, disenrollment is effective the first day of the calendar month following the month of death.

(7) *Plan termination or area reduction.* (i) If the plan terminates or is terminated or the service area or continuation area are reduced with respect to all M+C enrollees in the area in which they reside, the M+C organization must give each Medicare enrollee a written notice of the effective date of the plan termination or area reduction and a description of alternatives for obtaining benefits under the M+C program.

(ii) The notice must be sent before the effective date of the plan termination or area reduction.

(e) *Consequences of disenrollment—* (1) *Disenrollment for non-payment of premiums, disruptive behavior, fraud or abuse, loss of Part A or Part B.* An individual who is disenrolled under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or paragraph (b)(2)(ii) of this section is deemed to have elected original Medicare.

(2) *Disenrollment based on plan termination, area reduction, or individual moves out of area.* (i) An individual who is disenrolled under paragraph (b)(2)(i) or (b)(3) of this section has a special election period in which to make a new election as provided in § 422.62(b)(1) and (b)(2).

(ii) An individual who fails to make an election during the special election period is deemed to have elected original Medicare.

§ 422.80 Approval of marketing materials and election forms.

(a) *HCFA review of marketing materials.* An M+C organization may not distribute any marketing materials (as defined in paragraph (b)), or election forms, or make such materials or forms available to individuals eligible to elect an M+C plan, unless—

(1) At least 45 days before the date of distribution the M+C organization has submitted the material or form to HCFA for review under the guidelines in paragraph (c); and

(2) HCFA has not disapproved the distribution of the material or form.

(b) *Definition of marketing materials.* Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(1) Promote the M+C organization, or any M+C plan offered by the M+C organization;

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an M+C plan offered by the M+C organization;

(3) Explain the benefits of enrollment in an M+C plan, or rules that apply to enrollees;

(4) Explain how Medicare services are covered under an M+C plan, including conditions that apply to such coverage;

(5) Examples of marketing materials include, but are not limited to:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (*e.g.*, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements (evidence of coverage), member handbooks, and newsletters.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures *etc.*

(vii) Membership or claims processing activities (*e.g.*, materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or annual notification information).

(c) *Guidelines for HCFA Review.* In reviewing marketing material or election forms under paragraph (a) of this section, HCFA determines that the marketing materials:

(1) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by HCFA, the following information to Medicare beneficiaries interested in enrolling:

(i) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(ii) Adequate written description of any supplemental benefits and services.

(iii) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each.

(iv) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(2) Notify the general public of its enrollment period (whether time-limited or continuous) in an appropriate manner, through appropriate media, throughout its service and continuation area.

(3) Include in the written materials notice that the organization is authorized by law to refuse to renew its contract with HCFA, that HCFA also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the plan.

(4) Contain no statements that are inaccurate or misleading or otherwise make misrepresentations.

(5) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

(d) *Deemed approval (one-stop shopping).* If HCFA has not disapproved the distribution of marketing material or forms submitted by an M+C organization with respect to an M+C plan in an area, HCFA is deemed not to have disapproved the distribution in all other areas covered by the M+C plan and organization except with regard to any portion of the material or form that is specific to the particular area.

(e) *Standards for M+C organization marketing.*

(1) In conducting marketing activities, M+C organizations may not:

(i) Provide for cash or other monetary rebates as an inducement for enrollment or otherwise. This does not prohibit explanation of any legitimate benefits the beneficiary might obtain as an enrollee of the M+C plan, such as eligibility to enroll in a supplemental benefit plan that covers deductibles and coinsurance, or preventive services.

(ii) Engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(iii) Solicit door-to-door for Medicare beneficiaries.

(iv) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the M+C organization, the M+C organization may not claim that it is recommended or endorsed by HCFA or Medicare or that HCFA or Medicare recommends that the beneficiary enroll in the M+C plan. It may, however, explain that the organization is approved for participation in Medicare.

(v) Distribute marketing materials for which, before expiration of the 45-day

period, the M+C organization receives from HCFA written notice of disapproval because it is inaccurate or misleading, or misrepresents the M+C organization, its marketing representatives, or HCFA.

(2) In its marketing, the M+C organization must:

(i) Demonstrate the HCFA's satisfaction that marketing resources are allocated to marketing to the disabled Medicare population as well as beneficiaries age 65 and over.

(ii) Establish and maintain a system for confirming that enrolled beneficiaries have in fact, enrolled in the M+C plan, and understand the rules applicable under the plan.

(f) *Employer group retiree Marketing.* HCFA may permit M+C organizations to develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the M+C organization, and to furnish these materials only to such group members. While such materials must be submitted for approval under paragraph (a) of this section, HCFA will only review potions of these materials that related to M+C plan benefits.

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Subpart C—Benefits and Beneficiary Protections

§ 422.100 General requirements.

(a) *Basic rule.* Subject to the conditions and limitations set forth in this subpart, an M+C organization offering an M+C plan must provide enrollees in that plan with coverage of the basic benefits described in § 422.101 (and, to the extent applicable, the benefits described in § 422.102) by furnishing the benefits directly or through arrangements, or by paying for the benefits. HCFA reviews these benefits subject to the requirements of § 422.100(g) and the requirements in subpart G of this part.

(b) *Services of noncontracting providers and suppliers.* (1) An M+C organization must make timely and reasonable payment to or on behalf of the plan enrollee for the following services obtained from a provider or supplier that does not contract with the M+C organization to provide services covered by the M+C plan:

(i) Emergency services as defined in § 422.2.

(ii) Urgently needed services as defined § 422.2.

(iii) Renal dialysis services provided while the enrollee was temporarily outside the plan's service area.

(iv) Post-stabilization care services that were—

(A) Pre-approved by the organization; or

(B) Were not pre-approved by the organization because the organization did not respond to the provider of post-stabilization care services' request for pre-approval within 1 hour after being requested to approve such care, or could not be contacted for pre-approval.

(v) Services for which coverage has been denied by the M+C organization and found (upon appeal under subpart M of this part) to be services the enrollee was entitled to have furnished, or paid for, by the M+C organization.

(2) An M+C plan (other than an M+C MSA plan) offered by an M+C organization satisfies paragraph (a) of this section with respect to benefits for services furnished by a noncontracting provider if that M+C plan provides payment in an amount the provider would have received under original Medicare (including balance billing permitted under Medicare Part A and Part B).

(c) *Types of benefits.* An M+C plan may include two types of benefits:

(1) Basic benefits as defined in § 422.2.

(2) Supplemental benefits, which consist of—

(i) Mandatory supplemental benefits as defined in § 422.2; and

(ii) Optional supplemental benefits as defined in § 422.2.

(d) *Availability and structure of plans.* An M+C organization offering an M+C plan must offer it—

(1) To all Medicare beneficiaries residing in the service area of the M+C plan;

(2) At a uniform premium; and

(3) With a uniform level of cost-sharing, as defined in § 422.2.

(e) *Terms of M+C plans.* Terms of M+C plans described in instructions to beneficiaries, as required by § 422.111, will include basic and supplemental benefits and terms of coverage for those benefits.

(f) *Multiple plans in one service area.* An M+C organization may offer more than one M+C plan in the same service area subject to the conditions and limitations set forth in this subpart for each M+C plan.

(g) *HCFA review and approval of M+C plans.* HCFA reviews and approves each M+C plan to ensure that the plan does not—

(1) Promote discrimination;

(2) Discourage enrollment;

(3) Steer specific subsets of Medicare beneficiaries to particular M+C plans; or

(4) Inhibit access to services.

(h) *Benefits affecting screening mammography, influenza vaccine, and pneumococcal vaccine.* (1) Enrollees of M+C organizations may directly access (through self-referral) screening mammography and influenza vaccine.

(2) M+C organizations may not impose cost-sharing for influenza vaccine and pneumococcal vaccine.

(i) *Requirements relating to Medicare conditions of participation.* Basic benefits must be provided through providers meeting the requirements in § 422.204(a)(3).

(j) *Choice of practitioners.* Consistent with the requirements of § 422.204 relating to the prohibition of discrimination against providers, if more than one type of practitioner is qualified to furnish a particular service, the M+C organization may select the type of practitioner to be used.

§ 422.101 Requirements relating to basic benefits.

Except as specified in § 422.264 (for entitlement that begins or ends during a hospital stay) and § 422.266 (with respect to hospice care), each M+C organization must—

(a) Provide coverage of, through the provision of or payment for, all services that are covered by Part A and Part B of Medicare (if the enrollee is entitled to benefits under both parts) or by Medicare Part B (if entitled only under Part B) and that are available to beneficiaries residing in the geographic area in which services are covered under the M+C plan (or to Part A and Part B services obtained outside the geographic area if it is common practice to refer patients to sources outside that geographic area); and

(b) Comply with—

(1) HCFA's national coverage decisions; and

(2) Written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which services are covered under the M+C plan.

§ 422.102 Supplemental benefits.

(a) *Mandatory supplemental benefits.* (1) Subject to HCFA's approval, an M+C organization may require Medicare enrollees of an M+C plan other than an MSA plan to accept and pay for services in addition to those included in the basic benefits described in § 422.101.

(2) If the M+C organization imposes mandatory supplemental benefits, it must impose them on all Medicare beneficiaries enrolled in the M+C plan.

(3) HCFA approves mandatory supplemental benefits if it determines that imposition of the mandatory benefits will not substantially discourage Medicare beneficiaries from enrolling in the M+C plan.

(b) *Optional supplemental benefits.* Except as provided in § 422.104 in the

case of MSA plans, each M+C organization may offer (for election by the enrollee and without regard to health status) services that are in addition to those included in the basic benefits described in § 422.101 and any mandatory supplemental benefits described in paragraph (a) of this section. Optional supplemental benefits must be offered to all Medicare beneficiaries enrolled in the M+C plan.

(c) *Payment for supplemental services.* All supplemental benefits are paid for directly by (or on behalf of) the enrollee of the M+C plan.

§ 422.103 Benefits under an M+C MSA plan.

(a) *General rule.* An M+C organization offering an M+C MSA plan must make available to an enrollee, or provide reimbursement for, at least the services described under in § 422.101 after the enrollee incurs countable expenses equal to the amount of the plan's annual deductible.

(b) *Countable expenses.* An M+C organization offering an M+C MSA plan must count toward the annual deductible at least all amounts that would be paid for the particular service under original Medicare, including amounts that would be paid by the enrollee as deductibles or coinsurance.

(c) *Services after the deductible.* For services received by the enrollee after the annual deductible is satisfied, an M+C organization offering an M+C MSA plan must pay, at a minimum, the lesser of the following amounts:

(1) 100 percent of the expense of the services.

(2) 100 percent of the amounts that would have been paid for the services under original Medicare, including amounts that would be paid by the enrollee as deductibles and coinsurance.

(d) *Annual deductible.* The annual deductible for an M+C MSA plan—

(1) For contract year 1999, may not exceed $6,000; and

(2) For subsequent contract years may not exceed the deductible for the preceding contract year, increased by the national per capita growth percentage determined under § 422.252(b).

§ 422.104 Special rules on supplemental benefits for M+C MSA plans.

(a) An M+C organization offering an M+C MSA plan may not provide supplemental benefits that cover expenses that count towards the deductible specified in § 422.103(d).

(b) In applying the limitation of paragraph (a) of this section, the following kinds of policies are not considered as covering the deductible:

(1) A policy that provides coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(2) A policy of insurance in which substantially all of the coverage relates to liabilities incurred under workers' compensation laws, tort liabilities, liabilities relating to use or ownership of property, and any other similar liabilities that HCFA may specify by regulation.

(3) A policy of insurance that provides coverage for a specified disease or illness or pays a fixed amount per day (or other period) of hospitalization.

§ 422.105 Special rules for point of service option.

(a) A POS benefit is an option that an M+C organization may offer in an M+C coordinated care plan or network M+C MSA plan to provide enrollees with additional choice in obtaining specified health care services from individuals or entities that do not have a contract with the M+C organization to provide service through the M+C coordinated care plan or network M+C MSA plan offering the POS option. The plan may offer a POS option—

(1) Under a coordinated care plan only as an additional benefit as described in § 422.312;

(2) Under a coordinated care plan only as a mandatory supplemental benefit as described in § 422.102(a); or

(3) Under a coordinated care plan or network MSA plan as an optional supplemental benefit as described in § 422.102(b).

(b) *Approval required.* An M+C organization may not implement a POS benefit until it has been approved by HCFA.

(c) *Ensuring availability and continuity of care.* An M+C network plan that includes a POS benefit must continue to provide all benefits and ensure access as required under this subpart.

(d) *Enrollee information and disclosure.* The disclosure requirements specified in § 422.111 apply in addition to the following requirements:

(1) *Written rules.* M+C organizations must maintain written rules on how to obtain health benefits through the POS benefit.

(2) *Evidence of coverage document.* The M+C organization must provide to beneficiaries enrolling in a plan with a POS benefit an "evidence of coverage" document, or otherwise provide written documentation, that specifies all costs and possible financial risks to the enrollee, including—

(i) Any premiums and cost-sharing for which the enrollee is responsible;

(ii) Annual limits on benefits and on out-of-pocket expenditures;

(iii) Potential financial responsibility for services for which the plan denies payment because they were not covered under the POS benefit, or exceeded the dollar limit for the benefit; and

(iv) The annual maximum out-of-pocket expense an enrollee could incur.

(e) *Prompt payment.* Health benefits payable under the POS benefit are subject to the prompt payment requirements in § 422.520.

(f) *POS Related Data.* An M+C organization that offers a POS benefit must report data on the POS benefit in the form and manner prescribed by HCFA.

§ 422.106 Special arrangements with employer groups.

An M+C organization may negotiate with an employer group to provide benefits to members of the employer group who are enrolled in an M+C plan offered by the organization. While these negotiated employer group benefits may be designed to complement the benefits available to Medicare beneficiaries enrolled in the M+C plan, they are offered by the employer group independently as the product of private negotiation. Examples of such employer-benefits include the following:

(a) Reductions in the portion of the premium that the M+C organization charges to the beneficiary.

(b) Reductions in portion of other cost sharing amounts the M+C organization charges to the beneficiary.

(c) The addition of benefits that may require additional premium and cost sharing. The addition of benefits and the charges for those benefits are not subject to HCFA review or approval.

§ 422.108 Medicare secondary payer (MSP) procedures.

(a) *Basic rule.* HCFA does not pay for services to the extent that Medicare is not the primary payer under section 1862(b) of the Act and part 411 of this chapter.

(b) *Responsibilities of the M+C organization.* The M+C organization must, for each M+C plan—

(1) Identify payers that are primary to Medicare under section 1862(b) of the Act and part 411 of this chapter;

(2) Determine the amounts payable by those payers; and

(3) Coordinate its benefits to Medicare enrollees with the benefits of the primary payers.

(c) *Charges to other entities.* The M+C organization may charge, or authorize a provider to charge, other individuals or entities for covered Medicare services

for which Medicare is not the primary payer, as specified in paragraphs (d) and (e) of this section.

(d) *Charge to other insurers or the enrollee.* If a Medicare enrollee receives from an M+C organization covered services that are also covered under State or Federal workers' compensation, any no-fault insurance, or any liability insurance policy or plan, including a self-insured plan, the M+C organization may charge, or authorize a provider to charge any of the following—

(1) The insurance carrier, the employer, or any other entity that is liable for payment for the services under section 1862(b) of the Act and part 411 of this chapter.

(2) The Medicare enrollee, to the extent that he or she has been paid by the carrier, employer, or entity for covered medical expenses.

(e) *Charge to group health plans (GHPs) and large group health plans (LGHPs).* An M+C organization may charge a GHP or LGHP for services it furnishes to a Medicare enrollee who is also covered under the GHP or LGHP and may charge the Medicare enrollee to the extent that he or she has been paid by the GHP or LGHP.

§ 422.109 Effect of national coverage determinations (NCDs).

(a) If HCFA determines and announces that an NCD meets the criteria for "significant cost" described in paragraph (c) of this section, an M+C organization is not required to assume risk for the costs of that service until the contract year for which the annual M+C capitation rate is determined on a basis that includes the cost of the NCD service.

(b) The M+C organization must furnish, arrange or pay for an NCD "significant cost" service prior to the adjustment of the annual M+C capitation rate. The following rules apply to such services:

(1) Medicare payment for the service is:

(i) In addition to the capitation payment to the M+C organization; and

(ii) Made directly by the fiscal intermediary and carrier to the M+C organization in accordance with original Medicare payment rules, methods, and requirements.

(2) NCD costs for which HCFA intermediaries and carriers will not make payment and are the responsibility of the M+C organization are—

(i) Services necessary to diagnose a condition covered by the NCD;

(ii) Most services furnished as follow-up care to the NCD service;

(iii) Any service that is already a Medicare-covered service and included in the annual M+C capitation rate; and

(iv) Any service, including the costs of the NCD service itself, to the extent the M+C organization is already obligated to cover it as an additional benefit under § 422.312 or supplemental benefit under § 422.102.

(3) NCD costs for which HCFA intermediaries and carriers make payment are—

(i) Costs relating directly to the provision of services related to the NCD that were noncovered services prior to the issuance of the NCD; and

(ii) A service that is not included in the M+C per capita payment rate.

(4) If the M+C organization does not provide or arrange for the service consistent with HCFA's NCD, enrollees may obtain the services through qualified providers not under contract to the M+C organization, and the organization will pay for the services consistent with § 422.109(c).

(5) Beneficiaries are liable for Part A deductible and any applicable coinsurance amounts.

(c) The term "significant cost" as it relates to a particular NCD means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1998 and 1999, is $100,000;

(ii) For calendar year 2000 and subsequent calendar years, is the preceding year's dollar threshold adjusted to reflect the national per capita growth percentage described in § 422.254(b).

(2) The estimated cost of all of Medicare services furnished nationwide as a result of a particular NCD represents at least 0.1 percent of the national standardized annual capitation rate (see § 422.254(f)), multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

§ 422.110 Discrimination against beneficiaries prohibited.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, an M+C organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an M+C plan offered by the organization on the basis of any factor that is related to health status, including, but not limited to the following:

(1) Medical condition, including mental as well as physical illness.

(2) Claims experience.

(3) Receipt of health care.

(4) Medical history.

(5) Genetic information.

(6) Evidence of insurability, including conditions arising out of acts of domestic violence.

(7) Disability.

(b) *Exception.* An M+C organization may not enroll an individual who has been medically determined to have end-stage renal disease. However, an enrollee who develops end-stage renal disease while enrolled in a particular M+C organization may not be disenrolled for that reason. An individual who is an enrollee of a particular M+C organization, and resides in the M+C plan service area at the time he or she first becomes M+C eligible, is considered to be "enrolled" in the M+C organization for purposes of the preceding sentence.

(c) Plans are required to observe the provisions of the Civil Rights Act, Age Discrimination Act, and Americans with Disabilities Act (see § 422.501(h)).

§ 422.111 Disclosure requirements.

(a) *Detailed description of plan provisions.* An M+C organization must disclose the information specified in § 422.64 and in paragraph (b) of this section—

(1) To each enrollee electing an M+C plan it offers;

(2) In clear, accurate, and standardized form; and

(3) At the time of enrollment and at least annually thereafter.

(b) *Content of plan description.* The description must include the following information:

(1) *Service area.* The M+C plan's service area and any enrollment continuation area.

(2) *Benefits.* The benefits offered under the plan, including applicable conditions and limitations, premiums and cost-sharing (such as copayments, deductibles, and coinsurance) and any other conditions associated with receipt or use of benefits; and for purposes of comparison—

(i) The benefits offered under original Medicare, including the content specified in § 422.64(c);

(ii) For an M+C MSA plan, the benefits under other types of M+C plans; and

(iii) The availability of the Medicare hospice option and any approved hospices in the service area, including those the M+C organization owns, controls, or has a financial interest in.

(3) *Access.* The number, mix, and distribution (addresses) of providers from whom enrollees may obtain services; any out-of network coverage; any point-of-service option, including the supplemental premium for that

option; and how the M+C organization meets the requirements of §§ 422.112 and 422.114 for access to services offered under the plan.

(4) *Out-of-area coverage.* Out-of-area coverage provided by the plan.

(5) *Emergency coverage.* Coverage of emergency services, including—

(i) Explanation of what constitutes an emergency, referencing the definitions of emergency services and emergency medical condition at § 422.2;

(ii) The appropriate use of emergency services, stating that prior authorization cannot be required;

(iii) The process and procedures for obtaining emergency services, including use of the 911 telephone system or its local equivalent; and

(iv) The locations where emergency care can be obtained and other locations at which contracting physicians and hospitals provide emergency services and post-stabilization care included in the M+C plan.

(6) *Supplemental benefits.* Any mandatory or optional supplemental benefits and the premium for those benefits.

(7) *Prior authorization and review rules.* Prior authorization rules and other review requirements that must be met in order to ensure payment for the services. The M+C organization must instruct enrollees that, in cases where noncontracting providers submit a bill directly to the enrollee, the enrollee should not pay the bill, but submit it to the M+C organization for processing and determination of enrollee liability, if any.

(8) *Grievance and appeals procedures.* All grievance and appeals rights and procedures.

(9) *Quality assurance program.* A description of the quality assurance program required under § 422.152.

(10) *Disenrollment rights and responsibilities.*

(c) *Disclosure upon request.* Upon request of an individual eligible to elect an M+C plan, an M+C organization must provide to the individual the following information:

(1) The information required under § 422.64(c).

(2) The procedures the organization uses to control utilization of services and expenditures.

(3) The number of disputes, and the disposition in the aggregate, in a manner and form described by the Secretary. Such disputes shall be categorized as

(i) Grievances according to § 422.564; and

(ii) Appeals according to § 422.578 et. seq.

(4) A summary description of the method of compensation for physicians.

(5) Financial condition of the M+C organization, including the most recently audited information regarding, at least, a description of the financial condition of the M+C organization offering the plan.

(d) *Changes in rules.* If an M+C organization intends to change its rules for an M+C plan, it must—

(1) Submit the changes for HCFA review under the procedures of § 422.80; and

(2) Give notice to all enrollees 30 days before the intended effective date of the changes.

(e) *Changes to provider network.* The M+C organization must make a good faith effort to provide written notice of a termination of a contracted provider within 15 working days of receipt or issuance of a notice of termination, as described in § 422.204(c)(4), to all enrollees who are patients seen on a regular basis by the provider whose contract is terminating, irrespective of whether the termination was for cause or without cause. When a contract termination involves a primary care professional, all enrollees who are patients of that primary care professional must also be notified.

§ 422.112 Access to services.

(a) *Rules for coordinated care plans and network M+C MSA plans.* An M+C organization that offers an M+C coordinated care plan or network M+C MSA plan may specify the networks of providers from whom enrollees may obtain services if the following conditions are met:

(1) The M+C organization ensures that all covered services, including additional or supplemental services contracted for by (or on behalf of) the Medicare enrollee, are available and accessible under the plan. To do this, the M+C organization must do the following:

(i) Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to covered services to meet the needs of the population served. These providers are typically utilized in the network as primary care providers (PCPs), specialists, hospitals, skilled nursing facilities, home health agencies, ambulatory clinics, and other providers.

(ii) Select the panel of PCPs from which the enrollee selects a PCP.

(iii) Provide or arrange for necessary specialty care, and in particular—

(A) Women enrollees may choose direct access to a women's health specialist within the network for women's routine and preventive health care services provided as basic benefits (as defined in § 422.2) while the plan maintains a PCP or some other means for continuity of care; and

(B) Plans must have procedures approved by HCFA for—

(*1*) Identification of individuals with complex or serious medical conditions;

(*2*) Assessment of those conditions, including medical procedures to diagnose and monitor them on an ongoing basis; and

(*3*) Establishment and implementation of a treatment plan appropriate to those conditions, with an adequate number of direct access visits to specialists to accommodate the treatment plan. Treatment plans must be time-specific and updated periodically by the PCP.

(2) In the case of involuntary termination of an M+C plan or specialist(s) for a reason other than for cause, the M+C organization must do the following:

(i) Inform beneficiaries, at the time of termination, of their right to maintain access to specialists.

(ii) Provide the names of other M+C plans in the area that contract with specialists of the beneficiary's choice, as well as an explanation of the process the beneficiary would need to follow should he or she decide to return to original Medicare.

(iii) If seeking a service area expansion for an M+C plan, demonstrate that the number and type of providers available to plan enrollees are sufficient to meet projected needs of the population to be served.

(iv) Demonstrate to HCFA that its providers in an M+C plan are credentialed through the process set forth at § 422.204(a).

(v) Establish written standards for—

(A) Timeliness of access to care and member services that meet or exceed standards established by HCFA. Timely access to care and member services within a plan's provider network must be continuously monitored to ensure compliance with these standards, and the M+C organization must take corrective action as necessary;

(B) Policies and procedures (coverage rules, practice guidelines, payment policies, and utilization management) that allow for individual medical necessity determinations; and

(C) Provider consideration of beneficiary input into the provider's proposed treatment plan.

(vi) Ensure that the hours of operation of its M+C plan providers are convenient to the population served by the plan and do not discriminate against Medicare enrollees.

(vii) Ensure services are provided in a culturally competent manner to all enrollees, including those with limited

English proficiency or reading skills, diverse cultural and ethnic backgrounds, and physical or mental disabilities.

(viii) Make plan services available 24 hours a day, 7 days a week, when medically necessary.

(ix) Provide coverage for emergency and urgent care services in accordance with paragraph (b) of this section.

(3) The M+C organization must ensure continuity of care and integration of services through arrangements that include, but are not limited to—

(i) Use of a practitioner who is specifically designated as having primary responsibility for coordinating the enrollee's overall health care;

(ii) Policies that specify whether services are coordinated by the enrollee's primary care practitioner or through some other means;

(iii) An ongoing source of primary care, regardless of the mechanism adopted for coordination of services;

(iv) Programs for coordination of care that coordinate services with community and social services generally available through contracting or noncontracting providers in the area served by the M+C plan, including nursing home and community-based services;

(v) Procedures to ensure that the M+C organization and its provider network have the information required for effective and continuous patient care and quality review, including procedures to ensure that—

(A) An initial assessment of each enrollee's health care needs is completed within 90 days of the effective date of enrollment.

(B) Each provider, supplier, and practitioner furnishing services to enrollees maintains an enrollee health record in accordance with standards established by the M+C organization, taking into account professional standards; and

(C) Appropriate and confidential exchange of information among provider network components;

(vi) Procedures to ensure that enrollees are informed of specific health care needs that require follow-up and receive, as appropriate, training in self-care and other measures they may take to promote their own health; and

(vii) Systems to address barriers to enrollee compliance with prescribed treatments or regimens.

(b) *Special rules for all M+C organizations for emergency and urgently needed services.* (1) The M+C organization covers emergency and urgently needed services—

(i) Regardless of whether the services are obtained within or outside the organization; and

(ii) Without required prior authorization.

(2) The M+C organization may not deny payment for a condition that—

(i) Is an emergency medical condition as defined in § 422.2; or

(ii) A plan provider or other M+C organization representative instructs an enrollee to seek emergency services within or outside the plan.

(3) The physician treating the enrollee must decide when the enrollee may be considered stabilized for transfer or discharge, and that decision is binding on the M+C organization.

(4) For emergency services obtained outside the M+C plan's provider network, the organization may not charge the enrollee more than $50 or what it would charge the enrollee if he or she obtained the services through the organization, whichever is less.

§ 422.114 Access to services under an M+C private fee-for-service plan.

(a) *Sufficient access.* (1) An M+C organization that offers an M+C private fee-for-service plan must demonstrate to HCFA that it has sufficient number and range of providers willing to furnish services under the plan.

(2) HCFA finds that an M+C organization meets the requirement in paragraph (a)(1) of this section if, with respect to a particular category of health care providers, the M+C organization has—

(i) Payment rates that are not less than the rates that apply under original Medicare for the provider in question;

(ii) Contracts or agreements with a sufficient number and range of providers to furnish the services covered under the M+C private fee-for-service plan; or

(iii) A combination of paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(b) *Freedom of choice.* M+C fee-for-service plans must permit enrollees to obtain services from any entity that is authorized to provide services under Medicare Part A and Part B and agrees to provide services under the terms of the plan.

§ 422.118 Confidentiality and accuracy of enrollee records.

For any medical records or other health and enrollment information it maintains with respect to enrollees, an M+C organization must establish procedures to do the following:

(a) Safeguard the privacy of any information that identifies a particular enrollee. Information from, or copies of, records may be released only to authorized individuals, and the M+C organization must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released only in accordance with Federal or State laws, court orders, or subpoenas.

(b) Maintain the records and information in an accurate and timely manner.

(c) Ensure timely access by enrollees to the records and information that pertain to them.

(d) Abide by all Federal and State laws regarding confidentiality and disclosure for mental health records, medical records, other health information, and enrollee information.

§ 422.128 Information on advance directives.

(a) Each M+C organization must maintain written policies and procedures that meet the requirements for advance directives, as set forth in subpart I of part 489 of this chapter. For purposes of this part, *advance directive* has the meaning given the term in § 489.100 of this chapter.

(b) An M+C organization must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care by or through the M+C organization.

(1) An M+C organization must provide written information to those individuals with respect to the following:

(i) Their rights under the law of the State in which the organization furnishes services (whether statutory or recognized by the courts of the State) to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives. Providers may contract with other entities to furnish this information but remain legally responsible for ensuring that the requirements of this section are met. The information must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of the State law.

(ii) The M+C organization's written policies respecting the implementation of those rights, including a clear and precise statement of limitation if the M+C organization cannot implement an advance directive as a matter of conscience. At a minimum, this statement must do the following:

(A) Clarify any differences between institution-wide conscientious objections and those that may be raised by individual physicians.

(B) Identify the state legal authority permitting such objection.

(C) Describe the range of medical conditions or procedures affected by the conscience objection.

(D) Provide the information specified in paragraph (a)(1) of this section to each enrollee at the time of initial enrollment. If an enrollee is incapacitated at the time of initial enrollment and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the M+C organization may give advance directive information to the enrollee's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated enrollee or to a surrogate or other concerned persons in accordance with State law. The M+C organization is not relieved of its obligation to provide this information to the enrollee once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to ensure that the information is given to the individual directly at the appropriate time.

(E) Document in a prominent part of the individual's current medical record whether or not the individual has executed an advance directive.

(F) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(G) Ensure compliance with requirements of State law (whether statutory or recognized by the courts of the State) regarding advance directives.

(H) Provide for education of staff concerning its policies and procedures on advance directives.

(I) Provide for community education regarding advance directives that may include material required in paragraph (a)(1)(i) of this section, either directly or in concert with other providers or entities. Separate community education materials may be developed and used, at the discretion of the M+C organization. The same written materials are not required for all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. An M+C organization must be able to document its community education efforts.

(2) The M+C organization—

(i) Is not required to provide care that conflicts with an advance directive; and

(ii) Is not required to implement an advance directive if, as a matter of conscience, the M+C organization cannot implement an advance directive and State law allows any health care provider or any agent of the provider to conscientiously object.

(3) The M+C organization must inform individuals that complaints concerning noncompliance with the advance directive requirements may be filed with the State survey and certification agency.

§ 422.132 Protection against liability and loss of benefits.

Enrollees of M+C organizations are entitled to the protections specified in § 422.502(g).

Subpart D—Quality Assurance

§ 422.152 Quality assessment and performance improvement program.

(a) *General rule.* Each M+C organization that offers one or more M+C plans must have, for each of those plans, an ongoing quality assessment and performance improvement program that meets the applicable requirements of this section for the services it furnishes to its M+C enrollees.

(b) *Requirements for M+C coordinated care plans and network M+C MSA plans.* An organization offering an M+C coordinated care plan or M+C network MSA plan must do the following:

(1) Meet the requirements in paragraph (c)(1) of this section concerning performance measurement and reporting. With respect to an M+C coordinated care plan, an organization must also meet the requirements of paragraph (c)(2) of this section concerning the achievement of minimum performance levels. The requirements of paragraph (c)(2) of this section do not apply with respect to an M+C MSA plan.

(2) Conduct performance improvement projects as described in paragraph (d) of this section. These projects must achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of clinical care and nonclinical care areas that can be expected to have a favorable effect on health outcomes and enrollee satisfaction.

(3) In processing requests for initial or continued authorization of services, follow written policies and procedures that reflect current standards of medical practice.

(4) Have in effect mechanisms to detect both underutilization and overutilization of services.

(5) Make available to HCFA information on quality and outcomes measures that will enable beneficiaries to compare health coverage options and select among them, as provided in § 422.64(c)(10).

(c) *Performance measurement and reporting.* The organization offering the plan must do the following:

(1) Measure performance under the plan, using standard measures required by HCFA, and report its performance to HCFA. The standard measures may be specified in uniform data collection and reporting instruments required by HCFA, and will relate to—

(i) Clinical areas including effectiveness of care, enrollee perception of care, and use of services; and

(ii) Nonclinical areas including access to and availability of services, appeals and grievances, and organizational characteristics.

(2) Achieve any minimum performance levels that HCFA establishes locally, regionally, or nationally with respect to the standard measures.

(i) In establishing minimum performance levels, HCFA considers historical plan and original Medicare performance data and trends.

(ii) HCFA establishes the minimum performance levels prospectively upon contract initiation and renewal.

(iii) The organization must meet the minimum performance levels by the end of the contract year.

(iv) In accordance with § 422.506, HCFA may decline to renew the organization's contract in the year that HCFA determines that it did not meet the minimum performance levels.

(d) *Performance improvement projects.* (1) Performance improvement projects are organization initiatives that focus on specified clinical and nonclinical areas and that involve the following:

(i) Measurement of performance.

(ii) System interventions, including the establishment or alteration of practice guidelines.

(iii) Improving performance.

(iv) Systematic follow-up on the effect of the interventions.

(2) Each project must address the entire population to which the measurement specified in paragraph (d)(1)(i) of this section is relevant.

(3) HCFA establishes M+C organization and M+C plan-specific obligations for the number and distribution of projects among the required clinical and nonclinical areas, in accordance with paragraphs (d)(4) and (d)(5) of this section, to ensure that the projects are representative of the entire spectrum of clinical and nonclinical care areas associated with a plan.

(4) The required clinical areas include:

(i) Prevention and care of acute and chronic conditions.

(ii) High-volume services.

(iii) High-risk services.

(iv) Continuity and coordination of care.

(5) The required nonclinical areas include:

(i) Appeals, grievances, and other complaints.

(ii) Access to, and availability of, services.

(6) In addition to requiring that the organization initiate its own performance improvement projects, HCFA may require that the organization—

(i) Conduct particular performance improvement projects that are specific to the organization; and

(ii) Participate in national or statewide performance improvement projects.

(7) For each project, the organization must assess performance under the plan using quality indicators that are—

(i) Objective, clearly and unambiguously defined, and based on current clinical knowledge or health services research; and

(ii) Capable of measuring outcomes such as changes in health status, functional status and enrollee satisfaction, or valid proxies of those outcomes.

(8) Performance assessment on the selected indicators must be based on systematic ongoing collection and analysis of valid and reliable data.

(9) Interventions must achieve improvement that is significant and sustained over time.

(10) The organization must report the status and results of each project to HCFA as requested.

(e) *Requirements for non-network M+C MSA plans and M+C private fee-for-service plans.* An organization offering an M+C non-network MSA plan or an M+C private fee-for-service plan must do the following:

(1) Measure performance under the plan using standard measures required by HCFA and report its performance to HCFA. The standard measures may be specified in uniform data collection and reporting instruments required by HCFA and will relate to—

(i) Prevention and care of acute and chronic conditions;

(ii) High-volume services;

(iii) High-risk services; and

(iv) Enrollee satisfaction.

(2) Evaluate the continuity and coordination of care furnished to enrollees.

(3) If the organization uses written protocols for utilization review, the organization must—

(i) Base those protocols on current standards of medical practice; and

(ii) Have mechanisms to evaluate utilization of services and to inform enrollees and providers of services of the results of the evaluation.

(f) *Requirements for all types of plans*—(1) *Health information.* For all types of plans that it offers, an organization must—

(i) Maintain a health information system that collects, analyzes, and integrates the data necessary to implement its quality assessment and performance improvement program;

(ii) Ensure that the information it receives from providers of services is reliable and complete; and

(iii) Make all collected information available to HCFA.

(2) *Program review.* For each plan, there must be in effect a process for formal evaluation, at least annually, of the impact and effectiveness of its quality assessment and performance improvement program.

§ 422.154 External review.

(a) *Basic rule.* Except as provided in paragraph (c) of this section, each M+C organization must, for each M+C plan it operates, have an agreement with an independent quality review and improvement organization (review organization) approved by HCFA to perform functions of the type described in part 466 of this chapter.

(b) *Terms of the agreement.* The agreement must be consistent with HCFA guidelines and include the following provisions:

(1) Require that the organization—

(i) Allocate adequate space for use of the review organization whenever it is conducting review activities; and

(ii) Provide all pertinent data, including patient care data, at the time the review organization needs the data to carry out the reviews and make its determinations.

(2) Except in the case of complaints about quality, exclude review activities that HCFA determines would duplicate review activities conducted as part of an accreditation process or as part of HCFA monitoring.

(c) *Exceptions.* The requirement of paragraph (a) of this section does not apply for an M+C private fee-for-service plan or a non-network M+C MSA plan if the organization does not carry out utilization review with respect to the plan.

§ 422.156 Compliance deemed on the basis of accreditation.

(a) *General rule.* An M+C organization may be deemed to meet any of the requirements of paragraph (b) of this section if—

(1) The M+C organization is fully accredited (and periodically reaccredited) by a private, national accreditation organization approved by HCFA; and

(2) The accreditation organization used the standards approved by HCFA for the purposes of assessing the M+C organization's compliance with Medicare requirements.

(b) *Deeming requirements.* The following requirements are deemable:

(1) The quality assessment and performance improvement requirements of § 422.152.

(2) The confidentiality and accuracy of enrollee records requirements of § 422.118.

(c) *Effective date of deemed status.* The date on which the organization is deemed to meet the applicable requirements is the later of the following:

(1) The date on which the accreditation organization is approved by HCFA.

(2) The date the M+C organization is accredited by the accreditation organization.

(d) *Obligations of deemed M+C organizations.* An M+C organization deemed to meet Medicare requirements must—

(1) Submit to surveys by HCFA to validate its accreditation organization's accreditation process; and

(2) Authorize its accreditation organization to release to HCFA a copy of its most recent accreditation survey, together with any survey-related information that HCFA may require (including corrective action plans and summaries of unmet HCFA requirements).

(e) *Removal of deemed status.* HCFA removes part or all of an M+C organization's deemed status for any of the following reasons:

(1) HCFA determines, on the basis of its own survey or the results of the accreditation survey, that the M+C organization does not meet the Medicare requirements for which deemed status was granted.

(2) HCFA withdraws its approval of the accreditation organization that accredited the M+C organization.

(3) The M+C organization fails to meet the requirements of paragraph (d) of this section.

(f) *Enforcement authority.* HCFA retains the authority to initiate enforcement action against any M+C

organization that it determines, on the basis of its own survey or the results of an accreditation survey, no longer meets the Medicare requirements for which deemed status was granted.

§ 422.157 Accreditation organizations.

(a) *Conditions for approval.* HCFA may approve an accreditation organization with respect to a given standard under this part if it meets the following conditions:

(1) In accrediting M+C organizations, it applies and enforces standards that are at least as stringent as Medicare requirements with respect to the standard or standards in question.

(2) It complies with the application and reapplication procedures set forth in § 422.158.

(3) It is not controlled, as defined in § 413.17 of this chapter, by the entities it accredits.

(b) *Notice and comment*—(1) *Proposed notice.* HCFA publishes a proposed notice in the **Federal Register** whenever it is considering granting an accreditation organization's application for approval. The notice—

(i) Specifies the basis for granting approval;

(ii) Describes how the accreditation organization's accreditation program meets or exceeds all of the Medicare requirements for which HCFA would deem compliance on the basis of the organization's accreditation; and

(iii) Provides opportunity for public comment.

(2) *Final notice.* (i) After reviewing public comments, HCFA publishes a final **Federal Register** notice indicating whether it has granted the accreditation organization's request for approval.

(ii) If HCFA grants the request, the final notice specifies the effective date and the term of the approval, which may not exceed 6 years.

(c) *Ongoing responsibilities of an approved accreditation organization.* An accreditation organization approved by HCFA must undertake the following activities on an ongoing basis:

(1) Provide to HCFA in written form and on a monthly basis all of the following:

(i) Copies of all accreditation surveys, together with any survey-related information that HCFA may require (including corrective action plans and summaries of unmet HCFA requirements).

(ii) Notice of all accreditation decisions.

(iii) Notice of all complaints related to deemed M+C organizations.

(iv) Information about any M+C organization against which the accrediting organization has taken remedial or adverse action, including revocation, withdrawal or revision of the M+C organization's accreditation. (The accreditation organization must provide this information within 30 days of taking the remedial or adverse action.)

(v) Notice of any proposed changes in its accreditation standards or requirements or survey process. If the organization implements the changes before or without HCFA approval, HCFA may withdraw its approval of the accreditation organization.

(2) Within 30 days of a change in HCFA requirements, submit to HCFA—

(i) An acknowledgment of HCFA's notification of the change;

(ii) A revised cross-walk reflecting the new requirements; and

(iii) An explanation of how the accreditation organization plans to alter its standards to conform to HCFA's new requirements, within the time-frames specified in the notification of change it receives from HCFA.

(3) Permit its surveyors to serve as witnesses if HCFA takes an adverse action based on accreditation findings.

(4) Within 3 days of identifying, in an accredited M+C organization, a deficiency that poses immediate jeopardy to the organization's enrollees or to the general public, give HCFA written notice of the deficiency.

(5) Within 10 days of HCFA's notice of withdrawal of approval, give written notice of the withdrawal to all accredited M+C organizations.

(d) *Continuing Federal oversight of approved accreditation organizations.* This paragraph establishes specific criteria and procedures for continuing oversight and for withdrawing approval of an accreditation organization.

(1) *Equivalency review.* HCFA compares the accreditation organization's standards and its application and enforcement of those standards to the comparable HCFA requirements and processes when—

(i) HCFA imposes new requirements or changes its survey process;

(ii) An accreditation organization proposes to adopt new standards or changes in its survey process; or

(iii) The term of an accreditation organization's approval expires.

(2) *Validation review.* HCFA or its agent may conduct a survey of an accredited organization, examine the results of the accreditation organization's own survey, or attend the accreditation organization's survey, in order to validate the organization's accreditation process. At the conclusion of the review, HCFA identifies any accreditation programs for which validation survey results—

(i) Indicate a 20 percent rate of disparity between certification by the accreditation organization and certification by HCFA or its agent on standards that do not constitute immediate jeopardy to patient health and safety if unmet;

(ii) Indicate any disparity between certification by the accreditation organization and certification by HCFA or its agent on standards that constitute immediate jeopardy to patient health and safety if unmet; or

(iii) Indicate that, irrespective of the rate of disparity, there are widespread or systematic problems in an organization's accreditation process such that accreditation no longer provides assurance that the Medicare requirements are met or exceeded.

(3) *Onsite observation.* HCFA may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing meetings concerning the accreditation process, evaluating survey results or the accreditation status decision making process, and interviewing the organization's staff.

(4) *Notice of intent to withdraw approval.* If an equivalency review, validation review, onsite observation, or HCFA's daily experience with the accreditation organization suggests that the accreditation organization is not meeting the requirements of this subpart, HCFA gives the organization written notice of its intent to withdraw approval.

(5) *Withdrawal of approval.* HCFA may withdraw its approval of an accreditation organization at any time if HCFA determines that—

(i) Deeming based on accreditation no longer guarantees that the M+C organization meets the M+C requirements, and failure to meet those requirements could jeopardize the health or safety of Medicare enrollees and constitute a significant hazard to the public health; or

(ii) The accreditation organization has failed to meet its obligations under this section or under § 422.156 or § 422.158.

(6) *Reconsideration of withdrawal of approval.* An accreditation organization dissatisfied with a determination to withdraw HCFA approval may request a reconsideration of that determination in accordance with subpart D of part 488 of this chapter.

§ 422.158 Procedures for approval of accreditation as a basis for deeming compliance.

(a) *Required information and materials.* A private, national accreditation organization applying for approval must furnish to HCFA all of the following information and materials. (When reapplying for approval, the organization need furnish only the particular information and materials requested by HCFA.)

(1) The types of M+C plans that it would review as part of its accreditation process.

(2) A detailed comparison of the organization's accreditation requirements and standards with the Medicare requirements (for example, a crosswalk).

(3) Detailed information about the organization's survey process, including—

(i) Frequency of surveys and whether surveys are announced or unannounced.

(ii) Copies of survey forms, and guidelines and instructions to surveyors.

(iii) Descriptions of—

(A) The survey review process and the accreditation status decision making process;

(B) The procedures used to notify accredited M+C organizations of deficiencies and to monitor the correction of those deficiencies; and

(C) The procedures used to enforce compliance with accreditation requirements.

(4) Detailed information about the individuals who perform surveys for the accreditation organization, including—

(i) The size and composition of accreditation survey teams for each type of plan reviewed as part of the accreditation process;

(ii) The education and experience requirements surveyors must meet;

(iii) The content and frequency of the in-service training provided to survey personnel;

(iv) The evaluation systems used to monitor the performance of individual surveyors and survey teams; and

(v) The organization's policies and practice with respect to the participation, in surveys or in the accreditation decision process by an individual who is professionally or financially affiliated with the entity being surveyed.

(5) A description of the organization's data management and analysis system with respect to its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

(6) A description of the organization's procedures for responding to and investigating complaints against accredited organizations, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs.

(7) A description of the organization's policies and procedures with respect to the withholding or removal of accreditation for failure to meet the accreditation organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.

(8) A description of all types (for example, full, partial) and categories (for example, provisional, conditional, temporary) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if HCFA approves the accreditation organization.

(9) A list of all currently accredited M+C organizations and the type, category, and expiration date of the accreditation held by each of them.

(10) A list of all full and partial accreditation surveys scheduled to be performed by the accreditation organization as requested by HCFA.

(11) The name and address of each person with an ownership or control interest in the accreditation organization.

(b) *Required supporting documentation.* A private, national accreditation organization applying or reapplying for approval must also submit the following supporting documentation:

(1) A written presentation that demonstrates its ability to furnish HCFA with electronic data in HCFA compatible format.

(2) A resource analysis that demonstrates that its staffing, funding, and other resources are adequate to perform the required surveys and related activities.

(3) A statement acknowledging that, as a condition for approval, it agrees to comply with the ongoing responsibility requirements of § 422.157(c).

(c) *Additional information.* If HCFA determines that it needs additional information for a determination to grant or deny the accreditation organization's request for approval, it notifies the organization and allows time for the organization to provide the additional information.

(d) *Onsite visit.* HCFA may visit the accreditation organization's offices to verify representations made by the organization in its application, including, but not limited to, review of documents, and interviews with the organization's staff.

(e) *Notice of determination.* HCFA gives the accreditation organization a formal notice that—

(1) States whether the request for approval has been granted or denied;

(2) Gives the rationale for any denial; and

(3) Describes the reconsideration and reapplication procedures.

(f) *Withdrawal.* An accreditation organization may withdraw its application for approval at any time before it receives the formal notice specified in paragraph (e) of this section.

(g) *Reconsideration of adverse determination.* An accreditation organization that has received notice of denial of its request for approval may request reconsideration in accordance with subpart D of part 488 of this chapter.

(h) *Request for approval following denial.* (1) Except as provided in paragraph (h)(2) of this section, an accreditation organization that has received notice of denial of its request for approval may submit a new request if it—

(i) Has revised its accreditation program to correct the deficiencies on which the denial was based;

(ii) Can demonstrate that the M+C organizations that it has accredited meet or exceed applicable Medicare requirements; and

(iii) Resubmits the application in its entirety.

(2) An accreditation organization that has requested reconsideration of HCFA's denial of its request for approval may not submit a new request until the reconsideration is administratively final.

Subpart E—Relationships with Providers.

422.200 Basis and scope.

This subpart is based on sections 1852(a)(1), (a)(2), (b)(2), (c)(2)(D), (j), and (k) of the Act; section 1859(b)(2)(A) of the Act; and the general authority under 1856(b) of the Act requiring the establishment of standards. It sets forth the requirements and standards for the M+C organization's relationships with providers including physicians, other health care professionals, institutional providers and suppliers, under contracts or arrangements or deemed contracts under M+C private fee-for-service plans. This subpart also contains some requirements that apply to noncontracting providers.

§ 422.202 Participation procedures.

(a) *Notice and appeal rights.* An M+C organization that operates a coordinated care plan or network MSA plan must provide for the participation of individual health care professionals, and the management and members of groups of health care professionals, through reasonable procedures that include the following:

(1) Written notice of rules of participation such as terms for payment, utilization review, quality improvement programs, credentialing, data reporting, confidentiality, guidelines or criteria for the furnishing of particular services, and other rules related to administrative policy.

(2) Written notice of material changes in participation rules before the changes are put into effect.

(3) Written notice of participation decisions that are adverse to health care professionals.

(4) A process for appealing adverse decisions, including the right of physicians and other health care professionals to present information and their views on the decision. In the case of a termination of a provider contract by the M+C organization, this process must conform to the rules in § 422.204(c).

(b) *Consultation.* The M+C organization must consult with the physicians, and other health care professionals who have agreed to provide services under an M+C plan offered by the organization, regarding the organization's medical policy, quality assurance program, and medical management procedures and ensure that the following standards are met:

(1) Practice guidelines and utilization management guidelines—

(i) Are based on reasonable medical evidence or a consensus of health care professionals in the particular field;

(ii) Consider the needs of the enrolled population;

(iii) Are developed in consultation with contracting health care professionals; and

(iv) Are reviewed and updated periodically.

(2) The guidelines are communicated to providers and, as appropriate, to enrollees.

(3) Decisions with respect to utilization management, enrollee education, coverage of services, and other areas in which the guidelines apply are consistent with the guidelines.

(c) An M+C organization that operates an M+C plan through subcontracted physician groups or other subcontracted networks of health care professionals must provide that the participation procedures in this section apply equally to physicians and other health care professionals within those subcontracted groups.

§ 422.204 Provider credentialing and provider rights.

(a) *Basic requirements.* An M+C organization must follow a documented process with respect to providers and suppliers who have signed contracts or participation agreements that—

(1) For providers (other than physicians and other health care professionals) requires determination, and redetermination at specified intervals, that each provider—

(i) Licensed to operate in the State, and in compliance with any other applicable State or Federal requirements; and

(ii) Reviewed and approved by an accrediting body, or meets the standards established by the organization itself;

(2) For physicians and other health care professionals, including members of physician groups, covers—

(i) Initial credentialing that includes written application, verification of licensure and other information from primary sources, disciplinary status, eligibility for payment under Medicare, and site visits as appropriate. The application must be signed and dated and include an attestation by the applicant of the correctness and completeness of the application and other information submitted in support of the application;

(ii) Recredentialing at least every 2 years that updates information obtained during initial credentialing and considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, and other plan activities, and that includes an attestation of the correctness and completeness of the new information; and

(iii) A process for receiving advice from contracting health care professionals with respect to criteria for credentialing and recredentialing; and

(iv) Requiring that, to the extent applicable, the requirements in paragraphs (a)(2)(i) and (a)(2)(iii) of this section are satisfied; and

(3)(i) Specify that basic benefits must be provided through, or payments must be made to, providers that meet applicable requirements of title XVIII and part A of title XI of the Act. In the case of providers meeting the definition of "provider of services" in section 1861(u), basic benefits may only be provided through such providers if they have a provider agreement with HCFA permitting them to provide services under original Medicare.

(ii) Ensures compliance with the requirements at § 422.752(a)(8) that prohibit employment or contracts with individuals (or with an entity that employs or contracts with such an individual) excluded from participation under Medicare and with the requirements at § 422.220 regarding physicians and practitioners who opt out of Medicare.

(b) *Discrimination prohibited*—(1) *General rule.* An M+C organization may not discriminate, in terms of participation, reimbursement, or indemnification, against any health care professional who is acting within the scope of his or her license or certification under State law, solely on the basis of the license or certification.

(2) *Construction.* The prohibition in paragraph (b)(1) of this section does not preclude any of the following by the M+C organization:

(i) Refusal to grant participation to health care professionals in excess of the number necessary to meet the needs of the plan's enrollees (except for M+C private-fee-for-service plans, which may not refuse to contract on this basis).

(ii) Use of different reimbursement amounts for different specialties.

(iii) Implementation of measures designed to maintain quality and control costs consistent with its responsibilities.

(c) *Denial, suspension, or termination of contract.* The requirements in this paragraph (c) apply to an M+C organization that operates a coordinated care plan or network MSA plan providing benefits through contracting providers.

(1) *Notice to health care professional.* An M+C organization that denies, suspends, or terminates an agreement under which the health care professional provides services to M+C plan enrollees must give the affected individual written notice of the following:

(i) The reasons for the action.

(ii) The standards and the profiling data the organization used to evaluate the health care professional.

(iii) The numbers and mix of health care professionals the organization needs.

(iv) The affected health care professional's right to appeal the action and the process and timing for requesting a hearing.

(2) *Composition of hearing panel.* The M+C organization must ensure that the majority of the hearing panel members are peers of the affected health care professional.

(3) *Notice to licensing or disciplinary bodies.* An M+C organization that suspends or terminates a contract with a health care professional because of deficiencies in the quality of care must give written notice of that action to licensing or disciplinary bodies or to other appropriate authorities.

(4) *Timeframes.* An M+C organization and a contracting provider must provide at least 60 days written notice to each other before terminating the contract without cause.

§ 422.206 Interference with health care professionals' advice to enrollees prohibited.

(a) *General rule.* (1) An M+C organization may not prohibit or otherwise restrict a health care professional, acting within the lawful scope of practice, from advising, or advocating on behalf of, an individual who is a patient and enrolled under an M+C plan about—

(i) The patient's health status, medical care, or treatment options (including any alternative treatments that may be self-administered), including the provision of sufficient information to the individual to provide an opportunity to decide among all relevant treatment options;

(ii) The risks, benefits, and consequences of treatment or non-treatment; or

(iii) The opportunity for the individual to refuse treatment and to express preferences about future treatment decisions.

(2) Health care professionals must provide information regarding treatment options in a culturally-competent manner, including the option of no treatment. Health care professionals must ensure that individuals with disabilities have effective communications with participants throughout the health system in making decisions regarding treatment options.

(b) *Conscience protection.* The general rule in paragraph (a) of this section does not require the M+C plan to cover, furnish, or pay for a particular counseling or referral service if the M+C organization that offers the plan—

(1) Objects to the provision of that service on moral or religious grounds; and

(2) Through appropriate written means, makes available information on these policies as follows:

(i) To HCFA, with its application for a Medicare contract, or within 10 days of submitting its ACR proposal, as appropriate.

(ii) To prospective enrollees, before or during enrollment.

(iii) With respect to current enrollees, the organization is eligible for the exception provided in paragraph (a)(1) of this section if it provides notice within 90 days after adopting the policy at issue; however, under § 422.111(d), notice of such a change must be given in advance.

(c) *Construction.* Nothing in paragraph (b) of this section may be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974.

(d) *Sanctions.* An M+C organization that violates the prohibition of paragraph (a) of this section or the conditions in paragraph (b) of this section is subject to intermediate sanctions under subpart O of this part.

§ 422.208 Physician incentive plans: requirements and limitations.

(a) *Definitions.* In this subpart, the following definitions apply:

Bonus means a payment made to a physician or physician group beyond any salary, fee-for-service payments, capitation, or returned withhold.

Capitation means a set dollar payment per patient per unit of time (usually per month) paid to a physician or physician group to cover a specified set of services and administrative costs without regard to the actual number of services provided. The services covered may include the physician's own services, referral services, or all medical services.

Physician group means a partnership, association, corporation, individual practice association, or other group of physicians that distributes income from the practice among members. An individual practice association is defined as a physician group for this section only if it is composed of individual physicians and has no subcontracts with physician groups.

Physician incentive plan means any compensation arrangement to pay a physician or physician group that may directly or indirectly have the effect of reducing or limiting the services provided to any plan enrollee.

Potential payments means the maximum payments possible to physicians or physician groups including payments for services they furnish directly, and additional payments based on use and costs of referral services, such as withholds, bonuses, capitation, or any other compensation to the physician or physician group. Bonuses and other compensation that are not based on use of referrals, such as quality of care furnished, patient satisfaction or committee participation, are not considered payments in the determination of substantial financial risk.

Referral services means any specialty, inpatient, outpatient, or laboratory services that a physician or physician group orders or arranges, but does not furnish directly.

Risk threshold means the maximum risk, if the risk is based on referral services, to which a physician or physician group may be exposed under a physician incentive plan without being at substantial financial risk. This is set at 25 percent risk.

Substantial financial risk, for purposes of this section, means risk for referral services that exceeds the risk threshold.

Withhold means a percentage of payments or set dollar amounts deducted from a physician's service fee, capitation, or salary payment, and that may or may not be returned to the physician, depending on specific predetermined factors.

(b) *Applicability.* The requirements in this section apply to an M+C organization and any of its subcontracting arrangements that utilize a physician incentive plan in their payment arrangements with individual physicians or physician groups. Subcontracting arrangements may include an intermediate entity, which includes but is not limited to, an individual practice association that contracts with one or more physician groups or any other organized group such as those specified in § 422.4.

(c) *Basic requirements.* Any physician incentive plan operated by an M+C organization must meet the following requirements:

(1) The M+C organization makes no specific payment, directly or indirectly, to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to any particular enrollee. Indirect payments may include offerings of monetary value (such as stock options or waivers of debt) measured in the present or future.

(2) If the physician incentive plan places a physician or physician group at substantial financial risk (as determined under paragraph (d) of this section) for services that the physician or physician group does not furnish itself, the M+C organization provides aggregate or per-patient stop-loss protection in accordance with paragraph (f) of this section, and conducts periodic surveys in accordance with paragraph (g) of this section.

(3) For all physician incentive plans, the M+C organization provides to HCFA the information specified in § 422.210.

(d) *Determination of substantial financial risk*—(1) *Basis.* Substantial financial risk occurs when risk is based on the use or costs of referral services,

and that risk exceeds the risk threshold. Payments based on other factors, such as quality of care furnished, are not considered in this determination.

(2) *Risk threshold.* The risk threshold is 25 percent of potential payments.

(3) *Arrangements that cause substantial financial risk.* The following incentive arrangements cause substantial financial risk within the meaning of this section, if the physician's or physician group's patient panel size is not greater than 25,000 patients, as shown in the table at paragraph (f)(2)(iii) of this section:

(i) Withholds greater than 25 percent of potential payments.

(ii) Withholds less than 25 percent of potential payments if the physician or physician group is potentially liable for amounts exceeding 25 percent of potential payments.

(iii) Bonuses that are greater than 33 percent of potential payments minus the bonus.

(iv) Withholds plus bonuses if the withholds plus bonuses equal more than 25 percent of potential payments. The threshold bonus percentage for a particular withhold percentage may be calculated using the formula—Withhold % = −0.75 (Bonus %) +25%.

(v) Capitation arrangements, if—

(A) The difference between the maximum potential payments and the minimum potential payments is more than 25 percent of the maximum potential payments;

(B) The maximum and minimum potential payments are not clearly explained in the contract with the physician or physician group.

(vi) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 25 percent of potential payments.

(e) An M+C fee-for-service plan may not operate a physician incentive plan.

(f) Stop-loss protection requirements. (1) *Basic rule.* The M+C organization must assure that all physicians and physician groups at substantial financial risk have either aggregate or per-patient stop-loss protection in accordance with the following requirements:

(2) *Specific requirements.* (i) Aggregate stop-loss protection must cover 90 percent of the costs of referral services that exceed 25 percent of potential payments.

(ii) For per-patient stop-loss protection if the stop-loss protection provided is on a per-patient basis, the stop-loss limit (deductible) per patient must be determined based on the size of the patient panel and may be a combined policy or consist of separate policies for professional services and institutional services. In determining patient panel size, the patients may be pooled in accordance with paragraph (g) of this section.

(iii) Stop-loss protection must cover 90 percent of the costs of referral services that exceed the per patient deductible limit. The per-patient stop-loss deductible limits are as follows:

Panel size	Single combined deductible	Separate institutional deductible	Separate professional deductible
1–1,000	$6,000	$10,000	$3,000
1,001–5,000	30,000	40,000	10,000
5,001–8,000	40,000	60,000	15,000
8,001–10,000	75,000	100,000	20,000
10,001–25,000	150,000	200,000	25,000
>25,000	(1)	(1)	(1)

[1] None.

(g) *Pooling of patients.* Any entity that meets the pooling conditions of this section may pool commercial, Medicare, and Medicaid enrollees or the enrollees of several M+C organizations with which a physician or physician group has contracts. The conditions for pooling are as follows:

(1) It is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or physician group.

(2) The physician or physician group is at risk for referral services with respect to each of the categories of patients being pooled.

(3) The terms of the compensation arrangements permit the physician or physician group to spread the risk across the categories of patients being pooled.

(4) The distribution of payments to physicians from the risk pool is not calculated separately by patient category.

(5) The terms of the risk borne by the physician or physician group are comparable for all categories of patients being pooled.

(h) *Periodic surveys of current and former enrollees.* An M+C organization must conduct periodic surveys of current and former enrollees where substantial financial risk exists. These periodic surveys must—

(1) Include either a sample of, or all, current Medicare/Medicaid enrollees in the M+C organization and individuals disenrolled in the past 12 months for reasons other than—

(i) The loss of Medicare or Medicaid eligibility;

(ii) Relocation outside the M+C organization's service area;

(iii) For failure to pay premiums or other charges;

(iv) For abusive behavior; and

(v) Retroactive disenrollment.

(2) Be designed, implemented, and analyzed in accordance with commonly accepted principles of survey design and statistical analysis;

(3) Measure the degree of enrollees/disenrollees' satisfaction with the quality of the services provided and the degree to which the enrollees/disenrollees have or had access to the services provided under the M+C organization; and

(4) Be conducted no later than 1 year after the effective date of the M+C organization's contract and at least annually thereafter.

(i) *Sanctions.* An M+C organization that fails to comply with the requirements of this section is subject to intermediate sanctions under subpart O of this part.

§ 422.210 Disclosure of physician incentive plans

(a) *Disclosure to HCFA*—(1) *Basic requirement.* Each M+C organization must provide to HCFA descriptive information about its physician incentive plan in sufficient detail to enable HCFA to determine whether that plan complies with the requirements of § 422.208. Reporting should be on the HCFA PIP Disclosure Form (OMB No. 0938–0700).

(2) *Content.* The information must include at least the following:

(i) Whether services not furnished by the physician or physician group are covered by the incentive plan.

(ii) The type or types of incentive arrangements, such as, withholds, bonus, capitation.

(iii) The percent of any withhold or bonus the plan uses.

(iv) Assurance that the physicians or physician group has adequate stop-loss protection, and the amount and type of stop-loss protection.

(v) The patient panel size and, if the plan uses pooling, the pooling method.

(vi) If the M+C organization is required to conduct enrollee surveys, a summary of the survey results.

(3) *When disclosure must be made to HCFA.* An M+C organization must disclose annually to HCFA the physician incentive arrangements that are effective at the start of each year. In addition, HCFA does not approve an M+C organization's application for a contract unless the M+C organization discloses the physician incentive arrangements effective for that contract.

(b) *Disclosure to Medicare beneficiaries—Basic requirement.* An M+C organization must provide the following information to any Medicare beneficiary who requests it:

(1) Whether the M+C organization uses a physician incentive plan that affects the use of referral services.

(2) The type of incentive arrangement.

(3) Whether stop-loss protection is provided.

(4) If the M+C organization was required to conduct a survey, a summary of the survey results.

§ 422.212 Limitations on provider indemnification.

An M+C organization may not contract or otherwise provide, directly or indirectly, for any of the following individuals, organizations, or entities to indemnify the organization against any civil liability for damage caused to an enrollee as a result of the M+C organization's denial of medically necessary care:

(a) A physician or health care professional.

(b) Provider of services.

(c) Other entity providing health care services.

(d) Group of such professionals, providers, or entities.

§ 422.214 Special rules for services furnished by noncontract providers.

(a) *Services furnished to enrollees of coordinated care plans by providers.* (1) Any provider (other than a provider of services as defined in section 1861(u) of the Act) that does not have in effect a contract establishing payment amounts for services furnished to a beneficiary enrolled in an M+C coordinated care plan must accept, as payment in full, the amounts that the provider could collect if the beneficiary were enrolled in original Medicare.

(2) Any statutory provisions (including penalty provisions) that apply to payment for services furnished to a beneficiary not enrolled in an M+C plan also apply to the payment described in paragraph (a)(1) of this section.

(b) *Services furnished by providers of service.* Any provider of services as defined in section 1861(u) of the Act that does not have in effect a contract establishing payment amounts for services furnished to a beneficiary enrolled in an M+C coordinated care plan must accept as payment in full the amounts (less any payments under §§ 412.105(g) and 413.86(d)) that it could collect if the beneficiary were enrolled in original Medicare.

§ 422.216 Special rules for M+C private fee-for-service plans.

(a) *Payment to providers—*(1) *Payment rate.* (i) The M+C organization must establish uniform payment rates for items and services that apply to all contracting providers, regardless of whether the contract is signed or deemed under paragraph (f) of this section.

(ii) Contracting providers must be reimbursed on a fee-for-service basis.

(iii) The M+C organization must make information on its payment rates available to providers that furnish services that may be covered under the M+C private fee-for-service plan.

(2) *Payment to contract providers.* For each service, the M+C organization pays a contract provider (including one deemed to have a contract) an amount that is equal to the payment rate under paragraph (a)(1) of this section minus any applicable cost-sharing.

(3) *Noncontract providers.* The organization pays for services of noncontract providers in accordance with § 422.100(b)(2).

(4) *Service furnished by providers of service.* Any provider of services as defined in section 1861(u) of the Act that does not have in effect a contract establishing payment mounts for services furnished to a beneficiary enrolled in an M+C private fee-for-service plan must accept as payment in full the amounts (less any payments under §§ 412.109(g) and 413.86(d) of this chapter) that it could collect if the beneficiary were enrolled in original Medicare.

(b) *Charges to enrollees—*(1) *Contract providers.* (i) Contract providers and "deemed" contract providers may charge enrollees no more than the cost-sharing and, subject to the limit in paragraph (b)(1)(ii) of this section, balance billing amounts that are permitted under the plan, and these amounts must be the same for "deemed" contract providers as for those that have signed contracts in effect.

(ii) The organization may permit balance billing no greater than 15 percent of the payment rate established under paragraph (a)(1) of this section.

(iii) The M+C organization must specify the amount of cost-sharing and balance billing in its contracts with providers and these amounts must be the same for "deemed" contract providers as for those that have signed contracts in effect.

(iv) The M+C organization is subject to intermediate sanctions under § 422.752(a)(7), under the rules in subpart O of this part, if it fails to enforce the limit specified in paragraph (b)(1)(i) of this section.

(2) *Noncontract providers.* A noncontract provider may not collect from an enrollee more than the cost-sharing established by the M+C private fee-for-service plan as specified in § 422.308(b).

(c) *Enforcement of limit—*(1) *Contract providers.* An M+C organization that offers an M+C fee-for-service plan must enforce the limit specified in paragraph (b)(1) of this section.

(2) *Noncontract providers.* An M+C organization that offers an M+C private fee-for-service plan must monitor the amount collected by noncontract providers to ensure that those amounts do not exceed the amounts permitted to be collected under paragraph (b)(2) of this section. The M+C organization must develop and document violations specified in instructions and must forward documented cases to HCFA.

(d) *Information on enrollee liability—*(1) *General information.* An M+C organization that offers an M+C fee-for-service plan must provide to plan enrollees, for each claim filed by the enrollee or the provider that furnished the service, an appropriate explanation of benefits. The explanation must include a clear statement of the enrollee's liability for deductibles, coinsurance, copayment, and balance billing.

(2) *Advance notice for hospital services.* In its terms and conditions of payment to hospitals, the M+C organization must require the hospital, if it imposes balance billing, to provide to the enrollee, before furnishing any services for which balance billing could amount to not less than $500—

(i) Notice that balance billing is permitted for those services;

(ii) A good faith estimate of the likely amount of balance billing, based on the enrollees presenting condition; and

(iii) The amount of any deductible, coinsurance, and copayment that may be due in addition to the balance billing amount.

(e) *Coverage determinations.* The M+C organization must make coverage determinations in accordance with subpart M of this part.

(f) *Rules describing deemed contract providers.* Any provider furnishing health services to an enrollee in an M+C private fee-for-service plan, and who has not previously entered into a contract or agreement to furnish services under the plan, is treated as having a contract in effect and is subject to the limitations of this section that apply to contract providers if the following conditions are met:

(1) The services are covered under the plan and are furnished—

(i) To an enrollee of an M+C fee-for-service plan; and

(ii) Provided by a provider including a provider of services (as defined in section 1861(u) of the Act) that does not have in effect a signed contract with the M+C organization.

(2) Before furnishing the services, the provider—

(i) Was informed of the individual's enrollment in the plan; and

(ii) Was informed (or given a reasonable opportunity to obtain information) about the terms and conditions of payment under the plan, including the information described in § 422.202(a)(1).

(3) The information was provided in a manner that was reasonably designed to effect informed agreement and met the requirements of paragraphs (g) and (h) of this section.

(g) *Enrollment information.* Enrollment information was provided by one of the following methods or a similar method:

(1) Presentation of an enrollment card or other document attesting to enrollment.

(2) Notice of enrollment from HCFA, a Medicare intermediary or carrier, or the M+C organization itself.

(h) *Information on payment terms and conditions.* Information on payment terms and conditions was made available through either of the following methods:

(1) The M+C organization used postal service, electronic mail, FAX, or telephone to communicate the information to one of the following:

(i) The provider.

(ii) The employer or billing agent of the provider.

(iii) A partnership of which the provider is a member.

(iv) Any party to which the provider makes assignment or reassigns benefits.

(2) The M+C organization has in effect a procedure under which—

(i) Any provider furnishing services to an enrollee in an M+C private fee-for-service plan, and who has not previously entered into a contract or agreement to furnish services under the plan, can receive instructions on how to request the payment information;

(ii) The organization responds to the request before the entity furnishes the service; and

(iii) The information the organization provides includes the following:

(A) Billing procedures.

(B) The amount the organization will pay towards the service.

(C) The amount the provider is permitted to collect from the enrollee.

(D) The information described in § 422.202(a)(1).

(3) Announcements in newspapers, journals, or magazines or on radio or television are not considered communication of the terms and conditions of payment.

(i) *Provider credentialing requirements.* Contracts with providers must provide that, in order to be paid to provide services to plan enrollees, providers must meet the requirements specified in § 422.204(a)(1) and (a)(1)(iii).

§ 422.220 Exclusion of services furnished under a private contract.

An M+C organization may not pay, directly or indirectly, on any basis, for services (other than emergency or urgently needed services as defined in § 422.2) furnished to a Medicare enrollee by a physician (as defined in section 1861(r)(1) of the Act) or other practitioner (as defined in section 1842(b)(18)(C) of the Act) who has filed with the Medicare carrier an affidavit promising to furnish Medicare-covered services to Medicare beneficiaries only through private contracts under section 1802(b) of the Act with the beneficiaries. An M+C organization must pay for emergency or urgently needed services furnished by a physician or practitioner who has not signed a private contract with the beneficiary.

Subpart F—Payments to Medicare+Choice Organizations

§ 422.249 Terminology.

In this subpart—

(a) The terms "per capita rate" and "capitation rate" (see § 422.252) are used interchangeably; and

(b) In the term "area-specific," "area" refers to any of the payment areas described in § 422.250(c).

§ 422.250 General provisions.

(a) *Monthly payments*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, HCFA makes advance monthly payments equal to 1/12th of the annual M+C capitation rate for the payment area described in paragraph (c) of this section adjusted for such demographic risk factors as an individual's age, disability status, sex, institutional status, and other such factors as it determines to be appropriate to ensure actuarial equivalence. Effective January 1, 2000, HCFA adjusts for health status as provided in § 422.256(c). When the new risk adjustment is implemented, 1/12th of the annual capitation rate for the payment area described in paragraph (c) of this section will be adjusted by the risk adjustment methodology under § 422.256(d).

(2) *Special rules.* (i) *Enrollees with end-stage renal disease.* (A) For enrollees determined to have end-stage renal disease (ESRD), HCFA establishes special rates that are determined under an actuarially equivalent approach to that used in establishing the rates under original Medicare.

(B) HCFA reduces the payment rate by the equivalent of 50 cents per renal dialysis treatment. These funds will be used to help pay for the ESRD network program in the same manner as similar reductions are used in original Medicare.

(ii) *MSA enrollees.* For MSA enrollees, HCFA makes advanced monthly payments as described in paragraph (a)(1) less the amount (if any) identified in § 422.262(c)(1)(ii) to be deposited in the M+C MSA. In addition, HCFA deposits in the M+C MSA the lump sum amounts (if any) determined in accordance with § 422.262(c).

(iii) *RFB plan enrollees.* For RFB plan enrollees, HCFA adjusts the capitation payments otherwise determined under this subpart to ensure that the payment level is appropriate for the actuarial characteristics and experience of these enrollees. Such adjustment can be made on an individual or organization basis.

(b) *Adjustment of payments to reflect number of Medicare enrollees—General rule.* HCFA adjusts payments retroactively to take into account any difference between the actual number of Medicare enrollees and the number on which HCFA based an advance monthly payment.

(c) *Payment areas*—(1) *General rule.* Except as provided in paragraph (e) of this section, the M+C payment area is a county or an equivalent geographic area specified by HCFA.

(2) *Special rule for ESRD enrollees.* For ESRD enrollees, the M+C payment

area is a State or other geographic area specified by HCFA.

(d) *Terminology.* As used in paragraph (e) of this section, "metropolitan statistical area," "consolidated metropolitan statistical area," and "primary metropolitan statistical area" mean any areas so designated by the Secretary of Commerce.

(e) *Geographic adjustment of payment areas.* For contract years beginning after 1999—

(1) *State request.* A State's chief executive may request, no later than February 1 of any year, a geographic adjustment of the State's payment areas for the following calendar year. The chief executive may request any of the following adjustments to the payment area specified in paragraph (c)(1) of this section:

(i) A single Statewide M+C payment area.

(ii) A metropolitan-based system in which all nonmetropolitan areas within the State constitute a single payment area and any of the following constitutes a separate M+C payment area:

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(A) All portions of each single metropolitan statistical area within the State.

(B) All portions of each primary metropolitan statistical area within each consolidated metropolitan statistical area within the State.

(iii) A consolidation of noncontiguous counties.

(2) *HCFA response.* In response to the request, HCFA makes the payment adjustment requested by the chief executive.

(3) *Budget neutrality adjustment for geographically adjusted payment areas.* If HCFA adjusts a State's payment areas in accordance with paragraph (e)(2) of this section, HCFA at that time, and each year thereafter, adjusts the capitation rates so that the aggregate Medicare payments do not exceed the aggregate Medicare payments that would have been made to all the State's payments areas, absent the geographic adjustment.

(f) *Determination and applicability of payment rates.* (1) All payment rates are annual rates, determined and promulgated no later than March 1st, for the following calendar year.

(2) For purposes of paragraphs (b) and (c) of § 422.252, except as provided in § 422.254(e)(4), the "capitation payment rate for 1997" is the rate determined under section 1876(a)(1)(c) of the Act.

§ 422.252 Annual capitation rates.

Subject to the adjustments specified in this subpart, the annual capitation rate for a particular payment area is equal to the largest of the following:

(a) *Blended capitation rate.* The blended capitation rate is the sum of—

(1) The area-specific percentage (specified in § 422.254(a)) for the year multiplied by the annual area-specific capitation rate for the payment area as determined under § 422.254(e) for the year, and

(2) The national percentage (specified in § 422.254(a)) for the year multiplied by the national input-price-adjusted capitation rate for the payment area as determined under § 422.254(g) for the year.

(3) Multiplied by the budget neutrality adjustment factor determined under § 422.254(d).

(b) *Minimum amount rate.* (1) For 1998—

(i) For the 50 States and the District of Columbia, the minimum amount rate is 12 times $367.

(ii) For all other jurisdictions the minimum amount rate is the lesser of the rate described in (b)(1)(i) or 150 percent of the capitation payment rate for 1997.

(2) For each succeeding year, the minimum amount rate is the minimum amount rate for the preceding year, increased by the national per capita growth percentage (specified in § 422.254(b)) for the year.

(c) *Minimum percentage increase rate.* (1) For 1998, the minimum percentage increase rate is 102 percent of the annual capitation rate for 1997.

(2) For each succeeding year, the minimum percentage increase rate is 102 percent of the annual capitation rate for the preceding year.

§ 422.254 Calculation and adjustment factors.

The following are the factors used in calculating the per capita payment rates:

(a) *Area-specific and national percentages.* For purposes of § 422.252(a)(1), the area-specific percentage and the national percentage, for each year, are as follows:

	Area-specific	National
For 1998	90	10
For 1999	82	18
For 2000	74	26
For 2001	66	34
For 2002	58	42
For years after 2002	50	50

(b) *National per capita growth percentage.* For purposes of § 422.252(a)(2),

(1) The national per capita growth percentage for a year is HCFA's estimate of the rate of growth in per capita expenditures, reduced by the percentage points specified in paragraph (b)(2) of this section for the year. HCFA may make separate estimates for aged enrollees, disabled enrollees, and enrollees who have ESRD.

(2) The percentage points that HCFA uses to reduce its estimates are as follows:

(i) For 1998, 0.8 percentage points.

(ii) For years 1999–2002, 0.5 percentage points.

(iii) For years after 2002, 0 percentage points.

(c) *Medical education payment adjustments.* For purposes of paragraph (e)(2) the medical education payment adjustments are amounts that HCFA estimates were payable to teaching hospitals during 1997 for—

(1) the indirect costs of medical education under section 1886(d)(5)(B) of the Act; and

(2) The direct costs of graduate medical education under section 1886(h) of the Act.

(d) *General budget neutrality factor.* For each year, HCFA applies a budget neutrality factor to the blended capitation rates under § 422.252(a) so that the estimated aggregate payments made under this part equal the estimated aggregate payments that would have been made if based entirely on area-specific capitation rates.

(e) *Annual Area-specific capitation rate* (1) *Basic rule.* Subject to the provisions of paragraphs (e)(2) and (e)(3) of this section, the annual area-specific capitation rate for a particular payment area is—

(i) For 1998, subject to paragraph (e)(4) of this section, the per capita rate determined for that area for 1997 under section 1876(a)(1)(c) of the Act, increased by the national per capita growth percentage for 1998; and

(ii) For a subsequent year, the area-specific capitation rate determined for the previous year, increased by the national per capita growth percentage for the year.

(2) *Exclusion of medical education costs.* In calculating the area-specific capitation rates, the following percentages of the amounts estimated by HCFA under § 422.254(c) as medical education payment adjustments to hospitals, are excluded:

For 1998	20 percent.
For 1999	40 percent.
For 2000	60 percent.
For 2001	80 percent.
For years after 2001	100 percent.

(3) *Payments under the State hospital reimbursement system.* To the extent that HCFA estimates that a 1997 per

capita rate reflects payments to hospitals under section 1814(b)(3) of the Act, HCFA makes a payment adjustment that is comparable to the adjustment that would have been made under paragraph (e)(2) of this section if the hospitals had not been reimbursed under section 1814(b)(3) of the Act.

(4) *Areas with highly variable per capita rates.* With respect to a payment area for which the per capita rate for 1997 varies by more than 20 percent from the per capita rate for 1996, HCFA may substitute for the 1997 rate a rate that is more representative of the costs of the enrollees in the area.

(f) *National standardized annual capitation rate.* The national standardized annual capitation rate is equal to—

(1) The sum, for all payment areas, of the products of—

(i) The annual area-specific capitation rate and

(ii) The average number of Medicare beneficiaries residing in the area multiplied by the average of the risk-factor weights used to adjust payments under § 422.256(c);

(2) Divided by the sum, for all payment areas, of the products specified in paragraph (f)(1)(ii) of this section for all payment areas.

(g) *The input-price-adjusted annual national capitation rate*—(1) *General rule.* The input-price-adjusted annual national capitation rate for a M+C payment area for a year is equal to the sum, for all the types of Medicare services (as classified by HCFA), of the product (for each service) of—

(i) The national standardized annual M+C capitation rate (determined under paragraph (f) of this section) for the year;

(ii) The proportion of such rates for the year which is attributable to such type of services; and

(iii) An index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price for such services.

(2) HCFA may, subject to the special rules for 1988, use indices that are used in applying or updating national payment rates for particular areas and localities.

(3) *Special rules for 1998.* In applying this paragraph for 1998—

(i) Medicare services are classified as Part A and Part B services;

(ii) The proportion attributable to Part A services is the ratio (expressed as a percentage) of the national average per capita rate of payment for Part A services for 1997 to the national average per capita rate of payment for Part A and Part B services for that year;

(iii) The proportion attributed to part B services is 100 percent minus the ratio described in paragraph (g)(3)(ii) of this section;

(iv) For Part A services, 70 percent of the payments attributable to those services are adjusted by the index used under section 1886(d)(3)(E) of the Act to adjust payment rates for relative hospital wage levels for hospitals located in the particular payment area; and

(v) For part B services—

(A) 66 percent of payments attributable to those services are adjusted by the index of the geographic area factors under section 1848(e) of the Act used to adjust payment rates for physician services in the particular payment area; and

(B) Of the remaining 34 percent, 40 percent is adjusted by the index specified in paragraph (g)(3)(iv) of this section.

§ 422.256 Adjustments to capitation rates and aggregate payments.

(a) *Adjustment for over or under projection of national per capita growth percentages.* (1) Beginning with rates for 1999, HCFA adjusts all area-specific and national capitation rates for the previous year to reflect any differences between the projected national per capita growth percentages for that year and previous years, and the current estimates of those percentages for such years.

(2) Beginning with rates for 2000, HCFA also adjusts the minimum amount rate (calculated under § 422.252(b)) in the same manner.

(b) *Adjustment for national coverage determination (NCD) services.* If HCFA determines that the cost of furnishing an NCD service is "significant," HCFA adjusts capitation rates for the next calendar year to take account of the cost of that service. Until the new capitation rates are in effect, the M+C organization is paid for the "significant cost" service on a fee-for-service basis as provided under section 422.105(b).

(c) *Risk adjustment: General rule.* Capitation payments are adjusted for age, gender, institutional status, and other appropriate factors, including health status.

(d) *Risk adjustment: Health status*—(1) *Data collection.* To adjust for health status, HCFA applies a risk factor based on data obtained in accordance with § 422.257.

(2) *Initial implementation.* HCFA applies this adjustment factor to payments beginning January 1, 2000.

(3) *Uniform application.* Except as provided for M+C RFB plans under § 422.250(a)(2)(iii), HCFA applies this adjustment factor to all types of plans.

§ 422.257 Encounter data.

(a) *Data collection: Basic rule.* Each M+C organization must submit to HCFA (in accordance with HCFA instructions) all data necessary to characterize the context and purposes of each encounter between a Medicare enrollee and a provider, supplier, physician, or other practitioner.

(b) *Types of service and timing of submittal.* M+C organizations must submit data as follows:

(1) Beginning on a date determined by HCFA, inpatient hospital care data for all discharges that occur on or after July 1, 1997.

(2) HCFA will provide advance notice to M+C organizations to collect and submit data for services that occur on or after July 1, 1998, as follow:

(i) Physician, outpatient hospital, SNF, and HHA data beginning no earlier than October 1, 1999; and

(ii) All other data HCFA deems necessary beginning no earlier than October 1, 2000.

(c) *Sources and extent of data.* (1) To the extent required by HCFA, the data must account for services covered under the original Medicare program, for Medicare covered services for which Medicare is not the primary payor, or for other additional or supplemental benefits that the M+C organization may provide.

(2) The data must account separately for each provider, supplier, physician, or other practitioner that would be permitted to bill separately under the Medicare fee-for-service program, even if they participate jointly in the same encounter.

(d) *Other data requirements.* The data must—

(1) Conform to the requirements for equivalent data for Medicare fee-for-service when appropriate, and to all relevant national standards; and

(2) Be submitted electronically to the appropriate HCFA contractor.

(e) *Validation of data.* M+C organizations and their providers and practitioners will be required to submit medical records for the validation of encounter data, as prescribed by HCFA.

(f) *Use of data.* HCFA uses the data obtained under this section to determine the risk adjustment factor that it applies to annual capitation rates under § 422.256(c). HCFA may also use the data for other purposes.

§ 422.258 Announcement of annual capitation rates and methodology changes.

(a) *Capitation rates.* (1) No later than March 1 of each year, HCFA announces to M+C organizations and other interested parties the capitation rates for the following calendar year.

(2) HCFA includes in the announcement a description of the risk and other factors and explains the methodology in sufficient detail to enable M+C organizations to compute monthly adjusted capitation rates for individuals in each of its payment areas.

(b) *Advance notice of changes in methodology.* (1) No later than January 15 of each year, HCFA notifies M+C organizations of changes it proposes to make in the factors and the methodology it used in the previous determination of capitation rates.

(2) The M+C organizations have 15 days to comment on the proposed changes.

§ 422.262 Special rules for beneficiaries enrolled in M+C MSA plans.

(a) *Establishment and designation of medical savings account (MSA).* A beneficiary who elects coverage under an M+C MSA plan—

(1) Must establish an M+C MSA with a trustee that meets the requirements of paragraph (b) of this section; and

(2) If he or she has more than one M+C MSA, designate the particular account to which payments under the M+C MSA plan are to be made.

(b) *Requirements for MSA trustees.* An entity that acts as a trustee for an M+C MSA must—

(1) Register with HCFA;

(2) Certify that it is a licensed bank, insurance company, or other entity qualified, under sections 408(a)(2) or 408(h) of the IRS Code, to act as a trustee of individual retirement accounts;

(3) Agree to comply with the M+C MSA provisions of section 138 of the IRS Code of 1986; and

(4) Provide any other information that HCFA may require.

(c) *Deposit in the M+C MSA.* (1) The payment is calculated as follows:

(i) The monthly M+C MSA premium is compared with 1/12 of the annual capitation rate for the area determined under § 422.252.

(ii) If the monthly M+C MSA premium is less than 1/12 of the annual capitation rate, the difference is the amount to be deposited in the M+C MSA for each month for which the beneficiary is enrolled in the MSA plan.

(2) HCFA deposits the full amount to which a beneficiary is entitled under paragraph (c)(1)(ii) of this section for the calendar year, beginning with the month in which M+C MSA coverage begins.

(3) If the beneficiary's coverage under the M+C MSA plan ends before the end of the calendar year, HCFA recovers the amount that corresponds to the remaining months of that year.

§ 422.264 Special rules for coverage that begins or ends during an inpatient hospital stay.

(a) *Applicability.* This section applies to inpatient services in a "subsection (d) hospital" as defined in section 1886(d)(1)(B) of the Act.

(b) *Coverage that begins during an inpatient hospital stay.* If coverage under an M+C plan offered by an M+C organization begins while the beneficiary is an inpatient in a subsection (d) hospital—

(1) Payment for inpatient services until the date of the beneficiary's discharge is made by the previous M+C organization or original Medicare, as appropriate.

(2) The M+C organization offering the newly-elected M+C plan is not responsible for the inpatient services until the date after the beneficiary's discharge; and

(3) The M+C organization offering the newly-elected M+C plan is paid the full amount otherwise payable under this subpart.

(c) *Coverage that ends during an inpatient hospital stay.* If coverage under an M+C plan offered by an M+C organization ends while the beneficiary is an inpatient in a subsection (d) hospital—

(1) The M+C organization is responsible for the inpatient services until the date of the beneficiary's discharge;

(2) Payment for those services during the remainder of the stay is not made by original Medicare or by any succeeding M+C organization offering a newly-elected M+C plan; and

(3) The M+C organization that no longer provides coverage receives no payment for the beneficiary for the period after coverage ends.

§ 422.266 Special rules for hospice care.

(a) *Information.* An M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to elect hospice care under section 1812(d)(1) of the Act about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity) if—

(1) A Medicare hospice program is located within the plan's service area; or

(2) It is common practice to refer patients to hospice programs outside that area.

(b) *Enrollment Status.* Unless the enrollee disenrolls from the M+C plan, a beneficiary electing hospice continues his or her enrollment in the M+C plan and is entitled to receive, through the M+C plan, any benefits other than those that are the responsibility of the Medicare hospice.

(c) *Payment.* During the time the hospice election is in effect, HCFA's monthly capitation payment to the M+C organization is reduced to an amount equal to the adjusted excess amount determined under § 422.312. In addition, HCFA pays through the original Medicare program (subject to the usual rules of payment)—

(1) The hospice program for hospice care furnished to the Medicare enrollee; and

(2) The M+C organization, provider or supplier for other Medicare-covered services furnished to the enrollee.

§ 422.268 Source of payment and effect of election of the M+C plan election on payment.

(a) *Source of payments.* Payments under this subpart, to M+C organizations or M+C MSAs, are made from the Federal Hospital Insurance Trust Fund or the Supplementary Medical Insurance Trust Fund. HCFA determines the proportions to reflect the relative weight that benefits under Part A, and benefits under Part B represents of the actuarial value of the total benefits under title XVIII of the Act.

(b) *Payments to the M+C organization.* Subject to §§ 412.105(g) and 413.86(d) of this chapter and §§ 422.105, 422.264, and 422.266, HCFA's payments under a contract with an M+C organization (described in § 422.250) with respect to an individual electing an M+C plan offered by the organization are instead of the amounts which (in the absence of the contract) would otherwise be payable under original Medicare for items and services furnished to the individual.

(c) *Only the M+C organization entitled to payment.* Subject to § 422.262, 422.264, 422.266, and 422.520 of this part and sections 1886(d)(11) and 1886(h)(3)(D) of the Act, only the M+C organization is entitled to receive payment from HCFA under title XVIII of the Act for items and services furnished to the individual.

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Subpart G—Premiums and Cost-Sharing

§ 422.300 Basis and scope.

(a) *General.* This subpart is based on section 1854 of the Act. It sets forth the requirements and limitations for payments by and on behalf of Medicare beneficiaries who elect an M+C plan.

(b) *Transition period.* For contract periods beginning before January 1,

2002, HCFA applies the following special rules.

(1) M+C organizations may, with HCFA's agreement, modify an M+C plan offered prior to January 1, 2002 by—

(i) Adding benefits at no additional cost to the M+C plan enrollee; and

(ii) Lowering the premiums approved through the ACR process;

(iii) Lowering other cost-sharing amounts approved through the ACR process.

(2) For contracts beginning on a date other than January 1 (according to § 422.504(d)), M+C organizations may submit ACRs on a date other than May 1 approved by HCFA.

§ 422.302 Terminology.

As used in this subpart, unless specified otherwise—

Additional revenues are revenues collected or expected to be collected from charges for M+C plans offered by an M+C organization in excess of costs actually incurred or expected to be incurred. Additional revenues would include such things as revenues in excess of expenses of an M+C plan, profits, contribution to surplus, risk margins, contributions to risk reserves, assessments by a related entity that do not represent a direct medical or related administrative cost, and any other premium component not reflected in direct medical care costs and administrative costs.

APR stands for the M+C plan's average per capita rates of payment. The APR is the average amount the M+C organization estimates HCFA will pay (without any needed offsets or reductions, such as, those required by § 422.250(a)(2)(ii) for M+C MSA plan enrollees) for the period covered by the ACR for all of the Medicare beneficiaries electing the M+C plan.

M+C monthly basic beneficiary premium means, with respect to an M+C coordinated care plan, the amount authorized to be charged under § 422.308(a)(1) for the plan, or, with respect to a M+C private fee-for-service plan, the amount filed under § 422.306(d)(1).

M+C monthly supplemental beneficiary premium means, with respect to an M+C coordinated care plan, the amount authorized to be charged under § 422.308(a)(2) for the M+C plan, or, with respect to an MSA or an M+C private fee-for-service plan, the amount filed under § 422.306(c)(2) or § 422.306(d)(2).

M+C monthly MSA premium means, with respect to an M+C plan, the amount of such premium filed under § 422.306(c)(1).

§ 422.304 Rules governing premiums and cost-sharing.

(a) *Monthly premiums.* The monthly premium charged to the beneficiary is—

(1) For an individual enrolled in an M+C plan (other than an M+C MSA plan) offered by an M+C organization, the sum of the M+C monthly basic beneficiary premium plus the M+C monthly supplemental beneficiary premium (if any); or

(2) For an individual enrolled in an M+C MSA plan offered by an M+C organization, the M+C monthly supplemental beneficiary premium (if any).

(b) *Uniformity.* The M+C monthly basic beneficiary premium, the M+C monthly supplemental beneficiary premiums, and the M+C monthly MSA premium of an M+C organization may not vary among individuals enrolled in the M+C plan. In addition, the M+C organization may not vary the level of copayments, coinsurance, or deductibles charged for basic benefits or supplemental benefits (if any), among individuals enrolled in the M+C plan.

(c) *Timing of payments.* The M+C organization must permit payments of M+C monthly basic and supplemental beneficiary premium on a monthly basis and may not terminate coverage for failure to make timely payments except as provided in § 422.74(b)(1).

(d) *Monetary inducements prohibited.* An M+C organization may not provide for cash or other monetary rebates as an inducement for enrollment or for any other reason or purpose.

§ 422.306 Submission of proposed premiums and related information.

(a) *General rule.* (1) Not later than May 1 of each year, each M+C organization and any organization intending to contract as an M+C organization in the subsequent year must submit to HCFA, in the manner and form prescribed by HCFA, for each M+C plan it intends to offer in the following year—

(i) The information specified in paragraph (b), (c), or paragraph (d) of this section for the type of M+C plan involved; and

(ii) The service area and enrollment capacity (if any).

(2) If the submission is not complete, timely, or accurate, HCFA has the authority to impose sanctions under Subpart O of this part or may choose not to renew the contract.

(b) *Information required for coordinated care plans*—(1) *Basic benefits.* For basic benefits, the following information is required:

(i) The ACR as specified in § 422.310.

(ii) The M+C monthly basic beneficiary premium.

(iii) A description of cost-sharing to be imposed under the plan, and its actuarial value.

(iv) A description of any additional benefits to be provided pursuant to § 422.312 and the actuarial value determined for those benefits.

(v) Amounts collected in the previous contract period for basic benefits.

(2) *Supplemental benefits.* For supplemental benefits, the following information is required:

(i) The ACR.

(ii) The M+C monthly supplemental beneficiary premium.

(iii) A description of supplemental benefits being offered, the cost sharing to be imposed, and their actuarial value.

(iv) Amounts collected in the previous contract period for supplemental benefits.

(c) *Information required for MSA plans.* (1) The monthly MSA premium for basic benefits.

(2) The M+C monthly supplementary beneficiary premium for supplemental benefits.

(3) A description of all benefits offered under the M+C MSA plan.

(4) The amount of the deductible imposed under the plan.

(5) Amounts collected in the previous contract period for supplemental benefits.

(d) *Information required for M+C private fee-for-service plans.* (1) The information specified under paragraph (b)(1) of this section.

(2) The amount of the M+C monthly supplemental beneficiary premium.

(3) A description of all benefits offered under the plan.

(4) Amounts collected in the previous contract period for basic and supplemental benefits.

(e) *HCFA review*—(1) *Basic rule.* Except as specified in paragraph (e)(2) of this section, HCFA reviews and approves or disapproves the information submitted under this section.

(2) *Exception.* HCFA does not review or approve or disapprove the following information:

(i) Any amounts submitted with respect to M+C MSA plans.

(ii) The M+C monthly basic and supplementary beneficiary premiums for M+C private fee-for-service plans.

§ 422.308 Limits on premiums and cost sharing amounts.

(a) *Rules for coordinated care plans*—(1) For basic benefits, the M+C monthly basic beneficiary premium (multiplied by 12) charged, plus the actuarial value of the cost-sharing applicable, on average, to beneficiaries enrolled under this part may not exceed the annual actuarial value of the deductibles and

coinsurance that would be applicable, on average, to beneficiaries entitled to Medicare Part A and enrolled in Medicare Part B if they were not enrollees of an M+C organization as determined in the ACR under § 422.310. For those M+C plan enrollees that are enrolled in Medicare Part B only, the M+C monthly basic beneficiary premium (multiplied by 12) charged, plus the actuarial value of the deductibles, coinsurance and copayments applicable, on average, to those beneficiaries enrolled under this part may not exceed the annual actuarial value of the deductibles and coinsurance that would be applicable, on average, to beneficiaries enrolled in Medicare Part B if they were not enrollees of an M+C organization as determined in the ACR under § 422.310.

(2) *For supplemental benefits*, the M+C monthly supplemental beneficiary premium (multiplied by 12) charged, plus the actuarial value of its cost-sharing, may not exceed the amounts approved in the ACR for those benefits, as determined under § 422.310 on an annual basis.

(3) *Coverage of Part A services for Part B-only Medicare enrollees.* If an M+C organization furnishes coverage of Medicare Part A-type services to a Medicare enrollee entitled to Part B only, the M+C plan's premium plus the actuarial value of its cost-sharing for these services may not exceed the lesser of—

(i) The APR that is payable for these services for those beneficiaries entitled to Part A plus the actuarial value of Medicare deductibles and Coinsurance for the services;

(ii) or the ACR for such services.

(b) *Rule for M+C private fee-for-service plans.* The average actuarial value of the cost-sharing for basic benefits may not exceed the actuarial value of the cost-sharing that would apply, on average, to beneficiaries entitled to Medicare Part A and enrolled in Medicare Part B if they were not enrolled in an M+C plan as determined in the ACR under § 422.310.

(c) *Special rules for determination of actuarial value.* If HCFA determines that adequate data are not available to determine actuarial value under paragraph (a) or (b) of this section, HCFA may make the determination with respect to all M+C eligible individuals in the same geographic area or State or in the United States, or on the basis of other appropriate data.

§ 422.309 Incorrect collections of premiums and cost-sharing.

(a) *Definitions.* As used in this section—

(1) *Amounts incorrectly collected* (i) Means amounts that:

(A) Exceed the limits imposed by § 422.308;

(B) In the case of a M+C private fee-for-service plan, exceed the M+C monthly basic beneficiary premium or the M+C monthly supplemental premium submitted under § 422.306; and

(C) In the case of a M+C MSA plan, exceed the M+C monthly supplemental premium submitted under § 422.308 and the deductible for basic benefits; and

(ii) Includes amounts collected from an enrollee who was believed not entitled to Medicare benefits but was later found to be entitled.

(2) *Other amounts due* are amounts due for services that were—

(i) Emergency, urgently needed services, or other services obtained outside the M+C plan; or

(ii) Initially denied but, upon appeal, found to be services the enrollee was entitled to have furnished by the M+C organization.

(b) *Basic commitments.* An M+C organization must agree to refund all amounts incorrectly collected from its Medicare enrollees, or from others on behalf of the enrollees, and to pay any other amounts due the enrollees or others on their behalf.

(c) *Refund methods*—(1) *Lump-sum payment.* The M+C organization must use lump-sum payments for the following:

(i) Amounts incorrectly collected that were not collected as premiums.

(ii) Other amounts due.

(iii) All amounts due if the M+C organization is going out of business or terminating its M+C contract for an M+C plan(s).

(2) *Premium adjustment or lump-sum payment, or both.* If the amounts incorrectly collected were in the form of premiums, or included premiums as well as other charges, the M+C organization may refund by adjustment of future premiums or by a combination of premium adjustment and lump-sum payments.

(3) *Refund when enrollee has died or cannot be located.* If an enrollee has died or cannot be located after reasonable effort, the M+C organization must make the refund in accordance with State law.

(d) *Reduction by HCFA.* If the M+C organization does not make the refund required under this section by the end of the contract period following the contract period during which an amount was determined to be due an enrollee, HCFA reduces the premium the M+C organization is allowed to charge an M+C plan enrollee by the amounts incorrectly collected or otherwise due. In addition, the M+C organization would be subject to sanction under Subpart O for failure to refund amounts incorrectly collected from M+C plan enrollees.

§ 422.310 Adjusted community rate (ACR) approval process.

(a) *General rule.* (1) Except with respect to M+C MSA plans, each M+C organization must compute a separate ACR for each M+C coordinated care or private fee-for-service plan offered to Medicare beneficiaries. In computing the ACR, the M+C organization calculates an initial rate (for years after 1999, using the methods described in paragraph (b), for 1999, under § 417.594(b)) that represents the "commercial premium" the M+C organization would charge its general non-Medicare eligible enrollment population for the basic benefits, and any mandatory supplemental benefits covered under the M+C plan. The M+C organization should also calculate a separate initial rate (using the same approach) for each optional supplemental benefit package it offers under an M+C plan. For years after 1999 the M+C organization then either adjusts that rate by the factors specified in paragraph (c) of this section or requests that HCFA adjust the rate in accordance with the procedures specified in paragraph (c)(6) of this section. For 1999, adjustments are made under section 417.594(c). All data submitted as part of the ACR process is subject to audit by HCFA or any person or organization designated by HCFA.

(2) To calculate the adjusted excess described in section 422.312, the M+C organization or HCFA further reduces the rate for Medicare-covered services by the actuarial value of applicable Medicare coinsurance and deductibles.

(3) Separate ACRs must be calculated for Part A and Part B enrollees and Part B-only enrollees for each M+C plan offered, and for each optional supplemental benefit option.

(4) In calculating its initial rate, the M+C organization must identify and take into account anticipated revenue collectible from other payers for those services for which Medicare is not the primary payer as described in § 422.108.

(5) Except as provided in paragraph (a)(6) of this section, the M+C organization must have an adequate accounting system that is accrual based and uses generally-accepted accounting principles to develop its ACR.

(6) For M+C organizations that are part of a government entity that uses a cash basis of accounting, ACR cost data

developed on this basis is acceptable. However, only depreciation on capital assets, rather than the expenditure for the asset, is acceptable.

(b) *Initial rate calculation for years after 1999.* (1) The M+C organization's initial rate for each M+C plan is calculated on a 12-month basis for non-Medicare enrollees, using either, at the M+C organization's election—

(i) A community rating system (as defined in section 1308(8) of the PHS Act, other than subparagraph (C)); or

(ii) A system, approved by HCFA, under which the M+C organization develops an aggregate premium for each M+C plan for all enrollees of that M+C plan that is weighted by the size of the various enrolled groups and individuals that compose the M+C organization's enrollment in that M+C plan. For purposes of this section, enrolled groups are defined as employee groups or other bodies of subscribers (including individual subscribers) that enroll in the M+C plan on a premium basis.

(2) Regardless of which method the M+C organization uses to calculate its initial rate, the initial rate must be equal to the premium the M+C organization would charge its non-Medicare enrollees on a yearly basis for services included in the M+C plan.

(3) Except as provided in paragraph (b)(4) of this section, the M+C organization must identify in its initial rate calculation for an M+C plan, the following components whose rates must be consistent with rates used by the M+C organization in calculating premiums for non-Medicare enrollees:

(i) Direct medical care.

(ii) Administration.

(iii) Additional Revenues.

(iv) Enrollee cost sharing (for example, deductibles, coinsurance, or copayments) for Medicare-covered services and for additional and supplemental benefits.

(4) An M+C organization that does not usually separate its premium components as described in paragraph (b)(3) of this section may calculate its initial rate with the methods it uses for its other enrolled groups if the M+C organization provides HCFA with the documentation necessary to support any adjustments the M+C organization makes to the initial rate in accordance with paragraph (c)(5) of this section.

(5) The initial rate calculation must not carry forward any losses experienced by the M+C organization during prior contract periods. The M+C organization must submit supporting documentation to assure HCFA that ACR values do not include past losses but only premiums for covered services, additional services, and supplemental benefits for the upcoming 12-month period.

(c) *Adjustment factors for years after 1999.* Adjustment factors are designed to adjust on a component basis the initial rate calculated under paragraph (b) of this section to reflect differences in utilization characteristics of the M+C organization's Medicare enrollees electing an M+C plan using a relative cost ratio. Adjustment factors are as follows:

(1) *Direct medical care.* The relative cost ratio for direct medical care for an M+C plan is determined by comparing the direct medical care costs actually incurred on an accrual basis during the most recently ended calendar year prior to submission of the ACR for Medicare enrollees that elected the M+C plan to the direct medical care costs of non-Medicare enrollees incurred over the same period. The non-Medicare enrollees included in this computation must be consistent with the non-Medicare enrollees included in the initial rate computation.

(2) *Administration.* The relative cost ratio for Administration for an M+C plan is determined by comparing the administrative costs actually incurred on an accrual basis during the most recently ended calendar year prior to submission of the ACR for Medicare enrollees that elected the M+C plan to the administrative costs of non-Medicare enrollees incurred over the same period. The non-Medicare enrollees included in this computation must be consistent with the non-Medicare enrollees included in the initial rate computation.

(3) *Additional revenues.* The relative cost ratio for additional revenues for an M+C plan is determined by comparing the additional revenues collected on an accrual basis during the most recently ended calendar year prior to submission of the ACR for Medicare enrollees that elected the M+C plan to the additional revenues of non-Medicare enrollees collected over the same period. The non-Medicare enrollees included in this computation must be consistent with the non-Medicare enrollees included in the initial rate computation.

(4) *Additional adjustments.* Additional adjustments may be necessary if the M+C organization, with agreement of HCFA, determines that the adjustment of the initial rate by the relative cost ratios does not represent an accurate ACR value of the initial rate component. Adjustments will be allowed that are designed to reduce ACR values to equal the actuarial value of the M+C plan charge structure.

(5) *Supporting documentation.* All adjustments made by the M+C organization must be accompanied by adequate supporting data. If an M+C organization does not have sufficient enrollment experience to develop this data, it may, during its initial contract period use reasonable estimates acceptable to HCFA to establish its ACR values.

(6) *Adjustment by HCFA.* If it is determined that the M+C organization does not have adequate data to adjust the initial rate calculated under paragraph (b) of this section to reflect the utilization characteristics of Medicare enrollees, HCFA adjusts the initial rate. HCFA adjusts the rate on the basis of differences in the utilization characteristics of—

(i) Medicare and non-Medicare enrollees in other M+C plans; or

(ii) Medicare beneficiaries in the M+C organization's area, State, or the United States who are eligible to elect an M+C plan and other individuals in that same area, State, or the United States.

(d) *Special rules for certain organizations.* An M+C organization that does not have non-Medicare enrollees or sufficient Medicare enrollment experience to adequately calculate ACR values may calculate its ACR using estimates described in paragraphs (a)(1) and (a)(2) of this section as an additional adjustment described in paragraph (c)(4) of this section.

(1) The M+C organization may use an estimate of the ACR value for the direct medical and administrative components of a service or services offered using generally-accepted accounting principles.

(2) The M+C organization may use an estimate of the ACR value for the additional revenue component of a service or services offered based on the lesser of (if the information is available)—

(i) The average of additional revenues received through risk payments for health services contracted to be furnished to an enrolled population of other organizations;

(ii) The average of additional revenues received for health services furnished; or

(iii) A reasonable estimate of additional revenues of other M+C organizations in the general marketplace.

(e) *Adjustment by HCFA.* If HCFA finds that there is insufficient enrollment experience to determine the APR or ACR for a M+C plan at the beginning of a contract period, HCFA may—

(1) Determine the APR based on the enrollment experience of other M+C organizations;

(2) Determine ACR using data in the general commercial marketplace; or

(3) Determine either or both rates using the best available information, which may include enrollment experience of other M+C organizations and section 1876 risk contractors.

(f) *HCFA review.* (1) The M+C organization's methodology and computation of its ACR are subject to review and approval by HCFA. When the M+C organization submits the ACR computation, it must include adequate supporting data. Except as provided in § 422.306(e)(2), HCFA authorizes the M+C organization to collect premiums and other cost sharing amounts described in § 422.306 that are equal to the amounts calculated in the ACR.

(2) If the M+C organization is dissatisfied with an HCFA determination that the M+C organization's computation is not acceptable, the M+C organization may within 2 weeks after the date of receipt of notification of this determination, file a request for a hearing with HCFA. The request must state why the M+C organization believes the determination is incorrect and must be accompanied by any supporting evidence the M+C organization wishes to submit. The hearing is conducted by a hearing officer designated by HCFA under the hearing procedures described in subpart N.

§ 422.312 Requirement for additional benefits.

(a) *Definitions.* As used in this section—

(1) *Excess amount* is the amount by which the APR exceeds the actuarial value of the Medicare covered services required under § 422.101(a), as determined on the basis of the ACR determined under § 422.310, as reduced for the actuarial value of the cost-sharing under Medicare Parts A and B. A separate excess amount must be determined for Part B-only enrollees.

(2) *Adjusted excess amount* is the excess amount minus any amount withheld and reserved for the organization in a stabilization fund, as provided in paragraph (c) of this section.

(b) *Requirement for additional benefits.* If there is an adjusted excess amount for the plan it offers, the M+C organization must—

(1) Provide additional benefits with an actuarial value (less the actuarial value of any copayment or coinsurance associated with the benefit) which HCFA determines is at least equal to the adjusted excess amount; and

(2) Provide those benefits uniformly for all Medicare enrollees electing the plan.

(c) *Stabilization fund.* (1) An M+C organization may request for part of an excess amount to be withheld and reserved, for a specified number of contract periods, in the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Insurance Trust Fund in the proportions that HCFA determines to be appropriate.

(2) The reserved funds are to be used to stabilize and prevent undue fluctuations in the additional benefits that are required under this section and are provided during subsequent contract periods.

(3) Any amounts not provided as additional benefits during the period specified by the M+C organization for which the stabilization fund is established, reverts for the use of the trust funds.

(4) *Establishment of a stabilization fund.* An M+C organization's request to have monies withheld in a stabilization fund for a specific M+C plan must be made when the M+C organization notifies HCFA under § 422.306 of its proposed premiums, other cost-sharing amounts, and related information in preparation for its next contract period.

(i) *Limit per contract period.* Except as provided in paragraph (c)(4)(iii) of this section, HCFA does not withhold in a stabilization fund more than 15 percent of the excess amount for a given contract period.

(ii) *Cumulative limit.* If HCFA has established a stabilization fund for an M+C plan, it does not approve a request for withholding made by that M+C organization for a subsequent contract period that would cause the total value of the stabilization fund to exceed 25 percent of the excess amount applicable to the M+C plan for that subsequent contract period.

(iii) *Exception.* HCFA may grant an exception to the limit described in paragraph (c)(3)(i) of this section if the M+C organization can demonstrate to HCFA's satisfaction that the value of the additional benefits it provides to its Medicare enrollees electing this M+C plan fluctuates substantially in excess of 15 percent from one contract period to another.

(iv) *Interest.* The amounts withheld in a stabilization fund are accounted for by HCFA in accounts for which interest does not accrue to the M+C organization.

(5) *Withdrawal from a stabilization fund.* An M+C organization's request to make a withdrawal from the stabilization fund established for an M+C plan to be used during a contract period must be made when the M+C organization notifies HCFA under § 422.306 of its proposed premiums, cost-sharing amounts, and related information in preparation for its next contract period.

(i) *Notification requirements.* An M+C organization must—

(A) Indicate how it intends to use the withdrawn amounts;

(B) Justify the need for the withdrawal in terms of stabilizing the additional benefits it provides to Medicare enrollees;

(C) Document the M+C plan's experience with fluctuations of revenue requirements relative to the additional benefits it provides to Medicare enrollees; and

(D) Document its experience during the contract period previous to the one for which it requests withdrawal to ensure that the M+C organization will not be using the withdrawn amounts to refinance losses suffered during that previous contract period.

(ii) *Criteria for HCFA approval.* HCFA approves a request for a withdrawal from a benefit stabilization fund for use during the next contract period only if—

(A) The average of the APR for the M+C plan's next contract period of the M+C plan is less than that of the previous contract period;

(B) The M+C plan's ACR for the next contract period is significantly higher than that of the previous contract period;

(C) The M+C plan's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period; or

(D) The ACR for the next contract period results in additional benefits that are significantly less in total value than that of the previous contract period.

(iii) *Basis for denial.* HCFA does not approve a request for a withdrawal from a stabilization fund if the withdrawal would allow the M+C organization to refinance prior contract period losses or to avoid losses in the upcoming contract period.

(iv) *Form of payment.* Payment of monies withdrawn from a stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the M+C organization for Medicare beneficiaries electing the M+C plan during the period of the contract.

(d) Construction. Nothing in this section may be construed as preventing an M+C organization from providing supplemental benefits in addition to those required under this section and

from imposing a premium for those supplemental benefits.

Subpart H—Provider-Sponsored Organizations

3. *Nomenclature change.* Throughout subpart H, "Medicare+Choice", wherever it appears, is revised to read "M+C".

4. *Nomenclature change.* Throughout subpart H, "items and services", wherever it appears, is revised to read "services".

§ 422.350 [Amended]

5. In § 422.350, the following changes are made:

a. In paragraph (a)(1), "hereinafter referred to as PSOs" is revised to read "(PSOs)".

b. The definition of "capitated basis" is removed and a definition of "capitation payment" is added in its place, to read as set forth below.

c. In the definition of "cash equivalent", "accounts receivables, which" is revised to read "accounts receivable that".

d. The definition of "health care provider" and the statement for "M+C" are removed.

e. In the definition of "insolvency", "where" is revised to read "in which".

f. The definition of "provider-sponsored organization is revised to read as set forth below.

§ 422.350 Basis, scope, and definitions.

* * * * *

Capitation payment means a fixed per enrollee per month amount paid for contracted services without regard to the type, cost, or frequency of services furnished.

* * * * *

Provider-sponsored organization (PSO) means a public or private entity that—

(1) Is established or organized, and operated, by a health care provider or group of affiliated health care providers;

(2) Provides a substantial proportion (as defined in § 422.352) of the health care services under the M+C contract directly through the provider or affiliated group of providers; and

(3) When it is a group, is composed of affiliated providers who—

(i) Share, directly or indirectly, substantial financial risk, as determined under § 422.356, for the provision of services that are the obligation of the PSO under the M+C contract; and

(ii) Have at least a majority financial interest in the PSO.

§ 422.352 [Amended]

6. In § 422.352, the following changes are made:

a. In paragraph (a)(1) "such licensure" is revised to read "State licensure", and "section 1855(a)(2) of the Act" is revised to read "§ 422.370".

b. In paragraph (b)(2), "as defined in § 422.354" is removed.

c. Paragraph (c) is revised to read as follows:

§ 422.352 Basic requirements.

* * * * *

(c) *Rural PSO.* To qualify as a rural PSO, a PSO must—

(1) Demonstrate to HCFA that—

(i) It has available in the rural area, as defined in § 412.62(f) of this chapter, routine services including but not limited to primary care, routine specialty care, and emergency services; and

(ii) The level of use of providers outside the rural area is consistent with general referral patterns for the area; and

(2) Enroll Medicare beneficiaries, the majority of which reside in the rural area the PSO serves.

§ 422.354 [Amended]

7. In § 422.354, the following changes are made:

a. In the introductory text, "of by two or more" is revised to read "of two or more".

b. In paragraphs (a)(1), (a)(2), and (c), the parenthetical phrases are removed.

c. Paragraph (b) is revised to read as follows:

§ 422.354 Requirements for affiliated providers.

* * * * *

(b) Each affiliated provider of the PSO shares, directly or indirectly, substantial financial risk for the furnishing of services the PSO is obligated to provide under the contract.

* * * * *

§ 422.356 [Amended]

8. In § 422.356, in paragraph (a)(3)(ii), "Agreement by the affiliated provider" is revised to read "Affiliated providers agree".

§ 422.370 [Amended]

9. In § 422.370 the following changes are made:

a. In the introductory text, the word "as" is revised to read "to offer".

b. Paragraphs (1) and (2) are redesignated as paragraphs (a) and (b).

10. § 422.372 is revised to read as follows:

§ 422.372 Basis for waiver of State licensure.

(a) *General rule.* Subject to this section and to paragraphs (a) and (e) of § 422.374, HCFA may waive the State licensure requirement if the organization has applied (except as provided in paragraph (b)(4) of this section) for the most closely appropriate State license or authority to conduct business as an M+C plan.

(b) *Basis for waiver of State licensure.* Any of the following may constitute a basis for HCFA's waiver of State licensure.

(1) *Failure to act timely on application.* The State failed to complete action on the licensing application within 90 days of the date the State received a substantially complete application.

(2) *Denial of application based on discriminatory treatment.* The State has—

(i) Denied the license application on the basis of material requirements, procedures, or standards (other than solvency requirements) not generally applied by the State to other entities engaged in a substantially similar business; or

(ii) Required, as a condition of licensure that the organization offer any product or plan other than an M+C plan.

(3) *Denial of application based on different solvency requirements.* (i) The State has denied the application, in whole or in part, on the basis of the organization's failure to meet solvency requirements that are different from those set forth in §§ 422.380 through 422.390; or

(ii) HCFA determines that the State has imposed, as a condition of licensure, any documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, or standards set forth by HCFA to implement, monitor, and enforce §§ 422.380 through 422.390.

(4) *State declines to accept licensure application.* The appropriate State licensing authority has given the organization written notice that it will not accept its licensure application.

11. In § 422.374, paragraph (b) is revised to read as follows:

§ 422.374 Waiver request and approval process.

* * * * *

(b) HCFA gives the organization written notice of granting or denial of waiver within 60 days of receipt of a substantially complete waiver request.

* * * * *

12. In § 422.384, paragraph (b)(3) is revised to read as follows:

§ 422.384 Financial plan requirement.

* * * * *

(b) * * *

(3) Cash-flow statements;

* * * * *

13. *Nomenclature change:* Throughout subpart H, the phrase "health care provider", wherever it appears, is revised to read "provider".

14. Subpart I is added as follows:

Subpart I—Organization Compliance with State Law and Preemption by Federal Law

Sec.
422.400 State licensure requirement.
422.402 Federal preemption of State law.
422.404 State premium taxes prohibited.

Subpart I—Organization Compliance with State Law and Preemption by Federal Law

§ 422.400 State licensure requirement.

Except in the case of a PSO granted a waiver under subpart H of this part, each M+C organization must—

(a) Be licensed under State law, or otherwise authorized to operate under State law, as a risk-bearing entity (as defined in § 422.2) eligible to offer health insurance or health benefits coverage in each State in which it offers one or more M+C plans;

(b) If not commercially licensed, obtain certification from the State that the organization meets a level of financial solvency and such other standards as the State may require for it to operate as an M+C organization; and

(c) Demonstrate to HCFA that—

(1) The scope of its license or authority allows the organization to offer the type of M+C plan or plans that it intends to offer in the State; and

(2) If applicable, it has obtained the State certification required under paragraph (b) of this section.

§ 422.402 Federal preemption of State law.

(a) *General preemption.* Except as provided in paragraph (b) of this section, the rules, contract requirements, and standards established under this part supersede any State laws, regulations, contract requirements, or other standards that would otherwise apply to M+C organizations and their M+C plans only to the extent that such State laws are inconsistent with the standards established under this part. This preemption of State laws and other standards applies only to coverage pursuant to an M+C contract, and does not extend to benefits outside of such contract or to individuals who are not M+C enrollees of an organization with an M+C contract.

(b) *Specific preemption.* As they might otherwise apply to the M+C plans of an M+C organization in a State, State laws and regulations pertaining to the following areas are specifically preempted by this part:

(1) Benefit requirements, such as mandating the inclusion in an M+C plan of a particular service, or specifying the scope or duration of a service (for example, length of hospital stay, number of home health visits). State cost-sharing standards with respect to any benefits are preempted only if they are inconsistent with this part, as provided for in paragraph (a) of this section.

(2) Requirements relating to inclusion or treatment of providers and suppliers.

(3) Coverage determinations (including related appeal and grievance processes for all benefits included under an M+C contract). Determinations on issues other than whether a service is covered under an M+C contract, and the extent of enrollee liability under the M+C plan for such a service, are not considered coverage determinations for purposes of this paragraph.

(c) Except as provided in paragraphs (a) and (b) of this section, nothing in this section may be construed to affect or modify the provisions of any other law or regulation that imposes or preempts a specific State authority.

§ 422.404 State premium taxes prohibited.

(a) *Basic rule.* No premium tax, fee, or other similar assessment may be imposed by any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, or any of their political subdivision or other governmental authorities with respect to any payment HCFA makes on behalf of M+C enrollees under subpart F of this part.

(b) *Construction.* Nothing in this section shall be construed to exempt any M+C organization from taxes, fees, or other monetary assessments related to the net income or profit that accrues to, or is realized by, the organization from business conducted under this part, if that tax, fee, or payment is applicable to a broad range of business activity.

Subpart J [Reserved]

15. Subpart J is reserved.

16. Subpart K is added as follows:

Subpart K—Contracts With Medicare+Choice Organizations

Sec.
422.500 Definitions.
422.501 General provisions.
422.502 Contract provisions.
422.504 Effective date and term of contract.
422.506 Nonrenewal of contract.
422.508 Modification or termination of contract by mutual consent.
422.510 Termination of contract by HCFA.
422.512 Termination of contract by the M+C organization.
422.514 Minimum enrollment requirements.
422.516 Reporting requirements.
422.520 Prompt payment by M+C organization.
422.524 Special rules for RFB societies.

Subpart K—Contracts With Medicare+Choice Organizations

§ 422.500 Definitions.

For purposes of this subpart, the following definitions apply:

Business transaction means any of the following kinds of transactions:

(1) Sale, exchange, or lease of property.

(2) Loan of money or extension of credit.

(3) Goods, services, or facilities furnished for a monetary consideration, including management services, but not including—

(i) Salaries paid to employees for services performed in the normal course of their employment; or

(ii) Health services furnished to the M+C organization's enrollees by hospitals and other providers, and by M+C organization staff, medical groups, or independent practice associations, or by any combination of those entities.

Clean Claim means a claim that has no defect, impropriety, lack of any required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment.

Party in interest includes the following:

(1) Any director, officer, partner, or employee responsible for management or administration of an M+C organization.

(2) Any person who is directly or indirectly the beneficial owner of more than 5 percent of the organization's equity; or the beneficial owner of a mortgage, deed of trust, note, or other interest secured by and valuing more than 5 percent of the organization.

(3) In the case of an M+C organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law.

(4) Any entity in which a person described in paragraph (1), (2), or (3) of this definition:

(i) Is an officer, director, or partner; or

(ii) Has the kind of interest described in paragraphs (1), (2), or (3) of this definition.

(5) Any person that directly or indirectly controls, is controlled by, or is under common control with, the M+C organization.

(6) Any spouse, child, or parent of an individual described in paragraph (1), (2), or (3) of this definition.

Related entity means any entity that is related to the M+C organization by common ownership or control and—

(1) Performs some of the M+C organization's management functions under contract or delegation;

(2) Furnishes services to Medicare enrollees under an oral or written agreement; or

(3) Leases real property or sells materials to the M+C organization at a cost of more than $2,500 during a contract period.

Significant business transaction means any business transaction or series of transactions of the kind specified in the above definition of "business transaction" that, during any fiscal year of the M+C organization, have a total value that exceeds $25,000 or 5 percent of the M+C organization's total operating expenses, whichever is less.

§ 422.501 General provisions.

(a) *Basic rule.* In order to qualify as an M+C organization, enroll beneficiaries in any M+C plans it offers, and be paid on behalf of Medicare beneficiaries enrolled in those plans, an M+C organization must enter into a contract with HCFA.

(b) *Conditions necessary to contract as an M+C organization.* Any entity seeking to contract as an M+C organization must:

(1) Be licensed by the State as a risk bearing entity in each State in which it seeks to offer an M+C plan as defined in § 422.2.

(2) Meet the minimum enrollment requirements of § 422.514, unless waived under § 422.514(b).

(3) Have administrative and management arrangements satisfactory to HCFA, as demonstrated by at least the following:

(i) A policy making body that exercises oversight and control over the M+C organization's policies and personnel to ensure that management actions are in the best interest of the organization and its enrollees.

(ii) Personnel and systems sufficient for the M+C organization to organize, plan, control, and evaluate financial and marketing activities, the furnishing of services, the quality assurance program, and the administrative and management aspects of the organization.

(iii) At a minimum, an executive manager whose appointment and removal are under the control of the policy making body.

(iv) A fidelity bond or bonds, procured and maintained by the M+C organization, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the M+C organization.

(v) Insurance policies or other arrangements, secured and maintained by the M+C organization and approved by HCFA to insure the M+C organization against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(vi) A compliance plan that consists of the following:

(A) Written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable Federal and State standards.

(B) The designation of a compliance officer and compliance committee that are accountable to senior management.

(C) Effective training and education between the compliance officer and organization employees.

(D) Effective lines of communication between the compliance officer and the organization's employees.

(E) Enforcement of standards through well-publicized disciplinary guidelines.

(F) Provision for internal monitoring and auditing.

(G) Ensures prompt response to detected offenses and development of corrective action initiatives.

(H) An adhered-to process for reporting to HCFA and/or the OIG credible information of violations of law by the M+C organization, plan, subcontractors or enrollees for a determination as to whether criminal, civil, or administrative action may be appropriate. With respect to enrollees, this reporting requirement shall be restricted to credible information on violations of law with respect to enrollment in the plan, or the provision of, or payment for, health services.

(4) Not accept new enrollees under a section 1876 reasonable cost contract in any area in which it seeks to offer an M+C plan.

(5) The M+C organization's contract must not have been terminated by HCFA under § 422.510 within the past 5 years.

(c) *Contracting authority.* Under the authority of section 1857(c)(5) of the Act, HCFA may enter into contracts under this part without regard to Federal and Departmental acquisition regulations set forth in title 48 of the CFR and provisions of law or other regulations relating to the making, performance, amendment, or modification of contracts of the United States if HCFA determines that those provisions are inconsistent with the efficient and effective administration of the Medicare program.

(d) *Protection against fraud and beneficiary protections.* (1) HCFA annually audits the financial records (including data relating to Medicare utilization, costs, and computation of the ACR) of at least one-third of the M+C organizations offering M+C plans. These auditing activities are subject to monitoring by the Comptroller General.

(2) Each contract under this section must provide that HCFA, or any person or organization designated by HCFA has the right to:

(i) Inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under the M+C contract;

(ii) Inspect or otherwise evaluate the facilities of the organization when there is reasonable evidence of some need for such inspection; and

(iii) Audit and inspect any books, contracts, and records of the M+C organization that pertain to—

(A) The ability of the organization to bear the risk of potential financial losses, or

(B) Services performed or determinations of amounts payable under the contract.

(e) *Severability of contracts.* The contract must provide that, upon HCFA's request—

(1) The contract will be amended to exclude any M+C plan or State-licensed entity specified by HCFA; and

(2) A separate contract for any such excluded plan or entity will be deemed to be in place when such a request is made.

§ 422.502 Contract provisions.

The contract between the M+C organization and HCFA must contain the following provisions:

(a) *Agreement to comply with regulations and instructions.* The M+C organization agrees to comply with all the applicable requirements and conditions set forth in this part and in general instructions. An M+C organization's compliance with paragraphs (a)(1) through (a)(13) of this section is material to performance of the contract. The M+C organization agrees—

(1) To accept new enrollments, make enrollments effective, process voluntary disenrollments, and limit involuntary disenrollments, as provided in subpart B of this part.

(2) That it will comply with the prohibition in § 422.108 on discrimination in beneficiary enrollment.

(3) To provide—

(i) The basic benefits as required under § 422.100 and, to the extent applicable, supplemental benefits under § 422.101; and

(ii) Access to benefits as required under subpart C of this part;

(iii) In a manner consistent with professionally recognized standards of health care, all benefits covered by Medicare.

(4) To disclose information to beneficiaries in the manner and the form prescribed by HCFA as required under § 422.110;

(5) To operate a quality assurance and performance improvement program and have an agreement for external quality review as required under subpart D of this part;

(6) To comply with all applicable provider requirements in subpart E of this part, including provider certification requirements, anti-discrimination requirements, provider participation and consultation requirements, the prohibition on interference with provider advice, limits on provider indemnification, rules governing payments to providers, and limits on physician incentive plans;

(7) To comply with all requirements in subpart M of this part governing coverage determinations, grievances, and appeals;

(8) To comply with the reporting requirements in § 422.516 and the requirements in § 422.257 for submitting encounter data to HCFA;

(9) That it will be paid under the contract in accordance with the payment rules in subpart F of this part;

(10) To develop its annual ACR, and submit all required information on premiums, benefits, and cost-sharing by May 1, as provided in subpart G of this part;

(11) That its contract may not be renewed or may be terminated in accordance with this subpart and subpart N of this part.

(12) To comply will all requirements that are specific to a particular type of M+C plan, such as the special rules for private fee-for-service plans in §§ 422.114 and 422.216 and the MSA requirements in §§ 422.56, 422.103, and 422.262; and

(13) To comply with the confidentiality and enrollee record accuracy requirements in § 422.118.

(14) An M+C organization's compliance with paragraphs (a)(1) through (a)(13) and (c) of this section is material to performance of the contract.

(b) *Communication with HCFA.* The M+C organization must have the capacity to communicate with HCFA electronically.

(c) *Prompt payment.* The M+C organization must comply with the prompt payment provisions of § 422.520 and with instructions issued by HCFA, as they apply to each type of plan included in the contract.

(d) *Maintenance of records.* The M+C organization agrees to maintain for 6 years books, records, documents, and other evidence of accounting procedures and practices that—

(1) Are sufficient to do the following:

(i) Accommodate periodic auditing of the financial records (including data related to Medicare utilization, costs, and computation of the ACR) of M+C organizations.

(ii) Enable HCFA to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed under the contract, and the facilities of the organization.

(iii) Enable HCFA to audit and inspect any books and records of the M+C organization that pertain to the ability of the organization to bear the risk of potential financial losses, or to services performed or determinations of amounts payable under the contract.

(iv) Properly reflect all direct and indirect costs claimed to have been incurred and used in the preparation of the ACR proposal.

(v) Establish component rates of the ACR for determining additional and supplementary benefits.

(vi) Determine the rates utilized in setting premiums for State insurance agency purposes and for other government and private purchasers; and

(2) Include at least records of the following:

(i) Ownership and operation of the M+C organization's financial, medical, and other record keeping systems.

(ii) Financial statements for the current contract period and six prior periods.

(iii) Federal income tax or informational returns for the current contract period and six prior periods.

(iv) Asset acquisition, lease, sale, or other action.

(v) Agreements, contracts, and subcontracts.

(vi) Franchise, marketing, and management agreements.

(vii) Schedules of charges for the M+C organization's fee-for-service patients.

(viii) Matters pertaining to costs of operations.

(ix) Amounts of income received by source and payment.

(x) Cash flow statements.

(xi) Any financial reports filed with other Federal programs or State authorities.

(e) *Access to facilities and records.* The M+C organization agrees to the following:

(1) HHS, the Comptroller General, or their designee may evaluate, through inspection or other means—

(i) The quality, appropriateness, and timeliness of services furnished to Medicare enrollees under the contract;

(ii) The facilities of the M+C organization; and

(iii) The enrollment and disenrollment records for the current contract period and six prior periods.

(2) HHS, the Comptroller General, or their designees may audit, evaluate, or inspect any books, contracts, medical records, patient care documentation, and other records of the M+C organization, related entity, contractor, subcontractor, or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract, or as the Secretary may deem necessary to enforce the contract.

(3) The M+C organization agrees to make available, for the purposes specified in paragraph (d) of this section, its premises, physical facilities and equipment, records relating to its Medicare enrollees, and any additional relevant information that HCFA may require.

(4) HHS, the Comptroller General, or their designee's right to inspect, evaluate, and audit extends through 6 years from the final date of the contract period or completion of audit, whichever is later unless—

(i) HCFA determines there is a special need to retain a particular record or group of records for a longer period and notifies the M+C organization at least 30 days before the normal disposition date;

(ii) There has been a termination, dispute, or fraud or similar fault by the M+C organization, in which case the retention may be extended to 6 years from the date of any resulting final resolution of the termination, dispute, or fraud or similar fault; or

(iii) HCFA determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate, and audit the M+C organization at any time.

(f) *Disclosure of information.* The M+C organization agrees to submit—

(1) To HCFA, certified financial information that must include the following:

(i) Such information as HCFA may require demonstrating that the organization has a fiscally sound operation.

(ii) Such information as HCFA may require pertaining to the disclosure of ownership and control of the M+C organization.

(2) To HCFA, all information that is necessary for HCFA to administer and evaluate the program and to simultaneously establish and facilitate a process for current and prospective

beneficiaries to exercise choice in obtaining Medicare services. This information includes, but is not limited to:

(i) The benefits covered under an M+C plan;

(ii) The M+C monthly basic beneficiary premium and M+C monthly supplemental beneficiary premium, if any, for the plan or in the case of an MSA plan, the M+C monthly MSA premium.

(iii) The service area and continuation area, if any, of each plan and the enrollment capacity of each plan;

(iv) Plan quality and performance indicators for the benefits under the plan including —

(A) Disenrollment rates for Medicare enrollees electing to receive benefits through the plan for the previous 2 years;

(B) Information on Medicare enrollee satisfaction;

(C) Information on health outcomes;

(D) The recent record regarding compliance of the plan with requirements of this part, as determined by HCFA; and

(E) Other information determined by HCFA to be necessary to assist beneficiaries in making an informed choice among M+C plans and traditional Medicare;

(v) Information about beneficiary appeals and their disposition;

(vi) Information regarding all formal actions, reviews, findings, or other similar actions by States, other regulatory bodies, or any other certifying or accrediting organization;

(vii) For M+C organizations offering an MSA plan, information specified by HCFA for HCFA's use in preparing its report to the Congress on the MSA demonstration, including data specified by HCFA in the areas of selection, use of preventative care, and access to services.

(viii) To HCFA, any other information deemed necessary by HCFA for the administration or evaluation of the Medicare program.

(3) To its enrollees all informational requirements under § 422.64 and, upon an enrollee's, request the financial disclosure information required under § 422.516.

(g) *Beneficiary Financial Protection.* The M+C organization agrees to comply with the following requirements:

(1) Each M+C organization must adopt and maintain arrangements satisfactory to HCFA to protect its enrollees from incurring liability for payment of any fee that are the legal obligation of the M+C organization. To meet this requirement the M+C organization must—

(i) Ensure that all contractual or other written arrangements with providers prohibit the organization's providers from holding any beneficiary enrollee liable for payment of any such fees; and

(ii) Indemnify the beneficiary enrollee for payment of any fees that are the legal obligation of the M+C organization for services furnished by providers that do not contract, or that have not otherwise entered into an agreement with the M+C organization, to provide services to the organization's beneficiary enrollees.

(2) The M+C organization must provide for continuation of enrollee health care benefits—

(i) For all enrollees, for the duration of the contract period for which HCFA payments have been made; and

(ii) For enrollees who are hospitalized on the date its contract with HCFA terminates, or, in the event of an insolvency, through discharge.

(3) In meeting the requirements of this paragraph (g), other than the provider contract requirements specified in paragraph (g)(1) of this section, the M+C organization may use—

(i) Contractual arrangements;

(ii) Insurance acceptable to HCFA;

(iii) Financial reserves acceptable to HCFA; or

(iv) Any other arrangement acceptable to HCFA.

(h) *Requirements of other laws and regulations.* (1) The M+C organization agrees to comply with—

(i) Title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR part 84;

(ii) The Age Discrimination Act of 1975 as implemented by regulations at 45 CFR part 91;

(iii) The Americans With Disabilities Act; and

(iv) Other laws applicable to recipients of Federal funds; and

(v) All other applicable laws and rules.

(2) M+C organizations receiving Federal payments under M+C contracts, and related entities, contractors, and subcontractors paid by an M+C organization to fulfill its obligations under its M+C contract are subject to certain laws that are applicable to individuals and entities receiving Federal funds. M+C organizations must inform all related entities, contractors and subcontractors that payments that they receive are, in whole or in part, from Federal funds.

(i) *M+C organization relationship with related entities, contractors, and subcontractors.* (1) Notwithstanding any relationship(s) that the M+C organization may have with related entities, contractors, or subcontractors, the M+C organization maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with HCFA.

(2) The M+C organization agrees to require all related entities, contractors, or subcontractors to agree that—

(i) HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of the related entity(s), contractor(s), or subcontractor(s) involving transactions related to the M+C contract; and

(ii) HHS', the Comptroller General's, or their designee's right to inspect, evaluate, and audit any pertinent information for any particular contract period will exist through 6 years from the final date of the contract period or from the date of completion of any audit, whichever is later.

(3) All contracts or written arrangements between M+C organizations and providers, related entities, contractors, or subcontractors must contain the following:

(i) Enrollee protection provisions that provide—

(A) Consistent with paragraph (g)(1) of this section, arrangements that prohibit providers from holding an enrollee liable for payment of any fees that are the obligation of the M+C Organization; and

(B) Consistent with paragraph (g)(2) of this section, provision for the continuation of benefits.

(ii) Accountability provisions that indicate that—

(A) The M+C organization oversees and is accountable to HCFA for any functions or responsibilities that are described in these standards; and

(B) The M+C organization may only delegate activities or functions to a provider, related entity, contractor, or subcontractor in a manner consistent with requirements set forth at paragraph (i)(4) of this section.

(iii) A provision requiring that any services or other activity performed by a related entity, contractor or subcontractor in accordance with a contract or written agreement will be consistent and comply with the M+C organization's contractual obligations.

(4) If any of the M+C organizations' activities or responsibilities under its contract with HCFA are delegated to other parties, the following requirements apply to any related entity, contractor, subcontractor, or provider:

(i) Written arrangements must specify delegated activities and reporting responsibilities.

(ii) Written arrangements must either provide for revocation of the delegation activities and reporting requirements or specify other remedies in instances where HCFA or the M+C organization determine that such parties have not performed satisfactorily.

(iii) Written arrangements must specify that the performance of the parties is monitored by the M+C organization on an ongoing basis.

(iv) Written arrangements must specify that either—

(A) The credentials of medical professionals affiliated with the party or parties will be either reviewed by the M+C organization; or

(B) The credentialing process will be reviewed and approved by the M+C organization and the M+C organization must audit the credentialing process on an ongoing basis.

(v) All contracts or written arrangements must specify that the related entity, contractor, or subcontractor must comply with all applicable Medicare laws, regulations, and HCFA instructions.

(5) If the M+C organization delegates selection of the providers, contractors, or subcontractor to another organization, the M+C organization's written arrangements with that organization must state that the HCFA-contracting M+C organization retains the right to approve, suspend, or terminate any such arrangement.

(j) *Additional contract terms.* The M+C organization agrees to include in the contract such other terms and conditions as HCFA may find necessary and appropriate in order to implement requirements in this part.

(k) *Severability of contracts.* The contract must provide that, upon HCFA's request—

(1) The contract will be amended to exclude any M+C plan or State-licensed entity specified by HCFA; and

(2) A separate contract for any such excluded plan or entity will be deemed to be in place when such a request is made.

(l) *Certification of data that determine payment.* As a condition for receiving a monthly payment under subpart F of this part, the M+C organization agrees that its chief executive officer (CEO) or chief financial officer (CFO) must request payment under the contract on a document that certifies the accuracy, completeness, and truthfulness of relevant data that HCFA requests. Such data include specified enrollment information, encounter data, and other information that HCFA may specify.

(1) The CEO or CFO must certify that each enrollee for whom the organization is requesting payment is validly enrolled in an M+C plan offered by the organization and the information relied upon by HCFA in determining payment is accurate.

(2) The CEO or CFO must certify that the encounter data it submits under § 422.257 are accurate, complete, and truthful.

(3) If such encounter data are generated by a related entity, contractor, or subcontractor of an M+C organization, such entity, contractor, or subcontractor must similarly certify the accuracy, completeness, and truthfulness of the data.

(m) *Certification of accuracy of ACR.* The M+C organization agrees, as a condition for retaining (and not providing additional benefits with) payment amounts below the amount of its ACR, that the information in its ACR submission is accurate and fully conforms to the requirements in § 422.310.

§ 422.504 Effective date and term of contract.

(a) *Effective date.* The contract is effective on the date specified in the contract between the M+C organization and HCFA and, for a contract that provides for coverage under an MSA plan, not earlier than January 1999.

(b) *Term of contract.* Except as provided in paragraph (d) of this section, each contract is for a period of 12 months beginning on January 1 and ending on December 31.

(c) *Renewal of contract.* In accordance with § 422.506, contracts are renewed annually only if—

(1) HCFA informs the M+C organization that it authorizes a renewal; and

(2) The M+C organization has not provided HCFA with a notice of intention not to renew.

(d) *Exception.* Prior to January 1, 2002, at HCFA's discretion, a contract may be for a term longer than 12 months and may begin on a date specified by HCFA other than January 1.

§ 422.506 Nonrenewal of contract.

(a) *Nonrenewal by an M+C organization.* (1) An M+C organization may elect not to renew its contract with HCFA as of the end of the term of the contract for any reason provided it meets the timeframes for doing so set forth in paragraphs (a)(2) and (a)(3) of this section.

(2) If an M+C organization does not intend to renew its contract, it must notify—

(i) HCFA in writing, by May 1 of the year in which the contract would end;

(ii) Each Medicare enrollee, at least 90 days before the date on which the nonrenewal is effective. This notice must include a written description of alternatives available for obtaining Medicare services within the service area, including alternative M+C plans, Medigap options, and original Medicare and must receive HCFA approval.

(iii) The general public, at least 90 days before the end of the current calendar year, by publishing a notice in one or more newspapers of general circulation in each community located in the M+C organization's service area.

(3) HCFA may accept a nonrenewal notice submitted after May 1 if—

(i) The M+C organization notifies its Medicare enrollees and the public in accordance with paragraph (a)(2)(ii) and (a)(2)(iii) of this section; and

(ii) Acceptance is not inconsistent with the effective and efficient administration of the Medicare program.

(4) If an M+C organization does not renew a contract under this paragraph (a), HCFA will not enter into a contract with the organization for 5 years unless there are special circumstances that warrant special consideration, as determined by HCFA.

(b) *HCFA decision not to renew.* (1) HCFA may elect not to authorize renewal of a contract for any of the following reasons:

(i) The M+C organization has not fully implemented or shown discernable progress in implementing quality improvement projects as defined in § 422.152(d).

(ii) The M+C organization's level of enrollment or growth in enrollment is determined by HCFA to threaten the viability of the organization under the M+C program and or be an indicator of beneficiary dissatisfaction with the M+C plan(s) offered by the organization.

(iii) For any of the reasons listed in § 422.510(a), which would also permit HCFA to terminate the contract.

(iv) The M+C organization has committed any of the acts in § 422.752(a) that would support the imposition of intermediate sanctions or civil money penalties under subpart O of this part.

(2) *Notice.* HCFA provides notice of its decision whether to authorize renewal of the contract as follows:

(i) To the M+C organization by May 1 of the contract year.

(ii) If HCFA decides not to authorize a renewal of the contract, to the M+C organization's Medicare enrollees by mail at least 90 days before the end of the current calendar year.

(iii) If HCFA decides not to authorize a renewal of the contract, to the general public at least 90 days before the end of the current calendar year, by publishing a notice in one or more newspapers of

general circulation in each community or county located in the M+C organization's service area.

(3) *Notice of appeal rights.* HCFA gives the M+C organization written notice of its right to appeal the decision not to renew in accordance with § 422.644.

§ 422.508 Modification or termination of contract by mutual consent.

(a) A contract may be modified or terminated at any time by written mutual consent.

(1) If the contract is terminated by mutual consent, except as provided in paragraph (b) of this section, the M+C organization must provide notice to its Medicare enrollees and the general public as provided in § 422.512(b)(2) and (b)(3).

(2) If the contract is modified by mutual consent, the M+C organization must notify its Medicare enrollees of any changes that HCFA determines are appropriate for notification within timeframes specified by HCFA.

(b) If the contract terminated by mutual consent is replaced the day following such termination by a new M+C contract, the M+C organization is not required to provide the notice specified in paragraph (a)(1) of this section.

§ 422.510 Termination of contract by HCFA.

(a) *Termination by HCFA.* HCFA may terminate a contract for any of the following reasons:

(1) The M+C organization has failed substantially to carry out the terms of its contract with HCFA.

(2) The M+C organization is carrying out its contract with HCFA in a manner that is inconsistent with the effective and efficient implementation of this part.

(3) HCFA determines that the M+C organization no longer meets the requirements of this part for being a contracting organization.

(4) The M+C organization commits or participates in fraudulent or abusive activities affecting the Medicare program, including submission of fraudulent data.

(5) The M+C organization experiences financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that such a risk to health exists.

(6) The M+C organization substantially fails to comply with the requirements in subpart M of this part relating to grievances and appeals.

(7) The M+C organization fails to provide HCFA with valid encounter data as required under § 422.257.

(8) The M+C organization fails to implement an acceptable quality assessment and performance improvement program as required under subpart D of this part.

(9) The M+C organization substantially fails to comply with the prompt payment requirements in § 422.520.

(10) The M+C organization substantially fails to comply with the service access requirements in § 422.112 or § 422.114.

(11) The M+C organization fails to comply with the requirements of § 422.208 regarding physician incentive plans.

(b) *Notice.* If HCFA decides to terminate a contract for reasons other than the grounds specified in § 422.510(a)(5), it gives notice of the termination as follows:

(1) *Termination of contract by HCFA.* (i) HCFA notifies the M+C organization in writing 90 days before the intended date of the termination.

(ii) The M+C organization notifies its Medicare enrollees of the termination by mail at least 30 days before the effective date of the termination.

(iii) The M+C organization notifies the general public of the termination at least 30 days before the effective date of the termination by publishing a notice in one or more newspapers of general circulation in each community or county located in the M+C organization's service area.

(2) *Immediate termination of contract by HCFA.* (i) For terminations based on violations prescribed in § 422.510(a)(5), HCFA notifies the M+C organization in writing that its contract has been terminated effective the date of the termination decision by HCFA. If termination is effective in the middle of a month, HCFA has the right to recover the prorated share of the capitation payments made to the M+C organization covering the period of the month following the contract termination.

(ii) HCFA notifies the M+C organization's Medicare enrollees in writing of HCFA's decision to terminate the M+C organization's contract. This notice occurs no later than 30 days after HCFA notifies the plan of its decision to terminate the M+C contract. HCFA simultaneously informs the Medicare enrollees of alternative options for obtaining Medicare services, including alternative M+C organizations in a similar geographic area and original Medicare.

(iii) HCFA notifies the general public of the termination no later than 30 days after notifying the plan of HCFA's decision to terminate the M+C contract. This notice is published in one or more newspapers of general circulation in each community or county located in the M+C organization's service area.

(c) *Corrective action plan*—(1) *General.* Before terminating a contract for reasons other than the grounds specified in paragraph (a)(5) of this section, HCFA provides the M+C organization with reasonable opportunity, not to exceed timeframes specified at subpart N of this part, to develop and receive HCFA approval of a corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(2) *Exception.* If a contract is terminated under § 422.510(a)(5), the M+C organization will not have the opportunity to submit a corrective action plan.

(d) *Appeal rights.* If HCFA decides to terminate a contract, it sends written notice to the M+C organization informing it of its termination appeal rights in accordance with subpart N of this part.

§ 422.512 Termination of contract by the M+C organization.

(a) *Cause for termination.* The M+C organization may terminate the M+C contract if HCFA fails to substantially carry out the terms of the contract.

(b) *Notice.* The M+C organization must give advance notice as follows:

(1) To HCFA, at least 90 days before the intended date of termination. This notice must specify the reasons why the M+C organization is requesting contract termination.

(2) To its Medicare enrollees, at least 60 days before the termination effective date. This notice must include a written description of alternatives available for obtaining Medicare services within the services area, including alternative M+C plans, Medigap options, original Medicare and must receive HCFA approval.

(3) To the general public at least 60 days before the termination effective date by publishing an HCFA-approved notice in one or more newspapers of general circulation in each community or county located in the M+C organization's geographic area.

(c) *Effective date of termination.* The effective date of the termination is determined by HCFA and is at least 90 days after the date HCFA receives the M+C organization's notice of intent to terminate.

(d) *HCFA's liability.* HCFA's liability for payment to the M+C organization ends as of the first day of the month

after the last month for which the contract is in effect.

(e) *Effect of termination by the organization.* HCFA does not enter into an agreement with an organization that has terminated its contract within the preceding 5 years unless there are circumstances that warrant special consideration, as determined by HCFA.

§ 422.514 Minimum enrollment requirements.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, HCFA does not enter into a contract under this subpart unless the organization meets the following minimum enrollment requirement—

(1) At least 5,000 individuals (or 1,500 individuals if the organization is a PSO) are enrolled for the purpose of receiving health benefits from the organization; or

(2) At least 1,500 individuals (or 500 individuals if the organization is a PSO) are enrolled for purposes of receiving health benefits from the organization and the organization primarily serves individuals residing outside of urbanized areas as defined in § 412.62(f) (or, in the case of a PSO, the PSO meets the requirements in § 422.352(c)).

(3) Except as provided for in paragraph (b) of this section, an M+C organization must maintain a minimum enrollment as defined in paragraphs (a)(1) and (a)(2) of this section for the duration of its contract.

(b) *Minimum Enrollment Waiver.* (1) For an organization that does not meet the applicable requirement of paragraph (a) of this section at application for an M+C contract or during the first 3 years of such contract, HCFA may waive the minimum enrollment requirement as provided for below. To receive a waiver, an organization must demonstrate to HCFA's satisfaction that it is capable to administering and managing an M+C contract and is able to manage the level of risk required under the contract. Factors that HCFA will take into consideration in making this evaluation include the extent to which—

(i) The organization management and providers have previous experience in managing and providing health care services under a risk-based payment arrangement to at least as many individuals as the applicable minimum enrollment for the entity as described in paragraph (a) of this section, or

(ii) The organization has the financial ability to bear financial risk under an M+C contract. In determining whether an organization is capable of bearing risk, HCFA considers factors such as the organization's management experience as described in paragraph (b)(1)(i) of this section and stop-loss insurance that is adequate and acceptable to HCFA; and,

(iii) The organization is able to establish a marketing and enrollment process that will allow it to meet the applicable enrollment requirement specified in paragraph (a) of this section prior to completion of the third contract year.

(2) If an M+C organization fails to meet the enrollment requirement in the first year, HCFA may waive the minimum requirements for another year provided that the organization—

(i) Requests an additional minimum enrollment waiver no later than 120 days before the end of the first year;

(ii) Continues to demonstrate it is capable of administering and managing an M+C contract and is able to manage the level of risk; and,

(iii) Demonstrates an acceptable marketing and enrollment process. Enrollment projections for the second year of the waiver will become the organization's transitional enrollment standard.

(3) If an M+C organization fails to meet the enrollment requirement in the second year, HCFA may waive the minimum requirements for the third year only if the organization has attained the transitional enrollment standard as described in paragraph (b)(2)(iii) of this section.

(c) Failure to meet enrollment requirements. HCFA may elect not to renew its contract with an M+C organization that fails to meet the applicable enrollment requirement in paragraph (a) of this section

§ 422.516 Reporting requirements.

(a) *Required information.* Each M+C organization must have an effective procedure to develop, compile, evaluate, and report to HCFA, to its enrollees, and to the general public, at the times and in the manner that HCFA requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the following:

(1) The cost of its operations.

(2) The patterns of utilization of its services.

(3) The availability, accessibility, and acceptability of its services.

(4) To the extent practical, developments in the health status of its enrollees.

(5) Information demonstrating that the M+C organization has a fiscally sound operation.

(6) Other matters that HCFA may require.

(b) *Significant business transactions.* Each M+C organization must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the following:

(1) A description of significant business transactions (as defined in § 422.500) between the M+C organization and a party in interest.

(2) With respect to those transactions—

(i) A showing that the costs of the transactions listed in paragraph (c) of this section do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(ii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(3) A combined financial statement for the M+C organization and a party in interest if either of the following conditions is met:

(i) Thirty-five percent or more of the costs of operation of the M+C organization go to a party in interest.

(ii) Thirty-five percent or more of the revenue of a party in interest is from the M+C organization.

(c) *Requirements for combined financial statements.* (1) The combined financial statements required by paragraph (b)(3) of this section must display in separate columns the financial information for the M+C organization and each of the parties in interest.

(2) Inter-entity transactions must be eliminated in the consolidated column.

(3) The statements must have been examined by an independent auditor in accordance with generally accepted accounting principles and must include appropriate opinions and notes.

(4) Upon written request from an M+C organization showing good cause, HCFA may waive the requirement that the organization's combined financial statement include the financial information required in this paragraph (c) with respect to a particular entity.

(d) *Reporting and disclosure under ERISA.* (1) For any employees' health benefits plan that includes an M+C organization in its offerings, the M+C organization must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular M+C organization) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The M+C organization must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

(e) *Loan information.* Each organization must notify HCFA of any loans or other special financial arrangements it makes with contractors, subcontractors and related entities.

(f) *Enrollee access to information.* Each M+C organization must make the information reported to HCFA under § 422.502(f)(1) available to its enrollees upon reasonable request.

§ 422.520 Prompt payment by M+C organization.

(a) *Contract between HCFA and the M+C organization.*

(1) The contract between HCFA and the M+C organization must provide that the M+C organization will pay 95 percent of the "clean claims" within 30 days of receipt if they are submitted by, or on behalf of, an enrollee of an M+C private fee-for-service plan or are claims for services that are not furnished under a written agreement between the organization and the provider.

(2) The M+C organization must pay interest on clean claims that are not paid within 30 days in accordance with sections 1816(c)(2)(B) and 1842(c)(2)(B).

(3) All other claims must be approved or denied within 60 calendar days from the date of the request.

(b) *Contracts between M+C organizations and providers and suppliers.* Contracts or other written agreements between M+C organizations and providers must contain a prompt payment provision, the terms of which are developed and agreed to by both the M+C organization and the relevant provider.

(c) *Failure to comply.* If HCFA determines, after giving notice and opportunity for hearing, that an M+C organization has failed to make payments in accordance with paragraph (a) of this section, HCFA may provide—

(1) For direct payment of the sums owed to providers, or M+C private fee-for-service plan enrollees; and

(2) For appropriate reduction in the amounts that would otherwise be paid to the organization, to reflect the amounts of the direct payments and the cost of making those payments.

§ 422.524 Special rules for RFB societies.

In order to participate as an M+C organization, an RFB society—

(a) May not impose any limitation on membership based on any factor related to health status; and

(b) Must offer, in addition to the M+C RFB plan, health coverage to individuals who are members of the church or convention or group of churches with which the society is affiliated, but who are not entitled to receive benefits from the Medicare program.

Subpart L—Effect of Change of Ownership or Leasing of Facilities During Term of Contract

17. *Nomenclature change.* Throughout newly designated subpart L, "HMO or CMP" is revised to read "M+C organization" wherever it appears.

18. *Nomenclature change.* Throughout newly designated subpart L, "HMO's or CMP's" are revised to read "M+C organization" and "M+C organization's" respectively.

§ 422.550 [Amended]

19. In § 422.550, the following changes are made:

a. In paragraph (b), the following sentence is added at the end: "The M+C organization must also provide updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization."

b. In paragraphs (c)(2) and (e), "§ 417.522" is revised to read "§ 422.552".

c. In paragraph (d)(2), "subpart L" is revised to read "subpart K".

§ 422.552 [Amended]

20. In § 422.552, in paragraph (a)(1), the following sentence is added at the end: "The M+C organization also provides HCFA with updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization."

§ 422.553 [Amended]

21. In § 422.553, "subpart J" is revised to read "subpart K".

22. Subparts M through O are added to read as follows:

Subpart M—Grievances, Organization Determinations and Appeals

Sec.

422.560 Basis and scope.
422.561 Definitions.
422.562 General provisions.
422.564 Grievance procedures.
422.566 Organization determinations.
422.568 Standard timeframes and notice requirements for organization determinations.
422.570 Expediting certain organization determinations.
422.572 Timeframes and notice requirements for expedited organization determinations.
422.574 Parties to the organization determination.
422.576 Effect of an organization determination.
422.578 Right to a reconsideration.
422.580 Reconsideration defined.
422.582 Request for a standard reconsideration.
422.584 Expediting certain reconsiderations.
422.586 Opportunity to submit evidence.
422.590 Timeframes and responsibility for reconsiderations.
422.592 Reconsideration by an independent entity.
422.594 Notice of reconsidered determination by the independent entity.
422.596 Effect of a reconsidered determination.
422.600 Right to a hearing.
422.602 Request for an ALJ hearing.
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Subpart M—Grievances, Organization Determinations and Appeals

§ 422.560 Basis and scope.

(a) *Statutory basis.* (1) Section 1852(f) of the Act provides that an M+C organization must establish meaningful grievance procedures.

(2) Section 1852(g) of the Act establishes requirements that an M+C organization must meet concerning organization determinations and appeals.

(b) *Scope.* This subpart sets forth—

(1) Requirements for M+C organizations with respect to grievance procedures, organization determinations, and appeal procedures.

(2) The rights of M+C enrollees with respect to organization determinations, and grievance and appeal procedures.

(3) The rules concerning notice of noncoverage of inpatient hospital care.

(4) The rules that apply when an M+C enrollee requests immediate PRO review of a determination that he or she no longer needs inpatient hospital care.

§ 422.561 Definitions.

As used in this subpart, unless the context indicates otherwise—

Appeal means any of the procedures that deal with the review of adverse organization determinations on the health care services an enrollee is entitled to receive or any amounts the enrollee must pay for a service, as defined under § 422.566(b). These procedures include reconsiderations by the M+C organization, and if necessary, an independent review entity, hearings before ALJs, review by the Departmental Appeals Board (DAB), and judicial review.

Authorized representative means an individual authorized by an enrollee to act on his or her behalf in obtaining an organization determination or in dealing with any of the levels of the appeal process, subject to the rules described in 20 CFR part 404, subpart R, unless otherwise stated in this subpart.

Enrollee means an M+C eligible individual who has elected an M+C plan offered by an M+C organization, or his or her authorized representative.

Grievance means any complaint or dispute other than one involving an organization determination, as defined in § 422.566(b).

Physician has the meaning given the term in section 1861(r) of the Act.

§ 422.562 General provisions.

(a) *Responsibilities of the M+C organization.* (1) An M+C organization, with respect to each M+C plan that it offers, must establish and maintain—

(i) A grievance procedure as described in § 422.564 for addressing issues that do not involve organization determinations;

(ii) A procedure for making timely organization determinations; and

(iii) Appeal procedures that meet the requirements of this subpart for issues that involve organization determinations; and

(2) An M+C organization must ensure that all enrollees receive written information about the—

(i) Grievance and appeal procedures that are available to them through the M+C organization; and

(ii) Complaint process available to the enrollee under the PRO process as set forth under section 1154(a)(14) of the Act.

(3) In accordance with subpart K of this part, if the M+C organization delegates any of its responsibilities under this subpart to another entity or individual through which the organization provides health care services, the M+C organization is ultimately responsible for ensuring that the entity or individual satisfies the relevant requirements of this subpart.

(b) *Rights of M+C enrollees.* In accordance with the provisions of this subpart, enrollees have the following rights:

(1) The right to have grievances between the enrollee and the M+C organization heard and resolved, as described in § 422.564.

(2) The right to a timely organization determination, as provided under § 422.566.

(3) The right to request an expedited organization determination, as provided under § 422.570.

(4) If dissatisfied with any part of an organization determination, the following appeal rights:

(i) The right to a reconsideration of the adverse organization determination by the M+C organization, as provided under § 422.578.

(ii) The right to request an expedited reconsideration, as provided under § 422.584.

(iii) If, as a result of a reconsideration, an M+C organization affirms, in whole or in part, its adverse organization determination, the right to an automatic reconsidered determination made by an independent, outside entity contracted by HCFA, as provided in § 422.592.

(iv) The right to an ALJ hearing if the amount in controversy is $100 or more, as provided in § 422.600.

(v) The right to request DAB review of the ALJ hearing decision, as provided in § 422.608.

(vi) The right to judicial review of the hearing decision if the amount in controversy is $1000 or more, as provided in § 422.612.

(c) *Limits on when this subpart applies.* (1) If an enrollee receives immediate PRO review (as provided in § 422.622) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to review of that issue by the M+C organization; and

(ii) The PRO review decision is subject only to the appeal procedures set forth in part 473 of this chapter.

(2) If an enrollee has no further liability to pay for services that were furnished by an M+C organization, a determination regarding these services is not subject to appeal.

(d) *When other regulations apply.* Unless this subpart provides otherwise, the regulations in 20 CFR, part 404, subparts J and R (covering, respectively, the administrative review and hearing process and representation of parties under title II of the Act), apply under this subpart to the extent they are appropriate.

§ 422.564 Grievance procedures.

(a) *General rules.* (1) Each M+C organization must provide meaningful procedures for timely hearing and resolution of grievances between enrollees and the organization or any other entity or individual through which the organization provides health care services under any M+C plan it offers.

(2) Grievance procedures must meet any guidelines established by HCFA.

(b) *Distinguished from organization determinations and appeals.* Grievance procedures are separate and distinct from organization determinations and appeal procedures, which address organization determinations.

(c) *Distinguished from the PRO complaint process.* Under section 1154(a)(14) of the Act, the PRO must review beneficiaries' written complaints about the quality of services they have received under the Medicare program; this process is separate and distinct from the grievance procedures of the M+C organization.

§ 422.566 Organization determinations.

(a) *Responsibilities of the M+C organization.* Each M+C organization must have a procedure for making timely organization determinations (in accordance with the requirements of this subpart) regarding the benefits an enrollee is entitled to receive under an M+C plan, including basic benefits as described under § 422.100(c)(1) and mandatory and optional supplemental benefits as described under § 422.102, and the amount, if any, that the enrollee is required to pay for a health service. The M+C organization must have a

standard procedure for making determinations, in accordance with § 422.568, and an expedited procedure for situations in which applying the standard procedure could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, in accordance with §§ 422.570 and 422.572.

(b) *Actions that are organization determinations.* An organization determination is any determination made by an M+C organization with respect to any of the following:

(1) Payment for emergency services, post-stabilization care, or urgently needed services.

(2) Payment for any other health services furnished by a provider other than the M+C organization that the enrollee believes—

(i) Are covered under Medicare; or

(ii) If not covered under Medicare, should have been furnished, arranged for, or reimbursed by the M+C organization.

(3) The M+C organization's refusal to provide services that the enrollee believes should be furnished or arranged for by the M+C organization when the enrollee has not received the services outside the M+C organization.

(4) Discontinuation of a service, if the enrollee disagrees with the determination that the service is no longer medically necessary.

(c) *Who can request an organization determination.* Any of the parties listed in § 422.574 can request an organization determination, with the exception that only the parties listed in § 422.570(a) can request an expedited determination.

§ 422.568 Standard timeframes and notice requirements for organization determinations.

(a) *Timeframe for requests for service.* When a party has made a request for a service, the M+C organization must notify the enrollee of its determination as expeditiously as the enrollee's health condition requires, but no later than 14 calendar days after the date the organization receives the request for a standard organization determination. The M+C organization may extend the timeframe by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an M+C organization's decision to deny). The M+C organization must notify the enrollee of its determination as expeditiously as the enrollee's health condition requires, but no later than upon expiration of the extension.

(b) *Timeframe for requests for payment.* The M+C organization must process requests for payment according to the "prompt payment" provisions set forth in § 422.520.

(c) *Written notification for denials.* If an M+C organization decides to deny service or payment in whole or in part, it must give the enrollee written notice of the determination.

(d) *Content of the notice.* The notice of any denial under paragraph (c) of this section must—

(1) State the specific reasons for the denial in understandable language;

(2) Inform the enrollee of his or her right to a reconsideration;

(3) Describe both the standard and expedited reconsideration processes, including the enrollee's right to and conditions for obtaining an expedited reconsideration for service requests, and the rest of the appeal process; and

(4) Comply with any other requirements specified by HCFA.

(e) *Effect of failure to provide timely notice.* If the M+C organization fails to provide the enrollee with timely notice of an organization determination as specified in this section, this failure itself constitutes an adverse organization determination and may be appealed.

§ 422.570 Expediting certain organization determinations.

(a) *Request for expedited determination.* An enrollee or a physician (regardless of whether the physician is affiliated with the M+C organization) may request that an M+C organization expedite an organization determination involving the issues described in § 422.566(b)(3) and (b)(4). (This does not include requests for payment.)

(b) *How to make a request.* (1) To ask for an expedited determination, an enrollee or a physician must submit an oral or written request directly to the M+C organization or, if applicable, to the entity responsible for making the determination, as directed by the M+C organization.

(2) A physician may provide oral or written support for a request for an expedited determination.

(c) *How the M+C organization must process requests.* The M+C organization must establish and maintain the following procedures for processing requests for expedited determinations:

(1) Establish an efficient and convenient means for individuals to submit oral or written requests. The M+C organization must document all oral requests in writing and maintain the documentation in the case file.

(2) Promptly decide whether to expedite a determination, based on the following requirements:

(i) For a request made by an enrollee the M+C organization must provide an expedited determination if it determines that applying the standard timeframe for making a determination could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(ii) For a request made or supported by a physician, the M+C organization must provide an expedited determination if the physician indicates that applying the standard timeframe for making a determination could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) *Actions following denial.* If an M+C organization denies a request for expedited determination, it must take the following actions:

(1) Automatically transfer a request to the standard timeframe and make the determination within the 14-day timeframe established in § 422.568 for a standard determination. The 14-day period begins with the day the M+C organization receives the request for expedited determination.

(2) Give the enrollee prompt oral notice of the denial and follow up, within 2 working days, with a written letter that—

(i) Explains that the M+C organization will process the request using the 14-day timeframe for standard determinations;

(ii) Informs the enrollee of the right to file a grievance if he or she disagrees with the M+C organization's decision not to expedite; and

(iii) Provides instructions about the grievance process and its timeframes.

(e) *Action on accepted request for expedited determination.* If an M+C organization grants a request for expedited determination, it must make the determination and give notice in accordance with § 422.572.

(f) *Prohibition of punitive action.* An M+C organization may not take or threaten to take any punitive action against a physician acting on behalf or in support of an enrollee in requesting an expedited determination.

§ 422.572 Timeframes and notice requirements for expedited organization determinations.

(a) *Timeframe.* Except as provided in paragraph (b) of this section, an M+C organization that approves a request for expedited determination must make its determination and notify the enrollee (and the physician involved, as appropriate) of its decision, whether

adverse or favorable, as expeditiously as the enrollee's health condition requires, but no later than 72 hours after receiving the request.

(b) *Extensions.* The M+C organization may extend the 72-hour deadline by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an M+C organization's decision to deny). The M+C organization must notify the enrollee of its determination as expeditiously as the enrollee's health condition requires, but no later than upon expiration of the extension.

(c) *Confirmation of oral notice.* If the M+C organization first notifies an enrollee of its expedited determination orally, it must mail written confirmation to the enrollee within 2 working days of the oral notification.

(d) *How information from noncontract providers affects timeframes for expedited determinations.* If an M+C organization must receive medical information from noncontract providers, the 72-hour period begins when the organization receives that information. Noncontract providers must make reasonable and diligent efforts to expeditiously gather and forward all necessary information in order to receive timely payment.

(e) *Content of the notice of expedited determination.* (1) The notice of any expedited determination must state the specific reasons for the determination in understandable language.

(2) If the determination is not completely favorable to the enrollee, the notice must—

(i) Inform the enrollee of his or her right to a reconsideration;

(ii) Describe both the standard and expedited reconsideration processes, including the enrollee's right to request, and conditions for obtaining, an expedited reconsideration, and the rest of the appeal process; and

(iii) Comply with any other requirements specified by HCFA.

(f) *Effect of failure to provide a timely notice.* If the M+C organization fails to provide the enrollee with timely notice of an expedited organization determination as specified in this section, this failure itself constitutes an adverse organization determination and may be appealed.

§ 422.574 Parties to the organization determination.

The parties to the organization determination are—

(a) The enrollee (including his or her authorized representative);

(b) An assignee of the enrollee (that is, a physician or other provider who has furnished a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service);

(c) The legal representative of a deceased enrollee's estate; or

(d) Any other provider or entity (other than the M+C organization) determined to have an appealable interest in the proceeding.

§ 422.576 Effect of an organization determination.

The organization determination is binding on all parties unless it is reconsidered under §§ 422.578 through 422.596 or is reopened and revised under § 422.616.

§ 422.578 Right to a reconsideration.

Any party to an organization determination (including one that has been reopened and revised as described in § 422.616) may request that the determination be reconsidered under the procedures described in § 422.582, which address requests for a standard reconsideration. An enrollee or physician (acting on behalf of an enrollee) may request an expedited reconsideration as described in § 422.584.

§ 422.580 Reconsideration defined.

A reconsideration consists of a review of an adverse organization determination, the evidence and findings upon which it was based, and any other evidence the parties submit or the M+C organization or HCFA obtains.

§ 422.582 Request for a standard reconsideration.

(a) *Method and place for filing a request.* A party to an organization determination must ask for a reconsideration of the determination by filing a written request with—

(1) The M+C organization that made the organization determination;

(2) An SSA office; or

(3) In the case of a qualified railroad retirement beneficiary, an RRB office.

(b) *Timeframe for filing a request.* Except as provided in paragraph (c) of this section, a party must file a request for a reconsideration within 60 calendar days from the date of the notice of the organization determination. If the SSA or RRB receives a request, it forwards the request to the M+C organization for its reconsideration. The timeframe within which the organization must conduct its review begins when it receives the request.

(c) *Extending the time for filing a request.*

(1) *General rule.* If a party shows good cause, the M+C organization may extend the timeframe for filing a request for reconsideration.

(2) *How to request an extension of timeframe.* If the 60-day period in which to file a request for a reconsideration has expired, a party to the organization determination may file a request for reconsideration with the M+C organization, SSA, or an RRB office. If SSA or RRB receives a request, it forwards the request to the M+C organization for its reconsideration. The request for reconsideration and to extend the timeframe must—

(i) Be in writing; and

(ii) State why the request for reconsideration was not filed on time.

(d) *Parties to the reconsideration.* The parties to the reconsideration are the parties to the organization determination, as described in § 422.574, and any other provider or entity (other than the M+C organization) whose rights with respect to the organization determination may be affected by the reconsideration, as determined by the entity that conducts the reconsideration.

(e) *Withdrawing a request.* The party who files a request for reconsideration may withdraw it by filing a written request for withdrawal at one of the places listed in paragraph (a) of this section.

§ 422.584 Expediting certain reconsiderations.

(a) *Who may request an expedited reconsideration.* An enrollee or a physician (regardless of whether he or she is affiliated with the M+C organization) may request that an M+C organization expedite a reconsideration of a determination that involves the issues described in § 422.566(b)(3) and (b)(4). (This does not include requests for payment.) A physician that requests an expedited reconsideration must be acting on behalf of the enrollee as an authorized representative.

(b) *How to make a request.* (1) To ask for an expedited reconsideration, an enrollee or a physician acting on behalf of an enrollee must submit an oral or written request directly to the M+C organization or, if applicable, to the entity responsible for making the reconsideration, as directed by the M+C organization.

(2) A physician may provide oral or written support for a request for an expedited reconsideration.

(c) *How the M+C organization must process requests.* The M+C organization must establish and maintain the

following procedures for processing requests for expedited reconsiderations:

(1) *Handling of requests.* The M+C organization must establish an efficient and convenient means for individuals to submit oral or written requests, document all oral requests in writing, and maintain the documentation in the case file.

(2) *Prompt decision.* Promptly decide on whether to expedite the reconsideration or follow the timeframe for standard reconsideration based on the following requirements:

(i) For a request made by an enrollee, the M+C organization must provide an expedited reconsideration if it determines that applying the standard timeframe for reconsidering a determination could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(ii) For a request made or supported by a physician, the M+C organization must provide an expedited reconsideration if the physician indicates that applying the standard timeframe for conducting a reconsideration could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) *Actions following denial.* If an M+C organization denies a request for expedited reconsideration, it must take the following actions:

(1) Automatically transfer a request to the standard timeframe and make the determination within the 30-day timeframe established in § 422.590(a). The 30-day period begins the day the M+C organization receives the request for expedited reconsideration.

(2) Give the enrollee prompt oral notice, and follow up, within 2 working days, with a written letter that—

(i) Explains that the M+C organization will process the enrollee's request using the 30-day timeframe for standard reconsiderations;

(ii) Informs the enrollee of the right to file a grievance if he or she disagrees with the organization's decision not to expedite; and

(iii) Provides instructions about the grievance process and its timeframes.

(e) *Action following acceptance of a request.* If an M+C organization grants a request for expedited reconsideration, it must conduct the reconsideration and give notice in accordance with § 422.590(d).

(f) *Prohibition of punitive action.* An M+C organization may not take or threaten to take any punitive action against a physician acting on behalf or in support of an enrollee in requesting an expedited reconsideration.

§ 422.586 Opportunity to submit evidence.

The M+C organization must provide the parties to the reconsideration with a reasonable opportunity to present evidence and allegations of fact or law, related to the issue in dispute, in person as well as in writing. In the case of an expedited reconsideration, the opportunity to present evidence is limited by the short timeframe for making a decision. Therefore, the M+C organization must inform the parties of the conditions for submitting the evidence.

§ 422.590 Timeframes and responsibility for reconsiderations.

(a) *Standard reconsideration: Request for services.*

(1) If the M+C organization makes a reconsidered determination that is completely favorable to the enrollee, the M+C organization must issue the determination (and effectuate it in accordance with § 422.618(a)) as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days from the date it receives the request for a standard reconsideration. The M+C organization may extend the timeframe by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an M+C organization's decision to deny). For extensions, the M+C organization must issue and effectuate its determination as expeditiously as the enrollee's health condition requires, but no later than upon expiration of the extension.

(2) If the M+C organization makes a reconsidered determination that affirms, in whole or in part, its adverse organization determination, it must prepare a written explanation and send the case file to the independent entity contracted by HCFA as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days from the date it receives the request for a standard reconsideration (or no later than the expiration of an extension described in paragraph (a)(1) of this section). The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

(b) *Standard reconsideration: Request for payment.* (1) If the M+C organization makes a reconsidered determination that is completely favorable to the enrollee, the M+C organization must issue its reconsidered determination to the enrollee (and effectuate it in accordance with § 422.618(a)) no later than 60 calendar days from the date it receives the request for a standard reconsideration.

(2) If the M+C organization affirms, in whole or in part, its adverse organization determination, it must prepare a written explanation and send the case file to the independent entity contracted by HCFA no later than 60 calendar days from the date it receives the request for a standard reconsideration. The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

(c) *Effect of failure to meet timeframe for standard reconsideration.* If the M+C organization fails to provide the enrollee with a reconsidered determination within the timeframes specified in paragraph (a) or paragraph (b) of this section, this failure constitutes an affirmation of its adverse organization determination, and the M+C organization must submit the file to the independent entity in the same manner as described under paragraphs (a)(2) and (b)(2) of this section.

(d) *Expedited reconsideration*—(1) *Timeframe.* Except as provided in paragraph (d)(2) of this section, an M+C organization that approves a request for expedited reconsideration must complete its reconsideration and give the enrollee (and the physician involved, as appropriate) notice of its decision as expeditiously as the enrollee's health condition requires but no later than 72 hours after receiving the request.

(2) *Extensions.* The M+C organization may extend the 72-hour deadline by up to 14 calendar days if the enrollee requests the extension or if the organization justifies a need for additional information and how the delay is in the interest of the enrollee (for example, the receipt of additional medical evidence from noncontract providers may change an M+C organization's decision to deny). The M+C organization must notify the enrollee of its determination as expeditiously as the enrollee's health condition requires but no later than upon expiration of the extension.

(3) *Confirmation of oral notice.* If the M+C organization first notifies an enrollee orally of a completely favorable expedited reconsideration, it must mail written confirmation to the enrollee within 2 working days.

(4) *How information from noncontract providers affects timeframes for expedited reconsiderations.* If the M+C organization must receive medical information from noncontract providers, the 72-hour period begins when the

organization receives the information. Noncontract providers must make reasonable and diligent efforts to expeditiously gather and forward all necessary information in order to receive timely payment.

(5) *Affirmation of an adverse expedited organization determination.* If, as a result of its reconsideration, the M+C organization affirms, in whole or in part, its adverse expedited organization determination, the M+C organization must submit a written explanation and the case file to the independent entity contracted by HCFA as expeditiously as the enrollee's health condition requires, but not later than within 24 hours of its affirmation. The organization must make reasonable and diligent efforts to assist in gathering and forwarding information to the independent entity.

(e) *Notification of enrollee.* If the M+C organization refers the matter to the independent entity as described under this section, it must concurrently notify the enrollee of that action.

(f) *Failure to meet timeframe for expedited reconsideration.* If the M+C organization fails to provide the enrollee with the results of its reconsideration within the timeframe described in paragraph (d) of this section, this failure constitutes an adverse reconsidered determination, and the M+C organization must submit the file to the independent entity within 24 hours of expiration of the timeframe set forth in paragraph (d) of this section.

(g) *Who must reconsider an adverse organization determination.* (1) A person or persons who were not involved in making the organization determination must conduct the reconsideration.

(2) When the issue is the M+C organization's denial of coverage based on a lack of medical necessity, the reconsidered determination must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue.

§ 422.592 Reconsideration by an independent entity.

(a) When the M+C organization affirms, in whole or in part, its adverse organization determination, the issues that remain in dispute must be reviewed and resolved by an independent, outside entity that contracts with HCFA.

(b) The independent outside entity must conduct the review as expeditiously as the enrollee's health condition requires but must not exceed the deadlines specified in the contract.

(c) When the independent entity conducts a reconsideration, the parties to the reconsideration are the same parties listed in § 422.582(d) who qualified during the M+C organization's reconsideration, with the addition of the M+C organization.

§ 422.594 Notice of reconsidered determination by the independent entity.

(a) *Responsibility for the notice.* When the independent entity makes the reconsidered determination, it is responsible for mailing a notice of its reconsidered determination to the parties and for sending a copy to HCFA.

(b) *Content of the notice.* The notice must—

(1) State the specific reasons for the entity's decisions;

(2) If the reconsidered determination is adverse (that is, does not completely reverse the M+C organization's adverse organization determination), inform the parties of their right to an ALJ hearing if the amount in controversy is $100 or more;

(3) Describe the procedures that a party must follow to obtain an ALJ hearing; and

(4) Comply with any other requirements specified by HCFA.

§ 422.596 Effect of a reconsidered determination.

A reconsidered determination is final and binding on all parties unless a party files a request for a hearing under the provisions of § 422.602, or unless the reconsidered determination is revised under § 422.616.

§ 422.600 Right to a hearing.

(a) If the amount remaining in controversy is $100 or more, any party to the reconsideration (except the M+C organization) who is dissatisfied with the reconsidered determination has a right to a hearing before an ALJ. The M+C organization does not have the right to request a hearing before an ALJ.

(b) The amount remaining in controversy, which can include any combination of Part A and Part B services, is computed in accordance with § 405.740 of this chapter for Part A services and § 405.817 of this chapter for Part B services.

(c) If the basis for the appeal is the M+C organization's refusal to provide services, HCFA uses the projected value of those services to compute the amount remaining in controversy.

§ 422.602 Request for an ALJ hearing.

(a) *How and where to file a request.* A party must file a written request for a hearing at one of the places listed in § 422.582(a) or with the independent, outside entity. The organizations listed in § 422.582(a) forward the request to the independent, outside entity, which is responsible for transferring the case to the appropriate ALJ hearing office.

(b) *When to file a request.* Except when an ALJ extends the timeframe as provided in 20 CFR 404.933(c), a party must file a request for a hearing within 60 days of the date of the notice of a reconsidered determination.

(c) *Parties to a hearing.* The parties to a hearing are the parties to the reconsideration, the M+C organization, and any other person or entity whose rights with respect to the reconsideration may be affected by the hearing, as determined by the ALJ.

(d) *When the amount in controversy is less than $100.* (1) If a request for a hearing clearly shows that the amount in controversy is less than $100, the ALJ dismisses the request.

(2) If, after a hearing is initiated, the ALJ finds that the amount in controversy is less than $100, he or she discontinues the hearing and does not rule on the substantive issues raised in the appeal.

§ 422.608 Departmental Appeals Board (DAB) review.

Any party to the hearing, including the M+C organization, who is dissatisfied with the ALJ hearing decision, may request that the DAB review the ALJ's decision or dismissal. Regulations located at 20 CFR 404.967 through 404.984 regarding SSA Appeals Council Review apply to DAB review for matters addressed by this subpart.

§ 422.612 Judicial review.

(a) *Review of ALJ's decision.* Any party, including the M+C organization, may request judicial review (upon notifying the other parties) of an ALJ's decision if—

(1) The DAB denied the party's request for review; and

(2) The amount in controversy is $1,000 or more.

(b) *Review of DAB decision.* Any party, including the M+C organization, may request judicial review (upon notifying the other parties) of the DAB decision if—

(1) It is the final decision of HCFA; and

(2) The amount in controversy is $1,000 or more.

(c) *How to request judicial review.* A party must file a civil action in a district court of the United States in accordance with section 205(g) of the Act (see 20 CFR 422.210 for a description of the procedures to follow in requesting judicial review).

§ 422.616 Reopening and revising determinations and decisions.

(a) An organization or reconsidered determination made by an M+C

organization, a reconsidered determination made by the independent entity described in § 422.592, or the decision of an ALJ or the DAB that is otherwise final and binding may be reopened and revised by the entity that made the determination or decision, under the rules in § 405.750 of this chapter.

(b) Reopening may be at the instigation of any party.

(c) The filing of a request for reopening does not relieve the M+C organization of its obligation to make payment or provide services as specified in § 422.618.

(d) Once an entity issues a revised determination or decision, any party may file an appeal.

§ 422.618 How an M+C organization must effectuate reconsidered determinations or decisions.

(a) *Reversals by the M+C organization*—(1) *Requests for service.* If, on reconsideration of a request for service, the M+C organization completely reverses its organization determination, the organization must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 30 calendar days after the date the M+C organization receives the request for reconsideration (or no later than upon expiration of an extension described in § 422.590(a)(1)).

(2) *Requests for payment.* If, on reconsideration of a request for payment, the M+C organization completely reverses its organization determination, the organization must pay for the service no later than 60 calendar days after the date the M+C organization receives the request for reconsideration.

(b) *Reversals other than by the M+C organization.* If the M+C organization's organization determination is reversed in whole or in part by the independent outside entity or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the organization determination. The M+C organization must also inform the independent, outside entity that the organization has effectuated the decision.

§ 422.620 How M+C organizations must notify enrollees of noncoverage of inpatient hospital care.

(a) *Enrollee's entitlement.* Where an M+C organization has authorized coverage of the inpatient admission of an enrollee, either directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in §§ 422.2 and 422.112(b)), the enrollee remains entitled to inpatient hospital care until he or she receives notice of noncoverage of that care.

(b) *Physician concurrence required.* Before the M+C organization gives notice of noncoverage as described in paragraph (c) of this section, the physician who is responsible for the enrollee's hospital care must concur.

(c) *Notice to the enrollee.* The M+C organization must give the enrollee written notice that includes the following:

(1) The reason why inpatient hospital care is no longer needed.

(2) The effective date of the enrollee's liability for continued inpatient care.

(3) The enrollee's appeal rights.

(4) Comply with any other requirements specified by HCFA.

(d) *Physician concurrence when a hospital determines if care is necessary.* If the M+C organization allows the hospital to determine whether inpatient care is necessary, the hospital obtains the concurrence of the contracting physician responsible for the enrollee's hospital care or of another physician as authorized by the M+C organization, and notifies the enrollee, following the procedures set forth in § 412.42(c)(3) of this chapter.

§ 422.622 Requesting immediate PRO review of noncoverage of inpatient hospital care.

(a) *Enrollee's right to review or reconsideration.* (1) An enrollee who wishes to appeal a determination by an M+C organization or hospital that inpatient care is no longer necessary must request immediate PRO review of the determination in accordance with paragraph (b) of this section. An enrollee who requests immediate PRO review may remain in the hospital with no additional financial liability as specified in paragraph (c) of this section.

(2) An enrollee who fails to request immediate PRO review in accordance with the procedures in paragraph (b) of this section may request expedited reconsideration by the M+C organization as described in § 422.584, but the financial liability rules of paragraph (c) of this section do not apply.

(b) *Procedures enrollee must follow.* For the immediate PRO review process, the following rules apply:

(1) The enrollee must submit the request for immediate review—

(i) To the PRO that has an agreement with the hospital under § 466.78 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after he or she receives written notice that the M+C organization or hospital has determined that the hospital stay is no longer necessary.

(2) On the date it receives the enrollee's request, the PRO must notify the M+C organization that the enrollee has filed a request for immediate review.

(3) The M+C organization must supply any information that the PRO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day immediately following the day the enrollee submits the request for review.

(4) In response to a request from the M+C organization, the hospital must submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the organization makes its request.

(5) The PRO must solicit the views of the enrollee who requested the immediate PRO review.

(6) The PRO must make a determination and notify the enrollee, the hospital, and the M+C organization by close of business of the first working day after it receives all necessary information from the hospital, or the organization, or both.

(c) *Liability for hospital costs*—(1) *When the M+C organization determines that hospital services are not, or are no longer, covered.* (i) Except as provided in paragraph (c)(1)(ii) of this section, if the M+C organization authorized coverage of the inpatient admission directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in §§ 422.2 and 422.112(b)), the organization continues to be financially responsible for the costs of the hospital stay when a timely appeal is filed under paragraph (a)(1) of this section until noon of the calendar day following the day the PRO notifies the enrollee of its review determination. If coverage of the hospital admission was never approved by the M+C organization (or the admission does not constitute emergency or urgently needed care, as described in §§ 422.2 and 422.112(b)), the M+C organization is liable for the hospital costs only if it is determined on appeal that the hospital stay should have been covered under the M+C plan.

(ii) The hospital may not charge the M+C organization (or the enrollee) if—

(A) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate PRO review; and

(B) The PRO upholds the noncoverage determination made by the M+C organization.

(2) *When the hospital determines that hospital services are no longer required.* If the hospital determines that inpatient hospital services are no longer necessary, and the enrollee could not reasonably be expected to know that the services would not be covered, the hospital may not charge the enrollee for inpatient services received before noon of the calendar day following the day the PRO notifies the enrollee of its review determination.

Subpart N—Medicare Contract Determinations and Appeals

§ 422.641 Contract determinations.

This subpart establishes the procedures for making and reviewing the following contract determinations:

(a) A determination that an entity is not qualified to enter into a contract with HCFA under Part C of title XVIII of the Act.

(b) A determination to terminate a contract with an M+C organization in accordance with § 422.510(a).

(c) A determination not to authorize a renewal of a contract with an M+C organization in accordance with § 422.506(b).

§ 422.644 Notice of contract determination.

(a) When HCFA makes a contract determination, it gives the M+C organization written notice.

(b) The notice specifies—

(1) The reasons for the determination; and

(2) The M+C organization's right to request reconsideration.

(c) For HCFA-initiated terminations, HCFA mails notice 90 days before the anticipated effective date of the termination. For terminations based on initial determinations described at § 422.510(a)(5), HCFA immediately notifies the M+C organization of its decision to terminate the organization's M+C contract.

(d) When HCFA determines that it will not authorize a contract renewal, HCFA mails the notice to the M+C organization by May 1 of the current contract year.

§ 422.646 Effect of contract determination.

The contract determination is final and binding unless—

(a) The determination is reconsidered in accordance with §§ 422.648 through 422.658;

(b) A timely request for a hearing is filed under § 422.662; or

(c) The reconsideration decision is revised as a result of a reopening under § 422.696.

§ 422.648 Reconsideration: Applicability.

(a) Reconsideration is the first step for appealing a contract determination specified in § 422.641.

(b) HCFA reconsiders the specified determinations if the M+C organization files a written request in accordance with § 422.650.

§ 422.650 Request for reconsideration.

(a) *Method and place for filing a request.* A request for reconsideration must be made in writing and filed with any HCFA office.

(b) *Time for filing a request.* The request for reconsideration must be filed within 15 days from the date of the notice of the initial determination.

(c) *Proper party to file a request.* Only an authorized official of the entity or M+C organization that was the subject of a contract determination may file the request for reconsideration.

(d) *Withdrawal of a request.* The M+C organization or M+C contract applicant who filed the request for a reconsideration may withdraw it at any time before the notice of the reconsidered determination is mailed. The request for withdrawal must be in writing and filed with HCFA.

§ 422.652 Opportunity to submit evidence.

HCFA provides the M+C organization or M+C contract applicant and the HCFA official or officials who made the contract determination reasonable opportunity to present as evidence any documents or written statements that are relevant and material to the matters at issue.

§ 422.654 Reconsidered determination.

A reconsidered determination is a new determination that—

(a) Is based on a review of the contract determination, the evidence and findings upon which that was based, and any other written evidence submitted before notice of the reconsidered determination is mailed, including facts relating to the status of the M+C organization subsequent to the contract determination; and

(b) Affirms, reverses, or modifies the initial determination.

§ 422.656 Notice of reconsidered determination.

(a) HCFA gives the M+C organization or M+C contract applicant written notice of the reconsidered determination.

(b) The notice—

(1) Contains findings with respect to the M+C organization's qualifications to enter into or remain under a contract with HCFA pursuant to Part C of title XVIII of the Act;

(2) States the specific reasons for the reconsidered determination; and

(3) Informs the M+C organization or M+C contract applicant of its right to a hearing if it is dissatisfied with the determination.

§ 422.658 Effect of reconsidered determination.

A reconsidered determination is final and binding unless a request for a hearing is filed in accordance with § 422.662 or it is revised in accordance with § 422.696.

§ 422.660 Right to a hearing.

The following parties are entitled to a hearing:

(a) An applicant entity that has been determined in a reconsidered determination to be unqualified to enter into a contract with HCFA under Part C of the Act.

(b) An M+C organization whose contract with HCFA has been terminated or has not been renewed as a result of a contract determination as provided in § 422.641.

§ 422.662 Request for hearing.

(a) *Method and place for filing a request.* A request for a hearing must be made in writing and filed by an authorized official of the applicant entity or M+C organization that was the party to the determination under appeal. The request for a hearing must be filed with any HCFA office.

(b) *Time for filing a request.* A request for a hearing must be filed within 15 days after the date of the notice of contract or reconsidered determination.

(c) *Parties to a hearing.* The parties to a hearing must be—

(1) The parties described in § 422.660;

(2) At the discretion of the hearing officer, any interested parties who make a showing that their rights may be prejudiced by the decision to be rendered at the hearing; and

(3) HCFA.

§ 422.664 Postponement of effective date of a contract determination when a request for a hearing with respect to a contract determination is filed timely.

(a) HCFA postpones the proposed effective date of the contract determination to terminate a contract with an M+C organization until a hearing decision is reached and affirmed by the Administrator following review under § 422.692 in instances where an M+C organization requests review by the Administrator; and

(b) HCFA extends the current contract at the end of the contract period (in the

case of a determination not to renew) only—

(1) If HCFA finds that an extension of the contract will be consistent with the purpose of this part; and

(2) For such period as HCFA and the M+C organization agree.

(c) Exception: A contract terminated in accordance with § 422.510(a)(5) will be immediately terminated and will not be postponed if a hearing is requested.

§ 422.666 Designation of hearing officer.

HCFA designates a hearing officer to conduct the hearing. The hearing officer need not be an ALJ.

§ 422.668 Disqualification of hearing officer.

(a) A hearing officer may not conduct a hearing in a case in which he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.

(b) A party to the hearing who objects to the designated hearing officer must notify that officer in writing at the earliest opportunity.

(c) The hearing officer must consider the objections, and may, at his or her discretion, either proceed with the hearing or withdraw.

(1) If the hearing officer withdraws, HCFA designates another hearing officer to conduct the hearing.

(2) If the hearing officer does not withdraw, the objecting party may, after the hearing, present objections and request that the officer's decision be revised or a new hearing be held before another hearing officer. The objections must be submitted in writing to HCFA.

§ 422.670 Time and place of hearing.

(a) The hearing officer fixes a time and place for the hearing, which is not to exceed 30 days from the receipt of the request fo. the hearing, and sends written notice to the parties. The notice also informs the parties of the general and specific issues to be resolved and information about the hearing procedure.

(b) The hearing officer may, on his or her own motion, or at the request of a party, change the time and place for the hearing. The hearing officer may adjourn or postpone the hearing.

(c) The hearing officer will give the parties reasonable notice of any change in time or place of hearing, or of adjournment or postponement.

§ 422.672 Appointment of representatives.

A party may appoint as its representative at the hearing anyone not disqualified or suspended from acting as a representative before the Secretary or otherwise prohibited by law.

§ 422.674 Authority of representatives.

(a) A representative appointed and qualified in accordance with § 422.672 may, on behalf of the represented party—

(1) Gives or accepts any notice or request pertinent to the proceedings set forth in this subpart;

(2) Presents evidence and allegations as to facts and law in any proceedings affecting that party; and

(3) Obtains information to the same extent as the party.

(b) A notice or request sent to the representative has the same force and effect as if it had been sent to the party.

§ 422.676 Conduct of hearing.

(a) The hearing is open to the parties and to the public.

(b) The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(c) The hearing officer provides the parties an opportunity to enter any objection to the inclusion of any document.

(d) The hearing officer decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

§ 422.678 Evidence.

The hearing officer rules on the admissibility of evidence and may admit evidence that would be inadmissible under rules applicable to court procedures.

§ 422.680 Witnesses.

(a) The hearing officer may examine the witnesses.

(b) The parties or their representatives are permitted to examine their witnesses and cross-examine witnesses of other parties.

§ 422.682 Discovery.

(a) Prehearing discovery is permitted upon timely request of a party.

(b) A request is timely if it is made before the beginning of the hearing.

(c) A reasonable time for inspection and reproduction of documents is provided by order of the hearing officer.

(d) The hearing officer's order on all discovery matters is final.

§ 422.684 Prehearing.

The hearing officer may schedule a prehearing conference if he or she believes that a conference would more clearly define the issues.

§ 422.686 Record of hearing.

(a) A complete record of the proceedings at the hearing is made and transcribed and made available to all parties upon request.

(b) The record may not be closed until a hearing decision has been issued.

§ 422.688 Authority of hearing officer.

In exercising his or her authority, the hearing officer must comply with the provisions of title XVIII and related provisions of the Act, the regulations issued by the Secretary, and general instructions issued by HCFA in implementing the Act.

§ 422.690 Notice and effect of hearing decision.

(a) As soon as practical after the close of the hearing, the hearing officer issues a written decision that—

(1) Is based upon the evidence of record; and

(2) Contains separately numbered findings of fact and conclusions of law.

(b) The hearing officer provides a copy of the hearing decision to each party.

(c) The hearing decision is final and binding unless it is reversed or modified by the Administrator following review under § 422.692, or reopened and revised in accordance with § 422.696.

§ 422.692 Review by the Administrator.

(a) *Request for Review by Administrator.* An M+C organization that has received a hearing decision upholding a contract termination determination may request review by the Administrator within 15 days of receiving the hearing decision as provided under § 422.690(b).

(b) *Review by the Administrator.* The Administrator shall review the hearing officer's decision, and determine, based upon this decision, the hearing record, and any written arguments submitted by the M+C organization, whether the termination decision should be upheld, reversed, or modified.

(c) *Decision by the Administrator.* The Administrator issues a written decision, and furnishes the decision to the M+C organization requesting review.

§ 422.694 Effect of Administrator's decision.

A decision by the Administrator under section 422.692 is final and binding unless it is reopened and revised in accordance with § 422.696.

§ 422.696 Reopening of contract or reconsidered determination or decision of a hearing officer or the Administrator.

(a) *Initial or reconsidered determination.* HCFA may reopen and revise an initial or reconsidered determination upon its own motion within one year of the date of the notice of determination.

(b) *Decision of hearing officer.* A decision of a hearing officer that is

unfavorable to any party and is otherwise final may be reopened and revised by the hearing officer upon the officer's own motion within one year of the notice of the hearing decision. Another hearing officer designated by HCFA may reopen and revise the decision if the hearing officer who issued the decision is unavailable.

(c) *Decision of Administrator.* A decision by the Administrator that is otherwise final may be reopened and revised by the Administrator upon the Administrator's own motion within one year of the notice of the Administrator's decision.

(d) *Notices.* (1) The notice of reopening and of any revisions following the reopening is mailed to the parties.

(2) The notice of revision specifies the reasons for revisions.

§ 422.698 Effect of revised determination.

The revision of a contract or reconsidered determination is binding unless a party files a written request for hearing of the revised determination in accordance with § 422.662.

Subpart O—Intermediate Sanctions

§ 422.750 Kinds of sanctions.

(a) The following intermediate sanctions and civil money penalties may be imposed:

(1) Civil money penalties ranging from $10,000 to $100,000 depending upon the violation.

(2) Suspension of enrollment of Medicare beneficiaries.

(3) Suspension of payment to the M+C organization for Medicare beneficiaries who enroll.

(4) Require the M+C organization to suspend all marketing activities to Medicare beneficiaries for the M+C plan subject to the intermediate sanctions.

(b) The enrollment, payment, and marketing sanctions continue in effect until HCFA is satisfied that the deficiency on which the determination was based has been corrected and is not likely to recur.

§ 422.752 Basis for imposing sanctions.

(a) *All intermediate sanctions.* For the violations listed below, HCFA may impose any of the sanctions specified in § 422.750 on any M+C organization that has a contract in effect. The M+C organization may also be subject to other applicable remedies available under law.

(1) Fails substantially to provide, to an M+C enrollee, medically necessary services that the organization is required to provide (under law or under the contract) to an M+C enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee.

(2) Imposes on M+C enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1854 of the Act and Subpart G of this part.

(3) Expels or refuses to reenroll a beneficiary in violation of the provisions of this part.

(4) Engages in any practice that could reasonably be expected to have the effect of denying or discouraging enrollment of individuals whose medical condition or history indicates a need for substantial future medical services.

(5) Misrepresents or falsifies information that it furnishes—

(i) To HCFA; or

(ii) To an individual or to any other entity.

(6) Fails to comply with the requirements of § 422.204, which prohibits interference with practitioners' advice to enrollees.

(7) Fails to comply with § 422.216, which requires the organization to enforce the limit on balance billing under a private fee-for service plan.

(8) Employs or contracts with an individual who is excluded from participation in Medicare under section 1128 or 1128A of the Act (or with an entity that employs or contracts with such an individual) for the provision of any of the following:

(i) Health care.

(ii) Utilization review.

(iii) Medical social work.

(iv) Administrative services.

(b) *Suspension of enrollment and marketing.* If HCFA makes a determination under § 422.510(a), HCFA may impose the intermediate sanctions in § 422.756(c)(1) and (c)(3).

§ 422.756 Procedures for imposing sanctions.

(a) *Notice of Sanction and opportunity to respond*—(1) *Notice of sanction.* Before imposing the intermediate sanctions specified in paragraph (c) of this section HCFA—

(i) Sends a written notice to the M+C organization stating the nature and basis of the proposed sanction; and

(ii) Sends the OIG a copy of the notice.

(2) *Opportunity to respond.* HCFA allows the M+C organization 15 days from receipt of the notice to provide evidence that it has not committed an act or failed to comply with the requirements described in § 422.752, as applicable. HCFA may allow a 15-day addition to the original 15 days upon receipt of a written request from the M+C organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date of receipt of the sanction notice. HCFA does not grant an extension if it determines that the M+C organization's conduct poses a threat to an enrollee's health and safety.

(b) *Informal reconsideration.* If, consistent with paragraph (a)(2) of this section the M+C organization submits a timely response to HCFA's notice of sanction, HCFA conducts an informal reconsideration that:

(1) Consists of a review of the evidence by an HCFA official who did not participate in the initial decision to impose a sanction; and

(2) Gives the M+C organization a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(c) *Specific sanctions.* If HCFA determines that an M+C organization has acted or failed to act as specified in § 422.752 and affirms this determination in accordance with paragraph (b) of this section, HCFA may—

(1) Require the M+C organization to suspend acceptance of applications made by Medicare beneficiaries for enrollment in the sanctioned M+C plan during the sanction period;

(2) In the case of a violation under § 422.752(a), suspend payments to the M+C organization for Medicare beneficiaries enrolled in the sanctioned M+C plan during the sanction period; and

(3) Require the M+C organization to suspend all marketing activities for the sanctioned M+C plan to Medicare enrollees.

(d) Effective date and duration of sanctions—(1) *Effective date.* Except as provided in paragraph (d)(2) of this section, a sanction is effective 15 days after the date that the organization is notified of the decision to impose the sanction or, if the M+C organization timely seeks reconsideration under paragraph (b) of this section, on the date specified in the notice of HCFA's reconsidered determination.

(2) *Exception.* If HCFA determines that the M+C organization's conduct poses a serious threat to an enrollee's health and safety, HCFA may make the sanction effective on a date before issuance of HCFA's reconsidered determination.

(3) *Duration of sanction.* The sanction remains in effect until HCFA notifies the M+C organization that HCFA is satisfied that the basis for imposing the

sanction has been corrected and is not likely to recur.

(e) *Termination by HCFA.* In addition to or as an alternative to the sanctions described in paragraph (c) of this section, HCFA may decline to authorize the renewal of an organization's contract in accordance with § 422.506(b)(2) and (b)(3), or terminate the contract in accordance with § 422.510.

(f) *Civil Money Penalties.* (1) If HCFA determines that an M+C organization has committed an act or failed to comply with a requirement described in § 422.752, HCFA notifies the OIG of this determination, and also notifies OIG when HCFA reverses or terminates a sanction imposed under this part.

(2) In the case of a violation described in paragraph (a) of § 422.752, or a determination under paragraph (b) of § 422.752 based upon a violation under § 422.510(a)(4) (involving fraudulent or abusive activities), in accordance with the provisions of 42 CFR parts 1003 and 1005, the OIG may impose civil money penalties on the M+C organization in accordance with parts 1003 and 1005 of this title in addition to, or in place of, the sanctions that HCFA may impose under paragraph (c) of this section.

(3) In the case of a determination under paragraph (b) of § 422.752 other than a determination based upon a violation under § 422.510(a)(4), in accordance with the provisions of 42 CFR parts 1003 and 1005, HCFA may impose civil money penalties on the M+C organization in the amounts specified in § 422.758 in addition to, or in place of, the sanctions that HCFA may impose under paragraph (c) of this section.

§ 422.758 Maximum amount of civil money penalties imposed by HCFA.

If HCFA makes a determination under § 422.752(b), based on any determination under § 422.510(a) except a determination under § 422.510(a)(4), HCFA may impose civil money penalties in the following amounts:

(a) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more M+C enrollees—$25,000 for each determination.

(b) For each week that a deficiency remains uncorrected after the week in which the M+C organization receives HCFA's notice of the determination—$10,000.

§ 422.760 Other applicable provisions.

The provisions of section 1128A of the Act (except subsections (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 17, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 18, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16731 Filed 6–19–98; 11:35 am]

BILLING CODE 4120–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1847/P.L. 105–184

Telemarketing Fraud Prevention Act of 1998 (June 23, 1998; 112 Stat. 520)

S. 1150/P.L. 105–185

Agricultural Research, Extension, and Education Reform Act of 1998 (June 23, 1998; 112 Stat. 523)

S. 1900/P.L. 105–186

U.S. Holocaust Assets Commission Act of 1998 (June 23, 1998; 112 Stat. 611)

H.R. 3811/P.L. 105–187

Deadbeat Parents Punishment Act of 1998 (June 24, 1998; 112 Stat. 618)

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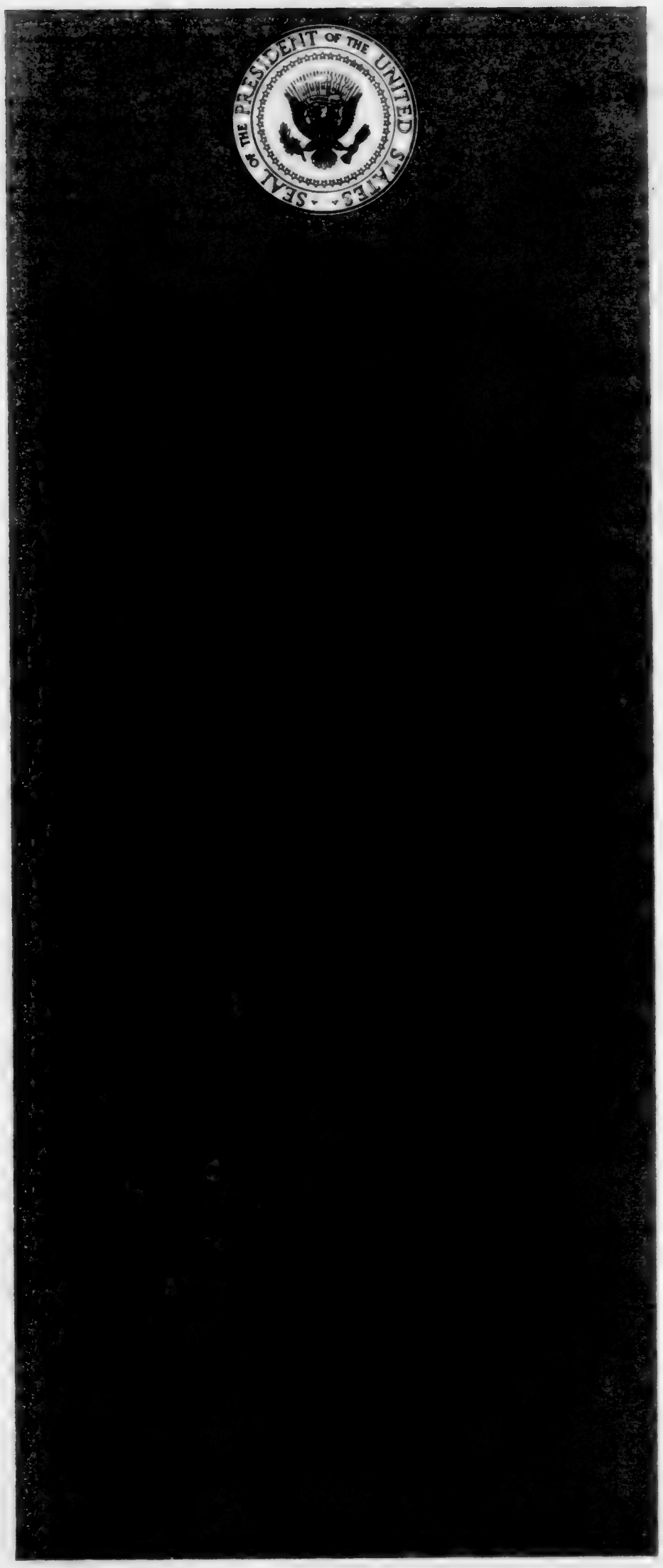

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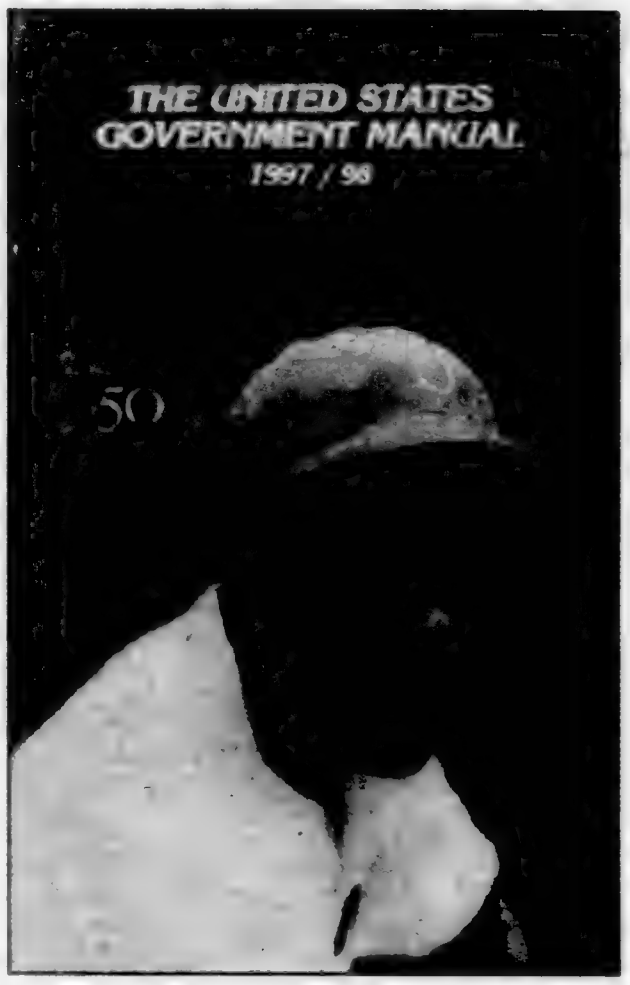

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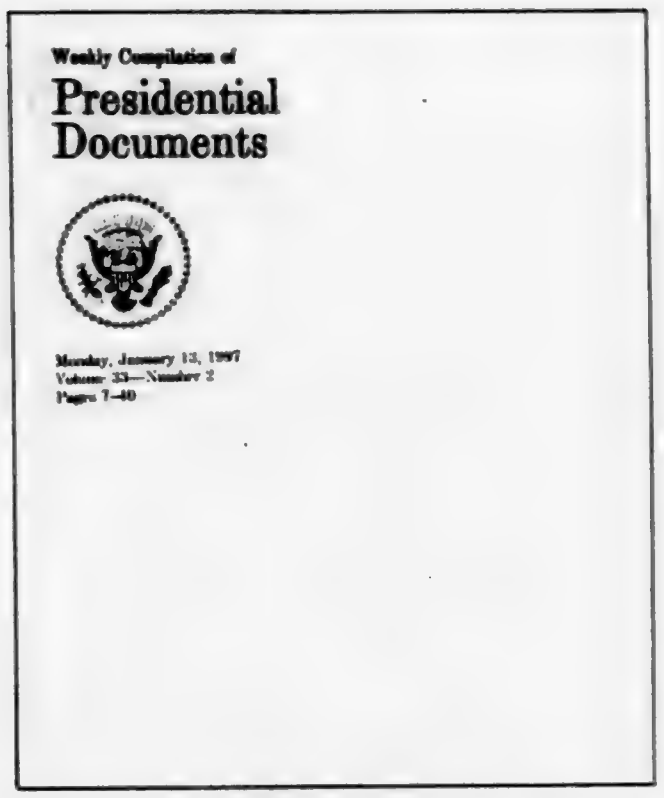

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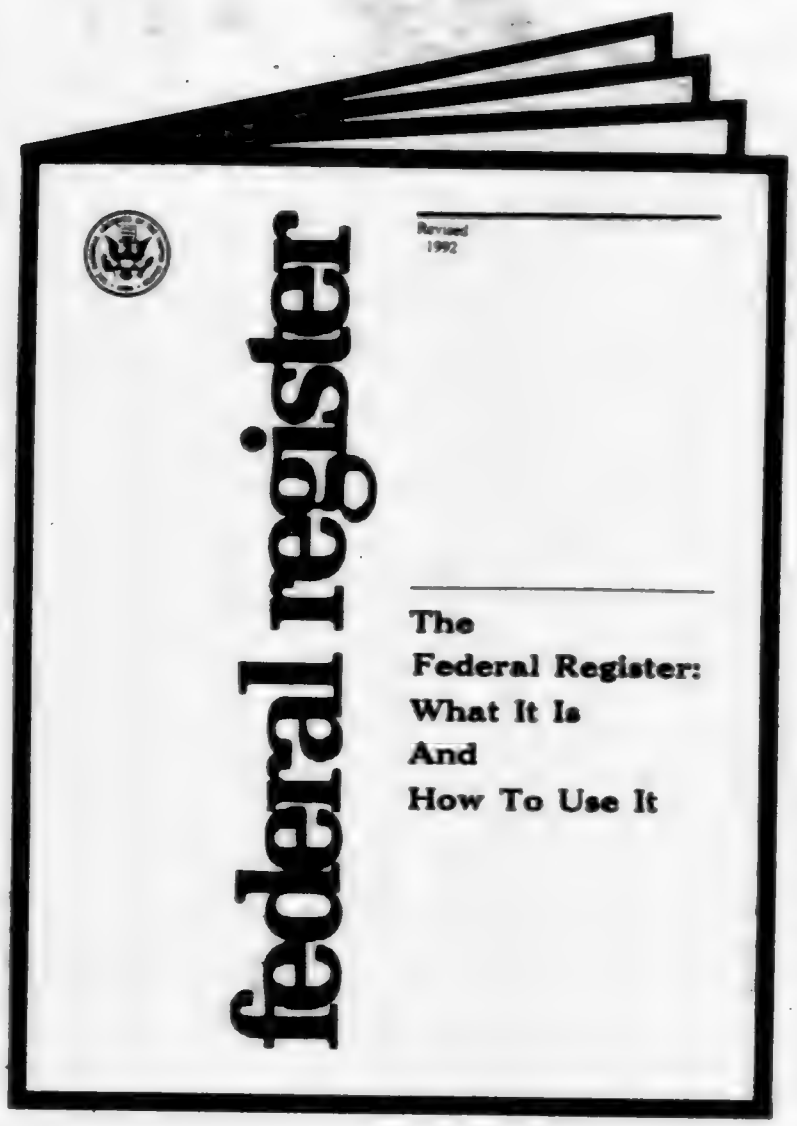

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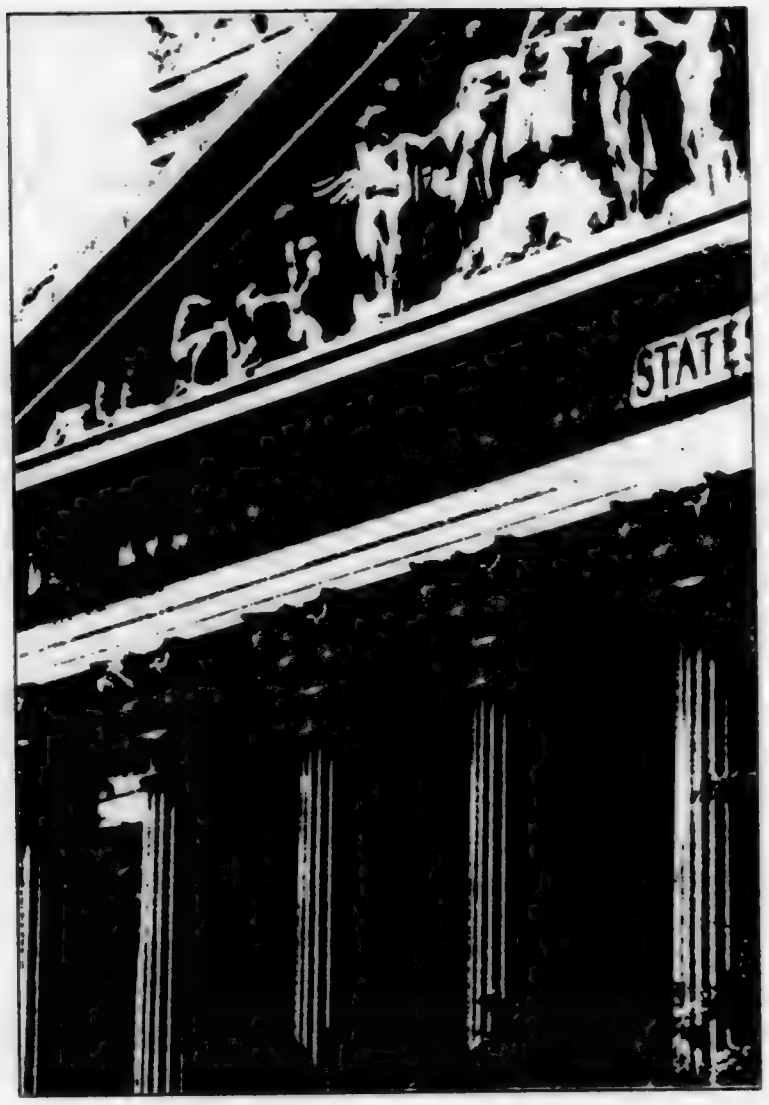

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Rules and Regulations

Federal Register
Vol. 63, No. 124
Monday, June 29, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 121P; AG Order No. 2162–98]

RIN 1125–AA23

Executive Office for Immigration Review; Motion To Reopen: Suspension of Deportation and Cancellation of Removal; Corrections

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule; Corrections.

SUMMARY: The Department of Justice published in the **Federal Register** of June 11, 1998 (63 FR 31890) a document which amended the regulations of the Executive Office for Immigration Review by establishing a new procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal pursuant to the Nicaraguan Adjustment and Central American Relief Act. That document, which is an interim rule, contains technical errors that are corrected in this document.

EFFECTIVE DATES: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Rosemary Hart, Senior Counsel, Office of Legal Counsel, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, (202) 514–2027 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on June 11, 1998 (63 FR 31890), the interim rule amending part 3 of title 8, Code of Federal Regulation contains technical errors that are in need of correction.

Correction of Publication

Accordingly, the publication on June 11, 1998 (63 FR 31890) of the interim rule that was the subject of FR Doc. 98–15588 is corrected as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

§ 3.43 [Corrected]

1. On page 31894, in the third column, in § 3.43(b), the paragraph designated as (b)(4)(iv)(c) is correctly redesignated as paragraph (b)(4)(iv)(C).

2. On page 31895, in the first column, in § 3.43, the paragraphs designated as (c) and (d) are correctly redesignated as paragraphs (d) and (e), respectively.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 98–17108 Filed 6–26–98; 8:45 am]

BILLING CODE 4410–30–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 933 and 935

[No. 98–15]

[RIN 3069–AA69]

Eligibility for Membership and Advances

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the definitions in its membership and advances regulations relating to combination business or farm properties on which a residence is located. For institutions with total assets of $500,000,000 or less, the amendments eliminate the requirement that at least 50 percent of the value of such properties be attributable to the residential portion of the property, and require instead that the residence constitute an integral part of the property. The amendments are intended to assist smaller depository institutions, particularly those located in rural areas, that have combination farm or business property loans in their portfolios, to qualify for Federal Home Loan Bank (FHLBank) membership and, once admitted, to provide the collateral necessary to obtain FHLBank advances. For those institutions with assets in excess of $500,000,000, the amendments retain the existing 50 percent of value requirement. The amendments also allow loans that would satisfy the statutory and regulatory requirements under the Community Investment Program, or under the community investment cash advance provisions, of the Federal Home Loan Bank Act (Bank Act), to qualify for membership eligibility purposes.

DATES: Effective July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, Office of Policy, (202) 408–2842; Neil R. Crowley, Associate General Counsel, (202) 408–2990, Sharon B. Like, Senior Attorney-Adviser, (202) 408–2930, Office of General Counsel; Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. FHLBank System and Finance Board Roles and Responsibilities

Under the Bank Act, the Finance Board is responsible for the supervision and regulation of the 12 FHLBanks. *See* 12 U.S.C. 1422a(a), 1422b(a)(1). Specifically, the Finance Board is responsible for ensuring that the FHLBanks operate in a financially safe and sound manner and carry out their housing finance and community investment mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* section 1422a(a)(3). The Bank Act also empowers the Finance Board to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of the Bank Act, including regulations on FHLBank membership eligibility and advances collateral requirements. *See id.* section 1422b(a)(1).

II. Current 50 Percent Test For Loans Secured By Combination Property Under the Membership and Advances Regulations

The regulations of the Finance Board allow certain types of mortgage loans to be used in determining an institution's eligibility to become a FHLBank member and its ability to borrow from the FHLBank, after becoming a member. As described below, loans secured by combination properties can be used for these purposes only if at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property (50 percent test). *See* 12 CFR

933.1(n)(1)(iii), 935.1. For both purposes, that test is the same.

A. Membership Eligibility

Section 4(a) of the Bank Act establishes the eligibility criteria for institutions to become members of the FHLBank System. *See* 12 U.S.C. 1424(a). Section 4(a)(2)(A) of the Bank Act requires, in part, that an insured depository institution have "at least 10 percent of its total assets in *residential mortgage loans*" in order to be eligible for FHLBank membership (10 percent requirement). *See id.* section 1424(a)(2)(A) (emphasis added). The Bank Act does not define the term "residential mortgage loan." The Finance Board's current membership regulation defines "residential mortgage loan" to include, among other things, a "home mortgage loan." *See* 12 CFR 933.1(bb)(1). The Bank Act defines a "home mortgage loan" as "a loan made by a member or a nonmember borrower upon the security of a home mortgage." *See* 12 U.S.C. 1422(5). The Bank Act defines a "home mortgage" generally as a mortgage upon real estate "upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by the [Finance] Board." *See id.* section 1422(6). The membership regulation implements these statutory provisions by defining "home mortgage loan" to include, in part, a loan secured by a first lien on "[c]ombination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property." *See* 12 CFR 933.1(n)(1)(iii). The term "combination business or farm property" means "real property for which the total appraised value is attributable to residential, and business or farm uses." *Id.* § 933.1(i).

B. Eligible Collateral for Advances

Section 10(a) of the Bank Act authorizes a FHLBank to make secured advances to its members and specifies the types of collateral that a FHLBank may accept when originating or renewing an advance. *See* 12 U.S.C. 1430(a). Section 10(a)(1) of the Bank Act requires a FHLBank making or renewing an advance to its members to obtain and maintain a security interest in certain specified types of collateral, among which are "[f]ully disbursed, whole first mortgages on *improved residential property* (not more than 90 days delinquent)." *See id.* section 1430(a)(1) (emphasis added). The Bank Act does not define "residential property" or "improved residential property." The Finance Board's current advances regulation defines "improved residential real property" to mean "residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units." 12 CFR 935.1. The advances regulation defines "residential real property" to include, among other things, "combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property." *See id.* The term "combination business or farm property" means "real property for which the total appraised value is attributable to the combination of residential, and business or farm uses." *Id.*

Thus, in order for a combination farm or business loan to qualify as a "residential mortgage loan" for purposes of satisfying the 10 percent requirement under the current membership regulation, or to qualify for purposes of satisfying advance collateral requirements under the current advances regulation, the combination farm or business property securing the loan must meet the 50 percent test.

III. Proposed Rulemaking

A. Derivation and Description of Proposed Rule

In early 1997, the Finance Board was approached by representatives of community depository institutions, particularly those located in rural areas, who advised that they have a need for alternative funding sources to meet credit demands in their communities, which they believed the FHLBank System was well-suited to provide. As discussed in the preamble to the proposed rule, they indicated that community depository institutions, particularly those in rural areas, often are essential to the housing finance activities and the broader economic well being of the communities they serve. Such institutions have less demand for conventional single family and multifamily mortgage credit and their service areas often are characterized by low population density and a low level of economic activity. In such circumstances, those institutions have not been able to originate a substantial number of residential first mortgage loans. Moreover, many loans originated by rural banks are made on the security of family farms, which are in part residential but which often do not meet the 50 percent test. They stated that the 50 percent test thus hinders the ability of rural banks to become FHLBank System members or to take full advantage, as FHLBank members, of the opportunity to obtain advances and thereby serve the credit needs of their communities.

In response to these concerns, the Finance Board had reason to believe that the 50 percent test may operate to exclude some number of residential properties beyond what was intended when the Finance Board adopted the test. Accordingly, the Finance Board reviewed the relevant statutory and regulatory provisions governing membership eligibility and advances collateral and determined, as discussed in greater detail below, that the statute affords sufficient latitude to address the issues by making changes to the current regulations.

In order to confirm whether the concerns raised by the community institutions were well-founded, the Finance Board issued the proposed rule, which would have eliminated the 50 percent test in both the membership and advances regulations, and replaced it with a provision permitting a loan to be eligible if it is secured by "combination business or farm property, on which is located a permanent structure actually used as a residence, other than for temporary or seasonal housing." *See* 62 FR 53251—53 (Oct. 14, 1997). The objective of the proposal was to ease the burdens of the 50 percent test, within the parameters of the statute. Doing so would allow more institutions with combination family farm/residential loans or combination family business/residential loans (such as loans secured by businesses where the family owns and lives in a residential unit above the store) to be eligible for FHLBank membership and borrowing from the FHLBanks. The requirement that any eligible combination property must have a permanent structure actually used as a residence was intended to ensure that the property retained the requisite residential character required by the statute, which was one reason why the Finance Board adopted the 50 percent test. The proposal was not intended to allow large agribusiness or other large commercial loans to be used for membership eligibility and advances collateral purposes.

In addition, the proposed rule defined "residential mortgage loan," for membership eligibility purposes, to include "[l]oans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program [(CIP)] established under section 10(i) of the Bank Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10)

of the Bank Act." *See* 62 FR 53251—53; 12 U.S.C. 1430(i), (j)(10). The intent of this proposed amendment was to allow such community investment loans to be considered for purposes of eligibility for membership, and to conform the membership regulation more closely to the advances regulation, which already includes loans financed by section 10(i) or section 10(j)(10) advances within the definition of "residential housing finance assets." *See* 12 CFR 935.1.

B. General Discussion of Comments on Proposed Rule

The Finance Board received over 290 comment letters on the proposed rule, which were split relatively evenly between those supporting and those opposing the proposal. The commenters supporting the proposal included five FHLBanks, FHLBank members, prospective members, banking trade associations, and state finance departments. The overwhelming majority of the letters supporting the proposal came from small community banks and thrifts, predominantly in rural areas. The remaining letters supporting the proposal followed closely a comment letter submitted by a banking trade association.

All but one of the comment letters opposing the proposal were from persons or entities associated with the Farm Credit System, a nationwide network of federally chartered, borrower-owned cooperative financial institutions and related service organizations specializing in agricultural loans. The Farm Credit System institutions are major competitors of commercial banks and other farm and rural housing lenders within agricultural credit markets. *See* USDA Economic Research Service Agricultural Economic Report Number 749, "Credit in Rural America" (April 1997) at 42–43 (USDA Report). The trade association for the Farm Credit System submitted a detailed comment letter opposing the proposed rule. Nearly all of the remaining comment letters opposing the proposed rule raised substantially the same issues, and many of them were identical.

Commenters supporting the proposal confirmed the views expressed in the proposed rule that there is a need for additional funding sources in rural markets and that the proposal would further the FHLBank System's housing finance mission by making available such funding for combination farm/residential loans, which are important to rural communities. Commenters confirmed that the 50 percent test is under-inclusive, allowing only those combination loans secured by very small farms to be used for membership eligibility and advances collateral purposes. No commenter contended that the 50 percent test adequately captures all of the family farms or businesses that make up combination properties.

Commenters also stated that the 50 percent test may discriminate against lower income individuals, who can afford only a modest residence on their farm, in favor of more affluent persons, who can place a more expensive residence on the same acreage. They contended that the rule has the effect, in practice, of encouraging the FHLBanks and their members to ignore the housing finance needs of the lower income segments of their communities in favor of more wealthy individuals, which is inconsistent with the FHLBanks' housing finance mission. A banking trade association also emphasized that the 50 percent test may be unworkable in practice because even family farms often are appraised based on their ability to generate income, using the "capitalization approach." Under that approach, the residential portion rarely would be valued at a level approaching the 50 percent test, notwithstanding that the residential portion of the property is integral to the success of the farm on which it is located.

Representatives of the Farm Credit System contended, however, that the proposal goes too far in the opposite direction and is apt to be over-inclusive by allowing the use of loans secured by a combination farm or business property with little or no residential value. They argued that eliminating the 50 percent test is inconsistent with the housing finance mission of the FHLBank System, that the test does not hinder rural banks' ability to become FHLBank members, and that rural banks do not have less demand for conventional single family and multifamily mortgages. They also argued that the Finance Board failed to consider the practical consequences and safety and soundness risks of the proposal.

IV. Adoption of Revised Standard in the Final Rule

After considering the information received in the comment letters, as well as its own resources, the Finance Board has decided to adopt the final rule with one substantive change from the proposed rule, and to limit the applicability of that change to community financial institutions, which are defined as those of a certain asset size or less. Each of those actions is intended to address concerns raised by commenters about the possible overbreadth of the proposed rule. The changes will apply to both the membership and advances collateral provisions, and are intended to limit qualifying loans to combination farm/residence and combination business/residence loans that have the requisite residential nexus, and to exclude large agribusiness and other large commercial loans, which do not. Specifically, the final rule amends the definition of "home mortgage loan" in § 933.1(n)(1)(iii) of the membership regulation to include a loan secured by "combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), *where the residence constitutes an integral part of the property.*" *See* § 933.1(n)(1)(iii) (emphasis added). That revision would apply only to "community financial institutions," which the final rule defines as institutions with average total assets of $500,000,000 or less, based on the average of total assets over the prior three years. For larger institutions, the current 50 percent test would continue to apply. The definition of "residential mortgage loan" in § 933.1(bb)(1) of the membership regulation, because it already includes "home mortgage loans," as defined by these amendments, need not be specifically amended. *See* 12 CFR 933.1(bb)(1). The final rule amends the definition of "residential real property" in § 935.1 of the advances regulation in the same manner. Thus, eligible collateral will include loans secured by "combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), *where the residence constitutes an integral part of the property.*" *See* § 935.1 (emphasis added). As with the membership provisions, this amendment would apply only for institutions with average total assets of $500,000,000 or less over the prior three years; larger institutions would remain subject to the 50 percent test.

V. Authority and Reasons for Changing the 50 Percent Test

A. Finance Board's General Statutory Authority

Congress has offered no guidance on how the Finance Board should deal with combination properties. The Bank Act provides no definition of "residential mortgage loan," which is the operative term for purposes of the 10 percent requirement, nor does it speak to what combination properties may be encompassed by the term. *See* 12 U.S.C. 1424(a)(2)(A). The Bank Act does define a "home mortgage loan" as "a loan

made by a member or a nonmember borrower upon the security of a home mortgage." *See id.* section 1422(5). The Bank Act also defines a "home mortgage" generally as a mortgage upon real estate "upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by the [Finance] Board." *See id.* section 1422(6). The statute does not speak directly to the issue of what constitutes a combination property for purposes of these definitions, nor does the language used by Congress ("upon which is located, or which comprises or includes") suggest that the residential portion of a combination property must meet any specified threshold in order for a mortgage on such property to qualify as a "home mortgage." Indeed, the only statutory mandate, with respect to eligibility for membership, is that the loan must be secured by real estate on which there is located, or which comprises or includes, a home or dwelling unit. *See id.* Moreover, the statute expressly authorizes the Finance Board to define all of those terms.

Congress has offered no more guidance in the context of eligible collateral for advances. Section 10(a) of the Bank Act authorizes each FHLBank to make secured advances to its members upon collateral sufficient, in the judgment of the FHLBank, to fully secure the advances. *See id.* section 1430(a). The Bank Act sets forth the types of collateral that may secure an advance, including "[f]ully disbursed, whole first mortgages on *improved residential property* (not more than 90 days delinquent)." *See id.* section 1430(a)(1) (emphasis added). Again, with regard to what is encompassed by "residential property" or "improved residential property," Congress has opted to remain silent and has not defined the terms. Thus, with respect to the use of whole first mortgages as collateral for advances, the only statutory mandate is that they attach to real property that previously has been improved by the construction of a residence. *See id.*

In considering the comments and determining the terms of the final rule, the Finance Board has been mindful of the requirement that it is bound ultimately by the "unambiguously expressed intent of Congress." *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984) (*Chevron*); *Independent Banks Association of America, and American Bankers Association* v. *Farm Credit Administration*, Civil Action No. 97–00695 (Memorandum Opinion) (Nov. 24, 1997) at 8 (*IBAA*). As noted previously, Congress has opted not to define "residential mortgage loan" and "improved residential property," which are the operative terms in the Bank Act underlying these amendments to the membership and advances regulations. Moreover, the only terms that Congress has defined, "home mortgage" and "home mortgage loan," are not implicated in the statutory provisions here at issue. Even if they were, Congress has defined them in such a way that does not address combination properties, and Congress has expressly authorized the Finance Board to define the terms of the definitions. Because there is nothing in the plain language of the Bank Act that mandates that the residential portion of combination properties constitute a specified percentage of the property's total appraised value, the Finance Board, in the exercise of its informed discretion, must interpret "residential mortgage loan" and "improved residential property" for this purpose and must do so in a manner that is "permissible" in light of the statute's structure and purpose. *See Chevron*, 467 U.S. at 843–45; *IBAA* at 8.

B. Reasons for Changing the 50 Percent Test

1. Bank Act and Legislative History Do Not Provide Particular Direction

Just as there is nothing in the plain language of the Bank Act that suggests how to define "residential mortgage loan" and "improved residential property," there is nothing in the legislative history of the Bank Act that indicates an intent of Congress about how to define these terms, both of which were adopted by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. Law 101–73, 108 Stat. 183 (August 9, 1989). *See* FIRREA, §§ 704(a), 714(a). FIRREA added the 10 percent "residential mortgage loans" requirement to section 4 of the Bank Act. *See* FIRREA, § 704(a). The Conference Report accompanying FIRREA states that, in order to qualify for membership in a FHLBank, insured depository institutions "must have at least 10 percent of their assets in residential mortgage loans, including 1–4 family, multifamily and funded residential construction loans, to qualify for membership." *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. 101–222, 101st Cong., 1st Sess. at 424 (1989) (FIRREA Conference Report). That statement is not particularly helpful because the use of the term "including" indicates that it is at best a non-exclusive illustrative list of some types of loans that Congress viewed as qualifying as "residential mortgage loans."

The legislative history also indicates that the 10 percent requirement was the product of a legislative compromise. The Senate bill would have required a commercial bank to meet the Qualified Thrift Lender (QTL) test, as revised by the Senate bill, in order to be eligible for FHLBank membership. The QTL test, both before and after FIRREA, required a savings association to maintain a certain percentage of its assets in "qualified thrift investments" (QTIs), which FIRREA defined in some detail. The FIRREA Conference Report describes QTIs as "housing finance and related activities." *See id.* at 407. The House bill would not have required commercial banks to meet any quantitative assets test to be eligible for FHLBank membership. In conference, the agreed upon compromise was to replace the Senate's QTL threshold test with the 10 percent residential mortgage loans requirement.

The understanding of the Congress in reaching this compromise is not evident from the legislative history. What is evident from the statutes, however, is that Congress chose diametrically opposed approaches for dealing with the concepts of QTIs and "residential mortgage loans" or "improved residential property," respectively. Congress took great care to define by statute the categories of assets that could be considered to be QTIs. *See* FIRREA, § 303(a). Moreover, Congress quite clearly expressed its intent that the QTI categories established by statute were not to be modified, stating that the QTI assets "are specifically defined so as to prevent the inclusion of other assets by regulatory interpretation." *See* FIRREA Conference Report at 407. In contrast, Congress did not define what may be included in "residential mortgage loans" for purposes of the 10 percent requirement, nor did it include any comparable language in the FIRREA Conference Report. If any inference can be drawn from this meager legislative history, it is that Congress must have intended to leave the implementation of these terms to the informed judgment of the Finance Board. Had it intended otherwise, it could have defined the terms by statute or unequivocally expressed its intent as to how the provisions are to be applied, both of which it did, in the same law, for the QTL test.

Regarding eligible collateral for advances, prior to FIRREA each FHLBank was authorized to make

secured advances to its members upon such security as the Federal Home Loan Bank Board (FHLBB) may prescribe. *See* 12 U.S.C. 1430(a) (1989). FIRREA amended section 10(a) to establish specific categories of eligible collateral that a FHLBank may accept as security for advances to members. *See* FIRREA, § 714(a). Section 10(a)(1) eligible collateral includes "fully disbursed, whole first mortgages on *improved residential property* (not more than 90 days delinquent). *See* 12 U.S.C. 1430(a)(1) (emphasis added). The FIRREA Conference Report refers to the eligible collateral as "low risk assets" and describes the section 10(a)(1) collateral generally as "current first residential mortgage loans." *See* FIRREA Conference Report at 427. The FIRREA Conference Report does not further define "improved residential property" or "residential mortgage loans" for advances collateral purposes. For the reasons described for membership purposes, it appears as well that Congress intended to allow the Finance Board to further define these terms.

2. The 50 Percent Test Is Purely a Regulatory Creation That Can Be Changed for Good Reason

The 50 percent test was purely a regulatory creation of the Finance Board, adopted on the assumption that requiring at least half of the value of the combination property to be attributable to a residence would ensure that such properties possess the residential nexus required by the statute and still meet the housing finance needs of rural and other communities. In retrospect, it appears that the decision to rely on the 50 percent test in all cases was unduly restrictive, because properties not meeting the test still might possess substantial residential characteristics that could be recognized for membership and advances collateral purposes, consistent with the statute. After considering the comments in favor of the proposal, the Finance Board is persuaded that the 50 percent test is not operating in practice to serve the purposes intended. Indeed, it appears more likely that the test operates in some cases to frustrate the mission of the FHLBank System by excluding important elements of both rural and urban housing finance markets. The Finance Board is particularly concerned about comments indicating that the test discriminates against lower income persons, effectively precluding current and prospective FHLBank members from using FHLBank services to address the housing finance needs of that segment of the population.

As a general matter, an agency is free to change its interpretation of its statute so long as its actions are rational, reasonable, not arbitrary and capricious, involve no clear error of judgment, and a satisfactory explanation for its actions is included in the record. *See, e.g.*, 5 U.S.C. 706(2)(A); *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 41–43 (1983); *Camp* v. *Pitts*, 411 U.S. 138, 142 (1973) (per curiam); *IBAA*, at 8–9. This test is "not particularly demanding," even when the agency action consists of a change in a long-standing regulatory position on a particular issue. *See, e.g., Republican Nat. Committee* v. *Federal Election Com'n.*, 76 F.3d 400, 407 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 682 (1997); *IBAA* at 9. In fact, an agency is charged with the responsibility of continually evaluating the appropriateness of its regulatory policy, even regulatory policy already adopted. *See Chevron*, 467 U.S. at 863–64; *IBAA* at 9.

3. Specific Reasons for Changing the 50 Percent Test

Commenters supporting the proposal confirmed that it would further the FHLBank System's housing finance mission by making available a needed source of funding for combination farm/residential loans, which are important to rural communities. Commenters also confirmed that the 50 percent test is under-inclusive, allowing only those combination loans secured by very small farms to be used for membership eligibility and advances collateral purposes. No commenter contended that the 50 percent test precisely captures all of the family farms or businesses that make up combination properties having a sufficient residential nexus. The Finance Board is of the view that the 50 percent test is unnecessarily severe in excluding bona fide residences simply because the non-residential portion may have a greater value than the residential portion.

One difficulty in relying exclusively on an objective test, such as the 50 percent test, is that it is apt to be over- or under-inclusive because of geographic variations. Another difficulty with the 50 percent test is that it may discriminate against lower income individuals, who can afford only a modest residence on their farm, in favor of more affluent persons, who can place a more expensive residence on the same acreage. One commenter raised precisely that issue, providing examples of the value of certain types of residences in relation to given acreage of farmland. A rule that encourages the FHLBanks and their members to ignore the housing finance needs of the lower income segments of their communities in favor of more wealthy individuals is not consistent with carrying out the housing finance and community investment mission of the FHLBanks, which relates to all segments of the market.

Farm Credit System commenters contended, however, that the proposal to eliminate the 50 percent test without providing a substitute standard went too far in the opposite direction and is apt to be over-inclusive by allowing the use of loans secured by a combination business or farm property, even if the property were to possess only the barest of residential characteristics. The Finance Board believes that there may be merit in that argument, at least on the point that the proposed rule might be construed by some as allowing properties with only the slightest residential component to be included as residential property. The proposal was not intended to be applied in the manner suggested by the commenters. Nor was it intended to allow a FHLBank to characterize large agribusiness and other large commercial loans as residential loans. Instead, it was intended to make the definitions recognize and conform to the practical realities of the residential housing finance markets in rural communities. The Finance Board agrees that the final rule should incorporate some further standard that more clearly expresses the Finance Board's intention to preclude the use of loans having only minimal residential characteristics.

Therefore, the Finance Board is revising the definitions of "home mortgage loan" and "residential real property" in the final rule to include a standard that would limit qualifying loans to combination farm/residence and combination business/residence loans with a sufficient residential nexus. The final rule also limits the application of the revised definition to institutions with assets of $500,000,000 or less. By narrowing the substance of the definition and by limiting its applicability, the Finance Board intends to target the benefits of the rule change more precisely on the housing finance and community investment mission of the FHLBank System, and to exclude the types of large agribusiness and other large commercial loans that were of concern to some commenters. Specifically, the final rule amends the definition of "home mortgage loan" in § 933.1(n)(1)(iii) of the membership regulation to include a loan secured by "combination business or farm property, on which is located a permanent structure actually used as a residence

(other than for temporary or seasonal housing), *where the residence constitutes an integral part of the property.*" *See* § 933.1(n)(1)(iii) (emphasis added). The amended rule would apply only to institutions with average total assets of $500,000,000 or less, determined over a three-year period; for larger institutions, the current 50 percent test would remain in effect. The definition of "residential mortgage loan" in § 933.1(bb)(1) of the membership regulation includes the term "home mortgage loans," as defined in § 933.1(n)(1)(iii), and therefore, need not be specifically amended in order to include these revisions. *See* 12 CFR 933.1(bb)(1). The final rule amends the definition of "residential real property" in § 935.1 of the advances regulation in a similar manner. *See* § 935.1.

The intent of the Finance Board in adding the "integral" requirement is to create a standard that will include only those combination properties where the residence is inextricably linked to the non-residential portion, such as in what is commonly understood as a family farm or a family business with a residence "above the store." What constitutes such a property will vary from region to region across the country; what constitutes a family farm in the western states, for example, might well be larger in size than what constitutes a family farm in New England, although the residential portion of each property may be of comparable size. The Finance Board believes adding the "integral" requirement will allow additional latitude for the FHLBanks by providing for the inclusion of loans secured by property containing a residence whose value cannot be inconsequential in relation to the overall value of the property, while excluding the types of large agribusiness and other large commercial loans that concerned the commenters.

By adopting a more subjective standard, the Finance Board intends to allow the FHLBanks, which are in a better position to know what constitutes a family farm or business within their districts, to determine for themselves which combination properties include a residence that is so inextricably linked to the remainder of the property as to be integral to the property as a whole. That is a particularly fact-specific determination. For example, the "integral" standard would not necessarily preclude non-contiguous farm parcels that secure the same loan, so long as, in the judgment of the FHLBank, all of the parcels satisfy the "integral" standard. Clearly, a parcel's proximity to the residence is apt to be a principal consideration in determining whether the two properties are "inextricably linked" for these purposes. In any event, these would be matters for the FHLBank to address. Likewise, the FHLBank must determine how much documentation shall be provided by prospective and current members in order to show that particular loans and their collateral satisfy the standard. The Finance Board expects to review the FHLBanks' implementation of the standard as part of the annual examination process and will monitor compliance with this provision.

Limiting the applicability of the revised definitions to institutions with assets of $500,000,000 or less would further address the concerns of some commenters that the proposed rule could be manipulated to allow very large commercial and large agribusiness loans to be considered as "residential" simply by including a residence on the underlying property. The Finance Board never intended the proposed rule to encompass purely commercial or business loans, and has incorporated the "integral" standard into the final rule in order to ensure that any combination loan used for membership or collateral purposes would have the requisite residential nexus. Nonetheless, the Finance Board also believes that the inclusion of an additional safeguard against the concerns expressed by the commenters would be consistent with its goals and with the Bank Act.

One means of lessening the likelihood that an institution could mischaracterize large commercial or large agribusiness loans as "residential" is to limit the maximum size of the loans that may qualify under the "integral" standard. That result may be achieved indirectly by limiting the size of the institutions that may take advantage of the amended rule, because the maximum dollar amount of loans that a depository institution may make is tied to its capital levels, which in turn are a function of its size. As a general matter, depository institutions are barred from extending credit to any one borrower in an amount exceeding 15 percent of their capital and surplus. 12 U.S.C. 84(a)(1). That lending limit applies to the aggregate amount of all loans made to a single "borrower," which term may encompass other related persons and entities. *See* 12 CFR 32.5.

Although the dollar amount of the lending limit will vary from institution to institution, the approximate cap for institutions with assets of $500,000,000 or less should be sufficiently small to preclude the type of large commercial and large agribusiness loans cited by the commenters. For example, a depository institution must maintain minimum total capital equal to 8 percent of its "risk-weighted assets." *Id.* Part 3, App. A, Sec. 4(b). Using that as a proxy for actual capital, and assuming a 100 percent risk-weighting (which in practice is unlikely to be the case), an institution with assets of $500,000,000 might have capital of approximately $40,000,000, with a lending limit of approximately $6,000,000. An institution with $100,000,000 in assets might have a lending limit of approximately $1,200,000. Those limits would apply to the total amount of all loans made to a single borrower, and thus would encompass both residential loans of the type permitted under these amendments, as well as any commercial or personal loans. Moreover, as a matter of sound banking practice, depository institutions do not generally lend to the full amount permitted under their lending limit, so the Finance Board anticipates that the dollar amounts of loans made are apt to be considerably smaller than these rough estimates. The Finance Board believes that effectively placing the qualifying loans within the lending limits of members and prospective members should help ensure that the loan amounts, and hence their purposes, are more likely to be for bona fide residential combination properties and not for large commercial or large agribusiness loans.

4. Other Alternatives Considered

In attempting to reconcile the competing interests of commenters, the Finance Board considered various other options for defining qualifying "residential mortgage loans" and "residential real property." As discussed further below, in the Finance Board's view, none of these alternatives would satisfactorily achieve the goal of including true combination family farm and business loans, both of which have the residential nexus required by the Bank Act, while excluding large agribusiness and other large commercial loans, which do not.

For example, the Finance Board considered adopting a specific percentage test other than the 50 percent test. Such a test would ensure that the property securing the loan has a greater residential component than under the proposal, while continuing to qualify more loans that now fail the 50 percent test. However, such a test would establish a national standard that likely would remain under-inclusive, that could not reflect differences in local real estate values, and would continue to exclude from membership and borrowing any rural institutions with combination farm or business loans that

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could not meet the reduced percentage test, regardless of whether the underlying properties included bona fide residences. For example, as a commenter pointed out, even such a modified test likely would exclude family ranches in areas where the land is very valuable relative to the residence. The test also would create operational difficulties where the existing appraisals held by the members originating the loan do not separate the value of the residence from the value of the entire property.

The Finance Board also considered adopting a specific acreage limit or dollar limit as a proxy for identifying a family farm or business, *i.e.*, the combined farm property securing the loan could not exceed a specific acreage limit, or the combination farm or business loan could not exceed a specific dollar amount. If the acreage limit or dollar limit were set low enough, the standard likely would qualify small combination family farm or business loans, while excluding large agricultural and other business loans. However, as pointed out by a commenter, such limits once again would establish national standards that cannot reflect differences in local business operations and real estate values. The acreage size limit likely would be under-inclusive, excluding some large-acreage farms that would be considered to be family farms in certain locales, such as ranching areas. The dollar limit likely would have the same problem, effectively requiring the establishment of a nationwide standard that would not necessarily reflect local market differences. In addition, an acreage limit or dollar limit, by itself, would not necessarily guarantee an adequate residential nexus, which the statute requires.

One FHLBank commenter suggested that the Finance Board adopt an employee-based or ownership-based standard as a surrogate for small combination family farm and business loans. Such an approach would limit a qualifying farm or business obtaining the loan to no more than a specific number of full-time equivalent employees. The commenter suggested using 100 employees as an appropriate level. The commenter also proposed limiting a farm or business corporation obtaining the loan to no more than a specific number of shareholders, such as 10 shareholders. Such standards likely would encompass many of the type of loans intended by the Finance Board, while excluding large agricultural and other large business loans. However, again, this approach would establish a national standard that would not work in all locales. It also would be very difficult for the Finance Board to ascertain how many employees or shareholders are typical for a family farm or business throughout the country, and then craft a regulation based on that information. In addition, an employee or shareholder test, by itself, would not necessarily guarantee an adequate residential nexus, which the statute requires.

Another option considered was to require that the combination farm or business property securing the loan be owner-occupied. Such a standard would exclude loans secured by large farms with only a caretaker's residence located on the property. However, a commenter indicated that this standard would be under-inclusive because it would exclude a significant number of combination family farm or business loans where a family member lives in the residence on the property but the residence is owned in the name of another family member or a family-owned corporation. Defining ownership also could create problems in implementation of the standard, and possible conflicts with state laws.

Another option presented was to limit the farm or business obtaining the loan to family partnerships or proprietorships, *i.e.*, not corporations, on the theory that this would serve as a surrogate for small combination family farm and business loans. However, as a commenter pointed out, such a standard also would be under-inclusive because it would eliminate many small family farms that are incorporated for tax or other reasons.

The Finance Board also considered an option supported by a FHLBank commenter to establish a "materiality" standard for the residential portion of the combination property, with each FHLBank adopting its own criteria for determining "materiality" based on local conditions. Such a standard could be an independent requirement or combined with a reduced percentage test. The standard would ensure that the property securing the loan has a "material" residential component, and would reflect differences in local combination farm or business properties, which a national standard cannot do, thereby qualifying more combination farm or business loans held by rural institutions that might otherwise fail the 50 percent test or a reduced percentage test. However, the term "material" is a term of art in other areas of the law, such as the federal securities laws, and its use here might prompt unintended and undue reliance on a standard established under a body of law unrelated to the FHLBanks.

C. Comments on Finance Board's Authority to Change the 50 Percent Test

1. Mission and Goals of the FHLBank System

The Farm Credit System commenters contended that the proposed rule would be inconsistent with the housing finance mission of the FHLBank System, principally because it would have allowed the use of loans for membership and collateral purposes that are not predominantly residential in nature. As described previously, the final rule requires not only that any eligible combination property must include a bona fide permanent residence, but that the residential component of the property must be "integral" to, or inextricably linked with, the overall parcel.

The Finance Board believes that the "integral" standard will ensure that any loan secured by such combination property will have the necessary residential nexus required by the Bank Act, and thus will be consistent with the FHLBanks' housing finance mission. The "integral" standard may well allow the use of some loans secured by combination properties even if the value of the residential portion of the property does not predominate, but the Bank Act clearly permits that possibility, for reasons discussed previously. Moreover, the housing finance mission of the FHLBanks includes a community investment component, and the final rule is consistent with that aspect of the mission as well. In 1989, the Congress mandated that each FHLBank must establish a Community Investment Program (CIP); Congress also expressly permitted the FHLBanks to establish additional community investment cash advance programs (Section 10(j)(10) programs). *See* 12 U.S.C. 1430(i), (j)(10).

Under the CIP, "community-oriented mortgage lending" includes loans to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods. *Id.* at 1430(j)(2). The Finance Board previously has determined that such targeted commercial and economic development lending constitutes "residential housing finance," for purposes of allowing long-term CIP advances. *See* CIP Policy Statement, Board Resolution No. 92–533 (July 17, 1992); 12 CFR 935.1, 935.14(b)(2). The section 10(j)(10) provisions do not specify any targeting requirements, which suggests that Congress contemplated that Section 10(j)(10) programs need not have the same targeting or other eligibility

requirements as are required under the CIP.

It is possible under these provisions for a FHLBank to fund targeted commercial or economic development that has no "residential" component, at least in the sense contemplated by the Farm Credit System commenters. Yet, the Finance Board has determined that such funding would be part of the FHLBank's housing finance mission, as described above. It would be anomalous to find that a targeted loan for wholly commercial or economic development purposes is so clearly within the mission of the FHLBanks, but that a combination loan, even if similarly targeted, would somehow be beyond the housing finance mission because it may be in part related to a commercial business or farm property. The Finance Board believes that some number of rural and urban combination properties will necessarily be located in low-and moderate-income neighborhoods. Further, limiting the size of the institutions eligible to use the revised standard, and thereby limiting the size of the combination loans to be made by these institutions, is itself a method of targeting the use of this standard to the communities and uses most in need of the relief. To accept the reasoning of the Farm Credit System commenters and conclude otherwise would require the Finance Board to ignore the community investment aspect of the housing finance mission, which it is not prepared to do. In the view of the Finance Board, the final rule is consistent with both the historical concept of residential housing finance, as well as the more broadly defined concept incorporated by Congress into the Bank Act in 1989.

2. "Rational" Basis for Changing Prior Agency Statutory Interpretation

Some of the commenters opposing the proposed rule contended that the proposal should be withdrawn as inconsistent with the Finance Board's prior interpretations of the statutory provisions, suggesting that the Finance Board has ignored those interpretations and is obliged to adhere to them. The commenters noted, for example, that in the original rulemaking when the 50 percent test for advances collateral purposes was adopted, the Finance Board rejected a commenter's suggestion to set the limit at 10 percent, explaining that the higher percentage better reflected the FHLBanks' focus on housing finance. *See* 58 FR 29456, 29462 (May 20, 1993). Opposing commenters now question the authority of the Finance Board to take what they believe is a conflicting position.

The Finance Board by no means has ignored its prior positions and interpretations relating to the 50 percent test. To the contrary, the Finance Board has carefully and thoroughly considered its past approaches to this issue, all of the comments and suggestions received in response to the proposed rule, and various alternative approaches. The Finance Board has elected now to adopt an approach that is consistent with its prior intentions yet, at the same time, better accomplishes its intentions, is more flexible and allows for more subjective analysis in lieu of rigid adherence to a fixed percentage test.

As previously noted, an agency is free to change its interpretation of its statute so long as its actions are rational, reasonable, not arbitrary and capricious, involve no clear error of judgment, and a satisfactory explanation for its actions is included within the record. *See, e.g.*, 5 U.S.C. 706(2)(A); *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 41–43; *Camp*, 411 U.S. at 142; *IBAA*, at 8–9.

Nothing in the Bank Act or in the Administrative Procedure Act alters the agency's authority in this regard. In fact, deference is given to the administering agency's construction of an ambiguous statute if it is "permissible" or "reasonable" in light of the statute's overall structure and goals. *Chevron*, 467 U.S. at 843–45. Deference to the Finance Board's policy judgments is particularly appropriate given its expertise and the broad discretion Congress has conferred upon it. The Finance Board regulates in an area—the financial services context where courts have customarily deferred to evolving administrative interpretations of statutory language as a means of accommodating changes in the market place and customers' service needs. *See, e.g., Clarke* v. *Securities Industry Ass'n*, 479 U.S. 388, 403–09 (1987); *Board of Governors of Federal Reserve System* v. *Investment Company Institute*, 450 U.S. 46, 56–58, 68 (1981). A notable example of such deference is *IBAA* v. *Clarke*, where the court, deferring to a statutory construction by a federal banking regulatory agency that recognized "the realities of banking in the nineties" and that "the financial industry is complex and changing," concluded that "[t]his kind of regulatory and competitive environment is especially suited to the expert judgment of regulators accustomed to dealing with the industry day to day." 917 F.2d 1126, 1129 (8th Cir. 1990). Thus, it is firmly established that the Finance Board is entitled to deference as the agency charged with administering the Bank Act. *See Rust* v. *Sullivan*, 500 U.S. 173, 184, 186–187 (1991).

Change in statutory interpretation is not a problem "since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency." *Smiley* v. *Citibank (South Dakota), N.A.*, 116 S.Ct. 1730, 1734 (1996). As the U.S. Supreme Court emphasized in *Chevron*, "an initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis." 467 U.S. at 863–64. That is what the Finance Board is doing through this rulemaking.

3. Ability of Rural Banks to Become FHLBank Members; Need for FHLBank Credit

Some commenters argued that the Finance Board offered no reasoned explanation or empirical data to support its departure from prior practice. The Farm Credit System trade association argued that the 50 percent test should be retained because it does not hinder rural banks' ability to become FHLBank members, and rural banks do not have less demand for conventional single family and multifamily mortgages.

As an initial matter, there is nothing that requires the Finance Board to conduct empirical studies as a prerequisite to conducting a rulemaking proceeding. Indeed, there are any number of issues on which an agency may regulate, such as interpretations of a statute, where empirical analysis would have little relevance or benefit. An empirical study of rural credit and housing markets might better inform the Finance Board about certain aspects of those markets. It would be of no use, however, in determining what minimum residential characteristics are required by Congress in order for loans on combination properties to be eligible for membership and advances collateral purposes, which is the issue addressed by this rule.

That said, in adopting this final rule, the Finance Board has considered studies prepared by other parties as sources of information about the need for alternative funding sources for rural banks and the state of rural credit markets. *See* USDA Report; "Second Annual Community Bank Competitiveness Study," ABA/ABA Banking Journal (Feb. 1998); Farm Credit Situation Survey Report 1997 (American Bankers Association 1997). The Finance Board also has taken into consideration its initial discussions with industry representatives about the shortcomings of the 50 percent test, as well as the comments supporting the proposal, which confirm the need for

alternative funding sources for rural banks and the likelihood that the proposal would address that need. The Finance Board does not believe that it is required to undertake further independent empirical research of the rural credit and housing markets in order to exercise its rulemaking authority.

The Farm Credit System trade association cited to a statement in the USDA Report that, "[n]ationwide, rural-headquartered commercial banks are as likely to be members of the [FHLBank System] as are other banks" to support its views. *See* USDA Report at 48 n.19. However, the commenter also acknowledged in a footnote that, "[n]otwithstanding this conclusion, the [USDA] Report noted that 'rural access' to FHLBank membership was of 'some concern' in three isolated markets." What the commenter characterizes as three "isolated markets" are in fact three FHLBank districts—Des Moines, Dallas and Topeka—which encompass 14 states. Moreover, the USDA Report indicates that there are a total of 900 ineligible rural banks in these districts. *See id.* The purpose of the Finance Board's rule is to assist some of these 900 rural banks in joining and borrowing from the FHLBank System, as well as to assist current members in increasing their borrowing capacity. Two of the FHLBanks cited in the USDA Report, Des Moines and Topeka, submitted comment letters strongly supporting the proposal. The Des Moines letter stated that eliminating the current 50 percent test will enable over 600 of the FHLBank's current small community bank members with assets under $100 million to fully use FHLBank funding. In addition, the FHLBank estimated that the expansion of the membership eligibility criteria to include these combination loans will enable approximately 700 more financial institutions to join the Des Moines FHLBank. (The USDA Report estimated 322 ineligible rural banks in the Des Moines district, *see id.;* therefore, it is assumed that the estimate of 700 ineligible institutions provided by the Des Moines FHLBank covers non-rural as well as rural institutions.)

In addition, the USDA Report states that there are concerns about whether rural offices of large urban banks effectively serve their rural customers. *See id.* at 63. The USDA Report also states that rural FHLBank members are larger and hold a greater ratio of mortgage-related assets than other rural banks that are not FHLBank members. *See id.* at 48 n.19. This suggests that smaller banks and their rural customers may be underserved at present and that increased FHLBank access by small rural banks is needed. Notwithstanding the arguments of the Farm Credit System commenters, it appears that the information in the USDA Report actually supports the Finance Board's view that the 50 percent test operates in practice to hinder the ability of rural banks to become FHLBank members.

In addition, in a subsequent comment letter the Farm Credit System trade association suggested that it is concerned with commercial bank competition in the agricultural markets and indicated that there are already two government sponsored enterprises (GSEs) serving the credit needs of agriculture—the Farm Credit System and the Federal Agricultural Mortgage Corporation (Farmer Mac). As previously stated, many family farm/residential loans, while not meeting the 50 percent test, have a sufficient residential nexus to ensure consistency with the FHLBank System's housing finance and community investment mission. Because it is within the missions of the Farm Credit System and Farmer Mac, as well as the FHLBank System, to support the rural housing markets, there is clearly some overlap in the markets served by different GSEs. Such overlap can result in competition among GSEs.

The primary benefit afforded to GSEs is the ability to borrow at rates only slightly higher than Treasury borrowing rates. The Farm Credit System, Farmer Mac and the FHLBanks all receive this benefit by virtue of their GSE status. In return for this benefit, GSEs have a responsibility to fulfill a public policy mission. One of the ways that GSEs fulfill their mission is by passing along their funding advantage to the end user. The FHLBank System's housing finance and community investment mission requires the FHLBanks to provide funds to financial institutions in all markets, including rural markets that also may receive some assistance from one or more other GSEs. To the extent that other GSEs also provide government subsidized assistance to certain rural markets, the revisions to the FHLBanks' membership and collateral provisions do not result in an introduction of a new subsidy to these markets, but rather provide another source of government-subsidized funding. In fact, competition among GSEs can be viewed as a positive development because it helps ensure that government subsidies flow to the end user and not to the GSE's managers and shareholders.

The Farm Credit System trade association also argued that its analysis of the likely membership effects of the proposed rule does not suggest that rural banks would uniquely benefit from elimination of the 50 percent test. The commenter indicated that, based on its own analysis of the loan portfolios of non-metropolitan and metropolitan banks, membership eligibility for non-metropolitan banks would increase approximately 10.5 percent, while membership eligibility for metropolitan banks would similarly increase by more than 8 percent.

Although the proposed rule was issued in response to concerns raised by rural banks, and is intended specifically to assist rural banks in accessing the FHLBank System, the Finance Board did not intend that such benefits accrue solely to rural banks. These amendments apply as well to combination properties involving a non-farm business and a residence, and it is anticipated that loans secured by such properties located in urban areas also will be used by members and prospective members as a result of this rule. The mission of the FHLBank System includes the provision of funds to financial institutions located in all areas of the country, and to the extent the rule assists non-rural, as well as rural, banks, it is entirely consistent with the FHLBank System's mission.

The Farm Credit System trade association also claimed that statements made in support of the proposed rule contradict and must be reconciled with past Finance Board statements to Congress. Specifically, the Finance Board has stated that "[e]ligible [other real estate related] collateral for [FHLBank] System advances is already very broad," and "[t]here is no evidence that advance demand is constrained by a lack of eligible collateral." *See* Finance Board *Report on the Structure and Role of the Federal Home Loan Bank System* at 167 (March 19, 1993).

The advantages of expanding the scope of that category of eligible collateral were not considered to be significant at that time. *See id.* However, as acknowledged by the commenter, the Finance Board separately recommended that Congress permit the FHLBanks to accept a broader range of collateral to secure advances in order to carry out the FHLBank System's mission as defined by the Finance Board. *See id.* In addition, as explained in the proposed rule, since adoption of the 50 percent test, the Finance Board has received new information from members and nonmembers of the FHLBank System indicating that the 50 percent test has proven to be under-inclusive and, consequently, is constraining advance demand in certain markets. This was confirmed by a significant number of commenters, many of whom contend

that eliminating the 50 percent test would further the FHLBank System's housing finance mission by making available a needed source of funding for combination farm/residential loans.

4. Practical Consequences of Changing the 50 Percent Test

The Farm Credit System trade association also argued that the Finance Board failed to consider the practical consequences of the proposal. For instance, the commenter stated that the proposed rule did not indicate how, with a substantial increase of eligible collateral, the Finance Board would reconcile the credit demand in rural markets with the potential impact on credit supply. The commenter estimated that more than $18 billion in loans held by non-metropolitan banks could be newly pledged as collateral for FHLBank advances. The commenter argued that such an analysis is one essential predicate to deciding whether the proposed rule is appropriately tailored to the Finance Board's statutory housing mission.

The most likely practical consequences resulting from the final rule are that some number of rural institutions will become eligible to become members of the FHLBank System, will do so, and will borrow from their FHLBank to finance residential housing within their communities. Obviously, if the rule has the desired effect, there should be some corresponding increase in the aggregate amount of advances outstanding, which currently total approximately $208 billion System-wide. The Finance Board has no reason to believe that an additional $18 billion of collateral, assuming for the sake of argument that $18 billion is an accurate figure, will overwhelm the credit markets. For one thing, some portion of that amount will be owned by institutions that choose not to become members, and some will be owned by members who will not borrow to their full potential. Additionally, the FHLBanks all have credit policies that establish discounts for various types of collateral. Given the circumstances and the prudent underwriting by the FHLBanks, the Finance Board would expect that any FHLBank accepting newly-authorized loans on combination properties would significantly discount those loans pledged as collateral. This discounting, or overcollateralization, would further diminish the amount of credit that the newly-authorized collateral could support. Moreover, the insured depository institutions that presumably would be borrowing against this collateral are regulated by other agencies, which require the institutions they regulate to limit asset growth to what is prudent. *See* 12 CFR Part 30, App. A, § II.F. The Finance Board believes that those operational and regulatory checks will preclude any undue consequences in the rural credit markets as a result of this rule.

5. Safety and Soundness Risks of Changing the 50 Percent Test

The Farm Credit System trade association also stated that the Finance Board did not indicate how it will address the fact that a mortgage on a combination property may be less liquid and marketable than a conventional home mortgage. The commenter stated that a safety and soundness issue may arise where a prospective member lender lacks the necessary understanding of the agricultural lending process, which may result in compromised underwriting practices and poor credit decisions in pursuing loans on newly eligible combination properties, increasing the likelihood of loan losses incurred by the FHLBanks.

In fact, the proposed rule discussed at length the fact that any additional risks that might arise if such mortgage loans are used as collateral for advances should be adequately managed in accordance with the current provisions of the advances regulation and FHLBank credit policies. The FHLBanks already accept combination loans, and have expertise in underwriting advances secured by such loans. The final rule, like the current advances regulation, does not mandate that the FHLBanks accept combination farm or business loans as collateral for advances. It merely includes such loans in the category of loans eligible to be accepted by a FHLBank to secure advances.

The FHLBanks already are permitted to accept as collateral for advances to members "other real estate related collateral" (provided aggregate outstanding advances secured by such collateral do not exceed 30 percent of the member's capital). *See* 12 U.S.C. 1430(a)(4); 12 CFR 935.9(a)(4). Included in this category of permissible collateral are loans on farms and other agricultural property, commercial mortgage loans, construction loans, land development loans, and second mortgage loans including home equity loans. *See* 12 CFR 935.9(a)(4)(ii). The FHLBanks also may accept multifamily loans as eligible collateral, without being subject to the 30 percent member capital limit. *See* 12 U.S.C. 1430(a)(1); 12 CFR 935.9(a)(1)(i). With respect to each of those types of collateral, the FHLBanks already manage the credit, liquidity, and marketability risks cited by the commenter, as well as other risks, associated with non-one-to-four family residential mortgage collateral. There is no evidence that these revisions will subject the FHLBanks to underwriting tasks that are beyond their ability to manage.

The Finance Board requires that the FHLBanks have such underwriting expertise and credit policies before accepting such loans as collateral. Specifically, the advances regulation requires, among other things, that the FHLBanks establish written procedures for determining the value of collateral securing advances, and that the FHLBanks follow those procedures in ascertaining the value of particular assets offered as collateral. *See* 12 CFR 935.12. The regulation also permits the FHLBanks to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the FHLBank deems necessary. *See id.*

Rural lending often requires collateral valuation practices that may differ significantly from those typically employed in lending on the security of one-to-four family homes. The Finance Board expects each FHLBank to review its collateral valuation procedures, and amend them as necessary to reflect the changes made in the final rule, before accepting as collateral any newly authorized combination properties. The Finance Board also expects that the FHLBanks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral, taking into account the additional risks inherent in rural lending and each FHLBank's own capability to evaluate those risks. In addition, the FHLBanks generally require that members pledge additional collateral if the value of their original collateral declines.

Finally, as the regulator of the FHLBanks, the Finance Board's primary responsibility is to ensure that the FHLBanks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). The Finance Board's oversight of the FHLBanks includes annual on-site examinations and regular off-site review of FHLBank operations. Emphasis is placed on areas of FHLBank operation that could potentially expose the FHLBank and the FHLBank System to risk. As part of the examination process, the Finance Board reviews and evaluates the FHLBanks' management of collateral. Examiners review valuation methodology, discounts applied to collateral, and frequency of review or re-valuation for various types of collateral. Moreover, the loan quality and underwriting practices of the individual members are reviewed regularly by the

primary banking regulators through periodic examinations.

In short, the above-described FHLBank practices, regulatory requirements, and Finance Board examination oversight, do not encourage FHLBank members to approve unsafe or unsound loans that could be pledged to the FHLBanks to secure advances.

In addition, increasing access to the FHLBank System would provide current and prospective members with enhanced risk management options. The USDA Report states that access to funds from GSEs, such as the FHLBanks, enhances liquidity and can improve profitability and risk management of depository financial intermediaries, including commercial banks, credit unions, and thrifts. *See* USDA Report at 97. Risk management is enhanced because GSE funds are available with longer maturities than are usually available on deposits at commercial banks. *See id.* at 98. Advances can be used to control interest rate risk by allowing member banks to match the funding to the maturity, payment structure, prepayment options, and other features of the loans they make. *See id.*

The Finance Board specifically requested comment on whether elimination of the 50 percent test might expose the FHLBanks to any undue risk of loss should a FHLBank need to liquidate the combination mortgage loans it holds as collateral for an advance. *See* 62 FR 53252. Many commenters stated that the proposal would not present safety or soundness risks for the FHLBanks because, as discussed above, the FHLBanks do not lend against the full value of collateral, but rather apply discounts depending on the riskiness of the collateral and the difficulties in valuing it. Commenters also pointed out that the FHLBanks obtain appraisals of collateral from members, and can require additional collateral if necessary.

In addition, commenters noted that combination loans at rural banks are solidly performing and generally exceed the loan quality of the rest of the banking industry, with 1996 net charge-offs on average loans at rural banks at 0.32 percent, while net charge-offs for banks overall were 0.61 percent. One FHLBank commenter noted that the experience of lenders in Iowa during the 1980s "agricultural crisis" was that, while there was a substantial decline in value of both one-to-four family properties in rural areas and combination farm/residence properties, the decline was not greater for the combination properties than it was for those that were solely residential. In fact, the combination properties were more likely to be sold since there remained buyers interested in the agricultural portion of the land. Based on this experience, the commenter did not believe that combination property is more volatile than solely residential property located in rural areas. The commenter stated that it planned to hire additional experienced personnel to ensure that, through proper due diligence, its practices are prudent and will not expose the FHLBank to undue risks of loss.

Accordingly, the Finance Board believes that through due diligence, overcollateralization, and prudent credit and collateral risk management procedures and practices, the FHLBanks can adequately prevent undue risk of loss on advances secured by combination loans. Therefore, the Finance Board does not believe that there are undue safety and soundness risks that would suggest that the Finance Board lacks the "rational" basis for changing the 50 percent test in the final rule.

VI. Definition of "Residential Mortgage Loan" in § 933.1(bb)(8) of the Final Rule

Consistent with the proposed rule, "residential mortgage loan" is defined in § 933.1(bb)(8) of the final rule to include, for membership eligibility purposes, loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the CIP established under section 10(i) of the Bank Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10) of the Bank Act. *See* 12 U.S.C. 1430(i), (j)(10).

The intent of this amendment is to allow such community investment loans to be considered for purposes of eligibility for membership, and to conform the membership regulation more closely to the advances regulation, which already includes loans financed by section 10(i) or section 10(j)(10) advances within the definition of "residential housing finance assets." *See* 12 CFR 935.1. A banking trade association specifically supported the proposed definition.

VII. Regulatory Flexibility Act

The final rule does not impose any additional reporting, recordkeeping, or compliance requirements on prospective or current FHLBank members. Although the Finance Board anticipates that the final rule will be of benefit primarily to small depository institutions, it will not have a disproportionate impact on small entities. Therefore, in accordance with the Regulatory Flexibility Act, the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

VIII. Paperwork Reduction Act

The final rule does not contain any collections of information, as defined by the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 933

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, parts 933 and 935 of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend § 933.1 by revising paragraph (n)(1)(iii), removing "or" at the end of paragraph (bb)(6)(iii), removing the period at the end of paragraph (bb)(7) and adding "; or" in its place, and adding paragraph (bb)(8) to read as follows:

§ 933.1 Definitions.

* * * * *

(n) Home mortgage loan * * *

(1) * * *

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. For purposes of this subparagraph, the term "community financial institution" means an institution that has average total assets of $500,000,000 or less, based on an average of total assets over the three preceding years. The Board shall adjust the limit annually based on the annual

increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor; or

* * * * *

(bb) Residential mortgage loan * * *

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10) of the Act.

* * * * *

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Amend § 935.1 by revising paragraph (1)(v) in the definition of "Residential real property" to read as follows:

§ 935.1 Definitions.

* * * * *

Residential real property * * *

(1) * * *

(v) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. For purposes of this subparagraph, the term "community financial institution" means an institution that has average total assets of $500,000,000 or less, based on an average of total assets over the three preceding years. The Board shall adjust the limit annually based on the annual increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

* * * * *

Dated: April 14, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–17163 Filed 6–26–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–25–AD; Amendment 39–10635; AD 98–14–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, that requires inspections of the main gearbox suspension bi-directional cross-beam (cross-beam) for cracks, and replacement of the cross-beam if a crack is found. This amendment is prompted by several reports of cracks in the cross-beam. The actions specified by this AD are intended to provide a terminating action to prevent failure of the cross-beam that could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing.

DATES: Effective August 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Model AS–355E, F, F1, F2, and N helicopters was published in the **Federal Register** on March 3, 1998 (63 FR 10349). That action proposed to require visual and dye-penetrant inspections of the cross-beam for cracks, and replacement with an airworthy cross-beam if a crack is found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter states that the applicability of the AD should exclude helicopters that have been modified in accordance with Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, and Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997. The FAA agrees that helicopters having the modifications need not be inspected as prescribed in this AD, and that is why the applicability is limited to those model helicopters that have cross-beam, P/N 350A38–1018-all dash numbers, installed. However, a paragraph has been added stating that installation of cross-beams that have the modifications constitutes terminating action for the requirements of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 454 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish each visual inspection with an estimated average of 150 visual inspections per helicopter, 3 work hours per helicopter to accomplish the dye-penetrant inspection, and 6 work hours per helicopter to replace the cross-beam, if necessary, and that the average labor rate is $60 per work hour. Parts costs will be approximately $6,000 per cross-beam. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,012,160 to perform an average of 150 visual inspections and one dye-penetrant inspection per helicopter, and to replace the cross-beam on all 454 helicopters.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–14–01 Eurocopter France: Amendment 39–10635. Docket No. 97–SW–25–AD.

Applicability: Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross-beam (cross-beam), part number (P/N) 350A38–1018-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cross-beam that could lead to rotation of the main gearbox, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For cross-beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, visually inspect the cross-beam for cracks in accordance with paragraph 2.B.1) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997.

(2) If a crack is found as a result of the inspections required by paragraph (a)(1) of this AD, remove the cross-beam and replace it with an airworthy cross-beam.

(b) For cross-beams having 5,000 or more hours TIS:

(1) Within 550 hours TIS or 2,750 operating cycles, whichever occurs first, after compliance with paragraph (a)(1) of this AD, perform a dye-penetrant inspection in accordance with paragraph 2.B.2) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1996.

(2) If a crack is found as a result of the inspections required by paragraphs (b)(1) of this AD, remove the cross-beam and replace it with an airworthy cross-beam.

(c) Prior to installing any replacement cross-beams, regardless of TIS, inspect the replacement cross-beam in accordance with paragraph (b)(1) of this AD.

(d) Accomplishment of the modifications in accordance with paragraph 2.B of the Accomplishment Instructions in Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, or Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacements, if necessary, shall be done in accordance with Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, and Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 3, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–156–071(B)R1 and AD 96–155–053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on June 19, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17178 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–20]

Modification of Class E Airspace; Marion, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on June 5, 1998 (63 FR 30594), Airspace Docket No. 98–AGL–20. The final rule modified Class E Airspace at Marion, OH.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–15039, Airspace Docket No. 98–AGL–20, published on June 5, 1998 (63 FR 30594) rule modified Class E Airspace at Marion, OH. One error was discovered in the legal description for the Class E airspace for Marion, OH. This action corrects that error. Correction to Final Rule.

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Marion, OH, as published in the **Federal Register** June 5, 1998 (63 FR 30594), (FR Doc. 98–15039), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL OH E5 Marion, OH [Corrected]

On page 30594, Column 3, first line from the top of the column, in the Class E airspace designation for Marion, OH, incorporated by reference in § 71.1, correct the word "Buckyrus" to read "Bucyrus".

Issued in Des Plaines, IL on June 10, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 98–16637 Filed 6–16–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 5

Exemption of Insubstantial Financial Conflicts.

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission is amending a Commission Rule to make it consistent with the Office of Government Ethics' regulation establishing regulatory waivers of certain financial conflicts of interest.

EFFECTIVE DATE: This amendment is effective on June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, Attorney, Federal Trade Commission, Room 594, 6th Street and Pennsylvania Ave., NW., Washington DC 20580. 202–326–2426.

SUPPLEMENTARY INFORMATION: When the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards"), 5 CFR Part 2635, became effective on February 3, 1993, they superseded most of the Commission's own standards of conduct, 16 CFR Part 5. The Commission rescinded its superseded standards on February 8, 1993. *See* 58 FR 15763 (March 24, 1993). The Commission retained Rule 5.8 because it had not been superseded by the new Standards, but renumbered it as Rule 5.2.

Rule 5.2(a)–(c) provides the requirements and procedures for seeking a waiver of a financial conflict of interest. In addition, Rule 5.2(d) notes that a financial interest in "[s]tocks and bonds of a diversified mutual fund or investment company" is waived automatically, pursuant to 18 U.S.C. 208(a), provided that the employee does not own more than one percent of the value of the fund's reported assets.

The U.S. Office of Government Ethics issued a final rule, 5 CFR Part 2640, effective on January 17, 1997, describing a number of additional circumstances under which a financial conflict of interest is waived automatically. For example, an employee may participate in a particular matter, despite holding a financial interest that would be affected by the matter, if the interest arises from the ownership of publicly traded securities and is valued at no more than $5000. 5 CFR 2640.202(a). Thus, the reference to an automatic waiver in Commission Rule 5.2(d) should be amended to reflect the existence of these additional regulatory waivers.

This rule amendment relates solely to agency practice, and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

The amended rule does not involve the "collection of information" as that term is defined by the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3520.

List of Subjects in 16 CFR Part 5

Standards of conduct.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 5—STANDARDS OF CONDUCT

1. The authorities citation for Part 5 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306, 5 CFR part 2635, unless otherwise noted.

2. Section 5.2 is amended by revising paragraph (d) to read as follows:

§ 5.2 Exemption of insubstantial financial conflicts.

* * * * *

(d) Pursuant to 5 CFR Part 2640, certain financial interests are exempted from the provisions of 18 U.S.C. 208(a) as being too remote to too inconsequential to affect the integrity of an employee's services.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17232 Filed 6–26–98; 8:45 am]

BILLING CODE 6750–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

RIN 0960–AE68

Electronic Freedom of Information Act Amendments of 1996

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These rules reflect the changes made by the Electronic Freedom of Information Act Amendments (EFOIA) of 1996 that give the public access to government information and records maintained in an electronic format, provide for expedited processing of certain requests, establish "electronic reading rooms," eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available.

EFFECTIVE DATE: These rules are effective July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ron Martorana, Social Insurance Specialist, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1745 for information about these rules. For information on eligibility on claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: These rules revise our existing regulations to reflect the provisions of Pub. L. 104–231, the Electronic Freedom of Information Act Amendments of 1996. Pub. L. No. 104–231 amended 5 U.S.C. 552, popularly known as the Freedom of Information Act (FOIA), to provide public access to information in an electronic format, provide for expedited processing of certain requests, establish

"electronic reading rooms," eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available. The rules also make technical changes to related rules.

According to the new law, the term "record" encompasses information, subject to the requirements of the FOIA, when maintained in any format, including an electronic format. The category of "reading room" records, at 5 U.S.C. 552(a)(2), is expanded to include records that the agency discloses in response to a FOIA request that have become, or are likely to become, the subject of future requests. An index of those records that are subject to multiple requests must be prepared and made available by computer telecommunications by December 31, 1999. Furthermore, agencies must create an "electronic reading room" to contain records created after November 1, 1996 that are required to be made available under 5 U.S.C. 552(a)(2). Additionally, agencies must make reasonable efforts to search for records, even when information is maintained in an electronic database, unless such efforts would significantly interfere with the operation of the agency's automated information system. If a requester requests a record in a particular format, agencies must attempt to provide the record in that format if the record is readily reproducible in such format.

The general period for responding to requests has been changed from 10 days to 20 days. Moreover, multi-track processing may be offered as a way to provide more timely responses. Agencies and requesters may discuss alternative time frames to process requests, or modifications to the requests, when the general 20-day time for responding cannot be met. Expedited processing of requests must be done when there is a compelling need for the records. "Compelling need" means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when a request is made by a person primarily engaged in disseminating information (e.g., the news media), and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

The amount of information deleted on a record must be indicated, unless doing so would harm an interest protected by an exemption; and, if technically feasible, the indication shall be at the place in the record where the deletion is made. If whole pages or documents are withheld, an estimate of the volume of material withheld must be provided to the requester, unless doing so would harm an interest protected by an exemption. Furthermore, a guide for requesting records, to include an index and description of major record systems, must be made available to the public.

The definition of "record" in § 402.30 is revised to reflect the provisions of section 3 of Pub. L. No. 104–231 to include information stored in an electronic format, and the meaning of "record" in the Records Disposal Act, 44 U.S.C. 3301, as well as the Supreme Court's decision in *U.S. Dept. of Justice* v. *Tax Analysts*, 492 U.S. 136 (1989).

Section 402.35 is revised to reflect the provisions of section 4 of Pub. L. No. 104–231 concerning availability of records, extent of deletions, and a general index of records.

Section 402.40 is revised to indicate that SSA Publications on CD–ROM are available for purchase.

Section 402.45 is revised to add a new category to reading room records. These are records which "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." Also, we have provided an electronic index for this category of records as reflected in section 4 of the EFOIA amendments.

Section 402.100(b) is revised to reflect the decision in *Dept. of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) concerning whether personal information may be released. In that case, the Court stated that the only public interest to be considered is whether disclosure would shed light on how an agency performs its statutory duties, and that the identity of the requester or purpose for which the information is requested is not relevant.

Section 402.110, entitled "Exemption seven for withholding records: Law enforcement", in 20 CFR 400–499 as revised as of April 1, 1997 is incorrectly designated. It should be designated as § 402.105.

Section 402.115, which explains the deletion of personally identifying details in requested records, and § 402.120, which explains the creation of records, has been moved for ease of reference to § 402.145, which explains what we are required to do when responding to a request for information.

Section 402.130 is revised by adding language about the electronic availability of a guide/handbook on how to request information from the Social Security Administration (SSA). We also describe how the public can request FOIA records.

Section 402.140 is revised to include multi-track processing, requests for expedited processing and the changes in time limits as provided in sections 7 and 8 of the EFOIA amendments. The EFOIA amendments extended the general period of 10 days for determining whether to comply with a request to 20 days.

The EFOIA amendments encourage agencies which experience difficulties in meeting FOIA's time limits to experiment with multi-track processing. Before the enactment of the EFOIA amendments, due to increased volumes of FOIA requests and staff losses, we experimented with various processes to reduce backlogs, among them multi-tracking. The results are encouraging and we plan to institute multi-tracking procedures. We have established four tracks depending on the ease of providing an answer:

(1) Track 1—Requests that can be answered with readily available records or information. These are the fastest to process.

(2) Track 2—Requests where we need records or information from other offices throughout the Agency, but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) Track 3—Requests which require a substantive decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

(4) Track 4—Requests that will be expedited.

The EFOIA requires agencies to promulgate regulations providing expedited access for requesters who show a "compelling need" for a speedy response. The EFOIA describes compelling need as when there is "an imminent threat to the life or physical safety of an individual," or when it is a request from a member of the media, and there is an "urgency to inform the public concerning actual or alleged Federal Government activity."

Section 402.145 is revised to include new provisions on searching for, retrieving, and furnishing records in electronic formats, and describes how deletions on records will be indicated.

Section 402.150 is revised to cross-refer to § 402.45 to describe the indexing of records for the new category of reading room records. This describes our procedures for releasing records for which we receive multiple requests or expect to receive multiple requests.

Section 402.160 is revised to correct the reference to § 402.145(b) and (c) and to clarify these paragraphs. These

references should read § 402.155(b) and (c).

Comments on Notice of Proposed Rulemaking

These regulations were published in the **Federal Register** (62 FR 43489) as a notice of proposed rulemaking on August 14, 1997. Interested parties were given 30 days to submit comments. No public comments were received. We are, therefore, publishing these final rules with no substantive changes from the proposed rules.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to mandatory OMB review.

Regulatory Flexibility Act

We certify that these rules do not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects in 20 CFR 402

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping.

Dated: June 18, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 402 of 20 CFR chapter III as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for 20 CFR part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); Section 413(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 923b), 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 402.30 is amended by revising the definition of "records" to read as follows:

§ 402.30 Definitions.

* * * * *

Records means any information maintained by an agency, regardless of forms or characteristics, that is made or received in connection with official business. This includes handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and material in other forms, such as punchcards; magnetic tapes; cards; computer discs or other electronic formats; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures. It does not include objects or articles such as exhibits, models, equipment, and duplication machines, audiovisual processing materials, or computer software. It does not include personal records of an employee, or books, magazines, pamphlets, or other reference material in formally organized and officially designated SSA libraries, where such materials are available under the rules of the particular library.

* * * * *

3. Section 402.35 is amended by adding new paragraph (d) to read as follows:

§ 402.35 Publication.

* * * * *

(d) *Availability by Telecommunications.* To the extent practicable, we will make available by means of computer telecommunications the indices and other records that are available for inspection.

4. Section 402.40 is amended by adding new paragraph (h) to read as follows:

§ 402.40 Publications for sale.

* * * * *

(h) SSA Publications on CD–ROM.

5. Section 402.45 is amended by adding new paragraph (d) to read as follows:

§ 402.45 Availability of records.

* * * * *

(d) *Electronic Reading Room.* We will prepare an index of records which have become or are likely to become the subject of subsequent requests. The index, and, to the extent practicable, the records will be made available on the Internet or by other computer telecommunications means.

6. Section 402.100 is amended by revising the heading and paragraph (b) to read as follows:

§ 402.100 Exemption six: Clearly unwarranted invasion of personal privacy.

* * * * *

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading a person's privacy against the public interest in disclosure. In determining whether disclosure would be in the public interest, we will consider whether disclosure of the requested information would shed light on how a Government agency performs its statutory duties. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

* * * * *

7. The first § 402.110 entitled "Exemption seven for withholding records: Law enforcement" is amended by correctly designating the section number to read § 402.105.

§ 402.115 [Removed]

8. Section 402.115 is removed.

§ 402.120 [Removed]

9. Section 402.120 is removed.

10. Section 402.130 is revised to read as follows:

§ 402.130 How to request a record.

You may request a record in person or by mail or by electronic telecommunications. To the extent practicable, and in the future, we will attempt to provide access for requests by telephone, fax, Internet, and e-mail. Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. We may charge fees for some requests (§§ 402.145–402.175 explain our fees). You should identify the request as a Freedom of Information Act request and mark the outside of any envelope used to submit your request as a "Freedom of Information Request." The staff at any Social Security office can help you prepare this request.

11. Section 402.140 is revised to read as follows:

§ 402.140 How a request for a record is processed.

(a) In general, we will make a determination as to whether a requested record will be provided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request by the appropriate official (see § 402.135). This 20-day period may be extended in unusual circumstances by written notice to you, explaining why we need additional time, and the extension may be for up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If we cannot process your request within 10 additional days, we will notify you and provide you an opportunity to limit the scope of the request so that it may be processed within the additional 10 days, or we will provide you with an opportunity to arrange with us an alternative time frame for processing the request, or for processing a modified request.

(c) *Multi-tracking procedures.* We will establish four tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time:

(1) Track 1—Requests that can be answered with readily available records or information. These are the fastest to process.

(2) Track 2—Requests where we need records or information from other offices throughout the Agency but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) Track 3—Requests which require a decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

(4) Track 4—Requests that will be expedited.

(d) We will provide for expedited access for requesters who show a "compelling need" for a speedy response. The EFOIA describes compelling need as when the failure to obtain the records on an expedited basis could reasonably be expected to pose "an imminent threat to the life or physical safety of an individual," or when the request is from a person primarily engaged in disseminating information (such as a member of the news media), and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." We also will expedite processing of a request if the requester explains in detail to our satisfaction that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time. We will respond within 10 days to a request for expedited processing and, if we decide to grant expedited processing, we will then notify you of our decision whether or not to disclose the records requested as soon as practicable.

12. Section 402.145 is revised to read as follows:

§ 402.145 Responding to your request.

(a) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. We will make reasonable efforts to search for records manually or by automated means, including any information stored in an electronic form or format, except when such efforts would significantly interfere with the operation of our automated information system. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–11.4; and the General Records Schedules of the National Archives and Records Administration.

(b) *Furnishing records.* We will furnish copies only of records that we have or can retrieve. We are not required to create new records or to perform research for you. We may decide to conserve Government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. For instance, we could extract sections from various similar records instead of providing repetitious information. We generally will furnish only one copy of a record. We will make reasonable efforts to provide the records in the form or format you request if the record is readily reproducible in that form or format.

(c) *Deletions.* When we publish or otherwise make available any record, we may delete information that is exempt from disclosure. For example, in an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names and other identifying details may be deleted. When technically feasible, we will indicate the extent of deletions on the portion of the record that is released or published at the place of the deletion unless including that indication would harm an interest protected by an exemption. If we deny a request, in whole or in part, we will make a reasonable effort to estimate the volume of any requested matter that is not disclosed, unless such an estimate would harm an interest protected by an exemption.

(d) *Creation of records.* We are not required to create new records merely to satisfy a request. However, we will search manually or by automated means to locate information that is responsive to the request. If extensive computer programming is needed to respond to a request, we may decline to commit such resources, or if we agree to do so, we may charge you for the reasonable cost of doing so. We do not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from our other responsibilities may not always be possible.

13. Section 402.150 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as new paragraph (b) to read as follows:

§ 402.150 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and it did not apply, or applied differently, in the previous situation(s) or if the previous release was unauthorized. See § 402.45(d) regarding records in electronic reading rooms.

* * * * *

14. Section 402.160 is amended by revising paragraphs (b) and (c) to read as follows:

§ 402.160 Fees to be charged—general provisions.

* * * * *

(b) If we are not charging you for the first two hours of search time, under paragraph (c) of § 402.155, and those two hours are spent on a computer search, then the two free hours are the first two hours of the time needed to access the information in the computer.

(c) If we are not charging you for the first 100 pages of duplication, under paragraph (b) or (c) of § 402.155, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout.

* * * * *

[FR Doc. 98–17104 Filed 6–26–98; 8:45 am]

BILLING CODE 4160–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 54

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 2, 1998 (63 FR 5233). The document issued regulations requiring the sponsor of any drug, including a biological product, or device marketing application (applicant), to submit certain information covering the compensation to, and financial interests of, any clinical investigator conducting certain clinical studies. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs, Food and Drug Administration (HF–60), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3440, FAX 301–594–0113.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–2407 appearing on page 5233 in the **Federal Register** of February 2, 1998, the following correction is made:

§ 54.4 [Corrected]

On page 5251, in the first column, in § 54.4 *Certification and disclosure requirements*, paragraph (a), line 3, "519(k)" is corrected to read "510(k)".

Dated: June 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17145 Filed 6–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0440]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymers with morpholine-2,4,6-trichloro-1,3,5-triazine reaction products, methylated, as a stabilizer for olefin polymers intended for use in contact with food. This action is in response to a petition filed by Cytec Industries, Inc.

DATES: The regulation is effective June 29, 1998; written objections and requests for a hearing by July 29, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1997 (62 FR 60095), FDA announced that a food additive petition (FAP 8B4562) had been filed by Cytec Industries, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,6-hexanediamine, *N,N'*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymers with morpholine-2,4,6-trichloro-1,3,5-triazine reaction products, methylated, as a stabilizer for olefin polymers complying with 21 CFR 177.1520 intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe and the additive will achieve its intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

FDA's review of this petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route; but the Committee concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, " * * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for

FAP 8B4562 (62 FR 60095, November 6, 1997). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before July 29, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biaggi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5: 699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conference concerning "Formaldehyde;" Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
1,6–Hexanediamine, *N,N*-bis(2,2,6,6-tetramethyl-4-piperidinyl)-, polymers with morpholine-2,4,6-trichloro-1,3,5-triazine reaction products, methylated (CAS Reg. No. 193098–40–7).	For use only as a stabilizer at levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter. The finished polymers are to contact food only under conditions of use C, D, E, F, and G, as described in Table 2 of § 176.170(c) of this chapter. Provided that the finished food-contact articles have a volume of at least 18.9 liters (5 gallons).

Dated: June 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17144 Filed 6–26–98; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter V

[Docket No. FR–4254–N–03]

HUD Disaster Recovery Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of disaster recovery funds availability and waivers; clarification.

SUMMARY: The 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters required publication of a Notice governing use of such funds in conjunction with any program administered by the Federal Emergency Management Agency (FEMA) for buyouts of structures in disaster areas. HUD published a Notice on September 8, 1997 (62 FR 47344) that described the policies and procedures applicable to the HUD Disaster Recovery Initiative. This Notice clarifies the timing of the reports HUD expects to receive on the use of HUD Disaster Recovery Initiative grant funds. This Notice also clarifies the citizen participation certifications and notifies grantees of a statutory restriction on waivers related to funds used as the non-Federal cost-share for U.S. Army Corps of Engineers projects.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the

"800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On September 8, 1997 (62 FR 47344), HUD published a Notice describing the policies and procedures applicable to the HUD Disaster Recovery Initiative, in accordance with the requirements of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including those in Bosnia (Pub. L. 105–18; approved June 12, 1997). HUD's Disaster Recovery Initiative helps communities that are affected by disasters and that receive Presidential declarations. When other agencies cannot assist, HUD steps in with funding for recovery activities—providing the glue that holds together the sometimes disconnected pieces of disaster recovery.

HUD is issuing this Notice to clarify the provisions of the September 8, 1997 Notice regarding the timing of the submission to HUD of necessary reports. The items included in this Notice replace the indicated portions in the September 8, 1997 Notice and add additional information. All other paragraphs of the September 8, 1997 Notice are unaffected. This Notice simplifies the requirement for an annual report and clarifies requirements for the statutorily required quarterly reports. HUD is retaining the annual financial reconciliation and benefit elements of the annual report, but is shifting them from a separate annual report into every fourth quarterly report. To the extent possible, HUD will automate the quarterly reports and the annual reconciliation and benefit calculation.

This Notice also clarifies the citizen participation requirements, eliminating an unintended source of confusion in the September 8, 1997 Notice, which required a grantee to certify it was following the citizen participation plan required at part 91, although it also stated slightly different requirements. This portion of the Notice may have resulted in a conflict or confusion for some grantees (especially those that included procedures in their citizen participation plan in case of a Federally declared disaster). This Notice changes the requirement from certifying to the part 91 citizen participation plan, to certifying to the plan required at section I.E.7.b. of the Notice.

This Notice also notifies grantees of a statutory restriction on waivers related to funds used as the non-Federal cost-share for U.S. Army Corps of Engineers projects.

Accordingly, FR Doc. 97–23752, the HUD Disaster Recovery Initiative Notice of disaster recovery funds availability and waivers, published in the **Federal Register** on September 8, 1997 (62 FR 47344), is amended as follows:

1. On page 47345, in column 3, in section I.E. entitled "*Submission Requirements*", paragraph 3.e. is revised to read as follows:

I. Empowering Communities for Recovery

* * * * *

E. Submission Requirements

* * * * *

3. The city or county grantee must describe monitoring standards and procedures pursuant to § 91.230 and include certifications pursuant to:

* * * * *

e. Section I.E.7.b. of this Notice (Citizen participation);

* * * * *

2. On page 47346, in column 1, in section I.E. entitled "*Submission Requirements*", paragraph 6.f. is revised to read as follows:

I. Empowering Communities for Recovery

* * * * *

E. Submission Requirements

* * * * *

6. The State grantee must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

* * * * *

f. Section I.E.7.b. of this Notice (Citizen participation);

* * * * *

3. On page 47348, in column 3, in section I.H. entitled "*Ineligible Activities*", a new paragraph 3. is added at the end (after section I.H.2.c.), to read as follows:

I. Empowering Communities for Recovery

* * * * *

H. Ineligible Activities

* * * * *

3. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997; 111 Stat. 1344, 1358) prohibits HUD from granting a waiver for the use of more than $100,000 in HUD Disaster Recovery funds for the non-Federal cost-share of a U.S. Army Corps of Engineers project, except for a levee project at Devils Lake, North Dakota. Thus, for funds in excess of $100,000, the proviso prohibits HUD from granting a waiver for relief from various program requirements, if the funds used for that activity will also be used to meet the non-federal cost-share for a Corps project. In contrast, the use of HUD Disaster Recovery funds for payment of the non-Federal cost-share required by a Federal grant-in-aid program has long been authorized by section 105(a)(9) of the Housing and Community Development Act of 1974, and therefore no waiver is required just to make matching eligible. This prohibition applies only to HUD Disaster Recovery funding in the foregoing appropriation law and such funding in prior appropriation laws.

* * * * *

4. On page 47351, in columns 2 and 3, section II.A. entitled "*Program Administrative, Recordkeeping and Reporting Requirements*" is revised to read as follows:

II. Ensuring the Public Trust

A. Program Administrative Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492 for States and at §§ 570.500–570.513 for cities and counties, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. HUD will compile this PER for the HUD Disaster Recovery Initiative from the quarterly reports submitted under paragraph 3 below, except that, with the final quarterly report submitted prior to grant closeout, States must also include with the PER a special narrative that discusses how the States assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

2. Cities and counties must submit a Performance Report for the HUD Disaster Recovery Initiative in accordance with 24 CFR 91.520. This Performance Report will be compiled by HUD from the quarterly reports submitted under paragraph 3 below. The final quarterly report submitted prior to grant closeout also must include a special narrative that discusses how the city or county assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

3. Congress has required that quarterly reports be submitted on all disbursements and use of funds for or associated with buyouts. HUD must also receive reporting information for program management purposes.

Therefore, each grantee must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the overall percent of benefit to low- and moderate-income persons (unless waived). HUD is seeking approval from OMB for any new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

* * * * *

Dated: June 19, 1998.

Saul Ramirez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–17273 Filed 6–26–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration, Labor

29 CFR Parts 1915 and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document revises the Construction and Shipyard standards regulating occupational exposure to asbestos to conform the standards to the Court of Appeals decision in *Asbestos Information Association/North America* v. *Reich*, 117 F. 3d 891 (5th Cir. July 24, 1997). The Court vacated the construction and shipyard standards insofar as they regulate asbestos-containing roof cements, mastics and coatings. The court's decision did not affect the general industry asbestos standard, and that standard is not being changed.

DATES: Effective on July 24, 1997.

FOR FURTHER INFORMATION CONTACT: John Martonik, Acting Director, Directorate of Safety Standards Programs, Room N–3605, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone (202) 219–8061.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1994, the Occupational Safety and Health Administration published final standards (59 FR 40964, 29 CFR 1910.1001, 1915.1001, and 1926.1101), regarding occupational asbestos exposure. On June 29, 1995, OSHA issued amendments (60 FR 33974, 29 CFR 1915.1001 and 1926.1101) to correct and clarify various provisions of the construction and shipyard employment standards.

The Asbestos Information Association/North American (AIA/NA) petitioned for review of the construction and maritime standards' requirements for work practices, training, and hazard communication for asphalt roof cements, coatings and mastics which contain asbestos. In *Asbestos Information Association/North America* v. *Reich*, 117 F. 3d 891 (5th Cir. July 24, 1997), the court vacated the standards insofar as they regulate these materials.

Need for Correction

OSHA is amending sections 1915.1001 and 1926.1101 to conform the regulations to the court's decision. OSHA is adding a statement to paragraph (a) in both standards to state that the standard does not apply to asbestos-containing asphalt roof cements, coatings and mastics. In paragraph (g)(12) in the maritime standard and in paragraph (g)(11) of the construction standard covering alternative work practices, OSHA is deleting references to roofing cements, mastics and coatings. Section 1910.1001 remains unchanged.

OSHA is required to make these corrections to conform the standard to the court's decision. Because OSHA has no discretion in the matter, notice and opportunity for public comment are not necessary.

List of Subjects

29 CFR Part 1915

Asbestos, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Vessels.

29 CFR Part 1926

Asbestos, Construction industry, Hazardous substances, Occupational safety and health.

Signed at Washington, D.C., this 22nd day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, 29 CFR Parts 1915 and 1926 are corrected by making the following correcting amendments:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for 29 CFR part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; 29 CFR part 1911.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819) and 5 U.S.C. 553.

Subpart Z—Toxic and Hazardous Substances

2. In § 1915.1001, add paragraph (a)(8) and revise paragraph (g)(12) introductory text to read as follows:

§ 1915.1001 Asbestos.

(a) *Scope and application.* * * *

* * * * *

(8) This section does not apply to asbestos-containing asphalt roof cements, coatings and mastics.

* * * * *

(g) *Methods of compliance* * * *

* * * * *

(12) *Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing and pipeline coating materials.* Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(12) when installing, removing, repairing, or maintaining intact pipeline asphaltic wrap, or roof flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(12) or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(12).

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart Z—Toxic and Hazardous Substances

3. The authority citation for Subpart Z of 29 CFR 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

4. In § 1926.1101, add paragraph (a)(8) and revise paragraph (g)(11) introductory text to read as follows:

§ 1926.1101 Asbestos.

(a) *Scope and application.* * * *

* * * * *

(8) This section does not apply to asbestos-containing asphalt roof coatings, cements and mastics.

* * * * *

(g) *Methods of compliance* * * *

* * * * *

(11) *Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing and pipeline coating materials.* Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(11) when installing, removing, repairing, or maintaining intact pipeline asphaltic wrap, or roof flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(11) or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(11).

* * * * *

[FR Doc. 98–17091 Filed 6–26–98; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 404, 405, 406, and 407

46 CFR Parts 401, 402, 403, and 404

[USCG–1998–3976]

Great Lakes Pilotage; Reorganization of Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation's (SLSDC) responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act, as amended, (GLPA) was transferred from the SLSDC to the U.S. Coast Guard on March 5, 1998. This rule relocates the Great Lakes Pilotage regulations from their current place in Title 33, Code of Federal Regulations, to their original place in Title 46, Code of Federal Regulations. Relocation of these regulations is necessary to position Great Lakes Pilotage rules with other U.S. Coast Guard regulations, and not with other SLSDC regulations. This rule also makes conforming amendments to the regulations to reflect U.S. Coast Guard responsibilities under the GPLA.

DATES: This final rule is effective June 30, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–3976), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–00001.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact LTJG Mark A. Cunningham, U.S. Coast Guard, telephone 202–267–1534. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

This rulemaking relates to departmental management, organization, procedure, and practice. Under 5 U.S.C. 553(b)A, notice and public comment are unnecessary with respect to rules of this nature. Therefore, a notice of proposed rulemaking was not published prior to this rulemaking. For the same reason, good cause exists for making this rule effective less than 30 days after its publication date as is ordinarily required by 5 U.S.C. 553(d).

Background and Purpose

In 1994, the Secretary of Transportation (the Secretary) formed a study group to determine where to best locate the authority to execute the functions vested in him by the GPLA. Among other powers and duties, the GPLA authorizes the Secretary to examine pilots, register them, and set rates for their services. Because the study group recommended transferring these functions from the U.S. Coast Guard to the SLSDC, the Secretary withdrew the Coast Guard's authority in these matters and redelegated it to the SLSDC (December 11, 1995; 60 FR 63444). On November 12, 1997, the U.S. Court of Appeals for the District of Columbia Circuit, in *Halverson* v. *Slater*, 129 F.3d 180 (D.C. Cir, 1997), reversed a district court decision and held that the Secretary lacks the authority, under 49 U.S.C. 322(b), to delegate Great Lakes Pilotage Act powers and duties to the SLSDC. The court vacated the December 11, 1995 rule and determined that, under 46 U.S.C. 2104(a), the Secretary may delegate these functions only to the U.S Coast Guard. On March 5, 1998, the Secretary responded to the court's ruling by redelegating the authority to carry out functions under the GLPA to the U.S. Coast Guard (63 FR 10781–2).

This rulemaking relocates the Great Lakes Pilotage regulations from their current place in Title 33 to their original place in Title 46. Reorganization of the CFR is necessary to position Great Lakes Pilotage rules with other U.S. Coast Guard regulations, and not with other SLSDC regulations. This rule redesignates parts 404, 405, 406, and 407 of 33 CFR Chapter IV, as parts 401, 402, 403, and 404, respectively, of 46 CFR Chapter III.

This rule also makes conforming editorial changes to the redesignated sections that reflect the redelegation of Seaway responsibilities to the U.S. Coast Guard. For example, the word "Administrator" is changed to the word "Commandant" and the words "Saint Lawrence Seaway Development Corporation" are changed to the words "U.S. Coast Guard.

This rule also revises the authority citations of each redesignated part to reflect the renewed delegation of responsibilities from the Secretary to the U.S. Coast Guard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities.

"Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rulemaking is an intra-departmental administrative that does nothing more than relocate certain sections of the U.S. Code of Federal Regulations. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.).*

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(b), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 404

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

33 CFR Part 405

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

33 CFR Part 406

Accounting, Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

46 CFR Part 407

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

46 CFR Part 401

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

46 CFR Part 402

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

46 CFR Part 403

Accounting, Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

46 CFR Part 404

Administrative practice and procedure, Coast Guard, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen, Waterways.

For the reasons discussed in the preamble, and under the authority of 46 U.S.C. 2104(a) and 49 CFR 1.46 (mmm), the Coast Guard amends 33 CFR Chapter IV, and 46 CFR Chapter III as follows:

33 CFR CHAPTER IV

PARTS 404, 405, 406, AND 407 [REDESIGNATED AS 46 CFR CH. III (PARTS 401, 402, 403 AND 404)]

1. In 33 CFR Chapter IV, redesignate parts 404, 405, 406, and 407 as 46 CFR Chapter III, parts 401, 402, 403, and 404 respectively.

46 CFR CHAPTER III

2. Add a heading for 46 CFR Chapter III to read as follows:

CHAPTER III—COAST GUARD (GREAT LAKES PILOTAGE), DEPARTMENT OF TRANSPORTATION

PART 401—[AMENDED]

3. The authority citation for redesignated part 401, Title 46, Code of Federal Regulations is revised to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm), 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

4. Revise the redesignated §§ 401.110 (a)(2) and (a)(9) to read as follows:

§ 401.110 Definitions.

* * * * *

(a) * * *

(2) *Commandant* means Commandant, U.S. Coast Guard, Washington, DC 20593–0001.

* * * * *

(9) *Director* means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Director, Great Lakes Pilotage (G–MO), 2100 Second Street, SW, Washington, DC 20593–0001.

* * * * *

§ 401.230 [Amended]

5. In the second sentence of § 401.230(b) remove the words "Director or other official of the Saint Lawrence Seaway Development Corporation." and add, in its place, the word "Director."

6. Revise redesignated § 401.250(d) to read as follows:

§ 401.250 Suspension and revocation of certificates of registration.

* * * * *

(d) Every U.S. Registered Pilot shall, whenever his or her license is revoked or suspended under the provisions of Part 5 of this title, deliver his Certificate of Registration simultaneously with his or her license to the U.S. Coast Guard. If the license is suspended, the Certificate of Registration will be held with the suspended license and returned to the holder upon expiration of the suspension period.

§ 401.431 [Amended]

6. In redesignated § 401.431(e) remove the words "Saint Lawrence Seaway Development Corporation" and add, in its place, the word "Administration."

§ 401.510 [Amended]

7. In both sentences of redesignated § 401.510(b)(5) remove the words "or the Director."

PART 402—[AMENDED]

8. The authority citation for redesignated part 402, Title 46, Code of Federal Regulations is revised to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

PART 403—[AMENDED]

9. The authority citation for redesignated part 403, Title 46, Code of Federal Regulations is revised to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

PART 404—[AMENDED]

10. The authority citation for redesignated part 404, Title 46, Code of Federal Regulations is revised to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

11. In addition to the above amendments to Chapter III of Title 46, remove the word "Director" and add, in its place, the word "Commandant" in the following sections:

a. Section 401.210(a)(4);
b. Section 401.210(a)(7);
c. Section 401.220(b);
d. Section 401.240(d);
e. Section 401.320(d)(2);
f. Section 401.320(d)(3);
g. Section 401.510(b)(3), introductory text
h. Section 401.710(g); and
i. Section 401.100.

12. In addition to the above amendments to Chapter III of Title 46, remove the words "Saint Lawrence Seaway Development Corporation" and add, in their place, the words "U.S. Coast Guard" in the following sections:

a. Section 401.211(e);
b. Section 401.230(c);
c. Section 401.230(d);
d. Section 401.240(a);
e. Section 401.250(c);
f. Section 401.320(d)(4);
g. Section 401.425;
h. Section 401.510(b)(2);
i. Section 401.510(b)(3);
j. Section 401.600(a);
k. Section 401.615(b); and
l. Section 401.620(a).

13. In addition to the above amendments to Chapter III of Title 46, remove the word "Administrator" and add, in its place, the word "Commandant" in the following sections:

a. Section 401.615(b); and
b. Section 401.650.

14. In addition to the above amendments to Chapter III of Title 46, remove all references to "404" and add, in their place, "401" in the following sections:

a. 401.210(a)(8);
b. 401.210(b);
c. 401.211(a)(1), (b) and (3);
d. 401.230(e);
e. 401.240(b);
f. 401.320(b);
g. 401.330(a);
h. 401.335(a)(1);
i. 401.340(a) and (c);
j. 401.400(c);
k. 401.405 introductory text;
l. 401.410 introductory text;
m. 401.420(a);
n. 401.425;
o. 401.438;
p. 401.431(a), (f) and (g);
q. 401.451(a)(1);
r. 401.600(b);
s. 401.620(b);
t. 401.645;
u. 401.700(b);
v. 401.710(e);
w. 401.720(b);
x. 401.100;
y. 401.210(a);
z. 401.320(a) introductory text;
aa. 403.100;
bb. 403.400(c);
cc. 404.1(a);

15. In addition to the above amendments to Chapter III of Title 46, remove all references to "405" and add, in their place, "402" in the following sections:

a. 401.340(a);
b. 401.710.(d) and (e).

16. In addition to the above amendments to Chapter III of Title 46, remove all references to "406" and add, in their place, "403" in the following sections:

a. 401.320(d)(3);
b. Part 404, Appendix A. Step 1.A.

17. In addition to the above amendments to Chapter III of Title 46, remove all references to "407" and add, in their place, "404" in the following sections:

a. 403.120(b);
b. 404.1(b);
c. 404.10(a);
c. 404, Appendix A, Step 1.B;
d. 404, Appendix C, introductory text.

Dated: June 24, 1998.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–17269 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. MC96–1; Order No. 1214]

Amendments to Domestic Mail Classification Schedule

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the Domestic Mail Classification Schedule (DMCS) by eliminating provisions related to a barcoded small parcel experiment. These provisions expired April 28, 1998. Given the status of the experiment and the Postal Service's intention not to request an extension or seek a permanent classification, elimination of these provisions will ensure that the DMCS accurately reflects current classifications and discounts.

DATES: This rule was effective April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Suite 300, Washington, DC, 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: One of the provisions recommended by the Commission and approved by the Governors in Docket No. MC96–1, Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, specified that the experiment would be limited to a two-year period, ending April 28, 1998. Shortly before the expiration date, the Postal Service published a notice in the **Federal Register** stating its intention to allow the experiment to end on the scheduled expiration date without filing a request with the Commission to establish permanent classifications and discounts. The notice also briefly reviewed the basic objectives of the experiment and the reasons why the Service decided against pursuing a permanent classification. See generally 63 FR 19407–19408 (April 20, 1998).

For the reasons stated above, the Commission hereby adopts the following amendment to the DMCS, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 3001, Appendix A to Subpart C—Postal Service Rates and Charges).

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For reasons set out in the preamble, the Commission amends 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

Appendix A to Subpart C—[Amended]

2. Appendix A to Subpart C—Postal Service Rates and Charges is amended as follows:

a. Remove 221.4.
b. Remove and reserve 223.4.
c. Remove "Pre-barcoded parcels (experimental)" and footnote 11 in First-Class Mail Rate Schedule 221, Letters and Sealed Parcels.

d. Remove note 5 in First-Class Mail Rate Schedule 223 Priority Mail Subclass.

Dated: June 23, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–17249 Filed 6–26–98; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN85–1a; FRL–6115–7]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 25, 1994, the State of Indiana submitted regulations as a revision to the ozone State Implementation Plan (SIP), governing the control of Volatile Organic Compound (VOC) emissions from graphic arts sources in Lake and Porter Counties. EPA approved these regulations on May 4, 1995, subject to the condition that the State adopt appropriate record keeping and reporting requirements. On July 24, 1997, the State of Indiana submitted a SIP revision request to the EPA containing, among other things, record keeping and reporting requirements for all graphic arts sources in Indiana. VOC is one of the air pollutants which combine on hot, sunny summer days with oxides of nitrogen to form ground-level ozone, commonly known as smog, in and downwind of significant source areas, such as large urban areas. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages. The State's rule revisions are designed to meet the Clean Air Act (Act) requirement for States to adopt Reasonably Available Control Technology (RACT) rules for sources that are covered by Control Techniques Guideline (CTG) documents or that are major sources for VOC. This rulemaking action approves, through direct final action, the Indiana SIP revision request as it pertains to graphic arts sources.

DATES: The "direct final" rule is effective on August 28, 1998, unless EPA receives adverse or critical written comments by July 29, 1998. If adverse comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, at (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the Clean Air Act; Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

Section 182(b)(2) of the Act requires all States with moderate and above ozone nonattainment areas to adopt RACT rules for VOC sources that are located within these ozone nonattainment areas and that are covered by CTG documents. One source category to be controlled by application of RACT rules is graphic arts.

In Indiana, VOC emission control requirements for graphic arts sources are contained in Indiana Administrative Code (IAC) rule 326 IAC 8–5–5. This rule applies to packaging rotogravure, publication rotogravure, and flexographic printing sources. On February 25, 1994, the State of Indiana submitted a revision request for its ozone SIP amending the graphic arts rule. This amendment functioned to reduce the source size applicability cut-off for graphic arts sources located in the severe ozone nonattainment area (Lake and Porter Counties) from 100 to 25 tons of VOC per year (potential to emit) as required by sections 182(b)(2) and 182(d) of the Act.

Based on a review of the February 25, 1994 submittal, the EPA proposed to conditionally approve the rule revision on January 10, 1995 (60 FR 2568), and completed final rulemaking to conditionally approve the SIP revision on May 4, 1995 (60 FR 22241). At that time, the EPA stated that, although the revised rule contained acceptable VOC emission control requirements for graphic arts sources, it did not include specific record keeping and reporting requirements needed to make the rule sufficiently enforceable. EPA's conditional approval was based on a December 14, 1994 commitment from the State to correct the rule to add appropriate record keeping and reporting requirements.

The rule revisions submitted by the Indiana Department of Environmental Management (IDEM) on July 24, 1997, were designed, in part, to provide the record keeping and reporting requirements for graphic arts sources. The submittal also includes additional revisions to rule 326 IAC 8–5–5. These rule revisions are addressed in this rulemaking.

IDEM's July 24, 1997 submittal also includes rule revisions for miscellaneous metal coating sources that employ the use of dip tanks or flow coating operations. These rule revisions will be addressed in a separate, future rulemaking.

II. Summary of Rule Revisions

In the discussion which follows, to remain consistent with definitions used by IDEM (these definitions differ in some respect from those used by other States and from those typically used by the EPA (EPA typically reverses the following definitions)), the following definitions are used in this rulemaking:

Facility means any one (1) structure, piece of equipment, installation, or operation which emits or has the potential to emit any air contaminant. Single pieces of equipment or single installations with multiple emission points shall be considered as a single facility.

Source means an aggregation of one (1) or more facilities which are located on one piece of property or on contiguous or adjacent properties, and which are owned or operated by the same person (or by persons under common control).

These definitions are found in Indiana's rules 326 IAC 1–2–27 and 326 IAC 1–2–72, respectively.

The following summarizes the contents of the newly adopted rules or the adopted revisions to the existing rules.

Rule 326 IAC 8–1–9

This rule has been adopted to cover general record keeping and reporting requirements for graphic arts sources subject to new rules 326 IAC 8–1–10 through 326 IAC 8–1–12. Rule 326 IAC 8-1–9 states that the applicable test methods and procedures specified in rule 326 IAC 8–1–4 (testing procedures) shall be used to determine: (1) the VOC content of each coating as applied; and (2) the efficiency of each emissions capture system and control device. Records required by this rule, including those used to demonstrate source exemption from applicable emission control requirements, must be submitted to IDEM or EPA upon request. All

applicable records are required to be maintained on-site in an accessible manner for three years and in a "reasonably accessible" manner for an additional two year period.

Rule 326 IAC 8–1–10

This rule has been adopted to cover compliance certification, record keeping, and reporting requirements for graphic arts sources that use compliant coatings (compliant with the requirements of rule 326 IAC 8–5–5). Upon startup of a facility, or upon changing the method of compliance to the use of compliant coatings, the owner or operator of the source must certify to IDEM that the source is in compliance with the requirements of this rule.

By May 1, 1997, or upon startup of a new coating facility, or upon changing the compliance method to the use of compliant coatings, the owner or operator of the facility shall for each coating facility and each coating used, collect and record each day and maintain all of the following information: (1) the name and identification number of each coating, as applied; and (2) the mass of VOC (excluding water and exempt compounds) per volume of coating, as applied, expressed in units necessary to determine compliance. As new coatings are added, the records for the facility must be updated to include the new coatings. If use of a coating is discontinued, the records for the discontinued coating must be maintained in compliance with rule 326 IAC 8–1–9.

Sources affected by this rule must notify IDEM if one of the following instances occurs:

(1) When noncompliant coatings are used, the owner or operator of the noncomplying facility must notify IDEM within 30 days following the use of the noncompliant coating, and must include the following information: (a) name and location of the coating facility; (b) time, date, and duration of the noncompliance; and (c) the corrective actions taken; or,

(2) At least 30 calendar days before changing the method of compliance from the use of compliant coatings to the use of daily-weighted averaging or to the use of control devices, the owner or operator shall comply with rule 326 IAC 8–1–11(b) or with rule 326 IAC 8–1–12(b). These rules require certification of the compliance of a facility with the applicable emission control requirements (see discussion of certification requirements below).

Rule 326 IAC 8–1–11

This rule applies to graphic arts sources for which compliance is based on the use of daily-weighted averaging. Upon startup of a new coating facility, or upon changing compliance to the use of daily-weighted averaging, the owner or operator of the coating facility must certify to IDEM that the coating facility is in compliance with the requirements of this rule. This certification must include:

(1) the name and location of the facility;

(2) the address and telephone number of the person responsible for the facility;

(3) the identification of each coating facility and identification of the applicable emission limit for each of these facilities;

(4) the name and identification number of each coating facility that will comply by means of daily-weighted averaging;

(5) the VOC content of each coating, as applied, each day for each coating facility, expressed in units necessary to determine compliance;

(6) the instrument or method that will be used to calculate the VOC content of each coating and the volume of each coating, as applied, used each day at each coating facility;

(7) the method by which the owner or the operator will create and maintain records each day;

(8) calculation of the daily-weighted average VOC emission rate/content level for a day representative of the current or projected maximum production levels; and,

(9) the time at which the coating facility's day begins if a time other than midnight local time is used to define a day.

For each coating facility and for each coating used, the owner or operator must record and maintain the following daily information:

(1) the name and identification number of each coating, as applied;

(2) the mass of VOC per volume (excluding water and exempt compounds) and the volume of each coating, as applied, in units necessary to determine compliance; and,

(3) the daily-weighted average VOC content of all coatings used in the coating facility.

On and after May 1, 1997, applicable sources must notify IDEM if one of the following instances occurs:

(1) When a record shows use of coatings with VOC contents exceeding a daily-weighted average limit, the owner or operator must submit a copy of the record to and notify IDEM within 30 days following the use of the noncompliant coatings, and must include the following information: (a) name and location of the coating facility; (b) date and duration of the noncompliance; and (c) the corrective actions taken; or,

(2) At least 30 calendar days before changing the method of compliance to the use of compliant coatings or to the use of emission control devices and away from the use of a daily-weighted average, the owner or operator shall comply with the requirements of 326 IAC 8–1–10(b) or with the requirements of 326 IAC 8–1–12(b) as appropriate.

Rule 326 IAC 8–1–12

This rule applies to graphic arts sources for which compliance is based on the use of emission control devices.

By May 1, 1997, or upon startup of a new coating facility, or upon changing the method of compliance for an existing coating facility to use of an emission control device, the owner or operator of the facility must comply with the following requirements:

(1) The control system operation, maintenance, and testing must meet the following requirements:

(a) The control system must be operated and maintained according to manufacturer recommendations, but may be modified based on compliance tests or upon written request of IDEM;

(b) A copy of the operating and maintenance procedures must be maintained at the facility for inspection by the control system operators and by IDEM;

(c) The control system must be tested initially, with follow-up compliance tests conducted no later than every 30 months after the initial control system test; and,

(d) Compliance tests must be conducted according to a protocol developed by IDEM at least 30 days before the test. The rule specifies the minimum information that must be contained in the protocol.

(2) The rule specifies the monitoring equipment requirements for each type of emission control equipment, covering the following emission control system types: thermal incinerators; catalytic incinerators; and carbon adsorbers.

On or after May 1, 1997, or after startup of a coating facility, or after switching the compliance method to use of an emission control device, the owner or operator must collect and record on a daily basis all of the following information for each coating facility:

(1) the name and identification number of each coating used;

(2) the mass of VOC per unit volume of coating solids, as applied, the volume solids content, as applied, and the

volume, as applied, of each coating, expressed in units necessary to determine compliance;

(3) the maximum VOC content (mass of VOC per unit volume of coating solids, as applied) or the daily-weighted average VOC content (mass of VOC per unit volume of coating solids, as applied) of the coatings used;

(4) the required overall emission reduction efficiency;

(5) the actual overall emission reduction efficiency achieved as determined during a compliance test conducted under rule 326 IAC 8–1–12(b)(1)(C);

(6) the control device monitoring data as specified in the rule for thermal incinerators, catalytic incinerators, or carbon adsorbers;

(7) a log of operating time for the capture system, control device, monitoring equipment, and associated coating facility; and,

(8) a maintenance log for the capture system, control device, and monitoring equipment detailing all routine and nonroutine maintenance performed, including dates and durations of any outages.

The owner or operator of a facility must notify IDEM within 30 calendar days of any noncompliance, identifying the control system for which noncompliance has occurred and the corrective actions taken. The owners or operators must also notify IDEM at least 30 calendar days in advance before switching to an alternative compliance method.

Rule 326 IAC 8–5–5

The source application portion of this rule has been modified to address (after October 1, 1993) sources located in Lake and Porter Counties as follows:

(1) Sources whose potential emissions of VOC are greater than or equal to 25 tons per year (22.7 megagrams per year) are subject to all requirements of this rule, as well as to the requirements of rules 326 IAC 8–1–9 through 326 IAC 8–1–12;

(2) Sources whose potential emissions of VOC are less than 25 tons per year but greater than or equal to 10 tons per year are exempt from the emission control requirements of the rule, but are subject to the certification, record keeping, and reporting requirements of rule 326 IAC 8–7–2(c) and rule 326 IAC 8–1–9(b); and,

(3) Sources whose potential emissions of VOC are less than 10 tons per year are subject to the record keeping and reporting requirements of rule 326 IAC 8–1–9(b) only. Rule 326 IAC 8–1–9(b) requires that records used to demonstrate that a source is exempt from emission control requirements be submitted to IDEM or to the EPA within 30 days of the receipt of a written request from either of these agencies.

Other changes in rule 326 IAC 8–5–5 are minor and cosmetic in nature and do not change the impact and basic requirements of the rule. These minor changes are acceptable and are not given further consideration here.

III. Technical Merits of Rule Revisions

Rules 326 IAC 8–1–9 through 326 IAC 8–1–12 have been added by IDEM to the VOC rules to cover record keeping and reporting requirements for graphic arts sources in Indiana. In developing these rules, IDEM followed the example graphic arts rule provided in EPA's June 25, 1992 model VOC rules. It is these model VOC rules that provide the primary guidance used here to judge the adequacy of Indiana's rule revisions.

Rule 326 8–5–5 was modified to refine the emission control, record keeping, and reporting requirements for graphic arts sources located in Lake and Porter Counties. This revision is needed given the lower emissions source cutoff for major VOC sources (25 tons per year) for sources in these counties, which are classified as "severe" nonattainment for ozone under section 181 of the Clean Air Act.

Rule 326 IAC 8–1–9

The general record keeping and reporting requirements contained in this new rule are acceptable and consistent with EPA's model VOC rules.

Rule 326 IAC 8–1–10

The record keeping and reporting requirements for the use of compliant coatings in graphic arts sources contained in this rule are generally acceptable. Two minor concerns, however, are noted in subdivisions (b)(5) and (c)(2) of this rule. Both of these rule subsections require the recording of the VOC mass content of coatings, as applied, excluding water and exempt compounds from the mass of VOC when determining the VOC content of the coating. The definition of VOC contained in 326 IAC 1–2–90, however, does not include water and exempt compounds. Therefore, the water and exempt compound exclusion clauses of subdivisions (b)(5) and (c)(2) have no meaning and no impacts. To be absolutely correct, these clauses should follow the references to "volume" in these subdivisions. These clauses should be relocated in the rule through technical corrections to the rule. However, taking into account that the misplaced clauses have no data recording and enforcement impacts, and noting that the remainder of these rule subdivisions agree with EPA's model VOC rules, EPA has concluded that rule 326 IAC 8–1–10 is approvable.

Rules 326 IAC 8–1–11 and 326 IAC 8–1–12

These rules are consistent with EPA's model VOC rules, and are acceptable.

Rule 326 IAC 8–5–5

The only changes in this rule of significance in this rulemaking are the changes made to subdivision (a)(3). These changes only affect graphic arts sources located in Lake and Porter Counties, where the Act requires (section 182(b)(2)) RACT for major sources (potential to emit VOC at a rate equal to or greater than 25 tons per year within Lake and Porter Counties as required by section 182(d) of the Act). For these sources, subdivision (a)(3)(A) of this rule requires full compliance with all requirements contained in rules 326 IAC 8–1–9 through 326 IAC 8–1–12, as well as with the emission control requirements of 326 IAC 8–5–5. This revised subdivision is acceptable.

New subdivision (a)(3)(B), which covers Lake and Porter Counties' graphic arts sources with potential VOC emissions less than 25 tons per year but greater than or equal to 10 tons per year, exempts these sources from the emission reduction requirements of rule 326 IAC 8–5–5, but requires these sources to submit data to confirm the appropriateness of source exemption and to make data available to IDEM or EPA upon request. These requirements are acceptable.

New subdivision (a)(3)(C), which covers the remainder of graphic arts sources in Lake and Porter Counties, those with potential VOC emissions below 10 tons per year, requires these sources to make records supporting source exemption available to IDEM or EPA within 30 days after receiving a data request. This rule is acceptable to the EPA.

IV. Final Rulemaking Action

EPA is approving the revisions of rules 326 IAC 8–1–9 through 326 IAC 8–1–12 and of rule 326 IAC 8–5–5 for graphic arts sources of VOC emissions as a revision to the Indiana State Implementation Plan as requested by the State of Indiana and as submitted to the EPA on July 24, 1997. The approval of these rules satisfies EPA's May 4, 1995 (60 FR 22240) conditional approval of 326 IAC 8–5–5, and supersedes EPA's earlier conditional approval.

It is noted that Indiana has indicated an intent to amend rules 326 IAC 8–1–

9 through 326 IAC 8–1–12 in the future to incorporate the record keeping and reporting requirements for all new coating VOC control rules. The approval given here is only applicable to the use of these rules for graphic arts sources. As these rule are amended in the future for other coating source categories, EPA will review the merits of these rules as they apply to those specific coating source categories. EPA is not approving these rules for generic application to all coating source categories.

The EPA is publishing this rule without prior proposal because EPA believes this is a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical written comments be filed. This rule will become effective without further notice unless EPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by July 29, 1998. Should the EPA receive such comments, it will publish a rule informing the public that this rule did not take effect. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 28, 1998.

Nothing in this rule should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, titled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that it does not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1998, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector result from this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 2, 1998.

David A. Ulrich,

Acting Regional Administrator, Region V.

For reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.769 is amended by removing and reserving paragraph (b).

3. Section 52.770 is amended by adding paragraph (c)(122) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(122) On July 24, 1997, Indiana submitted rules requiring record keeping and reporting requirements for graphic arts sources of volatile organic compounds and amended source applicability requirements for graphic arts sources located in Lake and Porter Counties as a revision to the State Implementation Plan.

(i) Incorporation by reference.

(A) 326 IAC 8–1–9 General record keeping and reporting requirements. 326 IAC 8–1–10 Compliance certification, record keeping, and reporting requirements for certain coating facilities using compliant coatings. 326 IAC 8–1–11 Compliance certification, record keeping, and reporting requirements for certain coating facilities using daily weighted averaging. 326 IAC 8–1–12 Compliance

certification, record keeping, and reporting requirements for certain coating facilities using control devices. Adopted by the Indiana Air Pollution Control Board November 6, 1996. Filed with the Secretary of State April 22, 1997. Published at Indiana Register, Volume 20, Number 9, June 1, 1997. Effective May 22, 1997.

(B) 326 IAC 8–5–5 Graphic arts operations. Adopted by the Indiana Air Pollution Control Board November 6, 1996. Filed with the Secretary of State April 22, 1997. Published at Indiana Register, Volume 20, Number 9, June 1, 1997. Effective May 22, 1997.

[FR Doc. 98–17122 Filed 6–26–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4071a; FRL–6104–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) reasonably available control technology (RACT) for eight (8) major sources located in Pennsylvania. The intended effect of this rule is to approve source-specific plan approvals and operating permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective August 28, 1998 unless the Agency receives adverse comment by July 29, 1998. Should the Agency receive adverse or critical comments it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to David Campbell, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 566–2196, at the EPA Region III office or via e-mail at campbell.dave@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On April 16, 1996 and March 24, 1998, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone.

However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for eight (8) sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for eight (8) major sources. Several of the operating permits contain conditions irrelevant to the determination of VOC RACT. Consequently, these provisions are not being included in this approval for source-specific VOC RACT.

RACT Determinations

The following table identifies the individual operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon further request from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA.—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #) compliance permit (CP #)	Source type	"Major source" pollutant
The Fibre-Metal Products Company.	Delaware	23–0025	Miscellaneous manufacturing (safety products).	VOC
Finnaren & Haley, Inc	Montgomery	46–0070	Paint manufacturing	VOC
Fres-co System USA, Inc	Bucks	09–0027	Graphic arts	VOC
Graphic Packaging Corp	Chester	15–0013	Graphic arts	VOC

PENNSYLVANIA.—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES—Continued

Source	County	Plan approval (PA #) operating permit (OP #) compliance permit (CP #)	Source type	"Major source" pollutant
Montour Oil Service Company	Lycoming	41–0013	Petroleum storage and distribution terminal.	VOC
Atlantic Refining and Marketing Corporation.	Northumberland	49–0015	Petroleum storage and distribution terminal.	VOC
Transwall Corp	Chester	15–0025	Graphic arts	VOC
Tavo Packaging, Inc	Bucks	09–0008	Miscellaneous manufacturing (office furniture).	VOC

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule should adverse or critical comments be filed. This rule will be effective August 28, 1998 without further notice unless the Agency receives relevant adverse comments by July 29, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the, proposed rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 28, 1998 and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to all paragraphs subject to this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

Final Action

EPA is approving eight (8) operating permits as VOC RACT for eight (8) individual sources.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report

regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1998. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rulo or action. This action to approve VOC RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be "economically significant" as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" because this is not an "economically significant" regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 13, 1998.

William Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(132) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(132) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC RACT, submitted on April 16, 1996 and March 24, 1998 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Two (2) letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC RACT determinations in the form of operating permits on the following dates: April 16, 1996 and March 24, 1998.

(B) Operating permits (OP):

(*1*) The Fibre-Metal Products Company (Delaware County), OP 23–0025, effective February 20, 1998, except for the expiration date and conditions Nos. 16 and 17 relating to non-RACT provisions.

(*2*) Finnaren & Haley, Inc. (Montgomery County), OP 46–0070, effective March 5, 1998, except for the expiration date and conditions Nos. 13 and 15 relating to non-RACT provisions.

(*3*) Fres-co System USA, Inc. (Bucks County), OP 09–0027, effective March 5, 1998, except for the expiration date and conditions No. 22 relating to non-RACT provisions.

(*4*) Graphic Packaging Corporation (Chester County), OP 15–0013, effective February 28, 1998, except for the expiration date and conditions Nos. 19 and 20 relating to non-RACT provisions.

(*5*) Montour Oil Service Company (Lycoming County), OP 41–0013, effective March 19, 1998, except for the expiration date and conditions Nos. 7 and 9 relating to non-RACT provisions.

(*6*) Atlantic Refining and Marketing Corporation (Northumberland County), OP 49–0015, effective March 19, 1998, except for the expiration date and conditions Nos. 8 and 10 relating to non-RACT provisions.

(*7*) Transwall Corporation (Chester County), OP 15–0025, effective March 10, 1998, except for the expiration date and conditions Nos. 15, 19, and 21 relating to non-RACT provisions.

(*8*) Tavo Packaging, Inc. (Bucks County), OP 09–0008, effective November 8, 1995 except for the expiration date and condition No. 7 relating to non-RACT provisions.

(ii) Additional material.

(A) Remainder of the Commonwealth of Pennsylvania's April 16, 1996 and March 24, 1998 VOC and NO_x RACT SIP submittals for the relevant sources.

(B) Additional clarifying material submitted by Pennsylvania: Letter dated March 24, 1998 from James M. Seif, Secretary, Pennsylvania Department of Environmental Protection providing additional information on Tavo Packaging, Inc.

[FR Doc. 98–17117 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268, and 271

[FRL–6115–4]

RIN 2050–AD79

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions: Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: On May 4, 1998, EPA published regulations listing two organobromine production wastes as hazardous. It also set land disposal restrictions prohibitions and treatment standards for those wastes. This document corrects purely technical errors in the final regulations.

EFFECTIVE DATE: This rule is effective on June 29, 1998.

ADDRESSES: Supporting materials for the final rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–98–OBLF–FFFFF. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 920–9810 in the Washington, DC

metropolitan area. For information on this notice contact Rhonda Minnick (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, (703) 308–8771.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer, then select option for Rules and Regulations.

The official record for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

I. Reasons and Basis for Today's Amendment

The Agency has found a number of purely technical errors in the final rule. Today's amendment makes technical corrections where appropriate.

II. Amendments to the Final Rule

A. Section 148.18

Paragraph (f) of § 148.18 stated that the effective date of the prohibition for the underground injection of organobromine production wastes was August 3, 1998, the date 90 days from date of publication. This is in error. A waste cannot be prohibited from land disposal, including underground injection, before it is a hazardous waste. The wastes do not become hazardous until November 4, 1998, six months from the date of publication (63 FR 24596). Therefore, the effective date for § 148.18 is being amended to conform with the effective date of the listing, November 4, 1998.

B. Section 268.33

Paragraph (b) of § 268.33 is unnecessary and is thus being removed. The paragraph stated that the organobromine production wastes could be land disposed between May 4, 1998 and November 4, 1998 only in a unit meeting minimum technological requirements. Such a prohibition does not make sense, however, because the organobromine production wastes are not hazardous until November 4, 1998. To clarify that there is no prohibition on land disposal of these wastes between May 4, 1998 and November 4, 1998, paragraph (b) is omitted, paragraph (c) is designated as (b), and paragraph (d) is designated as (c).

Paragraph (c) (new paragraph (b)) is amended so that it no longer references paragraph (b), the paragraph being omitted as discussed above. Removal of this unneccesary cross-reference will make new paragraph (b) much easier to understand.

Paragraph (d) (new paragraph (c)) included language that applies only to wastes that display a hazardous characteristic. It stated: "If the waste contains constituents (*including underlying hazardous constituents in characteristic wastes that have been diluted to remove the characteristic*) in excess of the applicable Universal Treatment Standard levels of § 268.48 of this Part, the waste is prohibited from land disposal, and all requirements of Part 268 are applicable, except as otherwise specified." The italicized phrase does not apply to organobromine production wastes because they are wastes that are listed as hazardous rather than ones that display a hazardous characteristic. The phrase is removed by this action.

C. Section 268.40

There was a mistake in the treatment standard table for K140. The table erroneously stated that the treatment standard for 2,4,6-Tribromophenol wastewaters was 0.35. The treatment standard is corrected to be 0.035, which conforms to the wastewater treatment standards for 2,4,6-Tribromophenol in U408, and in the Universal Treatment Standards table.

D. Section 271.1

There were two mistakes in § 271.1(j), Table 2. The effective dates in Table 2 appeared as August 3, 1998, and May 4, 2000. Both of these dates were incorrect. They are corrected by this amendment to be November 4, 1998.

III. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it clarifies requirements by correcting a number of errors in the May 4, 1998 final rule. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

IV. Analysis Under Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, the Paperwork Reduction Act, National Technology Transfer and Advancement Act of 1995, and Executive Order 13045

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act, and it does not affect requirements under the Paperwork Reduction Act. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Neither this technical correction action nor the final rule involve technical standards. Therefore, EPA did not consider the use of any voluntary standards in this rulemaking. This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this action is not an economically significant rule, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

V. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 29, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is [is not] a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 18, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.18 is amended by revising paragraph (f) to read as follows:

§ 148.18 Hazardous waste injection restrictions.

* * * * *

(f) Effective November 4, 1998, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K140, and in 40 CFR 261.33(f) as EPA Hazardous Waste number U408 are prohibited from injection.

PART 268—LAND DISPOSAL RESTRICTIONS

3. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

4. Section 268.33 is amended by removing paragraph (b), by redesignating paragraph (c) as (b), and paragraph (d) as (c), and revising redesignated paragraphs (b) introductory text, and (c) to read as follows:

§ 268.33 Waste-specific prohibitions—organobromine wastes.

* * * * *

(b) The requirements of paragraph (a) of this section do not apply if:

* * * * *

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of § 268.48 of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

5. Section 268.40 is amended by revising in the table the entry for K140 to read as follows. The appropriate footnotes are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable.]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
•	•	•	•	•	•
K140	Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6 tribromophenol..	2,4,6-Tribromophenol	118–79–6	0.035	7.4
•	•	•	•	•	•

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems, are not subject to treatment standards. (See § 268.1(c)(3)and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See § 148.1(d)).

[10] Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technolgy code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42 (b).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by revising the entries in Table 2 for August 3, 1998 and for May 4, 2000 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
.	.	.	.
November 4, 1998	Prohibition on land disposal of newly listed and identified wastes..	3004(g)(4)(C) and 3004(m)	May 4, 1998; 63 FR 24596
November 4, 1998	Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris..	3004(m) 3004(g)(4)(C) and 3004(m)	Do.
.	.	.	.

* * * * *

[FR Doc. 98–17264 Filed 6–26–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 98–82]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 12, 1998, the Commission released a Third Report and Order in CC Docket No. 95–115, adopting measures to distribute the costs of long-term number portability among telecommunications carriers. In this order, the Commission decides that telecommunications carriers shall pay for the shared costs of the number portability regional databases based on each telecommunications carrier's end-user telecommunications revenues in each region, telecommunications carriers shall bear their own carrier-specific costs directly related to providing number portability, incumbent LECs have the option to recover their carrier-specific costs directly related to providing number portability through a five-year end user charge, as well as through number portability query charges to other carriers, and unregulated carriers may recover their carrier-specific costs directly related to providing number portability in any lawful manner. This Third Report and Order ensures that all telecommunications carriers bear the costs of number portability in a competitively neutral manner.

EFFECTIVE DATE: July 29, 1998, except for §§ 52.32(b) and 52.33(a)(1), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Lloyd Collier at (202) 418–2712, or Neil Fried at (202) 418–1865, Competitive Pricing Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Third Report and Order in CC Docket No. 95–116, In the Matter of Telephone Number Portability, FCC 98–82, RM 8535, adopted May 5, 1998, and released May 12, 1998. The file in its entirety is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857–3800.

ANALYSIS OF PROCEEDING

I. Background

A. The Provision of Long-Term Number Portability

The Telecommunications Act of 1996 amends the 1934 Act to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. Congress added section 251(b)(2) to the 1934 Act, which requires all LECs, both incumbents and new entrants, "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." In light of Congress' number portability mandate, the Commission released a combined *First Report and Order* (Order) *& Further Notice of Proposed Rulemaking* (Further Notice) (61 FR 38605, July 25, 1996) in July 1996 to begin implementing number portability. Without number portability, customers ordinarily cannot change their local telephone companies unless they change telephone numbers. Under the existing network architecture and the North American Numbering Plan (NANP), a telephone number functions like an address: every number is associated with an individual switch operated by a particular local telephone company in a specific geographic area. The area code, also called the Numbering Plan Area (the NPA), identifies the general geographic area within which the switch provides service. The next three digits of the telephone number (the NXX) identify the switch that serves the customer. The last four digits identify the specific telephone line serving the customer's location. Carriers use this ten-digit number to connect a telephone call to the called party. Thus, if a customer changes local telephone companies and receives service at the same location from a different telephone company providing service from a different switch, the customer's new local telephone company typically must assign the customer a new seven-digit number (NXX code plus line number) associated with the new switch and new telephone line.

2. Number portability technology allows customers to retain their telephone numbers when changing local service providers. Although the Commission did not mandate a specific long-term number portability method, most carriers intend to provide long-term number portability through a location routing number (LRN) architecture. Under an LRN architecture, each switch is assigned a unique ten-digit LRN, the first six digits of which identify the location of that switch. Each customer's telephone number is matched in a regional database with the LRN for the switch that currently serves that telephone number. Each database serves an area that corresponds to one of the original regional Bell Operating Company (RBOC) service territories. Neutral third parties, called local number portability administrators (LNPAs), will administer these regional databases.

3. When a customer changes from one LEC to another, the carrier that wins the customer will "port" the customer's number from the former carrier by electronically transmitting (uploading) the new LRN to the administrator of the relevant regional database. This will pair the customer's original telephone number with the LRN for the switch of the new carrier, allowing the customer to retain the original telephone number. The regional database administrators will then electronically transmit (download) LRN updates to carrier-operated local service management systems (LSMSs). Each carrier will distribute this information to service control points (SCPs) or signal transfer points (STPs) that the carrier will use to store and process data for providing number portability.

4. For a carrier to route an interswitch telephone call to a location where number portability is available, the carrier must determine the LRN for the switch that serves the terminating telephone number of the call. Once number portability is available for an NXX, carriers must "query" all interswitch calls to that NXX to determine whether the terminating customer has ported the telephone number. Carriers will accomplish this by sending a signal over the SS7 network to retrieve from an SCP or STP the LRN associated with the called telephone number. The industry has proposed, and the Commission has endorsed, an "N minus one" (N–1) querying protocol. Under this protocol, the N–1 carrier will be responsible for the query, where "N" is the entity terminating the call to the end user, or a network provider contracted by the entity to provide tandem access. Thus the N–1 carrier (*i.e.* the last carrier before the terminating carrier) for a local call will usually be the calling customer's local service provider; the N–1 carrier for an interexchange call will usually be the calling customer's interexchange carrier (IXC). An N–1 carrier may perform its own querying, or it may arrange for other carriers or third parties to provide querying services on its behalf.

5. To route a local call under this system, the originating local service provider will examine the seven-digit number that its customer dialed, for example "456–7890." If the called telephone number is on the originating switch (i.e. an intraswitch call), the originating local service provider will simply complete the call. If the call is interswitch, the originating local service provider will compare the NXX, "456," with its table of NXXs for which number portability is available. If "456" is not such an NXX, the originating local service provider will treat the call the same as it did before the existence of long-term number portability. If it is an NXX for which portability is available, the originating local service provider will add the NPA, for instance "123," to the dialed number and query "(123) 456–7890" to an SCP containing the LRNs downloaded from the relevant regional database. The SCP will return the LRN for "(123) 456–7890" (which would be "(123) 456 XXXX" if the customer has not changed carriers, or something like "(123) 789-XXXX" if the customer has changed carriers), and use the LRN to route the call to the appropriate switch with an SS7 message indicating that it has performed the query. The terminating carrier will then complete the call. To route an interexchange call, the originating local service provider will hand the call off to the IXC and the IXC will undertake the same procedure.

B. Prior Commission Decisions

6. The *Order*, as modified by the *First Memorandum Opinion and Order on Reconsideration* (First Reconsideration Order) (62 FR 18280, April 15, 1997), requires LECs to implement long-term number portability: (1) in Chicago, Philadelphia, Atlanta, New York, Los Angeles, Houston, and Minneapolis—the largest metropolitan statistical area (MSA) in each of the seven RBOC regions between October 1, 1997, and March 31, 1998; (2) in the rest of the 100 largest MSAs in quarterly stages between January 1, 1998, and December 31, 1998; and (3) thereafter in switches outside the 100 largest MSAs, within six months of a request by a telecommunications carrier. A number of carriers have received extensions of the March 31, 1998, implementation deadline for certain areas ranging from two to five months.

7. The Commission explained that the statutory definition of number portability requires LECs to implement

number portability in such a way that LEC customers can keep their telephone numbers when they switch to any other telecommunications carrier, including, therefore, when they switch to a commercial mobile radio services (CMRS) provider. The Commission also required in the Order that certain types of CMRS providers be able by December 31, 1998, to route calls to any ported numbers and be able by June 30, 1999, to allow their own customers to take their telephone numbers to other carriers. By its language, section 251(b)(2) requires only that LECs provide number portability, and the 1934 Act, as amended, excludes from the definition of "local exchange carrier" those entities engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term. Although the Commission declined in the *Order* to address whether CMRS providers are LECs, the Commission exercised authority under sections 1, 2, 4(i), and 332 to require three categories of CMRS providers' cellular providers, broadband personal communications service (PCS) providers, and covered specialized mobile radio (SMR) providers' to provide number portability. The Commission concluded that requiring these CMRS providers to provide number portability would serve the public interest by promoting competition between and among local wireless and wireline carriers, as well as among providers of interstate access service.

8. In the *Order*, the Commission exempted some CMRS providers from the obligation to provide number portability: paging and other messaging service providers, private paging service providers, business radio service providers, providers of land mobile service on 220–222 MHz, public coast stations, public land mobile service providers, 800 MHz air-ground radio-telephone service providers, offshore radio service providers, mobile satellite service providers, narrowband PCS service providers, local SMR licensees, and local multipoint distribution service (LMDS) providers. The Commission reasoned that such carriers currently have little impact on competition for local service.

9. In the *First Reconsideration Order*, the Commission concluded that within the 100 largest MSAs, LECs must provide number portability only in switches for which another carrier has specifically and reasonably requested the provision of number portability. The Commission reasoned that such an approach allows carriers to focus their resources where competitors plan to enter, which is where number portability is likely to have the most impact in the short run on the development of competition for local services. Structuring implementation in this fashion reduces costs, eases the demands on software vendors, and encourages efficient deployment, network planning, and testing. The Commission emphasized, however, that all carriers, even those operating portability-incapable switches, are still responsible for properly routing calls to telephone numbers in locations where number portability is available. Carriers can meet that responsibility either by routing the call to one of their switches that is capable of performing the necessary database query, or by arranging for another carrier or a third party to query the database or route the call.

10. In the *Second Report and Order* (62 FR 48774, September 17, 1997), the Commission determined that if an N–1 carrier arranges with another entity to perform queries on the carrier's behalf, that other entity may charge the N–1 carrier in accordance with requirements to be established in this *Third Report and Order*. The Commission also noted that when an N–1 carrier fails to ensure that a call is queried, the call might inadvertently be routed by default to the LEC that originally served the telephone number. If the number was ported, the LEC incurs costs in redirecting the call. This could happen, for example, if there is a technical failure in the N–1 carrier's ability to query, or if the N–1 carrier fails to ensure that its calls are queried, either through its own query capability or through an arrangement with another carrier or third-party. The Commission determined in the *Second Report and Order* that if a LEC performs queries on default-routed calls, the LEC may charge the N–1 carrier in accordance with requirements to be established in this *Third Report and Order*. The Commission determined further that it would allow LECs to block default-routed calls, but only in specific circumstances when failure to do so is likely to impair network reliability. The Commission also said that it would require LECs to apply this blocking standard to calls from all carriers on a nondiscriminatory basis.

II. The Statutory Framework

A. Federal/State Jurisdiction

11. We conclude that section 251(e)(2) requires the Commission to ensure that carriers bear the costs of providing long-term number portability on a competitively neutral basis for both interstate and intrastate calls. In reaching this conclusion, we note that section 251(e)(2) expressly and unconditionally grants the Commission authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis.

12. Consequently, we find that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanism for all the costs of providing long-term number portability. We conclude that an exclusively federal recovery mechanism for long-term number portability will enable the Commission to satisfy most directly its competitive neutrality mandate, and will minimize the administrative and enforcement difficulties that might arise were jurisdiction over long-term number portability divided. Further, such an approach obviates the need for state allocation of the shared costs of the regional databases, a task that would likely be complicated by the databases' multistate nature. Under the exclusively federal number portability cost recovery mechanism, incumbent LECs' number portability costs will not be subject to jurisdictional separations. Instead, we will allow incumbent LECs to recover their costs pursuant to requirements we establish in this *Third Report and Order*.

B. Scope of Section 251(e)(2)

13. We interpret the terms of section 251(e)(2) in ways that will best implement its goals. The 1996 Act amended the 1934 Act to provide for a pro-competitive, de-regulatory national policy framework and to open all telecommunications markets to competition. Section 251(b)(2) furthers those congressional goals by requiring all LECs to provide number portability so that subscribers of local telephone service can retain their telephone numbers when changing carriers. At the same time, by requiring the Commission to ensure that all telecommunications carriers bear on a competitively neutral basis the costs of providing number portability, section 251(e)(2) seeks to prevent those costs from themselves undermining competition.

14. We conclude that "the cost[s] of establishing " number portability" to be borne on a competitively neutral basis include the costs that LECs incur to meet the obligations imposed by section 251(b)(2), as well as the costs other telecommunications carriers' such as IXCs and CMRS providers' incur for the industry-wide solution to local number portability. [1] The Act defines number

[1] Under the N–1 protocol recommended by the industry under the auspices of the NANC, and the

portability as the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Thus, "the costs of number portability" are the costs of enabling telecommunications users to keep their telephone numbers without degradation of service when they switch carriers. Such costs include the costs a carrier incurs to make it possible to transfer a telephone number to another carrier, as well as the costs involved in making it possible to route calls to customers who have switched carriers (i.e., the costs involved in making the N–1 querying protocol possible). IXCs and CMRS providers, as well as LECs, incur these costs.

15. We also adopt the tentative conclusion in the *Further Notice* that costs not directly related to providing number portability, as defined further below, are not costs of providing number portability. Consequently, such costs need not "be borne by all telecommunications carriers on a competitively neutral basis" under section 251(e)(2). Section 251(e)(2) requires that the costs of providing number portability be borne on a competitively neutral basis. Costs not directly related to providing number portability encompass a wide range of costs that carriers incur to provide telecommunications functions unrelated to number portability. We find no indication that Congress intended to place such costs within the scope of the competitive neutrality requirement of section 251(e)(2). Because costs not directly related to providing number portability are not subject to 251(e)(2), the Commission is not obligated under that section to create special provisions to ensure that they are borne on a competitively neutral basis.

16. We also conclude that section 251(e)(2) requires the Commission to ensure that number portability costs are distributed among, as well as recovered by, carriers on a competitively neutral basis. Despite the Commission's tentative conclusion that section 251(e)(2) only applies to the distribution of number portability costs, we now find ambiguous the scope of the language requiring that costs "be borne * * * on a competitively neutral basis." We find further that reading section 251(e)(2) as applying to both distribution and recovery best achieves the congressional goal of ensuring that the costs of providing number portability do not restrict the local competition that number portability is intended to encourage. Because the manner in which carriers recover the costs of providing number portability could affect their ability to compete, we cannot ensure that number portability costs are "borne by all telecommunications carriers on a competitively neutral basis" unless we address both distribution and recovery. If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs. Therefore, we find that section 251(e)(2) requires the Commission to ensure that both the distribution and recovery of intrastate and interstate number portability costs occur on a competitively neutral basis.

C. Competitive Neutrality

17. We adopt the Commission's tentative conclusion to apply to long-term number portability the Order's definition of competitive neutrality as requiring that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. Applying this definition will ensure that the cost of implementing number portability does not undermine the goal of the 1996 Act to promote a competitive environment for the provision of local communications services.

18. We also adopt the Commission's tentative conclusion to apply to long-term number portability the two-part test the Commission developed to determine whether carriers will bear the interim costs of number portability on a competitively neutral basis. Under this test, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return.

19. Accordingly, we adopt for purposes of long-term number portability the *Order's* definition of competitive neutrality as requiring that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. We also adopt the two-part test for determining whether this definition is met. We apply this interpretation of competitive neutrality to the shared costs of providing number portability below. We find it unnecessary to address whether to apply our competitive neutrality principles to states that opt out of the regional database plan because no state elected to opt out by the July 1, 1997, deadline. We apply the interpretation of competitive neutrality to the carrier-specific costs directly related to providing number portability below.

III. Categorization of Costs

20. We adopt the Commission's tentative conclusion to divide the costs raised by this proceeding into three categories: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability. The division of costs between shared costs and carrier-specific costs directly related to providing number portability recognizes that some costs of providing number portability are incurred by regional database administrators, while others are incurred by carriers in the first instance. The division between carrier-specific costs directly related to providing number portability and carrier-specific costs not directly related to providing number portability recognizes that some component of the costs carriers incur will provide carriers with benefits unrelated to number portability.

21. We adopt the Commission's tentative definition of shared costs as costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability. We also conclude that once the shared costs are allocated they are attributable to specific carriers, at which point we will treat them as carrier-specific costs directly related to providing number portability.

22. We also adopt the Commission's tentative subcategorization of the shared costs into nonrecurring costs, recurring costs, upload costs, and download costs. We clarify, however, that the shared upload and download costs include only the costs that the database administrators incur to process uploads and downloads; the costs that the carriers incur individually to process uploads and downloads are carrier-specific costs directly related to providing number portability.

Commission's requirements for the provision of long-term number portability, almost all telecommunications carriers'including LECs, IXCs, and CMRS providers'will incur costs of number portability.

23. We further conclude that query costs are not shared costs initially incurred by the regional database administrators, but are carrier-specific costs directly related to providing number portability. At the time of the *Further Notice*, the Commission's understanding had been that the regional administrators might perform queries for carriers. In that case, query costs might have constituted shared costs because the database administrators would have incurred costs for the industry as a whole, and the costs would need to be allocated among individual carriers. The industry has chosen, however, not to adopt this approach to number portability. Instead, the N–1 carrier will incur all querying costs individually in the first instance, either by querying its own copy of data downloaded from the regional databases, or by arranging for the querying of such a database copy maintained by another carrier or other third party. Because the regional database administrators will not perform queries on behalf of carriers, query costs are more appropriately considered carrier-specific costs directly related to providing number portability.

24. We conclude that carrier-specific costs directly related to providing number portability are limited to costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another. Costs that carriers incur as an incidental consequence of number portability, however, are not costs directly related to providing number portability.

25. We reject the requests of some commenters that we classify the entire cost of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade relates to the provision of number portability. Carriers incur costs for software generics, switch hardware, and OSS, SS7 or AIN upgrades to provide a wide range of services and features. Consequently, only a portion of such joint costs are carrier-specific costs directly related to providing number portability. Thus, we will consider as subject to the competitive neutrality mandate of section 251(e)(2) all of a carrier's dedicated number portability costs, such as for number portability software and for the SCPs and STPs reserved exclusively for number portability. We will also consider as carrier-specific costs directly related to the provision of number portability that portion of a carrier's joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability. Apportioning costs in this way will further the goals of section 251(e)(2) by recognizing that providing number portability will cause some carriers, including small and rural LECs, to incur costs that they would not ordinarily have incurred in providing telecommunications service. At the same time, this approach recognizes that some upgrades will enhance carriers' services generally, and that at least some portion of such upgrade costs are not directly related to providing number portability.

26. Because carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers may not use general overhead loading factors in calculating such costs. Carriers already allocate general overhead costs to their rates for other services, and allowing general overhead loading factors for long-term number portability might lead to double recovery. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.

27. As discussed below, we are permitting incumbent LECs to recover their number portability costs in federally tariffed end-user charges and query services. To facilitate determination of the portion of joint costs carriers shall treat as carrier-specific costs directly related to providing number portability, and to facilitate evaluation of the cost support that carriers will file in their federal tariffs, we are requesting that carriers and interested parties file comments by August 3, 1998 proposing ways to apportion the different types of joint costs. Carriers and interested parties may file reply comments by September 16, 1998. We will delegate authority to the Chief, Common Carrier Bureau, to determine appropriate methods for apportioning joint costs among portability and nonportability services, and to issue any orders to provide guidance to carriers before they file their tariffs, which are to take effect no earlier than February 1, 1999.

28. We decline to create special cost categories for the number portability costs of small and rural carriers. The Commission's definitions of carrier-specific costs directly and not directly related to providing number portability will enable all carriers, including small and rural carriers, as well as carriers providing Extended Area Service, to identify the costs subject to section 251(e)(2). The three cost categories the Commission has created account for all potential number portability costs and provide workable distinctions for the purposes of implementing section 251(e)(2).

29. Creating unique cost categories for wireless carriers is also unnecessary at this time. The Commission's definitions are not tied to unique technological constraints of wireline communications, and nothing in the record leads us to conclude that the three cost categories are too narrow to apply to the number portability costs of wireless carriers. Wireless carriers, like wireline carriers, will depend upon the regional databases, and the record does not suggest that the costs of the regional databases are disproportionately affected by any one industry segment.

IV. Costs of the Regional Databases

A. Distribution of Shared Costs: Allocation v. Usage-Based Rates

30. We require telecommunications carriers to pay for the database administrators' nonrecurring, recurring, upload, and download costs pursuant to an allocator, which we select below, rather than on a usage-sensitive basis. We have used the two-prong competitive neutrality test to ensure that the allocator we choose distributes these costs on a competitively neutral basis. Once these shared costs are distributed to telecommunications carriers, we treat each carrier's portion of the costs as a carrier-specific cost directly related to providing number portability. Because telecommunications carriers will recover these costs as carrier-specific costs directly related to providing number portability, which we discuss below, we need not address their recovery here.

31. Distributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads. At the outset of number portability, these carriers are more likely to be competitive LECs. Consequently, usage-sensitive distribution of the shared costs could give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, as well as disparately affect the ability of competing service providers to earn a normal return. Although the record does not show conclusively that usage-based charges would hamper materially a carrier's ability to compete for subscribers, we

believe it prudent at this early stage in the deployment of number portability to minimize such risk.

32. Moreover, assessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently. The entire industry benefits from the maintenance of reliable regional databases for providing number portability: unless carriers download data, they will be unable to terminate traffic to the appropriate end-user; unless carriers upload ported numbers to the databases, the databases will be inaccurate, making downloads useless for current and future database participants alike. Thus, all carriers that port telephone numbers and all carriers that terminate calls to portability-capable NXXs depend on the timely uploading and downloading of information to and from the regional databases to ensure an accurate database and the proper routing of telephone calls. Furthermore, all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers, and because it facilitates the conservation of telephone numbers through number pooling.

33. We will not adopt a separate distribution methodology for wireless carriers. The record indicates that wireless carriers will use the regional databases in the same manner as wireline carriers. Consequently, we see no reason to treat wireless carriers differently than wireline carriers with respect to the distribution of the shared costs.

B. The Allocator

34. As part of its management duties under § 52.26 of the Commission's Rules, the LNPA of each regional database must collect sufficient revenues to fund that database. We will require the LNPA of each regional database to do this by allocating the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region. The Commission adopted end-user telecommunications revenues in the *Universal Service Order* (62 FR 32862, June 17, 1997) as the assessment base for determining contributions to universal support mechanisms. We will require carriers to include intrastate, interstate, and international revenues in calculating end-user revenues because number portability will affect all such services. An end-user telecommunications revenue allocator is similar to a retail-revenues allocator in that both are based on telecommunications revenues that carriers collect from end-users. Unlike retail-revenues, however, end-user telecommunications revenues includes revenues derived from subscriber line charges (SLCs).[2] End-user telecommunications revenues also include revenues collected from carriers that purchase telecommunications services for their own internal use.

35. The end-user telecommunications revenue allocator meets the two-prong competitive neutrality test. First, the allocator will not give one service provider an appreciable, incremental cost advantage when competing for a subscriber. Because the end-user telecommunications revenue allocator will distribute the shared costs of the regional databases to each carrier in proportion to that carrier's end-user revenues, it will cost carriers approximately the same increase in shared costs to win a specific subscriber. For example, if one of two LECs wins a third LEC's subscriber, whichever of the two LECs wins the subscriber will win the end-user revenue that subscriber generates, which will increase its allocated portion of the shared costs. Because the subscriber is likely to use approximately the same amount of local service regardless which of the two competing LECs provides service to the subscriber, the incremental shared cost one of the two LECs would experience if it had won the subscriber would be about the same as the incremental shared cost the other would experience if it won the subscriber. This increase would also approximately equal the decrease in shared costs the third carrier would experience, having lost the subscriber. These amounts may not be exactly the same because each of the three carriers may have different rates and may not collect exactly the same revenue from that subscriber. The difference, however, will not be significant enough to create an appreciable, incremental cost disadvantage. Furthermore, any difference will not be caused by providing number portability, but by differences in the underlying efficiency, services, and rates of each of the carriers. Thus we believe the allocator will not itself create an appreciable, incremental cost advantage that was not already present even absent number portability.

[2] The SLC is a flat monthly per-line rate that the end user pays.

36. Second, allocating shared costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return. Because carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only increase as it increases its revenue stream. Consequently, the end-user revenues allocator will not disparately affect competing carriers' abilities to earn a normal return. An end-user revenues allocator will also be easy to administer because carriers already track their sales to end-users for billing purposes, and will be familiar with the end-user revenues allocator from its use for universal service support contributions. Although an end-user revenues allocator will relieve pure wholesalers, which have no end-user revenue, from directly bearing shared costs, the end-user method does not exclude wholesale revenues from the revenue base that determines carriers' shared costs. As the Commission explained in the *Universal Service Order*, wholesale charges are built into retail rates, and thus the allocator still reflects wholesale revenue. This is competitively neutral because it avoids double-counting revenues, and because wholesale carriers are not competing with retail carriers for end users in the marketplace.

C. Carriers Required To Share the Costs of the Regional Databases

37. We will require allocation of the shared costs among all telecommunications carriers because section 251(e)(2) states that "[t]he cost of establishing * * * number portability shall be borne by all telecommunications carriers on a competitively neutral basis." Our end-user revenues allocator, by its nature, does not reach carriers, such as pure wholesalers, that do not have end-user revenues. Because section 251(e)(2) requires all carriers to bear the costs of number portability on a competitively neutral basis, we will require carriers that do not have end-user revenues to pay $100 per year per region as their statutory share of the shared costs. We believe that $100 represents a fair contribution for carriers that do not have end-user revenues, but can revisit this issue should it become necessary. This fee will not give any such carriers an appreciable, incremental cost advantage when competing for a

subscriber because such carriers do not compete for end-user customers. Moreover, this charge will be the same for all such carriers. Thus, it will not create any disadvantage to the extent these carriers are competing with each other. This fee is also not likely to disparately affect the ability of competing carriers to earn a normal return because such a nominal charge is unlikely to affect a carrier's return and, again, because all such carriers will face the same charge. Consequently, such a fee is competitively neutral.

D. Regional v. National Allocation of Regional Database Costs

38. We will require telecommunications carriers to bear the shared costs on a regional basis because such a plan is most consistent with the regional nature of the databases, and because a national approach would require designation of a national administrator. As part of its duties established in § 52.26 of the Commission's Rules,[3] each local number portability administrator of a regional database shall collect sufficient revenues from all telecommunications carriers providing telecommunications service in areas that regional database serves to fund the operation of that regional database. Thus, after subtracting the charges it collects from telecommunications carriers with no end-user revenues, each database administrator shall distribute the remaining shared costs based upon each remaining telecommunications carrier's proportion of the end-user revenues collected by all telecommunications carriers in that region. To apply the end-user revenues allocator, administrators may request regional end-user revenues data from telecommunications carriers once a year. We direct telecommunications carriers to comply with such requests. One of the objectives of the biennial review of our regulations required under the Communications Act is to consider ways to reduce filing burdens on carriers. The Commission may further consider in the biennial review or other proceedings how best to administer the allocation of the shared costs.

39. We are aware that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated by the regional LLCs. We will permit, but not require, each regional administrator and LLC to adjust prospectively through a reasonable true-up mechanism the future bills of those carriers that participated in such agreements so that the shared costs each such carrier will have contributed approaches what those carriers would have paid had an end-user telecommunications revenue allocator been in place when carriers started paying the regional administrators. Permitting the regional administrators and LLCs to perform such true-ups ensures that costs are recovered from carriers in a manner consistent with our rules, while accounting for the period prior to the effective date of our rules and recognizing that agreements may have been reasonable mechanisms to recover regional database costs on a temporary basis pending this *Third Report and Order*.

[3] These duties include all management tasks required to run the regional databases.

V. Carrier-Specific Costs Directly Related to Providing Number Portability

40. We will allow but not require incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users. As noted, we recognize consumers' sensitivity to end-user charges. Under the circumstances before us, however, we conclude that allowing carriers to recover number portability costs in this manner will best serve the goals of the statute. The Commission has only two sources from which it may allow carriers to recover costs in the federal jurisdiction: charges IXCs pay LECs for exchange access, and end-user charges. Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so. We note further that, like long-term number portability, the advent of equal access and 800 number portability required carriers to incur significant costs to modify their networks, although these costs were not recovered in federal end-user charges. These improvements led to increased competition and substantial long-term benefits to consumers. We anticipate a similarly positive effect for consumers with respect to the impact of number portability, namely the increased choice and lower prices that result from the competition that number portability helps make possible. We also note that number portability will facilitate number pooling, which will help forestall telephone-number exhaust.[4]

41. Carriers not subject to rate regulation—such as competitive LECs, CMRS providers, and non-dominant IXCs—may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act.[5] Requiring incumbent LECs to bear their own carrier-specific costs of providing number portability and allowing them to recover those costs from their own customers, while leaving other carriers unregulated, meets our competitive neutrality standard that number portability cost distribution and recovery mechanisms: (1) not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) not disparately affect the ability of competing service providers to earn a normal return.

42. Requiring incumbent LECs to bear their own carrier-specific costs directly related to providing number portability will not disadvantage any telecommunications carrier because under an LRN implementation of long-term number portability a carrier's costs should vary directly with the number of customers that carrier serves. Our examination of the present record and cost data that some carriers have provided indicates that incumbent LECs, competitive LECs, and CMRS providers competing in the local service market are likely to have approximately the same long-run incremental number portability cost of winning a subscriber. Incumbent LECs will likely have large absolute costs because of their large networks, but they also will have a large customer base over which to spread those costs; competitive LECs and CMRS providers will likely incur fewer absolute costs because of their smaller networks, but they will also likely have smaller customer bases over which to spread those costs.

43. Some small LECs and CMRS providers may find that their smaller customer bases make adding number portability capability in their own

[4] Until now, local service providers had to be assigned entire NXXs, even if they did not need all 10,000 of the NXX's telephone numbers. With the advent of number portability, carriers can share NXXs and pool unused telephone numbers, which results in more efficient allocation of telephone numbers and reduces the need for measures such as area-code overlays to combat telephone number exhaust.

[5] Although generally not rate regulated, competitive LECs, CMRS providers, and IXCs—as telecommunications carriers—remain subject to the Communications Act and Commission rules.

networks uneconomical. Such carriers can benefit from economies of scale similar to those of incumbent LECs, however, by arranging for another carrier or third-party provider to provide number portability functionality for them, as it appears that a market for number portability services may develop. Similarly, they may enter into cooperative agreements with other small carriers. Conversely, such carriers might install number portability in their networks and sell any excess number portability capacity to other carriers. Because resellers will simply be reselling the number portability capability of a facilities-based carrier, we would expect that resellers will also have comparable incremental number portability costs. Similarly, we would expect that carriers competing for interexchange customers will bear the costs of providing number portability associated with N–1 queries in rough proportion to the number of interexchange customers they serve; the more customers they win, the more queries they must perform to terminate those customers' calls. IXCs and CMRS providers can either query interexchange calls themselves or arrange for other carriers or third-party providers to provide querying service for them.

44. Regulating the recovery of number portability costs by incumbent LECs, but not by competitive LECs, CMRS providers, and IXCs, also will not place any carrier at a competitive disadvantage. Creating an optional end-user charge for incumbent LECs ensures that such carriers have a reasonable opportunity to recover their costs and at the same time allows carriers to forego some or all of such charges if they deem it necessary to compete in the local service market. Similarly, unregulated carriers may recover their costs in end-user charges if they choose to do so. Regulating incumbent LEC recovery should not disadvantage incumbent LECs as compared to competitive LECs because competitive LECs also have number portability costs under LRN. If a customer does switch to a competitive LEC, that customer may have to pay end-user charges or service rates that recover the competitive LEC's portability costs. Thus, the customer's incentive to leave the incumbent LEC is offset by the fact that the customer would then have to pay charges that recover the competitive LEC's number portability costs. Therefore, incumbent LECs are unlikely to have a material disadvantage in competing for subscribers under our recovery mechanism.

45. We also observe that under LRN-based long-term number portability the LEC serving the customer who places a local call will generally be responsible for the query. Thus, winning a customer shifts responsibility for the queries needed to complete that customer's local calls from the original carrier to the acquiring carrier. Similarly, the IXC serving the customer who places an interexchange call will be responsible for any query needed. Consequently, under the LRN approach to number portability, query costs follow customers, and requiring each carrier to bear its own carrier-specific costs directly related to providing number portability is competitively neutral.

46. Under the requirements we adopt today, an incumbent LEC may recover its carrier-specific costs directly related to providing long-term number portability to end users by establishing a monthly, number portability charge in tariffs filed with the Commission. We determine, however, that recovery from end users should be designed so that end users generally receive the charges only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability. To achieve this, we will allow the monthly number-portability charge to begin no earlier than February 1, 1999, on a date the incumbent LEC carrier selects, and to last no longer than five years. We choose this start date for the federal end-user charge because by the end of 1998, under the implementation schedule the Commission has mandated for number portability, a large proportion of customers will reside in areas where number portability is available: the largest 100 MSAs.[6] In contrast, if the end-user charge were permitted to start immediately, substantially fewer customers would be in areas where number portability is available. Thus, the February 1, 1999, start date will better tailor recovery to areas where customers can receive number portability than would an earlier start date for recovery. We choose February 1, 1999, rather than January 1, 1999, to provide a brief additionel time-period to ensure that number portability has been implemented before customers incur charges, and because carriers will also be filing tariff revisions to take effect January 1, 1999, to implement PICC and SLC adjustments.

47. In addition, we will allow an incumbent LEC to assess the monthly charge only on end users it serves in the 100 largest MSAs, and end users it serves outside the 100 largest metropolitan statistical areas from a number-portability-capable switch. Because carriers may make any switch number-portability capable, this approach will encourage carriers to install number portability and help ensure that end-users are assessed number portability charges only where they are reasonably likely to be benefitting from number portability. If a carrier receives an extension past February 1, 1999, for one of the 100 largest MSAs, the carrier may not assess the monthly charge in that MSA until it begins providing long-term number portability in the MSA. The incumbent local exchange carrier shall levelize[7] the monthly number-portability charge over five years by setting a rate for each charge at which the present value of the revenue recovered by the charge equals the present value of the cost being recovered. The carriers shall use a discount rate equal to the rate of return on investment which the Commission has authorized for regulated interstate access services pursuant to Part 65 of the Commission's Rules. Currently, this rate is 11.25 percent. We require levelization of the monthly charge to protect consumers from varying rates. Incumbent LECs may collect less than the maximum allowable charge, or decline to collect the charge, from some or all of their customers so long as they do so in a reasonable and nondiscriminatory manner. Thus we will not, for example, allow incumbent LECs to offset such lower charges by collecting higher charges in areas where no competitive carriers are present.

48. We choose the five-year period for the end-user charge because it will enable incumbent LECs to recover their portability costs in a timely fashion, but will also help produce reasonable charges for customers and avoid imposing those charges for an unduly long period. A longer period would increase the total charges consumers pay because, as discussed, carriers' unrecovered capital investment will be subject to an 11.25 percent return, while a shorter period would increase the monthly charge to consumers. We find that a five-year period effectively balances these concerns. After a carrier

[6] The top 100 MSAs comprise approximately 61.1% of all subscriber lines, a conservative estimate, based on our calculation that approximately 61.1% of the United States population resides in the 100 largest MSAs. We calculated this percentage from population estimates of the United States Census Bureau.

[7] A levelized rate is one that is calculated to remain constant over a recovery period and is set at the level at which the discounted present value of the stream of payments is equal to the discounted present value of the stream of costs over the period.

establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set. Furthermore, once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis. Carriers can recover any remaining costs through existing mechanisms available for recovery of general costs of providing service.

49. We will allow incumbent LECs to assess one monthly number-portability charge per line, except that one PBX trunk shall receive nine monthly number-portability charges and one primary rate interface integrated services digital network line (PRI ISDN line) shall receive five monthly number-portability charges. As the Commission observed in the access charge reform proceeding, a PBX trunk provides on average the equivalent service capacity of nine Centrex lines. *See In re Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order (62 FR 56120, October 29, 1997). We set the PBX charge at nine times the level of the ordinary charge because Centrex and PBX arrangements are functionally equivalent. To do otherwise could encourage a large customer to choose one of these arrangements over the other because of the number portability charge, and thus would not be competitively neutral. Similarly, the access charge reform proceeding set a five to one equivalency ratio for PRI ISDN lines, and we apply that equivalency ratio here. To further our goals for the Lifeline Assistance Program, carriers may not impose the monthly number-portability charge on customers in that program.

50. The incumbent LEC may assess the monthly charge on resellers of the incumbent LEC's local service; as well as on purchasers of switching ports as unbundled network elements under section 251 of the Communications Act, because the incumbent LEC will be providing the underlying number portability functionality even though the incumbent LEC will no longer have a direct relationship with the end user. Thus, it appears that the reseller and the purchaser of the unbundled switch port will receive all their number portability functionality through these arrangements. Consequently, allowing the incumbent LEC to assess the charge will be competitively neutral because the reseller and the purchaser of the switch port will incur the charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere. The unregulated reseller and purchaser of the switch port may recover in any lawful manner the charges the incumbent LEC assesses on them. The incumbent local exchange carrier may not assess the monthly number-portability charge on carriers that purchase the incumbent local exchange carrier's local loops as unbundled network elements under section 251. We do not allow the incumbent LEC to assess such a charge because the unbundled loop does not contain the number portability functionality. The purchaser of the unbundled loop will still be responsible for providing such functionality, and thus incurring elsewhere the corresponding cost. Congress has directed the Commission to provide for the recovery of number portability costs. Because we have so provided in this proceeding, we presume that state commissions will not include the costs of number portability when pricing unbundled network elements.

51. Local service providers may query calls for other carriers by arrangement, or may receive unqueried, default-routed traffic when the N–1 carrier has not performed the query. Thus we also will allow incumbent LECs to recover from N–1 carriers in a federally tariffed query-service charge their carrier-specific costs directly related to providing prearranged and default query services. Other carriers required or permitted to file federal tariffs may also tariff query services. Carriers shall indicate in the cost support section of their tariffs the portion of their carrier-specific costs directly related to providing number portability attributable to the number portability services they provide end users, and that portion attributable to the number portability query services they provide on behalf of other carriers.

52. All the RBOCs and GTE have submitted, and periodically revised, estimates of the costs they will incur in implementing LRN number portability. In reviewing the record, we observe a wide variation among companies' estimated costs and their categorization of those costs as directly related or not directly related to providing number portability. We remind the incumbent LECs that only costs directly related to providing number portability are recoverable through the long-term number portability cost recovery mechanism we establish in this *Third Report and Order*. As discussed above, the Chief, Common Carrier Bureau, will further consider methods of identifying the portion of joint costs that incumbent LECs should treat as carrier-specific costs directly related to providing number portability.

VI. Regulatory Flexibility Act Analysis

53. As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice*. The Commission sought written public comments on the proposals in the *Further Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Third Report and Order* is as follows:

54. Need for and Objectives of Rules: The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopts rules and procedures intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. In implementing the statute, the Commission has the responsibility to adopt rules that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, however, section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."

55. Summary of Significant Issues Raised by the Public in Response to the IRFA: There were no comments submitted specifically in response to the IRFA. However, in their general comments, some commenters assert that if competition is to emerge in the local exchange market the regulatory standards adopted by the Commission to recover the cost of implementing long-term number portability should not disproportionately burden small entities, especially new entrants. In the *Third Report and Order*, we adopt rules and regulations to ensure that the way

all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace.

56. Description and Estimate of Number of Small Businesses to Which Rules Will Apply: The Regulatory Flexibility Act generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

57. Our rules governing long-term number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXCs, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their field of operations or are independently owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of "small entities" and "small business concerns." Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

58. Insofar as our rules apply to all telecommunications carriers, they may have an economic impact on a substantial number of small businesses, as well as on small incumbent LECs. The rules may have an impact upon new entrant LECs and small incumbent LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimate that 2,100 small entities could be affected. We have derived this estimate based on the following analysis:

59. According to the 1992 Census of Transportation, Communications, and Utilities, there were approximately 3,469 firms with under 1,000 employees operating under the Standard Industrial Classification (SIC) category 481—Telephone. See U.S. Dept. of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities (issued May 1995). Many of these firms are the incumbent LECs and, as noted above, would not satisfy the SBA definition of a small business because of their market dominance. There were approximately 1,350 LECs in 1995. Industry Analysis Division, FCC, Carrier Locator: Interstate Service Providers at Table 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1995). Subtracting this number from the total number of firms leaves approximately 2,119 entities which potentially are small businesses which may be affected. This number contains various categories of carriers, including small incumbent LECs, competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these carriers—although not dominant—may not meet the other requirement of the definition of a small business because they are not "independently owned and operated." See 15 U.S.C. § 632(a)(1). For example, a PCS provider which is affiliated with a long distance company with more than 1,500 employees would not meet the definition of a small business. Another example would be if a cellular provider is affiliated with a dominant LEC. Thus, a reasonable estimate of the number of "small businesses" affected by this Order would be approximately 2,100.

60. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules: The *Third Report and Order* concludes that the costs raised in this proceeding should be divided into three categories: shared costs, carrier-specific costs directly related to number portability, and carrier-specific costs not directly related to number portability. Shared costs are those costs incurred on behalf of the industry as a whole, such as the costs of the regional database administrator to build, operate, and maintain the databases needed to provide number portability. The *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for that region. While carriers already track their sales to end-users for billing purposes, they will need to identify their regional end-user revenues. That information, along with periodic updates, must be provided to the regional database administrator for the appropriate allocation of shared costs.

61. The *Third Report and Order* requires incumbent LECs to maintain records that detail both the nature and specific amount of those carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The *Third Report and Order* directs carriers and interested parties to file comments by August 3, 1998, and reply comments by September 16, 1998, proposing ways to apportion the different types of joint costs between portability and nonportability services. The *Third Report and Order* requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges.

62. Steps Taken to Minimize Impact on Small Entities Consistent with Stated Objectives: The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. We have attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for the region. Apportioning shared costs in this way will further the statutory purpose of ensuring that carriers bear the costs of number portability on a competitively neutral basis. Furthermore, the *Third Report and Order* concludes that regulated

carriers may identify that portion of their joint costs that is demonstrably an incremental cost that they incurred in the provision of long-term number portability. Allowing such identification recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services. The *Third Report and Order* also concludes that non-dominant carriers, such as competitive LECs, CMRS providers, and IXCs—some of which will be small entities—are not subject to extensive regulation and may recover their number portability costs in any manner otherwise consistent with Commission rules and the Communications Act.

63. Report to Congress: The Commission shall send a copy of this FRFA, along with this *Third Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A copy of the *Third Report and Order* and this FRFA (or summaries thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

64. This *Third Report and Order* concludes that the costs raised in this proceeding should be divided into three categories: shared costs, carrier-specific costs directly related to number portability, and carrier-specific costs not directly related to number portability. Shared costs are those costs incurred on behalf of the industry as a whole, such as the costs of the regional database administrator to build, operate, and maintain the databases needed to provide number portability. The *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for the region. While carriers already track their sales to end-users for billing purposes, they will need to identify their regional end-user revenues. That information, along with periodic updates, must be provided to the regional database administrator for the appropriate allocation of shared costs. The *Third Report and Order* also requires incumbent LECs to maintain records that detail both the nature and specific amount of those carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The *Third Report and Order* requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

VIII. Ordering Clauses

65. Accordingly, it is ordered that pursuant to authority contained in sections 1, 2, 4(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332, Part 52 of the Commission's rules is amended as set forth.

66. It is further ordered that the policies, rules and requirements set forth herein are adopted.

67. It is further ordered that the policies, rules and requirements adopted herein shall be effective on July 29, 1998, except for §§ 52.32(b) and 52.33(a)(1), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

68. It is further ordered that the Commission's Office of Public Affairs, References Operations Division, shall send a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

69. It is further ordered that incumbent local exchange carriers may file tariffs to take effect no earlier than February 1, 1999, setting out the monthly number portability charge they intend to collect from their end users, in accordance with this Order.

70. It is further ordered that pursuant to authority contained in section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), the Chief, Common Carrier Bureau, is delegated authority to determine appropriate methods for apportioning joint costs among portability and nonportability services, and to issue any orders to provide guidance to incumbent LECs before they file their tariffs, which are to take effect no earlier than February 1, 1999. To facilitate determination of the portion of joint costs carriers shall treat as carrier-specific costs directly related to providing number portability, and to facilitate evaluation of the cost support that carriers will file in their federal tariffs, carriers and interested parties may file comments by August 3, 1998 proposing ways to apportion the different types of joint costs. Carriers and interested parties may file reply comments by September 16, 1998.

List of Subjects in 47 CFR Part 52

Carrier-specific costs, Communications common carriers, Long-term number portability cost recovery, Number portability, Regional databases, Shared costs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Accordingly, part 52 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 52—NUMBERING

1. The authority for part 52 continues to read as follows:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155, 251 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

2. Add § 52.32 to read as follows:

§ 52.32 Allocation of the shared costs of long-term number portability

(a) The local number portability administrator, as defined in § 52.21(h), of each regional database, as defined in § 52.21(l), shall recover the shared costs of long-term number portability attributable to that regional database from all telecommunications carriers providing telecommunications service in areas that regional database serves. Pursuant to its duties under § 52.26, the local number portability administrator shall collect sufficient revenues to fund the operation of the regional database by:

(1) Assessing a $100 yearly contribution on each telecommunications carrier identified in paragraph (a) introductory text that has no intrastate, interstate, or international end-user telecommunications revenue derived from providing telecommunications service in the areas that regional database serves, and

(2) Assessing on each of the other telecommunications carriers providing telecommunications service in areas that regional database serves, a charge that recovers the remaining shared costs of long-term number portability attributable to that regional database in proportion to the ratio of:

(i) The sum of the intrastate, interstate, and international end-user

telecommunications revenues that such telecommunications carrier derives from providing telecommunications service in the areas that regional database serves, ii) to the sum of the intrastate, interstate, and international end-user telecommunications revenues that all telecommunications carriers derive from providing telecommunications service in the areas that regional database serves.

(b) The local number portability administrator for a particular regional database may require the telecommunications carriers providing telecommunications service in the areas served by the regional database to provide once a year that data necessary to calculate, pursuant to paragraph (a)(1) or (a)(2) of this section, those carriers' portions of the shared costs of long-term number portability attributable to that regional database. All such telecommunications carriers shall comply with any such requests.

(c) Once a telecommunications carrier has been allocated, pursuant to paragraph (a)(1) or (a)(2) of this section, its portion of the shared costs of long-term number portability attributable to a regional database, the carrier shall treat that portion as a carrier-specific cost directly related to providing number portability.

3. Add § 52.33 to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

(a) Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1), and a number portability query-service charge, as specified in paragraph (a)(2).

(1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after that date.

(i) An incumbent local exchange carrier may assess each end user it serves in the 100 largest metropolitan statistical areas, and each end user it serves from a number-portability-capable switch outside the 100 largest metropolitan statistical areas, one monthly number-portability charge per line except that:

(A) One PBX trunk shall receive nine monthly number-portability charges.

(B) One PRI ISDN line shall receive five monthly number-portability charges.

(C) Lifeline Assistance Program customers shall not receive the monthly number-portability charge.

(ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(A) of this section, as if the incumbent local exchange carrier were serving those carriers' end users.

(iii) An incumbent local exchange carrier may not assess a monthly number-portability charge for local loops carriers purchase as unbundled network elements under section 251.

(iv) The incumbent local exchange carrier shall levelize the monthly number-portability charge over five years by setting a rate for the charge at which the present value of the revenue recovered by the charge does not exceed the present value of the cost being recovered, using a discount rate equal to the rate of return on investment which the Commission has prescribed for interstate access services pursuant to Part 65 of the Commission's Rules.

(2) The number portability query-service charge may recover only carrier-specific costs directly related to providing long-term number portability that the incumbent local exchange carrier incurs to provide long-term number portability query service to carriers on a prearranged and default basis.

(b) All telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

[FR Doc. 98–17076 Filed 6–26–98; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 061898D]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Catch limit adjustment.

SUMMARY: NMFS adjusts the daily catch limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in the southern area (Delaware and states south) to one fish per angler, with a maximum of three fish per vessel, from the school size class and one fish per vessel from the large school or small medium size class. The duration of the catch limit adjustment is limited to the period of June 26 through July 27, 1998, whereupon the limit will revert to one BFT from the school, large school, or small medium size class per vessel per day. This action is being taken to provide increased fishing opportunities in the southern area without risking overharvest of this category.

DATES: The daily catch limit adjustment is effective 1:00 a.m., local time, June 26, 1998, until 11:30 p.m., local time, July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260, or Sarah McLaughlin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

NMFS is responsible for implementing the International Commission for the Conservation of Atlantic Tunas recommendation to limit the annual catch of school bluefin to 8 percent by weight of the total annual domestic quota, i.e., 1,344 metric tons (mt). In addition, it is NMFS' goal to increase the geographical and temporal distribution of data collection and fishing opportunities for all fishermen in the Angling category.

Since January 1, 1998, NMFS has maintained the daily catch limit at one BFT per vessel to ensure that the southern area quota would not be exceeded and to provide increased fishing opportunities throughout the southern area. Preliminary estimates of southern area landings for January through May 1998 indicate that no more than 5 mt of school BFT (subquota of 51 mt), no more than 10 mt of large school/small medium BFT (subquota of 72 mt),

and approximately 2.3 mt of large medium/giant BFT (subquota of 5 mt) were landed. Updates to these estimates will be used to effect any further inseason adjustments as necessary. NMFS has determined that a catch limit adjustment is warranted to ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

The daily catch limit for the southern area is adjusted as follows: No more than one BFT per angler, with a maximum of three fish per vessel, from the school size class may be retained each day per Angling category vessel. In addition, one BFT per vessel per day may be landed from the large school or small medium size class. This catch limit adjustment is effective June 26 through July 27, 1998, whereupon the catch limit will revert to one BFT from the school, large school, or small medium size class per vessel per day.

These catch limits have been selected based on catch rates for the 1997 fishing season. Therefore, NMFS will continue to monitor the Angling category fishery closely through the Automated Catch Reporting System and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional catch limit adjustment is necessary to enhance scientific data collection from all geographic areas. Closures or subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA-TUNA (888–872–8862), 301–713–1279, or 978–281–9305 for updates on quota monitoring and catch limit adjustments. Anglers aboard Charter/Headboat vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by phoning 888–USA-TUNA (888–872–8862), or in North Carolina, to a reporting station. For information about the North Carolina Harvest Tagging Program, including reporting station locations, call 800–338–7804.

Classification

This action is taken under 50 CFR 285.24(d)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: June 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17166 Filed 6–23–98; 5:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980319068–8155–02; I.D. 021998A]

RIN 0648–AK59

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Fishing Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is extending the current moratorium on harvesting seamount groundfish from the Hancock Seamount in the Northwestern Hawaiian Islands until August 31, 2004. The fishery has been under a moratorium since 1986. This action is being taken in response to a recommendation by the Western Pacific Fishery Management Council (Council), which heard reports from its Bottomfish Plan Team and Scientific and Statistical Committee that revealed that armorhead (*Pentaceros richardsoni*), an overfished seamount species, has not recovered. The intent of this action is to allow the protection provided for this resource to continue.

DATES: Effective September 1, 1998.

ADDRESSES: Request for information relevant to this action should be sent to William T. Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: James J. Morgan or Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, (562) 980–4030, or Al Katekaru, Pacific Islands Area Office, (808) 973–2985.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on March 26, 1998 (63 FR 14675) requesting public comments on extending the moratorium on harvesting seamount groundfish from Hancock Seamount in the Northwestern Hawaiian Islands until August 31, 2004. There were no comments received during the public comment period ending May 11, 1998.

This resource was overfished by foreign vessels before the Magnuson Fishery Conservation and Management Act was implemented; it has never been the target of domestic fishermen. The original Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, implemented in 1986, established a moratorium on fishing for bottomfish and seamount groundfish (51 FR 27413, July 31, 1986). Periodic reviews of the stocks indicated that no recovery had occurred. Therefore, on August 17, 1992 (57 FR 36907), the moratorium was extended to August 31, 1998. Armorhead was listed as overfished in the September 1997 "Report to Congress Status of Fisheries of the United States."

The last U.S. research cruise of Hancock Seamount was conducted in 1993; however, the Japanese trawl fleet continues to harvest armorhead on neighboring seamounts outside the exclusive economic zone (EEZ). According to bottom trawl catch and effort statistics provided by the National Research Institute of the Far Seas Fisheries, the most current (1995) spawning potential ratio (SPR) for the armorhead stock is 1.8 percent at all seamounts outside the EEZ. These seamounts comprise 95 percent of the trawl grounds and 91 percent of the total historic seamount-wide catch in the Japanese trawl fishery. Based on the low SPR value, it is inferred that the status of the Hancock Seamount armorhead stock is similarly depressed and well under the current 20 percent SPR definition for an overfished stock.

At its April 21, 1997, meeting, the Council heard reports from its Bottomfish Plan Team and Scientific and Statistical Committee on the status of seamount groundfish resources. On the basis of those reports, and in accordance with the framework procedures at 50 CFR 660.67, the Council recommended that the moratorium be extended for at least another 6 years (i.e., August 31, 2004).

The Council recognizes that the stocks extend outside the EEZ and that the moratorium will not ensure recovery of the resource within the EEZ; however, the action is in accordance with U.S. responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act. The Council also has taken action to convene a panel of international experts to explore possible international management of the Emperor and Hawaiian Ridge Seamount armorhead fishery under the aegis of the United Nations Agreement Relating to

Straddling Fish Stocks and Highly Migratory Fish Stocks.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 23, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.68 is revised to read as follows:

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2004.

[FR Doc. 98–17274 Filed 6-26-98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 124
Monday, June 29, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV98–928–1 PR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1998–99 and subsequent fiscal years from $0.0059 to $0.0063 per pound of papayas handled. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 29, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, and Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 155 and Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas beginning on July 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal years from $0.0059 per pound to $0.0063 per pound of papayas handled.

The papaya marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of papayas. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 7, 1998, and recommended 1998–99 expenditures of $561,500 and an assessment rate of $0.0063 per pound of papayas. In comparison, last year's budgeted expenditures were $623,000. The assessment rate of $0.0063 per pound is $0.0004 higher than the rate currently in effect. The Committee determined that the present assessment rate would be inadequate to fund its anticipated expenses and maintain a sufficient reserve fund for the 1998–99 fiscal year. The Committee is authorized to maintain an operating reserve in an amount not to exceed approximately one fiscal year's operational expenses. Last year, the reserve fund was $110,000. At the end of the 1998–99 fiscal year the operating reserve is

expected to be $25,200, which is considered adequate by the Committee. After consideration of anticipated expenses for the 1998–99 fiscal year, it was determined that assessment income, interest, and income from other sources would provide sufficient funds to meet anticipated expenses and maintain an adequate reserve fund.

The major expenditures recommended by the Committee for the 1998–99 fiscal year include $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1997–98 were $200,000 for marketing and promotion, $225,000 for research and development, and $81,000 for salaries, respectively.

The assessment rate recommended by the Committee was derived by dividing assessment income needed by expected shipments of papayas. Papaya shipments for 1998–99 are estimated at 38 million pounds which should provide $239,400 in assessment income. Income derived from handler assessments, when combined with income from the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income and $84,800 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,200 at the end of the 1998–99 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, as a percentage, four handlers each shipped in excess of 3.85 million pounds of papayas, and the remaining handlers each shipped less than 3.85 million pounds of papayas. Using an average f.o.b. price of $1.30 per pound, the four handlers shipping in excess of 3.85 million pounds of papayas each could be considered large businesses and the remaining handlers could thus be considered small businesses under SBA's definition. Using an average grower price of $0.45 per pound and industry shipments of 36 million pounds, grower revenues would be $16.2 million. Average revenue per grower would thus be $40,500. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal years from $0.0059 per pound to $0.0063 per pound of papayas handled. The Committee recommended 1998–99 expenditures of $561,500 and an assessment rate of $0.0063 per pound of papayas handled. The proposed assessment rate of $0.0063 per pound is $0.0004 higher than the 1997–98 rate. The quantity of assessable papayas for the 1998–99 fiscal year is estimated at 38 million pounds. Thus, the $0.0063 rate should provide $239,400 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and Japanese Inspection program, along with interest income and $84,800 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,200 at the end of the 1998–99 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1998–99 expenditures of $561,500 which include decreases in marketing and promotion, and research and development programs. The Committee discussed further decreases in these budget categories to avoid increasing the assessment rate, but it decided that the programs should be funded at the recommended levels. Salary increases were budgeted to cover the costs of a new employee. The assessment rate of $0.0063 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 38 million pounds for the 1998–99 fiscal year. This estimate would generate $239,400 in assessment income. When combined with $237,300 in anticipated income from other sources including $84,800 from the reserve, the Committee would have adequate funds to meet 1998–99 expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 1998–99 season could range between $.30 and $0.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1998–99 fiscal year as a percentage of total grower revenue could range between 1.4 and 2.1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the papaya industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee

meetings, the May 7, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large papaya handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal year begins on July 1, 1998, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:.

Authority: 7 U.S.C. 601–674.

2. Section 928.226 is proposed to be revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1998, an assessment rate of $0.0063 per pound is established for papayas grown in Hawaii.

Dated: June 23, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–17251 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–21]

Proposed Establishment of Class E Airspace; Davenport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Davenport Municipal Airport, Davenport, IA. The FAA has received a request to establish Class E surface area at Davenport, IA. The commissioning of the Davenport Automated Surface Observation System (ASOS) qualifies the Davenport Municipal Airport for a Class E surface area. The intended effect of this action is to establish controlled airspace for instrument operations at the Davenport Municipal Airport.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ACE–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E surface airspace area at Davenport, IA. The FAA has received a request to establish a Class E surface area. Commissioning of the ASOS qualifies the Davenport Municipal Airport for a Class E surface area. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ACE IA E5 Davenport, IA [New]

Davenport Municipal Airport, IA
(Lat. 41°36′38″ N., long. 90°35′19″ W.)

Within a 4.1-mile radius of the Davenport Municipal Airport, This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on June 4, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–17224 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL85–1b; FRL–6115–8]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an Indiana State Implementation Plan (SIP) revision request, dated July 24, 1997, submitted to EPA to complete requirements for record keeping and reporting requirements and other related requirements for the control of Volatile Organic Compound (VOC) emissions from graphic arts sources. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the EPA receives relevant adverse written comment on this proposed rule. Should the EPA receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before July 29, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886 6057.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 2, 1998.

David A. Ulrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–17121 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4071b; FRL–6104–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for eight (8) major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a

second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by July 29, 1998.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105..

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 566–2196, at the EPA Region III office or via e-mail at campbell.dave@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to this action, VOC RACT determinations for individual sources located in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 13, 1998.

William Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 98–17118 Filed 6–26–98; 8:45 am]

BILLING CODE 3560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 98–94; FCC 98–118]

Testing New Technologies

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: On June 11, 1998, the Federal Communications Commission released a Notice of Inquiry to solicit public comment about the effects of existing Title II regulations on experiments involving advanced telecommunications technology conducted by firms subject to those regulations. The document, part of the Commission's 1998 biennial regulatory review, seeks comment about various initiatives the Commission could undertake in order to promote technology testing, including use of the Commission's biennial review power to repeal or modify regulations, and, alternatively, use of the Commission's authority to forbear from applying certain statutory provisions and Commission rules.

DATES: Comments are due on or before July 21, 1998. Reply comments are due on or before August 5, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Suite 222, Washington, DC 20554, with a copy to Scott Bergmann of the Common Carrier Bureau, Federal Communications Commission, 2033 M Street, NW, Suite 500, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952, or Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry released June 11, 1998 (FCC 98–118). The full text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Summary of the Public Notice

1. In the Notice of Inquiry (Notice), the Commission solicits public comment about the effects of its existing Title II regulations on experiments involving advanced telecommunications technology conducted by firms subject to these regulations. The inquiry is based on the Commission's belief that experiments involving new technology, including technical trials and market trials, are a critical step in the process of introducing new services that benefit the public. The Commission seeks to ensure that its regulation does not unnecessarily discourage applicants from conducting experiments involving new technology and new applications of existing technology. The Commission seeks comment on ways in which it may redesign its regulation in order to encourage and facilitate such tests.

2. Section 7 of the Communications Act of 1934, as amended (the Communications Act or the Act), states that it is "the policy of the United States to encourage the provision of new technologies and services to the public." More recently, Congress reinforced section 7 by adding section 706 of the Telecommunications Act of 1996. Section 706(a) encourages the deployment of advanced telecommunications services by directing the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans * * * by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." Pursuant to these congressional directives, the Notice seeks public comment about a broad range of issues relating to the Commission's regulation of technology testing.

3. Pursuant to new section 11, Congress has required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest." Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to promote "meaningful deregulation and streamlining where competition or other considerations warrant such action." The Notice is thus undertaken in conjunction with the Commission's 1998 biennial regulatory review and in it the Commission asks, *inter alia*, whether and how the Commission can apply its section 11 deregulatory and streamlining mandate to remove or restructure existing regulations in order to promote technology testing.

4. Alternatively, the Commission asks in the Notice whether it should and can

use its new forbearance authority to accomplish the same goal. New section 10 of the Communications Act requires the Commission to forbear from applying sections of the Act and its regulations to carriers and services upon satisfying a stated three-part test. Telecommunications carriers and classes of telecommunications carriers may file applications seeking such forbearance treatment. The Notice seeks comment on whether the Commission should undertake specific efforts to encourage or promote such forbearance applications relating to technology testing or, alternatively, should define a class of experimental services that would qualify for forbearance treatment.

5. The Commission does not, however, limit the record of this proceeding to those alternatives. Rather, the Commission encourages commenters to offer any and all relevant and helpful suggestions to promote technology testing by regulated companies. Well-considered proposals to eliminate or streamline regulations governing technology testing would further the Commission's on-going pro-competition and pro-consumer regulatory mandate. In the last few decades, the telecommunications industry has experienced radical changes in its technologies, services, and markets. In response to these changes, the Commission has increasingly adopted policies that reflect the view that open entry and competition bring greater benefits to consumers and society than traditional regulation of markets dominated by one or a few carriers. Moreover, Congress in the 1996 Act has advanced this trend by aggressively promoting a new, competition-driven marketplace. New technologies and new applications of existing technologies will be critical in ensuring that the United States benefits from the competitive opportunities they will foster.

6. The Commission seeks comment about the effect of its regulation on experiments involving new technology and on whether affirmative steps are necessary to further encourage and facilitate testing by removing regulatory barriers to such testing. The Commission believes that its regulatory processes should not unduly impede experiments in new technology, and asks commenters in this proceeding to discuss fully how current Commission regulatory practices might tend to promote or frustrate necessary and desirable technology testing. To this end, the Notice asks commenters to address comprehensively those requirements currently imposed pursuant to the Act, including all relevant Commission rules and requirements, on those firms seeking to conduct experiments.

7. For example, under current requirements, depending on the nature of the technology or service to be tested, a firm seeking to conduct technical or market trials might be required to obtain several different approvals, including, *e.g.*, a tariff authorization under section 203, a certificate under section 214, approvals of Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) plans under the Computer III rules, a developmental or experimental radio license, as well as, in specific cases, waivers of various Commission rules. All of these rule requirements serve legitimate and, indeed, compelling regulatory ends under certain circumstances. Tariff requirements, for example, are one way to help ensure that ratepayers pay just and reasonable rates and do not suffer from unlawful discrimination. CEI and ONA plans help ensure that carriers do not prefer their own enhanced service operations to the detriment of competitive enhanced service providers. Radio licensing, *inter alia*, prevents radio frequency interference caused by and to co-channel and adjacent channel service providers. The Commission seeks comment regarding whether any existing rule requirements in these areas can be relaxed or avoided in the context of short-term experimental testing of new technology and new applications of existing technology.

8. The Commission asks commenters to develop a specific record on how, from planning and regulatory perspectives, firms engage in experiments, including both technical trials and market trials of services using new technology. For example, commenters should indicate whether carriers must have particular authorizations in place prior to conducting technical or market trials of a service, or whether such authorization is only required prior to the commercial offering of a service. The Commission also seeks comment on the extent to which non-carriers, *i.e.*, equipment manufacturers or vendors, are responsible for technology testing and the extent to which these non-carriers are subject to any of the Commission's requirements in their testing of new technologies.

9. Based on the inquiry described above, the Commission may determine that certain of its common carrier regulations impede testing and experimentation with new technologies and new applications of existing technologies. For that reason, the Commission explores possible alternative approaches to encourage and facilitate technology experiments, namely, using section 11(b) to create streamlined authorization procedures (based on current Part 5 procedures governing wireless test applications) and applying regulatory forbearance under section 10 of the Act to "carve out" exceptional treatment for qualified tests. By suggesting these alternatives the Commission does not preclude discussion of others, and encourages commenters to offer any and all relevant and helpful suggestions. The Commission seeks specific comment on the ramifications of allowing technology testing to be conducted through market trials, *i.e.*, trials in which customers pay to obtain the service being tested. The Commission thinks that such market trials can be a useful way to develop "real world" information that is relevant to the introduction of new technology. At the same time, the Commission will in every case take steps to ensure that customers—including ratepayers of regulated carriers—do not improperly subsidize technology testing, and the Commission solicits comment on ways to ensure that the costs of such trials continue to be borne by shareholders.

II. Procedural Matters

A. Ex Parte Presentations

10. Pursuant to § 1.1204(b)(1) of the Commission's rules, the proceeding is exempt from the prohibitions and restrictions in the ex parte requirements.

B. Comment Filing Procedures

11. *General.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties shall file comments not later than July 21, 1998, and reply comments not later than August 5, 1998. To file formally in the proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and twelve copies. Comments and reply comments should be sent to the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554, with copies to: Thomas J. Beers, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554; Scott K. Bergmann, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554. Parties should file one copy of any documents filed in this docket with the Commission's copy contractor,

International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC 20554.

12. *Other requirements.* Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments.

13. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at: <http:dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>. Only one copy of electronically filed comments must be submitted. Commenters must note on the subject line whether an electronic submission is an exact copy of formal comments. Commenters also must include their full name and U.S. Postal Service mailing address in their submissions. Further information on the process of submitting comments electronically is available at that location and at <http://www.fcc.gov/e-file>.

14. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division, 2033 M Street, NW, Room 500, Washington, DC 20554. Such diskettes should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

III. Ordering Clauses

15. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 7, 10, 11, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157, 160, 161, 218, 403, that notice is hereby given of the inquiry described above and that comment is sought on these issues.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17079 Filed 6–26–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–98–3972]

RIN 2127–AG76

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend 49 CFR part 572 by adding design and performance specifications for a new, more advanced 6-year-old child dummy. The agency believes that the new dummy, part of the family of Hybrid III test dummies, is more representative of humans than the existing 6-year-old child dummy specified by the agency, and allows the assessment of more types of potential injuries. The new dummy is especially needed to evaluate the effects of air bag deployment on children, but would also provide greater and more useful information in a variety of environments to better evaluate child safety. Adding the dummy to part 572 would be the first step toward using the dummy to evaluate the safety of air bags for children. The issue of specifying use of the dummy in determining compliance with performance test requirements, e.g., as part of the agency's occupant protection standard and/or child restraint standard, will be addressed in future rulemakings.

DATES: Comments must be received by September 28, 1998.

ADDRESSES: Comments should refer to the docket number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10 a.m. to 5 p.m.).

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912). For legal issues: Edward Glancy, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

On November 14, 1991, NHTSA published in the **Federal Register** (56 FR 57830) a final rule establishing specifications and performance criteria for a test dummy representing a 6-year-old child. The specifications and performance criteria were set forth as subpart I of 49 CFR part 572. The agency explained that adding the subpart I 6-year-old child dummy to part 572 was a possible first step toward using the dummy to test the compliance of booster seats and other types of child restraint systems as part of Safety Standard No. 213, *Child Restraint Systems*. The agency subsequently added the dummy to Standard No. 213 in a final rule published in the **Federal Register** (60 FR 35126) on July 6, 1995.

In these rulemakings, NHTSA recognized that a more advanced 6-year-old child dummy was under development, and the possible future desirability of adopting such a dummy. In commenting on the agency's proposal to add the subpart I dummy to Standard No. 213, the American Automobile Manufacturers Association (AAMA) suggested that the agency instead add a 6-year-old child dummy based on the 50th percentile male Hybrid III dummy. AAMA stated that this dummy had improved anthropometric emulation, more human-like response, and superior instrumentation capability.

NHTSA explained its decision to adopt the Subpart I 6-year-old child dummy, rather than a more advanced dummy, as follows:

> The issue of whether NHTSA should adopt the Hybrid III 6-year-old dummy instead of the (Subpart I) dummy was addressed in the NPRM and in the rule adopting the 6-year-old dummy specifications into part 572. NHTSA's position has been that, while the Hybrid III dummy might have potential advantages over the (Subpart I) dummy in the number of injury parameters the dummies can measure, rulemaking on the latter dummy should not be delayed pending assessment of the performance of the new dummy. NHTSA stated in the part 572 final rule:
>
> The (Subpart I) dummy's ability to measure HIC, chest acceleration and femur loads, and its ability to replicate the motions and excursions of a child in a crash are sufficient to provide valid assessment of the injury potential of child restraint systems in a reliable manner. Since the (Subpart I) dummy is ready now, and a final rule specifying the dummy will help improve safety, the agency believes it is appropriate to proceed with adding the dummy to part 572.
>
> Likewise, NHTSA believes rulemaking adopting use of a 6-year-old dummy in Standard 213 compliance tests should not be delayed pending evaluation of the suitability and availability of the dummy as a test

device. Such evaluation will be undertaken in the near future.

60 FR 35129–30.

While the desirability of a more advanced 6-year-old child dummy has been apparent for a number of years, the need for such a dummy has become more urgent with the emergence of the safety problems current air bags pose for out-of-position children. Experience in using the subpart I dummy has shown it to be adequate for the purpose of evaluating child restraints for the injury criteria and test conditions specified by Standard No. 213, but limited with respect to the types of injury risks it can measure, particularly in an air bag environment.

For example, the neck of the subpart I dummy is not of multi-segment design. Accordingly, it has less biofidelity in areas such as impact responses in flexion and extension motion. Since neck injury is one of the primary causes of fatalities to out-of-position children from air bags, biofidelity is needed in these areas to evaluate the effects of air bag deployment on children.

By contrast, the more advanced Hybrid III 6-year-old child dummy (hereafter referred to as the H-III6C dummy) incorporates improved biofidelity and extended measurement capability in many areas, including those discussed above. Because of the greater biofidelity and extended measurement capability of the H-III6C dummy, it can be used to evaluate the safety of children in a much wider array of environments than the Subpart I dummy, including assessing the effects of air bag deployment on out-of-position children. The agency notes that the H-III6C dummy is the only advanced 6-year-old child dummy that has been developed to date.

The H–III6C dummy is part of a family of Hybrid III-type dummies. The first Hybrid III dummy was a 50th percentile male dummy. NHTSA has specified use of this dummy for compliance testing under Standard No. 208, *Occupant Crash Protection*, since 1986, initially on an optional basis, and more recently on a mandatory basis.

The need for a family of Hybrid III-type dummies having considerably improved biofidelity and anthropometry was recognized by the Centers for Disease Control and Prevention (CDC) in 1987 when it awarded a contract to Ohio State University under the title "Development for Multi-sized Hybrid III Based Dummy Family." At that time, the funding covered only the development of a small female and a large male dummy. However, CDC provided additional funding in 1989 to develop a design foundation for a Hybrid III type 6-year-old child dummy.

Development of the H–III6C has continued since then under the guidance of the Hybrid III Dummy Family Task Force of SAE. NHTSA has also been involved with development of the dummy, initially as an observer in meetings of the SAE Task Force. As the development of the dummy approached maturity, the agency began to prefer the use of the dummy in its research programs, because of its advanced instrumentation capability and better biofidelity.

NHTSA began substantial use of the H–III6C dummy in late 1994. However, it found that inconsistencies in impact response and durability problems necessitated modifications. This prevented the agency from conducting an assessment of the dummy's capabilities as an objective and stable test tool and its ability to function in a variety of impact environments without structural deficiencies. The agency advised the SAE Task Force of its interest in seeing the dummy development accelerate and be brought to a quick conclusion because of the need to support air bag safety assessment and better evaluation of new child restraints. Subsequent testing of the dummy revealed additional problems requiring additional redesigns in the neck and thorax areas, which stretched the first availability of preproduction dummies into midsummer 1997. At that time, the agency began an extensive test and evaluation program of the dummy.

The agency has now completed its evaluation of the H–III6C dummy and has tentatively concluded that it is ready for incorporation into part 572. NHTSA is placing in the docket a technical report entitled "Development and Evaluation of the Hybrid III 6-Year-Old Child Dummy." That report provides the technical information supporting this rulemaking.

Accordingly, the agency is proposing specifications and performance criteria for the H–III6C dummy. The specifications would consist of the following three items:

(1) A drawings and specifications package entitled "Drawings and Specifications for the Hybrid III 6-Year-Old Dummy (May 1998)";

(2) A user's manual entitled "User's Manual for the Hybrid III 6-Year-Old Dummy [a date would be inserted in the final rule]"; and

(3) A document entitled "Printout of Descriptions of Patterns and Molds for the Hybrid III 6-Year Old Dummy in Digital Form [a date would be inserted in the final rule]";

These specifications are intended to ensure that the dummies are uniform in their construction and capable of uniform and repeatable response in the impact environment. The agency notes that the first item listed above, the drawings and specifications, will be available for inspection in NHTSA's docket. (Since this item is non-scannable, it cannot be placed in the DOT Dockets Management System (DMS). Instead a statement indicating where it may be viewed, i.e., in NHTSA's docket, will be placed in the DMS.) Copies may also be obtained from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705; Telephone: (301) 210–5600.

The user's manual and digital descriptions of patterns and molds will not be available until the time of the final rule. The user's manual will be similar to the user's manual specified by part 572 for other dummies.

As with other dummies, NHTSA is proposing impact performance criteria to serve as calibration checks, and to further assure the kinematic uniformity of the dummy and the absence of damage from previous use. The tests address head, neck, thorax and femur impact responses and stiffness assessments of the lumbar spine-abdomen area to torso flexion motion.

The agency is proposing generic specifications for all of the dummy-based sensors. For most earlier dummies, the agency specified sensors by make and model. However, NHTSA believes that approach is unnecessarily restrictive.

The generic specifications that the agency is proposing include (1) the uniaxial piezoresistive accelerometer designated as SA572–S4, (2) force and moment transducers: upper neck SA572–S11, lumbar spine SA572–S12, anterior-superior iliac spine load cell SA572–S13, single axis femur load cell SA572–S10, and (3) the thorax-based chest deflection potentiometer SA572–51. The proposed specifications essentially reflect the characteristics of the sensors used in NHTSA's dummy evaluation series that are identified by make and model in the above referenced technical report "Development and Evaluation of the Hybrid III 6-year-old Child Dummy." Specifications for these sensors are included in the drawing package. Interested persons are encouraged to comment on the adequacy of the proposed specifications; potential impact on the measured test data, including the comparability of data using sensors manufactured by different companies; and issues related to calibration assurance tests.

NHTSA notes that the H–III6C dummy is the first of several new dummies it will propose to add to part 572. Later this year, the agency plans to propose adding an advanced 3-year-old child dummy, the CRABI 12 month old child dummy, and the Hybrid III 5th percentile female adult dummy. The agency intends to use these dummies in its rulemaking for advanced air bags. All of these dummies could be specified for use in a variety of potential Standard No. 208 tests, including static out-of-position tests and/or various dynamic tests. The child dummies could also be specified for use in Standard No. 213 tests.

This notice only concerns the H–III6C dummy, and is only proposing to add the dummy to part 572. The issue of specifying the use of the H–III6C dummy as part of Standard No. 208 or Standard No. 213 will be addressed in future rulemakings However, since one of the primary purposes of adding the dummy to part 572 is to enable it to be specified for use in the Federal motor vehicle safety standards, NHTSA encourages commenters to address its suitability for the types of tests discussed above. The agency also encourages commenters to address the dummy's suitability with respect to measuring potential injury criteria.[1]

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This document proposes to amend 49 CFR part 572 by adding design and performance specifications for a new, more advanced 6-year old child dummy which the agency may later separately propose for use in the Federal motor vehicle safety standards. If this proposed rule becomes final, it would affect only those businesses which choose to manufacture or test with the dummy. It does not impose any requirements on anyone.

The cost of an uninstrumented H–III6C dummy is approximately $30,000. Instrumentation would add approximately $25,000 to $41,000 to the cost, depending on the amount of instrumentation.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed amendment would not impose or rescind any requirements for anyone. Therefore, it would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on this proposal. Two copies should be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this action will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

2. 49 CFR part 572 would be amended by adding a new subpart N, consisting of §§ 572.120–572.129, to read as follows:

Subpart N—Hybrid III 6-Year-Old Child

Sec.

572.120 Incorporation by reference.
572.121 General description.
572.122 Head assembly and test procedure.
572.123 Neck assembly and test procedure.
572.124 Thorax assembly and test procedure.
572.125 Lumbar spine, abdomen, and pelvis assembly and test procedure.
572.126 Knees and knee impact test procedure.
572.127 Test conditions and instrumentation.

Subpart N—Hybrid III 6-Year-Old Child

§ 572.120 Incorporation by reference.

(a) The following materials are hereby incorporated in this subpart N by reference:

(1) A drawings and specifications package entitled "Drawings and

[1] For information concerning potential injury criteria, see NHTSA Event Report, "Techniques for Developing Child Dummy Protection Reference Values," Docket No. NHTSA–1996–1772–70, and SAE Human Biomechanics and Simulation Standards Committee comments concerning that report, Docket No. NHTSA–1996–1772–94.

Specifications for the Hybrid III 6-Year-Old Dummy (May 1998)";

(2) A user's manual entitled "User's Manual for the Hybrid III 6-Year-Old Dummy [a date will be inserted in the final rule]";

(3) A document entitled "Printout of Descriptions of Patterns and Molds for the Hybrid III 6-Year Old Dummy in Digital Form [a date will be inserted in the final rule]";

(4) SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests";

(5) SAE J1733 of 1994–12, "Sign Convention for Vehicle Crash Testing."

(6) The Director of the Federal Register approved those materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at NHTSA's Docket Section, 400 Seventh Street S.W., room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) The incorporated materials are available as follows:

(1) The drawings and specifications package referred to in paragraph (a)(1) of this section and the user's manual referred to in paragraph (a)(2) of this section are available from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705 (301) 210–5600.

(2) The printout of the descriptions of patterns and molds for the Hybrid III 6-Year Old Dummy in digital form referred to in paragraph (a)(1)(3) of this section is available from NHTSA's Docket Section.

(3) The SAE materials referred to in paragraphs (a)(4) and (a)(5) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

§ 572.121 General description.

(a)(1) The Hybrid III 6-year-old dummy consists of the components and assemblies that are described by "Drawings and Specifications for the Hybrid III 6-Year-Old Dummy (May 1998)." The complete assembly of the dummy is shown in drawing 127–0000. The component assemblies, and their drawing numbers, are listed in the following Table A:

TABLE A

Component assembly	Drawing No.
Head Assembly	127–1000
Neck Assembly	127–1015
Upper Torso Assembly	127–2000
Lower Torso Assembly	127–3000
Leg Assembly	127–4000
Arm Assembly	127–5000

(2) These drawings, and all other drawings referred to in this subpart by the term "drawing" followed by a number, are contained in "Drawings and Specifications for the Hybrid III 6-Year-Old Dummy (May 1998)."

(b) Disassembly, inspection, and assembly procedures are set forth in "User's Manual for the Hybrid III 6-Year-Old Dummy [a date will be inserted in the final rule]";

(c) The patterns and molds are described by "Printout of Descriptions of Patterns and Molds for the Hybrid III 6-Year-Old Dummy in Digital Form [a date will be inserted in the final rule]";

(d) Adjacent segments are joined in a manner such that except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(e) The structural properties of the dummy are such that the dummy conforms to this Part in every respect both before and after its use in any test similar to those specified in Standard No. 208, *Occupant Crash Protection* and Standard No. 213, *Child Restraint Systems*.

§ 572.122 Head assembly and test procedure.

(a) Head assembly. The head consists of the assembly shown in drawing 127–1000, six axis neck transducer structural replacement (drawing 78051–383X), head to neck pivot pin (drawing 78051–339) and 3 accelerometers (drawing SA–572 S4) mounted in conformance to drawing 127–1550.

(b) When the head assembly in paragraph (a) of this section is dropped from a height of 376.0+/−1.0 mm (14.8+/−0.04 in) in accordance with paragraph (c) of this section the peak resultant acceleration at the location of the accelerometers at the head CG shall not be less than 245 G and more than 300 G. The resultant acceleration vs. time history curve shall be unimodal; oscillations occurring after the main pulse are less than 10 percent of the peak resultant acceleration. The lateral acceleration shall not exceed 15 g's (zero to peak).

(c) Head test procedure. The test procedure for the head is as follows:

(1) Soak the head assembly in a controlled environment with a temperature from 18.9 to 25.6 °C (66 to 78 °F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Prior to the test, clean the impact surface of the skin and the impact surface of the steel plate with isopropyl alcohol, trichloroethane, or an equivalent. The skin of the head must be clean and dry for testing.

(3) Suspend the head assembly as shown in Figure N1. The lowest point on the forehead is 376.0+/−1.0 mm (14.8 +/−0.04 in) from the impact surface and the head is oriented to an incline of 62 +/−1 deg. between the plane of the lower surface of the six axis transducer or its structural replacement and the plane of the impact surface. The 1.57 mm (0.062 in.) diameter holes located on either side of the dummy's head are used to ensure that the head is level with respect to the impact surface.

(4) Drop the head assembly from the specified height by means that ensures a smooth, instant release onto a rigidly supported flat horizontal steel plate which is 50.4 mm (2 in) thick and 610 mm (24 in) square. The impact surface shall be clean, dry and have a micro finish of not less than 203.2×10^{-6} mm (8 micro inches) (RMS) and not more than 2032.0×10^{-6} mm (80 micro inches) (RMS).

(5) Allow at least 2 hours between successive tests on the same head.

§ 572.123 Neck assembly and test procedure.

(a) The neck assembly consists of the assembly of components shown in drawing 127–1015.

(b) Neck assembly. When the head-neck assembly, consisting of the head shown in drawing 127–1000, neck shown in drawing 127–1015, pivot pin 78051–339, bib simulator shown in drawing 127–1025, neck bracket shown in drawing 127–8221, six axis neck transducer shown in drawing SA–572 S11, neck mounting adapter TE–2208–001, and either three accelerometers as shown in drawing SA572S4 installed in the head assembly as specified in section 572.122 or their equivalent, is tested according to the test procedure in paragraph (c) of this section, it shall have the following characteristics:

(1) Flexion. Plane D referenced in Figure N2, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 74 degrees and 92 degrees. During this rotation interval, the moment measured by the neck transducer (drawing SA–572 S11) about the occipital condyles shall not be less than 27Nm (19.9 ft-lb) and not more than 33 Nm (24.3 ft-lb). The moment shall be calculated by the following formula: Moment (Nm) = My−(0.01778m)×(Fx). The positive

moment shall decay for the first time to 5 Nm between 103 ms and 123 ms.

(2) Extension. Plane D referenced in Figure N3, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 94 degrees and during this rotation interval, the moment measured by the neck transducer (drawing S–572 S11) about the occipital condyles shall not be more than −19 Nm (−14 ft-lb) and not less than −24 Nm (−17.7ft-lb). The moment shall be calculated by the following formula: Moment (Nm) = My−(0.01778m)×(Fx). The negative moment shall decay for the first time to −5 Nm between 127 ms and 147 ms.

(3) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material.

(c) Test Procedure (1) Soak the neck assembly in a controlled environment at a temperature between 20.6 to 22.2°C (69 to 72 F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Torque the jam nut (drawing 9000341) on the neck cable (drawing 127–1016) to 0.23 Nm (2 in-lbs).

(3) Mount the head-neck assembly defined in paragraph (b) of this section, on the pendulum so the midsagittal plane of the head is vertical and coincides with the plane of motion of the pendulum as shown in Figure N2 for flexion and Figure N3 for extension tests.

(4) Release the pendulum and allow it to fall freely from a height to achieve an impact velocity of 4.95+/−0.12 m/s (16.2 +/−0.4 ft/s) for flexion and 4.3 +/−0.12 m/s (14.10+/−0.40 ft/s) for extension tests, measured by an accelerometer at the center of the pendulum at the instant of contact with the honey comb.

(i) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. All data channels should be at the zero level at this time.

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified below. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve:

Time	Pendulum pulse			
	Flexion		Extension	
ms	m/s	ft/s	m/s	ft/s
10	1.2–1.6	3.9–5.3	1.0–1.4	3.3–4.6
20	2.4–3.4	7.9–11.2	2.2–3.0	7.2–9.8
30	3.8–5.0	12.5–16.4	3.2–4.2	10.5–13.8

§ 572.124 Thorax assembly and test procedure.

(a) *Thorax (Upper Torso) Assembly.* The thorax consists of the part of the torso assembly shown in drawing 127–2000.

(b) *Thorax assembly.* When the anterior surface of the thorax of a completely assembled dummy (drawing 127–0000) is impacted by a test probe conforming to § 572.127(a) at 6.71 +/−0.12 m/s (22.0 +/−0.4 ft/s) according to the test procedure in paragraph (c) of this section,

(1) The peak force measured by the probe in accordance with § 572.127 shall not be less than 1150 N (258 lbs) and not more than 1300 N (292 lbs) and the maximum sternum displacement relative to the spine is not less than 38.0 mm (1.50 in) and not more than 44.0 mm (1.7 in) as measured with chest deflection transducer (drawing 127–8050), and

(2) The internal hysteresis of the ribcage in each impact as determined by the plot of force vs. deflection in paragraph (b)(1) of this section shall be not less than 69 percent but not more than 85 percent.

(c) *Test procedure.* (1) Soak the dummy in a controlled environment at a temperature between 20.6 to 22.2°C (69 to 72 F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Seat and orient the dummy, that wears light weight cotton stretch short sleeve shirt and above the knee pants on a seating surface without back support as shown in Figure N4, with the limbs extended horizontally and forward, parallel to the midsagittal plane, the midsagittal plane vertical within +/−1 degree and the ribs level in the anterior-poster and lateral directions within +/−0.5 degrees.

(3) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the midsagittal plane of the dummy within +/−2.5 mm (0.1 in.) and is 12.7 +/−1.1 mm (0.5+/−0.04 in.) below the horizontal centerline of the No. 3 rib and is within 0.5 degrees of a horizontal line in the dummy's midsagittal plane.

(4) Adjust the dummy so that the tangent plane at the surface on the ribs immediately adjacent to the designated impact point is vertical and parallel to the face of the test probe.

(5) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(6) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

(7) Allow at least 30 minutes between successive tests.

§ 572.125 Lumbar spine, abdomen, and pelvis assembly and test procedure.

(a) Upper/lower torso assembly. The test objective is to determine the stiffness effects of the lumbar spine (drawing 127–3002) and abdominal insert (drawing 127–8210) on resistance to articulation between the upper torso assembly (drawing 127–2000) and the lower the torso assembly (drawing 127–3000).

(b) When the upper torso assembly of a seated dummy is subjected to a force continuously applied at the head to neck pivot pin level through a rigidly attached adaptor bracket as shown in Figure N5, according to the test procedure set out in paragraph (c) of this section, the lumbar spine-abdomen assembly shall:

(1) Flex by an amount that permits the upper torso assembly to translate in angular motion until the instrument cavity mating surface at the back of the thoracic spine is at 45 degrees relative to the vertical transverse plane at which time the force level applied perpendicular to the thoracic spine box mating surface is not less than 33 pounds and not more than 45 pounds, and

(2) Upon removal of the force the torso assembly returns to within 8 degrees of its initial position.

(c) Test procedure.

(1) Assemble the upper and the lower thorax including the loading adaptor bracket, and attach them to the fixture

in a seated posture as shown in Figure N5.

(2) Secure the pelvis at the pelvis instrument cavity rear face at the by threading four ¼ in cap screws into the available threaded attachment holes. Tighten the mountings so that the test material is rigidly affixed to the test fixture and pelvic-lumbar joining surface is horizontal.

(3) Attach the loading adapter bracket to the spine of the dummy and the pull cable and load cell as shown in Figure N5.

(4) Flex the thorax forward 40 degrees and then rearward as necessary to allow the torso to return to its initial position without external assistance.

(5)(i) Apply a forward force in the midsagittal plane through the adaptor bracket as shown in Figure N5 at any upper torso deflection rate between 0.5 and 1.5 degrees per second, up to 45 degrees of flexion, at which time the applied force is perpendicular to the thoracic spine box instrumentation cavity mating surface.

(ii) Continue to apply a force sufficient to maintain 45 degrees of flexion for 10 seconds, and record the highest applied force during the 10 seconds period.

(iii) Release all force as rapidly as possible, and measure the return angle 3 minutes after the release.

§ 572.126 Knees and knee impact test procedure.

(a) The knee assembly is part of the leg assembly shown in drawing 127–4000.

(b) Knee assembly. When the knee assembly, consisting of the knee cap shown in drawing 127–4013–1 (left) –2 (right), knee flesh shown in drawing 127–4011, lower leg shown in drawing 127–4014, the foot assembly shown in drawing 127–4030–1 (left) –2 (right), and femur load transducer shown in drawing SA–572 S10 or its structural replacement (drawing 127–4007), is tested according to the test procedure in § 572.127(c), the peak resistance force as measured with the test probe mounted accelerometer is not less than 1.8 kN (441 lbs) and not more than 2.8 kN (617 lbs).

(c) Test Procedure.

(1) Soak the knee assembly in a controlled environment at a temperature between 18.9 to 25.6 C (66 to 78 F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Mount the test material and secure it to a rigid test fixture as shown in Figure N6. No contact is permitted between any part of the foot and tibia and any exterior surface.

(3) Align the test probe so that throughout its stroke and at contact with the knee it is within 2 deg. of horizontal and collinear with the longitudinal centerline of the femur.

(4) Guide the pendulum so that there is no significant lateral vertical or rotational movement at time zero.

(5) The test probe velocity at the time of contact is 2.1+/−0.03 m/s (6.9+/−0.1 ft/s).

(6) Time-zero is defined as the time of initial contact between the impactor and the knee.

§ 572.127 Test conditions and instrumentation.

(a) The test probe for thoracic impacts is a 101.6 +/−0.25 mm (4.00 +/−0.01 in.) diameter cylinder that weighs 2.86 +/−.02 kg (6.3 +/−0.05 lb) including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 12.7 mm (0.5 in.). The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis collinear with the longitudinal centerline of the cylinder.

(b) The test probe for knee impact tests is a 76.2 +/−0.2 mm (3.0 +/−0.01 in.) diameter cylinder that weighs .82 +/−.01 kg (1.8 +/−0.02 lb) including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 12.7 mm (0.5 in.) max. The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis collinear to the longitudinal centerline of the cylinder.

(c) Head accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572 S4 or equivalent and be mounted in the head as shown in drawing 127–0000 sheet 3.

(d) The neck force/moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA–572 S11 or its equivalent and be mounted in the head-neck assembly as shown in drawing 127–0000 sheet 3.

(e) The thorax accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572 S4, or its equivalent and are mounted in the torso assembly in triaxial configuration at T4, and in uniaxial for-and-aft oriented configuration on the most anterior ends of ribs #1 and #6 and at the spine box at the levels of #1 and #6 ribs as shown in drawing 127–2000.

(f) The chest deflection transducer shall have the dimensions and response characteristics specified in drawing 127–8050 or equivalent and be mounted in the upper torso assembly as shown in drawing 127–2000.

(g) The optional lumbar spine force-moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA–572 S12 or its equivalent and be mounted in the lower torso assembly as shown in drawing 127–3000 as a replacement for lumbar adaptor 127–3005.

(h) The optional iliac spine force transducers shall have the dimensions and response characteristics specified in drawing SA–572 S13 or equivalent and be mounted in the torso assembly as shown in drawing 127–3000 as a replacement for A.S.I.S. load cell replacement 127–3015–1 (left) and –2 (right).

(i) The optional pelvis accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572 S4, or its equivalent and be mounted in the torso assembly in triaxial configuration in the pelvis bone as shown in drawing 127–3550.

(j) The femur force transducer shall have the dimensions and response characteristics specified in drawing SA–572 S10 or its equivalent and be mounted in the leg assembly as shown in drawing 127–4001.

(k) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests," with channel classes as follows:

(1) Head acceleration—Class 1000.

(2) Neck:

(i) Forces—Class 1000.

(ii) Moments—Class 600.

(iii) Pendulum acceleration—Class 180.

(3) Thorax:

(i) Rib acceleration—Class 1000.

(ii) Spine and pendulum accelerations—Class 180.

(iii) Sternum deflection—Class 600.

(4) Lumbar:

(i) Forces—Class 1000.

(ii) Moments—Class 1000.

(5) Pelvis accelerations -Class 1000.

(6) Femur forces—Class 600.

(l) Coordinate signs for instrumentation polarity conform to the Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report, SAE J1733, 1994–12.

(m) The mountings for sensing devices shall have no resonance frequency within range of 3 times the frequency range of the applicable channel class.

(n) Limb joints are set at lg, barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment shall not exceed 2G throughout the range of limb motion.

(o) Performance tests of the same component, segment, assembly, or fully assembled dummy are separated in time by period of not less than 30 minutes unless otherwise noted.

(p) Surfaces of dummy components are not painted except as specified in this part or in drawings subtended by this part.

BILLING CODE 4910-59-P

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Figures to Subpart N

Figure N1

HEAD DROP TEST SET-UP SPECIFICATIONS

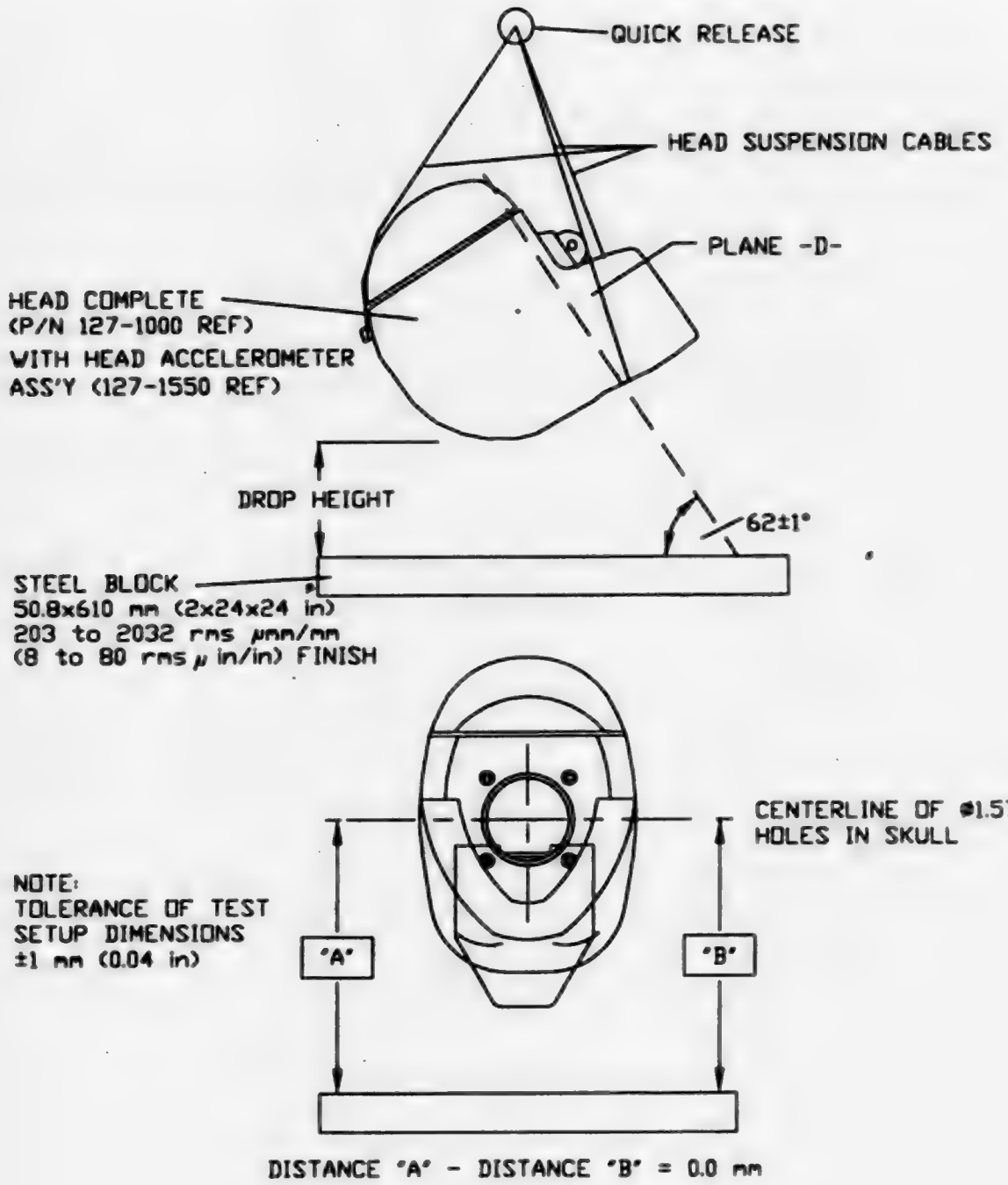
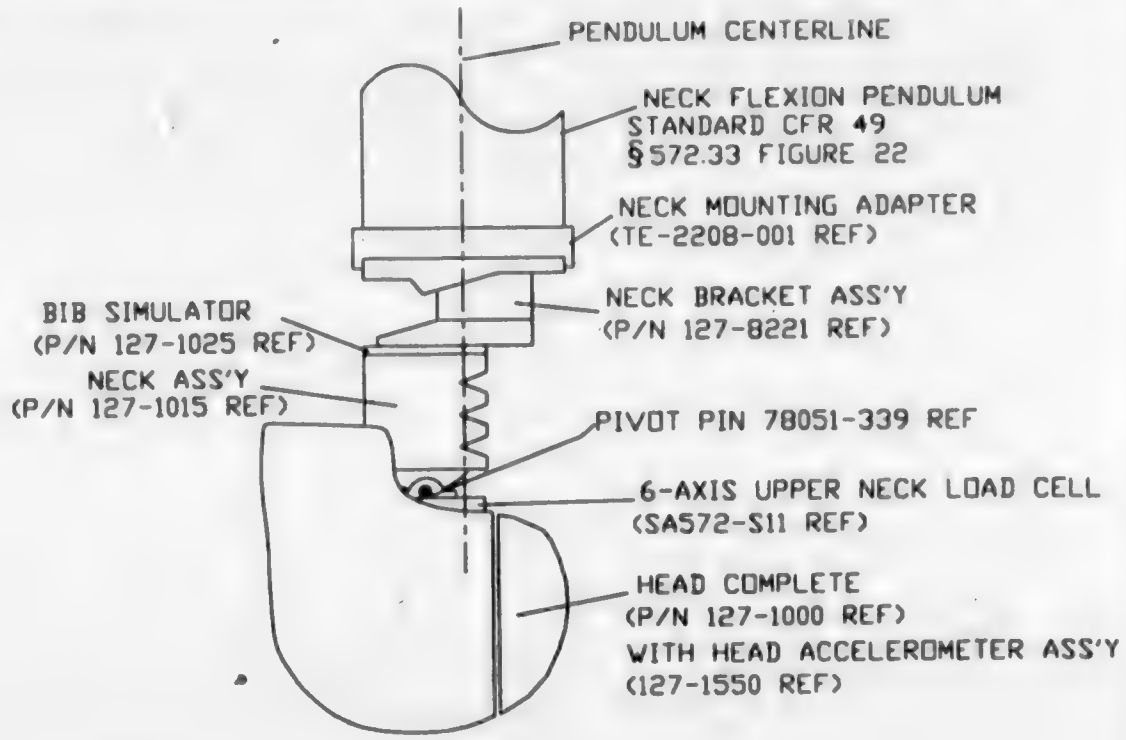


Figure N2

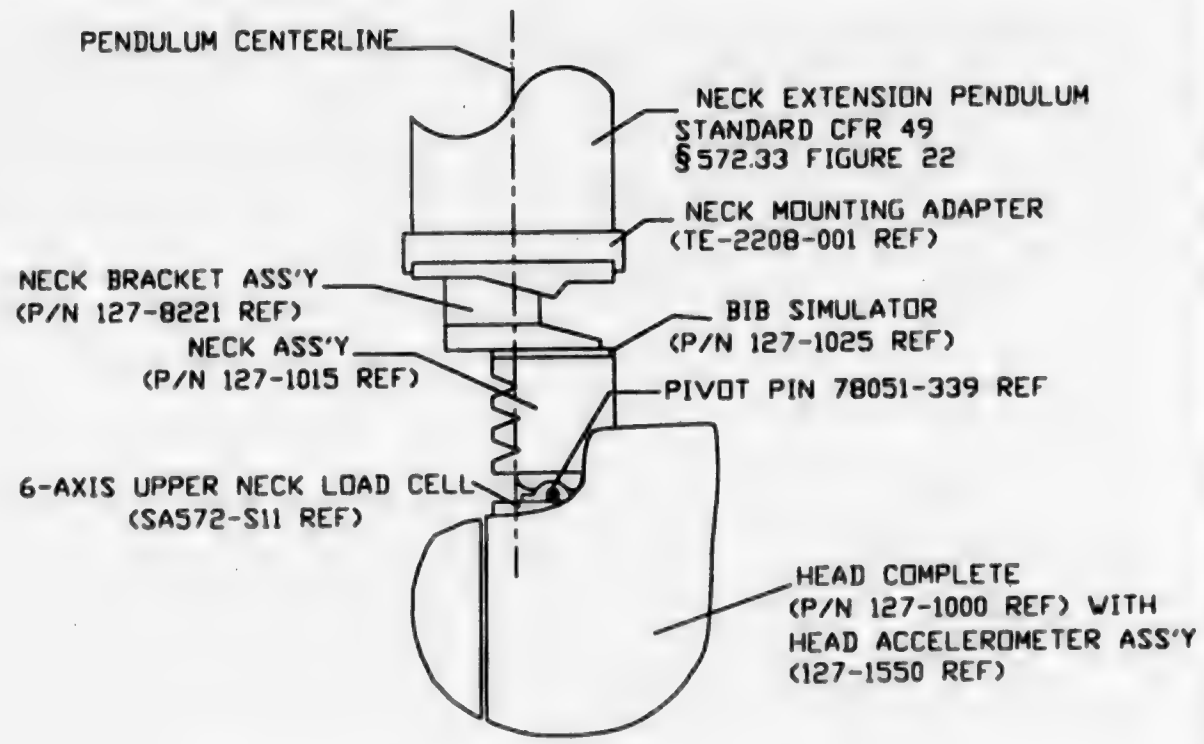
NECK FLEXION TEST SET-UP SPECIFICATIONS



NOTE:
PENDULUM SHOWN AT THE VERTICAL POSITION

Figure N3

NECK EXTENSION TEST SET-UP SPECIFICATIONS



NOTE:
PENDULUM SHOWN AT THE VERTICAL POSITION

Figure N4

THORAX IMPACT TEST SET-UP SPECIFICATIONS

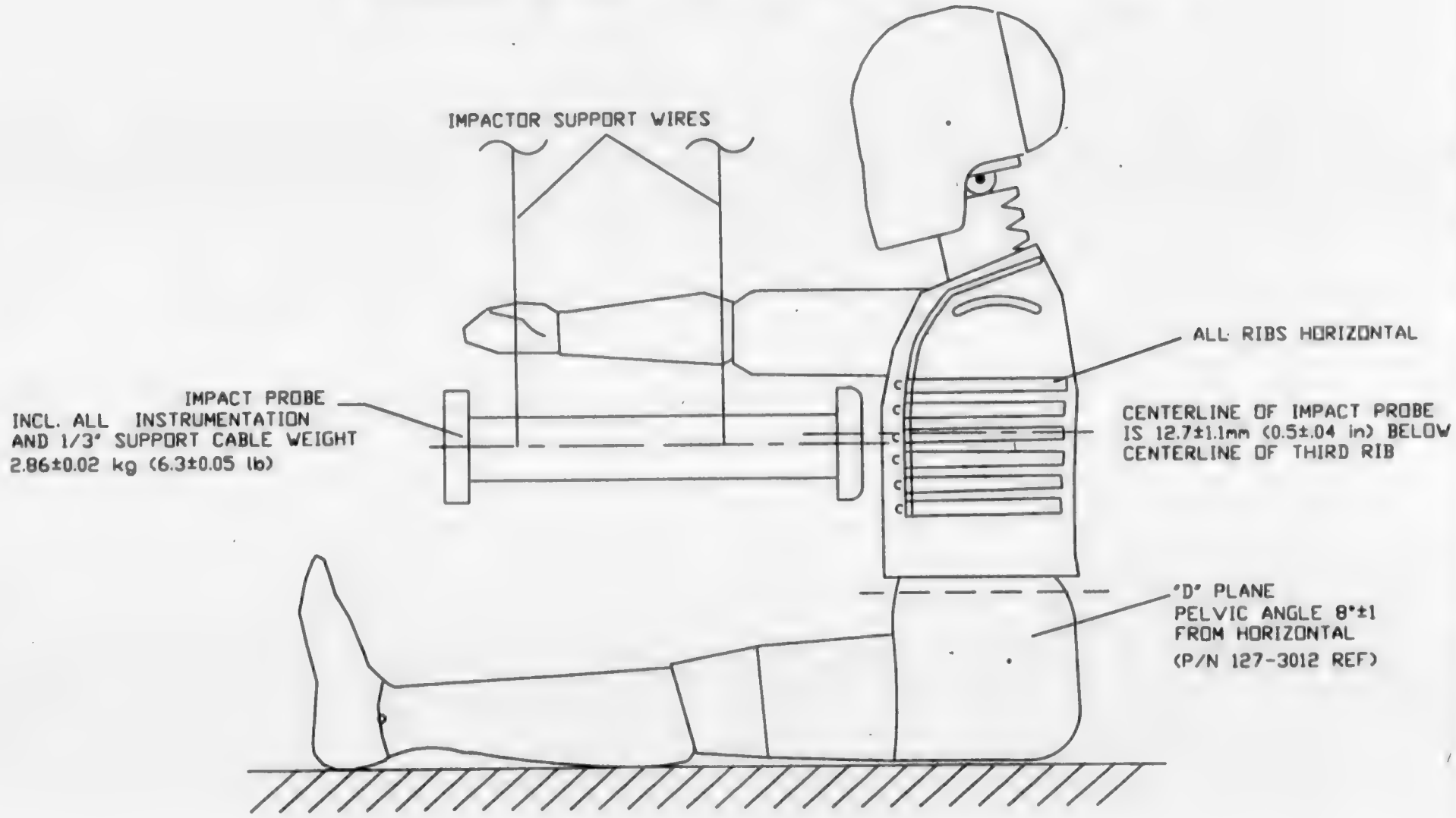
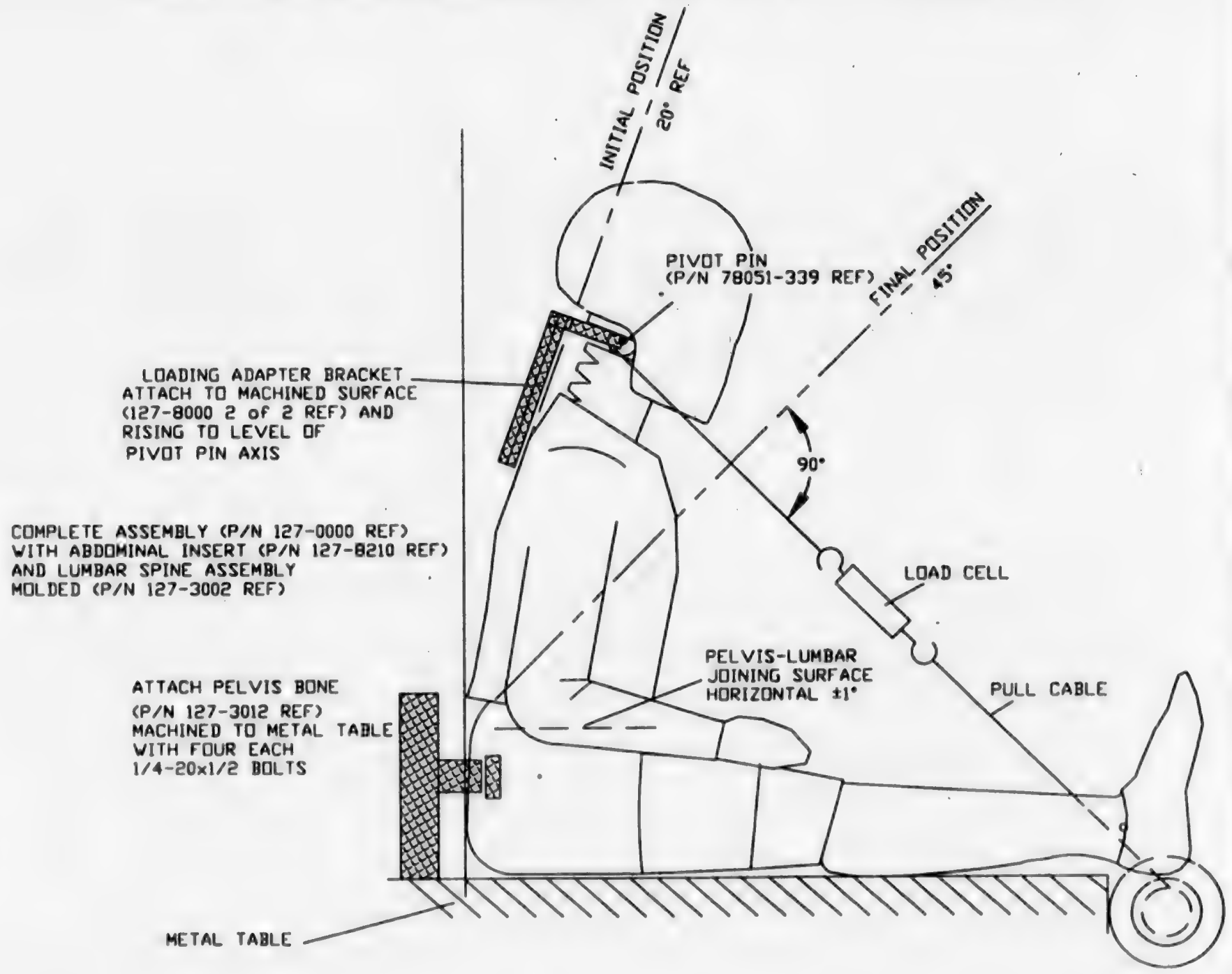


Figure N5

LUMBAR-SPINE FLEXION TEST SET-UP SPECIFICATIONS

Figure N5

LUMBAR-SPINE FLEXION TEST SET-UP SPECIFICATIONS



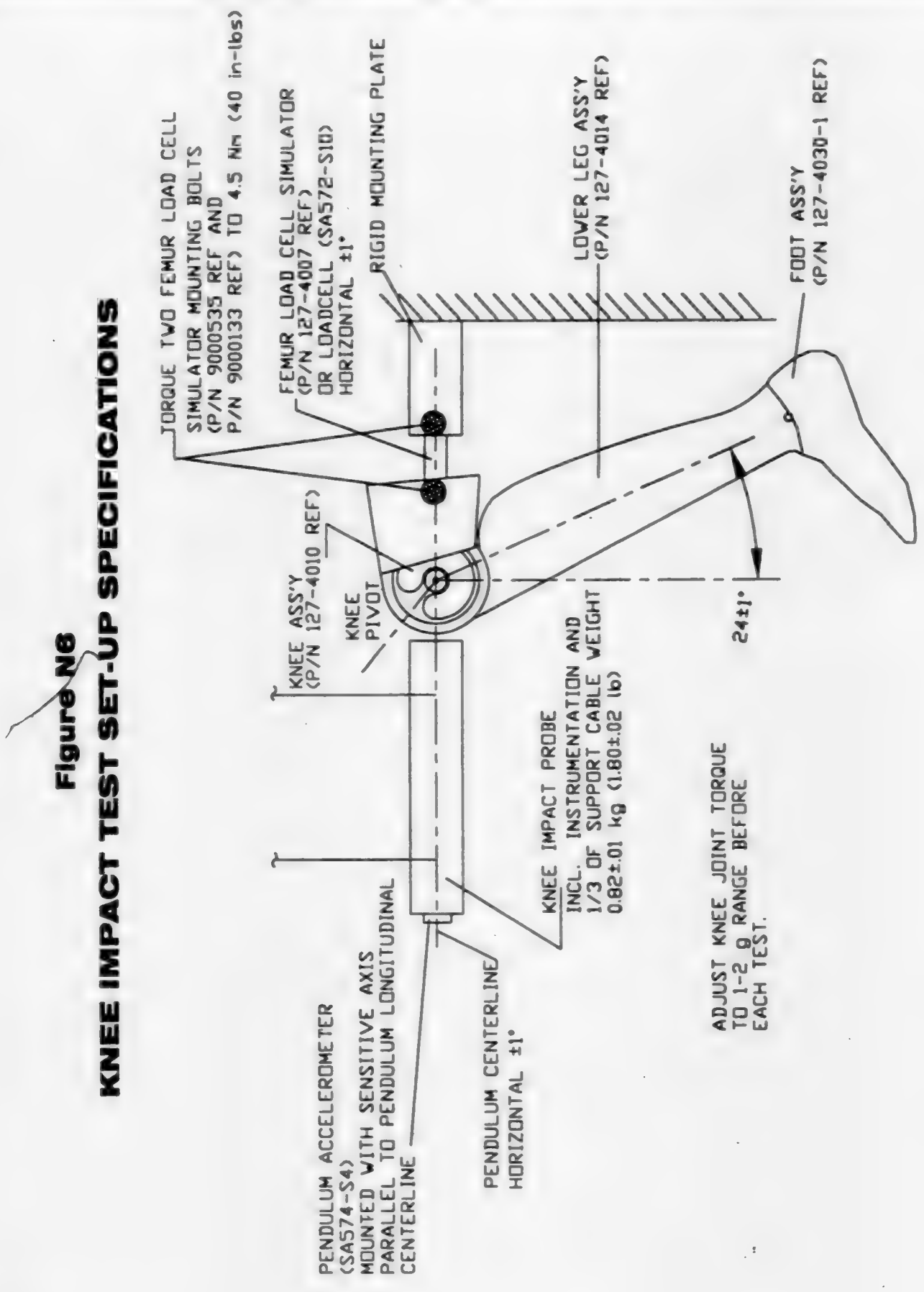


Figure N8

KNEE IMPACT TEST SET-UP SPECIFICATIONS

Issued on: June 22, 1988.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–17138 Filed 6–25–98; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on a Petition To List the Northern Goshawk in the Contiguous United States West of the 100th Meridian

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list the northern goshawk (*Accipiter gentilis*) in the contiguous United States west of the 100th meridian under the Endangered Species Act, as amended (Act). After review of all available scientific and commercial information, the Service finds that listing this population as endangered or threatened is not warranted.

DATES: The finding announced in this document was made on June 22, 1998.

ADDRESSES: Data, information, comments or questions concerning this petition should be sent to Mr. David Wesley, Assistant Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181, ATTN: Office of Technical Support. The petition, finding, supporting data and comments will be available for public inspection by appointment, during normal business hours at the following address: U.S. Fish and Wildlife Service, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, 4th Floor, Portland, Oregon 97204, (503/808–2565).

FOR FURTHER INFORMATION CONTACT: Mr. David Wesley, Assistant Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6159); or Monty Knudsen, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, Portland, Oregon 97204, (503/808–2565).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (90-day finding), and notice of the finding is to be published promptly in the **Federal Register**. If a finding is made that substantial information was presented, the Service is required to promptly commence a status review of the species involved and determine whether the petitioned action is warranted, not warranted or warranted but precluded by other higher priority listing actions.

On September 29, 1997, the Service announced a 90-day finding (62 FR 50892) for a petition to list the northern goshawk in the contiguous United States west of the 100th meridian under the Endangered Species Act of 1973, as amended. In that finding, the Service found that the petition presented substantial information indicating that the listing of the northern goshawk as a threatened or endangered species in the contiguous United States west of the 100th meridian may be warranted. At that time, the Service initiated a status review for this population of the northern goshawk and announced that a 12-month finding will be prepared at the conclusion of the review.

The northern goshawk (*Accipiter gentilis*) occurs in temperate and boreal forests of North America, Europe and Asia. In North America, the northern goshawk breeds from western and central Alaska, northern Yukon, eastern and southern Mackenzie, southern Keewatin, northeastern Manitoba, northern Ontario, central and northeastern Quebec, Labrador, and Newfoundland south to southern Alaska, central California, southern Nevada, southeastern Arizona, southern New Mexico, the eastern foothills of the Rockies and the Black Hills, central Alberta, central Saskatchewan, southern Manitoba, northern Minnesota, central Michigan, Pennsylvania, central New York, northwestern Connecticut, and locally south in the montane habitats at least to West Virginia and possibly to eastern Tennessee and western North Carolina (Squires in prep). This notice pertains to the northern goshawk that occurs in the contiguous United States west of the 100th meridian.

In North America, the winter range of goshawks includes all of the breeding range, and extends south as far as southern California, northern Mexico and Texas, and occasionally to northern portions of the Gulf States, rarely including Florida (Squires in prep).

Two groups of the northern goshawk are recognized worldwide: the palearctic *gentilis* group and the nearctic *atricapillus* group. The latter occurs in North America and consists of *A.g. atricapillus* (Wilson 1812, type locality Philadelphia, Pennsylvania). The *atricapillus* group occurs over much of Alaska, Canada, and the mountains of the western and eastern United States. In addition to *A.g. atricapillus*, at least two other subspecies are currently, but variously, accepted—*A.g. laingi* (Taverner 1940, type locality Queen Charlotte Islands, British Columbia), which occurs on islands off the Canadian Pacific coast, and *A.g. apache* van Rossem (van Rossem 1938, type locality Chiricahua Mountains, Arizona), which occurs in the mountains. *A.g. laingi* is the subject of a separate petition action and is not further addressed in this notice.

Recognition of the *apache* subspecies in the American southwest is a subject of current debate. It is recognized by a number of scientists, but not by the American Ornithologists' Union. The U.S. Fish and Wildlife Service acknowledged the existence of *apache* as a subspecies in its 1992 administrative finding relative to the petition to list the northern goshawk. However, the Service now considers the issue of recognition of *apache* as a legitimate subspecies to be unresolved, and does not consider it a separate subspecies for purposes of this notice.

Information reviewed by the Service indicates that data regarding goshawk population trends is limited (Squires and Reynolds 1997), and migration or Christmas bird counts are difficult to interpret because of low numbers observed, biases inherent in the methodology, and irruptive migrations (Titus and Fuller 1990). However, Kennedy (1997) conducted a comprehensive review of available, peer-reviewed research, and found no evidence of a decline in goshawks in North America based on its range, demographics (density, fecundity, and survival) and population trends. Based on a variety of information from across North America, Kennedy concluded that there is no strong evidence to indicate that goshawk populations are declining, increasing or stable. She emphasizes two possible conclusions based on her analysis: 1) either the goshawk is not declining or 2) current sampling techniques are insufficient to detect population trends. Based on the best available information gathered for the Service's Status Review, the Service did not find evidence of a declining population trend for goshawks. The Service found that approximately 75 percent of the reported territories analyzed for its status review were discovered within the past 10 years. In those areas where intensive survey and monitoring efforts have been implemented, goshawks generally are found. The available data indicate that

goshawks remain widely distributed throughout their historic range in the western United States.

The habitat information gathered and reviewed by the Service indicates that changes have occurred in the distribution, amount and structural characteristics of mature forests throughout much of the western United States. In general, the primary change has been reduction of mature forest cover by logging, although other factors such as fire suppression and catastrophic fire have also been implicated. However, the extent to which goshawk populations are correlated with amounts of mature forest cover is unknown. Recent survey efforts continue to result in discovery of goshawks, even in areas of historic logging activity, which indicates that the species may not be uncommon, but rather is difficult to locate and adequately survey. The Service found no evidence that goshawk habitat is limiting the population, or that a significant curtailment of the species' habitat or range is occurring.

The information presented in the petition relies largely on the contention that the northern goshawk is dependent on large, unbroken tracts of "old-growth" and mature forest. However, the Service has found no evidence to support this claim. The Service found that while the goshawk typically does use mature forest or larger trees for nesting habitat, it appears to be a forest habitat generalist in terms of the types and ages of forests it will use to meet its life history requirements. Goshawks can use small patches of mature habitat to meet their nesting requirements within a mosaic of habitats of different age classes; a key factor appears to be availability of prey.

While timber management has been demonstrated to affect goshawks at least at local levels (Reynolds 1989, Crocker-Bedford 1990, Bright-Smith and Mannon 1994, Woodbridge and Detrich 1994, Beier and Drennan 1997, Desimone 1997), forest management practices, such as the use of controlled fire and selective thinning, also may make habitats more suitable to goshawks by opening up dense understory vegetation, creating snags, down logs, and woody debris, and creating other conditions conducive to goshawks and their prey (Reynolds *et al.* 1992, Graham *et al.* 1997).

Throughout much of the western United States, the nature and rate of decline in mature forest habitats on Federal lands has slowed significantly during the past decade. The Service estimates that 80 percent of goshawk habitat occurs on Federal forest lands. Public debate over management of Federal forest resources has resulted in regional forest management strategies, many of which focus on retention and restoration of mature forest habitats. These changes are reflected in declines of timber volume sold from National Forest lands in many western states. Although mature forest habitat continues to be harvested, the Service finds that, in general, habitat conditions on Federal lands are no longer declining as in previous decades, and are improving in many areas throughout the west.

In conclusion, the Service finds that while forest management (e.g., timber harvest and fire exclusion) has changed the vegetation characteristics throughout much of the western United States, the goshawk continues to be well-distributed throughout its historic range. The Service finds no evidence that the goshawk population is declining in the western United States, that habitat is limiting the overall population, that there are any significant areas of extirpation, or that a significant curtailment of the species' habitat or range is occurring. The petition relies largely on the contention that the goshawk is dependent on large, unbroken tracts of old-growth and mature forest in its assertion that the species is in danger of extinction. However, neither the petition nor other information available to the Service supports this claim. The Service found that while goshawks frequently use stands of old-growth and mature forest for nesting, overall the species appears to be a forest habitat generalist in terms of the variety and age-classes of forest types it uses to meet its life history requirements. Therefore, the Service finds that listing the northern goshawk in the contiguous United States west of the 100th meridian as threatened or endangered is not warranted because the best available information does not indicate that it is in danger of extinction or likely to become so in the foreseeable future.

References

A complete list of references used in preparation of this finding is available upon request from the U.S. Fish and Wildlife Service, Office of Technical Support (see **ADDRESSES** section).

Author

The primary author of this document is Catrina Martin, U.S. Fish and Wildlife Service, Office of Technical Support (see **ADDRESSES** section).

Authority

16 U.S.C. 1381–1487l; 16 U.S.C. 4201–4245; Pub L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: June 22, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–17151 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061898B]

RIN 0648–AK60

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Precious Corals Fisheries; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (FMP) for Secretarial review. Amendment 3 would establish framework procedures for regulatory changes under the FMP.

DATES: Comments on Amendment 3 must be received on or before August 28, 1998.

ADDRESSES: Comments on Amendment 3 should be sent to, and copies of Amendment 3 are available from, Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds at (808) 522–8220 or Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS at (808) 973–2985.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires

that NMFS, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the fishery management plan or amendment.

Amendment 3 to the FMP would establish framework procedures for regulatory changes under the FMP. Under the proposed framework procedures, new management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the precious coral permit areas. The framework procedures would authorize the implementation of measures that may affect the fishing season, classification of coral beds, harvest quotas for all management unit species, size restrictions, incidental catches and permit conditions. Each action taken under the framework process would entail documentation of the analysis of impacts of that action. To the extent appropriate, the Council would prepare regulations, regulatory analyses, environmental assessments, or other documents depending on the scope of the action, which framework process is being used, and the types and magnitude of impacts involved. Advance public notice, public discussion, and consideration of public comment would be required.

NMFS invites comments on proposed Amendment 3 through the end of the comment period. NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 3 has been submitted for Secretarial review and approval. NMFS expects to publish the proposed rule and request public comment on the proposed regulations in the near future. Public comments on the proposed rule must be received by August 28, 1998 to be considered in the approval/disapproval decision on Amendment 3.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17167 Filed 6-26-98; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 63, No. 124
Monday, June 29, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

U.S. Warehouse Act Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish a schedule increasing the licensing and inspection fees to be charged warehouse operators under the United States Warehouse Act (USWA) and regulations with respect to: Cotton, grain, tobacco, wool, dry bean, nut, syrup, and cottonseed.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen Linden, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0553, Washington, DC 20250–0553, telephone (202) 690–4321, FAX: (202) 690–3123, E-Mail: Helen__Linden@wdc.fsa.usda.gov.

Background

Pursuant to the provisions of the USWA which regulates warehouse operations for the benefit of all depositors, the Secretary has the authority to license public warehouse operators. Warehouse operators that opt to have a USWA license understand that fees will be imposed to cover the costs of the program. Specifically, section 10 of the USWA (7 U.S.C. 251) mandates the imposition of fees for USWA licensed warehouses. The USWA provides, in part, that:

The Secretary of Agriculture * * * shall charge, assess, and cause to be collected a reasonable fee for (1) Each examination or inspection of a warehouse * * *; (2) each license issued to any person to classify, inspect, grade, sample, or weigh agricultural products stored or to be stored * * *; (3) each annual warehouse license issued to a warehouseman to conduct a warehouse * * *; and (4) each warehouse license amended, modified, extended, or reinstated * * *. Such fees shall cover, as nearly as practicable, the costs of providing such services and licenses, including administrative and supervisory costs * * *.

The USWA mandates fee collections to sustain the Federal warehouse licensing and examination programs. In keeping with the Department of Agriculture's strategic plan of making the USWA more self-sufficient, the Farm Service Agency (FSA) is raising USWA license and user fees to increase the amount of revenue generated to recover operational costs for the USWA in Fiscal Year 1999 (FY). The FY 99 fee adjustment reflects a general, across the board, 7.5 percent increase in fees for all USWA licensed warehouse operators.

The regulations used in administering USWA fees were last amended effective October 1, 1997, (62 FR 33582, June 20, 1997 and corrected at 62 FR 42234, August 6, 1997), at which time fee adjustments reflected increases of no greater than 10 percent for each type of commodity with the rate of increase depending on FSA's direct costs with respect to warehouse examinations for that commodity.

These regulations at 7 CFR parts 735 through 743 provide that USWA fees could be adjusted annually in order to cover, as nearly as practicable, the operating costs for the program.

Warehouse and Service License Fees

The fee for original issuance, reissuance, or duplication of a license for cotton, grain, tobacco, wool, dry beans, nut, syrup, and cottonseed is $80 for each license issued.

The fee charged to license individuals to inspect, sample, grade, classify, or weigh commodities is $35 for each service license issued.

Warehouse Annual and Inspection Fees

These fees are shown in the following tables by agricultural product. Inspection fees are assessed for each original examination or inspection, or reexamination or reinspection for modification of an existing license. Annual fees are assessed independently of inspection fees.

COTTON

[In bales]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–20,000	$590	$1,075
20,001–40,000	770	1,400
40,001–60,000	945	1,720
60,001–80,000	1,185	2,155
80,001–100,000	1,480	2,690
100,001–120,000	1,775	3,225
120,001–140,000	2,070	3,765
140,001–160,000	2,365	4,300
160,001+	*2,365	**4,300

* Plus $60 per 5,000 bale capacity above 160,000 bales or fraction thereof.
** Plus $110 per 5,000 bale capacity above 160,000 bales or fraction thereof.
Inspection fees will be charged at the rate of $80 for each 1,000 bales of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

GRAIN
[In bushels]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–150,000	$155	$280
150,001–250,000	310	565
250,001–500,000	460	835
500,001–750,000	620	1,125
750,001–1,000,000	770	1,400
1,000,001–1,200,000	925	1,680
1,200,001–1,500,000	1,075	1,955
1,500,001–2,000,000	1,230	2,235
2,000,001–2,500,000	1,385	2,520
2,500,001–5,000,000	1,535	2,790
5,000,001–7,500,000	1,695	3,080
7,500,001–10,000,000	1,850	3,365
10,000,001+	*1,850	**3,365

* Plus $50 per million bushels above 10,000,000 or fraction thereof.
** Plus $90 per million bushels above 10,000,000 or fraction thereof.
Inspection fees will be charged at the rate of $16 for each 10,000 bushels of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

DRY BEANS
[In hundredweight]

Licensed capacity	Annual fee
100–90,000	$770
90,001–150,000	1,075
150,001–300,000	1,385
300,001–450,000	1,695
450,001–600,000	2,000
600,001–720,000	2,305
720,001–900,000	2,620
900,001–1,200,000	2,925
1,200,001–1,500,000	3,225
1,500,001–3,000,000	3,535
3,000,001+	3,845

Inspection fees will be charged at the rate of $16 for each 1,000 hundredweight of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Tobacco and wool

Annual fee: $16 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $620.

Inspection fee: $16 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Nuts

Annual fee: $14 for each 100 short tons of licensed capacity, or fraction thereof, but in no case less than $620.

Inspection fee: $8 for each 100 short tons of licensed capacity, or fraction thereof, of peanuts and $14 for each 1,000 hundredweight, or fraction thereof, of other nuts, but in no case less than $160 nor more than $1,600.

Syrup

Annual fee: $6 for each 5,000 gallons of licensed capacity, or fraction thereof, but in no case less than $620.

Inspection fee: $6 for each 5,000 gallons of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Cottonseed

Annual fee: $16 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $620.

Inspection fee: $16 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $160 nor more than $1,600.

Signed at Washington, DC, on June 23, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–17179 Filed 6–26–98; 6:46 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on July 10, 1998 at the Olympic Natural Resources Center, 1455 South Forks Avenue, Forks, Washington. The meeting will begin at 9:30 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Update and discussion on reorganization plans for the Olympic Forest; (2) Effectiveness Monitoring Pilot Project: update from subcommittee, presentation by Quileute member on potential use of Soleduck drainage and Olympic Natural Resources Center on possible partnership; (3) Review video on Sequim Elk Herd Management (4) Review Adaptive Management Area Draft Guide; (5) Update on Soleduck Ranger District projects and activities. Olympic Province Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211.

Dated: June 23, 1998.

Claire Lavendel,

Acting Forest Supervisor.

[FR Doc. 98–17207 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Tom Cole, Secretary of State, for additional farm products used or produced in farming operations, or a product of such crop or livestock in its

unmanufactured state that is in the possession of a person engaged in farming operations in that State as follows:

teff, kudu, gemsbok, eland, gnu

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.22(a)(3)(v), 2.81(a)(5), 55 FR 22795.

Dated: June 22, 1998.

Harold W. Davis,

Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 98–17182 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–EN–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: July 7–8, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed: July 7, 1998, 9:00 a.m.; Open: July 8, 1998, 10:00 a.m.–12:00 noon and 1:30 p.m.–4:00 p.m.

MATTERS TO BE CONSIDERED:

Closed Meeting:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

Open Meeting:

1. Discussion of Final Report
2. Review and Accept Minutes of June 4, 1998 Open Meeting
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 98–17322 Filed 6–25–98; 11:12 am]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:30 p.m. on July 16, 1998, at the University of Maryland at Baltimore School of Law—Moot Court Room, 500 West Baltimore Street, Baltimore, Maryland 21201. The Committee will hold a forum for Korean Americans, government officials, and others to speak on the topic, "City Services, Public Safety, and the Justice System: Do Korean American Storeowners in Baltimore Get Equal Treatment?"

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Chester L. Wickwire, 410–825–8949, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 19, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–17237 Filed 6–26–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke in part one antidumping duty order.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4637.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Dynamic Random Access Memory semiconductors ("DRAMs") from the Republic of Korea.

Initiation of Reviews

In accordance with 19 CFR 331.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 1999.

Antidumping duty proceedings	Period to be revised
Brazil: Orange Juice, A–351–605	5/1/97–4/30/98
Branco Peres Citrus S.A.	
CYM Citrus S.A.	
Cambuhy Citrus Comercial e Exportadora Ltda.	
Citrovita Agroindustrial S.A.	
Frutax Industria e Comercio Ltda.	
Sucorrico S.A.	
India: Certain Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/97–4/30/98
Rajinder Pipes Ltd.	

Antidumping duty proceedings	Period to be revised
Republic of Korea: DRAMs, A–580–812	5/1/97–4/30/98
LG Semicon Co., Ltd.	
Hyundai Electronics Industries Co.	
G5 Corporation	
Taiwan: Certain Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/97–4/30/98
Yieh Hsing Enterprise Co., Ltd.	
Yun Din Steel	
Kao Hsing Chang Iron & Steel Corporation	
Yieh Loong Co., Ltd.	
Far East Machinery Co., Ltd.	
Tai Feng Industries	
An Mau Steel Co., Ltd.	
Taiwan: Polyvinyl Alcohol, A–583–824	5/1/97–4/30/98
Chang Chun Petrochemical Co., Ltd.	
E.I. du Pont De Nemours & Co., Inc.	
Perry Chemical Corp.	

Anti-friction bearings proceedings and firms	Period/Class or kind
France: A–427–801	5/1/97–4/30/98
SKF France (including all relevant affiliates)	All
Societe Nouvelle de Roulements (SNR)	All
SNFA S.A.	All
Rolfer LDA	Ball
Minetti	Ball
Motovario	Ball
Rodaindustria SA	Ball
Rodiandustria Vigo SA	Ball
Bucher-Guyer AG	Ball
Alfa Team Gmbh	Ball
D & R Technisher Grosshandel	Ball
Frolich & Dorken GmbH	Ball
RMV Walzalager Vetr. GmbH	Ball
Wyko Export	Ball
Germany: A–428–801	5/1/97–4/30/98
FAG Kugelfischer George Schaefer AG	All
INA Walzlager Schaeffler KG	All
SKF GmbH (including all relevant affiliates)	All
Torrington Nadellager GmbH	Ball & Cylindrical
Rolfer LDA	Ball & Cylindrical
Minetti	Ball & Cylindrical
Motovario	Ball & Cylindrical
Rodaindustria SA	Ball & Cylindrical
Rodiandustria Vigo SA	Ball & Cylindrical
Bucher-Guyer AG	Ball & Cylindrical
Alfa Team Gmbh	Ball & Cylindrical
D & R Technisher Grosshandel	Ball & Cylindrical
Frolich & Dorken GmbH	Ball & Cylindrical
RMV Walzlager Vetr. GmbH	Ball & Cylindrical
Wyko Export	Ball & Cylindrical
Italy: A–475–801	5/1/97–4/30/98
SKF Industrie S.p.A. (including all relevant affiliates)	Ball
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical
SOMECAT S.p.A.	Ball & Cylindrical
Rolfer LDA	Ball
Minetti	Ball
Motovario	Ball
Rodaindustria SA	Ball
Rodiandustria Vigo SA	Ball
Bucher-Guyer AG	Ball
Alfa Team Gmbh	Ball
D & R Technisher Grosshandel	Ball
Frolich & Dorken GmbH	Ball
RMV Walzlager Vetr. GmbH	Ball
Wyko Export	Ball
Japan: A–588–804	5/1/97–4/30/98
Koyo Seiko Co., Ltd.	All
Nachi-Fujikoshi Corporation	All
Nippon Pillow Block Sales Company, Ltd.	All
NSK Ltd. (formerly Nippon Seiko K.K.)	All
NTN Corporaiton	All
Romania: A–485–801	5/1/97–4/30/98

Anti-friction bearings proceedings and firms	Period/Class or kind
Technoimportexport, S.A. (TIE)	Ball
Singapore: A–559–801	5/1/97–4/30/98
NMB Singapore Ltd./Pelmec Industies (Pte.) Ltd.	Ball
Sweden: A–401–801	5/1/97–4/30/98
SKF Sverige AB	Ball & Cylindrical
Rolfer LDA	Ball
Minetti	Ball
Motovario	Ball
Rodaindustria SA	Ball
Rodiandustria Vigo SA	Ball
Bucher-Guyer AG	Ball
Alfa Team GmbH	Ball
D & R Technisher Grosshandel	Ball
Frolich & Dorken GmbH	Ball
RMV Walzlager Vetr. GmbH	Ball
Wyko Export	Ball
The United Kingdom: A–412–801	5/1/97–4/30/98
NSK Bearings Europe Ltd./RHP Bearings Ltd.	Ball & Cylindrical
Barden Corporation	Ball & Cylindrical
FAG (U.K.) Limited	Ball & Cylindrical
SNFA Bearings Limited	Ball & Cylindrical

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 22, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–17137 Filed 6–26–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 6, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. The review covers shipments of this merchandise to the United States by one respondent during the period May 1, 1996, through April 30, 1997. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0650 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations last codified at 19 CFR part 353. While the Department's revised regulations, as codified at 19 CFR part 351 (Antidumping Duties; Countervailing Duties, 62 FR 27296 (May 19, 1997) ("revised regulations"), do not govern this review, they do describe the Department's practice where cited in this notice.

Background

This review covers one manufacturer/exporter, the Borusan Group (Borusan), of merchandise subject to the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. On February 6, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 6155 (*Preliminary Results*). On March 9, 1998, we received case briefs from Allied Tube & Conduit Corporation and Wheatland Tube Company (collectively, "the petitioners") and from Borusan. We

received rebuttal briefs from both parties on March 16, 1998.

Scope of Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. Imports of subject merchandise are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Partial Rescission

We originally initiated a review of three companies: Borusan, Yucelboru Ihracat Ithalat ve Pazarlama A.S./ Cayirova Boru Sanayi ve Ticaret A.S. (Yucelboru), and Erbosan Erviyas Boru Sanayii ve Ticaret A.S. (Erbosan). *See Notice of Initiation of Antidumping Duty Administrative Review*, 62 FR 35154 (June 30, 1997). However, as noted in the preliminary results, Yucelboru and Erbosan notified us that they had no shipments of subject merchandise during the period of review (POR). Although we inadvertently did not publish a notice of rescission at the time of the preliminary results, we did confirm with the Customs Service that this was correct and so stated in the preliminary results. *See Preliminary Results* at 6155. We received no comments concerning either of these companies for the final results. Therefore, consistent with our practice (*see, e.g., Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997), we have rescinded our review of the two companies with no shipments during the POR. *See also* 19 CFR 351.213(d)(3) of the Department's revised regulations.

Fair Value Comparisons

We calculated export price (EP) and normal value based on the same methodology used in the preliminary results. However, as discussed further below, due to a change in our matching methodology *vis a vis* sales disregarded as below cost, we were able to match all U.S. sales to sales of similar merchandise sold in the home market without resorting to constructed value (CV).

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.) (*Cemex*). In that case, based on the pre-URAA Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (normal value) when the Department finds home market sales to be outside the "ordinary course of trade."

Although this issue was not raised by any party in this proceeding, in light of the *Cemex* decision the Department has reconsidered its practice with respect to any sales found to be outside the "ordinary course of trade." Under the URAA, such sales now include sales disregarded as below cost. *See* Section 771(15). In accordance with *Cemex*, the Department has determined that it would be inappropriate to resort directly to CV, in lieu of comparison market sales, as the basis for normal value where sales of merchandise identical to, or most similar to, that sold in the United States are disregarded as below cost. Instead, we will use sales of similar merchandise, if such sales exist, and will resort to CV as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we were able to compare U.S. sales to contemporaneous sales of the most similar foreign like product made in the ordinary course of trade, based on the matching characteristics identified in the preliminary results. *See Preliminary Results* at 6156.

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Borusan made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the preliminary results, with the following exceptions.

1. While we based our calculation of interest expenses on the interest expenses of the consolidated Borusan Group companies, we have allocated this expense (which was reported on an annual basis) to each month of the POR using the ratio of monthly to annual interest expenses for the four largest of the Borusan Group companies, consistent with the 1994–95 review. We have also recalculated Borusan's amortized foreign exchange losses. *See* Comment 7.
2. We have valued purchases of coil and zinc by Borusan's mills from affiliated parties at the higher of the cost of producing the input, the transfer price, or the market price. *See* Comment 8.
3. We added packing to the cost of manufacturing (COM) in order not to understate the calculation of general and administrative expenses (G&A) and interest, because the cost of goods sold (COGS) used in the denominator to calculate the G&A and interest expense factor includes packing. *See* Comment 9.
4. We deducted imputed credit expenses from CV. *See* Comment 10.
5. We corrected a clerical error regarding indexation of monthly costs. *See* Final Results Analysis Memorandum from Case Analyst to File: Pipe and Tube from Turkey (June 8, 1998) (Final Results Analysis Memorandum).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners and from Borusan.

Comment 1: Level of Trade

The petitioners submit the following comments regarding the level-of-trade analysis in the preliminary results: (1) the Department incorrectly determined that there are two levels of trade in the home market without sufficient record evidence that home market sales differ significantly in terms of the stage of marketing involved (see Comment 1A, below); (2) because there is only one home market level of trade, the Department incorrectly granted a level-of-trade adjustment when comparing U.S. sales to one of the two purported home market levels (see Comment 1A, below); (3) even if the Department finds two home market levels of trade, no adjustment should be made because Borusan has not demonstrated a causal

link between (a) differences in the marketing stages between the two levels and (b) pricing differences between the two levels, *i.e.*, it has not shown that marketing differences at the two purported levels have caused pricing differences at the two levels (see Comment 1B, below); and (4) if a level-of-trade adjustment is granted, it should be calculated on a reseller-specific basis (see Comment 1C, below).

Comment 1A—Identification of Home Market Levels of Trade

The petitioners state that there is only one level of trade in the home market because there are no significant differences in the stage of marketing for any of Borusan's purported levels of trade.[1] The petitioners contend that, based on an analysis of the customer class and the selling functions involved, LOT C sales should not be considered as a separate level of trade.

The petitioners first emphasize that the type of customer is an important factor in the level-of-trade analysis. Referencing the preamble to the Department's revised regulations (Preamble to Antidumping Duties; Countervailing Duties, 62 FR 27296, 27371, (May 19, 1997) (Preamble)) and *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17156 (April 9, 1997) (*Mexican Cement*), the petitioners state that different levels of trade necessarily involve purchasers at different places in the chain of distribution. According to the petitioners, Borusan's mill direct sales at LOT A, back-to-back sales through resellers at LOT B, and reseller inventory sales at LOT C all involve sales to end users. The petitioners submit that Borusan has shown only that there are sales to different types of end users at all three claimed levels of trade, and argue that distinctions among types of end users are not relevant to a determination regarding whether such customers occupy different places in the chain of distribution.

Regarding selling functions, the petitioners contend that four of the 12 claimed selling functions as reported by Borusan are not selling functions at all, and maintain that the remaining eight do not show any material difference in the nature or level of selling function being provided. The petitioners claim that inventory maintenance is the only significant selling function present in LOT C and not in LOT A/B. Even here, however, the petitioners contend that LOT A/B sales also involve maintaining inventory at the mill, and argue that any difference in the inventory maintenance at the two levels is not significant in terms of the level-of-trade analysis. Citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30337 (June 14, 1996) (*Pasta from Italy*), the petitioners assert that mere differences in the degree to which a particular selling function is performed are given little weight in establishing separate levels of trade. The petitioners add that it is rare that the Department would find that any single selling function is so significant as to warrant a finding of different levels of trade, citing Preamble to Antidumping Duties; Countervailing Duties; Proposed Regulations, 61 FR 7308, 7348 (February 27, 1996) (Proposed Regulations). The petitioners conclude that, since LOT C sales are not made at a level of trade separate from LOT A/B, no adjustment should be made for comparisons involving LOT C sales.

Borusan responds that, although it disagrees with the Department's determination to collapse LOTs A and B, the Department should continue to find at least two levels of trade (LOT A/B and LOT C) because Borusan has adequately demonstrated the existence of separate and distinct levels of trade in the home market. Borusan characterizes its home market channels of distribution as follows: LOT A involves made-to-order sales direct from the mill to sophisticated, unaffiliated distributor/resellers at high volumes; LOT B sales are made through affiliated resellers primarily to unaffiliated distributors, on an FOB-mill basis where the merchandise is shipped directly to the customers without the merchandise entering the resellers' inventory; and, LOT C sales are made by the resellers out of locally maintained forward inventory to small local retailers and end users.

Borusan argues that its sales at LOT C involve several qualitatively and quantitatively different selling functions than those involved in LOT A/B. Principally, Borusan claims, LOT C sales are made out of pre-positioned inventory from regional warehouses instead of directly from the mill. According to Borusan, this sales process does not involve only inventory maintenance, but also requires the performance of a number of additional functions (and the incurrence of certain additional selling expenses) at the LOT C level, including forecasting of regional demand for different products, inventory planning, placing orders with the mill, making arrangements for shipping from the mill, and incurring inventory carrying costs during the holding period. Borusan argues further that, since LOT C sales are routinely made to small, local retailers and end-users, LOT C resellers are involved in customer education and problem-solving, and providing advice on suitability, uses, and characteristics of Borusan's products.

Finally, with respect to the petitioners' argument that inventory maintenance occurs at both LOT A/B and LOT C, Borusan notes that LOT C involves the pre-positioning of forward inventory, a selling function that the Department has recognized as both significant in and of itself, and distinct from the inventory maintenance that occurs at the mill, citing *Pasta from Italy* at 30341–30342.

DOC Position: We continue to find that there are two home market levels of trade, LOT A/B and LOT C. We also find that LOT C involves a more remote level than LOT A/B. For these final results, we have continued to match U.S. sales first to LOT A/B; where we matched U.S. sales to LOT C, we have granted a level-of-trade adjustment, as discussed further in our response to Comments 1B and 1C below.

In order to find that sales are made at different levels of trade, we must determine that such sales involve different stages of marketing. *See* 19 CFR 351.412(b)(2). As a threshold matter, we analyze selling functions to determine if the levels of trade identified by a party are meaningful. Preamble at 27371. Our examination of the record evidence in this case confirms that, consistent with our preliminary results and with the final results of the 1994–95 review,[2] there are significant differences in the selling functions involved in LOT A/B sales in comparison with those involved in LOT C sales.

At LOT A/B, Borusan makes home market sales directly from the mill to large, sophisticated customers or, in a

[1] Borusan initially claimed three home market levels of trade—sales shipped directly from the mill to distributors/wholesalers (LOT A, "mill direct"), sales made by affiliated resellers that also involve direct shipment from the mill to the customer (LOT B, "reseller back-to-back"), and sales made by affiliated resellers out of locally maintained forward inventory (LOT C, "reseller inventory sales"). As in the 1994–95 review, we collapsed LOTs A and B in the preliminary results, but found that LOT C sales were made at a level of trade separate from LOT A/B sales. Contrary to the 1994–95 review, however, we found a pattern of consistent price differences between the two levels, and made a level-of-trade adjustment when comparing U.S. sales with LOT C sales. *See Preliminary Results* at 6158; *see also Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69068–69069 (December 31, 1996) (*1994–95 Final Results*).

[2] No review was conducted with respect to the 1995–96 period.

'back-to-back' manner, where the sale is made by an affiliated reseller who does not take the merchandise into its inventory. In both instances, sales are made on an FOB-mill basis, and Borusan's customers make their own transportation arrangements regarding delivery of the merchandise from the mill. At LOT C, Borusan: (1) makes low-quantity sales to smaller customers through affiliated resellers who take the merchandise into inventory prior to the sale; (2) provides delivery services once the sale is made; and (3) maintains more intensive and frequent interactions with the customer. Thus, contrary to the petitioners' assertions, we find that there is more than one significant selling function that occurs at LOT C and not at LOT A/B. We discuss each in turn, below.

First, while it is not the only difference between LOT C sales and LOT A/B sales, inventory maintenance is a principal selling function that distinguishes these levels. Since LOT C sales are made out of stock, the affiliated resellers at LOT C have the responsibility of storing merchandise before purchasers have been found. The additional responsibility of maintaining merchandise in inventory also gives rise to related selling functions that are performed at LOT C. These include forecasting of regional demand for different products, inventory planning, placing orders with the mill, and incurring inventory carrying costs during the holding period. We also note that, in taking merchandise into inventory at LOT C, Borusan's affiliated resellers perform delivery-related functions that are not performed at LOT A/B, including: (1) arranging for shipment of merchandise involved in LOT C sales from the mill to the affiliated reseller's warehouse; and (2) providing immediate local delivery of such pre-positioned inventory once the sale is made to the final customer. *See* Borusan Questionnaire Response Section A (Borusan section A response) at 14 (resellers making LOT C sales "specialize in providing immediate local delivery of standard grades which they keep in inventory").

The additional forward warehousing and related activities performed by the affiliated resellers in making LOT C sales, as described above, constitute a distinct set of selling activities separate from any inventory maintenance performed at the mill. Thus, we disagree with the petitioners' contention that, since some form of inventory maintenance is conducted at each level of trade, any differences in this selling function are insufficient to support a finding of different levels of trade. Considering the additional selling functions associated with maintaining inventory at the affiliated reseller's warehouse for LOT C sales, we do not accept the petitioners' claim that the inventory maintenance performed at Borusan's mills is so similar to the reseller forward warehousing performed by affiliated resellers making LOT C sales as to render the differences in inventory maintenance between LOT A/B and LOT C sales insignificant for our analysis.

In addition to the inventory-and delivery-related selling activities described above, LOT C sales, which are typically smaller-volume sales, involve customer-based selling activities specific to the customers involved in such sales, which, as further discussed below, differ in the aggregate from the customers served by LOT A/B. These include customer education and advice on the suitability, uses, and characteristics of Borusan's products.

Based on the above analysis of selling activities, we have determined that there are meaningful distinctions between LOT A/B and LOT C. Aside from selling functions, we also consider the type of customer and the level of selling expenses in determining whether sales are made at different stages of marketing. *See* Preamble at 2731. Regarding the petitioners' arguments with respect to customer class, while we agree with the petitioners that the type of customer is an important indicator in identifying levels of trade (*id.*), we disagree with their assertion that the fact that both levels of trade involve some sales to end-users requires a finding that there are no customer differences between these levels. First, as a point of clarification, Borusan's LOT C sales are made not only to end users, but also to local distributors and small retailers. Second, the relevant standard, regardless of customer labels, is whether the customers involved at each purported level of trade constitute purchasers at different stages in the chain of distribution. *See Antifriction Bearings from France et al.; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54053, 54055 (October 17, 1997) (*AFBs 1995–96*).

The record evidence before us indicates that LOT C customers occupy a different place in the chain of distribution than do LOT A/B customers. At LOT C, the affiliated resellers tend to make sales in small quantities ("sometimes just a few pieces of pipe at a time") to these customers. Borusan section A response at 13. In contrast, Borusan makes mill direct sales only to the following customers: affiliated companies, customers requiring special technical services, or customers located in Istanbul that purchase at high volume. *Id.* at 12.

Finally, with respect to the level of selling expenses involved at each channel of distribution, our examination of the expenses reported on home market sales indicates that, as Borusan claims, the per-unit indirect selling expenses are higher for sales made through LOT C than for those made at LOT A/B. Consistent with the Department's practice and regulations, we have considered this as an additional factor in our determination that LOT C is separate from, and more advanced than, LOT A/B.

Comment 1B—Price Differences Between Levels of Trade

The petitioners contend that, even if the Department correctly determined that Borusan's LOT C sales were made at a different level of trade than its LOT A/B sales, the Department erred in granting a level-of-trade adjustment with respect to comparisons made to LOT C sales. According to the petitioners, Borusan has not demonstrated that any price differences that exist between LOT A/B and LOT C are due to the difference in level of trade. The petitioners note that the Statement of Administrative Action accompanying the URAA (SAA) provides that the Department will grant a level-of-trade adjustment only where there is a difference in level of trade and the difference affects price comparability. Therefore, the petitioners claim, the burden is on Borusan to demonstrate a "causal link" between the difference in selling functions and the difference in prices.

The petitioners argue that, in this case, one likely reason that prices for sales at LOT C are higher than at LOT A/B is because of the smaller volumes involved in LOT C sales. In this respect, the petitioners reference the SAA (at 830) for the proposition that the Department must "ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales." The petitioners also suggest that another factor in higher LOT C prices is the fact that trade discounts are offered at LOT A/B but not at LOT C. The petitioners conclude that, because Borusan has made no effort to discount the impact of non-level-of-trade factors that account for the difference in prices, it is not entitled to a level of trade adjustment.

Borusan responds that there is no provision in the statute or regulations that requires that there be a causal link

between different selling functions and differences in prices. Rather, Borusan asserts, after finding separate levels of trade, the Department need only find that a pattern of price differences exists at different levels of trade, which allows the presumption that the price differences are attributable to different levels of trade. Borusan agrees in part that the price differences here arise because of a difference in quantities sold at each level; however, Borusan disagrees with the petitioners' interpretation of the SAA's provision regarding quantities and level-of-trade adjustments. Borusan argues that the petitioners have taken this quote out of context, as it is only intended to be illustrative of the Department's concern against double-counting when a party claims both a level-of-trade adjustment and an adjustment for differences in quantities.

DOC Position: We agree with the petitioners that we may adjust for differences in levels of trade only when such a difference is "demonstrated to affect price comparability," as provided at section 773(a)(7)(A)(ii) of the Act. However, this sub-section also explicitly provides for how any such effect on price comparability is to be determined, *i.e.*, based on "a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined." *Id.* In this case, as stated in the preliminary results, we determined that a pattern of consistent price differences existed because we found the monthly average prices were higher at one level of trade for virtually all models and months as well as for virtually all sales. *See Preliminary Results* at 6158. Therefore, we cannot accept the petitioners' argument that Borusan must otherwise demonstrate a "causal link" between the difference in selling functions and prices in order to receive a level-of-trade adjustment for comparisons involving LOT C sales.

The Department ruled definitively on this issue in *Antifriction Bearings from France et al.*, 62 FR 2081, 2108 (January 15, 1997) (*AFBs 1994–95*). In addressing an argument made by the petitioner in that case that various respondents had failed to demonstrate that differences in prices were due to differences in the selling functions performed at each level of trade, the Department stated:

> The adoption of [the petitioner's] "due to" standard would impose an independent causation requirement upon both the level-of-trade adjustment and CEP-offset provisions. Such a requirement is neither required by the statute nor administratively feasible.

Id.

We also note the following regarding the petitioners' arguments concerning the effect on prices of (1) Borusan's discount policy and (2) the quantities sold at each level of trade. First, regarding the argument that the lower net prices at LOT A/B are caused in part by greater discounts granted at this level versus those granted at LOT C, while we agree that such differences in Borusan's discount policy between levels of trade may result in lower net prices at LOT A/B, this does not change that fact that such differences in net prices between levels of trade exist. Regarding the petitioners' argument concerning differences in quantities sold, the SAA provision cited by the petitioners regarding quantity differences vis a vis the level-of-trade analysis concerns the importance of not double-counting any quantity adjustment already granted (no quantity adjustment was made in this case). In this respect, the SAA provides:

> Commerce will isolate the price effect, if any, attributable to the sale at different levels of trade, and will ensure that expenses previously deducted from normal value are not deducted a second time through a level of trade adjustment.

SAA at 830. *See also* Senate Report on the Uruguay Round Agreements Act, which provides as follows:

> [S]ection 224 first creates section 773(a)(7)(A) providing for level of trade adjustments. Under this new provision, Commerce is directed to increase or decrease normal value to make due allowance for any difference (or lack of difference) between normal value and export price or constructed export price that is shown to be wholly or partly due to a difference in level of trade. *To avoid double counting, however, this new section expressly precludes level of trade adjustments to account for differences for which an allowance has already otherwise been made.*

Joint Report of the Committee on Finance et al., Uruguay Round Agreements Act, S. Rep. No. 103–412, at 70 (1994) (emphasis added).

Comment 1C—Reseller-Specific Level-of-Trade Adjustment

The petitioners contend that, in the event the Department continues to grant a level-of-trade adjustment for comparisons involving home market sales made at LOT C, it should make the adjustment on a reseller-specific basis. The petitioners argue that this is a more accurate methodology because it reflects the average amount of additional inventory maintenance performed by the specific reseller involved in each transaction.

Borusan responds that there is no legal basis for making the level-of-trade adjustment on a reseller-specific basis. Borusan states that the Department's revised regulations regarding level of trade state that the Department will normally calculate the amount of a level-of-trade adjustment by: (1) calculating the weighted-averages of the prices of sales at the two home market levels of trade; (2) calculating the average of the percentage differences between those weighted-average prices; and (3) applying this average percentage difference to normal value. See 19 CFR 351.412(e). Thus, Borusan concludes, the adjustment is to be made using a combined weighted-average of all sales at a particular level of trade.

DOC Position: We agree with Borusan that the revised regulations provide for a weighted-average adjustment. Further, the SAA states that "any adjustments under section 773(a)(7)(A) will be calculated as the percentage by which the weighted-average prices at each of the two levels of trade differ in the market used to establish normal value." See SAA at 830. Accordingly, we have not changed the manner in which we have calculated the adjustment for these final results.

Comment 2: Home Market Indirect Selling Expenses

The petitioners argue that, because Borusan failed to follow the instructions in the Department's initial questionnaire regarding one of its two reported home market indirect selling expense fields, the Department should re-calculate these expenses based on adverse facts available. The petitioners' comments concern the INDIRSH1 expense, for which Borusan calculated separate factors based on the indirect selling expenses of each company that makes the final sale to the unaffiliated customer (*i.e.*, expenses incurred by the mills—Borusan Boru (BBBF), Kartal Boru, and Bosas—for LOT A sales, and expenses incurred by resellers for LOT B [3] and LOT C sales), allocated across home market sales made by each company. Borusan's specific deficiencies with respect to the Department's instructions include the following, according to the petitioners: (1) the failure to provide a list of overhead expenses itemizing the specific elements of each company's expenses, and (2) the submission of worksheets that are meaningless because they do not demonstrate either the amount of each type of expense or

[3] Although, as noted above, we consider Borusan's claimed LOT A and LOT B sales to be made at the same level of trade, we continue to refer to sales made through the back-to-back reseller channel as 'LOT B' sales for ease of reference and in keeping with the terminology used by the interested parties in this case.

the manner in which it was derived and allocated.

The petitioners also list a number of indirect selling expense and sales values that purportedly do not reconcile with Borusan's financial statements. Due to the proprietary nature of this list of selling expenses and sales values, we are unable to summarize or address the petitioners' specific comments in this regard. We address these claims further in the Final Results Analysis Memorandum.

Noting that the Department did not conduct a verification of information provided by Borusan in this review, the petitioners assert that the accuracy of the Department's margin calculation depends almost entirely on Borusan's cooperation and responsiveness, and maintain that Borusan's disregard of the Department's instructions is tantamount to failing verification. The petitioners claim that Borusan should, therefore, be deemed an uncooperative respondent, and its indirect selling expenses should be calculated using adverse facts available, based on the precedent established in *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990). The petitioners recommend that the Department apply the highest indirect selling expense factor calculated for any member of the Borusan Group to each producer and reseller in the Borusan Group.

Borusan responds that its indirect selling expenses were adequately documented and, therefore, should not be modified. First, Borusan explains that, in response to the Department's instructions, it provided a complete explanation of how indirect selling expenses were calculated for BBBF, the largest pipe producer in the Borusan Group, and for Bozoklar, an affiliated reseller. Second, Borusan explains that, for this review, it used the same methodology that was verified and accepted by the Department in the 1993–94 and 1994–95 reviews.

DOC Position: Consistent with the past two reviews involving this company, we have accepted Borusan's methodology for reporting indirect selling expenses.

Section 776 of the Act provides, *inter alia*, that the Department shall apply facts available if an interested party withholds information that has been requested by the Department. In this case, there is no basis upon which to apply facts available as Borusan has provided the necessary information requested.

First, we do not agree with the petitioners regarding the adequacy of the supporting documentation submitted by Borusan concerning its INDIRSH1 expense. In its response to our supplemental questionnaire, Borusan provided detailed support for indirect selling expenses incurred by the largest pipe producer (BBBF) and by one of its largest resellers (Bozoklar). *See* Borusan sections A–D supplemental questionnaire response (December 19, 1997) (Borusan supplemental response), at Exhibits 13–14. As we explain further in the Final Results Analysis Memorandum, this documentation supports the reported expense and is in accordance with the company's normal books and records.

Regarding the petitioners' proposal that we treat Borusan as if it had failed verification due to the failure to provide information requested by the Department, as noted above, we have no basis for that decision; accordingly, we have not changed the calculation of Borusan's indirect selling expenses. In addition, we note that: (1) we conducted successful verifications of this company in the past two administrative reviews; (2) no verification was required for Borusan in this administrative review; and (3) the petitioners did not request that we verify Borusan's data in this review.

Comment 3: Allocation of Home Market Inland Freight From Plant to Warehouse, Warranty, and Interest Revenue

The petitioners contend that Borusan's calculations of home market inland freight from plant to warehouse, warranty expenses, and interest revenue on an annual basis are distortive and should have been calculated on a monthly basis. Citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan (TRBs from Japan)*, 63 FR 2565 (January 15, 1998), the petitioners state that the Department's practice is to accept allocations only if they are not distortive and the respondent is fully cooperative but unable to report the information in a more specific manner.

With respect to inland freight from plant to warehouse, the petitioners argue that the allocation of freight charges across the entire POR is distortive, and maintain that Borusan has not shown that it is unable to report this expense on a monthly basis. Regarding warranty expenses, the petitioners assert that in addition to allocating this expense on an annual basis, Borusan has failed to comply with the Department's instructions to report such expenses on a model-specific basis, or on the most product-specific basis possible. Regarding interest revenue, the petitioners claim that Borusan's customer-specific allocations are insufficient because, as with inland freight and warranty, allocating this revenue on a yearly basis does not properly account for inflation in Turkey. The petitioners request that the Department base freight charges and warranty expenses on adverse facts available by not deducting these expenses from normal value; for interest revenue, the petitioners recommend the highest revenue reported for any customer during the POR.

Borusan responds generally that: (1) its responses to the Department's information requests concerning these expenses were complete; (2) while the Department requested further explanation regarding how Borusan calculated these charges, it never instructed Borusan to recalculate the expenses once Borusan supplied these explanations; and (3) the petitioners have provided no evidence for their assertion that Borusan's methodology with respect to these expenses is distortive.

Regarding inland freight expenses, Borusan cites to its supplemental questionnaire response, wherein the company provides an explanation regarding why it would be extremely burdensome to tie particular freight invoices to particular sales invoices. Borusan argues that its approach is reasonable given the large number of home market sales. In addition, Borusan notes that it based its reporting of freight charges on calendar year 1996, which the company maintains is conservative since, in so doing, it applied an average 1996 charge per ton to POR sales, including those made in 1997. According to Borusan, it is the Department's practice to accept values from the fiscal year that most closely approximates the POR when the POR spans two fiscal years.

Regarding the warranty expense, Borusan states that the Department's supplemental questionnaire focused on inquiring into why Borusan had calculated warranty expenses on a calendar-year basis instead of on a POR basis. Borusan states that it explained in its responses the calculation of warranty on a fiscal year basis is appropriate because it most closely reflects the POR. Borusan adds that, as with inland freight, it is conservative to calculate home market warranty expenses on a calendar-year (1996) basis given the high inflation rate in Turkey.

Finally, regarding interest revenue, Borusan states that, as explained in its supplemental response, it is unable to tie these charges to individual

transactions. Borusan adds that calculating this item on an annual basis is less distortive than a monthly calculation because interest collected in one month generally relates to invoices from a prior month.

DOC Position: We do not agree with the petitioners' claim that, because Borusan's home market inland freight expense, warranty expense, and interest revenue were not reported on a monthly basis, we should base these items on adverse facts available. However, we have determined that Borusan incorrectly reported home market inland freight expenses for certain LOT B sales, because the terms of sale indicate that these expenses were not incurred on such sales. We have not adjusted for inland freight with respect to LOT B sales.

We first address the petitioners' claims regarding monthly versus annual expense allocations. In our supplemental questionnaire, we asked Borusan for further clarification regarding a number of aspects of its reporting of these items, including requests for further descriptions of the allocation methodologies used in calculating the per-unit amounts reported in Borusan's home market sales database. Our questions concerned primarily: (1) the allocation of the inland freight expense to subject versus non-subject merchandise; (2) the feasibility of reporting the inland freight expense on a transaction-specific basis; (3) the direct versus indirect nature of the warranty expense; and (4) the rationale for reporting the warranty expense on a calendar-year, as opposed to POR, basis. *See, e.g.*, questions 34–36, and 39, of the Department's supplemental questionnaire (November 21, 1997). Borusan addressed each of our questions in turn in its supplemental response. *See* Borusan Supplemental Response at 29–33. Borusan's initial questionnaire response also addressed the basis for its reporting of interest revenue using a customer-specific methodology. See Borusan Questionnaire Response for sections B–D (September 8, 1997) (Borusan sections B–D response).

While we requested further information regarding various aspects of Borusan's allocation methodologies, we did not request the company to report these items on a monthly basis in either the initial or the supplemental questionnaire. Given that we did not request that Borusan report these items in this manner, it would be inappropriate to resort to adverse facts available as requested by the petitioners.[4]

However, we did not deduct freight expenses reported in the home market sales listing for LOT B sales, because Borusan has clearly indicated that such sales are made on an FOB-mill basis. Borusan allocated its freight expenses on a reseller-specific basis, allocating total freight expenses across all sales by each reseller, regardless of whether the sale was made at claimed LOT B or at LOT C. In response to our request that it report inland freight expenses on a transaction-specific basis, Borusan explained in its supplemental response (at 30–31) that it was unable to do so due to the large number of transactions involved, and, instead, continued to allocate these expenses across all sales by reseller. Thus, if a reseller made both LOT B and LOT C sales, Borusan reported per-unit freight expenses (Inland Freight, Plant to Distribution Warehouse; Inland Freight, Plant/Warehouse to Customer) for both LOT B and LOT C sales made by that reseller. In providing this explanation, Borusan referred to delivery expenses incurred on "back-to-back" sales. However, Borusan has clearly indicated, in a number of places in its questionnaire responses and in its case briefs, that the terms of sale for LOT B sales do not include delivery. *See* Borusan section A response at 13 (describing the delivery process on LOT B sales: "The customer arranges for the transportation of the merchandise from the mill to the intended destination."); *see also* Borusan sections B–D response at B–15, regarding terms of delivery for each channel of distribution; *see also* Borusan rebuttal brief at 5: ("LOT B sales involve shipment of the merchandise on an FOB-mill basis directly to the customers without the merchandise entering into the resellers' inventory.") Although one element of the inland freight from plant to warehouse expense (truck loading expense) is reportedly incurred on all domestic shipments of merchandise produced by one mill (BBBF), Borusan provided no means of isolating this expense from the other inland freight expenses that it did not in fact incur on LOT B sales. Accordingly, for these final results, we have not made a deduction for inland freight expenses with respect to sales made at LOT B.

[4] In the event that future reviews of this order are requested, we will reconsider whether to request certain selling expense information on a monthly basis.

Comment 4: Pre-Sale Warehouse Expenses

The petitioners assert that the Department should deny any adjustment to normal value for Borusan's pre-sale warehouse expenses based on Borusan's failure to quantify these expenses properly. According to the petitioners, Borusan did not take the following actions, as required by the initial questionnaire: (1) Borusan did not list all warehouse locations used to distribute the foreign like product; (2) Borusan did not follow the instructions that it report as pre-sale warehouse expenses direct warehouse expenses only, and that it include indirect expenses for pre-sale warehousing among its reported indirect selling expenses; and (3) Borusan did not describe how the indirect and the direct costs of warehouse operations were separated. The petitioners state that, instead, Borusan simply calculated the reported pre-sale warehouse expense for each reseller by dividing the total warehouse expense incurred during 1996, including indirect expenses, by the total quantity of goods sold out of stock in 1996. In light of these alleged failures to comply with the Department's instructions, the petitioners assert that the Department should deny any deduction to normal value for pre-sale warehouse expenses.

Borusan responds that it properly documented its pre-sale warehouse expenses incurred in connection with home market sales. First, Borusan claims, the Department's policy, pursuant to section 773(a)(6) of the Act, is to make an adjustment to normal value for warehouse expenses, such as these, that are incurred at remote selling locations, citing *Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Administrative Review*, 62 FR 42496 (August 7, 1997) (*Cookware from Mexico*). Borusan adds that its calculation of pre-sale warehouse expenses was prepared according to the methodology that was verified and accepted by the Department during the two most recent reviews. Finally, Borusan states, the Department did not ask in a supplemental questionnaire for additional information regarding Borusan's calculation of pre-sale warehouse expenses and, because the petitioners have provided no evidence to serve as a basis for the denial of an adjustment for Borusan's pre-sale warehouse expenses, the Department should continue to make this adjustment to normal value.

DOC Position: We have accepted as a movement expense the pre-sale warehouse expenses claimed by

Borusan. With respect to the petitioners' concern regarding the listing of warehouse locations, we note that Borusan did provide, in its initial questionnaire response (at Exhibit B–7), a list of locations for warehouses leased by its affiliated resellers. (Borusan incurred this expense for sales involving such leased warehouses but not with respect to warehouses owned by its affiliates.) With respect to the petitioners' concern regarding direct versus indirect warehouse expenses, first, we consider warehousing expenses that are incurred after the foreign like product leaves the original place of shipment as movement expenses. *See* 19 CFR 351.401(e)(2). Second, Borusan properly isolated this expense to only those sales on which it was incurred, *i.e.*, sales of merchandise stored in leased warehouses. Accordingly, we have accepted Borusan's reporting of this expense.

Comment 5: Packing Costs

The petitioners argue that Borusan failed to create a factual record supporting its calculation of packing costs for both the comparison market and the United States market and, therefore, the Department should calculate Borusan's packing costs using adverse facts available.

First, the petitioners claim that sections B and C of the Department's questionnaire instructed Borusan to do the following: (1) Describe the packing types used in the comparison market and those used to prepare merchandise for shipment to the United States; (2) submit worksheets listing the packing materials used, the average cost of each material, how much of each material was used, the average labor hours by packing type and the average per-hour labor cost, including benefits; and, (3) provide a list of overhead expenses incurred in packing and demonstrate how those expenses were allocated by packing type.

Instead, the petitioners argue, Borusan merely stated that: (1) It packs standard pipe for shipment in both the export and the domestic markets by tying bundles of pipes together with metal straps; and, (2) the reported packing cost includes the costs of labor, materials and overhead incurred during each month allocated over the total metric tons packed.

The petitioners argue further that, while section D of the Department's questionnaire requests a complete and detailed description of each stage of the production process, Borusan's description of the packing stage merely states that the pipe is marked and bundled for final shipment. While acknowledging that Borusan lists some packing materials in response to this item, the petitioners maintain that Borusan neglected to explain whether all bundles are packed in the same manner, or to report the quantities and costs of each packing material used. Likewise, the petitioners argue, Borusan failed to provide average labor hours and average labor costs per hour for packing, and provided no explanation for its allocation of packing overhead expenses. Finally, the petitioners challenge Borusan's methodology for allocating packing costs by weight, and insist that packing costs in the pipe industry are largely a function of the number of pieces being packed, not the weight.

For these reasons, the petitioners suggest that, consistent with *Circular Welded Non-Alloy Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37020 (July 10, 1997) (*Pipe and Tube from Mexico*), the Department should double the average reported home market packing costs and use that as the U.S. packing cost as adverse facts available.

Borusan responds that the petitioners' arguments are without merit, and maintains that the petitioners have overlooked important information contained in Borusan's response. First, Borusan asserts that varnishing costs are materials costs (and were fully discussed in Borusan's sections B–D response at D–41–42) and not packing costs as argued by the petitioners. Second, Borusan claims that it provided allocation worksheets (at Exhibit D–13) that clearly explain the derivation of the reported per-unit costs for each month of the POR.

With respect to the petitioners' argument that Borusan failed to provide a list of variable overhead expenses incurred in packing, Borusan points out that it reported (at D–8) a list of the packing material used to bundle the pipes for shipment, plus the amount and description of each overhead expense incurred in packing.

Finally, Borusan claims that, while the petitioners objected to Borusan's allocation of packing costs based on weight, they offered no evidence to support a claim that Borusan's allocation methodology is distortive or inaccurate. Instead, Borusan argues, the methodology is reasonable and, furthermore, is consistent with the methodology verified and accepted by the Department during the two most recent reviews.

DOC Position: The petitioners' argument in favor of calculating Borusan's packing costs by use of adverse facts available is essentially two-pronged: (1) That Borusan has failed to act to the best of its ability to provide the complete information requested, and (2) that Borusan's chosen methodology, which allocates packing costs on the basis of weight, instead of pieces, is not reflective of actual practice in the pipe industry.

Regarding the first point, Borusan listed (at D–8) its material inputs by type, including packing materials. Further, Borusan's product brochure (at Exhibit A–27) explains that the merchandise is packaged as "bare bundles." The petitioners have provided no evidence to indicate that Borusan has neglected to report all packing materials by type.

In addition, in response to our questionnaire, Borusan provided (at Exhibits D–13, D–14 and D–15) monthly transformation cost tables for its three production facilities. Borusan also provided (at Exhibits D–21 and D–23, respectively) worksheets illustrating the cost calculations for the highest volume U.S. product and the highest volume home market product. Borusan explained in its questionnaire response (at D–44) that all of the costs used in Exhibits D–13, D–14 and D–15 were taken from data contained in the company's internal monthly ledgers.

Regarding the second point, we note that in *Pipe and Tube From Mexico*, the petitioners' suggested model by which we use adverse facts available to calculate packing costs, the packing costs were calculated on a weight basis, the same methodology challenged as unreliable by the petitioners in this review. Furthermore, our acceptance of Borusan's methodology, which was verified and accepted by the Department in the two most recent reviews, is consistent with prior segments of this proceeding.

Comment 6: Allocation of Domestic Brokerage and Handling on U.S. Sales

The petitioners argue that Borusan should not have reported Turkish lashing charges, customs charges, loading charges, and port fees based on the weight of each U.S. shipment, since such charges are actually incurred on an *ad valorem* basis. The petitioners explain that basing such charges on weight results in a distortion when entries cover merchandise of varying values. Therefore, the petitioners assert, the Department should apply the highest domestic brokerage and handling amount reported for any U.S. transaction to all U.S. sales as facts available.

Borusan responds that the petitioners assertion that brokerage and handling

costs are incurred on an *ad valorem* basis is incorrect. Borusan asserts that a percentage charge contained in Borusan's response, which is cited by the petitioner in support of its claim that these expenses are incurred on an *ad valorem* basis, is in fact simply the value-added-tax rate collected on the customs charges and does not relate to the amount of the customs charges in any way.

DOC Position: The information on the record supports Borusan's position that the brokerage and handling charges, which Borusan reported on a shipment-specific basis, reflect the actual charges incurred by Borusan in connection with its U.S. shipments. *See* Borusan sections B–D response at Exhibit C–5. Therefore, we have not accepted the petitioners' arguments.

Comment 7: Interest Expense Factor

The petitioners make the following comments regarding Borusan's reported interest expense factor. First, they raise a general allocation claim, i.e., that Borusan incorrectly calculated this factor by taking the Borusan Group companies' annual expense amounts and dividing by 12. The petitioners propose that, as in the 1994–95 review, the Department should allocate the annual interest expense reported by Borusan to each month of the POR using the ratio of monthly-to-annual-interest expenses for the four largest of the Borusan Group firms.

Regarding the specific items that comprise Borusan's reported interest expense, the petitioners comment on the calculation of this item in the preliminary results as follows: (1) The Department correctly denied the claim made by Borusan in its supplemental response that foreign exchange losses should be excluded because they are due to inflation; (2) Borusan incorrectly included foreign exchange gains related to sales; (3) Borusan incorrectly amortized foreign exchange losses; and (4) Borusan incorrectly included various income items as offsets to its financial expenses, while improperly excluding a miscellaneous "other financial expenses" item. Regarding each of these items, the petitioners also claim that it is not possible to reconcile Borusan's breakout of reported income and expense items with the totals reported in Borusan's financial statements.

The petitioners' primary arguments concerning each of these issues are as follows. With respect to (1), the petitioners state that Borusan's own financial statement treats foreign exchange losses as an expense, not as an inflation adjustment. Regarding (2), while the petitioners acknowledge that gains on financial assets such as cash balances are appropriate offsets to financing costs, they maintain that Borusan has not explained sufficiently why its reported gains are appropriate offsets, particularly in light of the fact that the Department excluded Borusan's foreign exchange gains in the past two reviews (finding that Borusan's reported foreign exchange gains were related to sales, not production operations). Regarding (3), the petitioners state that exchange rate losses should not be amortized but, instead, all period losses should be included in the interest expense factor, and maintain that Borusan has not reported this expense in accordance with its normal books and records. Finally, with respect to (4), the petitioners state that the Department should not allow Borusan's claimed offsets for various categories of interest income (which concern offsets other than the exchange rate gain offset discussed in item 2, above), but should include the "other financial expenses" item because Borusan did not explain sufficiently why this should be excluded.

While Borusan does not address the petitioners' general comment that the Department should allocate interest expenses to each month of the POR using the ratio of monthly-to-annual-interest expenses for the four largest of the Borusan Group firms, it does respond to each of the other comments raised by the petitioners.

First, Borusan contends that, as claimed in the supplemental questionnaire, exchange rate losses are caused by inflation and should not be included in interest expense. Second, Borusan states that, consistent with the two most recent reviews, it did not make any offset for exchange gains related to sales. Third, Borusan disagrees with the petitioners' contention that there is no precedent for Borusan's amortization of exchange rate losses on foreign currency debt. In fact, Borusan claims, it is the Department's practice to amortize such translation losses over the life of the loan. Fourth, Borusan disputes the petitioners' suggestion that it did not substantiate its claimed interest income offsets, and maintains that its "other financial expenses" item should be excluded because it concerns bank commissions, which are reported in a separate field.

DOC Position: We first note that, consistent with prior segments of this proceeding and with the petitioners' arguments in this segment of the proceeding, we have allocated Borusan's interest expenses to each month of the POR using the ratio of monthly-to-annual-interest expenses for the four largest of the Borusan Group companies. *See 1994–95 Final Results* at 69074.

Regarding the petitioners' comments on the calculation of the interest factor, we agree with the petitioners that exchange losses on foreign currency debt represent a cost of borrowing and, therefore, should be included in the financial expense calculation. *See 1993–94 Final Results* at 51632 ("The Department has clearly established that translation losses on dollar-denominated loans, as reflected in the company's income statement, are appropriately included in the cost of production because they reflect an actual increase in the amount of local currency that will have to be paid to settle these loans.") We have continued to include such losses in the interest expense calculation.

We disagree, however, with the petitioners' assertion that none of Borusan's reported exchange rate gains should be allowed. Our practice is to include foreign exchange gains as an offset to finance expenses if they are related to the cost of acquiring debt for purposes of financing production operations, and to exclude this item if it relates to sales. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebar from Turkey)*, 62 FR 9737, 9741 (March 4, 1997); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30324 (June 14, 1996). In applying this standard in the prior two segments of this proceeding, we did not allow any of Borusan's reported exchange rate gains as an offset, finding that such gains "were not debt-related, but rather involved export sales activities (*i.e.*, the gains arising from foreign-currency denominated export receivables)." *1994–95 Final Results* at 69074; *see also 1993–94 Final Results* at 51632 ("In this case, we find that foreign exchange gains are related to sales, not production; therefore, they should not be used as an offset for calculating home market interest expenses.")

However, unlike prior reviews, in the instant proceeding Borusan has included in its interest expense calculation only those exchange rate gains related to cash balances and inventory, while excluding those related to sales (accounts receivable). *See Borusan sections B–D response* at Exhibit D–20 (separating exchange rate gains "earned on accounts receivable" from those earned on "cash balances and other," and demonstrating that these two items equal "total foreign exchange gains"); *see also Borusan*

supplemental response, Attachment J[5]). Exchange rate gains on cash balances and inventory are short-term in nature and do not constitute a separate investing activity. Accordingly, we have accepted these exchange gains as an offset to finance expenses.

We also disagree with the petitioners' contention that Borusan should not be permitted to amortize its exchange rate losses. For purposes of our analysis, it is appropriate to amortize the foreign exchange losses over the life of the associated debt, since the gain or loss is realized only as the loans are paid. *See, e.g., Rebar from Turkey* at 9743. However, we also disagree with Borusan's proposed weighted-average amortization of the foreign exchange losses. Instead, we have amortized the foreign exchange loss incurred on each loan over the life of the associated loan.

Finally, regarding Borusan's claimed "other income" offsets and its rationale for not including its "other financial expenses" item, we note the following. First, as a general matter, we disagree with the petitioners' contention that it is not possible to substantiate the breakout of reported income and expense items from the totals reported in the financial statements. In fact, other than an amount called discount on term transactions, Borusan provided a detailed breakdown of the items listed in its financial expense calculation and a brief description of each item included therein. *See* Borusan sections B–D response at D–20.

It is the Department's practice to allow a respondent to offset financial expenses with short-term interest income earned from the general operations of the company. *See, e.g., Timken* v. *United States*, 852 F. Supp. 1040, 1048 (CIT 1994). The Department does not, however, offset interest expense with interest income earned on long-term investments because long-term investment does not relate to current operations. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy*, 60 FR 31981, 31991 (June 19, 1995). Therefore, we have included income offsets that Borusan demonstrated were short-term in nature. We note in particular that the largest such offset, Borusan's 'other financial income,' relates to short-term bank interest; the absence of long-term notes receivable on Borusan's financial statements indicates that this amount is from short-term sources. We did not allow one claimed offset, 'discount on term transactions,' for which Borusan failed to explain either the source of the income or the short or long-term nature of the item.

We also agree with Borusan that 'other financial expenses' concern bank commissions, which were reported separately. Accordingly, we have not added such expenses to Borusan's interest expense calculation, as requested by the petitioners.

Comment 8: Purchases From Affiliated Suppliers

The petitioners argue that the Department should revalue the costs of coil and zinc purchased by Borusan's mills (BBBF, Kartal Boru, and Bosas) from affiliated parties. The petitioners state that the following data in Borusan's response indicate below-market pricing of such inputs: (1) BBBF's coil purchases from an affiliated party covered only the cost of production, plus transportation, exclusive of the affiliated party's selling, general and administrative expenses or profit; and (2) proprietary information in Borusan's response (as further described in the Final Results Analysis Memorandum) indicates that Kartal Boru's and Bosas' coil purchases, and BBBF's zinc purchases also were not made at market prices.

Borusan responds that the petitioners' allegation regarding prices paid to suppliers selectively ignores information provided in Borusan's supplemental response that demonstrates that the mills paid market prices for affiliated party coil and zinc inputs. Borusan claims that the petitioners distort the administrative record by characterizing BBBF's coil purchases from its affiliated supplier as 'substantial.'

DOC Position: We consider the inputs in question (coil and zinc) to be major inputs with respect to the production of subject merchandise. Accordingly, we have valued purchases of coil and zinc by Borusan's mills from affiliated parties at the higher of the cost of producing the input, the transfer price, or the market price. *See* section 773(f)(3) of the Act; *see also* 19 CFR 351.407(b). We describe our methodology for doing so in the Final Results Analysis Memorandum.

Comment 9: G&A and Interest Expense

The petitioners argue that the G&A and interest expense factors must be recalculated because the denominator (COGS) includes packing, which, when the factors are applied to COMs exclusive of packing, understates the G&A and interest expense calculations. The petitioners suggest that the Department should add packing to COM to correct the understatement of G&A and interest expenses, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 62 FR 55574, 55581 (October 27, 1997).

Borusan responds that it has used the same methodology in the two most recent reviews and that this methodology was verified and accepted by the Department. Borusan contends that packing represents an insignificant portion of the understatement and is more than offset by applying historical G&A and interest expense factors to replacement costs.

DOC Position: We agree with the petitioners and have added packing to COM when calculating the G&A and interest expenses. Although Borusan asserts that the distortion is negligible, there is still an understatement of these expenses. As for Borusan's claim that we are applying a historical G&A and interest expense factor to replacement costs, both G&A and interest have been adjusted to account for inflation before calculating the G&A and interest expense factors.

Comment 10: Circumstance-of-Sale Adjustment for Imputed Credit

Borusan claims that the Department failed to make a circumstance-of-sale (COS) adjustment to normal value for imputed credit expenses when normal value was based on CV. Borusan argues that, pursuant to section 773(a)(8) of the Act, the Department's well-established practice dictates that it make such an adjustment, citing, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9195 (February 24, 1998); *TRB's From Japan* at 2583; *Amended Final Results of Antidumping Duty Administrative Review: Fresh Kiwi Fruit From New Zealand*, 62 FR 47440 (September 9, 1997)).

The petitioners respond that: (1) due to Borusan's failure to quantify the COS adjustment it seeks, no such adjustment is warranted, and (2) if the Department does grant a COS adjustment, such adjustment should be based on a proper calculation of Borusan's net prices. Regarding the adequacy of Borusan's credit calculation, the petitioners claim that Borusan calculated a POR-average home market interest rate, and maintain that Borusan's failure to provide monthly interest rates makes it impossible to properly calculate home market credit expenses for purposes of

[5] The petitioners argue, based on proprietary information, that the information provided in this exhibit is insufficient to allow the Department to change its position from the past two reviews and grant an offset for exchange gains. We address this aspect of the petitioners' argument in the Final Results Analysis Memorandum.

the COS adjustment. The petitioners assert that the various interest rates charged to Borusan during the POR vary widely, and suggest that, due to the high inflation in Turkey, it would be unfair to calculate interest expense on an average basis. Further, the petitioners add, it is the Department's practice to calculate costs on a monthly basis, citing *Pipe and Tube from Mexico* at 37016.

The petitioners argue in the alternative that, if the Department does make the COS adjustment requested by Borusan, imputed home market credit expenses must be based on a proper calculation of Borusan's net prices. Specifically, the petitioners argue, Borusan's calculation of net price does not include a deduction for the quantity rebate granted to certain customers by Borusan, thereby overstating the net price to which the credit expense is applied.

DOC Position: Pursuant to section 773(a)(8) of the Act, a COS adjustment for home market imputed credit expenses should be made when CV is the basis for normal value. We use imputed credit expenses to measure the effect of a specific respondent's selling practices in the United States and in the comparison market. Because Borusan's U.S. sales were export price sales, the adjustment entails adding U.S. imputed credit to the CV, and subtracting home market imputed credit from the CV. Although we added the U.S. imputed credit for the preliminary results, we neglected to deduct the home market imputed credit. We have made this correction for the final results.

We disagree with the petitioners' assertion that, because Borusan did not calculate its home market credit expense using monthly interest rates, we should disallow this adjustment. Borusan calculated this expense on a weighted-average basis, *i.e.*, the total principle times the number of days utilized for each short-term loan. This methodology is consistent with that used in calculating interest for both the 1993–94 and the 1994–95 reviews of this proceeding, and we did not request that Borusan recalculate this expense using monthly interest rates. Under these facts, it would be inappropriate to deny this adjustment.

We also disagree that a deduction for the quantity rebate, as proposed by the petitioners, is appropriate, because the quantity rebate is not part of the opportunity cost of the use of money in each sale. Instead, the quantity rebate is given after payment has been made by Borusan's customer.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period May 1, 1996, through April 30, 1997:

Manufacturer/exporter	Margin (percent)
The Borusan Group	0.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.[6] While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) the cash deposit rate for Borusan will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.74 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 18, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–17250 Filed 6–26–98; 8:45 am]

BILLING CODE 3510–DS–P

[6] We note that, in the preliminary results, we erroneously indicated that if the assessment rates that we calculated for the final results were *de minimis*, we would not instruct Customs to assess duties. However, section 353.6 (b) of our regulations requires the assessment of duties for any importer-specific assessment rates greater than zero. Accordingly, we have not disregarded *de minimis* rates for assessment purposes.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of proposed boundary expansion for the Padilla Bay National Estuarine Research Reserve.

SUMMARY: The Sanctuaries and Reserves Division of OCRM is considering a requesting by the Washington State Department of Ecology to include the 92

acre Hat Island adjacent to the boundary of the Padilla Bay National Estuarine Research Reserve (PBNERR) within the PBNERR boundary. Hat Island, currently in state ownership, contains primarily forested upland, rocky cliffs, rocky shores, and intertidal seagrass habitats. The island supports old growth forests dating back to the 1600's, active nesting and perching habitat for state and federally threatened and endangered bird species, and unique vegetative communities including the "Idaho bunchgrass" recommended for protection by the Washington State Natural Heritage Program. It provides ideal research and education opportunities for the PBNERR.

FOR FURTHER INFORMATION CONTACT: Terry Stevens, Reserve Manager, Padilla Bay National Estuarine Research Reserve, Breazeale-Padilla Bay Interpretive Center, 1043 Bay View-Edison Road, Mount Vernon, Washington 98273; Phone (360) 428–1558 or Nina Garfield, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, SSMC4, 11th Floor, Silver Spring, MD 20910; Phone (301) 713–3141, ext. 171.

SUPPLEMENTARY INFORMATION: The Padilla Bay National Estuarine Research Reserve (PBNERR) was designated in 1980 pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The PBNERR includes more than 10,000 acres within its administrative boundary comprising eelgrass, subtidal sand and mud habitats, and an upland farm area.

Washington State requested NOAA approval to amend the PBNERR boundary to include the state-owned Hat Island adjacent to the current boundary. For several years Hat Island has been discussed for possible inclusion into the PBNERR boundary. During original boundary planning efforts by the Governor's Steering Committee for the Reserve in 1979–80, Hat Island was recognized as a valuable asset for inclusion, but due to its private ownership and extreme high cost, it was decided to leave it outside the boundary and only include the two islands (Saddlebag and Dot) to the north which were already owned by the State. Interest in including Hat Island at a future date was noted in the management plan for future consideration. In the early 1990's, Hat Island was purchased by the Nature Conservancy, and then by the State with funds appropriated for the Washington Wildlife and Recreation Program, with interim management responsibility granted to the Washington Department of Natural Resources (WDNR). Discussions between the Washington Department of Ecology (the PBNERR's managing authority) and the WDNR have concluded that the island is best suited for inclusion in the PBNERR.

The inclusion of Hat Island into the PBNERR will enhance opportunities for research, monitoring, education, and management of Puget Sound's unique estuarine resources.

The expansion proposes inclusion of the 92 acres Hat Island on the western boundary of the PBNERR. This island is dominated by forested uplands, including old growth stands of Douglas fir, steep rocky cliffs, unique vegetative communities, and rocky shoreline, and intertidal and subtidal seagrass communities.

Any person wishing to comment on the proposed boundary expansion may forward written comments to Ms. Nina Garfield, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 11th Floor, Silver Spring, MD 20910. Comments must be submitted no later than thirty (30) calendar days from issuance of this notice.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.)

Dated: June 22, 1998.

Nancy Foster,

Asssistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 98–17260 Filed 6–26–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title, Associated Form, and OMB Number: Customer Service Survey—Regulatory Program, U.S. Army Corps of Engineers; ENG 5065; OMB Number 0710—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 60,000.

Responses Per Respondent: 1.

Annual Responses: 60,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 15,000.

Needs And Uses: The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination. The information collected will be used to determine what areas of the program can be improved and to consider policy areas which may need revision to improve customer satisfaction. Without this customer survey, we could not comply with Executive Order 12862, "Setting Customer Service Standards," and would have to rely on more informal and less structured, and therefore less effective, methods of obtaining public input.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Farms; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. James A. Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 22, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17160 Filed 6–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 205, Publicizing Contract Actions, and DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Number 0704–0286.

Type of Request: Extension.
Number of Respondents: 6,862.
Responses per Respondent: 1.
Annual Responses: 6,862.
Average Burden per Response: 1.1 hours.
Annual Burden Hours: 7,548.
Needs and Uses: This information collection requirement pertains to contractor information provided to Cooperative Agreement Holders. DFARS Subpart 205.4 and the clause at DFARS 252.205–7000 require that defense prime contractors awarded contracts over $500,000 provide to cooperative agreement holders, upon request, a list of employees or offices that are responsible for entering into subcontracts under defense contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The purpose of the cooperative agreements is for the agreement holders to provide procurement technical assistance to business entities within a specified geographic area. This guidance implements 10 U.S.C. 2416.
Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.
Frequency: On occasion.
Respondent Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 22, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17161 Filed 6–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, and Related Clauses at 252.236; OMB Number 0704–0255.
Type of Request: Extension.
Number of Respondents: 2,740.
Responses per Respondent: 1.
Annual Responses: 2,740.
Average Burden per Response: 100.96 hours.
Annual Burden Hours: 276,625.
Needs and Uses: This information collection requirement pertains to information collections applicable to fixed-price construction contracts. Government personnel use the information generated by these collections to (a) evaluate contractor proposals for contract modifications, (b) determine that a contractor has removed obstructions to navigation, (c) review contractor requests for payment for mobilization and determine reasonableness of costs allocated to mobilization and demobilization, and (d) determine eligibility for the 20 percent evaluation preference for U.S. firms in the award of some overseas construction contracts. This request covers the following requirements prescribed in DFARS 236.570, applicable to fixed-price construction contracts: (i) DFARS 252.236–7000 requries contractors to submit a price breakdown with any proposal for a contract modification; (2) DFARS 252.236–7002 requires contractors to notify the contracting officer of obstructions in navigable waterways; (3) DFARS 252.236–7003 requires contractors to provide supporting documentation when submitting requests for payment for mobilization and preparatory work; (4) DFARS 252.236–7004 permits contracting officers to require contractors to furnish cost data justifying the percentage of the cost split between mobilization and demobilization, if the contracting officer believes that the proposed percentages do not bear a reasonable relation to the cost of the work; and, (5) DFARS 252.233–7010 and DFARS 252.236–7012 require offerors to identify their status as a U.S. firm or, when contract performance will be on Kwajalein Atoll, status as a U.S. or Marshallese firm.
Affected Public: Business or Other For-Profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 23, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17162 Filed 6–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA) will meet in closed session on June 23–24, 1998 at the National Reconnaissance Organization, 14675 Lee Road, Chantilly, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the objectives and plans of the National Imagery and Mapping Agency (NIMA) to meet the needs of the national and military intelligence customers as they enter the 21st Century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17158 Filed 6–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Test and Evaluation

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Test and Evaluation will meet in closed session on July 14–15, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the entire range of activities relating to Test and Evaluation and recommend new and innovative ways that the T&E community can better support the warfighter.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: June 23, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17159 Filed 6–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 28, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 23, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Indian Student Eligibility Certification Form for Formula Grants to Local Educational Agencies.
Frequency: Annually.
Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 11,200.
Burden Hours: 3,100.
Abstract: The Indian Student Eligibility Certification Form is used by LEAs to certify the number of eligible Indian students enrolled within their school system for the purpose of generating funds under the Indian Education Formula Grant Program to LEAs.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) Self-Study Instrument.
Frequency: Every 3 or 4 years per State, based on the monitoring schedule.
Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 12.
Burden Hours: 3,360.
Abstract: Under the Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act), States are required to maintain and implement a Statewide, comprehensive, coordinated, multi disciplinary, interagency system that provides early intervention services to infants and toddlers with disabilities and their families. The State's lead agency for Part C is responsible for the monitoring of programs and activities within the State, and the Federal government must provide technical assistance to States to carry out their Part C responsibilities. The self study instrument provides technical guidance to the State, and is also used for Federal and State monitoring of the Part C program.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Section 704 Annual Performance Report.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't. SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 320.

Burden Hours: 44.

Abstract: Section 752(I)(2)(A) of the Rehabilitation Act Amendments of 1992 (Attachment A) requires each grantee under this program to submit an annual report to the Commissioner of the Rehabilitation Services Administration (RSA) on essential demographic, service and outcome information. The information collected by RSA will be used to evaluate the program, including the new Government Performance Results Act requirements, and make recommendations to Congress. It provides RSA with a uniform and efficient method of monitoring the program for compliance with statutory and regulatory requirements and to determine substantial progress required for funding of all non-competing continuation discretionary grants. The respondents are Centers for Independent Living and Designated State Units.

[FR Doc. 98–17187 Filed 6–26–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Correction.

SUMMARY: On June 16, 1998 a notice of the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education was published in the **Federal Register** (63 FR 32866–32867).

This notice corrects the times allocated for the closed and open sessions. The correct times for the closed sessions are from 8:30 a.m. to 12:00 p.m., and from 2:30 p.m. to 5:00 p.m. The correct time for the open session is from 12:00 p.m. to 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, U.S. Department of Education, 600 Independence Avenue, SW, Room 3100, ROB #3, Washington, DC 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph

Dated: June 19, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–17139 Filed 6–26–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98–561–000; FERC–561]

Proposed Information Collection and Request for Comments

June 23, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before August 28, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 561 "Annual Report of Interlocking Positions" (OMB No. 1902–0099) is used by the Commission to implement the statutory provisions of Title II, Section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d) which amended Part III Section 305 © of the Federal Power Act (FPA). Submission of the list is necessary to fulfill the requirements of Section 211—Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information is collected by the Commission to identify persons holding interlocking position between public utilities and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. Specifically, the Commission must determine that individuals in utility operations holding two positions at the same time would adversely affect the public interest. The Commission can employ enforcement proceedings when violations and omissions of the Act's provisions occur. The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR 46.6. and 131.31.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)x(2)x(3)
1,600	1	0.25	400

The estimated total cost to respondents is $21,052. (400 hours divided by 2,088 hours per year per employee times $109,889 per year per average employee = $21,052). The cost per respondent is $13.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing acquiring, installing, and

utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17184 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2035–006, CO]

City and County of Denver, CO; Notice of Application and Applicant-Prepared EA Accepted for Filing; Notice Requesting Interventions and Protests; and Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

June 23, 1998.

The Applicant, the City and County of Denver, Colorado acting by and through its Board of Water Commissioners (Denver Water), proposes to continue to operate and maintain its existing Gross Reservoir Project and to construct a hydroelectric generating facility with a capacity of not more than 5 megawatts (MW) at the project. The Gross Reservoir Project is on South Boulder Creek in Boulder County, Colorado. The project is located partially on lands of the United States administered by the U.S. Forest Service, Roosevelt National Forest, and the Bureau of Land Management.

The existing project consists of: (1) a 340-foot-high concrete gravity dam with a crest length of 1,050 feet; (2) a reservoir with a surface area of 418 acres with 2-foot-high flashboards on the dam spillway; and (3) a valve house, located downstream from the spillway apron, containing discharge valves that release flows onto a reinforced-concrete splash pad. The applicant proposes to install the following facilities: (1) a powerhouse, reconstructed out of the existing valve house, containing one turbine-generator unit with an installed capacity not to exceed 5 MW; (2) a switchyard, located between the dam and the powerhouse; and (3) a 25-kilovolt (kV), 1-mile-long transmission line, interconnecting to the Public Service Company of Colorado system and replacing an existing 4.16-kV distribution line.

The purpose of this notice is to: (1) update interested parties on the Gross Reservoir Project application process status: (2) inform all interested parties that the Gross Reservoir applicant-prepared environmental assessment (EA) and final license application filed with the Commission on April 29, 1998, are hereby accepted; (3) invite interventions and protests; and (4) solicit comments, final recommendations, terms and conditions, or prescriptions on Denver Water's EA and final license application.

Applicant-Prepared EA Process and Gross Reservoir Project Schedule

The Energy Policy Act of 1992 (Act) gives the Commission the authority to allow the filing of an applicant-prepared EA with a license application. The Act also directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeably required by the Commission.

On September 10, 1996, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for the processes of license application and applicant-prepared EA preparation to be coordinated.

National Environmental Policy Act (NEPA) scoping was conducted on the project through scoping documents issued October 17, 1996, and March 19, 1997, and in public scoping meetings on November 7, 1996. On December 15, 1997, Denver Water issued for comment a draft license application and preliminary draft EA. On April 29, 1998, Denver Water filed with the Commission the final license application and applicant-prepared EA, copies of which can be obtained from Denver Water.

Commision staff have determined that some additional information is needed from Denver Water, which is due on July 10, 1998 (except for engineering drawings of Gross dam, which are due on August 9, 1998). Once that information is received, staff will complete and issue a draft EA for comment. Staff anticipate issuing their draft EA by the end of 1998, and intend on incorporating final comments into the staff draft EA. The deadline for filing comments on the application pursuant to this notice takes into account the staff additional information request. Therefore, commenters should have sufficient time to review Denver Water's additional information before filing final comments.

Interventions and Protests

All such filings must: (1) bear in all capital letters the title "MOTION TO INTERVENE", (2) set forth in the heading the name of the Applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 19 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from Denver Water. All motions to intervene must be received 60 days from the date of this notice. A copy of

any motion to intervene or protest must be served on each representative of Denver Water specified in the final application.

Comments, Final Terms and Conditions, Recommendations and Prescriptions

Interested parties have 60 days from the date of this notice to file with the Commission any final comments, final recommendations, terms and conditions and prescriptions for the Gross Reservoir Project. Denver Water will have 45 days to respond to those.

Filing Requirements

The above documents must be filed by providing an original and 8 copies as required by the Commission's regulations to: Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17199 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–12–000]

Gulf States Transmission Corporation; Notice of Filing

June 23, 1998.

Take notice that on June 15, 1998, Gulf States Transmission Corporation (Gulf States) submitted standards of conduct under Order Nos. 497 *et seq.*[1] and order Nos. 566 *et seq.*[2] Gulf States states that it is filing its standards of conduct to reflect El Paso Energy Corporation's recent acquisition of Gulf States.

Gulf States states that it has served copies of the filing upon all of its affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 8, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17194 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–617–000]

Koch Gateway Pipeline Company; Notice of Application

June 23, 1998.

Take notice that on June 16, 1998, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251 filed a request pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations to abandon an obsolete natural gas transportation service authorized in Docket No. CP78–494 [1] for Columbia Gas Transmission Corporation (Columbia Gas). The application is on file with the Commission and open to public inspection.

Koch proposes to abandon an obsolete transportation service formally provided to Columbia Gas pursuant to Koch's Rate Schedule X–111. Koch states that Columbia Gas concurs with the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 14, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If no motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17189 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–621–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

June 23, 1998.

Take notice that on June 16, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–621–000 a request

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[1] Order no. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *Order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, FERC Stats & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[1] *See*, 5 FERC ¶ 61,173 (1978).

pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to relocate sales tap facilities used to render service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution), located in Elk County, Pennsylvania, under National Fuel's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National Fuel proposes to relocate an existing sales tap, designated as Station T–No. 1374, utilized for transportation service for Distribution, located in Jefferson County, Pennsylvania. National Fuel states that the new station will be located in Elk County, Pennsylvania, approximately three miles east of the existing station, which will be moved in its entirety. National Fuel declares that it is necessary to relocate Station T–No. 1374 because the line it is currently located on, Line F–97(S), is in a deteriorated condition and is scheduled for abandonment. National Fuel asserts that it will submit an application pursuant to Section 7(b) of the Commission's Regulations in the near future with regard to Line F–97(S).

National Fuel declares that it anticipates the flow at the new station, also designated Station T–1374, will be 1,953 Mcf per day with a maximum capacity estimated to be 4,583 Mcf per day. National Fuel states the cost of relocating this station is estimated to be $125,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17190 Filed –26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–623–000]

NorAm Gas Transmission Company; Notice of Application to Abandon

June 23, 1998.

Take notice that on June 17, 1998, NorAm Gas Transmission Company (NorAm), P.O. Box 21734, Shreveport, Louisiana 71151 filed under Section 7(b) of the Natural Gas Act, for authority to abandon, ownership interests in two offshore Louisiana gathering facilities. The application is on file with the Commission and open to public inspection.

Specifically, NorAm proposes to abandon its 20.83% ownership interest in a 10.34 mile, 20-inch gathering line extending from Block 57 to Block 32 in the Eugene Island field. NorAm also proposes to abandon its 18.79% ownership interest in a 1.45 mile, 12-¾–inch gathering line extending from block 73 to Block 72 in the Main Pass Field.

Any person desiring to be heard or make any protest with reference to said application should on or before July 14, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17191 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–253–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 23, 1998.

Take notice that on June 19, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

Williston Basin states that the revised tariff sheets are being filed to make minor tariff modifications and housekeeping changes necessary to correct and clarify its Tariff as more fully explained in the filing.

Williston Basin is requesting that the tariff sheets be made effective on August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17200 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–85–000]

Charles B. Wilson, Jr., Inc., et al.; Notice of Petition for Dispute Resolution

June 23, 1998.

Take notice that, on June 15, 1998, Charles B. Wilson, Jr., Inc., Powell Petroleum, Inc., Billy R. Powell, Bronco, Ltd., Charles Bruce Wilson, III and Lea Wilson (collectively: Applicants) filed a petition requesting the Commission to resolve the dispute they have with Colorado Interstate Gas Company (CIG) as to whether Applicants owe CIG any Kansas ad valorem tax refunds. Applicants request that the Commission find that they have no Kansas ad valorem tax refund liability to CIG for the period from 1983 to 1988, based on a 1988 Settlement Agreement between Applicants and CIG (1988 Settlement). Applicants' petition is on file with the Commission and open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al.*,[1] on remand from the DC Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.

Applicants state that the CIG has attempted to collect Kansas ad valorem tax refunds from them for the period from 1983 to 1988. Applicants contend that these efforts are a breach of their 1988 Settlement with CIG, because the 1988 Settlement released Applicants and CIG from all claims against each other relating to Applicants' gas purchase agreement with CIG. Applicants also state that they will be establishing an interest bearing escrow account in which they will place the involved principal and interest (excluding royalty refunds). Applicant requests that in the event the 1988 Settlement does not resolve the issue refund liability, then Applicant requests that Commission grant an adjustment relieving Applicant from such refund liability. Applicants also request that the Commission establish a briefing schedule so that Applicants can fully advise the Commission of their position.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17201 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 92 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2375–013, Maine and 8277–008, Maine]

International Paper Company Otis Hydroelectric Company; Notice of Availability of Final Environmental Assessment

June 23, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for major new licenses for the Riley-Jay-Livermore Project and Otis Hydroelectric Project located on the Androscoggin River in Franklin, Androscoggin, and Oxford Countries, near the Towns of Canton, Jay, Livermore, and Livermore Falls, Maine, and has prepared a final Environmental Assessment (EA) for re-licensing the projects. In the EA, the Commission staff has analyzed the potential environmental impacts of the projects and has concluded that approval of the projects, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington DC 20426.

For further information, please contact Monte J. TerHaar at (202) 219–2768 or Patti-Leppert Slack at (202) 219–2767.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17186 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1984–056 Wisconsin and 11162–002 Wisconsin]

Wisconsin River Power Company, Wisconsin Power and Light Company; Notice of Availability of Draft Environmental Assessment

June 23, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new major license for the Petenwell-Castle Rock Hydroelectric Project located on the Wisconsin River in Woods, Juneau, and Adams Counties near Necedah, Wisconsin, and the application for original major license for the Prairie du Sac Hydroelectric Project located on the Wisconsin River in Sauk and Columbia Counties near Prairie du Sac, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the proposed licensing actions. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed licenses, and has concluded that approval of the proposed licenses, with appropriate measures, would not constitute major federal actions significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal

Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 1984–056 to all comments on the Petenwell-Castle Rock Project, and Project No. 11162–002 to all comments on the Prairie du Sac Project. For further information, please contact Peter A. Leitzke at (202) 219–2803.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17185 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Commission

[Docket No. CP98–363–000]

Etowah LNG Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Etowah LNG Project; Request for Comments on Environmental Issues; and Notice of Site Visit, Public Scoping Meeting, and Technical Conference

June 23, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the liquefied natural gas (LNG) storage plant and associated pipeline facilities proposed in the Etowah LNG Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by an Etowah LNG Company, L.L.C. (Etowah) representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. Etowah would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Etowah could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

[1] Etowah LNG Company, L.L.C.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Summary of the Proposed Project

Etowah seeks authority to construct and operate an LNG storage plant and associated pipeline facilities in Polk County, Georgia. The proposed LNG plant would be located approximately 4.5 miles northeast of Rockmart, Georgia and 40 miles northwest of Atlanta, Georgia. The purpose of the facilities is to meet winter peak shaving requirements, including those of Atlanta Gas Light Company (AGLC) and the City of Austell Gas System.

The primary components of the LNG plant would include:

- A 750,000-barrel double-wall metal LNG storage tank with a gas-equivalent capacity of 2.5 billion cubic feet;
- A pretreatment and liquefaction system with a capacity of 15 million cubic feet per day (MMcfd);
- A boil-off recompression system;
- A vaporization and sendout system with a design capacity of 300 MMcfd with standby vaporization capacity of up to 200 MMcfd;
- Measurement facilities;
- Associated control and hazard-protection sustems; and
- A trucking system capable of loading 20,000 gallons per hour..

Etowah also proposes to construct:

- Approximately 12.5 miles of 12.75-inch-diameter pipeline (Etowah pipeline) in Polk County, Georgia. The Etowah pipeline would be adjacent to and overlap an existing utility right-of-way for 83 percent of its route; and
- A 1.3-mile-long permanent access road and new bridge extending from the plant site northward to Davis Town Road.

The LNG storage tank would be approximately 149 feet in height and 250 in diameter. The LNG tank area would be surrounded by an earthen berm that would slope towards an impoundment basin that together form the spill containment system. The proposed project facilities would be designed, constructed, operated, and maintained to comply with the U.S. Department of Transportation Federal Safety Standards for Liquefied Natural Gas Facilities (49 Code of Federal Regulations [CFR] Part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards.

The following related nonjurisdictional facilities would be constructed:

- AGLC would construct and operate approximately 16.8 miles of 24-inch-diameter pipeline (Etowah-Mars Hill Road pipeline) in Polk, Paulding, and Cobb Counties, Georgia connecting the LNG plant to AGLC's distribution system. The Etowah-Mars Hill Road pipeline would be adjacent to and overlap an existing utility right-of-way for 95 percent of its route; and
- Georgia Power would construct and operate an approximately 0.9-mile-long 115 kilovolt (kV) overhead electric powerline collocated with AGLC's pipeline, and a 0.4-acre 115 kV to 4,160 volt substation connecting the LNG plant to the new Georgia Power electric powerline in Polk County, Georgia.

All natural gas received at the LNG facility for liquefaction and storage would be shipped from Southern Natural Gas Company's (Southern) system through the Etowah pipeline. Vaporized natural gas would be transported from the LNG facility either through the Etowah pipeline to Southern's system or through the Etowah-Mars Hill Road pipeline to AGLC's system.

The location of the project facilities is shown in appendix 2.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the LNG plant would affect approximately 50 acres of an 833-acre site owned by Etowah. An additional 7.8 acres would be disturbed during construction of the permanent access road to the site. The 57.8 acres of land for the plant site and access road would be permanently affected by the project.

Construction of the proposed Etowah pipeline would affect approximately 132.3 acres of land, including temporary extra work areas. Following construction, about 50.5 acres of land would be maintained as new permanent right-of-way.

Construction of the related nonjurisdictional facilities would affect approximately 106.4 acres of land. Of this, about 0.4 acre would be required for the substation, 4.2 acres would be required for the powerline, and 101.8 acres would be required for the Etowah-Mars Hill Road pipeline. Following construction, about 4.6 acres would be required for the substation and permanent right-of-way for the powerline and 61.1 acres would be required for the permanent right-of-way for the Etowah-Mars Hill Road pipeline.

The EA Process/Environmental Issues

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Etowah. This preliminary list of issues may be changed based on your comments and our analysis.

• Geology and Soils:

—Effect of blasting and disposal of blast rock.
—Landslide potential (moderate incidence with high susceptibility).
—Erosion control.
—Facility site and right-of-way restoration.

• Water Resources and Fisheries:

—Groundwater withdrawal and discharge to surrounding surface waters.
—Effect of blasting on potable water sources.
—Effect of permanent access road and bridge on Hills Creek.
—Crossings of 35 perennial waterbodies.
—Impact on Silver Creek, a secondary trout stream.
—Hydrostatic test water rates and discharge locations.

• Vegetation and Wildlife:

Effect of facility construction and operation on wildlife and fisheries habitat, including federally and state-listed threatened and endangered, or sensitive animal and plant species and their habitats.
—Impact on forested wetlands.
—Clearing of upland forest.

• Cultural Resources:

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

• Socioeconomics:

—Impact of a peak workforce of about 300 workers on housing and demands for services in the surrounding area.
—Impact of timber removal on landowners.
—Long-term effects of increased employment and tax benefits on the local economy.

• Land Use and Transportation:

—Crossing of one recreation area leased by the Georgia Department of Natural Resources.
—Effect on 18 residences within 50 feet of the construction work area.
—Visual effect of the storage tank on the surrounding area.
—Impact on future county plans (e.g., schools, roads).
—Consistency with local land use plans and zoning
—Impact of construction and operation traffic

• Air Quality and Noise:

—Air quality and noise impacts associated with construction and operation.

• Public Safety:

—Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion), siting criteria, seismic criteria, and cryogenic criteria.
—Consequences of a major spill.
—Design and operation of the firewater system.
—Assessment of hazards associated with natural gas pipelines.

• Cummulative Impact:

—Assessment of the combined effect of the proposed project with other projects which have been or may be proposed in the same region and similar time frame.

We will also evaluate possible site, routing, and system alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative sites and routes, and measures to avoid or lessen environmental impact). The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P, Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;

• Reference Docket No. CP98–363–999; and

• Mail your comments so that they will be received in Washington, DC on or before July 24, 1998.

Beyond asking for written comments, we invite you to attend our public scoping meeting that will be held on July 13, 1998, at 7:00 p.m. at the Rockmart Community Center, 604 Goodyear Street, Rockmart, Georgia. This public meeting will be designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. The staff will also visit the proposed LNG plant site and pipeline routes on July 13, 1998.

On July 14, 1998, at 8:30 a.m., the FERC staff will meet with representatives of Etowah to conduct a cryogenic design and engineering review of the proposed LNG facilities. This technical conference will be held at the Northwest Atlanta Hilton, 2055 South Park Place, Atlanta, Georgia. The discussion will initially be limited to the staff and members of the applicant's staff who have expertise in the given topics. Other attendees will be given the opportunity to ask questions on the above issues after the initial discussions have concluded.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor".

Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's services list for this proceeding. If you want to become an intervenor you must file a motion to intervene According to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late internvention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project, site visit, and technical conference is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17183 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Tendered for Filing With the Commission

June 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License (Tendered Notice).

b. *Project No.:* 372–008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydroelectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, (626) 302–1564.

i. *FERC Contact:* Nan Allen at (202) 219–2938.

j. *Description of Project:* The existing project consists of: (1) a 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); and (7) a 2,352-foot-long tailrace.

k. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

l. With this notice, we are initiating consultation with the California State Historic Preservation Officer, as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17188 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 22, 1998, 63 FR 33924.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 24, 1998, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added on the Agenda scheduled for the June 24, 1998 meeting.

Item No.	Docket No. and company
CAE–19	EC96–19–007 and ER96–1663–008, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company.
	ER98–441–000 and 001, Southern California Edison Company.
	ER98–495–000 and 001, Pacific Gas and Electric Company.
	ER98–496–000 and 001, San Diego Gas & Electric Company.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17324 Filed 6–25–98; 11:39 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–57–000]

Algonquin Gas Transmission Company; Notice of Refund Report

June 23, 1998.

Take notice that on June 19, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing a refund report pursuant to Ordering Paragraph (C) of the Commission's February 22, 1995 order in Gas Research Institute (GRI), Docket No. RP95–124–000.

Algonquin states that on May 29, 1998, Algonquin received its share of the GRI refund totaling $866,955.00.

Algonquin states that on June 6, 1998, each eligible firm customer was redited its pro rata share of the GRI refund.

Algonquin states that copies of the filing were served on each of its affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17193 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CT98–56–000]

Iroquois Gas Transmission System, L.P.; Notice of GRI Refunds

June 23, 1998.

Take notice that on June 19, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing a report of Gas Research Institute (GRI) refunds to Iroquois for the period from January 1, 1997 to December 31, 1997.

Iroquois states that the refund credits have been based on the total refund from GRI to Iroquois of $309,562 and that credits were given to all eligible firm customers.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17192 Filed 6–26–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–6]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Gulf of Mexico Program Management Committee.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Nassau Bay Hilton, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: A meeting of the Gulf of Mexico Program Management Committee will be held at the Nassau Bay Hilton, Houston, Texas. The committee will meet from 1:00 P.M. to 5:00 P.M. on July 22 and from 8:30 A.M. to 3:00 P.M. on July 23. Agenda items will include: Multi-Year Performance Plan Review; Overview of Clean Water Action Plan Implementation; FY 1999 Funding Guidance criteria discussion; and Gulf of Mexico Program/Gulf NEP Compact overview.

The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program.

[FR Doc. 98–17261 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–5]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Gulf of Mexico Program Citizens Advisory Committee.

SUMMARY: The Gulf of Mexico Program's Citizens Advisory Committee will hold a meeting at the Nassau Bay Hilton, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: A meeting of the Gulf of Mexico Program Citizens Advisory Committee will be held at the Nassau Bay Hilton, Houston, Texas. The committee will meet from 10:00 A.M. to 5:00 P.M. on July 21. Agenda items will include: Multi-Year Performance Plan and FY 1999 Funding Guidance discussion; Coastal watershed/estuary approach to assisting Gulf States; and CAC Membership & attendance update and discussion.

The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program.

[FR Doc. 98–17262 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–2]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Lucent Project XL Draft Umbrella Final Project Agreement and Related Documents.

SUMMARY: EPA is today requesting comments on a proposed Project XL Final Project Agreement (FPA) for Lucent Technologies, Inc. The FPA is a voluntary agreement developed collaboratively by Lucent, stakeholders, the Commonwealth of Pennsylvania, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing a total of fifty projects undertaken in full partnership with the states.

The draft FPA is based on an existing third-party certified environmental management system (EMS) for Lucent's entire global microelectronics business unit, in fulfillment of the ISO 14001 standard for EMSs. The draft FPA would allow Lucent to use the existing EMS as a framework for developing specific proposals involving regulatory flexibility such as simplifying permitting, record keeping, and reporting requirements, while driving continual improvement and pollution prevention programs. The draft FPA would provide a "test bed" to determine the broad applicability of ISO 14001 as a vehicle for determining and managing regulatory flexibility while achieving superior environmental performance.

Lucent's proposed project is a multi-regional attempt to incorporate environmental management practices across the entire business unit. The parties anticipate that the EMS will foster superior environmental performance by identifying opportunities to reduce Lucent's environmental impact. EPA Regions 3 and 4 are intended sites for facility-specific projects. Each facility-specific addendum to the umbrella FPA will also demonstrate superior environmental performance. The regulatory flexibility necessary to implement specific projects will be discussed in each facility-specific addendum.

As part of its EMS, Lucent has established facility-specific Local Environmental Advisory Groups (LEAGs) for all of its facilities globally. Each LEAG is composed of local stakeholders including environmental organizations, community groups, employees, and other interested citizens. The LEAGs provide input on the XL project and the EMS. The LEAGs unanimously approved the draft umbrella FPA.

DATES: The period for submission of comments ends on July 29, 1998.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Rich Kampf, U.S. EPA, Region III, 841 Chestnut Street (3WP00), Philadelphia, PA 19107, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. Comments may also be faxed to Mr. Kampf at (215) 566–2301 or Ms. Birnbaum at (202) 401–2474. Comments will also be received via electronic mail sent to: kampf.rich@epamail.epa.gov or birnbaum.nancy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or Fact Sheet, contact: Rich Kampf, U.S. EPA, Region III, 841 Chestnut Street (3WP00), Philadelphia, PA 19107, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region III in Philadelphia. Questions to EPA regarding the documents can be directed to Rich Kampf at (215) 566–2105 or L. Nancy Birnbaum at (202) 260–2601. To be included on the Lucent Project XL mailing list to receive information about future public meetings, XL progress reports and other mailings from Lucent on the XL Project, contact: Debra Hennelly, Lucent Technologies, Inc., 219 Mount Airy Road, Room 2F236, P.O. Box 612, Basking Ridge, NJ 07920–0612. Ms. Hennelly can also be reached by telephone at (908) 953–4960. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, Room 1029, 401 M Street, SW (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL" and via an automated fax-on-demand menu at (202) 260–8590.

Dated: June 23, 1998.

Lisa Lund,

Deputy Associate Administrator for Reinvention Programs, Office of Reinvention.

[FR Doc. 98–17263 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1010; Report No. AUC–98–18–B (Auction No. 18)]

Auction of the Phase II 220 MHz Service Licenses; Scheduled for September 15, 1998—Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the procedures and minimum opening bids for the upcoming Phase II 220 MHz Service ("220 MHz Service") auction. On January 13, 1998, the Commission released a Public Notice, ("220 MHz Public Notice"), seeking comment on the establishment of reserve prices or minimum opening bids for the 220 MHz Service auction. In addition, the Commission also sought comment on a number of procedures to be used in the 220 MHz Service auction.

EFFECTIVE DATES: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Hartigan, Bob Reagle, or Frank Stilwell, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660, Scott A. Mackoul, Commercial Wireless Division at (202 418–7240, or Marty Liebman, Policy Division, Wireless Telecommunications Bureau at (202 418–1310.

SUPPLEMENTARY INFORMATION: This is the summary of a Public Notice released May 29, 1998. The text of the public notice in its entirety, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. In addition, the text of the public notice in its entirety, including attachments, is available on the World Wide Web at http://www.fcc.gov/wtb/auctions/220/220.html#PN.

1. Introduction

1. The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 908 licenses to operate in the 220–222 MHz band. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs); and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (*see* Attachment A for a complete listing of licenses). The licenses include the following channels:

	Channels
(1) EA Block:	
A: Channel Groups 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channel 171–180	10
(2) EAG Block:	
F: Channel Groups 1, 6, 11	15
G: Channel Groups 4, 9, 14	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channel 186–200	15
(3) Nationwide Block:	
K: Channels 51–60	10
L: Channels 81–90	10
M: Channels 141–150	10

Auction Date: The auction will commence on September 15, 1998. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: The Phase II 220 MHz Service—Auction No. 18.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadline	
• Auction Seminar	August 6, 1998.
• Short Form Application (FCC Form 175)	August 17, 1998; 5:30 p.m. ET.

• Upfront Payments (via wire transfer)	August 31, 1998; 6:00 p.m. ET.
• Orders for Remote Bidding Software	September 1, 1998; 5:30 p.m. ET.
• Mock Auction	September 11, 1998 (time TBA).
Telephone Contacts	
• FCC National Call Center	(888) CALL–FCC ((888) 225–5322) (For Bidder Information Packages, General Auction, Information, and Seminar Registration, press option #2 at the prompt). Hours of service: 8 a.m.–5:30 p.m. ET.
• FCC Technical Support Hotline	(202) 414–1250 (V), (202) 414–1255 (TTY). Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday; 9 a.m.–5 p.m. ET, weekend of August 15–16, 1998.

List of Attachments

- Attachment A
  Summary of Phase II 220 Mhz Licenses to be Auctioned
- Attachment B
  List of Cases Pending before the Commission Involving Non-Nationwide Phase I 220 MHz Licensees
- Attachment C
  Guidelines for Completion of FCC Forms 175 and 159, and Exhibits
- Attachment D
  Electronic Filing and Review of FCC Form 175
- Attachment E
  Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
- Attachment F
  List of Commenters

I. Background

2. In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, is to be replaced with a geographic-based system in the Phase II 220 MHz Service which is the subject of the upcoming auction. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The geographic areas for the licenses were created based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. The Economic Area Groupings (EAGs), developed by the Commission, include groupings of EAs and encompass the sum total of all EAs. Three Nationwide licenses, including all of the EAGs, are also to be offered in the Phase II 220 MHz Service auction. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 CFR Part 90.

3. On May 21, 1998, the Commission released a *Memorandum Opinion and Order on Reconsideration* in PR Docket No. 89–552, 63 FR 32579; June 12, 1998. Among other things the Commission removed the spectrum efficiency standard that applied to equipment operating in the 220–222 MHz band, eliminated installment payments for small business and very small businesses, and increased bidding credits for such entities.

II. Due Diligence

4. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's Rules. *See* 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

5. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of a future agreement with Canada on the use of 220–222 MHz spectrum in the border area.

6. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to particular incumbent non-nationwide 220 MHz licensees. The Commission notes that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

III. Potential Bidders Are Solely Responsible for Investigating and Evaluating the Degree to Which Such Pending Matters May Affect Spectrum Availability in Areas Where They Seek EA or EAG Licenses

7. To aid potential bidders, Attachment B to this Public Notice lists pending matters of which the Commission is aware that relate to licenses or applications for the 220 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 220–222 MHz band. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules.

8. Corrections and additions must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. One copy of each submission should also be sent to International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, while an additional courtesy copy may be sent to Scott A. Mackoul, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2100 M Street, NW., 7th Floor, Washington, DC 20554. Parties filing additions or corrections should include the internal reference number (DA 98–1010) on their submissions. Parties also are reminded that some of the proceedings are restricted proceedings governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on

all parties to that restricted proceeding. *See* generally 47 CFR 1.1200–1.1216.

9. Additional information regarding matters identified in Attachment B is available to the public. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Pubic Reference Rooms, located at 2025 M Street, NW., Room 5608, Washington, DC 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In addition, copies of the pleadings are available for public inspection only in the Gettysburg Public Reference Room.

10. In addition, potential bidders may search for information (but not the pleadings) regarding incumbent 220 MHz licensees on the World Wide Web at http://www.fcc.gov/wtb. In particular, information can be accessed by downloading databases by selecting "WTB Database Files" (http://www.fcc.gov/wbt/databases.html), or searching on-line by selecting "Search WTB Databases" (http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.hts). Any telephone inquiries regarding these matters should be directed to the Technical Support Hotline at (202) 414–1250 (V) or (202) 414–1255 (TTY).

IV. The Commission Makes no Representations or Guarantees Regarding the Accuracy or Completeness of Information That Has Been Provided by Incumbent Licensees and Incorporated Into the Database. Potential Bidders Are Strongly Encouraged to Physically Inspect any Sites Located in or Near the Geographic Area for Which They Plan to Bid

11. Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by the above-listed deadline.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC For 159) by the above-listed deadline.
- Comply with all provisions outlined in this Public Notice.

12. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. In the 220 MHz Service auction, for example, the rule would apply to an applicant bidding for an EAG and an applicant bidding for an EA within that EAG. Applicants that apply to bid for "all markets" or a nationwide license would be precluded from communicating with all other applicants. An exception is where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in their short-form applications. *See* 47 CFR 1.2105(c). The Commission notes that Section 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to bring to the Commission's attention any communication not permissible under the applicant's certification of compliance with § 1.2105(c). Finally, bidders are reminded that they have a duty to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

13. Bidder Information Package: More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to "Federal Communications Commission" or "FCC." To place an order, contact the FCC National Call Center at (888) CALL–FCC (888) 225–5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in this auction will receive a Bidder Information Package in approximately three weeks, and need not call again unless they wish to order additional copies.

14. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the Phase II 220 MHz Service, contained in Title 47, Part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1, of the Code of Federal Regulations.

15. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, RM–8506, GN Docket No. 93–252, PP Docket No. 93–253, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943 (1997), 62 FR 15978 (April 3, 1997) ("220 MHz Third Report and Order"). The Commission resolved petitions for reconsideration of the *220 MHz Third Report and Order* in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253, FCC 98–93, *Memorandum Opinion and Order on Reconsideration* (rel. May 21, 1998), 63 FR 32580 (June 12, 1998) ("220 MHz MO&O").

16. For general background on the Phase I 220 MHz Service, *see*, among other materials: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89–552, *Report and Order*, 6 FCC Rcd 2356 (1991), 56 FR 19598 (April 29, 1991); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 80–552, *Memorandum Opinion and Order*, 7 FCC Rcd 4484 (1992), 57 FR 32448 (July 22, 1992).

17. For further information about the 220 MHz Service, *see* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, GN Docket No. 93–252, *Second Report and Order*, 11 FCC Rcd 3668 (1996), 61 FR 3841 (Feb. 2, 1996) ("220 MHz Second Report and Order"); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Fourth Report and Order*, 12 FCC Rcd 13453 (1997), 62 FR 46211 (Sept. 2, 1997).

18. The Terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. Potential bidders are reminded that the *220 MHz MO&O*, released May 21, 1998, which resolved petitions for reconsideration filed in response to the *220 MHz Second Report and Order* and the *220 MHz Third Report and Order* altered some of the decisions and rules adopted in those orders. In addition, the decisions reached in the 220 MHz proceeding are

the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See, e.g., PLMRS Narrowband Corp., et al.* v. *Federal Communications Commission,* No. 92–1432, *et al.* (D.C. Cir., filed September 18, 1992).

19. The Commission may amend or supplement the information contained in its public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800.

20. *Bidder Alerts:* All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

V. The FCC Makes no Representations or Warranties About the Use of This Spectrum for Particular Services. Applicants Should be Aware That an FCC Auction Represents an Opportunity to Become an FCC Licensee in This Service, Subject to Certain Conditions and Regulations. An FCC Auction Does Not Constitute an Endorsement by the FCC of Any Particular Services, Technologies or Products, nor Does an FCC License Constitute a Guarantee of Business Success. Applicants Should Perform Their Individual Due Diligence Before Proceeding as They Would With Any New Business Venture

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the Phase II 220 MHz Service auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

22. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific Phase II 220 MHz Service proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

2. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

23. As described above, this auction offers: (1) Five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs); and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (*see* Attachment A for a complete listing of licenses).

(1) Determination of Revenues

24. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purposes of this auction, the Commission will not impose specific equity requirements on controlling principals. However, in order to qualify as a very small business or small business, an applicant's qualifying principals must maintain control of the applicant. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

(2) Application Showing

25. Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements to qualify as a very small business or small business for this auction. *See* 47 CFR 90.1009 and 1.2105.

B. Bidding Credits

26. Qualifying Phase II 220 MHz applicants are eligible for bidding credits. The size of a Phase II 220 MHz bidding credit depends on the annual gross revenues of the bidder and its controlling principals and affiliates, as averaged over the preceding three years:

- A bidder with gross annual revenues of not more than $15 million receives a 25 percent discount on its winning bids for Phase II 220 MHz Service licenses; and,
- A bidder with gross annual revenues of not more than $3 million receives a 35 percent discount on its winning bids for Phase II 220 MHz Service licenses.

27. Bidding credits are not cumulative: applicants that qualify receive either the 25 percent or the 35 percent bidding credit, but not both. The definitions of very small business and small business (including calculation of gross annual revenue) are set forth in 47 CFR 90.1021(b).

28. Phase II 220 MHz Service bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same levels of bidding credits. *See* 47 CFR 90.1017(b). Finally, Phase II 220 MHz Service bidders should also note that there are no

installment payment plans in the 220 MHz Service auction.

3. Pre-Auction Procedures

A Short-form Application (FCC Form 175)—Due August 17, 1998

29. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on August 17, 1998. Late applications will not be accepted.

30. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* 3.C. *infra*.

(1) Filing Options

31. Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and must bid telephonically, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. Applicants that file electronically may make amendments to their applications until the filing deadline. The following is a brief description of each filing method.

(a) Electronic Filing

32. Applicants wishing to file electronically may generally do so on a 24-hour basis beginning July 20, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on August 17, 1998. Information about installing and running the FCC Form 175 application software is included in Attachment D to this Public Notice. Technical support is available at (202) 414–1250 (V) or (202) 414–1255 (TTY); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday, and 9 a.m.–5 p.m. ET, the weekend of August 15–16.

(b) Manual Filing

33. Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175–S exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the May 1998 version of FCC Form 175 and the October 1995 edition of the 175–S (if applicable). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of FCC Forms 175 and 175–S can be obtained by calling (202) 418–FORM.

34. Manual applications may be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 18, Federal Communications Commission, Wireless Telecommunications Bureau, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

Note: Manual applications delivered to any other location will not be accepted.

(2) Completion of the FCC Form 175

35. Applicants should carefully review 47 CFR 90.1009 and 1.2105, and must complete all items on the FCC Form 175 (and Form 175–S, if applicable). Instructions for completing the FCC Form 175 are in Attachment C of this Public Notice.

36. Failure to sign a manually filed FCC Form 175 (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

37. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants that file electronically may review their own completed FCC Form 175. Applicants also have access to view other applicants' completed FCC Form 175s, after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. There is a fee of $2.30 per minute for accessing the system. *See* Attachment D for details.

B. Application Processing and Minor Corrections

38. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

39. As described more fully in the Commission's Rules, after the August 17, 1998, short form filing deadline, applicants may make only minor corrections to the FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). *See* 47 CFR 90.1009 and 1.2105.

C. Upfront Payments—Due August 31, 1998

40. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on August 31, 1998.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 18 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the August 31, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Making Auction Payments by Wire Transfers

41. Wire transfer payments must be received by 6:00 p.m. ET on August 31, 1998. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.
Receiving Bank: Mellon Pittsburgh.
BNF: FCC/AC 910–0171.
OBI Field: (Skip one space between each information item)
"Auctionpay".
Taxpayer Identification No.: (Same as FCC Form 159, block 26).
Payment Type Code: (Enter "A22U").

FCC Code: 1 (Same as FCC Form 159, block 23A: "18").

Payer Name: (Same as FCC Form 159, block 2).

Lockbox No.: 358430.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

42. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 18." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

43. Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to this Public Notice and will also be included in the Bidder Information Package.

(3) Amount of Upfront Payment

44. In the *220 MHz Third Report and Order*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. 62 FR at 15981. In the *220 MHz Public Notice*, (63 FR 2976, January 20, 1998) the Commission proposed for the Phase II 220 MHz Service auction an upfront payment of one cent per MHz/POP with no amount less than $2,500. 63 FR at 2978.

45. For the Phase II 220 MHz Service auction the Commission will adopt its proposal of one cent per MHz/POP with no amount less than $2,500. This upfront payment amount, based upon the data in Attachment A, will be the amount required to bid on a particular license(s) in Auction No. 18. The Commission believes that this is the appropriate upfront payment formula, considering such factors as the population in each geographic license area, and the value of spectrum similar to that being offered in the 220 MHz Service. The Commission notes that this upfront payment amount is lower than that used in many previous auctions—*e.g.*, the PCS spectrum auctions—but believes a reduction is appropriate, for the reasons expressed by a commenter, namely, the size of the likely participants in the 220 MHz Service auction.

46. The upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. For Auction No. 18, the total number of bidding units assigned to each bidder is equal to the amount of the upfront payment, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied, but rather to cover the maximum number of bidding units associated with licenses the bidder wishes to place bids on and hold high bids on at any given time. In order to be able to place a bid on a license, in addition to having specified that license on FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction.

47. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

48. Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 18 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in 5.D., *infra*.

D. Auction Registration

49. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

50. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

51. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, September 10, 1998 should contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 2 Massachusetts Avenue, NE., Washington, DC 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

52. Qualified bidders that file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for $175.00 by September 1, 1998. (Auction software is tailored to a specific auction, so software from prior auctions will not

work for Auction No. 18.) A software order form is included in the Bidder Information Package.

F. Auction Seminar

53. On August 6, 1998, the FCC will sponsor a seminar for the Phase II 220 MHz Service auction in Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 220 MHz Service and auction rules.

54. To register, complete the registration form to be included in the upcoming Phase II 220 MHz Service auction Bidder Information Package. The registration form will include details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

55. All applicants whose FCC Form 175 and 175–S have been accepted for filing will be eligible to participate in a mock auction beginning September 11, 1998. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Due to different bidding procedures in the Phase II 220 MHz Service auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

4. Auction Event

56. The first round of the auction will begin on September 15, 1998. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

57. The Commission adopts its proposal, in the *220 MHz Public Notice*, to award the 908 licenses in the Phase II 220 MHz Service in a single, simultaneous multiple round auction. 63 FR at 2977. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Commission believes, is most administratively efficient. In addition, the Commission believes that the Phase II 220 MHz licenses are interdependent and bidders may prefer to substitute different types of licenses during the same auction.

(2) Maximum Eligibility and Activity Rules

58. In the *220 MHz Public Notice*, the Commission proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. For the Phase II 220 MHz Service auction the Commission will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. The Commission notes that there is no provision for increasing a bidder's maximum eligibility during the course of an auction.

59. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

60. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in Part 4.B.(3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part 4.A.(4) and "Stage Transitions" in Part 4.A.(5), *infra*, the Commission adopts them for the 220 MHz Service auction.

(3) Activity Rule Waivers and Reducing Eligibility

61. In the *220 MHz Public Notice*, the Commission proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.

62. Based upon the Commission's experience in previous auctions, the Commission concludes that each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

63. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

64. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction States," Part 4.A.(4). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

65. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(4) Auction Stages

66. In the *220 MHz Public Notice*, the Commission proposed to conduct the auction in stages and employ an activity rule. The Commission concludes that the auction will be composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and/or during the auction.

67. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current

eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

68. *Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

69. *Stage Three:* In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding round of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

70. Because the foregoing procedures have proven successful in maintaining proper tempo in previous auctions, the Commission will adopt them for the Phase II 220 MHz Service auction.

(5) Stage Transitions

71. In the *220 MHz Public Notice*, the Commission proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units).

72. The Commission concludes that the auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the Phase II 220 MHz Service auction.

(6) Auction Stopping Rules

73. In the *220 MHz Public Notice*, the Commission proposed to retain the discretion to keep the auction open, even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, the Commission proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule").

74. Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdrawns a previous high bid.

75. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder has submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

76. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping, rule it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

77. Adoption of these rules, the Commission believes, is most appropriate for the Phase II 220 MHz auction because our experience in prior auctions demonstrates that the simultaneous stopping rule balanced the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support of use of a simultaneous stopping rule.

(7) Auction Delay, Suspension, or Cancellation

78. In the *220 MHz Public Notice*, the Commission proposed that, by police notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

79. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Commission will adopt our proposed auction cancellation rules. By public notice or by announcement during the action, the Burean may delay, suspend or cancel the auction in the event of natural disaster, technical, obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(1) Round Structure

80. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

81. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Reserve Price or Minimum Opening Bid

82. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established with FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of inference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

83. In the *220 MHz Public Notice*, the Bureau proposed to establish minimum opening bids for the 220 MHz Service auction and to retain discretion to lower the minimum opening bids. Specifically, the Bureau proposed the following formula for calculating minimum opening bids for Auction 18:

1. EA Licenses
   $0.0175 MHz * POP
2. EAG Licenses
   $0.015 MHz * POP
3. Nationwide Licenses
   $0.02 MHz * POP

with a minimum of no less than $2,500 per license. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

84. The Commission adopts minimum opening bids for each of the licenses in the Phase II 220 MHz Service auction that are reducible at the discretion of the Bureau. The levels will be set as follows:

1. EA Licenses
   $0.015 MHz * POP
2. EAG License
   $0.0125 MHz * POP
3. Nationwide Licenses
   $0.0175 MHz * POP

with a minimum of no less than $2,500 per license.

85. As was the case in prescribing minimum opening bids in the auction of the upper channels in the 800 MHz SMR service and the LMDS auctions, Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. The Bureau is unpersuaded by commenters' assertions that minimum opening bids for the Phase II 220 MHz Service auction are not in the public interest. Setting the level of the minimum opening bids is a difficult task, especially in the case of the Phase II 220 MHz Service where the channels are narrow, encumbered and the potential uses of the band remain to be explored. To address this concern, the minimum opening bids adopted here are reducible. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Commission emphasizes, however, that such discretion will be exercised sparingly and early in the auction, *ie.*, before bidders lose all waivers and begin the lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bids on specific licenses.

86. The Commission concludes that the revised formula presented here best meets the objectives of our auction authority in establishing a reasonable minimum opening bid. The Commission has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that the Commission must balance the revenue raising objective against its other public interest objectives in setting the minimum bid level. In doing so, the Commission agree with commenters that the 220 MHz channels are narrow and the likely auction participants will be small business entrepreneurs. In addition, the Commission recognizes that the EAG licenses are more substantially encumbered than are the other license types. The Commission has adjusted its minimum opening bids accordingly. In sum, the Commission's experience in using minimum opening bids in the 800 MHz SMR auction and the LMDS auction supports the fact that minimum opening bids promote efficient allocation of licenses and speed the course of the auction while ensuring that valuable assets are not sold for nominal prices.

(3) Minimum Accepted Bids

87. In the *220 MHz Public Notice*, the Commission proposed to use an exponential smoothing methodology to calculate minimum bid increments. The Commission further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

88. Because these techniques have proven effective in prior auctions, the Commission adopts its proposal for the 220 MHz Service auction. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the Phase II 220 MHz Service auction, the Commission will utilize, as described immediately below, an exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The exponential smoothing methodology has been used in previous auctions, including the WCS auction and the 800 MHz SMR auction.

Exponential Smoothing

89. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

90. Using exponential smooting, the calculation of the percentage bid increment for each license will be based

on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighing factor times the number of new bids received on the license in the current bidding round plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.05, and the maximum percentage increment at 0.15.

Equations

$A_i=(C*B_i)+((1-C)*A_{i-1})$
I_i=smaller of $(1+A_i)*N$) and M
Where:
A_i=activity index for the current round (round i)
C=activity weight factor
B_i=number of bids in the current round (round i)
A_{i-1}=activity index from previous round (round i − 1), A_0 is 0
I_i=percentage bid increment for the current round (round i)
N=minimum percentage increment
M=maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_i from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred it it is under ten thousand.

Examples

License 1
C=0.5, N=0.05, M=0.15
Round 1 (2 new bids, high bid = $1,000,000)

1. Calculation of percentage increment using exponential smoothing:
$A_1=(0.5*2)+(0.5*0)=1$
$I_1=(1+1)*0.05=0.1$

2. Minimum bid increment using the percentage increment (I_1 from above)
0.1*$1,000,000=$100,000

3. Minimum acceptable bid for round 2=1,100,000

Round 2 (3 new bids, high bid=2,000,000)

1. Calculation of percentage increment using exponential smooting:
$A_2=(0.5*3)+(0.5*1)=2$
$I_2=(1+2)*0.05=0.15$

2. Minimum bid increment using the percentage increment (I_2 from above)
0.15 * $2,000,000 = $300,000

3. Minimum acceptable bid for round 3 = 2,300,000

Round 3 (1 new bid, high bid = 2,300,000)

1. Calculation of percentage increment using exponential smoothing:
$A_3=(0.5*1)+(0.5*2)=1.5$
$I_3=(1+1.5)*0.05+0.125$

2. Minimum bid increment using the percentage increment (I_3 from above)
0.125 * $2,300,000 = $287,500

3. Minimum acceptable bid for round 4 = 2,588,000

(4) High Bids

91. Each bid will be date- and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date- and time-stamped than bids submitted later in a round.

(5) Bidding

92. During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round, and will not have a separate period to withdraw bids. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamped of that bid reflect the latest time the bid was submitted.

93. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 18.

94. A bidder's maximum eligibility in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

95. The bidding software requires each bidder to log in to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

96. The bid entry screen of the Automated Auction System software for the Phase II 220 MHz Service auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

97. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "16" in the bid increment multiplier column and press submit.

98. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount.

Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(6) Bid Removal and Bid Withdrawal

99. In the *20 MHz Public Notice*, the Commission proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction.

a. Procedures

100. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and, may serve to expedite the course of the action. Therefore, the Commission will adopt these procedures for the 220 MHz Service auction.

101. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraw its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 90.1007, 1.2104(g), and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.2.c.(4).

102. In previous auctions, the Commission has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals play in an auction, *i.e.* reducing risk associated with efforts to secure various geographic area licenses in combination, the Commission concludes that, for the 220 MHz Service auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Commission believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Commission's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in the 220 MHz Service auction.

103. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 90.1007, 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

104. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

b. Calculation

105. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 CFR 90.1007, 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results

106. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, a new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

107. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 18 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcement

108. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

109. As noted in 3.B., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Frank Stilwell, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Frank Stilwell of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

5. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

110. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

111. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 90.1011(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part 4.B.2.c(6). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

112. Within ten business days after release of the auction closing, notice winning bidders must submit a properly completed long-form application and required exhibits for each Phase II 220

MHz Service license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 90.1013. Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

113. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

114. All applicants that submitted upfront payments but were not winning bidders for any Phase II 220 MHz Service license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

115. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, NW. Room 452, Washington, DC 20554.

116. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A—Summary of Phase II 220 MHZ Licenses to be Auctioned

Attachment B—List of Cases Pending Before the Commission Involving Non-Nationwide Phase I 220 MHZ Licensees

Attachment C—Guidelines for completion of FCC Forms 175 and 159, and Exhibits

Attachment D—Electronic Filing and Review of FCC Form 175

Attachment E—Summary Listing of Documents From the Commission and the Wireless Telecommunications Bureau Addressing Application of The Anti-Collusion Rules

Attachment F—List of Commenters

Note: Attachments A through F are not printed in the **Federal Register**. See the beginning of the Supplementary Information section for availability.

[FR Doc. 98–17147 Filed 6–26–98; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required from employees of the Federal Emergency Management Agency who file a claim with the Agency under 31 U.S.C. 3721 for the loss of or damage to personal property which is incident to their service.

Supplementary Information. 31 U.S.C. 3721 requires claimants to substantiate their claims as a condition of payment by the Agency. The Agency's substantiation requirements are set forth in 44 CFR 11.76. There is no set form required by the Agency for filing a claim under this statute.

Collection of Information

Title: Claims of Federal Personnel for Personal Property Loss or Damage.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0167.

Form Numbers: None.

Abstract: The information is provided by FEMA personnel to make a claim against FEMA for personal property damage incident to service. The information is used by FEMA to determine the appropriate disposition and payment of claims.

Affected Public: Federal Government.

Number of Respondents: 7.

Frequency of Response: On occasion.

Hours Per Response: 1 hour.

Estimated Total Annual Burden Hours: 7.

Estimated Cost: None.

Comments

Written comments are solicited to: (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Robert S. Brock, Associate General Counsel for General Law, Office of General Counsel, Federal Emergency

Management Agency, at (202) 646–4095 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–17238 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–855–DR]

Territory of American Samoa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of American Samoa (FEMA–855–DR), dated February 9, 1990, and related determinations.

EFFECTIVE DATE: June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost-sharing arrangements under FEMA–855–DR is adjusted at 90 percent Federal funding for eligible costs for the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dated: June 17, 1998.

James L. Witt,

Director.

[FR Doc. 98–17246 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1223–DR]

Florida; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1223–DR), dated June 18, 1998, and related determinations.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 18, 1998:

Alachua, Baker, Bay, Bradford, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Dade, DeSoto, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madision, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, Taylor, Union, Volusia, Walton, and Washington Counties for direct Federal assistance appropriate for required emergency measures, authorized under the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–17240 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3126–EM]

Kansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Kansas (FEMA–3126–EM), dated June 9, 1998, and related determinations.

EFFECTIVE DATE: June 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 9, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from an explosion on June 8, 1998, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Kansas.

Specifically, you are authorized to activate and deploy search and rescue teams to respond to this event as authorized under subsection 502(a) of the Stafford Act.

In addition, you are authorized to provide such other forms of emergency assistance as you may deem necessary.

Emergency assistance which you provide pursuant to this declaration will be at 75 percent Federal funding.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carolyn J. Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared emergency disaster:

Sedgwick County

FEMA has been authorized to activate and deploy search and rescue teams to respond to the explosion in Sedgwick County, Kansas, pursuant to Title V of the Stafford Act.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–17239 Filed 6–26–98; 8:45 am]

BILLING CODE 5718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1222–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1222–DR), dated June 16, 1998, and related determinations.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 16, 1998:

Broome and Wyoming Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–17241 Filed 6–26–98; 8:45 am]

BILLING CODE 5718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1220–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1220–DR), dated June 15, 1998, and related determinations.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from flooding and ground saturation on March 2, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leslie A. Rucker of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Benson, Dickey, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Stutsman, and Towner Counties, and the Indian reservations of the Spirit Lake Sioux Tribe and the Turtle Mountain Band of Chippewa for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–17242 Filed 6–26–98; 8:45 am]

BILLING CODE 5718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1194–DR]

Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Commonwealth of the Northern Mariana Islands (FEMA–1194–DR), dated December 24 1997, and related determinations.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost share arrangement under FEMA–1194–DR is adjusted at 100 percent Federal funding for eligible costs for the Individual and Family Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment

Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–17247 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1219–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Pennsylvania, (FEMA–1219–DR), dated June 8, 1998, and related determinations.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Pennsylvania, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 1998:

Beaver, Pike, and Susquehanna Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–17243 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1219–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1219–DR), dated June 8, 1998, and related determinations.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe storms, tornadoes and flooding on May 31, through June 2, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Allegheny, Berks, Somerset, and Wyoming Counties for Individual Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–17244 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include Disaster Unemployment Assistance in the following area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1998: Day County for Disaster Unemployment Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–17245 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1215–DR]

Tennessee; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Lauderdale County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–17246 Filed 6–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Damon Lavelle Wilson, 10010 Rio Bravo, Houston, TX 77064, Sole Proprietor.

Toriello Passarelli, Inc. d/b/a, Toriello Freight International, 8538 NW 72nd Street, Miami, FL 33166, Officers: Mario Toriello, President, Elizabeth Cano, Vice President.

Dated: June 23, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–17140 Filed 6–26–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–09]

Kin Bridge Express Inc. and Kin Bridge Express (U.S.A.) Inc.—Possible Violations of Sections 8, 10(a)(1), 10(b)(1) and 23 of the Shipping Act of 1984; Order of Investigation and Hearing

Kin Bridge Express Inc. ("Kin Bridge Taiwan") is a tariffed and bonded non-vessel-operating common carrier ("NVOCC") located at 2nd Floor, No. 80, Section 2, Chang An East Road, Taipei 10405, Taiwan. Kin Bridge Taiwan holds out to operate as an NVOCC pursuant to its tariff No. 015344–002, filed April 9, 1998. Wilson Chiao is President of Kin Bridge Taiwan.

Kin Bridge Express (U.S.A.) Inc. ("Kin Bridge USA") was, until April 18, 1998, a tariffed and bonded NVOCC located at 182–30 150th Road, Jamaica, New York 11413. Effective April 18, Kin Bridge USA canceled its NVOCC tariff and transferred its bond to Kin Bridge Taiwan.[1] Kin Bridge USA continues to serve as U.S. destination agent for Kin Bridge Taiwan and as its designated resident agent for service of process. The President of Kin Bridge USA is Michael Hong.

It appears that Kin Bridge Taiwan, acting as shipper on certain shipments on which it was doing business as NVOCC, participated in a scheme of commodity misdescriptions on at least 73 shipments transported by an ocean common carrier between January 7, 1996 and February 4, 1997. The shipments originated from Kin Bridge's offices in Taiwan and Hong Kong and were consigned to Kin Bridge USA in New York. Kin Bridge Taiwan issued a "house," of NVOCC, bill of lading for each shipment for tender by the ultimate consignee to Kin Bridge USA upon arrival of the cargo.

It further appears that Hanjin Shipping Co. and other ocean common carriers rated the commodities in accordance with the false cargo description furnished by Kin Bridge Taiwan, and its U.S. destination agent, Kin Bridge USA, accepted delivery of the cargo and made payment to the ocean carrier on the basis of the resulting lower rate. Other contemporaneous documentation, such as the arrival notice issued by Kin Bridge USA to the U.S. consignee, indicate that Kin Bridge USA and its principals knew that the shipments actually consisted of commodities different from those listed on the ocean common carrier's bills of lading.

Moreover, it appears that the rates assessed and collected by Kin Bridge Taiwan and its U.S. agent Kin Bridge USA for these shipments bear no relation to the rates set forth in any Kin Bridge tariff then on file with the Commission. Prior to April 9, 1998, Kin Bridge Taiwan in fact had no tariff and no NVOCC bond; nonetheless it was actively engaged in negotiating and executing service contracts with Hanjin Shipping Co.[2] and possibly other ocean common carriers prior to such date. Nor could the tariff of Kin Bridge USA set forth the applicable rates, because Kin Bridge USA only published a limited number of rates, which were applicable to its outbound NVOCC services.

It further appear that, during the period January 1996 through April 1998, numerous outbound shipments were originated by Kin Bridge USA in its capacity as an NVOCC, which were destined to Kin Bridge USA agents in the Far East. Review of the ATFI tariff of Kin Bridge USA indicates that many of these shipments may not have been covered by outbound rates then on file in the tariff of Kin Bridge USA.

[1] Kin Bridge Taiwan maintains an NVOCC bond, No. 055326, in the amount of $50,000 with Washington International Insurance Company, Itasca, Illinois.

[2] Hanjin Service Contract No. 3852, and Hanjin Service Contract No. 5117, both signed by Kin Bridge Taiwan.

Since Kin Bridge USA canceled its tariff on April 18, 1998, Kin Bridge Taiwan has maintained what many be characterized as a "shell" tariff, consisting of ten commodity descriptions, four of which are applicable to Cargo N.O.S. Only these latter Cargo N.O.S. rates apply to cargo inbound from the Far East. Kin Bridge Taiwan does not publish "per container" rates for inbound cargo, nor does it appear likely that it charges those rates which it does publish, since these are assessed solely on a weight/measurement (W/M) ton basis. Nonetheless, it appears that Kin Bridge Taiwan is actively soliciting NVOCC cargo, and that it may not be assessing or collecting those rates set forth in its tariff.

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. sec. 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at least than the rates or charges that would otherwise be applicable. Section 10(b)(1), 46 U.S.C. app. sec. 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Sections 8 and 23 of the 1984 Act, 46 U.S.C. app. secs. 1707 and 1721, require that every NVOCC maintain a tariff and a bond. Under section 13 of the 1984 Act, 46 U.S.C. app. sec. 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[3] Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13, and 23 of the 1984 Act, 46 U.S.C. app. secs. 1709, 1710, 1712, and 1721, an investigation is instituted to determine:

(1) Whether Kin Bridge Express Inc. and Kin Bridge Express (USA) Inc. violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at least than the rates and charges otherwise applicable through the means of misdescription of cargo;

(2) Whether Kin Bridge Express Inc. and Kin Bridge Express (USA) Inc. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in their respective NVOCC tariffs;

(3) Whether Kin Bridge Express Inc. violated sections 8 and 23 of the 1984 Act by operating as a non-vessel-operating common carrier without having a tariff and bond on file with the Commission:

(4) Whether, in the event violations of sections 8, 10(a)(1), 10(b)(1), and 23 of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of such penalties;

(5) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Kin Bridges Express Inc. should be suspended; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, deposition, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that Kim Bridge Express Inc. and Kin Bridge Express (U.S.A.) Inc. are designated as Respondents in this proceeding;

It is further ordered, that the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, that notice of this order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72;

It is further ordered, that all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's rules and practice and procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedures, the initial decision of the Administrative Law Judge shall be issued by June 23, 1999 and the final decision of the Commission shall be issued by October 21, 1999.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–17141 Filed 6–26–98; 8:45 am]

BILLING CODE 6730–01–M

[3] The maximum penalties are raised by 10 percent for violations occurring after November 7, 1996. *See Inflation Adjustment of Civil Monetary Penalties,* 27 S.R.R. 809 (1996).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 15, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Henderson Family Limited Partnership, Vienna, Missouri; to acquire voting shares of Maries County Bancorp, Inc., Vienna, Missouri and Progress Bancshares, Inc., Sullivan, Missouri, and thereby indirectly acquire Progress Bank, Sullivan, Missouri; Maries County Bank, Vienna, Missouri; and Belle State Bank, Belle, Missouri.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Donald Ray Clark and Kitty Darline Clark, both of Anadarko, Oklahoma; to acquire voting shares of First State Bank, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, June 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17205 Filed 6-26-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Citizens Bancshares, Inc., Salineville, Ohio; to merge with Mid Am, Inc., Bowling Green, Ohio, and thereby indirectly acquire Adrian State Bank, Adrian, Michigan; American Community Bank, N.A., Lima, Ohio; Amerifirst Bank, N.A., Xenia, Ohio; First National Bank of Northwestern Ohio, Bryan, Ohio; Mid American National Bank and Trust Company, Toledo, Ohio; and Northside Deposit Bank, Pittsburgh, Pennsylvania.

In connection with this application, Citizens Bancshares also has applied to acquire MFI Investments Corp, Bryan, Ohio; Mid Am Recovery Services, Inc., Clearwater, Florida; Mid Am Credit Corp, Columbus, Ohio; Mid Am Financial Services, Inc., Carmel, Indiana; and Mid Am Private Trust, N.S., Cincinnati, Ohio, and thereby engage directly in permissible broker/dealer securities activities pursuant to §§ 225.28(b)(7) and 225.28(b)(8) of Regulation Y; permissible collection agency activities pursuant to § 225.28(b)(2)(iv) of Regulation Y; permissible lending and leasing activities pursuant to §§ 225.28(b)(1) and 225.28(b)(3) of Regulation Y; permissible consumer finance, lending, and loan servicing activities pursuant to § 225.28(b)(1) of Regulation Y; and permissible trust company functions pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; and its wholly owned subsidiary, Ameribanc, Inc., St. Louis, Missouri, to acquire 100 percent of the voting shares and merge with First Financial Bancorporation, Iowa City, Iowa, and thereby indirectly acquire First National Bank Iowa, Iowa City, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of AmQuest Financial Corporation, Duncan, Oklahoma, and thereby indirectly acquire AmQuest Bank, N.A., Lawton, Oklahoma, and Exchange National Bank and Trust Company, Ardmore, Oklahoma.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Violeta Investments, Ltd., Hebbronville, Texas; to become a bank holding company by acquiring 9.18 percent of the voting shares of Hebbronville State Bank, Hebbronville, Texas.

Board of Governors of the Federal Reserve System, June 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17206 Filed 6-26-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. CCF Holding Company, Jonesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Jonesboro, Georgia.

2. SunTrust Banks, Inc., Atlanta, Georgia, and SunTrust Banks of Florida, Inc., Orlando, Florida; to merge with Citizens Bancorporation, Inc., Marianna,

Florida, and thereby indirectly acquire Citizens Bank of Marianna, Marianna, Florida, and Gladsen State Bank, Chattahoochee, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pilot Grove Savings Bank Employee Stock Ownership Plan, Pilot Grove, Iowa; to acquire 1.82 percent of the voting shares of Pilot Bancorp, Inc., Pilot Grove, Iowa, and thereby indirectly acquire Pilot Grove Savings Bank, Pilot Grove, Iowa.

Board of Governors of the Federal Reserve System, June 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17252 Filed 6-26-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-13790) published on pages 28385-28386 of the issue for Friday, May 22, 1998.

Under the Federal Reserve Bank of Richmond heading, the entry for NationsBank Corporation and NationsBank (DE) Corporation, both in Charlotte, North Carolina (collectively NationsBank), is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation and NationsBank (DE) Corporation, both in Charlotte, North Carolina (collectively, NationsBank); to merge with BankAmerica Corporation, San Francisco, California (BankAmerica), and thereby acquire the following bank subsidiaries of BankAmerica: Bank of America National Trust and Savings Association, San Francisco, California; Bank of America Texas, National Association, Dallas, Texas; Bank of America National Association, Phoenix, Arizona; and Bank of America Community Development Bank, Walnut Creek, California. On consummation of the proposed transaction, NationsBank would be renamed BankAmerica Corporation. NationsBank may form one or more intermediate bank holding companies.

In connection with the proposed transaction, NationsBank has provided notice to acquire all of the nonbank subsidiaries of BankAmerica and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that previously have been determined to be permissible for bank holding companies. NationsBank also would continue to control all of its existing bank and nonbank subsidiaries.

The comment period on this application has been extended. Comments on this application must be received by July 9, 1998.

Board of Governors of the Federal Reserve System, June 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17253 Filed 6-26-98; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98066]

Translational Research Centers for Diabetes Control Within Managed-Care Settings; Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds, and invites cooperative agreement applications for a multi-center, collaborative, diabetes translational research initiative within managed-care settings to (1) evaluate the extent to which healthcare providers and healthcare delivery systems implement accepted standards of diabetes care (e.g., American Diabetes Association), which can reduce the burden of diabetes and its complications; (2) explore the factors that affect variations in implementing quality diabetes care; and (3) develop and test strategies aimed at closing the gap between existing practice and optimal standards of care.

The collaborative studies will consist of two phases. Phase 1 (12 months)—Planning, collaborative development of the protocol(s), and development of the manual of operations. Phase 2 (48 months)—Conduct of studies selected by the Steering Committee, analysis, and reporting of the results.

Under a Request for Contract, FY 1998 funds will be made available to fund one Data Coordinating Center (DCC). The organization funded for the DCC will not be eligible to receive funds under this Program Announcement. The DCC will collaborate with the recipients under this announcement in the design and writing of the study protocol(s) and consent forms, creation of the data collection forms, and writing of the manual(s) of operations. In addition, it will assist with the development of the operational plans, develop a system to collect, manage, and store scientific data, management and analysis, and collaborate with the Translational Research Centers in reporting of results.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 241(a) and 247b (k)(2)). Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, child care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are public and private nonprofit domestic organizations operating within managed-care settings and providing services to a minimum of 5,000 people with diabetes. Thus, managed-care organizations, teaching hospitals, universities, colleges, and research institutions are eligible to apply. Applicants claiming nonprofit status must include evidence of nonprofit status with their application.

Minority individuals and women are encouraged to apply as Principal Investigators. Institutions caring for large numbers of racial and ethnic minority groups with diabetes are especially encouraged to apply.

Funding Preference: A funding preference will be given to applications under the following conditions: Women, racial, and ethnic minority populations to be accessed by the applicant—to ensure that the selected Diabetes

Translational Research Centers will together have a good balance of racial and ethnic minority groups.

Applicants must have direct access to a population of at least 5,000 people with diabetes or access through a partnership, operating within a managed-care setting.

Institutions may apply as a single entity or in a collaborative partnership. In this regard, applicants are encouraged to form collaborative arrangements with investigators at minority institutions or minority investigators at other institutions. However, only one institution will be named as the recipient of grant funds in a partnership.

The expertise appropriate for the Translational Research Center applications includes a knowledge of the clinical, epidemiological, and health services research aspects of diabetes. All eligible applicants must have diabetes-related research capacity within a managed-care setting, i.e., access to large numbers of patients with diabetes (minimum of 5,000); strong multi disciplinary research groups, access to good data systems, access to academic skills in health services research, epidemiology, survey design, behavioral sciences, and health economics.

Eligibility characteristics must be clearly specified with appropriate documentation in the Application Requirements section of your application (see Application Content).

Note: Effective January 1, 1996, Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in Lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $800,000 is available in FY 1998 to fund up to four Translational Research Centers. It is expected that the average award during the planning phase (Year 1) of this project will be $200,000 (including direct and indirect costs), ranging from $150,000 to $250,000. However, it is anticipated that additional funds may be available in FY 1999 to increase the average award for Year 01 to approximately $500,000, ranging from $300,000 to $700,000.

Please plan your project in anticipation of these additional funds. It is expected that awards will begin on or before September 30, 1998, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. At this time, CDC anticipates that there will not be a renewed competition after five years.

Use of Funds

Allowable Uses: Funds are awarded for a specifically defined purpose and must be targeted for implementation and management of the project. Funds can support personnel, services directly related to the project, and the purchase of hardware and software for data collection, analysis, and project management and evaluation purposes.

Prohibited Uses: Cooperative agreement funds under this program announcement cannot be used for (1) construction, (2) renovation, (3) the purchase or lease of passenger vehicles or vans, (4) to supplant non-federal funds that would otherwise be made available for this purpose, or (5) cost of regular patient care.

Restrictions on Lobbying: Applicants should be aware of restrictions on the use of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants and cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, (Pub. L. 105–78) states in section 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agency acting for such recipient, related to any activity designed to influence legislation or appropriations pending before Congress or any State legislature.

Background

A considerable body of evidence exists for the efficacy of interventions (e.g., glycemic control, cardiovascular disease (CVD) risks reduction, screening for diabetes complications) to reduce the avoidable burden of diabetes. Nevertheless, the effectiveness, generalizability, feasibility, and sustainability of several of these interventions in real-life settings are less than clear. Furthermore, several reports suggest that considerable gaps exist between existing practice and recommended standards of diabetes care for people with diabetes. For example, the American Diabetes Association has recommended standards of care for several aspects of diabetes management (American Diabetes Association, Clinical Practice Recommendations 1998, Diabetes Care 1998;21 (Suppl.1). However, national estimates from the Behavioral Risk Factor Surveillance System indicate that the population of Americans receiving appropriate diabetes care practices such as foot and eye examinations, glycosylated hemoglobin, and other preventive care evaluations fall short of the recommended standards.

Managed care represents a revolution in the way health care is funded, organized, and delivered in the United States, and has affected the way in which diabetes treatment and control are conducted in both the private and public sectors. In the public sector, many health departments are in some stage of transition from directly delivering clinical services to using other delivery models that involve managed care. Thus, managed-care providers play a key role in the way people with diabetes are diagnosed and managed for increasing numbers of Americans. With more diagnostic and treatment services for diabetes being conducted in managed care, new partnerships are needed between managed-care health plans and public health agencies to design and implement essential and innovative diabetes-related services. Furthermore, managed-care (by virtue of coordinating all care for persons with diabetes) is probably the closest approximation to population medicine currently available in the United States. Managed-care, therefore, offers significant opportunities to understand and test intervention effectiveness and cost-effectiveness within a real-life context,

as well as the public health impact of system wide interventions.

Purpose

The purpose of this diabetes translational research initiative is to initiate a multicenter, collaborative program of applied population-based research related to diabetes, and to develop a knowledge base through published research in scientific literature and handbooks for professional associations that will improve the process, delivery, and outcome of diabetes services within managed-care settings. The knowledge base to be developed will address methods for and assessment of effectiveness, cost-effectiveness, generalizability, feasibility, and sustainability of interventions. Such a knowledge base may include a variety of activities covering the range of diabetes interventions, including diabetes screening and diagnosis; treatment approaches, glycemic control, CVD risk reduction, and screening for diabetes complications.

This program will improve the availability, accessibility, quality of process, effectiveness, cost-effectiveness, and health outcomes of diabetes-related services provided by managed-care health plans. The benefit of this program will be the establishment of new partnerships and relationships among managed-care health plans and between managed-care health plans and public health agencies. Thus, the challenges of improving diabetes control services may be collaboratively assessed in a manner to have a national public health impact. The other goals of this program will include provision of data for policy development, assessment, and capacity-building at the State and local levels with respect to managed care and the CDC Diabetes Control Program's ability to develop appropriate diabetes control policies and to conduct diabetes surveillance in a changing health environment.

Program Requirements

Work performed under this cooperative agreement will be the result of collaborative efforts among the funded Translational Research Centers and the Data Coordinating Center. Recipients will be responsible for implementing research methods and study design, analysis, use of data, and dissemination of results via peer-reviewed scientific publications or other related material.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A., below, and CDC will be responsible for carrying out the activities described under B., below.

A. Recipient Activities

1. Participate in the protocol development, data collection, quality control, final data analysis and interpretation, the preparation of publications, and presentation of findings.

2. Establish a Steering Committee that will be the primary governing body of the study and will be comprised of each of the Principal Investigators from the Translational Research Centers and the Data Coordinating Center. The Steering Committee will have primary responsibility for developing common study protocols, facilitating the conduct and monitoring of the studies, and reporting the study results.

3. Work cooperatively with the other Translational Centers, the Data Coordinating Center, and agree to follow the common protocol(s) and manual(s) of operations developed in Phase 1 of the study by the Steering Committee.

4. Transmit all relevant study data to a central Data Coordinating Center for data editing, formatting, combination, and primary analysis.

5. Collaborate with other health organizations, community groups, etc., as necessary to accomplish program activities.

6. Maintain an effective and adequate management and staffing plan. The success of the program will depend on recruiting and hiring staff in a timely manner. Staff should have the education, background, and experience to successfully conduct the activities proposed in this application.

B. CDC Activities

1. Support and stimulate the recipients' activities by collaborating and providing scientific and public health consultation and assistance in the development of activities related to the cooperative agreement. Consistent with this concept, the tasks and activities in carrying out the studies will be shared among the recipients and the CDC.

2. Establish a Data Coordinating Center that will serve as a resource for standardized assessment, analysis, reporting, and that will assist in the design and writing of study protocol(s) in collaboration with the Research Centers.

3. Assist in the coordination of activities between the Diabetes Translational Research Centers and the Data Coordinating Center.

4. Facilitate communication among recipients and assist in quality control, interim data monitoring, final data analysis and interpretation, and coordination and performance monitoring.

5. Serve as a consultant to the Steering Committee.

Technical Reporting Requirements

An original and two copies of the following reports must be submitted to the Grants Management Branch, CDC.

A. Semiannual progress reports are required of all cooperative agreement recipients. The first semiannual report is required with each year's noncompeting continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project). The second semiannual report is due 30 days after the end of each budget period and should cover activities from the date of the previous report. Progress reports should address the status of all recipient activities above, including:

1. A comparison of actual accomplishments to the objectives established for the period.

2. The reasons for slippage if established goals were not met.

3. Other pertinent information essential to evaluating progress.

4. Data pertaining to various project activities.

B. A financial status report (FSR) is required no later than 90 days after the end of each budget period. The final financial status report is required no later than 90 days after the end of the project period. Please submit the original and two (2) copies of all reports to the Grants Management Branch, CDC.

Notification of Intent To Apply (Preapplication Letter)

To assist CDC in planning and executing the evaluation of applications submitted under this Program Announcement (98086), a nonbinding letter of intent-to-apply is requested from potential applicants. Although not a prerequisite of the application, the letter should be submitted to Bernice A. Moore, Epidemiology and Statistics Branch, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–10, 4770 Buford Highway NE., Atlanta, GA 30341–3717, telephone (770) 488–5855; fax (770) 488–5966; or Internet or CDC WONDER E-mail at bamo@cdc.gov. It should be postmarked no later than one month before the planned submission deadline (due not later than July 15, 1998. The letter should identify the Program Announcement number, the

name and address of the applicant's institution, and telephone number of a contact person. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

Application Content

It is anticipated that applications for Diabetes Translational Research Centers within this initiative will focus on important aspects of the process and outcome of care for people with diabetes. Process of care may include diabetes screening and diagnosis; treatment approaches; glycemic control; cardiovascular disease (CVD) risks reduction; screening for diabetes complications; and outcome of care may include quality of life and avoidable morbidity and death among people with diabetes. In addition, the extent and causes of variation in implementation of accepted standards of diabetes care may be explored at three levels—individuals, healthcare providers, and health care delivery systems. Emphasis should be on identifying important and potentially modifiable factors that contribute to the failure to use recommended standards of diabetes care, and on designing and testing (using rigorous scientific approaches) cost-effective strategies aimed at achieving optimal care. Furthermore, in keeping with the philosophy of Translational Research, designs should emphasize intervention effectiveness which span diverse populations and a variety of healthcare approaches (e.g., type of managed care), leading to findings with high generalizability. Thus, good translational research will require multicenter participation and represent populations of diverse age, ethnicity, socioeconomic status, and severity of diabetes. Furthermore, strategies aimed at achieving optimal diabetes care should aim for generalizability, sustainability and cost-effectiveness.

Each applicant must propose the research questions and study designs that best address the objectives of this initiative and are most appropriate for their patient population. The outcome of this initiative should result in the following questions:

1. What are the current levels of care provided to people with diabetes, and how does it compare with the recommended standards of diabetes care (e.g., American Diabetes Association)?

2. What is the health-related quality of life for people with diabetes and what factors influence patient satisfaction and quality of life?

3. What are the major factors that influence the process, delivery, effectiveness, costs, and sustainability of interventions aimed at glycemic control, and conventional CVD risk factor (elevated blood pressure, dyslipidemia, smoking, overweight, physical inactivity) reduction among people with diabetes?

4. What are the major factors that influence the process, delivery, effectiveness, costs, and sustainability of interventions aimed at the early detection of microvascular complications of diabetes (e.g., retinopathy, nephropathy)?

Collaborative protocols to study the above questions will be developed by a Steering Committee composed of the recipients and the Principal Investigator of a Data Coordinating Center selected under a separate Request for Contract. The collaborative study protocol(s) will move into the implementation stage with the concurrence of the Steering Committee.

It is not the intent of this Program Announcement to solicit elaborately detailed research plans for the above proposed collaborative studies because the final protocols will be collaboratively developed by the investigators during the planning phase (Phase 1).

Specific Instructions

All applicants must develop their applications in accordance with PHS Form 5161–1 (Revised 5/96), information contained in this Program Announcement, and the format and page limitations that follow. Provide a clear and succinct description and supportive references regarding how each of the statements apply in your application:

1. Experience in one or more of the following areas: Health economics research, health services research, epidemiological research, or health information systems research.

2. Employs or can engage investigators in the fields of economics, health services research, or information systems research who have direct experience at establishing, working with, and researching diabetes-related topics, and with a corresponding record of substantial publication in the peer-reviewed scientific literature.

3. Ability and willingness to designate one experienced and published investigator as the project's principal investigator.

4. The principal investigator for this project has access to a population of at least 5,000 people with diabetes who are cared for within a managed-care setting, and has access to research infrastructure and to basic data necessary to carry out this project.

5. Describe the composition of the proposed study population (for example, addressing the inclusion of women and members of minority groups and their subpopulations in the section that will describe the research design). A copy of the CDC policy on Women, Racial and Ethnic Minorities is enclosed with the application kit for guidance.

6. Nonprofit organizations must document their status on application PHS Form 5161–1 (Revised 5/96), Part D of the Checklist.

Responses to the above may follow the Table of Contents in your application, but must appear as the first page(s) of the text of your application and be titled, Application Requirements. Eligibility characteristics must be clearly specified with appropriate documentation in the Application Requirements section of your application.

The application narrative must include the following sections in the order presented below:

A. Rationale for the research question(s) chosen to be addressed (not to exceed 1 page):

Describe the research question(s) chosen to be addressed and the rationale for this selection. Include an explanation of why this question is a priority for the investigator(s) and what types of interest, experience, or expertise the investigator(s) brings to the particular problem inherent in the chosen research question(s).

The extent to which the rationale for the chosen research question (1) is based on public health importance, (2) is based on the experience and expertise of the investigator(s), and (3) clearly communicates the anticipated value to the purpose of the Diabetes Translational Research Initiative.

B. Objectives of the research (not to exceed 4 pages):

Itemize the objectives and timelines of the research in relation to the chosen research question(s), and describe: (1) The extent to which the objectives of the chosen research question(s) are numerically measurable, specific, realistic, time-phased, and suitable for development into a collaborative, multicenter study protocol; the extent to which applicant presents a detailed operational plan for initiating and conducting the project that clearly and appropriately addresses all Recipient Activities; (2) the extent to which the applicant clearly identifies specific assigned responsibilities and time commitment of all key professional personnel; (3) the extent to which the plan clearly describes applicant's technical approach and methods for conducting the proposed studies and

extent to which the approach and methods are appropriate and adequate to accomplish the objectives; (4) the extent to which applicant describes collaboration with CDC and others during the various phases of the project and shows commitment to a multicenter, collaborative approach.

C. Design of the research (not to exceed 3 pages):

The extent to which the proposed methodology of the research is scientifically sound, realistic, appears likely to answer the chosen research question(s), and will produce generalizable findings; and, if appropriate, the degree to which the applicant has included women, racial and ethnic minority populations in the proposed research to include:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representations.

2. The proposed justification when representation is limited or absent.

3. A statement whether the design of the study is adequate to measure differences when warranted.

4. A statement whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

D. Background and experience of the principal investigator, coinvestigators, and the applying institution, organization, or agency (not to exceed 3 pages):

Describe the educational and professional background of the principal investigator, and document the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying out health economics, health services, or information systems research. Specifically, emphasize the experience of the principal investigator in participating in collaborative, multicenter research projects, and describe the data sources that are available to the investigator. Describe the population and number of people with diabetes within the managed-care health plan, and provide details of the managed-care structure, organization, financing, and percentage of the Medicaid population under contract. Provide a brief description of how the project will be organized, and indicate the proposed staffing plan.

E. Access to a large number of people with diabetes (≤5000) cared for within managed care (not to exceed 2 pages):

Describe the extent to which (1) the population used in carrying out this research project is sufficiently typical of people with diabetes around the country or accurately represents special groups of people with the disease—so that a solution to the collaborative research question(s) will have the broadest possible application; (2) the principal investigators have sufficient access to well developed data sources and ability to use it for the purposes of carrying out this research project; and (3) if applicable, attach evidence of collaboration specifying the commitment of the parties involved and provide details, including the terms of access to data and to populations and any specified limits to collaboration for the purposes of this project.

F. Budget and budget justification (not to exceed 5 pages):

Provide a detailed, line-item budget with justification that demonstrates the request is consistent with the purpose and objectives of this program. The budget for Phase I of the study should be clearly delineated. Budgets should allow for approximately three persons, including the Principal Investigator, to attend Steering Committee and Subcommittee meetings. The detailed budget for Phase I should be estimated on the basis of monthly meetings during Phase 1.

G. Human Subjects:

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe (in an appendix) adequate procedures for the protection of human subjects. Also, ensure that women, and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Typing and Mailing

All pages must be clearly numbered and a complete index to the application and its appendixes must be included. Do not bind, staple, or paper clip any pages of any copy of the application, including appendixes. Do not include any bound documents (e.g., pamphlets or other publications) in the appendixes. Do not include cardboard, plastic, or other page separators between the sections. The entire application must be typewritten, single-spaced, and in unreduced type (12-point fonts) on 8½″ by 11″ white paper, with at least 1″ margins, including headers and footers, and printed on one side only.

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Rationale for the Research Question(s) Chosen to be Addressed (15 points)

Describe the research question(s) chosen to be addressed and the rationale for this selection. Included in this should be an explanation of why this question is a priority for the investigator(s) and what types of interest, experience, or expertise the investigator(s) brings to the particular problem inherent in the chosen research question(s).

The extent to which the rationale for the chosen research question (1) is based on public health importance, (2) is based on the experience and expertise of the investigator(s), and (3) clearly communicates the anticipated value to the purpose of the Diabetes Translational Research Initiative.

B. Objectives of the Research (20 points).

(1) The extent to which the objectives of the chosen research question(s) are numerically measurable, specific, realistic, and time-phased, and suitable for development into a collaborative, multicenter study protocol. The extent to which the applicant presents a detailed operational plan for initiating and conducting the project that clearly and appropriately addresses all Recipient Activities; (2) the extent to which the applicant clearly identifies specific assigned responsibilities and time commitment of all key professional personnel; (3) the extent to which the plan clearly describes applicant's technical approach and methods for conducting the proposed studies and the extent to which the approach and methods are appropriate and adequate to accomplish the objectives; and (4) the extent to which applicant describes collaboration with other translation centers during the various phases of the project, and shows commitment to a multicenter, collaborative approach.

C. Design of the Research (20 points).

The extent to which the proposed methodology of the research is scientifically sound, realistic, appears likely to answer the chosen research question(s), and will produce generalizable findings; and, if appropriate, the degree to which the applicant has included women, racial and ethnic minority populations in the proposed research to include:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representations.

2. The proposed justification when representation is limited or absent.

3. A statement whether the design of the study is adequate to measure differences when warranted.

4. A statement whether the plans for recruitment and outreach for study participants include the process of

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establishing partnerships with community(ies) and recognition of mutual benefits.

D. Background and Experience of the Principal Investigator and of the Applying Institution, Organization, or Agency (20 points).

Describe the educational and professional background of the principal investigator, and document the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying out health economics, health services, or information systems research. Specifically, emphasize the experience of the principal investigator in participating in collaborative, multicenter research projects, and describe the data sources that are available to the investigator. Describe the population and number of people with diabetes within the managed-care health plan, and provide details of the managed-care structure, organization, financing, and percentage of Medicaid population under contract. Provide a brief description of how the project will be organized and indicate the proposed staffing plan.

E. Access to a large Number of people with diabetes (≤5000) cared for within managed care (25 points).

Describe the extent to which (1) the population used in carrying out this research project is sufficiently typical of people with diabetes around the country or accurately represents special groups of people with the disease—so that a solution to the collaborative research question(s) will have the broadest possible application; (2) the principal investigator has sufficient access to well developed data sources and ability to use it for the purposes of carrying out this research project; and (3) if applicable, attach evidence of collaboration specifying the commitment of the parties involved and provide, including the terms of access to data and to populations any specified limits to collaboration for the purposes of this project.

F. Budget and Budget Justification (Not Weighted).

The extent to which the budget is reasonable and consistent with the purpose and objectives of this program.

G. Human Subjects (Not Weighted).

If the proposed project involves human subjects, whether or not exempt from the Department of Health and Human Services (DHSS) regulations, the extent to which adequate procedures are described for the protection of human subjects. Note: Objective Review Panel recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise; (2) protections appear inadequate and the Review Panel has concerns related to human subjects; (3) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable, and (4) protections appear adequate that women, racial and ethnic minority populations are appropriately represented in applications involving human research.

Content of Noncompeting Continuation Applications

Submitted within the project period need only include:

A. A brief progress report that describes the accomplishments of the previous semi-annual period. This report will be in lieu of the semi-annual progress report.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, key personnel, work plans, etc.) not included in year 01 or subsequent continuation applications.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372, which sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. The application kit includes a current list of SPOCs. If the SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–18, Room 305, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application due date (a waiver has been requested). Please include the Program Announcement Number and Program Title on the letter. The granting agency does not guarantee to "accommodate or explain" for State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and should include the following:

1. A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination plans with the appropriate State or local health agencies.

If the State and/or local health official desires a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.988.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review

committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit. Should human subjects reviews be required, the proposed word play should incorporate timelines for such development and review activities.

Women, Racial, and Ethnic Minorities Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Confidentiality

Any personal identifying information obtained in connection with the delivery of services provided to any individual under any program that is being carried out with a cooperative agreement made under this Program Announcement shall not be disclosed unless required by a law of a State or political subdivision or unless such an individual provides written, voluntary informed consent.

Application Submission and Deadline

The application must be carefully completed, following the directions provided in this Program Announcement. An original and two copies of the application PHS Form 5161–1 (Revised 5/96) must be submitted to Sharron P. Orum, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Atlanta, GA 30305–2209, on or before August 14, 1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.a. and 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305–2209, telephone (404) 842–6595; fax (404) 842–6513; or Internet or CDC WONDER E-mail at <lxt1@.cdc.gov>. Programmatic technical assistance may be obtained from Bernice A. Moore, Epidemiology and Statistics Branch, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–10, 4770 Buford Highway NE., Atlanta, GA 30341–3701, telephone (770) 488–5855; fax (770) 488–5966; or Internet or CDC WONDER E-mail at <bamo@cdc.gov>.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

Please refer to Announcement Number 98086 when requesting information and submitting an application.

You may obtain this and other CDC Announcements from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov.

Potential applicants may obtain a copy of *Healthy People 2000* (Full Report, Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325; telephone 202–512–1800.

Dated: June 22, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17202 Filed 6–26–98; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Infectious Diseases (NCID), Hepatitis Branch of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Consultants Meeting on the Prevention and Control of Hepatitis C Virus (HCV) Infection.

Times and Dates: 6 p.m.–9:30 p.m., July 15, 1998. 8 a.m.–5 p.m., July 16, 1998. 8 a.m.–12 p.m., July 17, 1998.

Place: Atlanta Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available. Registration is required.

Purpose: The purpose of this working meeting is to review and discuss draft recommendations that will serve as a resource to individuals and organizations involved in evaluating persons for HCV infection, and are based on currently available knowledge.

Matters To Be Discussed: Participants will discuss recommendations for identifying persons at risk for HCV infection and the appropriate counseling and testing of these persons. Participants will also discuss recommendations to guide appropriate medical referral of HCV infected persons. The agenda will include an overview of HCV public health strategies; and sessions on (a) screening; (b) counseling and referral; and (c) implementation.

The participants will include representatives from public, private, voluntary and non-governmental organizations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Wesley Hodgson, Hepatitis Branch, NCID, CDC, M/S G–37, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–3048, fax 404/639–1538, e-mail wxh9@cdc.gov.

Dated: June 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17203 Filed 6–26–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 14 and 15, 1998, from 8:30 a.m. to 5 p.m.

Location: Bethesda Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Rhonda W. Stover, or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 14, 1998, the committee will hear presentations concerning general regulatory issues from the Division of Antiviral Drug Products.

Procedure: On July 14, 1998, from 8:30 a.m. to 1 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 6, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. on July 14, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 6, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 14, 1998, from 1 p.m to 5 p.m., and on July 15 from 8:30 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). The meeting will discuss information relevant to pending investigational new drug applications and drug development plans.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: June 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17212 Filed 6-26-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 30, 1998, 8 a.m. to 6 p.m.

Location: Bethesda Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–211), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) Biologics license application 97–0509, Amgen Inc.'s Stemgen® (ancestim); (2) the report from the December 17, 1997, meeting of the Xenotransplantation Subcommittee; and (3) the research programs in the Laboratory of Immunology and the Laboratory of Molecular Immunology, Office of Therapeutics Research and Review, Center for Biologics Evaluation and Research. An indication is sought, in combination with Neupogen® (filgrastim), for use in mobilization of peripheral blood progenitor cells.

Procedure: On July 30, 1998, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 20, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 20, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On July 30, 1998, from 5 p.m. to 6 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss confidential information relevant to the scientific site visit report of the Laboratory of Immunology and the Laboratory of Molecular Immunology, Office of Therapeutics Research and Review, Center for Biologics Evaluation and Research.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–17146 Filed 6-26-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–227]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Research and Analytic Support for Implementing Performance Measurement in Medicare Fee for Service; *Form No.:* HCFA-R–227 (OMB# 0938–0718); *Use:* As required by the Balanced Budget Act (BBA), Section 1851(d), the Health Care Financing Administration (HCFA) needs to develop comparable performance measures for Fee For Service (FFS) Medicare. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. HCFA may potentially disseminate this information to Medicare beneficiaries so that they may make informed health care choices; *Frequency:* Biennially; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 6,670; *Total Annual Responses:* 6,670; *Total Annual Hours:* 2,223.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 22, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–17154 Filed 6–26–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding Section 602 of the Veterans Health Care Act of 1992—Rebate Option

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

SUMMARY: Section 602 of Pub. L. 102–585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service (PHS) Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of HHS in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed that amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of the final guidelines recognizing a rebate option for State AIDS Drug Assistance Programs (ADAPs) receiving funds under Title XXVI of the PHS Act as an optional alternate means of accessing section 340B discount pricing.

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Staley, R. Ph., Senior Program Manager, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, MD 20814, Phone (301) 594–4353; Fax (301) 594–4982.

SUPPLEMENTARY INFORMATION:

(A) Background

The proposed guidelines, recognizing a rebate option for State AIDS Drug Assistance Programs (ADAPs), were announced in the **Federal Register** at 62 FR 45823 on August 29, 1997. A period of 30 days was established to allow interested parties to submit comments. The Department received comments from eleven sources including State AIDS Drug Assistance Programs, pharmaceutical manufacturers, and organizations representing pharmaceutical manufacturers or covered entities. Ten commenters supported the proposed guideline. There were no comments strongly in opposition to the recognition of an ADAP rebate option. The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing these final guidelines. The rebate option is adopted with several modifications based upon these comments.

(B) Comments and Responses

Standardization of Systems

Comment: It is hoped that the guideline will ensure a rebate process similar to the Medicaid model and voluntary systems currently utilized by most drug companies in that such standardization will ensure a more efficient rebate system.

Response: The **Federal Register** notice requested comments only on the recognition of a rebate option and did not propose a specific mechanism for accessing such rebates. State ADAPs and manufacturers are encouraged to follow standard business practices in designing the contracts and agreements for such a rebate mechanism. The voluntary rebate agreements and the Medicaid rebate program may be used as models for development of the ADAP rebate agreements. The process for claim submission and payment is expected to be similar. The stipulations found in 59 FR 25113, May 13, 1994, section XI, entitled "Manufacturer's Contracts Requiring Entity Compliance" are also deemed to be applicable in that a manufacturer may not condition a rebate contract or agreement upon an entities' compliance with the provisions of section 340B. Manufacturer stipulated requirements for participation in the manufacturer designed voluntary rebate agreements, if predicated on section 340B compliance,

should be renegotiated for the section 340B rebate agreements.

Comment: Guidelines should allow State ADAPs with negotiated voluntary rebate agreements to continue to provide utilization data according to the terms of existing agreements.

Response: Voluntary rebate agreements with covered entities that provide at least the minimum statutory discount and do not contain requirements inconsistent with section 340B and published program guidelines will be considered consistent with the section 340B rebate program. State ADAPs may not need to negotiate new agreements if these conditions are met, and the ADAP or the manufacturer does not desire a new agreement. ADAPs may continue to provide utilization data according to terms of existing agreements if so desired.

Comment: Unlike the Medicaid rebate program, the proposed rebate program lacks specificity regarding program provisions and safeguards. It is critical that standardized contracts that provide for efficient and accountable procedures, systems, and data reporting formats be defined and implemented in conjunction with the program. The purpose of these provisions would be to protect the integrity of the program by safeguarding against errors, misunderstanding, and the potential for duplicate discounts and rebates.

Response: This notice only recognizes an ADAP rebate option and does not provide in-depth implementation strategies. Standard business practices should be utilized by State ADAPs and manufacturers. The mechanisms developed and used in the Medicaid rebate program and the current voluntary rebate programs (consistent with the requirements of section 340B and program guidelines) are models to be emulated. Of course, a 340B discount and a Medicaid rebate on the same covered drug are prohibited by section 340B.

Comment: The HRSA draft guidance does not address the mechanics of communication between an ADAP and a manufacturer about drugs reimbursed by the ADAP for which it claims a rebate from a manufacturer. It is recommended that HRSA consider requiring the ADAPs to use the claim form that State Medicaid programs use in submitting rebate requests to manufacturers.

Response: The **Federal Register** notice did not address the mechanics of the rebate process. However, ADAPs are encouraged to use Medicaid claim form HCFA–R–144 as a model for two reasons. First, this form can be considered a standard business practice model. Second, manufacturers should find it advantageous to receive rebate claims from State ADAPs in a similar form and format to that received from the State Medicaid programs.

Diversion and Duplicate Discounts

Comment: The State ADAP and the manufacturer are able to avoid the problems of diversion and double discounting if both the ADAP and the manufacturer have reached an understanding concerning the arrangements the ADAP has made to meet its statutory obligations (to avoid diversion and claims resulting in a duplicate discount).

Response: Guidelines have been issued to minimize the potential for duplicate discounting and covered drug diversion (59 FR 25110, May 13, 1994), and manufacturers have available to them auditing and dispute resolution remedies if they believe that duplicate discounting or covered drug diversion has occurred (61 FR 65406, December 12, 1996). In addition, manufacturers and covered entities are referred to 59 FR 25113 for a reminder that "a manufacturer may not condition the offer of statutory discounts upon an entity's assurance of compliance with section 340B provisions."

Comment: It would be difficult to administer a rebate program in which a given State ADAP used both the discount option and the rebate option. HRSA should clarify the policy that the rebate option is an "alternate to" the direct discount mechanism and the choice of a single mechanism should be made by each State ADAP. We urge that HRSA clarify that the ADAP rebate is available only for those drugs not purchased at the PHS (section 340B) discount. Additionally it is recommended that HRSA maintain a list of which option has been selected by each ADAP.

Response: The State ADAP 340B rebate option is an alternate method of accessing 340B pricing developed by HRSA in response to a clear need by certain State ADAPs which are unable to access such pricing through the direct discount option. We anticipate that these State ADAPs will promptly begin accessing 340B pricing using this rebate option. However, in States which have decentralized drug purchasing, there is the possibility that some decentralized ADAP components may elect to access pricing through a rebate mechanism while other ADAP components may develop systems to access a direct discount. States with decentralized drug purchasing are encouraged to centralize drug reimbursement mechanisms, so that from this central location, they can effectively maintain the necessary records to document appropriate drug reimbursement activity for the entire State. Using this drug reimbursement documentation, the central ADAP can then monitor reimbursement activity and prevent any duplicate rebate/discount on the same drug. In addition, the centralized ADAP can request appropriate rebates from the manufacturers in a more efficient and reliable manner. A State ADAP participating in the State ADAP section 340B rebate program will be listed as a covered entity, Entity Type "RWIIR."

Comment: Under a decentralized system, it may be difficult to assure that duplicate discounts will not occur on drugs provided to Medicaid patients. At any rate, coordination between the ADAPs and State Medicaid agencies will be required.

Response: Section 340B(a)(5)(A) prohibits a covered entity's request for a discount on a drug subject to an agreement under section 340B if the drug is subject to the payment of a rebate under Medicaid. This requirement applies whether the State ADAP uses a decentralized system or a centralized system. The mechanism to prevent a duplicate discount was published in the **Federal Register** on May 7, 1993 (58 FR 27293). This mechanism was developed in consultation with HCFA. In order to avoid a duplicate discount, the State ADAP must refrain from billing the State Medicaid agency unless the manufacturer's 340B rebate (either estimated or actually paid) is deducted from the price paid by the ADAP. This will help ensure that the State ADAP will only bill the State Medicaid agency at the actual acquisition cost plus a reasonable dispensing fee established by the State Medicaid agency. If the manufacturer's rebate is different from the estimated amount, the amounts billed to the State Medicaid agency will need to be reconciled.

Manufacturer Participation

Comment: All pharmaceutical manufacturers whose products are on any State ADAP formulary should be mandated to participate in the 340B rebate program.

Response: Only those manufacturers that have signed the section 340B Pharmaceutical Pricing Agreement (PPA) with HHS must honor appropriate section 340B rebate requests from covered entities. The rebate option is a component of the section 340B program specific to State ADAPs; therefore, manufacturers, receiving an appropriate rebate claim from a covered entity listed on the Electronic Data Retrieval System

(EDRS) as a State ADAP participating in the section 340B rebate program, are required to provide a rebate that meets or exceeds the 340B discount. Manufacturers who do not provide a rebate will be considered out of compliance with the PPA.

Technical Comments and Contractual Agreements

Comment: The notice does not detail the way in which State ADAPs would or should invoice manufacturers for rebates. For example, there are no statements on determination of actual units utilized during a specific period of time or a statement as to the time frame in which an ADAP must submit invoices.

Response: Standard business practices should be utilized. A manufacturer and a State ADAP are encouraged to specify in a contract or agreement the units and required time frame for claim data reporting. Unit definitions for reporting and report periods similar to those used in the Medicaid agreements and voluntary rebate agreements and contracts are considered standard business practices and thus acceptable. A standard State ADAP section 340B rebate claim submission and processing guideline was not specified so as to allow maximum flexibility between a State ADAP and manufacturers in the development of contracts and agreements.

Comment: There is no explicit audit provision in place to assure that the amount of units claimed for rebates coincides with the actual units of product dispensed. In addition, there is no specific procedure referenced for dispute resolution when a manufacturer disagrees with the amount invoiced from a State ADAP.

Response: Sections 340B(a)(5)(A) and (B) prohibit a 340B discount and a Medicaid rebate on the same drug and the resale or transfer of a 340B discounted drug to an individual who is not a patient of the covered entity. The manufacturer audit guidelines and the informal dispute resolution process guidelines (61 FR 65406–65412, December 12, 1996) allow manufacturers to audit covered entities pursuant to guidelines and dispute, among other issues, certain covered entity claims (e.g., rebates for covered drugs given to individuals who are not patients of the covered entity).

Comment: Manufacturers must have the freedom to enter into contractual agreements with individual State ADAP programs to address potential problems.

Response: Manufacturers and State ADAPs are able to enter into contractual agreements that address potential problems and mutually acceptable solutions.

Comment: A comprehensive and enforceable contract between the State ADAP program and the manufacturer should be developed through a public comment process and implemented prior to the establishment of the proposed new rebate mechanism. Specific elements that should be incorporated in any such agreement include: drug National Drug Code (NDC); prescription number; date reimbursed; quantity; unit type; amount reimbursed to the pharmacy; and dispensing pharmacy name, city, and state. Absent these provisions, the guidelines and principles proposed in the notice are not sufficient to ensure that the rebate option can operate equitably and efficiently.

Response: Requiring a "comprehensive and enforceable contract" would delay State ADAP participation in the 340B rebate program. HRSA wishes to allow maximum flexibility between each manufacturer and State ADAP in reaching such agreements.

Pharmacy specific data (prescription number, date of reimbursement, and similar data elements) are not reported on the initial Medicaid utilization submission and are not considered the standard for initial claim submission. HRSA encourages manufacturers to accept aggregate data (similar to Medicaid form HCFA–R–144) in the initial claim form. HRSA encourages State ADAPs to consider that the more detailed and accurate the initial claim data, the less likelihood a claim will be questioned or disputed.

Comment: We recommend that HRSA establish a specific date, such as 60 days after HRSA issues its guidance in final form, after which drugs reimbursed by an ADAP would be eligible for a rebate from a manufacturer with which the ADAP has entered into a rebate agreement.

Response: The effective date for the inception of the State ADAP 340B rebate program will be 30 days after the date of publication of this final notice. A State ADAP will not be considered a covered entity participating in the 340B rebate program until it is listed on the ODP Electronic Data Retrieval System (EDRS). At maximum, a period of one hundred and twenty days may elapse between publication of this final guideline and the next quarterly update of the EDRS. State ADAPs listed on the first quarterly EDRS update after the publication of this final notice may submit claims for covered drugs that were purchased 30 days after the date of final notice publication and thereafter. State ADAPs listed on a later EDRS update may claim rebates only on purchases made after their effective date of listing on the EDRS. ADAPs may need time to work closely with their State Medicaid programs to develop procedures to prevent duplicate discounting. Some ADAPs may find it necessary to improve record keeping and data tracking systems.

Comment: We recommend that HRSA establish a time period within which claims may be submitted for a manufacturer rebate. A fixed filing deadline will help avoid disputes and the Medicaid model may provide an analogy wherein Medicaid providers have one year in which to submit claims for reimbursement to state Medicaid programs. The benefit of a uniform expectation about the finality of payments and disputes for a given period may outweigh any concerns about HRSA imposing requirements on ADAPs.

Response: HRSA agrees that a maximum time period for submission of claims of one year appears to be within the range of standard business practices. However, a specific guideline for data claim submission and processing for rebates is not included in this guideline.

Comment: We urge HRSA to adopt requirements that manufacturer rebates paid to a State ADAP expand the care provided by the ADAP.

Response: Although section 340B does not discuss an appropriate use for 340B drug purchasing savings, the legislative history provides that section 340B was enacted to permit scarce Federal dollars to reach more eligible patients and provide more comprehensive services. *See* H.R. Rep. No. 102–348, 102d Cong., 2d Sess., pt 2, at 16 (1992).

Expansion of the Rebate Option to Additional Covered Entities

Comment: The characteristics of State ADAPs and their components make them more like State-run pharmaceutical benefit programs. The commitment of the States to assume responsibility for rebate contracting and administration has been essential to making the voluntary rebate program manageable. Our (favorable) response to the recognition of a rebate program for the ADAPs would be different if HRSA proposed a rebate program for all covered entities. Accordingly, we urge that the rebate mechanism be an option only for meeting the unique needs of the State ADAP programs and that HRSA not consider any further expansion to other categories of entities.

Response: At this time, we agree. This notice only recognizes a rebate option

for the State AIDS Drug Assistance Programs that receive assistance under Title XXVI of the PHS Act.

(C) The State ADAP Section 340B Rebate Option

In light of the comments and responses set forth above, the guideline for the state ADAP 340B rebate option is as follows: HRSA recognizes rebates obtained by the State ADAPs or their components that equal or exceed the 340B discount provided by the statutory ceiling price as a method of participating in the 340B program, subject to compliance with other requirements for participation. Standard business practices, such as those reflected in the Medicaid Rebate Program and current voluntary manufacturer rebate programs (consistent with the requirements of section 340B and all program guidance published in the **Federal Register**) are appropriate for the development of rebate contracts and agreements between State ADAPs and manufacturers. State ADAPs or their components and manufacturers wishing technical assistance in developing a rebate program and rebate agreements should contact HRSA's Office of Drug Pricing at (301) 594–4353 or (800) 628–6297.

State ADAPs or their components determined to be eligible for participation in the State ADAP 340B rebate program will be listed on the Office of Drug Pricing (ODP) Electronic Data Retrieval System (EDRS) on the first quarterly update of the EDRS which occurs 30 days following the effective date of this **Federal Register** notice. State ADAPs or their components listed on this update may submit rebate claims to participating manufacturers for covered drugs that are purchased starting 30 days after the date of this final notice publication. State ADAPs or their components listed on a later EDRS update may claim rebates only on purchases made after their effective date of listing on the EDRS.

Section 340B(a)(5)(A) reflects Congressional recognition that there is a potential for a covered drug purchased by a covered entity at the 340B discount price to be subject to a Medicaid rebate, if the drug is reimbursed by the Medicaid program. All program guidance regarding the prevention of such duplicate discounting must be followed by ADAPs participating in the rebate program as well as those participating in the discount program. Guidance regarding billing State Medicaid Agencies at actual acquisition cost plus a dispensing fee (established by the State Medicaid agency) and the prevention of duplicate discounting was published in the **Federal Register** on May 7, 1993 (58 FR 27293) entitled "Duplicate Discounts and Rebates on Drug Purchases." Further guidance was published in the **Federal Register** on May 13, 1994 (59 FR 25112). State ADAPs may find it necessary to work with State Medicaid Agencies to adapt these guidelines to meet the unique circumstances of each individual State, such as provisions permitting retroactive reimbursement of drug purchases while Medicaid eligibility was pending.

The HRSA is sensitive to concerns about diversion of covered drugs to individuals who are not patients of the covered entities. Guidelines have been issued to minimize this potential, and manufacturers have available to them specified remedies if they believe diversion has occurred. These guidelines and remedies will apply fully to drugs purchased under a rebate option, and we believe that instituting rebates will not increase the potential for diversion.

Dated: May 22, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–17142 Filed 6–26–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment of the Secretary's Advisory Committee on Genetic Testing

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Secretary's Advisory Committee on Genetic Testing (Committee).

This Committee will advise the Secretary of Health and Human Services on all aspects of the development and use of genetic tests, including making recommendations on policies and procedures for the safe and effective incorporation of genetic technologies into health care; assessing the effectiveness of existing and future measures for oversight of genetic tests; and identifying research needs related to the Committee's purview.

Unless renewed by appropriate action prior to its expiration, the charter for the Secretary's Advisory Committee on Genetic Testing will expire two years from the date of establishment.

Dated: June 22, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–17168 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

Date: August 2–5, 1998.

Time: 7:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard, Rm. 635F, Rockville, MD 20852–7405, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17172 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: July 28–30, 1998.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Virginia P. Wray, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard—Room 635, Rockville, MD 20895–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; 93.392, Cancer Construction, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17173 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Epidemiologic Studies of the Meyak and Techa River Cohorts.

Date: July 10, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North—Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C.M. Kerwin, Phd, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

Name of Committee: National Cancer Institute Special Emphasis Panel Phase I Clinical Studies of Chemopreventive Agents.

Date: July 13, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North—Conference Room F, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C.M. Kerwin, Phd, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

Name of Committee: National Cancer Institute Special Emphasis Panel International Phase III IL–2 Study.

Date: July 17, 1998.

Time: 7:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Olivia A. Preble, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—Rm. 643, Rockville, MD 20892–7405, 301/496–7929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17175 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute Subcommittee B—Basic Sciences.

Date: July 6, 1998.

Open: 8:30 am to 8:50 am.

Agenda: Call to Order by Board Chair and presentation by NCI Director regarding the Bypass Budget 2001.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892 301/496–2378.

Closed: 8:50 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Florence E. Farber, Phd, Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health 6130 Executive Boulevard, EPN 609, Rockville, MD 20892 301/496–2378.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.393, Cancer Cause and Prevention Research; 93.394, Cancer

Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398 Cancer Research Manpower; 93.399, Cancer Control; 93.392, Cancer Construction, National Institute of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17177 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: July 10, 1998.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892.

Contact Person: Andrew P. Mariani, Phd, Scientific Review Branch, 6130 Executive Blvd., Suite 350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17176 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Initiative for Minority Student Development Special Emphasis Panel.

Date: July 20–21, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Bldg., Room 1AS19H, 45 Center Drive, Bethesda, MD 20891.

(Catalogue of Federal Domestic Assistance Program Nos. 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.375, Minority Biomedical Research Support, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17169 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAM Special Emphasis Panel.

Date: July 9–10, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Lymangrover, Ph.D., Scientific Review Administrator, NIAMS, 45 Center Drive, Room 5AS 25, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Basic Research on Biomechanical Signalling Mechanisms in Cartilage.

Date: July 16, 1998.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tommy L. Broadwater, Ph.D., Chief, NIAMS, 45 Center Drive, Room 5AS25U, Bethesda, MD 20892.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Osteoporosis.

Date: July 26–27, 1998.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tommy L. Broadwater, Ph.D., Chief, NIAMS, 45 Center Drive, Room 5AS25U, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17170 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, Mbrs Subcommittee B, Minority Biomedical Research Support Review Subcommittee.

Date: July 9–10, 1998.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room C, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Michael A. Sesma, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Bldg., Room 1AS19H, 45 Center Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17171 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.

Date: July 7, 1998.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.

Date: July 15, 1998.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol A. Campbell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5195C, MSC 7848, Bethesda, MD 20892, (301) 435–1257.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel ZRG3MCHA/1M.

Date: July 20, 1998.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda MD 20892, (Telephone Conference Call).

Contact Person: Ronald Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1711.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–17174 Filed 6–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program: Final Notice of Allocations to States of FY 1998 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 1998 funds for refugee [1] social services.

SUMMARY: This notice establishes the allocations to States of FY 1998 funds for social services under the Refugee Resettlement Program (RRP). We have added approximately $22.1 million in unexpended FY 19965 CMA funds to the social services formula program bringing the total to $90.9 million in funds available for formula social services in FY 1998.

This notice reflects the decision by Congress to provide $14,000,000 under social services to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. This notice also announces ORR's intention to postpone a final decision on the elimination of the floor formula for States with small refugee populations until a later date. A notice of proposed social service allocations to States was published in the **Federal Register** on February 13, 1998, (63 FR 7422) for public comment. The population estimates that were used in the proposed notice have been adjusted in the final notice as a result of additional arrival information.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, Director, Division of Refugee Self-sufficiency, (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $129,990,000 in FY 1998 refugee social service funds as part of the FY 1998 appropriation for the Department of Health and Human Services (HHS) (Pub. L. 105–78).

The FY 1998 House Appropriations Committee Report (H.R. Rept. No. 105–205) reads as follows with respect to social services funds:

The bill provides $129,990,000 for social services, an increase of $19,108,000 over the comparable fiscal year 1997 appropriation and the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside $16,000,000 for

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Expoert Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship. In addition, ORR may initiate planning grants to create alternative cash and medical assistance programs for refugees.

The Committee recommends that ORR give special consideration in allocating grant funding to applicants providing rehabilitation services for victims of physical and mental torture. The Committee requests that ORR be prepared to testify regarding its activities in support of victims of torture during the fiscal year 1999 budget hearings.

The FY 1998 Senate Appropriations Committee Report (S. Rept. No. 105–58) adds the following:

The Committee is concerned that the current policy of the Office of Refugee Resettlement prohibiting the use of a portion of refugee social services and targeted assistance formula grant funds for refugees who have been in the United States for more than 5 years deprives some counties and States of the ability to give employment-related assistance to may of their refugee welfare recipients. The Committee urges the ORR to be flexible in considering waiver requests of the 5-year policy.

The Conference Report on Appropriations (H. Rept. No. 105–390) agrees with the House and Senate Reports regarding the allocation of social services.

The Director of the Office of Refugee Resettlement (ORR) will use the $129,990,000 appropriated for FY 1998 social services as follows:

- $68,841,500 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,148,500 will be awarded as social service discretionary grants through competitive grant announcements that will be issued separately from this notice.
- $19,000,00 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded through a discretionary grant announcement that will be issued separately from this notice.
- $16,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A grant announcement will be issued separately from this notice.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through announcements issued separately from this notice.

In addition, we are adding $22,066,190 in unexpended CMA funds that were obligated to States in FY 1996 to FY 1998 formula social service allocations to States, increasing the total amount available for the formula social services program in FY 1998 to $90,907,690. Congress provided ORR with broad carry-over authority in the FY 1998 HHS appropriations law to use FY 1996 CMA carry-over funds for assistance and other activities in the refugee program in fiscal years 1997 and 1998. The appropriations law state: "* * * That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Pub.L. 104–134 for fiscal year 1996 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal years 1997 and 1998." We have decided that the best use of FY 1996 unexpended CMA funds would be to increase State allocations in the social services formula program to enable States to more fully serve both RCA refugees and refugee recipients of Temporary Assistance for Needy Families (TANF) within the refugee social services system. Fourth quarter formula social service grant awards to States will reflect the increased funding.

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $90,907,690 to States on the basis of each State's proportion of the national population of refugees who has been in the U.S. 3 years or less as of October 1, 1997 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FR 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a viable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

We indicated in the proposed notice that ORR intends to eliminate the floor formula beginning in FY 1999 and to use the 3-year refugee population allocations formula for all participating States. The Director has decided to postpone a final decision on this issue at this time to allow consideration of this issue within the context of other program changes that may result through ORR regulations changes. See the "Discussion of Comments Received" section of this notice for further discussion of this issue.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR part 400 subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.147, States are required to provide services to refugees in the following order of

priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Export Financing, and Related Programs Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

In the past, a number of States have focused primarily on servicing refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face. We, therefore, strongly encourage State Refugee Coordinators to make every effort to develop agreements with their State TANF program to utilize, to the maximum extent possible, the existing refugee service system in a State for refugee TANF participants.

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a Family's needs for both employment related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with 45 CFR 400.145(c), States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make very effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.156(e), refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific (45 CFR 400.156(d)).

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities (45 CFR 400.156(c)).

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative (45 CFR 400.156(b)).

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs) voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for

social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support (social) services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (60 FR 15766, March 27, 1995). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

The Use of MAAs

ORR believes that the use of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, we expect States to use MAAs as service providers to the maximum extent possible. We strongly encourage States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. Discussion of Comments Received

We received 16 letters of comment in response to the notice of proposed FY 1998 allocations to States for refugee social services. The comments are summarized below and are followed in each case by the Department's response.

Comment: Thirteen commenters expressed concern over the proposed elimination of a floor amount for States with small refugee populations. Four States that receive a floor amount indicated that they would be forced to withdraw from the refugee program if the floor allocation is eliminated because the social services grant level would be insufficient to enable the program to continue to operate. Several comments indicated that refugees would go unserved in small States without a floor allocation. Other commenters made the point that once a State program is eliminated, it would be very difficult, and perhaps impossible, to reinstate the program in order to meet refugee emergencies that may arise in the future. Two commenters felt that the basis for elimination of the floor was unclear and needed to be clarified.

Representing an alternate view, two commenters expressed support for elimination of the floor for small States. One of the commenters, however, recommended reserving a small portion of discretionary funds to assist small States to continue in the refugee program.

Response: We recognize the expressed concerns of the States and refugee service providers that would be affected by the elimination of the small State floor and wish to be careful in considering all factors in making a final decision on this issue. We are also mindful of the fact that significant changes in refugee policy may result from the regulations process we are currently engaged in, and that it would make sense to consider other policy changes, such as elimination of the floor, within that context. We have decided, therefore, to postpone a final decision on elimination of the floor for small States to allow consideration of the floor issue within the context of other program changes that may result through ORR regulations changes. This means that we do not plan to eliminate floor allocations to small States in FY 1999. We also want to assure the floor States that the Director will not make a final decision on this issue without first meeting with each of the affected States to discuss implications and alternatives.

Comment: Three commenters objected to the fact that each year an ever increasing portion of refugee social services funding is awarded through discretionary programs instead of through the social service formula program. While recognizing that Congress increased the social services appropriation to serve specific types of needs, the commenters recommended that a responsible approach to the allocation of these funds would be to allocate these funds through the social services formula program, thereby allowing States to determine how best to address these special needs at the local level. The commenters felt that the quality of services would improve by allowing States and local areas greater discretion in determining how needs should be met. One commenter indicated that the different funding sources for self-sufficiency services within the refugee program make it difficult and unnecessarily complicated for States. Another commenter recommended that ORR consider an allotment of 75% of the total social services appropriation to States and 25% to discretionary programs.

Response: The use of discretionary programs allows ORR to better ensure that the service funds that Congress intends for certain populations or certain needs are targeted to the communities where these special populations reside or where special needs are the greatest. Allocation of these funds through the social services formula program would distribute funds to all States, regardless of whether the target populations reside or the target needs exist to any significant degree in each State. We believe the former method is the better method to ensure that Congressional intent is met.

Comment: One commenter stated that the 3-year population formula for social services is inequitable to States with high concentrations of refugees who have been in the U.S. more than 3 years. The commenter recommended that ORR work to have the Refugee Act amended to allow social services funds to be allocated on the basis of a State's total refugee population needing employment services.

Response: States with large concentrations of refugees also receive targeted assistance funding which is

expressly intended for services to long-term refugee welfare recipients, such as the post-36-month population, who are still in need of employment services. Therefore, we do not see a particular need to amend the statutory formula for social services.

Comment: One commenter recommended that ORR should be responsive to the Senate Appropriations Committee's request that ORR be flexible in considering waiver requests regarding the limitation of eligibility for services to refugees who have been in the U.S. less than 5 years. The commenter recommended that ORR grant States maximum flexibility to use service funds for refugees who have been in the U.S. more than 5 years.

Response: We are very willing to consider any requests for a waiver of the 5-year service limitation that are submitted to ORR, as long as documentation is provided to ensure that all refugees residing in a State or California county, who have been in the U.S. less than 5 years, are being fully served. What we cannot do, however, is to delegate the authority to waive Federal regulations pertaining to the refugee program to a State official, as was requested by one State. The authority for waiving Federal refugee program regulations rests solely with the Director of ORR as the Federal official responsible for the administration of the program and, therefore, may not be delegated.

III. Allocation Formula

Of the funds available for FY 1998 for social services, $90,907,690 is allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the Sate as of October 1, 1997, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1998 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1997, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants, and Kurdish asylees.

For fiscal year 1998, ORR's formula allocations for the States for social services are based on the numbers of refugees, Amerasians, Kurdish asylees, and entrants who arrived during the preceding three fiscal years: 1995, 1996, and 1997, based on arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1994, and September 30, 1997, and who are thought to be living in each State as of October 1, 1997.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 (OMB # 0970–0043) on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1997. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians and Kurdish asylees are included in the refugee figures.

With regard to Havana parolees, we have adjusted the 3-year population of one State, the State of Florida, based on documentation the State provided regarding the number of Havana parolee arrivals to that State. For all other States, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting each State that received entrant arrivals during the 3-year period from FY 1995–FY 1997 with a prorated share of the 5,992 parolees reported by the Immigration and Naturalization Service (INS) to have come to the U.S. directly from Havana in FY 1997. In addition, we have credited each State with the same share of FY 1995 and FY 1996 Havana parolees that they were credited with in the final FY 1996 and FY 1997 social service notices. The allocations in this notice reflect these additional parolee numbers.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1997, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the formula amounts which the population estimates yield (col. 5); and the allocation amounts after allowing for the minimum amounts (col. 6).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submitted and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. The following amounts are allocated for refugee social services in FY 1998:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1998

State	Refugees[1] (1)	Entrants (2)	Havana[2] parolees (3)	Total population (4)	Formula amount (5)	Allocation (6)
Alabama	523	113	61	697	$201,618	$201,618
Alaska[3]	0	0	0	0	0	0
Arizona	4,979	542	324	5,845	1,690,760	1,690,760
Arkansas	183	13	6	202	58,432	93,968
California[4]	45,673	948	667	47,288	13,678,816	13,678,816
Colorado	3,502	9	7	3,518	1,017,638	1,017,638
Connecticut	2,124	297	182	2,603	752,960	752,960
Delaware	34	4	3	41	11,860	75,000
Dist. of Columbia	1,831	14	8	1,853	536,010	536,010
Florida	14,625	24,247	19,517	58,389	16,889,960	16,889,960
Georgia	8,420	247	153	8,820	2,551,327	2,551,327

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1998—Continued

State	Refugees[1] (1)	Entrants (2)	Havana[2] parolees (3)	Total population (4)	Formula amount (5)	Allocation (6)
Hawaii	236	1	0	237	68,556	100,000
Idaho	1,443	1	1	1,445	417,990	417,990
Illinois	11,462	446	251	12,159	3,517,187	3,517,187
Indiana	1,195	11	9	1,215	351,458	351,458
Iowa	4,851	6	3	4,860	1,405,833	1,405,833
Kansas	1,601	17	10	1,628	470,925	470,925
Kentucky[5]	3,065	579	248	3,892	1,125,824	1,125,824
Louisiana	1,345	239	163	1,747	505,348	505,348
Maine	674	1	0	675	195,255	195,255
Maryland	3,700	170	104	3,974	1,149,544	1,149,544
Massachusetts	7,176	151	113	7,440	2,152,140	2,152,140
Michigan	7,327	396	192	7,915	2,289,541	2,289,541
Minnesota	8,726	25	15	8,766	2,535,707	2,535,707
Mississippi	37	32	22	91	26,323	75,000
Missouri	5,765	22	17	5,804	1,678,901	1,678,901
Montana	226	0	0	226	65,374	100,000
Nebraska	1,825	40	17	1,882	544,399	544,399
Nevada[5]	892	803	551	2,046	591,838	591,838
New Hampshire	903	1	0	904	261,497	261,497
New Jersey	3,866	1,110	799	5,775	1,670,512	1,670,512
New Mexico	466	787	613	1,866	539,771	539,771
New York	38,386	1,184	793	40,363	11,675,649	11,675,649
North Carolina	3,179	45	23	3,247	939,247	939,247
North Dakota	1,163	4	3	1,170	338,441	338,441
Ohio	3,985	54	28	4,067	1,176,445	1,176,445
Oklahoma	772	17	10	799	231,124	231,124
Oregon	4,383	514	273	5,170	1,495,506	1,495,506
Pennsylvania	7,217	327	166	7,710	2,230,242	2,230,242
Rhode Island	346	7	3	356	102,979	102,979
South Carolina	346	8	4	358	103,557	103,557
South Dakota	658	0	0	658	190,337	190,337
Tennessee	3,570	225	105	3,900	1,128,138	1,128,138
Texas	11,470	1,064	703	13,237	3,829,016	3,829,016
Utah	2,567	1	0	2,568	742,835	742,835
Vermont	714	0	0	714	206,536	206,536
Virginia	4,834	252	143	5,229	1,512,573	1,512,573
Washington	17,412	66	30	17,508	5,064,471	5,064,471
West Virginia	14	1	0	15	4,339	75,000
Wisconsin	2,387	18	11	2,416	698,867	698,867
Wyoming[3]	0	0	0	0	0	0
Total	251,878	35,059	26,351	313,288	90,623,606	90,907,690

[1] Includes: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.
[2] For FY 1997, Florida's HP's (3957) were based on actual data while HP's in other States (2035) were prorated based on the States' proportion of the three year (FY 1995–1997) entrant population. For FY 1996, Florida's HP's (7303) were based on actual data while HP's in other States (2611) were prorated based on the States' proportion of the three year (FY 1994–1996) entrant population. For FY 1995, Florida's HP's (8245) were based on actual data while HP's in other States (2188) were prorated based on the States' proportion of the three year (FY 1993–1995) entrant population.
[3] Alaska and Wyoming no longer participate in the Refugee Program.
[4] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.
[5] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: June 19, 1998.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 98–17266 Filed 6–26–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–04]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due: August 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison

Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information: Title of Proposal: Subrecipient Agreement OMB Control Number, if applicable: Description of the need for the information and proposed use: This information is needed in order for the Tribe/Tribally Designated Housing Entity (TDHE) to be able to effectively monitor the activities of the subrecipient and to ensure that funds are being utilized in accordance with applicable statutes and regulations. The authority for collection of this information is 1996 Native American Housing and Self-Determination Act (NAHASDA).

Agency form numbers, if applicable: None.

Members of affected public: Tribal Governments, Tribally Designated Housing Entities (THDEs).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response. 200 respondents, four times per year (average), 10 hours per response, 8,000 hours total reporting burden.

Status of the proposed information collection: New.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 22, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

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- - SAMPLE - -

SUBRECIPIENT AGREEMENT

Agreement between
(insert name of Recipient)
and
(insert name of Subrecipient)
for the Implementation of the
Indian Housing Block Grant Number _____

This Agreement is entered into between (insert name of Tribe/TDHE), hereinafter referred to as Recipient, and the (insert name of Subrecipient), hereinafter referred to as Subrecipient, to authorize Subrecipient to act as the subrecipient entity for the implementation of the Indian Housing Block Grant (IHBG) Number _____ under the Native American Housing and Self Determination Act of 1996 (NAHASDA). The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of the IHBG fund or other assets including program income.

1. WORK ASSIGNED

The work assigned under this Agreement is as follows:

(Insert specific description of the work assigned to the Subrecipient. Include any exceptions, deletions or special circumstances.)

2. OBLIGATIONS OF THE SUBRECIPIENT

A. Statement of Work (SOW).

1. The Subrecipient shall be responsible, on behalf and in the best interests of the Recipient/TDHE, for the successful implementation of the specific IHBG Number _____ activities, as described in this Agreement

2. The Subrecipient shall supervise and monitor the day-to-day performance of its staff/any contractors and shall report to the Recipient regarding their monitoring findings on a regular

basis. It will also submit regular progress reports, revised documentation or schedules, and immediately alert the Recipient in writing as to any problems encountered which could delay or alter the agreed upon terms of the Agreement.

3.The Subrecipient shall advocate, solicit, coordinate, procure, manage, develop, and maintain the program as stated in this Agreement on behalf of the Recipient. This includes entering into agreements, arbitrating, compromising, negotiating, and settling disputes, and securing, obtaining, managing, transferring, and holding funds from any source.

4. The Subrecipient shall adhere to all applicable laws, regulations, and guidance in the administration of this Agreement. The Subrecipient agrees that it is responsible for any damages incurred by the Recipient as a result of Subrecipient's failure in this regard.

B. Schedule of Work.

1. The Subrecipient shall prepare and submit a Schedule of Work (Schedule) specifying work to be done, dates of completion and sources of funds. This schedule must be approved by the Recipient prior to beginning of work or release of funds.

2. Proposed changes or amendments to the Schedule must be submitted in writing to the Recipient for review and concurrence. All such documents become a part of this Agreement and are thus subject to the same standards and requirements stipulated herein.

C. Budget.

1.The budgetary amount established for the work assigned under this Agreement totals $(insert dollar amount). The Subrecipient will make requests for funds commensurate with the time frames and formats prescribed by the Recipient. (Recipient to state specific windows for requests and attach copies of forms it wants the Subrecipient to use.)

2.After the Recipient has determined that the work was performed satisfactorily, payments will be

made for eligible expenses actually incurred by the Subrecipient, and will not exceed the actual cash requirements. Payments will be made against the line items as specified in the approved budget. Payments will be denied or made within 30 days of request by the Subrecipient.

3.The Subrecipient will submit monthly accounting statements to the Recipient. The date established for these submissions is (Recipient to insert the day/date each month that the statements are due.) The Subrecipient will also submit other reasonable written reports upon request by the Recipient.

3.RECORDS AND REPORTS

A. Establishment and Maintenance of Records

1. The Subrecipient shall maintain records including, but not limited to, financial records, bid documents, and all other records sufficient to reflect all direct and indirect costs incurred to perform the work assigned.

2. The Subrecipient shall maintain reports as required by this Agreement. It shall establish and maintain all backup data necessary to support those reports.

3. The Subrecipient is responsible for maintaining all other records and reports as required by law, including, but not limited to those required by the regulation implementing NAHASDA.

B. Preservation of Records and Reports.

1. The Subrecipient shall preserve and make available for review and inspection all records and reports related to the work assigned under this Agreement. These records and reports shall be maintained for a period of three years after the program close out. Program close out shall be the point at which the Recipient agrees that the responsibilities of the Subrecipient have been completed.

2. The Subrecipient shall retain these records and reports beyond this period of time until any possible litigation audit findings, or claims have been resolved.

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4. AUDITS

A. Review of Records.

1. The Subrecipient must make their records available for review by the recipient, as well as others authorized by the Recipient.

B. Compliance.

1. The Subrecipient must comply with applicable sections of OMB Circular No. A-133, Revised June 24, 1997.

5.OBLIGATIONS OF THE TRIBE

A. Timely Payments.

1. The Recipient must perform prompt reviews of payment requests submitted by the Subrecipient. Requests for payments shall be either denied or approved and made by the Recipient within 30 days of request by the Subrecipient.

B. Monitoring Activities.

1. The Recipient shall establish a schedule for periodic review of the Subrecipient. Reviews shall be conducted (insert time period for review, e.g., at the end of each quarter, every, six months, etc.).

2. On site reviews may be made only after the Recipient has provided notice to the Subrecipient of such review in writing at least (insert time for notice, e.g., one week, 10 days, etc.) prior to the review.

C. Provision of Information.

1. The Recipient shall provide the Subrecipient with program information necessary for the Subrecipient to perform their duties with respect to this Agreement. An example of program information is the Indian Housing Plan, or applicable portions, for the tribe for which activities under this Agreement are to be undertaken.

6. OTHER REQUIREMENTS

A. Nondiscrimination Requirements.

1. Subrecipients must comply with the nondiscrimination requirements shown in 24 CFR 1000.12.

B. Relocation and Acquisition.

1. Subrecipients must comply with the relocation and real property acquisition policies as shown in 24 CFR 1000.14.

C. Labor Standards.

1. Subrecipients must comply with the labor standards as shown in 24 CFR 1000.16.

D. Environmental Reviews.

1. A Subrecipient may collect data and provide information for an environmental review to the Recipient, but it may not certify or assume responsibility for an environmental review. See 24 CRF 1000.18.

E. Administrative Requirements.

1. Subrecipients must comply with the administrative requirements as listed in 24 CFR 1000.26.

F. Conflict of Interest.

1. Subrecipients must comply with the conflict of interest provisions as shown in 24 CFR 1000.30 and Part 85.36

G. Lead-Based Paint Poisoning Prevention.

1. Subrecipients must comply with the lead-based paint poisoning prevention requirements as shown in 24 CFR 1000.40.

H. Section 3 of the Housing and Urban Development Act of 1968.

1. Subrecipients must comply with Section 3 of the Housing and Urban Development Act of 1968 as set forth in 24 CFR 1000.42.

I. Use of Debarred, Suspended or Ineligible Contractors.

1. Subrecipients must comply with the prohibitions in 24 CFR Part 24, as well as any tribal requirements, with regard to the use of debarred, suspended or ineligible contractors. (24 CFR 1000.44).

J. Drug-Free Workplace.

1. Subrecipients must comply with the Drug-Free Workplace Act of 1988, HUD's implementing regulations at 24 CFR Part 24, and any tribal requirements. (24 CFR 1000.46).

K. Indian Preference.

1. Subrecipients must comply with the Indian preference requirements pursuant to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e(b)). (24 CFR 1000.48).

L. Other.

1. Subrecipients must comply with all other applicable portions of 24 CFR Part 1000, as well as all other applicable laws and regulations.

7. AMENDMENTS

This agreement may be amended by the Subrecipient or the Recipient at any time provided that such amendments make specific reference to this agreement, are executed in writing, signed by an authorized representative of both organizations, and approved by the Recipient's, governing body. Such amendments shall not invalidate this agreement, or relieve or release either party from its obligations under this Agreement.

The Recipient may, at its discretion, amend this agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of service or schedule or, the activities to be undertaken as part of this agreement, such

modification will be incorporated only by written amendment signed by both the Recipient and the Subrecipient.

8. SUSPENSION AND/OR TERMINATION

The Recipient retains the right to suspend or terminate this Agreement should the Subrecipient in any way materially fail to comply with any term of the award. The award may also be terminated for convenience subject to the provisions set forth in 24 CFR 85.43 and 85.44.

9. REVERSION OF ASSETS

Upon the expiration of this Agreement, the Subrecipient shall transfer to the Recipient all funds on hand at the time of expiration of this Agreement, and all accounts receivable that are attributable to the use of these funds. All real property that was acquired or improved with NAHASDA funds and is under the control of the Subrecipient shall be returned to the Recipient, unless property ownership or control has been transferred as evidenced by a written document and attached as an addendum to this Agreement.

[FR Doc. 98–17276 Filed 6–26–98 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–05]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract for Development of Architectural/ Engineering (A/E) Services and Comprehensive Improvement Assistance Program (CIAP) A/E Services.

OMB Control Number, if applicable: 2577–0015.

Description of the need for the information and proposed use: The contractual agreements between a HUD grantee (housing agency, (HA)) and an architect/engineer (A/E) for design and construction services establish responsibilities of both parties pursuant to the contract. The HA and A/E are not required by the contract to submit any materials to HUD. These contractual agreements are required by Federal Law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits.

Agency form numbers, if applicable: HUD–51915, HUD–51915–A.

Members of affected public: State, Local Government, Businesses or other for-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,630 projects (respondents), one A/E contract per project, two hours per contract, 5,260 hours includes signing the contracts and preparation of the contracts using the model form of agreement. 657 hours total annual recordkeeping burden (2,630 projects × .25 hours/contract).

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 22, 1998.

Deborah Vincent,

General Deputy, Assistant Secretary for Public and Indian Housing.

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U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015 (exp.7/31/98)

Model Form of Agreement Between Owner and Design Professional

Model Form of Agreement Between Owner and Design Professional

U. S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015 (exp. 7/31/98)

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85 36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement made as of the _____ day of _____ in the year of _____

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

A 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s)
- Schedule of building types, unit distribution and bedroom count
- Scale plan of all buildings, and typical dwelling units
- Wall sections and elevations
- Outline specifications
- Preliminary construction cost estimates
- Project specific analysis of codes, ordinances and regulations
- Three dimensional line drawings

A 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction
- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquires
- Drafting and issuing addendum approved by Owner
- Attending prebid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

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A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- Monitor the quality and progress of the work and furnish a written field report ☐ weekly, ☐ semi monthly, ☐ monthly, or ☐ _____. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and countersign change orders.
- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents within _____ calendar days for the date of the receipt of a Notice to Proceed.
- Design Development Documents within _____ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- Bidding, Construction and Contract Documents within _____ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of $ _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	$ _____
Design Development Phase	$ _____
Bidding, Construction & Contract Document Phase	$ _____
Bidding & Award Phase	$ _____
Construction Phase	$ _____
Post Completion/ Warranty Phase	$ _____
Total Basic Services	$ _____

B. 2.0 Reimbursables

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of $ _____. Reimbursable expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office (s), and Owner's office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

B .3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner's receipt of the invoice.

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) $ _____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Con-

struction Contract Cost, the Owner has the right to require the Design Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

_____

_____

_____

_____

_____

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount
_____	
_____	
_____	
_____	

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional 's negligent performance of any of the services furnished under this contract.

Article E: Additional Requirements

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of $10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest

extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

E. 1.13 Indian Preference in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.165 and Federal law, the Design Professional shall provide Indian Preference in its contracting, training, and employment practices when this contract is with an Indian Housing Authority and shall incorporate the following language into all of its subcontracts:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to the contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of $100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of $100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

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E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

E. 1.18Prohibition Against Liens. . The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

This Agreement is entered into as of the day and year first written above.

Owner	Design Professional
_____	_____
(Housing Authority)	(Firm)
_____	_____
(Signature)	(Signature)
_____	_____
(Print Name)	(Print Name)
_____	_____
(Print Title)	(Print Title)

Addendum (If any)
(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day of _____ in the year of _____ between the Owner _____ and Design Professional _____ on Project _____. The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications. This Addendum is dated this _____ day of _____ in the year of _____.

Owner	Design Professional
_____ (Housing Authority)	_____ (Firm)
_____ (Signature)	_____ (Signature)
_____ (Print Name)	_____ (Print Name)
_____ (Print Title)	_____ (Print Title)

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U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015 (exp.7/31/98)

Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

U. S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (F) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements. Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present

member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of $10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons. Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

1.13 Indian Preference in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.165 and Federal law, the Design Professional shall provide Indian Preference in its contracting, training, and employment practices when this contract is with an Indian Housing Authority and shall incorporate the following language into all of its subcontracts:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to the contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

1.14 Clean Air and Water. (Applicable to contracts in excess of $100,000). Because of 24 CFR 85.36(i)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of $100,000.

1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex , national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

[FR Doc. 98–17277 Filed 6–26–98; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–05]

Announcement of OMB Approval Number for Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities—24 CFR part 58 (Final Rule).

FOR FURTHER INFORMATION CONTACT: Richard Broun, Director, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1201, ext. 4465. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to 24 CFR part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

The OMB approval number for this information collection is 2506–0087, which expires on June 30, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: June 23, 1998.

Fred Karnas,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–17275 Filed 6–26–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Revised Draft Recovery Plan for the Mobile River Basin Aquatic Ecosystem for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a revised draft recovery plan for the Mobile River Basin aquatic ecosystem, a drainage basin encompassing much of south and central Alabama, with portions extending into east Mississippi, northwest Georgia, and southeast Tennessee. The revised draft plan addresses the recovery objectives, criteria, and tasks for 15 freshwater species, including 3 fish, 11 mussels, and 1 aquatic snail, and complements recovery plans previously developed for another 17 freshwater species within the Mobile River Basin, including 2 turtles, 7 fish, 6 mussels, and 2 plants. The Service solicits review and comment from the public on this revised draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 1, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (601/965–4900, ext. 25).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The draft Mobile River Basin Aquatic Ecosystem Recovery Plan was initially released for public review and comment on September 28, 1994. The current revised draft plan evolved from four years of information sharing, discussion, and review of aquatic resources and conflicts by a group of Mobile River Basin stakeholders that included private landowners, industry representatives, environmental organizations, and State and Federal agencies.

The revised draft recovery plan provides recovery objectives and criteria for the goldline darter (*Percina aurolineata*), Cherokee darter (*Etheostoma scotti*), Etowah darter (*Etheostoma etowahae*), Alabama moccasinshell (*Medionidus acutissimus*), orange-nacre mucket (*Lampsilis perovalis*), fine-lined pocketbook (*Lampsilis altilis*), southern acornshell (*Epioblasma othcaloogensis*), upland combshell (*Epioblasma metastriata*), Coosa moccasinshell (*Medionidus parvulus*), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), triangular kidneyshell (*Ptychobranchus greeni*), and the tulotoma snail (*Tulotoma magnifica*). The goldline darter was listed as threatened in 1992 due to a suspected decline in historic range, population fragmentation and isolation, and existing threats to extant populations due to water quality degradation. The threatened Cherokee darter and endangered Etowah darter were listed in 1994 because of nonpoint source pollution threats to limited stream populations. In 1993, eight of the 11 mussels were listed as endangered, and three as threatened due to habitat loss and fragmentation resulting from

impoundment and their vulnerability to nonpoint source pollution and other threats. The tulotoma snail was listed as endangered in 1991 due to the loss of more than 90 percent of its historic habitat, and the isolation and vulnerability of surviving populations.

The recovery objectives of the revised draft plan are to protect the Basin's native aquatic fauna and flora by achieving higher levels of innovative land and water stewardship; reclassify and delist the tulotoma snail; delist the goldline, Etowah, and Cherokee darters; and prevent the extinction of the eight endangered mussels and the continued decline of the three threatened mussels. Actions needed to achieve these objectives include protection of fluvial habitats and water quality, development of mitigation strategies for in stream habitats, community based watershed stewardship planning and action, concerted public education efforts, and basic research on freshwater species endemic to the basin.

This revised plan is being submitted for technical/agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 22, 1998.

Robert Bowker,

Field Supervisor.

[FR Doc. 98–17180 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–5410–A159; AZA 30673]

Application for Conveyance of Federally-Owned Mineral Interests, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application for the conveyance of federally-owned minerals has been filed under the provisions of 43 U.S.C. 1720 for the following described lands:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E.,
Sec. 11, NW¼.
containing 160 acres.

Upon publication in the **Federal Register**, the mineral interests owned by the United States in the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregation will terminate upon issuance of a patent for the mineral interests, rejection of the application, or 2 years from the date of publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Neel McBride, (602) 417–9353, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004–2203.

Dated: June 16, 1998.

Mary Jo Yoas,

Supervisor, Lands and Minerals Operations.

[FR Doc. 98–17155 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–01; N–56882]

Termination of Segregative Effect, Portion of Airport Lease N–56882

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action partially terminates a segregative effect on airport lease N–56882 held by the Eureka County Board of Commissioners. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth Nelson, Elko Field Office, 3900 E. Idaho St., Elko, Nevada 89801, 702–753–0200

SUPPLEMENTARY INFORMATION: The segregative effect for the affected lands was made on July 21, 1966, pursuant to the Act of May 24, 1928, as amended. Partial termination of the segregative effect will allow conveyance by direct sale of the affected land to the Eureka County Board of Commissioners in order to alleviate a situation of inadvertent encroachment by adjacent property owners.

The segregative effect is hereby terminated for the following described land:

Mount Diablo Meridian, Nevada

T. 29 N., R. 48 E.,
Sec. 4,. Lots 14, 15, 18.

The area described contains 5.13 acres in Eureka County.

1. At 9 a.m. on July 29, 1998, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

2. At 9 a.m. on July 29, 1998, the land described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 16, 1998.

David J. Vandenberg,

Acting Field Manager.

[FR Doc. 98–17156 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 20, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 14, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Benton County

Edwards Grocery, 20 S. Second St., Rogers, 98000852

Cross County

Block, Isaac, House, 404 E. Hamilton St., Wynne, 98000851

COLORADO

Alamosa County

Sacred Heart Catholic Church, 727 4th St., Alamosa, 98000855

Jefferson County

Arvada Downtown, Roughly bounded by Ralston Rd., Teller Rd., Grandview Ave. and Yukon St., Arvada, 98000854

Larimer County

Edgemont, 1861 Mary's Lake Rd., Estes Park, 98000853

FLORIDA

Clay County

Clarke, William, Estate, (Orange Park, Florida MPS), 1039–1057 Kingsley Ave., Orange Park, 98000862

Green, Joseph, House (Orange Park, Florida MPS), 531 McIntosh Ave., Orange Park, 98000860

Helffrich, William, House (Orange Park, Florida MPS), 1200 Plainfield Ave., Orange Park, 98000857

Orange Park Elementary School (Orange Park, Florida MPS), 1401 Plainfield Ave., Orange Park, 98000858

Orange Park Negro Elementary School (Orange Park, Florida MPS), 440 McIntosh Ave., Orange Park, 98000856

River Road Historic District (Orange Park, Florida MPS), Jct. of River Rd. and Stiles Ave., Orange Park, 98000861

Westcott, William, House (Orange Park, Florida MPS), 443 Stiles Ave., Orange Park, 98000859

Orange County

Russell, Annie, Theatre, 1000 Holt Ave., Winter Park, 98000863

IOWA

Emmet County

Ellsworth Ranch Bridge (Historic Highway Bridges of Iowa MPS), 130th St., over E fork of Des Moines R., Armstrong vicinity, 98000869

Fayette County

Maple View Sanitarium, 100 N. Walnut St., West Union, 98000866

Polk County

Highland Park Historic Business District at Euclid and Sixth Avenues, Roughly jct. of Euclis Ave. and Sixth Ave., Des Moines, 98000867

Shelby County

Chicago, Rock Island and Pacific Railroad Stone Arch Viaduct, 0.5 mi. NW of jct. of St. F66 and Hackberry Rd., Shelby vicinity, 98000870

Story County

Briggs Terrace, 1204 H Ave., Nevada, 98000868

Woodbury County

Burkam, Elzy G., House, 1525 Douglas St., Sioux City, 98000864

Martin, T.S., and Company, Jct. of 4th St. and Nebraska St., Sioux City, 98000865

MASSACHUSETTS

Plymouth County

Revere Beach Reservation Historic District, Roughly bounded by Eliot Circle, Revere Beach Blvd., Northern Circle, and Atlantic Ocean, Revere, 98000871

MINNESOTA

Dakota County

Ramsey Mill and Old Mill Park, Jct of 18th St. and Vermillion R., Hastings, 98000872

NEW YORK

Warren County

Wiawaka Holiday House, NY 9L, SE of Lake George, Lake George, 98000874

NORTH CAROLINA

Chatham County

Siler City High School, 119 S. Third Ave., Siler City, 98000873

TENNESSEE

Monroe County

Owen, Charles, House, 1019 Mayes St., Sweetwater, 98000875

TEXAS

Atascosa County

Korus Farmstead, US–281 at Farm-to-Market Rd. 536, Leming vicinity, 98000876

WISCONSIN

Dane County

Fritz, John, Farmstead, 642 Fritz Rd., Montrose, 98000879

Green Lake County

McClelland—Kasuboski House, W404 W. Hillside Rd., Berlin, 98000878

Manitowoc County

Green Bay Road Bridge, Mill St. at Manitowoc R., Manitowoc Rapids, 98000877

[FR Doc. 98–17272 Filed 6–26–98; 8:45 am]

BILLING CODE 4310–70–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program Federal Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 8:30 a.m.to 5 p.m. on July 8, 1998 and from 8:30 a.m. to 12 noon on July 10,1998 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, Virginia 22209–2111.

The agenda will concentrate on the activities of the MVDP over the past six months and plans for the next year.

The meeting will be open to the public unless it is necessary to discuss procurement sensitive information; should this be the case, it will be announced and the meeting closed at the appropriate time. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728, Fax (202) 216–3702. or e-mail: cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer (Technical Advisor, Malaria Vaccine Development Program).

[FR Doc. 98–17231 Filed 6–26–98; 8:45 am]

BILLING CODE 8116–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on April 22, 1998, in 63 FR 19946, at which time a 60-calendar day comment period was announced. This comment period ended June 22, 1998. No comments were received in response to this notice. This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways

to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30-calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, 202/395–5871.

SUMMARY OF FORM UNDER REVIEW:

Type of request: Revision.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC 50.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 850 per year.

Federal Cost: $1060 per year.

Authority for Information Collection: Sections 231 and 234 (a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): OPIC 50 is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: June 24, 1998.

Laura Naide,

Senior Counsel, Department of Legal Affairs.

[FR Doc. 98–17257 Filed 6–26–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Keystone Sanitation Company, Inc., et al.*, Civil Action No. 1:CV–93–1482, was lodged on with the United States Court for the Middle District of Pennsylvania on June 23, 1998.

The proposed consent decree pertains to the Keystone Sanitation Superfund Site ("Site"), located near Hanover, Pennsylvania. The United States had sued a number of defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, to recover past response costs incurred at the Site. In the settlement, eight generator defendants agree to perform on-site and off-site groundwater remediation in exchange for a site-wide covenant not to sue under Section 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6673. They also agree to pay $125,000 toward natural resource damages in exchange for a covenant not to sue under Section 107 of CERCLA, 42 U.S.C. 9607, for natural resource damages. The settling generator defendants also agree to reimburse $13,000 of the past response costs incurred by the Commonwealth of Pennsylvania in connection with the Site, and to pay $30,000 toward state natural resource damages, and in exchange the Commonwealth provides similar covenants not to sue under CERCLA, RCRA, and the state statutory counterparts. The settling generator defendants receive contribution protection for matters addressed in the settlement, and waive all existing claims against the plaintiffs and all generator or transporter parties, as well as future claims for contribution as to generators and transporters contributing less than 18,000 cubic yards of municipal solid wastes to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Keystone Sanitation Company, et al.*, DOJ Ref. # 90–11–2–656A.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $125.00 payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17181 Filed 6–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on July 16, 1998, from 10:00 am until 4:00 pm at The Washington National Airport Hilton Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations

for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the February 19, 1998, meeting; introduction of newly appointed Board members, discussion of comments on the DRAFT Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories; discussion of certification; and a discussion of topics for the next DNA Advisory Board meeting.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" X 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Dwight E. Adams, Chief, Scientific Analysis Section, Laboratory Division—Room 3266, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535–0001, (202) 324–4416, FAX (202) 324–1462

Dated: June 22, 1998.

Dwight E. Adams,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 98–17136 Filed 6–26–98; 8:45 am]

BILLING CODE 4410–62–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10483, et al.]

Proposed Exemptions; Van Ness Plastic Molding Co., Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Van Ness Plastic Molding Co., Inc. Employees' Money Purchase Pension Plan (the Plan) Located in Belleville, NJ

[Application No. D–10483]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the making to the Plan of a restoration payment (the Restoration Payment) with respect to certain defaulted third-party notes (Note 1, Note 2 and Note 3; collectively, the Notes) by the Van Ness Plastic Molding Co., Inc. (the Employer), a party in interest with respect to the Plan; and (2) the potential future receipt by the Employer of recapture payments (the

Recapture Payments) made to the Plan pursuant to bankruptcy proceedings involving the issuer/assignor of the Notes.

This proposed exemption is subject to the following conditions:

(a) Mr. William Van Ness, the Plan trustee (the Trustee), agrees to have excluded from his individual account in the Plan (the Account) any benefit attributable to the Restoration Payment, such that the total Restoration Payment is allocated to the Accounts of the other Plan participants and does not include any portion related to the interest of Mr. Van Ness's Account in the Notes.

(b) The Restoration Payment, which is calculated based upon the Account balances in the Plan of participants other than Mr. Van Ness, covers—

(1) The aggregate unrecovered principal of the Notes plus accrued, but unpaid, interest on the Notes as of the dates of default, calculated through December 31, 1997;

(2) An additional amount representing interest on the unrecovered principal of Notes 2 and 3, originally scheduled for maturity in 1999, from January 1998 until the date the Restoration Payment is made; and

(3) Lost opportunity costs associated with Note 1, which was originally scheduled for maturity in 1997, from January 1998 until the date the Restoration Payment is made.

(c) Any Recapture Payments are restricted solely to the amounts, if any, recovered by the Plan with respect to the Notes in litigation or otherwise.

(d) The Restoration Payment is made to resolve potential claims for breach of fiduciary duty relating to the management of the Plan.

(e) The Employer receives a favorable ruling from the Internal Revenue Service (the Service) that the Restoration Payment does not constitute a "contribution" or other payment that will disqualify the Plan.

Summary of Facts and Representations

1. The Plan is a nonstandardized prototype money purchase pension plan having 96 participants and total assets of $1,831,873.27 as of December 31, 1997. The Plan is sponsored by the Employer, a New Jersey corporation that is engaged in the manufacture of plastic molding. Mr. William Van Ness, the Trustee, also serves as the sole shareholder and president of the Employer. As Trustee, Mr. Van Ness has full investment discretion and authority with regard to Plan investments except with respect to those that are under the control of an investment manager.

2. Among the assets of the Plan are three notes that were issued or assigned by The Bennett Funding Group, Inc. (Bennett), an unrelated party. The Notes, which were acquired by the Plan between 1993 and 1995 at the direction of Mr. Van Ness, are in the face amounts of $250,000 (Note 1), $17,688.48 (Note 2), and $13,842.22 (Note 3). In order to purchase the Notes, the Plan paid Bennett an aggregate cash purchase price of $281,530.70. Following acquisition, the Plan did not incur any servicing fees or costs in connection with the administration of the Notes.

The Notes are further described as follows:

(a) *Note 1* represented a contractual or an insurable interest in a pooled investment vehicle that was established and sold by Bennett and its subsidiary, Resort Funding, Inc., on a non-recourse basis to accredited investors. The investment pool consisted of consumer sales agreements, leases and rental agreements, installment sales contracts or consumer sales agreements generated by third party business equipment dealers and others. The amount of the issue was $60 million. Each unit or interest had a minimum purchase price of $10,000. The term of each investment contract or "note" ranged from 11 months to 60 months and carried interest at the rate of approximately 6 percent to 9 percent per annum.

On March 15, 1993, the Plan acquired Note 1 from Bennett for the cash purchase price of $250,000. Note 1, which carried interest at the rate of 9 percent per annum, was scheduled to mature on December 15, 1997. Interest under Note 1 was payable to the Plan in monthly installments of $1,875, with payments commencing on April 15, 1993.

(b) *Note 2* was acquired by the Plan from Bennett on August 1, 1995 for a total purchase price of $17,688.48. Note 2 had a term commencing on September 30, 1995 and ending on August 30, 1999. It carried interest at the annualized rate of 9.5 percent. Principal and interest were payable to the Plan in monthly installments of $444.39.

(c) *Note 3* was acquired by the Plan from Bennett on November 16, 1995 for a total purchase price of $13,842.22. Note 3 had a term commencing from January 15, 1996 until December 15, 1999. It carried interest at the annualized rate of 9.5 percent. Principal and interest were payable to the Plan in monthly installments of $337.76.

Each Note was secured by (a) equipment owned by Bennett which Bennett was leasing to unrelated parties; and (b) an assignment of the income stream generated by such leases.[1] The Employer and the Trustee believed that the Notes were relatively low-risk and safe investments.

4. On or about March 29, 1996, Bennett filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of New York (Case Nos. 96–61376 *et seq.*). Richard C. Breeden, formerly the Chairman of the Securities and Exchange Commission (the SEC), was appointed Bankruptcy Trustee for the Bennett debtors on April 18, 1996. Subsequent to the March 29, 1996 filing, five additional affiliates of Bennett filed for Chapter 11 protection and Mr. Breeden was again appointed as Bankruptcy Trustee for these entities.

5. The Declaration of Bankruptcy by the Bennett debtors stemmed from a lawsuit by the SEC regarding alleged widespread fraudulent practices involving the Bennett debtors. In this regard, (a) over $55 million of fictitious leases were sold to investors and the funds derived from investors were used to service these leases; (b) assignments made of government leases were typically illegal and ineffective; and (c) through certain "sham" transactions Bennett appeared to be profitable while it was actually losing money.

6. The Plan filed a Proof of Claim (the Claim) in the amount of $326,355.73 for the "money loaned and purchase of lease/assignments" in the Bennett bankruptcy.[2] The Plan's Claim was classified as an unsecured nonpriority claim, since Mr. Breeden noted that there was no collateral or lien on the property of the debtor securing the Claim. The Claim includes both principal and interest payments on the Notes' outstanding balances from the date of the last payment received in 1996 through December 15, 1997. In this regard, the Plan received aggregate payments from Bennett with respect to the Notes of $70,396.67. Such payments can be broken down as follows:

(a) *For Note 1*, the Plan received a final interest payment from Bennett in March 1996 in the amount of $1,875 or total interest payments of $67,500.

(b) *For Note 2*, the Plan received monthly interest payments from Bennett until February 1996 in the amount of $444.39 or a total payment of both principal and interest of $2,221.95.

[1] According to the applicant, the question of whether the Notes were also secured by a master insurance policy issued by Generali Underwriters, Inc., an unrelated party, which guaranteed the income stream from the leases, continues to be the subject of litigation.

[2] The Department expresses no opinion herein on whether the acquisition and holding of the Notes by the Plan violated any of the provisions of Part 4 of Title I of the Act.

(c) *For Note 3*, the Plan received monthly interest payments until February 1996 of $337.36 or a total payment of both principal and interest of $674.72.

At the time of the Bennett bankruptcy proceedings, the amount of unrecovered principal for Notes 1, 2 and 3 were $250,000, $15,825.81 and $13,363.98, respectively.

7. Because of the complexity surrounding the Bennett debtors' bankruptcy, it is unclear whether any recovery of the Notes will occur. Also, due to uncertainty about whether the Notes have actually been insured, the applicant believes it unlikely that any insurance company would pay investors' claims (including individual investors and retirement plans) relating to the individual leases inasmuch as the insured is listed as Bennett. The applicant further represents that whatever amount, if any, that the Plan is able to recover with respect to the Notes through the bankruptcy proceedings, or otherwise, it is likely to suffer significant losses.

8. As stated in Representation 1, as of December 31, 1997, the assets of the Plan totaled $1,831,873.27. This figure reflects the fair market value of the Plan's assets and assumes that the Notes (plus accrued interest) are valued at $0. According to the applicant, the exact fair market value of the Notes is not ascertainable at this time as litigation is ongoing with respect to this matter.

9. At present, the amount of unrecovered principal of the Notes is $279,189.79. In addition, the accrued interest associated with the Notes through the dates of default, calculated through December 31, 1997 is $44,458.89. In order to avoid potential fiduciary claims by Plan participants and others relating to the Plan's investment in the Notes, the Employer proposes to restore the losses to the Plan by making a "Restoration Payment." Therefore, an administrative exemption is requested from the Department.

10. The Restoration Payment will consist, in part, of the aggregate amount of the principal loss on the Notes (i.e., $279,189.79) plus accrued, but unpaid, interest (i.e., $44,458.89), calculated from the time of default through December 31, 1997, and multiplied by 58.38 percent, which percentage reflects the interests in the Plan of participants other than Mr. Van Ness, who has a 41.62 percent interest in the Plan. In other words, 58.38 percent of the unrecovered principal and interest (or $188,946.09) will be paid to the Accounts of the remaining Plan participants. The Restoration Payment will also include an additional amount representing accrued interest on the unpaid principal of Notes 2 and 3, for the period January 1998 until the date the Restoration Payment is made, again attributable to the Accounts of participants in the Plan other than the Account of Mr. Van Ness. Finally, the Restoration Payment will include the lost opportunity costs with respect to the unrecovered principal of Note 1 from the period of its scheduled maturity in December 1997 and ending with the date immediately preceding the date the Restoration Payment is made, again attributable to the Accounts of participants in the Plan other than the Account of Mr. Van Ness. Such opportunity costs will be based on the average rate of return for the Plan, excluding the Notes, for the years 1995 through 1997.[3]

Assuming the Restoration Payment is made to the Plan on June 30, 1998, the applicant represents that the opportunity costs associated with Note 1 is $18,302.13 and would be calculated as follows:

$250,000 (Unrecovered Principal of Note 1) × 58.38% (Plan's Interest in Note 1) × 12.54% (Plan's Average Rate of Return for 1995–1997) = $18,302.13.

Again assuming the Restoration Payment is made to the Plan on June 30, 1998, the applicant represents that the total payment would be approximately $208,321.87. Of this amount,

(a) ***$188,946.09*** would denote the Restoration Payment as of December 31, 1997, which would be calculated as follows:

$250,000.00	Note 1 Unrecovered Principal
15,825.81	Note 2 Unrecovered Principal
13,363.98	Note 3 Unrecovered Principal
$279,189.79	Total Unrecovered Principal
$44,458.89	Accrued interest on Notes from Default through 12/31/97
$323,648.68	Total Unrecovered Principal and Accrued Interest through 12/31/97

$323,648.68 × 58.38% (Plan's Interest in Notes 1, 2 and 3 plus Accrued Interest) = $188,946.09;

(b) ***$18,302.13*** would be attributed to the opportunity costs associated with Note 1 from January 1998 through June 30, 1998, as already calculated above;

(c) ***$438.86*** would be attributed to actual interest accruing on Note 2 from January 1998 through June 30, 1998, calculated as follows: $15,825.81 (Note 2 Unrecovered Principal) × 58.38% (Plan's Interest in Note 2) × 4.75% (½ year interest) = $438.86; and

(d) ***$634.79*** would represent the additional interest accruing on Note 3 from January 1998 until June 30, 1998, calculated as follows: $13,363.98 (Note 3 Unrecovered Principal) × 58.38% (Plan's Interest in Note 3) × 4.75% (½ year interest) = $634.79.

11. Because Mr. Van Ness has agreed to have excluded from his Account any benefit which may be attributable to the Restoration Payment, each affected Plan participant will have allocated to his or her Account in the Plan the applicable portion of the Restoration Payment as determined by the third-party Plan administrator. However, in no event will a restored Account have assets exceeding the amount that would have been in the Account of the affected Plan participant but for the loss due to the Bennett bankruptcy.

The Plan will be required to refund the Restoration Payment to the Employer only to the extent of any amount or amounts that the Plan is able to recover from Bennett (the Recapture Payment). The Employer will bear all expenses of prosecuting the Plan's claims with respect to the Notes, including those relating to the Bennett bankruptcy proceedings, as well as the costs of the exemption application.

12. Coincident with its filing of the exemption application, the Employer requested a Private Letter Ruling from the Service on the issues of whether the Restoration Payment (a) would constitute a "contribution" or other payment to the Plan subject to the provisions of either sections 404 or 4972 of the Code; (b) would adversely affect the qualified status of the Plan pursuant to either Code sections 401(a)(4) or 415; (c) would result in taxable income to affected Plan participants and beneficiaries; and (d) would be deductible in full by the Employer pursuant to section 162 of the Code.[4] In

[3] The average rate of return earned by the Plan for 1995 through 1997 is 12.54 percent. This figure does not include the Plan's investment in the Notes. In a letter dated September 11, 1997, Mark Shemtob, A.S.A of Aber Pension Services, Inc., an independent actuarial and pension consulting firm, located in Livingston, New Jersey, represented that the Plan had net investment earnings of $198,126 in 1995 and an average account balance of $1,198,876, which would result in a 16.53 percent rate of return for 1995. In 1996, Mr. Shemtob noted that the Plan had net investment earnings of $131,397 and an average account balance of $1,032,459, which would result in a 12.73 percent rate of return for that year.

By letter dated April 29, 1998, the applicant noted that the Plan's rate of return for the year 1997 was 8.41 percent based upon a telephone communication with Mr. Shemtob. Accordingly, the average rate of return for the Plan for the period 1995 through 1997 is 12.54 percent.

[4] Section 401(a)(4) of the Code provides that contributions made by an employer to or under a

Continued

its ruling letter of March 2, 1998, the Service stated that neither the Code nor the Income Tax Regulations provide guidance on whether the Employer's proposed Restoration Payment would constitute a contribution under the Code. However, in the instant case, the Service noted that the Restoration Payment would ensure that the affected participants would recover their Account balances and place such participants in the position in which they would have been in the absence of the Trustee's decision to invest a portion of the Plan's assets in the Notes.

The Service explained that it was reasonable to characterize the Restoration Payment as a "replacement payment." In this regard, the replacement payment would be made by the Employer in response to potential claims against the Employer and those individuals who were responsible for investing the Plan's assets in the Notes. In addition, the replacement payment would be allocated to the Accounts of participants in the Plan who had incurred a principal loss as a result of the Note investment. Thus, the Service concluded that the proposed Restoration Payment (a) would not constitute a contribution or other payment subject to the provisions of Code sections 404 or 4972; (b) would not adversely affect the qualified status of the Plan pursuant to either Code section 401(a)(4) or Code section 415; and (c) would not, when made, result in taxable income to affected Plan participants and beneficiaries.

Finally, the ruling letter is conditioned on two requirements. Firstly, the Restoration Payment must be made to resolve potential claims for breach of fiduciary duty relating to the management of the Plan. Secondly, the ruling letter is based on the representation that no part of the Restoration Payment will be added to the Account of the Trustee.

13. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Restoration Payment will enable the Plan to recover immediately the unpaid principal of the Notes, accrued interest and lost opportunity costs; (b) any Recapture Payments will be restricted solely to the amounts, if any, recovered by the Plan with respect to the Notes in litigation or otherwise; (c) the Employer has received a favorable ruling from the Service that the Restoration Payment does not constitute a "contribution" or other payment that will disqualify the Plan; (d) Mr. Van Ness's Account will not share in the Restoration Payment such that the total Restoration Payment will be made to the Accounts of Plan participants other than Mr. Van Ness; and (e) the Restoration Payment will be made to resolve potential claims for breach of fiduciary duty relating to the management of the Plan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John Hancock Mutual Life Insurance Company (JHMLIC) Located in Boston, Massachusetts

[Application No. D–10484]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570 subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to:

(1) The proposed purchases and sales of timber properties between various separate accounts (the Accounts), such as the ForesTree Separate Account, that are maintained by JHMLIC and managed by Hancock Natural Resource Group, Inc. (HNRG), John Hancock Timber Resource Corporation (JHTRC), or another Affiliate of JHMLIC; and

(2) The proposed purchases and sales of timber properties between the Accounts where HNRG or another Affiliate of JHMLIC serves as the investment manager and various partnerships (the Partnerships) in which JHTRC or another Affiliate of JHMLIC is the general partner.

Conditions and Definitions

This proposed exemption is subject to the following conditions:

1. ERISA-Covered Plans may participate in the proposed transactions only if they have total assets in excess of $100 million.

2. At least 30 days prior to the proposed transaction, each affected Customer invested in the Accounts or Partnerships participating in the transaction will be provided with information regarding the timber properties involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of the Customer. Notice of any change in the purchase price will be provided to the Customer at least 30 days prior to the consummation of the transaction.

3. An Independent Fiduciary will be appointed by JHMLIC or an Affiliate to represent the interests of the ERISA-Covered Plans as follows:

(a) Where the proposed transaction involves an ERISA-Covered Plan (including a Pooled Separate Account or Partnership holding "plan assets" subject to the Act)[5] and a Non-ERISA Plan or other Non-ERISA Customer, an Independent Fiduciary will be appointed to represent the ERISA-Covered Plan (or Pooled Separate Account or Partnership), whether that Account or Partnership is the buyer or the seller of a timber property in the proposed transaction;

(b) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or Partnerships holding "plan assets" subject to the Act) and the decision to liquidate the timber property is the result of one or more "triggering events" described below, an Independent Fiduciary will be appointed by JHMLIC or an Affiliate to represent the purchasing plan (or Pooled Separate Account or Partnership)—i.e. the Buying Account or Buying Partnership. A "triggering event" will exist whenever:

(i) JHMLIC or an Affiliate receives a direction from the Customer to liquidate

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stock bonus, pension, profit sharing or annuity plan shall be deductible under section 404 subject to certain limitations contained therein.

Section 415 of the Code provides, in relevant part, that a trust which is part of a pension, profit sharing or stock bonus plan shall not constitute a qualified trust under section 401(a)—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceeds the limitations of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitations of subsection (c).

Section 415(e) of the Code provides limitations on employer contributions and benefits where an individual is a participant in both a defined benefit and a defined contribution plan maintained by the same employer.

Section 1.415–6(b)(2) of the Income Tax Regulations provides that the term "annual additions" includes employer contributions which are made under the plan. Section 1.415–6(b)(2) further provides that the Commissioner of the Service may treat transactions between the plan and the employer or certain allocations to participants' accounts as giving rise to annual additions.

Section 4972 of the Code imposes on an employer an excise tax on nondeductible contributions to a qualified plan.

Finally, section 402(a) of the Code generally provides that amounts held in a trust that is exempt from tax under Code section 501(a) and that is part of a plan that meets the qualification requirements of Code section 401(a) will not be taxable to participants until such time as such amounts are actually distributed to distributees under the plan.

[5] See 29 CFR 2510.3–101 for the Department's definition of "plan assets" relating to plan investments.

all of the Customer's Account or interest in a Partnership;

(ii) JHMLIC or an Affiliate receives a request by the Customer to liquidate a specified timber property; or

(iii) A liquidation of all of the assets held in the Selling Account or Selling Partnership, or a particular property held by such Account or Partnership, is required under the terms of the investment contract, insurance contract or investment guidelines governing the Account or Partnership, and the decision to select any particular timber property to be sold is outside of the control of JHMLIC and its Affiliates; and

(c) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or Partnerships holding "plan assets" subject to the Act) and there is no "triggering event" as described above in Condition 3(b), an Independent Fiduciary will be appointed by JHMLIC or an Affiliate for each Account or Partnership involved in the transaction.

4. With respect to each transaction requiring the participation of an Independent Fiduciary (as described in Condition 3 above), the purchase and sale of a timber property shall not be consummated unless the Independent Fiduciary determines that the transaction, including the price to be paid or received for the property, would be in the best interest of the particular Account or Partnership involved based on the investment policies and objectives of such Account or Partnership.

5. Each Account or Partnership which buys or sells a particular timber property pays no more than or receives no less than the fair market value of the timber property at the time of the transaction, as determined by a qualified independent real estate appraiser experienced with the valuation of timber properties similar to the type involved in the transaction.

6. Each purchase or sale of a timber property between the Accounts or Partnerships is a one-time transaction for cash.

7. Each Account or Partnership involved in the purchase or sale of a timber property pays no real estate commissions or brokerage fees relating to the transaction.

8. JHMLIC or an Affiliate acts as a discretionary investment manager for the assets of the Accounts or Partnerships involved in each transaction.

9. No purchase or sale transaction is designed to benefit the interests of one particular Account or Partnership over another.

10. For purposes of this proposed exemption:

(a) "Account" means a Separate Account as defined below, including a "Non-Pooled Separate Account" or a "Pooled Separate Account";

(b) "Partnership" means a limited partnership with assets, that may or may not be considered "plan assets" subject to the Act, for which JHTRC or another Affiliate of JHMLIC is the general partner and HNRG or another Affiliate of JHMLIC serves as investment manager;

(c) "ERISA-Covered Plan" is an employee benefit plan as defined under section 3(3) of the Act;

(d) "Non-ERISA Plan" or "Non-ERISA Customer" means an entity or investor not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, a charitable foundation fund or other institutional investor, whose assets are managed in an Account or Partnership for which JHMLIC or an Affiliate acts as investment manager;

(e) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with JHMLIC;

(f) "Buying Account" or "Buying Partnership" means the Account or Partnership which seeks to purchase timber properties from another Account or Partnership;

(g) "Selling Account" or "Selling Partnership" means the Account or Partnership which seeks to sell timber properties to another Account or Partnership;

(h) "Independent Fiduciary" means a person or entity with authority to both review the appropriateness of the proposed transaction for an Account or Partnership, that is considered to hold "plan assets" subject to the fiduciary responsibility provisions of the Act, based on the investment policy established for that Account or Partnership, and to negotiate the terms of the transaction, including the price to be paid for the timber property. An individual or firm selected to serve as an Independent Fiduciary shall meet the following criteria:

(1) The individual or firm may have no current employment relationship with John Hancock or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(2) The individual or firm must not have received more than five (5) percent of its annual gross receipts during the preceding calendar year from business with John Hancock and its Affiliates;

(3) The individual or individuals in the firm must have an undergraduate or graduate academic degree in forestry;

(4) The individual or individuals in the firm must have a minimum of five (5) years experience and a demonstrated proficiency in timberland appraisal work;

(5) The individual or individuals in the firm must have a current certification as a Member of the Appraisal Institute, a Senior Real Estate Analyst under the Society of Real Estate Appraisers, or a similar nationally recognized certification;

(6) The individual or firm must have the ability to access appropriate timberland sales comparison data and make appropriate adjustments to the subject property; and

(7) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations;

(i) "Separate Account" means a segregated asset Account which receives premiums or contributions from customers, including employee benefit plans subject to the Act, in connection with group annuity contracts and funding agreements, with investments held in the name of JHMLIC, but where the value of the contract or agreement to the Customer (contractholder) fluctuates with the value of the investment associated with such Account;

(j) "Non-Pooled Separate Account" or "Non-Pooled Account" means a Separate Account established to back a single contract issued to one Customer, which may be an employee benefit plan subject to the Act;

(k) "Pooled Separate Account" or "Pooled Account" means a Separate Account established to back a group of substantially identical contracts issued to a number of unrelated Customers, including employee benefits plans subject to the Act; and

(l) "Customer" means a person or entity that acts as the authorized representative for an Account or Partnership involved in a proposed purchase or sale of timber properties, that is independent of JHMLIC and its Affiliates.

Summary of Facts and Representations

1. *The Applicants.* The applicant for the exemption is John Hancock Mutual Life Insurance Company of Massachusetts (JHMLIC or "John Hancock") on behalf of itself and on behalf of its indirect wholly-owned subsidiaries, Hancock Natural Resource Group, Inc. (HNRG) and John Hancock Timber Resource Corporation (JHTRC), both Delaware corporations.

John Hancock ranks as one of the largest insurance companies in the United States and is a registered investment advisor. John Hancock and its subsidiaries had total assets of approximately $58.6 billion as of December 31, 1996, and assets under management of approximately $107 billion as of that date.

John Hancock offers group annuity contracts and funding agreements to Customers, including employee benefit plans subject to the Act. Certain of these contracts and agreements provide that, in accordance with contractholder direction, the premiums or contributions received from the contractholder will be allocated internally on the books of John Hancock to segregated asset accounts or "Separate Accounts." The Separate Account investments are held in John Hancock's name, but the value of the contract or agreement to the contractholder fluctuates with the value of the investments associated with the Separate Account. The direct expenses of managing the investments and John Hancock's fees are charged against the value of the Separate Account.

Separate Accounts may be established to back a single contract issued to one customer (a "Non-Pooled Separate Account"). In addition, a Separate Account may be established to back a group of substantially identical contracts issued to a number of unrelated customers (a "Pooled Separate Account").

2. John Hancock currently maintains a number of Separate Accounts that invest almost exclusively in timberland. These Pooled and Non-Pooled Separate Accounts are known as the ForesTree Separate Accounts. The contractholders of both the pooled and non-pooled ForesTree Separate Accounts include both ERISA-covered plans and non-ERISA governmental plans. As of July 1997, John Hancock had established a total of 14 such pooled and non-pooled ForesTree Separate Accounts in which 32 contractholders participate. Currently, over two million acres of timberland are allocated to the ForesTree Separate Accounts, and these properties have a fair market value in excess of $2.3 billion.

Under the applicable contract or agreement, John Hancock has the right to control, manage and administer each Separate Account, including the sole discretion to select and dispose of investments in accordance with the investment policy established for the Account.

3. John Hancock's management responsibilities under the ForesTree Separate Accounts are performed mostly by its wholly-owned subsidiary, HNRG, which was established in 1995. Prior to its incorporation in 1995, HNRG functioned as a division within John Hancock. HNRG currently manages 2.5 million acres of timberland valued at approximately $2.87 billion. HNRG's managed assets include assets held in the ForesTree Separate Accounts as well as assets managed through other arrangements. HNRG is responsible for all decisions regarding the acquisition and disposition of timberland properties held in the ForesTree Separate Accounts, although such decisions must be reviewed and approved by John Hancock's internal investment committees. HNRG also has sole responsibility for the management of John Hancock's timberland properties, including site preparation and reforestation, road building and construction, maintenance, acquisition of insurance and payment of taxes. On-site work is performed by independent forest managers under contract to HNRG.

4. Assets invested in the ForesTree Separate Accounts are managed by John Hancock and HNRG in accordance with the investment policies established for the Accounts. The investment policy for each Non-Pooled Account is established jointly by John Hancock and the contractholder. For each of the Pooled Accounts, the investment policy is established by John Hancock and adopted by each contractholder when it chooses to participate in a Pooled Account. Under the investment policy of most of the ForesTree Separate Accounts, timberland properties are purchased or sold opportunistically to favor the return of the particular portfolio. However, John Hancock states that as a practical matter the properties allocated to the ForesTree Separate Accounts are fairly illiquid investments, and are considered by its customers to be long-term investments.

HNRG has established certain guidelines that are followed as investments are acquired and allocated to timberland portfolios it manages, including those portfolios for Accounts holding "plan assets" subject to the Act such as the ForesTree Separate Accounts. The goal of these guidelines is to enable HNRG to provide its clients with access to a variety of timberland acquisitions through a fair, consistent and unbiased process. The central element of the procedure is a determination of the suitability of an investment for a portfolio. In the event that an investment is suitable for more than one portfolio, priorities are set in accordance with an investment queue procedure.

HNRG states that the first step in determining portfolio suitability is to identify all potential funding sources for a pending acquisition among its existing clients. Each prospective participating Account is evaluated independently. The client's investment policy, setting forth specific objectives and constraints, is the primary determinant of whether or not a particular acquisition is suitable for allocation to the Account. The portfolio "fit" is based on financial analysis that projects and measures future portfolio performance, including and excluding the pending acquisition, against established performance targets. Performance targets may include total return, appreciation and income. Different levels of investment in the pending acquisition are reviewed. Consideration is given to diversification by geographic region, timber markets and timber species. The proposed investment is analyzed to determine if it can be broken into appropriate parcels to fit the client portfolio's needs. Portfolio investment recommendations are intended to be consistent with the standards defined by the Association for Investment Management and Research (AIMR), a professional association which has adopted certain standards for best practices by investment managers.

The amount of funding available for any potential acquisition is determined after the portfolio suitability analysis has been completed. As a result, HNRG states that when it comes to funding an acquisition, one of the following three situations will exist: (i) The acquisition will be undersubscribed (i.e. there are not enough funds available to acquire the investment); (ii) the acquisition is fully subscribed (i.e. there are ample funds available to acquire the investment), or (iii) the acquisition is oversubscribed (i.e. client portfolio funding availability exceeds the amount needed to fund the acquisition).

The "investment queue" sets the priorities for utilizing funds from existing client Accounts in the event an investment is suitable for more than one client's portfolio. The "investment queue" is based on the source of available client funds with the following order of priority:

(a) Client funds committed to timber property acquisitions, but unallocated;
(b) Timberland disposition proceeds designated for reinvestment;
(c) Cash flow from operations; and
(d) Contingent funds.

Within each of the four categories of available funds, the length of time that the funds have been available for investment will determine the level of priority. For example, funds that have

been committed to an HNRG timberland investment program, but are unallocated, will receive priority between clients in the chronological order of when each commitment was established.

5. Customers that want to use John Hancock's timber management expertise typically invest in the ForesTree Separate Accounts. These customers include both ERISA-covered plans and non-ERISA plans. Customers may also invest directly in Partnerships that own timber properties. In these cases, JHTRC is usually appointed the general partner of the Partnership holding the property and HNRG serves as investment manager of the Partnership. These management responsibilities are exercised in accordance with the investment guidelines contained in the partnership agreements, which contain HNRG's investment selection and allocation policy procedures (as described in Paragraph 4 above).

For purposes of this proposed exemption, both ForesTree Separate Account contractholders and John Hancock's investment management clients who directly invest in Partnerships holding timber properties, including ERISA-Covered Plans, are referred to as "Customers'.

The Transactions

6. The Applicants state that occasions may arise when it is appropriate to liquidate timber property held in an Account or Partnership, even though the property remains an attractive investment. For example, a Customer's timber investments may have so increased in value from its initial investment that the timber-related portion of the Customer's aggregate portfolio exceeds the Customer's current asset allocation guidelines for that investment class. In addition, a Customer may request that John Hancock liquidate a portion of its timber portfolio in order to recognize some of the portfolio's gains, even though the particular timber parcel remains an attractive investment. John Hancock may also conclude that a particular timber parcel, through individually an attractive investment, is no longer appropriate for the Customer's Account, in light of the composition of the Account, its liquidity needs and other available investment opportunities.

The Applicants state that in these and other situations in which timber parcels might be sold, the parcels chosen for liquidation could be appropriate investments for other Customers. Under the proposed exemption, John Hancock could satisfy the objectives of a Selling Account or Selling Partnership and a Buying Account or Buying Partnership in a manner that provides advantages to both sides of the transaction. Therefore, John Hancock requests an exemption that would permit it (and its Affiliates) to transfer timber parcels between its Customer Accounts and Partnerships under certain conditions and procedures described herein.

7. If John Hancock determines that it should liquidate any timberland assets held in a Customer's Account or Partnership, or if as the result of certain "triggering events" described below such a liquidation must occur, and John Hancock concludes that a particular parcel of timberland to be sold is an appropriate investment for the portfolio of another Account or Partnership, John Hancock will engage independent fiduciaries (the I/Fs) to represent the interests of any ERISA-Covered Plans involved.

Under the procedures described by the Applicants, an I/F will be appointed by JHMLIC or an Affiliate to represent the interests of the ERISA-Covered Plans as follows:

(a) Where the proposed transaction involves an ERISA-Covered Plan (including a Pooled Separate Account or Partnership holding "plan assets" subject to the Act) and a Non-ERISA Plan or other Non-ERISA Customer, an I/F will be appointed to represent the ERISA-Covered Plan (or Pooled Separate Account or Partnership), whether that Account or Partnership is the buyer or the seller of a timber property in the proposed transaction.

(b) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or Partnerships holding "plan assets" subject to the Act) and the decision to liquidate the timber property is the result of one or more "triggering events" described below, an I/F will be appointed by JHMLIC or an Affiliate to represent the purchasing plan (or Pooled Separate Account or Partnership)—i.e. the Buying Account or Buying Partnership. A "triggering event" will exist whenever:

(i) JHMLIC or an Affiliate receives a direction from the Customer to liquidate all of the Customer's Account or interest in a Partnership;

(ii) JHMLIC or an Affiliate receives a request by the Customer to liquidate a specified timber property; or

(iii) A liquidation of all of the assets held in the Selling Account or Selling Partnership, or a particular timber property held by such Account or Partnership, is required under the terms of the investment contract, insurance contract or investment guidelines governing the Account or Partnership, and the decision to select any particular property to be sold is outside the control of JHMLIC and its Affiliates.

(c) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or Partnerships holding "plan assets" subject to the Act) and there is no "triggering event", an I/F will be appointed by JHMLIC or an Affiliate for each Account or Partnership involved in the transaction.

With respect to each transaction requiring the participation of an I/F, the purchase and sale of a timber property shall not be consummated unless the I/F determines that the transaction, including the price to be paid or received for the property, would be in the best interest of the particular Account or Partnership involved based on the investment policies and objectives of such Account or Partnership. The I/F will have the authority both to review the appropriateness of the proposed purchase or sale in light of the Customer's investment policy and to negotiate the terms of the transaction, including the price to be paid for the property and the allocation of the transaction cost savings to the buyer and seller.[6] The I/F will always be provided with a recent appraisal of the timber property obtained by HNRG from a qualified independent real estate appraiser experienced with the valuation of timber properties similar to the type involved in the transaction. Under the conditions of this proposed exemption, each Account or Partnership which buys or sells a particular timber property must pay no more than or receive no less than the fair market value of the timber property at the time of the transaction, as determined by an independent qualified real estate appraiser.

8. An individual or firm selected to serve as an I/F would be required to meet the following criteria:

(a) The individual or firm may have no current employment relationship with John Hancock or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(b) The individual or firm must not have received more than five (5) percent of its annual gross receipts during the preceding calendar year from business with John Hancock and its Affiliates;

[6] The Applicants state that generally all of the transaction expenses for the buyer and the seller would be saved. However, to the extent that there are any expenses that cannot be avoided, such expenses would be negotiated between the independent fiduciary and John Hancock, or a second independent fiduciary, as the case may be.

(c) The individual or individuals in the firm must have an undergraduate or graduate academic degree in forestry;

(d) The individual or individuals in the firm must have a minimum of five (5) years experience and a demonstrated proficiency in timberland appraisal work;

(e) The individual or individuals in the firm must have a current certification as a Member of the Appraisal Institute, a Senior Real Estate Analyst under the Society of Real Estate Appraisers, or a similar nationally recognized certification;

(f) The individual or firm must have the ability to access appropriate timberland sales comparison data and make appropriate adjustments to the subject property; and

(g) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations.

In addition to the appointment of an I/F, the Applicants state that at least 30 days prior to any transaction, each affected Customer involved with the Accounts or Partnerships participating in the transaction will be provided with information regarding the timber properties involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of the Customer. John Hancock will provide an additional notice to Customers should the price of a timber property change following the initial notice. The transaction will not be consummated until 30 days after the second notice has been provided.

Any Customer that is an ERISA-Covered Plan will be responsible for monitoring the performance of John Hancock and its Affiliates as well as the I/F, when an I/F is required, to ensure that the conditions of this proposed exemption are met. The Applicants state that all ERISA-Covered Plans will be large plans with sophisticated fiduciaries capable of monitoring the performance of the parties in the proposed transaction. Under the conditions of this proposed exemption, ERISA-Covered Plans may participate in the proposed transactions only if they have total assets in excess of $100 million.

Justification for Transactions

9. The Applicants represent that the transfer of timber properties from one Account or Partnership to another will have a number of advantages to both the Buying Account or Partnership and the Selling Account or Partnership.

First, when the transfer is between two of John Hancock's ForesTree Separate Accounts, it will not require the transfer of legal ownership of the property. John Hancock has legal title to all assets allocated to its Separate Accounts and may reallocate these assets among Separate Accounts without a change in legal title. This means that significant transaction costs can be avoided, including real property transfer taxes, title insurance policy costs, closing and recording costs and, where required, phase one environmental audits.[7] In addition, each Account or Partnership involved in the purchase or sale of a timber property would not pay any real estate commissions or brokerage fees for the transaction. The allocation of any remaining transaction costs would be negotiated between the buyer and the seller for each transaction. Under the transactions that would be covered by this proposed exemption, the I/Fs would be responsible for negotiating the allocation of any remaining transaction costs for the Accounts or Partnerships for which they are acting.

Second, a transfer of timber properties between the Accounts or Partnerships will often allow a Buying Account or Partnership to invest its assets more quickly and in properties that might not otherwise be available to them. John Hancock believes that investors commit to establishing a timberland investment portfolio because they have identified a current need for such an asset category. Therefore, John Hancock states that once a Customer has committed to a ForesTree Separate Account or to a Partnership, it is important to the Customer to invest its funds as rapidly as is prudent. However, attractive timber properties are relatively scarce, and allowing a transfer of timber parcels in accordance with this proposed exemption would provide an opportunity for the purchasing Customers to invest funds more rapidly than would be possible if the purchase involved a seller having no relationship to John Hancock.

Third, the Applicants represent that because HNRG is the manager of the Selling Account's or Partnership's timber property, much more information about the property would be available to a Buying Account or Partnership than would be if the property were not managed by HNRG. John Hancock states that this situation reduces the risk to its purchasing Customers. In addition, because HNRG is already familiar with the timber property, the Buying Account or Partnership would avoid certain expenses normally associated with the purchase of a new property. These "start-up" expenses include the costs of lot management plan development, aerial photographs and geographical information systems (GIS) mapping.

Finally, each purchase and sale of a timber property between the Accounts and/or Partnerships will be a one-time transaction for cash. No purchase or sale transaction will be designed to benefit the interests one particular Account or Partnership over another.

10. In summary, John Hancock represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because: (a) Each purchase or sale of a timber property between the Accounts or Partnerships will be a one-time transaction for cash; (b) each affected Customer involved with the Accounts or Partnerships participating in the transaction will be provided with information, at least 30 days prior to the proposed transaction, regarding the timber properties involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of the Customer; (c) an I/F will be appointed by JHMLIC or an Affiliate to represent the interests of the ERISA-Covered Plans in the proposed transaction, unless the decision to liquidate a timber property from a Selling Account or Selling Partnership is the result of one or more "triggering events'; (d) in a transaction where an I/F is involved, the purchase or sale of the timber property shall not be consummated unless the I/F determines that the transaction, including the price to be paid or received for the property, would be in the best interest of the particular Account or Partnership involved based on the investment policies and objectives of such Account or Partnership; (e) each Account or Partnership which buys or sells a particular timber property will pay no more than or will receive no less than the fair market value of the timber property at the time of the transaction, as determined by an independent qualified real estate appraiser; (f) each Account or Partnership involved in the purchase or sale of a timber property will pay no real estate commissions or brokerage fees relating to the transaction; (g) no purchase or sale transaction will be designed to benefit the interests one particular Account or

[7] For example, in a transaction between Lyons Falls Pulp & Paper, Inc., as seller, and a JHMLIC Non-Pooled Separate Account, as buyer, which involved 67,430 acres of timberland that was sold to the Account for approximately $12.1 million on February 14, 1996, the total transaction costs involved more than 7.15 percent of the acquisition price or over $865,150 ($12,100,000 × .0715). This figure excludes the New York State Gains Tax of over $1,000,000 that was incurred by the seller.

Partnership over another; and (b) ERISA-Covered Plans will be able to participate in the proposed transactions only if they have total assets in excess of $100 million.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

ACRA Local 725 Health & Welfare Fund (the Welfare Plan) and ACRA Local 725 Pension Fund (the Pension Plan; together, the Plans) Located in Macon, Georgia

[Application Nos. L–10536 and D–10537]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed payment of interest by the Pension Plan to the Welfare Plan on past mistaken contributions (the Mistaken Contributions) pursuant to an indemnification agreement by the Board of Trustees of the Pension Plan with respect to the Mistaken Contributions, provided the following conditions are satisfied: (a) The Mistaken Contributions occurred as a result of an inadvertent clerical error committed by the Plans' independent third party administrator; (b) the principal amount of the Mistaken Contributions was repaid as soon as the error was discovered; and (c) the amount of interest to be paid to the Welfare Plan by the Pension Plan has been determined by a third party bank to be the fair market rate of interest.

Summary of Facts and Representations

1. The Welfare Plan is the ACRA Local 725 Health & Welfare Fund of Dade, Broward and Monroe Counties, Florida, and the Pension Plan is the ACRA Local 725 Pension Fund of Dade, Broward and Monroe Counties, Florida. Each Plan is maintained pursuant to Collective Bargaining Agreements between Air Conditioning Refrigeration Associates, an employer association representing various employers (the Employers), and United Association Local Union Number 725 (the Union), an employee organization whose members are covered by the Plan. The Union represents individuals who perform, as employees of the Employers, construction and service work in the air conditioning and pipe trades.

The Welfare Plan provides health and welfare benefits to participant employees and their families. It is funded solely by Employer contributions and earnings thereon. The Welfare Plan has been in existence since 1961. As of April 30, 1997, the Welfare Plan had 674 participants, and approximately $4,275,000 in assets.

The Pension Plan provides retirement and certain disability benefits to Plan participants and survivor benefits to spouses and/or other beneficiaries that may be designated by the participant in accordance with the Plan's procedures. The Pension Plan has been in existence since 1962. As of April 30, 1997 the Pension Plan had 1,633 participants and assets of approximately $56,100,000.

2. The Board of Trustees of each Plan, all of whom are individuals who serve in that capacity for both Plans, had for a period of several years retained the services of Consolidated Benefit Services, Inc. of Atlanta, Georgia (Consolidated) to serve as administrative manager (the Administrator) for the Plans. Employer contributions are made to the Pension Plan and the Welfare Plan as well as other trust funds and entities to which contributions are required to be paid pursuant to the Collective Bargaining Agreement between the Employers and the Union. These contributions are collected and deposited in an escrow account (the Escrow) under the supervision of the Administrator. The purpose of the Escrow is to receive and deposit Employer contributions, allow for clearance of checks and record each Employer contribution to the Plans in a timely fashion. Sums received by the Escrow are then allocated to the appropriate accounts. Thus, the appropriate amount of contributions due to the Welfare Plan are normally allocated and paid to the Welfare Plan accounts, and the appropriate amount of contributions due to the Pension Plan are normally allocated and paid to the Pension Plan accounts.

3. In approximately September, 1996, the Board of Trustees of each Plan was advised that the parent corporation of Consolidated, Harrington Benefit Corporation (Harrington), which was also the parent corporation of American Benefit Plan Administrators, Inc. (ABPA), had been acquired by Health Services, Inc. (Health Services), a public company. After the acquisition of Harrington by Health Services, all administrative record-keeping for the Plans was transferred from the Atlanta office of Consolidated to the Dallas office of ABPA.

4. In August 1997, the independent accountant for the Plans (the Auditor), in the course of conducting a routine annual audit, discovered that in November 1996, ABPA, as the Administrator for the Plans, withdrew from the Escrow and transferred to the accounts of the Pension Plan, sums which were in excess of the proper contributions allocated to the Pension Plan by the Employers. This excess payment created a shortfall in the proper contributions to the Welfare Plan. This process continued to occur in subsequent months.[8] For purposes of this proposed exemption, all excess amounts of money erroneously allocated to the Pension Plan during this period of time are described herein as "the Mistaken Contributions". The applicant represents that payments from the Escrow to the Pension Plan were utilized by ABPA to pay current disbursements by the Pension Plan, including such items as current pension benefits and ongoing operational expenses. Nonetheless, all financial reports from ABPA to the Trustees of each Plan erroneously reflected the proper contributions being allocated to the Pension Plan and the Welfare Plan. These erroneous financial reports, rather than documentation showing the actual amounts transferred to the Pension Plan, were delivered to the respective Boards of Trustees. Accordingly, the Boards of Trustees of the Plans were not aware of the fact that sums of money were being allocated erroneously to the Pension Plan from the Escrow. The Trustees were notified by the Auditor in late August, 1997. At that time, immediate instructions were made to correct the Mistaken Contributions.

5. On October 29, 1997, all excess sums paid erroneously to the Pension Plan were repaid to the Welfare Plan. The period of delay between the time of discovery of the error (i.e., August, 1997) and its correction was the time required by the Auditor to accurately investigate and calculate the amount necessary to correct the error. The total amount of the Mistaken Contributions was $796,983.29. This amount represented approximately 18.6% of the Welfare Plan's assets and 1.4% of the Pension Plan's assets.

[8] In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. With respect to the actions and omissions of ABPA, the Department notes that no relief would be provided under the proposed exemption for any violation of the general fiduciary provisions of Part 4 of Title I of the Act.

6. The applicants represent that since the Mistaken Contributions were the result of unintended erroneous allocations by the Administrator of contributions by the Employers, they may be considered to come within section 403(c)(2)(A)(ii) of the Act, which would permit the return of the contributions within 6 months after the plan administrator discovered that the contributions were made by a mistake of fact or law.[9] As a result, the applicants are not seeking an exemption for the Mistaken Contributions or the repayment of their principal amount. Rather, the applicants are requesting an exemption merely for the proposed payment of interest by the Pension Plan to the Welfare Plan in connection with the treatment of these transactions as "Mistaken Contributions" in order to make the Welfare Plan "whole" for the Pension Plan's use of the money that was erroneously allocated by ABPA from the Escrow to the Pension Plan.

7. In addition to the Pension Plan's repayment of the principal amount of the Mistaken Contributions to the Welfare Plan, the Board of Trustees of the Pension Plan now proposes to pay interest to the Welfare Plan pursuant to an indemnification agreement (the Indemnification) with the Board of Trustees of the Welfare Plan. The Indemnification consists of an agreement to pay a reasonable rate of interest on the total amount of the Mistaken Contributions to reimburse the Welfare Plan for lost income. The interest rate to be paid by the Pension Plan will be established as a fair market rate by an independent bank. The Liberty Bank (the Bank) in Macon, Georgia, was contacted for the purpose of establishing such a market rate. The Bank is an independent bank which has no other relationship with the Plans. The Bank represents that an appropriate rate for such Mistaken Contributions would be 8.25 to 8.5% per annum. Accordingly, the Trustees of both Plans have agreed to utilize the rate of 8.5% per annum to reimburse the Welfare Plan for losses relating to the period of time it was denied access to the assets (i.e., $796,983.29).

8. The applicants represent that the Trustees of the Plans have repeatedly requested ABPA to provide a written explanation of the manner in which the Mistaken Contributions occurred, but ABPA has failed to provide any response. Due to dissatisfaction with ABPA's performance, the Trustees terminated ABPA's services effective August 31, 1997, and appointed a new administrative manager, Core Management Resources, Inc., of Macon, Georgia.

9. The applicants represent that no participant in either Plan experienced any reduction, deferment or delay in receipt of any benefit due from either Plan as a result of the errors. All benefits and expenses of each Plan were paid in a timely fashion by each respective Plan in the ordinary course of its business.

10. In summary, the applicants represent that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The Mistaken Contributions were inadvertent transfers that occurred solely through the errors of the Plans' independent third party administrator, ABPA; (b) the Pension Plan repaid the principal amount of the Mistaken Contributions to the Welfare Plan as soon as possible after the error was discovered and properly calculated by the Auditor; (c) the amount of interest to be paid to the Welfare Plan on the Mistaken Contributions has been determined by an independent bank (i.e., the Bank) as a fair market rate of interest to reimburse the Welfare Plan for losses relating to the period of time it was denied access to the assets erroneously allocated to the Pension Plan; and (d) no participant in either the Welfare Plan or the Pension Plan experienced any reduction, deferment or delay in receipt of any benefit due from the Plan as a result of the transactions.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

William M. Hitchcock SERP (DB) (the Plan) Located in Houston, Texas

[Application No. D–10605]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of 67,466 shares of stock (the Stock) in Thoratec Laboratories, Inc. (Thoratec) to William M. Hitchcock (Mr. Hitchcock), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plan pays no sales commissions or other expenses in connection with the transaction; (c) the Plan receives the fair market value of the Stock, as determined by reference to its most current listed price on the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ) at the time of the transaction; and (d) Mr. Hitchcock is the only Plan participant to be affected by the transaction, and he desires that the transaction be consummated.[10]

Summary of Facts and Representations

1. The Plan is a defined benefit self-employed retirement plan with one participant, Mr. Hitchcock, who is the sole owner of the Plan sponsor. The Plan sponsor is a sole proprietorship which is engaged in the business of consulting. Mr. Hitchcock is also the Plan's trustee. As of March 18, 1998, the Plan had $468,873 in total assets.

2. On February 14, 1994, the Plan purchased 2,400 shares of the Stock at a price of $2.03 per share (i.e., for a total of $4,872). On April 5, 1995, the Plan purchased 200,000 shares of the Stock at a price of $1.30 per share (i.e., for a total of $260,000). On June 10, 1996, the Stock underwent a reverse stock split of 1/3 and, as a result, the Plan currently holds 67,466 shares of the Stock. Mr. Hitchcock is a director of Thoratec, and together he and the Plan own 1.8% of Thoratec.[11] The Stock currently constitutes approximately 93% of the Plan's assets.[12] The Stock is publicly traded on the NASDAQ.

[9] The Department expresses no opinion in this proposed exemption as to whether the contributions are subject to section 403(c)(2)(A)(ii) of the Act.

[10] Since Mr. Hitchcock is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[11] In this proposed exemption, the Department is expressing no opinion as to whether the Plan's acquisitions of the Stock constituted a prohibited transaction under section 4975 of the Code, nor is the Department herein proposing relief for any prohibited transaction which may have occurred as a result of such acquisitions of the Stock by the Plan. However, the purchases and holding of the Stock by the Plan raise questions under section 4975(c)(1)(D) and (E) of the Code. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Mr. Hitchcock, as a director of Thoratec, may have had an interest in the acquisitions and holding of the Stock which may have affected his best judgment as a fiduciary of the Plan. In such circumstances, the transactions may have violated section 4975(c)(1)(D) and (E) of the Code. *See* Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holding of the Stock by the Plan, the Department is extending no relief for these transactions herein.

[12] The Department notes that the Internal Revenue Service has taken the view that if a plan is exposed

3. Mr. Hitchcock now proposes to purchase the Stock from the Plan for cash. No commissions or other expenses will be paid by the Plan in connection with the sale. The Plan will receive the fair market value of the Stock, as determined by its most current listed price on the NASDAQ at the time of the sale. On March 12, 1998, the Stock was trading at a price of $7.00 per share. Therefore, based upon this per share trading price, Mr. Hitchcock would have paid the Plan $472,262 for the Stock (67,466 shares times $7.00 per share).

4. Mr. Hitchcock represents that the proposed sale would be advantageous to the Plan because it would increase the Plan's liquidity and diversify the Plan's assets. In addition, 66,666 shares of the Stock owned by the Plan are unregistered and subject to certain sale restrictions under Rule 144 of the Securities and Exchange Commission (SEC). The restricted Stock can be disposed of only in a private placement or in the public market over a period of years under the timing and volume restrictions of SEC Rule 144. As a result, all of the Plan's shares of the Stock may not be sold on the open market at the present time. These shares of the Stock were purchased by the Plan in a private placement. However, in any sale of the Plan's shares to a third party in a private placement, the purchaser would probably demand a significant discount off the NASDAQ listed price in order to acquire the shares. Therefore, by selling all of the Stock to Mr. Hitchcock for the most current listed price for each share of the Stock on the NASDAQ, the Plan will receive a premium for its shares at the time of the transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses will be paid by the Plan in connection with the sale; (c) the Plan will receive the fair market value of the Stock, as determined by its most current listed price on the NASDAQ at the time of the sale; and (d) Mr. Hitchcock is the only Plan participant to be affected by the transaction, and he desires that the transaction be consummated.

Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons: Since Mr. Hitchcock is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of June 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–17135 Filed 6–26–98; 8:45 am]

BILLING CODE 4510–29–P

to the risk of large losses because of the lack of diversification and the speculative nature of investments made by the Plan, such an investment strategy may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. For example, see Rev. Rul. 73–532, 1973–2 C.B. 128, which states, among other things, that the safeguards and diversity that a prudent investor would adhere to must be present in order for the "exclusive-benefit-of-employees" requirement to be met. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of section 401(a) of the Code occurred as a result of the Plan's acquisition of investments that may be speculative in nature, such as the purchase of the Stock.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 29, 1998.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal

agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 14, 1998 (63 FR 18235). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Military Personnel Records (MPR) Customer Satisfaction Survey.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: 21,333.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 5,333 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed MPR Customer Satisfaction Survey is to (1) provide baseline data concerning customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed MPR Customer Satisfaction Survey will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: June 23, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–17213 Filed 6–26–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Space Planning for the National Archives and Records Administration; Public Meeting

The National Archives and Records Administration announces the following meetings:

—Thursday, July, 9, 1998, from 1 p.m. to 3 p.m. at the National Archives and Records Administration, Mid Atlantic Region (Center City Philadelphia), 900 Market Street, Philadelphia, PA 19107–4292. For further information call 215–671–9027 or e-mail james.mouat@philfrc.nara.gov.

—Thursday, July 30, 1998, from 7 p.m. to 9 p.m. at the National Archives and Records Administration, Southeast Region, 1557 St. Joseph Avenue, East Point, GA 30344–2593. For further information call 404–763–7477 or e-mail james.mcsweeney@atlanta.nara.gov.

This is a series of meetings at which NARA is seeking public input for a study of its space needs for the next 10 years. NARA representatives will explain the reasons for undertaking a space plan, its objectives, and the planning process, and will invite comments and answer questions. In addition to helping NARA with its planning, this meeting is part of a National Performance Review initiative called *Conversations With America: My Government Listens.* NARA urges everyone interested to attend.

Reservations are not required. The meetings will be open to the public.

Dated: June 22, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–17215 Filed 6–26–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced closed meeting (**Federal Register**, Vol. 63, No. 118, page 33735, Friday, June 19, 1998) scheduled for Tuesday, June 23, 1998.

3. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

The Board voted unanimously that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The National Credit Union Administration Board also determined that its business required the addition of the following two items to the closed agenda.

6. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

7. Administrative Action under Sections 120 and 209 of the Federal Credit Union Act. Closed pursuant to exemptions (6), (9)(B) and (10).

The Board voted unanimously that agency business required that these items be considered with less than the usual seven days notice, that they be closed to the public, and that no earlier announcement of these changes were possible.

The previously announced items were:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).

2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7) and (8).

3. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

4. Administrative Action under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).

5. Four (4) Personnel Actions. Closed pursuant to exemptions (2), (5), (6), (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–17304 Filed 6–24–98; 5:08 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; Notice of Consideration of Issuances of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Energy Corporation (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Figure 5.1–1 of the Technical Specifications (TS) to show the location of the new meteorological tower. The proposed TS change does not change the related TS Section 5.1.1.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change involves the location of the meteorological tower. The meteorological tower is mainly used for post-accident radiological release assessment and does not impact the initiation or mitigation of previously analyzed accidents. No change in routine or accident radioactive release diffusion estimate methods is made. The new location is approximately twice as far as the old location from the reactor buildings. Within a radius of 60 meters of the new location, there is no significant structure that the tower can reach if it falls down. A fall of the tower due to natural or man-made causes will not adversely affect Category I structures such as the reactor buildings, auxiliary building, spent fuel pool buildings, diesel generator buildings, and control room. These structures have been analyzed for effect from tornado missiles comparable to or more severe than those possibly generated from a failed tower. The results of these analyses showed that no safety limit was exceeded due to tornado missiles.

The new location and tower do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change involves the location of the meteorological tower. The new tower, like the old one, is separated from other systems in the plant. No physical changes to other systems or changes in methods governing normal plant operation are made as a result of this proposed change. Failure of the new tower due to either man-made or natural causes should not create any new effects than those described above.

The new location and tower do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

No. The proposed change involves the location of the meteorological tower. The proposed change does not involve any physical change to other systems in the plant and has no impact on any safety analysis assumptions. Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 29, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated March 3, 1998, as supplemented by letters dated April 24 and May 7, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Dated at Rockville, Maryland, this 23rd day of June 1998.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17217 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DRP–39 and DRP–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

By letter dated March 12, 1998, ComEd requested an exemption from certain requirements of 10 CFR 50.71, "Maintenance of records, making of reports," for Zion Nuclear Power Station, Units 1 and 2. The proposed action would permit ComEd to extend the time interval for the submittal of Zion Station's Updated Final Safety Analysis Report (UFSAR). The next Zion Nuclear Power Station Final Safety Analysis Report (FSAR) update is due in July 1998. The proposed exemption would allow this date to be extended to December 1998.

The Need for the Proposed Action

Pursuant to 10 CFR 50.34(b) each application for a license to operate a facility shall include an FSAR. This report shall include information that describes the facility, presents the design bases and the limits on its operation and presents a safety analysis of the structure, systems and components of the facility. This information and description is needed to permit understanding of the system designs and their relationships to safety evaluations.

Pursuant to 10 CFR 50.71(e) all light water nuclear power reactors shall

update their FSARs periodically. According to 10 CFR 50.71(e)(4), the time interval for the subsequent FSAR updates must not exceed 24 months. The last full update of the Zion UFSAR was submitted to the NRC on July 5, 1996. Consequently, the next update would be required to be submitted no later than July 1998. However, ComEd is requesting an exemption from this requirement to allow them to update the FSAR to reflect the present condition of the units.

By letters dated February 13, 1998, and March 9, 1998, ComEd informed the NRC that Zion Nuclear Power Station, Units 1 and 2, have permanently ceased operations and both units are completely defueled and all fuel has been placed in the spent fuel pool for long-term storage. By letter dated May 4, 1998, the NRC acknowledged Zion's permanent cessation of power operation and permanent removal of fuel from the reactor vessels.

Many of the systems and components previously required for safety are no longer needed because the Zion units are permanently shut down. Therefore, updating the current FSAR will provide a description of components and systems that are no longer relevant to safety. Instead ComEd has proposed and committed to prepare and submit an update to the FSAR reflecting the permanently defueled condition of Zion Nuclear Power Station, Units 1 and 2, by December 31, 1998. This update will become Zion's Defueled Safety Analysis Report (DSAR).

Because ComEd's board decision on January 14, 1998, to shut down Zion was unexpected, ComEd staff did not have adequate time to develop the DSAR. Therefore, ComEd is requesting an extension of the update interval to allow sufficient time to develop and submit the DSAR. In their letter dated March 12, 1998, ComEd stated that many of the technical, administrative, and management resources needed to develop a DSAR are the same as those that would be involved in updating the FSAR. Consequently, updating the current FSAR by July 1998 would result either in a delay in developing a DSAR or in the expenditure of significant additional resources to develop a DSAR while preparing an UFSAR submittal in parallel.

Based on the information provided above, the extension of time interval from July 1998 to December 1998 for the submittal of the UFSAR would have no impact on the ability of systems, structures and components to perform the safety functions required with the plant permanently shut down, nor would it affect the safety of activities conducted with the facility in this condition. The proposed time exemption will not affect the potential for undesirable impacts to the environment.

Environmental Impacts of the Proposed Action

The proposed action involves administrative activities unrelated to plant operation.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no significant radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on June 18, 1998, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 12, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 126 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 24th day of June, 1998.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17219 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–36, a license held by the Maine Yankee Atomic Power Company (MYAPC or the licensee). The exemption would apply to the Maine Yankee Atomic Power Station, a permanently shutdown plant located at the MYAPC site in Lincoln County, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would modify security requirements to eliminate certain equipment, to relocate certain equipment, to modify certain procedures, and reduce the number of armed responders, due to the permanently shutdown and defueled status of the Maine Yankee facility.

The proposed action is in accordance with the licensee's application dated November 25, 1997. The requested action would grant an exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Plant Reactors against Radiological Sabotage."

The Need for the Proposed Action

Maine Yankee was shut down in December 1996. On August 7, 1997, the licensee informed the Commission that it had decided to permanently cease

operations at Maine Yankee Atomic Power Station and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), the certifications in the letter modified the facility operating license to permanently withdraw MYAPC's authority to operate the reactor and to load fuel in the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Due to this reduced risk, certain requirements of 10 CFR 73.55 are no longer appropriate. An exemption is required from portions of 10 CFR 73.55 to allow the licensee to implement a revised Defueled Security Plan that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action. The Commission concludes that exemption from certain portions of 10 CFR 73.55 are acceptable given the reduced consequences of the threat to a defueled reactor site with respect to public health and safety from an act of sabotage resulting in the release of radioactive material contained in the spent fuel.

The proposed change will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely with the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to Operation of Maine Yankee Atomic Power Station, (July 1972).

Agencies and Persons Consulted

In accordance with its stated policy, on May 14, 1998, the NRC staff consulted with Mr. Patrick Dostie of the State of Maine, Department of Human Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter, dated November 25, 1997, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Wiscasset Public Library, High Street, Post Office Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 23rd day of June 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17218 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–7001; 70–7002]

Procedures for Managing Gaseous Diffusion Plant Backfit Requirements; Notice of Availability

On March 26, 1997, the U.S. Nuclear Regulatory Commission (NRC) published a notice of availability of the Office of Nuclear Material Safety and Safeguards (NMSS) Policy and Procedures Letter 1–53, "GDP Plant Specific and Generic Backfit Management." This policy and procedures letter contains guidance and criteria for implementing the Gaseous Diffusion Plant backfit requirements of 10 CFR Part 76.76.

NRC received public comments on NMSS Policy and Procedures Letter 1–53, and has issued a revised version. This revised policy and procedures letter is available for inspection at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC; the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003 (Docket No. 70–7001); and the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662 (Docket No. 70–7002).

For further information, contact Tom Wenck, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8088.

Dated at Rockville, Maryland this 15th day of June 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–17216 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on July 16, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, July 16, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the NRC staff's activities associated with license renewal, proposed staff's plans and schedule for reviewing the license renewal application and related safety issues. The Subcommittee will also discuss the ACRS involvement in reviewing the license renewal submittal and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will

be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 23, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–17220 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on July 17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, July 17, 1998–8:30 a.m. until the conclusion of business

The Subcommittee will discuss issues in the Staff Requirements Memorandum dated April 20, 1998, regarding situation-specific cases where probabilistic risk assessment (PRA) results and insights have improved the existing regulatory system and specific areas in which PRA, when applied properly, can have a positive impact on the regulatory system. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: June 23, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–17221 Filed 6–26–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Postal Facility Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of visit.

SUMMARY: Arrangements have been made for members of the Commission and certain advisory staff members to visit the Postal Service's facility in Merrifield, Virginia. The purpose is to observe mail processing, including management operating data system (MODS) data collection. Information obtained during the visit will assist Commissioners and staff in the execution of their duties.

DATES: The tour is scheduled for Monday, June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Steven L. Sharfman, General Counsel, (202) 789–6820.

SUPPLEMENTARY INFORMATION: A report of the visit will be filed in the Commission's Docket Room.

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

Dated: June 23, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–17164 Filed 6–26–98; 8:45 am]

BILLING CODE 7715–FW–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Certification Regarding Rights to Unemployment Benefits.

(2) *Form(s) submitted:* UI–45.

(3) *OMB Number:* 3220–0079.

(4) *Expiration date of current OMB clearance:* 9/30/1998.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents:* 1,950.

(8) *Total annual responses:* 2,900.

(9) *Total annual reporting hours:* 487.

(10) *Collection description:* In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates the claimant left voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–17230 Filed 6–26–98; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–5, Form X–17A–5, SEC File No. 270–155; OMB Control No. 3235–0123, Rule 17a–5(c), SEC File No. 270–199, OMB Control No. 3235–0199; Rule 17a–7, SEC File No. 270–147, OMB Control No. 3235–0131.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17a–5 under the Securities Exchange Act of 1934 ("Exchange Act") ("Act") is the basic reporting rule for brokers and dealers, and Form X–17A–5, the Financial and Operational Combined Uniform Single Report, is the basic document for reporting the financial and operational condition of securities brokers and dealers.

The staff estimates that approximately 7,765 respondents respond to this collection of information 39,895 times annually, with a total burden of 12 hours for each response, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 17a–5 is 478,740 hours. The average cost per hour is $100. Therefore, the total cost of compliance for the respondents is $47,874,000.

Rule 17a–5(c) under the Exchange Act requires certain brokers and dealers to provide statements of financial condition to their customers. It is estimated that approximately 750 broker and dealer respondents incur an average burden of 294,444 hours per year to comply with this rule.

Rule 17a–7 under the Exchange Act requires non-resident brokers or dealers to maintain in the United States complete and current copies of books and records required to be maintained under any rule adopted under the Act. Alternatively, Rule 17a–7 provides that the non-resident brokers or dealers may sign a written undertaking to furnish the requisite books and records to the Commission upon demand.

There are approximately 86 non-resident brokers and dealers. Based on the Commission's experience in this area, it is estimated that the average amount of time necessary to preserve the books and records in the United States as required by Rule 17a–7 is one hour per year. Accordingly, the total burden is 86 hours annually.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 22, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17235 Filed 6–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–40112; File No. 600–24]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

June 23, 1998.

Notice is hereby given that on June 12, 1998, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] to extend DCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend DCC's temporary registration as a clearing agency through July 31, 1999.

On January 12, 1990, pursuant to Sections 17A and 19(a) of the Act[3] and Rule 17Ab2–1(c) thereunder,[4] the Commission granted DCC's application for registration as a clearing agency on a temporary basis for a period of thirty-six months.[5] Since that time, the Commission has extended DCC's temporary registration through July 31, 1998.[6] DCC now requests that the Commission grant an extension of DCC's temporary registration as a clearing agency, subject to the same terms and conditions expressed in previous orders granting and extending DCC's temporary registration,[7] for a period of twelve months or for such longer period as the Commission deems appropriate.

One of the primary reasons for DCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of transactions involving the over-the-counter trading of options on U.S. Treasury securities. Since that time, the Commission has approved DCC's request to provide clearance and settlement services for repurchase agreement transactions involving U.S.

[1] 15 U.S.C. 78s(a).

[2] Letter from Stephen K. Lynner, Delta Clearing Corp. (June 11, 1998).

[3] 15 U.S.C. 78q–1 and 78s(a).

[4] 17 CFR 240.17Ab2–1(c).

[5] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890. Prior to a 1996 name change, DCC was named Delta Government Options Corp.

[6] Securities Exchange Act Release Nos. 38869 (July 24, 1997) 62 FR 40871 (extension until July 31, 1998); 31856 (February 11, 1993), 58 FR 9005 (extension until January 12, 1995); 35198 (January 6, 1995), 60 FR 3286 (extension until January 31, 1997); and 38224 (January 31, 1997), 62 FR 5869 (extension until July 31, 1997).

[7] *Supra* note 6.

Treasury securities as the underlying instrument.[8] Currently, repurchase agreement transactions constitute the majority of the transactions cleared by DCC.

As a part of its temporary registration, DCC was granted a temporary exemption from the requirements of Section 17A(b)(3)(C),[9] which requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. While Commission staff and DCC staff have had ongoing discussions on DCC's proposed method of complying with Section 17A(b)(3)(C), the Commission believes that the issue of DCC's compliance with the fair representation requirements should be completely resolved before DCC receives permanent registration as a clearing agency under Section 17A(b) of the Act.[10]

In light of DCC's past performance, the Commission believes that DCC complies with the statutory prerequisites for registration as a clearing agency contained in Section 17A(b)(3) of the Act except for the fair representation requirement discussed above.[11] Therefore, the Commission believes that DCC should continue to be registered on a temporary basis. Comments received during DCC's temporary registration will be considered in determining whether DCC should receive permanent registration as a clearing agency.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to the File No. 600–24 and should be submitted by July 29, 1998.

It is therefore ordered, pursuant to Section 19(a) of the Act, that DCC's registration as a clearing agency (File No. 600–24) be and hereby is temporarily approved through July 31, 1999.

[8] Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[9] 15 U.S.C. 78q–1(b)(3)(C).

[10] 15 U.S.C. 78q–1(b).

[11] 15 U.S.C. 78q–1(b)(3).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17234 Filed 6–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40109; File No. SR–NASD–97–77]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Arbitration of Employment Discrimination Claims

June 22, 1998.

I. Introduction

On October 17, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), by and through its wholly owned subsidiary NASD Regulation, submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 10201 of the NASD's Code of Arbitration Procedure ("Code") to remove the requirement to arbitrate statutory claims of employment discrimination.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No 39421 (December 10, 1997), 62 FR 66164 (December 17, 1997). Nine comment letters were received on the proposal.[3] NASD Regulation subsequently filed Amendment No. 2 to the proposed rule filing on April 15, 1998.[4]

[12] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Dennis C. Vacco, Attorney General of the State of New York ("Attorney General"), to Jonathan G. Katz, Secretary, Commission, dated December 17, 1997 ("Attorney General Letter"); Gilbert F. Casellas, Chairman, U.S. Equal Employment Opportunity Commission ("EEOC"), to Secretary, Commission, ("EEOC Letter"); Jeffrey L. Liddle, Liddle & Robinson, L.L.P., to Secretary, Commission, dated January 2, 1998 ("Liddle Letter"); W. Hardy Callcott, Vice President and Deputy General Counsel, Charles Schwab ("Schwab"), to Jonathan G. Katz, Secretary, Commission, dated January 6, 1997 [sic] ("Schwab Letter"); William J. Fitzpatrick, Attorney, to Secretary, Commission, dated January 8, 1997 [sic] ("Fitzpatrick Letter"); Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, Commission, dated January 13, 1998 ("SIA Letter"); Helen Norton, Director, Equal Opportunity Programs, Women's Legal Defense Fund ("WLDF"), to Jonathan G. Katz, Secretary, Commission, dated January 7, 1998 ("WLDF Letter"); Cliff Palefsky, Chair, Securities Industry Arbitration Committee, National Employment Lawyers Association ("NELA"), to Secretary, Commission, dated January 6, 1998 ("NELA Letter"); and George A. Schieren, Senior Vice President and General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, Commission, dated January 16, 1998 ("Merrill Letter").

[4] Letter from Jean I. Feeney, Attorney, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated April 14, 1998. Amendment No 2 amends the language of the proposed rule change in Section 10201(b) of the code to state "A claim alleging employment discrimination, *including a sexual harassment claim*, [or sexual harassment] in violation of a statute is not required to be arbitrated." Amendment No. 2 also amends the effective date of the proposed rule change to January 1, 1999. In addition, Amendment No. 2 responds to the comment letters.

II. Description

The proposed rule change will modify the current requirement that associated persons arbitrate all disputes arising out of their employment or termination of employment with a member broker/dealer. The proposed rule provides that associated persons are no longer required, solely by virtue of their association or their registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons still will be required to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons.

Background

The requirement for associated persons to register with the NASD arises from Section 15A(g)(3)(B) of the Act, which provides that the NASD may "require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established [by the rules of the association]." The registration requirement for associated persons who effect securities transactions was made mandatory by Rule 15b7–1 under the Act in 1993.[5] The NASD, other self-regulatory organizations ("SROs"), and

[5] 17 CFR 240.15b7–1. The rule provides as follows:

No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities Rulemaking Board (if it is subject to the rules of that organization).

state regulatory authorities require all applicants for registration as persons associated with a broker/dealer (registered representatives, assistant representatives or principals) to complete and sign the Form U–4, the "Uniform Application for Securities Industry Registration or Transfer."[6] Form U–4 requires registered persons to submit to arbitration any claim that is eligible under the rules of the organizations with which they register (as indicated in Item 10 of the Form U–4).[7] thus, the Form U–4 incorporates by reference the rule of the SRO with which the individual is to be registered. NASD Rule 10101 provides as follows:

> The Code of Arbitration Procedure is prescribed * * * for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company * * * between or among members and associated persons * * *.

For industry and clearing controversies, Rule 10201 requires that all matters eligible under Rule 10101 be submitted to arbitration at the request of any member or associated person.[8] Rules 10101 and 10201 were amended in 1993 to include the language relating to disputes "arising out of the employment or termination of employment" of an associated person.[9] This language was added in order to clarify that employment disputes were required to be arbitrated, since a California court had held that the Code of Arbitration Procedure did not cover such disputes, but only covered disputes arising out of or in connection with business transactions.[10]

Over the past several years, employees have raised several challenges to the mandatory arbitration of employment discrimination disputes. In 1991, the Supreme Court established the framework for considering the issues raised by such challenges in *Gilmer* v. *Interstate/Johnson Lane Corp.*[11] In *Gilmer*, which involved a person registered with the New York Stock Exchange, the Court examined numerous challenges to the adequacy of arbitration procedures raised by the registered representative and found that none was sufficient to prevent the Court from enforcing the representative's agreement, pursuant to his signing of the Form U–4, to arbitrate his federal age discrimination claim. The Court held that Mr. Gilmer had not met his burden of showing that Congress intended to preclude arbitration of claims under the Age Discrimination in Employment Act ("ADEA") of 1967.[12]

Subsequent to the *Glimer* decision, several courts have declined to find a Constitutional or statutory bar to enforcement of the agreement to arbitrate contained in the Form U–4. Indeed, they have extended the reasoning of *Glimer* to cover disputes arising under Title VII of the Civil Rights Act of 1964,[13] the Americans with Disabilities Act,[14] and state statutes of a similar nature.[15] Courts also have extended the application of *Glimer* to the NASD, since its rules are similar to the NYSE rule at issue *Glimer*.[16] The Commission notes, however, that the U.S. Court of Appeals for the Ninth Circuit, in *Duffield* v. *Robertson Stephens & Co.*, 1998 U.S. App. Lexis 9284 (9th cir. 1998), recently held that Item 10 of Form U–4, incorporating the current mandatory provision of Rule 10101 and 10201, is unenforceable as applied to Title VII claims.

Registered persons and others have continued to question the policy of requiring the arbitration of statutory discrimination claims.[17] In February of 1997, three members of Congress wrote to the SEC and questioned the authority of the NASD and other SROs to require arbitration of statutory discrimination claims in employment disputes through an associated person's signing of the Form U–4.[18] Legislation was introduced that year in both the House and Senate[19] that would prohibit employers and employees from entering into predispute arbitration agreements concerning claims of unlawful employment discrimination.[20]

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[6] The Form U–4 was adopted effective October 1, 1975.

[7] The relevant language on the Form U–4 states:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations indicated in Item 10 as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction.

From page 4 of the Form U–4 as revised in November 1991. A new version of the Form U–4 was approved by the Commission on July 5, 1996. Securities Exchange Act Release No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996). Use of the revised form has been deferred pending related changes to the Central Registration Depository ("CRD"). Securities Exchange Act Release No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996). The substance of the quoted language was not changed in the revision.

[8] As one court explained, "Section 1 [now Rule 10101] defines the general universe of issues that *may* be arbitrated, and Section 8 [now Rule 10201] describes a subset of that universe that *must* be arbitrated under the Code." *Armijo* v. *Prudential Ins. Co. of Am.*, 72 F.3d 793, 798 (10th Cir. 1995).

[9] Securities Exchange Act Release No. 32802 (August 25, 1993), 58 FR 45932 (August 31, 1993). In its order approving this change and a related change in the composition of arbitration panels to hear employment disputes, the Commission recognized that claims based on allegations of age, sex, or race discrimination, or relating to sexual harassment, were subject to the arbitration requirement.

[10] *Higgins* v. *Superior Court of Los Angeles County*, No. B057028 (Cal. App. Oct. 8, 1991), *review denied and decision ordered not officially published*, 1 Cal. Rptr. 2d 57 (1992). The state court noted the difference between the NYSE rule (at issue in the Supreme Court's *Gilmer* decision, discussed below), which refers to disputes arising out of the employment or termination of employment of an associated person, and the NASD rule, which at the time did not contain the phrase relating to employment. A federal court reached the same conclusion while the rule change was pending approval. *Farrand* v. *Lutheran Bhd.*, 993 F.2d 1253 (7th Cir. 1993). The Association stated in its rule filing that the amendment was a clarification of existing intent rather than a new policy; some courts accepted this view, while other courts interpreted the rule amendment as a change in policy. See *Kuehner* v. *Dickinson & Company*, 84 F.3d 316, 320 n.1 (9th Cir. 1996) (describing splits in the Seventh, Tenth and Eleventh Circuits on this issue).

[11] 500 U.S. 20 (1991). Those challenges included contentions that anti-discrimination laws are designed to further important social policies that should be addressed in a public forum, that arbitration panels may be biased, that discovery is more limited in arbitration than in court, that arbitrators often do not issue written opinions, that arbitration procedures do not provide for broad equitable relief and class actions, and that there is unequal bargaining power between employers and employees. The Court noted the most of these contentions were generalized attacks on arbitration that had been rejected in prior Supreme Court decisions. *Id.* at 30.

[12] *Id.* at 35. The Court cited its earlier holding that, "So long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function." 500 U.S. at 28, *quoting Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638 (1985).

[13] *See, e.g., Alford* v. *Dean Witter Reynolds, Inc.*, 939 F.2d 229 (5th Cir. 1991); *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 957 F. Supp. 1460 (N.D.Ill. 1997). *But see Rosenberg* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 1998 U.S. Dist. Lexis 877 (D.Mass. 1998).

[14] *See, e.g., Austin* v. *Owens-Brockway Glass Container, Inc.*, 78 F.3d 875, 881 (4th Cir.), *cert. denied*, 117 S. Ct. 432 (1996).

[15] *See, e.g., Kaliden* v. *Shearson Lehman Hutton, Inc.*, 789 F. Supp. 179, 180 (W.D. Pa. 1991).

[16] *See, e.g., Metz* v. *Merril Lynch Pierce, Fenner & Smith, Inc.*, 39 F.3d 1482, 1488 (10th Cir. 1994).

[17] *See, e.g.*, Commission on Future of Worker-Management Relations ("Dunlop Commission"), *Report and Recommendations* 33 n.15 (1994); Equal Employment Opportunity Commission, *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment* n.2 (1997).

[18] Letter from Representatives Edward J. Markey, Anna G. Eshoo, and Jesse L. Jackson, Jr., to Arthur Levit, Chairman, SEC (February 3, 1997). The Commission's Division of Market Regulation determined that there was no clear answer and suggested that the SROs should address the issue in the first instance.

[19] H.R. 983 and S. 63, 105th Cong. (1997).

[20] Under the proposed legislation, the parties could agree, after a dispute arose, whether to resolve it by arbitration or by court proceedings.

Details of the Proposed Rule Change

Paragraph (a) of the proposed rule adds a prefatory phrase indicating that the requirement to arbitrate employment disputes contains an exception, set forth in paragraph (b).

New paragraph (b) provides that claims alleging employment discrimination, including sexual harassment, in violation of a statute are not required to be arbitrated by NASD rules.[21] This means that such claims may be filed in the appropriate court, if the employee chooses to do so and is not under an enforceable predispute obligation to arbitrate the dispute. An employee also may agree to arbitrate after a dispute arises.[22]

Paragraph (b) applies only to claims alleging employment discrimination, including sexual harassment,[23] in violation of a statute.[24] Paragraph (b) does not apply to causes of action created solely by judicial precedents or to other causes of action under state or federal law, which remain subject to mandatory arbitration under paragraph (a).[25]

Paragraph (c) of the proposed rule is former paragraph (b), which is unchanged except for the renumbering.

Effective Date

The NASD originally requested that the proposed rule become effective one year from the date of Commission approval. However, the NASD is now asking that the proposed rule change become effective on January 1, 1999.[26] NASD Regulation states that the rule change will apply to claims filed on or after the effective date of the rule change.[27] NASD Regulation states that this method is the one most commonly used with regard to changes to the Code and is the most efficient to administer.

III. Summary of Comments

The Commission received nine comment letters on the proposed rule change. Six commenters supported the proposed rule change, with recommended modifications. Three commenters opposed the proposed rule change.[28] The comment letters focused on three main issues: (1) whether the rule will lead to the bifurcation of claims in arbitration and in court; (2) whether the one-year delayed effective date was appropriate; and (3) whether the rule should be amended to permit only post-dispute agreements to arbitrate. NASD Regulation responded to the comment letters.[29]

Overview of the Proposed Rule Change

Many of those who support the proposed rule change do so because they believe employment discrimination claims do not belong in arbitration. The EEOC, for example, applauded the proposal as a "first step" toward bringing the securities industry into harmony with the intent of federal anti-discrimination statutes. The WLDF asserted that it will help protect important civil rights. NELA argued that the NASD does not have the jurisdiction to compel the waiver of fundamental statutory rights and remedies as a condition of employment, and that statutory claims of this sort do not belong in the present arbitration system. The New York Attorney General supported the proposed rule change, maintaining that industry arbitrators lack training and experience relating to interpreting and applying employment discrimination law.

One commenter opposed the proposed rule change, contending that it is against public policy, is contrary to case law and federal legislation encouraging the use of arbitration, ignores the concerns of courts,[30] and undermines a long history of a system of SRO arbitration of employment matters without any empirical evidence of a problem.[31] Similarly, Schwab stated that although it is willing to resolve statutory discrimination claims in court, because arbitration is the preferable forum, it does not support the proposed rule change in its current form. In Schwab's view, arbitration is fundamentally fair as a dispute resolution process and the NASD should address any concerns by working to improve the process, not by removing some classes of cases from the process.[32] On the other hand, one commenter opposed the proposed rule change as not going far enough. He maintained that the Commission should prohibit arbitration of all employment claims in any instance.[33]

NASD Regulation responded that its arbitration forum is fair and that it provides many benefits to employees as well as to members, and that the proposed rule change does not in any way indicate a lack of confidence in the current arbitration system.

Comments Concerning Bifurcation of Claims

Several letters voiced concerns that, as presently drafted, the rule presents the possibility that claimants will be required to pursue different claims in different forums. A number of commenters asserted that the proposal should be expanded to cover all common law claims concerning employment-related matters,[34] such as wrongful termination, defamation, negligent supervision, invasion of privacy, tortious interference with economic opportunity, and intentional infliction of emotional distress.[35] Those commenters argued that since the proposed rule change allows the statutory discrimination claims to be brought in court, while requiring employees to bring the common law and all other statutory claims in arbitration, it will result in the separation of claims that are often joined together and based

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[21] *See* Amendment No. 2, *supra* note 4.

[22] A report by the NASD's Arbitration Policy Task Force ("Task Force Report") observed that arbitration of employment-related disputes offers advantages in terms of speed and cost, and that arbitration's essentially equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in anti-discrimination statutes. Task Force Report at 119. Therefore, the NASD expects that many employees will continue to file their discrimination claims in arbitration if the proposed rule becomes effective, and the NASD states that it intends to make further enhancements to its arbitration forum to make it even more attractive to parties. Firms and their employees who agree to arbitrate discrimination claims may agree to use any arbitration forum.

[23] Sexual harassment has been held to be a form of sex discrimination, and thus a violation of Title VII. *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57, 64 (1986).

[24] The NASD intends the term "statute" to be interpreted broadly, as defined in *Black's Law Dictionary* 1410 (6th Ed. 1990): "A formal written enactment of a legislative body, whether federal, state, city, or county."

[25] Such judicially created causes of action might include, for example, claims alleging "wrongful discharge" without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law.

[26] *See* Amendment No. 2, *supra* note 4.

[27] Accordingly, under the proposal, on January 1, 1999, claims may be filed in court for past conduct if they are within the applicable statutes of limitation and other statutory requirements and no other predispute arbitration agreements apply.

[28] Liddle Letter; Fitzpatrick Letter; Schwab Letter.

[29] *See* Amendment No. 2, *supra* note 4.

[30] Fitzpatrick Letter.

[31] *Id.* the SIA also noted that critics of the arbitration process have not offered any empirical data to support a claim that SRO arbitration is not a fair forum for employees to resolve statutory employment discrimination claims and employees actually do better in arbitration than in overcrowded court systems.

[32] Schwab noted that the NASD did state its intent to provide increased training in employment related issues to arbitrators and to assign arbitrators based on their subject-matter expertise.

[33] Liddle Letter. He stated that the decision to exclude statutory employment claims from mandatory arbitration reflects the NASD's view that its arbitration process is not suited to handle resolution of these claims because it is fundamentally unfair and does not afford a claimant with an employment claim a full and fair opportunity to vindicate his or her rights.

[34] Attorney General Letter; Liddle Letter. Another commenter stated that the proposed rule change should be expanded to cover all statutory employment rights, including those under ERISA, the Family and Medical Leave Act, and other laws. WLDF Letter.

[35] Attorney General Letter.

on the same alleged facts.[36] In their view, such bifurcation of the statutory and common law claims could create a financial burden on employees[37] and members or member firms,[38] delay the resolution of claims,[39] and cause scheduling and discovery disputes.[40] Several commenters also voiced concerns about the possible res judicata or collateral estoppel effects of the arbitration on the court proceeding.[41]

NASD Regulation responded that the proposed rule change is an exception to a long-standing rule requiring the arbitration of disputes between members and associated persons and that the interest groups who expressed their concerns focused on federal anti-discrimination legislation, not on common law claims or other federal laws. In addition, NASD Regulation stated it will continue to observe developments in this area (as will the Commission).

Comments Concerning the Effective Date

Several commenters recommended that the proposal become effective earlier than one year after Commission approval.[42] Several commenters suggested immediate effectiveness,[43] while one suggested effectiveness three months after Commission approval.[44] The EEOC was of the view that the rule should be effective immediately upon Commission approval because securities industry employees should not be locked into an agreement that conflicts with the principles underlying the anti-discrimination laws. The EEOC was not persuaded otherwise by the NASD's justification that a one-year delay will allow it to improve its arbitral forum[45] and stated that the NASD can still pursue those steps notwithstanding an immediate effective date. The EEOC stated that existing deficiencies in the arbitral process militate against delaying the effective date. The EEOC was concerned that the year delay will allow firms time to implement their own mandatory arbitration agreements to replace the requirement eliminated by the NASD. Similarly, NELA's view is that the real purpose of the waiting period is to allow member firms time to implement their own mandatory arbitration requirements in employee contracts in order to circumvent the positive benefits of the rule change. The WLDF objected to the one-year waiting period because it argued that victims of sexual harassment and other forms of illegal discrimination will continue to be denied important safeguards, while NELA opposed the one year waiting period as being inconsistent with the purpose and spirit of the proposal and stated it would be unconscionable to keep in place for a year a system that is "admittedly inadequate" for the resolution of statutory discrimination claims.

On the other hand, the SIA and Merrill Lynch supported the one-year phase in period.[46] The SIA stated that employees and firms need time to consider what agreements they may wish to enter into with each other and that firms need time to consider and implement the changes. The SIA also noted that the NASD intends to use the year to enhance the quality of its arbitration programs, to increase the level of confidence that employees have in the fairness of the NASD arbitration forum, and to work with other regulators to consider whether other change sin the industry registration process are warranted. The SIA argued that the proposal does not need to be implemented immediately to protect employee rights because (1) the Supreme Court has stated that parties who agree to arbitrate their claims do not forgo any substantive statutory rights, and (2) it is not true that arbitration is improper and unfair to employees. Similarly, Merrill Lynch supported a one-year waiting period because, in its view, arbitration is not unfair, as found by the Supreme Court in *Gilmer*, and employees fare better in SRO arbitration than in court. Merrill Lynch stated that because the proposed rule change represents a significant change in industry practice, other SROs (who have not followed the NASD's lead in this area) and the industry need time to resolve the issues created by the new rule.[47]

NASD Regulation responded that the publicity that has surrounded the proposed rule has always included the fact that the rule would take effect one year after Commission approval, so firms and employees have not been on notice that they should act more quickly. NASD Regulation also stated that making the rule change effective shortly after Commission approval would be problematic because other SROs that require arbitration of employee/employer disputes may wish to amend their rules to be consistent with the NASD and this process could take several months. Nonetheless, the NASD stated that it understands the desirability of a definitive effective date and moved the effective date to January 1, 1999. In the view of NASD Regulation, this date gives other SROs, members and employees sufficient time to take action to respond to the rule.

With regard to the significance of the effective date, NASD Regulation stated that the rule change will apply to claims filed on or after the effective date of the rule change. NASD Regulation asserted that this method is the one most commonly used with regard to changes to the Code and is the most efficient to administer, as it does not involve subsidiary determinations as to the dates of other transactions.

Comments Concerning Voluntary Post-Dispute Agreements

Several commenters argue that pre-dispute agreements to arbitrate should not be allowed because they are never truly voluntary,[48] because of the

[36] Attorney General Letter; Liddle Letter; Schwab Letter; Fitzpatrick Letter.

[37] Liddle Letter.

[38] Schwab Letter. Schwab noted that the court case and arbitration case might occur in different states, requiring different lawyers and further increasing the costs of final resolution.

[39] Attorney General Letter; Liddle Letter; Schwab Letter.

[40] Schwab Letter. In addition, Schwab observed that parties may file pretextual claims in court to gain the advantage of more liberal discovery in court than in arbitration, or that multiple proceedings may result in orders that conflict with one another. Schwab argued that, because it is more likely that arbitrations and investigations will now occur at the same time because the arbitration necessarily will not resolve the discrimination claims, the proposal creates the potential for conflict between investigations by the EEOC or comparable state or local agencies, and arbitrations. Schwab also maintained that parties to arbitration would then subpoena the investigatory files and submit the information to the arbitration panel, who are likely to misunderstand the information in those files, which may be gathered without due process or significant input from the parties involved. Schwab suggested that EEOC and comparable state investigative files should not be subject to discovery or admissible as evidence in arbitration.

[41] Liddle Letter; Schwab Letter.

[42] Attorney General Letter; EEOC Letter; WLDF Letter; NELA Letter.

[43] EEOC Letter; WLDF Letter; NELA Letter.

[44] Attorney General Letter.

[45] The NASD stated that it intended to improve the arbitration process to ensure procedural adequacy and to safeguard employee rights, including providing for greater disclosure to employees of the effect of signing the Form U–4, the features of arbitration, and their rights under the proposed rule.

[46] Fitzpatrick, who oppose the proposed rule change, nevertheless supported the one-year period in the event the Commission approves the proposed rule change.

[47] Schwab requested that the NASD and the Commission clarify precisely how the one-year effective date is intended to operate. Schwab questioned whether the proposed rule change will apply to any court case filed more than a year form the approval of the proposal (which could encourage people to wait to file a case), or whether it will apply only to employees who sign the Form U–4 after one year has passed (which would result in different employees having different rights in incidents occurring at the same time).

[48] Attorney General Letter; EEOC Letter. The Attorney General further stated that opposition to pre-dispute arbitration agreements is widespread, including some members of Congress, the EEOC, and the Commission on the Future of Worker-

unequal bargaining power of employers and employees,[49] and because they are contrary to the fundamental principles reflected in this nation's anti-discrimination laws.[50] These commenters argued that the Commission should only allow agreements that are truly voluntary and that are entered into after a dispute has arisen.[51] In addition, one commenter supported voluntary post-dispute agreements to arbitrate employment disputes only to the extent that such agreements preserve the substantive protections and remedies afforded by statute, and argued that the NASD should amend its proposal to include such protections.[52]

The NASD Regulation stated it considered the above issues and does not take a position on the desirability of private arbitration agreements between members and their employees, but instead simply determined to remove from its rules the mandatory requirement as to claims of statutory employment discrimination.

IV. Discussion

Under the Act, SROs, like the NASD, are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to Section 19(b)(2) of the Act, the Commission is required to approve a rule change of an SRO like the NASD if it determines that the proposal is consistent with applicable statutory standards.[53] These standards include Section 15A(b)(6) of the Act, which provides that the NASD's rules must be designed to, among other things, "promote just and equitable principles of trade;" and "protect investors and the public interest." Section 15A(b)(6) also provides that the NASD's rules may not be designed to "regulate * * * matters not related to the purposes of the [Exchange Act] or the administration of the [NASD]."

By changing its rule, the NASD will no longer require associated persons, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination. NASD's proposal is consistent with the applicable statutory standards.[54] The statutory employment anti-discrimination provisions reflect an express intention by legislators that employees receive special protection from discriminatory conduct by employers. Such statutory rights are an important part of this country's efforts to prevent discrimination. It is reasonable for the NASD to determine that in this unique area, it will not, as a self-regulatory organization, require arbitration.

With respect to the bifurcation issue raised by the commenters, the Supreme Court, in *Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 217 (1985), acknowledge the appropriateness of bifurcation between federal statutory and pendant state law claims.

With respect to the issue raised by commenters of whether the rule should be effective immediately or have a delayed effective date, notwithstanding this rule change by the NASD, other SROs continue to have rules that will require employees of their members to arbitrate statutory discrimination claims. The NASD's decision to move the effective date from one year after approval of the proposed rule change to January 1, 1999 is a reasonable compromise. The January 1, 1999 date will permit other SROs to change their rules as the NASD has done, so that employees of member firms of other SROs will not be required to arbitrate these claims.

With respect to other comments that suggested that the NASD should enact other rules concerning employer/employee arbitration agreements or extend this rule to other causes of action, these issues are left to the NASD to consider in the first instance.

In approving this rule, the Commission notes that it has considered the proposed rule's effects upon efficiency, competition, and capital formation.[55]

Amendment No. 2 is a technical amendment; it changes the rule language to clarify that sexual harassment is a form of sex discrimination prohibited under Title VII (as well as certain state statutes). This change will make it clear to the securities industry that sexual harassment claims are encompassed within the term "employment discrimination" claims. In addition, as discussed more fully above, Amendment No. 2 also amends the effective date of the proposal to an earlier date, while at the same time still allowing enough time for members and member firms to consider and implement the changes.[56]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change, as amended, (SR–NASD–97–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[58]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17150 Filed 6–26–98; 8:45 am]

BILLING CODE 8010–01–M

Management Relations ("Dunlop Commission"). Legislation was introduced in the House and the Senate that would prohibit parties from entering into agreements to resolve employment discrimination claims unless they voluntarily enter into them after such claims arise.

[49] Attorney General Letter.

[50] EEOC Letter.

[51] Attorney General Letter; EEOC Letter; Liddle Letter.

[52] Attorney General Letter. NASD Regulation responded that the content of private arbitration agreements is not germane to the proposed rule change, which simply removes the arbitration requirement imposed through the signing of the Form U–4 from the NASD's rules.

[53] the Commission oversees the arbitration programs of the SROs, like the NASD, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

[54] 15 U.S.C. 78o–3(b)(6).

[55] 15 U.S.C. 78c(f).

[56] Because Amendment No. 2 is technical in nature, it is not subject to a notice and comment requirement.

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40108; File No. SR–PCX–98–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 To Extend the Supervisory Specialist Pilot Program

June 22, 1998.

I. Background

On March 3, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to establish a temporary, 90-day, Supervisory Specialist Pilot Program ("Program").[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Also on March 3, 1998, the PCX filed proposed rule change SR–PCX–98–13 ("Companion filing"), requesting the Commission to approve a one-year pilot of the Program. *See* Securities Exchange Act Release No. 39825 (April 1, 1998), 63 FR 17250. The Companion filing originally was to become effective at the expiration of the temporary, 90-day Program. On March 12, 1998 the PCX filed Amendment No. 1 to the proposed rule change. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marc McKayle, Attorney, Division of Market Regulation ("Division"), Commission

Continued

The proposed rule change was published for comment in the **Federal Register** on March 31, 1998.[4] Under the Program, eligible PCX specialist firms may operate two specialist posts, on the PCX Equities Floors only, based upon one Exchange membership. On June 16, 1998, the PCX filed Amendment No. 2, proposing to extend the 90-day pilot, due to expire on June 22, 1998, for an additional 90 days to give PCX an adequate opportunity to respond to concerns regarding the filing raised in comment letters, and to prevent the disruption of specialist firms already operating under the Program.[5] For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

II. Proposed Rule Change

In an effort to streamline the way business is conducted on the Exchange's Equities Floors, and to provide Exchange specialist firms with greater control over the management and costs of their operations, the Exchange proposed to adopt the Supervisory Specialist Pilot Program. Under the Program, a specialist firm may operate two specialist posts based upon one Exchange membership, provided that both posts will be staffed by Specialists who have been qualified by the Exchange as Registered Specialists under the rules of the Exchange. The Program permits one specialist post to be staffed by a Member who is registered as the supervising specialist ("Supervisory Specialist"), while the other post is staffed by an Associated Person of the specialist firm who is otherwise qualified to act as a Registered Specialist (the "Associate Specialist"). Under the Program, the Supervisory Specialist acts as supervising specialist over the Associate Specialist. Program participants are restricted to Exchange Members with seats on the Equity floor, and no more than two specialist posts may be operated per membership.

III. Comments

The Commission has received three comment letters on the proposal. One comment letter supports the Exchange's rationale for the Program.[6] The others oppose the Program. The two opposing letters claim that the Program will dilute the value of Exchange seats as an investment property.[7] Furthermore, the dissenters argue that such a change to the Exchange's seat operations requires approval by a majority vote of the PCX Membership, as well as the PCX Board of Directors, pursuant to the Article V, Section 1 of the PCX Constitution.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on whether the proposal is consistent with the PCX Constitution. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–14 and should be submitted by July 20, 1998.

V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the Exchange Act Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protest investors and the public. In originally approving the program for a 90-day pilot, the Commission preliminarily found that the Program could enhance liquidity in equity securities traded on the Exchange members by given specialist firms the opportunity to become specialists in more stock without incurring additional membership costs. Since then the Commission has received comment letters expressing concerns with certain aspects of the Program. By approving the Program for a further limited period of time, but without extending it to additional firms, the Commission will prevent disruption to the firms already enrolled in the Program while enabling the Commission to determine whether its preliminary determinations remain correct in light of the comment letters. Approval of the 90-day extension has no bearing on, and should not be interpreted to suggest that the Commission ultimately will approve PCX's Companion filing (SR–PCX–98–13),[9] requesting approval of the pilot for one year.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. First, the Commission notes that the extension is only for 90 days. Second, the approval of the 90-day extension is granted on the condition that the PCX will not enlist any additional specialist firms to the Program during this period. As a result, the extension will merely preserve the status quo to give the PCX additional time to respond to the comment letters and to give the Commission time to consider that response.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–14) is hereby approved on an accelerated basis through September 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17233 Filed 6–26–98; 8:45 am]

BILLING CODE 8010–01–M

("Amendment No. 1"). In Amendment No. 1, the PCX provided a basis for the accelerated effectiveness of the proposal pursuant to Section 19(b)(2) of the Act, explaining that the Program was designed to permit specialist firms greater control over the impact of sharply escalating seat prices, while preserving the quality of the Exchange's markets and services to the public and its members.

[4] Securities Exchange Act Release No. 39784 (March 24, 1998), 63 FR 15472.

[5] See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission (June 18, 1998) ("Amendment No. 2").

[6] See letter from Daniel H. Turner, President, Rubicon Securities, Inc. to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (May 12, 1998).

[7] See letters from Matthew D. Wayne, Counsel to PBL, Inc., Vanasco & Wayne, to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (April 14, 1998), and John A. Brown, Chairman (retired), M.J.T. Securities, Inc., to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (June 2, 1998).

[8] U.S.C. 78f(b)(5).

[9] Securities Exchange Act Release No. 39825 (April 1, 1998) 63 FR 17250.

[10] 15 U.S.C. 78s(b)(2).

[11] CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2844]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–42, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on June 18, 1998.

It is proposed that the system description will include revisions and/or additions to each section except the sections entitled "System name," "Retrievability" and "Systems exempted from certain provisions of the Act." A new section entitled "Security classification" has also been added. The changes to the existing system description are proposed to reflect more accurately the Bureau of Political-Military Affairs' record-keeping practices, the enlargement of the scope of its mandate, and a reorganization of its activities and operations.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Kenneth F. Rossman, Acting Chief; Programs and Policies Division; Office of IRM Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

This system of records will be effective 40 days from the date of publication unless we receive comments which will result in a contrary determination.

The altered system, the "Munitions Control Records, STATE–42" will read as set forth below.

Dated: June 18, 1998.

Patrick R. Hayes,

Acting Assistant Secretary for the Bureau of Administration.

STATE–42

SYSTEM NAME:

Munitions Control Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, Annex 6; Room 200; 1700 Lynn St.; Arlington, VA 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Exporters of defense articles and defense services with or without Department of State authorization; individuals who are applicants for export licenses; individuals who are registered as exporters; and individuals who are brokers for sales of defense articles or defense services who completed registration statements or submitted requests for approval of a brokering activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651A (Organization of the Department of State); 22 U.S.C. 3921 (Management of service); 5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2778 (Arms Export Control Act).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, registration statements when a principal executive officer or owner is the same as the applicant, and checks for registration fees sent to the Department of State (Department) when an individual registers as a manufacturer, exporter and/or broker of defense articles or defense services; copies of letters to individuals and businesses from the Department pertaining to their registration; Proposed Charging Letters and Orders and Consent Agreements pertaining to the Department's administrative cases; correspondence, memoranda, federal court documents, telegrams, other government agency reports, and E–Mail messages between the Department and other federal agencies regarding law enforcement and intelligence information about defense trade activities pertaining to the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

The information in this system is used primarily by the Office of Defense Trade Controls when making determinations regarding:

(a) Individuals who have been authorized to export or retransfer a defense article, defense service or related technical data;

(b) Which commodities, quantities, and dollar values were authorized for export and the extent of any export violations;

(c) Administrative charges imposed on an individual for violating the export regulations; and

(d) The removal of export privileges.

The information may also be used to send required reports to Congress about certain defense trade transactions. The principal users of this information outside the Department of State are the U.S. Customs Service and the Department of Justice for their investigations of violations of the Arms Export Control Act. This information may also be released to other federal intelligence and law enforcement agencies pursuant to statutory intelligence and law enforcement responsibilities or for other lawful purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to Annex 6 has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired to the Federal Records Center according to published records schedules of the Department of State and as approved by the National Archives and Records Administration. Licenses and license applications will be destroyed after fifteen years. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA–6, Room 200, Department of State, Washington, DC 20522–0602.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Political-Military Affairs (Office of defense Trade Controls) might have information pertaining to themselves should write to the Director; Office of IRM Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512. The individual must specify that he/she wishes the Office of Defense Trade Controls to be checked. At minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; and a brief description of the circumstances which may have caused the creation of the record including the approximate dates of the circumstances which give the individual cause to believe that the Office of Defense Trade Controls may have records pertaining to him/her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual, from the organization the individual represents and intelligence and law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (3)(4)(G), (H) and (I), and (f). See Department of States rules published in the **Federal Register**.

[FR Doc. 98–17228 Filed 6–26–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 19, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3964.
Date Filed: June 17, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 15, 1998.
Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Department's Regulations, applies for renewal of segment 1 of its Certificate of Public Convenience and Necessity for Route 648 (Raleigh/Durham-London), issued by Order 93–12–27, December 17, 1994.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–17255 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending June 19, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3959.
Date Filed: June 15, 1998.
Parties: Members of the International Air Transport Association.
Subject: 14PTC3 Telex Mail Vote 944 Korea-Russia fares
Intended effective date: June 18, 1998.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–17254 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in time and location of meetings.

SUMMARY: The FAA is issuing this notice to advise the public of a change in time and location for two special meetings of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 8515, February 19, 1998).

DATES: The July 15, 1998, meeting will begin at 3 p.m.; the July 21, 1998, meeting will begin at 10 a.m.

ADDRESSES: The July 15, 1998, meeting will be held at the Embassy Suites, 1250 22nd Street, NW., Washington, DC. The July 21, 1998, meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6200–6204, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of two special meetings of the Executive Committee to be held on July 15, 1998, at the Embassy Suites, 1250 22nd Street, NW., Washington, DC, and on July 21, 1998, at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6200–6204, Washington, DC.

The agenda for the July 15, 1998, meeting will include a detailed review of the draft report of the Fuel Tank Harmonization working Group.

The agenda for the July 21, 1998, meeting will include a further review of and vote on the report of the Fuel Tank Harmonization working Group.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 6, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** A copy of the draft report of the Fuel Tank Harmonization Working Group will be available at each meeting or may be obtained following the meeting by contacting the above person.

Issued in Washington, DC, on June 23, 1998.

Joseph A. Hawkins,
Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–17225 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on July 15 at 1:00 p.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss noise certification issues. This meeting will be held July 15, 1998, at 1:00 p.m., at the General Aviation Manufacturers Association. The agenda for this meeting will include progress reports from the FAR/JAR Harmonization Working Group for Helicopters and the FAR/JAR Harmonization Working Group for Subsonic Transport Airplanes. It will also include the presentation and vote on the NPRM from the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes. Members of the public may obtain copies of this NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 23, 1998.

Paul Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–17226 Filed 6–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–551X]

Knox & Kane Railroad Company—Abandonment Exemption—in Clarion County, PA

Knox & Kane Railroad Company (Knox) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 9-mile line of its railroad between Station #3069 + 49, immediately west of milepost 86, and Station #3533 + 70, immediately west of milepost 95, in Clarion County, PA. The line traverses United States Postal Service Zip Codes 16232 and 16254.

Knox has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 29, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 9, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 20, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Daniel J. Sweeney, 1750 Pennsylvania Ave., NW, Washington, DC 20006

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Knox has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 3, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Knox shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Knox's filing of a notice of consummation by June 29, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 19, 1998.

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16927 Filed 6–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Republic of.

Dated: June 19, 1998.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 98–17153 Filed 6–26–98; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register
Vol. 63, No. 124
Monday, June 29, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 240, 245, 274a and 299

[INS No. 1893-97; AG Order No. 2154–98]

RIN 1115–AF04

Adjustment of Status for Certain Nationals of Nicaragua and Cuba

Correction

In rule document 98–13246 beginning on page 27823, in the issue of Thursday, May 21, 1998, make the following corrections:

On page 27828, in the second column, in the second full paragraph, in the third line, "deporting" should read "deportation"; in the fourth line, "removing" should read "removal"; and in the fifth line, "to" should read "may be".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40075; File No. SR–CBOE–98–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Committee Responsible for Governing RAES Participation in SPX

Correction

In notice document 98–15780 appearing on page 32668 in the issue of Monday, June 15, 1998, make the following correction:

On page 32688, in the third column, following the last paragraph, the signature line should read as set forth below:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 10

[Docket No. 98–08]

RIN 1557–AB62

Municipal Securities Dealers

Correction

In rule document 98–14016, beginning on page 29092, in the issue of Thursday, May 28, 1998, make the following correction:

§ 10.2 [Corrected]

On page 29094, in the second column, in § 10.2(c), the second sentence should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–21]

Amendment of Class E Airspace; Cedar City, UT

Correction

In rule document 98–14539 beginning on page 29943 in the issue of Tuesday, June 2, 1998, make the following correction:

§ 71.1 [Corrected]

On page 29944, in the first column, under the heading **ANM UT E5 Cedar City, UT [Revised]**:

1. In the eighth line "35°45′00″" should read "37°45′00″".

2. In the tenth line "113°15′30″" should read "113°15′00″".

BILLING CODE 1505–01–D

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federal register

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Part II

Department of Agriculture

Rural Utilities Service

7 CFR Part 1724

Electric Engineering, Architectural Services and Design Policies and Procedures; Final Rule

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1724

RIN 0572–AA48

Electric Engineering, Architectural Services and Design Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations on engineering and architectural services. These policies and procedures are presently contained in seven RUS bulletins, which will be rescinded after this regulation becomes effective. This rule simplifies and codifies RUS policy and procedures to be followed by electric borrowers relating to architectural and engineering services. This rule also simplifies and codifies RUS requirements for the planning and design of electric distribution, transmission, and generation systems and facilities owned by RUS borrowers.

DATES: Effective Date: July 29, 1998.

Incorporation by Reference: Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: fgatchel@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Final Rule Related Notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) exempted RUS loans and loan guarantees from coverage under this order.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

National Performance Review

The regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule will be submitted to OMB for approval. The paperwork contained in this rule will not be effective until approved by OMB.

Send questions or comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

RUS has promulgated regulations pertaining to the design and construction of RUS electric borrower's systems. These regulations are contained in 7 CFR chapter XVII, part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures, which describes policies and procedures pertaining to RUS electric borrower procurement of architectural and engineering services for planning, design, and construction management of buildings and electric utility plant such as distribution and transmission lines, substations, communications and control systems, and generating plants.

The policies and procedures covered by this rule are presently contained in RUS Bulletins 41–1, Engineering Services for Electric Borrowers; 42–1, Architectural Services for Electric Borrowers; 60–1, Standards for the Preparation of Circuit Diagrams, Electrical Data Sheets, and Other Drawings for Systems of Electrical Borrowers; 60–2, Electric System Capacity; 80–11, Reports of Progress of Construction and Engineering Services; 81–9, Preparation of Plans and Specifications for Distribution and Transmission Facilities; and 86–2, Pre-Construction Activities for Headquarters Facilities for Electric Borrowers. The previous policies and procedures are being changed and updated by this rule. Upon the effective date of this rule, RUS Bulletins 41–1, 42–1, 60–1, 60–2, 80–11, 81–9, and 86–2 will be superseded and rescinded.

The major substantive changes are as follows:

(a) This rule eliminates the requirement for RUS approval of the borrower's selection of the architect and of the engineer.

(b) This rule eliminates the requirement for RUS approval of architectural services contracts and distribution and transmission engineering services contracts for all facilities, and generation engineering services contracts if the facilities are not financed by RUS.

(c) This rule eliminates the requirement for RUS approval for closeout of architectural or engineering services contracts.

(d) This rule eliminates the requirement for submittal of progress reports to RUS for facilities not financed by RUS.

(e) This rule eliminates the requirement for RUS approval of many

plans and specifications. However, many requirements, such as the National Electrical Safety Code (NESC), Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), building accessibility standards, RUS standards, specifications, and use of acceptable materials, etc., apply regardless of the source of financing.

(f) Design data that have been approved by RUS may be used for new facilities without further approval.

(g) This rule will simplify and clarify RUS requirements regarding system design.

(h) This rule combines seven bulletins and three contracting forms.

Comments

On August 4, 1997, RUS published a proposed rule at 62 FR 41883. Comments were received from 13 parties, including one cooperative association, 2 engineering associations, 3 distribution borrowers, 3 power supply borrowers, and 4 engineering firms. RUS considered all comments. All substantive comments are addressed herein.

Some commenters suggested that RUS eliminate the requirement that RUS borrowers use RUS standards and RUS accepted materials, especially when the project is financed from sources other than RUS, and to eliminate all RUS approvals when the project is financed from sources other than RUS. RUS disagrees with this approach. Any project that is part of a borrower's interrelated electrical system can impact the collateral that serves as security for loans and guarantees made by RUS. Inadequate design or materials in one part of the system, regardless of how financed, can adversely affect the entire system. RUS considers the requirements that RUS borrowers use RUS standards and accepted materials and for RUS approvals as proposed are in the government's best interests as lender.

One commenter suggested that RUS clarify the applicability of prior editions of the National Electrical Safety Code (NESC). Since the NESC itself specifically addresses facilities that comply with prior editions of the NESC, no change is needed in the rule.

Some commenters suggested that RUS allow non-licensed engineers to do certain work and not require all employed engineers to be registered. Nothing in the proposed rule requires each and every person doing engineering work to be registered. Generally, the rule allows the a borrower to use qualified non-licensed subordinates to do engineering work to the same extent as allowed by applicable State engineering regulations.

Several commenters suggested that RUS allow more than 6 months for inspection of work order construction. RUS disagrees with this comment. Inspection of work order construction is important to the safety of the public and the borrower's employees, and should be completed as expeditiously as possible. Where special circumstances (e.g., unusual weather conditions) preclude inspection within six months, the borrower may request a waiver of this time requirement.

Several commenters suggested that RUS not require that inspected work orders be noted and initialed on the RUS Form 219. In response to this comment, RUS has eliminated the requirement that the inspected work orders be noted and initialed, requiring only that the inspected work orders be indicated on the RUS Form 219.

One commenter suggested that RUS not require RUS Form 219 to be used for work on facilities not financed by RUS. It is not RUS' intent to require RUS Form 219 for work on facilities not financed by RUS. The final rule clarifies this point.

One commenter suggested that RUS not prohibit the borrower's manager from certifying the RUS Form 219. RUS believes that its long-standing requirement for separation of responsibility continues to have merit while causing little borrower inconvenience. No change has been made in the final rule.

One commenter suggested that RUS allow as-built drawings as a substitute for staking sheets in connection with work order inspection. In response to this comment, RUS has changed the final rule accordingly.

Some commenters suggested that RUS allow borrowers to use either an architect or an engineer for the design of buildings and that RUS should allow the borrower, instead of the architect or engineer, to do the construction management. One commenter noted that RUS Form 220 requires electrical, mechanical, and structural expertise that an architect may not have. It is RUS' intent that all work be done by individuals and organizations well qualified to do the work. This could include having an engineer design buildings with architectural assistance, the borrower doing construction management with engineering or architectural assistance, or an architect obtaining additional electrical, mechanical, and structural expertise. Since nothing in the rule is contrary to this interpretation, no change is needed in the rule.

One commenter suggested that there should be specific time limits placed on RUS in connection with the approval process. RUS understands the commenter's concern, but disagrees with the commenter's solution. While RUS makes every effort to support the borrower's schedule by providing timely approvals, an automatic approval after a given period of time is not consistent with the purpose of RUS approval. No change has been made in the final rule.

Some commenters suggested that RUS use a standard form of engineering services contract based on one prepared by the Engineers Joint Contract Documents Committee in lieu of the RUS standard form, while another commenter suggested that RUS rewrite the standard form of engineering services contract to conform to current business practices. Other commenters noted that the proposed rule's requirement that the engineer's documents comply with all environmental regulations could be construed as a warranty or guarantee of services and RUS should modify the proposed rule to eliminate this express warranty or guarantee. Other commenters suggested that RUS not require engineers to provide construction management services nor to "supervise" construction. One commenter suggested that RUS not require the engineer to "inspect" construction, and that the engineer's obligation should be to "observe" construction. RUS believes that the RUS standard form of engineering services contract, based on many years of successful use by RUS borrowers, is still fundamentally sound. Certain specific comments have been addressed and changes made in the standard form of engineering services contract to clarify certain provisions of the contract.

One commenter noted that RUS stated that only 3 contract forms are required, but § 1724.70 lists 12 forms. The forms listed in § 1724.70 are available from RUS, but only those so indicated are required to be used. The others forms are available for use by borrowers but are not required. The final rule clarifies this point.

Some commenters suggested that RUS not require borrowers to use the standard contract forms for small jobs (e.g., less then $75,000 or 5 percent of total utility plant.) RUS disagrees with this comment. A small engineering job can have a significant impact on a much larger project. Also, the standard contract forms are only required for RUS financed facilities, which tend to be larger projects. No change has been made in the final rule.

Several commenters suggested that RUS not require professional liability insurance of $1, 000,000. In response to

this comment, RUS has changed the required amount of insurance to $500,000.

One commenter suggested that RUS allow computer generated forms in lieu of the standard printed version, since "reasonable modifications and additions" to the standard forms are permitted. RUS disagrees with this. RUS believes that the most effective means of maintaining accurate and recognizable forms is to continue to use the preprinted version. No change has been made in the final rule.

One commenter suggested that RUS eliminate the sample compensation schedule from the RUS Form 220. RUS has determined that the sample compensation schedule is not necessary and has been eliminated.

One commenter suggested that the RUS Forms 220 and 236 require the engineer to get the owner's permission to open bids if three or fewer bids are received, as is the case in the RUS Form 211. This commenter also suggested that RUS Form 220 should require the architect to inspect materials and equipment prior to incorporation into the project, and to reject those not in conformance with the specification, as is the case in the RUS Forms 211 and 236. RUS agrees that the standard forms of contract should be consistent in these areas and has modified the forms accordingly.

List of Subjects in 7 CFR Part 1724

Electric power, Incorporation by reference, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, RUS hereby amends 7 CFR chapter XVII by revising part 1724 to read as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

Subpart A—General

Sec.

1724.1 Introduction.
1724.2 Waivers.
1724.3 Definitions.
1724.4 Qualifications.
1724.5 Submission of documents to RUS.
1724.6 Insurance requirements.
1724.7 Debarment and suspension.
1724.8 Restrictions on lobbying.
1724.9 Environmental compliance.
1724.10–1724.19 [Reserved]

Subpart B—Architectural Services

1724.20 Borrowers' requirements—architectural services.
1724.21 Architectural services contracts.
1724.22–1724.29 [Reserved]

Subpart C—Engineering Services

1724.30 Borrowers' requirements—engineering services.
1724.31 Engineering services contracts.
1724.32 Inspection and certification of work order construction.
1724.33–1724.39 [Reserved]

Subpart D—Electric System Planning

1724.40 General.
1724.41–1724.49 [Reserved]

Subpart E—Electric System Design

1724.50 Compliance with National Electrical Safety Code (NESC).
1724.51 Design requirements.
1724.52 Permitted deviations from RUS construction standards.
1724.53 Preparation of plans and specifications.
1724.54 Requirements for RUS approval of plans and specifications.
1724.55 Dam safety.
1724.56–1724.69 [Reserved]
Appendix A to subpart E of part 1724—Hazard Potential Classification for Civil Works Projects

Subpart F—RUS Contract Forms

1724.70 List of RUS contract forms for architectural and engineering services.
1724.71 Use of printed forms.
1724.72–1724.73 [Reserved]
1724.74 Engineering service contract for the design and construction of a generating plant, RUS Form 211.
1724.75 Architectural service contract, RUS Form 220.
1724.76 Engineering service contract—electric system design and construction, RUS Form 236.
1724.77–1724.99 [Reserved]

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

§ 1724.1 Introduction.

(a) The policies, procedures and requirements in this part implement certain provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers.

(b) All borrowers, regardless of the source of financing, shall comply with RUS' requirements with respect to design, construction standards, and the use of RUS accepted material on their electric systems.

(c) Borrowers are required to use RUS contract forms only if the facilities are financed by RUS.

§ 1724.2 Waivers.

The Administrator may waive, for good cause on a case-by-case basis, requirements and procedures of this part.

§ 1724.3 Definitions.

Terms used in this part have the meanings set forth in § 1710.2 of this chapter. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in § 1710.2 of this chapter, the following terms have the following meanings for the purposes of this part:

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Force account construction means construction performed by the borrower's employees.

NESC means the National Electrical Safety Code.

Repowering means replacement of the steam generator or the prime mover or both at a generating plant.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given orally followed by a confirming letter.

RUS financed means financed or funded wholly or in part by a loan made or guaranteed by RUS, including concurrent supplemental loans required by § 1710.110 of this chapter, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

§ 1724.4 Qualifications.

The borrower shall ensure that:

(a) All selected architects and engineers meet the applicable registration and licensing requirements of the States in which the facilities will be located;

(b) All selected architects and engineers are familiar with RUS standards and requirements; and

(c) All selected architects and engineers have had satisfactory experience with comparable work.

§ 1724.5 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS. (See part 1700 of this chapter.)

(b) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B and C of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by a certified copy of the board resolution awarding the contract.

(c) *Contract amendments requiring RUS approval.* The borrower shall submit to RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval. Each contract amendment submittal to RUS must be accompanied by a certified copy of the board resolution approving the amendment.

§ 1724.6 Insurance requirements.

(a) Borrowers shall ensure that all architects and engineers working under contract with the borrower have insurance coverage as required by part 1788 of this chapter.

(b) Borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than $500,000.

§ 1724.7 Debarment and suspension.

Borrowers shall comply with the requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

§ 1724.8 Restrictions on lobbying.

Borrowers shall comply with the restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1724.9 Environmental compliance.

Borrowers shall comply with the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers.

§§ 1724.10–1724.19 [Reserved]

Subpart B—Architectural Services

§ 1724.20 Borrowers' requirements—architectural services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select a qualified architect to perform the architectural services required for the design and construction management of headquarters facilities. The selection of the architect is not subject to RUS approval unless specifically required by RUS on a case by case basis. Architect's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(b) The architect retained by the borrower shall not be an employee of the building supplier or contractor, except in cases where the building is prefabricated and pre-engineered.

(c) The architect's duties are those specified under the Architectural Services Contract and under subpart E of this part, and, as applicable, those duties assigned to the "engineer" for competitive procurement procedures in part 1726 of this chapter.

(d) If the facilities are RUS financed, the borrower shall submit or require the architect to submit one copy of each construction progress report to RUS upon request.

(e) Additional information concerning RUS requirements for electric borrowers' headquarters facilities are set forth in subpart E of this part. See also RUS Bulletin 1724E–400, Guide to Presentation of Building Plans and Specifications, for additional guidance. This bulletin is available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

§ 1724.21 Architectural services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS Form 220, Architectural Services Contract, must be used by electric borrowers when obtaining architectural services.

(b) The borrower shall ensure that the architect furnishes or obtains all architectural services related to the design and construction management of the facilities.

(c) Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Such modifications or additions shall not relieve the architect or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes must be approved by RUS prior to execution of the contract.

(d) Architectural services contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(e) *Closeout.* Upon completion of all services and obligations required under each architectural services contract, including, but not limited to, submission of final documents, the borrower must closeout that contract. The borrower shall obtain from the architect a final statement of cost, which must be supported by detailed information as appropriate. For example, out-of-pocket expense and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation. RUS Form 284, Final Statement of Cost for Architectural Service, may be used. All computations of the compensation must be made in accordance with the terms of the architectural services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1724.22–1724.29 [Reserved]

Subpart C—Engineering Services

§ 1724.30 Borrowers' requirements—engineering services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the planning, design, and construction management of the system.

(b) Each borrower shall retain or employ one or more qualified engineers to inspect and certify all new construction in accordance with § 1724.32. The engineer must not be the borrower's manager.

(c) The selection of the engineer is not subject to RUS approval unless specifically required by RUS on a case by case basis. Engineer's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(d) The engineer's duties are specified under the Engineering Services Contract and under part 1726 of this chapter. The borrower shall ensure that the engineer executes all certificates and other instruments pertaining to the engineering details required by RUS.

(e) Additional requirements related to appropriate seismic safety measures are contained in part 1792, subpart C, of this chapter, Seismic Safety of Federally Assisted New Building Construction.

(f) If the facilities are RUS financed, the borrower shall submit or require the engineer to submit one copy of each

construction progress report to RUS upon RUS' request.

§ 1724.31 Engineering services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS contract forms for engineering services shall be used. Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Any such modifications or additions shall not relieve the engineer or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes to the RUS contract form shall be approved by RUS prior to execution of the contract.

(b) RUS Form 236, Engineering Service Contract—Electric System Design and Construction, shall be used for all distribution, transmission, substation, and communications and control facilities. These contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) RUS Form 211, Engineering Service Contract for the Design and Construction of a Generating Plant, shall be used for all new generating units and repowering of existing units. These contracts require RUS approval.

(d) Any amendments to RUS approved engineering services contracts require RUS approval.

(e) *Closeout.* Upon completion of all services and obligations required under each engineering services contract, including, but not limited to, submission of final documents, the borrower must closeout the contract. The borrower shall obtain from the engineer a completed final statement of engineering fees, which must be supported by detailed information as appropriate. RUS Form 234, Final Statement of Engineering Fee, may be used. All computations of the compensation shall be made in accordance with the terms of the engineering services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1724.32 Inspection and certification of work order construction.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) The borrower shall ensure that all field inspection and related services are performed within 6 months of the completion of construction, and are performed by a licensed engineer, except that a subordinate of the licensed engineer may make the inspection, provided the following conditions are met:

(1) The inspection by the subordinate is satisfactory to the borrower;

(2) This practice is acceptable under applicable requirements of the States in which the facilities are located;

(3) The subordinate is experienced in making such inspections;

(4) The name of the person making the inspection is included in the certification; and

(5) The licensed engineer signs such certification which appears on the inventory of work orders.

(b) The inspection shall include a representative and sufficient amount of construction listed on each RUS Form 219, Inventory of Work Orders (or comparable form), being inspected to assure the engineer that the construction is acceptable. Each work order that was field inspected shall be indicated on RUS Form 219 (or comparable form.) The inspection services shall include, but not be limited to, the following:

(1) Determination that construction conforms to RUS specifications and standards and to the requirements of the National Electrical Safety Code (NESC), State codes, and local codes;

(2) Determination that the staking sheets or as-built drawings represent the construction completed and inspected;

(3) Preparation of a list of construction clean-up notes and staking sheet discrepancies to be furnished to the owner to permit correction of construction, staking sheets, other records, and work order inventories;

(4) Reinspection of construction corrected as a result of the engineer's report;

(5) Noting, initialing, and dating the staking or structure sheets or as-built drawings and noting the corresponding work order entry for line construction; and

(6) Noting, initialing, and dating the as-built drawings or sketches for generating plants, substations, and other major facilities.

(c) *Certification.* (1) The following certification must appear on all inventories of work orders:

> I hereby certify that sufficient inspection has been made of the construction reported by this inventory to give me reasonable assurance that the construction complies with applicable specifications and standards and meets appropriate code requirements as to strength and safety. This certification is in accordance with acceptable engineering practice.

(2) A certification must also include the name of the inspector, name of the firm, signature of the licensed engineer, the engineer's State license number, and the date of signature.

§§ 1724.33–1724.39 [Reserved]

Subpart D—Electric System Planning

§ 1724.40 General.

Borrowers shall have ongoing, integrated planning to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements for their electric systems. The primary components of the planning system consist of long-range engineering plans and construction work plans. Long-range engineering plans identify plant investments required over a long-range period, 10 years or more. Construction work plans specify and document plant requirements for a shorter term, 2 to 4 years. Long-range engineering plans and construction work plans shall be in accordance with part 1710, subpart F, of this chapter. See also RUS Bulletins 1724D–101A, Electric System Long-Range Planning Guide, and 1724D–101B, System Planning Guide, Construction Work Plans, for additional guidance. These bulletins are available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

§§ 1724.41–1724.49 [Reserved]

Subpart E—Electric System Design

§ 1724.50 Compliance with National Electrical Safety Code (NESC).

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) A borrower shall ensure that its electric system, including all electric distribution, transmission, and generating facilities, is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the National Electrical Safety Code (NESC) and all applicable and current electrical and safety requirements of any State or local governmental entity. Copies of the NESC may be obtained from the Institute of Electrical and Electronic Engineers, Inc., 445 Hoes Lane, Piscataway, NJ 08855. This requirement applies to the borrower's electric system regardless of the source of financing.

(b) Any electrical standard requirements established by RUS are in addition to, and not in substitution for or a modification of, the most current and accepted criteria of the NESC and

any applicable electrical or safety requirements of any State or local governmental entity.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B and C. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

§ 1724.51 Design requirements.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Distribution.* All distribution facilities must conform to the applicable RUS construction standards and utilize RUS accepted materials.

(b) *Transmission lines.* (1) All transmission line design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, transmission line design data summary, general description of terrain, right-of-way calculations, discussion concerning conductor and structure selection, conductor sag and tension information, design clearances, span limitations due to clearances, galloping or conductor separation, design loads, structure strength limitations, insulator selection and design, guying requirements, and vibration considerations. For lines composed of steel or concrete poles, or steel towers, in which load information will be used to purchase the structures, the design data shall also include loading trees, structure configuration and selection, and a discussion concerning foundation selection.

(3) Line design data for uprating transmission lines to higher voltage levels or capacity must be approved by RUS.

(4) Transmission line design data which has received RUS approval in connection with a previous transmission line construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(c) *Substations.* (1) All substation design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, a discussion of site considerations, oil spill prevention measures, design considerations covering voltage, capacity, shielding, clearances, number of low and high voltage phases, major equipment, foundation design parameters, design loads for line support structures and the control house, seismic considerations, corrosion, grounding, protective relaying, and AC and DC auxiliary systems. Reference to applicable safety codes and construction standards are also to be included.

(3) Substation design data which has received RUS approval in connection with a previous substation construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(d) *Generating facilities.* (1) This section covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (e) of this section. Generation plant buildings must meet the requirements of paragraph (e)(1) of this section.

(2) For all new generation units and for all repowering projects, the design outline shall be approved by RUS, unless RUS determines that a design outline is not needed for a particular project.

(3) The design outline will include all significant design criteria. During the early stages of the project, RUS will, in consultation with the borrower and its consulting engineer, identify the specific items which are to be included in the design outline.

(e) *Headquarters.* (1) *Applicable laws.* The design and construction of headquarters facilities shall comply with all applicable Federal, State, and local laws and regulations, including, but not limited to:

(i) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794), which states that no qualified individual with a handicap shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, appendix A) are the applicable standards for all new or altered borrower buildings, regardless of the source of financing.

(ii) The Architectural Barriers Act of 1968 (42 U.S.C. 4151), which requires that buildings financed with Federal funds are designed and constructed to be accessible to the physically handicapped.

(iii) The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR 1990 Comp., p. 269). Appropriate seismic safety provisions are required for new buildings for which RUS provides financial assistance. (See part 1792, subpart C, of this chapter.)

(2) The borrower shall provide evidence, satisfactory in form and substance to the Administrator, that each building will be designed and built in compliance with all Federal, State, and local requirements.

(f) *Communications and control.* (1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The performance considerations for a new or replacement master system must be approved by RUS. A master system includes the main controller and related equipment at the main control point. Performance considerations include all major system features and their justification, including, but not limited to, the objectives of the system, the types of parameters to be controlled or monitored, the communication media, alternatives considered, and provisions for future needs.

§ 1724.52 Permitted deviations from RUS construction standards.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Structures for raptor protection.* (1) RUS standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large raptors to protect such birds from electric shock due to physical contact with energized wires. Where raptor protection in the design of overhead line structures is required by RUS; a Federal, State or local authority with permit or license authority over the proposed construction; or where the borrower voluntarily elects to comply with the recommendations of the U.S. Fish and Wildlife Service or State wildlife agency, borrowers are permitted to deviate from RUS construction standards, provided:

(i) Structures are designed and constructed in accordance with

"Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996" (Suggested Practices for Raptor Protection); and,

(ii) Structures are in accordance with the NESC and applicable State and local regulations.

(2) Any deviation from the RUS construction standards for the purpose of raptor protection, which is not in accordance with the Suggested Practices for Raptor Protection, must be approved by RUS prior to construction.

"Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996," published by the Edison Electric Institute/Raptor Research Foundation, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the Raptor Research Foundation, Inc., c/o Jim Fitzpatrick, Treasurer, Carpenter Nature Center, 12805 St. Croix Trail South, Hastings, Minnesota 55033. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the RUS standard transformer secondary neutral connections may be modified in accordance with Rule 97D2 of the NESC.

(c) *Lowering of neutral conductor on overhead distribution lines.* (1) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an additional distance not exceeding two feet (0.6 m) for the purpose of economically meeting the clearance requirements of the NESC.

(2) It is permissible to lower the transformer and associated neutral attachment up to two feet (0.6 m) to provide adequate clearance between the cutouts and single-phase, conventional distribution transformers.

(3) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an additional distance of up to six feet (2 m) for the purpose of performing construction and future line maintenance on these assemblies from bucket trucks designed for such work.

§ 1724.53 Preparation of plans and specifications.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *General.* (1) The borrower (acting through the engineer, if applicable) shall prepare plans and specifications that adequately represent the construction to be performed.

(2) Plans and specifications for distribution, transmission, or generating facilities must be based on a construction work plan (as amended, if applicable), engineering study or construction program which has been approved by RUS if financing for the facilities will at any time be requested from RUS.

(b) *Composition of plans and specifications package.* (1) Whether built by force account or contract, each set of plans and specifications must include:

(i) *Distribution lines.* Specifications and drawings, staking sheets, key map and appropriate detail maps;

(ii) *Transmission lines.* Specifications and drawings, transmission line design data manual, vicinity maps of the project, a one-line diagram, and plan and profile sheets;

(iii) *Substations.* Specifications and drawings, including a one-line diagram, plot and foundation plan, grounding plan, and plans and elevations of structure and equipment, as well as all other necessary construction drawings, in sufficient detail to show phase spacing and ground clearances of live parts;

(iv) *Headquarters.* Specifications and drawings, including:

(A) A plot plan showing the location of the proposed building plus paving and site development;

(B) A one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown; and

(C) An outline specification including materials to be used (type of frame, exterior finish, foundation, insulation, etc.); and

(v) *Other facilities (e.g., generation and communications and control facilities).* Specifications and drawings, as necessary and in sufficient detail to accurately define the scope and quality of work required.

(2) For contract work, the appropriate standard RUS construction contract form shall be used as required by part 1726 of this chapter.

§ 1724.54 Requirements for RUS approval of plans and specifications.

The provisions of this section apply only to RUS financed electric system facilities.

(a) For any contract subject to RUS approval in accordance with part 1726 of this chapter, the borrower shall obtain RUS approval of the plans and specifications, as part of the proposed bid package, prior to requesting bids. RUS may require approval of other plans and specifications on a case by case basis.

(b) *Distribution lines.* RUS approval of the plans and specifications for distribution line construction is not required if standard RUS drawings, specifications, RUS accepted material, and standard RUS contract forms (as required by part 1726 of this chapter) are used. Drawings, plans and specifications for nonstandard distribution construction must be submitted to RUS and receive approval prior to requesting bids on contracts or commencement of force account construction.

(c) *Transmission lines.* (1) Plans and specifications for transmission construction projects which are not based on RUS approved line design data or do not use RUS standard structures must receive RUS approval prior to requesting bids on contracts or commencement of force account construction.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for transmission construction which use previously approved design data and standard structures do not require RUS approval. Plans and specifications for related work, such as right-of-way clearing, equipment, and materials, do not require RUS approval unless required by paragraph (a) of this section.

(d) *Substations.* (1)(i) Plans and specifications for all new substations must receive RUS approval prior to requesting bids on contracts or commencement of force account construction, unless:

(A) The substation design has been previously approved by RUS; and

(B) No significant NESC revisions have occurred.

(ii) The borrower shall notify RUS in writing that a previously approved design will be used, including identification of the previously approved design.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for substation modifications and for substations using previously approved designs do not require RUS approval.

(e) *Generation facilities.* (1) This paragraph (e) covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission

switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (f) of this section.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) *Headquarters buildings.* (1) This paragraph (f) covers office buildings, warehouses, and equipment service buildings. Generating plant buildings are covered under paragraph (e) of this section.

(2) The borrower shall obtain RUS approval of the plans and specifications for all headquarters buildings prior to issuing invitations to bid. The borrower shall also submit two copies of RUS Form 740g, Application for Headquarters Facilities. The application must show surface area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities. This form is available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

(g) *Communications and control facilities.* (1) This paragraph (g) covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

(h) Terms and conditions include the RUS standard form of contract, general and special conditions, and any other non-technical provisions of the contract. Terms and conditions which have received RUS approval in connection with a previous contract for a particular borrower are considered approved by RUS for that borrower.

§ 1724.55 Dam safety.

(a) The provisions of this section apply only to RUS financed electric system facilities.

(1) (i) Any borrower that owns or operates a RUS financed dam must utilize the "Federal Guidelines for Dam Safety," (Guidelines), as applicable. A dam, as more fully defined in the Guidelines, is generally any artificial barrier which either:

(A) Is 25 feet (8 m) or more in height; or

(B) Has an impounding capacity at maximum water storage elevation of 55 acre-feet (68,000 m^3) or more.

(ii) The "Federal Guidelines for Dam Safety," FEMA 93, June, 1979, published by the Federal Emergency Management Agency (FEMA), is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "Federal Guidelines for Dam Safety" may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(2) The borrower shall evaluate the hazard potential of its dams in accordance with Appendix E of the U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, July 31, 1995. A summary of the hazard potential criteria is included for information as Appendix A to this subpart. The U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, July 31, 1995, published by the United States Army Corps of Engineers, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program may be obtained from the U. S. Army Corps of Engineers, Publications Depot, 2803 52nd Ave., Hyattsville, MD 20781. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(3) For high hazard potential dams, the borrower must obtain an independent review of the design and critical features of construction. The reviewer must have demonstrated experience in the design and construction of dams of a similar size and nature. The reviewer must be a qualified engineer not involved in the original design of the dam or a Federal or State agency responsible for dam safety. The reviewer must be approved by RUS.

(4) The independent review of design must include, but not necessarily be limited to, plans, specifications, design calculations, subsurface investigation reports, hydrology reports, and redesigns which result from encountering unanticipated or unusual conditions during construction.

(5) The independent review of construction shall include:

(i) *Foundation preparation and treatment.* When the foundation has been excavated and exposed, and before critical structures such as earth embankments or concrete structures are placed thereon, the borrower shall require the reviewer to conduct an independent examination of the foundation to ensure that suitable foundation material has been reached and that the measures proposed for treatment of the foundation are adequate. This examination must extend to the preparation and treatment of the foundation for the abutments.

(ii) *Fill placement.* During initial placement of compacted fill materials, the borrower shall require the reviewer to conduct an independent examination to ensure that the materials being used in the various zones are suitable and that the placement and compaction procedures being used by the contractor will result in a properly constructed embankment.

(6) If the reviewer disagrees with any aspect of the design or construction which could affect the safety of the dam, then the borrower must meet with the design engineer and the reviewer to resolve the disagreements.

(7) *Emergency action plan.* For high hazard potential dams, the borrower must develop an emergency action plan incorporating preplanned emergency measures to be taken prior to and following a potential dam failure. The plan should be coordinated with local government and other authorities involved with the public safety and be approved by the borrower's board of directors.

(b)(1) For more information and guidance, the following publications regarding dam safety are available from FEMA:

(i) "Emergency Action Planning Guidelines for Dams," FEMA 64.

(ii) "Federal Guidelines for Earthquake Analysis and Design of Dams," FEMA 65.

(iii) "Federal Guidelines for Selecting and Accommodating Inflow Design Floods for Dams," FEMA 94.

(iv) "Dam Safety: An Owner's Guidance Manual," FEMA 145, August, 1987.

(2) These publications may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794.

§§ 1724.58—1724.69 [Reserved]

Appendix A to Subpart E of Part 1724—Hazard Potential Classification for Civil Works Projects

The source for this appendix is U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, Appendix E. Appendix E is available from the address listed in § 1724.55(a)(2).

Category [1]	Low	Significant	High
Direct Loss of Life [2]	None expected (due to rural location with no permanent structures for human habitation).	Uncertain (rural location with few residences and only transient or industrial development).	Certain (one or more extensive residential, commercial or industrial development).
Lifeline Losses [3]	No disruption of services—repairs are cosmetic or rapidly repairable damage.	Disruption of essential facilities and access.	Disruption of critical facilities and access.
Property Losses [4] ..	Private agricultural lands, equipment and isolated buildings.	Major public and private facilities	Extensive public and private facilities.
Environmental Losses [5].	Minimal incremental damage	Major mitigation required	Extensive mitigation cost or impossible to mitigate.

Notes:

[1] Categories are based upon project performance and do not apply to individual structures within a project.

[2] Loss of life potential based upon inundation mapping of area downstream of the project. Analysis of loss of life potential should take into account the extent of development and associated population at risk, time of flood wave travel and warning time.

[3] Indirect threats to life caused by the interruption of lifeline services due to project failure, or operation, i.e., direct loss of (or access to) critical medical facilities or loss of water or power supply, communications, power supply, etc.

[4] Direct economic impact of value of property damages to project facilities and down stream property and indirect economic impact due to loss of project services, i.e., impact on navigation industry of the loss of a dam and navigation pool, or impact upon a community of the loss of water or power supply.

[5] Environmental impact downstream caused by the incremental flood wave produced by the project failure, beyond which would normally be expected for the magnitude flood event under a without project conditions.

Subpart F—RUS Contract Forms

§ 1724.70 List of RUS contract forms for architectural and engineering services.

The following RUS contract forms for architectural and engineering services are available:

(a) RUS Form 179, Rev. 9–66, Architects and Engineers Qualifications (optional form);

(b) RUS Form 211, Rev. 6–98, Engineering Service Contract for the Design and Construction of a Generating Plant (required form);

(c) RUS Form 215, Rev. 5–67, Engineering Service Contract—System Planning (optional form);

(d) RUS Form 220, Rev. 6–98, Architectural Services Contract (required form);

(e) RUS Form 234, Rev. 3–57, Final Statement of Engineering Fee (optional form);

(f) RUS Form 236, Rev. 6–98, Engineering Service Contract—Electric System Design and Construction (required form);

(g) RUS Form 241, Rev. 3–56, Amendment of Engineering Service Contract (optional form);

(h) RUS Form 244, Rev. 12–55, Engineering Service Contract—Special Services (optional form);

(i) RUS Form 258, Rev. 4–58, Amendment of Engineering Service Contract—Additional Project (optional form);

(j) RUS Form 284, Rev. 284, Final Statement of Cost for Architectural Service (optional form);

(k) RUS Form 297, Rev. 12–55, Engineering Service Contract—Retainer for Consultation Service (optional form); and

(l) RUS Form 459, Rev. 9–58, Engineering Service Contract—Power Study (optional form).

§ 1724.71 Use of printed forms

(a) Persons wishing to obtain forms referred to in this part should contact: Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. These forms may be reproduced as needed.*

(b) If a RUS contract form is required by this part, the borrower shall use the form in the format available from RUS (photocopying or other exact reproduction is acceptable.) The RUS contract forms are not to be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown indicating that they are different from the standard form.

§§ 1724.72—1724.73 [Reserved]

§ 1724.74 Engineering service contract for the design and construction of a generating plant, RUS Form 211.

The contract form in this section shall be used when required by this part.

ENGINEERING SERVICE CONTRACT FOR THE DESIGN AND CONSTRUCTION OF A GENERATING PLANT

AGREEMENT, made _____, _____, between _____ (hereinafter called the "Owner") and _____ of _____ hereinafter called the "Engineer").

Whereas, the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") of the United States of America (hereinafter called the "Government") has approved the making of a loan or loan guarantee of not in excess of $_____ by the Government to the Owner pursuant to the Rural Electrification Administration Act of 1936, as amended, approximately $_____ of which is intended to finance, in whole or in part, the construction and operation of an electrical generating plant which is estimated to cost $_____ and consists of _____ in the State of _____, having the Rural Utilities Service project designation of _____, (hereinafter called the "Project"), located at such place as the Owner with the approval of the Administrator shall designate;

Now, therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligation of Engineer

In accordance with the normal standards and practices used in the profession, the Engineer shall diligently and competently render all engineering services which shall be necessary or advisable for the expeditious, economical, and sound design and construction of the Project with due consideration to applicable ecological and environmental requirements. The enumeration of specific duties and obligations to be performed by the Engineer hereunder shall not be construed to limit the general undertakings of the Engineer.

Article II

Design of Project

Section 1. The Engineer shall prepare and within _____ days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, a "Project Design Manual" which shall consist of, but not necessarily be limited to, the following items:

(a) A detailed statement covering the procedures to be followed by the Engineer in the performance of this Agreement, including, without limitation, such matters as the routing and distribution of copies of correspondence and reports, the furnishing of lists of plans and specifications, procedures relating to the awarding of construction and equipment contracts, identification of persons to be called by telephone with respect to various subject matters, contract closeouts, and meetings.

(b) A design outline which includes all design criteria for the Project, including, without limitation, plant site, equipment, building requirements, environmental equipment and other environmental factors, civil, electrical, and mechanical requirements. The outline shall comply with the requirements of RUS Environmental Policies and Procedures.

(c) Evaluation studies which support the economic basis for the design and selection of equipment, including, without limitation, turbine throttle and exhaust conditions, boiler feed pump, air quality equipment, and condenser.

(d) Testing procedures which outline the responsibilities to be assumed by the Owner, Engineer, and contractor and include, without limitation, acceptance testing, concrete tests, laboratory testing, radiographic inspection, electrical checkout, and testing.

Section 2. In addition, the Engineer shall prepare and within _____ days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, preliminary plans (hereinafter called the "Preliminary Plans") which shall consist of:

(a) A single-line diagram of proposed main and auxiliary electrical connections, including all major equipment, switching and substations.

(b) A single-line flow diagram of proposed steam, water, gas, oil, and air connections, including all major equipment.

(c) A schedule, in a form acceptable to the Owner and Administrator, showing by months the estimated time required for each major subdivision of the Project for design, fabrication, and installation, and the estimated date the project will be available for commercial service. Such schedule shall specify, in percentages, the portion of the total design performance of the Engineer under this Agreement which each item of design represents.

(d) The Engineer's estimate of the total cost of the completed Project, by components, together with the forecast of the amounts of money needed by the Owner each month until completion of the Project.

Section 3. Promptly upon receipt of approval by the Owner and by the Administrator, if the approval of the Administrator is required, of the Project Design Manual and Preliminary Plans, the Engineer shall proceed with preparation of and shall submit, in duplicate, to the Owner and to the Administrator, if approval of the Administrator is required, complete and detailed plans and specifications, drawings, maps, and other engineering documents required for the construction of the Project (all of the foregoing being hereinafter sometimes collectively called the "Plans and Specifications"). In the preparation of the Plans and Specifications, the Engineer shall consult with the Owner to the end that the Project shall serve the purposes intended by the Owner. The Engineer shall diligently make such necessary changes in the Plans and Specifications as may be required by the Owner and the Administrator. The Plans and Specifications shall include the following:

(a) Detailed drawings showing the complete design and layout of the Project.

(b) The form of construction contract (hereinafter called the "Construction Contract") to be entered into between the Contractor and Owner for the construction of the Project, including forms of notice and instructions to bidders, material and construction specifications, contractor's proposal, bidder's qualifications, contractor's bond, and construction drawings. If the Owner or the Administrator shall direct that the Project shall be constructed under more than one contract, the Engineer shall submit forms of all necessary Construction Contracts and shall also prepare and submit in connection with each such contract all that is hereinabove required of the Engineer in connection with the Construction Contract. All maps, drawings, plans, specifications, estimates, and other documents required to be prepared or submitted by the Engineer under this section or other sections of the Agreement shall conform to applicable environmental requirements related to the project, including those commitments contained in the RUS Final Environmental Statement, standard specifications, and other forms prescribed by the Administrator, unless deviation therefrom shall be permitted by the Administrator in writing.

Section 4. The Engineer shall also proceed to procure and submit to the Owner and to the Administrator, if approval of the Administrator is required, forms of other contracts and documents for the equipment and materials proposed to be purchased by the Owner for use in connection with the construction of the Project or any services necessary or desirable in connection therewith.

Section 5. The Engineer, immediately upon receipt of notice from the Owner and from the Administrator, if approval of the Administrator is required, of their approval for bidding purposes of the form of Construction Contract or any contracts for materials, equipment, and services, as the case may be, shall, unless otherwise instructed by the Owner with the prior approval of the Administrator, take all appropriate and necessary action to procure full, free, and competitive bidding for the award of such contracts. In fulfilling this responsibility, the Engineer shall prepare and submit to the Owner for approval a recommended bidders' list. Upon approval of such list by the Owner, the Engineer, in collaboration with the Owner, shall fix a date for the opening of bids for such contracts. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of the Proposals for the construction of the Project or the supply of materials, equipment, or services therefor.

Section 6. The Engineer shall attend all openings of bids for the construction of the Project, or any part thereof, or for the furnishing of materials, equipment, and services therefor. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Engineer shall carefully check and prepare tabulations of all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids so that contracts may be prudently and properly awarded. The Engineer shall submit in writing to the Owner its first, second, and third choice of bidders, materials, and equipment to be used in each case, with its recommendation and reasons for the selection. When the Owner has indicated its choice of bidders, materials, and equipment, the Engineer shall forward a tabulation of the bids, copies of the recommendation, and the Owner's selection to the Administrator, if approval of the Administrator is required. If requested by the Administrator, the Engineer shall forward one complete copy of all original bids received. Upon approval by the Administrator, if approval of the Administrator is required, of the selection of a bidder, materials, and equipment, the Engineer shall prepare three counterparts of the contract to be executed by the Owner and the Contractor and shall forward such executed counterparts to the Administrator for approval, if approval of the Administrator is required.

Section 7. The Engineer shall furnish to the Owner all engineering information, services, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises, titles, rights, and authorizations

and shall cooperate with the Owner's attorney in the procuring thereof.

Article III

Construction Management

Section 1. The Engineer shall supervise the construction of the Project and shall make a diligent effort to ensure the expeditious and economical construction thereof in accordance with the Plans and Specifications and the terms of the Construction Contract and equipment or material contracts and the loan contract (hereinafter called the "Loan Contract") entered into between the Owner and the Government or any other lenders specifying the terms upon which the Project shall be constructed and financed. The Engineer shall carefully inspect all materials and equipment prior to their incorporation in the Project and shall promptly reject those not in compliance with the Specifications. The Engineer shall also supervise and inspect the incorporation of the materials in the Project and the workmanship with which such materials are incorporated. The Engineer, as representative of the Owner, shall have sole responsibility for requiring the Contractor to perform the Construction Contract in accordance with its terms and the Plans and Specifications, and, in performing the duties incident to such responsibility, the Engineer shall issue to the Contractor such directives and impose such restrictions as may be required to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications in the construction of the Project; provided that the Engineer shall not be required to exercise any actual control over employees of the Contractor. The term "supervise" when used herein shall not confer upon the Engineer responsibility for the Contractor's construction means, methods, or techniques. The obligations of the Engineer hereunder run to and are for the benefit of only the Owner and the Administrator.

Section 2. If, after the Construction Contract has been approved by the Administrator, if approval of the Administrator is required, it shall be determined that any change or changes in the Plans and Specifications are advisable, the Engineer shall prepare and submit to the Owner and the Contractor all necessary details in connection with such change or changes. The execution of such changes by the Engineer shall be within the intent of the Engineer's general undertakings as outlined elsewhere in this contract. Upon approval of the change or changes by the Owner and the Contractor, the proposed change or changes shall be submitted by the Engineer to the Administrator, if approval of the Administrator is required, in the form of a contract amendment.

Section 3. The Engineer shall prepare all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the terms of the Construction Contract, equipment or material contracts, or the Loan Contract. When any bid specification is forwarded to RUS for review, an updated cost estimate for the proposed contract shall also be included. After all major equipment contracts have been awarded and all permits have been received, and after approximately forty percent (40%) of the project design has been completed and construction has commenced, the Engineer shall update, on a quarterly basis, unless more frequently requested by the Owner, the information required under Article II, Section 2(d) hereof.

Section 4. The Engineer shall, upon completion of construction of component parts of the Project, make a complete inspection and conduct, utilizing the Owner's operating personnel and/or the manufacturer's representatives, such component and system tests as shall be necessary to assure conformance with the Plans and Specifications, the standards required by the Construction Contract, equipment and materials contracts, and the guarantees given in connection therewith.

Section 5. The Engineer shall schedule and coordinate the start-up activities for placing the plant in service. This shall include preparation of system operating schedules, written system start-up procedures, and operating manuals describing the various plant systems and operating procedures.

Section 6. The Engineer shall prepare written procedures for final acceptance tests of major equipment, such procedures being subject to the Owner's concurrence. Furthermore, the Engineer shall conduct, utilizing the Owner's operating personnel, final acceptance tests of major equipment. Such tests shall be made in the presence of duly qualified representatives of the Owner and the Administrator, if the Administrator elects to attend, and the time and procedure of such tests shall be agreed upon by the Engineer, the Owner, and the Administrator. After completion of each final acceptance test, the Engineer shall prepare copies of the test results and recommendations as to acceptability of equipment and submit them to the Owner for review.

Section 7. A competent resident engineer with full authority to act for the Engineer shall be maintained by the Engineer at the site of the Project during the entire period of any construction activity. The Engineer shall maintain at the site of the Project and under the direct supervision of the resident engineer a sufficient number of qualified engineering field inspectors to fully discharge the responsibilities of the Engineer pursuant to Article III, Section 1 hereof.

Article IV

Final Documents

The Engineer shall, upon the completion of the inspection and tests in respect of the Project provided in Sections 4 and 6 of Article III, obtain or prepare and deliver to the Owner the following:

(a) A nameplate inventory and summary in triplicate of all equipment and facilities incorporated in the Project together with a breakdown of contract costs arranged by Standard List of Retirement Units, RUS Bulletin 181–2.

(b) Two complete sets of final inventory (record) drawings showing the location and layout of the Project in accordance with revisions to design drawings and field records of construction. All information required by this Agreement to be included in the maps and drawings shall be included in the record drawings. One complete set of the record drawings shall be in reproducible form satisfactory to the Owner. The Engineer shall also provide the Owner with any other original manufacturer's equipment drawings not otherwise available to the Owner.

(c) An itemized statement in triplicate of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials, equipment, and services thereof.

(d) A certificate in triplicate to the effect that the Project has been fully constructed substantially in accordance with the Plans and Specifications if and as amended.

(e) A detailed report in duplicate of all tests, in a form satisfactory to the Owner.

(f) All maps, tracings, and drawings prepared or used by the Engineer in connection with the performance of the duties of the Engineer under this Agreement.

(g) Operating and maintenance manuals received from manufacturers.

When the Owner has determined that the Project is available for commercial service, the Engineer shall report to the Owner and the Administrator, for depreciation purposes, the estimated total contract cost of the Project, plus the Owner's other related overhead cost, as obtained from the Owner, showing as a separate item the cost of land (a non-depreciable item).

Article V

Compensation

Section 1. The Owner shall pay the Engineer for the services performed hereunder as indicated in the attached Schedule A.

Section 2. The total compensation to be paid in connection with this Agreement shall not exceed $_____ (_____ Dollars.)

Section 3. The Engineer shall submit to the Owner each month a certified statement in duplicate of the amounts due for services hereunder, which statement shall be in accordance with the applicable reports of engineering progress required by Article VI, Section 1 hereof, and shall be in such detail and contain such supporting data as the Owner may request. The Owner shall review and approve each statement within thirty (30) days or inform the Engineer of the reasons the statement cannot be approved. Upon approval of each such statement by the Owner, ninety (90) percent of the amount thereof shall be due and payable. The balance of the compensation payable under Section 1 hereof shall be due and payable within thirty (30) days after completion of the Project. The Project shall be deemed complete for the purposes of the Agreement when all required final documents, including a certificate of completion, have been submitted by the Engineer and approved by the Owner and by the Administrator, if approval of the Administrator is required.

Section 4. In the event that this Agreement at any time be terminated pursuant to Article VI, Section 2 hereof, the compensation which shall be payable by the Owner to the Engineer for services rendered prior to such termination shall be computed as follows:

(a) Compensation for services in respect of the Design of the Project shall be determined

in accordance with Section 1 of this Article V, using the final report of engineering progress referred to in Article VI, Section 1 hereof to determine the percentage of completion of the services in respect of design of the Project as of the effective date of termination.

(b) Compensation for services in respect of supervision and inspection of construction of the Project and all other services shall be computed at the rate of $_____ per staff hour of supervision and inspection of construction performed by the Engineer prior to the effective date of termination, but in no event shall such compensation exceed an amount computed in accordance with the provisions of Section 1 of this Article V. The Engineer shall submit to the Owner, in duplicate, a statement of the staff hours of supervision and inspection of construction in such detail and with such supporting data as may be requested by the Owner.

Section 5. Compensation payable to the Engineer under any of the Articles of this Agreement shall be in addition to taxes or levies (excluding Federal, State, and Local Income Taxes) which may be assessed against the Engineer by any State or political subdivision directly on services performed or payments for services performed by the Engineer pursuant to this Agreement. Such taxes or levies which the Engineer may be required to collect or pay, shall, in turn, be added by the Engineer to invoices submitted to the Owner pursuant to this Agreement.

Section 6. At or prior to the time when any payments shall be made to the Engineer pursuant to this Agreement, the Engineer if requested by the Owner shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project have been fully paid by the Engineer up to and including a date not more than fifteen (15) days prior to the date when such payment shall be made. At or before the time when the final payment provided to be made hereunder shall be made to the Engineer by the Owner, the Engineer shall also furnish to the Owner, as a condition precedent to such payment, a certificate in form satisfactory to the Administrator that all the employees of the Engineer have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien on the Project have been paid.

Section 7. Interest at the rate of _____ percent (_____ %) per annum [percentage is not to exceed any applicable State usury laws] shall be paid by the Owner to the Engineer on all unpaid balances due the Engineer, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Engineer and the Owner.

Article VI

Miscellaneous

Section 1. The Engineer shall prepare and execute in such form and detail as the Owner and the Administrator shall direct all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the Construction Contract or the Loan Contract, including, without limitation, a monthly report of engineering progress on the form of schedule referred to in Article II, Section 2(c) hereof, showing the percentage of completion of each of the subdivisions thereof and the overall percentage of completion of engineering services in respect of the design and construction of the Project as of the date of each such report; Monthly Cost Estimates and Forecasts of Cash Requirements in the form referred to in Article II, Section 2(d) hereof, which shall contain explanations of changes, if any, from prior Monthly Cost Estimates and Forecasts of Cash Requirements. From time to time the Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, all necessary changes in the schedule referred to in Article II, Section 2(c) hereof; provided, however, that no changes shall be made in the percentages assigned to each item of design in the original schedule approved by the Owner and by the Administrator, if approval of the Administrator is required, pursuant to Article II, Section 2(c) hereof.

Section 2. The Owner may at any time terminate this Agreement by giving notice to the Engineer in writing to that effect, delivered or mailed to the Engineer's last known address not less than twelve (12) calendar days prior to the effective date of termination specified in the notice. From and after the effective date specified in such notice, this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services hereunder as provided in Section 3 of Article V hereof, and the Engineer shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all other letters, documents, and other material including all records pertaining thereto. If this Agreement shall be terminated, the Engineer shall prepare and submit to the Owner and the Administrator a final report of engineering progress as of the date of termination.

Section 3. Insurance. The Engineer shall take out and maintain throughout the period of this Agreement insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Engineer's employees who perform any of the obligations of the Engineer under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article V, Section 2, but not less than $500,000.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Engineer shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Engineer shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 4. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct in writing, shall replace any resident engineer or other persons employed by the Engineer in connection with the Project. For the information of the Owner and the Administrator, the Engineer shall file with the Owner and the Administrator a statement, signed by the Engineer, of the qualifications, including specific experience of each engineer and inspector assigned to the Project and the duties assigned to each.

Section 5. Approvals, directions, and notices provided to be given hereunder by the Administrator to the Engineer or the Owner shall be deemed to be properly given if given by the Administrator or by any person authorized by the Administrator to give such approvals, directions, or notices.

Section 6. The Engineer shall follow all applicable RUS rules and regulations.

Section 7. This Agreement may be simultaneously executed and delivered in three or more counterparts, each of which so executed and delivered shall be deemed to be

an original, and all constitute but one and the same instrument.

Section 8. The obligations of the Engineer under this Agreement shall be assigned without the approval in writing of the Owner and of the Administrator.

Section 9. This Agreement shall be effective only from and after the time when it shall be approved by the Administrator in writing. Neither this Agreement nor any provision thereof shall be modified, amended, rescinded, waived, or terminated without the approval of the Administrator.

Section 10. The Engineer shall comply with applicable statutes pertaining to engineering and warrants that _____ (Name of Engineer) who will be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the _____ day of _____, _____.

In witness whereof, the parties hereto have caused this Agreement to be duly executed.

_____ Owner

By _____ President

ATTEST: _____ Secretary

_____ Engineer

_____ President, Partner [Strike out inapplicable designation.]

ATTEST: _____ Secretary

Schedule A—Compensation

[End of clause]

§ 1724.75 Architectural service contract, RUS Form 220.

The contract form in this section shall be used when required by this part.

ARCHITECTURAL SERVICES CONTRACT

AGREEMENT, made _____, _____, between _____ (hereinafter called the "Owner") and _____ of _____ (hereinafter called the "Architect").

Whereas, the Owner owns and operates a rural electric or telecommunications system, having the Rural Utilities Service designation of _____, financed in whole or in part with loans made or guaranteed by the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"). If the project is financed wholly or in part by the Rural Telephone Bank, an agency of the United States of America, the references in this Agreement to the "Administrator" shall mean the "Governor" of the Rural Telephone Bank as well; and

Whereas, the Owner desires to _____ (hereinafter called the "Project") at an estimated cost of construction not to exceed: _____ dollars ($_____) for new work, and/or _____ dollars ($_____) for remodeling, which aggregate _____ dollars ($_____), hereinafter called the "Anticipated Cost," is exclusive of the cost of land, legal, architectural, accounting, or other professional services, or of interest.

Now, therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligation of Architect

The Architect shall render, diligently and competently in accordance with the normal standards used in the profession, all architectural services which shall be necessary or advisable for the expeditious, economical, and sound design, construction, and satisfactory completion of the Project. The enumeration of specific duties and obligations to be performed by the Architect hereunder shall not be construed to limit the general undertakings of the Architect. The obligations of the Architect hereunder run to, and are for the benefit of, only the Owner and the Administrator and shall not relieve the Contractor of its own responsibility under its agreement with the Owner.

Article II

Preconstruction Period

Section 1.

(a) The Architect shall prepare: (1) preliminary drawings, (2) a general description of materials and types of construction, and (3) an overall estimate of the cost of construction (all of the foregoing hereinafter collectively called the "Preliminary Documents"), and not later than _____ days after the date of execution of this Agreement, shall submit them in triplicate to the Owner for approval. Any changes in the Preliminary Documents required as a condition of approval shall be promptly made by the Architect.

(b) After receipt of notice of approval of the Preliminary Documents from the Owner, the Architect will proceed with the preparation of:

(1) Detailed plans showing the complete design of the Project including, but not limited to, architectural, structural, electrical, mechanical, and site development features.

(2) Complete and detailed specifications describing the design requirements of the Project, including all matters referred to in subparagraph (1) above, and any materials to be incorporated therein.

(3) The Construction Contract, RUS Form 257, "Contract to Construct Buildings," (hereinafter called the "Construction Contract"), which includes the Notice and Instructions to Bidders, Bid Bond, Bidders' Proposal, Owners' Acceptance, and Contractors' Bond, to be entered into between a bidder and the Owner for the construction of the Project. (All of the foregoing, including any revisions thereof, being hereinafter collectively called the "Plans and Specifications.")

Within _____ days after receipt of such approval of the Preliminary Documents, the Architect shall prepare and submit to the Owner, in duplicate, for its approval, complete and detailed "Final" Plans and Specifications as required for the construction of the Project. All documents required to be prepared and submitted by the Architect hereunder shall be on the applicable standard forms prescribed by the Administrator. In the preparation of the Plans and Specifications, the Architect shall consult with the Owner to ascertain the requirements of the project. Upon approval by the Owner of the Plans and Specifications, such approval being noted thereon under the corporate seal of the Owner attesting the approval thereof by the Owner, the Architect shall diligently make such changes in the Plans and Specifications as may be required as a condition of approval thereof.

Section 2. So far as it shall be necessary in the preparation of the Plans and Specifications and in the construction of the Project, the Owner shall furnish the Architect information and data in respect of the following:

(a) A complete and accurate survey of the building site, including grades and lines of streets, pavements, and adjoining properties;

(b) The rights, restrictions, easements, boundaries, and contours of the building site;

(c) Sewer, water, gas, electric, and telephone service, etc.; and

(d) Test borings and pits, and chemical, mechanical, and other tests.

Section 3. If the Owner shall direct that the Project shall be constructed under more than one contract, the Architect shall submit all necessary Construction Contract forms and shall also prepare and submit in connection with each such contract all of the information and documents that shall be required for construction of the Project.

Section 4. Immediately after the Architect has received approval of the Plans and Specifications from the Owner, the Architect, unless otherwise instructed by the Owner, shall take all appropriate and necessary action to procure full, free, and competitive bidding for the award of the Construction Contract. Any public notices which by law are required of the Owner shall be published at the expense of the Owner.

Section 5. The Architect shall prepare and furnish to each qualified bidder requesting them one set of the Plans and Specifications together with all necessary forms and other documents upon payment of the amount stipulated by the Architect, which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. The Architect shall also prepare and furnish to bidders requesting them additional sets of the Plans and Specifications together with all necessary forms and other documents upon payment of an amount stipulated by the Architect, which payment will not be subject to refund.

Section 6. The Architect shall address to each prospective bidder a written response to inquiries from any prospective bidder with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of proposals for the construction of the Project or the furnishing of materials or services therefor. Under some circumstances the Architect may request that the inquiries from the prospective bidders be submitted in writing. The Architect or a competent representative of the Architect shall attend all openings of bids for the construction of the Project or any part thereof. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Architect shall carefully check and

prepare tabulations of all bids received and shall render to the Owner a recommendation and all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently awarded in accordance with the policy and procedure prescribed by the Owner and the Administrator.

Section 7. The Architect shall furnish to the Owner all architectural information, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises, and authorizations, and shall cooperate with the Owner's attorney in the procuring thereof.

Section 8. If, after the Construction Contract has been approved, it shall be determined by the Owner that a change or changes in the Plans and Specifications are advisable, the Architect shall prepare and submit to the Owner all necessary details in connection with such change or changes, the Construction Contract shall be amended accordingly, and the Architect shall immediately proceed in respect of any construction required thereby in like manner as though such construction were originally required under the Construction Contract.

Article III

Construction Period

Section 1. The Architect shall conduct inspection activities, and for projects involving multiple construction contracts, shall provide project coordination and inspection activities, and shall make a diligent effort to secure for the Owner the expeditious and economical construction of the Project in accordance with the approved Plans and Specifications and the terms of the Construction Contract. The Architect, unless otherwise directed in writing by the Owner, shall have and exercise sole responsibility for the issuance of supplemental directives to the Contractor regarding the Contractor's performance in accordance with the terms of the Construction Contract. In fulfilling the above responsibility, the Architect shall:

(a) Issue to the Contractor such directives and impose such restrictions as may be necessary to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications.

(b) Visit the Project site at intervals appropriate to the stage of construction, but in no event (except for periods of prolonged work stoppage or construction delay) less than once per week, to inspect construction of the Project, to inspect excavations prior to placing of concrete, and to inspect other work prior to it being covered from view.

(c) Make recommendations to the Owner concerning the selection of materials, colors, finishes, designs, or devices for use in the Project.

(d) Periodically inspect materials prior to their incorporation into the Project and promptly reject those not in compliance with the Specifications.

(e) Observe the manner of incorporation of materials into the Project and the workmanship with which such materials are incorporated.

(f) Review and if acceptable approve material and/or equipment substitutions for compliance with contract documents.

(g) Observe results of specified tests.

(h) Be available to the Owner and the Contractor during office hours for consultation.

(i) Review completed construction, direct the Contractor to correct observed defects, and approve payments to the Contractor for correctly completed construction.

(j) Prepare such change orders as may be required for the Project.

Section 2. The Architect shall review and, if acceptable, approve shop drawings, samples, schedules, and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with requirements of the Plans and Specifications.

Section 3. The Architect shall prepare and execute all estimates, certificates, and other documents required to be executed by the Architect pursuant to the Construction Contract. Unless otherwise provided in the Construction Contract, the Architect will furnish to the Contractor, free of charge, copies of the Plans and Specifications as may be reasonably necessary for the execution of the work.

Section 4. The Architect shall prepare and submit to the Owner monthly construction progress reports.

Section 5. The Architect shall, upon notice by the Contractor of completion of the work and a request for a final inspection of the Project:

(a) Make a careful and thorough inspection to determine that the construction of the Project has been completed in accordance with the Plans and Specifications and the terms of the Construction Contract and any amendments thereto.

(b) Prepare and deliver to the Owner complete and detailed final documents, including, without limitation, the following:

(1) An itemized statement of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials and services therefor.

(2) A Certificate of Completion on the form approved by the Administrator, to the effect that the Project has been fully constructed in accordance with the Plans and Specifications, if and as amended.

(3) One complete set of "as-constructed" Plans and Specifications of the Project in reproducible form satisfactory to the Owner.

(4) A Certificate of Architect and a Final Statement of Architect's Fee due hereunder.

(c) Use diligent efforts:

(1) To obtain from the Contractor releases of all liens and of rights to claim any lien from manufacturers, material suppliers, and subcontractors that have furnished materials or services for the construction of the Project.

(2) To obtain a Certificate of Contractor, on the form approved by the Administrator, to the effect that all labor has been paid.

(3) To obtain and deliver to the Owner all material and workmanship warranties or bonds required by the Plans and Specifications and service and operating manuals furnished by manufacturers or suppliers.

Article IV

Compensation

Section 1. The Owner shall pay the Architect for all services performed hereunder, except as provided in Section 3 hereof, a sum calculated as follows. (The Owner and Architect should agree upon the compensation schedule to be inserted in Tables Nos. 1 and 2 below.)

Table No. 1

NEW CONSTRUCTION
COST OF NEW CONSTRUCTION _____
COMPENSATION FOR ARCHITECTURAL SERVICES _____
TABLE NO. 2
REMODELING WORK
COST OF REMODELING WORK _____
COMPENSATION FOR ARCHITECTURAL SERVICES

If a Project shall consist of new construction and remodeling work, the Architect and the Owner shall agree on an equitable distribution of the final cost of construction between new construction and remodeling work, which shall be used to determine the applicable compensation from the two tables in this Section 1. For the purpose of computing compensation due the Architect under this Agreement for services rendered, "remodeling," shall be defined for this project as follows: _____

The sum shall be due and payable as follows:

(a) Twenty percent (20%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Preliminary Documents.

(b) An additional fifty percent (50%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Plans and Specifications.

(c) An additional twenty percent (20%) thereof, as construction progresses, in monthly installments each bearing the same ratio to the total amount payable under this subsection (c) as the corresponding monthly payment to the Contractor bears to the total amount payable to the Contractor.

(d) The balance, if any, of the compensation due under this Section 1 and all other provisions of this Agreement, shall be payable within thirty (30) days after Completion of the Project in accordance with the provisions of Section 2 of this Article IV.

For the purpose of this Article, the term "Cost of Construction of the Project," shall mean the Construction Contract Price including amendments thereto, plus the cost of labor and materials furnished for the Project by the Owner and in respect of which the Architect shall have rendered services hereunder. Extra drafting or other services performed shall be paid for as provided in Section 3 of this Article IV.

The term "Completion of the Project" shall mean full performance of all obligations under this Agreement and all amendments and revisions thereof.

Section 2. Prior to the time when any payment shall be made to the Architect pursuant to this Agreement, the Architect, if requested by the Owner, shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Architect in connection with the Project have been fully paid by the Architect up to

and including a date not more than fifteen (15) days prior to the date when such payment shall be due. Before the time when the final payment provided to be made pursuant to this Article IV shall be made to the Architect by the Owner, the Architect shall also furnish to the Owner as a condition precedent to such payment (a) a Certificate of Architect stating that all the employees of the Architect have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid, and (b) a Final Statement of Architect's Fee showing the Cost of Construction of the Project and the amount due the Architect under this Agreement.

Section 3. If the Architect shall, at the request of the Owner, perform any of the services outlined in Section 2 of Article II or if, after approval of the Construction Contract the Architect shall perform extra drafting or other services because of changes ordered by the Owner or default of the Contractor, the Architect shall be paid, in respect thereof, a sum equal to the Architect's reasonable out-of-pocket expenses, plus _____ percent (____%) (not to exceed fifty percent (50%)) thereof for office overhead plus reasonable subsistence, transportation, and communication expenses, if any, paid to, or on behalf of, employees; which amount shall be due and payable ten (10) days after approval by the Owner of the services performed and the invoice of the Architect. The compensation due the Architect under this paragraph shall be decreased by the amount of any increase in the compensation due the Architect under Section 1 of this Article IV. The Architect shall submit to the Owner a statement of out-of-pocket expenses in respect of extra drafting or other services to be compensated for pursuant to this Section 3. Out-of-pocket expenses shall be limited to money paid by the Architect for direct labor, labor taxes, labor insurance, prorated sick leave, vacation, holiday, retirement, and medical insurance benefits, all applicable to such direct labor, except that, in the case of services performed with the prior approval of the Owner by the following officers, partners, or others having ownership interests in the Architect, the rates corresponding to "direct labor" set forth below shall apply: _____.

Section 4. If this Agreement shall be terminated pursuant to the provisions of Section 1 or Section 2 of Article V hereof, the compensation for services rendered prior to such termination shall be computed as follows:

(a) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Preliminary Documents and such compensation shall be prorated on the basis of the percentage of completion of such Preliminary Documents as of the effective date of termination.

(b) One-half of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Plans and Specifications and such compensation shall be prorated on the basis of the percentage of completion of such Plans and Specifications as of the effective date of termination.

(c) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost shall represent compensation for the coordination and inspection of construction of the Project and such compensation shall be prorated on the basis of the percentage of such services determined by the value of the Project constructed prior to the effective date of termination.

(d) One-tenth of the compensation set forth in Section 1 of this Article IV based upon the Cost of Construction of the Project shall represent compensation for the services provided for in Section 5 of Article III and such compensation shall be prorated on the basis of the percentage of such services performed prior to the effective date of termination.

(e) Compensation for the services referred to in Section 2 of Article II, which may be performed by the Architect at the request of the Owner and for extra drafting and other services because of changes ordered by the Owner, shall be computed in accordance with the provisions of Section 3 of this Article IV.

Section 5. Interest shall be paid by the Owner to the Architect on all unpaid balances due the architect, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Architect. Such interest shall be at the rate of ____ percent (____%). [Percentage is not to exceed any applicable State usury laws.] Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Architect and the Owner.

Article V

Miscellaneous

Section 1. The Owner may at any time terminate this Agreement by giving notice to the Architect in writing to that effect, delivered and mailed to the Architect's last known address not less than ten (10) days prior to the effective date of termination specified in the notice. From and after the effective date of termination specified in such notice, this Agreement shall be terminated, provided, however, that the Architect shall be entitled to receive compensation for services theretofore rendered pursuant to this Agreement, computed in accordance with the provisions of Article IV, Section 4, hereof.

Section 2. The Architect shall have the right, by giving to the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Architect shall have been prevented by conditions beyond the control and without the fault of the Architect (a) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement, or (b) from proceeding with the completion of full performance of any remaining services required of the Architect pursuant to this Agreement for a period of six (6) months from the date of last performance by the Architect of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Architect shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in Section 1 of this Article.

Section 3. Upon Completion of the Project or termination of this Agreement, the Architect shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all letters, documents, and other material including all records pertaining thereto.

Section 4. Insurance. The Architect shall take out and maintain throughout the period of this Agreement insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Architect's employees who perform any of the obligations of the Architect under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article IV, Section 1, but not less than $500,000.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Architect shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Architect shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 5. The obligations and duties to be performed by the Architect under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Architect, if the Owner shall so direct, shall replace any person employed by the Architect in connection with the Project.

For the information of the Owner and the Administrator, the Architect shall, upon request, file with the Owner and the Administrator, on forms approved by the Administrator, statements of the qualifications, including specific experience, of each person assigned to the Project and the duties assigned to each, and certifications of insurance coverage.

Section 6. The Architect shall follow all applicable RUS rules and regulations.

Section 7. This Agreement shall be simultaneously executed and delivered in three counterparts, each of which when so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 8. The obligations of the Architect under this Agreement shall not be assigned without the approval in writing of the Owner.

Section 9. The Architect shall comply with applicable statutes pertaining to the practice of the profession. It is hereby warranted that the Architect possesses license number _____ issued by the State of _____ on the _____ day of _____, _____.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be affixed and attested by their duly authorized representatives all as of the date first above written.

_____ Owner

By _____ President

ATTEST: _____ Secretary

_____ Architect

By _____

_____ Title

ATTEST: _____ Secretary

[End of clause]

§ 1724.76 Engineering service contract—electric system design and construction, RUS Form 236.

The contract form in this section shall be used when required by this part.

ENGINEERING SERVICE CONTRACT

ELECTRIC SYSTEM DESIGN AND CONSTRUCTION

AGREEMENT made _____, 19 ___, between _____ (hereinafter called the "Owner"), and _____ of _____ (hereinafter called the "Engineer").

Whereas, the Owner has obtained loans made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), to finance in whole or in part a rural electric system pursuant to the Rural Electrification Act of 1936, as amended, and plans the construction of a project designated _____, being hereinafter called the "Project," consisting of approximately the following facilities:

Distribution and Transmission Lines:

_____ miles (_____ km) of _____ kV line,

_____ miles (_____ km) of _____ kV line,

_____

Substations:

Name _____ _____ MVA _____ kV to _____ kV

_____ _____ MVA _____ kV to _____ kV

Switching Stations:

Name _____ _____ kV

Name _____ _____ kV

Other:

_____ miles (_____ km) of line conversion, _____ miles (_____ km) of line removal, and the following:

_____

Now, therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligations

In accordance with the normal standards and practices used in the profession, the Engineer shall render diligently and competently all engineering services which shall be necessary or advisable for the expeditious, economical, and sound design and construction of the Project, with due consideration given to applicable ecological and environmental requirements. The enumeration of specific duties and obligations to be performed by the Engineer hereunder shall not be construed to limit the general undertakings of the Engineer.

Article II

Preconstruction Period

Section 1. The Engineer shall give thorough consideration to aesthetics and the protection of the environment in all phases of construction of the Project, including line routing and station locations. Where RUS or the Owner has prepared an environmental document or the Owner must comply with the conditions of a Special Use Permit imposed by a Federal land management agency, the Engineer shall incorporate all environmental commitments of the applicable documents that specifically relate to the facilities to be constructed.

Section 2. The Engineer shall, within thirty (30) days after the date of execution of this Agreement, make a complete field inspection and investigation for the purpose of determining the most economical and practicable location of the proposed lines.

The Engineer shall cooperate with the Owner's right-of-way agent and attorney in developing a schedule of right-of-way procurement and assist the Owner in developing suitable property maps for use by the Owner's easement solicitors.

Section 3. Prior to the preparation of Plans and Specifications by the Engineer, the Owner shall furnish to the Engineer the following as may be applicable:

(a) Copies of pertinent Engineering Studies, including Construction Work Plans when available, on which to base the design of the electrical facilities to be built; key maps of the Owner's present and proposed facilities and detail or vicinity maps showing location of existing lines, consumers served, and easements obtained.

(b) Detailed lists of materials, if any, on hand or on order which are to be furnished by the Owner in the construction of the Project, together with the quantity and the value of each item of such material.

(c) With respect to materials contained in the assembly units indicated for removal, a list showing values of individual material items for which the Contractor will be credited with respect to salvaged materials returned to the Owner if not included in item (b) above.

Section 4. Sufficient soil test data to ensure adequate foundation designs shall be provided by the _____ Owner _____ the Engineer [check one].

Section 5. If requested by the Owner, the Engineer shall prepare and submit to the Owner estimates of quantities of materials to be furnished by the Owner for use in connection with the construction of the Project. The Engineer shall procure and submit to the Owner forms of contracts and other documents for such materials and for such other services as may be necessary or desirable in connection with the construction of the Project.

Section 6. For transmission lines, the Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, a summary of transmission line and substation design data with supporting calculations. The Plans and Specifications and the Plan and Profile, if any, shall be based on the design data approved by the Owner and by the Administrator, if approval of the Administrator is required.

Section 7. The Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, plan and profile sheets for all transmission lines.

Section 8. In specifying right-of-way clearing for transmission lines where "feathering" and/or undulating boundaries are required, the Engineer shall mark all brush and trees to be removed unless such marking is the responsibility of another authority. The Engineer shall also compute all clearing units, and show all clearing units on the plan and profile drawings or on separate drawings prepared for this purpose.

Section 9. The Engineer shall prepare, and within _____ days after the date of execution of this Agreement submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, two copies of complete and detailed plans and specifications, drawings,

maps, and other documents required for the construction of the Project (all of the foregoing being hereinafter collectively called the "Plans and Specifications"). In the preparation of the Plans and Specifications, the Engineer shall consult with the Owner to the end that the Project shall serve the purpose intended by the Owner. Unless otherwise directed by the Owner, the Engineer shall use Construction Work Plans and Engineering Studies, as furnished by the Owner, as a basis for the preparation of the Plans and Specifications. The Engineer shall diligently make such changes in the Plans and Specifications as may be required by the Owner or the Administrator as a condition of approval thereof.

Section 10. The Engineer shall, for each substation, prepare and furnish for the Owner's approval and for the Administrator's approval, if approval of the Administrator is required, the following drawings and such others as may be necessary or desirable for the construction of the Project:

One line diagram (relays, breakers, transformers, switches, etc.)
Three line diagram (PT, CT, phasing, etc.)
Plot plan (excluding land surveys and plots necessary in acquisition of property)
Grading plan, fence layout and details
Structure plan and details
Structure elevations (with section views)
Footing plan and details
Grounding plan and details
Cable trench and layout plan
Lighting plan and details
Control house plan and details
Control house elevations and details
Material lists

Section 11. All maps, drawings, plan and profile sheets, plans and specifications, contract forms, addenda, estimates, studies, and other documents required to be prepared or submitted by the Engineer under this Article II or other articles of this Agreement shall conform to the applicable standard specifications and other forms prescribed by the Administrator, unless deviation therefrom shall have been approved by the Administrator.

Section 12. The Engineer shall furnish to the Owner all engineering information, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises, and authorizations from public bodies, and all necessary or desirable permits, licenses, or agreements with respect to the crossing of navigable streams, railroads, and power lines, and with respect to the paralleling or crossing of communications lines and signal circuits, and shall assist the Owner to the extent necessary to obtain such permits, licenses, franchises, authorizations, and agreements. The Engineer shall also furnish to the Owner all engineering information, data, and drawings required for procuring transmission line right-of-way through condemnation proceedings. If requested by the Owner, the Engineer shall attend, or appear as a witness in, hearings or other proceedings before public service commissions or other regulatory bodies in connection with procuring of the foregoing.

Section 13. When notified by the Administrator (if approval of the Administrator is required) and by the Owner of their approval of the form of Construction Contract, the Engineer shall immediately take all appropriate and necessary action to procure full, free, and competitive bidding for the award of such contract or contracts, and when requested assist the Owner with the purchase of material and equipment. The term "Construction Contract" as used herein shall also include right-of-way clearing contracts, equipment contracts, or materials contracts if such contracts are utilized in the construction of the project. In fulfilling this responsibility, the Engineer shall prepare and submit to the Owner for approval a recommended list of qualified bidders to construct the project. Upon approval of such list by the Owner, the Engineer, in collaboration with the Owner, shall fix a date for the opening of bids for such contracts. The Engineer shall prepare and furnish to the qualified bidders the Plans and Specifications and Construction Drawings together with all necessary forms and other documents.

Section 14. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of the proposals for the construction of the Project or the supply of materials or services therefor. The Engineer, or a competent representative of the Engineer, shall attend and supervise all openings of bids for the construction of the Project or for the furnishing of materials or services therefor. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Engineer shall carefully check and prepare detailed assembly unit price tabulations of all bids received, and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently and properly awarded in accordance with the policy and procedure prescribed by the Owner and the Administrator.

Section 15. If any change is to be made in the Plans and Specifications after the Construction Contract has been approved by the Owner and by the Administrator, if approval of the Administrator is required, the Engineer shall prepare and submit the necessary details for a contract amendment in accordance with the procedure prescribed by the Owner and the Administrator.

Article III

Staking

Section 1. The Engineer, with the approval of the Owner, shall determine when staking of the Project shall begin; provided, however, that the Engineer shall not commence staking until the Owner shall have certified that all right-of-way authorizations and easements reasonably required for the construction of the Project have been procured. The Owner shall furnish qualified persons to negotiate with landowners or tenants with respect to such right-of-way authorizations and easements and the locations of meter poles or service entrances. The Engineer shall proceed diligently with such staking and continue therewith in such manner as not to retard the progress of construction of the Project.

The staking shall be done in a thorough and workmanlike manner and in accordance with the latest revision of the National Electrical Safety Code, applicable State codes, plans and specifications, and approved transmission line plan and profile sheets. The Engineer shall in no case stake lines other than those authorized by the Owner. The Engineer shall replace all stakes lost or removed prior to or during construction of the Project. All costs, including costs of stakes, equipment, and other material used in connection with the staking, shall be borne by the Engineer. All stakes shall be marked to show the pole number. Where practicable, all stakes shall be driven in such manner that the pole number shall be visible from the pole hauling truck when poles are being distributed. Each transmission structure stake shall be marked with the station number and the height and class of pole. Where it is probable that the Contractor will have difficulty in locating stakes, the Engineer shall drive a four-foot (1.2 m) building lath or equivalent in addition and adjacent to the stake. The Engineer shall give due consideration to the location of the consumer's load center and service termination in staking pole locations on or near the consumer's premises so that the service entrance cable or low voltage conductors to buildings will be as short as possible.

Section 2. The Engineer shall cause staking sheets or structure lists to be maintained in such form as the Owner shall require, on which shall be accurately entered all pertinent and useful information and directions concerning the construction of the Project. Five counterparts of the staking sheets or structure lists shall be supplied by the engineer to the Contractor and two copies shall be supplied to the Owner. When revisions in staking sheets or structure lists are necessary, the Engineer shall cause all copies of the staking sheets or structure lists to be corrected to reflect such revisions in the information or directions previously incorporated thereon.

Section 3. The Engineer shall prepare and submit to the Owner a report showing the quantity, kind, price, and extended total of all units of construction for each portion of the Project at the time such portion is released to the Contractor for construction.

Section 4. A competent resident engineer, with full authority to act for the Engineer, shall be maintained by the Engineer at the site of the Project at all times when staking is being performed.

Article IV

Construction Management

Section 1. The Engineer shall supervise the construction of the Project and shall make a diligent effort to ensure the expeditious and economical construction thereof in accordance with the Plans and Specifications and the terms of the Construction Contract or

contracts and ensure that all specified environmental criteria are followed. The Engineer shall carefully inspect all materials and equipment prior to their incorporation in the Project and shall promptly reject those not in compliance with the Specifications. The Engineer shall also supervise and inspect the incorporation of the materials in the Project and the workmanship with which such materials are incorporated. Such inspection shall be deemed to be adequate if a reasonable percentage of all construction units are inspected at the time of installation. The Engineer, as representative of the Owner, shall have sole responsibility for requiring the Contractor to perform the Construction Contract in accordance with its terms and the Plans and Specifications; and, in performing the duties incident to such responsibility, the Engineer shall issue to the Contractor such directives and impose such restrictions as may be required to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications, in construction of the Project; provided that the Engineer shall not be required to exercise any actual control over employees of the Contractor. The term "supervise" when used herein shall not confer upon the Engineer responsibility for the Contractor's construction means, methods, or techniques. The obligations of the Engineer hereunder run to and are for the benefit of only the Administrator and the Owner.

Section 2. The Engineer shall measure ground resistance at all substation ground fields prior to bonding the ground field to the substation structure. In addition, upon recommendation by the Engineer and authorization by the Owner, the Engineer shall measure the ground resistance at the following locations:

(a) At all transmission structures with overhead ground wire prior to the installation of the overhead ground wire.

(b) At all transmission structures with pole grounds prior to the installation of power conductor. The Engineer shall prepare a report of the ground resistance measurements mentioned above and submit such report to the Owner together with recommendations for changes, if any, required to ensure satisfactory operation. To the extent such changes are approved, the Engineer shall make appropriate changes in the Plans and Specifications in accordance with the provisions of Section 15 of Article II.

Section 3. The Engineer shall maintain at the site of the Project during the entire period of construction a competent resident engineer with full authority to act for the Engineer, unless specifically directed otherwise by the Owner in writing. When necessary to assure adequate inspection, one or more competent inspectors shall also be maintained when construction units are being installed or corrective work is being performed, the number of inspectors being subject to approval by the Owner. The Engineer shall report, in writing, defects in workmanship or materials to the Contractor and the Owner and shall instruct the Contractor to correct such defects immediately, in accordance with the terms of the Construction Contract. A resident engineer shall be present during the final inspection of completed construction.

Section 4. The Engineer shall test along lines, immediately after they have been energized, for objectionable radio interference. All cases of radio interference due to faulty construction of or defective equipment in the Project shall be reported to the Contractor for correction.

Article V

Final Documents

Section 1. The Engineer shall prepare and, within twenty (20) days after the completion of construction of the Project by the Contractor, submit complete and detailed final documents to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required.

Article VI

Compensation

Section 1. The Owner shall pay the Engineer for the services performed hereunder as indicated in the attached Schedule A.

Section 2. The total compensation to be paid in connection with this Agreement shall not exceed $_____ (_____ Dollars.)

Section 3. Compensation payable to the Engineer under this Agreement shall be in addition to taxes or levies (excluding Federal, State and local income taxes) which may be assessed against the Engineer by any State or political subdivision directly on services performed or payments for services performed by the Engineer pursuant to this Agreement. Such taxes or levies, which the Engineer may be required to collect or pay, shall, in turn, be added by the Engineer to invoices submitted to the Owner pursuant to this Agreement.

Section 4. Interest at the rate of _____ percent (_____ %) per annum [percentage is not to exceed any applicable State usury laws] shall be paid by the Owner to the Engineer on all unpaid balances due the Engineer commencing thirty (30) days after the due date; provided that the delay in payment beyond the due date is not caused by any condition within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of interest has been determined by the Engineer and the Owner.

Section 5. Prior to the time when any payment shall be made to the Engineer pursuant to this Agreement, the Engineer, if requested by the Owner, shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project, have been fully paid by the Engineer up to and including a date not more than fifteen (15) days prior to the date when such payment shall be made. Before the time when the final payment shall be made to the Engineer by the Owner, the Engineer shall also furnish to the Owner, as a condition precedent to such payment, a certificate that all the employees of the Engineer have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid.

Article VII

Miscellaneous

Section 1. The Owner may at any time terminate this Agreement by giving notice to the Engineer in writing to that effect not less than ten (10) days prior to the effective date of termination specified in the notice. Such notice shall be deemed given if delivered or mailed to the last known address of the Engineer. From and after the effective date specified in such notice, this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services hereunder as provided in Section 2 of this Article VII.

Section 2. In the event that this Agreement at any time be terminated pursuant to Section 1 of this Article VII, the compensation which shall be payable to the Engineer by the Owner shall be computed so far as possible in accordance with the provisions of Article VI. To the extent that the provisions of Section 1 of Article VI cannot be applied because construction is incomplete at the effective date of such termination, the Engineer shall be paid for engineering services in respect of incomplete construction a sum which shall bear the same ratio of the compensation which would have been payable under the provisions of Section 1 of Article VI, if such construction had been completed, as the engineering services in respect of such incomplete construction bear to the engineering services which would have been rendered if construction had been completed.

If requested by the Owner, the Engineer shall submit to the Owner in duplicate a verified statement of actual expenses in respect of such incomplete construction. All compensation payable under this Section 2 shall be due and payable thirty (30) days after the approval by the Owner of the amount due hereunder.

Section 3. The Engineer shall have the right, by giving the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Engineer shall have been prevented by conditions beyond the control and without the fault of the Engineer (a) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement, or (b) from proceeding with the completion of full performance of any remaining services required of the Engineer pursuant to this Agreement for a period of six (6) months from the date of last performance by the Engineer of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in Section 2 of this Article.

Section 4. Upon completion of the Project or termination of the Contract, the Engineer shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all letters, documents, and other material, including all records pertaining thereto.

The term "Completion of the Project" shall mean full performance of all obligations

under this Contract and all amendments and revisions thereof as evidenced by the approval of the final documents by the Owner and by the Administrator, if approval of the Administrator is required.

Section 5. The Engineer shall follow all applicable RUS rules and regulations.

Section 6. The Engineer shall prepare and execute in such form and detail as the Owner and the Administrator shall direct all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the terms of the Construction Contract or the Loan Contract, including progress reports of engineering services and reports of the progress of construction.

Section 7. The Engineer shall approve each monthly estimate of the Contractor prior to payment by the Owner. Such approval shall include a certification by the Engineer that all construction for which payment is requested has been completed in accordance with the terms of the Construction Contract and that all defective construction, of which the Contractor shall have received fifteen (15) or more days written notice, has been corrected. The Engineer shall also maintain at the site of the Project a cumulative inventory of all units of construction incorporated in the Project.

Section 8. The Engineer shall notify the Owner when the Project, or any section thereof, shall be ready to be energized. When requested by the Administrator, such notice shall also be given to the Administrator. The Engineer shall assist the Owner in causing the Project, or such section thereof, to be energized.

Section 9. Insurance. The Engineer shall take out and maintain throughout the period of this Agreement insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Engineer's employees who perform any of the obligations of the Engineer under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article VI, Section 2, but not less than $500,000.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Engineer shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Engineer shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 10. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct, shall replace any resident engineer or other persons employed by the Engineer in connection with the Project. The Engineer shall file with the Owner and the Administrator a statement, signed by the Engineer, of the qualifications, including specific experience of each engineer and inspector assigned to the Project and the duties assigned to each.

Section 11. Approvals, directions, and notices provided to be given hereunder by the Administrator to the Engineer or the Owner shall be deemed to be properly given if given by any person authorized by the Administrator to give approvals, directions, or notices.

Section 12. The Engineer shall establish and maintain an office at the site of the Project, with telephone service where available, when staking or construction is in progress. Any notice, instructions, or communications delivered to such office shall be deemed to have been delivered to the Engineer.

Section 13. This Agreement may simultaneously be executed and delivered in two or more counterparts each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 14. The obligations of the Engineer under this Agreement shall not be assigned without the approval in writing of the Owner.

Section 15. The Engineer shall comply with applicable statutes pertaining to engineering and warrants that _____ [Name of Engineer] who will be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the _____ day of _____, 19____.

In witness whereof, the Parties hereto have caused this Agreement to be duly executed.

_____ Owner

By _____ President

ATTEST: _____ Secretary

_____ Engineer

By _____ President, Partner [Strike out inapplicable designation]

ATTEST: _____ Secretary

Schedule A—Compensation

[End of clause]

§§ 1724.77–1724.99 [Reserved]

Dated: June 17, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–16792 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–15–P

federal register

Monday
June 29, 1998

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1998–1999 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AE12

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1998–1999 Subsistence Taking of Fish and Wildlife Regulations

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsisteuce uses during the 1998–1999 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1997–1998 Subsistence Taking of Fish and Wildlife Regulations", which expire on June 30, 1998. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section ____.24 of Subpart C) and restates and extends Sections ____.26, Subsistence Taking of Fish and ____.27, Subsistence Taking of Shellfish.

DATES: Section ____.24 is effective July 1, 1998. Section ____.25 is effective July 1, 1998, through June 30, 1999. Sections ____.26 and ____.27 are effective January 1, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, telephone (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule for §§ ____.23–____.25. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al. v. United States of America et al.* Therefore, to the extent that these regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanektok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the continuation of the proceedings in the consolidated "Katie John" litigation, a petition to the Secretaries of the Interior and Agriculture addressing jurisdiction in navigable waters, and activities in the State Legislature, no attempt is being made to alter the fish and shellfish portions of the regulations (Sections ____.26 and ____.27) until final guidance has been received regarding the jurisdictional authority of the Federal government over navigable waters in general, and specifically with respect to the waters at issue in *Native Village of Quinhagak et al. v. United States of America et al.*

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role

in the subsistence management of fish and wildlife on Alaska pubic lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in May 1998.

Summary of Changes

Section ____.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of effected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; and 62 FR 29016, published May 29, 1997.) During its May 4–May 6, 1998, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained in the section on Analysis of Proposals Adopted by the Board.

Section ____.25 (Subpart D) regulations are subject to an annual cycle and require development of an entire new rule each year. Proposed Subpart D regulations for the 1998–1999 seasons and harvest limits, and methods and means were published on July 25, 1997, in the **Federal Register** (62 FR 39987–40029). A 60-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. Overall, the Board received a total of 109 proposals for change to Customary and Traditional Use Determinations or to Subpart D. Subsequent to the 60-day review period, the Board prepared a booklet describing 109 proposals and 5 Requests for Reconsideration that were deferred from the 1997–1998 Board cycle and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Eight of the proposals were withdrawn from consideration and three Special Actions were included for deliberation at the May Board meeting. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board.

Section ____.26 (Subsistence taking of fish) and Section ____.27 (Subsistence taking of shellfish) were last published on May 29, 1997, (62 FR 29016). Fish and shellfish regulations are effective from January 1 through December 31 each year. Due to litigation and petitions to the Secretaries of the Interior and Agriculture, both relating to extended jurisdiction to navigable waters, the fish and shellfish regulations are not revised, but rather, are extended through December 31, 1999.

Analysis of Proposals Rejected by the Board

The Board rejected 28 proposals, Requests for Reconsideration, or Special Actions based on recommendations from the respective Regional Council and additional factors. Seven of the rejected proposals were rendered moot by adoption of other proposals.

Five proposals requested that seasons for deer be shortened or eliminated. The Board determined that the biological and harvest data did not support a need to close or shorten seasons in order to protect the population or the subsistence users' opportunity to harvest wildlife.

The Board also rejected three proposals requesting that customary and traditional use determinations be revised for bear or moose in certain areas. In each case, the cultural resource data did not substantiate the request.

One proposal requesting same-day airborne hunting of caribou was rejected based on testimony that it was not a customary and traditional method of harvest and on possible conflicts with the Airborne Hunting Act.

One proposal requesting shooting of caribou from a moving snow-machine was rejected based on a conservation concern related to indiscriminate wounding of animals.

Four proposals requested expanding seasons for beaver, moose, marten, mink, and weasel and establishing a season for muskox. These proposals were rejected based on concern for low populations in the specific locales.

The Board rejected one proposal that would have required meat to be left on the bone until removed from the field. This proposal was rejected as unduly imposing on the subsistence user without good cause.

The Board also rejected the five Requests for Reconsideration because additional data supporting their original decisions were presented at the respective Regional Council meetings.

The Board also deferred action on 16 proposals and part of one other in order to collect additional data, or allow communities or Regional Councils additional time to review the issues and provide additional information.

Analysis of Proposals Adopted by the Board

The Board adopted 64 proposals or Special Actions and parts of 1 other. Some of these proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals, except one, were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting wildlife populations. Detailed information relating to justification on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management at the address listed previously. Some additional changes are a result of Board actions occurring over the past year. Additional technical clarifications and removal of excess materials have been made which result in a more readable document.

Southeast Region

Eighteen proposals and one Request for Reconsideration from April 1997 affecting residents of the Southeast Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Opened a closed area to moose hunting in Unit 1(B).
- Established a customary and traditional use determination for black bear, brown bear, deer, and goat in Unit 1(C).
- Added a requirement for a Federal registration permit for a doe hunt in Unit 2.
- Opened a moose season in a previously closed area in Unit 3.
- Established a customary and traditional use determination for goat and wolf in Units 5 and 6(A).

Southcentral Region

Eighteen proposals and one Request for Reconsideration from April 1997 affecting residents in the Southcentral Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Revised the lynx trapping season in a number of Units.
- Opened Federal public lands to hunting and trapping of otter in Unit 6.
- Closed Federal public lands to hunting caribou in Unit 11.
- Revised the customary and traditional use determination for black bear, brown bear, and goat in Unit 11.
- Revised the customary and traditional use determination for goat, brown bear, caribou, sheep, and moose in Unit 11.
- Established a goat season in Unit 11.
- Established a special sheep hunt for the elderly in Unit 11.
- Established a customary and traditional use determination for brown bear in Unit 13.
- Revised the customary and traditional use determination for caribou in Unit 13 and black bear in Unit 16.
- Extended the season for caribou in Unit 13.
- Continued a moose season in Unit 15.

Kodiak/Aleutians Region

Four proposals and one Request for Reconsideration from April 1997 affecting residents of the Kodiak/Aleutians Region were acted on by the Board during their May meeting resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Opened an elk hunt in Unit 8.
- Extended the deer season in Unit 8.
- Changed the customary and traditional use determination for caribou in part of Unit 10.

Bristol Bay Region

Seventeen proposals and two Special Actions affecting residents of the Bristol Bay Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Revised the customary and traditional use determination for brown bear in part of Unit 9.
- Revised the seasons for caribou, brown bear, moose, and various furbearers in Units 9 and 17.
- Revised the customary and traditional use determination for black bear and brown bear in Unit 17.
- Revised the season and harvest restrictions for caribou in Units 9, 17, and 19.
- Revised the harvest restrictions for moose in Unit 9, 17, and 19.
- Revised the season and harvest limit for various furbearers in Unit 17.

Yukon-Kuskokwim Delta Region

Two proposals affecting residents of the Yukon-Kuskokwim Delta Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Closed an area to moose hunting in a portion of Unit 18.

Western Interior Region

Twenty-one proposals affecting residents of the Western Interior Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Revised the customary and traditional use determinations for brown bear and caribou in Unit 19.
- Revised the customary and traditional use determinations for moose and caribou in Unit 21.
- Revised the seasons for beaver, moose, wolf, and caribou in Units 19, 21, and 24.

Seward Peninsula Region

Seven proposals, one Request for Reconsideration from April 1997, and one Special Action affecting residents of the Seward Peninsula Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24.

- Established a cooperative hunt program with the State for muskox in Unit 22.
- Revised seasons and/or harvest restrictions for brown bear, beaver, moose, and wolverine in Unit 22.

Northwest Arctic Region

Two proposals affecting residents of the Northwest Arctic Region was acted on by the Board resulting in the following changes to the regulations found in § ____.24.

- Revised customary and traditional use determinations for sheep and black bear in Unit 23.

Eastern Interior Region

Nine proposals affecting residents of the Eastern Interior Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Revised the seasons and harvest restrictions for moose in Units 20 and 25.
- Revised the customary and traditional use determination for brown bear, caribou, sheep, and moose for Unit 12.
- Revised the customary and traditional use determination for caribou for Units 20 and 25.
- Established a season for brown bear in Units 12 and 20.

North Slope Region

Two proposals and one Request for Reconsideration from April 1997 affecting residents of the North Slope Region were acted on by the Board resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Revised the harvest limit for sheep in part of Unit 26.

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule are unnecessary, and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement over and above standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the seven years the Program has been operating, there has been no benefit to the public demonstrated by the delaying the effective date of the regulations. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice prior to publication of this rule. The Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 1998.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four

alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA—The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act—These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires 5/31/2000.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § [____.24 Customary and traditional determinations.]) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand. Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and

there is no cost involved to any state or local entities or tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

Drafting Information—These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Curt Wilson, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § ___.24 is revised to read as follows:

§ ___.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

Area	Species	Determination
(1) Wildlife Determinations		
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A)
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatilek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.

Area	Species	Determination
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chicaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, Remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C) and (D)	Brown Bear	No Federal subsistence priority.
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only(, 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass, King Cove, and Sand Point.
10, Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A) –(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder 11	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.

Area	Species	Determination
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake.
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area.	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.

Area	Species	Determination
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and residents of Akaik and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akaik and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C),(D)	Bison	No Federal subsistence priority.

Area	Species	Determination
19(A) and (B)	Brown Bear	Residents of Unit 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F)and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F)and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Tekdanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenena, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E) and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Tekdanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F), and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Residents of Unit 21 and 23.
21(A)	Caribou	Residents of Unit 21(A), 21(D), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Unit 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Unit 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Unit 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.

Area	Species	Determination
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Sheldon Point, and Alakanuk.
22, Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 29(F), 25(D), and Manley.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).

Area	Species	Determination
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
(2) Fish and Shellfish Determinations		
KOTZEBUE-NORTHERN AREA—Northern District.	All finfish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char.	Residents of the Kotzebue District.
NORTON SOUND—PORT CLARENCE AREA.	Salmon	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon.	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the western-most tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe.	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage.	Salmon	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage.	Salmon	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater finfish.	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, which is all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58° 52′ North latitude) midstream Shelikof Strait, and west of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.

Area	Species	Determination
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict.	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula	Salmon and Dolly Varden char.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long. and east of 132° 25′ W. long.
District 3—Section 3–A	Salmon and Dolly Varden char.	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Vardun char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.

Area	Species	Determination
District 14—Section 14–B and 14–C	Salmon smelt and Dolly Varden char.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers	Salmon and smelt ..	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet. Hai of Haines, excluding residents in the drainage of Excursion Inlet.

(b) [Reserved]

Subpart D—Subsistence Taking of Fish and Wildlife

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.25 is added effective July 1, 1998, through June 30, 1999, to read as follows:

§ ____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an

authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or Taking means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or antler point refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraphs (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § __.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § __.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § __.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § __.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) All edible meat from caribou and moose harvested in Units 9(B), 17 and 19(B) prior to October 1 must remain on the bones of the front quarters and hind quarters until the meat is removed from the field or is processed for human consumption.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not

removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area or presented for commercial tanning within the Management Area, it must first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(1) Any wolf taken in Unit 2 must be sealed on or before the 30th day after the date of taking.

(2) The radius and ulna of the left foreleg must remain naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1—5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B) 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Remainder of Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.

Harvest limits	Open season
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer: 4 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31 by Federal registration permit only.	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes.	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Dec. 1–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer	Aug. 1–Nov. 30.
Moose: Unit 3—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10.–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations:

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) Chichagof Island is closed to the use of any motorized land vehicle for the taking of marten, mink, and weasel.

Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only	Mar. 15–May 20. Sept. 15–Dec. 31.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only	Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes.	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a State metal locking tag; no State metal locking tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting;

(D) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B).	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only .. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Unit 6(D) (subareas RG243 and RG245)—The taking of goats is prohibited on all public lands	No open season.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Remainder of Unit 6(C)—No limit	July 1–June 30.
Fox, Red (Including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6(A), (B) and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the

drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7, that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	August 10–Sept. 20.
Unit 7, Remainder	No open season.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolvenne	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10—Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57°52′ N. lat., 152°58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct 1–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31; no more than 1 antlerless deer may be taken from Oct 1–Nov. 30.	Aug. 1–Jan. 31.
Elk: Afognak Island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. Entry for elk hunting shall be from marine waters only.	Sept. 1–Sept. 25
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.

Harvest limits	Open season
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1—Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek;

(C) A firearm may be used under a trapping license to take beaver in Unit 9(B) from April 1—May 31 and in the remainder of Unit 9 from April 1—April 30;

(D) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(E) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C)—4 caribou; however, no more than 1 may be a cow, no more than 2 caribou may be taken Aug. 10–Nov. 30, and no more than 1 caribou may be taken per calendar month between Dec. 1–Mar. 31.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—that portion southwest of the headwaters of Fireweed and Blueberry Creeks (north of Mt. Veniaminof) to and including the Sandy River drainage on the Bristol Bay side of the Alaska Peninsula; and that portion south of Seal Cape to Ramsey Bay on the Pacific side of the Alaska Peninsula divide is closed to all hunting of caribou.	No open season.
Remainder of Unit 9(E)—4 caribou	Aug. 10–Apr. 30
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.

Harvest limits	Open season
Unit 9(B)—1 bull	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 bull	Sept. 1–Sept. 20. Dec. 1–Dec. 31
Coyote: 2 coyotes	Sept. 1–Apr. 30
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Lynx: 2 lynx	Nov. 10–Feb. 28
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30
Trapping	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Remainder of Unit 9—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands.

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only	No open season.
Remainder of Unit 10—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10—Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and

must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: Unit 11	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older. No designated hunter permits will be issued for this hunt.	Sept. 21–Oct. 20.
Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull	Aug. 25–Sept. 20.
Coyote: 2 coyotes	Sept. 1—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands	No open season.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands	No open season.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced	Winter season to be announced by the Board.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only	Aug. 20–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.

Harvest limits	Open season
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken	Aug. 20–Aug. 28. Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Jan. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the

north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Oct. 21–Mar. 31
Sheep: Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 13(E)—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Unit 13—Remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Oct. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation, are closed to the subsistence taking of wildlife;

(B) the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife.

(iii) Unit-specific regulations:

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.

Harvest limits	Open season
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15–Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Trapping	
Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: Unit 14(C)—No limit	Dec. 15–Jan. 15.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse, ptarmigan, and hares may be taken only from October 1–March 1 by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear	
Unit 15(C)—3 bears.	July 1–June 30
Unit 15 Remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only..	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping	
Beaver: 20 Beaver per season.	Dec. 1–Mar. 31.
Coyote: No limit.	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter:	
Unit 15(A), (B)—No limit	Nov. 10–Jan. 31.
Unit 15(C)—No limit.	Nov. 10–Feb. 28.
Wolf: No limit.	Nov. 10–Feb. 28.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	4Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including

Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Woood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 17(A), remainder and 17(C), remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager between Aug. 1–Mar. 31.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Remainder of Unit 17(B) and (C)—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 17—40 beaver per season	Nov. 10–Feb. 28.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears.	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan." The season will be closed when the total harvest reaches guidelines as described in the approved "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan".	Season to be announced by the Yukon Delta National Wildlife Refuge Manager between Aug. 25 and Mar. 31.
Unit 18—that portion north of the Yukon River—5 caribou per day.	Aug. 1–Mar. 31.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—South of and including the Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.

Harvest limits	Open season.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M*1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears.	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Remainder of Unit 19(A), (B), and (D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug.1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system..	July 1–June 30.
Sheep: 1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.

Harvest limits	Open season
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1—Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Remainder of Unit 19(A)—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and

26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 116, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision (SE¼SE¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(E)—1 bear	Aug. 10–June 30
Unit 20, remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a combined State/Federal harvest quota of 150 for the Fortymile herd has been reached	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Remainder of Unit 20(B)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Remainder of Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken	Aug. 20–Aug. 28. Sept. 1–Sept. 15.

Harvest limits	Open season
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20(A), (B), (D), (E), and (C) east of the Tekdanika River—No limit	Dec. 1–Feb. 28.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30
Remainder of Unit 20—No limit	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is

closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The taking of up to three moose per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; moose may not be taken within one-half mile of the Yukon River during the February season. During the Sept. 1–Sept. 25 season a State registration permit is required within the Koyukuk Controlled Use Area.	Sept. 1–Sept. 25. Feg. 1–Feb. 10.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 21—No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) The Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only	Sept. 1–May 31.
Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only	Sept. 1–May 31.
Unit 22(C)	No open session.
Remainder of Unit 22—1 bear by State registration permit	Sept. 1–May 31.
Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is restricted to residents of Unit 22(A) only	Aug. 1–Sept. 30. Dec. 1–Jan. 31:
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull	Aug. 1–Jan. 31.
Unit 22(D), remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Twelve Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 36 permits. Six Federal permits will be issued for National Park Service lands and six for Bureau of Land Management lands.	Aug. 1–Mar. 15.
Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Nine Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 18 permits.	Aug. 1–Mar. 15.
Remainder of Unit 22	No open season.
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22 Remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22 Remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.

Harvest limits	Open season
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 22(A), (B), (D), and (E)—60 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) The Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 23;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1–Jun. 10.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears.	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years.	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—that portion west of Howard Pass and the Aniuk, Cutler and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 10 permits.	Aug. 1–Mar. 15.
Remainder of Unit 23	No open season.
Coyote: 2 coyotes.	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.

Harvest limits	Open season
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine.	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Remainder of Unit 23–30 beaver	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase): No limit.	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit.	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit	Sept. 1–May 31.
Caribou:.	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, upstream from Huslia antlerless moose may only be taken during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 1–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25–Sept. 25.
Coyote: 2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side

of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area; that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Caribou and moose may be taken from a boat under power in Unit 25.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 28.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area.	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Remainder of Unit 25(B)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek; Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	

Harvest limits	Open season
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25(C)—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Remainder of Unit 25—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1—Aug. 31 and from Jan. 1—Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 26;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26 (B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the the Killik River are closed to the the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
Not more than 5 caribou per regulatory year may be transported from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1—31.
Remainder of Unit 26	No open season.
Muskox: Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	Sept. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1—Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

4. In Subpart D of 36 CFR part 242 and 50 CFR part 100, §§ ____.26 and ____.27 are added effective January 1, 1999, through December 31, 1999, to read as follows:

§ ____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of finfish, excluding halibut, or their parts for subsistence uses.

(2) Finfish, excluding halibut, may be taken for subsistence uses at any time by any method unless restricted by the subsistence fishing regulations found in this section.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § ____.27:

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per

specified time period, even if part or all of the fish are preserved.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi;* all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net means a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Federal lands means lands and waters and interests therein the title to which is in the United States.

Fishwheel means a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish—bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice.

Lead means either a length of net employed for guiding fish into a seine, set gill net, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Public lands or *public land* means lands situated in the State of Alaska which are Federal lands, except—

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbusha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net means a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Take or *Taking* means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

To operate fishing gear means any of the following: the deployment of gear in the waters of Alaska; the removal of gear from the waters of Alaska; the removal of fish or shellfish from the gear during an open season or period; or the possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination

from the Federal Subsistence Board that the sale constitutes customary trade.

(2) No person may take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(3) No person may use explosives or chemicals to take fish for subsistence uses.

(4) Each person shall plainly and legibly inscribe his or her first initial, last name, and address on any fish wheel, keg, buoy, stakes attached to gill nets, and on any other unattended fishing gear which the person has employed to take fish for subsistence uses.

(5) All pots used to take fish must contain an opening on the webbing of a sidewall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter.

(6) Persons licensed by the State of Alaska to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts.

(7) Except as provided elsewhere in this subpart, the taking of rainbow trout and steelhead trout is prohibited.

(8) Fish taken for subsistence use or under subsistence regulations may not be subsequently used as bait for commercial or sport fishing purposes.

(9) The use of live non-indigenous fish as bait is prohibited.

(10) Any fishing gear used to take fish for subsistence uses may not obstruct more than one-half the width of any stream. A stationary fishing device may obstruct not more than one-half the width of any stream.

(11) Kegs or buoys attached to any permitted gear may be any color but red.

(12) Harvest limits authorized in this section or § ____.27 may not be accumulated with bag limits authorized in State seasons.

(13) Unless specified otherwise in this section, use of a rod and reel to take fish is permitted without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) Where a subsistence fishing permit issued by the ADF&G is required by this section, that permit is not required to take fish for subsistence uses with rod and reel. The harvest and possessions limits for taking fish for subsistence uses with a rod and reel in those areas are the same as indicated on the ADF&G permit issued for subsistence fishing with other gear types;

(ii) Where a subsistence fishing permit is not required by this section, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska sport fishing regulations in those same areas.

(14) Unless restricted in this section, or unless restricted under the terms of a required subsistence fishing permit, gear specified in definitions in paragraph (b) of this section are legal types of gear for subsistence fishing.

(15) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time.

(16) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by regulations for particular areas set forth in this section.

(17) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(18) Unlawful possession of subsistence finfish. Fish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(d) *Fishery management area restrictions.* For detailed descriptions of Fishery Management Areas, see State of Alaska Fishing Regulations.

(1) *Kotzebue-Northern Area.* (i) Salmon may be taken only by gill nets, beach seines, or a rod and reel.

(ii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(2) *Norton Sound-Port Clarence Area.* (i) Salmon may be taken only by gill nets, beach seines, fishwheel, or a rod and reel.

(ii) Except as provided in this paragraph (d)(2), fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit issued by ADF&G is required, except for use of rod and reel, as follows:

(A) Pilgrim River drainage including Salmon Lake;

(B) For net fishing in all waters from Cape Douglas to Rocky Point.

(iii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon Area.* (i) Salmon may be taken only by set gill nets, beach seines, fishwheels, or rod and reel.

(ii) Except as provided in this paragraph (d)(3), fish may be taken for subsistence purposes without a subsistence fishing permit.

(iii) A subsistence fishing permit issued by the ADF&G is required, except for the use of rod and reel, as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the ADF&G regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the United States—Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B.

(iv) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit issued by the ADF&G, there is no closed season on fish other than salmon.

(v) Only one subsistence fishing permit will be issued to each household per year.

(vi) Birch Creek of the upper Yukon drainage, and waters within 500 feet of its mouth, is closed to subsistence fishing June 10 through September 10, except that whitefish and suckers may be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G.

(vii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the State highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(viii) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20.

(ix) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at

Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(x) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xi) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks and within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64° 06′ N. lat., 145° 34′ W. long), Richardson Clearwater Creek (Clear Creek at 64° 14′ N. lat., 146° 16′ W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between the ADF&G regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xii) The following waters are closed to the taking of chum salmon from August 15–December 31:

(A) Toklat River;

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xiii) Salmon may be taken only by set gill nets in those locations described in below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(G) Waters within one nautical mile seaward from any grassland bank in District 1.

(xiv) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15–April 14.

(xv) A commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xvi) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than 6-inch mesh after a date specified by emergency order issued between July 10–July 31.

(xvii) In Subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon; a person may not sell or purchase salmon from which the dorsal fin has been removed.

(xviii) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated ADF&G check stations by the end of each weekly fishing period; immediately after salmon have been taken, catches must be recorded on a harvest form provided by the ADF&G.

(xix) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15, and 75 chum and coho salmon for periods after August 15.

(xx) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15; when either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close; a later season will open after August 15 to allow the taking of the harvest limit for periods after August 15; if the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xxi) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15; upon request, permits for additional salmon may be issued by the ADF&G.

(xxii) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(4) *Kuskokwim Area.* (i) Salmon may only be taken by gill net, beach seine, fishwheel, or by a rod and reel, subject to the restrictions set forth in this paragraph (d)(4), except that salmon may also be taken by spear in the Holitna River drainage.

(ii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(iii) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(iv) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(v) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak from those non-navigable drainages tributary to the Kuskokwim River downstream from the confluence of the Kuskokwim and Holitna Rivers and from those non-navigable drainages to Kuskokwim Bay north of the community of Platinum, subject to the following restrictions:

(A) Rainbow trout may be taken only by the use of gill nets, rod and reel, or jigging through the ice;

(B) The use of gill nets for taking rainbow trout is prohibited from March. 15–June 15.

(5) *Bristol Bay Area.* (i) Salmon and char may only be taken by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G.

(ii) Only one subsistence fishing permit may be issued to each household per year.

(iii) Each gill net must be staked and buoyed.

(iv) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(v) Salmon, herring, and capelin may only be taken by set gill nets and by a rod and reel, except that salmon may also be taken by spear in the Togiak River including its tributaries.

(vi) Subsistence fishing is not permitted within the boundaries of Katmai National Park.

(vii) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(viii) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the ADF&G King Salmon office.

(ix) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14: Lower Talarik Creek, Roadhouse Creek, Nick G. Creek, Middle Talarik Creek, Alexi

Creek, Copper River, Upper Talarik Creek, Tazimina River, Kakhonak River, Pete Andrew Creek, Young's Creek, Gibralter River, Zacker Creek, Chekok Creek, Dennis Creek, Newhalen River, Tomokok Creek, Belinda Creek.

(x) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski.

(xi) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(6) *Aleutian Islands Area.* (i) Salmon may be taken by seine and gill net, with gear specified on a subsistence fishing permit issued by the ADF&G, or by a rod and reel.

(ii) The Adak District is closed to the taking of salmon.

(iii) Salmon and char may be taken only by rod and reel or under the terms of a subsistence fishing permit issued by the ADF&G, except that a permit is not required in the Akutan, Umnak and Adak Districts; not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit; a record of subsistence-caught fish must be kept on the reverse side of the permit; the record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31.

(7) *Alaska Peninsula Area.* (i) Salmon may be taken by seine, gill net, gear specified on a permit issued by the ADF&G, or rod and reel.

(ii) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon;

(B) Trout Creek;

(C) Humbolt Creek.

(iii) Salmon and char may only be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G; a record of subsistence-caught fish must be kept on the reverse side of the permit; the record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31.

(8) *Chignik Area.* (i) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit issued by the ADF&G, or by a rod and reel, except that in Chignik Lake, salmon may not be taken with purse seines.

(ii) Salmon may not be taken in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) Salmon and char may only be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G. A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31.

(iv) From June 10–September 30, commercial fishing license holders may not subsistence fish for salmon.

(9) *Kodiak Area.* (i) Salmon may be taken 24 hours a day from January 1 through December 31 except as provided in this paragraph (d)(9)(i):

(A) From June 1–September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1–September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel;

(C) Salmon may be taken only by gill net, seine, or by a rod and reel;

(D) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(ii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All water closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Las Point to the tip of River Mouth Point of Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55′10″ N. lat., 152°36′ W. long. to 57°55′03″ N. lat., 152°29′20″ W. long.

(iii) A subsistence fishing permit issued by the ADF&G is required for taking salmon, trout and char for subsistence purposes (hourly restrictions and rod/reel restrictions identified in this permit do not apply on waters under Federal jurisdiction in the Kodiak Area); a subsistence fishing permit issued by the ADF&G is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from May 1–June 30; all subsistence fishermen shall keep a record of the number of subsistence fish taken each year; the number of subsistence fish shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the ADF&G by February 1 of the year following the year the permit was issued.

(10) *Cook Inlet Area.* (i) Salmon may be taken only by rod and reel, or under the authority of a subsistence fishing permit issued by the ADF&G; only one permit may be issued to a household each year; a subsistence fishing permit holder shall record daily salmon catches on forms provided by the ADF&G.

(ii) Trout, grayling, char, and burbot may not be taken in fresh water.

(iii) All public waters on the Kenai Peninsula are closed to subsistence fishing.

(iv) Smelt may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(v) Gill nets may not be used.

(11) *Prince William Sound Area.* (i) Salmon and freshwater fish species may be taken only by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G.

(ii) Only one subsistence fishing permit will be issued to each household per year.

(iii) Use of fishwheels:

(A) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain;

(B) Subsistence fishwheels must be removed from the water at the end of the permit period;

(C) Each permittee may operate only one fishwheel at any one time;

(D) No person may set or operate a fishwheel within 75 feet of another fishwheel;

(E) No fishwheel may have more than two baskets;

(F) The permit holder must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by this Part;

(G) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(iv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(v) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit.

(vi) All tributaries of the Copper River and waters of the Copper River are closed to the taking of salmon.

(vii) Crosswind Lake is closed to all subsistence fishing.

(viii) Salmon may be taken for subsistence purposes in the waters of the Southwestern District only as follows:

(A) Only pink salmon may be taken;

(B) Pink salmon may be taken by dipnets or by a rod and reel;

(C) Pink salmon may be taken only from May 15–September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) There are no harvest and possession limits for this fishery;

(F) ADF&G permits may be issued only at Tatitlek village.

(12) *Yakutat Area.* (i) Salmon, trout, and char may be taken only by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G.

(ii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes; the holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(iii) Subsistence fishermen must remove the dorsal fin from subsistence-caught salmon when taken.

(13) *Southeastern Alaska Area.* (i) Salmon, trout, char and herring spawn on kelp may be taken only by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G.

(ii) No person may possess subsistence-taken and sport-taken salmon on the same day.

(iii) Salmon, trout or char taken incidentally by gear operated under the terms of an ADF&G subsistence permit for salmon are legally taken and possessed for subsistence purposes; the holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(iv) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

§ ____.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § ____.26 or this section.

(c) Methods, means, and general restrictions. (1) The harvest limit specified herein for a subsistence season for a species and the State bag limit set for a State season for the same species are not cumulative. This means that a person or designated group who has taken the harvest limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State season.

(2) Unless otherwise provided in this section, gear as specified in the definitions of § ____.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent ADF&G vessel license number. The keg or buoy may be any color except red.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in paragraph (c)(5) of this section, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab,

tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered.

(e) Unlawful possession of subsistence shellfish. Shellfish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(f) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(2) *Cook Inlet Area.* All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) *Kodiak Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab; each pot can be no more than 75 cubic feet in capacity;

(D) King crab may be taken only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15–February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location;

(C) The daily harvest and possession limit is 12 male crab per person.

(4) *Alaska Peninsula-Aleutian Islands Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1–January 31.

(v) The daily harvest and possession limit is 12 male tanner crab per person.

(5) *Bering Sea Area.* (i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male dungeness crab per person.

(v) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31.

(vi) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male tanner crab.

Dated: May 21, 1998.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: May 22, 1998.

James A. Caplan,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 98–16686 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–11–P and 4310–55–P

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federal register

Monday
June 29, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 750 and 761
Disposal of Polychlorinated Biphenyls (PCBs); Final Rule

VOL 63 ISS 124 JE 29 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 750 and 761

[OPPTS–66009C; FRL–5726–1]

RIN 2070-AC01

Disposal of Polychlorinated Biphenyls (PCBs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending its rules under the Toxic Substances Control Act (TSCA) which address the manufacture, processing, distribution in commerce, use, cleanup, storage and disposal of polychlorinated biphenyls (PCBs). This rule provides flexibility in selecting disposal technologies for PCB wastes and expands the list of available decontamination procedures; provides less burdensome mechanisms for obtaining EPA approval for a variety of activities; clarifies and/or modifies certain provisions where implementation questions have arisen; modifies the requirements regarding the use and disposal of PCB equipment; and addresses outstanding issues associated with the notification and manifesting of PCB wastes and changes in the operation of commercial storage facilities. This rule also codifies policies that EPA has developed and implemented over the past 19 years. This rule will streamline procedures and focuses on self-implementing requirements and the elimination of duplication. Some activities currently requiring PCB disposal approvals will no longer require those approvals. EPA believes that this rule will result in substantial cost savings to the regulated community while protecting against unreasonable risk of injury to health and the environment from exposure to PCBs.

DATES: This rule shall become effective August 28, 1998. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on July 29, 1998 (see 40 CFR 23.5, 50 FR 7271).

The information collection requirements contained in this rule have not yet been approved by the Office of Management and Budget (OMB) and are not effective until OMB approves them. Once OMB has approved the information collection requirements contained in this rule, EPA will publish another document in the **Federal Register** to announce OMB's approval and to amend 40 CFR part 9 to incorporate the assigned OMB approval number into the table of OMB control numbers for EPA regulations at 40 CFR 9.1.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Electronic copies of the following documents: *Response to Comments Document on the Proposed Rule–Disposal of Polychlorinated Biphenyls* and *Support Document for the PCB Disposal Amendments, Final Rule* are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

The following outline is provided to assist the reader in locating topics of interest in the preamble.

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I. Regulated Entities

Entities potentially regulated by this action are those which manufacture, process, distribute in commerce, use, or dispose of PCBs. Regulated categories and entities include:

Category	Examples of Regulated Entities
Industry	Chemical manufacturers, electroindustry manufacturers, end-users of electricity, PCB waste handlers (e.g., storage facilities, landfills and incinerators), waste transporters, general contractors
Utilities and rural electric cooperatives	Electric power and light companies
Individuals, Federal, State, and Municipal Governments	Individuals and agencies which own, process, distribute in commerce, use, and dispose of PCBs

This table is not exhaustive, but lists the types of entities that could potentially be regulated by this action. Other types of entities may also be regulated. To determine whether your entity is regulated by this action, carefully examine the applicability criteria in 40 CFR part 761. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" unit.

II. Background

A. General Reaction to Proposed Rule

On June 10, 1991 (56 FR 26738), EPA issued an Advanced Notice of Proposed Rulemaking (ANPR) to solicit comments on possible changes to the PCB disposal regulations promulgated under the authority of TSCA section 6(e) and codified in 40 CFR part 761. On December 6, 1994 (59 FR 62788) (FRL-4167-1), EPA issued a Notice of Proposed Rulemaking (NPRM) after considering comments and supporting data on the issues outlined in the ANPR and other issues brought to EPA's attention during the course of implementing the TSCA PCB program. After publication of the NPRM, EPA conducted a series of briefings on the

proposed amendments to better acquaint potential commenters with the potential impacts so that they could better formulate their comments. On June 6 and 7, 1995, EPA held a public hearing on the proposed amendments. A transcript of that hearing is in the public record. Almost all commenters supported the objectives EPA proposed for the PCB program, but they also provided numerous comments on how to better achieve those objectives.

EPA has prepared a Response to Comments document which addresses comments not otherwise discussed in this preamble. You may review the Response to Comments document in the TSCA Public Docket (OPPTS docket control number 66009A), Rm. B607, Northeast Mall at the Environmental Protection Agency, 401 M St., SW., Washington, DC.

B. Overview of Final Rule

This rulemaking promulgates significant amendments affecting the use, manufacture, processing, distribution in commerce, and disposal of PCBs.

These amendments add regulatory provisions authorizing certain uses of PCBs; authorizing the manufacture, processing, and distribution in commerce of PCBs for use in research and development activities; specifying additional alternatives for the cleanup and disposal of PCBs; and clarifying the processing for disposal exemption.

These amendments also add sections establishing standards and procedures for disposing of PCB remediation waste and certain products manufactured with PCBs; establishing procedures for determining PCB concentration; establishing standards and procedures for decontamination; establishing controls over the storage of PCBs for reuse; and establishing a mechanism for coordinating TSCA disposal approvals for the management of PCB wastes among various Federal programs. These amendments also update several marking, recordkeeping, and reporting requirements.

The regulatory requirements that apply to materials containing PCBs depend in part on the PCB concentration. To ensure a consistent and reproducible basis for determining PCB concentrations, § 761.1(b)(4) provides that the concentration of non-liquid PCBs must be determined on a dry weight basis; the concentration of liquid PCBs must be determined on a wet weight basis; and the concentration of multi-phasic (i.e., both non-liquid and liquid) PCBs must be determined by separating the phases and analyzing each phase.

C. Statutory Authorities

This final rule is issued pursuant to sections 6(e)(1), 6(e)(2)(B), 6(e)(3)(B) and 18(b) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules regarding the disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would require PCBs to be marked with clear and adequate warnings (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(B) gives EPA the authority to authorize the use of PCBs in other than a totally enclosed manner based on a finding of no unreasonable risk of injury to health or the environment (15 U.S.C. 2605(e)(2)(B)). TSCA section 6(e)(3)(B) provides that any person may petition EPA for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs (15 U.S.C. 2605(e)(3)(B)). EPA may grant an exemption based on findings that an unreasonable risk of injury to health or the environment will not result, and that the petitioner has made good faith efforts to develop a substitute for PCBs.

D. Unreasonable Risk Standard

Under TSCA section 6(e), EPA makes decisions using the concept of "unreasonable risk." In evaluating whether a risk is unreasonable, EPA considers the probability that a regulatory action will harm health or the environment, and the costs and benefits to society that are likely to result from the action. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors.

a. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue. Available animal studies indicate an oncogenic potential. EPA has also found that PCBs may cause reproductive effects and developmental toxicity in humans. Chloracne may also occur in humans exposed to PCBs.

b. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, which decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. This ultimately results in human exposure through consumption of PCB-containing food sources. PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

c. *Risks.* Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has quantified risks from certain exposure scenarios (See for example, Refs. 1 and 2). For example, assessments of the risks from exposure to PCBs in soil have been used as the basis for several of today's regulatory actions.

2. *Benefits of PCBs and the availability of substitutes.* The benefits to society of particular activities involving PCBs vary. PCBs were used principally because they had excellent dielectric properties. The dielectric properties were supplemented by thermal stability and even the ability to retard burning, a considerable problem with the most commonly used alternative dielectric fluid. For other uses, thermal stability and flame retardancy were enhanced by resistance to degradation by chemical oxidizers, acids and bases. Although it is difficult to estimate the financial benefits from the reduction in industrial fires from the use of PCBs, it is clear that there were far fewer fires from the use of PCBs as alternatives to other commonly used flammable and ignitable fluids. These benefits are especially significant in uses where heat was generated or where a fire from another source would be augmented and intensified by the presence of flammable fluids. Unfortunately, the properties of thermal stability and resistance to chemical degradation which made PCBs so useful industrially, make PCBs a problem when they are released to the environment, where they and their toxic effects persist for long periods. The toxic effects of PCBs do not play a role in most uses where there is little, if any, actual exposure. So long as the PCBs are used inside containers and are not available for potential exposure or release to the environment, the benefits from their continued use, versus the cost to decontaminate or dispose of and replace them, can outweigh the risks.

While some electrical equipment manufactured to contain PCBs prior to 1978 is still in use, most of the equipment in use that contains PCBs

was manufactured to use another dielectric fluid, but was contaminated with PCBs during manufacturing or servicing. In most cases, the PCB concentration is low and the industrial properties of PCBs are for all practical purposes no longer contributing to continued use of the equipment. Similarly, because of their chemical inertness, the low concentration PCBs do not interfere with or compromise the use of the contaminated alternative dielectric fluids. Therefore, the benefits from continued use of the contaminated equipment, as opposed to decontamination or disposal and replacement, can continue to be realized.

3. *Costs.* The reasonably ascertainable costs of this rulemaking are discussed in detail in "Cost Impacts of the Final Regulation Amending the PCB Disposal Regulations at 40 CFR Part 761" (Ref. 3).

Overall, this rulemaking is intended to protect against unreasonable risks from PCBs by providing cost-effective and environmentally protective disposal options that will reduce exposure to PCBs by encouraging their removal from the environment, thereby reducing the potential risk to human health and the environment from PCBs. The rule also authorizes certain continued uses of PCBs and materials contaminated with PCBs where exposure can be controlled and where removal and disposal of the material would be costly or impractical. More detailed analyses of unreasonable risk specific to individual regulatory provisions are included throughout the preamble.

III. Issues Not Addressed by this Rulemaking

A. Preempting Other Requirements

Several commenters raised the issue of a general preemption under TSCA of all other Federal, State, and local laws and regulations concerning the management of PCB wastes. As stated in the NPRM preamble, TSCA does not allow the Administrator to preempt State disposal rules which describe the manner or method of disposal of a chemical substance or mixture, or in this instance, the disposal of PCBs (59 FR 62832). Moreover, EPA believes that such a preemptive rule would not flow from any of the proposed changes and therefore is not within the scope of this rulemaking.

B. Toxicity of PCBs

Several commenters argued that EPA should reassess the toxicity of PCBs. In the NPRM, EPA indicated that it had undertaken a study of PCB toxicity. This study, completed in September 1996, found PCBs to be carcinogenic, but concluded that PCBs are not as potent as previously determined (Ref. 4). In today's final rule, EPA has proceeded with the TSCA PCB requirements based on the risk data relied on in the NPRM. The Agency will consider additional revisions to these TSCA regulations in the future to accommodate additional new information clarifying PCB non-cancer effects and bioaccumulation factors, and to remain consistent with regulations issued under other statutes, such as the Clean Water Act (CWA), and with other EPA policies, such as those governing response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA will follow closely the public comment process on other rulemakings, and upon completion of a balanced assessment of both the cancer and non-cancer effects, will adjust its regulatory standards on PCBs as appropriate.

In adopting this policy position, EPA weighed the potential benefits and costs associated with revising the final rule to reflect the most recent PCB cancer potency information. Such a change at this time would delay the issuance of the final rule and its anticipated large cost savings, for likely only very marginal benefits.

C. Issues Deferred for Later Rulemaking

EPA today is not finalizing provisions regarding exports of PCBs (see Unit IV.J. of this preamble), or use authorizations for non-liquid PCBs. EPA intends to address these issues in future rulemakings.

In the NPRM, EPA solicited comments on the appropriate levels for corrective action of PCB contamination under the Resource Conservation and Recovery Act (RCRA) (59 FR 62794-95). EPA is not taking final action on this part of the proposal today. Those comments will be addressed by the Office of Solid Waste and Emergency Response (OSWER) during the process for promulgating final RCRA corrective actions regulations. (For more information, see 61 FR 19432, May 1, 1996.) The Office of Pollution Prevention and Toxics will continue to work with OSWER and other Offices in the Agency to coordinate programs concerning PCBs.

In addition, EPA has issued in the **Federal Register** a Notice of Intent to implement a Performance Based Measurement System (PBMS), under which the regulated community would be able to select any appropriate analytical test method for use in complying with EPA's regulations (62 FR 52098, October 6, 1997) (FRL–5903–2). Implementation of this program for a given rule requires that EPA propose changes and seek public comment on them. EPA intends to propose such changes to the TSCA PCB regulations in the future. The Agency defines PBMS as a set of processes wherein the data quality needs, mandates, or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. Where PBMS is implemented, the regulated community would be able to select any appropriate analytical test method for use in complying with EPA's regulations. It is EPA's intent that implementation of PBMS have the overall effect of improving data quality and encouraging advancement of analytical technologies. The Agency anticipates proposing amendments to certain of its regulations, as needed, to incorporate PBMS into its regulatory programs. EPA intends to implement PBMS on a program-specific basis. Each of EPA's programs is presently developing a plan for implementation. EPA intends to provide ample opportunity for the public to comment on specific aspects of PBMS implementation.

Finally, EPA is deferring final regulatory action on proposed § 761.30(q) for future rulemaking. In the NPRM, EPA solicited comments on authorizing the use of PCBs in existing applications that had not been authorized by previous PCB rulemakings (59 FR 62809, December 6, 1994). Although EPA received many comments supporting the proposed authorizations, many commenters wanted EPA to drop many, if not all, of the proposed conditions for the authorizations. EPA needed additional time to review the recently submitted risk assessment studies and also to obtain additional data for certain uses in order to reduce the uncertainties associated with the available studies. EPA therefore intends to publish a Supplemental Notice to solicit additional data on the items that EPA proposed authorizing in the NPRM. EPA is interested in any data that could be used by the Agency in its review of the risks of exposure from PCBs that might be associated with the existing applications of the PCB-containing items that were identified in the NPRM. EPA is particularly interested in data relating to the following items, when such items have been identified as containing PCBs: certain paints, caulking, and coal-tar enamel coatings used on steel water pipe and underground tanks. Due to the potential

lag time that may be necessary to either develop or assemble these data, a listing of the data elements that are required for this analysis is provided below.

1. *Wipe sample data for each of the products (or classes of products, i.e., paint) for which uses would be authorized.* These data should be collected from products that are known to contain PCBs (i.e., based on bulk sample results or from historic knowledge). Also, the detection limits for these materials should be sufficiently low to ensure that risks can be calculated down to the 10^{-6} range. Estimates of the detection limits that would be required to estimate a 10^{-6} risk level for the products for which exposure scenarios have been developed by EPA can be found in Table 1 of the document "Support Document for the PCB Disposal Amendments, Final Rule" (Ref. 5). This document has been placed in the docket and is available at EPA's web site under "Laws and Regulations" at the Federal Register-Environmental Documents entry (http://www.epa.gov/fedrgstr/).

2. *Transfer data.* Information on the transfer of PCBs to human skin from the non-liquid PCBs listed in Table 1 of the support document. EPA recognizes that these data may not be available. If such data are not available, EPA requests suggestions regarding how to factor in a value representing the likely transfer of PCBs to human skin.

3. *Air monitoring data for each of the products (or classes of products, i.e., paint) for which uses would be authorized.* These data should be collected from products that are known to contain PCBs (i.e., based on bulk sample results or from historic knowledge). Also, the detection limits for these materials should be sufficiently low to ensure that risks can be calculated down to the 10^{-6} range. See Table 1 of the support document for estimates of the detection limits that would be required to estimate a 10^{-6} risk level for the products for which exposure scenarios have been developed by EPA.

EPA is particularly interested in data that are representative of the highest concentrations of PCBs in the product (or class of products, i.e., paint). For example, commenters provided information that paint formulations with 10 to 12% PCBs were recommended in the commercial formulation manuals. Therefore, wipe sample and air monitoring data for products such as paints should come from those coatings with bulk sample levels of 10 to 12% PCBs. If only data from coatings with bulk sample levels of less than 10 to 12% PCBs are available, EPA would still be interested in receiving that data. In addition to the collected data, EPA would like a copy of the sampling plan that was used in collecting the data and a description of the quality assurance/quality control procedures that were applied to the data set.

The Supplemental Notice which EPA plans to publish later this year, will provide specific information regarding the data request and the date and location for data submissions.

IV. Notice of Final Rulemaking

A. General Requirements

1. *Applicability of regulations* The regulatory requirements that apply to materials containing PCBs depend in part on the PCB concentration. To identify what regulatory requirements apply to a material that contains PCBs, a person has two options: either to determine the PCB concentration and apply the regulations specified for that concentration and type of material, or to assume the concentration to be 500 parts per million (ppm) or greater. Under the second option, it is not necessary to determine the PCB concentration of the material, but the most restrictive regulatory requirements apply (see § 761.50(a)(5) in the regulatory text).

Where liquid samples cannot be collected, such as on contaminated surfaces, surface sampling and concentration levels have been developed (see part 761, subpart G, The PCB Spill Cleanup Policy), and are included at § 761.1(b)(3). The surface concentrations, which were based on dermal exposure, are equated to the existing PCB regulations which included economic considerations. For example, the regulations established for PCBs at concentrations of 50 to less than 500 ppm apply to contaminated surfaces at concentrations of greater than 10 to less than 100 micrograms per 100 square centimeters (>10-<100 $\mu g/100\ cm^2$). In addition, specific sections of today's rule codify the relationship between surface contamination and the existing regulations based on milligrams of PCBs per liter of liquid on a dry weight basis.

a. *Determination of PCB concentrations—wet weight/dry weight.* The Agency sought to ensure a consistent and reproducible basis for determining PCB concentrations by specifying at § 761.1(b)(4) how the PCB levels were to be determined in liquids, non-liquids, or mixtures of both. If the PCBs are "non-liquid PCBs" as defined in § 761.3, then a person must determine PCB concentrations using dry weight (i.e., excluding the weight of water). If the PCBs are "liquid PCBs" as defined in § 761.3, then a person must determine PCB concentrations using wet weight. If the PCBs are multi-phasic (i.e., both non-liquid and liquid PCBs), then a person must separate the phases and perform the appropriate analysis on each phase. PCB determinations must be made on a weight-per-weight basis (e.g., milligrams per kilogram), or, for liquids, on a weight-per-volume basis (e.g., milligrams per liter) if the density of the liquid is also reported (see § 761.1(b)(2) in the regulatory text).

The Agency proposed the definition of "non-liquid PCBs" to mean PCBs which contain no liquids which pass through the filter when using the paint filter test method (EPA Method 9095 in "Test Methods for Evaluating Solid Waste" (SW-846)) (Ref. 6). Commenters indicated that if materials contain no visible liquids or contained no liquid phases, they should not be required to perform the paint filter test. The Agency has modified the definition to include visual inspection of the materials to determine that they do not flow at room temperature (25 °C or 77 °F). For all other materials, such as sludges or sediments potentially containing free liquids, EPA has retained a paint filter test to determine the presence of free liquids.

The Agency proposed the definition of "dry weight basis" to mean reporting chemical analysis results by excluding the weight of the water in the sample. Commenters indicated that certain methods of removing water could skew the analytical results. Since, in this instance, the Agency wants to exclude the water weight, it amended the definition of "dry weight" in the final rule to specify removing the weight of the water. EPA also included examples for removing water from a sample, such as air drying at ambient temperature, filtration, decantation, or heating at a low temperature followed by cooling in the presence of a desiccant. The Agency is not specifying which method to use, only that the chosen method must be applicable to measuring PCBs in the sample matrix at the concentration of concern and must be reproducible.

The Agency proposed the definition of "wet weight basis" to mean reporting chemical analysis results by including the weight of all dissolved water in a homogenous liquid. A commenter believes that wet weight should be the weight of the PCBs compared to the weight or the volume of all liquids, excluding the weight or volume of non-liquid materials that can be separated. Under the TSCA section 6(e) PCB regulations, EPA has always used weight/weight for determining PCB

concentrations. However, the Agency has amended the definition of "wet weight" in the final rule to allow sample analytical results to be reported on a weight per volume basis rather than a weight/weight basis, if the density of the liquid is also reported.

For multi-phasic wastes, the disposal requirements are generally based on the highest PCB concentration in any phase. For example, a sample of sludge containing both non-liquid and liquid phases would first need to be separated into its various phases. Then each phase must be analyzed for PCB concentration. Assume that this separation and analysis results in a non-liquid phase containing 600 ppm PCBs, an aqueous liquid phase containing 100 µg/L, and a non-aqueous phase containing 60 ppm. At the time of disposal, the sludge may either be separated into phases or disposed of without separation. If it is disposed of without separation, it must be disposed of in accordance with the requirements applicable to the phase with the highest concentration, i.e., as non-liquid waste ≥500 ppm PCBs. If the waste is separated into phases, each phase may be disposed of according to the disposal requirements applicable to that phase.

In general, the anti-dilution rule requires that even if the phases were to be disposed of separately, all phases would have to be disposed of based on the highest concentration in any phase in the sample, since the phase contaminated at a lower level was in contact with a more contaminated phase. However, in the PCB remediation waste (§ 761.61) and decontamination (§ 761.79) provisions, EPA is allowing each separated phase to be disposed of or decontaminated, respectively, based on its own PCB concentration.

Some commenters anticipated that by requiring determining PCB levels in various media or phases to be analyzed separately, EPA was also requiring that the phases be separated for disposal. Commenters consistently indicated that these additional analytical and disposal requirements would be extremely burdensome, costly, and unnecessary. EPA did not intend to require that multi-phasic waste be separated for disposal. Multi-phasic waste samples must be separated for analysis because the PCBs may have concentrated in one of the phases. Proper separation allows the multi-phasic sample to be analyzed using consistent and reproducible methods. The waste as a whole must be disposed of based on the highest concentration in any phase, but need not be separated into phases at the time of disposal.

b. *Application of the anti-dilution provision.* The "anti-dilution" provision at 40 CFR 761.1(b)(5) prohibits a person from avoiding specific PCB disposal requirements because a PCB concentration was reduced or shifted from one material or environmental medium to another by adding a diluent, or separating or concentrating the PCBs.

The Agency did not propose to modify this important provision, but did receive comments on it. The Agency did not find them compelling, and therefore, the anti-dilution provision remains in effect unchanged. Any specific variances from the anti-dilution provision, such as for certain PCB remediation waste, have been included in the appropriate provisions of subpart D of part 761. EPA continues to be concerned about intentional or fortuitous PCB dilution and remains committed to stringent regulation of PCB waste disposal. In finalizing several variances from the anti-dilution provision, EPA is simply recognizing that where PCBs have already been released, the critical disposal issue is to mitigate the damage from the release.

c. *PCB concentration assumptions for use.* EPA proposed to add § 761.1(g) to exempt oil-filled equipment manufactured after July 2, 1979, from the scope of the rule, provided that the equipment: (1) Had a permanent label or mark affixed by the manufacturer indicating that it contained no PCBs; or (2) had not been serviced with PCBs and was accompanied by documentation from the manufacturer certifying that the equipment contained no PCBs when manufactured.

EPA also proposed to amend the existing definition of "PCB Transformer" at § 761.3 to codify its policy (44 FR 31517, May 31, 1979) that certain transformers for which the PCB concentration has not been established must be assumed to contain greater than 500 ppm PCBs. EPA also requested information regarding numbers of small transformers or other pieces of electrical equipment that contain PCBs (59 FR 62820, December 6, 1994). Some examples are: potential transformers, current transformers, instrument transformers, grounding transformers, voltage transformers, and ignition transformers. These small transformers range in size from several inches to several feet in height. They can be filled with oil, epoxy, or tar-like potting compounds that contain PCBs, or they can be "dry." These small transformers generally do not have nameplates and are not easily sampled. Unless the PCB concentrations were established, these transformers would have to be assumed to be PCB Transformers under the proposed revision to the definition of that term.

Many commenters stated that the proposed amendment to the definition of "PCB Transformer" would be burdensome and costly with no apparent environmental benefit. They indicated that changing the definition would capture many more transformers, i.e., those which had not been tested or those with no information regarding the type of dielectric fluid on their nameplate. Many of these newly captured transformers probably were manufactured after July 1979, and their nameplates might not indicate the type of dielectric fluid they contain. Commenters suggested that instead of amending the definition, EPA should require that these units be tested prior to disposal.

Commenters were also concerned that under the proposed PCB Transformer definition, EPA would drop the generic exclusions from the assumption requirement for transformers manufactured after 1979, since transformer nameplates and other records on post-1979 transformers may only indicate the type of dielectric fluid in the unit, and not the absence of PCBs.

Commenters stated that defining "PCB Transformer" to include small transformers was costly and burdensome because, like small capacitors, they are hard to find, cannot be easily tested without destroying their integrity, and generally do not contain information regarding dielectric fluid.

Rather than finalizing proposed § 761.1(g) and amending the PCB-Transformer definition as proposed, EPA has created new § 761.2, PCB Concentration Assumptions for Use, to set forth the PCB concentration assumptions for the use of transformers and other oil-filled electrical equipment. Section 761.2 codifies EPA's policy (the assumption policy) that the owner of mineral oil-filled electrical equipment, including transformers, that was manufactured prior to July 2, 1979, and whose PCB concentration has not been established, must assume that it is PCB-Contaminated, i.e., contains 50 ppm or greater PCB, but less than 500 ppm PCB. If the date of manufacture is unknown but the dielectric fluid is known to be mineral-oil, then the owner must assume the unit to be PCB-Contaminated.

Commenters questioned the safety of sampling pole-top transformers, and noted that the design specifications for these units, as well as for pad-mounted transformers, called for mineral-oil fluid. In addition, commenters pointed out and provided data to support the fact that pad-mounted distribution

transformers rarely (typically less than 1% of the units sampled) contained PCBs greater than or equal to 500 ppm. These comments are consistent with EPA's experience that higher concentration, non-mineral-oil PCB Transformers are generally located in secure indoor locations and in indoor electrical substations and are not mounted on utility poles or outdoor pads (47 FR 37342, August 25, 1982). Therefore, pole-top and pad-mounted distribution transformers manufactured before July 2, 1979, are assumed to be PCB-Contaminated while in use unless the concentration has been established.

Section 761.2 also allows the owner or operator of oil-filled electrical equipment, including transformers, that was manufactured after July 2, 1979, and whose PCB concentration is not established, to assume that it is non-PCB, i.e., containing less than 50 ppm PCB.

In addition, § 761.2 provides that the owner or operator of a transformer manufactured prior to July 2, 1979, and filled with a fluid other than mineral oil, whose PCB concentration has not been established, must assume that it is a PCB Transformer, i.e., containing 500 or greater ppm PCB, if it contains 1.36 kg (3 lbs) or more of fluid. The assumption requirement does not apply to "dry" transformers, i.e., those containing no fluid. If the date of manufacture is unknown and the type of dielectric fluid in the unit is unknown, the unit must be assumed to be PCB (i.e., ≥500 ppm).

Finally, § 761.2 provides that transformers containing less than 1.36 kg of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers whose PCB concentration has not been established may be assumed to contain <50 ppm PCBs. EPA believes this policy as applied to transformers containing less than 1.36 kg of fluid poses no unreasonable risk of injury to health or the environment. Because of the widespread and diverse nature of the use of these transformers, and the small amount of PCBs contained within each one, all regulatory approaches targeted at controlling releases from them are very expensive compared to the potential quantity of PCBs kept from the environment. Thus, EPA has not identified a reasonable cost-effective regulatory alternative that would significantly reduce the risks from the remaining PCB small transformers in service. Since these transformers contain small quantities of dielectric fluid and many of them are encapsulated, PCBs are rarely released from these transformers during their use or from the equipment using the transformers. Therefore, risks of exposure to humans, food, feed, water, or the environment from their use is low. In conclusion, EPA finds that allowing the continued use of small transformers containing PCBs is not unreasonable because the risk of exposure is low and there appears to be no practical, cost-effective risk reduction measures. They may, therefore, if the concentration is unknown, be assumed to be non-PCB while in use.

The assumption policies in § 761.2 do not apply when electrical equipment is being disposed of. At that time, the owner or operator of PCB equipment must know its actual PCB concentration and use the proper disposal method.

These modifications to the final rule should significantly reduce the burden commenters identified in the proposal. Since the Agency has revised the PCB Transformer definition to include only transformers containing 1.36 kg or more of fluid, and has specified other PCB concentration assumptions for use in § 761.2, many tranformers that would have been included under the proposed PCB Transformer definition are not now included. For example, § 761.2 eliminates the need to test, while in use, any mineral oil-filled transformer manufactured after July 2, 1979, that had no information on a permanent label or mark and had not been serviced or tested previously. EPA also believes that testing costs have decreased since 1979, so commenter's assertions that the proposed changes will increase their costs are unlikely. In addition, companies have stated that they frequently determine their equipments' PCB concentration during routine servicing. Since the PCB regulations have been in place since 1978, EPA assumes that the owners and operators of most transformers have had them serviced at some point and already know their concentration. Therefore, EPA believes that most units' PCB concentration is known, and the assumption that they are PCB-Contaminated need not apply.

Those persons wishing to establish the PCB concentration of a transformer, rather than making an assumption in accordance with today's rule, may do so. PCB concentration may be established: (1) By testing the equipment; or (2) from a permanent label (i.e., a nameplate), mark or other documentation from the manufacturer of the equipment indicating its PCB concentration at the time of manufacture; and service records or other documentation indicating the PCB concentration of all fluids used in servicing the equipment since it was first manufactured.

To assist owners or operators in identifying PCB Transformers by their dielectric trade name or common name, EPA is restating a list of names used by manufacturers for PCBs, previously published in a **Federal Register** Notice (41 FR 14136, April 1, 1976, Appendix A): Aroclor, Asbestol, Askarel, Chlorextol, Clophen, Diaclor, DK, Dykanol, Elemex, Fenclor, Hyvol, Inerteen, Kennechlor, No-Flamol, Phenoclor, Pyralene, Pyranol, Saf-T-Kuhl, and Santotherm. Additional common trade names for PCBs were listed in EPA's 1994 PCB Q&A Manual: Arochlor B, ALC, Apirolio, ASK, Adkarel, Capacitor 21, Chlorinol, Chlorphen, Chlorinol, EEC-18, Eucarel, Inclor, Kenneclor, Magvar, MCS 1489, Nepolin, Nonflammable Liquid, Pydraul, Pyroclor, and Santovac 1 and 2. The above list is not all-inclusive.

To clarify what capacitors must be assumed to contain PCBs, EPA proposed to amend the definition of "capacitor" in § 761.3 by inserting existing language on PCB concentration assumptions from the disposal provisions. This was intended to make evident to readers that the assumption provision on capacitors applies to all provisions, such as marking, use, and recordkeeping requirements, and not just disposal.

Several commenters protested that EPA should not "change" its "current" assumption that capacitors of unknown concentration are assumed to be PCB-Contaminated (contains 50 ppm or greater PCB, but less than 500 ppm PCB). EPA wishes to clarify that the Agency has always maintained that capacitors of unknown concentration must be assumed to be PCB (500 ppm or greater). The current assumption provisions for capacitors found at § 761.60(b)(2)(i) date back to the proposed PCB disposal and marking requirements rule of May 24, 1977 (42 FR 26564). As EPA noted on August 25, 1982, in the preamble to the final rule on use in electrical equipment (47 FR 37342 at 37347), "virtually *all* capacitors (large and small) manufactured prior to 1978 were filled with PCB fluid at a concentration *near 100 percent*. Capacitors manufactured after 1978 did not use PCB dielectric fluid." Data was provided to EPA in support of the 1982 electrical use rule by the Edison Electric Institute (EEI) and the Utilities Solid Waste Activities Group (USWAG). This data indicated that of approximately 2.8 million large capacitors in the utilities industry, *100%* contained PCBs at concentrations of 500 ppm or greater (47 FR 17426; at 17428).

In today's final rule, language on assumption of capacitor concentration is found at the new § 761.2(a)(4), and the existing definition of "capacitor" at § 761.3 is being left unchanged. The language in § 761.2 has been modified from the proposed language to make clear that capacitors manufactured after July 2, 1979, do not need to be assumed to be PCB Capacitors, rather they are assumed to be non-PCB because they were manufactured after the ban on manufacture and processing of PCBs became effective. This includes most capacitors that have been labeled by the manufacturer with the statement "No PCBs" in accordance with existing § 761.40(g). In addition, a definition of "PCB Capacitor" has been added to § 761.3 to make clear that references to PCB Capacitors in part 761 refer only to capacitors containing 500 ppm PCBs or greater. Capacitors containing 50 ppm or greater PCB, but less than 500 ppm PCB are PCB-Contaminated.

Where the concentration of equipment has not been established and is therefore assumed based on the concentration assumptions in § 761.2, that concentration also determines the marking, recordkeeping, monitoring, and other requirements applicable to the equipment while it is in use. For example, a transformer that is assumed to be a PCB Transformer under § 761.2(a)(3) is subject to the use conditions for PCB Transformers set out at § 761.30(a).

d. *Applicability based on PCB concentration.* Almost every section of the PCB regulations is based on numerical standards, usually expressed as the weight of PCBs per weight of liquid or non-liquid matrix, or as the weight of PCBs wiped off a given surface area. These regulatory levels can differ depending on whether the rules are addressing the manufacture, use, or disposal of PCBs. Commenters requested clarification regarding the determination of weights of PCBs in the regulations. In particular, the 45 kg threshold for recordkeeping at § 761.180(a) and marking at § 761.40(b) were cited. EPA is finalizing language in today's final rule at § 761.1(b)(6) to eliminate any confusion on the application of weights or volumes cited in the rule. Unless otherwise noted in the regulations, references to weights or volumes in part 761 apply to the total weight or volume of the PCB containing material (oil, soil, etc.), not the calculated weight or volume of only the PCB molecules within that substance.

PCB wastes generally are regulated for disposal under TSCA at concentrations of 50 ppm or greater. Certain exceptions exist, such as the use of waste oil containing greater than 2 ppm and less than 50 ppm PCBs for energy recovery. Wastes containing PCBs at 500 ppm PCBs or greater may have other disposal requirements, such as destruction through combustion or other approved technologies. Where a disposal requirement is specified in the PCB rules, it cannot be avoided through dilution (see § 761.1(b)(5) of the regulatory text). Other Federal, State, or local laws or regulations may impose additional, perhaps more stringent, requirements on PCB disposal.

Once something is a PCB waste, contains PCBs, or is contaminated with PCBs at regulated levels, cleanup or decontamination may be desired or required. Today's regulations establish levels and procedures for cleanup and decontamination. Anything decontaminated under these paragraphs can be processed or distributed in commerce (see § 761.20(c)(5) of the regulatory text), reused (see § 761.30(u) of the regulatory text) or disposed of in accordance with part 761, subpart D as applicable.

The self-implementing cleanup level (i.e., the "walk-away" level) for soil in high occupancy (e.g., residential) areas is ≤1 ppm, or ≤10 ppm if the soil is capped (see § 761.61(a)(4)(i)(A) of the regulatory text). The cleanup level in low occupancy (e.g., electrical substation) areas is ≤25 ppm to ≤100 ppm, depending on site conditions (see § 761.61(a)(4)(i)(B)(*1*) of the regulatory text). The codified text uses parts per million (ppm) for concentration measurement of non-liquids as an equivalent to milligrams per kilogram (mg/kg).

Decontamination standards for surfaces are as follows: for non-porous surfaces in contact with liquid PCBs destined for reuse, ≤10 micrograms PCBs per 100 square centimeters (μg PCBs/100 cm^2) (see § 761.79(b)(3)(i) of the regulatory text); for non-porous surfaces in contact with liquid PCBs destined for smelting, ≤100 μg PCBs/100 cm^2 (see § 761.79(b)(3)(ii) of the regulatory text); for non-porous surfaces in contact with non-liquid PCBs destined for reuse, Visual standard No. 2, Near-White Blast Cleaned Surface Finish, of the National Association of Corrosion Engineers (NACE) (see § 761.79(b)(3)(i) of the regulatory text); for non-porous surfaces in contact with non-liquid PCBs destined for smelting, Visual standard No. 3, Commercial Blast Cleaned Surface Finish, of NACE (see § 761.79(b)(3)(ii); and for fresh spills to concrete, ≤10 μg PCBs/100 cm^2 (see § 761.79(b)(4) of the regulatory text).

Decontamination standards for liquids are as follows: for water, ≤0.5 μg PCBs/L (approximately 0.5 ppb) for unrestricted use (see § 761.79(b)(1)); and for organic and non-aqueous inorganic liquids, ≤2 mg PCBs/L (approximately 2 ppm) (see § 761.79(b)(2) of the regulatory text). The codified text uses ppm or milligrams per liter (mg/L) for concentration measurements of non-aqueous liquids and parts per billion (ppb) or micrograms per liter (μg/L) for concentrations of aqueous liquids.

The part 761 regulations do not address or preempt the regulation of non-PCB components of a waste. If the PCB component of a waste is approved for disposal at a facility, the approval for the disposal of the other regulated waste components must be addressed by all other applicable statutes or regulatory authorities. As an example, while non-liquid PCB/radioactive waste less than 50 ppm PCBs that is not the result of dilution is not regulated for disposal under TSCA, this waste would need to be disposed of in accordance with all applicable requirements for the management and disposal of the radioactive component of the waste. Disposers should be advised that site-specific permit or license conditions or local requirements may preclude such disposal. Similarly, under § 761.79(g)(2), hydrocarbon decontamination liquids having PCB concentrations less than 50 ppm may be burned and marketed in accordance with the requirements for used oil in § 761.20(e). Where such liquids had a radioactive component, burning and marketing would have to be carried out in accordance with all applicable Federal, State and local requirements for the management and disposal of the radioactive component of the waste.

In general, PCBs are banned for use unless specifically authorized. Authorizations may specify conditions for use such as marking, labeling, or recordkeeping, and can establish the level of regulatory control depending on such considerations as the type or location of use or potential for exposure (see § 761.30 of the regulatory text).

When a product is manufactured, the potential exists for it to be contaminated with PCBs as a by-product during manufacture, through contaminated feedstock, or through the addition of PCBs from another source. As a result, the product assumes the same regulatory status as the source (see § 761.1(b)(5)). In general, minimum regulatory levels for PCBs under section 6(e) of TSCA, including PCBs in manufactured items or products, are the same as the minimum regulatory levels listed above. When something is imported into the Customs Territory of the United States for use, TSCA defines

that importation as manufacture (see TSCA section 3). All imports of PCBs are banned absent a TSCA section 6(e)(3)(B) exemption, unless the import satisfies the requirement at § 761.20(b). See Unit IV.J. of this preamble. The use of PCBs or "disposal" of PCB wastes in a manufacturing process for a new product is not authorized.

2. *Definitions—additions and modifications.* This discussion is limited to a few of the definitions included in § 761.3. EPA also has added definitions for acronyms frequently used in part 761 (e.g., ASTM, CERCLA, DOT, RCRA, TSCA and U.S. GOP). The remaining definitions being incorporated at § 761.3 in this rulemaking are discussed in other sections of this preamble.

a. *PCB-Contaminated Electrical Equipment.* EPA proposed to clarify the current definition of "PCB-Contaminated Electrical Equipment" (specifically as it relates to PCB-Contaminated Transformers at § 761.3), by incorporating the "assumption rule" which was included in the PCB Ban rule preamble (44 FR 31517, May 31, 1979). This change would have been effected by adding the following language to the definition: "a transformer is assumed to contain PCBs at 500 ppm or greater, if it is an untested mineral oil transformer and reasons exist to believe that the transformer was at any time serviced with fluid containing PCBs at 500 ppm or greater."

In today's final rule, EPA codified the assumptions for PCB-Contaminated Electrical Equipment in new § 761.2 rather than in the definition of that term at § 761.3. Section 761.2 provides that mineral oil-filled electrical equipment (other than circuit breakers, reclosers, oil-filled cable, and rectifiers) that was manufactured before July 2, 1979, and whose PCB concentration is not established, must be assumed to be PCB-Contaminated Electrical Equipment, i.e., containing 50 ppm or greater PCB, but less than 500 ppm PCB. PCB concentration may be established either by testing the equipment; or by a permanent mark or other documentation from the equipment's manufacturer indicating its PCB concentration at the time of manufacture, and service records or other documentation indicating the PCB concentration of all fluids used in servicing the equipment since it was manufactured.

The final rule also clarified that the definition includes equipment with a surface concentration of greater than 10 µg PCBs/100 cm^2 to less than 100 µg/100 cm^2. Many commenters expressed confusion over EPA's intent in adding surface sampling to the definition of PCB-Contaminated Electrical Equipment. EPA's intent is to provide a way to handle equipment in the absence of liquids or when non-liquids were present. Surface sampling is not required in addition to sampling that is conducted when liquids are present.

b. *Non-porous surface.* EPA proposed to define "non-porous surface" as "a smooth, unpainted solid surface that limits penetration of liquid PCBs beyond the immediate surface."

Several commenters asked that concrete be included in the definition of "non-porous surface." Data were provided in a comment to demonstrate that concrete was less porous than granite and marble. However, the data clearly indicate that the porosity of concrete can vary widely depending on its constituents and preparation. The PCB remediation waste provision addresses existing concrete, where it is doubtful that porosity testing or formulation details could be provided to make a verifiable comparison to the natural stone materials.

Some concerns raised by commenters who sought relief for cleanup of concrete are addressed in new § 761.30(p), which allows continued use of contaminated concrete under specified conditions. The authorization, however, requires disposal of the concrete at the end of its useful life, based on the bulk concentration of PCBs in the concrete, and not on surface concentration.

EPA clarifies the distinction between porosity with respect to risk for two different generic scenarios: (1) Materials used as a conduit to divert, or as a barrier to prevent precipitation or its runoff, from further transporting previously released PCBs; and (2) materials which have been subjected over time to a continuous or single release of PCBs which have not been contained or removed, but have been allowed to migrate.

In the first scenario, a concrete cap can prevent migration of water deposited on the surface. Such a cap diverts the water from passing through the concrete, preventing PCB movement in PCB remediation waste beneath the cap. In this sense the concrete is non-porous to the water. Concrete also can be "non-porous" when used for containment as a floor for a storage facility, because any release to the upper surface of the floor would not be allowed to persist and migrate but would be quickly cleaned up and/or recontained.

For the second scenario, concrete is porous to continued slow releases of dielectric or hydraulic fluid. Historically, this kind of release would not always have been controlled or cleaned up. Some of these releases have penetrated over 30 centimeters of concrete and have continued to migrate in soil under the concrete pad or floor for several meters. Floors and pads for most of these situations were not built to contain spills or prevent migration of fluids, but were constructed for structural support, where porosity was not a performance specification or requirement. When fluids have penetrated concrete for a long period, surface cleaning is inappropriate to remove PCBs that have migrated under the surface, and will most likely be unsuccessful. However, surface sampling may help estimate the extent of surface migration of an old or continuous release of PCB fluids onto concrete.

c. *PCB Capacitor.* EPA added this definition to clarify that the term PCB Capacitor in part 761 refers to capacitors containing 500 ppm PCBs and greater (as opposed to 50 or greater ppm). Any capacitors containing 50 ppm or greater PCB, but less than 500 ppm PCB are PCB-Contaminated. EPA is retaining the existing definition of capacitor.

d. *SW-846.* EPA provided an abbreviated name for the series of chemical procedures entitled "SW-846, Test Methods for Evaluating Solid Waste," often referenced in the regulation.

3. *References.* In the NPRM, EPA described the availability of test standards developed by the American Society for Testing and Materials (ASTM) which have been incorporated by reference in 40 CFR part 761. Copies of the incorporated ASTM standards are available for inspection at the Office of the Federal Register and the TSCA Nonconfidential Information Center, or copies may be obtained directly from the ASTM in Philadelphia, PA.

Commenters wanted EPA to include the full text of these incorporated test methods in the regulations. The justifications for this recommendation included simplicity (i.e., access to requirements from a single source), costs of acquiring ASTM standards, and burdensome paperwork and delays associated with requesting the documents. EPA estimates that roughly 40 pages of text would be added to the Code of Federal Regulations (CFR) if the referenced standards were included in the PCB regulations text, at an annual estimated cost to EPA of $2,500, compared to the individual investment by affected entities of less than $300 for the 16 applicable standards. There are, however, more compelling reasons for not including the text of these standards in the regulations: (1) The

Administration's streamlining initiatives to reduce the number of pages of regulatory text in the CFR, (2) copyright restrictions, and (3) the availability of these documents through other sources. For these reasons, EPA has promulgated § 761.19 as proposed.

B. Manufacturing, Processing, Distribution in Commerce, and Use

1. *Prohibitions and exceptions—a. Processing for disposal.* Existing § 761.20(c)(2) states that PCBs "may be processed . . . in compliance with the requirements of this part for purposes of disposal in accordance with the requirements of § 761.60." Today's final rule clarifies which processing for disposal requires an approval and which does not. Processing for disposal must not result in dilution to avoid disposal requirements.

The provisions at § 761.20(c)(2) in today's rule essentially addresses the following situations:

Processing for disposal activities which are primarily associated with and facilitate storage or transportation for disposal are disposal, but do not require a TSCA PCB disposal approval. Examples include, but are not limited to: removing PCBs from service (e.g., draining liquids); pumping liquids out of temporary storage containers or articles into drums or tank trucks for transportation to a storage facility or disposal facility; dismantling or disassembling serviceable equipment pieces and components; packaging or repackaging PCBs for transportation for disposal; or combining materials from smaller containers.

Processing for disposal activities which are primarily associated with and facilitate treatment, as defined in 40 CFR 261.10, or land disposal, require an approval unless they are part of an existing approval or a self-implementing activity (such as activities allowed under § 761.61(a) and § 761.79), or are otherwise specifically allowed under part 761, subpart D. Examples include, but are not limited to, microencapsulation; pulverization; particle size separation; employing augers or hoppers to facilitate feeding non-liquid PCBs into a disposal unit; directly piping liquid PCBs into a disposal unit from PCB Items, storage containers or bulk transport vehicles; and directly introducing non-liquid PCBs from containers, bulk transport vehicles or on pallets into a disposal unit, such as an incinerator, a high efficiency boiler, industrial furnace, alternate destruction method, or chemical waste landfill.

Processing, diluting, or otherwise blending waste (prior to introducing it into a disposal unit) for purposes of meeting a PCB concentration limit in a disposal approval shall be done in accordance with the approval, or shall comply with § 761.79 or § 761.60(a)(2) or (3).

The rate of delivering liquids or non-liquids into a PCB disposal unit shall be part of the conditions of the PCB disposal approval for the unit when an approval is required.

Commenters sought to include various forms of processing for disposal outside of a disposal approval because they felt that these activities are common industrial waste management practices. EPA finds that there are two kinds of processing for disposal activities which potentially could change the disposal status of waste through processing: (1) Dilution by blending down the PCB concentration of the waste (any kind of processing which mixes waste with other waste or non-waste lowers the concentration of the highest PCB concentration waste component(s)); and (2) complete or partial separation, such as particle size separation, of waste components. These kinds of processing must be included in an approval to assure that all regulated materials are disposed of in accordance with the disposal regulations.

b. Sewage sludge. Today's rule revises § 761.20(a)(4) to harmonize the TSCA regulations on use or disposal of sewage sludge containing PCBs with similar regulations promulgated under the Clean Water Act. For sewage sludge regulated under TSCA for use or disposal, blending of the sewage sludge to avoid TSCA disposal requirements is prohibited.

EPA also revised the definition of "PCB remediation waste" to respond to comments that by including in that definition municipal sewage treatment sludges at any concentration, EPA's proposal would supersede CWA sewage sludge regulations. EPA did not intend to do so. The definition of "PCB remediation waste" in the final rule excludes sewage sludge at less than 50 ppm in use under § 761.20(a)(4), and includes "PCB sewage sludge" as defined at 40 CFR 503.9(w) containing ≥50 ppm PCBs. However, some use and disposal activities not clearly covered by the CWA regulations are banned by TSCA even for sewage sludge containing less than 50 ppm PCBs, for example the intentional or accidental dilution of PCB wastes by mixing or blending with sewage sludge. All sewage sludge containing ≥50 ppm PCBs still falls under the definition of PCB remediation waste.

2. *Distribution in commerce after decontamination.* EPA is finalizing a conforming amendment to existing § 761.20(c)(5), which consolidates provisions proposed at § 761.20(c)(5), (c)(6), and (c)(7). The Agency is aware that during manufacture, use, and servicing of PCBs, PCB Items and other goods, PCB contamination can occur. The Agency believes that liquids and non-liquids may be used, distributed in commerce, or disposed of after contaminating PCBs have been removed or reduced in concentration as specified without posing an unreasonable risk of injury to health or the environment.

In § 761.20(c)(5) of the regulatory text, EPA is clarifying that equipment, structures, or liquid or non-liquid materials that were contaminated with PCBs ≥50 ppm may be distributed in commerce when certain conditions are met. These conditions include decontamination in accordance with: (1) A TSCA PCB disposal approval; (2) applicable decontamination standards and procedures under § 761.79; (3) applicable EPA PCB spill cleanup policies (e.g., TSCA, CERCLA, regional) at the time of decontamination; or (4) if the materials were not formerly decontaminated but now meet an applicable decontamination standard in § 761.79. Similar conditions for the use or reuse of decontaminated materials are addressed in § 761.30(u).

3. *Authorizations—a. Registration requirements for PCB Transformers.* To qualify for the current use authorization, all PCB Transformers were required to have been registered with local fire response personnel by December 1, 1985 (see existing § 761.30(a)(1)(vi), the fires rule). In addition, when the transformers are in use in or near commercial buildings, current regulations require them to be registered with the building owners (see existing § 761.30(a)(1)(vii)). Owners of transformers at industrial sites could fulfill the current requirement by registering with their on-site fire brigade, while owners of PCB Transformers in or near commercial buildings had to register with both the local fire department and the building owner. PCB Transformers erroneously assumed to have been contaminated at less than 500 ppm PCBs are required to be registered within 30 days of discovery of the actual contamination level (see existing § 761.30(a)(1)(xv)(D)). If the transformer owner could not demonstrate (e.g., by the production of the signed receipt from a registered or certified letter used to register the transformer with the fire response

personnel) that this registration had taken place, then that PCB Transformer was not authorized for use under § 761.30.

A review of the regulated community's compliance with these registration requirements by the Office of the Inspector General of EPA and EPA Regional personnel found that many fire departments, including those serving large cities, had not received registration information for a large percentage of those PCB Transformers which should have been registered. In addition, many owners could not demonstrate that they had registered their transformers as required in order to continue each unit's authorization for use (Ref. 7).

Pursuant to section 18(b) of TSCA, the State of Connecticut petitioned EPA for an exemption from the preemption provisions of section 18(a)(2) to allow the State to require, among other things, the registration of PCB Transformers (i.e., transformers with dielectric fluid at ≥500 ppm PCB) with the Connecticut Department of Environmental Protection (Ref. 8). Connecticut argued that this registration would provide a significantly higher degree of protection for State residents and emergency response personnel from the risks posed by PCB Transformers than the current Federal rules under TSCA because: (1) State emergency response personnel need the information because they often respond to fires and spills at sites throughout the State, and (2) the State, if it had the information, could more quickly issue warnings regarding fishing, swimming, or other activities that could increase human exposure to PCBs when fires or spills occur.

While EPA sees merit in these arguments, EPA believes that residents of every State would be better protected by a uniform, nationwide registration requirement, in which EPA would receive the data and make it available to Federal, State, and local emergency or fire response personnel and to building owners.

Therefore, in response to the State of Connecticut's Petition and the Inspector General's report documenting a lack of compliance with the existing regulation, EPA proposed to amend § 761.30(a)(1)(vii) to require all owners of PCB Transformers to register their transformers with EPA, no later than 90 days after the effective date of the final rule. EPA proposed this as a one-time registration requirement. However, under the proposed rule, owners of transformers that were subsequently identified as PCB Transformers or received from another location would have to register those transformers with EPA no later than 30 days after they identified or received the transformer. To minimize data gathering and processing, EPA proposed that transformer owners would only have to report the following information currently required under § 761.180(a) to be included on their annual document logs: (1) Transformer location (address) and number of PCB Transformers, (2) the total weight in kilograms of PCBs contained in the PCB Transformers, and (3) name, address, telephone number, and signature of the owner, operator, or other authorized representative certifying the accuracy of the information submitted. EPA proposed that if a PCB Transformer is transferred to a different location after it is registered, information concerning that transfer would be recorded in the former owner's annual document log. EPA has authority to collect registration information on transformers under section 8 of TSCA, 15 U.S.C. 2607.

Many commenters felt that instead of a new registration program, EPA should enforce its existing requirements. Although EPA agrees that effective enforcement of its regulations is important, EPA believes that the national registration program provides benefits that merely improving the enforcement of the existing fire rules cannot provide. For example, collecting the information nationally, in one data base, provides transformer location information to all emergency responders, whether they are from the local volunteer fire department, from the State (as Connecticut described in its petition), or from the Federal government.

In addition, the new registration program is designed to cure features of the existing rule that impede enforcement. For instance, the existing rule does not require transformer owners to maintain records documenting that they complied with the rule. An inspector who is not sure, based on the evidence available at an inspection, whether or not registration with the fire department occurred, must determine which fire department is the primary responder for that facility and impose on it to determine if registration, in fact, occurred. The new rule requires the transformer owner to maintain, with the annual log, proof that registration occurred. If that documentation is absent, not only is there a violation, but the inspector will easily be able to double check the national data base to determine if the registration in fact occurred.

Some commenters asked whether they could comply with the national transformer registration program by sending EPA a copy of the information that they previously sent to the primary fire response jurisdiction under the fires rule. EPA agrees that this is an appropriate method of complying with the national transformer registration program, as long as the submission contains all the information required under the new regulations, and that information has not changed since being submitted to the local fire department. Information required by the new regulations, but not by the prior fires rule, can be submitted to the Agency in a cover letter on company stationery. See below for a further discussion of the format of the required information.

Some commenters questioned how the Agency intended to manage the data it received pursuant to the national transformer registration program. The Agency intends to provide the information to state fire bureaus and other umbrella organizations for further dissemination to local fire departments. In addition, the Agency intends eventually to make the information available in an electronic data base, probably on EPA's World Wide Web Home Page. The Agency believes that the Internet has become a valuable and reliable tool in disseminating information, a situation that did not exist when the fires rule was originally promulgated in 1985.

One commenter suggested that if the purpose of the registration is the protection of emergency responders, such responders should be trained to assume that all transformers contain PCBs and act accordingly. EPA agrees that such training would be appropriate for all emergency responders, and has anecdotal evidence that some receive such training. However, EPA, in the absence of other evidence, cannot assume that all local and state emergency response personnel that may respond to a fire are so trained. Therefore, EPA believes that establishing a national data base of PCB Transformers will serve to protect all emergency responders, not just those trained to assume that all transformers contain PCBs, from the dangers of PCBs in fires.

Several commenters suggested that there is no showing of risk to justify the transformer registration program. EPA disagrees. EPA determined, in 1985, that a risk to fire response personnel existed such that the fires rule was necessary (50 FR 29170, 29174, July 17, 1985). The Agency has not received sufficient information to indicate that such a risk has abated. Therefore, the Agency believes that it is still necessary to have PCB Transformer location information available to local fire response

personnel. As discussed above, EPA believes that a national registration program will address this risk by making the information available on demand to the local fire response personnel, and will provide additional protection by making it available to others, such as state emergency response personnel, that may respond to fires. In addition, changes to the rule that will make it easier to enforce, such as requiring that proof of registration be kept with the annual log, should assist in abating the risk from fires involving PCBs by increasing the rate of compliance, therefore providing emergency response personnel with information about more PCB Transformers.

Several commenters also suggested that the creation of a new registration requirement would be duplicative of the requirements in place under section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001 to 11050, and at existing § 761.30(a)(1)(vi) and (a)(1)(vii). While EPA agrees that some duplication may exist, the amount of duplication is not sufficient to justify a decision not to finalize the transformer registration requirement. Moreover, the EPCRA reporting requirements have quantity or jurisdictional triggers that do not satisfy the information needed for the PCB Transformer registration program. For example, EPCRA section 304 requires that releases of certain chemicals be reported. EPA believes that it is important that emergency response personnel have information about the locations of PCB Transformers prior to releases, so that they can plan, in advance, how to respond to such releases. Sections 311 and 312 of EPCRA do require reporting, for planning purposes, to various emergency response personnel for hazardous chemicals that are present at the facility at 10,000 pounds or greater, and for extremely hazardous substances at less than 500 pounds. EPA intends this registration requirement to apply to anyone owning a PCB Transformer, as defined in the regulations, with no provision to exempt those people whose PCB Transformers do not contain, in total, 10,000 pounds or more of PCBs.

Since EPA proposed the transformer registration program in 1994, PCBs have taken on increasing importance in international negotiations regarding hazardous substances. For example, negotiations are ongoing to develop a legally binding Protocol on Persistent Organic Pollutants under the United Nations Economic Commission for Europe's Convention on Long Range Transboundary Air Pollution. In those negotiations, several European countries support a mandatory ban on PCB use to comply with a European Community Directive banning PCB use by 2010. However, having a national data base of the amounts of PCBs in transformers (the largest single source of liquid PCBs) will allow EPA to evaluate more accurately the impact of such proposals on the American economy.

EPA also requested comments on the State of Connecticut petition. In the proposal, EPA indicated that if it did not promulgate a uniform national registration requirement, then it would be inclined to promulgate an exemption under section 18(b) to allow any State to implement its own registration requirements for transformers. Commenters overwhelmingly opposed a State registration program, citing the requirement as redundant, burdensome, and a potential misuse of preemption. EPA agrees with the commenters and is not adopting the State registration requirement in this rulemaking.

Today, as a condition of the authorization for continued use, EPA is finalizing a national registration requirement for PCB Transformers at § 761.30(a)(1)(vi). This new registration requirement extends to PCB Transformers in use or in storage for reuse, even if a specific PCB Transformer was registered under the old requirements at § 761.30(a)(1)(vi). However, a person who takes possession of a PCB-Transformer after the deadline for the original registration has passed does not need to register that transformer with the EPA. Any person taking possession of a transferred PCB Transformer should assure that it was registered under the requirement of § 761.30(a)(1)(vi). PCB Transformers that are not registered are not authorized for use and must be disposed of.

In general, a person who assumes that a transformer is a PCB-Contaminated Transformer, and then discovers that it is a PCB Transformer, must register that transformer with the EPA within 30 days of discovering that it is a PCB Transformer. However, this requirement only applies if the transformer is located at an address where no other PCB Transformers are located. If other PCB Transformers are located at the same address, and those PCB Transformers are registered with EPA, the owner of the newly-identified PCB Transformer is not required to register that transformer with the EPA.

Under § 761.30(a)(1)(vi)(D), the registration requirement will be a part of the authorization for continued use for each PCB Transformer. To remove duplicate reporting, EPA is also deleting the existing requirements to register PCB Transformers with the fire department. Since this registration will be sent to EPA Headquarters, it enhances the current registration requirement by providing a central point for information collection and dissemination. However, based on comments requesting a longer period of time in which to register transformers, EPA is extending the date to have PCB Transformers registered from 90 days to 120 days from the effective date of today's rule.

The information required for this registration now includes the following: (1) Company name and address, (2) contact name and telephone number, (3) location of transformer(s) (address, or for a mobile source like a ship, the name of the ship), (4) number of PCB Transformers and the total weight of the transformers in kilograms, (5) whether any transformers at this location contain flammable dielectric fluid (optional), and (6) signature of the owner, operator, or other representative authorized to certify the accuracy of the information submitted. EPA Form No. 7720-12, provided at Unit V. of this preamble, has been submitted to OMB for review. Once OMB clears the form, it may be used for the uniform submission of registration information, but its use will be optional. In lieu of the form EPA will accept the registration information on company stationery. Where a company has multiple locations, EPA will accept one form or cover letter which provides information pertaining to the company (including a point of contact), followed by attachments that provide information (per § 761.30(a)(1)(vi)) specific to each location. Finally, anyone who no longer possesses any PCB Transformers and would like to be removed from the data base can notify EPA in writing. Notification to remove a company or location from the data base is strictly voluntary.

b. *Remove outdated material.* EPA proposed to remove provisions of 40 CFR part 761 that have become outdated due to the passage of time. All of the affected provisions were in subpart B (i.e., prohibitions and authorizations). EPA received very few comments on its proposal; no opposing comments were received regarding the proposed changes at § 761.30(b), (c), (d), and (e). EPA received a comment that § 761.30(g), which authorizes the use in other than a totally enclosed manner of 50 ppm or greater PCBs in diarylide and phthalocyanin pigments until January 1, 1982, is obsolete. This provision further restricted the processing and distribution in commerce of these pigments with PCB concentrations of 50 ppm or greater after July 1, 1979, and

their limited manufacture after July 2, 1979, to those individuals who are granted exemptions from EPA. EPA agrees with the commenter. The manufacture, processing, and distribution of products containing inadvertently generated PCBs at concentrations of less than 50 ppm are currently regulated by provisions found at §§ 761.1(f), 761.3, 761.185, 761.187, and 761.193. In today's final rule, EPA is deleting the authorization currently found at § 761.30(g) and is finalizing the proposed revisions to the authorizations at § 761.30(b), (c), (d), (e), and (h).

One commenter identified a drafting error in § 761.30(h) regarding the use conditions for electromagnets, switches, and voltage regulators which incorrectly directed individuals to inspection requirements at § 761.30(a)(1)(iii) and (a)(1)(iv). Since the use of electromagnets at concentrations of 500 ppm or greater was prohibited in areas which pose an exposure risk to food or feed after October 1, 1985, EPA is also deleting the visual inspection requirement currently found at § 761.30(h)(1)(ii). A revised (h)(1)(ii) has been included (see the discussion on voltage regulators) which changes the incorrect references to read "§ 761.30(a)(1)(ix), (a)(1)(xiii), and (a)(i)(xiv)" where such an inspection is now required.

EPA also proposed to remove the § 761.20(c)(3) provisions requiring submission of a notice to EPA prior to exporting PCBs or PCB Items for disposal. This proposal is not being finalized at this time. As explained in Unit IV.J. of this preamble, EPA is deferring its rulemaking on export until a later time.

c. *Voltage regulators.* Current § 761.30(a)(1)(xv) requires owners of mineral oil transformers that had been assumed to contain 50 ppm or greater PCB, but less than 500 ppm PCB, but are tested and found to contain 500 ppm or greater PCBs, to bring those units into compliance with part 761. EPA proposed the same requirements for voltage regulators (see proposed § 761.30(a)(1)(xvi)). Voltage regulators which were marked or otherwise known to contain PCBs at 500 ppm or greater would also be required to come into compliance with part 761. Under existing rules, mineral oil-filled electrical equipment (including voltage regulators) that was manufactured before July 2, 1979, and whose PCB concentration is not established is assumed to be PCB-Contaminated Electrical Equipment (i.e., contains ≥50 ppm PCB, but <500 ppm PCB).

Due to the risks associated with higher concentration PCBs, the final rule requires that voltage regulators that contain 3 pounds or more of dielectric fluid containing 500 ppm or greater PCBs must be properly marked while in service, their locations must be marked, fire-related incidents must be reported, regular inspections must be conducted, records must be kept pursuant to § 761.180, and they must be properly disposed of when they are taken out of service. These are essentially the requirements that currently apply to PCB Transformers. EPA believes the same requirements are appropriate for voltage regulators containing ≥500 ppm PCBs based on the similarity between the functions of and risks posed by the two types of equipment. Small voltage regulators (less than three pounds of PCB dielectric fluid) are subject to the disposal provisions of § 761.60, but not the use provisions mentioned above.

EPA solicited comments on the appropriateness of requiring enhanced electrical protection for voltage regulators as is the case for mineral oil transformers known or found to contain greater than or equal to 500 ppm PCBs. Commenters indicated that enhanced electrical protection cannot be installed on voltage regulators. Therefore, EPA will not require this.

In addition, EPA solicited comments on whether voltage regulators should be added to existing § 761.30(a)(1)(xv) with transformers, or placed in a separate paragraph. In response to comments, EPA added the amendments to § 761.30(h)(1), which currently addresses voltage regulators.

EPA received suggestions that it should apply the voltage regulator requirements to all mineral oil (assumed to be < 500 ppm PCBs) electrical equipment found to be greater than or equal to 500 ppm. None provided data, however, to indicate the types of unregulated electrical equipment that may contain greater than or equal to 500 ppm PCBs. As explained in the NPRM, EPA has data indicating that approximately 2% of voltage regulators contain PCBs greater than or equal to 500 ppm. Due to the lack of data on other mineral oil electrical equipment that may contain PCBs greater than or equal to 500 ppm, EPA is not applying this standard to other mineral oil filled electrical equipment.

Commenters also pointed out that many voltage regulators contain an internal PCB-containing capacitor that may rupture or leak. They felt that it was important to remove this capacitor if one was conducting a retrofill prior to reclassification to avoid fluid leaking from the capacitor and contaminating the replacement fluid. EPA agrees that this is a prudent practice and highly recommends, although is not requiring, that if such a capacitor is found in the voltage regulator, it be removed and replaced with one that is non-PCB.

d. *Natural gas pipeline systems.* EPA has worked for several years to address PCB contamination in natural gas pipelines and associated equipment, such as air compressors. The reasons for the presence and movement of PCBs in gas pipelines are not well understood, but it may have occurred through use of PCB-containing lubricating oils in compressors, fogging of pipeline systems with PCB-containing oil vapor, and PCB migration from contaminated natural gas pipeline systems. PCBs primarily move with the condensate liquids that form in the pipelines. Some natural gas pipeline systems still contain PCBs in liquid condensate despite repeated attempts to rid the systems of PCBs. (See, for example, comments of Interstate Natural Gas Association of America, May 1, 1995, C1-134).

In response to these contamination issues, EPA initiated a compliance monitoring program for companies with >50 ppm PCBs in their pipelines, where EPA presumed that any pipeline showing PCB contamination >50 ppm was contaminated along its whole length. As a result, EPA has used various administrative mechanisms to declassify or decontaminate pipeline and pipeline system components.

In the NPRM, EPA proposed changes to the use authorization for natural gas pipelines and related appurtenances which are contaminated with 50 ppm or greater PCBs. EPA requested comment on additional changes to § 761.30(i) at the June 6-7, 1995 public hearing. EPA proposed to define "natural gas pipeline systems" to include not only natural gas pipe and appurtenances but also natural gas compressor systems (see 59 FR 62855). EPA excluded air compressors and appurtenances and proposed a separate definition for "compressed air systems." EPA proposed to expand the use authorization in § 761.30(i) to include natural gas pipeline systems contaminated with 50 ppm or more PCBs, provided the owner or operator of the pipeline notified EPA of the contamination, characterized its extent, sampled and analyzed potential sources of contamination, took remedial measures such as removing the contamination sources or reducing the PCB concentration to <50 ppm, and documenting these actions. The proposed regulations also gave EPA flexibility to adjust these requirements based on the unique needs or history of particular pipeline systems and past Federal, State or local regulatory

actions. EPA also proposed that PCB-Contaminated pipelines and appurtenances which had been drained of all free-flowing liquids could be reused in any natural gas pipeline system or distributed in commerce for other specific uses (e.g., transport of bulk hydrocarbons, chemicals, or petroleum products).

The natural gas pipeline industry strongly supported revising the use and reuse authorizations while offering specific comments regarding cost effective and flexible approaches to regulating their industry. EPA has responded to as many of these concerns as possible while ensuring that the natural gas pipeline industry continues to actively reduce PCB concentrations below 50 ppm in natural gas pipeline systems. Today's rule does not allow the introduction of PCBs into natural gas pipeline systems; instead it authorizes the use and reuse of natural gas pipeline systems that were contaminated with PCBs in the past, provided certain actions are taken. Unless use of the system was authorized, the system would have to cease operation until the PCBs were removed, burdening the public by making fuel more costly or unavailable. EPA believes this burden would outweigh the risk posed by allowing continued use of the system, so long as the PCBs are contained in the system, are regularly removed in the condensate, and, when removed, are stored and disposed of in accordance with these regulations.

Today's final rule broadens the proposed definition of "natural gas pipeline systems" to include natural gas gathering facilities, natural gas pipe and pipeline appurtenances, natural gas compressors, and natural gas storage facilities. Both interstate and local distribution natural gas pipeline systems are covered under today's rule. Additionally, air compressors are not included as a part of natural gas pipeline systems because their use is not unique to the natural gas pipeline industry. Air compressor systems are now defined separately in § 761.3 and their use is authorized under specific conditions in § 761.30(t).

The use authorization promulgated today in § 761.30(i) for natural gas pipeline systems is modified slightly from the NPRM in response to comments requesting more realistic time frames and flexibility (e.g., allowing the use of historical data to satisfy requirements for notification to EPA, sampling and analysis, or decontamination). The rule now authorizes the continued use of PCBs in natural gas pipeline systems at <50 ppm. The rule also authorizes the continued use of PCBs at concentrations ≥50 ppm in natural gas pipeline systems not owned or operated by a seller or distributor of natural gas; owners or operators of these systems have no obligations under § 761.30(i). For systems which are owned or operated by a seller or distributor of natural gas, continued use is authorized at concentrations ≥50 ppm if steps are taken to identify and reduce PCBs to <50 ppm in demonstrated sources of PCBs within the natural gas pipeline system. EPA has also extended the time frames under § 761.30(i). With respect to the § 761.30(i)(1)(iii)(A)(*2*) sampling requirement, EPA agrees with a commenter's suggestion that the 120–day period begin with the effective date of today's rule where pipeline owners are aware of existing PCB contamination.

Commenters noted that they could not be responsible for addressing sources of PCB contamination which resulted from companies outside their control. Any natural gas pipeline systems which do not include potential sources of PCB contamination, such as scrubbers, compressors, or filters containing PCB concentrations of 50 ppm or greater, are generally exempt from the requirements for identifying, characterizing, and reducing sources of PCBs, provided documentation regarding this is maintained. For example, the owner/operator of a local natural gas distribution system meeting these conditions would need to document that the most likely source of PCB contamination was the natural gas pipeline system that supplied their natural gas. However, any natural gas pipe or liquids which are contaminated with PCBs are subject at removal to the applicable disposal, decontamination, or reuse provisions, to reduce the PCB contamination levels in the system. Some commenters were concerned that natural gas end users, such as homeowners and businesses, would be covered by the regulations. Because end users are excluded from the definition of natural gas pipeline system in § 761.3, they are not subject to the requirements of § 761.30(i).

EPA is dropping the § 761.45(a) marking requirement for natural gas pipeline contaminated with PCBs at <50 ppm which was formerly required at § 761.30(i). Commenters stated that marking underground pipe is unworkable and unnecessary for <50 ppm PCBs. EPA, however, is requiring that aboveground pipeline system components containing PCB liquids at ≥50 ppm bear the M_L Mark in accordance with § 761.45(a) because of potential exposure to PCB liquids. (See § 761.30(i)(1)(iii)(A)(*6*) of the regulatory text). Thus, the marking requirements apply to equipment such as compressors, valves, drips or other pipeline components that are aboveground, are used to contain or collect PCB liquids, and where historical data or recent sampling data indicate PCBs at ≥50 ppm. EPA also solicited comments in the NPRM on whether it should require marking of individual natural gas pipe temporarily stored for testing prior to disposal (59 FR 62855). Commenters opposed this as too burdensome and unnecessary when the storage area is marked. EPA agrees and is not requiring marking of individual pipe in temporary storage areas.

Today's rule incorporates proposed reuse options in certain low exposure uses for PCB-Contaminated (50-<500 ppm) natural gas pipelines that have been drained of all free-flowing liquids (see § 761.30(i)(2) and (i)(3)). The basis for these options was EPA's risk assessment for natural gas pipe (Ref. 9). Some commenters requested that EPA further expand the use authorization to allow drained natural gas pipe to be melted or smelted for metal recovery. They claimed that the proposal, which required PCB-Contaminated pipe to be burned in industrial furnaces, was too restrictive (see proposed § 761.60(a)(4), finalized as § 761.72). They stated that steel melting furnaces would not accept natural gas pipe under these conditions, thereby eliminating a cost-effective and safe reuse for their pipe. EPA is addressing pipe smelting as disposal under § 761.72 (see Unit IV.E. of this preamble).

Commenters also requested use and reuse authorizations for pipelines that were presumed to contain >500 ppm PCBs due to EPA's assumption policy or historical sampling indicating such contamination. Without this authorization, commenters were concerned that legitimate reuses of contaminated natural gas pipeline and appurtenances within existing pipeline systems or for other purposes would be precluded.

The final use and reuse authorization for PCBs in natural gas pipeline systems envisions a declining PCB concentration over time to below 50 ppm. Under the new § 761.30(i)(4), EPA is allowing the characterization of natural gas pipeline liquids, components, and segments based on the actual PCB concentrations at removal, rather than former presumptions or historical data. Liquids may be collected at existing condensate collection points in the pipe or pipeline system. The level of PCB contamination found at a collection point is assumed

to extend to the next collection point downstream.Natural gas pipe appurtenances or components that do not contain free-flowing liquids must be tested for surface level PCB concentrations using the standard wipe test (see part 761, subpart M). If drained natural gas pipe or appurtenances will be reused under § 761.30(i)(2) or (i)(3), rather than disposed of, testing is not required.

In a June 6, 1988, letter, EPA stated that it would presume that natural gas pipelines in EPA's 1981 Compliance Monitoring Program were contaminated at ≥500 ppm PCBs due to the discovery of such concentrations in components of the natural gas pipeline system or because natural gas purchased from another system had shown ≥500 ppm PCBs (Ref. 10). Much progress has been made in reducing PCB concentrations in natural gas pipelines under the Compliance Monitoring Program. Thus, EPA is formally ending the Program and releasing the affected natural gas pipeline companies from any further obligations under it as of the effective date of today's rule. Therefore, EPA's 500 ppm presumption policy for natural gas pipeline systems no longer applies. EPA believes that the final rule adequately addresses remaining actions necessary to further reduce PCB concentrations in natural gas pipelines while providing regulatory flexibility and reduced compliance costs.

One commenter asked EPA to clarify the relationship between the proposed regulations and EPA Technical Guidance Documents (TGDs). The commenter requested that EPA allow regulated entities the option of using TGDs and ADPs to meet the proposed requirements (e.g., §§ 761.30(i)(5) and 761.60), particularly with respect to using existing PCB concentrations rather than presumed concentrations. The three TGDs for declassification, abandonment, and classification of stored pipe (Refs. 11, 12, and 13) were developed to implement EPA's presumption policy of PCB contamination at ≥500 ppm. As discussed above, today's rule eliminates the presumption policy and allows natural gas pipeline systems to be managed based on actual PCB concentration. Therefore, today's regulations supersede these guidance documents.

e. *Research and development (R&D).* In the NPRM, EPA addressed the manufacture, use, processing, and distribution in commerce of PCBs and PCB waste material as analytical reference standards for research and development. EPA's objective in amending the § 761.30(j) use authorization was to clarify the types of activities covered by the R&D provision. Also, EPA wanted to broaden the category of PCBs covered by the authorization to facilitate real-world PCB cleanup activities (e.g., to include analytical reference samples from PCB waste materials, rather than limiting R&D activities to the use of less than 5 milliliters of hermetically sealed vials of PCBs). EPA clarified that the kind of activities for which the use of PCBs or analytical reference samples derived from PCB waste material is authorized includes, but is not limited to, chemical analysis or analyses which examine the concentration, physical properties, toxicity, environmental fate, health effects, transport processes, and metabolic products of PCBs.

Although the use of PCBs and PCBs in analytical reference samples derived from waste material is authorized in conjunction with PCB disposal-related activities, PCB disposal activities are governed by the requirements at § 761.60. Therefore, R&D into PCB disposal-related activities using limited quantities of PCBs is addressed at § 761.60(j) and is treated differently from all other R&D uses of PCBs when the intent is the development, assessment, and/or the perfection of a disposal technology. When the intent of the activity is an R&D study of PCBs, such as those activities listed above, it is an authorized use under § 761.30(j). When the intent of the activity is to conduct a study using PCBs to develop or assess the efficiency of PCB disposal technologies, it may qualify as a self-implementing R&D activity for PCB disposal pursuant to § 761.60(j).

Under § 761.30(j), analytical reference samples derived from PCB waste materials may be used if they have been obtained from an authorized source (i.e., in accordance with § 761.80(h) or (i)) and are packaged pursuant to Hazardous Material Regulations at 49 CFR parts 171 through 180. All PCB wastes resulting from the use of these samples during PCB R&D activities are required to be stored in compliance with § 761.65(b), must be manifested during transport to an approved storage or disposal facility, and once the use of PCB waste samples is complete, they must be disposed of in accordance with all applicable Federal, State, and local laws and regulations, including 40 CFR part 761.

Commenters noted the confusion created by having two R&D provisions, one relating to disposal (§ 761.60(j)), and one to other R&D activities (§ 761.30(j)). TSCA recognizes various categories of PCB activities: manufacture, processing, distribution in commerce, use, disposal, and combinations of such activities. The regulations generally adopt that structure, and the existence of two R&D provisions is therefore not new. EPA's intent is not to integrate disposal and use activities; to do so, would cause more confusion about the PCB R&D disposal approval requirements.

Two examples raised by one commenter illustrate the scope of the two R&D provisions. First, the analysis of PCB photochemical properties is R&D, but also destroys PCBs. To determine the applicable PCB provision, one should first assess the intent of the activity. Since the stated objective is to analyze the photochemical properties of PCBs, § 761.30(j) applies. EPA recognizes that analytical procedures may destroy PCBs, but that was not the objective in this example. Nor was the objective to develop, evaluate, or refine a disposal technology--activities requiring an R&D disposal approval under the existing rules.

Second, PCB waste materials are used as quality assurance samples to measure experimental error of analytical or scientific methods for PCBs. The expansion of the R&D use authorization to include these media is in response to the need to conduct PCB analyses on "weathered" PCBs such as those found at cleanup sites. These wastes can be used in interlaboratory studies to determine the toxicity and potential effects to health and the environment of PCBs that have bioaccumulated in the environment over time. When the waste sample is used to develop, evaluate, or refine a disposal activity, § 761.60 applies (e.g., § 761.60(j) for PCB R&D disposal activities using less than 1 kilogram of pure PCBs, or § 761.60(i)(2) where otherwise appropriate). Otherwise, use of the waste sample in analytical procedures would be conducted pursuant to § 761.30(j).

Another commenter suggested that EPA expand § 761.30(j) to read: PCBs may be used for R&D "as samples of environmental media or mixtures of PCBs and solid waste" to ensure that mixtures of PCBs, such as waste oil containing PCBs, could be used in R&D. Since the comment was so general, EPA is uncertain as to whether the commenter is concerned that they would be prevented from obtaining analyses of PCB mixtures. If the commenter's concern is about acquiring laboratory services to analyze samples of PCB mixtures, no further changes are required since chemical analysis is an authorized use of PCBs under § 761.30(j). The fact that the PCBs are found in samples of waste mixtures such as waste oil or solid waste does not preclude a laboratory from analyzing

them. EPA has modified the authorization to include PCBs in analytical reference samples derived from waste materials, if such samples are processed and distributed in commerce by persons with a TSCA section 6(e)(3)(B) exemption (e.g., either an individual exemption or as a member of the class exemption).

Commenters also confused the use authorization for PCBs and PCBs in analytical reference samples derived from waste materials at § 761.30(j) with the class exemption for processors and distributors of PCBs and analytical reference samples derived from PCB waste material at § 761.80(i). Section 761.30(j) authorizes the use of these materials in research and development — TSCA bans the use of PCBs unless authorized by rule. Section 761.80(i) allows individuals covered by the class exemption to gather and package (i.e., process) PCBs and analytical reference samples derived from PCB waste material for distribution in commerce. TSCA also bans processing and distribution in commerce of PCBs, but provides the exemption process by which EPA may allow such activities. Because TSCA provides different mechanisms for allowing use of PCBs as distinct from processing and distribution in commerce, these different activities are dealt with in separate sections of the rule.

Additionally, commenters found confusing EPA's proposed limitation of the PCB volumes used for R&D. EPA has concluded that limiting the quantity of a facility's use of PCBs is not necessary since quantity limitations have been established elsewhere in the regulations contingent upon the activity being conducted (e.g., processing, distribution in commerce, R&D for PCB disposal). However, EPA has retained the definition for "small quantities for research and development" since provisions previously established by EPA were based on this narrowly crafted definition and contributed to EPA's determination that the constraints were a sufficient precaution against the risk of human or environmental exposure to PCBs.

Also, EPA would have required notification of the appropriate Regional Administrator at least 30 days prior to the commencement of any R&D activity authorized under § 761.30(j). Commenters questioned whether EPA really intended for laboratories to notify the Agency of their R&D use activities. EPA agrees that the notification requirement is confusing and unnecessary, and has removed it from the use authorization at § 761.30(j).

Commenters representing university laboratories interpreted the scope of the PCB regulations to exclude educational institutions, such as labs at universities, from compliance with the PCB regulations. Commenters confessed confusion regarding EPA-approved activities and viewed the proposed use authorization at § 761.30(j) as being a framework for current research activities that would enable them to be in compliance with EPA rules. Unless specifically exempt, TSCA and its implementing regulations apply to all "persons" as defined in the regulations, which includes educational institutions (see § 761.3). Activities involving the use of PCBs are banned unless specifically authorized by 40 CFR part 761. Individuals are encouraged, therefore, to direct their inquiries to the Office of the Director, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, or their Regional PCB Coordinator, if they are uncertain about whether an activity is prohibited under TSCA and impacts their ability to engage in certain PCB activities such as qualifying for an EPA grant.

f. *Contaminated porous surfaces.* In response to comments, EPA has added a use authorization for contaminated porous surfaces contaminated by spills of liquid PCBs, such as concrete, wood, and coated metal surfaces. The authorization requires self-implementing controls to reduce exposure to the spilled PCBs and to restrict further migration of the PCBs from or within the porous material (see § 761.30(p)). Without this use authorization, these materials would have to be removed and disposed of. EPA agrees with comments that the removal of porous materials contaminated by spills of liquid PCBs is economically burdensome and unnecessary where release of and exposure to the PCBs can be controlled. EPA believes that the use conditions specified in § 761.30(p) will effectively prevent exposure to any residual PCBs in the contaminated porous material and therefore continued use of this material will not present an unreasonable risk. If a spill occurred on concrete and the source seeped through the concrete and into the underlying soil, the responsibility for addressing contamination to the underlying soil remains, even though the concrete could possibly meet the specified conditions.

g. *Rectifiers.* EPA is aware that a certain number of oil-filled and solid-state rectifiers (devices that convert alternating current to direct current) contain PCBs. Therefore, EPA proposed to authorize the continued use, at § 761.30(r), of PCBs at any concentration in rectifiers, and PCBs at less than 50 ppm to be used in servicing rectifiers for the remainder of their useful life.

EPA solicited comments and data on the following: (1) The number of rectifiers currently in use, (2) the extent of PCB contamination in rectifiers, (3) the size of such units and whether EPA should adopt a *de minimis* PCB volume at or above which rectifiers would be regulated under TSCA (e.g., in the same manners as capacitors with less than 1.36 kgs (3 pounds) of fluid are considered small and generally not regulated under TSCA for disposal), (4) the number of oil-filled versus solid state rectifiers, and (5) any information supporting a use authorization for rectifiers.

EPA is finalizing § 761.30(r) as proposed. Commenters indicated that rectifiers were typically found with less than 50 ppm PCBs. Therefore, due to their generally low concentration, EPA concludes that continued use of rectifiers for the remainder of their useful lives will not pose an unreasonable risk. Rectifiers are therefore authorized for continued use as long as they are serviced only with less than 50 ppm PCBs.

h. *Scientific instruments.* EPA proposed, at § 761.30(k), to authorize the use of up to 100 milliliters of PCBs at any concentration in scientific instruments, provided the PCBs were in use in the instrument at the time the final rule became effective. In today's final rule, EPA is dropping the "in use" provision based on comments that not all instruments are continually in use. In addition, a commenter was confused as to whether other currently authorized existing uses of PCBs in electrical equipment or scientific instruments not specifically mentioned in the authorization would now be prohibited. To clarify, this authorization does not prohibit other authorized uses of PCBs, such as in electrical transformers and capacitors, in instruments used for scientific study.

Commenters stated that experiments could require up to 150 milliliters of PCBs. Commenters also stated that the possibility of releases from scientific instruments is minimized because of OSHA's Laboratory Standards at 29 CFR § 1910.1450. Based on these comments, EPA concludes that the use of PCBs in scientific instruments at greater than 100 milliliters will not pose an unreasonable risk, the final rule does not retain the 100 milliliter limit.

Finally, EPA combined the proposed authorization at § 761.30(s) and three existing use authorizations, § 761.30(k),

Microscopy mounting medium; § 761.30(n), Microscopy immersion oil; and § 761.30(o), Optical liquids, into a single authorization at § 761.30(k) entitled "Use in scientific instruments." Each of the four uses is included in the new combined authorization.

i. *Air compressor systems.* EPA proposed a use authorization and decontamination standards for air compressor systems as part of the use authorization for natural gas pipeline systems at § 761.30(i). In today's final rule, however, EPA has added a separate definition for "air compressor systems" at § 761.3 and authorized the use of PCBs in concentrations of ≥50 ppm in air compressor systems under specific conditions in § 761.30(s) to allow a reasonable time frame for removal and reduction of PCBs. The Agency made this change because the use of air compressors is not unique to the natural gas pipeline industry. Additionally, the decontamination requirements for air compressor systems are now found in the decontamination section in § 761.79.

As with natural gas pipeline systems, EPA believes that allowing continued use of the air compressor system while the PCBs are being removed does not pose an unreasonable risk, so long as the PCBs are contained in the system, are regularly removed in the condensate, and, when removed, are stored and disposed of in accordance with these regulations.

j. *Other gas and liquid transmission systems.* Commenters agreed with EPA's proposal to authorize use of PCBs in natural gas pipeline systems, but suggested that EPA expand the authorization to include other types of transmission systems. EPA has less comprehensive data regarding these other transmission systems, but the information indicates that these systems would be smaller in size than most natural gas pipeline systems. For this reason, and because of the wide variety of these systems, such an authorization is generally best made on a case-by-case basis. Therefore, under § 761.30(t) in today's rule, EPA is authorizing the use of PCBs at concentrations ≥50 ppm in other gas and liquid transmission systems which are owned or operated by a seller or distributor only with the written approval of the Director, National Program Chemicals Division. Owners or operators of these systems must take steps to identify and reduce PCBs to <50 ppm in demonstrated sources of PCBs within the pipeline system. This use authorization provides a mechanism to address rare cases of PCB-Contaminated gas or liquid systems which may not be authorized elsewhere to ensure that these systems are identified and cleaned to below 50 ppm PCBs. The rule also authorizes the continued use of PCBs in pipeline systems at <50 ppm. In addition, the rule authorizes the continued use of PCBs at concentrations ≥50 ppm in pipeline systems not owned or operated by a seller or distributor; owners or operators of these systems have no obligations under § 761.30(t).

k. *Use/reuse of decontaminated materials.* EPA clarifies in § 761.30(u) of today's rule that equipment, structures, or liquid or non-liquid materials that were contaminated with PCBs ≥50 ppm may be used or reused once decontamination standards and applicable use conditions set forth in § 761.30(u) are met. However, these materials may not be used or reused in direct contact with food, feed, or drinking water unless otherwise allowed in part 761. This restriction is designed to limit cross-contamination, thus reducing risk from PCB ingestion (see § 761.30(u)(2)). Water may, however, be used or reused without restriction if it is below the decontamination standard of 0.5 micrograms per liter in § 761.79(b)(1). Water containing PCBs at concentrations <200 µg/L (approximately 200 ppb) may be used or reused in industrial processes where there is no release from the process (e.g., as a non-contact cooling water).

Some commenters asked when equipment, structures, and other liquid or non-liquid materials used intermittently in PCB decontamination, cleanup, or servicing activities must be decontaminated. These items include, but are not limited to: distillation columns; wastewater treatment units; metal pans used to collect PCB liquids; and tools and other equipment used in cleanup activities. While in use, equipment such as that used in a wastewater treatment system (e.g., piping, filter-cake presses, and precipitators) is operating as a PCB waste management unit conducting decontamination activities as described in § 761.79 and as such does not need a TSCA PCB disposal approval. Any wastes removed from the equipment, such as filter-cakes or distillation bottoms, are subject to the PCB regulations based on the PCB concentration at removal.

Inactive equipment contaminated with PCBs as a result of its use during cleanup, decontamination, or servicing, but which will be reused for the same activities, may be eligible for the provisions for storage of PCB Articles designated for reuse in § 761.35 (see Unit IV.C. of this preamble). If the equipment will no longer be used, then it is subject to the subpart D storage and disposal requirements. If the equipment is inactive for less than 30 days, the temporary storage for disposal provisions for PCB Items under existing § 761.65(c)(1) could be utilized; after 30 days, the 1–year storage for disposal requirements in § 761.65(b) apply. If the equipment is decontaminated according to §§ 761.79 and 761.20(c)(5), it is exempt from further TSCA regulation.

C. Storage of PCB Articles Designated for Reuse

EPA proposed at § 761.67 to limit storage for reuse of PCB Articles in areas not designed, constructed, and operated in compliance with § 761.65(b) for a maximum of 3 years from the later of the date a PCB Article was taken out of service or the effective date of today's final rule. PCB Articles would have to be labeled when they were taken out of service and placed into storage for reuse. In addition, the storage for reuse of any PCB Article would have to comply with all marking and recordkeeping requirements. Information required on the labels for PCB Articles being stored for reuse would include the date the equipment was placed into storage for reuse or the effective date of the final rule, if the other date is not known; a projected location for the equipment's future use; and the date the equipment was scheduled for repair or servicing, if appropriate.

Commenters indicated that 3 years was not a sufficient time period for storing articles for reuse. Some commenters indicated that storage should be unlimited because of the 1– to 2–year lead time required for manufacturers to supply new equipment. Also, for electrical utilities or natural gas pipelines, commenters pointed to the urgency to maintain service by having replacements for emergencies at hand. Therefore, the Agency is extending the storage for reuse provision from 3 years to 5 years.

Commenters also disagreed with the storage for reuse labeling requirement, or indicated that the labeling requirement was burdensome and unnecessary because information EPA proposed to require on the label was already maintained in the annual document log. Based on comments received, EPA is not finalizing the proposed labeling requirement. PCB Articles are already required to be labeled indicating when they were placed in storage for disposal (§ 761.65(c)(8)). Therefore, requiring PCB Articles being stored for reuse also to be labeled could be confusing.

EPA is retaining at § 761.35 the other proposed recordkeeping requirements for PCB Articles being stored for reuse since much of this information is normally maintained in the facility's annual document log. The Agency believes that owners or operators with PCB Articles being kept for reuse already maintain records indicating when articles are removed for servicing or repair because of scheduling and budgeting purposes.

Commenters also indicated that the proposed requirement that owners or operators indicate the future use location of a PCB Article being stored for reuse was burdensome and unnecessary. The Agency disagrees. The knowledge on where an article was proposed for reuse distinguishes the article from one being stored for resale or disposal. The latter types of storage are prohibited unless appropriate regulatory controls are followed. Therefore, EPA is requiring that the projected location of the article to be included in the facility's annual document log.

Electrical utilities and natural gas pipeline or transmission companies commented that storing PCB Articles in an area which is designed, constructed, and operated in compliance with § 761.65(b) could cause delays in repairing equipment and restoring service to customers, without significantly reducing risk to health and the environment. EPA understands that emergency situations may require that certain PCB Articles be stored in close proximity to their potential use locations and in this final rule allows such articles to be stored for reuse in an area which was not designed, constructed, and operated in compliance with § 761.65(b) for no more than 5 years. PCB Articles may be stored for reuse indefinitely in an area designed, constructed, and operated in compliance with § 761.65(b), or outside such an area provided that the owner or operator has received written approval from the EPA Regional Administrator for the Region in which the article is stored.

D. Marking

EPA proposed several changes to the § 761.40 marking requirements, including changes to the marking of transport vehicles, storage units, Large Low Voltage Capacitors in use, and equipment in use containing PCB Transformers and PCB Large Capacitors. EPA also proposed an associated clarification to the PCB concentration assumptions for capacitors (see Unit IV.A.1.c. of this preamble).

1. *Transport vehicles.* Existing § 761.40(b) and (e) require the marking of transport vehicles carrying one or more PCB Transformers or 45 kg of liquid PCBs at concentrations of 50 ppm or greater. Existing § 761.40(b) and (e) essentially express the same requirements regarding marking transport vehicles loaded with liquid PCBs at 50 ppm or greater. EPA proposed to eliminate this duplication by combining references to the marking requirement for transport vehicles at § 761.40(b) and (e) under proposed paragraph (d), thus leaving the requirements for the remaining PCB Items under paragraph (e). EPA also proposed to extend the marking requirement to transport vehicles carrying 45 kg of PCBs (≥50 ppm) in any phase to make the marking requirements for transport vehicles carrying non-liquid PCBs consistent with those carrying liquid PCBs.

Commenters expressed general support for EPA's overall objective of clarification and elimination of duplication. However, most commenters opposed marking transport vehicles carrying non-liquid PCBs as unnecessary and problematic. For instance, utilities would have to mark service trucks because they occasionally transport one or more drums of waste from a cleanup site. Some commenters requested that EPA rescind the TSCA vehicle marking requirement altogether and defer to DOT placarding standards for vehicle marking. Several commenters noted that as drafted, the proposed rule would unintentionally be retroactively effective.

In today's final rule, EPA is combining references to the marking requirement for transport vehicles carrying liquid PCBs at existing § 761.40(b) and (e) under paragraph (b) (rather than paragraph (d) as proposed) and leaving the requirements for the remaining PCB Items under paragraph (e). This amendment does not result in any substantive change to the existing provisions at § 761.40.

The Agency is not finalizing the proposal to mark transport vehicles containing non-liquid PCBs. This change would impose more burdens on the regulated community than EPA envisioned, and is likely to complicate, rather than simplify, compliance. EPA agrees that it is not desirable to require utility service fleets to carry PCB labels on a routine basis when they will only occasionally transport small amounts of non-liquid PCBs. Regarding the comments recommending that EPA eliminate all the existing requirements at § 761.40 to mark transport vehicles, EPA believes that such a change would be outside the scope of this rulemaking, because EPA proposed to retain and strengthen these requirements.

Also, a commenter expressed concern that forklifts used to move PCB containers would require marking as transport vehicles. EPA clarifies that forklifts used on site (e.g., not used on public roads) are not considered transport vehicles and are not required to be marked as such under § 761.40(b).

Several commenters believe the 45 kg threshold for marking transport vehicles is based on the mass of the actual PCB molecules in the liquid. This has never been the case. Marking is triggered by 45 kg total weight of the material containing 50 ppm or more of PCBs, irrespective of the weight of the PCB molecules in that material, and has been since promulgation of the Disposal and Marking rule (43 FR 7150, February 17, 1978). For instance, a single drum containing 45 kg of mineral oil dielectric fluid at 50 ppm PCBs triggers the marking provisions. The total material weight also applies to the 45 kg trigger for recordkeeping provisions at existing § 761.180(a). This issue is clarified by new language at § 761.1(b)(6).

2. *Storage units.* Existing § 761.40(h) requires M_L marks on PCB Items and transport vehicles to be placed so that they can be easily read. EPA proposed modifying § 761.40(h) to require marks on storage units. No significant comment was received on the proposal and it is finalized as proposed.

3. *Large Low Voltage Capacitors.* In the NPRM, EPA noted that PCB Large Low Voltage (LLV) Capacitors often are not identified and disposed of properly at the time of removal, because they are not required to bear the M_L mark while in use. Accordingly, EPA proposed to require the marking of those PCB LLV Capacitors still in use, within 180 days of the effective date of the final rule. Allowances identical to those at existing § 761.40(c)(2) for PCB Large High Voltage (LHV) Capacitors were made for PCB LLV Capacitors in inaccessible locations.

EPA received several comments on the proposal. Some commenters felt the rule was reasonable and sensible, others that it was burdensome and that PCB LLV Capacitors in use posed little risk. Commenters expressed concern about the number of capacitors that would require marking under this rule, but provided no data or analysis to support contentions on the proposal's burden or the risk associated with unmarked PCB LLV Capacitors in use. One commenter noted that access to PCB LLV Capacitors in some equipment would be difficult. More than one commenter requested

that EPA allow records of unmarked PCB LLV Capacitors to be maintained off-site.

EPA believes that it is important to revise the marking provisions to include PCB LLV Capacitors in use. PCB LLV Capacitors in use were exempted from marking with the M_L in the original Disposal and Marking rule (43 FR 7150), to reduce the burden associated with the large numbers then in use. Instead, PCB LLV Capacitors were to be marked upon removal from use, and new non-PCB LLV Capacitors were required to be labeled "No PCBs" to distinguish them from unmarked PCB LLV Capacitors in use. The Agency's regional staff have reported observing over the last several years that PCB LLV Capacitors, being unmarked, are often mistaken by uninformed personnel as non-PCB, and disposed of improperly (rather than being identified as PCB, marked with an M_L, and disposed of as PCB waste). This problem will only increase, as aging PCB LLV Capacitors approach the end of their service life and are removed in increasing numbers. Industry familiarity with the 1978 M_L marking exception for PCB LLV Capacitors is likely to decline in the future, increasing the number of PCB LLV Capacitors misidentified for disposal. To complicate identification, the requirement that new LLV Capacitors be labeled "No PCBs" expires on July 1, 1998 (see existing § 761.40(g)). Also, although LLV Capacitors are less likely than LHV Capacitors to fail and leak in service, the risk of PCB exposure posed by PCB LLV Capacitors will increase as larger numbers of aging units fail in service. Accordingly, EPA believes the marking of all PCB LLV Capacitors is now necessary. The burden of this regulation will also be significantly less than it would be if it had been imposed in 1978, in that the number of PCB LLV Capacitors affected has greatly diminished through attrition and phase-out efforts.

Therefore, in today's rule, EPA is finalizing § 761.40(k)(1) to require marking of PCB LLV Capacitors in use. PCB LLV Capacitors in use in inaccessible locations inside equipment are exempt, provided that the equipment is marked. Such capacitors must continue to be marked individually at the time of removal from service. In regard to protected locations (e.g., power poles, structures or fences) with unmarked LLV Capacitors, EPA is not allowing the maintenance of records at a central location. Repair or spill response personnel may not have timely access to records maintained off-site at a central facility. Also, the on-site record requirement is consistent with the existing requirement for PCB LHV Capacitors at § 761.40(c)(2)(ii). EPA wants to emphasize that records are only required at a protected location if the owner chooses to leave individual capacitors there unmarked.

4. *PCB equipment in use.* Because of identification and disposal concerns, EPA is requiring that all equipment containing PCB Transformers or PCB Large Capacitors (High or Low Voltage), including equipment in use, be marked with the M_L mark (see § 761.40(k)(2)). Existing § 761.40(a)(4) only required equipment containing PCB Transformers or PCB LHV Capacitors to be marked at the time of manufacture, distribution, or removal from service. Today's rule expands this provision to cover all equipment with PCB LLV Capacitors, and equipment with PCB Transformers and PCB LHV Capacitors not already marked (i.e., in-service equipment not manufactured or distributed in commerce after the effective date of § 761.40(a)(4)). These marking provisions do not apply to equipment containing PCB-Contaminated Electrical Equipment.

E. Disposal

1. *Applicability.* In the final rule, EPA has created a new § 761.50, titled Applicability of Storage and Disposal Provisions. The purpose of § 761.50 is to guide the public to the subpart D provisions that apply to specific kinds of wastes and specific activities. There are four items of note about § 761.50. First, it contains general prohibitions and conditions applicable to all of subpart D. For example, EPA's policy that spills or other uncontrolled discharges of PCBs at concentrations of 50 or greater ppm constitute disposal, formerly at § 761.60(d)(1), is now at § 761.50(a)(4).

Second, § 761.50 clarifies that § 761.60 applies to PCB liquids and PCB Items, and not to other PCB waste, such as PCB remediation waste or PCB bulk product waste. Those wastes are now regulated by new §§ 761.61 and 761.62, respectively.

Third, EPA specifies the storage and disposal options for PCB/radioactive waste at § 761.50(b)(7). Any person storing PCB/radioactive waste ≥50 ppm PCBs must do so based on the PCB concentration of the waste, except as provided in §§ 761.65(a)(1), 761.65(b)(1)(ii), and 761.65(c)(6)(i) of this part. Any person disposing of PCB/radioactive waste at ≥50 ppm PCBs must do so taking into account both the PCB concentration and the radioactive properties of the waste. If, taking into account only the properties of the PCBs in the waste (and not the radioactive properties of the waste), the waste meets the requirements for disposal in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill (e.g., PCB bulk product waste under § 761.62(b)(1)), then the person may dispose of the PCB/radioactive waste, without regard to the PCB component of the waste, on the basis of its radioactive properties in accordance with all applicable requirements for the radioactive component of the waste.

Fourth, § 761.50 clarifies the TSCA rules governing the regulatory status and cleanup of PCB spills and disposal sites in light of the ruling on the prefatory note exclusion to § 761.60 by EPA's Chief Judicial Officer in *Re: Standard Scrap Metal Company*, TSCA-V-C-288, Appeal No. 87-4, August 2, 1990 (Standard Scrap). See 59 FR 62792, December 6, 1994, for a discussion of that decision.

EPA proposed to delete the prefatory note, and substitute language on the disposal of PCB waste generated before 1978 as introductory text to § 761.60. In the final rule, this language appears at § 761.50(b)(3). That section provides that sites where PCBs have been placed in a land disposal facility (such as a dump, landfill, waste pile, or land treatment unit), spilled, or otherwise released to the environment prior to April 18, 1978, are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site, and do not necessarily require further disposal action. The final rule allows the EPA Regional Administrator, on a case-by-case basis, to make a finding that spills, leaks, or other uncontrolled discharges, such as leaching, from a pre-1978 disposal site constitute ongoing disposal that presents an unreasonable risk of exposure to PCBs. The EPA Regional Administrator may make this finding regardless of whether the site is a spill, dump, land treatment unit, waste pile, stream, river, pond, lake, any sediment (or dredge material from a stream, river, pond, or lake), ground water, surface water, landfill, or any other type of disposal site. Once the EPA Regional Administrator makes such a finding, the owner or operator must dispose of the wastes until the unreasonable risk no longer exists. EPA believes that pre-1978 PCB disposal units or areas of contamination should not be allowed to remain "in-service" and thus unaddressed, as the existing prefatory note currently allows, if they pose an unreasonable risk due to exposure to PCBs.

Commenters argued that TSCA's applicability is clearly prospective and

that the proposed change inappropriately extends the reach of the TSCA regulations to spills and disposals which occurred prior to the effective date of the regulations. EPA's response is that section 6(e) provided EPA with a broad mandate to protect health and the environment from unreasonable risk of injury from PCBs. Just as EPA has banned or restricted the manufacture, processing, distribution in commerce, and use of PCBs where they pose an unreasonable risk of injury regardless of when that activity started or that piece of equipment was first put into service, EPA is now addressing PCBs disposed of in a manner which, due to spills, leaks, or other uncontrolled discharges from the site, constitutes ongoing improper disposal that now poses an unreasonable risk of injury.

With regard to sites containing PCB remediation wastes generated on or after April 18, 1978, owners or operators of those sites now have two choices: they may clean up the wastes in accordance with new § 761.61, or, if applicable, they may cleanup the wastes in accordance with EPA's Spill Cleanup Policy, part 761, subpart G.

Owners or generators of PCB remediation waste may unilaterally (for example, to obtain insurance, to sell property or to reduce civil liability) dispose of PCB remediation waste in accordance with self-selected portions of § 761.61, the Spill Cleanup Policy, or any other procedures, but are not afforded any relief from any regulatory liability from TSCA, based on that voluntary action alone.

2. *Landfilling of liquid PCBs.* In today's final rule EPA is removing the provisions formerly at § 761.60(a)(2)(ii) allowing the disposal of PCB-Contaminated mineral oil dielectric fluid, which has been stabilized on-site prior to disposal in accordance with § 761.75(b)(8), at a chemical waste landfill. However, the land disposal of PCB-Contaminated liquids from incidental sources associated with non-liquid PCB waste is allowed, if information is provided to or obtained by the owner or operator of the chemical waste landfill that shows that the waste does not exceed 500 ppm PCBs, is not an ignitable waste, and disposal does not violate RCRA land disposal regulations (see § 761.60(a)(3)). This provision applies to PCB-Contaminated liquids, which are in the form of precipitation, condensation, leachate or load separation and are associated with PCB Articles or non-liquid PCB wastes being disposed of in a chemical waste landfill. This provision does not apply to bulk liquid wastes, which must be disposed of in an incinerator or high efficiency boiler under § 761.60(a)(1) or (a)(2), or to liquid PCB remediation waste, such as stormwater runoff from PCB bulk product waste. Disposal of liquid PCB remediation waste is regulated at § 761.61(a)(5)(iv), (b), or (c).

The provisions allowing landfilling of liquids at less than 500 ppm were established May 31, 1979, when there was a limited number of incinerators permitted to burn PCB waste and disposal capacity was a concern. EPA believes the amount of low concentration PCB liquids anticipated to be designated for disposal and in storage for disposal can easily be accommodated by the existing and anticipated future PCB disposal technologies other than landfilling (See discussion of disposal capacity in the preamble to the Import for Disposal Rule (61 FR 11098, March 18, 1986).) EPA expects the existing PCB disposal and storage for disposal regulations and the amendments finalized today to accommodate the additional liquid PCBs requiring incineration or alternative disposal treatment. In addition, today's rule makes EPA policy on landfilling liquid PCBs more consistent with the prohibition on landfilling of liquid hazardous waste containing PCBs at concentrations of 50 ppm or greater under the RCRA land disposal restrictions at 40 CFR 268.32(a)(2) and 268.42(a)(1).

In the NPRM, EPA proposed to eliminate the landfilling of all PCB-Contaminated liquids, without exception. Approximately 10 comments were received on this issue. Several commenters were concerned about the implications of the ban on "incidental" or "environmental" liquids associated with non-liquid wastes, which usually are of an aqueous nature. Examples cited included precipitation, condensation, leachate, and load separation. To address this problem, § 761.60(a)(3) allows the disposal of such incidental liquids.

3. *Disposal in scrap metal recovery ovens and smelters.* Under the existing PCB disposal regulations (see existing § 761.60(b)(5) and (b)(6)), disposal of drained PCB-Contaminated Electrical Equipment and other drained PCB Articles is not regulated. At the time of the NPRM, a significant number of facilities were disposing of drained PCB-Contaminated articles (including PCB-Contaminated Electrical Equipment such as transformers) in scrap metal recovery ovens. These furnaces are also commonly referred to as sweat furnaces, bakeout ovens, and wire furnaces. However, some drained PCB-Contaminated articles have been prepared for metal smelting under uncontrolled combustion conditions such as open burning. Open burning can result in significant amounts of products of incomplete combustion such as PCBs, polychlorinated dibenzo-p-dioxins, and polychlorinated dibenzofurans (Ref. 14). Therefore, EPA has prohibited open burning (see § 761.50(a)(1)) and in § 761.72 has established scrap metal recovery ovens operating conditions that control emissions and result in no unreasonable risk of injury to health or the environment.

EPA has responded affirmatively to commenters who have provided acceptable alternatives to EPA's proposal, which required direct disposal of the drained PCB-Contaminated articles in a metal smelter. The commenters' alternative includes primary and secondary combustion chambers. In the primary combustion chamber, the articles are slowly warmed to a temperature below the melting point of aluminum and kept at that temperature for a number of hours, much longer than the time waste is in the primary chamber of a PCB incinerator. Any PCBs present in the drained PCB-Contaminated articles will vaporize or be destroyed at these temperatures. The primary combustion chamber operates under a slightly negative pressure (or draft) so that combustion gases do not leak out but are passed into the secondary chamber. The secondary combustion chamber operates at the same combustion conditions as a PCB incinerator. In the secondary chamber any remaining PCBs and any incomplete combustion products formed in the primary chamber are destroyed. Both EPA's proposed method and the method proposed by the commenters are included in the final rule.

Commenters did, however, express confusion over EPA's use of the term "industrial furnace," as the proposal's adoption of the RCRA definition of that term at 40 CFR 260.10. In response to these comments, EPA has deleted this definition in the final rule, and has changed the terms in § 761.72. That section now refers at § 761.72(a) to "scrap metal recovery ovens" and at § 761.72(b) to "smelters." Operating parameters for each type of device are specified. Any device that meets the operating parameters is authorized for disposal of PCB wastes specified in § 761.72 in accordance with those parameters.

EPA finds there is no unreasonable risk of injury to health or the environment from PCB, polychlorinated dibenzo-p-dioxin, and polychlorinated dibenzofuran emissions from incineration of small amounts of PCBs

in accordance with the requirements of § 761.72. Very small amounts of PCBs remain on drained surfaces of PCB-Contaminated equipment. This is the result of the original concentration of less than 500 ppm PCBs and the thinness of the dielectric fluid. The amount of PCBs present in the primary chamber of an industrial furnace is much smaller than would routinely be present in a PCB incinerator over the same time period. The amount of PCBs present in the primary chamber is even smaller than would be fed into most combustion facilities burning waste oil at less than 50 ppm PCBs under § 761.20(e), and the amount of PCBs in a secondary chamber is smaller still. EPA has further provided for the control of emissions by requiring scrap metal recovery ovens and smelters to have a final permit under RCRA or be operating under a valid State air emissions permit which includes a standard for PCBs (see § 761.72(c)).

In addition to intact drained PCB-Contaminated Electrical Equipment and other intact drained PCB-Contaminated articles (such as hydraulic equipment), scrap metal recovery ovens and smelters may be used to dispose of metal surfaces which are included in PCB remediation wastes and PCB bulk product waste. Metal in PCB remediation waste includes scrap metal found in an industrial sludge lagoon or rinsed drums formerly used to contain cleanup solvents. Metal in PCB bulk product waste includes pieces from disassembled, drained PCB-Contaminated transformers or metal surfaces coated with non-liquid PCBs such as painted pieces of fuel tanks. Non-metal PCB remediation wastes such as liquids, soils, sludges, and dredged sediments) and non-metal PCB bulk product waste (such as shredder fluff and air handling system gaskets) are not approved for disposal in scrap metal recovery ovens and smelters. However, waste oils containing PCBs at concentrations less than 50 ppm may be burned in scrap metal recovery ovens and smelters which qualify under specified conditions (see § 761.20(e)).

4. *PCB articles*—a. *PCB-Contaminated Electrical Equipment.* Drained PCB-Contaminated Electrical Equipment is not regulated for disposal under the existing PCB regulations at § 761.60(b)(4). In promulgating this provision, it was EPA's intent that disposal of this equipment in an approved incinerator or chemical waste landfill is not required. The equipment or its components would still have to be disposed of in a way that ended its useful life, such as salvaging through smelting when certain conditions are met (Ref. 15). EPA solicited comments in the NPRM on whether it should amend the regulations for the disposal of drained PCB-Contaminated Electrical Equipment to ensure that the equipment is properly disposed of and is not illegally reused. Possible remedies such as mandating decontamination and stricter controls to ensure that units were completely drained were not well received by commenters. In particular, most commenters stated that anecdotal information that drained PCB-Contaminated Electrical Equipment carcasses were used for barbecue grills reflected isolated instances of non-compliance.

EPA proposed to modify § 761.60(b)(4) to allow disposal of drained PCB-Contaminated Electrical Equipment only in facilities permitted, licensed, or registered by a State to manage municipal solid waste (excluding thermal treatment units), in an industrial furnace, or in a TSCA-approved disposal facility. EPA also proposed to amend § 761.60(b)(4) to require that equipment be drained for a period of not less than 48 hours, so that as much liquid as possible was removed from the equipment to further reduce PCB content prior to disposal.

Most commenters stated that defining a drain time added new burdens without providing additional protection to health or the environment. Instead, commenters felt that EPA should focus on the methods used to remove oil from transformers, especially large transformers where the actual draining procedure could be hazardous to personnel and the equipment. Specifically, commenters suggested that EPA consider pumping, vacuuming, and other methods as acceptable means for removing oil from transformers. In support, commenters provided test data indicating that 95 to 99% of the oil was removed from the transformer in the first hour and any residual oil removed during a 48-hour period would be extremely small. Because a small amount of residual oil still remained after draining, some commenters suggested excluding the use of State licensed municipal or industrial waste landfills as disposal options for this equipment. They felt this would be a reasonable exclusion because many State-permitted solid waste landfills do not accept this equipment.

EPA is not finalizing the requirement that transformers be drained for 48 hours. In addition, rather that requiring "draining" of PCB liquids, amended § 761.60(b)(4) allows PCB liquids to be "removed" (e.g., pumped or vacuumed). EPA realizes that liquid can be trapped in the inner workings and as an additional measure, EPA suggests a second removal action to ensure that as much liquid as possible is removed from the unit. EPA emphasizes that any residual liquid that remains is regulated and the receiving facility is responsible for its management. EPA is not excluding the use of State licensed municipal or industrial waste landfills as disposal options, because to do so would be counter to EPA's goal of providing flexibility, and would reduce the number of options available in areas where these landfills will accept this equipment.

b. *Small capacitors.* Under current § 761.60(b)(2)(ii), PCB small capacitors may be disposed of as municipal solid waste. In the NPRM, EPA sought data indicating whether there was support for statements by TSCA section 21 petitioners (Ref. 16) that the disposal practices at a municipal solid waste landfill, such as compaction, would cause PCB small capacitors to leak and cause a risk to health and the environment through ground water contamination. The Agency did not receive data substantiating these statements. Therefore, EPA will not change the disposal requirements for intact and non-leaking PCB small capacitors. Except for capacitors owned by manufacturers of capacitors or manufacturers of equipment containing PCB small capacitors, any quantity of intact, non-leaking PCB small capacitors may be disposed of in a municipal solid waste landfill. However, the Agency continues to recommend that generators of large numbers of intact and non-leaking PCB small capacitors dispose of them as PCB waste.

c. *Fluorescent light ballasts containing PCBs.* In the preamble to the NPRM, the Agency requested comment on information submitted in a TSCA section 21 petition (Ref. 16) that some fluorescent light ballasts manufactured prior to 1978 have PCBs at concentrations of 50 ppm or greater in their potting material. Potting material is insulating material which fills the space between the functioning parts of the ballast and its outer metal covering (shell). This information was supported by test data showing that the asphalt potting material used in fluorescent light ballasts has been found to contain PCBs (Refs. 17 and 18). Comments on the proposed rule confirmed that PCBs have been found in the potting material of some fluorescent light ballasts. These ballasts, therefore, are subject to a different disposal requirement than a fluorescent light ballast containing PCBs only in a PCB small capacitor. Where a fluorescent light ballast contains PCBs at 50 ppm or greater, other than in an

intact and non-leaking PCB small capacitor, the PCB small capacitor is no longer the controlling factor for disposal. Fluorescent light ballasts containing PCBs in their potting material must be disposed of in a TSCA-approved disposal facility, as bulk product waste under § 761.62, as household waste under § 761.63 (where applicable), or in accordance with the decontamination provisions of § 761.79 (see § 761.60(b)(6)(iii)).

Several commenters stated that the only way to determine whether fluorescent light ballasts contained PCBs at concentrations of 50 ppm or greater in their potting material would be to open, and essentially destroy, the ballast to analyze the potting material. While this may be true, the Agency is not requiring the testing of potting material for those units in use. Owners or operators will not be required to remove fluorescent light ballasts prior to the end of their useful life. However, if owners or operators of buildings are thinking of changing the fluorescent light ballasts, for example, for relamping the building for energy conservation, and would like to know the applicable disposal requirements, the Agency has two suggestions. First, assume that the potting material in the fluorescent light ballasts contains PCBs at 50 ppm or greater and dispose of them as PCB waste. Second, conduct a survey of the manufacturer and type of ballasts in use in the building and develop a random sampling plan for each manufacturer and type of ballast found and analyze the samples for PCBs. If no PCBs are found and the PCB small capacitors are intact and non-leaking, then the ballasts could be disposed of in a municipal solid waste landfill or recycled, through decontamination at § 761.79, for metals recovery. While there is no regulatory requirement to test the potting material for PCBs prior to disposal, TSCA requires owners or operators with PCBs to dispose of them properly. Not all fluorescent light ballasts contain PCBs. All ballasts manufactured between July 1978 and July 1998 are required to bear a "No PCB" label indicating that they do not contain PCBs. According to data submitted in the TSCA section 21 petition, ballasts manufactured prior to July 1978 have a better than 50% chance of containing PCBs at 50 ppm or greater in their potting material. Finally, State and/or local governments may have additional, more stringent, disposal requirements for PCB small capacitors or fluorescent light ballasts containing PCBs and some municipal solid waste landfills may not accept PCBs no matter what their form.

EPA has been aware for many years that fluorescent light ballasts can contain PCB small capacitors. Under existing rules, intact and non-leaking PCB small capacitors may be disposed of as municipal solid waste (unless the disposer is a manufacturer of PCB capacitors or PCB equipment) (see § 761.60(b)(2)(ii)). The TSCA section 21 petition alleged that disposal practices at municipal solid waste landfills can cause PCB small capacitors to rupture, creating a risk of ground water contamination. EPA asked for comment on this issue, and, in the event that additional disposal controls were needed, proposed to limit to 25 per year the number of fluorescent light ballasts containing PCB small capacitors that could be disposed of as municipal solid waste. EPA received no data confirming that the risk described in the TSCA section 21 petition existed. EPA therefore is not finalizing this limitation. However, disposers of fluorescent light ballasts that contain a PCB small capacitor should be aware that they could be subject to CERCLA liability if the municipal solid waste landfill becomes a Superfund site.

d. *Natural gas pipeline systems.* For reasons that are not well-understood, some natural gas pipeline systems have become contaminated with PCBs at regulated levels (i.e., ≥50 ppm PCB). Contaminated systems have been operated under compliance agreements and § 761.60(e) alternate disposal approvals (Ref. 9). Today's rule prescribes the conditions under which natural gas pipeline systems containing PCBs are authorized for use and reuse (see Unit IV.B.3.d. of this preamble and § 761.30(i) of the regulatory text), and requirements under which natural gas pipeline systems can be abandoned in place or otherwise disposed of without posing an unreasonable risk (see § 761.60(b)(5)).

Those who hold alternate PCB disposal permits or approvals issued under § 761.60(e) may continue to use those approvals within the confines of their specific conditions to dispose of natural gas pipeline and appurtenances. A company may, however, request in writing that EPA revoke its alternate disposal approval to allow the company to comply with today's regulatory requirements in lieu of the conditions specified in its disposal approval. EPA continues to reserve its right to modify the conditions of the alternate disposal approval when, for example, applicable regulatory requirements for disposal, decontamination, or reuse are changed. Accordingly, EPA does not intend to grant renewals for existing alternate disposal approvals in cases where the final PCB regulations adequately address protection of human health and the environment. These approvals have been issued based on a no unreasonable risk finding. However, some specific conditions in approvals are different from similar general conditions in the rulemaking. These specific conditions are based on monitoring data collected during disposal and other pipeline maintenance operations conducted under the approval. This data may not be applicable to the general population of natural gas pipeline systems.

Today's rule generally requires that all free-flowing liquids be removed from natural gas pipe abandoned in place or removed for disposal.

Most of the abandonment and disposal provisions for natural gas pipeline systems apply where the systems contain PCBs at any concentration ≥50 ppm. There is one provision for abandonment and one provision for removal with subsequent action that apply to PCB-Contaminated systems (i.e., ≥50 and <500 ppm PCBs). Any person disposing of a natural gas pipeline system under either of these provisions (paragraphs (b)(5)(i)(B) or (b)(5)(ii)(A)(*1*)) must characterize it for PCB contamination by analyzing organic liquids collected at existing condensate collection points in the natural gas pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream, i.e., the next existing condensate collection point unless pipeline maintenance or other activity results in a closer sampling location. If no organic liquids are present, drain free-flowing liquids and collect standard wipe samples according to subpart M. Collect condensate within 72 hours of the final transmission of natural gas through the part of the system to be abandoned and wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas. PCB concentration of the organic phase of multi-phasic liquids must be determined in accordance with § 761.1(b)(4).

Pipeline liquids containing ≥50 ppm PCBs removed from the system must be disposed of as PCB remediation waste in accordance with § 761.61(a)(5)(iv), based on the PCB concentration present at the time liquid is removed from the pipeline. This does not mean that non-pipeline liquids or non-liquids may be added to the pipeline liquids either prior to or during removal to result in dilution of the concentration of the liquids. Liquids containing <50 ppm PCBs may be burned for energy recovery in accordance with the provisions

pertaining to used oil at § 761.20(e). Commenters questioned the need to separate organic and aqueous phases of condensate for disposal. It is not complicated or expensive to separate the organic phase of condensate from the aqueous phase. Separation is not needed if all of the multi-phasic liquid is disposed of as determined by a concentration of ≥50 ppm in the organic phase.

i. *Abandonment.* The final rule specifies how natural gas pipeline systems containing ≥50 ppm PCBs may be abandoned in place when no longer in use. Requirements differ depending on the PCB concentration in the system and the diameter of the pipe. The few changes made from the NPRM are to clarify language and expand the options available.

ii. *Removal with subsequent action.* The final rule also specifies the requirements for natural gas pipeline systems containing ≥50 ppm PCBs that are removed for disposal. Depending on the PCB concentration in the system and the diameter of the pipe, natural gas pipe may be disposed of in a municipal solid waste landfill, a TSCA-approved incinerator or chemical waste landfill, as PCB bulk product waste, or may be decontaminated.

EPA received comments that the interior of natural gas pipe is covered with a thin, porous coating to inhibit corrosion and thus could not be decontaminated under § 761.79. That section provides methods for decontamination of non-porous, but not porous, surfaces. EPA has amended the definition of non-porous surface at § 761.3 to clarify that this coated natural gas pipe is considered a non-porous surface (see § 761.60(b)(5)(ii)).

Commenters asked whether dry pipe could be smelted in a steel melting furnace, and whether such smelting would be regulated as use, reuse or disposal. As provided in § 761.79(b)(3)(ii), non-porous surfaces, such as natural gas pipe, contaminated at less than 100 μg/100 cm^2, may be smelted in an industrial furnace operating in accordance with § 761.72(b). Metal smelting of the residual surface PCBs is PCB disposal even though the smelted metal may be used or reused.

iii. *Sampling (subpart M).* EPA clarifies that the regulatory status of natural gas pipe is based on the PCB concentration in free-flowing condensate liquids in the pipe. If no free-flowing liquids exist in the pipe at the time of sampling, surface sampling is required.

EPA made several changes to the sampling protocol in response to comments. First, although the EPA Regional Administrator may approve of smaller sampling surface areas on a case-by-case basis, EPA believes that 100 cm^2 is available for sampling in most natural gas pipeline situations. Second, EPA revised the sample site location procedure to account for the potential loss of surface residues of PCBs from the thermal cutting of pipe. Third, with respect to the sampling location in a pipe segment that has been removed for disposal, only one sample from one end of a pipe segment is now required rather than a sample at each end of the pipe segment. EPA does not expect concentration differences at the downstream end of a pipe segment and the upstream end of the adjacent downstream pipe segment to be significantly different. Fourth, EPA has provided two options for selecting the sampling site among a contiguous set of pipe segments less than 7 miles long.

For sampling pipe to be abandoned in place, EPA is requiring sampling at the ends of the section to be abandoned and is designating the sampling unit to be between the pressure side of a compressor station and the suction side of the next compressor station downstream of the gas flow. EPA has also revised and clarified language on extrapolating the PCB disposal regulatory status of an unsampled pipe segment that is part of a population that has been sampled for removal, disposal, or abandonment. In addition, EPA clarified the regulatory status of pipe with respect to surface concentrations measured in the characterization samples.

EPA derived the sampling protocol (part 761, subpart M) from its oversight of natural gas pipe removal by parties to the 1981 compliance agreement with EPA. The sampling procedure accounts for the distribution of condensate through the pipeline system over time by the flow of natural gas and for pipeline system management practices.

e. *Dermal protection.* EPA proposed, at §§ 761.60(b)(6)(iii) and 761.79(a)(5), to require that anyone coming in contact with surfaces contaminated with PCBs at levels of 10 to <100 μg PCB/100 cm^2 must be protected from dermal exposure to those surfaces (59 FR 62860). EPA removed the concentration range because it intended to prevent dermal contact, not require measurements. Most disposal operations managing this waste would require dermal protection for handling sharp-edged metal material whether there were residual PCBs on the surfaces or not. The final rule at §§ 761.60(b)(6)(iv) and 761.79(e)(2) requires workers to wear or use protective clothing or equipment to protect against dermal contact or inhalation of PCBs or materials containing PCBs.

5. *Alternate disposal.* Section 761.60(e) allows persons who are required to incinerate PCBs and PCB Items and who can demonstrate that an alternate destruction method that can achieve a level of performance equivalent to § 761.70 incinerators exists, may submit a written request to the EPA for an exemption from the incineration requirements of § 761.60 or § 761.70. EPA did not intend that the submission of this application be optional, as could be construed by the word "may" in § 761.60(e). EPA, therefore, proposed to amend § 761.60(e) to clarify that written approval to use an alternate method of destroying PCBs or PCB Items must be obtained from EPA prior to using the method to destroy PCB waste. EPA received no negative comments on this proposed wording change and it is finalized as proposed.

6. *Analytical procedures.* In the NPRM, EPA proposed to require that chemical analysis of PCBs be conducted using gas chromatography. The proposal did not require the use of a specific gas chromatographic procedure since the selection of an analytical method would vary according to the material being tested (see 59 FR 62861). EPA also solicited comments on whether ASTM Method D-4059, "Standard Method for Analysis of Polychlorinated Biphenyls in Insulating Liquids by Gas Chromatography" should be listed at § 761.60(g)(1)(iii) and (g)(2)(iii) as an acceptable analytical method (see 59 FR 62826).

Two commenters suggested EPA identify specific sample preparation and gas chromatographic analytical techniques for specific uses and materials. Although EPA recognizes variability can exist when different testing methods and procedures are used to analyze PCBs, EPA has determined that the statutory requirement to consider the costs and benefits associated with establishing regulatory requirements argues for increased flexibility at the expense of precision. As a result, § 761.60(g)(1)(iii) and (g)(2)(iii) offer the maximum flexibility for individuals to use gas chromatographic procedures that are available through both EPA published methods and ASTM testing methods. However, in the final rule, EPA is clarifying that the methods other than those specified in the regulations must produce results that obtain a level of performance equal to or better than the specified methods. If analytical differences arise, the Agency will use

those methods outlined in SW-846, Test Methods for Evaluating Solid Waste, to verify analytical determinations.

EPA received one comment that the applicability of ASTM D-4059 was very limited and restrictive. Although ASTM D-4059 may be limited, some individuals may deal with only a narrow assortment of dielectric fluids. Thus, EPA has included ASTM D-4059 as an example of an acceptable method in § 761.60(g).

7. *Research and development for PCB disposal.* EPA has found that properly conducted research and development for PCB disposal presents no unreasonable risk. When approving these activities under current § 761.60(e), EPA generally takes into account such factors as the quantity of PCB waste in the study; whether the capacity for approved PCB disposal exceeds demand; whether there may be some specialized wastes for which there is no currently approved disposal method; and whether there may be some locations where there is a sufficient quantity of waste that existing approved disposal technologies might be inadequate or where the economics of the existing approved technologies prohibit necessary cleanup. EPA also takes into account the inability of a number of research for disposal approvals to achieve performance objectives. For these studies, EPA still requires a written approval, because larger amounts of waste potentially pose more obstacles to treatment and disposal and greater potential for risk from incomplete or unsuccessful disposal.

Today's rule establishes a self-implementing approval for disposal research and development studies using smaller quantities of materials. For these approvals, the maximum annual amount that may be treated during R&D for disposal activities is 500 gallons of liquid PCB waste or 70 cubic feet of non-liquid PCB waste. These amounts should be sufficient to perform most research at a pilot disposal unit scale. The PCB material may not exceed 10,000 ppm. Each R&D for PCB disposal activity under this section may last no more than 1 year.

One commenter saw the requirement to provide 30–day advance notification to EPA, State, and local authorities prior to the start of a R&D for disposal activity as an unnecessary burden which would encumber scientific research and not provide any benefits. EPA strongly supports community right to know. EPA knows of few research projects which are so essential or time-sensitive that the 30–day notice would cause a severe hardship. However, EPA will not require the 30-day advance notification of disposal, if EPA, State, and local authorities waive the requirement in writing.

Some commenters had difficulty understanding the distinction EPA was making between PCB R&D activities for use and for disposal. TSCA itself creates the distinction. One objective of TSCA and the PCB regulations is to direct PCBs out of use and into disposal so that they can no longer present a risk of injury to health or the environment. EPA may authorize the use of PCBs that pose no unreasonable risk of injury to health or the environment, but when the PCBs are no longer in use, they must be disposed of. For example, PCBs in storage for disposal may not be reused. Today's rule authorizes chemical analysis and scientific experimentation using PCBs in a separate category under § 761.30(j).

Commenters noted that some chemical analysis of PCBs under § 761.30(j) would result in the destruction (i.e., disposal) of PCBs, and that all PCBs in R&D, including R&D for disposal, could be viewed as in use until the research and development was completed. EPA believes that the use of PCBs in the R&D activities under § 761.30(j) poses inherently different risks from the R&D for disposal activities under § 761.60(j). For example, the amounts of PCBs used in scientific research are small and strictly accounted for, while amounts used in disposal research can be much larger and their ultimate fate depends on the success of the disposal technology. In addition, PCBs used in research under § 761.30(j) are used in a controlled environment by trained laboratory staff, while PCBs used in § 761.60(j) may be in open environments. Therefore, EPA has finalized these provisions essentially as proposed.

Other commenters objected to the 1–year limit on self-implementing R&D for disposal. EPA recognizes that some R&D for PCB disposal activities may last more than 1–year. The rule allows the EPA Regional Administrator to grant extensions to the time limit, and this process should not result in delays if timely requests for extension, including a report on the progress of the R&D for disposal activities, are provided to EPA. In the past, when conditions of the approvals have been met, EPA has extended in a timely manner bioremediation and other kinds of "treatability" R&D for disposal approvals for more than 3 years after an original 1–year approval.

Based on comments requesting a clarification, the introductory sentences from § 761.60(j) of the proposal were moved to § 761.3 to create a definition of "research and development for PCB disposal."

8. *PCB remediation waste.* The proposed rule provided for three PCB remediation waste disposal options: (1) Self-implementing disposal similar to the PCB Spill Cleanup Policy, which is an enforcement policy codified at 40 CFR part 761, subpart G (see § 761.61(a)); (2) existing approved disposal technologies (see § 761.61(b)); and (3) risk-based disposal (see § 761.61(c)). EPA has retained each of these three options. General comments about the options are discussed first; more specific comments are discussed under the heading for each option.

Commenters sought clarification on: (1) The regulatory status of PCB remediation waste generated prior to April 18, 1978; (2) use or disposal of sewage sludge; (3) management of liquid PCB remediation waste; (4) management of radioactive PCB remediation waste; and (5) the applicability of the PCB Spill Cleanup Policy (part 761, subpart G). PCB remediation waste generated prior to April 18, 1978, is discussed in Unit IV.E.1. of this preamble, which explains new § 761.50, Applicability of Storage and Disposal Provisions. EPA consolidated the liquid PCB remediation wastes disposal options in § 761.61(a)(5)(iv).

Commenters were concerned that PCB remediation waste stored at the cleanup site for more than 30 days prior to disposal would have to be stored in accordance with § 761.65(b). EPA has added § 761.65(c)(9) to allow on-site storage of bulk PCB remediation waste in a way which prevents uncaptured releases in case of a spill and controls migrations from precipitation and volatilization. Waste transported off-site must be packaged according to the Hazardous Materials Regulations at 49 CFR parts 171 through 180 and stored for disposal in facilities approved under § 761.65(b).

EPA received comments on the applicability of 40 CFR part 761, subpart G, the PCB Spill Cleanup Policy. The only change EPA made to subpart G was to decrease the minimum reportable quantity from 10 pounds to 1 pound of PCBs. EPA continues to emphasize that subpart G is not a regulation but an enforcement policy that applies to releases from authorized uses. EPA intends that new § 761.61 will address more spill scenarios than subpart G does, such as (1) those which occurred prior to May 4, 1987, and (2) those which occurred after May 4, 1987, where notification was not given and/or where cleanup was not begun in accordance with the PCB Spill Cleanup

Policy. Many commenters wanted to extrapolate subpart G to other cleanup waste scenarios instead of using proposed § 761.61. Today's final rule does not expand the scope of subpart G, but EPA factored many of the assumptions used in subpart G, such as the time allowed for PCBs to migrate from a spill, into § 761.61.

The NPRM stated that the self-implementing option of § 761.61 would not apply at sites being cleaned up under CERCLA, RCRA, or any EPA enforcement action. A number of commenters suggested that this provision was too broad because it would preclude the self-implementing option even at portions of such facilities that were not being addressed by other authorities. One commenter stated that the reference to other enforcement actions by EPA was too vague.

EPA did not intend to prevent or discourage persons from conducting self-implemented cleanups where another part of the same facility is being addressed under an authority such as CERCLA or RCRA. But EPA also clarifies that a facility cannot unilaterally decide to do a self-implementing cleanup under § 761.61, and then contend that their decision precluded any further or different cleanup under other authorities. As modified, today's rule does not prevent a person from conducting a self-implementing cleanup at any part of its property, even if another part of the facility is also being addressed under some other authority. For example, a large site having zones A, B, and C could have an on-going RCRA corrective action cleanup at zone A, a CERCLA section 106 order at zone B, and still potentially be eligible for a self-implementing PCB remediation at zone C. Section 761.61(a)(1)(ii) simply clarifies that such action by the facility does not bind other cleanup programs, such as CERCLA or RCRA, which remain free to determine which parts of the facility they will address and how to do so, using their usual cleanup criteria. Since sites contaminated with PCBs often contain other contaminants such as metals and organic solvents, each remedial action needs to consider and address all constituents of concern. If a person is considering doing a self-implementing cleanup at a portion of the facility likely to undergo cleanup under some other Federal or state program, the person would be well-advised to coordinate with that program before proceeding, to avoid having to do further work after its self-implementing cleanup was completed. With respect to PCB remediation waste cleanup, EPA acknowledges the usefulness of the documents entitled: *Guidance on Remedial Actions at Superfund Sites with PCB Contamination*, EPA/540/G-90/007, August 1990; *Technology Alternatives for the Remediation of PCB-Contaminated Soil and Sediment*, EPA Engineering Issue, EPA/540/S-93/506, October 1993; and *Best Management Practices (BMPs) for Soil Treatment Technologies: Suggested Operational Guidelines to Prevent Cross-media Transfer of Contaminants during Clean-up Activities*, EPA 530-R-97-007, May 1997. These documents are available from the RCRA Hotline at 1-800-424-9346.

Some commenters also stated that EPA should clarify how this rule would operate as an "applicable or relevant and appropriate requirement" (ARAR) under CERCLA. Cleanup decisions at CERCLA sites have relied on the 1987 TSCA PCB Spill Cleanup Policy. It must be noted that because the Spill Cleanup Policy is not a binding regulation, it is not an ARAR for Superfund response actions. However, as policy reflecting substantial scientific and technical evaluation, it has been considered as important guidance in developing cleanup levels at Superfund sites. EPA anticipates that today's rule will be a potential ARAR at CERCLA sites where PCBs are present. EPA would expect that CERCLA cleanups would typically comply with the substantive requirements of one of the three options, provided by § 761.61, upon completion of the cleanups. This decision would not be made by the facility, but in the remedy selection process.

a. *Self-implementing option.* EPA reorganized proposed § 761.61(a), and the reorganized structure is reflected here.

EPA did not intend self-implementing PCB remediation waste disposal to apply to large PCB remediation sites unless very stringent sampling requirements are used. EPA intended it to address moderate sized sites where only PCBs were present (or the properties of PCBs drove cleanup decisions) and where a general no unreasonable risk remedy would be acceptable. Generic risk assumptions and sampling approaches for small areas of contamination cannot be universally applied to very large sites. Nor can sampling schemes for continuously generated, current waste streams from well-characterized industrial processes serve as a scientifically sound starting point for large areas where the homogeneity of the waste is unknown. Sampling must be much more comprehensive for heterogeneous waste (or waste of unknown homogeneity) where little is known about contamination sources, the periodicity and exact location of waste generation, and any PCB migration from the waste since original deposition. Much greater knowledge from pre-cleanup characterization of waste can reduce verification sampling. Through a risk-based approval at § 761.61(c), the EPA Regional Administrator can more actively evaluate measurements taken concurrently with cleanup (as is done at Superfund National Priority List (NPL) sites) as an alternative to a more stringent self-implementing verification sampling approach required in § 761.61(a). Without the same level of oversight as in NPL sites, self-implementing verification sampling should be comprehensive. To limit transaction time for site cleanup and constraints on cleanup, EPA placed the site sampling emphasis in § 761.61(a)(5) at the post-cleanup verification period, rather than under the limited pre-cleanup site characterization in § 761.61(a)(2).

i. *Applicability.* The applicability section of the NPRM provided that the self-implementing remediation waste option was not applicable to areas having human or animal populations that might have a higher sensitivity to the toxic effects of PCBs. This provision has been deleted in response to comments it could apply to almost all sites. New language has been added at § 761.61(a)(4)(vi) to enable the EPA Regional Administrator, based on the notification required in § 761.61(a)(3), to require cleanup of the site or a portion of the site to more stringent cleanup levels based on proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, day care centers, endangered species habitats, estuaries, wetlands, national parks, national wildlife refuges, commercial fisheries, and sports fisheries.

ii. *Site characterization.* Today's rule requires any person conducting self-implementing cleanup of PCB remediation waste to characterize the site adequately to be able to provide the information necessary for the Regional Administrator to review the cleanup plan. The proposal required detailed small scale information, such as numbers of characterization sample results (proposed Appendix II). Today's rule is more flexible, providing subpart N as a reference point for the assessment of sampling data, but allowing other sampling methods that are as effective at characterizing contamination at the site.

EPA also clarified that non-liquid sample results shall be reported on a dry weight basis, as µg/g of sample. Liquid sample results must be reported on a

wet weight basis as µg/g of sample. Surface sampling results shall be reported as µg/100 cm² (see § 761.274 of the regulatory text). Regardless of the size of the surface area, divide 100 cm² by the surface area and multiply this quotient by the total number of micrograms of PCBs on the surface to obtain the equivalent measurement of micrograms per 100 cm².

iii. *Notification and certification.* Commenters sought to eliminate the notification requirement, based on inconvenience and not wanting to identify the site, rather than risk/exposure concerns. EPA is continuing its policy of providing State and local jurisdictions advanced notice of PCB disposal. Section 761.61(a)(3) was redesignated and revised to designate who in the State and local agencies would receive the notification.

EPA clarifies that it did not intend the 30–day notification requirement to prohibit emergency cleanup (see § 761.61, introductory text, of the regulatory text). Emergency cleanup may occur without notification, but does not satisfy the requirements of § 761.61. Emergency cleanup is appropriate where there is imminent danger to health and the environment without containment and/or treatment. Emergency cleanup is not appropriate to prevent additional cleanup costs or other business expenses resulting from containment or from waiting 30 days for the notification process to be completed. Emergency response personnel should communicate directly with EPA regional personnel on proposed remedial actions. EPA has retained language allowing less than 30 days notification if the EPA Regional Administrator, and State and local officials who are required to receive the notification, waive the 30–day requirement in writing (see § 761.61(a)(3)(iii) of the regulatory text).

iv. *Cleanup levels.* EPA did not receive comments which justified changes in the proposed cleanup levels. However, the final rule retains the proposed provision at § 761.61(c) allowing the EPA Regional Administrator to approve risk-based cleanup levels, on a case-by-case basis, different than those required in § 761.61(a). The final rule organizes § 761.61(a)(4) by the PCB remediation waste medium: bulk PCB remediation waste, non-porous surfaces, porous surfaces, and liquids.

The proposed definitions at § 761.3 for "high exposure area" and "low exposure area," have been changed in two ways: (1) To reflect that EPA is addressing the occupancy of the area by individuals not wearing dermal and respiratory protection as a surrogate for reasonable worst-case exposure; and (2) to reflect that EPA evaluates the exposure risk in the area based on the combination of the final concentration of PCBs in the area and the amount of time of exposure. The term "high exposure area" is now "high occupancy area" and "low exposure area" is now "low occupancy area." Many outdoor areas will be low occupancy areas; others, such as school playgrounds and residential yards, might be high occupancy areas. Commenters offered several terms in place of the proposed "high exposure area" and "low exposure area." Only one actually focused on the risk-based foundation of the self-implementing cleanup: the exposure of an individual. This comment suggested that occupancy was a reasonable worst-case surrogate for exposure and offered an extensive description of occupancy scenarios. EPA used a simpler variation of the comment as the final definition.

The final rule is structured so that the risk to occupants not wearing dermal and respiratory protection of high occupancy areas and low occupancy areas is generally the same. For the same chemical (PCBs) the risk is directly proportional to exposure. The rule allows different concentrations of PCBs to remain in high occupancy areas and low occupancy areas based on different occupancy times (see § 761.61(a)(4) of the regulatory text). For example, the non-porous surface cleanup level for high occupancy areas is 10 µg PCB/100 cm², and for low occupancy areas is 100 µg PCB/100 cm², an order of magnitude difference. Therefore, to have the same risk of exposure, the maximum occupancy time must be 1/10 as long in a high occupancy area as in a low occupancy area. For bulk remediation materials, EPA allows cleanup levels of 1 ppm in high occupancy areas and 25 ppm in low occupancy areas. EPA believes that the measures taken to prevent exposure in low occupancy areas, such as capping, marking and fencing, provide sufficient additional protection to normalize the higher cleanup levels.

EPA's evaluation of risk assumed unprotected exposure 24 hours a day, 7 days a week (168 hours per week) for the high occupancy scenario. Because the surface cleanup concentrations are 10 times as high in the low occupancy area as in the high occupancy area, to have the same exposure in both areas, the low occupancy unprotected exposure would have to be 1/10 of the high occupancy exposure period, or less than 16.8 hours per week. For bulk materials, the low occupancy exposure would be 1/28 of 168 hours, or less than 6.7 hours per week. The number of hours in the definitions of "high occupancy area" and "low occupancy area" in § 761.3 reflect these weekly averages times a 50–week exposure per year assuming a 2–week annual vacation from the occupancy area, that is 50 weeks x 16.8 hours/week = 840 hours and 50 weeks x 6.7 hours/week = 335 hours.

EPA has limited the self-implementing option to these two scenarios based on the risk-based concepts implemented as part of the Spill Cleanup Policy in 40 CFR part 761, subpart G (Refs. 19 and 20). EPA's experience has been that most cleanup scenarios have been effectively dealt with by the two-tiered approach in the Spill Cleanup Policy. In the few instances where the two-tiered approach has not readily addressed a particular cleanup scenario, the EPA Regional Administrator has exercised flexibility to allow less stringent or alternative requirements. (See 40 CFR 761.120(c)). Similarly, under § 761.61(c), the EPA Regional Administrator has the flexibility to grant a risk-based approval for cleanup of PCB remediation waste to levels different from those specified under the defintions of "high occupancy area" and "low occupancy area."

Revised § 761.61(a)(4) also requires the owner of an area cleaned up to the levels of a low occupancy area to clean the area to the levels of a high occupancy area where there is a change in the use of the area such that exposure to PCBs could reasonably be expected to increase.

v. *Site cleanup.* EPA is clarifying in § 761.61(a)(5) that PCB disposal technologies approved under §§ 761.60 and 761.70 are acceptable for on-site self-implementing PCB remediation waste disposal within the confines of the operating conditions of the respective approvals. For example, technologies approved under § 761.60 or § 761.70 for disposal of PCB liquids may not be used to dispose of soil. Technologies approved under § 761.60 or § 761.70 to dispose of PCBs in soil at concentrations less than 500 ppm may not be used to dispose of soil containing greater than 500 ppm PCBs.

The only forms of on-site disposal technology which do not require an approval under § 761.60 or § 761.70 and which are approved for self-implementing disposal are soil washing and decontamination in accordance with § 761.79. Soil washing is extraction of PCBs from soil using a solvent, recovering the solvent from the soil, separating the PCBs from the recovered solvent for disposal, and then disposal

or reuse of the solvent in accordance with § 761.79(d) and (g).

Based on comments received on the potential emissions of products of incomplete combustion from *in-situ* vitrification and EPA's experience in approving this disposal technology, this technology may not be used for on-site disposal without an approval from EPA under § 761.60(e) or § 761.61(c).

EPA assumed that the primary application of self-implementing cleanup would be safe and effective on-site treatment and land disposal (e.g., PCB concentration reduction, with the PCBs destroyed on-site, followed by on-site land disposal). EPA did not intend to prohibit or discourage off-site disposal, and is retaining the off-site disposal regulatory options which have been in place since April 18, 1978 (see § 761.61(b) of the regulatory text). EPA recognizes that some materials will be sent off-site because of the economics of on-site treatment of small amounts of unusual or high concentration waste. Today's rule expands the options for off-site disposal; for example, PCB remediation waste containing less than 50 ppm PCBs may be sent off-site for disposal in State-approved land disposal facilities for the management of municipal solid waste landfills permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA; or disposal facilities approved under 40 CFR part 761.

EPA received comments requesting the option to dispose of PCB/radioactive waste in a waste management unit licensed under the Atomic Energy Act. However, the Agency has concerns that disposal practices at those facilities, while appropriate for radioactive waste, may result in an unreasonable risk to human health and the environment from PCBs ≥50 ppm disposed of at such sites. Therefore, § 761.50(b)(7) provides that any person disposing of PCB/radioactive waste must do so taking into account both its PCB concentration and its radioactive properties. If, taking into account only the properties of the PCBs in the waste (and not the radioactive properties of the waste), the waste meets the requirements for disposal in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill (e.g., PCB bulk product waste under § 761.62(b)(1)), then the person may dispose of the PCB/radioactive waste, without regard to the PCB component of the waste, on the basis of its radioactive properties in accordance with all applicable requirements for the radioactive component of the waste.

Commenters suggested that sampling and analysis could pose unnecessary costs if the waste were to be disposed of, assuming that it was regulated, especially since the proposal could be read as always requiring analysis. EPA added an option at § 761.50(a)(5) that non-liquid PCBs can be assumed to be ≥500 ppm and disposed of accordingly, rather than analyzed.

EPA also eliminated the proposed requirement to notify disposal facilities receiving PCB remediation waste which will be stored in an area subject to a PCB commercial storage approval and/or disposed of in an area subject to a PCB disposal approval. Pre-disposal notification is still required for all other storage and disposal facilities (see § 761.61(a)(5)(i)(B)(*3*)(*iv*) of the regulatory text). In addition, the subpart K notification and manifesting requirements do not apply to off-site disposal of PCB remediation waste at <50 ppm.

In response to comments, EPA clarified the disposal options for liquid PCB remediation waste, and provided for the disposal of mixed liquid/non-liquid PCB remediation waste. The overall objective of PCB remediation waste disposal is to minimize potential risks of PCB dispersion into the environment from disposal. One way to do so is to remove liquids from mixed liquid/non-liquid waste. Ways to minimize such risks from transportation of waste are on-site PCB remediation waste disposal, or using packaging in compliance with DOT Hazardous Materials Regulations (HMR) at 49 CFR parts 171 through 180. PCBs not subject to the HMR (i.e., PCB wastes at less than 20 ppm or less than 1 pound of PCBs regardless of concentration) must be packaged in accordance with 49 CFR 173.203 (for liquids) or 49 CFR 173.213 (for non-liquids). Therefore, EPA is requiring on-site, phase separation of mixed liquid/non-liquid PCB remediation waste unless protective packaging for liquids is used for off-site shipment.

vi. *Cleanup verification.* The final rule clarifies that the scope of subpart O (proposed Appendix II) includes verifying that bulk PCB remediation waste or porous surfaces at a site have been properly cleaned up in accordance with § 761.61(a). EPA added options, including compositing, to the cleanup verification sampling in subpart O. Cleanup verification sampling for non-porous surfaces is addressed in subpart P. These subparts may not be used to make conclusions or extrapolations about PCB concentrations outside of the area which has been cleaned up and verified based on the results of that sampling. EPA also added a third dimension to the verification procedure to ascertain if the cleanup captured vertical waste migration. Subpart O applies only to bulk PCB remediation waste and porous surfaces left at the original cleanup location. Non-liquid, non-metal PCB remediation waste to be shipped off-site must be sampled in accordance with subpart R.

EPA did not propose to allow compositing on the grounds that compositing can dilute hot spots, but commenters pointed out that hot spots should have been eliminated in the contamination removal process. EPA agrees, and therefore the final rule provides for the compositing of samples. For example, EPA has changed the minimum number of samples from three, to one composite of three. For liquids, no compositing is necessary because they mix naturally and are easily homogenized by stirring.

Subpart O provides two sampling options for large sites. The first option is designed to address sites having a single point source, many point sources, or an unknown number of sources, of contamination. The second option only addresses sites having a known single point source of contamination. Both options use a square grid structure and grid interval, which has been enlarged to correspond to the largest interval provided in the PCB Spill Cleanup Policy. Both options specify compositing of adjacent samples of the same size, provide the maximum number of samples which can be composited, and require that composited samples be mixed thoroughly and subsampled before chemical analysis.

EPA revised the requirement to reclean an entire site based on a single sample's failure to meet cleanup levels. As revised, when a composite fails to meet the cleanup requirements, the area that must be recleaned and reanalyzed is an area larger by a grid interval than the area represented by the failing composite.

Subpart P provides sample site selection procedures for non-porous surfaces, as well as procedures for analyzing the samples and interpreting the results of the sampling. Subpart P applies to all non-porous surfaces destined for disposal, regardless of whether the disposal will take place on-site or off-site.

EPA also provided in subpart Q a test for qualifying an alternate extraction and chemical analysis procedure for determining PCB concentrations in PCB remediation waste in initially characterizing the cleanup site and for post cleanup verification.

vii. *Cap requirements.* In the NPRM, EPA used the term "non-porous" to describe concrete used as a cap over non-liquid PCB remediation waste left on-site. At § 761.61(a)(7), EPA has replaced descriptions of cap materials with performance criteria, which essentially paraphrase cap requirements from § 264.310(a) of the RCRA regulations. EPA recommends that the owner of a cleanup site containing a cap visually inspect the cap monthly in perpetuity for breaches such as leaks, cracks, breaks, and faults. EPA increased the amount of time allowed to repair a break in a cap to allow additional time to technically and physically begin repairs in remote areas.

viii. *Deed restrictions for caps, fences, and low occupancy areas.* Commenters worried about potential risks from a site which was cleaned to low occupancy area standards being converted to a high occupancy area use. In response, at § 761.61(a)(8), EPA added deed restriction requirements from the RCRA landfill closure regulations, which includes requirements for converting the land use which addresses situations such as the change from a low occupancy area to a high occupancy area.

ix. *Recordkeeping.* EPA finalized § 761.61(a)(9) as proposed.

b. *Performance-based option.* The NPRM included high-temperature incinerators, high efficiency boilers, chemical waste landfills, and alternate destruction technologies approved by EPA as performance-based disposal options for PCB remediation waste. These options have been retained in the final rule.

The final rule at § 761.61(b)(3) also allows material containing <50 ppm PCBs that has been dredged or excavated from waters of the United States to be managed and disposed of in accordance with a permit that has been issued under section 404 of the Clean Water Act or under section 103 of the Marine Protection, Research, and Sanctuaries Act (or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers (Corps) at 33 CFR part 320 *et seq.*). These options are available only for dredged material containing PCBs <50 ppm. Dredged material contaminated with PCBs at ≥50 ppm must be managed under one of the other disposal options of § 761.61.

Research has shown that sediments can be the depository for chemicals and other pollutants, including PCBs, discharged into surface waters from both point and non-point sources. Contaminants in sediments can harm aquatic environments and pose a threat to human health. Studies have shown that PCB contamination may occur in all types of water bodies (Ref. 21, Chapter 2.). Dredged material containing PCBs, such as sediments, settled sediment fines, and aqueous decantate from sediment, is included in the definition of "PCB remediation waste" and is regulated for disposal under TSCA at the concentration at which it is found.

The Corps bears important national responsibilities regarding dredged material, as a regulatory agency and in constructing and maintaining the Federal navigation system. The Corps dredges approximately 250 million cubic yards of sediment from navigable waterways each year to maintain navigation. The Corps regulates the excavation and placement of another approximately 75 million cubic yards of dredged material by Federal navigation project beneficiaries. Dredged material from those navigation projects is placed in many sites, including ocean waters, estuaries, beaches, rivers, and uplands, including sites associated with beach nourishment and wetlands construction. In addition, the Corps and its associated local sponsors are responsible for a large number of flood control channels, which must be periodically dredged to maintain their capacity to hold and convey flood waters.

Since 1971, EPA and the Corps have worked jointly to develop comprehensive testing and management protocols used to determine suitable alternatives for management and disposal of dredged material. Regulatory programs established under the Marine Protection, Research, and Sanctuaries Act and the Clean Water Act require analysis of alternatives to protect the environment while ensuring economic and engineering feasibility. The testing and management protocols for dredged material developed by the Corps and EPA are used to assess and manage sediments representing the full spectrum of contamination potential. Existing Corps/EPA regulatory authorities and their scientific protocols were developed specifically for dredged material regulation and management.

EPA believes that management and disposal of dredged materials containing <50 ppm PCBs in accordance with the Corps/EPA protocols as provided for at § 761.61(b)(3) will not present an unreasonable risk to health or the environment.

Section 761.61(b)(3) provides a disposal option specific to dredged material containing <50 ppm PCBs. As noted above, dredged material falls within the definition of PCB remediation waste, and as such the other disposal options of § 761.61(a), (b), and (c) are available for management and disposal of dredged material containing PCBs at any concentration, as long as the applicable requirements are met.

c. *Risk-based option.* Section 761.61(c) allows the EPA Regional Administrator to approve case-by-case, risk-based cleanup, storage, or disposal of PCB remediation waste as an alternative to § 761.61(a) or (b). Commenters asked EPA to codify a public comment and/or participation process. EPA intends to use the public comment process in use in each respective EPA Regional PCB program office.

d. *Disposal of PCB sewage sludge.* Land application of sewage sludge containing <50 ppm PCBs is "use" under TSCA section 6(e), and is authorized under § 761.20(a)(4). Use of sewage sludge containing ≥50 ppm PCBs is prohibited (see Unit IV.B.1.b. of this preamble). Disposal of sewage sludge containing less than 50 ppm PCBs, including application as a landfill cover, is unregulated under TSCA. Sewage sludge containing ≥50 ppm PCBs, defined as "PCB sewage sludge," must be disposed of pursuant to § 761.61. In addition, regulations at 40 CFR part 503 or part 257 may apply to use and disposal of sewage sludge containing <50 ppm PCBs, including sewage sludge that is PCB remediation waste. As mentioned in the exceptions for the use of sewage sludge at § 761.20(a)(4), PCBs in sewage sludge regulated for disposal under TSCA may not be diluted for purposes of avoiding the PCB disposal regulations.

9. *PCB bulk product waste (non-remediation waste).* In the NPRM, EPA identified certain PCBs and PCB Items coming out of service for disposal as PCB Non-Remediation Waste (see § 761.3 and § 761.62). In today's rule, EPA calls this material PCB bulk product waste, to characterize more accurately its source and nature. The final rule clarifies at § 761.62 that the wastes addressed are ≥50 ppm PCBs when taken out of service and there are four disposal options for PCB bulk product waste (performance-based disposal, disposal in solid waste landfills, risk-based disposal and disposal as daily landfill cover or roadbed). The final rule at § 761.65(c)(10) addresses temporary on-site storage of this waste. Under § 761.62(c), EPA may issue alternate storage approvals for PCB bulk product waste on a case-by-case basis.

a. *Performance-based disposal.* In response to comments seeking consistency with PCB remediation waste disposal, EPA added RCRA

Subtitle C landfills as a disposal option for PCB bulk product waste because they are designed and operated in the same manner as TSCA chemical waste landfills (see § 761.62(a)(3) of the regulatory text). EPA also added alternate disposal pursuant to § 761.60(e), decontamination pursuant to § 761.79, thermal decontamination pursuant to § 761.79(c)(6), and a coordinated approval pursuant to § 761.77 (see §§ 761.62(a)(4), (a)(5), (a)(6), and (a)(7) respectively of the regulatory text).

b. *Disposal in solid waste landfills (leachability-based option).* In the NPRM, EPA presumed that some PCB bulk product wastes met the leachability based-standard of <50 parts per billion (ppb) PCBs (see proposed § 761.62(b)). Other PCB bulk product wastes could be tested using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (the TCLP test) to determine the leachability of PCBs in the waste.

In today's final rule, EPA has not retained the TCLP as the definitive test because commenters indicated that it was not accurate and EPA prefers to set performance standards without prescribing test methods. Instead, EPA has provided two different landfill disposal options for PCB bulk product waste. PCB bulk product waste containing PCBs which are tightly bound within the matrix of PCB bulk product wastes and bulk product waste which leaches <10 µg/L measured using a procedure used to simulate leachate generation may be disposed of in municipal or non-municipal non-hazardous waste landfills (§ 761.62(b)(1)). PCB bulk product waste containing PCBs which are not bound in a solid matrix may be disposed of in landfills which segregate the wastes from organic liquids which could mobilize the PCBs and which collect leachate generated from the landfill cell and monitor it for PCBs (see § 761.62(b)(2) of the regulatory text). Disposal of these materials in accordance with the conditions specified in § 761.62(b) would not result in release of toxicologically significant concentrations of PCBs to the the ambient environment, including ground water. Therefore, EPA has determined that such disposal does not present an unreasonable risk of injury to health or the environment (Refs. 22 and 23).

While EPA is still requiring leach testing for certain materials disposed of in a municipal or non-municipal non-hazardous waste landfill (see § 761.62(b)(1)(iii)), EPA has reduced the level of PCBs in the aqueous leachate from 50 to 10 µg/L (approximately 10 ppb). This change is based on comments that the solubility of two major Aroclor components, 1254 and 1260, is generally less than 50 ppb. Thus false negatives concerning the presence of leachable PCBs (PCBs not bound up in the matrix of the waste) would result if EPA retained 50 ppb as the regulatory level.

It is not always necessary to determine the PCB concentration or leaching characteristics of PCB bulk product waste. For example, under § 761.62(b)(1)(i) certain PCB bulk product waste may be disposed of in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill regardless of its PCB concentration. Under § 761.62(b)(4), the disposer would have to notify the disposal facility that the waste may contain PCBs ≥50 ppm, but could do so based on application of a general knowledge of the waste stream (or similar material) to report the PCB concentration. If the disposer could not base the § 761.62(b)(4) notice on general knowledge of the PCB concentration of the waste, and needed to sample the waste, however, the disposer would have to use subpart R or another sampling method approved under § 761.62(c). It would also be necessary to use subpart R or § 761.62(c) for purposes of disposal of PCB bulk product waste in accordance with § 761.62(a)(4) in a facility having an upper limit on PCB concentration which can be disposed using the approval.

Generators of PCB bulk product waste must provide prior notification to PCB waste management facilities not having commercial PCB storage or disposal approvals. The notice must state that the PCB bulk product waste may include components containing PCBs at ≥50 ppm. There are three options for determining the concentration of the waste: analysis of a representative sample of the waste in the shipment selected in accordance with subpart R; application of a general knowledge of the waste stream (or similar material) based on prior testing by the disposer or others; or the presumption that the unsampled, unanalyzed waste contains ≥500 ppm PCBs (see § 761.50(a)(5)). For PCB bulk product waste disposed of under § 761.62(b)(1), the notice must state that the waste is known or presumed to leach <10 µg/L PCBs. For PCB bulk product waste disposed of under § 761.62(b)(2), the notice must state that the waste is known or presumed to leach ≥10 µg/L PCBs.

In addition, § 761.62(b)(4) requires different notification procedures for waste disposed of under § 761.62(b)(1) than for waste disposed of under § 761.62(b)(2). For waste disposed of under § 761.62(b)(1), notice is required only in advance of the first shipment from the same disposal waste stream. For example, a new notice would be required where a shredding operation changed its feedstock from automobiles to plastic-insulated electrical cables or to white goods (i.e., household appliances or industrial appliances, such as refrigerators, ranges, washers, and water heaters). A disposer of demolition waste would have to submit a new notice for demolition waste from a new demolition project. For example, where a disposer was delivering waste from a demolition project in more than one load, a notice would not be required for each load from that project. Where the disposer began delivery of waste from a different demolition project, a new notice would be required. For waste disposed of under § 761.62(b)(2), notice is required in advance of the first shipment from the same disposal waste stream and with each subsequent shipment.

Also, part 761, subpart K does not apply to PCB bulk product waste disposed of under § 761.62(b).

Under current rules at § 761.60(b)(2)(ii), intact and non-leaking PCB small capacitors may be disposed of as municipal solid waste. Automobile and appliance shredder fluff may be disposed of in a municipal or non-municipal non-hazardous waste landfill as PCB bulk product waste only if it does not contain shredded PCB small capacitors. If a capacitor is shredded, the PCBs are no longer enclosed within the capacitor and must be disposed of under § 761.62(a) or (c).

c. *Risk-based option.* Section 761.62(c) sets out the procedure EPA will use for issuing risk-based storage or disposal approvals for PCB bulk product waste. EPA will evaluate each application for a risk-based approval and its supporting information to determine whether the proposed storage or disposal methods or locations would pose an unreasonable risk of injury to health or the environment. To allow flexibility, the final rule does not specify the criteria EPA must use in this evaluation. However, examples of such criteria could be: (1) The nature and quantity of the wastes; (2) the proposed alternate design and operation; (3) the hydrogeologic setting of the unit, including attenuative capacity and thickness of the liners and soils present between the pile and ground water or surface water; and (4) any other factors

which would influence the quality and mobility of the leachate produced and its potential to migrate to ground or surface water.

d. *Disposal as daily landfill cover or roadbed.* EPA received comments on using automobile shredder waste as a daily landfill cover or under asphalt as part of a road bed. EPA considers these activities as disposal rather than use, and under § 761.62(d) will allow shredder waste to be disposed of in a landfill as the final daily cover, if it remains in the landfill and is not released or dispersed by wind or other action or may be disposed of under asphalt as part of a road bed. Because these disposal options have been restricted to materials that do not leach, and because other potential routes of exposure have been controlled, EPA has concluded that the risk from these disposal options is the practical equivalent of disposal in a landfill as required in § 761.62(b)(1), and therefore that this risk is not unreasonable. Both of these potential disposal approaches can also be addressed in a risk-based disposal application under § 761.62(c).

e. *Sampling (subpart O).* EPA redesignated Appendix III as subpart O, and reorganized it to have three levels of random sampling: collecting a representative 19-liter (5 gallon) bucket of waste from the population, selecting one quarter of this 19 liters for particle size reduction, and selecting a subsample of the reduced particle size fraction for chemical analysis. Use the procedures specified in subpart R to sample non-liquid, non-metal PCB bulk product waste or non-liquid, non-metal PCB remediation waste to be disposed of off-site when it is necessary to analyze the waste to determine PCB concentration or leaching characteristics for storage or disposal. Subpart R includes procedures for sampling waste which is continuously generated and previously generated waste. However, § 761.50(a)(5) allows non-liquid PCBs to be land disposed without regard to otherwise-applicable sampling requirements by presuming that the PCBs disposed of are ≥500 ppm (or ≥100 μg/100 cm^2 if no free-flowing liquids are present).

Some commenters provided specific sampling plans to address the objectives in the proposed rulemaking. EPA incorporated some aspects of these plans into subpart O. However, these plans relied on judgement sampling, which has an inherent bias. To avoid the bias, EPA has substituted sample selection procedures which use random numbers.

10. *PCB household wastes.* EPA raised the issue in the ANPR and NPRM, of whether it should create an exclusion from the disposal requirements for PCB household waste. Although some commenters questioned whether such an exclusion was needed, most supported the idea, and suggested that EPA develop a TSCA exclusion that is identical to the RCRA household waste exclusion at 40 CFR part 261.4(b). EPA agrees that the provision at § 761.63 should be modified to more closely parallel the RCRA exclusion.

In the NPRM, EPA defined PCB household waste as:

> PCB waste that is composed of unwanted or discarded household items that contain PCBs, come from private residences and are commonly found in private households, including individually owned or rented units of a multi-unit construction. Wastes created during renovation and demolition projects are not PCB household wastes except for paint on surfaces. Renovation or demolition projects include, but are not limited to, the conversion of industrial property to residential units or the remodeling of hotels, motels, or multiple rental units.

Several commenters suggested that EPA should expand the definition to include wastes from commercial office buildings, automobiles, and other vehicles found in private households regardless of the source, and renovation wastes from private homeowners. In addition, they encouraged EPA to eliminate distinctions it created between transient and permanent settings. Many commenters did not accept the distinctions that EPA had drawn between the TSCA and RCRA exclusions as valid.

EPA has modified the definition for PCB household waste to read as follows:

> PCB waste that is generated by residents on the premises of a temporary or permanent residence for individuals (including individually owned or rented units of a multi-unit construction), and that is composed primarily of materials found in wastes generated by consumers in their homes. PCB household waste includes unwanted or discarded non-commercial vehicles (prior to shredding), household items, and appliances or appliance parts and wastes generated on the premises of a residence for individuals as a result of routine household maintenance by or on behalf of the resident. Bulk or commingled liquid PCB wastes at concentrations of 50 ppm or greater, demolition and renovation wastes, and industrial or heavy duty equipment with PCBs are not PCB household wastes.

Two criteria applicable to the RCRA household waste exemption must also be satisfied for the TSCA PCB household waste exclusion: (1) The waste must be generated by individuals on the premises of a temporary or permanent residence for individuals, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978, November 13, 1984). As a result, waste from sources such as commercial office buildings are not subject to the exclusion. EPA did not include a comprehensive listing of the structures that could serve as temporary or permanent residences in the TSCA definition. Nonetheless, residences covered by the RCRA exclusion at § 261.4(b)(1) (e.g., single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) are included under the TSCA PCB household waste exclusion.

EPA has determined that the PCB household waste exclusion will not result in an unreasonable risk of injury to health or the environment. Due to their age, many of the PCB-containing items that would be found in consumer households have been disposed of by now. As a result, few household items are likely to contain PCB capacitors (e.g., certain refrigerators and household freezers, room and central air conditioners, heat pumps, furnace blowers, fluorescent lighting ballasts and microwave ovens), and the disposal of those which remain in service will occur in a random, geographically dispersed manner. Further, non-liquid PCBs found in household items will most likely be bound in a solid matrix. EPA has taken precautions not to include in the PCB household waste definition regulated PCB liquids (i.e., ≥50 ppm PCB), demolition or renovation waste, and industrial or heavy duty PCB equipment. Only those municipal collection programs and treatment and storage facilities that can satisfy the PCB household waste exclusion criteria will be able to operate under that exclusion. The ultimate disposal of PCB household wastes is regulated; that is, these wastes cannot be abandoned, for instance, on an empty lot. EPA believes that PCB household waste managed in accordance with these requirements will not result in environmental releases of PCBs.

Homeowners will commonly utilize their local hazardous waste collection programs to dispose of unused paint, some of which may contain PCBs. Typically the homeowners bring in liquids in 1 or 5 gallon buckets which are consolidated into drums at the collection point and forwarded to a waste handling facility where they are tested before mixing with other similar wastes. Bulk liquids with a concentration of less than 50 ppm may then enter the waste oil/solvent

recycling stream and be used for fuel blending purposes. Rather than allow the waste management facility to treat bulk liquids containing 50 ppm PCBs or greater as unregulated wastes, EPA is requiring that these liquid PCB wastes be handled as regulated PCB waste (i.e., ≥50 ppm); therefore, regulated levels of bulk liquid PCB wastes are explicitly excluded from the household waste definition. EPA believes that regulated bulk or commingled liquid PCBs should be managed in high efficiency boilers or incinerators, as appropriate.

Further, EPA is not adopting the recommendation to include renovation and demolition wastes within the exclusion, since these wastes are not generated by consumers in their homes. However, wastes generated as the result of routine household maintenance (as opposed to renovation, construction or demolition activities) regardless of whether the activity is conducted by the homeowner or a contractor, would be considered PCB household wastes. Routine household maintenance would include, for example, stripping and repainting residential walls, and small home maintenance or repair projects such as removing/replacing PCB-containing articles from residential units. This approach is in alignment with existing policies for the RCRA household waste exemption. EPA has indicated that it does not consider wastes from debris produced during building construction, renovation, or demolition in houses, or other residences to be similar to those generaged by a consumer in the home during the course of daily living (49 FR 4478, November 13, 1984). (Refs. 24 and 25). Therefore, the risk considerations are not the same as for materials falling within the definition of PCB household wastes. The disposal of these materials is regulated under § 761.62.

Commenters from the scrapping industry wanted EPA to broaden the scope of the proposed PCB household waste exclusion to allow the processing of items traditionally received by that industry. Instead, elsewhere in this rule (see § 761.79(b)), EPA recognizes certain activities traditionally conducted by the scrapping industry (e.g., chopping, stripping insulation, and scrapping) as forms of decontamination and states that those activities do not require a TSCA disposal approval. Waste generated as a result of those processes generally is regulated as PCB bulk product wastes and must be disposed of in accordance with § 761.62.

Another commenter stated that PCB capacitors in residential furnaces should be managed as PCB household waste at the time of disposal. EPA agrees. Other appliances that may contain PCB small capacitors include, but are not limited to, refrigerators and household freezers, room and central air conditioners, heat pumps, furnace blowers, fluorescent lighting ballasts and microwave ovens. These items, although they contain PCBs, may be handled as PCB household waste under the TSCA exclusion and disposed of through a municipal hazardous waste collection program.

EPA also received a request to clarify its intent regarding entities that accumulate capacitors for disposal at TSCA facilities, for instance, utilities that collect capacitors from households. As indicated in the preamble discussion regarding the disposal of PCB small capacitors, the Agency is not changing the disposal requirements for intact and non-leaking PCB small capacitors; e.g., individuals other than manufacturers of PCB capacitors and/or PCB Equipment may dispose of small capacitors as municipal solid waste. (Leaking PCB small capacitors are regulated waste and are required to be disposed of by a method approved under TSCA.) EPA applauds the activities of those entities who collect and accumulate household capacitors for disposal in TSCA-approved facilities and encourages those entities to continue their collection and disposal efforts.

11. *Wastes from R&D activities, including chemical analysis of PCBs.* EPA proposed disposal requirements for waste generated during the process of chemical analysis. In response to comments, EPA clarifies that § 761.64 addresses laboratory wastes from R&D activities authorized in § 761.30(j) as well as the chemical analysis required in part 761, including §§ 761.30, 761.60, 761.61, 761.62, and 761.79. EPA believes that these two types of activities present similarly minimal risk because of the quantities and concentrations of the waste and the controlled environments in which the activities take place.

Commenters sought to increase the maximum waste quantities approved for disposal in a State-approved solid waste landfill, because larger laboratories generate more waste than the maximum allowance and because the small amounts of waste at issue would be difficult to track on an annual basis. The intent of the minimum quantity was to provide some regulatory relief for individuals who generate small quantities of PCB waste, and provide incentives to minimize PCB laboratory waste generation. Based on these comments, EPA has determined that the cost of recordkeeping to demonstrate compliance with the annual maximum amounts is not justified in terms of the potential increment of additional waste above those amounts that would be disposed of each year. Therefore, EPA has deleted the annual limit of 54 cubic feet in volume or 1,000 kg in weight from the final rule. EPA still encourages all disposers to practice waste minimization.

12. *Restructuring disposal technology requirements.* While many commenters supported the proposed disposal technology requirements, they stated that the proposed rule structure was confusing. Therefore, in addition to adding the proposed disposal technolgies, EPA reorganized subpart D to make the varius provisions easier to locate. For example, EPA moved the technical and performance requirements for high efficiency boilers, formerly in § 761.60(a)(2) and (a)(3), to new § 761.71; and moved the requirements for industrial furnaces, proposed at § 761.60(a)(4), to new § 761.72. Incinerator and chemical waste landfill technical requirements remain in §§ 761.70 and § 761.75.

F. Storage for Disposal

1. *One-year time limit and extensions.* EPA proposed to allow extension of the 1-year time limit for storage and disposal where the persons storing the waste had been unsuccessful in their continuing attempts to dispose of or secure disposal for their waste. EPA also proposed to allow extension of the 1-year time limit as a condition of a PCB disposal approval, based on such factors as lack of disposal capacity, the absence of a treatment technology, or insufficient time to complete the treatment or destruction process.

In today's rule, criteria for extending the 1-year time limit for storage and disposal are being finalized as proposed with two changes. First, PCB/radioactive waste removed from service for disposal is excluded from the 1-year storage for disposal requirement provided that continuing attempts to dispose of the waste are documented and the waste is managed in accordance with all applicable Federal, State, and local laws and regulations. PCB/radioactive waste that is exempt from the 1-year storage for disposal time limit pursuant to § 761.65(a)(1) is also exempt from the exception reporting requirements of paragraphs (c), (d), and (e) of § 761.215 (the provisions pertaining to the One-year Exception Report).

In addition, many commenters objected to initiating disposal decisions 30 days after waste had been placed in storage for disposal, as proposed in § 761.65(a)(2)(iv). EPA did not intend

that generators make disposal decisions within 30 days from the date their waste was first placed into storage for disposal. In the past, the Agency has allowed generators 9 months (270 days) in which to get their wastes to disposers and 90 days for disposers to dispose of the PCB waste as outlined in Office of Enforcement and Compliance Assurance TSCA Compliance Program Policy 6-PCB-6. In this final rule, as a condition of obtaining a 1-year extension, the Agency is requiring generators to demonstrate continuing attempts to obtain disposal for PCB wastes 270 days after first placing their waste into storage for disposal.

2. *Facility requirements*—a. *Temporary storage of PCB liquid at 500 ppm or greater.* Current § 761.65(c)(1)(iv) allows temporary storage, in an area that does not meet the requirements of § 761.65(b), of PCB Containers filled with liquid containing between 50 and 500 ppm PCBs for up to 30 days from the date the liquids were removed from use. EPA proposed to amend that section to allow temporary storage of PCB containers filled with liquid containing PCBs at concentrations of 500 ppm or greater.

Several commenters asked that EPA extend the temporary storage period from 30 to 90 days. The Agency originally proposed to allow temporary storage of liquids greater than or equal to 500 ppm PCBs because of generators consolidating PCBs prior to shipment to a disposal facility. Since these consolidating activities were believed to be of a short duration, EPA did not propose changes to the 30–day time limit. EPA continues to believe that a 30–day time limit is appropriate and therefore did not change it.

EPA is finalizing the 30-day temporary storage provision for liquid PCBs at 50 ppm or greater, provided a Spill Prevention Countermeasure and Control (SPCC) (40 CFR part 112) plan is in place and the liquid waste is in stationary bulk storage tanks (including rolling stock such as tanker trucks as specified by the Department of Transportation (DOT)) or packaging authorized in the Hazardous Materials Regulations (49 CFR parts 171 through 180) (see § 761.65(c)(1)).

b. *Storage of large PCB capacitors and PCB-Contaminated equipment on pallets next to a qualified storage area.* EPA proposed to delete the provision allowing pallet storage at § 761.65(c)(2). EPA reasoned that the phaseout date (October 1, 1988, § 761.30(1)) for most uses of PCB Large High Voltage Capacitors had passed, and additional storage space for this equipment was no longer needed. EPA also reasoned that this provision was no longer needed for PCB-Contaminated Electrical Equipment because it is typically drained prior to disposal and the drained hull or carcass is not subject to § 761.65.

Commenters unanimously disagreed, indicating that pallet storage is still widely used. Many proactive companies in the electrical utility industry and elsewhere have either reclassified their PCB Transformers to less than 500 ppm PCB or have disposed of these units, leaving the vast majority of their existing inventory of transformers in the 50 to 499 ppm PCB range or lower. When these units are taken out of service for disposal they are stored on pallets prior to draining. In addition, many large capacitors removed from restricted access areas are stored on pallets prior to disposal. Commenters also pointed out that eliminating this provision would create undue hardship by forcing them to either expand their existing storage areas or to ship this waste to another location. Therefore, EPA is not deleting the pallet storage provisions from § 761.65(c)(2).

c. *Alternate storage of PCBs.* EPA proposed to modify § 761.65(b)(2) to allow the storage of PCBs and PCB Items designated for disposal in waste management units permitted by EPA under section 3004 of RCRA or by a State authorized under section 3006 of RCRA to regulate the management of hazardous waste in containers. The proposed rule would also have allowed the storage in units otherwise regulated by a State under a TSCA look-alike law or approved as part of a PCB disposal approval. EPA reasoned that the RCRA requirements for permitted container storage units would provide an equal level of protection as the TSCA requirements, and preclude an unreasonable risk of injury from PCBs. Both require recordkeeping, waste tracking, secondary containment, monitoring for leaks, inspections, and financial assurance and closure requirements. The proposal did not extend to units operating in interim status under RCRA. The proposal would also have allowed PCBs, especially large volume wastes otherwise required to be stored in compliance with this section, to be stored under the terms and conditions specified in a PCB disposal approval.

Commenters generally favored the proposal, but some wanted EPA to adopt other RCRA provisions, such as storage in facilities with interim status and the 90-day accumulation period allowed for generators under 40 CFR 262.34. EPA's criteria for allowing PCBs to be stored other than in a facility approved under § 761.65(d) are that the permit must cover the management of PCBs and have a financial assurance mechanism. EPA is not allowing the storage of PCB waste in RCRA facilities operating under interim status because the interim status permit only applies to hazardous wastes and not to PCBs. Therefore, there would be no financial assurance to cover corrective action pursuant to 40 CFR 264.101.

EPA is also adding three other scenarios where PCB waste could be stored without a formal approval under § 761.65(d) or meeting the design criteria of § 761.65(b). The first two scenarios are facilities that are granted risk-based storage approvals under § 761.61(c) (PCB remediation waste) or § 761.62(c) (PCB bulk product waste). In both cases, the application for the storage approval must include information, based on technical, environmental, and other considerations, that the proposed storage method will not pose an unreasonable risk to human health or the environment. The third scenario is where a facility has a TSCA PCB Coordinated Approval, which includes provisions for storage, issued pursuant to § 761.77.

Any PCB waste spilled while stored at a RCRA facility must be cleaned up in accordance with the PCB Spill Cleanup Policy (40 CFR part 761, subpart G).

d. *Revision to storage unit criteria.* EPA amended § 761.65(b)(1)(iv) for consistency with the new definition of "porous surface" at § 761.3 which includes concrete and cement. The existing rule, which refers to Portland cement and concrete as "impervious," would have been inconsistent with the definition of "porous surface." These references are not being deleted, however, because this would cause all existing storage units that have used Portland cement or concrete to be out of compliance. Section 761.65(b)(1)(iv), as amended, requires a storage facility to have "floors and curbing constructed of Portland cement, concrete, or a continuous, smooth, non-porous surface as defined at § 761.3 of this part, which prevents or minimizes penetration of PCBs." EPA recommends, however, that nonporous surfaces be used for curbing and flooring for storage units since cleanup of non-porous surfaces is easier and less costly. EPA also recommends that porous surfaces be rendered non-porous by coating them with an epoxy sealant.

3. *DOT containers for storage of PCB waste.* EPA is adopting DOT container requirements for PCB storage, transportation, and disposal (see §§ 761.60(b)(2)(vi) and 761.65(c)(6)), by eliminating citations to specific

container type and cross-referencing the new performance-based DOT Hazardous Material Regulations (HMR) container requirements (see 49 CFR parts 171 through 180).

While this change will simplify regulatory compliance, individuals must keep in mind that EPA regulates storage of PCB waste in non-transportation situations, and additional marking requirements at § 761.40 are still in effect. In addition, because of the anti-dilution provision at § 761.1(b)(5), EPA may regulate PCB waste at a much lower concentration than DOT. Therefore, EPA may require some PCB waste not subject to the DOT regulations (i.e., less than 20 ppm or <1 pound of PCBs regardless of concentration) to be packaged in accordance with the DOT HMR (e.g., 49 CFR 173.203 (for liquids) or 173.213 (for non-liquids)), that is, in DOT authorized containers.

PCBs are listed in Packing Group II of the Hazardous Materials table at 49 CFR 172.101. However, under the HMR, PCBs that are transported by highway or rail need only be packaged pursuant to Packing Group III. PCB/radioactive waste, PCB/mixed waste, and PCB/hazardous waste not packaged in accordance with the HMR are not allowed to be transported. Additionally, the HMR as amended on December 21, 1990 (55 FR 52402) prohibits the construction of DOT specification packaging previously designated for PCB waste storage (i.e., DOT Specification 5, 5B, 6D, 17C, 17E, and 17H containers) effective October 1, 1994. Further, transportation of PCBs in these outdated DOT specification containers is not authorized beyond September 30, 1996, unless they were filled prior to, and not emptied and refilled after, October 1, 1996 (see 49 CFR 171.14(a)(2)).

Several commenters argued that EPA should continue to allow the use of these old DOT specification containers for storing PCBs in situations not subject to DOT regulations. Some companies have invested in inventories of these old specification containers that would be expensive to replace. The Department of Energy noted that it has large quantities of non-fissionable PCB/radioactive waste in storage that would have to be repackaged. EPA relied for many years on the stringent standards in the old DOT specifications, and believes the continued use of containers meeting these specifications for non-DOT applications will not pose an unreasonable risk to health or the environment. Therefore, EPA is allowing such use to continue at § 761.65(c)(6)(ii).

EPA received comments that it should continue to list at § 761.65(c) all containers authorized by DOT. EPA believes such an approach would defeat EPA's objectives of providing flexibility to industry and minimizing the resource burden associated with updating the PCB regulations each time DOT modifies its requirements. Most commenters supported EPA's proposal to cross-reference DOT regulations instead.

The final rule also amends § 761.60(b)(2)(vi) to conform to the new DOT container requirements. A commenter misunderstood the effect of the change to this section and expressed concern that EPA is making a new allowance for PCB Capacitor disposal at § 761.60(b)(2)(vi). This is not the case. Section § 761.60(b)(2)(vi) is an existing provision which is being modified only with respect to container specifications. Readers of today's final rule should keep in mind that the PCB Capacitors described in § 761.60(b)(2)(vi) of the regulatory text may not be disposed of in a chemical waste landfill unless the Assistant Administrator for Prevention, Pesticides and Toxic Substances first authorizes their disposal pursuant to existing § 761.60(b)(2)(v).

4. *PCB/radioactive waste.* The proposed rule defined "PCB/fissionable radioactive waste or PCB/radioactive waste" as "PCBs regulated for disposal under subpart D of part 761 that also contain fissionable radioactive material or radioactive material subject to regulation under the Atomic Energy Act of 1954 as amended." At the suggestion of comments, EPA is clarifying the definition by deleting the reference to "PCB/fissionable radioactive waste," maintaining the term "PCB/radioactive waste," and including PCBs regulated for disposal that also contain source, special nuclear, or byproduct material that is subject to the Atomic Energy Act of 1954 as amended, or naturally occurring or accelerator produced radioactive material.

The Agency also proposed to allow PCB/radioactive waste to be stored for longer than 1 year if the storer requested and received an extension. Several commenters indicated that since there is inadequate disposal capacity for PCB/radioactive waste, EPA should not require generators of such waste to undertake the process of requesting and obtaining 1 year extensions. The Agency agrees and, in addition, has exempted PCB/radioactive waste from the 1 year storage for disposal and exception reporting requirements (see § 761.65(a)).

EPA proposed to allow PCB/radioactive waste to be stored in containers other than those meeting the DOT performance standards and to not require a minimum 6-inch high curbing for PCB/radioactive waste. EPA received no comments on these proposals and they are finalized as proposed (see § 761.65(c)(6)(i) and § 761.65(b)(1)(ii)).

5. *Changes in ownership or operational control.* See Unit IV.M.6. of this preamble.

6. *Dating and inspection of PCB Article Containers.* PCB Articles and PCB Containers must be checked periodically for leaks (see § 761.65(c)(5)), and dated when they are placed into storage (see § 761.65(c)(8)). PCB Article Containers, however, were not included in § 761.65(c)(5) and (c)(8), creating a loophole that allows a storage unit owner to omit dating and inspecting these containers and to circumvent the 1-year storage and disposal time limit. EPA proposed in the NPRM to correct this oversight by replacing the phrase "PCB Articles and PCB Containers" with "PCB Items" wherever it occurs in § 761.65(c)(5) and (c)(8). The definition of "PCB Item" at § 761.3 includes PCB Article, PCB Article Container, PCB Container, PCB Equipment and anything else that contains PCBs. No significant comments were received on this proposal, and EPA is finalizing the modification as proposed.

G. TSCA PCB Coordinated Approvals

In both the ANPR, and the NPRM, EPA solicited comments regarding a provision which would allow it to recognize certain other Federal or State waste management documents governing the storage, cleanup, treatment and disposal of PCB wastes. The reasons for developing such a provision were to eliminate duplicative approval processes (i.e., modifying the requirement to issue a TSCA PCB approval), to foster communications and coordination among Federal and State environmental officials, and to ensure a more efficient use of limited resources. Permits or approvals from other state or Federal programs often are required for the storage or disposal of the PCB waste. For example, placement of dredged material in upland environments is a disposal option at many navigation projects, for environmental and economic reasons. The U.S. Army Corps of Engineers evaluates placement of dredged material in upland facilities, including evaluation of the potential contaminant pathways from the dredged material placement operation. These placement operations are subject to the permit requirements of section 10 of the Rivers and Harbors Act of 1899, taking into account EPA's Clean Water Act section 404(b)(1) Guidelines and the

National Environmental Policy Act (Ref. 26).

Where the dredged material also contained regulated PCBs, its management and disposal would be subject to TSCA. Management and disposal of dredged material containing <50 ppm PCBs, based on a permit or authorization issued by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or section 103 of the Marine Protection, Research, and Sanctuaries Act, is an authorized disposal option under § 761.61(b)(3). Except in accordance with the self-implementing provisions of § 761.61(a), management and disposal of dredged material with a higher PCB concentration, or material disposed of in an upland facility with no return flow to waters of the United States, would be subject to TSCA approval requirements. The disposer could avoid the requirement to get a separate TSCA approval if a coordinated approval were granted based on a permit issued under the Clean Water Act, Marine Protection, Research and Sanctuaries Act, Rivers and Harbors Act, or other applicable authority.

Under existing requirements, a TSCA PCB approval is required generally for the commercial storage and disposal of PCB wastes at 50 ppm or greater. There are, however, limited scenarios where a TSCA PCB approval is not applicable, such as the on-site cleanup and disposal of PCBs under the CERCLA Superfund program.

Some commenters supported the coordinated approval provision, because "better coordination with existing State authorities should be encouraged" and "greater flexibility will be provided to generators for the disposal of PCBs," but they also identified concerns. Of those in favor, most preferred the self-implementing approach over the interactive procedures, believing that a detailed TSCA review of permitted RCRA or State PCB program activities is not necessary. EPA has retained the interactive approach to ensure that a review under the TSCA authority is accomplished prior to, rather than after, the initiation of the proposed PCB disposal activity. A prior review was not included in the self-implementing approach, which would have allowed individuals to commence their PCB disposal activities immediately after completing three steps: obtaining an EPA identification number (or confirming an existing number), notifying the EPA Regional Administrator of their preference to use another waste management document, and receiving written confirmation from the EPA Regional Administrator that the notice had been received. Although a detailed review may not be necessary, the Agency believes the success of the coordinated approval process lies in appropriate coordination and consultation with the other waste management authority to ensure few opportunities exist for the mismanagement of PCB wastes. Therefore, EPA chose the interactive approach because the Agency believes that the costs of the additional administrative requirements are outweighed by the increased level of environmental protection possible under this approach.

One commenter cautioned EPA about losing its ability to exercise national oversight over the PCB program if hybrid State permits replace TSCA permitting requirements. A slightly different point of view was expressed by one commenter who suggested that Federal oversight should be kept to a minimum if States choose to address PCB wastes using State authorities. Other commenters opposed the proposal as unnecessary and resulting in: (1) Differential treatment of facilities currently holding TSCA approvals (i.e., not all facilities would be held to the same standards); (2) confusion regarding TSCA and RCRA labeling and storage requirements placing generators, storers, and disposers in "double jeopardy"; and (3) State programs which may be more stringent or overly protective.

EPA recognizes that the coordinated approval may not be a perfect solution to the problem of duplicative permitting requirements. To take advantage of the coordinated approval, a facility could rely on a valid waste management permit/approval issued under a Federal law that is administered in whole or in part by the Administrator. Although the standards under these different authorities may vary, they do serve to eliminate or reduce the risks to health or the environment from exposure to PCBs. The process is voluntary; individuals are not required to obtain a TSCA PCB Coordinated Approval. The coordinated approval provision may also be appropriate for PCB waste management documents which have been issued pursuant to regulations that have been promulgated by a State for the disposal of PCBs. Implementation of the coordinated approval process using the interactive approach will ensure the other waste management permit/approval is consistent with the basic principles of the TSCA PCB disposal program.

In regard to the point that States may be more stringent or overly protective, commenters suggested that EPA should preempt State and local standards for PCBs. As stated in the NPRM preamble, TSCA does not allow the Administrator to preempt State disposal rules which describe the manner or method of disposal of a chemical substance or mixture, or in this instance, the disposal of PCBs (59 FR 62832).

Although several commenters recognized that the option to regulate the disposal of PCBs at the State level currently exists under either a TSCA look-alike program or an expanded RCRA hazardous waste program, no unanimity existed on which approach was preferred. Some commenters felt the TSCA PCB Coordinated Approval was the equivalent of a Federal mandate. Commenters were not in favor of State PCB programs because of the potential inconsistency in standards and regulatory requirements which could complicate compliance, create confusion, result in higher costs and excessive burden to the regulated community and unnecessarily impede interstate commerce.

Section 761.77 is not a Federal mandate. EPA is not requiring any State to develop a TSCA look-alike program or to expand its RCRA hazardous waste program to include PCBs. However, any State may pursue either option, provided, for TSCA look-alike programs, that the requirements are at least as stringent in the protection of health and the environment as the applicable TSCA requirements, and under expanded hazardous waste programs or any State program that has been approved by EPA, the risks of injury to health or the environment from PCBs are eliminated or reduced by actions taken under those authorities. The TSCA PCB Program is not delegable, and EPA is not delegating responsibility for implementing TSCA section 6(e) to the States. The TSCA PCB Coordinated Approval provides a mechanism for Federal and State environmental officials to better coordinate PCB activities, maximize diminishing resources, incorporate flexibility and reduce oversight of States which demonstrate the ability to monitor PCB activities.

EPA has retained the coordinated approval provision, but has modified it in light of comments. One commenter suggested EPA include a definition for TSCA PCB Coordinated Approval. EPA agrees and has added the definition in § 761.3.

A number of comments questioned the applicability of a TSCA PCB Coordinated Approval at CERCLA remediation sites. Proposed § 761.77(g), which addressed on-site remediation activities conducted under CERCLA, has been deleted. EPA did not intend to suggest that a TSCA approval would be

required for CERCLA on-site remediation and disposal activities.

EPA also clarifies that revocation of a TSCA PCB Coordinated Approval will be based solely on those PCB activities covered by the non-TSCA approval that serve as the technical or legal basis for the coordinated approval, i.e., are related to the management of PCBs. For example, a determination to issue a notice of deficiency or to revoke the TSCA PCB Coordinated Approval may be based on, but is not necessarily limited to: (1) Non-compliance with § 761.77(b) and (c); (2) operation of the approved PCB waste management process in a manner which may result in an unreasonable risk of injury to health or the environment; (3) failure to comply with, expiration of, or revocation of the non-TSCA approval or of the program under which the non-TSCA approval was issued; and (4) for CERCLA off-site actions, lack of completion of requirements conducted pursuant to CERCLA decision and enforcement documents issued by EPA that apply to off-site PCB waste management activities, or failure of the owner, operator or responsible party to comply with conditions of the decision and enforcement documents that apply to PCB waste management activities. EPA also clarifies that before it revokes a TSCA PCB Coordinated Approval, it will, as a matter of policy, consult with the authority that issued the underlying non-TSCA approval. EPA is not required, however, to seek or obtain the agreement or concurrence of the issuing authority prior to revoking a TSCA PCB Coordinated Approval.

Finally, permits issued by regulations found in title 40 of the CFR, such as those authorized under RCRA at § 270.60, may be covered under the coordinated approval provision.

H. Decontamination

In today's rule, EPA is finalizing the decontamination regulations as proposed in § 761.79 with modifications resulting from public comments and EPA's scientific studies. The Agency clarifies that: (1) Decontamination standards and procedures can be used for disposal and decontaminated materials can be distributed in commerce, used or reused; (2) specified decontamination activities no longer need a PCB disposal approval; (3) materials meeting the applicable decontamination standards or procedures are unregulated for disposal under subpart D of part 761; and (4) most wastes and residues from decontamination activities can be managed based on their existing PCB concentration. EPA clarifies that when contaminated PCB materials are sent off-site for decontamination, they must be manifested to a commercial PCB storer or disposer.

In the NPRM (59 FR 62800), EPA proposed for non-porous surfaces the decontamination standard in EPA's Spill Clean-up Policy (i.e., less than or equal to 10 micrograms PCB per 100 centimeters squared), and two non-aggressive decontamination procedures using kerosene as an alternative to decontamination followed by confirmatory sampling. The Agency also proposed to waive TSCA disposal approval requirements for a number of specified decontamination activities while requiring measures to be taken to prevent releases of PCBs to the environment and to protect workers against dermal contact or inhalation. The Agency solicited comment on including distillation as a decontamination activity. After using an EPA specified decontamination procedure, the decontaminated surface would not be regulated for disposal and could be reused except in association with food, feed, or drinking water in accordance with proposed § 761.20(c)(5). The Agency also clarified that disposal of materials used in decontamination, such as abrasives, solvents, and equipment is regulated. EPA further proposed that certain solvents could be disposed of in industrial boilers. Finally, the Agency proposed a decontamination level for water consistent with EPA's drinking water standard to ensure that the reuse of decontaminated water is safe.

The final decontamination regulations at § 761.79 establish measurement-based decontamination standards for removing PCBs from water, organic liquids, non-porous surfaces, concrete, and non-porous surfaces in contact with non-liquid PCBs (including non-porous surfaces covered with a porous surface, such as paint or coating on metal). EPA is finalizing the self-implementing decontamination procedures for non-porous surfaces in contact with mineral oil dielectric fluid (MODEF) and providing a mechanism for allowing other performance-based procedures and solvents to be used in decontamination of materials contaminated with MODEF or other PCB liquids. The final rule clarifies that thermal processes as specified in § 761.72 may be used to decontaminate metal surfaces. Additionally, EPA moved the decontamination of air compressor systems, formerly in § 761.60(b)(5), to the performance-based provisions of § 761.79.

EPA has maintained the general provisions from the proposal requiring persons conducting decontamination activities to protect against direct releases of PCBs to the environment and to protect workers from dermal contact or inhalation of PCBs or materials containing PCBs. Although many commenters felt that these requirements were duplicative of OSHA standards, EPA believes that they are necessary. First, OSHA standards do not apply to all settings where decontamination activities may occur. Second, because EPA is no longer requiring PCB disposal approvals for specified decontamination activities, these general safety standards will ensure there is no unreasonable risk of injury to health or the environment from decontamination activities.

The decontamination procedures in § 761.79 do not apply to all wastes. For example, they do not apply to intact electrical equipment such as transformers, voltage regulators, capacitors, and rectifiers. The surface areas in this kind of equipment are very large and may have numerous laminations with a high contact, low volume space limiting the solvent contact necessary for complete decontamination. In addition, electrical equipment may contain porous components such as wood. Since most porous materials cannot be adequately decontaminated, the decontamination procedures generally do not apply to porous surfaces (except for non-porous surfaces covered with a porous surface, such as paint or coating on metal, which can be decontaminated by removing the paint or coating, leaving only a non-porous surface meeting the standards in § 761.79(b)(3)). Finally, today's decontamination procedures are not appropriate for or applicable to wastes such as soil, debris, and sediments.

Commenters suggested a number of specific decontamination methods. Some also wanted a mechanism for EPA to approve additional methods in the future. EPA has added the distillation of PCBs from contaminated solvents, oil/water separation, and scarification of surfaces to the decontamination procedures under § 761.79 which do not need a PCB disposal approval. The Agency agrees with comments that potential air release concerns associated with distillation will be adequately addressed by the Clean Air Act and RCRA. The decontamination methods no longer requiring a PCB disposal approval now are: chopping (including wire chopping), distilling, filtering, oil/water separation, spraying, soaking, wiping, stripping of insulation, scraping, scarification, the use of abrasives or solvents to remove or separate PCBs from contaminated non-porous surfaces or liquids, or thermal

processes in accordance with § 761.72. Some specific methods mentioned in the comments, such as physical abrasion, surfactant cleaning, and hydroblasting fit these general decontamination categories. EPA did not include some methods suggested by commenters because the efficacy of the suggested method was not demonstrated, or because EPA did not believe there was a way to easily contain a release of PCBs to the environment. The decontamination procedures listed in § 761.79 will not pose an unreasonable risk because the procedures that create the potential for release of PCBs would do so in airborne dust, which can be controlled through standard industrial practices. Section 761.79(e) also requires persons conducting decontamination activities to protect against release of PCBs to the environment and requires workers to wear equipment to protect against dermal or inhalation contact from PCBs. Persons wishing to conduct decontamination methods not covered by § 761.79 must obtain a PCB disposal approval.

EPA is allowing contaminated water to be decontaminated to different concentration levels specified in § 761.79(b)(1) depending on its subsequent use, reuse, or disposal. EPA has finalized the proposed decontamination standard for water of ≤0.5 micrograms PCBs per liter. Under § 761.30(u)(3), water meeting this decontamination standard may be reused without restriction. Many commenters requested a higher standard where water would not be used for drinking water, food or feed, such as when the water would be subject to the Clean Water Act standards for direct or indirect discharges or used as non-contact cooling water in an industrial setting. EPA has responded to these comments by including in § 761.30(u)(4) a provision allowing water containing less than 200 micrograms per liter (approximately 200 ppb), the maximum water solubility of common Aroclor formulations of PCBs, to be used in industrial processes where there is no release from the process (e.g., as a non-contact cooling water). In addition, EPA has specified in §§ 761.50(a)(3) and 761.79(b)(1)(ii) that water containing PCBs may be discharged to a treatment works (as defined in regulations at 40 CFR 503.9(aa) implementing the Clean Water Act) or to navigable waters if the PCB concentration is less than 3 µg/L (approximately 3 ppb), or in accordance with a PCB discharge limit included in a permit issued under section 307(b) or 402 of the Clean Water Act. The processes for regulating discharges under the Clean Water Act are adequate to protect against an unreasonable risk from exposure to PCBs. Where PCBs are not specifically subject to a discharge limit, the final rule incorporates the 3 µg/L level historically used to regulate discharges of PCBs, both in specific PCB disposal approvals under part 761 and in regulations governing industrial processes that recycle PCB-Contaminated raw materials.

The final rule establishes a decontamination standard for organic liquids and non-aqueous inorganic liquids containing PCBs of less than 2 milligrams per kilogram (i.e., <2 ppm PCBs). EPA revised the proposed organic liquids standard from less than 2 milligrams per liter to less than 2 milligrams per kilogram by weight to be more consistent with PCB concentration measurements required in § 761.1(b)(2).

The final rule includes decontamination standards for non-porous surfaces (See § 761.79(b)(3)). The decontamination standard for non-porous surfaces in contact with liquid PCBs at concentrations ≥500 ppm for unrestricted use is ≤10 µg/100 cm² and for smelting in an industrial furnace operating in accordance with § 761.72(b) is <100 µg PCB/100 cm². Surface PCB concentrations are measured using a standard wipe test as defined at § 761.123. In response to comments, EPA added two decontamination standards for non-porous surfaces in contact with non-liquid PCBs, such as painted or coated metal, after removal of the coating. These surfaces may be decontaminated for unrestricted use in accordance with National Association of Corrosion Engineers (NACE) Visual Standard No. 2, Near-White Blast Cleaned Surface Finish, and decontaminated for smelting in an industrial furnace (operating in accordance with § 761.72(b)) using NACE Visual Standard No. 3, Commercial Blast Cleaned Surface Finish, and verified by visual inspection of all cleaned areas (Refs. 27 and 28),

Under § 761.79(c)(2), the Agency is allowing movable equipment and tools to be decontaminated by swabbing, a double rinse/wash as specified in § 761.123, or another applicable decontamination standard or procedure in § 761.79.

Several commenters sought other provisions available through EPA's Spill Clean-up Policy for cleaning up recent PCB spills, particularly for concrete and other porous surfaces. EPA has added a decontamination standard of ≤10 µg/100 cm² for concrete that has been contaminated within 72 hours. EPA has not established decontamination levels for other porous materials such as wood, or for older spills on concrete, because of the likelihood that the materials have absorbed PCBs which cannot be adequately removed. These materials may be used, subject to the use authorization at new § 761.30(p), or disposed of in accordance with 40 CFR part 761, subpart D.

EPA has also finalized the self-implementing decontamination procedures for non-porous surfaces contaminated with MODEF with some modifications (see § 761.79(c)) (Ref. 29). Many commenters wanted to use additional decontamination solvents. EPA has included other organic solvents having similar properties to kerosene in performance-based decontamination options. EPA conducted scientific studies to evaluate decontamination of impervious surfaces with aqueous-based solvents (Ref. 30).

Based on EPA's limited performance-based validation testing, EPA is providing a self-implementing procedure under § 761.79(d)(4) to qualify additional decontamination fluids for decontaminating non-porous surfaces contaminated with MODEF or other PCB liquids (see subpart T). EPA tested several solvents for use in accordance with performance-based decontamination under § 761.79(c)(3) and (c)(4). EPA did not intend its testing to be limiting, but did not test all potential solvents under all potential conditions. EPA only used MODEF as a surface spiking solution for convenience and because it was expected to be one of the most common sources of PCB contamination on surfaces. Testing results indicated that other solvents and other conditions could be acceptable for decontaminating surfaces that are contaminated with PCBs.

The final rule also includes a self-implementing procedure for decontamination of metal surfaces using thermal processes in accordance with § 761.72, depending on the PCB concentration (see § 761.79(c)(6)). Some surfaces decontaminated using these procedures may then be unregulated for disposal or use.

EPA is not finalizing all of the performance-based decontamination procedures for air compressor systems (proposed at § 761.30(i)(3)(i)). Commenters generally stated that the self-implementing procedures for cleaning air receivers and other pressurized large volume tanks by rotation were impracticable, and these provisions are not included in the final rule. Several types of spray equipment for cleaning large volume tanks are on the market, but the potential operating conditions are too varied to allow EPA

to establish uniform, self-implementing protocols. Spraying is, however, an authorized decontamination method under § 761.79(b), as long as the decontamination levels specified in that section are met and confirmed by sampling. In addition, the final rule includes a provision at § 761.79(h) allowing the EPA Regional Administrator to approve decontamination or sampling methods not specifically described elsewhere in § 761.79 based on a finding of no unreasonable risk.

The final rule does include self-implementing decontamination procedures for piping and air lines of air compressor systems. Commenters raised concerns about the use of kerosene and other prescribed conditions for this equipment. In response, EPA is allowing the use of additional organic and aqueous solvents based on data submitted by commenters, and based on EPA's experience with the regulated community's use of these solvents in accordance with PCB disposal approvals issued under § 761.60(e). For decontamination using other solvents or conditions, follow the appropriate provisions of § 761.79(d)(4) and subpart T or seek a PCB disposal approval.

EPA clarifies that self-implementing, performance-based decontamination conducted under § 761.79(c) does not require confirmatory surface measurements (see § 761.79(f)). However, anyone claiming that a surface is decontaminated must be able to substantiate that claim in writing. Subpart N provides sampling procedures for water and organic liquids. Subpart P provides sample site selection procedures for non-porous surfaces and concrete decontaminated from recent spills, as well as procedures for analyzing the samples and interpreting the results of the sampling. When sampling is required for the measurement-based provisions in § 761.79(b), written records must be maintained for 3 years from the date of decontamination. Copies of records may be maintained at the decontamination site or elsewhere as long as they are available to EPA in a timely manner, if requested.

EPA also clarifies that solvents contaminated during use in decontamination are to be managed and used at their existing concentration (see § 761.79(g)). Unless specifically addressed elsewhere, disposal options do not depend on the original concentration of PCBs in the material which is decontaminated. EPA is requiring chlorinated solvents used for decontamination to be disposed of as PCB waste regardless of their concentration in order to discourage their use and to minimize adverse consequences from uncontrolled air releases. However, EPA is allowing chlorinated solvents, other contaminated solvents, liquids, or non-liquids resulting from decontamination activities to be decontaminated to the extent permitted under § 761.79. Hydrocarbon solvents containing <50 ppm PCBs may also be burned and marketed in accordance with the used oil provisions of § 761.20(e). Because used oils are composed primarily of hydrocarbons, burning of hydrocarbon solvents will pose a similar, not unreasonable, risk to burning of used oils. One commenter asked whether hydrocarbon solvents which are also radioactive could be burned for energy recovery under the used oil provisions of § 761.20(e) if the combustion facility was approved or licensed for burning radioactive waste. Today's regulations do not preclude this activity.

Finally, wastes resulting from decontamination activities are subject to applicable manifesting, storage, and disposal requirements for PCB wastes. Facilities conducting decontamination activities must also comply with recordkeeping, reporting, and notification requirements of subparts J and K.

I. Exemptions for Manufacturing, Importing, Processing, Distributing in Commerce, and Exporting PCBs

1. *Class exemption for manufacture, import, processing, distribution in commerce, and export of PCBs for R&D.* EPA proposed the establishment of a class exemption at § 761.80(i) to allow processing and distribution in commerce for R&D of PCBs and PCB analytical reference samples derived from PCB waste material. EPA proposed this class exemption to minimize negative impacts from the relatively time-consuming statutory and regulatory process for individual companies seeking an exemption from the prohibition on processing and distributing in commerce of PCBs.

Overall, commenters agreed with the establishment of a new class exemption to facilitate the use of PCBs in R&D. However, they suggested that EPA and the scientific community would be better served if the class exemption also included the manufacture of PCBs for R&D. EPA agrees and has added manufacture of PCBs to § 761.80(i). EPA has also modified the text of proposed § 761.80(i) to specify that import and export of these materials are also covered by the exemption. All individuals who wish to be included in the class exemption will be required to submit a notification in the form of a petition to the Agency. EPA will treat a renewal request submitted by any one class member 6 months prior to the expiration of the 1-year exemption as a renewal request for the entire class (see the procedures at 40 CFR part 750, subpart C and § 750.31(e)).

EPA is limiting the manufacturing, import, processing, distribution in commerce, and export of PCBs to no more than 500 grams of PCBs annually, packaged in 5 milliliter hermetically sealed containers. EPA is also limiting the processing, distribution in commerce, and export of analytical reference samples derived from PCB waste material to 500 grams of PCBs annually. Individuals wishing to temporarily exceed these limitations must notify the Director, National Program Chemical Division, in writing, of the sites and quantities involved, and provide a justification for an increase. Any increase granted will be in writing and will not extend beyond the time remaining in the exemption year. Persons needing an increase on other than a temporary basis are required to obtain an individual exemption which addresses their specific needs. Until EPA has completed rulemaking on a request for an individual exemption, individuals may continue their PCB activities, but are limited to the constraints of the existing class exemption.

The establishment of the class exemption at § 761.80(i) does not affect any manufacturer, processor, distributor or exporter previously granted an exemption under existing § 761.80(c), (f), (g), or (h). Those individuals will not be required to modify or discontinue the activity for which their exemption was granted at this time. In addition, EPA will consider individuals who have obtained exemptions under § 761.80(c), (f), and (h) to manufacture, process, distribute in commerce, or export PCBs for R&D in quantities of 500 grams or less, to be grandfathered into the class exemption at § 761.80(i) without the submission of a petition at this time. However, if those individuals increase the quantity of PCBs (beyond 500 grams), change the manner of manufacture, processing, or distribution in commerce of the PCBs, or any other aspect of the existing exemption, they must submit a new petition.

EPA is also allowing processors and distributors of PCBs in small quantities for R&D currently authorized by § 761.80(g) to continue their activity unchanged unless they wish to exceed the 100 gram limit. At that time, they can follow the notification procedures of § 761.80(g)(2), or submit a petition

within the § 761.80(i) timeframe, which would allow them to increase their limit to 500 grams.

Today's rule also allows research and development for PCB disposal under certain conditions (see § 761.60(j)). Processing and distribution in commerce of PCBs associated with R&D for disposal are regulated under existing provisions at § 761.20(c). Persons engaging in processing and distribution in commerce of PCBs for this disposal activity need not request an exemption under § 761.80.

2. *Class exemption for manufacturing PCBs for research and development of disposal technologies.* EPA proposed at § 761.80(e) to establish a class exemption allowing R&D facilities to manufacture (including import) PCBs solely for the manufacturer's own research to develop PCB disposal technologies. This provision has been included in the final rule. For purposes of § 761.80(e), use "solely in the manufacturer's or importer's own research" means use by the manufacturer or importer or one of its wholly-owned subsidiaries conducting disposal-related R&D. However, distribution of the PCBs that are manufactured under this exemption to other entities for their R&D activities is prohibited. All PCBs and materials containing PCBs, regardless of concentration, remaining from the disposal-related studies, are required to be disposed of or decontaminated pursuant to the original PCB concentration.

EPA is limiting PCB manufacturing, including import, activities under this exemption to 500 grams (approximately 1 pound (lb)) of PCBs per year. Commenters suggested EPA increase the quantity from 1 lb to 10 lbs to better serve the scientific community in conducting R&D for disposal-related activities. EPA considers 500 grams an ample R&D quantity for a year because PCBs are generally used in extremely small quantities (i.e., micrograms) during these activities. Individuals wishing to exceed this amount on a temporary basis must request and receive approval, in writing, from the Director, National Program Chemicals Division. To ensure that PCB manufacture under § 761.80(e) is being conducted for R&D into PCB disposal, EPA is requiring that the EPA Regional Administrator be notified in writing 30 days prior to the start of R&D activities requiring the manufacture of PCBs. This conforms with the § 761.60(j)(1)(ii) notification requirement.

A person wishing to be included in the class exemption at § 761.80(e) must submit an exemption petition to EPA 60 days prior to engaging in activities under the exemption. Renewals of or modifications to the exemption are required annually pursuant to the interim procedures for manufacturing exemptions at § 750.11 or processing and distribution in commerce exemption at § 750.31. To reduce the paperwork burden of the renewal process for the class, EPA will deem a properly filed renewal request for the exemption by any member of each class as a renewal request for the entire class.

3. *Other exemption issues.* EPA proposed modifications to § 761.80(g) which it is not adopting in today's final rule. One modification correlated with a proposed change in the "small quantities for research and development" definition at § 761.3; however, the proposed modification is moot because EPA is not finalizing the proposed definitional change. In addition, EPA intended to expand the existing class exemption at § 761.80(g) to include distribution in commerce for export. However, such distribution in commerce may be conducted under § 761.80(i) as finalized, and additional modification of § 761.80(g) is therefore no longer necessary. Similarly, proposed changes to § 761.80(o) regarding exemption renewals under § 761.80(g) have been rendered moot by changes from the proposal. EPA also is not finalizing proposed modifications to § 761.80(n) regarding renewals of the new class exemption at § 761.80(e); these provisions are in the text of § 761.80(e).

Many of the newly created provisions for exemptions to process and distribute PCBs in commerce direct readers to the petition filing procedures at 40 CFR 750.31. EPA discovered a drafting error in § 750.31(c), "Content of petition," from a previous amendment. Therefore, EPA is promulgating a technical correction to delete references at § 750.31(c)(9) to paragraphs which no longer exist (i.e., "(d)(1) through (8)" and "(d)(1), (3) and (5)"). These references should have been redesignated as paragraphs "(c)(1) through (8)" and "(c)(1), (3) and (5)" when § 750.31 was amended on April 11, 1994.

To grant an exemption under section 6(e)(3)(B) of TSCA, EPA must find that there is no unreasonable risk of injury to health or the environment from the exempted activity and that good faith efforts have been conducted to find a substitute for PCBs.

EPA finds that the manufacture, import, processing, distribution in commerce, and export of PCBs in accordance with § 761.80(e) and (i) will not result in an unreasonable risk of injury to health or the environment. The risk of environmental release of PCBs or risks of exposure to PCBs is negligible due to OSHA workplace safety regulations, the highly-trained nature of laboratory workers and scientists, the limitation on the volume of production, DOT transportation regulations, and the current marking regulations that require containers to be labeled as containing PCBs (also see the discussion in the NPRM). Finally, all wastes from PCB processing, including diluted PCB materials and any PCB residues or other contaminated media, are subject to the 1-year storage and disposal time limits at § 761.65 and § 761.60 and the manifesting requirements at § 761.207 *et seq.*

The good faith efforts finding does not apply because other chemicals cannot be substituted in toxicological, environmental, or analytical testing for PCBs.

J. Transboundary Movements

1. *The import for disposal rule and the Sierra Club decision.* In the NPRM, EPA proposed to control the export and import of PCBs for disposal under § 761.20. Subsequently, the PCB import regulations were separated from the larger rulemaking package and finalized on March 18, 1996 (61 FR 11096) (FRL–5354–8), at § 761.93 under a new subpart F - Transboundary Shipments of PCBs for Disposal. On July 7, 1997, the U.S. Court of Appeals for the Ninth Circuit overturned the Import for Disposal Rule, on the ground that EPA could not rely, as it did, on section 6(e)(1) of TSCA to authorize imports of PCBs for disposal. *Sierra Club* v. *EPA*, 118 F.3d 1324 (9th Cir. 1997). On July 18, 1997, EPA by letter informed those people who had submitted an import notification to EPA, pursuant to § 761.93, that EPA was closing the border to imports of PCBs. Accordingly, EPA would not allow the import of any shipment of PCBs under § 761.93 that left the exporting country after 12:01 a.m. local time, July 20, 1997. EPA can now only allow imports of PCBs by issuing exemptions to importers via the petition process under section 6(e)(3)(B) of TSCA. Today's rule implements the Sierra Club decision by amending § 761.97(a)(1) with minor clarifications.

2. *Proposed export provisions.* In the Import for Disposal rule, EPA redesignated the provisions formerly codified at § 761.20(c) allowing exports for disposal of PCBs and PCB Items at concentrations <50 ppm into a new § 761.97(a)(1). EPA believes that export of PCBs and PCB Items at concentrations <50 ppm was not affected by the *Sierra Club* decision, and

is retaining § 761.97(a)(1) with minor clarifications.

EPA stated in the NPRM that exports of PCBs and PCB Items for disposal in concentrations ≥50 ppm should be allowed on a case-by-case basis unless EPA had reason to believe that the PCBs would not be properly managed (59 FR 62817). EPA proposed that exports of PCBs or PCB Items in concentrations ≥50 ppm would be allowed at EPA's initiative or in response to a petition, provided there was an international agreement between the United States and the receiving country concerning PCB exports. Petitions needed to include a variety of information regarding the PCB waste and its proposed management; a certification by the government of the receiving country that it had received accurate and complete information about the waste, consented to receive it, and had adequate disposal facilities to assure proper management; and identification by the exporter of wastes containing liquid PCBs or PCB-containing electrical equipment. EPA proposed to exclude two types of PCB shipments from being considered exports or imports. The first type involved transit shipments where PCBs (including residues from spill clean-up in transit) are transported from the United States through another country and back to the United States (e.g., from Alaska through Canada to the continental United States). The second type of shipment involved PCBs procured domestically by the United States government, shipped to another country for United States government use and returned to the United States for disposal while remaining under United States government control.

3. *Decision to defer final rulemaking on exports and other transboundary shipments.* EPA has decided not to finalize today the provisions in the NPRM on exports for disposal or the return to the United States of Federal government PCB waste. EPA intends to address those issues as well as imports for disposal under the section 6(e)(3)(B) petition process in a future rule.

EPA is, however, finalizing the proposed provisions on transit shipments at a new § 761.99 for other transboundary movements. The Agency is also clarifying that PCB waste shipments that are merely transiting the U.S. (e.g., from Mexico to Canada) are not exports or imports.

The future rule on exports for disposal will not affect EPA's policy on PCB exports for use. Under the 1980 Closed Border Policy, PCB exports for disposal were banned. Exports for use or reuse were not affected, but remained subject to the limitations for processing and distribution in commerce under TSCA section 6(e)(3) and 40 CFR § 761.20, and the export notification requirements of TSCA section 12(b) and 40 CFR part 707, subpart D.

K. Change in Reportable Quantity — Spill Cleanup Policy

The Agency proposed to amend § 761.125(a)(1) by revising the phrase "under the National Contingency Plan all spills involving 10 pounds or more" to read "under the National Contingency Plan all spills involving 1 pound or more." Most commenters supported the proposal and EPA has finalized it without change.

L. Records and Monitoring

1. *Transfer of totally enclosed PCBs.* Under existing § 761.20(c)(1), totally enclosed PCB Items, such as Transformers, and Large High and Low Voltage Capacitors ≥50 ppm (as defined in § 761.3) sold before July 1, 1979, for purposes other than resale, may be distributed in commerce (e.g., sold). EPA proposed that records be maintained on transactions for these PCB Items. Some commenters supported this proposal while others believed it was not necessary because facilities maintained such information in their sales records.

The Agency is amending § 761.180(a)(2)(ix) to require owners or operators transferring totally enclosed PCB Items that were sold before July 1, 1979, for purposes other than resale to record in their annual document log the name, address, and telephone number of the person to whom it was transferred; and the serial number of the item or, if a serial number is not available, its internal identification number. Since commenters indicated that they were already keeping such records, adding the information to the annual document log should not present much of an additional burden.

2. *Recordkeeping requirements for storage unit operators.* In today's final rule, EPA is adding recordkeeping requirements for storage unit operators (see § 761.180(a)(1)(iii) and (b)(1)(iii). This addition requires the operator to maintain a record of cleanups and inspections for leaks that must be performed under § 761.65(c)(5). These records are part of the facility's annual records, and must be maintained, and made available for inspection, with those records for the same time period. In the past, EPA inspectors had no way to verify that unit operators were complying with § 761.65(c)(5).

A few commenters felt that the proposed requirement would duplicate records they maintain under the Spill Cleanup Policy (§ 761.125). EPA is not prescribing a format for spill cleanup records under today's new provisions at § 761.180. Records of cleanup maintained by storage unit operators in compliance with the Spill Cleanup Policy will also satisfy the new recordkeeping requirement, provided they are kept with the annual records. Today's rule does not require a storage unit operator to develop and maintain two separate set of records for the same spill.

In the NPRM, EPA also proposed to require that storage unit operators keep a current written inventory or log of their unit (see proposed § 761.180(a)(1)(iv) and (b)(1)(iv)), to assist EPA inspectors in their on-site inspections. EPA believed that the proposal would not additionally burden unit owners or operators, since they must maintain an inventory to properly manage their facility, to ensure compliance with the 1-year storage and disposal time-limit, and to collect data for the annual log.

EPA received numerous comments on this requirement; most criticized it as being more burdensome than EPA understood and maintained that its benefits did not outweigh its costs. Commenters noted that many companies keep computerized inventories at central locations, and producing a paper copy and maintaining it at the storage unit would impose a significant new compliance cost. Commenters stated that keeping an inventory on-site was problematic with storage units at remote or dirty/dangerous locations (e.g., storage units for radioactive waste). Many commenters felt that the burden of constantly updating such an inventory was unjustified, since it would only be used on the day an inspection was conducted.

EPA has not finalized its proposal. While access to an inventory would help EPA conduct on-site inspections of storage unit facilities, EPA recognizes that the burden on storage unit operators associated with maintaining a continually-updated inventory on-site exceeds the benefit to the inspectors.

M. Amendments to the Notification and Manifesting Rule

The NPRM addressed a number of issues that were not contemplated when the PCB Notification and Manifesting (N&M) rule was published on December 21, 1989 (54 FR 52716, 40 CFR part 761, subpart K). Some of these issues were raised by litigants who sought review of the rule, and by other waste handling associations. (See, for example, Refs. 31 and 32.) Some items which EPA is

finalizing in today's rule have been previously promulgated under RCRA regulations and seem appropriate for inclusion in the PCB N&M rule. Others are simply clarifications and are accompanied by changes to 40 CFR part 761.

1. *Definition of commercial storer: Small quantity exemption for solids, and "related' companies.* On June 27, 1990 (55 FR 26204), EPA amended the N&M rule to, among other things, clarify the definition of "commercial storer of PCB waste" at § 761.3. In 1990, EPA added the word "liquid" to the phrase "exceeds 500 gallons of PCBs" so that the phrase reads "exceeds 500 liquid gallons of PCBs." This excluded facilities that were storing at any one time less than 500 gallons of liquid PCB waste from the requirement to seek approval as a commercial storer of that waste.

In a petition filed with the District of Columbia Circuit Court of Appeals on September 25, 1990, the petitioner claimed that EPA acted arbitrarily when it narrowed the small volume exemption in this manner so that storers of less than 500 gallons of non-liquid waste would not qualify for the exemption. EPA agreed that certain classes of businesses (e.g., companies performing PCB waste treatability studies and laboratories affiliated with PCB handling companies) on occasion may possess relatively small quantities of solid PCB waste generated by others. EPA also agreed to initiate a regulatory amendment to establish a small quantity exemption for solids to complement the exemption for liquids. EPA told the petitioner that until the rule was amended, it would take no enforcement action against a facility storing small quantities of PCB solids without a commercial storage approval if certain conditions were met (Ref. 32).

In the NPRM, EPA added a small volume exemption for storage of no more than 70 cubic feet of non-liquid PCBs to the definition of "commercial storer of PCB waste." EPA solicited comments on this proposal, and in particular, whether 70 cubic feet was an appropriate cutoff.

EPA also clarified how the change of ownership or release of title of PCB waste relates to a person becoming a commercial storer of PCB waste. The following example illustrates the clarification. If a facility that generates and stores its own waste (e.g., transformers) is sold (or the title otherwise changes ownership), the new owner (or holder of the title) does not become a commercial storer of PCB waste. The waste, along with the facility, is now owned by the purchaser, which is storing its own waste and is therefore not a commercial storer.

Commenters agreed that EPA should add a non-liquid quantity below which one could store waste generated by others without needing a commercial storer approval. However, some commenters asked EPA to clarify whether one could store less than 500 liquid gallons *and* less than 70 cubic feet and qualify for the exemption. This was not EPA's intent. One is excluded from the requirement to seek a commercial storer approval if the total volume of stored waste generated by others is less than 500 gallons of material; liquid or non-liquid. Accordingly, to set a uniform standard, EPA has set the regulatory cutoff at a total combined volume of 500 gallons of liquid or non-liquid PCB-Contaminated material. For computation of non-liquid PCB volume, 500 gallons (U.S.) equals approximately 1.89 cubic meters.

The majority of other comments requested that EPA clarify what related companies are not considered to be storing others waste. Therefore, EPA has included examples of related companies in the definition of commercial storage (see § 761.3). One example listed in § 761.3 is a company having a joint ownership interest in a facility from which PCB waste is generated (such as a jointly owned electric power generating station) where the PCB waste is stored by one of the co-owners of the facility. The participants have an undivided ownership interest in the entire plant (although percentage of ownership may differ) and one of them is designated and responsible for operating the facility. This operating entity is the one storing the waste. The waste is jointly owned and the financial assurances provided by the ownership and operating agreements, together with the responsible nature of the operating utility, exempt such facilities from the need to seek commercial storage approval.

Other utilities commented that they should not be considered commercial storers of PCB waste when they manage waste generated by their customers, and that requiring them to seek commercial storer approval impedes them from engaging in this activity. EPA disagrees. It assumes that the utility is not the transformer owner, for example, and would be storing waste generated by others in this scenario. Utilities wishing to assist customers with their waste management could store less than 500 gallons of liquid or non-liquid waste at any time or act as a transfer facility, storing the waste less than 10 consecutive days, and not have to seek commercial storer approval.

2. *Clarification of exception reporting.* EPA proposed to amend § 761.215(b), (c), and (d), which discuss when a generator, commercial storer, or disposer must submit One-year Exception Reports to the EPA Regional Administrator. Currently, a disposer is required to submit a One-year Exception Report if: (i) The PCB waste is received on a date more than 9 months after it was removed from service for disposal as indicated on the manifest, and (ii) the disposer could not dispose of the PCB waste within 1 year from the date of removal from service for disposal.

A generator is required to submit the One-Year Exception Report when the generator has not received a copy of the manifest with the hand-written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the original transporter. Also, a generator or commercial storer who manifests PCBs or PCB Items to a disposer of PCB waste must submit the Exception Report when: (i) The waste was transferred to the disposer within 9 months after removal from service for disposal as indicated on the manifest, and (ii) the generator or commercial storer has not received within 13 months after the date of removal for disposal a Certificate of Disposal (CD) or it receives the CD, which indicates that the waste was disposed more than 1 year after it was removed from service for disposal.

The regulations do not, however, indicate when the disposer, commercial storer, or generator has to submit the One-year Exception Report to the EPA Regional Administrator. EPA proposed to amend § 761.215(b), (c), and (d) to require that the disposer, commercial storer, or generator submit the report to the EPA Regional Administrator no later than 30 days from the discovery of the passage of the regulatory deadlines.

Commenters generally disfavored exception reporting, but did not oppose EPA's proposal if EPA maintains the requirement to submit exception reports. However, most felt that 45 or 60 days was a more appropriate timeframe. EPA is not changing its requirement to submit exception reports under § 761.215 due to their usefulness as an enforcement tool, but is adding a 45-day submission timeframe to § 761.215(b), (c), and (d) for submission of the report to the EPA Regional Administrator.

3. *Timing for submission of the certificate of disposal.* Section 761.218(b) requires the owner or operator of a disposal facility to send a Certificate of Disposal (CD) to the generator indicated on the manifest that accompanied the shipment of PCB waste to the disposal facility, within 30

days after disposal of the PCB waste identified on the manifest was completed. Section 761.215(d)(2) indicates that a generator or commercial storer should submit a One-year Exception Report to the EPA Regional Administrator when the CD is not received from the disposer within 13 months from the date of removal from service for disposal (DORFSFD).

EPA clarifies that there may be different DORFSFD dates for different individual items on any given manifest. This means that some items listed on the manifest will need to be disposed of earlier than others to meet the 1-year time-limit for storage and disposal. Therefore, there will also be different CDs associated with those different disposal dates (unless the entire shipment listed on the manifest is disposed of before the 1-year anniversary of the item with the earliest DORFSFD). EPA proposed that the generator may either submit more than one manifest per shipment based on whether there are different DORFSFDs for the items in the shipment or attach a continuation sheet to reflect the different DORFSFDs. EPA wants to make clear that it is not appropriate to base disposal on the manifest item with the latest DORFSFD, or to send the CD based on that item.

Commenters generally opposed the concept of preparing multiple manifests or CD's. EPA agrees that multiple manifests or CDS may be overly burdensome and is not specifically requiring either one in this final rule. EPA is adding, however, language to § 761.218(b) indicating that a CD must be sent to the generator within 30 days of the date that disposal of each item of PCB waste identified on the manifest was completed. Generators and disposers may work out the details on how best to meet this requirement.

4. *Applicability of manifesting requirements.* EPA proposed to amend § 761.207(j), which describes what wastes are subject to the manifesting requirements based on PCB concentration and whether dilution has occurred. The section now states that if the waste contains less than 50 ppm PCBs, but comes from a source that contained greater than or equal to 50 ppm PCBs, it is subject to the manifesting and disposal requirements. Cited as an example is PCB spill cleanup material containing less than 50 ppm when the spill involved material containing greater than or equal to 50 ppm.

Proposed § 761.207(j) specified that there would be no manifest requirement for material currently below 50 ppm that derives from pre-April 18, 1978 spills of any concentration, or pre-July 2, 1979 spills less than 500 ppm. This is because (i) the material "as found" is below the regulatory threshold that would subject it to the disposal requirements of 40 CFR part 761, subpart D, and (ii) the original spilled material was below or not subject to those disposal requirements at the time of the original spill.

In addition, the manifest requirement does not apply to material derived from spills that have been decontaminated in accordance with EPA's spill cleanup policies (40 CFR part 761, subpart G). In other words, material containing PCBs that has been decontaminated to a level below 50 ppm would not be treated as if it contained greater than or equal to 50 ppm PCBs for disposal purposes, and could be disposed of in a municipal landfill or by other non-PCB disposal methods. This position is consistent with EPA's regulations that permit material contaminated as the result of a PCB spill to be distributed in commerce if it is decontaminated in accordance with the applicable spill cleanup policies (see 40 CFR 761.20(c)(5)).

EPA received no negative comments on the proposed amendment to § 761.207(j), and is finalizing it as proposed. Commenters did ask how to tell whether a pre-78 spill was originally <50 ppm PCBs when the original source of the spill is not known and test results at the spill site all show levels <50 ppm PCBs. Since prior to 1978 there were no PCB regulations addressing anti-dilution, any pre-78 spill that is found and tested to be less than 50 ppm may be treated at the concentration found, without determining whether the spilled material originally contained PCBs at greater than or equal to 50 ppm PCBs.

5. *Renotification: changes in facility operations.* Sections 761.202 and 761.205 discuss who must obtain an EPA ID number and how to do so using EPA Form 7710-53. EPA clarifies that when a facility has previously notified the Agency of its PCB waste handling activities using EPA Form 7710-53 and those activities change (e.g., the owner or operator of the facility notified EPA as a commercial storer and now wants to engage in the transport of PCB waste, or notified as a transporter and a commercial storer but no longer wishes to engage in the activity of transporting PCB waste, or the facility has changed its physical location), the notifier must resubmit EPA Form 7710-53 to reflect those changes. It will help EPA process the form if the form or cover letter indicates that it is a resubmission based on changes in facility operations and not a new submission.

EPA proposed to add this resubmission requirement for EPA Form 7710-53 to new § 761.205(f). EPA proposed that the resubmission be submitted to EPA no later than 5 working days after the change was made.

Some commenters opposed having to renotify if the facility location changed, others thought renotification was appropriate only when the facility ceased its waste handling activities, and still others thought it was inappropriate to notify when the facility ceased its PCB waste handling activities. For EPA to effectively track the number and type of PCB waste handlers, it must know whether a facility has ceased operation or moved. EPA is finalizing this amendment as proposed with one minor change; the time to renotify is 30 days, rather than 5 days as proposed.

In addition, high efficiency boilers and scrap metal recovery ovens/smelters that burn regulated PCBs must now notify EPA using Form 7710-53 pursuant to 761.205 (see Unit IV.E.3. of this preamble for further discussion).

6. *Transfer of ownership of commercial storage facilities.* EPA proposed to add paragraph (j) to § 761.65 on the procedures and timing for transferring ownership of a commercial storage facility. The timing and procedures would apply to facilities with either interim or final approval.

Existing commercial storage facilities had until August 2, 1990, to submit a completed application to EPA and receive interim status to operate until the application was formally approved or denied. Existing § 761.65(d)(3) describes the information that must be in the application, such as a closure plan, closure cost estimate, and financial assurance for closure. The N&M rule did not, however, discuss procedures and criteria for transferring ownership of a facility (as is the case under the RCRA regulations at 40 CFR 270.72(a)(4)). In the NPRM, EPA solicited comments on recognizing the transfer of interim status or final approval for commercial storage facilities if all the following conditions were met:

(i) The transferee demonstrated it had established, by the date of transfer, financial assurance for closure pursuant to § 761.65(g) using a mechanism effective as of the date of final approval. This would assure that there would be no lapse in financial assurance for the transferred facility.

(ii) The transferee submitted a new and complete application for final storage approval.

(iii) Any significant deficiencies (e.g., technical operations, closure plans, cost

estimates) that EPA had identified in the application of the transferor, were resolved in the new application by either the transferor or by the transferee.

The new application would also have to include all the elements listed in 40 CFR 761.65(d)(3). Before the transfer of interim status or final approval could occur, EPA would have to review the new application and deem it "complete," i.e., all the required elements were included in the application. The application would also have to correct any significant deficiencies previously identified. EPA would reserve the right to deny the transfer of the interim approval status or final approval if upon review of the new application, EPA determined that the transferee was not qualified or was unable or unwilling to achieve and maintain its operations in compliance with TSCA and the PCB rules. In addition, a determination by the EPA Regional Administrator that the transfer of interim status or final approval could occur would not be determinative of the final decision that would be made regarding the commercial storage application. EPA would also reserve the right to deny any subsequent transfer request respecting a particular facility if EPA believed that the transfer was undertaken to avoid the requirement of seeking a final commercial storage approval.

The requirements described above would have to be met before EPA would recognize the transfer of interim status. For example, Company "X" is interested in acquiring ownership of Company "Y," which has interim status to operate as a commercial storer of PCB waste. If EPA does not recognize the transfer of interim status before Company "X" takes legal title to the facility from Company "Y," Company "X" may be in violation of the commercial storage regulations because it did not have interim status to operate at the time it took legal title.

To facilitate ownership transfer, EPA also solicited comments on whether a "new" application is necessary. If, for example, the transferee accepted the contents of the old application, the only parts that would have to be amended (excluding any deficiencies that have yet to be corrected) would be the financial assurance for closure, a new list of principals and key employees, and the compliance history of any business with which those individuals had been affiliated in the preceding 5 years. This submission of an "amended" application would save the transferee and the EPA time and money.

Commenters agreed that it should not be necessary to submit an entirely new application. Therefore, in today's final rule the transferee may submit a complete amended application including the parts mentioned above. Most commenters disagreed with the Agency's position that any deficiencies identified in the original application would have to be resolved before EPA would recognize the transfer. They felt they should be able to obtain the previous owner's status without having to resolve any discrepancies or be allowed to establish a compliance schedule to resolve the deficiencies in a timely manner.

EPA does not think it is a sound practice to allow the transfer of ownership of a commercial storage facility with interim status to a new owner when there are deficiencies in the existing application. If the deficiencies identified in the existing application are resolved in the amended application (i.e., the transferee will be submitting a new compliance history for new principals and key employees or a new closure plan), then EPA will consider the discrepancy in the original application to be resolved and allow the transfer. The Agency may still find discrepancies in the amended portion of the transferee's application and these would have to be resolved before the facility was granted final commercial storage approval.

Many commenters wanted an established timeframe by which EPA must notify the transferee of approval or denial of the transfer request. In today's final rule, EPA will provide a written decision on whether it will recognize the transfer of ownership of the facility within 90 days of receipt of the complete application.

7. *Modifications to storage facilities.* Section 761.65(e)(4) discusses when a commercial storage facility must submit a request to EPA for a modification to its storage approval to amend its closure plan. In the NPRM, EPA proposed a similar requirement for revising the financial assurance for closure when there are modifications to the commercial storage facility, for example, where the facility is enlarged and the maximum inventory of waste increases sufficiently to warrant an increase to the financial assurance mechanism. EPA proposed to add § 761.65(g)(9) to require that when a modification to the storage facility warrants establishing a new financial assurance mechanism or amending the existing one, the owner or operator must have done so no later than 30 days after the EPA Regional Administrator (or Director, National Program Chemicals Division) is notified that the modification is complete, but before the use of the modified portion of the facility. In addition, EPA proposed that the EPA Regional Administrator (or Director, National Program Chemicals Division) would have to be notified in writing no later than 7 days after the modification to the facility is complete.

Commenters requested that EPA clarify what percentage increase in storage capacity would trigger the need for a new or amended financial assurance mechanism. If the modification results in any increase in the maximum storage capacity indicated in the permit, an amendment to the financial assurance mechanism is required to address the added waste inventory.

In today's final rule, EPA amended proposed § 761.65 by replacing the phrase "Regional Administrator (or Director, National Program Chemicals Division)" with "Director of the Federal or State issuing authority" to reflect the possibility that the permit may have been issued under another authority but recognized under a TSCA PCB Coordinated Approval (see § 761.77).

EPA also changed the timeframe in which the permitting authority must be notified of the completion of the facility modification from 7 to 30 days.

8. *Clarification of which disposers must submit annual reports.* Section 761.180(b)(3) requires that each owner or operator of a PCB disposal or commercial storage facility submit an annual report, summarizing the records and annual document log maintained under § 761.180(b)(1) and (b)(2), to the EPA Regional Administrator of the EPA Region in which the facility is located by July 15 of each year. Sections 761.180(b)(1) and (b)(2) require that information obtained from manifests that are generated or received by the facility be recorded. If a disposal facility disposed of only its own waste and, therefore, never received or generated a manifest, it still has to prepare an annual document log under § 761.180(b)(2)(iii). Examples of such facilities include high efficiency boilers at § 761.71; and facilities conducting decontamination under § 761.79.

EPA clarifies that "disposers of PCB waste," as defined at § 761.3, who dispose of their own waste must submit an annual report. Therefore, EPA proposed to amend § 761.180(b)(3) to state that a disposer's obligation to submit an annual report is based on the act of disposing of PCB waste material and not whether the facility received or generated manifests. EPA received no negative comments on the proposal and is finalizing it as proposed.

9. *Financial assurance mechanism: corporate guarantee.* EPA proposed to

reference 40 CFR 264.143(f)(10) of the RCRA financial assurance regulations (57 FR 42832, September 16, 1992) to add an additional financial assurance mechanism for PCB commercial storage facility closure. This mechanism allows the corporate guarantor to be the direct or higher-tier parent corporation of the owner or operator; a firm whose parent corporation is also the parent corporation of the owner or operator; or a firm with a substantial business relationship with the owner or operator of the commercial storage facility. EPA proposed to add this mechanism as § 761.65(g)(7) and redesignate existing (g)(7) as (g)(8). The proposal met with no negative comments and is finalized as proposed.

10. *Clarification of the term "facility."* In the NPRM, EPA solicited comments on the need to clarify the terms "facility" and "facilities." The terms are used in different contexts throughout 40 CFR part 761. EPA's impetus for raising this issue came from reviewing the PCB Notification and Manifesting rule preamble (54 FR 52716, 52722, column 2). That preamble discussion focusses on the requirement for generators with on-site storage facilities to notify the Agency of their PCB waste handling activities. The first two sentences in the last paragraph read, "In submitting their notifications to EPA, members of this class of generator/storer will submit a notification form for each of their storage areas that is subject to § 761.65. EPA will issue a unique identification number to each notifying storage facility, and this identification number will correspond to the physical location of the facility."

Here the terms "storage area" and "storage facility" are used interchangeably to mean all structures on contiguous land or specified property, as opposed to a particular building, structure, cell, or unit. EPA did not intend to require notification for each storage unit on a contiguous piece of property, which would result in multiple, individual identification numbers for that property. A facility on a contiguous piece of property, regardless of the number of storage areas or units, need only notify once. Therefore, in this instance, the term facility means all contiguous land and structures used for the storage of PCB waste.

In other sections of the PCB regulations, however, the term "facility" means an individual unit or structure. For example, § 761.65(b)(1) states that a facility used for the storage of PCBs and PCB Items shall have an adequate roof, walls, and floor; continuous curbing with a minimum 6 inch high curb; no floor drains or expansions joints, etc.; and shall not be located at a site below the 100–year flood water elevation. It is clear in this instance, that EPA is not referring to a contiguous piece of property, but to an individual structure or unit.

In most of 40 CFR part 761, the term "facility" refers to a contiguous piece of property including the structures or individual storage or disposal units. There are, however, 10 or so places in the PCB regulations where the term "facility" refers only to the individual unit or structure. In these 10 places, EPA proposed to delete the term "facility" and insert a term whose definition will best represent the Agency's intent (i.e., an individual unit, structure, or building). EPA solicited comments on the most appropriate term to convey this meaning. For purposes of this final rule, the term "unit" will be used to indicate this change in the regulatory text. The term "unit" includes structures that meet the design criteria of § 761.65(b) and any functional equivalent recognized by the EPA Regional Administrator under § 761.77. EPA has added definitions of "unit" and "facility" to § 761.3 of today's final rule.

11. *Notification by transporters.* EPA wishes to clarify the status of subcontractors and permanently leased operators under the manifesting and notification regulations. The issue is whether a person who owns and operates a vehicle that is leased to a motor carrier and is being used to transport PCB waste must obtain an EPA Identification number or may use the ID number issued to the motor carrier.

EPA's PCB regulations generally require any person who is transporting PCB waste to have an EPA ID number. Specifically, 40 CFR 761.202(b)(2) states that a transporter of PCB waste shall not transport PCB waste without having received an EPA ID number from EPA, or deliver PCB waste to transporters, disposers, or commercial storers that have not received an EPA ID number. A "Transporter of PCB Waste" is defined at § 761.3 to mean "any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for purposes other than consolidation by a generator." Section 761.3 defines a "Person" to mean "any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government."

Generally, EPA has interpreted these rules to require an EPA ID number for the person who is ultimately responsible for transporting the waste, but not for employees of that person. Thus a corporation that is transporting PCB waste would be the "Transporter of PCB Waste" and would have to obtain an ID number. Corporate employees who physically drive the trucks that contain the waste would use the corporate ID number rather than obtain their own. This approach is illustrated by EPA Form 7710-53, "Notification of PCB Activity," which requires notification on behalf of facilities, not individual employees. Similarly, the Uniform Hazardous Waste Manifest, EPA Form 8700-22, used under subpart K associates the EPA ID number with the company name (Items no. 5 through 9).

In contrast, an individual who owns and operates his or her own truck as an independent PCB waste hauler, rather than as an employee, is the person ultimately responsible for moving the waste. Such a person is a "Transporter of PCB Waste" and is required to obtain his or her own unique EPA ID number.

In some situations, however, the owner/operator is driving the vehicle under a lease to another person, and is no longer operating with complete independence. The preamble to the proposed rule (59 FR 62841) noted that EPA interpreted the regulations to require a separate EPA ID number for individual owner/operators even if they had permanently leased their vehicles to a second person. EPA did not allow an owner/operator to use the second person's EPA ID number, based on the rationale that the owner/operator was operating independently and was not part of the entity that had been granted the EPA ID number.

Commenters questioned the merit of this interpretation. The commenters noted that under certain leases, the control of a motor carrier over a leased vehicle and its owner/operator approximates the control of an employer over an owned vehicle and its employee operator. Under such a lease, the motor carrier exercises control over the vehicle and driver, and is legally responsible for maintaining vehicle records and for insuring the vehicle. The motor carrier is also liable for the owner/operator's actions on the road, including Department of Transportation (DOT) violations and any accidents or releases of hazardous materials.

Comments also detailed how motor carriers are regulated under DOT/Interstate Commerce Commission (ICC) rules. Comments noted that DOT/ICC regulations do not compel a motor carrier to own vehicles; rather, they may lease vehicles, either from a leasing company or from individuals who own

and operate their own vehicle. For purposes of DOT/ICC regulations, once a vehicle is leased by a motor carrier, that vehicle is under the control of the motor carrier, and the owner/operator is no longer regulated as an independent entity. The vehicle is then considered part of the motor carrier's fleet, and it must be identified with the motor carrier's ICC, DOT, or State identification number. In addition, for DOT and ICC purposes, the motor carrier is the legal entity responsible and liable for the actions of the leased vehicle and its owner/operator.

In consideration of these comments, EPA believes it is appropriate to modify its interpretation of the regulation that requires a Transporter of PCB Waste to obtain an EPA ID number. The owner/operator of a vehicle may utilize the EPA ID number of a motor carrier while moving PCB waste in that vehicle provided the vehicle is leased to a motor carrier and, under the terms of the lease, the motor carrier has exclusive possession, control, and use of the vehicle and assumes complete responsibility and liability for the operation of the vehicle while it is being used under the lease. An example of such a lease is one complying with the ICC regulations at 49 CFR part 1057, subpart B. Alternatively, the owner/operator may use his or her own EPA identification number. This interpretation supersedes the earlier interpretation published in the proposed rule preamble at 59 FR 62841.

12. *Verification of a RCRA identification number for use for PCB waste handling activities under TSCA.* The current PCB regulations require that when a person has a RCRA identification number and wishes to engage in PCB waste handling activities, the person must submit the Notification of PCB Activity Form (EPA Form 7710-53) and have their RCRA identification number verified in writing before the person engages in certain PCB waste handling activities. Due to delays in verifying existing RCRA numbers, a notifier may use their RCRA identification number prior to receipt of written verification from EPA once the notifier has confirmed that EPA is in receipt of their PCB notification form. Confirmation of receipt of the form may be accomplished by submitting it through the U.S. mail--return receipt requested, telephoning to confirm receipt of mail or facsimile, commercial overnight carrier's delivery verification processes, or any other manner in which the submitter can demonstrate that the form was received by EPA Headquarters. Written verification that the RCRA identification number may be used for TSCA PCB waste handling activities will follow.

V. Chart of Marking and Recordkeeping Requirements and EPA Forms

The following chart clarifies the marking and recordkeeping provisions of 40 CFR part 761, amended to reflect today's final rule. Annual recordkeeping requirements are highlighted with an asterisk. M_L refers to the large PCB mark as defined at § 761.45. This chart is included as an informal reference guide only and is not a complete statement of all applicable requirements. Readers must refer to the actual regulations at 40 CFR part 761 for specific legal requirements.

The PCB Transformer Registration Form, EPA Form 7720-12, discussed at Unit IV.B.3.a., and the revised Notification of PCB Activity Form, EPA Form 7710-53, discussed at various units of this preamble, are reproduced here for the convenience of and use by the regulated community.

PCB Marking and Recordkeeping Requirements

Regulated Items	Marking Requirements	In-Service Records	Disposal and Storage-for-Disposal Records
PCB Containers	M_L	-Total Kg weight of all containers* -Description of contents*	-Date container -Serial or I.D. number * -Kg weight of each* -Description of contents* -Dates for: removal; transport; disposal* -Total number & Kg weight*
PCB Article Containers	M_L	-Total Kg weight of all containers* -Description of contents*	-Date container -Serial or I.D. number* -Kg weight of each* -Description of contents* -Dates for: removal; transport; disposal* -Total number & Kg weight*
PCB Transformers	M_L M_L or approved mark on access to unit (e.g., vault doors)	-Total number of units* -Total Kg weight* -Inspection and maintenance -Registration with EPA -Record of sale	-Date article -Serial or I.D. number* -Kg of fluid in each* -Dates for: removal; transport; disposal* -Total number & Kg weight*
PCB Large High or Low Voltage Capacitors	M_L on unit or on protected location	-Total number* (protected location records if applicable) -Record of sale	-Date article -Serial or I.D. number* -Kg of fluid in each* -Dates for: removal; transport; disposal* -Total number & Kg weight*
PCB Small Capacitors	**		

PCB Marking and Recordkeeping Requirements—Continued

Regulated Items	Marking Requirements	In-Service Records	Disposal and Storage-for-Disposal Records
PCB-Contaminated Electrical Equipment	Not required	-Record of sale	Not required (once drained)
PCB Equipment that contains PCB Large Capacitors or PCB Transformers	M_L	Records required for PCB Large Capacitors or PCB Transformers	Records required for PCB Large Capacitors or PCB Transformers
Natural Gas Pipelines, Compressors, Appurtenances Air compressor systems (≥2ppm)	M_L on above ground sources of PCB liquids ≥50 ppm		
Bulk PCB waste	M_L on container		-Kg weight/quantity dates of each batch in or out. Also disposition of each batch out. -Total Kg weight
Storage areas	M_L		-Annual records as required under § 761.180 -Records of attempts to comply with 1-year limit (if necessary)
Transport vehicles	M_L if contains a PCB Transformer or 45kg liquid PCBs		
PCB motors, hydraulic and heat-transfer systems	M_L (Note: use of these items no longer authorized)		

* Annual reporting requirement.
** Manufacturers are required to mark non-PCB Large Low Voltage capacitors, small capacitors, and fluorescent light ballasts with a "No PCBs" label until 7/1/98.

USEPA	United States Environmental Protection Agency Washington, DC 20460	Form Approved OMB No. 2070-0112

Notification of PCB Activity

Return To:	For Official Use Only
Fibers & Organics Branch (7404) Office of Pollution Prevention & Toxics U.S. Environmental Protection Agency 401 M Street, S.W. Washington, DC 20460	

1. Name of Facility	Name of Owner Facility	2. EPA Identification Number (If already assigned under RCRA)

3. Facility Mailing Address (Street or PO Box, City, State, & Zip Code)	4. Location of Facility (No. Street, City, State, & Zip Code)

5. Installation Contact (Name and Title)	6. Type of PCB Activity (Mark 'X' in appropriate box. See Instructions.
	☐ A. Generator w/onsite storage facility ☐ B. Storer (Commercial)
Telephone Number (Area Code and Number)	☐ C. Transporter ☐ D. R&D/Treatability
	☐ E. Approved Disposer ☐ F. Scrap Metal Recovery Oven/Smelter, High Efficiency Boilers

7. Certification

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as a company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

Signature	Name and Official Title (Type of Print)	Date Signed

Paperwork Reduction Act Notice

The annual public burden for this collection of information is estimated to average 1.5 hours per response. This estimate includes time for reading instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing collection of information, including suggestions for reducing the burden to: Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (mail code 2137), 401 M Street, S.W., Washington, D.C. 20460. Include the OMB number identified above in any correspondence. Do not send the completed form to this address. The actual information or form should be submitted in accordance with the instructions accompanying the form, or as specified in the corresponding regulations.

EPA Form 7710-53 (Rev.)
Previous editions are obsolete.

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Item-by-Item Instructions for Completing EPA Form 7710-53

Return completed form to:

Fibers & Organics Branch (7404)
Office of Pollution Prevention & Toxics
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

No information on the form may be claimed confidential.

Type or print in black ink all items, except Item VII, "Certification." If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Item 1 -- Name of facility: Enter the name of the facility and the name of the owner of the facility.

Item 2 -- EPA identification number (if already assigned under RCRA): Enter the identification number the facility was assigned under the RCRA hazardous waste notification regulations. If no identification number has been assigned, leave this space blank. A notifier may use their RCRA identification number prior to receipt of written verification from EPA once they have confirmed that EPA is in receipt of their PCB notification form. Confirmation of receipt of the form may be accomplished by submitting it through the U.S. mail -- return receipt requested, telephoning to confirm receipt of mail or facsimile, commercial overnight carrier's delivery verification processes, or any other manner in which the submitter can demonstrate in that the form was received by EPA Headquarters.

Items 3 and 4 -- Facility mailing address and location: Complete Items III and IV. Please note that the address you give in Item IV, "Location of Facility," must be a physical address, not a post office box or route number. If the mailing address and physical location are the same, you may enter "Same" in Item IV. If the facility is a mobile incinerator, you may enter "mobile" in Item IV, and provide the mailing address for the installation contact in Item III.

Item 5 -- Installation contact: Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item 6 -- Type of PCB activity: Mark the appropriate box(es) to show which PCB activities are taking place at this facility.

A. Generator with onsite storage facility: You are a generator with an onsite storage facility under this notification requirement if you are a user, owner, or processor of PCBs or PCB items and you maintain your own storage facilities subject to 40 CFR 761.65(b) or (c)(7) for PCBs. If you are a generator with an onsite storage facility, mark an "X" in this box.

B. Commercial Storer: You are a commercial storer if you own or operate a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b) or (c)(7), and which engages in off-site storage activities involving the PCB wastes generated by others. Most commercial storers of PCB waste perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary for your storage facility to qualify as a commercial storer of PCB wastes generated by others. See definition of commercial storer in 40 CFR 761.3. If you are a commercial storer, mark an "X" in this box.

C. Transporter: If you move PCBs by air, rail, highway, or water, then mark an "X" in this box.

D. R&D/Treatability: If you are engaged in conducting R&D into PCB disposal technologies and cannot accept waste on a commercial scale, mark an "X" in this box. You should also check this box if you conduct treatability studies even though you may have marked the "Approved Disposer" box.

E. Approved Disposer: If you currently hold a valid EPA permit to dispose of PCBs in concentrations exceeding 50 ppm in a landfill, through alternative technology or incineration, mark an "X" in this box.

F. Scrap Metal Recovery Oven/Smelter, High Efficiency Boilers: If you operate a device to dispose of PCBs, or if you dispose of PCBs in compliance with Section 761.71 (i.e., high efficiency boilers) or Section 761.72 (i.e., scrap metal recovery oven/smelter), mark an "X" in this box.

Item 7 -- Certification: This certification must be signed by the owner, operator, or an authorized representative of the facility. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

EPA Form 7710-53 Reverse

USEPA	United States Environmental Protection Agency Washington, DC 20460	Form Approved OMB No. 2070

PCB TRANSFORMER REGISTRATION

Return To: Fibers & Organics Branch (7404) Office of Pollution Prevention & Toxics U.S. Environmental Protection Agency 401 M Street, S.W. Washington, DC 20460	For Official Use Only

1. Company Name	Address	Contact Name & Phone #

2. a. Location of PCB Transformer(s) - Location #1	2. a. Location of PCB Transformer(s) - Location #2
b. No. of Transformers and wt. (kg):	b. No. of Transformers and wt. (kg):
c. Any transformers containing flammable dielectric fluid: Yes or No	c. Any transformers containing flammable dielectric fluid: Yes or No
2. a. Location of PCB Transformer(s) - Location #3	2. a. Location of PCB Transformer(s) - Location #4
b. No. of Transformers and wt. (kg):	b. No. of Transformers and wt. (kg):
c. Any transformers containing flammable dielectric fluid: Yes or No	c. Any transformers containing flammable dielectric fluid: Yes or No

7. Certification

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as a company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

Signature	Name and Official Title (Type of Print)	Date Signed

Paperwork Reduction Act Notice

The annual public reporting burden for this collection of information is estimated to average 2 hours per response. This estimate includes time for reading instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (mail code 2137), 401 M Street, S.W., Washington, D.C. 20460. Include the OMB number identified above in any correspondence. Do not send the completed form to this address. The actual information or form should be submitted in accordance with the instructions accompanying the form, or as specified in the corresponding regulations.

EPA Form 7720-12

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Item-by-Item Instructions for Completing EPA Form 7720-12

No information on this form may be claimed as confidential.

Return completed form to:

Fibers & Organics Branch (7404)
Office of Pollution Prevention & Toxics
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

PCB Transformer **means any transformer that contains 500 ppm or greater PCB dielectric. For PCB concentration assumptions applicable to transformers containing three pounds or more of fluid other than mineral oil, see 40 CFR 761.2. For provisions permitting reclassification of electrical equipment containing 500 ppm or greater PCBs to PCB-Contaminated Electrical Equipment, see 40 CFR 761.30(a) and (h).**

Type or print in black ink all items, except Item 3, "Certification." If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Item 1 **Company Name:** Enter the name of the company which owns the equipment.
Address: Enter the street, city, state, and zip code of the company.
Contact Name and Phone Number: Enter the name and business telephone number of the person who should be contacted regarding information submitted on this form.

Item 2a **Location of PCB Transformers:** Enter the address (street, city, state, and zip code) where the PCB Transformer(s) is located. Please note that the address you give must be a physical address, not a P.O. Box. Route numbers are acceptable provided they include enough specificity to assist emergency response personnel in determining the location of the transformer(s).

Item 2b **Number (No.) of Transformers and weight (wt..):** Enter the total number of PCB (500 ppm or greater) Transformers at this location (address) and the total weight (wt..) in kilograms (kg) of the PCB dielectric fluid in the transformer(s).

Item 2c **Any transformers containing flammable dielectric fluid:** (Response optional) Circle yes or no if you have any knowledge that there are or are not transformers at this location (address) that contain flammable (see 40 CFR 261.21(a)(1) - Characteristics of Ignitability) dielectric fluid.

***Please note this form has been designed to accommodate companies submitting registrations for multiple locations. However, companies with more than 4 locations may choose to submit an additional form(s) or an attachment(s).

Item VII -- Certification: This certification must be signed by the owner, operator, or an authorized representative of the transformer owner or operator of the facility or property where the unit is located. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

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VI. Rulemaking Record

The following list of documents includes basic information considered by the Agency in developing today's final rule. The official records of previous PCB rulemakings are incorporated as they exist in the TSCA Public Docket on the date this rule is promulgated. A full list of the materials included in the official rulemaking record is available for inspection and copying in the TSCA Nonconfidential Information Center (NCIC) from noon to 4 p.m. The TSCA NCIC is located in Rm. B607, Northeast Mall, 401 M St., SW., Washington, DC. However, any CBI that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection.

VII. References

1. USEPA, OHEA. *Development of Advisory Levels for Polychlorinated Biphenyls (PCBs) Cleanup.* OHEA-E-187 (May 1986): 199pp.

2. Versar, Inc. Assessment of Risks Associated with the PCB Disposal Amendments. (May 11, 1998): 42 pp.

3. USEPA, OPPTS, EETD. Cost Impacts of the Final Regulation Amending the PCB Disposal Regulations at 40 CFR Part 761. (April 30, 1998): 236pp.

4. USEPA, ORD. *PCBs Cancer Dose-Response Assessment and Application to Environmental Mixtures.* EPA/600/P-96/001F (September 1996): 75pp.

5. USEPA, OPPT, NPCD. Support Document for the PCB Disposal Amendments, Final Rule; Request for Data in Support of a TSCA Use Authorization for Non-Liquid PCB Applications. (April 16, 1998): 5pp.

6. USEPA, OSWER. *Test Methods for Evaluating Solid Waste, Third Edition.* SW-846, *Method Number 9095 Paint Filter Liquids Test.* 4pp.

7. USEPA, OIG. Memorandum from Kenneth A. Konz, Assistant Inspector General for Audit to Linda J. Fisher, Assistant Administrator, OPPTS, USEPA. Subject: Special Report No. E1EPG2–11–6000–2500065, Review of EPA Rule Regulating PCB Transformer Fires. (August 21, 1992): 24pp.

8. State of Connecticut, Department of Environmental Protection. Letter from Timothy R.E. Keeney to William K. Reilly (August 23, 1991): 2pp.

9. USEPA, OPTS, EED. Memorandum from K.A. Hammerstrom to D. Keenher, EED. Subject: Exposure to PCBs in recycled pipe. (July 7, 1988): 8pp.

10. USEPA, OPTS, EED. Letter from M.P. Halper to L.J. Ogden, Interstate Natural Gas Association of America. Subject: Responses to letter of March 17, 1988 re: natural gas pipeline removal and retirement. (June 6, 1988): 12pp.

11. USEPA. *Technical Guidance for the Abandonment in Place of Interstate Natural Gas Pipeline Systems* (October 24, 1990): 13pp.

12. USEPA, OPTS, OTS. *Guidance on Classification for Purposes of Disposal of Stored Natural Gas Pipe Which Was Not Part of a Pipe Removal Project Carried Out Under an EPA-Approved PCB Disposal Activity* (February 1991): 10pp.

13. USEPA, OPTS, OTS. *Technical Guidance for the Declassification of Interstate Natural Gas Pipeline Systems* (February 1991): 6pp.

14. USEPA, OSWER. Strategy for Minimization and Combustion. EPA/530-R-94-044. (November 1994): 23pp.

15. USEPA, OPTS. Letter from J.A. Moore, Assistant Administrator, Office of Pesticides and Toxic Substances, to T.K. Allen, Piper and Marbury, counsel for Utilities Solid Waste Activities Group. Subject: An interpretation of the PCB regulations on the disposal of drained carcasses from mineral oil transformers, (September 9, 1986): 4pp.

16. Hazardous Waste Treatment Council. *Petition For Rulemaking to Amend 40 CFR § 761.60 [under section 21 of TSCA].* Submitted to USEPA by Richard C. Fortuna, Executive Director for the Hazardous Waste Treatment Council, Franklin D. Sales, President of Salesco Systems USA, Inc., and Brin McCagg, Vice-President of FulCircle Ballast Recyclers (December 15, 1992).

17. S.D. Myers, Inc. Summary of Results: PCB Levels in Light Ballast Compound. (August 11, 1993): 31pp.

18. Rollins Environmental Services, Inc. Analytical Protocol and Analytical Results from PCB Ballast Study (September 20, 1993): 112pp.

19. USEPA. Memorandum from Greg Schweer, Exposure Assessment Branch, to Jane Kim, Chemical Regulation Branch, Re: PCB Spill Exposure Scenarios (April 18, 1986): 3pp.

20. USEPA. Memorandum from Karen A. Hammerstrom, Exposure Assessment Branch, to Jane Kim, Chemical Regulation Branch, Re: Cleanup of PCB Spills Located Indoors (February 5, 1986): 8pp.

21. USEPA, OW. Proceedings of the EPA's Contaminated Sediment Management Strategy Forums (September 1992): 215pp.

22. USEPA, OPTS, EED, and USEPA, OSW. Project Summary--PCB, Lead and Cadmium Levels in Shredder Waste Materials: A Pilot Study. (EPA 560/5-90-008A). (April 1991): 14pp.

23. USEPA, Memorandum from Pat Jennings, Exposure Assessment Branch, to Denise Keehner, Chief, Chemical Regulation Branch, Re: Estimates of Exposure of Humans to PCBs from Disposal of Fluff (August 16, 1988): 21pp.

24. USEPA, OGC. Memorandum from Lisa K. Friedman to Pamela A. Hill, Applicability of the Household Waste Exclusion to Lead-Contaminated Soil (March 7, 1995): 6pp.

25. USEPA, OSWER. Letter from Michael Shapiro to Mark Veckman, Comprehensive Environmental Assessment, Status of (Household) Waste Generated from Abatement of Lead-Based Paint (May 24, 1994): 3pp.

26. U.S. Army, U.S. Army Corps of Engineers, Directorate of Civil Works. Letter from John P. D'Aniello, Acting Director of Civil Works, to RCRA Docket Information Center, OW, EPA (August 28, 1996): 7pp.

27. National Association of Corrosion Engineers (NACE). "Standard Test Method, Visual Standard for Surfaces of New Steel Centrifugally Blast Cleaned with Steel Grit and Shot." TM0175-75 (1981): 5pp.

28. U.S. Navy, Puget Sound Naval Shipyard. Electronic mail from Peggy Sue Jones to John H. Smith, USEPA. Subject: NACE standards for cleanliness of blasted metal surfaces (January 26, 1998): 2pp.

29. Midwest Research Institute. Letter from K. Boggess to J. Smith, Chemical Regulations Branch, EED, OPTS, USEPA, Subject: "PCB surface decontamination experiments using kerosene," EPA Contract No. 68-DO-0137, MRI Project No. 9801-A, Work Assignment No. 30, (June 25, 1992): 4pp.

30. Nishioka, M. and Hines, C. "Final Report for Work Assignment 1-9, Technical Support for PCB Disposal Rulemaking" (undated): 10pp.

31. USEPA, OGC. Letter from J.C. Nelson, to F.S. Blake, Swidler Berlin, Chartered, counsel for General Motors Corporation and Chrysler Corporation. Subject: Petition for review of the PCB manifest rule (December 20, 1990): 3pp.

32. USEPA, OGC. Letter from J.C. Nelson to M. Edgar of Piper Marbury, counsel for Chemical Waste Management, Inc. Subject: Petition for review re: PCB Notification and Manifesting Rule; Correction; dated June 27, 1990, (March 1, 1991): 2pp.

33. USEPA. Memorandum from Gregg Schweer, Exposure Assessment Branch, to Jane Kim, Chemical Regulation Branch, Re: Conservative Estimates of Potential Exposures of PCBs Resulting from Spills of One Pound of PCBs in Mineral Oil or Askaral Fluid. (October 24, 1986): 14pp.

34. USEPA, OSWER. "Soil Screening Guidance Technical Background Document" EPA/540/R-95/128. (May 1996): 168 pp. (plus appendices).

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), OMB has determined that this is an "economically significant regulatory action" under section 3(f)(1) of the Executive Order. OMB has made this determination because the net annual economic impact of this rule is estimated to result in a potential total annual cost savings of between $178.1 million and $736.1 million. This action was submitted to OMB for review, and any changes matle in response to OMB comments are available for review in the docket.

In support of the cost saving amendments contained in this final rule, EPA has conducted a thorough cost assessment of the estimated costs and cost savings associated with the provisions presented in the proposed rule, and those contained in the final rule. The cost assessment for the final rule is presented in a document entitled *Cost Impacts of the Final Regulation Amending the PCB Disposal Regulations at 40 CFR Part 761*, a copy of which is available in the docket for this rule. In addition, the Agency has also prepared a risk assessment, entitled *Assessment of Risks Associated with the PCB Disposal Amendments*, which summarizes the risks associated with the amendments provisions and upon which the Agency's findings of no unreasonable risks are based.

Although resulting in significant cost savings, these amended provisions will not reduce the benefits associated with the protection of human health and the environment afforded through the original regulation, which are summarized in Unit II.D. of this preamble. EPA has determined, therefore, that there is no need to revise the benefits analysis prepared for the original rule. In addition, since these amendments reduce the overall costs and burdens associated with the existing program requirements, it is not necessary in this case to conduct an extensive quantitative analysis of all the potential alternatives. The Agency has therefore conducted the necessary assessments in compliance with Executive Order 12866. The following is a brief summary of the cost assessment prepared for the final rule.

The net economic impact of the final regulation is a cost savings that will be distributed widely throughout the economy. In estimating cost savings, the final regulation was compared to two cost baselines, except for requirements related to the disposal of PCB-Contaminated ship hulls, in which case the Agency considered a third baseline. The first baseline is based on the costs derived from EPA policy as it has evolved in response to PCB waste handling issues, while the second baseline reflects a literal interpretation of the existing regulation. To estimate the costs associated with the disposal of PCB-Contaminated ship hulls, EPA has added a third baseline to reflect the special circumstances surrounding this activity. The Agency used these baselines in its assessment of costs for this rule because it is important to recognize the regulatory impact of changes that have resulted from the subsequent issuance of official Agency policy. In either case, the cost assessment indicates that the final regulation will generate a net cost savings when compared to either baseline, although the savings are substantially higher for the existing regulation baseline. The net, annual cost savings are $148.1 million when using the special circumstances baseline, $178.1 million using the EPA policy baseline, and $736.1 million using the existing regulation baseline.

Significant cost savings result from changes to the disposal requirements for PCB remediation waste. EPA will now allow wider latitude in selecting disposal methods for PCB remediation wastes, resulting in a lowering of disposal costs, and producing a cost savings estimated at approximately $80.5 million/year. EPA is also creating disposal requirements for PCB bulk product waste. This provision, which affects primarily generators of automobile shredder wastes and building demolition wastes, disposal of ship hulls, and PCB-Contaminated porous surfaces, generates savings of $593.4 million/year relative to the existing regulation. The savings relative to EPA policy are much smaller ($98.4 million/year) because EPA policy has allowed disposal of automobile shredder fluff as municipal solid waste. The annual savings for the disposal of ship hulls using the special circumstances baseline is also lower ($68.4 million) because the Navy is already disposing of ship hulls in a manner consistent with this rule.

Several provisions will affect electric utilities and industrial and nonindustrial entities that own PCB-Contaminated Electrical Equipment and generate PCB waste. The largest cost item is that for training industry personnel about the numerous new provisions of the final regulation. The first-year costs of this training are estimated at $6.5 million. Annualized over 10 years, this estimated cost is approximately $9.8 million per year. Numerous other items generate much smaller costs or cost savings. Cost-generating provisions include requirements for transformer registration, records of inspections and PCB cleanup activities, and storage for reuse. Savings-generating provisions include those that reduce the administrative burdens for obtaining approvals to decontaminate equipment, requirements for disposal of fluorescent light ballasts, and temporary storage of liquid PCBs.

The following table provides aggregate annual costs and cost savings estimates.

Aggregate Costs and Cost Savings ($Millions Per Year)

	Baseline Assumption:		
	Special Circumstances	EPA Policy	Existing Regulation
Compliance Costs[a]	13.0	13.0	13.0
Cost Savings	161.1	191.1	749.1
Net Cost Savings	148.1	178.1	736.1

[a]Compliance costs are identical regardless of the baseline used. All regulatory amendments generating compliance costs are entirely new. Totals do not add due to rounding.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601

et seq.), the Agency hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

The compliance costs and cost savings were distributed among the affected sectors (e.g., electric utility and non-utility entities, entities with PCB ballasts from fluorescent light fixtures, and entities operating natural gas pipelines) to identify the economic impacts throughout the economy. Most provisions will affect electric utilities and non-utility owners of PCB-Contaminated equipment or materials. Training costs represent the largest cost elements, and are annualized at approximately $9.8 million per year. Several cost savings also accrue to owners of PCB-Contaminated Electrical Equipment.

The net compliance costs (excluding the savings for PCB remediation waste) were distributed among utilities in the electric utility industry based on estimates regarding the share of PCB and PCB-Contaminated equipment owned by utilities. Ownership of such equipment was judged to be the best possible proxy for the distribution of compliance costs and cost savings by industry. In order to develop a conservative estimate of regulatory impacts on industry, the savings from remediation wastes were excluded in these calculations since savings from remediation wastes will be distributed very unevenly among firms.

Net compliance costs were distributed to entities in the electric utility industry based on the share of PCB and PCB-Contaminated equipment owned by utilities. Costs were further distributed to utilities based on the relative magnitude of electricity sales (in megawatt-hours) among various groups of utilities. Per entity compliance costs for small private utilities are estimated at $137 or 0.006% of revenues, while compliance costs for small public utilities were estimated at $36 or 0.006% of revenues. With the exclusions of certain cost saving items, as described above, the net compliance costs are quite small. They represent a negligible percentage of revenues for the affected industries. While savings will be distributed among electric utilities and industry, data are not sufficient to distribute these savings in detail by industry.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted for approval to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No.1729.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epamail.epa.gov." An electronic copy has also been posted with the **Federal Register** notice on EPA's homepage with other information related to this action.

The information requirements contained in this rule are not effective until OMB approves them. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9. Upon OMB's approval, the Agency will publish a notice in the **Federal Register** to announce the OMB action and to ensure that any necessary changes are made to the list of OMB control numbers for EPA's regulations.

This information collection includes both reporting and recordkeeping requirements that are associated with the management of PCBs, PCB Items, and PCB waste. These reporting and recordkeeping requirements were implemented to ensure the Agency is knowledgeable of ongoing PCB activities (e.g., who, what, where) and that individuals using or disposing of PCBs are held accountable for their activities and can demonstrate compliance with the PCB provisions at 40 CFR part 761. EPA will use this information to ensure PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. Data collected under the transformer registration program ultimately will be provided to the EPA Regional Offices and other environmental offices, on an as requested basis (e.g., State environmental agencies, fire response personnel, etc.). Some data will be used to evaluate whether an unreasonable risk of injury to health or the environment will ensue from the respondents' PCB activities. Some data will be used to supplement the Office of Pollution Prevention and Toxics' (OPPT) data base on the identity and location of individuals who engage in PCB waste handling activities. Many of these requirements are triggered only by an individual's need to address a particular PCB scenario, while other requirements apply to the universe of individuals who use, process, distribute in commerce, or dispose of PCBs.

EPA anticipates that no one individual would be subject to all of the requirements contained in this rule. Responses to the collection of information are mandatory (see 40 CFR part 761). The burden to respondents for complying with this information collection is estimated to total 1,786,153 hours per year, with an annual cost of $78,422,831 which includes $20,819,000 for the acquisition of training services unaffiliated with specific respondent hours. Cost without training services is $57,603,831. These totals are based on an average burden range of 15 minutes to 550 hours per response for an estimated 68,079 respondents submitting 24 reports, and an average burden range of 50 minutes to 60 hours for an estimated 395,409 respondents maintaining required records.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send any comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques within 30 days to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), EPA has determined that this regulatory action does not contain any "unfunded mandates," as described by the Act, for State, local or tribal governments, or the private sector. Nor does this action result in the expenditure of $100 million or more by any State, local, or tribal governments, or by anyone in the private sector. Furthermore, no nonfederal governmental inspections or activities are required under the final regulation. The relevant costs associated with this regulation are described in the Executive Order 12866 section above. Therefore, this action is not subject to the requirements of UMRA, or require special consultation under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. As the Executive Order states, each Federal agency is required to "analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities. . . ." Accordingly, EPA examined the impact of the PCB disposal amendments on the geographic distribution of PCB management activities, relative to the socioeconomic characteristics of the surrounding communities. The final regulation affects the use, maintenance, storage, handling, and disposal of PCB Articles. None of the areas it covers, however, will influence the socioeconomic equity of actual or potential environmental exposures to PCB wastes. Several aspects of the regulation, pertinent to this issue, are discussed below.

The final regulation will affect the manner in which electric utilities and other industrial entities maintain and store PCB-Contaminated equipment. These activities will occur predominantly at existing utility and industrial locations where they will represent a very minor portion of the facility activities. The impending changes, which are designed to reduce potential work and environmental exposures, will not influence the geographic distribution of these activities. Further, the changes are unlikely to cause job activities to be redistributed among utility and industrial workers. The changes should also produce a net decrease in risk to the affected workers. In any case, there is no apparent avenue through which these changes might affect environmental justice considerations.

The final regulation will influence the disposal of PCB-Contaminated wastes but does not directly affect the siting of PCB management facilities. While the regulation will allow possible shifts in how PCBs are disposed among facilities, there is no direct influence on the location of such operations, and, therefore, no impact on the socioeconomic distribution of exposure risks.

The final regulation will allow PCB wastes to be handled at a wider range of facilities, including RCRA facilities, than under existing regulations. The final regulation will also allow low concentration PCB wastes to be disposed of in municipal solid waste facilities. In any case, the regulation might have a slight influence on the mix of wastes disposed of at these various facilities but will not otherwise affect the operation or maintenance of those facilities.

A recent report by the U.S. General Accounting Office entitled *Hazardous and Nonhazardous Waste: Demographics of People Living Near Waste Facilities* (1995) reviewed environmental justice research studies, and reached no definitive conclusion on whether existing RCRA facilities and other hazardous waste sites are located disproportionately in poor or minority neighborhoods. Studies that focused on commercial RCRA facilities (excluding Superfund and other uncontrolled hazardous waste sites, which are less relevant to this analysis) also did not find these facilities to be disproportionately located in poor or minority neighborhoods.

Based on the final rule's lack of influence on waste facility siting or the socioeconomic distribution of waste handling activities, EPA concludes that the final rule has no impact on environmental justice.

F. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action was initiated and the Notice of Proposed Rulemaking for this action published prior to the date of the order. Under section 2-202 of the Executive Order, the order only applies to those regulatory actions initiated after the date of the order or for which a Notice of Proposed Rulemaking is published 1 year after the date of the order. In any case, although OMB has determined that this is an economically significant action (see Unit VIII.A. above), this regulatory action does not involve any environmental health or safety risks that the Agency has reason to believe may disproportionately affect children. In fact, the substantial net cost savings that are generated by the final rule, will not reduce the benefits associated with the protection of human health or the environment afforded through the original regulation.

G. National Technology Transfer and Advancement Act (NTTAA)

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), (15 U.S.C. 272 note) the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards.

Although the PCB program has historically used, and continues to rely on, standards that have been developed under a voluntary consensus process, today's final rule imposes procedures that must be used in order to abandon PCB articles, as well as for sampling, site characterization, validation of decontamination efforts, and the disposal of various PCB wastes. The disposal options contained in this rule are much more flexible than those that currently exist. Given this level of flexibility, EPA must ensure that the ultimate disposal options which are selected by regulated entities are utilized in a manner that is protective of health and the environment. As a result, EPA is promulgating the procedures and requirements in subparts M through Q of this rule to ensure consistency in both the way disposal determinations are made and in the manner in which similar PCB wastes are disposed of. These requirements were subject to the

notice and comment process which is prescribed by the Administrative Procedures Act. All comments were reviewed and the requirements of subparts M through Q were modified as a result of EPA's consideration of those comments. A discussion of some of the changes that were made appears in Units IV.E.4., 8. and 9. of the preamble to this rule.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 750

Environmental protection, Administrative practice and procedure, Chemicals, Hazardous substances.

40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: June 18, 1998.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 750—[AMENDED]

1. In part 750:

a. The authority citation for part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

§ 750.31 [Amended]

b. In § 750.31(c)(9) introductory text and (c)(9)(vii), by revising the references to "paragraphs (d)(1) through (8)" to read "paragraphs (c)(1) through (c)(8)".

c. In § 750.31(c)(9)(ii) and (c)(9)(iii), by revising the references to "paragraphs (d)(1), (3) and (5)" to read "paragraphs (c)(1), (c)(3), and (c)(5)".

PART 761—[AMENDED]

2. In part 761:

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

b. In § 761.1, by revising paragraph (b) to read as follows:

§ 761.1 Applicability.

* * * * *

(b)(1) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this part include, but are not limited to: dielectric fluids; solvents; oils; waste oils; heat transfer fluids; hydraulic fluids; paints or coatings; sludges; slurries; sediments; dredge spoils; soils; materials containing PCBs as a result of spills; and other chemical substances or combinations of substances, including impurities and byproducts and any byproduct, intermediate, or impurity manufactured at any point in a process.

(2) Unless otherwise noted, PCB concentrations shall be determined on a weight-per-weight basis (e.g., milligrams per kilogram), or for liquids, on a weight-per-volume basis (e.g., milligrams per liter) if the density of the liquid is also reported. Unless otherwise provided, PCBs are quantified based on the formulation of PCBs present in the material analyzed. For example, measure Aroclor™ 1242 PCBs based on a comparison with Aroclor™ 1242 standards. Measure individual congener PCBs based on a comparison with individual PCB congener standards.

(3) Most provisions in this part apply only if PCBs are present in concentrations above a specified level. Provisions that apply to PCBs at concentrations of <50 ppm apply also to contaminated surfaces at PCB concentrations of ≤10/100 cm^2. Provisions that apply to PCBs at concentrations of ≥50 to <500 ppm apply also to contaminated surfaces at PCB concentrations of >10/100 cm^2 to <100 μg/100 cm^2. Provisions that apply to PCBs at concentrations of ≥500 ppm apply also to contaminated surfaces at PCB concentrations of ≥100 μg/100 cm^2.

(4) PCBs can be found in liquid, non-liquid and multi-phasic (combinations of liquid and non-liquid) forms. A person should use the following criteria to determine PCB concentrations to determine which provisions of this part apply to such PCBs.

(i) Any person determining PCB concentrations for non-liquid PCBs must do so on a dry weight basis.

(ii) Any person determining PCB concentrations for liquid PCBs must do so on a wet weight basis. Liquid PCBs containing more than 0.5 percent by weight non-dissolved material shall be analyzed as multi-phasic non-liquid/liquid mixtures.

(iii) Any person determining the PCB concentration of samples containing PCBs and non-dissolved non-liquid materials ≥0.5 percent, must separate the non-dissolved materials into non-liquid PCBs and liquid PCBs. For multi-phasic non-liquid/liquid or liquid/liquid mixtures, the phases shall be separated before chemical analysis. Following phase separation, the PCB concentration in each non-liquid phase shall be determined on a dry weight basis and the PCB concentration in each liquid phase shall be determined separately on a wet weight basis.

(iv) Any person disposing of multi-phasic non-liquid/liquid or liquid/liquid mixtures must use the PCB disposal requirements that apply to the individual phase with the highest PCB concentration except where otherwise noted. Alternatively, phases may be separated and disposed of using the PCB disposal requirements that apply to each separated, single-phase material.

(5) No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.

(6) Unless otherwise specified, references to weights or volumes of PCBs in this part apply to the total weight or total volume of the material (oil, soil, debris, etc.) that contains regulated concentrations of PCBs, not the calculated weight or volume of only the PCB molecules contained in the material.

* * * * *

c. By adding a new § 761.2 to read as follows:

§ 761.2 PCB concentration assumptions for use.

(a)(1) Any person may assume that transformers with <3 pounds (1.36 kilograms (kgs)) of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers whose PCB concentration is not established contain PCBs at <50 ppm.

(2) Any person must assume that mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and whose PCB concentration is not established is PCB-Contaminated Electrical Equipment (i.e., contains ≥50 ppm PCB, but <500 ppm PCB). All pole-top and pad-mounted distribution transformers manufactured before July 2, 1979, must be assumed to be mineral-oil filled. Any person may assume that electrical equipment manufactured after July 2, 1979, is non-PCB (i.e., <50 ppm

PCBs). If the date of manufacture of mineral oil-filled electrical equipment is unknown, any person must assume it to be PCB-Contaminated.

(3) Any person must assume that a transformer manufactured prior to July 2, 1979, that contains 1.36 kg (3 pounds) or more of fluid other than mineral oil and whose PCB concentration is not established, is a PCB Transformer (i.e., ≥500 ppm). If the date of manufacture or the type of dielectric fluid is unknown, any person must assume the transformer to be a PCB Transformer.

(4) Any person must assume that a capacitor manufactured prior to July 2, 1979, whose PCB concentration is not established contains ≥500 ppm PCBs. Any person may assume that a capacitor manufactured after July 2, 1979, is non-PCB (i.e., <50 ppm PCBs). If the date of manufacture is unknown, any person must assume the capacitor contains ≥500 ppm PCBs. Any person may assume that a capacitor marked at the time of manufacture with the statement "No PCBs" in accordance with § 761.40(g) is non-PCB.

(b) PCB concentration may be established by:

(1) Testing the equipment; or

(2)(i) A permanent label, mark, or other documentation from the manufacturer of the equipment indicating its PCB concentration at the time of manufacture; and

(ii) Service records or other documentation indicating the PCB concentration of all fluids used in servicing the equipment since it was first manufactured.

d. In § 761.3, by revising the definitions for "Commercial storer of PCB waste," "PCB-Contaminated Electrical Equipment," "PCB Item," "PCB Transformer," and paragraph (2) of "Qualified Incinerator"; by removing the definitions for "Basel Convention" and "Emergency Situation"; and by adding alphabetically 36 definitions to read as follows:

§ 761.3 Definitions.

* * * * *

Air compressor system means air compressors, piping, receiver tanks, volume tanks and bottles, dryers, airlines, and related appurtenances.

* * * * *

ASTM means American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

* * * * *

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9657).

* * * * *

Cleanup site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a cleanup of PCB remediation waste, regardless of whether the site was intended for management of waste.

* * * * *

Commercial storer of PCB waste means the owner or operator of each facility that is subject to the PCB storage unit standards of § 761.65(b)(1) or (c)(7) or meets the alternate storage criteria of § 761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. A generator who only stores its own waste is subject to the storage requirements of § 761.65, but is not required to obtain approval as a commercial storer. If a facility's storage of PCB waste generated by others at no time exceeds a total of 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste. Storage of one company's PCB waste by a related company is not considered commercial storage. A "related company" includes, but is not limited to: a parent company and its subsidiaries; sibling companies owned by the same parent company; companies owned by a common holding company; members of electric cooperatives; entities within the same Executive agency as defined at 5 U.S.C. 105; and a company having a joint ownership interest in a facility from which PCB waste is generated (such as a jointly owned electric power generating station) where the PCB waste is stored by one of the co-owners of the facility. A "related company" does not include another voluntary member of the same trade association. Change in ownership or title of a generator's facility, where the generator is storing PCB waste, does not make the new owner of the facility a commercial storer of PCB waste.

* * * * *

DOT means the United States Department of Transportation.

Dry weight means the weight of the sample, excluding the weight of the water in the sample. Prior to chemical analysis the water may be removed by any reproducible method that is applicable to measuring PCBs in the sample matrix at the concentration of concern, such as air drying at ambient temperature, filtration, decantation, heating at low temperature followed by cooling in the presence of a desiccant, or other processes or combinations of processes which would remove water but not remove PCBs from the sample. Analytical procedures which calculate the dry weight concentration by adjusting for moisture content may also be used.

* * * * *

Facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of PCB waste. A facility may consist of one or more treatment, storage, or disposal units.

* * * * *

High occupancy area means any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is: 840 hours or more (an average of 16.8 hours or more per week) for non-porous surfaces and 335 hours or more (an average of 6.7 hours or more per week) for bulk PCB remediation waste. Examples could include a residence, school, day care center, sleeping quarters, a single or multiple occupancy 40 hours per week work station, a school class room, a cafeteria in an industrial facility, a control room, and a work station at an assembly line.

* * * * *

Liquid PCBs means a homogenous flowable material containing PCBs and no more than 0.5 percent by weight non-dissolved material.

Low occupancy area means any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is: less than 840 hours (an average of 16.8 hours per week) for non-porous surfaces and less than 335 hours (an average of 6.7 hours per week) for bulk PCB remediation waste. Examples could include an electrical substation or a location in an industrial facility where a worker spends small amounts of time per week (such as an unoccupied area outside a building, an electrical equipment vault, or in the non-office space in a warehouse where occupancy is transitory).

* * * * *

Natural gas pipeline system means natural gas gathering facilities, natural gas pipe, natural gas compressors, natural gas storage facilities, and natural gas pipeline appurtenances (including instrumentation and vessels directly in contact with transported natural gas such as valves, regulators, drips, filter

separators, etc., but not including air compressors).

* * * * *

Non-liquid PCBs means materials containing PCBs that by visual inspection do not flow at room temperature (25 °C or 77 °F) or from which no liquid passes when a 100 g or 100 ml representative sample is placed in a mesh number 60 ± 5 percent paint filter and allowed to drain at room temperature for 5 minutes.

* * * * *

Non-porous surface means a smooth, unpainted solid surface that limits penetration of liquid containing PCBs beyond the immediate surface. Examples are: smooth uncorroded metal; natural gas pipe with a thin porous coating originally applied to inhibit corrosion; smooth glass; smooth glazed ceramics; impermeable polished building stone such as marble or granite; and high density plastics, such as polycarbonates and melamines, that do not absorb organic solvents.

* * * * *

NTIS means the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

* * * * *

Open burning means the combustion of any PCB regulated for disposal, in a manner not approved or otherwise allowed under subpart D of this part, and without any of the following:

(1) Control of combustion air to maintain adequate temperature for efficient combustion.

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion.

(3) Control of emission of the gaseous combustion products.

* * * * *

PCB bulk product waste means waste derived from manufactured products containing PCBs in a non-liquid state, at any concentration where the concentration at the time of designation for disposal was ≥50 ppm PCBs. PCB bulk product waste does not include PCBs or PCB Items regulated for disposal under § 761.60(a) through (c), § 761.61, § 761.63, or § 761.64. PCB bulk product waste includes, but is not limited to:

(1) Non-liquid bulk wastes or debris from the demolition of buildings and other man-made structures manufactured, coated, or serviced with PCBs. PCB bulk product waste does not include debris from the demolition of buildings or other man-made structures that is contaminated by spills from regulated PCBs which have not been disposed of, decontaminated, or otherwise cleaned up in accordance with subpart D of this part.

(2) PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances.

(3) Plastics (such as plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; or furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes or other similar coatings or sealants; caulking; adhesives; paper; Galbestos; sound deadening or other types of insulation; and felt or fabric products such as gaskets.

(4) Fluorescent light ballasts containing PCBs in the potting material.

* * * * *

PCB Capacitor means any capacitor that contains ≥500 ppm PCB. Concentration assumptions applicable to capacitors appear under § 761.2.

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PCB-Contaminated means a non-liquid material containing PCBs at concentrations ≥50 ppm but <500 ppm; a liquid material containing PCBs at concentrations ≥50 ppm but <500 ppm or where insufficient liquid material is available for analysis, a non-porous surface having a surface concentration >10 µg/100 cm² but <100 µg/100 cm², measured by a standard wipe test as defined in § 761.123.

PCB-Contaminated Electrical Equipment means any electrical equipment including, but not limited to, transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contains PCBs at concentrations of ≥50 ppm and <500 ppm in the contaminating fluid. In the absence of liquids, electrical equipment is PCB-Contaminated if it has PCBs at >10 µg/100 cm² and <100 µg/100 cm² as measured by a standard wipe test (as defined in § 761.123) of a non-porous surface.

* * * * *

PCB field screening test means a portable analytical device or kit which measures PCBs. PCB field screening tests usually report less than or greater than a specific numerical PCB concentration. These tests normally build in a safety factor which increases the probability of a false positive report and decreases the probability of a false negative report. PCB field screening tests do not usually provide: an identity record generated by an instrument; a quantitative comparison record from calibration standards; any identification of PCBs; and/or any indication or identification of interferences with the measurement of the PCBs. PCB field screening test technologies include, but are not limited to, total chlorine colorimetric tests, total chlorine x-ray fluorescence tests, total chlorine microcoulometric tests, and rapid immunoassay tests.

PCB household waste means PCB waste that is generated by residents on the premises of a temporary or permanent residence for individuals (including individually owned or rented units of a multi-unit construction), and that is composed primarily of materials found in wastes generated by consumers in their homes. PCB household waste includes unwanted or discarded non-commercial vehicles (prior to shredding), household items, and appliances or appliance parts and wastes generated on the premises of a residence for individuals as a result of routine household maintenance by or on behalf of the resident. Bulk or commingled liquid PCB wastes at concentrations of ≥50 ppm, demolition and renovation wastes, and industrial or heavy duty equipment with PCBs are not household wastes.

* * * * *

PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

* * * * *

PCB/radioactive waste means PCBs regulated for disposal under subpart D of this part that also contain source, special nuclear, or byproduct material subject to regulation under the Atomic Energy Act of 1954, as amended, or naturally-occurring or accelerator-produced radioactive material.

* * * * *

PCB remediation waste means waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations ≥50 ppm PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was ≥500 ppm PCB beginning on April 18, 1978, or ≥50 ppm PCB beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are from a source not authorized for use under this part. PCB remediation waste means soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to:

(1) Environmental media containing PCBs, such as soil and gravel; dredged materials, such as sediments, settled

sediment fines, and aqueous decantate from sediment.

(2) Sewage sludge containing <50 ppm PCBs and not in use according to § 761.20(a)(4); PCB sewage sludge; commercial or industrial sludge contaminated as the result of a spill of PCBs including sludges located in or removed from any pollution control device; aqueous decantate from an industrial sludge.

(3) Buildings and other man-made structures, such as concrete or wood floors or walls contaminated from a leaking PCB or PCB-Contaminated transformer, porous surfaces and non-porous surfaces.

* * * * *

PCB sewage sludge means sewage sludge as defined in 40 CFR 503.9(w) which contains ≥50 ppm PCBs, as measured on a dry weight basis.

* * * * *

PCB Transformer means any transformer that contains ≥500 ppm PCBs. For PCB concentration assumptions applicable to transformers containing 1.36 kilograms (3 lbs.) or more of fluid other than mineral oil, see § 761.2. For provisions permitting reclassification of electrical equipment, including PCB Transformers, containing ≥500 ppm PCBs to PCB-Contaminated Electrical Equipment, see § 761.30(a) and (h).

* * * * *

Performance-based organic decontamination fluid (PODF) means kerosene, diesel fuel, terpene hydrocarbons, and terpene hydrocarbon/alcohol mixtures.

* * * * *

Porous surface means any surface that allows PCBs to penetrate or pass into itself including, but not limited to, paint or coating on metal; corroded metal; fibrous glass or glass wool; unglazed ceramics; ceramics with a porous glaze; porous building stone such as sandstone, travertine, limestone, or coral rock; low-density plastics such as styrofoam and low-density polyethylene; coated (varnished or painted) or uncoated wood; concrete or cement; plaster; plasterboard; wallboard; rubber; fiberboard; chipboard; asphalt; or tar paper. For purposes of cleaning and disposing of PCB remediation waste, porous surfaces have different requirements than non-porous surfaces.

* * * * *

Qualified incinerator means one of the following:

* * * * *

(2) A high efficiency boiler which complies with the criteria of § 761.71(a)(1), and for which the operator has given written notice to the appropriate EPA Regional Administrator in accordance with the notification requirements for the burning of mineral oil dielectric fluid under § 761.71(a)(2).

* * * * *

RCRA means the Resource Conservation and Recovery Act (40 U.S.C. 6901 *et seq.*).

* * * * *

Research and development (R&D) for PCB disposal means demonstrations for commercial PCB disposal approvals, pre-demonstration tests, tests of major modifications to previously approved PCB disposal technologies, treatability studies for PCB disposal technologies which have not been approved, development of new disposal technologies, and research on chemical transformation processes including, but not limited to, biodegradation.

* * * * *

Sewage sludge means sewage sludge as defined in § 503.9(w) of this chapter that contains <50 ppm (on a dry weight basis) PCBs.

* * * * *

Soil washing means the extraction of PCBs from soil using a solvent, recovering the solvent from the soil, separating the PCBs from the recovered solvent for disposal, and then disposal or reuse of the solvent.

Standard wipe sample means a sample collected for chemical extraction and analysis using the standard wipe test as defined in § 761.123. Except as designated elsewhere in part 761, the minimum surface area to be sampled shall be 100 cm^2.

* * * * *

SW-846 means the document having the title "SW-846, Test Methods for Evaluating Solid Waste," which is available from either the National Technical Information Service (NTIS, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, telephone: (703) 487-4650 or the U.S. Government Printing Office (U.S. GPO, 710 North Capitol St., NW., Washington, DC 20401, telephone: (202) 783-3238.

* * * * *

TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

* * * * *

TSCA PCB Coordinated Approval means the process used to recognize other Federal or State waste management documents governing the storage, cleanup, treatment, and disposal of PCB wastes. It is the mechanism under TSCA for accomplishing review, coordination, and approval of PCB waste management activities which are conducted outside of the TSCA PCB approval process, but require approval under the TSCA PCB regulations at 40 CFR part 761.

* * * * *

Unit means a particular building, structure, or cell used to manage PCB waste (including, but not limited to, a building used for PCB waste storage, a landfill, an industrial boiler, or an incinerator).

U.S. GPO means the U.S. Government Printing Office, 710 North Capitol St., NW., Washington, DC 20401.

* * * * *

Wet weight means reporting chemical analysis results by including either the weight, or the volume and density, of all liquids.

* * * * *

e. In § 761.19, the table in paragraph (b), in the second column, by revising the reference to "§ 761.60(a)(3)(iii)(B)(*6*)" wherever it appears to read "§ 761.71(b)(2)(vi)" and by revising the introductory text of paragraph (b) to read as follows:

§ 761.19 References.

* * * * *

(b) *Incorporation by reference.* The following material is incorporated by reference, and is available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC. These incorporations by reference were approved by the Director of the Office of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies of the incorporated material are available for inspection at the TSCA Nonconfidential Information Center (7407), Rm. B607, Northeast Mall, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Copies of the incorporated material may be obtained from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

* * * * *

f. Throughout part 761, by revising the references to "Director, Chemical Management Division" and "Director, CMD," to read "Director, National Program Chemicals Division".

g. In § 761.20, by revising the section heading and paragraphs (a)(4), (c)(2), and (c)(5) to read as follows:

§ 761.20 Prohibitions and exceptions.

* * * * *

(a) * * *

(4) An authorization is not required to use sewage sludge where the uses are regulated at parts 257, 258, and 503 of this chapter. No person may blend or otherwise dilute PCBs regulated for disposal, including PCB sewage sludge

and sewage sludge not used pursuant to parts 257, 258, and 503 of this chapter, for purposes of use or to avoid disposal requirements under this part. Except as explicitly provided in subpart D of this part, no person may dispose of regulated PCB wastes including, but not limited to, PCB remediation waste, PCB bulk product waste, PCBs, and PCB industrial sludges, into treatment works, as defined in § 503.9(aa) of this chapter.

* * * * *

(c) * * *

(2) Any person may process and distribute in commerce for disposal PCBs at concentrations of ≥50 ppm, or PCB Items with PCB concentrations of ≥50 ppm, if they comply with the applicable provisions of this part.

(i) Processing activities which are primarily associated with and facilitate storage or transportation for disposal do not require a TSCA PCB storage or disposal approval.

(ii) Processing activities which are primarily associated with and facilitate treatment, as defined in § 261.10 of this chapter, or disposal require a TSCA PCB disposal approval unless they are part of an existing approval, are part of a self-implementing activity under § 761.61(a) or § 761.79(b) or (c), or are otherwise specifically allowed under subpart D of this part.

(iii) With the exception of provisions in § 761.60(a)(2) and (a)(3), in order to meet the intent of § 761.1(b), processing, diluting, or otherwise blending of waste prior to being introduced into a disposal unit for purposes of meeting a PCB concentration limit shall be done in accordance with a TSCA PCB disposal approval or comply with the requirements of § 761.79.

(iv) Where the rate of delivering liquids or non-liquids into a PCB disposal unit is an operating parameter, this rate shall be a condition of the TSCA PCB disposal approval for the unit when an approval is required.

* * * * *

(5) Decontaminated materials. Any person may distribute in commerce equipment, structures, or other liquid or non-liquid materials that were contaminated with PCBs ≥50 ppm, including those not otherwise authorized for distribution in commerce under this part, provided that one of the following applies:

(i) The materials were decontaminated in accordance with a TSCA PCB disposal approval issued under subpart D of this part, with § 761.79, or with applicable EPA PCB spill cleanup policies in effect at the time of the decontamination.

(ii) If not previously decontaminated, the materials now meet an applicable decontamination standard in § 761.79(b).

* * * * *

h. Section 761.30 is amended as follows:

i. Paragraph (a)(1) is amended by removing (a)(1)(iii)(A) through (a)(1)(iii)(C)(*2*)(*i*), and (a)(1)(iii)(D), and by redesignating (a)(1)(iii)(C)(*2*)(*ii*) and (a)(1)(iii)(C)(*2*)(*iii*) as (a)(1)(iii)(A) and (a)(1)(iii)(B), respectively; by revising paragraph (a)(1)(vi); in paragraph (a)(1)(vii)(C), by revising the phrase "280/120 volt radial" to read "208/120 volt radial"; in paragraph (a)(1)(x) by revising the reference to "§ 761.60" to read "subpart D of this part"; by adding new paragraphs (a)(1)(xii)(I) and (a)(1)(xii)(J); in paragraph (a)(1)(xv) introductory text by revising the reference to "§ 761.3" to read "§ 761.2"; and by revising paragraph (a)(1)(xv)(D).

ii. Paragraph (b) is amended by revising paragraph (b)(1) and by removing paragraph (b)(2)(ii) and redesignating paragraphs (b)(2)(iii) through (b)(2)(vii) as (b)(2)(ii) through (b)(2)(vi), respectively.

iii. By revising paragraphs (c), (d), (e), (h)(1)(ii), (i), (j), (k) and (p); removing and reserving paragraphs (g), (n), and (o); and adding paragraphs (h)(1)(iii), (q), (r), (s), (t), and (u).

The revisions and additions read as follows:

§ 761.30 Authorizations.

(a) * * *

(1) * * *

(vi)(A) No later than December 28, 1998 all owners of PCB Transformers, including those in storage for reuse, must register their transformers with the Environmental Protection Agency, National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404), 401 M St., SW., Washington, DC 20460. This registration requirement is subject to the limitations in paragraph (a)(1) of this section.

(*1*) A transformer owner who assumes a transformer is a PCB-Contaminated transformer, and discovers after December 28, 1998 that it is a PCB-Transformer, must register the newly-identified PCB Transformer, in writing, with the Environmental Protection Agency no later than 30 days after it is identified as such. This requirement does not apply to transformer owners who have previously registered with the EPA PCB Transformers located at the same address as the transformer that they assumed to be PCB-Contaminated and later determined to be a PCB Transformer.

(*2*) A person who takes possession of a PCB Transformer after December 28, 1998 is not required to register or re-register the transformer with the EPA.

(B) Any person submitting a registration under this section must include:

(*1*) Company name and address.

(*2*) Contact name and telephone number.

(*3*) Address where these transformers are located. For mobile sources such as ships, provide the name of the ship.

(*4*) Number of PCB Transformers and the total weight in kilograms of PCBs contained in the transformers.

(*5*) Whether any transformers at this location contain flammable dielectric fluid (optional).

(*6*) Signature of the owner, operator, or other authorized representative certifying the accuracy of the information submitted.

(C) A transformer owner must retain a record of each PCB Transformer's registration (e.g., a copy of the registration and the return receipt signed by EPA) with the inspection and maintenance records required for each PCB Transformer under paragraph (a)(1)(xii)(I) of this section.

(D) A transformer owner must comply with all requirements of paragraph (a)(1)(vi)(A) of this section to continue the PCB-Transformer's authorization for use, or storage for reuse, pursuant to this section and TSCA section 6(e)(2)(B).

* * * * *

(xii) * * *

(I) Record of the registration of PCB Transformer(s).

(J) Records of transfer of ownership of a PCB Item (excluding intact non-leaking small capacitors) with a PCB concentration of ≥500 ppm, when records are not maintained in compliance with § 761.180(a)(2).

* * * * *

(xv) * * *

(D) Register the PCB Transformer in writing with the building owner within 30 days of discovery.

* * * * *

(b) * * *

(1) *Use restrictions.* After July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration >1,000 ppm is prohibited.

* * * * *

(c) *Use in mining equipment.* After January 1, 1982, PCBs may be used in mining equipment only at a concentration level of <50 ppm.

(d) *Use in heat transfer systems.* After July 1, 1984, PCBs may be used in heat transfer systems only at a concentration level of < 50 ppm. Heat transfer systems that were in operation after July 1, 1984, with a concentration level of <50 ppm PCBs may be serviced to maintain a concentration level of <50 ppm PCBs.

Heat transfer systems may only be serviced with fluids containing <50 ppm PCBs.

(e) *Use in hydraulic systems.* After July 1, 1984, PCBs may be used in hydraulic systems only at a concentration level of <50 ppm. Hydraulic systems that were in operation after July 1, 1984, with a concentration level of <50 ppm PCBs may be serviced to maintain a concentration level of <50 ppm PCBs. Hydraulic systems may only be serviced with fluids containing <50 ppm PCBs.

* * * * *

(g) [Reserved]

(h) * * *

(1) * * *

(ii) Use and storage for reuse of voltage regulators which contain 1.36 kilograms (3 lbs) or more of dielectric fluid with a PCB concentration of ≥500 ppm are subject to the following provisions:

(A) The owner of the voltage regulator must mark its location in accordance with § 761.40.

(B) If a voltage regulator is involved in a fire-related incident, the owner must immediately report the incident to the National Response Center (Toll-free: 1–800–424–8802; in Washington, DC: 202–426–2675). A fire-related incident is defined as any incident that involves the generation of sufficient heat and/or pressure, by any source, to result in the violent or non-violent rupture of the voltage regulator and the release of PCBs.

(C) The owner of the voltage regulator must inspect it in accordance with the requirements of paragraphs (a)(1)(ix), (a)(1)(xiii), and (a)(1)(xiv) of this section that apply to PCB Transformers.

(D) The owner of the voltage regulator must comply with the recordkeeping and reporting requirements at § 761.180.

(iii) The owner of a voltage regulator that assumes it contains <500 ppm PCBs as provided in § 761.2, and discovers by testing that it is contaminated at ≥500 ppm PCBs, must comply with paragraph (h)(1)(ii)(A) of this section 7 days after the discovery, and paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), and (h)(1)(ii)(D) of this section immediately upon discovery.

* * * * *

(i) *Use and reuse of PCBs in natural gas pipeline systems; use and reuse of PCB-Contaminated natural gas pipe and appurtenances.* (1)(i) PCBs are authorized for use in natural gas pipeline systems at concentrations <50 ppm.

(ii) PCBs are authorized for use, at concentrations ≥50 ppm, in natural gas pipeline systems not owned or operated by a seller or distributor of natural gas.

(iii)(A) PCBs are authorized for use, at concentrations ≥50 ppm, in natural gas pipeline systems owned or operated by a seller or distributor of natural gas, if the owner or operator:

(*1*) Submits to EPA, upon request, a written description of the general nature and location of PCBs ≥50 ppm in their natural gas pipeline system. Each written description shall be submitted to the EPA Regional Administrator having jurisdiction over the segment or component of the system (or the Director, National Program Chemicals Division, Office of Prevention, Pesticides, and Toxic Substances, if the system is contaminated in more than one region).

(*2*) Within 120 days after discovery of PCBs ≥50 ppm in natural gas pipeline systems, or by December 28, 1998, whichever is later, characterizes the extent of PCB contamination by collecting and analyzing samples to identify the upstream and downstream end points of the segment or component where PCBs ≥50 ppm were discovered.

(*3*) Within 120 days of characterization of the extent of PCB contamination, or by December 28, 1998, whichever is later, samples and analyzes all potential sources of introduction of PCBs into the natural gas pipeline system for PCBs ≥50 ppm. Potential sources include natural gas compressors, natural gas scrubbers, natural gas filters, and interconnects where natural gas is received upstream from the most downstream sampling point where PCBs ≥50 ppm were detected; potential sources exclude valves, drips, or other small liquid condensate collection points.

(*4*) Within 1 year of characterization of the extent of PCB contamination, reduces all demonstrated sources of PCBs ≥50 ppm to <50 ppm, or removes such sources from the natural gas pipeline system; or implements other engineering measures or methods to reduce PCB levels to <50 ppm and to prevent further introduction of PCBs ≥50 ppm into the natural gas pipeline system (e.g., pigging, decontamination, in-line filtration).

(*5*) Repeats sampling and analysis at least annually where PCBs are ≥50 ppm, until sampling results indicate the natural gas pipeline segment or component is <50 ppm PCB in two successive samples with a minimum interval between samples of 180 days.

(*6*) Marks aboveground sources of PCB liquids in natural gas pipeline systems with the M_L Mark in accordance with § 761.45(a), where such sources have been demonstrated through historical data or recent sampling to contain PCBs ≥50 ppm.

(B) Owners or operators of natural gas pipeline systems which do not include potential sources of PCB contamination as described in paragraph (i)(1)(iii)(A)(*3*) of this section containing ≥50 ppm PCB are not subject to paragraphs (i)(1)(iii)(A)(*2*), (i)(1)(iii)(A)(*3*), (i)(1)(iii)(A)(*4*), or (i)(1)(iii)(A)(*6*) of this section. Owners or operators of these systems, however, must comply with the other provisions of this section (e.g., sampling of any collected PCB liquids and recordkeeping).

(C) The owner or operator of a natural gas pipeline system must document in writing all data collected and actions taken, or not taken, pursuant to the authorization in paragraph (i)(1)(iii)(A) of this section. They must maintain the information for 3 years after the PCB concentration in the component or segment is reduced to <50 ppm, and make it available to EPA upon request.

(D) The Director, National Program Chemicals Division, after consulting with the appropriate EPA Region(s) may, based on a finding of no unreasonable risk, modify in writing the requirements of paragraph (i)(1)(iii)(A) of this section, including extending any compliance date, approving alternative formats for documentation, waiving one or more requirements for a segment or component, requiring sampling and analysis, and requiring implementation of engineering measures to reduce PCB concentrations. EPA will make such modifications based on the natural gas pipeline system size, configuration, and current operating conditions; nature, extent or source of contamination; proximity of contamination to end-users; or previous sampling, monitoring, remedial actions or documentation of activities taken regarding compliance with this authorization or other applicable Federal, State, or local laws and regulations. The Director, National Program Chemicals Division, may delegate the authority described in this paragraph, upon request, to the appropriate EPA Region.

(E) The owner or operator of a natural gas pipeline system may use historical data to fulfill the requirements of paragraphs (i)(1)(iii)(A)(*1*), (i)(1)(iii)(A)(*2*) and (i)(1)(iii)(A)(*3*) of this section. They may use documented historical actions taken to reduce PCB concentrations in known sources; decontaminate components or segments of natural gas pipeline systems; or otherwise to reduce PCB levels to fulfill the requirements of paragraph (i)(1)(iii)(A)(*4*) of this section.

(2) Any person may reuse PCB-Contaminated natural gas pipe and appurtenances in a natural gas pipeline

system, provided all free-flowing liquids have been removed.

(3) Any person may use PCB-Contaminated natural gas pipe, drained of all free-flowing liquids, in the transport of liquids (e.g., bulk hydrocarbons, chemicals, petroleum products, or coal slurry), as casing to provide secondary containment or protection (e.g., protection for electrical cable), as industrial structural material (e.g., fence posts, sign posts, or bridge supports), as temporary flume at construction sites, as equipment skids, as culverts under transportation systems in intermittent flow situations, for sewage service with written consent of the Publicly Owned Treatment Works (POTW), for steam service, as irrigation systems (<20 inch diameter) of less than 200 miles in length, and in a totally enclosed compressed air system.

(4) Any person characterizing PCB contamination in natural gas pipe or natural gas pipeline systems must do so by analyzing liquids collected at existing condensate collection points in the pipe or pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream. Any person characterizing multi-phasic liquids must do so in accordance with § 761.1(b)(4); if no liquids are present, they must use standard wipe samples in accordance with subpart M of this part.

(5)(i) Any person disposing of liquids containing PCBs ≥50 ppm removed, spilled, or otherwise released from a natural gas pipeline system must do so in accordance with § 761.60(a) based on the PCB concentration at the time of removal from the system. Any person disposing of materials contaminated by spills or other releases of PCBs ≥50 ppm from a natural gas pipeline systems, must do so in accordance with §§ 761.61 or 761.79, as applicable.

(ii) Any person who markets or burns for energy recovery liquids containing PCBs at concentrations <50 ppm PCBs at the time of removal from a natural gas pipeline system must do so in accordance with the provisions pertaining to used oil at § 761.20(e). No other use of liquid containing PCBs at concentrations above the quantifiable level/level of detection removed from a natural gas pipeline system is authorized.

(j) *Research and development.* For purposes of this section, authorized research and development (R&D) activities include, but are not limited to: the chemical analysis of PCBs, including analyses to determine PCB concentration; determinations of the physical properties of PCBs; studies of environmental transport processes; studies of biochemical transport processes; studies of effects of PCBs on the environment; and studies of the health effects of PCBs, including direct toxicity and toxicity of metabolic products of PCBs. Authorized R&D activities do not include research, development, or analysis for the development of any PCB product. Any person conducting R&D activities under this section is also responsible for determining and complying with all other applicable Federal, State, and local laws and regulations. Although the use of PCBs and PCBs in analytical reference samples derived from waste material is authorized in conjunction with PCB-disposal related activities, R&D for PCB disposal (as defined under § 761.3) is addressed in § 761.60(j). PCBs and PCBs in analytical reference samples derived from waste materials are authorized for use, in a manner other than a totally enclosed manner, provided that:

(1) They obtain the PCBs and PCBs in analytical reference samples derived from waste materials from sources authorized under § 761.80 to manufacture, process, and distribute PCBs in commerce and the PCBs are packaged in compliance with the Hazardous Materials Regulations at 49 CFR parts 171 through 180.

(2) They store all PCB wastes resulting from R&D activities (e.g., spent laboratory samples, residuals, contaminated media such as clothing, etc.) in compliance with § 761.65(b) and dispose of all PCB wastes in compliance with § 761.64.

(3) They use manifests, pursuant to subpart K of this part, for all R&D PCB wastes being transported from the R&D facility to a commercial storer and/or a disposal facility. However, no manifests are required if the residuals or unused analytical reference samples of PCB waste material are returned either to the physical location where the samples were collected or a location where other regulated PCBs from the physical location where the samples were collected are being stored for disposal.

(4) No person may manufacture, process, or distribute in commerce PCBs for research and development unless they have been granted an exemption to do so under TSCA section 6(e)(3)(B).

(k) *Use in scientific instruments.* PCBs may be used indefinitely in scientific instruments, for example, in oscillatory flow birefringence and viscoelasticity instruments for the study of the physical properties of polymers, as microscopy mounting fluids, as microscopy immersion oil, and as optical liquids in a manner other than a totally enclosed manner. No person may manufacture, process, or distribute in commerce PCBs for use in scientific instruments unless they have been granted an exemption to do so under TSCA section 6(e)(3)(B).

* * * * *

(n)—(o) [Reserved]

(p) *Continued use of porous surfaces contaminated with PCBs regulated for disposal by spills of liquid PCBs.* (1) Any person may use porous surfaces contaminated by spills of liquid PCBs at concentrations >10 µg/100 cm² for the remainder of the useful life of the surfaces and subsurface material if the following conditions are met:

(i) The source of PCB contamination is removed or contained to prevent further release to porous surfaces.

(ii) If the porous surface is accessible to superficial surface cleaning:

(A) The double wash rinse procedure in subpart S of this part is conducted on the surface to remove surface PCBs.

(B) The treated surface is allowed to dry for 24 hours.

(iii) After accessible surfaces have been cleaned according to paragraph (p)(1)(ii) of this section and for all surfaces inaccessible to cleanup:

(A) The surface is completely covered to prevent release of PCBs with:

(*1*) Two solvent resistant and water repellent coatings of contrasting colors to allow for a visual indication of wear through or loss of outer coating integrity; or

(*2*) A solid barrier fastened to the surface and covering the contaminated area or all accessible parts of the contaminated area. Examples of inaccessible areas are underneath a floor-mounted electrical transformer and in an impassible space between an electrical transformer and a vault wall.

(B) The surface is marked with the M_L Mark in a location easily visible to individuals present in the area; the M_L Mark shall be placed over the encapsulated area or the barrier to the encapsulated area.

(C) M_L Marks shall be replaced when worn or illegible.

(2) Removal of a porous surface contaminated with PCBs from its location or current use is prohibited except for removal for disposal in accordance with §§ 761.61 or 761.79 for surfaces contaminated by spills, or § 761.62 for manufactured porous surfaces.

(q) [Reserved]

(r) *Use in and servicing of rectifiers.* Any person may use PCBs at any concentration in rectifiers for the remainder of the PCBs' useful life, and may use PCBs <50 ppm in servicing (including rebuilding) rectifiers.

(s) *Use of PCBs in air compressor systems.* (1) Any person may use PCBs

in air compressor systems at concentrations <50 ppm.

(2) Any person may use PCBs in air compressor systems (or components thereof) at concentrations ≥50 ppm provided that:

(i) All free-flowing liquids containing PCBs ≥50 ppm are removed from the air compressor crankcase and the crankcase is refilled with non-PCB liquid.

(ii) Other air compressor system components contaminated with PCBs ≥50 ppm, are decontaminated in accordance with § 761.79 or disposed of in accordance with subpart D of this part.

(iii) Air compressor piping with a nominal inside diameter of <2 inches is decontaminated by continuous flushing for 4 hours, at no <300 gallons per hour (§ 761.79 contains solvent requirements).

(3) The requirements in paragraph (s)(2) of this section must be completed by August 30, 1999 or within 1 year of the date of discovery of PCBs at ≥50 ppm in the air compressor system, whichever is later. The EPA Regional Administrator for the EPA Region in which an air compressor system is located may, at his/her discretion and in writing, extend this timeframe.

(t) *Use of PCBs in other gas or liquid transmission systems.* (1) PCBs are authorized for use in intact and non-leaking gas or liquid transmission systems at concentrations <50 ppm PCBs.

(2) PCBs are authorized for use at concentrations ≥50 ppm in intact and non-leaking gas or liquid transmission systems not owned or operated by a seller or distributor of the gas or liquid transmitted in the system.

(3) Any person may use PCBs at concentrations ≥50 ppm in intact and non-leaking gas or liquid transmission systems, with the written approval of the Director, National Program Chemicals Division, subject to the requirements applicable to natural gas pipeline systems at paragraphs (i)(1)(iii)(A), (i)(1)(iii)(C) through (i)(1)(iii)(E), and (i)(2) through (i)(5) of this section.

(u) *Use of decontaminated materials.* (1) Any person may use equipment, structures, other non-liquid or liquid materials that were contaminated with PCBs during manufacture, use, servicing, or because of spills from, or proximity to, PCBs ≥50 ppm, including those not otherwise authorized for use under this part, provided:

(i) The materials were decontaminated in accordance with:

(A) A TSCA PCB disposal approval issued under subpart D of this part;

(B) Section 761.79; or

(C) Applicable EPA PCB spill cleanup policies (e.g., TSCA, RCRA, CERCLA, EPA regional) in effect at the time of the decontamination; or

(ii) If not previously decontaminated, the materials now meet an applicable decontamination standard in § 761.79(b).

(2) No person shall use or reuse materials decontaminated in accordance with paragraph (u)(1)(i) of this section or meeting an applicable decontamination standard in paragraph (u)(1)(ii) of this section, in direct contact with food, feed, or drinking water unless otherwise allowed under this section or this part.

(3) Any person may use water containing PCBs at concentrations ≤0.5µg/L PCBs without restriction.

(4) Any person may use water containing PCBs at concentrations <200 µg/L (i.e., < 200 ppb PCBs) for non-contact use in a closed system where there are no releases (e.g., as a non-contact cooling water).

i. By adding § 761.35 to read as follows:

§ 761.35 Storage for reuse.

(a) The owner or operator of a PCB Article may store it for reuse in an area which is not designed, constructed, and operated in compliance with § 761.65(b), for no more than 5 years after the date the Article was originally removed from use (e.g., disconnected electrical equipment) or 5 years after August 28, 1998, whichever is later, if the owner or operator complies with the following conditions:

(1) Follows all use requirements at § 761.30 and marking requirements at subpart C of this part that are applicable to the PCB Article.

(2) Maintains records starting at the time the PCB Article is removed from use or August 28, 1998. The records must indicate:

(i) The date the PCB Article was removed from use or August 28, 1998, if the removal date is not known.

(ii) The projected location and the future use of the PCB Article.

(iii) If applicable, the date the PCB Article is scheduled for repair or servicing.

(b) The owner or operator of a PCB Article may store it for reuse in an area that does not comply with § 761.65(b) for a period longer than 5 years, provided that the owner or operator has received written approval from the EPA Regional Administrator for the Region in which the PCB Article is stored. An owner or operator of a PCB Article seeking approval to extend the 5–year period must submit a request for extension to the EPA Regional Administrator at least 6 months before the 5-year storage for reuse period expires and must include an item-by-item justification for the desired extension. The EPA Regional Administrator may include any conditions to such approval deemed necessary to protect health or the environment. The owner or operator of the PCB Article being stored for reuse must comply with the other applicable provisions of this part, including the record retention requirements at § 761.180(a).

(c) Any person may store a PCB Article for reuse indefinitely in:

(1) A unit in compliance with § 761.65(b).

(2) A unit permitted under section 3004 of RCRA to manage hazardous wastes in containers.

(3) A unit permitted by a State authorized under section 3006 of RCRA to manage hazardous waste.

j. In § 761.40, by revising paragraphs (a)(5), (b), (e), and (h), and adding paragraphs (k) and (l) to read as follows:

§ 761.40 Marking requirements.

(a) * * *

(5) PCB Large Low Voltage Capacitors at the time of removal from use (see also paragraph (k) of this section).

* * * * *

(b) As of October 1, 1979, each transport vehicle loaded with PCB Containers that contain more than 45 kg (99.4 lbs.) of liquid PCBs at concentrations of ≥50 ppm or with one or more PCB Transformers shall be marked on each end and each side with the M_L mark as described in § 761.45(a).

* * * * *

(e) As of October 1, 1979, applicable PCB Items in paragraphs (a)(1), (a)(6), (a)(7), and (a)(8) of this section containing PCBs in concentrations of 50 to 500 ppm shall be marked with the M_L mark as described in § 761.45(a).

* * * * *

(h) All marks required by this subpart must be placed in a position on the exterior of the PCB Items, storage units, or transport vehicles so that the marks can be easily read by any persons inspecting or servicing the marked PCB Items, storage units, or transport vehicles.

* * * * *

(k) As of April 26, 1999 the following PCB Items shall be marked with the M_L mark as described in § 761.45(a):

(1) All PCB Large Low Voltage Capacitors not marked under paragraph (a) of this section shall be marked individually, or if one or more PCB Large Low Voltage Capacitors are installed in a protected location such as on a power pole, or structure, or behind

a fence, then the owner or operator shall mark the pole, structure, or fence with the M_L mark, and maintain a record or procedure identifying the PCB Capacitors at the protected location. PCB Large Low Voltage Capacitors in inaccessible locations inside equipment need not be marked individually, provided the owner or operator marks the equipment in accordance with paragraph (k)(2) of this section, and marks the individual capacitors at the time of removal from use in accordance with paragraph (a) of this section.

(2) All equipment not marked under paragraph (a) of this section containing a PCB Transformer or a PCB Large High or Low Voltage Capacitor.

(l)(1) All voltage regulators with a PCB concentration of ≥500 ppm must be marked individually with the M_L mark as described in § 761.45(a).

(2) Locations of voltage regulators containing PCBs ≥500 ppm PCBs shall be marked as follows: the vault door, machinery room door, fence, hallway, or means of access, other than grates or manhole covers, must be marked with the M_L mark as described in § 761.45(a).

k. By amending subpart D by removing the "Note" appearing just after the heading for subpart D and adding § 761.50, reading as follows:

§ 761.50 Applicability.

(a) *General PCB disposal requirements.* Any person storing or disposing of PCB waste must do so in accordance with subpart D of this part. The following prohibitions and conditions apply to all PCB waste storage and disposal:

(1) No person may open burn PCBs. Combustion of PCBs approved under § 761.60(a) or (e), or otherwise allowed under part 761, is not open burning.

(2) No person may process liquid PCBs into non-liquid forms to circumvent the high temperature incineration requirements of § 761.60(a).

(3) No person may discharge water containing PCBs to a treatment works (as defined § 503.9(aa) of this chapter) or to navigable waters unless the PCB concentration is <3 µg/L (approximately 3 ppb), or unless the discharge is in accordance with a PCB discharge limit included in a permit issued under section 307(b) or 402 of the Clean Water Act.

(4) Spills and other uncontrolled discharges of PCBs at concentrations of ≥50 ppm constitute the disposal of PCBs.

(5) Any person land disposing of non-liquid PCBs may avoid otherwise-applicable sampling requirements by presuming that the PCBs disposed of are ≥500 ppm (or ≥100 µg/100 cm^2 if no free-flowing liquids are present).

(6) Any person storing or disposing of PCBs is also responsible for determining and complying with all other applicable Federal, State, and local laws and regulations.

(b) *PCB waste.* (1) *PCB liquids.* Any person removing PCB liquids from use (i.e., not PCB remediation waste) must dispose of them in accordance with § 761.60(a), or decontaminate them in accordance with § 761.79.

(2) *PCB Items.* Any person removing from use a PCB Item containing an intact and non-leaking PCB Article must dispose of it in accordance with § 761.60(b), or decontaminate it in accordance with § 761.79. PCB Items where the PCB Articles are no longer intact and non-leaking are regulated for disposal as PCB bulk product waste under § 761.62(a) or (c).

(i) Fluorescent light ballasts containing PCBs only in an intact and non-leaking PCB Small Capacitor are regulated for disposal under § 761.60(b)(2)(ii).

(ii) Fluorescent light ballasts containing PCBs in the potting material are regulated for disposal as PCB bulk product waste under § 761.62.

(3) *PCB remediation waste.* PCB remediation waste, including PCB sewage sludge, is regulated for cleanup and disposal in accordance with § 761.61.

(i) Any person responsible for PCB waste at concentrations ≥50 ppm placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, must dispose of the waste as follows:

(A) Sites containing these wastes are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site. However, the EPA Regional Administrator may inform the owner or operator of the site that there is reason to believe that spills, leaks, or other uncontrolled releases or discharges, such as leaching, from the site constitute ongoing disposal that may present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site, and may require the owner or operator to generate data necessary to characterize the risk. If after reviewing any such data, the EPA Regional Administrator makes a finding, that an unreasonable risk exists, then he or she may direct the owner or operator of the site to dispose of the PCB remediation waste in accordance with § 761.61 such that an unreasonable risk of injury no longer exists.

(B) Unless directed by the EPA Regional Administrator to dispose of PCB remediation waste in accordance with paragraph (b)(3)(i)(A) of this section, any person responsible for PCB remediation waste placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, who unilaterally decides to dispose of that waste (for example, to obtain insurance or to sell the property), is not required to cleanup in accordance with § 761.61. Disposal of the PCB remediation waste must comply with § 761.61. However, cleanup of those wastes that is not in complete compliance with § 761.61 will not afford the responsible party with relief from the applicable PCB regulations for that waste.

(ii) Any person responsible for PCB waste placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, must dispose of it as follows:

(A) In accordance with the PCB Spill Cleanup Policy (Policy) at subpart G of this part, for those PCB remediation wastes that meet the criteria of the Policy. Consult the Policy for a description of the spills it covers and its notification and timing requirements.

(B) In accordance with § 761.61. Complete compliance with § 761.61 does not create a presumption against enforcement action for penalties for any unauthorized PCB disposal.

(iii) The owner or operator of a site containing PCB remediation waste has the burden of proving the date that the waste was placed in a land disposal facility, spilled, or otherwise released into the environment, and the concentration of the original spill.

(4) *PCB bulk product waste*—(i) *General.* Any person disposing of PCB bulk product waste must do so in accordance with § 761.62. PCB bulk product waste, as that term is defined in § 761.3, is waste that was ≥50 ppm when originally removed from service, even if its current PCB concentration is <50 ppm. PCB bulk product waste is regulated for disposal based on the risk from the waste once disposed of. For waste which is land disposed, the waste is regulated based on how readily the waste is released from disposal to the environment, in particular by leaching out from the land disposal unit.

(ii) *Metal surfaces in contact with PCBs.* Any person disposing of metal surfaces in contact with PCBs (e.g., painted metal) may use thermal decontamination procedures in accordance with § 761.79(c)(6) (see § 761.62(a)(6)).

(5) *PCB household waste.* Any person storing or disposing of PCB household

waste, as that term is defined in § 761.3, must do so in accordance with § 761.63.

(6) *PCB research and development waste.* Any person disposing of PCB wastes generated during and as a result of research and development for use under § 761.30(j), or for disposal under § 761.60(j), must do so in accordance with § 761.64.

(7) *PCB/Radioactive waste.* (i) Any person storing PCB/radioactive waste ≥50 ppm PCBs must do so taking into account both its PCB concentration and its radioactive properties, except as provided in § 761.65(a)(1), (b)(1)(ii), and (c)(6)(i).

(ii) Any person disposing of PCB/radioactive waste must do so taking into account both its PCB concentration and its radioactive properties. If, taking into account only the properties of the PCBs in the waste (and not the radioactive properties of the waste), the waste meets the requirements for disposal in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill (e.g., PCB bulk product waste under § 761.62(b)(1)), then the person may dispose of the PCB/radioactive waste, without regard to the PCB component of the waste, on the basis of its radioactive properties in accordance with all applicable requirements for the radioactive component of the waste.

(8) *Porous surfaces.* In most cases a person must dispose of porous surfaces as materials where PCBs have penetrated far beneath the surface, rather than a simple surface contamination. Any person disposing of porous surfaces on which PCBs have been spilled and meeting the definition of PCB remediation waste at § 761.3 must do so in accordance with § 761.61(a)(5)(iii). Any person disposing of porous surfaces which are part of manufactured non-liquid products containing PCBs and meeting the definition of PCB bulk product waste at § 761.3 must do so in accordance with § 761.62. Any person may decontaminate concrete surfaces upon which PCBs have been spilled in accordance with § 761.79(b)(4), if the decontamination procedure is commenced within 72 hours of the initial spill of PCBs to the concrete or portion thereof being decontaminated. Any person may decontaminate porous non-liquid PCBs in contact with non-porous surfaces, such as underground metal fuel tanks coated with fire retardant resin or pitch, for purposes of unrestricted use or disposal in a smelter in accordance with § 761.79(b)(3).

(c) *Storage for disposal.* Any person who holds PCB waste must store it in accordance with § 761.65.

(d) *Performance specifications for disposal technologies*—(1) *Incinerators.* Any person using an incinerator to dispose of PCBs must use an incinerator that meets the criteria set forth in § 761.70.

(2) *High efficiency boilers.* Any person using a high efficiency boiler to dispose of PCBs must use a boiler that meets the criteria set forth in § 761.71.

(3) *Scrap metal recovery ovens and smelters.* Any person using scrap metal recovery ovens and smelters to dispose of PCBs must use a device that meets the criteria set forth in § 761.72.

(4) *Chemical waste landfills.* Any person using a chemical waste landfill to dispose of PCBs must use a chemical waste landfill that meets the criteria set forth in § 761.75.

(e) *TSCA PCB Coordinated Approval.* Any person seeking a TSCA PCB Coordinated Approval must follow the procedures set forth in § 761.77.

l. In § 761.60 by revising paragraphs (a)(1) through (a)(3), by removing paragraphs (a)(4), (a)(5), and (a)(6); in paragraph (b) by adding introductory text just after the italic heading "PCB Articles," and by revising paragraphs (b)(1)(i)(B), (b)(2)(iv) introductory text, (b)(2)(vi), revising paragraphs (b)(3) and (b)(4); by redesignating paragraphs (b)(5) and (b)(6) as (b)(6) and (b)(7), respectively; by adding new paragraphs (b)(5), (b)(6)(iii), and (b)(6)(iv), and by revising newly designated (b)(6)(ii); in paragraph (c)(3) by removing the term "facility" and adding, in its place, the term "unit"; removing and reserving paragraphs (d) and (f)(2); revising paragraph (e); adding paragraphs (g)(1)(iii) and (g)(2)(iii); by revising paragraph (i)(2), and adding paragraph (j) to read as follows:

§ 761.60 Disposal requirements.

(a) *PCB liquids.* PCB liquids at concentrations ≥50 ppm must be disposed of in an incinerator which complies with § 761.70, except that PCB liquids at concentrations ≥50 ppm and <500 ppm may be disposed of as follows:

(1) For mineral oil dielectric fluid, in a high efficiency boiler according to § 761.71(a).

(2) For liquids other than mineral oil dielectric fluid, in a high efficiency boiler according to § 761.71(b).

(3) For liquids from incidental sources, such as precipitation, condensation, leachate or load separation and are associated with PCB Articles or non-liquid PCB wastes, in a chemical waste landfill which complies with § 761.75 if:

(i) Disposal does not violate § 268.32(a)(2) or § 268.42(a)(1) of this chapter.

(ii) Information is provided to or obtained by the owner or operator of the chemical waste landfill that shows that the liquids do not exceed 500 ppm PCB and are not an ignitable waste as described in § 761.75(b)(8)(iii).

(b) *PCB Articles.* This paragraph does not authorize disposal that is otherwise prohibited in § 761.20 or elsewhere in this part.

(1) * * *

(i) * * *

(B) In a chemical waste landfill approved under § 761.75; provided that all free-flowing liquid is removed from the transformer, the transformer is filled with a solvent, the transformer is allowed to stand for at least 18 continuous hours, and then the solvent is thoroughly removed. Any person disposing of PCB liquids, including both the dielectric fluid and all solvents used as a flush, that are removed from the transformer, shall do so in accordance with paragraph (a)(1) of this section or decontaminate them in accordance with § 761.79. Solvents may include kerosene, xylene, toluene, and other solvents in which PCBs are readily soluble. Any person disposing of these PCB liquids must ensure that the solvent flushing procedure is conducted in accordance with applicable safety and health standards as required by Federal or State regulations.

* * * * *

(2) * * *

(iv) Any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment, and acquired the PCB Capacitor in the course of such manufacturing, shall place the PCB Small Capacitors in a container meeting the DOT packaging requirements at 49 CFR parts 171 through 180 and dispose of them in accordance with either of the following:

* * * * *

(vi) Any person disposing of large PCB capacitors or small PCB capacitors described in paragraph (b)(2)(iv) of this section in a chemical waste landfill approved under § 761.75, shall first place them in a container meeting the DOT packaging requirements at 49 CFR parts 171 through 180. In all cases, the person must fill the interstitial space in the container with sufficient absorbent material (such as soil) to absorb any liquid PCBs remaining in the capacitors.

(3) *PCB hydraulic machines.* (i) Any person disposing of PCB hydraulic machines containing PCBs at concentrations of ≥50 ppm, such as die casting machines, shall do so by one of the following methods:

(A) In accordance with § 761.79.

(B) In a facility which is permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable (excluding thermal treatment units).

(C) In an industrial furnace operating in compliance with § 761.72.

(D) In a disposal facility approved under this part.

(ii) All free-flowing liquid must be removed from each machine and the liquid must be disposed of in accordance with the provisions of paragraph (a) of this section. If the PCB liquid contains ≥1,000 ppm PCB, then the hydraulic machine must be decontaminated in accordance with § 761.79 or flushed prior to disposal with a solvent listed at paragraph (b)(1)(i)(B) of this section which contains <50 ppm PCB. The solvent must be disposed of in accordance with paragraph (a) of this section or § 761.79.

(4) *PCB-Contaminated Electrical Equipment.* Any person disposing of any PCB-Contaminated Electrical Equipment, except capacitors, shall do so by removing all free-flowing liquid from the electrical equipment and disposing of the removed liquid in accordance with paragraph (a) of this section. The drained PCB-Contaminated Electrical Equipment, including any residual liquids, shall be disposed of by one of the following methods:

(i)(A) In a facility which is permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable (excluding thermal treatment units).

(B) In an industrial furnace operating in compliance with § 761.72.

(C) In a disposal facility or process approved under this part.

(ii) Any person disposing of Large Capacitors that contain ≥50 ppm but <500 ppm PCBs shall do so in a disposal facility approved under this part.

(iii) The storage for disposal of PCB-Contaminated Electrical Equipment containing no free-flowing liquid is not regulated under subpart D of this part.

(5) *Natural gas pipeline systems containing PCBs.* The owner or operator of natural gas pipeline systems containing ≥50 ppm PCBs, when no longer in use, shall dispose of the system either by abandonment in place of the pipe under paragraph (b)(5)(i) of this section or removal with subsequent action under paragraph (b)(5)(ii) of this section. Any person determining the PCB concentrations in natural gas pipeline systems shall do so in accordance with paragraph (b)(5)(iii) of this section.

(i) *Abandonment.* Natural gas pipe containing ≥50 ppm PCBs may be abandoned in place under one or more of the following provisions:

(A) Natural gas pipe having a nominal inside diameter of ≤4 inches, and containing PCBs at any concentration but no free-flowing liquids, may be abandoned in the place it was used to transport natural gas if each end is sealed closed and the pipe is either:

(*1*) Included in a public service notification program, such as a "one-call" system under 49 CFR 192.614(a) and (b).

(*2*) Filled to 50 percent or more of the volume of the pipe with grout (such as a hardening slurry consisting of cement, bentonite, or clay) or high density polyurethane foam.

(B) PCB-Contaminated natural gas pipe of any diameter, where the PCB concentration was determined in accordance with subpart M of this part after the last transmission of gas through the pipe or at the time of abandonment, that contains no free-flowing liquids may be abandoned in the place it was used to transport natural gas if each end is sealed closed.

(C) Natural gas pipe of any diameter which contains PCBs at any concentration but no free-flowing liquids, may be abandoned in the place it was used to transport natural gas, if each end is sealed closed, and either:

(*1*) The interior surface is decontaminated with one or more washes of a solvent in accordance with the use and disposal requirements of § 761.79(d). This decontamination process must result in a recovery of 95 percent of the solvent volume introduced into the system, and the PCB concentration of the recovered wash must be <50 ppm (see § 761.79(a)(1) for requirements on use and disposal of decontaminating fluids).

(*2*) The pipe is filled to 50 percent of the volume of the pipe with grout (such as a hardening slurry-like cement, bentonite, or clay) or high density polyurethane foam (except that only cement shall be used as grout under rivers or streams) and each end is sealed closed.

(D) Natural gas pipe of any diameter which contains PCBs at any concentration may be abandoned in place after decontamination in accordance with § 761.79(c)(3), (c)(4) or (h) or a PCB disposal approval issued under § 761.60(e) or § 761.62(c).

(ii) *Removal with subsequent action.* Natural gas pipeline systems may be disposed of under one of the following provisions:

(A) The following classifications of natural gas pipe containing no free-flowing liquids may be disposed of in a facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable (excluding thermal treatment units); scrap metal recovery oven and smelter operating in compliance with the requirements of § 761.72; or a disposal facility approved under this part:

(*1*) PCB-Contaminated natural gas pipe of any diameter where the PCB concentration was determined in accordance with subpart M of this part after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas.

(*2*) Natural gas pipe containing PCBs at any concentration and having a nominal inside diameter ≤4 inches.

(B) Any component of a natural gas pipeline system may be disposed of under one of the following provisions:

(*1*) In an incinerator operating in compliance with § 761.70.

(*2*) In a chemical waste landfill operating in compliance with § 761.75, provided that all free-flowing liquid PCBs have been thoroughly drained.

(*3*) As a PCB remediation waste in compliance with § 761.61.

(*4*) In accordance with § 761.79.

(iii) *Characterization of natural gas pipeline systems by PCB concentration in condensate.* (A) Any person disposing of a natural gas pipeline system under paragraphs (b)(5)(i)(B) or (b)(5)(ii)(A)(*1*) of this section must characterize it for PCB contamination by analyzing organic liquids collected at existing condensate collection points in the natural gas pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream. If no organic liquids are present, drain free-flowing liquids and collect standard wipe samples according to subpart M of this part. Collect condensate within 72 hours of the final transmission of natural gas through the part of the system to be abandoned and wipe samples after the last transmission of gas through the pipe or during removal from the location it was used to transport natural gas.

(B) PCB concentration of the organic phase of multi-phasic liquids shall be determined in accordance with § 761.1(b)(4).

(iv) *Disposal of pipeline liquids.* (A) Any person disposing of liquids

containing PCBs ≥50 ppm removed, spilled, or otherwise released from a natural gas pipeline system must do so in accordance with § 761.61(a)(5)(iv) based on the PCB concentration at the time of removal from the system. Any person disposing of material contaminated by spills or other releases of PCBs ≥50 ppm from a natural gas pipeline system, must do so in accordance with § 761.61 or § 761.79, as applicable.

(B) Any person who markets or burns for energy recovery liquid containing PCBs at concentrations <50 ppm PCBs at the time of removal from a natural gas pipeline system must do so in accordance with the provisions pertaining to used oil at § 761.20(e). No other use of liquid containing PCBs at concentrations above the quantifiable level/level of detection removed from a natural gas pipeline system is authorized.

(6) * * *

(ii) Any person disposing of PCB-Contaminated Articles must do so by removing all free-flowing liquid from the article, disposing of the liquid in accordance with paragraph (a)(2) or (a)(3) of this section and disposing of the PCB-Contaminated Articles with no free-flowing liquid by one of the following methods:

(A) In accordance with § 761.79.

(B) In a facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable (excluding thermal treatment units).

(C) In an industrial furnace operating in compliance with § 761.72.

(D) In a disposal facility approved under this part.

(iii) Fluorescent light ballasts containing PCBs in their potting material must be disposed of in a TSCA-approved disposal facility, as bulk product waste under § 761.62, as household waste under § 761.63 (where applicable), or in accordance with the decontamination provisions of § 761.79.

(iv) Any person with access to, or in direct contact with, PCB-Contaminated surfaces must be protected from dermal exposure to those surfaces.

* * * * *

(d) [Reserved]

(e) Any person who is required to incinerate any PCBs and PCB Items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB Items exists and that this alternative method can achieve a level of performance equivalent to an incinerator approved under § 761.70 or a high efficiency boiler operating in compliance with § 761.71, must submit a written request to either the EPA Regional Administrator or the Director, National Program Chemicals Division, for a waiver from the incineration requirements of § 761.70 or § 761.71. Requests for approval of alternate methods that will be operated in more than one Region must be submitted to the Director, National Program Chemicals Division except for research and development activities involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one Region must be submitted to the appropriate EPA Regional Administrator. The applicant must show that his or her method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, the EPA Regional Administrator or the Director, National Program Chemicals Division may, in his or her discretion, approve the use of the alternate method if he or she finds that the alternate disposal method provides PCB destruction equivalent to disposal in a § 761.70 incinerator or a § 761.71 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may include such conditions and provisions as the EPA Regional Administrator or Director, National Program Chemicals Division deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination. No person may use the alternate method of destroying PCBs or PCB Items prior to obtaining permission from the appropriate EPA official.

(f)(1) * * *

(2) [Reserved]

(g) * * *

(1) * * *

(iii) Unless otherwise specified in this part, any person conducting the chemical analysis of PCBs shall do so using gas chromatography. Any gas chromatographic method that is appropriate for the material being analyzed may be used, including EPA Method 608, "Organochlorine Pesticides and PCBs" at 40 CFR part 136, Appendix A;" EPA Method 8082, "Polychlorinated Biphenyls (PCBs) by Capillary Column Gas Chromatography" of SW-846, "OSW Test Methods for Evaluating Solid Waste," which is available from NTIS; and ASTM Standard D-4059, "Standard Test Method for Analysis of Polychlorinated Biphenyls in Insulating Liquids by Gas Chromatography," which is available from ASTM.

(2) * * *

(iii) Unless otherwise specified in this part, any person conducting the chemical analysis of PCBs shall do so using gas chromatography. Any gas chromatographic method that is appropriate for the material being analyzed may be used, including those indicated in paragraph (g)(1)(iii) of this section.

* * * * *

(i) * * *

(2) Except for activity authorized under paragraph (j) of this section, research and development (R&D) for PCB disposal using a total of <500 pounds of PCB material (regardless of PCB concentration) will be reviewed and approved by the EPA Regional Administrator for the Region where the R&D will be conducted, and R&D for PCB disposal using 500 pounds or more of PCB material (regardless of PCB concentration) will be reviewed and approved by the Director, National Program Chemicals Division.

* * * * *

(j) *Self-implementing requirements for research and development (R&D) for PCB disposal.*

(1) Any person may conduct R&D for PCB disposal without prior written approval from EPA if they meet the following conditions:

(i) File a notification and obtain an EPA identification number pursuant to subpart K of this part.

(ii) Notify in writing the EPA Regional Administrator, the State environmental protection agency, and local environmental protection agency, having jurisdiction where the R&D for PCB disposal activity will occur at least 30 days prior to the commencement of any R&D for PCB disposal activity conducted under this section. Each written notification shall include the EPA identification number of the site where the R&D for PCB disposal activities will be conducted, the quantity of PCBs to be treated, the type of R&D technology to be used, the general physical and chemical properties of material being treated, and an estimate of the duration of the PCB activity. The EPA Regional Administrator, the State environmental protection agency, and the local environmental protection agency may waive notification in writing prior to commencement of the research.

(iii) The amount of material containing PCBs treated annually by the facility during R&D for PCB disposal activities does not exceed 500 gallons or

70 cubic feet of liquid or non-liquid PCBs and does not exceed a maximum concentration of 10,000 ppm PCBs.

(iv) No more than 1 kilogram total of pure PCBs per year is disposed of in all R&D for PCB disposal activities at a facility.

(v) Each R&D for PCB disposal activity under this section lasts no more than 1 calendar year.

(vi) Store all PCB wastes (treated and untreated PCB materials, testing samples, spent laboratory samples, residuals, untreated samples, contaminated media or instrumentation, clothing, etc.) in compliance with § 761.65(b) and dispose of them according to the undiluted PCB concentration prior to treatment. However, PCB materials not treated in the R&D for PCB disposal activity may be returned either to the physical location where the samples were collected or a location where other regulated PCBs from the physical location where the samples were collected are being stored for disposal.

(vii) Use manifests pursuant to subpart K of this part for all R&D PCB wastes being transported from the R&D facility to an approved PCB storage or disposal facility. However, §§ 761.207 through 761.218 do not apply if the residuals or treated samples are returned either to the physical location where the samples were collected or a location where other regulated PCBs from the physical location where the samples were collected are being stored for disposal.

(viii) Package and ship all PCB wastes pursuant to DOT requirements under 49 CFR parts 171 through 180.

(ix) Comply with the recordkeeping requirements of § 761.180.

(2) Do not exceed material limitations set out in paragraphs (j)(1)(iii) and (iv) of this section and the time limitation set out in paragraph (j)(1)(v) of this section without prior written approval from EPA. Requests for approval to exceed the material limitations for PCBs in R&D for PCB disposal activities as specified in this section must be submitted in writing to the EPA Regional Administrator for the Region in which the facility conducting R&D for PCB disposal activities is located. Each request shall specify the quantity or concentration requested or additional time needed for disposal and include a justification for each increase. For extensions to the duration of the R&D for PCB disposal activity, the request shall also include a report on the accomplishments and progress of the previously authorized R&D for PCB disposal activity for which the extension is sought. The EPA Regional Administrator may grant a waiver in writing for an increase in the volume of PCB material, the maximum concentration of PCBs, the total amount of pure PCBs, or the duration of the R&D activity. Approvals will state all requirements applicable to the R&D for PCB disposal activity.

(3) The EPA Regional Administrator for the Region in which an R&D for PCB disposal activity is conducted may determine, at any time, that an R&D PCB disposal approval is required under paragraphs (e) and (i)(2) of this section or § 761.70(d) to ensure that any R&D for PCB disposal activity does not present an unreasonable risk of injury to health or the environment.

m. By adding §§ 761.61, 761.62, 761.63, and 761.64 to subpart D to read as follows:

§ 761.61 PCB remediation waste.

This section provides cleanup and disposal options for PCB remediation waste. Any person cleaning up and disposing of PCBs managed under this section shall do so based on the concentration at which the PCBs are found. This section does not prohibit any person from implementing temporary emergency measures to prevent, treat, or contain further releases or mitigate migration to the environment of PCBs or PCB remediation waste.

(a) *Self-implementing on-site cleanup and disposal of PCB remediation waste.* EPA designed the self-implementing procedure for a general, moderately-sized site where there should be low residual environmental impact from remedial activities. The procedure may be less practical for larger or environmentally diverse sites. For these other sites, the self-implementing procedure still applies, but an EPA Regional Administrator may authorize more practical procedures through paragraph (c) of this section. Any person may conduct self-implementing cleanup and disposal of PCB remediation waste in accordance with the following requirements without prior written approval from EPA.

(1) *Applicability.* (i) The self-implementing procedures may not be used to clean up:

(A) Surface or ground waters.

(B) Sediments in marine and freshwater ecosystems.

(C) Sewers or sewage treatment systems.

(D) Any private or public drinking water sources or distribution systems.

(E) Grazing lands.

(F) Vegetable gardens.

(ii) The self-implementing cleanup provisions shall not be binding upon cleanups conducted under other authorities, including but not limited to, actions conducted under section 104 or section 106 of CERCLA, or section 3004(u) and (v) or section 3008(h) of RCRA.

(2) *Site characterization.* Any person conducting self-implementing cleanup of PCB remediation waste must characterize the site adequately to be able to provide the information required by paragraph (a)(3) of this section. Subpart N of this part provides a method for collecting new site characterization data or for assessing the sufficiency of existing site characterization data.

(3) *Notification and certification.* (i) At least 30 days prior to the date that the cleanup of a site begins, the person in charge of the cleanup or the owner of the property where the PCB remediation waste is located shall notify, in writing, the EPA Regional Administrator, the Director of the State or Tribal environmental protection agency, and the Director of the county or local environmental protection agency where the cleanup will be conducted. The notice shall include:

(A) The nature of the contamination, including kinds of materials contaminated.

(B) A summary of the procedures used to sample contaminated and adjacent areas and a table or cleanup site map showing PCB concentrations measured in all pre-cleanup characterization samples. The summary must include sample collection and analysis dates. The EPA Regional Administrator may require more detailed information including, but not limited to, additional characterization sampling or all sample identification numbers from all previous characterization activities at the cleanup site.

(C) The location and extent of the identified contaminated area, including topographic maps with sample collection sites cross referenced to the sample identification numbers in the data summary from paragraph (a)(3)(i)(B) of this section.

(D) A cleanup plan for the site, including schedule, disposal technology, and approach. This plan should contain options and contingencies to be used if unanticipated higher concentrations or wider distributions of PCB remediation waste are found or other obstacles force changes in the cleanup approach.

(E) A written certification, signed by the owner of the property where the cleanup site is located and the party conducting the cleanup, that all sampling plans, sample collection procedures, sample preparation

procedures, extraction procedures, and instrumental/chemical analysis procedures used to assess or characterize the PCB contamination at the cleanup site, are on file at the location designated in the certificate, and are available for EPA inspection. Persons using alternate methods for chemical extraction and chemical analysis for site characterization must include in the certificate a statement that such a method will be used and that a comparison study which meets or exceeds the requirements of subpart Q of this part, and for which records are on file, has been completed prior to verification sampling.

(ii) Within 30 calendar days of receiving the notification, the EPA Regional Administrator will respond in writing approving of the self-implementing cleanup, disapproving of the self-implementing cleanup, or requiring additional information. If the EPA Regional Administrator does not respond within 30 calendar days of receiving the notice, the person submitting the notification may assume that it is complete and proceed with the cleanup according to the information the person provided to the EPA Regional Administrator. Once cleanup is underway, the person conducting the cleanup must provide any proposed changes from the notification to the EPA Regional Administrator in writing no less than 14 calendar days prior to the proposed implementation of the change. The EPA Regional Administrator will determine in his or her discretion whether to accept the change, and will respond to the change notification verbally within 7 calendar days and in writing within 14 calendar days of receiving it. If the EPA Regional Administrator does not respond verbally within 7 calendar days and in writing within 14 calendar days of receiving the change notice, the person who submitted it may deem it complete and acceptable and proceed with the cleanup according to the information in the change notice provided to the EPA Regional Administrator.

(iii) Any person conducting a cleanup activity may obtain a waiver of the 30-day notification requirement, if they receive a separate waiver, in writing, from each of the agencies they are required to notify under this section. The person must retain the original written waiver as required in paragraph (a)(9) of this section.

(4) *Cleanup levels.* For purposes of cleaning, decontaminating, or removing PCB remediation waste under this section, there are four general waste categories: bulk PCB remediation waste, non-porous surfaces, porous surfaces, and liquids. Cleanup levels are based on the kind of material and the potential exposure to PCBs left after cleanup is completed.

(i) *Bulk PCB remediation waste.* Bulk PCB remediation waste includes, but is not limited to, the following non-liquid PCB remediation waste: soil, sediments, dredged materials, muds, PCB sewage sludge, and industrial sludge.

(A) *High occupancy areas.* The cleanup level for bulk PCB remediation waste in high occupancy areas is ≤1 ppm without further conditions. High occupancy areas where bulk PCB remediation waste remains at concentrations >1 ppm and ≤10 ppm shall be covered with a cap meeting the requirements of paragraphs (a)(7) and (a)(8) of this section.

(B) *Low occupancy areas.* (*1*) The cleanup level for bulk PCB remediation waste in low occupancy areas is ≤25 ppm unless otherwise specified in this paragraph.

(*2*) Bulk PCB remediation wastes may remain at a cleanup site at concentrations >25 ppm and ≤50 ppm if the site is secured by a fence and marked with a sign including the M_L mark.

(*3*) Bulk PCB remediation wastes may remain at a cleanup site at concentrations >25 ppm and ≤100 ppm if the site is covered with a cap meeting the requirements of paragraphs (a)(7) and (a)(8) of this section.

(ii) *Non-porous surfaces.* In high occupancy areas, the surface PCB cleanup standard is ≤ 10 μg/100 cm^2 of surface area. In low occupancy areas, the surface cleanup standard is <100 μg/100 cm^2 of surface area. Select sampling locations in accordance with subpart P of this part or a sampling plan approved under paragraph (c) of this section.

(iii) *Porous surfaces.* In both high and low occupancy areas, any person disposing of porous surfaces must do so based on the levels in paragraph (a)(4)(i) of this section. Porous surfaces may be cleaned up for use in accordance with § 761.79(b)(4) or § 761.30(p).

(iv) *Liquids.* In both high and low occupancy areas, cleanup levels are the concentrations specified in § 761.79(b)(1) and (b)(2).

(v) *Change in the land use for a cleanup site.* Where there is an actual or proposed change in use of an area cleaned up to the levels of a low occupancy area, and the exposure of people or animal life in or at that area could reasonably be expected to increase, resulting in a change in status from a low occupancy area to a high occupancy area, the owner of the area shall clean up the area in accordance with the high occupancy area cleanup levels in paragraphs (a)(4)(i) through (a)(4)(iv) of this section.

(vi) The EPA Regional Administrator, as part of his or her response to a notification submitted in accordance with § 761.61(a)(3) of this part, may require cleanup of the site, or portions of it, to more stringent cleanup levels than are otherwise required in this section, based on the proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, day care centers, endangered species habitats, estuaries, wetlands, national parks, national wildlife refuges, commercial fisheries, and sport fisheries.

(5) *Site cleanup.* In addition to the options set out in this paragraph, PCB disposal technologies approved under §§ 761.60 and 761.70 are acceptable for on-site self-implementing PCB remediation waste disposal within the confines of the operating conditions of the respective approvals.

(i) *Bulk PCB remediation waste.* Any person cleaning up bulk PCB remediation waste shall do so to the levels in paragraph (a)(4)(i) of this section.

(A) Any person cleaning up bulk PCB remediation waste on-site or using a soil washing process may do so without EPA approval, subject to all of the following:

(*1*) A non-chlorinated solvent is used.

(*2*) The process occurs at ambient temperature.

(*3*) The process is not exothermic.

(*4*) The process uses no external heat.

(*5*) The process has secondary containment to prevent any solvent from being released to the underlying or surrounding soils or surface waters.

(*6*) Solvent disposal, recovery, and/or reuse is in accordance with relevant provisions of approvals issued according to paragraphs (b)(1) or (c) of this section or applicable paragraphs of § 761.79.

(B) Bulk PCB remediation waste may be sent off-site for decontamination or disposal in accordance with this paragraph, provided the waste is either dewatered on-site or transported off-site in containers meeting the requirements of the DOT Hazardous Materials Regulations (HMR) at 49 CFR parts 171 through 180.

(*1*) Removed water shall be disposed of according to paragraph (b)(1) of this section.

(*2*) Any person disposing off-site of dewatered bulk PCB remediation waste shall do so as follows:

(*i*) Unless characterized for disposal according to subpart O, the bulk PCB remediation waste shall be assumed to contain ≥50 ppm PCBs.

(*ii*) Bulk PCB remediation wastes with a PCB concentration of <50 ppm shall be disposed of in accordance with paragraph (a)(5)(v)(A) of this section.

(*iii*) Bulk PCB remediation wastes with a PCB concentration ≥50 ppm shall be disposed of in a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA, or a PCB disposal facility approved under this part.

(*iv*) The generator must provide written notice, including the quantity to be shipped and highest concentration of PCBs (using extraction EPA Method 3500B/3540C or Method 3500B/3550B followed by chemical analysis using EPA Method 8082 in SW-846 or methods validated under subpart Q of this part) at least 15 days before the first shipment of bulk PCB remediation waste from each cleanup site by the generator, to each off-site facility where the waste is destined for an area not subject to a TSCA PCB Disposal Approval.

(*3*) Any person may decontaminate bulk PCB remediation waste in accordance with § 761.79 and return the waste to the cleanup site for disposal as long as the cleanup standards of paragraph (a)(4) of this section are met.

(ii) *Non-porous surfaces.* PCB remediation waste non-porous surfaces shall be cleaned on-site or off-site for disposal on-site, disposal off-site, or use, as follows:

(A) For on-site disposal, non-porous surfaces shall be cleaned on-site or off-site to the levels in paragraph (a)(4)(ii) of this section using:

(*1*) Procedures approved under § 761.79.

(*2*) Technologies approved under § 761.60(e).

(*3*) Procedures or technologies approved under paragraph (c) of this section.

(B) For off-site disposal, non-porous surfaces:

(*1*) Having surface concentrations <100 μg/100 cm² shall be disposed of in accordance with paragraph (a)(5)(i)(B)(*3*)(*ii*) of this section. Metal surfaces may be thermally decontaminated in accordance with § 761.79(c)(6)(i).

(*2*) Having surface concentrations ≥100 μg/100 cm² shall be disposed of in accordance with paragraph (a)(5)(i)(B)(*3*)(*iii*) of this section. Metal surfaces may be thermally decontaminated in accordance with § 761.79(c)(6)(ii).

(C) For use, non-porous surfaces shall be decontaminated on-site or off-site to the standards specified in § 761.79(b)(3) or in accordance with § 761.79(c).

(iii) *Porous surfaces.* Porous surfaces shall be disposed on-site or off-site as bulk PCB remediation waste according to paragraph (a)(5)(i) of this section or decontaminated for use according to § 761.79(b)(4), as applicable.

(iv) *Liquids.* Any person disposing of liquid PCB remediation waste shall either:

(A) Decontaminate the waste to the levels specified in § 761.79(b)(1) or (b)(2).

(B) Dispose of the waste in accordance with paragraph (b) of this section or an approval issued under paragraph (c) of this section.

(v) *Cleanup wastes.* Any person generating the following wastes during and from the cleanup of PCB remediation waste shall dispose of or reuse them using one of the following methods:

(A) Non-liquid cleaning materials and personal protective equipment waste at any concentration, including non-porous surfaces and other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from cleanup activities shall be disposed of in a facility permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable, a RCRA Subtitle C landfill permitted by a State to accept PCB waste, or a PCB disposal facility approved under this part. Requirements in subpart K of this part do not apply to this waste. Decontaminate this same waste in accordance with § 761.79(b) or (c).

(B) Cleaning solvents, abrasives, and equipment may be reused after decontamination in accordance with § 761.79.

(6) *Cleanup verification*—(i) *Sampling and analysis.* Any person collecting and analyzing samples to verify the cleanup and on-site disposal of bulk PCB remediation wastes and porous surfaces must do so in accordance with subpart O of this part. Any person collecting and analyzing samples from non-porous surfaces must do so in accordance with subpart P of this part. Any person collecting and analyzing samples from liquids must do so in accordance with § 761.269. Any person conducting interim sampling during PCB remediation waste cleanup to determine when to sample to verify that cleanup is complete, may use PCB field screening tests.

(ii) *Verification.* (A) Where sample analysis results in a measurement of PCBs less than or equal to the levels specified in paragraph (a)(4) of this section, self-implementing cleanup is complete.

(B) Where sample analysis results in a measurement of PCBs greater than the levels specified in paragraph (a)(4) of this section, self-implementing cleanup of the sampled PCB remediation waste is not complete. The owner or operator of the site must either dispose of the sampled PCB remediation waste, or reclean the waste represented by the sample and reinitiate sampling and analysis in accordance with paragraph (a)(6)(i) of this section.

(7) *Cap requirements.* A cap means, when referring to on-site cleanup and disposal of PCB remediation waste, a uniform placement of concrete, asphalt, or similar material of minimum thickness spread over the area where remediation waste was removed or left in place in order to prevent or minimize human exposure, infiltration of water, and erosion. Any person designing and constructing a cap must do so in accordance with § 264.310(a) of this chapter, and ensure that it complies with the permeability, sieve, liquid limit, and plasticity index parameters in § 761.75(b)(1)(ii) through (b)(1)(v). A cap of compacted soil shall have a minimum thickness of 25 cm (10 inches). A concrete or asphalt cap shall have a minimum thickness of 15 cm (6 inches). A cap must be of sufficient strength to maintain its effectiveness and integrity during the use of the cap surface which is exposed to the environment. A cap shall not be contaminated at a level ≥1 ppm PCB per Aroclor™ (or equivalent) or per congener. Repairs shall begin within 72 hours of discovery for any breaches which would impair the integrity of the cap.

(8) *Deed restrictions for caps, fences and low occupancy areas.* When a cleanup activity conducted under this section includes the use of a fence or a cap, the owner of the site must maintain the fence or cap, in perpetuity. In addition, whenever a cap, or the procedures and requirements for a low occupancy area, is used, the owner of the site must meet the following conditions:

(i) Within 60 days of completion of a cleanup activity under this section, the owner of the property shall:

(A) Record, in accordance with State law, a notation on the deed to the property, or on some other instrument which is normally examined during a title search, that will in perpetuity notify any potential purchaser of the property:

(*1*) That the land has been used for PCB remediation waste disposal and is

restricted to use as a low occupancy area as defined in § 761.3.

(2) Of the existence of the fence or cap and the requirement to maintain the fence or cap.

(3) The applicable cleanup levels left at the site, inside the fence, and/or under the cap.

(B) Submit a certification, signed by the owner, that he/she has recorded the notation specified in paragraph (a)(8)(i)(A) of this section to the EPA Regional Administrator.

(ii) The owner of a site being cleaned up under this section may remove a fence or cap after conducting additional cleanup activities and achieving cleanup levels, specified in paragraph (a)(4) of this section, which do not require a cap or fence. The owner may remove the notice on the deed no earlier than 30 days after achieving the cleanup levels specified in this section which do not require a fence or cap.

(9) *Recordkeeping.* For paragraphs (a)(3), (a)(4), and (a)(5) of this section, recordkeeping is required in accordance with § 761.125(c)(5).

(b) *Performance-based disposal.* (1) Any person disposing of liquid PCB remediation waste shall do so according to § 761.60(a) or (e), or decontaminate it in accordance with § 761.79.

(2) Any person disposing of non-liquid PCB remediation waste shall do so by one of the following methods:

(i) Dispose of it in a high temperature incinerator approved under § 761.70(b), an alternate disposal method approved under § 761.60(e), a chemical waste landfill approved under § 761.75, or in a facility with a coordinated approval issued under § 761.77.

(ii) Decontaminate it in accordance with § 761.79.

(3) Any person may manage or dispose of material containing <50 ppm PCBs that has been dredged or excavated from waters of the United States:

(i) In accordance with a permit that has been issued under section 404 of the Clean Water Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

(ii) In accordance with a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act, or the equivalent of such a permit as provided for in regulations of the U.S. Army Corps of Engineers at 33 CFR part 320.

(c) *Risk-based disposal approval.* (1) Any person wishing to sample, cleanup, or dispose of PCB remediation waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB remediation waste in a manner other than prescribed in § 761.65, must apply in writing to the EPA Regional Administrator in the Region where the cleanup site is located. Each application must contain information described in the notification required by § 761.61(a)(3). EPA may request other information that it believes necessary to evaluate the application. No person may conduct cleanup activities under this paragraph prior to obtaining written approval by EPA.

(2) EPA will issue a written decision on each application for a risk-based method for PCB remediation wastes. EPA will approve such an application if it finds that the method will not pose an unreasonable risk of injury to health or the environment.

§ 761.62 Disposal of PCB bulk product waste.

PCB bulk product waste shall be disposed of in accordance with paragraph (a), (b), or (c) of this section. Under some of these provisions, it may not be necessary to determine the PCB concentration or leaching characteristics of the PCB bulk product waste. When it is necessary to analyze the waste to make either of these determinations, use the applicable procedures in subpart R of this part to sample the waste for analysis, unless EPA approves another sampling plan under paragraph (c) of this section.

(a) *Performance-based disposal.* Any person disposing of PCB bulk product waste may do so as follows:

(1) In an incinerator approved under § 761.70.

(2) In a chemical waste landfill approved under § 761.75.

(3) In a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.

(4) Under an alternate disposal approval under § 761.60(e).

(5) In accordance with the decontamination provisions of § 761.79.

(6) For metal surfaces in contact with PCBs, in accordance with the thermal decontamination provisions of § 761.79(c)(6).

(7) In accordance with a TSCA PCB Coordinated Approval issued under § 761.77.

(b) *Disposal in solid waste landfills.* (1) Any person may dispose of the following PCB bulk product waste in a facility permitted, licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill:

(i) Plastics (such as plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; or furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes or other similar coatings or sealants; caulking; Galbestos; non-liquid building demolition debris; or non-liquid PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff).

(ii) Other PCB bulk product waste, sampled in accordance with the protocols set out in subpart O of this part, that leaches PCBs at <10 µg/L of water measured using a procedure used to simulate leachate generation.

(2) Any person may dispose of PCB bulk product waste other than those materials meeting the conditions of paragraph (b)(1) of this section, (e.g., paper or felt gaskets contaminated by liquid PCBs in a facility that is permitted, licensed, or registered by a State to manage municipal solid waste subject to part 258 of this chapter or non-municipal non-hazardous waste subject to §§ 257.5 through 257.30 of this chapter, as applicable, if:

(i) The PCB bulk product waste is segregated from organic liquids disposed of in the landfill unit.

(ii) Leachate is collected from the landfill unit and monitored for PCBs.

(3) Any release of PCBs (including but not limited to leachate) from the landfill unit shall be cleaned up in accordance with § 761.61.

(4)(i) Any person disposing off-site of PCB bulk product waste regulated under paragraph (b)(1) of this section at a waste management facility not having a commercial PCB storage or disposal approval must provide written notice to the facility a minimum of 15 days in advance of the first shipment from the same disposal waste stream. The notice shall state that the PCB bulk product waste may include components containing PCBs at ≤50 ppm based on analysis of the waste in the shipment or application of a general knowledge of the waste stream (or similar material) which is known to contain PCBs at those levels, and that the PCB bulk product waste is known or presumed to leach <10 µg/L PCBs.

(ii) Any person disposing off-site of PCB bulk product waste regulated under paragraph (b)(2) of this section at a waste management facility not having a commercial PCB storage or disposal approval must provide written notice to the facility a minimum of 15 days in advance of the first shipment from the same disposal waste stream and with each shipment thereafter. The notice shall state that the PCB bulk product waste may include components containing PCBs at ≥50 ppm based on

analysis of the waste in the shipment or application of a general knowledge of the waste stream (or similar material) which is known to contain PCBs at those levels, and that the PCB bulk product waste is known or presumed to leach ≥10 µg/L PCBs.

(5) Any person disposing of PCB bulk product waste must maintain a written record of all sampling and analysis of PCBs or notifications made under this paragraph for 3 years from the date of the waste's generation. The records must be made available to EPA upon request.

(6) Requirements in subparts C and K of this part do not apply to waste disposed of under paragraph (b) of this section.

(c) *Risk-based cleanup approval.* (1) Any person wishing to sample or dispose of PCB bulk product waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB bulk product waste in a manner other than prescribed in § 761.65, must apply in writing to: the EPA Regional Administrator in the Region where the disposal or storage site is located, for disposal or storage occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for disposal or storage occurring in more than one EPA Region. Each application must contain information indicating that, based on technical, environmental, or waste-specific characteristics-or considerations, the proposed storage or disposal methods or locations will not pose an unreasonable risk of injury to health or the environment. EPA may request other information that it believes necessary to evaluate the application. No person may conduct disposal or storage activities under this paragraph prior to obtaining written approval by EPA.

(2) EPA will issue a written decision on each application for a risk-based storage or disposal method for PCB bulk product wastes. EPA will approve such an application if it finds that the method will not pose an unreasonable risk of injury to health or the environment.

(d) *Disposal as daily landfill cover or roadbed.* Bulk product waste described in paragraph (b)(1) of this section may be disposed of:

(1) As daily landfill cover as long as the daily cover remains in the landfill and is not released or dispersed by wind or other action; or

(2) Under asphalt as part of a road bed.

§ 761.63 PCB household waste storage and disposal.

PCB household waste, as defined at § 761.3, managed in a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, or in a facility with an approval to dispose of PCB bulk product waste under § 761.62(c), is not subject to any other requirements of part 761 of this chapter. PCB household waste stored in a unit regulated for storage of PCB waste must not be commingled with PCB waste.

§ 761.64 Disposal of wastes generated as a result of research and development activities authorized under § 761.30(j) and chemical analysis of PCBs.

This section provides disposal requirements for wastes generated during and as a result of research and development authorized under § 761.30(j). This section also provides disposal requirements for wastes generated during the chemical analysis of samples containing PCBs under part 761, including §§ 761.30, 761.60, 761.61, 761.62, and 761.79. For determining the presence of PCBs in samples, chemical analysis includes: sample preparation, sample extraction, extract cleanup, extract concentration, addition of PCB standards, and instrumental analysis.

(a) Portions of samples of a size designated in a chemical extraction and analysis method for PCBs and extracted for purposes of determining the presence of PCBs or concentration of PCBs are unregulated for PCB disposal under this part.

(b) All other wastes generated during these activities are regulated for disposal based on their concentration at the time of disposal as follows:

(1) Liquid wastes, including rinse solvents, must be disposed of according to § 761.61(a)(5)(iv).

(2) Non-liquid wastes must be disposed of in the same manner as non-liquid cleaning materials and personal protective equipment waste according to § 761.61(a)(5)(v)(A).

n. In § 761.65, by revising paragraphs (a), (b) introductory text, (b)(1)(ii), (b)(1)(iv), and by adding paragraph (b)(2); by revising paragraph (c)(1)(iv); by removing the terms "facilities" and "facility" and adding, in their place, the terms "units" and "unit", respectively in paragraph (c)(4), by revising paragraphs (c)(5), (c)(6), (c)(7) introductory text, and (c)(8); by redesignating paragraph (c)(9) as (c)(10) and adding a new paragraph (c)(9); in paragraph (d)(2)(iii) by removing the term "facility" and adding, in its place, the term "unit"; by redesignating paragraph (g)(7) as (g)(8) and by adding new paragraphs (g)(7) and (g)(9); by redesignating paragraph (j) as paragraph (k) and adding a new paragraph (j), to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(a)(1) *Storage limitations.* Any PCB waste shall be disposed of as required by subpart D of this part within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins. PCB/radioactive waste removed from service for disposal is exempt from the 1-year time limit provided that the provisions at paragraphs (a)(2)(ii) and (a)(2)(iii) of this section are followed and the waste is managed in accordance with all other applicable Federal, State, and local laws and regulations for the management of radioactive material.

(2) *One-year extension.* Any person storing PCB waste that is subject to the 1-year time limit for storage and disposal in paragraph (a)(1) of this section may provide written notification to the EPA Regional Administrator for the Region in which the PCB waste is stored that their continuing attempts to dispose of or secure disposal for their waste within the 1-year time limit have been unsuccessful. Upon receipt of the notice by the EPA Regional Administrator, the time for disposal is automatically extended for 1 additional year (2 years total) if the following conditions are met:

(i) The notification is received by the EPA Regional Administrator at least 30 days before the initial 1-year time limit expires and the notice identifies the storer, the types, volumes, and locations of the waste and the reasons for failure to meet the initial 1-year time limit.

(ii) A written record documenting all continuing attempts to secure disposal is maintained until the waste is disposed of.

(iii) The written record required by paragraph (a)(2)(ii) of this section is available for inspection or submission if requested by EPA.

(iv) Continuing attempts to secure disposal were initiated within 270 days after the time the waste was first subject to the 1-year time limit requirement, as specified in paragraph (a)(1) of this section. Failure to initiate and continue attempts to secure disposal throughout the total time the waste is in storage shall automatically disqualify the notifier from receiving an automatic extension under this section.

(3) *Additional extensions.* Upon written request, the EPA Regional Administrator for the Region in which the wastes are stored or the Director, National Program Chemicals Division, may grant additional extensions beyond the 1-year extension authorized in paragraph (a)(2) of this section. At the time of the request, the requestor must supply specific justification for the additional extension and indicate what measures the requestor is taking to secure disposal of the waste or indicate why disposal could not be conducted during the period of the prior extension. The EPA Regional Administrator or the Director, National Program Chemicals Division may require, as a condition to granting any extension under this section, specific actions including, but not limited to, marking, inspection, recordkeeping, or financial assurance to ensure that the waste does not pose an unreasonable risk of injury to health or the environment.

(4) *Storage at an approved facility.* Increased time for storage may be granted as a condition of any TSCA PCB storage or disposal approval, by the EPA Regional Administrator for the Region in which the PCBs or PCB Items are to be stored or disposed of, or by the Director, National Program Chemicals Division, if EPA determines that there is a demonstrated need or justification for additional time, that the owner or operator of the facility is pursuing relevant treatment or disposal options, and that no unreasonable risk of injury to health or the environment will result from the increased storage time. In making this determination, EPA will consider such factors as absence of any approved treatment technology and insufficient time to complete the treatment or destruction process. EPA may require as a condition of the approval that the owner or operator submit periodic progress reports.

(b) Except as provided in paragraphs (b)(2), (c)(1), (c)(7), (c)(9), and (c)(10) of this section, after July 1, 1978, owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with the following storage unit requirements:

(1) * * *

(ii) An adequate floor that has continuous curbing with a minimum 6 inch high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored there, whichever is greater. PCB/radioactive wastes are not required to be stored in an area with a minimum 6 inch high curbing. However, the floor and curbing must still provide a containment volume equal to at least two times the internal volume of the largest PCB Container or 25 percent of the total internal volume of all PCB Containers stored there, whichever is greater.

* * * * *

(iv) Floors and curbing constructed of Portland cement, concrete, or a continuous, smooth, non-porous surface as defined at § 761.3, which prevents or minimizes penetration of PCBs.

* * * * *

(2) No person may store PCBs and PCB Items designated for disposal in a storage unit other than one approved pursuant to paragraph (d) of this section or meeting the design requirements of paragraph (b) of this section, unless the unit meets one of the following conditions:

(i) Is permitted by EPA under section 3004 of RCRA to manage hazardous waste in containers, and spills of PCBs are cleaned up in accordance with subpart G of this part.

(ii) Qualifies for interim status under section 3005 of RCRA to manage hazardous waste in containers, meets the requirements for containment at § 264.175 of this chapter, and spills of PCBs are cleaned up in accordance with subpart G of this part.

(iii) Is permitted by a State authorized under section 3006 of RCRA to manage hazardous waste in containers, and spills of PCBs are cleaned up in accordance with subpart G of this part.

(iv) Is approved or otherwise regulated pursuant to a State PCB waste management program no less stringent in protection of health or the environment than the applicable TSCA requirements found in this part.

(v) Is subject to a TSCA Coordinated Approval, which includes provisions for storage of PCBs, issued pursuant to § 761.77.

(vi) Has a TSCA PCB waste management approval, which includes provisions for storage, issued pursuant to § 761.61(c) or § 761.62(c).

(c)(1) * * *

(iv) PCB containers containing liquid PCBs at concentrations of ≥50 ppm, provided a Spill Prevention, Control and Countermeasure Plan has been prepared for the temporary storage area in accordance with part 112 of this chapter and the liquid PCB waste is in packaging authorized in the DOT Hazardous Materials Regulations at 49 CFR parts 171 through 180 or stationary bulk storage tanks (including rolling stock such as, but not limited to, tanker trucks, as specified by DOT).

* * * * *

(5) All PCB Items in storage shall be checked for leaks at least once every 30 days. Any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers. Any spilled or leaked materials shall be immediately cleaned up and the materials and residues containing PCBs shall be disposed of in accordance with § 761.61. Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with § 761.180(a) and (b).

(6) Except as provided in paragraphs (c)(6)(i) and (c)(6)(ii) of this section, any container used for the storage of liquid or non-liquid PCB waste shall be in accordance with the requirements set forth in the DOT Hazardous Materials Regulations (HMR) at 49 CFR parts 171 through 180. PCB waste not subject to the HMR (i.e., PCB wastes at concentrations of <20 ppm or <1 pound of PCBs regardless of concentration) must be packaged in accordance with Packaging Group III, unless other hazards associated with the PCB waste cause it to require packaging in accordance with Packaging Groups I or II. For purposes of describing PCB waste not subject to DOT's HMR on a manifest, one may use the term "Non-DOT Regulated PCBs."

(i) Containers other than those meeting HMR performance standards may be used for storage of PCB/radioactive waste provided the following requirements are met:

(A) Containers used for storage of liquid PCB/radioactive wastes must be non-leaking.

(B) Containers used for storage of non-liquid PCB/ radioactive wastes must be designed to prevent the buildup of liquids if such containers are stored in an area meeting the containment requirements of paragraph (b)(1)(ii) of this section, as well as all other applicable State or Federal regulations or requirements for control of radioactive materials.

(C) Containers used to store both liquid and non-liquid PCB/radioactive wastes must meet all regulations and requirements pertaining to nuclear criticality safety. Acceptable container materials currently include polyethylene and stainless steel provided that the container material is chemically compatible with the wastes being stored. Other containers may be used to store both liquid and non-liquid PCB/radioactive wastes if the users are able to demonstrate, to the appropriate Regional Administrator and other appropriate regulatory authorities (i.e., Nuclear Regulatory Commission, Department of Energy or the Department

of Transportation), that the use of such containers is protective of health and the environment as well as public health and safety.

(ii) The following DOT specification containers that conform to the requirements of 49 CFR, chapter I, subchapter C in effect on September 30, 1991, may be used for storage and transportation activities that are not subject to DOT regulation, and may be used on a transitional basis as permitted at 49 CFR 171.14. For liquid PCBs: Specification 5 container without removable head, Specification 5B container without removable head, Specification 6D overpack with Specification 2S or 2SL polyethylene containers, or Specification 17E container. For non-liquid PCBs: Specification 5 container, Specification 5B container, or Specification 17C container.

(7) Stationary storage containers for liquid PCBs can be larger than the containers specified in paragraph (c)(6) of this section provided that:

* * * * *

(8) PCB Items shall be dated on the item when they are removed from service for disposal. The storage shall be managed so that the PCB Items can be located by this date. Storage containers provided in paragraph (c)(7) of this section, shall have a record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container. The record shall also include the date, quantity, and disposition of any batch of PCBs removed from the container.

(9) Bulk PCB remediation waste or PCB bulk product waste may be stored at the clean-up site or site of generation for 180 days subject to the following conditions:

(i) The waste is placed in a pile designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting.

(ii) The waste must not generate leachate through decomposition or other reactions.

(iii) The storage site must have:

(A) A liner that is designed, constructed, and installed to prevent any migration of wastes off or through the liner into the adjacent subsurface soil, ground water or surface water at any time during the active life (including the closure period) of the storage site. The liner may be constructed of materials that may allow waste to migrate into the liner. The liner must be:

(*1*) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.

(*2*) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift.

(*3*) Installed to cover all surrounding earth likely to be in contact with the waste.

(B) A cover that meets the requirements of paragraph (c)(9)(iii)(A) of this section, is installed to cover all of the stored waste likely to be contacted with precipitation, and is secured so as not to be functionally disabled by winds expected under normal seasonal meteorological conditions at the storage site.

(C) A run-on control system designed, constructed, operated, and maintained such that:

(*1*) It prevents flow onto the stored waste during peak discharge from at least a 25-year storm.

(*2*) It collects and controls at least the water volume resulting from a 24-hour, 25-year storm. Collection and holding facilities (e.g., tanks or basins) must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(iv) The provisions of this paragraph may be modified under § 761.61(c).

* * * * *

(g) * * *

(7) The corporate guarantee as specified in § 264.143(f)(10) of this chapter.

* * * * *

(9) A modification to a facility storing PCB waste that increases the maximum storage capacity indicated in the permit requires that a new financial assurance mechanism be established or an existing one be amended. When such a modification occurs, the Director of the Federal or State issuing authority must be notified in writing no later than 30 days from the completion of the modification. The new or revised financial assurance mechanism must be established and activated no later than 30 days after the Director of the Federal or State issuing authority is notified of the completion of the modification, but prior to the use of the modified portion of the facility.

* * * * *

(j) *Changes in ownership or operational control of a commercial storage facility.* The date of transfer of interim status or final approval shall be the date the EPA Regional Administrator (or Director, National Program Chemicals Division) provides written approval of the transfer. EPA will provide a final written decision within 90 days of receipt of the complete new or amended application. The Agency will approve the transfer if the following conditions are met:

(1) The transferee has established financial assurance for closure pursuant to paragraph (g) of this section using a mechanism effective as of the date of final approval so that there will be no lapse in financial assurance for the transferred facility.

(2) The transferor or transferee has resolved any deficiencies (e.g., technical operations, closure plans, cost estimates, etc.) the Agency has identified in the transferor's application.

* * * * *

o. By adding §§ 761.71 and 761.72 to read as follows:

§ 761.71 High efficiency boilers.

(a) To burn mineral oil dielectric fluid containing a PCB concentration of ≥50 ppm, but <500 ppm:

(1) The boiler shall comply with the following criteria:

(i) The boiler is rated at a minimum of 50 million BTU hours.

(ii) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is ≤50 ppm and the excess oxygen is at least 3 percent when PCBs are being burned.

(iii) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is ≤100 ppm and the excess oxygen is at least 3 percent when PCBs are being burned.

(iv) The mineral oil dielectric fluid does not comprise more than 10 percent (on a volume basis) of the total fuel feed rate.

(v) The mineral oil dielectric fluid is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations).

(vi) The owner or operator of the boiler:

(A) Continuously monitors and records the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning mineral oil dielectric fluid; or

(B) If the boiler will burn <30,000 gallons of mineral oil dielectric fluid per year, measures and records the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning mineral oil dielectric fluid.

(vii) The primary fuel feed rates, mineral oil dielectric fluid feed rates,

and total quantities of both primary fuel and mineral oil dielectric fluid fed to the boiler are measured and recorded at regular intervals of no longer than 15 minutes while burning mineral oil dielectric fluid.

(viii) The carbon monoxide concentration and the excess oxygen percentage are checked at least once every hour that mineral oil dielectric fluid is burned. If either measurement falls below the levels specified in this section, the flow of mineral oil dielectric fluid to the boiler shall be stopped immediately.

(2) Thirty days before any person burns mineral oil dielectric fluid in the boiler, the person gives written notice to the EPA Regional Administrator for the EPA Region in which the boiler is located and that the notice contains the following information:

(i) The name and address of the owner or operator of the boiler and the address of the boiler.

(ii) The boiler rating in units of BTU/hour.

(iii) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when mineral oil dielectric fluid is burned.

(iv) The type of equipment, apparatus, and procedures to be used to control the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack.

(3) When burning mineral oil dielectric fluid, the boiler must operate at a level of output no less than the output at which the measurements required under paragraph (a)(2)(iii) of this section were taken.

(4) Any person burning mineral oil dielectric fluid in a boiler obtains the following information and retains the information for 5 years at the boiler location:

(i) The data required to be collected under paragraphs (a)(1)(vi) and (vii) of this section.

(ii) The quantity of mineral oil dielectric fluid burned in the boiler each month.

(b) To burn liquids, other than mineral oil dielectric fluid, containing a PCB concentration of ≥50 ppm, but <500 ppm:

(1) The boiler shall comply with the following criteria:

(i) The boiler is rated at a minimum of 50 million BTU/hour.

(ii) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is ≤50 ppm and the excess oxygen is at least 3 percent when PCBs are being burned.

(iii) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is ≤100 ppm and the excess oxygen is at least 3 percent when PCBs are being burned.

(iv) The waste does not comprise more than 10 percent (on a volume basis) of the total fuel feed rate.

(v) The waste is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations).

(vi) The owner or operator of the boiler must:

(A) Continuously monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning waste fluid; or

(B) If the boiler will burn <30,000 gallons of waste fluid per year, measure and record the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning waste fluid.

(vii) The primary fuel feed rate, waste fluid feed rate, and total quantities of both primary fuel and waste fluid fed to the boiler must be measured and recorded at regular intervals of no longer than 15 minutes while burning waste fluid.

(viii) The carbon monoxide concentration and the excess oxygen percentage must be checked at least once every hour that the waste is burned. If either measurement falls below the levels specified in either (a)(1)(ii) or (a)(1)(iii) of this section, the flow of waste to the boiler shall be stopped immediately.

(2) Prior to any person burning these liquids in the boiler, approval must be obtained from the EPA Regional Administrator for the EPA Region in which the boiler is located and any persons seeking such approval must submit to the EPA Regional Administrator a request containing at least the following information:

(i) The name and address of the owner or operator of the boiler and the address of the boiler.

(ii) The boiler rating in units of BTU/hour.

(iii) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when low concentration PCB liquid is burned.

(iv) The type of equipment, apparatus, and procedures to be used to control the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack.

(v) The type of waste to be burned (e.g., hydraulic fluid, contaminated fuel oil, heat transfer fluid, etc.).

(vi) The concentration of PCBs and of any other chlorinated hydrocarbon in the waste and the results of analyses using the American Society of Testing and Materials (ASTM) methods as follows: Carbon and hydrogen content using ASTM D-3178-84, nitrogen content using ASTM E-258-67 (Reapproved 1987), sulfur content using ASTM D-2784-89, ASTM D-1266-87, or ASTM D-129-64, chlorine content using ASTM D-808-87, water and sediment content using either ASTM D-2709-88 or ASTM D-1796-83 (Reapproved 1990), ash content using ASTM D-482-87, calorific value using ASTM D-240-87, carbon residue using either ASTM D-2158-89 or ASTM D-524-88, and flash point using ASTM D-93-90.

(vii) The quantity of wastes estimated to be burned in a 30–day period.

(viii) An explanation of the procedures to be followed to ensure that burning the waste will not adversely affect the operation of the boiler such that combustion efficiency will decrease.

(3) On the basis of the information in paragraph (b)(2) of this section and any other available information, the Regional Administrator may, at his/her discretion, find that the alternate disposal method will not present an unreasonable risk of injury to health or the environment and approve the use of the boiler.

(4) When burning PCB wastes, the boiler must operate at a level of output no less than the output at which the measurements required under paragraph (b)(2)(iii) of this section were taken.

(5) Any person burning liquids in boilers approved as provided in paragraph (b)(3) of this section, must obtain the following information and retain the information for 5 years at the boiler location:

(i) The data required to be collected in paragraphs (b)(1)(vi) and (b)(1)(vii) of this section.

(ii) The quantity of low concentration PCB liquid burned in the boiler each month.

(iii) The analysis of the waste required by paragraph (b)(2)(vi) of this section taken once a month for each month during which low concentration PCB liquid is burned in the boiler.

§ 761.72 Scrap metal recovery ovens and smelters.

Any person may dispose of residual PCBs associated with PCB-Contaminated articles regulated for

disposal under § 761.60(b), metal surfaces in PCB remediation waste regulated under § 761.61, or metal surfaces in PCB bulk product waste regulated under §§ 761.62(a)(6) and 761.79(c)(6), from which all free-flowing liquids have been removed:

(a) In a scrap metal recovery oven:

(1) The oven shall have at least two enclosed (i.e., negative draft, no fugitive emissions) interconnected chambers.

(2) The equipment with all free-flowing liquid removed shall first be placed in the primary chamber at room temperature.

(3) The primary chamber shall operate at a temperature between 537 °C and 650 °C for a minimum of 2½ hours and reach a minimum temperature of 650 °C (1,202 °F) once during each heating cycle or batch treatment of unheated, liquid-free equipment.

(4) Heated gases from the primary chamber must feed directly into the secondary chamber (i.e., afterburner) which must operate at a minimum temperature of 1,200 °C (2,192 °F) with at least a 3 percent excess oxygen and a retention time of 2.0 seconds with a minimum combustion efficiency of 99.9 percent according to the definition in § 761.70(a)(2).

(5) Heating of the primary chamber shall not commence until the secondary chamber has reached a temperature of 1,200 ± 100 °C (2,192 ° ± 180 °F).

(6) Continuous emissions monitors and recorders for carbon dioxide, carbon monoxide, and excess oxygen in the secondary chamber and continuous temperature recorders in the primary and secondary chambers shall be installed and operated while the primary and secondary chambers are in operation to assure that the two chambers are within the operating parameters in paragraphs (a)(3) through (a)(5) of this section.

(7) Emissions from the secondary chamber shall be vented through an exhaust gas stack in accordance with valid State and local air regulations and permits, which include a standard for PCBs or meets the standards in paragraph (a)(8) of this section.

(8) Exhaust gas stack emissions shall be for: particulates <0.015 grains/dry standard cubic foot, sulfur dioxide <35 parts per million by volume (ppmv), nitrogen oxide <150 ppmv, carbon monoxide <35 ppmv, and hydrogen chloride <35 ppmv.

(9) A measurement of the temperature in the secondary chamber at the time the primary chamber starts heating must be taken, recorded and retained at the facility for 3 years from the date each charge is introduced into the primary chamber.

(b) By smelting:

(1) The operating temperature of the hearth must be at least 1,000 °C at the time it is charged with any PCB-Contaminated non-porous surface.

(2) Each charge containing a PCB-Contaminated item must be added into molten metal or a hearth at ≥1,000 °C.

(3) Successive charges may not be introduced into the hearth in less than 15–minute intervals.

(4) The smelter must operate in compliance with any applicable emissions standards in part 60 of this chapter.

(5) The smelter must have an operational device which accurately measures directly or indirectly, the temperature in the hearth.

(6) Take, record and retain at the disposal facility for 3 years from the date each charge is introduced, a reading of the temperature in the hearth at the time it is charged with a non-porous surface item.

(c)(1) Scrap metal recovery ovens and smelters must either have a final permit under RCRA (part 266, subpart H of this chapter and § 270.66 of this chapter) or be operating under a valid State air emissions permit which includes a standard for PCBs.

(2) Scrap metal recovery ovens and smelters disposing of PCBs must provide notification as disposers of PCBs, are not required to submit annual reports, and shall otherwise comply with all applicable provisions of subparts J and K of this part, as well as other applicable Federal, State, and local laws and regulations.

(3) In lieu of the requirement in paragraphs (a) and (b) of this section, upon written request by the owner or operator of a scrap metal recovery oven or smelter, the EPA Regional Administrator, for the Region where the oven or smelter is located, may make a finding in writing, based on a site-specific risk assessment, that the oven or smelter does not pose an unreasonable risk of injury to health or the environment because it is operating in compliance with the parameters and conditions listed in paragraphs (a)(1) through (a)(8) and (b)(1) through (b)(9) of this section even though the oven or smelter does not have a RCRA or State air permit as required by paragraph (c)(1) of this section. The written request shall include a site-specific risk assessment.

(d) PCB liquids, other liquid waste qualifying as waste oils which may be used as provided for at § 761.20(e), or PCB remediation waste, other than PCB-Contaminated articles, may not be disposed of in a scrap metal recovery oven or smelter unless approved or otherwise allowed under subpart D of this part.

§ 761.75 [Amended]

p. In § 761.75, by removing the term "facility" and adding, in its place, the term "unit" wherever it appears in paragraphs (b)(7)(i), (b)(7)(ii), and (b)(7)(iii).

q. By adding § 761.77 to read as follows:

§ 761.77 Coordinated approval.

(a) *General requirements.* Notwithstanding any other provision of this part, the EPA Regional Administrator for the Region in which a PCB disposal or PCB commercial storage facility described in paragraphs (b) and (c) of this section is located may issue a TSCA PCB Coordinated Approval to the persons described in those paragraphs if the conditions listed in this section are met. A TSCA PCB Coordinated Approval will designate the persons who own and who are authorized to operate the facilities described in paragraphs (b) and (c) of this section and will apply only to such persons. All requirements, conditions, and limitations of any other permit or waste management document cited or described in paragraphs (b) and (c) of this section, as the technical or legal basis on which the TSCA PCB Coordinated Approval is issued, are conditions of the TSCA PCB Coordinated Approval.

(1) Persons seeking a TSCA PCB Coordinated Approval shall submit a request for approval by certified mail, to the EPA Regional Administrator for the Region in which the activity will take place. Persons seeking a TSCA PCB Coordinated Approval for a new PCB activity shall submit the request for approval at the same time they seek a permit, approval, or other action for a PCB waste management activity under any other Federal or State authority.

(i) The request for a TSCA PCB Coordinated Approval shall include a copy of the letter from EPA announcing or confirming the EPA identification number issued to the facility for conducting PCB activities; the name, organization, and telephone number of the person who is the contact point for the non-TSCA Federal or State waste management authority; a copy of the relevant permit or waste management document specified in paragraphs (b) and (c) of this section, including all requirements, conditions, and limitations, if the EPA Regional Administrator does not have a copy of the document, or a description of the waste management activities to be

conducted if a permit or other relevant waste management document has not been issued; and a certification that the person who owns or operates the facility is aware of and will adhere to the TSCA PCB reporting and recordkeeping requirements at subparts J and K of this part.

(ii) The EPA Regional Administrator shall review the request for completeness, for compliance with the requirements of paragraphs (b) and (c) of this section, and to ensure that the PCB activity for which approval is requested will not present an unreasonable risk of injury to health or the environment. The EPA Regional Administrator shall either:

(A) Issue a written notice of deficiency explaining why the request for approval is deficient. If appropriate, the EPA Regional Administrator may either:

(*1*) Request additional information to cure the deficiency.

(*2*) Deny the request for a TSCA PCB Coordinated Approval.

(B) Issue a letter granting or denying the TSCA PCB Coordinated Approval. If the EPA Regional Administrator grants the TSCA PCB Coordinated Approval, he or she may acknowledge the non-TSCA approval meets the regulatory requirements under TSCA as written, or require additional conditions the EPA Regional Administrator has determined are necessary to prevent unreasonable risk of injury to health or the environment.

(C) If the EPA Regional Administrator denies a request for a Coordinated Approval under paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of this section, the person who requested the TSCA PCB Coordinated Approval may submit an application for a TSCA Disposal Approval.

(2) The EPA Regional Administrator may issue a notice of deficiency, revoke the TSCA PCB Coordinated Approval, require the person to whom the TSCA PCB Coordinated Approval was issued to submit an application for a TSCA PCB approval, or bring an enforcement action under TSCA if he or she determines that:

(i) Conditions of the approval relating to PCB waste management activities are not met.

(ii) The PCB waste management process is being operated in a manner which may result in an unreasonable risk of injury to health or the environment.

(iii) The non-TSCA approval expires, is revoked, is suspended, or otherwise ceases to be in full effect.

(3) Any person with a TSCA PCB Coordinated Approval must notify the EPA Regional Administrator in writing within 5 calendar days of changes relating to PCB waste requirements in the non-TSCA waste management document which serves as the basis for a TSCA PCB Coordinated Approval. Changes in the ownership of a commercial storage facility which holds a TSCA PCB Coordinated Approval shall be handled pursuant to § 761.65(j).

(b) Any person who owns or operates a facility that he or she intends to use to landfill PCB wastes; incinerate PCB wastes; dispose of PCB wastes using an alternative disposal method that is equivalent to disposal in an incinerator approved under § 761.70 or a high efficiency boiler operating in compliance with § 761.71; or stores PCB wastes may apply for a TSCA PCB Coordinated Approval. The EPA Regional Administrator may approve the request if the EPA Regional Administrator determines that the activity will not pose an unreasonable risk of injury to health or the environment and the person:

(1)(i) Has a waste management permit or other decision or enforcement document which exercises control over PCB wastes, issued by EPA or an authorized State Director for a State program that has been approved by EPA and is no less stringent in protection of health or the environment than the applicable TSCA requirements found in this part; or

(ii) Has a PCB waste management permit or other decision or enforcement document issued by a State Director pursuant to a State PCB waste management program no less stringent in protection of health or the environment than the applicable TSCA requirements found in this part; or

(iii) Is subject to a waste management permit or other decision or enforcement document which is applicable to the disposal of PCBs and which was issued through the promulgation of a regulation published in Title 40 of the Code of Federal Regulations.

(2) Complies with the terms and conditions of the permit or other decision or enforcement document described in paragraph (b)(1) of this section.

(3) Unless otherwise waived or modified in writing by the EPA Regional Administrator, complies with § 761.75(b); § 761.70(a)(1) through (a)(9), (b)(1) and (b)(2), and (c); or the PCB storage requirements at §§ 761.65(a), (c), and (d)(2), as appropriate.

(4) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(c) A person conducting research and development (R&D) into PCB disposal methods (regardless of PCB concentration), or conducting PCB remediation activities may apply for a TSCA PCB Coordinated Approval. The EPA Regional Administrator may approve the request if the EPA Regional Administrator determines that the activity will not pose an unreasonable risk of injury to health or the environment and the person:

(1)(i) Has a permit or other decision and enforcement document issued or otherwise agreed to by EPA, or permit or other decision and enforcement document issued by an authorized State Director for a State program that has been approved by EPA, which exercises control over the management of PCB wastes, and that person is in compliance with all terms and conditions of that document; or

(ii) Has a permit, which exercises control over the management of PCB wastes, issued by a State Director pursuant to a State PCB disposal program no less stringent than the requirements in this part.

(2) Complies with the terms and conditions of that permit or other decision and enforcement document.

(3) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

r. By revising § 761.79 to read as follows:

§ 761.79 Decontamination standards and procedures.

(a) *Applicability.* This section establishes decontamination standards and procedures for removing PCBs, which are regulated for disposal, from water, organic liquids, non-porous surfaces (including scrap metal from disassembled electrical equipment), concrete, and non-porous surfaces covered with a porous surface, such as paint or coating on metal.

(1) Decontamination in accordance with this section does not require a disposal approval under subpart D of this part.

(2) Materials from which PCBs have been removed by decontamination in accordance with this section may be distributed in commerce in accordance with § 761.20(c)(5).

(3) Materials from which PCBs have been removed by decontamination in accordance with this section may be used or reused in accordance with § 761.30(u).

(4) Materials from which PCBs have been removed by decontamination in accordance with this section, not including decontamination waste and residuals under paragraph (g) of this section, are unregulated for disposal under subpart D of this part.

(5) Any person decontaminating porous surfaces other than concrete under paragraph (b)(4) of this section and non-porous surfaces covered with a porous surface, such as paint or coating on metal, under paragraph (b)(3) or (c)(8) of this section must obtain an alternative decontamination approval in accordance with paragraph (h) of this section.

(6) Any person engaging in decontamination under this section is responsible for determining and complying with all other applicable Federal, State, and local laws and regulations.

(b) *Decontamination standards.* Chopping (including wire chopping), distilling, filtering, oil/water separation, spraying, soaking, wiping, stripping of insulation, scraping, scarification or the use of abrasives or solvents may be used to remove or separate PCBs, to the following standards, from liquids, concrete, or non-porous surfaces.

(1) The decontamination standard for water containing PCBs is:

(i) Less than 200 µg/L (i.e., <200 ppb PCBs) for non-contact use in a closed system where there are no releases;

(ii) For water discharged to a treatment works (as defined in § 503.9(aa) of this chapter) or to navigable waters, <3 µg/L (approximately <3 ppb) or a PCB discharge limit included in a permit issued under section 307(b) or 402 of the Clean Water Act; or

(iii) Less than or equal to 0.5 µg/L (i.e., approximately ≤0.5 ppb PCBs) for unrestricted use.

(2) The decontamination standard for organic liquids and non-aqueous inorganic liquids containing PCBs is <2 milligrams per kilogram (i.e., <2 ppm PCBs).

(3) The decontamination standard for non-porous surfaces in contact with liquid and non-liquid PCBs is:

(i) For unrestricted use:

(A) For non-porous surfaces previously in contact with liquid PCBs at any concentration, where no free-flowing liquids are currently present, ≤10 micrograms PCBs per 100 square centimeters (≤10 µg/100 cm^2) as measured by a standard wipe test (§ 761.123) at locations selected in accordance with subpart P of this part.

(B) For non-porous surfaces in contact with non-liquid PCBs (including non-porous surfaces covered with a porous surface, such as paint or coating on metal), cleaning to Visual Standard No. 2, Near-White Blast Cleaned Surface Finish, of the National Association of Corrosion Engineers (NACE). A person shall verify compliance with standard No. 2 by visually inspecting all cleaned areas.

(ii) For disposal in a smelter operating in accordance with § 761.72(b):

(A) For non-porous surfaces previously in contact with liquid PCBs at any concentration, where no free-flowing liquids are currently present, <100 µg/100 cm^2 as measured by a standard wipe test (§ 761.123) at locations selected in accordance with subpart P of this part.

(B) For non-porous surfaces in contact with non-liquid PCBs (including non-porous surfaces covered with a porous surface, such as paint or coating on metal), cleaning to Visual Standard No. 3, Commercial Blast Cleaned Surface Finish, of the National Association of Corrosion Engineers (NACE). A person shall verify compliance with standard No. 3 by visually inspecting all cleaned areas.

(4) The decontamination standard for concrete is ≤10 µg/100 cm^2 as measured by a standard wipe test (§ 761.123) if the decontamination procedure is commenced within 72 hours of the initial spill of PCBs to the concrete or portion thereof being decontaminated.

(c) *Self-implementing decontamination procedures.* The following self-implementing decontamination procedures are available as an alternative to the measurement-based decontamination methods specified in paragraph (b) of this section. Any person performing self-implementing decontamination must comply with one of the following procedures.

(1) Any person decontaminating a PCB Container must do so by flushing the internal surfaces of the container three times with a solvent containing <50 ppm PCBs. Each rinse shall use a volume of the flushing solvent equal to approximately 10 percent of the PCB Container capacity.

(2) Any person decontaminating movable equipment contaminated by PCBs and used in storage areas, tools, and sampling equipment may do so by:

(i) Swabbing surfaces that have contacted PCBs with a solvent;

(ii) A double wash/rinse as defined in subpart S of this part; or

(iii) Another applicable decontamination procedure in this section.

(3) Any person decontaminating a non-porous surface in contact with free-flowing mineral oil dielectric fluid (MODEF) at levels ≤10,000 ppm PCBs must do so as follows:

(i) Drain the free-flowing MODEF and allow the residual surfaces to drain for an additional 15 hours.

(ii) Dispose of drained MODEF according to paragraph (g) of this section.

(iii) Soak the surfaces to be decontaminated in a sufficient amount of clean (containing <2 ppm PCBs) performance-based organic decontamination fluid (PODF) such that there is a minimum of 800 ml of PODF for each 100 cm^2 of contaminated or potentially contaminated surface for at least 15 hours at ≥20 °C.

(iv) Approved PODFs include:

(A) Kerosene.

(B) Diesel fuel.

(C) Terpene hydrocarbons.

(D) Mixtures of terpene hydrocarbons and terpene alcohols.

(v) Drain the PODF from the surfaces.

(vi) Dispose of the drained PODF in accordance with paragraph (g) of this section.

(4) Any person decontaminating a non-porous surface in contact with free-flowing MODEF containing >10,000 ppm PCB in MODEF or askarel PCB (up to 70 percent PCB in a mixture of trichlorobenzenes and tetrachlorobenzenes) must do so as follows:

(i) Drain the free-flowing MODEF or askarel and allow the residual surfaces to drain for an additional 15 hours.

(ii) Dispose of drained MODEF or askarel according to paragraph (g) of this section.

(iii) Soak the surfaces to be decontaminated in a sufficient amount of clean PODF (containing <2 ppm PCBs) such that there is a minimum of 800 ml of PODF for each 100 cm^2 of contaminated or potentially contaminated surface for at least 15 hours at ≥20 °C.

(iv) Approved PODFs include:

(A) Kerosene.

(B) Diesel fuel.

(C) Terpene hydrocarbons.

(D) Mixtures of terpene hydrocarbons and terpene alcohols.

(v) Drain the PODF from the surfaces.

(vi) Dispose of the drained PODF in accordance with paragraph (g) of this section.

(vii) Resoak the surfaces to be decontaminated, pursuant to paragraph (c)(3)(iii) of this section, in a sufficient amount of clean PODF (containing <2 ppm PCBs) such that there is a minimum of 800 ml of PODF for each 100 cm^2 of surface for at least 15 hours at ≥20 °C.

(viii) Drain the PODF from the surfaces.

(ix) Dispose of the drained PODF in accordance with paragraph (g) of this section.

(5) Any person decontaminating piping and air lines in an air compressor system must do so as follows:

(i) Before decontamination proceeds, disconnect or bypass the air compressors and air dryers from the piping and air lines and decontaminate the air compressors and air dryers separately in accordance with paragraphs (b), (c)(1) through (c)(6), or (c)(8) of this section. Dispose of filter media and desiccant in the air dyers based on their existing PCB concentration.

(ii) Test the connecting line and appurtenances of the system to assure that there is no leakage. Test by introducing air into the closed system at from 90 to 100 pounds per square inch (psi). Only if there is a pressure drop of <5 psi in 30 minutes may decontamination take place.

(iii) When there is no leakage, fill the piping and air lines with clean (containing <2 ppm PCBs) solvent. Solvents include PODF, aqueous potassium hydroxide at a pH between 9 and 12, or water containing 5 percent sodium hydroxide by weight.

(iv) Circulate the solvent to achieve turbulent flow through the piping and air lines in the air compressor system until the total volume of solvent circulated equals 10 times the total volume of the particular article being decontaminated, then drain the solvent. Calculate the total volume of solvent circulated by multiplying the pump rate by the time of pumping. Turbulent flow means a Reynolds number range from 20,000 to 43,000. Refill the system with clean PODF and repeat the circulation and drain process.

(6) Any person using thermal processes to decontaminate metal surfaces in contact with PCBs, as required by § 761.62(a)(6), must use one of the following options:

(i) Surfaces in contact with liquid and non-liquid PCBs at concentrations <500 ppm may be decontaminated in an industrial furnace for purposes of disposal in accordance with § 761.72.

(ii) Surfaces in contact with liquid or non-liquid PCBs at concentrations ≥500 ppm may be smelted in an industrial furnace operating in accordance with § 761.72(b), but must first be decontaminated in accordance with § 761.72(a) or to a surface concentration of <100 μg/100 cm^2.

(d) *Decontamination solvents.* (1) Unless otherwise provided in paragraphs (c)(3) through (c)(5) of this section, the solubility of PCBs in any solvent used for purposes of decontamination under this section must be 5 percent or more by weight.

(2) The solvent may be reused for decontamination so long as its PCB concentration is <50 ppm.

(3) Solvent shall be disposed of under paragraph (g) of this section.

(4) Other than as allowed in paragraphs (c)(3) and (c)(4) of this section, solvents may be tested and validated for performance-based decontamination of non-porous surfaces contaminated with MODEF or other PCB liquids, in accordance with the self-implementing procedures found in subpart T of this part. Specific conditions for the performance-based testing from this validation are determined in the validation study.

(e) *Limitation of exposure and control of releases.* (1) Any person conducting decontamination activities under this section shall take necessary measures to protect against direct release of PCBs to the environment from the decontamination area.

(2) Persons participating in decontamination activities shall wear or use protective clothing or equipment to protect against dermal contact or inhalation of PCBs or materials containing PCBs.

(f) *Sampling and recordkeeping.* (1) Confirmatory sampling is required under paragraph (b) of this section. For liquids described in paragraphs (b)(1) and (b)(2) of this section, sample in accordance with §§ 761.269 and 761.272. For non-porous surfaces and concrete described in paragraphs (b)(3) and (b)(4) of this section, sample in accordance with subpart P of this part. A written record of such sampling must be established and maintained for 3 years from the date of any decontamination under this section. The record must show sampling locations and analytical results and must be retained at the site of the decontamination or a copy of the record must be made available to EPA in a timely manner, if requested. In addition, recordkeeping is required in accordance with § 761.180(a) for all wastes generated by a decontamination process and regulated for disposal under this subpart.

(2) Confirmatory sampling is not required for self-implementing decontamination procedures under paragraph (c) of this section. Any person using these procedures must retain a written record documenting compliance with the procedures for 3 years after completion of the decontamination procedures (e.g., video recordings, photographs).

(g) *Decontamination waste and residues.* Decontamination waste and residues shall be disposed of at their existing PCB concentration unless otherwise specified.

(1) Distillation bottoms or residues and filter media are regulated for disposal as PCB remediation waste.

(2) PCBs physically separated from regulated waste during decontamination (such as by chopping, shredding, scraping, abrading or oil/water separation, as opposed to solvent rinsing and soaking), other than wastes described in paragraph (g)(1) of this section, are regulated for disposal at their original concentration.

(3) Hydrocarbon solvent used or reused for decontamination under this section that contains <50 ppm PCB must be burned and marketed in accordance with the requirements for used oil in § 761.20(e), disposed of in accordance with § 761.60(a) or (e), or decontaminated pursuant to this section.

(4) Chlorinated solvent at any PCB concentration used for decontamination under this section shall be disposed of in an incinerator operating in compliance with § 761.70, or decontaminated pursuant to this section.

(5) Solvents ≥50 ppm other than those described in paragraphs (g)(3) and (g)(4) of this section shall be disposed of in accordance with § 761.60(a) or decontaminated pursuant to this section.

(6) Non-liquid cleaning materials and personal protective equipment waste at any concentration, including non-porous surfaces and other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from decontamination shall be disposed of in accordance with § 761.61(a)(5)(v).

(h) *Alternative decontamination or sampling approval.* (1) Any person wishing to decontaminate material described in paragraph (a) of this section in a manner other than prescribed in paragraph (b) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place. Each application must describe the material to be decontaminated and the proposed decontamination method, and must demonstrate that the proposed method is capable of decontaminating the material to the applicable level set out in paragraphs (b)(1) through (b)(4) of this section.

(2) Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take

place. Each application must describe the material to be decontaminated and the proposed self-implementing decontamination method and must include a proposed validation study to confirm performance of the method.

(3) Any person wishing to sample decontaminated material in a manner other than prescribed in paragraph (f) of this section, must apply in writing to the EPA Regional Administrator in the Region where the activity would take place. Each application must contain a description of the material to be decontaminated, the nature and PCB concentration of the contaminating material (if known), the decontamination method, the proposed sampling procedure, and a justification for how the proposed sampling is equivalent to or more comprehensive than the sampling procedure required under paragraph (f) of this section.

(4) EPA may request additional information that it believes necessary to evaluate the application.

(5) EPA will issue a written decision on each application for risk-based decontamination or sampling. No person may conduct decontamination or sampling under this paragraph prior to obtaining written approval from EPA. EPA will approve an application if it finds that the proposed decontamination or sampling method will not pose an unreasonable risk of injury to health or the environment.

s. In § 761.80, by adding paragraphs (e) and (i) to read as follows:

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(e) The Administrator grants a class exemption to all research and development (R&D) facilities for a period of 1 year to manufacture or import PCBs for use solely in the manufacturer or importer's own research for the development of PCB disposal technologies. Each person that wishes to be part of the exemption must meet the following conditions:

(1) A petition for an exemption from the PCB prohibition on manufacturing PCBs must be received by EPA 60 days prior to engaging in these activities.

(2) Requests for renewal must be filed pursuant to § 750.11 of this chapter. EPA will deem any properly filed request for the renewal of the exemption by any member of the class as a renewal request for the entire class.

(3) The quantity of the PCBs manufactured annually must not exceed 500 grams by total weight of pure PCBs. Any person who wishes to manufacture or import more than 500 grams of PCBs in 1 year must receive written approval from the Director, National Program Chemicals Division to exceed the limitations established by this provision. The Director, National Program Chemicals Division may grant approval without further rulemaking. Any increase granted will be in writing and will extend only for a maximum of the time remaining in a specific exemption year.

(4) The owner or operator of the facility must notify the EPA Regional Administrator in writing 30 days prior to the commencement of R&D activities that include the manufacture or import of PCBs under the exemption, unless the facility has obtained a PCB R&D approval from EPA pursuant to § 761.60(e), § 761.60(i)(2), § 761.70(a), or § 761.70(b) and the approval contains a provision allowing the manufacture of PCBs.

(5) Records are maintained of their PCB activities for a period of 3 years after ceasing operations. The records must include the sources and the annual amounts of PCBs received if imported and the type and annual amount of PCBs that were manufactured.

(6) All PCBs and materials containing PCBs, regardless of concentration, remaining from the disposal-related studies must be disposed of according to § 761.60(j)(1)(vi), or decontaminated pursuant to § 761.79, based on the original PCB concentration.

* * * * *

(i) The Administrator grants a class exemption to all persons who manufacture, import, process, distribute in commerce, or export PCBs, or analytical reference samples derived from PCB waste material, provided the PCBs are manufactured, imported, processed, distributed in commerce, or exported solely for the purpose of R&D and the following conditions are met:

(1) Notification in the form of a petition for an exemption from the PCB prohibitions on manufacture, import, processing, distribution in commerce, or export is received by EPA 60 days prior to engaging in these activities.

(2) Requests for renewal are filed pursuant to §§ 750.11 and 750.31 of this chapter. EPA will deem any properly filed request for the renewal of the exemption by any member of the class as a renewal request for the entire class.

(3) The PCBs are packaged in one or more hermetically sealed containers of a volume of no more than 5.0 ml each. Analytical reference samples derived from PCB waste material may be packaged in a container larger than 5.0 ml when packaged pursuant to applicable DOT performance standards.

(4) The quantity of PCBs manufactured, imported, processed, distributed in commerce, or exported annually must not exceed 500 grams by total weight of pure PCBs. Any person who expects to manufacture, import, process, distribute in commerce, or export more than 500 grams of PCBs in 1 year or to exceed the 5.0 ml packaging requirement must obtain a written approval from the Director, National Program Chemicals Division and must identify the sites of PCB activities and the quantity of PCBs to be manufactured, imported, processed, distributed in commerce, or exported. Each request must include a justification. The Director, National Program Chemicals Division, may grant approval without further rulemaking. Any increase granted will be in writing and will extend only for a maximum of the time remaining in a specific exemption year.

(5) All treated and untreated PCB regulated material and material coming into contact with regulated material must be stored and disposed of according to subpart D of this part, or decontaminated pursuant to § 761.79.

(6) All PCB materials must be distributed in DOT-authorized packaging.

(7) Records are maintained of their PCB activities for a period of 3 years after ceasing operations. The records must include the sources and the annual amounts of PCBs received if imported, the annual amount of PCBs that were manufactured, the annual amount of PCBs that were processed and/or distributed in commerce (to include export), and the persons to whom the PCBs were shipped.

* * * * *

t. By revising § 761.93 to read as follows:

§ 761.93 Import for disposal.

(a) *General provisions.* No person may import PCBs or PCB Items for disposal without an exemption issued under the authority of TSCA section 6(e)(3).

(b) [Reserved]

u. By revising § 761.97(a)(1) and (a)(2) to read as follows:

§ 761.97 Export for disposal.

(a) * * *

(1) PCBs and PCB Items at concentrations <50 ppm (or <10 µg PCB/100 cm^2 if no free-flowing liquids are present) may be exported for disposal.

(2) For the purposes of this section, PCBs and PCB Items of unknown concentrations shall be treated as if they contain ≥50 ppm.

* * * * *

v. By adding § 761.99 to subpart F to read as follows:

§ 761.99 Other transboundary shipments.

For purposes of this subpart, the following transboundary shipments are not considered exports or imports:

(a) PCB waste generated in the United States, transported outside the Customs Territory of the United States (including any residuals resulting from cleanup of spills of such wastes in transit) through another country or its territorial waters, or through international waters, and returned to the United States for disposal.

(b) PCB waste in transit, including any residuals resulting from cleanup of spills during transit, through the United States (e.g., from Mexico to Canada, from Canada to Mexico).

w. Section 761.125 is amended by revising the second sentence of the introductory text of paragraph (a)(1) and in paragraphs (a)(2) and (c)(4)(i) by revising the reference to "§ 761.60" to read "subpart D of this part", to read as follows:

§ 761.125 Requirements for PCB spill cleanup.

(a) * * *

(1) * * * For example, under the National Contingency Plan all spills involving 1 pound or more by weight of PCBs must currently be reported to the National Response Center (1-800-424-8802). * * *

* * * * *

§ 761.180 [Amended]

x. In § 761.180:

i. By revising the phrase in paragraph (e)(1) to "§ 761.60(a)(2)(iii)(A)(*8*) and § 761.60(a)(3)(iii)(A)(*8*)" to read "§ 761.71(a)(1)(viii) and § 761.71(b)(1)(viii)".

ii. By revising the phrase in paragraph (e)(2) to "§ 761.60(a)(2)(iii)(A)(*7*) and § 761.60(a)(3)(iii)(A)(*7*)" to read "§ 761.71(a)(1)(vii) and § 761.71(b)(1)(vii)".

iii. By revising the reference in paragraph (e)(3) to "§ 761.60(a)(3)(iii)(B)(*6*)" to read "§ 761.71(b)(2)(vi)".

iv. By adding paragraphs (a)(1)(iii), (a)(2)(ix), (a)(3), (a)(4), (b)(1)(iii), and (b)(5), and by revising the introductory text of paragraph (b)(3).

The revisions and additions read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(1) * * *

(iii) Records of inspections and cleanups performed in accordance with § 761.65(c)(5).

(2) * * *

(ix) Whenever a PCB Item, excluding small capacitors, with a concentration of ≥50 ppm is distributed in commerce for reuse pursuant to § 761.20(c)(1), the name, address, and telephone number of the person to whom the item was transferred, date of transfer, and the serial number of the item or the internal identification number, if a serial number is not available, must be recorded in the annual document log. The serial number or internal identification number shall be permanently marked on the equipment.

(3) [Reserved]

(4) For purposes of this paragraph, PCB Voltage Regulators shall be recorded as PCB Transformers.

(b) * * *

(1) * * *

(iii) Records of inspections and cleanups performed in accordance with § 761.65(c)(5).

* * * * *

(3) The owner or operator of a PCB disposal facility (including an owner or operator who disposes of his/her own waste and does not receive or generate manifests) or a commercial storage facility shall submit an annual report, which briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1) and (b)(2) of this section to the EPA Regional Administrator of the Region in which the facility is located by July 15 of each year, beginning with July 15, 1991. The first annual report submitted on July 15, 1991, shall be for the period starting February 5, 1990, and ending December 31, 1990. The annual report shall contain no confidential business information. The annual report shall consist of the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.

* * * * *

(5) For purposes of this paragraph, PCB Voltage Regulators shall be recorded and reported as PCB Transformers.

* * * * *

y. In § 761.205, by adding paragraph (f) to read as follows:

§ 761.205 Notification of PCB waste activity (EPA Form 7710-53).

* * * * *

(f) When a facility has previously notified EPA of its PCB waste handling activities using EPA Form 7710-53 and those activities change, the facility must resubmit EPA Form 7710-53 to reflect those changes no later than 30 days from when a change is made. Examples of when a PCB waste handler must renotify the Agency include, but are not limited to the following: the company changes location of the facility; or the company had notified solely as engaging in a certain type of PCB waste handling activity and now wishes to engage in another PCB waste activity (e.g., previously only commercially stored PCB waste and now wishes to transport PCB waste).

z. In § 761.207, by revising paragraph (j) to read as follows:

§ 761.207 The manifest—general requirements.

* * * * *

(j) The requirements of this section apply only to PCB wastes as defined in § 761.3. This includes PCB wastes with PCB concentrations below 50 ppm where the PCB concentration below 50 ppm was the result of dilution; these PCB wastes are required under § 761.1(b) to be managed as if they contained PCB concentrations of 50 ppm and above. An example of such a PCB waste is spill cleanup material containing <50 ppm PCBs when the spill involved material containing PCBs at a concentration of ≥50 ppm. However, there is no manifest requirement for material currently below 50 ppm which derives from pre-April 18, 1978, spills of any concentration, pre-July 2, 1979, spills of < 500 ppm PCBs, or materials decontaminated in accordance with § 761.79.

aa. In § 761.215, by revising the introductory text of paragraphs (b), (c), and (d), and adding paragraph (f) to read as follows:

§ 761.215 Exception reporting.

* * * * *

(b) A generator of PCB waste subject to the manifesting requirements shall submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the hand written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall be submitted to EPA no later than 45 days from the date on which the generator should have received the manifest. The Exception Report shall include the following:

* * * * *

(c) A disposer of PCB waste shall submit a One-year Exception Report to the EPA Regional Administrator for the Region in which the disposal facility is located no later than 45 days from the end of the 1-year storage for disposal date when the following occurs:

* * * * *

(d) A generator or commercial storer of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception

Report to the EPA Regional Administrator for the Region in which the generator or commercial storer is located no later than 45 days from the date the following occurs:

* * * * *

(f) PCB/radioactive waste that is exempt from the 1-year storage for disposal time limit pursuant to § 761.65(a)(1) is also exempt from the exception reporting requirements of paragraphs (c), (d), and (e) of this section.

bb. In § 761.218, by revising paragraph (b) to read as follows:

§ 761.218 Certificate of disposal.

* * * * *

(b) The owner or operator of the disposal facility shall send the Certificate of Disposal to the generator identified on the manifest which accompanied the shipment of PCB waste within 30 days of the date that disposal of each item of PCB waste identified on the manifest was completed unless the generator and the disposer contractually agree to another time frame.

* * * * *

cc. By adding subparts L, M, N, O, P, Q, R, S, and T to read as follows:

Subpart L—[Reserved]

Subpart M—Determining a PCB Concentration for Purposes of Abandonment or Disposal of Natural Gas Pipeline: Selecting Sample Sites, Collecting Surface Samples, and Analyzing Standard PCB Wipe Samples

Sec.

761.240 Scope and definitions.
761.243 Standard wipe sample method and size.
761.247 Sample site selection for pipe segment removal or pipeline section abandonment.
761.250 Sample site selection for pipeline section abandonment.
761.253 Chemical analysis.
761.257 Determining the regulatory status of sampled pipe.

Subpart N—Cleanup Site Characterization Sampling for PCB Remediation Waste in Accordance with § 761.61(a)(2)

Sec.

761.260 Applicability.
761.265 Sampling bulk PCB remediation waste and porous surfaces.
761.267 Sampling non-porous surfaces.
761.269 Sampling liquid PCB remediation waste.
761.272 Chemical extraction and analysis of samples.
761.274 Reporting PCB concentrations in samples.

Subpart O—Sampling to Verify Completion of Self-Implementing Cleanup and On-Site Disposal of Bulk PCB Remediation Waste and Porous Surfaces in Accordance with § 761.61(a)(6)

Sec.

761.280 Application and scope.
761.283 Determination of the number of samples to collect and sample collection locations.
761.286 Sample size and procedure for collecting a sample.
761.289 Compositing samples.
761.292 Chemical extraction and analysis of individual samples and composite samples.
761.295 Reporting and recordkeeping of the PCB concentrations in samples.
761.298 Decisions based on PCB concentration measurements resulting from sampling.

Subpart P—Sampling Non-Porous Surfaces for Measurement-Based Use, Reuse, and On-Site or Off-Site Disposal under § 761.61(a)(6) and Determination under § 761.79(b)(3)

Sec.

761.300 Applicability.
761.302 Proportion of the total surface area to sample.
761.304 Determining sample location.
761.306 Sampling 1 meter square surfaces by random selection of halves.
761.308 Sample selection by random number generation on any two-dimensional square grid.
761.310 Collecting the sample.
761.312 Compositing of samples.
761.314 Chemical analysis of standard wipe test samples.
761.316 Interpreting PCB concentration measurements resulting from this sampling scheme.

Subpart Q—Self-Implementing Alternative Extraction and Chemical Analysis Procedures for Non-liquid PCB Remediation Waste Samples

Sec.

761.320 Applicability.
761.323 Sample preparation.
761.326 Conducting the comparison study.

Subpart R—Sampling Non-Liquid, Non-Metal PCB Bulk Product Waste for Purposes of Characterization for PCB Disposal in Accordance With § 761.62, and Sampling PCB Remediation Waste Destined for Off-Site Disposal, in Accordance With § 761.61

Sec.

761.340 Applicability.
761.345 Form of the waste to be sampled.
761.346 Three levels of sampling.
761.347 First level sampling—waste from existing piles.
761.348 Contemporaneous sampling.
761.350 Subsampling from composite samples.
761.353 Second level of sample selection.
761.355 Third level of sample selection.
761.356 Conducting a leach test.
761.357 Reporting the results of the procedure used to simulate leachate generation.
761.358 Determining the PCB concentration of samples of waste.
761.359 Reporting the PCB concentrations in samples.

Subpart S—Double Wash/Rinse Method for Decontaminating Non-Porous Surfaces

Sec.

761.360 Background.
761.363 Applicability.
761.366 Cleanup equipment.
761.369 Pre-cleaning the surface.
761.372 Specific requirements for relatively clean surfaces.
761.375 Specific requirements for surfaces coated or covered with dust, dirt, grime, grease, or another absorbent material.
761.378 Decontamination, reuse, and disposal of solvents, cleaners, and equipment.

Subpart T—Comparison Study for Validating a New Performance-Based Decontamination Solvent under § 761.79(d)(4)

Sec.

761.380 Background.
761.383 Applicability.
761.386 Required experimental conditions for the validation study and subsequent use during decontamination.
761.389 Testing parameter requirements.
761.392 Preparing validation study samples.
761.395 A validation study.
761.398 Reporting and recordkeeping.

Subpart L [Reserved]

Subpart M—Determining a PCB Concentration for Purposes of Abandonment or Disposal of Natural Gas Pipeline: Selecting Sample Sites, Collecting Surface Samples, and Analyzing Standard PCB Wipe Samples

§ 761.240 Scope and definitions.

(a) Use these procedures to select surface sampling sites for natural gas pipe to determine its PCB surface concentration for abandonment-in-place or removal and disposal off-site in accordance with § 761.60(b)(5).

(b) "Pipe segment" means a length of natural gas pipe that has been removed from the pipeline system to be disposed of or reused, and that is usually approximately 12.2 meters (40 feet) or shorter in length. Pipe segments are usually linear.

(c) "Pipeline section" means a length of natural gas pipe that has been cut or otherwise separated from the active pipeline, usually for purposes of abandonment, and that is usually longer than 12.2 meters in length. Pipeline sections may be branched.

§ 761.243 Standard wipe sample method and size.

(a) Collect a surface sample from a natural gas pipe segment or pipeline

section using a standard wipe test as defined in § 761.123. Detailed guidance for the entire wipe sampling process appears in the document entitled "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," dated June 23, 1987 and revised on April 18, 1991. This document is available from the TSCA Assistance Information Service, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(b) Collect a surface sample from a minimum surface area of 100 cm^2 at each sampling site selected. The EPA Regional Administrator may approve, in writing, requests to collect a sample from smaller surface areas, when <100 cm^2 of surface eligible for sampling is present; e.g., when sampling a small diameter pipe, a small valve, or a small regulator. When smaller surfaces are sampled, convert the measurement to the equivalent measurement for 100 cm^2 for purposes of comparison to standards based on 100 cm^2.

§ 761.247 Sample site selection for pipe segment removal or pipeline section abandonment.

(a) *General.* (1) Select the pipe segments to be sampled by following the directions in paragraph (b) of this section.

(2) Locate the proper position along the length of the pipe segment that you have selected for sampling, by following the directions in paragraph (c) of this section.

(3) Select the proper sampling position around the circumference of the pipe segment or pipeline section that you have selected for sampling, by following the directions in paragraph (d) of this section.

(4) Prior to removing pipe from the ground or lifting the pipe from its location during former operations, mark the top side of the pipe.

(5) Do not sample if there are free-flowing liquids in the pipe segment. Free-flowing liquids must be removed prior to sampling.

(b) *Selecting pipe segments to sample.* Select the pipe segment(s) that you will sample from a length of pipe or group of pipe segments, as follows:

(1) Do not sample a pipe segment that is longer than 12.2 meters (40 feet). If a segment is longer than 12.2 meters in length, cut the segment so that all resulting segments are 12.2 meters or less in length.

(2) Determine which pipe segments to sample as follows:

(i) When a length of pipe having seven or fewer segments is removed for purposes of disposal, sample each pipe segment.

(ii) When removing a length of pipe having multiple contiguous segments less than 3 miles in total length, take samples from a total of seven segments.

(A) Sample the first and last segments removed.

(B) Select the five additional segments according to one of the two following procedures:

(*1*) Assign all segments a unique sequential number. Then select five numbers using a random number table or random number generator. If the random number generator or random number table produces either the first pipe segment, the last pipe segment, or any previously selected segment, select another random number until there are seven different numbers, each corresponding to a different pipe segment.

(*2*) Divide the total number of segments by six. Round the resulting quotient off to the nearest whole number. The resulting number is the interval between the segments you will sample. For example, cut a 2.9 mile section of pipeline into 383 segments of approximately 40 feet each. Sample the first (number 1) and last (number 383) segments. To determine which additional five segments to sample, divide the total number of segments, 383, by 6. Round up the resulting number in this example, 63.8, to the next whole number, 64. Add 64 to the number of each preceding pipe segment five separate times to select five additional pipe segments for sampling. In this example, the first pipe segment has the number 1, add 64 to 1 to select segment 65. Next, add 64 to 65 to select segment 129. Continue in this fashion to select all seven segments: 1, 65, 129, 193, 257, 321, and 383.

(iii) When removing a length of pipe having multiple contiguous segments more than 3 miles in total length for purposes of disposal, take samples of each segment that is ½ mile distant from the segment previously sampled. Sample a minimum of seven segments.

(c) *Selecting the sampling position—length.* Select the sampling position along the length of the pipeline section or pipe segment, as follows:

(1) Take samples at the end upstream of the former gas flow of each segment removed.

(2) If the pipe segment is cut with a torch or other high temperature heat source, take the sample at least 15 cm (6 inches) inside the cut end of the pipe segment.

(3) If the pipe segment is cut with a saw or other mechanical device, take the sample at least 2 cm (1 inch) inside the end of the pipe segment.

(4) If the sample site location selected in the procedure at paragraph (c)(2) or (c)(3) of this section is a porous surface (for example, there is significant corrosion so that the wipe material will be shredded), then move the sample site further inside the pipe segment (away from the end of the pipe or pipe segment) until there is no such porous surface. For purposes of this subpart, natural gas pipe with a thin porous corrosion preventive coating is a non-porous surface.

(5) If there is not a non-porous surface accessible by paragraphs (c)(2) and (c)(3) of this section, use one of the following three options:

(i) Sample the downstream end of the pipe segment using the same sample site location procedure as for the upstream end.

(ii) Select another pipe segment using the random selection procedure described in paragraph (b) of this section.

(iii) If there is no other pipeline section or pipe segment in the population to be sampled and both ends of a pipe segment have porous surfaces at all possible sample collection sites, then assume that the pipe segment contains ≥50 ppm PCB but <500 ppm PCB.

(d) *Selecting the sample position—circumference.* Based on the mark on the top of the pipe segment made prior to removing pipe from the ground or lifting the pipe from its location during former operations, sample the inside center of the bottom of the pipe being sampled. Make sure the sample is centered on the bottom of the pipeline section or pipe segment; that is, sample an equal area on both sides of the middle of the bottom of the pipeline section or pipe segment for the entire length of the sample.

§ 761.250 Sample site selection for pipeline section abandonment.

This procedure is for the sample site selection for a pipeline section to be abandoned, in accordance with § 761.60(b)(5)(i)(B).

(a) *General.* (1) Select sample collection sites in the pipeline section(s) by following the directions in paragraph (b) of this section.

(2) Select the proper sampling position along the pipe by following the directions in § 761.247(d).

(3) Assure, by visual inspection, the absence of free-flowing liquids in the pipe by affirming no liquids at all liquid collection points and all ends of the pipeline section to be abandoned.

(b) *Selection sample collection sites.* At a minimum, sample all ends of all pipeline sections to be abandoned in place.

(1) If the pipeline section to be abandoned is between the pressure side of one compressor station and the suction side of the next compressor station downstream of the former gas flow, at a minimum, sample all ends of the abandoned pipe.

(2) If the pipeline section to be abandoned is longer than the distance between the pressure side of one compressor station and the suction side of the next compressor station downstream of the former gas flow, divide the pipeline section, for purposes of sampling, into smaller pipeline sections no longer than the distance from the pressure side of one compressor station to the suction side of the next compressor station downstream of the former gas flow. Consider each of the smaller sections to be a separate abandonment and sample each one, at a minimum, at all ends.

(3) Use the following procedure to locate representative sample collection sites in pipeline sections at points other than the suction and pressure side of compressor stations, or the ends of the pipeline section to be abandoned.

(i) First, assign a unique identifying sequential number to each kilometer or fraction of a kilometer length of pipe within the entire pipeline section.

(ii) Use a random number table or a random number generator to select each representative sample collection site from a complete list of the sequential identification numbers.

(iii) Samples may be collected by removing any covering soil, cutting the pipe to gain access to the sampling location, and collecting the surface sample with the pipe in place, rather than completely removing the pipeline sections to collect the surface sample.

§ 761.253 Chemical analysis.

(a) Extract PCBs from the standard wipe sample collection medium and clean-up the extracted PCBs in accordance with either Method 3500B/3540C or Method 3500B/3550B from EPA's SW-846, Test Methods for Evaluating Solid Waste, or a method validated under subpart Q of this part. Use Method 8082 from SW-846, or a method validated under subpart Q of this part, to analyze these extracts for PCBs.

(b) Report all PCB sample concentrations in µg/100 cm^2 (16 square inches) of surface sampled. If sampling an area smaller than 100 cm^2, report converted sample concentrations in accordance with § 761.243(b).

§ 761.257 Determining the regulatory status of sampled pipe.

(a) For purposes of removal for disposal of a pipe segment that has been sampled, the sample results for that segment determines its PCB surface concentration. Determine the PCB surface concentration of a segment which was not sampled as follows:

(1) If the unsampled pipe segment is between two pipe segments which have been sampled, assume that the unsampled segment has the same PCB surface concentration as the nearest sampled pipe segment.

(2) If an unsampled pipe segment is equidistant between two pipe segments which have been sampled, assume the PCB surface concentration of the unsampled segment to be the arithmetic mean of the PCB surface concentrations measured in the two equidistant, sampled, pipe segments.

(b) For purposes of abandonment of a pipeline section, assume that the PCB surface concentration for an entire pipeline section is the arithmetic mean of the PCB surface concentrations measured at the ends of the pipeline section. If additional representative samples were taken in a pipeline section, assume that the PCB surface concentration for the entire pipeline section is the arithmetic mean of the concentrations measured in all representative samples taken.

(c) For purposes of removal for disposal under § 761.60(b)(5)(ii)(A)(*1*) or abandonment under § 761.60(b)(5)(i)(B), if the surface PCB concentration of a pipe segment, determined by direct measurement or in accordance with paragraph (a) of this section, or of a pipeline section as determined in accordance with paragraph (b) of this section, is >10 µg/100 cm^2, but <100 µg/100 cm^2, then that segment or section is PCB-Contaminated.

Subpart N—Cleanup Site Characterization Sampling for PCB Remediation Waste in Accordance with § 761.61(a)(2)

§ 761.260 Applicability.

This subpart provides a method for collecting new data for characterizing a PCB remediation waste cleanup site or for assessing the sufficiency of existing site characterization data, as required by § 761.61(a)(2).

§ 761.265 Sampling bulk PCB remediation waste and porous surfaces.

(a) Use a grid interval of 3 meters and the procedures in §§ 761.283 and 761.286 to sample bulk PCB remediation waste that is not in a container and porous surfaces.

(b) Use the following procedures to sample bulk PCB remediation waste that is in a single container.

(1) Use a core sampler to collect a minimum of one core sample for the entire depth of the waste at the center of the container. Collect a minimum of 50 cm^3 of waste for analysis.

(2) If more than one core sample is taken, thoroughly mix all samples into a composite sample. Take a subsample of a minimum of 50 cm^3 from the mixed composite for analysis.

(c) Use the following procedures to sample bulk PCB remediation waste that is in more than one container.

(1) Segregate the containers by type (for example, a 55-gallon drum and a roll-off container are types of containers).

(2) For fewer than three containers of the same type, sample all containers.

(3) For more than three containers of the same type, list the containers and assign each container an unique sequential number. Use a random number generator or table to select a minimum of 10 percent of the containers from the list, or select three containers, whichever is the larger.

(4) Sample the selected container(s) according to paragraph (b) of this section.

§ 761.267 Sampling non-porous surfaces.

(a) Sample large, nearly flat, non-porous surfaces by dividing the surface into roughly square portions approximately 2 meters on each side. Follow the procedures in § 761.302(a).

(b) It is not necessary to sample small or irregularly shaped surfaces.

§ 761.269 Sampling liquid PCB remediation waste.

(a) If the liquid is single phase, collect and analyze one sample. There are no required procedures for collecting a sample.

(b) If the liquid is multi-phasic, separate the phases, and collect and analyze a sample from each liquid phase. There are no required procedures for collecting a sample from each single phase liquid.

(c) If the liquid has a non-liquid phase which is >0.5 percent by total weight of the waste, separate the non-liquid phase from the liquid phase and sample it separately as a non-liquid in accordance with § 761.265.

§ 761.272 Chemical extraction and analysis of samples.

Use either Method 3500B/3540C or Method 3500B/3550B from EPA's SW-846, Test Methods for Evaluating Solid Waste, or a method validated under subpart Q of this part, for chemical

extraction of PCBs from individual and composite samples of PCB remediation waste. Use Method 8082 from SW-846, or a method validated under subpart Q of this part, to analyze these extracts for PCBs.

§ 761.274 Reporting PCB concentrations in samples.

(a) Report all sample concentrations for non-liquid PCBs on a dry weight basis as micrograms of PCBs per gram of sample (ppm by weight). Report surface sampling results as μg/100 cm^2. Divide 100 cm^2 by the surface area and multiply this quotient by the total number of micrograms of PCBs on the surface to obtain the equivalent measurement of micrograms per 100 cm^2.

(b) Report all sample concentrations for liquid PCBs on a wet weight basis as micrograms of PCBs per gram of sample (ppm by weight).

Subpart O—Sampling to Verify Completion of Self-Implementing Cleanup and On-Site Disposal of Bulk PCB Remediation Waste and Porous Surfaces in Accordance with § 761.61(a)(6)

§ 761.280 Application and scope.

Follow the procedures in this subpart when sampling to verify completion of the cleanup for self-implementing, on-site disposal of bulk PCB remediation waste and porous surfaces consistent with the levels of § 761.61(a)(4)(i) and (iii). The objective of this subpart is not to search for new contamination. Confirmation of compliance with the cleanup levels in § 761.61(a)(4) is only verifiable for the area sampled in accordance with this subpart. Do not make conclusions or extrapolations about PCB concentrations outside of the area which has been cleaned up and verified based on the results of this verification sampling.

§ 761.283 Determination of the number of samples to collect and sample collection locations.

This section addresses how to determine the number of samples to collect and sample collection locations for bulk PCB remediation waste and porous surfaces destined to remain at a cleanup site after cleanup.

(a) *Minimum number of samples.* (1) At each separate cleanup site at a PCB remediation waste location, take a minimum of three samples for each type of bulk PCB remediation waste or porous surface at the cleanup site, regardless of the amount of each type of waste that is present. There is no upper limit to the number of samples required or allowed.

(2) This is an example of how to calculate the minimum number of required samples at a PCB remediation waste location. There are three distinct cleanup sites at this example location: a loading dock, a transformer storage lot, and a disposal pit. The minimum number of samples to take appears in parentheses after each type of waste for each cleanup site. The PCB remediation wastes present at the loading dock are concrete (three samples) and clay soil (three samples). The non-liquid PCB remediation wastes present at the transformer storage lot are oily soil (three samples), clay soil (three samples) and gravel (three samples). The PCB remediation wastes present at the disposal pit are sandy soil (three samples), clay soil (three samples), oily soil (three samples), industrial sludge (three samples), and gravel (three samples).

(b) *Selection of sample locations--general.* (1)(i) Use a square-based grid system to overlay the entire area to be sampled. Orient the grid axes on a magnetic north-south line centered in the area and an east-west axis perpendicular to the magnetic north-south axis also centered in the area.

(ii) If the site is recleaned based on the results of cleanup verification conducted in accordance with § 761.61(a)(6), follow the procedures in paragraph (b) of this section for locating sampling points after the recleaning, but reorient the grid axes established in paragraph (b)(1)(i) of this section by moving the origin one meter in the direction of magnetic north and one meter in the direction east of magnetic north.

(2) Mark out a series of sampling points 1.5 meters apart oriented to the grid axes. The sampling points shall proceed in every direction to the extent sufficient to result in a two-dimensional grid completely overlaying the sampling area.

(3) Collect a sample at each point if the grid falls in the cleanup area. Analyze all samples either individually or according to the compositing schemes provided in the procedures at § 761.289. So long as every sample collected at a grid point is analyzed as either an individual sample or as part of a composite sample, there are no other restrictions on how many samples are analyzed.

(c) *Selection of sample locations--small cleanup sites.* When a cleanup site is sufficiently small or irregularly shaped that a square grid with a grid interval of 1.5 meters will not result in a minimum of three sampling points for each type of bulk PCB remediation waste or porous surface at the cleanup site, there are two options.

(1) Use a smaller square grid interval and the procedures in paragraph (b) of this section.

(2) Use the following coordinate-based random sampling scheme. If the site is recleaned based on the results of cleanup verification conducted in accordance with § 761.61(a)(6), follow the procedures in this section for locating sampling points after the recleaning, but select three new pairs of sampling coordinates.

(i) Beginning in the southwest corner (lower left when facing magnetic north) of the area to be sampled, measure in centimeters (or inches) the maximum magnetic north-south dimension of the area to be sampled. Next, beginning in the southwest corner, measure in centimeters (or inches) the maximum magnetic east-west dimension of the area to be sampled. Designate the north-south and east-west dimensions (describing the west and south boundaries, respectively, of the area to be sampled), as the reference axes of a square-based grid system.

(ii) Use a random number table or random number generator to select a pair of coordinates that will locate the sample within the area to be sampled. The first coordinate in the pair is the measurement on the north-south axis. The second coordinate in the pair is the measurement on the east-west axis. Collect the sample at the intersection of an east-west line drawn through the measured spot on the north-south axis, and a north-south line drawn through the measured spot on the east-west axis. If the cleanup site is irregularly shaped and this intersection falls outside the cleanup site, select a new pair of sampling coordinates. Continue to select pairs of sampling coordinates until three are selected for each type of bulk PCB remediation waste or porous surface at the cleanup site.

(d) *Area of inference.* Analytical results for an individual sample point apply to the sample point and to an area of inference extending to four imaginary lines parallel to the grid axes and one half grid interval distant from the sample point in four different directions. The area of inference forms a square around the sample point. The sides of the square are parallel to the grid axes and one grid interval in length. The sample point is in the center of the square area of inference. The area of inference from a composite sample is the total of the areas of the individual samples included in the composite.

§ 761.286 Sample size and procedure for collecting a sample.

At each selected sampling location for bulk PCB remediation waste or porous surfaces, collect at least 20 milliliters of waste, or a portion of sufficient weight for the chemical analyst to measure the concentration of PCBs and still have sufficient analytical detection sensitivity to reproducibly measure PCBs at the levels designated in § 761.61(a)(4). Use a core sampler having a diameter ≥2 cm and ≤3 cm. Collect waste to a maximum depth of 7.5 cms.

§ 761.289 Compositing samples.

Compositing is a method of combining several samples of a specific type of bulk PCB remediation waste or porous surface from nearby locations for a single chemical analysis. There are two procedures for compositing bulk PCB remediation waste samples. These procedures are based on the method for selecting sampling site locations in § 761.283(b) and (c). The single chemical analysis of a composite sample results in an averaging of the concentrations of its component samples. The area of inference of a composite is determined by the area of inference of each of its component samples as described in § 761.283(d). Compositing is not mandatory. However, if compositing is used, it must be performed in accordance with the following procedures.

(a) *Compositing in the field or in a laboratory.* Compositing may occur either in the field or in a laboratory. Prepare composite samples using equal volumes of each constituent or component sample. Composited samples must be from the same type of bulk PCB remediation waste or porous surface (see the example at § 761.283(a)(2)). Mix composite samples thoroughly. From each well-mixed composite sample, take a portion of sufficient weight for the chemical analyst to measure the concentration of PCBs and still have sufficient analytical detection sensitivity to reproducibly measure PCBs at the levels designated in § 761.61(a)(4).

(b)(1) *Compositing from samples collected at grid points in accordance with § 761.283(b).* There are two kinds of composite sampling procedures depending on the original source of contamination of the site.

(i) The first procedure is for sites with multiple point sources of contamination (such as an old electrical equipment storage area, a scrap yard, or repair shop) or for unknown sources of contamination. Under this compositing scheme, composite a maximum of nine samples for each type of bulk PCB remediation waste or porous surface at the cleanup site. The maximum dimensions of the area enclosing a nine grid point composite is two grid intervals bounded by three collinear grid points (3.0 meters or approximately 10 feet long). Take all samples in the composite at the same depth. Assure that composite sample areas and individually analyzed samples completely overlay the cleanup site.

(ii) The second procedure is for a single point source of contamination, such as discharge into a large containment area (e.g., pit, waste lagoon, or evaporation pond), or a leak onto soil from a single drum or tank. Single point source contamination may be from a one-time or continuous contamination. Composites come from two stages: an initial compositing area centered in the area to be sampled, and subsequent compositing areas forming concentric square zones around the initial compositing area. The center of the initial compositing area and each of the subsequent compositing areas is the origin of the grid axes.

(A) *Definition of the initial compositing area.* The initial compositing area is based on a square that contains nine grid points, is centered on the grid origin, and has sides two grid intervals long. The initial compositing area has the same center as this square and sides one half a grid interval more distant from the center than the square. The initial compositing area has sides three grid intervals long.

(B) *Definition of subsequent compositing areas.* Subsequent composite sampling areas are in concentric square zones one grid interval wide around the initial compositing area and around each successive subsequent compositing area. The inner boundary of the first subsequent compositing area is the outer boundary of the initial compositing area. The outer boundary of the first subsequent compositing area is centered on the grid origin, has sides one grid interval more distant from the grid origin than the inner boundary, and is two grid intervals longer on a side than the inner boundary. The inner boundary of each further subsequent compositing area is the outer boundary of the previous subsequent compositing area. The outer boundary of each further subsequent compositing area is centered on the grid origin, has sides one grid interval more distant from the grid origin than the inner boundary, and is two grid intervals longer on a side than the inner boundary.

(C) *Taking composite samples from the initial and subsequent compositing areas.* (1) Select composite sampling areas from the initial compositing area and subsequent compositing areas such that all grid points in the initial compositing area and subsequent compositing areas are part of a composite or individual sample.

(2) A person may include in a single composite sample a maximum of all nine grid points in the initial compositing area. The maximum number of grid points in a composite sample taken from a subsequent compositing area is eight. These eight grid points must be adjacent to one another in the subsequent compositing area, but need not be collinear.

(2) *Compositing from samples taken at grid points or pairs of coordinates in accordance with § 761.283(c).* Samples collected at small sites are based on selecting pairs of coordinates or using the sample site selection procedure for grid sampling with a smaller grid interval.

(i) *Samples collected from a grid having a smaller grid interval.* Use the procedure in paragraph (b)(1)(i) of this section to composite samples and determine the area of inference for composite samples.

(ii) *Samples collected from pairs of coordinates.* All three samples must be composited. The area of inference for the composite is the entire area sampled.

§ 761.292 Chemical extraction and analysis of individual samples and composite samples.

Use either Method 3500B/3540C or Method 3500B/3550B from EPA's SW-846, Test Methods for Evaluating Solid Waste, or a method validated under subpart Q of this part, for chemical extraction of PCBs from individual and composite samples of PCB remediation waste. Use Method 8082 from SW-846, or a method validated under subpart Q of this part, to analyze these extracts for PCBs.

§ 761.295 Reporting and recordkeeping of the PCB concentrations in samples.

(a) Report all sample concentrations for bulk PCB remediation waste and porous surfaces on a dry weight basis and as micrograms of PCBs per gram of sample (ppm by weight).

(b) Record and keep on file for 3 years the PCB concentration for each sample or composite sample.

§ 761.298 Decisions based on PCB concentration measurements resulting from sampling.

(a) For grid samples which are chemically analyzed individually, the PCB concentration applies to the area of inference as described in § 761.283(d).

(b) For grid samples analyzed as part of a composite sample, the PCB concentration applies to the area of inference of the composite sample as described in § 761.283(d) (i.e., the area of inference is the total of the areas of the individual samples included in the composite).

(c) For coordinate pair samples analyzed as part of a composite sample, in accordance with §§ 761.283(c)(2) and 761.289(b)(2)(ii), the PCB concentration applies to the entire cleanup site.

Subpart P—Sampling Non-Porous Surfaces for Measurement-Based Use, Reuse, and On-Site or Off-Site Disposal under § 761.61(a)(6) and Decontamination under § 761.79(b)(3)

§ 761.300 Applicability.

This subpart provides sample site selection procedures for large, nearly flat non-porous surfaces, and for small or irregularly shaped non-porous surfaces. This subpart also provides procedures for analyzing the samples and interpreting the results of the sampling. Any person verifying completion of self-implementing cleanup and on-site disposal of non-porous surfaces under § 761.61(a)(6), or verifying that decontamination standards under § 761.79(b)(3) are met, must use these procedures.

§ 761.302 Proportion of the total surface area to sample.

(a) *Large nearly flat surfaces.* Divide the entire surface into approximately 1 meter square portions and mark the portions so that they are clearly identified. Determine the sample location in each portion as directed in § 761.304.

(1) For large nearly flat surfaces contaminated by a single source of PCBs with a uniform concentration, assign each 1 meter square surface a unique sequential number.

(i) For three or fewer 1 meter square areas, sample all of the areas.

(ii) For four or more 1 meter square areas, use a random number generator or table to select a minimum of 10 percent of the areas from the list, or to select three areas, whichever is more.

(2) For other large nearly flat surfaces, sample all of the one meter square areas.

(b) *Small or irregularly shaped surfaces.* For small surfaces having irregular contours, such as hand tools, natural gas pipeline valves, and most exterior surfaces of machine tools, sample the entire surface. Any person may select sampling locations for small, nearly flat surfaces in accordance with § 761.308 with the exception that the maximum area in § 761.308(a) is <1 meter square.

(c) *Preparation of surfaces.* Drain all free-flowing liquids from surfaces and brush off dust or loose grit.

§ 761.304 Determining sample location.

(a) For 1 square meter non-porous surface areas having the same size and shape, it is permissible to sample the same 10 cm by 10 cm location or position in each identical 1 square meter area. This location or position is determined in accordance with § 761.306 or § 761.308.

(b) If some 1 square meter surfaces for a larger non-porous surface area have different sizes and shapes, separately select the 10 cm by 10 cm sampling position for each different 1 square meter surface in accordance with § 761.308.

(c) If non-porous surfaces have been cleaned and the cleaned surfaces do not meet the applicable standards or levels, surfaces may be recleaned and resampled. When resampling surfaces previously sampled to verify cleanup levels, use the sampling procedures in §§ 761.306 through 761.316 to resample the surfaces. If any sample site selected coincides with a previous sampling site, restart the sample selection process until all resampling sites are different from any previous sampling sites.

§ 761.306 Sampling 1 meter square surfaces by random selection of halves.

(a) Divide each 1 meter square portion where it is necessary to collect a surface wipe test sample into two equal (or as nearly equal as possible) halves. For example, divide the area into top and bottom halves or left and right halves. Choose the top/bottom or left/right division that produces halves having as close to the shape of a circle as possible. For example, a square is closer to the shape of a circle than is a rectangle and a rectangle having a length to width ratio of 2:1 is closer to the shape of a circle than a rectangle having a length to width ratio of 3:1.

(b) Assign a unique identifier to each half and then select one of the halves for further sampling with a random number generator or other device (i.e., by flipping a coin).

(c) Continue selecting progressively smaller halves by dividing the previously selected half, in accordance with paragraphs (a) and (b) of this section, until the final selected half is larger than or equal to 100 cm^2 and smaller than 200 cm^2.

(d) Perform a standard PCB wipe test on the final selected halves from each 1 meter square portion.

(e) The following is an example of applying sampling by halves. Assume that the area to sample is a 1 meter square surface area (a square that has sides 1 meter long). Assign each half to one face of a coin. After flipping the coin, the half assigned to the face of the coin that is showing is the half selected.

(1) Selecting the first half:

(i) For a square shape the top/bottom halves have the same shape as the left/right halves when compared to a circle, i.e., regardless of which way the surface is divided, each half is 1 half meter wide by 1 meter long. Therefore, divide the area either top/bottom or left/right. For selecting the first half, this example will select from left/right halves.

(ii) A coin flip selects the left half. The dimensions of this selected surface area are 1 meter high and ½ meter wide.

(2) Selecting the second half:

(i) If the next selection of halves was left/right, the halves would be rectangles four times as long as they are wide (¼ meter wide and 1 meter high). Halves selected from top/bottom would be square (½ meter on a side). Therefore, select the next halves top/bottom, because the shape of the top/bottom halves (square) is closer to the shape of a circle than the shape of the left/right halves (long narrow rectangles).

(ii) A coin flip selects the top half. The dimensions of this selected surface area are ½ meter high and ½ meter wide.

(3) Selecting the third half:

(i) Just as for the selection of the first half, which divided the original square area, both the left/right and the top/bottom halves have the same shape when compared to a circle (both are rectangles having the same dimensions). Therefore, choose either left/right or top/bottom halves. This example will select from left/right halves.

(ii) A coin flip selects the right half. The dimensions of this selected surface are ¼ meter by ½ meter.

(4) Selecting the fourth half:

(i) If the next selection of halves was left/right, the halves would be rectangles four times as long as they are wide (⅛ meter wide and ½ meter high. Halves selected from top/bottom would be square (¼ meter on a side). Therefore, select the next halves top/bottom, because the shape of the top/bottom halves (square) are closer to the shape of a circle than the shape of the left/right halves (long narrow rectangles).

(ii) A coin flip selects the bottom half. The dimensions of this selected surface area are ¼ meter high and ¼ meter wide.

(5) Selecting the fifth half:

(i) Just as for the selection of the first and third halves, both the left/right and the top/bottom halves have the same

shape when compared to a circle (both are rectangles having the same dimensions). Therefore, choose either left/right or top/bottom halves. This example will select from left/right halves.

(ii) A coin flip selects the right half. The dimensions of the selected surface are ⅛ meter by ¼ meter.

(6) Selecting the sixth half:

(i) If the next selection of halves was left/right, the halves would be rectangles four times as long as they are wide (⅛ meter wide and ¼ meter high. Halves selected from top/bottom would be square (⅛ meter on a side). Therefore, select the next halves top/bottom, because the shape of the top/bottom halves (square) are closer to the shape of a circle than the shape of the left/right halves (long narrow rectangles).

(ii) A coin flip selects the top half. The dimensions of this selected surface are ⅛ meter high and ⅛ meter wide or 12.5 cm by 12.5 cm.

(7) Collect a standard wipe test sample in the sixth half. Since the dimensions of half of the sixth half would be 12.5 cm by 6.25 cm, the area (approximately 78 cm^2) would be less than the required 100 cm^2 minimum area for the standard wipe test. Therefore, no further sampling by halves is necessary. Take the standard wipe test samples of the entire selected sixth half.

§ 761.308 Sample selection by random number generation on any two-dimensional square grid.

(a) Divide the surface area of the non-porous surface into rectangular or square areas having a maximum area of 1 square meter and a minimum dimension of 10 centimeters.

(b) Measure the length and width, in centimeters, of each area created in paragraph (a) of this section. Round off the number of centimeters in the length and the width measurements to the nearest centimeter.

(c) For each 1 square meter area created in accordance with paragraph (a) of this section, select two random numbers: one each for the length and width borders measured in paragraph (b) of this section. An eligible random number can be from zero up to the total width, minus 10 centimeters.

(d) Locate the 10 centimeter by 10 centimeter sample.

(1) Orient the 1 square meter surface area so that, when you are facing the area, the length is left to right and the width is top to bottom. The origin, or reference point for measuring selected random numbers of centimeters to the sampling area, is on the lower left corner when facing the surface.

(2) Mark the random number selected for the length distance, in centimeters, from the origin to the right (at the bottom of the area away from the origin).

(3) From the marked length distance on the bottom of the area, move perpendicularly up from the bottom of the area into the area for the distance randomly selected for the width.

(4) Use the point determined in paragraph (d)(3) of this section as the lower left corner of the 10 centimeter by 10 centimeter sample.

§ 761.310 Collecting the sample.

Use the standard wipe test as defined in § 761.123 to sample one 10 centimeter by 10 centimeter square (100 cm^2) area to represent surface area PCB concentrations of each square meter or fraction of a square meter of a nearly flat, non-porous surface. For small surfaces, use the same procedure as for the standard wipe test, only sample the entire area, rather than 10 centimeter by 10 centimeter squares.

§ 761.312 Compositing of samples.

For a surface originally contaminated by a single source of PCBs with a uniform concentration, it is permissible to composite surface wipe test samples and to use the composite measurement to represent the PCB concentration of the entire surface. Composite samples consist of more than one sample gauze extracted and chemically analyzed together resulting in a single measurement. The composite measurement represents an arithmetic mean of the composited samples.

(a) *Compositing samples from surfaces to be used or reused.* For small or irregularly shaped surfaces or large nearly flat surfaces, if the surfaces are contaminated by a single source of PCBs with a uniform concentration, composite a maximum of three adjacent samples.

(b) *Compositing samples from surfaces to be disposed of off-site or on-site.* (1) For small or irregularly shaped surfaces, composite a maximum of three adjacent samples.

(2) For large nearly flat surfaces, composite a maximum of 10 adjacent samples.

§ 761.314 Chemical analysis of standard wipe test samples.

Perform the chemical analysis of standard wipe test samples in accordance with § 761.272. Report sample results in micrograms per 100 cm^2.

§ 761.316 Interpreting PCB concentration measurements resulting from this sampling scheme.

(a) For an individual sample taken from an approximately 1 meter square portion of the entire surface area and not composited with other samples, the status of the portion is based on the surface concentration measured in that sample. If the sample surface concentration is not equal to or lower than the cleanup level, by inference the entire 1 meter area, and not just the immediate area where the sample was taken, is not equal to or lower than the cleanup level.

(b) For areas represented by the measurement results from compositing more than one 10 centimeter by 10 centimeter sample, the measurement for the composite is the measurement for the entire area. For example, when there is a composite of 10 standard wipe test samples representing 9.5 square meters of surface area and the result of the analysis of the composite is 20 µg/100 cm^2, then the entire 9.5 square meters has a PCB surface concentration of 20 µg/100 cm^2, not just the area in the 10 cm by 10 cm sampled areas.

(c) For small surfaces having irregular contours, where the entire surface was sampled, measure the surface area. Divide 100 cm^2 by the surface area and multiply this quotient by the total number of micrograms of PCBs on the surface to obtain the equivalent measurement of micrograms per 100 cm^2.

Subpart Q—Self-Implementing Alternative Extraction and Chemical Analysis Procedures for Non-liquid PCB Remediation Waste Samples

§ 761.320 Applicability.

This subpart describes self-implementing comparison testing requirements for chemical extraction and chemical analysis methods used as an alternative to the methods required in §§ 761.272 or 761.292. Any person conducting comparison testing under this subpart must comply with the requirements of § 761.80(i), including notification. Use alternative methods only after successful completion of these comparison testing requirements and after documentation of the results of the testing.

§ 761.323 Sample preparation.

(a) The comparison study requires analysis of a minimum of 10 samples weighing at least 300 grams each. Samples of PCB remediation waste used in the comparison study must meet the following three requirements.

(1) The samples must either be taken from the PCB remediation waste at the

cleanup site, or must be the same kind of material as that waste. For example, if the waste at the cleanup site is sandy soil, you must use the same kind of sandy soil in the comparison study. Do not use unrelated materials such as clay soil or dredged sediments in place of sandy soil.

(2) PCB remediation waste may contain interferences which confound or hamper sample extraction and chemical analysis. These interferences may be from chemicals or other attributes preexisting in the waste material, resulting from the PCB contamination source, or resulting from treatment to remove or destroy PCBs. Comparison study samples must also contain these interfering materials to demonstrate successful analysis in their presence. For example, a PCB remediation waste may have been co-disposed with chlorobenzene solvents or chlorinated pesticides. These chlorinated compounds would have to be present in the comparison study compounds at the same levels found, or at the highest levels expected to be found, in the PCB remediation waste. As another example, for PCB remediation waste which had been solvent washed with liquid amines to remove PCBs, comparison study samples would have to contain concentrations of these amines at the same levels found, or at the highest levels expected to be found, in the PCB remediation waste.

(b) Prior to initiating the comparison study, confirm the following PCB concentrations in the comparison study samples using the methods specified in § 761.292. All samples of non-liquid PCB remediation waste must have PCB concentrations between 0.1 and 150 ppm.

(1) A minimum of three comparison study samples must have PCB concentrations above the cleanup level specified for the site in § 761.61(a)(4) and a minimum of three comparison study samples must have PCB concentrations below the specified cleanup level.

(2) At least one comparison study sample must have a PCB concentration ≥90 percent and ≤100 percent of the cleanup level.

(3) At least one comparison study sample must have a PCB concentration ≥100 percent and ≤110 percent of the cleanup level.

(c) If the comparison study samples do not have the concentrations or concentration ranges required by paragraph (b) of this section, for purposes of use in this chemical extraction and chemical analysis comparison study, a person may adjust PCB concentrations by dilution. Any excess material resulting from the preparation of these samples, which is not used as an analytical sample, is regulated as the PCB concentration in the component having the highest PCB concentration of the component materials in the sample.

§ 761.326 Conducting the comparison study.

Extract or analyze the comparison study samples using the alternative method. For an alternative extraction method or alternative analytical method to be comparable to the methods required in § 761.292, all of the following conditions must be met.

(a) All samples having PCB concentrations greater than or equal to the level of concern, as measured by the methods required in § 761.292, are found to be greater than or equal to the level of concern as measured by the alternative method (no false negatives).

(b) Only one sample which contains PCBs at a level less than the level of concern, as measured by the methods required in § 761.292, is found to have a PCB concentration greater than the level of concern as measured by the alternative method (false positive); and all other samples which contain PCBs at levels less than the level of concern, as measured by the methods required in § 761.292, are found by the alternative method to have PCBs less than the level of concern (there are no additional false positives).

Subpart R—Sampling Non-Liquid, Non-Metal PCB Bulk Product Waste for Purposes of Characterization for PCB Disposal in Accordance With § 761.62, and Sampling PCB Remediation Waste Destined for Off-Site Disposal, in Accordance With § 761.61

§ 761.340 Applicability.

Use the procedures specified in this subpart to sample the following types of waste when it is necessary to analyze the waste to determine PCB concentration or leaching characteristics for storage or disposal.

(a) Existing accumulations of non-liquid, non-metal PCB bulk product waste.

(b) Non-liquid, non-metal PCB bulk product waste from processes that continuously generate new waste.

(c) Non-liquid PCB remediation waste from processes that continuously generate new waste, that will be sent off-site for disposal.

§ 761.345 Form of the waste to be sampled.

PCB bulk product waste and PCB remediation waste destined for off-site disposal must be in the form of either flattened or roughly conical piles. This subpart also contains a procedure for contemporaneous sampling of waste as it is being generated.

§ 761.346 Three levels of sampling.

To select a sample of the waste and prepare it for chemical extraction and analysis, there are three required levels of random sampling.

(a) First, select a single 19-liter (5 gallon) portion from a composite accumulated either contemporaneously with the generation of the waste or by sampling an existing pile of waste. Collection procedures for the first level of sampling from existing piles of waste are in § 761.347. Collection procedures for the first level of sampling from a contemporaneous generation of waste are in § 761.348. Compositing requirements and requirements for the subsampling of composite samples to result in a single 19-liter sample are in § 761.350. Send the 19-liter sample to the laboratory for the second and third levels of sampling, including particle size reduction for leach testing and drying as required by § 761.1(b)(4).

(b) Second, at the laboratory, select one quarter of the 19-liter sample. Procedures the laboratory must use for this second level of sample selection appear in § 761.353.

(c) Third, select a 100 gram subsample from the second level subsample. Procedures the laboratory must use for this third level of sample selection appear in § 761.355.

§ 761.347 First level sampling—waste from existing piles.

(a) *General.* Sample piles that are either specifically configured for sampling (see paragraph (b) of this section) or that are of conical shape (see paragraph (c) of this section). If sampling from either of these shapes is not possible, conduct contemporaneous sampling, in accordance with the procedures in § 761.348, or obtain the approval of the Regional Administrator for an alternate sampling plan in accordance with § 761.62(c).

(b) *Specifically configured piles.* A specifically configured pile is a single flattened pile in the shape of a square or rectangle having no restrictions on length or width but restricted to 30 cm (1 foot) in depth. A square shaped pile facilitates sampling site selection for the first level sample. Select eight 19-liter samples from the pile and composite them into one 19-liter sample as follows:

(1) Divide the pile into quarters.

(2) Divide each of the quarter sections into quarters (i.e., into sixteenths of the original pile).

(3) Select two sixteenths from each of the four quarters, according to one of the two following options:

(i) Randomly select the two sixteenths from one quarter and sample the sixteenths occupying the same positions in each of the other three quarters.

(ii) Randomly select two sixteenths from each of the four quarters (i.e., perform a random selection four different times).

(4) At this point the eight selected sixteenths undergo further division and sample selection. Divide each of the eight selected sixteenths into four equal parts. Using a random number generator or random number table, select one of the four equal parts from each of the eight equal areas. If each of the four equal parts has a volume >76 liters when projected downwards 30 cm, continue to divide each selected area into four equal parts, and select one of the parts, until each selected area has a volume of <76 liters but ≥19 liters. When projected to a depth of 30 cm, a square having a 25 cm side or a circle having a diameter of approximately 28.5 cm equals a volume of approximately 19 liters. The volume of 76 liters is equal to the volume enclosed by a square having a side of 50 cm (or other shape having an area of 250 cm^2) projected to a depth of 30 cm.

(5) Take one sample of approximately 19 unsorted liters of waste from each of the eight selected areas. Place each sample into a separate 19-liter container, allowing only sufficient space at the top of the container to secure the lid.

(6) Composite the eight 19-liter samples in accordance with § 761.350.

(c) *Conical-shaped piles.* If it is necessary to sample a pile which is too large to be spread on the site to a uniform thickness of 1 foot or 30 cm, or if there are too many piles to spread out in the space available, use the following procedure to sample the piles. This procedure assumes that the shape of the piles is analogous to a cone; that is, having a circular base with PCB bulk product waste or PCB remediation waste destined for off-site disposal stacked up uniformly to a peak that is a point centered above the center of the circular base. Collect eight 19-liter samples as follows:

(1) *Collecting samples from more than one pile.* If the PCB bulk product waste or PCB remediation waste consists of more than one pile or container, assign each pile or container an integer number and then generate seven random integer numbers to select the piles from which you will collect samples. It is possible that this random selection procedure will result in selecting the same pile number more than once, even if seven or more piles are present. If so, sample the pile once and restart the sampling collection process to collect additional samples. Do not collect multiple samples from the same location in the pile.

(2) *Collecting samples from a single pile.* If only one pile or container is present, collect all eight samples from the same pile.

(3) *Setting up the sample site selection system from a pile.* Locate a sample in a pile by the use of three parameters: a particular radial direction, "r," from the peak at the center of the pile to the outer edge at the base of the pile; a point, "s," along that radial direction between the peak of the pile and the outer edge of the base of the pile; and a depth, "t", beneath point "s." The top of the sample material will be below depth *t*, at point *s*, on radius *r*. Use a rod, dowel, stake, or broom handle as a marker. Nail or otherwise fasten to the top of the marker two pieces of string or cord of sufficient length and strength to reach from the top of the marker at the top of the pile to the farthest peripheral edge at the bottom of the pile, when the marker is positioned at the top or apex of the pile. Pound or push the marker into the top center (apex) of the pile, downward toward the center of the base. Insert the marker for at least 30 cm or one foot until the marker is rigidly standing on its own, even when the cord is pulled tight to the bottom peripheral edge of the pile. Ensure that the marker protrudes from the top of the pile sufficiently to allow the strings to move easily around the pile when they are pulled tight. Select the three parameters and the sampling location as follows:

(i) Determine the radial component (r) of the location for each sample.

(A) Tie to a stake or otherwise fasten one of the strings at "b," the bottom of the pile, as a reference point for finding *r*.

(B) Measure the circumference "c," the distance around the bottom of the pile. Determine *r* from *b* in one of two ways:

(*1*) Multiply *c* by a randomly generated fraction or percentage of one.

(*2*) Select a random number between one and the total number of centimeters in *c*.

(C) Locate *r* by starting at *b*, the place where the fixed string meets the base of the pile, and travel clockwise around the edge of the pile at the base for the distance you selected in paragraph (c)(3)(iii) of this section.

(D) Fasten the second string at the selected distance. The second string marks the first parameter *r*.

(ii) Determine the second parameter *s* of the location for each sample.

(A) Measure the distance, *l*, along the string, positioned in paragraph (c)(3)(i)(D) of this section, from the top to the bottom of the pile at the selected radial distance *r*. Determine the distance *s* from *l* in one of two ways:

(*1*) Multiply *l* by a randomly generated fraction or percentage of one.

(*2*) Select a random number between one and the total number of centimeters in *l*.

(B) Mark, for example by placing a piece of tape on the string positioned according to paragraph (c)(3)(i)(D) of this section, the distance *s*, up from the bottom of the pile on the string at *r*.

(iii) Determine the third and final parameter *t* of the location for each sample.

(A) Mark and number 1 cm intervals from one end of a rigid device, for example a rod, dowel, stake, or broom handle, for measuring the distance from the top of the pile to the bottom at the point *s* selected in paragraph (c)(3)(ii)(B) of this section. The marked and numbered device shall be of sufficient strength to be forced down through the maximum depth of the pile and sufficient length to measure the depth of the waste in the pile at any point.

(B) Take the measuring device, constructed according to paragraph (c)(3)(iii)(A) of this section, and at position s, push the end of the device marked with zero straight down into the pile until it reaches the bottom of the pile or ground level. The vertical distance "v" is the number of centimeters from the surface of the pile at point *s* on the string to the bottom of the pile or ground level. Read the distance *v* on the measuring device at the surface of the pile. From the distance *v*, determine *t*, in one of two ways:

(*1*) Randomly generate a fraction of one and multiply the fraction times *v*.

(*2*) Select a random number between zero and the total number of centimeters of the vertical distance *v*.

(iv) Dig a hole straight down into the pile for *t* centimeters (inches) from the surface of the pile at *s*.

(v) At depth *t*, directly under the s mark on the string, outline the top of the sample container and collect (shovel) all waste under the outline in the following order of preference in paragraphs (c)(3)(v)(A) through (c)(3)(v)(C) of this section. It is possible that some of the eight sampling locations will not provide 19 liters of sample.

(A) For a depth of 30 cm.

(B) Until the container is full.

(C) Until the ground level is reached.

(d) *Compositing the samples.* Composite the eight 19-liter samples and subsample in accordance with § 761.350. Send the subsample to a laboratory for further sampling as described in §§ 761.353 and 761.355 and for chemical extraction and analysis. If there is insufficient sample for a 19-liter sample from the composite sample composed of the eight iterations of sample site selection, according to the procedures in paragraphs (c)(3)(i) through (c)(3)(v) of this section, select additional sample sites, collect additional samples and composite the additional waste in the samples until a minimum of 19 liters is in the composite.

§ 761.348 Contemporaneous sampling.

Contemporaneous sampling is possible when there is active generation of waste and it is possible to sample the waste stream as it is generated. Collect eight 19-liter samples as follows.

(a) Collect each sample by filling a 19-liter (5 gallon) container at a location where the PCB bulk product waste is released from the waste generator onto a pile or into a receptacle container before the waste reaches the pile or receptacle container.

(b) Determine a sample collection start time using a random number generator or a random number table to select a number between 1 and 60. Collect the first sample at the randomly selected time in minutes after start up of the waste output, or if the waste is currently being generated, after the random time is selected. For example, if the randomly selected time is 35, begin collection 35 minutes after the start up of waste generation. Similarly, if waste output is ongoing and the random start determination occurred at 8:35 a.m., collect the first sample at 9:10 a.m. (35 minutes after the random start determination).

(c) Collect seven more samples, one every 60 minutes after the initial sample is collected. If the waste output process stops, stop the 60–minute interval time clock. When the process restarts, restart the 60–minute interval time clock and complete the incomplete 60–minute interval.

(d) Composite the eight 19-liter samples and subsample in accordance with § 761.350.

§ 761.350 Subsampling from composite samples.

(a) *Preparing the composite.* Composite the samples (eight from a flattened pile; eight or more from a conical pile; eight from waste that is continuously generated) and select a 19-liter subsample for shipment to the chemical extraction and analysis laboratory for further subsampling. There are two options for the preparation of the composite:

(1) *Option one.* Place all of the contents of all 19-liter samples that you collected into a 209 liter (55 gallon) drum or similar sized, cylinder-shaped container. Completely close the container, and roll it 10 or more complete revolutions to mix the contents.

(2) *Option two.* Add the 19-liter samples one at a time to a 209 liter (55 gallon) drum. Between the addition of each 19-liter sample, stir the composite using a broom handle or similar long, narrow, sturdy rod that reaches the bottom of the container. Stir the mixture for a minimum of 10 complete revolutions of the stirring instrument around the container at a distance approximately half way between the outside and center of the container.

(b) *Selecting a 19-liter subsample from the composite.* Once the composite is mixed, pour the mixture of waste out on a plastic sheet and either divide it into 19-liter size piles or make one large pile.

(1) From 19-liter sized piles, use a random number generator or random number table to select one of the piles.

(2) From one large pile, flatten the pile to a depth of 30 cm and divide it into 4 quarters of equal size. Use a random number generator or random number table to select one quarter of the pile. Further divide the selected quarter pile into 19-liter portions and use a random number generator or random number table to select one 19-liter portion. A square having a 25 cm side or a circle having a diameter of approximately 28.5 cm when projected downwards 30 cm equals approximately 19 liters.

(c) *Transferring the sample to the analytical laboratory.* Place the selected 19-liter subsample in a container, approved for shipment of the sample, to the chemical extraction and analysis laboratory, for the next step in sample selection in accordance with § 761.353.

§ 761.353 Second level of sample selection.

The second level of sample selection reduces the size of the 19-liter subsample that was collected according to either § 761.347 or § 761.348 and subsampled according to § 761.350. The purpose of the sample size reduction is to limit the amount of time required to manually cut up larger particles of the waste to pass through a 9.5 millimeter (mm) screen.

(a) *Selecting a portion of the subsample for particle size reduction.* At the chemical extraction and analysis laboratory, pour the 19-liter subsample onto a plastic sheet or into a pan and divide the subsample into quarters. Use a random number generator or random number table to select one of these quarters.

(b) *Reduction of the particle size by the use of a 9.5 mm screen.* Collect the contents of the selected quarter of waste resulting from conducting the procedures in paragraph (a) of this section and shake the waste in a 9.5 mm screen. Separate the waste material which passes through the screen from the waste material which does not pass through the screen. Manually cut or otherwise reduce the size of all parts of the waste portion which did not pass through the 9.5 mm screen, such that each part of the waste shall pass through the 9.5 mm screen by shaking.

(c) Drying the reduced particle size waste. Dry all of the waste portion resulting from conducting the procedures in paragraph (b) of this section, from 10 to 15 hours in a drying oven at 100 °C. Allow the dried waste to cool to room temperature.

(d) *Mixing the dried waste.* Place all of the waste resulting from conducting the procedures in paragraph (c) of this section in a 19-liter pail or similarly sized, cylinder-shaped container. Mix the dried material according to one of the two following options:

(1) *First mixing option.* Completely close the container and roll the container a minimum of 10 complete revolutions to mix the contents.

(2) *Second mixing option.* Use a sturdy stirring rod, such as a broom handle or other device that reaches the bottom of the container, to stir the waste for a minimum of 10 complete revolutions around the container at a distance approximately half way between the outside and the center of the container.

§ 761.355 Third level of sample selection.

The third level of sample selection further reduces the size of the subsample to 100 grams which is suitable for the chemical extraction and analysis procedure.

(a) Divide the subsample resulting from conducting the procedures in § 761.353 of this part into 100 gram portions.

(b) Use a random number generator or random number table to select one 100 gram size portion as a sample for a procedure used to simulate leachate generation.

(c) Dry the 100 gram sample, selected after conducting the procedure in paragraph (b) of this section, for 10 to 15 hours in a drying oven at 100 °C and

cool it to the analytical laboratory room temperature before analysis using a procedure used to simulate leachate generation. This sample was dried previously in the larger quantity sample at the second level of sampling (§ 761.353(c)) and is dried a second time here (in the third level of sample selection). This dried and cooled sample must weigh at least 50 grams.

(d) If the dried and cooled sample weighs <50 grams, select additional 100 gram portions of sample one at a time by repeating the directions in paragraph (b) and (c) of this section, and add each additional 100 gram portion of sample to the first 100 gram portion until at least 50 grams of dried material is in the sample to be analyzed using a procedure used to simulate leachate generation.

§ 761.356 Conducting a leach test.

No method is specified as a procedure used to simulate leachate generation.

§ 761.357 Reporting the results of the procedure used to simulate leachate generation.

Report the results of the procedure used to simulate leachate generation as micrograms PCBs per liter of extract from a 100 gram sample of dry bulk product waste. Divide 100 grams by the grams in the sample and multiply this quotient by the number of micrograms PCBs per liter of extract to obtain the equivalent measurement from a 100 gram sample.

§ 761.358 Determining the PCB concentration of samples of waste.

Use either Method 3500B/3540C or Method 3500B/3550B from EPA's SW-846, Test Methods for Evaluating Solid Waste, or a method validated under subpart Q of this part, for chemical extraction of PCBs from individual and composite samples of PCB bulk product waste. Use Method 8082 from SW-846, or a method validated under subpart Q of this part, to analyze these extracts for PCBs.

§ 761.359 Reporting the PCB concentrations in samples.

Report all sample concentrations as ppm by weight on a dry weight basis.

Subpart S—Double Wash/Rinse Method for Decontaminating Non-Porous Surfaces

§ 761.360 Background.

The double wash/rinse procedure is used to quickly and effectively remove PCBs on surfaces. It is important to select and use the proper cleanup equipment, to conduct the procedure correctly so as not to redistribute PCBs, and to comply with disposal requirements for all cleanup materials.

§ 761.363 Applicability.

The double wash/rinse procedure includes two washing steps and two rinsing steps. The two washing and rinsing steps are slightly different depending on whether a contaminated surface was relatively clean before the spill (see § 761.372), or whether the surface was coated or covered with dust, dirt, grime, grease or another absorbent material (see § 761.375).

§ 761.366 Cleanup equipment.

(a) Use scrubbers and absorbent pads that are not dissolved by the solvents or cleaners used, and that do not shred, crumble, or leave visible fragments on the surface. Scrubbers and absorbent pads used to wash contaminated surfaces must not be reused. Scrubbers and absorbent pads for rinsing must not contain ≥2 ppm PCBs. Scrubbers and absorbent pads used in the second rinse of contaminated surfaces may be reused to wash contaminated surfaces.

(b) Capture and contain all solvents and cleaners for reuse, decontamination, or disposal. Clean organic solvents contain <2 ppm PCBs. Clean water contains <3 ppb PCBs.

§ 761.369 Pre-cleaning the surface.

If visible PCB-containing liquid is present on the surface to be cleaned, thoroughly wipe or mop the entire surface with absorbent paper or cloth until no liquid is visible on the surface.

§ 761.372 Specific requirements for relatively clean surfaces.

For surfaces that do not appear dusty or grimy before a spill, such as glass, automobile surfaces, newly-poured concrete, and desk tops, use the double wash/rinse procedures in this section.

(a) *First wash.* Cover the entire surface with organic solvent in which PCBs are soluble to at least 5 percent by weight. Contain and collect any runoff solvent for disposal. Scrub rough surfaces with a scrub brush or disposable scrubbing pad and solvent such that each 900 cm^2 (1 square foot) of the surface is always very wet for 1 minute. Wipe smooth surfaces with a solvent-soaked, disposable absorbent pad such that each 900 cm^2 (1 square foot) is wiped for 1 minute. Any surface <1 square foot shall also be wiped for 1 minute. Wipe, mop, and/or sorb the solvent onto absorbent material until no visible traces of the solvent remain.

(b) *First rinse.* Wet the surface with clean rinse solvent such that the entire surfaces is very wet for 1 minute. Drain and contain the solvent from the surface. Wipe the residual solvent off the drained surface using a clean, disposable absorbent pad until no liquid is visible on the surface.

(c) *Second wash.* Repeat the procedures in paragraph (a) of this section. The rinse solvent from the first rinse (paragraph (b) of this section) may be used.

(d) *Second rinse.* Repeat the procedures in paragraph (b) of this section.

§ 761.375 Specific requirements for surfaces coated or covered with dust, dirt, grime, grease, or another absorbent material.

(a) *First wash.* Cover the entire surface with concentrated or industrial strength detergent or non-ionic surfactant solution. Contain and collect all cleaning solutions for proper disposal. Scrub rough surfaces with a scrub brush or scrubbing pad, adding cleaning solution such that the surface is always very wet, such that each 900 cm^2 (1 square foot) is washed for 1 minute. Wipe smooth surfaces with a cleaning solution-soaked disposable absorbent pad such that each 900 cm^2 (1 square foot) is wiped for 1 minute. Wash any surface <1 square foot for 1 minute. Mop up or absorb the residual cleaner solution and suds with an clean, disposable, absorbent pad until the surface appears dry. This cleaning should remove any residual dirt, dust, grime, or other absorbent materials left on the surface during the first wash.

(b) *First rinse.* Rinse off the wash solution with 1 gallon of clean water per square foot and capture the rinse water. Mop up the wet surface with a clean, disposable, absorbent pad until the surface appears dry.

(c) *Second wash.* Follow the procedure in § 761.372(a).

(d) *Second rinse.* Follow the procedure in § 761.372(b).

§ 761.378 Decontamination, reuse, and disposal of solvents, cleaners, and equipment.

(a) *Decontamination.* Decontaminate solvents and non-porous surfaces on equipment in accordance with the standards and procedures in § 761.79(b) and (c).

(b) *Reuse.* A solvent may be reused so long as its PCB concentration is <50 ppm. Decontaminated equipment may be reused in accordance with § 761.30(u). Store solvents and equipment for reuse in accordance with § 761.35.

(c) *Disposal.* Dispose of all solvents, cleaners, and absorbent materials in accordance with § 761.79(g). Dispose of equipment in accordance with § 761.61(a)(5)(v)(A), or decontaminate in accordance with § 761.79(b) or (c). Store

for disposal equipment, solvents, cleaners, and absorbent materials in accordance with § 761.65.

Subpart T—Comparison Study for Validating a New Performance-Based Decontamination Solvent under § 761.79(d)(4)

§ 761.380 Background.

This subpart provides self-implementing criteria for validating the conditions for use in performance-based decontamination of solvents other than those listed in § 761.79(c)(3) and (c)(4). Any person may use this subpart for validating either a chemical formulation or a product with a trade name whether or not the constituents of the product are proprietary.

§ 761.383 Applicability.

Use the self-implementing decontamination procedure only on smooth, non-porous surfaces that were once in contact with liquid PCBs. Decontamination procedures under this subpart shall exactly parallel § 761.79(c)(3) and (c)(4), except that the procedures described in § 761.79(c)(3)(iii) and (c)(3)(iv) and (c)(4)(iii), (c)(4)(iv) and (c)(4)(vii) may be revised to contain parameters validated in accordance with this subpart.

§ 761.386 Required experimental conditions for the validation study and subsequent use during decontamination.

The following experimental conditions apply for any solvent:

(a) *Temperature and pressure.* Conduct the validation study and perform decontamination at room temperature (from ≥15 °C to ≤30 °C) and at atmospheric pressure.

(b) *Agitation.* Limit the movement in the solvent to the short-term movement from placing the contaminated surface into the soak solvent and from removing the surface from the soak solvent.

(c) *Time of soak.* Soak the surface for a minimum of 1 hour.

(d) *Surface conditions for the validation study.* Prior to beginning the validation study, ensure that there are no free-flowing liquids on surfaces and that surfaces are dry (i.e., there are no liquids visible without magnification). Also ensure that surfaces are virtually free from non-liquid residues, corrosion, and other defects which would prevent the solvent from freely circulating over the surface.

(e) *Confirmatory sampling for the validation study.* Select surface sample locations using representative sampling or a census. Sample a minimum area of 100 cm^2 on each individual surface in the validation study. Measure surface concentrations using the standard wipe test, as defined in § 761.123, from which a standard wipe sample is generated for chemical analysis. Guidance for wipe sampling appears in the document entitled "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," available from the TSCA Assistance Information Service, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(f) *Concentration of PCBs.* The method validated may be used only to decontaminate surfaces containing PCBs at concentrations on which the validation study was performed and lower concentrations.

§ 761.389 Testing parameter requirements.

There are no restrictions on the variable testing parameters described in this section which may be used in the validation study. The conditions demonstrated in the validation study for these variables shall become the required conditions for decontamination using the solvent being validated and shall replace the comparable conditions in § 761.79(b)(3) through (b)(6). There are limited potential options for varying a single requirement in this section. If you change one of these variable requirements, change it only in the way listed in this section and do not change any other validated conditions. If you desire to change more than one of the requirements in this section, you must conduct a new study to validate the decontamination under the desired conditions.

(a) The study apparatus is not standardized. Critical components of the study are the PCB material (for example MODEF or some other spiking solution), the volume of the soaking solvent, and the area of the contaminated surface. The EPA study used beakers and shallow dishes as the experimental vessels to contain the surface and solvent during the soaking process. In order to minimize surface-to-volume ratios, it is convenient to utilize flat contaminated surfaces and shallow solvent containers. During the validation study, use the same ratio of contaminated surface area to soak solvent volume as would be used during actual decontamination. It is also permissible to use a smaller surface area to soaking solvent volume than used in the validation study, so long as all other required parameters are used as validated in the confirmation required in § 761.386(a) through (f), and paragraphs (a) through (c) of this section. Do not use a larger surface-area-to-solvent-volumes ratio or different kind of solvent based on the results of the validation study.

(b) Except for the minimum soak time of 1 hour (as required in § 761.386(c)), the length of soak time is not otherwise restricted in the validation study. The soak time used in the validation study, however, is a use requirement for subsequent decontamination using the solvent being validated. It is permissible to use longer soak times for decontamination than the soak time used in the validation study, if all other parameters required in § 761.386, and paragraphs (a) and (c) of this section are used.

(c) There is no restriction on the kind of material containing PCBs to use to create the surface contamination for the validation study. There is also no restriction on the level of starting PCB surface concentration. It is permissible to use lower concentrations of PCB than the concentration used in the validation study, if all other parameters required in § 761.386(a) through (f), and paragraphs (a) through (c) of this section are used.

§ 761.392 Preparing validation study samples.

(a)(1) To validate a procedure to decontaminate a surface contaminated with a spill from liquid of a known concentration, contaminate (spike) the surface to be used in the validation study as follows:

(i) Use a spiking solution made of PCBs mixed with a solvent to contaminate clean surfaces. Clean surfaces are surfaces having PCB surface concentrations <1 μg/100 cm^2 before intentionally contaminating the surface.

(ii) Prior to contaminating a surface for the validation study, mark the surface sampling area to assure that it is completely covered with the spiking solution.

(iii) Deliver the spiking solution onto the surface, covering all of the sampling area. Contain any liquids which spill or flow off the surface. Allow the spiking solution to drip drain off into a container and then evaporate the spiking solution off the contaminated surface prior to beginning the validation study. Contaminate a minimum of eight surfaces for a complete validation study.

(iv) As a quality control step, test at least one contaminated surface to determine the PCB concentration to verify that there are measurable surface levels of PCBs resulting from the contamination before soaking the surface in the decontamination solvent. The surface levels of PCBs on the contaminated surfaces must be ≥20 μg/100 cm^2.

(2) To validate a procedure to decontaminate a specified surface

concentrations of PCBs as measured by a standard wipe sample, contaminate a minimum of 10 surfaces. Contaminate all the surfaces identically following the procedures in paragraph (a)(1) of this section and measure the PCB surface concentrations of at least three of the surfaces using a standard wipe test to establish a surface concentration to be included in the standard operating procedure. The surface levels of PCBs on the contaminated surfaces must be ≥20 µg/100 cm².

(b) [Reserved]

§ 761.395 A validation study.

(a) Decontaminate the following prepared sample surfaces using the selected testing parameters and experimental conditions. Take a standard wipe sample of the decontaminated surface.

(1) At least one uncontaminated surface. The surface levels of PCBs on the uncontaminated surface must be <1 µg/100 cm².

(2) At least seven contaminated surfaces.

(b)(1) Use SW-846, Test Methods for Evaluating Solid Waste methods for sample extraction and chemical analysis as follows: Use Method 3500B/3540C or Method 3500B/3550B for the extraction and cleanup of the extract and Method 8082 for the chemical analysis, or methods validated under subpart Q of this part.

(2) Report all validation study surface sample concentrations on the basis of micrograms of PCBs per 100 cm² of surface sampled.

(c) Following completion of the validation study, measurements from the contaminated surfaces must have an arithmetic mean of ≤10 µg/100 cm². If the arithmetic mean is >10 µg/100 cm², then the validation study failed and the solvent may not be used for decontamination under § 761.79(d)(4) according to the parameters tested.

§ 761.398 Reporting and recordkeeping.

(a) Submit validation study results to the Director, National Program Chemicals Division (NPCD), (7404), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC, prior to the first use of a new solvent for alternate decontamination under § 761.79(d)(4). The use of a new solvent is not TSCA Confidential Business Information (CBI). From time to time, the Director of NPCD will confirm the use of validated new decontamination solvents and publish the new solvents and validated decontamination procedures in the **Federal Register**.

(b) Any person may begin to use solvent validated in accordance with this subpart at the time results are submitted to EPA.

(c) Record all testing parameters and experimental conditions from the successful validation study into a standard operating procedure (SOP) for reference whenever the decontamination procedure is used. Include in the SOP the identity of the soaking solvent, the length of time of the soak, and the ratio of the soak solvent to contaminated surface area during the soaking process. Also include in the SOP the maximum concentration of PCBs in the spilled material and the identity of the spilled material, and/or the measured maximum surface concentration of the contaminated surface used in the validation study. Record and keep the results of the validation study as an appendix to the SOP. Include in this appendix, the solvent used to make the spiking solution, the PCB concentration of the spiking solution used to contaminate the surfaces in the validation study, and all of the validation study testing parameters and experimental conditions.

[FR Doc. 98–17048 Filed 6–23–98; 11:27 am]

BILLING CODE 6560–50–F

VOL 63 ISS 124 JE 29 1998 UMI

federal register

Monday
June 29, 1998

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities and Inviting Applications for New Rehabilitation Research Training Centers for Fiscal Years 1998–1999; Notice

VOL 63 ISS 124 JE 29 1998 UMI

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1998–1999 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary announces final funding priorities for two Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for two RRTCs related to: (1) aging and mental retardation; and (2) disability statistics.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On May 4, 1998, the Secretary published a notice of proposed priorities in the **Federal Register** (63 FR 24718–24721). The Department of Education received three letters commenting on the notice of proposed priorities by the deadline date.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Aging With Mental Retardation

Comment: The RRTC should be required to carry out research and develop models of service that support aging in place and showcase best practices that provide for an institutional admission diversion. In conjunction with this requirement, the RRTC should be required to develop informational materials that would help people with mental retardation reach a better understanding of what happens (and may happen) to them as they age. These materials and information should illustrate and guide the steps they can take to maintain a healthy lifestyle as older adults.

Discussion: Under the second and third required activities of the priority, an applicant could propose to carry out research and develop models of service that support aging in place and showcase best practices that provide for an institutional admission diversion. The peer review process will evaluate the merits of this proposal. However, NIDRR has no basis for requiring all applicants to carry out this research.

In regard to the commenter's suggestion that RRTC should be required to develop informational materials, the second general RRTC requirement states that the RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties. Therefore, if an applicant proposes to carry out the research suggested by the commenter, no further requirements are necessary in order for the RRTC to develop this informational material.

Changes: None.

Comment: The requirement to "identify, develop, and evaluate accommodations that help maintain employment" is not among the most significant issues facing persons aging with mental retardation and should be eliminated or made optional.

Discussion: NIDRR acknowledges that for the oldest segment of the population of persons aging with mental retardation, maintaining employment is not as significant an issue as others included in the priority. However, there are a substantial number of persons aging with mental retardation who are employed and face barriers to maintaining employment as they age. Applicants have the discretion to emphasize or deemphasize specific activities included in the priority depending upon the importance the applicant attaches to the activity. An applicant could deemphasize this activity, and the peer review process will evaluate the merits of the proposal. NIDRR declines to eliminate the activity because the knowledge gained from this research could prove to be beneficial to those persons aging with mental retardation who are employed.

Changes: None.

Comment: The required activity on health should be revised to include: development of a model of medical education applicable to managed care; research on coincident conditions in older age; development of practice guidelines and standards for both women's and men's health; identification of care practices to address very old persons; and an examination of dementia care models that further community living.

Discussion: Under the first activity of the priority, an applicant could propose to carry out all of the projects included in the comment. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to carry out this research.

Changes: None.

Comment: The RRTC should be required to identify aging models that are successful with the general population and demonstrate their applicability with persons aging with mental retardation.

Discussion: Under the first and third activities, an applicant could propose to identify aging models that are successful with the general population and demonstrate their applicability with persons aging with mental retardation. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to carry out this research.

Changes: None.

Comment: More and more States are developing consumer-directed models of supporting adults with mental retardation. However, not enough empirical data exist about the effectiveness of these service models. The topic of self-direction or consumer direction should be incorporated into the third required activity.

Discussion: NIDRR agrees that integrating research on consumer choice or self-direction in the activities of the RRTC is important and needed.

Changes: The priority has been revised to require the RRTC to address issues of self-direction in all of the required activities except the fourth activity.

Rehabilitation Research and Training Centers

The authority for RRTCs is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program, the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General RRTC Requirements

The following requirements apply to the RRTCs pursuant to these absolute priorities, unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

The RRTC must provide: (1) Applied research experience; (2) training on research methodology; and (3) training to persons with disabilities and their families, service providers, and other appropriate parties in accessible formats on knowledge gained from the Center's research activities.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities:

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Priority 1: Aging With Mental Retardation

Background

There are an estimated 550,000 adults 40 years and older with mental retardation (McNeil, J., "Special Report on Mental Retardation and Mental Illness," Bureau of the Census, Survey of Income and Program Participation, 1997). This population has aging-related health and social care needs specific to their condition (McCarthy, J. and Mullan, E., "The Elderly with a Learning Disability (Mental Retardation): An Overview," *International Psychogeriatrics*, 8 (3), pgs. 489–501, 1996).

Current research has begun to identify secondary conditions that are causally related to aging with mental retardation. For instance, there is evidence that persons aging with mental retardation and a lifelong history of certain medications (e.g., psychotropic, anti-seizure) have a higher risk of developing secondary conditions such as osteoporosis or tardive dyskinesia (Adlin, M., "Health Care Issues," *Older Adults with Developmental Disabilities: Optimizing Choice and Change*, Baltimore, Paul H. Brookes Pub. Co., pgs. 49–60, 1993). Persons with Downs Syndrome have a higher prevalence of Alzheimer's disease at an earlier age than the general population (Janicki, M., "Practice Guidelines for the Clinical Assessment and Care Management of Alzheimer's Disease and Other Dementias Among Adults with Intellectual Disability," *Journal of Intellectual Disability Research*, 40, pgs. 374–382, 1996). In addition, persons aging with mental retardation experience aging-related conditions like hypertension, osteoarthritis, heart disease, obesity, and high cholesterol levels. Treating such conditions in persons aging with mental retardation is complicated by difficulty in communicating about nutrition, exercise, and prescribed treatment protocols (Edgerton, R. "Some People Know How to Be Old," *Life Course Perspectives on Adulthood and Old Age*, American Association on Mental Retardation Monograph Series, pgs. 53–66, 1994) and by poor health maintenance practices (Edgerton, R. et al., "Health Care for Aging People with

Mental Retardation," *Mental Retardation*, 32 (2), pgs. 146–150, April, 1994).

The health status and needs of older women with mental retardation have received little research attention and merit special consideration. We have limited information on the availability of screening for breast or cervical cancers, onset and reactions to menopause, and treatment for osteoporosis in menopausal and.post-menopausal women, or the general health status of women with mental retardation as they age (Murphy, L., *Aging with Developmental Disabilities: Women's Health Issues*, Texas Arc, 1997).

Approximately 80 percent of adults with mental retardation live at home, often with their families of origin, and many are known to the service system (Seltzer, M., "Aging Parents with Co-Resident Adult Children: The Impact of Lifelong Caregiving," *Life Course Perspectives on Adulthood and Old Age*, American Association on Mental Retardation, pgs. 3–18, 1994). A major issue facing older family caregivers is planning for the future of their children aging with mental retardation. A shortage of alternative living arrangements and the aging of family members contribute to this concern (Heller, T., "Support Systems, Well-being, and Placement Decision-making Among *Older Parents and Their Adult Children with Developmental Disabilities," Older Adults with Developmental Disabilities; Optimizing Choice and Change*, pgs. 107–122, 1993). For many families, planning for the future financial needs of their members with mental retardation is a particular concern.

There has been little research examining family caregiving throughout the life of the person aging with mental retardation, particularly analysis of sibling roles in the caregiving process. Cross-sectional studies have suggested that older family caregivers perceive less personal burden than do younger caregivers (Hayden, M., "Support, Problem-Solving/Coping Ability, and Personal Burden of Younger and Older Caregivers of Adults with Mental Retardation," *Mental Retardation*, 35, pgs. 364–372, 1997). With increasing age, there appears to be greater acceptance of the family member and greater reciprocity in caregiving as the child with mental retardation takes on caregiving roles with aging parents (Heller, T., "Adults with Mental Retardation as Supports to their Parents: Effects on Parental Caregiving Appraisal," *Mental Retardation*, 35, pgs. 338–346, 1997).

For adults living in residential settings, family involvement has been low. However, such involvement has many benefits for the adult including increasing social interaction, oversight of residential conditions, provision of recreational opportunities, assistance with financial planning activities (Feinstein, C., "A Survey of Family Satisfaction with Regional Treatment Centers and Community Services to Persons with Mental Retardation in Minnesota," Philadelphia: Conroy and Feinstein Associates, 1988). Older adults with mental retardation have lower rates of family involvement than younger adults (Hill, B., *Living in the Community: A Comparative Study of Foster Homes and Small Group Homes for People with Mental Retardation*, Minneapolis: University of Minnesota, Center for Residential and Community Services, 1989).

Approximately 40 percent of working age persons with mental retardation work outside the home (McNeil, J., "Current Population Reports: Americans With Disabilities," U.S. Census Bureau, P70–61, 1997). Research indicates that as persons with mental retardation grow older, they experience new work-related problems because of functional decline and changing job requirements. Furthermore, many individuals with mental retardation and their employers are unaware of the resources and services available to help them solve these problems (Parent, W., "Social Integration in the Workplace; An Analysis of the Interaction Activities of Workers with Mental Retardation and their Co-workers," *Education and Training in Mental Retardation*, 27, pgs. 28–37, 1992).

Many individuals aging with mental retardation have limited access to assistive technology that might help them cope with aging-related functional limitations such as decreased mobility. Assistive technology has generally been underutilized by persons with mental retardation of all ages because few devices successfully incorporate accommodations that assist persons with cognitive impairments in their use (Wehmeyer, M., "The Use of Assistive Technology by People with Mental Retardation and Barriers to This Outcome: A Pilot Study," *Technology and Disability*, 4, pgs. 195–204, 1995). Also, staff and families often are insufficiently aware of assistive technology solutions or of options for its funding.

Information on health care utilization rates and educational and employment status of persons with mental retardation is not readily available. Although a number of Federal agencies, some States, and private research institutions collect mental retardation data, too often these data are unanalyzed. Secondary analysis of existing data on mental retardation would help identify research questions and gaps in service for persons with mental retardation and their families.

Priority 1

The Secretary will establish an RRTC on Aging with Mental Retardation to assist individuals aging with mental retardation and their families to prevent secondary conditions, maintain general overall health, plan for the future, and maximize independence. The RRTC shall:

(1) Identify, develop, and evaluate programs that promote health, including early recognition and treatment of secondary conditions, with special emphasis on the needs of women aging with mental retardation;

(2) Investigate determinants of the role played by the family of origin in providing care for persons aging with mental retardation, with special emphasis on adults in residential settings and the role of siblings in the caregiving process;

(3) Identify, develop, and evaluate techniques that assist individuals with mental retardation and their families to plan for future needs, including future financial needs;

(4) Analyze and disseminate information from national data sets and public health surveillance data on adults with mental retardation to identify health care utilization, educational, and employment patterns;

(5) Identify, develop, and evaluate accommodations that help maintain employment;

(6) Identify best practices in the use of assistive technology or universal design to compensate for physical and psychological consequences of aging with mental retardation.

In carrying out these purposes, the RRTC must:

- Coordinate with other relevant research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research at the National Institutes of Health, the National Institute on Mental Health, the National Institute on Aging, the Rehabilitation Services Administration, the Department of Veteran Affairs, the Social Security Administration, the Health Care Financing Administration, and the Rehabilitation Research Training Centers on Managed Care and Personal Assistance Services; and
- Address issues of consumer choice or self-direction in all of the activities except the fourth activity.

Priority 2: Disability Statistics

Background

A number of Federal, State, and private agencies collect information on persons with disabilities. While some of this information is analyzed, significant amounts of unanalyzed data are generated. The National Health Interview Survey, the Survey of Income and Program Participation, the California Work and Health Survey, other surveys, population data, information on program participation, data on institutions, and market research profiles provide many indicators about the lives of persons with disabilities. Policy makers, program directors, and others need information on the incidence, prevalence and distribution of disabilities, as well as the integration of persons with disabilities into society. Likewise, reliable information on use of services such as long-term care, transportation, vocational rehabilitation and personal care assistance is extremely valuable to individuals with disabilities and their organizations, planners, researchers and policy makers.

The 1994–95 National Health Interview Survey on Disability (NHIS–D) conducted by the National Center for Health Statistics was developed, in part, to meet the demands for data from numerous agencies (Verbrugge, L. M., "The Disability Supplement to the 1994–95 National Health Interview Survey," for the National Center for Health Statistics). The 1994–95 NHIS–D offers an excellent opportunity to analyze many variables related to persons with disabilities. Researchers can use the NHIS–D to determine access to health care and personal services, use of assistive technologies, and community participation, among other key descriptors.

The major Federal agencies that routinely collect information on disability publish only a small fraction of statistical information derived from that data. Most agency data collections are driven by statutory requirements and agencies report statistics about receipt of program services and subsets of eligible individuals. These constraints limit the usefulness of the data that are collected. Easier access to a full range of data on disability for policy makers and others may be assured, in part, by providing a central resource for disability statistics and information and an organized and comprehensive system for the collection, analysis, and synthesis of the data. A disability statistics center can use existing data to conduct meta-analyses focused on problems such as employment, use of health care and social services, household situations, family composition, and educational levels.

Researchers, policy makers and others have begun to work within the framework of the "New Paradigm of Disability," a contextual model of disability that recognizes the role of the built environment and of social and cultural factors in the disablement-enablement process. Most national surveys fail to measure the role of environmental factors in the operational definitions of disability used, tending to focus solely on health problems as the locus of disability. (Kirchner, C., "Looking Under the Streetlamp: Inappropriate Use of Measures Just Because They Are There" *Journal of Disability Policy Studies*, 7:77–90. 1996). The Americans with Disabilities Act (ADA) emphasizes barrier removal, accessibility, and reasonable accommodations. Barriers may be physical or may involve programmatic exclusions and other social obstacles. Despite increasing recognition that data systems must be enhanced to meet newly developing information needs, such as those suggested by the New Paradigm of Disability and the ADA, there is a lack of environmental measures that have been tested for accuracy and reliability. This has been an impediment to the development of survey and census measures of disability at the national and State levels.

New survey measures must be developed to accurately and reliably depict disability in the context of individual health and environmental factors. The resulting questions must take into account the interaction between the individual and the environment and examine the effects of that interaction on the ability to carry out daily activities and normative social roles. This includes examination of the immediate living arrangements of the person's household and the larger community environment. Architectural accessibility features, assistive technologies, transportation, and other accommodations and supports must be addressed.

With increased global interest in disability, researchers must be aware of new developments in the World Health Organization sponsored International Committee on Impairments, Disabilities, and Handicaps, and consider international data sets for purposes of comparison with U.S. data and, as appropriate, to generate hypotheses to be tested against U.S. data.

Given these needs and opportunities in the promotion and use of disability statistics, a Center that can identify major sources and perform secondary analyses of existing data, including meta-analyses on important topics, will be a cornerstone of a future disability data initiative. The Center can also contribute to the future of disability research through the development, testing, and dissemination of data collection items that address the New Paradigm of Disability.

Priority 2

The Secretary will establish an RRTC to improve collection and analysis of disability statistics to guide development of disability policies. The RRTC shall:

(1) Conduct secondary analyses of critical and relevant data sets, including estimates of the incidence, prevalence, and distribution of various disabilities, and disseminate analytical reports;

(2) Develop new measures, designed for inclusion in general population surveys, addressing the effect of physical, policy, and social environments on persons with disabilities; and disseminate these to survey designers, researchers, and statistical agencies;

(3) Conduct meta-analyses on key variables such as, but not limited to, employment, income and health status, using a range of relevant existing data sets on disability; and analyze the policy implications based upon the results of these analyses;

(4) Identify major gaps in demographic and program data on the disabled population and develop strategies for addressing those gaps; and

(5) Serve as a resource to researchers, consumers and consumer groups, planners, and policy makers for statistical information on disability and develop and implement a marketing plan to support dissemination of that information.

In carrying out the purposes of the priority, the RRTC must coordinate with relevant activities sponsored by the Centers for Disease Control and Prevention, the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Bureau of the Census, the Department of Labor, and the National Institutes of Health.

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Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Parts 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Numbers 84.133B, Rehabilitation Research and Training Centers)

Dated: June 23, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–17113 Filed 6–26–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Rehabilitation Research and Training Centers for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly *Rehabilitation Research and Training Centers* in Subpart C.

Program Title: Rehabilitation Research and Training Centers (RRTCs).

CFDA Number: 84.133B.

Purpose of Program: RRTCs conduct coordinated and advanced programs or research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources and provide training for service providers, individuals with disabilities and families and representatives, and rehabilitation researchers.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1998, REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Aging with mental retardation	8/28/98	1	$700,000	60
Disability statistics	8/28/98	1	700,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RRTC Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for RRTCs on aging with mental retardation and disability statistics under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the

project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(f) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) Adequacy and reasonableness of the budget (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(j) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary strongly recommends that applicants:

(1) Include a one-page abstract in their application;

(2) Limit Part III—Application Narrative to no more than 125 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides);

(3) Double-space (no more than 3 lines per vertical inch) all sections of text in the application narrative; and

(4) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The recommended application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the recommended page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

The recommendations for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be

awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: June 23, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect cost rate of 15 percent.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I Find out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications

than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

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APPLICATION FOR FEDERAL ASSISTANCE	2. DATE SUBMITTED:	Application Identifier
1. TYPE OF SUBMISSION ☐ Construction ☐ Non-Construction Preapplication: ☐ Construction ☐ Nonconstruction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (Give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. Employer Identification Number: ___ - _____	7. TYPE OF APPLICATION: (enter appropriate letter here) ☐ A. State F. Intermunicipal K. Indian tribe B. County G. Special District L. Individual C. Municipal H. Independent School Dist. M. Profit Org. D. Township I. State Cont. / of HL N. Other (Specify) E. Interstate J. Private University _____
8. TYPE OF APPLICATION ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) here: ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify)	9. NAME OF FEDERAL AGENCY
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84. This	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date:	Ending Date:	a. Applicant:	b. Project:

15. ESTIMATED FUNDING		16. IS APPLICANT SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES ☐ THIS PREAPPLICATION /APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
c. State	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes" attach an explanation ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title:	c. Telephone Number:
d. Signature of Authorized Representative		e. Date Signed:

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Standard Form 424 REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicants control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matter related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12.	List the State and area (county, city, etc.) the applicant is applying to serve with this application.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

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U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1880--0538 Expiration Date: 10/31/99
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

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Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grants awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its applications a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participant in the project and to achieve to high standards. Consistent with program requirements and its approved applications, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperative in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1–801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503. *Rehabilitation Research and Training Center* (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

BILLING CODE 4000–01–C

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968, as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

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Standard Form 424B (4-88) Prescribed by OMB Circular A-102

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

http://www.dnb.com/dbis/aboutdb/intlduns.htm

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

[FR Doc. 98-17114 Filed 6-26-98; 8:45 am]
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H.R. 1847/P.L. 105–184
Telemarketing Fraud Prevention Act of 1998 (June 23, 1998; 112 Stat. 520)

S. 1150/P.L. 105–185
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S. 1900/P.L. 105–186
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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[6] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

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Rules and Regulations

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure to provide notice that a judge may exclude a party, a representative, or other person from all or any portion of a Board proceeding before him or her because of misconduct. The amendment further provides procedures for a person facing exclusion to show cause why he or she should not be excluded, for an interlocutory appeal to the Board of a judge's order excluding a person, and for a motion to stay the proceeding pending the Board's decision on an interlocutory appeal of an exclusion order. The intent of the amendment is to inform parties and their representatives that MSPB judges have the authority to exclude a person from a proceeding and will exercise it when necessary to ensure that adjudication of cases proceeds expeditiously and without undue disruption.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board previously published an interim rule to provide notice that a judge may exclude a party, a representative, or other person from all or any portion of a Board proceeding before him or her because of misconduct (62 FR 62689, November 25, 1997). The interim rule requested public comments and allowed 60 days, until January 26, 1998, for receipt of such comments.

Comments were received from two practitioners before the Board. Both commenters recommended that the interim rule be amended to provide: (1) an opportunity for the person facing exclusion to show cause why he or she should not be excluded from the proceeding; and (2) automatic Board review of a judge's exclusion order upon the filing of a motion for certification of the order as an interlocutory appeal. In the interest of due process, the Board has adopted both of these recommendations in the final rule. Subsection 1201.31(d)(2) in the interim rule has been replaced by subsections 1201.31(d)(2) and (d)(3) in the final rule. The former prescribes procedures for issuance of a show cause order and for a response to such an order, while the latter provides procedures for the certification of an interlocutory appeal.

One commenter recommended that the interim rule be amended to provide for a stay of the proceeding by a single Board member where a judge's exclusion order has been certified as an interlocutory appeal to the Board. The Board has not adopted this specific recommendation but, instead, has added new language at subsection 1201.31(d)(4)(ii) providing that where an exclusion order has been certified to the Board as an interlocutory appeal, the judge or the Board may stay the proceeding. The provision also permits a party to move for a stay of the proceeding. This approach preserves the Board's discretion to control the conduct of the proceeding and to determine whether, under the particular circumstances of the case, a stay would serve the interests of the parties. There has been no change in the interim rule's requirement that where the judge excludes a party's representative, the party be given a reasonable time to obtain another representative; see subsection 1201.31(d)(4)(i).

In the final rule, the Board also has amended section 1201.41(b)(7) to clarify that the authority of a judge to exclude a person from a proceeding is to be exercised as provided under section 1201.31(d).

Three other recommendations made in the public comments have not been adopted in the final rule. One commenter recommended that the Board require that all prehearing and settlement conferences be recorded and that the interim rule be amended to provide a procedure for purging a person's exclusion from a proceeding from the record. The burden of implementing the former recommendation in over 8,000 prehearing conferences each year would far exceed the anticipated benefit, given that misconduct at that stage occurs infrequently. In addition, recording conferences could have the effect of inhibiting free discussion of settlement terms during the course of a settlement conference. The Board concludes that the decision to record a conference is best left to the judge's discretion. As to purging the record, the Board has determined that a special procedure is unnecessary; a motion could be filed in an appropriate case. The other commenter recommended that a procedure be established outside the context of adjudication of a specific case for filing a complaint against an administrative judge. This recommendation is outside the scope of the present rule. The Board, however, has referred the recommendation to its Director, Office of Regional Operations, for review and a determination as to whether a demonstrated need for such a complaint procedure has been established.

The Board has determined that one further change should be made in the interim rule in the interest of clarity. In subsection 1201.31(d)(1), the phrase, "misbehavior that obstructs the hearing," has been replaced by "conduct that is prejudicial to the administration of justice." The new language incorporates the standard established by the American Bar Association (ABA) *Model Rules of Professional Conduct* (Rule 8.4(d)), which has been adopted by over forty state bars and construed by the courts. See *Howell* v. *State Bar*, 843 F.2d 205, 208 (5th Cir.), cert. denied, 488 U.S. 982 (1988) (holding that the phrase "prejudicial to the administration of justice" is neither overbroad nor vague on its face as case law, court rules, and the "lore of the profession" provide sufficient guidance).

Finally, subsection 1201.31(d)(4) in the interim rule has been renumbered 1201.31(d)(5).

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

'Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board adopts as final its interim rule published at 62 FR 62689, November 25, 1997, with the following changes:

1. Section 1201.31(d), as added by the interim rule, is revised to read as follows:

§ 1201.31 Representatives.

* * * * *

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or conduct that is prejudicial to the administration of justice.

(2) When a judge determines that a person should be excluded from participation in a proceeding, the judge shall inform the person of this determination through issuance of an order to show cause why he or she should not be excluded. The show cause order shall be delivered to the person by the most expeditious means of delivery available, including issuance of an oral order on the record where the determination to exclude the person is made during a hearing. The person must respond to the judge's show cause order within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the order, unless the judge provides a different time limit, or forfeit the right to seek certification of a subsequent exclusion order as an interlocutory appeal to the Board under paragraph (d)(3) of this section.

(3) When, after consideration of the person's response to the show cause order, or in the absence of a response to the show cause order, the judge determines that the person should be excluded from participation in the proceeding, the judge shall issue an order that documents the reasons for the exclusion. The person may obtain review of the judge's ruling by filing, within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the ruling, a motion that the ruling be certified to the Board as an interlocutory appeal. The judge shall certify an interlocutory appeal to the Board within one day (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a motion. Only the provisions of this paragraph apply to interlocutory appeals of rulings excluding a person from a proceeding; the provisions of §§ 1201.91 through 1201.93 of this part shall not apply.

(4) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that:

(i) Where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative; and

(ii) Where the judge certifies an interlocutory appeal of an exclusion ruling to the Board, the judge or the Board may stay the proceeding *sua sponte* or on the motion of a party for a stay of the proceeding.

(5) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

2. Section 1201.41(b)(7), is revised to read as follows:

§ 1201.41 Judges.

* * * * *

(b) * * *

(7) Exclude any person from all or any part of the proceeding before him or her as provided under § 1201.31(d) of this part;

* * * * *

Dated: June 22, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–16930 Filed 6–29–98; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 31, 32, 36, 51, 52, 53, 54, 56, 58, 70, and 160

[Docket Number FV–95–303]

Removal of U.S. Grade Standards and Other Selected Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting two interim final rules concerning removal of voluntary U.S. grade standards and other selected regulations from the Code of Federal Regulations (CFR). This action is part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, USDA, AMS, Room 2085–S, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 690–0262.

SUPPLEMENTARY INFORMATION: An interim final rule was published in the **Federal Register** on December 4, 1995. That rule removed most of the voluntary U.S. grade standards and other selected regulations covering a number of agricultural commodities (dairy products, tobacco, wool, mohair, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, and poultry and rabbit products) from the CFR. A second interim final rule was published on August 13, 1997 which: removed from the CFR those standards that had been retained pending completion of rulemaking at the time an interim final rule was published on December 4, 1995 which removed most of the U.S. standards from the CFR; reinstated the U.S. standards for Wisconsin Cigar-Binder Tobacco, and regulations related to the purchase of samples of wool and of mohair grades; and, lastly added a new part titled "Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards." These procedures were first discussed in the original interim rule and further developed and published in the August 13, 1997 interim final rule providing specifics as to the procedures that AMS will follow when developing, revising, suspending, or terminating voluntary U.S. grade standards. The Department is making final the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5

U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The United States standards issued or revised pursuant to the Agricultural Marketing Act, and issued thereunder, are administered under the direction of the Administrator of AMS and, as in the past, will be based on input from interested parties, including various industries which are mostly comprised of small entities as defined by the Small Business Administration (13 CFR 121.601). Other users of the various standards are government agencies including USDA's Farm Services Agency and the Foreign Agricultural Service.

Removal of voluntary standards and other selected regulations covering a number of agricultural commodities from the CFR is expected to benefit the affected industries because it will provide for more timely improvement in the standards in accordance with the published procedures. Notice of any actions as to the development, revision, suspension or termination of U.S. standards will be published in the **Federal Register** with request for comment to ensure that all interested parties, including small businesses as well as the general public, have an opportunity to have their views considered regarding any actions taken concerning the U.S. grade standards. This rule will specify a new CFR part titled "Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards." These procedures reflect the steps that were discussed in the original interim final rule concerning the procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions have been previously approved by the Office of Management and Budget.

Background

The Secretary of Agriculture is authorized under various statutes to provide various services to provide Federal grading/certification services and to develop and establish efficient marketing methods and practices of agricultural commodities. For more than 75 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide a uniform language that may be used to describe the characteristics of more than 450 commodities as valued by the marketplace. These standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information.

Although use of the U.S. standards is usually voluntary, they have through the years been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have often out paced the revision of existing or, the issuance of new regulations. As a result, the marketplace has been in some instances burdened with outdated trading language. The President's regulatory review initiative provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers by reducing the regulatory burden. As part of this initiative, AMS determined that certain regulations that were in the CFR which could be administered under the authority of AMS should be removed from the CFR.

With this objective, on December 4, 1995, AMS published an interim final rule with a request for comments that removed most of the voluntary U.S. standards and related regulations from the CFR. That action included all of the standards except those that at the time were in rulemaking, incorporated by reference in marketing orders/agreements appearing at 7 CFR Parts 900 through 999, or those used to implement government price supports. Those grade standard regulations have remained in the CFR, even though the text will also be available as AMS standards along with all other grade standards.

On March 11, 1996, in response to requests by representatives of the dairy and meat industries, USDA published a notice in the **Federal Register** that it would reopen and extend the comment period until July 10, 1996. The industry association comments asked for more time to evaluate how the changes AMS was initiating would impact their respective industries.

Twenty one comments were received from interested persons in connection with the interim final rule. Those commenting included representatives of trade associations, a food processor, a state department of agriculture and other interested persons. The majority of comments were commodity specific and were addressed on an AMS program basis with regard to the appropriate commodity topic.

One comment expressed its concern about the process AMS would follow with regard to drafting new or revising existing standards and wanted assurance that AMS would continue to solicit input from industry when developing and revising U.S. grade standards.

Taking into account the various comments received in response to the request for comment on the December 4, 1995 interim final rule, AMS prepared a second interim final rule which was published in the **Federal Register** on August 13, 1997. That rule addressed by Program and commodity the specific concerns or comments from industry.

One comment was received in response to the August 13, 1997, interim final rule. The American Meat Institute stated that their "* * * initial reservations to the December 1995 version of the rule regarding the ability of industry to fully participate in the development of future changes to grade standards appear to have been resolved. * * *" The August 13, 1997, interim final rule codified in Part 36 of 7 CFR procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

Further, during the period of time since the comment period ended, AMS has had an opportunity to revise several grade standards using the procedures that were established under Part 36. At this time AMS is confident that the procedures effectively provide for public input.

This action will make final those regulations. As has been longstanding practice, the standards for the various commodities will be administered by the respective commodity programs within AMS. Also, AMS has had time to evaluate the effectiveness of procedures that were published in Part 36 and believes that they are serving their intended purposes. Accordingly, it is appropriate that the provisions of the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule be made final, without change.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 31

Wool.

7 CFR Part 32

Mohair.

7 CFR Part 36

Administrative practice and procedure, Agricultural commodities, Food grades and standards, Reporting and recordkeeping requirements.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

7 CFR Part 160

Administrative practice and procedure, Advertising, Forests and forest products, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

PART 29—TOBACCO INSPECTION

PART 31—WOOL STANDARDS

PART 32—MOHAIR STANDARDS

PART 36—PROCEDURES BY WHICH THE AGRICULTURAL MARKETING SERVICE DEVELOPS, REVISES, SUSPENDS, OR TERMINATES VOLUNTARY OFFICIAL GRADE STANDARDS

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS[1,2] (INSPECTION, CERTIFICATION, AND STANDARDS)

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS[3]

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS[4]

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES

Accordingly the interim final rule amending 7 CFR Parts 29, 31, 32, 51, 52, 53, 54, 56, 58, 70, and 160, which was published at 60 FR 62172 on December 4, 1995, and the interim final rule amending 7 CFR Parts 29, 31, 32, 36, 52, 53, 54, and 58, which was published at 62 FR 43430 on August 13, 1997, are adopted as final rules, without change.

Dated: June 24, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–17349 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–02–P

[1] Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

[3] Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea; cocoa; coffee; spices; condiments.

[4] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 801

RIN 0580–AA62

Official Testing Service for Corn Oil, Protein, and Starch

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content. GIPSA is incorporating by reference the Corn Refiners Association Method A–20, Starch method, into the regulations and will use it as the chemical reference method for determining the starch content in corn. To recover the cost of providing this service, GIPSA is establishing a fee identical to the fees already established for other near-infrared spectroscopy measurements (wheat protein and soybean oil and protein). GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn (HOC) production.

DATES: This interim rule is effective July 1, 1998. To be assured of consideration, written comments must be filed before July 30, 1998.

The incorporation by reference of Analysis for Starch in Corn, Method A–20, 2nd revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in the rule is approved by the Director of the Federal Register as of July 1, 1998.

ADDRESSES: Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, DC 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, DC, during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, GIPSA, USDA, Room 1661–S, STOP 3632, Washington, DC, 20250–3632; telephone (202) 720–0252; or E-mail jgiler@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The Administrator of GIPSA has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule establishes tolerances to expand the use of currently approved near-infrared spectroscopy analyzers to test corn for oil, protein, and starch content and to establish a fee identical to the fees already established for wheat protein and soybean oil and protein testing services. Currently, near-infrared spectroscopy analyzers are being used to determine protein in wheat and protein and oil in soybean in both domestic and export markets. There are 57 official agencies (49 private entities, 8 States) designated by GIPSA to perform official grain inspection services. In addition, there are 8 delegated States. Most of the agencies could be considered small entities under Small Business Administration criteria.

The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service on a request basis and locations where service is requested infrequently may make arrangements with a neighboring agency to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 1998 crop year, the U.S. Feed Grains Council's production information estimated that approximately 1,250,000 acres were planted in high-oil corn, of which 40 to 50 percent is under contract. Currently, producers, grain handlers, exporters, and feedlot operators rely primarily on private laboratories to determine percent oil, protein, and starch in corn. Many of the producers, grain handlers, exporters, and feedlot operators may be considered small entities under Small Business criteria. Further, grain handlers and exporters are using this information to determine value and premiums. The extent to which these entities will request the official testing of corn for oil, protein, and starch or the impact of offering this service is difficult to quantify. GIPSA believes that corn producers, feedlot operators, grain handlers, and exporters will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premium.

Fees will be charged for these official services. The fees charged by GIPSA will be $1.50 per test when the test is performed at the applicant's facility, $8.00 per test if the test is performed elsewhere, and $15.75 for an appeal. These fees are the same as fees charged for similar tests and their impact on applicants for services will vary depending upon usage since these tests are on a request basis.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Parts 800 and 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

Background

In its 1996–97 report, Value-Enhanced Corn Quality Report, dated April 1997, the U.S. Feed Grains Council estimated that value-enhanced corn (VEC) was produced on 2.3 to 2.8 million acres (representing 3.2 to 3.8 percent of the U.S. harvested acreage). VEC includes waxy corn, high-lysine and other essential amino acid corn, hard endosperm corn, popcorn, sweet corn, white corn, and high-oil corn. The report projects the U.S. acreage of VEC to remain essentially unchanged, with the exception of high-oil corn, which is considered the fastest growing VEC produced in the marketplace. The report stated that more than 1 million acres of high-oil corn is projected for the 1998 crop year (up from virtually none in 1993), is expected to more than double (2.5 million acres) in 1999, and to reach 3 million acres by 2000. High-oil corn will continue to be a significant part of the VEC produced and traded in the marketplace.

High-oil corn is used by livestock feeders to replace animal fat previously added to livestock rations and to help the animals gain weight more quickly. U.S. No. 2 corn typically averages less than 4.5 percent oil content, while high-oil corn can contain up to 8.0 percent. At this time, depending on the oil content, high-oil corn premiums range from 5 to 24 cents per bushel. High-oil corn is almost exclusively grown through contracts with livestock feeders or companies that will export the grain.

For several years, high-oil corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. GIPSA's goal is to provide the corn industry with accurate results that the market can rely on to negotiate price, value, and premium.

GIPSA investigated a near-infrared spectroscopy (NIRS) calibration for use with currently approved near-infrared transmittance (NIRT) analyzers using 92 corn samples representing oil, protein, and starch ranges of 4.0 to 8.5 percent, 8.0 to 12.0 percent, and 64 to 72 percent (dry basis), respectively. Calibration performance data were statistically analyzed for the sample set. The standard deviation of differences (SDD) between near-infrared spectroscopy oil values and official solvent oil extraction reference results, was 0.44. A comparison of NIRT analyzer protein values and official combustion nitrogen analyzer reference results yielded an SDD of 0.40. The SDD between near-infrared spectroscopy analyzer starch predictions and reference values obtained using Corn Refiners Association Method A–20, was 2.20. GIPSA has determined that this level of accuracy is commensurate with prospective official customer needs. To further assure the performance of the NIRT analyzer for corn measurements, GIPSA is establishing the maintenance tolerances for corn oil content at ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for protein content at ±0.30 percent mean deviation from the national standard NIRS instruments, which are

referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for starch content at ±0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

This rule incorporates by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA will use the Starch method as the chemical reference method for determining the starch content in corn.

GIPSA is announcing the implementation of corn oil, protein, and starch testing services as an official criterion effective July 1, 1998. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch under the authority of the USGSA. Percent oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be $1.50 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory; $8.00 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and $15.75 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA is revising § 800.71 to establish fees for corn oil, protein, and starch testing services.

GIPSA is also revising § 801.7 to establish tolerances for corn oil, protein, and starch analyzers.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is unnecessary and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) this rule merely expands utilization of currently approved technology to offer additional services to the industry and establishes tolerances for that service; (2) the corn market year begins July 1, 1998, and the service should be in effect to allow its use at the beginning of the marketing year; and (3) this rule provides a 30-day opportunity for comment and all written comments timely received will be considered prior to finalization of the rule.

A 30-day comment period is deemed appropriate because the corn market year begins on July 1, 1998, and this rule should be made final as soon as possible during the beginning of the 1998 year.

List of Subjects in 7 CFR Parts 800 and 801

Grains, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Parts 800 and 801 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Table 1(2) (i through x) and adding (xi) and revising Table 2(1)(v) and (2)(ii) in Schedule A of paragraph (a) to read as follows:

§ 800.71 Fees Assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

Table 1.—* * *

(2) * * *	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	7.50
(viii) Vomitoxin (quantitative)	12.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rates.	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50

* * * * *

Table 2.—* * *

(1) * * *	
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	$25.50
(b) Aflatoxin (per test—TLC method)	101.50
(c) Corn oil, protein, and starch (one or any combination)	8.00
(d) Soybean protein and oil (one or both)	8.00
(e) Wheat protein (per test)	8.00
(f) Sunflower oil (per test)	8.00
(g) Vomitoxin (qualitative)	26.00
(h) Vomitoxin (quantitative)	31.00
(i) Waxy corn (per test)	9.25
(j) Canola (per test—00 dip test)	9.25
(k) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) * * *	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	$25.75
(b) Aflatoxin (TLC)	111.00
(c) Corn oil, protein, and starch (one or any combination)	15.75
(d) Soybean protein and oil (one or both)	15.75
(e) Wheat protein (per test)	15.75
(f) Sunflower oil (per test)	15.75
(g) Vomitoxin (per test—qualitative)	36.00
(h) Vomitoxin (per test—quantitative)	41.00
(i) Vomitoxin (per test—HPLC Board Appeal)	128.00
(j) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	

* * * * *

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[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

* * * * *

PART 801—[AMENDED]

3. The authority for Part 801 continues to read:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

4. Section 801.7 is revised to read as follows:

§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.

(a) *Reference methods.* (1) The chemical reference protein determinations used to reference and calibrate official NIRS instruments shall be performed in accordance with "Comparison of Kjeldahl Method for Determination of Crude Protein in Cereal Grains and Oilseeds with Generic Combustion Method: Collaborative Study," July/August 1993, Ronald Bicsak, Journal of AOAC International Vol. 76, No. 4, 1993, and subsequently approved by the AOAC International as the Combustion method, AOAC International Method 992.23. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(2) The chemical reference starch determination used to reference and calibrate official NIRS instruments shall be performed in accordance with the Corn Refiners Association Method A–20, Analysis for Starch in Corn, Second revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153–1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(b) *Tolerances* (1) *NIRS wheat protein analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of wheat protein content shall be ±0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(2) NIRS soybean oil and protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of soybean oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(3) *NIRS corn oil, protein, and starch analyzers.* The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of corn oil shall be ±0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for determination of protein content shall be ±0.30 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for determination of starch content shall be ±0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

Dated: June 19, 1998.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–16966 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–07]

Amendment to Class E Airspace; Farmville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Farmville, VA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Farmville Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 21 SIAP to Farmville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Farmville, VA, was published in the **Federal Register** (63 FR 27015). The development of the GPS RWY 21 SIAP for Farmville Municipal Airport requries the amendment of the Class E airspace at Farmville, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IRF operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Farmville, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 21 SIAP to Farmville Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Farmville, VA [Revised]

Farmville Municipal Airport, VA
(Lat. 37°21'27"N., long. 78°26'16"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Farmville Municipal Airport.

* * * * *

Issued in Jamaica, New York on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17361 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–02]

Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Philadelphia, PA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on the Instrument Landing System (ILS) at Philadelphia International Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the ILS Runway (RWY) 9R SIAP to Philadelphia International Airport.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Philadelphia, PA, was published in the **Federal Register** (63 FR 24995). The amendment of the ILS RWY 94 SIAP for Philadelphia International Airport requires the amendment of the Class E airspace at Philadelphia, PA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Philadelphia, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the ILS RWY 9R SIAP to Philadelphia International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Philadelphia, PA [Revised]

Philadelphia International Airport, PA
(Lat. 39°52'13"N., long. 75°14'42"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Philadelphia International Airport extending clockwise from the 095° bearing from the airport to the 225° bearing from the airport and within a 15-mile radius of Philadelphia International Airport extending from the 225° bearing from the airport clockwise to the 095° bearing from the airport, excluding the portions that coincide with the Berlin, NJ, Cross Keys, NJ, Wrightstown, NJ, Toughkenamon, PA, North

Philadelphia, PA, and Wilmington, DE, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17362 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket Number: 980623159–8159–01]

RIN 0693–AB47

Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Final rule and extension of implementation date.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, under authority delegated by the Secretary of Commerce, and pursuant to Section 15 of the Fastener Quality Act (Act), has determined that by July 26, 1998, the current implementation date of the Act, there will not be a sufficient number of laboratories accredited to perform the volume of inspection and testing required by the Act. Accordingly, the Director is extending the implementation date of the Act until October 25, 1998 and amending the existing regulations to reflect the new implementation date.

DATES: Effective June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Subhas G. Malghan, FQA Program Manager, Technology Services, National Institute of Standards and Technology, Building 820, Room 306, Gaithersburg, MD 20899, telephone number (301) 975–5120.

SUPPLEMENTARY INFORMATION: The Fastener Quality Act (Act), (Pub.L. 101–592 as amended by Pub.L. 104–113), requires that certain fasteners sold in commerce conform to the standards and specifications to which they are represented to be manufactured and have been inspected, tested, and certified. Inspection and testing mean that the manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample of the fasteners in such a lot to determine whether the lot of fasteners conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under Section 6 of the Act.

In accordance with Section 15, the requirements of the Act shall be applicable only to fasteners fabricated one hundred eighty (180) days or more after the effective date of final regulations implementing the Act. The Secretary may extend the implementation date upon a determination that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required.

The final rule implementing the Fastener Quality Act became effective on November 25, 1996, and was to apply to fasteners manufactured on or after May 27, 1997, the "implementation date". On April 18, 1997, as permitted by Section 15 of the Act, NIST announced a one year extension of the implementation date of the Act to May 26, 1998, because there was an insufficient number of laboratories accredited to perform the volume of inspection and testing required by the Act and regulations (62 FR 19041 (1997)). During the one extension, NIST published for public comment proposed amendments to the rule implementing the Act (62 FR 47240 (1997)). On April 14, 1998, based on the public comments received, NIST published the amendments to the 1996 final rule and once again extended the implementation date of the Act (63 FR 18260 (1998)). At that time, the National Voluntary Laboratory Accreditation Program (NVLAP) and the NIST-recognized private accreditation bodies reported that although an insufficient number of laboratories was expected to be accredited by May 26, 1998, only a sixty (60) day extension appeared necessary. Based on this information, NIST extended the implementation date of the Act to July 26, 1998.

Currently, NVLAP and the private accreditation bodies have received applications from approximately 580 testing laboratories, a sufficient number for implementation of the Act. Of these, approximately 250 testing laboratories have been accredited and are listed on the NIST Accredited Laboratory List. The extension of the implementation date to October 25, 1998, will allow the remainder of the laboratories who have applies to complete the accreditation process. In addition, NIST is publishing technical amendments to section 280,12 (a), (b), and (c) to reflect the extension.

The extension of the implementation date does not affect the provisions of section 280.12(d) and (e). Fasteners manufactured after May 14, 1998 and meeting the requirements of either of these paragraphs still may be sold as FQA compliant.

In addition, the extension of the implementation date affects the Facilities self-certification provisions contained in section 280.810(c)(3). A Facility's determination whether to self-certify must now be based on whether that Facility believes its registration will be completed by October 25, 1998, the new implementation date. Such determination is within each Facility's discretion and should be based on arrangements between the Facility and its Registrar as to when the Facility's registration will be complete. However, Facilities wishing to self-certify still must submit the required items by September 30, 1998; NIST cannot legally accept self-certification paperwork after September 30, 1998. NIST cannot provide relief for Facilities whose registrations are not complete by October 25, 1998, but who failed to submit self-certification by September 30, 1998. Any self-certifications received by September 30, 1998, and acknowledged by NIST will only be effective until May 25, 1999, as stated in the existing regulations at § 280.810(c)(3)(ii).

Additional Information

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(B), the Director of NIST has determined that good cause exists to waive the requirement to provide prior notice and an opportunity for public comment for this action as such procedures are unnecessary. The procedures are unnecessary because this action merely makes technical amendments to the existing regulations to comport with the exercise of statutory authority to extend the implementation date. Since this action is not a substantive change to the regulations, this rule is not subject to a thirty day delay in its effectiveness.

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

Since this action is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. § 553, or any other law,

it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: June 25, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

PART 280—FASTERNER QUALITY

For the reasons set forth in the preamble, Title 15 of the Code of Federal regulations part 280 is amended as follows:

1. The authority for part 280 continues to read as follows:

Authority: Sec. 13 of the Fastener Qaulity Act (Pub. L. 101–592, as amended by Pub. L. 104–113).

2. Section 280.12 is revised to read as follows:

§ 280.12 Applicability.

(a) The requirements of the Fastener Qaulity Act and this report shall be applicable only to fasteners manufactured on or after October 25, 1998.

(b) Metal manufactured prior to october 25, 1998 may not be used to manufacture fasteners subject to the Act and this part unless the metal has not tested for chemistry pursuant to § 280.15 of this part by a laboratory accredited under the Act and this part and the chemical charteristics of the metal conform to those required by the standards and specifications.

(c) Nothing in the Act and this part prohibits selling finished fasteners manufacture prior to october 25, 1998 or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency.

3. Section 280.602(k) is revised to read as follows:

§ 280.602 Violations.

* * * * *

(k) *Sale of fasteners manufactured prior the implementation date as compliant with the Act.* No person shall represent, sell, or offer for sale fasteners manufactured prior to October 25, 1998 as being in conformance with the Act of this part except as provided for in § 280.12 (d) or (e) of this part.

* * * * *

4. Section 280.810(c)(3)(i) is revised to read as follows:

§ 280.810 Listing of recognized accreditors, accredited registrars, and registered facilities.

* * * * *

(c) *List of Facilities.* * * *

(3)(i) If a Facility intends to be listed in accordance with § 280.810(c)(1) but the registration process will not be completed by October 25, 1998, the Facility may be provisionally listed on the Facilities List by providing the following to NIST on or before September 30, 1998:

(A) Certification that:

(*1*) The Facility is registered to QS–9000 or an equivalent by a quality systems registrar;

(*2*) The facility conforms to all other requirements of the Act and these regulations at the time of certification;

(*3*) If the Facility ceases to be registered to QS–9000 or an equivalent by an accredited Registrar and/or ceases to conform to any other requirement of the Act and these regulations at any time during the provisional listing period, it will notify NIST of that fact within three working days; and

(*4*) If the Facility fails to apply to an accredited Registrar for registration under the FQA within 30 days of the time the Registrar is accredited by a NIST-approved Accreditor, an authorized representative of the Facility will immediately notify NIST. (If the Facility's current Registrar decides not to seek accreditaton under the FQA, it is the Facility's responsibility to apply to another Registrary that has been approved by NIST-ABEP.);

* * * * *

[FR Doc. 98–17319 Filed 6–29–98; 8:45 am]

BILLING CODE 3515–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 270, and 275

[Release Nos. 33–7548, 34–40122, IC–23272, and IA–1727; File No. S7–4–97]

RIN 3235–AG62; 3235–AH01

Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is amending the definitions of "small business" and "small organization" that are used in connection with Commission rulemaking under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933 regarding regulatory requirements applicable to investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers. These definitions are used specifically for purposes of the Regulatory Flexibility Act, which requires the Commission to consider the impact of its regulations on small entities. The amendments to these definitions reflect recent changes in the law as well as changes in the securities markets over the past decade, including technological innovations and increased business relationships among participants in the securities industry.

EFFECTIVE DATE: The rule amendments will become effective July 30, 1998.

FOR FURTHER INFORMATION CONTACT:

General

Christopher Gilkerson, Assistant General Counsel at (202–942–0929), or Anne H. Sullivan, Senior Counsel at (202–942–0954), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–6, Washington, D.C. 20549.

Divisions with Particular Responsibility

Thomas M.J. Kerwin, Senior Counsel, Division of Investment Management, (definitions applicable to investment companies and investment advisers) (202–942–0690).

Glenn J. Jessee, Special Counsel, Office of the Chief Counsel, Division of Market Regulation (definitions applicable to brokers, dealers, exchanges, transfer agents and issuers, securities information processors, and broker-dealers) (202–942–0073).

SUPPLEMENTARY INFORMATION: The Commission is amending the definitions of "small business" and "small organization" (together, "small business") set forth in Rule 0–10 (17 CFR 270.0–10) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act"), Rule 0–7 (17 CFR 275.0–7) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (the "Advisers Act"), Rule 0–10 (17 CFR 240.0–10) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), and Rule 157 (17 CFR 230.157) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act") as those terms are used for purposes of Chapter Six of the Administrative Procedure Act, 5 U.S.C. 601 *et seq.* (the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (1980), as amended, Pub. L. No. 104–

121, Title II, Subtitle D, 110 Stat. 864 (1996) (the "Reg. Flex. Act")).

The Reg. Flex. Act, enacted in 1980, requires federal agencies, among other things, to consider the impact of rulemaking on entities that qualify as "small" under applicable standards in the Reg. Flex. Act,[1] the Small Business Act,[2] or regulations promulgated by the Small Business Administration ("SBA").[3] In 1982, the Commission adopted definitions that it considered appropriate for issuers and other entities subject to its regulation.

On January 22, 1997, the Commission published for comment proposed amendments to its definitions of "small business" for purposes of the Reg. Flex. Act, when used in connection with rulemaking affecting investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers.[4] In addition to publishing the rule proposal in the **Federal Register**, the Commission posted the proposed rule changes on the small business page of the Commission's Website.[5] To give the public additional time to comment, the Commission extended the comment period for the proposed amendments.[6] The Commission received no comments on the proposal. The Commission is adopting the amendments to the "small business" definitions as proposed.[7] The Commission is, however, making some modifications to the "small business" definition of investment adviser to reflect amendments to the Investment Advisers Act enacted under the National Securities Markets Improvement Act of 1996 (the "Improvement Act")[8] and to simplify the definition. As required under the Reg. Flex. Act, the Commission has consulted with the SBA Office of Advocacy regarding the amendments it is adopting.[9]

[1] 5 U.S.C. 603, 604.

[2] 15 U.S.C. 631 *et seq.*

[3] 13 CFR Part 121.

[4] Securities Act Release No. 7383, Exchange Act Release No. 38190, Investment Company Act Release No. 22478, Investment Advisers Act Release No. 1609, 62 FR 4106 (Jan. 28, 1997) (the "Proposing Release").

[5] The Commission's Website is located at http://www.sec.gov.

[6] Securities Act Release No. 7404, Exchange Act Release No. 38401, Investment Company Act Release No. 22566, Investment Advisers Act Release No. 1619, 62 FR 13356 (Mar. 20, 1997).

[7] The Commission intends to maintain its current definitions of "small business" as they relate to small business issuers, clearing agencies, bank municipal securities dealers, and public utility holding company systems.

[8] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[9] *See* 5 U.S.C. 601(3), 601(4).

I. Background

The Reg. Flex. Act defines the term "small entity" as a "small business," "small organization," or "small governmental jurisdiction."[10] The definition of "small business" incorporates the Small Business Size Regulations ("SBA size standards")[11] established by the SBA under the Small Business Act.[12] In addition, the Reg. Flex. Act definition of "small business" authorizes agencies to establish their own definitions if they determine that specialized definitions are more appropriate to the activities of the agency.[13]

As discussed in greater detail in the Proposing Release, the Commission has a longstanding commitment to understanding and addressing the concerns of small business.[14] Consistent with this commitment, in 1982, the Commission chose to adopt its own definitions of "small business" for purposes of Commission rulemaking after reviewing size standards adopted by the SBA.[15]

As discussed in the Proposing Release, the Commission's definitions adopted in 1982 were, in many ways, more expansive than the statutory definitions of "small business" and "small organization" in the Reg. Flex. Act. Under the Reg. Flex. Act, a business is not considered "small" if it is not "independently owned and operated."[16] The Commission's definitions went beyond the Reg. Flex. Act requirements because, for the most part, the Commission's definitions did not limit "small businesses" to those that were independently owned and operated. The Commission's original definitions also were broader in certain respects than the SBA size standards, which consider various limiting factors when determining if an entity is "small."[17] For example, the SBA size standards aggregate the interests of affiliated entities for the purpose of determining whether an entity is "independently owned and operated," and thus, "small."[18] In determining whether entities are affiliated, the SBA size standards consider such factors as control, management, ownership, and contractual relationships.[19] In addition, the SBA may treat multiple entities that have identical or substantially identical business or economic interests as a single entity.[20] Although the Commission's current definitions in some cases address the concept of control,[21] none of the other affiliation concepts set forth in the SBA size standards were considered when the Commission originally adopted its definitions of "small business" in 1982.

Under the Commission's current definitions, a majority of broker-dealers and investment advisers qualify as small.[22] Some of those "small" broker-dealers handle customer orders in excess of $200 million from which they earn more than $6 million per year in

[10] *Id.* § 601(6).

[11] 13 CFR Part 121.

[12] 15 U.S.C. 632(a)(2)(A) (SBA authority to establish standards for determining "small business concern").

[13] 5 U.S.C. 601(3), 601(4).

[14] *See* Proposing Release, supra note 4.

[15] The SBA adopted its size standards in 1980. Small Business Size Standards, Revisions of Methods of Establishing Size Standards and Definitions of Small Business, 45 FR 15442 (Mar. 10, 1980). The Commission determined that the SBA size standards were generally inappropriate in the context of regulations affecting securities issuers and reporting companies. *See* Proposed Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6302, Exchange Act Release No. 17645, PUHCA Release No. 21970, Trust Indenture Act Release No. 619, Investment Company Act Release No. 11694, Investment Advisers Act Release No. 754, 46 FR 19251 (Mar. 30, 1981) ("1981 Proposing Release"); *see also* Final Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6380, Exchange Act Release No. 18452, PUHCA Release No. 22371, Trust Indenture Act Release No. 693, Investment Company Act Release No. 12194, Investment Advisers Act Release No. 791, 47 FR 5215, 5216 (Feb. 4, 1982) ("1982 Adopting Release").

[16] *See* 5 U.S.C. 601(4) ("small organization" under the Reg. Flex. Act means an entity that is "independently owned and operated and is not dominant in its field"); 15 U.S.C. 632(a)(1) (definition of "small-business concern" under the Small Business Act (as incorporated in the Reg. Flex. Act definition of "small business," 5 U.S.C. 601(3)) means an entity that is "independently owned and operated and * * * is not dominant in its field").

[17] *See* SBA size standards, 13 CFR 121.102 (size eligibility provisions and standards).

[18] *Id.* § 121.103.

[19] *Id.* § 121.103(a)(1) (describing control relationships that constitute affiliation); *id.* § 121.103(a)(2) (describing factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships that SBA considers in determining whether affiliation exists).

[20] *See id.* § 121.103(a)(3).

[21] Under certain of the current definitions of "small business" under the Exchange Act (broker, dealer, clearing agency, municipal securities dealer, securities information processor, transfer agent), the Commission has considered control interests in determining whether an entity was "small." Exchange Act Rule 0–10 (17 CFR 240.0–10). The SBA regulations also address factors of control. 13 CFR 121.103(a)(1).

[22] Under the current definitions, approximately 75 percent of investment advisers and 60 percent of registered broker-dealers qualify as "small." The number of "small" investment advisers registered with the Commission was significantly reduced as of July 8, 1997, however, as a result of legislation that reallocated primary responsibility for regulating most smaller investment advisers to the states. *See infra* notes 45–47 and accompanying text.

revenue.[23] These entities are classified as "small" under current Commission rules even though they may be affiliated with larger entities that are responsible for many of the smaller firms' securities functions. Similarly, today most mutual funds are affiliated with large mutual fund families, and many investment advisers are affiliated with larger financial services firms. These relationships allow the "small" affiliates to rely on a larger entity that centralizes administrative and compliance systems for all affiliates, significantly reducing regulatory burdens for each individual affiliate.

A similar relationship exists between introducing broker-dealers and the large firms through which they clear securities trades. Although introducing and clearing firms share responsibility for ensuring that a customer's account is handled properly, introducing firms typically depend on clearing firms to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing the confirmation of the customer's trade. The increase in these affiliations since 1982 occurred along with tremendous growth and significant technological changes in the securities industry that facilitate such arrangements.[24] These changes in the securities industry prompted the Commission to begin reviewing certain of its "small business" definitions in 1995.[25]

The Commission expanded its review of "small business" definitions in 1996, after Congress enacted the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").[26] Among other things, SBREFA (i) imposed new obligations on the Commission and other agencies to assist small entities in understanding and complying with regulatory requirements,[27] (ii) amended the Reg. Flex. Act to allow small entities to seek judicial review of agency compliance with the Reg. Flex. Act,[28] and (iii) amended the Equal Access to Justice Act ("EAJA")[29] by expanding the class of litigants eligible to receive EAJA awards to include small entities as defined under the Reg. Flex. Act.[30] In view of the Commission's expanded obligations under SBREFA,[31] and changes in the securities industry discussed above, the Commission is adopting amendments to certain of its "small business" definitions to take into account more of the factors suggested by SBA size standards in determining whether an entity qualifies as "small."[32] The following sections of this release describe the amendments to specific "small business" definitions. The release also discusses how the amended definition of "small business" as it relates to investment advisers differs from the proposal and the reasons for the changes.

II. Discussion of Amendments

A. Investment Companies

The Commission is adopting, as proposed, amendments to the rule under the Investment Company Act that defines "small business" as applied to investment companies.[33] The current rule treats as a small business each investment company ("fund") that has $50 million or less in assets as of the end of its fiscal year.[34] As amended, the rule generally treats a fund as a small business only if it and any group of related funds have aggregate net assets of $50 million or less.[35] The Commission estimates that approximately 400 funds will be treated as small businesses under the amended rule.

The amended rule defines a group of related funds to include two or more management companies (including any series of such a company) that hold themselves out to investors as related companies for purposes of investment and investor services, and share either a common investment adviser (or affiliated advisers) or a common administrator.[36] In the case of a unit investment trust ("UIT"), a group of related funds means two or more UITs that have a common sponsor.[37]

There is a special rule applicable to insurance company separate accounts.[38]

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[23] The revenue amount is based on information provided by broker-dealers in quarterly FOCUS reports. The amount of customer order flow is derived using revenue data in the FOCUS reports.

[24] Between 1980 and 1996, the value of public offerings (including debt and equity, but not investment company securities) increased from $58 billion to over $1 trillion. Between 1990 and 1996, the dollar volume of equity securities traded on registered national securities exchanges and Nasdaq grew 277 percent, with over $7.8 trillion traded in 1996. Assets under management by investment advisers (excluding bank advisers to registered investment companies) rose from $205 billion to over $10 trillion (a 4,778 percent increase) between 1980 and 1996. Over the same period, assets of investment companies increased 1,514 percent from $235 billion to $3.794 trillion. The number of securities firms and professionals registered with the Commission or with self-regulatory organizations has also surged. The number of broker-dealers grew, over the same period, from around 5,200 to approximately 7,760 (a 49 percent increase). In addition, technological progress has changed the securities industry. For example, advances in information technology have resulted in the proliferation of information vendors and electronic trading systems not contemplated in 1982. Since 1982, the markets have seen the development of fully automated electronic broker-dealers and exchanges, improved electronic order execution systems at broker-dealers, exchanges, and national securities associations, and improved electronic linkages among markets and between broker-dealers and their customers. These changes have created substantially deeper and more liquid markets and have made trading more immediate and less expensive for both institutional and retail customers.

[25] *See* Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations, 60 FR 59503, 61073 (Nov. 28, 1995) (noting Division of Investment Management's consideration whether to recommend that the Commission propose amended definition of "small entity" in Rule 0–10 (17 CFR 270.0–10) under the Investment Company Act).

[26] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[27] *Id.* §§ 212, 213(b), 110 Stat. 858, 859.

[28] *Id.* § 242, 110 Stat. 865.

[29] 5 U.S.C. 504; 28 U.S.C. 2412.

[30] Pub. L. No. 104–121, § 232(b)(2), 110 Stat 863.

[31] The Commission is concerned that, as a result of the Commission's existing broad definitions of "small business," certain of the amendments made by SBREFA could result in a significant increase in the Commission's exposure to litigation beyond that reasonably contemplated by the Reg. Flex. Act. The Commission's enforcement litigation and other litigation matters have increased in recent years. In light of increased exposure to litigation under SBREFA, which could further strain the Commission's limited budget, the Commission believes it is appropriate to revise certain small business definitions under its own rules to reflect better the policies underlying the Reg. Flex. Act and the SBA size standards.

[32] In instances where the Commission has already instituted a rulemaking proceeding and prepared an Initial Regulatory Flexibility Analysis (IRFA) under the old small business definitions, those definitions will apply for purposes of any final rulemaking and the Commission's preparation of the required Final Regulatory Flexibility Analysis (FRFA).

[33] *See* amended Rule 0–10 (17 CFR 270.0–10); Proposing Release, *supra* note 4.

[34] Rule 0–10 (17 CFR 270.0–10).

[35] Amended Rule 0–10. Conforming amendments to Rule 157(b) (17 CFR 230.157(b)) under the Securities Act and Rule 0–10(b) (17 CFR 240.0–10(b)) under the Exchange Act adopt the same small business definition of an investment company. To facilitate the efficient computation of net assets, the amended rule provides that the Commission may base its count of the assets of any group of related funds on the net assets of each fund (or series) in the group at the end of each fund's fiscal year, as generally reported in Form N–SAR. Amended Rule 0–10(c) (17 CFR 270.0–10(c)); *see* 17 CFR 274.101; Form N–SAR, Item 74T. As under the current rule, small business status will be determined on a company-by-company basis rather than a series-by-series basis (even in the unusual circumstances when some series of a multi-series company may not constitute a group of related funds with respect to other series).

[36] Amended Rule 0–10(a)(1) (17 CFR 270.0–10(a)(1)). Under this definition, the assets to be aggregated for a multi-series company would include those of all series of the company, and of any separately organized company (and its series) in a related group.

[37] Amended Rule 0–10(a)(2) (17 CFR 270.0–10(a)(2)). A UIT holds a fixed portfolio of securities deposited by its sponsor, and does not have an investment adviser. *See generally* Section 4(2) of the Investment Company Act (15 U.S.C. 80a–4(2)). The amended rule does not define a group of related funds as applied to a face amount certificate company, another type of fund, which will continue to be subject to the $50 million test on a company-by-company basis.

[38] Separate accounts contain assets used to fund certain insurance and investment contracts between

Because state law generally treats separate account assets as the property of the sponsoring insurance company, the amended rule aggregates each separate account's assets with the assets of its sponsor, including other sponsored accounts.[39] As a result, the Commission expects few, if any, separate accounts to be treated as small businesses.

B. Investment Advisers

The Commission is adopting proposed amendments to the rule under the Advisers Act that defines "small business" as applied to investment advisers, with changes designed to reflect recent legislation and to simplify the proposed amendments.[40] The current rule defines as a small business each investment adviser that either (i) manages assets ("client assets") with a total value of $50 million or less as of the end of its most recent fiscal year, and performs no other advisory services; or (ii) performs other advisory services, manages client assets of $50 million or less if it manages client funds, and has assets related to its advisory business ("business assets") that do not exceed $50,000.[41] As amended, Rule 0–7 treats an adviser as a small business if (i) neither the adviser nor an adviser it controls, is controlled by, or is under common control with has $25 million or more of assets under management, and (ii) neither the adviser nor any person it controls, is controlled by, or is under common control with has $5 million or more of total assets.[42]

In the Proposing Release, the Commission requested comment whether, in light of the Improvement Act's transfer of primary responsibility for regulating small advisers to the states, a threshold of $25 million for client assets under management would be more appropriate than the $50 million threshold.[43] The Commission also requested comment whether the $50,000 threshold for business assets continued to be appropriate.[44] The Commission has now determined that the $25 million client asset threshold coupled with a $5 million total assets test more appropriately reflects the Improvement Act's allocation of regulatory responsibilities between the Commission and the states.

The Improvement Act reallocated regulatory responsibility over investment advisers between the Commission (which is now responsible for larger advisers with national businesses) and state securities regulators (which are now responsible for smaller advisers with essentially local businesses).[45] To effect this division of responsibility, Congress generally prohibited advisers with less than $25 million of assets under management from registering with the Commission after July 8, 1997.[46] Thus, Congress viewed "small advisers" as those having less than $25 million of assets under management.[47] The Commission believes that the definition of small business as applied to investment advisers for Reg. Flex. Act purposes should be revised to reflect the threshold that Congress used in the Improvement Act for similar purposes. Therefore, the Commission is reducing the threshold to $25 million of assets under management.[48]

Under the proposed amendments, an adviser having less than $50 million of client assets would *not* have been considered a small business if the adviser (i) had substantial business assets or (ii) was affiliated with a large firm.[49] Amended Rule 0–7 reflects the policy of extending an asset test to all investment advisers, but substantially simplifies the proposed amendments and reduces the amount of information the Commission must collect to determine whether an adviser is a small business.[50] As adopted, the rule excludes from the definition of small business an adviser having less than $25 million of assets under management if, based on information filed with the Commission, the adviser (i) has $5 million or more of "total assets," or (ii) controls, is controlled by, or is under common control with (a) another adviser that has $25 million or more of assets under management or (b) any person (other than a natural person) that

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the sponsoring insurance company and contract owners. Each account typically is organized as a UIT, or in some cases as a management company having a sponsor-affiliated investment adviser. *See generally* Section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a–2(a)(37)).

[39] Amended Rule 0–10(b) (17 CFR 270.0–10(b)).

[40] *See* amended Rule 0–7 (17 CFR 275.0–7); Proposing Release, *supra* note .

[41] Rule 0–7 (17 CFR 275.0–7).

[42] Amended Rule 0–7. "Total assets" is a broader and simpler term than "business assets." *See* amended Rule 0–7(b)(2) (total assets means total assets as shown on the balance sheet of investment adviser or other "person" in a control relationship with the adviser). It includes business assets, such as leases and equipment, as well as other types of assets, such as cash and accounts receivable. Total assets should be easier for advisers to calculate than business assets, since the information on total assets is readily available on the balance sheets of advisers and their affiliates.

[43] *See* Proposing Release, *supra* note , at text accompanying n.60.

[44] *Id.* As noted above, the Commission received no comments.

[45] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) at text accompanying note 5 (62 FR 28112 (May 22, 1997)) ("Adviser Registration Release").

[46] *See* Section 203A(a)(1) of the Advisers Act (15 U.S.C. 80b–3a(a)(1)) (prohibiting an adviser from registering with the Commission if it is subject to regulation by its home state unless it has assets under management of $25 million or more). The Commission retains primary responsibility for larger advisers, advisers to investment companies, advisers whose principal office and place of business is located in one of the four states that do not regulate advisers or is located overseas, and advisers exempted by rule from the prohibition on registration with the Commission. *See* Section 203A(a)(1) and (c) of the Advisers Act (15 U.S.C. 80b–3a(a)(1) and (c)); Rule 203A–2 (17 CFR 275.203A–2) (exempting nationally recognized statistical rating organizations, certain pension consultants, any smaller adviser having the same principal office and place of business as a registered adviser affiliated with it through a control relationship, and any new firm reasonably expecting to have $25 million or more of assets under management).

[47] *See* Report on S. 1815, "The Securities Investment Promotion Act of 1996," S. Rep. No. 293, 104th Cong., 2d Sess. 1–4 (1996) (legislation would focus SEC supervision "on investment advisers most likely to be engaged in interstate commerce" and focus state supervision "on advisers whose activities are most likely to be centered in their home state"; "legislation allows states to assume the primary role with respect to regulating advisers that are small, local businesses, managing less than $25 million in client assets, while the Commission's role is focused on larger advisers with $25 million or more in client assets under management").

[48] The Advisers Act permits the Commission to increase (but not to reduce) the $25 million minimum threshold for registration with the Commission. *See* Section 203A(a)(1)(A) of the Advisers Act (15 U.S.C. 80b–3a(a)(1)(A)). To coordinate amended Rule 0–7 with future Commission rulemaking in this regard, the amended rule provides that the maximum threshold for a small business will increase in tandem with any increase in the minimum threshold for Advisers Act registration. Amended Rule 0–7(a)(1) and (3) (17 CFR 275.0–7(a)(1) and (3)). Rule 203A–1 (17 CFR 275.203A–1), which gives an adviser discretion whether to register with the Commission instead of a state if the adviser has between $25 million and $30 million of assets under management, does not affect the definition of small business for purposes of amended Rule 0–7. *See* Adviser Registration Release, *supra* note 45, at text accompanying nn.48–49 (Rule 203A–1 merely makes registration optional within a specified range without raising the minimum threshold for registration).

[49] *See* Proposing Release, *supra* note , at nn.51–58 and accompanying text (proposing to extend current Rule 0–7's $50,000 business asset test to all advisers; proposing not to treat adviser as small entity if affiliated with large adviser or fund or entity deemed large under Rule 0–10 under the Exchange Act (17 CFR 240.0–10)).

[50] *See* 1981 Proposing Release, *supra* note 15 at 19257, 19263 (two attributes desirable in size standards are capacity to differentiate the small members of an industry from other members and the use of readily available information to derive standards). Under the amended rule, the determination of the adviser's small status will be based on information reported by the adviser about its size and the size of its affiliates under two tests, as explained below. In contrast, the proposed amendments would have applied two size tests to the adviser and several other tests to affiliates. The Commission expects to propose to amend Form ADV to add questions needed to obtain the information.

has $5 million or more of total assets.[51] The Commission estimates that under amended Rule 0–7, approximately 1,500 registered advisers will be treated as small businesses, approximately 500 fewer than under the proposed amendments.[52] Most of this change is attributable to reducing the threshold for client assets to less than $25 million of assets under management. The advisers considered small businesses under the amended rule will consist primarily of the advisers that have less than $25 million of assets under management but are registered with the Commission because they have a principal office and place of business in one of the four states that does not regulate advisers.[53]

C. Definitions Under the Exchange Act

1. Exchanges

As discussed in the Proposing Release, the Commission is expanding the definition of "small business" as it applies to exchanges to include a requirement that an exchange also not be affiliated with any person (other than a natural person) that is not a small business as defined in Rule 0–10.[54] Under the amended rule, an exchange is "affiliated" with another entity when the exchange controls, is controlled by, or is under common control with the other entity. This change will conform the definition applicable to exchanges with other definitions of "small business" under the Exchange Act by applying the affiliation standard already applicable to broker-dealers, clearing agencies, bank municipal securities dealers, securities information processors, and transfer agents.[55]

2. Securities Information Processors

The Commission is retaining in substantially the same form the existing criteria for determining whether a securities information processor is a "small business." This includes the requirement that, to be considered small, a securities information processor must have serviced less than 100 interrogation devices or moving tickers during the preceding fiscal year.[56] As proposed, the Commission also is modifying the definition of "interrogation device" for purposes of Rule 0–10 to take into account new technologies used to disseminate securities industry information to markets and market participants through increasingly diverse methods. Accordingly, for purposes of the amended small business definition, "interrogation device" includes any device that may be used to read or receive electronic information, including proprietary terminals or personal computers via computer-to-computer interfaces, or gateway access. This will include electronic devices that display securities information such as quotations and indications of interest, as well as those that display only last sale data or transaction reports.

3. Transfer Agents and Issuers

The amended small business definition for transfer agents retains the existing criteria based on volume of transfer business and number of shareholder accounts.[57] As discussed in the Proposing Release, however, the Commission is adding a third criterion: whether a transfer agent transfers only the items of "small issuers," as defined under Exchange Act Rule 0–10.[58] The shares of small issuers, as opposed to those of large publicly-traded companies, typically are held by a small portion of the investing public and are less likely to be the subject of a substantial amount of trading activity. Thus, the activities of small transfer agents, many of which are not subject to registration under Section 17A of the Exchange Act, are not likely to have a substantial effect on the investing public or the operation of the national clearance and settlement system. In contrast, transfer agents for large companies whose shares are heavily traded are likely to have a far greater effect on securities processing, generally, and on the operation of the national clearance and settlement system.[59]

The Commission also is deleting language in Rule 0–10(a) that currently limits the definition of small business, as it refers to "issuer" or "person," to Sections 12, 13, 14, 15(d), or 16 of the Exchange Act.[60] This deletion reflects that, under the amended rule, transfer agents who transfer items of issuers with total assets greater than $5 million will not be considered small for purposes of the Reg. Flex. Act. In addition, no transfer agent, broker-dealer, exchange, clearing agency, securities information processor, or bank municipal securities dealer will be classified as small if it is affiliated with an issuer that does not qualify as small under Rule 0–10. This change is consistent with the intent of the Reg. Flex. Act that only businesses and organizations that are "independently owned" may qualify as small entities.[61]

4. Broker-Dealers

As discussed in the Proposing Release, the Commission is retaining the capital standard currently set forth in Rule 0–10 that is used for determining whether a broker[62] or dealer[63] is deemed a "small business."[64] The

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[51] *See* amended Rule 0–7(a) (2) and (3) (17 CFR 275.0–7(a)(2) and (3)). The $5 million total assets test is one measure of a small entity under Rule 0–10 (17 CFR 240.0–10(a)) under the Exchange Act. Amended Rule 0–7(b)(1) defines control consistent with Rule 203A–2(c) under the Advisers Act (17 CFR 275.203A–2(c)).

[52] The number of small businesses for which the Commission has primary regulatory responsibility has dropped sharply as a result of the Improvement Act's prohibiting most small advisers from registering with the Commission. *See supra* text accompanying notes 45–47. Following the final de-registration of those advisers no longer eligible to register with the Commission, there will be approximately 7,600 Commission-registered advisers. In contrast, prior to July 8, 1997 there were approximately 23,000 advisers registered with the Commission.

[53] *See supra* note 46. When one or more of these four states institutes a registration scheme for advisers with assets under management of less than $25 million, the number of small business advisers registered with the Commission will decrease. *See also* Adviser Registration Release, *supra* note 45, at n.42 ("Commission data suggests that most advisers that will remain registered with the Commission have assets under management well in excess of $25 million").

[54] The term "exchange" is defined in Section 3(a)(1) of the Exchange Act (15 U.S.C. 78c(a)(1)). The Commission is retaining the existing provisions of Rule 0–10 that define as "small" those exchanges that are exempt from the requirements of rule 11Aa3–1 (17 CFR 240.11Aa3–1) regarding the dissemination of transaction reports and last sale data with respect to transactions in securities. Currently, none of the eight registered exchanges is fully exempted from the requirements of Rule 11Aa3–1 and, consequently, none is considered a "small business" under Rule 0–10.

[55] This amendment is consistent with the Commission's belief that it is appropriate to exclude entities with significant economic and financial resources from regulatory treatment as small businesses under the Reg. Flex. Act. *See* 1981 Proposing Release, 46 FR at 19257.

[56] The term "securities information processor" is defined in Section 3(a)(22) of the Exchange Act (15 U.S.C. 78c(a)(22)). Currently, neither of the two registered exclusive securities information processors is designated as a "small business" under Rule 0–10.

[57] The term "transfer agent" is defined in Section 3(a)(25) of the Exchange Act (15 U.S.C. 78c(a)(25)).

[58] Small issuers, for this purpose, are issuers with total assets of $5 million or less.

[59] See Securities and Exchange Commission, *Study of Unsafe and Unsound Practices of Broker and Dealers* 37–39 (1971).

[60] 15 U.S.C. 78*l*, 78m, 78n, 78o(d), and 78p.

[61] *See supra* note 16. As noted above, amended Rule 0–10 provides that only those transfer agents that limit the number of items they transfer, handle a limited number of shareholder accounts, and transfer small issuer securities are considered small businesses. Because this category is limited to those transfer agents that would generally be exempt from registration under Exchange Act Section 17A, the Commission believes that there will be few, if any, registered transfer agents that qualify as small businesses for purposes of the Reg. Flex. Act.

[62] The term "broker" is defined in Section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)).

[63] The term "dealer" is defined in Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

[64] Rule 0–10 under the Exchange Act (17 CFR 240.0–10(c)) currently defines "small business" to include any broker or dealer that has total capital of less than $500,000 and that is not affiliated with

Commission, however, is expanding the affiliation standard applicable to broker-dealers. Under the amended definition, the Commission estimates that approximately 13 percent of all registered broker-dealers will be characterized as "small."

The affiliation test currently only looks to whether a broker-dealer controls, is controlled by, or is under common control with, an entity other than a small business or small organization. This test focuses primarily on relationships between broker-dealers based on voting control or the sharing of profits. As discussed in the Proposing Release, the structure and operation of broker-dealer activities suggest that other kinds of business relationships, such as the contractual relationship between an introducing broker and its clearing firm, can give rise to an opportunity by which a clearing firm can exercise substantial influence over the business of its introducing brokers. In order to conform better its affiliation standard to the nature of business relationships that exist between broker-dealers, the Commission is expanding the definition of affiliation applicable to broker-dealers under Rule 0–10 to include arrangements whereby one broker-dealer introduces transactions in securities to another.[65]

This new affiliation standard is consistent with SBA regulations addressing affiliation that consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships.[66] As a practical matter, clearing and introducing firms have identical business interests. In fact, most introducing brokers could not be in business without the capital, technology, and back-office support provided by the clearing firm. Introducing and clearing brokers also have a shared legal responsibility for ensuring that a customer's account is handled properly.[67]

Under amended Rule 0–10, an introducing broker that introduces transactions to a large clearing firm generally will not be considered a "small business" for purposes of the Reg. Flex. Act. The Commission acknowledged in the Proposing Release, however, that certain broker-dealers that limit their activities to handling only investment company securities or interests or participations in insurance company separate accounts typically are small, sometimes one-person operations that combine limited securities activities with broader tax, financial planning, and insurance services. Accordingly, the Commission is providing an exception from the affiliation standard for these broker-dealers.

III. Effects on Competition and Regulatory Flexibility Considerations

Section 23(a)(2) of the Exchange Act[68] requires the Commission, in adopting rules under the Exchange Act, to consider the impact a rule would have on competition and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission is of the view that the amendments to Exchange Act Rule 0–10 will not impose any burden on competition. The rule changes will not affect the manner in which any regulated entity conducts its business. Moreover, entities that will no longer be classified as small businesses for Reg. Flex. Act purposes should suffer no resulting competitive disadvantage. Although the Commission considers the impact of its rules and rule proposals on small entities, any modification or accommodation relating to size is based on objective criteria such as net assets and not whether an entity meets a "small business" definition under the Commission's Rules.

As discussed in the Proposing Release, the Commission has conferred with the SBA and the SBA concurs that no regulatory flexibility analysis is required for the amendments.[69] The definitions of the terms "small business" do not impose any requirements on small businesses. The definitions are interpretations of terms that identify those entities that the Commission will study for Reg. Flex. Act purposes when proposing and adopting rules, and are rules of agency practice and procedure.

IV. Statutory Authority

The Commission is amending Rule 157 (17 CFR 230.157), Rule 0–10 (17 CFR 240.0–10), Rule 0–10 (17 CFR 270.0–10), and Rule 0–7 (17 CFR 275.0–7) pursuant to chapter 6 of title 5 of the United States Code (particularly Section 601 thereof (5 U.S.C. 601)), and pursuant to Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w), Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–37), and Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11).

Text of Rule Amendments

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w,

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any person (other than a natural person) that is not a small business under the rule.

[65] From a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements. The clearing agreement outlining the respective duties and obligations of an introducing broker and its clearing firm typically contains various requirements imposed by the clearing firm with respect to the handling of customer accounts by the clearing and introducing brokers, and the clearing firm's maintenance of customer assets. Although the customer places its order directly with the introducing firm, the Commission considers the account to be an account of the clearing firm, which has primary legal responsibility with respect to the handling of customer funds and securities, and for sending account statements to the customer. Thus, both introducing and clearing firms have a shared responsibility for ensuring that a customer's account is handled properly.

[66] *See supra* notes 19–20 and accompanying text (SBA size standard considerations in determining "small business concern"). See also Report to Accompany H.R. 4660, H.R. Rep. No. 96–519, pt.1, at 19 (1979) (suggesting that the definition of "small businesses" was intended to encompass businesses that are independently owned and operated and not dominant in their field of operation). Consistent with the Reg. Flex. Act definitions of small business, SBA regulations that address affiliation consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships. 13 CFR 121.103(a).

[67] As a legal matter, for purposes of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) and the Commission's financial responsibility rules, a customer is the customer of the clearing firm. *See* Exchange Act Release No. 31511, 57 FR 56973 (Dec. 2, 1992).

[68] 15 U.S.C. 78w(a)(2).

[69] *See* Proposing Release, 62 FR at 4113.

78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

Section 230.157 is amended by revising the section heading and paragraph (b) to read as follows:

§ 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.

* * * * *

(b) When used with reference to an investment company that is an issuer for purposes of the Act, have the meaning ascribed to those terms by § 270.0–10 of this chapter.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78l, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.0–10 is amended to revise the section heading and paragraphs (a), (b), (e), (g)(2), (g)(3), and (i); redesignate paragraphs (h)(2) and (h)(3) as paragraphs (h)(3) and (h)(4), respectively; and add paragraphs (h)(2), (j) and (k) to read as follows:

§ 240.0–10 Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.

* * * * *

(a) When used with reference to an "issuer" or a "person," other than an investment company, mean an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less;

(b) When used with reference to an "issuer" or "person" that is an investment company, have the meaning ascribed to those terms by § 270.0–10 of this chapter;

* * * * *

(e) When used with reference to an exchange, mean any exchange that:

(1) Has been exempted from the reporting requirements of § 240.11Aa3–1; and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

* * * * *

(g) * * *

(2) Provided service to fewer than 100 interrogation devices or moving tickers at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section; and

(h) * * *

(2) Transferred items only of issuers that would be deemed "small businesses" or "small organizations" as defined in this section; and

* * * * *

(i) For purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if:

(1) Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or

(2) Such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.

(j) For purposes of paragraphs (d) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

(k) For purposes of paragraph (g) of this section, "interrogation device" shall refer to any device that may be used to read or receive securities information, including quotations, indications of interest, last sale data and transaction reports, and shall include proprietary terminals or personal computers that receive securities information via computer-to-computer interfaces or gateway access.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

6. Section 270.0–10 is revised to read as follows:

§ 270.0–10. Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) *General.* For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. For purposes of this section:

(1) In the case of a management company, the term *group of related investment companies* shall mean two or more management companies (including series thereof) that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) Either:

(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or

(B) Have a common administrator; and

(2) In the case of a unit investment trust, the term *group of related investment companies* shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related investment companies based on the net assets of each investment company in the group as of the end of such company's fiscal year.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a), 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

* * * * *

8. Section 275.0–7 is revised to read as follows:

§ 275.0–7. Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b–3a(a)(2)) and reported on Form ADV–T (17 CFR 279.3) or its most recent Schedule I to Form ADV (17 CFR 279.1), having a total value of less than $25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b–3a(a)(1)(A));

(2) Did not have total assets of $5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more (or such higher amount as the Commission may deem appropriate), or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.

(b) For purposes of this section:

(1) *Control* means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another person is presumed to control the other person.

(2) *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other person with its subsidiaries consolidated, whichever is larger.

Dated: June 24, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17387 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE86

Administrative Review Process; Prehearing Proceedings and Decisions by Attorney Advisors; Extension of Expiration Date

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules extend the time period set out in our regulations during which attorney advisors in our Office of Hearings and Appeals (OHA) may conduct certain prehearing proceedings and, where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. We are extending the date at which these rules will no longer be effective from July 1, 1998, until April 1, 1999.

EFFECTIVE DATE: These rules are effective June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On June 30, 1995, in an action undertaken to reduce the record numbers of requests for an administrative law judge (ALJ) hearing pending in our OHA hearing offices, we published final rules in the **Federal Register** (60 FR 34126) that authorize OHA's attorney advisors to conduct certain prehearing proceedings and, if a decision that is wholly favorable to the parties to the hearing may be issued at the completion of these proceedings, to issue such a decision. These regulations, which are codified at §§ 404.942 and 416.1442, included a provision stating that the rules would no longer be effective on June 30, 1997, unless the Commissioner of Social Security extended the expiration date of the provisions by publication of a final rule in the **Federal Register**. We subsequently published a final rule in the **Federal Register** on June 30, 1997 (62 FR 35073), stating that these rules would no longer be effective on July 1, 1998.

In order to maximize our ability to meet our hearing production goals, we have decided to extend the date on which these rules will no longer be effective from July 1, 1998, to April 1, 1999. The final rules amend the sunset provision in §§ 404.942 and 416.1442 (which expressly provides for extending the expiration date of those sections) to provide that the provisions authorizing prehearing proceedings and decisions by attorney advisors will no longer be effective on April 1, 1999, unless the provisions are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because these rules only extend the date on which the regulatory provisions concerning prehearing proceedings and decisions by attorney advisors will no longer be effective. These rules make no substantive change to those provisions. The current regulations expressly provide that the provisions may be extended. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the provisions on prehearing proceedings and decisions by attorney advisors. However, without a timely extension of the expiration date for these provisions, we will lack

regulatory authority beginning July 1, 1998, to have OHA attorney advisors conduct certain prehearing proceedings and issue fully favorable decisions where appropriate under the rules. In order to provide for an uninterrupted continuance of that authority for the additional period we believe appropriate, and to ensure that we retain the ability to manage the hearings process appropriately, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rules are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: June 23, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.942 is amended by revising paragraph (g), to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N is amended as follows:

1. The authority citation for subpart N continues to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1442 is amended by revising paragraph (g), to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

[FR Doc. 98–17343 Filed 6–29–98; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 884, and 890

[Docket No. 94N–0418]

Medical Devices; Retention of Three Preamendment Class III Devices in Class III

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is retaining the following three preamendments class III devices in class III: Lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair. The agency is taking this action because insufficient information exists to determine that special controls would provide reasonable assurance of their safety and effectiveness, and/or these devices present a potential unreasonable risk of illness or injury.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 18, 1997 (62 FR 33044), FDA issued a proposed rule to retain the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair in class III. This proposed retention in class III was based on a lack of information submitted in response to the section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) order to determine whether or not special controls could be established to reasonably assure the safety and effectiveness of these devices.

Interested persons were given until September 16, 1997, to comment on the proposed rule. During the comment period, FDA received no comments on the proposed rule.

II. FDA's Conclusion

FDA has concluded that insufficient information exists to establish special controls to provide reasonable assurance of the safety and effectiveness of the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair and/or that these devices present a potential unreasonable risk of illness or injury.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, and because this rule retains these devices as previously classified, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

This final rule is issued under sections 513, 515(i), and 701(a) of the act (21 U.S.C. 360c, 360e(i), and 371(a)) and under authority of the Commissioner of Food and Drugs.

Dated: June 17, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–17290 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8772]

RIN 1545–AU08

Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

DATES: *Effective date:* These regulations are effective June 30, 1998.

Applicability date: These regulations apply to information returns required to be filed on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Joy Welch, (202) 622–4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see the telephone numbers listed at the beginning of **SUPPLEMENTARY INFORMATION**

SUPPLEMENTARY INFORMATION: If the inquiry relates to magnetic media filing and magnetic media specifications for Form W–2, Form 499R–2/W–2PR, Form W–2VI, Form W–2GU, and Form W–2AS, persons residing in the following locations should contact the corresponding Social Security Administration office (not a toll-free call):

Alabama (404) 562–1314 (Atlanta),
Alaska (206) 615–2125 (Seattle),
American Samoa (415) 744–4559 (San Francisco),
Arizona (415) 744–4559 (San Francisco),
Arkansas (501) 324–5466 (Little Rock),
California (415) 744–4559 (San Francisco),
Colorado (303) 844–2364 (Denver),
Connecticut (617) 565–2895 (Boston),
Delaware (215) 597–4632 (Philadelphia),
District of Columbia (215) 597–4632 (Philadelphia),
Florida (404) 562–1314 (Atlanta),
Georgia (404) 562–1314 (Atlanta),
Guam (415) 744–4559 (San Francisco),
Hawaii (415) 744–4559 (San Francisco),
Idaho (206) 615–2125 (Seattle),
Illinois (312) 575–4244 (Chicago),
Indiana (312) 575–4244 (Chicago),
Iowa (816) 936–5649 (Kansas City),
Kansas (816) 936–5649 (Kansas City),
Kentucky (404) 562–1314 (Atlanta),
Louisiana (504) 389–0426 (Baton Rouge),
Maine (617) 565–2895 (Boston),
Maryland (215) 597–4632 (Philadelphia),
Massachusetts (617) 565–2895 (Boston),
Michigan (312) 575–4244 (Chicago),
Minnesota (312) 575–4244 (Chicago),
Mississippi (404) 562–1314 (Atlanta),
Missouri (816) 936–5649 (Kansas City),
Montana (303) 844–2364 (Denver),
Nebraska (816) 936–5649 (Kansas City),
Nevada (415) 744–4559 (San Francisco),
New Hampshire (617) 565–2895 (Boston),
New Jersey (212) 264–5643 (New York),
New Mexico (505) 262–6048 (Albuquerque),
New York (212) 264–5643 (New York),
North Carolina (404) 562–1314 (Atlanta),
North Dakota (303) 844–2364 (Denver),
Ohio (312) 575–4244 (Chicago),
Oklahoma (405) 951–3007 (Oklahoma City),
Oregon (206) 615–2125 (Seattle),
Pennsylvania (215) 597–4632 (Philadelphia),
Puerto Rico (787) 766–5574 (San Juan),
Rhode Island (617) 565–2895 (Boston),
South Carolina (404) 562–1314 (Atlanta),
South Dakota (303) 844–2364 (Denver),
Tennessee (404) 562–1314 (Atlanta),
Texas-Central/South (210) 229–6433 (San Antonio),
Texas-Dallas County (214) 767–6777 (Dallas),
Texas-North (817) 978–3123 (Forth Worth),
Texas-Southeast (713) 718–3015 (Houston),
Texas-West (505) 262–6048 (Albuquerque),
Utah (303) 844–2364 (Denver),
Vermont (617) 565–2895 (Boston),
Virgin Islands (787) 766–5574 (San Juan),
Virginia (215) 597–4632 (Philadelphia),
Washington (206) 615–2125 (Seattle),
West Virginia (215) 597–4632 (Philadelphia),
Wisconsin (312) 575–4244 (Chicago), and
Wyoming (303) 844–2364 (Denver).

If the inquiry relates to either the waiver procedure for all forms described

in these regulations or the magnetic media specifications for Forms 1042–S, 1098, 1099 series, 5498, 8027, or W–2G, persons should contact the Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25402–1359; telephone (304) 263–8700 (not a toll-free call).

Background

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) was added to the Internal Revenue Code (Code) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98–67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Pub. L. 101–239, 103 Stat. 2394. As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year.

On October 10, 1996, final and temporary regulations (TD 8683) amending the existing regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) were published in the **Federal Register** (61 FR 53056). A notice of proposed rulemaking (REG–209803–95) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (61 FR 53161). These regulations were issued at the request of the Social Security Administration (the SSA) that regulations be issued to require employers required to file 250 or more Forms 499R–2/W–2PR (Withholding Statement (Puerto Rico)), Forms W–2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W–2GU (Guam Wage and Tax Statement), and Forms W–2AS (American Samoa Wage and Tax Statement) to file these forms with the SSA on magnetic media. Filing these forms on magnetic media will reduce administrative burdens and will increase accurate processing of information. These regulations also reflect the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

One written comment responding to this notice was received. No public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as modified and the corresponding temporary regulations are removed. The comment is discussed below.

Summary of Comment

The commentator suggests that the definition of *magnetic media* is too restrictive and that it does not encompass the use of additional technology that would facilitate the underlying reporting requirements. The commentator suggests that the definition is not broad enough to include the use of digital filing, specifically 2D barcode. Neither the IRS nor the SSA utilize digital filing technology at this time. However, the IRS and the SSA are committed to utilizing available technology that would facilitate the purpose of information reporting.

Therefore, the regulations make clear that the use of other media may be permitted in the future as provided in applicable regulations, revenue procedures, or publications.

Relationship to Treasury Decision 8734

Treasury Decision 8734 was published in the **Federal Register** on October 14, 1997 (62 FR 53387) and removed §§ 1.6045–1T and 1.6045–2T effective January 1, 1999. This document removes §§ 1.6045–1T and 1.6045–2T effective June 30, 1998. Because this document removes these sections at an earlier date, a document will be published later to amend TD 8734 to take this into account.

Special Analyses

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and prescribe only the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Donna Joy Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 1.6045–1T and 1.6045–2T [Removed]

Par. 2. Sections 1.6045–1T and 1.6045–2T, currently in effect, are removed.

Par. 3. Section 1.6045–1, currently in effect, is amended by:

1. Revising paragraph (l).
2. Removing the language "§ 1.6045–1T(l)" and adding "paragraph (l) of this section" in its place in paragraph (q).

The revision reads as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

* * * * *

Par. 4. Section 1.6045–2, currently in effect, is amended by:

1. Revising paragraph (g)(2).
2. Removing the language "§ 1.6045–2T(g)(2)" and adding "paragraph (g)(2) of this section" in its place in paragraph (i).

The revision reads as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(g) * * *

(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 301.6011–2 is amended by:

1. Revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) heading, (c)(1)(i), (c)(1)(iii), (c)(2), (d), (f), (g) heading, and (g)(2).
2. Adding paragraph (c)(1)(iv).
3. Removing paragraphs (c)(3) and (c)(4) and the last sentence of paragraph (e).

The revisions and addition read as follows:

§ 301.6011–2 Required use of magnetic media.

(a) * * *

(1) *Magnetic media.* The term *magnetic media* means any media permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Form 1042–S, 1098, 1099 series, 5498, 8027, W–2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W–2 (Wage and Tax Statement), Form 499R–2/W–2PR (Withholding Statement (Puerto Rico)), Form W–2VI (U.S. Virgin Islands Wage and Tax Statement), Form W–2GU (Guam Wage and Tax Statement), Form W–2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

* * * * *

(c) *Exceptions*—(1) *Low-volume filers/250-threshold*—(i) *In general.* No person is required to file information returns on magnetic media unless the person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

* * * * *

(iii) *No aggregation.* Each type of information return described in paragraphs (b)(1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

Example 1. For the calendar year ending December 31, 1998, Company X is required to file 200 returns on Form 1099–INT and 350 returns on Form 1099–MISC. Company X is not required to file Forms 1099–INT on magnetic media but is required to file Forms 1099–MISC on magnetic media.

Example 2. During the calendar year ending December 31, 1998, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R–2/W–2PR on magnetic media but is not required to file Forms W–2AS on magnetic media.

Example 3. For the calendar year ending December 31, 1998, Company Z files 300 original returns on Form 1099–DIV and later files 70 corrected returns on Form 1099–DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See § 301.6721–1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W–2, Forms 499R–2/W–2PR, Forms W–2VI, Forms W–2GU, or Form W–2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship (see § 31.6071(a)–1(a)(3)(ii) of this chapter). A request for waiver must be

made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be in accordance with applicable Internal Revenue Service or Social Security Administration procedures.

* * * * *

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective dates.* * * *

(2) Paragraphs (a)(1), (b)(1), (b)(2), (c)(1)(i), (c)(1)(iii), (c)(1)(iv), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e).

§ 301.6011–2T [Removed].

Par. 7. Section 301.6011–2T is removed.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 22, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–16411 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

(T.D. ATF–401; Ref: Notice No. 862)

RIN: 1512–AB64

Implementation of Public Law 104208, Omnibus Consolidated Appropriations Act of 1997 (96R–034P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary Rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, which amended the Gun Control Act of 1968. Specifically, the new law makes it unlawful for individuals who have been convicted of a "misdemeanor crime of domestic violence" to ship, transport, receive or possess firearms and ammunition, and prohibits sales or other dispositions of firearms and ammunition to such individuals. Further, the law requires individuals acquiring handguns from Federal firearms licensees under the Brady law to certify that they have not been convicted of such a crime. Additionally, it allows all Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATE: The temporary regulations are effective June 30, 1998.

ADDRESS: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1996, The Omnibus Consolidated Appropriations Act of 1997 (hereinafter, "the Act"), Pub. L. 104–208 (110 Stat. 3009), was enacted. The Act amended the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. The amendments became effective upon the date of enactment. The new statutory provisions and the regulation changes necessitated by the Act are as follows:

(1) *Misdemeanor crime of domestic violence.* The Act amended 18 U.S.C. 922(g) to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive in or affecting commerce firearms or ammunition. It also amended 18 U.S.C. 922(d) to make it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that: (1) Is a misdemeanor under Federal or State law; (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes any offense that is classified as a misdemeanor under Federal or State law. (An example of a Federal misdemeanor is a conviction in an Indian Court established pursuant to 25 CFR part 11. Misdemeanor convictions in other Indian courts are not Federal misdemeanors because these courts are not considered Federal or State courts.) In addition, in States that do not classify offenses as misdemeanors, the definition includes any State or local offense punishable by imprisonment for a term of one year or less.

Accordingly, if State A has an offense classified as a State "domestic violence misdemeanor" that is punishable by up to five years imprisonment, it would be a misdemeanor crime of domestic violence as defined in the GCA.

If State B does not characterize offenses as misdemeanors, but has a domestic violence offense that is punishable by no more than one year imprisonment, this offense would be a misdemeanor crime of domestic violence as defined in the GCA. Therefore, a person convicted of such an offense would be subject to firearms disabilities under 18 U.S.C. 922(g)(9).

Moreover, the definition includes offenses that are punishable only by a fine, as well as offenses that are punishable by a term of imprisonment. Nothing in the language of the statute limits the term misdemeanor crime of domestic violence to offenses punishable by imprisonment. The legislative history of the statute illustrates that the prohibition on firearm possession by persons convicted of such offenses was to be as broad as possible, for example, covering individuals who plead guilty to minor offenses.

The prohibition also applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer lawfully possess a firearm or ammunition.

Whether a person has been "convicted" of a misdemeanor crime of domestic violence is determined by the law of the jurisdiction where the proceedings were held. In addition, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights upon conviction for such an offense) *AND* the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

In addition, a person shall not be considered to have been convicted of such an offense, unless (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel; and (2) if the person was entitled to a jury trial, the case was tried by a jury or the person knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.

The definition of misdemeanor crime of domestic violence includes all offenses that have as an element the use or attempted use of physical force (*e.g.*, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault and battery against his or her spouse would be prohibited from receiving or possessing firearms or ammunition.

A misdemeanor crime of domestic violence includes an offense that is committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

The statute does not define the phrase "a person who is cohabiting with the victim as a spouse" or a "person similarly situated to a spouse." "Cohabit" is commonly defined as "to live together as husband and wife, especially when not legally married." Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Therefore, for purposes of these regulations the phrase "cohabiting as a spouse" means two persons living together in an intimate relationship who hold themselves out as husband and wife.

Further, the regulations interpret the phrase "similarly situated to a spouse" to mean two persons who share the same domicile in an intimate relationship. A "domicile" is defined as "one's fixed place of dwelling, where one intends to reside more or less permanently." Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Unlike persons "cohabiting with a spouse," persons "similarly situated" do not necessarily have to hold themselves out as husband and wife.

The regulation also implements the Act's amendments to 18 U.S.C. 922(s) to require individuals who intend to acquire handguns from licensees to state on the Brady Form, ATF Form 5300.35, whether they have been convicted of a "misdemeanor crime of domestic violence."

Prior to the Act, employees of government agencies with firearms disabilities were allowed to receive and possess firearms for official duties under the exemption in 18 U.S.C. 925(a)(1). However, the Act amended section 925(a)(1) to prohibit the possession of firearms and ammunition by any individual convicted of a misdemeanor crime of domestic violence. Accordingly, the regulations provide that employees of government agencies convicted of disqualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by government employees for use in performing their official duties, and government employees' personal firearms and ammunition.

The regulations are also being amended to provide that dealers may continue to sell firearms to law enforcement officers, including out-of-State officers, for official use without requiring them to fill out a Form 4473 or a Form 5300.35. Prior to the Act, law enforcement officers could establish their exemption from these requirements if they presented a certification letter on their agency's letterhead, signed by a person in authority within the agency, and stating that the firearm would be used in the performance of official duties. This procedure is now being incorporated into the regulations.

To ensure that law enforcement officers who purchase firearms for official use are not subject to the misdemeanor crime of domestic violence disability, the regulations provide that the certification letter must also state that a records check does not disclose any convictions of the officer for a misdemeanor crime of domestic violence. This new requirement allows for an effective method of determining whether the officer is prohibited from purchasing firearms and provides safeguards equivalent to those afforded by the Form 4473 and Form 5300.35. Disposition of the firearm to the officer must still be entered into the licensee's permanent records and the certification letter must be retained in the licensee's files.

(2) *Disposition of Curio or Relic Firearms by Licensed Importers, Manufacturers, and Dealers Away From Their Licensed Premises.* The Act amended 18 U.S.C. 923(j) to allow licensed importers, manufacturers, and dealers to engage in the business of selling or transferring curio or relic firearms to other licensees away from their licensed premises. Prior to the amendment, licensed importers, manufacturers, and dealers were restricted to conducting business from their licensed premises and temporarily at gun shows away from the licensed premises if the gun show was in the same State as that specified on the license. The regulation at § 178.50 is being amended to reflect this amendment. In addition, § 178.100 is being amended to require licensees to record in their acquisition and disposition records the location of the sale or disposition.

Licensed importers, manufacturers, and dealers are still subject to all recordkeeping requirements in the

regulations concerning the sale or other disposition of curios or relics.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. § 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. § 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0520. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is in §§ 178.130(a)(1) and 178.134. This information is required to prevent the purchase of handguns by persons convicted of a misdemeanor crime of domestic violence. The likely respondents are individuals.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information: The author of this document is Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR part 178 is amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), and Pub. L. 104–208 (110 Stat. 3009).

* * * * *

Par. 3. Section 178.11 is amended by adding the definition for "misdemeanor crime of domestic violence" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Misdemeanor crime of domestic violence. (a) Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence." The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

(b) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(i) The case was tried by a jury, or

(ii) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(c) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

* * * * *

Par. 4. Section 178.32 is amended by removing the word "or" at the end of paragraph (a)(7), by removing the period at the end of paragraph (a)(8)(iii)(B) and adding in its place ", or", by removing the word "or" at the end of paragraph (d)(7), by removing the period at the end

of paragraph (d)(8)(ii)(B) and adding in its place ", or", and by adding new paragraphs (a)(9) and (d)(9) to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

(d) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

Par. 5. Section 178.50 is amended by removing the word "or" at the end of paragraph (b), by removing the period at the end of paragraph (c) and adding in its place "; or", and by adding new paragraph (d) to read as follows:

§ 178.50 Locations covered by license.

* * * * *

(d) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location pursuant to the provisions of § 178.100.

Par. 6. Section 178.99 is amended by removing the word "or" at the end of paragraph (c)(7), by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place ", or", and by adding new paragraph (c)(9) to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

Par. 7. Section 178.100 is amended by redesignating paragraph (a) as (a)(1), by adding new paragraph (a)(2), and by revising paragraph (c) to read as follows:

§ 178.100 Conduct of business away from licensed premises.

(a)(1) * * *

(2) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location.

* * * * *

(c) Licensees conducting business at locations other than the premises specified on their license under the provisions of paragraph (a) of this section shall maintain firearms records in the form and manner prescribed by Subpart H of this part. In addition, records of firearms transactions conducted at such locations shall include the location of the sale or other disposition, be entered in the acquisition and disposition records of the licensee, and retained on the premises specified on the license.

Par. 8. Section 178.130(a)(1) is amended by revising the last sentence to read as follows:

§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.

(a)(1) * * * The transferee must date and execute the sworn statement contained on the form showing that the transferee is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; is not a person who, having been a citizen of the United States, has renounced such citizenship; and has not been convicted of a misdemeanor crime of domestic violence.

* * * * *

Par. 9. Section 178.134 is added to Subpart H to read as follows:

§ 178.134 Sale of firearms to law enforcement officers.

(a) Law enforcement officers purchasing firearms for official use who provide the licensee with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence are not required to complete Form 4473 or Form 5300.35. The law enforcement officer purchasing the firearm may purchase a firearm from a licensee in another State, regardless of where the officer resides or where the agency is located.

(b)(1) The following individuals are considered to have sufficient authority to certify that law enforcement officers purchasing firearms will use the firearms in the performance of official duties:

(i) In a city or county police department, the director of public safety or the chief or commissioner of police.

(ii) In a sheriff's office, the sheriff.

(iii) In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.

(iv) In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

(2) An individual signing on behalf of the person in authority is acceptable, provided there is a proper delegation of authority.

(c) Licensees are not required to prepare a Form 4473 or Form 5300.35 covering sales of firearm made in accordance with paragraph (a) of this section to law enforcement officers for official use. However, disposition to the officer must be entered into the licensee's permanent records, and the certification letter must be retained in the licensee's files.

Par. 10. Section 178.141 is amended by revising the introductory text to read as follows:

§ 178.141 General.

With the exception of §§ 178.32(a)(9) and (d)(9) and 178.99(c)(9), the provisions of this part shall not apply with respect to:

* * * * *

Par. 11. Section 178.144 is amended by removing the word "and" at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and by adding in its place "; and", and by adding paragraph (c)(8) to read as follows:

§ 178.144 Relief from disabilities under the Act.

* * * * *

(c) * * *

(8) In the case of an applicant who has been convicted of a misdemeanor crime of domestic violence, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored.

* * * * *

Signed: February 18, 1998.

John W. Magaw,

Director.

Approved: April 24, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–17288 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 64, 66, 67, 100, 109, 110, 115, 117, 118, 130, 135, 141, 143, 144, 146, 151, 153, 154, 155, 157, 160, 161, 162, 163, 164, 165, 174, 175, 181, and 183

[USCG–1998–3799]

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout Title 33 of the Code of Federal Regulations (CFR) to update the title before it is recodified on July 1. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This rule is effective on June 30, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MSR–2), 202–267–0257.

SUPPLEMENTARY INFORMATION:

Discussion of the Rule

This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, makes conforming amendments to geographical descriptions resulting from organizational changes, and makes other technical and editorial corrections. Some editorial changes are discussed individually in the following paragraphs. This rule does not change any substantive requirements of existing regulations.

Section 100.50

This rule removes § 100.50, Penalties. On April 8, 1997, the Coast Guard published a final rule, entitled Civil Money Penalties Inflation Adjustments [CGD 96–052] (62 FR 16695), which incorporated this section into Table 1.—Civil Monetary Penalty Inflation Adjustments, in 33 CFR part 27.

Part 130

On March 7, 1996, the Coast Guard published a final rule finalizing its interim regulations implementing the provisions concerning financial responsibility for vessels under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (Acts) [CGD 91–005] (61 FR 9264). In addition, the Coast Guard removed obsolete provisions by removing 33 CFR parts 131, 132 and 137.

As stated in the final rule, "Part 130, the remaining preexisting vessel financial responsibility part, is being phased out and will be removed after December 27, 1997, at the close of the transition schedule established by § 138.15(b) of the interim rule and, now, this final rule." With this final rule, the Coast Guard removes part 130.

Section 174.121

This rule revises § 174.121 to reflect the current address for States forwarding copies of casualty or accident reports to the Commandant (G–OCC).

Section 175.17

In § 175.17, the exemption in paragraph (e) for recreational submersibles terminated on April 30, 1995. This rule removes the paragraph.

Section 175.135

In § 175.135, the provisions of paragraph (a) expired in July 1982. This rule removes the paragraph.

Section 181.21

The Coast Guard revises § 181.21 to reflect the current statutory citation in 46 U.S.C. 4301.

Section 183.901

This rule removes § 183.901 because the Outboard Marine Corporation no longer builds the "OMC Sea Drive" and the special provision is not relevant to another product.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule involves internal agency practices and procedures, and it will not impose any costs on the public.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34) (a) and (b) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs (34) (a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 67

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 109

Anchorage grounds.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 115

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

33 CFR Part 117

Bridges.

33 CFR Part 118

Bridges.

33 CFR Part 130

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 135

Administrative practice and procedure, Advertising, Claims, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 141

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

33 CFR Part 143

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

33 CFR Part 144

Continental shelf, Marine safety, Occupational safety and health.

33 CFR Part 146

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 163

Cargo vessels, Harbors, Navigation (water), Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 175

Marine safety.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety, Reporting and recordkeeping requirements, Administrative practice and procedure.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 64, 66, 67, 100, 109, 110, 115, 117, 118, 130, 135, 141, 143, 144, 146, 151, 153, 154, 155, 157, 160, 161, 162, 163, 164, 165, 174, 175, 181, and 183 as follows:

PART 1—GENERAL PROVISIONS

Subpart 1.01—Delegation of Authority

1. Revise the authority citation for subpart 1.01 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

§ 1.01–20 [Amended]

2. In § 1.01–20, remove paragraph (b) and remove the designator for paragraph (a).

3. Revise § 1.01–50 to read as follows:

§ 1.01–50 Delegation to District Commander, Seventeenth Coast Guard District.

The Commandant redelegates to the District Commander, Seventeenth Coast Guard District, the authority in 46 U.S.C. 3302(i)(1) to issue permits to certain vessels transporting cargo, including bulk fuel, from one place in Alaska to another place in Alaska.

Subpart 1.20—Testimony by Coast Guard Personnel and Production of Records in Legal Proceedings

4. The authority citation for subpart 1.20 continues to read as follows:

Authority: 5 U.S.C. 301; 14 U.S.C. 632, 633, 49 U.S.C. 322; 49 CFR 1.46 and part 9.

§ 1.20–1 [Amended]

5. In § 1.20–1(c), remove the words "Claims and Litigation Division" and add, in their place, the words "Office of Claims and Litigation", wherever they appear.

Subpart 1.26—Charges for Duplicate Medals, and Sales of Personal Property, Equipment for Services and Rentals

6. The authority citation for subpart 1.26 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46(k).

§ 1.26–15 [Amended]

7. In § 1.26–15(a), remove the last sentence, in the paragraph, and add, in its place, the words "49 U.S.C. 44502(d) authorizes the Coast Guard to provide for assistance, the sale of fuel, oil, equipment, and supplies, to an aircraft when necessary to allow the aircraft to continue to the nearest private airport.".

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

8. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

§ 64.11 [Amended]

9. In § 64.11(b) introductory text, remove the words "report required by 46 CFR 4.05–1, Notice of Marine Casualty" and add, in their place, the words "information required by 46 CFR 4.05, Notice of Marine Casualty and Voyage Records".

PART 66—PRIVATE AIDS TO NAVIGATION

10. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

§ 66.01–3 [Amended]

11. In § 66.01–3(a), remove the words "49 CFR 1.4(g)" and add, in their place, the words "49 CFR 1.45(b)".

PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

12. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; 49 CFR 1.46.

§ 67.01–10 [Amended]

13. In § 67.01–10, remove paragraph (a) and remove the designator for paragraph (b).

PART 100—MARINE EVENTS

14. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

§ 100.50 [Removed]

15. Remove § 100.50 and the effective date note immediately following the section.

§ 100.1102 [Amended]

16. In § 100.1102(b), remove the words "Commander (oan), Eleventh Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822–5399." and add, in their place, the words "Commander (pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100."

PART 109—GENERAL

17. The authority citation for part 109 continues to read as follows:

Authority: R.S. 4233, as amended, 28 Stat. 647 as amended, 30 Stat. 98, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1), 80 Stat. 940; 33 U.S.C. 180, 258, 322, 471, 49 U.S.C. 1655(g)(1); Department of Transportation Order 1100.1, March 31, 1967, 49 CFR 1.4(a)(3).

§ 109.01 [Amended]

18. In § 109.01, remove paragraph (b) and remove the designator for paragraph (a).

§ 109.05 [Amended]

19. In § 109.05(a), remove the words "redelegated, with specific limitations, by the Commandant to each Coast Guard District Commander in § 1.05–1(g)", and add, in their place, the words "redelegated the authority to establish anchorage grounds to each Coast Guard District Commander in § 1.05–1(e)(1)(i)".

§ 109.10 [Amended]

20. In § 109.10, remove the words "in Title 49, Code of Federal Regulations and redelegated, with specified limitations, by the Commandant to each Coast Guard District Commander in § 1.05–1(g) of this title" and add, in their place, the words "under § 1.46 of Title 49 CFR, who has redelegated pursuant to the authority to establish special anchorage areas to each Coast Guard District Commander in § 1.05–1(e)(1)(i)".

PART 110—ANCHORAGE REGULATIONS

21. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

22. Revise § 110.1(a) to read as follows:

§ 110.1 General.

(a) The areas described in subpart A of this part are designated as special anchorage areas for purposes of 33 U.S.C. §§ 2030(g) and 2035(j). Vessels of less than 20 meters in length, and barges, canal boats, scows, or other nondescript craft, are not required to sound signals required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035). Vessels of less than 20 meters are not required to exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C. 2030).

* * * * *

§ 110.155 [Amended]

23. In § 110.155, in the NOTE immediately following paragraph (f)(1) introductory text, remove the numbers "(4) and (5)" and add, in their place, the numbers "(2) and (3)"; remove the NOTE immediately following paragraph (j)(5)(i); in paragraph (l)(8) introductory text, remove the words "Captain of the Port, Mooring Permit Section, Building 109, Governors Island, New York, N.Y. 10004" and add, in their place, the words "Coast Guard Activities New York, Waterways Oversight Branch, 212 Coast Guard Drive, Staten Island, NY 10305"; and in paragraph (n)(1), remove the numbers "49–C, 49–F," and add, in their place, the number "49–F".

24. Revise § 110.158(a)(8) to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) * * *

(8) *Dead ship anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.0″N	76°34′11.5″W
39°13′13.0″N	76°34′11.9″W
39°13′13.5″N	76°34′06.8″W
39°13′14.4″N	76°33′30.9″W
39°13′00.0″N	76°33′31.0″W

and thence to the point of beginning.

Datum: NAD 27

The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to use of this anchorage for more than 72 hours.

* * * * *

§ 110.206 [Amended]

25. In § 110.206(a), remove the word "the" immediately preceding the word "U.S."; remove the word "lyng" and add, in its place, the word "line"; and remove the number "42°20′06″ N. 82° 59′57″W." and add, in its place, the number "42°20′06″N., 82°59′57″W.".

PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

26. The authority citation for part 115 continues to read as follows:

Authority: c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633; sec. (g)(6), 80 Stat. 941 (49 U.S.C. 1655(g)); 49 CFR 1.46(c).

§ 115.70 [Amended]

27. In § 115.70, remove the last sentence in paragraph (b).

PART 117—DRAWBRIDGE OPERATION REGULATIONS

28. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.123 [Amended]

29. In § 117.123(c), remove the words "Burlington Northern" and add, in their place, the words "Arkansas Missouri"; remove the words "Missouri Pacific Railroad Bridge" and add, in their place, the words "Missouri Pacific Railroad Drawbridge"; remove the words "White River" and add, in their place, the words "Arkansas Waterway"; and revise the section heading to read as follows:

§ 117.123 Arkansas Waterway-Automated Railroad Bridges.

* * * * *

§ 117.133 [Amended]

30. In § 117.133, remove paragraph (a) and remove the designator for paragraph (b).

§ 117.153 [Amended]

31. In § 117.153, remove the words "Northwestern Pacific railroad" and add, in their place, the words "Golden Gate Bridge, Highway and Transportation District".

§ 117.155 [Amended]

32. In § 117.155, remove the words "North Coast Railroad Bridge" and add, in their place, the words "Northwestern Pacific Railroad Company bridge".

§ 117.179 [Amended]

33. In § 117.179, remove the words "Southern Pacific" and add, in their place, the words "San Mateo County Transportation Department"; and remove the words "Superintendent, Southern Pacific Transportation Company, at Oakland" and add, in their place, the words "San Mateo Transportation Department, at San Carlos".

34. In § 117.393, in paragraph (b) introductory text and (b)(4), remove the words "Chicago and Northwestern" and add, in their place, the words "Union Pacific"; and revise the section heading to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

§ 117.395 [Amended]

35. In § 117.395, redesignate paragraphs (a) and (b) as § 117.393(c) and (d) and remove the section heading.

§ 117.401 [Amended]

36. In § 117.401, remove the number "0.9" and add, in its place, the number "0.85".

§ 117.488 [Amended]

37. In § 117.488(a), add the words "CSX Transportation" immediately preceding the words "railroad bridge".

§ 117.501 [Amended]

38. In § 117.501(b), remove the words "Southern Pacific Transportation Company railroad/vehicular" and add, in their place, the words "St. John Road".

§ 117.667 [Amended]

39. In § 117.667(a), remove the words "Chicago and Northwestern" and add, in their place, the words "Union Pacific".

§ 117.720 [Amended]

40. In § 117.720 introductory text, remove the words "Cape May County Bridge Commission bridge" and add, in their place, the words "County of Cape May bridge".

§ 117.889 [Amended]

41. In § 117.889, in paragraph (b), remove the words "Southern Pacific" and add, in their place, the words "Central Oregon and Pacific"; and revise the section heading to read as follows:

§ 117.889 Siuslaw River.

* * * * *

§ 117.893 [Amended]

42. In § 117.893(b), remove the words "Southern Pacific" and add, in their place, the words "Central Oregon and Pacific".

§ 117.943 [Amended]

43. In § 117.943, remove the words "Seaboard System" and add, in their place, the word "Clarksville".

44. Revise § 117.989 to read as follows:

§ 117.989 Trinity River.

The draws of the Union Pacific Railroad bridges, mile 41.4 at Liberty, mile 54.8 at Kenefick, mile 117.3 at Goodrich, mile 181.8 at Riverside, and the Burlington Northern Santa Fe railroad bridge, mile 96.2 at Romayor, need not be opened for the passage of vessels.

§ 117.997 [Amended]

45. In § 117.997, in paragraphs (a)(2)(ii) and (c)(2)(ii), remove the number "(804)" and add, in its place, the number "(757)".

§ 117.1031 [Amended]

46. In § 117.1031, remove paragraph (a) and remove the designator for paragraph (b).

§ 117.1063 [Amended]

47. In § 117.1063(b), remove the words "Burlington Northern railroad" and add, in their place, the words "Washington State Parks and Recreation Commission".

§ 117.1081 [Amended]

48. In § 117.1081, remove the words "Chicago, Milwaukee, St. Paul and Pacific" and add, in their place, the words "CP Rail".

49. In Appendix A to Part 117, revise the entries for Arkansas, Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, South Carolina, Tennessee, and Wisconsin to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	•
Arkansas						
Arkansas Waterway	67.4	Rob Roy	Union Pacific RR	KTA 435	16	
	118.2	Little Rock	Union Pacific RR	KSK 392	16	13
	118.7	Little Rock	Union Pacific RR	KSK 392	16	13
	119.6	Little Rock	Union Pacific RR	KSK 392	16	13
White River	98.9	Clarendon	Union Pacific RR	KUF 653	16	14
	196.3	Clarendon	Union Pacific RR	KVY 684	13	13
	254.6	Clarendon	Union Pacific RR	KIZ 553	16	13

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	•
Illinois						
Illinois Waterway	21.6	Hardin	Illinois DOT, SR16	WZQ 8761	16	14
	43.2	Pearl	Gateway Western RR	KLU 797	16	14
	56.0	Florence	Illinois DOT, US36	WZQ 8761	16	14
	61.4	Valley City	Norfolk Southern RR	KTR 857	16	14
	88.6	Beardstown	Burlington Northern Santa Fe RR.	KLU 801	16	14
	151.2	Pekin	Union Pacific RR	KVF 831	16	14
	160.7	Peoria	Peoria and Pekin Union Railway Co.	WQX 651	16	14
	224.7	La Salle	Illinois DOT, US51	WZQ 8761	16	13
	239.4	Ottawa	Burlington Northern Santa Fe RR.	WRD 810	16	14
	285.8	Rockdale	Brandon Road, Illinois DOT.	WZQ 8761	16	13
	287.3	Joliet	McDonough Highway, Illinois DOT.	WZQ 8761	16	13
	287.6	Joliet	CSX Transportation	KUF 907	16	14
	288.7	Joliet	Ruby Street, Illinois DOT	WZQ 8761	16	13
Upper Mississippi River	481.4	Rock Island	Burlington Northern Santa Fe RR.	WUD 715	16	14
	482.9	Rock Island	Department of the Army	AAF 274	16	14
Iowa						
	364.0	Keokuk	City of Keokuk US136	KLG 365	16	14
Upper Mississippi River	383.9	Fort Madison	Burlington Northern Santa Fe RR.	KRS 859	13	13
	403.1	Burlington	Burlington Northern Santa Fe RR.	KJC 779	16	13
	518.0	Clinton	Union Pacific RR	KUF 735	16	13
	535.0	Sabula	I+M Rail Link	KEA 997	16	13
	579.9	Dubuque	Illinois Central Gulf RR	KQ 9042	16	14
Missouri River	618.3	Council Bluffs	Illinois Central Gulf RR	KD 2870	16	13
Kansas						
Missouri River	422.5	Atchison	Union Pacific RR	KTD 426	16	14
Kentucky						
Green River	8.3	Spottsville	CSX Transportation	KT 4181	16	13
Ohio River	604.4	Louisville	Conrail	KUZ 381	13	13
	606.8	Louisville	27th St., McAlpine Lock, Louisville Gas and Electric Co.	WUE 241	16	14
	606.5	Louisville	27th St., McAlpine Lock (Bascule), U.S. Army Engineer District, Louisville.	WUE 241	16	14
•	•	•	•	•	•	•
Minnesota						
Upper Mississippi River	813.7	Hastings	CP Rail	KTD 538	16	14
	835.7	Newport	Union Pacific RR	KUZ 544	16	14
	839.2	St. Paul	Union Pacific RR	KUZ 546	16	14
	841.4	Omaha	Union Pacific RR	KUZ 545	16	14
Duluth-Superior Harbor, MN-WI.	0.25	Duluth	Minnesota Avenue, Duluth.	KAN 388	16	13
•	•	•	•	•	•	•
Missouri						
Upper Mississippi River	282.1	Louisiana	Gateway Western RR	KLU 798	16	14
	309.9	Hannibal	Norfolk Southern RR	KUZ 448	16	14
Missouri River	359.4	Kansas City	CP Rail	KVY 575	16	13
	365.6	Kansas City	A–S–B, Burlington Northern RR.	KQU 500	16	14
	366.1	Hannibal	Union Pacific RR	KQU 500	16	14
	448.2	St. Joseph	Northeast Kansas and Missouri RR.	KTD 403	16	14

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	•
South Carolina						
Intracoastal WW	347.3	Myrtle Beach Little River	SC, US17	KT 5433	9	9
	371.0	Socastee	SC, SR544	KT 5438	9	9
	462.2	Sullivans Island	Ben Sawyer, SC, SR703	KT 5438	9	9
	470.8	Charleston	Wappoo Creek, SC, SR171.	KT 5438	9	9
	536.0	Beaufort	Lady's Island, SC, US21	KT 5439	9	9
Savannah River	21.6	Savannah	Houlihan, GA DOT	WHV 879	9	9
Savannah River	60.9	Clyo	Seaboard System RR	WKB 679	9	9
Tennessee						
Cumberland River	126.5	Clarksville	J.R. Corman	KF 2204	16	13
	185.2	Bordeaux	Cheatham County Rail Authority.	KX 6366	16	13
	190.4	Nashville	CSX Transportation	KQ 7197	16	13
Tennessee River	100.5	New Johnsonville	CSX Transportation	KC 9465	16	13
•	•	•	•	•	•	•
Wisconsin						
Upper Mississippi River	699.8	LaCrosse	CP Rail	KVY 631	16	13
St. Croix River	0.2	Prescott	Burlington Northern Santa Fe RR.	KJC 782	16	14
	0.3	Prescott	Wisconsin and Minnesota	KD 2829	7	14
	17.3	Hudson	Union Pacific RR	KUZ 549	16	14

§§ 117.101, 117.383, 117.393, 117.667, 117.861, 117.869, 117.887, 117.1035, 117.1037, 117.1041, 117.1051, 117.1053, 117.1058, and 117.1059 [Amended]

50. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Burlington Northern" and add, in their place, the words "Burlington Northern Santa Fe" in the following sections:

(a) Section 117.101(a);
(b) Section 117.383;
(c) Section 117.393(a) introductory text;
(d) Section 117.667(a);
(e) Section 117.861;
(f) Section 117.869(c) introductory text, and (c)(3);
(g) Section 117.887;
(h) Section 117.1035(c);
(i) Section 117.1037(a) introductory text;
(j) Section 117.1041(b)(1) and (b)(2);
(k) Section 117.1051(c);
(l) Section 117.1053;
(m) Section 117.1058(a) and (d); and
(n) Section 117.1059(e) and (f).

§§ 117.101 and 117.686 [Amended]

51. In addition to the amendments set forth above, in 33 CFR part 117, remove the word "Gulf" in the following sections:

(a) Section 117.101(b); and
(b) Section 117.686(a).

§§ 117.101, 117.105, 117.107, 117.109, 117.113, 117.271, 117.361, and 117.415 [Amended]

52. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Seaboard System" and add, in their place, the words "CSX Transportation" in the following sections:

(a) Section 117.101(d);
(b) Section 117.105;
(c) Section 117.107;
(d) Section 117.109;
(e) Section 117.113;
(f) Section 117.271(a);
(g) Section 117.361; and
(h) Section 117.415(a) and (b).

§§ 117.115 and 117.511 [Amended]

53. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Southern Railway" and add, in their place, the words "Norfolk Southern Railroad" in the following sections:

(a) Section 117.115(b); and
(b) Section 117.511(a).

§§ 117.125, 117.953, 117.957, 117.959, 117.969, 117.975, 117.984, and 117.991 [Amended]

54. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Missouri Pacific" and add, in their place, the words "Union Pacific" in the following sections:

(a) Section 117.125(a) and (e);
(b) Section 117.953(b);
(c) Section 117.957 introductory text;
(d) Section 117.959;
(e) Section 117.969;
(f) Section 117.975;
(g) Section 117.984; and
(h) Section 117.991 introductory text.

§§ 117.151, 117.177, 117.185, 117.441, 117.489, 117.493, 117.501, 117.871, 117.897, 117.955, and 117.987 [Amended]

55. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Southern Pacific" and add, in their place, the words "Union Pacific" in the following sections:

(a) Section 117.151;
(b) Section 117.177;
(c) Section 117.185;
(d) Section 117.441;
(e) Section 117.489(a);
(f) Section 117.493(a);
(g) Section 117.501(c);
(h) Section 117.871;
(i) Section 117.897(b);
(j) Section 117.955(b); and
(k) Section 117.987.

§§ 117.171 and 117.971 [Amended]

56. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Atchison, Topeka and Santa Fe" and add, in their place, the words "Burlington Northern Santa Fe" in the following sections:

(a) Section 117.171(b); and
(b) Section 117.971.

§§ 117.439 and 117.465 [Amended]

57. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Southern Pacific" and add, in their place, the words "Burlington Northern Santa Fe" in the following sections:

(a) Section 117.439(b); and
(b) Section 117.465(f).

§§ 117.449 and 117.487 [Amended]

58. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Texas and Pacific" and add, in their place, the words "Union Pacific" in the following sections:

(a) Section 117.449(a); and

(b) Section 117.487(b).

§§ 117.637 and 117.855 [Amended]

59. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Chessie System" and add, in their place, the words "CSX Transportation" in the following sections:

(a) Section 117.637(b); and

(b) Section 117.855(c) introductory text.

§§ 117.865 and 117.881 [Amended]

60. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Burlington Northern" and add, in their place, the words "Willamette and Pacific" in the following sections:

(a) Section 117.865; and

(b) Section 117.881(a).

§§ 117.1047 and 117.1065 [Amended]

61. In addition to the amendments set forth above, in 33 CFR part 117, remove the words "Burlington Northern" and add, in their place, the words "Puget Sound and Pacific" in the following sections:

(a) Section 117.1047(b); and

(b) Section 117.1065(b).

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

62. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; 49 CFR 1.46(b) and (c).

§ 118.60 [Amended]

63. In § 118.60, remove the words "Annex I, Appendix A of 33 CFR Part 81" and add, in their place, the words "33 CFR Part 84—Annex 1".

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

64. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 2716, 2716a; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

PART 130—[REMOVED]

65. Remove part 130.

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

66. The authority citation for part 135 continues to read as follows:

Authority: 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

§ 135.9 [Amended]

67. In § 135.9, remove the words "Funds Management Branch, Commandant (G–MER–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001" and add, in their place, the words "U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804".

§ 135.305 [Amended]

68. In § 135.305(a)(1), remove the words "400 Seventh Street SW., Washington, D.C. 20590" and add, in their place, the words "2100 Second Street, SW., Washington, DC 20593–0001".

PART 141—PERSONNEL

69. The authority citation for part 141 continues to read as follows:

Authority: 43 U.S.C. 1356; 49 CFR 1.46(z).

§ 141.15 [Amended]

70. In § 141.15(a), remove the words "On or after April 5, 1983, each" and add, in their place, the word "Each".

PART 143—DESIGN AND EQUIPMENT

71. The authority citation for part 143 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46; section 143.210 is also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

§ 143.15 [Amended]

72. In § 143.15(b), remove the words "(33 CFR Part 87, Appendix A)".

PART 144—LIFESAVING APPLIANCES

73. The authority citation for part 144 continues to read as follows:

Authority: 43 U.S.C. 1333d; 46 U.S.C. 3102(a); 46 CFR 1.46.

§ 144.01–20 [Amended]

74. In § 144.01–20, in paragraph (b), remove the words "On or before July 1, 1963, all" and add, in their place, the word "All"; and in paragraphs (c) and (d), remove the words, "after October 5, 1982,".

PART 146—OPERATIONS

75. The authority citation for part 146 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

§ 146.140 [Amended]

76. In § 146.140(a), remove the words "For facilities existing on June 19, 1989, the EEP must be submitted to the OCMI having jurisdiction over the facility before December 18, 1989. For facilities not existing on June 19, 1989, the" and add, in their place, the word "The".

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart A—Implementation of MARPOL 73/78 and the Protocol on Environmental Protection to the Antarctic Treaty as It Pertains to Pollution From Ships

77. The authority citation for subpart A continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Pub. L. 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351; 49 CFR 1.46.

§ 151.10 [Amended]

78. In § 151.10, remove paragraph (i).

79. Revise § 151.17(b)(1) to read as follows:

§ 151.17 Surveys.

* * * * *

(b)* * *

(1) An initial survey conducted before the ship is put into service.

* * * * *

§ 151.19 [Amended]

80. In § 151.19, remove paragraph (f).

§ 151.27 [Amended]

81. In § 151.27(a), remove the last sentence.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

82. The authority citation for part 153 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321; 42 U.S.C. 9615; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.45 and 1.46.

§ 153.205 [Amended]

83. In § 153.205, in Table 1 titled "Addresses and Telephone Numbers of Coast Guard District Offices and EPA Regional Offices," in the entry for the 11th Coast Guard District, remove the address and phone number "union Bank Bldg., 400 Oceangate, Long Beach, CA 90822–5399. 213–499–5330" and add, in its place, the address "Building 50–6, Coast Guard Island, Alameda, CA 94501, telephone 510–437–2940"

84. Revise § 153.307 to read as follows:

§ 153.307 Penalties.

Any person who fails or refuses to comply with the provisions of this part, or to comply with an order issued by the Federal On-Scene Coordinator under 33 U.S.C. §§ 1321(c) or (e)(1)(B), is liable for a civil penalty per day of violation or an amount equal to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

85. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

§ 154.804 [Amended]

86. In § 154.804, remove and reserve paragraph (b).

§ 154.814 [Amended]

87. In § 154.814(h), remove the words "paragraphs (e) and (f)" and add, in their place, the words "paragraphs (d) and (f)".

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

88. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

§ 155.240 [Amended]

89. In § 155.240, in paragraph (a), remove the words "by no later than January 21, 1995,"; and in paragraph (d), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3).

§ 155.245 [Amended]

90. In § 155.245(a), remove the words "by no later than January 21, 1995,".

§ 155.310 [Amended]

91. In § 155.310(c), remove the words "By January 21, 1997, all" and add, in their place, the word "All".

§ 155.350 [Amended]

92. In § 155.350, remove paragraph (e).

§ 155.360 [Amended]

93. In § 155.360, remove paragraph (f).

§ 155.370 [Amended]

94. In § 155.370, remove paragraph (g).

§ 155.400 [Amended]

95. In § 155.400, remove paragraph (d).

§§ 155.205, 155.210, 155.215, 155.220, 155.225, and 155.230 [Amended]

96. In addition to the amendments set forth above in 33 CFR part 155, remove the words "By June 20, 1994," and capitalize the first word immediately following each deleted phrase in the following places:

(a) Section 155.205(a);
(b) Section 155.210(a);
(c) Section 155.215(a);
(d) Section 155.220(a);
(e) Section 155.225; and
(f) Section 155.230(a).

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

97. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

§ 157.10a [Amended]

98. In § 157.10a, in paragraph(a), remove the words "Not later than June 1, 1981, except as allowed in paragraph (b) of this section, an" and add, in their place, the word "An"; remove and reserve paragraph (b); in paragraph (c), remove the words "Not later than June 1, 1981, an" and add, in their place, the word "An"; in paragraph (d), remove the word ", (b),"; and in paragraph (e), remove the word ", (b),".

§ 157.12 [Amended]

99. In § 157.12, remove paragraphs (d) and (e).

§ 157.100 [Amended]

100. In § 157.100(b), remove the words "2100 Second Street SW., Washington, DC 20593" and add, in their place, the words "400 7th Street, SW., Washington, DC 20590–0001".

§ 157.200 [Amended]

101. In § 157.200(b), remove the words "2100 Second St., SW., Washington, DC 20593" and add, in their place, the words "400 7th Street, SW., Washington, DC 20590–0001".

§ 157.410 [Amended]

102. In § 157.410 introductory text, remove the words "No later than August 5, 1995, each" and add, in their place, the word "Each".

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

103. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

§ 160.109 [Amended]

104. In § 160.109(a)(1), remove the words "as those terms are defined in section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a)" and add, in their place, the words "as those terms are defined in 46 U.S.C. 2101".

§ 160.113 [Amended]

105. In § 160.113(a), remove the words "may prohibit any vessel subject to the provisions of section 4417a of the Revised Statutes (46 U.S.C. 391a)" and add, in their place, the words "may prohibit any vessel, subject to the provisions of chapter 37 of Title 46, U.S. Code,".

§ 160.115 [Amended]

106. In § 160.115, remove the words "46 U.S.C. 91" and add, in their place, the words "46 U.S.C. App. 91".

PART 161—VESSEL TRAFFIC MANAGEMENT

107. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

§ 161.30 [Amended]

108. In § 161.30, remove the number "606" and add, in its place, the number "606.8".

§ 161.40 [Amended]

109. In Table 161.40(c), VTS BERWICK BAY REPORTING POINTS, under the heading "Latitude/longitude," remove the symbol "–" and add, in its place, the symbol "°", in each entry.

§ 161.45 [Amended]

110. In § 161.45(a), remove the numbers "45–57′N." and "46–38.7′N." and add, in their place, the numbers "45°57′ N." and "46°38.7′N.".

§ 161.55 [Amended]

111. In § 161.55, in the introductory text, remove the numbers "48–23′08″N., 124–43′37″W.", "48–23′30″N., 124–44′12″W.", and "49–00′06″N., 122–45′18″W." and add, in their place, the numbers "48°23′08″N., 124°43′37″W.", "48°23′30″N., 124°44′12″W.", and "49°00′06″N., 122°45′18″W."; in paragraph (b), remove the numbers "48–35′45″N.", "48–23′30″N.", "48–35′45″N., 124–47′30″W.", "48–23′30″N., 124–48′37″W.", and "49–N." and add, in their place, the numbers

"48°35′45″N.", "48°23′30″N.", "48°35′45″N., 124°47′30″W.", "48°23′30″N., 124°48′37″W.", and "49°N."; in paragraph (c), remove the numbers "48–26′24″N., 122–45′12″W." and "48–40′34″N., 122–42′44″W." and add, in their place, the numbers "48°26′24″N., 122°45′12″W." and "48°40′34″N., 122°42′44″W."; and redesignate paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d).

§ 161.60 [Amended]

112. In § 161.60, in paragraph (a), remove the number "146–30′ W. and 147–20′ W." and add, in its place, the number "146°30′W. and 147°20′W."; in paragraph (c)(1), remove the number "61–N." and add, in its place, the number "61°N."; and revise paragraph (b) to read as follows:

§ 161.60 Vessel Traffic Service Prince William Sound.

* * * * *

(b) The Valdez Narrows VTS Special Area consists of those waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″N., 146°40′W.; and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″N., 146°36′42″W.

* * * * *

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

113. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 162.105 [Amended]

114. In § 162.105(a), remove the words "Second Coast Guard District" and add, in their place, the words "Eighth Coast Guard District".

§ 162.117 [Amended]

115. In § 162.117(a), remove the numbers "45–57′ N." and "46–38.7′ N." and add, in their place, the numbers "45°5″N." and "46°38.7′N.".

§ 162.205 [Amended]

116. In § 162.205(b)(5), remove the words "Commander, 12th U.S. Coast Guard District" and add, in their place, the words "District Commander".

§ 162.240 [Amended]

117. In § 162.240(d), remove the words "Captain of the Port, Southeast Alaska. The office of the Captain of the Port, Southeast Alaska, is located in Juneau, Alaska" and add, in their place, the words "Commanding Officer, Marine Safety Office, Juneau, Alaska".

PART 163—TOWING OF BARGES

118. Revise the authority citation for part 163 to read as follows:

Authority: 33 U.S.C. 152, 2071; 49 CFR 1.46(n).

PART 164—NAVIGATION SAFETY REGULATIONS

119. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.37 [Amended]

120. In § 164.37(b), remove the words "Section 5 of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391a)" and add, in their place, the words " 46 U.S.C. 3708".

§ 164.38 [Amended]

121. In § 164.38, revise paragraphs (b) introductory text, (b)(2), and (b)(3); and remove and reserve paragraph (c) to read as follows:

§ 164.38 Automatic radar plotting aids (ARPA).

* * * * *

(b) An Automatic Radar Plotting Aid (ARPA) that complies with the standard for such devices adopted by the International Maritime Organization in its "Operational Standards for Automatic Radar Plotting Aids" (Appendix A), and that has both audible and visual alarms, must be installed as follows:

(1) * * *

(2) Each tank vessel of 10,000 gross tons or more operating on the navigable waters of the United States must be equipped with an ARPA.

(3) Each self-propelled vessel of 15,000 gross tons or more that is not a tank vessel, and is not carrying oil or hazardous material in bulk as cargo or in residue operating on the navigable waters of the United States, and was constructed before September 1, 1984, must be equipped with an ARPA, except when it is operating on the Great Lakes and their connecting and tributary waters.

* * * * *

§ 164.38 Appendix A [Amended]

122. In Appendix A to § 164.38, in paragraph 3.9, remove the word "Connexions" and add, in its place, the word "Connections"; in paragraph 3.9.1, remove the word "connexion" and add, in its place, the word "connection"; and in the undesignated heading to ANNEX 1 to APPENDIX A— DEFINITIONS OF TERMS TO BE USED ONLY IN CONNEXION WITH ARPA PERFORMANCE STANDARDS, remove the word "CONNEXION" and add, in its place, the word "CONNECTION".

123. Revise § 164.40(a) to read as follows:

§ 164.40 Devices to indicate speed and distance.

(a) Each vessel required to be fitted with an Automatic Radar Plotting Aid (ARPA) under § 164.38 of this part must be fitted with a device to indicate speed and distance of the vessel either through the water or over the ground.

* * * * *

§ 164.41 [Amended]

124. In § 164.41(a)(1), remove the last two sentences and add, in their place, the words "Each receiver installed must be labeled with the information required under paragraph (b) of this section".

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

125. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.120 [Amended]

126. In § 165.120, in paragraph (a), remove the numbers "42–33–10 North" and "71–01–23 West" and add, in their place, the numbers "42°33′10″N." and "71°01′23″W."; and in paragraph (b)(4), remove the numbers "42–23–09 North, 71–01–31 West" and "42–23–05 North, 71–01–31 West" and add, in their place, the numbers "42°23′09″N., 71°01′31″W." and "42°23′05″N., 71°01′31″W.".

§ 165.121 [Amended]

127. In § 165.121(a)(1), remove the numbers "41–25N." and "71–23W." and add, in their place, the numbers "41°25′N." and "71°23′W.".

§ 165.701 [Amended]

128. In § 165.701(a), remove the number "28–30.95N, 80–37.6W" and add, in its place, the number "28°30.95′N., 80°37.6′W.".

§ 165.713 [Amended]

129. In § 165.713(a), remove the numbers "32°–47.2′N" and "78°–57.8′W" and add, in their place, the numbers "32°47.2′N." and "78°57.8′W".

130. Revise § 165.752(a) to read as follows:

§ 165.752 Sparkman Channel, Tampa, Florida-regulated navigation area.

(a) A regulated navigation area is established to protect vessels from limited water depth in Sparkman

Channel caused by an underwater pipeline. The regulated navigation area is in Sparkman Channel between the lines connecting the following points (referenced in NAD 83):

	Latitude	Longitude		Latitude	Longitude
1:	27°56′20.5″N	082°26′42.0″W	to	27°56′19.3″N	82°26′37.5″W
2:	27°55′32.0″N	082°26′54.0″W	to	27°55′30.9″N	82°26′49.1″W

* * * * *

§ 165.805 [Amended]

131. In § 165.805, in paragraphs (a)(1) and (a)(2), remove the number "30 06′38″N, 93 17′34″W" and add, in its place, the number "30°06′38″N., 93°17′34″W.".

§ 165.821 [Amended]

132. In § 165.821, in paragraph (b), remove the words "(c)(i) through (iv)" and add, in their place, the words "(c)(1) through (4)"; and in paragraph (c), redesignate paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4).

133. Revise § 165.1108(a) to read as follows:

§ 165.1108 San Diego Bay, California.

(a) *Location.* The area encompassed by the following geographic coordinates is a regulated navigation area:

32°41′24.6″N	117°14′21.9″W
32°41′34.2″N	117°13′58.5″W
32°41′34.2″N	117°13′37.2″W

Thence south along the shoreline to

32°41′11.2″N	117°13′31.3″W
32°41′11.2″N	117°13′58.5″W

Thence north along the shoreline to the point of origin.

Datum: NAD 1983.

* * * * *

134. In § 165.1110 revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 165.1110 Safety Zone: Los Angeles Harbor; San Pedro Bay, CA.

(a) * * *

(1) *Pier 400:* Those waters of Los Angeles Harbor and San Pedro Bay in the vicinity of Pier 400 as defined by the lines connecting the following coordinates.

Latitude	*Longitude*
33°44′29.06″N	118°14′17.25″W
33°43′48.06″N	118°13′59.25″W
33°43′03.50″N	118°14′11.72″W
33°42′45.17″N	118°15′04.78″W
33°43′00.00″N	118°15′29.90″W
33°43′21.94″N	118°15′41.51″W
33°43′45.04″N	118°15′30.81″W
33°43′58.55″N	118°14′44.38″W
33°44′03.70″N	118°14′26.65″W

and thence to the point of origin. All coordinates use Datum: NAD 83.

(2) *Shallow Water Habitat Extension:* Those waters of Los Angeles Harbor and San Pedro Bay as defined by the lines connecting the following coordinates.

Latitude	*Longitude*
33°42′32.10″N	118°15′00.00″W
33°42′49.84″N	118°15′41.51″W
33°42′47.06″N	118°15′58.26″W
33°42′24.99″N	118°15′23.59″W

and thence to the point of origin. All coordinates use Datum: NAD 83.

* * * * *

§ 165.1402 [Amended]

135–136. In § 165.1402(a), remove the number "144.39′28.1″ E" and add, in its place, the number "144°39′28.1″ E.".

§ 165.1703 [Amended]

137. In § 165.1703(a), remove the numbers "61.07–5 N" and "146.18 W" and add, in their place, the numbers "61°07′5″ N." and "146°18′ W."

138. In § 165.1704, in paragraph (a), remove the numbers "146–30′ W. and 147–20′ W." and add, in their place, the numbers "146°30′ W. and 147°20′ W."; and revise paragraph (b) to read as follows:

§ 165.1704 Prince William Sound, Alaska-regulated navigation area.

* * * * *

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.60 of this chapter establishes a VTS Special Area for the waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″ N., 146°40′ W.; and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″ N., 146°36′42″ W.

* * * * *

139. In § 165.1705, revise paragraph (a) to read as follows:

§ 165.1705 Ketchikan Harbor, Ketchikan, Alaska-safety zone.

(a) That portion of Ketchikan Harbor, Ketchikan, Alaska enclosed by the following boundary lines is a Safety Zone: A line from Thomas Basin Entrance Light "2", latitude 55°20.3′ N., longitude 131°38.5′ W., to East Channel Lighted Buoy "4A", latitude 55°20.4′ N., longitude 131°38.9′ W., to Pennock Island Reef Lighted Buoy "PR", latitude 55°20.3′ N., longitude 131°40′ W., to Wreck Lighted Buoy "WR6", latitude 55°20.7′ N., longitude 131°40.3′ W., then following a line bearing 064 degrees true to shore. This zone is effective 24 hours per day from 1 May through 30 September, annually. Annual notices of these regulations will be issued in Local Notices to Mariners.

* * * * *

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

140. The authority citation for part 174 continues to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

§ 174.5 [Amended]

141. In § 174.5, remove the words "in this part, 46 U.S.C. 6102, and in Chapter 123 of Title 46 U.S. Code relating to numbering and casualty reporting" and add, in their place, the words "of this part, 46 U.S.C. 6102, and 46 U.S.C. Chapter 123".

142. Revise § 174.121 to read as follows:

§ 174.121 Forwarding of casualty or accident reports.

Within 30 days of the receipt of a casualty or accident report, each State that has an approved numbering system must forward a copy of that report to the Commandant (G–OCC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

PART 175—EQUIPMENT REQUIREMENTS

143. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

§ 175.17 [Amended]

144. In § 175.17, remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

§ 175.101 [Amended]

145. In § 175.101, remove the designator for paragraph (a) and remove the words ", after 31 December 1980,".

§ 175.135 [Amended]

146. In § 175.135, remove paragraph (a) and remove the designator for paragraph (b).

PART 181—MANUFACTURER REQUIREMENTS

147. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

148. Revise § 181.21(a) to read as follows:

§ 181.21 Purpose, applicability and effective dates.

(a) This subpart prescribes the requirements for identification of boats to which 46 U.S.C. 4301 applies.

* * * * *

PART 183—BOATS AND ASSOCIATED EQUIPMENT

149. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

Subpart N—[Removed and Reserved]

150. Remove and reserve subpart N.

Dated: June 19, 1998.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–17268 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–98–035]

RIN 2115–AE46

Special Local Regulations; City of Pittsburgh Independence Eve Celebration Allegheny River Mile 0.0–0.5, Monongehela River Mile 0.0–0.2 and Ohio River Mile 0.0–0.9

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations of 33 CFR 100.201, "Annual marine events within the Second Coast Guard District", Table One, number 15, listed as "City of Pittsburgh Independence Eve Celebration." In 1996, the Second Coast Guard District was disestablished, and the Eighth District boundaries were expanded to include the prior Second District area of responsibility. The Eight District Commander now exercises authority over the combined geographical region. 61 FR 29958 (June 13, 1996). This event will be held on July 4, 1998 at Pittsburgh, Pennsylvania. Implementation of § 33 CFR 100.201 (Table One, 15) is necessary to provide for the safety of life on navigable waters during the event.

DATES: 33 CFR 100.201 (Table One, 15) is effective from 7 p.m. until 12 p.m. on July 4, 1998.

FOR FURTHER INFORMATION CONTACT: LT T.J. Ferring, Marine Safety Office, Pittsburgh, PA, Tel:(412) 644–5808.

SUPPLEMENTARY INFORMATION: The City of Pittsburgh Independence Eve Celebration is an annual river festival sponsored by Citiparks. These special local regulations permit the Coast Guard to control vessel traffic in order to ensure the safety of spectators and participants. Spectators will be able to view the event from areas designated by the sponsor. Non-participating vessels will be able to transit the area during breaks between scheduled events.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 98–17368 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–070]

RIN 2115–AA97

Safety Zone: Independence Day Celebration Fireworks, Wards Island, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Independence Day Celebration fireworks program located on Wards Island, East River, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River, New York.

DATES: This rule is effective from 8:45 p.m. until 10:15 p.m. on Wednesday, July 1, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4195.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the fact that plans for this event were recently finalized, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for pubic entertainment.

Background and Purpose

The New York Power Authority has submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of the East River, at Wards Island, New York. This regulation establishes a safety zone in all waters of the East River, within a 150 yard radius of the land shoot at approximate position 40°46′55.5″N 073°55′33″W (NAD 1983), approximately 200 yards northeast of the Triboro Bridge. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Wednesday, July 1, 1998. The safety zone prevents vessels from transiting this portion of the East River, and it is needed to protect boaters from the hazards associated with fireworks launched from shore in the area.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The

Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that marine traffic will still be able to transit through the East River, and advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–070 to read as follows:

§ 165.T01–070 Safety Zone: Independence Day Celebration Fireworks, Wards Island, East River, New York.

(a) *Location*. The following area is a safety zone: all waters of the East River within a 150 yard radius of the land shoot at Wards Island, New York in approximate position 40° 46′ 55.5″N 073° 55′ 33″W (NAD 1983), approximately 200 yards northeast of the Triboro Bridge.

(b) *Effective period*. This section is effective from 8:45 p.m. until 10:15 p.m. on Wednesday, July 1, 1998.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 16, 1998.

L.M. Brooks,

Captain, U.S. Coast Guard, Captain of the Port, New York Acting.

[FR Doc. 98–17369 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH103–2; FRL–6116–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule published on March 30, 1998, which approved sulfur dioxide emission limits for the Sun Oil Company located in Lucas County, Ohio.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, at (312) 886–6036.

SUPPLEMENTARY INFORMATION: On March 30, 1998 (63 FR 15091), EPA approved the Ohio Environmental Protection Agency's December 9, 1996 request to incorporate site specific sulfur dioxide emission limits for the Sun Oil facility located in Lucas County, Ohio into the Ohio State Implementation Plan. Two errors were made in codifying EPA's approval. Specifically, EPA intended to delete the existing references to this Sun Oil facility at 40 CFR 52.1881(a)(4) and (8). Unfortunately the references to this Sun Oil facility were not removed from §§ 52.1881 (a)(4) and (8) when these paragraphs were published beginning at the bottom of the third column on page 15093 and finishing in the second column on page 15094. An additional error identified in paragraph (a)(4) is that Bergstrom Paper is erroneously listed twice as an exception to EPA's approval of the sulfur dioxide emission limits for Montgomery County. This technical correction removes the Sun Oil references at 40 CFR 52.1881(a)(4) and (8) and the duplicate Bergstrom Paper entry at paragraph(a)(4).

Need for Correction

The failure to remove references to Sun Oil Company's Lucas County facility from §§ 52.1881(a)(4) and (8) incorrectly indicates that this facility is not subject to the requirements contained in these paragraphs. The deletion of the duplicate Bergstrom Paper entry will clarify the Montgomery County codification. EPA is publishing this action to correct these errors.

Administrative Procedure Act

This action will be effective immediately upon publication in the **Federal Register** pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1) and (3)(APA) for good cause. This action which merely corrects codification errors made in EPA's approval of a sulfur dioxide emission limit for Sun Oil's Lucas County facility and a similar typographical error is too minor to be of interest to the general public. Holding a public comment period on this action is unnecessary. The thirty day delay of the effective date of this action generally required by the APA is unwarranted in that it does not serve the public interest to unnecessarily delay the effective date of this action.

A. Executive Order 12866

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The EPA thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act.

B. Children's Health Protection

This rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1966, generally provides that before a rule may take affect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 30, 1998. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur dioxide.

Dated: June 18, 1998.

Gail C. Ginsberg,

Acting Regional Administrator.

For the reasons stated in the preamble, § 52.1881 of part 52, chapter I, title 40 of the Code of Federal Regulations published at 63 FR15091 March 30, 1998, is corrected as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1881 is amended by correcting paragraphs (a)(4) and (a)(8) to read as follows:

§ 52.1881 Control strategy: Sulfur dioxide.

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light—Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric—Beckjord), Clinton County, Columbiana County, Coshocton County (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Ohio Rubber, Cleveland Electric Illuminating Company—Eastlake, and Painesville Municipal Boiler #5), Lawrence County (except Allied Chemical—South Point), Licking County, Logan County, Lorain County (except Ohio Edison—Edgewater, Cleveland Electric Illuminating Company—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper and Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical Company), Wayne County, Williams County, Wood County (except Libbey—Owens—Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties or sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Lake County (Ohio Rubber, Cleveland Electric Illuminating Company—Eastlake, and Painesville Municipal—Boiler #5), Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating Company—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey—Owens—Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

[FR Doc. 98–17115 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA45–1–7383, FRL–6116–8]

Approval and Promulgation of Air Quality State Implementation Plans, Louisiana; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document corrects 40 CFR part 52, subpart T—Louisiana, § 52.970 Identification of Plan, by removing an inadvertent duplication of paragraph (c)(55).

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7354 or via e-mail at scoggins.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the current 40 CFR part 52, an error exists in having two § 52.970 (c)(55) paragraphs. This action corrects this duplication.

Administrative Procedure Act

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual cost of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act. The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides and Volatile organic compounds.

Dated: June 17, 1998.

Gregg A. Cooke,

Regional Administrator, Region 6.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

§ 52.970 [Corrected]

2. Section 52.970 is corrected by removing the first paragraph (c)(55).

[FR Doc. 98–17376 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 300 and 301

RIN 3090–AG25

Federal Travel Regulation; General Guides and Temporary Duty (TDY) Travel Allowances

AGENCY: Office of Government wide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule on Federal Travel Regulations appearing in the **Federal Register** of Wednesday, April 1, 1998 (63 FR 15950). The rule added a new Chapter 300, and revised Chapter 301, except Appendixes A and B.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jane Groat, (202) 501–4318.

SUPPLEMENTARY INFORMATION: In rule document 98–7725 beginning on page 15950 in the issue of Wednesday, April 1, 1998, make the following corrections:

CHAPTER 300—GENERAL

* * * * *

PART 300–2—HOW TO USE THE FTR

1. On page 15951, under the table of contents in column two, following the Table of Contents for part 300–2, subpart C, add an authority citation to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586."

2. On page 15951, in lines four and seven from the bottom of column two, correct the words "contractor-issued" and "Contractor-provided" to read "Government contractor-issued" and "government contractor-provided".

3. On page 15952, correct lines one and two of column one to read "*Employee with a disability* (also see Special needs)—".

4. On page 15952, in the second column, in the 11th line from the top, correct the word "Territory" to read "Territories".

5. On page 15953, in the 26th line from bottom of Column one, correct the word "cannot" to read "can".

6. One page 15954, in column two, instruction number 2 is corrected by adding after the words "41 CFR chapter 301 is amended by "the words" revising the chapter heading; creating subchapter designations A, B, C, and D;".

7. One page 15955, the first two lines in column three are revised to read "PART 301–10—TRANSPORTATION EXPENSES".

8. On page 15955, in the 19th line from the bottom of column three, correct "(GTR(s)," to read "(GTR(s))".

9. On page 15956, in the 17th line from the top of column two, correct "POV" to read "privately owned automobile".

10. On page 15956, in the 26th line from the bottom of column two, correct "301–10–450" to read "301–10.450".

11. On page 15957, in the 15th line from the top of column one, correct paragraph (b) to read "(b) Using coach class service, unless premium class or first-class service is authorized;".

12. On Page 15957, in the ninth line from the top of column three, correct "10.115" to read "10.117".

13. On page 15959, in lines 13 and 14 from the top of column one, remove the words "of this section".

14. On page 15959, in line 24 from the top of column one, correct "U.S." to read "U.S.".

15. On page 15959, in the 23rd and 24th lines from the bottom of column two, remove the words "of this part".

16.–17. On page 15959, in lines 17 and 18 from the bottom of column three, correct the cite "101–.37.403" to read "101–37.403" and the words "and or" to read "and/or".

18. On page 15960, the word "allowance" in the § 301–10.304 title is corrected to read "allowances".

19. On page 15961, in column one, remove the comma in the 26th line from the top, and in the 27th line from the top, add a comma after the word "following".

20. On page 15961, in the 28th line from the top of column two, remove the words "designated post of duty" and add the words "official station" in its place.

21. On page 15961, in the 24th line from the bottom of column two, amend "§ 301.10.450" to read "§ 301–10.450".

22. One page 15962, in the 7th line from the bottom of column one, revise the words "Where you obtain lodging" to read "Your TDY location".

23. On page 15963, in the 31st line from the top in the third column, correct the word "Reference" to read "reference".

24. On page 15965, in the 26th and 27th lines from the top in the third column, remove the words "But not that" and correct the word "when" to "When".

25. On page 15965, in the 4th line from the bottom, in column two of the table, amend "Government charge card" to read "Government contractor-issued charge card".

26. One page 15966, in the 31st line from the top of column one, amend "301.13–3" to read "301–13–3".

27. On page 15967, in the 21st line from the bottom of column one, remove the symbol "§ " and replace it with the word "part".

28. On page 15967, unbold the print in the 17th and 18th lines from the top of column two.

29. On page 15968, remove the word "C(c)ontractor-issued" and replace it with the words "Government contractor-issued" where it appears in the sixth line from the bottom of column one, the eighth, 13th, and 26th lines from the top of column two, the 22nd line from the top of column three, the second, fifth, and eighth lines from the top of the second column of the table, and the second line from the top of the third column of the table, respectively.

30. On page 15968, in the seventh line from the bottom of column two, remove the word "shall" and replace it with the word "will".

31. On page 15968, in the fourth line from the top of column three, remove the words "of your travel card" and replace them with the words "of your Government contractor-issued travel card".

32. On page 15968, in the subpart B heading, amend the word "common" to read "Common".

33. On page 15968, in the third line from the top of column three of the table, remove the hyphen from the word "circumstances".

34. On page 15968, in the fifth line from the bottom of column three, correct the words "the GTR" to read "the recovered GTR".

35. On page 15969, in the first table, remove the words "(C) charge card" and "contractor-issued" and replace them with the words "Government contractor-issued charge card" where they appear in the third line from the bottom of column one, and the fourth and fifth lines from the top of column two, respectively.

36–37. On page 15969, in the second line from the bottom of column two in the first table and the second line from the bottom of column one in the second table, remove the hyphen from the words "particularly" and "transaction", respectively.

38. On page 15970, in the 12th line from the bottom of column one, remove the word "for" and replace it with the word "from".

39. On page 15970, in the 18th line from the top of column three, remove the words "You must submit the ticket coupons" and replace them with the words "You must submit any unused tickets, coupons, or other evidence of refund".

40. On page 15971, in the 12th line from the bottom of column three, remove the word "Should" and replace it with the word "May".

41. On page 15973, in the 16th line from the bottom of column one, remove the word "A" and replace it with the word "An".

42. On page 15974, in the 26th line from the top of column two, remove the word "signature" and replace it with the word "signatures".

43. On page 15975, in the seventh line from the bottom of column one, remove the word "authorization" and replace it with the word "authorizations".

44. On page 15976, in the 26th line from the top of column two, add a period following the word "advances".

45. On page 15976, in the 27th line from the bottom of column three, remove the acronym "POV" and replace it with "POVs".

46. On page 15977, in the sixth line from the bottom of column one, remove the word "section" and replace it with the symbol "§".

47. On page 15977, in the 15th line from the bottom of column one, and the 18th and 31st lines from the top of column three, remove the words "contractor issued" and "contractor-issued" and replace them with words "Government contractor-issued", respectively.

48. On page 15978, in the 24th line from the bottom of column one, remove the "0".

49. On page 15978, in the 23rd line from the top of column two, remove the word "and".

50. On page 15978, in the 25th line from the top of column two and the eighth line from the bottom of column three, remove the word "contractor-issued" and replace it with the words "Government contractor-issued", respectively.

51. On page 15978, in the 15th line from the top of column three, remove the "period" and replace it with a semi-colon.

52. On page 15979, in the tenth line from the top of column one, remove the word "contractor-issued" and replace it with the words "Government contractor-issued".

53. On page 15979, in the 14th line from the bottom of column two, remove the words "of this subpart".

54. On page 15979, in the ninth line from the bottom of column two and the 19th line from the top of column three, remove the words "non Federal" and "non-federal" and replace them with the word "non-Federal".

55. On page 15980, in the 25th line from the bottom of column one, remove the word "pre -employment" and replace it with the word"pre-employment".

56. On page 15980, in the tenth line from the top of column two, remove the words "contract issued" and replace them with the word "contractor-issued".

57. On page 15980, in the 11th line from the bottom of column two, and lines six through eight from the top of column three, remove the words "he or she" and "himself or herself" and replace them with the words "he/she" and "himself/herself", respectively.

58. On page 15980, in the 16th line from the bottom of column three, remove the numeral "1".

59. On page 15981, in the 23rd line from the top of column one, remove the words "contract issued" and replace them with the word "contractor-issued".

60. On page 15981, in Appendix C to chapter 301 remove the word "City", in column one and insert it after the phrase "State, Zip" on the same line.

61. On page 15981, in the first table, second column, correct the phrase "his or her" to read "his/her" and in the second table, second column, correct the phrase "he or she" to read, "he/she" both times it appears.

62. On page 15981, in the tenth line from the bottom of column three of Appendix C, remove the words "within noncontiguous" and replace them with the words "outside the continental".

63. On page 15981, in the 11th line from the bottom of column three of Appendix C, remove the word "Continental" and replace it with the word "continental".

64. On page 15982, in the third column of the second table, remove the acronym "POC" and replace it with "POV".

65. On page 15983, in the seventh line from the top, remove the word "Note" and replace it with the words "Note to Appendix C".

66. On page 15983, insert a new 11th line from the bottom of column one to read "EFT: Electronic Funds Transfer".

67. On page 15983, insert a new 17th and 18th line from the bottom of column two to read "ID: Identification" and "IDL: International Date Line", respectively.

68. On page 15983, insert a new 14th line from the bottom of column two to read "JTR: Joint Travel Regulation".

69. On page 15983, insert a new 16th line from the bottom of column three to read "SSN: Social Security Number".

70. On page 15983, in line 12 from the bottom of column three, remove the word "System" and replace it with "Services/System".

Dated: June 23, 1998.

Peggy Wood,

Deputy Director, Travel and Transportation, Management Policy Division.

[FR Doc. 98–17107 Filed 6–29–98; 8:45am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[DA 98–914]

Electronic Tariff Filing System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order which requires that incumbent local exchange carriers (LECs) use the Common Carrier Bureau's (Bureau) Electronic Tariff Filing System (ETFS) to officially file tariffs and associated documents. The Order amends the Commission's tariff filing rules to accommodate mandatory electronic filing. This Order applies the mandatory electronic filing requirement to incumbent LECs only. However, ETFS also enables interested parties to access and download these documents over the Internet, and to file petitions to reject, or suspend and investigate tariff filings electronically.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Todd R. Mitchell or Geneva S, Butler, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted on May 28, 1998, and released on May 28, 1998. The full text of the Order is available for inspection and copying during normal business hours in the Commission's Public Reference Room, Room 239, 1919 M Street N.W., Washington, DC. The complete text of this decision may be purchased from the Commission's duplication contractor, International Transcription Services Inc. (ITS), (202) 857 3800, 1231 20th Street, N.W., Washington, DC 20036.

1. The amended rules also provide that the official filing date is the date on which the document is received by ETFS. The date of receipt shall be determined by the time of the end of the electronic transmission with 5:30 pm Eastern Time as the cut-off time for filings. Thus, if the transmission of a filing ends after 5:30 pm Eastern Time on a business day, the official filing date will be the next business day. If the time of termination of the filing is on a day that is not a business day, such as, a weekend or holiday, the official filing date will be the next business day. ETFS automatically establishes the date of filing in accordance with these requirements. Parties filing electronically must request and receive a receipt at the end of each filing session in order to complete the transmission. The receipt, which will be received at the filer's computer, will provide details of the filing session, including the official receipt date and time, and will serve as the filing party's official documentation that the filing was received by the Commission. The Commission requires that all incumbent LECs file all of their tariff base documents electronically within the first five business days of July, 1998. Nonmajor rules, such as implementation of electronic tariff filing, and rules implementing the Telecommunications Act of 1996 can go into effect as determined by the agency as long as Contract With America Advancement Act (CWAAA) and required abstracts have been filed with Congress. ETFS has met these requirements, therefore the waiting period for **Federal Register** printing is not required.

2. Access to ETFS is via the Common Carrier Bureau's web page: <http://www.fcc.gov/ccb>, for the incumbent LECs and other interested parties. Access to the web page is through an Internet Service Provider (ISP) with software that includes a browser program, preferably Netscape 3.0 or later versions. To view documents in ETFS effectively, a user must have Adobe Acrobat plug-in for browser software. An ETFS user's manual is available for viewing or downloading, as well as, in paper form from the Commission's commercial copy contractor, ITS. A computer terminal is available in the Commission's Public Reference Room, Room 239, 1919 M Street NW, Washington, DC, for accessing ETFS. The Commission has established an e-mail address (etfs@fcc.gov) and an information line (202) 418–7700, for questions and comments. Bureau, 202–418–1520.

Paperwork Reduction Act:

The Federal Communications Commission received Office of Management and Budget approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Control No.: 3060–0745.

Expiration Date: 12/31/2000.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996—CC Docket No. 96–187.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 1400 respondents; .33 hours per response (avg.); 462 total annual burden hours (estimates for electronic filing only).

Estimated Annual Reporting and RecordKeeping Cost Burden: $170,000.

Frequency of Response: On occasion.

Description: In the Tariff Streamlining Report and Order, the Commission adopted regulations implementing the tariff streamlining provisions of the Telecommunications Act of 1996. The Commission determined, *inter alia*, that it would establish a program of mandatory electronic filing of tariffs and associated documents by incumbent local exchange carriers (LECs). The Commission delegated authority to the Chief, Common Carrier Bureau (Bureau), to establish this program. This Order amends rules to accommodate the Commission's Electronic Tariff Filing System (ETFS). Incumbent LECs must use the Bureau's ETFS to officially file tariffs and associated documents beginning July 1, 1998. Other parties may also file documents using ETFS, such as petitions to reject, or suspend and investigate tariff filings beginning July 1, 1998. Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Ordering Clause

Accordingly, *It Is Ordered*, pursuant to sections 1, 4(i), 10, 201–205, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201–205, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, and paragraph 48 of the Tariff Streamlining Order, 12 FCC Rcd 2170, page 2195 (1997), part 61 of the Commission's rules is amended as set forth in the rule changes.

It Is Further Ordered that these rules shall become effective July 1, 1998.

List of Subjects in 47 CFR Part 61

Tariffs.

Federal Communications Commission.

Patrick J. Donovan,

Deputy Chief, Competitive Pricing Division, Common Carrier Bureau.

Rule Changes

For the reasons discussed in the preamble part 61 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Section 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Add new §§ 61.13 through 61.17 and a new undesignated center heading after the heading "GENERAL RULES" to read as follows:

Rules for Electronic Filing

Sec. 61.13 Scope.
Sec. 61.14 Method of filing publications.
Sec. 61.15 Letters of transmittal and cover letters.
Sec. 61.16 Base documents.
Sec. 61.17 Method of filing applications for special permission.

Rules for Electronic Filing

§ 61.13 Scope.

(a) This applies to all tariff publications of carriers required to file tariff publications electronically, and any tariff publication that a carrier chooses to file electronically.

(b) All incumbent local exchange carriers are required to file tariff publications electronically.

(c) All tariff publications shall be filed in a manner that is compatible and consistent with the technical requirements of the Electronic Tariff Filing System.

§ 61.14 Method of filing publications.

(a) Publications filed electronically must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The Electronic Tariff Filing System will accept filings 24 hours a day, seven days a week. The official filing date of a publication received by the Electronic Tariff Filing System will be determined by the date and time the transmission ends. If the transmission ends after the close of a business day, as that term is defined in § 1.4(e)(2) of this Chapter, the filing will be date and time stamped as of the opening of the next business day.

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter, (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit a copy of the Form 159 and the original transmittal letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved". Issuing carriers should submit these fee materials on the same day as the transmission in paragraph (a) of this section.

(c) Carriers that are required to file publications electronically may not file those publications on paper or other media unless specifically required to do so by the Commission.

(d) Carriers that are required to file publications electronically need only transmit one set of files to the Commission. No other copies to any other party are required.

(e) Carriers that are required to file publications electronically must continue to comply with the format requirements set forth in part 61.

§ 61.15 Letters of transmittal and cover letters.

(a) All tariff publications filed with the Commission electronically must be accompanied by a letter of transmittal. All letters of transmittal must:

(1) Concisely explain the nature and purpose of the filing;

(2) Specify whether supporting information is required for the new tariff or tariff revision, and specify the Commission rule or rules governing the supporting information requirements for that filing;

(3) Contain a statement indicating the date and method of filing of the original of the transmittal as required by § 61.14(b).

(b) Carriers filing tariffs electronically pursuant to the notice requirements of section 204(a)(3) of the Communications Act shall display prominently, in the upper right hand corner of the letter of transmittal, a statement that the filing is made pursuant to that section and whether the tariff is filed on 7 or 15 days notice.

(c) Any carrier filing a new or revised tariff made on 15 days' notice or less shall include in the letter of transmittal the name, room number, street address, telephone number, and facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions against the filing as required under § 1.773(a)(4) of this chapter.

(d) The letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication and may not be requested in the transmittal letter.

(e) The letter of transmittal must be substantially in the format established in §§ 61.33(g) and 61.33(h)(1).

(f) All submissions of documents other than a new tariff or revisions to an existing tariff, such as Base Documents or Tariff Review Plans, must be accompanied by a cover letter that concisely explains the nature and purpose of the filing. Publications submitted under this paragraph are not required to submit a tariffing fee.

§ 61.16 Base documents.

(a) The Base Document is a complete tariff which incorporates all effective revisions, as of the last day of the preceding month. The Base Document should be submitted with a cover letter as specified in § 61.15(f) of this part and identified as the *Monthly Updated Base Document*.

(b) Initially, carriers that currently have tariffs on file with the commission must file a Base Document within five days of the initiation of mandatory electronic filing.

(c) Subsequently, if there have been revisions that became effective up to and including the last day of the preceding month, a new Base Document must be submitted within the first five business days of the current month that will incorporate those revisions.

§ 61.17 Method of filing applications for special permission.

(a) An application for special permission filed electronically must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The Electronic Tariff Filing System will accept filings 24 hours a day, seven days a week. The official filing date of a publication received by the Electronic Tariff Filing System will be determined by the date and time the transmission ends. If the transmission ends after the close of a business day, as that term is defined in § 1.4(e)(2) of this chapter, the filing will be date and time stamped as of the opening of the next business day.

(b) In addition, except for issuing carriers filing tariffing fees

issuing carriers must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit a copy of the Form 159 and the original application letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved". Issuing carriers should submit these fee materials on the same day as the transmission in paragraph (a) of this section.

(c) In addition, the requirements of § 61.153(c) are applicable, except the additional copy addressed to the Chief, Tariff and Pricing Analysis Branch is not required.

3. Section 61.52 is amended by revising paragraph (c) to read as follows:

§ 61.52 Form, size, type, legibility, etc.

* * * * *

(c) Incumbent local exchange carriers shall file all tariff publications and associated documents, such as transmittal letters, requests for special permission, and supporting information, electronically in accordance with the requirements set forth in § 61.13 through § 61.17.

[FR Doc. 98–17410 Filed 6–29–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 062396A]

Pacific Halibut Fisheries; Washington Sport Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: NMFS announces changes to the regulations for the Area 2A sport fishery off the south coast of Washington. A subsection of the south coast of Washington area, from the Queets River south to 47°00'00" N. lat., and east of 124°40'00" W. long. will be open 7 days per week, beginning June 26, 1998, until 36,648 lb (16.6 mt) are estimated to have been taken, after which time all sport fishing for halibut in the south coast of Washington area between the Queets River and Leadbetter Point will be closed. The purpose of this action is to allow halibut taken as bycatch in shallow-depth sport fishing trips to be retained, rather than discarded.

DATES: Effective June 25, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. Information relevant to this action is available for public review during business hours at this address.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6120.

SUPPLEMENTARY INFORMATION: The Area 2A Catch Sharing Plan for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 17, 1998 (63 FR 13000). In accordance with those regulations, the sport fishery in the area from Queets River, Washington, to Leadbetter Point, Washington opened on May 1 and has continued for 5 days per week (Sunday through Thursday) since that opening. The 1998 subarea quota for this fishery is 36,648 lb (16.1 mt). This all-depth sport fishery in this area is scheduled to close when 1,000 lb (0.45 mt) are projected to remain in the subarea quota. Immediately following that closure, the season would reopen in the shallow-depth area from the Queets River (47°31'42" N. lat.) south to 47°00'00" N. lat. and east of 124°40'00" W. long., and continue every day until the full 36,648 lb (16.1 mt) subarea quota is estimated to have been taken.

The best available data on June 16, 1998, indicates that as of June 14, 1998, 31,327 lb (14.2 mt) of halibut have been taken in the area from the Queets River south to Leadbetter Point, Washington. Catch rate attainment for this subarea is significantly slower than it has been in past years, lengthening the directed sport season over past season durations. While a longer than usual halibut season has been beneficial to area sport fishery operations, the lengthened 5 day per week fishery has had an unanticipated impact on sport fishing trips directed at species other than halibut. Because the halibut fishery is restricted to 5 days per week, halibut must be discarded when caught incidentally on fishing trips directed at other species on days when halibut may not be landed (Friday and Saturday). A small number of halibut are taken from the shallow depth area, where a significant rockfish sport fishery occurs. Allowing halibut landings for 7 days per week from this area will eliminate unnecessary discard of incidentally-caught halibut. Any halibut landed from the shallow-depth fishery on a Friday or a Saturday will count against the all-depth fishing quota of 35,648 lb (16.1 mt). NMFS has determined, in consultation with Washington Department of Fish and Wildlife (WDFW), that the directed halibut fishery for this area has been proceeding at a sufficiently slow rate to justify allowing Friday and Saturday halibut landings from the shallow depth fishing trips that are generally directed at species other than halibut, but which may catch halibut incidentally.

Section 24 of the 1998 Pacific halibut regulations provides NMFS with the flexibility to make certain inseason management changes including, among other things, modification of sport fishing periods, and modification of sport fishery days per calendar week. In consultation with WDFW, the Pacific Fishery Management Council, and the International Pacific Halibut Commission (IPHC), NMFS has determined that the remaining quota for this area is sufficient to open the shallow depth fishery for 7 days per week, beginning June 26, 1998. The all-depth fishery will continue as originally specified in the annual management measures, until 35,648 lb (16.6 mt) are estimated to have been taken from the south coast of Washington area. Once 35,648 lb (16.1 mt) are estimated to have been taken, the shallow depth subarea within the south coast of Washington area (from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long.) will remain open every day until 36,648 lb (16.6 mt) are estimated to have been taken, or until September 30, whichever occurs first.

NMFS Action

For the reasons stated above, NMFS announces the following change to the 1998 annual management measures (63 FR 13000, March 17, 1998, as amended). For the Washington south coast subarea, section 23(4)(C)(iii)(A) is amended as follows:

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10" N. lat.), the quota for landings into ports in this area is 36,648 lb (16.6 mt).

(A) The fishing season that began on May 3 continues 5 days a week (Sunday through Thursday) until 35,648 lb (16.1) are estimated to have been taken and the season is closed by the Commission. Within the area described in this section, above, the area from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long. is open 7 days per week, and continues every day until

36,648 lb (16.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

Classification

These actions are authorized by the regulations implementing the Area 2A Catch Sharing Plan. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to implement these changes to limit unnecessary halibut discard, and because the public had an opportunity to comment on NMFS' authority to make inseason changes to certain management measures when those measures would further the objectives of the Catch Sharing Plan, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period: Public comments will be received for a period of 15 days after the effectiveness of this action. This action is authorized by Section 24 of the annual management measures for Pacific halibut fisheries published on March 17, 1998 (63 FR 13000, 13008) and has been determined to be not significant for purposes of E.O. 12866.

Dated: June 24, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 98–17342 Filed 6–25–98; 1:42pm]

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Proposed Rules

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICER OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–A129

Hazardous Duty Pay

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Officer of Personnel Management is issuing a proposed regulation to provide an 8 percent hazard pay differential for General Schedule employees who perform work at a worksite a more than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1300 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email at payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606–2858, FAX: (202) 606–0824, or email at payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Smithsonian Institution asked the Office of Personnel Management (OPM) to establish a 10 percent hazard pay differential for General Schedule employees for days when they must perform work at the Smithsonian Astrophysical Observatory (SAO) near the 4206 meter (13,800 foot) summit of Mauna Kea, an extinct volcano on the Island of Hawaii. The Smithsonian Institution states that suitable housing is available only near sea level and that SAO employees must commute back and forth from their homes to the SAO worksite each workday. The Smithsonian Institution submitted research evidence which indicates that work at high altitudes can have negative physiological effects such as impaired judgment, increased heart rates, and nausea, especially if employees have not had time to acclimate to the lower atmospheric pressure and oxygen levels that exist at a high altitude.

After discussions with the Smithsonian Institution, OPM has agreed to propose an 8 percent hazard duty pay differential for work at such a high altitude. The reason for proposing a lower differential rate is to conform with a proposed 8 percent environmental differential rate for prevailing rate (wage) employees who work at the same or similar high altitude job sites. The proposal for an 8 percent environmental differential will be provided to the Federal Prevailing Rate Advisory Committee for its consideration.

As stated in 5 U.S.C. 5545(d), OPM is responsible for establishing schedules of hazardous duty pay differentials for General Schedule employees. This proposed regulation would authorize a new hazard pay category for General Schedule employees who must work at worksite more than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. The establishment of this new category for payment of hazardous duty pay would not relieve an agency of its responsibility to take whatever measures are feasible to minimize the harmful effects of work at a high altitude.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend subpart I of part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

1. The authority for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

2. Appendix A to subpart I of part 550 is amended by adding a new category to the Schedule of Hazard Pay Differentials to read as follows:

Appendix A—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Duty	Rate of hazard pay differential (percent)	Effective date
. . . . .	.	.
Exposure to Physiological Hazards:		

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)—Continued

Duty	Rate of hazard pay differential (percent)	Effective date
(6) *Working at high altitudes.* Performing work at a worksite more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	8	[Date of effectiveness of the final rule].

[FR Doc. 98–17318 Filed 6–29–98; 8:45 am]
BILLING CODE 3325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–98–327]

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to seven percent fees charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937 would also be affected. This rule would also incorporate miscellaneous changes to revise a citation number and revise a statement in a footnote in regards to sample size.

DATES: Comments must be postmarked or courier dated on or before July 30, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver at the above address or call (202) 720–4693.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget. Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the required analyses are set forth below.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover lot, and year round and less than year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with costs projected at $13.1 million and an end-of-year reserve balance of $3.9 million. The PPB trust fund reserve balance for these programs will be approximately $0.5 million under the four-month level of approximately $4.4 million, which is called for by Agency policy. Further, PPB's cost of operating the user fee financed programs are expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

The Processed Products Branch (PPB) estimates that without a fee increase the trust fund reserve as called for by Agency policy (four-months) will significantly decrease, that will result in an operating reserve balance of approximately $3.0 million in FY 1999 and $2.6 million in FY 2000. This relates to only 2.9 months and 2.3 months of operating reserve for the respective years.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases have increased PPB's cost of operating these programs by $400,000 per year.

The proposed fee increase of approximately 3 to 7 percent, should result in an estimated $500,000 in additional revenue per year and should enable PPB to cover its costs and re-establish program reserves (current operating reserves are being maintained at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The objective of the proposed rule is to increase user fee revenue generated under the lot inspection program, and the year round and less than year round inspection programs by approximately $500,000 annually. This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which states that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *".

There are more than 1239 users of PPB's lot, and less than year round and year round inspection services (including applicants who must meet

import requirements,[1] inspections which amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this proposed rule.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR parts 944 and 999.

Inasmuch as the inspection services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (three to seven percent) and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and therefore, any decision to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA authorizes official inspection, grading and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule will amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program and incorporates miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While PPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, and less than year round and year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). The current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with cost projected at $13.1 million and an end-of-year reserve of $3.9 million. This will result in a decrease of PPB's trust fund balance of approximately $0.5 million under the four-month level ($4.4 million) called for by Agency policy. Further, PPB's cost of operating these inspection programs is expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000, resulting in a decrease of the trust fund balance to approximately $3.0 in FY 1999, and to approximately $2.6 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases will increase PPB's costs of operating these inspection programs by approximately $400,000 per year. Therefore, the salary increases necessitate additional funding under the program. This proposed fee increase of approximately 3 to 7 percent should result in an estimated additional revenue of $500,000 per year, and should enable PPB to cover the costs of doing business and re-establish program reserves (current operating reserves are at a level below that provided for by Agency policy). In order to reach and maintain a four-month reserve, a further increase in fees may be likely in future years.

Based on the aforementioned analysis of increasing program costs, AMS proposes to increase the fees relating to lot inspection service and the fees for less than year round and year round inspection services. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under § 52.51 overtime work would also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42–52.51. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current $41.00/hr.
Proposed $43.00/hr.

Charges for travel and other expenses as found in § 52.50 are:

Current: $41.00/hr.
Proposed: $43.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) are:

(1) For inspector assigned on a year-round basis:

Current: $34.00/hr.
Proposed: $35.00/hr.

(2) For inspector assigned on less than a year-round basis: Each inspector:

Current: $42.00/hr.
Proposed: $45.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51(d) are:

(1) Each inspector:

Current: $42.00/hr.
Proposed: $45.00/hr.

Also, AMS revises §§ 52.21 and 52.38 (Table II, footnote number 2), of 7 CFR part 52 to make editorial changes.

In § 52.21, § 52.50 is referenced as providing information regarding the purchase of additional copies of certificates. This should be revised to read § 52.49.

In § 52.38, Table II, footnote number 2, the statement that describes the sample size for Group 3 containers that weigh over 10 pounds is omitted. Table II, footnote number 2 is revised to include the sample size for Group 3 containers that are over 10 pounds.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices,

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Fruits, Reporting and recordkeeping requirements, and Vegetables.

For the reasons set forth in the preamble, 7 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 52.42 [Amended]

2. In § 52.42, the figure "$41.00" is revised to read "$43.00".

§ 52.50 [Amended]

3. In § 52.50, the figure "$41.00" is revised to read "$43.00".

§ 52.51 [Amended]

4. In § 52.51, paragraph (c)(1), the figure "$34.00" is revised to read "$35.00", in paragraph (c)(2), the figure "$42.00" is revised to read "$45.00", and in paragraph (d)(1), the figure "$42.00" is revised to read "$45.00".

§ 52.21 [Amended]

5. In § 52.21, the words "§ 52.50" is revised to read "§ 52.49".

§ 52.38 [Amended]

6. In § 52.38, Table II, footnote number 2 is revised to read as follows:

[2] When a standard sample size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

Dated: June 24, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–17297 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–12]

Proposed Amendment to Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Danville, VA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Danville Regional Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–12, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Danville, VA. The ILS RWY 2 SIAP has been amended for the Danville Regional Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. the incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Danville, VA [Revised]

Danville Regional Airport, VA
(Lat. 36°34'27" N., long. 79°20'07" W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17359 Filed 6–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–05]

Proposed Establishment of Class E Airspace; Tidioute, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Tidioute, PA. A VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME)—A Standard Instrument Approach Procedure (SIAP), a VOR/DME RNAV Runway (RWY) 28 SIAP, a VOR/DME RNAV RWY 10 SIAP, a Global Positioning System (GPS) RWY 29 SIAP, and a GPS RWY 10 SIAP have been developed for the Rigrtona Airport, Tidioute, PA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–05, FAA Eastern Region, Federal Buildings, #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal businesses hours in the Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parts are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–05". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Tidioute, PA. A VOR/DME–A SIAP, a VOR/DME RNAV RWY 28, a VOR/DME RNAV RWY 10, a GPS RWY 28 SIAP, and a GPS RWY 10 SIAP have been developed for Rigrtona Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Tidioute, PA [New]

Rigrtona Airport, PA
(Lat. 41°40'57"N., long. 79°27'11"W).

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Rigrtona Airport excluding the portions that coincides with the Titusville, PA and Corry, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17360 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–06]

Proposed Establishment of Class E Airspace; Collegeville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Collegeville, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Rhone-Poulenc Rorer Collegeville Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–06, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430, The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, airspace branch AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–06". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Collegeville, PA. A GPS Point In Space Approach has been developed for the Rhone-Poulenc Rorer Collegeville Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Collegeville, PA [New]

Rhone-Poulenc Rorer Collegeville Heliport, PA
Point In Space Coordinates
(Lat. 40°10′08″N., long. 75°28′35″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Rhone-Poulenc Rorer Collegeville Heliport excluding that portion that coincides with the Pottstown, PA, North Philadelphia, PA, and Philadelphia, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17363 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–09]

Proposed Establishment of Class E Airspace; Gettysburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Gettysburg, PA. The development of a new Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach based on the Global Positioning System (GPS), and serving the Gettysburg Hospital Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–09, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–09". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Gettysburg, PA. A GPS Point In Space Approach has been developed for the Gettysburg Hospital Heliport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this approach and for IFR operations to the heliport. The area would be depicted on appropriate aeronautical charts.

Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Gettysburg, PA [New]

The Gettysburg Hospital Heliport, PA
Point In Space Coordinates
(Lat. 39°48′24″N., long. 77°14′48″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving The Gettysburg Hospital Heliport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17364 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–11]

Proposed Establishment of Class E Airspace; Carlisle, PA

AGENCY: Federal Aviation Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Carlisle, PA. The Carlisle Airport is served by a Non-Directional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 28 Standard Instrument Approach Procedure (SIAP) and a VHF Omni-Directional Radio Range (VOR) Distance Measuring Equipment (DME) or GPS–A SIAP. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–11, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposals. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments Airspace Docket No. 98–AEA–11". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Carlisle, PA. An NDB or GPS RWY 28 SIAP and a VOR/DME or GPS–A SIAP has been published for Carlisle Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document

would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Carlisle, PA [New]

Carlisle Airport, PA
(Lat. 40°11'16" N., long. 77°10'28" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Carlisle Airport.

* * * * *

Issued in Jamaica, New York, on June 15, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–17367 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 99

Single Issue Focus Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration's Office of Consumer Affairs is announcing a Single Issue Focus Meeting. The meeting will provide an opportunity for consumers, patient advocates, health professionals, and industry to learn about and comment on the proposed rule published in the **Federal Register** of June 8, 1998, on section 401 of the Food and Drug Administration Modernization Act of 1997 and the dissemination of information on unapproved/new uses for marketed drugs, biologics, and devices.

DATES: The meeting will be held on Wednesday, July 8, 1998, from 1:30 p.m. to 4:30 p.m. Send information regarding registration by July 6, 1998.

ADDRESSES: The meeting will be held at the Wilbur J. Cohen Bldg., Snow Room, 330 Independence Ave., SW., Washington, DC. Metro Stop: Blue or Orange Line to Federal Center, SW.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–827–4417, FAX 301–443–9767, E-mail: SMTP[Manders1@bangate.fda.gov].

SUPPLEMENTARY INFORMATION: Send registration information (including name, title, organization, address, telephone, fax number, and any requests for oral presentations) to the contact person (address above) by July 6, 1998. Any requests for oral presentations should include a brief summary of the presentation and the approximate amount of time requested for the presentation. The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. Every effort will be made to accommodate all registrants and requests for oral presentations. However because space and time is limited, admittance is on a "first come, first serve basis," and the agency may not be able to accommodate all requests for oral presentations.

If you need special accommodations due to a disability, please contact Michael D. Anderson (address above) by July 6, 1998.

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: June 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–17293 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 862]

RIN 1512–AB64

Implementation of Pub. L. 104–208, the Omnibus Consolidated Appropriations Act of 1997 (96R–034P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of the **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, enacted September 30, 1996. These regulations implement the law by adding to the list of prohibited persons anyone convicted of a "misdemeanor crime of domestic violence" and by adding the provision that employees of government agencies convicted of such misdemeanors may not lawfully possess or receive firearms and ammunition. In conjunction with the new prohibited person category, regulations are also prescribed to require purchasers of handguns to state on the Brady Form, ATF Form 5300.35, that they have not been convicted of a misdemeanor crime of domestic violence.

In addition, the temporary rule implements the amendment to the Gun Control Act allowing Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. The temporary regulations also serve as the text of this

notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before September 28, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No.

FOR FURTHER INFORMATION CONTACT: Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is in 27 CFR 178.130(a)(1) and 178.134. This information is required to prevent the purchase of handguns by persons convicted of a misdemeanor crime of domestic violence. The likely respondents are individuals.

Estimated total annual reporting burden per respondent: .1 hours. Estimated number of respondents: 8,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request in writing, to the the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 178. For the text of the temporary regulations, see T.D. ATF—published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information: The author of this document is Barry Fields, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: February 18, 1998.

John W. Magaw,

Director.

Approved: April 24, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–17287 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–97–020]

RIN 2115–AE47

Drawbridge Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the Flagler Memorial, Royal Park, and Southern Boulevard drawbridges at Palm Beach. The Coast Guard has reconsidered its original proposal in the NPRM published on August 12, 1997, to change both the seasonal weekday and weekend operating imstructions for the bridges, and now is proposing to change only the seasonal weekday opening instructions, including eliminating the existing weekday openings at 8 a.m. on the Flagler Memorial bridge and at 8 a.m. and 5 p.m. on the Royal Park bridge, while retaining the other provisions in the original NPRM extending the seasonal opening period by one month and establishing a 30 minutes opening schedule for the Southern Boulevard Bridge during seasonal weekdays.

DATES: Comments must be received on or before August 31, 1998.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except federal holidays. The telephone number is (305) 536–6546. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for

inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD07–97–020] and the specific section of this revised proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in any unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. If may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Ms. Evelyn Smart at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Regulatory History

On August 12, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (62 FR 43132). The NPRM proposed to change the regulations governing the operation of the Flagler Memorial, Royal Park, and Southern Boulevard drawbridges in Palm Beach, Florida. In response to the NPRM, the Coast Guard received objections from the Florida Inland Navigation District, the Marine Industries of Palm Beach and several local residents, expressing their concern about seasonal weekend openings being limited to set times vice opening on signal.

Background and Purpose

The Coast Guard's original proposal included commencing the seasonal opening schedules for all three bridges a month earlier on 1 October to help reduce traffic congestion and proposed seasonal 30 minute weekend and holiday opening schedules for all three bridges. It also proposed creating a 30 minute opening schedule for the Southern Boulevard Bridge during seasonal weekdays.

Discussion of Comments

Four comments were received on the original NPRM stating that the proposed weekend opening schedules during the winter season would place an undue burden on the boating public, and that the local community benefited from an increase in boater traffic. The Coast Guard agreed, and has eliminated the proposed seasonal weekend opening schedules from this revised proposal. Therefore, all three bridge will still operate on signal on the weekends. One comment was received requesting that the seasonal 8 a.m. opening on the Flagler Memorial bridge and the 8 a.m. and 5 p.m. openings on the Royal Park bridge be removed because of their effect upon commuter rush hour traffic. The Coast Guard agreed that there is a significant increase in commuter traffic during this period, and is eliminating those rush hour openings in this revised proposal. Two comments were received requesting the Coast Guard to extend the winter operating schedule year round. The Coast Guard disagreed, as there is a not a present need to restrict openings during the off season because of the decrease in commuter traffic during that time.

Discussion of the Revised Proposal

The Coast Guard reviewed its original proposal and determined that the significant increase in vessel traffic on weekends was beneficial to the local community and should not be unreasonably impacted by bridge opening instructions which did not provide clearly offsetting benefits to the seasonal traffic across the bridge. Therefore, the proposed changes to the weekend opening schedules have been removed from this revised proposal and the weekend opening schedules have been modified to remove the existing 8 a.m. opening on the Flagler Memorial bridge and the 8 a.m. and 5 p.m. openings on the Royal Park Bridge, which have significantly impacted the flow of highway commuter traffic.

These revised regulations would maintain the existing seasonal weekday 30 minute opening schedule for Flagler Memorial and Royal Park Bridges, and add the seasonal weekday 30 minute opening schedule to the Southern Boulevard Bridge which now operates on signal. The seasonal restrictions for all three bridges would start one month earlier on 1 October to help reduce traffic congestion created by earlier arrival of seasonal visitors to the Palm Beach areas. This changes is intended to relieve seasonal highway congestion while still meeting the reasonable needs of navigation.

The amended regulations still provide an exception to the opening schedules for public vessels of the United States, tug vessels with tows, and vessels in situations where a delay would endanger life or property.

Regulatory Evaluation

This revised proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not a significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because this revised proposal does not effect the exemptions for tugs with tows and emergency situations already contained in the regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this revised proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this revised proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows. If however, you think that your business or organization qualifies as a small entity and that this revised proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think you qualify and in what way and to what degree this proposed rule will economically affect you.

Collection of Information

This revised proposal contains no collection of information requirements

under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this revised proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this revised proposal and has determined pursuant to section 2.B.2.a (CE #32(e)) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.261 revised paragraphs (u), (v) and (w) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(u) Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach. The draw shall open on signal; except that from October 1 to May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(v) Royal Park (SR 704) bridge, mile 1022.6 at Palm Beach. The draw shall open on signal; except that from October 1 through May 31, Monday through Friday except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m., to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(w) Southern boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach. The draw shall open on signal; except that, from October 1 through May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:15 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. From 9:15 a.m. to 4:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

* * * * *

Dated: June 23, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–17370 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children and Families

45 CFR Part 1303

RIN: 0970–AB87

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Administration on Children, Youth and Families is issuing this Notice of Proposed Rulemaking to propose timelines for the conducting of administrative hearings on adverse actions taken against Head Start grantees and to make additional changes to the regulations designed to expedite the appeals process.

DATES: In order to be considered, comments on this proposed rule must be received on or before August 31, 1998.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, PO Box 1182, Washington, DC 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2219, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jim S. Kolb (202) 205–8580.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1998, Head Start served 752,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Proposed Regulation

The authority for this Notice of Proposed Rulemaking (NPRM) is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Pub. L. 103–252, Title I of the Human Services Amendments of 1994. ACF proposes to make changes to the regulations designed to expedite the appeals process and as specifically required by section 646(c) to specify a timeline for administrative hearings on adverse actions taken against grantees, and a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing. The proposed rule implements these requirements.

Overall, this proposed rule on timelines, including the conforming changes to other affected sections of the appeals requirements in part 1303, will have the effect of saving time and expenses while continuing to allow due process to a grantee appealing a proposed termination or denial of refunding decision. In the past, a number of appeal proceedings have been protracted and costly partly because of the absence of statutory or regulatory timelines for holding a

hearing. Under the proposed timelines, decisions can be rendered in a shorter period of time thus allowing quicker removal of a deficient grantee. This will help ensure that children and their families receive high quality Head Start services from a qualified provider.

III. Section by Section Discussion of the NPRM

Section 1303.14 Appeal by a Grantee from a Termination of Financial Assistance

The proposed rule makes several changes to this section. ACF is proposing to revise section 1303.14(c)(1) to state in greater detail the information which it must include in letters of termination. Under the proposed regulation the Agency will be required to state the legal basis for termination, the factual findings on which the termination is based, or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which the Agency is relying for its determination. This change will reduce the need for the Agency to supplement its initial notice with additional filings after the appeal is filed and thereby streamline and expedite the appeals process.

The Agency is also proposing to amend the regulation to increase the amount of time for a grantee to appeal a termination from 10 days to 30 days. The change is being made to give grantees more time in which to develop their initial appeal submission. More complete submissions will allow quicker resolutions of appeals. This increase in time to file appeals carries with it more responsibility for filing properly, as discussed below.

The last sentence in § 1303.14(c)(2) is being deleted because the standard for content of the request for a hearing will now appear in the revised § 1303.14(d).

The Agency is also proposing new language for § 1303.14(d) which requires the grantee to state in more detail the basis of its appeal of the termination. This change will reduce the need for the grantees to supplement their initial request for a hearing with additional filings and thereby streamline and expedite the appeals process. ACF is also proposing a change in § 1303.14(c)(5) to make it consistent with the new § 1303.14(d). A new § 1303.14(c)(6) is added to provide for two sanctions against ACF in the event that a notice of termination is deficient.

If in the judgment of the Departmental Appeals Board a grantee fails to comply with these requirements in a substantial manner its appeal must be rejected, with prejudice. The burden shall be on a grantee to show good cause for any failure to comply with these requirements. Workload difficulties shall not normally constitute good cause, unless the Departmental Appeals Board determines that adjustments cannot be made by the grantee and that the conflicting matters reasonably take precedence over the expeditious conduct of the appeal. Thus, for example, a grantee must show extenuating circumstances for its failure to provide documents in its possession at the time of its appeal and to raise arguments or objections that would logically be raised or made in light of the notice of termination. If the failure is not substantial, the appeal may proceed, but the omitted document must be excluded and the omitted argument or objection barred. These provisions flow from the purpose of these changes, which is to expedite appeals, and in light of the fact that grantees will have twenty more days to file their appeals than is the case under current regulations. The proposed regulation does provide relief from the sanctions under exceptional circumstances, as the Departmental Appeals Board may determine in accordance with the regulations. The new paragraph on sanctions is (e).

The current § 1303.14(e) is deleted and a portion of its contents revised and added as the last sentence in the new paragraph (d)(7) of this section. It would require the grantee to serve notice of the appeal and request for a hearing on any delegate agency which would be financially affected at the time the grantee files its appeal. However, failure to do so would be between the delegate and grantee and would not prevent the non-renewal or termination action from proceeding. Any remedy would be between the grantee and delegate agency.

The proposed revision of § 1303.14(g) to be redesignated as (i) includes a new requirement that delegate agencies, requesting an opportunity to participate in a hearing, must do so within 30 days of the grantee's request for a hearing. This new requirement is consistent with the overall thrust of the proposed provision which is to minimize delays and require the parties to eliminate possible sources of delay in the proceedings.

Section 1303.15 Appeal by a Grantee From a Denial of Refunding

ACF is proposing to revise paragraph (b)(2) of this provision to give grantees 30 instead of 10 days in which to appeal denial of refunding. This proposed change will make this provision consistent with revised § 1303.14(c)(2). The additional time will allow grantees to provide more complete submissions which will allow quicker resolutions of appeals. The proposed revision to paragraph (d) will require ACF to state in more detail the basis of the decision to deny refunding to a grantee. The additional information in the notice will reduce the need for the Agency to supplement its initial notice with filing after the appeal is filed and thereby streamline and expedite the appeals process. Paragraph (d) also provides for two sanctions against ACF in the event that a notice of denial of refunding is deficient. The Agency also is proposing to add paragraphs (f), (g) and (h) to 45 CFR 1303.15 to make the procedures for appeals of denials of refunding consistent with those for termination appeals in 45 CFR 1303.14.

Section 1303.16 Conduct of Hearing

The proposed revision would specifically require the parties to use prepared written direct testimony. ACF's experience with prepared written testimony has shown it is more efficient in terms of clear presentation of direct testimony and the reduction of hearing time and expense, including the absence of agency staff from their normal duties. Direct testimony is the testimony of witnesses in response to the questions of the attorney for the party which called them. After a witness's direct testimony is presented to the Board, the attorney for the opposing party has an opportunity to cross examine, and the attorney for the party which called the witness has another opportunity to ask additional questions, a process known as "redirect examination." Prepared direct testimony by parties eliminates the need for live direct testimony at the hearing. However, cross examination and redirect examination will be live at the hearing. This permits the presiding member to assess witness credibility through direct observation. Use of prepared written direct testimony by the parties can result in a significant reduction in the amount of time needed for a hearing and the cost of compiling transcripts of hearings. Based on it own experience, ACF believes this approach will contribute to streamlining the Head Start appeals process. Changes also are proposed in the wording of 45 CFR 1303.16(e) to make it consistent with the

proposed changes in 45 CFR 1303.14(e) and (g).

Section 1303.17 Time for hearing and decision

This proposed rule implements section 646(c) of the Head Start Act, which directs the Secretary to specify timelines for commencing hearings and rendering decisions.

The Head Start Act and implementing regulations in 45 CFR part 1303 seek to strike a balance between the need to ensure that all Head Start programs are of high quality and are responsive to the families they serve, on the one hand, and protection of existing grantees from arbitrary or baseless adverse actions, on the other. Assuring that all Head Start programs provide quality services is a goal of the Department and the Congress, as reflected in the report of the Advisory Committee on Head Start Quality and Expansion and the amendments made to the Head Start Act by Title I of the Human Services Amendments of 1994. Those amendments added section 641A of the Act (42 U.S.C. 9836A) which, in subsection (d), sets out in detail the actions which must be taken with respect to a grantee which has been found, during an on-site review, to have quality deficiencies. This subsection directs the Secretary to require programs to correct all identified deficiencies either immediately or within one year of notification by the Department of the deficiencies under an approved Quality Improvement Plan. The Department must initiate proceedings to terminate the Head Start grant of any agency which does not correct all identified deficiencies within the prescribed time frames. Grantees which wish to appeal a proposed termination may do so to the Department of Health and Human Services Departmental Appeals Board.

The proposed rule requires that any hearing of an appeal by a grantee from a notice of suspension, termination or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal, whether or not there is a hearing, must be rendered not later than 60 days after the close of the proceedings, including submission of the briefs and the holding of oral argument, if allowed or required by the Departmental Appeals Board.

Currently, there are no timelines for the hearings or the decisions on appeals by grantees. The proposed timelines will ensure an expeditious and more predictable review process, allow sufficient time for consideration of the case, and protect the grantees' statutory right to the opportunity for a full and fair hearing.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory requirement for Head Start grantee appeals to be heard and decided within certain, defined time frames.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This NPRM does not contain any information collection or record-keeping requirements.

List of Subjects in 45 CFR Part 1303

Administrative practice and procedure, Education of the disadvantaged, Grant—programs-social programs, Reporting and recordkeeping requirements.

(Catalog of Domestic Assistance Program Number 93.600, Project Head Start)

Dated: December 24, 1997.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: March 20, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR part 1303 is proposed to be amended to read as follows:

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

1. The authority citation for part 1303 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. Section 1303.14 is amended by revising paragraphs (c)(1), (2) and (5); removing paragraph (e); redesignating paragraphs (d) and (f) through (j) as paragraphs (f) through (r); adding new paragraphs (c)(6), (d) and (e); and revising the newly redesignated paragraph (i) to read as follows:

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

* * * * *

(c) A notice of termination shall set forth:

(1) The legal basis for the termination under paragraph (b) of this section, the factual findings on which the termination is based or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

(2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing, shall be afforded one, as mandated by 42. U.S.C. 9841.

* * * * *

(5) That the grantee's notice of appeal and request for hearing must meet the requirements set forth in paragraph (d) of this section.

(6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee's notice of appeal and request for hearing must:

(1) Be in writing;

(2) Specifically identify what factual findings are disputed;

(3) Identify any legal issues raised, including relevant citations;

(4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has obtained permission from the Departmental Appeals Board to submit fewer copies);

(5) Include any request for specifically identified documents the grantee wishes to obtain from ACF, a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to obtain the documents from ACF and was unable to do so;

(6) Include a statement on whether the grantee is requesting a hearing; and

(7) Be filed with the Departmental Appeals Board and be served on the ACF official who issued the termination notice. The grantee must serve notice of the appeal and any request for a hearing on any delegate agency which would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee's notice of appeal and request for hearing are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantees's failures are not substantial, but are confined to a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other "discovery" request not timely made.

(3) The sanctions set forth in paragraphs (e) (1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failures to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

* * * * *

(i) If the responsible HHS official initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's notice of appeal and request for hearing.

* * * * *

3. Section 1303.15 is amended by revising paragraphs (b)(2) and (d) (1) and adding new paragraphs (d)(4), (f), (g) and (h) to read as follows:

§ 1303.15 Appeal by a grantee from a denial of refunding.

* * * * *

(b) * * *

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

* * * * *

(d) * * *

(1) The legal basis for the denial of refunding under paragraph (a) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

* * * * *

(4) A statement that failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

* * * * *

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantees, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(g) Paragraphs (j), (k), and (l) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

(h) The Departmental Appeals Board sanctions with respect to a grantee's appeal of denial of refunding are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantees's failures are not substantial, but are confined to a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or a document or other "discovery" request not timely made.

(3) The sanctions set forth in paragraphs (h) (1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failures to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

4. Section 1303.16 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h); adding a new paragraph (d); and revising newly redesignated paragraph (f) to read as follows:

§ 1303.16 Conduct of hearing.

* * * * *

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When prepared written direct testimony is submitted by the parties, witnesses must be available at the hearing for cross-examination and redirect examination. If a party can show substantial hardship in using prepared written direct testimony, the Departmental Appeals Board may exempt it from the requirement. However, such hardship must be more than difficulty in doing so, and it must be shown with respect to each witness.

* * * * *

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which must be made within 30 days of the grantee's notice of appeal and request for hearing in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

5. Section 1303.17 is added to read as follows:

§ 1303.17 Time for hearing and decision.

(a) Any hearing of an appeal by a grantee from a notice of suspension, termination or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the close of the proceedings, including submission of the briefs and oral argument, if allowed or required by the Departmental Appeals Board, and completion of final transcripts and any other applicable corrections to them.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph (a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations;

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for reasons beyond the control of either party or the Board.

[FR Doc. 98–17296 Filed 6–29–98; 8:45 am]
BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[ET Docket No. 98–95; FCC 98–119]

Dedicated Short Range Communications of Intelligent Transportation Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications ("DSRC") of Intelligent Transportation Systems ("ITS"). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goals of the U.S. Congress, Department of Transportation and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and to facilitate the growth of the ITS industry.

DATES: Comments are due September 14, 1998, reply comments are due October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology, (202) 418–2451.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 98–95, FCC 98–119, adopted June 11, 1998, and released June 11, 1998 . The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Notice of Proposed Rule Making

1. On May 19, 1997, the Intelligent Transportation Society of America ("ITS America") filed a Petition for Rulemaking ("Petition") requesting that the Commission allocate 75 megahertz of spectrum in the 5.850–5.925 GHz band on a co-primary basis for DSRC-based ITS services. The Petition states that DSRC links are needed for eleven ITS user services and places DSRC needs into three categories: current DSRC applications; emerging DSRC applications; and future DSRC applications.

2. The 5.850–5.925 GHz band is allocated internationally on a primary basis for Fixed Services, Fixed Satellite Service ("FSS") Earth-to-space links ("uplinks"), and Mobile Services. Additionally, in Region 2, this band is allocated on a secondary basis to the Amateur Radio Service and the Radiolocation Service. Finally, the 5.850–5.875 GHz segment is designated internationally for industrial, scientific and medical ("ISM") applications. Domestically, the entire band is currently allocated on a co-primary basis for the Government's Radiolocation Service (i.e., for use by high-powered military radar systems) and for non-Government FSS uplink operations. ISM devices and unlicensed part 15 devices are also permitted to operate in the 5.850–5.875 GHz segment. Finally, the Amateur Radio Service has a secondary domestic allocation in the entire band.

3. We propose to allocate 75 megahertz of spectrum, at 5.850–5.925 GHz, to the Mobile Service and to designate its use for DSRC operations. We tentatively conclude that this significant amount of proposed spectrum would further the goals of the National ITS program and encourage the development of advanced technologies to increase the safety and efficiency of the national transportation infrastructure well into the future. Additionally, a 75 megahertz allocation should enable avoidance of occupied frequencies in areas where incumbent use is heavy and should be sufficient to meet the spectrum demands of future DSRC operations, such as Automated Highway Systems, which could require several dedicated wideband channels to ensure reliability. We request comment on whether this proposed allocation is excessive given that efficient spectrum use techniques exist and our goal of promoting spectrum efficiency. We welcome alternative suggestions for an allocation for DSRC.

4. We believe that spectrum sharing between FSS and DSRC operations may be possible. However, we seek comment on the likely future needs for this spectrum for FSS earth stations. In this regard, we note that given the much higher power of FSS operations and the relatively low power of DSRC operations, individual DSRC operations are unlikely to cause harmful interference to incumbent FSS satellite operations. We also do not expect that DSRC devices in the aggregate would negatively impact existing or future FSS operations, particularly given that there are several other potentially significant contributors to the overall noise level in this band, such as government radars and ISM devices. We request comment on this preliminary assessment. We also seek comment on what, if any, effects the widespread deployment of DSRC devices could have on future development of FSS operations in this band. In this regard, we observe that widespread deployment of mobile devices, including devices with potential public safety uses, could make it more difficult to coordinate new FSS operations. We also seek comment on whether there are any instances in which DSRC services might be unacceptably impaired by FSS operations. We seek comment on whether terrain shielding, directional antennas, RF fencing and other techniques can be employed by DSRC operators to avoid receiving or causing interference. Alternatively, should interference situations arise where the two services are not compatible in a specific area or over a range of frequencies, we request comment on the feasibility of relocating the FSS operations to other geographic areas or frequency bands using the principles outlined in the Emerging Technologies

rulemaking. That is, if the DSRC licensee needs spectrum used by an FSS licensee, the DSRC entity would be responsible for the expense of modifying the FSS uplink to another location or frequency and ensuring that the FSS entity is able to achieve comparable operations.

5. Unlicensed low power operations in the 5.850–5.875 GHz segment may be affected by this potential allocation. Although unlicensed devices have no allocation status and are not protected by our rules, we believe that the provision of hearing assistance devices to those with disabilities is a valuable service in the public interest. At present, any mobile part 15 hearing assistance device operating in the 5.850–5.875 GHz band could encounter interference problems from various higher powered incumbent operations such as Government radar operations, FSS and ISM operations. Therefore, we request comment on whether the 5.850–5.875 GHz segment is currently being used for hearing assistance device operations, the likelihood of any such future uses, and whether any measures can or should be taken to protect such uses.

6. We acknowledge that amateur operations are permitted to operate at up to 1.5 kW PEP output with high gain antennas which could interfere with DSRC receivers if operated on similar frequencies in the same geographic area. Nevertheless, amateur operations have access to 275 megahertz in the 5.650–5.925 GHz band and we believe any amateur use of the 5.9 GHz range could be engineered to avoid DSRC operations. Also, amateurs may be able to continue use of these frequencies in rural areas where DSRC applications may not be extensively deployed. We anticipate that any interference problems that may develop between amateur stations and DSRC operations could be resolved by changing the frequency of the amateur operation in order to protect primary status operations or by other engineering techniques, such as power reduction or directional antennas.

7. We tentatively conclude that DSRC-based ITS services can share spectrum with incumbent operations in this frequency range. We request comment on this issue and solicit further analysis of the spectrum sharing potential between DSRC-based operations and the incumbent use of the 5.850–5.925 GHz band.

8. We believe it is necessary to outline an order of responsibility in resolving interference problems, if they occur. Specifically, we note that DSRC operations are not likely to interfere with Government radar operations and ISM operations, but the reverse may not always be the case. We propose to require DSRC operations to accept interference generated by ISM operations in this range, as is generally the case in ISM bands. Additionally, we note that DSRC operations, Government radar operations and FSS Earth-to-space operations would operate on a co-primary basis in this frequency range. Therefore, we propose to place the responsibility for coordination equally on each of those operations through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee. As is generally the case with co-primary services, any licensee initiating new or modified service in the band would be required to avoid interference to existing operations. Finally, secondary amateur operations would not be permitted to cause harmful interference to primary licensed operations in this frequency range. Nonetheless, to the extent that DSRC applications may operate on an unlicensed basis under part 15, they would be required to avoid causing interference to and cannot claim interference protection from all operations with secondary and primary allocation status. We request comment on this issue and encourage suggestions for alternative approaches.

9. As is always the case for FCC approved devices, we will require all DSRC equipment to comply with our RF safety guidelines. We believe this level of protection is appropriate and will not result in the generation of unsafe levels of RF energy. We request comment, on whether any specific aspects of our RF safety guidelines are inappropriate for the deployment of DSRC equipment.

10. We solicit comment and proposals for a channelization plan. We encourage commenters and standards setting organizations to consider and discuss the following factors in developing a DSRC channelization plan: optimization of spectrum use; use of informal standards to promote compatibility or interoperability of certain DSRC applications; flexible channel options for emerging services; diversity of DSRC services; and equipment affordability. For example, a proposed DSRC channelization plan could provide for a few wideband channels for certain purposes, such as backscatter automatic toll collection, and reserve a number of narrowband channels for active transponder DSRC services or other services with smaller data throughout requirements. We request comment on whether provision for different channel bandwidths for different data requirements or technologies would significantly effect the viability or cost of DSRC equipment. Further, we request comment specifically on whether to permit use of both passive and active DSRC devices and on whether and how reliance on informal DSRC technical standards, as opposed to Commission-adopted standards, may facilitate a smoother transition or integration among DSRC technologies.

Initial Regulatory Flexibility Certification, and Voluntary Initial Regulatory Flexibility Analysis (Voluntary IRFA)

11. The Regulatory Flexibility Act ("RFA"),[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

12. This *Notice of Proposed Rule Making* ("NPRM") proposes to allocate the 5.850–5.925 GHz band to the Private Land Mobile Service ("PLMS") for use by Dedicated Short Range Communications Services ("DSRCS") in the provision of Intelligent Transportation Services ("ITS"). DSRCS communications are used for non-voice wireless transfer of data over short distances between roadside and mobile radio units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety and other intelligent transportation service applications in a variety of public and commercial environments. This action is taken in response to a Petition for Rulemaking filed by the Intelligent Transportation Society of America ("ITS America"). While this *NPRM* does propose an allocation and some basic technical

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

parameters, the issues of licensing, channelization, and other complex technical matters are being deferred to a later proceeding. Therefore, because this present action will not result in the provision of these operations, we certify that this action will not have a significant economic impact on a substantial number of small entities.

13. Despite the certification, we have performed a voluntary Initial Regulatory Flexibility Analysis (IRFA), below, to create a fuller record in this proceeding and to give more information to entities, small and not, that might be affected by our action. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of the *NPRM*, including this certification and voluntary analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

14. The objective of this action is to provide sufficient spectrum to permit the development of DSRCS technologies to improve the nation's transportation infrastructure and bolster the involvement of United States companies in this emerging industry.

B. Legal Basis

15. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The 5.85–5.925 GHz band is currently available to the U.S. Federal Government for Radiolocation purposes, Fixed Satellite Service licensees for international intercontinental links, amateur radio operators and by various entities using part 18 Industrial, Scientific and Medical ("ISM") equipment and part 15 unlicensed device equipment. We note that there are only 45 FSS licenses issued for operation in 5.85–5.925 GHz band and most if not all are held by large corporations. Further, amateur radio operators and the Federal Government do not qualify as small entities. We also note that part 18 ISM devices are protected in this band, which only generate electromagnetic energy, are not used for communication purposes and therefore cannot receive interference or be impacted by this action. Finally, while part 15 unlicensed devices are permitted to operate in the 5.85–5.875 GHz portion, they do so on an unlicensed, unprotected basis. Further, the Commission has no means to determine the number of small entities that might use unlicensed part 15 equipment that operates in the band at issue. The *NPRM* discusses means by which the potential DSRCS would be able to share the spectrum with incumbent operations and requests comment on ways to ensure such spectrum sharing. Accordingly, we do not believe this action would have a negative impact on small entities that operate in the 5.85–5.925 GHz band, but nevertheless request comment on this assessment.

17. Regarding the Fixed Satellite Service licensees for international intercontinental links, the Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[3] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[4] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[5] The Census report does not provide more precise data.

18. Regarding the future use of the 5.85–5.925 GHz band by DSRCS equipment, we believe it is too early to make an determination on such operations. A future rulemaking proceeding will propose further technical standards, licensing and service rules and a separate regulatory flexibility analysis will address all issues relevant to that proceeding.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

19. We are proposing to allocate this spectrum for a new service. The licensing and technical regulations governing these operations will be addressed in a separate proceeding. Therefore, this proposed action does not create any reporting or compliance requirements.

[3] An exception is the Direct Broadcast Satellite (DBS) Service.

[4] 13 CFR 120.121, SIC code 4899.

[5] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The *NPRM* proposes basic technical rules such as power limits, unwanted emission limits and a frequency stability requirement. It also requests comment on whether operational standards should be adopted to facilitate nation-wide interoperability of DSRCS. The development of DSRCS operational standards could delay the initial deployment of such equipment, but could ultimately result in equal footing for all manufacturers, including small entities, in producing equipment that meets uniform standards. We request comment on further alternatives that might minimize the amount of economic impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17314 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061998C]

Fisheries of the Northeastern United States; Petition for Rulemaking for Rotational Opening of Georges Bank Closed Areas for Scallop Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for rulemaking requesting that sea scallop harvest be allowed on a rotational basis in areas of Georges Bank that are currently closed to all vessels capable of catching groundfish, including scallop vessels. David E. Frulla, of Brand, Lowell, and Ryan (Petitioner), has petitioned the Secretary of Commerce (Secretary), on behalf of

the Fisheries Survival Fund, to determine where in the Georges Bank closed areas scallops are large in size and number and where primary groundfish are more susceptible to scallop gear, to better target and optimize scallop fishing while still maximizing recovery of primary groundfish stocks and habitat. The Petitioner requests that when the data collection has been completed, emergency action be taken to open portions of Georges Bank currently closed to scallop fishing, which would be balanced by closing some currently open areas.

DATES: Comments on the petition are requested on or before August 31, 1998.

ADDRESSES: Copies of the petition for rulemaking are available upon request from Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the petition should be directed to Dr. Gary C. Matlock at the above address. Please mark the outside of the envelope "Rotational Opening of Scallop Closed Areas."

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, 301–713–2341.

SUPPLEMENTARY INFORMATION: The fishery affected by this petition for rulemaking is the Atlantic sea scallop fishery, which is managed under the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The Secretary has management authority for this species group under the Magnuson-Stevens Fishery Conservation and Management Act. The management unit for this fishery is Atlantic sea scallop (*Placopecten magellanicus*) in U.S. waters of the Atlantic Ocean from North Carolina to Newfoundland along the continental shelf of North America. Implementing regulations for the fishery are found at 50 CFR part 648, subpart D.

The scallop advisory report issued from the 23rd Stock Assessment Workshop in March 1997 stated that the current spawning stock biomass (SSB) is at a low level and the level of landings is determined primarily by variations in the number of recruits entering the fishery. On Georges Bank, abundance and fishing mortality are at moderate levels, but this results from approximately one-half of the region currently being closed to fishing via the groundfish closed areas to protect depleted stocks of cod, haddock, and yellowtail flounder. Scallop dredges were included in the fishing ban owing to their propensity to catch juvenile flatfish and other species whose stocks had collapsed. The scallop stock is rebuilding in these closed areas, but elsewhere on Georges Bank fishing mortality is greater than the current overfishing threshold. Overfishing for Atlantic sea scallops is defined in the FMP as the fishing mortality rate greater than the rate that would maintain an SSB that is 5 percent of the SSB level that would exist without fishing. The report further states that scallops in the Mid-Atlantic region are at a low level of abundance, are overexploited, and are declining. The large 1990 and 1991 year classes have been overfished and incoming recruitment is among the lowest on record. Based on high fishing mortality rates, low stock size, and lack of significant recruitment, the management advice from the Northeast Stock Assessment Workshop is that fishing effort should be reduced immediately and significantly in the Mid-Atlantic region to preserve SSB and to improve yield per recruit. Recent results of the 1997 NMFS survey confirm that trends in abundance and biomass in both the Mid-Atlantic and Georges Bank regions are decreasing.

The Petitioner states that the Georges Bank groundfish closures, which have been in effect since December 1994, are causing an imbalance in fishing effort, thereby making scallop rebuilding more difficult to achieve. He is requesting that information collected from the Georges Bank area on the scallop resource begin by July 1998, after which emergency action should be instituted to open areas of Georges Bank through limited rotational openings, coupled with closures of certain portions of currently open areas. He states that NMFS analyses have already concluded that such rebalancing should help scallop stocks and moderate the worst of the impending economic effects for the scallop fishermen.

NMFS requests interested persons to submit comments on the petition for rulemaking submitted by the Petitioner. NMFS will consider this information in determining whether to proceed with the development of regulations requested by the petition.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17340 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061998B]

Western Pacific Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public hearing to discuss proposed measures to address the requirements of the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) through an amendment to all of the Council's fishery management plans that will address new provisions and definitions.

DATES: The meeting will be held on July 20, 1998, from 6:00 p.m. to 8:00 p.m.

ADDRESSES: The meeting will be held in the conference room of the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, at (808) 522–8220.

SUPPLEMENTARY INFORMATION: The public is invited to discuss and make recommendations to the Council on the provisions of the Magnuson-Stevens Act pertaining to essential fish habitat, bycatch, fishing sectors, fishing communities, and definitions of overfishing.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: June 24, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17341 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 26, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: 7 CFR 319, 321, 352—Foreign Quarantine Notices.

OMB Control Number: 0579–0049

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. The Plant Quarantine Act and the Federal Plant Pest Act authorize the Department to carry out this mission. Section 1 of the Plant Quarantine Act (7 U.S.C. 154) requires the Secretary of Agriculture to issue a permit for the importation into the United States of any nursery stock, and to prescribe conditions and regulations for issuing these permits. Section 5 of the Plant Quarantine Act (7 U.S.C. 159) authorizes the Secretary to determine whether the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds or other plant products not included by the term "nursery stock" will result in the introduction of plant diseases or insect pest into the United States, and to then specify which of these products will be subject to the provisions of Section 1 of the Plant Quarantine Act. Implementing the laws is necessary in order to prevent injurious plant and insect pests from entering the United States, a situation that could produce serious consequences for Agriculture. Accordingly, the Animal Plant and Health Inspection Service (APHIS) uses a number of forms and documents to collect information on planned importations of plants, fruits, vegetables and/or plan products to the United States.

Need and Use of the Information: APHIS is required to collect information from a variety to individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, fruits, vegetables, roots, bulbs, seeds, and other plant products. The information that APHIS collects is vital to helping ensure that these products do not harbor plant or insect pests.

Description of Respondents: Business or other for-profit; Individual or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 53,271.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 88,232.

Assistant Secretary for Administration, Office of Civil Rights

Title: Collection of Information on Women in Agriculture.

OMB Control Number: 0508–NEW.

Summary of Collection: USDA's Office of Civil Rights, Accountability Division was formed and assigned responsibility for collecting data and measuring USDA's program delivery, procurement, export, and business development activities to women. The Accountability Division is seeking approval of an information collection to survey participants at the Second International Conference on Women in Agriculture to gather demographic data on women in agriculture and, more specifically, information on customer satisfaction with USDA programs and services. The conference will be held in Washington, D.C. June 28–July 2.

Need and Use of the Information: The information will be collected through an automated survey using computer workstations positioned at various sites throughout the conference facility. The information will be used by USDA's Office of Civil Rights to:

- Identify issues and/or barriers regarding program or service delivery,
- Establish baseline data/information related to program performance and customer service,
- Provide potential solutions to barriers in program and/or service delivery,
- Identify serious issues that would merit a compliance or further review by the Office of Civil Rights.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local, or Tribal Government.

Number of Respondents: 1,300.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 221.

Emergency approval for this information collection has been requested by June 26, 1998.

Food and Nutrition Service

Title: Annual Report of State Revenue Matching.

OMB Control Number: 0584–0075.

Summary of Collection: The National School Lunch Program, administered by

the Food and Nutrition Service (FNS), is mandated by the National School Lunch Act, 42 U.S.C. 1751 and the Child Nutrition Act of 1966, 42 U.S.C. 1771. Under the program, States are required to match 30 percent (or a lesser percent based on per capita income) of the Federal funds made available for the School Lunch Program. Annually, the State agencies are required to report to FNS, the total funds used in order to receive Federal reimbursement for meals served to eligible participants using form FNS–13.

Need and Use of the Information: The information collected allows FNS to monitor State compliance with the revenue matching requirement. Without this information, States may receive Federal funds which are not warranted. Monitoring the matching of State funds is essential to preventing fraud, waste, or abuse in the National School Lunch Program.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 57.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,560.

National Agricultural Statistics Service

Title: Cold Storage.

OMB Control Number: 0535–0001.

Summary of Collection: Providing information on national supplies of food in refrigerated storage facilities has been the responsibility of the Department of Agriculture since 1914. This service is the outcome of an investigation made by the Department in 1911, in response to allegations that food warehouses were being used by food speculators to "corner-the-market" and drive up prices paid by consumers. NASS will collect information using a biennial survey of refrigerated warehouses to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply.

Need and Use of the Information: NASS collects information from the Cold Storage Report that includes inventory statistics for approximately 100 food items held in public, private, and semi-private refrigerated warehouses. The stock figures in the Cold Storage Report are used by food processors, food brokers, and farmers in making production, marketing, and pricing decisions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,195.

Frequency of Responses: Reporting: Monthly; Biannually; Other (8 times/years).

Total Burden Hours: 4,505.

Farm Service Agency

Title: Insured Farm Ownership Loan Policies, Procedures, and Authorizations.

OMB Control Number: 0560–0157.

Summary of Collection: The Consolidated Farm and Rural Development Act of 1972, authorizes the Secretary and the Farm Service Agency (FSA) to make direct farm ownership (FO) loans to eligible applicants who are unable to obtain commercial credit. The collection of information is needed to process applicant requests for FSA FO loans in a timely manner while maintaining the highest lending standards possible to protect the interests of the government. The purpose of FSA's direct FO program is to help family farmers become financially successful. FSA has various tools to assist family farmers including low interest rates, flexible repayment terms, and individualized credit supervision and counseling.

Need and Use of the Information: The collection of information is used by FSA employees to ensure that loans involving the purchase of real estate are properly documented and secured. This protects the interests of both the farm borrower and the Government.

Description of Respondents: Individuals or households; Farms.

Number of Respondents: 160.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 53.3.

Food and Nutrition Service

Title: Repayment Demand and Program Disqualification.

OMB Control Number: 0584–NEW.

Summary of Collection: In conjunction with the Food Stamp Act of 1977, the Food and Nutrition Service (FNS) implements regulations that provide requirements for food stamp household application, certification, and continued eligibility for food stamp benefits. Occasionally, FNS must initiate collection action for repayment of overissued benefits resulting from inadvertent household and State agency overissuances, and overissuances due to intentional program violations. Information is collected in these instances through the appropriate State agency to document the claim of overissuance and initiate repayment.

Need and Use of the Information: The information will be collected by State agency personnel from individuals collecting food stamp benefits. The State agencies must maintain all records associated with this collection for a period of three years so that FNS can review documentation during compliance reviews and other audits. Without approval of this information collection, FNS would not be able to correct accidental or fraudulent overpayment errors in the Food Stamp Program.

Description of Respondents: Individuals or households; State, Local, or Tribal Government.

Number of Respondents: 43,810.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 185,474.

Rural Housing Service

Title: 7 CFR 1806–A, "Real Property Insurance".

OMB Control Number: 0575–0087.

Summary of Collection: Rural Housing Service (RHS) Multi-Family Housing (MFH) program is administered under the provisions of the Housing Act of 1949 and Sections 303(c), and 321(b) of the consolidated Farm and Rural Development Act (CONTACT). This regulation is currently shared by the Farm Service Agency (FSA) and the MFH of the RHS. The regulation governs the servicing of property insurance on buildings and land securing and interest of RHS or FSA in connection with an FSA Farm Loan Program or RHS MFH loan. The information collected pertains to the verification of insurance on property securing Agency loans. The information required is submitted by FSA or RHS borrowers to agency offices. It is necessary to protect the government from losses due to weather, natural disasters, or fire and ensure that the Act's loan making requirements of hazards insurance are met by loan applicants.

Need and Use of the Information: RHS MFH collects information from borrowers documenting that they have sufficient insurance on their property that would repair or replace the valuable structures on the property should it be damaged. This protects the Government from losses due to weather, natural disasters or fire.

Description of Respondents: Individuals or households; Farms; Business or other for-profit.

Number of Respondents: 20,386.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 12,562.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–17358 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–98–06]

Milk in the New England and Other Marketing Areas; Determination of Equivalent Grade A Butter Price Series

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of equivalent price series.

SUMMARY: This document announces that the Chicago Mercantile Exchange (CME) Grade AA Butter Spot Call for the month minus 9 cents is an equivalent butter price alternative for use in computing the butterfat differential and the Basic Formula Price (BFP) which are used to establish minimum class prices in all Federal milk marketing orders. The CME announced that trading of Grade A and Grade B butter in the Butter Spot Call contract will be suspended effective June 26, 1998. The CME Grade A butter price currently is used to establish milk prices under Federal orders. The establishment of an equivalent Grade A butter price series is essential to the continuing operation of the Federal order program.

EFFECTIVE DATE: June 26, 1998.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183, e-mail address nicholas—memoli@usda.gov.

SUPPLEMENTARY INFORMATION: This document provides an equivalent butter price series for calculation of the butterfat differential and the BFP which are used to derive milk prices in all Federal milk marketing orders (7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139). Currently, the CME Grade A butter price series is used to establish values for the butterfat differential and the BFP which are used to compute minimum class prices in all Federal milk marketing orders. The new butter price series is essential to the continuing operation of the Federal order program.

The final CME Grade A butter price will be announced on June 19, 1998, and this price will be used until June 25. However, a new equivalent price series needs to be effective June 26, 1998, to compute the butterfat differential and the BFP for the month of June and subsequent months. For the month of June, the butterfat differential and the BFP will be computed by using a simple average of the CME Grade A butter prices for the first 25 days (June 1 through June 25) and the CME Grade AA butter prices minus 9 cents for the last 5 days (June 26 to June 30). The June butterfat differential and BFP will be announced on July 2, 1998. Thereafter, on or before the 5th day of each month, a simple average of the CME Grade AA butter prices less 9 cents will be used to compute the butterfat differential and the BFP for the preceding month.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable provisions of the orders, as amended, regulating the handling of milk in the aforesaid marketing areas, it is hereby found and determined that:

(1) The CME announced that trading on Grade A and Grade B butter in the Butter Spot Call contract will be suspended effective June 26, 1998.

(2) The absolute level of the CME Grade A butter price is needed to determine the value of the butterfat differential and the month-to-month change in the price level is used in the product price formula update component of the BFP.

(3) Each order provides that if for any reason a price or pricing constituent required by the order for computing class prices or for other purposes is not available as prescribed in the order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

(4) The International Dairy Foods Association (IDFA) requested that the CME Grade AA Butter Spot Call for the month less 9 cents be used as an equivalent Grade A butter price. IDFA suggested that the equivalent butter price series become effective June 5, 1998, or as soon as possible. Agri-Mark Dairy Cooperative submitted a comment letter supporting IDFA's request and the recommended effective date. In addition, Michigan Milk Producers Association suggested that the CME Grade AA butter price less 9 cents or the formula (i.e., Grade AA butter price—.1342/.82) proposed by National Milk Producers Federation for Federal Order Reform be used as the equivalent butter price replacement.

(5) The CME Grade AA butter price for the month less 9 cents should be used as an equivalent price for the purposes of establishing minimum prices under all Federal orders. The new butter price series is expected to yield a price generally equal to the suspended price series. However, in regards to IDFA's suggested effective date, the proper exercise of the Department's authority would require that the Secretary issue an equivalent price determination with an effective date only after the June 26 suspension of Grade A butter trading on the CME.

(6) The final CME Grade A butter price will be announced on June 19, 1998, and that price will be applicable until June 25. Therefore, for the month of June, the butterfat differential and the BFP will be computed by using a simple average of the CME Grade A butter prices for the first 25 days (June 1 through June 25) and the CME Grade AA butter prices minus 9 cents for the last 5 days (June 26 to June 30). These prices will be announced on July 2, 1998. Thereafter, on or before the 5th of each month, the new equivalent price series will be used to compute the butterfat differential and the BFP for the preceding month.

(7) In conclusion, the Department has determined that the CME Grade AA Butter Spot Call for the month less 9 cents is an equivalent Grade A butter price for the purposes of computing the butterfat differential and the BFP which are used to establish milk prices under all Federal milk orders. The new equivalent butter price series will be effective June 26, 1998.

Dated: June 26, 1998.

Authority: 7 U.S.C. 601–674.

Isi A. Siddiqui,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 98–17522 Filed 6–26–98; 2:24 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on July 16 and 17, 1998, at the Pt. Reyes National Seashore Administration Building Main Conference Room in Olema, CA. The meeting will be held from 9:00 a.m. to 5:00 p.m. July 16 and 8:30 a.m. to 5 p.m. July 17. The Pt. Reyes National Seashore Administration Building is located at #1 Bear Valley Road in Olema. Agenda items to be covered include: (1) Status of 2 PAC letters; (2) Status of Aquatic/Riparian Monitoring Team; (3) New National

Wildland Fire Policy as it relates to air quality; (4) Field trip at the Pt. Reyes National Seashore; (5) Subcommittee reports and recommendations (Coho, Public/Private/Tribal Partnership Opportunities, Work on the Ground, Recreation/Tourism, PAC/Scert, Monitoring); (6) Agencies' feedback on implementing the Coho Subcommittee roads resolution; (7) Joint 3 PAC meeting follow-up on priority action items identified at the May 28–29 PAC meeting; (8) PAC updates; and (9) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: June 22, 1998.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 98–17282 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on July 14, 1998 at the Diamond Lake Resort at Diamond Lake in Douglas County, Oregon.

The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Review of committee operating guides; (2) a proposal for course woody material management; (3) Province Interagency Executive Committee action on the Advisory Committee's recommendation on issues to work on over the next year; (4) local issue presentation by Umpqua National Forest and Roseburg Bureau of Land Management; (5) Subcommittee reports; and (7) public comment. All Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: June 22, 1998.

Charles J. Anderson,

Acting Forest Supervisor, Designated Federal Official.

[FR Doc. 98–17283 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
GA–153, Coosa Valley Livestock Market, Inc., Rome, Georgia.	May 20, 1959.
UT–117, Parker Sales, Logan, Utah.	June 18, 1992.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC, 22nd day of June 1998.

Daniel L. Van Ackeren,

Director Office of Policy/Litigation Support Packers and Stockyards Programs.

[FR Doc. 98–17350 Filed 6–29–98; 8:45 am]

BILLING CODE 3410–EN–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, July 13–15, 1998 at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, July 13, 1998

9:00 a.m.–Noon and 1:30–4:00 p.m. Committee of the Whole—Accessibility Guidelines (Closed Meeting).

Tuesday, July 14, 1998

9:30 a.m.–Noon Committee of the Whole—Accessibility Guidelines (Closed Meeting).

1:30–4:00 p.m. Committee of the Whole—Detectable Warnings and over-the-Road Buses, Final Rules (Closed Meeting).

Wednesday, July 15, 1998

9:00 a.m.–10:30 a.m. Planning and Budget Committee

10:30 a.m.–Noon Technical Programs Committee

1:30 p.m.–3:30 p.m. Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the May 13, 1998 Board Meeting.
- Planning and Budget Committee Report—Fiscal Year 1998 Spending Plan Revision.
- Technical Programs Committee Report—Status Report on Fiscal Year 1997 and 1998 Research Projects, and Discussion of Research Objectives and Direction.

Closed Meeting

- Committee of the Whole Reports—Accessibility Guidelines; Suspension of Requirements for Detectable Warnings, Final Rule; and Accessibility Requirements for Over-the-Road Buses, Final Rule.

All meetings are accessible to persons with disabilities. Sign language

interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–17303 Filed 6–29–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey (CPS)—October 1998 School Enrollment Supplement.

Form Number(s): There are no forms. We conduct all interviewing on computers.

Agency Approval Number: 0607–0464.

Type of Request: Reinstatement, with change of an expired collection.

Burden: 4,000 hours.

Number of Respondents: 48,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 1998 CPS. The Bureau of the Census and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 40 years.

This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This survey is the only source of national data on the age distribution and family characteristics of college students, and the only source of demographic data on preprimary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in employment and progress in school.

The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

This year, we are removing inquiries on computer usage and private school tuition which are only asked periodically. No other changes are proposed.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182; and Title 29, U.S.C., Sections 1–9.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 23, 1998.

Madeleine Clayton,

Management Analyst, Office of Management and Organization.

[FR Doc. 98–17286 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

Bureau: International Trade Administration.

Title: American Management and Business Internship Training (AMBIT) Program: Applications.

Agency Form Number: None.

OMB Number: 0625–0224.

Type of Request: Regular Submission.

Burden: 1,050 hours.

Number of Respondents: 450.

Avg. Hours Per Response: Range from 1 to 3 hours.

Needs and Uses: The U.S. Department of Commerce's International Trade Administration, in collaboration with the International Fund for Ireland (IFI), has established the American Management & Business Internship Training (AMBIT) program. AMBIT-participating U.S. firms provide one-to six-month training programs for managers and technical experts from Northern Ireland and the Border Counties of Ireland, thereby improving their skills while enhancing U.S. commercial opportunities in the region. AMBIT is one of several U.S. Government economic initiatives announced by President Clinton to demonstrate America's interest in supporting the economic development of Northern Ireland and the Six Border Counties of Ireland.

The U.S. Department of Commerce works in partnership with the IFI, and organization established in 1986 by the British and Irish Governments to promote economic/social progress and to encourage contact, dialog, and reconciliation in the region. The United States, the European Union, Canada, and New Zealand contribute to the IFI budget.

The applications are sent to U.S. companies and intern candidates via facsimile or mail upon request. Feedback surveys are given to participating companies and interns at the completion of the programs.

Affected Public: Businesses or other for-profit, not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days to Victoria Beacher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1998.

Madeleine Clayton,

Management Analyst, Office of Management and Organization.

[FR Doc. 98–17395 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–DA–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Quarterly Financial Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 31, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Lee, Bureau of the Census, Room 1282–3, Washington, DC 20233, Telephone (301) 457–3343.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Quarterly Financial Report (QFR) Program is planning to submit for approval to the Office of Management and Budget (OMB) its four data collection forms: Quarterly Financial Report Forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form, and QFR–103(NB)-Nature of Business Report. The current expiration for these forms is December 31, 1998.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 103–105 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 1998. Efforts are underway to extend this authority. On May 13, 1998, Senator Fred Thompson (R-TN) introduced S. 2071, a bill that would extend the authority to conduct the QFR Program through September 30, 2005. Senator John Glenn (D-OH) is a co-sponsor of the legislation. We plan to submit a request for extension of the OMB approval of the QFR program reporting forms in anticipation of the enactment of this legislation.

The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. An extensive subscription mailing list attests to the diverse groups using these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are governmental organizations charged with economic policy-making responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 25 days of the end of the quarter for which the data are being requested. Letters and/or telephone calls encouraging participation will be directed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0432.

Form Number: QFR–101 (Sent quarterly to manufacturing, mining, and wholesale trade corporations with assets of $50 million or more at time of sampling), QFR–102 (Sent quarterly to retail trade corporations with assets of $50 million or more at time of sampling), QFR–101A (Sent quarterly to manufacturing corporations with assets of less than $50 million at time of sampling), and QFR–103 (Sent at the beginning of sample selection and at 2-year intervals if the corporation is included in the sample for more than eight quarters)

Type of Review: Regular Review.

Affected Public: Manufacturing corporations with assets of $250 thousand or more and mining and wholesale and retail trade corporations with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR–101—3,475 per quarter, 13,900 annually

Form QFR–102—575 per quarter, 2,300 annually

Form QFR–101A—4,500 per quarter, 18,000 annually

Form QFR–103—1,225 per quarter 4,900 annually.

Estimated Time Per Response: The average for all respondents is about 2.1 hours. For companies completing Form QFR–101 or QFR–102, the range is from less than 1 to 10 hours, averaging 2.9 hours. For companies completing Form QFR-101A, the range is less than 1 hour to 3 hours, averaging 1.2 hours. For companies completing Form QFR–103, the range is from 1 to 4 hours, averaging 2.4 hours.

Estimated Total Annual Burden Hours: The total annual burden for fiscal years 1999 and 2000 is estimated to be 80,340 hours.

Estimated Total Annual Cost: The cost to all respondents for their time to respond is estimated to be $1,063,742. This cost is calculated by multiplying the annual burden hours (80,340) by the Bureau of Labor Statistics' 1996 estimate ($523 for a 39.5 hour work week) for a private industry entry level accountant.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 91 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 24, 1998.

Madeleine Clayton,

Management Analyst, Office of Management and Organization.

[FR Doc. 98–17285 Filed 6–29–98; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 88–8A016.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Wood Machinery Manufacturers of America ("WMMA") on February 3, 1989. The Notice of issuance of the

original Certificate was published in the **Federal Register** on February 9, 1989 (54 FR 6312).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88–80016, was originally issued to WMMA on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); December 13, 1993 (58 FR 66344, December 20, 1993); August 23, 1994 (59 FR 44408, August 29, 1994); September 20, 1996 (61 FR 50471, September 26, 1996); and June 20, 1997 (62 FR 34440, June 26, 1997).

WMMA's Export Trade Certificate of Review has been amended to:

1. Add as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Terrco, Inc., Waterloo, South Dakota; and

2. Delete L.R.H. Enterprises, Inc. and Wood-Mizer Products as "Members" of the Certificate.

Effective Date: March 10, 1998.

Dated: June 24, 1998

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–17337 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062298D]

Marine Mammals; File No. P368F

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Associate Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss landing, CA 95039–0450, has requested an amendment to scientific research Permit No. 974 (File No. P368F).

DATES: Written or telefaxed comments must be received on or before July 30, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–4045).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 974, issued on August 29, 1995 (60 FR 46577) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 974 authorizes the permit holder to: determine body fat of harbor seals (*Phoca vitulina*); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 600 harbor seals as a result of the above activities. The permit holder requests authorization to: increase the number of accidental mortalities from 2 to 15 to compensate for the effects of El Nino on pup condition, and increase total number of takes of adults and subadults.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–17339 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062498D]

Marine Mammals; Permit No. 926

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Robin W. Baird, Dalhousie University, Halifax, Nova Scotia, B3H 4J1, Canada, has requested an amendment to scientific research Permit No. 959.

DATES: Written comments must be received on or before July 30, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA (206/526–6150);

Regional Administrator, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to (1) radio tag via suction cup attachment up to 50 killer whales (*Orcinus orca*) and up to 100 Dall's porpoise (*Phocoenoides dalli*) annually in the waters of Washington, Southeast Alaska, Oregon, and California over a 5-year period.

The Holder is now requesting that the Permit be amended to authorize the suction-cup TDR/VHF tagging of the following additional species of cetaceans: Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), sperm whales (*Physeter macrocephalus*), northern right whale dolphins (*Lissodelphis borealis*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Risso's dolphins (*Grampus griseus*), short-finned pilot whales (*Globicephala macrorhynchus*), false killer whales (*Pseudorca crassidens*), minke whales (*Balaenoptera acutorostrata*), and gray whales (*Eschrichtius robustus*).

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 24, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–17392 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062298B]

Marine Mammals; File No. 758–1459

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 30, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant seeks to determine liver enzyme activity from up to six fresh, northern fur seal pup carcasses or stillbirth fetuses. In the event that no fresh carcasses are available, the application wishes to euthanize up to six moribund/mortally injured seals. If an animal has any chance of survival if left on its own, or could survive through rehabilitation, then euthanasia would not be administered.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 24, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–17393 Filed 6–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 223, Environment, Conservation, and Occupational Safety, and Related Clauses at 252.223; OMB Number 0704–0272.

Type of Request: Revision.
Number of Respondents: 2,856.
Responses Per Respondent: 12.56.
Annual Responses: 35,873.
Average Burden Per Response: 0.81 hours.
Annual Burden Hours: 28,964.
Needs and Uses: This information collection requirement consolidates the requirements previously covered by OMB Control Numbers 0704–0272, 0704–0343, and 0704–0385, and also transfers requirements relating to Part 223 from OMB Control Number 0704–0187. This information collection requirement pertains to information that an offeror/contractor must submit to the Department of Defense (DoD) in response to solicitation provisions and contract clauses in DFARS 252.223. The information is used by DoD contracting officers to: (1) Verify compliance with requirements for labeling of hazardous material; (2) ensure compliance of contractors with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of future mishaps; (3) monitor subcontractor compliance with DoD 4145.26–M; (4) verify that the contractor has the financial capability to reimburse the Government for any liabilities incurred by the Government as a result of the contractor's negligence or breach of contract; and, (5) monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms.
Affected Public: Business or Other For-Profit; Not-For Profit Institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 25, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17317 Filed 6–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–43, with attached transmittal, policy justification and sensitivity of technology.

Dated: June 25, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

11 JUN 1998
In reply refer to:
I-67832/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-43, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $73 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

VOL 63 ISS 125 JE 30 1998 UMI

Transmittal No. 98-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 24 million
Other	$ 49 million
TOTAL	$ 73 million

(iii) Description of Articles or Services Offered:
PATRIOT Missile System equipment including three AN/MPQ-53 radar sets, three AN/MSQ-104 engagement control stations, three M983 tractors, nine M931A2 trucks, Government Furnished Equipment, trailers, information coordination central, transporters, modification kits, generators, shop and tool equipment, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, technical support, and other related elements of logistics support.

(iv) Military Department: Army (YRA)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 11 JUN 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - PATRIOT Missile System Equipment

The Government of Israel has requested a possible sale of PATRIOT Missile System equipment including three AN/MPQ-53 radar sets, three AN/MSQ-104 engagement control stations, three M983 tractors, nine M931A2 trucks, Government Furnished Equipment, trailers, information coordination central, transporters, modification kits, generators, shop and tool equipment, spare and repair parts, support and test equipment, personnel training and training equipment, Quality Assurance Team, technical support, and other related elements of logistics support. The estimated cost is $73 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs this surface-to-air equipment to continue the upgrade of its air defense capabilities and will have no difficulty absorbing these additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Electronic Systems, Bedford, Massachusetts. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale may require a Quality Assurance Team in-country periodically as the program proceeds.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PATRIOT Air Defense Weapon System and the AN/MPQ-53 semi-trailer mounted radar set are the classified and sensitive elements of the PATRIOT Missile System. The highest level of classified information required to be released for training, operation, and maintenance of the PATRIOT missiles system is Secret. The highest level which could be revealed through reverse engineering or testing of the end item is Secret. This information includes Confidential and Secret reports and test data, as well as performance and capability data classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–17315 Filed 6–29–98; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.
ACTION: Altering a record system.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.
DATES: The alteration will be effective on July 27, 1998, unless comments are received that would result in a contrary determination.
ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.
FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.
SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on June 17, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: June 25, 1998.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–4

SYSTEM NAME:

NCIS Investigative Files System *(February 22, 1993, 58 FR 10762).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Persons in the following categories who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS:

Active, reserve, and inactive members of the naval service; civilians, to include applicants for employment with NCIS; both citizen and alien employees located in both the U.S. and in overseas areas and including temporary, part-time, and advisory personnel employed by the Department of the Navy; industrial and contractor personnel; civilian personnel being considered for sensitive positions, boards, conferences, etc. Civilian personnel who worked or resided overseas, e.g., Red Cross personnel. Civilian and military personnel accused, suspected, a witness to, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the Department of the Navy; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a Department of the Navy installation, facility or ship; civilians and civilian or military personnel who are subjects, co-subjects, witnesses, and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, state, and local) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilians and civilian, contract and military personnel upon whom evidence is stored at a Consolidated Evidence Facility; civilian, contract, or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilians, contract, and civilian and military personnel who were/are of counterintelligence interest to the Department of the Navy. Persons under investigation and parties to the conversation whose conversations have been intercepted during wire, electronic and oral surveillance operations conducted by or on behalf of NCIS.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Official investigative reports prepared by NCIS or other Federal, state, local or foreign law enforcement or investigative body. NCIS information reports (NIRs) and their predecessor NCIS operations reports (NORs) and their predecessor NCIS Reports of Investigations (ROI). NCIS NIRS, ROIs, and other similar documents and NIRs document information received by NCIS which is of interest to the naval services or other law enforcement or investigative bodies. The Counterintelligence Directorate still uses the ROI format to document its investigative activities. Requests for, documentation pertaining to, results of wire, electronic and oral intercepts; polygraph examinations and summaries; physical surveillances; mail cover or search; and other law enforcement and counterintelligence investigative methods. Also may contain biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Action Lead Sheets, investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

Regional Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.

Consolidated Evidence Inventory Records. Reporting and documenting evidence analyzed, stowed, transferred, or destroyed. Wire, Electronic, and Oral Interceptions Index Records. Listing of persons who were subjects of wire, electronic, or oral communications intercept operations. The data includes the name of the person who is the subject of the surveillance and citizenship; Social Security Number; and date/place of birth, if known; to the extent known names of each identifiable person whose communications were intercepted; telephone numbers or radio call signs involved; case number; address of location of each interception; activity maintaining the case file; and date or dates of the interceptions.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Screening Board Reports. These reports set forth the results of oral

examination of applicants for a position as a Special Agent with NCIS.

Personnel Security Investigations. Requests for and results of investigations or inquiries conducted by U.S. Navy or other Department of Defense, Federal, state, or local investigative agency. Record includes: personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; etc.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 18 U.S.C. 2510-2520 and 3504; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage, Counterespionage and Sabotage Matters; DoD Regulation 5200.2-R, Personnel Security Program Regulation; DoD Directive 5200.26, Defense Investigative Program; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; DoD Directive 5210.48, DoD Polygraph Program; DoD Regulation 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; DoD Directive 5505.9, Interception of Wire, Electronic, and Oral Communications for Law Enforcement; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy; Secretary of the Navy Instruction 5520.4B, Department of the Navy Polygraph Program; OPNAV Instruction 5510.1H, Department of the Navy Information and Personnel Security Program Regulation; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; and E.O. 12333, United States Intelligence Activities.'

PURPOSE(S):

Delete entry and replace with 'The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the Department of the Navy. This includes personal, personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department of the Navy.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to assist Federal, state and local agencies that perform law enforcement or quasi-law enforcement functions; to assist Federal, state and local agencies that perform victim/witness assistance services, child protection services or family support or sailor services; insurance claims including workmen's compensation; provide protective operations under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; assist local law enforcement agencies in meeting their responsibilities for complying with Congressionally mandated records checks such as Brady Handgun Violence Prevention Act checks; used for public affairs or publicity purposes such as wanted persons announcements, etc; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5-02. Wire, Electronic, and Oral Interceptions Index is maintained to enable NCIS to quickly locate records of intercept activities in response to motions for discovery and inquiries.

Users of the records in this system include NCIS employees who require access for operational, administrative, or supervisory purposes; DoD criminal investigative and intelligence units; DoD components making suitability determinations.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraphs one, three, and five, and add the following three paragraphs 'To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

To the Department of Veterans Affairs for use in benefit determinations.

To the White House for the purpose of personnel actions requiring approval of the President of the United States as provided for in DoD Instruction 1320.4.'

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RETRIEVABILITY:

Delete entry and replace with 'NCIS closed case paper files are filed by numeric sequential number, alphabetic by topical title, and geographic location; microfilm files are filed by dossier number; and electronic/optically imaged files by case control and Social Security Number. In order to locate the file it is necessary to query the Defense Clearance and Investigations Index using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Polygraph electronic systems also use the polygraph approval number. Open case files may also be retrieved from NCIS automated systems by a control number assigned at the time the investigation is initiated.

Copies of the files in the Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are retrieved by name. Polygraph sites can also retrieve copies of the file by polygraph approval number.

Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers. Wire, Electronic, and Oral Intercept Index records are retrieved by a combination of name, address, Social Security Number, telephone number/radio call sign, or case designation.'

SAFEGUARDS:

Delete entry and replace with 'Buildings employ alarms, security guards, and or rooms with security controlled areas accessible only to authorized persons. Classified and highly sensitive paper records are maintained in General Service Administrative approved security containers. Paper and microform records in NCIS records office are stored

in open shelves and filing cabinets in security controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Noncurrent and master copy of microfilmed files are retired to the Washington National Records Center where retrieval is restricted to NCIS authorized personnel.'

RETENTION AND DISPOSAL:

Delete entry and replace with '*Counterintelligence (CI) Records:*

CI records are retained in the active file until the case is closed; then destroyed 25 years after the date of last action. Major CI investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives and Records Administration (NARA) when 25 years old.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI investigative records; except when the request is for CI personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years.Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file. CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists. In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

Personnel investigations:

Completed NCIS investigative files on Personnel Security Investigations (PSI's) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 25 years after the date of last action or 10 years after termination of employment, whichever is later.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

Law Enforcement Records:

Criminal investigative files are destroyed after 25 years, except (1) controlled death investigations which are destroyed 75 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 25 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer.

Incident Complaint Reports (ICR) received from Navy Shore Patrol and Marine Corps military police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS are destroyed when 25 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed.

Criminal intelligence operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source (also called 'cooperating witness') records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Information reports consisting of incidental information impacting on the security or discipline of commands or of interest to other law enforcement elements are destroyed when 25 years old.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, state and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and ICRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier. Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer. Microfiche copies are destroyed when all cases on the fiche are cleared from the National Crime Information Center.

Laboratory fingerprint card files are disposed of as follows:

(1) one fingerprint card set is forwarded to the Federal Bureau of Investigation; the other set is destroyed when 75 years old

(2) fingerprint card indices and related correspondence are destroyed when all administrative needs have expired.

Counterintelligence records on persons not affiliated with DoD must be destroyed within 90 days or one year

under criteria set forth in DoD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or one year, as appropriate.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.'

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RECORD SOURCE CATEGORIES:

Delete entry and replace with 'From individual, DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.'

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N05520–4

SYSTEM NAME:

NCIS Investigative Files System.

SYSTEM LOCATION:

Primary System: Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

Decentralized Segments - Located at the Naval Criminal Investigative Service (NCIS) Field Offices (FO), Resident Agencies (RA), and Polygraph sites worldwide. Naval Criminal Investigative Service Regional Offices retain copies of certain portions of some investigative files and related documentation for up to one year. The number and location of these Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are subject to change in order to meet the requirements of the Department of the Navy.

Naval Criminal Investigative Service Regional Forensic Laboratories retain records of lab analysis of evidence submitted for law enforcement purposes.

Consolidated Evidence Facilities maintain evidence inventory records.

Current locations of NCIS decentralized segments may be obtained from the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in the following categories who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS:

Active, reserve, and inactive members of the naval service; civilians, to include applicants for employment with NCIS; both citizen and alien employees located in both the U.S. and in overseas areas and including temporary, part-time, and advisory personnel employed by the Department of the Navy; industrial and contractor personnel; civilian personnel being considered for sensitive positions, boards, conferences, etc. Civilian personnel who worked or resided overseas, e.g., Red Cross personnel. Civilian and military personnel accused, suspected, a witness to, or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the Department of the Navy; civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a Department of the Navy installation, facility or ship; civilians and civilian or military personnel who are subjects, co-subjects, witnesses, and victims in law enforcement and investigative cases in which law enforcement and investigative authorities (Federal, state, and local) have requested laboratory analysis of submitted evidence for law enforcement purposes; civilians and civilian, contract and military personnel upon whom evidence is stored at a Consolidated Evidence Facility; civilian, contract, or military personnel involved in the loss, compromise, or unauthorized disclosure of classified material/information; civilians, contract, and civilian and military personnel who were/are of counterintelligence interest to the Department of the Navy. Persons under investigation and parties to the conversation whose conversations have been intercepted during wire, electronic and oral surveillance operations conducted by or on behalf of NCIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official investigative reports prepared by NCIS or other Federal, state, local or foreign law enforcement or investigative body. NCIS information reports (NIRs) and their predecessor NCIS operations reports (NORs) and their predecessor NCIS Reports of Investigations (ROI). NCIS NIRS, ROIs, and other similar documents and NIRs document information received by NCIS which is of interest to the naval services or other law enforcement or investigative bodies. The Counterintelligence Directorate still uses the ROI format to document its investigative activities. Requests for, documentation pertaining to, results of wire, electronic and oral intercepts; polygraph examinations and summaries; physical surveillances; mail cover or search; and other law enforcement and counterintelligence investigative methods. Also may contain biographic data, intelligence/counterintelligence debriefing reports, information concerning U.S. personnel who are missing, captured, or detained by a hostile entity. The information may be of criminal, counterintelligence, or general investigative interest.

Action Lead Sheets, investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NCIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner. Also, copies of examination records created in support of criminal investigations. This data includes statistical and technical data sheets, questions sheets, charts, numerical evaluation forms, subject statements, consent forms, medical waivers, interview logs, personal data sheets, and related documents.

Case Control and Management documents which serve as the basis for recording, conducting, controlling, and guiding the investigative activity. Records identifying confidential sources and contacts with them. Index to persons reported by 'Name Only'.

Regional Laboratory Report Records. Records reporting and documenting laboratory analysis of submitted evidence.

Consolidated Evidence Inventory Records. Reporting and documenting evidence analyzed, stowed, transferred, or destroyed.Wire, Electronic, and Oral Interceptions Index Records. Listing of persons who were subjects of wire, electronic, or oral communications intercept operations. The data includes the name of the person who is the subject of the surveillance and citizenship; Social Security Number; and date/place of birth, if known; to the extent known names of each identifiable person whose communications were intercepted; telephone numbers or radio call signs involved; case number; address of location of each interception; activity maintaining the case file; and date or dates of the interceptions.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhour expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Screening Board Reports. These reports set forth the results of oral examination of applicants for a position as a Special Agent with NCIS.

Personnel Security Investigations. Requests for and results of investigations or inquiries conducted by U.S. Navy or other Department of Defense (DoD), Federal, state, or local investigative agency. Record includes: personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; requests for and National Agency checks; local agency checks; military records; birth records; employment records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 18 U.S.C. 2510-2520 and 3504; 44 U.S.C. 3101; 47 U.S.C. 605; Executive Memorandum of June 26, 1939, Investigations of Espionage, Counterespionage and Sabotage Matters; DoD Regulation 5200.2-R, Personnel Security Program Regulation; DoD Directive 5200.26, Defense Investigative Program; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; DoD Directive 5210.48, DoD Polygraph Program; DoD Regulation 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; DoD Directive 5505.9, Interception of Wire, Electronic, and Oral Communications for Law Enforcement; Secretary of the Navy Instruction 3820.2D, Investigative and Counterintelligence Collection and Retention Guidelines Pertaining to the Department of the Navy; Secretary of the Navy Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy; Secretary of the Navy Instruction 5520.4B, Department of the Navy Polygraph Program; OPNAV Instruction 5510.1H, Department of the Navy Information and Personnel Security Program Regulation; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; and E.O. 12333, United States Intelligence Activities.

PURPOSE(S):

The information in this system is (was) collected to meet the investigative, counterintelligence, and security responsibilities of the Department of the Navy. This includes personal, personnel security, internal security, criminal, and other law enforcement matters all of which are essential to the effective operation of the Department of the Navy.

The records in this system are used for the following purposes: Suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to assist Federal, state and local agencies that perform law enforcement or quasi-law enforcement functions; to assist Federal, state and local agencies that perform victim/witness assistance services, child protection services or family support or sailor services; insurance claims including workmen's compensation; provide protective operations under the DoD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; assist local law enforcement agencies in meeting their responsibilities for complying with Congressionally mandated records checks such as Brady Handgun Violence Prevention Act checks; used for public affairs or publicity purposes such as wanted persons announcements, etc; referral of matters under their cognizance to federal, state or local law enforcement authorities including criminal prosecution, civil court action or regulatory order; advising higher authorities and naval commands of the important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; input into the Defense Security Service managed Defense Clearance and Investigations Index (DCII) database under system notice V5-02. Wire, Electronic, and Oral Interceptions Index is maintained to enable NCIS to quickly locate records of intercept activities in response to motions for discovery and inquiries.

Users of the records in this system include NCIS employees who require access for operational, administrative, or supervisory purposes; DoD criminal investigative and intelligence units; DoD components making suitability determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To federal intelligence agencies for matters under their purview.

To other investigative units (federal, state, or local) for whom the investigation was conducted, or who are engaged in regulatory, criminal investigative and intelligence activities; to defense counsel in the course of acquiring information.

To commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an unwarranted invasion of privacy is not involved.

To victims of crimes to the extent necessary to pursue civil and criminal remedies.

To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted

under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

To the Department of Veterans Affairs for use in benefit determinations.

To the White House for the purpose of personnel actions requiring approval of the President of the United States as provided for in DoD Instruction 1320.4.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Maintained on paper records in file folders, audio and audiovisual tapes, microimaging, electronic systems, magnetic tape, optical digital data disks, CD ROM, and computer output products. Some laboratory documents are stored in loose-leaf notebooks or bound record books.

RETRIEVABILITY:

NCIS closed case paper files are filed by numeric sequential number, alphabetic by topical title, and geographic location; microfilm files are filed by dossier number; and electronic/optically imaged files by case control and Social Security Number. In order to locate the file it is necessary to query the Defense Clearance and Investigations Index using the name of the subject and at least one other personal identifier such as date of birth, place of birth, or Social Security Number. Polygraph electronic systems also use the polygraph approval number. Open case files may also be retrieved from NCIS automated systems by a control number assigned at the time the investigation is initiated.

Copies of the files in the Naval Criminal Investigative Service Field Offices, Naval Criminal Investigative Service Resident Agencies, and Polygraph sites are retrieved by name. Polygraph sites can also retrieve copies of the file by polygraph approval number. Consolidated Evidence Facility and Regional Forensic Lab information is retrieved by name, case control number, submitting agency log number, log numbers, or lab numbers. Wire, Electronic, and Oral Intercept Index records are retrieved by a combination of name, address, Social Security Number, telephone number/radio call sign, or case designation.

SAFEGUARDS:

Buildings employ alarms, security guards, and or rooms with security controlled areas accessible only to authorized persons. Classified and highly sensitive paper records are maintained in General Service Administrative approved security containers. Paper and microform records in NCIS records office are stored in open shelves and filing cabinets in security controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared and trained. Noncurrent and master copy of microfilmed files are retired to the Washington National Records Center where retrieval is restricted to NCIS authorized personnel.

RETENTION AND DISPOSAL:

Counterintelligence (CI) Records:

CI records are retained in the active file until the case is closed; then destroyed 25 years after the date of last action. Major CI investigations are retired to the NCIS records office upon case closure; then transferred to the National Archives and Records Administration (NARA) when 25 years old.

Source records are retained in the active file until the operation is complete; then destroyed 75 years after the date of the last action.

Reciprocal CI investigative files regarding individuals or organizations under investigative jurisdiction of the requesting agency are disposed of as prescribed above for CI investigative records; except when the request is for CI personnel security matters; then the file is destroyed after one year.

CI defensive briefings are retained until case closure, retired to the NCIS records office; then destroyed after 15 years. Foreign national marriage and visa applicant investigations are retired to the NCIS records office upon case closure; then destroyed after one year except when the investigation surfaces significant derogatory material. These files are destroyed after five years.

Records pertaining to CI polygraph examinations conducted in support of CI activities are filed with the case file and disposed of in accordance with the guidance for the associated file. CI Security Polygraph Program (CSP) records are maintained in the active file until no longer needed; then disposed of after the final quality control review as follows: (1) CSP cases favorably resolved are destroyed after the final quality assurance review, except at NCIS Polygraph Units which retain the CSP investigative reports only; destroying it when no longer needed or after one year (2) CSP cases other than favorably resolved are destroyed 25 years after completion of the final quality assurance review, except when an existing criminal investigation exists. In such cases the CSP Package is incorporated into the investigative file and disposed of in accordance with the disposition guidance for the dossier (3) audio tape recordings of routine CSP examinations with no significant responses are erased when no longer needed or after 90 days. Recordings referred for further investigation are incorporated into the investigative case file and disposed of in accordance with the disposition guidance for the dossier.

Personnel investigations:

Completed NCIS investigative files on Personnel Security Investigations (PSI's) are destroyed after 15 years unless significant incidents or adverse information is developed, in which case they are destroyed after 25 years. PSI files on persons considered for affiliation with DoD will be destroyed within one year if the affiliation is not consummated.

Special Agent applicant records are retained for one year if the applicant declines offer of employment and five years if the applicant is rejected for employment. Non-DoD-affiliated applicant records are destroyed when no longer needed or after 90 days. Records for applicants who are accepted are retired to NCIS records office upon case closure; then destroyed 10 years after release, separation, transfer, retirement, or resignation.

Internal personnel inquiries records are retired to NCIS records office after case closure; then destroyed 25 years after the date of last action or 10 years after termination of employment, whichever is later.

Limited inquiries records are retired to NCIS records office at inquiry closure; then destroyed after 5 years.

Support applicant records are retired to NCIS records office at case closure; then destroyed after 15 years.

Law Enforcement Records:

Criminal investigative files are destroyed after 25 years, except (1) controlled death investigations which are destroyed 75 years after date of case closure (2) files of cases determined to be of historical value are transferred to NARA 25 years after the date of the last action, except Grand Jury material which is destroyed at the time of transfer.

Incident Complaint Reports (ICR) received from Navy Shore Patrol and Marine Corps military police offices pertaining to categories of investigations/reports under the jurisdiction of NCIS are destroyed when

25 years old. Cases referred but determined not under NCIS jurisdiction are destroyed when no longer needed.

Criminal intelligence operations files are retired to NCIS records office upon closure; then destroyed 15 years after closure for Group 1 records and five years for Group 2.

Protective operations files involving protective details of distinguished persons are destroyed when five years old, except records where a threat or attempted threat materialized are destroyed when 25 years old.

Law enforcement source (also called 'cooperating witness') records are retired to NCIS records office after case closure and destroyed 15 years after the date of last action.

Information reports consisting of incidental information impacting on the security or discipline of commands or of interest to other law enforcement elements are destroyed when 25 years old.

Reciprocal investigative files regarding requests for investigative assistance from other Federal, state and local law enforcement agencies are disposed of as prescribed for the criminal investigative reports and ICRs, as appropriate.

Polygraph examinations conducted for criminal investigations are quality assured and filed in the associated criminal investigation. Disposition is in accordance with the guidance for the investigative case file.

Wire, Electronic, Oral Interception Index computer entries are deleted upon destruction or transfer to NARA of the case file containing intercept information. Disposition of the case files is governed by the NARA approved retention period applied to the case dossier. Hardcopy records used to create the index are destroyed upon verification that the indexing information has been fully and accurately entered into the automated index.

National Crime Information Center (NCIC) records that support Department of the Navy entries into the FBI's National Crime Information Center are destroyed after the related entry is deleted from the National Crime Information Center computer. Microfiche copies are destroyed when all cases on the fiche are cleared from the National Crime Information Center.

Laboratory fingerprint card files are disposed of as follows:

(1) one fingerprint card set is forwarded to the Federal Bureau of Investigation; the other set is destroyed when 75 years old

(2) fingerprint card indices and related correspondence are destroyed when all administrative needs have expired.

Counterintelligence records on persons not affiliated with DoD must be destroyed within 90 days or one year under criteria set forth in DoD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy.

Files retained in the Naval Criminal Investigative Service Field Offices and Naval Criminal Investigative Service Resident Agencies and Polygraph sites are temporary and are destroyed after 90 days or one year, as appropriate.

Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records; and magnetic erasing for computerized records. Optical digital data and CD ROM records are destroyed as specified by NAVSO P-5239-26, 'Remanence Security Guidebook' of September 1993.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE, Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, or Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. This can be accomplished by providing an unsworn declaration that states 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, Code 00JF, 716 Sicard Street, SE, Washington, DC 20388–5380.

Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth and Social Security Number. Persons submitting written requests must properly establish their identity to the satisfaction of the Naval Criminal Investigative Service. This can be accomplished by providing an unsworn declaration that states 'I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual, DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2), since the information is compiled and maintained by the Naval Criminal Investigative

Command, which performs as its principle function the enforcement of criminal laws.

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 98–17316 Filed 6–29–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed modifications and extensions of the following Electric Power Forms:

EIA–411, "Coordinated Bulk Power Supply Program Report;"
EIA–412, "Annual Report of Public Electric Utilities;"
EIA–417R, "Electric Power Systems Emergency Report;"
EIA–759, "Monthly Power Plant Report;"
EIA–767, "Steam-Electric Plant Operation and Design Report;"
EIA–826, " Monthly Electric Utility Sales and Revenue Report with State Distributions;"
EIA–860, "Annual Electric Generator Report;"
EIA–861, "Annual Electric Utility Report;"
EIA–867, "Annual Nonutility Power Producer Report;" and
EIA–900, "Monthly Nonutility Sales for Resale Report."

DATES: Written comments must be submitted on or before August 31, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the DOE contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to John G. Colligan, Energy Information Administration, Electric Power Division, EI–53, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0650; telephone (202) 426–1174; e-mail jcolliga@eia.doe.gov; and FAX (202) 426–1311.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of forms and instruction sets should be directed to John Colligan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

Confidentiality Notice

The issue of the confidential treatment of data collected on any of the forms listed above is being addressed and will be resolved as a separate matter under other **Federal Register** notices. Whatever final confidentiality procedures are implemented will be applied to each of the EIA survey forms above as appropriate.

II. Current Actions

The EIA will request (a) a 3-year extension, through December 31, 2001, for all forms listed, and (b) modifications to the specific forms as described below. The proposed changes the EIA is requesting through this action reflect the current state of the electric power industry.

Additional changes may be required, prior to the new expiration date, in order to be up-to-date with the rapidly changing industry.

Form EIA–411, "Coordinated Bulk Power Supply Program," Propose changing planning projections period (Items 1, 2, and 4) from 10 years to 5 years. The form and instructions will be modified to show this changes.

Form EIA–412, "Annual Report of Public Electric Utilities," Propose changing the reporting threshold from 120,000 MWh to 150,000 MWh. The instructions will be modified to show this change.

Form EIA–417R, "Annual Summary of Emergency Occurrences," no change.

Form EIA–759, "Monthly Power Plant Report," no change.

Form EIA–767, "Steam-Electric Plant Operation and Design Report," no change.

Form EIA–826, "Monthly Electric Utility Sales and Revenue Report with State Distributions." Propose adding

two new data tables: (1) the distribution company will be asked to provide data about the monthly bill if they are billing the consumer for another energy service provider; and (2) the energy service provider will report data if billing is done by them or a third party other than the distribution company. The form and instructions will be modified to show these changes.

Form EIA–860, "Annual Electric Generator Report," two changes are proposed: (1) the survey form designation and name will be altered to, Form EIA–860–A, "Annual Electric Generator Report—Utility;" and (2) the planning projection period (Schedule II and Schedule III) will be changed from 10 years to 5 years. The form and instructions will be modified to show these changes.

Form EIA–861, "Annual Electric Utility Report." Three changes are proposed: (1) Item 5 on Schedule II indicating new plant intention(s) will be deleted; (2) Schedule IV will require energy service providers to report the total dollars paid by the consumer(s) whether or not the energy service provider issues the bill; and (3) the Demand Side Management (Schedule V) threshold will be raised from 120,000 MWh to 150,000 MWh. The form and instructions will be modified to show these changes.

Form EIA–867, "Annual Nonutility Power Producer Report." Three changes are proposed: (1) the form name and number will be changed to, Form EIA–860–B "Annual Electric Generator Report—Nonutility"; (2) Item 3(a) estimated useful thermal output and 3(b) thermal output used will be added to Schedule IVB. The form and instructions will be modified to show these changes.

Form EIA–900, "Monthly Nonutility Sales for Resale Report." Six changes are proposed: (1) the survey name will be changed to "Monthly Nonutility Power Report;" three new data elements on (2) fuel type, (3) gross generation (kWh), and (4) fossil fuel consumption will be added; and (5) sales for resale and (6) sales to other end users will be deleted. The form and instructions will be modified to show these changes.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency? Does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden estimates for each form collection are shown below. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

EIA–411, "Coordinated Bulk Power Supply Program Report,"—15.50 hrs. per response (previous estimate was 20.7 hrs.)

EIA–412, "Annual Report of Public Electric Utilities,"—30.3 hrs. per response (no change from previous estimate)

EIA–417R, "Electric Power Systems Emergency Report and Annual Summary of Emergency Occurrences,"—2.89 hrs. per response (no change from previous estimate). Note: The frequency, magnitude, and duration of emergency occurrences are hard to predict, therefore making reporting times hard to predict.

EIA–759, "Monthly Power Plant Report,"—1.4 hrs. per response (no change from previous estimate)

EIA–767, "Steam-Electric Plant Operation and Design Report," 84 hrs. per response for plants of 100 MW or more, and 4 hrs. for plants from 10 MW but less than 100 MW. (no change from previous estimate)

EIA–826, "Monthly Electric Utility Sales and Revenue Report with State Distributions,"—1.5 hrs. per response (previous estimate was 1.4 hrs.)

EIA–860, "Annual Electric Generator Report,"—15.0 hrs. per response (previous estimate was 15.3 hrs)

EIA–861, "Annual Electric Energy Industry Report,"—7.5 hrs per response (previous estimate was 7.9 hrs.)

EIA–867, "Annual Nonutility Power Producer Report,"—2.12 hrs. per response (no change from previous estimate)

EIA–900, "Monthly Nonutility Sales for Resale Report,"—.25 hrs. per response (no change from previous estimate).

Please comment on (1) the accuracy of our estimates and (2) how the agency could minimize the burden of the collections of information, including the use of automated collection techniques or other forms of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collections. What is the estimated: (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operating and maintaining and purchasing service costs associated with these data collections?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use the data? Be specific.

C. Identify any alternate sources of data. Do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, June 24, 1998.

Lynda T. Carlson,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–17371 Filed 6–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–596–000]

Columbia Gulf Transmission Company; Notice of Application

June 24, 1998.

Take notice that on June 5, 1998, as supplemented on June 17, 1998, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP98–596–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA)

and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement facilities and for permission and approval to abandon the facilities being replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf requests permission and approval to abandon by removal one 12,050 horsepower (Hp) International Organization for Standard (ISO) rated compressor unit and appurtenances located in Corinth, Alcorn County, Mississippi; one 12,050 Hp (ISO) rated compressor unit and appurtenances located in Inverness, Humphreys County, Mississippi; and one 14,000 Hp (ISO) rated compressor unit and appurtenances located in Hampshire, Maury County, Tennessee. As replacement for the aforementioned compressor units, Columbia Gulf proposes to construct and operate one 17,282 Hp (ISO) rated compressor unit and appurtenances at the Corinth Compressor Station; one 17,282 Hp (ISO) rated compressor unit and appurtenances at the Inverness Compressor Station; and one 14,550 Hp (ISO) rated compressor unit at the Hampshire Compressor Station. The total cost associated with the construction and operation of the compressor units is approximately $37,600,000.

Columbia Gulf also proposes to increase the certificated Hp rating of the Corinth Compressor Station from 44,750 Hp (ISO) to 49,982 Hp (ISO); the Inverness Compressor Station from 38,100 Hp (ISO) to 45,832 Hp (ISO); and the Hampshire Compressor Station from 40,050 Hp (ISO) to 43,100 Hp (ISO).

Finally, Columbia Gulf proposes to increase the maximum certificated capacity level of its mainline by 96,555 Dth per day to 2,218,868 Dth per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17326 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2881–000]

Entergy Services, Inc.; Notice of Filing

June 19, 1998

Take notice that on May 1, 1998, Entergy Services, Inc., (Entergy Services), as agent for System Energy Resources, Inc. (SERI), tendered for filing the annual informational update (Update), containing the 1998 redetermination of the Monthly Capacity Charges, prepared in accordance with the provisions of SERI's Power Charge Formula (PCF) Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Section 2(B) of the PFC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before June 26, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17325 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–622–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

June 24, 1998.

Take notice that on June 16, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP98–622–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new sales tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to construct and operate a new sales tap for delivery of approximately 60 Mcf per hour of gas with a maximum capacity of approximately 183 Mcf per hour to National Fuel Gas Distribution Corporation. National Fuel states that the proposed sales tap would be located on its Line V–M194 in Jefferson County, Pennsylvania. National Fuel estimates the cost of construction would be $100,000.

National Fuel further states that this addition is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without determent or disadvantage to other customers, that its peak day and annual deliveries would not be effected and that the total volumes deliveries would not exceed the total volumes authorized prior to their request.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest if filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17328 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13–007, 2047–003, 2060–003, 2084–007, 2318–004, 2320–013, 2330–034, 2474–006, 2482–022, 2539–008, 2569–026, 2616–010, 2641–002, 2645–070, 2696–005, 2701–026, 2713–037, 2837–005, 5984–023, 7320–010, 7387–005, 11408–015, 4472–016, 6032–038]

Niagara Mohawk Power Corporation; Notice Rejecting Request for Rehearing

June 24, 1998.

By letter order issued May 6, 1998, the Deputy Executive Director and Chief Financial Officer denied Niagara Mohawk Power Corporation's (Niagara Mohawk) appeal of certain portions of the fiscal year 1997 administrative annual charge bills for the above-captioned projects. On June 8, 1998, Niagara Mohawk filed a request for rehearing of that letter order with the Commission.

Section 313(a) of the Federal Power Act [1] requires an aggrieved party to file a request for rehearing within thirty days after the issuance of the Commission's order, in this case by June 5, 1998. Because the 30-day deadline for requesting rehearing is statutorily based, it cannot be extended and Niagara Mohawk's request for rehearing must be rejected as untimely.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17329 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 16 U.S.C. 825*l*.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–616–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

June 24, 1998.

Take notice that on June 16, 1998, Northern Border Pipeline Company (Northern Border), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–616–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct a tap on its system in Will County, Illinois authorized in blanket certificate issued in Docket No. CP84–420–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border proposes to install a tap to serve as a future point of interconnect with Amoco Chemicals (Amoco). Northern Border states that a tap would consist of a twelve-inch tee and valve. The estimated cost of the proposed facilities would be $52,000 which Northern Border would install on Amoco's property as partial consideration for an easement across its property. Northern Border reports that it would file to obtain Commission approval to operate the proposed tap, at such time Amoco elects to interconnect with Northern Border.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–17327 Filed 6–29–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–8]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Santa Barbara Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Santa Barbara County Air Pollution Control District (SBAPCD, or "District") in Santa Barbara, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit the SBAPCD to keep the financial assistance awarded to it by EPA for FY–98 under section 105(c) of the CAA.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by July 30, 1998.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of section 105 of the CAA, EPA provides financial assistance (grants) to the SBAPCD to aid in the operation of its air pollution control programs. In FY–97 EPA awarded the SBAPCD $328,732, which represented approximately 8% of the District's budget. In FY–98, EPA awarded the SBAPCD $307,000, which represented approximately 7.6% of the District's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–98 § 105 application, which EPA reviewed in the fall of 1997, the SBAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $3,678,150. This MOE at the time of the grant award was sufficient to meet the requirements of the CAA because it was higher than the projected FY97 MOE of $3,570,793. Based on this information, EPA awarded SBAPCD its FY98 grant in December, 1997. In January of 1998, SBAPCD submitted an actual FY97 MOE of $3,701,408. This resulted in the projected FY98 MOE level of $3,678,150 not being sufficient to meet the MOE requirements of the CAA because it is lower than the actual FY–97 MOE, with a shortfall of $23,258 between the MOE for FY–97 and FY98. In order for the District to be eligible to keep its FY98 grant and to receive the additional EPA funding which has become available to SBAPCD for FY98, EPA must make a determination under Section 105(c)(2).

The SBAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the SBAPCD go directly to the district to fund its operations. It is the "unit of Government" for Section 105(c)(2) purposes. The SBAPCD submitted documentation to EPA which shows that since FY97 air permit fee revenues decreased because of declining economic conditions which caused the business community to curtail operations, resulting in fewer permits issued and fees collected. As a result, the SBAPCD's overall budget and its MOE decreased. The SBAPCD also submitted documentation to EPA which shows that the District lost 12.25 staff positions since FY97. These reductions in fees and staff have been non-selective in that all programs within SBAPCD have been impacted.

In summary, the SBAPCD's MOE reductions resulted from budget cuts stemming from a loss of fee revenues due to circumstances beyond the District's control. EPA proposes to determine that the SBAPCD's lower FY–98 MOE level meets the § 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SBAPCD to keep the funds received from EPA for FY–98.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by July 30, 1998 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by July 30, 1998.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: June 17, 1998.

David P. Howekamp,

Director, Air Division, Region 9.

[FR Doc. 98–17377 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6117–9]

Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notification is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on July 15, 1998 from 9:30 a.m. to 4:00 p.m. Eastern Standard Time (pre-registration at 8:30 a.m.) at the U.S. EPA National Vehicle and Fuel Emissions Laboratory Office Building located at 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph. 734/214-4200 (adjacent to the Lab Building located at 2565 Plymouth Road, Ann Arbor, MI 48105). This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source

program including: Various topics related to Tier II, OMS outreach activities, NAS/NRC study to evaluate the MOBILE model, and the mobile emissions transient test (METT) and the inspection and maintenance (I/M) programs.

Members of the public requesting technical information should contact:

Mr. Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4374, Fax: 734/214–4821, email: lorang.phil@epa.gov.

or

Mr. John T. White, Alternate Designated Federal Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4353, Fax: 734/214–4821, email: white.johnt@epa.gov.

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm.

Members requesting administrative information should contact: Ms. Jennifer Criss, FACA Management Officer, U.S. EPA—NVFEL Office Bldg., 2000 Traverwood Drive, Ann Arbor, MI 48105, FACA Help Line: 734/214–4518, Fax: 734/214–4821, email: criss.jennifer@epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than July 5, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Donald E. Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 98–17378 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44649; FRL–5798–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on *N*-Methylpyrrolidone (CAS No. 106–91–21). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for *N*-Methylpyrrolidone were submitted by the *N*-Methylpyrrolidone Producers Group, Inc. on behalf of its member companies: ARCO Chemical Company, BASF Corporation, and ISP Management Company, Inc. These companies are the test sponsors of record for the consent order. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on May 22, 1998. The submission includes a final report entitled "Oncogenicity Study with *N*-Methylpyrrolidone (NMP) Two-Year Feeding Study in Sprague Dawley Rats." This chemical is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymers. It is the preferred solvent in a variety of chemical reactions and the manufacture of numerous chemical intermediates and in products such as plastics, surface coatings, and pesticides. An important new use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylenes, olefins, and diolefins, in the removal of sulfur compounds from natural and refinery gases, and in the dehydration of natural gas.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44649). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: June 17, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–17383 Filed 6–29–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of proposed information collections contained in 1998 Biennial Review - Streamlining of Radio Technical Rules; Comments Requested

June 19, 1998.

SUMMARY: On June 11, 1998, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rule making (NPRM) in MM Docket No. 98–93 (FCC No. 98–117) in the matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules. The summary of the NPRM was published in the Federal Register on June 22, 1998. The NPRM contains proposed information collections subject to the Office of Management and Budget (OMB) approval. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. The NPRM has been submitted to OMB for review under Section 3507(d) of the PRA.

The Commission, as part of its continuing effort to reduce paperwork

burdens, invites the general public and OMB to comment on the proposed information collections contained in the Notice, as required by the PRA. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 31, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed, you should advise the contact listed below as soon as possible.

ADDRESSES: All comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. In addition to filing comments with the Secretary, copies should be submitted to Les Smith, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, D.C. 20554, or via the Internet to lesmith@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, NW., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the proposed information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: None.

Title: NPRM - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules.

Form Number: FCC 301, FCC 302–FM, FCC 302–AM, FCC 303–S, FCC 340, FCC 349, FCC 350.

Type of Review: New collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions.

Number of Respondents: 4,650.

Estimated Time Per Response: 2.5 hours to 1,106 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $28,672,625 (Consulting engineers and attorney fees).

Total Annual Burden: 28,639 hours.

Needs and Uses: On June 11, 1998, the Commission adopted a Notice of Proposed Rulemaking in MM Docket No. 98–93 (FCC 98–117) in the matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules. The summary of this NPRM was published in the Federal Register on 6/22/98. This rulemaking proceeding was initiated to obtain comments concerning the Commission's proposed amendment of certain technical rules and policies governing the radio broadcast services—in order to enhance opportunities for improvement of facilities and service and eliminate unnecessary administrative burdens and delays, while maintaining the technical integrity of the radio broadcast services. This review was undertaken in conjunction with the Commission's current efforts to streamline its existing rules and eliminate unnecessary or redundant procedural requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17278 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

June 24, 1998.

The Federal Communications Commission (FCC) has received Office of management and Budget (OMB) approval for the following information collection pursuant to the Paperwork Reduction Act of 1995, Public law 104–03. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission.

OMB Control No.: 3060–0686.

Expiration Date: 06/30/2001.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 1,000 respondents; 3,531 annual responses; an average of 42 hours per response; 148,178.8 total annual burden hours for all requirements.

Estimated Annual Reporting and Recordkeeping Cost Burden: $106,500.

Frequency of Response: Quarterly; on occasion; semi-annually; annually.

Description: The information collections pertaining to parts 1 and 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected pursuant to part 61 of the rules is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934. The information collections under Section 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest. Obligation to respond: required. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17279 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 63 FR 33931, June 22, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 24, 1998.

CHANGE IN THE MEETING: The following topic was moved from the open portion to the closed portion of the meeting:

- Proposed Settlement Agreement Regarding the Federal Home Loan Bank of Des Moines Petition

The above matter was moved to the closed portion of the meeting, pursuant

to section 906.5(b) of the Finance Board regulations and exempt under section 552b(c)(8) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–17540 Filed 6–26–98; 2:48 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 6, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 26, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–17558 Filed 6–26–98; 3:36 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98035]

Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for new and competitive continuation cooperative agreements for epidemiologic and behavioral research studies of AIDS and HIV infection. This program addresses the "Healthy People 2000" priority area of HIV Infection. These awards will help support researchers in the conduct of HIV-related epidemiologic research studies that foster prevention of HIV infection or HIV-related disease in children. These include studies that address the follow-up of HIV-infected children and other HIV epidemiologic studies.

Research Issue: HIV Infection in Children—Follow Up of Perinatally-Infected Children

Applications are solicited for continued prospective follow-up of HIV-infected children enrolled in the Perinatal AIDS Collaborative Transmission Study (PACTS) between 1986 and 1998. This is a research issue of programmatic interest to the health care community and to CDC for FY 1998. This issue is considered significant to gaining a greater understanding of the epidemiology of AIDS and HIV infection. Follow-up should be done at least every 3 months, and include: (1) collecting information on HIV-related clinical conditions, HIV-related medication use, hospitalizations, and vital status; and (2) collecting blood specimens for viral load testing, lymphocyte immunophenotyping, and storage for other HIV-related testing. Applicants will use a common data collection instrument, protocol, and data management system designed and implemented in collaboration with CDC.

Applications submitted by organizations that examine additional important HIV-related epidemiologic research issues will also be accepted and considered for funding.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

C. Availability of Funds

Approximately $4.5 million is available in FY 1998 to fund approximately 6 awards. It is expected that awards will range from $250,000 to $1.5 million. It is expected that 4 projects addressing HIV infection in children and 2 other HIV epidemiologic studies will be funded. Awards will begin on or about September 29, 1998, and will be made for a 12-month budget period, within a project period of up to 3 years. Funding estimates may change.

Funding Preferences

Preference will be given to competing continuation applications from satisfactorily performing projects over applications for projects not already receiving support under the program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under "Recipient Activities," below, and CDC will be responsible for conducting activities listed under "CDC Activities", below:

Recipient Activities

Applicants addressing the same research issue should be willing to participate in collaborative studies with other CDC-sponsored researchers, including using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Applicants will be required to pool data for analysis and publication. Applicants are also required to:

A. Develop the research study protocol and data collection forms.

B. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocol and the program requirements.

C. Continue to follow study participants as determined by the study protocol.

D. Establish procedures to maintain the rights and confidentiality of all study participants.

E. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocol.

F. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

G. Conduct data analysis with all collaborators as well as present and publish research findings.

CDC Activities

A. Provide technical assistance in the design and conduct of the research.

B. Provide technical guidance in the development of study protocols, consent forms, and data collection forms.

C. Assist in designing a data management system.

D. Assist in performance of selected laboratory tests.

E. Coordinate research activities among the different sites.

F. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Competing Applications (New Applications and Competing Continuation Applications)

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applicants should identify their proposed research issue on line one of the face page of the application form. Applicants must demonstrate adequate capacity for continued follow-up of children, routine virologic and immunologic testing, data management, and specimen storage. Applicants also must demonstrate the capacity to analyze data and specimens collected in the PACTS project to address important issues related to preventing HIV infection and its manifestations in children, and provide proposed analyses to be completed during the project period.

In future years, noncompeting continuation applications submitted within the approved project period should include:

A. brief progress report describing the accomplishments of the preceding budget period;

B. new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is, not in the initial application; and

C. annual budget and justification (budget items that are unchanged from the preceding budget period do not need rejustification, simply list the items in the budget and note that they are continuation items).

F. Submission and Deadline

On or before JULY 31, 1998, submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398) to: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98035, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, Georgia 30305–2209.

Applications must be postmarked by the U.S. Postal Service or a commercial carrier by the deadline date. If your application does not arrive in time for submission to the independent review panel, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent reviewer group appointed by CDC. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. All applicants must state which research category they are addressing. Applicants should demonstrate the applicant's ability to address the research problem in a collaborative manner with other collaborators. Applications will be reviewed and evaluated based on the evidence submitted.

HIV Infection in Children

A. Recruitment, Retention, and Adherence to Study Protocol (20 Points)

(1) Extent of applicant's experience in perinatal and pediatric HIV infection epidemiologic research.

(2) Evidence of ability to successfully follow HIV-infected children in longitudinal research studies.

(3) Evidence of ability to collect complete data from HIV-infected children.

B. Description and Justification of Research Plans (30 Points)

(1) Extent of familiarity and quality of experience pertinent to proposed research activities.

(2) Understanding of the research objectives as evidenced by high quality of the proposed plan for research and a study design that is appropriate to answer research questions.

(3) Originality of research, extent to which it does not replicate past or present research efforts, and direct relevance of research to guiding current efforts to prevent perinatal HIV transmission and HIV disease progression in children.

(4) Feasibility of plans to follow study participants, and adequacy of sample size to address research questions. This includes demonstration of the experience of the investigator in enrolling and following such persons, and the comprehensiveness of the plan to protect the rights and confidentiality of all participants.

(5) Thoroughness of plans for data management, data analysis, and laboratory analysis; reasonableness of data collected; and statistical rigor.

(6) Extent to which proposal demonstrates feasible plans for coordinating research activities of multiple clinical sites, where appropriate, and with CDC. Letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included.

(7) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

C. Research Capability (30 Points)

(1) Capacity to conduct study as evidenced by quality of experience with similar or related research as evidenced by previous related research, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

(2) Demonstration of working relationships with proposed collaborators.

(3) Demonstration of epidemiologic, behavioral, administrative, clinical, laboratory, data management, and statistical expertise needed to conduct proposed research.

D. Staffing, Facilities, and Time-line (20 Points)

(1) Availability of qualified personnel with realistic and sufficient percentage-time commitments, and the clarity of the descriptions of the duties and responsibilities of project personnel.

(2) Adequacy of plans for project oversight to assure quality of data.

(3) Adequacy of facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

(4) Adequacy of time line for completion of project activities.

E. Other (not Scored)

(1) *Budget:* Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

(2) *Human Subjects:* Does the application adequately address the institutional review board requirements for the protection of human subjects?

_____ Yes _____ No

Comments: _____

Other HIV/AIDS Epidemiologic Research Studies

A. Familiarity With and Access to Study Population (25 Points)

(3) Extent of applicant's knowledge of issues faced by study population and experience in working with this population.

(4) Existence of linkages to facilitate recruitment from and referral to programs providing services for the study population and letters of support from these programs.

(5) Feasibility of plans to involve the study population, their advocates, or service providers in the development of research and intervention activities and to inform them of research results.

(6) Evidence that plans for recruitment of and outreach for study participants will include establishing partnerships with communities.

B. Description and Justification of a Research Plan (40 Points)

(1) Quality of the review of the scientific literature pertinent to the proposed study, including theoretical basis for research, and relevance of research questions.

(2) The originality of research, the extent to which it does not replicate past or present research efforts (including ongoing efforts not yet described in publications), and relevance to guiding current HIV prevention efforts.

(3) Applicant's understanding of the research objectives as evidence by high quality of the proposed research plan with a study design that is appropriate to answer research questions.

(4) Feasibility of plans to sample, recruit, enroll, test, interview, and follow study participants and adequacy of sample size to address research questions. This includes demonstration of the availability of HIV-infected potential study participants and persons at risk for HIV infection and the experience of the investigator in enrolling and following such persons in a culturally and linguistically appropriate manner; the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research, including: (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits; comprehensiveness of the plan to protect the rights and confidentiality of all participants; and proposed justification when representation is limited or absent.

(5) Thoroughness of analysis plans, reasonableness for data collected, statistical rigor and complexity.

(6) Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems), if appropriate.

C. Demonstrate Staff's Capability to Conduct Research (20 Points)

(1) Capacity to conduct study as evidenced by experience with similar or related research as evidenced by their previous related research.

(2) Extent of the team's productive working relations with proposed collaborators.

(3) Ability, willingness, and need to collaborate with researchers from other study sites in study design and analysis, including use of common forms, and sharing of specimens (when appropriate) and data.

D. Staffing, Facilities, and Time-line (15 Points)

(1) Availability of qualified personnel with realistic and sufficient percentage-time commitments; and the clarity of the description of duties and responsibilities of project personnel with epidemiologic, behavioral, administrative, clinical, laboratory, data management, and statistical responsibilities.

(2) Adequacy of the facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

(3) Adequacy of time line.

E. Other (not Scored)

(1) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

(2) Human Subjects: Does the application adequately address the institutional review board requirements for the protection of human subjects?

_____ Yes _____ No

Comments: _____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress report;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status report and performance report, no more than 90 days after the end of the project period send all reports to: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, GA 30305–2209.

For descriptions of the following Other Requirements, see Attachment 1:

AR98–1 Human Subjects
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–6 Patient Care
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act
AR98–10 Smoke-Free Workplace Requirements

AR98–11 Healthy People 2000

AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k) (2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and to identify the Announcement number, 98035. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98035, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mail Stop E–15, Atlanta, GA 30305–2209, Telephone (404) 842–6550, E-mail kgm1@cdc.gov.

See also the CDC Internet home page at: www.cdc.gov

For program technical assistance, contact: Jeff Efird, Acting Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention Centers for Disease Control and Prevention (CDC) 1600 Clifton Road, NE., Mail Stop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mail jle1@cdc.gov.

Eligible applicants are encouraged to call before developing and submitting their applications.

Dated: June 23, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17305 Filed 6–29–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Program Announcement 98096]

Economic Evaluation of Engineering Control Interventions for Drywall Sanding Construction Activities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program to conduct an economic evaluation and variable analyses of engineering control interventions during drywall sanding construction activities. This program addresses the "Healthy People 2000" priority area of Occupational Safety and Health.

The purpose of the program is to identify the financial and behavior factors which are affected by implementing drywall sanding engineering controls. These factors may occur throughout the construction-model hierarchy from the individual worker on up to the building owner. A successful project will serve as an example throughout the construction industry that the cost and benefits of providing a clean and safe working environment should be evaluated from the big-picture perspective as opposed to the level of acquisition. Such an example could lead to new implementation strategies to increase the use of engineering controls and ultimately improve the construction work environment.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $95,000 is available in FY 1998 to fund one award. It is expected that the award will be renewed on an annual basis for an additional two years at an approximate amount of $95,000 per year. It is expected that the awards will begin on or about September 1, 1998, with 12-month budget periods within project periods of up to three years. The funding estimate is subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds: The applicant should allocate funds for at least one annual CDC/NIOSH directed meeting.

Programmatic Interest: The applicant should address the availability of drywall sanding dust exposure reduction interventions and the economic impact and related variable analyses of some or all of the identified interventions upon the various organizational layers (e.g. worker, subcontractor, general contractor, building owner) within the building construction process.

D. Program Agreement Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop, implement, and evaluate a study protocol.
2. Provide statistical analysis of the data.
3. Disseminate study results to the construction safety and health community.
4. Collaborate with CDC/NIOSH on these activities and the activities listed below.

B. CDC/NIOSH Activities

1. Providing scientific and technical collaboration including study design and protocol development, and data analysis.
2. Monitor and evaluate scientific and operational accomplishments of the project through site visits, telephone calls, and review of technical reports and interim data analysis.
3. Collaborate with awardee(s) on data analysis, and interpretation of findings.
4. Review the results of the study and collaborate, where appropriate, in the preparation and publication of results in peer-reviewed journals and construction industry trade publications.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and

Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 10, 1998, submit the application to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98096, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (15 Percent)

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the general objectives of the proposed cooperative agreement, and (b) evidence of ability to design an effective evaluation study.

2. Experience (15 Percent)

The extent to which the applicant's prior work and experience in evaluating occupational safety and health intervention efforts and/or experience within the construction trades affected by drywall finishing operations.

3. Goals, Objectives and Methods (35 Percent)

The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which the methods are sufficiently detailed to allow assessment of whether the objectives can be achieved for the budget period. Clearly state the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the proposal.

This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Facilities and Resources (10 Percent)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project. The proposal should include a commitment from the participating institution, as evidenced by a written agreement. For applicants who have already identified potential construction site(s) to conduct the evaluation, the proposal should include a commitment, as evidenced by a written agreement, from the building owner, general contractor, and relevant subcontractors with jurisdiction over the drywall finishing and budget management operations, when such exist at the applicant's anticipated study location(s).

5. Project Management and Staffing Plan (15 Percent)

The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate personnel who have the needed qualifications to implement the proposed plan. The extent to which the applicant has the capacity to design, implement, and evaluate the proposed intervention program.

6. Collaboration (10 Percent)

The extent to which all partners are clearly described and their qualifications and the extent to which their intentions to participate are explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. Evidence or a statement should be provided that these funds do not duplicate already funded components of ongoing projects.

7. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

8. Human Subjects (Not Scored)

If human subjects will be involved, how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports including a brief program description and a listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I (included in the application package).

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e)(7)]. The Catalog of Federal Domestic Assistance number is 93.262 for the National Institute for Occupational Safety and Health.

J. Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You

will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98096. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. Please refer to NIOSH announcement number 98096 when requesting information and submitting an application.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained by contacting: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98096, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–13, Atlanta, GA 30305–2209, telephone (404) 842–6804, Email address: vxw1@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance contact: Kenneth Mead, P.E., telephone (513) 841–4319, Email kcm3@cdc.gov, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention (CDC), Division of Physical Sciences and Engineering, 4676 Columbia Parkway, Mailstop R–5, Cincinnati, OH 45226.

National Occupational Research Agenda (NORA): CDC, NIOSH is committed to the program priorities developed by NORA. Copies of the publication, "The National Occupational Research Agenda" may be obtained from The National Institute of Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or telephone 1–800–356–4674, and is available through the NIOSH Home Page, "http://www.cdc.gov/niosh/nora.html".

Dated: June 23, 1998.

Diane D. Porter,

Acting Director, National Institute For Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17300 Filed 6–29–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Program Announcement Number 98042; Cooperative Agreement for Waterborne Disease Occurrence Studies

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds to provide assistance for conducting waterborne disease occurrence studies that will aid in producing a national estimate of waterborne disease.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section(s) 301(a), 317(k)(1), and 317 (k)(2) of the Public Health Service Act [42 U.S.C. 241(a), 247b(k)(1) and 247b(k)(2)], as amended.

Smoke-free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private non-profit entities, including universities; university-affiliated systems including not-for-profit medical centers; research institutions and rehabilitation hospitals; State and local health departments and other related State government agencies; federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned non-profit businesses are eligible to apply.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Availability of Funds

Approximately $450,000 is available in FY 1998 to fund approximately three awards. It is expected that the average award will be $150,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of Department of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State Legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The last few years have seen increased attention to microbiological contaminants in drinking water. This concern has led to a number of new provisions for research and regulation of such contaminants in the August 1996 Amendments to the Safe Drinking Water Act (SDWA) P.L. 104–182. Section 137(d) of the 1996 amendments, 42 U.S.C. Section 300j–18d calls for waterborne disease occurrence studies to estimate the incidence of waterborne disease in the United States. Only a limited number of studies have been done to develop such an estimate, in part because some of the methodologies needed require further refinement and experience in conducting studies of this problem is limited. Unfortunately, no single study or study design will allow such an estimate to be made with confidence. The Environmental Protection Agency (EPA) and CDC are collaborating to aid other organizations to conduct studies regarding the incidence of waterborne disease and etiologic agents causing waterborne disease. Such studies will concentrate on gastrointestinal illness due to microbial contaminants in drinking water, including both well known and emerging bacteria, viruses, and protozoa. This announcement is not intended to support studies addressing illness due to chemical contamination.

Purpose

The purpose of this cooperative agreement is to provide assistance for conducting studies to: (1) estimate the incidence of waterborne disease due to microbial contamination of drinking water and/or (2) identify and describe the relationship between measures of water quality and health outcomes or the evidence of infection due to gastrointestinal pathogens.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. identify and describe the population to be studied,
2. identify and describe the water system(s) serving the population studied,
3. form a collaborative relationship with the water utility(s) and local health department(s) serving the population to be studied,
4. if appropriate, assess the methods used by the water utility(s) to measure water quality and obtain water quality data. Describe surrogate measures of water contamination that would be evaluated,
5. collect data on outcomes of interest and/or identify and evaluate existing data on these outcomes. If appropriate, collect specimens from human participants to determine the etiologic agents causing gastrointestinal illness. Evaluate the likelihood that the etiologic agents are waterborne,
6. maintain data, including databases, and confidentiality protections,
7. document your Quality Assurance Project Plan (QAPP), as required by EPA, for assuring that the data collected are of the expected quality for their intended use and are properly assessed,
8. analyze data to describe the relationship(s) of the health outcome(s) with water-related exposure variables,
9. evaluate and describe the generalizability of the study findings, and
10. analyze collected data and disseminate research results by appropriate methods such as publication in journals, presentation at meetings, conferences, etc.

B. CDC Activities

CDC and EPA will provide technical assistance in the design and conduct of the research. This may include:

(1) providing technical consultation in the design and conduct of the project, including data collection and analytic approach, and evaluation;

(2) providing technical assistance regarding special clearances and approval for human subjects and data collection;

(3) providing format and guidance for QAPP

(4) providing educational materials, including working with grantees to develop new materials that might be needed; and

(5) facilitating exchange of information among recipients.

Technical Reporting Requirements

An original and two copies of an annual progress report are required and must be submitted no later than 90 days after the end of each budget period. These progress reports must include: (1) a comparison of actual accomplishments to the goals and objectives established for the period; and (2) the reasons for failure, if established goals were not met; (3) other pertinent information including, when appropriate, analysis and explanation of performance costs significantly higher than expected. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement will be submitted with the progress report.

An annual Financial Status Report (FSR) must be submitted no later than 90 days after the end of each budget period.

The final financial status and progress reports are required no later than 90 days after the end of the project period. All reports are submitted to Grants Management Branch, CDC. Please send all reports or other correspondence to: Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–18, Room 314, Atlanta, GA 30305–2209.

Application Content

Application

An original and five copies of the application should be submitted to the Grants Management Officer, Grants Management Branch, CDC at the address above. All applicants must develop their application in accordance with the PHS Form 398 (revised 5/95), information contained in this cooperative agreement announcement, and the instructions outlined below. In order to ensure an objective, impartial, and prompt review.

General Instructions

1. All pages must be clearly numbered.
2. A complete index to the application and its appendixes must be included.
3. The original and two copies of the application must be submitted unstapled and unbound. No bound material will be accepted.
4. All material must be typewritten, single spaced, and in unreduced type (no smaller than font size 12) on 8 1/2" by 11" white paper, with at least 1" margins, headers, and footers.
5. All pages must be printed on one side only.

Specific Instructions

The application narrative must not exceed 10 pages (excluding budget and appendixes). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. *Abstract:* Provide a brief (two pages maximum) abstract of the project.
2. *Background and Need:* Discuss the background and need for the proposed project. Demonstrate a clear

understanding of the purpose and objectives of this cooperative agreement program. Illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement program.

3. *Capacity and Personnel:* Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. Specifically, letters of support from water utilities that outline the types of data they intend to share should be provided. Do not include letters of support from CDC or EPA personnel. Letters of support from CDC or EPA will not be accepted in the application. Award of a cooperative agreement implies CDC and EPA participation as outlined in the Program Requirements section of this announcement.

4. *Objectives and Technical Approach:* Describe specific objectives for the proposed project which are measurable and time-phased and are consistent with the purpose and goals of this cooperative agreement. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all Recipient Activities. If proposing a two (2) year project, provide a detailed description of first-year activities and a brief overview of activities in the second year. Clearly state the proposed length of the project period. Clearly identify specific assigned responsibilities for all key professional personnel. Include a clear description of applicant's technical approach/methods which are directly relevant to the study objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC, EPA, and/or others during various phases of the project. Describe in detail a plan for evaluating study results and for evaluating progress toward achieving project objectives.

5. *Budget:* Provide in an appendix a budget and accompanying detailed justification for the first-year of the project that is consistent with the purpose and objectives of this program. If proposing a multi-year project, also provide estimated total budget for each subsequent year.

6. *Human Subjects:* Whether or not exempt from HHS regulations, if the proposed project involves human subjects, describe adequate procedures for the protection of human subjects.

7. *Women, Racial, and Ethnic minorities:* Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

Noncompeting Continuation Applications

For noncompeting continuation applications submitted within the approved project period, include only:

1. brief progress report describing the accomplishments of the preceding budget period;

2. New or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is not in the initial application; and

3. Annual budget and justification (budget items that are unchanged from the preceding budget period do not need re-justification, simply list the items in the budget and note that they are continuation items).

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 points):

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program.

2. Capacity and Personnel (35 points total):

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. (10 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. (10 points)

c. Extent to which applicant includes letters of support from non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate as described in the operational plan, such as a water utility's intent to provide specific water quality data. If appropriate, the extent to which letters from non-participating local and state health departments express their support of the operational plan (15 points). Do not include letters of support from CDC or EPA personnel.

3. Objectives and Technical Approach (55 points total):

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all Recipient Activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the plan is adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. If there is a laboratory component to the proposal, the extent to which plans for ensuring quality of measurements are included. The extent the proposed plan includes the inclusion of women, ethnic, and racial groups in the proposed research to include (1) the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with the community and recognition of mutual benefits will be documented.

If the proposed project involves human subjects, whether or not exempt from the HHS regulations, the extent to which adequate procedures are described for the protection of human subjects. Note: Objective Review Group (ORG) recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear

inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable. (25 points)

c. Extent to which applicant describes adequate and appropriate collaboration with CDC, EPA and/or others (e.g. water utilities and health departments) during various phases of the project. (10 points)

d. Extent to which applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving project objectives. (10 points)

4. Budget (not scored):

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372 (E.O.), which sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Sharron Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–18, Room 314, Atlanta, GA 30305–2209. The due date for State process recommendations is 30 days after the application deadline date for new and competing continuation awards (the appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application receipt date that would accommodate the 60-day State recommendation process period). The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR, Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadline

The original and five copies of the completed application PHS Form 398 (revised 5/95), OMB Control Number 0925–0001) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305–2209, on or before August 5, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. received on or before the deadline date; or

b. sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. a. or 1. b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305–2209, (404) 842–6801. E-mail address: gcg4@cdc.gov.

Programmatic technical assistance may be obtained from Bill MacKenzie, MD, Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road,

NE., Atlanta, GA 30333, Telephone: (770) 488–7784. E-mail address: wrm0@cdc.gov

Please refer to Announcement Number 98042 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone:(202) 512–1800.

Dated: June 24, 1998.

John L. Williams,

Director Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17306 Filed 6–29–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/CB–98–04A]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Demonstration Projects Under the Adoption Opportunities Program

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of correction.

SUMMARY: This notice corrects the Notice of an Announcement published in the **Federal Register** on June 9, 1998 (63 FR 31502) by correcting the category of eligible applicants under Priority Area 98.3—Achieving Increased Placements of Children in Foster Care. For this priority area only State agencies are eligible to compete for funds. Under section 203(d)(1) of Title II of the Child Abuse Prevention and Treatment Act, as amended, Pub. L. 104–235, states that the Secretary "shall make grants for improving State efforts to increase the placement of foster children legally free for adoption * * *. Additionally, states are encouraged to collaborate with private, non-profit agencies and Indian tribes to increase the number of adoptions or permanent placements of children who are in foster care.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Highway, Suite 415, Arlington, Virginia 22201, the telephone number is 1–800–351–2293.

SUPPLEMENTARY INFORMATION: On June 9, 1998, the Administration on Children, Youth and Families published the Notice of Announcement Number: CB–98–04 in the **Federal Register** soliciting proposals to support demonstration projects under the Adoption Opportunities Program. The eligibility should have been limited to State social service agencies. This amendment corrects that error. Further, the Children's Bureau encourages states to develop collaborate agreements with private, non-profit agencies and Indian tribes to increase the number of adoptions or permanent placements of children who are in foster care. All other requirements for mailed applications/overnight/express mail service and hand-delivered applications/applicant couriers remain the same as in the original announcement.

(Catalog of Federal Domestic Assistance Program Number 93.652, Adoption Opportunities Program)

Dated: June 23, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–17313 Filed 6–29–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCSE 98TIP–1]

Child Support Enforcement Demonstration and Special Projects; Federal/Tribal Grant (Cooperative Agreement) to Plan Tribal Child Support Programs

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice.

SUMMARY: The OCSE invites eligible entities to submit competitive grant applications to assist them in planning and preparing to run their own child support program. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is August 31, 1998. See Part IV of this announcement for more information on submitting applications.

ADDRESSES: Application kits containing the necessary forms and instructions to apply for a grant under this program announcement are available from: Administration for Children and Families, Office of Child Support Enforcement, Office of Automation and Special Projects (OCSE/OASP), 370 L'Enfant Promenade, SW, 4th Floor, West Wing, Washington, DC 20447, Attention: Jay Adams, (202) 401–9240, 401–5539 (FAX), ljadams@ACF.DHHS.GOV, www.acf.dhhs.gov/programs/oa/form.htm.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), OCSE/OASP, Lucille Dawson at (202) 401–5437 or Lawrence A. Dunmore, III at (202) 205–4554, for specific program concerns regarding the announcement. Lois Hodge, Grants Officer/Team 1, (202) 401–2344.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and Catalog of Federal Domestic Assistance (CFDA) Number.

Part II: Applicant and Project Eligibility—eligible applicants, priorities and preferences, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, competitive review and evaluation criteria, funding reconsideration.

Part IV: The Application—application development, application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139 Expiration date 10/31/00).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

A. Child Support Enforcement Program History

The mission of the Child Support Enforcement (CSE) Program, which was established in 1975 under Title IV–D of the Social Security Act, is to ensure that children receive financial and emotional support from both their parents. The program locates non-custodial parents, establishes legal paternity, and establishes and enforces child support orders. The Federal Office of Child Support Enforcement (OCSE) administers the program in cooperation with the State and local agencies designated under Title IV–D of the Social Security Act. The OCSE provides direction, guidance and oversight to the States. The Federal government reimburses the bulk of the State agencies' administrative costs in the conduct of their responsibilities for the program.

B. Program Purpose

The CSE program is a Federal matching program where Federal funding is available for State expenditures eligible for reimbursement. A number of Tribes have been involved in CSE by way of agreements with States. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by the Balanced Budget Act of 1997, provides a number of new opportunities for Tribes and tribal organizations to become more involved in child support enforcement.

The first of these opportunities involves changes to the Federal law that allow funding of tribal activities carried out under cooperative agreements with States. Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was available, through the State, for eligible expenditures of tribes pursuant to a cooperative agreement with the State under which the State delegated any functions of the IV–D program to the tribal entity and the tribal entity complied with all requirements of title IV–D applicable to the function or functions delegated to the tribe. The amended Act authorizes State/Tribal cooperative agreements under which Tribes no longer need to satisfy all applicable IV–D requirements as specified in 45 CFR 303.107(c). Federal Financial Participation (FFP) continues to be available for expenditures under State/Tribal cooperative agreements if such expenditures are otherwise eligible for reimbursement under title IV–D of the Act and 45 CFR part 304.

C. Direct Tribal Funding

The second of these opportunities, direct funding from the Federal government, is the subject of this program announcement. New section 455(f) of the Social Security Act allows the Secretary to make direct payments to an Indian tribe or tribal organization that demonstrates to the Secretary's satisfaction that it has the capacity to operate a child support enforcement program meeting the following objectives of Part IV–D of the Social Security Act.

- Establishment of paternity;
- Establishment, modification, and enforcement of support orders;
- Location of absent parents.

The Law requires the Secretary to issue regulations establishing the requirements which must be met by an Indian tribe or tribal organization in order for it to be eligible for direct funding under subsection 455(f).

D. Program Objectives

OCSE has undertaken a consultation process to obtain ideas, suggestions, and concerns from Tribes and tribal organizations regarding the regulations it must prepare before issuing direct grants to Tribes. OCSE (has or is in the process of) holding three major regional consultation meetings. In addition, OCSE sent packages of information on child support to all tribes and all major tribal organizations. An "800" number, (1–800–433–1434), has been established so that tribes can phone in comments pertaining to information on child support. The OCSE has also established a location on its internet site to receive comments. The internet address is http://www.acf.dhhs.gov/programs/cse/fdback.htm OCSE thinks that another way to get information to help shape the Native American CSE program is to issue a small number of grants to Tribes and Tribal organizations to assist them in planning and preparing to run their own child support program. While our consultation meetings are good forums for discussion about child support enforcement and a good way for us to hear tribal ideas and concerns, we think that additional useful information can be gained by working with a few tribes in actually taking the first steps towards running their own child support enforcement programs.

E. Legislative Authority

Section 452(j) of the Social Security Act, 42 U.S.C.652(j), provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

F. Availability of Funds

$100,000 is available for FY 1998. We envision issuing 2 to 4 grants. A non-Federal match is not required. OCSE is also providing grants under a separate program announcement, **Federal Register**: May 8, 1998 (Volume 63, Number 89) pages 25490–25493, to a wide variety of public and private agencies. The purpose of these grants is to further the national child support mission, vision and goals as outlined in the CSE Strategic Plan with Outcome Measures for Fiscal Years 1995–1999. A copy of the CSE Strategic Plan may be obtained upon request (See **ADDRESSES** of this announcement).

G. CFDA NUMBER: 93.601—Child Support Enforcement Demonstrations and Special Projects

Part II. Applicant and Project Eligibility

A. Eligible Applicants

Eligible applicants for these Tribal child support program grants are Tribes and Tribal Organizations. We will be selecting Tribes from two categories:

(1) Tribes or tribal organizations with some experience with the child support program, e.g., through cooperative agreements with States and (2) tribes and tribal organizations with no direct experience with child support enforcement.

B. Federal Participation

OCSE anticipates substantial Federal involvement in these projects. OCSE will offer successful grantees considerable technical assistance and support. OCSE will be available to help grantees review their laws, look at how other Tribes have approached child support issues. This assistance will be provided by a combination of teleconferences and on-site visits.

C. Project Priorities and Preferences

OCSE plans to issue these grants mainly to Tribal governments or consortia of Tribal governments. While other tribal organizations may apply for grants under this announcement, they should be aware that OCSE will give preference to tribal governments or consortia, as noted in

Part III: Review Process, Competitive Review and Evaluation Criteria in this Announcement

Our expectation is that these grants will result in Tribes with previous CSE experience being capable at the end of

the grant to receive either direct funding under section 455(f) or a follow-up demonstration grant. For Tribes with no previous CSE experience, we expect that by the end of the grant period, the Tribe will have in place a detailed plan to guide the Tribe in its efforts to qualify for direct Federal funding under section 455(f).

D. Project and Budgets Periods

Generally, project and budget periods for these projects will be up to 17 months. However, OCSE will consider projects up to 36 months, if unique circumstances warrant. If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or "budget periods." Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Part III: The Review Process

A. Intergovernmental Review

This program is not covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Applications will be evaluated according to the following four criteria. Applications can receive a maximum of 90 points on these four criteria. Up to an additional 10 points will be awarded based on whether the applicant is a tribal government or consortia of Tribal governments and on the extent of the applicant's contribution to project costs.

(1) Criterion I: Understanding and Project Structure (Maximum: 20 points)

The application should describe the extent to which the project will contribute to OCSE's knowledge regarding how to structure the Native American CSE program and prototype. In evaluating this criteria, OCSE will look at the extent to which lessons learned from the applicant's project could be applied to a range of other Tribes and Tribal organizations.

(2) Criterion II: Design and Project Goals (Maximum: 20 Points)

The application should include a sound project design to achieve the project's stated goals. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework.

(3) Criterion III: Project Contribution and Effectiveness (Maximum: 30 Points)

The applicant should identify the extent to which the grant project will contribute to the Tribe's or organization's ability to run a successful CSE program.

(4) Criterion IV: Reasonable Costs (Maximum: 20 Points)

The project costs are reasonable in relation to the identified tasks.

(5) Additional Points: Tribal Contributions and Tribal Governments/ Consortia (Maximum: 10 Points)

OCSE will award 1 point for contributions amounting to less than 10% of the total project budget; 3 points for contributions between 10% and 25%; and 5 points for contributions over 25%.

OCSE will give preference to Tribal governments or consortia of Tribal governments by adding 5 points to the scores of applications from such organizations.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement. The length of the application, not including the application forms and all attachments, i.e., Certifications, Disclosures, and Assurances, should not exceed 20 pages. The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted to determine the total length. If applications exceed 20 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. Each applicant should submit one signed original and two additional copies of the application.

Applications must contain the following elements:

(1) Project Description: The application must spell out how the project will be carried out, i.e., what specific activities will be funded through the grant and who will carry them out.

(2) Project Goals and Objectives: The application must state what the project is intended to accomplish.

(3) Budget: The application must provide a proposed budget. If the applicant plans to contribute funds or other resources to the project, these should be described in the application.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified

as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Lois Hodge/Tribal Child Support, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge/Tribal Child Support." ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Dated: June 19, 1998.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 98–17265 Filed 6–29–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements relating to the manufacture and distribution of hearing aid devices.

DATES: Submit written comments on the collection of information requirements by August 31, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information set forth below.

With respect to the following collections of information, FDA invites comments on: (1) Whether the proposed collections of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burdens of the proposed collections of information, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burdens of the collections of information on respondents, including through the use of appropriate automated collection techniques, when appropriate, and other forms of information technology.

Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control Number 0910–0171—Extension)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid through distribution of a User Instructional Brochure. The User Instructional Brochure must also contain technical data about the device, instructions for its use, maintenance, and care, a warning statement, a notice about the medical evaluation

requirement, and a statement if the aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the User Instructional Brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the User Instructional Brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users and provide a copy of the User Instructional Brochure to any health care professional, user, or prospective users who requests a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain for 3 years copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health professionals, or other for profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.420(c)	40	5	200	40	8,000
801.421(a)(1)	9,900	52	514,800	0.10	51,480
801.421(a)(2)	9,900	97	960,300	0.30	288,090
801.421(b)	9,900	162	1,600,000	0.30	480,000
801.421(c)	9,900	5	49,700	0.17	8,449
Totals					836,019

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—Estimated Annual Recordkeeping Burden[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.421(d)	9,900	162	1,600,000	0.25	400,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 801.420(c) estimate assumes that 40 hearing aid manufacturers/distributors each distribute 5 different models of hearing aids. Thus, the 40 hearing aid manufacturers/distributors will provide 5 different User Instructional Brochures to sellers for distribution to prospective users and users. The completion of each User Instructional Brochure is estimated to require 40 staff hours.

Sections 801.421(a)(1) and 801.421(a)(2) estimates are based on information obtained in the FDA review mentioned previously which revealed that medical evaluations were obtained in 32 percent of the sales and signed waivers were obtained in 60 percent of the sales. For § 801.421(a)(1) estimate, the figure was derived by multiplying the current number of annual hearing aid sales (1.6 million) by .32 and then dividing by the number of hearing aid dispensers (9,900). FDA estimates that it will take hearing aid dispensers .10 hours to request and obtain the required medical evaluation documentation. For § 801.421(a)(2) estimate, the figure was derived by multiplying the current number of hearing aid sales (1.6 million) by .60 and then dividing by the number of hearing dispensers (9,900). FDA estimates that it will take hearing aid dispensers .30 hours to articulate the required disclosure and prepare and make available a waiver form for adults 18 years of age or older to sign. For § 801.421(b) estimate, FDA assumes that 9,900 hearing aid dispensers will have 162 sales annually. For all such sales, the dispenser must provide the prospective user a copy of the User Instructional Brochure and the opportunity to read and review the contents with him/her orally, or in the predominant method used during the sale. FDA estimates that this exchange will involve .30 staff hours.

Section 801.421(c) estimate assumes that 40 hearing aid manufacturers/distributors, and 9,900 dispensers will provide copies of the User Instructional Brochure to any health care professional, user, or prospective user who request a copy in writing. It is estimated that 5 written requests for copies of the brochures will be received by each hearing aid manufacturer/distributor and dispenser annually. It is estimated that each request for a brochure will take .17 staff hours to complete. This effort consists of the hearing aid manufacturer/distributor or

hearing aid dispenser locating the appropriate User Instructional Brochure for the specific model and mailing the brochure to the requester.

Section 801.421(d) recordkeeping estimate assumes that 9,900 hearing aid dispensers will each retain 162 records. Each record documents the dispensing of a hearing aid to a hearing aid user. Each recordkeeping entry is estimated to require 0.25 staff hours.

Dated: June 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17289 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0430]

Nalco Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nalco Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium acrylate/styrene sulfonate copolymer for use as an antiscalant boiler treatment where steam from treated boilers may contact food.

DATES: Written comments on the petitioner's environmental assessment by July 30, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3189.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4598) has been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60563. The petition proposes to amend the food additive regulations in § 173.310 *Boiler water additives* (21 CFR 173.310) to provide for the safe use of sodium acrylate/sulfonated styrene copolymer for use as an antiscalant boiler treatment where steam from treated boilers may contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 30, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b)(1).

Dated: June 8, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–17292 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0433]

Servo Delden BV; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Servo Delden BV has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4600) has been filed by Servo Delden BV, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–17321 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Center for Veterinary Medicine; Change of Internet Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in the Internet address for the Center for Veterinary Medicine (CVM) to ensure that users can continue to have uninterrupted access to CVM's Internet site. The CVM Internet site is one of the agency's methods of communicating with the public regarding the ongoing mission of CVM, which is the organization within the agency that regulates the manufacture and distribution of animal drugs, feeds, and related products.

FOR FURTHER INFORMATION CONTACT: Jerome J. McDonald, Center for Veterinary Medicine (HFV–16), Food and Drug Administration, 7500 Standish

Pl., Rockville, MD 20855, 301–827–6505.

SUPPLEMENTARY INFORMATION: On May 17, 1998, CVM changed its Internet address to "www.fda.gov/cvm". If users enter the old CVM internet address ("www.cvm.fda.gov"), a message will notify them of the change and will automatically redirect them to the new address. The message redirecting users to the new Internet site (redirect) will be in effect for approximately 3 months. CVM recommends that users who have bookmarked pages within the CVM website (e.g., What's New, the On-line Library, CVM's telephone directory, etc.) update the bookmarks with the new CVM Internet address. If users do not update the bookmarks, an error message will result and no redirect instructions will be provided.

Dated: June 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17320 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-day Proposed Collection: Common Reporting Requirements for Urban Indian Health Programs

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, which requires opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was published in the March 10, 1998, **Federal Register** (63 FR 11688) and allowed 60 days of public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

PROPOSED COLLECTION: *Title:* 09–17–0007, "Common Reporting Requirements for Urban Indian Health Programs." *Type of Information Collection Request:* Revision of currently approved information collection, 0917–0007, "Common Reporting Requirements for Urban Indian Health Programs," which expires July 31, 1998. *Form Number:* Reporting forms contained in IHS instruction manual, "Urban Indian Health Programs Common Reporting Requirements."

Need and Use of Information Collection: The requested information is provided by American Indian/Alaska Native (AI/AN) urban health organizations contracting with the IHS to provide health care services to AI/ANs in urban settings. The information is collected annually and is used to monitor and evaluate contractor performance, prepare budget reports, and allocate resources.

Affected Public: Businesses or other for-profit, individuals and households, not-for-profit institutions; and State, Local, or Tribal Governments. *Type of Respondents:* Urban Indian health care organizations.

The table below provides the following: types of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour.

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Face Sheet	34	1	34	0.50 (30 mins)	17.0
Table 1	34	1	34	2.00 (120 mins)	68.0
Table 2	34	1	34	0.75 (45 mins)	26.0
Table 3	34	1	34	2.25 (135 mins)	77.0
Table 4	**24	1	23	0.50 (30 mins)	12.0
Table 5	34	1	34	2.00 (120 mins)	68.0
Table 6	34	1	34	2.00 (120 mins)	68.0
Table 7	34	1	34	1.00 (60 mins)	34.0
Table 8	34	1	34	1.25 (75 mins)	43.0
Total	261		261		413.0

*For ease of understanding, burden hours are also provided in actual minutes.
**Excludes urban Indian health projects with no medical components.

There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (1) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbook Parkway, Suite 450, Rockville, MD 20852–1601; call non-Toll free at (301) 443–1116; send via fax to (301) 443–1522; or send your e-mail request, comments, and return address to: lhodahkw@hqe.ihs.gov.

Comment Due Date: Comments regarding this information are best assured to having their full effect if received on or before July 30, 1998.

Dated: June 19, 1998.

Michel E. Lincoln,

Acting Director.

[FR Doc. 98–17323 Filed 6–29–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Request for Nominations

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Exxon Valdez Oil Spill Public Advisory Group Nomination Solicitation.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is soliciting nominations for the Public Advisory Group, which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning in October 1998.

DATES: All nominations should be received on or before August 21, 1998.

ADDRESSES: Nominations should be sent to the Exxon Valdez Oil Spill Trustee Council, 645 G Street, Suite 401, Anchorage, Alaska 99501 (fax: 907/276–7178).

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Official, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011; or Cherri Womac, Exxon Valdez Oil Spill Trustee Council, 645 G Street, Suite 401, Anchorage, Alaska, (907) 278–8012 or (800) 478–7745. A copy of the charter for the Public Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Group consists of 17 members representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreation users, sport hunting and fishing, subsistence, and science/academic. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Nominees need to submit the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, telephone, fax);
2. Information about the nominee's knowledge of the region, peoples or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;
3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;
4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;
5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and
6. Answers to the conflict of interest questions listed below. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nominee provide the following information with their information packet. If the answer to any of these questions is yes, please provide a brief explanation of your answer. A yes will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or likely will submit, a proposal for funding by the Trustee Council, or be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group to have a direct bearing on the financial condition of yourself, your spouse, children, other relative with whom you live or your employer?

Dated: June 24, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–17357 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Notice of Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: July 28, 1998, at 8:30 a.m.

ADDRESSES: Fourth floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of

Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a discussion of the fiscal year 1999 Work Plan and a discussion of the restoration reserve fund. A public meeting on the Work Plan will be held Monday, July 27 at 7:00 p.m. at the same location.

Dated: June 24, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–17356 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–962–1410–00–P]

Notice for Publication Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Tok, Alaska.

Serial Number	Approximate land description	Acreage
F–21904–81	T. 21 N., R. 16 E., Copper River Meridian	11,484
F–21905–83	T. 20 N., R. 15 E., Copper River Meridian	2,560
F–21905–94	T. 20 N., R. 16 E., Copper River Meridian	7,440

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until July 30, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–17307 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Erie Canalway Report; Availability

In accordance with Public Law 103–332, the National Park Service announces that the draft Erie Canalway report, a special resource study of the New York State Canal System, including an environmental assessment, is available for public review and comment.

A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for possible federal designation and further National Park Service involvement. Based on the results of this assessment, the study presents a range of possible management alternatives.

The draft Erie Canalway report, a special resource study of the New York State Canal System, is available for review at most local libraries throughout the canal corridor in Upstate New York. Copies are also available at the Boston Support Office of the National Park Service, 15 State Street, Attn: Ellen Levin Carlson, Boston, MA 02109. Call 617–223–5048 for further information. In addition, NPS staff will be participating in a number of meetings being sponsored by local community groups and institutions throughout the summer. Watch for local meeting notices in local newspapers and newsletters. Written comments will be accepted through August 3, 1998 at Boston Support Office, National Park Service, 15 State Street, Boston, MA 02109; Attn: Ellen Levin Carlson.

Terry W. Savage,

Superintendent.

[FR Doc. 98–17374 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of the National Maritime Heritage Grants Advisory Committee

AGENCY: National Park Service, Interior

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that the National Maritime Heritage Grants Advisory Committee will meet from 9:00 a.m. to 5:00 p.m. on the following dates and at the following location.

DATES: July 22–24, 1998.

LOCATION: Hall of States, 444 North Capitol Street, N.W, Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Kevin Foster, National Maritime Initiative (2280), National Park Service, 1849 C Street N.W., Washington, D.C. 20240. Phone: (202) 343–5969, Fax: (202) 343–1244.

SUPPLEMENTARY INFORMATION: Public Law 103–451 (16 U.S.C. 5401), established the National Maritime Heritage Grants Advisory Committee to advise the Secretary of the Interior on matters pertaining to the National Maritime Heritage Grants Program and the National Maritime Heritage Policy.

The purpose of this meeting is to review grant proposals and make funding recommendations to the Secretary and to discuss strategies for achieving the National Maritime Heritage Policy. The Committee will address general business, discuss grant

proposals, and assess the current status of maritime heritage at the national level and recommend appropriate changes, actions, and priorities.

Part of the meeting may be closed to the public. Pursuant to 16 U.S.C. 5404(j) the Committee has the authority to close a Committee meeting by majority vote. A vote will be taken regarding whether to close the meeting, and the meeting may be closed thereafter. Any member of the public may file, for consideration by the Committee, a written statement concerning matters to be discussed. Statements should be submitted to Kevin Foster, Chief, National Maritime Initiative (2280), National Park Service, 1849 C Street N.W., Washington, D.C. 20240.

Barry Mackintosh,

Acting Chief Historian.

[FR Doc. 98–17310 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Update National Park Service Policies for Managing the National Park System

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is updating its policies for managing the National Park System. The policies are contained in Part One of a document titled Management Policies, which was last published in 1988. Interested parties are invited to provide information or suggestions that should be considered by the NPS. The NPS expects to have a draft of the updated Management Policies available for public review and comment by December 30, 1998.

DATES: Information from interested parties will be accepted until August 15, 1998.

ADDRESSES: Send information or suggestions to Bernard Fagan, National Park Service, Office of Policy, 1849 C Street NW, Room 3230., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bernard Fagan at (202) 208–7469.

SUPPLEMENTARY INFORMATION: The NPS is updating the policies that guide management of the National Park System. The policies are contained in Part One of a document titled Management Policies. In the 10 years since the document was last published, new laws, new technologies, new understandings of the living and non-living environment, and changes in our society have evolved to the point where the NPS's 1988 policies must be re-examined and updated where necessary. Some of those 1988 policies have been updated more recently through Director's Orders, which have been made available for public review and comment. Organizations and individuals with an interest in NPS Management Policies are invited to provide information or suggestions that should be considered by the NPS during the review process. The 1988 edition of NPS Management Policies that will be updated is posted on the Internet at <http://www.nps. gov/planning/mngmtplc/npsmptoc.html>. If you are not able to access this information by Internet and would like to receive a copy through the mail, please contact Bernard Fagan at the address listed above. The NPS expects to have a draft of the updated Management Policies available for public review and comment by December 30, 1998. It also will be posted on the NPS Internet site.

Dated: June 11, 1998.

Loran G. Fraser,

Chief, Office of Policy.

[FR Doc. 98–17375 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from New Mexico in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meet the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The seven cultural items are ceramic water vials, decorated with black geometric designs on a white slip.

Between 1920 and 1922, Edgar L. Hewett of the Museum of New Mexico acquired these cultural items from Antonia Tapia, a Rain Priest at the Pueblo of Pojoaque, also known as Posuwage. These objects are now in the collection of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico.

The cultural affiliation of these cultural items is clearly Pojoaque Pueblo as indicated through ethnographic description, museum records, and consultation with representatives of the Pueblo of Pojoaque. Representatives of the Pueblo of Pojoaque have also stated that these seven cultural items have ongoing historical, traditional, and cultural importance central to the tribe itsel, and no individual had or has the right to alienate them.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(4), these seven cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual.

The three cultural items consist of two carved fetish stones and a ceramic *cloud blower* pipe.

The only information available in museum records regarding these cultural items is that they were recovered from site LA 61, a known pre-contact component of the Pueblo of Pojoaque based on material culture and architecture.

The cultural affiliation of these cultural items is clearly Pojoaque Pueblo as indicated through ethnographic information, museum records, and consultation with representatives of the Pueblo of Pojoaque. Representatives of the Pueblo of Pojoaque also state that these three cultural items are needed by traditional Native American religious leaders for the practice of traditional religions by present-day adherents.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(3), these three cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these 10 items and the Pueblo of Pojoaque.

This notice has been sent to officials of the Pueblo of Pojoaque. Representatives of any other Indian tribe that believes itself to be culturally

affiliated with these objects should contact Patiricia House, Director, Museum of Indian Arts and Cultures/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344 before July 30, 1998. Repatriation of these objects to the Pueblo of Pojoaque may begin after that date if no additional claimants come forward.

Dated: June 23, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–17311 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from New Mexico in the Possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the human remains was made by Museum of Indian Arts and Culture/Laboratory of Anthropology professional staff in consultation with representatives of the Pueblo of Pojoaque.

In 1953, human remains representing two individuals were removed from the Pojoaque Grant site (LA 835) during legally authorized excavations under a National Park Service Federal Antiquities permit by Museum of New Mexico staff during a New Mexico State Highway and Transportation Department work project. No known individuals were identified. The two associated funerary objects are ceramic vessels.

Based on the associated funerary objects and other cultural material present, the Pojoaque Grant site has been identified as an Ancestral Puebloan site, occupied between 850—1100 A.D. Further, this site is located on Pueblo of Pojoaque tribal lands. Based on material culture, continuity of occupation, and oral history presented by representatives of the Pueblo of Pojoaque, this site is affiliated with the present-day Pueblo of Pojoaque.

Based on the above mentioned information, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Museum of Indian Arts and Culture/ Laboratory of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Pojoaque.

This notice has been sent to officials of the Pueblo of Pojoaque. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia House, Director, Museum of Indian Arts and Cultures/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344; before July 30, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Pojoaque may begin after that date if no additional claimants come forward.

Dated: June 23, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–17312 Filed 6–29–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on June 25, 1998, a proposed Consent Decree was lodged with the United States District Court for the District of Montana in *United States et al.* v. *Crown Butte Mines, Inc. et al.*, Civil Action No. CV–98–91–BLG–JDS. the proposed Consent Decree: (1) settles claims asserted by the United States and the State of Montana arising out of the release or threat of release of hazardous substances attributable to mining related activities on certain lands located within the New World Mining District in western Montana (the "Site"); (2) settles claims asserted in a related action also pending in the same court styled *Beartooth Alliance et al.* v. *Crown Butte Mines, Inc et al.*, Cause No. CV 93–154–BLG–JDS; and (3) satisfies and effectuates an agreement in principle entered August 12, 1996, between the United States, the Settling Defendants, and certain public interest groups relating to the termination of efforts to open a proposed gold mine in the New World Mining District (the "August 12 Agreement").

The defendants in the action brought by the United States and the State are Crown Butte Mines, Inc. and Crown Butte Resources Ltd (collectively referred to as "Crown Butte"). The Complaint filed by the United States and the State asserts claims on behalf of both governments under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA") and asserts claims on behalf of the State pursuant to the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, Chapter 10, part 7, M.C.A. ("CECRA"), to recover costs incurred in connection with response actions taken or to be taken at the Site, for recovery for injuries to natural resources, and to obtain injunctive relief requiring the defendants to take further response and/ or restoration actions at the Site.

Simultaneously with the filing of the Complaint, the United States and the State moved the Court to consolidate their action with the *Beartooth Alliance et al.* action. In that action, Beartooth Alliance, Greater Yellowstone Coalition, Northern Plains Resource Council, Northwest Wyoming Resource Council, Sierra Club, Gallatin Wildlife Association, Wyoming Wildlife Federation, Montana Wildlife Federation, and Wyoming Outdoor Council, all not for profit corporations (collectively referred to herein as "GYC"), brought claims against Crown Butte, Noranda Minerals Corp., Noranda Exploration, Inc., and Noranda Inc. alleging that the defendants were discharging pollutants into navigable waters of the United States from point sources in the New World Mining District in violation of Section 301(a) of

the Clean Water Act, 33 U.S.C. 1251–1387 ("CWA").

The parties to the consolidated actions are also parties to, or are interested in, the August 12 Agreement. The August 12, 1996 Agreement involved, among other things, the purchase by the United States of certain interests in properties in the New World Mining District on which Crown Butte proposed to develop a gold mine (the "District Property"), the escrow of a portion of the purchase monies for use in conducting response and/or restoration actions to address the effects of releases or threats of release of hazardous substances in the New World Mining District and the granting of a number of covenants by the parties to the Agreement. Through Pub. L. 105–83, 111 Stat. 1614, enacted November 14, 1998, Congress authorized the implementation of the Agreement and appropriated up to $65,000,000 for this purpose. With the lodging of the proposed Consent Decree the requirements of Pub. L. 105–83 have been satisfied. Entry of the proposed Consent Decree and the implementation of its provisions will satisfy the objectives and obligations contained in the August 12 Agreement.

Pursuant to the Consent Decree, Crown Butte will transfer, cause to be transferred, or relinquish to the United States those property interests that comprise the District Property. In return, the United States will pay Crown Butte $65,000,000. Immediately upon receipt of the payment from the United States, Crown Butte will pay into escrow $22,500,000 to be used by the United States, after consultation with the State, to implement response and/or restoration actions to address:

(1) Releases or threats of release of hazardous substances, pollutants, or contaminants at the Site; (2) injuries to natural resources resulting from such releases; and (3) other matters affecting water quality or natural resources in certain stream systems on or adjacent to the Site. In addition, the Consent Decree provides that any funds remaining after completion of actions noted in the preceding sentence will be used by the United States for other purposes and/or restoration actions within the New World Mining District. The proposed Consent Decree also contains undertakings by Crown Butte and certain named related companies to forebear in perpetuity any mining related activities in the New World Mining District.

The proposed Consent Decree provides for covenants not to sue from the United States, the State, and GYC in favor of Crown Butte and certain names related companies for claims pursuant to Sections 106 and 107(a) of CERCLA, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 3et seq., The Clean Water Act, 33 U.S.C. 1251 *et seq.*, and/or the CECRA, Title 75, chapter 10, Part 7, and the Montana Water Quality Act, Title 75, Chapter 5 MCA. In addition, the proposed Consent Decree provides for covenants from Crown Butte, GYC and the State in favor of the United States relating to conditions in the New World Mining District and the response and/or restoration actions to be performed there.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *Crown Butte Mines, Inc. et al.*, D.J. Ref. No. 90–11–3–1674.

The proposed Consent Decree and exhibits may be examined at the following locations: Gallatin National Forest, Supervisor's Office, 10 East Babcock, Ave., Federal Bldg. Boseman, Montana; Gardiner Ranger District, U.S. Highway 89 South, Gardiner, Montana; and, the Office of the United States Attorney, District of Montana, 301 South Park Ave., Helena, Montana, and 2929 Third Avenue, North, Suite 400, Billings, Montana.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $20.50 (without exhibits) or $31.00 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–17402 Filed 6–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1901–98]

Notice of the Pilot Test of the Compliance Measurement System at Ports-of-Entry To Measure Program Effectiveness at Ports-of-Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs the public that effective July 1, 1998, the Immigration and Naturalization Service (INS) will begin to test the immigration compliance measurement system known as the Inspections Traveler Examination (INTEX). The INTEXT system will provide the means for the INS to estimate how effective it is in identifying aliens who are attempting to illegally enter the United States through Ports-of-Entry. This compliance system will enable the INS to measure and improve its effectiveness in accomplishing its mission.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Johnnie Walton, Program Analyst, Immigration and Naturalization Service, Room 4064, 425 I Street, N.W., Washington, D.C. 20536, telephone (202) 305–2035 or fax (202) 514–8345.

SUPPLEMENTARY INFORMATION: The INS has created an outcome performance measurement system that gauges the level of compliance and the ability to achieve results in the area of border control at Ports-of-Entry. This compliance measurement system is scheduled to be piloted starting July 1, 1998, at 20 Ports-of-Entry (10 air and 10 land) as shown below.

Airports—Land Ports

New York, NY—San Ysidro, CA
Miami, FL—El Paso, TX
Los Angeles, CA—Detroit, MI
Dallas, TX—Brownsville, TX
Washington-Dulles, VA—San Luis, AZ
Detroit, MI—Del Rio, TX
San Juan, PR—Pacific Highway, WA
Seattle, WA—Progreso, TX
Phoenix, AZ—Calais, ME
St. Louis, MO—Columbus, NM

The compliance system requires that a random number of travelers, who have already been examined by INS Officers, be selected to undergo a supplementary inspection which will further examine their admissibility into the United States. The process includes a supplementary inspection that involves a detailed review of documents, databases, and personal items. All

travelers will be randomly subject to INTEX. Based on initial pilot tests conducted to date, U.S. citizens and certain alien travelers with diplomatic status will be detained no more than 3 to 5 minutes on average. The INTEX process for all other alien travelers will take an average of 30 minutes. Depending on the traffic volume of the POE, between one and five compliance inspections will be conducted per day at each POE. Conducting between one and five INTEX exams at pilot land border and air POEs will yield data concerning about 1,800 inspections over a 30-day period. This amount of data will enable the Inspections program to quantify program effectiveness in detecting inadmissible aliens through the primary inspections process.

Dated: June 25, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–17456 Filed 6–29–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Agency Information Collection Activities: Proposed Collection; Comment Request; Senior Technical Assistance Register (STAR)

AGENCY: Bureau of International Labor Affairs (ILAB), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Bureau of International Labor Affairs is soliciting comments concerning the proposed extension of the Senior Technical Assistance Register (STAR). The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comment must be submitted by August 31, 1998.

ADDRESSES: Comments are to be submitted to Bureau of International Labor Affairs, Department of Labor, Room S–5006, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 219–7633. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5613.

FOR FURTHER INFORMATION CONTACT: Contact Jack Luther, Office of Foreign Relations, Bureau of International Labor Affairs, U.S. Department of Labor, Room S–5006, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–7633 ext. 149. Copies of the referenced information collection request are available for inspection and will be mailed to persons who request copies by telephoning Jack Luther at (202) 219–7633 ext. 149.

SUPPLEMENTARY INFORMATION:

I. Background

The Senior Technical Assistance Register (STAR) is a program of the Bureau of International Labor Affairs of the United States Department of Labor which identifies persons interested in providing advisory services to developing countries in which the Department of Labor is providing development assistance. The Register identifies specialists in the fields of labor and social affairs who would be willing to volunteer their services to the Department for short term overseas technical assistance assignments in their particular areas of expertise.

II. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Senior Technical Assistance Register. Extension is necessary to continue to identify persons who would be interested in this program.

Type of Review: Extension.

Agency: Bureau of International Labor Affairs.

Title: Senior Technical Assistance Register (STAR).

OMB Number: 1225–0064.

Affected Public: Individuals or households.

Total Respondents: 10.

Frequency: On occasion.

Total Responses: 10.

Average Time per Response: 23 minutes.

Estimated Total Burden Hours: 230.

Total Annualized capital/startup costs: 0.

Total initial annual costs: (operating/maintaining systems or purchasing services): 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: June 25, 1998.

Sudha Haley,

Area Advisor, Near East, North Africa and South Asia.

[FR Doc. 98–17348 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of The Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension Welfare Benefits Administration.

Title: Notice of Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

OMB Number: 1210–0105 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 479.

Total Responses: 94,854.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 3,162 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 270,000.

Description: The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. This information collection request covers notifying participants and beneficiaries and to the federal government when a plan elects the increased cost exemption.

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: 1210–0106 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,364.

Total Responses: 3,527.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 118 hours.

Total annualized capital/startup costs: $2,420,000.

Total annual costs (operating/maintaining systems or purchasing services): $10,000.

Description: The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. Upon receipt of the notice, participants and beneficiaries may request and receive at no charge a summary of the information on which the exemptions were based. This information collection request covers the calculation and disclosure of information on which the exemption was based.

Agency: Pension and Welfare Benefits Administration.

Title: Notice of Group Health Plan's Use of Transition Period, and Posting Thereof.

OMB Number: 1210–0107 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 286.

Total Responses: 286.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 10 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $1,200.

Description: The Mental Health Parity Act of 1996 requires parity between the dollar limits imposed on mental health benefits and those imposed on medical/surgical benefits offered by group health plans and group health insurance coverage offered by issuers. Plans may be exempted from this requirement if parity would result in an increase in cost of at least one percent and participants and beneficiaries and the federal government are notified. Plans electing increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government and post a copy of the notice in the workplace. This information collection request covers notice and posting concerning the use of the transition period.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–17347 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Participation by OSHA Personnel in State Plan Enforcement Litigation

On January 21, 1998, the Office of the Solicitor of the Department of Labor issued a memorandum to the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) concerning participation by OSHA Personnel in State Plan Enforcement Litigation. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, telephone number (202) 219–8188, ext. 135.

Signed at Washington, DC this 23rd day of June 1998.

Ronald G. Whiting,

Deputy Solicitor of Labor for Regional Operations.

MEMORANDUM FOR CHARLES JEFFRESS

Assistant Secretary for Occupational Safety and Health

From: Marvin Krislov, Deputy Solicitor for National Operations

Ronald Whiting, Deputy Solicitor Regional Operations

Subject: Participation by OSHA Personnel in State Plan Enforcement Litigation

This is in response to requests by OSHA for advice as to the application of the Department of Labor regulations at 29 CFR sec. 2.20 *et seq.*, to participation by employees of the Occupational Safety and Health Administration in occupational safety and health enforcement cases brought by states which administer occupational safety and health state plans approved by OSHA under section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667.

Regulations at 29 CFR § 2.20 (frequently referred to as the "subpoena regulation") provide that the appropriate Deputy Solicitor of Labor shall instruct Departmental employees how to respond to a request for information or testimony in connection with any litigation in which the U.S. Department of Labor is not a party. The public policies underlying the subpoena regulation include the following: (1.) conservation of governmental resources; (2.) minimizing governmental involvement in controversial matters unrelated to official business; (3.) centralization of the dissemination of information; (4.) avoiding the expenditure of government time and money in aid of private purposes. It may be of interest to you that OSHA receives by far a greater number of

testimony requests than any other agency in the Department of Labor. Without the subpoena regulations, OSHA's available personnel resources would be significantly diminished by the testimony of its employees in private civil suites.

The Office of the Solicitor recognizes, however, that requests for assistance in OSHA enforcement litigation arising under federally-approved state plans present different circumstances from cases involving private litigation, due to the partnership between federal OSHA and the states which is created under section 18 of the OSH Act. Like federal OSHA, states with federally-approved plans are responsible, among other things, for adopting and enforcing workplace safety and health standards. Standards and enforcement procedures under approved state plans are required to be "at least as effective as" federal standards and procedures, and in the majority of instances are nearly identical. OSHA monitors the operation of each state plan, and when certain effectiveness criteria are met, state enforcement replaces that of federal OSHA in areas covered by the approved plan. States receive federal OSHA matching grants of up to 50% of the costs of administering their approved plans. In addition, OSHA affords technical support to its sister agencies in the form of compliance officer training, laboratory services, and technical assistance in implementing new or complex standards.

In view of the shared responsibilities of OSHA and federally-approved state plans under the Act, requests for participation by Department of Labor personnel in enforcement cases arising under a federally-approved state plan, where federal personnel have directly participated by either taking part in an on-site inspection or by furnishing substantial technical assistance to the state in the preparation of its case, will generally be approved by the Deputy Solicitor under the DOL subpoena regulation. In making such decisions we will, of course, consider the extent to which such personnel would be available to provide evidence in a comparable enforcement proceeding under the federal OSH Act. Thus, for example, federal OSHA compliance and technical personnel will generally be made available in contested cases to provide testimony concerning their observations while accompanying state inspectors, or to explain technical issues on which they have produced input during the development of the state's case. Factors such as the relevance of the requested testimony, the competence of the intended witness to testify on a particular issue, and whether any privileges might apply, may affect the availability of a federal witness, just as it does in federal enforcement cases. There may be other factors which could affect approval in individual cases. The policy outlined above does not apply to the availability of witnesses to provide official statements of agency policy or render interpretations of standards during litigation; such interpretations are normally rendered by the agency only through rulemaking, letters of interpretation, in court pleadings or in other official documents.

In summary, approval will generally be granted for participation by OSHA staff in contested enforcement cases under federally-approved state plans. As discussed above we will, of course, consider the factors present in each individual case. This policy is based upon the unique federal-state enforcement scheme created by the federal OSH Act, and does not affect the availability of DOL personnel to testify in connection with any other DOL-administered program. Requests for testimony in connection with non-OSHA related litigation, or in connection with OSHA-related cases in which DOL is not a party and which do not fall within the category of cases described above, will continue to be evaluated individually under the criteria and procedures of 29 CFR 2.20 *et seq.*

[FR Doc. 98–17309 Filed 6–29–98; 8:45 am]
BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 92–6

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 92–6. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before August 31, 1998.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarify the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782 (this is not a toll-free number), FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act.

II. Current Actions

This existing collection of information should be continued because without the relief provided by this exemption, certain aspects of these transactions might be prohibited by the Employee Retirement Income Security Act. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption requires the pension plan to inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. If the participant elects not to purchase the contract, the relative, the employer, another plan, the owner-employee or the shareholder-employee may purchase the contract from the plan upon receipt by the plan of written consent of the participant. The disclosure

requirements of the exemption do not apply if the contract is sold to the plan participants. The disclosure requirements incorporated within the exemption are intended to protect the rights of plan participants by (1) putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured and (2) giving them the right of first refusal to purchase such contracts.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 92–6.

OMB Number: 1210–0063.

Recordkeeping: 6 years.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 7,960.

Frequency: On occasion.

Total Responses: 7,960.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 1,327.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter public record.

Dated: June 25, 1998.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 98–17344 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 82–63

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 82–63. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before August 31, 1998.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarify the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–4782 (this is not a toll-free number), FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

1. Background

Prohibited Transaction Class Exemption 82–63 allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act.

II. Current Actions

This existing collection of information should be continued because without the relief provided by this exemption, certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan would be subject to the prohibitions of section 406 of the Employee Retirement Income Security Act. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The class exemption has two basic information collection requirements. The first requirement is that the compensation be paid in accordance with a written instrument authorized by a non-lending fiduciary, and the second is that the lending fiduciary furnish the authorizing fiduciary with certain information.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 82–63.

OMB Number: 1210–0062.

Recordkeeping: 6 years.

Affected Public: Business of other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 18,245.

Frequency: On occasion.

Total Responses: 36,490.

Average Time Per Response: 5 minutes.

Estimated Total Burden Hours: 3,041.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 1998.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 98–17345 Filed 6–29–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Exemption 96–62

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork

Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Exemption 96–62, the expedited process for approval of exemptions. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the contract section of this notice.

DATES: Written comments must be submitted on or before August 31, 1998.

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782 (not a toll-free number), FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

Background

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the Secretary of Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published Prohibited Transaction Exemption 96–62, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B. This class exemption permits a plan to engage in a transaction which might otherwise be prohibited following a demonstration to the Department that the transaction: (1) is substantially similar to those described in at least two prior individual exemptions granted by the Department, and (2) presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. Under the class exemption, a party may proceed with a transaction in as little as 78 days from the acknowledgement of receipt by the Department of a written submission filed in accordance with the terms of the class exemption. This ICR includes the information required to be included in this submission, and the notice to interested parties which is required under the class exemption.

II. Current Action

Beacause this ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA, the Department intends to request an extension of this ICR beyond its September 30, 1998 expiration date.

Type of Review: Extension.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 96–62.

OMB Number: 1210–0098.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 45.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–17346 Filed 6–9–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–083)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before August 31, 1998.

ADDRESSES: All comments should be addressed to Ms. Sue McDonald, Mail Code GS4, Lyndon B. Johnson Space Center, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700–0007.

Type of review: Extension.

Need and Uses: Federal law requires that Johnson Space Center keep records of each radioactive material transfer.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Number of Respondents: 50.

Responses Per Respondent: 2.

Annual Responses: 100.

Hours Per Request: ½ hr.

Annual Burden Hours: 58.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–17280 Filed 6–29–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–084]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that IDEA, LLC of Beltsville, MD has applied for an exclusive license to practice the invention described and claimed in NASA Case No. KSC–11809, entitled "Detector for Particle Surface Contamination," which is assigned to

the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATE: Responses to this notice must be received by August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Code MM–E, John F. Kennedy Space Center, FL 32899.

Dated: June 22, 1998.

Edward A. Frankle,

General Counsel

[FR Doc. 98–17281 Filed 6–29–98; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, June 29, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Two Personnel Actions. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business requires that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–17470 Filed 6–26–98; 11:10 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Crystal River Unit 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72 issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3, located in Citrus County, Florida.

The proposed amendment would allow operation with a number of indications previously identified as tube end anomalies (TEA) and multiple tube end anomalies (MEA) in the Crystal River Unit 3 (CR–3) Once Through Steam Generator (OTSG) tubes. The duration of the proposed license amendment would be until CR–3's next refueling outage, currently scheduled for fall 1999. This proposed change may be necessary due to the potential condition of noncompliance with CR–3 Improved Technical Specification 5.6.2.10.4.b. Such a condition may result from confirmation of an ongoing re-analysis of eddy current testing (ECT) data, of indications previously identified as TEAs and MEAs in the upper roll expansion of the OTSG upper tube sheet, as now being within the pressure boundary of the tubes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

This evaluation addresses the potential effects of operating with TEAs and MEAs within the pressure boundary cladding region. The indications remaining in service are within the upper end of the tube pressure boundary. Two accidents analyzed in the SAR [safety analysis report] must be evaluated: Steam Generator Tube Rupture and Main Steam Line Break.

The steam generator tube rupture accident assumptions bound the possible effects of leaving these indications in service. A complete circumferential severance of a tube is assumed in the accident scenario. The location of these indications in the upper tubesheet precludes a tube rupture from occurring (the tubes are restrained by the tubesheet). Additionally, in the event of a complete circumferential severance, the tube will not retract from the tubesheet. Thus, the probability of occurrence of this accident is not increased by leaving these indications in service.

The main steam line break accident is not initiated by the condition of the tubing. However, an assumption of one gpm primary-to-secondary leakage through the OTSG is assumed in the MSLB [main steam line break] accident analysis. Calculated cumulative leakage, assuming all of the indications are leaking, is determined to be well below one gpm, thus the accident analysis initial assumptions bound the existing condition of the OTSGs. Thus, it is concluded that the probability of occurrence of a main steam line break is not increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes or accident scenarios are created by allowing operation with TEAs and MEAs extending within the tubes' pressure boundary. The TEAs and MEAs remaining in service are within the upper end of the tube pressure boundary and even in the event of a complete circumferential severance, the tube will not retract from the tubesheet. Therefore, the tubesheet hoop effect will still act to minimize leakage. The postulated potential leakage generated from allowing these indications to remain in service is bounded by the CR–3 MSLB scenario. The MSLB scenario has been thoroughly evaluated and the potential damage to the steam generator tubes is not increased. This change does not increase the risk of a plant trip or challenge other safety systems. Therefore, this change does not create a possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

ITS Bases 3.4.12 contains relevant information pertaining to the limitations on RCS [reactor coolant system] leakage. These Bases discuss the one gpm primary-to-secondary leakage assumed for a main steam line break accident as well as the steam generator tube rupture accident. As discussed, the maximum calculated accident leakage, assuming all of these indications leak, is well below one gpm. Therefore, the margin of safety as defined in the ITS bases is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 30, 1998 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 18, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 23rd day of June 1998.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17354 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–18 issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) to reflect a planned modification to the spent fuel pool (SFP) storage racks. Specifications associated with SFP boron concentration, fuel assembly storage, and maximum limit on the number of fuel assemblies which can be stored in the SFP would be revised.

The Commission had previously issued a Notice of Consideration of Issuance of an Amendment published in the **Federal Register** on May 12, 1998 (63 FR 26213). This notice contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene.

Due to oversight, the May 12, 1998, Notice of Consideration of Amendment did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by the Commission's regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined below, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of requests for a hearing and petitions to intervene, as well as the admission of contentions.) The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By July 30, 1998, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing and petition for leave to intervene seeking to invoke the hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing and petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing and a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 31, 1997, as supplemented June 18, 1997, October 10, 1997, October 20, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 30, 1998, April 23, 1998, April 27, 1998, May 8, 1998, and May 22, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 24th day of June 1998.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17353 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366 and License Nos. DPR–57 and NPF–5]

Southern Nuclear Operating Company Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Confirmatory Order Modifying License; Effective Immediately

I

Southern Nuclear Operating Company, Inc. (SNC/the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5, which authorizes operation of Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers" and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years.

SNC has committed to complete final implementation of Thermo-Lag 330–1 fire barriers corrective actions at both Hatch units by startup of Unit 2 from the fall 1998 refueling outage. The NRC staff has concluded that this schedule is reasonable based on the amount of installed Thermo-Lag and the complexity of the plant-specific fire barrier configurations and issues. In order to remove compensatory measures, such as fire watches, it has been determined the resolution of the Thermo-Lag corrective actions by SNC must be completed in accordance with the current SNC schedule. By letter dated April 29, 1998, the NRC staff notified SNC of its plan to incorporate SNC's schedule commitment into a requirement by issuance of an order and requested consent from the licensee. By letter dated June 2, 1998, the licensee provided its consent to issuance of a Confirmatory Order.

III

The licensee's commitment as set forth in its letter of June 2, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the licensee's commitment in its June 2, 1998, letter be confirmed by this Order. The licensee has agreed to this action. Based on the above, and the licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered*, effective immediately, that:

SNC shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Plant Hatch Units 1 and 2, described in the SNC submittal to the NRC dated December 13, 1994, March 28, 1995, and May 11, 1998 (HL–5632), by startup of Unit 2 from the fall 1998 refueling outage.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attention: Rulemaking and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II, P.O. Box 2257, Atlanta, Georgia 30303–3415, and to the licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 24th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17351 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 102nd meeting on July 20–22, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, July 20, 1998—8:30 A.M. until 6:00 p.m.

Tuesday, July 21, 1998—8:30 A.M. until 6:00 p.m.

Wednesday, July 22, 1998—8:30 A.M. until 4:00 p.m.

A. Planning For and Meeting With the Nuclear Regulatory Commission

The Committee will prepare for and meet with the Commission to discuss items of mutual interest. Topics will include the ACRS Plans and Priorities list and past Committee reports on the interim guidance in support of the final rule on radiological criteria for license termination, NRC waste-related research, and risk-informed, performance-based regulation. Observations will also be presented on the recent two-day working group discussions on the near-field environment and the performance of engineered barriers in the Yucca Mountain Repository. The Committee is currently scheduled to meet with the Commission on July 21, 1998 at 1:30 p.m.

B. Yucca Mountain Regulatory Framework

The Committee will be briefed by the staff on the status and content of the site-specific regulatory framework to be used to judge the acceptability of DOE's license application for disposal of high-level waste at the proposed Yucca Mountain, NV site. Topics might include a discussion of the proposed relevant 10 CFR Part 63, the Issue Resolution Status Report (IRSR) on Total System Performance Assessment (TSPA) and a description of important measures developed by the staff for application to the proposed repository as well as other waste disposal facilities.

C. Generic LLW Disposal Facility Criticality Issues

The Committee will review recent staff papers on the potential for criticality and the need to continue research on post-disposal criticality at low-level radioactive waste disposal facilities.

D. Development of a Standard Review Plan (SRP) for Decommissioning

The Committee will be briefed by the staff on its plans to develop an SRP for use by the NRC in reviewing and evaluating nuclear facility decommissioning plans.

E. Meeting With NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards

The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

F. Preparation of ACNW Reports

The Committee will discuss planned reports, including risk-informed, performance-based regulation, waste related research, regulatory guides dealing with decommissioning, and other topics discussed during this and previous meetings as the need arises.

G. Committee Activities/Future Agenda

The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

H. Miscellaneous

The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings was published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting Chief, Nuclear Waste Branch, Mr. Howard J. Larson, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Acting Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson, Acting Chief, Nuclear Waste Branch (telephone 301/415–6805), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: June 24, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–17355 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 29, July 6, 13, and 20, 1998.

PLACE: Commissioner's Conference Room 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 29

Tuesday, June 30

10:00 a.m
Meeting with Commonwealth Edison (Public Meeting) (Contact: Stewart Richards, 301–415–1395)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

2:00 p.m.
Briefing on Performance Assessment Progress in HLW, LLW, and SDMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285)

Week of July 6—Tentative

Thursday, July 9

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of July 13—Tentative

Friday, July 17

11:30 a.m.
Affirmation Section (Public Meeting) (if needed)

Week of July 20—Tentative

Tuesday, July 21

1:30 p.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

3:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov.SECY.smj.schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: June 25, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–17534 Filed 6–26–98; 1:51 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
ALABAMA	Col. L. N. Hagan, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4378.	Same.
ALASKA	Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172.	Same.
ARIZONA	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212.	Same.
ARKANSAS	David D. Snellings, Jr., Director, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136.	Same.
CALIFORNIA	Sgt. Meg Planka, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 327–3310, 24 hours: (916) 445–2211.	Same.
COLORADO	Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501.	Same.
CONNECTICUT	Commissioner Arthur J. Rocque, Jr., Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3001, 24 hours: (860) 424–3333.	Same.
DELAWARE	Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739–4321, 24 hours: (302) 739–5851.	Same.
FLORIDA	Harlan Keaton, Manager, Bureau of Radiation Control, Environmental Radiation Control, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095.	Same.
GEORGIA	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559–6600.	Same.
HAWAII	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State of Hawaii, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4424.	Same.
IDAHO	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7206, 24 hours: (208) 334–2900.	Same.
ILLINOIS	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900.	Same.
INDIANA	Melvin J. Carraway, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248.	Same.
IOWA	Ellen M. Gordon, Administrato:, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113, (515) 281–3231.	Same.
KANSAS	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1409, 24 hours: (785) 296–3176.	Same.
KENTUCKY	John A. Volpe, Ph.D., Manager, Radiation and Toxic Agents Section, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621–0001, (502) 564–3700.	Same.
LOUISIANA	Captain Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896–6614, (504) 925–6113.	Same.
MAINE	Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000.	Same.
MARYLAND	First Sgt. Wellington Gray, Maryland State Police, Communication Services Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4208, 24 hours: (410) 653–4200.	Same.
MASSACHUSETTS	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 305 South Street, 7th Floor, Jamaica Plain, MA 02130, (617) 727–6214.	Same.
MICHIGAN	Captain Stephen D. Madden, Commanding Officer, Special Operations Division, Michigan State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336–6263, 24 hours: (517) 336–6100.	Same.
MINNESOTA	John R. Kerr, Assistant Director, Planning Branch, Division of Emergency Management, Department of Public Safety, B5—State Capitol, 75 Constitution Avenue, St. Paul, MN 55155, (612) 296–0481, 24 hours: (612) 649–5451.	Same.
MISSISSIPPI	James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 352–9100.	Same.
MISSOURI	Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748.	Same.
MONTANA	George Eicholtz, Coordinator, Radiological Health Program, Montana DPHHS, Licensure Bureau, P.O. Box 202951, Helena, MT 59620–2951, (406) 444–5246..	[1]
NEBRASKA	Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545.	Same.
NEVADA	Stanley R. Marshall, Supervisor, Radiological Health Section, Health Division, Department of Human Resources, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (702) 687–5394, 24 hours: (702) 687–5300.	Same.
NEW HAMPSHIRE	Richard M. Flynn, Commissioner, New Hampshire Department of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–2791, (603) 271–3636 (24 hours).	Same.
NEW JERSEY	Kent Tosch, Manager, Bureau of Nuclear Engineering, Department of Environmental Protection, CN 415, Trenton, NJ 08625–0415, (609) 984–7701.	Same.
NEW MEXICO	Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628, (505) 476–9620, 24 hours: (505) 827–9126.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
NEW YORK	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222.	Same.
NORTH CAROLINA	Line Sgt. Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 29590, Raleigh, NC 27626–0590, (919) 733–5282, After hours: (919) 733–3861.	Same.
NORTH DAKOTA	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–2121.	Same.
OHIO	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235–2206, (614) 889–7150.	Same.
OKLAHOMA	Bob A. Ricks, Commissioner, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424.	Same.
OREGON	David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy 625 Marion Street, NE, Salem, OR 97310, (503) 378–6469.	Same.
PENNSYLVANIA	John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA, 17105–3321, (717) 651–2001.	Same.
RHODE ISLAND	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277–3500; ext. 150.	Same.
SOUTH CAROLINA	Virgil R. Autry, Director, Division of Radioactive Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4244, Emergency: (803) 253–6488.	Same.
SOUTH DAKOTA	Gary N. Whitney, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5060, (605) 773–3231.	Same.
TENNESSEE	John D. White, Jr., Director, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1504, (615) 741–0001, After hours:, (Inside TN) 1–800–262–3300, (Outside TN) 1–800–258–3300.	Same.
TEXAS	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6688.	(2)
UTAH	William J. Sinclair, Director, Division of Radiation Control 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123.	Same.
VERMONT	Lieutenant Col. John H. Sinclair, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345.	Same.
VIRGINIA	L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674–2400.	Same.
WASHINGTON	Lieutenant Gail R. Otto, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600, (360) 753–0565, After hours: (253) 536–6210 (ext. 0).	Same.
WEST VIRGINIA	Colonel Gary L. Edgell, Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
WISCONSIN	Steven D. Sell, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232.	Same.
WYOMING	Captain L.S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708, (307) 777–4317, 24 hours: (307) 777–4321.	Same.
DISTRICT OF COLUMBIA	Norma J. Stewart, Program Manager, Pharmaceutical, Radiological, and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, DC 20001, (202) 727–7218, After hours: (202) 727–6161.	Same.
PUERTO RICO	Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767–8056 or (787) 767–8181.	Same.
GUAM	Jesus T. Salas, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 475–1658/9.	Same.
VIRGIN ISLANDS	Roy L. Schneider, Governor, Governor's Office, 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802, (809) 774–0001.	Same.
AMERICAN SAMOA	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

[1] Jim Greene, Administrator, Disaster & Emergency Services, P.O. Box 4789, Helena, MT 59604, (406) 841–3911, same.
[2] Col. Dudley M. Thomas, Director, Texas Department of Public Safety, Attn: EMS Tech. Hazards, P.O. Box 4087, Austin, TX 78773–0001, (512) 424–2429, (512) 424–2277 (24 hrs).

Questions
should be di
Office of Stat
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DC 20555 (IN
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Dated at Roc
of June 1998.

For the Nucl
Richard L. Ba
Director, Offic

[FR Doc. 98–16

BILLING CODE 75

SECUTITIES
COMMISSIO

[Investment C
23265; 812–10

Bond Fund S
Application

June 23, 1998.

AGENCY: Secu
Commission

ACTION: Notic
order under s
Investment C
"Act") for an
12(d)(1)(G)(i)

SUMMARY OF
Applicants s
permit a func
section 12(d)
investments
instruments.

APPLICANTS:
Centennial A
Centennial C
Centennial G
Centennial M
Centennial N
Centennial T
Oppenheime
Fund, Oppen
Appreciation
Reserves, Op
Income Fund
Fund, Oppen
Markets Fun
Fund, Oppen
Oppenheime
Oppenheime
Oppenheime
Fund, Oppen
Minerals Fun
Fund, Oppen
Oppenheime
Oppenheime
Oppenheime
Fund, Oppen
Company Fu
Cap Growth
Cap Value Fu
Term Govern
Main Street

Questions regarding this matter should be directed to Spiros Droggitis, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (INTERNET Address: SCD@NRC.GOV) or at (301) 415–2367.

Dated at Rockville, Maryland, this 18th day of June 1998.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 98–16912 Filed 6–29–98; 8:45 am]

BILLING CODE 7590–01–P

SECUTITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23265; 812–10936]

Bond Fund Series, et al.; Notice of Application

June 23, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption for section 12(d)(1)(G)(i)(II).

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) of the Act to make investments in securities and other instruments.

APPLICANTS: Bond Fund Series, Centennial America Fund, L.P., Centennial California Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Tax Exempt Trust, Centennial Tax Exempt Trust, Oppenheimer California Municipal Fund, Oppenheimer Capital Appreciation Fund, Oppenheimer Cash Reserves, Oppenheimer Champion Income Fund, Oppenheimer Core Equity Fund, Oppenheimer Developing Markets Fund, Oppenheimer Discovery Fund, Oppenheimer Enterprise Fund, Oppenheimer Equity Income Fund, Oppenheimer Global Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Growth Fund, Oppenheimer High Yield Fund, Oppenheimer Integrity Funds, Oppenheimer International Bond Fund, Oppenheimer International Growth Fund, Oppenheimer International Small Company Fund, Oppenheimer Large Cap Growth Fund, Oppenheimer Large Cap Value Fund, Oppenheimer Limited-Term Government Fund, Oppenheimer Main Street Funds, Inc.®, Oppenheimer MidCap Fund, Oppenheimer Money Market Fund, Inc., Oppenheimer Mult-State Municipal Trust, Oppenheimer Multiple Strategies Fund, Oppenheimer Municipal Bond Fund, Oppenheimer Municipal Fund, Oppenheimer New York Municipal Fund, Oppenheimer Quest Capital Value Fund, Inc., Oppenheimer Quest for Value Funds, Oppenheimer Quest Global Value Fund, Inc., Oppenheimer Quest Value Fund, Inc., Oppenheimer Real Asset Fund, Oppenheimer Series Fund Inc., Oppenheimer Stable Value Fund, Oppenheimer Strategic Income Fund, Oppenheimer Total Return Fund, Inc., Oppenheimer U.S. Government Trust, Oppenheimer Variable Account Funds, Oppenheimer World Bond Fund, Panorama Series Fund, Inc., Rochester Fund Municipals, and Rechester Portfolio Series (Collectively, the "Existing Funds"), Oppenheimer Funds, Inc. ("OFI"), Oppenheimer Real Asset Management ("ORAM"), Centennial Asset Management Corporation ("CAMC") (collectively, the "Advisers"), and Oppenheimer Funds Distributor, Inc. ("OFDI"), including each applicant's successor in interest.[1]

FILING DATES: The application was filed on December 30, 1997, and amended on March 10, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC order a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicants, Two World Trade Center, 34th Floor, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Existing Funds is organized as either a Maryland corporation, a Massachusetts business trust, or a Delaware limited partnership, and is an open-end management investment company registered under the Act. Several of the Existing Funds are organized as series companies. Applicants request that the relief apply to any registered open-end management investment company or series thereof which in the future is part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Existing Funds, and for which OFDI, CAMC, or any entity controlled by OFDI or CAMC, acts as principal underwriter, or for which OFI, ORAM, CAMC, or any entity controlled by OFI, ORAM, or CAMC, acts as investment adviser (together with any future series of Existing Funds, the "New Funds").[2] The New Funds and the Existing Funds are collectively referred to as the "Funds" and individually as a "Fund."

2. The Funds will be designated as either Mixed Funds or Core Funds. Each Mixed Fund will invest in a combination of Core Funds and, pursuant to the relief requested in the application, in other securities that are consistent with the Fund's stated investment objectives and policies ("Additional Portfolio Investments"). Applicants want to have the flexibility to invest in Additional Portfolio Investments so that the Mixed Funds can take advantage of available investment opportunities as well as make investments in the Core Funds. OFI or one of its subsidiaries, CAMC, or ORAM, each an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such

[1] "Successor in interest" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing investment companies that currently intend to rely on the requested order named as applicants, and any New Fund that subsequently relies on the order will comply with the terms and conditions of the application.

securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G).

3. Applicants state that the investment by the Mixed Funds in the Core Funds will comply with section 12(d)(1)(G) of the Act, with the exception of the requirement in section 12(d)(1)(G)(i)(II) that the Mixed Funds limit their other investments to Government securities and short-term paper.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from section 12(d)(1)(G)(i)(II) to permit the Mixed Funds to invest in Additional Portfolio Investments as described in the application. Applicants believe that the Mixed Funds' proposed investments in Additional Portfolio Investments do not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Mixed Funds from investing in the Additional Portfolio Investments as described in the application.

2. Before approving any investment advisory contract for a Mixed Fund, the directors of the Mixed Fund, including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that the advisory fee, if any, charged under the contract is based on services provided that are in addition to, rather than duplicative of, services provided under the contracts of any Core Fund in which the Mixed Fund may invest.These findings and their basis will be recorded fully in the minute books of the Mixed Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17295 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23268; 812–11064]

The Emerging Germany Fund Inc.; Notice of Application

June 24, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

Summary of Application: Applicant, The Emerging Germany Fund, Inc., a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of its net asset value.

Filing Date: The application was filed on March 13, 1998 and amended on May 28, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 20, 1998 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Four Embarcadero Center, San Francisco, CA 94111–4189, Attention: Robert J. Goldstein.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is registered under the Act as a closed-end management investment company and is organized as a Maryland Corporation. Applicant's investment objective is long-term capital appreciation, which applicant seeks to obtain by investing primarily in equity and equity-linked securities of German companies. Applicant's investment adviser is Dresdner RCM Global Investors LLC, an investment adviser registered under the Investment Advisers Act of 1940.

2. On February 12, 1998, applicant's board of directors adopted a distribution policy with respect to applicant's common stock that calls for quarterly distributions of approximately 2.5% of applicant's average weekly net asset value, for an annual total of at least 10% of its average weekly net asset value (the "Distribution Policy").

3. Applicant states that the Distribution Policy will provide a steady cash flow to its shareholders, and, during periods when its per share net asset value is increasing, a means for shareholders to receive on a regular basis some of the appreciation in value of their shares. Applicant also believes that the Distribution Policy plays a role in reducing the discount from net asset value at which applicant's shares typically trade.

4. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect the Distribution Policy.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that applicant may make with respect to any one year, would prevent the normal operation of its Distribution Policy whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns on capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added as an "extra" to one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Distribution Policy, or retained by applicant (with applicant paying taxes on the retained amounts). Applicant asserts that the application of rule 19b–1 to its Distribution Policy may cause anomalous results and create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains and dividends from investment income. Applicant states that the Distribution Policy has been disclosed in a special letter to its shareholders, and applicant will disclose the Policy in future quarterly and annual reports to shareholders. Applicant further states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or return of capital) will accompany each distribution (or the conformation of the reinvestment under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution received during the year will be disclosed to each shareholder of applicant who received distributions during the year (including shareholders who shares during the year). Applicant expects to include disclosure describing the amount and source of distributions under the Distribution Policy on a cumulative basis for the full fiscal year either in (i) the statement showing the amount and source of the quarterly distribution paid in the last quarter of each fiscal year, or (ii) in a separate statement mailed to shareholders shortly after year-end.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend") where the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

5. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicant asserts, however, that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that any Commission order granted the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17385 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23269; File No. 812–11092]

Variable Insurance Products Fund, et al.

June 24, 1998.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from Sections 9(a), 13(a), 15(a) and 15(d) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an amended order to permit shares of the Variable Insurance Products Fund, Variable Insurance Products Fund II, and Variable Insurance Products Fund III (together, the "Funds"), as well as shares of any future funds for which Fidelity Management & Research Company ("FMR") or any affiliate of FMR serves as the investment manager, advisor, principal underwriter, or sponsor ("Future Funds") to be issued to and held by qualified pension and retirement plans outside the Separate account context ("Qualified Plans").

APPLICANTS: Variable Insurance Products Fund ("VIPF"), Variable Insurance Products Fund II ("VIPF II"), and Variable Insurance Products Fund III ("VIPF III").

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FILING DATE: The application was filed on March 24, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 20, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street, N7A, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Michael B. Koffler, Attorney, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Funds is a Massachusetts business trust and is registered under the 1940 Act as an open-end diversified management investment company. VIPF and VIPF II presently consist of five portfolios each, and VIPF III currently consists of three portfolios. Additional portfolios may be added in the future. The Funds currently serve as the underlying investment vehicle for separate accounts supporting variable annuity contracts and variable life insurance policies issued by various insurance companies.

2. FMR, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser for each of the Funds.

3. The Commission previously granted exemptive relief (the "Original Orders") to the extent necessary to permit shares of the Funds and Future Funds to be sold to and held by separate accounts of both affiliated and unaffiliated life insurance companies in support of variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, "Variable Contracts"). Separate accounts owning shares of the Funds and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding."

5. The Original Orders do not expressly address the sale of shares of the Funds or any Future Funds to Qualified Plans. Applicants propose that the Funds and any Future Funds be permitted to offer and sell shares of the Funds to Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, exempting scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (and any comparable rule) thereunder, respectively, to the extent necessary to permit shares of the Funds and any Future Funds to be sold to and held by Qualified Plans.

2. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available, however, only where the management investment company underlying the separate account ("underlying fund") offers its shares exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company. Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of an underlying fund to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) also provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of an underlying fund to Qualified Plans.

5. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants state that changes in the federal tax law have created the opportunity for each Fund to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying variable Contracts. Treasury Regulations provide that, to meet the diversification requirements, all of the

beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

9. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. Applicants maintain that the relief previously granted from Section 9(a) in the Original Orders will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Qualified Plans use such Funds. Applicants maintain that applying the requirements of Section 9(a) because of investment by Qualified Plans would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employment Retirement Income Security Act ("ERISA"), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fudiciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in one of the Funds, Applicants believe that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or share funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. Applicants maintain that the purchase of shares of the Funds by Qualified Plans that provide voting right does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants state that there is very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Applicants note that the Treasury Regulations specifically permit qualified pension or retirement plans and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or revenue rulings thereunder, present any inherent conflicts of interest.

16. Applicants not that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

17. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

18. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds. Applicants note that state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

19. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

20. Applicants state that the sale of shares of the Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit variable contractowners by promoting economies of scale, by permitting safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

21. Applicants assert that, regardless of the type of shareholder in each Fund, FMR is or would be contractually and otherwise obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of such Fund (the "Board"). FMR works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identity of the shareholders. Thus, each Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the Funds to Qualified Plans.

Conditions for Relief

Applicants consent to the following conditions:

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a portfolio (or class thereof) of a Fund (a "Participant") shall report any potential or existing conflicts to the applicable Board. A Participant will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. If pass-through voting is applicable, this includes, but is not limited to, an obligation by each Particpant to inform the Board whenever it has determined to disregard the voting instructions of its participants. The responsibility to report such conflicts and information, and to assist the Board will be the contractual obligations of the Participant under its agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in such Qualified Plan.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the contractowners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable life insurance contractowners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of a Board of a Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their expense and to the extent reasonably practicable (as determined

by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of a Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in such Qualified Plans. For purposes of this condition, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund, or FMR be required to establish a new funding medium for any Variable Contract. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan mades such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be make known promptly and in writing to all Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of various contractowners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of such Fund will monitor events in order to identify the existence of any material conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, the Participants shall submit to each Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

10. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a portfolio (or class thereof) of such Fund unless such Qualified Plan executes a fund participation agreement with the relevant Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusion

For the reasons summarized above, Applicants asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17386 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40111); File No. SR–CBOE–97–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Definition of Stop Orders

June 23, 1998.

I. Introduction

On August 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE or Exchange"), filed with the Securities and Exchange Commission ("SEC or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 6.53 ("Rule"), governing the definition of option stop orders, to clarify that option stop orders on the CBOE are triggered when the option contract reaches a specified price "on the CBOE floor." The proposed rule change was published for comment in Securities Exchange Act Release No. 39100 (September 19, 1997), 62 FR 50644 (September 26, 1997). No comments were received on the proposal.

On May 26, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] This order approves the proposal and approves

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephanie C. Mullins, Attorney, CBOE, to Mike Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated May 26, 1998 ("Amendment No. 1"). In Amendment No. 1, the CBOE amends the filing by clarifying that: (1) an option stop order is triggered by a trade, as well as by a bid or offer; (2) while the options markets do have access to information from other exchanges, they do not have an electronic linkage that provides for the transmission of orders similar to the Intermakert Trading System; and (3) while the CBOE does not explicitly prohibit trade-throughs, Rule 6.73(a) requires a floor broker "to use due diligence to execute the order at the best price or prices available to him in accordance with the rules." and in some circumstances, a floor broker may determine that he should try to execute his order on another market.

Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The CBOE proposes to amend its Rule 6.53 ("Rule") governing the definition of stop orders to clarify that an option stop order on the CBOE is triggered when the option contract reaches a specified price "on the CBOE floor."

Currently, paragraph (c)(iii) of Exchange Rule 6.53 defines a stop order as a contingency order to buy or sell when the market for a particular option contract reaches a specified price. The Rule does not specify, but has always been interpreted by the CBOE to mean, that the contingency to buy or sell is satisfied when the option contract trades or is bid at or above the stop price (in the case of a buy order) or trades or is offered at or below the stop price (in the case of a sell order) "on the floor of the CBOE."[4] The proposed amendment will make it clear, therefore, that a stop order is not activated when the bid or offer (as appropriate) reaches the stop limit on another options exchange or when an options transaction occurs at the stop limit on another options exchange. The CBOE believes that the proposed rule change will clarify the required treatment of option stop orders under the CBOE's rules.

III. Discussion

After careful review of the Exchange's proposal, and for the reasons discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[6]

The Commission believes that the proposal is reasonable in that it will not adversely affect the depth and liquidity necessary to maintain fair and orderly markets because the proposal represents a codification of the existing practice of the CBOE requiring that stop orders left with CBOE members must be effected and executed based on transactions or quotes that occur only on the floor of the CBOE.[7] It also serves to clarify the responsibility of CBOE members regarding the handling of stop orders by removing a potential ambiguity contained in the existing Rule.

The Commission notes that the CBOE has retracted a statement made in its original filing that claimed CBOE options traders have no way of knowing whether a contract has reached a specified "stop" in another options market place.[8] CBOE now states that it recognizes that options markets do have access to trade and quote information occurring on other options exchanges; however, CBOE maintains that the absence of an electronic linkage providing for the transmission of orders to other options exchanges in order to access current quotes makes it impracticable for CBOE members to rely on such data.

The Commission disagrees that the existence of an electronic order routing linkage between options markets should be a requirement to "triggering" option stop orders based on quotes or transactions occurring in another options market. In determining the proper triggering event(s) that apply to option stop orders, the most important factor to consider is whether the triggering quotes or trades are bona fide and available on a timely and reliable basis. However, it is not necessary to have an electronic order routing linkage, such as the Intermarket Trading System ("ITS"), to ensure that quotes and trades occurring on other options exchanges meet this test.

Notwithstanding its disagreement with CBOE over the relevance of the existence of an intermarket electronic order routing system to the present proposal, the Commission believes there are valid reasons for approving the CBOE's proposal at this time. The rule proposal codifies an interpretation of CBOE Rule 6.53 that has been observed by market participants for many years. Indeed, this interpretation is consistent with the practices of the Annex and PCX.[9] Ideally, the extension of national market system principles to the options exchanges would include the existence of electronic linkages ensuring the availability to all market participants of real-time quote and trade information and the ability of exchange markets to access each other's markets at the touch of a button. Another reason to approve the present filing is that while real-time quote and trade information originating from other options markets is currently available to all market participants, including CBOE floor members, this information is not always reliable. For instance, during the last several years, the dissemination of options trade information has been subject, during certain peak market volatility events, to "queuing," whereby quote and trade data become bottlenecked and cannot be delivered on a real-time basis. Until options quote and trade information becomes more reliable, it is reasonable for the options exchanges to limit instances where members must automatically trigger and execute customer orders based on quote and trade information emanating from the other options exchanges.

Given that CBOE's policy regarding options stop orders ignores quotes and transactions occurring on other options markets, it is important to emphasizes that broker-dealers representing customer options orders, including CBOE floor brokers, must continue to fulfill their best execution obligations, this includes monitoring the prices available on all exchanges that trade the particular option and may require the broker-dealer to attempt execution on the exchange with the best available price. Moreover, the CBOE, along with the other exchanges, should continue to efforts to increase the reliability of the dissemination of timely quote and trade information. At some point in future, when such reliability increases, it may be appropriate to activate stop orders or other contingency orders based on bids, offers, or executions occurring on other options markets.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment clarifies the description of the proposed rule change and explains several statements in the filing. For these reasons, the Commission finds good cause for approving Amendment No. 1 on an accelerated basis.

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[4] *See* Amendment No. 1, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The Commission notes that the American Stock Exchange ("Amex") and the Pacific Exchange, Inc. ("PCX"), interpret their rules to mean that a stop order left with a member will be executed based on transactions or quotes that occur only on the floor of their own exchange. Telephone conversation between Stuart Diamond, Director of Rulings, Amex, and Chester A. McPherson, Staff Attorney, Division, Commission, February 3, 1998; telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, and James T. McHale, Special Counsel, Division, Commission, on June 18, 1998.

[8] The Commission notes that various available proprietary systems provide quotes and transactions reports on a real time basis.

[9] *See supra* note 7.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than the those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–41, and should be submitted by July 21, 1998.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–97–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17294 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40121; File Nos. SR–DTC–98–12, SR–PTC–98–02]

Self-Regulatory Organizations; The Depository Trust Company; Participants Trust Company; Notice of a Proposed Rule Change Relating to a Proposed Merger Between The Depository Trust Company and Participants Trust Company

June 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 29, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on June 2, 1998, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") and on June 2, 1998, Participants Trust Company ("PTC") filed with the Commission proposed rule changes as described in Items I, II, and III below, which items have been prepared primarily by DTC and PTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes relate to the arrangements for a proposed merger between DTC and PTC.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and PTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and PTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In March 1998, PTC announced that it had decided to seek an affiliation with DTC. The arrangements for the proposed merger provide the following. PTC will merge with and into DTC, and DTC will make certain payments to PTC's shareholders. For at least two years from the effective date of the merger, DTC will provide the services currently offered by PTC in a separate division of DTC ("Division"). The current rules and procedures of PTC with respect to depository services, the processing of transactions in PTC-eligible securities, and the PTC participants fund will be incorporated into the rules and procedures of DTC and will be applied to the business of the Division.[3] In addition, DTC will offer PTC participants that are not DTC participants an opportunity to become participants of the Division.

Under the proposed rule changes, PTC's users, most of which are also DTC participants, will continue to have access to the depository services offered by PTC. DTC and PTC believe that the proposed merger should assist in eliminating redundant facilities and thereby should reduce the costs of processing transactions in mortgage-backed securities that are currently PTC-eligible.

DTC and PTC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the arrangements for the proposed merger should assure that continued availability to PTC users of efficient and cost-effective depository services and thereby should facilitate the prompt and accurate clearance and settlement of transactions in PTC-eligible securities. In addition, the proposed arrangements should provide PTC participants with access to DTC's facilities and should be implemented consistent with DTC's obligations to safeguard securities and funds in its custody and control or for which it is responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

DTC and PTC believe that the proposed arrangements will impose no burden on competition. Securities depositories registered under Section 17A of the Act[5] are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and to respond to regulatory requirements.

DTC and PTC believe that the current regulatory scheme and the particular structure and nature of the depository industry provide ample means to insure that the merger of PTC with and into DTC will achieve regulatory objectives. Sections 17A and 19 of the Act[6] and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC. DTC is

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC and PTC.

[3] DTC and PTC have informed the Commission that the changes to DTC's rules and procedures to provide for the Division and to accommodate the application of PTC's current rules and procedures to Division business will be the subject of a future rule filing with the Commission.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1 and 78s.

owned by its members who utilize its services, and its Board of Directors is comprised of its members. DTC must assure a fair representation of its member in the selection of its directors and administrators. DTC's service fees are reviewed by its board and subject to public notice and comment.

After the consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository and clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced and thereby should permit a more efficient and productive allocation of industry resources. Accordingly, DTC and PTC believe that the proposed transaction advances the objectives of the national clearance and settlement system without an inappropriate or unnecessary burden upon competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participation or Others

Written comments on the proposal from DTC participants, PTC participants, or others have not been solicited or received. However, the proposed arrangements have been reviewed and approved by PTC's Board of Directors, which is comprised of representatives of the banks and broker-dealers that are PTC's stockholders and participants. In addition, DTC believes that the proposed arrangements are consistent with recommendations made by the Vision 2000 Committee ("Committee"), a committee of industry representatives of the Boards of DTC and the National Securities Clearing Corporation. The Committee's report dated September 1994 states that:

> The industry currently owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways. * * * We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.[7]

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC or PTC consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal offices of DTC and PTC. All submissions should refer to File Nos. SR–DTC–98–12 and SR–PTC–98–02 and should be submitted by July 21, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17384 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

[7] The Committee's report is attached as Exhibit 2 to DTC's filing, which is available for review and inspection in the Commission's public reference room and through DTC.

[8] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Restoration of Preferential Tariff Treatment Under the Generalized System of Preferences for Certain Articles From Thailand

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Preferential tariff treatment under the generalized System of Preferences (GSP) is restored to four articles from Thailand, effective with respect to articles entered, or withdrawn from warehouse, on or after the 15th day after the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Murphy, Director for ASEAN Affairs, Office of the U.S. Trade Representative, (202) 395–6813.

SUPPLEMENTARY INFORMATION: Pursuant to section 503(c)(2) of the Trade Act of 1974, as amended, 19 U.S.C. 2463(c)(2)), beneficiary developing countries are subject to competitive need limitations on the preferential tariff treatment afforded under the GSP. Proclamation 6813 of July 28, 1995 (60 FR 39095), in relevant part, proclaimed the waiver of competitive need limitations and the restoration of GSP preferential tariff treatment with respect to four articles from Thailand, with an effective date to be announced by the United States Trade Representative by publication of a notice in the **Federal Register**. These four articles are in Harmonized Tariff Schedule of the United States ("HTS") subheadings 6702.90.65 (certain artificial flowers, foliage, fruit and parts thereof); 7113.11.20 (certain articles of silver jewelry and parts thereof, valued at not over $18 per dozen); 7113.19.50 (certain other articles of jewelry and parts thereof); and 9403.60.80 (certain wooden furniture).

Pursuant to authority vested in the United States Trade Representative by the laws of the United States, including but not limited to sections 503 and 604 of the Trade Act and Proclamation 6813 of July 28, 1995, and in order to restore GSP preferential tariff treatment to articles from Thailand in HTS subheadings 6702.90.65, 7113.11.20, 7113.19.50, and 9403.60.80, the HTS is modified as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, on or after the 15th day after publication of this notice.

Susan Esserman,

Acting United States Trade Representative.

Annex

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States ("HTS") is modified by:

(1) Deleting "6702.90.65 Thailand" and "7113.11.20 Thailand"; and

(2) Deleting "Thailand" set out opposite subheading 7113.19.50 and opposite subheading 9403.60.80.

Section B. For HTS subheadings 6702.90.65 and 7113.11.20, the Rates of Duty 1-Special subcolumn is modified by deleting

the symbol "A*" and inserting an "A" in lieu thereof.

[FR Doc. 98–17388 Filed 6–25–98; 3:23 pm]
BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–116]

Termination of Action: Protection of Intellectual Property Rights by the Government of Honduras

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of action and monitoring and request for public comments.

SUMMARY: On March 16, 1998, the USTR determined that the failure by the Government of Honduras to provide adequate and effective protection of intellectual property rights was unreasonable and burdened or restricted United States commerce and that the appropriate action was to suspend preferential treatment accorded under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs to certain products of Honduras, including certain cucumbers, watermelons, and cigars. In view of the Government of Honduras' measures to combat piracy and to protect intellectual property rights of the United States, the USTR has terminated that action taken under Section 301(b) of the Trade Act of 1974 ("Trade Act"). USTR will monitor Honduras' compliance in protecting the intellectual property rights of the United States pursuant to Section 306 of the Trade Act.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Mary Barnicle, Office of the Western Hemisphere, (202) 396–5190 or William Busis, Office of the General Counsel, (202) 395–3150, Office of the United States Trade Representatives.

SUPPLEMENTARY INFORMATION: In 1992, the Motion Picture Association filed a petition under the Generalized System of Preferences program asking that tariff preference benefits to Honduras under the GSP and CBI programs be withdrawn due to widespread, blatant copyright piracy. In May 1997, the Trade Policy Staff Committee (TPSC) recommended that GSP and CBI benefits be suspended unless the Government of Honduras improved its intellectual property rights enforcement within four months. On October 31, 1997, in order to implement the TPSC recommendation, the USTR initiated an investigation under Section 302(b) of the Trade Act (19 U.S.C. 2412(b)) with respect to certain acts and policies of the Government of Honduras concerning its protection of intellectual property rights, including the failure to provide adequate and effective copyright protection and enforcement of rights of copyright owners, resulting in, for example, the wise-spread unauthorized broadcasting in Honduras of pirated videos and the rebroadcasting of U.S. satellite-carried television programming. See 62 FR 60299 of November 7, 1997. The USTR proposed to determine that the practices under investigation were actionable under Section 301 of the Trade Act and that the appropriate response would be a partial suspension of tariff preferences for certain Honduran imports.

After the initiation of the investigation, the United States consulted repeatedly with the Government of Honduras regarding the matters under investigation. However, while the Honduran government established a television regulatory authority and initiated criminal actions against two stations engaged in broadcast piracy, blatant broadcast piracy continued and U.S. copyright-based industries continued to suffer harm. On March 16, 1998, the USTR determined pursuant to sections 301(b)(1) and 304(a)(1)(A)(ii) of the Trade Act that the Government of Honduras failed to provide adequate and effective protection of intellectual property rights and the acts, policies or practices of Honduras under investigation were unreasonable and burdened or restricted U.S. commerce. The USTR further determined pursuant to sections 304(a)(1)(B), 301(b)(2), and 301(c)(1)(C) of the Trade Act that the appropriate and feasible action was to suspend the duty-free GSP and CBI treatment accorded to certain products of Honduras, including certain cucumbers, watermelons, and cigars. See 63 FR 16608 of April 3, 1998.

Following the USTR determinations as to the actionability and specific action to be taken, the Government of Honduras has taken a number of steps to stop broadcast piracy. It temporarily shut down two television stations and imposed and collected fines from the stations in an effort to provide adequate copyright protection. The Government of Honduras has also made a written promise to impose higher fines and to temporarily shut down the television stations again for a longer period if piracy resumes. Section 307(a)(1)(C) of the Trade Act authorizes the USTR to terminate any action, subject to the specific direction, if any, of the President, if such action is being taken under Section 301(b) and is no longer appropriate. In light of the foregoing, the USTR has determined that the existing Section 301(b) action should be terminated and, as specified in the annex to this notice, the suspended GSP and CBI benefits should be restored. Restoration of benefits will be effective with regard to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. The USTR has also decided to terminate the GSP review initiated in 1993.

Section 604 of the Trade Act, as amended (19 U.S.C. 2463), authorizes the President to modify the Harmonized Tariff Schedule of the United States (HTS) to reflect laws, and actions thereunder, affecting the treatment of imports. In Proclamation 6969 of Jan. 27, 1997 (62 FR 4415 of Jan. 29, 1997), the President delegated to USTR the authority under Section 604 to embody rectifications, technical or conforming changes, or similar modifications in the HTS.

The notice that suspended GSP and CBI benefits for certain imports from Honduras renumbered HTS general note 7(d)(iv)—which embodied in the HTS Section 213(d) of the CBERA, as amended (19 U.S.C. 2703(d))—as HTS general note 7(g). See 63 FR 16608 of April 3, 1998. Pursuant to the authority delegated by the President to USTR in Proclamation 6969, the annex to this notice makes a technical correction to HTS general note 7(g) in order to make the provision a complete sentence.

Prior to terminating this 301 action, the USTR consulted with the domestic industry concerned regarding the modification and termination of the existing action. An opportunity for public comment prior to this action was not possible in view of the need for expeditious action. Immediate termination of the Section 301 action was required to ensure full and prompt implementation of measures taken by the Government of Honduras to prevent resumption of piracy.

Interested members of the public are now invited to submit comments to USTR regarding this action. USTR will review these comments upon receipt.

Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on July 31, 1998. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223,

Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–116) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket (Docket No. 301–116) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Susan G. Esserman,

Acting United States Trade Representative.

Annex

The Harmonized Tariff Schedule of the United States ("HTS") is modified as set forth below with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective specified for the enumerated actions:

1. With respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, or on after June 30, 1998:

(a). General note 4(d) of the HTS is modified by deleting the following subheadings and the country set out opposite them: 0707.020 Honduras; 0707.00 Honduras; 0807.11.30 Honduras.

(b). For the following subheadings, the Rates of Duty 1—Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof: 0707.20; 0707.00; 0807.11.30.

2. With respect to articles entered, or withdrawn from warehouse for consumption, on or after June 30, 1998.

(a). General note 7(d) of the HTS is modified by:

(i). in subdivision (ii) deleting "of the CBERA;" and inserting "of the CBERA; or" in lieu thereof;

(ii) in subdivision (iii) deleting "provided for in this note; or" and inserting "provided for in this note." in lieu thereof; and

(iii). deleting subdivision (iv).

(b). For the following subheadings, the Rates of Duty 1—Special subcolumn is modified by deleting the symbol "E*" and inserting an "E" in lieu thereof: 0707.00.20; 0707.00.40; 0807.11.30; 2402.10.60.

3. With respect to articles entered, or withdrawn from warehouse for consumption, on or after the April 20, 1998, general note 7 to the HTS is modified by deleting subdivision 7(g) and inserting the following new subdivision 7(g) in lieu thereof:

"(g) The duty-free treatment provided under the CBERA shall not apply to any agricultural product of chapters 2 through 52, inclusive, that is subject to a tariff-rate quota, if entered in a quantity in excess of the in-quota quantity for such produce."

[FR Doc. 98–17485 Filed 6–26–98; 12:56 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–96–1437]

Privacy Act of; Notice to Amend Systems of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed amendments to numerous Privacy Act systems of records.

SUMMARY: As part of the biennial review of systems of records required by the Privacy Act, DOT discovered outdated room numbers for some records system notices and the failure to identify a second repository of records in one system. This notice proposes to make the appropriate changes.

EFFECTIVE DATE: August 10, 1998.

ADDRESSES: Interested individuals may comment on this publication by writing to Robert I. Ross, C–10, U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590; telephone: 202–366–9156; fax: 202–366–9170; e-mail: bob.ross@ost.dot.gov.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments concerning this proposed altered system should be directed to Robert I. Ross, Office of the General Counsel, C–10, US Department of Transportation, Washington, DC 20590; telephone: 202–366–9156; fax: 202–366–9170; e-mail: bob.ross@ost.dot.gov. If no comments are received, the proposed change will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

SUPPLEMENTARY INFORMATION: DOT systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address. The specific change to each record system being amended is highlighted in italics below in the notice, as amended, which is being published in its entirety. None of the proposed amendments is within the purview of subsection (r) of the Privacy Act, as amended, which requires the submission of a new or altered systems report.

DOT/OST 003

SYSTEM NAME:

Allegations of Infringement of United States Patents.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of the Secretary of Transportation, Office of the General Counsel, 400 7th Street, SW., *Room 10102*, Washington, DC, 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe that an agency of the Department of Transportation is infringing a United States patent owned by the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence alleging that agencies of the Department of Transportation have infringed, or are infringing, United States patents owned by the originator of the correspondence. Copies of replies by the Department Patent Counsel to the originator of the allegation. Copies of correspondence forwarding the allegation to the particular Department agency accused for their comment; their replies to Patent Counsel. Copies of correspondence between the Department of Transportation and the Department of Justice concerning the allegations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 1.57

PURPOSE(S):

The purpose of the system is to document allegations that agencies of the Department of Transportation have infringed, or are infringing, United States patents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of allegations and Patent Counsel's actions thereon.

SEE PREFATORY STATEMENT OF GENERAL ROUTINE USES.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal "need to know."

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Patent owners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 004

SYSTEM NAME:

Board for Correction of Military Records (BCMR).

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *4100*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel requesting the Board for Correction of Military Records to correct their military records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actions of the General Counsel acting under delegated authority approving or disapproving BCMR cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of the General Counsel's action in individual BCMR cases.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Files are kept in the office of the Assistant General Counsel. Requests are referred to the Executive Secretary, BCMR.

RETENTION AND DISPOSAL:

Retained indefinitely for precedential purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, U.S. Department of Transportation, Washington, DC 20590.
Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Contact System Manager.

RECORD ACCESS PROCEDURES:

Contact System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure."

RECORD SOURCE CATEGORIES:

Official agency records; hearings, documentary material from outside the agency.

DOT/OST 005

SYSTEM NAME:

Confidential Statement of Employment and Financial Interests.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of Transportation in supervisory or other positions where a conflict of interest or the appearance of a conflict of interest might occur. Also included in this category are Consultants and Experts of the Department of Transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on employment and financial interests and debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information to be furnished is required by Executive Order 11222 and the regulations of the Office of Personnel Management (OPM) issued thereunder and may not be disclosed except as the OPM or the agency head may determine. The purpose of the use of this information is to avoid a conflict of interest or the appearance of a conflict of interest in DOT employees.

Prefatory Statement of General Routine Uses 1, 4 and 6 apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Accordion-type file folder.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are stored in safe.

RETENTION AND DISPOSAL:

Records are kept 6 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Deputy General Counsel, C–2, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room 10428.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the Deputy General Counsel either in person or in writing. If written the individual must provide a notarized signature.

RECORD ACCESS PROCEDURES:

Access to records requires the individual to contact in person or write the Deputy General Counsel.

CONTESTING RECORD PROCEDURES:

Contest of a record is also through the Deputy General Counsel.

RECORD SOURCE CATEGORIES:

Statements of employment and financial interests, creditors, interests in real property are submitted by employees and consultants of the

Department of Transportation. Initial requests for submission of statements are through the Office of Personnel and Training.

DOT/OST 012

SYSTEM NAME:

Files Relating to Personnel Hearings.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain employees of the Office of the Secretary who have availed themselves of the opportunity for a hearing in certain personnel matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of the legal services performed and reference material for future cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by agency management in the preparation and conduct of administrative hearings.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Files are kept in the office of the Assistant General Counsel.

RETENTION AND DISPOSAL:

Retire in 3 years; destroy in 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, U.S. Department of Transportation, Washington, D.C. 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure."

RECORD SOURCE CATEGORIES:

Official agency records; hearings; documentary material from outside the agency.

DOT/OST 019

SYSTEM NAME:

Individual Personal Interests in Intellectual Property.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inventors employed by or having contractual relationships with the Department of Transportation and other Government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invention disclosures, Government Patents Branch cases, patent applications, issued patents, and license agreement files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Patent Counsel and his staff as a record of determination of rights in inventions, determination of novelty and patentability, determination of patent coverage, and allocation of rights in issued patents.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals who have legal interest in the records or legal "need to know."

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, D.C. 20590

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures"

RECORD SOURCE CATEGORIES:

Individual inventors, technical evaluators, and United States Patent and Trademark Office.

DOT/OST 037

SYSTEM NAME:

Records of Confirmation Proceeding Requirements for Proposed Executive Appointments to the Department of Transportation.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals nominated for top executive positions of the Department of Transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Financial data and biographical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data submitted to the General Counsel as reviewing official by subject individual for use by the Senate Commerce Committee to determine if there would be a conflict of interest, or the appearance of a conflict of interest; in subject's appointment to the Department of Transportation.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Legal sized documents located in locked safe.

RETRIEVABILITY:

Individual names filed alphabetically.

SAFEGUARDS:

Physical security consists of filing records in safe; data released to Senate Commerce Committee and authorized officials only of the Department.

RETENTION AND DISPOSAL:

Records are retained for 6 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Deputy General Counsel, C–2, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10428*.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the Deputy General Counsel at the address above, either in person or in writing. If written the individual must provide a notarized signature.

RECORD ACCESS PROCEDURES:

Access to records requires the individual to contact in person or write the Deputy General Counsel.

CONTESTING RECORD PROCEDURES:

Contest of a record is also through the Deputy General Counsel.

RECORD SOURCE CATEGORIES:

Documents are provided by subject individual.

DOT/OST 045

SYSTEM NAME:

Unsolicited Contract or Research and Development Proposals Embodying Claims of Proprietary Rights.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe they have original and innovative ideas in the field of transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of descriptions of proposed innovations or inventions and methods of carrying out the proposal. Evaluations by Patent Counsel of the adequacy and propriety of restrictive markings on the proposals and correspondence of the Patent Counsel pertaining thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of Patent Counsel's action in individual unsolicited proposal cases.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name and subject in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only in accordance with the terms of restrictive markings agreed upon between submitter and DOT.

RETENTION AND DISPOSAL:

Transfer to storage when three years old; Destroy after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, D.C. 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure."

RECORD SOURCE CATEGORIES:

Forwarded by individual or by the DOT office to whom unsolicited proposal was addressed.

DOT/OST 056

SYSTEM NAME:

Garnishment Files.

SYSTEM LOCATION:

(1) Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room *10102*, Washington, DC 20590.

(2) *Department of Transportation, Federal Aviation Administration, Southern Region, Financial Services Division, 1701 Columbia Avenue, College Park, GA 30337 (mailing address: Box 20636, Atlanta, GA 30320).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of Transportation, including members of the Coast Guard, whose pay is sought to be attached under section 459 of the Social Security Act, 42 U.S.C. 659.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and court orders, and copies thereof, concerning attachment of employees' pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as record of garnishments and Garnishment Attorney's action thereon.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in the Garnishment Attorney's office.

RETRIEVABILITY:

Indexed individually by name in alphabetical order.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal "need to know."

RETENTION AND DISPOSAL:

Retained for as long as the attachment of pay continues and thereafter as needed for precedential value.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Garnishment Attorney, C–10, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *10102*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Data are obtained from state courts and agencies, private attorneys, present and former spouses of employees, and federal pay records.

DOT/OST 059

SYSTEM NAME:

Files of the Board for Correction of Military Records (BCMR) for the Coast Guard.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the General Counsel, Board for Correction of Military Records, 400 7th Street, SW., Room *4100*, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications for relief before the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and related documents, Board decisions, and official military records of applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Chairman, the Board, the Executive Secretary and Staff in

determining whether to grant relief to applicants.

Used by the Coast Guard in presenting its views to the Board concerning pending cases. Also used by applicant and his representative.

Used by the General Counsel and his staff in determining whether to approve decisions of the board.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in one of two alphabetical sequences representing pending and closed cases. Also indexed by docket number. Pending cases filed by docket number; closed cases filed alphabetically.

SAFEGUARDS:

Records are disclosed only to the applicant, his representative, interested members of Congress, and the Coast Guard.

RETENTION AND DISPOSAL:

Transfer of official military record of individual separated from service to Federal Records Center when case closed; transfer of official military record of Active or Reserve member to Coast Guard Headquarters when case closed; retention of application file in all cases.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Executive Secretary, Board for the Correction of Military Records, C–60, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room *4100*.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure."

RECORD SOURCE CATEGORIES:

U.S. Coast Guard, Veterans Administration, individual applicants.

Dated: June 22, 1998.

Nancy E. McFadden,

General Counsel, Department of Transportation.

[FR Doc. 98–17229 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–XX, Certification of Transport Airplane Structure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25–XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to the Administrator for showing compliance with the provisions of subparts C and D of 14 CFR part 25 regarding the type certification requirements for transport airplane structure. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 28, 1998.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Jim Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Transport Standards Staff, at the address above, telephone (206) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–XX, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This AC contains guidance for the latest amendment of the regulations and applies to all transport category airplanes for which a new, amended, or supplemental type certificate is required. This guidance should be applied to any portion of the airplane structure that has been modified. In the past, advisory and guidance information applicable to transport airplane structure has been formally published as ACs. Advisory circulars have not been developed for all of the regulatory requirements applicable to transport airplane structure, however. In many instances, certification of new technology airplanes resulted in the need to interpret the existing regulations and to apply new regulations. Issue papers and special conditions were generated to document the compliance method agreed upon between the applicant and the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretation of the intent of specific regulations. This guidance was documented in the form of policy memorandums that were distributed to all ACOs, letters to applicants and foreign airworthiness authorities, and issue papers. In many instances, this information was not organized in a manner that allowed easy access, and applicants were not aware of revised policy. This AC formalizes existing policy so that the public and FAA personnel have access to this information. The methods and procedures described in this AC have evolved after many years and represents current certification practice. Issued in Renton, Washington, on June 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–17365 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fire and Cabin Safety Research; Notice of Public Conference

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Public Conference.

SUMMARY: This notice announces an International Public Conference on Fire and Cabin Safety Research, which is being held by the Federal Aviation Administration (FAA) as a follow-up to a similar conference in November of 1995, and to discuss the current state of cabin and fire safety research. The Cabin Safety Research Program (CSRP) and the conference are being jointly sponsored by the Joint Aviation Authorities (JAA)

of Europe, Transport Canada Civil Aviation (TCCA) and the Civil Aviation Bureau of Japan (JCAB).

DATES: The Conference is scheduled for Monday through Friday, November 16–20, 1998. Registration will be from 6:00 p.m. until 8:00 p.m., November 15, and from 7:00 a.m. until 8:30 a.m. on November 16. The Conference will begin at 8:30 a.m., November 16.

REGISTRATION: Persons planning to attend the public conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. Pre-registration deadline is October 1, 1998, and registration is subject to space availability. There is a $225 fee to attend the conference, which will include lunch and refreshments each day, as well as one dinner. Payment can be in the form of checks or certain major credit cards.

ADDRESSES: The public conference will be held at Harrah's Casino-Hotel, 777 Harrah's Boulevard, Atlantic City New Jersey 08401, telephone 1–800–242–7724 (outside the United States: 609–441–5600).

FOR FURTHER INFORMATION CONTACT: April Horner, Galaxy Scientific Corporation, c/o FAA Technical Center, Fire Safety Branch, AAR–422, Bldg. 287, Atlantic City International Airport, New Jersey 08405, telephone 609–485–4471, fax 609–646–5229, or on internet at: April__CTR__Horner@admin.tc.faa.gov

SUPPLEMENTARY INFORMATION: Notice is given of a public conference November 16–20, 1998, at the Harrah's Casino-Hotel, 777 Harrah's Boulevard, Atlantic City, New Jersey 08401. This conference is a follow-up to a similar conference of November 1995 and is intended to summarize the current state of cabin and fire safety research, as well as explore the directions of future research.

In order to more systematically address the subject to cabin safety research, the FAA, in conjunction with the JAA and TCCA developed a Cabin Safety Research Program plan. This document describes a procedure whereby the Aviation Authorities can identify and assess the potential benefit of research in different areas and later determine the appropriateness of specific cabin safety research. This plan was introduced at the 1995 conference and the authorities have been working under its provisions since then.

While research has been very productive and has resulted in improved safety standard, it has been largely carried out in piecemeal fashion, outside of a systematic framework. There was no formal vehicle to integrate all cabin safety research so that the benefits are maximized, and the available funds are spent most effectively. The FAA has developed such a vehicle to improve both the efficiency and quality of future cabin safety research. Because research will often result in new guidance or regulation, and because the aviation industry is largely an international entity, this potential regulatory impact must be harmonized between regulatory authorities. Therefore, the development of the CSRP was coordinated with the JAA, TCCA and the JCAB.

The FAA has determined that a follow-up to the 1995 conference is appropriate and timely, and that issues relating to fire safety in general (that is, fire safety not limited to the cabin) should be included. This conference will afford the interested public an opportunity to comment on the research programs currently underway, as well suggest the course of future research.

Additional information regarding the conference can be found on the World Wide Web, at: http://asp.tc.faa.gov/FAATC/AAR422/conference/brochure.html

The agenda for the conference will include:

Monday, November 16, 1998

Conference Opening Session
Presentations of general interest and program goals

Tuesday, November 17, 1998

AM
CRASH DYNAMICS (Structures)
FIRE—General
PM
CRASH DYNAMICS—Injury
FIRE—Halon Systems
OPERATIONAL ISSUES
FIRE—Advanced Materials

Wednesday, November 18, 1998

AM
CRASH DYNAMICS—Modeling
OPERATIONAL ISSUES
FIRE—Cargo Compartment
FIRE—Advanced Materials
PM
CRASH DYNAMICS—Workshop
EVACUATION
FIRE—Cargo Compartment (Modeling)
FIRE—Advanced Materials

Thursday, November 19, 1998

AM
EVACUATION—
FIRE—Applied Materials
FIRE—Fuel Tank Explosion
PM
EVACUATION
FIRE—Applied Materials
FIRE—Watermist and other Systems

Friday, November 20, 1998

AM
Sessions Summaries
Conference Closing Session

Note that this agenda involves simultaneous presentation of different topics. However, to the extent possible, subjects that might have broader applicability have been scheduled so as to not overlap.

Attendance is open to the interested public, but will be limited to the space available.

Conference Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at Harrah's Hotel-Casino at Conference rates of $79 plus tax and fees for a standard single/double room, and $99 plus tax and fees for a single/double suite. Persons wishing to attend the Conference are encouraged to make reservations by October 1, 1998, by contacting the hotel direct at 1–800–242–7724 (outside the United States: 609–441–5600). Be sure to identify yourself as an FAA Fire/Cabin Safety Conference attendee to receive the conference rate.

Persons in Canada that have questions of a technical nature, or would like to find out more regarding Transport Canada's involvement, may contact: Mr. Claude Lewis, Transport Canada Civil Aviation, Aircraft Certification Branch—AARDH, Ottawa, Ontario, Canada KIA ON8, Telephone: 613–990–5906, fax: 613–996–9178; e-mail:lewisc@tc.gc.ca.

Persons who plan to attend the Conference should be aware of the following procedures which are established to facilitate the workings of the conference.

1. The Conference will be open on a space available basis to all persons registered.

2. A $225 fee will be charged for attending the conference. This fee will include lunch each day, as well as refreshments during breaks, and one dinner.

3. Following each presentation, or series of presentations on a similar topic, a brief question and answer period may be allowed and participants will be given the opportunity for open discussions, within the time available. In addition, there will be spearate workshop sessions following some of the technical sessions for more in-depth discussions.

4. This conference is intended to address fire and cabin safety research, rather than regulatory, issues. As such, statements made by Airworthiness Authority participants at the conference will not be taken as expressing final Authority positions.

Issued in Renton, Washington, on June 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–17366 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 15, 1998 to be assured of consideration.

Special Request: In order to ensure that the survey described below is available to include in the materials used for the Federal Tax Deposit (FTD) School, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 26, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–012–G.
Type of Review: Revision.
Title: Small Business Laboratory Survey for ABCs of Federal Tax Deposits (FTDs) Pilot Classes.
Description: The purpose of the survey is to obtain feedback from the class attendees on the effectivness of the class. Any appropriate feedback will be used to improve the class material, presentation, instructors, and related customer service.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 17 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–17330 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1998 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0122.
Form Number: None.
Type of Review: Extension.
Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.
Description: The voluntary customer service survey, as mandated by Executive Order 12862, measures customer satisfaction.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Respondent: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 876 hours.
Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–17331 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 17, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 15, 1998 to be assured of consideration.

Special Request: In order to conduct the focus group interviews described below in a timely manner, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 30, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–014–G.
Type of Review: Revision.
Title: Balance Due Return Focus Group Interviews.
Description: There are two objectives of the focus groups:

(1) To learn more about why taxpayers have insufficient withholding and estimated payments; and

(2) To receive input from taxpayers and return prepares on what the Service can or should do about this situation.

With this knowledge, we hope to improve IRS policies and procedures, reduce the burden balance due taxpayers face, and improve taxpayer satisfaction.

Respondents: Individuals or households. Business or other for-profit.
Estimated Number of Respondents: 96.
Estimated Burden Hours Per Respondent:

Screening process	5 minutes.
Focus group interviews	2 hours.
Travel time	1 hour.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 256 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–17332 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 18, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0200.

Form Number: IRS Form 5307.

Type of Review: Extension.

Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.

Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code (IRC) sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 39,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 16 min.
Learning about the law or the form—4 hr., 10 min.
Preparing the form—8 hr., 9 min.
Copying, assembling, and sending the form to the IRS—1 hr., 4 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 726,960 hours.

OMB Number: 1545–0201.

Form Number: IRS Form 5308.

Type of Review: Extension.

Title: Request for Change in Plan/Trust Year.

Description: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 480.

Estimated Burden Hours Per Respondent/Recordkeeper: 44 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 339 hours.

OMB Number: 1545–0409.

Form Number: IRS Forms 211 and 211(SP).

Type of Review: Revision.

Title: (1) Application for Reward for Original Information (Form 211).

(2) Solicited de Recompensa por Información Original (Spanish Version) (Form 211(SP)).

Description: Forms 211/211(SP) are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code (IRC) 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Respondents: Individuals or households.

Estimated Number of Respondents: 11,200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1545–0796.

Form Number: IRS Form 6524.

Type of Review: Revision.

Title: Office of Chief Counsel—Application.

Description: The Chief Counsel Application form provides data we deem critical for evaluating an attorney applicant's qualifications such as LSAT score, bar admission status, type of work preference, law school, class standing. OF–306 does not provide this information.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–0800.

Regulation Project Number: Reg. 601.601.

Type of Review: Extension.

Title: Rules and Regulations.

Description: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondent: 600.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–0814.

Regulation Project Number: EE–44–78 Final.

Type of Review: Extension.

Title: Cooperative Hospital Service Organizations.

Description: This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in section 501(c).

Respondents: Not-for-profit institutions.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–0874.

Form Number: IRS Form 8328.

Type of Review: Extension.

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

Description: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—2 hr., 11 min.
Preparing and sending the form to the IRS—2 hr., 23 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 107,800 hours.

OMB Number: 1545–0915.

Form Number: IRS Form 8332.

Type of Review: Extension.

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes.
Learning about the law or the form—5 minutes.
Preparing the form—7 minutes.
Copying, assembling, and sending the form to the IRS—14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 82,500 hours.

OMB Number: 1545–0954.

Form Number: IRS Form 1120–ND.

Type of Review: Extension.

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Description: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash or the dismantling of a nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—23 hr., 12 min.
Learning about the law or the form—3 hr., 7 min.
Preparing the form—5 hr., 30 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,236 hours.

OMB Number: 1545–1013.

Form Number: IRS Form 8612.

Type of Review: Extension.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—1 hr., 52 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 195 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17333 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1998 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0009.

Form Number: TD F 90–22.1.

Regulation Parts: 31 CFR Parts 103.22, 103.23, 103.24, 103.25, 103.26, 103.27, 103.28, 103.29, 103.32, 103.33, 103.34, 103.35, 103.36, 103.37, 103.38, 103.43, 103.45, 103.54, 103.71, 103.72, 103.72, 103.73, 103.75, 103.76 and 103.77.

Type of Review: Extension.

Title: Financial Recordkeeping and Reporting of Currency and Foreign Transactions; and, Report of Foreign Bank and Financial Accounts (TD F 90–22.1).

Description: This information collection, which applies primarily to financial institutions, assists Federal, State and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking and other crimes. The information collection also assists in the examination and other regulatory matters.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 140,000.

Estimated Total Annual Responses: 13,000,000.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 11,529,711 hours .

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17334 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 23, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0134.

Form Number: IRS Form 1128.

Type of Review: Revision.

Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form 1128 is needed in order to process taxpayers' request to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms

Estimated Number of Respondents/Recordkeepers: 11,800.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1128 parts I and II	Form 1128 parts I and III.
Recordkeeping	9 hr., 34 min	16 hr., 59 min.
Learning about the law or the form	3 hr., 23 min	4 hr., 56 min.
Preparing and sending the form to the IRS	3 hr., 41 min	6 hr., 38 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 282,002 hours.

OMB Number: 1545–0633.

Notice Number: Notices 437, 438 and 466.

Type of Review: Extension.

Title: Notice of Intention to Disclose.

Description: Notice is required by 26 U.S.C. 6110(f). A reply is necessary if recipient disagrees with the Service's proposed deletions. The Service uses the reply to consider propriety of making additional deletions to public inspection version of written determinations or related background file documents.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

OMB Number: 1545–0820.

Regulation Project Number: EE–86–88 NPRM (Previously 279–81).

Type of Review: Extension.

Title: Incentive Stock Options.

Description: The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax returns.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 16,650 hours.

OMB Number: 1545–1081.

Form Number: IRS Form 8809.

Type of Review: Revision.

Title: Request for Extension of Time to File Information Returns.

Description: Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process request expeditiously and to track from year to year those who repeatedly ask for an extension.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 4 min.
Learning about the law or the form—10 min.
Preparing and sending the form to the IRS—26 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 133,000 hours.

OMB Number: 1545–1165.

Form Number: IRS Form 8821.

Type of Review: Revision.

Title: Tax Information Authorization.

Description: Form 8821 is used to appoint someone to receive or inspect certain tax information. Data is used to identify appointees and to ensure that confidential information is not divulged to unauthorized persons.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 minutes.
Learning about the law and the form—12 minutes.
Preparing the form—24 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 210,000 hours.

OMB Number: 1545–1189.

Form Number: IRS Form 8819.

Type of Review: Extension.

Title: Dollar Election Under Section 985.

Description: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Respondents: Business or other for-profit.

Estimated Number of Respondent/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 52 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 23 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 8,325 hours.

OMB Number: 1545–1354.

Form Number: IRS Form 8833.

Type of Review: Revision.

Title: Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

Description: Form 8833 is used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based position disclosure required by regulations section 301.7701(b)–7(b) for "dual resident" taxpayers.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 7 min.
Learning about the law or the form—1 hr., 35 min.
Preparing and sending the form to the IRS—1 hr., 43 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 38,460 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17335 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 23, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 15, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the surveys described below in a timely manner, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 2, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–013–G.

Type of Review: Revision.

Title: Internal Revenue Service's Fourth Annual Survey of Contractors.

Description: The purpose of this survey is to attempt to obtain contractor information about the ways the Internal Revenue Service (IRS) can improve its contracting. An opinion survey is expected to provide the information needed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 250 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17336 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 13–04]

Delegation of Authority Relating to the United States Enrichment Corporation Privatization

June 24, 1998.

1. *Purpose.* This Directive makes certain delegations to the Assistant Secretary (Financial Markets) relating to the United States Enrichment Corporation (USEC) privatization.

2. *Background.* The Atomic Energy Act of 1954 as amended by the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2938), and the USEC Privatization Act (Pub. L. 104–134, 110 Stat. 1321–335) (collectively, the "Acts") authorize the Secretary of the Treasury to approve or disapprove the USEC Board's determinations that the method of transfer and the terms and conditions for the transfer of USEC to the private sector meet certain statutory requirements under the Acts. Treasury Order (TO) 103–04, "Delegation of Authority Relating to the United States Enrichment Corporation Privatization," delegates to the Under Secretary for Domestic Finance the Secretary's authority under the Acts relating to the USEC privatization.

3. *Delegation.* The duties, powers, rights, and obligations of the Secretary of the Treasury which are vested in the Under Secretary for Domestic Finance pursuant to TO 103–04 are hereby redelegated to the Assistant Secretary (Financial Markets).

4. *Redelegation.* The Assistant Secretary (Financial Markets) may redelegate in writing such of the authorities granted under this Directive as the Assistant Secretary (Financial Markets) deems appropriate.

5. *Authority.* TO 103–04, "Delegation of Authority Relating to the United States Enrichment Corporation Privatization."

6. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

7. *Office of Primary Interest.* Office of the Under Secretary for Domestic Finance.

John D. Hawke, Jr.,

Under Secretary for Domestic Finance.

[FR Doc. 98–17373 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 103–04]

Delegation of Authority Relating to the United States Enrichment Corporation Privatization

Dated: June 24, 1998

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), I hereby delegate to the Under Secretary for Domestic Finance the authority of the Secretary of the Treasury under the Atomic Energy Act of 1954 as amended by the Energy Policy Act of 1992 (Public Law 102–486, 106 Stat. 2938), and the USEC Privatization Act (Public Law 104–134, 110 Stat. 1321–335) (collectively, the "Acts"), to exercise any right or power, make any finding or determination, or perform any duty or

obligation which the Secretary of the Treasury is authorized to exercise, make, or perform under the Acts relating to the privatization of the United States Enrichment Corporation.

2. This authority may be redelegated in writing to an appropriate subordinate official.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 98–17372 Filed 6–29–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 1998 and ending on December 31, 1998 the prompt payment interest rate is 6% (6) per centum per annum.

DATES: This notice announces the interest rate applicable for the July 1, 1998 to December 31, 1998 period.

ADDRESSES: Comments or inquiries may be mailed to Sandra K. Jones, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be made available for downloading from the http://www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Debt Accounting Branch Manager, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5171, Sandra K. Jones, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5174, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192, or Brenda L. Hoffman, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5198.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub. L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub. L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1998 and ending on December 31, 1998, is 6 per centum per annum.

Dated: June 25, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

[FR Doc. 98–17475 Filed 6–26–98; 12:56 pm]

BILLING CODE 4810–35–P

Corrections

Federal Register
Vol. 63, No. 125
Tuesday, June 30, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-127-002]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

Correction

In notice document 98–16721, beginning on page 34370, in the issue of Wednesday, June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98-2-000; FERC Form 2]

Proposed Information Collection and Request for Comments

Correction

In notice document 98–16712, appearing on page 34369, in the issue of Wednesday, June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 3721-001, 4270-001, 4282-001, 4312-001, 4628-001, 4738-002 and 9231-000]

Puget Sound Power & Light Company, Mountain Rhythm Resources, Mountain Water Resources, Watersong Resources, McGrew and Associates and City of Tacoma, Washington, McGrew, McMaster and Koch and City of Tacoma, Washington, and Scott Paper Company; Notice of Motion for Declaratory Order

Correction

In notice document 98–16715, beginning on page 34372, in the issue of June 24, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3350]

Public Workshops for Response Plan Equipment Caps: Scheduled Increases in Mechanical Recovery and Potential Changes to Dispersant Planning Requirements

Correction

In notice document 98–16780, beginning on page 34500 in the issue of Wednesday, June 24, 1998, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the eighth line "jcapliscomdt.uscg.mil" should read "jcaplis@comdt.uscg.mil".

BILLING CODE 1505-01-D

federal register

Tuesday
June 30, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Proposed Rule

VOL 63 ISS 125 JE 30 1998 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

RIN 2120–AD27

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. That notice proposed an upgrade in the requirements for both seat/restraint systems and for flammability standards for seat cushions used in commuter category airplanes. It also proposed an increase in the downward inertia load factor for items of mass within the cabin for all normal, utility, acrobatic, and commuter category airplanes. The FAA is developing a new proposal based on information gathered subsequent to the NPRM.

DATES: This proposed rule is withdrawn as of June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION: On July 14, 1993, the FAA published Notice of Proposed Rulemaking No. 93–71 (58 FR 38028) to propose an amendment to 14 CFR part 23 and invited public comment. During the comment period, the General Aviation Manufacturers Association (GAMA) objected to the proposed rule. GAMA's September 17, 1993, letter to the docket stated the following: "The docket for the rule did not contain data on several recent accidents of 10–19 passenger airplanes operated under 14 CFR part 135 rules, which indicated that those accidents occurred at crash conditions approaching those of a flat impact crash. The FAA considered it necessary to evaluate the flat impact crash condition when conducting the analysis leading to the proposals in this notice. Because FAA bases certain of the criteria in this proposal on these data and analyses therefore, industry cannot appropriately comment on this proposal until the supporting data are made available for public evaluation." The report GAMA referenced, "Commuter Airplane Accident Data Analysis," was published in August 1994. The FAA reopened the comment period on November 4, 1994; it closed on March 4, 1995.

Many of the general comments addressed the accuracy of the derived safety benefits of the rule and questioned how the safety benefits could be evaluated independently from the benefits expected of other recently adopted rules. Several commenters questioned the use of a 15-year life expectancy for seats utilizing fireblocking materials when their commercial experience indicated an average life expectancy of four years.

On March 29, 1995, Notice No. 95–5, "Commuter Operations and General Certification and Operations Requirements," was published. This rulemaking effort proposed, in part, to move all scheduled part 135 operations with ten passenger seats or more to 14 CFR part 121 operations and for newly type certificated airplanes operating in accordance with part 121 to be type certificated under part 25. Since most airplane manufacturers of part 23 commuter category airplanes design their airplanes to be operated in accordance with part 135, the proposed rule affected the applicability of part 23 certification requirements for airplanes operating in scheduled service with ten or more passenger seats. On January 19, 1996, the "Commuter Operations and General Certification and Operations Requirements" final rule was adopted as amendment 121–151. As a result, the FAA re-evaluated the cost analysis for Notice 93–71. With the removal of scheduled part 135 aircraft, the proposed amendment would no longer be cost-beneficial. With the adoption of amendment 121–151, the projected benefits of the dynamic seat testing and flammability requirements proposed in Notice No. 93–71 have been negated.

Other commenters addressed the stringency of the proposed rule when compared to the existing requirements for similarly sized small transport category airplanes. The FAA cannot agree that such a comparison is valid. The 14 CFR part 25 transport category airplane seat dynamic performance standards were defined using data that were representative of the impact response characteristics of large (narrow or wide body) transport category airplanes. The structural depth under the floor and impact energy absorption characteristics of these airplanes is considerably greater than that for commuter category airplanes and small transport category airplanes. In light of these differences, the use of part 25 transport category airplane standards for commuter category airplanes would not provide adequate protection. The FAA is considering amending both part 23 and part 25 standards to make them consistent for commuter category and small transport category airplanes.

Additional comments stated that the maximum acceleration levels proposed were unrealistically high and would require excessive energy absorption designs. The FAA disagrees. Energy absorbing seats have been designed and tested at the Civil Aeromedical Institute (CAMI) to the combined longitudinal and vertical test conditions found in Notice No. 93–71, and those seats met the requirements of the proposed rule. Those tests demonstrated that the minimum requirements for providing occupant spinal column/pelvic load protection can be provided with seats that have four inches of seat stroke or energy absorption capability. Full-scale commuter category airplane impact tests conducted with the CAMI energy absorbing seats on board have confirmed the above CAMI test lab finding.

In consideration of those comments to Notice No. 93–71 regarding the cost-benefit analysis and the effect of amendment 121–151, the Federal Aviation Administration has decided to withdraw Notice No. 93–71. Instead, the FAA is planning to task the Aviation Rulemaking Advisory Committee (ARAC) to amend both part 25 transport category airplane standards and part 23 to make them consistent for commuter category and small transport category airplanes.

In addition, the FAA plans to initiate a new rulemaking project to propose seat cushion fireblocking provisions for new type certificated commuter category airplanes. Accordingly, Notice No. 93–71, published on July 14, 1993 (58 FR 32028), is withdrawn.

Issued in Washington, DC on June 22, 1998.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 98–17291 Filed 6–29–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
June 30, 1998

Part III

Department of Housing and Urban Development

24 CFR Parts 5, 207, et al.
Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Proposed Rule

VOL 63 ISS 125 JE 30 1998 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 207, 266, 880, 881, 882, 883, 884, 886, 891, 965, and 983

[Docket No. FR–4280–P–01]

RIN 2501–AC45

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish for housing assisted under certain HUD programs uniform physical condition standards. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair. HUD's Section 8 housing, Public Housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) currently must meet certain standards and must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what constitutes acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, vary from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, this rule proposes that certain HUD housing, as defined in this rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. This rule also generally describes new physical inspection procedures that will allow HUD to determine conformity with such standards. This rule would not change the requirement for annual physical inspections currently found in the covered HUD programs. Additionally, this rule would not affect the existing requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection of the program.

DATES: Comments must be submitted on or before July 30, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Real Estate Assessment Center, Attention: William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102. Persons with hearing and speech impairments may contact the Center via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Background—Statutory Directive To Provide Decent, Safe, and Sanitary Housing

"The Declaration of Policy" in section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437) (1937 Act) provides in relevant part as follows:

> It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of *decent, safe, and sanitary* dwellings for families of lower income * * *. (Emphasis added)

More recently, in the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990; 42 U.S.C. 12701 *et seq.*), the Congress reaffirmed the nation's housing policy. Section 102 of this statute (42 U.S.C. 12702) states in relevant part as follows:

> The objective of national housing policy shall be to reaffirm the long-established national commitment to *decent, safe, and sanitary* housing for every American by strengthening a nationwide partnership of public and private institutions.

The housing standard set by the Congress as the standard for all American families is one of decent, safe, and sanitary housing. As the statutes cited above reflect, this is also the standard by which HUD housing should be evaluated.

II. Current Requirements Governing Physical Condition and Property Maintenance Standards for HUD Housing

The majority of HUD programs currently contain requirements governing the physical condition and maintenance of the housing. In discussing the various housing that is proposed to be covered by this rule (Section 8 project-based housing, Public Housing, HUD-insured multifamily housing, and other HUD-assisted housing) the term "HUD housing" is used for purposes of brevity.

Current Standards Applicable to Section 8 Housing

HUD's Section 8 project-based assistance is provided under the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program for homeless individuals), and project-based Certificate programs. The statutory physical condition standard for all Section 8 housing is "decent, safe, and sanitary." Specifically, section 2 of the 1937 Act, as noted above, declares the statutory policy to provide assistance for low-income individuals in "decent, safe, and sanitary" dwellings in the Section 8 (and Public Housing) program. Additionally, section 3(b)(1) of the 1937 Act defines the term "low-income housing," which term includes Public Housing and housing receiving Section 8 assistance, as "decent, safe, and sanitary dwellings assisted under this Act."

The various forms of Section 8 Housing Assistance Payments (HAP) Contracts covering all of these Section 8 programs contain broad references to the quality or the physical condition of the housing that must be maintained, language that is similar to the 1937 Act language. While there is some minor variation in language, these contracts generally require owners to maintain project units and related premises in decent, safe, and sanitary condition.

The program regulations for each of the Section 8 programs provide the substantive physical condition standards for each program, but they differ somewhat from one another. For the Section 8 New Construction and Substantial Rehabilitation programs, the regulations provide that housing is decent, safe, and sanitary if it is maintained in a condition substantially the same as at the time of acceptance (see 24 CFR 880.201 and 881.201). Section 8 New Construction projects

also must comply with HUD minimum property standards;[1] applicable State and local laws, codes, ordinances, and regulations; HUD requirements pertaining to noise abatement and control; and HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for "projects for the elderly or handicapped" (24 CFR 880.207). Section 8 Substantial Rehabilitation projects must comply with HUD minimum design standards for rehabilitation for residential properties;[2] applicable State and local laws, codes, ordinances, and regulations; HUD noise abatement and control requirements; and HUD section 209 requirements (24 CFR 881.207). The requirements in §§ 880.207 and 881.207 generally relate to design, construction, and rehabilitation standards, rather than to physical maintenance requirements. This proposed rule only addresses physical condition after completion of construction and/or rehabilitation. This rule does not propose to revise the design, construction, and rehabilitation standards currently found in HUD regulations.

Additionally, this rule does not propose to revise the housing quality standards (HQS) applicable to the Section 8 Certificates and Vouchers program. As discussed later in this preamble, HQS will remain applicable to the Section 8 Certificates and Vouchers Program.

Current Standards Applicable to Public Housing

HUD Public Housing is also subject to a standard of decent, safe, and sanitary. Section 3(b)(1) of the 1937 Act provides in relevant part as follows:

> The term *low-income housing* means decent, safe, and sanitary dwellings assisted under this Act. The term "public housing" means low-income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8.

Section 14 of the 1937 Act, which addresses Public Housing modernization, also emphasizes a decent, safe, and sanitary housing standard. Section 14(j)(2) provides, in relevant part, that "the Secretary shall issue rules and regulations establishing standards which provide for decent, safe, and sanitary living conditions in low-rent public housing projects * * *." In addition to the references to the decent, safe, and sanitary standard, other sections of the 1937 Act refer to the "obligation" of a public housing agency (PHA) to inspect and maintain the Public Housing units in the PHA's projects. For example, in connection with the Public Housing Management Assessment Program (PHMAP), established by section 6(j) of the 1937 Act, section 6(j)(1)(G) requires the PHA to inspect the units to ascertain "maintenance or modernization needs."

The current regulatory provisions addressing the physical condition of Public Housing projects are found in several sections of HUD's regulations in Title IX of 24 CFR: §§ 901.30 (of the PHMAP regulations), 941.203 (of the Public Housing Development regulations), 965.704 (of the PHA-Owned or Leased Projects regulations), and 968.315 (of the Comprehensive Improvement Program Regulations). In the current Public Housing Development regulations, § 941.203 (Design and construction standards) provides that Public Housing projects must comply with a national building code; applicable State and local laws, codes, ordinances, and regulations; and other Federal requirements, including fire safety requirements and HUD minimum property standards. (HUD's minimum property standards are found in 24 CFR part 200, subpart S, and remain applicable to Public Housing as design and construction standards.)

As noted earlier in this preamble, Public Housing is not only currently subject to a standard of "decent, safe, and sanitary" housing, there is also a statutory obligation on the PHA to inspect Public Housing units (see section 6(j) of the 1937 Act). This requirement is found in the current Public Housing Management Assessment Program (PHMAP) regulations (see 24 CFR 901.30). Section 901.30, captioned "Indicator #5, Annual Inspection of Units and Systems," provides in relevant part that: "All occupied units are required to be inspected." This proposed rule would not change the current requirement that PHAs inspect all of their units annually to determine maintenance and modernization needs. However, through a separate rulemaking, HUD is proposing new assessment regulations for Public Housing under which PHAs would be required to maintain their units in accordance with the same decent, safe, and sanitary standard proposed in part 5, subpart G of this rule.

Current Standards Applicable to Insured Multifamily Housing

Generally, in HUD-insured multifamily housing, the mortgagors are subject, by contract, to maintain the mortgaged premises, accommodations, and the grounds appurtenant thereto, in good repair and condition. Additionally, HUD's standard mortgage form requires the mortgagor to keep the premises in good repair. Although existing FHA regulations and supplementary materials (such as handbooks) do not provide exact details on what is meant by "good repair," the "good repair" standard is very similar if not identical to the "decent, safe, and sanitary" standard. For example, HUD Handbook 4350.1 REV–1, Multifamily Asset Management and Project Servicing, provides that in determining the level of management review HUD should perform on site, it should review the mortgagee's annual physical inspection "to determine if the condition of the property is consistent with the provision of "*decent, safe, and sanitary housing*" (emphasis added). For HUD-owned projects, section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701–z–11) provides that HUD shall manage or dispose of HUD-owned projects and projects covered by a HUD-held mortgage in a manner that will, in the least costly fashion among reasonable available alternatives, address the goal of maintaining existing housing stock in a "decent, safe, and sanitary condition," among other things.

Summary of Current Applicable Standards

While Section II of the preamble does not address all the various HUD programs that contain housing physical condition standards and physical inspection requirements, the section provides examples of the similarities and differences in housing standards and inspection requirements to which certain HUD subsidized, assisted, and/or insured housing is currently subject under various HUD programs. These standards are found throughout HUD regulations, and are also supplemented by HUD handbooks, contracts, agreements, and other documents. Although several sets of housing standards apply to HUD housing, HUD finds it warranted, by the proper administration of its duties, to apply a uniform set of physical condition standards to the housing related to HUD's Section 8 (project-based assistance only), Public Housing,

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[1] The minimum property standards pertain to HUD requirements for site design, building design, materials, and construction of projects. An owner has the obligation to maintain a project constructed in accordance with the minimum property standards in a condition "substantially the same as at the time of [its] acceptance" (24 CFR 880.201).

[2] The HUD minimum design standards contain the basic HUD requirements for the rehabilitation of projects. An owner has the obligation to maintain a project rehabilitated in accordance with the minimum design standards in a condition "substantially the same as at the time of [its] acceptance" (§ 881.201).

Section 202/811 Supportive Housing, and multifamily mortgage insurance programs. (As described below, HUD's Section 8 Certificate and Voucher Programs will continue to be subject to the existing housing quality standards (HQS) set forth in HUD's regulations in 24 CFR part 982.) However, in adopting uniform physical condition standards for HUD housing, this proposed rule would not alter the statutory standard for maintaining HUD housing. Instead, this proposed rule, by using the statutory terminology, clearly acknowledges that the physical condition of the housing that is to be met is one of "decent, safe, and sanitary."

III. Proposed Uniform Physical Condition Standards

Through this rule, HUD proposes uniform physical condition standards that will serve to determine whether certain HUD housing is decent, safe, sanitary and in good repair. HUD also proposes that these standards be evaluated through uniform physical inspection procedures. These proposed standards and inspection process are intended to achieve three significant objectives:

(1) Consistency in physical condition standards for HUD housing;

(2) Standardization of the inspection to be undertaken to determine compliance with the standards; and

(3) Implementation of an electronically-based inspection system to evaluate, rate and rank the physical condition of HUD housing objectively.

HUD Programs Covered by the New Standards

The proposed new physical condition standards will apply to housing assisted by HUD under the following programs (Section V of this preamble discusses the specific regulatory parts and sections that are proposed to be amended). In this rule, the various types of HUD housing that are proposed to be subject to the new physical condition standards, as set forth in paragraphs (1) through (3) below, are collectively referred to as "HUD housing."

1. Section 8 Project-Based and Other Assisted Housing

—Section 8 Project-Based Assistance, including the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals), and project-based Certificate programs;
—Section 202 Program of Supportive Housing for the Elderly;
—Section 811 Program of Supportive Housing for Persons with Disabilities; and
—Section 202 Loan Program for Projects for the Elderly and Handicapped (including 202/8 projects and 202/162 projects).

While this proposed rule covers Section 8 project-based assistance, as described above, this proposed rule would not cover Section 8 tenant-based assistance (i.e., housing assisted by HUD's Section 8 Certificate and Vouchers Rental Assistance Program; see 24 CFR part 982). The housing quality standards (HQS) were originally established by the Secretary for the purpose of Section 8 tenant-based housing assistance. Unlike Section 8 project-based assistance, HUD is continuously reviewing and approving new units into the Section 8 tenant-based assistance programs, and HUD has found that HQS is appropriate for this purpose. As discussed earlier in this rule, HUD believes that all of its programs should be subject to the same uniform physical inspection requirements. HUD also believes that it would be appropriate to require the Section 8 Certificate and Voucher (tenant-based assistance) programs to be subject to the uniform standards. However, HUD is not proposing at this time to apply the new uniform standards to such housing, but instead will consider doing so at a later date.

2. FHA Multifamily Housing

The proposed standards also will apply to multifamily housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

—Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
—Section 213 of the NHA (Cooperative Housing Insurance);
—Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
—Section 221(d) (3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 231 of the NHA (Housing for Elderly Persons);
—Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);
—Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
—Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
—Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and
—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

The proposed standards would not apply to housing insured under HUD's single family mortgage insurance programs. Section 5.701(b)(1) of this proposed rule lists those sections of the National Housing Act that specifically give the Secretary authority to insure mortgages. Sections of the NHA that give the Secretary authority to insure mortgages "pursuant to" another section of the NHA are not listed in the coverage of § 5.701 of this proposed rule, because HUD ultimately has insured the mortgages under one of the listed statutory sections.

3. Public Housing

—Housing receiving assistance under sections 5, 9 or 14 of the U.S. Housing Act of 1937.

Through a separate rulemaking, HUD is proposing new assessment regulations for Public Housing under which PHAs would be required to maintain their units in accordance with the same decent, safe, and sanitary standard proposed in part 5, subpart G of this rule. Under the HUD 2020 Management Reform Plan, published in the **Federal Register** on August 12, 1997 (62 FR 43204), HUD is seeking new tools to strengthen its abilities to ensure the soundness and physical condition of Public Housing. Consistent with HUD's responsibilities under the new Real Estate Assessment Center, HUD intends to conduct independent inspections of a statistically valid number of Public Housing units for each PHA, in order to confirm compliance with the new uniform physical condition standards.

Although HUD encourages PHAs to use its inspection software during the course of their own annual inspections in order to promote uniformity in inspections, HUD is not proposing at this time to require PHAs to use HUD's inspection software for two reasons. First, PHAs may have existing software for operations (e.g., work order systems) that may be incompatible with the HUD software. It would be unreasonable and uneconomical to require PHAs to change their existing systems. Second, PHAs may, as a part of their operating procedures, combine other inspections (e.g., housekeeping, preventative

maintenance) with their annual unit inspections. HUD believes that its role, consistent with section 2 of the U.S. Housing Act of 1937 (42 U.S.C. 1437), is to prescribe broad standards, giving PHAs maximum latitude as to how best to meet those standards consistent with existing statutes, regulations, and their own operating procedures and practices. HUD has no objection, however, if the PHA determines that use of the HUD software for its own purposes is in its best interests.

Standards for Determining Housing That Is Decent, Safe, Sanitary and in Good Repair

The uniform standards in this proposed rule would set parameters under which the HUD housing must be maintained and will be evaluated. These standards are designed to analyze, score, and rank the overall and general physical condition of a project. This evaluation would not focus on a single element, but would take into consideration significant observable deficiencies and score compliance taken as a whole. A single critical element with a major defect (for example, an inoperable heating system), however, could have a significant impact on a project's overall evaluation. The proposed standards emphasize health and safety considerations as essential to housing that is decent, safe, sanitary and in good repair.

The physical condition standards are intentionally broad and are defined with terms such as in "proper operating condition," "adequately functional," and "free of health and safety hazards." Given the differences in construction and design of HUD housing, and the different types of electrical and utility systems that an inspector will encounter, the rule cannot define or describe proper operating condition for every type of system. For example, an inspection of whether an electrical heating system is operating properly might be different from an inspection of whether an oil-based heating system is operating properly. This would not mean, however, that these two systems should be subject to a different physical condition standard. The standard—proper operating condition—is the same for both types of systems and is the same for all heating systems.

The uniform physical condition standards in this proposed rule do not include design or configuration requirements for housing (e.g., these standards do not require that every unit have a kitchen). The regulations for the individual housing programs will continue to contain any such design or configuration requirements. The uniform physical condition standards in this proposed rule are structured so that regardless of the configuration of a particular project or unit (for example, a shared kitchen versus private kitchens), the project or unit would be inspected under the uniform standards. Similarly, the proposed standards do not address occupancy requirements of a dwelling unit, that is, the number of residents per unit. The proposed standards are solely concerned with the physical condition of the housing and the operational state of its various elements, to the extent relevant.

The proposed new standards address six major areas of the HUD housing:

(1) Site;
(2) Building exterior;
(3) Building systems;
(4) Dwelling units;
(5) Common areas; and
(6) Health and safety.

Under this proposed rule, the major areas of the HUD housing and their related elements are to be maintained in a manner that is decent, safe, sanitary and in good repair. Intrinsic to all these areas are health and safety considerations. However, there are other broad health and safety concerns that HUD will evaluate at any time they are observed. Since HUD places such a high priority on health and safety concerns, this proposed rule identifies them separately.

1. Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

2. Building Exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

3. Building Systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

4. Dwelling Units. Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit must be free of health and safety hazards. The unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC, kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows (where applicable) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units may not contain water facilities). If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. Properties that are subject to the specific requirements of the Fire Administration Authorization Act must also comply with those requirements.

5. Common Areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas would apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

6. Health and Safety Considerations. All areas and components of the housing must be free of health and safety hazards. As discussed in the preceding section, the five other major inspectable areas contain health and safety considerations that will be evaluated in the applicable areas. In addition, there are broad health and safety concerns by which HUD will evaluate the housing. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based

paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

With regard to the evaluation and reduction of lead-based paint hazards, HUD is developing consolidated final regulations to implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (42 U.S.C 4851 *et seq.*). These final regulations will be based upon a proposed rule published on June 7, 1996 (61 FR 29170), and will be codified in 24 CFR part 35.

No Preemption of State and Local Building and Maintenance Codes. The new uniform physical condition standards in this rule would not supersede or preempt State and local building and maintenance codes with which HUD housing must comply. HUD housing must continue to adhere to these codes.

IV. Proposed Uniform Physical Inspection Requirements

Frequency of Inspection

To make a determination of whether the owner is providing HUD housing that is decent, safe, sanitary and in good repair, this rule proposes to continue the practice currently found in HUD programs of requiring a physical inspection of each HUD housing structure (except that Public Housing shall be inspected as described below). This proposed rule would require such inspections annually, unless HUD provides notice to the contrary. HUD housing is currently subject to an annual inspection requirement; therefore, an annual inspection would impose no new requirement.

The New Inspection Protocol

Along with the uniform physical condition standards proposed in this rule, HUD intends to implement a new computer-driven physical inspection protocol. The inspection would not have to be performed by an engineer or architect, but may be performed by a person who is generally familiar with real estate of the type to be inspected. Any eligible individual who is trained and certified under HUD auspices to use the new HUD computer program may conduct the inspection. The inspector will complete the inspection using a hand-held computer that uses the HUD software. The new HUD computer program would guide the inspector through the inspection, prompting the necessary observations to be made regarding the condition of the property. The computer program is based on substantially objective observations, which will tend to eliminate the uncertainty of subjective interpretation of the physical condition standards. The results of the inspection will be electronically transferred to HUD and will be processed and scored by electronic means and recorded in a Central Integrated Data Repository.

Determining Whether HUD Housing Meets the New Physical Condition Standards

The determination of whether the HUD housing meets the standard of decent, safe, sanitary and in good repair would be based on a review of observable deficiencies of the health and safety conditions, the site, the building, the dwelling units, and the common areas of such housing. The computer program will generate a score for these major areas and their respective elements. The scores will allow HUD to rank the housing according to physical condition as determined by the computer-based inspection.

Inherent in such a scoring system is the weighting of factors that make up the physical condition standards. For instance, health and safety hazards are of utmost importance to HUD; therefore, these factors, as well as other key components of the building (i.e., roof, walls, heating) might be more heavily weighted in the scoring. Other factors that are less crucial to health and safety, although still related to housing that is decent, safe, sanitary and in good repair, might receive a lower weight. For example, a faulty roof would generally be weighed more heavily than a faulty sidewalk, because it could generally have a greater impact on the residents' health and safety. The evaluation system will create a composite score for HUD housing by calculating the component scores on a weighted average basis.

V. Regulatory Amendments

New Subpart for Physical Condition Standards and Inspection Requirements

This rule proposes to create a new subpart G in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart G would consist of three sections. Section 5.701 would provide the lists of the types of HUD housing to which the uniform physical condition standards and inspection requirements would apply. This section also would describe the unique applicability of the proposed requirements to the Public Housing program, as described above.

Section 5.703 would contain the physical condition standards for HUD housing that is decent, safe, sanitary and in good repair. These are the standards to which HUD housing must be maintained. Section 5.705 would simply provide that any entity responsible for conducting a physical inspection of HUD housing must inspect such housing annually (unless HUD provides notice to the contrary), in accordance with HUD-prescribed physical inspection procedures. This rule would not affect the existing requirements under each covered HUD program regarding which entity is responsible for conducting the physical inspection. HUD intends to provide more details with respect to the implementation of its physical inspection system through notices and other guidance materials.

Conforming Amendments in Program Regulations

In accordance with the proposed physical condition standards and inspection requirements, this rule also proposes to make several conforming amendments to HUD's program regulations.

1. *24 CFR part 207; Multifamily Housing Mortgage Insurance.* This rule proposes to add a new § 207.260, which will provide that for FHA-insured multifamily properties, the mortgagor must maintain the insured project in accordance with the physical condition standards in the new subpart G of part 5. This section would also require the mortgagee to inspect the project in accordance with the requirements in subpart G of part 5. As described above, the requirements for the mortgagor to maintain the property in a condition that is decent, safe, sanitary and in good repair (and for the mortgagee to inspect the property) are not new. This rule provides a clear set of physical condition standards and inspection requirements to help ensure that these

properties are maintained in accordance with such obligations.

2. *24 CFR part 266; Housing Finance Agency (HFA) Risk-Sharing.* This rule proposes to add a new § 266.507 to provide that the mortgagor must maintain the project in accordance with the new physical condition standards in subpart G of part 5. This new section would apply the new standards to all projects insured previously or in the future. This rule also proposes to remove § 266.505(b)(6) regarding the maintenance requirements of the Regulatory Agreement between the HFA and the mortgagor, since the maintenance requirements would be in the new § 266.507. This rule would also amend § 266.510(a) to require HFAs to perform their inspections in accordance with the inspection requirements in subpart G of part 5.

3. *24 CFR part 880; Section 8 New Construction.* This rule proposes to amend § 880.201 to revise the definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove paragraph (a) of § 880.207 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

4. *24 CFR part 881; Section 8 Substantial Rehabilitation.* This rule proposes to amend § 881.201 to revise the definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove paragraph (a) of § 881.207 regarding HUD's minimum design standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

5. *24 CFR part 882; Section 8 (Project-Based) Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals).* HUD recently amended its regulations in part 882 to remove the regulatory provisions on certificates. These provisions are now in part 982. (Please see the Section 8 Certificate and Voucher Programs Conforming Rule, published in the **Federal Register** on April 30, 1998, 63 FR 23826.) The only regulatory provisions remaining in part 882 are for two Section 8 project-based programs—Moderate Rehabilitation and Single Room Occupancy for homeless individuals.

This rule proposes to amend part 882 further to recognize the new uniform physical condition standards. This rule would amend § 882.102 to revise the definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule would also remove the definition of "Housing Quality Standards" from § 882.102, since those standards would be replaced by the new uniform physical condition standards in this proposed rule.

This rule would then amend § 882.404 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint). Similarly, this rule would also amend § 882.803(b) for the SRO program by replacing references to the Housing Quality Standards with references to § 882.404.

6. *24 CFR part 883; Section 8 State Housing Agencies.* This rule proposes to amend § 883.302 to add a definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove the definition of "MPS (Minimum Property Standards)" in § 883.302, and paragraphs (a)(1) and (b)(1) of § 883.310 regarding HUD's minimum property and design standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with these standards.

7. *24 CFR part 884; Section 8 New Construction Set-Aside for Rural Rental Housing.* This rule proposes to amend § 884.102 to revise the definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also proposes to remove the definition of "Minimum property standards" in § 884.102, and paragraph (b)(1) of § 884.110 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 would replace the continuing requirement to comply with those standards.

8. *24 CFR part 886; Section 8 Special Allocations (Loan Management Set-Aside (LMSA) and Property Disposition (PD)).* This rule proposes to amend §§ 886.102 (LMSA) and 886.302 (PD) to revise the definition of the term "Decent, safe, and sanitary." This rule would provide that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also would amend §§ 886.113 (LMSA) and 886.307 (PD) by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the specific occupancy requirements (i.e., the number of tenants per dwelling unit); such requirements are not addressed by the new uniform physical condition standards. This rule also would retain the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint).

9. *24 CFR part 891; Supportive Housing for the Elderly and Persons with Disabilities.* This rule would add a new § 891.180 to provide that housing assisted under these supportive housing programs must be maintained and inspected in accordance with the proposed physical condition standards and inspection requirements in subpart G of part 5.

10. *24 CFR part 965; PHA-Owned or Leased Projects—General Provisions.* This rule proposes to add a new subpart F (consisting of § 965.601) to part 965. Section 965.601 would require that housing that is owned or leased by a PHA must be maintained in accordance with the new uniform physical condition standards. Section 965.601 would also provide that for each PHA, HUD intends to perform independent inspections to confirm that Public Housing is being maintained in accordance with the new uniform physical condition standards using the proposed new inspection system, based upon a statistically valid sample of Public Housing units for each PHA.

11. *24 CFR part 983; Section 8 Project-Based Certificate Program.* This rule proposes to amend § 983.5 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule would retain, however, the specific occupancy requirements, since these requirements are not addressed by the new uniform physical condition standards. This rule also would retain the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule would not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the

separate regulations that are under development for lead-based paint).

VI. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this rule, of HUD's proposal to establish a uniform set of physical condition standards and to establish a uniform inspection protocol has been developed with the participation of HUD's program participants, industry leaders, and experts in the real estate inspection industries. As also discussed in the preamble, in adopting uniform physical condition standards for HUD housing, this proposed rule would not alter the statutory standard for the maintenance of HUD housing, nor the existing requirement to conduct property inspection. HUD anticipates that making these standards uniform and consistent will ease the administrative burden for participants in the covered HUD programs, and therefore there is a benefit to making this standard effective at the earliest date possible. Given these reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**. HUD will also directly notify entities that have expressed a significant interest to HUD by sending such entities a copy of this proposed rule.

VII. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule is not anticipated to have a significant economic impact on a substantial number of small entities. All HUD housing is currently subject to physical condition standards and a physical inspection requirement. As discussed in the preamble to this proposed rule, there are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. Accordingly, this proposed rule does not alter that requirement, nor does the proposed rule shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals currently responsible for the inspection of HUD subsidized properties would remain responsible. The proposed rule, however, provides for uniform physical inspection standards for the majority of HUD programs. These standards would not be significantly different from those standards to which HUD housing is currently subject. The existing applicable standards are similar but there are some variations from HUD program to program. HUD anticipates that making these standards uniform and consistent for the HUD programs covered by this rule will ease the administrative burden for participants in the covered HUD programs, including and particularly small entities. As with the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made.

Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would provide a uniform set of physical condition standards and physical inspection requirements for HUD housing, which would make HUD's requirements clearer and more objective. As a result, the proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)

14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low-and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is proposed to be amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart G is added to part 5 to read as follows:

Subpart G—Physical Condition Standards and Inspection Requirements

Sec.
5.701 Applicability.
5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).
5.705 Uniform physical inspection requirements.

Subpart G—Physical Condition Standards and Inspection Requirements

§ 5.701 Applicability.

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. "Project-based assistance" means Section 8 assistance that is attached to the structure (see § 982.1(b)(1) regarding the distinction between "project-based" and "tenant-based" assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) This subpart also applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(5) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(6) Section 231 of the NHA (Housing for Elderly Persons);

(7) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(8) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(9) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(10) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(11) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(c) This subpart also applies to Public Housing (housing receiving assistance under sections 5, 9, or 14 of the U.S. Housing Act of 1937).

(d) For purposes of this subpart, the term "HUD housing" means the types of housing listed in paragraphs (a), (b), and (c) of this section.

§ 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c) must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair.

These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) *Dwelling units.* (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units may not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas would apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

§ 5.705 Uniform physical inspection requirements.

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. A new § 207.260 is added, immediately after § 207.259a, to read as follows:

§ 207.260 Maintenance and inspection of property.

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

5. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.505 [Amended]

6. Section 266.505 is amended by removing and reserving paragraph (b)(6).

7. A new § 266.507 is added, to read as follows:

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G.

8. In § 266.510, paragraph (a) is revised to read as follows:

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. Section 880.201 is amended by revising the definition of "*Decent, safe and sanitary*", to read as follows:

§ 880.201 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 880.207 [Amended]

11. Section 880.207 is amended by removing and reserving paragraph (a).

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

12. The authority citation for 24 CFR part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

13. Section 881.201 is amended by revising the definition of "*Decent, safe and sanitary*", to read as follows:

§ 881.201 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 881.207 [Amended]

14. Section 881.207 is amended by removing and reserving paragraph (a).

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

15. The authority citation for 24 CFR part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

16. Section 882.102 is amended in paragraph (b) by revising the definition of "*Decent, safe, and sanitary*"; and by removing the definition of "*Housing quality standards* (HQS)"; to read as follows:

§ 882.102 Definitions.

* * * * *

(b) * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition standards in 24 CFR part 5, subpart G.

* * * * *

17. Section 882.404 is amended by revising the heading; by revising paragraph (a); by removing and reserving paragraph (b); by revising paragraph (c); and by removing paragraph (d); to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

(a) Compliance with physical condition standards. Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

* * * * *

(c) *Compliance with lead-based paint requirements.* Housing used in the Section 8 moderate rehabilitation program must comply with the lead-based paint requirements in 24 CFR 982.401(j). For purposes of the SRO program, however, see § 882.803(b).

18. Section 882.803 is amended by revising paragraph (b), to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b) *Physical condition standards.* Section 882.404 applies to this program, except that the lead-based paint requirements in 24 CFR 982.401(j) do not apply to this program, since these SRO units will not house children.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

19. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

20. Section 883.302 is amended by adding a definition of "*Decent, safe, and sanitary*", in alphabetical order; and by removing the definition of "*MPS (Minimum Property Standards*"; to read as follows:

§ 883.302 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 883.310 [Amended]

21. Section 883.310 is amended by removing and reserving paragraphs (a)(1) and (b)(1).

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

23. Section 884.102 is amended by revising the definition of "*Decent, safe, and sanitary*"; and by removing the definition of "*Minimum property standards*"; to read as follows:

§ 884.102 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

§ 884.110 [Amended]

24. Section 884.110 is amended in paragraph (b) by removing "(1) Minimum Property Standards," and the designations "(2)", "(3)", "(4)", and "(5)".

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

25. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

26. Section 886.102 is amended by revising the definition of "*Decent, Safe and Sanitary*", to read as follows:

§ 886.102 Definitions.

* * * * *

Decent, Safe, and Sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

27. Section 886.113 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); and by removing paragraphs (j) through (n); to read as follows:

§ 886.113 Physical condition standards; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

28. Section 886.302 is amended by revising the definition of "*Decent, safe, and sanitary*", to read as follows:

§ 886.302 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the

physical condition requirements in 24 CFR part 5, subpart G.

* * * * *

29. Section 886.307 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); and by removing paragraphs (j) through (p); to read as follows:

§ 886.307 Physical condition standards; physical inspection requirements.

(a) *General.* Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

30. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

31. In subpart A of part 891, a new § 891.180 is added, to read as follows:

§ 891.180 Physical condition standards; physical inspection requirements.

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

32. The authority citation for 24 CFR part 965 continues to read as follows:

Authority: 2 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

33. In part 965, a new subpart F, consisting of § 965.601, is added, to read as follows:

Subpart F—Physical Condition Standards and Physical Inspection Requirements

§ 965.601 Physical condition standards; physical inspection requirements.

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

34. The authority citation for 24 CFR part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

35. Section 983.5 is revised to read as follows:

§ 983.5 Physical condition standards; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Lead-based paint.* 24 CFR 982.401(j) applies to assistance under this part.

Dated: June 5, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–17271 Filed 6–29–98; 8:45 am]

BILLING CODE 4210-32-P

VOL 63 ISS 125 JE 30 1998 UMI

federal register

Tuesday
June 30, 1998

Part IV

Department of Housing and Urban Development

24 CFR Parts 5, 200, et al.
Uniform Financial Reporting Standards for HUD Housing Programs; Proposed Rule

VOL 63 ISS 125 JE 30 1998 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 236, 266, 880, 886, and 982

[Docket No. FR–4321–P–01]

RIN 2501–AC49

Uniform Financial Reporting Standards for HUD Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would establish for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs uniform annual financial reporting standards. The rule would require public housing agencies and project owners of HUD-assisted housing to submit electronically to HUD, on an annual basis, certain financial information in a standardized format. Electronic submission is necessary because the manual submission of annual financial information to HUD has become a significant administrative burden to housing authorities, project owners, and mortgagees, as well as to HUD. This rule also would require that the annual financial information to be submitted to HUD must be prepared in accordance with generally accepted accounting principles. HUD is developing the format and the content of the financial information to be reported to HUD annually.

The objective of this rule is to standardize the annual financial information submission process and, through standardization, bring consistency to the evaluation of the financial condition of housing assisted under HUD programs.

DATES: *Comment due date:* Comments must be submitted on or before July 30, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention Paul Maxwell, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–2082 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

HUD 2020 Management Reforms

The HUD 2020 Management Reform Plan announced in June 1997, and published in the **Federal Register** on August 12, 1997 (62 FR 43204) presents significant changes to HUD's structure, processes and systems. These changes are directed to improving the efficiency and effectiveness of HUD's programs, operations and the provision of its services. One of the major reforms announced in the HUD 2020 Management Reform Plan is the establishment of a Real Estate Assessment Center (REAC) to be a separate organization within HUD apart from the traditional program functional areas. The REAC is responsible for evaluating the performance of entities managing or owning housing for which HUD has a financial interest or statutory obligation to monitor.

Specifically, REAC is responsible for monitoring the following areas: (1) the physical conditions of HUD properties; (2) the financial conditions of the properties; (3) the management capabilities of the property owners of this housing; and (4) general resident satisfaction. The objective of REAC is to protect HUD's interest (as well as the interest of taxpayers) by identifying and mitigating the risks of financial loss due to: (1) physical deterioration from neglected/inadequate maintenance or modernization; (2) financial insolvency of the owner that impacts the availability of funds to meet HUD program obligations; or (3) intentional fraud, waste and abuse. The resident satisfaction process will allow REAC to hear of conditions directly from tenants and to take or require action when survey results significantly differ from other analysis results.

For REAC to properly evaluate and monitor the financial condition of HUD properties, certain financial information must be provided to HUD on an annual basis. The statutes, regulations, and contracts governing HUD housing programs currently provide for the annual submission of financial information to HUD, as well as such other information that HUD may require to monitor compliance with program statutory, regulatory, and contractual requirements. However, the financial reporting standards vary to some degree from program to program.

As part of HUD's management reform, HUD created working groups familiar with both FHA properties and public housing properties to examine the annual financial information that now is submitted to HUD under its various housing programs. The working groups discussed what financial information needs to be submitted to HUD on an annual basis, and how preparation and submission of this information, and the evaluation by HUD, could be made less burdensome while preserving the enforcement integrity of the information. The conclusion of the working groups was that the annual financial information required of PHAs and project owners should be made uniform to the extent possible across the various HUD housing programs, and that the information should be submitted to HUD in a standardized format. Additionally, there was agreement that the information should be prepared by the entities in accordance with generally accepted accounting principles (GAAP), and the information should be submitted to HUD electronically.

II. Uniform Financial Reporting Standards

Highlights of the Rule

This rule would establish for HUD's public housing, Section 8 housing, other assisted housing, and multifamily insured housing programs annual financial reporting standards. The rule would require public housing agencies and project owners to submit electronically to HUD, on an annual basis, certain financial information, as determined by HUD, and in accordance with a standardized format to be established by HUD. Electronic submission is necessary because the manual submission of HUD financial information has become a significant administrative burden to housing agencies and project owners as well as to HUD. This rule would also require that the annual financial information to be reported to HUD must be prepared in accordance with generally accepted accounting principles (GAAP). "Generally accepted accounting principles" has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA). Under GAAP, the accounting principles and financial reporting standards are established by the Governmental

Accounting Standards Board (GASB) for governmental entities, and by the Financial Accounting Standards Board (FASB) for nongovernmental entities.

The specific compliance dates for covered entities to meet the reporting requirements in this rule are discussed in more detail later in this preamble under the heading "Compliance with New Uniform Financial Reporting Requirements." Generally, however, this rule proposes that the annual submission date for the report would be no later than sixty (60) days after the end of the covered entity's fiscal year. Public housing agencies are currently required to report the results of operations based on HUD accounting requirements within 45 days following the close of their fiscal year. Accordingly, this rule amends the time period for public housing agencies by establishing this 60-day time period in part 5, subpart H. HUD is currently developing the content and the format in which the annual financial information is to be submitted. The format will be substantially the same for all covered programs, but the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/FHA-related housing vs. PHAs). HUD's objective is to standardize the financial information submission process and through standardization bring consistency to the assessment of the financial condition of the housing.

Standardized Financial Information

All HUD housing programs currently require the submission of financial information at least annually to HUD. Much of the financial information that is now submitted to HUD would continue to be submitted to HUD. The content of the annual financial report to be submitted to HUD would not be materially altered by this rule. It is HUD's intention, however, to remove from this report redundant information wherever it is identified. Therefore, with respect to information to be reported, this rule would not represent a significant departure from current reporting practice. The manner in which the financial information is prepared and the format in which it is submitted would be altered by the requirements to comply with GAAP and to submit the report electronically and in a standardized format. A standardized format is anticipated to bring uniformity and consistency to the evaluation of the financial data. Electronic submission is anticipated to bring efficiency to the process and reduce administrative burden.

Generally Accepted Accounting Principles (GAAP)

Accounting and reporting in accordance with GAAP, as prescribed by GASB and FASB, would bring much needed consistency to HUD program evaluation. Conversion to GAAP would require the covered HUD program participant to manage its accounting and reporting in accordance with a standard set of rules published by auditing and accounting professionals and recognized both within and outside of government. The use of GAAP, therefore, would enable HUD and program participants to account for transactions and report results of operations using widely accepted protocols. Financial reports based on GAAP are widely accepted by industry and government and are, therefore, widely understood. The relative consistency of GAAP would allow HUD to perform analysis on its large housing portfolio in ways that would assure the overall reliability and validity of the results. As noted earlier in this preamble, HUD has contacted industry leaders and participants in HUD's public housing and insured and subsidized housing programs, and has discussed GAAP and financial reporting, generally, with these parties. From these discussions, HUD has learned that GAAP accounting and reporting is more meaningful than present HUD accounting, and that these entities seek the benefits of the change. By and large the multifamily housing industry already adheres to GAAP tenets.

With respect to public housing, many PHAs are also already adhering to GAAP tenets. At least two States (Louisiana and Tennessee) require that all PHAs in those States convert their HUD basis of accounting financial statements to a GAAP basis for State reporting purposes. Therefore, PHAs, as well as the accountants and auditors in those two States have experience with the GAAP conversion process. Additionally, several large PHAs (New York, Chicago, Denver, Seattle, and Baltimore, for example) have already converted to GAAP. It is expected that many PHAs have quantified the effect of the differences between GAAP and the HUD basis of accounting because of the guidance given in the Public and Indian Housing Low Rent Accounting Guide and because of other business and operating needs (e.g., the liability for sick and vacation leave). Further, many PHAs have expressed to HUD their interest in GAAP reporting for the purpose of ease of understanding by their board members and for acceptance by lenders for private funding and for other non-HUD reporting purposes.

For those PHAs that may not be familiar with GAAP or that have not had occasion to prepare GAAP financial reports for other submissions (for example, reports that may be required to be submitted to State or local governments), accounting support services are an eligible expense under the performance funding system (PFS). To ease the conversion, the current public housing agency accounting guide and chart of accounts will not be modified except to add those additional accounts needed to record new transactions in accordance with GAAP or to enhance the existing chart of accounts to address current business operation requirements. Some illustrative examples of these new accounts are: (1) An allowance for uncollectible receivables and the related bad debt expense; (2) an allowance for depreciation of buildings, structures, and equipment and the related depreciation expense; and (3) liability and expense accounts for probable losses expected from litigation, claims and other contingencies. While a PHA's accounting staff will have to quantify the amounts to be recorded in these new accounts, the PHA's independent public accountants can provide guidance on GAAP. HUD also will offer guidance for purposes of standardizing the conversion results.

Electronic Submission

Both HUD and the various entities that participate in HUD programs are making more extensive use of automated systems. Vice President Gore's Report of the National Performance Review has, as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government. (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2). Requiring the electronic submission of financial data in HUD housing programs is another step in implementing the Vice President's objective. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors, and faster HUD review and analysis.

The manner of electronic submission of financial reports contemplated by HUD is via the Internet, rather than through tape, diskette, or paper. HUD, however, may approve transmission of

the data by tape or diskette if HUD determines that the cost of electronic Internet transmission would be excessive. In this day and age of increased automation in communications and business transactions, including the reporting of information, HUD anticipates that the instances in which covered entities will not be able to comply with submission of financial data electronically via Internet will be very few. Implementation of this electronic standardized financial reporting system would help to bring HUD up to speed with its program partners in terms of modern technology.

Financial Report Submission Date

The rule provides that the annual submission date for the report will be sixty (60) days after the end of the covered entity's fiscal year. The 60-day requirement appears in existing regulations, regulatory agreements, and/or subsidy contracts for most of the housing covered by this rule (see, e.g., the Section 8 project-based assistance programs). Since HUD has determined that the 60-day requirement has provided a reasonable amount of time to compile and submit the required information, and since a majority of the covered entities are familiar with this time period, HUD has determined that there is no compelling reason to change the 60-day requirement. Since under existing practice, public housing agencies generally report the results of operations to HUD within 45 days following the end of their fiscal years, this rule would allow PHAs 15 extra days during which to submit their financial reports. The dates on which HUD intends to make these reporting requirements effective and mandatory are discussed later in this preamble, under the heading "Compliance with New Uniform Financial Reporting Requirements."

HUD Programs Covered

The uniform financial reporting standards would apply to owners and/or administrators of housing under the following HUD programs:

1. Public Housing

The reporting requirements would apply to PHAs receiving assistance under sections 5, 9, or 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437g, and 1437*l*) (the 1937 Act).

2. PHAs Administering Section 8 Housing Assistance Payments Programs

The reporting requirements would apply to PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

3. Owners of Housing Receiving Section 8 Project-Based Housing Assistance

The reporting requirements would apply to owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program.

4. Multifamily Housing

The reporting requirements would apply to owners of housing receiving assistance or loans under the following HUD programs:

—Section 202 Program of Supportive Housing for the Elderly;
—Section 811 Program of Supportive Housing for Persons with Disabilities; and
—Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

The reporting requirements would also apply to owners of all housing with mortgages insured, coinsured, or held by HUD, or housing that is receiving assistance from HUD. Such housing would include, but may not be limited to, housing under the following authorities:

—Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
—Section 213 of the NHA (Cooperative Housing Insurance);
—Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
—Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
—Section 231 of the NHA (Housing for Elderly Persons);
—Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);
—Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
—Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
—Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and
—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

Section 5.801(a)(4) of this proposed rule lists those sections of the National Housing Act that specifically give the Secretary authority to insure mortgages. Sections of the NHA that give the Secretary authority to insure mortgages "pursuant to" another section of the NHA are not listed in the coverage of § 5.801 of this proposed rule, because HUD ultimately has insured the mortgages under one of the listed statutory sections (e.g., a coinsured mortgage may be insured under section 207 of the NHA, pursuant to section 244 of the NHA).

Compliance With New Uniform Financial Reporting Requirements

For PHAs, as recipients of assistance under sections 5, 9, or 14, or as contract administrators of the various Section 8 assisted housing programs listed in section 2, above, HUD intends that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, will begin with those PHAs with fiscal years ending September 30, 1999 and later. This compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its

report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

For all other entities to which this rule would apply ("other covered entities"), HUD intends that the requirement of electronic submission of GAAP-based audited financial reports, as provided in this rule, will begin with those other covered entities with fiscal years ending December 31, 1998 and later. The earlier starting date reflects the widespread use of GAAP by other covered entities. Beginning on January 1, 1999 and thereafter, all financial reports submitted to HUD by other covered entities would be required to be submitted in accordance with the requirements of this rule. Other covered entities with fiscal years ending December 31, 1998 are required to submit electronic, GAAP-based, audited financial reports by no later than March 1, 1999 (60 days after the close of the fiscal year). Covered entities with fiscal years ending December 31, 1998 that elect to submit their audited reports earlier than the due date of March 1, 1999 must submit their audited financial reports electronically and prepared in accordance with GAAP, in the manner and format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to January 1, 1999, other covered entities may submit their financial reports in accordance with this rule, but they would not be required to do so.

The reporting requirements in this rule are not intended to alter the applicability or timing of the audit requirements in the Single Audit Act (as discussed below). HUD intends to issue notices and other guidance on the details relating to the implementation of this rule.

Additionally, to allow for a period of consistent assessment of the financial reports submitted to HUD under this rule for the purpose of making any refinements or necessary adjustments, PHAs covered by this rule will not be allowed to change their fiscal years for their first three full fiscal years following the effective date of this rule.

III. Cross-Cutting Financial Reporting and Recordkeeping Requirements

While the statutory authorities for the individual HUD housing programs (e.g., the U.S. Housing Act of 1937 or the National Housing Act) provide for the submission of financial information to HUD, in such form and at such times as prescribed by HUD, there are also certain statutory financial reporting and recordkeeping requirements that cut across several HUD programs. This rule would not supersede the requirements. These cross-cutting requirements are as follows:

The Byrd Amendment

Section 814 of the Housing Act of 1954 (42 U.S.C. 1434) (the Byrd Amendment) provides that every contract between HUD and any person or local body for a loan, advance, grant or contribution must provide that the person or local body must keep such records as HUD prescribes. The records must permit a speedy and effective audit and fully disclose the amount and disposition of the proceeds by the person or local body. The Byrd Amendment also provides that no mortgage covering new or rehabilitated multifamily housing shall be insured unless the mortgagor certifies that the mortgagor will keep the records as are prescribed by HUD in such form as to permit a speedy and effective audit. Finally, the Byrd Amendment provides that HUD and the Comptroller General of the United States shall have access to and the right to examine and audit the records.

The Single Audit Act

The Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) (the Act), as amended by the Single Audit Act Amendments of 1996 (Pub. L. 104–156; approved July 5, 1996) (Single Audit Act of 1996), sets audit requirements for State and local governments and nonprofit organizations that receive Federal awards, including loan guarantees. The Single Audit Act of 1996 raised the monetary threshold for expenditures—from $25,000 to $300,000—over which it requires an entity to have an audit. The Act now provides that each entity that expends $300,000 or more shall have either a single audit or a program-specific audit annually. The Single Audit Act of 1996 also shortened the financial report submission date from 13 months to 9 months, and it included a report submission process that includes a data collection form and streamlined filing requirements.

OMB Circular A–128 implemented the Act for State and local governments, and a separate OMB Circular A–133 implemented audit requirements for nonprofits. Similarly, the regulations in 24 CFR part 44 implemented OMB Circular A–128 audit requirements for State and local governments, and the regulations in 24 CFR part 45 set forth the audit requirements for nonprofits under OMB Circular A–133. The program regulations for many of the housing programs addressed in this rule refer to the audit requirements in parts 44 and/or 45 (e.g., 24 CFR 200.11, 236.901, 266.510, 880.211, 886.131, 891.160).

On June 30, 1997 (62 FR 35278), OMB published in the **Federal Register** the final revisions to OMB Circular A–133. The revisions were undertaken to reflect the changes made to the Act by the Single Audit Act of 1996. Revised OMB Circular A–133 consolidated the requirements for States and local governments with the requirements for nonprofits, and therefore rescinded OMB Circular A–128. By interim rule published on November 18, 1997 (62 FR 61616), HUD adopted the requirements of revised OMB Circular A–133. Through the November 18, 1997 interim rule, HUD removed and reserved 24 CFR parts 44 and 45, since these parts are no longer applicable (upon issuance of revised OMB Circular A–133). HUD is currently developing a rule that will correct all references in HUD's regulations to those obsolete regulations. The financial reporting submission requirements in this proposed rule would be consistent with the provisions of the Act and OMB Circular A–133.

IV. Objective of the Rule

The purpose of this rule is to bring uniformity and consistency to the financial reporting component of HUD housing programs, which otherwise varies from program to program, in most cases solely on the basis that the program is not administered by the same HUD office. This rule will improve the efficiency of the financial reporting process, and reduce the administrative burden for covered entities and for HUD.

V. Regulatory Amendments

New Subpart for Uniform Financial Reporting Standards

This rule creates a new subpart H in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart H consists of one section. Section 5.801(a) describes the entities to which the uniform financial reporting standards will apply. Paragraph (b) of § 5.801 provides that entities covered by subpart H must submit electronically to HUD certain annual financial

information, prepared in accordance with generally accepted accounting principles, and in the format prescribed by HUD. In accordance with paragraph (c) of § 5.801, the information must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting entity.

Conforming Amendments in Program Regulations

In accordance with the uniform financial reporting standards, this rule also makes several conforming amendments to HUD's program regulations to reference compliance with the uniform financial reporting standards in 24 CFR part 5, subpart H. HUD is developing a separate proposal regarding the overall assessment of public housing, in which HUD will further address the applicability of the uniform financial reporting standards in 24 CFR part 5, subpart H, to the public housing programs.

One of the conforming amendments proposed in this rule would be to add a new § 200.36, which would refer to the uniform financial reporting requirements in subpart H of part 5. Section 200.36 would apply the new financial reporting requirements to all HUD's multifamily mortgage insurance programs, since many of the various program regulations (e.g., 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 241) refer to the cross-cutting requirements in part 200. This rule proposes to amend the heading for subpart A of part 200 to clarify that the financial reporting requirement would be a continuing eligibility requirement.

HUD may make additional conforming amendments at the final rule stage of this rule to remove any outdated or inconsistent regulatory provisions.

VI. Justification for Shortened Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this rule, of HUD's proposal to require standardized financial information, to be prepared in accordance with GAAP and electronically submitted, has been developed with the participation of HUD's program participants, industry leaders and experts in the financial and accounting industries. As also discussed in the preamble, the change to GAAP and the requirement of the submission of annual financial reports in electronic and standardized format will not be a significant change for many HUD program participants. In HUD's multifamily programs, the multifamily program participants already largely adhere to GAAP tenets. In HUD's public housing programs, several public housing agencies already adhere to GAAP tenets. These PHAs can serve as resources to other PHAs for assistance in the conversion process.

GAAP requires that financial statements prepared on another comprehensive basis of accounting (the basis prescribed by HUD accounting, for example) include in the accompanying notes, a summary of significant accounting policies that would include the basis of presentation and describe how that basis differs from generally accepted accounting principles. PHAs, therefore, under current non-GAAP reporting are already aware, or should be aware, of the differences between the basis of accounting prescribed by HUD and that prescribed by GAAP. Additionally, the timetable for this rule recognizes the time allowed by the Single Audit Act for the preparation and submission of the final audited statements. This period of time allows HUD to work with PHAs and private owners not currently using GAAP to assist them in the conversion process.

The changes to the financial reporting requirements, proposed by this rule, will bring consistency to the evaluation of the financial condition of housing assisted under various HUD programs, which benefits the entities covered by this rule. The standardization of and electronic submission of the annual financial information due to HUD will not only bring consistency for all program participants, it will reduce the administrative burden on program participants. Electronic submission of financial information results in cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors as well as other benefits such as increased speed in the preparation and exchange of information preparation and exchange, and faster HUD review and analysis.

Given these reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**. HUD will also directly notify entities that have expressed a significant interest to HUD by sending such entities a copy of this proposed rule.

VII. Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates the total reporting and recordkeeping burden that will result from the proposed collection of information as follows:

REPORTING BURDEN

	Number of respondents	Frequency of response	Estimated time (hours)	Average response (hours)
PHAs	3,300	1	.75	2,475
Multifamily Housing Owners	30,000	1	.75	22,500
Total Reporting Burden	.....	.....	.....	24,975

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4321) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

and

Paul Maxwell, Reports Liaison Officer, Department of Housing & Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

This proposed rule involves external administrative requirements and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) and (where this rule would amend existing provisions) 50.19(c)(2), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. The financial reporting requirements proposed to be established by this rule are anticipated to reduce administrative burden for all entities covered by this rule, including small entities. As noted in the preamble, this rule does not propose a new reporting requirement. The annual reporting of certain financial information is already a HUD program requirement. What this rule proposes is to standardize, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP), and to provide for electronic submission. These proposed changes to financial reporting to HUD are anticipated to bring consistency, simplicity, and reduced administrative burden to the reporting process. For those entities unfamiliar with GAAP, and particularly for any small entities that may be unfamiliar with GAAP, HUD intends to conduct training seminars in order to assist small entities in their conversion to GAAP. With respect to costs, the audit costs assumed by PHAs and multifamily project owners are a recognized part of operating and administrative expenses, and accordingly, it is anticipated that there will be no (or very little) monetary costs incurred. As noted in the preamble, the Federal Housing Commissioner has required GAAP-based accounting for a number of years, and the vast majority of owners already adhere to its tenets. Therefore, any burden involved in conversion to GAAP in FHA programs is anticipated to be minimal. Further, in developing its electronic filing requirements, FHA has involved all stakeholders in the development effort, including owners and agent organizations and the accounting profession.

In addition to the issues of training and costs, entities will have up to 9 months to prepare statements in accordance with GAAP (the period of time allowed under the Single Audit Act). Notwithstanding HUD's determination that this rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMBRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)

14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)

14.134—Mortgage Insurance—Rental Housing (Section 207)

14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))

14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)

14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)

14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair Housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies) Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart H, consisting of § 5.801, is added to part 5 to read as follows:

Subpart H—Uniform Financial Reporting Standards

§ 5.801 Uniform financial reporting standards.

(a) *Applicability.* This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437*l*) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program;

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities;

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(xiv) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk-Sharing Program).

(b) *Submission of financial information.* Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance as prescribed by HUD.

(c) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(d) *Reporting compliance dates.* Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(e) *Limitation on changing fiscal years.* To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following [the effective date of the final rule to be inserted at the final rule stage].

PART 200—INTRODUCTION TO FHA PROGRAMS

3. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

4. The heading of Subpart A is revised to read as follows:

Subpart A—Requirements for Application, Commitment, and Endorsement Generally Applicable to Multifamily and Health Care Facility Mortgage Insurance Programs; and Continuing Eligibility Requirements for Existing Projects

5. A new § 200.36 is added immediately after § 200.35 to read as follows:

§ 200.36 Financial reporting requirements.

The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

6. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

7. Section 236.1 is amended by revising the heading, by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

* * * * *

(b) The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

8. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

9. In § 266.505, paragraph (b)(7) is revised to read as follows:

§ 266.505 Regulatory agreement requirements.

* * * * *

(b) * * *

(7) Maintain complete books and records established solely for the project and comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

10. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

11. In § 880.601, paragraph (d)(1) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

12. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

13. In § 886.318, paragraph (d)(1) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) * * *

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

14. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

15. In § 982.158, paragraph (a) is amended by adding a sentence at the end, to read as follows:

§ 982.158 Program accounts and records.

(a) * * * The HA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

* * * * *

Dated: June 5, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–17270 Filed 6–29–98; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 901

Public Housing Assessment System; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 901

[Docket No. FR–4313–P–01]

RIN 2577–AB81

Public Housing Assessment System

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes an entirely new system for the assessment of public housing in the United States. The nation's public housing system houses 1.2 million families in 20,000 projects across the 50 States, Puerto Rico, Guam and the U.S. Virgin Islands, operated by 3,400 public housing agencies. The major components of the new system include:

The rule provides for the first-ever assessment of the physical condition, financial health, and resident services in public housing. For the first time, the physical condition of every project in the nation's public housing inventory will be inspected on a regular basis with uniform standards to ensure that residents receive decent, safe, and sanitary housing. For the first time, the financial condition of every public housing agency will be assessed on generally accepted accounting principles. For the first time, resident satisfaction with public housing services will be measured and counted in HUD's assessment of public housing agency management.

The rule provides for increased flexibility for top performers. Public housing agencies which score in the top ten percent in their physical condition, financial health, resident satisfaction, and management operations will receive substantial flexibility and bonus points for funding competitions.

The rule provides for the establishment of a Troubled Agency Recovery Center to improve poor performers. Public housing agencies which perform unsuccessfully on these factors will be referred to a new Troubled Agency Recovery Center to improve poor performers.

The rule provides for the establishment of an Enforcement Center and Receivership for agencies which fail to improve performance. Public housing agencies which fail to post significant improvement within a year will be automatically referred to the new HUD Enforcement Center which will institute proceedings for judicial receivership to remove failed agency management.

The purpose of the new Public Housing Assessment System is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable, and provides real rewards for high performers and consequences for poor performers. As more fully discussed in the Supplementary Information section of the preamble, the proposed rule was developed with the assistance of public housing agency officials, representatives of public housing agency organizations, and representatives of public housing residents organizations.

DATES: *Comment due date:* July 30, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD Constituents Participation in the Proposed Rule

President Clinton's Executive Order on Regulatory Planning and Review (E.O. 12866, issued September 30, 1993) provides in section (6)(a) that:

> Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local and tribal officials).

Consistent with President Clinton's Executive and HUD's own partnership initiatives with its constituents and clients, the new assessment system for public housing was developed with extensive discussion and consultation with public housing agency (PHA) officials, officials from PHA representative organizations, representatives of public housing resident groups, experts in the fields of finance and audit and physical inspection of properties, and other interested parties such as housing advocacy groups and local government representatives. These discussions and consultations began in October 1997 and continued through April 1998. It was important to HUD that these entities and individuals have input in the development of a proposal for a new assessment system for public housing.

The consultation and discussions with PHA agency officials and representative groups will continue through the final rulemaking process and in the implementation of this new system. During the transition period to the new system, HUD will work closely with PHAs and resident groups to make any necessary refinements to the system. HUD, PHAs and public housing residents all want to see an effective and efficient management system for public housing, and will work together to make this a successful system for all concerned.

II. HUD 2020 Management Reforms

On June 26, 1997, HUD released its plan, the "HUD 2020 Management Reform Plan," for significant management reforms at HUD. HUD published the plan in the **Federal Register** on August 12, 1997 (62 FR 43204). The HUD 2020 Management Reform Plan is directed to (1) empowering people and communities to improve themselves, and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of HUD's programs, operations, and delivery of services. To improve the efficiency and effectiveness of HUD's programs, operations, and delivery of services, the HUD 2020 Management Reform Plan calls for the restructuring of HUD's internal operations to reallocate resources and consolidate major functions.

Under the HUD 2020 Management Reform Plan, resources will be allocated in a way that is designed to align HUD's resources with its long-term mission of empowering people and communities to improve themselves and succeed in today's world. Consolidation of functions is designed to avoid duplication of effort, achieve

consistency and uniformity in the performance of these functions, and ensure fairness. With respect specifically to HUD's public housing programs, the consolidation of certain functions is critical to the survival of public housing as an affordable housing option for low-income persons. Those consolidated functions that will significantly impact and benefit public housing operations include the establishment of a Real Estate Assessment Center, a Troubled Agency Recovery Center (TARC) and an Enforcement Center. These centers provide the backbone of HUD's new system for Federal management of the nation's public housing. The following provides a brief overview of the functions of the three centers and their relationship to public housing, as well as to other HUD assisted properties.

A. Measuring Program Performance—the Real Estate Assessment Center

The Real Estate Assessment Center (the "Assessment Center" or "REAC") is charged with the responsibility for assessing and scoring the condition of properties in which HUD has an interest and the performance of entities that manage and own those properties. Until the establishment of the Assessment Center, HUD's Office of Housing and the Office of Public and Indian Housing independently operated separate real estate assessment operations, yet the administration of both organization's multifamily portfolios is a common function of asset management. Under the Assessment Center, the assessment of all of the properties of the Office of Housing and the Office of Public and Indian Housing is consolidated and the evaluation standards and procedures are made uniform, to the greatest extent feasible.

The establishment of the Assessment Center marks an important change in HUD's way of doing business. Until the establishment of the Assessment Center, HUD has never had an effective and comprehensive property assessment system. Under HUD 2020 Management Reform, for the first time in HUD's history, all properties will be physically inspected and financially assessed using a comprehensive and uniform protocol. The Assessment Center will play a key role in evaluating and scoring the condition of public housing properties and the performance of PHAs, and it also will play a key role in evaluating and scoring the condition of other HUD-assisted housing and FHA-insured properties, and the performance of the entities that manage and own those properties. The Assessment Center will be staffed with individuals who are experts in the areas of finance and audit, real estate functions, and housing management operations.

In order for the Assessment Center to effectively perform its functions, certain assessment tools—specifically, physical condition standards for HUD properties, and financial information from HUD reporting entities—need to be made uniform to the greatest extent possible. As discussed later in this preamble, establishment of uniform protocols for assessing physical condition and financial information is underway. These new standardized protocols will become significant diagnostic tools for the Assessment Center. For public housing, as will be discussed in more detail later, these uniform protocols will form part of the basis by which the Assessment Center will analyze the performance of public housing agencies (PHAs) and assign a score. The score assigned to a PHA will identify that PHA as a high performer, standard performer or troubled PHA. High performers will receive increased regulatory flexibility, bonus points and other incentives. Those PHAs designated as troubled will be referred to the Troubled Agency Recovery Center to improve performance.

The uniform protocols to be used by the Assessment Center, although standardized, will not be static. The Assessment Center will provide an ongoing analysis and evaluation of assessment methods to determine the accuracy, the effectiveness and the relevance of inspection, management and financial protocols, including factors, scoring, weights, sampling and algorithms. The Assessment Center will keep the public and HUD program participants advised of the findings obtained through this ongoing analysis and of any recommended changes to the protocols and indicators through issuance of **Federal Register** notice or other appropriate notice.

One of HUD's objectives under HUD 2020 Management Reform is not only to identify where performance by program participants fails to meet acceptable standards, but to assist these participants in raising their level of performance. For PHAs, such assistance will be provided either by the appropriate HUD area HUB/Program Center, or by the TARC if the PHA is designated as troubled.

B. Assisting Troubled Public Housing Agency Performers—Troubled Agency Recovery Centers (TARCs)

The Troubled Agency Recovery Centers established by HUD will assist PHAs designated as troubled to reach improved performance through the development and implementation of sustainable solutions. Upon designation as troubled, a PHA will be referred to the TARC for assistance. The TARC will work with the PHA to develop and implement an intervention strategy to help raise the PHA's level of performance. The TARC will provide technical assistance to troubled PHAs on a variety of public housing operation issues, including: property needs and maintenance; occupancy procedures; resident and applicant relations; and financial management. One of the principal objectives of the TARC is to determine the appropriate course of action for the troubled PHA to achieve recovery, considering the resources and the recovery period best suited for the individual PHA, its community and the families the PHA serves. If a troubled PHA is found to be making substantial progress toward addressing its problems, consideration may be given to allowing the PHA additional time to continue the recovery effort. If a troubled PHA's problems are not addressed within the period established by this rule, the PHA will be referred to the Enforcement Center.

C. Restoring Public Trust—the Enforcement Center

The greatest breach of the public trust at HUD is the waste, fraud and abuse in HUD's existing portfolio of millions of housing units. Until recently, each of HUD's program offices (the Offices of Public and Indian Housing, Housing, and Community Planning and Development) operated independent enforcement functions, with different standards and procedures. HUD has combined non-civil rights enforcement actions for the program offices into one authority—the Enforcement Center. The Enforcement Center is a fundamental programmatic reform that HUD will take to restore public trust in fulfilling its mission to provide decent, safe and sanitary housing for lower and moderate income households. The Enforcement Center is intended to be the central Departmental focus for taking aggressive action against owners of HUD's troubled assisted housing and public housing portfolios. The Enforcement Center will be responsible for correcting long-standing noncompliance issues with HUD grantees, and will take action against owners who do not cooperate with HUD during any recovery process or who may have put housing projects in jeopardy by engaging in waste, fraud or abuse.

With respect to public housing, the Enforcement Center will be responsible for troubled PHAs that fail to improve their performance during the

established time period. The actions taken by the Enforcement Center against such PHAs include judicial receivership to remove failed management, and referrals for the imposition of civil and criminal sanctions to the applicable Federal government agencies or offices, where appropriate.

D. Achieving Fairness By Transferring Responsibility to Independent Units

Each of the three centers, the Assessment Center, the TARC, and the Enforcement Center, will be separate units, independent from traditional HUD program areas and functions. This separation from traditional program areas reflects a key objective of HUD 2020 Management Reform and that is to treat program participants and assess program performance on the basis of uniform standards, not on the basis of which HUD program office administers the assistance. Before the HUD 2020 Management Reforms, program office staff all too often were handed conflicting mandates. On the one hand, staff were asked to provide assistance to HUD program participants (communities, housing agencies, multifamily owners, etc.) to help them meet their housing and urban development needs; and on the other hand, these employees were directed to monitor the actions of the program participants. HUD realizes that both roles are important to HUD's mission and have a place in HUD, but the role of facilitator and the role of monitor are inherently in conflict. The creation of the Assessment Center, the TARC and the Enforcement Center as independent units is designed to address the inconsistent responsibilities previously handled by program staff. Dividing the important functions of community facilitator and program monitor into different offices is a critical step in restoring public trust in HUD.

Restoring public trust not only will be achieved through independence of the Assessment Center, TARC and the Enforcement Center, but in the consistent uniform approach the centers take to the performance of their respective functions. As discussed earlier, for the Assessment Center, a consistent and fair approach to the evaluation of HUD properties requires uniform assessment standards in two critical areas: (1) The physical condition of properties receiving HUD financial assistance; and (2) the financial condition of the owners and managers of these properties.

E. Standardization of Physical Assessment of Properties—Uniform Physical Condition Standards

As part of the HUD 2020 Management Reform objective to create a uniform, assessment process for all HUD assisted properties, HUD is establishing uniform physical conditions standards and inspection procedures for its assisted housing, FHA related properties and public housing. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair—the physical condition standard to which HUD assisted housing always has been subject. HUD's Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing currently must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what constitutes acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, vary from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, for the physical condition indicator of the Public Housing Assessment System (PHAS), this proposed rule provides for public housing properties to be evaluated on the basis of uniform physical condition standards that ensure that the public housing is decent, safe, and sanitary. Through separate rulemaking, HUD will propose to apply these uniform physical condition standards to properties assisted under other HUD housing programs. These standards are discussed in greater detail later in this preamble.

F. Standardization of the Financial Assessment of Program Participants—Uniform Financial Reporting

The uniform assessment of HUD properties under HUD 2020 Management Reform also includes a uniform financial assessment process. To achieve this objective, HUD is establishing uniform standards for annual financial reporting for HUD's public housing, Section 8 housing, and multifamily insured housing programs, and will require public housing agencies, project owners, and managers (if applicable) of HUD-assisted housing to submit to HUD annually in an electronic mode and standardized format, to be established by HUD, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as prescribed by the Governmental Accounting Standards Board (GASB). Electronic submission is necessary because the manual submission of annual financial information has become a significant administrative burden to PHAs, project owners, and mortgagees, as well as to HUD. HUD is developing a standardized format for the reporting of the annual financial information, which will be ready for dissemination in sufficient time to allow PHAs to comply with the provisions of this rule. This format will be substantially the same for all covered programs, but the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/Federal Housing Administration (FHA)-related entities vs. PHAs). The objective of the uniform financial reporting requirements is to standardize the annual financial information submission process and, through standardization, bring consistency to the evaluation of the financial condition of housing assisted under HUD programs. Therefore, for the financial condition indicator of the PHAS, this proposed rule provides for PHAs to submit electronically to HUD annual financial reports prepared in accordance with GASB GAAP. Through separate rulemaking, HUD will propose to apply these uniform financial reporting requirements to program participants in other HUD housing programs. The financial reporting requirements are discussed in greater detail later in this preamble.

G. Enhancing Public Trust Through Improved Assessment of Public Housing and PHAs

The new Public Housing Assessment (PHAS), proposed by this rule, is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS represents a major rethinking of public housing management. The parties most involved in, and affected by, public housing—PHAs and public housing residents—have expressed concerns that the existing system largely ignores the physical conditions of public housing. [1]

[1] The current Public Housing Management Assessment Program (PHMAP), for which the regulations are codified at 24 CFR part 901, was established in accordance with section 502 of the

Under the current system, a PHA's management performance may be assessed as acceptable when its residents are living in unacceptable housing conditions. Other concerns are that the current system is almost totally dependent on PHA self-certification, rather than on objective evidence or third-party verification; does not focus on basic real estate functions; and does not provide for opportunity for input from those directly served by the PHA—the public housing residents. The new PHAS responds to these concerns by adding indicators that provide for independent assessment and specifically assess these components of a PHA's operation—physical condition of the property; financial condition; and resident feedback.

Under the PHAS, HUD will evaluate a PHA based on the following indicators: (1) the physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) residents' assessment (through a resident survey) of the PHA's performance. The management indicator of this new assessment system will incorporate the majority of the existing statutory management assessment indicators (the remaining statutory indicators will be part of the other PHAS indicators). Each of these major indicators is comprised of components. The PHAS indicators are discussed in further detail below. The PHAS, although applicable only to public housing, reflects HUD's approach under HUD 2020 Management Reform to all properties assisted by HUD. HUD will assess all HUD-related properties in a manner similar to that outlined in this proposed rule, utilizing uniform financial and physical indicators, and resident feedback.

III. The Public Housing Assessment System (PHAS)

A. Overview of the PHAS

The new PHAS is designed to instill trust in public housing as a cost effective and affordable housing option by demonstrating that there is in place an assessment system that accurately determines whether a PHA is doing an outstanding, acceptable, or unacceptable job in providing decent, safe and sanitary housing to its residents. An accurate assessment of a PHA's performance is critical because the consequences of that assessment can be significant. For PHAs determined to be performing well, the consequences will be less scrutiny and additional flexibility. For PHAs determined not to be performing well, the consequences will be intensive technical assistance, deadlines for improvement and possible punitive actions for failure to improve during established periods.

The approach provided by the PHAS maximizes the best use of public funds by concentrating resources on those PHAs in most need of attention and recognizing outstanding performers. The system is fundamentally designed to provide relevant and verifiable measures that directly relate to PHA performance. Additionally, the system is designed to allow HUD to act upon the findings produced from four comprehensive indicators.

Under the PHAS, the Assessment Center assumes responsibility from the Office of Public and Indian Housing for assessing the performance of PHAs. The Assessment Center will examine four essential areas of housing operations to determine a PHA's performance in delivering HUD programs and services. These indicators are: (1) the physical condition of public housing (addressed in subpart B of the rule); (2) the financial condition of a PHA (addressed in subpart C of the rule); (3) the management operations capabilities of PHAs, which will incorporate the majority of the existing statutory assessment requirements (addressed in subpart D of the rule); and resident service and satisfaction (addressed in subpart E of the rule). To assess the performance of a PHA on the basis of the first two indicators, the Assessment Center will utilize comprehensive and standardized protocols to conduct physical inspections of public housing properties, as described above, and to assess the financial condition of PHAs. For the Management Operations Indicator and the Resident Service and Satisfaction Indicator, the Assessment Center will gather and analyze data and information provided by the PHA.

In order to determine a composite score for each PHA, the four indicators of the PHAS will be individually scored and then combined to present a composite score that reflects the overall performance of PHAs for a total of 100 possible points. The 100 points are distributed as follows:

30 total points for the physical condition;

30 total points for the financial condition;

30 total points for management operations; and

10 total points for resident service and satisfaction.

The following discussion presents a brief overview of each of the four indicators to be used under the PHAS.

1. PHAS Indicator #1—Physical Condition of Public Housing Properties

Subpart B of part 901 of this proposed rule addresses the Physical Condition Indicator. This indicator provides for the assessment of the physical condition of a PHA's public housing. A PHA must maintain its housing in decent, safe, and sanitary condition.

Statutory Standard of Decent, Safe and Sanitary. This well established and longstanding physical condition standard has several statutory sources, including section 3(b)(1) of the 1937 Act, which provides in relevant part as follows:

> The term "low-income housing" means decent, safe, and sanitary dwellings assisted under this Act. The term "public housing" means low-income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8.

Section 14 of the 1937 Act, which addresses public housing modernization, also emphasizes a decent, safe, and sanitary housing standard. Section 14(j)(2) provides, in relevant part, that "the Secretary shall issue rules and regulations establishing standards which provide for decent, safe, and sanitary living conditions in low-rent public housing projects. * * *" [2] In adopting uniform physical condition standards for public housing, this proposed rule would not alter the statutory standard for maintaining public housing. Instead, the proposed rule, by using the statutory terminology, clearly acknowledges that public housing must be maintained in "decent, safe, and sanitary" condition.[3]

No Preemption of State and Local Building and Maintenance Codes. The new uniform physical condition standards established by HUD do not supersede or preempt State and local building and maintenance codes with

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Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 29, 1990) (NAHA), which amended section 6(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)) (the 1937 Act).

[2] The current regulatory provisions addressing the physical condition of public housing projects are found in several sections of HUD's regulations in Title IX of 24 CFR: §§ 901.30 (of the PHMAP regulations), 941.203 (of the Public Housing Development regulations), 965.704 (of the PHA-Owned or Leased Projects regulations), and 968.315 (of the Comprehensive Improvement Program Regulations).

[3] As the proposed regulatory text will show, the physical condition standards are referred to as "decent, safe, sanitary and in good repair." As the preamble discussion notes the statutory physical condition standard for public housing is expressed in terms of "decent, safe and sanitary." For FHA-related properties, the statutory standard is expressed in terms of "good repair and condition." In adopting physical condition standards that are applicable to both public housing and FHA-related properties, HUD uses the descriptive term—"decent, safe, sanitary and in good repair."

which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

Uniform Physical Condition Standards. The uniform physical standards being established would set parameters under which public housing (as well as other HUD assisted housing) must be maintained and will be evaluated. These standards are designed to analyze, score, and rank the overall and general physical condition of a project. This evaluation would not focus on a single element, but would take into consideration significant observable deficiencies and score compliance taken as a whole. A single critical element with a major defect (for example, an inoperable heating system), however, could have a significant impact on a project's overall evaluation. The standards address six major areas of the housing to be evaluated: (1) site; (2) building exterior; (3) building systems; (4) dwelling units; (5) common areas; and (6) health and safety. The standards emphasize health and safety considerations as essential to housing that is decent, safe, and sanitary. Appendix A to the proposed rule lists the items to be inspected within each of the six major areas.

Physical Inspection of Public Housing. Public housing is not only currently subject to a standard of decent, safe and sanitary, there is also an obligation on the PHA to "inspect" public housing units. Section 6(j)(1)(G) of the 1937 Act requires the PHA to inspect units to ascertain "maintenance or modernization needs." This corresponding regulatory requirement is found in HUD's regulations at 24 CFR 901.30. Section 901.30, captioned "Indicator #5, Annual Inspection of Units and Systems," provides in relevant part that: "All occupied units are required to be inspected." This rule would not change the current requirement for an annual inspection. That requirement remains and is provided for under subpart D of this proposed rule, Management Operations.

Under this proposed rule, an assessment of the physical condition of a PHA's properties would be determined by an independent inspection of the properties by HUD. Consistent with HUD's responsibilities under the Assessment Center, HUD intends to conduct independent physical inspections, using a new uniform, objective, and computerized inspection software developed by HUD, of a statistically valid number of public housing units for each PHA, in order to confirm compliance with the uniform physical condition standards. The determination of whether public housing meets the standard of decent, safe, and sanitary would be based on a review of observable deficiencies of the site, the building exterior, the building systems, the dwelling units, the common areas, and the health and safety conditions of such housing. The computer program will generate a score for these components. The scores will allow HUD to assess the overall physical condition of the public housing as determined by the computer-based inspection.

To ensure the independence of the physical inspection, HUD intends to contract with private inspection firms to perform the inspections. All inspectors will be trained under HUD auspices in the use of the inspection protocol. Upon being certified, inspectors will obtain their PHA inspection assignment from the Assessment Center. The inspector will download property profile information on the selected PHA's projects via the Internet from the HUD Home page. The inspector will complete the inspection using a hand-held computer that uses the HUD software. After the inspection is completed, the inspector will upload the inspection results to HUD's central information data repository (CIDR) where it will be verified for accuracy and then scored using predetermined weights based on the relative importance of the property areas inspected and factual observed deficiencies identified during the inspection. HUD will exercise quality control procedures over the contractor inspections to assure the validity and quality of the inspections.

Total Points for PHAS Indicator #1. The total point value of the Physical Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Physical Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

2. PHAS Indicator #2—Financial Condition

Subpart C of this proposed rule addresses the Financial Condition Indicator and would establish the process for the assessment of a PHA's financial condition. The rule would require PHAs to submit to HUD, on an annual basis, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as those principles are prescribed by the Governmental Accounting Standards Board (GASB). The rule also requires that the annual financial report due to HUD must be submitted electronically and in a uniform format, with the electronic mode and format to be determined by HUD. The objective of the Financial Condition Indicator is to measure the financial condition of PHAs for the purpose of evaluating whether they have sufficient financial resources and are managing those financial resources effectively to support the provision of decent, safe, and sanitary housing.

Generally Accepted Accounting Principles (GAAP). Accounting and reporting in accordance with GAAP would bring much needed consistency to HUD program evaluation. GAAP requires the participant to manage its accounting and reporting in accordance with a standard set of rules published by auditing and accounting professionals and recognized both within and outside of government. The use of GAAP, therefore, would enable HUD and program participants to account for transactions and report results of operations using widely accepted protocols. The audit process would be enhanced by the use of GAAP, reducing audit costs. The resulting reports are widely accepted by industry and government and are, therefore, widely understood. The relative consistency of GAAP would allow HUD to perform analysis on its large housing portfolio in ways that assure the overall reliability and validity of the results.

The discussions that HUD had with PHAs, PHA representatives, residents and other interested parties about the new PHAS included conversion of PHA financial reports to GAAP. From these discussions, HUD has learned that GAAP accounting and reporting is more meaningful than present HUD accounting, and that the majority of PHAs seek the benefits of the change. A number of PHAs already have begun using GAAP or are in the process of converting to GAAP. At least two States (Louisiana and Tennessee) require that all PHAs in those States convert their HUD basis of accounting financial statements to a GAAP basis for State reporting purposes. Therefore, PHAs, as well as the accountants and auditors in those two States, have experience with the GAAP conversion process. Additionally, several large PHAs (New York, Chicago, Denver, Seattle, and Baltimore, for example) have already converted to GAAP. Further, it is expected that many PHAs have quantified the effect of the differences between GAAP and the HUD basis of accounting because of the guidance given in the Public and Indian Housing Low Rent Technical Accounting Guide and because of other business and operating needs (e.g., the need to fund liabilities for sick and vacation leave).

For those PHAs that may not be familiar with GAAP or that have not had

occasion to prepare GAAP financial reports for other submissions (for example, reports that may be required to be submitted to State or local governments), accounting support services are an eligible expense under the Performance Funding System (PFS). To ease the conversion, the current PHA accounting guide and chart of accounts will not be modified except to add those additional accounts needed to record new transactions in accordance with GAAP or to enhance the existing chart of accounts to address current business operation requirements. Some illustrative examples of these new accounts are: (1) an allowance for uncollectible receivables and the related bad debt expense; (2) an allowance for depreciation of buildings, structures and equipment and the related depreciation expense; and (3) liability and expense accounts for probable losses expected from litigation, claims, and other contingencies. While a PHA's accounting staff will have to quantify the amounts to be recorded in these new accounts, the PHA's independent public accountants can provide guidance on GAAP. HUD also will offer guidance for purposes of standardizing the conversion results. Since HUD funds all audit costs as an add-on to the performance funding system (PFS), PHAs should not bear any increase in the costs of an audit that may result in converting to GAAP.

Electronic Submission. HUD is aware that automated systems are being used more extensively among the various entities that participate in HUD programs, and the use of such systems is expanding within HUD itself. Vice President Gore's Report of the National Performance Review has, as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government. (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2). Requiring the electronic submission of financial data in HUD housing programs is another step in implementing the Vice President's objective. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors, and faster HUD review and analysis.

This rule would require PHAs to submit their financial reports to HUD electronically, via the Internet, rather than through tape, diskette, or paper. HUD, however, may approve transmission of the data by tape or diskette if HUD determines that the cost of electronic Internet transmission would be excessive. HUD anticipates that the instances in which covered entities will not be able to comply with submission of financial data electronically via Internet will be very few. This rule would help to bring HUD up to speed with its program partners in terms of modern technology.

Assessing Financial Condition. The key indicators used to distinguish PHAs in strong financial condition from those which may be financially troubled include: (1) A measure of liquidity, the Current Ratio (defined as current assets divided by current liabilities), and (2) a measure of viability, the Number of Months Expendable Fund Balance (defined as the Expendable Fund Balance divided by monthly Operating Expenditures); (3) Days Receivable Outstanding (defined as the average number of days tenant receivables are outstanding); (4) Vacancy Loss (defined as the loss of potential rental income due to vacancy); (5) Expense Management/Energy Consumption (defined as expense per unit for key expenses); and (6) Net Income or Loss divided by the Expendable Fund Balance (defined as the net income or loss, if any, for the operating year, divided by the expendable fund balance).

The liquidity measure is evidence of the property's ability to cover its near term obligations with resources available in the near term. The viability measure is evidence of the PHA's ability to operate using its expendable fund balance without relying on additional funding. Prudent financial management practices, appropriate to the PHA environment, suggest that these components be maintained at certain levels, although a range may be acceptable for peer groups of PHAs.

The Days Receivable Outstanding component measures the ability of the PHA to collect its tenant receivables in a timely fashion. The inability to collect tenant receivables in a timely fashion might help explain poor performance in the liquidity and viability measures.

The Vacancy Loss component measures the extent to which the PHA is maximizing its revenue from operations.

The Expense Management/Energy Consumption component, adjusted for size and region, and includes energy consumption expenses as well as any other factors that would reasonably contribute to differences in expense ratios, will provide a measure of the PHA's ability to maintain its expense ratios at a reasonable level relative to its peers.

Net Income or Loss divided by the Expendable Fund Balance will provide a measure of how the year's operations have affected the PHA's viability to a substantial degree.

Total Points for PHAS Indicator #2. The total point value of the Financial Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

Financial Reporting Compliance Dates. HUD intends that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, will begin with those PHAs with fiscal years ending September 30, 1999 and later. This compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

3. PHAS Indicator #3—Management Operations

Subpart D of this proposed rule addresses the Management Operations Indicators of PHAs and provides for the assessment of a PHA's management operations. PHAS Indicator #3 (Management Operations) basically reflects the requirements of the existing PHMAP system.

The PHAS preserves the statutory indicators found in section 6(j) of the 1937 Act, with some minor reorganization (from that in the existing system) which is designed to reflect their integration into the broader PHAS assessment and to establish their new point values within the PHAS. The statutory indicators are: (1) Vacancy rate; (2) unexpended Section 14 (of the

1937 Act) funds; (3) rents uncollected; (4) energy consumption; (5) unit turn-around time; (6) outstanding work orders; and (7) annual inspection of units. The Management Operations Indicator of the PHAS incorporates the seven statutory indicators. As is currently the case under the existing system, statutory indicators (1) and (5) are combined under the new PHAS. The statutory energy consumption indicator is part of PHAS Indicator 2 (Financial Condition), just as it was folded into the financial management indicator of existing system. The energy/utility consumption expenses faced by a PHA on an annual basis will be part of the PHA's annual financial report to HUD.

With respect to non-statutory indicators, the security indicator remains part of the Management Operations assessment under the PHAS. The resident services and community building indicator is now replaced by a separate indicator (PHAS Indicator #4—Resident Service and Satisfaction). Similarly, the financial condition indicator is now replaced by a separate indicator (PHAS Indicator #2—Financial Condition).

The analysis of the individual statutory management indicators will not deviate significantly from the existing assessment system. Scores will continue to be based on a PHA's certification to the various management operations indicators. For example, under Management Indicator #1 (Vacancy Rate and Unit Turnaround Time), a low vacancy rate will score higher than a high vacancy rate. Under Management Indicator #4 (Work Orders) a high percentage of emergency work orders completed or abated within 24 hours or less will score better than a lower percentage of emergency work orders completed or abated within 24 hours or less.

As under the existing system, for the Management Operations Indicator of the PHAS, a PHA will continue to submit certifications as to its performance under each of the management indicators, and a PHA's certifications will be subject to independent verification. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories.

Total Points for PHAS Indicator #3. The total point value of the Management Operations Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Indicator #3 (Management Operations), a PHA must receive a score of at least 60 percent of the 30 points available.

4. PHAS Indicator #4—Resident Service and Satisfaction

Subpart E of this rule addresses PHAS Indicator #4, Resident Service and Satisfaction. This indicator assesses the level of resident satisfaction with PHA housing and services. This assessment would consist of existing PHMAP Indicator #7, resident services and community building, revised to (1) be consistent with the framework of the new PHAS, and (2) provide a separate resident services satisfaction survey. The objective of this Indicator #4 is to seek input from all public housing residents. To achieve an acceptable score under this indicator, a PHA must obtain a response from a statistically significant sample of public housing residents. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

The resident service and satisfaction assessment score will include three components of the survey process.

The first component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions to include topics such as: (1) Resident organizations; (2) program activities; (3) surrounding environment; (4) management responsiveness; (5) safety; (6) involvement; (7) resources; and (8) communication.

The second component will be a score based on the PHA's level of implementation and its follow-up or corrective actions based on the results of the survey.

The third component is verification that the data collection, tabulation and submission was undertaken consistent with guidelines to be provided by HUD. HUD reserves the right to conduct the survey at any time on its own.

Total Points for PHAS Indicator #4. The total point value of the Resident Service and Satisfaction Indicator is 10 of the 100 points available under the PHAS. A PHA will not receive any points if the survey is not conducted in accordance with HUD prescribed methodology or if the survey results are determined to be altered by the PHA.

5. Scoring Performance Under the PHAS and Consequences of the Score

Issuance of the PHAS Score. An *overall* PHAS score will be issued by HUD for each PHA 60 to 90 days after the end of the PHA's fiscal year. As discussed earlier in this preamble, each of the four PHAS indicators will be graded individually and these four indicators will then be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be graded individually and will be used to determine a single score for the major indicator. Based on the score, a PHA will fall into one of three categories:

High Performer PHAs. A PHA that achieves a score of at least 60% of the points available for each of the four indicators and achieves an *overall* score of 90% or greater shall be designated as a high performer. A PHA shall not be designated as a high performer if it scores below the threshold established for any of the four indicators. High performers will be afforded incentives and include relief from reporting and other requirements as described in the rule.

Standard Performer PHAs. A PHA that achieves a total score of less than 90% but not less than 60% shall be designated as a standard performer. All standard performers must correct reported deficiencies. A standard performer PHA that receives a score of less than 70% but not less than 60% shall be referred to the appropriate HUD area HUB/Program Center and will be required to submit an improvement plan to correct and eliminate deficiencies in the PHA's performance. Standard performers that receive a score over 70% may also be required to submit an improvement plan to correct or eliminate any deficiency.

Troubled Performer PHAs. A PHA that receives a total score of less than 60% shall be designated as a troubled performer. Upon designation as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with the requirements of this rule, the PHA shall be referred to the TARC for longer term intensive assistance in raising its performance level.

The actions that HUB/Program Centers and the TARC with respect to PHAs receiving low or failing scores under the PHAS are discussed further in the following section.

6. Consequences of a PHAS Score

As under the existing system, PHAS scores will be made public. PHAs designated as high performers will be relieved of certain HUD requirements, effective upon notification of a high performer designation. Additionally, high performer PHAs may be eligible for bonus points for funding competitions, where permissible by the statute and regulations governing the grant program. High performer PHAs also will receive a Certificate of Commendation from HUD and public recognition of their

outstanding performance. Representatives of high performer PHAs may be requested to serve on HUD working groups that will advise HUD in such areas as troubled PHAs and performance standards for all PHAs.

Referral to the HUB Program Center. PHAs that are designated as standard performer and have a score of less than 70% but not less than 60% will be referred to HUD's area HUB/Program Center. The HUB/Program Center will work with the PHA to correct any deficiency indicated in its assessment within a period of 90 days, as described in the Improvement Plan to be submitted to HUD. The Improvement Plan will, among other things, describe the procedures that the PHA will follow to correct the deficiencies. If the PHA fails to submit an acceptable Improvement Plan or correct deficiencies within the time specified in an Improvement Plan, the HUB/Program Center will refer the PHA to the TARC for appropriate action.

Referral to the TARC. PHAs that are designated as troubled are referred to the TARC. The TARC will require the troubled PHA to prepare and execute a Memorandum of Agreement (MOA), a binding contractual agreement by which the PHA will commit to take certain action that will lead to its recovery from a troubled status. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include, among other things, annual and quarterly performance targets and strategies to be used by the PHA in achieving the performance targets. The TARC may impose budget and/or management controls on a PHA referred to the TARC.

Referral to the Enforcement Center. A troubled PHA that fails to execute or meet the requirements of the MOA will be referred to the Enforcement Center. The Enforcement Center shall initiate judicial appointment of a receiver, and where appropriate, the Enforcement Center may investigate the PHA and seek the imposition of civil or criminal penalties through the appropriate Federal government agencies or offices.

The purpose of the referral to one of the three centers discussed above is to provide for a more effective, efficient and expeditious resolution of a PHA's problems than is currently the case under the existing assessment system. The HUB/Program Center and the TARC will work with PHAs to quickly address performance deficiencies. The Enforcement Center will seek quick action to replace the management of PHAs that fail or refuse to address their performance deficiencies.

Appeal of "Troubled" Designation. As provided by section 6(j) of the 1937 Act, a PHA may appeal designation as a trouble agency (including designation as troubled with respect to the modernization program); petition for removal of such designation; and appeal any refusal to remove such designation as permitted under section 6(j)(2)(A)(iii) of the 1937 Act. The appeal shall be submitted by a PHA to the Assessment Center within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the Assessment Center without appropriate documentation will not be considered and will be returned to the PHA. Upon receipt of an appeal from a PHA, the Assessment Center will convene a Board of Review (the Board) to evaluate the appeal and its merits for purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the TARC).

HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the time period provided is grounds for denial of an appeal.

7. Timeline for Implementation of Inspection and Reporting Dates Under the PHAS

The new PHAS is proposed to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs' fiscal years ending in September, 1999 and later must be prepared on a GAAP basis. The first scores under the new PHAS will be issued not later than December, 1999 for PHAs with FYs ending in September, 1999. Thus, PHAs will have at least one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. During this one year transition period, advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. The implementation schedule for inspection of public housing properties and reporting is as described in the following table:

REAL ESTATE ASSESSMENT CENTER (REAC)

[Assessment Periods and Reporting Dates]

REAC assessment results		Financial reporting	Physical inspection	Management operations	Resident survey
Score issued	Period covered fiscal year end (1)	Due date (2)	Inspection dates (3)	Submission due date (4)	Survey dates (5)
12/1999	9–30–99	11–30–99	7/99–9/99	11–30–99	4/99–9/99
03/2000	12–31–99	2–28–2000	10/99–12/99	2–28–2000	10/99–12/99
06/2000	3–31–2000	5–31–2000	1/2000–3/2000	5–31–2000	1/2000–3/2000
09/2000	6–30–2000	8–31–2000	4/2000–6/2000	8–31–2000	4/2000–6/2000
12/2000	9–30–2000	11–30–2000	7/2000–9/2000	11–30–2000	7/2000–9/2000

Notes:

1. The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of three years.

2. PHAs with fiscal years ending 9–30–99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A–133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than $300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an "Agreed-Upon Procedures" report that could be specifically directed at verifying calculations.

3. Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

4. The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

5. Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

8. Other Issues Related to the New PHAS

PHA Fiscal Year for First Three Years of the new PHAS. As noted in footnote 1 to the chart, to allow for a period of consistent assessments to refine and make necessary adjustments to the new PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of the PHAS.

Compliance with Other Departmentwide and Program Specific Requirements. The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with every departmentwide or program specific requirement. For example, a PHA must comply with fair housing and equal opportunity requirements, requirements under Section 504 of the Rehabilitation Act of 1973, and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

Adding, Subtracting and Modifying Indicators. HUD reserves the right to add new indicators or components of indicators, or remove indicators or modify indicators of the new PHAS if HUD believes that such action will contribute to a comprehensive and more accurate assessment of a PHA's performance. For example, HUD may include in the Management Operations Indicator a component on verification of tenant income by a PHA. PHAs and the public will be notified of any change in indicators or components through issuance of the appropriate type of notice.

Streamlining of Regulation. Consistent with Executive Order 12866 on Regulatory Planning and Review, HUD reviews its regulations to determine, among other things, whether the regulations are redundant or duplicative of other HUD or other agency regulations, and should therefore be streamlined or consolidated. As part of this review, streamlining or consolidation changes may be made to this rule at the final rule stage.

IV. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this proposed rule, of HUD's new PHAS has been developed with the participation of PHAs, PHA representatives, residents, representatives from resident organizations, and experts in the field of finance and real estate. Therefore, the proposal of a new assessment system, and the fundamental concepts and components of this new system are not unfamiliar to PHAs and public housing residents. As discussed earlier in the preamble and in this section, the diagnostic tools (physical assessment, financial assessment and resident services and satisfaction) that are added to the current "management" assessment of the existing system are requirements and standards familiar to PHAs.

With respect to the uniform standards for physical condition and financial reporting, the components of these standards are not significantly "new." HUD's physical condition standards closely resemble the Section 8 housing quality standards and, are therefore, standards that the PHAs are familiar with. The financial reporting requirements, as discussed earlier in this preamble, provide for a new submission format, electronic and in a uniform format prescribed by HUD, but the overall content of the report largely includes the financial information that PHAs are already submitting in their annual financial reports. The requirement to prepare the financial reports in accordance with GAAP will be a change for some PHAs, but many PHAs are already preparing GAAP financial reports. The rule provides a sufficient period for PHAs to convert to GAAP. HUD also will offer guidance for purposes of standardizing the conversion results, and since HUD funds audit costs, PHAs should bear minimal, if any, increase in the costs of an audit that may result in converting to GAAP.

With respect to the Management Operations Indicator, this is substantially the same as in existing PHMAP, and therefore already familiar to PHAs.

With respect to the new Resident Service and Satisfaction Indicator, this indicator builds on the existing resident indicator in PHMAP.

For the above reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**.

V. Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained at §§ 901.25(b)(3) (Certification of the extent to which the physical condition and neighborhood environment adjustment applies; 901.25(b)(5) (Maintenance of supporting documentation for physical condition and neighborhood environment adjustment); 901.33(a) (Annual financial reports); 901.50(b) (Reporting information on resident service and satisfaction); 901.60 (Data collection); 901.63 (Exclusion request); 901.69 (PHA right of petition and appeal); 901.75 (MOA); 901.77 (Improvement Plan); and 901.81 (Notice and response), of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Public Housing Assessment System (PHAS)

(2) Summary of the collection of information:

PHAs shall be required to maintain certain records and submit certain information, as specified in the rule text, for the purpose of HUD review. The HUD review will result in a numerical score and the designation of a PHA's status. A PHA's status may result in: the award of recognition and incentives from HUD, the requirement

to design and implement a plan to increase the PHAS score, or the referral of the PHA for enforcement action. The PHA may petition or appeal certain aspects of the scoring and designation, and is provided an opportunity to respond before the imposition of enforcement actions.

(3) Description of the need for the information and its proposed use:

The information is needed to assess the performance of a PHA in essential housing operations. The information will be used to reward good performance and improve or correct deficient performance.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be PHAs. The estimated number of respondents is included in paragraph (5), immediately below. The proposed frequency of responses is once annually.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hours)
901.25(b)(3)	3,268	1	.5	1,634
901.25(b)(5)	750	1	.5	375
901.33(a)	3,268	1	1.0	3,268
901.50(b)	3,268	1	10.0	32,680
901.50(b)	1.2 million	1	.5	600,000
901.60	3,268	1	25.0	81,700
901.63	350	1	2.0	700
901.69	200	1	2.0	400
901.75	100	1	25.0	2,500
901.77	500	1	10.0	5,000
901.81	5	1	2.0	10
Total Reporting and Recordkeeping Burden (Hours)				728,267

(b) In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4313) and must be sent to:

Joseph F. Lackey, Jr., UD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This proposed rule would revise HUD's existing regulations for the assessment of public housing (PHMAP). The new the PHAS incorporates the statutory indicators of PHMAP, and adds three additional indicators. One of the new indicators—physical condition—would assess the extent to which PHAs are providing public housing that is decent, safe, and sanitary. As explained above, public housing has always been subject to a statutory standard of "decent, safe, and sanitary." This rule proposes to simply provide a clear and objective statement of the standard. This indicator would also entail an annual independent HUD inspection of public housing, but it would not impose additional inspection requirements upon PHAs. The clarity and consistency of this new indicator would provide a fair, accurate, and reliable assessment of the physical condition of the large public housing portfolio. However, since this proposed rule would not alter the statutory standard for physical condition, nor impose additional inspection obligations, the new physical condition indicator would not have a

significant economic impact on a substantial number of small entities.

The second indicator—financial condition—would assess the financial condition of PHAs, requiring them to submit financial reports to HUD electronically and in accordance with GAAP. HUD estimates that electronic submission of financial information will be less burdensome to PHAs, since many PHAs are making more extensive use of automated systems. This proposed rule would allow exceptions if the cost of electronic submission would be excessive. GAAP-based accounting reports, which are widely accepted and recognized, are not substantially different than the reports that PHAs are currently submitting. A number of PHAs are already required to use GAAP or are otherwise using GAAP, and the majority of the PHAs with which HUD has consulted support the change to GAAP. For those PHAs that are not yet using GAAP, HUD is taking several steps to ease the conversion, including making only simple additions to the current PHA accounting guide and chart of accounts, and providing other conversion guidance and training, particularly to small entities. Increasing the speed of information exchange (through electronic submission) and the consistency and accuracy of the information (through GAAP) would greatly enhance the assessment of a PHA's financial condition. However, this new indicator would not have a significant economic impact on a substantial number of small entities.

The fourth indicator—resident service and satisfaction—entails a new resident service and satisfaction survey. This survey is key to obtaining input from public housing residents, which is an important aspect of assessing public housing. HUD intends that this survey will be conducted through an automated process, and accordingly, will present a minimal administrative burden for PHAs in terms of administering and evaluating the survey. HUD intends to provide the survey format and the electronic reporting format, as well as software specifications. Therefore, this survey would not have a significant economic impact on a substantial number of small entities.

HUD is also seeking to minimize any burden on PHAs by allowing a significant transition period for converting to the new PHAS. PHAs will have at least one year before new scores are issued under the PHAS. During that transition period, HUD intends to issue advisory scores regarding physical condition and financial management to provide guidance to PHAs and to ease the conversion to the new PHAS.

The new PHAS is fundamentally designed to provide relevant and verifiable measures that directly relate to a PHA's performance and that result in an accurate and reliable score. This improved assessment process will allow HUD to target its oversight resources on those PHAs most in need of attention; high-performing PHAs will receive recognition, along with reduced HUD scrutiny and additional flexibility. Since the revised assessment system in this rule would not impose any significant new requirements upon PHAs, and since HUD will assist PHAs in their conversion to the system, this rule would not have a significant economic impact on a substantial number of small entities. However, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The proposed rule would not create any new significant requirements. As a result, the proposed rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Part 901

Administrative practice and procedure, Public housing, reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 901—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.
901.1 Purpose and general description.
901.3 Scope.
901.5 Applicability.
901.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

901.20 Physical condition assessment.
901.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
901.25 Physical condition scoring and thresholds.
901.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

901.30 Financial condition assessment.
901.33 Financial reporting requirements.
901.35 Financial condition scoring and thresholds.
901.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

901.40 Management operations assessment.
901.43 Management operations performance standards.
901.45 Management operations scoring and thresholds.
901.47 Management operations portion of total PHAS points.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

901.50 Resident service and satisfaction assessment.
901.53 Resident service and satisfaction scoring and thresholds.
901.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

901.60 Data collection.
901.63 PHAS scoring.
901.67 Score and designation status.
901.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

901.71 Incentives for high performers.
901.73 Referral to an Area HUB/Program Center.
901.75 Referral to a TARC.
901.77 Referral to the Enforcement Center.
901.79 Substantial default.
901.83 Interventions.
901.85 Resident petitions for remedial action.

Appendix A to Part 901—Areas and Items to be Inspected

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 901.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations,

including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator (Apprentice)#1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the management operations indicator and the resident service and satisfaction indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following [*effective date of final rule to be inserted at final rule stage*].

§ 901.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every departmentwide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. PHAs' adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

§ 901.5 Applicability.

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

§ 901.7 Definitions.

As used in this part:

Adjustment for physical condition (project age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60% of the available points in an indicator or component.

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the indicators and components within the indicator(s), identified as a result of the PHAS assessment when an MOA is not required.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous 3 years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) with the average time nonemergency work orders were active in that fiscal year that is 2 years previous to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous 3 years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred for modernization is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in

the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 901.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is maintaining its public housing in a condition that is decent, safe, sanitary and in good repair (DSS/GR), as this standard is defined § 901.23.

(b) *Physical inspection under PHAS Indicator #1.* REAC will provide for an independent physical inspection of, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine compliance with DSS/GR standard.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 901.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 901.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).

(a) Public housing must be maintained in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of public housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(1) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(6) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(b) Appendix A to this part lists the areas to be inspected and the items in each area to be inspected.

§ 901.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score of the overall condition of the PHA's public housing portfolio which reflects weights based on the relative importance of the individual inspectable areas and the deficiencies observed.

(b) *Adjustment for physical condition (project age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the physical score for a project will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the project or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA, and to appropriately apply the adjustment.

(1) Adjustments in three areas. Adjustments to the PHA physical project score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the project; and

(iii) Physical condition of the building exteriors.

(2) Definitions. Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to projects over ten years old and that have not been had substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to projects located where the immediate surrounding neighborhood (that is a majority of the census tracts or

census block groups on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (project age) neighborhood environment. HUD will adjust the physical score of a PHA's project subject to both the physical condition (project age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by project, to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHAS Certification (which is available from the Department of Housing and Urban Development, HUD Custom Service Center, 451 Seventh Street, SW, Room B–102, Washington, DC 20410; telephone (800) 767–7468), the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site projects.* The Date of Full Availability (DOFA) shall apply to scattered site projects, where the age of units and buildings vary, to determine whether the projects have received substantial rehabilitation within the past ten years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the project's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Projects that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the projects and the record of capital improvements, indicating that these particular projects have not received modernization funds.

(iii) PHAs shall also document that in all cases, projects that were exempted for other reasons were not included in the calculation.

(c) *Thresholds.* In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Physical Condition Indicator.

§ 901.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 901.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator on the basis of the annual financial report provided in accordance with § 901.33.

§ 901.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must provide to HUD, on an annual basis, such financial information, as required by HUD. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance;

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance prescribed by HUD.

(b) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 901.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score that relies on the key components of financial health and management as well as audit and internal control flags.

(1) The key components of PHAS Indicator #2 include:

(i) Current Ratio—current assets divided by current liabilities;

(ii) Number of Months Expendable Fund Balance—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;

(iii) Days Receivable Outstanding—average number of days tenant receivables are outstanding;

(iv) Vacancy Loss—loss of potential rent due to vacancy;

(v) Expense Management/Energy Consumption—expense per unit for key expenses, including energy consumption; and

(vi) Net Income or Loss divided by the Expendable Fund Balance—measures how the year's operations have affected the PHA's viability.

(2) *Additional components.* Additional components may be used to identify circumstances in which there

exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate "flags" that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers.

(b) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Financial Condition Indicator.

§ 901.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations

§ 901.40 Management operations assessment.

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, and an additional non-statutory indicator (security) as provided in § 901.43.

§ 901.43 Management operations performance standards.

(a) *Management operations indicators.* The following indicators will be used to assess a PHA's management operations:

(1) *Management Indicator #1—Vacancy rate and unit turnaround time.* This management indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management Indicator #2—Modernization.* This management indicator is automatically excluded if a PHA does not have a modernization program. This management indicator examines the amount of unexpended funds over three Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components of this management indicator #2 apply to the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the HOPE VI assistance, vacancy reduction, and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP.

(3) *Management Indicator #3—Rents uncollected.* This management indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management Indicator #4—Work orders.* This management indicator examines the time it takes to complete or abate emergency work orders, the average number of days non-emergency work order were active, and any progress a PHA has made during the preceding three years to reduce the period of time non-emergency maintenance work orders were active. Implicit in this management indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management Indicator #5—PHA annual inspection of units and systems.* This management indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. This management indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management Indicator #6—Security.* This management indicator evaluates the PHA's performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug prevention or crime reduction grant(s). A PHA may receive credit for performance under non-HUD funded programs if it provides auditable financial and statistical documentation for these programs. A PHA with fewer than 250 units will not be assessed under this management indicator unless it provides auditable financial and statistical documentation for these programs.

(b) *Reporting on performance under the Management Operations Indicator.* Each PHA will provide to HUD a certification on its performance under each of the management indicators in paragraph (a) of this section. The certifications shall comply with the requirements of § 901.60.

§ 901.45 Management operations scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA which reflects weights based on the relative importance of the individual management indicators.

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this PHAS Indicator #3. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Management Operations Indicator.

§ 901.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 901.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Reporting information on resident service and satisfaction.* The assessment will be performed through the use of a resident service and satisfaction survey to be administered by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

§ 901.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #4, REAC will calculate a score that includes three components of the survey process. One component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions, to include topics such as: resident organizations; program activities; surrounding environment; management responsiveness; safety; involvement; resources; and communication. The second component will be a score based on the level of implementation and follow-up or corrective actions based on the results of the survey. The final component is verification that the data collection, tabulation and submission was conducted in a manner consistent with guidance provided by HUD.

(b) *Thresholds.* A PHA will not receive any points under this PHAS Indicator if the survey is not conducted in accordance with a HUD prescribed methodology or the survey results are determined to be altered by the PHA. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if it receives at least 6 points, or 60% of the available points under this PHAS Indicator #4.

§ 901.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring

§ 901.60 Data collection.

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part.

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than 60 days after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Services Satisfaction, of this part not later than 60 days after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15 day period past the due date. If all certifications or year-end financial information are not received within 90 days past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators and components certified to, which shall result in troubled and mod-troubled designations.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s) or component(s) shall receive a score of 0 for the relevant indicator(s) or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 901.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA 60 to 90 days after the end of the PHA's fiscal year.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 901.67 Score and designation status.

(a) *Designation status corresponding to score.* A PHA will be scored with a corresponding designation of status as follows:

(1) *High Performer.* A PHA that achieves a score of at least 60% of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90% or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 901.71.

(2) *Standard Performer.* A PHA that achieves a total PHAS score of less than 90% but not less than 60% shall be designated a standard performer. All standard performers must correct reported deficiencies. A standard performer that receives a score less than 70% but not less than 60% shall be subject to other oversight, as described in § 901.73. A PHA that achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2 or 3 shall not be designated a standard performer, but shall be designated a troubled performer, as provided in paragraph (a)(3) of this section.

(3) *Troubled Performer.* A PHA that achieves a total PHAS score of less than 60%, or achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2, or 3, shall be designated as troubled, and referred to the TARC as described in § 901.75. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60% of the maximum calculation for the modernization indicator under PHAS Indicator #3 (Management Operations, subpart D of this part) may be subject to the following sanctions: under the Comprehensive Grant Program to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C); under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR part 968, subpart B); or disapproval of funding under the HOPE VI Program.

(b) *Exceptional circumstances of high performer or standard performer*—(1) *Independent reviews, rescission of incentives or status.* In exceptional circumstances, even though a PHA has received designation as a high performer or standard performer, the HUB/Program Center may conduct any review as necessary, and deny or rescind incentives or high performer or standard performer status in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the management of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as an independent review, routine reports and reviews, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHAS). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD–53012A, Section 4, Mission of the PHA). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(2) When a HUB/Program Center acts for any of the reasons stated in paragraph (b)(1) of this section, the HUB/Program Center will send written notification to the PHA with a specific explanation of the reasons. An informational copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

§ 901.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal.* As permitted under section 6(j)(2)(A)(iii), a PHA may:

(1) Appeal designation as a troubled agency (including designation as troubled with respect to the modernization program);

(2) Petition for removal of such designation; and

(3) Appeal any refusal to remove such designation.

(b) *Appeal process.* The appeal shall be submitted by a PHA to the REAC within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(c) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(d) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 901.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 90% on each of the indicators for which they are assessed, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to

be conducted as circumstances may warrant.

(d) *HUB/Program Center to impose requirements.* The HUB/Program Center will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.67(b)(1).

§ 901.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70% but not less than 60% shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70% may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70% is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. A RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70% to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies*—(1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator and/or component which was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the TARC for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations.

§ 901.75 Referral to a TARC.

Upon designation of a PHA as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. The actions to be taken by the TARC and the PHA shall be as follows:

(a) *Recovery plan and MOA.* Within 30 days of notification of the designation of a troubled PHA within its area, the appropriate TARC will deploy an on-site team to develop a Recovery Plan. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a memorandum of agreement (MOA) as described in paragraph (c) of this section.

(b) *PHA review of recovery plan and MOA.* The PHA will have 10 days to review the recovery plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the plan with its area TARC, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by the TARC, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of Agreement (MOA).* The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management

controls by the TARC, declaration of substantial default and subsequent actions, including referral to the Enforcement Center for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the Enforcement Center; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* Unless extended by the TARC and documented in the MOA, the maximum recovery period for a troubled PHA is the first full fiscal year following execution of the MOA.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute an MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the Enforcement Center, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), substantial improvement is defined as 50% of the points needed to achieve a passing score.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example. A PHA receives a score of 50; 60 is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the 5 point increase, the PHA will be referred to the Enforcement Center.

§ 901.77 Referral to the Enforcement Center.

Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 901.75 constitutes a substantial default in accordance with § 901.79 and shall result in referral to the Enforcement Center. The Enforcement Center is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The Enforcement Center shall initiate the judicial appointment of a receiver or the interventions provided in § 901.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the Enforcement Center including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

§ 901.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.75 , or to make reasonable progress to execute or meet requirements included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 901.75(h), in its PHAS score in one year following issuance of the failed score is in substantial default;

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs," or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but are not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the

determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 901.83, and determined to be appropriate to remedy the noncompliance, citing § 901.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 901.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 901.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or HUD, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 901.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Appendix A to Part 901—Areas and Items To Be Inspected

AREA: Site

Items

Fencing and Retaining Walls
Grounds
Lighting
Mail Boxes/Project Signs
Market Appeal
Parking Lots/Driveways
Play Areas and Equipment
Refuse Disposal
Roads
Storm Drainage
Walkways

AREA: Building Exterior

Items

Doors
Fire Escapes
Foundations
Lighting
Roofs
Walls
Windows

AREA: Building Systems

Items

Domestic Water
Electrical System
Elevators
Emergency Power
Fire Protection
HVAC
Sanitary System

AREA: Dwelling Unit

Items

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

AREA: Common Areas

Items

Basement/Garage/Carport
Closets/Utility/Mechanical
Community Room
Day Care

Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restroom
Storage
Trash Collection Areas

AREA: Health and Safety

Items

Air Quality
Electrical Hazards
Elevator
Emergency/Fire Exits
Fire Escapes
Flammable Materials
Garbage and Debris
Ground Fault Interrupters
Handrails
Hazards
Hot Water Heater
Infestation
Lead Paint
Pools and Related Structures
Smoke Detectors

Dated: June 5, 1998.

Deborah Vincent,
General Deputy Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,
Director, Real Estate Assessment Center.

[FR Doc. 98–17302 Filed 6–29–98; 8:45 am]
BILLING CODE 4210–33–P

VOL 63 ISS 125 JE 30 1998 UMI

federal register

Tuesday
June 30, 1998

Part VI

Presidio Trust

36 CFR Parts 1001, 1002, 1004 and 1005
Interim Management of the Presidio; Final Interim Rule

VOL
63
ISS
125
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PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1004 and 1005

RIN 3212–AA00

Interim Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Final interim rule; request for comment.

SUMMARY: The Presidio Trust (Trust) was created by Congress in 1996 to manage most of the former U.S. Army base known as the Presidio, in San Francisco, California. The Presidio is currently under the administrative jurisdiction of the National Park Service (NPS), Department of the Interior (DOI). Pursuant to law, administrative jurisdiction of approximately 80 percent of this property will be transferred to the Trust on July 1, 1998. This rulemaking adopts the basic requirements for management of this property as a final interim rule. Public comment is invited on this interim rule. In addition, the Trust intends to publish a notice of proposed rulemaking containing more extensive and revised regulations for management of the area it will administer. Comments on this interim rule, as well as on the proposed rule, will be considered by the Trust in promulgating its final rule.

DATES: This interim rule is effective as of June 30, 1998. Comments on this rulemaking must be received by August 31, 1998.

ADDRESSES: Written comments on this rule must be sent to James E. Meadows, Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: James E. Meadows, Executive Director, The Presidio Trust, 10 Funston Avenue, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

I. Introduction

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks and Public Lands Management Act of 1996, 16 U.S.C. Sec. 460bb note, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to sec. 103(b) of the Trust Act, the Secretary of the U.S. Department of the Interior is to transfer administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, within one year of the first meeting of the Trust's Board of Directors (Board), which was held on July 9, 1997. In order to facilitate planning, budgeting and other administrative functions, the Trust has requested, and the Secretary of the Interior has agreed, that such property will be transferred to the Trust's administrative jurisdiction on July 1, 1998. Notice of such transfer was published in the **Federal Register** on June 12, 1998 (63 FR 32236).

Section 104(j) of the Trust Act authorizes the Trust, "in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities" under the Trust Act. The regulations contained in this document cover such matters for the Presidio as resource protection, public use and recreation; vehicles and traffic safety; and commercial and private operations.

Prior to promulgating these final interim regulations, the Trust consulted with the Secretary of the Interior, who serves on the Trust's Board of Directors pursuant to sec. 103(c)(1)(A) of the Trust Act, as well as with officials of the Department of the Interior, the National Park Service and the U.S. Park Police designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that such consultation will continue during the comment period on these final interim regulations and the comment period on the more extensive and revised regulations which the Trust intends to propose in the future.

The regulations contained in this document are being promulgated as final interim regulations without a notice and comment period pursuant to 5 U.S.C. 553(a)(2) (Administrative Procedure Act exemption for matters relating to public property); 5 U.S.C. 553(d)(3) (Administrative Procedure Act exemption upon finding of good cause); and sec. 104(j) of the Trust Act (providing that the "Trust shall give notice of the adoption of such rules and regulations by publication in the **Federal Register**"). The Trust is promulgating the regulations contained in this document as final interim regulations in order to provide immediately for public safety, good order and efficient management of the property to be transferred to the Trust's jurisdiction. In light of these immediate needs, the deadline imposed by statute for transfer of administrative jurisdiction of the property, the impracticability of providing for public comment on these regulations before they must be in effect, and the cited authorities, the Trust has found good cause under 5 U.S.C. 553(d)(3) for promulgating these final interim regulations without a notice and comment period.

The Trust is simultaneously providing for a public comment period of 60 days on these regulations. In addition, the Trust intends to publish a notice of proposed rulemaking containing more extensive and revised regulations for management of the property it will administer. Comments on this final interim rule, as well as on the proposed rule, will be considered by the Trust in promulgating its final rule. That promulgation will include a discussion of any comments received and any amendments made to these final interim regulations and the proposed regulations as a result of the comments. All comments received, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying.

II. General Principles of this Rulemaking

These final interim regulations are designed to deviate as little as necessary from the current regulations for the Presidio, which have served the public well during the approximately four-year period in which the NPS has had administrative jurisdiction of the entire Presidio. These final interim regulations are intended to serve the needs of the public during this period of transition from the NPS to the Trust for approximately 80 percent of the Presidio.

The primary regulations that have governed conduct in the Presidio for the past four years are found at 36 CFR parts 1, 2, 4, 5, and 36 CFR 7.97. These are NPS regulations applicable generally to units of the National Park system (36 CFR parts 1, 2, 4 and 5) and written specifically for the Golden Gate National Recreation Area (36 CFR 7.97). The Presidio is located within the boundaries of the Golden Gate National Recreation Area (GGNRA). Although the Trust intends to promulgate additional regulations concerning other topics, as well as more extensively revised regulations on these topics, the Trust is promulgating the regulations in this document in their present form because the conduct covered by the existing NPS regulations is of central concern to the Trust as it assumes administrative jurisdiction of Area B of the Presidio.

The Trust prepared the regulations in this document using these existing NPS regulations as a template. As these regulations were reviewed and

modified, the Trust deviated from these templates only so far as necessary to clarify issues, correct minor errors, and conform to current style standards for the Code of Federal Regulations. It is likely that the Trust will find it desirable in the future to deviate more significantly from the regulatory approach of the NPS or the DOI, particularly to promote clarity and remove provisions that are unnecessary for management of the area to be administered by the Trust. Nevertheless, for purposes of the immediate management of this area, the Trust is maintaining, to the extent possible, the regulatory status quo in both substance and structure. The section-by-section analysis provided below explains in greater detail the minor changes that have been made to the NPS regulations and the reasons for those changes.

Pursuant to sec. 104(i) of the Trust Act, day-to-day law enforcement activities and services in the area to be administered by the Trust will be conducted primarily by the U.S. Park Police, the federal agency that provides professional law enforcement services for units of the National Park system. Other authorized law enforcement agencies will also continue to conduct law enforcement activities and services in the area administered by the Trust.

III. Revisions Applicable to Multiple Sections

Certain changes have been required throughout the NPS regulations in order to apply them to the activities of the Trust and its management of the property to be transferred to it. The general changes in terminology are explained in the following chart:

References in the NPS regulations to the following terms	Have been changed in these regulations to the following terms
National Park Service or U.S. Department of the Interior	Presidio Trust.
Park, unit of the National Park System, or park area	Area administered by the Presidio Trust, or the boundaries thereof.
Superintendent	Board, in the context of a decision of general applicability; or Executive Director, in the context of an administrative or executive decision.
Director	Board.
Office of the superintendent	Office of the Presidio Trust.
The purposes for which a park unit is managed or was established (or similar language).	The purposes of the Presidio Trust Act.
General management plans or resource management plans	Policies of the Presidio Trust.
Park road	Presidio Trust road.
park users	visitors or tenants.

The Trust has also retained in these regulations an efficient and effective administrative vehicle used by the NPS in managing its many diverse units. For most of these units, including the GGNRA, the NPS has developed a set of policies, procedures, closures and designations known as the GGNRA Superintendent's Compendium. The current GGNRA Superintendent's Compendium is available for public inspection at the address identified above. Prior to the transfer of administrative jurisdiction to the Trust, the Trust will have adopted a similar Compendium of detailed rules, including supporting determinations, in order to allow the Trust to manage flexibly the diverse demands on the Presidio while protecting its natural and cultural resources, fulfilling the purposes of the Trust Act, and responding to changing conditions. Section 1001.7 of these final interim regulations sets out the procedure for the Trust to follow in maintaining the Compendium and making it available to the public.

These final interim regulations reorganize a limited number of the provisions in the NPS regulations in order to place regulations on the same general topic near each other. This was necessary in two instances. First, the NPS has adopted special regulations pertaining to the GGNRA at 36 CFR 7.97. Section 7.97(a) does not apply to the property to be transferred to the Trust and so has not been included in these regulations. Section 7.97(b) concerns powerless flight and has been included in Part 1002 of these regulations with the section covering aircraft as a new § 1002.17(g). Section 7.97(c) concerns use of bicycles and has been included in Part 1004 of these regulations as § 1004.30(b), in place of the NPS regulation at 36 CFR 4.30(b), which authorized the promulgation of this special regulation on bicycles. Other references in the NPS regulations to "special regulations" have been deleted as a result of the incorporation of the applicable provisions of 36 CFR 7.97 into these final interim regulations.

The second instance where reorganization was necessary involves regulations concerning boating and water use activities. NPS regulations at 36 CFR part 3 cover these activities, but they are currently prohibited by the GGNRA Superintendent's Compendium in the area to be transferred to the Trust. As a result, these final interim regulations merely incorporate this prohibition into Part 1002 as a new § 1002.63 in order to avoid repromulgating all of 36 CFR Part 3 only to make it inapplicable in the Trust's Compendium.

In several provisions of the NPS regulations, the terms chapter, part and section are used inconsistently. For the sake of clarity, these references have been corrected in these final interim regulations. Similarly, cross-references to various provisions have been revised as appropriate. The numbering system used in the NPS regulations has also been retained insofar as possible, with the addition of "1000" to each section number from the regulations in Chapter I (National Park Service, Department of the Interior) that is being carried over, with only minor modifications, to this Chapter X (Presidio Trust). Although this approach leaves gaps in the numbering of these final interim regulations, it is intended to reduce opportunities for confusion during the transition process.

Section-by-Section Analysis

The following analysis reviews only those sections of the final interim regulations that are not discussed in more general terms above. Because these final interim regulations are modeled on existing regulations of the NPS, this analysis focuses on differences between these regulations and the existing NPS regulations.

Part 1001 General Provisions

Section 1001.2 Applicability and Scope

Sections 1.2(a)(2) through (a)(5) of the NPS regulations were deleted because the Trust will not be administering any lands covered by these provisions (e.g., pursuant to a written instrument or in which the United States holds an interest in less than fee). Section 1.2(b) of the NPS regulations was deleted because, as discussed above, all of the

lands and waters to be transferred to the administrative jurisdiction of the Trust are federally owned.

Section 1001.3 Enforcement and Penalties

Sections 1.3(b) through (d) of the NPS regulations were deleted because they do not apply to the area to be transferred to the administrative jurisdiction of the Trust.

Section 1001.4 Definitions

This section was revised to incorporate definitions that are generally applicable to the regulations published today and to delete those definitions that were no longer needed as a result of other differences between the NPS regulations and these final interim regulations.

The terms "Board" and "Executive Director" were added, along with a provision including their designees in the definition. This is intended to provide senior officials of the Trust with the flexibility to delegate responsibilities and authority as appropriate to carry out the purposes of the Trust Act. The terms "Director," "Regional Director," "Secretary," and "Superintendent" were removed since the NPS and DOI will no longer have jurisdiction over the area covered by these final interim regulations following the transfer.

The term "printed matter" is defined in this section generally to exclude items of merchandise. This corresponds to the definition of the term used by the NPS in its Special Directive 95–11 interpreting its regulation at 36 CFR 2.52 concerning sale or distribution of printed matter, which is currently applicable to the area to be transferred to the Trust. The Trust believes it is appropriate to incorporate this definition directly into these final interim regulations for the sake of clarity and public notice.

Section 1.4(b) of the NPS regulations was not incorporated into these final interim regulations because, as discussed below, boating and water activities are prohibited in the area to be administered by the Trust.

Section 1001.10 Symbolic Signs

Rather than reprint the symbolic signs in 36 CFR 1.10, these have simply been cross-referenced in this section of the final interim regulations.

Part 1002 Resource Protection, Public Use and Recreation

Section 1002.2 Wildlife Protection

Because hunting and trapping are not permitted under current law in the area to be administered by the Trust, §§ 2.2(b), (c) and (f) of the NPS regulations are unnecessary and have been replaced by a provision in these final interim regulations stating that hunting and trapping are prohibited.

Section 1002.3 Fishing

Under the GGNRA Superintendent's Compendium, fishing is currently prohibited in the area to be administered by the Trust. As a result, these final interim regulations merely incorporate this prohibition into § 1002.3 in order to avoid repromulgating all of 36 CFR 2.3 only to make it inapplicable in the Trust's Compendium.

Section 1002.4 Weapons, Traps and Nets

Section 2.4(a)(2)(ii) of the NPS regulations has been deleted since it refers to areas designated by special regulations and no such special regulations have been issued for the GGNRA on this subject. Section 2.4(d) of the NPS regulations has been deleted because it is not necessary for the Executive Director to have the authority to issue weapons permits in the area to be administered by the Trust.

Section 1002.5 Research Specimens

Sections 2.5(d) and (f) of the NPS regulations have been deleted because they are inapplicable to the area to be administered by the Trust. Because the enabling statute for the GGNRA does not expressly prohibit the killing of wildlife, § 2.5(e) of the NPS regulations is the currently applicable provision and has been incorporated into these final interim regulations.

Section 1002.10 Camping and Food Storage

The reference to lawfully taken wildlife in § 2.10(b)(6) of the NPS regulations has been deleted because hunting and trapping are prohibited in the area to be transferred to the Trust.

Section 1002.15 Pets

Section 2.15(b) of the NPS regulations has been deleted from these final interim regulations because hunting is not allowed in the area to be administered by the Trust.

Section 1002.17 Aircraft and Air Delivery

Sections 2.17(a)(1) and (2) of the NPS regulations have been deleted from these regulations because there are no special regulations under which locations for operating or using aircraft have been designated in the area to be administered by the Trust.

Section 1002.18 Snowmobiles

Under § 2.18(c) of the NPS regulations, snowmobiles are allowed only on routes and water surfaces designated for such use in special regulations. Because no such special regulations have been issued for the GGNRA on this subject, the remaining provisions of 36 CFR 2.18 governing the use of snowmobiles have no applicability. As a result, these final interim regulations merely state this prohibition in § 1002.18 in order to avoid repromulgating all of 36 CFR 2.18.

Section 1002.19 Winter Activities

As a result of the prohibition on snowmobiles, the second sentence of 36 CFR 2.19(b) has not been incorporated into these final interim regulations, since it relates only to activities using snowmobiles.

Section 1002.23 Recreation Fees

The National Park Service has established a variety of recreation fees for the GGNRA in accordance with 36 CFR Part 71. This section has been modified to provide that the Trust will charge the same fees for activities in the area under its administrative jurisdiction.

Section 1002.50 Special Events

In § 1002.50(a)(3), the reference to unreasonable interference with activities of the National Park Service has been retained, supplemented by a reference to activities of the Trust. Pursuant to sec. 102(c) of the Presidio Trust Act, after the transfer of administrative jurisdiction to the Trust, the National Park Service will continue to be responsible for providing public interpretive services, visitor orientation and educational programs on all lands within the Presidio.

Section 1002.51 Public Assemblies, Meetings

Section 2.51(e)(3) has been revised as discussed above in connection with § 1002.50(a)(3).

Section 1002.52 Sale or Distribution of Printed Matter

Section 2.52(e)(3) has been revised as discussed above in connection with §§ 1002.50(a)(3) and 1002.51(e)(3).

Part 1004 Vehicles and Traffic Safety

Section 1004.10 Travel on Presidio Trust Roads and Designated Routes

Under § 4.10(b) of the NPS regulations, off-road motor vehicle use is allowed only on routes designated for such use in special regulations. Because no such special regulations have been

issued for the GGNRA on this subject, the remaining provisions of 36 CFR 4.10 governing off-road motor vehicle use have no applicability in the area to be administered by the Trust. As a result, these final interim regulations do not incorporate the last clause of § 4.10(a), § 4.10(b) or § 4.10(c)(3).

Part 1005 Commercial and Private Operations

Section 1005.2—Alcoholic Beverages; Sale of Intoxicants

The NPS regulations at 36 CFR 5.2(b) do not apply to the GGNRA by their terms. As a result, they have not been incorporated into these final interim regulations.

Section 1005.3 Business Operations

The reference in the NPS regulations to specific authorization under special regulations has not been incorporated into these final interim regulations because no special regulations on this subject have been adopted for the GGNRA.

Section 1005.4 Commercial Passenger-Carrying Motor Vehicles

By its own terms, 36 CFR 5.4(a) does not apply to the area to be administered by the Trust. Accordingly, this subsection has not been incorporated into these final interim regulations.

Section 1005.5 Commercial Photography

This section is adapted from both 36 CFR 5.5 and 43 CFR 5.1. The requirements of 43 CFR 5.1 have been incorporated directly into § 1005.5(a) of these final interim regulations, rather than by cross-reference, in order to improve clarity and allow for clarifying revisions to terminology used in 43 CFR 5.1.

Section 1005.10 [Reserved]

Section 5.10 of the NPS regulations (concerning eating, drinking or lodging establishments) applies by its terms only to the following National Parks: Glacier, Lassen Volcanic, Mesa Verde, Mount McKinley, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone and Yosemite. It therefore does not apply to the GGNRA or to the area administered by the Trust. Accordingly, this section has not been incorporated into these final interim regulations.

Regulatory Impact

This rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from this final interim rule. Because this final interim rule is not "economically significant," it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this final interim rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final interim rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this final interim rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

This final interim rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities between the Federal Government and the States. In accordance with Executive Order 12612, the Trust has determined that this final interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this rulemaking. The EA determined that this rulemaking will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR Parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 10 Funston Avenue, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Paperwork Reduction Act

The information collection requirements of these interim regulations, which are specified in § 1001.8, are coextensive with those of the existing NPS regulations, which have previously been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

Other Applicable Authorities

The Presidio Trust has drafted and reviewed these final interim regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

List of Subjects

36 CFR Part 1001

National parks, Penalties, Public lands, Recreation and recreation areas.

36 CFR Part 1002

National parks, Public lands, Recreation and recreation areas, Signs and symbols.

36 CFR Part 1004

Bicycles, National parks, Public lands, Recreation and recreation areas, Traffic regulations.

36 CFR Part 1005

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Public lands, Recreation and recreation areas, Transportation.

Dated: June 24, 1998.

James E. Meadows,

Executive Director.

In consideration of the foregoing, the Presidio Trust establishes new Chapter X in Title 36 of the Code of Federal Regulations consisting of Parts 1001, 1002, 1004 and 1005 as set forth below:

CHAPTER X—PRESIDIO TRUST

Part
1001 General provisions
1002 Resource protection, public use and recreation
1004 Vehicles and traffic safety
1005 Commercial and private operations

PART 1001—GENERAL PROVISIONS

Sec.
1001.1 Purpose.
1001.2 Applicability and scope.
1001.3 Penalties.

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Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1001.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government and protection of persons, property and natural and cultural resources within the area under the jurisdiction of the Presidio Trust.

(b) The regulations in this chapter will be utilized to fulfill the statutory purposes of the Presidio Trust Act.

§ 1001.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within the boundaries of federally owned lands and waters administered by the Presidio Trust.

(b) The regulations contained in Parts 1002, 1004 and 1005 of this chapter shall not be construed to prohibit administrative activities conducted by the Presidio Trust, or its agents, in accordance with approved policies of the Presidio Trust, or in emergency operations involving threats to life, property, or resources of the area administered by the Presidio Trust.

(c) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

§ 1001.3 Penalties.

A person convicted of violating a provision of the regulations contained in Parts 1001, 1002, 1004 and 1005 of this chapter, within the area administered by the Presidio Trust, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

§ 1001.4 Definitions.

The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

Abandonment means the voluntary relinquishment of property with no intent to retain possession.

Administrative activities means those activities conducted under the authority of the Presidio Trust for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

Airboat means a vessel that is supported by the buoyancy of its hull and powered by a propeller or fan above the waterline. This definition should not be construed to mean a "hovercraft," that is supported by a fan-generated air cushion.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight.

Archeological resource means material remains of past human life or activities that are of archeological interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

Authorized emergency vehicle means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

Authorized person means an employee or agent of the Presidio Trust with delegated authority to enforce the provisions of this chapter.

Bicycle means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

Board means the Board of Directors of the Presidio Trust or its designee.

Boundary means the limits of lands or waters administered by the Presidio Trust as specified by Congress, or denoted by presidential proclamation, or recorded in the records of a state or political subdivision in accordance with applicable law, or published pursuant to law, or otherwise published or posted by the Presidio Trust.

Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

Carry means to wear, bear, or have on or about the person.

Controlled substance means a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) or a drug or substance added to these schedules pursuant to the terms of the Act.

Cultural resource means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

Developed area means roads, parking areas, picnic areas, campgrounds, or other structures, facilities or lands located within development and historic zones depicted on the land management and use map for the area administered by the Presidio Trust.

Downed aircraft means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

Executive Director means the Executive Director of the Presidio Trust or his or her designee.

Firearm means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

Fish means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes, or any mollusk or crustacean found in salt water.

Fishing means taking or attempting to take fish.

Hunting means taking or attempting to take wildlife, except trapping.

Legislative jurisdiction means lands and waters under the exclusive or concurrent jurisdiction of the United States.

Manual wheelchair means a device that is propelled by human power, designed for and used by a mobility-impaired person.

Motor vehicle means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

Motorcycle means every motor vehicle having a seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

Net means a seine, weir, net wire, fish trap, or other implement designed to

entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

Nondeveloped area means all lands and waters within the area administered by the Presidio Trust other than developed areas.

Operator means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Pack animal means horses, burros, mules or other hoofed mammals when designated as pack animals by the Executive Director.

Permit means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Person means an individual, firm, corporation, society, association, partnership, or private or public body.

Pet means a dog, cat or any animal that has been domesticated.

Possession means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

Practitioner means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by the United States or the jurisdiction in which such person practices to distribute or possess a controlled substance in the course of professional practice.

Presidio Trust and *Trust* mean the wholly-owned federal government corporation created by the Presidio Trust Act.

Presidio Trust Act means Title I of Public Law 104–333, 110 Stat. 4097, as the same may be amended.

Presidio Trust road means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Presidio Trust.

Printed matter means message-bearing textual printed material such as books, pamphlets, magazines and leaflets and does not include other forms of merchandise, such as posters, coffee mugs, sunglasses, audio or videotapes, T-shirts, hats, ties, shorts and other clothing articles.

Public use limit means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

Refuse means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, or other discarded materials.

Services means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other utilities, or any act for which payment is customarily received.

Smoking means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

Snowmobile means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by a ski or skis in contact with the snow.

State means a State, territory, or possession of the United States.

State law means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries the area administered by the Presidio Trust or a portion thereof is located.

Take or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the aforementioned.

Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

Traffic control device means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Executive Director for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

Trap means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

Trapping means taking or attempting to take wildlife with a trap.

Underway means when a vessel is not at anchor, moored, made fast to the shore or docking facility, or aground.

Unloaded, as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or track.

Vessel means every type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation.

Weapon means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under the laws of the State in which the area administered by the Presidio Trust or portion thereof is located.

Wildlife means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

§ 1001.5 Closures and public use limits.

(a) Consistent with applicable legislation and Federal administrative policies, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the Board may:

(1) Establish, for all or a portion of the area administered by the Presidio Trust, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of the area administered by the Presidio Trust to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration

in the public use pattern of the area administered by the Presidio Trust, adversely affect the natural, aesthetic, scenic or cultural values of the area administered by the Presidio Trust, require a long-term or significant modification in the resource management objectives of the area administered by the Presidio Trust, or is of a highly controversial nature, shall be published as rulemaking in the **Federal Register**.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the Board shall prepare a written determination justifying the action. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) of this section has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a) of this section, a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact resources of the area administered by the Presidio Trust. This determination shall be available to the public upon request.

(d) To implement a public use limit, the Board may establish a permit, registration, or reservation system. Permits shall be issued in accordance with the criteria and procedures of § 1001.6.

(e) Except in emergency situations, the public will be informed of closures, designations, and use or activity restrictions or conditions, visiting hours, public use limits, public use limit procedures, and the termination or relaxation of such, in accordance with § 1001.7.

(f) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited.

§ 1001.6 Permits.

(a) When authorized by regulations set forth in this chapter, the Executive Director may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit. The activity authorized by a permit shall be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the Executive Director during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1001.7.

(d) Unless otherwise provided for by the regulations in this chapter, the Executive Director shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The Executive Director shall include in a permit the terms and conditions that the Executive Director deems necessary to protect resources of the area administered by the Presidio Trust or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter.

(f) A compilation of those activities requiring a permit shall be maintained by the Executive Director and available to the public upon request.

(g) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to this section without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this section.

(h) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the Executive Director.

§ 1001.7 Public notice.

(a) Whenever the authority of § 1001.5(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of the area administered by the Presidio Trust as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected locale.

(2) Maps available in the office of the Presidio Trust and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the affected area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, brochures, maps and handouts.

(b) In addition to the above-described notification procedures, the Board shall compile in writing all the designations, closures, permit requirements and other restrictions imposed under discretionary authority. This compilation shall be updated annually and made available to the public upon request.

§ 1001.8 Information collection.

The information collection requirements contained in 36 CFR 1001.5, 1002.5, 1002.10, 1002.12, 1002.17, 1002.33, 1002.38, 1002.50, 1002.51, 1002.52, 1002.60, 1002.61, 1002.62, 1004.4 and 1004.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide the Executive Director data necessary to issue permits for special uses of the area administered by the Presidio Trust and to obtain notification of accidents that occur within the area administered by the Presidio Trust. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In 36 CFR 1002.33 and 1004.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

§ 1001.10 Symbolic signs.

(a) The signs pictured in 36 CFR 1.10 provide general information and regulatory guidance in the area administered by the Presidio Trust. Certain of the signs designate activities that are either allowed or prohibited. Activities symbolized by a sign bearing a slash mark are prohibited.

(b) The use of other types of signs not herein depicted is not precluded.

PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.

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1002.63 Boating and water use activities.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1002.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into an ecosystem within the area administered by the Presidio Trust.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the area administered by the Presidio Trust: Provided, however, that the Board may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the area administered by the Presidio Trust.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the Board.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler. This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in the area administered by the Presidio Trust.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The Board may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1001.5 and 1001.7 of this chapter. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The Board may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect wildlife, the reproductive potential of a plant species, or otherwise adversely affect the resources of the area administered by the Presidio Trust.

(2) The Board may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the area administered by the Presidio Trust.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the Board.

(iii) Unauthorized removal of natural products from the area administered by the Presidio Trust.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 1002.2 or § 1002.3.

§ 1002.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife.

(2) The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

(3) Possessing unlawfully taken wildlife or portions thereof.

(b) *Hunting and trapping.* Hunting and trapping are prohibited within the area administered by the Presidio Trust.

(c) The Board may establish conditions and procedures for transporting lawfully taken wildlife through the area administered by the Presidio Trust. Violation of these conditions and procedures is prohibited.

(d) The Board may designate all or portions of the area administered by the Presidio Trust as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.

(e) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.3 Fishing.

Fishing is prohibited within the area administered by the Presidio Trust.

§ 1002.4 Weapons, traps and nets.

(a)(1) Except as otherwise provided in this section, the following are prohibited:

(i) Possessing a weapon, trap or net.

(ii) Carrying a weapon, trap or net.

(iii) Using a weapon, trap or net.

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in the area administered by the Presidio Trust where:

(A) The taking of wildlife is authorized by law in accordance with § 1002.2;

(B) The taking of fish is authorized by law in accordance with § 1002.3.

(ii) Within a residential dwelling. For purposes of this paragraph only, the term "residential dwelling" means a fixed housing structure which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home.

(3) Traps, nets and unloaded weapons may be possessed within a temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not being propelled by machinery and is used as a shooting platform in accordance with Federal and State law.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(e) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(f) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.5 Research specimens.

(a) Taking plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit, is prohibited.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the Executive Director determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the area administered by the Presidio Trust.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the States, shall not be issued unless the species cannot be obtained outside of the area administered by the Presidio Trust and the primary purpose of the collection is to enhance the protection or management of the species.

(d) A permit authorizing the killing of plants, fish or wildlife may be issued only when the Executive Director approves a written research proposal and determines that the collection will not be inconsistent with the purposes of the Presidio Trust Act and has the potential for conserving and perpetuating the species subject to collection.

(e) Specimen collection permits shall contain the following conditions:

(1) Specimens placed in displays or collections will bear official National Park Service museum labels and their catalog numbers will be registered in the National Park Service National Catalog.

(2) Specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the Executive Director.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.10 Camping and food storage.

(a) The Board may require permits, designate sites or areas, and establish conditions for camping.

(b) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on visitors or tenants, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(5) The installation of permanent camping facilities.

(6) Displaying wildlife carcasses or other remains or parts thereof.

(7) Connecting to a utility system, except as designated.

(8) Failing to obtain a permit, where required.

(9) Violating conditions which may be established by the Board.

(10) Camping outside of designated sites or areas.

(c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(d) *Food storage.* The Board may designate all or a portion of the area administered by the Presidio Trust where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

§ 1002.11 Picnicking.

Picnicking is allowed, except in designated areas closed in accordance with § 1001.5 of this chapter. The Board may establish conditions for picnicking in areas where picnicking is allowed. Picnicking in violation of established conditions is prohibited.

§ 1002.12 Audio disturbances.

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner that exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or that, if below that level, nevertheless makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purposes of the Presidio Trust Act, impact on visitors or tenants, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) In developed areas, operating a power saw, except pursuant to the terms and conditions of a permit.

(3) In nondeveloped areas, operating any type of portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit.

(4) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 1002.50 or § 1002.51.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.13 Fires.

(a) The following are prohibited:

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(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the Board.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or resources of the area administered by the Presidio Trust, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources of the area administered by the Presidio Trust, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination of use and in accordance with such conditions as may be established by the Board. Violation of these conditions is prohibited.

(c) During periods of high fire danger, the Executive Director may close all or a portion of the area administered by the Presidio Trust to the lighting or maintaining of a fire.

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.14 Sanitation and refuse.

(a) The following are prohibited:

(1) Disposing of refuse in other than refuse receptacles.

(2) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the Executive Director.

(3) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(4) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(5) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(6) Polluting or contaminating waters or water courses within the area administered by the Presidio Trust.

(7) Disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated.

(8) In developed areas, the disposal of human body waste, except at designated locations or in fixtures provided for that purpose.

(9) In nondeveloped areas, the disposal of human body waste within 100 feet of a water source, high water mark of a body of water, or a campsite, or within sight of a trail, except as otherwise designated.

(b) The Board may establish conditions concerning the disposal, containerization, or carryout of human body waste. Violation of these conditions is prohibited.

§ 1002.15 Pets.

(a) The following are prohibited:

(1) Possessing a pet in a public building, public transportation vehicle, or location designated as a swimming beach, or any structure or area closed to the possession of pets by the Board. This paragraph shall not apply to guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing-impaired persons.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

(3) Leaving a pet unattended and tied to an object, except in designated areas or under conditions which may be established by the Board.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on visitors or tenants, and other relevant factors, or that frightens wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the Board.

(b) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other resources of the area administered by the Presidio Trust.

(c) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(d) Pets may be kept by residents of the area administered by the Presidio Trust consistent with the provisions of this section and in accordance with conditions which may be established by the Board. Violation of these conditions is prohibited.

(e) This section does not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

§ 1002.16 Horses and pack animals.

The following are prohibited:

(a) The use of animals other than those designated as "pack animals" for purposes of transporting equipment.

(b) The use of horses or pack animals outside of trails, routes or areas designated for their use.

(c) The use of horses or pack animals on a Presidio Trust road, except where such travel is necessary to cross to or from designated trails, or areas, or privately owned property, and no alternative trails or routes have been designated; or when the road has been closed to motor vehicles.

(d) Free-trailing or loose-herding of horses or pack animals on trails, except as designated.

(e) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(f) Obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(g) Violation of conditions which may be established by the Board concerning the use of horses or pack animals.

§ 1002.17 Aircraft and air delivery.

(a) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit, is prohibited.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government, or emergency rescues in accordance with the directions of the Executive Director, or to landings due to circumstances beyond the control of the operator.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the Executive Director. In establishing removal procedures, the Executive Director is authorized to establish a reasonable date by which aircraft removal operations must be complete; determine times and means of access to and from the downed aircraft; and specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under paragraph (c)(1) of this section is prohibited.

(3) The Executive Director may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life; the removal of a downed aircraft would result in extensive resource damage; or the removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration as found in 14 CFR chapter I.

(e) The operation or use of hovercraft is prohibited.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(g) The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the Board, pursuant to the terms and conditions of a permit.

§ 1002.18 Snowmobiles.

The use of snowmobiles is prohibited.

§ 1002.19 Winter activities.

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing and similar winter sports are prohibited on Presidio Trust roads and in parking areas open to motor vehicle traffic, except as otherwise designated.

(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes.

(c) Failure to abide by area designations or activity restrictions established under this section is prohibited.

§ 1002.20 Skating, skateboards and similar devices.

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited, except in designated areas.

§ 1002.21 Smoking.

(a) The Board may designate a portion of the area administered by the Presidio Trust, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

§ 1002.22 Property.

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the Board.

(3) Failing to turn in found property to the Executive Director as soon as practicable.

(b) *Impoundment of property.* (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the Executive Director.

(2) Unattended property that interferes with visitor safety or orderly management of the area administered by the Presidio Trust, or that presents a threat to resources of the area administered by the Presidio Trust may be impounded by the Executive Director at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the Executive Director may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property.* (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the Executive Director's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the Presidio Trust. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) Abandoned property shall be disposed of in accordance with law.

(4) Property, including real property, located within the area administered by the Presidio Trust and owned by a deceased person, shall be disposed of in accordance with the laws of the State within whose exterior boundaries the property is located.

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.23 Recreation fees.

(a) Recreation fees shall be charged in the area administered by the Presidio Trust to the same extent that recreation fees have been established for the Golden Gate National Recreation Area in accordance with 36 CFR part 71.

(b) Entering designated entrance fee areas or using specialized sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established without paying the required fees and possessing the applicable permits is prohibited. Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(c) The Executive Director may, when in the public interest, prescribe periods during which the collection of recreation fees shall be suspended.

§ 1002.30 Misappropriation of property and services.

(a) The following are prohibited:

(1) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(2) Obtaining property or services offered for sale or compensation without making payment or offering to pay.

(3) Obtaining property or services offered for sale or compensation by means of deception or a statement of past, present or future fact that is instrumental in causing the wrongful transfer of property or services, or using stolen, forged, expired, revoked or fraudulently obtained credit cards or paying with negotiable paper on which payment is refused.

(4) Concealing unpurchased merchandise on or about the person without the knowledge or consent of the seller or paying less than purchase price by deception.

(5) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

(b) The regulations contained in this section apply, regardless of land

ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.31 Trespassing, tampering and vandalism.

(a) The following are prohibited:

(1) *Trespassing.* Trespassing, entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.

(2) *Tampering.* Tampering or attempting to tamper with property or real property, or moving, manipulating or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(3) *Vandalism.* Destroying, injuring, defacing, or damaging property or real property.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.32 Interfering with agency functions.

(a) The following are prohibited:

(1) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(2) *Lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or resources of the area administered by the Presidio Trust, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(3) *False information.* Knowingly giving a false or fictitious report or other false information to an authorized person investigating an accident or violation of law or regulation, or on an application for a permit.

(4) *False Report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.33 Report of injury or damage.

(a) A person involved in an incident resulting in personal injury or property damage exceeding $300, other than an accident reportable under § 1004.4 of this chapter, shall report the incident to the Executive Director as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

(b) Failure to report an incident in accordance with paragraph (a) of this section is prohibited.

§ 1002.34 Disorderly conduct.

(a) A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(1) Engages in fighting or threatening, or in violent behavior.

(2) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(3) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(4) Creates or maintains a hazardous or physically offensive condition.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.35 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.* (1) The use and possession of alcoholic beverages within the area administered by the Presidio Trust is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age limit will apply for purposes of this paragraph.

(ii) The possession of an alcoholic beverage by a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age will apply for purposes of this paragraph.

(3)(i) The Board may close all or a portion of a public use area or public facility within the area administered by the Presidio Trust to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. Provided however, that such a closure may only be implemented following a determination made by the Board that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and § § 1001.5 and 1002.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the Board does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 1004.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

(b) *Controlled substances.* The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(c) Presence within the area administered by the Presidio Trust when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or resources of the

area administered by the Presidio Trust, is prohibited.

§ 1002.36 Gambling.

(a) Gambling in any form, or the operation of gambling devices, is prohibited.

(b) This regulation applies, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1002.37 Noncommercial soliciting.

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a permit that has been issued under § 1002.50, § 1002.51 or § 1002.52.

§ 1002.38 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(b) Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the Board may establish, and in accordance with applicable State law.

(c) Violation of the conditions established by the Board or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: Provided, however, There is a meaningful association between the area administered by the Presidio Trust and the events, and the observance contributes to visitor understanding of the significance of the area administered by the Presidio Trust, and a permit therefore has been issued by the Executive Director. A permit shall be denied if such activities would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Be contrary to the purposes of the Presidio Trust Act; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the Executive Director. The application shall be submitted so as to reach the Executive Director at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the Executive Director may require:

(1) The filing of a bond payable to the Presidio Trust, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the United States.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.51 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the area administered by the Presidio Trust, provided a permit therefore has been issued by the Executive Director.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the area administered by the Presidio Trust, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate on a map, that shall be available in the office of the Presidio Trust, the locations available for public assemblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Unreasonably impair the atmosphere of peace and tranquillity maintained in wilderness, natural, historic or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede

pedestrians or vehicles, or harass visitors with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 1002.52 Sale or distribution of printed matter.

(a) The sale or distribution of printed matter is allowed within the area administered by the Presidio Trust, provided that a permit to do so has been issued by the Executive Director, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant; the name of the organization (if any); the date, time, duration, and location of the proposed sale or distribution; the number of participants; and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the area administered by the Presidio Trust, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate on a map, which shall be available for inspection in the office of the Presidio Trust, the locations within the area administered by the Presidio Trust that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to resources of the area administered by the Presidio Trust; or

(2) Unreasonably impair the atmosphere of peace and tranquillity maintained in wilderness, natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust concessioners or contractors; or

(5) Present a clear and present damage to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the area administered by the Presidio Trust for the purposes of the Presidio Trust Act.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 1002.60 Livestock use and agriculture.

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind within the area administered by the Presidio Trust or the use of such area for agricultural purposes is prohibited, except:

(1) As specifically authorized by Federal statutory law; or

(2) As required under a reservation of use rights arising from acquisition of a tract of land; or

(3) As designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

(b) Activities authorized pursuant to any of the exceptions provided for in paragraph (a) of this section shall be allowed only pursuant to the terms and conditions of a license, permit or lease. Violation of the terms and conditions of a license, permit or lease issued in accordance with this paragraph is prohibited and may result in the suspension or revocation of the license, permit, or lease.

(c) *Impounding of livestock.* (1) Livestock trespassing within the area administered by the Presidio Trust may be impounded by the Executive Director and, if not claimed by the owner within the periods specified in this paragraph, shall be disposed of in accordance with applicable Federal and State law.

(2) In the absence of applicable Federal or State law, the livestock shall be disposed of in the following manner:

(i) If the owner is known, prompt written notice of impoundment will be served, and in the event of the owner's failure to remove the impounded livestock within five (5) days from delivery of such notice, it will be disposed of in accordance with this paragraph.

(ii) If the owner is unknown, disposal of the livestock shall not be made until at least fifteen (15) days have elapsed from the date that a notice of impoundment is originally published in a newspaper of general circulation in the county in which the trespass occurs or, if no such newspaper exists, notification is provided by other appropriate means.

(iii) The owner may redeem the livestock by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding, and the amount of damage

to public property injured or destroyed as a result of the trespass.

(iv) In determining the claim of the government in a livestock trespass, the value of forage consumed shall be computed at the commercial rates prevailing in the locality for the class of livestock found in trespass. The claim shall include the pro rata salary of employees for the time spent and the expenses incurred as a result of the investigation, reporting, and settlement or prosecution of the claim.

(v) If livestock impounded under this paragraph is offered at public sale and no bid is received, or if the highest bid received is less than the amount of the claim of the United States or of the officer's appraised value of the livestock, whichever is the lesser amount, such livestock, may be sold at private sale for the highest amount obtainable, condemned and destroyed, or converted to the use of the United States.

§ 1002.61 Residing on Federal lands.

(a) Residing within the area administered by the Presidio Trust, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.62 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation within the area administered by the Presidio Trust without the authorization of the Board is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas according to conditions which may be established by the Board.

(c) Failure to abide by area designations and established conditions is prohibited.

(d) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 1002.63 Boating and water use activities.

Swimming, boating and the use of any water vessel are prohibited within the area administered by the Presidio Trust.

PART 1004—VEHICLES AND TRAFFIC SAFETY

Sec.

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Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1004.1 Applicability and scope.

The applicability of the regulations in this part is described in § 1001.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on all roadways and parking areas within the boundaries of the area administered by the Presidio Trust that are open to public traffic and that are under the legislative jurisdiction of the United States.

§ 1004.2 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within the boundaries of the area administered by the Presidio Trust are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

§ 1004.3 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

§ 1004.4 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the Executive Director as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the Executive Director.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the Executive Director unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the area administered by the Presidio Trust.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

§ 1004.10 Travel on Presidio Trust roads and designated routes.

(a) Operating a motor vehicle is prohibited except on Presidio Trust roads and in parking areas.

(b) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the Board.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a Presidio Trust road or route.

§ 1004.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a Presidio Trust road. However, the Board may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The Board may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the Board.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the Executive Director.

§ 1004.12 Traffic control devices.

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the Executive Director.

§ 1004.13 Obstructing traffic.

The following are prohibited:

(a) Stopping or parking a vehicle upon a Presidio Trust road, except as authorized by the Executive Director, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

§ 1004.14 Open container of alcoholic beverage.

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in the area administered by the Presidio Trust is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

§ 1004.15 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in the area administered by the Presidio Trust will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

§ 1004.20 Right of way.

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

§ 1004.21 Speed limits.

(a) Speed limits in the area administered by the Presidio Trust are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of Presidio Trust road under repair or construction.

(3) 45 miles per hour: upon all other Presidio Trust roads.

(b) The Board may designate a different speed limit upon any Presidio Trust road when a speed limit set forth in paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes of the Presidio Trust Act. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a Presidio Trust road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

§ 1004.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of § 1004.2.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

§ 1004.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) Tests. (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within the area administered by the Presidio Trust has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) Presumptive levels. (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

§ 1004.30 Bicycles.

(a) The use of a bicycle is prohibited except on Presidio Trust roads, in parking areas and on routes designated for bicycle use; provided, however, that the Board may close any Presidio Trust road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1001.5 and 1001.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or the resources of the area administered by the Presidio Trust.

(b) *Designated bicycle routes.* The use of a bicycle is permitted in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Board as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the Presidio Trust and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes within the area administered by the Presidio Trust.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 1004.4, 1004.10, 1004.11 and 1004.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the Executive Director.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

§ 1004.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the Board.

PART 1005—COMMERCIAL AND PRIVATE OPERATIONS

Sec.

1005.1 Advertisements.
1005.2 Alcoholic beverages; sale of intoxicants.
1005.3 Business operations.
1005.4 Commercial passenger-carrying motor vehicles.
1005.5 Commercial photography.
1005.6 Commercial vehicles.
1005.7 Construction of buildings or other facilities.
1005.8 Discrimination in employment practices.
1005.9 Discrimination in furnishing public accommodations and transportation services.
1005.10–1005.12 [Reserved]
1005.13 Nuisances.
1005.14 Prospecting, mining, and mineral leasing.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1005.1 Advertisements.

Commercial notices or advertisements shall not be displayed, posted, or distributed within the area administered by the Presidio Trust unless prior written permission has been given by the Executive Director. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the area administered by the Presidio Trust and such notices and advertisements are found by the Executive Director to be desirable and necessary for the convenience and guidance of the public.

§ 1005.2 Alcoholic beverages; sale of intoxicants.

The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations. (See also § 1002.35 of this chapter.)

§ 1005.3 Business operations.

Engaging in or soliciting any business in the area administered by the Presidio Trust, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, is prohibited.

§ 1005.4 Commercial passenger-carrying motor vehicles.

Passenger-carrying motor vehicles that are so large as to require special escort in order to proceed safely over Presidio Trust roads, or which in the judgment of the Executive Director are beyond the carrying capacity or safety factor of the roads, will not be permitted in the area administered by the Presidio Trust, except that, where they may satisfactorily enter and travel to the Presidio Trust headquarters they may be parked there during the period of stay.

§ 1005.5 Commercial photography.

(a) *Motion pictures, television.* Before any motion picture may be filmed or any television production or sound track may be made, which involves the use of professional casts, settings, or crews, by any person other than bona fide newsreel or news television personnel, written permission must first be obtained from the Executive Director, in accordance with the following:

(1) *Permit required.* No picture may be filmed, and no television production or sound track made on any area administered by the Presidio Trust, by any person other than amateur or bona fide newsreel and news television photographers and soundmen, unless written permission has been obtained from the Presidio Trust. Applications for permission should be submitted to the Executive Director.

(2) *Fees; bonds.* (i) No fees will be charged for the making of motion pictures, television productions or sound tracks on areas administered by the Presidio Trust. The regular general admission and other fees currently in effect in any area under the jurisdiction of the Presidio Trust are not affected by this paragraph.

(ii) A bond shall be furnished, or deposit made in cash or by certified check, in an amount to be set by the

official in charge of the area to insure full compliance with all of the conditions prescribed in paragraph (a)(4) of this section.

(3) *Approval of application.* Permission to make a motion picture, television production or sound track on areas administered by the Presidio Trust will be granted by the Executive Director in his discretion and on acceptance by the applicant of the conditions set forth in paragraph (a)(4) of this section.

(4) *Form of application.* The following form is prescribed for an application for permission to make a motion picture, television production, or sound track on areas administered by the Presidio Trust:

Date _____

To the Executive Director of the Presidio Trust:

Permission is requested to make, in the area administered by the Presidio Trust, a

_____

The scope of the filming (or production or recording) and the manner and extent thereof will be as follows:

_____

_____

Weather conditions permitting, work will commence on approximately _____ and will be completed on approximately _____. (An additional sheet should be used if necessary.)

The undersigned accepts and will comply with the following conditions:

Utmost care will be exercised to see that no natural features are injured, and after completion of the work the area will, as required by the official in charge, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the official in charge.

Credit will be given to the Presidio Trust through the use of an appropriate title or announcement, unless there is issued by the official in charge of the area a written statement that no such courtesy credit is desired.

Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.

Any special instructions received from the official in charge of the area will be complied with.

Any additional information relating to the privilege applied for by this application will be furnished upon request of the official in charge.

_____
(Applicant)

For _____
(Company)

Bond Requirement $ _____

Approved:

_____
(Date)

_____
(Title)

(b) *Still photography.* The taking of photographs of any vehicle, or other articles of commerce or models for the purpose of commercial advertising without a written permit from the Executive Director is prohibited.

§ 1005.6 Commercial vehicles.

(a) The term "Commercial vehicle" as used in this section shall include, but not be limited to trucks, station wagons, pickups, passenger cars or other vehicles when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

(b) The use of government roads within the area administered by the Presidio Trust by commercial vehicles, when such use is in no way connected with the operation of the area administered by the Presidio Trust, is prohibited, except that in emergencies the Executive Director may grant permission to use Presidio Trust roads.

(c) The Executive Director shall issue permits for commercial vehicles used on Presidio Trust roads when such use is necessary for access to private lands situated within or adjacent to the area administered by the Presidio Trust, to which access is otherwise not available.

§ 1005.7 Construction of buildings or other facilities.

Constructing or attempting to construct a building, or other structure, boat dock, road, trail, path, or other way, telephone line, telegraph line, power line, or any other private or public utility, upon, across, over, through, or under any area administered by the Presidio Trust, except in accordance with the provisions of a valid permit, contract, or other written agreement with the United States, is prohibited.

§ 1005.8 Discrimination in employment practices.

(a) The proprietor, owner, or operator of any hotel, inn, lodge or other facility or accommodation offered to or enjoyed by the general public within the area administered by the Presidio Trust is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in connection with any activity provided for or permitted by contract with or permit from the Government or by derivative subcontract or sublease. As used in this section, the term "employment" includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post either the following notice or notices supplied in accordance with Executive Order 11246 at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment:

Notice

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, or national origin is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§ 1005.9 Discrimination in furnishing public accommodations and transportation services.

(a) The proprietor, owner or operator and the employees of any hotel, inn, lodge, or other facility or accommodation offered to or enjoyed by the general public within the area administered by the Presidio Trust and, while using such area, any commercial passenger-carrying motor vehicle service and its employees, are prohibited from:

(1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin; or

(2) Discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be

conspicuous to any person seeking accommodations, facilities, services, or privileges:

Notice

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints of violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within the boundaries of the area administered by the Presidio Trust that are under the legislative jurisdiction of the United States.

§§ 1005.10–1005.12 [Reserved]

§ 1005.13 Nuisances.

The creation or maintenance of a nuisance upon the federally owned lands of the area administered by the Presidio Trust or upon any private lands within the boundaries of the area administered by the Presidio Trust under the exclusive legislative jurisdiction of the United States is prohibited.

§ 1005.14 Prospecting, mining, and mineral leasing.

Prospecting, mining, and the location of mining claims under the general mining laws and leasing under the mineral leasing laws are prohibited in the area administered by the Presidio Trust except as authorized by law.

[FR Doc. 98–17308 Filed 6–29–98; 8:45 am]
BILLING CODE 4310–4R–U

VOL 63 ISS 125 JE 30 1998 UMI

federal register

Tuesday
June 30, 1998

Part VII

Office of Management and Budget

Department of Defense

General Services Administration

National Aeronautics and Space Administration
48 CFR Part 1, et al.

Small Business Administration
13 CFR Part 121, et al.

Federal Acquisition Regulations for Small Disadvantaged Businesses; Notice and Rules

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Disadvantaged Business Procurement; Reform of Affirmative Action in Federal Procurement

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Notice of determination concerning price evaluation adjustments.

SUMMARY: The Federal Acquisition Regulation (FAR), 48 CFR Part 19, contains regulations permitting eligible small disadvantaged businesses (SDB's) to receive price evaluation adjustments in Federal procurement programs. The FAR provides further that the Department of Commerce (DOC) will determine the price evaluation adjustments available for use in Federal procurement programs. The DOC, in the attached memorandum, determines price evaluation adjustments (percentages) by Standard Industrial Classification (SIC) major groups and regions that are effective for new solicitations for the upcoming year. The DOC memorandum describes the methodology for determining price evaluation adjustments.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, Telephone 202–395–3302. For information on the Commerce methodology, contact Mr. Jeffrey Mayer, Director of Policy Development, Economics and Statistics Administration, U.S. Department of Commerce, Telephone 202–482–1728.

SUPPLEMENTARY INFORMATION:

Procurement Mechanisms and Factors

FAR Subpart 19.11 provides for the use of price evaluation adjustments for eligible SDBs. OFPP gives notice that the attached Memorandum from the DOC determines that certain SIC major groups are eligible for a price evaluation adjustment. The Memorandum also includes factors for use on a regional basis in certain industries. FAR Subpart 19.11 provides that these factors are authorized for use in new solicitations issued on or after October 1, 1998, that allow for a price evaluation adjustment.

Allan E. Brown,

Acting Administrator.

Attachment

Department of Commerce

Economics and Statistics Administration

Memorandum for Office of Federal Procurement Policy

From: Jeffrey L. Mayer, Director of Policy Development.

Subect: Price Evaluation Adjustments and Benchmarking Methodology.

Pursuant to new Federal Acquisition Regulation (FAR) 19.201(b), transmitted herein is the Department of Commerce determination on the price evaluation adjustments for use in Federal procurements and the supporting benchmarking methodology.

I. Background

FAR 19.201(b) requires the Department of Commerce to determine price evaluation adjustments for applicable standard industrial classification (SIC) major groups. To establish price evaluation adjustments, the Office of the Chief Economist and the Office of Policy Development in the Economics and Statistics Administration of the Department of Commerce (DOC) conducted an economic analysis to identify industries eligible for price evaluation adjustments to implement the Administration's proposal for reforming affirmative action in Federal procurement programs.

DOC is responsible for: (i) developing the methodology for calculating the benchmark limitations; (ii) developing the methodology for calculating the size of the price evaluation adjustments that should be employed in a given industry; and (iii) determining applicable adjustments. In addition, DOC is charged with providing information to the Small Business Administration for its use in administering the 8(a) program.

II. Price Evaluation Adjustments

Based upon the methodology described below, DOC determines that a price evaluation adjustment of ten percent be employed in the following industries:

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT

SIC major industry group	Eligibility (*)	Description of industry grouping
Agriculture, Forestry, and Fishing		
01		Agricultural production—crops.
02		Agricultural production—livestock.
07		Agricultural services.
08		Forestry.
09		Fishing, hunting, & trapping.
Mining		
10	*	Metal mining.
12	*	Coal mining.
13	*	Oil & gas extraction.
14	*	Extraction of nonmetallic minerals, ex. Fuels.
Construction		
15		Building construction—general contractors.
15	*	East North Central.
15	*	East South Central.
15	*	Middle Atlantic.
15		Mountain.
15		New England.
15		Pacific.
15		South Atlantic.
15		West North Central.
15	*	West South Central.

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

SIC major industry group	Eligibility (*)	Description of industry grouping
16		Heavy construction other than buildings—contractors.
16		East North Central.
16	*	East South Central.
16		Middle Atlantic.
16		Mountain.
16		New England.
16		Pacific.
16		South Atlantic.
16		West North Central.
16	*	West South Central.
17		Construction—special trade contractors.
17		East North Central.
17		East South Central.
17		Middle Atlantic.
17		Mountain.
17	*	New England.
17		Pacific.
17		South Atlantic.
17	*	West North Central.
17		West South Central.
		Manufacturing
20		Food & kindred products.
21		Tobacco products.
22	*	Textile mill products.
23	*	Apparel & other finished products made from fabrics.
24	*	Lumber & wood products, ex. Furniture.
25	*	Furniture & fixtures.
26	*	Paper & allied products.
27	*	Printing, publishing, & allied industries.
28	*	Chemicals & allied products.
29	*	Petroleum refining & related industries.
30	*	Rubber & miscellaneous plastics products.
31	*	Leather & leather products.
32		Stone, clay, glass, & concrete products.
33		Primary metal industries.
34	*	Fabricated metal products.
35		Industrial & commercial machinery & computer equipment.
36	*	Electronic & other electrical equipment & components, ex. Computers.
37	*	Transportation equipment.
38	*	Measuring, analyzing, & controlling instruments; photographic, medical & optical goods; watches & clocks.
39	*	Miscellaneous manufacturing industries.
		Transportation, Communications, Electric, Gas, Sanitary Services
40		Railroad transportation.
41	*	Local & suburban transit & interurban highway passenger transportation.
42	*	Motor freight transportation & warehousing.
44	*	Water transportation.
45		Transportation by air.
46	*	Pipelines, exc. natural gas.
47	*	Transportation services.
48	*	Communications.
49	*	Electric, gas, & sanitary services.
		Wholesale Trade
50	*	Wholesale trade—durable goods.
51	*	Wholesale trade—nondurable goods.
		Retail Trade
52	*	Building materials, hardware, garden supply, & mobile home dealers.
53	*	General Merchandise stores.
54	*	Food stores.
55	*	Automotive dealers & gasoline service stations.
56	*	Apparel & accessory stores.
57	*	Home furniture, furnishings, & equipment stores.
58	*	Eating & drinking places.
59	*	Miscellaneous retail.

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

SIC major industry group	Eligibility (*)	Description of industry grouping
		Finance, Insurance, and Real Estate
60	*	Depository institutions.
61	*	Nondepository adjustment institutions.
62	*	Security & commodity brokers, dealers, exchanges, & services.
63	*	Insurance carriers.
64	*	Insurance agents, brokers, & services.
65	*	Real estate.
67	*	Holding & other investment offices.
		Services
70	*	Hotels, rooming houses, camps, & other lodging places.
72		Personal services.
73	*	Business services.
75	*	Automotive repair, services, & parking.
76	*	Miscellaneous repair services.
78		Motion pictures.
79		Amusement & recreation services.
80	*	Health services.
81		Legal services.
82	*	Educational services.
83		Social services.
84		Museums, art galleries, & botanical & zoological gardens
86		Membership organizations.
87	*	Engineering, accounting, research, management, & related services.
88		Private households.
89	*	Miscellaneous services.

III. Benchmarking Methodology

DOC's methodology is designed to ensure that the price adjustments authorized by the reforms are narrowly tailored to remedy discrimination. The methodology includes four steps. First, DOC identified firms that are "ready and willing" to supply the federal government. Second, DOC calculated the federal government's utilization of each ready and willing firm as the FY 1996 net contract obligations awarded by federal agencies to each ready and willing firm. Third, DOC estimated the capacity of each ready and willing firm to supply the federal government. Finally, DOC compared SDB shares of utilization and capacity held by ready and willing firms in each Contracting Arena [1] and recommended that the price evaluation adjustments be implemented where SDB share of industry utilization falls short of SDB share of industry capacity.

A. Data

DOC set four major criteria for choosing the data needed to estimate the benchmark limitations:

- The data should be as current as possible;
- The data should include information on a large number of firms, including SDBs;
- The data should identify firms that are ready and willing to supply the federal government;
- The data should permit the direct comparison of capacity and utilization for the same year.

No existing data sets, such as the Survey of Minority-Owned Business Enterprises (conducted by the U.S. Bureau of the Census), were designed to meet these criteria. Consequently, DOC identified three sets of firms as ready and willing to supply the federal government in FY 1996.[2] These sets are:

1. Bidders from a sample of competitive procurements (over $25,000) in FY 1996. DOC implemented a survey of federal contracting officers, who were asked to identify the firms that bid in a random sample of 16,616 procurements (the survey had a response rate of 76 percent). The sample of procurements was drawn from a sampling frame consisting of all new, competitive, multi-bid contracts awarded by major federal agencies.[3] The sampling frame was extracted from the Federal Procurement Data System (FPDS) for prime contract actions worth more than $25,000.[4] The sampling frame

[1] A firm's Contracting Arena is the industry grouping in which it bid, was awarded a contract, or had 8(a) certification and (in the case of construction companies) the Census Division where it was located. In most cases, the industry grouping is the two digit Standard Industrial Classification major industry group. The following related major industry groups were regrouped together for purposes of applying the benchmarking methodology because otherwise the regression analysis (described below) for at least one of the constituent major industry groups would have had what DOC deemed to be an insufficient number of firms (that is, less than 30 degrees of freedom): agriculture (SIC Major Industry Groups 01, 02, 07); forestry and fishing (08, 09); mining (10, 12, 13, 14); rubber, misc. plastic products, and leather products (30, 31); local transit, interurban highway passenger transportation, and misc. transportation services (41, 47); pipelines and utilities (46, 49); retail trade other than eating and drinking places (53, 54, 55, 56, 57,59); and finance, insurance, and real estate (60, 61, 62, 63, 64, 65, 67). We could make no satisfactory aggregation for several major industry groups (21, 40, 72, 78, 79, 81, 84, 86, 88) that would allow analysis with a sufficient number of firms.

[2] Unique "firms" were identified by their Taxpayer Identification Numbers (TIN) and the Contracting Arenas in which they participated in federal contracting. Firms with missing or defective TINs or Contracting Arena information were not included in the unified data set. A firm can be any for-profit company, non-profit organization, or a state or local government establishment that bid for a federal contract, or a company certified in the 8(a) program. Finally, some firms were included more than once if they participated in federal contracting in more than one Contracting Arena.

[3] The agencies were all 14 cabinet agencies, plus EPA, GSA, NASA, and TVA, which together accounted for 98.8 percent of the value of all procurement contracts over $25,000 in FY 1996.

[4] Awards under contracts valued at $25,000 or less (and individual contract actions worth $25,000 or less and awarded by DOD) accounted for only 7.2 percent of all federal contract awards in FY 1996. The FPDS does not include detailed data on individual contracts worth $25,000 or less, making it impossible to include these contracts in DOC's analysis. Since the SDB share of the sub-$25,000 awards was only 3.3 percent, while the SDB share of awards over $25,000 was 5.8 percent, omitting the sub-$25,000 awards (where usage of 8(a) contracting is negligible) does not under-estimate SDB utilization.

was stratified by the two, three, or four-digit Standard Industrial Classification (SIC) codes corresponding to the major activity covered by each contract. For SIC 15, SIC 16 and SIC 17 (i.e., construction industries), the sampling frame was further stratified by the nine multi-state Census Divisions in which the contractor was located. Each sampled contract had a sample weight equal to the reciprocal of its probability of being sampled. All firms responding to the solicitation resulting in the contract in the sample were included in the resulting bidders' data set.

2. All firms that won all other types of new contracts (over $25,000) in FY 1996, i.e., firms identified in the FY 1996 FPDS that were the sole bidder on new, competitive contracts, and firms awarded new contracts in FY 1996 through noncompetitive contracting.[5]

3. All firms certified as active and eligible for 8(a) contracts by the Small Business Administration in FY 1996, whether or not the firms won new contracts in FY 1996.

To prevent duplication, DOC matched the three data sets by the firms' Taxpayer Identification Numbers and the Contracting Arenas in which they participated in federal contracting. Each firm that appeared in data sets (2) or (3) was given a sample weight of 1.0, as these firms were sampled with certainty. DOC recomputed the sample weights for each firm that appeared more than once in data set (1), but not in data sets (2) and (3), as the inverse of the joint probability of being selected, where the probability of each solicitation that resulted in a contract being selected was independent.[6] The resulting "Ready and Willing Data Set" had no firms with duplicate Taxpayer Identification Numbers in the same Contracting Arena.[7]

DOC then matched the firms in the Ready and Willing Data Set by their Taxpayer Identification Numbers to data on firm age,[8] annual payroll, and for-profit status for all payroll taxpaying legal entities included in the Census Bureau's 1995 Standard Statistical Establishment List (SSEL), which consists of all establishments in the United States. The SSEL was also used to fill in the state where construction firms were located, if the Ready and Willing Data Set was missing that information.[9]

B. Computing SDB Share of Utilization

DOC matched firms in the Ready and Willing Data Set to the FPDS, by their Taxpayer Identification Numbers and Contracting Arenas to obtain the total net contract obligations actually awarded ("utilization") to these firms in FY 1996. The resulting data set is called the "Utilization Data Set." DOC then computed the SDB share of utilization in a Contracting Arena by dividing the weighted sum of utilization of SDB firms in the Contracting Arena by the weighted sum of utilization of all firms the Contracting Arena (regardless of SDB status), where the weights were the sample weights in the Ready and Willing Data Set.

C. Estimating SDB Share of Capacity

DOC defined a firm's capacity to fulfill federal contracts as the geometric mean value of federal contracting work a contractor of a given size and age handles, in a given Contracting Arena. The method for estimating capacity is as follows:

1. Using the Utilization Data Set, the natural logarithm of utilization was regressed on the following variables for for-profit firms in each Contracting Arena with positive utilization:

- A constant term;
- Firm age in 1996 (measured as the natural logarithm of number of years since the firm first appeared in the SSEL);
- A dummy variable if the firm first appeared in the SSEL before 1975;
- The natural logarithm of 1995 payroll (measured in thousands of dollars);
- Interaction terms between the natural logarithm of payroll and the two age variables;
- A dummy variable if the firm certified that it met the Small Business Administration's definition of a small business in that Contracting Arena.

2. Using the Utilization Data Set, the mean natural logarithm of utilization was computed separately for two groups of firms in each Contracting Arena:

- Firms missing one or more of the regressors listed in step 1 above;
- Non-profit and government establishments.

This was done so that we would not have to drop these firms from our analysis and possibly bias our estimates. Not-for-profit and government entities do not fit well into our basic regression model, since payroll data are probably not a true measure of resource limits for a government establishment and because non-profit organizations may behave differently from for-profit firms participating in federal contracting.

3. The mean natural logarithm of utilization for firms of a given size and age was estimated for each of the for-profit firms with complete data in the Ready and Willing Data Set by computing their predicted utilization using the regression coefficients estimated in step 1 above and the corresponding characteristics of ready and willing firms (i.e., their payroll, age, and small business status).

4. The mean natural logarithm of utilization for profit-making firms with missing data and for non-profit/government entities in the Ready and Willing Data Set was set equal to the corresponding means computed in step 2 above.

5. The estimates of mean natural logarithm of utilization were exponentiated to convert them to dollar amounts; these were each firm's "capacity" to fulfill federal contracts.

6. Weighted sums of the capacity estimates were then computed for SDBs and for all firms in each Contracting Arena, where the weights were the sample weights described in section III.A. above.

7. The benchmark limitations (i.e., SDB share of industry capacity held by firms ready and willing to fulfill federal contracts) in each Contracting Arena is equal to the ratio of the weighted sum of SDB capacities to the weighted sum of capacities of all firms in the Contracting Arena.

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[5] Firms listed under GSA and VA schedules in FY 1996 and that did not appear elsewhere in the FY 1996 data were not included in DOC's analysis; total orders under these schedules accounted for only 1.6 percent of contract awards greater than $25,000 in FY 1996. DOC found that omitting these firms had no effect on its findings.

[6] Competitive contracts were sampled without replacement for purposes of collecting data on bidders, so the probability of selecting one contract is independent of the probability of selecting another. However, since many firms bid for more than one contract, bidders were sampled with replacement.

[7] Some firms in the Ready and Willing Data Set did not consistently identify their SDB status. DOC based its decision on which SDB designation to accept as follows:

- All 8(a) certified firms were assumed to be SDBs;
- If a firm was not 8(a) certified, then it was considered SDB if it self-certified as SDB on any offer in the bidders' sample;
- If a firm was in neither the 8(a) certified data set nor in the bidders' data set, then its SDB status was assumed to be the most frequently appearing status that appeared for the firm in the FPDS.

[8] More precisely, each firm's age was derived from a variable in the SSEL that indicated the year that the TIN first appeared in the SSEL, the earliest effective year being 1975, when Census first began keeping track of when firms appeared in the data set.

[9] Any estimates that used SSEL data were subject to the Census Bureau's Title 13 disclosure rules and must be accompanied by this standard notice:

"The research described in this memorandum was conducted while the authors were research associates at the Center for Economic Studies, U.S. Bureau of the Census. Research results and conclusions expressed are those of the authors and do not necessarily indicate concurrence by the Bureau of the Census or the Center for Economic Studies."

In this way, DOC's method for estimating capacity converts the number of ready and willing firms that contract with the federal government to aggregate expected value of the amount (in dollars) of federal contracting that ready and willing firms potentially could fulfill. The method adjusts raw firm counts to reflect observable characteristics widely believed to be associated with the quantity of federal contracting work that a firm is able to manage.

IV. Estimating the Size of the Price Evaluation Adjustment

Based on the Defense Department's experience with its price evaluation adjustment, DOC determined that a price evaluation adjustment of ten percent would not raise the SDB share of utilization above the SDB share of capacity held by firms ready and willing to fulfill federal contracts in any industry (and regions, in the case of the construction sector). Accordingly, DOC determined that there were no industries (and regions, in the case of the construction sector) where a price evaluation adjustment greater than 0 percent and less than ten percent would be appropriate.

V. Basis for DOC's Determinations

DOC compared the benchmark limitations for each Contracting Arena to the SDB shares of actual utilization in each Contracting Arena. DOC determined that a price adjustment be used in those Contracting Arenas where it can be shown that SDBs have a greater share of capacity than the federal government is using, i.e., where the benchmark limitations exceed SDB shares of actual utilization.[10]

[FR Doc. 98–17157 Filed 6–26–98; 8:45 am]

BILLING CODE 3116–01–P

[10] In effect, the benchmarking methodology measures gaps in contracting awards to SDBs that are unrelated to size and age differences with non-SDBs. The methodology does not attempt to estimate SDB share of industry capacity to fulfill federal contracts in the absence of all current and past discrimination. In other words, to the extent that differences in size, age, or number of firms reflect discrimination against small, disadvantaged businesses, this analysis does not take direct account of such discrimination, which may be substantial.

VOL 63 ISS 125 JE 30 1998 UMI

DEPARTM

GENERAL ADMINIST

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48 CFR Pa 52

[FAC 97–0

RIN 9000–

Federal A Reform o Procurem

AGENCY: D General S and Natio Administ

ACTION: In comment.

SUMMARY: the Gener and the N Administ Federal A an interim the Feder (FAR) con disadvant These am Departme reform aff procurem to ensure constituti the Supre *Construct* 2097 (199 subject to Budget re 12866, da is a major

DATES: *Eff* *Applic* provision rule are e issued on *Comme* submitted address s August 3 formulati

ADDRESSE submit w Services Secretari Room 40 Washingt E-Mail Internet s farcase.97 Please 004A in this case.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 14, 15, 19, 33, and 52

[FAC 97–06; FAR Case 97–004A]

RIN 9000–AH59

Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to issue Federal Acquisition Circular 97–06, as an interim rule to make amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* October 1, 1998.

Applicability Date: The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 31, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–004A@gsa.gov

Please cite FAC 97–06, FAR case 97–004A in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Ms. Victoria Moss, Procurement Analyst, Federal Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington DC 20405, Telephone: (202) 501–4764

or

Mr. Mike Sipple, Procurement Analyst, Contract Policy and Administration, Director, Defense Procurement, Department of Defense, 3060 Defense Pentagon, Washington DC 20301–3060, Telephone: (703) 695–8567.

For general information call the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

In Adarand, the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand*. The DoJ proposal was published in the **Federal Register** for public notice and invitation for comments at 61 FR 26042, May 23, 1996. The DoJ model is expected to be implemented in several parts: revisions to the FAR and the FAR supplements; Small Business Administration (SBA) regulations; and procurement mechanisms and applicable factors (percentages) determined by the Department of Commerce (DoC). The SBA regulations were published for public comment on August 14, 1997 (62 FR 23584). This interim rule contains certain FAR revisions. On May 9, 1997, proposed amendments to the FAR, based on the DoJ Model, were published as a proposed rule in the **Federal Register** (62 FR 25786). All public comments received in response to the proposed rule were considered in the formulation of this interim rule. 143 letters containing approximately 222 comments were received in response to the proposed rule. The following significant changes were made to the rule based on the comments received:

1. Changes were made to conform it to the regulations issued by the Small Business Administration. These changes include conforming protest and appeal and certification procedures in the FAR to those prescribed by SBA.

2. Clarifying that the annual DoC determination of procurement mechanisms shall only affect solicitations that are issued on or after the effective date of the DoC determination.

3. Clarifying that any decisions to limit use of the mechanisms because of a finding of undue burden will not affect on-going acquisitions.

4. Clarifying that an individual or business concern need only provide supporting rationale in a request for an undue burden determination.

5. Clarifying that fair market price under the price evaluation adjustment shall be determined in accordance with the procedures in 15.404–1(b) (referenced in 19.202–6).

6. Removing the prohibition against use of the price evaluation adjustment for acquisitions under the Competitiveness Demonstration Program.

7. Revising the provisions at 52.212–3 and 52.219–1, and the clause at 52.219–23 to facilitate their use by all agencies.

Other changes have been made to make the rule effective at the earliest practicable date, taking account of the time required for SBA to determine eligibility of SDB firms. This rule implements the price evaluation adjustment for SDB concerns. It is anticipated that coverage pertaining to the SDB participation program will be issued 1 day following publication of this rule under FAR Case 97–004B.

B. Regulatory Flexibility Act

These changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because through the rule small business concerns may be provided benefits in Federal contracting. An Initial Regulatory Flexibility Analysis (IRFA) was prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA). A summary of the IRFA was published along with the FAR proposed rule in the **Federal Register** at 62 FR 25786, May 9, 997. The economic impact associated with certification and associated costs, as well as other program requirements addressed in the SBA's changes to 13 CFR Parts 121, 124, and 134 have been addressed in analyses prepared by the SBA. The following information is provided to update the IRFA related to this FAR interim rule:

This interim rule would establish in the FAR a procurement mechanism benefiting

small disadvantaged businesses (SDBs). The mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. This price evaluation adjustment would be mandatory for those competitive procurements to which it applied. It would not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

The main impact of the rule is expected to be on SDBs seeking to obtain contracts from Federal government agencies. The best available estimate of the number of such firms is 30,000. The basis for this estimate is the IRFA prepared by SBA addressing the changes to 13 CFR Parts 121, 124, and 134. The anticipated costs for certification and protest and appeal procedures are addressed in SBA's IRFA. The primary impact of this interim rule is expected to be the increase in contract awards to qualified firms and a corresponding decrease in contract awards to firms that are not qualified as SDBs.

Within the constraints imposed by the need to implement the DoJ-proposed reforms, the rule was crafted throughout to select alternatives that would minimize any adverse economic impact on small business.

A copy of the IRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the interim rule contains reporting and recordkeeping requirements. Requests for approval of new information collection requirements were submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collections required by this rule were approved under clearance 9000–0150 through June 30, 2000. Public comments concerning this request were invited through a **Federal Register** notice published on May 9, 1997. No comments were received.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the FAR to the model program designed by the Department of Justice to ensure compliance with Constitutional standards established by the Supreme Court and, thereby, avoid unnecessary litigation. A proposed FAR rule on this subject was published for public comment at 62 FR 25786 on May 9, 1997. As a result of public comments received in response to the proposed rule, changes have been made to the rule. This interim rule would qualify for publication as a final rule; however, further public comments are requested. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52

Government procurement.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular—FAC 97–06

Federal Acquisition Circular (FAC) 97–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

Dated: June 17, 1998.

R.D. Kerrins,

Col., USA, Dep Director, Defense Procurement.

Dated: June 16, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administrator, Office of Acquisition Policy, General Services Administration.

Dated: June 17, 1998.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

Therefore, 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 12, 14, 15, 19, 33, and 52 continues to read as follows:

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding, in numerical order, the following entries:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.219–22	9000–0150
52.219–23	9000–0150
* * * * *	

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.301 is amended by revising paragraph (b)(2) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(2) *The provision at 52.212–3, Offeror Representations and Certifications-Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4. Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a);

* * * * *

4. Section 12.303(b)(1) is revised to read as follows:

12.303 Contract format.

* * * * *

(b) * * *

(1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), or if set aside for emerging small businesses;

* * * * *

PART 14—SEALED BIDDING

5. The section heading for 14.206 is revised to read as set forth below.

14.206 Small business set-asides and price evaluation adjustments for small disadvantaged business concerns.

6. Section 14.502 is amended by redesignating paragraph (b)(4) as (b)(5) and adding a new (b)(4) to read as follows:

14.502 Conditions for use.

* * * * *

(b) * * *

(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see Subpart 19.11).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.503 is amended by revising paragraph (a)(2) to read as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) *Preaward notices for small business programs.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see Subpart 19.5), or when a small disadvantaged business concern receives a benefit based on its disadvantaged status (see Subpart 19.11) and is the apparently successful offeror, upon completion of negotiations and determinations of responsibility, and completion of the process in 19.304(d), if necessary, but prior to award, the contracting officer shall notify each offeror in writing of the name and address of the apparently successful offeror. The notice shall also state that the Government will not consider subsequent revisions of the offeror's proposal; and no response is required unless a basis exists to challenge the disadvantaged status and/or small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805–2).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

8. Section 19.000 is amended by revising the introductory text of paragraph (a); at the end of (a)(6) by removing "and"; at the end of (a)(7) by removing the period and inserting "; and"; and by adding paragraph (a)(8) to read as follows:

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*), the Federal Property and Administrative Services Act (41 U.S.C. 252), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), 10 U.S.C. 2323, and Executive Order 12138, May 18, 1979. It covers—

* * * * *

(8) The use of a price evaluation adjustment for small disadvantaged business concerns.

* * * * *

9. Section 19.001 is amended in the definition of "Small disadvantaged business concern" by revising its introductory paragraph; by redesignating paragraphs (a) and (b) introductory text as (a)(1) and (a)(2) introductory text; (b)(1), (b)(2), and (b)(3) as (a)(2)(i), (a)(2)(ii), and (a)(2)(iii); and (c) and (d) as (a)(3) and (a)(4); and by adding paragraphs (a) introductory text and (b) to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern, as used in this part, means—

(a) For subcontractors, a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR 124.

* * * * *

(b) For prime contractors, (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns) an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification from the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B, and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

10. Section 19.201 is amended by redesignating paragraphs (b), (c), and (d) as (c), (d), and (e), respectively; and by adding new paragraphs (b) and (f) to read as follows:

19.201 General policy.

* * * * *

(b) The Department of Commerce will determine on an annual basis, by Major Groups as contained in the Standard Industrial Classification (SIC) manual, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The Department of Commerce determination shall include the applicable factors, by SIC Major Group, to be used in the price evaluation adjustment for SDB concerns (see 19.1104). The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the SDB procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the price evaluation adjustment for SDB concerns where the Department of Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

* * * * *

(f)(1) Each agency shall designate, at levels it determines appropriate, personnel responsible for determining whether, in order to achieve the contracting agency's goal for SDB concerns, the use of the SDB mechanism in Subpart 19.11 has resulted in an undue burden on non-SDB firms in one of the major industry groups and regions identified by Department of Commerce following paragraph (b) of this section, or is otherwise inappropriate. Determinations under this subpart are for the purpose of determining future acquisitions and shall not affect ongoing acquisitions. Requests for a determination, including supporting rationale, may be submitted to the agency designee. If the agency designee makes an affirmative determination that the SDB mechanism has an undue burden or is otherwise inappropriate, the determination shall be forwarded through agency channels to the OFPP, which shall review the determination in consultation with the Department of Commerce and the Small Business Administration. At a minimum, the following information should be included in any submittal:

(i) A determination of undue burden or other inappropriate effect, including proposed corrective action.

(ii) The SIC Major Group affected.

(iii) Supporting information to justify the determination, including, but not limited to, dollars and percentages of contracts awarded by the contracting activity under the affected SIC Major Group for the previous two fiscal years and current fiscal year to date for—

(A) Total awards;

(B) Total awards to SDB concerns;

(C) Awards to SDB concerns awarded contracts under the SDB price evaluation adjustment where the SDB concerns would not otherwise have been the successful offeror;

(D) Number of successful and unsuccessful SDB offerors; and

(E) Number of successful and unsuccessful non-SDB offerors.

(iv) A discussion of the pertinent findings, including any peculiarities related to the industry, regions or demographics.

(v) A discussion of other efforts the agency has undertaken to ensure equal opportunity for SDBs in contracting with the agency.

(2) After consultation with OFPP, or if the agency does not receive a response from OFPP within 90 days after notice is provided to OFPP, the contracting agency may limit the use of the SDB mechanism in Subpart 19.11 until the Department of Commerce determines the updated price evaluation adjustment, as required by this section. This limitation shall not apply to solicitations that already have been synopsized.

11. Section 19.202–6 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

19.202–6 Determination of fair market price.

Agencies shall determine the fair market price as follows:

(a) For total and partial small business set-aside contracts and contracts utilizing the price evaluation adjustment for small disadvantaged business concerns, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404–1(b).

* * * * *

Subpart 19.3—Determination of Status as a Small Disadvantaged Business Concern or a Small Business Concern

12. The heading for Subpart 19.3 is revised to read as set forth above.

13. Section 19.302 is amended at the end of the introductory text of paragraph (d) by adding the following sentence:

19.302 Protesting a small business representation.

* * * * *

(d) * * * SBA's regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR 124, Subpart B.

19.304 [Redesignated as 19.306]

14a. Section 19.304 is redesignated as 19.306.

14b. New sections 19.304 and 19.305 are added to read as follows:

19.304 Disadvantaged business status.

(a) To be eligible to receive a benefit as a prime contractor based on its disadvantaged status, a concern, at the time of its offer, must either be certified as a small disadvantaged business (SDB) concern or have a completed SDB application pending at the SBA or a Private Certifier (see 19.001).

(b) The contracting officer may accept an offeror's representation that it is an SDB concern for general statistical purposes. The provision at 52.219–1, Small Business Program Representations, or 52.212–3(c)(2), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data for general statistical purposes.

(c) The provision at 52.219–22, Small Disadvantaged Business Status, or 52.212–3(c)(7), Offeror Representations and Certifications—Commercial Items, is used to obtain SDB status when the prime contractor may receive a benefit based on its disadvantaged status. The mechanism that may provide benefits on the basis of disadvantaged status as a prime contractor is a price evaluation adjustment for SDB concerns (see Subpart 19.11).

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is listed on the SBA's register by accessing the list at http://www.sba.gov or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(2) If the apparently successful offeror has represented that its SDB application is pending at the SBA or a Private Certifier, and its position as the apparently successful offeror is due to the application of the price evaluation adjustment, the contracting officer shall follow the procedure in paragraph (d) of this section.

(d) Notifications to SBA of potential awards to offerors with pending SDB applications. (1) The contracting officer shall notify the Small Business Administration Assistant Administrator for SDBCE 409 Third Street, SW Washington, DC 20416. The notification shall contain the name of the apparently successful offeror, and the names of any other offerors that have represented that their applications for SDB status are pending at the SBA or a Private Certifier and that could receive the award due to the application of a price evaluation adjustment if the apparently successful offeror is determined not to be an SDB by the SBA.

(2) The SBA will, within 15 calendar days after receipt of the notification, determine the disadvantaged status of the apparently successful offeror and, as appropriate, any other offerors referred by the contracting officer and will notify the contracting officer.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer shall presume that the apparently successful offeror, and any other offerors referred by the contracting officer, are not disadvantaged, and shall make award accordingly, unless the contracting officer grants an extension to the 15-day response period. No

written determination is required for the contracting officer to make award at any point following the expiration of the 15-day response period.

(4) When the contracting officer makes a written determination that award must be made to protect the public interest, the contracting officer may proceed to contract award without notifying SBA or before receiving a determination of SDB status from SBA during the 15-day response period. In both cases, the contracting officer shall presume that the apparently successful offeror, or any other offeror referred to the SBA whose SDB application is pending, is not an SDB and shall make award accordingly.

19.305 Protesting a representation of disadvantaged business status.

(a) This section applies to protests of a small business concern's disadvantaged status as a prime contractor. Protests of a small business concern's disadvantaged status as a subcontractor are processed under 19.703(a)(2). Protests of a concern's size as a prime contractor are processed under 19.302. Protests of a concern's size as a subcontractor are processed under 19.703(b). An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see Subpart 19.11).

(b) An offeror, excluding an offeror determined by the contracting officer to be non-responsive or outside the competitive range, or an offeror that SBA has previously found to be ineligible for the requirement at issue, may protest the apparently successful offeror's representation of disadvantaged status by filing a protest in writing with the contracting officer. SBA regulations concerning protests are contained in 13 CFR 124, Subpart B. The protest—

(1) Must be filed within the times specified in 19.302(d)(1); and

(2) Must contain specific facts or allegations supporting the basis of protest.

(c) The contracting officer or the SBA may protest in writing a concern's representation of disadvantaged status at any time following bid opening or notification of intended award.

(1) If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA may protest a concern's representation of disadvantaged status by filing directly with its Assistant Administrator for Small Disadvantaged Business Certification and Eligibility and notifying the contracting officer.

(d) The contracting officer shall return premature protests to the protestor. A protest is considered to be premature if it is submitted before bid opening or notification of intended award. SBA normally will not consider a postaward protest. SBA may consider a postaward protest in its discretion where it determines that an SDB determination after award is meaningful (*e.g.*, where the contracting officer agrees to terminate the contract if the protest is sustained).

(e) Upon receipt of a protest that is not premature, the contracting officer shall withhold award and forward the protest to Small Business Administration, Assistant Administrator for SDBCE, 409 Third Street, SW, Washington, DC 20416. The contracting officer shall send to SBA—

(1) The written protest and any accompanying materials;

(2) The date the protest was received;

(3) A copy of the protested concern's representation as a small disadvantaged business, and the date of such representation; and

(4) The date of bid opening or date on which notification of the apparently successful offeror was sent to unsuccessful offerors.

(f) When the contracting officer makes a written determination that award must be made to protect the public interest, award may be made notwithstanding the protest.

(g) The SBA Assistant Administrator for Small Disadvantaged Business Certification and Eligibility will notify the protestor and the contracting officer of the date the protest was received and whether it will be processed or dismissed for lack of timeliness or specificity. For protests that are not dismissed, the SBA will, within 15 working days after receipt of the protest, determine the disadvantaged status of the challenged offeror and will notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless it is appealed and—

(1) The contracting officer receives the SBA's decision on the appeal before award; or

(2) The contracting officer has agreed to terminate the contract, as appropriate, based on the outcome of the appeal (see 13 CFR 124, Subpart B).

(h) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is disadvantaged and may award the contract, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(i) An SBA determination may be appealed by—

(1) The party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

(j) The appeal must be filed with the SBA's Administrator or designee within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will not apply to the instant acquisition (but see paragraph (g)(2) of this section).

15. Newly redesignated 19.306 is amended in paragraph (a) by adding a sentence at the end of the paragraph; and by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

19.306 Solicitation provision and contract clause.

(a) * * * The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(b) The contracting officer shall insert the provision at 52.219–22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

16. Subpart 19.11, consisting of sections 19.1101 through 19.1104, is added to read as follows:

Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

Sec.

19.1101 General.
19.1102 Applicability.
19.1103 Procedures.
19.1104 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

19.1101 General.

A price evaluation adjustment for small disadvantaged business concerns shall be applied as determined by the Department of Commerce (see 19.201(b)). Joint ventures may qualify provided the requirements set forth in 13 CFR 124.1002(f) are met.

19.1102 Applicability.

(a) The price evaluation adjustment shall be used in competitive acquisitions.

(b) The price evaluation adjustment shall not be used in acquisitions that—

(1) Are not greater than the simplified acquisition threshold;

(2) Are awarded pursuant to the 8(a) program; or

(3) Are set aside for small business concerns.

19.1103 Procedures.

(a) Give offers from small disadvantaged business concerns a price evaluation adjustment by adding the factor determined by the Department of Commerce to all offers, except—

(1) Offers from small disadvantaged business concerns that have not waived the evaluation adjustment;

(2) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402;

(3) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges and universities or minority institutions; or

(5) For DOD acquisitions, otherwise successful offers of qualifying country end products (see DFARS 225.000–70 and 252.225–7001).

(b) Apply the factor on a line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the price evaluation adjustment.

(c) Do not evaluate offers using the price evaluation adjustment when it would cause award, as a result of this adjustment, to be made at a price that exceeds fair market price by more than the factor as determined by the Department of Commerce (see 19.202–6(a)).

19.1104 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1102 apply. The contracting officer shall insert the authorized price evaluation adjustment factor. The clause shall be used with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

PART 33—PROTESTS, DISPUTES, AND APPEALS

17. Section 33.102 is amended in paragraph (a) by revising the last sentence to read as follows:

33.102 General.

(a) * * * (See 19.302 for protests of small business status, and 19.305 for protests of disadvantaged business status.)

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.212–3 is amended by revising the date of the provision; removing the definition of "Small disadvantaged business concern"; revising paragraph (c)(2); adding (c)(7); and adding Alternate I following "(End of provision)" to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct 1998)

* * * * *

(c) * * *

(2) Small disadvantaged business concern. The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

* * * * *

(7) (*Complete only if the solicitation contains the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and the offeror desires a benefit based on its disadvantaged status.*)

(i) *General.* The offeror represents that either—

(A) It ☐ is, ☐ is not certified by the Small Business Administration as a small disadvantaged business concern and is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It ☐ has, ☐ has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [*The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:* _____.]

* * * * *

(End of provision)

Alternate I (Oct 1998). As prescribed in 12.301(b)(2), add the following paragraph (c)(8) to the basic provision:

(8) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(7) of this provision.) [*The offeror shall check the category in which its ownership falls*]:

____Black American.

____Hispanic American.

____Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____Individual/concern, other than one of the preceding.

19. Section 52.212–5 is amended by revising the clause date; redesignating paragraphs (b)(6) through (b)(17) as (b)(7) through (b)(18), respectively; and adding a new paragraph (b)(6) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Oct 1998)

* * * * *

(b) * * *

____(6)(i) 52.219–23, Notice of Price Evaluation

Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) ____Alternate I of 52.219–23.

* * * * *

20. Section 52.219–1 is amended by revising the introductory text of the provision; the provision date and paragraph (b)(2); by deleting the definitions of "Joint venture" and "Small disadvantaged business concern"; and adding an Alternate I to read as follows:

52.219–1 Small Business Program Representations.

As prescribed in 19.306(a), insert the following provision:

Small Business Program Representations (Oct 1998)

* * * * *

(b) * * *

(2) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

* * * * *

Alternate I (Oct 1998). As prescribed in 19.306(a), add the following paragraph (b)(4) to the basic provision:

(4) (Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision). [*The offeror shall check the category in which its ownership falls*]:

____Black American.

____Hispanic American.

____Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____Individual/concern, other than one of the preceding.

52.219–2 [Amended]

21. Section 52.219–2 is amended in the introductory paragraph by revising "19.304(b)" to read "19.306(c)".

22. Sections 52.219–22 and 52.219–23 are added to read as follows:

52.219–22 Small Disadvantaged Business Status.

As prescribed in 19.306(b), insert the following provision:

Small Disadvantaged Business Status (Oct 1998)

(a) *General.* This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219–1, Small Business Program Representation.

(b) *Representations.*

(1) *General.* The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

☐ (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(A) No material change in disadvantaged ownership and control has occurred since its certification;

(B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(C) It is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

☐ (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2)☐*For Joint Ventures.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [*The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:* _____.]

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall:

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provision)

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 1998)

(a) *Definitions.* As used in this clause—

Small disadvantaged business concern means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration;

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

United States means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, and the District of Columbia.

(b) *Evaluation adjustment.* (1) Offers will be evaluated by adding a factor of _____ [*percentage to be inserted by*

the contracting officer] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges or universities or minority institutions;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government; and

(v) For DOD acquisitions, otherwise successful offers of qualifying country end products (see sections 225.000–70 and 252.225–7001 of the Defense FAR Supplement).

(2) The factor shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Oct 1998). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

[FR Doc. 98–17197 Filed 6–26–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulatory Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–06 which amends the Federal Acquisition Regulation (FAR). Further information regarding this rule may be obtained by referring to FAC 97–06 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

Reform of Affirmative Action in Federal Procurement

FAC 97–06/FAR Case 97–004A. The interim rule amends FAR Parts 1, 12, 14, 15, 19, 33, and 52 to establish a mechanism to benefit small disadvantaged business concerns at the prime contract level. This mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. This price evaluation adjustment conforms to the Department of Justice proposal to reform affirmative action in Federal procurement and to regulations issued by the Small Business Administration regarding small disadvantaged business programs. This price evaluation adjustment is mandatory for those competitive procurements to which it applies. It does not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–17198 Filed 6–26–98; 8:45 am]

BILLING CODE 6820–EP–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) amends both the eligibility requirements for, and contractual assistance provisions within, the SBA's 8(a) Business Development (8(a) BD) program. This final rule changes the name of the program from the Minority Small Business and Capital Ownership Development program to the 8(a) BD program to better reflect the purpose of the program. This rule streamlines the operation of the 8(a) BD program, eases certain restrictions perceived to be burdensome on Program Participants, clarifies certain eligibility requirements, and deletes obsolete regulations.

DATES: *Effective Date:* This rule is effective on July 30, 1998.

Compliance Dates: Subpart A applies to all applications for the 8(a) Business Development program pending as of July 30, 1998 and all 8(a) procurement requirements accepted by SBA on or after July 30, 1998. These rules do not apply to any appeals pending before SBA's Office of Hearings and Appeals. The revisions to 13 CFR part 121 apply with respect to all solicitations issued on or after June 30, 1998. Except for 13 CFR 134.408(c), the procedural revisions to 13 CFR part 134 apply to all appeals served or filed on or after June

30, 1998. 13 CFR 134.408(c) applies as of the publication to all pending appeals before SBA's Office of Hearings and Appeals.

FOR FURTHER INFORMATION CONTACT: William A. Fisher, Acting Associate Administrator for Minority Enterprise Development, at (202) 205–6412.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to federal agencies, directing them to simplify their regulations. In response to this directive, SBA completed a page-by-page, line-by-line review of all of its then existing regulations to determine which might be revised or eliminated. Revisions to 13 CFR Part 124 awaited a review by the Department of Justice (DOJ) of all Federal procurement affirmative action programs. On May 23, 1996, DOJ published in the **Federal Register** a comprehensive proposal for tailoring affirmative action programs in the Federal procurement arena (*see* 61 FR 26042), and on May 9, 1997 the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. In response to and in conjunction with the DOJ and FAR reform proposals, on August 14, 1997, SBA published in the **Federal Register**, 62 FR 43584, a proposed rule to amend 13 CFR part 124. Subpart A of the proposed part 124 dealt with changes pertaining to the 8(a) Business Development (8(a) BD) program which is authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). Subpart B of proposed part 124 dealt with SBA's role in the certification and protest of small disadvantaged businesses, as contemplated by the DOJ and FAR proposals. During the proposed rule's 60-day comment period, SBA received 95 timely comments, the majority of which favored the proposed changes. This rule finalizes subpart A of 13 CFR part 124 (its regulations relating to the SBA's 8(a) Business Development Program. SBA continues to consider issues relating to subpart B of 13 CFR part 124, and will finalize those regulations at a later time. This rule does not address any comments made regarding subpart B of part 124 or SBA's response thereto.

A substantial number of commenters applauded SBA's effort to remove duplicative provisions, and rewrite those that appeared wordy or unclearly written. For the most part, the comments also supported the substantive changes proposed by SBA. SBA received comments on many aspects of the proposed rule. With the exception of comments which did not set forth any rationale or make suggestions, SBA discusses and responds fully to all the comments below.

In addition to the changes to 13 CFR part 124, the final rule also makes changes to SBA's size regulations (part 121) to permit size protests and appeals of Standard Industrial Classification (SIC) code designations in connection with 8(a) competitive procurements, and to exclude certain joint venture arrangements from SBA's affiliation rules. These changes should increase the potential pool of small businesses available to compete for particular procurements and should encourage contracting officers to consider small business contractors more closely before determining a procurement strategy. The final rule also transfers the procedures relating to certain statutorily authorized appeals in the 8(a) program from part 124 to part 134 of 13 CFR.

This final rule streamlines the operation of the 8(a) BD program, eases certain restrictions perceived to be burdensome on Participants, amends certain eligibility procedures, and deletes obsolete regulations. It reorganizes the regulations into identifiable substantive areas for ease of use and clarity. It also changes all references to SBA's Office of Minority Small Business and Capital Ownership Development to the Office of 8(a) Business Development to emphasize that individuals participating in the program need not be members of minority groups and to stress the importance of assisting participating firms in their overall business development.

SBA has attempted to rewrite the regulations in plain English wherever possible. To this end, SBA has written section headings in question format for ease of use, and has eliminated unnecessary verbiage from the regulations.

This rule amends eligibility procedures for admission to the 8(a) BD program and also amends contractual assistance provisions within the 8(a) BD program. It eliminates the requirement that a Participant must have specified SIC codes approved by SBA in its business plan in order to be eligible for 8(a) contracts, establishes consistent remedial measures for firms that do not meet their non-8(a) business activity targets, eases certain joint venture restrictions, and establishes a mentor/protege program for developing 8(a) Participants. This rule also liberalizes the standard of review for non-group members seeking disadvantaged status from a clear and convincing evidence test to a preponderance of the evidence standard.

Summary of Comments and SBA's Response

Part 121: SBA received a substantial number of comments agreeing with SBA's proposal to exclude certain joint venture arrangements from the normal affiliation rules. This provision will encourage contracting officers to use small business contractors to a greater extent. With the consolidation of procurements becoming an increasing reality, some contracting officers may feel that requirements are too big for a small business to perform successfully. The proposed rule would have permitted two or more small business concerns to joint venture for a particular procurement and be considered a small business concern so long as each concern individually was small. Several commenters recommended that this provision be broadened to exclude affiliation rules where there are "teaming" agreements as well. SBA concurs with this recommendation, and has changed the rule accordingly.

Part 124, subpart A: Most of the comments received by SBA focused on subpart A of part 124. The following analysis discusses each of the significant comments received.

The proposed rule contained no provision for reporting changes that would adversely affect a firm's eligibility, either during the application stage or during a Participant's tenure in the program. As a result of a number of comments, several new provisions have been included in the regulation. Section 124.2 requires, in part, that a Participant must maintain its program eligibility throughout its tenure in the program and is obligated to inform SBA of any changes that would adversely affect its program eligibility. To continue a firm's participation in the program, § 124.112 specifically reasserts this obligation and § 124.112(b)(2) requires program Participants as part of their annual review to represent that no adverse change occurred or, in the alternative, to describe any adverse changes that have occurred. During the application stage, the 8(a) applicant is obligated to inform SBA of any adverse changes that may have occurred since the actual application.

Section 124.103(c) of the proposed rule stated that individuals who are not members of designated socially disadvantaged groups must establish individual social disadvantage by a "preponderance of the evidence."

Previously, individuals not members of a designated group needed to prove individual social disadvantage by "clear and convincing" evidence. SBA received many comments regarding the proposed change in the evidentiary standard. The majority of commenters did not favor changing the standard. SBA believes that all individuals who can show that they have personally suffered social disadvantage, including women and handicapped individuals, should be admitted to the 8(a) BD program, and that the change in the evidentiary standard is necessary for constitutional reasons. In response to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 115 Sup. Ct. 2097 (1995), which requires programs to provide a race-based remedy to be "narrowly tailored," the Department of Justice recommended the "preponderance of the evidence" standard for government-wide disadvantaged business programs. SBA based the "preponderance of the evidence" standard on the Department of Justice proposal, and continues to believe that the use of this standard strengthens the defense of the 8(a) BD program. Therefore, SBA retains the "preponderance of the evidence" standard in the final rule. While the criteria for a case of individual social disadvantage remains basically the same, the final rule changes the evidentiary standard that must be shown to demonstrate an individual case of social disadvantage. In assessing a claim of individual social disadvantage, SBA will consider all relevant information submitted by an applicant. Evidence which tends to show generalized patterns of discrimination against a non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.

Proposed § 124.103(d) stated that representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias may petition SBA to be included as a group presumed to be socially disadvantaged. One commenter asked what the evidentiary standard should be for approval of a designated group. As a result of this comment, § 124.103(d)(1) of the final rule provides that a preliminary showing must be made that substantial evidence exists that a group meets the criteria to be determined presumptively socially disadvantaged. Once this showing is made, SBA will publish a notice for comment and, where deemed appropriate, hold hearings and/or conduct its own research. After completion of the process, SBA will determine whether a preponderance of the evidence shows that the group meets the necessary criteria to be considered presumptively disadvantaged.

Proposed § 124.104, which set forth the factors to be reviewed to determine the economic status of socially disadvantaged individuals, clarified that a contingent liability does not reduce an individual's net worth. A commenter remarked that contingent liabilities reduce capital and credit opportunities and should be considered as reducing net worth. SBA understands this possibility, but does not adopt the comment. There are wide varieties of contingencies and their impacts on credit opportunities. Moreover, individuals should not be permitted to satisfy the net worth criterion by offering guarantees and indemnities with remote possibilities of becoming actual liabilities.

Another commenter felt that § 124.104 needed to set forth in greater detail the criteria SBA uses to determine whether an individual is economically disadvantaged. SBA will study this issue for possible later revision.

Another commenter suggested that under § 124.104, review of the financial status of individuals claiming economic disadvantage should be performed going back two years prior to application. This is already addressed in two subsections of this section and no further provisions are needed. Proposed § 124.104(c) provides that SBA will take into account the individual's personal income for the previous two years. Proposed § 124.104(c)(1) provides that SBA will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a or beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the 8(a) BD program or within two years of a Participant's annual program review, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

One commenter expressed concern that transfers of assets to family members within two years prior to application should be objectionable even if the transfer was "for fair market value." The commenter felt that sham transfers would be made to enable individuals to qualify as economically disadvantaged under the thresholds. SBA has not adopted this comment since, if a transferee received fair market value for an asset, the transfer would be a sale, not a sham. As such, the transfer would not distort a calculation of the transferor's net worth.

SBA had specifically requested comments on proposed § 124.105, seeking input on whether and under what circumstances trust arrangements might be considered permissible without violating the statutory requirement that an applicant or Participant must be at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals. SBA received several comments on this issue. Upon further reflection, SBA has determined that ownership of an 8(a) applicant or Participant by trusts that are the functional equivalent of individuals, like living trusts, are tantamount to individual ownership and should be permitted in the program. One commenter noted that the IRS treats living trusts as individuals for the purposes of income tax calculation, and urged SBA to do the same. The SBA recognizes that an increasing number of entrepreneurs are using such vehicles for tax and estate planning purposes. Therefore, a provision making certain trusts eligible for 8(a) participation has been included in § 124.105(a). The new provision states that an 8(a) BD concern owned by a trust is considered to be directly owned by a disadvantaged individual if the trust is revocable and the disadvantaged individual is also the grantor, a trustee and the sole current beneficiary of the trust.

Section 124.105(h) of the proposed rule set forth certain ownership restrictions for non-disadvantaged individuals and concerns. Proposed § 124.105(h)(1) stated that a non-disadvantaged individual or a non-Participant concern that owns a 10 percent or greater interest in a Participant as a general partner or stockholder may not own more than a 10 percent interest in another Participant. Proposed § 124.105(h)(2) stated that a non-Participant concern in the same or similar line of business may not own more than 10 percent in a current Participant, and a former

Participant in the same or similar line of business may not own more than 20 percent in a current Participant. Five commenters disagreed with these restrictions. They felt they were unnecessary and would place extra burdens on 8(a) firms that non-8(a) firms do not have. Most felt that if SBA determines that the firm is 51 percent owned, managed and controlled by a disadvantaged individual, no other ownership restrictions should apply. Two commenters pointed out that the regulation as proposed would hinder the firm's access to capital. The commenters pointed out that access to money is necessary to make the transition into the competitive market place. In response to these comments, the SBA has revised its regulations to raise the percentages that non-disadvantaged individuals, non-disadvantaged firms and former 8(a) firms may own in an 8(a) Participant in the transitional stage of program participation. With respect to a firm in the transitional stage of 8(a) program participation, the final rule states that (1) a non-disadvantaged individual or a non-Participant concern with at least a 10 percent ownership interest in another Participant may own up to a 20 percent interest; (2) a non-disadvantaged individual or concern in the same or similar line of business may own up to a 20 percent interest; and (3) a former 8(a) Participant may own up to a 30 percent interest. Percentages of ownership for firms in the developmental stage of program participation are not changed in this rule. SBA's decision to ease the current restrictions on ownership of an 8(a) BD concern should improve access to sources of capital. SBA decided not to raise the percentages higher than 20 and 30 percent at this time due to its continued concern over program abuse through the possible establishment of fronts. SBA will continue to monitor this section of the rule and may adjust the percentages further in the future if it deems it appropriate to do so.

Section 124.105(i) contains standards for obtaining SBA approval of a change in a Participant's ownership. Several commenters expressed concern that a time limit should be imposed on SBA to approve or decline change of ownership requests. The final rule provides that the AA/8(a)BD will issue a decision within 60 days of receipt by the Agency of a request containing all necessary documentation, and that the decision of the AA/8(a)BD will be the final Agency decision. The final rule further provides that the denial of a request for a change of ownership may be grounds for program termination if the change is nonetheless completed.

The preamble to the proposed rule solicited comments on a proposal to use suspension as a tool to allow time for an SBA inquiry into a Participant's change of ownership or control. No negative comments were received relating to this issue. Commenters who did address the matter approved of such use, providing that SBA would restore the length of the suspension to the firm's program term if the change is ultimately approved. As a result of the comments, SBA has revised § 124.105(i). As revised, § 124.105(i) provides that, where a Participant requests a change of ownership or business structure, and the change has already occurred, SBA will suspend the Participant pending a decision on the request. If the change is approved, the SBA will restore the length of the suspension to the Participant's program term where the change in ownership results from the death or incapacity of a disadvantaged individual, or where the firm requested prior approval and waited 60 days for SBA approval before making the change. SBA will not restore the length of a suspension for any firm that did not request a change in ownership prior to making the change (except, as noted, for a change due to death or incapacity). This provision has also been added to § 124.305 governing suspensions.

The proposed regulation regarding suspension (§ 124.305) has been modified to clarify the jurisdiction of the Office of Hearings and Appeals and the standard of evidence necessary for SBA to sustain its suspension action. The proposed rule stated that SBA has the burden of showing that "substantial" evidence exists in support of at least one of the grounds for termination cited in the Letter of Intent to Terminate. SBA has decided not to adopt this new standard in the final rule. The final rule provides that SBA is required to show only that "adequate" evidence exists in support of a least one of the grounds for termination. The final rule defines the term "adequate evidence" as information sufficient to support the reasonable belief that a particular act or omission has occurred. This definition is adopted from § 9.403 of Title 48 of the Code of Federal Regulations.

Section 124.305 has also been amended to provide that, unless the Administrative Law Judge consolidates the suspension and termination proceedings, the review must be limited to determining whether the government's interest needs protection. SBA's Office of Hearings and Appeals (OHA) may not review the grounds for termination under a suspension action.

A commenter questioned whether proposed § 124.105(i) conflicts with the requirement in § 124.515 that a change in ownership of an 8(a) BD concern requires a waiver from SBA for the Participant to continue performing on an 8(a) contract. Section 124.105(i) allows continued performance of a contract without a waiver if a disadvantaged individual is substituted for another, with SBA approval before the change is implemented. SBA requires waivers under § 124.515 only where ownership of an 8(a) Participant would be changed to an extent that the 8(a) BD concern would be no longer at least 51 percent owned by one or more disadvantaged individuals. If SBA does not approve a change in ownership because it determines that the acquiring individual is not disadvantaged or that the firm as structured after the change is no longer owned and controlled by disadvantaged individuals, then the firm must seek a waiver under § 124.515 in order to continue to perform any of its 8(a) contracts.

Proposed § 124.106 explained the concept of control and the factors which SBA looks at to determine who controls an 8(a) BD concern. Several commenters raised issues of control where a non-disadvantaged individual held a critical license. SBA does not believe that the mere fact that a non-disadvantaged employee who is not also an equity owner of the firm holds a critical license would cause the disadvantaged principal(s) to lose control. In such a case, the disadvantaged principal(s) must demonstrate their management expertise and the right to replace the non-disadvantaged employee at any time with another technical employee. However, SBA agrees that the situation is much more complicated where the non-disadvantaged individual who holds a critical license is also an equity owner of the firm. The final rule permits SBA to find negative control where a non-disadvantaged owner holds a critical license. The burden is on the applicant or Participant to demonstrate that control is in the hands of one or more disadvantaged individuals. The final rule provides that an individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. SBA recognizes that failure to possess technical expertise or a required license are factors that may be considered in evaluating the disadvantaged

individual's control of the concern, but that such circumstances are not dispositive.

One commenter suggested that 8(a) concerns be allowed to own subsidiary concerns without being in violation of the requirement under proposed § 124.106(a)(3) that an owner of an 8(a) concern devote full time to management of the concern. SBA's policy is to allow such ownership since working with the subsidiary indirectly advances the interests of the 8(a) concern. Therefore, a provision expressly allowing such ownership has been added to § 124.106(a)(3). However, this exception does not change the general requirement that an owner of an 8(a) concern devote full time to manage the concern.

A few commenters requested that some flexibility be given to the requirement under § 124.106(a)(3) that a disadvantaged individual who manages the Participant concern must devote full-time to the business during normal working hours. As stated in the preamble to the proposed regulations, this requirement is not intended to prevent such individual from spending normal business hours away from the premises in such areas as marketing and outreach that benefit the concern. The rule does not imply that business activities could not be conducted by such individual outside the office. It does, however, prohibit such individual from being physically located at a site on a continuing basis which is separate and distinct from the Participant concern during normal business hours, despite any claim that he or she is managing the concern from that location. SBA believes it is important for the growth and development of the 8(a) BD concern that the disadvantaged individual who manages the concern devote full time to such management. Therefore, SBA makes no change to the final rule.

The proposed regulations continued SBA's current approach and required that disadvantaged individuals have majority control of the board of directors. Some commenters felt that this requirement did not reflect business practice in the corporate world. One commenter felt that, particularly in smaller corporations, the sole shareholder or the majority shareholder virtually always controls the board of directors. This control stems from his or her ability to replace directors at will. The commenter recognized, however, that in rare situations the sole or majority owner might not control the board, such as where directors have fixed terms and cannot be removed before the end of such terms. In addition, SBA notes that cumulative voting practices and super majority requirements (i.e., any provisions requiring more than a simple majority vote) may make it difficult for a shareholder owning only 51% of a corporate concern to control the board of directors of that concern. Likewise, where more than one disadvantaged owner is involved, voting rights and control of the board of directors is harder to pinpoint. As such, SBA accepts this comment to a point. The final rule gives several alternatives for finding control by disadvantaged individuals of the board of directors. Where a single disadvantaged individual owns 100% of an applicant or Participant, SBA deems that individual to control the board of directors, and no further analysis is needed. Where a single disadvantaged individual owning less than 100% seeks to qualify a concern, SBA deems that individual to control the board of directors where he or she owns at least 51% of the concern or, where the concern has super majority voting requirements, that percentage of ownership needed to overcome any such super majority ownership requirements, and he or she is on the board of directors. The applicant will be required to inform SBA of any super majority voting requirements provided for in its articles of incorporation, its by-laws, or by state law. Thus, the disadvantaged owner is able to convene a shareholder's meeting, change corporate by-laws and articles of incorporation, and change directors on the board at will. In such a case, SBA will not look at the makeup of the board of directors for determining control of the firm (although SBA will continue to examine the character of directors). Where more than one disadvantaged owner seeks to qualify an applicant or Participant (i.e., no one individual owns 51%) and each such individual is on the board of directors, SBA deems those individuals to control the board of directors where together they own at least 51% of the concern or, where the concern has super majority voting requirements, that percentage of ownership needed to overcome any such super majority ownership requirements, and they can demonstrate that they have made arrangements to overcome any potential stalemates and that they have the comparable ability of a single majority owner to act quickly. For example, where a concern has three disadvantaged individuals each owning 17%, SBA will deem the individuals to control the board of directors without looking at the board's make-up if two of the three individuals have given their voting rights to the third individual. Where an applicant or Participant cannot demonstrate the ability for a disadvantaged individual to act quickly to replace members of the board of directors, SBA will look at the composition of the board of directors and will apply the current board of directors control requirements to the concern. The concern must meet the current requirement that one or more disadvantaged individuals must control the board of directors through numbers of individuals on the board or, where permitted by state law, through weighted voting.

Numerous commenters expressed concern that, with the lowering of the evidentiary standard for eligibility in cases of individual social disadvantage, there would be a greater need to police fraud in the program application process. Many warned of potential front situations involving the transfer of ownership and/or control of the applicant firm from one family member to another. This final rule addresses these issues at several points. Section 124.106(f) provides that if a non-disadvantaged individual transfers majority ownership or control of the applicant firm to a family member within two years of the date of application while remaining an owner, officer, director or key employee of the company, the non-disadvantaged individual will be presumed to control the company. As noted above, the final rule also requires program applicants (§ 124.204(d)) and Participants (§ 124.112(b)) to inform SBA of any changes that would adversely affect their eligibility. Failure to inform SBA of these adverse changes, or falsely certifying that no adverse changes exist, are grounds for denial of entry into the program or, if concern is a already a program Participant, grounds for termination from the program.

Proposed § 124.107 set forth the requirement that an 8(a) BD applicant must possess potential for success in competing in the private sector. One commenter questioned whether an 8(a) applicant that can meet the requirements under § 124.107(b)(iii) and (iv), needs 8(a) BD assistance. These subsections provide that if an applicant to the 8(a) BD program does not meet the requirement that it has been in business in its primary industry classification for at least two full years prior to applying, this requirement may be waived if certain conditions are met. In 1990, Congress passed legislation that would allow concerns to waive the two year rule after satisfying five conditions. *See* The Small Business Administration Reauthorization and Amendments Act

of 1990, Pub. L. No. 101–574 § 203(b)(1), 104 Stat. 2814, 2818–2819 (1990). SBA adopted the same five conditions for waiver in the 8(a) regulations, but has clarified that applicants will be assessed in the context of their proposed participation in the program.

As indicated above, several commenters expressed a need for greater oversight by SBA during the application process to prevent fraud. SBA notes that provisions included in the proposed regulations at § 124.108(a)(5) provide that SBA may decline an application due to the submission of false information. SBA may also terminate a firm from the program under § 124.303(a)(1)(15) if it discovers later that the Participant falsified information in its application. SBA retains these provisions in the final rule.

Proposed § 124.108(a) provided that SBA could exclude firms from program participation for lack of good character in circumstances where there was credible evidence of criminal activity. Upon further internal deliberation, the final rule significantly expands and clarifies § 124.108(a). SBA will also find a firm ineligible for the 8(a) BD program if it or one of its principals (1) lacks integrity as demonstrated by information related to an indictment, guilty plea, conviction, civil judgment or settlement; (2) is currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity; or (3) has knowingly submitted false information as part of the application for program admission. This clarification and expansion of the definition of good character reinforces the concept of business character as a requirement for program eligibility. It also promotes greater consistency between the eligibility requirements in this section and the grounds for termination in § 124.303(a).

Several commenters believed that payment of obligations to the Federal government should be included as an element of good business character under § 124.108(a). Failure to pay significant obligations owed to the Federal Government is already a basis for program termination under § 124.303(a)(11). Additionally, the existence of defaults resulting in a loss on a federal loan or federally assisted financing has long been a reason for denying financial assistance in other SBA programs. *See* 13 CFR § 120.110. For these reasons, SBA has added a new paragraph (e) to § 124.108, providing that any firm or principal that fails to pay significant financial obligations owed to the Federal Government is not eligible for admission to the 8(a) BD program.

Section 124.108(f) of the proposed rule defined a "broker" as a concern that adds no value to an item being supplied to a procuring activity. One commenter suggested that the definition of broker be expanded to provide that a company would not be considered a broker if it purchased and shipped an item, despite the fact that purchasing and shipping do not technically "add value" to an item. SBA concurs that the proposed language did not adequately capture the meaning of the term "broker." SBA has, therefore, added language to § 124.108 to refine the definition of a broker. The final rule (§ 124.108(d)) provides that a broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities. This definition of "broker" is specific to this rule. Some firms which refer to themselves as brokers in their line of business may not be ineligible for 8(a) participation as "brokers" under this rule.

The final rule also clarifies the provision restricting a tribe's (or an ANC's) ability to own more than one firm in the 8(a) program doing the same work. Section 124.109(c)(3)(ii) specifies that a tribe may own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the tribe operates in the 8(a) BD program as its primary SIC code. In other words, SBA will not deny an application from a tribally-owned concern where the application plans to do some work (but not its primary work) in the same SIC as another 8(a) firm owned by the tribe. The final rule makes this same clarification for CDCs and Native Hawaiian Organizations as well. *See* §§ 124.110(c) and 124.111(d), respectively.

Proposed § 124.112 listed the criteria Participants must meet in order to remain eligible for the 8(a) BD program. One commenter suggested that if SBA determines that a Participant is no longer eligible for the 8(a) BD program under § 124.112, that the Participant be allowed to respond to the factors supporting ineligibility even before SBA initiates early graduation or termination proceedings under § 124.302 and § 124.303, respectively. If SBA initiates such proceedings, the Participant now has 30 days to respond to SBA under § 124.304(b). SBA believes these procedures give the Participant an adequate opportunity to respond on the issue of continued eligibility.

Another commenter recommended that a Participant which obtains an SBA loan should not thereby be considered to have "access to credit" under § 124.112 such that the socially disadvantaged individuals are no longer considered economically disadvantaged. Since this is already SBA's policy, no change to the regulation is necessary.

One commenter felt that requiring certification of the transfer of assets to family members under § 124.112(b)(4) would penalize individuals for making gifts to their families and would serve no legitimate purpose. SBA does not intend that each disadvantaged owner report every gift made to his or her family members. SBA is merely trying to determine if an individual has transferred significant assets to his or her family members in order to remain eligible for the program (i.e., in order to remain "economically disadvantaged"). Where the individual retains some use or enjoyment of the asset transferred (e.g., real estate is "transferred" to a spouse and the individual continues to have access to it; a piece of art is "transferred" to a family member, but continues to be displayed in the individual's residence), SBA will attribute the asset back to the disadvantaged individual for purposes of determining his or her continued economic disadvantage status. Where the individual demonstrates that the transfer is an irrevocable transfer as to which the disadvantaged individual retains no use or enjoyment (e.g., the one-time transfer of funds to an adult child to assist the child's purchase of a residence), the asset will not be attributed back to the disadvantaged individual. In addition, § 124.104(c)(1)(ii) of the final rule specifies that SBA will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements. This does not mean that an individual claiming disadvantaged status may transfer unreasonably large funds or other assets to an immediate family member and claim that it should not be attributed back to him or her because the transfer was, for example, a birthday present. The funds or assets transferred must be reasonable and within customary limits for the occasion.

Another commenter suggested that SBA also attribute back to the disadvantaged transferor all transfers to

non-family members for less than fair market value. SBA does not adopt this suggestion. Such a rule could discourage, for example, an irrevocable charitable transfer of assets. SBA notes that if an asset is transferred subject to a retained interest or a remainder, then the present value of the retained interest will continue to be counted as an asset in determining the donor's net worth. As such, there is no need to impose further restrictions or requirements on these transfers.

A few commenters noted that language in proposed § 124.112, concerning the continuing eligibility of businesses in the 8(a) BD program, inadvertently requires concerns owned by Alaska Native Corporations (ANCs) to comply with §§ 124.101 through 124.108. SBA has revised § 124.112 to correct this error. In addition, this section has been revised to address the continuing eligibility of concerns owned by Indian tribes, Native Hawaiian Organizations and Community Development Corporations (CDCs).

With respect to the new mentor/protege program, one commenter suggested that SBA should measure the performance of the mentor and benefits of the program. SBA has adopted this suggestion by revising § 124.112(b) to require from protege firms a narrative report on the program as part of their annual report. SBA has also revised § 124.520 to provide specific standards for SBA reviews of mentor/protege relationships.

Proposed § 124.112(c) set forth examples under which SBA may determine that a socially disadvantaged individual is no longer economically disadvantaged. One commenter noted that the proposed rule referred to the economic status of the 8(a) BD Participant, rather than the disadvantaged individual. This error has been corrected in the final regulations, and language has been added to clarify that the economic status of the Participant may be considered in analyzing the status of the individual.

Proposed § 124.204 set forth the process of applying to the 8(a) BD program. Proposed § 124.204(b) stated that eligibility for the program is based on the circumstances existing on the date of application, but that SBA may request clarification of information in the application. Several commenters felt that this was too harsh and that concerns which might easily be eligible for the program would not be allowed the chance to make simple changes in order to be eligible. While SBA understands the desire an applicant would have to be able to change its application at any point in time in order to come into compliance with SBA's requirements during the application process, SBA believes that it is more important for reviewers not to have an application that is an ever-changing moving target. In addition, SBA notes that the applicant still has its right to request reconsideration of an initial decline letter and it is free to make any changes in its application at that time.

Proposed § 124.302 of the regulations set forth the criteria for early graduation. A Participant could be graduated early if it either successfully completes the program prior to the end of its program term or if one or more of the disadvantaged owners are no longer economically disadvantaged. Some commenters felt that successful firms would be penalized for their success if they were graduated before the expiration of their 9 year term. Although SBA is authorized to graduate firms that meet their business objectives early, this process is at the discretion of the Administrator. Early graduation is not an automatic process. Only Participants that show sufficient competitive strength and viability to compete successfully outside the program will be subject to early graduation. Once they show such strength and viability, their need for continued participation in the program has ended. Accordingly, SBA has retained these provisions in the final rule.

One commenter suggested that SBA should graduate Participants early when the Participants have demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program, whether or not they have achieved the targets, goals and objectives set forth in their business plans. SBA believes that this recommendation is contrary to the Small Business Act. The Small Business Act authorizes SBA to graduate Participants early only under limited circumstances, among them where a Participant has successfully completed the program by substantially achieving its targets, goals and objectives. SBA understands the concerns of the commenter, and will take efforts to ensure that the targets, goals and objectives in the business plans are realistic and appropriate.

Section 124.303(a) of the proposed rule provides for early termination from the 8(a) program prior to the expiration of a concern's Program Term for good cause. Section 124.303(a)(13) lists, as an example of good cause, excessive transfers of funds or other business assets hindering development of the concern, and excessive withdrawals from the concern for the personal benefit of any of its owners or any entity affiliated with the owners. Several commenters were concerned with SBA labeling withdrawals "excessive" without reviewing the totality of the circumstances. Section 124.112(d)(3) defines as excessive those withdrawals during any one fiscal year of a Participant that exceed $150,000 for firms with sales up to $1,000,000; $200,000 for firms with sales between $1,000,000 and $2,000,000; and $300,000 for firms with sales over $2,000,000. The regulation permits SBA to terminate the concern for good cause for such withdrawals. However, it does not state that SBA will automatically terminate the concern. SBA realizes that some withdrawals above the "excessive" guidelines are not excessive in light of the totality of the circumstances. SBA decides terminations on a case-by-case basis and always considers the totality of the circumstances beforehand. Nonetheless, the final rule clarifies that SBA will presume to be excessive all withdrawals exceeding the specified amounts.

The final rule changes § 124.303 to add clarity and to eliminate redundancy. Proposed § 124.303(a)(18) stated that a suspension or revocation of any license required to run the business is good cause for termination. SBA has deleted this paragraph and transferred its substance to § 124.303(a)(12). Section 124.303(a)(12) of the final rule now lists as a ground for termination the failure to keep licenses, charters and permits current.

SBA received several comments concerning the application of benchmarks to the 8(a) BD program. This application is based on the DOJ review of Federal procurement affirmative action programs and the Government-wide SDB program. Because this rule is not finalizing SBA's implementation of the SDB program at this time, it eliminates all references to benchmarks from the 8(a) regulations (i.e, subpart A).

SBA has changed many of the 8(a) contracting sections as a result of the comments. It has amended the general provisions in proposed § 124.501 in several respects. The final rule eliminates proposed paragraph (d) of § 124.501 as unnecessary, and renumbers proposed paragraphs (e) and (f) as paragraphs (d) and (e) respectively. That paragraph had clarified that a concern's success in meeting its support level would not preclude future 8(a) BD contract awards. Although SBA thought this clarification necessary at the time the regulations were originally amended to permit 8(a) concerns to exceed their support levels, SBA believes that that need no longer exists.

One commenter requested clarification concerning the purpose of delegating contract execution authority. The primary purpose behind such delegation is improved efficiency. Procuring activities can award contracts much more quickly and efficiently with such authority and may, therefore, see more opportunities for making use of the 8(a) BD program.

A sentence was added to proposed § 124.501 to provide that, where practicable, simplified acquisition procedures should be used for 8(a) contracts at or below the simplified acquisition threshold. This change conforms SBA's regulations to the Federal Acquisition Regulation (FAR) governing simplified acquisition procedures (48 CFR Part 13) and promotes efficiency and economy. SBA has also amended its rule, including § 124.501(e), to change the term "procuring agency" to "procuring activity," thus identifying correctly the Government contracting entity referenced. Since Federal contracting is frequently performed at the sub-Agency level, using the term "procuring agency" did not cover every entity that may enter into an 8(a) contract.

As a result of the comments, SBA added a new paragraph (f) to provide that an 8(a) Participant that identifies a requirement should request SBA to contact the procuring activity to request that the requirement be offered to the 8(a) program.

Proposed § 124.502 addressed offers of procurements to the 8(a) BD Program. SBA has amended its proposed § 124.502(a) to provide that a procuring activity may transmit an offering letter to SBA by electronic mail, if available, or by facsimile transmission, mail or commercial delivery service. This conforms the rule to the simplified acquisition procedures contained in the FAR and helps ensure that procuring activities can award small contracts expeditiously. SBA has amended its proposed § 124.502(b) to provide that, in cases where performance of a construction contract is to take place overseas, the contract should be offered to the Office of 8(a) BD located in SBA Headquarters.

One commenter asked why SBA verified the size of an 8(a) concern prior to accepting a sole source contract on its behalf since self-certification is accepted in every other case. SBA performs this function for sole source awards since there is no mechanism in place for protesting a concern's size in reference to a sole source award. Thus, there is no other check to ensure that concerns in line for award of sole source contracts are in fact small for such contracts. Moreover, since sole source awards are significant benefits, enabling firms to receive contracts without having to compete with other firms, it is particularly important that eligibility, including size, is verified.

Proposed § 124.503 set forth the procedures for accepting a requirement for the 8(a) BD Program. This rule amends § 124.503(a) to provide that, where a contract is valued at or below the simplified acquisition threshold, SBA will accept or reject the requirement within two days of receipt of the offer. In cases where the offer is made on behalf of a particular Program Participant, if SBA does not accept or reject the requirement or request an extension within two days, the procuring activity may assume that the offer has been approved and go forward with the award. SBA intends this change to conform to the simplified acquisition procedures contained in Part 13 of the FAR and to promote efficiency. This final rule also makes a significant change to promote efficiency where SBA has delegated its 8(a) contract execution functions to an agency and a procuring activity within that agency has a procurement requirement whose value is less than the Simplified Acquisition Procedures (SAP) threshold amount. In such case, this rule authorizes SBA, in its discretion, to permit the procuring activity to award an 8(a) contract under the SAP threshold amount without sending an offering letter to SBA and without receiving SBA's official acceptance of the requirement for the 8(a) program.

A number of comments requested clarification of the treatment of multiple award and federal supply schedule contracts. SBA has added a paragraph to § 124.503 setting forth the standards to be applied to these types of contracts. Since, unlike Basic Ordering Agreements (BOA's), multiple award schedule contracts and federal supply schedule contracts are contracts, a new task order under such a contract will not require a new offer and acceptance. Likewise, if a concern qualifies for award of a multiple award schedule or federal supply schedule contract in terms of eligibility and size, it will not be denied future task orders on that contract if it subsequently grows large. Finally, if a multiple award schedule or federal supply schedule contract was competed when awarded, subsequent task orders under such contract will not require further competition under § 124.506.

As a result of the comments, SBA has added a new paragraph (i) to clarify that where SBA has delegated its 8(a) contract execution authority to a procuring activity, the procuring activity must still offer and SBA must accept all requirements intended to be awarded as 8(a) contracts. The only exception to the normal offer and acceptance process is that identified above where a procurement requirement is less than the SAP threshold amount and SBA has specifically authorized (through the Memorandum of Understanding delegating its contract execution functions or otherwise) a procuring activity to dispense with offer and acceptance.

Proposed § 124.504 set forth the circumstances limiting SBA's ability to accept a procurement for award as an 8(a) contract. In response to comments identified below, this final rule specifically authorizes the use of SAP in connection with 8(a) contract awards, and requires SBA to review offering letters for requirements under SAP in an expedited two-day time frame. In order to meet this quick acceptance turn around, SBA has decided not to consider adverse impact in connection with a requirement offered under SAP. It is not feasible for SBA to obtain current financial statements from affected small businesses and to make adverse impact determinations within two days. However, because the SAP threshold is $100,000, SBA believes that adverse impact should not be a real factor with these smaller contracts, and that this change should not have a harmful effect.

Proposed § 124.504(e) (§ 124.504(d) in the final rule) concerned the release of a procurement for non-8(a) competition. One commenter pointed out that the language in proposed § 124.504(e)(3) was misleading. That language provided that if SBA declines to accept an offer and releases the requirement, it will recommend to the procuring agency that the requirement be procured as a small business or SDB set-aside. The commenter correctly pointed out that SDB set-asides are not authorized at this time. SBA has, therefore, amended this paragraph to provide that if SBA declines to accept an offer for the 8(a) program, it will recommend that the requirement be procured as a small business or, if authorized, SDB set-aside.

One commenter suggested that industries for which SBA has elected not to accept requirements should be listed on SBA's website. SBA is considering adopting this idea; however, it need not revise its regulations to adopt this policy. Another commenter recommended that firms that have graduated be permitted to compete for follow-on contracts where the firm had been awarded the original

contract. Applicable law precludes SBA from making this change.

A number of commenters requested additional procedures to protect the rights of small firms which could be adversely impacted by a decision to accept an award for the 8(a) BD program. SBA carefully considered these comments and weighed them against the need of procuring activities for prompt award of contracts. SBA determined that the current procedures were sufficient to ensure that small businesses performing contracts are not unduly harmed by the acceptance of an award for the 8(a) program.

Proposed § 124.506 provided that 8(a) procurements above certain dollar thresholds must be competed among eligible Participants. A number of commenters requested that the competitive thresholds be lowered. These thresholds were set by statute and, therefore, may not be lowered by SBA.

One commenter requested clarification concerning how the thresholds are applied to indefinite delivery/indefinite quantity (ID/IQ) contracts. The commenter asked whether the total value of such contracts would be the value of what the procuring activity actually expects to order or the maximum ordering amount it may order. SBA considers the maximum ordering amount to be the total value of the contract for purposes of determining whether a particular ID/IQ contract must be competed. As a result of this comment, § 124.506(a)(2) has been amended to provide that for indefinite delivery or indefinite quantity type contracts, the thresholds are applied to the maximum order amount authorized.

Language was mistakenly included in proposed § 124.507(c) which referred to limiting competitions to the transitional stage of program participation. SBA has eliminated this language in the final rule, since it does not restrict competitions to the transitional stage.

One commenter objected to the language in proposed § 124.506(c)(3) requiring SBA to deny a request to compete a requirement under the competitive thresholds where the request is made following the inability of the procuring activity and the potential sole source awardee to reach an agreement on price or some other material term or condition. The commenter pointed out that this provision unnecessarily restricts the flexibility of the Federal Government. SBA agrees with this comment and has amended this paragraph to provide only that SBA may deny a request under such circumstances.

A number of commenters objected to SBA's proposal to eliminate its authority to award an 8(a) contract above the competitive threshold on a sole-source basis where there is only one eligible firm capable of performing the requirement. As a result of the comments, SBA has added this provision back to the regulations at § 124.506(d).

Proposed § 124.507 set forth the procedures applicable to competitive 8(a) contracts. One commenter objected to the elimination of the requirement that a firm must obtain SBA approval to do business under a particular SIC code. SBA has considered this comment, but has rejected it. After several years of experience, SBA believes that the burden on an 8(a) Participant to obtain SBA approval for every SIC code under which the Participant might want to perform contracts hinders more than helps the Participant's business development. Moreover, the procuring activity's determination that a particular 8(a) Participant is responsible to perform a given contract should suffice to prevent firms from brokering contracts or from competing for contracts for which they are not qualified.

One commenter correctly pointed out that Certificate of Competency (COC) procedures should not be inapplicable in cases where SBA has delegated contract execution authority to the procuring activity as provided in proposed § 124.507(b)(7). SBA agrees. SBA did not intend to make the COC procedures inapplicable where contract execution authority has been delegated. In addition, the final rule transfers the substance of proposed § 124.507(b)(6) (dealing with the execution of competitive 8(a) contracts) to a new § 124.508. The correction regarding the availability of COCs where SBA has delegated its 8(a) contract execution functions to a procuring activity and the transfer of proposed § 124.507(b)(6) to a new section make proposed § 124.507(b)(7) unnecessary. Thus, SBA has eliminated that provision in this final rule.

A number of commenters objected to the special geographic requirements for construction contracts in proposed § 124.507(c)(2). These requirements are mandated by the Small Business Act and, therefore, may not be eliminated. One commenter correctly pointed out that the reference to principal places of business in proposed § 124.507(c)(2) is incorrect and should be bona fide places of business. SBA agrees with this comment and has made this correction.

This final rule adds a new § 124.508 governing execution of 8(a) contracts. This new section clarifies that SBA, the procuring activity and the 8(a) firm may sign a tripartite agreement or, where SBA has delegated contract execution authority, the procuring activity and the Participant alone may sign an 8(a) contract. This section also provides that, where SBA receives a contract for signature valued at or below the simplified acquisition threshold, it will sign the contract and return it to the procuring activity within three (3) days of receipt. This addition was made to conform to the simplified acquisition procedures in the FAR and to promote expeditious award of smaller contracts.

Pursuant to proposed § 124.508 (§ 124.509 in the final rule), a Participant could not receive sole source 8(a) contracts where it was not in compliance with its non-8(a) business activity targets. A commenter recommended that SBA allow more flexibility to permit sole source awards where the firm can demonstrate good faith efforts to obtain non-8(a) revenue. SBA agrees that a waiver to the requirement prohibiting further sole source contracts when a Participant does not meet its non-8(a) business activity target may be appropriate in limited, extraordinary circumstances. The final rule permits the AA/8(a)BD, or his or her designee, to allow one or more sole source contracts to a Participant that is not in compliance with its non-8(a) business activity target where a denial of a sole source contract would cause severe economic hardship to the Participant so that the Participant's survival may be jeopardized, or where extenuating circumstances beyond the Participant's control caused the Participant not to meet its non-8(a) business activity target. For example, a Participant might demonstrate that it was the apparent successful offeror for a non-8(a) contract that was cancelled by the procuring activity, and that a loss of that projected revenue caused the Participant not to meet its non-8(a) business activity target. However, loss of additional profit or other normal business consequences will not be grounds for granting a waiver. SBA believes that a more extensive waiver is not needed because the rule permits sufficient flexibility by allowing a firm to come into compliance during authorized quarterly reviews. The rule authorizes no appeal right for decisions not to grant a waiver, and such a waiver is totally at SBA's discretion. The final rule also adds a provision authorizing the SBA Administrator to waive the requirement that a Participant cannot receive an 8(a) sole source award when it is not in

compliance with its non-8(a) business activity targets where the head of the procuring activity requests that award be made for the best interests of the Government.

Proposed § 124.509 (§ 124.510 in the final rule) set forth the requirement that certain percentages of work be performed by the 8(a) BD concern on an 8(a) BD contract. One commenter pointed out that compliance with the percentage of work requirements is an element of responsibility and, therefore, should be determined as of the date of award. SBA agrees with this comment and has amended this section to provide that SBA will determine whether the firm will be capable of complying with the percentage of work requirements by the time of award of the contract for both sealed bid and negotiated procurements.

Another commenter correctly pointed out that the example in the regulation conflicts with the requirements set forth in 13 CFR § 125.6, which refer to the work required as a percentage of total labor rather than as a percentage of the total value of the contract. SBA agrees with this comment and has changed example 1 as well as some of the language in § 124.510(c) of the final rule to conform to the language in § 125.6. (The legislation on which the performance of work requirements are based states the percentage of work required as a percentage of total labor and not total value.) Example 2 was not changed because the example does not conflict with either § 125.6 or the legislation. Example 2 merely clarifies application of the rule in the early stages of performance of an ID/IQ contract.

One commenter pointed out that application of the subcontracting limitations at all times during performance of an ID/IQ contract would keep many contractors from proposing on task orders. SBA agrees that the regulation is not flexible enough in this regard and has amended the language in paragraph (c) to provide that SBA may approve in writing an 8(a) BD firm's request to subcontract out more than the required percentage where it receives assurances from both the contractor and the procuring activity that the percentages will be met by the time performance is completed. SBA believes that this addition will provide firms with the necessary flexibility without undermining the purposes of the rule. Where a firm has received permission to subcontract out more than the required percentage and does not comply with the percentage requirements by the end of the contract, SBA will not grant future waivers.

There were a number of comments on proposed § 124.512 governing joint ventures. Several commenters objected to the requirement in proposed § 124.512(e) that a contract be awarded in the name of the 8(a) BD participant or participants, even though the contract is to be performed by the joint venture. The commenters argued that the contract should be in the name of the joint venture to assure that all parties to the joint venture are obligated to perform. SBA agrees with this view and has amended this section to provide that the procuring activity will execute an 8(a) contract in the name of the joint venture entity. With respect to the statutory requirement that all 8(a) contracts be performed by participant concerns, SBA interprets the AA/8(a)BD's acceptance of Participants into the program to extend to approved joint ventures in which the Participant is the lead joint venture partner. In other words, for purposes of contracting, admission into the program includes both a concern in its own capacity and any approved joint venture in which the concern is the lead entity. For contracting purposes, SBA will consider the joint venture to be the Participant where the joint venture meets all applicable requirements and is approved by SBA.

Paragraph (f) requiring all parties to the joint venture to sign such documents as are necessary to obligate themselves to ensure performance of the contract was deleted as unnecessary where the contract is entered into in the joint venture's name. However, a provision was added requiring the joint venture agreement to obligate each party to the venture to complete performance of the contract even if one of the members withdraws. (*See* § 124.513(c)(7))

A number of commenters felt that the provision requiring the 8(a) members of the joint venture to perform the applicable percentages of work under the performance of work requirements (§ 124.510) would undermine the benefits derived from the joint venture arrangement. SBA considered this comment and agrees that many of the advantages of performing a particular contract as a joint venture would be lost if the 8(a) BD concern is required to perform as much of the contract as it would have had to perform had it been awarded the contract directly. Therefore SBA has amended paragraph (b)(1)(iv) of this section to provide that the joint venture must perform the applicable percentage of work. Paragraph (g) was also eliminated in light of this change.

SBA made a number of other technical changes to the joint venture provisions (§ 124.513 in the final rule) as a result of the comments. The term "lead entity" was changed to "managing venturer" to comport with current terminology. One commenter requested clarification of the term "very little" in proposed § 124.512(a) which states that SBA will not approve a joint venture arrangement where the 8(a) concern brings "very little" to the relationship. That provision has been clarified to provide that SBA will not approve the joint venture if the 8(a) concern brings very little in terms of resources and expertise to the relationship. A more precise definition would not leave SBA sufficient discretion to judge each case on its own merits.

Proposed § 124.514 (§ 124.515 in the final rule) set forth the provisions requiring an 8(a) contract to be performed by the Participant that was initially awarded it, and requiring the contract to be terminated for convenience if there is a change in the ownership or control of the concern. SBA received several comments regarding the authority for a waiver where one Participant transfers ownership and control to another eligible Participant. The commenters believed that a bulk transfer of all or substantially all of one 8(a) concern's assets to another 8(a) concern should satisfy the requirement this requirement. SBA carefully considered the legal requirements of the Small Business Act as it pertains to this provision. Upon further deliberation, SBA agrees that a transfer of all a Participant's operating assets to another Participant should be treated the same as a transfer of stock or another ownership interest, provided the Participant that transfers its assets to another eligible Participant withdraws from the 8(a) BD program, and it ceases its business operations, or presents a plan to SBA for its orderly dissolution. The requirement that all "operating assets" be transferred excludes accounts receivable and cash. SBA will require dissolution or a plan to dissolve as a condition for the waiver because SBA does not believe that it is appropriate for the transferor to remain a separate legal entity that could restart operations and seek to obtain 8(a) contracts after the transfer of all of its operating assets.

SBA received three comments on proposed § 124.516 (§ 124.517 in the final rule) concerning protests of 8(a) contract awards. All three commenters recommended extending this provision to permit protests of the size of a concern in line for a sole source award. SBA rejected this comment since it is difficult for other firms to find out about sole source awards and only a few, if

any, firms would have standing to protest the award of a sole-source contract under SBA's size regulations. SBA has historically verified the size of each potential awardee of a sole-source contract since the benefits of receiving a contract without having to compete are so significant. Moreover, if any concern or individual believes a firm in line for a sole-source award does not meet the size standard for the SIC code for the contract, such firm may contact SBA and explain why it believes that the firm is not small. SBA will consider such information in verifying the size of that concern for the award provided the information is specific and credible. While SBA makes no changes to allow size protests and SIC code appeals in connection with sole source 8(a) contracts at this time, SBA will continue to examine this issue and may make additional changes at a later date.

Proposed § 124.518 (§ 124.519 in the final rule), authorized Participants (other than firms owned by an Indian tribe or an ANC) to receive any combination of 8(a) sole source and 8(a) competitive contracts up to a specified dollar amount (excluding contracts of $100,000 or less). Once that dollar amount of 8(a) contracts is reached, the firm will not be eligible to receive any more 8(a) sole source contracts, but will remain eligible for competitive 8(a) awards. The proposed rule set the dollar limit above which a firm could not receive sole source 8(a) awards at five times the size standard for the firm's primary SIC code or $100,000,000, whichever was less. SBA received comments on both sides of this issue. Several thought the cap was set at too high a level, while others thought that it should be set even higher. No commenters presented persuasive reasons for setting the cap at a level other than that set forth in the proposed rule. As such, the final rule continues the five times the size standard or $100,000,000 language. If the size standard for a particular SIC code increases over time, the corresponding cap amount will also increase. One comment suggested that after a firm reaches the specified dollar threshold amount, SBA should require it to use other 8(a) concerns that have not received contracts as subcontractors in order to receive additional sole source awards. SBA considered this comment, but decided not to adopt it. It is important to remember that SBA will not restrict all 8(a) contract support after a Participant receives total 8(a) contract support equaling at least five times the size standard for its primary SIC code or $100,000,000. A firm will be unable to receive only sole source 8(a) contracts after reaching the cap amount. The alternative suggested by the commenter seeks to have a Participant that has exceeded the cap subcontract 8(a) sole source contracts to other Participants that have not received an 8(a) contract. SBA believes that enforcing the cap should enable more of those same firms (i.e., the Participants that have not received an 8(a) contract) to receive 8(a) contracts directly. While both would aid in distributing the performance of 8(a) contracts to more Participants, from the perspective of a Participant that has not received an 8(a) contract, receiving a sole source contract directly is preferable to getting a piece of an 8(a) contract as another Participant's subcontractor. In addition, SBA believes that the alternative cap amounts are sufficiently high so that a Participant that reaches the cap amount should be able to compete effectively for 8(a) competitive contracts. That, in turn, should assist such firms in reaching viability after leaving the 8(a) program.

Upon further reflection, SBA also amended the date at which a Participant's eligibility for a sole source contract is measured. The proposed rule stated that such eligibility would be measured as of the date of contract award, without taking into account whether the value of that award would cause the limit to be exceeded. SBA believes that such a requirement could cause an undue hardship for both 8(a) Participants and procuring activities. As proposed, SBA could accept a sole source requirement on behalf of a particular Participant (because the Participant had not yet received contracts in excess of the cap amount), the Participant and the procuring activity could enter into protracted negotiations, and SBA could be required later to deny the award of the contract because eligibility would be determined as of the date of award and the Participant may have received one or more competitive 8(a) contracts between the acceptance and award dates. Thus, this final rule changes the date that a firm's eligibility for a sole source award, in terms of whether the firm has exceeded the dollar limit for 8(a) contracts, from the date of award to the date that the requirement is accepted by SBA. This does not in any way imply that all eligibility for an 8(a) sole source contract will now be measured at the acceptance date. In other words, this final rule will continue to require that a firm be a current Participant in the 8(a) program on the date of contract award in order to receive an 8(a) sole source award. See § 124.508(c).

Finally, similar to the provision identified above when a Participant fails to achieve its non-8(a) business activity targets, the final rule adds a provision authorizing the SBA Administrator to waive the requirement that a Participant cannot receive an 8(a) sole source award in excess of the cap amount where the head of the procuring activity requests that award be made for the best interests of the Government.

Proposed § 124.519 (§ 124.520 in the final rule) set forth the standards for the mentor/protege program. Most of the commenters were in favor of this new program, although several warned that the potential existed for abuse. Numerous commenters requested greater detail in this section. Some of the commenters felt that a section explaining the purpose of the program would be helpful. In response to those comments, SBA has amended paragraph (a) of this section to clarify that the program is designed to encourage approved mentors to provide various forms of assistance to eligible Participants, with examples of the assistance contemplated.

SBA received varying views regarding the type of business that should be able to act as a mentor. The comments ranged from recommendations that any business, large or small, disadvantaged-owned or not, should be able to be a mentor, to only small businesses, to support for the proposed rule which limited mentors to former 8(a) Participants and current 8(a) Participants in the transitional stage of the program. Upon further deliberation, SBA believes that the focus should not be on who the mentor is, but what the concern acting as a mentor will provide to the protege. For that reason, the final rule permits any business, large or small, to be a mentor if it can demonstrate the commitment and ability to assist small, developing 8(a) Participants. Under the final rule, a mentor generally will have no more than one protege at a time. The AA/8(a)BD may, however, authorize a concern to mentor more than one protege at a time where the concern can demonstrate that the additional mentor/protege relationship will not adversely affect the development of either protege firm. SBA does not believe that it would be appropriate to authorize a concern to be a mentor in a second mentor/protege relationship if that relationship would harm or compete with the protege of the first mentor/protege relationship approved by SBA.

Some of the commenters felt that the amount of a contract the protege could perform should be limited. After considering this comment, SBA has

decided not to adopt it at this time. SBA does not want to impose additional requirements on mentor/protege joint ventures that do not apply to joint ventures between 8(a) BD concerns and other entities.

Many of the commenters requested guidelines so that the mentor does not take control of the contracts or the company. SBA will monitor the mentor/protege arrangement on a regular basis to help ensure that this does not occur.

Some commenters requested that the program be expanded to enable companies which have never been in the 8(a) BD program to become proteges. SBA has not adopted this recommendation. It must be remembered that SBA's mentor/protege program is designed to be an additional developmental tool for Participants in the 8(a) BD program. Only firms that SBA has certified to participate in the 8(a) BD program are statutorily eligible to receive any of the benefits of the program.

One commenter suggested that a provision be added clarifying that a mentor and protege will not be determined to be affiliated based on the mentor/protege agreement or assistance provided pursuant to the agreement. SBA agrees with this comment and has amended paragraph (d) of this section to add a new subparagraph (4) to this effect.

Several commenters suggested standards for SBA monitoring of the relationship and the adoption of objective standards by which to measure the success of a mentor/protege relationship. In response to these comments, SBA has added a new paragraph (f) to impose specific reporting requirements on the protege and to provide standards under which SBA will review the mentor/protege relationship. The final rule also amends paragraph (e) of this section (§ 124.519(d) in the proposed rule) to provide that SBA will review the mentor/protege relationship annually to determine whether to approve its continuation for another year. As set forth in the rule, the mentor/protege program is designed to assist the development of Participants in the developmental stage of the program, Participants that have not received an 8(a) contract, and Participants having a size that is less than half the size standard corresponding to its primary SIC code. Where a Participant leaves the developmental stage of the program, receives several significant 8(a) contracts, or has a size that exceeds half the size standard corresponding to its primary SIC code, the firm may no longer need the assistance provided by the mentor/protege relationship, and the AA/8(a)BD may decide not to authorize its continuation.

SBA received no comments to proposed §§ 124.601 through 124.603 and §§ 124.701 through 124.704. As such, this rule makes no changes to those sections from the proposed rule.

Part 124, subpart B: Subpart B of the proposed rule defined a Small Disadvantaged Business (SDB) and set forth the procedures by which a firm can be recognized as an SDB. As noted above, SBA will discuss the comments to subpart B and finalize its provisions in a later rulemaking action.

Part 134: The proposed new Subpart D of Part 134 contained the rules of procedure applying to appeals of denials of 8(a) BD program admission based solely on the negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206; early graduation pursuant to § 124.302 and 124.304; termination pursuant to § 124.303 and 124.304; and denials of requests to issue a waiver of the performance of work/termination for convenience requirements pursuant to § 124.513.

The proposed rules transferred the rules of procedure governing the 8(a) program from § 124.210 to Part 134 so that all procedures related to appeals before OHA are contained in one part of SBA's regulations.

SBA received one comment regarding the proposed revisions to Part 134. The majority of these comments dealt with streamlining the regulations governing the appeals of denials of 8(a) BD program admission and protecting appellant rights.

The proposed rule did not change § 134.202 and § 134.203 of the former regulations. The commenter requested that SBA amend § 134.202 to require that the appeal petition include the SBA determination. SBA agrees that the appeal petition should include the SBA determination and modified § 134.203, which specifies the requirements of a petition, to include the submission of the SBA determination. This provision will allow the Administrative Law Judge to determine, without further delay, whether the appeal was timely filed.

This rule does not finalize the proposed amendment to § 134.206(a) that would have changed the date on which the SBA's 45-day period to file an answer would run. The proposed rule would have changed that date from the date that an appeal is served on SBA to the date that an appeal is filed at OHA. Upon further consideration, SBA does not believe that this change is appropriate. The proposed rule was concerned about SBA not having the allotted time to answer an appeal where the appeal was incorrectly served on SBA's Office of General Counsel. SBA has addressed this concern by clarifying the service requirements for 8(a)-related appeals set forth in § 134.403.

Proposed § 134.401, which outlined the scope of the rules in Subpart D, had no provision for appeals to OHA from suspensions pursuant to § 124.305. A commenter stated that the inclusion of appeals related to suspension was necessary pursuant to § 124.305(b) which provides that notice of suspension includes a statement that a request for hearing on the suspension will be considered by an Administrative Law Judge at OHA and granted or denied as a matter of discretion. SBA agreed with the comment and added § 134.401(e) in response to it.

A commenter noted that proposed § 134.405, which deals with jurisdiction, failed to include a provision for the jurisdiction of suspension cases pursuant to § 124.305. SBA added subsection (c) to proposed § 134.405 in response to this comment. Subsection (c) provides that the jurisdiction of OHA in suspension cases is limited to determining whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

Proposed § 134.406 dealt with review of the administrative record and replaced § 124.210. A commenter requested that an appellant be permitted to object to the absence of a document in the administrative record. Since § 134.406(c) provides that the administrative record need not contain all documents pertaining to the appellant, SBA decided that § 134.406(c) should be amended in response to this request. Revised § 134.406(c) allows an appellant to object to the absence of a document he or she believes was erroneously omitted from the administrative record, thereby helping to ensure that the Administrative Law Judge has all of the information needed to decide the case.

Proposed § 134.406(e) limited remand to situations where "due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide" the case. A commenter requested that remand be extended to include cases in which SBA made an erroneous analysis of facts. SBA determined that SBA error is properly handled on appeal under

proposed § 134.408 and, therefore, did not adopt this comment.

Proposed § 134.408, which dealt with decisions on appeal, replaced § 124.210. A commenter requested that the term "re-examine" be changed to "reconsider," and that a time limit be placed on when the decision is final. SBA determined that for clarity purposes the term "re-examine" should be changed to "reconsider." SBA further determined that, in response to the commenter's request for a reasonable time period after which the decision is final, a period of 20 days should be inserted into the proposed regulation after which time the decision is final.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule is not a major rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The rule addresses changes in the SBA's 8(a) BD program. The overall impact of the changes to the 8(a) BD program will be beneficial to small businesses. The rule also makes several changes to SBA's size regulations that will have an impact beyond that program, and should result in more procurement opportunities for small business generally. No definitive data exist that would allow SBA to conclude that the proposed rule will have a substantial impact on a significant number of small businesses.

Specifically, the rule improves and strengthens the 8(a) BD program. It responds to the challenges posed by the findings in the *Adarand Constructors, Inc.* v. *Pena*, 115 Sup. Ct. 2097 (1995) (Adarand), and are designed to improve the success rates for firms after their terms of participation in the 8(a) BD program end. The rule changes fall within three major categories. They are: (1) measures designed to more equitably distribute 8(a) contracts; (2) small business affiliation rule revisions; and (3) a new mentor/protege program.

The changes that exclude certain joint venture and teaming arrangements from SBA's affiliation rules and the 8(a) mentor/protege program are designed to enable small businesses to effectively compete for contracts that were previously too large for a single small business to perform as a prime contractor. By allowing small businesses to form joint venture and teaming relationships without regard to affiliation, they can be considered responsible contractors for "bundled" and other large contracts which exceed the capability of any of the individual small businesses to perform as prime contractors. Likewise, 8(a) Participants will be able to submit offers for and be considered responsible businesses for larger contracts than they would be able to obtain individually without the newly established mentor/protege program. Expanding the number and dollar amount of contracts available for award through the 8(a) BD program may result in a shift of dollars to small business.

In fiscal year (FY) 1996, the federal government spent $197.6 billion on the procurement of goods and services. Small businesses were awarded $41.1 billion in prime contracts, representing about a 21 percent share of the total contract dollars. There are approximately 180,000 small firms registered on PRO-Net, SBA's database of small businesses actively seeking federal government contracts. By comparison, there are approximately 5,800 small firms certified as eligible 8(a) Participants. In FY 1996, $6.4 billion or 3.2 percent of the total government prime contracts were awarded to less than 2,000 8(a) certified small businesses. SBA believes that the changes set forth in this rule will benefit small firms, but not increase the net number of current 8(a) Participants by more than 500 to 800 businesses, or less than 1 percent of the total universe of small firms seeking federal government contracts.

Similarly, the changes regarding affiliation eligibility and the mentor/protege program will benefit small business contractors, but impact a relatively small number of businesses and dollars, when compared to total government spending and the universe of small firms seeking federal government contracts. Because of consolidation, contracts are becoming larger and fewer in number. It has become increasingly more difficult for small business to possess the wherewithal to individually perform these larger contracts. The changes in small business affiliation rules are designed to counter the growing trend of contract consolidation and allow small firms to compete for larger contracts.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, Tribally-owned concerns.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.103 is amended by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively, by revising paragraph (f)(2) and by adding a new paragraph (f)(3) to read as follows:

§ 121.103 What is affiliation?

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exclusion from affiliation.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a non-8(a) Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(ii) A joint venture or teaming arrangement of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (f) of this section so long as the requirements of 13 CFR 124.513(b)(1) are met.

(iii) Two firms approved by SBA to be a mentor and protege under 13 CFR 124.520 may joint venture as a small business for any Federal Government procurement, provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519.

* * * * *

3. Section 121.1001 is amended by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(3) through (a)(7), by adding the following new paragraph (a)(2), and by revising paragraph (b)(2) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(2) For competitive 8(a) contracts, the following entities may protest:

(i) Any offeror;

(ii) The contracting officer; or

(iii) The SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for 8(a) Business Development.

* * * * *

(b) * * *

(2) For SBA's 8(a) BD program:

(i) Concerning initial or continued 8(a) BD eligibility, the following entities may request a formal size determination:

(A) The 8(a) BD applicant concern or Participant; or

(B) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(ii) Concerning individual sole source 8(a) contract awards, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract;

(B) The SBA program official with authority to execute the 8(a) contract; or

(C) The SBA District Director in the district office that services the Participant, or the Associate Administrator for 8(a)BD.

* * * * *

4. Section 121.1103 is amended by revising paragraph (a) to read as follows:

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular sole source 8(a) contract, only the Associate Administrator for 8(a)BD may appeal.

* * * * *

PART 124—[AMENDED]

5. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

6. In part 124, subpart B consisting of §§ 124.601 through 124.610 is redesignated as subpart B, §§ 124.1001 through 124.1010, and subpart A is revised to read as follows:

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Subpart A—8(a) Business Development

Provisions of General Applicability

124.1 What is the purpose of the 8(a) Business Development program?
124.2 What length of time may a business participate in the 8(a) BD program?
124.3 What definitions are important in the 8(a) BD program?

Eligibility Requirements for Participation in the 8(a) Business Development Program

124.101 What are the basic requirements a concern must meet for the 8(a) BD program?
124.102 What size business is eligible to participate in the 8(a) BD program?
124.103 Who is socially disadvantaged?
124.104 Who is economically disadvantaged?
124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?
124.106 When do disadvantaged individuals control an applicant or Participant?
124.107 What is potential for success?
124.108 What other eligibility requirements apply for individuals or businesses?
124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?
124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?
124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?
124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

Applying to the 8(a) BD Program

124.201 May any business submit an application?
124.202 Where must an application be filed?
124.203 What must a concern submit to apply to the 8(a) BD program?
124.204 How does SBA process applications for 8(a) BD program admission?
124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?
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124.207 Can an applicant reapply for admission to the 8(a) BD program?

Exiting the 8(a) BD Program

124.301 What are the ways a business may leave the 8(a) BD program?
124.302 What is early graduation?
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124.304 What are the procedures for early graduation and termination?
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Business Development

124.401 Which SBA field office services a Participant?
124.402 How does a Participant develop a business plan?
124.403 How is a business plan updated and modified?
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Contractual Assistance

124.501 What general provisions apply to the award of 8(a) contracts?
124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?
124.503 How does SBA accept a procurement for award through the 8(a) BD program?
124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?
124.505 When will SBA appeal the terms and conditions of a particular 8(a) contract or a procuring activity decision not to reserve a procurement for the 8(a) BD program?
124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?
124.507 What procedures apply to competitive 8(a) procurements?
124.508 How is an 8(a) contract executed?
124.509 What are non-8(a) business activity targets?

124.510 What percentage of work must a Participant perform on an 8(a) contract?
124.511 How is fair market price determined for an 8(a) contract?
124.512 Delegation of contract administration to procuring agencies.
124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?
124.514 Exercise of 8(a) options and modifications.
124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?
124.516 Who decides contract disputes arising between a Participant and a procuring activity after the award of an 8(a) contract?
124.517 Can the eligibility or size of a Participant for award of an 8(a) contract be questioned?
124.518 How can an 8(a) contract be terminated before performance is completed?
124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?
124.520 Mentor/Protege program.

Miscellaneous Reporting Requirements

124.601 What reports does SBA require concerning parties who assist Participants in obtaining federal contracts?
124.602 What kind of annual financial statement must a Participant submit to SBA?
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Management and Technical Assistance Program

124.701 What is the purpose of the 7(j) management and technical assistance program?
124.702 What types of assistance are available through the 7(j) program?
124.703 Who is eligible to receive 7(j) assistance?
124.704 What additional management and technical assistance is reserved exclusively for concerns eligible to receive 8(a) contracts?

Subpart A—8(a) Business Development

Provisions of General Applicability

§ 124.1 What is the purpose of the 8(a) Business Development program?

Sections 8(a) and 7(j) of the Small Business Act authorize a Minority Small Business and Capital Ownership Development program (designated the 8(a) Business Development or "8(a) BD" program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.

§ 124.2 What length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program. The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. A firm that completes its nine year term of participation in the 8(a) BD program is deemed to graduate from the program. The nine year program term may be shortened only by termination, early graduation or voluntary graduation as provided for in this subpart.

§ 124.3 What definitions are important in the 8(a) BD Program?

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation or ANC means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*)

Bona fide place of business, for purposes of 8(a) construction procurements, means a location where a Participant regularly maintains an office which employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites.

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, *et seq.*

Concern is defined in part 121 of this title.

Days means calendar days unless otherwise specified.

Day-to-day operations of a firm means the marketing, production, sales, and administrative functions of the firm.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. *See* definition of "tribally-owned concern."

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Negative control is defined in part 121 of this title.

Non-disadvantaged individual means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status an applicant or Participant does not rely in qualifying for 8(a) BD program participation.

Participant means a small business concern admitted to participate in the 8(a) BD program.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The SIC code designations are described in the Standard Industrial Classification Manual published by the U.S. Office of Management and Budget.

Principal place of business means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where the business records are kept are in different locations, SBA will determine the principal place of business for program purposes.

Program year means a 12-month period of an 8(a) BD Participant's program participation. The first program year begins on the date that the concern is certified to participate in the 8(a) BD program and ends one year later. Each subsequent program year begins on the Participant's anniversary of program certification and runs for one 12-month period.

Same or similar line of business means business activities within the

same two-digit "Major Group" of the SIC Manual as the primary industry classification of the applicant or Participant. The phrase "same business area" is synonymous with this definition.

Self-marketing of a requirement occurs when a Participant identifies a requirement that has not been committed to the 8(a) BD program and, through its marketing efforts, causes the procuring activity to offer that specific requirement to the 8(a) BD program on the Participant's behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) BD program as an open requirement or on behalf of another Participant has not "self-marketed" the requirement within the meaning of this part.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

Eligibility Requirements for Participation in the 8(a) Business Development Program

§ 124.101 What are the basic requirements a concern must meet for the 8(a) BD program?

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrates potential for success.

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a) An applicant concern must qualify as a small business concern as defined in part 121 of this title. The applicable size standard is the one for its primary industry classification. The rules for calculating the size of a tribally-owned concern, a concern owned by an Alaska Native Corporation, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation are additionally affected by §§ 124.109, 124.110, and 124.111, respectively.

(b) If 8(a) BD program officials determine that a concern may not qualify as small, they may deny an application for 8(a) BD program admission or may request a formal size determination under part 121 of this title.

(c) A concern whose application is denied due to size by 8(a) BD program officials may request a formal size determination under part 121 of this title. A favorable determination will enable the firm to immediately submit a new 8(a) BD application without waiting one year.

§ 124.103 Who is socially disadvantaged?

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

(b) *Members of designated groups.* (1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section. Being born in a country does not, by itself, suffice to make the birth country an individual's country of origin for purposes of being included within a designated group.

(2) An individual must demonstrate that he or she has held himself or herself out, and is currently identified by others, as a member of a designated group if SBA requires it.

(3) The presumption of social disadvantage may be overcome with credible evidence to the contrary. Individuals possessing or knowing of such evidence should submit the information in writing to the Associate Administrator for 8(a) BD (AA/8(a)BD) for consideration.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the groups presumed to be socially disadvantaged in paragraph (b)(1) of this section must establish individual social disadvantage by a preponderance of the evidence.

(2) Evidence of individual social disadvantage must include the following elements:

(i) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(ii) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(iii) Negative impact on entry into or advancement in the business world because of the disadvantage. SBA will consider any relevant evidence in assessing this element. In every case, however, SBA will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(A) *Education.* SBA considers such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(B) *Employment.* SBA considers such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channelled the individual into nonprofessional or non-business fields.

(C) *Business history.* SBA considers such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business

associates, and exclusion from business or professional organizations.

(d) *Socially disadvantaged group inclusion.* (1) *General.* Representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias may petition SBA to be included as a presumptively socially disadvantaged group under paragraph (b)(1) of this section. Upon presentation of substantial evidence that members of the group have been subjected to racial or ethnic prejudice or cultural bias because of their identity as group members and without regard to their individual qualities, SBA will publish a notice in the **Federal Register** that it has received and is considering such a request, and that it will consider public comments.

(2) *Standards to be applied.* In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this section, SBA must determine that:

(i) The group has suffered prejudice, bias, or discriminatory practices;

(ii) Those conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in the Small Business Act; and

(iii) Those conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to small business owners generally.

(3) *Procedure.* The notice published under paragraph (d)(1) of this section will authorize a specified period for the receipt of public comments supporting or opposing the petition for socially disadvantaged group status. If appropriate, SBA may hold hearings. SBA may also conduct its own research relative to the group's petition.

(4) *Decision.* In making a final decision that a group should be considered presumptively disadvantaged, SBA must find that a preponderance of the evidence demonstrates that the group has met the standards set forth in paragraph (d)(2) of this section based on SBA's consideration of the group petition, the comments from the public, and any independent research it performs. SBA will advise the petitioners of its final decision in writing, and publish its conclusion as a notice in the **Federal Register**. If appropriate, SBA will amend paragraph (b)(1) of this section to include a new group.

§ 124.104 Who is economically disadvantaged?

(a) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(b) *Submission of narrative and financial information.* (1) Each individual claiming economic disadvantage must describe it in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(c) *Factors to be considered.* In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. SBA will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that SBA compares include total assets, net sales, pre tax profit, sales/working capital ratio, and net worth.

(1) *Transfers within two years.* (i) Except as set forth in paragraph (c)(1)(ii) of this section, SBA will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the 8(a) BD program or within two years of a Participant's annual program review, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(ii) SBA will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(iii) In determining an individual's access to capital and credit, SBA may consider any assets that the individual transferred within such two-year period described by paragraph (c)(1)(i) of this section that SBA does not consider in evaluating the individual's assets and net worth (e.g., transfers to charities).

(2) *Net worth.* For initial 8(a) BD eligibility, the net worth of an individual claiming disadvantage must be less than $250,000. For continued 8(a) BD eligibility after admission to the program, net worth must be less than $750,000. In determining such net worth, SBA will exclude the ownership interest in the applicant or Participant and the equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant or Participant). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(i) A contingent liability does not reduce an individual's net worth.

(ii) The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

An applicant or Participant must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations (CDCs). *See*

§ 124.3 for definition of unconditional ownership; and §§ 124.109, 124.110, and 124.111, respectively, for special ownership requirements for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, and CDCs.

(a) *Ownership must be direct.* Ownership by one or more disadvantaged individuals must be direct ownership. An applicant or Participant owned principally by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more disadvantaged individuals does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a disadvantaged individual where the trust is revocable, and the disadvantaged individual is the grantor, a trustee, and the sole current beneficiary of the trust.

(b) *Ownership of a partnership.* In the case of a concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.

(c) *Ownership of a limited liability company.* In the case of a concern which is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(d) *Ownership of a corporation.* In the case of a concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(e) *Stock options' effect on ownership.* In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by disadvantaged individuals. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-disadvantaged individuals will be treated as exercised, except for any ownership interests which are held by investment companies licensed under the Small Business Investment Act of 1958.

(f) *Dividends and distributions.* One or more disadvantaged individuals must be entitled to receive:

(1) At least 51 percent of the annual distribution of dividends paid on the stock of a corporate applicant concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation.

(g) *Ownership of another Participant.* The individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 20 percent equity ownership interest in any other single Participant.

(h) *Ownership restrictions for non-disadvantaged individuals and concerns.* (1) A non-disadvantaged individual (in the aggregate with all immediate family members) or a non-Participant concern that is a general partner or stockholder with at least a 10 percent ownership interest in one Participant may not own more than a 10 percent interest in another Participant that is in the developmental stage or more than a 20 percent interest in another Participant in the transitional stage of the program. This restriction does not apply to financial institutions licensed or chartered by Federal, state or local government, including investment companies which are licensed under the Small Business Investment Act of 1958.

(2) A non-Participant concern in the same or similar line of business may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in a transitional stage of the program, except that a former Participant or a principal of a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant, in the same or similar line of business.

(i) *Change of ownership.* A Participant may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change and SBA approves the transaction in writing prior to the change. The decision to approve or deny a Participant's request for a change in ownership or business structure will be made and communicated to the firm by the AA/8(a)BD. The decision of the AA/8(a)BD is the final decision of the Agency. The AA/8(a)BD will issue a decision within 60 days from receipt of a request containing all necessary documentation, or as soon thereafter as possible. If 60 days lapse without a decision from SBA, the Participant cannot presume that it can complete the change without written approval from SBA. A decision to deny a request for change of ownership or business structure may be grounds for program termination where the change is made nevertheless.

(1) Any Participant that was awarded one or more 8(a) contracts may substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver under § 124.515, as long as it receives SBA's approval prior to the change.

(2) Where the previous owner held less than a 10 percent interest in the concern, or the transfer results from the death or incapacity due to a serious, long-term illness or injury of a disadvantaged principal, prior approval is not required, but the concern must notify SBA within 60 days.

(3) Continued participation of the Participant with new ownership and the award of any new 8(a) contracts requires SBA's determination that all eligibility requirements are met by the concern and the new owners.

(4) Where a Participant requests a change of ownership or business structure, and proceeds with the change prior to receiving SBA approval (or where a change of ownership results from the death or incapacity of a disadvantaged individual for which a request prior to the change in ownership could not occur), SBA will suspend the Participant from program benefits pending resolution of the request. If the change is approved, the length of the suspension will be restored to the Participant's program term in the case of death or incapacity, or if the firm requested prior approval and waited 60 days for SBA approval.

(5) A change in ownership does not provide the new owner(s) with a new 8(a) BD program term. For example, if a concern has been in the 8(a) BD program for five years when a change in ownership occurs, the new owner will have four years remaining until program graduation.

(j) *Public offering.* A Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership. Such request will cause SBA to examine the concern's continued need for access to the business

development resources of the 8(a) BD program.

(k) *Community property laws given effect.* In determining ownership interests when an owner resides in any of the community property states or territories of the United States (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), SBA considers applicable state community property laws. If only one spouse claims disadvantaged status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. A transfer or relinquishment of interest by the non-disadvantaged spouse may be necessary in some cases to establish eligibility.

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

Control is not the same as ownership, although both may reside in the same person. SBA regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or Participant's management and daily business operations must be conducted by one or more disadvantaged individuals, except for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, or Community Development Corporations (CDCs). (*See* §§ 124.109, 124.110, and 124.111, respectively, for the requirements for concerns owned by Indian tribes or ANCs, for concerns owned by Native Hawaiian Organizations, and for CDC-owned concerns.) Disadvantaged individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A disadvantaged individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-disadvantaged individual having an equity interest in the applicant or Participant firm, the non-disadvantaged individual may be found to control the firm.

(a)(1) An applicant or Participant must be managed on a full-time basis by one or more disadvantaged individuals who possess requisite management capabilities.

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant.

(3) One or more disadvantaged individuals who manage the applicant or Participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the 8(a) firm, and not to firms in which the disadvantaged individual has an ownership interest.

(4) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan.

(5) Except as provided in paragraph (d)(1) of this section, a disadvantaged owner's unexercised right to cause a change in the control or management of the applicant concern does not in itself constitute disadvantaged control and management, regardless of how quickly or easily the right could be exercised.

(b) In the case of a partnership, one or more disadvantaged individuals must serve as general partners, with control over all partnership decisions. A partnership in which no disadvantaged individual is a general partner will be ineligible for participation.

(c) In the case of a limited liability company, one or more disadvantaged individuals must serve as management members, with control over all decisions of the limited liability company.

(d) One or more disadvantaged individuals must control the Board of Directors of a corporate applicant or Participant.

(1) SBA will deem disadvantaged individuals to control the Board of Directors where:

(i) A single disadvantaged individual owns 100% of all voting stock of an applicant or Participant concern;

(ii) A single disadvantaged individual owns at least 51% of all voting stock of an applicant or Participant concern, the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where super majority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by state law, the disadvantaged individual must own at least the percent of the voting stock needed to overcome any such super majority voting requirements; or

(iii) More than one disadvantaged shareholder seeks to qualify the concern (i.e., no one individual owns 51%), each such individual is on the Board of Directors, together they own at least 51% of all voting stock of the concern, no super majority voting requirements exist, and the disadvantaged shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has super majority voting requirements, the disadvantaged shareholders must own at least that percentage of voting stock needed to overcome any such super majority ownership requirements.

(2) Where an applicant or Participant does not meet the requirements set forth in paragraph (d)(1) of this section, the disadvantaged individual(s) upon whom eligibility is based must control the Board of Directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted—worth more than one vote—in order for the concern to be eligible for 8(a) participation). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-disadvantaged Directors to control the Board of Directors, directly or indirectly;

(ii) Any Executive Committee of Directors must be controlled by disadvantaged directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(3) An applicant must inform SBA of any super majority voting requirements provided for in its articles of incorporation, its by-laws, by state law, or otherwise. Similarly, after being admitted to the program, a Participant must inform SBA of changes regarding super majority voting requirements.

(4) Non-voting, advisory, or honorary Directors may be appointed without affecting disadvantaged individuals' control of the Board of Directors.

(5) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability

members, officers, and/or directors of the applicant or Participant. However, no such non-disadvantaged individual or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or Participant;

(2) Be a former employer or a principal of a former employer of any disadvantaged owner of the applicant or Participant, unless it is determined by the AA/8(a)BD that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or Participant and such relationship is in the best interests of the 8(a) BD firm; or

(3) Receive compensation from the applicant or Participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually CEO or President). The highest ranking officer may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the applicant or Participant. In the case of a Participant, the Participant must also obtain the prior written consent of the AA/8(a)BD or designee before changing the compensation paid to the highest ranking officer to be below that paid to a non-disadvantaged individual.

(f) Non-disadvantaged individuals who transfer majority stock ownership or control of the firm to an immediate family member within two years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm.

(g) Non-disadvantaged individuals or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) In circumstances where an applicant or Participant seeks to establish disadvantaged control of the Board of Directors through paragraph (d)(2) of this section, non-disadvantaged individuals control the Board of Directors of the applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-disadvantaged individuals effectively to prevent a quorum or block actions proposed by the disadvantaged individuals.

(2) A non-disadvantaged individual or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or Participant which directly or indirectly allows the non-disadvantaged individual significantly to influence business decisions of the Participant.

(3) A non-disadvantaged individual or entity controls the applicant or Participant or an individual disadvantaged owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-disadvantaged individual or entity the power to control a firm.

(4) Business relationships exist with non-disadvantaged individuals or entities which cause such dependence that the applicant or Participant cannot exercise independent business judgment without great economic risk.

§ 124.107 What is potential for success?

The applicant concern must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. To do so, it must be in business in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted pursuant to paragraph (b) of this section.

(a) Income tax returns for each of the two previous tax years must show operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification.

(b)(1) SBA may waive the two years in business requirement if each of the following five conditions are met:

(i) The individual or individuals upon whom eligibility is based have substantial business management experience;

(ii) The applicant has demonstrated technical experience to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD program;

(iii) The applicant has adequate capital to sustain its operations and carry out its business plan as a Participant;

(iv) The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category; and

(v) The applicant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts as a Participant.

(2) The concern seeking a waiver under paragraph (b) must provide information on governmental and nongovernmental contracts in progress and completed (including letters of reference) in order to establish successful contract performance, and must demonstrate how it otherwise meets the five conditions for waiver. SBA considers an applicant's performance on both government and private sector contracts in determining whether the firm has an overall successful performance record. If, however, the applicant has performed only government contracts or only private sector contracts, SBA will review its performance on those contracts alone to determine whether the applicant possesses a record of successful performance.

(c) In assessing potential for success, SBA considers the concern's access to credit and capital, including, but not limited to, access to long-term financing, access to working capital financing, equipment trade credit, access to raw materials and supplier trade credit, and bonding capability.

(d) In assessing potential for success, SBA will also consider the technical and managerial experience of the applicant concern's managers, the operating history of the concern, the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) BD certification, and its financial capacity. The applicant concern as a whole must demonstrate both technical knowledge in its primary industry category and management experience sufficient to run its day-to-day operations.

(e) The Participant or individuals employed by the Participant must hold all requisite licenses if the concern is engaged in an industry requiring professional licensing (e.g., public accountancy, law, professional engineering).

(f) An applicant will not be denied admission into the 8(a) BD program due solely to a determination that potential 8(a) contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Participants providing the same or similar items or services.

§ 124.108 What other eligibility requirements apply for individuals or businesses?

(a) *Good character.* The applicant or Participant and all its principals must have good character.

(1) If, during the processing of an application, adverse information is obtained from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, no further action will be taken on the application until SBA's Inspector General has collected relevant information and has advised the AA/8(a)BD of his or her findings. The AA/8(a)BD will consider those findings when evaluating the application.

(2) Violations of any of SBA's regulations may result in denial of participation in the 8(a) BD program. The AA/8(a)BD will consider the nature and severity of the violation in making an eligibility determination.

(3) Debarred or suspended concerns or concerns owned by debarred or suspended persons are ineligible for admission to the 8(a) BD program.

(4) An applicant is ineligible for admission to the 8(a) BD program if the applicant concern or a proprietor, partner, limited liability member, director, officer, or holder of at least 10 percent of its stock, or another person (including key employees) with significant authority over the concern:

(i) Lacks business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement; or

(ii) Is currently incarcerated, or on parole or probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity.

(5) If, during the processing of an application, SBA determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. If, after admission to the program, SBA discovers that false information has been knowingly submitted by a firm, SBA will initiate termination proceedings and suspend the firm under §§ 124.304 and 124.305. Whenever SBA determines that the applicant submitted false information, the matter will be referred to SBA's Office of Inspector General for review.

(b) *One-time eligibility.* Once a concern or disadvantaged individual upon whom eligibility was based has participated in the 8(a) BD program, neither the concern nor that individual will be eligible again.

(1) An individual who claims disadvantage and completes the appropriate SBA forms to qualify an applicant has participated in the 8(a) BD program if SBA approves the application.

(2) Use of eligibility will take effect on the date of the concern's approval for admission into the program.

(3) An individual who uses his or her one-time eligibility to qualify a concern for the 8(a) BD program will be considered a non-disadvantaged individual for ownership or control purposes of another applicant or Participant. The criteria restricting participation by non-disadvantaged individuals will apply to such an individual. *See* §§ 124.105 and 124.106.

(4) When at least 50% of the assets of a concern are the same as those of a former Participant, the concern will not be eligible for entry into the program.

(5) Participants which change their form of business organization and transfer their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization provided the previous business is dissolved and all other eligibility criteria are met. In such a case, the new organization may complete the remaining program term of the previous organization. A request for a change in business form will be treated as a change of ownership under § 124.105(i).

(c) *Wholesalers.* An applicant concern seeking admission to the 8(a) BD program as a wholesaler need not demonstrate that it is capable of meeting the requirements of the nonmanufacturer rule for its primary industry classification.

(d) *Brokers.* Brokers are ineligible to participate in the 8(a) BD program. A broker is a concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.

(e) *Federal financial obligations.* Neither a firm nor any of its principals that fails to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing, is eligible for admission to or participation in the 8(a) BD program.

§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?

(a) *Special rules for ANCs.* Small business concerns owned and controlled by ANCs are eligible for participation in the 8(a) program and must meet the eligibility criteria set forth in § 124.112 to the extent the criteria are not inconsistent with this section. ANC-owned concerns are subject to the same conditions that apply to tribally-owned concerns, as described in paragraphs (b) and (c) of this section, except that the following provisions and exceptions apply only to ANC-owned concerns:

(1) Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1), which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).

(2) An ANC that meets the requirements set forth in paragraph (a)(1) of this section is deemed economically disadvantaged under 43 U.S.C. 1626(e), and need not establish economic disadvantage as required by paragraph (b)(2) of this section.

(3) Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by an ANC must be for profit to be eligible for the 8(a) program. The concern will be deemed owned and controlled by the ANC where both the majority of stock or other ownership interest and total voting power are held by the ANC and holders of its settlement common stock.

(4) The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. Therefore, an individual responsible for control and management of an ANC-owned applicant or Participant need not establish personal social and economic disadvantage.

(5) Paragraphs (b)(3)(i), (ii) and (iv) of this section are not applicable to an ANC, provided its status as an ANC is clearly shown in its articles of incorporation.

(6) Paragraph (c)(1) of this section is not applicable to an ANC-owned concern to the extent it requires an express waiver of sovereign immunity or a "sue and be sued" clause.

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) BD program, an Indian tribe must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Thereafter, it need not reestablish such status in order to have other businesses

that it owns certified for 8(a) BD program participation, unless specifically required to do so by the AA/8(a)BD or designee. Each tribally-owned concern seeking to be certified for 8(a) BD participation must comply with the provisions of paragraph (c) of this section.

(1) *Social disadvantage.* An Indian tribe as defined in § 124.3 is considered to be socially disadvantaged.

(2) *Economic disadvantage.* In order to be eligible to participate in the 8(a) BD program, the Indian tribe must demonstrate to SBA that the tribe itself is economically disadvantaged. This must involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

(i) The number of tribal members.

(ii) The present tribal unemployment rate.

(iii) The per capita income of tribal members, excluding judgment awards.

(iv) The percentage of the local Indian population below the poverty level.

(v) The tribe's access to capital.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement must list all assets including those which are encumbered or held in trust, but the status of those encumbered or in trust must be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each. The list must also specify the members of the tribe who manage or control such enterprises by serving as officers or directors.

(3) *Forms and documents required to be submitted.* Except as otherwise provided in this section, the Indian tribe generally must submit the forms and documents required of 8(a) BD applicants as well as the following material:

(i) A copy of all governing documents such as the tribe's constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (b)(2) of this section.

(c) *Business eligibility.* In order to be eligible to participate in the 8(a) BD program, a concern which is owned by an eligible Indian tribe (or wholly owned business entities of such tribe) must meet the conditions set forth in paragraphs (c)(1) through (c)(7) of this section.

(1) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. The concern's articles of incorporation, partnership agreement or limited liability company articles of organization must contain express sovereign immunity waiver language, or a "sue and be sued" clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) *Size.* (i) A tribally-owned applicant concern must qualify as a small business concern as defined for purposes of Federal Government procurement in part 121 of this title. The particular size standard to be applied is based on the primary industry classification of the applicant concern.

(ii) A tribally-owned Participant must certify to SBA that it is a small business pursuant to the provisions of part 121 of this title for the purpose of performing each individual contract which it is awarded.

(iii) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe) for either 8(a) BD program entry or contract award, the firm's size shall be determined independently without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(3) *Ownership.* (i) For corporate entities, a tribe must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a tribe must own at least a 51 percent interest.

(ii) A tribe cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A tribe may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the tribe operates in the 8(a) BD program as its primary SIC code.

(iii) The restrictions of § 124.105(h) do not apply to tribes; they do, however, apply to non disadvantaged individuals or other business concerns that are partial owners of a tribally-owned concern.

(4) *Control and management.* (i) The management and daily business operations of a tribally-owned concern must be controlled by the tribe, through one or more disadvantaged individual members who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

(A) Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or

(B) Management may be provided by non-tribal members if SBA determines that such management is required to assist the concern's development, that the tribe will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how disadvantaged tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concerns in the future.

(ii) Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.

(5) *Individual eligibility limitation.* SBA does not deem an individual involved in the management or daily business operations of a tribally-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(6) *Potential for success.* (i) A tribally-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for

each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (c)(6)(ii) of this section.

(ii) In determining whether a tribally-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(A) The technical and managerial experience and competency of the individual(s) who will manage and control the daily operation of the concern;

(B) The financial capacity of the concern; and

(C) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(7) *Other eligibility criteria.* (i) As with other 8(a) applicants, a tribally-owned applicant concern shall not be denied admission into the 8(a) program due solely to a determination that specific contract opportunities are unavailable to assist the development of the concern unless:

(A) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(B) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

(ii) Except for the tribe itself, the concern's officers, directors, and all shareholders owning an interest of 20% or more must demonstrate good character. *See* § 124.108(a).

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

(a) Concerns owned by economically disadvantaged Native Hawaiian Organizations, as defined in § 124.3, are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.101 through 124.108 and § 124.112 to the extent that they are not inconsistent with this section.

(b) A concern owned by a Native Hawaiian Organization must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. SBA will determine the concern's size independently, without regard to its affiliation with the Native Hawaiian Organization or any other business enterprise owned by the Native Hawaiian Organization, unless the Administrator determines that one or more such concerns owned by the Native Hawaiian Organization have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(c) A Native Hawaiian Organization cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A Native Hawaiian Organization may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the Native Hawaiian Organization operates in the 8(a) BD program as its primary SIC code.

(d) SBA does not deem an individual involved in the management or daily business operations of a Participant owned by a Native Hawaiian Organization to have used his or her individual eligibility within the meaning of § 124.108(b).

(e)(1) An applicant concern owned by a Native Hawaiian Organization must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a concern owned by a Native Hawaiian Organization has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competence of the individual(s) who will manage and control the daily operation of the concern.

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

(a) Concerns owned at least 51 percent by CDCs (or a wholly owned business entity of a CDC) are eligible for participation in the 8(a) BD program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. These concerns must meet all eligibility criteria set forth in § 124.101 through § 124.108 and § 124.112 to the extent that they are not inconsistent with this section.

(b) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) is considered to be controlled by such CDC and eligible for participation in the 8(a) BD program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial experience of an extent and complexity needed to run the concern.

(c) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. SBA will determine the concern's size independently, without regard to its affiliation with the CDC or any other business enterprise owned by the CDC, unless the Administrator determines that one or more such concerns owned by the CDC have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(d) A CDC cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant. A CDC may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same SIC code that a current Participant owned by the CDC operates in the 8(a) BD program as its primary SIC code.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(b).

(f)(1) A CDC-owned applicant concern must be in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification, or demonstrate potential for success as set forth in paragraph (e)(2) of this section.

(2) In determining whether a CDC-owned concern has the potential for success, SBA will look at a number of factors including, but not limited to:

(i) The technical and managerial experience and competence of the individual(s) who will manage and control the daily operation of the concern;

(ii) The financial capacity of the concern; and

(iii) The concern's record of performance on any previous Federal or private sector contracts in the primary industry in which the concern is seeking 8(a) certification.

(g) A CDC-owned applicant and all of its principals must have good character as set forth in § 124.108(a).

§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

(a) *Standards.* In order for a concern (except those owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs) to remain eligible for 8(a) BD program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.108. For concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs to remain eligible, they must meet the criteria set forth in this § 124.112 to the extent that they are not inconsistent with § 124.109, § 124.110 and § 124.111, respectively. The concern must inform SBA in writing of any changes in circumstances which would adversely affect its program eligibility, especially economic disadvantage and ownership and control. Any concern that fails to meet the eligibility requirements after being admitted to the program will be subject to termination or early graduation under §§ 124.302 through 124.304, as appropriate.

(b) *Submissions supporting continued eligibility.* As part of an annual review, each Participant must annually submit to the servicing district office the following:

(1) A certification that it meets the 8(a) BD program eligibility requirements as set forth in § 124.101 through § 124.108 and paragraph (a) of this section;

(2) A certification that there have been no changed circumstances which could adversely affect the Participant's program eligibility. If the Participant is unable to provide such certification, the Participant must inform SBA of any changes and provide relevant supporting documentation.

(3) Personal financial information for each disadvantaged owner;

(4) A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member, or to a trust any beneficiary of which is an immediate family member, within two years of the date of the annual review. The record must provide the name of the recipient(s) and family relationship, and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual.

(5) A record of all payments, compensation, and distributions (including loans, advances, salaries and dividends) made by the Participant to each of its owners, officers or directors, or to any person or entity affiliated with such individuals;

(6) If it is an approved protege, a narrative report detailing the contacts it has had with its mentor and benefits it has received from the mentor/protege relationship. See § 124.520(b)(4) for additional annual requirements;

(7) IRS Form 4506, Request for Copy or Transcript of Tax Form; and

(8) Such other information as SBA may deem necessary. For other required annual submissions, *see* §§ 124.601 through 124.603.

(c) *Eligibility reviews.* (1) Upon receipt of specific and credible information alleging that a Participant no longer meets the eligibility requirements for continued program eligibility, SBA will review the concern's eligibility for continued participation in the program.

(2) Sufficient reasons for SBA to conclude that a socially disadvantaged individual is no longer economically disadvantaged include, but are not limited to, excessive withdrawals of funds or other assets withdrawn from the concern by its owners, or substantial personal assets, income or net worth of any disadvantaged owner. SBA may also consider access by the Participant firm to a significant new source of capital or loans since the financial condition of the Participant is considered in evaluating the disadvantaged individual's economic status.

(d) *Excessive withdrawals.* (1) The term withdrawal includes, but is not limited to, the following: officer's salary; cash dividends; distributions in excess of amounts needed to pay S Corporation taxes; cash and property withdrawals; bonuses; loans; advances; payments to immediate family members; investments on behalf of an owner, officer, or key employee; acquisition of a business not merged with the 8(a) Participant; charitable contributions; and speculative ventures.

(2) If SBA determines that excessive funds or other assets have been withdrawn from the Participant, SBA may:

(i) Initiate termination proceedings under §§ 124.303 and 124.304 where the withdrawals detrimentally affect the achievement of the Participant's targets, objectives and goals set forth in its business plan, or its overall business development;

(ii) Initiate early graduation proceedings under §§ 124.302 and 124.303 where the withdrawals do not adversely affect the Participant's business development; or

(iii) Require an appropriate reinvestment of funds or other assets, as well as any other actions SBA deems necessary to counteract the detrimental effects of the withdrawals, as a condition of the Participant maintaining program eligibility.

(3) Withdrawals are excessive if during any fiscal year of the Participant they exceed (i) $150,000 for firms with sales up to $1,000,000; (ii) $200,000 for firms with sales between $1,000,000 and $2,000,000; and (iii) $300,000 for firms with sales over $2,000,000.

(4) The fact that a concern's net worth has increased despite withdrawals that are deemed excessive will not preclude SBA from determining that such withdrawals were detrimental to the attainment of the concern's business objectives or to its overall business development.

Applying to the 8(a) BD Program

§ 124.201 May any business submit an application?

Any concern or any individual on behalf of a business has the right to apply for 8(a) BD program participation whether or not there is an appearance of eligibility.

§ 124.202 Where must an application be filed?

An application for 8(a) BD program admission must be filed in the SBA Division of Program Certification and Eligibility (DPCE) field office serving the territory in which the principal place of business is located. The SBA district office will provide an applicant concern with information regarding the 8(a) BD program and with all required application forms.

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, and personal history statements. An applicant must also submit IRS Form 4506, Request for Copy

or Transcript of Tax Form, to SBA. The application package may be in the form of an electronic application.

§ 124.204 How does SBA process applications for 8(a) BD program admission?

(a) The AA/8(a)BD is authorized to approve or decline applications for admission to the 8(a) BD program. The appropriate DPCE field office will receive, review and evaluate all 8(a) BD applications except those from ANC-owned applicants. SBA's Anchorage District Office will receive all applications from ANC-owned applicants and review them for completeness before sending them to the AA/8(a)BD for further processing. The appropriate field office will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the DPCE field office. Incomplete application packages will not be processed.

(b) SBA, in its sole discretion, may request clarification of information contained in the application at any time in the application process. SBA will take into account any clarifications made by an applicant in response to a request for such by SBA.

(c) An applicant concern's eligibility will be based on circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section or as provided in paragraph (d) of this section.

(d) Changed circumstances for an applicant concern occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for decline. The applicant must inform SBA of any changed circumstances that could adversely affect its eligibility for the program (particularly economic disadvantage and ownership and control) during its application review. Failure to inform SBA of any such changed circumstances constitutes good cause for which SBA may terminate the Participant if non-compliance is discovered after admittance.

(e) The decision of the AA/8(a)BD to approve or deny an application will be in writing. A decision to deny admission will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(f) If the AA/8(a)BD approves the application, the date of the approval letter is the date of program certification for purposes of determining the concern's program term.

§ 124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

(a) An applicant may request the AA/8(a)BD to reconsider his or her initial decline decision by filing a request for reconsideration with the SBA field office that originally processed its application. Filing means submission by personal delivery, first-class mail, express mail, fascimile transmission followed by first-class mail, or commercial delivery service. The applicant must submit its request for reconsideration within 45 days of receiving notice that its application was declined. The applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(b) The AA/8(a)BD will issue a written decision within 45 days of the regional DPCE's receipt of the applicant's request. The AA/8(a)BD may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/8(a)BD will explain why the applicant is not eligible for admission to the 8(a) BD program and give specific reasons for the decline.

(c) If the AA/8(a)BD declines the application solely on issues not raised in the initial decline, the applicant can ask for reconsideration as if it were an initial decline.

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

(a) An applicant may appeal a denial of program admission to SBA's Office of Hearings and Appeals (OHA), if it is based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial decision that is based at least in part on the failure to meet any other eligibility criterion is not appealable and is the final decision of SBA.

(b) The applicant may appeal an initial decision of the AA/8(a)BD without requesting reconsideration, or may appeal the decision of the AA/8(a)BD on reconsideration.

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in § 134.204) of the Agency decision.

(d) If an appeal is filed with OHA, the written decision of the Administrative Law Judge is the final Agency decision. If an appealable decision is not appealed, the decision of the AA/8(a)BD is the final Agency decision.

§ 124.207 Can an applicant reapply for admission to the 8(a) BD program?

A concern which has been declined for 8(a) BD program admission may submit a new application for admission to the program 12 months after the date of the final Agency decision to decline.

Exiting the 8(a) BD Program

§ 124.301 What are the ways a business may leave the 8(a) BD program?

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Graduation upon the expiration of the program term established pursuant to § 124.2;

(b) Voluntary early graduation;

(c) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or

(d) Termination pursuant to the provisions of §§ 124.303 and 124.304.

§ 124.302 What is early graduation?

(a) *General.* SBA may graduate a firm from the 8(a) BD program prior to the expiration of its Program Term where SBA determines that:

(1) The concern has successfully completed the 8(a) BD program by substantially achieving the targets, objectives, and goals set forth in its business plan prior to the expiration of its program term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

(2) One or more of the disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged.

(b) *Criteria for determining whether a Participant has met its goals and objectives.* In determining whether a Participant has substantially achieved the targets, objectives and goals of its business plan and in assessing the overall competitive strength and viability of a Participant, SBA considers the totality of circumstances, including the following factors:

(1) Degree of sustained profitability;

(2) Sales trends, including improved ratio of non-8(a) sales to 8(a) sales since program entry;

(3) Business net worth, financial ratios, working capital, capitalization, and access to credit and capital;

(4) Current ability to obtain bonding;

(5) A comparison of the Participant's business and financial profiles with profiles of non-8(a) BD businesses having the same primary four-digit SIC code as the Participant;

(6) Strength of management experience, capability, and expertise; and

(7) Ability to operate successfully without 8(a) contracts.

(c) *Excessive withdrawals.* SBA may graduate a Participant prior to the expiration of its program term where excessive funds or other assets have been withdrawn from the Participant (see § 124.112(d)(3)), causing SBA to determine that the Participant has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program.

§ 124.303 What is termination?

(a) SBA may terminate the participation of a concern in the 8(a) BD program prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the concern's 8(a) BD application, regardless of whether correct information would have caused the concern to be denied admission to the program, and regardless of whether correct information was given to SBA in accompanying documents or by other means.

(2) Failure by the concern to maintain its eligibility for program participation.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.

(4) Failure by the concern to obtain prior written approval from SBA for any changes in ownership or business structure, management or control pursuant to §§ 124.105 and 124.106.

(5) Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the Participant business concern.

(6) Failure by the concern or one or more of the concern's principals to maintain good character.

(7) A pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(8) Cessation of business operations by the concern.

(9) Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.

(10) A pattern of inadequate performance by the concern of awarded section 8(a) contracts.

(11) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(12) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(13) Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern (*see* § 124.112(d).

(14) Unauthorized use of SBA direct or guaranteed loan proceeds or violation of an SBA loan agreement.

(15) Submission by or on behalf of a Participant of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.507 or failure to report changes that adversely affect the program eligibility of an applicant or program participant under § 124.204 and § 124.112, where responsible officials of the 8(a) BD Participant knew or should have known the submission to be false.

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to part 145 of this title or FAR subpart 9.4 (48 CFR part 9, subpart 9.4).

(17) Conduct by the concern, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.

(18) Willful failure by the Participant business concern to comply with applicable labor standards and obligations.

(19) Material breach of any terms and conditions of the 8(a) BD Program Participation Agreement.

(20) Willful violation by a concern, or any of its principals, of any SBA regulation pertaining to material issues.

(b) The examples of good cause listed in paragraph (a) of this section are intended to be illustrative only. Other grounds for terminating a Participant from the 8(a) BD program for cause may exist and may be used by SBA.

§ 124.304 What are the procedures for early graduation and termination?

(a) *General.* The same procedures apply to both early graduation and termination of Participants from the 8(a) BD program.

(b) *Letter of Intent to Terminate or Graduate Early.* When SBA believes that a Participant should be terminated or graduated prior to the expiration of its program term, SBA will notify the concern in writing. The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date of service (as defined in § 134.204 of this title) of the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation. Service is defined in § 134.204.

(c) *Recommendation and decision.* Following the 30-day response period, the Assistant Administrator for DPCE (AA/DPCE) or designee will consider the proposed early graduation or termination and any information submitted in response by the concern. Upon determining that early graduation or termination is not warranted, the AA/DPCE or designee will notify the Participant in writing. If early graduation or termination appears warranted, the AA/DPCE will make such a recommendation to the AA/8(a)BD, who will then make a decision whether to early graduate or terminate the concern. SBA will act in a timely manner in processing early graduation and termination actions.

(d) *Notice requirements.* Upon deciding that early graduation or termination is warranted, the AA/8(a)BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of part 134 of this title.

(e) *Appeal to OHA.* Procedures governing appeals of early graduation or termination to SBA's OHA are set forth in part 134. If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days of the date of service (as defined in § 134.204), the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

(f) *Effect of early graduation or termination.* After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) At any time after SBA issues a Letter of Intent to Terminate pursuant to § 124.304, the AA/8(a)BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that concern until the issue of the concern's termination from the program is finally decided. The AA/8(a)BD may suspend a Participant when he or she determines that suspension is needed to protect the interests of the Federal Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Federal Government. SBA will suspend a Participant where SBA determines that the Participant submitted false information in its 8(a) BD application.

(b) SBA will issue a Notice of Suspension to the Participant's last known address by certified mail, return receipt requested. Suspension is effective as of the date of the issuance of the Notice. The Notice will provide the following information:

(1) The basis for the suspension;

(2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;

(3) A statement that awards of competitive and non-competitive 8(a) contracts, including those which have been "self-marketed" by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;

(5) A statement that the suspension is effective nationally throughout SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of discretion.

(7) A statement that the firm's participation in the program is suspended effective on the date the Notice is served, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days of the date of service (as defined in § 134.204) of a Notice of Suspension pursuant to paragraph (b) of this section. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one, but authority to grant a hearing is within the discretion of the Administrative Law Judge in OHA. A suspension remains in effect pending the result of its appeal.

(d) SBA has the burden of showing that adequate evidence exists that protection of the Federal Government's interest requires suspension before OHA or the AA/8(a)BD makes a final determination regarding the termination action.

(1) The term "adequate evidence" means information contained in the record before the AA/8(a)BD at the time of his or her suspension decision that is sufficient to support the reasonable belief that the Government's interests need to be protected.

(2) SBA need not demonstrate that an act or omission actually occurred in order for OHA to uphold a suspension. SBA's burden in a suspension proceeding is limited to demonstrating that it had a reasonable belief that a particular act or omission occurred, and that that act or omission requires suspension to protect the interests of the Government.

(3) Unless the Administrative Law Judge consolidates the suspension and termination proceedings, OHA's review is limited to determining whether the Government's interests need to be protected, and will not consider the merits of the termination action.

(e) If there is a timely appeal, the decision of the Administrative Law Judge is the final SBA decision. If there is not a timely appeal, the decision of the AA/8(a)BD is the final Agency decision.

(f) Upon the request of SBA, OHA may consolidate suspension and termination proceedings when the issues presented are identical.

(g) Any program suspension which occurs under this section is effective until such time as SBA lifts the suspension or the Participant's participation in the program is fully terminated. If the concern is ultimately not terminated from the 8(a) BD program, the suspension will be lifted and the length of the suspension will be added to the concern's program term.

(h) SBA may suspend a Participant from program benefits where a change of ownership or business structure has been requested if ownership or control of the participant changed prior to SBA's approval pending resolution of the request to change its ownership or control. If the change of ownership is approved, the length of the suspension will be added to the firm's program term where the change in ownership results from the death or incapacity of a disadvantaged individual or where the firm requested prior approval and waited 60 days for SBA approval before making the change. The suspension will be commenced by the issuance of a notice similar to that required for termination-related suspensions under paragraph (b) of this section, except that a change of ownership suspension is not appealable.

(i) SBA does not recognize the concept of de facto suspension. Adding time to the end of a Participant's program term equal to the length of a suspension will occur only where a concern's program participation has been formally suspended in accordance with the procedures set forth in this section.

(j) A suspension from 8(a) BD participation under this section has no effect on a concern's eligibility for non-8(a) Federal Government contracts. However, a debarment or suspension under the Federal Acquisition Regulation (48 CFR, chapter 1) will disqualify a concern from receiving all Federal Government contracts, including 8(a) contracts.

Business Development

§ 124.401 Which SBA field office services a Participant?

The SBA district office which serves the geographical territory where a Participant's principal place of business is located normally will service the concern during its participation in the 8(a) BD program.

§ 124.402 How does a Participant develop a business plan?

(a) *General.* In order to assist the SBA servicing office in determining the business development needs of its portfolio Participants, each Participant must develop a comprehensive business plan setting forth its business targets, objectives, and goals.

(b) *Submission of initial business plan.* Each Participant must submit a business plan to its SBA servicing office as soon as possible after program admission. The Participant will not be eligible for 8(a) BD program benefits, including 8(a) contracts, until SBA approves its business plan.

(c) *Contents of business plan.* The business plan must contain at least the following:

(1) A detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future

plans to enter into one or more new markets;

(2) The applicant's designation of its primary industry classification, as defined in § 124.3;

(3) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the 8(a) BD program;

(4) An analysis of the concern's strengths and weaknesses, with particular attention on ways to correct any financial, managerial, technical, or work force conditions which could impede the concern from receiving and performing non-8(a) contracts;

(5) Specific targets, objectives, and goals for the business development of the concern during the next two years;

(6) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and

(7) Such other information as SBA may require.

§ 124.403 How is a business plan updated and modified?

(a) *Annual review.* Each Participant must annually review its business plan with its assigned Business Opportunity Specialist (BOS), and modify the plan as appropriate. The Participant must submit a modified plan and updated information to its BOS within thirty (30) days after the close of each program year. It also must submit a capability statement describing its current contract performance capabilities as part of its updated business plan.

(b) *Contract forecast.* As part of the annual review of its business plan, each Participant must annually forecast in writing its needs for contract awards for the next program year. The forecast must include:

(1) The aggregate dollar value of 8(a) contracts to be sought, broken down by sole source and competitive opportunities where possible;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities to be sought, identified by product or service; and

(4) Such other information as SBA may request to aid in providing effective business development assistance to the Participant.

(c) *Transition management strategy.* Beginning in the first year of the transitional stage of program participation, each Participant must annually submit a transition management strategy to be incorporated into its business plan. The transition management strategy must describe:

(1) How the Participant intends to meet the applicable non-8(a) business activity target imposed by § 124.507 during the transitional stage of participation; and

(2) The specific steps the Participant intends to take to continue its business growth and promote profitable business operations after the expiration of its program term.

§ 124.404 What business development assistance is available to Participants during the two stages of participation in the 8(a) BD program?

(a) *General.* Participation in the 8(a) BD program is divided into two stages, a developmental stage and a transitional stage. The developmental stage will last four years, and the transitional stage will last five years, unless the concern has exited the program by one of the means set forth in § 124.301 prior to the expiration of its program term.

(b) *Developmental stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the developmental stage of program participation:

(1) Sole source and competitive 8(a) contract support;

(2) Financial assistance pursuant to § 120.375 of this title;

(3) The transfer of technology or surplus property owned by the United States pursuant to § 124.405; and

(4) Training to aid in developing business principles and strategies to enhance their ability to compete successfully for both 8(a) and non-8(a) contracts.

(c) *Transitional stage of program participation.* A Participant, if otherwise eligible, may receive the following assistance during the transitional stage of program participation:

(1) The same assistance as that provided to Participants in the developmental stage;

(2) Assistance from procuring agencies (in cooperation with SBA) in forming joint ventures, leader-follower arrangements, and teaming agreements between the concern and other Participants or other business concerns with respect to contracting opportunities outside the 8(a) BD program for research, development, or full scale engineering or production of major systems (these arrangements must comply with all relevant statutes and regulations, including applicable size standard requirements); and

(3) Training and technical assistance in transitional business planning.

§ 124.405 How does a Participant obtain Federal Government surplus property?

(a) *General.* (1) Pursuant to 15 U.S.C. 636(j)(13)(F), eligible Participants may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR Part 101–44 and this section will be used to transfer surplus property to eligible Participants.

(2) The property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has been determined to be "donable" as defined in 41 CFR 101–44.001–3.

(b) *Eligibility to receive Federal surplus property.* To be eligible to receive Federal surplus property, on the date of transfer a concern must:

(1) Be in the 8(a) BD program;

(2) Be in compliance with all program requirements, including any reporting requirements;

(3) Not be debarred, suspended, or declared ineligible under part 9, subpart 9.4 of the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations;

(4) Not be under a pending 8(a) BD program suspension, termination or early graduation proceeding; and

(5) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus property.* (1) Eligible Participants may acquire surplus Federal property from any SASP located in any state, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus property is to be and that this use is consistent with the objectives of the concern's 8(a) business plan;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government during its term of participation in the 8(a) program and for one year after it leaves the program;

(iv) That, at its own expense, it will return the property to a SASP or transfer it to another Participant if directed to do so by SBA because it has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give SBA access to inspect the property and all records pertaining to it.

(2) A firm receiving surplus property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(3) If the property is not placed in use for the purposes for which it was intended within one year of its receipt, SBA may direct the concern to deliver the property to another Participant or to the SASP from which it was acquired.

(4) Failure to comply with any of the commitments made under paragraph (c)(1) of this section constitutes a basis for termination from the 8(a) program.

(d) *Procedures for acquiring Federal Government surplus property.* (1) Participants may participate in the surplus property distribution program administered by the SASPs to the same extent, but with no special priority over, other authorized transferees. *See* 41 CFR subpart 101–44.2.

(2) Each Participant seeking to acquire Federal Government surplus property from a SASP must:

(i) Certify in writing to the SASP that it is eligible to receive the property pursuant to paragraph (b) of this section;

(ii) Make the written representations and agreement required by paragraph (c)(1) of this section; and

(iii) Identify to the SASP its servicing SBA field office.

(3) Upon receipt of the required certification, representations, agreement, and information set forth in paragraph (d)(2) of this section, the SASP must contact the appropriate SBA field office and obtain SBA's verification that the concern seeking to acquire the surplus property is eligible, and that the identified use of the property is consistent with the concern's business activities. SASPs may not release property to a Participant without this verification.

(4) The SASP and the Participant must agree on and record the fair market value of the surplus property at the time of the transfer to the Participant. The SASP must provide to SBA a written record, including the agreed upon fair market value, of each transaction to a Participant when any property has been transferred.

(e) *Costs.* Participants acquiring surplus property from a SASP must pay a service fee to the SASP which is equal to the SASP's direct costs of locating, inspecting, and transporting the surplus property. If a Participant elects to incur the responsibility and the expense for transporting the acquired property, the concern may do so and no transportation costs will be charged by the SASP. In addition, the SASP may charge a reasonable fee to cover its costs of administering the program. In no instance will any SASP charge a Participant more for any service than their established fees charged to other transferees.

(f) *Title.* The title to surplus property acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property.

(g) *Compliance.* (1) SBA will periodically review whether Participants that have received surplus property have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Participants must provide SBA with access to all relevant records upon request.

(3) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(4) SBA may take any action to correct any noncompliance involving the use of transferred property still in possession of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;

(ii) Requiring that the property be transferred to another Participant having a need and use for the property, returned to the SASP serving the area where the property is located for distribution to another eligible transferee or to another SASP, or transferred through GSA to another Federal agency;

(iii) Recovery of the fair rental value of the property from the date of its receipt by the Participant; and

(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

(5) Where SBA finds that a recipient has sold or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant is liable for the agreed upon fair market value of the property at the time of the transfer, or the sale price, whichever is greater. However, a Participant need not repay any amount where it can demonstrate to SBA's satisfaction that the property is no longer useful for the purpose for which it was transferred and receives SBA's prior written consent to transfer the property. For example, if a piece of equipment breaks down beyond repair, it may be disposed of without being subject to the repayment provision, so long as the concern receives SBA's prior consent.

(6) Any funds received by SBA in enforcement of this section will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

Contractual Assistance

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal agencies, including contracts to furnish equipment, supplies, services, leased real property, or materials to them or to perform construction work for them, and to contract the performance of these contracts to qualified Participants. Where practicable, simplified acquisition procedures should be used for 8(a) contracts at or below the simplified acquisition threshold. Where appropriate, SBA will delegate the contract execution function to procuring activities. In order to receive and retain a delegation of SBA's contract execution and review functions, a procuring activity must report all 8(a) contract awards, modifications, and options to SBA.

(b) 8(a) contracts may either be sole source awards or awards won through competition with other Participants.

(c) Admission into the 8(a) BD program does not guarantee that a Participant will receive 8(a) contracts.

(d) A requirement for possible award may be identified by SBA, a particular Participant or the procuring activity itself. SBA will submit the capability statements provided to SBA annually under § 124.403 to appropriate procuring activities for the purpose of matching requirements with Participants.

(e) Participants should market their capabilities to appropriate procuring activities to increase their prospects of receiving sole source 8(a) contracts.

(f) An 8(a) participant that identifies a requirement that appears suitable for award through the 8(a) BD program may request SBA to contact the procuring activity to request that the requirement be offered to the 8(a) BD program.

(g) A concern must be a current Participant in the 8(a) BD program at the time of award, except as provided in § 124.507(d).

(h) A Participant must certify that it is a small business under the size

standard corresponding to the SIC code assigned to each 8(a) contract. 8(a) BD program personnel will verify size prior to award of an 8(a) contract. If the Participant is not verified as small, it may request a formal size determination from the appropriate General Contracting Area Office under part 121 of this title.

(i) Any person or entity that misrepresents its status as a "small business concern owned and controlled by socially and economically disadvantaged individuals" in order to obtain any 8(a) contracting opportunity will be subject to possible criminal, civil and administrative penalties, including those imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d).

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

(a) A procuring activity contracting officer indicates his or her formal intent to award a procurement requirement as an 8(a) contract by submitting a written offering letter to SBA. The procuring activity may transmit the offering letter to SBA by electronic mail, if available, or by facsimile transmission, as well as by mail or commercial delivery service.

(b) Contracting officers must submit offering letters to the following locations:

(1) For competitive 8(a) requirements and those sole source requirements for which no specific Participant is nominated (i.e., open requirements) other than construction requirements, to the SBA district office serving the geographical area in which the procuring activity is located;

(2) For competitive and open construction requirements, to the SBA district office serving the geographical area in which the work is to be performed or, in the case of such contracts to be performed overseas, to the Office of 8(a) BD located in SBA Headquarters;

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.

(c) An offering letter must contain the following information:

(1) A description of the work to be performed;

(2) The estimated period of performance;

(3) The SIC code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The acquisition history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this requirement during the previous 24 months;

(11) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business set-aside, or as a small disadvantaged business set-aside if applicable, and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the procuring activity's clear intent to use any of these means of procurement;

(12) Identification of any specific Participant that the procuring activity contracting officer nominates for award of a sole source 8(a) contract, if appropriate, including a brief justification for the nomination, such as one of the following:

(i) The Participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) BD program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable;

(14) Identification of all Participants which have expressed an interest in being considered for the acquisition;

(15) Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) BD program;

(16) A request, if appropriate, that a requirement whose estimated contract value is under the applicable competitive threshold be awarded as an 8(a) competitive contract; and

(17) Any other information that the procuring activity deems relevant or which SBA requests.

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

(a) *Acceptance of the requirement.* Upon receipt of the procuring activity's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) BD program. SBA's decision whether to accept the requirement will be sent to the procuring activity in writing within 10 working days of receipt of the written offering letter if the contract is valued at more than the simplified acquisition threshold, and within two days of receipt of the offering letter if the contract is valued at or below the simplified acquisition threshold, unless SBA requests, and the procuring activity grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the 8(a) BD program and in support of a specific Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer on behalf of the 8(a) BD program.

(3) Where SBA has delegated its contract execution functions to a procuring activity, the procuring activity may assume that SBA accepts its offer for the 8(a) program if the procuring activity does not receive a reply to its offer within five days.

(4) In the case of procurement requirements valued at or below the Simplified Acquisition Procedures threshold:

(i) Where a procuring activity makes an offer to the 8(a) program on behalf of a specific Program Participant and does not receive a reply to its offer within two days, the procuring activity may assume the offer is accepted and proceed with award of an 8(a) contract;

(ii) Where SBA has delegated its 8(a) contract execution functions to an agency, SBA may authorize the procuring activity to award an 8(a) contract without requiring an offer and acceptance of the requirement for the 8(a) program. In such a case, the procuring activity must notify SBA of all 8(a) awards made under this authority.

(5) Where SBA does not respond to an offering letter within the normal 10-day time period, the procuring activity may seek SBA's acceptance through the AA/8(a)BD. The procuring activity may assume that SBA accepts its offer for the 8(a) program if it does not receive a reply from the AA/8(a)BD within 5 days of his or her receipt of the procuring activity request.

(b) *Verification of SIC code.* As part of the acceptance process, SBA will verify the appropriateness of the SIC code designation assigned to the requirement by the procuring activity contracting officer.

(1) SBA will accept the SIC code assigned to the requirement by the procuring activity contracting officer as

long as it is reasonable, even though other SIC codes may also be reasonable.

(2) If SBA and the procuring activity are unable to agree as to the proper SIC code designation for the requirement, SBA may either refuse to accept the requirement for the 8(a) BD program, appeal the contracting officer's determination to the head of the agency pursuant to § 124.505, or appeal the SIC code designation to OHA under part 134 of this title.

(c) *Sole source award where procuring activity nominates a specific Participant.* SBA will determine whether an appropriate match exists where the procuring activity identifies a particular Participant for a sole source award.

(1) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant recommended by the procuring activity, provided that:

(i) The procurement is consistent with the Participant's business plan;

(ii) The Participant complies with its applicable non-8(a) business activity target imposed by § 124.509(d);

(iii) The Participant is small for the size standard corresponding to the SIC code assigned to the requirement by the procuring activity contracting officer; and

(iv) The Participant has submitted required financial statements to SBA.

(2) If an appropriate match exists, SBA will advise the procuring activity whether SBA will participate in contract negotiations or whether SBA will authorize the procuring activity to negotiate directly with the identified Participant. Where SBA has delegated its contract execution functions to a procuring activity, SBA will also identify that delegation in its acceptance letter.

(3) If an appropriate match does not exist, SBA will notify the Participant and the procuring activity, and may then nominate an alternate Participant.

(d) *Open requirements.* When a procuring activity does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the procurement is a construction requirement, SBA will examine the portfolio of Participants that have a bona fide place of business within the geographical boundaries served by the SBA district office where the work is to be performed to select a qualified Participant. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, SBA may nominate a Participant with a bona fide place of business within the geographical boundaries served by another district office within the same state, or may nominate a Participant having a bona fide place of business out of state but within a reasonable proximity to the work site. SBA's decision will ensure that the nominated Participant is close enough to the work site to keep costs of performance reasonable.

(2) If the procurement is not a construction requirement, SBA may select any eligible, responsible Participant nationally to perform the contract.

(3) In cases in which SBA selects a Participant for possible award from among two or more eligible and qualified Participants, the selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts.

(e) *Formal technical evaluations.* Except for requirements for architectural and engineering services, SBA will not authorize formal technical evaluations for sole source 8(a) requirements. A procuring activity:

(1) Must request that a procurement be a competitive 8(a) award if it requires formal technical evaluations of more than one Participant for a requirement below the applicable competitive threshold amount; and

(2) May conduct informal assessments of several Participants' capabilities to perform a specific requirement, so long as the statement of work for the requirement is not released to any of the Participants being assessed.

(f) *Repetitive acquisitions.* A procuring activity contracting officer must submit a new offering letter to SBA where he or she intends to award a follow-on or repetitive contract as an 8(a) award. This enables SBA to determine:

(1) Whether the requirement should be a competitive 8(a) award;

(2) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(3) The affect that contract award would have on the equitable distribution of 8(a) contracts; and

(4) Whether the requirement should continue under the 8(a) BD program.

(g) *Basic Ordering Agreements (BOAs).* A Basic Ordering Agreement (BOA) is not a contract under the FAR. See 48 CFR 16.703(a). Each order to be issued under the BOA is an individual contract. As such, the procuring activity must offer, and SBA must accept, each task order under a BOA in addition to offering and accepting the BOA itself.

(1) SBA will not accept for award on a sole source basis any task order under a BOA that would cause the total dollar amount of task orders issued to exceed the applicable competitive threshold amount set forth in § 124.506(a).

(2) Where a procuring activity believes that task orders to be issued under a proposed BOA will exceed the applicable competitive threshold amount set forth in § 124.506(a), the procuring activity must offer the requirement to the program to be competed among eligible Participants.

(3) Once a concern's program term expires, the concern otherwise exits the 8(a) BD program, or becomes other than small for the SIC code assigned under the BOA, new orders will not be accepted for the concern.

(h) *Multiple Award and Federal Supply Schedule Contracts.* Unlike Basic Ordering Agreements, Multiple Award and Federal Supply Schedule contracts are contracts. Orders issued under these contracts are not considered separate contracts. As such, SBA's acceptance of the original Multiple Award or Federal Supply Schedule contract is valid for the duration of the contract. Separate offers and acceptances will not be made for individual task orders under these contracts.

(1) Task orders are not required to be competed where the value of the task order will exceed the competitive threshold as long as the original contract was competed.

(2) A concern may continue to accept new orders under a Multiple Award or Federal Supply Schedule contract even where a concern's program term expires, the concern otherwise exits the 8(a) BD program, or the concern becomes other than small for the SIC code assigned under the contract subsequent to award of the contract.

(i) Requirements where SBA has delegated contract execution authority. Except as provided in paragraph (a)(4)(i) of this section, where SBA has delegated its 8(a) contract execution authority to the procuring activity, the procuring activity must still offer and SBA must still accept all requirements intended to be awarded as 8(a) contracts.

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

SBA will not accept a procurement for award as an 8(a) contract if the circumstances identified in paragraphs (a) through (d) of this section exist.

(a) *Reservation as small business or SDB set-aside.* The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside prior to offering the requirement to SBA for award as an 8(a) contract. The AA/8(a)BD may permit the acceptance of the requirement, however, under extraordinary circumstances.

Example to paragraph (a). SBA may accept a requirement where a procuring activity made a decision to offer the requirement to the 8(a) BD program before the solicitation was sent out and the procuring activity acknowledges and documents that the solicitation was in error.

(b) *Competition prior to offer and acceptance.* The procuring activity competed a requirement among Participants prior to offering the requirement to SBA and receiving SBA's formal acceptance of the requirement.

(1) Any competition conducted without first obtaining SBA's formal acceptance of the procurement for the 8(a) BD program will not be considered an 8(a) competitive requirement.

(2) SBA may accept the requirement for the 8(a) BD program as a competitive 8(a) requirement, but only if the procuring activity agrees to resolicit the requirement using appropriate competitive 8(a) procedures.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) BD program, and does not apply to follow-on or renewal 8(a) acquisitions. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) program under Simplified Acquisition Procedures.

(1) In determining whether the acceptance of a requirement would have an adverse impact on an individual small business, SBA will consider all relevant factors.

(i) In connection with a specific small business, SBA presumes adverse impact to exist where:

(A) The small business concern has performed the specific requirement for at least 24 months;

(B) The small business is performing the requirement at the time it is offered to the 8(a) BD program, or its performance of the requirement ended within 30 days of the procuring activity's offer of the requirement to the 8(a) BD program; and

(C) The dollar value of the requirement that the small business is or was performing is 25 percent or more of its most recent annual gross sales (including those of its affiliates). For a multi-year requirement, the dollar value of the last 12 months of the requirement will be used to determine whether a small business would be adversely affected by SBA's acceptance.

(ii) Except as provided in paragraph (c)(2) of this section, adverse impact does not apply to "new" requirements. A new requirement is one which has not been previously procured by the relevant procuring activity.

(A) Where a requirement is new, no small business could have previously performed the requirement and, thus, SBA's acceptance of the requirement for the 8(a) BD program will not adversely impact any small business.

(B) Construction contracts, by their very nature (e.g., the building of a specific structure), are deemed new requirements.

(C) The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional or different types of capabilities or work.

(D) SBA need not perform an impact determination where a new requirement is offered to the 8(a) BD program.

(2) In determining whether the acceptance of a requirement would have an adverse impact on a group of small businesses, SBA will consider the effects of combining or consolidating various requirements being performed by two or more small business concerns into a single contract which would be considered a "new" requirement as compared to any of the previous smaller requirements. SBA may find adverse impact to exist if one of the existing small business contractors meets the presumption set forth in paragraph (c)(1)(i) of this section.

(3) In determining whether the acceptance of a requirement would have an adverse impact on other small business programs, SBA will consider all relevant factors, including but not limited to, the number and value of contracts in the subject industry reserved for the 8(a) BD program as compared with other small business programs.

(d) *Release for non-8(a) competition.* In limited instances, SBA may decline to accept the offer of a follow-on or renewal 8(a) acquisition to give a concern previously awarded the contract that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside the 8(a) BD program.

(1) SBA will consider release only where:

(i) The procurement awarded through the 8(a) BD program is being or was performed by either a Participant whose program term will expire prior to contract completion, or, by a former Participant whose program term expired within one year of the date of the offering letter;

(ii) The concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract; and

(iii) The concern qualifies as a small business for the requirement now offered to the 8(a) BD program.

(2) In considering release, SBA will balance the importance of the requirement to the concern's business development needs against the business development needs of other Participants that are qualified to perform the requirement. This determination will include consideration of whether rejection of the requirement would seriously reduce the pool of similar types of contracts available for award as 8(a) contracts. SBA will seek the views of the procuring activity.

(3) If SBA declines to accept the offer and releases the requirement, it will recommend to the procuring activity that the requirement be procured as a small business or, if authorized, an SDB set-aside.

§ 124.505 When will SBA appeal the terms or conditions of a particular 8(a) contract or a procuring activity decision not to reserve a requirement for the 8(a) BD program?

(a) *What SBA may appeal.* The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(1) A contracting officer's decision not to make a particular procurement available for award as an 8(a) contract;

(2) A contracting officer's decision to reject a specific Participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) BD program; and

(3) The terms and conditions of a proposed 8(a) contract, including the procuring activity's SIC code designation and estimate of the fair market price.

(b) *Procedures for appeal.* (1) SBA must notify the contracting officer of the SBA Administrator's intent to appeal an adverse decision within 5 working days of SBA's receipt of the decision.

(2) Upon receipt of the notice of intent to appeal, the procuring activity must suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a consideration of the appeal.

(3) The SBA Administrator must send a written appeal of the adverse decision to the head of the procuring agency within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn.

(4) By statute (15 U.S.C. 637(a)(1)(A)), the procuring agency head must specify in writing the reasons for a denial of an appeal brought by the Administrator under this section.

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

(a) *Competitive thresholds.* (1) A procurement offered and accepted for the 8(a) BD program must be competed among eligible Participants if:

(i) There is a reasonable expectation that at least two eligible Participants will submit offers at a fair market price;

(ii) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing SIC codes and $3,000,000 for all other contracts; and

(iii) The requirement has not been accepted by SBA for award as a sole source 8(a) procurement on behalf of a tribally-owned or ANC-owned concern.

(2) For all types of contracts, the applicable competitive threshold amounts will be applied to the procuring activity estimate of the total value of the contract, including all options. For indefinite delivery or indefinite quantity type contracts, the thresholds are applied to the maximum order amount authorized.

(3) Where the estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the contract price arrived at through negotiations exceeds the competitive threshold, provided that the contract price is not more than ten percent greater than the competitive threshold amount.

Example to paragraph (a)(3). If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(4) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount may not be divided into several separate procurement actions for lesser amounts in order to use 8(a) sole source procedures to award to a single contractor.

(b) *Exemption from competitive thresholds for Participants owned by Indian tribes.* SBA may award a sole source 8(a) contract to a Participant concern owned and controlled by an Indian tribe or an ANC where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement. There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a tribally-owned or ANC-owned concern, but a procurement may not be removed from competition to award it to a tribally-owned or ANC-owned concern on a sole source basis.

(c) *Competition below thresholds.* The AA/8(a)BD, on a nondelegable basis, may approve a request from a procuring activity to compete a requirement that is below the applicable competitive threshold amount among eligible Participants.

(1) This authority will be used primarily when technical competitions are appropriate or when a large number of potential awardees exist.

(2) The AA/8(a)BD may consider whether the procuring activity has made and will continue to make available a significant number of its contracts to the 8(a) BD program on a noncompetitive basis.

(3) The AA/8(a)BD may deny a request if the procuring activity previously offered the requirement to the 8(a) BD program on a noncompetitive basis and the request is made following the inability of the procuring activity and the potential sole source awardee to reach an agreement on price or some other material term or condition.

(d) *Sole source above thresholds.* Where a contract opportunity exceeds the applicable threshold amount and there is not a reasonable expectation that at least two eligible 8(a) Participants will submit offers at a fair price, the AA/8(a)BD may accept the requirement for a sole source 8(a) award if he or she determines that an eligible Participant in the 8(a) portfolio is capable of performing the requirement at a fair price.

§ 124.507 What procedures apply to competitive 8(a) procurements?

(a) *FAR procedures.* Procuring activities will conduct competitions among and evaluate offers received from Participants in accordance with the Federal Acquisition Regulation (48 CFR, chapter 1).

(b) *Eligibility determination by SBA.* In either a negotiated or sealed bid competitive 8(a) acquisition, the procuring activity will request that the SBA district office servicing the apparent successful offeror determine that firm's eligibility for award.

(1) Within 5 working days after receipt of a procuring activity's request for an eligibility determination, SBA will determine whether the firm identified by the procuring activity is eligible for award.

(2) Eligibility is based on 8(a) BD program criteria, including whether the Participant is:

(i) A small business under the SIC code assigned to the requirement;

(ii) In compliance with any applicable competitive business mix target established or remedial measure imposed by § 124.509 that does not include the denial of future 8(a) contracts;

(iii) In the developmental stage of program participation if the solicitation restricts offerors to the developmental stage of participation; and

(iv) A concern with a bona fide place of business in the applicable geographic area if the procurement is for construction.

(3) If SBA determines that the apparent successful offeror is ineligible, SBA will notify the procuring activity. The procuring activity will then send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award.

(4) Except to the extent set forth in paragraph (d) of this section, SBA determines whether a Participant is eligible for a specific 8(a) competitive requirement as of the date that the Participant submitted its initial offer which includes price.

(5) If the procuring activity contracting officer believes that the apparent successful offeror is not responsible to perform the contract, he or she must refer the concern to SBA for a possible Certificate of Competency in accord with § 125.5 of this title.

(c) *Restricted competition.* (1) *Competition within stages of program participation.* SBA may accept a competitive 8(a) requirement that is limited to Participants in the developmental stage of program

participation, or may accept a requirement to be competed among firms both in the developmental and transitional stages of program participation.

(2) *Construction competitions.* Based on its knowledge of the 8(a) BD portfolio, SBA will determine whether a competitive 8(a) construction requirement should be competed among only those Participants having a bona fide place of business within the geographical boundaries of one or more SBA district offices, within a state, or within the state and nearby areas. Only those Participants with bona fide places of business within the appropriate geographical boundaries are eligible to submit offers.

(3) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Participants regardless of location may submit offers in response to competitive 8(a) solicitations. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, are any imposed by the solicitations themselves.

(d) *Award to firms whose program terms have expired.* A concern that has completed its term of participation in the 8(a) BD program may be awarded a competitive 8(a) contract if it was a Participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if it continues to meet all other applicable eligibility criteria.

(1) Amendments to the solicitation extending the date for submissions of offers will be disregarded.

(2) For a negotiated procurement, a Participant may submit revised offers, including a best and final offer, and be awarded a competitive 8(a) contract if it was eligible as of the initial date specified for the receipt of offers in the solicitation, even though its program term may expire after that date.

§ 124.508 How is an 8(a) contract executed?

(a) An 8(a) contract can be awarded in the following ways:

(1) As a tripartite agreement in which the procuring activity, SBA and the Participant all sign the appropriate contract documents. There may be separate prime and subcontract documents (i.e., a prime contract between the procuring activity and SBA and a subcontract between SBA and the selected 8(a) concern) or a combined contract document representing both the prime and subcontract relationships; or

(2) Where SBA has delegated contract execution authority to the procuring activity, directly by the procuring activity through a contract between the procuring activity and the Participant.

(b) Where SBA receives a contract for signature valued at or below the simplified acquisition threshold, it will sign the contract and return it to the procuring activity within three (3) days of receipt.

(c) In order to be eligible to receive a sole source 8(a) contract, a firm must be a current Participant on the date of award. (*See* § 124.507(d) for competitive 8(a) awards.)

§ 124.509 What are non-8(a) business activity targets?

(a) *General.* (1) To ensure that Participants do not develop an unreasonable reliance on 8(a) awards, and to ease their transition into the competitive marketplace after graduating from the 8(a) BD program, Participants must make maximum efforts to obtain business outside the 8(a) BD program.

(2) During both the developmental and transitional stages of the 8(a) BD program, a Participant must make substantial and sustained efforts, including following a reasonable marketing strategy, to attain the targeted dollar levels of non-8(a) revenue established in its business plan. It must attempt to use the 8(a) BD program as a resource to strengthen the firm for economic viability when program benefits are no longer available.

(b) *Required non-8(a) business activity targets during transitional stage.* (1) *General.* During the transitional stage of the 8(a) BD program, a Participant must achieve certain targets of non-8(a) contract revenue (i.e., revenue from other than sole source or competitive 8(a) contracts). These targets are called non-8(a) business activity targets and are expressed as a percentage of total revenue. The targets call for an increase in non-8(a) revenue over time.

(2) *Non-8(a) business activity targets.* During their transitional stage of program participation, Participants must meet the following non-8(a) business activity targets each year:

Participant's year in the transitional stage	Non-8(a) business activity targets (required minimum non-8(a) revenue as a percentage of total revenue)
1	15
2	25
3	35
4	45
5	55

(3) *Compliance with non-8(a) business activity targets.* SBA will measure the Participant's compliance with the applicable non-8(a) business activity target at the end of each program year in the transitional stage based on the Participant's latest fiscal year-end total revenue. Thus, at the end of the first year in the transitional stage of program participation, SBA will compare the Participant's non-8(a) revenue to its total revenue during that first year. If appropriate, SBA will require remedial measures during the subsequent program year. Thus, for example, non-compliance with the required non-8(a) business activity target in year one of the transitional stage would cause SBA to initiate remedial measures under paragraph (d) of this section for year two in the transitional stage.

(4) *Certification of compliance.* A Participant must certify as part of its offer that it complies with the applicable non-8(a) business activity target or with the measures imposed by SBA under paragraph (d) of this section before it can receive any 8(a) contract during the transitional stage of the 8(a) BD program.

(c) *Reporting and verification of business activity.* (1) Once admitted to the 8(a) BD program, a Participant must provide to SBA as part of its annual review:

(i) Annual financial statements with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.602; and

(ii) An annual report within 30 days from the end of the program year of all non-8(a) contracts, options, and modifications affecting price executed during the program year.

(2) At the end of each year of participation in the transitional stage, the BOS assigned to work with the Participant will review the Participant's total revenues to determine whether the non-8(a) revenues have met the applicable target. In determining compliance, SBA will compare all 8(a) revenues received during the year, including those from options and modifications, to all non-8(a) revenues received during the year.

(d) *Consequences of not meeting competitive business mix targets.* (1) Except as set forth in paragraph (e) of this section, beginning at the end of the first year in the transitional stage (the fifth year of participation in the 8(a) BD program), any firm that does not meet its applicable competitive business mix target for the just completed program year will be ineligible for sole source 8(a) contracts in the current program year, unless and until the Participant corrects the situation as described in paragraph (d)(2) of this section.

(2) If SBA determines that an 8(a) Participant has failed to meet its applicable competitive business mix target during any program year in the transitional stage of program participation, SBA may increase its monitoring of the Participant's contracting activity during the ensuing program year. SBA will also notify the Participant in writing that the Participant will not be eligible for further 8(a) sole source contract awards until it has demonstrated to SBA that it has complied with its non-8(a) business activity requirements as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section. In order for a Participant to come into compliance with the non-8(a) business activity target and be eligible for further 8(a) sole source contracts, it may:

(i) Wait until the end of the current program year and demonstrate to SBA as part of the normal annual review process that it has met the revised non-8(a) business activity target; or

(ii) At its option, submit information regarding its non-8(a) revenue to SBA quarterly throughout the current program year in an attempt to come into compliance before the end of the current program year. If the Participant satisfies the requirements of paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section, SBA will reinstate the Participant's ability to get sole source 8(a) contracts prior to its annual review.

(A) To qualify for reinstatement during the first six months of the current program year (i.e., at either the first or second quarterly review), the Participant must demonstrate that it has received non-8(a) revenue and new non-8(a) contract awards that are equal to or greater than the dollar amount by which it failed to meet its non-8(a) business activity target for the just completed program year. For this purpose, SBA will not count options on existing non-8(a) contracts in determining whether a Participant has received new non-8(a) contract awards.

(B) To qualify for reinstatement during the last six months of the current program year (i.e., at either the nine-month or one year review), the Participant must demonstrate that it has achieved its non-8(a) business activity target as of that point in the current program year.

Example 1 to paragraph (d)(2). Firm A had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), but failed to meet the minimum non-8(a) business activity target of 25 percent. It had 8(a) revenues of $8.5 million and non-8(a) revenues of $1.5 million (15 percent). Based on total revenues of $10 million, Firm A should have had at least $2.5 million in non-8(a) revenues. Thus, Firm A missed its target by $1 million (its target ($2.5 million) minus its actual non-8(a) revenues ($1.5 million)). Because Firm A did not achieve its non-8(a) business activity target, it cannot receive 8(a) sole source awards until correcting that situation. The firm may wait until the next annual review to establish that it has met the revised target, or it can choose to report contract awards and other non-8(a) revenue to SBA quarterly. Firm A elects to submit information to SBA quarterly in year 3 of the transitional stage (year 7 in the program). In order to be eligible for sole source 8(a) contracts after either its 3 month or 6 month review, Firm A must show that it has received non-8(a) revenue and/or been awarded new non-8(a) contracts totaling $1 million (the amount by which it missed its target in year 2 of the transitional stage).

Example 2 to paragraph (d)(2). Firm B had $10 million in total revenue during year 2 in the transitional stage (year 6 in the program), of which $8.5 million were 8(a) revenues and $1.5 million were non-8(a) revenues. At its first two quarterly reviews during year 3 of the transitional stage (year 7 in the program), Firm B could not demonstrate that it had received at least $1 million in non-8(a) revenue and new non-8(a) awards. In order to be eligible for sole source 8(a) contracts after its 9 month or 1 year review, Firm B must show that at least 35% (the non-8(a) business activity target for year 3 in the transitional stage) of all revenues received during year 3 in the transitional stage as of that point are from non-8(a) sources.

(3) In determining whether a Participant has achieved its required non-8(a) business activity target at the end of any program year in the transitional stage, or whether a Participant that failed to meet the target for the previous program year has achieved the required level of non-8(a) business at its nine-month review, SBA will measure 8(a) support by adding the base year value of all 8(a) contracts awarded during the applicable program year to the value of all options and modifications executed during that year.

(4) As a condition of eligibility for new 8(a) contracts, SBA may also impose other requirements on a Participant that fails to achieve the non-8(a) business activity targets. These include requiring the Participant to obtain management assistance, technical assistance, and/or counseling, and/or attend seminars relating to management assistance, business development, financing, marketing, accounting, or proposal preparation.

(5) SBA may initiate proceedings to terminate a Participant from the 8(a) BD program where the firm makes no good faith efforts to obtain non-8(a) revenues.

(e) *Waiver of sole source prohibition.* (1) The AA/8(a)BD, or his or her designee, may waive the requirement prohibiting a Participant from receiving further sole source 8(a) contracts when a Participant does not meet its non-8(a) business activity target where a denial of a sole source contract would cause severe economic hardship on the Participant so that the Participant's survival may be jeopardized, or where extenuating circumstances beyond the Participant's control caused the Participant not to meet its non-8(a) business activity target. The decision to grant or deny a request for a waiver is at SBA's discretion, and no appeal may be taken with respect to that decision.

(2) The SBA Administrator on a non-delegable basis may waive the requirement prohibiting a Participant from receiving further sole source 8(a) contracts when the Participant does not meet its non-8(a) business activity target where the head of a procuring activity represents to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

§ 124.510 What percentage of work must a Participant perform on an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for small business set-aside prime contractors, and are set forth in § 125.6 of this title.

(b) A Participant must certify in its offer that it will meet the applicable percentage of work requirement. SBA will determine whether the firm will be in compliance as of the date of award of the contract for both sealed bid and negotiated procurements.

(c) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of costs on an indefinite quantity 8(a) award is performed by the Participant, the Participant must demonstrate semiannually that it has performed the required percentage to that date. For a service or supply contract, this does not mean that the Participant must perform 50 percent of the applicable costs for each task order with its own force, or that a Participant must have performed 50 percent of the applicable costs at any point in time during the contract's life. Rather, the Participant must perform 50 percent of the applicable costs for the combined total of all task orders issued to date at six month intervals.

Example to paragraph (c)(1). Two task orders are issued under an 8(a) indefinite quantity service contract during the first six months of the contract. If $100,000 in personnel costs are incurred on the first task order, 90% of those costs ($90,000) are incurred for performance by the Participant's

own work force, and the second task order also requires $100,000 in personnel costs, the Participant would have to perform only 10 percent of the personnel costs on the second task order because it would still have performed 50% of the total personnel costs at the end of the six-month period ($100,000 out of $200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

Example to paragraph (c)(2). Where a contract guarantees a minimum of $100,000 in professional services and the first task order is for $60,000 in such services, the Participant may perform as little as $10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to $40,000 to ensure that it performs 50% of the $100,000 guaranteed minimum ($10,000 + $40,000 = $50,000 or 50% of the $100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.

§ 124.511 How is fair market price determined for an 8(a) contract?

(a) The procuring activity determines what constitutes a "fair market price" for an 8(a) contract.

(1) The procuring activity must derive the estimate of a current fair market price for a new requirement, or a requirement that does not have a satisfactory procurement history, from a price or cost analysis. This analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. The analysis must also consider any cost or pricing data that is timely submitted by SBA.

(2) The procuring activity must base the estimate of a current fair market price for a requirement that has a satisfactory procurement history on recent award prices adjusted to ensure comparability. Adjustments will take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be appropriate.

(b) Upon the request of SBA, a procuring activity will provide to SBA a written statement detailing the method it has used to estimate the current fair market price for the 8(a) requirement. This statement must be submitted within 10 working days of SBA's request. The procuring activity must identify the information, studies, analyses, and other data it used in making its estimate.

(c) The procuring activity's estimate of fair market price and any supporting data may not be disclosed by SBA to any Participant or potential contractor.

(d) The concern selected to perform an 8(a) contract may request SBA to protest the procuring activity's estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.505.

§ 124.512 Delegation of contract administration to procuring agencies.

(a) SBA may delegate, by the use of special clauses in the 8(a) contract documents or by a separate agreement with the procuring activity, all responsibilities for administering an 8(a) contract to the procuring activity except the approval of novation agreements under 48 CFR 42.302(a)(25).

(b) This delegation of contract administration authorizes a contracting officer to execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, notify SBA of all modifications and options exercised.

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing a specific 8(a) contract.

(2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement.

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(ii)(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds $10 million;

(2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a joint venture between a protege firm and its approved mentor (*see* § 124.520) will be deemed small provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in § 124.519.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by § 124.520, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project

manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract;

(7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

(8) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(9) Requiring the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the joint venture;

(10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* For any 8(a) contract, including those between mentors and proteges authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510, and the 8(a) partner(s) to the joint venture must perform a significant portion of the contract.

(e) *Prior approval by SBA.* SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(f) *Contract execution.* Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity.

(g) *Amendments to joint venture agreement.* All amendments to the joint venture agreement must be approved by SBA.

(h) *Inspection of records.* SBA may inspect the records of the joint venture without notice at any time deemed necessary.

§ 124.514 Exercise of 8(a) options and modifications.

(a) *Unpriced options.* The exercise of an unpriced option is considered to be a new contracting action.

(1) If a concern has graduated or been terminated from the 8(a) BD program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised.

(2) If the concern is still a Participant and otherwise eligible for the requirement on a sole source basis, the procuring activity contracting officer may negotiate price and exercise the option provided the option, considered a new contracting action, meets all regulatory requirements, including the procuring activity's offering and SBA's acceptance of the requirement for the 8(a) BD program.

(3) If the estimated fair market price of the option exceeds the applicable threshold amount set forth in § 124.506, the requirement must be competed as a new contract among eligible Participants.

(b) *Priced options.* The procuring activity contracting officer may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

(c) *Modifications beyond the scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. It will be treated the same as an unpriced option as described in paragraph (a) of this section.

(d) *Modifications within the scope.* The procuring activity contracting officer may exercise a modification within the scope of the initial 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

(a) An 8(a) contract must be performed by the Participant that initially received it unless a waiver is granted under paragraph (b) of this section.

(1) An 8(a) contract, whether in the base or an option year, must be terminated for the convenience of the Government if:

(i) One or more of the individuals upon whom eligibility for the 8(a) BD program was based relinquishes or enters into any agreement to relinquish ownership or control of the Participant such that the Participant would no longer be controlled or at least 51% owned by disadvantaged individuals; or

(ii) The contract is transferred or novated for any reason to another firm.

(2) The procuring activity may not assess repurchase costs or other damages against the Participant due solely to the provisions of this section.

(b) The SBA Administrator may waive the requirements of paragraph (a)(1) of this section if requested to do so by the 8(a) contractor when:

(1) It is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) Ownership and control of the concern that is performing the 8(a) contract will pass to another Participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(3) Any individual upon whom eligibility was based is no longer able to exercise control of the concern due to physical or mental incapacity or death;

(4) The head of the procuring agency, or an official with delegated authority from the agency head, certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions; or

(5) It is necessary for the disadvantaged owners of the initial 8(a) awardee to relinquish ownership of a majority of the voting stock of the concern in order to raise equity capital, but only if—

(i) The concern has graduated from the 8(a) BD program;

(ii) The disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owners will maintain control of the daily business operations of the concern.

(c) The 8(a) contractor must request a waiver in writing prior to the change of

ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 days after such occurrence. The Participant seeking to change ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds.

(d) SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.507(b)(2) and deciding whether at the time of the request for waiver (and prior to the transaction) the acquiring Participant is a responsible and eligible concern with respect to each contract for which a waiver is sought. As part of the waiver request, the acquiring firm must certify that it is a small business for the size standard corresponding to the SIC code assigned to each contract for which a waiver is sought.

(e) Anyone other than a procuring agency head who submits a certification regarding the impairment of the agency's objectives under paragraph (b)(4) of this section, must also certify delegated authority to make the certification.

(f) In processing a request for a waiver under paragraph (b)(2) of this section, SBA will treat a transfer of all a Participant's operating assets to another Participant the same as the transfer of an ownership interest, provided the Participant that transfers its assets to another eligible Participant:

(1) Voluntarily graduates from the 8(a) BD program; and

(2) Ceases its business operations, or presents a plan to SBA for its orderly dissolution.

(g) A concern performing an 8(a) contract must notify SBA in writing immediately upon entering into an agreement or agreement in principle (either oral or written) to transfer all or part of its stock or other ownership interest or assets to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(h) The Administrator has discretion to decline a request for waiver even though legal authority exists to grant the waiver.

(i) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this title within 45 days of the date of service (as defined in § 134.204) of the Administrator's decision.

§ 124.516 Who decides contract disputes arising between a Participant and a procuring activity after the award of an 8(a) contract?

For purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring activity. A dispute arising between an 8(a) contractor and the procuring activity contracting officer will be decided by the procuring activity, and appeals may be taken by the 8(a) contractor without SBA involvement.

§ 124.517 Can the eligibility or size of a Participant for award of an 8(a) contract be questioned?

(a) The eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.

(b) The size status of the apparent successful offeror for a competitive 8(a) procurement may be protested pursuant to § 121.1001(a)(2) of this chapter. The size status of a nominated Participant for a sole source 8(a) procurement may not be protested by another Participant or any other party.

(c) A Participant cannot appeal SBA's determination not to award it a specific 8(a) contract because the concern lacks an element of responsibility or is ineligible for the contract, other than the right set forth in § 124.501(h) to request a formal size determination where SBA cannot verify it to be small.

(d)(1) The SIC code assigned to a sole source 8(a) requirement may not be challenged by another Participant or any other party either to SBA or any administrative forum as part of a bid or contract protest. Only the AA/8(a)BD may appeal a SIC code designation with respect to a sole source 8(a) requirement.

(2) In connection with a competitive 8(a) procurement, any interested party who has been adversely affected by a SIC code designation may appeal the designation to SBA's OHA pursuant to § 121.1103 of this title.

(e) Anyone with information questioning the eligibility of a Participant to continue participation in the 8(a) BD program or for purposes of a specific 8(a) contract may submit such information to SBA under § 124.112(c).

§ 124.518 How can an 8(a) contract be terminated before performance is completed?

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default can be made by the procuring activity contracting officer after consulting with SBA. The contracting officer must advise SBA of any intent to terminate an 8(a) contract for default in writing before doing so. SBA may provide to the Participant any program benefits reasonably available in order to assist it in avoiding termination for default. SBA will advise the contracting officer of this effort. Any procuring activity contracting officer who believes grounds for termination continue to exist may terminate the 8(a) contract for default, in accordance with the Federal Acquisition Regulations (48 CFR chapter 1). SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* After consulting with SBA, the procuring activity contracting officer may terminate an 8(a) contract for convenience when it is in the best interests of the Government to do so. A termination for convenience is appropriate if any disadvantaged owner of the Participant performing the contract relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.515.

(c) *Substitution of one 8(a) contractor for another.* Where a procuring activity contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of § 124.515.

§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) A Participant (other than one owned by an Indian tribe or an ANC) may not receive sole source 8(a) contract awards where it has received a combined total of competitive and sole source 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

(1) For a firm having a revenue-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is five times the size standard corresponding to that SIC code as of the date of SBA's acceptance of the requirement for the 8(a) BD program or $100,000,000, whichever is less.

(2) For a firm having an employee-based primary SIC code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is $100,000,000.

(3) SBA will not consider 8(a) contracts awarded under $100,000 in determining whether a Participant has reached the limit identified in paragraphs (a)(1) and (a)(2) of this section.

(b) Once the limit is reached, a firm may not receive any more 8(a) sole source contracts, but may remain eligible for competitive 8(a) awards.

(c) The limitation set forth in paragraph (a) of this section will not apply for firms that are current Participants in the 8(a) BD program as of December 31, 1997.

(d) SBA includes the dollar value of 8(a) options and modifications in determining whether a Participant has reached the limit identified in paragraph (a) of this section. If an option is not exercised or the contract value is reduced by modification, SBA will deduct those values.

(e) A Participant's eligibility for a sole source award in terms of whether it has exceeded the dollar limit for 8(a) contracts is measured as of the date that the requirement is accepted for the 8(a) program without taking into account whether the value of that award will cause the limit to be exceeded.

(f) The SBA Administrator on a non-delegable basis may waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in this section where the head of a procuring activity represents to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

§ 124.520 Mentor/protege program.

(a) *General.* The mentor/protege program is designed to encourage approved mentors to provide various forms of assistance to eligible Participants. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture arrangements. The purpose of the mentor/protege relationship is to enhance the capabilities of the protege and to improve its ability to successfully compete for contracts.

(b) *Mentors.* Any concern that demonstrates a commitment and the ability to assist developing 8(a) Participants may act as a mentor and receive benefits as set forth in this section. This includes businesses that have graduated from the 8(a) BD program, firms that are in the transitional stage of program participation, other small businesses, and large businesses.

(1) In order to qualify as a mentor, a concern must demonstrate that it:

(i) Possesses favorable financial health, including profitability for at least the last two years;

(ii) Possesses good character;

(iii) Does not appear on the federal list of debarred or suspended contractors; and

(iv) Can impart value to a protege firm due to lessons learned and practical experience gained because of the 8(a) BD program, or through its general knowledge of government contracting.

(2) Generally, a mentor will have no more than one protege at a time. However, the AA/8(a)BD may authorize a concern to mentor more than one protege at a time where the concern can demonstrate that the additional mentor/protege relationship will not adversely affect the development of either protege firm (e.g., the second firm cannot be a competitor of the first firm).

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit its federal tax returns for the last two years to SBA for review.

(4) Once approved, a mentor must annually certify that it continues to possess good character and a favorable financial position.

(c) *Proteges.* (1) In order to initially qualify as a protege firm, a Participant must:

(i) Be in the developmental stage of program participation;

(ii) Have never received an 8(a) contract; or

(ii) Have a size that is less than half the size standard corresponding to its primary SIC code.

(2) Only firms that are in good standing in the 8(a) BD program (e.g., firms that do not have termination or suspension proceedings against them, and are up to date with all reporting requirements) may qualify as a protege.

(3) A protege firm may have only one mentor at a time.

(d) *Benefits.* (1) A mentor and protege may joint venture as a small business for any government procurement, including procurements less than half the size standard corresponding to the assigned SIC code and 8(a) sole source contracts, provided both the mentor and the protege qualify as small for the procurement and, for purposes of 8(a) sole source requirements, the protege has not reached the dollar limit set forth in § 124.519.

(2) Notwithstanding the requirements set forth in §§ 124.105(g) and (h), in order to raise capital for the protege firm, the mentor may own an equity interest of up to 40% in the protege firm.

(3) Notwithstanding the mentor/protege relationship, a protege firm may qualify for other assistance as a small business, including SBA financial assistance.

(4) No determination of affiliation or control may be found between a protege firm and its mentor based on the mentor/protege agreement or any assistance provided pursuant to the agreement.

(e) *Written agreement.* (1) The mentor and protege firms must enter a written agreement setting forth an assessment of the protege's needs and describing the assistance the mentor commits to provide to address those needs (e.g., management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The agreement must also provide that the mentor will provide such assistance to the protege firm for at least one year.

(2) The written agreement must be approved by the AA/8(a)BD. The agreement will not be approved if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protege, or if SBA determines that the agreement is merely a vehicle to enable a non-8(a) participant to receive 8(a) contracts.

(3) The agreement must provide that either the protege or the mentor may terminate the agreement with 30 days advance notice to the other party to the mentor/protege relationship and to SBA.

(4) SBA will review the mentor/protege relationship annually to determine whether to approve its continuation for another year.

(5) SBA must approve all changes to a mentor/protege agreement in advance.

(f) *Evaluating the mentor/protege relationship.* (1) In its annual business plan update required by § 124.403(a,) the protege must report to SBA for the protege's preceding program year:

(i) All technical and/or management assistance provided by the mentor to the protege;

(ii) All loans to and/or equity investments made by the mentor in the protege;

(iii) All subcontracts awarded to the protege by the mentor, and the value of each subcontract;

(iv) All federal contracts awarded to the mentor/protege relationship as a joint venture (designating each as an 8(a), small business set aside, or unrestricted procurement), the value of each contract, and the percentage of the

contract performed and the percentage of revenue accruing to each party to the joint venture; and

(v) A narrative describing the success such assistance has had in addressing the developmental needs of the protege and addressing any problems encountered.

(2) The protege must annually certify to SBA whether there has been any change in the terms of the agreement.

(3) SBA will review the protege's report on the mentor/protege relationship as part of its annual review of the firm's business plan pursuant to § 124.403. SBA may decide not to approve continuation of the agreement if it finds that the mentor has not provided the assistance set forth in the mentor/protege agreement or that the assistance has not resulted in any material benefits or developmental gains to the protege.

Miscellaneous Reporting Requirements

§ 124.601 What reports does SBA require concerning parties who assist Participants in obtaining federal contracts?

(a) Each Participant must submit annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

(b) Failure to submit the report is good cause for the initiation of a termination proceeding pursuant to §§ 124.303 and 124.304.

§ 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Participants with gross annual receipts of more than $5,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

(1) The servicing SBA District Director may waive the requirement for audited financial statements for good cause shown by the Participant.

(2) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(i) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(ii) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(iii) The concern has been a Participant less than 12 months.

(b) Participants with gross annual receipts between $1,000,000 and $5,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.

(c) Participants with gross annual receipts of less than $1,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

(d) Any audited or reviewed financial statements submitted to SBA pursuant to paragraphs (a) or (b) of this section must be prepared in accordance with Generally Accepted Accounting Principles.

(e) While financial statements need not be submitted until 90 or 120 days after the close of a Participant's fiscal year, depending on the receipts of the concern, a Participant seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine the concern's eligibility for the 8(a) contract. This report must show a breakdown of 8(a) and non-8(a) sales.

(f) Notwithstanding the amount of a Participant's gross annual receipts, SBA may require audited or reviewed statements whenever they are needed to obtain more complete information as to a concern's assets, liabilities, income or expenses, such as when the concern's capacity to perform a specific 8(a) contract must be determined, or when they are needed to determine continued program eligibility.

§ 124.603 What reports regarding the continued business operations of former Participants does SBA require?

Former Participants must provide such information as SBA may request concerning the former Participant's continued business operations, contracts, and financial condition for a period of three years following the date on which the concern graduates or is terminated from the program. Failure to provide such information when requested will constitute a violation of the regulations set forth in this part, and may result in the nonexercise of options on or termination of contracts awarded through the 8(a) BD program, debarment, or other legal recourse.

Management and Technical Assistance Program

§ 124.701 What is the purpose of the 7(j) management and technical assistance program?

Section 7(j)(1) of the Small Business Act, 15 U.S.C. 636(j)(1), authorizes SBA to enter into grants, cooperative agreements, or contracts with public or private organizations to pay all or part of the cost of technical or management assistance for individuals or concerns eligible for assistance under sections 7(a)(11), 7(j)(10), or 8(a) of the Small Business Act.

§ 124.702 What types of assistance are available through the 7(j) program?

Through its private sector service providers, SBA may provide a wide variety of management and technical assistance to eligible individuals or concerns to meet their specific needs, including:

(a) Counseling and training in the areas of financing, management, accounting, bookkeeping, marketing, and operation of small business concerns; and

(b) The identification and development of new business opportunities.

§ 124.703 Who is eligible to receive 7(j) assistance?

The following businesses are eligible to receive assistance from SBA through its service providers:

(a) Businesses which qualify as small under part 121 of this title, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(b) Businesses eligible to receive 8(a) contracts.

§ 124.704 What additional management and technical assistance is reserved exclusively for concerns eligible to receive 8(a) contracts?

In addition to the management and technical assistance available under § 124.702, Section 7(j)(10) of the Small Business Act authorizes SBA to provide additional management and technical assistance through its service providers exclusively to small business concerns eligible to receive 8(a) contracts, including:

(a) Assistance to develop comprehensive business plans with

specific business targets, objectives, and goals;

(b) Other nonfinancial services necessary for a Participant's growth and development, including loan packaging; and

(c) Assistance in obtaining equity and debt financing.

PART 134—[AMENDED]

7. The authority citation for 13 CFR part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6) and 637(a).

7a. Section 134.201 is amended by revising the second and third sentences to read as follows:

§ 134.201 Scope of the rules in this subpart B.

* * * Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter. In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

8. Section 134.202 is amended in paragraph (c) by removing the reference to "subpart D of this part" and inserting in its place the phrase "subpart E of this part," and in paragraph (d) by removing the phrase "§ 124.211" and inserting in its place the phrase "§ 134.305."

9. Section 134.203 is amended by redesignating paragraphs (a)(2) through (4) as paragraphs (a)(3) through (5) and adding the following new paragraph (a)(2):

§ 134.203 The petition.

(a) * * *

(2) The SBA determination being appealed.

* * * * *

10. Section 134.211 is amended by adding the following new paragraph (d):

§ 134.211 Motions.

* * * * *

(d) *Stay.* A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

§ 134.213 [Amended]

11. Section 134.213(a) is amended by removing the second sentence.

§ 134.222 [Amended]

12. Section 134.222 is amended by removing the ";" and the word "or" at the end of paragraph (a)(2), by inserting a "." at the end of paragraph (a)(2), and by removing paragraph (a)(3).

13. Subpart D is redesignated as Subpart E, §§ 134.401 through 134.418 are redesignated as §§ 134.501 through 134.518, and the following new Subpart D is added:

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

134.401 Scope of the rules in this subpart D.
134.402 Appeal petition.
134.403 Service of appeal petition.
134.404 Decision by Administrative Law Judge.
134.405 Jurisdiction.
134.406 Review of administrative record.
134.407 Evidence beyond the record and discovery.
134.408 Decision on appeal.

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

§ 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

(a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206 of this title;

(b) Early graduation pursuant to §§ 124.302 and 124.304;

(c) Termination pursuant to §§ 124.303 and 124.304;

(d) Denials of requests to issue a waiver pursuant to § 124.515; and

(e) Suspensions pursuant to § 124.305(a).

§ 134.402 Appeal petition.

In addition to the requirements of § 134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law.

§ 134.403 Service of appeal petition.

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to § 124.206 of this title, suspensions of program assistance pursuant to § 124.305, or denials of requests for waivers pursuant to § 124.515, a petitioner must serve the SBA's Associate General Counsel for General Law.

(2) For appeals relating to early graduation pursuant to §§ 124.302 and 124.304 or termination pursuant to §§ 124.303 and 124.304, a petitioner must serve the SBA's Associate General Counsel for Litigation.

(3) Service on SBA's Office of General Counsel generally or the SBA General Counsel do not meet the service requirements of this section.

(b) Service should be addressed to the AA/8(a)BD and the applicable Associate General Counsel at the Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

§ 134.404 Decision by Administrative Law Judge.

Appeal proceedings brought under this subpart will be conducted by an Administrative Law Judge.

§ 134.405 Jurisdiction.

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.202 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(c) Jurisdiction of the Administrative Law Judge in a suspension case is limited to the issue of whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

§ 134.406 Review of the administrative record.

(a) Except as provided in § 134.407, any proceeding conducted under this subpart shall be decided solely on a review of the written administrative record.

(b) The Administrative Law Judge's review is limited to determining

whether the Agency's determination is arbitrary, capricious, or contrary to law. As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal.

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker relied. The administrative record, however, need not contain all documents pertaining to the petitioner. For example, the administrative record in a termination proceeding need not include the Participant's entire business plan file, documents pertaining to specific 8(a) contracts, or the firm's application for participation in the 8(a) BD program if they are unrelated to the termination action. The petitioner may object to the absence of a document, previously submitted to or sent by SBA, which the petitioner believes was erroneously omitted from the administrative record.

(d) Where the Agency files its answer to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the answer and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law, or where it is clearly apparent from the record that SBA made an erroneous factual finding (e.g., SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (e.g., SBA applied the wrong regulatory provision in evaluating the case). Such a remand will be for a period of 10 working days.

§ 134.407 Evidence beyond the record and discovery.

(a) The Administrative Law Judge may not admit evidence beyond the written administrative record nor permit any form of discovery unless he or she first determines that the petitioner, upon written submission, has made a substantial showing, based on credible evidence and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior.

(1) Prior to any such determination, the Administrative Law Judge must permit SBA to respond in writing to any allegations of bad faith or improper behavior.

(2) Upon a determination by the Administrative Law Judge that the petitioner has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior.

(b) A determination by the Administrative Law Judge that the required showing set forth in paragraph (a) of this section has been made does not shift the burden of proof, which continues to rest with the petitioner.

§ 134.408 Decision on appeal.

(a) A decision of the Administrative Law Judge under this subpart is the final agency decision, and is binding on the parties.

(b) The Administrative Law Judge shall issue a decision, insofar as practicable, within 90 days after an appeal petition is filed. If the Administrative Law Judge does not issue a decision within 90 days after an appeal petition is filed, he or she must indicate the reason that the 90-day time limit has not been met in the decision, when issued.

(c) The Administrative Law Judge may reconsider an appeal decision within 20 days of the decision if there is a clear showing of an error of fact or law material to the decision.

Dated: February 13, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–17196 Filed 6–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to the Department of Justice's review of Federal procurement affirmative action programs and amendments to the Federal Acquisition Regulation to implement a government-wide small disadvantaged business (SDB) program, the Small Business Administration (SBA) issues this final rule establishing the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB.

DATES: *Effectove Dates.* The amendments made by this rule to subpart A of 13 CFR part 124 are effective on June 30, 1998. Sections 124.1001 through 124.1016 of subpart B of 13 CFR part 124 are effective on August 24, 1998. With the exeptions of §§ 124.1017(b) and 124.1020(c)(2), §§ 124.1017 through 124.1024 of subpart B of 13 CFR part 124 are effective on October 1, 1998. Sections 124.1017(b) and 124.1020(c)(2) of subpart B of 13 CFR part 124 are effective on January 1, 1999.

Compliance Dates. SBA will begin to accept and process applications for SDB certifications as of August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Calvin Jenkins, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, at (202) 205–6459.

SUPPLEMENTARY INFORMATION: On May 9, 1997, the Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business concerns. 62 FR 25786. The amendments were intended to conform to a Department of Justice (DOJ) proposal to reform affirmative action in Federal procurement (*see* 61 FR 26042) and to comply with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. Pena, 115 S.Ct. 2097 (1995). The proposed amendments to the FAR included procedures by which a firm claiming to be owned and controlled by one or more disadvantaged individuals could certify its status as a small disadvantaged business (SDB) concern for purposes of receiving a benefit as an SDB in connection with a Federal procurement. The proposed FAR change also contained procedures by which an interested party may protest a small business concern's disadvantaged status to the Small Business Administration (SBA). In response to and in conjunction with the DOJ and FAR reform proposals, on August 14, 1997, SBA published in the **Federal Register**, 62 FR 43584, a proposed rule to amend 13 CFR part 124. Subpart A of the proposed part 124 dealt with changes pertaining to the 8(a) Business Development (8(a) BD) program which is authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). Subpart B of proposed

part 124 dealt with SBA's role in the certification and protest of small disadvantaged businesses, as contemplated by the DOJ and FAR proposals. SBA is finalizing the vast majority of subpart A of 13 CFR part 124 as a separate rulemaking action. This rule finalizes subpart B of 13 CFR part 124, discussing fully all substantive comments received regarding subpart B in response to the August 14, 1997 proposed rule. This rule also makes four changes to subpart A of 13 CFR part 124 in order to take into account the effect that benchmark achievement, explained below, may have on the 8(a) BD program.

As recommended in the DOJ review of Federal affirmative action procurement programs, subpart B of part 124 as set forth in this rule describes standards and procedures by which a firm can apply to be recognized as a small disadvantaged business (SDB). Under the rule, SBA, or, where SBA deems it appropriate, SBA-approved state agencies, private sector organizations or business concerns (called Private Certifiers), will determine whether a firm is owned and controlled by specified individuals claiming to be disadvantaged. Where a Private Certifier determines ownership and control, the Private Certifier will issue a written decision as to whether the applicant is actually owned and controlled by the individuals identified as claiming disadvantaged status, and will forward the application along with a copy of its decision to SBA for further processing as to the other aspects of SDB eligibility. Where the Private Certifier finds that the applicant is not owned and controlled by the individuals claiming disadvantaged status, its decision will state the specific reasons for the finding, and inform the applicant of its right to appeal the decision to SBA's Office of Hearings and Appeals (OHA). Where SBA determines ownership and control, SBA will first determine whether the applicant is owned and controlled by the individual(s) claiming to be disadvantaged. If SBA determines that the applicant is not owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a written decision addressing only the ownership and control issues. If SBA determines that the applicant is owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a single written decision as to whether the applicant qualifies as an SDB. Such a decision will include the ownership and control of the firm, the size status of the firm, and the disadvantaged status of those individuals claiming to be disadvantaged. An applicant may appeal SBA's determination that it is not owned and controlled by those individuals claiming disadvantaged status, or its decision that one or more of the individuals claiming disadvantaged status are not actually disadvantaged to OHA. An applicant may also request a formal size determination with the applicable SBA Government Contracting Area Office.

Individuals who are members of certain designated groups are presumed to be socially and economically disadvantaged. SBA will consider evidence presented to it which is contrary to the presumptions, and may seek further information from the applicant individuals. Other individuals must submit a narrative statement identifying personally how their entry into or advancement in the business world has been impaired because of their individual social disadvantage, and how their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities. These procedures are completely separate from the 8(a) BD requirements. The rule describes procedures for listing and removing firms from an SBA-maintained on-line register of certified SDBs. With respect to the 8(a) BD program, the rule also provides regulatory authority for SBA, in its discretion, to limit program entry, accelerate program graduation, and limit the numbers of 8(a) contracts available when the benchmarks referred to in the FAR are achieved in particular industries.

SBA has attempted to write the regulations in plain English.

Discussion of Public Comment

SBA received several comments concerning the application of benchmarks to the 8(a) BD program. Some comments questioned the methodology of establishing benchmarks. Neither the proposed rule nor this final rule addresses the way in which benchmarks will be developed. As such, those comments are not relevant to this rulemaking, and SBA makes no changes in response to them. A few comments expressed concern about the actions SBA may take when the benchmark is exceeded in a particular industry (i.e., SBA may decide not to accept an application for the 8(a) BD program from a concern in that industry (§ 124.108(f)); SBA may accelerate graduation of Participants (§ 124.302(d)); or SBA may elect not to accept a requirement as an 8(a) contract (§ 124.504(d)). While the regulations give SBA discretion to take any of those actions in appropriate circumstances, they do not mandate that such actions be taken in any case. In considering whether to take action under these provisions, the SBA Administrator will weigh the business development purposes of the program in every case.

Part 124, subpart B: Subpart B of the August 14, 1997 proposed rule defined what an SDB is and set forth the procedures by which a firm can be recognized as an SDB. Each of the significant comments received regarding subpart B and the changes made to subpart B are identified below.

Proposed § 124.1001 defined an SDB as a business which is owned and controlled by one or more disadvantaged individuals. One commenter noted that this omitted references to certain entities which are considered disadvantaged. SBA agrees with this comment, and this final rule changes § 124.1001 to make clear that firms owned and controlled by the following entities, i.e., Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes (tribes) or Native Hawaiian Organizations (NHOs), are considered disadvantaged.

Proposed § 124.1002(d) would have required SBA to consider the "character" of each individual claiming disadvantaged status in determining whether a firm qualified as an SDB. Upon further reflection, SBA does not believe that SBA should look at the character of the firm or individuals claiming disadvantaged status as part of its SDB determination. The requirement that a firm and its principals possess "good character" should be a responsibility issue to be determined by the contracting officer in connection with each contract for which the firm is the apparent successful offeror, and should have no bearing on whether a firm should be classified as an SDB. As such, SBA has deleted that requirement from this final rule.

Proposed § 124.1002(b)(4) listed as a requirement for SDB status (relating to DOD, NASA and Coast Guard procurements) the additional requirement that a majority of the SDB's earnings accrue directly to the disadvantaged individuals. One commenter questioned why this restriction applied only to DOD, NASA and the Coast Guard. The reason for the limited applicability is that the restriction appears in the authorizing legislation for the SDB program applying to DOD, NASA and Coast Guard (*see* section 1207 of the Defense Acquisition Improvement Act of 1986, Public Law 99–661), but not in the authorizing legislation for the

Government-wide SDB program (*see* section 7102 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355). This rule is consistent with this statutory distinction.

Proposed § 124.1002(f)(4) required that a majority of a joint venture's earnings must accrue directly to disadvantaged individuals and entities. One commenter noted that this provision could be read to impose an additional requirement on ANCs that would be contrary to 43 U.S.C. 1626(e). SBA does not believe this to be true because the provision was meant to apply to SDBs owned by disadvantaged individuals and not to those owned by tribes, ANCs, CDCs or NHOs. Nevertheless, SBA has deleted this provision from the final rule because it is contract specific and should not affect whether a firm should be considered an SDB generally.

The final rule deletes proposed § 124.1002(g), the requirement that an SDB must perform certain specified percentages of work with its own employees. Upon further deliberation, SBA believes that this requirement is a contract specific requirement and does not belong in the regulations defining what an SDB is. SBA has added a new paragraph (g) clarifying that the ownership restrictions contained in §§ 124.105(g) and (h) do not apply to SDB eligibility. Those restrictions apply to the 8(a) BD program because it is a business development program.

Proposed §§ 124.1003 through 124.1009 set forth various requirements relating to Private Certifiers. The proposed rule stated that Private Certifiers would perform determinations of ownership and control and that SBA would perform such determinations where "a Private Certifier is not reasonably available." SBA received several comments on the proposed use of Private Certifiers. One commenter stated that the use of Private Certifiers provided a quick and cost effective certification process. Several commenters were concerned about the required qualifications, if any, of the Private Certifiers, the procedures to be used by them in the certification process, and the monitoring of the Private Certifiers. One commenter strongly disagreed with the use of Private Certifiers to determine ownership and control in any case, and believed that SBA was better suited for this responsibility.

Upon further deliberation, SBA does not believe it is prudent to limit its ability to perform ownership and control determinations only to situations where Private Certifiers are not available. The final rule still authorizes SBA to approve Private Certifiers and for Private Certifiers to perform ownership and control determinations in appropriate circumstances. However, it will be within SBA's discretion as to when and to what extent Private Certifiers will be utilized in the SDB certification process. A firm seeking to be certified as an SDB should contact its local SBA field office to learn whether to submit its SDB application to SBA or to a Private Certifier. SBA's Homepage on the Internet will also identify this information.

In addition, in response to concerns about SBA's monitoring Private Certifiers, the final rule (§ 124.1003) provides that SBA will establish standards regarding qualifications, monitoring, procedures and use, if any, of Private Certifiers. SBA will establish these standards in the document approving an organization or concern as a Private Certifier.

Proposed § 124.1004 described how an organization or business concern becomes a Private Certifier. The SBA received five comments regarding this proposed section. One commenter stated that training should be mandatory. While SBA believes that training will be necessary in many cases, it may not be needed in every case. As such, SBA has retained its flexibility to require training where appropriate. A second commenter stated that a monitoring system should be developed. SBA agrees and has provided for SBA monitoring in § 124.1003. A third commenter stated that the Private Certifiers should be nonprofit organizations or governmental agencies and not private sector organizations. SBA considered this comment, but has decided not to restrict Private Certifiers in this way. Nonprofit organizations and state and local governmental agencies may apply and be granted status as Private Certifiers. However, SBA does not believe that those are the only entities reasonably capable of providing this service. Such a restriction is unnecessary and would be contrary to policies that generally encourage competition.

Proposed § 124.1004(f) prohibited a Private Certifier from certifying any company with which it has other business dealings, but did not specify a timeframe for limiting such dealings or what types of activities SBA was in fact attempting to limit. Upon further deliberation, SBA believes that this regulation should provide the general authority for SBA to prohibit conflicts of interest between a Private Certifier and those firms that come to it seeking an ownership and control determination and protect the integrity of the Private Certifier decision-making process. SBA believes that the document (e.g., contract) that authorizes an entity to act as a Private Certifier should detail the specific conditions or limitations on other business transactions between the Private Certifier and those firms for which it performs an ownership and control determination. These restrictions may pertain to past relationships (so that a Private Certifier could not process an SDB application for a firm with which it had certain business dealings in the past) or to future transactions (so that the Private Certifier could not engage in certain business relationships with a firm for a specified period of time after processing the firm's SDB application). SBA does not intend to preclude a Private Certifier from making a determination with respect to a firm's SDB status for both federal and state/local SDB programs. That is not the type of "other business transactions" that this regulation is intended to prohibit.

Proposed § 124.1005 allowed Private Certifiers to charge a reasonable fee to process the firm's determination of ownership and control. There were two comments on this section. The first commenter noted that the language was confusing. SBA revised the language in the first sentence in response to this comment. The second commenter, a Federal agency, stated that the fee should be the same whether or not the applicant receives SDB certification. SBA agrees and has adopted this language in the final regulation. In addition, SBA has amended this section to provide that SBA may charge a fee to process ownership and control determinations where SBA performs ownership and control determinations. From time to time, SBA will publish a Notice in the **Federal Register** identifying any fee that SBA decides to charge to process a firm's determination of ownership and control. Any funds received by SBA to make these determinations will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

Proposed § 124.1008 explained the process to become certified as an SDB. SBA received several comments on this proposed section. Three comments supported the proposed language, and stated that this section would improve the efficiency of the process and reduce paperwork. A few comments addressed the need for a method of monitoring the Private Certifiers and their fees. As noted above, § 124.1003 of the final rule provides authority for SBA to include specific monitoring provisions in the

document approving an organization or concern to be a Private Certifier.

One commenter questioned the automatic inclusion of current 8(a) BD Participants as SDBs. SBA continues to believe that such inclusion is proper. An 8(a) BD concern's continuing eligibility as an SDB will be reviewed as part of the concern's annual review for the 8(a) BD program.

The final rule also removes all references in § 124.1008 to procuring agencies as certifiers. All SDB certifications will be made by SBA and its Private Certifiers.

One commenter specifically requested that an ANC-owned firm be permitted to apply for SDB status through the SBA Anchorage Office. To address this concern, SBA has added language to § 124.1008(a)(1) allowing SBA flexibility to direct where applications should be made.

Proposed § 124.1008(b) listed the required forms and documents to be submitted by the applicant for SDB certification. One commenter, noted that the required "small business self certification" should be included in this section. SBA does not adopt this comment. SBA concluded that it was not necessary to detail every form or piece of information that SBA might request from an SDB applicant. Instead, the final rule condenses § 124.1008(b) to provide that an SDB applicant must submit the same forms and attachments required by SBA when applying to the 8(a) BD program. This change gives SBA the flexibility to request whatever information is needed to make an informed decision.

SBA has clarified throughout this section that ownership and control determinations may be made by either SBA, or where SBA deems it appropriate, by Private Certifiers. SBA has added a new § 124.1008(d)(3) giving SBA the discretion in any case to analyze and determine whether a firm is owned and controlled by one or more individuals claiming disadvantage. SBA believes that this paragraph provides needed flexibility to the regulation to ensure that the SDB certification process runs smoothly in all circumstances. The final rule also adds a new § 124.1008(d)(4) which authorizes SBA's program office to re-evaluate an ownership and control decision by a Private Certifier where SBA receives credible evidence that the Private Certifier has substantially disregarded the applicable eligibility criteria. This provision provides to SBA the authority to quickly correct a determination that it believes to be clearly contrary to the eligibility requirements, and should promote more consistent decisions.

Proposed § 124.1008(e) was originally entitled "SDB Certification." A commenter stated that this was misleading in light of the fact that subsection (e) dealt with disadvantaged status. SBA agrees and has renamed subsection (e) "Disadvantaged determination."

Proposed § 124.1008(e)(1) stated that those claiming disadvantaged status who are members of a designated group are presumed to be socially and economically disadvantaged. A Federal agency commenter suggested deleting the phrase "and economically disadvantaged," contained in § 124.1008(e)(1) as inconsistent with proposed § 124.1002(c), which requires a net worth of less than $750,000. SBA does not agree that the language contained in § 124.1008(e)(1) conflicts with the monetary requirement of § 124.1002(c), and believes that eliminating the presumption for economic disadvantage would be contrary to the underlying statutory authority. The presumption of disadvantage for Federal SDB programs is based on the authority set forth in section 8(d) of the Small Business Act, 15 U.S.C. § 637(d). Section 8(d)(3)(C)(ii) clearly authorizes a presumption of both social and economic disadvantaged for members of certain designated groups. When members of the designated groups represent to SBA that they are disadvantaged, as part of a firm's application for SDB status, they represent that they meet the $750,000 net worth requirement for economic disadvantage. Absent credible evidence to the contrary, SBA will accept this representation because of the statutory presumption. Accordingly, SBA did not change the presumption in the final rule.

The final rule adds a new § 124.1008(e)(2)(ii). This provision states the obligations of the Private Certifier in the application process concerning individuals who are not members of a designated group. Proposed §§ 124.1008(e)(2) (ii) through (f) have been renumbered for easier understanding and subsection (f) has been renamed "SDB Determination."

Proposed § 124.1008(e)(2)(ii) stated that if one or more of the individuals upon whose status the Private Certifier relied in making its ownership and control decision is not disadvantaged, the Private Certifier would reject the firm's application for SDB status. One commenter stated that this language should be clarified to state that the firm would be rejected only if the disadvantaged status of that individual was needed to establish ownership and control. SBA agrees, and has amended renumbered § 124.1008(f)(2) to include this language.

The final rule also adds a new § 124.1008(i). This new paragraph provides that if a firm applying for SDB certification has a current, valid certification as a disadvantaged business enterprise (DBE) from a Department of Transportation (DOT) recipient, SBA may adopt the DBE certification as an SDB certification when determined to be appropriate.

Proposed § 124.1009 did not provide a procedure to remand an application back to a Private Certifier. A Federal agency commenter expressed concern that there was no such procedure in place when OHA overruled the Private Certifier's decision regarding ownership and control by those claiming disadvantaged status. SBA has revised § 124.1009 to remedy this omission. SBA has also expanded and clarified the procedures that will apply to an appeal of a decision of a Private Certifier in § 124.1009, and those relating to an appeal of an SBA decision in § 124.1008(f).

Proposed § 124.1010 provided that a firm could not represent itself as an SDB concern for purposes of receiving procurement preferences if it was not on the SBA-maintained list of qualified SDBs. SBA has amended this section to coincide with the final version of the FAR to provide that a firm may represent itself as an SDB if it has submitted an application for certification and that application is pending either at SBA or with a Private Certifier. The final rule further provides that SBA will make a determination on SDB status within 15 days where an SDB applicant is determined to be the successful offeror on a contract. In the event that SBA fails to make a determination within 15 days, the firm will not be eligible for award, and the procuring activity will award to another offeror.

Proposed § 124.1012 stated that a firm may reapply for certification 12 months after the date of the final SBA decision to decline the application. One commenter requested that the period for reapplication begin from the date of submission of the application, rather than denial. SBA does not agree with this suggestion, and has made no change.

Proposed § 124.1013 listed the criteria SBA would use to delete names on the SDB register. A Federal agency commenter noted that recent graduates of the 8(a) BD program are reviewed for social and economic disadvantage each year, through their final year of participation and, therefore, it is unnecessarily burdensome to require

them to apply for SDB certification immediately. SBA agreed and adopted this suggestion by adding a new § 124.1014, which clarifies how long an SDB certification lasts, and specifically allows a firm that has graduated from the 8(a) BD program to remain on the SBA-maintained list of qualified SDBs for a period of three years from the date of its last annual review in the 8(a) BD program.

Proposed § 124.1014 (§ 124.1015 in the final rule) addressed the effect of receiving an SDB certification. Proposed § 124.1014(d) stated that a firm must submit a new application every three years to remain on the SDB register. One commenter noted that a contract award that is not successfully challenged (i.e., the SDB status is upheld) should obviate the need for applying for a new certification. SBA agreed with this comment and has incorporated it in the new § 124.1014, dealing with how long an SDB certification lasts. The final rule provides that SDB status will run three years from the date SBA determines a firm to be disadvantaged in connection with a protest challenging its SDB status. This extension of SDB status applies only where SBA determines a firm to be an SDB on the merits. A firm's SDB status will not be extended where SBA merely dismisses a protest against it for some procedural reason (e.g., lack of timeliness or specificity). In addition, SBA added a new paragraph to clarify that 8(a) BD graduated firms will remain on the qualified list of SDBs for a period of three years from the date of their last annual review in the 8(a) BD program.

The final rule adds a new § 124.1016, authorizing SBA, in the absence of a protest, to re-evaluate the SDB status of a firm that is certified as an SDB where SBA receives credible evidence calling into question a firm's eligibility as an SDB. SBA added this section in response to a comment that was concerned about the possibility of a firm remaining on the list of qualified SDBs where it was clear that it no longer qualified as an SDB because no one had protested its SDB status. This section also provides that an SDB firm has an affirmative obligation to report any changes in ownership or control or any other circumstances that could adversely affect the firm's eligibility for SDB status to SBA.

The final rule adds a new § 124.1021(c) to clarify that SBA will consider a protest against a previously certified SDB which is an apparent successful offeror only where the protest presents credible evidence that the firm's circumstances have materially changed since SBA certified it as an SDB, or credible evidence that the firm's SDB application contained false or misleading information. SBA believes that this change is needed to give value to the SDB certification process. Without such a change, a firm's status as "disadvantaged" could be repeatedly challenged despite SBA ruling in its favor on one protest and despite its ownership and control remaining unchanged. Such challenges would impose a significant and costly burden on a firm having to defend its SDB status, as well as on SBA, and serve no useful purpose. SBA has also made conforming amendments to §§ 124.1015(c) and 124.1018(d) to recognize the limited right to protest the SDB status of a concern that has received an SDB certification from SBA.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this rule is not a major rule as defined by Executive Order 12866 in that it is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA has determined that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A summary of the Regulatory Flexibility Analysis follows. For a copy of the complete analysis, contact Calvin Jenkins, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, at (202) 205–6459.

Executive Order 12866

On May 9, 1997, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration proposed amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business concerns. 62 FR 25786. The amendments were intended to conform to a Department of Justice (DOJ) proposal to reform affirmative action in Federal procurement (*see* 61 FR 26042) and to comply with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S.Ct. 2097 (1995). The DOJ proposal addresses federal contracting with SDBs. Full implementation of the DOJ proposal requires revisions to the FAR, as well as regulatory changes by SBA and the Department of Commerce. For a full economic analysis of the changes to be made by the implementation of a government-wide SDB program, please refer to the analysis published with the FAR rule.

This final rule addresses only SBA's responsibilities under the SDB program. In brief summary, this rule requires SBA to (1) certify SDB concerns, including those owned by non-designated group members, and establish and maintain an updated list of qualified SDBs; and (2) resolve protests made challenging the eligibility of firms as SDBs for Federal procurement requirements. It also authorizes SBA to establish and oversee a national network of private entities to determine, where SBA deems it appropriate, whether firms seeking to be certified as SDBs are owned and controlled by individuals claiming to be socially and economically disadvantaged.

SBA's determination that this rule is not a major rule within the meaning of Executive Order 12866 is based on its analysis of the costs of implementing its responsibilities under the government-wide SDB program.

SBA has examined current information on procurement patterns, including the bidding behavior of small and small disadvantaged businesses to estimate the number of firms that will seek to be certified for the SDB program. In the first year, SBA estimates that about 30,000 firms will seek to be certified as SDBs. Current 8(a) firms (approximately 6,000 in number) meet all the tests for qualifying as SDBs, and will automatically be certified as SDBs.

Where SBA approves and authorizes a Private Certifier to make ownership and control determinations of firms seeking SDB certification, a Private Certifier may charge a reasonable fee for screening applications for completeness and for processing the ownership and control portion of applications. At the present time, it is uncertain to what extent Private Certifiers will be approved or used to make ownership and control determinations. SBA will make those determinations initially. The regulations authorize SBA to charge a fee in the future following a notice in the **Federal Register**. Should SBA elect to charge a fee, the notice will provide information as to the amount and when it will be charged.

SBA projects the impact of this program, based on this analysis, on those small businesses seeking to become certified SDBs, will be less than $15 million. This analysis is an estimate of costs for the first year of the program. Absent material changes or a successful protest, a certification of SDB status will

last three years. Firms claiming to be SDBs will certify that they continue to meet all applicable eligibility criteria for any federal contract during the three-year period.

Summary of the Analysis Prepared Pursuant to the Regulatory Flexibility Act

SBA believes that this rule may have a significant impact on a substantial number of small businesses. In fiscal year 1996, the federal government spent $197.6 billion on the procurement of goods and services. Small businesses were awarded $41.1 billion in prime contracts, representing approximately a 21 percent share of the total federal contract dollars. SDBs were awarded $10.3 billion in federal contracts, about 5 percent of all federal contract dollars. In addition, the federal contract dollars that went to SDBs was about 25 percent of all federal dollars that went to small businesses for the same period.

There are approximately 180,000 small firms registered on PRO-Net, SBA's database of small businesses actively seeking federal government contracts. SBA estimates that 30,000 small businesses will apply to be certified as SDBs in the first year of the program. This is a substantial number of small disadvantaged businesses interested in bidding on federal government contracts. In the proposed rule issued on August 14, 1998 (62 FR 43584–43628), SBA stated its intent to use Private Certifiers to determine "ownership and control" for purposes of the small and disadvantaged business program. We received no comments from the public concerning the economic impact of using Private Certifiers on small business. Although it is uncertain whether SBA will use Private Certifiers, SBA estimates, based on the fees charged by Private Certifiers for similar services, that the cost of a certification would range from $500 to $1,000. Similarly, if SBA elects to charge fees for certification, the fees would be equivalent to the fees charged by Private Certifiers. We have no estimates of the size of the small businesses that will apply to be certified or the value of the contracts that these small businesses will receive. Therefore, we cannot determine precisely the significance of the economic impact on small businesses.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), this rule imposes new reporting or recordkeeping requirements on firms applying to be certified as SDBS. The rule requires such firms to submit evidence that they are owned and controlled by one or more disadvantaged individuals. It further requires the individuals claiming to be disadvantaged to submit representations of group membership and disadvantaged status or evidence of disadvantaged status to SBA. Once certified as an SDB, this rule does not require an SDB to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 124

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, Tribally-owned concerns.

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

PART 124—[AMENDED]

1. The authority citation for 13 CFR part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.108 is amended by adding the following paragraph (f):

§ 124.108 What other eligibility requirements apply for individuals or businesses?

* * * * *

(f) *Achievement of benchmarks.* Where actual participation by disadvantaged businesses in a particular SIC Major Group exceeds the benchmark limitations established by the Department of Commerce, SBA, in its discretion, may decide not to accept an application for 8(a) BD participation from a concern whose primary industry classification falls within that Major Group.

3. Section 124.302 is amended by adding the following paragraph (d):

§ 124.302 What is early graduation?

* * * * *

(d) *Benchmark achievement.* SBA may graduate a Participant prior to the expiration of its program term where the Participant has substantially achieved the targets, objectives and goals of its business plan as adjusted under § 124.403(d) and its primary industry classification falls within a SIC Major Group in which the benchmarks described in § 124.403(d) have been achieved.

4. Section 124.403 is amended by adding paragraph (d) to read as follows:

§ 124.403 How is a business plan updated and modified?

* * * * *

(d) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a particular SIC Major Group exceeds the benchmark limitations established by the Department of Commerce for that Major Group, SBA may adjust the targets, objectives and goals contained in the business plans of Participants whose primary industry classification falls within that Major Group. Any adjustment will take into account projected decreases in 8(a) and SDB contracting opportunities.

5. Section 124.504 is amended by redesignating paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

* * * * *

(d) *Benchmark achievement.* Where actual participation by disadvantaged businesses in a SIC Major Group exceeds the benchmark limitations established by the Department of Commerce for that Major Group, SBA may elect not to accept a requirement having a SIC code within the Major Group that is offered to SBA for award as an 8(a) contract. In determining whether to accept a requirement in such a case, SBA will consider the developmental needs of Participants and other anticipated contracting opportunities available to them.

* * * * *

6. Subpart B to part 124 is revised to read as follows:

Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

124.1001 General applicability.
124.1002 What is a Small Disadvantaged Business (SDB)?
124.1003 What is a Private Certifier?
124.1004 How does an organization or business concern become a Private Certifier?
124.1005 Can a fee be charged to a firm to process the firm's application for SDB certification?
124.1006 Is there a list of Private Certifiers?
124.1007 How long may an organization or business concern be a Private Certifier?
124.1008 How does a firm become certified as an SDB?

124.1009 How does a firm appeal a decision of a Private Certifier?
124.1010 Can a firm represent itself to be an SDB if it has not yet been certified as an SDB?
124.1011 What is a misrepresentation of SDB status?
124.1012 Can a firm reapply for SDB certification?
124.1013 Is there a list of certified SDBs?
124.1014 How long does an SDB certification last?
124.1015 What is the effect of receiving an SDB certification?
124.1016 Can SBA re-evaluate the SDB status of a firm after SBA certifies it to be SDB?
124.1017 Who may protest the disadvantaged status of a concern?
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Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

§ 124.1001 General applicability.

(a) This subpart defines a Small Disadvantaged Business (SDB). It also sets forth procedures by which a firm can apply to be recognized as an SDB, including procedures to be used by private sector entities approved by SBA for determining whether a particular concern is owned and controlled by one or more disadvantaged individuals or Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes (tribes) or Native Hawaiian Organizations (NHOs). Finally, this subpart establishes procedures by which SBA determines whether a particular concern qualifies as an SDB in response to a protest challenging the concern's status as disadvantaged. Unless specifically stated otherwise, the phrase "socially and economically disadvantaged individuals" in this subpart includes tribes, ANCs, CDCs, and NHOs.

(b) Only small firms that are owned and controlled by socially and economically disadvantaged individuals are eligible to participate in Federal SDB price evaluation adjustment, evaluation factor or subfactor, monetary subcontracting incentive, or set-aside programs, or SBA's section 8(d) subcontracting program.

(c) In order for a concern to represent that it is an SDB as a prime contractor for purposes of a Federal Government procurement, it must have:

(1) Received a certification from SBA that it qualifies as an SDB; or

(2) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application from SBA or the Private Certifier.

(d) A firm cannot represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal subcontracting program if it is not on the SBA-maintained list of qualified SDBs.

§ 124.1002 What is a Small Disadvantaged Business (SDB)?

(a) *Reliance on 8(a) criteria.* In determining whether a firm qualifies as an SDB, the criteria of social and economic disadvantage and other eligibility requirements established in subpart A of this part apply, including the requirements of ownership and control and disadvantaged status, unless otherwise provided in this subpart. Qualified Private Certifiers must use the 8(a) criteria applicable to ownership and control in determining whether a particular firm is actually owned and controlled by one or more individuals claiming disadvantaged status.

(b) *SDB eligibility criteria.* A small disadvantaged business (SDB) is a concern:

(1) Which qualifies as small under part 121 of this title for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code.

(i) For purposes of SDB certification, the applicable SIC code is that which relates to the primary business activity of the concern;

(ii) For purposes related to a specific Federal Government contract, the applicable SIC code is that assigned by the contracting officer to the procurement at issue;

(2) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals as set forth in § 124.105. For the requirements relating to tribes and ANCs, NHOs, or CDCs, *see* §§ 124.109, 124.110, and 124.111, respectively.

(3) Except for tribes, ANCs, NHOs, and CDCs, whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. For the requirements relating to tribes and ANCs, NHOs, or CDCs, *see* §§ 124.109, 124.110, and 124.111, respectively.

(4) Which, for purposes of SDB procurement mechanisms authorized by 10 U.S.C. 2323 (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides) relating to the Department of Defense, NASA and the Coast Guard only, has the majority of its earnings accruing directly to the socially and economically disadvantaged individuals.

(c) *Disadvantaged status.* In assessing the personal financial condition of an individual claiming economic disadvantage, his or her net worth must be less than $750,000 after taking into account the exclusions set forth in § 124.104(c)(2).

(d) *Additional eligibility criteria.* Except for tribes, ANCs, CDCs and NHOs, each individual claiming disadvantaged status must be a citizen of the United States.

(e) *Potential for success not required.* The potential for success requirement set forth in § 124.107 does not apply as an eligibility requirement for an SDB.

(f) *Joint ventures.* Joint ventures are permitted for SDB procurement mechanisms (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides), provided that the requirements set forth in this paragraph are met.

(1) The disadvantaged participant(s) to the joint venture must have:

(i) Received an SDB certification from SBA; or

(ii) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application.

(2) For purposes of this paragraph, the term joint venture means two or more concerns forming an association to engage in and carry out a single, specific business venture for joint profit. Two or more concerns that form an ongoing relationship to conduct business would not be considered "joint venturers" within the meaning of this paragraph, and would also not be eligible to be certified as an SDB. The entity created by such a relationship would not be owned and controlled by one or more socially and economically disadvantaged individuals. Each contract for which a joint venture submits an offer will be evaluated on a case by case basis.

(3) Except as set forth in 13 CFR 121.103(f)(3), a concern that is owned and controlled by one or more socially and economically disadvantaged

individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated with such other concern(s) for size purposes. If the exception does not apply, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(4) An SDB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for performance of the contract.

(5) The joint venture must perform any applicable percentage of work required of SDB offerors, and the SDB joint venturer(s) must perform a significant portion of the contract.

(g) *Ownership restrictions for non-disadvantaged individuals.* The ownership restrictions set forth in § 124.105 (g) and (h) for non-disadvantaged individuals and concerns do not apply for purposes of determining SDB eligibility.

§ 124.1003 What is a Private Certifier?

A Private Certifier is an organization or business concern approved by SBA to determine whether firms are owned and controlled by one or more individuals claiming disadvantaged status. SBA may elect to arrange for one or more Private Certifiers to perform certain functions in the SDB Certification process. When that election is made, the provisions of §§ 124.1004 through 124.1007 will apply. SBA will establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of Private Certifiers in specific contracts or agreements between SBA and the Private Certifiers.

§ 124.1004 How does an organization or business concern become a Private Certifier?

(a) SBA may execute contracts or agreements with organizations or business concerns seeking to become Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification activities by SBA.

(b) The organization or business concern must demonstrate a knowledge of SBA's regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertability of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, SBA may require that appropriate officers and/or key employees of the concern attend a training session on SBA's rules and requirements.

(e) An organization or concern seeking to become a Private Certifier must agree to provide access to SBA of its books and records when requested, including records pertaining to its certification activities. Once SBA approves the organization or concern to be a Private Certifier, SBA may review this information, as well as the decisions of the Private Certifier, in determining whether it will renew or extend the term of the Private Certifier, or terminate the Private Certifier for cause.

(f) SBA will include in any contract or agreement document authorizing an entity to act as a Private Certifier appropriate conditions to prohibit conflicts of interests between the Private Certifier and the firms for which it processes SDB applications and to protect the integrity of the decision-making process.

§ 124.1005 Can a fee be charged to a firm to process the firm's application for SDB certification?

(a) With SBA's approval, a Private Certifier may charge a reasonable fee to a firm in order to screen the firm's application for completeness and to process a determination of ownership and control. The fee must be for actual services rendered and must not be related to whether or not the business concern is found to be owned and controlled by one or more individuals or entities claiming disadvantaged status.

(b) Where SBA makes the determination of ownership and control, SBA may collect a fee comparable to that which would be charged by a Private Certifier. From time to time, SBA will publish a Notice in the **Federal Register** identifying any fee that SBA will charge to process a firm's determination of ownership and control. SBA will promptly remit any funds received pursuant to this section to the Treasury of the United States as miscellaneous receipts.

§ 124.1006 Is there a list of Private Certifiers?

SBA will maintain a list of approved Private Certifiers on SBA's Home Page on the Internet. Any interested person may also obtain a copy of the list from the local SBA district office.

§ 124.1007 How long may an organization or business concern be a Private Certifier?

(a) SBA's approval document will specify how long the organization or concern may be a Private Certifier. The initial contract or agreement will have a base period of one year, and may include option years or renewal provisions.

(b) SBA may terminate a contract or agreement with an organization or business concern which is a Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 124.1005;

(2) Engaging in prohibited business transactions with the firms for which it processes SDB applications in violation of § 124.1004(f); or

(3) A demonstrated record of ownership and control determinations that are overturned on appeal by SBA's Office of Hearings and Appeals (OHA) or by SBA as part of an SDB protest.

§ 124.1008 How does a firm become certified as an SDB?

Any firm may apply to be certified as an SDB. SBA's field offices will provide further information and required application forms to any firm interested in SDB certification. In order to become certified as an SDB, a firm must apply to SBA or, if directed by SBA, to a Private Certifier. The application must include evidence demonstrating that the firm is owned and controlled by one or more individuals claiming disadvantaged status, along with certifications or narratives regarding the disadvantaged status of such individuals. *See* paragraph (e)(1) of this section. The firm also must submit information necessary for a size determination. *See* § 121.1008. Current 8(a) BD Participants do not need to submit applications for SDB status. These concerns automatically qualify as SDBs by virtue of their status as 8(a) BD concerns. An 8(a) Participant's continuing eligibility as an SDB will be

reviewed as part of the concern's 8(a) annual review.

(a) *Filing an SDB application.* (1) An interested firm must first submit a complete application to SBA's Assistant Administrator for Small Disadvantaged Business Certification and Eligibility (AA/SDBCE), Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, or to a specific SBA field office or an approved Private Certifier if directed by SBA.

(2) The firm must identify which individual(s) or entities are claiming disadvantaged status.

(b) *Required forms.* Each firm seeking to be certified as an SDB must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments may include, but not be limited to, financial statements, Federal personal and business tax returns and personal history statements. The application package may be in the form of an electronic application.

(c) *Application processing.* (1) SBA or a Private Certifier will advise each applicant generally within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required. If the application is not complete, SBA or the Private Certifier will return the application to the firm, and will notify the firm that it may reapply when its application is complete.

(2) The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own and control the concern.

(d) *Ownership and control decision.* SBA or a Private Certifier will determine whether those individuals claiming disadvantaged status own and control the applicant firm within 30 days of receipt of a complete application package, whenever practicable..

(1) Where a Private Certifier determines ownership and control, the Private Certifier will issue a written decision as to whether the applicant is owned and controlled by the individuals identified as claiming disadvantaged status.

(i) If the Private Certifier finds that the applicant is owned and controlled by the individuals claiming disadvantaged status, the Private Certifier will forward the application to SBA along with a copy of its ownership and control determination and the information required by paragraph (e)(2)(ii) of this section, where appropriate.

(ii) If the Private Certifier finds that the applicant is not owned and controlled by the individuals claiming disadvantaged status, its decision must state the specific reasons for the finding, and inform the applicant of its right to appeal the decision to SBA pursuant to § 124.1009.

(2) Where SBA determines ownership and control, SBA will first determine whether the applicant is owned and controlled by the individual(s) claiming to be disadvantaged. If SBA determines that the applicant is not owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a written decision addressing only the ownership and control issues. If SBA determines that the applicant is owned and controlled by the individual(s) claiming disadvantaged status, SBA will issue a single written decision as to whether the applicant qualifies as an SDB. Such a determination will include the ownership and control of the firm, the size status of the firm, and the disadvantaged status of those individuals claiming to be disadvantaged.

(3) In its sole discretion, SBA may analyze and determine whether a firm is owned and controlled by one or more individuals claiming disadvantaged status notwithstanding the availability of a Private Certifier to make such a decision.

(4) SBA reserves the right to re-evaluate an approved decision on ownership and control by a Private Certifier in a case where it has credible evidence that the Private Certifier has substantially disregarded the eligibility criteria.

(e) *Disadvantaged determination.* Once a concern receives a decision finding that it is owned and controlled by those individuals or entities claiming disadvantaged status (either through an initial determination or on appeal), SBA will determine whether the other eligibility criteria are met, and, if so, will include the SDB on the SBA-maintained list of qualified SDBs. SBA will make this determination within 30 days of receiving an SDB application, if practicable.

(1) *Members of designated groups.* (i) Those individuals claiming disadvantaged status that are members of the same designated groups that are presumed to be socially disadvantaged for purposes of SBA's 8(a) BD program (*see* § 124.103(b)) are presumed to be socially and economically disadvantaged for purposes of SDB certification. These individuals must represent that they are members of one of the designated groups, that they are identified as a member of one of the designated groups, that their net worth is less than $750,000 after taking into account the exclusions set forth in § 124.104(c)(2), and that they are citizens of the United States.

(ii) Absent credible evidence to the contrary, SBA may accept these representations as true and certify the firm as an SDB.

(2) *Individuals not members of designated groups.* (i) Each individual claiming disadvantaged status who is not a member of one of the designated groups must submit a statement identifying personally how his or her entry into or advancement in the business world has been impaired because of personally specific factors (*see* § 124.103(c)), and how his or her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (*see* §§ 124.103(c) and 124.104).

(ii) Where a Private Certifier determines ownership and control, the Private Certifier must also review the disadvantaged status submission and any other required information, and send to SBA the following:

(A) An executive summary and analysis of the disadvantaged status submission;

(B) The application and all supporting documentation; and

(C) A certification that the application is complete and suitable for evaluation.

(3) *Concerns owned by tribes, ANCs, CDCs, or NHOs:* SBA will process SDB applications from concerns owned and controlled by tribes, ANCs, CDCs, or NHOs in the same way as those from concerns owned by individuals who are members of designated groups.

(f) *SDB Determination.* (1) If SBA's AA/SDBCE determines that the individual(s) claiming disadvantage are disadvantaged and other eligibility criteria are met, he or she will certify the firm as an SDB.

(2) If SBA's AA/SDBCE determines that one or more of the individuals claiming to be disadvantaged is not disadvantaged and their disadvantaged status is required to establish disadvantaged ownership and control of the applicant, or any of the other eligibility criteria are not met, he or she will reject the firm's application for SDB certification. The AA/SDBCE will issue a written decision setting forth SBA's reasons for decline.

(3) Pursuant to part 134 of this title, a firm may appeal to OHA the AA/SDBCE's decision that one or more of the individuals claiming disadvantaged status is not disadvantaged, or, where SBA determines ownership and control, that those claiming disadvantaged status do not own and control the applicant. (*See* § 124.1009 for appeals from decisions by Private Certifiers.)

(i) The firm must serve SBA's Associate General Counsel for General Law with a copy of the appeal.

(ii) OHA will determine whether SBA's decision in either case was arbitrary, capricious, or contrary to law. OHA's review is limited to the facts that were before SBA at the time of its decision and any arguments submitted in or in response to the appeal. OHA will not consider any facts beyond those that were already presented to SBA unless the administrative judge determines that manifest injustice would occur if the appeal were limited to the record.

(4) A firm may also request a formal size determination pursuant to part 121 of this title where SBA finds that the firm is not small.

(g) *Current 8(a) BD program participants.* Any firm that is currently a Participant in SBA's 8(a) BD program need not seek an ownership and control determination or apply to SBA for a separate certification as an SDB. SBA will certify current 8(a) BD Participants as SDBs, and automatically include them on the list of qualified SDBs.

(h) *8(a) BD graduates.* SBA will automatically certify a firm that has graduated from the SBA's 8(a) BD program to be an SDB, provided SBA determined that the firm continued to be eligible for the 8(a) BD program as part of an annual review within the last three years. (*See* § 124.1014(b)).

(i) *Certification by DOT recipient.* If a firm applying for SDB certification has a current, valid certification as a disadvantaged business enterprise (DBE) from a Department of Transportation (DOT) recipient, SBA may adopt the DBE certification as an SDB certification when determined by the AA/SDBCE or designee to be appropriate.

§ 124.1009 How does a firm appeal a decision of a Private Certifier?

Where a Private Certifier performs an ownership and control determination and finds that a firm is not owned and controlled by the individual(s) claiming disadvantaged status, the firm may appeal that decision to OHA pursuant to part 134 of this title. The firm must serve SBA's Associate General Counsel for General Law and the applicable Private Certifier with a copy of the appeal.

(a) The Private Certifier must submit to OHA the full record upon which its decision was based within two days of receiving notification that an appeal has been filed.

(b) The Private Certifier and SBA may each elect to appear or not appear in an appeal-proceeding.

(c) OHA's review is limited to the facts that were before the Private Certifier at the time of its final decision and any arguments submitted in or in response to the appeal. OHA will not consider any facts beyond those that were already presented to the Private Certifier unless the administrative judge determines that manifest injustice would occur if the appeal were limited to the record.

(d) OHA will decide whether it believes that the facts support by a preponderance of the evidence the Private Certifier's determination regarding ownership and control.

(e) Where the facts presented in the record leave significant doubt as to whether the petitioner is or is not owned and controlled by one or more individuals claiming to be disadvantaged, the administrative judge may remand the case to the Private Certifier for reconsideration in accord with his or her remand order.

(f) If OHA finds that the firm is owned and controlled by the individual(s) claiming disadvantaged status, OHA will refer the application to SBA for further processing. If OHA finds that the firm is not owned and controlled by such individual(s), the administrative judge will state the reasons for that decision, which will be the final decision of the Agency.

§ 124.1010 Can a firm represent itself to be an SDB if it has not yet been certified as an SDB?

(a) *General rule.* Except as set forth in paragraph (d) of this section, a firm may represent itself to be an SDB concern in order to receive a preference as an SDB for any Federal procurement program if it has submitted a complete application for SDB certification to SBA or a Private Certifier and it has not received a negative determination regarding that application from SBA or the Private Certifier. A firm that has received a negative determination of ownership and control or a negative determination regarding its disadvantaged status and is awaiting the resolution of its appeal of that determination may not represent itself to be an SDB.

(b) *Where applicant becomes successful offeror.* If a concern becomes the apparent successful offeror on a contract for which it would receive a benefit for being an SDB while its application for SDB certification is pending, either at SBA or a Private Certifier, the contracting officer for the particular contract must immediately inform SBA's AA/SDBCE. SBA will then prioritize the firm's SDB application and make a determination regarding the firm's status as an SDB within 15 days from the date that SBA received the contracting officer's notification.

(1) Where the apparent successful offeror's completed application is pending an ownership and control determination with a Private Certifier, the concern must inform SBA which Private Certifier has its application. SBA will immediately contact the Private Certifier to require the Private Certifier to complete its ownership and control determination within 5 days of SBA's notification. In appropriate circumstances, SBA may undertake to make the determination itself, and may recoup the cost of the determination from the Private Certifier.

(2) If requested to do so by the procuring activity contracting officer, SBA will determine whether other offerors are SDBs where they have represented that their completed applications for SDB status are pending at SBA or a Private Certifier and they could receive the award if SBA determines that the apparently successful offeror is not an SDB.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer will presume that the apparently successful offeror, and any other offerors referred to SBA in connection with the same procurement by the contracting officer, are not disadvantaged, and will make award accordingly, unless the contracting officer grants an extension to the 15-day response period.

(c) *Representation as SDB for statistical purposes.* A firm may represent itself as an SDB concern for general statistical purposes without regard to any application for SDB certification or its inclusion on the SBA-maintained list of qualified SDB's.

(d) *Subcontracting programs.* Only firms that are on the SBA-maintained list of qualified SDBs may represent themselves as SDB concerns in order to receive a preference as an SDB for any Federal subcontracting program.

§ 124.1011 What is a misrepresentation of SDB status?

(a) Any person or entity that misrepresents a firm's status as a "small business concern owned and controlled by socially and economically disadvantaged individuals" ("SDB status") in order to obtain an 8(d) or SDB contracting opportunity or preference will be subject to the penalties imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as well as any other penalty authorized by law.

(b) A representation of SDB status by any firm that SBA has found not to be an SDB (either in connection with an SDB application or protest) will be deemed a misrepresentation of SDB status, unless and until the firm reapplies for and obtains SDB certification.

§ 124.1012 Can a firm reapply for SDB certification?

(a) A concern which has been denied SDB certification may reapply for certification at any time 12 months or more after the date of the most recent final decision of SBA to decline its application (either on appeal of an ownership and control determination, or a negative finding of disadvantaged status).

(b) A concern which received a decision that it was not owned and controlled by the individual(s) claiming disadvantaged status from a Private Certifier and does not appeal that decision to OHA may apply for a new ownership and control determination at any time.

§ 124.1013 Is there a list of certified SDBs?

(a) If SBA certifies a firm to be an SDB, SBA will enter the name of the firm into an SBA-maintained central on-line register, such as PRO-Net.

(b) The register of SDBs will contain the names of all firms that are currently certified to be SDBs, including the names of all firms currently participating in SBA's 8(a) BD program.

(c) On a continuing basis, SBA will delete from the on-line register those firms that have:

(1) Graduated or been terminated from SBA's 8(a) BD program for any reason and have not otherwise received SDB certification (*see*, §§ 124.1008(h) and 124.1014(b) for treatment of 8(a) graduates);

(2) Been determined not to be an SDB in response to an SDB protest brought under § 124.1017; or

(3) Other than current 8(a) Participants, not received a renewed SDB certification after being on the register for three years (*see* § 124.1014(c)).

§ 124.1014 How long does an SDB certification last?

(a) Once SBA certifies a firm to be an SDB by placing it on the list of qualified SDBs, the firm will generally remain on the SBA-maintained list of certified SDBs for a period of three years from the date of its certification.

(1) A firm's SDB certification will extend beyond three years where SBA finds the firm to be an SDB:

(i) On the merits in connection with a particular protest (*see* § 124.1023(h)(2));

(ii) In connection with an SBA-initiated SDB determination (*see* § 124.1016(a)(2)); or

(iii) As part of an 8(a) BD annual review.

(2) Where SBA finds a firm not to be an SDB in connection with an SDB protest, an SBA-initiated SDB determination, or an 8(a) BD annual review, SBA will immediately decertify the firm as an SDB and remove it from the qualified list of SDBs.

(b) A firm that graduates from the 8(a) BD program will remain on the list of certified SDBs for a period of three years from the date of its last annual review.

(c) To remain on the SDB register after three years, a firm whose status as an SDB has not been upheld in connection with a protest or an SBA-initiated SDB determination, or has not been certified as an eligible 8(a) Participant as part of an annual review, must submit a new application and receive a new certification.

§ 124.1015 What is the effect of receiving an SDB certification?

(a) A firm that is certified to be an SDB may represent itself as an SDB for such purposes as Federal price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentive programs, section 8(d) subcontracts, SDB set-asides, or any other programs which accept an SBA certification. A contracting officer may award a contract based on a firm's representation that it is a certified SDB absent a protest that the protested concern's circumstances have materially changed since SBA certified it as an SDB, or that the protested concern's SDB application contained false or misleading information (*see* § 124.1018(d)).

(b) For purposes of a particular Federal procurement, the firm must represent that it is both disadvantaged and small at the time it submits its initial offer including price (see part 121 of this title). At the same time, the firm must also represent that no material change has occurred in its SDB status since its SDB certification, or from the date of its application for SDB certification if its application has not yet been processed, and must specifically represent that the net worth of the disadvantaged individuals (not including concerns owned by tribes, ANCs, CDCs, or NHOs) upon whom the SDB certification was based still does not exceed $750,000.

(c) A firm's status as "disadvantaged" or "small" may be protested pursuant to §§ 124.1017 through 124.1021 and §§ 121.1001 through 121.1005, respectively, despite the presence of the firm on the SDB register, provided the protest contains specific allegations that the firm's circumstances have materially changed since SBA certified it as an SDB, or that the firm's SDB application contained false or misleading information.

§ 124.1016 Can SBA re-evaluate the SDB status of a firm after SBA certifies it to be SDB?

(a) SBA may initiate an SDB determination whenever it receives credible information calling into the question a firm's eligibility as an SDB, including an adverse determination from a DOT recipient of the firm's status as a DBE. Upon its completion of an SDB determination, SBA will issue a written decision regarding the SDB status of the questioned firm.

(1) If SBA finds that the firm does not qualify as an SDB, SBA will decertify the firm as an SDB, and immediately remove the firm from the list of qualified SDBs. The firm may appeal SBA's decision to OHA consistent with the provisions of § 124.1008(f) and part 134 of this chapter.

(2) If SBA finds that the firm continues to qualify as an SDB, the determination remains in effect for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

(b) An SDB firm must report within 10 days to the AA/SDBCE any changes in ownership and control or any other circumstances which could adversely affect its eligibility as an SDB.

§ 124.1017 Who may protest the disadvantaged status of a concern?

(a) In connection with a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment or an SDB set-aside, the following entities may protest the disadvantaged status of the apparent successful offeror:

(1) Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue;

(2) The procuring activity contracting officer; or

(3) SBA.

(b) In connection with an 8(d) subcontract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing

one or more SDB subcontractors, the procuring activity contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

(c) An interested party seeking to protest both the disadvantaged status and size of an apparent successful SDB offeror must submit two separate protests, one as to disadvantaged status pursuant to this subpart, and one as to size pursuant to part 121 of this title. An interested party seeking to protest only size of an apparent successful SDB offeror must submit a size protest to the contracting officer pursuant to part 121.

§ 124.1018 When will SBA not decide an SDB protest?

(a) SBA will not decide a protest as to disadvantaged status of any concern other than the apparent successful offeror.

(b) SBA will not normally consider a post award protest. SBA may consider a post award protest in its discretion where it determines that a protest decision after award would have a practical effect (e.g., where the contracting officer agrees to terminate the contract if the protest is sustained).

(c) SBA will not decide an untimely protest (see § 124.1020(c)).

(d) SBA will not decide a non-specific protest or one that does not present credible evidence that the protested concern's circumstances have materially changed since SBA certified it as an SDB, or that the protested concern's SDB application contained false or misleading information (*see* § 124.1021).

(e) An interested party may appeal SBA's dismissal of a protest for lack of specificity, timeliness, or a basis upon which SBA will consider a protest to SBA's Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development (DADA/GC&MED) pursuant to § 124.1024.

§ 124.1019 Who decides disadvantaged status protests?

In response to a protest challenging the disadvantaged status of a concern, the SBA's AA/SDBCE will determine whether the concern is disadvantaged.

§ 124.1020 What procedures apply to disadvantaged status protests?

(a) *General.* The protest procedures described in this section are separate and distinct from those governing size protests and appeals. All protests relating to whether a concern is a "small" business for purposes of any Federal program, including SDB set-asides and SDB evaluation adjustments, must be filed and processed pursuant to part 121 of this title.

(b) *Filing.* (1) All protests challenging the disadvantaged status of a concern with respect to a particular Federal procurement requirement must be submitted in writing to the procuring activity contracting officer, except in cases where the contracting officer or SBA initiates a protest.

(2) Any contracting officer who initiates a protest must submit the protest in writing to SBA in accord with paragraph (c) of this section.

(3) In cases where SBA initiates a protest, the protest must be submitted in writing to the AA/SDBCE and notification provided in accord with § 124.1022(a).

(c) *Timeliness of protest.* (1) *SDB evaluation adjustment and set-aside protests.* (i) *General.* In order for a protest to be timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Oral protests.* An oral protest relating to an SDB set-aside or SDB evaluation adjustment made to the contracting officer within the allotted 5-day period will be considered a timely protest only if the contracting officer receives a confirming letter postmarked, FAXed, or delivered no later than one calendar day after the date of such oral protest.

(iii) *Protests of contracting officers or SBA.* The time limitations in paragraph (c)(1)(i) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (c)(3) of this section.

(iv) *Untimely protests.* A protest received after the time limits set forth in this paragraph (c)(1) will be dismissed by SBA.

(2) *Section 8(d) protests.* In connection with an 8(d) subcontract, the contracting officer or SBA must submit a protest to the AA/SDBCE prior to the completion of performance by the intended 8(d) subcontractor.

(3) *Premature protests.* A protest in connection with any procurement which is submitted by any person, including the contracting officer, before bid opening or notification of intended award, whichever applies, will be considered premature, and will be returned to the protestor without action. A contracting officer that receives a premature protest must return it to the protestor without submitting it to the SBA.

(d) *Referral to SBA.* (1) Any contracting officer who receives a protest that is not premature must promptly forward it to the SBA's AA/SDBCE, 409 3rd Street, SW, Washington, DC 20416.

(2) A contracting officer's referral of a protest to SBA must contain the following:

(i) The written protest and any accompanying materials;

(ii) The date on which the protest was received by the contracting officer;

(iii) A copy of the protested concern's selfrepresentation as an SDB, and the date of such self-representation; and

(iv) The date of bid opening or the date on which notification of the apparent successful offeror was sent to all unsuccessful offerors, as applicable.

§ 124.1021 What format, degree of specificity, and basis does SBA require to consider an SDB protest?

(a) *Format.* An SDB protest need not be in any specific format in order for SBA to consider it.

(b) *Specificity.* A protest must be sufficiently specific to provide reasonable notice as to all grounds upon which the protested concern's disadvantaged status is challenged.

(1) SBA will dismiss a protest that merely asserts that the protested concern is not disadvantaged, without setting forth specific facts or allegations.

(2) The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely.

(c) *Basis.* SBA will consider a protest challenging whether the apparent successful offeror is owned and controlled by one or more socially and economically disadvantaged individuals, including whether one or more of the individuals claiming disadvantaged status is in fact socially or economically disadvantaged, only if the protest presents credible evidence that the firm's circumstances have materially changed since SBA certified it as an SDB, or that the firm's SDB application contained false or misleading information.

§ 124.1022 What will SBA do when it receives an SDB protest?

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the AA/SDBCE, or designee, will immediately notify the protestor and the contracting officer of the date the protest was received and whether it

will be processed or dismissed for lack of timeliness or specificity.

(b) In cases where the protest is timely and sufficiently specific, the AA/SDBCE, or designee, will also immediately advise the protested concern of the protest and forward a copy of it to the protested concern.

(1) The AA/SDBCE, or designee, is authorized to ask the protested concern to provide any or all of the following information and documentation, completed so as to show the circumstances existing on the date of self-representation: SBA Form 1010A, "Statement of Personal Eligibility" for each individual claiming disadvantaged status; SBA Form 1010B, "Statement of Business Eligibility;" SBA Form 413, "Personal Financial Statement," for each individual claiming disadvantaged status; information as to whether the protested concern, or any of its owners, officers or directors, have applied for admission to or participated in the SBA's 8(a) BD program and if so, the name of the company which applied or participated and the date of the application or entry into the program; business tax returns for the last two completed fiscal years prior to the date of self-representation; personal tax returns for the last two years prior to the date of self-representation for all individuals claiming disadvantaged status, all officers, all directors and for any individual owning at least 10% of the business entity; annual business financial statements for the last two completed fiscal years prior to the date of self-representation; a current monthly or quarterly business financial statement no older than 90 days; articles of incorporation; corporate by-laws; partnership agreements; limited liability company articles of organization; and any other relevant information as to whether the protested concern is disadvantaged.

(2) SBA's disadvantaged status determination need not be limited to consideration only of the issues raised in the protest. SBA may consider other applicable criteria.

(3) Unless the protest presents specific credible information which calls into question the veracity of application or other documents previously submitted to SBA by a current Participant in SBA's 8(a) BD program, SBA will allow the Participant to submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit or declaration that circumstances concerning the ownership and control of the business and the disadvantaged status of its principals have not changed since its application or entry into the program or its most recent annual review, and a copy of its most recently completed annual review.

(i) If the ownership or control of the business or the disadvantaged status of any principals have changed, the protested concern must comply with paragraph (b)(1) of this section.

(ii) An affidavit or declaration may be allowed only if SBA admitted the protested concern to the 8(a) BD program, or conducted an annual review of the protested concern, during the 12month period preceding the date on which SBA receives the protest, and if proceedings to suspend, terminate or early graduate the concern from the 8(a) BD program are not pending.

(c) Within 10 working days of the date that notification of the protest was received from the AA/SDBCE or designee, the protested concern must submit to the AA/SDBCE or designee, by personal delivery, FAX, or mail, the information and documentation requested pursuant to paragraph (b)(1) of this section or the affidavit permitted by paragraph (b)(2) of this section. Materials submitted must be received by the close of business on the 10th working day.

(1) SBA will consider only materials submitted timely, and the late or non-submission of materials needed to make a disadvantaged status determination may result in sustaining the protest.

(2) The burden is on the protested concern to demonstrate its disadvantaged status, whether or not it is currently shown on the list of qualified SDBs.

(3) The protested concern must timely submit to SBA any information it deems relevant to a determination of its disadvantaged status.

§ 124.1023 How does SBA make disadvantaged status determinations in considering an SDB protest?

(a) *General.* The AA/SDBCE, or designee, will determine a protested concern's disadvantaged status within 15 working days after receipt of a protest. If the procuring activity contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer may presume that the challenged offeror is disadvantaged, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(b) *Award after protest.* (1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until:

(i) The SBA has made an SDB determination, or

(ii) 15 working days have expired since SBA's receipt of a protest and the contracting officer has not agreed to an extension of the 15-day response period.

(2) Notwithstanding paragraph (b)(1) of this section, the contracting officer may award a contract after the receipt of an SDB protest where he or she determines in writing that an award must be made to protect the public interest.

(c) *Withdrawal of protest.* If a protest is withdrawn, SBA will not complete a new disadvantaged status determination, and a previous SDB certification will stand.

(d) *Basis for determination.* (1) Except with respect to a concern which is a current Participant in SBA's 8(a) BD program and is authorized under § 124.1022(b)(3) to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination will be based on the protest record, including reasonable inferences therefrom, as supplied by the protestor, protested concern, SBA or others.

(2) SBA may in its discretion make a part of the protest record information already in its files, and information submitted by the protestor, the protested concern, the contracting officer, or other persons contacted for additional specific information.

(e) *Disadvantaged status.* In evaluating the social and economic disadvantage of individuals claiming disadvantaged status, SBA will consider the same information and factors set forth in §§ 124.103 and 124.104. As provided in § 124.1002(c), individuals claiming disadvantaged status must have a net worth that is less than $750,000, after taking into account the exclusions set forth in § 124.104(c)(2).

(f) *Disadvantaged status determination.* SBA will render a written determination including the basis for its findings and conclusions.

(g) *Notification of determination.* After making its disadvantaged status determination, the SBA will immediately notify the contracting officer, the protestor, and the protested concern of its determination. SBA will promptly provide by certified mail, return receipt requested, a copy of its written determination to the same entities, consistent with law.

(h) *Results of an SBA disadvantaged status determination.* A disadvantaged status determination becomes effective immediately.

(1) If the concern is found not to be disadvantaged, the determination remains in full force and effect unless reversed upon appeal by SBA's DADA/GC&MED, or designee, pursuant to § 124.1024, or the concern is certified to

be an SDB under § 124.1008. The concern is precluded from applying for SDB certification for 12 months from the date of the final agency decision (whether by the AA/SDBCE, or designee, without an appeal, or by the DADA/GC&MED, or designee, on appeal).

(2) If the concern is found to be disadvantaged, the determination remains in full force and effect unless and until reversed upon appeal by SBA's DADA/GC&MED, or designee, pursuant to § 124.1024. A final Agency decision (whether by the AA/SDBCE, or designee, without an appeal, or by the DADA/GC&MED, or designee, on appeal) finding the protested concern to be an SDB remains in effect for three years from the date of the decision under the same conditions as if the concern had been granted SDB certification under § 124.1008.

§ 124.1024 Appeals of disadvantaged status determinations.

(a) *Who may appeal.* Appeals of protest determinations may be filed with the SBA's DADA/GC&MED by the protested concern, the protestor, or the contracting officer.

(b) *Timeliness of appeal.* An appeal must be in writing and must be received by the DADA/GC&MED no later than 5 working days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day time period.

(c) *Notice of appeal.* Notice of the appeal must be provided by the party bringing an appeal to the procuring activity contracting officer and either the protested concern or original protestor, as appropriate.

(d) *Grounds for appeal.* SBA will reexamine a protest determination only if there was a clear and significant error in the processing of the protest, or if the AA/SDBCE, or designee, failed to consider a significant material fact contained within the information supplied by the protestor or the protested concern. SBA will not consider protest determination appeals based on additional information or changed circumstances which were not disclosed at the time of the decision of the AA/SDBCE or designee, or which are based on disagreement with the findings and conclusions contained in the determination.

(e) *Contents of appeal.* No specific format is required for the appeal. However, the appeal must identify the protest determination which is appealed, and set forth a full and specific statement as to why the determination is erroneous under paragraph (c) of this section.

(f) *Completion of appeal after award.* An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the protest has been made, if so desired by the protested concern, or where SBA determines that a decision on appeal would have a material impact on contracting decisions, such as where the contracting officer agrees:

(1) In the case where an award is made to a concern other than the protested concern, to terminate the contract and award to the protested concern if the appeal finds that the protested concern is disadvantaged; or

(2) In the case where an award is made to the protested concern, to terminate the contract if the appeal finds that the protested concern is not disadvantaged.

(g) The appeal will be decided by the DADA/GC&MED, within 5 working days of its receipt, if practicable.

(h) The appeal decision will be based only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested concern, consistent with law.

(i) The decision of the DADA/GC&MED, is the final decision of the SBA, and cannot be further appealed to OHA.

Dated: March 6, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–17195 Filed 6–26–98; 8:45 am]

BILLING CODE 8025–01–P

federal register

Tuesday
June 30, 1998

Part VIII

Department of the Treasury

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93); Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury" or "Department") is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment includes changes necessary to make fungible stripped interest components for Treasury inflation-indexed securities, which the Department began issuing in January 1997. In addition, the amendment makes certain technical clarifications and conforming changes.

EFFECTIVE DATE: March 31, 1999.

ADDRESSES: This final rule is available for downloading from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C., 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Acting Director), Chuck Andreatta or Kurt Eidemiller (Government Securities Specialists), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

The Uniform Offering Circular (31 CFR Part 356) sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The Uniform Offering Circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1]

In January 1997, the Department began issuing a new type of marketable security, referred to as a Treasury inflation-indexed security, whose principal value is adjusted for inflation as measured by the Bureau of Labor Statistics of the U.S. Department of Labor.[2] The Department believes the issuance of these new securities will reduce interest costs to the Treasury over the long term and broaden the types of debt instruments available to investors in U.S. financial markets.

Treasury inflation-indexed securities have been eligible for the STRIPS (Separate Trading of Registered Interest and Principal of Securities) program since Treasury began issuing the new securities. STRIPS is the Department's program under which eligible securities are authorized to be separated into principal and interest components (interest components are also referred to as "TINTS"). Such components are maintained in book-entry accounts, and transferred separately in the Treasury/Reserve Automated Debt Entry System ("TRADES" or the commercial book-entry system). Unlike TINTS from Treasury fixed-principal securities, TINTS stripped from an inflation-indexed security are currently not fungible (i.e., they are not interchangeable) with TINTS stripped from a different inflation-indexed security, even if the components have the same maturity (payment) date.[3]

In the preamble to the final rule amendments to accommodate the issuance of inflation-indexed securities, the Department stated that it would "continue to work on making interest components fungible in a manner that is operationally feasible."[4] The Department recognizes that making stripped inflation-indexed interest components fungible is important to developing a liquid market for these components. The Department has worked with market participants to develop a methodology that will accomplish this goal.

The Department published for public comment a proposed amendment to the Uniform Offering Circular on December 8, 1997,[5] which laid out the proposed methodology for making TINTS stripped from different Treasury inflation-indexed securities fungible. The closing date for comments was February 6, 1998. As explained in more detail below, after considering the comments provided, Treasury has decided to adopt the proposed methodology for making TINTS stripped from different inflation-indexed securities fungible. This methodology will remain unchanged from its description in the proposed rule. However, in order to provide market participants sufficient time to make any necessary automated systems changes, the effective date of this final rule will be delayed until March 31, 1999.

II. Comments Received in Response to the Proposed Rule

The Department received one comment letter on the proposed rule, which was from The Bond Market Association ("Association").[6] In developing the final rule, the Department took the issues raised in this comment letter into consideration, as well as input received during discussions with various active Treasury securities market participants.

The Association generally supported the Department's efforts to make TINTS of inflation-indexed securities fungible. The Association, however, cited its members' concern with "the significant modifications needed for their operational systems to accommodate the trading and maintenance of the adjusted value of stripped interest components to the penny." The Association said its members believe "that it will require approximately six to nine months to both make and test the appropriate system changes before they can begin trading the new stripped securities." Association members, the commenter said, also expressed concerns that these system changes could complicate efforts already underway to make operational system adjustments to prepare for the year 2000, the European Monetary Unit and the General Collateral Finance Repo product of the Government Securities Clearing Corporation. Similar concerns were expressed to the Department in discussions with various active Treasury market participants. The Association suggested that Treasury consider truncating the pennies from the adjusted values, so that the adjusted values would be maintained in accounts and transferred in whole dollars.

The Association supported establishing a conversion factor between securities issued under different CPI base reference periods if the Consumer Price Index's base reference period is changed. Such a factor would enable TINTS from inflation-indexed securities issued during different CPI base

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[2] 62 FR 846 (January 6, 1997).

[3] See 31 CFR 356.31(f).

[4] 62 FR 846, 848 (January 6, 1997).

[5] 62 FR 64528 (December 8, 1997).

[6] See letter from Ms. Paula H. Simpkins, Vice President and Assistant General Counsel, The Bond Market Association (dated February 6, 1998). This letter is available to the public for inspection and downloading on the Internet, at the address provided earlier in this rule, and for inspection and copying at the Treasury Department Library, at the address provided earlier.

reference periods to be fungible. However, the Association recommended that the conversion be done on a voluntary basis so investors could decide whether the benefits outweigh the associated costs of conversion. The Association also recommended the creation of an additional conversion factor that would allow TINTS of inflation-indexed securities issued during a more-recent base period to be converted to an older base period. This additional convertibility, the commenter asserted, would further increase the marketability of the TINTS.

After taking the comments and views received into consideration, the Department is issuing a final rule that adopts the proposed rule without any significant changes. The suggestion to truncate the pennies from the calculation of adjusted values was not adopted because of the resulting payment differences to holders of inflation-indexed TINTS as compared with holders of unstripped inflation-indexed securities, particularly for smaller holders. However, in order to provide market participants with sufficient time to make any automated systems changes necessary for maintaining accounts and transferring adjusted values in pennies, Treasury has decided to adopt the recommendation of The Bond Market Association to delay the effective date. Accordingly, the effective date of this final rule will be delayed until March 31, 1999. In delaying the effective date, the Department recognizes the significant efforts of market participants in making systems changes for the year 2000 and the European Monetary Unit.

No changes are being proposed at this time to the current STRIPS program for fixed-principal securities. However, as stated in the preamble to the proposed rule, the Department will consider at a later date the desirability of making changes to the minimum and multiple requirements for fixed-principal TINTS similar to the requirements for inflation-indexed TINTS, i.e., discontinuing the $1,000 minimum-to-hold and multiple requirement, and permitting fixed-principal TINTS to be held in amounts to the penny.

The suggestions to make conversions of adjusted values from less-recent CPI base reference periods to more-recent base reference periods voluntary, and to create an additional conversion factor to facilitate conversions of adjusted values from more-recent periods to less-recent periods, were also not adopted. The Department believes that these suggestions, had they been adopted, would have been operationally very complicated. They also would have continued to make inflation-indexed TINTS not fungible to the extent that, in either case, there would have to be different CUSIP numbers for TINTS that have the same maturity (payment) date. The rule has been amended, therefore, so that in the event that the CPI is rebased, conversion to the most-recent base reference period will be mandatory. At such time, Treasury will publish information specifying the manner in which this conversion will be accomplished. In addition, any new TINTS created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

The only other change in the final rule from the proposed rule is to provide for mandatory conversion to fungible TINTS of any TINTS created prior to March 31, 1999.[7] Treasury stated in the preamble to the proposed rule that this conversion would occur because of the Department's goal, where possible, to make all TINTS from inflation-indexed securities fungible.[8] Also as stated in the preamble to the proposed rule, Treasury will provide public notice, if necessary, informing participants of the effective conversion date, along with detailed instructions regarding the conversion to fungible STRIPS.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Although this rule was issued initially in proposed form to secure the benefit of public comment, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this final rule and, therefore, the Paperwork Reduction Act does not apply. The collections of information in 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of "Adjusted value" to read as follows:

§ 356.2 Definitions.

* * * * *

Adjusted value means, for an interest component stripped from an inflation-indexed security, an amount derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, Section IV to this part, for an example of how to calculate the adjusted value for interest components stripped from an inflation-indexed security.)

* * * * *

3. Section 356.31 is revised to read as follows:

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be "stripped," i.e., divided into separate principal and interest components. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Treasury fixed-principal securities*—(1) *Minimum par amounts*

[7] As of May 31, 1998, none of the currently outstanding inflation-indexed securities has been stripped.

[8] 62 FR 64528, 64530 (December 8, 1997).

required for STRIPS. For a fixed-principal security to be stripped into the components described above, the par amount of the security must be in an amount that, based on its interest rate, will produce a semiannual interest payment in a multiple of $1,000. Exhibit C to this part provides the minimum par amounts required to strip a fixed-principal security at various interest rates, as well as the corresponding interest payments. Amounts greater than the minimum par amount must be in multiples of that amount. The minimum par amount required to strip a particular security will be provided in the press release announcing the auction results.

(2) *Principal components.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, at their par amount. The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from fixed-principal securities are maintained in accounts, and transferred, at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component.

(c) *Treasury inflation-indexed securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of an inflation-indexed security that may be stripped into the components described in paragraph (a) of this section is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their par amount. At maturity, the holder will receive the inflation-adjusted principal value or the par amount, whichever is greater. (See § 356.30.) The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their adjusted value, which is derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). See Appendix B, Section IV to this part, for an example of how to calculate an adjusted value. The payment value of any interest component created prior to March 31, 1999, will be converted to its adjusted value. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. The CUSIP number of any interest component created prior to March 31, 1999, will be converted to the fungible CUSIP number for the same maturity date. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component. At maturity, the payment to the holder will be derived by multiplying the adjusted value of the interest component by the Reference CPI of the maturity date, divided by 100. See Appendix B, Section IV to this part, for an example of how to calculate an actual payment amount from an adjusted value.

(4) *Rebasing of the CPI.* In the event that the CPI is rebased, the adjusted values of all outstanding inflation-indexed interest components will be converted to adjusted values based on the new base reference period. At such time, Treasury will publish information specifying the manner in which this conversion will be accomplished. Subsequent to rebasing, any TINTS created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

(d) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, i.e., restored to their fully-constituted form. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts or adjusted values, must be submitted together for reconstitution. Interest components stripped from inflation-indexed securities are different from interest components stripped from fixed-principal securities and, accordingly, are not interchangeable for reconstitution purposes.

(e) *Applicable regulations.* Unless otherwise provided in this part, notes and bonds stripped into their STRIPS components are governed by Subparts A, B, and D of Part 357 of this chapter.

4. Appendix B to Part 356 is amended by revising the list of section headings at the beginning of the Appendix to read as follows:

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes.
II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.
III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices.
IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components.
V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

* * * * *

5. Appendix B to Part 356 is amended by redesignating Section IV as Section V and adding a new Section IV to read as follows:

* * * * *

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components

Note: Valuing an interest component stripped from an inflation-indexed security at its adjusted value enables this interest component to be interchangeable (fungible) with other interest components that have the same maturity date, regardless of the underlying inflation-indexed security from which the interest components were stripped. The adjusted value provides for fungibility of these various interest components when buying, selling, or transferring them, or when reconstituting an inflation-indexed security.

Definitions

C=the regular annual interest rate, payable semiannually, e.g., .03625 (the decimal equivalent of a 3–5/8% interest rate)
Par=par amount of the security to be stripped
Ref $CPI_{Issue\ Date}$=reference CPI for the original issue date (or dated date, when the dated date is different from the original issue date) of the underlying (unstripped) security
Ref CPI_{Date}=reference CPI for the maturity date of the interest component
AV=adjusted value of the interest component
PA=payment amount at maturity by Treasury

Formulas

AV=Par (C/2)(100/Ref $CPI_{Issue\ Date}$) (rounded to 2 decimals with no intermediate rounding)
PA=AV (Ref CPI_{Date}/100) (rounded to 2 decimals with no intermediate rounding)

Example. A 10-year inflation-indexed note paying 3½% interest is issued on January 15, 1999, with the second interest payment on January 15, 2000. The Ref CPI on January 15, 1999 (Ref $CPI_{Issue\ Date}$) is 174.62783, and the Ref CPI on January 15, 2000 (Ref CPI_{Date}) is

179.86159. Calculate the adjusted value and the payment amount at maturity of the interest component.

Definitions

C=.035
Par=$1,000,000
Ref $CPI_{Issue\ Date}$=174.62783
Ref CPI_{Date}=179.86159

Resolution

For a par amount of $1 million, the adjusted value of each stripped interest component is $1,000,000 (.035/2)(100/174.62783), or $10,021.31 (no intermediate rounding).

For an interest component maturing on January 15, 2000, the payment amount is $10,021.31 (179.86159/100), or $18,024.49 (no intermediate rounding).

* * * * *

6. Exhibit C to Part 356 is amended by revising the heading to read as follows:

Exhibit C to Part 356—Minimum Par Amounts for Fixed-Principal STRIPS

* * * * *

Dated: June 26, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

[FR Doc. 98–17525 Filed 6–29–98; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1847/P.L. 105–184
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105th Congress, 2nd Session, 1998

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Acting Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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551.206 Corrected 2304
551.208 (c) heading corrected 2304
581 Authority citation revised 14757
581.101 Revised 14757
581.102 (d), (e) and (f) revised; (k) added 14757
581.103 (a)(27), (28), (b)(14), (15) and (c) revised; (a)(29), (b)(16) and (17) added 14758
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581.105 (a) revised 14758
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2610.105 (b)(4) and (5) amended; (b)(6) added 13116
2610.106 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 13116
2610.107 (b) amended 13116
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25 Revised; interim 19114

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56.76 (e)(5) amended 13331
91.37 (a) Tables 1 through 8 and (b) revised; (d) added 16372
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226.4 Regulation at 62 FR 902 confirmed 9104
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226.6 Regulation at 62 FR 902 confirmed; (f)(9) amended 9104
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226.7 (h) and (j) amended; interim 9728
226.12 (b) through (e) removed; (a) heading and new (b) added; interim 9728
226.13 Regulation at 62 FR 902 confirmed 9104
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226.14 Regulation at 62 FR 903 confirmed 9104
226.15 Regulation at 62 FR 903 confirmed 9104
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226.17 (b)(7) amended; interim 9729
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301.64 Regulation at 62 FR 61214 confirmed 12603
301.64–3 Regulation at 62 FR 61214 confirmed 12613
301.78–3 (c) amended; interim 19652
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301.89–14 (f)(2) amended; (d), (e) and (f) redesignated as (f), (g) and (h); new (d), new (e) and (i) added 1329
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800.86 (c)(2) Table 14 amended; eff. 6–1–99 20056
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900.601 Revised (OMB numbers) 10492
905.306 (a) Table 1 amended; interim 3250
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911.234 (Subpart) Added 15281
912 Removed 10493
913 Removed 10493
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916.115 Revised; interim 16039
916.160 (b) revised; interim 16039
916.350 (a)(4)(i), (ii), (iii), (4)(iv) Table 1, (5), (b) and (d) revised; interim 16039
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917.110 Revised; interim 16041
917.150 Revised; interim 16041
917.178 (b) revised; interim 16041
917.442 (a)(4)(i), (ii), (iii), (iv) Table 1, (6), (b) and (d) revised; interim 16041

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917.459 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1) introductory text, (iv) Table 1, new (3)(i), new (5) introductory text, new (i), new (6) introductory text, new (i), (b) introductory text, (1), (c) introductory text and (1) revised; new (a)(2) added; interim 16042
925 Nomenclature change 658
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925.215 (Subpart) Regulation at 62 FR 68152 confirmed 14602
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Regulation at 63 FR 658 confirmed 16390
929.16 Removed 10493
930.59 (b) suspended in part through 6–30–98; interim 404
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930.100 Regulation at 62 FR 44883 confirmed; (a) revised 20023
930.141 (a) revised; (b) removed 14024
930.159 Added; interim 404
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930.162 Added; interim 405
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959.237 Regulation at 62 FR 67696 confirmed 16392
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997.101 Regulation at 62 FR 48751 confirmed 3255
998.100 Heading amended; (g) removed; (h) and (i) redesignated as (g) and (h); interim 2851
998.200 Heading, (a), (h)(1) and (2) revised; (h)(3) added; interim 2851
998.409 Regulation at 62 FR 48751 confirmed 3255
999.600 Regulation at 62 FR 50243 confirmed 12979

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1496 Authority citation revised 11104
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1700.28 (b) and (c) corrected 18307
1700.30 (b) corrected 18307
1703.102 Amended 3637
1703.103 (a)(3) amended 3637
1703.107 (a)(5) revised 3637
1703.109 (h) introductory text amended 3637
1703.113 (b) amended; (c) revised 3637
1703.122 (e) introductory text amended 3637
1728 Authority citation revised 11590
1728.97 (b) amended 11591
1730 Added 3450

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1930 Authority citation revised 2135
1930.122 (b)(4)(i)(A)(*1*) amended 2135
1942.5 (b)(1)(ii)(D) removed; (b)(1)(ii)(E) through (L) redesignated as (b)(1)(ii)(D) through (K); (a)(1)(iii), (b)(1) introductory text, new (ii)(G), (c) introductory text, (2) and (3) amended 16089
1948 Authority citation revised 6052
1948.101—1948.150 (Subpart C) Removed 6052
1951 Authority citation revised 6052
1951.211 Amended 16089
1951.214 Amended 16089
1951.215 (a)(1) revised 16089
1951.852 (b) amended 6052
1951.853 (a) amended; (b)(2)(ix) revised 6053
1951.883 (a)(2) revised 6053
1951.901 Amended 6628
1951.909 (e)(2)(vii), (viii) introductory text, (A), (h)(3)(viii) and (j) revised; (k), (l) and (m) removed 6628
1951.914 Revised 6629
1951.950 OMB number 6629
1951 Exhibit D removed 6629
1962.30 Revised 20297
1965.12 Revised 20297
1980.108 (a)(1)(iii) and (d) revised; (a)(1)(v) and (vi) added 20298
1980.175 (h)(3) added 20299
2003.10 (c) table corrected 3255

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4274 Added 6053

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28 14839
29 ..... 19414, 19415
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4284 5474

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

1.1 (q) revised; interim 19383
103.1 Regulation at 58 FR 69210 confirmed 1334
(f)(3)(iii)(MM) amended; (f)(3)(iii)(NN) removed; interim 12984
103.7 Regulation at 58 FR 69210 confirmed 1334
103.2 (a)(1), (7), (b)(9), (10) heading, (i), (13), (14) and (e) revised; interim 12984
103.7 (b)(1) amended; interim 12986
204 Authority citation revised 12986
204.3 (c)(1)(iii) amended; (c)(1)(iv) and (vi) removed; (c)(1)(v) redesignated as (c)(1)(iv); (c)(3) added; interim 12986
204.4 (f)(1)(iv) removed; (d)(1) amended; interim 12986
207.7 Redesignated as 207.8; new 207.7 added 3795
207.8 Redesignated as 207.9; new 207.8 redesignated from 207.7 3795
207.9 Redesignated from 207.8 3795
208.7 (a)(2) revised; interim 12986
208.9 (b), (c), (d) and (f) revised 3796
208.10 Revised; interim 12986
208.14 (b)(2) revised; interim 12986
209.1 (b) amended; interim 12986
209.2 (c) amended; interim 12986
212.1 Regulation at 58 FR 69210 confirmed 1334
214.2 Regulation at 58 FR 69210 confirmed; (e)(22) revised 1334
214.6 (b) revised 1335
235.1 Regulation at 58 FR 69217 confirmed 1334
244.6 Revised; interim 12987
245.7 (a) revised; interim 12987
264.2 (c)(1)(iii) and (2)(iii) removed; (c)(3) amended; (d) through (h) redesignated as (e) through (i); new (d) added; interim 12987
264.5 (e)(1)(iv) removed; (e)(3)(i) and (ii) redesignated as (e)(3)(ii) and (iii); new (e)(3)(i) added; new (e)(3)(iii) amended; interim 12987
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273 Added 23655
274a.12 Regulation at 58 FR 69217 confirmed 1334
299.1 Table amended 3797
Table amended; interim 12987
299.5 Table amended 3797
Table amended; interim 12987
316.4 (a)(2) amended; (a)(3) removed; (a)(4) and (b) redesignated as (a)(3) and (c); new (b) added; interim 12987
332.2 Amended; interim 12987
335.2 (b) through (e) redesignated as (c) through (f); interim 12988
(b) added; interim 12988

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2.131 (d) added....10498
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3 Authority citation revised....10498
3.2 (a) amended....10498
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3.11 (a) amended....3023
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3.15 (d) amended....10498
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3.18 (d) amended....10499
3.19 (a)(1) and (3) amended....10499
3.100—3.118 (Subpart E) Authority citation removed....2
3.100 (a) Footnote 1 redesignated as Footnote 6....2
3.102 (c) Footnote 5 redesignated as Footnote 7....2
3.104 (b)(1)(i) Footnote 2 redesignated as Footnote 8....2
3.125—3.142 (Subpart F) Authority citation removed....2
3.136—3.142 Authority citation removed....2
51.1 Amended; interim....15284
51.3 (a) revised; interim....15284
77.1 Amended; interim....8840
78.4 Regulation at 62 FR 53532 confirmed....3638
78.41 (a) and (b) amended; interim....14336, 19170, 19653
85.1 Amended....17316
85.6 (c)(2)(iii), (iv) and (v) amended....17316
92 Technical correction....1889
93 Technical correction....1889
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93.301 (h)(6) and (7) amended....6064
93.308 (a)(1) amended....3640
93.324 Amended....3640
93.326 Amended....3640
94 Technical correction....1889
94.9 Regulation at 62 FR 43925 confirmed....12604
94.10 Regulation at 62 FR 43925 confirmed....12604
94.18 Heading, (a) and (b) revised; interim....408
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95 Technical correction....1889
96 Technical correction....1889
96.2 Heading and (b) revised; interim....408
97 Technical correction....1889
97.2 Table amended....16882
98 Technical correction....1889
130 Technical correction....1889
130.20 Regulation at 62 FR 61007 confirmed....18117
130.49 Regulation at 62 FR 61007 confirmed....18117
145.14 (a)(1), (b)(1) and (3) amended....3
145.23 (b)(2)(iii), (c)(1)(ii)(C), (e)(1) introductory text, (ii)(B), (3), (f)(3), (f)(5) and (g)(3) amended....3
145.33 (b)(2)(iii), (c)(1)(ii)(C), (d)(1)(vi), (e)(1) introductory text, (ii)(B), (3), (f)(3), (g)(3) and (i)(1)(v) amended....3
145.43 (b)(2)(iii), (d)(2) and (e)(2) amended....3
145.53 (b)(2)(iii) amended....3
147.5 (b) amended....3
147.6 Introductory text amended....3
147.7 Footnote 5, (b)(1)(vii), (d)(2) introductory text and (viii) amended....3
147.8 Introductory text amended....3
147.11 (b)(1), (4), (5) and (7) amended....3
147.12 (a)(3) Footnote 11 and (b)(3)(ii)(a) Footnote 12 amended....3
147.22 (c) amended....3
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317.363 (b)(3) introductory text and (i) amended; interim....7281
319.104 (d) amended....148

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381.118 (f) added 11360
381.463 (b)(3) introductory text and (i) amended; interim 7281
417 Notice of compliance 4560, 4562, 11104
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1.3 (c) amended 15740
1.25 (h) removed; (i) through (l) redesignated as (h) through (k) 15741
1.30 Undesignated center heading and section added 15741
1.31 Redesignated as 1.32; undesignated center heading and new 1.31 added 15741
1.32 Redesignated as 1.33; new 1.32 redesignated from 1.31; (b) revised; (d) removed 15741
1.33 Redesignated as 1.34; new 1.33 redesignated from 1.32; revised 15741
1.34 Removed; new 1.34 redesignated from 1.33 and revised 15741
1.38 Removed 15741
1.39 Heading and introductory text revised 15742
2.802 (b) introductory text, (e) and (g) revised 15742
2.1007 (a)(2) revised 15742
4.4 (i) revised 15742
4.5 Revised 15742
7.22 (a) and (b) revised 15742
9.8 (b) revised 2876
9.11—9.45 (Subpart A) Revised 2876
9.21 (b), (c) introductory text and (f) corrected 12988
9.45 Heading and (b) corrected 12988
9.53 (a) and (b) amended 15743
9.54 (b) amended 15743
9.60 (a) amended 15743
9.65 (a) introductory text and (b) amended 15743
9.66 (a)(1) introductory text, (2), (3) and (c)(2) amended; (b) revised 15743
9.69 (a) amended 15743
9.85 Amended 15743
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15.35 (c) introductory text revised 15743
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30 Technical correction 13773
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32 Technical correction 13773
32.1 (b) revised 1896
40 Technical correction 13773
40.2 Revised 1896
40.10 Revised 1896
50 Technical correction 1335, 13773
50.1 Revised 1897
50.5 Revised 1897
50.68 Removed 9403
52 Authority citation revised 1897
Technical correction 13773
52.1 Revised 1897
52.9 Added 1897
60 Technical correction 13773
60.1 Revised 1898
60.11 Revised 1898
61 Technical correction 13773
61.1 (c) revised 1898
61.9b Revised 1898
70 Technical correction 13773
70.2 Revised 1898
70.10 Revised 1899
70.24 (d) revised 9403
71 Technical correction 13773
71.0 (f) added 1899

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71.11 Added 1899
72 Technical correction 13773
72.2 (f) revised 1900
72.12 Revised 1900
76 Authority citation revised 15743
76.7 (e)(3) revised 15744
110 Technical correction 13773
110.1 (a) revised 1900
110.7b Revised 1900
110.131 (a) revised 15744
150 Technical correction 13773
150.2 Revised 1901

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430.2 Amended 13315
430.21—430.27 (Subpart B) Regulation at 62 FR 53510 confirmed 9390
430.22 (b)(6) added 13316
430.23 Heading revised; (s) through (v) added 13316
430.24 (s) through (v) amended 13316
430.27 (a)(1), (b)(1)(iii) and (l) amended 13316
430.21—430.27 (Subpart B) Appendix S added 13316
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430.31—430.33 (Subpart C) Heading revised 13317
430.31 Revised 13317
430.32 Heading and introductory text revised; (o) through (r) added 13317
430.33 Revised 13318
430.40 Revised 13318
430.41 Revised 13318
430.47 (a)(1) amended 13319
430.49 (a) amended 13319
430.50 (a) and (b) amended 13319
430.60 Revised 13319
430.61 (a)(4) amended 13319
430.62 Revised; eff. in part 3–18–99 13319
430.63 (a) amended 13321
430.70 (a)(1) introductory text (3) and (6)(i) revised 13321
430.73 Introductory text amended 13321
430.60—430.75 (Subpart F) Appendixes A and B revised 13321
600.27 (b)(2)(i)(A) revised; (b)(2)(i)(B) amended; (b)(2)(i)(C) removed; (b)(2)(i)(D) redesignated as (b)(2)(i)(C) 10503

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4.6 Revised 16380
9.101 Added 6473
32.2 (b) revised 15746
32.3 (c)(4)(ii)(B) and (6)(ii)(B) amended 15746
32.4 Revised 15746

Chapter II—Federal Reserve System (Parts 200—299)

202 Appendixes A and C amended 16394
204.3 (c) revised 15071
205.4 (c) added; interim 14532
207 Removed 2820
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220.126 Removed 2827
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224 Authority citation revised 2839
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224.1 (a) and (b)(1) amended 2839
224.2 Introductory text amended 2839
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225.200 (b)(4)(i) revised 14804
226 Dollar amount adjustment notice 6474
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265.11 (f) revised 2839

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303.2 (a) introductory text amended 17074
303.5 (d) removed 17074
303.6 (f)(1)(ii)(A) and (C) revised 17074
303.7 (a) heading, (1)(i), (ii)(A), (iii)(D) and (b)(4)(ii) revised; (f)(2)(i) amended; (f)(2)(ii) removed 17074
303.8 (f) removed 17074
309.1 Revised 16404
309.2 (e) revised 16404
309.4 Revised 16404
309.5 Revised 16404
309.6 Amended 16408
325.103 (c) revised 17074
326.1 (c) amended 17075
326.8 (a) and Footnote 3 revised 17075
327 Authority citation revised 17075
327.1 (b)(2) revised 17075
327.4 (a)(1)(i)(B)(*1*), (*2*), (ii)(B)(*1*) and (*2*) revised 17075
329.3 Added 8342
337.12 Revised 16381
346 Removed 17075
347 Revised 17075
351 Removed 17090
357 Authority citation revised 10295
357.1 (b) revised 10295
362.4 (c)(3)(i)(A) revised 17090

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

560.210 (b)(2) introductory text, (viii) and (ix) revised; (b)(2)(x) removed; (b)(2)(xi), (xii) and (xiii) redesignated as (b)(2)(x), (xi) and (xii); interim 1053
563.171 Revised 16381
575.2 (h) and (o) revised; (q) added 11365
575.6 (c) through (i) redesignated as (d) through (j); new (c) added 11365
575.10 (a)(2) introductory text, (3), (4) and (b)(1) amended; (a)(6)(i)(B) revised 11365
575.11 (b)(1) introductory text (2), (c) introductory text, (1), (3) and (e) revised; (b)(1)(ii) redesignated as (b)(1)(iii); new (b)(1)(ii) added 11365
575.12 (a)(2), (b)(1)(ii), (iii) and (2) revised 11366
575.14 Added 11366

Chapter VI—Farm Credit Administration (Parts 600—699)

614.4000 (b) amended (effective date pending) 5723
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614.4010 (b) amended (effective date pending) 5723
Regulation at 63 FR 5723 eff. 3–13–98 12401
614.4120 Revised (effective date pending) 5724

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Regulation at 63 FR 5724 eff. 3–13–98 12401
614.4125 Added (effective date pending) 5724
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614.4130 Revised (effective date pending) 5724
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614.4155 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4160 Regulation at 62 FR 66818 eff. 3–4–98 10515
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614.4270—614.4320 (Subpart G) Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4321 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4335 Regulation at 62 FR 63646 eff. 3–4–98 10515
614.4336 Regulation at 62 FR 63647 eff. 3–4–98 10515
614.4367 Regulation at 62 FR 63647 eff. 3–4–98 10515
615.5450 Regulation at 62 FR 53229 eff. 1–27–98 5223
615.5451 Regulation at 62 FR 53229 eff. 1–27–98 5223
615.5452 Regulation at 62 FR 53229 eff. 1–27–98 5223
615.5454 Regulation at 62 FR 53229 eff. 1–27–98 5223
615.5455 Regulation at 62 FR 53229 eff. 1–27–98 5223
615.5457 Regulation at 62 FR 53230 eff. 1–27–98 5223
615.5460 Regulation at 62 FR 53230 eff. 1–27–98 5223
627 Heading and authority citation revised (effective date pending) 5724
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627.2700 Revised (effective date pending) 5724
Regulation at 63 FR 5724 eff. 3–13–98 12401
627.2720 (a) removed; (b) through (f) redesignated as (a) through (e); new (b) revised (effective date pending) 5724
Regulation at 63 FR 5724 eff. 3–13–98 12401
627.2730 (b) removed; (c) redesignated as (b); new (b) revised (effective date pending) 5724
Regulation at 63 FR 5724 eff. 3–13–98 12401
627.2795—627.2797 (Subpart D) Added (effective date pending) 5725
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Chapter VII—National Credit Union Administration (Parts 700—799)

701.1 Revised 4373
701.19 (a) amended; interim 14026
701.26 (a) designation and (b) removed 10756
701.27 Removed 10756
701.36 (a)(4)(iv) amended 10756
704.11 (e) amended 10756
708a Heading and authority citation revised 10517
708a Appendix A amended 10517
708b.301 (a)(1) and (b)(1) amended 10519
708b.302 (a)(1), (2), (b)(1) and (2) amended 10519
712 Added 10756
724 Authority citation revised 14026
724.1 Amended; heading revised; interim 14026
791.5 (a)(2) revised 5859
791.6 (a) amended 5859
792 Authority citation revised 14338
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792.20—792.37 (Subpart B) Redesignated as 792.52—792.69 (Subpart E) 14338
792.52—792.69 (Subpart E) Redesignated from 792.20—792.37 (Subpart B); 14338

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900 Authority citation revised 3455
900.1—900.5 (Subpart A) Appendix A amended 3455
910.3 Revised 8059
912 Revised 8059
932 Authority citation revised 3455
932.11 (b) revised 3455
933 Authority citation revised 3455
933.1 (cc) revised 3455

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1720 Added; interim 8844

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203 ..... 9453, 12329
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210 12700
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107 Authority citation revised 5865
107.50 Amended 5865
107.110 Removed 5865
107.120 Revised 5865
107.150 (a)(1) introductory text revised 5866
107.210 Revised 5866
107.220 Removed 5866
107.230 (d)(4) introductory text revised 5866
107.503 (a), (b) and (e) revised; (c) amended 5866
107.660 (d) redesignated as (e); new (d) added 5866
107.710 (b) and (c) revised; (e) amended 5866
107.720 (b)(2) and (c)(1) introductory text revised; (b)(3) added 5867
107.730 (d)(3)(iv) revised 5867
107.740 (a) revised 5867
107.855 (c)(1), (4)(i) and (d)(4) revised; (g)(1) through (10) redesignated as (g)(2) through (11); new (g)(1) added 5867
107.865 (c)(2) amended; (d)(1) revised 5867
107.1100 Revised 5868
107.1110 Removed 5868
107.1120 (c) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) added 5868
107.1130 Heading, (a), (b) and (c) revised; (d) added 5868
107.1160 Introductory text added 5868
107.1200 (c) and (d) revised 5868
107.1210 Revised 5868
107.1230 (a) and (b) revised 5868
107.1240 (a)(1), (b), (c) and (d) revised 5868
107.1350 Undesignated center heading removed 5869
107.1350 Redesignated as 107.1585 5869
107.1400 Heading and introductory text revised 5869
107.1420 Revised 5869
107.1430 Amended 5869
107.1500 (b)(1), (4) and (f)(2) revised; (e) amended 5869
107.1505 (a) introductory text amended; (a)(1), (2) and (3) added; (b) revised 5869
107.1510 Introductory text and (d)(1)(ii) revised; (c) amended 5870
107.1520 Revised 5870
107.1530 (c), (e)(2) and (h) revised; (e)(3) and (4) removed 5871
107.1540 Introductory text amended 5871
107.1550 Introductory text amended; (a)(1), (b) and (c)(3) revised 5871
107.1560 Introductory text and (e) table amended; (a)(1), (4) and (b) revised 5872

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107.1570 Introductory text amended; (b)(1) heading, (i) and (ii) revised 5872
107.1575 Added 5872
107.1580 (a) heading and introductory text revised 5872
107.1585 Redesignated from 107.1350 and revised 5869
107.1590 (a)(1) revised; (c) removed; (d) redesignated as (c) 5873
107.1600 (a) amended; (b) revised 5873
107.1720 Added 5873
107.1820 (e)(9) revised 5873
107.1830 (a) revised 5873
115 Authority citation revised 12605
115.61 Amended 12605
123.18 Added 15072
123.19 Added 15072
123.20 Added 15073

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121 ..... 5480, 16148, 16882, 18150, 20139, 20447
123 20140
125 ..... 16148, 18150
126 ..... 16148, 18150

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1 Technical correction 23338
1.2 Amended 8318
21 Effective date confirmation 6808
Special FAA conditions 16089
23 Special FAA conditions 4563
23.901 (d)(2) revised 14797
23.903 (a)(2) revised 14798
25 Special FAA conditions 3023, 13773, 17090
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25.101 (i) added 8318
25.105 (c)(1) revised 8318
25.107 (a)(2) revised 8318
(a)(1) and (e) amended 8848
25.109 (b), (c), (d) redesignated as (e), (g) and (h); (a) and new (e) introductory text revised; new (b), new (c), new (d), (f) and (i) added; new (h) amended 8318
25.111 (a) amended 8848
25.113 (b) redesignated as (c); (a) introductory text, (1) and new (c) revised; new (b) added 8320
25.115 (a) revised 8320
25.119 Heading amended 8848
25.233 (a) amended 8848
25.349 Introductory text amended 8848
25.481 (a)(3) amended 8848
25.571 (a) introductory text, (3), (b) introductory text, (1), (5)(ii) and (e)(1) revised 15714
(b) corrected 23338
25.735 (f) introductory text and (2) revised; (h) added 8320
25.807 (f)(4) and (j) added 8848
(f)(4) corrected 12862
25.832 (a) introductory text and (2) amended 8848
25.855 (c) revised 8048
25.857 (c)(2) revised; (d) removed 8048
25.858 Heading and introductory text revised 8048
25.903 (c) amended 8848
(a)(2) revised 14798
25.1185 (a) amended 8848
25.1533 (a)(3) revised 8321
25 Appendix F amended 8848
33.77 (c) and (e) revised 14798
33.78 Added 14799
33 Appendix B added 14799
39.13 ..... 660, 1336, 1339, 1736, 1737, 1740, 1902, 1905, 1907, 1909, 1910, 1912—1914, 2594, 2597, 3031, 3457, 3459, 3809, 4156, 4158, 4161, 4162, 4375, 4564, 4567, 4569, 5224, 5226, 5227, 5726, 5875—5877, 5879, 5780, 5782, 6065, 6068, 6070, 6630, 6634, 6636—6638, 6641, 6643, 6840, 6841, 6843, 6845, 7639, 7641, 7643, 7645, 7647, 7651, 7655, 7659, 7663, 7667, 7671, 7675, 7679, 7683, 7687, 7688, 7692, 7695, 7697, 8065, 8069, 8073, 8077, 8081, 8085, 8089, 8093, 8849, 8851, 9404, 9406, 9408, 9731, 9733, 9735, 9926, 9927, 9929, 9931, 9933, 9934, 9936, 9937, 9939, 10296, 10298, 10301, 10302, 10522, 10526, 10528, 11107, 11110, 11111, 11112, 11114, 11115, 11117, 11820, 11821, 11822, 11824, 11986, 11988, 12402, 12404, 12406, 12407, 12409, 12606, 12608, 12610, 12612, 12613, 12615, 12616,

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61 SFAR No. 73 revised....666

61.2 (a) and (b) introductory text revised....20286

61.31 (h) heading and (i)(1) introductory text revised....20286

61.35 (a)(1) revised....20286

61.39 (a)(6) introductory text revised....20286

61.45 (b) revised....20286

61.51 (d), (e)(1)(i), (ii) and (4)(i) revised; (e)(1)(iii) added....20286

61.56 (c) introductory text revised; (g) and (h) redesignated as (h) and (i); new (g) added....20287

61.63 (d)(5), (f)(10) and (g)(10) revised....20287

61.87 (a) revised....20287

61.109 (f), (g)(2), (4), (h) introductory text, (1)(i) and (ii) revised....20287

61.129 (b)(4) introductory text, (f), (g)(5) introductory text, (h)(4) introductory text, (i)(A), (B) and (ii)(A) revised....20288

61.157 (b)(3), (f)(2), (g) introductory text, (8), (h) introductory text, (i) introductory text and (8) revised....20288

61.159 (a)(4) introductory text revised....20288

61.161 (a)(3) and (4) revised....20289

61.163 (a)(3) introductory text revised....20289

61.197 Revised....20289

61.199 (a) revised....20289

71.1 ....1915—1917, 2136—2138, 2599, 2601, 2885—2890, 4165, 4377—4392, 5228—5232, 7058—7062, 7064, 7282—7284, 8094, 8096, 8098—8100, 8343, 8344, 8346, 8563—8565, 9135, 9410—9413, 10759, 11990—11992, 112619—12621, 12623—12626, 12628—12631, 12633—12636, 12638—12641, 12989, 12991, 12992, 13779, 13780, 14346—14348, 14344, 14345, 14348, 14604, 14606, 14607, 14608, 15080—15083, 16048, 16889, 16890, 17092, 17935, 17936, 18312, 18314, 19394, 19395, 19397, 20068—20071, 20529, 20530, 23206

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73.19 (a) and (c) revised....16890

91 Technical correction....1917, 2304, 23338

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SFAR No. 50-2 amended....23604

91.605 (b)(3) revised....8321

93 Technical correction....1917

95....5883, 13119

97.21—97.35 ....667, 2140, 2602, 2604, 2605, 2892, 5448, 5886, 7065, 7067, 10761, 10762, 10764, 11993, 11994, 11996, 17938—17940, 23207, 23209, 23210, 23212, 23213

107.31 (i)(4) revised....18076

108.33 (e)(4) revised....18077

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121 Notice....4

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SFAR No. 50-2 amended....23604

121.189 (e) revised....8321

121.314 Revised....8048

121 Appendix L amended....8049

135 Notice....4

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SFAR No. 50-2 amended....23604

135.379 (e) revised....8321

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141.35 (b) introductory text and (d) introductory text revised 20289
141.36 (b) introductory text and (d) introductory text revised 20289
141 Appendix B amended 20289
Appendix D amended 20290
142 Technical correction 2304
150 Policy statement 16409
198 Revised 13740

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

243 Added 8280
243.15 (b) corrected 9413
382.7 (c) added 10535
382.38 Added 10535
(k) corrected 11954
382.41 (b), (e) introductory text, (2), (3) and (f) amended; (g) revised; (h) added 10536

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1274.105 (b)(8) added 12993
1274.202 (c)(6) amended; (f) added 12993
1274.204 (b)(1) revised; (b)(3) and (d)(2) amended 12993
1274.301 Amended 12993
1274.901 Amended 12993
1274.933 Added 12993

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33 23402
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71 ..... 2913, 3673—3675, 3854—3859, 6818, 7326—7328, 7330, 8151—8153, 9459, 9461, 9462, 11382, 11853, 12043, 12044, 12045, 12047—12055, 12710, 12711, 13015, 13016, 13153, 13803—13805, 13807—13809, 14387, 14388, 15107, 15108, 15110, 15111, 16451, 16718, 17740—17743, 19429, 19855—19858
91 ..... 126, 8324, 16078, 16452
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121 ..... 126, 8324, 16452
125 ..... 126, 8324, 16452
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135 ..... 6826, 8324, 9912
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255 3491
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TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

70 Nomenclature change 10303
70.2 Amended 10303

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Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

280.1 (d) added 18271
280.2 Amended 18271
280.6 Revised 18272
280.7 (a) revised 18274
280.10 Revised 18274
280.11 (b) revised 18274
280.12 Revised 18274
280.104 Added 18274
280.602 (e)(2), (h) and (j) revised; (k) through (o) added 18275
280.800—280.812 (Subpart I) Added 18275
280.900—280.901 (Subpart J) Added 18277
280.1000—280.1024 (Subpart K) Added 18278
280.1100—280.1127 (Subpart L) Added 18282

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

303.6 (a) amended 5888
303.14 (e) amended 5888

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

732 Authority citation revised 2455
Technical correction 7699
732.4 (b)(3)(iv) added 2456
740 Authority citation revised 2455, 5450
Technical correction 7699
740.2 (a)(5) and (c) added 2456
740.3 (f) added 2456
740.4 Revised 2456
740.5 Amended 2456
740.6 (b) added 2456
740.7 (f) revised 2456
(d)(4) added; (e)(2) amended; (f) revised; interim 5450
740.11 (a)(2), (b)(2)(iii) and (iv) revised; Supplement No. 1 added 2456
742 Authority citation revised 2455, 5451
Technical correction 7699
742.6 (a)(1) amended 2458
742.12 (a)(3) revised; (a)(4) removed 2458
(b)(3)(i)(C) and (iv) added; interim 5451
743 Added 2458
Technical correction 7699
744 Authority citation revised 2455
Technical correction 7699
744.8 (b) amended 2459
746 Authority citation revised 2455
Technical correction 7699
746.8 (b)(1)(ii) amended 2459
762 Authority citation revised 2455
Technical correction 7699
770.4 Removed 14030
774 Supplement No. 1 revised 2459
Technical correction 7699
Supplement No. 1, Category 1 amended (ECCN 1C350) 14030

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (h)(1), (2), (j)(3)(ii)(b), (c), (4)(ii)(b) amended 16892
806.17 Revised 3461

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers); interim 669
(b) table amended (OMB numbers) 11593, 14033
922.131 Amended 15087
922.132 (a)(1), (4) introductory text, (d) and (f) revised; (a)(4)(iv) and (v) amended; (a)(4)(vi) added 15087
922.133 (a) and (c) revised 15088
990 Reconsideration 6846

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30 18344
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TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

1.31—1.34 (Subpart D) Removed 7516
2.41 (f) revised 18820
3.11A Revised 7527
4.1 (b) and (c) revised 15758
4.9 (b)(7)(ii) revised; (b)(7)(iii) removed 18820
300.1 (h) revised; (j) and (k) added 7516
300.3 (b) revised 7516
300.4 Heading, (c) and (e) revised 7516
300.5 (b) revised 7516
300.8 (g) amended 7516
300.10 Revised 7517
300.21 Removed; new 300.21 redesignated from 300.22 7517
300.22 Redesignated as 300.21; new 300.22 redesignated from 300.23 7517
300.23 Redesignated as 300.22; new 300.23 redesignated from 300.24 7517
300.24 Redesignated as 300.23; new 300.24 redesignated from 300.25 7517
300.25 Redesignated as 300.24; new 300.25 redesignated from 300.25a; (a)(3), (4) introductory text and (i) revised 7517
300.25a Redesignated as 300.25; new 300.25a redesignated from 300.25b 7517
300.25b Redesignated as 300.25a 7517
300.33 (b) revised 7517
301.26 Heading, (b)(2) and (d) revised 7517
301.39 (a) amended; (c) revised 7517
301.48 Heading and (a)(3) revised 7517
303.1 Footnote 1 removed; (h) and (u) revised 7517
303.3 Revised 7518
303.7 Introductory text revised 7518
303.8 (a) introductory text revised 7518
303.15 (b) revised 7518
303.16 (a) introductory text, (1), (b) and (c) revised 7518
303.20 (b)(3) added; (d) revised 7518
303.33 Heading, (a)(3), (4) introductory text and (i) revised 7521
303.38 (b) revised 7521
303.40 Revised 7523
302.42 (a) amended 7523
305 Notice 14034
305 Appendix F revised 19399

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1203 Revised; eff. 3–10–99 11729

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TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

3.13 Added; interim 18830
3.14 Added; interim 18831
32.2 Revised; interim 18832
32.13 Added; interim 18832
33.4 Introductory text amended; interim 18834

Chapter II—Securities and Exchange Commission (Parts 200—399)

230.497 (k)(2)(ii) corrected 19286
230.498 (b) and (c)(3) corrected 19286
239.15A Form N-1A corrected 19286
241 Interpretative releases 17943
274.11A Form N-1A corrected 19286
274 Appendix A corrected 19286

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TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

284.10 (a)(6) and (c) added; (b)(1) revised 20095

Proposed Rules:

33 20340
284 19861

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

10.1 (a) introductory text and (b) amended 16416
101.3 Regulation at 62 FR 37133 eff. date confirmed 23214
118 Authority citation revised 16684
118.1 Amended 16684
118.4 (g) amended 16684
118.11 (b) and (g) amended 16684
122.15 Regulation at 62 FR 37133 eff. date confirmed 23214
123 Authority citation amended 16416
123.4 (b) amended 16416
128.24 (a) amended 16417
141.82 (d) amended 16417
142.23 Amended 19399
143.21 (a), (b), (c), (f) and (g) amended 16417
143.22 Amended 16417
143.23 (d) and (i) amended 16417
143.26 (a) amended 16417
145.4 (c) amended 16417
145.12 (a)(2), (3), (b)(1) and (c) amended 16417
145.35 Amended 16417
145.41 Amended 16417
148.23 (c)(1) and (2) heading and introductory text amended 16417

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.3 Revised 17326
216.74 Revised 17326

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

646 Added; interim 15988

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

5.200 Revised 18314
5.210 Revised 18317
5.215 Revised 18317
74.3602 (b)(2)(v) added 20098
101 Technical correction 17327
172.831 Added 16433
177.2415 Added 20315

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TITLE 21 Chapter I—Con.

310.545 (a)(27), (28) and (d)(28) added; (d) introductory text revised 19802
520.1484 (b) revised; (c)(3) amended 17329
558.78 (d)(3) revised 19185
558.95 (d)(4)(iv) added 18836
558.175 (d)(1)(iii)(*b*) and (iv)(*b*) amended 17948
558.195 (d) table amended 17948
558.311 (e)(1)(ii) table amended 17948
558.515 (d)(1)(iv)(*b*) amended 17948
606.121 (e)(1)(ii) amended 16685
610.11 (g) revised 19403
610.30 Amended 16685
640.2 (e)(3) amended 16685
640.17 Amended 16685
640.24 (b) amended 16685
640.64 (c)(2) amended 16685
640.69 (b) amended 16685
640.70 (a)(3) amended 16685
640.74 (b)(2) amended 16685
640.101 (a) amended 16685
640.102 (c) and (e) amended 16685
640.104 (a) amended 16685
806.10 Regulation at 62 FR 27191 eff. 5–18–98 18836
806.20 Regulation at 62 FR 27191 eff. 5–18–98 18836
814.39 (a) introductory text and (4) revised; (f) added 20533
814.100 (a)(2) and (d) revised; (e) added 19188
814.104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b)(5) and new (d) revised; new (c) amended 19189
814.106 Revised 19189
814.108 Revised 19189
814.112 (a) introductory text and (b) revised 19189
814.114 Revised 19189
814.116 (a) and (d) amended; (e) added 19189
814.118 (e) revised 19189
814.120 Revised 19189
814.124 (a) amended 19190
814.126 (a) amended; (b) revised 19190
892.2010 Added 23387
892.2020 Added 23387
892.2030 Added 23387
892.2040 Added 23387
892.2050 Added 23387
1270.33 (b)(1) amended 16685

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TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

40.204 Removed 16686
41.2 (g)(3) and (4) redesignated as (g)(5) and (6); new (g)(3) and (4) added 16893
41.32 Revised 16893
41.33 Revised 16894
41.122 (a)(4) and (h)(9) added 16895
50 Authority citation revised 20315
50.40 (a) amended 20315
93 Authority citation revised 16687
93.1 (a), (b), (c) and (e) amended 16687
121.1 Amended 17330

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503 15800

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.100 Amended 23853
5.214 Amended 23853
5.403 (a) revised; (b) amended 23853
5.520 (c)(1)(ii) and (2)(i) revised 23853
8.28 (a)(5) revised 23853

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

206.45 (e) revised; interim 17656

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Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

598 Added; interim 19155

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

882 Heading and authority citation revised 23853
882.101 Revised 23853
882.102 Revised 23853
882.106 Removed 23854
882.108 Removed 23854
882.109 Removed 23854
882.110 Removed 23854
882.111 Removed 23854
882.118 Removed 23854
882.112 Redesignated as 882.414 23854
882.201—882.219 (Subpart B) Removed 23854
882.217 Redesignated as 882.517 23854
882.301—882.335 (Subpart C) Removed 23854
882.401 Revised 23854
882.402 Removed 23854
882.404 Revised 23854
882.406 Redesignated as 882.810 23857
882.407 Revised 23855
882.411 (c) amended 23855
882.413 (c) removed 23855
882.414 Redesignated from 882.112 23854
882.501 Removed 23855
882.502 Removed 23855
882.503 Removed 23855
882.504 Removed 23855
882.505 Removed 23855
882.506 Removed 23855
882.508 Removed 23855
882.511 Heading revised; (a) through (e) redesignated as (b) through (f); new (a) added 23855
882.514 (a)(1), (d)(1) introductory text, (iv) and (v) amended; (d)(2)(vi) redesignated as (d)(1)(vi); (e) revised 23855
882.515 (b) amended; (c) redesignated as (d); new (c) added 23855
882.517 Redesignated from 882.217 23854
882.601—882.606 (Subpart F) Removed 23854
882.701—882.759 (Subpart G) Removed 23854
882.802 Amended 23855
882.803 (b) revised 23855
882.805 (d)(1)(i)(B) amended; (c) revised 23855
882.806 Heading, (a)(3) and (4) revised; (a)(2) amended; (a)(2) undesignated text designated as (a)(2)(ii); (a)(2)(i) added 23856
882.807 (a) and (d) revised 23856
882.808 (d), (i)(1), (3) and (o) amended; (b)(4), (c) and (i)(2) revised 23857
882.810 Removed; new 882.810 redesignated from 882.406; new (g)(1)(iii)(C) amended 23857

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

982 Authority citation revised 23857
982.4 Revised 23857
982.53 (a) revised 23859
982.54 (d)(7) revised; (d)(15) through (19) redesignated as (d)(18) through (22); new (d)(15), (16) and (17) added 23859
982.102 (d) removed 23895
982.152 (a)(3) added; (c)(1) revised 23859
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TITLE 28—JUDICIAL ADMINISTRATION

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0.64–2 Amended 20534
0.64–5 Added 63453
0.100—0.104 (Subart R) Appendix amended 38029, 52492, 52493
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added 51602
2.62 (a)(6) and (h)(5) amended 40270
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
50.22 Regulation at 61 FR 49260 confirmed 61629
58 Authority citation revised 51750
58.6 Added 51750
60.3 (a)(8) revised 11120
61 Appendix A amended; interim 11121
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70.26 (a), (b) and (c) revised; (d) added 45939, 45942

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511.12 (d) revised; eff. 4–9–98 11818
523 Authority citation revised 50787
523.20 (Subpart C) Added; interim 50787
524 Authority citation revised 53690
524.31 (a)(3) revised; interim 53691
524.41 (e) revised 7604
540 Authority citation revised 65185
540.14 (b) and (c) revised 65186
540.18 (c) and (d) revised 65185
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended 50789
541.14 (a) amended 50791
541.63 (a) amended 5218
541.65 (c) revised 5218
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544.70—544.75 (Subpart H) Revised; interim 50793
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548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292
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551.10 Amended 5218
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571.52 Revised 4357
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571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
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1904.30 Added (OMB numbers) 44552
1910.8 (b) table amended 42666, 65203
(b) table corrected 43581
(b) table amended (OMB numbers) 13340, 17093
1910.11—1910.19 (Subpart B) Authority citation revised 40195
1910.16 (a), (b) and (c)(4) revised 40195
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6), (c)(6)(iii)(a) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
(i)(1)(ii), (4)(ii), (n)(3) and Appendix A corrected 20098
Appendixes A, C and D corrected 20099
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.155—1910.165 (Subpart L) Authority citation revised 1284
1910.156 (f)(1)(i) and (v) revised 1284
1910.251—1910.255 (Subpart Q) Authority citation revised 1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised 1284
1910.261—1910.272 (Subpart R) Authority citation revised 1285
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised 1285
1910.1000—1910.1450 (Subpart Z) Authority citation amended 42666
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1910.1000 Table Z–1 and Z–3 corrected 42018
1910.1001 (g) revised; Appendix C removed 1285
1910.1003 (c)(4)(iv) and (d)(1) revised 1286
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1910.1017 (g) revised 1286
1910.1018 (h) revised 1286
1910.1025 (f) revised; Appendix B amended; Appendix D removed 1287
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1910.1027 (g) revised; Appendix C removed 1288
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1910.1029 (g) revised 1290
1910.1043 (f) revised 1290
1910.1044 (h) revised 1291
1910.1045 (h) revised; Appendix A amended 1291
(h)(2)(i) corrected 20099
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended 1292
1910.1048 (g) revised; Appendix E removed 1292
(g)(2)(i) corrected 20099
1910.1050 (h) revised; Appendix A amended 1293
Corrected 20099
1910.1051 (h) revised; Appendix E removed 1294
1910.1052 (n)(2)(i)(C) revised 42667
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(o) note added 66277
(g) revised 1295
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1915.8 Table amended (OMB numbers) 13340
1917 Authority citation revised 40195
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added 40196
1917.2 Amended 40196
1917.3 Added 40196
1917.11 (d) added 40196
1917.13 (g) revised; (h) and (i) added 40197
1917.17 (i), (j) and (k) revised 40197
1917.20 Revised 40197
1917.23 Heading, (b)(1) and (d) introductory text revised 40197

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1917.24 (a) revised 40197
1917.25 (a) and (c) revised; (g) added 40197
1917.26 (c) and (d) revised 40197
1917.27 (a)(2) revised; note added 40197
1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
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1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
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1926 Meeting and signing ceremony 37134
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1926.5 Table amended (OMB numbers) 3814, 13340, 17094
1926.50—1926.66 (Subpart D) Authority citation revised 1295
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296
1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
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1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298
1926.1101 (h) revised; Appendix C removed 1298
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1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
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2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
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2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.203 (a) correctly removed; CFR correction 58650

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(a) added 61012
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204 Nomenclature change 59569
2204.105 (f) added 59569
2204.107 (b) amended 35964
2204.301 Revised 35964

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2510.3-102 (b) revised 62936
2520.102-3 OMB number 36205
2520.104b-1 OMB number 36205
2520.104b-3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c-3 (Subpart E) Added 40699
2590 Authority citation revised 66953
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2590.701-3 OMB number 35905
2590.701-4 OMB number 35905
2590.701-5 OMB number 35905
2590.701-6 OMB number 35905
2590.712 Revised; interim 66957

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2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
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4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
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4011 Appendix B amended 65608
4022.1 Amended 67728
4022.24 (e) amended 67728
4022.26 (a) amended 67729
4022.61 (a) amended 60428
4041 Revised 60428
4043.3 (e) amended 36994
4044.13 (a) amended 67729
4044 Appendix B amended 37718, 43640, 48176, 53539, 61012, 65609
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4050 Revised 60440
4071 Added 36994
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47.10 Revised 60985
47.50 Revised 60985
56.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
57.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
75.204 (a) introductory text, (1), (2) and (b) introductory text revised 20030
75.1906 (g) correctly revised 12647
100.3 (a) introductory text and (g) revised 20035
100.4 (a) revised 20035
100.5 Introductory text through (h) and undesignated text redesignated as (a) introductory text through (8) and (b); new (c) and new (d) added 20035

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203 Workshop 17330
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203.50—203.91 (Subpart B) Revised 2618
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206.152 (b)(1)(i) amended; (b)(1)(iv) added 65761
(i) revised 65762
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206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65762
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65762
206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
(b)(1)(i) corrected 3618
206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65763
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218 Comment period extension 52016
218.52 Revised; interim 42066
227 Added 43084
228 Authority citation revised 43091
228.3 Added 43091
229 Authority citation revised 43091
229.3 Added 43091
250.1 (c)(5) and (d)(1) revised 42671
250.126 Revised 42671
250.160 (a) amended 39775
250.163 (b) amended 39775
250.200—250.209 (Subpart N) Revised 42668
250.209 (c) revised 67284
250.209—250.233 (Subpart O) Redesignated as 250.210—250.34 (Subpart O) 67284
251 Revised 67284
256.53 Corrected 36995
256.64 (a)(8) amended 39775
260.102 Amended 2629
260.110 (d) revised 2629

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723 Authority citation revised 63276
723.14 Table revised 63276
723.15 (b) amended 63276
724 Authority citation revised 63276
724.14 (b) amended 63276
845 Authority citation revised 63276
845.14 Table revised 63276
845.15 (b) amended 63277
846 Authority citation revised 63277
846.14 (b) amended 63277
870 Authority citation revised 60142
870.5 Amended 60142
870.17 Removed 10309
870.18 Revised 60142
870.19 Added 60143
870.20 Added 60146
901 Technical correction 4529
901.15 Table amended 66821
901.16 Removed 66822
902.15 Regulation at 62 FR 15116 eff. date corrected to 4-7-97 35342
904 Technical correction 44894
913.15 Table amended 54769
Table amended 17098
913.16 (o) removed 54769
(x) removed 17098
914 Technical correction 49049

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914.15 Table amended **44896, 44898, 47140, 59578**
914.16 (cc) and (dd) removed **47330**
914.25 (a) table amended 12652
916.15 Table amended 10317
917.15 Table amended **45717**
918.15 Table amended 11830
920.15 Table amended 13784, 19406
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924 Technical correction 6796
924.15 Added 1361
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924.17 Added 1362
925.15 Table amended **41844**
934.15 Table amended **44900**
935.15 Table amended **53234**
Table amended 9139
935.16 (a)(3) removed **53234**
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936.25 Table amended 8126
938.15 Table amended **60177**
Table amended 19820
938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added **60177**
(vvv) through (bbbb) added 19820
943.15 Table amended 10320
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943.25 Table amended 10320
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944.15 Table amended **41850**
944.16 (e), (f)(1), (g), (h) and (i) removed **41850**
944.25 Table amended **41850**
946 Technical correction **52181**
946.15 Table amended **48765, 60660**
946.25 (a) table amended **35968**
(a) table amended 5891

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206 ..... **36030, 38509, 49460, 50544, 52518, 55198**
..... 6113, 6887, 7085, 11384, 14057, 17349
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874 ..... **55365, 59639**
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914 ..... **42713**
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916 ..... 2916, 16728
917 ..... **46933, 63684, 65044**
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920 ..... **49183, 55321, 62273**
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924 ..... **40773**
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931 9165
934 ..... **46695, 48807**
935 ..... **36248, 38509**
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936 ..... **42715, 65632**
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938 ..... **67590**
943 ..... **67592, 67596, 67598**
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944 ..... 2192, 17138
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948 8891

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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added 58908
(b)(1) table amended 60782

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

2 Authority citation revised 14357
2.2 Revised 14357
2.9 Revised 14357
27 Added; interim 42213
27.7 (c)(3)(ii)(F) corrected 44036
103 Meeting 58909
Conditional exceptions grant 3640
103.11 (n)(8) and (9) redesignated as (n)(9) and (10); (n)(7)(iii) and new (8) added; eff. 8–1–98 1923
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised 47147
103.36 (b)(11) added; eff. 8–1–98 1924

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised 45520
202.1 Revised 45520
202.2 (a)(1) revised; (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); authority citation removed 45521
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed 45521
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed 45521
202.6 (b) and (e)(1) revised; authority citation removed 45521
202.7 (a) revised; authority citation removed 45521
203 Revised 5650
285 Authority citation revised 36210
Authority citation revised 16356, 23225
285.1 Added; interim 36210
285.7 Added; interim 23357
285.12 (Subpart B) Added; interim 16356
343 Revised 49914
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised 46445
344.3 (b)(3)(iii) revised 46446
356.12 (c)(1)(i) revised 43093
(b)(2) revised 4187
356.13 (a) revised 43093
356 Appendix B and Exhibit A amended 43094
357 Determination 61912
Determination 20099
357.22 (b) through (e) redesignated as (c) through (f); new (b) added 46861
357 Appendix B amended 43284
358 Revised 11355

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised 45101
Authority citation revised 10323
500.101 (Subpart A) Heading revised 45101
500.101 (a) amended 45101
500.201 (e) added 45101
500.306 Note amended 45101
500.508 (f) removed; note added 45101
500.601 (Subpart F) Revised 45101
500.602 Added 64721
500.701—500.718 (Subpart G) Revised 10324
500.701 (a) introductory text amended 45101
500.801 Revised 45101
500.802 Removed; new 500.802 redesignated from 500.807 45101
500.803 Removed; new 500.803 redesignated from 500.808 45101
500.804 Removed 45101
500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
Amended; OMB number 64722
501 Added 45101
501.101 Revised 52494
501.601 Note added 52494

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501.602 Amended **52494**
501.603 Note added **52495**
501.806 (b) revised **52495**
501.807 (a) revised **52495**
505 Authority citation revised **45106**
Authority citation revised 10331
505.40 Amended **45106**
505.50 Revised 10331
505.60 Revised **45106**
515 Authority citation revised **45106**
Authority citation revised 10331
515.101 (a) amended **45106**
515.201 (e) added **45106**
515.306 Note amended **45106**
515.508 (f) removed; note added **45106**
515.601 (Subpart F) Revised **45106**
515.701—515.718 (Subpart G) Revised 10331
515.701 (a) introductory text amended **45106**
515.801 Revised **45106**
515.802 Removed; new 515.802 redesignated from 515.807 ..... **45106**
515.803 Removed; new 515.803 redesignated from 515.808 ..... **45106**
515.804 Removed **45106**
515.805 Removed **45106**
515.806 Removed **45106**
515.807 Redesignated as 515.802 ..... **45106**
515.808 Redesignated as 515.803 ..... **45106**
515.901 Revised **45106**
535 Authority citation revised **45106**
535.101 (a) amended **45107**
535.508 (f) removed; note added **45107**
535.601 (Subpart F) Revised **45107**
535.701 (a) introductory text amended **45107**
535.801 (Subpart H) Revised **45107**
535.905 Revised **45107**
536 Authority citation revised **45107**
536.101 (a) amended **45107**
536.201 Existing text designated as (a); (b) added **45107**
536.312 Note added **45107**
536.503 (a) revised; note added **45107**
536.601 (Subpart F) Revised **45107**
536.801 Revised **45107**
536.802 Removed; new 536.802 redesignated from 536.805 ..... **45108**
536.803 Removed **45108**
536.804 Removed **45108**
536.805 Redesignated as 536.802 ..... **45108**
536.806 Removed **45108**
536.901 Revised **45108**
550 Authority citation revised **45108**
550.101 (a) amended **45108**
550.209 (c) added **45108**
550.304 Note amended **45108**
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added **45108**
550.601 (Subpart F) Revised **45108**
550.701 (a) introductory text amended **45108**
550.801 Revised **45108**
550.802 Removed; new 550.802 redesignated from 550.805 ..... **45108**
550.803 Removed; new 550.803 redesignated from 550.807 ..... **45108**
550.804 Removed **45108**
550.806 Removed **45108**
550.805 Redesignated as 550.802 ..... **45108**
550.807 Redesignated as 550.803 ..... **45108**
550.901 Revised **45108**
560 Authority citation revised **41852, 45108**
560.101 (a) amended **45109**
560.510 (d) introductory text, (1) and (2) revised **41852**
560.525 (a)(3) and (5)(i) revised **41852**
560.601 Revised **45109**
560.602 Removed **45109**
560.701 (a) introductory text amended **45109**
560.801 Revised **45109**
560.802 Removed; new 560.802 redesignated from 560.805 ..... **45109**
560.803 Removed; new 560.803 redesignated from 560.806 ..... **45109**
560.804 Removed **45109**
560.807 Removed **45109**
560.805 Redesignated as 560.802 ..... **45109**
560.806 Redesignated as 560.803 ..... **45109**
560.901 Revised **45109**
575 Authority citation revised **45109**
575.101 (a) amended **45109**
575.201 (c) added **45109**
575.306 Note amended **45109**
575.503 (h) removed; note added **45109**
575.601 (Subpart F) Revised **45109**
575.701 (a) introductory text amended **45109**
575.801 Revised **45109**
575.802 Removed; new 575.802 redesignated from 575.805 ..... **45109**
575.803 Removed **45109**
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575.805 Redesignated as 575.802 ..... **45109**
575.806 Removed **45109**

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575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110
585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111
590.803 Removed 45111
590.804 Removed 45111
590.805 Redesignated as 590.802 45111
590.806 Removed 45111
590.901 Revised 45111
595 Authority citation revised 45111
595.101 (a) amended 45111
595.201 Existing text designated as (a); (b) added 45111
595.311 Note amended 45111
595.503 (a) revised; note added 45111
595.601 (Subpart F) Revised 45111
595.701 (a) introductory text amended 45111
595.801 Revised 45111
595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732

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1 42443
27 42220
103 ..... 36475, 38511, 40778, 40779, 45365, 47156, 63298
208 ..... 48714, 51618, 55773
210 ..... 5426, 6001
212 46428
285 62458
..... 20006
317 23695
351 23695
353 23695
356 64528
370 23695
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TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added 40734
Subchapter B Heading revised 12160
21 Added 12160
22 Added 12164
23 Removed 12188
28.500 Revised 12188
32 Added 12188
34 Added 12204
33.26 (a), (b) introductory text and (1) revised 45939, 45943
40a Removed 11831
67 Revised 55517
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added 66525
175.4 Revised 66525
175.5 Revised 66525
175.6 Revised 66525
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added 66525
176 Revised 35346
199 Technical correction 42905
199.2 (b) amended 46878

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(b) amended; interim **54384**
(b) amended 9141
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised **46878**
(g)(48) revised; interim **54384**
(a)(9) introductory text, (i)(B) and (ii) revised; (a)(9)(i)(C), (v)(B) and (vi) note removed; (a)(9)(i)(D) and (v)(A) redesignated as (a)(9)(i)(C) and (v); (a)(10)(vi)(E) added 9141
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised **42904**
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim **54384**
199.13 (i) added; interim **39941**
199.14 (h)(1)(i)(D) added 7287
199.17 (a)(7) added; (d)(1) and (o)(3) revised 9142
199.18 (d)(2)(i) and (f) revised; (c)(3) added 9143
199.21 Revised **66990**
199.22 Added **66993**
203 Added 5261
220.9 (d) added 11600
247 Revised **42905**
270 Added; interim **39942**
Revised 3472
285 Revised **61013**
286 Revised **35351**
286.3 Amended **42916**
286.4 (b), (h)(1), (5) and (n)(2) corrected **38197**
286.12 (a)(1) and (2) corrected **38197**
286.28 (d)(3)(i)(A) corrected **38197**
(d)(3)(ii)(A) amended **42916**
311.7 (c)(10)(i), (ii) and (iii) added **46446**
(c)(11)(i) and (iii) added **59579**
318.9 Redesignated as 318.11 ..... **67291**
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318.11 Redesignated from 318.9 ..... **67291**
318.10 Added **67292**
320 Heading revised **65020**
320.1 (a)(1)(i) and (2) amended **65020**
320.2 Amended **65020**
320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised **65020**
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended **65020**
(c) heading, (1) introductory text and (iv) revised **65021**
320.5 (b) amended **65021**
320.6 (a) and (b) revised **65021**
320.7 (b), (c) introductory text, (1) and (d) amended **65021**
320.8 (a), (c)(3), (5) and (7) amended **65021**
320.9 (b)(2)(i) and (3) amended **65021**
320.10 Amended **65021**
320.11 Amended **65021**
397 Removed 6864

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed **48480**

Chapter VI—Department of the Navy (Parts 700—799)

701.118 (r) introductory text revised **61914**
706.2 Table Five amended **37719, 40450**
Tables Four and Five amended **47945**
Tables Two and Five amended 9743
Tables One and Four amended 9744
Table Five amended 9745, 19656
Tables Four and Five amended 13341
721 Removed 3860
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722 Removed 3860
Technical correction 4694

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175 13586
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199 ..... **45196, 61058, 64191, 67018**
212 9167
220 11635
311 ..... **41323**
318 ..... **51821**
323 11198
507 11858
901 ..... **63485**
989 ..... **67305**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

27.3 Table correctly revised **35385**

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80.501 (d) revised....5731
80.520 (a) revised....5731
80.1495 Revised....5731
82 Authority citation revised....5731
82.5 Added....5731
82.7 Added....5731
84.01 (b) and (c) redesignated as (c) and (d); new (b) added....5731
84.05 (a) revised; (b), (c) and (d) redesignated as (e), (b) and (c); new (d) added....5731
84.17 (c) added....5731
84.27 Added....5731
87.1 (c) revised....5732
88.13 Heading, (b) and (c) revised; (d) redesignated as (e); new (d) added....5732
90.5 Added....5732
90.7 Added....5732
96 Added....67506
100 Temporary regulations lists....42671, 60178
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100.35–T05–013 Added (temporary)....14819
100.35T–05–043 Added (temporary)....35391
100.35–T05–055 Added (temporary)....39776
100.35T–05–065 Added (temporary)....45718
100.35T–05–069 Added (temporary)....48768
100.35T–05–074 Added (temporary)....52501
100.35T–07–002 Added (temporary)....5456
100.35–T07–014 Added (temporary)....16115
100.35–T07–017 Added (temporary)....16116
100.35T–07–047 Added (temporary)....60178
100.35T–07–054 Added (temporary)....61630
100.35T–07–062 Added (temporary)....65022
100.35–T08–026 Added (temporary)....44410
100.35–T08–027 Added (temporary)....44411
100.35–T08–028 Added (temporary)....44411
Heading correctly revised....46553
100.35–T08–034 Added (temporary)....48767
100.35–T08–035 Added (temporary)....48766
100.35–T08–038 Added (temporary)....50506
100.35–T08–039 Added (temporary)....50507
100.01 Regulation at 61 FR 33032 eff. delayed to 1–1–99....67569
100.05 Regulation at 61 FR 33032 eff. delayed to 1–1–99....67569
100.15 Regulation at 61 FR 33032 eff. delayed to 1–1–99....67569
100.17 Regulation at 61 FR 33032 eff. delayed to 1–1–99....67569
100.18 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
100.19 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
100.25 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
100.30 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
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100.50 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
100.100 Regulation at 61 FR 33033 eff. delayed to 1–1–99....67569
100.102 Revised; eff. 7–26–97....35388
100.114 Implementation (temporary)....35388, 35391, 45158, 48766, 66996
100.201 Implementation (temporary)....43284
100.501 (c) revised; Table 1 added....46670
100.508 Implementation (temporary)....45718
100.509 Implementation (temporary)....35390
100.510 (b)(1) and (c) revised; Table 1 added....42067
100.511 Implementation (temporary)....14036, 19406, 23215
100.728 Added....43641
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100.1101 Implementation (temporary)....45158
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100.1102 Amended....3037
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100.1301 (a) stayed; (j) added; eff. 8-7-97 through 8-11-97 ..... **39444**
110.60 (p-3) removed 23663
110.90 Revised 16689
110.157 (b)(11) added; eff. 10-2-97 through 10-20-97 ..... **55168**
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117.5 Implementation (temporary) 6073
117.205 Revised 10140
117.253 (a) suspended; (c) added; eff. 4-2-98 through 8-31-98 19407
117.491 (a)(3) removed **52502**
117.524 Removed 18320
117.532 Removed 18319
117.533 Revised 18323
117.549 Implementation (temporary) 6073
117.559 Revised **38909**
117.603 Revised **50510**
117.604 Removed **50510**
117.609 Revised 2896
117.613 Revised 18323
117.633 (b) and (c) revised **43098**
117.637 (a)(1) revised **43931**
117.663 Revised 4584
117.675 (c) added; eff. 4-13-98 through 8-10-98 16906
117.720 Added 2312
117.733 Revised 2311
117.753 Revised **45160**
117.771 Revised **54385**
117.789 Implementation (temporary) 17679
117.793 (b) revised 18321
117.807 Removed 18322
117.821 Revised 9419
117.833 Existing text designated as (a); (b) added **66006**
117.1045 (a) revised **43097**
117.1061 (c) and (d) removed 10777
144.01-15 (d) correctly revised **35392**
151 Effective date confirmation **46446**
151.19 (c) revised **67532**
151.37 (a), (b) and (c) amended **67532**
155 Compliance date delay **37134**
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Authority citation and note revised **48773**
155.100 (a) introductory text revised; (c) added **48773**
155.140 (b) amended **51194**
155.235 Revised **51194**
155.480 (b) introductory text and (f) revised **48773**
155.1050 (k)(3) suspended; eff. 2-12-98 through 2-12-2001 7071
155.1052 (f) suspended in part; eff. 2-12-98 through 2-12-2001 7071
157.455 Regulation at 61 FR 60189 stay lifted; revised **49608**
159.3 Amended **51194**
159.5 Revised **51194**
159.7 Revised **51194**
159.201 Revised **51194**
159.205 Removed **51194**
160 Authority citation revised **65206**
160.203 Regulation at 59 FR 39459 confirmed 19190
160.207 (d) and (e) revised; interim **65206**
(d)(1) corrected 5458
Regulation at 59 FR 39460 confirmed 19190
160.211 Regulation at 59 FR 39460 confirmed 19190
160.213 Regulation at 59 FR 39460 confirmed 19190
160.215 Regulation at 59 FR 39460 confirmed 19190
162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7-25-97 through 12-15-97 ..... **45720**
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added **40272**
165 Effective date confirmation **35392, 65022**
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165.T01-029 Added (temporary) 19657
165.T01-040 Added (temporary) **35395**
165.T01-041 Added (temporary) **35404**
165.T01-042 Added (temporary) **35403**
165.T01-047 Added (temporary) **35681**
165.T01-048 Added (temporary) **35969**
165.T01-063 Added (temporary) **42677**
165.T01-082 Added (temporary) **45721**
165.T01-085 Added (temporary) **45722**
165.T01-089 Added (temporary) **46671**
165.T01-135 Added (temporary) 9941
165.T02-050 Added (temporary) **43100**

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165.T05.008 Added (temporary).....23218
165.T05-058 Added (temporary).....39446
165.T05-063 Added (temporary).....42676
165.T05-076 Added (temporary).....55168
165.T07-035 Added (temporary).....41275
165.T08036 Added (temporary).....35401
165.T08037 Added (temporary).....35401
165.T08038 Added (temporary).....35402
165.T08-041 Added (temporary).....38457
165.T11-018 Added (temporary).....9942
165.T11-040 Added (temporary); interim.....51781
165.T11-043 Added (temporary).....7706
165.T11-049 Added (temporary).....14622
165.T11-052 Added (temporary).....23664
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165.T13006 Added (temporary).....35394
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165.T13008 Added (temporary).....35400
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165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as (a)(1) and (2); new (a)(1), new (2) and (b) amended.....51782
165.503 Removed.....9942
165.510 Revised.....40275
165.709 Removed.....51780
165.726 Added.....50512
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim.....58653
165.1110 Revised; interim.....61631
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165.1301 Revised.....7708
165.1307 (a) revised.....39445
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74.26 (a), (b) and (c) revised.....45939, 45943
75.253 (c) revised.....40424

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75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended 40424
75.263 Added 40425
75.264 Added 40425
80.26 (a), (b) introductory text and (1) revised 45939, 45943
80 Appendix removed 45943
97 Authority citation revised 63221
97.101—97.124 (Subpart A) Sections designated as Subpart A; heading added 63220
97.101 Authority citation added 63221
97.102 Authority citation added 63221
97.103 Authority citation added 63221
97.107 Authority citation added 63221
97.124 Authority citation added 63221
97.401—97.409 (Subpart D) Added 63221

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208.32 (b)(2) removed; (b)(1)(i) through (iv) redesignated as (b)(1) through (4) 8020
222.4 Revised; eff. 7-31-97 35412
222.7 Authority citation amended 35412
222.9 Authority citation amended 35412
222.10 Authority citation amended 35412
222.11 Introductory text and authority citation amended; eff. 7-31-97 35412
222.12 Added; eff. 7-31 35412
222.13 Redesignated as 222.19; eff. 7-31-97 35412
Added; eff. 7-31-97 35413
222.14 Added; eff. 7-31-97 35413
222.15 Added; eff. 7-31-97 35413
222.16 Added; eff. 7-31-97 35413
222.17 Added; eff. 7-31-97 35413
222.18 Added; eff. 7-31-97 35414
222.19 Redesignated from 222.13; eff. 7-31-97 35412
222.22 (c) and (d) revised; eff. 7-31-97 35414
222.23 Added; eff. 7-31-97 35414
222.36 (b)(1) and (2) revised; eff. 7-31-97 35415
222.50 Authority citation amended 35412
222.80—222.85 (Subpart F) Added; eff. 7-31-97 35415
222.94 Authority citation amended 35412
222.95 Authority citation amended 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended 35412
222.104 Authority citation amended 35412
222.108 Authority citation amended 35412
222.109 Authority citation amended 35412
222.110 Authority citation amended 35412
222.111 Authority citation amended 35412
222.112 Authority citation amended 35412
222.113 Authority citation amended 35412
222.114—222.122 Undesignated center heading added; eff. 7-31-97 35416
222.114 Added; eff. 7-31-97 35416
222.115 Added; eff. 7-31-97 35416
222.116 Added; eff. 7-31-97 35416
222.117 Added; eff. 7-31-97 35417
222.118 Added; eff. 7-31-97 35417
222.119 Added; eff. 7-31-97 35418
222.120 Added; eff. 7-31-97 35418
222.121 Added; eff. 7-31-97 35418
222.122 Added; eff. 7-31-97 35418
222.150 (b)(1) amended; eff. 7-31-97 35418
222.151 Heading and (b)(1) revised; eff. 7-31-97 35418
222.152 (b) and (c) revised; eff. 7-31-97 35418
222.154 (e) revised; eff. 7-31-97 35419
222.156 (g) amended; eff. 7-31-97 35419
222.157 Heading, (a) and (b)(1) revised; eff. 7-31-97 35419

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225.158 Heading, introductory text and (b) revised; eff. 7–31–97 ..... **35419**
222.161 (c) amended; eff. 7–31–97 ..... **35419**
222.162 (a) revised; eff. 7–31–97 ..... **35419**
222.164 (a)(2) and (b) revised; OMB number; eff. 7–31–97 ..... **35419**
222.165 (e), (f) and (h) revised; eff. 7–31–97 ..... **35420**
280.32 (b)(1) designation correctly removed 16906

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303 Authority citation revised 18292
Nomenclature change 18293
303.1 Authority citation amended 18292
(a) amended 18293
303.2 Authority citation amended 18292
Amended 18293
303.3 (a) amended; (e) added; authority citation revised 18293
303.5 (a)(1)(vii) amended; (a)(1)(viii) removed 18294
303.7 Authority citation amended 18292
303.8 Authority citation amended 18292
303.9 Authority citation amended 18292
303.10 Authority citation amended 18292
303.11 Authority citation amended 18292
303.12 Authority citation amended 18292
(b)(1) designation and (2) removed 18294
303.13 Authority citation amended 18292
303.14 Authority citation amended 18292
303.15 Authority citation amended 18292
303.16 Authority citation amended 18292
303.17 Authority citation amended 18292
303.18 Authority citation amended 18292
Redesignated as 303.19; new 303.18 added 18294
303.19 Authority citation amended 18292
Redesignated as 303.20; new 303.19 redesignated from 303.18 18294
303.20 Authority citation amended 18292
Redesignated as 303.21; new 303.20 redesignated from 303.19; (b)(1) amended 18294
303.21 Authority citation amended 18292
Redesignated as 303.22; new 303.21 redesignated from 303.20 18294
303.22 Authority citation amended 18292
Redesignated as 303.23; new 303.22 redesignated from 303.21 18294
303.23 Authority citation amended 18292
Redesignated as 303.24; new 303.23 redesignated from 303.22 18294
303.24 Authority citation amended 18292
Redesignated from 303.23 and amended 18294
303.100 Revised (OMB number pending) 18294
303.101 Authority citation amended 18292
303.110 Authority citation amended 18292
303.111 Authority citation amended 18292
(a) and (b)(1) amended 18294
303.112 Authority citation amended 18292
303.113 Heading, (b) and authority citation revised 18294
303.120 Authority citation amended 18292
303.121 Authority citation amended 18292
303.122 Authority citation amended 18292
303.123 Authority citation amended 18292
303.124 Authority citation amended 18292
(a) amended 18294

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303.125 Authority citation amended 18292
303.126 Authority citation amended 18292
303.127 Authority citation amended 18292
303.128 Authority citation amended 18292
303.140 Revised 18294
303.141 Authority citation amended 18292
303.142 Authority citation amended 18292
303.143 Authority citation amended 18292
303.144 Authority citation amended 18292
Amended 18294
303.145 Authority citation amended 18292
(a) and (d)(1) amended; (e) redesignated as (f); new (e) added (OMB number pending) 18294
303.146 Authority citation amended 18292
303.147 Revised 18294
303.148 Authority citation amended 18292
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303.149—303.155 Undesignated center heading and sections removed 18295
303.160—303.176 Undesignated center heading amended 18295
303.160 Authority citation amended 18292
303.161 Authority citation amended 18292
303.162 Authority citation amended 18292
303.163 Removed 18295
303.164 Authority citation amended 18292
303.165 Authority citation amended 18292
303.166 Authority citation amended 18292
303.167 Authority citation amended 18292
(a) revised; (b)(2) amended; (c) added (OMB number pending) 18295
303.168 Authority citation amended 18292
303.169 Authority citation amended 18292
303.170 Authority citation amended 18292
(a) and (b)(2) amended 18295
303.171 Authority citation amended 18292
303.172 Authority citation amended 18292
303.173 Authority citation amended 18292
303.174 Authority citation amended 18293
303.175 Authority citation amended 18293
303.176 Authority citation amended 18293
303.180 Authority citation amended 18293
303.200 Authority citation amended 18293
303.201 Authority citation amended 18293
303.202 Authority citation amended 18293
303.203 Authority citation amended 18293
303.204 Existing text designated as (a); (b) added; authority citation revised 18295
303.205 Removed 18295
303.300 Authority citation amended 18293
303.301 Authority citation amended 18293
303.302 Removed 18295
303.320 Authority citation amended 18293
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303.321 Authority citation amended 18293
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303.323 Authority citation amended 18293
303.340 Authority citation amended 18293
303.341 Removed 18295
303.342 Authority citation amended 18293
303.343 Authority citation amended 18293

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303.344 Authority citation amended 18293
(d)(1)(ii) amended (OMB number pending) 18295
303.345 Authority citation amended 18293
303.346 Authority citation amended 18293
303.360 Authority citation amended 18293
(c)(3) and (4) amended 18295
303.361 Authority citation amended 18293
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303.400 Authority citation amended 18293
303.401 Authority citation amended 18293
303.402 Authority citation amended 18293
303.404 Authority citation amended 18293
303.405 Authority citation amended 18293
303.406 Authority citation amended 18293
303.406 (d)(1) revised 18296
303.419—303.425 Undesignated center heading revised 18296
303.419 Added 18296
303.420 Heading, introductory text, (a), (b)(1) and note 2 amended 18296
Authority citation amended 18293
303.421 Authority citation amended 18293
303.422 Authority citation amended 18293
303.423 Authority citation amended 18293
303.424 Authority citation amended 18293
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303.425 Authority citation amended 18293
303.460 Authority citation amended 18293
303.500 Authority citation amended 18293
303.501 Authority citation amended 18293
303.522 Authority citation amended 18293
303.521 Authority citation amended 18293
303.522 (b)(5) removed; (b)(6) and (7) redesignated as (b)(5) and (6) 18296
303.523 Authority citation amended 18293
303.524 Authority citation amended 18293
303.525 Authority citation amended 18293
303.526 Authority citation amended 18293
303.527 Authority citation amended 18293
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303.528 Authority citation amended 18293
303.540 Authority citation amended 18293
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303.560 Authority citation amended 18293
303.600 Authority citation amended 18293
(a) revised 18296
303.601 Authority citation amended 18293
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303.602 Authority citation amended 18293
(a) introductory text amended 18296
303.603 Authority citation amended 18293
303.604 Authority citation amended 18293
303.650 Authority citation amended 18293
(c) added (OMB number pending) 18296
303.651 Authority citation amended 18293
303.652 Authority citation amended 18293
303.653 Authority citation amended 18293
Amended (OMB number pending) 18296
303.654 Authority citation amended 18293
303.670 Undesignated center heading and section removed 18296
305 Removed; eff. 10-1-98 23601
307 Removed; eff. 10-1-98 23601

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309 Removed; eff. 10-1-98 23601
315 Removed; eff. 10-1-98 23601
316 Removed; eff. 10-1-98 23601
318 Removed; eff. 10-1-98 23601
319 Removed; eff. 10-1-98 23601
320 Removed; eff. 10-1-98 23601
324 Removed; eff. 10-1-98 23601
325 Removed; eff. 10-1-98 23601
326 Removed; eff. 10-1-98 23601
327 Removed; eff. 10-1-98 23601
328 Removed; eff. 10-1-98 23601
330 Removed; eff. 10-1-98 23601
331 Removed; eff. 10-1-98 23601
332 Removed; eff. 10-1-98 23601
333 Removed; eff. 10-1-98 23601
338 Removed; eff. 10-1-98 23601

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668.13 (d) and (e) removed; (f) redesignated as (d) 62876
668.23 (f) removed; (g) and (h) redesignated as (f) and (g) 62876
668.162 (a)(1) revised; (e) added 62876
668.167 (f) added 62877
668.171—668.175 (Subpart L) Added 62877
668 Appendix F added 62882
Appendix G added 62885
674.6 (a)(1) and (2) amended; (a)(3) removed 50847
674.9 (a) amended 50847
674.19 (b) amended 50847
674.31 (b)(2)(i)(D) revised 50848
674.33 (b)(6)(ii) amended; (d)(8) added 50848
674.34 (h) revised 50848
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added 50848
674.36 (c)(1), (2), (3) and (f) amended 50848
674.37 (c)(1), (2), (3) and (d) amended 50848
674.45 (c)(1)(ii)(A) amended 50848
674.52 (d)(2) amended 50848
675.9 (a) amended 50848
675.19 (a)(3) amended 50848
675.20 (b)(1) amended 50848
675.22 Heading amended 50848
675.26 (d) revised 63439
675.27 Authority citation revised 50848
676.9 (a) amended 50848
676.19 (a)(2) amended 50848
682.201 (a) introductory text through (3) amended 63433
682.202 (c)(5) revised 63434
682.209 (i)(1) revised 63434
682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised 63434
682.402 (c)(1) revised; (k)(2)(iii) amended 63434
682.604 (g)(2)(i) revised 63434
685.202 (c)(4) revised 63434
685.212 (b) revised 63435
685.301 (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added 63435
685.304 (b)(2)(i) revised 63435
685 Appendix A revised 35602

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701 Added 61430

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113 Authority citation revised 18837
113.49 (b) revised 18837
115 Authority citation revised 2142
115.1 Revised 2142
115.2 (b) revised; (c) removed; (d) redesignated as (c); (a) introductory text and new (c) amended 2142
(b) amended 18837
117 Authority citation revised 2142
117.1 (b), (c) introductory text and (d)(2) amended 2142

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117.3 Revised 2142
119 Nomenclature change 2142
133.1 Revised 23221
135.1 Amended 23221

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135 186

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

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4.15 Revised 61633
7.15 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c) 13353
7.67 (a) revised 9147

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212 Authority citation revised 58654
212.2 Revised 58654
212.3 Removed; new 212.3 redesignated from 212.5 58654
212.4 Removed; new 212.4 redesignated from 212.6 58654
212.5 Redesignated as 212.3; new 212.5 redesignated from 212.7 58654
212.6 Redesignated as 212.4; new 212.6 redesignated from 212.8 58654
212.7 (c) amended; redesignated as 212.5; new 212.7 redesignated from 212.9 58654
212.8 Redesignated as 212.6; new 212.8 redesignated from 212.10 58654
212.9 (d) amended; redesignated as 212.7; new 212.9 redesignated from 212.11 58654
212.10 (a)(2) amended; redesignated as 212.8; new 212.10 redesignated from 212.12 58654
212.11 (f) amended; redesignated as 212.9 58654
212.12 Redesignated as 212.10 58654
215.11 (c) revised; (d) added; interim 4188
242.24 (a)(1) table amended 45725
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727
292.60—292.70 (Subpart G) Revised 15059
Corrected 18837

Chapter VII—Library of Congress (Parts 700—799)

701.8 Revised 64280
701.35 Revised 8854
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1151 Revised 1924
1153 Removed 1926
1155 Removed 1926
1191 Appendix A amended 2016, 2071
1193 Added 5630

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1207.26 (a), (b) introductory text and (1) revised 45939, 45943
1210.26 (a), (b) and (c) revised 45939, 45943
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1.6 (d)(3), (6) and (e) revised; (f) added 53180
1.8 (a)(2)(i)(A) and (b) revised 53181
1.9 (d) and (f) revised 53181
1.10 (d) and (e) revised 53181
1.11 (b) revised 53181
1.14 (a) revised; (f) added 53182
1.16 (a), (b), (d) and (f) through (i) revised 40452
(d) and (l) revised 53182
1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
(a) through (d), (h), (l) and (q) revised; (e), (f) and (g) removed 53182
(q) correctly revised 61235
1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
(l) and (n) revised 53183
1.26 (a) revised 53183
1.27 Revised 53183
1.28 (a) and (c) revised 53183
1.33 (a) and (b) revised 53184
1.41 (a) revised 53184
1.47 Revised 53184
1.48 Revised 53185
1.51 Revised 53185
1.52 (a), (c) and (d) revised 53186
1.53 Revised 53186
(d)(1)(i) revised; interim 5732
1.54 Revised 53188
1.55 (a) revised 53188
1.59 Revised 53188
1.60 Removed 53188
1.62 Removed 53188
1.63 (a) and (d) revised; (e) added 53188
1.67 (b) revised 53189
1.69 (b) revised 53189
1.78 (a) revised 53189
1.84 (a)(2)(i), (b), (c) and (g) revised 53190
1.91 Revised 53190
1.92 Removed 53190
1.97 (c), (d) and (e) revised 53190
1.101 Removed 53190
1.102 (a) revised 53191
1.103 (a) revised 53191
1.104 Revised 53191
1.105 Removed 53192
1.106 Removed 53192
1.107 Removed 53192
1.108 Removed 53192
1.109 Removed 53192
1.111 (b) revised 53192
1.112 Revised 53192
1.113 Revised 53192
1.115 Removed 53192
1.116 Heading and (a) revised 53192
1.117 Removed 53192
1.118 Removed 53192
1.119 Removed 53192
1.121 Revised 53192
(a)(4) correctly removed 61235
1.122 Removed 53193
1.123 Removed 53193
1.124 Removed 53193
1.125 Revised 53193
1.126 Revised 53194
1.133 (b) revised 53194
1.134—1.139 Undesignated center heading revised 53194
1.134 Revised 53194
1.135 Revised 53194
1.136 Revised 53194
1.137 Revised 53194
1.139 Removed 53195
1.142 (a) revised 53195
1.144 Revised 53195
1.146 Revised 53195
1.152 Revised 53195
1.154 Heading and (a)(3) revised 53196
1.155 Revised 53196
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1.167 Revised 53196
1.171 Revised 53196
1.172 (a) revised 53196
1.175 Revised 53196
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1.192 (a) revised 53196
1.193 Revised 53197
1.194 Revised 53197
1.196 (b) and (d) revised 53197
1.197 (a) and (b) revised 53198
1.291 (c) revised 53198
1.293 (c) revised 53198
1.294 (b) revised 53198
1.304 (a)(1) revised 53198
1.312 (b) revised 53198
1.316 Revised 53198
1.317 Revised 53198
1.318 Removed 53198
1.324 Revised 53199
1.352 Removed 53199
1.366 (b), (c) and (d) revised 53199
1.377 (c) revised 53199
1.378 (d) revised 53199
1.425 Revised 53199
1.445 (a) revised 40453
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453
1.484 (d), (e) and (f) revised 53199
1.485 (a) revised 53200
1.488 (b)(3) revised 53200
1.492 (a), (b) and (d) revised 40453
(g) added 53200
1.494 (c) revised 53200
1.495 (c) revised 53200
1.510 (e) revised 53200
1.530 Heading and (d) revised; (e) removed 53200
1.550 (a), (b) and (e) revised 53201
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1.804 (b) revised 53202
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2 Technical correction 43100
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3.11 Revised 53202
3.21 Revised 53202
3.26 Revised 53202
3.27 Revised 53202
3.31 (c) added 53202
3.41 Revised 53202
3.51 Revised 53203
3.58 Added 53203
3.71—3.73 Undesignated center heading revised 53203
3.73 Heading and (b) revised 53202
5.1 Revised 53203
5.2 (b) revised; (c) and (d) removed 53203
5.3 (c) revised 53203
5.4 (a) and (d) revised 53204
5.5 (b) and (e) revised 53204
5.6 Removed 53204
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5.11 (b), (c) and (e)(3) revised 53204
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5.15 (a), (b), (c) and (e) revised 53204
5.16 Removed 53205
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5.19 Revised 53205
5.20 Revised 53205
5.25 (c) removed 53206
5.31 Removed 53206
5.32 Removed 53206
5.33 Removed 53206
7 Removed 53206
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201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.34 Added; interim 55739
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202 Appendix B amended 51603
203 Authority citation revised 55742
Authority citation revised 1926
203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1926
203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1926
203.6 (b)(6) amended; interim 55742
Regulation at 62 FR 55742 confirmed 1926
251 CARP arbitration list 9419
253.1 Amended 2144

NOTE: Boldface page numbers indicate 1997 changes.

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253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
255.3 (a) through (h) amended; (i) through (m) added 7289
258 Technical correction **62262, 62404**
258.3 Revised **55759**

Proposed Rules:

2 ..... **59640**
3 ..... **59640**
201 ..... **40780**
..... 3685, 15802, 17142
202 15802
203 15802
204 15802
211 15802
253 ..... **51619, 63502, 65777**
255 ..... **63506, 65778**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1 Nomenclature change **35970**
Nomenclature correction **47532**
1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) **51783**
2.6 (e)(6) revised 11122
3 Nomenclature change **35970**
Nomenclature correction **47532**
3.2 (f) revised **35422**
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added **35422**
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised **51278**
3.57 Cross reference amended **51281**
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added **51278**
3.158 (a) and (c) amended **51278**
3.261 (a)(40) added **51278**
3.262 (y) added **51278**
3.263 (g) added **51279**
3.272 (u) added **51279**
3.275 (i) added **51279**
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised **35422**
3.317 Regulation at 62 FR 23139 confirmed 11122
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added **51279**
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added **51279**
3.659 Cross reference amended **51281**
3.703 Cross reference amended **51281**
3.707 Cross reference amended **51281**
3.807 Cross reference amended **51281**
3.810 (a) amended; (d) added **35422**
3.811 Added; interim **35971**
Revised 412
3.814 Added **51279**
3.1000 (a) introductory text amended; authority citation added **35423**
3.1600 (c) amended **35423**
4.100 Removed **65219**
4.101 Removed **65219**
4.102 Removed **65219**
4.104 Revised **65219**
9 Nomenclature change **35970**
Nomenclature corrected **47533**
9.2 (a) and (b)(1) revised **35970**
9.8 (b) amended **35970**
17.32 Revised **53961**
17.85 Undesignated center heading and section added 11124
17.149 Regulation at 62 FR 30239 confirmed **64722**
17.150—17.154 Regulation at 62 FR 30239 confirmed **64722**
17.212 (d) added; authority citation revised **60783**
17.900—17.905 Undesignated center heading and sections added **51284**
19.9 Revised **52503**
20.611 Revised **55170**
20.1302 Revised **55170**

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 38 Chapter I—Con.

21.3021 (l) redesignated as (m); new (l) added 51784
21.3041 (e)(3) and (4) amended 55760
21.3045 (f) revised; (i)(3)(ii) amended 55760
21.3046 (e) removed 51784
(c)(1) and (d)(6)(ii) amended 59579
21.3047 Added 51784
21.4001—21.4279 (Subpart D) Authority citation revised 40280, 55760, 63849
21.4009 (b)(1) introductory text amended 55760
21.4200 (g) revised 55760
21.4201 (h) introductory text and (2) amended 55760
21.4233 (c) revised; (d) amended 40280
(b)(3) introductory text amended, (ii), (4) introductory text and (ii) amended 55760
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended 55760
21.4253 (d)(1) revised 35424
21.4256 Revised 63849
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.4270 (c) heading and Footnote 2 revised 55760
21.4279 (a) introductory text and (4) revised; (a)(5) added 63850
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended 51785
21.5001—21.5300 (Subpart G) Authority citation revised 55760
21.5270 (a), (g) and (i) amended 55760
21.5701—21.5901 (Subpart H) Authority citation revised 55761
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended 63848
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 63848
21.5901 (a) and (b) amended 55761
21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority citation, (d)(2)(iii), authority citation, (e)(2)(ii), (iii), (3)(iii), authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2) amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7154 (a) and (b) redesignated as (b) and (c); new (a) added; new (b) heading, (1) revised; new (b)(2)(i) and (ii) amended; OMB number 14038
21.7156 Introductory text and (a) introductory text removed; (a)(1), (2), (3), (b) and (c) redesignated as (b)(3), (4), (5), (c) and (d); heading and new (b)(3) revised; new (a), (b) heading, (1) and (2) added; new (c)(2) amended; OMB number 14038
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761

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21.7612 (b) revised **40280**
21.7622 (c) revised **55762**
21.7631 (h) added **55520**
21.7635 (x) redesignated as (y); new (x) added **55520**
21.7636 (b) redesignated as (c); new (b) added **55520**
(a)(1), (2)(i) and (3) revised **66278**
21.7639 (c)(2)(ii), authority citation, (f)(1), authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added **55521**
(b) introductory text amended **55762**
21.7659 Revised **55762**
21.7670 (d) amended **55762**
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added **55762**
21.8010—21.8410 (Subpart M) Added **51288**
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number **63278**
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number **63278**
36.4303 Revised 12002
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added **52505**
(a)(6) and (7) removed; (a)(3), (4) and (5) revised **63454**
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number **63278**
36.4330 Revised 12004
36.4335 (a) and (b) removed; (c) through (h) redesignated as new (a) through (f); new (e) authority citation removed 12004
36.4337 (a) revised **52505**
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised **53965**
(a) revised **63454**
36.4348 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (e) revised; new (d) added 12004
36.4349 (a)(2) revised (OMB number) 12007
43.26 (a), (b) introductory text and (1) revised **45939, 45943**
47 Heading revised 23665
47.1 (a) removed; (b) through (h) redesignated as (a) through (g); new (h) and (i) added 23665
47.2 Removed; new 47.2 redesignated from 47.3 and revised 23665
47.3 Redesignated as 47.2 23665

Proposed Rules:

17 ..... **39197, 40492**, 9990
19 ..... **36038**
20 ..... **55200, 64790**
21 ..... **35454, 45596, 48969, 60464, 62736, 66320**, 15341, 23408
36 ..... **37824**
47 ..... **52519**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended **41853**
3.3 (v) redesignated as (w); new (v) added **41853**
(e)(3) added **43642**
3.4 (h) added **41853**
4 Authority citation revised **61914**
4.5 Revised **61914**
4.6 Removed; new 4.6 redesignated from 4.7 ..... **61914**
4.7 Redesignated as 4.6 ..... **61914**
20 IMM amended; incorporation by reference; interim **45163, 47559, 49917, 56074, 58915**
IMM amended; incorporation by reference 3645, 3815
IMM amended; incorporation by reference; interim 5459, 9421, 13125
111 DMM amended; incorporation by reference **39947, 51372, 53540, 60181, 61015**
DMM amended; incorporation by reference 155, 14820, 19408
111.3 (f) table amended **63851**
111.5 Revised **63852**
222.5 (a)(7) amended 9943

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TITLE 39 Chapter I—Con.

255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised 66996
(c)(3) amended; (c)(4) and (5) revised 66997
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed 66997
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed 66997
(a)(3) correctly removed 2145
262 Authority citation revised 64280
Authority citation revised 6481
262.2 (a) revised; interim 64280
(a) revised 6481
262.4 Introductory text revised; interim 64280
Introductory text revised 6481
265.3 (a) revised; interim 64280
(a) revised 6481
265.5 Revised; interim 64280
Revised 6481
265.6 (a) revised; interim 64281
(e)(1) amended; interim 64282
(a) revised 6481
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim 64282
(b), (c), (d)(1), (e)(1), (f)(1), (2) and (g) revised 6482
265.10 Revised 64283
Revised 6483
265 Appendix A revised 64283
Appendix A revised 6483
946.6 (a)(2) revised 8126
954 Heading amended 66998
954.2 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.3 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.5 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.6 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.8 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.10 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.12 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.13 (a) and (c) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.14 (b)(6) and (8) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.16 (d)(1) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.17 (b) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.18 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.19 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.25 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
966 Revised 63279

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended 45530
3001.12 (e) amended 45530
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(i) amended; (k)(3)(i)(e) revised 45729
3001.43 (f)(1) amended 45530
3001.61—3001.69c (Subpart C) Appendix A amended 35425
3002 Auhority citation revised 45530
3002.4 Heading revised; (a) amended 45530
3002.5 Removed 45530

Proposed Rules:

20 47394
111 ..... 45366, 47178, 48191, 62540
..... 8154, 11199, 12864, 17143
232 61481
501 ..... 8893, 16464
775 42958
777 42958
778 42958

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TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed **43269**
8.2 (d) revised; eff. 7-14-98 18326
8.8 (b)(1) and (2) revised; eff. 7-14-98 18326
9.1 Table amended (OMB number) **37722, 44413, 47119, 52398, 54715, 55474**
Regulation at 61 FR 52295 eff. date corrected to 12-30-97 673
Table amended (OMB numbers) 964, 1060, 1320, 7269, 7710, 15016
Regulation at 61 FR 48229 eff. date corrected to 2-27-98 9944
30.26 (a), (b) and (c) revised **45939, 45944**
31.26 (a), (b) introductory text and (1) revised **45939, 45944**
32.105 Amended **47149**
32.335 (a) through (d) amended **47149**
32.430 (a) through (d) amended **47149**
35.105 Amended 7270
35.205 (c), (d) and (e) added 7270
35.210 (c) added 7270
35.215 Revised 7270
35.220 Added 7271
49 Added 7271
50 Announcement **38762**
Comment period extension **43642**
Notice 6032
Authority citation revised 7274
50.1 (i) added 7274
50.2 (c) and (d) revised 7274
50.3 Revised **38711**
50.6 Heading revised; (d) added **38711**
50.7 Added **38711**
50.9 Revised **38894**
50.10 Added **38894**
50 Appendix K revised **38712**
Appendix L added **38714**
Appendix M added **38753**
Appendix N added **38755**
Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
Appendix L corrected 7710
51 Authority citation revised **43801, 44903**
Technical correction 6483
51.100 (s) introductory text and (1) revised **44903**
(o)(3) revised 9151
(s)(1) revised 17333
51.103 (a) amended; (a)(1) and (2) removed 9151
51.212 Regulation at 62 FR 8328 eff. date corrected to 12-30-97 414
51.353 (c)(3) and (4) revised 1368
51.361 Regulation at 61 FR 49682 eff. date corrected to 2-10-98 6645
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724, 61016**
State implementation plan determinations **43647, 45531, 52946, 54769, 61914, 64522**
Notice **61236**
State implementation plan determinations 26, 3650, 8573, 9423, 15094, 16435
Technical correction 6483
52.12 Regulation at 62 FR 8328 eff. date corrected to 12-30-97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12-30-97 414
52.50 (c)(71) added 676
52.66 Added **49158**
52.70 (c)(27) added 11840
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)a(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
(c)(83)(i)(B) added 6489
(c)(78)(i)(C), (82)(i)(C), (83) and (85) added 6491
(c)(89) and (90) added 6659
(c)(82)(i)(D) added 15305
52.123 (f) added **41864**
52.124 (b) added **41864**
52.170 (c)(29) added 17683
52.181 (a) revised 17683
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**

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TITLE 40 Chapter I—Con.

(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added 48483
(c)(229)(i)(A)(*2*) added 48485
(c)(224)(i)(E) added 53544
(c)(243) added 54588
(c)(224)(i)(D) removed 54769
(c)(197)(i)(D) and (241)(i)(A)(*2*) added 59287
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added 60785
(c)(250) added 62951
(c)(239)(i)(E) added 65613
(c)(239)(i)(E)(*2*) added 67000
(c)(239)(i)(A)(*2*) 67004
(c)(231)(i)(B)(*2*), (239)(i)(D)(*1*) and (244) added 6075
(c)(239)(i)(E)(*3*) added 8128
(c)(6)(i)(C), (21)(vi)(C), (121)(ii)(C), (173)(i)(E), (182)(i)(E), (194)(i)(E)(*2*), (244)(i)(B) and (245)(i)(B) added 11833
(c)(230)(i)(B)(*2*) added 13531
(c)(252) and (253) added 15311
(c)(251) added 19661
(c)(247) added 19662
52.222 (a)(2) and (3) added 40937
(b)(2) added 43647
52.243 Added 19662
52.320 (c)(76) added 68195
(c)(71) added 67009
(c)(8), (15) and (72)(i)(D) revised 14360
(c)(84) added 15302
52.329 (a) revised 68195
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added 66008
(g) and (h) added 68195
52.370 (c)(72) added 52020
(c)(74) added 55340
(c)(72)(i)(B) and (K) corrected 65224
(c)(60) added 6487
(c)(73) added 20318
52.384 Added 55340
52.385 Added 52022
Table corrected 65224
Table amended 6487
52.420 (c)(58) added 37724
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 40139
52.424 (b) introductory text revised 1368
(c) added 16435
52.470 (c)(37) added 40937
52.520 (c)(98) added 38919
52.570 (c)(50) added; interim 42918
52.582 Existing text designated as (a); (b) added 23390
52.720 (c)(106(i)(D) added; (c)(109) revised 43102
(c)(139) added 62953
(c)(137) added 67001
(c)(135) added 8858
(c)(136) added 8859
(c)(138) added 11838
(c)(141) added 11846
(c)(142) added 13787
52.725 (e) added 11846
52.726 (p), (q) and (r) added 37506
Regulation at 62 FR 37506 withdrawn 46447
(p), (q) and (r) added 66294
52.770 (c)(109) added 38922
(c)(121) added 2147
52.776 (q) added 45171
52.777 (k) added 38464
(q) added 55176
(s) added 64735
52.820 (c)(64) added 55173
(c)(65) added 63455
(c)(66) added 5269
52.834 Added 13345
52.870 (c)(33) added 36213
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn 40281
(e) added 55176
(d) added 61246
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(f) added 14625
52.970 (c)(64) introductory text and (i) revised 51604
(c)(68) added 52951
(c)(74) added 63661
(c)(75) added 11374
52.975 (f) added 64286
52.994 Existing text designated as (a); (b) added 63662
Regulation at 62 FR 61634 eff. date corrected to 2–13–98 7290
Removed 11374
52.996 Added 61634
Correctly designated 4397
52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856

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(c)(126) and (127) added **46201**
(c)(125) added **53548**
52.1072 Added **40944**
(b) added **49616**
(c) added **52666**
52.1076 Added **40458**
52.1120 (c)(114) added; interim **37509**
(c)(113) added **37514**
52.1125 Added **37514**
52.1170 (c)(109) added **59996**
(c)(110) added 6651
52.1174 (p) added **50514**
52.1219 (b) added **39123**
52.1220 (c)(44) added **53242**
52.1237 (b) added **55172**
Regulation at 62 FR 55172 eff. date corrected to 2–10–98 6647
52.1270 Redesignated as 52.1281; new 52.1270 added **35442**
(c) table amended **37726**
(c) table corrected **40139**
52.1281 Redesignated from 52.1270; heading and (a) revised **35442**
52.1320 (c)(99) added **44221**
(c)(96) revised **45166**
(c)(100) added **45167**
(c)(101) added **46881**
(c)(98) added **52660**
(c)(102) added 3039
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
Regulation at 61 FR 39335 eff. date corrected to 2–10–98 6648
(c)(103) added 19825
(c)(105) added 20319
52.1323 (k) added **46881**
(l) added **52661**
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
(m) added 20320
52.1391 Added **65616**
52.1520 (c)(52) added **55525**
(c)(51) added 11604
52.1525 Table amended 11604
52.1533 Added **55525**
52.1570 (c)(63) added **42413**
52.1605 Table amended **42414**
52.1620 (c)(66) added **50518**
52.1670 (c)(91) added **49619**
(c)(93) added **67006**
(c)(92) added 23668
52.1679 Table amended **67006**
Table amended 23668
52.1683 (c), (d) and (e) added; interim **55344**
(f) added **66825**
52.1770 (c)(94) added **41280**
52.1870 (c)(115) added **49442**
(c)(117) added 13789
(c)(116) added 15093
52.1881 (a)(4) and (8) revised 15093
52.1885 Regulation at 62 FR 28637 withdrawn **40281**
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 ..... **43109**
(a)(6) added **44907**
(bb) added **61246**
(a)(7) added 1062
Regulation at 62 FR 26399 withdrawn 1368
(z) added 4195
Regulation at 62 FR 44907 eff. date corrected to 2–10–98 6649
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(cc) added 14626
52.1890 Added **47947**
Regulation at 62 FR 47947 eff. date corrected to 2–10–98 6646
52.1970 (c)(122) added **46210**
(c)(124) added 15294
52.2020 (c)(125) added **38917**
(c)(127) added **43104**
(c)(119) added **44415**
(c)(126) added **50871**
(c)(128) added **50873**
(c)(107) added **64725**
(c)(130) added 11372
(c)(129) added 13794
52.2023 (k) added 13794
(e) added 23673
52.2026 (a) introductory text and (1) revised **59996**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
(a)(2) revised 1368
(d) and (e) added 2153
(e) added 13794
52.2036 (j) added **38917**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
52.2070 (c)(48) and (49) added **46207**
52.2081 Table amended **46207**
52.2120 Redesignated as 52.2134; new 52.2120 added **35444**
(c) table amended **44219, 47761**
52.2134 Redesignated fron 52.2120; heading and (a) revised **35444**
52.2220 (c)(147) added **35683**
(c)(156) added **38912**
(c)(158) added **40460**

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(c)(155) added 40735
(c)(151) added 42070
(c)(154) added 43106
(c)(157) added 43645
(c)(159) and (160) added 62698
52.2270 (c)(102) added 44087
(c)(91) removed 49154
(c)(108) added 6493
(c)(107) added 6663
(c)(106) added 11835
52.2303 (a) revised 44088
52.2308 (f) added 7072
52.2309 (d) added 6663
52.2310 Added; interim 37144
52.2311 Added 6653
52.2320 (c)(38) added 38216
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12–30–97 414
52.2350 Added 38217
Existing text designated as (a); (b) added 18124
52.2351 Added 38217
52.2370 (c)(23) added 41282
(c)(24) added 41869
(c)(25) added 19828
52.2375 Table revised 41869
52.2381 Table amended 41282, 41870
Table amended 19828
Table corrected 23501
52.2420 (c)(115) and (116) added 38914
(c)(121) added 53239
(c)(120) added 53245
(c)(118) added 54587
(c)(119) added 61240
(c)(122) added 11842
(c)(123) added 13798
52.2424 Existing text designated as (a); (b) added 61240
52.2428 Existing text designated as (a); (b) added 38932
Removed 43472
Added 52032
52.2450 (b)(1) and (3) amended; (b)(2) revised 49152
(b)(2) revised 1368
52.2451 Revised 13798
52.2454 Added 52638
52.2470 (c)(73) added 42217
(c)(75) added 49444
(c)(75) revised 68187
(c)(76) added 5272
Regulation at 61 FR 49690 eff. date corrected to 2–10–98 6648
(c)(77) added 19658
52.2479 Amended 68188
52.2585 (l) added 39448
(m) added 5464
52.3854 Table amended 20318
53.1—53.16 (Subpart A) Revised 38784
53.3 (b)(5) correctly removed 7714
53.30—53.34 (Subpart C) Revised 38792
53.34 (c)(2)(i), (3) and (5) corrected 7714
53.30—53.34 (Subpart C) Table C–4 corrected 7714
53.50—53.59 (Subpart E) Added 38799
53.51 (a)(3) corrected 7714
53.54 (f)(7) corrected 7714
53.56 (f)(5) corrected 7714
53.57 (g) corrected 7714
53.50—53.59 (Subpart E) Tables E–1 and E–2 corrected 7714
53.60—53.66 (Subpart F) Added 38814
53.61 (g)(1)(ii) corrected 7714
53.64 (g)(4)(ii) corrected 7714
55.2 Amended 46408
55.3 (c) revised 46408
55.6 (d)(2) revised 46408
55.11 (a) revised; (j) added 46408
55.14 (e)(2)(i)(A) revised 41871
55 Appendix A amended 41871
58.1 Amended 38830
Corrected 7714
58.13 (b) and (d) revised; (e) and (f) added 38831
(d) corrected 7714
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
(d)(2) and (e) corrected 7714
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
(f) corrected 7714
58.34 Introductory text revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010

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58.35 (b) amended **38833**
58.41 (b) revised **59816**
Regulation at 62 FR 59816 withdrawn **67010**
58 Appendix A revised **38833**
Appendix C amended **38843**
Appendix D amended **38844, 59816**
Appendixes E and F amended **38854**
Appendixes E and G amended **59818**
Appendix D regulation at 62 FR 59816 withdrawn **67010**
Appendix A corrected 7714
Appendixes A and D corrected 7715
60 Determinations **36664**
Authority citation revised **48379**
Authority delegation notices **53245**
Clarification **62953**
Guidance availability **63662**
Authority delegation notices 1746, 5891
Technical correction 7199
60.1 (d) added **52641**
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
60.17 (b)(1) amended; (k) and (l) added **48379**
(a)(22) amended **52399**
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
60.30 Revised **48379**
60.30b—60.39b (Subpart Cb) Heading revised **45119**
60.31b Amended **45119, 45121**
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added **45119**
(b)(1), (d), (e), (f)(1) and (i)(1) amended **45125**
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed **45119**
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised **45120**
(a)(3) amended **45125**
60.34b (a) amended **45120, 45125**
60.35b Amended **45120**
60.38b (b) amended; (c) removed **45120**
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added **45120**
(c)(4)(iii)(B) amended **45125**
60.30e—60.39e (Subpart Ce) Added **48379**
60.49b (u) added **52641**
60.50b—60.59b (Subpart Eb) Heading revised **45120**
60.50b (b)(2) amended **45120**
(a) and (b) introductory text revised; (p) added **45121**
(b)(1), (e), (f), (g)(1) and (i)(1) amended **45125**
(j) introductory text amended **45126**
60.51b Amended **45121, 45126**
60.52b (c)(1) amended **45121**
(a)(1) through (5), (b)(1), (2) and (c)(2) amended **45126**
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended **45126**
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) **45126**
60.55b (a) amended **45126**
60.56b Amended **45126**
60.57b (a) introductory text, (b) introductory text and (c) amended **45126**
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8)

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and (g)(5)(ii) removed; (k)(4) added **45126**
60.59b (a) introductory text and (b) introductory text amended **45121**
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended **45127**
60.50c—60.58c (Subpart Ec) Added **48382**
60.112b (c) added **52641**
60.190 (b) revised; (c) added **52399**
60 Appendix A amended **52399**
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
61 Authority delegation notices **53245**
Authority delegation notices 1746, 5891
Technical correction 7199
61.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
61 Regulations at 61 FR 18278 and 18280 eff. date corrected to 2–9–98 6493
62 Authority citation revised 11608
62.850 (b)(3) and (4) added; (c) revised 11608
62.852 Removed 11608
62.854 Revised 11608
62.855 Revised 11608
62.865 (a)(3), (4) and (6) revised 11608
62.1110—62.1112 Undesignated center heading and sections added 2156
62.2350 (b)(5) and (c)(3) added **60787**
62.2355 Undesignated center heading and section added **60787**
62.3350 Undesignated center heading and section added **67572**
62.3912 Undesignated center heading and section added **41873**
62.3913 Undesignated center heading and section added 20103
62.4177 Undesignated center heading and section added **41874**
62.4178 Undesignated center heading and section added 13532
62.4620 (b)(4) added **45732**
62.4631—62.4632 Undesignated center heading and sections added **54589**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.4931—62.4932 Undesignated center heading and sections added **45732**
62.6356 Undesignated center heading and section added **41874**
62.6357 Undesignated center heading and section added 20321
62.6912 Undesignated center heading and section added **41874**
62.6913 Undesignated center heading and section added 20101
62.7855—62.7856 Undesignated center heading and sections added **54589**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.8600—62.8602 (Subpart JJ) Added **65619**
62.9350 (b)(4) and (c)(4) added **36997**
62.9505 Undesignated center heading and section added **36997**
(b) correctly removed **48950**
62.9630—62.9632 Undesignated center heading and sections added 17686
63 Authority delegation notices **36460**
Authority delegation notices 1746
Notice 2630
63.14 (d)(1) revised **65024**
63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added **65025**
63.342 (f)(3)(i) introductory text amended **42920**
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended **42920**
63.347 (e)(4) revised **42921**
63.360—63.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 ..... **64738**
63.440—63.458 (Subpart S) Added 18616
63.485 (o) introductory text revised **37722**
63.502 (a) revised; (j) added **37722**
63.640 (k)(2)(vii), (n)(1), (3) and (6) and (o)(2) revised; (n)(8), (9) and (r) added 13537

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63.641 Amended 13539
63.644 (a) introductory text amended 13539
63.645 (f)(4) amended; (f)(5) revised 13539
63.648 (e) revised 13539
63.654 (a), (g)(3)(i) introductory text and (h)(6) introductory text amended; (d)(1), (f) introductory text, (1)(i)(A), (ii) and (h)(1) revised; (f)(6) and (i)(5) added; (g)(3)(i)(B) removed; (g)(3)(i)(C) and (D) redesignated as (g)(3)(i)(B) and (C) 13539
63.640—63.654 (Subpart CC) Appendix amended 13540
63.741 (b) revised; (c) introductory text, (2), (3) and (4) revised; (f) amended; (c)(7), (h), (i) and (j) added 15016
63.742 Amended 15017
63.743 (a) introductory text, (b) introductory text and (c) revised; (a)(10) and (d) added 15017
63.744 (c) introductory text and (e)(12) amended; (e)(13) added; Table 3 redesignated as Table 1; (a) introductory text, (1), (2), (b) introductory text, (1), (c)(1)(ii), (2), (4), (d), (e)(1), (2) (9), (10), (11) and new Table 1 revised 15018
Corrected 17930
63.745 (f)(2) (g)(4)(viii) and (ix) amended; (g)(2)(iv) removed; (g)(2)(v) and (vi) redesignated as (g)(2)(iv) and (v); (e)(1), (2), (f) introductory text, (1) introductory text, (g)(2)(i), (ii), (iii), new (iv) and (v) revised; (g)(4)(x) added 15019
63.746 (a) introductory text and (b)(4)(v) amended; (b)(1), (3), (4)(i), (ii), (iii)(C), (4)(iv) and (c)(1) revised; (c)(2) and (3) added 15020
63.747 (c)(1), (2) and (e)(2) revised 15021
63.749 (a), (b), (d)(3)(iii)(B), (4)(iii), (f)(3)(ii)(A) and (h)(3)(i) revised 15021
63.750 (b)(2), (e)(2) amended; (c)(1), (e)(1), (g)(3)(ii), (9)(i), (i)(1), (2)(iii), (j) introductory text, (1), (3), (k) introductory text, (1), (l)(4) and (n)(3) revised; (i)(2)(iv) and (o) added 15021
63.751 (b)(6)(ii)(A) and (iii)(A)(*2*) introductory text amended; (b)(6)(iii) introductory text, (D), (c)(1), (2) and (d) revised 15023
63.752 (b)(1), (e)(1)(ii), (6) and (f) introductory text revised; (d)(4) removed 15023
63.753 (a)(1) introductory text and (d)(2)(i) revised 15023
63.741—63.759 (Subpart GG) Table 1 added 15024
Appendix A added 15026
63.840—63.859 (Subpart LL) Added 52407
63.1310—63.1335 (Subpart JJJ) Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
63.1311 (b), (d) introductory text and (1) introductory text revised 9945
(c) introductory text revised 15315
63.1331 (a) introductory text revised; (a)(10) added 37722
63 Appendix A amended 52418
Appendix A amended 15027, 18630
64 Added 54940
68 Interpretation 45134
68.3 Amended 644
68.10 (f) added 645
68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5) 645
68.130 Tables 1 and 2 amended 45132
(a) removed; (b) and (c) redesignated as new (a) and (b) 645
68 Appendix A amended 45132
69.11 (d) added 44416
69.41 Added 61205
70 Guidance availability 63662
70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54946
70 Appendix A amended 37516, 45167, 45734, 62951
Regulation at 61 FR 31443 eff. date corrected to 2–9–98 6494
Appendix A amended 13346
71 Guidance availability 63662

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71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54947**
72 Authority citation revised **55475**
72.1 (b) amended **55475**
72.2 Amended **55475**
72.6 (b)(9) added; (c)(1) and (2) revised **55475**
72.7 Revised **55476**
72.8 Revised **55477**
(b)(2) corrected **66279**
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended **55478**
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) **55478**
72.14 Added **55478**
72.22 (e) added **55480**
72.24 (a)(3), (5), (10) and (11) revised **55480**
72.25 (a) amended **55480**
72.30 (b)(3) removed; (e) added **55480**
72.31 (b) amended **55480**
72.32 (b) and (c) revised; (d) added **55480**
72.33 (b)(3) amended **55481**
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended **55481**
72.41 (b)(3) and (e)(1)(ii) amended **55481**
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended **55481**
72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended **55481**
72.51 Amended **55481**
72.60 Revised **55481**
72.61 (a) and (b)(2)(i) revised; (b)(3) added **55481**
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed **55482**
72.69 (a) revised **55482**
72.70 Revised **55482**
72.71 Revised **55482**
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended **55482**
72.73 Revised **55483**
72.74 Revised **55483**
72.80 (a), (b) and (d) through (g) revised **55484**
72.81 (c)(1)(ii) amended; (c)(2) revised **55485**
72.82 (a) and (d) revised **55485**
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added **55485**
72.85 (a) and (c) revised **55485**
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv) added; (b)(5), (6) and (7) revised **55485**
72.95 Introductory text amended; (d) added **55485**
73.10 Heading revised; (b)(3) added **55486**
73.70 (c)(3) revised 5735
73.90 (a)(1), (2) and (3) revised; (c)(3) amended **55486**
74.2 Amended **55487**
74.3 (b) and (d) amended 18841
74.4 (c) added 18841
74.10 (a)(2) amended 18841
74.14 (b) introductory text and (6)(ii) amended 18841
74.16 (a)(12) amended 18841
74.18 (d) and (e) amended 18841
74.22 (c)(2) amended 18841
74.26 (a)(2) amended 18841
74.42 (a) amended 18841
74.44 (a)(1)(i)(G), (2)(i), (iii), (c)(2)(ii)(B)*(1)*, (iii)(E)*(3)* and (F) amended 18841
74.47 (a)(3)(i) amended 18841
(a)(1), (3)(viii), (ix), (x), (xi), (xii) and (4) revised 18842
74.50 (a) introductory text and (1) through (4) redesignated as (a)(1) introductory text and (i) through (iv); new (a)(2) added 18842
75 Authority citation revised **55487**
75.67 (a) removed **55487**
77.3 (d)(3), (5) and (6) revised **55487**
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended **55487**

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(g)(2)(i)(D) correctly removed 66279
77.6 (a) revised 55487
78.1 (a) and (b)(1)(v) revised 55488
78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) 55488
78.4 (c)(1) amended 55488
(c)(1) corrected 66279
78.5 (a) amended 55488
78.7 Removed 55488
78.11 (a) amended 55488
78.12 (a)(2) amended 55488
78.14 (a) introductory text, (10) and (c)(1) amended 55488
78.15 (c) amended 55488
78.16 (d)(1) and (2) amended 55488
78.17 Amended 55488
78.18 (b) introductory text amended 55488
78.20 (b) amended 55488
80 Decision 63853
80.2 (nn) removed 60135
(ss) revised 68205
80.28 (g)(1)(iii) added 68205
80.30 (g)(1)(i) revised 68205
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised 68205
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised 68206
80.65 (d)(2)(iii) removed 60135
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised 60135
(e)(4) removed 68207
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised 68207
80.69 (f) removed 60135
80.72 (a) and (c) revised 54558
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed 60135
80.77 (g)(1)(ii) removed 60136
(g)(2)(iv)(B) revised 68207
80.78 (a)(6) revised 60136
(a)(1)(v)(C) revised 68207
80.79 (c) introductory text and (1) revised; (c)(3) added 68207
80.91 (e)(1)(iii) revised; (f)(2)(ii) added 68207
80.94 Added 45563
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added 68207
80.104 (a)(2)(xi) added 68208
80.128 (d)(2) revised 60136
80.129 (d)(3)(v) revised 60136
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) 60001
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) 60001
81 Attainment status determinations 51604
Authority citation revised 7274
81.1 (a) revised; (c), (d) and (e) added 7274
81.300—81.356 (Subpart C) Authority citation revised 7274
81.300 (a) amended 7274
81.301 Amended 2728
Regulation at 63 FR 2728 withdrawn 12652
81.302 Amended 2729, 9948
Regulation at 63 FR 2729 withdrawn 12652
81.303 Amended 60011
Amended 2730
Regulation at 62 FR 60011 eff. date corrected to 2-13-98 7290
Regulation at 63 FR 2730 withdrawn 12652
81.304 Amended 2733
Regulation at 63 FR 2733 withdrawn 12652
81.305 Amended 65030
Amended 2734, 15312
Regulation at 63 FR 2734 withdrawn 12652
81.306 Amended 68195
Amended 2741
Regulation at 63 FR 2741 withdrawn 12652
81.307 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.308 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.309 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652
81.310 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652

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81.311 Amended 2744
Regulation at 63 FR 2744 withdrawn 12652
81.312 Amended 2746
Regulation at 63 FR 2746 withdrawn 12652
81.313 Amended 2747
Regulation at 63 FR 2747 withdrawn 12652
81.314 Amended 2748, 11847
Regulation at 63 FR 2748 withdrawn 12652
81.315 Amended **45171, 55178, 64736**
Amended 2749
Regulation at 63 FR 2749 withdrawn 12652
81.316 Amended 2751, 13345
Regulation at 63 FR 2751 withdrawn 12652
81.317 Amended 2753
Regulation at 63 FR 2753 withdrawn 12652
81.318 Regulation at 62 FR 28637 withdrawn **40281**
Amended **55177, 61247**
Amended 2754, 14626
Regulation at 62 FR 61247 eff. date corrected to 2–10–98 6664
Regulation at 63 FR 2754 withdrawn 12652
81.319 Amended **64286**
Amended 2758
Regulation at 63 FR 2758 withdrawn 12652
81.320 Corrected; CFR correction **61916**
Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.321 Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.322 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.323 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.324 Amended 2763
Regulation at 63 FR 2763 withdrawn 12652
81.325 Amended 2765
Regulation at 63 FR 2765 withdrawn 12652
81.326 Amended 2766
Regulation at 63 FR 2766 withdrawn 12652
81.327 Amended 2768
Regulation at 63 FR 2768 withdrawn 12652
81.328 Amended 2770
Regulation at 63 FR 2770 withdrawn 12652
81.329 Amended 2771
Regulation at 63 FR 2771 withdrawn 12652
81.330 Amended 2772
Regulation at 63 FR 2772 withdrawn 12652
81.331 Amended **35972**
Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
81.332 Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
81.333 Amended 2774
Regulation at 63 FR 2774 withdrawn 12652
81.334 Amended 2776
Regulation at 63 FR 2776 withdrawn 12652
81.335 Amended 2777
Regulation at 63 FR 2777 withdrawn 12652
81.336 Regulation at 62 FR 28638 withdrawn **40281**
Amended **61247**
Amended 2778, 14626
Regulation at 62 FR 61247 eff. date corrected to 2–10–98 6664
Regulation at 63 FR 2778 withdrawn 12652
81.337 Amended 2780
Regulation at 63 FR 2780 withdrawn 12652
81.338 Amended **46210**
Amended 2782
Regulation at 63 FR 2782 withdrawn 12652
81.339 Amended 2783
Regulation at 63 FR 2783 withdrawn 12652
81.340 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.341 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.342 Amended 2785

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Regulation at 63 FR 2785 withdrawn 12652
81.343 Amended **62698**
Amended 2786
Regulation at 63 FR 2786 withdrawn 12652
81.344 Amended **44088**
Amended 2788, 8133
Regulation at 63 FR 2788 withdrawn 12652
81.345 Amended **38217**
Amended 2792
Regulation at 63 FR 2792 withdrawn 12652
81.346 Amended **41283, 41870**
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.347 Amended **61241**
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.348 Amended 2796, 12012
Regulation at 63 FR 2796 withdrawn 12652
81.349 Amended 2798
Regulation at 63 FR 2798 withdrawn 12652
81.350 Amended **39448**
Amended 2799
Regulation at 63 FR 2799 withdrawn 12652
81.351 Amended 2800
Regulation at 63 FR 2800 withdrawn 12652
81.352 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.353 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.354 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.355 Amended 2802
Regulation at 63 FR 2802 withdrawn 12652
81.356 Amended 2803
Regulation at 63 FR 2803 withdrawn 12652
82 Revocation notice 1927
Determination 6008
Notice of acceptability 9151
82.4 (r)(2) revised; interim 4363
82.30 (a) revised **68046**
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised **68046**
82.34 Heading and (a) revised; (b) amended; (d) added **68047**
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised **68047**
82.38 (a) and (b)(1)(iii) revised **68048**
82.40 (a)(2)(i) revised **68048**
82.30—82.42 (Subpart B) Appendix C added **68048**
Appendix D added **68052**
Appendix E added **68053**
Appendix F added **68055**
82.250—82.270 (Subpart H) Added 11096
85 Heading and authority citation revised **67736**
Authority citation revised 14635, 18998
85.1403 (c)(1)(iii)(B) introductory text, (C) introductory text and (1)(iv) revised; (c)(1)(iii)(C)(*6*) removed; (c)(1)(iii)(D) added 14635
85.1515 (c) revised 964
85.1602 Amended 18998
85.1603 (b), (c) and (d) revised **67736**
(c) revised 18998
85.1604 (a) revised **67736**
85.1606 Introductory text revised **67736**
86 Authority citation revised **44875, 47119**
Authority citation revised 7719
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86.1 (b)(1) table and (2) table amended **47119**
(b)(1) table amended **54715**
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised **54720**
86.001–30 (a)(4)(iv)(A) through (9) revised **54720**
86.004–2 Added **54720**
86.004–11 Added **54721**
86.004–15 Added **54722**
86.004–21 Added **54724**
86.004–25 Added **54725**
86.004–28 (c) and (d) revised **54726**
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised **54727**

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86.004–38 Added 54728
86.004–40 Added 54729
86.094–8 (c) revised 47120
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised 47120
86.094–11 (b)(1) introductory text revised 47120
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–17 (i) revised 7719
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.096–8 (c) revised 47120
86.096–11 (a) introductory text and (c) revised 47120
86.096–30 (a)(23) and (24) added 965
86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised 54716
86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended 54716
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended 54716
86.098–15 Added 54716
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended 54717
86.098–30 (a)(4)(iv)(A) through (12) revised 54719
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised 54720
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised 47120
86.119–90 (b)(3) revised; (b)(8) added 47121
86.144–94 (c)(8)(ii)(B) revised 47122
86.402–98 Added 11849
86.406–78 (d) revised 11849
86.518–78 (c) revised 11849
86.529–98 Added 11849
86.884–7 (a)(2)(i), (3) and (4) revised 47122
86.884–8 (c) revised 47122
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised 47122
86.884–10 (a)(8) revised 47123
86.884–13 (b)(6)(ii) and (iii) revised 47123
86.884–14 Revised 47123
86.1008–90 (a)(1)(iii) added 47123
86.1008–96 (a)(1) revised 47123
86.1008–2001 (a)(1)(iii) added 47123
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added 47123
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised 47124
86.1311–94 (b)(3) revised 54730
86.1312–88 (a) revised 47124
86.1313–91 (b)(2) revised 47125
86.1313–94 (b)(2) revised 47125
86.1313–98 Added 47126
86.1316–90 (b)(1) revised; (f) added 47126
86.1316–94 (b)(1) revised; (f) added 47126
86.1319–84 (d)(3) revised; (d)(8) added 47127
86.1319–90 (d)(3) revised; (d)(8) added 47127
86.1321–90 (a) and (b)(3) revised 47128
86.1321–94 (a) and (b)(3) revised 47128
86.1322–84 (b)(3) revised 47128
86.1323–84 (b)(3) revised 47129
86.1324–84 (c) revised 47129
86.1325–94 (c) revised 47129
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised 47130
86.1327–98 Added 47130
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed 47131
86.1334–84 (a)(2) revised 47131
86.1335–90 Revised 47131
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47132
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47133
86.1338–84 Revised 47133
86.1339–90 Revised 47134
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed 47134
86.1341–98 Added 47135

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86.1342–90 (h)(2)(i) through (vii) removed; (i) added **47135**
86.1342–94 (e) through (h) revised; (i) added **47135**
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added **47135**
86.1344–94 (e)(22) revised **54728**
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97; (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97; (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967
86.1703–99 Redesignated from 86.1703–97; (b) amended 967
86.1704–97 Redesignated as 86.1704–99 967
86.1704–99 Redesignated from 86.1704–97 967
86.1705–97 Redesignated as 86.1705–99 967
86.1705–99 Redesignated from 86.1705–97; heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
86.1706–97 Redesignated as 86.1706–99 969
86.1706–99 Redesignated from 86.1706–97 and revised 969
86.1707–99 Added 970
86.1708–97 Redesignated as 86.1708–99 976
86.1708–99 Redesignated from 86.1708–97; Heading, (b)(1)(i), (iii)(B) and (c) amended; tables amended; (e) added 976
86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97; heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
86.1710–97 (c)(7) corrected **45289**
Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97; amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97; (b) removed 985
86.1712–97 Redesignated as 86.1712–99 985
86.1712–99 Redesignated from 86.1712–97; (a)(2)(iii), (b)(1) and (3)(vi) revised 985
86.1713–97 Redesignated as 86.1713–99 986
86.1713–99 Redesignated from 86.1713–97 986
86.1714–97 Redesignated as 86.1714–99 986
86.1714–99 Redesignated from 86.1714–97 986
86.1716–97 Redesignated as 86.1716–99 986
86.1716–99 Redesignated from 86.1716–97; (b) removed 986
86.1717–97 Redesignated as 86.1717–99 986
86.1717–99 Redesignated from 86.1717–97; heading revised 986
86.1721–97 Redesignated as 86.1721–99 986
86.1721–99 Redesignated from 86.1721–97 986
86.1723–97 Redesignated as 86.1723–99 986
86.1723–99 Redesignated from 86.1723–97; revised 986
86.1724–97 Redesignated as 86.1724–99 986
86.1724–99 Redesignated from 86.1724–97; (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97; (d) added 986
86.1726–97 Redesignated as 86.1726–99 986
86.1726–99 Redesignated from 86.1726–97; (c)(1) revised 986
86.1728–97 Redesignated as 86.1728–99 987
86.1728–99 Redesignated from 86.1728–97 987
86.1734–97 Redesignated as 86.1734–99 987

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86.1734–99 Redesignated from 86.1734–97 987
86.1735–97 Redesignated as 86.1735–99 987
86.1735–99 Redesignated from 86.1735–97 987
86.1770–97 Redesignated as 86.1770–99 987
86.1770–99 Redesignated from 86.1770–97; (a)(2) revised 987
86.1771–97 Redesignated as 86.1771–99 987
86.1771–99 Redesignated from 86.1771–97 987
86.1772–97 Redesignated as 86.1772–99 987
86.1772–99 Redesignated from 86.1772–97; heading revised 987
86.1773–97 Redesignated as 86.1773–99 987
86.1773–99 Redesignated from 86.1773–97; (d) added 987
86.1774–97 Redesignated as 86.1774–99 987
86.1774–99 Redesignated from 86.1774–97 987
86.1775–97 Redesignated as 86.1775–99 987
86.1775–99 Redesignated from 86.1775–97 987
86.1776–97 Redesignated as 86.1776–99 987
86.1776–99 Redesignated from 86.1776–97 987
86.1777–97 Redesignated as 86.1777–99 987
86.1777–99 Redesignated from 86.1777–97 987
86.1778–97 Redesignated as 86.1778–99 987
86.1778–99 Redesignated from 86.1778–97 987
86.1779–97 Redesignated as 86.1779–99 987
86.1779–99 Redesignated from 86.1779–97 987
86.1780–97 Redesignated as 86.1780–99 987
86.1780–99 Redesignated from 86.1780–97 987
86 Appendix XVIII corrected **45289**
Appendix I amended **47136**
Appendix XVIII amended 987
Appendix I corrected 23501
88.308–94 Existing text designated as (a); (b) added 20107
89.1 (b)(3) revised 18998
89.2 Amended 18998
89.1—89.7 (Subpart A) Appendix A revised **67736**
90.103 (a)(3) revised **42643**
90.107 (h) added **42643**
90.1003 (b)(5) added **42644**
91.1103 (b)(4) added **42644**
92 Added 18998
92.133 Effective date pending 19044
92.213 Effective date pending 19051
92.216 Effective date pending 19053
92.308 Effective date pending 19056
92.309 Effective date pending 19057
92.406 Effective date pending 19059
92.504 Effective date pending 19060
92.606 Effective date pending 19066
92.708 Effective date pending 19069
92.910 Effective date pending 19077
93.100—93.128 (Subpart A) Revised **43801**
112 Petition denial **54508**
123 NPDES State program approval **61170**
131.33 Added **41183**
131.36 (d)(13)(i) and (ii) amended; (d)(13)(iii) removed **52927**
(d)(12)(ii) amended **53214**
(d)(12)(ii) table amended 10144
132 Table 3 amended **52924**
Appendix F amended 20110
136.3 (a) Table 1C amended **48403**
(b)(1) and (e) Table II amended **48404**
136 Appendix A amended **48405**
140 Authority citation revised 1320
140.4 (a) introductory text, (b) introductory text and (1) amended; (c)(1), (2), (3), and (4) introductory text added; (b)(1)(ii) redesignated as (c)(4)(i) 1320
141.2 Amended 23366
142.2 Amended 23367
142.10 (e) revised; (f) redesignated as (g); new (f) added 23367
142.11 (a)(6) redesignated as (a)(7); new (a)(6) added (effective date pending) 23367
142.12 (b)(1) revised; (e) added 23367
148 Notice **43109**
156 Notice **56075**
156.10 (h)(2)(iii) revised; (i)(2)(x)(D) added 9082
157 Grant of exemption 8577
159 Added **49388**

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167.90 (b) amended **49620**
170 Decision **51994, 53688**
170.112 (e)(7)(iv) added **52003**
180 Technical correction **56089**
Nomenclature change **66023**
Technical correction 1379
Heading and authority citation revised 10720
180.1 (k) revised; (o) added 10720
180.4 Revised 10720
180.106 Revised 2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2164
Revised 13542
180.110 Revised **49924**
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended **66023**
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text **66025**
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added **46907**
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading revised; new (c) heading added **64301**
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.175 Revised **64293**
180.183 Revised 2165
180.200 Heading revised; existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended **45754**
Amended **66023**
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.209 (b) table amended 5737
180.213 Revised 2165
180.213a Removed 2166
180.222 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 17692
180.242 (a) and (b) redesignated as (a)(1) and (2); (a)(1) heading added; (a)(1) table amended 2166
(b) text amended 9441
180.254 (a) heading added; (a) table amended; (b) removed 2166
180.275 (b) redesignated as (c); (a) heading, new (b) and (c) heading added **65376**
180.277 Removed **66023**
180.284 Regulation at 62 FR 7684 eff. date corrected to 1-6-98 416
180.288 Revised **66024**
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text **49931**
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added **66024**
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added **66024**
180.332 Amended; existing text designated as (a) **66024**
(a) table transferred in part from 186.250 ..... **66025**
180.353 Existing text redesignated as (a); new (a) heading and (b) added **45747**
180.356 (b) table amended 9427
180.361 (b) table amended 10546
180.364 (b) amended **42927**
180.368 (a) amended **66024**

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180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text, (i), (ii) and (iii) redesignated from 185.1300 (a) introductory text, (1), (2) and (3); (b) redesignated as (c); (a) heading and new (c) heading added **63026**
(a)(3) redesignated from 186.1300 existing text **63027**
(a)(3) table amended **66024**
180.380 Revised **38474**
(a) revised 7308
180.381 (b) table amended 5739
186.383 Existing text redesignated as (a); new (a) heading and (b) added **39974**
180.395 Heading revised; existing text designated as (a); (a) heading and (b) added 10543
180.407 Revised **44595**
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
180.408 Revised **66024**
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table **47568**
180.412 (b) added **44565**
180.414 Revised **45741**
(a)(4) added; (b) table amended **54789**
(b) table amended **65036**
180.416 Existing text designated as (a); (b) added **66014**
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added **46894**
180.418 Revised **63235**
(a)(2) added **63243**
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table **49937**
(b) table amended **61447**
180.422 Revised **63001**
(a)(3) added **66025**
180.425 (b) table amended 13130
180.430 Revised 1377
(a) table amended 19837
180.431 (b) table amended 23394
180.433 Existing text designated as (a); (a) heading and (b) added **36684**
(b) table amended **61645**
180.434 (b) table amended **43291**
(b) table amended 16439
(b) amended 19410
180.435 Revised **63001**
180.436 (a) existing text designated as (a)(1); new (a)(1) table revised; (b) redesignated as (a)(2) **63018**
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3) **63019**
180.438 Revised **36671**
(b) added **56102**
(a) revised **63010**
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 ..... **64048**
(a)(1) table amended 7299
180.440 Revised **62961**
180.442 (b) table amended **46900**
(a) revised; (b) table amended **62969**
(b) table amended 1379, 2163, 15765
Regulation at 61 FR 29678 eff. date corrected to 2–9–98 6495
180.443 (b) introductory text revised; (b) table amended **36678**
Introductory text revised; table amended **42690**
(b) table amended **65369**
(b) table amended 10545
180.445 Revised 9435
180.448 Existing text designated as (a); new (a) heading and (b) added **62992**
(b) table amended **68216**
(b) amended 17101
180.449 Revised **44095**
(b) table amended **56088**
180.452 Existing text designated as (a); heading and (b) added **66020**
180.458 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (3); (a)(2) added 17108
180.460 Revised 7305

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180.462 Existing text redesignated as (a); (b) added **44558**
180.466 Existing text designated as (a); (a) heading and (b) added **37521**
Revised **63034**
180.472 (b) added **36697**
(a) table amended **65367**
(a) table amended 14371, 14378
(b) table amended 15763
180.474 (b)(1) table corrected **56095**
180.478 Revised 16696
180.482 (a) heading added; (b) introductory text revised; (b) table amended **35689**
(b) amended **62985**
(b) table amended 13128
(b) amended 23392
180.487 Revised **54783**
180.493 (b) introductory text revised; (b) table amended **39961**
Corrected **47560**
(b) table amended 8139
180.495 (a) heading and (b) heading added; (b) table amended **54778**
(a) and (b) revised 18338
180.501 Added **61647**
180.503 (b) introductory text revised; (b) table amended **39956**
180.507 (a) added **36690**
180.509 Added **42684**
180.510 Added **39967**
180.511 Added **40741**
180.512 Added **41292**
Removed 13128
180.513 Added **44571**
180.514 Added **49163**
180.515 Added **51037**
180.516 Added **56082**
Heading and (a) revised 13128
180.517 Added **62979**
180.518 Added **63669**
180.527 Added 17699
180.532 Added 17706
180.533 Added 23401
180.1001 (b)(1) amended **41286**
180.1020 Existing text designated as (a); (b) added **63863**
180.1163 Regulation at 62 FR 58332, eff. date corrected to 2–17–98 7720
180.1164 (c) added **60661**
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1–6–98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1–6–98 417
180.1180 (a) heading and (b) revised; (c) and (d) removed 9430
180.1181 Added **41877**
180.1182 Added **43657**
180.1183 Added **43653**
180.1184 Added **44582**
180.1185 Added **44575**
180.1186 Added **44579**
180.1187 Added **46884**
Revised 682
180.1188 Added **46887**
Revised 679
180.1189 Added **61639**
180.1190 Added **52509**
180.1191 Added **56105**
180.1192 Added 17690
180.1194 Added 18329
180.1195 Added 14363
185 Authority citation revised **66025**
185.100 Removed 2167
185.350 Removed 2167
185.458 Transferred in part from 185.1075; redesignated as (a)(4) 17108
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed **47568**
185.1075 Transferred in part to 180.458 17108
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
185.1300 (a) introductory text, (1),(2) and (3) redesignated as 180.379(a)(2) introductory text, (i), (ii) and (iii); removed **63026**
185.1580 Removed **63001**
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed **38474**
185.2650 Existing text designated as 180.293(a)(2); removed **49931**
185.2750 Removed 2167

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185.3200 Table transferred in part to 180.421(a)(2) table; removed 49937
185.3225 Removed 63035
185.3625 Removed 61647
185.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 64048
185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed 66025
185.3900 Removed 64294
185.4700 Removed 45754
185.5450 Removed 63002
185.5550 Removed 2167
186 Authority citation revised 66025
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table 66025
Removed 66026
186.350 Amended 66026
Removed 2167
186.450 Amended 66026
186.458 (a)(5) and (6) transferred from 186.1075 (a) and (b) 17108
186.600 Removed 66026
186.800 Table transferred in part to 180.410(a) table; removed 47568
186.1000 (a) table amended 66026
186.1075 (a) table amended 66026
(a) and (b) transferred to 186.458 (a)(5) and (6); removed 17108
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed 63019
186.1300 Existing text redesignated as 180.379(a)(3) 63026
186.1350 Table amended 66026
186.1400 Removed 54790
186.1450 Removed 46907
186.1650 Revised 66026
186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed 38474
186.1950 Removed 2167
186.2000 Table amended 66026
186.2400 Removed 66026
186.2550 Removed 2167
186.2700 (a) table amended 66026
186.2750 Removed 2167
186.2950 Table amended 66026
186.3050 Removed 66026
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed 49937
186.3225 Removed 63035
186.3250 Revised 66026
186.3350 Removed 66026
186.3375 Removed 2167
186.3450 Removed 66026
186.3550 (a) table amended 66026
186.3750 Table amended 66026
186.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 64048
186.4000 Removed 66026
186.4700 Removed 45754
186.4750 Removed 2167
186.4800 Removed 66026
186.4975 Revised 66026
186.5000 Table amended 66026
186.5350 Removed 2167
186.5450 Removed 66026
186.5550 Removed 2167
186.5650 Removed 44595
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
228.15 (d)(6) revised 46149
Regulation at 61 FR 68970 eff. date corrected to 12–30–97 682
244 Regulation at 61 FR 69034 eff. date corrected to 12–30–97 683
Clarification 5739
245 Regulation at 61 FR 69034 eff. date corrected to 12–30–97 683
Clarification 5739
247.2 (d) added 60973
247.3 Amended; eff. 11–13–98 60973
247.12 (f) and (g) added; eff. 11–13–98 60974
247.13 Existing text designated as (a); (b) through (e) added; eff. 11–13–98 60974
247.14 Existing text designated as (a); (b) added; eff. 11–13–98 60974
247.15 (c) and (d) added; eff. 11–13–98 60974
247.16 (f) and (g) added; eff. 11–13–98 60974
247.17 Revised; eff. 11–13–98 60974

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258 Effective date confirmation 51606
Authority citation revised 17729
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
258.74 (e), (g) and (k) revised 17729
260.31 (d) added 59290
Regulation at 62 FR 59290 withdrawn 67736
261.4 (a)(15) added 18635
261 Appendix IX amended 55347, 63463
264.15 (b)(4) revised 64656
264.73 (b)(6) revised 64656
264.1030 (d) added 52641
(b)(3) and (c) revised; (e) added 64656
264.1031 Amended 64657
264.1033 (a)(2) revised 64657
264.1050 (g) added 52641
(b)(3), (c) and (f) revised 64657
264.1060 Revised 64657
264.1062 (b)(2) and (3) revised 64658
264.1064 (g)(6) and (m) revised 64658
264.1080 (e) added 52642
(b)(1) and (c) revised 64658
(f) and (g) added 11131
(f) and (g) removed 19838
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised 64658
264.1083 (a)(2) and (b)(1) revised 64658
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(*4*) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64659
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added 64659
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised 64659
264.1087 (c)(3)(ii) and (7) revised 64660
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64660
265.15 (b)(4) revised 64661
265.73 (b)(6) revised 64661
265.1030 (c) added 52642
(b)(3) revised; (d) added 64661
265.1033 (a)(2) and (f)(2)(vi)(B) revised 64661
265.1050 (f) added 52642
(b)(3) and (e) revised 64661
265.1060 Revised 64662
265.1062 (b)(2) and (3) revised 64662
265.1064 (g)(6) and (m) revised 64662
265.1080 (e) added 52642
(b)(1) and (c) introductory text revised 64662
(f) and (g) added 11139
(f) and (g) removed 19838
265.1081 Amended 64662
265.1082 Revised 64662
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised 64663
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (*I*), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised 64664
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(*4*) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64666
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added 64666
265.1087 (c)(4)(i), (d)(4)(i) and (g) introductory text revised 64666
265.1088 (c)(3)(ii) and (7) revised 64667
265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64667
265 Appendix VI revised 64668
268.39 (c) revised 37699
268.40 (g) amended 45572
268.44 (a) and (h) revised; (m) added; (p) removed 64509
268.48 (a) table amended 45572
270.14 (b)(5) revised 64671
271 State hazardous waste management program authorizations 43111, 47947, 49163, 52951, 61175, 62262, 62521, 67572
Regulation at 62 FR 29301 eff. date corrected to 12–30–97 683
State hazardous waste management program authorizations 2167, 4587, 6666
271.1 (j) Table 1 amended 45572
272.501 Added 2898
272.951 Added 67583
272.1601 Revised 23224
272.1851 Revised; eff. 7–14–98 23673
272.2201 Added 49169
272 Appendix A amended 49170, 67584

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Appendix A amended 2899, 23225
Appendix A amended; eff. 7–14–98 23677
281 State underground storage tank program authorizations 36698, 49620
State underground storage tank program authorizations 4589, 6667
282.102 Added 4593
282 Appendix A amended 4594
300 Notice 42414, 62524
300 Appendix B amended 35447, 35690, 35974, 36997, 37522, 41292, 46211, 48950, 48951, 49445, 49621, 50446, 50518, 50874, 52033, 53247, 55179, 56106, 65224, 67737, 68216
Appendix B amended 4398, 9949, 11337, 11376, 19193, 20322
302.6 (c) revised 13475
310 Revised; interim 8286
355.40 (a)(2)(vi) revised 13475
372.65 Regulation at 61 FR 38605 eff. date corrected to 2–10–98 6668
(a) and (b) amended 19839
403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
430 Revised 18635
712.30 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
716.5 Revised 15773
716.20 (b)(5) added 15773
716.25 Revised 15773
716.30 (a)(1) amended 15773
716.35 (a) introductory text revised 15774
716.45 (c)(3) revised 15774
716.60 (a) revised 15774
716.65 Revised 15774
716.120 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
(a) table, (c) table and (d) table amended 15774
721.325 Removed 51608
721.370 Removed 51608
721.390 Removed 51608
721.400 Removed 51608
721.405 Added 3419
721.415 Removed 51608
721.460 Removed 51608
721.470 Removed 51608
721.490 Removed 51608
721.524 Added 3419
721.526 Added 3419
721.528 Added 3419
721.537 Added 3419
721.538 Added 3420
721.539 Added 3420
721.567 Added 3420
721.637 Added 3421
721.640 Added 3421
721.641 Added 3421
721.643 Added 3421
721.655 Added 3421
721.658 Added 3421
721.700 Removed 9443
721.720 Added 3422
721.723 Added 3422
721.977 Added 3422
721.980 Added 3422
721.981 Added 3422
721.1105 Added 3422
721.1155 Added 3422
721.1175 Removed 51608
721.1575 Removed 51608
721.1660 Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
721.1705 Added 3423
721.1805 Added 3423
721.1907 Added 5742
721.1930 Added 3423
721.2050 Removed 51608
721.2082 Added 3423
721.2091 Added 3423
721.2094 Added 3424
721.2122 Added 3424
721.2145 Added 3425
721.2170 Removed 51608
721.2222 Added 3425
721.2225 Regulation at 61 FR 33374 eff. date corrected to 2–10–98 6668
721.2280 Added 3425
721.2345 Added 3425
721.2350 Added 3425
721.2535 Added 3425
721.2650 Removed 51608
721.2750 Removed 51608
721.2805 Added 3426
721.2815 Removed 35692
Regulation at 62 FR 35692 eff. date corrected to 12–30–97 686

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721.2840 Removed 9443
721.2860 Removed 9443
721.2880 Removed 9443
721.2925 Added 3426
721.2930 Removed 51608
721.2940 Removed 9443
721.3020 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3028 Removed 51608
721.3040 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3060 Correctly removed 40742
721.3085 Added 3426
721.3120 Removed 51608
721.3155 Added 3426
721.3200 Removed 9443
721.3240 Removed 11609
721.3254 Regulation at 61 FR 33375 eff. date corrected to 2–9–98 6496
721.3465 Added 3426
721.3485 Added 3427
721.3488 Added 3427
721.3550 Added 59583
(a) corrected 63035
721.3565 Added 3427
721.3640 Removed 51608
721.3764 Revised 42692
721.3870 Removed 51608
721.4020 Removed 51608
721.4085 Added 3427
721.4090 Added 3427
721.4095 Added 3428
721.4158 Added 3428
721.4220 Removed 51608
721.4257 Added 3428
721.4259 Added 3428
721.4400 Removed 51608
721.4462 Added 3428
721.4464 Added 3428
721.4465 Added 3428
721.4467 Added 3429
721.4468 Added 3429
721.4469 Added 3429
721.4476 Added 3429
721.4589 Added 3429
721.4640 Removed 9443
721.4780 Removed 51608
721.4790 Removed 51608
721.4800 Removed 51608
721.4885 Added 3430
721.5225 (a)(2)(v) revised 42692
721.5255 Added 3430
721.5279 Added 3430
721.5280 Added 3430
721.5281 Added 3430
721.5547 Added 3431
721.5549 Added 3431
721.5645 Added 3431
721.5650 Added 3431
721.5705 Removed 51608
721.5708 Added 3431
721.5725 Added 3432
721.5730 Added 3432
Correctly removed 9441
721.5867 Added 23679
721.5910 Removed 51608
721.5913 Added 3432
721.5990 Removed 9443
721.5995 Added 3432
721.6045 Added 3432
721.6075 Added 3432
721.6078 Added 3433
721.6165 Added 3433
721.6170 Added 3433
721.6193 Added 64740
721.6197 Added 3433
721.6475 Added 3433
721.6477 Added 3434
721.6485 Added 3434
721.6490 Added 3434
721.6495 Added 3434
721.6500 Removed 51608
721.6505 Added 3434
721.6580 Removed 51608
721.6640 Removed 51608
721.6700 Removed 51608
721.6720 Removed 51608
721.6740 Removed 51608
721.6760 Removed 51608
721.6780 Removed 51608
721.6840 Removed 51608
721.6880 Removed 51608
721.6940 Removed 51608
721.6960 Removed 51608
721.7040 Removed 51608
721.7046 (a)(1) revised 42692
721.7080 Removed 51608
721.7100 Removed 51608
721.7140 Removed 51608
721.7180 Removed 51608
721.7210 (a)(1) revised 42692
721.7240 Removed 51608
721.7300 Removed 51608
721.7320 Removed 51608
721.7340 Removed 51608
721.7370 Removed 51608
721.7375 Added 3434
721.7378 Added 3434
721.7400 Removed 51608

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721.7420 Removed 51608
721.7460 Removed 51608
721.7540 Removed 51608
721.7560 Removed 51608
721.7580 Removed 51608
721.7660 Removed 51608
721.7680 Removed 51608
721.7740 Removed 51608
721.7760 Removed 51608
721.8075 Removed 51608
721.8079 Added 3435
721.8095 Added 3435
721.8125 Removed 9443
721.8265 Removed 51608
721.8275 Removed 51608
721.8290 Removed 51608
721.8300 Removed 51608
721.8325 Removed 51608
721.8335 Removed 51608
721.8350 (a)(2)(iv) added 42692
721.8375 Removed 51608
721.8400 Removed 51608
721.8425 Removed 51608
721.8475 Removed 51608
721.8525 Removed 51608
721.8550 Removed 51608
721.8575 Removed 51608
721.8600 Removed 51608
721.8650 Removed 51608
721.8780 Added 3435
721.9005 Added 3435
721.9010 Added 3436
721.9080 Added 3436
721.9240 Removed 51608
721.9260 Removed 9443
721.9265 Added 3436
721.9270 Added 3436
721.9285 Added 3436
721.9320 Removed 51608
721.9360 Removed 51608
721.9420 Removed 51608
721.9488 Added 3437
721.9492 Added 3437
721.9497 Added 3437
721.9499 Added 3437
721.9503 Added 3437
721.9510 Removed 51608
721.9515 Added 3437
721.9525 Removed 51608
721.9545 Added 3437
721.9575 Added 3438
721.9576 Added 3438
721.9577 Added 3438
721.9635 Added 3438
721.9657 Added 3438
721.9659 Added 3438
721.9662 Added 3439
(a)(2)(i) corrected 9441
721.9664 Added 3439
721.9668 Added 9450
721.9717 Added 3439
721.9780 Removed 9443
721.9825 Added 3439
721.9830 Added 3440
721.9840 Added 3440
721.9870 Removed 51608
721.9928 Added 3440
721.9940 Removed 51608
721.9962 Removed 9443
721.9975 Removed 51608
799.1 (d) added 43824
799.9135—799.9780 (Subpart H) Added 43824

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8 18352
9 ..... 46937, 50152, 61482
22 9464
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51 ..... 41138, 44926, 49184, 55202, 64532, 66841
52 ..... 35756, 36249, 37007, 37172, 37175, 37526, 37527, 37832, 38949—38951, 39199, 39202, 39795, 40493, 40783, 41002, 41004, 41325, 41326, 41905, 41906, 42079, 42087, 42088, 42221, 43133, 43134, 43139, 43140, 43679, 43681, 43684, 43959, 44104, 44247, 44429, 44928, 44929, 45199, 46228, 46229, 46451, 46938, 47399, 47784, 48026, 48027, 48033, 48586, 48587, 48972, 49184, 49188, 49462, 49648, 49649, 50545, 50890, 52071, 52959, 53277, 53588, 53589, 53997, 54409, 54598, 54601, 55203, 55368, 55544, 59311, 60052, 60318, 61483, 61942, 61948, 62739, 63047, 63687, 64329, 64543, 64794, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035, 67320, 68246
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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

51–2.4 (a)(4)(C) removed; (b) amended 66529
51–4.3 (b)(6) and (c)(1) revised 66529
51–4.4 (c) revised 66529
51–5.2 (e) added 16439
51–5.3 (b) amended 16439
51–6.12 (c) revised 66529
51–6.14 Revised 66529
Redesignated as 51–6.15; new 51–6.14 added 16439
51–6.15 Redesignated from 51–6.14 16439
51–8.4 Amended 16440
51–8.5 (a) amended 16440
51–9.401 (a) amended 16440
51–9.405 (a) amended 16440
51–10.170 (c) amended 16440

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

60–1 Authority citation revised 44188
60–1.2 Amended 66971
60–1.3 Amended 44188, 66971
60–1.4 (d) amended 66971
60–1.5 (b)(1), (2), (c) and (d) amended 66971
60–1.7 (a)(1), (2), (3), (4), (b)(1) and (2) amended 66971
60–1.8 Revised 44188
60–1.9 (a) through (d) amended 66971
60–1.10 Amended 66971
60–1.12 Added 44188
(a) and (d) amended 66971
60–1.20 Heading, (a) and (d) revised; (e), (f) and (g) added 44189
60–1.21 Amended 66971
60–1.23 (b) amended 66971
60–1.24 (c)(3), (4), (5), (d) heading, (1) and (2) amended 66971
60–1.25 Amended 66971
60–1.26 Revised 44190
(a)(1)(vii), (c)(1) and (3) amended 66971
60–1.27 Revised 44191
60–1.28 Amended 66971
60–1.29 (a) and (b) amended 66971
60–1.30 Revised 44191
60–1.31 Revised 44192
60–1.32 Revised 44192
60–1.34 (a)(4) added 44192
60–1.40 (c) amended 66971
60–1.41 (b) amended 66971
60–1.42 (a) revised 44192
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60–1.43 Revised 44192
60–1.46 Amended 66971
60–60 Removed 44192
60–999.2 Table revised (OMB numbers) 66971

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–11 (Subpart B) Regulation at 61 FR 41001 eff. date extended to 12–31–98 58922
101–17—101–21 (Subchapter D Appendix) Amended; interim 42070
101–37.100 Amended 43472
101–37.600—101–37.610 (Subpart 101–37.6) Added 43472
101–42—101–49 (Subchapter H Appendix) Regulation at 62 FR 2022 eff. date extended to 1–15–99 68217
Temporary Reg. H–30 added; eff. to 2–21–2000 8352
101–43.000 Regulation at 62 FR 41353 eff. date extended to 12–31–98 68217
101–43.600—101–43.603 (Subpart 101–43.6) Regulation at 62 FR 41353 eff. date extended to 12–31–98 68217
101–43.4801 Regulation at 62 FR 41354 eff. date extended to 12–31–98 68217
101–46 Revised 5893
101–46.201–2 Regulation at 62 FR 41355 eff. date extended to 12–31–98 68217

Chapter 105—General Services Administration (Parts 105–1—105–999)

105–60 Revised 60016

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105–60.402 Revised **64741**
105–60.402–1 Revised **64741**
105–60.402–2 Revised **64741**
105–71.126 (a), (b) introductory text and (1) revised **45939, 45944**
105–72.306 (a), (b) and (c) revised **45939, 45944**

Chapter 109—Department of Energy Property Management Regulations (Parts 109–1—109–99)

Chapter 109 Revised 19616

Chapter 300—General (Parts 300–1—300–70)

Chapter 300 Established 15950

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–1 Revised 15954
301–2 Removed 15954
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301–3.1 Removed 15954
301–3.2 Removed 15954
301–3.3 Removed 15954
301–3.4 Removed 15954
301–3.5 Removed 15954
301–4 Removed 15994
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301–8 Removed 15994
301–8.3 (b)(1)(ii) revised; (c) removed; (d) redesignated as (c); (a)(1), (b)(1)(i) and new (c) amended **42928**
301–9 Removed 15994
301–10 Revised 15955
301–11 Revised 15961
301–12 Revised 15965
301–13 Added 15966
301–14 Removed 15994
301–15 Removed 15994
301–16 Removed 15994
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301–53 Added 15970
301–70 Added 15971
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301–72 Added 15976
301–73 Added 15978
301–74 Added 15979
301–75 Added 15980
Chapter 301 Appendix A revised **63798**
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Chapter 302—Relocation Allowances (Parts 302–1—302–99)

302–10.200 Heading and (b) revised 5742
302–10.201 (d) and (e) revised 5743
302–10.202 Heading, (a), (b) and (c) revised 5743
302–11 Authority citation revised 14637
302–11 Appendixes A through D amended 14637

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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

51 Added 53564
51.8 OMB number pending 53567
51.10 OMB number pending 53567
51.23 OMB number pending 53567
51.25 OMB number pending 53568
57.1104 (c)(1) amended 51374
57.1105 Revised 51374
57.1106 Revised 51374
61.30—61.38 (Subpart B) Authority citation revised 9950
61.30 Revised; interim 9950
61.33 Revised; interim 9950
61.34 Revised; interim 9950
61.35 Revised; interim 9950
61.36 Revised; interim 9950
61.37a (b)(3) concluding text designated as (b)(4); (a), (b) introductory text and (4) revised; interim 9950
61.38 Revised; interim 9951
121 Added 16332

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400 Technical correction 4595, 11417
400.202 Amended 59098
405 Technical correction 4595
405.502 (g) and (h) revised; interim 689
405.535 (b) amended 59098
409 Technical correction 11417
410 Technical correction 4595, 11417
Authority citation revised 20128
410.10 (v) and (w) added 20128
410.32 (e)(1) corrected 52034
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410.33 Added 59099
410.34 (d) introductory text and (4) revised 59100
410.37 Added 59100
410.56 Added 59101
410.71 Added 20128
410.73 Added 20128
410.150 (b)(17) and (18) added 20129
410.152 (a)(1)(iv) revised 20129
410.155 Revised 20129
410.160 (b)(5) and (6) added 59101
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411.15 (a)(1) revised; (k)(6), (7) and (8) added 59101
411.370 Added 1655
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411.382 Added 1657
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411.389 Added 1657
412 Technical correction 11417
412.2 (c)(5) revised 6868
412.108 Corrected 52034
413 Authority citation revised 310, 15737
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413.30 (a)(1), (2) and (c) amended 15737
413.40 (c)(2) revised 6868
413.92 Added 310
413.106 (f)(1) removed; (c)(5), (f)(2), (3) and (4) redesignated as (c)(6), (f)(1), (2) and (3); new (c)(5) added 5139
Regulation at 63 FR 5139 eff. date corrected to 4-10-98 15315
413.134 (b)(1), (ii)(A), (f)(1) and (2) heading revised; (g)(4) redesignated as (g)(5); (f)(2) introductory text and new (g)(4) added 1382
414 Technical correction 4595
414.20 Revised 59101
414.21 Added 59101
414.22 (b)(4) added 59102
414.32 (b) revised 59102
414.48 (b) revised 59102
414.62 Added 59102
417 Authority citation revised 20130
417.416 (d)(2) revised; (d)(3) added 20130
417.470 (a) revised; interim 63673
417.472 (h) added; interim 63673
418 Technical correction 52034
422 Added 18134
424 Decision 59818
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424.32 (a)(2) revised 20130
424.55 (b)(1) and (2) revised 20130

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TITLE 42 Chapter IV—Con.

433.68 (e)(2)(iv) amended **53572**
440 Technical correction 11417
440.70 (d) revised 310
441.10 (h) through (k) redesignated as (i) through (l); new (h) added 310
441.15 (d) added 310
441.16 Redesignated as 441.17; new 441.16 added 310
(i)(1)(i) revised 10731
441.17 Redesignated from 441.16 310
482.12 (c)(1)(v) amended; (c)(1)(vi) added; (c)(4)(ii) revised 20130
483.20 (d) through (f) redesignated as (k) through (m); (b) and (c) revised; new (d) through (j) added **67211**
483.315 (Subpart F) Added **67212**
485 Technical correction 11417
488 Technical correction 11417
489 Technical correction 11417
489.1 (e) added 312
489.10 (e) and (f) added 312
489.23 Added **56111**
489.28 Added 312
489.53 (a)(14) added **56111**
489.60—489.73 (Subpart F) Added 313
489.67 (a)(1) revised 10731
498 Technical correction 11417

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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

11.18 (a)(4) and (5) revised **60459**
11.33 (a) amended **60459**
11.40 (a) amended **60459**
20 Revised **53720**
36.2 (h) revised **52510**

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

418 Revised **66467**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1862.0-3—1862.6 (Subpart 1860) Removed **59821**
2090 Authority citation revised **51376, 52036**
2091.8 Redesignated from 2111.4 and revised **52036**
2093.0-3—2093.5-1 (Subpart 2093) Removed; eff. 10-31-97 ..... **51376**
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2130 Removed **52034**
2201.1-2 (e) added 23681
2760 Removed **62267**
3715.0-5 Amended **59822**
3715.7-1 (a)(2)(ii) revised **59822**
3744.1—3744.2 (Subpart 3744) Removed **65378**
3745.1 (Subpart 3745) Removed **65378**
3811.2-7 Removed **65378**
3824.1 (Subpart 3824) Removed **65378**
3825.0-3—3825.1 (Subpart 3825) Heading revised; nomenclature change **65378**
4750.3-3 (b) revised; (c) removed 18340

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5040 Revised 13132
5511.1-2 Removed; eff. 10-31-97 51377
5511.1-4 Removed; eff. 10-31-97 51377
5511.2-1 (a) and (b) designation removed; eff. 10-31-97 51377
5511.2-5 Removed; eff. 10-31-97 51377
5511.4 (b)(2) removed; eff. 10-31-97 51377
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

11 Authority citation revised 1066
11.43 Revised; interim 1066
11.44 Removed; interim 1067
11.48 Revised; interim 1067
11.61 Revised; interim 1068
11.62 Revised; interim 1069
11.63 Revised; interim 1069
11.64 Revised; interim 1069
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59 Authority citation revised 55715
59.1 Amended 55715
59.24 (a) revised 55715
60 Authority citation revised 55716
60.2 (a) revised 55716
60.3 (f) revised 55716
61 Appendixes A(1), A(2) and A(3) amended 66029
64 Authority citation revised 55716
64.3 (a)(1) table amended; (b) revised 55716
64.6 Table amended ... 54387, 59291, 60663, 62268
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65 Authority citation revised 55717
65.4 Tables amended 51786, 54388, 54391, 61248, 67738, 67741
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65.14 Revised 55717
67.11 Flood elevation determinations 51792, 54393, 61249, 67743
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70 Authority citation revised 55718
70.1 Revised 55718
70.3 (a) revised 55719
70.4 (a) and (b) revised 55719
70.5 (c) revised 55719
75 Authority citation revised 55719
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75.11 (a)(4), (5) and (7) revised 55719
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206.440 Revised 17111

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TITLE 45—PUBLIC WELFARE

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146 Authority citation revised 66961
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146.136 (Subpart C) Added; interim 66961

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TITLE 45

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.40 Removed **64303**
205.41 Removed **64303**
205.42 Removed **64303**
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232 Removed **64303**
233.120 Removed **64303**
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250 Removed **64303**
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257 Removed **64303**

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1110.1 Revised **66826**
1110.2 Amended **66826**
1110.13 (a), (b) and (c) revised **66826**
1156 Added 6876
1180—1199 (Subchapter E) Heading revised **66530**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

Chapter XII Heading revised 4598
1201 Revised 4598

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301.31 OMB number 2313
1304.20 (b) heading, (1), (c)(4) and (f)(1) amended; OMB number 2313
1304.21 (b)(1) amended 2313
1304.22 OMB number 2313
1304.23 OMB number 2313
1304.40 (a)(2) and (3) amended; OMB number 2313
1304.41 (b) amended; OMB number 2314
1304.50 (b)(3), (d)(1)(iii), (e)(3) and Appendix A amended; (d)(1)(ix) removed; (d)(1)(x), (xi) and (xii) redesignated as (d)(1)(ix), (x) and (xi); OMB number 2314
1304.51 (a)(1)(iii) amended; OMB number 2314
1304.52 (j)(1) amended; OMB number 2314
1304.60 OMB number 2314
1305.2 (k) through (r) redesignated as (l) through (s); (g), (i) and new (m) revised; new (k) added **12657**
1305.3 (b) and (d) amended; OMB number 2314
(a) revised; (b) through (f) redesignated as (c) through (g); new (b) added **12657**
1305.4 (a) amended; (b) revised **12657**
1305.6 (b) revised; (c) amended **12658**
1305.7 (c) revised **12658**
1306.30 (c) amended 2314

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised 11376
1630 Revised **68224**
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1630.2 (e) and (f) corrected 1532
1630.3 (c) introductory text corrected 1532
1630.12 (b) corrected 1532
1643 Added **67749**
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Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

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2521.30 (h) revised; interim 18138
2540.110 Revised; interim 18138

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TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(4) added 67532
2 Authority citation revised 67514
2.01–25 (a)(1)(ix) added; (a)(2) revised 67514
4.05–10 Revised 19192
8 Revised 67532
31 Authority citation revised 67514
31.01–3 Revised 67536
31.40–30 Added 67514
31.40–40 (b) revised 67514
56 Policy statement 10547
69.27 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added 67536
71 Authority citation revised 67514
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71.75–13 Added 67514
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115.925 Added 67515
116.439 (e) amended 64305
116.500 (h) amended 64305
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117.150 (a) amended 64305
117.175 (f)(4) amended 64305
117.200 (a)(1) through (4) amended 64305
117.210 (c) amended 64305
118.320 (c)(1) amended 64305
121.710 Amended 64306
122.604 (a) introductory text, (d) and (e) introductory text amended 64306
126 Authority citation revised 67515
126.480 Added 67515
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154.19 (a) introductory text revised 67537
175 Authority citation revised 67515
175.400 Amended 64306
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175.540 (d) added 67515
176 Authority citation revised 67515
176.925 Added 67515
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178.330 (a)(4)(v) amended 64306
180.130 (b) amended 64306
180.210 (d) amended 64306
185.604 (a) introductory text, (d) and (e) introductory text amended 64306
189 Authority citation revised 67515
189.60–30 Added 67515
189.60–40 (b) revised 67515

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

201 Authority citation revised 9157
201.2 Amended 9157
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201.186 (Subpart U) Removed 9158
221.1 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (b) amended 6880
221.3 (f), (k) and (t)(2) removed; (t)(1) redesignated as (t); (g) through (j) and (l) through (w) redesignated as (f) through (u) 6880
221.7 (b)(1)(ii) amended; (b)(1)(v) and (2)(iv) removed 6880
221.11 (a) introductory text and (1) amended 6880
221.13 (a)(1) amended 6880
221.13 (a)(1)(iii) removed; (a)(1)(iv) redesignated as (a)(1)(iii); (a)(3) amended 6881

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TITLE 46 Chapter II—Con.

221.15 (c)(4)(i) amended 6881
221.17 Amended 6881
221.19 Amended 6881
221.21—221.37 (Subpart C) Removed 6881
221.61 Note amended 6881
382 Revised 3828
383 Removed **61648**

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TITLE 47—TELECOMMUNICATION

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0.455 Introductory text revised **51797**
0.460 (a) revised **51797**
0.461 (a), (h) and (i) redesignated as (a)(1), (i) and (j); (a)(2) and new (h) added; (d)(1), (3), (g) introductory text, (3), concluding text, new (i), (j), (k) introductory text and (3) revised **51797**
0.467 (a)(1) table and (2) revised 8140
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1.47 (b) and (d) revised; (h) added 1035
1.720 Introductory text and (h) revised; (j) added 1035
1.721 (a)(5) through (8) revised; (a)(9) through (14), (c) and (d) added 1035
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1.724 (a), (b) and (c) revised; (f) through (j) added 1037
1.725 Revised 1037
1.726 Revised 1037
1.727 (b) thorugh (e) revised; (g) and (h) added 1038
1.729 Revised 1038
1.730 Removed 1039
1.731 Heading and (a) revised 1039
1.732 (a) through (d) and (f) revised; (h) added 1039
1.733 (a) introductory text, (2), (4), (5), (6) and (b) through (e) revised; (f), (g) and (h) added 1039
1.734 (c) revised; (d) added 1040
1.735 (b), (d), (e) and (f) revised 1040
1.736 Added 1041
1.767 Regulation at 60 FR 15726 eff. 6-13-96 ..... **51378**
1.1105 Table amended 1041
1.1157 (d) added **59825**
1.1159 (e) added **59825**
1.1162 (c)(1) and (2) added **59825**
1.1307 (b)(4) introductory text correctly revised **61448**
1.1402 (c) revised; (i) through (m) added 12024
1.1403 Heading revised; (e) added (effective date pending) 12025
1.1404 (g)(12) and (h) through (k) redesignated as (g)(13) and (k) through (n); new (g)(12), (h), (i) and (j) added (effective date pending) 12025
1.1409 (e) revised; (f) added (effective date pending) 12025
1.1417 Added (effective date pending) 12026
1.1418 Added (effective date pending) 12026
1.2101 Revised 2340
1.2102 (a) and (b) revised; note added 2340
(a)(10) added; (b)(4) introductory text revised 6103

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1.2103 (a) revised; (d) added 2341
1.2104 (d) and (g) revised 2341
1.2105 Revised 2341
1.2107 (b) and (c) revised 2342
(c) corrected 12659
1.2108 (b) and (c) revised 2343
1.2109 (a), (b) and (c) revised 2343
1.2110 (e)(4)(i) revised 55356
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(f)(2) corrected 12659
(f)(4)(ii), (iii) and (iv) revised 17122
1.2111 (c) and (d) revised; (e) added 2346
1.2112 Added 2347
1.2113 Added 2348
2.106 Table amended 6674
5.70 Added 55529
15.120 Added 20133
15.205 (d)(5) added 58658
15.209 (g) revised 58658
15.242 Added 58658
20.3 Amended 2637
20.18 Revised 2637
20.20 Added 63871
21.113 Heading revised; (d) added 55530
21.959 (a)(2) revised 2348
21.960 (b)(4) and (d)(1) revised 2348
22 Authority citation revised 20338
22.137 (a)(1) and (2) added; (b) amended 10344
22.369 Heading revised; (d) added 55530
22.903 Revised 63872
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23.20 (f) added 55530
24 Deadline establishment 2170
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24.18 Added 55531
24.304 (a)(2) revised 2348
24.309 (b) and (f) revised 2348
24.439 (a)(3) added 10344
24.704 (a)(2) revised 2349
24.709 (b)(9) added 55356
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24.711 (b) and (c) revised 2349
24.712 (b) added 2349
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24.716 (c) and (d) revised 2349
24.717 (c) revised 2349
24.839 (a)(1) and (2) added 10344
25.113 (b) amended (effective date pending) 64172
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25.115 (c) amended (effective date pending) 64172
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25.130 (d) amended (effective date pending) 64172
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25.131 (b) and (j) revised (effective date pending) 64172
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25.137 Added (effective date pending) 64172
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25.142 (d) and (e) added 59295
25.143 Corrected 51378
25.145 Added (OMB number pending) 61456
25.201 Amended 59296
25.203 (i) added 55531
25.204 (g) added 61457
25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added 61457
25.212 (c) correctly revised 51378
25.259 Added 59296
25.260 Added 59296
26.105 Added 55531
27.62 Added 55532
27.203 (b) revised 2349
27.209 (d) revised 2349
27.324 (a)(3) added; (b)(3) revised 10344
36.125 (a)(5) revised 2124
36.601 (c) revised 2124
36.612 (a) introductory text revised 2124
36.613 (a) introductory text amended 2124
36.621 (a)(1) and (4) introductory text amended; (a)(2), (3), (4)(ii)(A) and (C) revised 2124
36.622 (a) introductory text and (b) introductory text revised 2125
36.631 (a) through (d) revised 2125
42.10 Removed 59604
42.11 (a) revised; (c) removed 59604
43.51 Regulation at 61 FR 59200 eff. 10-1-97 51378
(d) revised 64751

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52.12 Added....55180
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54.201 Heading revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added....2125
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54.401 (d) amended....2128
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54.504 Heading, (a), (b) heading, (1), (2) introductory text and (v) revised; (b)(3) and (c) redesignated as (b)(4) and (d); new (b)(3) and new (c) added; new (b)(4) amended....2129
54.505 (b)(4) and (f) added; (d) removed....2130
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54.507 (c) amended....56120
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54.511 (b) and (c) revised; (d) added....2130
54.517 (a) revised....2131
54.518 Added....2131
54.519 Added....2131
54.603 Heading, (b)(1) introductory text, (2) and (3) revised....2131
54.604 Added....2131
54.605 (d) revised; (e) added....2131
54.609 (a) revised; (c) added....2131
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54.623 (c) amended....56120
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54.703 (b) and (c) amended....2132
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64.702 (d)(3) removed 20338
64.703 (a)(2) and (3)(iii) amended; (a)(4) added; eff. 10-1-99 11617
64.709 Added 11617
(e)(2) correctly added 15316
64.710 Added; eff. 10-1-99 11617
64.1001 (b), (c) and (d) revised (effective date pending in part) **64758**
64.1002 Revised (effective date pending) **64758**
64.1150 Regulation at 62 FR 43481 eff. 3-23-98 13798
64.1300 (c) and (d) revised **58686**
64.1903 (c) stayed 16696
64.2001—64.2009 (Subpart U) Added 20338
68.2 (1)(1) and (2) corrected **54790**
(a)(3), (d) introductory text and (j) revised; (d)(4) added **61654**
68.3 Amended **61654**
68.222 Removed **61664**
68.300 Revised **61664**
68.302 Revised **61664**
68.304 Revised **61667**
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69.4 (a) revised; (h)(6) removed **56132**
69.30 (c) revised; (d) added **65622**
69.111 (c) revised **56132**
69.124 Correctly revised **66030**
69.153 (c)(1) and (d) revised; (g) added **56132**
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69.155 (c) revised **56133**
69.612 (a)(3) amended 2133
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73.606 (b) table amended 6079
73.622 (b) through (h) revised 13552
73.623 (c) through (f) revised 13552
73.624 (c) revised 15784
73.625 (c)(5) added 13562
73.682 (a)(22)(i) and (24)(iii)(A) revised 20134
73.1030 (a) redesignated as (a)(1); (a)(2) added **55532**
73.3572 (a)(2) revised 13562
73.3612 Revised 16907

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74.24 (j) added **55532**
74 32 Added **55537**
74.706 (d) revised 13563
76 Reconsideration petition 17333
76.5 (mm)(2) revised; (mm)(3) and (4) added **61031**
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76.620 Added **61031**
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76.702 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
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76.802 (a) and (g) revised; (l) added (effective date pending) **61031**
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76.804 Added (effective date pending) **61032**
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76.805 Added **61033**
76.806 Added **61034**
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76.934 (h)(5)(i) and (9) revised; (h)(11) added **53576**
78.19 (c) redesignated as (c)(1); (c)(2) added **55533**
78.19 (f) added **55538**
80.21 (f) added **55533**
87.23 (a) redesignated as (a)(1); (a)(2) added **55534**
90.7 Amended **52044**
90.129 (e) revised **55534**
90.153 (a)(1) and (2) added; (b) amended 10345
90.155 (d) revised **52044**
90.177 Introductory text revised; (f) added **55534**
90.210 (k)(3) revised; (k)(6) added **52044**
90.350—90.363 (Subpart M) Heading revised **52043**
90.350 Amended **52044**
90.353 (d), (e) and (f) revised; (i) added **52044**
90.359 Revised **52044**
90.361 Introductory text and (c)(2)(ii)(B) revised **52044**
90.805 (c) revised 2349
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95.192 (d) added **55535**
95.206 (c) added **55535**
95.405 (d) added **55535**
95.816 (e)(2) redesignated as (d)(5); (c)(6) and (e) revised 2350
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95.840 Added **55535**
95.1003 (c) added **55536**
97.13 (c)(1) correctly revised **61448**
97.203 (h) added **55536**
97.205 (h) added **55536**
101 Technical correction 14039
101.13 (d) revised 6103
101.15 (c) revised 6103
101.17 Added 6103
101.31 (b)(3) introductory text and (e)(1)(v) revised; (b)(6) added **55538**
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101.45 (d) revised 6103
101.51 (a) introductory text revised 6104
101.53 (g) added 6104
(a)(1) and (2) added 10345
101.55 (a) introductory text and (b)(2) revised 6104
101.56 Added 6104
101.57 (a)(1) revised 9448
(a)(1)(ii)(B) corrected 14039
101.63 (a) and (d) revised 6104
101.64 Added 6104
101.103 (i)(1) and (2) added 6105
(b)(3) added 9448
(b)(3) corrected 14039
101.107 Table amended 6105
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(a) Footnote 8 corrected 14039
101.109 Table amended 6105
101.113 (a) amended 9448
(a) Footnote 8 corrected 14039
101.115 (c)(2) table amended 6105
101.123 Heading revised; (e) added **55536**
(d) added **55538**
(e) correctly designated **60664**
101.147 (v) redesignated as (v)(1); new (v)(1) revised; (v)(2) added 6105

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(a) amended; (u) introductory text revised 9448
(a) Footnote 16 and (u) introductory text corrected 14039
101.803 (a) and (d) amended 9448
(a) Footnote 7 and (d) Footnote 9 corrected 14039
101.1201—101.1209 (Subpart N) Added 6106
101.1209 Corrected 10781

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1.106 Table amended (OMB numbers) 9050, 9051
1.201-1 (a) amended **64940**
(b)(2) amended 9069
1.402 Amended **64914**
2.101 Regulation at 61 FR 41468 confirmed **64914**
Amended **64915**
4.602 Regulation at 61 FR 67412 confirmed 9050
4.603 Regulation at 61 FR 67412 confirmed; (a) revised 9050
4.703 (b)(3) amended **64915**
4.800 Amended **64917**
4.803 (a)(42) removed 9052
5.207 Regulation at 61 FR 41468 confirmed **64914**
6.001 (a) amended **64917**
7.403 Regulation at 61 FR 41468 confirmed **64914**
8.002 Regulation at 61 FR 41468 confirmed **64914**
8.402 Regulation at 61 FR 41468 confirmed **64914**
8.404 (b)(4) amended **64917**
8.901—8.904 (Subpart 8.9) Regulation at 61 FR 41468 confirmed **64914**
9.103 Regulation at 62 FR 44819 confirmed 9053
9.104 Regulation at 62 FR 44820 confirmed 9053

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9.508 Regulation at 61 FR 41469 confirmed **64914**
11.001 Amended 9051
12.102 (d)(2) and (3) revised **64917**
12.203 Amended **64917**
12.206 Amended **64917**
12.214 Revised 9054
12.301 (c)(2) amended **64917**
12.602 (a) and (b) amended **64917**
12.603 Regulation at 61 FR 41469 confirmed **64914**
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13.103 Regulation at 61 FR 41469 confirmed **64914**
13.202 Regulation at 61 FR 41469 confirmed **64914**
15.209 (b)(3) revised 9055
15.805–1 Regulation at 61 FR 41469 confirmed **64914**
16 Technical correction 1532
16.402–1 (b) introductory text revised **51379**
16.500 Regulation at 61 FR 41469 confirmed **64914**
16.701 Amended **64926**
16.703 (c)(1)(vi) amended **64926**
17.200 Regulation at 61 FR 41469 confirmed **64914**
17.204 Regulation at 61 FR 41470 confirmed **64914**
19.001 Regulation at 62 FR 44820 confirmed 9053
19.201 Regulation at 62 FR 44820 confirmed 9053
19.302 Regulation at 621 FR 44820 confirmed; (d) introductory text amended 9053
(a), (i) and (j) revised; (c)(1), (d)(1)(i), (e)(1), (g)(1), (2) and (h)(4) amended 9055
19.303 Heading and (c) revised 9056
19.502–1 Regulation at 61 FR 41470 confirmed **64914**
19.508 Regulation at 62 FR 44820 confirmed 9053
19.601 Regulation at 62 FR 44820 confirmed 9053
19.602–1 Regulation at 62 FR 44820 confirmed 9053
19.602–2 Regulation at 62 FR 44820 confirmed 9053
19.602–3 Regulation at 62 FR 44821 confirmed 9053
19.811–1 (c) introductory text amended **64940**
19.1001 Revised 9057
19.1003 Introductory text revised; (a) amended 9057
19.1006 (c)(1)(i) amended **64926**
(b)(1) amended 9057
22.1006 Regulation at 61 FR 41470 confirmed **64914**
22.1300—22.1308 (Subpart 22.13) Heading revised 9058
22.1300 Revised 9058
22.1301 Revised 9058
22.1302 (b) amended 9058
22.1303 (a) introductory text, (b)(1), (2) and (d) amended 9058
22.1304 (a) and (b) amended 9058
22.1305 Amended 9058
22.1306 Amended 9058
22.1307 Introductory text amended 9038
22.1308 (a)(1) introductory text amended; (a)(1)(i) and (b) revised 9058
23.1004 (b) amended 9051
23.1000—23.1005 (Subpart 23.10) Regulation at 62 FR 12697 confirmed 9051
25.402 (b) revised 9060
25.1000 Revised **64930**
25.1002 (c)(2) revised **64930**
29.401–6 (b) introductory text and (c)(1) amended **64930**
30.101 (c) revised 9060
31.109 (f)(3) amended 9061
31.205–6 Regulation at 62 FR 270 confirmed; (p)(1) revised **64931**
(p) revised; interim 9067
31.205–10 (a)(5) revised 9067
31.205–18 (a) amended; (c) and (d) heading revised; (e)(3) added **64932**
31.205–46 (a)(3)(iv) revised **64933**
31.205–52 Revised 9068
32.502–12 (c) amended 9061
32.503–3 (b)(2) amended 9061
32.602 Regulation at 61 FR 41470 confirmed **64914**
32.603 Regulation at 61 FR 41470 confirmed **64914**
32.1103 (a)(1) and (b)(2) amended **64926**
33.101 (b)(1) amended; (c) removed **64933**
33.102 Regulation at 61 FR 41470 confirmed **64914**
33.104 Regulation at 61 FR 41470 confirmed **64914**

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(a)(3)(iii) redesignated as (a)(3)(iv); new (a)(3)(iii) added; new (a)(3)(iv)(C) removed; new (a)(3)(iv)(D) redesignated as (a)(3)(iv)(C); new (a)(3)(iv)(B) and (h) revised (a)(4)(ii)(A), (B), (6) and (e) amended **64933**
(h)(5) corrected 1532
33.105 Regulation at 61 FR 41470 confirmed **64914**
34.001 Regulation at 61 FR 41470 confirmed **64914**
36.602–1 (a)(6) correctly removed; (a)(7) correctly redesignated as new (a)(6) **51379**
37.103 Corrected **51379**
37.202 Regulation at 61 FR 41470 confirmed **64914**
38.000 Regulation at 61 FR 41470 confirmed **64914**
39 Regulation at 61 FR 41470 confirmed **64914**
39.002 Amended 9068
39.103 Added 9068
41.202 (c)(1) amended **64926**
42 Heading revised 9062
42.000 Revised 9062
42.001 Revised 9062
42.002 Revised 9062
42.003 Revised 9062
42.101—42.103 (Subpart 42.1) Revised 9062
42.201—42.203 (Subpart 42.2) Revised 9062
42.203 (a) amended **64940**
42.301 Revised 9063
42.302 (a) introductory text, (11) introductory text, (iv), (13), (20), (32), (61) and (63) revised 9063
42.602 (c)(2) and (d) revised 9064
42.603 (a) introductory text and (b)(1) introductory text amended 9064
42.701 Amended 9064
42.703–1 (a) amended; (c) revised 9064
42.703–2 (d) amended 9064
42.704 (a), (b) and (c) revised 9064
42.705–1 (b)(1) revised **64915**
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42.705–2 (b)(1) revised **64916**
(a)(2) introductory text, (iv) and (b) revised 9065
42.705–3 (a)(2) revised 9065
42.1001—42.1008 (Subpart 42.10) Removed **64932**
42.1203 (b) and (c) revised; (d), (e) and (f) redesignated as (f), (g) and (h); new (d) and new (e) added **64934**
(c) corrected 1533
42.1204 (b) through (e) redesignated as (c), (e), (h) and (i); heading, (a) introductory text, (1), (2) introductory text and new (e) revised; new (b), new (d), (f) and (g) added **64935**
(g) corrected 1533
43.301 (a)(2)(iii) amended **64926**
44.204 (b) amended 9069
45.608–1 Regulation at 61 FR 41471 confirmed **64914**
45.608–5 Regulation at 61 FR 41471 confirmed **64914**
46.103 (d) revised 9065
46.104 (f) revised 9065
46.502 Amended 9065
46.801 Regulation at 61 FR 41471 confirmed **64914**
47.301–3 (c) introductory text amended 9065
47.303–17 (d)(1), (2) and (e) amended **64936**
49.002 (a) amended **64927**
49.501 Amended **64927**
51.103 Regulation at 61 FR 41471 confirmed **64914**
52.101 (e)(2)(i) amended **64927**
52.102 Revised **64927**
52.102–1 Removed **64927**
52.102–2 Removed **64927**
52.204–5 Regulation at 61 FR 67413 confirmed 9050
52.204–6 Regulation at 61 FR 67413 confirmed; amended 9050
52.212–1 Amended 9050
52.212–4 Amended 9052
52.212–5 Regulation at 61 FR 41471 confirmed **64914**
Amended 9052, 9058
52.213–1 Revised **64927**
52.213–2 Introductory text amended **64928**
52.213–3 Introductory text amended **64928**
52.213–4 Added **64928**
Amended 9052, 9058
52.215–2 Amended 9054

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52.216–7 Amended **64916**
Amended 9065
52.216–13 Amended **64916**
Corrected 1533
Amended 9065
52.216–15 Amended **64916**
Amended 9065
52.219–1 Amended 9069
52.222–35 Amended 9059
52.222–37 Amended 9059
52.222–48 Regulation at 61 FR 41471 confirmed **64914**
52.223–5 Regulation at 62 FR 12697 confirmed 9051
Amended 9052
52.230–1 Amended 9061
52.230–2 Amended 9054
52.230–3 Amended 9054
52.230–5 Amended 9061
52.233–2 Regulation at 61 FR 41471 confirmed **64914**
52.233–3 Regulation at 61 FR 41472 confirmed **64914**
52.239–1 Regulation at 61 FR 41472 confirmed **64914**
52.244–6 Amended 9059
52.247–64 (f) corrected **51379**
52.252–1 Revised **64928**
52.252–2 Revised **64929**
53 Technical correction 648
53.204–2 (a) amended **64940**
53.209–1 (d) amended **64937**
53.213 (a) through (e), (f)(1) and (2) amended **64929**
Corrected 1532
53.214 (c) amended **64940**
53.215–1 (c) amended **64940**
53.219 Regulation at 61 FR 67413 confirmed 9050
53.242–1 Amended **64935**
53.243 Amended **64929, 64936**
53.245 Regulation at 61 FR 41472 confirmed **64914**
53.249 (a)(2), (3) and (4) amended **64940**
53.301–33 Revised **64941**
53.301–279 Revised **64942**
53.301–294 Regulation at 61 FR 67413 confirmed 9050
53.301–1406 Revised **64938**
53.301–1435 Revised **64943**
53.301–1436 Revised **64947**
53.301–1437 Revised **64951**

Chapter 2—Department of Defense (Parts 200—299)

201.107 Added 11528
201.201–1 (c) revised; (d) amended 11528
201.304 Amended 11528
202.101 Amended 11528
204.805 Amended 11528
204.7300—204.7304 (Subpart 204.73) Added 15317
204.7303 (a)(2) and (4) corrected 20447
209 Technical correction 17124
209.104–1 (g)(iii) added; interim 11851
(g)(i)(A) introductory text and (*1*) revised; interim 14837
209.104–70 (c) added; interim 11851
(a) revised; interim 14837
209.403 Amended 11528
209.405–2 Added; interim 14837
209.409 Added; interim 14837
212 Technical correction 17124
212.301 Amended 11528
(f)(iv) added 15317
212.503 (a)(xii) added; interim 11851
213 Technical correction 17124
213.005 Added; interim 11851
214.205–5 (d) amended 11528
215.608 (a)(1) amended 11528
215.805–5 (a)(1)(A)(*1*) and (*2*) amended 11528
216.203–4 (d)(xvi) amended 11529
216.301 Removed 11529
216.301–3 Removed 11529
216.403–70 Removed 11529
216.404 Revised 11529
216.404–1 Redesignated as 216.405–1 11529
216.404–2 Redesignated as 216.405–2 11529
216.405–1 Redesignated from 216.404–1 11529
216.405–2 Redesignated from 216.404–2 11529
216.405 Added 11529
216.501 (a)(i) and (ii) amended 11529
216.505 Revised 11529
216.506 Revised 11529
217 Technical correction 17124
217.103—217.174 (Subpart 217.1) Revised 11529
217.207 Added; interim 11851
217.503—217.504 (Subpart 217.5) Revised 11530

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219.702 (a)(i) and (ii) amended 14640
219.703 (a) introductory text revised 11530
219.7104 (b) and (d) amended 11530
222 Technical correction 17124
222.1304 Added; interim 11851
223.404 (b)(3) introductory text and (4) revised 11531
225.000–70 (c), (j) and (m) revised 11531
225.000–71 (a)(1)(f) and (c)(2) revised 11531
225.102 (a)(3)(A) revised; (a)(3)(B) and (C) redesignated as (a)(3)(C) and (D); new (a)(3)(B) added 11531
225.105 Amended 11531
225.109 (a) and (d) introductory text amended; (d)(i) added 11532
225.109–70 Revised 11532
225.302 (a)(iii) and (iv) revised; (a)(v) added; (b)(i) amended 11532
225.402 (a)(1) revised 11532
225.408 Revised 11532
225.602 (3) introductory text revised 11533
225.603 (1) redesignated as (a); new (a) revised; (b)(i)(D), (E) and (ii) amended 11533
225.605–70 Revised 11534
225.872–1 (d) removed; interim 5745
225.872–4 (c) introductory text and (2) amended 11534
225.7005 Revised; interim 5745
225.7007–1 Revised; interim 5745
225.7007–3 Revised; interim 5745
225.7007–4 Revised; interim 5745
225.7010–1 Introductory text revised; interim 5745
225.7010–2 Revised; interim 5745
225.7010–3 Revised; interim 5745
225.7011–4 (b)(3) amended 11534
225.7016–1 Revised; interim 5745
225.7016–2 (b) amended; interim 5746
225.7016–3 Revised; interim 5746
225.7019–1 (a) revised; interim 5746
225.7019–3 (a)(1)(iii) and (iv) removed; (a)(1)(v), (vi), (vii) and (b) redesignated as (a)(1)(iii), (iv), (v) and (c); new (b) added; interim 5746
225.7022–1 (b) amended; interim 5746
225.7022–2 (b) revised; interim 5746
225.7022–3 Revised; interim 5746
225.7303–4 Regulation at 62 FR 30831 confirmed 11527
Revised 11534
225 Appendix A amended 11622
226.103 Revised 11534
226.104 Added 11534
227.676 (b) revised 11534
229.101 (d)(i) amended 11535
231.205–6 (f)(1) revised; interim 63036
(a)(2)(i)(A) through (ii)(B) removed 14641
231.205–70 Revised; interim 7309
(b)(4) corrected 12862
231.205–71 Removed 11535
231.303 (3) removed; (4) redesignated as new (3) 14641
231.603 (1) and (2) designation removed 14641
231.703 (1) and (2) designation removed 14641
232.006 Added 11535
232.006–5 Added 11535
232.070 Added 11535
232.071 Added 11535
232.072 Added 11535
232.072–1 Added 11535
232.072–2 Added 11535
232.072–3 Added 11536
232.102—232.108 (Subpart 232.1) Revised 11536
232.202–4—232.207 (Subpart 232.2) Revised 11537
232.502–1–71 (b)(3) amended 11537
232.970 Removed 11537
232.970–1 Removed 11537
232.970–2 Removed 11537
232.1001—232.1007 (Subpart 232.10) Added 11537
233.204–70 Added 11537
234.005–70 Amended 11537
234.005–70 Regulation at 62 FR 9991 confirmed 11527
234.005–71 Regulation at 62 FR 9991 confirmed 11527
235.001 Revised 11537
235.002 Removed 11538
235.7006 Regulation at 62 FR 37147 confirmed 11527
236.102 (3) and (4) redesignated as (4) and (5); new (3) added; interim 11538
236.274 (a) revised; interim 11538
236.570 (c) revised; interim 11538
236.602–2 Revised 11538
236.602–4 Revised 11538

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236.609–70 (b) revised 11539
237.102 Removed 11539
237.104 (f)(i) amended 11539
237.170 Removed 11539
237.170–1 Removed 11539
237.170–2 Removed 11539
237.170–3 Removed 11539
237.201 Added 11539
237.203 Revised 11539
237.203–70 Redesignated as 237.270 11539
237.205 Redesignated as 237.271 11539
237.206 Redesignated as 237.272 11539
237.270 Redesignated from 237.203–70; amended 11539
237.271 Redesignated from 237.205 11539
237.272 Redesignated from 237.206 11539
239.7405 Revised 11539
239.7406 (c) introductory text amended 11539
241 Revised 11539
242.302 Regulation at 62 FR 9991 confirmed 11527
(a)(4)(A) and (19) revised 11541
242.1107–70 Regulation at 62 FR 9991 confirmed 11527
Revised 11541
243.204–70 Regulation at 62 FR 37147 confirmed 11527
(b) amended; (c) added 11541
243.205–72 Regulation at 62 FR 37147 confirmed 11527
Correctly revised 17124
246.703 Revised 6109
246.704 (1) removed; (2) through (5) redesignated as (1) through (4) 6109
246.770 Removed 6109
246.770–1 Removed 6109
246.770–2 Removed 6109
246.770–3 Removed 6109
246.770–4 Removed 6109
246.770–5 Removed 6109
246.770–6 Removed 6109
246.770–7 Removed 6109
246.770–8 Removed 6109
250.102–70 Added 11541
250.201 (b) amended 11541
252.204–7004 Added 15317
252.209–7001 Amended; interim 14837
252.209–7003 Added; interim 11852
Corrected 16871
Introductory text corrected 17124
252.209–7004 Added; interim 14837
252.212–7001 Regulation at 62 FR 37147 confirmed 11527
Amended 11541
252.212–7002 Regulation at 62 FR 37147 confirmed 11527
252.225–7001 Revised 11541
252.225–7003 Revised 11542
252.225–7006 Amended 11542
252.225–7007 Revised 11542
252.225–7008 Revised 11543
252.225–7009 Amended 11544
252.225–7010 Amended 11544
252.225–7014 Amended 11544
252.225–7016 Amended; interim 5746
252.225–7020 Added 11545
252.225–7021 Added 11545
252.225–7026 Amended 11546
252.225–7027 Revised 11546
252.225–7029 Revised; interim 5746
252.225–7035 Revised 11546
252.225–7036 Revised 11547
252.225–7037 Revised 11548
252.229–7004 Amended 11548
252.232–7006 Removed 11548
252.234–7000 Regulation at 62 FR 9991 confirmed 11527
Amended 11548
252.234–7001 Regulation at 62 FR 9992 confirmed 11527
Revised 11548
252.234–7005 Regulation at 62 FR 9992 confirmed 11527
252.234–7006 Regulation at 62 FR 9992 confirmed 11527
252.236–7010 Amended; interim 11549
252.236–7012 Added; interim 11549
252.237–7019 Removed 11549
252.241–7000 Introductory text amended 11549
252.241–7001 Introductory text amended 11549
252.241–7005 Amended 11549
252.242–7005 Amended 11549
252.243–7002 Revised 11549
252.7027 Regulation at 62 FR 30832 confirmed 11527
253.204–70 (c)(4)(xi)(A) and (C) revised 11550
Chapter 2 Appendix G amended 11550
Appendix I amended 11552

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Policy statement 9158

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Chapter 5—General Services Administration (Parts 500—599)

Chapter 5 Small entity compliance guide 12969
501.103 (b) amended 19194
503.104–10 Revised; interim 18844
503.404 (a) and (b) designation removed; interim 18844
515.106–70 (a) revised; interim 18844
515.406–1 (b) revised 19194
532.902 Added; interim 12966
532.905 (c) added; interim 12966
532.908 (a) revised; interim 12966
538.203–71 (a) revised 19194
552.203–71 Removed; interim 18844
552.203–72 Removed; interim 18844
552.203–73 Introductory text revised; interim 18844
552.212–71 Amended; interim 12967
552.232–25 Added; interim 12967
552.232–70 Revised; interim 12969
552.238–72 Revised 19194
552.238–77 Revised 19195
552.270–1 Revised; interim 18844
552.270–2 Removed; interim 18846
552.270–3 Removed; interim 18846
552.270–4 Introductory text revised; interim 18846
552.270–5 Removed; interim 18846
552.270–6 Introductory text revised; interim 18846
552.270–20 Amended; interim 18846
570.107 Added; interim 18846
570.204–4 Revised; interim 18846
570.303 (a)(7)(i) and (8) revised; interim 18846
570.305 Revised; interim 18846
570.306 Removed; interim 18846
570.307 Revised; interim 18847
570.308–1 (b) removed; (c) redesignated as (b); interim 18847
570.308–2 Revised; interim 18847
570.308–3 Revised; interim 18847
570.309 Revised; interim 18847
570.310 Revised; interim 18847
570.401 Revised; interim 18847
570.602–2 (c)(3), (d), (e)(3) and (f)(3) revised; interim 18847
570.701 (c), (d), (f), (g), (h), (j) and (k) revised; interim 18847
570.702 Revised; interim 18847
570.703 (a)(25) removed; (a)(26) redesignated as (a)(25) 18848
570.704 Revised; interim 18848

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.301–70 (c) revised (OMB numbers) 17335
810 Removed 17335
811 Added 17335
812 Revised 17338
836.202 (a) amended 17338
836.206 Amended 17338
833.102 Introductory text and (b) amended 15318
833.103 (a)(1) revised; (a)(2)(ii) amended; (a)(3) and (4) removed; (a)(5) redesignated as (a)(3); new (a)(3)(vi) removed; new (a)(3)(vii), (viii) and (ix) redesignated as (a)(3)(vi), (vii) and (viii) 15318
833.103 (c) removed; (b) redesignated as new (c); new (b) and (f) added; (e) revised 15319
833.105 Removed 15319
833.106 Revised 15319
833.214 Added 15319
852.210–70 Redesignated as 852.211–70 17338
852.210–71 Redesignated as 852.211–71 17338
852.210–72 Redesignated as 852.211–72 17338
852.210–73 Redesignated as 852.211–73 17338
852.210–74 Redesignated as 852.211–74 17338
852.210–75 Redesignated as 852.211–75 17338
852.210–76 Redesignated as 852.211–76 17338
852.210–77 Redesignated as 852.211–77 17338
852.211–70 Redesignated from 852.210–70 17338
852.211–71 Redesignated from 852.210–71 17338
852.211–72 Redesignated from 852.210–72 17338
852.211–73 Redesignated from 852.210–73 17338
852.211–74 Redesignated from 852.210–74 17338
852.211–75 Redesignated from 852.210–75 17338
852.211–76 Redesignated from 852.210–76 17338

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852.211–77 Redesignated from 852.210–77; introductory text amended 17338
852.211–78 Redesignated from 852.212–70; introductory text amended 17338
852.212–70 Redesignated as 852.211–78 17338
852.229–70 Introductory text amended 17339
852.229–71 Introductory text amended 17339
852.233–70 Revised 15320
852.233–71 Added 15320
852.236–73 Removed 15320
852.271–70 Amended 17339
870 Authority citation revised 17339
870.112 (a), Footnote 1, (b) and (c)(1) amended 17339

Chapter 9—Department of Energy (Parts 900—999)

901.601 Existing text designated as (a); (b) added **53756**
903.104–10 Redesignated from 903.104–11 ..... **53756**
903.104–11 Redesignated as 903.104–10 ..... **53756**
904.804–1 Heading and (b) revised **53757**
912 Added **53757**
913.505–1 Revised **53757**
915.207–70 Added 10503
915.305 (Subpart 915.3) Added 10504
915.804–1 Redesignated from 915.804–3 ..... **53757**
915.804–3 Redesignated as 915.804–1 ..... **53757**
915.804–6 Revised **53757**
915.806–2 Added **53757**
915.1003 (Subpart 915.10) Removed **53757**
916.504 Added **53757**
916.505 Added **53757**
927.300 (b) amended 10505
927.303 (b) amended 10505
927.370 Removed 10505
927.401 Removed 10505
927.402–1 (b) revised; (c) through (g) removed; (h) redesignated as (c) 10505
927.402–3 Removed 10505
927.403 Revised 10505
927.404 Added 10505
927.408 Added 10506
927.409 Added 10506
927.7000—927.7005 (Subpart 927.70) Removed 10507
932.006–4 Added 5273
932.402—932.407 (Subpart 932.4) Heading revised **53758**
933.102 Added **53758**
939 Revised **53758**
944 Removed **53758**
952.204–70 Amended; heading revised **51803**
952.227–13 Amended 10507
952.227–14 Added 10507
952.227–73 Removed 10508
952.227–75 Removed 10508
952.227–76 Removed 10508
952.227–77 Removed 10508
952.227–78 Removed 10508
952.227–79 Removed 10508
952.227–83 Removed 10508
952.227–84 Revised 10508
970.0404–1 Amended **51803**
970.0404–2 (e) added **51803**
970.0404–4 (a)(1) revised; (a)(2) added **51803**
970.1508–1 Revised **53758**
970.2201 (b)(1)(ii) revised **51803**
970.2501 (Subpart 970.25) Added 5274
970.2602–2 Heading revised; existing text designated as (a); (b) added **63425**
970.2705 Revised 10508
970.2706 Revised 10508
970.2707 Added 10509
970.3101–3 (b), (c) and (d) added 5274
970.3101–7 Added 5274
970.3102 Exhisting text designated as (a); new (a) amended; (b) added 5274
970.3102–2 (i)(2) introductory text amended; (i)(2)(iv), (v), (vi) and (p) added 5275
970.3102–5 Revised 5275
970.3102–7 Revised 5275
970.3102–17 (b) heading revised; (b)(3) added 5275
970.3103 (b) revised 5276
970.3272 Added 5276
970.5204–1 Revised **51804**
970.5204–13 (d)(8)(iv), (e)(11) and (31) revised; (e)(37) and (38) added 5276
970.5204–14 (d)(8)(iv), (e)(9) and (29) revised; (e)(35) and (36) added 5276

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970.5204–17 Amended; heading revised 5276
970.5204–22 Amended **53758**
970.5204–24 Removed **53758**
970.5204–44 Amended **53759**
970.5204–60 Amended **53759**
970.5204–81 Added **63425**
970.5204–82 Added 10509
970.5204–83 Added 10511
970.5204–84 Added 5276
970.5204–85 Added 5276

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.105–2 (b)(1)(i) amended **67750**
1201.105–3 Existing text designated as (a); (b) added **67750**
1201.106 (a) amended **67750**
1202.1 (b) through (j) redesignated as (c) through (k); (b) added; new (i), (j)(1) and (7) revised **67750**
1202.7000 (Subpart 1202.70) Added **67750**
1202 Appendix A added **67750**
1203.104–11 Heading revised **67750**
1205.9000 (Subpart 1205.90) Added **67750**
1206.9000 (Subpart 1206.90) Added **67751**
1209.408–70 (Subpart 1209.4) Added **67751**
1214.303 Removed **67751**
1216.405 Redesignated as 1216.406 ..... **67751**
1216.406 Redesignated from 1216.405; (a), (b) and (c) redesignated as (e)(1)(i), (ii) and (iii) **67751**
1217.102—1217.102–1 (Subpart 1217.1) Removed **67751**
1222.608—1222.6080–4 (Subpart 1222.6) Removed **67751**
1224.202 Redesignated as 1224.203 ..... **67751**
1224.203 Redesignated from 1224.202 ..... **67751**
1225 Removed **67751**
1236.602–1 (a) and (c) removed **67751**
1237.104–90 Revised **67751**
1237.104–91 Added **67751**
1246.705 (a)(3) revised **67752**
1252.223–70 Revised **67752**
1252.225–90 Removed **67752**
1252.225–91 Removed **67752**
1252.228–70 Revised **67752**
1252.228–72 Revised **67752**
1253.303 (Subpart 1253.3) Appendix amended **67752**

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 Table amended (OMB numbers) **52266**
1425 Removed **52266**
1452.225–70 Removed **52266**

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1505.405 (Subpart 1505.4) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1511.011–70 Revised 10549
1514.201–6 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1515.612 (a)(1) introductory text revised 10549
1515.900—1515.970–2 (Subpart 1515.9) Revised **60665**
Regulation at 62 FR 60665 eff. date corrected to 2–10–98 6675
1535.007 Regulation at 62 FR 38477 eff. date corrected to 12–30–97 418
1537.200—1537.205 (Subpart 1537.2) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1548.102 (Subpart 1548.1) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.209–74 Regulation at 62 FR 5348 eff. date corrected to 12–30–97 691
Amended 692
1552.210–79 Regulation at 61 FR 33693 eff. date corrected to 2–10–98 6676
1552.211–70 Amended 10549
1552.214–70 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.217–73 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.217–74 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675

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1552.235–72 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–74 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–77 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418
1552.235–78 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.106 (1) revised (OMB numbers); interim 9953
1802.101 Amended; interim 9953
1803.104–5 (a)(1) amended; interim 9966
1804.570—1804.570–2 (Subpart 1804.5) Added; interim 9954
1805.201 Removed; interim 9954
1805.207 (a) added; interim 9954
1806.302–470 (b) removed; (c) redesignated as (b) 12997
1807.105 (b)(19) redesignated as (b)(20) **58687**
Introductory text amended 12997
1807.7205 Revised **58687**
1814.201–670 (d) amended; interim 9966
1815 Revised; interim 9954
1816.104—1816.104–70 (Subpart 1816.1) Added 12997
1816.402 Revised 12997
1816.402–2 Revised 12997
1816.402–70 (a) amended 12997
1816.402–270 (a) amended **58687**
(e)(1) revised; interim 9965
1816.404 Added **58687**
1816.405–270 (b)(2)(ii) amended; interim 9966
Revised 12998
1816.405–271 (a) revised 13133
1816.405–272 (a) amended 13133
1816.405–273 Revised 13133
1816.405–274 (e) revised 12998
1816.405–275 (b)(2) revised 13134
1816.405–276 Added 13134
1816.406–70 (a), (b) and (e) amended **58687**
(a) amended 13134
1817.503 Existing text designated as (2); (a) added **58687**
(a)(2) amended; interim 9967
1817.7001 (a)(1) redesignated as (a); (a)(2) removed **58687**
1817.7201 (Subpart 1817.72) Added **58687**
1819.602—1819.602–370 (Subpart 1819.6) Heading revised 12998
1827.301 Amended **58688**
1827.303–70 (b)(6) amended **58688**
1832.409–170 (d) amended; interim 9967
1832.402 (e)(1) revised 14040
1832.412 (f) redesignated as (f)(1); (f)(2) added **58688**
Revised 14040
1832.412–70 Added 14040
1832.501–2 Revised 14040
1832.502–2 Revised 14040
1832.702–70 (e) revised 14040
1833.210 Added 14041
1834.7003–1 (c) amended; interim 9965
1835.016–70 (d)(1), (2), (3), (5) and (7) amended; interim 9967
1837.102 Removed 12998
1837.102–70 Removed 12998
1837.110–70 (c) removed **58688**
1842 Heading revised 15320
1842.101—1842.170 (Subpart 1842.1) Heading revised 15320
1842.101 (a)(i) and (ii) amended 3652
Heading revised 15320
1842.102 Heading revised 15320
1842.102–70 (b) introductory text revised 3652
1842.202—1842.271 (Subpart 1842.2) Heading revised 15320
1842.202–70 Redesignated from 1842.203; (a)(i) through (v) redesignated as (a)(1) through (5) 15320
1842.203 Redesignated as 1842.202–70 15320
1842.803 (b)(1)(D) added **58688**
1842.7301 Revised 3652
1843.205–70 Heading revised; (a), (b) and (c) redesignated as (a)(1), (2) and (3); new (b) added 17339
1844.201–2 (c)(2) amended; interim 9967
1845.7101–3 (b) amended **58688**
1852.215–73 Removed; interim 9965
1852.215–74 Removed; interim 9965
1852.215–75 Removed; interim 9965

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1852.215–77 Amended; interim 9965
1852.215–78 Amended; interim 9965
1852.215–79 Amended; interim 9966
1852.215–81 Amended; introductory text revised; interim 9966
1852.215–82 Removed; interim 9966
1852.216–76 Amended 13134
1852.216–87 Amended **58688**
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1852.232–70 Added 14040
1852.237–72 Removed **58688**
1852.243–70 Amended; interim 9966
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1852.243–72 Added 17339
1853.215–2 Redesignated as 1853.215–70; interim 9966
1853.215–70 Redesignated from 1853.215–2; (a) amended; interim 9966
1853.232 Redesignated as 1853.232–70; interim 9966
1853.232–70 Redesignated from 1853.232–2; interim 9966
1853.242–70 (g) amended; interim 9967
1853.245 Redesignated as 1853.245–70; interim 9966
1853.245–70 Redesignated from 1853.245; interim 9966
1853.249 Redesignated as 1853.249–70; interim 9966
1853.249–70 Redesignated from 1853.249; interim 9966
1871.103 (b) amended; interim 9966
1871.104 (a) removed; (b) through (e) redesignated as (a) through (d); new (c) amended; interim 9966
1871.105 (a) revised; interim 9966
(f) amended; interim 9967
1871.301—1871.302 (Subpart 1871.3) Removed; interim 9966
1871.401–3 (a)(3) added; interim 9966
(a)(2) and (b)(4) amended; interim 9967
1871.401–4 (a)(4) added; interim 9966
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1871.401–5 (b)(2) revised; interim 9966
1871.402 (d) amended; interim 9967
1871.403 Removed; interim 9966
1871.505 Introductory text amended; interim 9967
1871.604–2 (a) amended; (d) revised; interim 9966
1871.604–3 (a) amended; interim 9967
1872.302 (b)(1) revised; interim 9966
1872.403–2 (c)(2) amended; interim 9966
1872.505 Introductory text amended; interim 9967
1872.702 (b)(1) amended; interim 9967
1872.705–1 Amended; interim 9967

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Chapter 28 Revised 16118

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1.26 (a)(8) revised.....55357
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1.52 (d) and (e) removed.....10782
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10 Appendix amended.....2172, 4197
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107.105 (a) introductory text revised.....51556
107.117 (d)(5) amended.....51556
107.301—107.339 (Subpart D) Appendix A amended.....51556
171.5 (a)(1)(i), (iii)(B) and (C)(3) revised.....65194
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171.6 (b)(2) table revised.....51557
(a) and (b) introductory text amended.....51558
171.7 (a)(3) table and (b) table amended.....51558
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171.12 (d)(1) amended.....51558
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172.101 Table amended.....51559
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172.203 (k)(3) amended.....51560
172.204 (b)(1) introductory text amended.....51560
172.301 (a)(3) revised.....16075
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172.504 (e) Table 1 amended.....16076
172.606 Introductory text removed; (a) and (b) revised.....16076
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173.5 (b) introductory text and (3) revised.....8142
173.6 (c)(3) amended.....51560
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173.62 (b) table amended.....51560
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173.125 (a) amended.....51560
173.166 (b)(1) and (3)(i) amended.....51560
173.202 (b) amended.....51560
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173.225 (e)(4) amended.....51560
173.242 (b)(1) amended.....51560
173.243 (b)(1) amended.....51560
173.247 (g)(1)(iii)(C) amended.....51560
173.320 (a)(3) revised.....51561
173.422 (b)(2) amended.....51561
174.705 Reinstated.....66900
175.700 (b) amended.....51561
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178.44 (b) Table 1 amended.....51561
178.50 (i) introductory text amended.....51561
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178.338–19 (b) amended.....51561
178.503 (a)(1) amended.....51561
179.15 (b) heading and (f)(1) revised; (e) introductory text amended.....51561
179.100–19 (a) amended.....51561
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179.100–24 Amended **51561**
179.221–1 Table amended **51561**
180 Authority citation revised **51561**
180.509 (j) redesignated as (j)(1); (j)(2) added **51561**
190.7 (a) revised 7722
190.203 (a) revised 7722
190.209 Revised 7722
191 Effective date confirmation 12659
191.1 (b)(3) added **61695**
191.3 Amended **61695**
191.21 Amended 7723
192 Effective date confirmation 12659
192.1 (b)(5) added **61695**
192.3 Amended **61695**
192.10 Added **61695**
192.16 (b)(5) revised 7723
192.107 (b)(2) revised 7723
192.383 Added 5471
(b) corrected 20135
192.614 (c)(4) removed; (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) and (e) added **61699**
(c)(5) revised 7723
192 Appendix A amended 7723
193.2059 (d)(1)(i) revised 7723
194 Effective date confirmation 10347
194.121 (a) revised **67293**
195 Effective date confirmation 3653
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195.1 Regulation at 62 FR 31367 withdrawn **52511**
(b)(6), (7) and (8) redesignated as (b)(7), (8) and (9); new (b)(6) added **61695**
195.2 Amended **61695**
195.3 (c)(5)(i) and (ii) revised 7723
195.9 Added **61695**
195.56 (a) revised 7723
195.302 (c)(1) introductory text, (2)(i) introductory text and (ii) revised **54592**
195.442 (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) added **61699**
199 Notice **59297**
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199.1 (d) revised **67294**
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199.3 Amended 13000
199.11 (e) revised; (f) added 13000
199.15 (d)(2) revised; (e) and (f) added 13000
199.17 (a) revised 7723

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209 Authority citation revised 11619
209.103 Amended 11619
209.335 (b) amended 11619
209.409 Amended 11619
209 Appendix A amended 11619
213 Authority citation revised 11620
213.15 Amended 11620
214 Authority citation revised 11620
214.5 Amended 11620
214 Appendix A amended 11620
215 Authority citation revised 11620
215.7 Amended 11620
215 Appendix B amended 11620
216 Authority citation revised 11620
216.7 Amended 11620
217 Authority citation revised 11620
217.5 Amended 11620
217 Appendix A amended 11620
218 Authority citation revised 11621
218.9 Amended 11621
218 Appendix A amended 11621
219 Determination 8142
Authority citation revised 11621
219.5 Amended **63466, 63676**
219.9 (a) amended 11621
219.19 Removed **63466**
219.101 (a)(5) added; (c) amended **63466**
219.104 (a)(3)(ii) amended **63466**
219.201 (b) amended **63466**
(a)(1) introductory text, (2) introductory text and (4) revised **63676**
219.203 (d)(2) amended **63467**
219.205 (c)(1) amended **63467**
219.207 (b) revised **63467**
219.209 (a)(1) amended **63467**
219.303 (c), (d) and (e) removed **63467**
219.601 (b)(2)(i) amended; (b)(2)(ii) and (iii) removed **63467**
219.603 Amended **63467**
219.703 (d) removed **63467**
219.709 Removed **63467**
219.803 (a) amended **63467**

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219 Appendix B amended **63467**
Appendix A amended 11621
220 Authority citation revised 11621
220.7 Amended 11621
220 Appendix C amended 11621
221 Authority citation revised 11621
221.17 Amended 11621
221 Appendix A amended 11621
223 Authority citation revised 11621
223.7 Amended 11621
223 Appendix B amended 11621
225 Authority citation revised 11621
225.19 (c) amended; (e) revised **63676**
225.29 Amended 11622
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228 Authority citation revised 11622
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228 Appendix A amended 11622
229 Authority citation revised 11622
229.7 (b) amended 11622
229 Appendix A amended 11622
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231 Authority citation revised 11623
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232 Authority citation revised 11623
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234 Authority citation revised 11623
234.6 (a) amended 11623
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235 Appendix A amended 11624
236 Authority citation revised 11624
236.0 (f) amended 11624
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240.11 Amended 11624
240.119 (d)(3) amended; (d)(4) and (5) removed; (d)(6) redesignated as (d)(4) **63467**
240 Appendix A amended 11624

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377.101—377.105 (Subpart A) Authority citation removed 11624
377.201—377.217 (Subpart B) Authority citation removed 11624
382 Controlled substances and alcohol testing rates 2172
385.3 Amended **60042**
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385.17 Revised **60043**
385.19 Revised **60043**
385 Appendix B revised **60043**
386 Authority citation revised 12414
386 Appendix A amended; Appendix B added 12414
393.5 Amended 8339
393.60 Revised 1387
393.75 (f) revised; (g) and (h) added; authority citation removed 8339
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533.5 (a) Table IV revised 16701
538 Petition denied 15322
541 Appendixes A and A–I amended **52045**
571 Petition denial 19839
571.105 Amended; eff. 3–1–99 12664
571.108 Amended 8145
571.121 Amended 7727
571.201 Amended 28
571.208 Corrected **51379**
Amended **62441**
Amended 3666
571.214 Amended 16140
571.223 Amended 3662
571.224 Amended 3662
572.31 (a)(3) revised 5747
572.35 (c)(1) and (2)(iv) revised 5748
572.40 (b) revised 16140
572.41 (a) introductory text, (4) and (c) revised 16140
572.43 (a) revised 16140
589 Petition denial 19839
593 Appendix A revised 52267
595 Added **62442**
595.5 (b)(3) introductory text and (i) revised **67754**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

653 Notice 418
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Chapter VII—National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

701 Revised 7311

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1002.1 (a), (e)(1) and (f)(6) table revised 8146
1002.2 (f) revised 8146
(g) reinstated; CFR correction 19195
1039.11 (a) table amended 19665
1111 Authority citation revised 2639
1111.1 (a) amended; (a)(1) through (10) and (d) added 2639
1111.8 Amended 2639
1111.9 Redesignated as 1111.10; new 1111.9 added 2639
1111.10 Redesignated from 1111.9; (a) revised 2639
1241 Authority citation revised **51380**
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TITLE 50—WILDLIFE AND FISHERIES

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17 Critical habitat designation 9967
17.3 Amended 8870
17.11 (h) table amended **59622, 64320, 66303**
(h) table amended 694, 1763, 3843, 12686, 13150, 14379
17.12 (h) table amended **54807, 61925**
(h) table amended 19849
17.22 (b)(5) and (6) added 8871
17.32 (b)(5) and (6) added 8871
17.42 (f) added **59622**
17.84 (k) added 1763
17.95 (b) and (e) amended 14379
17.108 (a)(7) added **63037**
20.134 (b) revised; (c) removed **63611**
21.47 Added 10560
32.70 Amended 2182
38 Added 11626

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216.111—216.118 (Subpart J) Revised; eff. 2-2-98 through 12-31-02 5283
217.12 Amended; interim 17955
222 Authority citation revised 8872
Technical correction 23226
222.3 Added 8872
222.22 (g) and (h) added 8872
222.34 Added; eff. 11-27-97 through 7-31-98 63470
226 Critical habitat designation 9967
226.22 Introductory text amended 1393
226.23 Added 1393
226 Table 4 added 1394
Figure 9 added 1395
227 Authority citation revised 13371
Technical correction 23226
227.4 (m) and (n) added 13371
227.72 (e)(2)(iv)(B) and (e)(4)(iv) amended; (e)(4)(iii) revised; interim 17956
229 Fishery list 5748
229.31 Added 51813
230 Quotas 16701
260 Inspection fees 67585
285 Inseason adjustments 51608, 53247, 66828
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285.2 Amended; interim 669
285.3 (a) revised; interim 669
285.9 Added; interim 669
285.31 (a)(22) revised; interim 669

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300 Technical correction 15324
300.63 (b) revised 13009

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Specifications 419
Heading revised 7073
Technical correction 10677
600.5 (a) and (b) amended 7075
600.10 Amended; interim 66551
Amended 7073, 7075
600.15 (b)(7) removed; (b)(8) through (13) redesignated as (b)(7) through (12) 7073
600.105 (a), (b) and (c) amended 7075
600.115 (a) and (b) amended 7075
600.205 (a) and (b) amended 7075
600.210 (a) amended 7073
600.215 (a)(4) amended 7073
(a)(3) amended 7075
600.225 (b)(2) amended 7075
600.230 Amended 7073
600.235 (c) amended 7073
(a) amended 7075
600.245 (a) amended 7075
600.305 (a)(2), (3), (c)(1) and (3) amended 7075
600.310 (b) and (f)(3) introductory text amended 7073
(c)(7)(i), (iii), (f)(1), (2) introductory text, (5) and (h) introductory text amended 7075
600.320 (c) amended 7075
600.325 (c)(3)(ii) amended 7075
600.330 (c)(2) amended 7073
(c) introductory text, (1) and (2) amended 7075
600.340 (b)(1) and (2)(iii) amended 7075
600.405 Amended 7075
600.415 (c)(2) amended 7075
600.501 (a)(1), (b), (e)(1)(i), (v) and (1) amended 7075
600.502 (f)(1) amended; (g), Table 1 and Table 2 revised 7073
600.504 (a)(1) and (b)(5) amended 7075
600.505 (a)(1), (2), (4), (5), (6), (8), (28) and (b)(1) amended 7075
600.506 (a), (b)(1), (2), (c)(2), (g)(2) and (j)(1) introductory text revised; (f), (h)(1), (2)(iii), (3)(ii) and (j)(2)(i) amended 7074
(b) introductory text and (h)(3) introductory text amended 7075
600.507 (a)(4) and (i) amended 7075
600.511 (c)(1) amended 7075
600.512 (a) amended 7075
600.515 Amended 7075

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600.516 (c) amended 7075
600.518 (b)(3) and (e)(1)(iv) amended 7075
600.520 (b)(2)(ii), (iii) and (3) amended 7075
600.610 (a)(1) amended 7075
600.615 (d)(2) revised 7075
600.725 (a), (b), (d), (f), (g), (h), (j), (k) and (p) amended 7075
600.730 (a) amended 7075
600.735 Amended 7075
600.740 (a) introductory text text, (4), (b) and (c) amended 7075
600.745 (a), (b)(1), (2) introductory text, (viii), (3)(i) introductory text, (ii), (iii) introductory text, (iv), (v), (c)(2), (d)(1), (2) introductory text, (2)(x), (3)(i) and (ii) introductory text amended 7075
600.750 Amended 7075
600.805—600.815 (Subpart J) Added; interim 66551
600.905—600.930 (Subpart K) Added; interim 66555
622 Temporary regulations 52045, 61700, 63677, 66304, 67010
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Fishery opening 9158
622.1 Table 1 amended 10565
622.2 Amended 10565, 18144
622.4 (d) and (p) revised 67721
(a) introductory text, (2) heading, (ix), (g) and (i) through (l) revised 67722
Regulation at 62 FR 67721 eff. date corrected to 12-30-97 290
(a)(2)(iv), (v), (vi) and (g) revised; (a)(2)(iii) and (q) added; (d) amended 10565
(a)(2)(ii), (o) heading, (1) and (2) amended 10569
622.5 (a)(1)(i) revised 10567
622.6 (b) revised; (c) and (d) removed 10567
622.7 (a), (b) and (c) revised 67722
Regulation at 62 FR 67722 eff. date corrected to 12-30-97 290
622.31 (d) removed; (e) through (k) redesignated as (d) through (j) 10567
622.32 (c)(1) revised 10567
622.34 (c), (g) introductory text and (1) amended; (l) revised 67722
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(l) suspended; (m) added; eff. 4-29-98 through 10-13-98; interim 18146
622.35 (e)(2)(i) revised 10567
622.36 Introductory text through (c) redesignated as (b) introductory text through (3); (a) added 67723
622.37 Regulation at 62 FR 47766 eff. date extended 67715
(d)(3) revised 444
(c)(1) revised 10567
622.38 (a) revised; (h) added 10567
622.39 (a)(2)(iv) added; (b)(1)(ii) and (v) revised 67723
(c)(1)(ii) revised 8356
(b)(1)(iii) suspended; (b)(1)(iv) added; eff. 4-29-98 through 10-13-98; interim 18147
622.40 (b)(3)(i) introductory text amended 10568
622.41 (c), (d)(1) and (3) revised 10568
(h) added 18144
622.42 (a)(1)(i) revised 67723
(c)(1)(i) and (2)(ii) revised 8356
(c) introductory text amended 10569
(a) suspended; (g) added; eff. in part 5-14-98 through 10-13-98 and 4-14-98 through 10-13-98; interim 18147
622.43 (a)(5) amended; (e) revised 67723
(a)(3)(i) and (ii) revised; (c) added 10569
622.44 (a)(1) introductory text added; (a)(1)(iii) and (2)(i) revised; (b)(2) amended 8356
(a)(2)(ii)(B) introductory text revised 10569
(a)(2)(ii)(A)(*2*)(*i*), (b)(1)(i) and (ii) introductory text amended 10569
622.45 (d)(2) amended; (h) added 10569
622.48 (d)(1) amended; (c) revised 10569
(i) added 18144
622 Appendix A amended 67723
630 Temporary regulations 12687, 23682

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630.1 (b) revised **55361**
630.2 Amended **55361**
630.4 (a) revised **55361**
630.7 (c) revised; (bb) and (cc) added **55361**
630.21 Revised **55361**
630.23 (a) and (b) amended **55362**
630.24 (a) redesignated as (a)(1); (a)(2) and (b)(5) added; (b)(1), (2), (3), (c), (d)(4) and (e) revised **55362**
630.25 Heading and (a)(1) revised; (b) amended **55362**
644.5 Suspended; eff. 3-27-98 through 9-23-98; interim 14033
644.10 Added; eff. 3-27-98 through 9-23-98; interim 14033
644.21 (a) and (d) suspended; (e) added; eff. 3-27-98 through 9-23-98 14034
648 Quotas **52277, 55362, 67754**
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648.2 Corrected **51381**
Amended 11593
648.4 (c)(2)(3)(B) corrected **51381**
(a)(3)(i)(B)(*2*) removed; (a)(3)(i)(C), (5)(i)(A)(*2*), (C), (ii)(A)(*2*), (C), (6)(i)(A)(*2*) and (C) revised **63875**
(a)(1) introductory text revised 11593
648.10 (f)(2) correctly revised **51381**
(c)(5) revised; (f)(3) added 11593
(d) and (f)(3)(i) revised 15329
648.13 (d) added **63875**
648.14 (a)(89) correctly revised **52274**
(j)(9) added **63875**
(u)(1) revised **66310**
(a)(13), (31)(iii), (33), (35), (36), (37), (47), (55), (b), (c) introductory text, (d) introductory text, (e), (g) introductory text, (t) and (x)(4) revised; (a)(31)(ii) amended; (a)(31)(iv), (104) and (c)(22) through (25) added 11594
(a)(110) and (111) added; interim 15326
(a)(101), (c)(7), (10), (24) and (25) revised; (a)(112) added 15330
(a)(112) correctly designated 19850
648.17 Added 11595
648.23 (a) introductory text revised 1774
648.53 (d) revised 11595
648.57 Added; interim 15326
648.80 (d)(2) and (3) revised; (d)(5) added 7730
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(a)(5)(i) and (8) revised 15330
648.81 (a)(2)(ii), (b)(2) introductory text, (c)(2)(i) and (f)(2)(ii) revised; (a)(2)(iii) added 7730
(a)(2)(i), (c)(2)(ii) and (f)(2)(ii) revised 11595
(d), (g), (h) and (j) revised; (n) added 15331
648.82 (a) revised 11595
648.83 (a)(1) introductory text revised 11595
648.86 Introductory text and (b)(3) added; (b)(1) heading, (i), (ii) and (2) revised 11595
(a)(1)(i), (ii), (b) introductory text, (1) introductory text, (i), (ii) and (3) revised; (a)(1)(iii) and (b)(4) added 15332
648.87 Heading, (a) and (b) correctly revised **52274**
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(a)(1)(i) corrected 19580
648.100 (a) revised **66310**
648.103 (c) revised **63875**
648.104 (a)(1) revised; (f) added **63876**
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(c)(3)(ii)(G) and (e)(2)(ii)(F) added **63890**
679.7 (g)(1) revised **67760**
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679.20 (g)(5)(ii) revised **63890**
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679.24 (e)(2)(iv) introductory text ad (A) through (D) redesignated as (e)(3) introductory text, and (i) through (iv); (e)(1), (2)(ii) and new (3) introductory text revised 11167
679.27 Added **63890**
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679.28 Added (effective date pending in part) 5843
679.31 Revised 8361
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679 Tables 1 and 3 amended **60670**
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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Hemphill. INQUIRIES, telephone 202–523–5227.

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300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
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600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
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50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
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600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
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1–199	(869–032–00096–4)	48.00	Apr. 1, 1997
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900–1899	(869–032–00103–1)	21.00	July 1, 1997
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1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
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1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–032–00108–1)	40.00	July 1, 1997
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50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
53–59	(869–032–00138–3)	14.00	July 1, 1997
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72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
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201–End	(869–032–00159–6)	15.00	July 1, 1997
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430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
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166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
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20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
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29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
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Subscription (mailed as issued)		247.00	1998
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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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251.101 (f) revised 2306
351.506 Regulation at 62 FR 10682 confirmed 26422
351.606 Regulation at 62 FR 10682 confirmed 26422
351.608 Regulation at 62 FR 10682 confirmed 26422
410.501 (a) amended 16877
532.201—532.285 (Subpart B) Appendix C amended; interim 6472
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551.104 Corrected 2304
551.206 Corrected 2304
551.208 (c) heading corrected 2304
581 Authority citation revised 14757
581.101 Revised 14757
581.102 (d), (e) and (f) revised; (k) added 14757
581.103 (a)(27), (28), (b)(14), (15) and (c) revised; (a)(29), (b)(16) and (17) added 14758
581.104 (j) removed; (k) redesignated as (j) 14758
581.105 (a) revised 14758
581.202 (a) and (b) revised 14758
581.303 (a) revised 14759
581.305 (d) and (e) revised 14759
581.402 Revised 14759
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581 Appendix A revised 14759
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582.305 (c) and (g) revised; (m) added 14787
582.402 (a) revised 14788
582.501 Revised 14788
733 Revised 4558
831 Authority citation revised 9401, 17049
831.201 (b)(1) revised 9402

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831.1203 (a)(5) revised 17049
831.1204 Revised 17049
842 Authority citation revised 9402
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844 Authority citation revised 17050
844.201 (a) and (c) revised 17050
870 Authority citation revised 9402
870.301 (c) added 9402
880 Added 10291
890.101 (a) amended 28891
890.102 (g) added 9402
(c)(4) removed; (c)(5) through (8) redesignated as (c)(4) through (7) 28891
890.303 (b) revised 28891

Chapter III—Office of Management and Budget (Parts 1300—1399)

1303 Authority citation revised 20514
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1303.40 (f) revised 20515
1303.60 (d) concluding text designated as (d)(3); (c) and new (d)(3) revised 20515

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1605.2 (c)(5) revised; interim 4366
(c)(5) revised 24380
1605.4 (c)(1) revised; interim 4366
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Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2610.102 Amended 13116
2610.105 (b)(4) and (5) amended; (b)(6) added 13116
2610.106 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 13116
2610.107 (b) amended 13116
2610.108 Heading revised; (a) and (b) amended 13116
2610.201 (a) and (b) introductory text revised; (f) amended 13116
2610.204 (a) revised; (c) amended 13116
2634.906 Amended 15274

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3501.104 Heading correctly revised 20447
3502.104 (a) corrected 18501

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Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

2.28 (b)(17) added 11101
6.25 (b)(1)(i) and (ii) suspended 13481
6.20—6.36 (Subpart) Appendix 3 amended 5233
Appendixes 1, 2 and 3 revised 20517
25 Revised; interim 19114

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

51.21 Revised 15277
51.38 Revised 15277
51.490 Revised; interim 20522
56 Heading revised 13330
56.17 (a)(2) and (3) removed; new (a)(2) through (5) added 13330
56.36 Revised 13330
56.37 Amended 13331
56.40 (a) revised 13331
56.76 (e)(5) amended 13331
91.37 (a) Tables 1 through 8 and (b) revised; (d) added 16372
91.38 Revised 16374
91.39 (a) revised 16374

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91.40 (a) revised 16375
93.11 Amended 16375
93.12 (b)(1) revised 16375
96.20 Revised 16375
96.21 (a) revised 16375

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

Chapter II Heading revised; nomenclature change; interim 9727
210.9 Regulation at 62 FR 901 confirmed; (b)(20) revised 9104
210.19 Regulation at 62 FR 901 confirmed; (f) revised 9104
226.2 Regulation at 62 FR 901 confirmed; amended 9104
Amended; interim 9727
226.4 Regulation at 62 FR 902 confirmed 9104
(e) and (f) amended; interim 9728
226.6 Regulation at 62 FR 902 confirmed; (f)(9) amended 9104
(c)(3) and (k) introductory text amended; interim 9728
226.7 (h) and (j) amended; interim 9728
226.12 (b) through (e) removed; (a) heading and new (b) added; interim 9728
226.13 Regulation at 62 FR 902 confirmed 9104
(d)(3)(ii) and (iii) amended 9105
226.14 Regulation at 62 FR 903 confirmed 9104
226.15 Regulation at 62 FR 903 confirmed 9104
(e)(3) revised; (f) amended 9105
226.16 (k) added; interim 9729
226.17 (b)(7) amended; interim 9729
226.18 Regulation at 62 FR 903 confirmed 9104
(b)(11) amended 9105
(a) introductory text revised; interim 9729
226.23 Regulation at 62 FR 903 confirmed 9104
(e)(1)(i) and (h)(6) amended; (e)(1)(iv) and (h)(1) revised; (e)(1)(vi) added 9105
(d), (e)(1)(i) and (ii)(F) amended; interim 9729

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301 Clarification 25153
301.45–3 (a) amended; interim 25748
301.50–3 (d) illustration revised 25155
301.64 Regulation at 62 FR 61214 confirmed 12603
301.64–3 Regulation at 62 FR 61214 confirmed 12613
301.78–3 (c) amended; interim 19652
(c) revised; interim 19798, 20054
(c) amended; interim 25750, 27440
301.81–3 (e) amended; interim 4152
301.89–3 (f) amended; interim 1
301.89–14 (f)(2) amended; (d), (e) and (f) redesignated as (f), (g) and (h); new (d), new (e) and (i) added 1329
301.93–3 (c) revised; interim 8836, 16878
319.34 (Subpart) Removed 13484
319.37–1 Amended 13484
319.37–2 (a) table amended 13484
319.40–2 (c) amended 13485
319.56–2t Table amended 13485
319.56–2w Revised 12396
354.2 Table amended 16879

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401.114 Regulation at 62 FR 63633 confirmed 14334
401.120 Regulation at 62 FR 63633 confirmed 14334
405 Heading revised 17053
405.1—405.9 (Subpart) Heading removed 17053
405.7 (d) introductory text revised 17053
454.7 Regulation at 62 FR 63633 confirmed 14334
457 Heading revised 17054
457.104 Regulation at 62 FR 63633 confirmed 14334
457.105 Regulation at 62 FR 63633 confirmed 14334
457.108 Regulation at 62 FR 63633 confirmed 14334
457.109 Regulation at 62 FR 63633 confirmed 14334

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457.113 Regulation at 62 FR 63633 confirmed 14334
457.150 Regulation at 62 FR 63633 confirmed 14334
457.158 Added 17054

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723 Regulation at 62 FR 15600 confirmed 9128
Nomenclature change 11585
723.103 Regulation at 62 FR 15600 confirmed; (d) amended 9128
723.104 Amended 11582
723.209 Regulation at 62 FR 15600 confirmed; heading revised; (c) amended 9128
723.209 Heading and (c) revised; interim 26714
723.210 (d) added 11582
723.213 (c) removed; (d) redesignated as new (c) 11582
723.216 (a) introductory text, (2)(ii)(A) and (iii)(A) revised 11582
723.308 Amended 11582
723.309 Introductory text amended 11582
723.409 Heading, (a), (b), (e)(1), (2) introductory text and (f) revised; (g) removed 11582
723.410 Introductory text revised 11583
723.501—723.504 (Subpart E) Revised 11583
783.8 (c) revised 3791

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.86 (c)(2) Table 14 amended; eff. 6-1-99 20056
810.104 (b) amended; eff. 6-1-99 20056

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

900.600 Revised 10492
900.601 Revised (OMB numbers) 10492
905.306 (a) Table 1 amended; interim 3250
Regulation at 63 FR 3250 confirmed 19382
911.234 (Subpart) Added 15281
912 Removed 10493
913 Removed 10493
915.235 (Subpart) Added 15281
916.115 Revised; interim 16039
916.160 (b) revised; interim 16039
916.350 (a)(4)(i), (ii), (iii), (iv) Table 1, (5), (b) and (d) revised; interim 16039
916.356 (a)(1) introductory text, (iv), (2)(i), (3)(i), (4) introductory text, (i), (5)(i), (6) introductory text, (i), (7)(i), (8)(i), (9)(i) and (c) revised; interim 16039
917.110 Revised; interim 16041
917.150 Revised; interim 16041
917.178 (b) revised; interim 16041
917.442 (a)(4)(i), (ii), (iii), (iv) Table 1, (6), (b) and (d) revised; interim 16041
917.459 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1) introductory text, (iv) Table 1, new (3)(i), new (5) introductory text, new (i), new (6) introductory text, new (i), (b) introductory text, (1), (c) introductory text and (1) revised; new (a)(2) added; interim 16042
925 Nomenclature change 658
Regulation at 63 FR 658 confirmed 16390
925.215 (Subpart) Regulation at 62 FR 68152 confirmed 14602
925.304 (b)(1) introductory text amended; (b)(1)(i) through (vii) removed; (b)(1)(viii) and (ix) redesignated as (b)(1)(ii) and (iii); new (b)(1)(i) added; interim 658
Regulation at 63 FR 658 confirmed 16390
Introductory text, (a) introductory text and (b)(1)(iii) revised; (b)(2) amended; interim 28480
929.16 Removed 10493

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930.59 (b) suspended in part; eff. 1-7-98 through 6-30-98; interim 404
Regulation at 63 FR 404 confirmed....20019
930.100 Regulation at 62 FR 44883 confirmed; (a) revised....20023
930.141 (a) revised; (b) removed 14024
930.159 Added; interim 404
Regulation at 63 FR 404 confirmed; (f) revised....20019
930.162 Added; interim 405
Regulation at 63 FR 405 confirmed....20019
930.200 Revised....14024
930.250 (Subpart) Added; eff. 4-28-98 through 6-30-98....20527
932.230 Revised....20058
944.106 (a) table amended; interim....3250
Regulation at 63 FR 3250 confirmed....19382
944.503 (a)(1) introductory text and (ii) revised; interim 28480
956.202 Revised....29091
959.237 Regulation at 62 FR 67696 confirmed....16392
959.322 Introductory text amended; (f)(5) revised 9130
966.323 (a)(1), (2)(i), (iii) and (d)(3) revised....146
(a)(1) revised....12401
979.219 Amended; interim....4368
Regulation at 63 FR 4368 confirmed....25389
980.212 (b)(1) revised....146
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982 Marketing percentages....3254, 27817
982.340 Regulation at 62 FR 53227 confirmed....9133
982.432 Removed....10493
982.457 Removed....10493
984.347 (Subart) Regulation at 62 FR 58644 confirmed 9135
985 Marketing percentages....8562, 14334, 23371
989 Marketing percentages....11585
989.6 Removed....10493
989.156 Regulation at 62 FR 60768 confirmed....4372
989.211 Removed....10493
993.405 Limitation on handling 20062
997.30 (a) revised; interim 2850
997.40 (c) introductory text, (d) and (e) amended; interim....2851
997.101 Regulation at 62 FR 48751 confirmed....3255
998.100 Heading amended; (g) removed; (h) and (i) redesignated as (g) and (h); interim 2851
998.200 Heading, (a), (h)(1) and (2) revised; (h)(3) added; interim 2851
998.409 Regulation at 62 FR 48751 confirmed....3255
999.600 Regulation at 62 FR 50243 confirmed....12979

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200--1299)

1205.510 (b)(2) and (3)(ii) table revised....27819

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301 Referendum results notice 10111
1301.13 (e) added....10110

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1425 Revised; interim....17312
1496 Authority citation revised 11104
1496.5 (b)(1) and (f) revised....11104
1499.8 (b)(4) and (c)(2) amended; interim 8837

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1700 Added 16085
1700.28 (b) and (c) corrected 18307
1700.30 (b) corrected....18307
1703.102 Amended 3637
1703.103 (a)(3) amended....3637
1703.107 (a)(5) revised....3637
1703.109 (h) introductory text amended....3637

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1703.113 (b) amended; (c) revised 3637
1703.122 (e) introductory text amended 3637
1728 Authority citation revised 11590
1728.97 (b) amended 11591
1730 Added 3450

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1806 Comment period reopened 29091
1910 Comment period reopened 29091
1922 Comment period reopened 29091
1930 Authority citation revised 2135
1930.122 (b)(4)(i)(A)(*1*) amended 2135
1942.5 (b)(1)(ii)(D) removed; (b)(1)(ii)(E) through (L) redesignated as (b)(1)(ii)(D) through (K); (a)(1)(iii), (b)(1) introductory text, new (ii)(G), (c) introductory text, (2) and (3) amended 16089
1944 Comment period reopened 29091
1948 Authority citation revised 6052
1948.101—1948.150 (Subpart C) Removed 6052
1951 Authority citation revised 6052
Comment period reopened 29091
1951.211 Amended 16089
1951.214 Amended 16089
1951.215 (a)(1) revised 16089
1951.852 (b) amended 6052
1951.853 (a) amended; (b)(2)(ix) revised 6053
1951.883 (a)(2) revised 6053
1951.901 Amended 6628
1951.909 (e)(2)(vii), (viii) introductory text, (A), (h)(3)(viii) and (j) revised; (k), (l) and (m) removed 6628
1951.914 Revised 6629
1951.950 OMB number 6629
1951 Exhibit D removed 6629
1955 Comment period reopened 29091
1956 Comment period reopened 29091
1962.1—1962.50 (Subpart A) Removed 29342
1962.30 Revised 20297
1962.47 Revised 29341
1965 Comment period reopened 29091
1965.12 Revised 20297
1980.108 (a)(1)(iii) and (d) revised; (a)(1)(v) and (vi) added 20298
1980.175 (h)(3) added 20299
2003.10 (c) table corrected 3255

Chapter XXX—Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

3017.105 Amended 27667

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

3550 Comment period reopened 29091

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Part 4200—4299)

4274 Added 6053

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220 ..... 24686, 25569, 27162
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274 27511
278 ..... 24985, 26250
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TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

1.1 (q) revised; interim 19383
3 Authority citation revised 27448
3.1 (b)(12) added; interim 27829
3.6 (a) amended 27448
3.19 (h) and (i) added 27448
103.1 Regulation at 58 FR 69210 confirmed 1334
(f)(3)(iii)(MM) amended; (f)(3)(iii)(NN) removed; interim 12984
103.2 (a)(1), (7), (b)(9), (10) heading, (i), (13), (14) and (e) revised; interim 12984
103.7 Regulation at 58 FR 69210 confirmed 1334
(b)(1) amended; interim 12986
204 Authority citation revised 12986
204.3 (c)(1)(iii) amended; (c)(1)(iv) and (vi) removed; (c)(1)(v) redesignated as (c)(1)(iv); (c)(3) added; interim 12986
204.4 (f)(1)(iv) removed; (d)(1) amended; interim 12986
207.7 Redesignated as 207.8; new 207.7 added 3795
207.8 Redesignated as 207.9; new 207.8 redesignated from 207.7 3795
207.9 Redesignated from 207.8 3795
208.7 (a)(2) revised; interim 12986
208.9 (b), (c), (d) and (f) revised 3796
208.10 Revised; interim 12986
208.14 (b)(2) revised; interim 12986
209.1 (b) amended; interim 12986
209.2 (c) amended; interim 12986
212.1 Regulation at 58 FR 69210 confirmed 1334
213a Clarification 27193
214.2 Regulation at 58 FR 69210 confirmed; (e)(22) revised 1334
214.6 (b) revised 1335
235.1 Regulation at 58 FR 69217 confirmed 1334

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236 Authority citation amended 27449
236.1 (c)(2) through (5) redesignated as (c)(8) through (11); (c)(1), new (11) and (d)(4) revised; new (c)(2) through (7) added 27449
240 Authority citation revised 27829
240.1 (a) amended; interim 27829
240.11 (a)(1) amended; interim 27829
240.31 Amended; interim 27829
240.41 (a) amended; interim 27829
244.6 Revised; interim 12987
245 Authority citation revised 27829
245.7 (a) revised; interim 12987
245.13 Added; interim 27829
264.2 (c)(1)(iii) and (2)(iii) removed; (c)(3) amended; (d) through (h) redesignated as (e) through (i); new (d) added; interim 12987
264.5 (e)(1)(iv) removed; (e)(3)(i) and (ii) redesignated as (e)(3)(ii) and (iii); new (e)(3)(i) added; new (e)(3)(iii) amended; interim 12987
Corrected 17489
273 Added 23655
274a.12 Regulation at 58 FR 69217 confirmed 1334
(c)(9) amended; interim 27833
274a.13 (d) amended; interim 27833
299.1 Table amended 3797
Table amended; interim 12987, 27834
299.5 Table amended 3797
Table amended; interim 12987, 27834
316.4 (a)(2) amended; (a)(3) removed; (a)(4) and (b) redesignated as (a)(3) and (c); new (b) added; interim 12987
332.2 Amended; interim 12987
335.2 (b) through (e) redesignated as (c) through (f); interim 12987
(b) added; interim 12988

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TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1 Policy statement 3017
2 Policy statement 3017
2.131 (d) added 10498
3 Policy statement 3017
3 Authority citation revised 10498
3.2 (a) amended 10498
3.3 (a) amended 10498
3.5 (a) amended 10498
3.6 (a)(2)(x) and (xi) amended; (a)(2)(xii) added 3023
3.11 (a) amended 3023
3.14 (a)(9) amended 3023
3.15 (d) amended 10498
(e) amended 10499
3.18 (d) amended 10499
3.19 (a)(1) and (3) amended 10499
3.100—3.118 (Subpart E) Authority citation removed 2
3.100 (a) Footnote 1 redesignated as Footnote 6 2
3.102 (c) Footnote 5 redesignated as Footnote 7 2
3.104 (b)(1)(i) Footnote 2 redesignated as Footnote 8 2
3.125—3.142 (Subpart F) Authority citation removed 2
3.136—3.142 Authority citation removed 2
51.1 Amended; interim 15284
51.3 (a) revised; interim 15284
77.1 Amended; interim 8840
78.4 Regulation at 62 FR 53532 confirmed 3638
78.41 (a) and (b) amended; interim 14336, 19170, 19653
85.1 Amended 17316
85.6 (c)(2)(iii), (iv) and (v) amended 17316
92 Technical correction 1889
93 Technical correction 1889
Effective date confirmation 15285
93.301 (h)(6) and (7) amended 6064
93.308 (a)(1) amended 3640
93.324 Amended 3640
93.326 Amended 3640
94 Technical correction 1889
94.9 Regulation at 62 FR 43925 confirmed 12604

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94.10 Regulation at 62 FR 43925 confirmed 12604
94.18 Heading, (a) and (b) revised; interim 408
(a)(2), (3) and (b) corrected 4347
95 Technical correction 1889
96 Technical correction 1889
96.2 Heading and (b) revised; interim 408
97 Technical correction 1889
97.2 Table amended 16882, 29343
98 Technical correction 1889
130 Technical correction 1889
130.20 Regulation at 62 FR 61007 confirmed 18117
130.49 Regulation at 62 FR 61007 confirmed 18117
145.14 (a)(1), (b)(1) and (3) amended 3
145.23 (b)(2)(iii), (c)(1)(ii)(C), (e)(1) introductory text, (ii)(B), (3), (f)(3), (f)(5) and (g)(3) amended 3
145.33 (b)(2)(iii), (c)(1)(ii)(C), (d)(1)(vi), (e)(1) introductory text, (ii)(B), (3), (f)(3), (g)(3) and (i)(1)(v) amended 3
145.43 (b)(2)(iii), (d)(2) and (e)(2) amended 3
145.53 (b)(2)(iii) amended 3
147.5 (b) amended 3
147.6 Introductory text amended 3
147.7 Footnote 5, (b)(1)(vii), (d)(2) introductory text and (viii) amended 3
147.8 Introductory text amended 3
147.11 (b)(1), (4), (5) and (7) amended 3
147.12 (a)(3) Footnote 11 and (b)(3)(ii)(a) Footnote 12 amended 3
147.22 (c) amended 3
147.24 (b)(3) and (c) amended 3

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—599)

310.25 Regulation at 62 FR 61009 withdrawn 1735
317.363 (b)(3) introductory text and (i) amended; interim 7281
319.104 (d) amended 148
381.118 (f) added 11360
381.463 (b)(3) introductory text and (i) amended; interim 7281
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TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

1.3 (c) amended 15740
1.25 (h) removed; (i) through (l) redesignated as (h) through (k) 15741
1.30 Undesignated center heading and section added 15741
1.31 Redesignated as 1.32; undesignated center heading and new 1.31 added 15741
1.32 Redesignated as 1.33; new 1.32 redesignated from 1.31; (b) revised; (d) removed 15741
1.33 Redesignated as 1.34; new 1.33 redesignated from 1.32; revised 15741
1.34 Removed; new 1.34 redesignated from 1.33 and revised 15741

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1.38 Removed 15741
1.39 Heading and introductory text revised 15742
2.802 (b) introductory text, (e) and (g) revised 15742
2.1007 (a)(2) revised 15742
4.4 (i) revised 15742
4.5 Revised 15742
7.22 (a) and (b) revised 15742
9.8 (b) revised 2876
9.11—9.45 (Subpart A) Revised 2876
9.21 (b), (c) introductory text and (f) corrected 12988
9.45 Heading and (b) corrected 12988
9.53 (a) and (b) amended 15743
9.54 (b) amended 15743
9.60 (a) amended 15743
9.65 (a) introductory text and (b) amended 15743
9.66 (a)(1) introductory text, (2), (3) and (c)(2) amended; (b) revised 15743
9.69 (a) amended 15743
9.85 Amended 15743
11.15 (e)(1) revised 25156
15.3 Revised 15743
15.35 (c) introductory text revised 15743
16.1 (e) revised 15743
25 Appendix A revised 25157
30 Technical correction 13773
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32.1 (b) revised 1896
40 Technical correction 13773
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50.1 Revised 1897
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50.68 Removed 9403
52 Authority citation revised 1897
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52.1 Revised 1897
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60.21 (b)(3), (4) and (c)(10) revised 26961
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72.2 (f) revised 1900
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72.24 (o) revised 26961
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73.1 (b)(6) revised 26962
73.50 Introductory text revised 26962
73.51 Added 26962
73.71 (b)(1) and (c) revised 26963
74.51 (a) introductory text revised 26963
75.4 (k)(5) revised 26963
76 Authority citation revised 15743
76.7 (e)(3) revised 15744
110 Technical correction 13773
110.1 (a) revised 1900
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110.131 (a) revised 15744
150 Technical correction 13773
150.2 Revised 1901

Chapter II—Department of Energy (Parts 200—699)

430.2 Amended 13315
430.21—430.27 (Subpart B) Regulation at 62 FR 53510 confirmed 9390
430.22 (b)(6) added 13316
430.23 Heading revised; (s) through (v) added 13316
430.24 (s) through (v) amended 13316
430.27 (a)(1), (b)(1)(iii) and (l) amended 13316
430.21—430.27 (Subpart B) Appendix S added 13316
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430.31—430.33 (Subpart C) Heading revised 13317
430.31 Revised 13317
430.32 Heading and introductory text revised; (o) through (r) added 13317
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430.47 (a)(1) amended 13319
430.49 (a) amended 13319
430.50 (a) and (b) amended 13319
430.60 Revised 13319
430.61 (a)(4) amended 13319
430.62 Revised; eff. in part 3-18-99 13319
430.63 (a) amended 13321
430.70 (a)(1) introductory text (3) and (6)(i) revised 13321
430.73 Introductory text amended 13321
430.60—430.75 (Subpart F) Appendixes A and B revised 13321
600.27 (b)(2)(i)(A) revised; (b)(2)(i)(B) amended; (b)(2)(i)(C) removed; (b)(2)(i)(D) redesignated as (b)(2)(i)(C) 10503

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32.3 (c)(4)(ii)(B) and (6)(ii)(B) amended 15746
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204.3 (c) revised 15071
205.4 (c) added; interim 14532
207 Removed 2820
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208.26 Revised 16380
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220.1 Revised 2820
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303.2 (a) introductory text amended 17074
303.5 (d) removed 17074
303.6 (f)(1)(ii)(A) and (C) revised 17074
303.7 (a) heading, (1)(i), (ii)(A), (iii)(D) and (b)(4)(ii) revised; (f)(2)(i) amended; (f)(2)(ii) removed 17074
303.8 (f) removed 17074
309.1 Revised 16404
309.2 (e) revised 16404
309.4 Revised 16404
309.5 Revised 16404
309.6 Amended 16408
325.103 (c) revised 17074
326.1 (c) amended 17075
326.8 (a) and Footnote 3 revised 17075
327 Authority citation revised 17075
327.1 (b)(2) revised 17075
327.4 (a)(1)(i)(B)(*1*), (*2*), (ii)(B)(*1*) and (*2*) revised 17075
329.3 Added 8342
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351 Removed 17090
357 Authority citation revised 10295
357.1 (b) revised 10295
362.4 (c)(3)(i)(A) revised 17090

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560.210 (b)(2) introductory text, (viii) and (ix) revised; (b)(2)(x) removed; (b)(2)(xi), (xii) and (xiii) redesignated as (b)(2)(x), (xi) and (xii); interim 1053
563.171 Revised 16381
575.2 (h) and (o) revised; (q) added 11365
575.6 (c) through (i) redesignated as (d) through (j); new (c) added 11365
575.10 (a)(2) introductory text, (3), (4) and (b)(1) amended; (a)(6)(i)(B) revised 11365
575.11 (b)(1) introductory text (2), (c) introductory text, (1), (3) and (e) revised; (b)(1)(ii) redesignated as (b)(1)(iii); new (b)(1)(ii) added 11365
575.12 (a)(2), (b)(1)(ii), (iii) and (2) revised 11366
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614.4120 Revised (effective date pending) 5724
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614.4125 Added (effective date pending) 5724
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614.4160 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4280 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4270—614.4320 (Subpart G) Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4321 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4335 Regulation at 62 FR 63646 eff. 3–4–98 10515
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615.5450 Regulation at 62 FR 53229 eff. 1–27–98 5223

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615.5451 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5452 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5454 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5455 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5457 Regulation at 62 FR 53230 eff. 1-27-98 5223
615.5460 Regulation at 62 FR 53230 eff. 1-27-98 5223
627 Heading and authority citation revised (effective date pending) 5724
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627.2700 Revised (effective date pending) 5724
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627.2720 (a) removed; (b) through (f) redesignated as (a) through (e); new (b) revised (effective date pending) 5724
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627.2730 (b) removed; (c) redesignated as (b); new (b) revised (effective date pending) 5724
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627.2795—627.2797 (Subpart D) Added (effective date pending) 5725
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701.1 Revised 4373
701.19 (a) amended; interim 14026
701.26 (a) designation and (b) removed 10756
701.27 Removed 10756
701.36 (a)(4)(iv) amended 10756
703.50 Regulation at 62 FR 64147 confirmed 24104
703.60 Regulation at 62 FR 64147 confirmed 24104
703.80 Regulation at 62 FR 64147 confirmed 24104
703.100 Regulation at 62 FR 64148 confirmed 24104
703.150 Regulation at 62 FR 64148 confirmed 24104
703.30 (g) removed; (h) through (l) redesignated as (g) through (k) 24104
703.50 (b)(2) revised 24105
703.100 (e) revised 24105
703.130 Revised 24105
704.5 (c)(6) revised 24105
704.11 (e) amended 10756
704 Appendix B amended 24105
708a Heading and authority citation revised 10517
708a Appendix A amended 10517
708b.301 (a)(1) and (b)(1) amended 10519
708b.302 (a)(1), (2), (b)(1) and (2) amended 10519
712 Added 10756
724 Authority citation revised 14026
724.1 Amended; heading revised; interim 14026
791.5 (a)(2) revised 5859
791.6 (a) amended 5859
792 Authority citation revised 14338
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900 Authority citation revised 3455
900.1—900.5 (Subpart A) Appendix A amended 3455
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932.11 (b) revised 3455
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933.1 (cc) revised 3455
960.1 Amended; interim 27672
960.4 (d) revised; interim 27672
960.5 (b)(9), (10)(i)(C) and (ii) revised; interim 27672
960.6 (b)(4)(ii) and (iii) amended; (b)(4)(iv)(A), (C)(*2*), (D), (F)(*8*) and (*10*) revised; interim 27673
960.7 (a) revised; interim 27673

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960.9 Introductory text revised; interim 27673
960.12 (e) revised; interim 27673
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107.120 Revised 5865
107.150 (a)(1) introductory text revised 5866
107.210 Revised 5866
107.220 Removed 5866
107.230 (d)(4) introductory text revised 5866
107.503 (a), (b) and (e) revised; (c) amended 5866
107.660 (d) redesignated as (e); new (d) added 5866
107.710 (b) and (c) revised; (e) amended 5866
107.720 (b)(2) and (c)(1) introductory text revised; (b)(3) added 5867
107.730 (d)(3)(iv) revised 5867
107.740 (a) revised 5867
107.855 (c)(1), (4)(i) and (d)(4) revised; (g)(1) through (10) redesignated as (g)(2) through (11); new (g)(1) added 5867
107.865 (c)(2) amended; (d)(1) revised 5867
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107.1110 Removed 5868
107.1120 (c) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) added 5868
107.1130 Heading, (a), (b) and (c) revised; (d) added 5868
107.1160 Introductory text added 5868
107.1200 (c) and (d) revised 5868
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107.1240 (a)(1), (b), (c) and (d) revised 5868
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107.1350 Redesignated as 107.1585 5869
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107.1420 Revised 5869
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107.1500 (b)(1), (4) and (f)(2) revised; (e) amended 5869
107.1505 (a) introductory text amended; (a)(1), (2) and (3) added; (b) revised 5869
107.1510 Introductory text and (d)(1)(ii) revised; (c) amended 5870
107.1520 Revised 5870
107.1530 (c), (e)(2) and (h) revised; (e)(3) and (4) removed 5871
107.1540 Introductory text amended 5871
107.1550 Introductory text amended; (a)(1), (b) and (c)(3) revised 5871
107.1560 Introductory text and (e) table amended; (a)(1), (4) and (b) revised 5872
107.1570 Introductory text amended; (b)(1) heading, (i) and (ii) revised 5872
107.1575 Added 5872
107.1580 (a) heading and introductory text revised 5872
107.1585 Redesignated from 107.1350 and revised 5869
107.1590 (a)(1) revised; (c) removed; (d) redesignated as (c) 5873
107.1600 (a) amended; (b) revised 5873
107.1720 Added 5873
107.1820 (e)(9) revised 5873
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115 Authority citation revised 12605
115.61 Amended 12605
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25.105 (c)(1) revised 8318
25.107 (a)(2) revised 8318
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25.109 (b), (c), (d) redesignated as (e), (g) and (h); (a) and new (e) introductory text revised; new (b), new (c), new (d), (f) and (i) added; new (h) amended 8318
25.111 (a) amended 8848
25.113 (b) redesignated as (c); (a) introductory text, (1) and new (c) revised; new (b) added 8320
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25.735 (f) introductory text and (2) revised; (h) added 8320
25.807 (f)(4) and (j) added 8848
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25.832 (a) introductory text and (2) amended 8848
25.855 (c) revised 8048

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25.857 (c)(2) revised; (d) removed 8048
25.858 Heading and introductory text revised 8048
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61.56 (c) introductory text revised; (g) and (h) redesignated as (h) and (i); new (g) added 20287
61.63 (d)(5), (f)(10) and (g)(10) revised 20287
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123 Authority citation amended 16416
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143.21 (a), (b), (c), (f) and (g) amended 16417
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354.5 (a), (b), (c), (d)(1), (2) and (7) revised; (d)(8) removed; (d)(9) redesignated as (d)(8) 24404
354.6 Revised 24404
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10.50 (c)(10) removed 26697
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25.31 (f) amended 26697
50 Authority citation revised 26697
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58 Authority citation revised 26698
71 Authority citation revised 26698
74.3602 (b)(2)(v) added 20098
101 Technical correction 17327
101.13 (g) introductory text and (h) introductory text removed; (g)(1), (2) and (3) redesignated as (h)(4)(i), (ii) and (iii); (h)(1) and new (4)(i), (ii) and (iii) revised; (j)(2)(ii), (p)(2), (q)(2), (3)(ii), (5)(i) and (6) amended 26980

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101.14 (e)(3) amended 26980
101.54 (d)(2) revised 26980
101.62 (d)(1)(ii)(D), (2)(iii)(C), (iv)(C), (4)(ii)(C) and (5)(ii)(C) amended 26980
101.69 (c), (d), (l), (m)(4), (n)(3), (4), (o)(3) and (4) amended; (m)(3) revised; (m)(4)(iii) and (5) added 26719
101.70 (j)(2) and (4)(ii) revised; (j)(3)(iii) added 26719
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178.2010 (b) table amended ... 27836, 29136
184.1420 Added 24419
184.1702 Added 28895
200 Authority citation revised 26698
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201.100 (c)(2) amended 26698
201.307 Added 27843
207 Authority citation revised 26698
207.25 (b)(2), (4), (5) and (6) amended 26698
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312 Authority citation revised 26698
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510.600 (c)(1) table and (2) table amended 24106, 25164, 26981, 27844, 27845
520.580 (b)(1) amended 26981
520.1445 (a) and (c) heading revised; (d) added 29352
520.1484 (b) revised; (c)(3) amended 17329
522.955 (d)(1)(iii) amended 26981
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522.2005 (b) amended 24420
522.2120 Amended 24107
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524.2101 (c) amended 26981
529.469 Added 25164
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558.58 (d)(1)(iii) table amended 27845
558.78 (d)(3) revised 19185
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558.95 (d)(4)(iv) added 18836
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558.120 (d)(1)(iii)(*b*) amended 27845
558.128 (a)(1) and (d)(1) table amended 27845
558.145 (a)(1) and (2) amended 27845
558.175 (d)(1)(iii)(*b*) and (iv)(*b*) amended 17948, 27845
558.195 (d) table amended 17948, 27845
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558.311 (e)(1)(ii) table amended 17948
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558.340 (a) amended 27845
558.342 (d)(3)(ii) and (6)(ii) amended 27845
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558.515 (d)(1)(iv)(*b*) amended 17948
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558.550 (a)(1), (d)(1)(vii)(*c*), (ix)(*c*), (xv)(*c*) and (xvi)(*c*) amended 27846
558.575 (a)(1) and (2) amended 27846
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558.600 (c)(4)(ii) amended 27846
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801 Interpretation 24934
803.1 (a) revised 26074
803.3 (c) introductory text amended; (m) through (ee) redesignated as (n) through (ff); (c)(1), new (p) introductory text, (1) and (r)(2) revised; (g) and new (m) added 26074
803.9 (c)(2) amended; (c)(3) removed; (c)(4) redesignated as (c)(3) 26075
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803.33 Heading revised; (a) introductory text, (2), (5), (7) introductory text, (vi) and (c) amended 26076
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804 Heading revised 26077
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804.3 (d) revised; (m)(1) and (2) amended 26077
804.25 (a)(1) and (2) amended; (c) removed 26077
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812 Authority citation revised 26699
814.39 (a) introductory text and (4) revised; (f) added 20533
814.100 (a)(2) and (d) revised; (e) added 19188
814.104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b)(5) and new (d) revised; new (c) amended 19189
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41.32 Revised 16893
41.33 Revised 16894
41.107 (c) redesignated as (c)(1); (c)(2) added; interim 24108
41.122 (a)(4) and (h)(9) added 16895
50 Authority citation revised 20315
50.40 (a) amended 20315
93 Authority citation revised 16687
93.1 (a), (b), (c) and (e) amended 16687
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5.214 Amended 23853
5.403 (a) revised; (b) amended 23853
5.520 (c)(1)(ii) and (2)(i) revised 23853
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206.45 (e) revised; interim 17656

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598 Added; interim 19155

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882.102 Revised 23853
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882.118 Removed 23854
882.112 Redesignated as 882.414 23854
882.201—882.219 (Subpart B) Removed 23854
882.217 Redesignated as 882.517 23854
882.301—882.335 (Subpart C) Removed 23854
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882.406 Redesignated as 882.810 23857
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882.411 (c) amended 23855
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882.414 Redesignated from 882.112 23854
882.501 Removed 23855
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882.505 Removed 23855
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882.508 Removed 23855
882.511 Heading revised; (a) through (e) redesignated as (b) through (f); new (a) added 23855
882.514 (a)(1), (d)(1) introductory text, (iv) and (v) amended; (d)(2)(vi) redesignated as (d)(1)(vi); (e) revised 23855
882.515 (b) amended; (c) redesignated as (d); new (c) added 23855
882.517 Redesignated from 882.217 23854
882.601—882.606 (Subpart F) Removed 23854
882.701—882.759 (Subpart G) Removed 23854
882.802 Amended 23855
882.803 (b) revised 23855
882.805 (d)(1)(i)(B) amended; (c) revised 23855
882.806 Heading, (a)(3) and (4) revised; (a)(2) amended; (a)(2) undesignated text designated as (a)(2)(ii); (a)(2)(i) added 23856
882.807 (a) and (d) revised 23856
882.808 (d), (i)(1), (3) and (o) amended; (b)(4), (c) and (i)(2) revised 23857
882.810 Removed; new 882.810 redesignated from 882.406; new (g)(1)(iii)(C) amended 23857

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982 Authority citation revised 23857
982.4 Revised 23857
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982.54 (d)(7) revised; (d)(15) through (19) redesignated as (d)(18) through (22); new (d)(15), (16) and (17) added 23859
982.102 (d) removed 23895
982.152 (a)(3) added; (c)(1) revised 23859
982.153 (a) designation and (b) removed 23860
982.158 (f)(6) amended; (f)(7) redesignated as (f)(8); new (f)(7) added 23860
982.204 (c) revised 23860
982.205 Heading and (c) revised 23860
982.206 (b)(1) amended; (a)(2) revised 23860
982.207 (c) redesignated as (d); new (c) added 23860
982.302 (a) revised 23860
982.303 (b)(1) amended; (b)(2) revised 23860
982.306 (d) and (e) redesignated as (e) and (f); new (d) added 27437
982.316 Added 23860
982.352 (c)(7) revised; (c)(8) amended; (c)(9) redesignated

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983.7 (b) introductory text and (7) revised; (b)(5) amended; (d) and (f) removed; (b)(8) and (c) added; (c) and (g) redesignated as (d) and (f)....23870
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TITLE 26--INTERNAL REVENUE

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1 Authority citation amended....16898
1.417(e)–1 (d) revised....16898
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1.985-1 Corrected....15760
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9.93 (c)(11), (17) and (18) revised; (c)(19) added.....16904

9.159 Added 16904

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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.64–2 Amended 20534
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0.100—0.104 (Subart R) Appendix amended 38029, 52492, 52493
2.37 (c) added 25772
2.44 (c) revised 25771
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added 51602
2.62 (a)(6) and (h)(5) amended 40270
2.67 Added 25770
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
50.22 Regulation at 61 FR 49260 confirmed 61629
51.55 (b)(1) designation and (2) removed; new (b) amended 24109
58 Authority citation revised 51750
58.6 Added 51750
60.3 (a)(8) revised 11120
61 Appendix A amended; interim 11121
66.26 (a), (b) introductory text and (1) revised 45939, 45942
70.26 (a), (b) and (c) revised; (d) added 45939, 45942

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

511.10–511.16 (Subpart B) Heading revised; eff. 4–9–98 11818
511.12 (d) revised; eff. 4–9–98 11818
523 Authority citation revised 50787
523.20 (Subpart C) Added; interim 50787
524 Authority citation revised 53690
524.31 (a)(3) revised; interim 53691
524.41 (e) revised 7604
540 Authority citation revised 65185
540.14 (b) and (c) revised 65186
540.18 (c) and (d) revised 65185
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended 50788
541.14 (a) amended 50791
541.63 (a) amended 5218
541.65 (c) revised 5218
541.67 (e) revised 5218
544.42 (d) revised 39916
544.70—544.75 (Subpart H) Revised; interim 50793
548.12 Revised 44836
548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292
550.58 Introductory text, (a) heading and (c)(3) revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added; interim 53691
551.10 Amended 5218
571.50 Revised 4357
571.51 (b) revised 4357
571.52 Revised 4357
571.53 Removed; new 571.53 redesignated from 571.54 and revised 4357
571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
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571.56 Removed 4357

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24 Revised 6621
95.26 (a), (b) and (c) revised 45939, 45942
97.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter I—National Labor Relations Board (Parts 100—199)

101.39 (a) correctly designated 52381
102.119 (Subpart L) Revised 58907
102.156—102.167 (Subpart U) Revised 55164
102.168—102.176 (Subpart V) Revised 55166

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

520 Revised 64959
521 Removed 64958
522 Removed 64958
523 Removed 64958
527 Removed 64958

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), , (g)(1), (h)(1), (i)(1), (j)(1), (2), (k)(1), (l)(1), (m)(1) and (n)(1) revised; (o) and (p) added 52945
697.3 Revised 52946

Chapter X—National Mediation Board (Parts 1200—1299)

1200 Removed 6645

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added 48949
1470.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.101 Regulation at 61 FR 7067 confirmed 36447
1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed 36447
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed 36447
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed 36447
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed 36447
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed 36447
1610 Authority citation revised 1341
1610.4 (a) and (c) amended; interim 1341
1610.5 (c) amended; interim 1341
1610.8 Revised; interim 1341
1610.9 Heading revised; (a) introductory text and (b) revised; (c) added; interim 1341
1610.10 (a) introductory text amended; (b) introductory text revised; (c) redesignated as (c); new (c) added; interim 1342
1610.11 (a), (b) and (f) amended; (c) revised; interim 1342
1610.14 (a) amended; interim 1342
1610.15 (f) amended; interim 1342
1610.18 (a) amended; interim 1342
1610.21 Revised; interim 1342
1610.34 (a) amended; interim 1342
1614.204 (d)(1) corrected; CFR correction 63847
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed 36447

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Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.30 Added (OMB numbers) **44552**
1910.8 (b) table amended **42666, 65203**
(b) table corrected **43581**
(b) table amended (OMB numbers) 13340, 17093
1910.11—1910.19 (Subpart B) Authority citation revised **40195**
1910.16 (a), (b) and (c)(4) revised **40195**
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6), (c)(6)(iii)(*a*) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
(i)(1)(ii), (4)(ii), (n)(3) and Appendix A corrected 20098
Appendixes A, C and D corrected 20099
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.155—1910.165 (Subpart L) Authority citation revised 1284
1910.156 (f)(1)(i) and (v) revised 1284
1910.251—1910.255 (Subpart Q) Authority citation revised 1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised 1284
1910.261—1910.272 (Subpart R) Authority citation revised 1285
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised 1285
1910.1000—1910.1450 (Subpart Z) Authority citation amended **42666**
Authority citation amended 1285
1910.1000 Table Z–1 and Z–3 corrected **42018**
1910.1001 (g) revised; Appendix C removed 1285
1910.1003 (c)(4)(iv) and (d)(1) revised 1286
(c)(4)(iv) corrected 20099
1910.1017 (g) revised 1286
1910.1018 (h) revised 1286
1910.1025 (f) revised; Appendix B amended; Appendix D removed 1287
(f)(1)(i) correctly revised 20099
1910.1027 (g) revised; Appendix C removed 1288
1910.1028 (g) revised; Appendix E removed 1289
(g)(2)(i) corrected 20099
1910.1029 (g) revised 1290
1910.1043 (f) revised 1290
1910.1044 (h) revised 1291
1910.1045 (h) revised; Appendix A amended 1291
(h)(2)(i) corrected 20099
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended 1292
1910.1048 (g) revised; Appendix E removed 1292
(g)(2)(i) corrected 20099
1910.1050 (h) revised; Appendix A amended 1293
Corrected 20099
1910.1051 (h) revised; Appendix E removed 1294
1910.1052 (n)(2)(i)(C) revised **42667**
(n)(2)(iii)(C) revised **48176**
(n)(2)(i)(B) and (iii)(C) revised **54383**
(o) note added **66277**
(g) revised 1295
(g)(1)(i) correctly revised; (g)(2)(i) corrected 20099
1915.8 Table amended (OMB numbers) 13340
1917 Authority citation revised **40195**
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added **40196**
1917.2 Amended **40196**
1917.3 Added **40196**
1917.11 (d) added **40196**
1917.13 (g) revised; (h) and (i) added **40197**
1917.17 (i), (j) and (k) revised **40197**
1917.20 Revised **40197**
1917.23 Heading, (b)(1) and (d) introductory text revised **40197**

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1917.24 (a) revised 40197
1917.25 (a) and (c) revised; (g) added 40197
1917.26 (c) and (d) revised 40197
1917.27 (a)(2) revised; note added 40197
1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)(iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
1917.123 Footnote 7 redesignated as footnote 9 40201
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
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1926 Meeting and signing ceremony 37134
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1926.5 Table amended (OMB numbers) 3814, 13340, 17094
1926.50—1926.66 (Subpart D) Authority citation revised 1295
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296
1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
1926.103 Revised 1297
1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298
1926.1101 (h) revised; Appendix C removed 1298
(h)(3)(iv) revised 20099
1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
1952.367 (b) added 49911

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2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
2200.67 Amended 35963
2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.203 (a) correctly removed; CFR correction 58650

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(a) added 61012
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204 Nomenclature change 59569
2204.105 (f) added 59569
2204.107 (b) amended 35964
2204.301 Revised 35964

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2510.3–102 (b) revised 62936
2520.102–3 OMB number 36205
2520.104b–1 OMB number 36205
2520.104b–3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c–3 (Subpart E) Added 40699
2590 Authority citation revised 66953
Clarification 67688, 67689
2590.701–3 OMB number 35905
2590.701–4 OMB number 35905
2590.701–5 OMB number 35905
2590.701–6 OMB number 35905
2590.712 Revised; interim 66957

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
2702.7 (b) revised 55336

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
4011.3 (c) amended 36994
4011 Appendix B amended 65608
4022.1 Amended 67728
4022.24 (e) amended 67728
4022.26 (a) amended 67729
4022.61 (a) amended 60428
4022.81 Revised 29354
4022.82 Revised 29354
4022.83 Amended 29355
4041 Revised 60428
4041.42 (d)(2) amended 29355
4043.3 (e) amended 36994
4044.13 (a) amended 67729
4044 Appendix B amended 37718, 43640, 48176, 53539, 61012, 65609
Appendix D amended 65611
Appendix B amended 2308, 7286, 12411, 18318, 26982
4050 Revised 60440
4050.2 Amended 29355
4071 Added 36994
4231 Revised 24421
4302 (Subchapter K) Added 36995
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TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

47.10 Revised **60985**
47.50 Revised **60985**
56.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
57.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
75.204 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
75.1906 (g) correctly revised 12647
100 Technical correction 26719
100.3 (a) introductory text and (g) revised 20035
100.4 (a) revised 20035
100.5 Introductory text through (h) and undesignated text redesignated as (a) introductory text through (8) and (b); new (c) and new (d) added 20035

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202.152 (a)(1) revised 26367
Regulation at 63 FR 26367 eff. date corrected to 6–29–98 27677
Regulation at 63 FR 27677 eff. date corrected to 6–29–98 28453
203 Workshop 17330
203.0—203.4 (Subpart A) Revised 2615
Heading correctly revised 24747
203.50—203.91 (Subpart B) Revised 2618
203.61 OMB number pending 2619
203.74 (b)(2) and (c) corrected 24747
206.152 (b)(1)(i) amended; (b)(1)(iv) added 65761
(i) revised 65762
Corrected 3618
206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65762
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65762
206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
(b)(1)(i) corrected 3618
206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65763
210 Comment period extension 52016
210.55 Revised; interim 42066
216.54 Revised 26367
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Regulation at 63 FR 27677 eff. date corrected to 6–29–98 28453
218 Comment period extension 52016
218.52 Revised; interim 42066
227 Added 43084
228 Authority citation revised 43091
228.3 Added 43091
229 Authority citation revised 43091
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250.112 (c)(1) and (e)(2) amended 29484
250.113 (b)(2) and (3) amended 29484
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250.118 (b)(2) amended 29484
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870.5 Amended 60142
870.17 Removed 10309
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870.19 Added 60143
870.20 Added 60146
901 Technical correction 4529
901.15 Table amended 66821
901.16 Removed 66822
902.15 Regulation at 62 FR 15116 eff. date corrected to 4–7–97 35342
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913.15 Table amended 54769
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913.16 (o) removed 54769
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925.15 Table amended 41844
934.15 Table amended 44900
935.15 Table amended 53234
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938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added 60177
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1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added.....58908
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203 Revised 5650
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285.1 Added; interim 36210
285.7 Added; interim 23357
285.11 Added 25139
285.12 (Subpart B) Added; interim 16356
343 Revised 49914
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised 46445
344.3 (b)(3)(iii) revised 46446
356.12 (c)(1)(i) revised 43093
(b)(2) revised 4187
356.13 (a) revised 43093
356 Appendix B and Exhibit A amended 43094
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357.22 (b) through (e) redesignated as (c) through (f); new (b) added 46861
357 Appendix B amended 43284
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500 Authority citation revised 45101
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500.101 (a) amended 45101
500.201 (e) added 45101
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500.508 (f) removed; note added 45101
500.601 (Subpart F) Revised 45101
500.602 Added 64721
500.701—500.718 (Subpart G) Revised 10324
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500.801 Revised 45101
500.802 Removed; new 500.802 redesignated from 500.807 45101
500.803 Removed; new 500.803 redesignated from 500.808 45101
500.804 Removed 45101
500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
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501 Added 45101
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505 Authority citation revised 45106
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515 Authority citation revised 45106
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515.306 Note amended 45106
515.508 (f) removed; note added 45106
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515.566 (a)(2) amended 27349
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535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
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536.201 Existing text designated as (a); (b) added **45107**
536.312 Note added **45107**
536.503 (a) revised; note added **45107**
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537 Added 27847
550 Authority citation revised **45108**
550.101 (a) amended **45108**
550.209 (c) added **45108**
550.304 Note amended **45108**
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550.601 (Subpart F) Revised **45108**
550.701 (a) introductory text amended **45108**
550.801 Revised **45108**
550.802 Removed; new 550.802 redesignated from 550.805 ..... **45108**
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575.503 (h) removed; note added **45109**
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575.701 (a) introductory text amended **45109**
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595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732

Proposed Rules:

1 42443
27 42220
103 ..... 36475, 38511, 40778, 40779, 45365, 47156, 63298 27230
208 ..... 48714, 51618, 55773 26561
210 ..... 5426, 6001
212 46428
285 ..... 62458 20006
317 23695
351 23695
353 23695
356 64528
370 23695
900—999 (Chapter IX) 68476

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added 40734
Subchapter B Heading revised 12160
21 Added 12160
22 Added 12164
23 Removed 12188
28.500 Revised 12188
32 Added 12188
34 Added 12204
33.26 (a), (b) introductory text and (1) revised 45939, 45943
40a Removed 11831
67 Revised 55517
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added 66525
175.4 Revised 66525
175.5 Revised 66525
175.6 Revised 66525
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added 66525
176 Revised 35346
199 Technical correction 42905
199.2 (b) amended 46878
(b) amended; interim 54384
(b) amended 9141
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised 46878
(g)(48) revised; interim 54384
(a)(9) introductory text, (i)(B) and (ii) revised; (a)(9)(i)(C), (v)(B) and (vi) note removed; (a)(9)(i)(D) and (v)(A) redesignated as (a)(9)(i)(C) and (v); (a)(10)(vi)(E) added 9141
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised 42904
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim 54384
199.11 (g)(3) through (g)(9) redesignated as (g)(4) through (10); (b)(1), (g) heading and new (10) revised; new (g)(3) added 27678
199.13 (i) added; interim 39941
199.14 (h)(1)(i)(D) added 7287
199.17 (a)(7) added; (d)(1) and (o)(3) revised 9142
199.18 (d)(2)(i) and (f) revised; (c)(3) added 9143
199.21 Revised 66990
199.22 Added 66993
203 Added 5261
220.9 (d) added 11600
247 Revised 42905
270 Added; interim 39942
Revised 3472
285 Revised 61013
286 Revised 35351
286.3 Amended 42916
286.4 (b), (h)(1), (5) and (n)(2) corrected 38197

NOTE: Boldface page numbers indicate 1997 changes.

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286.12 (a)(1) and (2) corrected **38197**
286.28 (d)(3)(i)(A) corrected **38197**
(d)(3)(ii)(A) amended **42916**
311.7 (c)(10)(i), (ii) and (iii) added **46446**
(c)(11)(i) and (iii) added **59579**
318.9 Redesignated as 318.11 ..... **67291**
Added **67292**
318.11 Redesignated from 318.9 ..... **67291**
318.10 Added **67292**
320 Heading revised **65020**
320.1 (a)(1)(i) and (2) amended **65020**
320.2 Amended **65020**
320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised **65020**
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended **65020**
(c) heading, (1) introductory text and (iv) revised **65021**
320.5 (b) amended **65021**
320.6 (a) and (b) revised **65021**
320.7 (b), (c) introductory text, (1) and (d) amended **65021**
320.8 (a), (c)(3), (5) and (7) amended **65021**
320.9 (b)(2)(i) and (3) amended **65021**
320.10 Amended **65021**
320.11 Amended **65021**
323 Appendix H amended 25772
397 Removed 6864

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed **48480**
507 Revised 27208

Chapter VI—Department of the Navy (Parts 700—799)

701.118 (r) introductory text revised **61914**
(m) heading revised 25773
706.2 Table Five amended **37719, 40450**
Tables Four and Five amended **47945**
Tables Two and Five amended 9743
Tables One and Four amended 9744
Table Five amended 9745, 19656
Tables Four and Five amended 13341, 24748
Table Four amended 24747
721 Removed 3860
Technical correction 4694
722 Removed 3860
Technical correction 4694

Chapter XXI—National Security Council (Parts 2100—2199)

2101 Removed 25736

Proposed Rules:

173—187 (Subchapter S) 13585
175 13586
178 ..... **50796**
199 ..... **45196, 61058, 64191, 67018**
212 9167
220 11635
311 ..... **41323**
318 ..... **51821**
323 11198
507 11858
901 ..... **63485**
989 ..... **67305**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

27.3 Table correctly revised **35385**
Table corrected **39313**
80.501 (d) revised 5731
80.520 (a) revised 5731
80.1495 Revised 5731
82 Authority citation revised 5731
82.5 Added 5731
82.7 Added 5731
84.01 (b) and (c) redesignated as (c) and (d); new (b) added 5731
84.05 (a) revised; (b), (c) and (d) redesignated as (e), (b) and (c); new (d) added 5731
84.17 (c) added 5731
84.27 Added 5731
87.1 (o) revised 5732
88.13 Heading, (b) and (c) revised; (d) redesignated as (e); new (d) added 5732
90.5 Added 5732
90.7 Added 5732
96 Added **67506**
100 Temporary regulations lists **42671, 60178**
Regulation at 61 FR 33032 eff. delayed to 1-1-99 ..... **67569**

NOTE: **Boldface page numbers indicate 1997 changes.**

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100.35–T05–013 Added (temporary).....14819
100.35T–05–043 Added (temporary).....35391
100.35–T05–055 Added (temporary).....39776
100.35T–05–065 Added (temporary).....45718
100.35T–05–069 Added (temporary).....48768
100.35T–05–074 Added (temporary).....52501
100.35T–07–002 Added (temporary).....5456
100.35–T07–014 Added (temporary).....16115
100.35–T07–017 Added (temporary).....16116
100.35T–07–047 Added (temporary).....60178
100.35T–07–054 Added (temporary).....61630
100.35T–07–062 Added (temporary).....65022
100.35–T08–026 Added (temporary).....44410
100.35–T08–027 Added (temporary).....44411
100.35–T08–028 Added (temporary).....44411
Heading correctly revised.....46553
100.35–T08–034 Added (temporary).....48767
100.35–T08–035 Added (temporary).....48766
100.35–T08–038 Added (temporary).....50506
100.35–T08–039 Added (temporary).....50507
100.01 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....67569
100.05 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....67569
100.15 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....67569
100.17 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....67569
100.18 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.19 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.25 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.30 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.35 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.50 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.100 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....67569
100.102 Revised; eff. 7–26–97.....35388
100.114 Implementation (temporary).....35388, 35391, 45158, 48766, 66996
100.201 Implementation (temporary).....43284
100.501 (c) revised; Table 1 added.....46670
100.508 Implementation (temporary).....45718
100.509 Implementation (temporary).....35390
100.510 (b)(1) and (c) revised; Table 1 added.....42067
100.511 Implementation (temporary).....14036, 19406, 23215, 24109
100.728 Added.....43641
100.730 Added.....15091
100.731 Added.....15090
100.732 Added.....26454
100.1101 Implementation (temporary).....45158
(a) revised; Table 1 amended; eff. 10–3–98.....16688
100.1102 Amended.....3037
Implementation (temporary).....16688
100.1301 (a) stayed; (j) added; eff. 8–7–97 through 8–11–97.....39444
110.60 (p–3) removed.....23663
110.90 Revised.....16689
110.157 (b)(11) added; eff. 10–2–97 through 10–20–97.....55168
117 Temporary drawbridge operation regulations.....46879, 46880, 50253, 52946, 62262, 63847, 66006
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117.5 Implementation (temporary).....6073
117.205 Revised.....10140
117.253 (a) suspended; (c) added; eff. 4–2–98 through 8–31–98.....19407
117.491 (a)(3) removed.....52502
117.524 Removed.....18320
117.532 Removed.....18319
117.533 Revised.....18323

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117.549 Implementation (temporary) 6073
117.559 Revised **38909**
117.569 Implementation (temporary) 26983
117.603 Revised **50510**
117.604 Removed **50510**
117.609 Revised 2896
117.613 Revised 18323
117.633 (b) and (c) revised **43098**
117.637 (a)(1) revised **43931**
117.663 Revised 4584
117.675 (c) added; eff. 4–13–98 through 8–10–98 16906
117.720 Added 2312
117.733 Revised 2311
117.753 Revised **45160**
117.771 Revised **54385**
117.789 Implementation (temporary) 17679
117.793 (b) revised 18321
117.802 Added 27680
117.807 Removed 18322
117.821 Revised 9419
(a)(2) removed; (a)(3) through (6) redesignated as (a)(2) through (5) 24427
117.833 Existing text designated as (a); (b) added **66006**
117.1045 (a) revised **43097**
117.1061 (c) and (d) removed 10777
144.01–15 (d) correctly revised **35392**
151 Effective date confirmation **46446**
151.19 (c) revised **67532**
151.37 (a), (b) and (c) amended **67532**
155 Compliance date delay **37134**
Compliance date extension **48769**
Authority citation and note revised **48773**
155.100 (a) introductory text revised; (c) added **48773**
155.140 (b) amended **51194**
155.235 Revised **51194**
155.480 (b) introductory text and (f) revised **48773**
155.1050 (k)(3) suspended; eff. 2–12–98 through 2–12–2001 7071
155.1052 (f) suspended in part; eff. 2–12–98 through 2–12–2001 7071
157.455 Regulation at 61 FR 60189 stay lifted; revised **49608**
159.3 Amended **51194**
159.5 Revised **51194**
159.7 Revised **51194**
159.201 Revised **51194**
159.205 Removed **51194**
160 Authority citation revised **65206**
160.203 Regulation at 59 FR 39459 confirmed 19190
160.207 (d) and (e) revised; interim **65206**
(d)(1) corrected 5458
Regulation at 59 FR 39460 confirmed 19190
160.211 Regulation at 59 FR 39460 confirmed 19190
160.213 Regulation at 59 FR 39460 confirmed 19190
160.215 Regulation at 59 FR 39460 confirmed 19190
162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7–25–97 through 12–15–97 ..... **45720**
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added **40272**
165 Effective date confirmation **35392, 65022**
Temporary regulations lists **42671, 60178**
Temporary regulations lists 6071, 24425
Technical correction 29061
165.T01–015 Added (temporary) 25165
165.T01–026 Added (temporary) 23217
165.T01–029 Added (temporary) 19657
165.T01–040 Added (temporary) **35395**
165.T01–041 Added (temporary) **35404**
Added (temporary) 27853
165.T01–042 Added (temporary) **35403**
165.T01–047 Added (temporary) **35681**
165.T01–048 Added (temporary) **35969**
165.T01–063 Added (temporary) **42677**
165.T01–082 Added (temporary) **45721**
165.T01–085 Added (temporary) **45722**
165.T01–089 Added (temporary) **46671**
165.T01–135 Added (temporary) 9941
165.T02–050 Added (temporary) **43100**
165.T05.008 Added (temporary) 23218
165.T05–058 Added (temporary) **39446**
165.T05–063 Added (temporary) **42676**
165.T05–076 Added (temporary) **55168**
165.T07–035 Added (temporary) **41275**
165.T08036 Added (temporary) **35401**
165.T08037 Added (temporary) **35401**
165.T08038 Added (temporary) **35402**
165.T08–041 Added (temporary) **38457**
165.T11–018 Added (temporary) 9942
165.T11–033 Added (temporary) 29137
165.T11–038 Added (temporary) 24110

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165.T11-040 Added (temporary); interim **51781**
165.T11-043 Added (temporary) **7706**
165.T11-049 Added (temporary) **14622**
165.T11-052 Added (temporary) **23664**
165.T11-060 Added (temporary) **43099**
165.T11-098 Added (temporary) **17099**
165.T13006 Added (temporary) **35394**
165.T13007 Added (temporary) **35396**
165.T13009 Added (temporary) **35397**
165.T13010 Added (temporary) **35399**
165.T13-011 Added (temporary) **37136**
165.T13-014 Added (temporary) **42674**
165.T13-015 Added (temporary) **42675**
165.T13008 Added (temporary) **35400**
165.T13-016 Added (temporary) **40277**
165.T13020 Added (temporary) **51779**
165.T13-022 Added (temporary) **50511**
165.T14-002 Added (temporary) **46672**
165.T17-001 Added (temporary) **7707**
165.T17-002 Added (temporary) **14621**
165.T96-073 Removed **35406**
165.113 Added **16117**
165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as (a)(1) and (2); new (a)(1), new (2) and (b) amended **51782**
165.503 Removed **9942**
165.510 Revised **40275**
165.709 Removed **51780**
165.726 Added **50512**
165.754 Added **27681**
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim **58653**
165.1110 Revised; interim **61631**
Regulation at 62 FR 61631 confirmed; revised; eff. 5-28-98 through 12-31-99 ..... **23219**
165.1301 Revised **7708**
165.1307 (a) revised **39445**
187 Comment period reopening **54385**
187.301—187.331 (Subpart D) Regulation at 60 FR 20315 eff. date delayed to 4-24-99 ..... **19658**

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

207.249 (b)(5)(iv) revised **24428**
207.260 (c) and (g) revised **24428**
334.1125 Added; interim **40278**
Regulation at 62 FR 40278 confirmed **53754**

Proposed Rules:

1—199 (Ch. I) **5767, 26756**
20 ..... **16731, 27700**
62 ..... **67031**
66 ..... **67031**
..... **18349**
84 ..... **36037**
95 ..... **45197**
100 ..... **38042, 45197, 45198, 50544, 60197, 62733**
..... **7740, 7741, 9977, 9979, 14057, 15115, 16179, 25187**
110 ..... **38511, 62734**
..... **6141**
117 ..... **35453, 38043, 43131, 43958, 46697, 53770, 66039, 68245**
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148 ..... **45774**
149 ..... **45774**
150 ..... **45774**
151 ..... **17782**
154 ..... **3861**
155 ..... **52057**
..... **3861, 9980**
165 ..... **41324, 45775, 55366**
..... **1089, 6142, 16181, 23703, 25189, 27019, 27243, 27893**
167 ..... **44428**
..... **6502**
173—187 (SubCh. S) **55199**
173 ..... **45197**
174 ..... **45197**
175 ..... **45197, 50280**
177 ..... **45197**
179 ..... **45197**
181 ..... **45197**
183 ..... **45197, 52673**
334 ..... **47166, 51618, 55367**

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74.26 (a), (b) and (c) revised **45939, 45943**
75.253 (c) revised **40424**
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended **40424**
75.263 Added **40425**

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75.264 Added 40425
80.26 (a), (b) introductory text and (1) revised 45939, 45943
80 Appendix removed 45943
97 Authority citation revised 63221
97.101—97.124 (Subpart A) Sections designated as Subpart A; heading added 63221
97.101 Authority citation added 63221
97.102 Authority citation added 63221
97.103 Authority citation added 63221
97.107 Authority citation added 63221
97.124 Authority citation added 63221
97.401—97.409 (Subpart D) Added 63221

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

222.4 Revised; eff. 7-31-97 35412
222.7 Authority citation amended 35412
222.9 Authority citation amended 35412
222.10 Authority citation amended 35412
222.11 Introductory text and authority citation amended; eff. 7-31-97 35412
222.12 Added; eff. 7-31-97 35412
222.13 Redesignated as 222.19; eff. 7-31-97 35412
Added; eff. 7-31-97 35413
222.14 Added; eff. 7-31-97 35413
222.15 Added; eff. 7-31-97 35413
222.16 Added; eff. 7-31-97 35413
222.17 Added; eff. 7-31-97 35413
222.18 Added; eff. 7-31-97 35414
222.19 Redesignated from 222.13; eff. 7-31-97 35412
222.22 (c) and (d) revised; eff. 7-31-97 35414
222.23 Added; eff. 7-31-97 35414
222.36 (b)(1) and (2) revised; eff. 7-31-97 35415
222.50 Authority citation amended 35412
222.80—222.85 (Subpart F) Added; eff. 7-31-97 35415
222.94 Authority citation amended 35412
222.95 Authority citation amended 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended 35412
222.104 Authority citation amended 35412
222.108 Authority citation amended 35412
222.109 Authority citation amended 35412
222.110 Authority citation amended 35412
222.111 Authority citation amended 35412
222.112 Authority citation amended 35412
222.113 Authority citation amended 35412
222.114—222.122 Undesignated center heading added; eff. 7-31-97 35416
222.114 Added; eff. 7-31-97 35416
222.115 Added; eff. 7-31-97 35416
222.116 Added; eff. 7-31-97 35416
222.117 Added; eff. 7-31-97 35417
222.118 Added; eff. 7-31-97 35417
222.119 Added; eff. 7-31-97 35418
222.120 Added; eff. 7-31-97 35418
222.121 Added; eff. 7-31-97 35418
222.122 Added; eff. 7-31-97 35418
222.150 (b)(1) amended; eff. 7-31-97 35418
222.151 Heading and (b)(1) revised; eff. 7-31-97 35418
222.152 (b) and (c) revised; eff. 7-31-97 35418
222.154 (e) revised; eff. 7-31-97 35419
222.156 (g) amended; eff. 7-31-97 35419
222.157 Heading, (a) and (b)(1) revised; eff. 7-31-97 35419
225.158 Heading, introductory text and (b) revised; eff. 7-31-97 35419
222.161 (c) amended; eff. 7-31-97 35419
222.162 (a) revised; eff. 7-31-97 35419
222.164 (a)(2) and (b) revised; OMB number; eff. 7-31-97 35419
222.165 (e), (f) and (h) revised; eff. 7-31-97 35420

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TITLE 34 Chapter II—Con.

280.32 (b)(2) removed; (b)(1)(i) through (iv) redesignated as (b)(1) through (4) 8020
(b)(1) designation correctly removed 16906

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

303 Authority citation revised 18292
Nomenclature change 18293
303.1 Authority citation amended 18292
(a) amended 18293
303.2 Authority citation amended 18292
Amended 18293
303.3 (a) amended; (e) added; authority citation revised 18293
303.5 (a)(1)(vii) amended; (a)(1)(viii) removed 18294
303.7 Authority citation amended 18292
303.8 Authority citation amended 18292
303.9 Authority citation amended 18292
303.10 Authority citation amended 18292
303.11 Authority citation amended 18292
303.12 Authority citation amended 18292
(b)(1) designation and (2) removed 18294
303.13 Authority citation amended 18292
303.14 Authority citation amended 18292
303.15 Authority citation amended 18292
303.16 Authority citation amended 18292
303.17 Authority citation amended 18292
303.18 Authority citation amended 18292
Redesignated as 303.19; new 303.18 added 18294
303.19 Authority citation amended 18292
Redesignated as 303.20; new 303.19 redesignated from 303.18 18294
303.20 Authority citation amended 18292
Redesignated as 303.21; new 303.20 redesignated from 303.19; (b)(1) amended 18294
303.21 Authority citation amended 18292
Redesignated as 303.22; new 303.21 redesignated from 303.20 18294
303.22 Authority citation amended 18292
Redesignated as 303.23; new 303.22 redesignated from 303.21 18294
303.23 Authority citation amended 18292
Redesignated as 303.24; new 303.23 redesignated from 303.22 18294
303.24 Authority citation amended 18292
Redesignated as 303.25; new 303.24 redesignated from 303.23 and amended 18294
303.25 Redesignated from 303.24 18294
303.100 Revised (OMB number pending) 18294
303.101 Authority citation amended 18292
303.110 Authority citation amended 18292
303.111 Authority citation amended 18292
(a) and (b)(1) amended 18294
303.112 Authority citation amended 18292
303.113 Heading, (b) and authority citation revised 18294
303.120 Authority citation amended 18292
303.121 Authority citation amended 18292
303.122 Authority citation amended 18292
303.123 Authority citation amended 18292
303.124 Authority citation amended 18292
(a) amended 18294
303.125 Authority citation amended 18292
303.126 Authority citation amended 18292

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303.127 Authority citation amended 18292
303.128 Authority citation amended 18292
303.140 Revised 18294
303.141 Authority citation amended 18292
303.142 Authority citation amended 18292
303.143 Authority citation amended 18292
303.144 Authority citation amended 18292
Amended 18294
303.145 Authority citation amended 18292
(a) and (d)(1) amended; (e) redesignated as (f); new (e) added (OMB number pending) 18294
303.146 Authority citation amended 18292
303.147 Revised 18294
303.148 Authority citation amended 18292
Introductory text, (a) and (b) revised; note 1 amended; note 2 removed (OMB number pending) 18294
303.149—303.155 Undesignated center heading and sections removed 18295
303.160—303.176 Undesignated center heading amended 18295
303.160 Authority citation amended 18292
Amended 18295
303.161 Authority citation amended 18292
303.162 Authority citation amended 18292
303.163 Removed 18295
303.164 Authority citation amended 18292
303.165 Authority citation amended 18292
303.166 Authority citation amended 18292
303.167 Authority citation amended 18292
(a) revised; (b)(2) amended; (c) added (OMB number pending) 18295
303.168 Authority citation amended 18292
303.169 Authority citation amended 18292
303.170 Authority citation amended 18292
(a) and (b)(2) amended 18295
303.171 Authority citation amended 18292
303.172 Authority citation amended 18292
303.173 Authority citation amended 18292
303.174 Authority citation amended 18293
303.175 Authority citation amended 18293
303.176 Authority citation amended 18293
303.180 Authority citation amended 18293
303.200 Authority citation amended 18293
303.201 Authority citation amended 18293
303.202 Authority citation amended 18293
303.203 Authority citation amended 18293
303.204 Existing text designated as (a); (b) added; authority citation revised 18295
303.205 Removed 18295
303.300 Authority citation amended 18293
303.301 Authority citation amended 18293
303.302 Removed 18295
303.320 Authority citation amended 18293
Amended 18295
303.321 Authority citation amended 18293
(b)(2) amended 18295
303.322 Authority citation amended 18293
(a)(1) and (d)(1) amended; note removed 18295
303.323 Authority citation amended 18293
303.340 Authority citation amended 18293
303.341 Removed 18295
303.342 Authority citation amended 18293
303.343 Authority citation amended 18293

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TITLE 34 Chapter III—Con.

303.344 Authority citation amended 18293
(d)(1)(ii) amended (OMB number pending) 18295
303.345 Authority citation amended 18293
303.346 Authority citation amended 18293
303.360 Authority citation amended 18293
(c)(3) and (4) amended 18295
303.361 Authority citation amended 18293
(f) and (g) added (OMB number pending) 18295
303.400 Authority citation amended 18293
303.401 Authority citation amended 18293
303.402 Authority citation amended 18293
303.404 Authority citation amended 18293
303.405 Authority citation amended 18293
303.406 Authority citation amended 18293
303.406 (d)(1) revised 18296
303.419—303.425 Undesignated center heading revised 18296
303.419 Added 18296
303.420 Heading, introductory text, (a), (b)(1) and note 2 amended 18296
Authority citation amended 18293
303.421 Authority citation amended 18293
303.422 Authority citation amended 18293
303.423 Authority citation amended 18293
303.424 Authority citation amended 18293
Amended 18296
303.425 Authority citation amended 18293
303.460 Authority citation amended 18293
303.500 Authority citation amended 18293
303.501 Authority citation amended 18293
303.521 Authority citation amended 18293
303.522 Authority citation amended 18293
(b)(5) removed; (b)(6) and (7) redesignated as (b)(5) and (6) 18296
303.523 Authority citation amended 18293
303.524 Authority citation amended 18293
303.525 Authority citation amended 18293
303.526 Authority citation amended 18293
303.527 Authority citation amended 18293
(a) amended 18296
303.528 Authority citation amended 18293
303.540 Authority citation amended 18293
(a)(2) revised 18296
303.560 Authority citation amended 18293
303.600 Authority citation amended 18293
(a) revised 18296
303.601 Authority citation amended 18293
(a)(7) revised; (a)(8) and (9) added (OMB number pending) 18296
303.602 Authority citation amended 18293
(a) introductory text amended 18296
303.603 Authority citation amended 18293
303.604 Authority citation amended 18293
303.650 Authority citation amended 18293
(c) added (OMB number pending) 18296
303.651 Authority citation amended 18293
303.652 Authority citation amended 18293
303.653 Authority citation amended 18293
Amended (OMB number pending) 18296
303.654 Authority citation amended 18293
303.670 Undesignated center heading and section removed 18296
305 Removed; eff. 10-1-98 23601
307 Removed; eff. 10-1-98 23601

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309 Removed; eff. 10–1–98 23601
315 Removed; eff. 10–1–98 23601
316 Removed; eff. 10–1–98 23601
318 Removed; eff. 10–1–98 23601
319 Removed; eff. 10–1–98 23601
320 Removed; eff. 10–1–98 23601
324 Removed; eff. 10–1–98 23601
325 Removed; eff. 10–1–98 23601
326 Removed; eff. 10–1–98 23601
327 Removed; eff. 10–1–98 23601
328 Removed; eff. 10–1–98 23601
330 Removed; eff. 10–1–98 23601
331 Removed; eff. 10–1–98 23601
332 Removed; eff. 10–1–98 23601
333 Removed; eff. 10–1–98 23601
338 Removed; eff. 10–1–98 23601

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

668.13 (d) and (e) removed; (f) redesignated as (d) 62876
668.23 (f) removed; (g) and (h) redesignated as (f) and (g) 62876
668.162 (a)(1) revised; (e) added 62876
668.167 (f) added 62877
668.171—668.175 (Subpart L) Added 62877
668 Appendix F added 62882
Appendix G added 62885
674.6 (a)(1) and (2) amended; (a)(3) removed 50847
674.9 (a) amended 50847
674.19 (b) amended 50847
674.31 (b)(2)(i)(D) revised 50848
674.33 (b)(6)(ii) amended; (d)(8) added 50848
674.34 (h) revised 50848
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added 50848
674.36 (c)(1), (2), (3) and (f) amended 50848
674.37 (c)(1), (2), (3) and (d) amended 50848
674.45 (c)(1)(ii)(A) amended 50848
674.52 (d)(2) amended 50848
675.9 (a) amended 50848
675.19 (a)(3) amended 50848
675.20 (b)(1) amended 50848
675.22 Heading amended 50848
675.26 (d) revised 63439
675.27 Authority citation revised 50848
676.9 (a) amended 50848
676.19 (a)(2) amended 50848
682.201 (a) introductory text through (3) amended 63433
682.202 (c)(5) revised 63434
682.209 (i)(1) revised 63434
682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised 63434
682.402 (c)(1) revised; (k)(2)(iii) amended 63434
682.604 (g)(2)(i) revised 63434
685.202 (c)(4) revised 63434
685.212 (b) revised 63435
685.301 (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added 63435
685.304 (b)(2)(i) revised 63435
685 Appendix A revised 35602

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

701 Added 61430

Proposed Rules:

5b 62670
200 15694
300 ..... 48924, 50435, 55026
301 ..... 48924, 50435, 55026
303 ..... 48924, 50435, 55026
..... 18297
682 50462
685 50462
702 9392

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

104 Revised 48179
113 Authority citation revised 18837
113.49 (b) revised 18837
115 Authority citation revised 2142
115.1 Revised 2142
115.2 (b) revised; (c) removed; (d) redesignated as (c); (a) introductory text and new (c) amended 2142
(b) amended 18837
117 Authority citation revised 2142
117.1 (b), (c) introductory text and (d)(2) amended 2142

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TITLE 35 Chapter I—Con.

117.3 Revised 2142
119 Nomenclature change 2142
133.1 Revised 23221
135.1 Amended 23221

Proposed Rules:

133 186
135 186

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

4.15 Revised 61633
7.15 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c) 13353
7.67 (a) revised 9147

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

212 Authority citation revised 58654
212.2 Revised 58654
212.3 Removed; new 212.3 redesignated from 212.5 58654
212.4 Removed; new 212.4 redesignated from 212.6 58654
212.5 Redesignated as 212.3; new 212.5 redesignated from 212.7 58654
212.6 Redesignated as 212.4; new 212.6 redesignated from 212.8 58654
212.7 (c) amended; redesignated as 212.5; new 212.7 redesignated from 212.9 58654
212.8 Redesignated as 212.6; new 212.8 redesignated from 212.10 58654
212.9 (d) amended; redesignated as 212.7; new 212.9 redesignated from 212.11 58654
212.10 (a)(2) amended; redesignated as 212.8; new 212.10 redesignated from 212.12 58654
212.11 (f) amended; redesignated as 212.9 58654
212.12 Redesignated as 212.10 58654
215.11 (c) revised; (d) added; interim 4188
223.52 Revised 24114
242.24 (a)(1) table amended 45725
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727
292.60—292.70 (Subpart G) Revised 15059
Corrected 18837

Chapter VII—Library of Congress (Parts 700—799)

701.8 Revised 64280
701.35 Revised 8854
703 Revised 50254

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1151 Revised 1924
1153 Removed 1926
1155 Removed 1926
1191 Appendix A amended 2016, 2071
1193 Added 5630

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1207 Authority citation revised 45943
1207.26 (a), (b) introductory text and (1) revised 45939, 45943
1210.26 (a), (b) and (c) revised 45939, 45943
1228 General Records Schedule No. 20 19369
1228.188 Revised 54584
1234.30 (a)(4) revised 54585

Proposed Rules:

1 63488
4 40317
7 60815
..... 13383, 19436
13 ..... 54409, 58932
..... 23706
14 63488
211 27245
212 ..... 4350, 4351, 9980

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242 ..... 39987, 66216
251 9987
292 47167
327 64192
1190 ..... 43133, 62275, 67320
..... 20562
1191 ..... 43133, 62275, 67320
..... 20562, 24080
1192 14571

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Technical correction 43100
1.4 (d) revised; (g) added 53180
1.6 (d)(3), (6) and (e) revised; (f) added 53180
1.8 (a)(2)(i)(A) and (b) revised 53181
1.9 (d) and (f) revised 53181
1.10 (d) and (e) revised 53181
1.11 (b) revised 53181
1.14 (a) revised; (f) added 53182
1.16 (a), (b), (d) and (f) through (i) revised 40452
(d) and (l) revised 53182
1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
(a) through (d), (h), (i) and (q) revised; (e), (f) and (g) removed 53182
(q) correctly revised 61235
1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
(l) and (n) revised 53183
1.26 (a) revised 53183
1.27 Revised 53183
1.28 (a) and (c) revised 53183
1.33 (a) and (b) revised 53184
1.41 (a) revised 53184
1.47 Revised 53184
1.48 Revised 53185
1.51 Revised 53185
1.52 (a), (c) and (d) revised 53186
1.53 Revised 53186
(d)(1)(i) revised; interim 5732
1.54 Revised 53188
1.55 (a) revised 53188
1.59 Revised 53188
1.60 Removed 53188
1.62 Removed 53188
1.63 (a) and (d) revised; (e) added 53188
1.67 (b) revised 53189
1.69 (b) revised 53189
1.78 (a) revised 53189
1.84 (a)(2)(i), (b), (c) and (g) revised 53190
1.91 Revised 53190
1.92 Removed 53190
1.97 (c), (d) and (e) revised 53190
1.101 Removed 53190
1.102 (a) revised 53191
1.103 (a) revised 53191
1.104 Revised 53191
1.105 Removed 53192
1.106 Removed 53192
1.107 Removed 53192
1.108 Removed 53192
1.109 Removed 53192
1.111 (b) revised 53192
1.112 Revised 53192
1.113 Revised 53192
1.115 Removed 53192
1.116 Heading and (a) revised 53192
1.117 Removed 53192
1.118 Removed 53192
1.119 Removed 53192
1.121 Revised 53192
(a)(4) correctly removed 61235
1.122 Removed 53193
1.123 Removed 53193
1.124 Removed 53193
1.125 Revised 53193
1.126 Revised 53194
1.133 (b) revised 53194
1.134—1.139 Undesignated center heading revised 53194
1.134 Revised 53194
1.135 Revised 53194
1.136 Revised 53194
1.137 Revised 53194
1.139 Removed 53195
1.142 (a) revised 53195
1.144 Revised 53195
1.146 Revised 53195
1.152 Revised 53195
1.154 Heading and (a)(3) revised 53196
1.155 Revised 53196
1.163 Heading and (b) revised 53196
1.167 Revised 53196
1.171 Revised 53196
1.172 (a) revised 53196

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1.175 Revised 53196
1.182 Revised 53196
1.184 Removed 53196
1.191 (a) and (b) revised 53196
1.192 (a) revised 53196
1.193 Revised 53197
1.194 Revised 53197
1.196 (b) and (d) revised 53197
1.197 (a) and (b) revised 53198
1.291 (c) revised 53198
1.293 (c) revised 53198
1.294 (b) revised 53198
1.304 (a)(1) revised 53198
1.312 (b) revised 53198
1.316 Revised 53198
1.317 Revised 53198
1.318 Removed 53198
1.324 Revised 53199
1.352 Removed 53199
1.366 (b), (c) and (d) revised 53199
1.377 (c) revised 53199
1.378 (d) revised 53199
1.425 Revised 53199
1.445 (a) revised 40453
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453
1.484 (d), (e) and (f) revised 53199
1.485 (a) revised 53200
1.488 (b)(3) revised 53200
1.492 (a), (b) and (d) revised 40453
(g) added 53200
1.494 (c) revised 53200
1.495 (c) revised 53200
1.510 (e) revised 53200
1.530 Heading and (d) revised; (e) removed 53200
1.550 (a), (b) and (e) revised 53201
1.770 Revised 53201
1.785 (d) revised 53201
1.804 (b) revised 53202
1.805 (c) revised 53202
2 Technical correction 43100
2.6 (b)(4) and (10) revised 40453
3.11 Revised 53202
3.21 Revised 53202
3.26 Revised 53202
3.27 Revised 53202
3.31 (c) added 53202
3.41 Revised 53202
3.51 Revised 53203
3.58 Added 53203
3.71—3.73 Undesignated center heading revised 53203
3.73 Heading and (b) revised 53202
5.1 Revised 53203
5.2 (b) revised; (c) and (d) removed 53203
5.3 (c) revised 53203
5.4 (a) and (d) revised 53204
5.5 (b) and (e) revised 53204
5.6 Removed 53204
5.7 Removed 53204
5.8 Removed 53204
5.11 (b), (c) and (e)(3) revised 53204
5.12 (b) revised 53204
5.13 Revised 53204
5.14 (a) revised 53204
5.15 (a), (b), (c) and (e) revised 53204
5.16 Removed 53205
5.17 Removed 53205
5.18 Revised 53205
5.19 Revised 53205
5.20 Revised 53205
5.25 (c) removed 53206
5.31 Removed 53206
5.32 Removed 53206
5.33 Removed 53206
7 Removed 53206
10.18 Revised 53206
10.23 (c)(15) revised 53206

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.32 Table revised 29138
201.34 Added; interim 55739
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202.23 (e)(1) and (2) amended 29139
202 Appendix B amended 51603
203 Authority citation revised 55742
Authority citation revised 1926
203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1926
203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1926
203.6 (b)(6) amended; interim 55742

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Regulation at 62 FR 55742 confirmed 1926
(b)(2) amended 29139
204.6 (a) amended 29139
211.3 (a)(1), (2) and (7) amended 29139
251 CARP arbitration list 9419
253.1 Amended 2144
253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
255.3 (a) through (h) amended; (i) through (m) added 7289
258 Technical correction 62262, 62404
258.3 Revised 55759
260 Added 25413

Proposed Rules:

2 59640
3 59640
201 40780
..... 3685, 15802, 17142, 26756
202 15802
203 15802
204 15802
211 15802
253 ..... 51619, 63502, 65777
255 ..... 63506, 65778
256 26756

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1 Nomenclature change 35970
Nomenclature correction 47532
1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) 51783
2.6 (e)(6) revised 11122
3 Nomenclature change 35970
Nomenclature correction 47532
3.2 (f) revised 35422
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added 35422
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised 51278
3.57 Cross reference amended 51281
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added 51278
3.158 (a) and (c) amended 51278
3.261 (a)(40) added 51278
3.262 (y) added 51278
3.263 (g) added 51279
3.272 (u) added 51279
3.275 (i) added 51279
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised 35422
3.317 Regulation at 62 FR 23139 confirmed 11122
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added 51279
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added 51279
3.659 Cross reference amended 51281
3.703 Cross reference amended 51281
3.707 Cross reference amended 51281
3.807 Cross reference amended 51281
3.810 (a) amended; (d) added 35422
3.811 Added; interim 35971
Revised 412
3.814 Added 51279
3.1000 (a) introductory text amended; authority citation added 35423
3.1600 (c) amended 35423
4.100 Removed 65219
4.101 Removed 65219
4.102 Removed 65219
4.104 Revised 65219
9 Nomenclature change 35970
Nomenclature corrected 47533
9.2 (a) and (b)(1) revised 35970
9.8 (b) amended 35970
17.32 Revised 53961
17.85 Undesignated center heading and section added 11124
17.149 Regulation at 62 FR 30242 confirmed 64722

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17.150—17.154 Regulation at 62 FR 30242 confirmed 64722
17.212 (d) added; authority citation revised 60783
17.900—17.905 Undesignated center heading and sections added 51284
19.9 Revised 52503
20.611 Revised 55170
20.1302 Revised 55170
21.3021 (l) redesignated as (m); new (l) added 51784
21.3041 (e)(3) and (4) amended 55760
21.3045 (f) revised; (i)(3)(ii) amended 55760
21.3046 (e) removed 51784
(c)(1) and (d)(6)(ii) amended 59579
21.3047 Added 51784
21.4001—21.4279 (Subpart D) Authority citation revised 40280, 55760, 63849
21.4009 (b)(1) introductory text amended 55760
21.4200 (g) revised 55760
21.4201 (h) introductory text and (2) amended 55760
21.4233 (c) revised; (d) amended 40280
(b)(3) introductory text amended, (ii), (4) introductory text and (ii) amended 55760
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended 55760
21.4253 (d)(1) revised 35424
21.4256 Revised 63849
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.4270 (c) heading and Footnote 2 revised 55760
21.4279 (a) introductory text and (4) revised; (a)(5) added 63850
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended 51785
21.4832 (e)(3) and (4) added 26433
21.5001—21.5300 (Subpart G) Authority citation revised 55760
21.5270 (a), (g) and (i) amended 55760
21.5701—21.5901 (Subpart H) Authority citation revised 55761
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended 63848
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 63848
21.5901 (a) and (b) amended 55761
21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
(a)(3) revised 27854
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority citation, (d)(2)(iii), authority citation, (e)(2)(ii), (iii), (3)(iii), authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2) amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7154 (a) and (b) redesignated as (b) and (c); new (a) added; new (b) heading, (1) revised; new (b)(2)(i) and (ii) amended; OMB number 14038
21.7156 Introductory text and (a) introductory text removed;

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(a)(1), (2), (3), (b) and (c) redesignated as (b)(3), (4), (5), (c) and (d); heading and new (b)(3) revised; new (a), (b) heading, (1) and (2) added; new (c)(2) amended; OMB number 14038
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761
21.7612 (b) revised 40280
21.7622 (c) revised 55762
21.7631 (h) added 55520
21.7635 (x) redesignated as (y); new (x) added 55520
21.7636 (b) redesignated as (c); new (b) added 55520
(a)(1), (2)(i) and (3) revised 66278
21.7639 (c)(2)(ii), authority citation, (f)(1), authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added 55521
(b) introductory text amended 55762
21.7659 Revised 55762
21.7670 (d) amended 55762
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added 55762
21.8010—21.8410 (Subpart M) Added 51288
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number 63278
36.4303 Revised 12002
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added 52505
(a)(6) and (7) removed; (a)(3), (4) and (5) revised 63454
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4330 Revised 12004
36.4335 (a) and (b) removed; (c) through (h) redesignated as new (a) through (f); new (e) authority citation removed 12004
36.4337 (a) revised 52505
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised 53965
(a) revised 63454
36.4348 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (e) revised; new (d) added 12004
36.4349 (a)(2) revised (OMB number) 12007
43.26 (a), (b) introductory text and (1) revised 45939, 45943
47 Heading revised 23665
47.1 (a) removed; (b) through (h) redesignated as (a) through (g); new (h) and (i) added 23665
47.2 Removed; new 47.2 redesignated from 47.3 and revised 23665
47.3 Redesignated as 47.2 23665

Proposed Rules:

17 ..... 39197, 40492
..... 9990
19 36038
20 ..... 55200, 64790
..... 27534
21 ..... 35454, 45596, 48969, 60464, 62736, 66320
..... 15341, 23408, 27701
36 37824
47 52519

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended 41853
Authority citation revised 28485
3.3 (v) redesignated as (w); new (v) added 41853
(e)(3) added 43642
3.4 (h) added 41853
(i) added 28485
4 Authority citation revised 61914
4.5 Revised 61914
4.6 Removed; new 4.6 redesignated from 4.7 61914
4.7 Redesignated as 4.6 61914

NOTE: Boldface page numbers indicate 1997 changes.

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20 IMM amended; incorporation by reference; interim 45163, 47559, 49917, 56074, 58915
IMM amended; incorporation by reference 3645, 3815
IMM amended; incorporation by reference; interim 5459, 9421, 13125
111 DMM amended; incorporation by reference 39947, 51372, 53540, 60181, 61015
DMM amended; incorporation by reference.....155, 14820, 19408
111.3 (f) table amended 63851
111.5 Revised.....63852
222.5 (a)(7) amended.....9943
241.4 Added; interim 25166
255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised.....66996
(c)(3) amended; (c)(4) and (5) revised 66997
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed.....66997
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed.....66997
(a)(3) correctly removed 2145
262 Authority citation revised.....64280
Authority citation revised.....6481
262.2 (a) revised; interim.....64280
(a) revised 6481
262.4 Introductory text revised; interim 64280
Introductory text revised 6481
265.3 (a) revised; interim.....64280
(a) revised 6481
265.5 Revised; interim.....64280
Revised 6481
265.6 (a) revised; interim.....64281
(e)(1) amended; interim 64282
(a) revised 6481
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim 64282
(b), (c), (d)(1), (e)(1), (f)(1), (2) and (g) revised 6482
265.10 Revised.....64283
Revised 6483
265 Appendix A revised.....64283
Appendix A revised 6483
946.6 (a)(2) revised 8126
954 Heading amended 66998
954.2 Amended 66998
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954.3 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97.....68364
954.5 Amended 66998
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954.6 Amended 66998
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954.8 Amended 66998
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954.10 Amended 66998
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954.12 Amended 66998
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954.13 (a) and (c) amended.....66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97.....68364
954.14 (b)(6) and (8) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97.....68364
954.16 (d)(1) amended 66998
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954.17 (b) amended.....66998
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954.18 (a) amended.....66998
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954.19 (a) amended.....66998
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954.25 Amended 66998
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3001.7 (a)(1)(iii) amended.....45530
3001.12 (e) amended.....45530
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(*i*) amended; (k)(3)(i)(*e*) revised 45729
3001.43 (f)(1) amended.....45530

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3001.61—3001.69c (Subpart C) Appendix A amended **35425**
3002 Auhority citation revised **45530**
3002.4 Heading revised; (a) amended **45530**
3002.5 Removed **45530**

Proposed Rules:

20 ..... **47394**
111 ..... **45366, 47178, 48191, 62540** 8154, 11199, 12864, 17143
232 ..... **61481**
501 ..... 8893, 16464
775 ..... **42958**
777 ..... **42958**
778 ..... **42958**

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed **43269**
8.2 (d) revised; eff. 7–14–98 18326
8.8 (b)(1) and (2) revised; eff. 7–14–98 18326
9.1 Table amended (OMB number) **37722, 44413, 47119, 52398, 54715, 55474**
Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
Table amended (OMB numbers) 964, 1060, 1320, 7269, 7710, 15016, 26720
Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
30.26 (a), (b) and (c) revised **45939, 45944**
31.26 (a), (b) introductory text and (1) revised **45939, 45944**
32.105 Amended **47149**
32.335 (a) through (d) amended **47149**
32.430 (a) through (d) amended **47149**
35.105 Amended 7270
35.205 (c), (d) and (e) added 7270
35.210 (c) added 7270
35.215 Revised 7270
35.220 Added 7271
49 Added 7271
50 Announcement **38762**
Comment period extension **43642**
Notice 6032
Authority citation revised 7274
50.1 (i) added 7274
50.2 (c) and (d) revised 7274
50.3 Revised **38711**
50.6 Heading revised; (d) added **38711**
50.7 Added **38711**
50.9 Revised **38894**
50.10 Added **38894**
50 Appendix K revised **38712**
Appendix L added **38714**
Appendix M added **38753**
Appendix N added **38755**
Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
Appendix L corrected 7710
51 Authority citation revised **43801, 44903**
Technical correction 6483
Authority citation revised 24433
51.100 (s) introductory text and (1) revised **44903**
(o)(3) revised 9151
(s)(1) revised 17333
51.103 (a) amended; (a)(1) and (2) removed 9151
51.212 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
51.351 (c) revised 24433
51.352 (c) revised 24433
51.353 (c)(3) and (4) revised 1368
51.357 (b)(4) revised 24433
51.361 Regulation at 61 FR 49682 eff. date corrected to 2–10–98 6645
51.373 (g) revised 24433
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724, 61016**
State implementation plan determinations **43647, 45531, 52946, 54769, 61914, 64522**
Notice **61236**
State implementation plan determinations 26, 3650, 8573, 9423, 15094, 16435, 25167, 26720
Technical correction 6483
52.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.40 Regulation at 62 FR 11331 eff. date corrected to 5–1–98 24114
52.50 (c)(71) added 676
52.66 Added **49158**
52.70 (c)(27) added 11840

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52.111 Added 16441
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(77)(i)(A)(*2*) redesignated as (c)(77)(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
(c)(83)(i)(B) added 6489
(c)(78)(i)(C), (82)(i)(C), (83) and (85) added 6491
(c)(89) and (90) added 6659
(c)(82)(i)(D) added 15305
(c)(82)(i)(E) added 24435
52.123 (f) added **41864**
(g) added 28904
52.124 (b) added **41864**
52.170 (c)(29) added 17683
52.181 (a) revised 17683
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added **48483**
(c)(229)(i)(A)(*2*) added **48485**
(c)(224)(i)(E) added **53544**
(c)(243) added **54588**
(c)(224)(i)(D) removed **54769**
(c)(197)(i)(D) and (241)(i)(A)(*2*) added **59287**
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added **60785**
(c)(250) added **62951**
(c)(239)(i)(E) added **65613**
(c)(239)(i)(E)(*2*) added **67000**
(c)(239)(i)(A)(*2*) **67004**
(c)(231)(i)(B)(*2*), (239)(i)(D)(*1*) and (244) added 6075
(c)(239)(i)(E)(*3*) added 8128
(c)(6)(i)(C), (21)(vi)(C), (121)(ii)(C), (173)(i)(E), (182)(f)(E), (194)(i)(E)(*2*), (244)(i)(B) and (245)(i)(B) added 11833
(c)(230)(i)(B)(*2*) added 13531
(c)(252) and (253) added 15311
(c)(251) added 19661
(c)(247) added 19662
52.222 (a)(2) and (3) added **40937**
(b)(2) added **43647**
52.243 Added 19662
52.320 (c)(71) added **67009**
(c)(76) added **68195**
(c)(8), (15) and (72)(i)(D) revised 14360
(c)(84) added 15302
52.329 (a) revised **68195**
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added **66008**
(g) and (h) added **68195**
52.370 (c)(72) added **52020**
(c)(74) added **55340**
(c)(72)(i)(B) and (ii)(K) corrected **65224**
(c)(60) added 6487
(c)(73) added 20318
52.384 Added **55340**
52.385 Added **52022**
Table corrected **65224**
Table amended 6487, 20318
52.420 (c)(58) added **37724**
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 ..... **40139**
52.424 (b) introductory text revised 1368
(c) added 16435
52.470 (c)(37) added **40938**
52.520 (c)(98) added **38919**
(c)(87) revised 28906
52.570 (c)(50) added; interim **42918**
52.582 Existing text designated as (a); (b) added 23390
52.720 (c)(106(i)(D) added; (c)(109) revised **43102**
(c)(139) added **62953**
(c)(137) added **67001**
(c)(135) added 8858
(c)(136) added 8859
(c)(138) added 11838
(c)(141) added 11846
(c)(142) added 13787
(c)(140) added; eff. 7–20–98 27492
52.725 (e) added 11846
52.726 (p), (q) and (r) added **37506**
Regulation at 62 FR 37506 withdrawn **46447**
(p), (q) and (r) added **66294**
52.770 (c)(109) added **38922**
(c)(121) added 2147
52.776 (q) added **45171**
52.777 (k) added **38464**
(q) added **55176**

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(s) added 64735
52.820 (c)(64) added 55173
(c)(65) added 63455
(c)(66) added 5269
52.834 Added 13345
52.870 (c)(33) added 36213
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn 40281
(e) added 55176
(d) added 61246
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(f) added 14625
52.970 (c)(64) introductory text and (i) revised 51604
(c)(68) added 52951
(c)(74) added 63661
(c)(75) added 11374
(c)(79) added; eff. 7–10–98 25775
52.975 (f) added 64286
52.992 Regulation at 62 FR 29078 eff. date corrected to 5–1–98 24115
52.994 Existing text designated as (a); (b) added 63662
Regulation at 62 FR 61634 eff. date corrected to 2–13–98 7290
Removed 11374
52.996 Added 61634
Correctly designated 4397
52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
(c)(126) and (127) added 46201
(c)(125) added 53548
(c)(128) added 26463
52.1072 Added 40944
(b) added 49616
(c) added 52666
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1170 (c)(109) added 59996
(c)(110) added 6651
52.1174 (p) added 50514
(q) added; eff. 7–20–98 27494
52.1219 (b) added 39123
Regulation at 62 FR 39123 eff. date corrected to 5–4–98 24435
52.1220 (c)(44) added 53242
52.1237 (b) added 55172
Regulation at 62 FR 55172 eff. date corrected to 2–10–98 6647
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
(c)(101) added 46881
(c)(98) added 52660
(c)(102) added 3039
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
Regulation at 61 FR 39335 eff. date corrected to 2–10–98 6648
(c)(103) added 19825
(c)(105) added 20319
52.1323 (k) added 46881
(l) added 52661
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
(m) added 20320
52.1391 Added 65616
52.1520 (c)(52) added 55525
(c)(51) added 11604
(c)(54) added 26459
52.1525 Table amended 11604, 26459
52.1533 Added 55525
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1620 (c)(66) added 50518
52.1670 (c)(91) added 49619
(c)(93) added 67006
(c)(92) added 23668
52.1679 Table amended 67006
Table amended 23668
52.1683 (c), (d) and (e) added; interim 55344
(f) added 66825
52.1770 (c)(94) added 41280
52.1870 (c)(115) added 49442
(c)(117) added 13789
(c)(116) added 15093
52.1881 (a)(4) and (8) revised 15093
52.1885 Regulation at 62 FR 28637 withdrawn 40281
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 43109
(a)(6) added 44907
(bb) added 61246
(a)(7) added 1063
Regulation at 62 FR 26399 withdrawn 1369
(z) added 4195

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Regulation at 62 FR 44907 eff. date corrected to 2–10–98 6649
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(cc) added 14626
52.1890 Added **47947**
Regulation at 62 FR 47947 eff. date corrected to 2–10–98 6646
52.1970 (c)(122) added **46210**
(c)(124) added 15294
(c)(123) added 24936
(c)(125) added 26461
52.2020 (c)(125) added **38917**
(c)(127) added **43104**
(c)(119) added **44415**
(c)(126) added **50871**
(c)(128) added **50873**
(c)(107) added **64725**
(c)(130) added 11372
(c)(129) added 13794
52.2023 (k) added 13794
(e) added 23673
52.2026 (a) introductory text and (1) revised **59998**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
(a)(2) revised 1368
(d) and (e) added 2153
(e) added 13794
52.2036 (j) added **38917**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
52.2070 (c)(48) and (49) added **46207**
52.2081 Table amended **46207**
52.2120 Redesignated as 52.2134; new 52.2120 added **35444**
(c) table amended **44219, 47761**
52.2134 Redesignated fron 52.2120; heading and (a) revised **35444**
52.2220 (c)(147) added **35683**
(c)(156) added **38912**
(c)(158) added **40460**
(c)(155) added **40735**
(c)(151) added **42070**
(c)(154) added **43109**
(c)(157) added **43645**
(c)(159) and (160) added **62698**
52.2270 (c)(102) added **44087**
(c)(91) removed **49154**
(c)(108) added 6493
(c)(107) added 6663
(c)(106) added 11835
52.2303 (a) revised **44088**
52.2308 (f) added 7072
52.2309 (d) added 6663
52.2310 Added; interim **37144**
52.2311 Added 6653
52.2320 (c)(38) added **38216**
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12–30–97 414
52.2350 Added **38217**
Existing text designated as (a); (b) added 18124
52.2351 Added **38217**
52.2370 (c)(23) added **41282**
(c)(24) added **41869**
(c)(25) added 19828
52.2375 Table revised **41869**
52.2381 Table amended **41282, 41870**
Table amended 19828
Table corrected 23501
52.2420 (c)(115) and (116) added **38914**
(c)(121) added **53239**
(c)(120) added **53245**
(c)(118) added **54587**
(c)(119) added **61240**
(c)(122) added 11842
(c)(123) added 13798
52.2424 Existing text designated as (a); (b) added **61240**
52.2428 Existing text designated as (a); (b) added **38932**
Removed **43472**
Added **52032**
52.2450 (b)(1) and (3) amended; (b)(2) revised **49152**
(b)(2) revised 1368
52.2451 Revised 13798
52.2454 Added **52638**
52.2470 (c)(73) added **42217**
(c)(75) added **49444**
(c)(75) revised **68187**
(c)(76) added 5272
Regulation at 61 FR 49690 eff. date corrected to 2–10–98 6648
(c)(77) added 19659
52.2479 Amended **68188**
52.2585 (l) added **39448**
(m) added 5464
Regulation at 62 FR 39448 eff. date corrected to 5–5–98 24748
52 Appendix D corrected; CFR correction 25415
53.1—53.16 (Subpart A) Revised **38784**
53.3 (b)(5) correctly removed 7714
53.30—53.34 (Subpart C) Revised **38792**
53.34 (c)(2)(i), (3) and (5) corrected 7714
53.30—53.34 (Subpart C) Table C–4 corrected 7714

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53.50—53.59 (Subpart E) Added....38799
53.51 (a)(3) corrected....7714
53.54 (f)(7) corrected....7714
53.56 (f)(5) corrected....7714
53.57 (g) corrected....7714
53.50—53.59 (Subpart E) Tables E–1 and E–2 corrected....7714
53.60—53.66 (Subpart F) Added....38814
53.61 (g)(1)(ii) corrected....7714
53.64 (g)(4)(ii) corrected....7714
55.2 Amended....46408
55.3 (c) revised....46408
55.6 (d)(2) revised....46408
55.11 (a) revised; (j) added....46408
55.14 (e)(2)(i)(A) revised....41871
55 Appendix A amended....41871
58.1 Amended....38830
Corrected....7714
58.13 (b) and (d) revised; (e) and (f) added....38831
(d) corrected....7714
58.14 Revised....38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended....38832
58.23 Introductory text revised; (c) added....38832
58.26 Heading and (b) introductory text revised; (d) and (e) added....38833
(d)(2) and (e) corrected....7714
58.30 (a) introductory text revised....38833
58.31 (f) revised....38833
(a) revised....59816
Regulation at 62 FR 59816 withdrawn....67010
(f) corrected....7714
58.34 Introductory text revised....38833
(a) revised....59816
Regulation at 62 FR 59816 withdrawn....67010
58.35 (b) amended....38833
58.41 (b) revised....59816
Regulation at 62 FR 59816 withdrawn....67010
58 Appendix A revised....38833
Appendix C amended....38843
Appendix D amended....38844, 59816
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60 Determinations....36664
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Authority delegation notices....53245
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Authority delegation notices....1746, 5891, 27854
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60.1 (d) added....52641
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97....414
60.17 (b)(1) amended; (k) and (l) added....48379
(a)(22) amended....52399
Regulation at 61 FR 18262 eff. date corrected to 2–9–98....6493
(a)(6) revised....24444
60.18 (c)(3) and (4)(i) revised....24444
60.30 Revised....48379
60.30b—60.39b (Subpart Cb) Heading revised....45119
60.31b Amended....45119, 45125
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added....45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended....45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed....45119
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(a)(3) amended....45125
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60.35b Amended....45120
60.38b (b) amended; (c) removed....45120
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(c)(4)(iii)(B) amended....45125

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60.30e—60.39e (Subpart Ce) Added 48379
60.49b (u) added 52641
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2), (c)(2), (d)(1) and (2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added 45126
60.59b (a) introductory text and (b) introductory text amended 45121
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended 45127
60.50c—60.58c (Subpart Ec) Added 48382
60.112b (c) added 52641
60.190 (b) revised; (c) added 52399
60 Appendix A amended 52399
Regulation at 61 FR 18262 eff. date corrected to 2-9-98 6493
61 Authority delegation notices 53245
Authority delegation notices 1746, 5891, 27854
Technical correction 7199
61.12 Regulation at 62 FR 8328 eff. date corrected to 12-30-97 414
61 Regulations at 61 FR 18278 and 18280 eff. date corrected to 2-9-98 6493
62 Authority citation revised 11608
62.850 (b)(3) and (4) added; (c) revised 11608
62.852 Removed 11608
62.854 Revised 11608
62.855 Revised 11608
62.865 (a)(3), (4) and (6) revised 11608
62.2350 (b)(5) and (c)(3) added 60787
62.2355 Undesignated center heading and section added 60787
62.2600 (b)(4) and (c)(3) added; eff. 7-20-98 27496
62.2606 Undesignated center heading and section added; eff. 7-20-98 27496
62.3350 Undesignated center heading and section added 67572
62.3912 Undesignated center heading and section added 41873
62.3913 Undesignated center heading and section added 20103
62.4177 Undesignated center heading and section added 41874
62.4178 Undesignated center heading and section added 13532
62.4620 (b)(4) added 45732
62.4631—62.4632 Undesignated center heading and sections added 54591
Regulation at 62 FR 54591 eff. date corrected to 2-10-98 6664
62.4931—62.4932 Undesignated center heading and sections added 45732

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62.6356 Undesignated center heading and section added **41874**
62.6357 Undesignated center heading and section added 20321
62.6912 Undesignated center heading and section added **41874**
62.6913 Undesignated center heading and section added 20101
62.7855—62.7856 Undesignated center heading and sections added **54591**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.8600—62.8602 (Subpart JJ) Added **65619**
62.9350 (b)(4) and (c)(4) added **36997**
62.9505 Undesignated center heading and section added **36997**
(b) correctly removed **48950**
Undesignated center heading corrected 24843
62.9630—62.9632 Undesignated center heading and sections added 17686
62.11110—62.11112 Undesignated center heading and sections added 2156
63 Authority delegation notices **36460**
Authority delegation notices 1746, 24116
Notice 2630
63.11 (b)(6) and (8) revised 24444
63.14 (d)(1) revised **65024**
(d)(1) revised 26465
63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added **65025**
(a)(5)(ii) introductory text revised; (a)(5)(ii)(C) added 26466
(a)(28) added; eff. 7–27–98 28909
63.100 (b)(1), (d) introductory text, (3) introductory text, (k) introductory text, (l)(1)(ii) and (2)(ii) revised; (g)(2)(iii), (h)(2)(iv) and (i)(2)(iv) amended; (d)(4), (g)(2)(iii)(A), (B), (h)(2)(iv)(A), (B), (i)(2)(iv)(A), (B) and (p) added 26081
63.106 (b)(6) added 26082
63.100—63.106 (Subpart F) Table 1 amended 26082
63.342 (f)(3)(i) introductory text amended **42920**
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended **42920**
63.347 (e)(4) revised **42921**
63.360—63.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 ..... **64738**
63.440—63.458 (Subpart S) Added 18616
63.461 Amended 24751
63.470 Added 24751
63.485 (o) introductory text revised **37722**
63.502 (a) revised; (j) added **37722**
63.640 (k)(2)(vii), (n)(1), (3) and (6) and (o)(2) revised; (n)(8), (9) and (r) added 13537
Regulation at 63 FR 13537 withdrawn 27212
63.641 Amended 13539
63.644 (a) introductory text amended 13539
63.645 (f)(4) amended; (f)(5) revised 13539
63.648 (e) revised 13539
63.654 (a), (g)(3)(i) introductory text and (h)(6) introductory text amended; (d)(1), (f) introductory text, (1)(i)(A), (ii) and (h)(1) revised; (f)(6) and (i)(5) added; (g)(3)(i)(B) removed; (g)(3)(i)(C) and (D) redesignated as (g)(3)(i)(B) and (C) 13539
63.640—63.654 (Subpart CC) Appendix amended 13540
63.741 (b) revised; (c) introductory text, (2), (3) and (4) revised; (f) amended; (c)(7), (h), (i) and (j) added 15016
63.742 Amended 15017
63.743 (a) introductory text, (b) introductory text and (c) revised; (a)(10) and (d) added 15017
63.744 (c) introductory text and (e)(12) amended; (e)(13) added; Table 3 redesignated as Table 1; (a) introductory text, (1), (2), (b) introductory text, (1), (c)(1)(ii), (2), (4), (d), (e)(1), (2) (9), (10), (11) and new Table 1 revised 15018
Corrected 17930
63.745 (f)(2) (g)(4)(viii) and (ix) amended; (g)(2)(iv) removed;

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(g)(2)(v) and (vi) redesignated as (g)(2)(iv) and (v); (e)(1), (2), (f) introductory text, (1) introductory text, (g)(2)(i), (ii), (iii), new (iv) and (v) revised; (g)(4)(x) added 15019
63.746 (a) introductory text and (b)(4)(v) amended; (b)(1), (3), (4)(i), (ii), (iii)(C), (4)(iv) and (c)(1) revised; (c)(2) and (3) added 15020
63.747 (c)(1), (2) and (e)(2) revised 15021
63.749 (a), (b), (d)(3)(iii)(B), (4)(iii), (f)(3)(ii)(A) and (h)(3)(i) revised 15021
63.750 (b)(2), (e)(2) amended; (c)(1), (e)(1), (g)(3)(ii), (9)(i), (i)(1), (2)(iii), (j) introductory text, (1), (3), (k) introductory text, (1), (l)(4) and (n)(3) revised; (i)(2)(iv) and (o) added 15021
63.751 (b)(6)(ii)(A) and (iii)(A)(*2*) introductory text amended; (b)(6)(iii) introductory text, (D), (c)(1), (2) and (d) revised 15023
63.752 (b)(1), (e)(1)(ii), (6) and (f) introductory text revised; (d)(4) removed 15023
63.753 (a)(1) introductory text and (d)(2)(i) revised 15023
63.741—63.759 (Subpart GG) Table 1 added 15024
Appendix A added 15026
63.840—63.859 (Subpart LL) Added **52407**
63.1310—63.1335 (Subpart JJJ) Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
63.1311 (b), (d) introductory text and (1) introductory text revised 9945
(c) introductory text revised 15315
63.1331 (a) introductory text revised; (a)(10) added **37722**
63 Appendix A amended **52418**
Appendix A amended 15027, 18630
64 Added **54940**
68 Interpretation **45134**
68.3 Amended 644
68.10 (f) added 645
68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5) 645
68.130 Tables 1 and 2 amended **45132**
(a) removed; (b) and (c) redesignated as new (a) and (b) 645
68 Appendix A amended **45132**
69.11 (d) added **44416**
69.41 Added **61205**
70 Guidance availability **63662**
70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54946**
70 Appendix A amended **37516, 45167, 45734, 62951**
Regulation at 61 FR 31443 eff. date corrected to 2–9–98 6494
Appendix A amended 13346
71 Guidance availability **63662**
71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54947**
72 Authority citation revised **55475**
72.1 (b) amended **55475**
72.2 Amended **55475**
72.6 (b)(9) added; (c)(1) and (2) revised **55475**
72.7 Revised **55476**
72.8 Revised **55477**
(b)(2) corrected **66279**
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended **55478**
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) **55478**
72.14 Added **55478**
72.22 (e) added **55480**
72.24 (a)(3), (5), (10) and (11) revised **55480**
72.25 (a) amended **55480**
72.30 (b)(3) removed; (e) added **55480**
72.31 (b) amended **55480**
72.32 (b) and (c) revised; (d) added **55480**
72.33 (b)(3) amended **55481**
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended **55481**
72.41 (b)(3) and (e)(1)(ii) amended **55481**
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended **55481**

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72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended **55481**
72.51 Amended **55481**
72.60 Revised **55481**
72.61 (a) and (b)(2)(i) revised; (b)(3) added **55481**
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed **55482**
72.69 (a) revised **55482**
72.70 Revised **55482**
72.71 Revised **55482**
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended **55482**
72.73 Revised **55483**
72.74 Revised **55483**
72.80 (a), (b) and (d) through (g) revised **55484**
72.81 (c)(1)(ii) amended; (c)(2) revised **55485**
72.82 (a) and (d) revised **55485**
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added **55485**
72.85 (a) and (c) revised **55485**
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv) added; (b)(5), (6) and (7) revised **55485**
72.95 Introductory text amended; (d) added **55485**
73.10 Heading revised; (b)(3) added **55486**
73.70 (c)(3) revised 5735
73.90 (a)(1), (2) and (3) revised; (c)(3) amended **55486**
74.2 Amended **55487**
74.3 (b) and (d) amended 18841
74.4 (c) added 18841
74.10 (a)(2) amended 18841
74.14 (b) introductory text and (6)(ii) amended 18841
74.16 (a)(12) amended 18841
74.18 (d) and (e) amended 18841
74.22 (c)(2) amended 18841
74.26 (a)(2) amended 18841
74.42 (a) amended 18841
74.44 (a)(1)(i)(G), (2)(i), (iii), (c)(2)(ii)(B)(*1*), (iii)(E)(*3*) and (F) amended 18841
74.47 (a)(3)(i) amended 18841
(a)(1), (3)(viii), (ix), (x), (xi), (xii) and (4) revised 18842
74.50 (a) introductory text and (1) through (4) redesignated as (a)(1) introductory text and (i) through (iv); new (a)(2) added 18842
75 Authority citation revised **55487**
75.67 (a) removed **55487**
76.16 Removed 24117
77.3 (d)(3), (5) and (6) revised **55487**
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended **55487**
(g)(2)(i)(D) correctly removed **66279**
77.6 (a) revised **55487**
78.1 (a) and (b)(1)(v) revised **55488**
78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) **55488**
78.4 (c)(1) amended **55488**
(c)(1) corrected **66279**
78.5 (a) amended **55488**
78.7 Removed **55488**
78.11 (a) amended **55488**
78.12 (a)(2) amended **55488**
78.14 (a) introductory text, (10) and (c)(1) amended **55488**
78.15 (c) amended **55488**
78.16 (d)(1) and (2) amended **55488**
78.17 Amended **55488**
78.18 (b) introductory text amended **55488**
78.20 (b) amended **55488**
80 Decision **63853**
80.2 (nn) removed **60135**
(ss) revised **68205**
80.28 (g)(1)(iii) added **68205**
80.30 (g)(1)(i) revised **68205**
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised **68205**
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised **68206**
80.46 Regulation at 61 FR 58306 eff. date corrected to 5–1–98 24117

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80.65 (d)(2)(iii) removed 60135
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised 60135
(e)(4) removed 68207
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised 68207
80.69 (f) removed 60135
80.72 (a) and (c) revised 54558
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed 60135
80.77 (g)(1)(ii) removed 60136
(g)(2)(iv)(B) revised 68207
80.78 (a)(6) revised 60136
(a)(1)(v)(C) revised 68207
80.79 (c) introductory text and (1) revised; (c)(3) added 68207
80.91 (e)(1)(iii) revised; (f)(2)(ii) added 68207
80.94 Added 45563
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added 68207
80.104 (a)(2)(xi) added 68208
80.128 (d)(2) revised 60136
80.129 (d)(3)(v) revised 60136
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) 60001
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) 60001
81 Attainment status determinations 51604
Authority citation revised 7274
81.1 (a) revised; (c), (d) and (e) added 7274
81.38 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.40 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.53 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.132 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.133 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.134 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.136 Regulation at 62 FR 30272 eff. date corrected to 5–4–98 24445
81.137 Regulation at 62 FR 30273 eff. date corrected to 5–4–98 24445
81.300—81.356 (Subpart C) Authority citation revised 7274
81.300 (a) amended 7274
81.301 Amended 2728
Regulation at 63 FR 2728 withdrawn 12652
81.302 Amended 2729, 9948
Regulation at 63 FR 2729 withdrawn 12652
81.303 Amended 60011
Amended 2730
Regulation at 62 FR 60011 eff. date corrected to 2–13–98 7290
Regulation at 63 FR 2730 withdrawn 12652
81.304 Amended 2733
Regulation at 63 FR 2733 withdrawn 12652
81.305 Amended 65030
Amended 2734, 15312
Regulation at 63 FR 2734 withdrawn 12652
81.306 Amended 68195
Amended 2741
Regulation at 63 FR 2741 withdrawn 12652
81.307 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.308 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.309 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652
81.310 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652
81.311 Amended 2744
Regulation at 63 FR 2744 withdrawn 12652
81.312 Amended 2746
Regulation at 63 FR 2746 withdrawn 12652
81.313 Amended 2747
Regulation at 63 FR 2747 withdrawn 12652

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81.314 Amended 2748, 11847
Regulation at 63 FR 2748 withdrawn 12652
81.315 Amended **45171, 55178, 64736**
Amended 2749
Regulation at 63 FR 2749 withdrawn 12652
81.316 Amended 2751, 13345
Regulation at 63 FR 2751 withdrawn 12652
81.317 Amended 2753
Regulation at 63 FR 2753 withdrawn 12652
81.318 Regulation at 62 FR 28637 withdrawn **40281**
Amended **55177, 61247**
Amended 2754, 14626
Regulation at 62 FR 61247 eff. date corrected to 2-10-98 6664
Regulation at 63 FR 2754 withdrawn 12652
81.319 Amended **64286**
Amended 2758
Regulation at 63 FR 2758 withdrawn 12652
81.320 Corrected; CFR correction **61916**
Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.321 Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.322 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.323 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.324 Amended 2763
Regulation at 63 FR 2763 withdrawn 12652
81.325 Amended 2765
Regulation at 63 FR 2765 withdrawn 12652
81.326 Amended 2766
Regulation at 63 FR 2766 withdrawn 12652
81.327 Amended 2768
Regulation at 63 FR 2768 withdrawn 12652
81.328 Amended 2770
Regulation at 63 FR 2770 withdrawn 12652
81.329 Amended 2771
Regulation at 63 FR 2771 withdrawn 12652
81.330 Amended 2772
Regulation at 63 FR 2772 withdrawn 12652
81.331 Amended **35972**
Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
Regulation at 62 FR 35972 eff. date corrected to 5-4-98 24445
81.332 Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
81.333 Amended 2774
Regulation at 63 FR 2774 withdrawn 12652
81.334 Amended 2776
Regulation at 63 FR 2776 withdrawn 12652
81.335 Amended 2777
Regulation at 63 FR 2777 withdrawn 12652
81.336 Regulation at 62 FR 28638 withdrawn **40281**
Amended **61247**
Amended 2778, 14626
Regulation at 62 FR 61247 eff. date corrected to 2-10-98 6664
Regulation at 63 FR 2778 withdrawn 12652
81.337 Amended 2780
Regulation at 63 FR 2780 withdrawn 12652
81.338 Amended **46210**
Amended 2782
Regulation at 63 FR 2782 withdrawn 12652
81.339 Amended 2783
Regulation at 63 FR 2783 withdrawn 12652
81.340 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.341 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.342 Amended 2785
Regulation at 63 FR 2785 withdrawn 12652
81.343 Amended **62698**
Amended 2786
Regulation at 63 FR 2786 withdrawn 12652
81.344 Amended **44088**
Amended 2788, 8133

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Regulation at 63 FR 2788 withdrawn 12652
81.345 Amended 38217
Amended 2792
Regulation at 63 FR 2792 withdrawn 12652
81.346 Amended 41283, 41870
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.347 Amended 61241
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.348 Amended 2796, 12012
Regulation at 63 FR 2796 withdrawn 12652
81.349 Amended 2798
Regulation at 63 FR 2798 withdrawn 12652
81.350 Amended 39448
Amended 2799
Regulation at 63 FR 2799 withdrawn 12652
Regulation at 62 FR 39448 eff. date corrected to 5–5–98 24748
81.351 Amended 2800
Regulation at 63 FR 2800 withdrawn 12652
81.352 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.353 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.354 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.355 Amended 2802
Regulation at 63 FR 2802 withdrawn 12652
81.356 Amended 2803
Regulation at 63 FR 2803 withdrawn 12652
82 Revocation notice 1927
Determination 6008
Notice of acceptability 9151, 28252
Clarification 26983
82.4 (r)(2) revised; interim 4363
82.30 (a) revised 68046
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised 68046
82.34 Heading and (a) revised; (b) amended; (d) added 68047
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised 68047
82.38 (a) and (b)(1)(iii) revised 68048
82.40 (a)(2)(i) revised 68048
82.30—82.42 (Subpart B) Appendix C added 68048
Appendix D added 68052
Appendix E added 68053
Appendix F added 68055
82.250—82.270 (Subpart H) Added 11096
85 Heading and authority citation revised 67736
Authority citation revised 14635, 18998, 24433
85.1403 (c)(1)(iii)(B) introductory text, (C) introductory text and (1)(iv) revised; (c)(1)(iii)(C)(6) removed; (c)(1)(iii)(D) added 14635
85.1515 (c) revised 964
85.1602 Amended 18998
85.1603 (b), (c) and (d) revised 67736
(c) revised 18998
85.1604 (a) revised 67736
85.1606 Introductory text revised 67736
85.2207 (a) and (e) removed 24433
85.2222 (c) revised 24433
85.2231 (b) revised 24434
86 Authority citation revised 44875, 47119
Authority citation revised 7719
National Low Emmission Vehicle Program finding 11374
86.1 (b)(1) table and (2) table amended 47119
(b)(1) table amended 54715
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised 54720
86.001–30 (a)(4)(iv)(A) through (9) revised 54720
86.004–2 Added 54720
86.004–11 Added 54721
86.004–15 Added 54722
86.004–21 Added 54724
86.004–25 Added 54725
86.004–28 (c) and (d) revised 54726
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised 54727
86.004–38 Added 54728
86.004–40 Added 54729

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86.094–8 (c) revised **47120**
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised **47120**
86.094–11 (b)(1) introductory text revised **47120**
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended **44875**
86.094–17 (i) revised 7719
86.094–26 (a)(2), (b)(2)(i) and (ii) amended **44875**
86.096–8 (c) revised **47120**
86.096–11 (a) introductory text and (c) revised **47120**
86.096–30 (a)(23) and (24) added 965
86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised **54716**
86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended **54716**
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended **54716**
86.098–15 Added **54716**
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended **54717**
86.098–30 (a)(4)(iv)(A) through (12) revised **54719**
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised **54720**
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised **47120**
(b)(2) table revised 24448
86.119–90 (b)(3) revised; (b)(8) added **47121**
(b)(3) revised; (b)(8) removed 24448
86.144–94 (c)(8)(ii)(B) revised **47122**
86.402–98 Added 11849
86.406–78 (d) revised 11849
86.518–78 (c) revised 11849
86.529–98 Added 11849
86.884–7 (a)(2)(i), (3) and (4) revised **47122**
86.884–8 (c) revised **47122**
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised **47122**
86.884–10 (a)(8) revised **47123**
86.884–13 (b)(6)(ii) and (iii) revised **47123**
86.884–14 Revised **47123**
86.1008–90 (a)(1)(iii) added **47123**
86.1008–96 (a)(1) revised **47123**
86.1008–2001 (a)(1)(iii) added **47123**
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added **47123**
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised **47124**
86.1311–94 (b)(3) revised **54730**
86.1312–88 (a) revised **47124**
86.1313–91 (b)(2) revised **47125**
86.1313–94 (b)(2) revised **47125**
86.1313–98 Added **47126**
86.1316–90 (b)(1) revised; (f) added **47126**
86.1316–94 (b)(1) revised; (f) added **47126**
86.1319–84 (d)(3) revised; (d)(8) added **47127**
(d)(3) revised; (d)(8) removed 24449
86.1319–90 (d)(3) revised; (d)(8) added **47127**
(d)(3) revised; (d)(8) removed 24449
86.1321–90 (a) and (b)(3) revised **47128**
86.1321–94 (a) and (b)(3) revised **47128**
86.1322–84 (b)(3) revised **47128**
86.1323–84 (b)(3) revised **47129**
86.1324–84 (c) revised **47129**
86.1325–94 (c) revised **47129**
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised **47130**
86.1327–98 Added **47130**
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed **47131**
(d) heading, introductory text, (1) and (2) revised 24449
86.1334–84 (a)(2) revised **47131**
86.1335–90 Revised **47131**
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47132**
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47133**
86.1338–84 Revised **47133**

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86.1339–90 Revised 47134
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed 47134
86.1341–98 Added 47135
86.1342–90 (h)(2)(i) through (vii) removed; (i) added 47135
86.1342–94 (e) through (h) revised; (i) added 47135
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added 47135
86.1344–94 (e)(22) revised 54728
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97; (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97; (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967
86.1703–99 Redesignated from 86.1703–97; (b) amended 967
86.1704–97 Redesignated as 86.1704–99 967
86.1704–99 Redesignated from 86.1704–97 967
86.1705–97 Redesignated as 86.1705–99 967
86.1705–99 Redesignated from 86.1705–97; heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
86.1706–97 Redesignated as 86.1706–99 969
86.1706–99 Redesignated from 86.1706–97 and revised 969
86.1707–99 Added 970
86.1708–97 Redesignated as 86.1708–99 976
86.1708–99 Redesignated from 86.1708–97; heading, (b)(1)(i), (iii)(B) and (c) amended; tables amended; (e) added 976
86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97; heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
86.1710–97 (c)(7) corrected 45289
Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97; amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97; (b) removed 985
86.1712–97 Redesignated as 86.1712–99 985
86.1712–99 Redesignated from 86.1712–97; (a)(2)(iii), (b)(1) and (3)(vi) revised 985
86.1713–97 Redesignated as 86.1713–99 986
86.1713–99 Redesignated from 86.1713–97 986
86.1714–97 Redesignated as 86.1714–99 986
86.1714–99 Redesignated from 86.1714–97 986
86.1716–97 Redesignated as 86.1716–99 986
86.1716–99 Redesignated from 86.1716–97; (b) removed 986
86.1717–97 Redesignated as 86.1717–99 986
86.1717–99 Redesignated from 86.1717–97; heading revised 986
86.1721–97 Redesignated as 86.1721–99 986
86.1721–99 Redesignated from 86.1721–97 986
86.1723–97 Redesignated as 86.1723–99 986
86.1723–99 Redesignated from 86.1723–97; revised 986
86.1724–97 Redesignated as 86.1724–99 986
86.1724–99 Redesignated from 86.1724–97; (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97; (d) added 986
86.1726–97 Redesignated as 86.1726–99 986
86.1726–99 Redesignated from 86.1726–97; (c)(1) revised 986
86.1728–97 Redesignated as 86.1728–99 987

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86.1728–99 Redesignated from 86.1728–97 987
86.1734–97 Redesignated as 86.1734–99 987
86.1734–99 Redesignated from 86.1734–97 987
86.1735–97 Redesignated as 86.1735–99 987
86.1735–99 Redesignated from 86.1735–97 987
86.1770–97 Redesignated as 86.1770–99 987
86.1770–99 Redesignated from 86.1770–97; (a)(2) revised 987
86.1771–97 Redesignated as 86.1771–99 987
86.1771–99 Redesignated from 86.1771–97 987
86.1772–97 Redesignated as 86.1772–99 987
86.1772–99 Redesignated from 86.1772–97; heading revised 987
86.1773–97 Redesignated as 86.1773–99 987
86.1773–99 Redesignated from 86.1773–97; (d) added 987
86.1774–97 Redesignated as 86.1774–99 987
86.1774–99 Redesignated from 86.1774–97 987
86.1775–97 Redesignated as 86.1775–99 987
86.1775–99 Redesignated from 86.1775–97 987
86.1776–97 Redesignated as 86.1776–99 987
86.1776–99 Redesignated from 86.1776–97 987
86.1777–97 Redesignated as 86.1777–99 987
86.1777–99 Redesignated from 86.1777–97 987
86.1778–97 Redesignated as 86.1778–99 987
86.1778–99 Redesignated from 86.1778–97 987
86.1779–97 Redesignated as 86.1779–99 987
86.1779–99 Redesignated from 86.1779–97 987
86.1780–97 Redesignated as 86.1780–99 987
86.1780–99 Redesignated from 86.1780–97 987
86 Appendix XVIII corrected 45289
Appendix I amended 47136
Appendix XVIII amended 987
Appendix I corrected 23501
88.308–94 Existing text designated as (a); (b) added 20107
89.1 (b)(3) revised 18998
89.2 Amended 18998
89.1—89.7 (Subpart A) Appendix A revised 67736
90.103 (a)(3) revised 42643
90.107 (h) added 42643
90.1003 (b)(5) added 42644
91.1103 (b)(4) added 42644
92 Added 18998
92.133 Effective date pending 19044
92.213 Effective date pending 19051
92.216 Effective date pending 19053
92.308 Effective date pending 19056
92.309 Effective date pending 19057
92.406 Effective date pending 19059
92.504 Effective date pending 19060
92.606 Effective date pending 19066
92.708 Effective date pending 19069
92.910 Effective date pending 19077
93.100—93.128 (Subpart A) Revised 43801
112 Petition denial 54508
123 NPDES State program approval 61170
131.33 Added 41183
131.36 (d)(13)(i) and (ii) amended; (d)(13)(iii) removed 52927
(d)(12)(ii) amended 53214
(d)(12)(ii) table amended 10144
132 Table 3 amended 52924
Appendix F amended 20110
136.3 (a) Table 1C amended 48403
(b)(1) and (e) Table II amended 48404
136 Appendix A amended 48405
140 Authority citation revised 1320
140.4 (a) introductory text, (b) introductory text and (1) amended; (c)(1), (2), (3), and (4) introductory text added; (b)(1)(ii) redesignated as (c)(4)(i) 1320
141.2 Amended 23366
142.2 Amended 23367
142.10 (e) revised; (f) redesignated as (g); new (f) added 23367
142.11 (a)(6) redesignated as (a)(7); new (a)(6) added (effective date pending) 23367
142.12 (b)(1) revised; (e) added 23367
148 Notice 43109
148.18 (f) added; eff. 11–4–98 24624

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(a) through (f) redesignated as (c) through (h); new (a) and (b) added; eff. 8–24–98 28636
156 Notice 56075
Policy statement 25168
156.10 (h)(2)(iii) revised; (i)(2)(x)(D) added 9082
157 Grant of exemption 8577
159 Added 49388
167.90 (b) amended 49620
170 Decision 51994, 53688
170.112 (e)(7)(iv) added 52003
180 Technical correction 56089
Nomenclature change 66023
Technical correction 1379
Heading and authority citation revised 10720
180.1 (k) revised; (o) added 10720
180.4 Revised 10720
180.33 Revised 28910
180.106 Revised 2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2164
Revised 13542
180.110 Revised 49924
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended 66023
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text 66025
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added 46907
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading and new (c) heading added 64301
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.175 Revised 64293
180.183 Revised 2165
180.200 Heading revised; existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended 45754
Amended 66023
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.209 (b) table amended 5737
180.213 Revised 2165
180.213a Removed 2166
180.222 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 17692
180.242 (a) and (b) redesignated as (a)(1) and (2); (a) heading added; (a)(1) table amended 2166
(b) text amended 9441
180.254 (a) heading added; (a) table amended; (b) removed 2166
180.275 (b) redesignated as (c); (a) heading, new (b) and (c) heading added 65376
180.277 Removed 66023
180.284 Regulation at 62 FR 7684 eff. date corrected to 1–6–98 416
180.288 Revised 66024
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text 49931
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added 66024
180.324 (a) revised 26480
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added 66024

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180.332 Amended; existing text designated as (a); (a) heading added **66024**
(a) table transferred in part from 186.250 ..... **66025**
180.353 Existing text redesignated as (a); new (a) heading and (b) added **45747**
180.355 (b) table amended 25777
180.356 (b) table amended 9427
180.361 (b) table amended 10547
180.364 (b) amended **42927**
180.368 (a) amended **66024**
180.377 Revised 26487
180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text and (i) through (iv) redesignated from 185.1300 (a) introductory text and (1) through (4); (b) redesignated as (c); (a) heading and new (c) heading added **63026**
(a)(3) redesignated from 186.1300 existing text **63027**
(a)(3) table amended **66024**
180.380 Revised **38474**
(a) revised 7308
180.381 (b) table amended 5739
180.383 Existing text redesignated as (a); new (a) heading and (b) added **39974**
180.395 Heading revised; existing text designated as (a); (a) heading and (b) added 10543
180.407 Revised **44595**
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
180.408 Revised **66024**
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table **47568**
180.412 (b) added **44565**
180.414 Revised **45741**
(a)(4) added; (b) table amended **54789**
(b) table amended **65036**
180.416 Existing text designated as (a); (a) heading and (b) added **66014**
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added **46894**
180.418 Revised **63235**
(a)(2) added **63243**
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table **49937**
(b) table amended **61447**
180.422 Revised **63001**
(a)(3) added **66025**
180.425 (b) table amended 13130
180.430 Revised 1377
(a) table amended 19837
180.431 (b) table amended 23394
180.433 Existing text designated as (a); (a) heading and (b) added **36684**
(b) table amended **61645**
180.434 (b) table amended **43291**
(b) table amended 16439
(b) amended 19410
Regulation at 62 FR 24045 eff. date corrected to 5–1–98 24119
180.435 Revised **63001**
180.436 (a) existing text designated as (a)(1); new (a)(1) table revised; (b) redesignated as (a)(2) **63018**
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3) **63019**
180.438 Revised **36671**
(b) added **56102**
(a) revised **63010**
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 ..... **64048**
(a)(1) table amended 7299
180.440 Revised **62961**
180.442 (b) table amended **46900**
(a) revised; (b) table amended **62969**
(b) table amended 1379, 2163, 15765
Regulation at 61 FR 29678 eff. date corrected to 2–9–98 6495
180.443 (b) introductory text revised; (b) table amended **36678, 42690**
(b) table amended **65369**
(b) table amended 10545

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Regulation at 62 FR 36678 eff. date corrected to 5-4-98 24450
(a) table amended 26097
180.445 Revised 9435
180.448 Existing text designated as (a); new (a) heading and (b) added **62992**
(b) table amended **68216**
(b) amended 17101
180.449 Revised **44095**
(b) table amended **56088**
180.452 Existing text designated as (a); heading and (b) added **66020**
180.458 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (3); (a)(2) added 17108
180.460 Revised 7305
180.462 Existing text redesignated as (a); (a) heading and (b) added **44558**
180.466 Existing text designated as (a); (a) heading and (b) added **37521**
Revised **63034**
180.472 (b) added **36697**
(a) table amended **65367**
(a) table amended 14371, 14378, 26098
(b) table amended 15763
Regulation at 62 FR 36697 eff. date corrected to 5-4-98 24450
180.474 (b)(1) table amended **56095**
180.478 Revised 16696
180.482 (a) heading added; (b) introductory text revised; (b) table amended **35689**
(b) amended **62985**
(b) table amended 13128, 26992
(b) amended 23392
180.487 Revised **54783**
180.493 (b) introductory text revised; (b) table amended **39961**
Corrected **47561**
(b) table amended 8139
180.495 (a) heading and (b) heading added; (b) table amended **54778**
(a) and (b) revised 18338
180.498 Regulation at 62 FR 10708 eff. date corrected to 5-1-98 24118
180.501 Added **61647**
180.503 (b) introductory text revised; (b) table amended **39956**
(a) and (b) table amended 24949
180.506 Regulation at 62 FR 34182 eff. date corrected to 5-4-98 24452
180.507 (a) added **36690**
Regulation at 62 FR 36690 eff. date corrected to 5-4-98 24451
(b) table amended 26089
180.509 Added **42684**
(b) table amended 24941
180.510 Added **39967**
(b) table amended 26472
180.511 Added **40741**
180.512 Added **41292**
Removed 13128
180.513 Added **44571**
180.514 Added **49163**
180.515 Added **51037**
180.516 Added **56082**
Heading and (a) revised 13128
180.517 Added **62979**
180.518 Added **63669**
180.527 Added 17699
Revised 26473
180.532 Added 17706
180.533 Added 23401
180.1001 (b)(1) amended **41286**
(c) table, (d) table and (e) table amended 24938
(c) table amended 28258
180.1020 Existing text designated as (a); (b) added **63863**
180.1163 Regulation at 62 FR 58332, eff. date corrected to 2-17-98 7720
180.1164 (c) added **60661**
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1180 (a) heading, (c) and (d) removed; (b) revised 9430
180.1181 Added **41877**
180.1182 Added **43657**
180.1183 Added **43653**
180.1184 Added **44582**
180.1185 Added **44575**
180.1186 Added **44579**
180.1187 Added **46884**
Revised 682
180.1188 Added **46887**
Revised 679
180.1189 Added **61639**
180.1190 Added **52509**
180.1191 Added **56105**

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180.1192 Added 17690
Revised 28261
180.1194 Added 18329
180.1195 Added 14363
180.1196 Added 24955
180.1197 Added 24963
185 Authority citation revised 66025
185.100 Removed 2167
185.350 Removed 2167
185.458 Transferred in part from 185.1075; redesignated as (a)(4) 17108
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed 47568
185.1075 Transferred in part to 180.458; removed 17108
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed 63019
185.1300 (a) introductory text and (1) through (4) redesignated as 180.379(a)(2) introductory text and (i) through (iv); removed 63026
185.1580 Removed 63001
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed 38474
185.2650 Existing text designated as 180.293(a)(2); removed 49931
185.2750 Removed 2167
185.3200 Table transferred in part to 180.421(a)(2) table; removed 49937
185.3225 Removed 63035
185.3625 Removed 61647
185.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 64048
185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed 66025
185.3900 Removed 64294
185.4700 Removed 45754
185.5450 Removed 63002
185.5550 Removed 2167
186 Authority citation revised 66025
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table 66025
Removed 66026
186.350 Amended 66026
Removed 2167
186.450 Amended 66026
186.458 (a)(5) and (6) transferred from 186.1075 (a) and (b) 17108
186.600 Removed 66026
186.800 Table transferred in part to 180.410(a) table; removed 47568
186.1000 (a) table amended 66026
186.1075 (a) table amended 66026
(a) and (b) transferred to 186.458 (a)(5) and (6); removed 17108
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed 63019
186.1300 Existing text redesignated as 180.379(a)(3) and removed 63026
186.1350 Table amended 66026
186.1400 Removed 54790
186.1450 Removed 46907
186.1650 Revised 66026
186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed 38474
186.1950 Removed 2167
186.2000 Table amended 66026
186.2400 Removed 66026
186.2550 Removed 2167
186.2700 (a) table amended 66026
186.2750 Removed 2167
186.2950 Table amended 66026
186.3050 Removed 66026
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed 49937
186.3225 Removed 63035
186.3250 Revised 66026
186.3350 Removed 66026
186.3375 Removed 2167
186.3450 Removed 66026

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186.3550 (a) table amended 66026
186.3750 Table amended 66026
186.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 64048
186.4000 Removed 66026
186.4700 Removed 45754
186.4750 Removed 2167
186.4800 Removed 66026
186.4975 Revised 66026
186.5000 Table amended 66026
186.5350 Removed 2167
186.5450 Removed 66026
186.5550 Removed 2167
186.5650 Removed 44595
Regulation at 62 FR 44595 eff. date corrected to 2-10-98 6665
194 Authority citation revised 27404
194.2 Amended 27404
194.8 Added 27404
194 Appendix A added 27405
228.15 (d)(6) revised 46149
Regulation at 61 FR 68970 eff. date corrected to 12-30-97 682
244 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
Clarification 5739
245 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
Clarification 5739
247.2 (d) added 60973
247.3 Amended; eff. 11-13-98 60973
247.12 (f) and (g) added; eff. 11-13-98 60974
247.13 Existing text designated as (a); (b) through (e) added; eff. 11-13-98 60974
247.14 Existing text designated as (a); (b) added; eff. 11-13-98 60974
247.15 (c) and (d) added; eff. 11-13-98 60974
247.16 (f) and (g) added; eff. 11-13-98 60974
247.17 Revised; eff. 11-13-98 60974
258 Effective date confirmation 51606
Authority citation revised 17729
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
258.74 (e), (g) and (k) revised 17729
260.31 (d) added 59290
Regulation at 62 FR 59290 withdrawn 67736
261.2 (c)(4) Table 1, (c)(3) and (e)(1)(iii) revised; eff. 8-24-98 28636
261.3 (a)(2)(i) and (iii) revised; eff. 8-24-98 28637
261.4 (a)(15) added 18635
(a)(9)(iii) and (16) added; (b)(7) revised; eff. 8-24-98 28636
261.5 (j) amended 24968
261.6 (a)(3)(iv)(A) and (C) amended 24968
261.32 Table amended; eff. 11-4-98 24625
261.33 (f) table amended; eff. 11-4-98 24625
261 Appendix IX amended 55347, 63463
Appendixes VII and VIII amended; eff. 11-4-98 24625
264.15 (b)(4) revised 64656
264.73 (b)(6) revised 64656
264.1030 (d) added 52641
(b)(3) and (c) revised; (e) added 64656
264.1031 Amended 64657
264.1033 (a)(2) revised 64657
264.1050 (g) added 52641
(b)(3), (c) and (f) revised 64657
264.1060 Revised 64657
264.1062 (b)(2) and (3) revised 64658
264.1064 (g)(6) and (m) revised 64658
264.1080 (e) added 52642
(b)(1) and (c) revised 64658
(f) and (g) added 11131
(f) and (g) removed 19838
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised 64658
264.1083 (a)(2) and (b)(1) revised 64658
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(4) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64659
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added 64659
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised 64659
264.1087 (c)(3)(ii) and (7) revised 64660
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64660
265.15 (b)(4) revised 64661
265.73 (b)(6) revised 64661
265.1030 (c) added 52642
(b)(3) revised; (d) added 64661

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265.1033 (a)(2) and (f)(2)(vi)(B) revised **64661**
265.1050 (f) added **52642**
(b)(3) and (e) revised **64661**
265.1060 Revised **64662**
265.1062 (b)(2) and (3) revised **64662**
265.1064 (g)(6) and (m) revised **64662**
265.1080 (e) added **52642**
(b)(1) and (c) introductory text revised **64662**
(f) and (g) added **11139**
(f) and (g) removed **19838**
265.1081 Amended **64662**
265.1082 Revised **64662**
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised **64663**
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (*I*), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised **64664**
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(*4*) revised; (e)(4), (f)(4) and (j)(2)(iii) added **64666**
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added **64666**
265.1087 (c)(4)(i), (d)(4)(i) and (g) introductory text revised **64666**
265.1088 (c)(3)(ii) and (7) revised **64667**
265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added **64667**
265 Appendix VI revised **64668**
268.2 (i) revised; (k) added; eff. 8–24–98 ..... **28639**
268.3 (d) added; eff. 8–24–98 ..... **28639**
268.4 (a)(2)(ii) and (iii) revised; eff. 8–24–98 ..... **28639**
268.7 (a)(1), (3)(ii), (7), (b)(1), (2), (5) and (6) revised; (a)(2), (3) introductory text, (4), (5) introductory text, (6), (b)(3) introductory text, (ii) table and (4) introductory text amended; (a)(2)(i), (b)(4)(iv), (v) and (e) added; eff. 8–24–98 ..... **28639**
268.33 Added; eff. 11–4–98 ..... **24625**
268.34 Revised; eff. 8–24–98 ..... **28641**
268.39 (c) revised **37699**
268.40 (g) amended **45572**
Table amended; eff. 11–4–98 ..... **24625**
(e) and table revised; (h) added; eff. 8–24–98 ..... **28641**
268.42 (a) introductory text revised; (a)(1), (2) and (3) removed; eff. 8–24–98 ..... **28738**
268.44 (a) and (h) revised; (m) added; (p) removed **64509**
(h)(3) redesignated as (h)(5); new (h)(3) and (4) added; eff. 8–24–98 ..... **28738**
268.45 (a) introductory text, (d)(3) and (4) revised; eff. 8–24–98 ..... **28738**
268.48 (a) table amended **45572**
(a) table amended; eff. 11–4–98 ..... **24626**
(a) table revised; eff. 8–24–98 ..... **28739**
268.49 Added; eff. 8–24–98 ..... **28751**
268 Appendixes VII and VIII amended; eff. 8–24–98 ..... **28752**
270.14 (b)(5) revised **64671**
271 State hazardous waste management program authorizations **43111, 47947, 49163, 52951, 61175, 62262, 62521, 67572**
Regulation at 62 FR 29301 eff. date corrected to 12–30–97 ..... **683**
State hazardous waste management program authorizations **2167, 4587, 6666, 24453**
271.1 (j) Table 1 amended **45572**
(j) Tables 1 and 2 amended; eff. 11–4–98 ..... **24627**
(j) Tables 1 and 2 amended; eff. 8–24–98 ..... **28753**
272.501 Added **2898**
272.951 Added **67583**
272.1601 Revised **23224**
272.1851 Revised; eff. 7–14–98 ..... **23676**
272.2201 Added **49169**
272 Appendix A amended **49170, 67584**
Appendix A amended **2899, 23225**
Appendix A amended; eff. 7–14–98 ..... **23677**
279.10 (i) revised **24969**
279.22 (d) revised **24969**
279.45 (h) revised **24969**
279.54 (g) revised **24969**
279.64 (g) revised **24969**
279.74 (b) revised **24969**
281 State underground storage tank program authorizations **36698, 49620**

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282.102 Added 4593
282 Appendix A amended 4594
300 Notice **42414, 62524**
300 Appendix B amended **35447, 35690, 35974, 36997, 37522, 41292, 46211, 48950, 48951, 49445, 49621, 50446, 50518, 50874, 52033, 53247, 55179, 56106, 65224, 67737, 68216**
Appendix B amended 4398, 9949, 11337, 11376, 19193, 20322, 25170, 27855, 27856
302.4 Amended; eff. 11-4-98 24627
302.6 (c) revised 13475
310 Revised; interim 8286
355.40 (a)(2)(vi) revised 13475
372.65 Regulation at 61 FR 38605 eff. date corrected to 2-10-98 6668
(a) and (b) amended 19839
403 Authority citation revised **38414**
403.8 (c) and (f)(6) revised **38414**
403.11 (b)(1)(i)(A) and (B) revised **38414**
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added **38414**
403.18 Revised **38414**
430 Revised 18635
712.30 Regulation at 61 FR 55787 eff. date corrected to 12-30-97 684
716.5 Revised 15773
716.20 (b)(5) added 15773
716.25 Revised 15773
716.30 (a)(1) amended 15773
716.35 (a) introductory text revised 15774
716.45 (c)(3) revised 15774
716.60 (a) revised 15774
716.65 Revised 15774
716.120 Regulation at 61 FR 55787 eff. date corrected to 12-30-97 684
(a) table, (c) table and (d) table amended 15774
721.325 Removed **51608**
721.370 Removed **51608**
721.390 Removed **51608**
721.400 Removed **51608**
721.405 Added 3419
721.415 Removed **51608**
721.460 Removed **51608**
721.470 Removed **51608**
721.490 Removed **51608**
721.524 Added 3419
721.526 Added 3419
721.528 Added 3419
721.537 Added 3419
721.538 Added 3420
721.539 Added 3420
721.567 Added 3420
721.637 Added 3421
721.640 Added 3421
721.641 Added 3421
721.643 Added 3421
721.655 Added 3421
721.658 Added 3421
721.700 Removed 9443
721.720 Added 3422
721.723 Added 3422
721.977 Added 3422
721.980 Added 3422
721.981 Added 3422
721.1105 Added 3422
721.1155 Added 3422
721.1175 Removed **51608**
721.1575 Removed **51608**
721.1660 Regulation at 61 FR 52295 eff. date corrected to 12-30-97 673
721.1705 Added 3423
721.1805 Added 3423
721.1907 Added 5742
721.1930 Added 3423
721.2050 Removed **51608**
721.2082 Added 3423
721.2091 Added 3423
721.2094 Added 3424
721.2122 Added 3424
721.2145 Added 3425
721.2170 Removed **51608**
721.2222 Added 3425
721.2225 Regulation at 61 FR 33374 eff. date corrected to 2-10-98 6668
721.2280 Added 3425
721.2345 Added 3425
721.2350 Added 3425
721.2535 Added 3425
721.2650 Removed **51608**
721.2750 Removed **51608**
721.2805 Added 3426
721.2815 Removed **35692**
Regulation at 62 FR 35692 eff. date corrected to 12-30-97 686
721.2840 Removed 9443
721.2860 Removed 9443
721.2880 Removed 9443
721.2925 Added 3426

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721.2930 Removed 51608
721.2940 Removed 9443
721.3020 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3028 Removed 51608
721.3040 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3060 Correctly removed 40742
721.3085 Added 3426
721.3120 Removed 51608
721.3155 Added 3426
721.3200 Removed 9443
721.3240 Removed 11609
721.3254 Regulation at 61 FR 33375 eff. date corrected to 2–9–98 6496
721.3465 Added 3426
721.3485 Added 3427
721.3488 Added 3427
721.3550 Added 59583
(a) corrected 63035
721.3565 Added 3427
721.3640 Removed 51608
721.3764 Revised 42692
721.3870 Removed 51608
721.4020 Removed 51608
721.4085 Added 3427
721.4090 Added 3427
721.4095 Added 3428
721.4158 Added 3428
721.4220 Removed 51608
721.4257 Added 3428
721.4259 Added 3428
721.4400 Removed 51608
721.4462 Added 3428
721.4464 Added 3428
721.4465 Added 3428
721.4467 Added 3429
721.4468 Added 3429
721.4469 Added 3429
721.4476 Added 3429
721.4484 Regulation at 62 FR 27694 eff. date corrected to 5–1–98 24120
721.4589 Added 3429
721.4640 Removed 9443
721.4780 Removed 51608
721.4790 Removed 51608
721.4800 Removed 51608
721.4885 Added 3430
721.5225 (a)(2)(v) revised 42692
721.5255 Added 3430
721.5279 Added 3430
721.5280 Added 3430
721.5281 Added 3430
721.5547 Added 3431
721.5549 Added 3431
721.5645 Added 3431
721.5650 Added 3431
721.5705 Removed 51608
721.5708 Added 3431
721.5725 Added 3432
721.5730 Added 3432
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721.5867 Added 23679
721.5910 Removed 51608
721.5913 Added 3432
721.5990 Removed 9443
721.5995 Added 3432
721.6045 Added 3432
721.6075 Added 3432
721.6078 Added 3433
721.6165 Added 3433
721.6170 Added 3433
721.6193 Added 64740
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721.6475 Added 3433
721.6477 Added 3434
721.6485 Added 3434
721.6490 Added 3434
721.6495 Added 3434
721.6500 Removed 51608
721.6505 Added 3434
721.6580 Removed 51608
721.6640 Removed 51608
721.6700 Removed 51608
721.6720 Removed 51608
721.6740 Removed 51608
721.6760 Removed 51608
721.6780 Removed 51608
721.6840 Removed 51608
721.6880 Removed 51608
721.6940 Removed 51608
721.6960 Removed 51608
721.7040 Removed 51608
721.7046 (a)(1) revised 42692
721.7080 Removed 51608
721.7100 Removed 51608
721.7140 Removed 51608
721.7180 Removed 51608
721.7210 (a)(1) revised 42692
721.7240 Removed 51608
721.7300 Removed 51608
721.7320 Removed 51608
721.7340 Removed 51608
721.7370 Removed 51608
721.7375 Added 3434
721.7378 Added 3434
721.7400 Removed 51608
721.7420 Removed 51608

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721.7460 Removed 51608
721.7540 Removed 51608
721.7560 Removed 51608
721.7580 Removed 51608
721.7660 Removed 51608
721.7680 Removed 51608
721.7740 Removed 51608
721.7760 Removed 51608
721.8075 Removed 51608
721.8079 Added 3435
721.8095 Added 3435
721.8125 Removed 9443
721.8265 Removed 51608
721.8275 Removed 51608
721.8290 Removed 51608
721.8300 Removed 51608
721.8325 Removed 51608
721.8335 Removed 51608
721.8350 (a)(2)(iv) added 42692
721.8375 Removed 51608
721.8400 Removed 51608
721.8425 Removed 51608
721.8475 Removed 51608
721.8525 Removed 51608
721.8550 Removed 51608
721.8575 Removed 51608
721.8600 Removed 51608
721.8650 Removed 51608
721.8780 Added 3435
721.9005 Added 3435
721.9010 Added 3436
721.9080 Added 3436
721.9240 Removed 51608
721.9260 Removed 9443
721.9265 Added 3436
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721.9320 Removed 51608
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721.9488 Added 3437
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721.9510 Removed 51608
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721.9662 Added 3439

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721.9664 Added 3439
721.9668 Added 9450
721.9717 Added 3439
721.9780 Removed 9443
721.9825 Added 3439
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721.9870 Removed 51608
721.9928 Added 3440
721.9940 Removed 51608
721.9962 Removed 9443
721.9975 Removed 51608
799.1 (d) added 43824
799.9135—799.9780 (Subpart H) Added 43824

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71.75–13 Added 67514
71.75–20 (a) revised 67514
91 Authority citation revised 67514
91.15–5 Revised 67536
91.60–30 Added 67514
91.60–40 (b) revised 67515
107 Authority citation revised 67515
107.205 Revised 67536
107.415 Added 67515
114.400 (b) amended 64305
115 Authority citation revised 67515
115.925 Added 67515
116.439 (e) amended 64305
116.500 (h) amended 64305
117.130 (b) amended 64305
117.150 (a) amended 64305
117.175 (f)(4) amended 64305
117.200 (a)(1) through (4) amended 64305
117.210 (c) amended 64305
118.320 (c)(1) amended 64305
121.710 Amended 64306
122.604 (a) introductory text, (d) and (e) introductory text amended 64306
126 Authority citation revised 67515
126.480 Added 67515
153.12 Introductory text revised 67537
154.19 (a) introductory text revised 67537
175 Authority citation revised 67515
175.400 Amended 64306
Corrected 65739
175.540 (d) added 67515
176 Authority citation revised 67515
176.925 Added 67515
176.930 Revised 67515
177.500 (j)(1) amended; (o)(1) revised 64306
178.330 (a)(4)(v) amended 64306
180.130 (b) amended 64306
180.210 (d) amended 64306
185.604 (a) introductory text, (d) and (e) introductory text amended 64306
189 Authority citation revised 67515
189.60–30 Added 67515
189.60–40 (b) revised 67515

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

201 Authority citation revised 9157
201.2 Amended 9157
201.21 Removed 9157
201.85 Amended 9157
201.86 Added 9157
201.87 Amended 9157
201.186 (Subpart U) Removed 9158
221.1 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (b) amended 6880
221.3 (f), (k) and (t)(2) removed; (t)(1) redesignated as (t); (g) through (j) and (l) through (w) redesignated as (f) through (u) 6880
221.7 (b)(1)(ii) amended; (b)(1)(v) and (2)(iv) removed 6880

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221.11 (a) introductory text and (1) amended 6880
221.13 (a)(1) amended 6880
221.13 (a)(1)(iii) removed; (a)(1)(iv) redesignated as (a)(1)(iii); (a)(3) amended 6881
221.15 (c)(4)(i) amended 6881
221.17 Amended 6881
221.19 Amended 6881
221.21—221.37 (Subpart C) Removed 6881
221.61 Note amended 6881
360 Removed 28912
382 Revised 3828
383 Removed 61648

Chapter IV—Federal Maritime Commission (Parts 500—599)

514.7 (g)(1) revised 63463
586 Petition denial 54396
586.2 Suspended 61649

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1—199 (Ch. I) 5767, 9916, 26756
1 26566
5 ..... 16731, 27700
10 ..... 55548, 60122, 61585
..... 3070, 16024, 19580, 26566
12 ..... 16024, 19580
15 ..... 55548, 60122
..... 2939, 3070
25 52057
..... 9980
27 ..... 52057, 60939
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32 52057
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298 7744

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order 56111
0.231 (i) revised 24124
0.291 (d) revised 1035
0.401 (a)(1)(iii) added 24124
0.408 Revised (OMB numbers) 52257
0.441 Revised 51797
0.443 Revised 51797
0.453 Introductory text revised 51797
0.455 Introductory text revised 51797
0.460 (a) revised 51797
0.461 (a), (h) and (i) redesignated as (a)(1), (i) and (j); (a)(2) and new (h) added; (d)(1), (3), (g) introductory text, (3), concluding text, new (i)(1), (j), (k) introductory text and (3) revised 51797
Corrected 25778
(i)(1) correctly designated 25779
0.467 (a)(1) table and (2) revised 8140
1 Deadline establishment 2170
Order 10153
Petitions 24126
1.4 (f) and (h) introductory text revised 24124
1.46 (b) and (c) revised 24124
1.47 (b) and (d) revised; (h) added 1035
(d) revised 24125
1.49 (a) revised; (f) added 24125
1.51 (e) revised 24125
1.52 Revised 24125
1.80 (b)(4) note amended 26992
1.401 (b) revised 24125
1.403 Revised 24125
1.419 (d) and (e) added 24125
1.429 (d) through (h) revised 24126
1.720 Introductory text and (h) revised; (j) added 1035
1.721 (a)(5) through (8) revised; (a)(9) through (14), (c) and (d) added 1035
1.722 Revised 1036
1.724 (a), (b) and (c) revised; (f) through (j) added 1037
1.725 Revised 1037
1.726 Revised 1037
1.727 (b) thorugh (e) revised; (g) and (h) added 1038
1.729 Revised 1038
1.730 Removed 1039
1.731 Heading and (a) revised 1039
1.732 (a) through (d) and (f) revised; (h) added 1039
1.733 (a) introductory text, (2), (4), (5), (6) and (b) through (e) revised; (f), (g) and (h) added 1039
1.734 (c) revised; (d) added 1040
1.735 (b), (d), (e) and (f) revised 1040
1.736 Added 1041
1.767 Regulation at 60 FR 15726 eff. 6-13-96 51378
1.1105 Table amended 1041

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1.1157 (d) added **59825**
1.1159 (e) added **59825**
1.1162 (c)(1) and (2) added **59825**
1.1206 (b)(1) and (2) revised 24126
1.1307 (b)(4) introductory text correctly revised **61448**
1.1402 (c) revised; (i) through (m) added 12024
1.1403 Heading revised; (e) added (effective date pending) 12025
1.1404 (g)(12) and (h) through (k) redesignated as (g)(13) and (k) through (n); new (g)(12), (h), (i) and (j) added (effective date pending) 12025
1.1409 (e) revised; (f) added (effective date pending) 12025
1.1417 Added (effective date pending) 12026
1.1418 Added (effective date pending) 12026
1.2101 Revised 2340
1.2102 (a) and (b) revised; note added 2340
(a)(10) added; (b)(4) introductory text revised 6103
Correctly revised 10780
1.2103 (a) revised; (d) added 2341
1.2104 (d) and (g) revised 2341
1.2105 Revised 2341
1.2107 (b) and (c) revised 2342
(c) corrected 12659
1.2108 (b) and (c) revised 2343
1.2109 (a), (b) and (c) revised 2343
1.2110 (e)(4)(i) revised **55356**
Revised 2343
(f)(2) corrected 12659
(f)(4)(ii), (iii) and (iv) revised 17122
1.2111 (c) and (d) revised; (e) added 2346
1.2112 Added 2347
1.2113 Added 2348
2.106 Table amended 6674
5.70 Added **55529**
15.120 Added 20133
15.205 (d)(5) added **58658**
15.209 (g) revised **58658**
15.242 Added **58658**
20.3 Amended 2637
20.18 Revised 2637
20.20 Added **63871**
21.113 Heading revised; (d) added **55530**
21.959 (a)(2) revised 2348
21.960 (b)(4) and (d)(1) revised 2348
22 Authority citation revised 20338
22.137 (a)(1) and (2) added; (b) amended 10344
22.369 Heading revised; (d) added **55530**
22.903 Revised **63872**
Removed 20338
23.20 (f) added **55530**
24 Deadline establishment 2170
Order 10153
24.18 Added **55531**
24.304 (a)(2) revised 2348
24.309 (b) and (f) revised 2348
24.439 (a)(3) added 10344
24.704 (a)(2) revised 2349
24.709 (b)(9) added **55356**
(b)(9) revised 17122
24.711 (b) and (c) revised 2349
24.712 (b) added 2349
(c) correctly designated as (b) 12659
24.716 (c) and (d) revised 2349
24.717 (c) revised 2349
24.839 (a)(1) and (2) added 10344
25.113 (b) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.115 (c) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.130 (d) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.131 (b) and (j) revised (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.137 Added (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.142 (d) and (e) added **59295**
25.143 Corrected **51378**
25.145 Added (OMB number pending) **61456**
25.201 Amended **59296**
25.203 (i) added **55531**
25.204 (g) added **61457**
25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added **61457**
25.212 (c) correctly revised **51378**

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25.259 Added **59296**
25.260 Added **59296**
26.105 Added **55531**
27.62 Added **55532**
27.203 (b) revised 2349
27.209 (d) revised 2349
27.324 (a)(3) added; (b)(3) revised 10344
36.125 (a)(5) revised 2124
36.601 (c) revised 2124
36.612 (a) introductory text revised 2124
36.613 (a) introductory text amended 2124
36.621 (a)(1) and (4) introductory text amended; (a)(2), (3), (4)(ii)(A) and (C) revised 2124
36.622 (a) introductory text and (b) introductory text revised 2125
36.631 (a) through (d) revised 2125
42.10 Removed **59604**
42.11 (a) revised; (c) removed **59604**
43 Technical correction 24120
43.51 Regulation at 61 FR 59200 eff. 10–1–97 ..... **51378**
(d) revised **64751**
43.61 (c) added (effective date pending) **64752**
Regulation at 62 FR 64752 eff. 2–9–98; corrected 5743
Regulation at 62 FR 45761 eff. 1–23–98 8578
52 Order **55762**
Waiver **64759**
52.7 (b) revised; (f) added **55180**
52.11 (c) and (g) revised; (h) and (i) added **55180**
52.12 Added **55180**
52.13 (b) revised; (c) through (g) added **55181**
52.15 (d) and (e) added **55182**
52.16 Added **55183**
54 Agency practice and procedure rules 162
54.101 (a) introductory text and (b) revised; (a)(1) amended 2125
54.201 Heading revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 2125
54.301 Revised 2126
54.303 Revised 2128
54.307 (a)(4) revised 2128
54.400 (a) and (d) revised 2128
54.401 (d) amended 2128
54.403 (d) added 2128
54.500 Revised 2128
54.501 Revised 2129
54.502 Revised 2129
54.503 Revised 2129
54.504 Heading, (a), (b) heading, (1), (2) introductory text and (v) revised; (b)(3) and (c) redesignated as (b)(4) and (d); new (b)(3) and new (c) added; new (b)(4) amended 2129
54.505 (b)(4) and (f) added; (d) removed 2130
54.506 Added 2130
54.507 (c) amended **56120**
(e) and (f) revised; (g)(4) amended 2130
(a) amended 3832
(g)(4) amended 27857
54.511 (b) and (c) revised; (d) added 2130
54.517 (a) revised 2131
54.518 Added 2131
54.519 Added 2131
54.603 Heading, (b)(1) introductory text, (2) and (3) revised 2131
54.604 Added 2131
54.605 (d) revised; (e) added 2131
54.609 (a) revised; (c) added 2131
54.619 (b) and (d) revised 2132
54.623 (c) amended **56120**
(e) revised 2132
(a) amended 3832
54.625 Added 2132
54.703 (b) and (c) amended 2132
54.705 Revised 2132
54.709 (a)(4) revised; (a)(5) added **65038**
(a) introductory text and (3) revised 2132
61.20 Regulation at 60 FR 15726 eff. 6–13–96 ..... **51378**
Revised **59604**
61.21 Regulation at 60 FR 15726 eff. 6–13–96 ..... **51378**
61 22 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
61.58 (e)(1) and (2) correctly redesignated as (f)(1) and (2); (e) reinstated; CFR correction 13133
61.72 (a) introductory text revised **59604**
63.01 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**

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63.02 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
63.05 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
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63.11 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64753**
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63.12 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64753**
Regulation at 62 FR 64753 eff. 2–9–98 5743
63.13 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.14 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.15 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
63.17 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
(b) revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.18 Regulation at 60 FR 15729 eff. 6–13–96 ..... **51378**
(e), (h) and (i) revised; (k) added (effective date pending) **64755**
Regulation at 62 FR 64755 eff. 2–9–98 5743
(e)(4)(ii)(A) corrected 24121
63.19 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.20 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.21 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
(a) revised; (e) redesignated as (h); new (e), (f) and (g) added (effective date pending) **64758**
Regulation at 62 FR 64758 eff. 2–9–98 5743
64 Order **55762**
Waiver **58686, 60034, 64759**
Authority citation revised **64758**
Authority citation revised 20338
Technical correction 24120
64.702 (d)(3) removed 20338
64.703 (a)(2) and (3)(iii) amended; (a)(4) added; eff. 10–1–99 11617
64.709 Added 11617
(e)(2) correctly added 15316
64.710 Added; eff. 10–1–99 11617
64.1001 (b), (c) and (d) revised (effective date pending in part) **64758**
64.1002 Revised (effective date pending) **64758**
64.1150 Regulation at 62 FR 43481 eff. 3–23–98 13798
64.1300 (c) and (d) revised **58686**
64.1903 (c) stayed 16696
64.2001—64.2009 (Subpart U) Added 20338
68.2 (1)(1) and (2) corrected **54790**
(a)(3), (d) introductory text and (j) revised; (d)(4) added **61654**
(j)(3) correctly designated; (d) introductory text and (j)(3) corrected 25170
68.3 Amended **61654**
Corrected 25170, 25171, 25172, 25173
68.222 Removed **61664**
68.300 Revised **61664**
68.302 Revised **61664**
(b)(1) note, (2) notes, (c)(1) note, (2)(iii) and illustrations corrected 25173
68.304 Revised **61667**
68.306 Revised **61667**
(e) correctly revised; illustration corrected 25173
68.308 Revised **61671**
Table and note corrected; (b)(6)(i) and (ii) correctly revised 25173
(b)(7)(ii)(C) and (e)(1)(ii) correctly added; (e)(1)(i) correctly designated; (e)(2)(ii) table correctly transferred to (e)(2)(i); (e)(1)(i) table, new (2)(i) table, (f)(3),

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(h)(1)(ii) table and (iii) corrected; second (d) through (f) correctly removed 25174
68.310 Revised **61682**
(b) table correctly revised 25174
(a)(1), (b) introductory text table, (5), table and illustrations corrected 25175
68.312 Revised **61689**
68.314 Revised **61690**
68.316 Heading revised **61691**
68.317 Heading revised **61691**
68.318 Revised **61691**
69 Waiver **56120**
Clarification and waiver ... 20334, 26495, 26497
69.4 (a) revised; (h)(6) removed **56132**
69.30 (c) revised; (d) added **65622**
69.111 (c) revised **56132**
69.124 Correctly revised **66030**
69.153 (c)(1) and (d) revised; (g) added **56132**
(h) added 2132
69.155 (c) revised **56133**
69.612 (a)(3) amended 2133
69.616 (d) amended 2133
69.619 (b) revised 2133
73 Petition denial **61692**
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73.202 (b) table amended ..... **51799, 51800, 53973, 54791, 55763, 59605, 63674, 63675, 65764—65766, 66030, 66031, 66295, 66530, 66826**
(b) table amended ..... 164, 165, 2350—2352, 3832—3835, 4195, 4398, 5464, 5744, 6077—6079, 7308, 8579—8581, 10346, 11378—11380, 12412, 12413, 13545, 13546, 17123, 17124, 18843, 19663, 23226, 24454, 26993, 27212, 27498, 27499, 27858, 27859
73.606 (b) table amended 6079
73.622 (b) through (h) revised 13552
73.623 (c) through (f) revised 13552
73.624 (c) revised 15784
73.625 (c)(5) added 13562
73.682 (a)(22)(i) and (24)(iii)(A) revised 20134
73.1030 (a) redesignated as (a)(1); (a)(2) added **55532**
73.3572 (a)(2) revised 13562
73.3612 Revised 16907
74.24 (j) added **55532**
74.32 Added **55537**
74.706 (d) revised 13563
76 Reconsideration petition 17333
76.5 (mm)(2) revised; (mm)(3) and (4) added **61031**
76.77 (a) revised 16907
76.613 Heading, (b), (c) and (d) revised (effective date pending) **61031**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.620 Added **61031**
76.701 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.702 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.800 Added (effective date pending) **61031**
76.802 (a) and (g) revised; (l) added (effective date pending) **61031**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.804 Added (effective date pending) **61032**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.805 Added **61033**
76.806 Added **61034**
76.922 Regulation at 62 FR 15127 eff. 9–4–97 ..... **52952**
(b)(5)(i) introductory text revised **53576**
76.934 (h)(5)(i) and (9) revised; (h)(11) added **53576**
78.19 (c) redesignated as (c)(1); (c)(2) added **55533**
(f) added **55538**
80.21 (f) added **55533**
87.23 (a) redesignated as (a)(1); (a)(2) added **55534**
90.7 Amended **52044**
90.129 (e) revised **55534**
90.153 (a)(1) and (2) added; (b) amended 10345
90.155 (d) revised **52044**
90.177 Introductory text revised; (f) added **55534**
90.210 (k)(3) revised; (k)(6) added **52044**
90.350—90.363 (Subpart M) Heading revised **52043**
90.350 Amended **52044**

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90.353 (d), (e) and (f) revised; (i) added **52044**
90.359 Revised **52044**
90.361 Introductory text and (c)(2)(ii)(B) revised **52044**
90.805 (c) revised 2349
90.812 (a) and (b) revised 2349
95.42 Added **55534**
95.192 (d) added **55535**
95.206 (c) added **55535**
95.405 (d) added **55535**
95.816 (e)(2) redesignated as (d)(5); (c)(6) and (e) revised 2350
Corrected 12659
95.840 Added **55535**
95.1003 (c) added **55536**
97.13 (c)(1) correctly revised **61448**
97.203 (h) added **55536**
97.205 (h) added **55536**
101 Technical correction 14039
101.13 (d) revised 6103
101.15 (c) revised 6103
101.17 Added 6103
101.31 (b)(3) introductory text and (e)(1)(v) revised; (b)(6) added **55538**
(e)(1)(vi) and (vii) revised; (e)(1)(viii) added 10779
101.45 (d) revised 6103
101.51 (a) introductory text revised 6104
101.53 (g) added 6104
(a)(1) and (2) added 10345
101.55 (a) introductory text and (b)(2) revised 6104
101.56 Added 6104
101.57 (a)(1) revised 9448
(a)(1)(ii)(B) corrected 14039
101.63 (a) and (d) revised 6104
101.64 Added 6104
101.103 (i)(1) and (2) added 6105
(b)(3) added 9448
(b)(3) corrected 14039
101.107 Table amended 6105
(a) amended 9448
(a) Footnote 8 corrected 14039
101.109 Table amended 6105
101.113 (a) amended 9448
(a) Footnote 8 corrected 14039
101.115 (c)(2) table amended 6105
101.123 Heading revised; (e) added **55536**
(d) added **55538**
(e) correctly designated **60664**
101.147 (v) redesignated as (v)(1); new (v)(1) revised; (v)(2) added 6105
(a) amended; (u) introductory text revised 9448
(a) Footnote 16 and (u) introductory text corrected 14039
101.803 (a) and (d) amended 9448
(a) Footnote 7 and (d) Footnote 9 corrected 14039
101.1111 Revised 26507
Regulation at 63 FR 26507 eff. date corrected to 7–13–98 27625
101.1201—101.1209 (Subpart N) Added 6106
101.1209 Corrected 10781

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0—199 (Ch. I) 15353, 26758, 27021
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74 ..... **52677, 60025, 60750, 65392, 65780**
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79 3070
80 ..... 16938, 26758
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90 ..... **52078, 58700, 60199** 770, 16938, 26758
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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-03 ..... **64912**
Small entity compliance guide **64952**
Federal Acquisition Circular No. 97-04 9048
Small entity compliance guide 9069
1.106 Table amended (OMB numbers) 9050, 9051
1.201-1 (a) amended **64940**
(b)(2) amended 9069
1.402 Amended **64914**
2.101 Regulation at 61 FR 41468 confirmed **64914**
Amended **64915**
4.602 Regulation at 61 FR 67412 confirmed 9050
4.603 Regulation at 61 FR 67412 confirmed; (a) revised 9050
4.703 (b)(3) amended **64915**
4.800 Amended **64917**
4.803 (a)(42) removed 9052
5.207 Regulation at 61 FR 41468 confirmed **64914**
6.001 (a) amended **64917**
7.403 Regulation at 61 FR 41468 confirmed **64914**
8.002 Regulation at 61 FR 41468 confirmed **64914**
8.402 Regulation at 61 FR 41468 confirmed **64914**
8.404 (b)(4) amended **64917**
8.901—8.904 (Subpart 8.9) Regulation at 61 FR 41468 confirmed **64914**
9.103 Regulation at 62 FR 44819 confirmed 9053
9.104 Regulation at 62 FR 44820 confirmed 9053
9.506 Regulation at 61 FR 41469 confirmed **64914**
11.001 Amended 9051
12.102 (d)(2) and (3) revised **64917**
12.203 Amended **64917**
12.206 Amended **64917**
12.214 Revised 9054
12.301 (c)(2) amended **64917**
12.602 (a) and (b) amended **64917**
12.603 Regulation at 61 FR 41469 confirmed **64914**
13 Revised **64917**
13.103 Regulation at 61 FR 41469 confirmed **64914**
13.202 Regulation at 61 FR 41469 confirmed **64914**
15.209 (b)(3) revised 9055
15.805-1 Regulation at 61 FR 41469 confirmed **64914**
16 Technical correction 1532
16.402-1 (b) introductory text revised **51379**
16.500 Regulation at 61 FR 41469 confirmed **64914**
16.701 Amended **64926**
16.703 (c)(1)(vi) amended **64926**
17.200 Regulation at 61 FR 41469 confirmed **64914**
17.204 Regulation at 61 FR 41470 confirmed **64914**
19.001 Regulation at 62 FR 44820 confirmed 9053
19.201 Regulation at 62 FR 44820 confirmed 9053
19.302 Regulation at 621 FR 44820 confirmed; (d) introductory text amended 9053
(a), (i) and (j) revised; (c)(1), (d)(1)(i), (e)(1), (g)(1), (2) and (h)(4) amended 9055
19.303 Heading and (c) revised 9056
19.502-1 Regulation at 61 FR 41470 confirmed **64914**
19.508 Regulation at 62 FR 44820 confirmed 9053
19.601 Regulation at 62 FR 44820 confirmed 9053
19.602-1 Regulation at 62 FR 44820 confirmed 9053

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19.602–2 Regulation at 62 FR 44820 confirmed 9053
19.602–3 Regulation at 62 FR 44821 confirmed 9053
19.811–1 (c) introductory text amended **64940**
19.1001 Revised 9057
19.1003 Introductory text revised; (a) amended 9057
19.1006 (c)(1)(i) amended **64926**
(b)(1) amended 9057
22.1006 Regulation at 61 FR 41470 confirmed **64914**
22.1300—22.1308 (Subpart 22.13) Heading revised 9058
22.1300 Revised 9058
22.1301 Revised 9058
22.1302 (b) amended 9058
22.1303 (a) introductory text, (b)(1), (2) and (d) amended 9058
22.1304 (a) and (b) amended 9058
22.1305 Amended 9058
22.1306 Amended 9058
22.1307 Introductory text amended 9038
22.1308 (a)(1) introductory text amended; (a)(1)(i) and (b) revised 9058
23.1004 (b) amended 9051
23.1000—23.1005 (Subpart 23.10) Regulation at 62 FR 12697 confirmed 9051
25.402 (b) revised 9060
25.1000 Revised **64930**
25.1002 (c)(2) revised **64930**
29.401–6 (b) introductory text and (c)(1) amended **64930**
30.101 (c) revised 9060
31.109 (f)(3) amended 9061
31.205–6 Regulation at 62 FR 270 confirmed; (p)(1) revised **64931**
(p) revised; interim 9067
31.205–10 (a)(5) revised 9067
31.205–18 (a) amended; (c) and (d) heading revised; (e)(3) added **64932**
31.205–46 (a)(3)(iv) revised **64933**
31.205–52 Revised 9068
32.502–12 (c) amended 9061
32.503–3 (b)(2) amended 9061
32.602 Regulation at 61 FR 41470 confirmed **64914**
32.603 Regulation at 61 FR 41470 confirmed **64914**
32.1103 (a)(1) and (b)(2) amended **64926**
33.101 (b)(1) amended; (c) removed **64933**
33.102 Regulation at 61 FR 41470 confirmed **64914**
33.104 Regulation at 61 FR 41470 confirmed **64914**
(a)(3)(iii) redesignated as (a)(3)(iv); new (a)(3)(iii) added; new (a)(3)(iv)(C) removed; new (a)(3)(iv)(D) redesignated as (a)(3)(iv)(C); new (a)(3)(iv)(B) and (h) revised (a)(4)(ii)(A), (B), (6) and (e) amended **64933**
(h)(5) corrected 1532
33.105 Regulation at 61 FR 41470 confirmed **64914**
34.001 Regulation at 61 FR 41470 confirmed **64914**
36.602–1 (a)(6) correctly removed; (a)(7) correctly redesignated as new (a)(6) **51379**
37.103 Corrected **51379**
37.202 Regulation at 61 FR 41470 confirmed **64914**
38.000 Regulation at 61 FR 41470 confirmed **64914**
39 Regulation at 61 FR 41470 confirmed **64914**
39.002 Amended 9068
39.103 Added 9068
41.202 (c)(1) amended **64926**
42 Heading revised 9062
42.000 Revised 9062
42.001 Revised 9062
42.002 Revised 9062
42.003 Revised 9062
42.101—42.103 (Subpart 42.1) Revised 9062
42.201—42.203 (Subpart 42.2) Revised 9062
42.203 (a) amended **64940**
42.301 Revised 9063
42.302 (a) introductory text, (11) introductory text, (iv), (13), (20), (32), (61) and (63) revised 9063
42.602 (c)(2) and (d) revised 9064
42.603 (a) introductory text and (b)(1) introductory text amended 9064
42.701 Amended 9064
42.703–1 (a) amended; (c) revised 9064
42.703–2 (d) amended 9064
42.704 (a), (b) and (c) revised 9064

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42.705–1 (b)(1) revised **64915**
(a) introductory text, (3), (4), (b)(1), (2) and (3) revised 9064
42.705–2 (b)(1) revised **64916**
(a)(2) introductory text, (iv) and (b) revised 9065
42.705–3 (a)(2) revised 9065
42.1001—42.1008 (Subpart 42.10) Removed **64932**
42.1203 (b) and (c) revised; (d), (e) and (f) redesignated as (f), (g) and (h); new (d) and new (e) added **64934**
(c) corrected 1533
42.1204 (b) through (e) redesignated as (c), (e), (h) and (i); heading, (a) introductory text, (1), (2) introductory text and new (e) revised; new (b), new (d), (f) and (g) added **64935**
(g) corrected 1533
43.301 (a)(2)(iii) amended **64926**
44.204 (b) amended 9069
45.608–1 Regulation at 61 FR 41471 confirmed **64914**
45.608–5 Regulation at 61 FR 41471 confirmed **64914**
46.103 (d) revised 9065
46.104 (f) revised 9065
46.502 Amended 9065
46.801 Regulation at 61 FR 41471 confirmed **64914**
47.301–3 (c) introductory text amended 9065
47.303–17 (d)(1), (2) and (e) amended **64936**
49.002 (a) amended **64927**
49.501 Amended **64927**
51.103 Regulation at 61 FR 41471 confirmed **64914**
52.101 (e)(2)(i) amended **64927**
52.102 Revised **64927**
52.102–1 Removed **64927**
52.102–2 Removed **64927**
52.204–5 Regulation at 61 FR 67413 confirmed 9050
52.204–6 Regulation at 61 FR 67413 confirmed; amended 9050
52.212–1 Amended 9050
52.212–4 Amended 9052
52.212–5 Regulation at 61 FR 41471 confirmed **64914**
Amended 9052, 9058
52.213–1 Revised **64927**
52.213–2 Introductory text amended **64928**
52.213–3 Introductory text amended **64928**
52.213–4 Added **64928**
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52.215–2 Amended 9054
52.216–7 Amended **64916**
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52.216–13 Amended **64916**
Corrected 1533
Amended 9065
52.216–15 Amended **64916**
Amended 9065
52.219–1 Amended 9069
52.222–35 Amended 9059
52.222–37 Amended 9059
52.222–48 Regulation at 61 FR 41471 confirmed **64914**
52.223–5 Regulation at 62 FR 12697 confirmed 9051
Amended 9052
52.230–1 Amended 9061
52.230–2 Amended 9054
52.230–3 Amended 9054
52.230–5 Amended 9061
52.233–2 Regulation at 61 FR 41471 confirmed **64914**
52.233–3 Regulation at 61 FR 41472 confirmed **64914**
52.239–1 Regulation at 61 FR 41472 confirmed **64914**
52.244–6 Amended 9059
52.247–64 (f) corrected **51379**
52.252–1 Revised **64928**
52.252–2 Revised **64929**
53 Technical correction 648
53.204–2 (a) amended **64940**
53.209–1 (d) amended **64937**
53.213 (a) through (e), (f)(1) and (2) amended **64929**
Corrected 1532
53.214 (c) amended **64940**
53.215–1 (c) amended **64940**
53.219 Regulation at 61 FR 67413 confirmed 9050
53.242–1 Amended **64935**
53.243 Amended **64929, 64936**
53.245 Regulation at 61 FR 41472 confirmed **64914**
53.249 (a)(2), (3) and (4) amended **64940**
53.301–33 Revised **64941**
53.301–279 Revised **64942**
53.301–294 Regulation at 61 FR 67413 confirmed 9050

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53.301–1406 Revised **64938**
53.301–1435 Revised **64943**
53.301–1436 Revised **64947**
53.301–1437 Revised **64951**

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201.107 Added 11528
201.201–1 (c) revised; (d) amended 11528
201.304 Amended 11528
202.101 Amended 11528
204.805 Amended 11528
204.7300—204.7304 (Subpart 204.73) Added 15317
204.7303 (a)(2) and (4) corrected 20447
209 Technical correction 17124
209.104–1 (g)(iii) added; interim 11851
(g)(i)(A) introductory text and (*1*) revised; interim 14837
209.104–70 (c) added; interim 11851
(a) revised; interim 14837
209.403 Amended 11528
209.405–2 Added; interim 14837
209.409 Added; interim 14837
212 Technical correction 17124
212.301 Amended 11528
(f)(iv) added 15317
212.503 (a)(xii) added; interim 11851
213 Technical correction 17124
213.005 Added; interim 11851
214.205–5 (d) amended 11528
215.608 (a)(1) amended 11528
215.805–5 (a)(1)(A)(*1*) and (*2*) amended 11528
216.203–4 (d)(xvi) amended 11529
216.301 Removed 11529
216.301–3 Removed 11529
216.403–70 Removed 11529
216.404 Revised 11529
216.404–1 Redesignated as 216.405–1 11529
216.404–2 Redesignated as 216.405–2 11529
216.405–1 Redesignated from 216.404–1 11529
216.405–2 Redesignated from 216.404–2 11529
216.405 Added 11529
216.501 (a)(1) and (ii) amended 11529
216.505 Revised 11529
216.506 Revised 11529
217 Technical correction 17124
217.103—217.174 (Subpart 217.1) Revised 11529
217.207 Added; interim 11851
217.503—217.504 (Subpart 217.5) Revised 11530
219.702 (a)(i) and (ii) amended 14640
219.703 (a) introductory text revised 11530
219.7104 (b) and (d) amended 11530
222 Technical correction 17124
222.1304 Added; interim 11851
223.404 (b)(3) introductory text and (4) revised 11531
225.000–70 (c), (j) and (m) revised 11531
225.000–71 (a)(1)(i) and (c)(2) revised 11531
225.102 (a)(3)(A) revised; (a)(3)(B) and (C) redesignated as (a)(3)(C) and (D); new (a)(3)(B) added 11531
225.105 Amended 11531
225.109 (a) and (d) introductory text amended; (d)(i) added 11532
225.109–70 Revised 11532
225.302 (a)(iii) and (iv) revised; (a)(v) added; (b)(i) amended 11532
225.402 (a)(1) revised 11532
225.408 Revised 11532
225.602 (3) introductory text revised 11533
225.603 (1) redesignated as (a); new (a) revised; (b)(i)(D), (E) and (ii) amended 11533
225.605–70 Revised 11534
225.872–1 (d) removed; interim 5745
Regulation at 63 FR 5745 confirmed 28284
225.872–4 (c) introductory text and (2) amended 11534
225.7005 Revised; interim 5745
(a)(4) added 28284
225.7007–1 Revised; interim 5745
Regulation at 63 FR 5745 confirmed 28284
225.7007–3 Revised; interim 5745
Regulation at 63 FR 5745 confirmed 28284
225.7007–4 Revised; interim 5745
Regulation at 63 FR 5745 confirmed 28284
225.7010–1 Introductory text revised; interim 5745
Regulation at 63 FR 5745 confirmed 28284

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Regulation at 63 FR 5745 confirmed.....28284
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225.7016–1 Revised; interim.....5745
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225.7016–2 (b) amended; interim.....5746
Regulation at 63 FR 5746 confirmed.....28284
225.7016–3 Revised; interim.....5746
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Regulation at 63 FR 5746 confirmed.....28284
225.7019–3 (a)(1)(iii) and (iv) removed; (a)(1)(v), (vi), (vii) and (b) redesignated as (a)(1)(iii), (iv), (v) and (c); new (b) added; interim.....5746
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Regulation at 63 FR 5746 confirmed.....28284
225.7022–2 (b) revised; interim.....5746
Regulation at 63 FR 5746 confirmed.....28284
225.7022–3 Revised; interim.....5746
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225.7303–4 Regulation at 62 FR 30831 confirmed.....11527
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225 Appendix A amended.....11622
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231.303 (3) removed; (4) redesignated as new (3).....14641
231.603 (1) and (2) designation removed.....14641
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232.072 Added.....11535
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232.102—232.108 (Subpart 232.1) Revised.....11536
232.202–4—232.207 (Subpart 232.2) Revised.....11537
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234.005–70 Amended.....11537
234.005–70 Regulation at 62 FR 9991 confirmed.....11527
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236.274 (a) revised; interim.....11538
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236.602–2 Revised.....11538
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237.272 Redesignated from 237.206 11539
239.7405 Revised 11539
239.7406 (c) introductory text amended 11539
241 Revised 11539
242.302 Regulation at 62 FR 9991 confirmed 11527
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242.1107–70 Regulation at 62 FR 9991 confirmed 11527
Revised 11541
243.204–70 Regulation at 62 FR 37147 confirmed 11527
(b) amended; (c) added 11541
243.205–72 Regulation at 62 FR 37147 confirmed 11527
Correctly revised 17124
246.703 Revised 6109
246.704 (1) removed; (2) through (5) redesignated as (1) through (4) 6109
246.770 Removed 6109
246.770–1 Removed 6109
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246.770–3 Removed 6109
246.770–4 Removed 6109
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246.770–8 Removed 6109
250.102–70 Added 11541
250.201 (b) amended 11541
252.204–7004 Added 15317
252.209–7001 Amended; interim 14837
252.209–7003 Added; interim 11852
Corrected 16871
Introductory text corrected 17124
252.209–7004 Added; interim 14837
252.212–7001 Regulation at 62 FR 37147 confirmed 11527
Amended 11541
252.212–7002 Regulation at 62 FR 37147 confirmed 11527
252.223–7004 Reinstated; CFR correction 28486
252.225–7001 Revised 11541
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252.225–7007 Revised 11542
252.225–7008 Revised 11543
252.225–7009 Amended 11544
252.225–7010 Amended 11544
252.225–7014 Amended 11544
252.225–7016 Amended; interim 5746
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252.225–7020 Added 11545
252.225–7021 Added 11545
(a)(5)(i) corrected 29061
252.225–7026 Amended 11546
252.225–7027 Revised 11546
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252.225–7036 Revised 11547
252.225–7037 Revised 11548
252.229–7004 Amended 11548
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252.232–7009 Added; interim 27683
252.234–7000 Regulation at 62 FR 9991 confirmed 11527
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252.234–7001 Regulation at 62 FR 9992 confirmed 11527
Revised 11548
252.234–7005 Regulation at 62 FR 9992 confirmed 11527
252.234–7006 Regulation at 62 FR 9992 confirmed 11527
252.236–7010 Amended; interim 11549
252.236–7012 Added; interim 11549
252.237–7019 Removed 11549
252.241–7000 Introductory text amended 11549
252.241–7001 Introductory text amended 11549
252.241–7005 Amended 11549
252.242–7005 Amended 11549
252.243–7002 Revised 11549
252.7027 Regulation at 62 FR 30832 confirmed 11527
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Chapter 2 Appendix G amended 11550
Appendix I amended 11552

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Chapter 4 Policy statement 9158

Chapter 4—Department of Agriculture (Parts 400—499)

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402.101 Amended 26994
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403.104–11 Redesignated as 403.104–10 26995

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408 Nomenclature change 26995
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411.404 Revised 26995
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1515.612 (a)(1) introductory text revised 10549
1515.900—1515.970–2 (Subpart 1515.9) Revised **60665**
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1801.106 (1) revised (OMB numbers); interim 9953
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1805.201 Removed; interim 9954
1805.207 (a) added; interim 9954
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1816.402 Revised 12997
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1816.402–70 (a) amended 12997
1816.402–270 (a) amended **58687**
(e)(1) revised; interim 9965
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1816.405–270 (b)(2)(ii) amended; interim 9966
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1816.405–271 (a) revised 13133
1816.405–272 (a) amended 13133
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1816.405–274 (e) revised 12998
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1816.405–276 Added 13134
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1819.602—1819.602–370 (Subpart 1819.6) Heading revised 12998
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1827.303–70 (b)(6) amended **58688**
1832.409–170 (d) amended; interim 9967
1832.402 (e)(1) revised 14040
1832.412 (f) redesignated as (f)(1); (f)(2) added **58688**
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1832.412–70 Added 14040
1832.501–2 Revised 14040
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1832.702–70 (e) revised 14040
1833.210 Added 14041
1834.7003–1 (c) amended; interim 9965
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1842 Heading revised 15320
1842.101—1842.170 (Subpart 1842.1) Heading revised 15320
1842.101 (a)(i) and (ii) amended 3652
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1842.102 Heading revised 15320
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1842.203 Redesignated as 1842.202–70 15320
1842.803 (b)(1)(D) added **58688**
1842.1501–1842.1503 (Subpart 1842.15) Added; interim 27859
1842.7301 Revised 3652
1843.205–70 Heading revised; (a), (b) and (c) redesignated as (a)(1), (2) and (3); new (b) added 17339
1844.201–2 (c)(2) amended; interim 9967
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1852.215–77 Amended; interim 9965
1852.215–78 Amended; interim 9965
1852.215–79 Amended; interim 9966
1852.215–81 Amended; introductory text revised; interim 9966
1852.215–82 Removed; interim 9966
1852.216–76 Amended 13134
1852.216–87 Amended **58688**
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1852.232–70 Added 14040
1852.237–72 Removed **58688**
1852.243–70 Amended; interim 9966
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1871.105 (a) revised; interim 9966
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1871.401–5 (b)(2) revised; interim 9966
1871.402 (d) amended; interim 9967
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1871.505 Introductory text amended; interim 9967
1871.604–2 (a) amended; (d) revised; interim 9966
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1872.505 Introductory text amended; interim 9967
1872.702 (b)(1) amended; interim 9967
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Chapter 28—Department of Justice (Parts 2800—2899)

Chapter 28 Revised 16118
2802.1 (Subpart 2802.1) Correctly designated 26738
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5231 Added **66827**
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Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.22 (a) revised 51804
1.23 (q) added 51804
1.26 (a)(8) revised 55357
1.46 (mmm) and (nnn) added 10782
1.52 (d) and (e) removed 10782
1.72 Added 51804
10.13 (a) and (b) revised 51804
10 Appendix amended 2172, 4197
Regulation at 63 FR 4197 eff. date corrected to 2-15-98 7311

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107.105 (a) introductory text revised 51556
107.117 (d)(5) amended 51556
107.301—107.339 (Subpart D) Appendix A amended 51556
171.5 (a)(1)(i), (iii)(B) and (C)(3) revised 65194
(a) introductory text, (1)(ii) and (c) amended 65195
171.6 (b)(2) table revised 51557
(a) and (b) introductory text amended 51558
171.7 (a)(3) table and (b) table amended 51558
171.8 Amended 51558
171.12 (d)(1) amended 51558
171.15 (a)(2) amended 51558
172.101 Table amended 51559
Table and Appendix A amended 51560
172.203 (k)(3) amended 51560
172.204 (b)(1) introductory text amended 51560
172.301 (a)(3) revised 16075
172.313 (c) revised 16075
172.504 (e) Table 1 amended 16076
172.606 Introductory text removed; (a) and (b) revised 16076
172.801—172.807 (Subpart I) Reinstated 66899
172.807 Revised 66902
173.5 (b) introductory text and (3) revised 8142
173.6 (c)(3) amended 51560
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173.8 (d)(1) amended; (d)(5) revised 8142
173.9 (e) amended 51560
173.32 (e)(2)(i) amended 51560
173.56 (b)(1) and (f) amended 51560
173.62 (b) table amended 51560
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173.125 (a) amended 51560
173.166 (b)(1) and (3)(i) amended 51560
173.202 (b) amended 51560
173.221 Amended 51560
173.225 (e)(4) amended 51560
173.242 (b)(1) amended 51560
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177.840 (e) amended 51561
178.36 (a)(2)(iii) amended 51561
178.44 (b) Table 1 amended 51561
178.50 (i) introductory text amended 51561
178.68 (f)(1)(ii) revised 51561
178.270-14 (b)(13) revised 51561
178.338-19 (b) amended 51561
178.503 (a)(1) amended 51561
179.15 (b) heading and (f)(1) revised; (e) introductory text amended 51561
179.100-19 (a) amended 51561
179.100-23 (a) amended 51561
179.100-24 Amended 51561
179.221-1 Table amended 51561
180 Authority citation revised 51561
180.509 (j) redesignated as (j)(1); (j)(2) added 51561
190.7 (a) revised 7722
190.203 (a) revised 7722
190.209 Revised 7722
191 Effective date confirmation 12659
191.1 (b)(3) added 61695
191.3 Amended 61695
191.21 Amended 7723

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192 Effective date confirmation 12659
192.1 (b)(5) added 61695
192.3 Amended 61695
192.10 Added 61695
192.16 (b)(5) revised 7723
192.107 (b)(2) revised 7723
192.383 Added 5471
(b) corrected 20135
192.614 (c)(4) removed; (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) and (e) added 61699
(c)(5) revised 7723
192 Appendix A amended 7723
193.2059 (d)(1)(i) revised 7723
194 Effective date confirmation 10347
194.121 (a) revised 67293
195 Effective date confirmation 3653
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195.1 Regulation at 62 FR 31367 withdrawn 52511
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195.2 Amended 61695
195.3 (c)(5)(i) and (ii) revised 7723
195.9 Added 61695
195.56 (a) revised 7723
195.302 (c)(1) introductory text, (2)(i) introductory text and (ii) revised 54592
195.442 (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) added 61699
199 Notice 59297
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199.1 (d) revised 67294
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199.11 (e) revised; (f) added 13000
199.15 (d)(2) revised; (e) and (f) added 13000
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209 Authority citation revised 11619
209.103 Amended 11619
209.335 (b) amended 11619
209.409 Amended 11619
209 Appendix A amended 11619
213 Authority citation revised 11620
213.15 Amended 11620
214 Authority citation revised 11620
214.5 Amended 11620
214 Appendix A amended 11620
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216 Authority citation revised 11620
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217 Authority citation revised 11620
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217 Appendix A amended 11620
218 Authority citation revised 11621
218.9 Amended 11621
218 Appendix A amended 11621
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Authority citation revised 11621
219.5 Amended 63466, 63676
219.9 (a) amended 11621
219.19 Removed 63466
219.101 (a)(5) added; (c) amended 63466
219.104 (a)(3)(ii) amended 63466
219.201 (b) amended 63466
(a)(1) introductory text, (2) introductory text and (4) revised 63676
219.203 (d)(2) amended 63467
219.205 (c)(1) amended 63467
219.207 (b) revised 63467
219.209 (a)(1) amended 63467
219.303 (c), (d) and (e) removed 63467
219.601 (b)(2)(i) amended; (b)(2)(ii) and (iii) removed 63467
219.603 Amended 63467
219.703 (d) removed 63467
219.709 Removed 63467
219.803 (a) amended 63467
219 Appendix B amended 63467
Appendix A amended 11621
220 Authority citation revised 11621
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220 Appendix C amended 11621
221 Authority citation revised 11621
221.17 Amended 11621
221 Appendix A amended 11621
223 Authority citation revised 11621, 24674
223.5 Revised 24675
223.7 Amended 11621
223.9 (d) added 24675

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223 Appendix B amended 11621
Appendix B revised 24676
225 Authority citation revised 11621
225.19 (c) amended; (e) revised 63676
225.29 Amended 11622
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228 Authority citation revised 11622
228.21 Amended 11622
228 Appendix A amended 11622
229 Authority citation revised 11622
229.7 (b) amended 11622
229 Appendix A amended 11622
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231 Authority citation revised 11623
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231 Appendix A amended 11623
232 Authority citation revised 11623, 24134
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232.0 (e) amended 11623
232.23 (e) introductory text, (8) and (9) revised; (e)(10), (11), (g)(2) and (h) added; (g) introductory text amended 24134
232 Appendix A amended 11623, 24135
233 Authority citation revised 11623
233.11 Revised 11623
233 Appendix A amended 11623
234 Authority citation revised 11623
234.6 (a) amended 11623
234 Appendix A amended 11623
235 Authority citation revised 11623
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235 Appendix A amended 11624
236 Authority citation revised 11624
236.0 (f) amended 11624
236 Appendix A amended 11624
239 Added 24676
240 Authority citation revised 11624
240.11 Amended 11624
240.119 (d)(3) amended; (d)(4) and (5) removed; (d)(6) redesignated as (d)(4) 63467
240 Appendix A amended 11624

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365.401—365.413 (Subpart D) Authority citation removed 28287
372.101—372.117 (Subpart A) Authority citation removed 28287
372.201—372.243 (Subpart B) Authority citation removed 28287
372.301—372.303 (Subpart C) Authority citation removed 28287
373.101—373.105 (Subpart A) Authority citation removed 28287
373.201 (Subpart B) Authority citation removed 28287
374.101—374.113 (Subpart A) Authority citation removed 28287
374.201 (Subpart B) Authority citation removed 28287
374.301—374.319 (Subpart C) Authority citation removed 28287
374.401—374.405 (Subpart D) Authority citation removed 28287
377.101—377.105 (Subpart A) Authority citation removed 11624, 28287
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382 Controlled substances and alcohol testing rates 2172
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385 Appendix B revised 60043
386 Authority citation revised 12414
386 Appendix A amended; Appendix B added 12414
393.5 Amended 8339, 24465
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393.75 (f) revised; (g) and (h) added; authority citation removed 8339
395 Interpretation 16697

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

533.5 (a) Table IV revised 16701
538 Petition denied 15322
541 Appendixes A and A–I amended 52045
553 Appendix A amended; Appendix B added 26514
571 Petition denial 19839
571.101 Amended; eff. 5–27–99 ..... 28926, 28927
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571.108 Amended 8145
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571.111 Amended; eff. 5-27-99 ..... 28929, 28930, 28931
571.116 Amended; eff. 5-27-99 28932
571.117 Amended; eff. 5-27-2003 28920
571.119 Amended; eff. 5-27-2003 28921
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571.207 Amended; eff. 5-27-99 28935
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571.209 Amended; eff. 5-27-99 28936
571.210 Amended; eff. 5-27-99 ..... 28941, 28943
571.214 Amended 16140
571.219 Amended; eff. 5-27-99 ..... 28946, 28947
571.220 Amended; eff. 5-27-99 28948
571.222 Amended; eff. 5-27-99 ..... 28948, 28951
571.223 Amended 3662
571.224 Amended 3662
571.301 Amended; eff. 5-27-99 28953
571.302 Amended; eff. 5-27-99 ..... 28954, 28956
572.31 (a)(3) revised 5747
572.35 (c)(1) and (2)(iv) revised 5748
572.40 (b) revised 16140
572.41 (a) introductory text, (4) and (c) revised 16140
572.43 (a) revised 16140
589 Petition denial 19839
593 Appendix A revised 52267
595 Added 62442
595.5 (b)(3) introductory text and (i) revised 67754

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

653 Notice 418
654 Notice 418

Chapter VII—National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

701 Revised 7311

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (a), (e)(1) and (f)(6) table revised 8146
1002.2 (f) revised 8146
(g) reinstated; CFR correction 19195
1039.11 (a) table amended 19665
1111 Authority citation revised 2639
1111.1 (a) amended; (a)(1) through (10) and (d) added 2639
1111.8 Amended 2639
1111.9 Redesignated as 1111.10; new 1111.9 added 2639
1111.10 Redesignated from 1111.9; (a) revised 2639
1152 Authority citation revised 28290
1152.27 (n) added 28290
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1241 Authority citation revised 51380
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17 Critical habitat designation 9967
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17.3 Amended 8870
17.11 (h) table amended 59622, 64320, 66303
(h) table amended 694, 1763, 3843, 12686, 13150, 14379, 26530
17.12 (h) table amended 54807, 61925
(h) table amended 19849
17.22 (b)(5) and (6) added 8871
17.32 (b)(5) and (6) added 8871
17.42 (f) added 59622
17.84 (k) added 1763
17.95 (b) and (e) amended 14379
17.108 (a)(7) added 63037
20.134 (b) revised; (c) removed 63611
21.47 Added 10560
23.23 (f) table amended 26741
32.70 Amended 2182
38 Added 11626

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

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217.12 Amended; interim 17955
222 Authority citation revised 8872
Technical correction 23226
222.3 Added 8872
222.22 (g) and (h) added 8872
222.34 Added; eff. 11-27-97 through 7-31-98 63470
226 Critical habitat designation 9967
226.22 Introductory text amended 1393
226.23 Added 1393
226 Table 4 added 1394
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227 Authority citation revised 13371
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227.4 (m) and (n) added 13371
227.72 (e)(2)(iv)(B) and (4)(iv) amended; (e)(4)(iii) revised; interim 17956
229 Fishery list 5748
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229 Figure 1 added 27861
230 Quotas 16701
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285 Inseason adjustments 51608, 53247, 66528
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285.2 Amended; interim 669
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285.31 (a)(22) revised; interim 669

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300 Technical correction 15324
300.63 (b) revised 13009

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(c) added 24752

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600 Specifications 419
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600.5 (a) and (b) amended 7075
600.10 Amended; interim 66551
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600.15 (b)(7) removed; (b)(8) through (13) redesignated as (b)(7) through (12) 7073
600.105 (a), (b) and (c) amended 7075
600.115 (a) and (b) amended 7075
600.205 (a) and (b) amended 7075
600.210 (a) amended 7073
600.215 (a)(4) amended 7073
(a)(3) amended 7075
600.225 (b)(2) amended 7075
600.230 Amended 7073
600.235 (c) amended 7073
(a) amended 7075
600.245 (a) amended 7075
600.305 (a)(2), (3), (c)(1) and (3) amended 7075
(a)(2) and (3) amended; (c)(1), (3), (11) and (12) revised; (c)(13) removed 24229
600.310 (b) and (f)(3) introductory text amended 7073
(c)(7)(i), (iii), (f)(1), (2) introductory text, (5) and (h) introductory text amended 7075
Revised 24229
600.315 (e)(3) and (4) redesignated as (e)(4) and (5); new (e)(3) added; (c)(2), (3), (e)(1) introductory text, (ii) and new (4) revised 24233
600.320 (c) amended 7075, 24234
600.325 (c)(3)(ii) amended 7075
(c)(3)(ii) revised 24234
600.330 (c)(2) amended 7073
(c) introductory text, (1) and (2) amended 7075
(a), (b)(1) and (c)(2) revised; (c) introductory text and (1) amended 24234
600.340 (b)(1) and (2)(iii) amended 7075
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600.345 Added 24234
600.350 Added 24235
600.355 Added 24236
600.405 Amended 7075
600.415 (c)(2) amended 7075
600.501 (a)(1), (b), (e)(1)(i), (v) and (i) amended 7075
600.502 (f)(1) amended; (g), Table 1 and Table 2 revised 7073
600.504 (a)(1) and (b)(5) amended 7075
600.505 (a)(1), (2), (4), (5), (6), (8), (28) and (b)(1) amended 7075
600.506 (a), (b)(1), (2), (c)(2), (g)(2) and (j)(1) introductory text revised; (f), (h)(1), (2)(iii), (3)(ii) and (j)(2)(i) amended 7074
(b) introductory text and (h)(3) introductory text amended 7075
600.507 (a)(4) and (i) amended 7075
600.511 (c)(1) amended 7075
600.512 (a) amended 7075
600.515 Amended 7075
600.516 (c) amended 7075
600.518 (b)(3) and (e)(1)(iv) amended 7075
600.520 (b)(2)(ii), (iii) and (3) amended 7075
600.610 (a)(1) amended 7075
600.615 (d)(2) revised 7075
600.725 (a), (b), (d), (f), (g), (h), (j), (k) and (p) amended 7075
(p) redesignated as (t); new (p) through (s) and (u) added; new (t) revised 27217
600.730 (a) amended 7075
600.735 Amended 7075
600.740 (a) introductory text text, (4), (b) and (c) amended 7075
600.745 (a), (b)(1), (2) introductory text, (viii), (3)(i) introductory text, (ii), (iii) introductory text, (iv), (v), (c)(2), (d)(1), (2) introductory text, (2)(x), (3)(i) and (ii) introductory text amended 7075
600.746 Added 27217

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600.750 Amended 7075
600.805—600.815 (Subpart J) Added; interim **66551**
600.905—600.930 (Subpart K) Added; interim **66555**
622 Temporary regulations **52045, 61700, 63677, 66304, 67010**
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Fishery opening 9158
622.1 Table 1 amended 10565
622.2 Amended 10565, 18144
622.4 (d) and (p) revised **67721**
(a) introductory text, (2) heading, (ix), (g) and (i) through (l) revised **67722**
Regulation at 62 FR 67721 eff. date corrected to 12–30–97 290
(a)(2)(iv), (v), (vi) and (g) revised; (a)(2)(iii) and (q) added; (d) amended 10565
(a)(2)(ii), (o) heading, (1) and (2) amended 10569
622.5 (a)(1)(i) revised 10567
622.6 (b) revised; (c) and (d) removed 10567
622.7 (a), (b) and (c) revised **67722**
Regulation at 62 FR 67722 eff. date corrected to 12–30–97 290
(aa) added; interim; eff. 5–14–98 through 11–16–98 27488
622.9 Added; interim; eff. 5–14–98 through 11–16–98 27488
622.31 (d) removed; (e) through (k) redesignated as (d) through (j) 10567
622.32 (c)(1) revised 10567
622.34 (c), (g) introductory text and (1) amended; (l) revised **67722**
Regulation at 62 FR 67723 eff. date corrected to 1–1–98 290
(l) suspended; (m) added; eff. 4–29–98 through 10–13–98; interim 18146
622.35 (e)(2)(i) revised 10567
622.36 Introductory text through (c) redesignated as (b) introductory text through (3); (a) added **67723**
622.37 Regulation at 62 FR 47766 eff. date extended **67715**
(d)(3) revised 444
(c)(1) revised 10567
622.38 (a) revised; (h) added 10567
622.39 (a)(2)(iv) added; (b)(1)(ii) and (v) revised **67723**
(c)(1)(ii) revised 8356
(b)(1)(iii) suspended; (b)(1)(iv) added; eff. 4–29–98 through 10–13–98; interim 18147
622.40 (b)(3)(i) introductory text amended 10568
622.41 (c), (d)(1) and (3) revised 10568
(h) added 18144
(h)(2) suspended; (h)(3) added; eff. 5–14–98 through 11–16–98 27500
622.42 (a)(1)(i) revised **67723**
(c)(1)(i) and (2)(ii) revised 8356
(c) introductory text amended 10569
(a) suspended; (g) added; eff. in part 5–14–98 through 10–13–98 and 4–14–98 through 10–13–98; interim 18147
622.43 (a)(5) amended; (e) revised **67723**
(a)(3)(i) and (ii) revised; (c) added 10569
622.44 (a)(1) introductory text added; (a)(1)(iii) and (2)(i) revised; (b)(2) amended 8356
(a)(2)(ii)(B) introductory text revised 10569
(a)(2)(ii)(A)(*2*)(i), (b)(1)(i) and (ii) introductory text amended 10569
622.45 (d)(2) amended; (h) added 10569
622.48 (d)(1) amended; (c) revised 10569
(i) added 18144
622 Appendix A amended **67723**
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630 Temporary regulations ... 12687, 23682
630.1 (b) revised **55361**
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630.4 (a) revised **55361**
630.7 (c) revised; (bb) and (cc) added **55361**
630.21 Revised **55361**
630.23 (a) and (b) amended **55362**
630.24 (a) redesignated as (a)(1); (a)(2) and (b)(5) added; (b)(1), (2), (3), (c), (d)(4) and (e) revised **55362**
630.25 Heading and (a)(1) revised; (b) amended **55362**

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644.5 Suspended; eff. 3-27-98 through 9-23-98; interim 14033
644.10 Added; eff. 3-27-98 through 9-23-98; interim 14033
644.21 (a) and (d) suspended; (e) added; eff. 3-27-98 through 9-23-98 14034
648 Quotas **52277**, 55362, **67754**
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648.4 (c)(2)(3)(B) corrected **51381**
(a)(3)(i)(B)(*2*) removed; (a)(3)(i)(C), (5)(i)(A)(*2*), (C), (ii)(A)(*2*), (C), (6)(i)(A)(*2*) and (C) revised **63875**
(a)(1) introductory text revised 11593
(a)(4)(i) added 27484
648.10 (f)(2) correctly revised **51381**
(c)(5) revised; (f)(3) added 11593
(d) and (f)(3)(i) revised 15329
648.13 (d) added **63875**
648.14 (a)(89) correctly revised **52274**
(j)(9) added **63875**
(u)(1) revised **66310**
(a)(13), (31)(iii), (33), (35), (36), (37), (47), (55), (b), (c) introductory text, (d) introductory text, (e), (g) introductory text, (t) and (x)(4) revised; (a)(31)(ii) amended; (a)(31)(iv), (104) and (c)(22) through (25) added 11594
(a)(110) and (111) added; interim 15326
(a)(101), (c)(7), (10), (24) and (25) revised; (a)(112) added 15330
(a)(112) correctly designated 19850
(a)(23), (24), (25) and (x)(1)(ii) revised; (a)(105) through (109) and (113) added; (x)(1)(iii) amended 27484
648.15 (b)(4) added 27485
648.17 Added 11595
648.23 (a) introductory text revised 1774
648.53 (d) revised 11595
648.57 Added; interim 15326
648.73 (d) added 27485
648.75 Introductory text added 27485
648.76 Added 27485
648.80 (d)(2) and (3) revised; (d)(5) added 7730
Introductory text revised 11595
(a)(5)(i) and (8) revised 15330
(a)(8)(i) corrected 25416
648.81 (a)(2)(ii), (b)(2) introductory text, (c)(2)(i) and (f)(2)(ii) revised; (a)(2)(iii) added 7730
(a)(2)(i), (c)(2)(ii) and (f)(2)(ii) revised 11595
(d), (g), (h) and (j) revised; (n) added 15331
(g)(1)(i) corrected 25416
648.82 (a) revised 11595
648.83 (a)(1) introductory text revised 11595
648.86 Introductory text and (b)(3) added; (b)(1) heading, (i), (ii) and (2) revised 11595
(a)(1)(i), (ii), (b) introductory text, (1) introductory text, (i), (ii) and (3) revised; (a)(1)(iii) and (b)(4) added 15332
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648.87 Heading, (a) and (b) correctly revised **52274**
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(a)(1)(i) corrected 19580
648.100 (a) revised **66310**
648.103 (c) revised **63875**
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648.104 (a)(1) revised; (f) added **63876**
648.105 (a) revised 27868
648.142 Revised 27868
648.143 (a) amended **66310**
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648.144 (a)(1)(i) amended **66310**
648.145 (c) amended 11160
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660.42 (a)(9) and (b)(5) revised 20540
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660.48 (a)(7) revised; (a)(8) redesignated as (a)(9); new (a)(8) added 20540
660.50 (b)(2) revised 20541
678 Temporary regulations 14837
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679.1 (d)(2) revised **59298**
679.2 Amended **63890, 66831**
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679.5 (l)(2) revised **59299**
(l)(1)(iv) revised **60669**
(c)(3)(ii)(G) and (e)(2)(ii)(F) added **63890**
679.7 (g)(1) revised **67760**
(b) added 8360
679.20 (g)(5)(ii) revised **63890**
(a)(8) redesignated as (a)(9); new (a)(8) and (c)(6) added **68228**
(b)(1)(iii) and (iv) redesignated as (b)(1)(iv) and (v); new (b)(1)(iii) added; (c)(1)(iii), (2)(ii), (3)(iii) and (f)(2) revised 8360
(c)(5) amended; (i) added 13011
679.21 (e)(1)(iii) through (vi) and (7)(iv) through (vii) redesignated as (e)(1)(iv) through (vii) and (e)(7)(v) through (viii); (e)(3)(ii)(A), (C) and (6) revised; new (e)(1)(iii) and new (7)(iv) added **66831**
(e)(3) through (8) redesignated as (e)(4) through (9); new (e)(3) added; new (e)(7)(i) revised 8361
(e)(3)(iv)(D) revised 11168
679.22 (c) revised 13011
679.23 (d)(1) revised 11168
679.24 (e)(2)(iv) introductory text ad (A) through (D) redesignated as (e)(3) introductory text, and (i) through (iv); (e)(1), (2)(ii) and new (3) introductory text revised 11167
679.27 Added **63890**
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679.28 Added (effective date pending in part) 5843
679.31 Revised 8361
679.40 (a)(5)(ii)(B) revised **59299**
679.42 (c) revised **60669**
(c)(2)(iii) corrected **66311**
(b) revised 11167
679.50 (i)(2)(xiv)(E)(*4*) revised **60182**
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(c)(2)(iv) revised 11168
679.64 Revised **68231**
679 Tables 1 and 3 amended **60670**
Appendix A added 5845
Appendix A correctly designated 8361
Tables 3 and 10 amended 11168
Table 2 amended 13011
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697.7 (c) added; interim 10155
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The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Hemphill. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Acting Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
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1–199	(869–032–00166–9)	30.00	Oct. 1, 1997

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Complete 1998 CFR set		951.00	1998
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Subscription (mailed as issued)		247.00	1998
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Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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251.101 (f) revised 2306
317.901 (c)(2) revised; interim 34258
335.103 (c)(3)(vii) added; interim 34258
351.506 Regulation at 62 FR 10682 confirmed 26422
351.606 Regulation at 62 FR 10682 confirmed 26422
351.608 Regulation at 62 FR 10682 confirmed 26422
351.701 (c)(3) revised 32594
351.801 (a)(2) revised 32594
351.802 (a)(1) revised 32595
410.501 (a) amended 16877
532.201—532.285 (Subpart B) Appendix C amended; interim 6472
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551.104 Corrected 2304
551.206 Corrected 2304
551.208 (c) heading corrected 2304
575.305 (d) added; interim 34121
581 Authority citation revised 14757
581.101 Revised 14757
581.102 (d), (e) and (f) revised; (k) added 14757
581.103 (a)(27), (28), (b)(14), (15) and (c) revised; (a)(29), (b)(16) and (17) added 14758
581.104 (j) removed; (k) redesignated as (j) 14758
581.105 (a) revised 14758
581.202 (a) and (b) revised 14758
581.303 (a) revised 14759
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581 Appendix A revised 14759
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582.305 (c) and (g) revised; (m) added 14787
582.402 (a) revised 14788
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733 Revised 4558
831 Authority citation revised 9401, 17049
831.108 Suspended 6-15-98 through 10-1-99; interim 32596
831.114 Added; eff. 6-15-98 through 10-1-99; interim 32596
831.201 (b)(1) revised 9402
831.1203 (a)(5) revised 17049
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842 Authority citation revised 9402
842.105 (b) revised 9402
842.205 Suspended 6-15-98 through 10-1-99; interim 32597
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844 Authority citation revised 17050
844.201 (a) and (c) revised 17050
846 Heading and authority citation revised 33233
846.701—846.726 (Subpart G) Added 33233
870 Authority citation revised 9402
870.301 (c) added 9402
880 Added 10291
890.101 (a) amended 28891
890.102 (g) added 9402
(c)(4) removed; (c)(5) through (8) redesignated as (c)(4) through (7) 28891
890.303 (b) revised 28891

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1201.31 (d) revised 35500
1201.41 (b)(7) revised 35500

Chapter III—Office of Management and Budget (Parts 1300—1399)

1303 Authority citation revised 20514
1303.2 Revised 20514
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1303.10 Revised 20514
1303.20 Revised 20515
1303.30 (d) and (e) revised 20515
1303.40 (f) revised 20515
1303.60 (d) concluding text designated as (d)(3); (c) and new (d)(3) revised 20515

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600—1699)

1605.2 (c)(5) revised; interim 4366
(c)(5) revised 24380

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TITLE 5 Chapter VI—Con.

1605.4 (c)(1) revised; interim 4366
(c)(1) revised 24381

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2610.102 Amended 13116
2610.105 (b)(4) and (5) amended; (b)(6) added 13116
2610.106 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 13116
2610.107 (b) amended 13116
2610.108 Heading revised; (a) and (b) amended 13116
2610.201 (a) and (b) introductory text revised; (f) amended 13116
2610.204 (a) revised; (c) amended 13116
2634.906 Amended 15274

Chapter XXV—Department of the Interior (Part 3501)

Chapter XXV Regulation at 62 FR 53718 confirmed 34258
3501.101 (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4) 34259
3501.104 Heading correctly revised 20447
3501.105 (b)(4)(ii)(E) amended 34259
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TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

2.28 (b)(17) added 11101
6.25 (b)(1)(i) and (ii) suspended 13481
6.20—6.36 (Subpart) Appendix 3 amended 5233
Appendixes 1, 2 and 3 revised 20517
25 Revised; interim 19114

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.901—28.917 (Subpart D) Authority citation revised 33237
28.909 (b) revised 33237
28.910 (a) revised 33237
28.911 (a) amended 33237
29 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
29.8001 Table amended 29529
31 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
32 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
36 Regulations at 62 FR 43430 confirmed 35502
51 Regulations at 60 FR 62172 confirmed 35502
51.21 Revised 15277
51.38 Revised 15277
51.490 Revised; interim 20522
52 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
53 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
54 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502
54.27 (a) and (b) amended 32966
56 Heading revised 13330
Regulations at 62 FR 43430 confirmed 35502
56.17 (a)(2) and (3) removed; new (a)(2) through (5) added 13330
56.36 Revised 13330
56.37 Amended 13331
56.40 (a) revised 13331
56.76 (e)(5) amended 13331
58 Regulations at 60 FR 62172 and 62 FR 43430 confirmed 35502

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70 Regulations at 62 FR 43430 confirmed 35502
91.37 (a) Tables 1 through 8 and (b) revised; (d) added 16372
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91.39 (a) revised 16374
91.40 (a) revised 16375
93.11 Amended 16375
93.12 (b)(1) revised 16375
96.20 Revised 16375
96.21 (a) revised 16375
160 Regulations at 62 FR 43430 confirmed 35502

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

Chapter II Heading revised; nomenclature change; interim 9727
210.9 Regulation at 62 FR 901 confirmed; (b)(20) revised 9104
210.19 Regulation at 62 FR 901 confirmed; (f) revised 9104
226.2 Regulation at 62 FR 901 confirmed; amended 9104
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226.4 Regulation at 62 FR 902 confirmed 9104
(e) and (f) amended; interim 9728
226.6 Regulation at 62 FR 902 confirmed; (f)(9) amended 9104
(c)(3) and (k) introductory text amended; interim 9728
226.7 (h) and (j) amended; interim 9728
226.12 (b) through (e) removed; (a) heading and new (b) added; interim 9728
226.13 Regulation at 62 FR 902 confirmed 9104
(d)(3)(ii) and (iii) amended 9105
226.14 Regulation at 62 FR 903 confirmed 9104
226.15 Regulation at 62 FR 903 confirmed 9104
(e)(3) revised; (f) amended 9105
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226.18 Regulation at 62 FR 903 confirmed 9104
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(a) introductory text revised; interim 9729
226.23 Regulation at 62 FR 903 confirmed 9104
(e)(1)(i) and (h)(6) amended; (e)(1)(iv) and (h)(1) revised; (e)(1)(vi) added 9105
(d), (e)(1)(i) and (ii)(F) amended; interim 9729

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301 Clarification 25153
301.45–3 (a) amended; interim 25748
301.50–3 (d) illustration revised 25155
301.64 Regulation at 62 FR 61214 confirmed 12603
301.64–3 Regulation at 62 FR 61214 confirmed 12613
301.78–3 (c) amended; interim 19652
(c) revised; interim 19798, 20054
(c) amended; interim 25750, 27440, 31888
301.80–2a Revised; interim 31602
301.81–3 (e) amended; interim 4152
301.89–1 Amended 31599
301.89–3 (f) amended; interim 1
301.89–14 (f)(2) amended; (d), (e) and (f) redesignated as (f), (g) and (h); new (d), new (e) and (i) added 1329
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301.93–3 (c) revised; interim 8836, 16878
319.8–10 (d) amended 31101
319.8–11 (a) introductory text amended 31101
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319.34 (Subpart) Removed 13484
319.37–1 Amended 13484
319.37–2 (a) table amended 13484
319.40–2 (c) amended 13485
319.56–2t Table amended 13485
319.56–2w Revised 12396
319.59 (a) and (b) amended 31101
319.59–2 (a) introductory text, (1)(i), (b)(2) and (c)(2) amended; (a)(2) revised; (b)(3) added 31101
319.69 (b)(1) revised 31102
354.2 Table amended 16879

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401 Heading revised 29935

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TITLE 7 Chapter IV—Con.

401.114 Regulation at 62 FR 63633 confirmed 14334
401.120 Regulation at 62 FR 63633 confirmed 14334
401.122 Introductory text revised 29935
401.129 Introductory text revised 34551
405 Heading revised 17053
405.1—405.9 (Subpart) Heading removed 17053
405.7 (d) introductory text revised 17053
425 Heading and authority citation revised 31335
425.1—425.7 (Subpart) Heading removed 31335
425.7 (d) introductory text revised 31335
435 Heading and authority citation revised 34782
435.1—435.7 (Subpart) Heading revised 34782
435.7 (d) introductory text revised 34782
447 Heading and authority citation revised 33838
447.1—447.7 (Subpart) Heading removed 33838
447.7 (d) introductory text revised 33838
454.7 Regulation at 62 FR 63633 confirmed 14334
457 Heading revised 17054
457.104 Regulation at 62 FR 63633 confirmed 14334
457.105 Regulation at 62 FR 63633 confirmed 14334
457.108 Regulation at 62 FR 63633 confirmed 14334
457.109 Regulation at 62 FR 63633 confirmed 14334
457.113 Regulation at 62 FR 63633 confirmed 14334
457.126 Added 33838
457.134 Added 31335
457.136 Added 34552
457.138 Corrected 31338
457.150 Regulation at 62 FR 63633 confirmed 14334
457.156 Added 34782
457.158 Added 17054
457.159 Added 29935

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723 Regulation at 62 FR 15600 confirmed 9128
Nomenclature change 11585
723.103 Regulation at 62 FR 15600 confirmed; (d) amended 9128
723.104 Amended 11582
723.209 Regulation at 62 FR 15600 confirmed; heading revised; (c) amended 9128
723.209 Heading and (c) revised; interim 26714
723.210 (d) added 11582
723.213 (c) removed; (d) redesignated as new (c) 11582
723.216 (a) introductory text, (2)(ii)(A) and (iii)(A) revised 11582
723.308 Amended 11582
723.309 Introductory text amended 11582
723.409 Heading, (a), (b), (e)(1), (2) introductory text and (f) revised; (g) removed 11582
723.410 Introductory text revised 11583
723.501—723.504 (Subpart E) Revised 11583
783.8 (c) revised 3791

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 (a) amended 32715
(a) amended; interim 35504
800.86 (c)(2) Table 14 amended; eff. 6-1-99 20056
801.6 Revised; interim 34554
801.7 Revised; interim 35505
810.104 (b) amended; eff. 6-1-99 20056
868.1 (b)(13) revised 29531
868.80 (a)(1) revised 29531

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900.600 Revised 10492

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900.601 Revised (OMB numbers) 10492
905.306 (a) Table 1 amended; interim 3250
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911.234 (Subpart) Added 15281
912 Removed 10493
913 Removed 10493
915.235 (Subpart) Added 15281
916.115 Revised; interim 16039
916.160 (b) revised; interim 16039
916.350 (a)(4)(i), (ii), (iii), (iv) Table 1, (5), (b) and (d) revised; interim 16039
916.356 (a)(1) introductory text, (iv), (2)(i), (3)(i), (4) introductory text, (i), (5)(i), (6) introductory text, (i), (7)(i), (8)(i), (9)(i) and (c) revised; interim 16039
917.110 Revised; interim 16041
917.150 Revised; interim 16041
917.178 (b) revised; interim 16041
917.442 (a)(4)(i), (ii), (iii), (iv) Table 1, (6), (b) and (d) revised; interim 16041
917.459 (a)(2) through (5) redesignated as (a)(3) through (6); (a)(1) introductory text, (iv) Table 1, new (3)(i), new (5) introductory text, new (i), new (6) introductory text, new (i), (b) introductory text, (1), (c) introductory text and (1) revised; new (a)(2) added; interim 16042
922.306 (a)(4) revised; interim 32718
925 Nomenclature change 658
Regulation at 63 FR 658 confirmed 16390
925.215 (Subpart) Regulation at 62 FR 68152 confirmed 14602
925.304 (b)(1) introductory text amended; (b)(1)(i) through (vii) removed; (b)(1)(viii) and (ix) redesignated as (b)(1)(ii) and (iii); new (b)(1)(i) added; interim 658
Regulation at 63 FR 658 confirmed 16390
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929.16 Removed 10493
930.59 (b) suspended in part; eff. 1–7–98 through 6–30–98; interim 404
Regulation at 63 FR 404 confirmed 20019
930.100 Regulation at 62 FR 44883 confirmed; (a) revised 20023
930.133 Added 33528
930.141 (a) revised; (b) removed 14024
930.158 Added 33528
930.159 Added; interim 404
Regulation at 63 FR 404 confirmed; (f) revised 20019
930.162 Added; interim 405
Regulation at 63 FR 405 confirmed 20019
930.200 Revised 14024
930.250 (Subpart) Added; eff. 4–28–98 through 6–30–98 20527
932.230 Revised 20058
944.106 (a) table amended; interim 3250
Regulation at 63 FR 3250 confirmed 19382
944.503 (a)(1) introductory text and (ii) revised; interim 28480
953.253 Revised; interim 32968
956.202 Revised 29091
958.240 Revised 32600
959.237 Regulation at 62 FR 67696 confirmed 16392
959.322 Introductory text amended; (f)(5) revised; interim 9131
Regulation at 63 FR 9131 confirmed 30579
966.323 (a)(1), (2)(i), (iii) and (d)(3) revised 146
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979.219 Amended; interim 4368
Regulation at 63 FR 4368 confirmed 25389
980.212 (b)(1) revised 146
(b)(1) revised 12401
982 Marketing percentages 3254, 27817
982.340 Regulation at 62 FR 53227 confirmed 9133
982.432 Removed 10493
982.457 Removed 10493
984.347 (Subart) Regulation at 62 FR 58644 confirmed 9135
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997.101 Regulation at 62 FR 48751 confirmed....3255
998.100 Heading amended; (g) removed; (h) and (i) redesignated as (g) and (h); interim....2851
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998.200 Heading, (a), (h)(1) and (2) revised; (h)(3) added; interim....2851
Regulation at 63 FR 2851 confirmed....33242
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998.409 Regulation at 62 FR 48751 confirmed....3255
999.600 Regulation at 62 FR 50243 confirmed....12979

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1412.207 Regulation at 62 FR 55152 confirmed; (d)(1) and (2) revised....33103
1412.302 Regulation at 62 FR 55152 confirmed....33103
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1412.304 Regulation at 62 FR 55152 confirmed....33103
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1485.16 (a)(1), (b)(6), (7), (9), (c)(8), (25), (d)(3) and (h)(3) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); (b)(11) added....29940
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1485.20 (a)(3)(vi) revised....29941
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1728 Authority citation revised....11590
1728.97 (b) amended....11591

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1730 Added 3450

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1806 Comment period reopened 29091
1910 Comment period reopened 29091
1922 Comment period reopened 29091
1930 Authority citation revised 2135
1930.122 (b)(4)(i)(A)(*1*) amended 2135
1942.5 (b)(1)(ii)(D) removed; (b)(1)(ii)(E) through (L) redesignated as (b)(1)(ii)(D) through (K); (a)(1)(iii), (b)(1) introductory text, new (ii)(G), (c) introductory text, (2) and (3) amended 16089
1944 Comment period reopened 29091
1948 Authority citation revised 6052
1948.101—1948.150 (Subpart C) Removed 6052
1951 Authority citation revised 6052
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1951.211 Amended 16089
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1951.215 (a)(1) revised 16089
1951.852 (b) amended 6052
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1951.883 (a)(2) revised 6053
1951.901 Amended 6628
1951.909 (e)(2)(vii), (viii) introductory text, (A), (h)(3)(viii) and (j) revised; (k), (l) and (m) removed 6628
1951.914 Revised 6629
1951.950 OMB number 6629
1951 Exhibit D removed 6629
1955 Comment period reopened 29091
1956 Comment period reopened 29091
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1962.30 Revised 20297
1962.47 Revised 29341
1965 Comment period reopened 29091
1965.12 Revised 20297
1980.108 (a)(1)(iii) and (d) revised; (a)(1)(v) and (vi) added 20298
1980.175 (h)(3) added 20299
2003.10 (c) table corrected 3255

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3017.105 Amended 27667

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103.2 (a)(1), (7), (b)(9), (10) heading, (i), (13), (14) and (e) revised; interim 12984
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204 Authority citation revised 12986
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214 Suspension of applicability 31874
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171.16 (c) introductory text, table, (1), (4), (d) and (e) revised 31858
171.19 Revised 31861

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430.21—430.27 (Subpart B) Regulation at 62 FR 53510 confirmed 9390
430.22 (b)(6) added 13316
430.23 Heading revised; (s) through (v) added 13316
430.24 (s) through (v) amended 13316
430.27 (a)(1), (b)(1)(iii) and (l) amended 13316
430.21—430.27 (Subpart B) Appendix S added 13316
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430.31—430.33 (Subpart C) Heading revised 13317
430.31 Revised 13317
430.32 Heading and introductory text revised; (o) through (r) added 13317
430.33 Revised 13318
430.40 Revised 13318
430.41 Revised 13318
430.47 (a)(1) amended 13319
430.49 (a) amended 13319
430.50 (a) and (b) amended 13319
430.60 Revised 13319
430.61 (a)(4) amended 13319
430.62 Revised; eff. in part 3–18–99 13319
430.63 (a) amended 13321
430.70 (a)(1) introductory text (3) and (6)(i) revised 13321
430.73 Introductory text amended 13321
430.60—430.75 (Subpart F) Appendixes A and B revised 13321
600.27 (b)(2)(i)(A) revised; (b)(2)(i)(B) amended; (b)(2)(i)(C) removed; (b)(2)(i)(D) redesignated as (b)(2)(i)(C) 10503
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1010 Authrority citation revised 30111
1010.102 Amended 30111
1010.105 Removed 30111

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9.101 Added 6473
10 Revised 29094
10.2 (c) corrected 35309
32.2 (b) revised 15746
32.3 (c)(4)(ii)(B) and (6)(ii)(B) amended 15746
32.4 Revised 15746

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202 Appendixes A and C amended 16394
204.3 (c) revised 15071
205.4 (c) added; interim 14532
207 Removed 2820
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208.26 Revised 16380
220 OTC margin stock lists 3804, 23195
220.1 Revised 2820
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220.10 Revised 2826
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220.15 Removed 2827
220.16 Removed 2827
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224 Authority citation revised 2839
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224.2 Introductory text amended 2839
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225 Authority citation revised 30370
225.200 (b)(4)(i) revised 14804
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226 Dollar amount adjustment notice 6474
226 Appendix H corrected 2723
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265.11 (f) revised 2839

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303.5 (d) removed 17074
303.6 (f)(1)(ii)(A) and (C) revised 17074
303.7 (a) heading, (1)(i), (ii)(A), (iii)(D) and (b)(4)(ii) revised; (f)(2)(i) amended; (f)(2)(ii) removed 17074
303.8 (f) removed 17074
309.1 Revised 16404
309.2 (e) revised 16404
309.4 Revised 16404
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309.6 Amended 16404
325.103 (c) revised 17074
326.1 (c) amended 17075
326.8 (a) and Footnote 3 revised 17075
327 Authority citation revised 17075
327.1 (b)(2) revised 17075
327.4 (a)(1)(i)(B)(*1*), (*2*), (ii)(B)(*1*) and (*2*) revised 17075
329.3 Added 8342
330 Revised 25756
337.12 Revised 16381
346 Removed 17075
347 Revised 17075
351 Removed 17090
357 Authority citation revised 10295
357.1 (b) revised 10295
362.4 (c)(3)(i)(A) revised 17090

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560.210 (b)(2) introductory text, (viii) and (ix) revised; (b)(2)(x) removed; (b)(2)(xi), (xii) and (xiii) redesignated as (b)(2)(x), (xi) and (xii); interim 1053
563.171 Revised 16381
575.2 (h) and (o) revised; (q) added 11365
575.6 (c) through (i) redesignated as (d) through (j); new (c) added 11365
575.10 (a)(2) introductory text, (3), (4) and (b)(1) amended; (a)(6)(i)(B) revised 11365
575.11 (b)(1) introductory text (2), (c) introductory text, (1), (3) and (e) revised; (b)(1)(ii) redesignated as (b)(1)(iii); new (b)(1)(ii) added 11365
575.12 (a)(2), (b)(1)(ii), (iii) and (2) revised 11366
575.14 Added 11366

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607 Authority citation revised 34268
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614.4000 (b) amended (effective date pending) 5723
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614.4010 (b) amended (effective date pending) 5723
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614.4120 Revised (effective date pending) 5724
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614.4125 Added (effective date pending) 5724
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614.4130 Revised (effective date pending) 5724
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614.4155 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4160 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4280 Regulation at 62 FR 66818 eff. 3–4–98 10515
614.4270—614.4320 (Subpart G) Regulation at 62 FR 66818 eff. 3–4–98 10515
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614.4335 Regulation at 62 FR 63646 eff. 3-4-98 10515
614.4336 Regulation at 62 FR 63647 eff. 3-4-98 10515
614.4367 Regulation at 62 FR 63647 eff. 3-4-98 10515
615.5450 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5451 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5452 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5454 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5455 Regulation at 62 FR 53229 eff. 1-27-98 5223
615.5457 Regulation at 62 FR 53230 eff. 1-27-98 5223
615.5460 Regulation at 62 FR 53230 eff. 1-27-98 5223
627 Heading and authority citation revised (effective date pending) 5724
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627.2700 Revised (effective date pending) 5724
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627.2720 (a) removed; (b) through (f) redesignated as (a) through (e); new (b) revised (effective date pending) 5724
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627.2730 (b) removed; (c) redesignated as (b); new (b) revised (effective date pending) 5724
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627.2795—627.2797 (Subpart D) Added (effective date pending) 5725
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701.19 (a) amended; interim 14026
701.26 (a) designation and (b) removed 10756
701.27 Removed 10756
701.36 (a)(4)(iv) amended 10756
703.50 Regulation at 62 FR 64147 confirmed 24104
703.60 Regulation at 62 FR 64147 confirmed 24104
703.80 Regulation at 62 FR 64147 confirmed 24104
703.100 Regulation at 62 FR 64148 confirmed 24104
703.150 Regulation at 62 FR 64148 confirmed 24104
703.30 (g) removed; (h) through (l) redesignated as (g) through (k) 24104
703.50 (b)(2) revised 24105
703.100 (e) revised 24105
703.130 Revised 24105
704.5 (c)(6) revised 24105
704.11 (e) amended 10756
704 Appendix B amended 24105
708a Heading and authority citation revised 10517
708a Appendix A amended 10517
708b.301 (a)(1) and (b)(1) amended 10519
708b.302 (a)(1), (2), (b)(1) and (2) amended 10519
712 Added 10756
724 Authority citation revised 14026
724.1 Amended; heading revised; interim 14026
791.5 (a)(2) revised 5859
791.6 (a) amended 5859
792 Authority citation revised 14338
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900 Authority citation revised 3455
900.1—900.5 (Subpart A) Appendix A amended 3455
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932 Authority citation revised 3455
932.11 (b) revised 3455
932.40 (d) revised 30587
932.41 (b)(2) and (c)(3)(ii) revised; (c)(3)(iv) added; (d) amended;

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(f) removed; (g) redesignated as (f) 30587
933 Authority citation revised 3455
933.1 (cc) revised 3455
(n)(1)(iii) revised; (bb)(6)(iii) and (7) amended; (bb)(8) added 35127
935.1 Amended 35128
960.1 Amended; interim 27672
960.4 (d) revised; interim 27672
960.5 (b)(9), (10)(i)(C) and (ii) revised; interim 27672
960.6 (b)(4)(ii) and (iii) amended; (b)(4)(iv)(A), (C)(*2*), (D), (F)(*8*) and (*10*) revised; interim 27673
960.7 (a) revised; interim 27673
960.9 Introductory text revised; interim 27673
960.12 (e) revised; interim 27673
960.13 (c)(4), (5)(iv), (d)(1) and (2)(iv) revised; interim 27673

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1720 Added; interim 8844
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107.120 Revised 5865
107.150 (a)(1) introductory text revised 5866
107.210 Revised 5866
107.220 Removed 5866
107.230 (d)(4) introductory text revised 5866
107.503 (a), (b) and (e) revised; (c) amended 5866
107.660 (d) redesignated as (e); new (d) added 5866
107.710 (b) and (c) revised; (e) amended 5866
107.720 (b)(2) and (c)(1) introductory text revised; (b)(3) added 5867
107.730 (d)(3)(iv) revised 5867
107.740 (a) revised 5867
107.855 (c)(1), (4)(i) and (d)(4) revised; (g)(1) through (10) redesignated as (g)(2) through (11); new (g)(1) added 5867
107.865 (c)(2) amended; (d)(1) revised 5867
107.1100 Revised 5868
107.1110 Removed 5868
107.1120 (c) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) added 5868
107.1130 Heading, (a), (b) and (c) revised; (d) added 5868
107.1160 Introductory text added 5868
107.1200 (c) and (d) revised 5868

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107.1210 Revised 5868
107.1230 (a) and (b) revised 5868
107.1240 (a)(1), (b), (c) and (d) revised 5868
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107.1350 Redesignated as 107.1585 5869
107.1400 Heading and introductory text revised 5869
107.1420 Revised 5869
107.1430 Amended 5869
107.1500 (b)(1), (4) and (f)(2) revised; (e) amended 5869
107.1505 (a) introductory text amended; (a)(1), (2) and (3) added; (b) revised 5869
107.1510 Introductory text and (d)(1)(ii) revised; (c) amended 5870
107.1520 Revised 5870
107.1530 (c), (e)(2) and (h) revised; (e)(3) and (4) removed 5871
107.1540 Introductory text amended 5871
107.1550 Introductory text amended; (a)(1), (b) and (c)(3) revised 5871
107.1560 Introductory text and (e) table amended; (a)(1), (4) and (b) revised 5872
107.1570 Introductory text amended; (b)(1) heading, (i) and (ii) revised 5872
107.1575 Added 5872
107.1580 (a) heading and introductory text revised 5872
107.1585 Redesignated from 107.1350 and revised 5869
107.1590 (a)(1) revised; (c) removed; (d) redesignated as (c) 5873
107.1600 (a) amended; (b) revised 5873
107.1720 Added 5873
107.1820 (e)(9) revised 5873
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115 Authority citation revised 12605
115.61 Amended 12605
120.845 Revised; interim 24740
121 Authority citation revised 31907
121.103 (f)(2) revised; (f)(3) and (4) redesignated as (f)(4) and (5); new (f)(3) added 35738
121.401 Amended 31907
121.1001 (a)(5) redesignated as (a)(6); new (a)(5) added 31907
(a)(2) through (6) redesignated as (a)(3) through (7); new (a)(2) added; (b)(2) revised 35739
121.1008 (a) revised 31908
121.1103 (a) revised 35739
123.18 Added 15072
123.19 Added 15072
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134.222 (a)(2) amended 35766
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25.101 (i) added 8318
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25.107 (a)(2) revised 8318
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25.109 (b), (c), (d) redesignated as (e), (g) and (h); (a) and new (e) introductory text revised; new (b), new (c), new (d), (f) and (i) added; new (h) amended 8318
25.111 (a) amended 8848
25.113 (b) redesignated as (c); (a) introductory text, (1) and new (c) revised; new (b) added 8320
25.115 (a) revised 8320
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25.233 (a) amended 8848
25.349 Introductory text amended 8848
25.481 (a)(3) amended 8848
25.493 (c) revised; (d) and (e) added 29072
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(b) corrected 23338
25.735 (f) introductory text and (2) revised; (h) added 8320
25.807 (f)(4) and (j) added 8848
(f)(4) corrected 12862
25.832 (a) introductory text and (2) amended 8848
25.855 (c) revised 8048
25.857 (c)(2) revised; (d) removed 8048
25.858 Heading and introductory text revised 8048
25.903 (c) amended 8848
(a)(2) revised 14798
25.1185 (a) amended 8848
25.1533 (a)(3) revised 8321
25 Appendix F amended 8848
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36 Appendix A corrected; CFR correction 26063
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73.19 (a) and (c) revised....16890

73.25....32724

73.50....32725

73.52....32725

91 Technical correction....1917, 2304, 23338

SFAR No. 79 amended....8017

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SFAR No. 79 corrected....19286

SFAR No. 50-2 amended....23604

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SFAR No. 67 amended 26687
91.605 (b)(3) revised 8321
93 Technical correction 1917
95 ..... 5883, 13119, 27205
97.21—97.35 ..... 667, 2140, 2602, 2604, 2605, 2892, 5448, 5886, 7065, 7067, 10761, 10762, 10764, 11993, 11994, 11996, 17938—17940, 23207, 23209, 23210, 23212, 23213, 25161, 25162, 28221, 28223, 28225, 30596, 30598, 33844, 33846
107.31 (i)(4) revised 18076
108.33 (e)(4) revised 18077
119 Notice 4
121 Notice 4
Technical correction ... 1917, 2304, 23338
SFAR No. 50-2 amended 23604
121.189 (e) revised 8321
121.314 Revised 8048
121 Appendix L amended 8049
135 Notice 4
Technical correction 1917, 23338
SFAR No. 50-2 amended 23604
SFAR No. 81 removed 25573
135.163 (b) revised 25573
135.379 (e) revised 8321
141.35 (b) introductory text and (d) introductory text revised 20289
141.36 (b) introductory text and (d) introductory text revised 20289
141 Appendix B amended 20289
Appendix D amended 20290
142 Technical correction 2304
150 Policy statement 16409
198 Revised 13740

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207 Revised 28236
208 Revised 28236
212 Revised 28236
243 Added 8280
243.15 (b) corrected 9413
380 Revised 28241
382.7 (c) added 10535
382.38 Added 10535
(k) corrected 11954
382.41 (b), (e) introductory text, (2), (3) and (f) amended; (g) revised; (h) added 10536

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1274.105 (b)(8) added 12993
1274.202 (c)(6) amended; (f) added 12993
1274.204 (b)(1) revised; (b)(3) and (d)(2) amended 12993
1274.301 Amended 12993
1274.901 Amended 12993
1274.933 Added 12993

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25 ..... 2186, 30423
27 34610
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39 ..... 167, 169, 171, 172, 174, 1070, 1072, 1074, 1076, 1930, 2911, 3054, 3056, 3267, 3270, 3272, 3273, 3275, 3276, 3278, 3483, 3852, 4404, 4406, 5318, 5320, 5322, 5324, 5325, 5327, 5763, 5765, 5766, 5898, 5900, 5902, 5904, 6499, 6500, 6501, 6682, 6683, 6685, 6689, 6882, 7076, 7078, 7080, 7082, 7083, 7085, 7322, 7324, 7739, 8149, 8369, 8371, 8373, 8374, 8881, 8883, 8885, 8886, 9163, 10156, 10157, 10349, 10572, 10573, 10576, 10579, 10783, 11169, 11171, 11381, 11631, 12042, 12418, 12419, 12706, 12708, 13013, 13151, 13374, 13376, 13378, 13379, 13381, 13566, 13569, 13570, 13572, 13574, 13576, 13577, 13579, 13581, 13800, 13801, 14043, 14044, 14047, 14049, 14051, 14055, 14383, 14385, 14651, 14652, 14654, 14656, 14658, 14660, 14849, 14850, 14851, 14853, 14855, 14857, 14859, 14861, 14863, 15105, 15790, 15791, 15793, 15795, 15797, 15798, 16163, 16165, 16167, 16169, 16170, 16172, 16174, 16175, 16177, 16447, 16449, 16709, 16711, 16713, 16715, 16716, 16916, 17130, 17341, 17342, 17344, 17346, 17738, 17969, 17970, 17972, 18151, 18153, 18155, 18156, 18158, 18160, 18163, 18164, 18167, 18341, 18342, 18852, 19421, 19423, 19425, 19427, 19668, 19670, 19672, 19673, 19675, 19677, 19678, 19680, 19682, 19684, 19686, 19688, 19689, 19852, 19854, 20141, 20143, 20543, 20545, 20546, 20548, 20550, 20552, 20554, 20556, 20684,

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71 ..... 2913, 3673—3675, 3854—3859, 6818, 7326—7328, 7330, 8151—8153, 9459, 9461, 9462, 11382, 11853, 12043, 12044, 12045, 12047—12055, 12710, 12711, 13015, 13016, 13153, 13803—13805, 13807—13809, 14387, 14388, 15107, 15108, 15110, 15111, 16451, 16718, 17740—17743, 19429, 19855—19858, 24500, 24764, 24995, 27012—27015, 27160, 27519, 29061, 29161—29167, 29959, 29960, 30156, 30157, 30159, 30427, 30428, 30570, 30663—30666, 31384, 31678, 31679, 32156, 32157, 32158, 33021, 33591, 33881, 34136, 34137, 34836—34839, 35166, 35546, 35547, 35548, 35549, 35550

91 ..... 126, 8324, 16078, 16452, 24140, 27876, 29061

107 19691

108 ..... 19691, 26706

121 ..... 126, 8324, 16452

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129 ..... 126, 16452

135 ..... 6826, 8324, 9912

139 19691

150 ..... 27876, 29061

255 3491

259 5329

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

2 Authority citation revised 29945

2.2 (d) and (f) removed; (e) and (g) redesignated as (d) and (e) 29945

2.4 (b) and (c) amended 29945

2.5 (a) and (b) amended 29945

2.7 Removed; new 2.7 redesignated from 2.8; (a) and (b) amended 29945

2.8 Redesignated as 2.7 29945

70 Nomenclature change 10303

70.2 Amended 10303

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

270 Removed 24917

280.1 (d) added 18271

280.2 Amended 18271

Corrected 34965

280.6 Revised 18272

(c)(5)(vi) corrected 34965

280.7 (a) revised 18274

280.10 Revised 18274

280.11 (b) revised 18274

280.12 Revised 18274, 35508

280.104 Added 18274

280.602 (e)(2), (h) and (j) revised; (k) through (o) added 18275

(o) corrected 34965

(k) revised 35508

280.800—280.812 (Subpart I) Added 18275

280.810 (c)(3)(i) revised 35508

280.900—280.901 (Subpart J) Added 18277

280.1000—280.1024 (Subpart K) Added 18278

280.1010 (b)(3)(vi) corrected 34965

280.1011 (c)(2)(v) correctly added 34965

280.1100—280.1127 (Subpart L) Added 18282

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

303.6 (a) amended 5888

303.14 (e) amended 5888

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

Chapter VII Policy statement 32123

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700 Authority citation revised.....31921
700.1 (a) amended; (b) revised; (c) redesignated as (e); new (c) and (d) added.....31921
700.2 (a) and (b) revised; (c) amended.....31921
700.3 (a) amended.....31921
700.4 Revised.....31921
700.7 (a) amended.....31921
700.8 Amended.....31921, 31922
700.10 (a) revised; (b) amended.....31922
700.11 (b) amended.....31922
700.12 (b) and (c) revised.....31922
700.13 (b)(4) added; (c)(5), (6) and (7) removed; (c)(8) redesignated as (c)(5); new (c)(5) amended; (d) revised; OMB number.....31922
700.14 (c) revised.....31922
700.17 (b)(2), (3) and (c) amended; (d)(1) and (f) revised; (d)(2) redesignated as (d)(3); new (d)(2) added.....31923
700.18 (a)(2)(v) added; (b)(1) revised; (b)(2) and (3) amended.....31923
700.21 (a) revised; (b)(2), (c) introductory text, (1) introductory text, (d) and (f) amended.....31923
700.30 (Subpart F) Revised.....31923
700.41 (Subpart G) Redesignated as 700.41 and transferred to Subpart F.....31924
700.50 (c) amended; OMB number.....31924
700.54 Heading revised; introductory text amended.....31924
700.55 (a), (b)(2) through (6) amended.....31924
700.70 (a) amended.....31924
700.71 (a), (c)(1), (2) and (3) amended.....31924
700.72 (a) and (b) amended.....31924
700.73 (a) and (b) amended.....31924
700.74 (a) revised; (b) removed; (c) and (d) redesignated as (b) and (c).....31924
700.75 Amended.....31924
700.80 (a)(2) amended.....31924
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700.81 (a), (b) and (d) through (h) amended.....31925
700.91 (d) amended.....31924
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700.93 Amended.....31925
700 Schedule 1 revised.....31925
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705 Authority citation revised.....31623
705.3 Existing text designated as (a); (b) added.....31623
705.5 (a) amended.....31623
705.7 (b) amended; (d) revised.....31623
705.8 (b)(6) amended.....31623
705.10 Revised.....31623
705.11 Added.....31623
705.12 Added.....31623
732 Authority citation revised.....2455
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732.4 (b)(3)(iv) added.....2456
740 Authority citation revised.....2455, 5450
Technical correction.....7699
740.2 (a)(5) and (c) added.....2456
740.3 (f) added.....2456
740.4 Revised.....2456
740.5 Amended.....2456
740.6 (b) added.....2456
740.7 (f) revised.....2456
(d)(4) added; (e)(2) amended; (f) revised; interim.....5450
740.11 (a)(2), (b)(2)(iii) and (iv) revised; Supplement No. 1 added.....2456
742 Authority citation revised.....2455, 5451
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742.6 (a)(1) amended.....2458
742.12 (a)(3) revised; (a)(4) removed.....2458
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743 Added.....2458
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744 Authority citation revised.....2455
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744.8 (b) amended.....2459
746 Authority citation revised.....2455
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746.8 (b)(1)(ii) amended.....2459
762 Authority citation revised.....2455
Technical correction.....7699
770.4 Removed.....14030
774 Supplement No. 1 revised.....2459
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Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (h)(1), (2), (j)(3)(ii)(b), (c), (4)(ii)(b) amended 16892
806.17 Revised 3461

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers); interim 669
(b) table amended (OMB numbers) 11593, 14033, 27484, 30398
(b) table amended (OMB numbers); interim; eff. 5-14-98 through 11-16-98 27488
911 Revised 24922
921.1 (f) amended 26717
921.10 (a) and (b) amended 26717
921.20 Amended 26717
921.31 Amended 26717
922.131 Amended 15087
922.132 (a)(1), (4) introductory text, (d) and (f) revised; (a)(4)(iv) and (v) amended; (a)(4)(vi) added 15087
922.133 (a) and (c) revised 15088
990 Reconsideration 6846

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2013 Added; interim 29948

Proposed Rules:

30 18344
922 6883
960 10785
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2300—2399 (Ch. XXIII) 8826

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

1.31—1.34 (Subpart D) Removed 7516
2.33 Revised 32977
2.41 (f) revised 18820
(f)(5) revised 32977
3.11A Revised 7527
4.1 (b) and (c) revised 15758
4.9 (b)(7)(ii) revised; (b)(7)(iii) removed 18820
(b)(7)(i), (c)(1) and (3) revised 32977
4.11 (c), (d), (f) and (g) revised 32978
4.15 (c)(3) revised 32978
5.2 (d) revised 35130
14.9 (a) and (b) revised 34808
260.2 Revised 24248
260.5 Revised 24248
260.6 (a) and (b) revised 24248
260.7 Introductory text, (a), (c), (d) and (e) revised 24248
260.8 Footnotes 4, 5 and 6 redesignated as Footnotes 7, 8 and 9 24248
Revised 24251
300.1 (h) revised; (j) and (k) added 7516
300.3 (b) revised 7516
300.4 Heading, (c) and (e) revised 7516
300.5 (b) revised 7516
300.8 (g) amended 7516
300.10 Revised 7517
300.21 Removed; new 300.21 redesignated from 300.22 7517
300.22 Redesignated as 300.21; new 300.22 redesignated from 300.23 7517
300.23 Redesignated as 300.22; new 300.23 redesignated from 300.24 7517
300.24 Redesignated as 300.23; new 300.24 redesignated from 300.25 7517
300.25 Redesignated as 300.24; new 300.25 redesignated from 300.25a; (a)(3), (4) introductory text and (i) revised 7517
300.25a Redesignated as 300.25; new 300.25a redesignated from 300.25b 7517
300.25b Redesignated as 300.25a 7517
300.33 (b) revised 7517
301.26 Heading, (b)(2) and (d) revised 7517
301.39 (a) amended; (c) revised 7517
301.48 Heading and (a)(3) revised 7517
303.1 Footnote 1 removed; (h) and (u) revised 7517

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TITLE 16 Chapter I—Con.

303.3 Revised 7518
303.7 Introductory text revised 7518
303.8 (a) introductory text revised 7518
303.15 (b) revised 7518
303.16 (a) introductory text, (1), (b) and (c) revised 7518
303.20 (b)(3) added; (d) revised 7518
303.33 Heading, (a)(3), (4) introductory text and (i) revised 7521
303.38 (b) revised 7521
303.40 Revised 7523
302.42 (a) amended 7523
305 Notice 14034
305 Appendix F revised 19399
802.70 Revised 34594

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1203 Revised; eff. 3–10–99 11729
1700.14 (a)(10)(vii) revised; (a)(27) added; eff. 3–2–99 29953

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235 17348
243 14865
303 ..... 447, 449
423 25417
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TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1.3 (gg)(2)(iv) revised 32730
1.12 (b)(2) revised 32731
1.17 (c)(5)(iii) removed 32726
(a)(1)(i)(B), (ii), (h)(2)(vi)(C)(*2*), (vii)(A)(*2*), (B)(*2*), (viii)(A)(*2*), (3)(ii)(B) and (v)(B) 32731
1.41 (k)(1) revised 33848
3.13 Added; interim 18830
3.14 Added; interim 18831
4.24 (j)(1)(v) corrected 24390
32.2 Revised; interim 18832
32.13 Added; interim 18832
33.4 Introductory text amended; interim 18834
(a)(2) removed 32732
33.7 (b) amended 32732
140.735–4 (b)(3) and (c)(5) introductory text revised 32733

Chapter II—Securities and Exchange Commission (Parts 200—399)

230.157 Heading and (b) revised 35514
230.497 (k)(2)(ii) corrected 19286
230.498 (b) and (c)(3) corrected 19286
232.301 Revised 29105
239.15A Form N–1A corrected 19286
240.0–10 Heading, (a), (b), (e), (g)(2), (3) and (i) revised; (h)(2) and (3) redesignated as (h)(3) and (4); (h)(2), (j) and (k) added 35514
240.14a–4 (c) introductory text and (1) revised; (c)(2) through (5) redesignated as (c)(4) through (7); new (c)(2) and (3) added 29118
240.14a–5 (e) revised; (f) added 29118
240.14a–8 Revised 29119
241 Interpretative releases 17943
270 Compliance date extension 29345
270.0–10 Revised 35514
274.11A Form N–1A corrected 19286
274 Appendix A corrected 19286
275.0–7 Revised 35515

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240 ...19430, 19693, 23504, 23584, 29301, 32628
242 ..... 23504, 29301
249 ..... 23504, 23584, 29301

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

37 Clarification 32611
284 Order 30127
284.10 (a)(6) and (c) added; (b)(1) revised 20095

Chapter VIII—Susquehanna River Basin Commission (Parts 800—899)

803.3 Amended 32124

Proposed Rules:

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161 27526
284 19861
385 27529

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

10.1 (a) introductory text and (b) amended 16416
10.5 Heading revised; (d) through (g) amended 29954
10.6 Amended 29954
12.74 Revised 29122
19.4 (b)(4)(i)(B) amended; (b)(5) revised 32944
24.22 (d)(5) and (g)(6) amended 32944
24.25 (a), (b)(2) and (c)(4) amended; interim 29125

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24.26 Added; interim 29125
101.3 Regulation at 62 FR 37133 eff. date confirmed 23214
(b)(3) amended 24746
111.1 Amended 32944
111.21 Existing text designated as (a); (a) amended; (b) and (c) added 32945
111.22 Removed 32945
111.23 (a)(1) revised; (b), (c), (d) and (f) removed; (e) redesignated as (b); new (b) amended 32945
113.62 (j) revised 32945
118 Authority citation revised 16684
118.1 Amended 16684
118.4 (g) amended 16684
118.11 (b) and (g) amended 16684
122.15 Regulation at 62 FR 37133 eff. date confirmed 23214
123 Authority citation amended 16416
123.4 (b) amended 16416
128.24 (a) amended 16417
141.82 (d) amended 16417
142.23 Amended 19399
143.21 (a), (b), (c), (f) and (g) amended 16417
143.22 Amended 16417
143.23 (d) and (i) amended 16417
143.26 (a) amended 16417
143.32 (n) amended 32945
143.35 Revised 32945
143.36 (a) amended; (c) introductory text revised 32945
143.37 (c) and (d) removed; (a) revised 32945
143.38 Removed 32945
143.39 Revised 32945
145.4 (c) amended 16417
145.12 (a)(2), (3), (b)(1) and (c) amended 16417
145.35 Amended 16417
145.41 Amended 16417
148.23 (c)(1) and (2) heading and introductory text amended 16417
162 Heading revised 32945
162.0 Revised 32945
162.1—162.8 (Subpart A) Heading revised 32946
162.1a Removed 32946
162.1b Removed 32946
162.1c Removed 32946
162.1d Removed 32946
162.1e Removed 32946
162.1f Removed 32946
162.1g Removed 32946
162.1h Removed 32946
162.1i Removed 32946
162.71 (e) removed 29131
162.74 Revised 29131
163 Added 32946
163.6 (b)(2)(ii) corrected 34808
178.2 Table amended (OMB numbers) 29133, 32955
181.12 (a)(1) introductory text and (b)(1) amended 32955
181.13 Amended 32955
181.22 (a) amended 32955
191.3 (a)(3) amended 27489
191.6 (c)(3) amended 27489
191.14 (c)(3)(iii)(D) and (iv)(C) amended 27489
191.92 (g) amended 27489

Chapter II—United States International Trade Commission (Parts 200—299)

201.7 (b) amended 29351
201.10 Revised 29347
201.11 (b)(4) and (5) added 30607
201.17 Revised 29347
201.18 (b) and (c) revised 29348
201.20 (b)(1)(ii), (iii) and (3)(i) revised 29347
201.22—201.33 (Subpart D) Revised 29348
205.3 (a)(1), (2), (b) and (d) amended 29351
207.3 (b) revised 30607
207.45 (a) revised 30607
207.46 (g) revised 30607
207.60—207.69 (Subpart F) Added 30606

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351.103 Revised 24401
351.304 Added 24401
351.305 Added 24402
351.306 Added 24403
354 Authority citation revised 24403
354 Nomenclature change 24403
354.1 Amended 24403
354.2 Revised 24403
354.3 (a)(3) and (4) revised; (a)(5) added 24404

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354.5 (a), (b), (c), (d)(1), (2) and (7) revised; (d)(8) removed; (d)(9) redesignated as (d)(8) 24404
354.6 Revised 24404
354.7 (b) revised 24405
354.9 (b) revised 24405
354.15 (e) removed 24405
354.17 (b) amended 24405
354.18 Added 24405
354.19 Added 24405

Proposed Rules:

113 31385
123 27533
151 31385

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.3 Revised 17326
Redesignated as 209.5; new 209.3 added 32613
209.4 Redesignated as 209.6; new 209.4 added 32613
209.5 Redesignated as 209.7; new 209.5 redesignated from 209.3 32613
209.6 Redesignated as 209.8; new 209.6 redesignated from 209.4 and revised 32613
209.7 Redesignated as 209.9; new 209.7 redesignated from 209.5 and revised 32613
209.8 Removed; new 209.8 redesignated from 209.6 and revised 32613
209.9 Redesignated as 209.10; new 209.9 redesignated from 209.7; (c) revised 32613
209.10 Redesignated as 209.11; new 209.10 redesignated from 209.9 and amended 32613
209.11 Redesignated as 209.12; new 209.11 redesignated from 209.10 and revised 32613
209.12 Redesignated as 209.13; new 209.12 redesignated from 209.11 and revised 32613
209.13 Removed; new 209.13 redesignated from 209.12 32613
(b) revised 32614
209.14 Revised 32614
209.15 Amended 32614
216.74 Revised 17326
255.8 Revised 29548

Chapter III—Social Security Administration (Parts 400—499)

402.30 Amended 35132
402.35 (d) added 35132
402.40 (h) added 35132
402.45 (d) added 35132
402.100 Heading and (b) revised 35132
402.110 First 402.110 redesignated as 402.105 35132
402.105 Redesignated from first 402.110 35132
402.115 Removed 35132
402.120 Removed 35132
402.130 Revised 35132
402.140 Revised 35133
402.145 Revised 35133
402.150 (a) revised; (b) removed; (c) redesignated as (b) 35133
402.160 (b) and (c) revised 35134
404.942 (g) revised 35516
404.985 Revised 24932
404.1501—404.1599 (Subpart P) Appendix 1 amended 30411
416.420 (a) revised 33546
416.1130 (a) revised 33546
416.1442 (g) revised 35516
416.1485 Revised 24933
416.2010 (b)(1)(iii) amended; (b)(1)(iv) revised; (b)(1)(v) through (x) added 33849

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

646 Added; interim 15988

Proposed Rules:

404 31680
416 32161

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

3 Authority citation revised 26697
5.31 (f)(2)(iii) and (iv) removed 26697
5.53 (a)(1) and (b)(1)(i) revised 27207
5.73 Removed 26697

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5.74 Removed 26697
5.200 Revised 18314
5.210 Revised 18317
5.215 Revised 18317
10 Authority citation revised 32735
10.50 (c)(10) removed 26697
10.75 (b) amended 32735
16.1 (b)(2) amended 26697
25.31 (f) amended 26697
50 Authority citation revised 26697
50.1 (a) amended 26697
54.4 (a) corrected 35134
56 Authority citation revised 26698
58 Authority citation revised 26698
71 Authority citation revised 26698
74.3602 (b)(2)(v) added 20098
101 Technical correction 17327
Food labeling prohibitions 34084, 34092, 34097, 34101, 34104, 34107, 34110, 34112, 34115
101.13 (g) introductory text and (h) introductory text removed; (g)(1), (2) and (3) redesignated as (h)(4)(i), (ii) and (iii); (h)(1) and new (4)(i), (ii) and (iii) revised; (j)(2)(ii), (p)(2), (q)(2), (3)(ii), (5)(i) and (6) amended 26980
101.14 (e)(3) amended 26980
101.36 (b)(3)(ii)(B), (C) and (iii) revised 30620
101.54 (d)(2) revised 26980
101.62 (d)(1)(ii)(D), (2)(iii)(C), (iv)(C), (4)(ii)(C) and (5)(ii)(C) amended 26980
101.69 (c), (d), (l), (m)(4), (n)(3), (4), (o)(3) and (4) amended; (m)(3) revised; (m)(4)(iii) and (5) added 26719
101.70 (j)(2) and (4)(ii) revised; (j)(3)(iii) added 26719
165.110 (b)(4)(iii)(A) table and (C) table amended; (b)(4)(iii)(G)(*3*)(*iv*) note removed 25769
Regulation at 63 FR 25769 eff. date corrected to 2–9–98 30621
172.831 Added 16433
173.340 (a)(4) introductory text revised; (a)(4) table amended 29134
177.2415 Added 20315
178.2010 (b) table amended 27836, 29136, 35135
178.3400 (c) table amended 29551
184.1420 Added 24419
184.1702 Added 28895
200 Authority citation revised 26698
200.15 Revised 26698
201 Authority citation revised 26698
201.50 (b) amended 26698
201.100 (c)(2) amended 26698
201.307 Added 27843
207 Authority citation revised 26698
207.25 (b)(2), (4), (5) and (6) amended 26698
207.31 (a)(1), (2), (3) and (c) amended 26698
210 Authority citation revised 26698
211 Authority citation revised 26698
310 Authority citation revised 26698
310.545 (a)(27), (28) and (d)(28) added; (d) introductory text revised 19802
312 Authority citation revised 26698
312.500—310.546 (Subpart E) Authority citation revised 26698
314 Authority citation revised 26698
314.170 Amended 26698
314.430 (f)(6) amended 26698
369 Authority citation revised 26698
369.5 Removed 26698
369.21 Amended 26698
429 Removed 26698
430 Removed 26068
431 Removed 26068
432 Removed 26068
433 Removed 26068
436 Removed 26068
440 Removed 26068
441 Removed 26068
442 Removed 26068
443 Removed 26068
444 Removed 26068
446 Removed 26068
448 Removed 26068
449 Removed 26068
450 Removed 26068
452 Removed 26069
453 Removed 26069
455 Removed 26069
460 Removed 26069
510.105 (c)(2) revised 32980
510.106 Revised 32980
510.600 (c)(1) table and (2) table amended 24106, 25164, 26981, 27844, 27845, 29551, 31624, 31931
520.580 (b)(1) amended 26981
520.905c (d)(1)(iii) added 31624
520.1445 (a) and (c) heading revised; (d) added 29352
520.1484 (b) revised; (c)(3) amended 17329

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520.2098 (b) amended 29551
522.955 (d)(1)(iii) amended 26981
522.1086 (b) amended; (c) redesignated as (d) 29352
522.1289 Added 29552
522.2005 (b) amended 24420
522.2120 Amended 24107
522.2121 Added 24107
524.1044g (b) amended 31932
524.2101 (c) amended 26981
529.469 Added 25164
529.1186 (b) revised 24106
556.600 Revised 24107
558.58 (d)(1)(iii) table amended 27845
558.78 (d)(3) revised 19185
(a)(2), (d)(1) table and (2)(ii) amended 27845
558.95 (d)(4)(iv) added 18836
(d)(1)(xi)(*b*) and (xii)(*b*) amended 27845
558.120 (d)(1)(iii)(*b*) amended 27845
558.128 (a)(1) and (d)(1) table amended 27845
558.145 (a)(1) and (2) amended 27845
558.175 (d)(1)(iii)(*b*) and (iv)(*b*) amended 17948, 27845
558.195 (d) table amended 17948, 27845
558.305 (a) amended 27845
558.311 (e)(1)(ii) table amended 17948
(b)(2) through (7), (e)(1)(v) table, (2)(v) and (3)(v) amended 27845
558.340 (a) amended 27845
558.342 (d)(3)(ii) and (6)(ii) amended 27845
558.355 (a) amended 24420
(b)(8), (9), (f)(1)(iv)(*b*), (v)(*b*), (xiv)(*b*), (xv)(*b*) and (xvi)(*b*) amended 27845
558.515 (d)(1)(iv)(*b*) amended 17948
(a) and (d)(1)(vi)(*b*) amended 27845
558.550 (a)(1), (d)(1)(vii)(*c*), (ix)(*c*), (xv)(*c*) and (xvi)(*c*) amended 27846
558.575 (a)(1) and (2) amended 27846
558.582 (a) amended 27846
558.600 (c)(4)(ii) amended 27846
606.121 (e)(1)(ii) amended 16685
610.11 (g) revised 19403
610.30 Amended 16685
640.2 (e)(3) amended 16685
640.17 Amended 16685
640.24 (b) amended 16685
640.64 (c)(2) amended 16685
640.69 (b) amended 16685
640.70 (a)(3) amended 16685
640.74 (b)(2) amended 16685
640.101 (a) amended 16685
640.102 (c) and (e) amended 16685
640.104 (a) amended 16685
800 Authority citation revised 26699
801 Interpretation 24934
Economic analysis statement 29552
803.1 (a) revised 26074
803.3 (c) introductory text amended; (m) through (ee) redesignated as (n) through (ff); (c)(1), new (p) introductory text, (1) and (r)(2) revised; (g) and new (m) added 26074
803.9 (c)(2) amended; (c)(3) removed; (c)(4) redesignated as (c)(3) 26075
803.10 Heading, (a)(2) and (c)(5) revised; (b) added 26075
803.11 Amended 26075
803.12 (b) revised 26075
803.17 Introductory text amended 26075
803.18 Heading, (b)(1)(ii) and (2) revised; (a), (b)(1) introductory text and (c) amended; (d) added 26075
803.19 (b) and (c) amended 26075
803.20 (a) introductory text and (2) amended; (a)(1) revised; (b)(2) added 26075
803.22 (a) and (b)(1) amended 26076
803.33 Heading revised; (a) introductory text, (2), (5), (7) introductory text, (vi) and (c) amended 26076
803.40—803.43 (Subpart D) Added 26076
803.56 Introductory text, (a) and (b) amended 26076
803.57 (a), (b), (c)(1) and (d) amended 26076
804 Heading revised 26077
804.1 (a) revised 26077
804.3 (d) revised; (m)(1) and (2) amended 26077
804.25 (a)(1) and (2) amended; (c) removed 26077
806.10 Regulation at 62 FR 27191 eff. 5-18-98 18836
806.20 Regulation at 62 FR 27191 eff. 5-18-98 18836
812 Authority citation revised 26699

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814.39 (a) introductory text and (4) revised; (f) added 20533
814.100 (a)(2) and (d) revised; (e) added 19188
814.104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b)(5) and new (d) revised; new (c) amended 19189
814.106 Revised 19189
814.108 Revised 19189
814.112 (a) introductory text and (b) revised 19189
814.114 Revised 19189
814.116 (a) and (d) amended; (e) added 19189
814.118 (e) revised 19189
814.120 Revised 19189
814.124 (a) amended 19190
814.126 (a) amended; (b) revised 19190
864.1860 Added 30142
868 Preamendment device retention 35516
884 Preamendment device retention 35516
890 Preamendment device retention 35516
892.2010 Added 23387
892.2020 Added 23387
892.2030 Added 23387
892.2040 Added 23387
892.2050 Added 23387
1240 Technical correction 29591
1240.70 Removed 26078
1270.33 (b)(1) amended 16685

Proposed Rules:

3 26690
5 26690
10 ..... 26690, 32772
16 ..... 26690, 31143, 35551
25 26690
26 17744
50 26690
56 26690
58 26690
70 30150
71 26690
73 30150
74 30150
80 30150
81 30150
82 30150
99 ..... 31143, 35551
100 27502
101 ..... 20486, 23624, 24254, 24593, 27016, 30150
102 20148
120 ..... 20450, 24254
165 25789
178 30150
200 26690
201 ..... 26690, 30150
207 ..... 26690, 26744
210 26690
211 26690
310 ..... 26690, 33592
312 26690
314 26690
315 28301
334 ..... 27886, 33592
369 26690
429 26690
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448 26127
449 26127
450 26127
452 26127
453 26127
455 26127
460 26127
601 28301
610 19431
701 30150
800 26690
803 26129
804 26129
807 26744
809 29174
812 26690
814 ..... 19196, 20558
820 29364
864 29174
874 25794
1271 26744
1308 18170

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

40.204 Removed 16686

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41.2 (g)(3) and (4) redesignated as (g)(5) and (6); new (g)(3) and (4) added 16893
41.32 Revised 16893
41.33 Revised 16894
41.107 (c) redesignated as (c)(1); (c)(2) added; interim 24108
41.122 (a)(4) and (h)(9) added 16895
50 Authority citation revised 20315
50.40 (a) amended 20315
93 Authority citation revised 16687
93.1 (a), (b), (c) and (e) amended 16687
121.1 Amended 17330

Chapter V—United States Information Agency (Parts 500—599)

514 Suspension of applicability 34276
514.90 (Subpart H) Added; interim 34810

Proposed Rules:

503 15800

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

655.601 (a) revised 33549

Proposed Rules:

655 ..... 31950, 31957
658 27228
1331 33220

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.100 Amended 23853
5.214 Amended 23853
5.403 (a) revised; (b) amended 23853
5.520 (c)(1)(ii) and (2)(i) revised 23853
8.28 (a)(5) revised 23853

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

203.255 (b)(5) revised; interim 29507
206.45 (e) revised; interim 17656

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Chapter V Clarification 35135
570.415 (k)(3)(ii) revised 31869
598 Added; interim 19155

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

882 Heading and authority citation revised 23853
882.101 Revised 23853
882.102 Revised 23853
882.106 Removed 23854
882.108 Removed 23854
882.109 Removed 23854
882.110 Removed 23854
882.111 Removed 23854
882.118 Removed 23854
882.112 Redesignated as 882.414 23854
882.201—882.219 (Subpart B) Removed 23854
882.217 Redesignated as 882.517 23854
882.301—882.335 (Subpart C) Removed 23854
882.401 Revised 23854
882.402 Removed 23854
882.404 Revised 23854
882.406 Redesignated as 882.810 23857
882.407 Revised 23855
882.411 (c) amended 23855
882.413 (c) removed 23855
882.414 Redesignated from 882.112 23854

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TITLE 24 Chapter VIII—Con.

882.501 Removed 23855
882.502 Removed 23855
882.503 Removed 23855
882.504 Removed 23855
882.505 Removed 23855
882.506 Removed 23855
882.508 Removed 23855
882.511 Heading revised; (a) through (e) redesignated as (b) through (f); new (a) added 23855
882.514 (a)(1), (d)(1) introductory text, (iv) and (v) amended; (d)(2)(vi) redesignated as (d)(1)(vi); (e) revised 23855
882.515 (b) amended; (c) redesignated as (d); new (c) added 23855
882.517 Redesignated from 882.217 23854
882.601—882.606 (Subpart F) Removed 23854
882.701—882.759 (Subpart G) Removed 23854
882.802 Amended 23855
882.803 (b) revised 23855
882.805 (d)(1)(i)(B) amended; (c) revised 23855
882.806 Heading, (a)(3) and (4) revised; (a)(2) amended; (a)(2) undesignated text designated as (a)(2)(ii); (a)(2)(i) added 23856
882.807 (a) and (d) revised 23856
882.808 (d), (i)(1), (3) and (o) amended; (b)(4), (c) and (i)(2) revised 23857
882.810 Removed; new 882.810 redesignated from 882.406; new (g)(1)(iii)(C) amended 23857

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

982 Authority citation revised 23857
982.4 Revised 23857
Corrected 31625
982.53 (a) revised 23859
982.54 (d)(7) revised; (d)(15) through (19) redesignated as (d)(18) through (22); new (d)(15), (16) and (17) added 23859
982.102 (d) removed 23895
982.152 (a)(3) added; (c)(1) revised 23859
982.153 (a) designation and (b) removed 23860
982.158 (f)(6) amended; (f)(7) redesignated as (f)(8); new (f)(7) added 23860
982.204 (c) revised 23860
982.205 Heading and (c) revised 23860
982.206 (b)(1) amended; (a)(2) revised 23860
982.207 (c) redesignated as (d); new (c) added 23860
982.302 (a) revised 23860
982.303 (b)(1) amended; (b)(2) revised 23860
982.306 (d) and (e) redesignated as (e) and (f); new (d) added 27437
982.316 Added 23860
Corrected 31625
982.352 (c)(7) revised; (c)(8) amended; (c)(9) redesignated as (c)(12); new (c)(9), (10) and (11) added 23860
982.401 (a)(1) amended 23861
982.402 (c) revised 23861
982.451 (a) removed; (b) and (c) redesignated as (a) and (b) 23861
982.452 (b)(2) revised 23861
982.501—982.517 (Subpart K) Added 23861
982.552 (a)(1) revised 23865
982.601—982.624 Added 23865
982.623 (b)(2)(i) corrected 31625
983.1 Revised 23870
983.2 Introductory text amended 23870
983.3 (d) added 23870
983.5 Revised 23870
983.7 (b) introductory text and (7) revised; (b)(5) amended; (d) and (f) removed; (b)(8) and (c) added; (c) and (g) redesignated as (d) and (f) 23870
983.10 (g)(1)(iii)(B) amended 23871
983.12 Revised 23871
983.13 Revised 23871
983.14 Removed 23871
983.51 (d) introductory text revised 23871
983.52 (a) and (c) amended 23871
983.55 (a) and (b) amended 23871
983.101 (b)(3) amended 23871
983.103 (d) amended 23871

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983.151 (b)(3) amended 23871
983.201 Revised 23871
983.202 Amended 23871
983.203 (a)(1), (b), (d)(6) and (g)(1) amended; (e) added 23871
983.204 (e) added 23871
983.205 Removed; new 983.205 redesignated from 983.206 23871
983.206 Redesignated as 983.205; new 983.206 redesignated from 983.207 23871
983.207 Redesignated as 983.206; new 983.207 redesignated from 983.208 and revised 23871
983.208 Redesignated as 983.207 23871
983.251—983.262 (Subpart F) Added 23871

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Interpretive Bulletin 26386

Proposed Rules:

5 ..... 35650, 35662
6 26022
50 30046
55 30046
58 30046
180 26022
200 ..... 26702, 32958, 35662
203 24736
207 ..... 26702, 35650
236 35662
266 ..... 35650, 35662
291 ..... 29496, 35650
570 26022
880 ..... 35650, 35662
881 35650
882 35650
883 35650
884 35650
886 ..... 35650, 35662
888 24846
901 35672
965 35650
982 35662
983 35650
3280 26392

TITLE 25—INDIANS

Chapter III—National Indian Gaming Commission (Parts 500—599)

514 Technical correction 17489

Proposed Rules:

11 32631
291 19693

TITLE 26--INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1--799)

1 Authority citation amended 16898, 30623, 33555
1.32–3T Added 34596
1.367(a)–1T (a), (c)(1) and (3)(ii)(C) concluding text amended; (b)(2)(i) and concluding text removed; (c)(2) revised 33555
1.367(a)–3 (a), (b) and (d) revised; (c)(1)(iii)(B) amended; (e) through (h) removed; new (e), (f) and (g) added 33556
1.367(a)–3T Removed 33561
1.367(a)–8 Added 33562
1.367(b)–1 Added 33566
1.367(b)–4 Added 33567
1.367(b)–7 (a) and (b) added 33568
1.367(d)–1T (a) amended 33568
1.411(d)–4 Added 30623
1.417(e)–1 (d) revised 16898
1.417(e)–1T (d) revised 16902
1.985-1 Corrected 15760
(b)(2)(ii)(C)(*1*) heading and (*2*) correctly added 15761
1.985-7 (b)(3), (c)(5) and (d)(5) corrected 15761
1.6038B–1 Added 33568
1.6038B–1T Heading, (a) through (b)(2), (c) introductory text and (f) revised; (b)(3) redesignated as (b)(4); new (b)(3), (c)(6) and (g) added 33570
1.6045–1T Removed 35519
1.6045–2T Removed 35519
1.6045–1 (l) revised; (q) amended 35519
1.6045–2 (g)(2) revised; (i) amended 35519

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TITLE 26—Chapter I—Con.

7.367(b)–1 (a) and (c)(1) revised; authority citation removed 33570
7.367(b)–4 (a) and (b) revised; authority citation removed 33570
7.367(b)–7 (a) revised; authority citation removed 33570
31 Authority citation amended 32735
31.6302–1 (f)(4) amended 32736
31.6302–1T Added 32736
301.6011–2 (a)(1), (b)(1), (2), (c)(1) heading, (i), (iii), (2), (d), (f), (g) heading and (2) revised; (c)(1)(iv) added; (c)(3) and (4) removed; (e) amended 35519
301.6011–2T Removed 35520
602.101 (c) table amended (OMB numbers) 30624, 33570, 34596

Proposed Rules:

1 ..... 17973, 19694, 19864, 20156, 24765, 25796, 27534, 28958, 29961, 32164, 33595, 34615, 34616
31 32774

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

9.93 (c)(11), (17) and (18) revised; (c)(19) added 16904
9.156 Added 33853
9.159 Added 16904
178.1 (a) revised 35522
178.11 Amended 35522
178.32 (a)(7), (8)(iii)(B), (d)(7), (8)(ii)(B) amended; (a)(9) and (d)(9) added 35522
178.50 (b) and (c) amended; (d) added 35523
178.99 (c)(7) and (8)(ii)(B) amended; (c)(9) added 35523
178.100 (a) existing text designated as (a)(1); (a)(2) added; (c) revised 35523
178.130 (a)(1) amended 35523
178.134 Added 35523
178.141 Introductory text revised 35523
178.144 (c)(6) and (7) amended; (c)(8) added 35523

Proposed Rules:

4 27017
178 35551

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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.64–2 Amended 20534
0.64–5 Added **63453**
0.100—0.104 (Subpart R) Appendix amended **38029, 52492, 52493**
2.37 (c) added 25772
2.44 (c) revised 25771
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added **51602**
2.62 (a)(6) and (h)(5) amended **40270**
2.67 Added 25770
16 Authority citation revised 29593
16.1—16.12 (Subpart A) Revised 29593
16.11 (b)(7) and (k)(3)(i) corrected 34965
16.40—16.55 (Subpart D) Revised 29600
16.41 (a) corrected 34965
16.42 (e) corrected 34965
16.51 (a) corrected 34965
16.54 (c) corrected 34965
16.99 (i) and (j) added **44083**
16 Appendix I revised 29604
Appendix I corrected 34965
17 Revised **36984**
32.1—32.2 (Subpart A) Heading revised **37715**
32.1 (a) amended **37715**
32.2 (a) introductory text added **37715**
32.3—32.9 (Subpart B) Heading removed **37715**
32.3—32.9 Undesignated center heading added **37715**
32.10—32.15 (Subpart C) Heading removed **37715**
32.10—32.15 Undesignated center heading added **37715**
32.10 (a) introductory text amended **37715**
32.16—32.18 (Subpart D) Heading removed **37715**
32.16—32.18 Undesignated center heading added **37715**
32.16 (a) amended **37715**
32.19—32.22 (Subpart E) Heading removed **37715**
32.19—32.22 Undesignated center heading added **37715**
32.23—32.24 (Subpart F) Heading removed **37715**
32.23—32.24 Undesignated center heading added **37715**
32.25 (Subpart G) Heading removed **37716**
32.25 Undesignated center heading added **37716**
32.31—32.40 (Subpart B) Added **37716**
32.35 (b) corrected **39120**
50.8 Removed 29604
50.22 Regulation at 61 FR 49260 confirmed **61629**
51.55 (b)(1) designation and (2) removed; new (b) amended 24109
58 Authority citation revised **51750**
58.6 Added **51750**
60.3 (a)(8) revised 11120
61 Appendix A amended; interim 11121
66.26 (a), (b) introductory text and (1) revised **45939, 45942**
70.26 (a), (b) and (c) revised; (d) added **45939, 45942**

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

511.10–511.16 (Subpart B) Heading revised 11818
511.12 (d) revised 11818
523 Authority citation revised **50787**
523.20 (Subpart C) Added; interim **50787**
524 Authority citation revised **53690**
524.31 (a)(3) revised; interim **53691**
524.41 (e) revised 7604
540 Authority citation revised **65185**
540.14 (b) and (c) revised **65186**
540.18 (c) and (d) revised **65185**
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended **50788**
541.14 (a) amended **50791**
541.63 (a) amended 5218
541.65 (c) revised 5218
541.67 (e) revised 5218
544.42 (d) revised **39916**
544.70—544.75 (Subpart H) Revised; interim **50793**
548.12 Revised **44836**
548.16 (c) amended **44836**
548.20 (a) and (b) amended **44836**
550.30—550.31 (Subpart D) Revised **45292**

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 28 Chapter V—Con.

550.58 Introductory text, (a) heading and (c)(3) revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added; interim 53691
551.10 Amended 5218
571.50 Revised 4357
571.51 (b) revised 4357
571.52 Revised 4357
571.53 Removed; new 571.53 redesignated from 571.54 and revised 4357
571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
571.55 Redesignated as 571.54 4357
571.56 Removed 4357

Proposed Rules:

2 40316
..... 17771
16 45184
..... 30429
25 30430
36 29924
50 45184
79 45774
100 23231
540 47894

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

24 Revised 6621
95.26 (a), (b) and (c) revised 45939, 45942
97.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter I—National Labor Relations Board (Parts 100—199)

101.39 (a) correctly designated 52381
102.119 (Subpart L) Revised 58907
102.156—102.167 (Subpart U) Revised 55164
102.168—102.176 (Subpart V) Revised 55166

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

402.13 OMB number 33779
403.11 OMB number 33779
404.9 OMB number 33779
405.11 OMB number 33779
406.1 (b) amended 33779
408.6 Revised 33779
409.7 OMB number 33779
417.2 (a) revised 33779
417.21 Amended 33779
417.22 Heading amended 33779
452.2 Amended 33780
452.5 Amended 33780
452.12 Footnote 13 amended 33780
452.77 Amended 33780
452.99 Amended 33780
453.2—453.9 Undesignated center heading amended 33780
453.21 (a) amended 33780
457.15 Revised 33780
457.16 Revised 33780
458.3 OMB number 33780
458.53 Amended 33780
458.85 Amended 33780

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

520 Revised 64959
521 Removed 64958
522 Removed 64958
523 Removed 64958
527 Removed 64958

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (2), (k)(1), (l)(1), (m)(1) and (n)(1) revised; (o) and (p) added 52945
697.3 Revised 52946

Chapter X—National Mediation Board (Parts 1200—1299)

1200 Removed 6645

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added 48949
1470.26 (a), (b) introductory text and (1) revised 45939, 45942

NOTE: Boldface page numbers indicate 1997 changes.

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Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.101 Regulation at 61 FR 7067 confirmed **36447**
1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed **36447**
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed **36447**
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed **36447**
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed **36447**
1610 Authority citation revised 1341
1610.4 (a) and (c) amended; interim 1341
1610.5 (c) amended; interim 1341
1610.8 Revised; interim 1341
1610.9 Heading revised; (a) introductory text and (b) revised; (c) added; interim 1341
1610.10 (a) introductory text amended; (b) introductory text revised; (c) redesignated as (c); new (c) added; interim 1342
1610.11 (a), (b) and (f) amended; (c) revised; interim 1342
1610.14 (a) amended; interim 1342
1610.15 (f) amended; interim 1342
1610.18 (a) amended; interim 1342
1610.21 Revised; interim 1342
1610.34 (a) amended; interim 1342
1614.204 (d)(1) corrected; CFR correction **63847**
1625.22 Added; eff. 7–6–98 30628
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.2 OMB number removed 44552
1904.4–7 OMB number removed 44552
1904.8 OMB number removed 44552
1904.17 OMB number removed 44552
1904.21 OMB number removed 44552
1904.30 Added (OMB numbers) **44552**
1910.8 (b) table amended **42666, 65203**
(b) table corrected **43581**
(b) table amended (OMB numbers) 13340, 17093
1910.11—1910.19 (Subpart B) Authority citation revised **40195**
1910.16 (a), (b) and (c)(4) revised **40195**
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6), (c)(6)(iii)(a) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269, 33466
1910.109 (c)(1)(vi) and Table H–21 amended; (d)(1)(iv) and (e)(2)(i) revised; eff. 8–17–98 33466
1910.110 (b)(15)(vi), (vii), (viii), (c)(2)(ii), (iii), (iv), (e)(10) and (g) removed; (b)(15)(ix) and (c)(2)(i) redesignated as (b)(15)(vi) and (c)(2); eff. 8–17–98 33466
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
(f)(7) and (8) removed; eff. 8–17–98 33466
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
(i)(1)(ii), (4)(ii), (n)(3) and Appendix A corrected 20098
Appendixes A, C and D corrected 20099
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.141—1910.147 (Subpart J) Authority citation revised 33466
1910.141 (a)(2) amended; eff. 8–17–98 33466
1910.142 (a)(4) removed; eff. 8–17–98 33466
1910.151—1910.152 (Subpart K) Authority citation revised 33466
1910.151 (b) amended; Appendix A added; eff. 8–17–98 33466

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1910.155—1910.165 (Subpart L) Authority citation revised....1284, 33467
1910.156 (f)(1)(i) and (v) revised 1284
(f)(2)(iii) removed; eff. 8–17–98 33467
1910.176—1910.184 (Subpart N) Authority citation revised....33467
1910.183 (a) removed; eff. 8–17–98 33467
1910.251—1910.255 (Subpart Q) Authority citation revised....1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised....1284
1910.261—1910.272 (Subpart R) Authority citation revised....1285, 33467
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised....1285
(a)(3)(ii), (iv), (v), (vi), (ix), (xi), (xii), (xiii), (xv), (xvii) through (xx), (xxii), (xxiv) through (xxvii), (b)(1), (2), (3), (5), (6), (c)(2)(vi), (vii), (3)(i), (6)(ii), (7)(ii), (8)(i), (11), (d)(1)(ii), (e)(3), (7), (9), (g)(1)(iv), (2)(i), (15)(iv), (vi), (h)(2)(iii), (j)(1)(iv), (3), (4)(ii), (5)(iv), (6)(ii), (k)(2)(i), (4), (16), (m)(2), (4), (5)(i) and (ii) removed; (a)(3)(iii), (vii), (viii), (x), (xiv), (xvi), (xxi), (xxiii), (b)(4), (7), (c)(2)(viii), (6)(i), (7)(i), (d)(1)(i), (g)(1)(v), (2)(ii), (iii), (15)(v), (h)(2)(iv), (j)(4)(iii) through (vi), (6)(iii), (k)(2)(ii) through (vi) and (m)(5)(iii) redesignated as (a)(3)(ii) through (ix), (b)(1), (2), (c)(2)(vi), (6), (7), (d)(1), (g)(1)(iv), (2)(i), (ii), (15)(iv), (h)(2)(iii), (j)(4)(ii) through (v), (6)(ii), (k)(2)(i) through (v), and (m)(5); new (m)(5) heading added and amended; eff. 8–17–98....33467
1910.262 (c)(3), (4), (gg), (ll)(1), (qq) and (rr) removed; (ll)(2) redesignated as (ll); eff. 8–17–98....33467
1910.265 (a)(1) and (c)(24)(iv)(*b*) redesignated as (a) and (c)(24)(iv); (a)(2), (c)(3)(i), (10), (14), (16), (17), (22), (24)(iv)(*a*), (*c*), (26)(i), (30)(vi), (x), (e)(3)(ii)(*d*), (f)(9), (g), (h) and (i) removed; eff. 8–17–98 33467
1910.267 Removed; eff. 8–17–98....33467
1910.268 (f)(1) revised; (f)(2), (3), (4), (7), (8) and (9) removed; (f)(5) and (6) redesignated as (f)(2) and (3)....33467
1910.1000—1910.1450 (Subpart Z) Authority citation amended **42666**
Authority citation amended....1285, 33467
1910.1000 Table Z–1 and Z–3 corrected....**42018**
1910.1001 (g) revised; Appendix C removed....1285
1910.1003 (c)(4)(iv) and (d)(1) revised....1286
(c)(4)(iv) corrected....20099
1910.1017 (g) revised....1286
(g)(5) removed; (g)(6) and (7) redesignated as (g)(5) and (6) 33468
1910.1018 (h) revised....1286
(n)(2)(ii)(C), (q)(2)(iii)(F), (G) and (H) removed; (n)(2)(ii)(D) redesignated as (n)(2)(ii)(C); (n)(2)(ii)(B), (3)(i), (q)(2)(iii)(D) and Appendixes A and C amended; (n)(3)(ii) revised; eff. 8–17–98....33468
1910.1025 (f) revised; Appendix B amended; Appendix D removed....1287
(f)(1)(i) correctly revised....20099
1910.1027 (g) revised; Appendix C removed....1288
1910.1028 (g) revised; Appendix E removed....1289
(g)(2)(i) corrected....20099
1910.1029 (g) revised....1290
(j)(2)(vi), (3)(ii), (iii) and Appendixes A and B amended; (j)(2)(vii) removed; (j)(2)(viii) and (3)(iv) redesignated as (j)(2)(vii) and (3)(v); new (j)(3)(iv) added; eff. 8–17–98....33468
1910.1043 (f) revised....1290
1910.1044 (h) revised....1291
1910.1045 (h) revised; Appendix A amended....1291
(h)(2)(i) corrected....20099
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended....1292

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1910.1048 (g) revised; Appendix E removed 1292
(g)(2)(i) corrected 20099
1910.1050 (h) revised; Appendix A amended 1293
Corrected 20099
1910.1051 (h) revised; Appendix E removed 1294
1910.1052 (n)(2)(i)(C) revised 42667
(n)(2)(iii)(C) revised 48176
(n)(2)(i)(B) and (iii)(C) revised 54383
(o) note added 66277
(g) revised 1295
(g)(1)(i) correctly revised; (g)(2)(i) corrected 20099
1915 Authority citation revised 35137
1915.8 Table amended (OMB numbers) 13340
1915.1001 (a)(8) added; (g)(12) introductory text revised 35137
1917 Authority citation revised 40195
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added 40196
1917.2 Amended 40196
1917.3 Added 40196
1917.11 (d) added 40196
1917.13 (g) revised; (h) and (i) added 40197
1917.17 (i), (j) and (k) revised 40197
1917.20 Revised 40197
1917.23 Heading, (b)(1) and (d) introductory text revised 40197
1917.24 (a) revised 40197
1917.25 (a) and (c) revised; (g) added 40197
1917.26 (c) and (d) revised 40197
1917.27 (a)(2) revised; note added 40197
1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
1917.123 Footnote 7 redesignated as footnote 9 40201
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
1918 Revised 40202
1926 Meeting and signing ceremony 37134
Technical correction; CFR correction 1919
1926.5 Table amended (OMB numbers) 3814, 13340, 17094
1926.20—1926.35 (Subpart C) Authority citation revised 33468
1926.31 (a) revised; eff. 8-17-98 33468
1926.50—1926.66 (Subpart D) Authority citation revised 1295, 33469
1926.50 (d)(1), (2) and (f) revised; Appendix A added; eff. 8-17-98 33469
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296

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1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
1926.103 Revised 1297
1926.150—1926.155 (Subpart F) Authority citation revised 33469
1926.152 (a)(1) revised; eff. 8-17-98 33469
1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.900—1926.914 (Subpart U) Authority citation revised 33469
1926.906 (q) revised; eff. 8-17-98 33469
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298, 35138
1926.1101 (h) revised; Appendix C removed 1298
(h)(3)(iv) revised 20099
(a)(8) added; (g)(11) revised 35138
1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
1952.367 (b) added 49911

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
2200.67 Amended 35963
2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.203 (a) correctly removed; CFR correction 58650
(a) added 61012
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204 Nomenclature change 59569
2204.105 (f) added 59569
2204.107 (b) amended 35964
2204.301 Revised 35964

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2510.3-102 (b) revised 62936
2520.102-3 OMB number 36205
2520.104b-1 OMB number 36205
2520.104b-3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c-3 (Subpart E) Added 40699
2590 Authority citation revised 66953
Clarification 67688, 67689
2590.701-3 OMB number 35905
2590.701-4 OMB number 35905
2590.701-5 OMB number 35905
2590.701-6 OMB number 35905
2590.712 Revised; interim 66957

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
2702.7 (b) revised 55336

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994

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4011.3 (c) amended **36994**
4011 Appendix B amended **65608**
4022.1 Amended **67728**
4022.24 (e) amended **67728**
4022.26 (a) amended **67729**
4022.61 (a) amended **60428**
4022.81 Revised 29354
4022.82 Revised 29354
4022.83 Amended 29355
4041 Revised **60428**
4041.42 (d)(2) amended 29355
4043.3 (e) amended **36994**
4044.13 (a) amended **67729**
4044 Appendix B amended **37718, 43640, 48176, 53539, 61012, 65609**
Appendix D amended **65611**
Appendix B amended 2308, 7286, 12411, 18318, 26982, 32615
4050 Revised **60440**
4050.2 Amended 29355
4071 Added **36994**
4231 Revised 24421
4302 (Subchapter K) Added **36995**
4901—4907 (Subchapter K) Redesignated as Subchapter L **36994**

Proposed Rules:

70a **40406**
71 ..... **40406**
103 8890
1208 7331
1614 8594
1900—1999 (Ch. XVII) 27698
1910 ..... **41002, 52671, 54160, 65388** 5905, 16918, 24501, 34139, 34140
1915 4426
1917 ..... **52671**
1918 ..... **52671**
1926 3813
2200 ..... 10166, 19435
2204 ..... **42957**
2510 18345
2550 ..... **66908** 19873
2560 ..... **47262**
2580 ..... **49894**
2700 25183
4011 23693
4022 ..... **66319** 23693
4041A 23693
4044 23693
4050 23693
4281 23693

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

47.10 Revised **60985**
47.50 Revised **60985**
56.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
57.3203 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
75.204 (a) introductory text, (1), (2) and (b) introductory text revised 20030
Compliance date corrected 28485
75.1906 (g) correctly revised 12647
100 Technical correction 26719
100.3 (a) introductory text and (g) revised 20035
100.4 (a) revised 20035
100.5 Introductory text through (h) and undesignated text redesignated as (a) introductory text through (8) and (b); new (c) and new (d) added 20035

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202.152 (a)(1) revised 26367
Regulation at 63 FR 26367 eff. date corrected to 6-29-98 27677
Regulation at 63 FR 27677 eff. date corrected to 6-29-98 28453
203 Workshop 17330
203.0—203.4 (Subpart A) Revised 2615
Heading correctly revised 24747
203.50—203.91 (Subpart B) Revised 2618
203.61 OMB number pending 2619
203.74 (b)(2) and (c) corrected 24747
206.152 (b)(1)(i) amended; (b)(1)(iv) added **65761**
(i) revised **65762**
Corrected 3618
206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised **65762**
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added **65762**

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206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised **65763**
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised **65763**
(b)(1)(i) corrected 3618
206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added **65763**
210 Comment period extension **52016**
210.55 Revised; interim **42066**
216.54 Revised 26367
Regulation at 63 FR 26367 eff. date corrected to 6–29–98 27677
Regulation at 63 FR 27677 eff. date corrected to 6–29–98 28453
218 Comment period extension **52016**
218.52 Revised; interim **42066**
227 Added **43084**
228 Authority citation revised **43091**
228.3 Added **43091**
229 Authority citation revised **43091**
229.3 Added **43091**
250.0—250.26 (Subpart A) Redesignated as 250.100—250.126 (Subpart A) 29479
250.1 (c)(5) and (d)(1) revised **42671**
Revised 26367
Regulation at 63 FR 26367 eff. date corrected to 6–29–98; (a) corrected 27677
Regulation at 63 FR 27677 eff. date corrected to 6–29–98 28453
250.30—250.34 (Subpart B) Redesignated as 250.200—250.204 (Subpart B) 29479
250.40 Redesignated as 250.300 29479
250.41 Redesignated as 250.301 29479
250.44 Redesignated as 250.302 29479
250.45 Redesignated as 250.303 29479
250.46 Redesignated as 250.304 29479
250.50—250.67 (Subpart D) Redesignated as 250.400—250.417 (Subpart D) 29479
250.70—250.87 (Subpart E) Redesignated as 250.500—250.517 (Subpart E) 29479
250.90—250.108 (Subpart F) Redesignated as 250.600—250.618 (Subpart F) 29479
250.100—250.126 (Subpart A) Redesignated from 250.0—250.26 (Subpart A) 29479
250.101 (e) table revised 29481
(c) amended 29484
250.102 Amended 29484
250.110—250.114 (Subpart G) Redesignated as 250.700—250.704 (Subpart G) 29479
250.110 (c), (d)(1), (2) and (h)(2) amended 29484
250.112 (c)(1) and (e)(2) amended 29484
250.113 (b)(2) and (3) amended 29484
250.114 (e) amended 29484
250.117 (b) amended 29484
250.118 (b)(2) amended 29484
(b)(2) and (e) amended 29485
250.120—250.127 (Subpart H) Redesignated as 250.800—250.807 (Subpart H) 29479
250.126 Revised **42671**
250.130—250.144 (Subpart I) Redesignated as 250.900—250.914 (Subpart I) 29479
250.150—250.164 (Subpart J) Redesignated as 250.1000—250.1014 (Subpart J) 29479
250.160 (a) amended **39775**
250.163 (b) amended **39775**
250.170—250.177 (Subpart K) Redesignated as 250.1100—250.1107 (Subpart K) 29479
250.180—250.185 (Subpart L) Revised 26370
Regulation at 63 FR 26370 eff. date corrected to 6–29–98 27677
Regulation at 63 FR 27677 eff. date corrected to 6–29–98 28453
Redesignated as 250.1200—250.1205 (Subpart L) 29479
250.182 (g) corrected 27677
(g) and (k) corrected 33853
250.183 (b)(1) correctly revised 33853
250.184 (a)(1) correctly revised; (b)(7) corrected 33853
250.190—250.194 (Subpart M) Redesignated as 250.1300—250.1304 (Subpart M) 29479
250.200—250.209 (Subpart N) Revised **42668**
Redesignated as 250.1400—250.1409 (Subpart N) 29479
250.200—250.204 (Subpart B) Redesignated from 250.30—250.34 (Subpart B) 29479
250.200 Amended 29485

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250.203 (b)(5)(i), (ii), (19), (m) and (p) amended 29485
250.204 (b)(1)(vii), (2)(i), (ii), (14), (p), (r) and (t) amended 29485
250.209 (c) revised 67284
250.209—250.233 (Subpart O) Redesignated as 250.210—250.234 (Subpart O) 67284
250.210—250.234 (Subpart O) Redesignated as 250.1500—250.1524 (Subpart O) 29479
250.250 Redesignated as 250.1600 29479
250.251 Redesignated as 250.1601 29479
250.252 Redesignated as 250.1602 29479
250.253 Redesignated as 250.1603 29479
250.254 Redesignated as 250.1604 29479
250.260 Redesignated as 250.1605 29479
250.261 Redesignated as 250.1606 29479
250.262 Redesignated as 250.1607 29479
250.263 Redesignated as 250.1608 29479
250.264 Redesignated as 250.1609 29479
250.265 Redesignated as 250.1610 29479
250.266 Redesignated as 250.1611 29479
250.267 Redesignated as 250.1612 29479
250.268 Redesignated as 250.1613 29479
250.269 Redesignated as 250.1614 29479
250.270 Redesignated as 250.1615 29479
250.271 Redesignated as 250.1616 29479
250.272 Redesignated as 250.1617 29479
250.273 Redesignated as 250.1618 29479
250.274 Redesignated as 250.1619 29479
250.280 Redesignated as 250.1620 29479
250.281 Redesignated as 250.1621 29479
250.282 Redesignated as 250.1622 29479
250.283 Redesignated as 250.1623 29479
250.284 Redesignated as 250.1624 29479
250.285 Redesignated as 250.1625 29479
250.286 Redesignated as 250.1626 29479
250.290 Redesignated as 250.1627 29479
250.291 Redesignated as 250.1628 29479
250.292 Redesignated as 250.1629 29479
250.293 Redesignated as 250.1630 29479
250.294 Redesignated as 250.1631 29479
250.295 Redesignated as 250.1632 29479
250.296 Redesignated as 250.1633 29479
250.297 Redesignated as 250.1634 29479
250.300 Redesignated from 250.40 29479
250.301 Redesignated from 250.41 29479
250.302 Redesignated from 250.44 29479
250.302 Amended 29485
250.303 Redesignated from 250.45 29479
(b) and (d) amended 29485
250.304 Redesignated from 250.46 29479
(a)(6), (b) and (e)(2) amended 29485
250.400—250.417 (Subpart D) Redesignated from 250.50—250.67 (Subpart D) 29479
250.401 (a)(3) and (d) amended 29485
250.406 (c) and (d)(10)(i) amended 29485
(d)(10)(i) revised 29607
250.407 Revised 29607
250.414 (a) and (g) amended 29485
250.415 (d) amended 29485
250.416 (b) amended 29485
250.417 (m)(1) and (o)(3) amended 29485
250.500—250.517 (Subpart E) Redesignated from 250.70—250.87 (Subpart E) 29479

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250.504 Amended 29485
250.505 Amended 29485
250.507 Amended 29485
250.508 Amended 29485
250.513 (a), (b)(4) and (d) amended 29485
250.516 Revised 29607
250.517 (e) amended 29485
250.600—250.618 (Subpart F) Redesignated from 250.90—250.108 (Subpart F) 29479
250.604 Amended 29485
250.605 Amended 29485
250.607 Amended 29485
250.608 Amended 29485
250.613 (b)(3) amended 29485
250.617 (e) amended 29485
250.618 Amended 29485
250.700—250.704 (Subpart G) Redesignated from 250.110—250.114 (Subpart G) 29479
250.702 (i) amended 29485
250.703 (a) amended 29485
250.800—250.807 (Subpart H) Redesignated from 250.120—250.127 (Subpart H) 29479
250.801 (b), (h)(1), (2) and (4) amended 29485
250.802 (b) and (c) amended 29485
250.803 (a), (b)(10) and (d) amended 29485
250.807 Amended 29485
250.900—250.914 (Subpart I) Redesignated from 250.130—250.144 (Subpart I) 29479
250.900 (b) and (c) amended 29485
250.901 (b)(1)(v)(D) and (2) amended 29485
(b)(3)(v), (4)(vi)(A) and (B) amended 29486
250.902 (a), (b)(1)(i) and (2)(i) amended 29486
250.903 (a)(1)(iii), (2)(ii), (3)(i), (ii), and (b)(2) amended 29486
250.904 (d)(4)(ii) and (8)(ii) amended 29486
250.905 (c)(2)(vii) and (5)(ii) amended 29486
250.906 (b)(2)(ii), (iii), (3)(i), (ii), (c)(1) and (5) amended 29486
(b)(2)(iii) corrected 34597
250.907 (c)(1)(iii), (3)(iv), (4)(v) and (6)(ii) amended 29486
250.908 (b)(6)(ii), (c)(5)(ii) and (6) amended 29486
250.911 (b)(4), (7)(iii)(D), (iv), (3)(ii) and (8)(iv) amended 29486
250.914 Amended 29486
250.1000—250.1014 (Subpart J) Redesignated from 250.150—250.164 (Subpart J) 29479
250.1000 (b), (c) and (d) amended 29486
(c) corrected 34597
250.1008 (h) amended 29486
250.1009 (a)(1) and (c)(9) amended 29486
(a)(1) corrected 34597
250.1010 (a) amended 29486
250.1011 (c)(1) amended 29486
250.1013 (b) amended 29486
250.1014 Amended 29486
250.1100—250.1107 (Subpart K) Redesignated from 250.170—250.177 (Subpart K) 29479
250.1101 (d) amended 29486
250.1102 (a)(9), (b)(8) and (9) amended 29486
250.1105 (f)(1)(i) and (ii) amended 29486
250.1200—250.1205 (Subpart L) Redesignated from 250.180—250.185 (Subpart L) 29479
250.1200 Table revised 29487
250.1201 Amended 29486
250.1202 (a)(3), (b)(4)(i), (f)(1), (g), (k)(1) and (l)(4) amended 29486
250.1203 (b)(2) and (4) amended 29486
250.1300—250.1304 (Subpart M) Redesignated from 250.190—250.194 (Subpart M) 29479
250.1301 (d), (g)(1) and (2)(ii) amended 29486
250.1302 (d) amended 29486
250.1303 (a)(4) amended 29487
250.1304 (b) amended 29487
250.1400—250.1409 (Subpart N) Redesignated from 250.200—250.209 (Subpart N) 29479
250.1401 Table revised 29488
250.1405 Amended 29487
250.1500—250.1524 (Subpart O) Redesignated from 250.210—250.234 (Subpart O) 29479
250.1500 (a) through (d) amended 29487

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Table revised 29488
(a) through (d) corrected 34597
250.1505 (c) and (f) amended 29487
(c) and (f) corrected 34597
250.1600 Redesignated from 250.250 29479
250.1601 Redesignated from 250.251 29479
250.1602 Redesignated from 250.252 29479
250.1603 Redesignated from 250.253 29479
250.1604 Redesignated from 250.254 29479
(b), (c) and (d) amended 29487
250.1605 Redesignated from 250.260 29479
(a), (b)(3) and (d) amended 29487
(a) corrected 34597
250.1606 Redesignated from 250.261 29479
250.1607 Redesignated from 250.262 29479
250.1608 Redesignated from 250.263 29479
250.1609 Redesignated from 250.264 29479
250.1610 Redesignated from 250.265 29479
250.1611 Redesignated from 250.266 29479
250.1612 Redesignated from 250.267 29479
Amended 29487
250.1613 Redesignated from 250.268 29479
250.1614 Redesignated from 250.269 29479
(b) amended 29487
250.1615 Redesignated from 250.270 29479
250.1616 Redesignated from 250.271 29479
250.1617 Redesignated from 250.272 29479
(a) and (d) amended 29487
250.1618 Redesignated from 250.273 29479
(a) and (c) amended 29487
250.1619 Redesignated from 250.274 29479
(b) amended 29487
250.1620 Redesignated from 250.280 29479
(a) amended 29487
250.1621 Redesignated from 250.281 29479
250.1622 Redesignated from 250.282 29479
250.1623 Redesignated from 250.283 29479
250.1624 Redesignated from 250.284 29479
(d)(1) amended 29487
250.1625 Redesignated from 250.285 29479
250.1626 Redesignated from 250.286 29479
250.1627 Redesignated from 250.290 29479
(a) amended 29487
(a) corrected 34597
250.1628 Redesignated from 250.291 29479
250.1629 Redesignated from 250.292 29479
250.1630 Redesignated from 250.293 29479
250.1631 Redesignated from 250.294 29479
250.1632 Redesignated from 250.295 29479
250.1633 Redesignated from 250.296 29479
250.1634 Redesignated from 250.297 29479
251 Revised 67284
256.53 Corrected 36995
256.64 (a)(8) amended 39775
260.102 Amended 2629
260.110 (d) revised 2629

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

723 Authority citation revised 63276
723.14 Table revised 63276
723.15 (b) introductory text amended 63276
724 Authority citation revised 63276
724.14 (b) amended 63276
845 Authority citation revised 63276
845.14 Table revised 63276
845.15 (b) introductory text amended 63277
846 Authority citation revised 63277
846.14 (b) amended 63277
870 Authority citation revised 60142
870.5 Amended 60142

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870.17 Removed 10309
870.18 Revised 60142
870.19 Added 60143
870.20 Added 60146
901 Technical correction 4529
901.15 Table amended 66821
901.16 Removed 66822
902.15 Regulation at 62 FR 15116 eff. date corrected to 4–7–97 35342
904 Technical correction 44894
913.15 Table amended 54769
Table amended 17098
913.16 (o) removed 54769
(x) removed 17098
914 Technical correction 49049
914.15 Table amended 44896, 44898, 47140, 59578
914.16 (cc) and (dd) removed 47141
914.25 (a) table amended 12652
916.15 Table amended 10317
916.25 Table amended 10317, 31116
917.15 (a) table amended 45717
918.15 Table amended 11830, 25394
920.15 Table amended 13784, 19406, 26453
920.16 (k), (m) and (o) removed 13784
(h), (i), (j) and (n) removed 26454
924 Technical correction 6796
924.15 Added 1361
Table amended 34599
924.16 Revised 1362
Table amended 34599
924.17 Added 1362
925.15 Table amended 41844
Table amended 34280
931.15 Table amended 31116
934.15 Table amended 44900
935.15 Table amended 53234
Table amended 9139
935.16 (a)(3) removed 53234
Removed 9139
936.25 Table amended 8126
938.15 Table amended 60177
Table amended 19820
938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added 60177
(vvv) through (bbbb) added 19820
(vvv) through (bbbb) correctly revised 32615
943.15 Table amended 10320, 19823, 31116
943.25 Table amended 10320, 19823
944.15 Table amended 41850
944.16 (e), (f)(1), (g), (h) and (i) removed 41850
944.25 Table amended 41850
946 Technical correction 52181
946.15 Table amended 48765, 60660
Table amended 34286
946.25 (a) table amended 35968
(a) table amended 5891

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56 ..... 65777, 67013, 68468
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57 ..... 64789, 65777, 67013, 68468
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70 ..... 65777, 67013, 68468
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71 ..... 65777, 67013, 68468
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75 ..... 50541, 62732, 64789
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211 38509
216 17133
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250 ..... 37819, 51614, 68244
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256 ..... 7335, 25187
290 68244
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773 ..... 47617, 56139, 63044
778 ..... 56139, 63044
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874 ..... 55365, 59639
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913 ..... 63045, 67014
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916 ..... 2916, 16728
917 ..... **46933, 63684, 65044**
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918 ..... **61712**
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920 ..... **49183, 55321, 62273**
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926 ..... **63685, 64327**
931 9165
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935 ..... **36248, 38509**
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938 ..... **67590**
943 ..... **67592, 67596, 67598**
..... 3508, 7356, 23407
944 ..... 2192, 17138
946 ..... **44924, 53275, 67014**
948 ..... 8891, 32632

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added **58908**
(b)(1) table amended **60782**

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

2 Authority citation revised 14357
2.2 Revised 14357
2.9 Revised 14357
27 Added; interim **42213**
27.7 (c)(3)(ii)(F) corrected **44036**
103 Meeting **58909**
Conditional exceptions grant 3640
103.11 (n)(8) and (9) redesignated as (n)(9) and (10); (n)(7)(iii) and new (8) added; eff. 8–1–98 1923
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised **47147**
103.36 (b)(11) added; eff. 8–1–98 1924

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised **45520**
202.1 Revised **45520**
202.2 (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); (a)(1), new (2) and new (3) revised; authority citation removed **45521**
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed **45521**
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed **45521**
202.6 (b) and (e)(1) revised; authority citation removed **45521**
202.7 (a) revised; authority citation removed **45521**
203 Revised 5650
285 Authority citation revised **36210**
Authority citation revised 16356, 23357, 25139
285.1 Added; interim **36210**
285.7 Added; interim 23357
285.11 Added 25139
285.12 (Subpart B) Added; interim 16356
343 Revised **49914**
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised **46445**
344.3 (b)(3)(iii) revised **46446**
356.2 Amended; eff. 3–31–99 35783
356.12 (c)(1)(i) revised **43093**
(b)(2) revised 4187
356.13 (a) revised **43093**
356.31 Revised; eff. 3–31–99 35783
356 Appendix B and Exhibit A amended **43094**
Appendix B amended; eff. 3–31–99 35783
Exhibit C amended; eff. 3–31–99 35784
357 Determination **61912**
Determination 20099
357.22 (b) through (e) redesignated as (c) through (f); new (b) added **46861**
357 Appendix B amended **43284**
358 Revised 11355

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TITLE 31

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

Chapter V Note 6 revised 29609
500 Authority citation revised 45101
Authority citation revised 10323
500.101 (Subpart A) Heading revised 45101
500.101 (a) amended 45101
500.201 (e) added 45101
500.306 Note amended 45101
500.508 (f) removed; note added 45101
500.601 (Subpart F) Revised 45101
500.602 Added 64721
500.701—500.718 (Subpart G) Revised 10324
500.701 (a) introductory text amended 45101
500.801 Revised 45101
500.802 Removed; new 500.802 redesignated from 500.807 45101
500.803 Removed; new 500.803 redesignated from 500.808 45101
500.804 Removed 45101
500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
Amended; OMB number 64722
501 Added 45101
501.101 Revised 52494
501.601 Note added 52494
501.602 Amended 52494
501.603 Note added 52495
501.806 (b) revised 52495
501.807 (a) revised 52495
505 Authority citation revised 45106
Authority citation revised 10331
505.40 Amended 45106
505.50 Revised 10331
505.60 Revised 45106
515 Authority citation revised 45106
Authority citation revised 10331, 27349
515.101 (a) amended 45106
515.201 (e) added 45106
515.306 Note amended 45106
515.508 (f) removed; note added 45106
515.560 (g) revised 27351
515.563 Revised 27349
515.564 (c) amended 27349
515.566 (a)(2) amended 27349
515.569 (d) revised 27349
515.601 (Subpart F) Revised 45106
515.701—515.718 (Subpart G) Revised 10331
515.701 (a) introductory text amended 45106
515.801 Revised 45106
515.802 Removed; new 515.802 redesignated from 515.807 45106
515.803 Removed; new 515.803 redesignated from 515.808 45106
515.804 Removed 45106
515.805 Removed 45106
515.806 Removed 45106
515.807 Redesignated as 515.802 45106
515.808 Redesignated as 515.803 45106
515.901 Revised 45106
535 Authority citation revised 45106
535.101 (a) amended 45107
535.508 (f) removed; note added 45107
535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
535.905 Revised 45107
536 Authority citation revised 45107
536.101 (a) amended 45107
536.201 Existing text designated as (a); (b) added 45107
536.312 Note added 45107
536.503 (a) revised; note added 45107
536.601 (Subpart F) Revised 45107
536.801 Revised 45107
536.802 Removed; new 536.802 redesignated from 536.805 45108
536.803 Removed 45108
536.804 Removed 45108
536.805 Redesignated as 536.802 45108
536.806 Removed 45108
536.901 Revised 45108
537 Added 27847
550 Authority citation revised 45108
550.101 (a) amended 45108
550.209 (c) added 45108
550.304 Note amended 45108
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added 45108
550.601 (Subpart F) Revised 45108
550.701 (a) introductory text amended 45108
550.801 Revised 45108
550.802 Removed; new 550.802 redesignated from 550.805 45108

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550.803 Removed; new 550.803 redesignated from 550.807 45108
550.804 Removed 45108
550.806 Removed 45108
550.805 Redesignated as 550.802 45108
550.807 Redesignated as 550.803 45108
550.901 Revised 45108
560 Authority citation revised 41852, 45108
560.101 (a) amended 45109
560.510 (d) revised 41852
560.525 (a) introductory text, (3) and (5)(1) revised 41852
560.601 Revised 45109
560.602 Removed 45109
560.701 (a) introductory text amended 45109
560.801 Revised 45109
560.802 Removed; new 560.802 redesignated from 560.805 45109
560.803 Removed; new 560.803 redesignated from 560.806 45109
560.804 Removed 45109
560.807 Removed 45109
560.805 Redesignated as 560.802 45109
560.806 Redesignated as 560.803 45109
560.901 Revised 45109
575 Authority citation revised 45109
575.101 (a) amended 45109
575.201 (c) added 45109
575.306 Note amended 45109
575.503 (h) removed; note added 45109
575.601 (Subpart F) Revised 45109
575.701 (a) introductory text amended 45109
575.801 Revised 45109
575.802 Removed; new 575.802 redesignated from 575.805 45109
575.803 Removed 45109
575.804 Removed 45109
575.805 Redesignated as 575.802 45109
575.806 Removed 45109
575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110
585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111
590.803 Removed 45111
590.804 Removed 45111
590.805 Redesignated as 590.802 45111
590.806 Removed 45111
590.901 Revised 45111
595 Authority citation revised 45111
595.101 (a) amended 45111
595.201 Existing text designated as (a); (b) added 45111
595.311 Note amended 45111
595.503 (a) revised; note added 45111
595.601 (Subpart F) Revised 45111
595.701 (a) introductory text amended 45111
595.801 Revised 45111
595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732
Appendixes A and B amended 28896
Appendix A amended 29609
Appendix B amended 29611
Appendix C amended 29612

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TITLE 31

Proposed Rules:

1 ..... **42443**
27 ..... **42220**
103 ..... **36475, 38511, 40778, 40779, 45365, 47156, 63298**
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208 ..... **48714, 51618, 55773**
..... 26561
210 ..... 5426, 6001
212 ..... **46428**
285 ..... **62458**
..... 20006
317 23695
351 23695
353 23695
356 ..... **64528**
370 23695
900—999 (Chapter IX) **68476**

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added **40734**
Subchapter B Heading revised 12160
21 Added 12160
22 Added 12164
23 Removed 12188
28.500 Revised 12188
32 Added 12188
34 Added 12204
33.26 (a), (b) introductory text and (1) revised **45939, 45943**
40a Removed 11831
67 Revised **55517**
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added **66525**
175.4 Revised **66525**
175.5 Revised **66525**
175.6 Revised **66525**
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added **66525**
176 Revised **35346**
199 Technical correction **42905**
199.2 (b) amended **46878**
(b) amended; interim **54384**
(b) amended 9141
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised **46878**
(g)(48) revised; interim **54384**
(a)(9) introductory text, (i)(B) and (ii) revised; (a)(9)(i)(C), (v)(B) and (vi) note removed; (a)(9)(i)(D) and (v)(A) redesignated as (a)(9)(i)(C) and (v); (a)(10)(vi)(E) added 9141
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised **42904**
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim **54384**
199.11 (g)(3) through (g)(9) redesignated as (g)(4) through (10); (b)(1), (g) heading and new (10) revised; new (g)(3) added 27678
199.13 (i) added; interim **39941**
199.14 (h)(1)(i)(D) added 7287
199.17 (a)(7) added; (d)(1) and (o)(3) revised 9142
199.18 (d)(2)(i) and (f) revised; (c)(3) added 9143
199.21 Revised **66990**
199.22 Added **66993**
203 Added 5261
204.4 (c)(1)(vii), (viii) and (ix) amended 33248
204.6 (a)(1), (4) and (b)(1)(v) amended 33248
204.8 Amended 33248
212 Revised 32616
218.9 (d) redesignated as (c) 33248
220.9 (d) added 11600
234 Revised 32619
247 Revised **42905**
270 Added; interim **39942**
Revised 3472
285 Revised **61013**
286 Revised **35351**
286.3 Amended **42916**
286.4 (b), (h)(1), (5) and (n)(2) corrected **38197**
286.12 (a)(1) and (2) corrected **38197**
286.28 (d)(3)(i)(A) corrected **38197**
(d)(3)(ii)(A) amended **42916**
311.7 (c)(10)(i), (ii) and (iii) added **46446**
(c)(11)(i), (ii) and (iii) added **59579**
318.9 Redesignated as 318.11 ..... **67291**
Added **67292**
318.11 Redesignated from 318.9 ..... **67291**
318.10 Added **67292**
320 Heading revised **65020**
320.1 (a)(1)(i) and (2) amended **65020**
320.2 Amended **65020**

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320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised **65020**
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended **65020**
(c) heading, (1) introductory text and (iv) revised **65021**
320.5 (b) amended **65021**
320.6 (a) and (b) revised **65021**
320.7 (b), (c) introductory text, (1) and (d) amended **65021**
320.8 (a), (c)(3), (5) and (7) amended **65021**
320.9 (b)(2)(i) and (3) amended **65021**
320.10 Amended **65021**
320.11 Amended **65021**
323 Appendix H amended 25772
352a.4 Second (c) redesignated as (d) 33248
383a.4 Second (b) redesignated as (c) 33248
397 Removed 6864

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed **48480**
507 Revised 27208

Chapter VI—Department of the Navy (Parts 700—799)

701.118 (r) introductory text revised **61914**
(m) heading revised 25773
706.2 Table Five amended 37719, **40450**
Tables Four and Five amended **47945**
Tables Two and Five amended 9743
Tables One and Four amended 9744
Table Five amended 9745, 19656, 29613
Tables Four and Five amended 13341, 24748
Table Four amended 24747
Table Two amended 31357, 34811
721 Removed 3860
Technical correction 4694
722 Removed 3860
Technical correction 4694

Chapter XXI—National Security Council (Parts 2100—2199)

2101 Removed 25736

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175 13586
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318 ..... **51821**
323 11198
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901 ..... **63485**
989 ..... **67305**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.01–1—1.01–90 (Subpart 1.01) Authority citation revised 35525
1.01–20 (a) amended; (b) removed 35525
1.01–50 Revised 35525
1.20–1 (c) amended 35525
1.26–15 (a) amended 35525
27.3 Table correctly revised **35385**
Table corrected **39313**
62.1 (b) redesignated as (b)(1); (b)(2) added; eff. 7–20–98 33573
62.21 (a) amended; eff. 7–20–98 33573
62.32 Added; eff. 7–20–98 33573
62.33 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); eff. 7–20–98 33573
62.34 (d)(6) revised; eff. 7–20–98 33573
62.54 Added; eff. 7–20–98 33573
64.11 (b) introductory text amended 35526
66.01–3 (a) amended 35526
66.01–10 (a) designation removed; (b) removed; eff. 7–20–98 33573
66.05–1 Revised; eff. 7–20–98 33573
66.05–5 Heading and (b) revised; eff. 7–20–98 33573
66.05–20 (c)(3) amended; eff. 7–20–98 33573
66.10–1 Revised; eff. 7–20–98 33574
66.10–5 Removed; eff. 7–20–98 33574
66.10–10 Removed; eff. 7–20–98 33574
66.10–15 (a) revised; eff. 7–20–98 33574

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66.10–20 Removed; eff. 7–20–98.....33574
66.10–25 Removed; eff. 7–20–98.....33574
66.10–30 Removed; eff. 7–20–98.....33574
66.10–35 Revised; eff. 7–20–98.....33574
66.10–40 Removed; eff. 7–20–98.....33574
66.10–45 Removed; eff. 7–20–98.....33574
67.01–10 (a) removed; (b) amended 35526
80.501 (d) revised.....5731
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80.1495 Revised 5731
82 Authority citation revised.....5731
82.5 Added 5731
82.7 Added 5731
84.01 (b) and (c) redesignated as (c) and (d); new (b) added 5731
84.05 (a) revised; (b), (c) and (d) redesignated as (e), (b) and (c); new (d) added 5731
84.17 (c) added 5731
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90.5 Added 5732
90.7 Added 5732
96 Added.....**67506**
100 Temporary regulations lists **42671, 60178**
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100.05 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....**67569**
100.15 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....**67569**
100.17 Regulation at 61 FR 33032 eff. delayed to 1–1–99.....**67569**
100.18 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
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100.25 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
100.30 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
100.35 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
100.35–T05–013 Added (temporary) 14819
100.35T–05–043 Added (temporary) **35391**
100.35–T05–055 Added (temporary) **39776**
100.35T–05–065 Added (temporary) **45718**
100.35T–05–069 Added (temporary) **48768**
100.35T–05–074 Added (temporary) **52501**
100.35T–07–002 Added (temporary) 5456
100.35–T07–014 Added (temporary) 16115
100.35–T07–017 Added (temporary) 16116
100.35T–07–037 Added (temporary) 34813
100.35T–07–047 Added (temporary) **60178**
100.35T–07–054 Added (temporary) **61630**
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100.35–T08–025 Added (temporary) 34812
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100.35–T08–034 Added (temporary) **48767**
100.35–T08–035 Added (temporary) **48766**
100.35–T08–038 Added (temporary) **50506**
100.35–T08–039 Added (temporary) **50507**
100.50 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
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100.100 Regulation at 61 FR 33033 eff. delayed to 1–1–99.....**67569**
100.101 (b) suspended; (d) added (temporary).....30633
100.102 Revised; eff. 7–26–97.....**35388**
100.114 Implementation (temporary).....**35388, 35391, 45158, 48766, 66996**
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100.119 (c) suspended; (d) added (temporary).....32739

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100.201 Implementation (temporary) **43284**
Implementation (temporary) 35534
100.501 (c) revised; Table 1 added **46670**
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100.507 Implementation (temporary) 30142
100.508 Implementation (temporary) **45718**
100.509 Implementation (temporary) **35390**
100.510 (b)(1) and (c) revised; Table 1 added **42067**
100.511 Implementation (temporary) 14036, 19406, 23215, 24109
100.515 Implementation (temporary) 32736
100.518 Implementation (temporary) 32736
100.728 Added **43641**
100.730 Added 15091
100.731 Added 15090
100.732 Added 26454
100.733 Added 34814
100.1101 Implementation (temporary) **45158**
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100.1102 Amended 3037
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(b) amended 35526
100.1301 (a) stayed; (j) added; eff. 8–7–97 through 8–11–97 ..... **39444**
109.01 (a) amended; (b) removed 35526
109.05 (a) amended 35526
109.10 Amended 35526
110.1 (a) revised 35526
110.51 Revised; eff. 7–27–98 34815
110.60 (p–3) removed 23663
110.90 Revised 16689
110.155 (f)(1) introductory text note amended 35526
110.157 (b)(11) added; eff. 10–2–97 through 10–20–97 ..... **55168**
110.158 (a)(8) revised 35526
110.206 (a) amended 35526
110.224 (d) table amended; (e)(10) revised; eff. 7–16–98 32740
115.70 (b) amended 35527
117 Temporary drawbridge operation regulations **46879, 46880, 50253, 52946, 62262, 63847, 66006**
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117.5 Implementation (temporary) 6073
117.101 (a), (b) and (d) amended 35529
117.105 Amended 35529
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117.115 (b) amended 35529
117.123 (c) amended 35527
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117.133 (a) removed; (b) amended 35527
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117.153 Amended 35527
117.155 Amended 35527
117.171 (b) amended 35529
117.177 Amended 35529
117.179 Amended 35527
117.185 Amended 35529
117.205 Revised 10140
117.253 (a) suspended; (c) added; eff. 4–2–98 through 8–31–98 19407
117.261 (e) removed 33577
117.271 (a) amended 35529
117.361 Amended 35529
117.383 Amended 35529
117.393 Heading revised; (b) introductory text and (4) amended; (c) and (d) redesignated from 117.395 (a) and (b) 35527
(a) introductory text amended 35529
117.395 (a) and (b) redesignated as 117.393(c) and (d); heading removed 35527
117.401 Amended 35527
117.415 (a) and (b) amended 35529
117.439 (b) amended 35529
117.441 Amended 35529
117.449 (a) amended 35530
117.465 (f) amended 35529
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117.488 (a) amended 35527
117.489 (a) amended 35529
117.491 (a)(3) removed **52502**
117.493 (a) amended 35529
117.501 (b) amended 35527
(c) amended 35529
117.511 (a) amended 35529
117.524 Removed 18320
117.532 Removed 18319

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117.533 Revised 18323
117.549 Implementation (temporary) 6073
117.559 Revised **38909**
117.569 Implementation (temporary) 26983
117.603 Revised **50510**
117.604 Removed **50510**
117.609 Revised 2896
117.613 Revised 18323
117.633 (b) and (c) revised **43098**
117.637 (a)(1) revised **43931**
(b) amended 35530
117.663 Revised 4584
117.667 (a) amended 35527, 35529
117.675 (c) added; eff. 4–13–98 through 8–10–98 16906
117.686 (a) amended 35529
117.720 Added 2312
Introductory text amended 35527
117.733 Revised 2311
117.739 (d), (f), (i), (m) and (n) added; eff. 7–23–98 34123
117.753 Revised **45160**
117.771 Revised **54385**
117.789 Implementation (temporary) 17679
117.793 (b) revised 18321
117.802 Added 27680
117.807 Removed 18322
117.821 Revised 9419
(a)(2) removed; (a)(3) through (6) redesignated as (a)(2) through (5) 24427
117.833 Existing text designated as (a); (b) added **66006**
117.855 (c) introductory text amended 35530
117.861 Amended 35529
117.865 Amended 35530
117.869 (c) introductory text amended 35529
117.871 Amended 35529
117.881 (a) amended 35530
117.887 Amended 35529
117.889 Heading revised; (b) amended 35527
117.893 (b) amended 35527
117.897 (b) amended 35529
117.943 Amended 35527
117.953 (b) amended 35529
117.955 (b) amended 35529
117.957 Introductory text amended 35529
117.959 Amended 35529
117.961 Removed 29954
117.969 Amended 35529
117.971 Amended 35529
117.975 Amended 35529
117.984 Amended 35529
117.987 Amended 35529
117.989 Revised 35527
117.991 Introductory text amended 35529
117.997 (a)(2)(ii) and (c)(2)(ii) amended 35527
117.1031 (a) removed; (b) amended 35527
117.1035 (c) amended 35529
117.1037 (a) introductory text amended 35529
117.1041 (b)(1) and (2) amended 35529
117.1045 (a) revised **43097**
117.1047 (b) amended 35530
117.1051 (c) amended 35529
117.1053 Amended 35529
117.1058 (a) and (d) amended 35529
117.1059 (e) and (f) amended 35529
117.1061 (c) and (d) removed 10777
117.1063 (b) amended 35527
117.1065 (b) amended 35530
117.1081 Amended 35527
117 Appendix A amended 35527
118.60 Amended 35530
130 Removed 35530
135.9 Amended 35530
135.305 (a)(1) amended 35530
141.15 (a) amended 35530
143.15 (b) amended 35530
144.01–15 (d) correctly revised **35392**
144.01–20 (b), (c) and (d) amended 35530
146.140 (a) amended 35530
151 Effective date confirmation **46446**
151.10 (i) removed 35530
151.17 (b)(1) revised 35530
151.19 (c) revised **67532**
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151.27 (a) amended 35530
151.37 (a), (b) and (c) amended **67532**
153.205 Table 1 amended 35530
153.307 Revised 35531
154.804 (b) removed 35531
154.814 (h) amended 35531
155 Compliance date delay **37134**
Compliance date extension **48769**
Authority citation and note revised **48773**
155.100 (a) introductory text revised; (c) added **48773**
155.140 (b) amended **51194**

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155.235 Revised **51194**
155.205 (a) amended 35531
155.210 (a) amended 35531
155.215 (a) amended 35531
155.220 (a) amended 35531
155.225 Amended 35531
155.230 (a) amended 35531
155.240 (a) amended; (d)(i), (ii) and (iii) redesignated as (d)(1), (2) and (3) 35531
155.245 (a) amended 35531
155.310 (c) amended 35531
155.350 (e) removed 35531
155.360 (f) removed 35531
155.370 (g) removed 35531
155.400 (d) removed 35531
155.480 (b) introductory text and (f) revised **48773**
155.1050 (k)(3) suspended; eff. 2-12-98 through 2-12-2001 7071
155.1052 (f) suspended in part; eff. 2-12-98 through 2-12-2001 7071
157.10a (a), (c), (d) and (e) amended; (b) removed 35531
157.12 (d) and (e) removed 35531
157.100 (b) amended 35531
157.200 (b) amended 35531
157.410 Introductory text amended 35531
157.455 Regulation at 61 FR 60189 stay lifted; revised **49608**
159.3 Amended **51194**
159.5 Revised **51194**
159.7 Revised **51194**
159.201 Revised **51194**
159.205 Removed **51194**
160 Authority citation revised **65206**
160.109 (a)(1) amended 35531
160.113 (a) amended 35531
160.115 Amended 35531
160.203 Regulation at 59 FR 39459 confirmed 19190
160.207 (d) and (e) revised; interim **65206**
(d)(1) corrected 5458
Regulation at 59 FR 39460 confirmed 19190
160.211 Regulation at 59 FR 39460 confirmed 19190
160.213 Regulation at 59 FR 39460 confirmed 19190
160.215 Regulation at 59 FR 39460 confirmed 19190
161.30 Amended 35531
161.40 (c) table amended 35531
161.45 (a) amended 35531
161.55 Introductory text, (b) and (c) amended; (b) through (e) redesignated as (a) through (d) 35531
161.60 (a) and (c)(1) amended; (b) revised 35532
162.105 (a) amended 35532
162.117 (a) amended 35532
162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7-25-97 through 12-15-97 ..... **45720**
162.205 (b)(5) amended 35532
162.240 (d) amended 35532
163 Authority citation revised 35532
164.37 (b) amended 35532
164.38 (b) introductory text, (2) and (3) revised; (c) removed; Appendix A amended 35532
164.40 (a) revised 35532
164.41 (a)(1) amended 35532
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added **40272**
165 Effective date confirmation **35392, 65022**
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Temporary regulations lists 6071, 24425
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165.T01-009 Added (temporary) 30144
165.T01-014 Added (temporary) 30634
165.T01-015 Added (temporary) 25165
165.T01-026 Added (temporary) 23217
165.T01-029 Added (temporary) 19657
165.T01-040 Added (temporary) **35395**
Added (temporary) 33579
165.T01-041 Added (temporary) **35404**
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165.T01-042 Added (temporary) **35403**
165.T01-044 Added (temporary) 34125
165.T01-047 Added (temporary) **35681**
165.T01-048 Added (temporary) **35969**
165.T01-050 Added (temporary) 32125
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165.T01-063 Added (temporary) **42677**
165.T01-070 Added (temporary) 35535
165.T01-082 Added (temporary) **45721**
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165.T01-135 Added (temporary) 9941
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165.T05-058 Added (temporary) **39446**
165.T05-063 Added (temporary) **42676**

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165.T05–076 Added (temporary) **55168**
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165.T08036 Added (temporary) **35401**
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165.T08–041 Added (temporary) **38457**
165.T11–033 Added (temporary) 29137
165.T11–038 Added (temporary) 24110
165.T11–040 Added (temporary); interim **51781**
165.T11–043 Added (temporary) 7706
165.T11–048 Added (temporary) 9942
165.T11–049 Added (temporary) 14622
165.T11–052 Added (temporary) 23664
165.T11–054 Added (temporary) 31627
165.T11–060 Added (temporary) **43099**
165.T11–079 Added (temporary) 34289
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165.T11–098 Added (temporary) 17099
165.T13006 Added (temporary) **35394**
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165.T13–011 Added (temporary) **37136**
165.T13–014 Added (temporary) **42674**
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165.T13008 Added (temporary) **35400**
165.T13–016 Added (temporary) **40277**
165.T13020 Added (temporary) **51779**
165.T13–022 Added (temporary) **50511**
165.T14–002 Added (temporary) **46672**
165.T17–001 Added (temporary) 7707
165.T17–002 Added (temporary) 14621
165.T96–073 Removed **35406**
165.113 Added 16117
165.120 (a) and (b)(4) amended 35532
165.121 (a)(1) amended 35532
165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as (a)(1) and (2); new (a)(1), new (2) and (b) amended **51782**
165.503 Removed 9942
165.510 Revised **40275**
165.701 (a) amended 35532
165.709 Removed **51780**
165.713 (a) amended 35532
165.726 Added **50512**
165.752 (a) revised 35532
165.754 Added 27681
165.805 (a)(1) and (2) amended 35533
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim **58653**
165.821 (b) amended; (c)(1) through (iv) redesignated as (c)(1) through (4) 35533
165.1108 (a) revised 35533
165.1110 Revised; interim **61631**
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(a)(1) and (2) revised 35533
165.1301 Revised 7708
165.1307 (a) revised **39445**
165.1402 (a) amended 35533
165.1703 (a) amended 35533
165.1704 (a) amended; (b) revised 35533
165.1705 (a) revised 35533
174.5 Amended 35533
174.121 Revised 35533
175.17 (e) removed; (f) redesignated as new (e) 35533
175.101 (a) amended 35534
175.135 (a) removed; (b) amended 35534
181.21 (a) revised 35534
183.901 (Subpart N) Removed 35534
187 Comment period reopening **54385**
187.301—187.331 (Subpart D) Regulation at 60 FR 20315 eff. date delayed to 4–24–99 19658

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207.249 (b)(5)(iv) revised 24428
207.260 (c) and (g) revised 24428
334.1125 Added; interim **40278**
Regulation at 62 FR 40278 confirmed **53754**

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404 Transferred to 46 CFR Part 401 35139
405 Transferred to 46 CFR Part 402 35139
406 Transferred to 46 CFR Part 403 35139
407 Transferred to 46 CFR Part 404 35139

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149 ..... **45774**
150 ..... **45774**
151 ..... 17782, 32780
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155 ..... **52057**
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165 ..... **41324, 45775, 55366**
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173—187 (SubCh. S) **55199**
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175 ..... **45197, 50280**
177 ..... **45197**
179 ..... **45197**
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183 ..... **45197, 52673**
334 ..... **47166, 51618, 55367**

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74.26 (a), (b) and (c) revised **45939, 45943**
75.253 (c) revised **40424**
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended **40424**
75.263 Added **40425**
75.264 Added **40425**
80.26 (a), (b) introductory text and (1) revised **45939, 45943**
80 Appendix removed **45943**
97 Authority citation revised **63221**
97.101—97.124 (Subpart A) Sections designated as Subpart A; heading added **63221**
97.101 Authority citation added **63221**
97.102 Authority citation added **63221**
97.103 Authority citation added **63221**
97.107 Authority citation added **63221**
97.124 Authority citation added **63221**
97.401—97.409 (Subpart D) Added **63221**

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

222.4 Revised; eff. 7-31-97 ..... **35412**
222.7 Authority citation amended **35412**
222.9 Authority citation amended **35412**
222.10 Authority citation amended **35412**
222.11 Introductory text and authority citation amended; eff. 7-31-97 ..... **35412**
222.12 Added; eff. 7-31-97 ..... **35412**
222.13 Redesignated as 222.19; eff. 7-31-97 ..... **35412**
Added; eff. 7-31-97 ..... **35413**
222.14 Added; eff. 7-31-97 ..... **35413**
222.15 Added; eff. 7-31-97 ..... **35413**
222.16 Added; eff. 7-31-97 ..... **35413**
222.17 Added; eff. 7-31-97 ..... **35413**
222.18 Added; eff. 7-31-97 ..... **35414**
222.19 Redesignated from 222.13; eff. 7-31-97 ..... **35412**
222.22 (c) and (d) revised; eff. 7-31-97 ..... **35414**
222.23 Added; eff. 7-31-97 ..... **35414**
222.36 (b)(1) and (2) revised; eff. 7-31-97 ..... **35415**
222.50 Authority citation amended **35412**
222.80—222.85 (Subpart F) Added; eff. 7-31-97 ..... **35415**
222.94 Authority citation amended **35412**
222.95 Authority citation amended **35412**

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 34 Chapter II—Con.

(g) introductory text revised; OMB number **35416**
222.103 Authority citation amended **35412**
222.104 Authority citation amended **35412**
222.106 Authority citation amended **35412**
222.109 Authority citation amended **35412**
222.110 Authority citation amended **35412**
222.111 Authority citation amended **35412**
222.112 Authority citation amended **35412**
222.113 Authority citation amended **35412**
222.114—222.122 Undesignated center heading added; eff. 7–31–97 ..... **35416**
222.114 Added; eff. 7–31–97 ..... **35416**
222.115 Added; eff. 7–31–97 ..... **35416**
222.116 Added; eff. 7–31–97 ..... **35416**
222.117 Added; eff. 7–31–97 ..... **35417**
222.118 Added; eff. 7–31–97 ..... **35417**
222.119 Added; eff. 7–31–97 ..... **35418**
222.120 Added; eff. 7–31–97 ..... **35418**
222.121 Added; eff. 7–31–97 ..... **35418**
222.122 Added; eff. 7–31–97 ..... **35418**
222.150 (b)(1) amended; eff. 7–31–97 ..... **35418**
222.151 Heading and (b)(1) revised; eff. 7–31–97 ..... **35418**
222.152 (b) and (c) revised; eff. 7–31–97 ..... **35418**
222.154 (e) revised; eff. 7–31–97 ..... **35419**
222.156 (g) amended; eff. 7–31–97 ..... **35419**
222.157 Heading, (a) and (b)(1) revised; eff. 7–31–97 ..... **35419**
225.158 Heading, introductory text and (b) revised; eff. 7–31–97 ..... **35419**
222.161 (c) amended; eff. 7–31–97 ..... **35419**
222.162 (a) revised; eff. 7–31–97 ..... **35419**
222.164 (a)(2) and (b) revised; OMB number; eff. 7–31–97 ..... **35419**
222.165 (e), (f) and (h) revised; eff. 7–31–97 ..... **35420**
280.32 (b)(2) removed; (b)(1)(i) through (iv) redesignated as (b)(1) through (4) 8020
(b)(1) designation correctly removed 16906

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

301 Revised 29930
303 Authority citation revised 18292
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303.1 Authority citation amended 18292
(a) amended 18293
303.2 Authority citation amended 18292
Amended 18293
303.3 (a) amended; (e) added; authority citation revised 18293
303.5 (a)(1)(vii) amended; (a)(1)(viii) removed 18294
303.7 Authority citation amended 18292
303.8 Authority citation amended 18292
303.9 Authority citation amended 18292
303.10 Authority citation amended 18292
303.11 Authority citation amended 18292
303.12 Authority citation amended 18292
(b)(1) designation and (2) removed 18294
303.13 Authority citation amended 18292
303.14 Authority citation amended 18292
303.15 Authority citation amended 18292
303.16 Authority citation amended 18292
303.17 Authority citation amended 18292
303.18 Authority citation amended 18292
Redesignated as 303.19; new 303.18 added 18294
303.19 Authority citation amended 18292
Redesignated as 303.20; new 303.19 redesignated from 303.18 18294
303.20 Authority citation amended 18292
Redesignated as 303.21; new 303.20 redesignated from 303.19; (b)(1) amended 18294

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303.21 Authority citation amended....18292
Redesignated as 303.22; new 303.21 redesignated from 303.20....18294
303.22 Authority citation amended....18292
Redesignated as 303.23; new 303.22 redesignated from 303.21....18294
303.23 Authority citation amended....18292
Redesignated as 303.24; new 303.23 redesignated from 303.22....18294
303.24 Authority citation amended....18292
Redesignated as 303.25; new 303.24 redesignated from 303.23 and amended....18294
303.25 Redesignated from 303.24....18294
303.100 Revised (OMB number pending)....18294
303.101 Authority citation amended....18292
303.110 Authority citation amended....18292
303.111 Authority citation amended....18292
(a) and (b)(1) amended....18294
303.112 Authority citation amended....18292
303.113 Heading, (b) and authority citation revised....18294
303.120 Authority citation amended....18292
303.121 Authority citation amended....18292
303.122 Authority citation amended....18292
303.123 Authority citation amended....18292
303.124 Authority citation amended....18292
(a) amended....18294
303.125 Authority citation amended....18292
303.126 Authority citation amended....18292
303.127 Authority citation amended....18292
303.128 Authority citation amended....18292
303.140 Revised....18294
303.141 Authority citation amended....18292
303.142 Authority citation amended....18292
303.143 Authority citation amended....18292
303.144 Authority citation amended....18292
Amended....18294
303.145 Authority citation amended....18292
(a) and (d)(1) amended; (e) redesignated as (f); new (e) added (OMB number pending)....18294
303.146 Authority citation amended....18292
303.147 Revised....18294
303.148 Authority citation amended....18292
Introductory text, (a) and (b) revised; note 1 amended; note 2 removed (OMB number pending)....18294
303.149—303.155 Undesignated center heading and sections removed....18295
303.160—303.176 Undesignated center heading amended....18295
303.160 Authority citation amended....18292
Amended....18295
303.161 Authority citation amended....18292
303.162 Authority citation amended....18292
303.163 Removed....18295
303.164 Authority citation amended....18292
303.165 Authority citation amended....18292
303.166 Authority citation amended....18292
303.167 Authority citation amended....18292
(a) revised; (b)(2) amended; (c) added (OMB number pending)....18295
303.168 Authority citation amended....18292
303.169 Authority citation amended....18292
303.170 Authority citation amended....18292
(a) and (b)(2) amended....18295

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303.171 Authority citation amended 18292
303.172 Authority citation amended 18292
303.173 Authority citation amended 18292
303.174 Authority citation amended 18293
303.175 Authority citation amended 18293
303.176 Authority citation amended 18293
303.180 Authority citation amended 18293
303.200 Authority citation amended 18293
303.201 Authority citation amended 18293
303.202 Authority citation amended 18293
303.203 Authority citation amended 18293
303.204 Existing text designated as (a); (b) added; authority citation revised 18295
303.205 Removed 18295
303.300 Authority citation amended 18293
303.301 Authority citation amended 18293
303.302 Removed 18295
303.320 Authority citation amended 18293
Amended 18295
303.321 Authority citation amended 18293
(b)(2) amended 18295
303.322 Authority citation amended 18293
(a)(1) and (d)(1) amended; note removed 18295
303.323 Authority citation amended 18293
303.340 Authority citation amended 18293
303.341 Removed 18295
303.342 Authority citation amended 18293
303.343 Authority citation amended 18293
303.344 Authority citation amended 18293
(d)(1)(ii) amended (OMB number pending) 18295
303.345 Authority citation amended 18293
303.346 Authority citation amended 18293
303.360 Authority citation amended 18293
(c)(3) and (4) amended 18295
303.361 Authority citation amended 18293
(f) and (g) added (OMB number pending) 18295
303.400 Authority citation amended 18293
303.401 Authority citation amended 18293
303.402 Authority citation amended 18293
303.404 Authority citation amended 18293
303.405 Authority citation amended 18293
303.406 Authority citation amended 18293
303.406 (d)(1) revised 18296
303.419—303.425 Undesignated center heading revised 18296
303.419 Added 18296
303.420 Authority citation amended 18293
Heading, introductory text, (a), (b)(1) and note 2 amended 18296
303.421 Authority citation amended 18293
303.422 Authority citation amended 18293
303.423 Authority citation amended 18293
303.424 Authority citation amended 18293
Amended 18296
303.425 Authority citation amended 18293
303.460 Authority citation amended 18293
303.500 Authority citation amended 18293
303.501 Authority citation amended 18293
303.521 Authority citation amended 18293
303.522 Authority citation amended 18293
(b)(5) removed; (b)(6) and (7) redesignated as (b)(5) and (6) 18296
303.523 Authority citation amended 18293

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303.524 Authority citation amended 18293
303.525 Authority citation amended 18293
303.526 Authority citation amended 18293
303.527 Authority citation amended 18293
(a) amended 18296
303.528 Authority citation amended 18293
303.540 Authority citation amended 18293
(a)(2) revised 18296
303.560 Authority citation amended 18293
303.600 Authority citation amended 18293
(a) revised 18296
303.601 Authority citation amended 18293
(a)(7) revised; (a)(8) and (9) added (OMB number pending) 18296
303.602 Authority citation amended 18293
(a) introductory text amended 18296
303.603 Authority citation amended 18293
303.604 Authority citation amended 18293
303.650 Authority citation amended 18293
(c) added (OMB number pending) 18296
303.651 Authority citation amended 18293
303.652 Authority citation amended 18293
303.653 Authority citation amended 18293
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303.654 Authority citation amended 18293
303.670 Undesignated center heading and section removed 18296
305 Removed; eff. 10–1–98 23601
307 Removed; eff. 10–1–98 23601
309 Removed; eff. 10–1–98 23601
315 Removed; eff. 10–1–98 23601
316 Removed; eff. 10–1–98 23601
318 Removed; eff. 10–1–98 23601
319 Removed; eff. 10–1–98 23601
320 Removed; eff. 10–1–98 23601
324 Removed; eff. 10–1–98 23601
325 Removed; eff. 10–1–98 23601
326 Removed; eff. 10–1–98 23601
327 Removed; eff. 10–1–98 23601
328 Removed; eff. 10–1–98 23601
330 Removed; eff. 10–1–98 23601
331 Removed; eff. 10–1–98 23601
332 Removed; eff. 10–1–98 23601
333 Removed; eff. 10–1–98 23601
338 Removed; eff. 10–1–98 23601

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

668.13 (d) and (e) removed; (f) redesignated as (d) **62876**
668.23 (f) removed; (g) and (h) redesignated as (f) and (g) **62876**
668.162 (a)(1) revised; (e) added **62876**
668.167 (f) added **62877**
668.171—668.175 (Subpart L) Added **62877**
668 Appendix F added **62882**
Appendix G added **62885**
674.6 (a)(1) and (2) amended; (a)(3) removed **50847**
674.9 (a) amended **50847**
674.19 (b) amended **50847**
674.31 (b)(2)(i)(D) revised **50848**
674.33 (b)(6)(ii) amended; (d)(8) added **50848**
674.34 (h) revised **50848**
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added **50848**
674.36 (c)(1), (2), (3) and (f) amended **50848**
674.37 (c)(1), (2), (3) and (d) amended **50848**
674.45 (c)(1)(ii)(A) amended **50848**
674.52 (d)(2) amended **50848**
675.9 (a) amended **50848**
675.19 (a)(3) amended **50848**
675.20 (b)(1) amended **50848**
675.22 Heading amended **50848**
675.26 (d) revised **63439**
675.27 Authority citation revised **50848**
676.9 (a) amended **50848**
676.19 (a)(2) amended **50848**
682.201 (a) introductory text through (3) amended **63433**

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TITLE 34 Chapter VI—Con.

682.202 (c)(5) revised **63434**
682.209 (i)(1) revised **63434**
682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised **63434**
682.402 (c)(1) revised; (k)(2)(iii) amended **63434**
682.604 (g)(2)(i) revised **63434**
685.202 (c)(4) revised **63434**
685.212 (b) revised **63435**
OMB number 34816
685.301 (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added **63435**
685.304 (b)(2)(i) revised **63435**
685 Appendix A revised **35602**

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

701 Added **61430**

Proposed Rules:

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300 ..... **48924, 50435, 55026**
301 ..... **48924, 50435, 55026**
303 ..... **48924, 50435, 55026**
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662 33766
663 33766
664 33766
682 ..... **50462**
685 ..... **50462**
702 9392

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

104 Revised **48179**
113 Authority citation revised 18837
113.49 (b) revised 18837
115 Authority citation revised 2142
115.1 Revised 2142
115.2 (b) revised; (c) removed; (d) redesignated as (c); (a) introductory text and new (c) amended 2142
(b) amended 18837
(b) corrected 33854
117 Authority citation revised 2142
117.1 (b), (c) introductory text and (d)(2) amended 2142
117.3 Revised 2142
119 Nomenclature change 2142
133.1 Revised 23221
133.74 Heading revised; (c) added 29614
135.1 Amended 23221

Proposed Rules:

133 186
135 186

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

4.15 Revised **61633**
7.15 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c) 13353
7.67 (a) revised 9147

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

212 Authority citation revised **58654**
212.2 Revised **58654**
212.3 Removed; new 212.3 redesignated from 212.5 ..... **58654**
212.4 Removed; new 212.4 redesignated from 212.6 ..... **58654**
212.5 Redesignated as 212.3; new 212.5 redesignated from 212.7 ..... **58654**
212.6 Redesignated as 212.4; new 212.6 redesignated from 212.8 ..... **58654**
212.7 (c) amended; redesignated as 212.5; new 212.7 redesignated from 212.9 ..... **58654**
212.8 Redesignated as 212.6; new 212.8 redesignated from 212.10 ..... **58654**
212.9 (d) amended; redesignated as 212.7; new 212.9 redesignated from 212.11 ..... **58654**
212.10 (a)(2) amended; redesignated as 212.8; new 212.10 redesignated from 212.12 ..... **58654**

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212.11 (f) amended; redesignated as 212.9 58654
212.12 Redesignated as 212.10 58654
215.11 (c) revised; (d) added; interim 4188
223.52 Revised 24114
242.24 (a)(1) table amended 45725
Revised 35336
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727
Added; eff. 7-1-98 through 6-30-99 35344
242.26 Added; eff. 1-1-99 through 12-31-99 35375
242.27 Added; eff. 1-1-99 through 12-31-99 35380
292.60—292.70 (Subpart G) Revised 15059
Corrected 18837

Chapter VII—Library of Congress (Parts 700—799)

701.8 Revised 64280
701.35 Revised 8854
703 Revised 50254

Chapter X—Presidio Trust (Parts 1001—1099)

Chapter X Established; interim 35697

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1151 Revised 1924
1153 Removed 1926
1155 Removed 1926
1191 Appendix A amended 2016, 2071
1193 Added 5630

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1207 Authority citation revised 45943
1207.26 (a), (b) introductory text and (1) revised 45939, 45943
1210.26 (a), (b) and (c) revised 45939, 45943
1228 General Records Schedule No. 20 19369
1228.188 Revised 54584
1234.30 (a)(4) revised 54585

Proposed Rules:

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7 60815
..... 13383, 19436
13 ..... 54409, 58932
..... 23706, 30162
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211 27245
212 ..... 4350, 4351, 9980
242 ..... 39987, 66216
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1191 ..... 43133, 62275, 67320
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1192 14571

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Technical correction 43100
1.4 (d) revised; (g) added 53180
1.6 (d)(3), (6) and (e) revised; (f) added 53180
1.8 (a)(2)(i)(A) and (b) revised 53181
1.9 (d) and (f) revised 53181
1.10 (d) and (e) revised 53181
1.11 (b) revised 53181
1.14 (a) revised; (f) added 53182
(g) added; interim 29617
1.16 (a), (b), (d) and (f) through (i) revised 40452
(d) and (l) revised 53182
1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
(a) through (d), (h), (i) and (q) revised; (e), (f) and (g) removed 53182
(q) correctly revised 61235

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1.18 Revised **40452**
1.19 (a)(2) and (3) revised **40452**
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised **40453**
1.21 (a)(1)(ii), (6) and (j) revised **40453**
(l) and (n) revised **53183**
1.26 (a) revised **53183**
1.27 Revised **53183**
1.28 (a) and (c) revised **53183**
1.33 (a) and (b) revised **53184**
1.41 (a) revised **53184**
1.47 Revised **53184**
1.48 Revised **53185**
1.51 Revised **53185**
1.52 (a), (c) and (d) revised **53186**
1.53 Revised **53186**
(d)(1)(i) revised; interim 5734
1.54 Revised **53188**
1.55 (a) revised **53188**
1.59 Revised **53188**
1.60 Removed **53188**
1.62 Removed **53188**
1.63 (a) and (d) revised; (e) added **53188**
1.67 (b) revised **53189**
1.69 (b) revised **53189**
1.78 (a) revised **53189**
1.84 (a)(2)(i), (b), (c) and (g) revised **53190**
1.91 Revised **53190**
1.92 Removed **53190**
1.97 (c), (d) and (e) revised **53190**
1.101 Removed **53190**
1.102 (a) revised **53191**
1.103 (a) revised **53191**
1.104 Revised **53191**
1.105 Removed **53192**
1.106 Removed **53192**
1.107 Removed **53192**
1.108 Removed **53192**
1.109 Removed **53192**
1.111 (b) revised **53192**
1.112 Revised **53192**
1.113 Revised **53192**
1.115 Removed **53192**
1.116 Heading and (a) revised **53192**
1.117 Removed **53192**
1.118 Removed **53192**
1.119 Removed **53192**
1.121 Revised **53192**
(a)(4) correctly removed 61235
1.122 Removed **53193**
1.123 Removed **53193**
1.124 Removed **53193**
1.125 Revised **53193**
1.126 Revised **53194**
1.133 (b) revised **53194**
1.134—1.139 Undesignated center heading revised **53194**
1.134 Revised **53194**
1.135 Revised **53194**
1.136 Revised **53194**
1.137 Revised **53194**
1.139 Removed **53195**
1.142 (a) revised **53195**
1.144 Revised **53195**
1.146 Revised **53195**
1.152 Revised **53195**
1.154 Heading and (a)(3) revised **53196**
1.155 Revised **53196**
1.163 Heading and (b) revised **53196**
1.167 Revised **53196**
1.171 Revised **53196**
1.172 (a) revised **53196**
1.175 Revised **53196**
1.182 Revised **53196**
1.184 Removed **53196**
1.191 (a) and (b) revised **53196**
1.192 (a) revised **53196**
1.193 Revised **53197**
1.194 Revised **53197**
1.196 (b) and (d) revised **53197**
1.197 (a) and (b) revised **53198**
1.291 (c) revised **53198**
1.293 (c) revised **53198**
1.294 (b) revised **53198**
1.304 (a)(1) revised **53198**
1.312 (b) revised **53198**
1.316 Revised **53198**
1.317 Revised **53198**
1.318 Removed **53198**
1.324 Revised **53199**
1.352 Removed **53199**
1.366 (b), (c) and (d) revised **53199**
1.377 (c) revised **53199**
1.378 (d) revised **53199**
1.412 (c)(6) revised; interim 29617
1.416 (c) revised; interim 29617
1.419 Added; interim 29617
1.425 Revised **53199**
1.431 (c) and (d) revised; interim 29618
1.432 Heading, (b) and (c) revised; (d) added; interim 29618
1.435 (a) revised; interim 29618
1.445 (a) revised **40453**
(a) revised; interim 29619
1.451 (a) revised; (d) added; interim 29619
1.461 (a) revised; interim 29619

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1.465 (b) and (c) revised; interim 29619
1.471 (a) revised; interim 29619
1.480 (a) revised; interim 29619
1.481 Added; interim 29619
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453
1.484 (d), (e) and (f) revised 53199
(b) revised; interim 29619
1.485 (a) revised 53200
(a) revised; interim 29620
1.488 (b)(3) revised 53200
1.492 (a), (b) and (d) revised 40453
(g) added 53200
1.494 (c) revised 53200
(c) revised; interim 29620
1.495 (c) revised 53200
(c) revised; interim 29620
1.510 (e) revised 53200
1.530 Heading and (d) revised; (e) removed 53200
1.550 (a), (b) and (e) revised 53201
1.770 Revised 53201
1.785 (d) revised 53201
1.804 (b) revised 53202
1.805 (c) revised 53202
1.821 Revised 29634
1.822 Revised 29635
1.823 Revised 29636
1.824 Revised 29637
1.825 Revised 29638
1.801—1.825 (Subpart G) Appendix A revised 29639
2 Technical correction 43100
2.6 (b)(4) and (10) revised 40453
3.11 Revised 53202
3.21 Revised 53202
3.26 Revised 53202
3.27 Revised 53202
3.31 (c) added 53202
3.41 Revised 53202
3.51 Revised 53203
3.58 Added 53203
3.71—3.73 Undesignated center heading revised 53203
3.73 Heading and (b) revised 53202
5.1 Revised 53203
5.2 (b) revised; (c) and (d) removed 53203
5.3 (c) revised 53203
5.4 (a) and (d) revised 53204
5.5 (b) and (e) revised 53204
5.6 Removed 53204
5.7 Removed 53204
5.8 Removed 53204
5.11 (b), (c) and (e)(3) revised 53204
5.12 (b) revised 53204
5.13 Revised 53204
5.14 (a) revised 53204
5.15 (a), (b), (c) and (e) revised 53204
5.16 Removed 53205
5.17 Removed 53205
5.18 Revised 53205
5.19 Revised 53205
5.20 Revised 53205
5.25 (c) removed 53206
5.31 Removed 53206
5.32 Removed 53206
5.33 Removed 53206
7 Removed 53206
10.18 Revised 53206
10.23 (c)(15) revised 53206

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.11 (e)(3) amended 30635
201.17 (b)(2) introductory text, (e)(2)(i), (12), (f)(4), (h)(3)(iii)(B)(*1*) and (9) introductory text amended 30635
201.18 (a)(3) amended 30635
201.19 (a)(3) amended 30635
201.29 (e)(3) amended 30635
201.32 Table revised 29138
201.33 (e)(1) amended 30635
201.34 Added; interim 55739
201.35 Added; interim; eff. 7–20–98 34296
201.36 Added; interim; eff. 7–20–98 34296
201.37 Added; interim; eff. 7–20–98 34297
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202.23 (e)(1) and (2) amended 29139
202 Appendix B amended 51603
203 Authority citation revised 55742
Authority citation revised 1927
203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1927

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203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1927
203.6 (b)(6) amended; interim 55742
Regulation at 62 FR 55742 confirmed 1927
(b)(2) amended 29139
204.6 (a) amended 29139
211.3 (a)(1), (2) and (7) amended 29139
251 CARP arbitration list 9419
251.3 (a) introductory text and (b) amended 30635
251.6 (b) amended 30635
251.30 (a)(1) amended 30635
251.32 (d) amended 30635
251.43 (e) amended 30635
251.46 (c)(3) and (d) amended 30635
251.47 (e), (f), (i) and (k) amended 30635
251.48 (b) amended 30635
251.60 Amended 30635
252.4 (a)(1) amended 30635
253.1 Amended 2144
253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
(e) heading amended 30635
(e) amended 30636
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
255.3 (a) through (h) amended; (i) through (m) added 7289
256.2 (b)(2) introductory text amended 30636
257.4 (a)(1) amended 30636
258 Technical correction 62262, 62404
258.1 Amended 30636
258.3 Revised 55759
259.5 (a)(1) amended 30636
260 Added 25413
260.3 (e) amended 30636

Proposed Rules:

2 59640
3 59640
201 40780
..... 3685, 15802, 17142, 26756
202 15802
203 15802
204 15802
211 15802
253 ..... 51619, 63502, 65777
255 ..... 63506, 65778
256 26756

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

0 Authority citation revised 33579
0.735–2 Removed; new 0.735–2 redesignated from 0.735–3 33579
0.735–3 Redesignated as 0.735–2 33579
1 Nomenclature change 35970
Nomenclature correction 47532
1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) 51783
2.6 (e)(6) revised 11122
3 Nomenclature change 35970
Nomenclature correction 47532
3.2 (f) revised 35422
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added 35422
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised 51278
3.57 Cross reference amended 51281
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added 51278
3.158 (a) and (c) amended 51278
3.261 (a)(40) added 51278
3.262 (y) added 51278
3.263 (g) added 51279
3.272 (u) added 51279
3.275 (i) added 51279
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised 35422
3.317 Regulation at 62 FR 23139 confirmed 11122
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added 51279

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3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added **51279**
3.659 Cross reference amended **51281**
3.703 Cross reference amended **51281**
3.707 Cross reference amended **51281**
3.807 Cross reference amended **51281**
3.810 (a) amended; (d) added **35422**
3.811 Added; interim **35971**
Revised 412
3.814 Added **51279**
3.1000 (a) introductory text amended; authority citation added **35423**
3.1600 (c) amended **35423**
4.100 Removed **65219**
4.101 Removed **65219**
4.102 Removed **65219**
4.104 Revised **65219**
9 Nomenclature change **35970**
Nomenclature corrected **47533**
9.2 (a) and (b)(1) revised **35970**
9.8 (b) amended **35970**
17.32 Revised **53961**
17.85 Undesignated center heading and section added 11124
17.149 Regulation at 62 FR 30242 confirmed **64722**
17.150—17.154 Regulation at 62 FR 30242 confirmed **64722**
17.212 (d) added; authority citation revised **60783**
17.900—17.905 Undesignated center heading and sections added **51284**
19.9 Revised **52503**
20.611 Revised **55170**
Removed; eff. 7–20–98 33580
20.1302 Revised **55170**
21.3021 (l) redesignated as (m); new (l) added **51784**
21.3041 (e)(3) and (4) amended **55760**
21.3045 (f) revised; (i)(3)(ii) amended **55760**
21.3046 (e) removed **51784**
(c)(1) and (d)(6)(ii) amended **59579**
21.3047 Added **51784**
21.4001—21.4279 (Subpart D) Authority citation revised **40280, 55760, 63849**
21.4009 (b)(1) introductory text amended **55760**
21.4200 (g) revised **55760**
(x) and (y) added; interim 34128
21.4201 (h) introductory text and (2) amended **55760**
(e)(3)(ii) revised; interim 34129
21.4233 (c) revised; (d) amended **40280**
(b)(3) introductory text, (ii), (4) introductory text and (ii) amended **55760**
(e) revised; interim 34129
21.4235 Added; interim 34129
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended **55760**
21.4253 (d)(1) revised **35424**
21.4256 Revised **63849**
21.4263 (h) through (k) redesignated as (i) through (l); heading, (a) through (g) and new (i)(1)(iii), authority citation, (2) authority citation, (3) authority citation, (4) authority citation, (j)(3) authority citation, (4) authority citation, (k) authority citation and (l) revised; new (i) introductory text, (1) introductory text, (2) introductory text, (4)(i), (iii) and (j) introductory text amended; new (h), (i)(1)(iv), (j)(1) and (2) added; new (i)(4)(ii) authority citation removed; interim 34130
21.4267 (a) authority citation, (b) authority citation and (1)(i) revised; (f) added **40280**
21.4270 (c) heading and Footnote 2 revised **55760**
21.4279 (a) introductory text and (4) revised; (a)(5) added **63850**
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended **51785**
21.4832 (e)(3) and (4) added 26433
21.5001—21.5300 (Subpart G) Authority citation revised **55760**
21.5270 (a), (g) and (i) amended **55760**
21.5701—21.5901 (Subpart H) Authority citation revised **55761**
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended **63848**
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended **63848**
21.5901 (a) and (b) amended **55761**

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21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
(n) added; eff. 7-23-98 34132
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
(a)(3) revised 27854
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority— citation, (d)(2)(iii), authority citation, (e)(2)(ii), (iii), (3)(iii), authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2) amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7154 (a) and (b) redesignated as (b) and (c); new (a) added; new (b) heading, (1) revised; new (b)(2)(i) and (ii) amended; OMB number 14038
21.7156 Introductory text and (a) introductory text removed; (a)(1), (2), (3), (b) and (c) redesignated as (b)(3), (4), (5), (c) and (d); heading and new (b)(3) revised; new (a), (b) heading, (1) and (2) added; new (c)(2) amended; OMB number 14038
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7270 (c) amended; interim 34131
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761
21.7612 (b) revised 40280
21.7622 (c) revised 55762
21.7631 (h) added 55520
21.7635 (x) redesignated as (y); new (x) added 55520
21.7636 (b) redesignated as (c); new (b) added 55520
(a)(1), (2)(i) and (3) revised 66278
21.7639 (c)(2)(ii), authority citation, (f)(1), authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added 55521
(b) introductory text amended 55762
21.7659 Revised 55762
21.7670 (d) amended 55762
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added 55762
21.8010—21.8410 (Subpart M) Added 51288
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number 63278
36.4303 Revised 12002
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added; interim 52505
(a)(6) and (7) removed; (a)(3), (4) and (5) revised 63454
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4330 Revised 12004
36.4335 (a) and (b) removed; (c) through (h) redesignated as

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new (a) through (f); new (e) authority citation removed 12004
36.4337 (a) revised; interim 52505
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised 53965
(a) revised 63454
36.4348 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (e) revised; new (d) added 12004
36.4349 (a)(2) revised; OMB number 12007
43.26 (a), (b) introductory text and (1) revised; interim 45939, 45943
47 Heading revised 23665
47.1—47.2 (Subpart A) Heading removed 23665
47.1 (a) removed; (b) through (h) redesignated as (a) through (g); new (h) and (i) added 23665
47.2 Removed; new 47.2 redesignated from 47.3 and revised 23665
47.3 Redesignated as 47.2 23665
47.3 (Subpart B) Heading removed 23665

Proposed Rules:

17 ..... 39197, 40492
..... 9990
19 36038
20 ..... 55200, 64790
..... 27534
21 ..... 35454, 45596, 48969, 60464, 62736, 66320
..... 15341, 23408, 27701
36 37824
..... 30162
47 52519

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended 41853
Authority citation revised 28485
3.3 (v) redesignated as (w); new (v) added 41853
(e)(3) added 43642
3.4 (h) added 41853
(i) added 28485
4 Authority citation revised 61914
4.5 Revised 61914
4.6 Removed; new 4.6 redesignated from 4.7 61914
4.7 Redesignated as 4.6 61914
20 IMM amended; incorporation by reference; interim 45163, 47559, 49917, 56074, 58915
IMM amended; incorporation by reference 3645, 3815
IMM amended; incorporation by reference; interim 5459, 9421, 13125
111 DMM amended; incorporation by reference 39947, 51372, 53540, 60181, 61015
DMM amended; incorporation by reference 155, 14820, 19408
111.3 (f) table amended 63851
111.5 Revised 63852
222.5 (a)(7) amended 9943
232 Authority citation revised 34600
232.1 (g) heading, (h)(1) introductory text, (j), (l) and (q)(3) revised; (g) existing text redesignated as (g)(1); (b), new (g)(1) and (h)(1)(i) amended; (g)(2), (h)(3), (4) and (5) added 34600
241.4 Added; interim 25166
255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised 66996
(c)(3) amended; (c)(4) and (5) revised 66997
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed 66997
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed 66997
(a)(3) correctly removed 2145
262 Authority citation revised 64281
Authority citation revised 6481
262.2 (a) revised; interim 64281
(a) revised 6481
262.4 Introductory text revised; interim 64281
Introductory text revised 6481
265.3 (a) revised; interim 64281
(a) revised 6481
265.5 Revised; interim 64281
Revised 6481
265.6 (a) revised; interim 64281
(e)(1) amended; interim 64282

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(a) revised 6481
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim **64282**
(b), (c), (d)(1), (e)(1), (f)(1), (2) and (g) revised 6482
265.10 Revised **64283**
Revised 6483
265 Appendix A revised **64283**
Appendix A revised 6483
946.6 (a)(2) revised 8126
954 Heading amended **66998**
954.2 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.3 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.5 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.6 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.8 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.10 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.12 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.13 (a) and (c) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.14 (b)(6) and (8) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.16 (d)(1) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.17 (b) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.18 (a) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.19 (a) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.25 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
966 Revised **63279**

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended **45530**
3001.12 (e) amended **45530**
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(*i*) amended; (k)(3)(i)(*e*) revised **45729**
3001.43 (f)(1) amended **45530**
3001.61—3001.69c (Subpart C) Appendix A amended **35425**
Appendix A amended 35140, 35141
3002 Auhority citation revised **45530**
3002.4 Heading revised; (a) amended **45530**
3002.5 Removed **45530**

Proposed Rules:

20 ..... **47394**
111 ..... **45366, 47178, 48191, 62540**
..... 8154, 11199, 12864, 17143
232 ..... **61481**
501 ..... 8893, 16464
775 ..... **42958**
777 ..... **42958**
778 ..... **42958**

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed **43269**
8.2 (d) revised; eff. 7–14–98 18326
8.8 (b)(1) and (2) revised; eff. 7–14–98 18326
9.1 Table amended (OMB number) **37722, 44413, 47119, 52398, 54715, 55474**
Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
Table amended (OMB numbers) 964, 1060, 1320, 7269, 7710, 15016, 26720, 33250
Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
30.26 (a), (b) and (c) revised **45939, 45944**
31.26 (a), (b) introductory text and (1) revised **45939, 45944**
32.105 Amended **47149**
32.335 (a) through (d) amended **47149**

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32.430 (a) through (d) amended **47149**
35.105 Amended 7270
35.205 (c), (d) and (e) added 7270
35.210 (c) added 7270
35.215 Revised 7270
35.220 Added 7271
49 Added 7271
50 Announcement **38762**
Comment period extension **43642**
Notice 6032
Authority citation revised 7274
50.1 (i) added 7274
50.2 (c) and (d) revised 7274
50.3 Revised **38711**
50.6 Heading revised; (d) added **38711**
50.7 Added **38711**
50.9 Revised **38894**
50.10 Added **38894**
50 Appendix K revised **38712**
Appendix L added **38714**
Appendix M added **38753**
Appendix N added **38755**
Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
Appendix L corrected 7710
51 Authority citation revised **43801**, **44903**
Technical correction 6483
Authority citation revised 24433
51.100 (s) introductory text and (1) revised **44903**
(o)(3) revised 9151
(s)(1) revised 17333
51.103 (a) amended; (a)(1) and (2) removed 9151
51.212 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
51.351 (c) revised 24433
51.352 (c) revised 24433
51.353 (c)(3) and (4) revised 1368
51.357 (b)(4) revised 24433
51.361 Regulation at 61 FR 49682 eff. date corrected to 2–10–98 6645
51.373 (g) revised 24433
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724**, **61016**
State implementation plan determinations **43647**, **45531**, **52946**, **54769**, **61914**, **64522**
Notice **61236**
State implementation plan determinations 26, 3650, 8573, 9423, 15094, 16435, 25167, 26720, 34298
Technical correction 6483
52.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.40 Regulation at 62 FR 11331 eff. date corrected to 5–1–98 24114
52.50 (c)(71) added 676
52.66 Added **49158**
52.70 (c)(27) added 11840
52.111 Added 16441
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(77)(i)(A)(*2*) redesignated as (c)(77)(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
(c)(83)(i)(B) added 6489
(c)(78)(i)(C), (82)(i)(C), (83) and (85) added 6491
(c)(89) and (90) added 6659
(c)(82)(i)(D) added 15305
(c)(82)(i)(E) added 24435
52.123 (f) added **41864**
(g) added 28904
52.124 (b) added **41864**
52.170 (c)(29) added 17683
(c)(29) removed 32981
52.181 (a) revised 17683, 32981
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added **48483**
(c)(229)(i)(A)(*2*) added **48485**
(c)(224)(i)(E) added **53544**
(c)(243) added **54588**
(c)(224)(i)(D) removed **54769**
(c)(197)(i)(D) and (241)(i)(A)(*2*) added **59287**
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added **60785**
(c)(250) added **62951**

NOTE: **Boldface page numbers indicate 1997 changes.**

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(c)(239)(i)(E) added 65613
(c)(239)(i)(E)(*2*) added 67000
(c)(239)(i)(A)(*2*) 67004
(c)(231)(i)(B)(*2*), (239)(i)(D)(*1*) and (244) added 6075
(c)(239)(i)(E)(*3*) added 8128
(c)(6)(i)(C), (21)(vi)(C), (121)(ii)(C), (173)(i)(E), (182)(i)(E), (194)(i)(E)(*2*), (244)(i)(B) and (245)(i)(B) added 11833
(c)(230)(i)(B)(*2*) added 13531
(c)(252) and (253) added 15311
(c)(251) added 19661
(c)(247) added 19662
(c)(240)(i)(A)(*2*), (*3*) and (*4*) added; eff. 7–15–98 32623
(c)(248) and (254) added; eff. 7–22–98 33855
52.222 (a)(2) and (3) added 40937
(b)(2) added 43647
52.243 Added 19662
52.320 (c)(71) added 67009
(c)(76) added 68195
(c)(8), (15) and (72)(i)(D) revised 14360
(c)(84) added 15302
52.329 (a) revised 68195
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added 66008
(g) and (h) added 68195
52.370 (c)(72) added 52020
(c)(74) added 55340
(c)(72)(i)(B) and (ii)(K) corrected 65224
(c)(60) added 6487
(c)(73) added 20318
52.384 Added 55340
52.385 Added 52022
Table corrected 65224
Table amended 6487, 20318
52.420 (c)(58) added 37724
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 40139
52.424 (b) introductory text revised 1368
(c) added 16435
52.470 (c)(37) added 40938
52.473 Added; eff. 7–2–98 29957
52.520 (c)(98) added 38919
(c)(87) revised 28906
52.570 (c)(50) added; interim 42918
52.582 Existing text designated as (a); (b) added 23390
(b)(5) added; eff. 8–10–98 34302
52.720 (c)(106(i)(D) added; (c)(109) revised 43102
(c)(139) added 62953
(c)(137) added 67001
(c)(135) added 8858
(c)(136) added 8859
(c)(138) added 11838
(c)(141) added 11846
(c)(142) added 13787
(c)(140) added; eff. 7–20–98 27492
52.725 (e) added 11846
52.726 (p), (q) and (r) added 37506
Regulation at 62 FR 37506 withdrawn 46447
(p), (q) and (r) added 66294
52.769 (b) removed; eff. 8–28–98 35144
52.770 (c)(109) added 38922
(c)(121) added 2147
(c)(122) added; eff. 8–28–98 35144
52.776 (q) added 45171
52.777 (k) added 38464
(q) added 55176
(s) added 64735
(q) redesignated as (r) 29957
52.820 (c)(64) added 55173
(c)(65) added 63455
(c)(66) added 5269
(c)(67) added; eff. 8–24–98 34602
52.834 Added 13345
52.870 (c)(33) added 36213
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn 40281
(e) added 55176
(d) added 61246
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(f) added 14625
52.970 (c)(64) introductory text and (i) revised 51604
(c)(68) added 52951
(c)(74) added 63661
(c)(75) added 11374
(c)(79) added; eff. 7–10–98 25775
First (c)(55) removed 35537
52.975 (f) added 64286
52.992 Regulation at 62 FR 29078 eff. date corrected to 5–1–98 24115
52.994 Existing text designated as (a); (b) added 63662
Regulation at 62 FR 61634 eff. date corrected to 2–13–98 7290
Removed 11374
52.996 Added 61634
Correctly designated 4397

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52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
(c)(126) and (127) added 46201
(c)(125) added 53548
(c)(128) added; eff. 7–13–98 26463
52.1072 Added 40944
(b) added 49616
(c) added 52666
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1170 (c)(109) added 59996
(c)(110) added 6651
52.1174 (p) added 50514
(q) added; eff. 7–20–98 27494
52.1219 (b) added 39123
Regulation at 62 FR 39123 eff. date corrected to 5–4–98 24435
52.1220 (c)(44) added 53242
52.1237 (b) added 55172
Regulation at 62 FR 55172 eff. date corrected to 2–10–98 6647
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
(c)(101) added 46881
(c)(98) added 52660
(c)(102) added 3039
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
Regulation at 61 FR 39335 eff. date corrected to 2–10–98 6648
(c)(103) added 19825
(c)(105) added 20319
52.1323 (k) added 46881
(l) added 52661
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
(m) added 20320
52.1391 Added 65616
52.1520 (c)(52) added 55525
(c)(51) added 11604
(c)(54) added; eff. 7–13–98 26459
52.1525 Table amended 11604
Table amended; eff. 7–13–98 26459
52.1533 Added 55525
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1620 (c)(66) added 50518
52.1670 (c)(91) added 49619
(c)(93) added 67006
(c)(92) added 23668
52.1679 Table amended 67006
Table amended 23668
52.1683 (c), (d) and (e) added; interim 55344
(f) added 66825
52.1770 (c)(94) added 41280
52.1870 (c)(115) added 49442
(c)(117) added 13789
(c)(116) added 15093
52.1881 (a)(4) and (8) revised 15093, 35536
52.1885 Regulation at 62 FR 28637 withdrawn 40281
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 43109
(a)(6) added 44907
(bb) added 61246
(a)(7) added 1063
Regulation at 62 FR 26399 withdrawn 1369
(z) added 4195
Regulation at 62 FR 44907 eff. date corrected to 2–10–98 6649
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(cc) added 14626
52.1890 Added 47947
Regulation at 62 FR 47947 eff. date corrected to 2–10–98 6646
52.1970 (c)(122) added 46210
(c)(124) added 15294
(c)(123) added 24936
(c)(125) added; eff. 7–13–98 26461
52.2020 (c)(125) added 38917
(c)(127) added 43104
(c)(119) added 44415
(c)(126) added 50871
(c)(128) added 50873
(c)(107) added 64725
(c)(130) added 11372
(c)(129) added 13794
(c)(131) added; eff. 7–23–98 31119
(c)(133) added; eff. 8–11–98 32127
(c)(132) added; eff. 8–28–98 35147
52.2023 (k) added 13794
(e) added 23673
52.2026 (a) introductory text and (1) revised 59998
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415

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(a)(2) revised 1368
(d) and (e) added 2153
(f) added 13794
(f) correctly designated 25167
52.2036 (j) added **38917**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
52.2070 (c)(48) and (49) added **46207**
52.2081 Table amended **46207**
52.2120 Redesignated as 52.2134; new 52.2120 added **35444**
(c) table amended **44219, 47761**
52.2134 Redesignated fron 52.2120; heading and (a) revised **35444**
52.2220 (c)(147) added **35683**
(c)(156) added **38912**
(c)(158) added **40460**
(c)(155) added **40735**
(c)(151) added **42070**
(c)(154) added **43109**
(c)(157) added **43645**
(c)(159) and (160) added **62698**
(c)(161) added; eff. 8–7–98 31121
52.2270 (c)(102) added **44087**
(c)(91) removed **49154**
(c)(108) added 6493
(c)(107) added 6663
(c)(106) added 11835
(c)(110) added; eff. 8–7–98 31123
52.2303 (a) revised **44088**
52.2308 (f) added 7072
52.2309 (d) added 6663
52.2310 Added; interim **37144**
52.2311 Added 6653
52.2320 (c)(38) added **38216**
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12–30–97 414
52.2350 Added **38217**
Existing text designated as (a); (b) added 18124
52.2351 Added **38217**
52.2370 (c)(23) added **41282**
(c)(24) added **41869**
(c)(25) added 19828
52.2375 Table revised **41869**
52.2381 Table amended **41282, 41870**
Table amended 19828
Table corrected 23501
52.2420 (c)(115) and (116) added **38914**
(c)(121) added **53239**
(c)(120) added **53245**
(c)(118) added **54587**
(c)(119) added **61240**
(c)(122) added 11842
(c)(123) added 13798
52.2424 Existing text designated as (a); (b) added **61240**
52.2428 Existing text designated as (a); (b) added **38932**
Removed **43472**
Added **52032**
52.2450 (b)(1) and (3) amended; (b)(2) revised **49152**
(b)(2) revised 1368
52.2451 Revised 13798
52.2454 Added **52638**
52.2470 (c)(73) added **42217**
(c)(75) added **49444**
(c)(75) revised **68187**
(c)(76) added 5272
Regulation at 61 FR 49690 eff. date corrected to 2–10–98 6648
(c)(77) added 19659
(c)(74) added 34603
52.2479 Amended **68188**
52.2585 (l) added **39448**
(m) added 5464
Regulation at 62 FR 39448 eff. date corrected to 5–5–98 24748
52 Appendix D corrected; CFR correction 25415
53.1—53.16 (Subpart A) Revised **38784**
53.3 (b)(5) correctly removed 7714
53.30—53.34 (Subpart C) Revised **38792**
53.34 (c)(2)(i), (3) and (5) corrected 7714
53.30—53.34 (Subpart C) Table C–4 corrected 7714
53.50—53.59 (Subpart E) Added **38799**
53.51 (a)(3) corrected 7714
53.54 (f)(7) corrected 7714
53.56 (f)(5) corrected 7714
53.57 (g) corrected 7714
53.50—53.59 (Subpart E) Tables E–1 and E–2 corrected 7714
53.60—53.66 (Subpart F) Added **38814**
53.61 (g)(1)(ii) corrected 7714
53.64 (g)(4)(ii) corrected 7714
55.2 Amended **46409**
55.3 (c) revised **46408**
55.6 (d)(2) revised **46409**
55.11 (a) revised; (j) added **46409**
55.14 (e)(2)(i)(A) revised **41871**
55 Appendix A amended **41871**
58.1 Amended **38830**
Corrected 7714
58.13 (b) and (d) revised; (e) and (f) added **38831**
(d) corrected 7714
58.14 Revised **38832**

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58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
(d)(2) and (e) corrected 7714
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
(f) corrected 7714
58.34 Introductory text revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58.35 (b) amended 38833
58.41 (b) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844, 59816
Appendixes E and F amended 38854
Appendixes E and G amended 59818
Regulation at 62 FR 59816 withdrawn 67010
Appendix A corrected 7714
Appendixes A and D corrected 7715
60 Determinations 36664
Authority citation revised 48379
Authority delegation notices 53245
Clarification 62953
Authority delegation notices 1746, 5891, 27854
Technical correction 7199
60.1 (d) added 52641
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
60.17 (b)(1) amended; (k) and (l) added 48379
(a)(22) amended 52399
Regulation at 61 FR 16262 eff. date corrected to 2–9–98 6493
(a)(6) revised 24444
60.18 (c)(3) and (4)(i) revised 24444
60.30 Revised 48379
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45125
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.32c (c) and (d) added; eff. 8–17–98 32750
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.36c (a) revised; eff. 8–17–98 32750
60.38b (b) amended; (c) removed 45120
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125
60.30e—60.39e (Subpart Ce) Added 48379
60.49b (u) added 52641
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2), (c)(2), (d)(1) and (2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126

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60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) **45126**
60.55b (a) amended **45126**
60.56b Amended **45126**
60.57b (a) introductory text, (b) introductory text and (c) amended **45126**
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added **45126**
60.59b (a) introductory text and (b) introductory text amended **45121**
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended **45127**
60.50c—60.58c (Subpart Ec) Added **48382**
60.112b (c) added: **52641**
60.190 (b) revised; (c) added **52399**
60.750 (a) and (b) amended; (c) added; eff. 8–17–98 32750
60.751 Amended; eff. 8–17–98 32750
60.752 (a), (b) introductory text, (2)(ii), (iii)(B), and (v)(A) revised; (c) and (d) added; eff. 8–17–98 32751
60.753 Introductory text revised; (d) and (g) amended; eff. 8–17–98 32751
60.754 (a)(1) introductory text and (c) revised; (a)(1)(i), (ii), (4)(ii), (5), (b)(3) and (d) amended; eff. 8–17–98 32751
60.755 (a)(3), (5), (b) introductory text and (c)(1) amended; (a)(4) revised; eff. 8–17–98 32752
60.756 (a) introductory text, (b)(1) and (2) introductory text amended; eff. 8–17–98 32752
60.757 (a)(1), (2), (3), (b)(1)(i) and (g) introductory text revised; eff. 8–17–98 32752
60.758 Introductory text removed; (a), (b) introductory text, (c) introductory text, (d) introductory text and (e) amended; (f) added; eff. 8–17–98 32752
60.759 (a)(3)(iii) amended; eff. 8–17–98 32753
60 Appendix A amended **52399**
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
61 Authority delegation notices **53245**
Authority delegation notices 1746, 5891, 27854
Technical correction 7199
61.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
61 Regulations at 61 FR 18278 and 18280 eff. date corrected to 2–9–98 6493
62 Authority citation revised 11608
62.850 (b)(3) and (4) added; (c) revised 11608
62.852 Removed 11608
62.854 Revised 11608
62.855 Revised 11608
62.865 (a)(3), (4) and (6) revised 11608
62.2350 (b)(5) and (c)(3) added **60787**
62.2355 Undesignated center heading and section added **60787**
62.2600 (b)(4) and (c)(3) added; eff. 7–20–98 27496
62.2606 Undesignated center heading and section added; eff. 7–20–98 27496
62.3350 Undesignated center heading and section added **67572**
62.3912 Undesignated center heading and section added **41873**
62.3913 Undesignated center heading and section added 20103
62.4177 Undesignated center heading and section added **41874**

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62.4178 Undesignated center heading and section added 13532
62.4620 (b)(4) added **45732**
62.4631—62.4632 Undesignated center heading and sections added **54591**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.4931—62.4932 Undesignated center heading and sections added **45732**
62.6356 Undesignated center heading and section added **41874**
62.6357 Undesignated center heading and section added 20321
62.6912 Undesignated center heading and section added **41874**
62.6913 Undesignated center heading and section added 20101
62.7855—62.7856 Undesignated center heading and sections added **54591**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.8600—62.8602 (Subpart JJ) Added **65619**
62.9350 (b)(4) and (c)(4) added **36997**
(b)(5) and (c)(5) added; eff. 8–25–98 34818
62.9505 Undesignated center heading and section added **36997**
(b) correctly removed **48950**
Undesignated center heading corrected 24843
62.9510 Undesignated center heading and section added; eff. 8–25–98 34818
62.9630—62.9632 Undesignated center heading and sections added 17686
Undesignated center heading and sections removed 33251
62.11110—62.11112 Undesignated center heading and sections added 2156
62.12600—62.12602 (Subpart ZZ) Added 29646
63 Authority delegation notices **36460**
Authority delegation notices 1746, 24116
Notice 2630
63.11 (b)(6) and (8) revised 24444
63.14 (d)(1) revised **65024**
(d)(1) revised; eff. 7–13–98 26465
63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added **65025**
(a)(5)(ii) introductory text revised; (a)(5)(ii)(C) added; eff. 7–13–98 26466
(a)(28) added; eff. 7–27–98 28909
63.100 (b)(1), (d) introductory text, (3) introductory text, (k) introductory text, (l)(1)(ii) and (2)(ii) revised; (g)(2)(iii), (h)(2)(iv) and (i)(2)(iv) amended; (d)(4), (g)(2)(iii)(A), (B), (h)(2)(iv)(A), (B), (i)(2)(iv)(A), (B) and (p) added 26081
63.106 (b)(6) added 26082
63.100—63.106 (Subpart F) Table 1 amended 26082
63.342 (f)(3)(i) introductory text amended **42920**
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended **42920**
63.347 (e)(4) revised **42921**
63.360—63.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 .....**64738**
63.440—63.458 (Subpart S) Added 18616
63.461 Amended 24751
63.470 Added 24751
63.485 (o) introductory text revised **37722**
63.502 (a) revised; (j) added **37722**
63.640 (k)(2)(vii), (n)(1), (3) and (6) and (o)(2) revised; (n)(8), (9) and (r) added 13537
Regulation at 63 FR 13537 withdrawn 27212
63.641 Amended 13539
Amended; eff. 8–18–98 31361
Regulation at 63 FR 13539 withdrawn 27212
63.644 (a) introductory text amended 13539
Regulation at 63 FR 13539 withdrawn 27212
63.645 (f)(4) amended; (f)(5) revised 13539
Regulation at 63 FR 13539 withdrawn 27212
63.648 (e) revised 13539
Regulation at 63 FR 13539 withdrawn 27212

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63.653 (d)(1) revised; eff. 8–18–98 31361

63.654 (a), (g)(3)(i) introductory text and (h)(6) introductory text amended; (d)(1), (f) introductory text, (1)(i)(A), (ii) and (h)(1) revised; (f)(6) and (i)(5) added; (g)(3)(i)(B) removed; (g)(3)(i)(C) and (D) redesignated as (g)(3)(i)(B) and (C) 13539

Regulation at 63 FR 13539 withdrawn 27212

63.640—63.654 (Subpart CC) Appendix amended 13540

Regulation at 63 FR 13540 withdrawn 27212

63.741 (b) revised; (c) introductory text, (2), (3) and (4) revised; (f) amended; (c)(7), (h), (i) and (j) added 15016

63.742 Amended 15017

63.743 (a) introductory text, (b) introductory text and (c) revised; (a)(10) and (d) added 15017

63.744 (c) introductory text and (e)(12) amended; (e)(13) added; Table 3 redesignated as Table 1; (a) introductory text, (1), (2), (b) introductory text, (1), (c)(1)(ii), (2), (4), (d), (e)(1), (2) (9), (10), (11) and new Table 1 revised 15018

Corrected 17930

63.745 (f)(2) (g)(4)(viii) and (ix) amended; (g)(2)(iv) removed; (g)(2)(v) and (vi) redesignated as (g)(2)(iv) and (v); (e)(1), (2), (f) introductory text, (1) introductory text, (g)(2)(i), (ii), (iii), new (iv) and (v) revised; (g)(4)(x) added 15019

63.746 (a) introductory text and (b)(4)(v) amended; (b)(1), (3), (4)(i), (ii), (iii)(C), (4)(iv) and (c)(1) revised; (c)(2) and (3) added 15020

63.747 (c)(1), (2) and (e)(2) revised 15021

63.749 (a), (b), (d)(3)(iii)(B), (4)(iii), (f)(3)(ii)(A) and (h)(3)(i) revised 15021

63.750 * (b)(2), (e)(2) amended; (c)(1), (e)(1), (g)(3)(ii), (9)(i), (i)(1), (2)(iii), (j) introductory text, (1), (3), (k) introductory text, (1), (l)(4) and (n)(3) revised; (i)(2)(iv) and (o) added 15021

63.751 (b)(6)(ii)(A) and (iii)(A)(*2*) introductory text amended; (b)(6)(iii) introductory text, (D), (c)(1), (2) and (d) revised 15023

63.752 (b)(1), (e)(1)(ii), (6) and (f) introductory text revised; (d)(4) removed 15023

63.753 (a)(1) introductory text and (d)(2)(i) revised 15023

63.741—63.759 (Subpart GG) Table 1 added 15024

Appendix A added 15026

63.840—63.859 (Subpart LL) Added **52407**

63.1211—63.1216 (Subpart EEE) Added 33820

63.1310—63.1335 (Subpart JJJ) Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944

63.1311 (b), (d) introductory text and (1) introductory text revised 9945

(c) introductory text revised 15315

63.1331 (a) introductory text revised; (a)(10) added **37722**

63 Appendix A amended **52418**

Appendix A amended 15027, 18630

64 Added **54940**

Guidance availability 63662

68 Interpretation **45134**

68.3 Amended 644

68.10 (f) added 645

68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5) 645

68.130 Tables 1 and 2 amended **45132**

(a) removed; (b) and (c) redesignated as new (a) and (b) 645

68 Appendix A amended **45132**

69.11 (d) added **44416**

69.41 Added **61205**

70 Guidance availability **63662**

70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54946**

70 Appendix A amended **37516, 45167, 45734, 62951**

Regulation at 61 FR 31443 eff. date corrected to 2–9–98 6494

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Appendix A amended 13346
71 Guidance availability 63662
71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54947
72 Authority citation revised 55475
72.1 (b) amended 55475
72.2 Amended 55475
72.6 (b)(9) added; (c)(1) and (2) revised 55475
72.7 Revised 55476
72.8 Revised 55477
(b)(2) corrected 66279
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended 55478
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) 55478
72.14 Added 55478
72.22 (e) added 55480
72.24 (a)(3), (5), (10) and (11) revised 55480
72.25 (a) amended 55480
72.30 (b)(3) removed; (e) added 55480
72.31 (b) amended 55480
72.32 (b) and (c) revised; (d) added 55480
72.33 (b)(3) amended 55481
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended 55481
72.41 (b)(3) and (e)(1)(ii) amended 55481
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended 55481
72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended 55481
72.51 Amended 55481
72.60 Revised 55481
72.61 (a) and (b)(2)(i) revised; (b)(3) added 55481
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed 55482
72.69 (a) revised 55482
72.70 Revised 55482
72.71 Revised 55482
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended 55482
72.73 Revised 55483
72.74 Revised 55483
72.80 (a), (b) and (d) through (g) revised 55484
72.81 (c)(1)(ii) amended; (c)(2) revised 55485
72.82 (a) and (d) revised 55485
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added 55485
72.85 (a) and (c) revised 55485
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv) added; (b)(5), (6) and (7) revised 55485
72.95 Introductory text amended; (d) added 55485
73.10 Heading revised; (b)(3) added 55486
73.70 (c)(3) revised 5735
73.90 (a)(1), (2) and (3) revised; (c)(3) amended 55486
74.2 Amended 55487
74.3 (b) and (d) amended 18841
74.4 (c) added 18841
74.10 (a)(2) amended 18841
74.14 (b) introductory text and (6)(ii) amended 18841
74.16 (a)(12) amended 18841
74.18 (d) and (e) amended 18841
74.22 (c)(2) amended 18841
74.26 (a)(2) amended 18841
74.42 (a) amended 18841
74.44 (a)(1)(i)(G), (2)(i), (iii), (c)(2)(ii)(B)(*1*), (iii)(E)(*3*) and (F) amended 18841
74.47 (a)(3)(i) amended 18841
(a)(1), (3)(viii), (ix), (x), (xi), (xii) and (4) revised 18842
74.50 (a) introductory text and (1) through (4) redesignated as (a)(1) introductory text and (i) through (iv); new (a)(2) added 18842
75 Authority citation revised 55487
75.67 (a) removed 55487
76.16 Removed 24117
77.3 (d)(3), (5) and (6) revised 55487
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended 55487

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(g)(2)(i)(D) correctly removed 66279
77.6 (a) revised 55487
78.1 (a) and (b)(1)(v) revised 55488
78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) 55488
78.4 (c)(1) amended 55488
(c)(1) corrected 66279
78.5 (a) amended 55488
78.7 Removed 55488
78.11 (a) amended 55488
78.12 (a)(2) amended 55488
78.14 (a) introductory text, (10) and (c)(1) amended 55488
78.15 (c) amended 55488
78.16 (d)(1) and (2) amended 55488
78.17 Amended 55488
78.18 (b) introductory text amended 55488
78.20 (b) amended 55488
80 Decision 63853
80.2 (nn) removed 60135
(ss) revised 68205
80.27 (a)(2) table amended; eff. 7-27-98 31631
80.28 (g)(1)(iii) added 68205
80.30 (g)(1)(i) revised 68205
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised 68205
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised 68206
80.46 Regulation at 61 FR 58306 eff. date corrected to 5-1-98 24117
80.65 (d)(2)(iii) removed 60135
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised 60135
(e)(4) removed 68207
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised 68207
80.69 (f) removed 60135
80.72 (a) and (c) revised 54558
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed 60135
80.77 (g)(1)(ii) removed 60136
(g)(2)(iv)(B) revised 68207
80.78 (a)(6) revised 60136
(a)(1)(v)(C) revised 68207
80.79 (c) introductory text and (1) revised; (c)(3) added 68207
80.81 (e)(1), (2) and (h) revised; eff 7-27-98 34825
80.91 (e)(1)(iii) revised; (f)(2)(ii) added 68207
80.94 Added 45563
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added 68207
80.104 (a)(2)(xi) added 68208
80.128 (d)(2) revised 60136
80.129 (d)(3)(v) revised 60136
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) 60001
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) 60001
81 Attainment status determinations 51604
Authority citation revised 7274
81.1 (a) revised; (c), (d) and (e) added 7274
81.38 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.40 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.53 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.132 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.133 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.134 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.136 Regulation at 62 FR 30272 eff. date corrected to 5-4-98 24445
81.137 Regulation at 62 FR 30273 eff. date corrected to 5-4-98 24445
81.300—81.356 (Subpart C) Authority citation revised 7274
81.300 (a) amended 7274
81.301 Amended 2728, 31020
Regulation at 63 FR 2728 withdrawn 12652
81.302 Amended 2729, 9948, 31021

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Regulation at 63 FR 2729 withdrawn 12652
Amended; eff. 7-13-98 32131
81.303 Amended **60011**
Amended 2730, 31022
Regulation at 62 FR 60011 eff. date corrected to 2-13-98 7290
Regulation at 63 FR 2730 withdrawn 12652
81.304 Amended 2733, 31025
Regulation at 63 FR 2733 withdrawn 12652
81.305 Amended **65030**
Amended 2734, 15312, 31027
Regulation at 63 FR 2734 withdrawn 12652
81.306 Amended **68195**
Amended 2741, 31033
Regulation at 63 FR 2741 withdrawn 12652
81.307 Amended 2742, 31035
Regulation at 63 FR 2742 withdrawn 12652
81.308 Amended 2742, 31035
Regulation at 63 FR 2742 withdrawn 12652
81.309 Amended 2743, 31035
Regulation at 63 FR 2743 withdrawn 12652
81.310 Amended 2743, 31036
Regulation at 63 FR 2743 withdrawn 12652
81.311 Amended 2744, 31037
Regulation at 63 FR 2744 withdrawn 12652
81.312 Amended 2746, 31039
Regulation at 63 FR 2746 withdrawn 12652
81.313 Amended 2747, 31040
Regulation at 63 FR 2747 withdrawn 12652
81.314 Amended 2748, 11847, 31041
Regulation at 63 FR 2748 withdrawn 12652
81.315 Amended **45171, 55178, 64736**
Amended 2749, 31042
Regulation at 63 FR 2749 withdrawn 12652
81.316 Amended 2751, 13345, 31044
Regulation at 63 FR 2751 withdrawn 12652
81.317 Amended 2753, 31046
Regulation at 63 FR 2753 withdrawn 12652
81.318 Regulation at 62 FR 28637 withdrawn **40281**
Amended **55177, 61247**
Amended 2754, 14626, 31047
Regulation at 62 FR 61247 eff. date corrected to 2-10-98 6664
Regulation at 63 FR 2754 withdrawn 12652
81.319 Amended **64286**
Amended 2758, 31051
Regulation at 63 FR 2758 withdrawn 12652
81.320 Corrected; CFR correction **61916**
Amended 2760, 31053
Regulation at 63 FR 2760 withdrawn 12652
81.321 Amended 2760, 31053
Regulation at 63 FR 2760 withdrawn 12652
81.322 Amended 2761, 31054
Regulation at 63 FR 2761 withdrawn 12652
81.323 Amended 2761, 31054
Regulation at 63 FR 2761 withdrawn 12652
81.324 Amended 2763, 31056
Regulation at 63 FR 2763 withdrawn 12652
81.325 Amended 2765, 31058
Regulation at 63 FR 2765 withdrawn 12652
81.326 Amended 2766, 31059
Regulation at 63 FR 2766 withdrawn 12652
81.327 Amended 2768, 31061
Regulation at 63 FR 2768 withdrawn 12652
81.328 Amended 2770, 31063
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81.329 Amended 2771, 31065
Regulation at 63 FR 2771 withdrawn 12652
81.330 Amended 2772, 31065
Regulation at 63 FR 2772 withdrawn 12652
81.331 Amended **35972**
Amended 2773, 31066
Regulation at 63 FR 2773 withdrawn 12652
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81.332 Amended 2773, 31066
Regulation at 63 FR 2773 withdrawn 12652
81.333 Amended 2774, 31068

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81.334 Amended 2776, 31069
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81.335 Amended 2777, 31070
Regulation at 63 FR 2777 withdrawn 12652
81.336 Regulation at 62 FR 28638 withdrawn **40281**
Amended **61247**
Amended 2778, 14626, 31072
Regulation at 62 FR 61247 eff. date corrected to 2–10–98 6664
Regulation at 63 FR 2778 withdrawn 12652
81.337 Amended 2780, 31073
Regulation at 63 FR 2780 withdrawn 12652
81.338 Amended **46210**
Amended 2782, 31075
Regulation at 63 FR 2782 withdrawn 12652
81.339 Amended 2783, 31076
Regulation at 63 FR 2783 withdrawn 12652
81.340 Amended 2784, 31077
Regulation at 63 FR 2784 withdrawn 12652
81.341 Amended 2784, 31077
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81.342 Amended 2785, 31078
Regulation at 63 FR 2785 withdrawn 12652
81.343 Amended **62698**
Amended 2786, 31080
Regulation at 63 FR 2786 withdrawn 12652
81.344 Amended **44088**
Amended 2788, 8133, 31081
Regulation at 63 FR 2788 withdrawn 12652
81.345 Amended **38217**
Amended 2792, 31085
Regulation at 63 FR 2792 withdrawn 12652
81.346 Amended **41283, 41870**
Amended 2793, 31086
Regulation at 63 FR 2793 withdrawn 12652
81.347 Amended **61241**
Amended 2793, 31086
Regulation at 63 FR 2793 withdrawn 12652
81.348 Amended 2796, 12012, 31089
Regulation at 63 FR 2796 withdrawn 12652
81.349 Amended 2798, 31091
Regulation at 63 FR 2798 withdrawn 12652
81.350 Amended **39448**
Amended 2799, 31092
Regulation at 63 FR 2799 withdrawn 12652
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81.351 Amended 2800, 31093
Regulation at 63 FR 2800 withdrawn 12652
81.352 Amended 2801, 31094
Regulation at 63 FR 2801 withdrawn 12652
81.353 Amended 2801, 31094
Regulation at 63 FR 2801 withdrawn 12652
81.354 Amended 2801, 31094
Regulation at 63 FR 2801 withdrawn 12652
81.355 Amended 2802, 31095
Regulation at 63 FR 2802 withdrawn 12652
81.356 Amended 2803, 31096
Regulation at 63 FR 2803 withdrawn 12652
82 Revocation notice 1927
Determination 6008
Notice of acceptability 9151, 28252
Clarification 26983
82.4 (r)(2) revised; interim 4363
82.30 (a) revised **68046**
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised **68046**
82.34 Heading and (a) revised; (b) amended; (d) added **68047**
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised **68047**
82.38 (a) and (b)(1)(iii) revised **68048**
82.40 (a)(2)(i) revised **68048**
82.30——82.42 (Subpart B) Appendix C added **68048**
Appendix D added **68052**
Appendix E added **68053**
Appendix F added **68055**
82.250—82.270 (Subpart H) Added 11096
85 Heading and authority citation revised **67736**
Authority citation revised 14635, 18998, 24433

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85.1403 (c)(1)(iii)(B) introductory text, (C) introductory text and (1)(iv) revised; (c)(1)(iii)(C)(*6*) removed; (c)(1)(iii)(D) added 14635
85.1515 (c) revised 964
85.1602 Amended 18998
85.1603 (b), (c) and (d) revised 67736
(c) revised 18998
85.1604 (a) revised 67736
85.1606 Introductory text revised 67736
85.2207 (a) and (e) removed 24433
85.2222 (c) revised 24433
85.2231 (b) revised 24434
86 Authority citation revised 44875, 47119
Authority citation revised 7719
National Low Emmission Vehicle Program finding 11374
86.1 (b)(1) table and (2) table amended 47119
(b)(1) table amended 54715
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised 54720
86.001–30 (a)(4)(iv)(A) through (9) revised 54720
86.004–2 Added 54720
86.004–11 Added 54721
86.004–15 Added 54722
86.004–21 Added 54724
86.004–25 Added 54725
86.004–28 (c) and (d) revised 54726
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised 54727
86.004–38 Added 54728
86.004–40 Added 54729
86.094–8 (c) revised 47120
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised 47120
86.094–11 (b)(1) introductory text revised 47120
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–17 (i) revised 7719
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.096–8 (c) revised 47120
86.096–11 (a) introductory text and (c) revised 47120
86.096–30 (a)(23) and (24) added 965
86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised 54716
86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended 54716
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended 54716
86.098–15 Added 54716
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended 54717
86.098–30 (a)(4)(iv)(A) through (12) revised 54719
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised 54720
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised 47120
(b)(2) table revised 24448
86.119–90 (b)(3) revised; (b)(8) added 47121
(b)(3) revised; (b)(8) removed 24448
86.144–94 (c)(8)(ii)(B) revised 47122
86.402–98 Added 11849
86.406–78 (d) revised 11849
86.518–78 (c) revised 11849
86.529–98 Added 11849
86.884–7 (a)(2)(i), (3) and (4) revised 47122
86.884–8 (c) revised 47122
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised 47122
86.884–10 (a)(8) revised 47123
86.884–13 (b)(6)(ii) and (iii) revised 47123
86.884–14 Revised 47123
86.1008–90 (a)(1)(iii) added 47123
86.1008–96 (a)(1) revised 47123
86.1008–2001 (a)(1)(iii) added 47123
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added 47123
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised 47124
86.1311–94 (b)(3) revised 54730
86.1312–88 (a) revised 47124
86.1313–91 (b)(2) revised 47125
86.1313–94 (b)(2) revised 47125
86.1313–98 Added 47126

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86.1316–90 (b)(1) revised; (f) added 47126
86.1316–94 (b)(1) revised; (f) added 47126
86.1319–84 (d)(3) revised; (d)(8) added 47127
(d)(3) revised; (d)(8) removed 24449
86.1319–90 (d)(3) revised; (d)(8) added 47127
(d)(3) revised; (d)(8) removed 24449
86.1321–90 (a) and (b)(3) revised 47128
86.1321–94 (a) and (b)(3) revised 47128
86.1322–84 (b)(3) revised 47128
86.1323–84 (b)(3) revised 47129
86.1324–84 (c) revised 47129
86.1325–94 (c) revised 47129
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised 47130
86.1327–98 Added 47130
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed 47131
(d) heading, introductory text, (1) and (2) revised 24449
86.1334–84 (a)(2) revised 47131
86.1335–90 Revised 47131
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47132
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47133
86.1338–84 Revised 47133
86.1339–90 Revised 47134
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed 47134
86.1341–98 Added 47135
86.1342–90 (h)(2)(f) through (vii) removed; (i) added 47135
86.1342–94 (e) through (h) revised; (i) added 47135
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added 47135
86.1344–94 (e)(22) revised 54730
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97; (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97; (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967
86.1703–99 Redesignated from 86.1703–97; (b) amended 967
86.1704–97 Redesignated as 86.1704–99 967
86.1704–99 Redesignated from 86.1704–97 967
86.1705–97 Redesignated as 86.1705–99 967
86.1705–99 Redesignated from 86.1705–97; heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
86.1706–97 Redesignated as 86.1706–99 969
86.1706–99 Redesignated from 86.1706–97 and revised 969
86.1707–99 Added 970
86.1708–97 Redesignated as 86.1708–99 976
86.1708–99 Redesignated from 86.1708–97; heading, (b)(1)(i), (iii)(B) and (c) amended; tables amended; (e) added 976
86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97; heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
86.1710–97 (c)(7) corrected 45289
Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97; amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97; (b) removed 985
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86.1712–99 Redesignated from 86.1712–97; (a)(2)(iii), (b)(1) and (3)(vi) revised 985
86.1713–97 Redesignated as 86.1713–99 986
86.1713–99 Redesignated from 86.1713–97 986
86.1714–97 Redesignated as 86.1714–99 986
86.1714–99 Redesignated from 86.1714–97 986
86.1716–97 Redesignated as 86.1716–99 986
86.1716–99 Redesignated from 86.1716–97; (b) removed 986
86.1717–97 Redesignated as 86.1717–99 986
86.1717–99 Redesignated from 86.1717–97; heading revised 986
86.1721–97 Redesignated as 86.1721–99 986
86.1721–99 Redesignated from 86.1721–97 986
86.1723–97 Redesignated as 86.1723–99 986
86.1723–99 Redesignated from 86.1723–97; revised 986
86.1724–97 Redesignated as 86.1724–99 986
86.1724–99 Redesignated from 86.1724–97; (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97; (d) added 986
86.1726–97 Redesignated as 86.1726–99 986
86.1726–99 Redesignated from 86.1726–97; (c)(1) revised 986
86.1728–97 Redesignated as 86.1728–99 987
86.1728–99 Redesignated from 86.1728–97 987
86.1734–97 Redesignated as 86.1734–99 987
86.1734–99 Redesignated from 86.1734–97 987
86.1735–97 Redesignated as 86.1735–99 987
86.1735–99 Redesignated from 86.1735–97 987
86.1770–97 Redesignated as 86.1770–99 987
86.1770–99 Redesignated from 86.1770–97; (a)(2) revised 987
86.1771–97 Redesignated as 86.1771–99 987
86.1771–99 Redesignated from 86.1771–97 987
86.1772–97 Redesignated as 86.1772–99 987
86.1772–99 Redesignated from 86.1772–97; heading revised 987
86.1773–97 Redesignated as 86.1773–99 987
86.1773–99 Redesignated from 86.1773–97; (d) added 987
86.1774–97 Redesignated as 86.1774–99 987
86.1774–99 Redesignated from 86.1774–97 987
86.1775–97 Redesignated as 86.1775–99 987
86.1775–99 Redesignated from 86.1775–97 987
86.1776–97 Redesignated as 86.1776–99 987
86.1776–99 Redesignated from 86.1776–97 987
86.1777–97 Redesignated as 86.1777–99 987
86.1777–99 Redesignated from 86.1777–97 987
86.1778–97 Redesignated as 86.1778–99 987
86.1778–99 Redesignated from 86.1778–97 987
86.1779–97 Redesignated as 86.1779–99 987
86.1779–99 Redesignated from 86.1779–97 987
86.1780–97 Redesignated as 86.1780–99 987
86.1780–99 Redesignated from 86.1780–97 987
86 Appendix XVIII corrected **45289**
Appendix I amended **47136**
Appendix XVIII amended 987
Appendix I corrected 23501
88.308–94 Existing text designated as (a); (b) added 20107
89.1 (b)(3) revised 18998
89.2 Amended 18998
89.1—89.7 (Subpart A) Appendix A revised **67736**
90.103 (a)(3) revised **42643**
90.107 (h) added **42643**
90.1003 (b)(5) added **42644**
91.1103 (b)(4) added **42644**
92 Added 18998
92.133 Effective date pending 19044

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92.213 Effective date pending 19051
92.216 Effective date pending 19053
92.308 Effective date pending 19056
92.309 Effective date pending 19057
92.406 Effective date pending 19059
92.504 Effective date pending 19060
92.606 Effective date pending 19066
92.708 Effective date pending 19069
92.910 Effective date pending 19077
93.100—93.128 (Subpart A) Revised **43801**
112 Petition denial **54508**
123 NPDES State program approval **61170**
131.33 Added **41183**
131.36 (d)(13)(i) and (ii) amended; (d)(13)(iii) removed **52927**
(d)(12)(ii) amended **53214**
(d)(12)(ii) table amended 10144
132 Table 3 amended **52924**
Appendix F amended 20110
136.3 (a) Table 1C amended **48403**
(b)(1) and (e) Table II amended **48404**
136 Appendix A amended **48405**
140 Authority citation revised 1320
140.4 (a) introductory text, (b) introductory text and (1) amended; (c)(1), (2), (3), and (4) introductory text added; (b)(1)(ii) redesignated as (c)(4)(i) 1320
141.2 Amended 23366
141.101 Revised 31934
142.2 Amended 23367
142.10 (e) revised; (f) redesignated as (g); new (f) added 23367
142.11 (a)(6) redesignated as (a)(7); new (a)(6) added (effective date pending) 23367
142.12 (b)(1) revised; (e) added 23367
148 Notice **43109**
148.18 (f) added; eff. 11–4–98 24624
(a) through (f) redesignated as (c) through (h); new (a) and (b) added; eff. 8–24–98 28636
(f) revised 35149
156 Notice **56075**
Policy statement 25168
156.10 (h)(2)(iii) revised; (i)(2)(x)(D) added 9082
157 Grant of exemption 8577
159 Added **49388**
159.153 Amended 33582
159.155 Correctly revised 33582
159.158 (a) introductory text, (b)(1) introductory text, (3) introductory text and (4) introductory text corrected 33582
159.159 (a)(1) introductory text correctly revised; (a)(2) corrected 33582
159.160 (b)(1), (3) and (4) corrected 33582
159.165 (b)(4) introductory text, (d)(1) introductory text and (2) introductory text correctly revised 33582
159.178 (a) and (b)(1) introductory text corrected; (b)(5) correctly added 33582
159.179 (a) introductory text and (2) introductory text corrected 33582
159.184 (c)(2) introductory text, (5)(iii) introductory text, (D), (G) and (iv) introductory text corrected; (c)(2)(vi) correctly removed; (c)(4)(iv)(G), (v)(A), (d)(2) and (3) correctly revised 33583
159.195 (b) corrected 33583
167.90 (b) amended **49620**
170 Decision **51994, 53688**
170.112 (e)(7)(iv) added **52003**
180 Technical correction **56089**
Nomenclature change **66023**
Technical correction 1379
Heading and authority citation revised 10720
180.1 (k) revised; (o) added 10720
180.4 Revised 10720
180.33 Revised 28910
180.106 Revised 2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2164
Revised 13542
180.110 Revised **49924**
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended **66023**
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text **66025**
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory

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text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added **46907**
(a)(13) introductory text, (i), (ii), (iii) introductory text, (A), (B) and (C) redesignated from 185.1450 (a) introductory text, (1), (2), (3) introductory text, (i), (ii) and (iii) 34829
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading and new (c) heading added **64301**
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.163 Revised 34826
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.174 Revised 34827
180.175 Revised **64293**
180.183 Revised 2165
180.200 Heading revised; existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended **45754**
Amended **66023**
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.209 (b) table amended 5737
180.213 Revised 2165
180.213a Removed 2166
180.222 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 17692
180.242 (a) and (b) redesignated as (a)(1) and (2); (a) heading added; (a)(1) table amended 2166
(b) text amended 9441
180.254 (a) heading added; (a) table amended; (b) removed; (c) revised 2166
180.274 Revised 34827
180.275 (b) redesignated as (c); (a) heading, new (b) and (c) heading added **65376**
180.276 Revised 34827
180.277 Removed **66023**
180.284 Regulation at 62 FR 7684 eff. date corrected to 1-6-98 416
180.288 Revised **66024**
180.289 Revised 34828
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text **49931**
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added **66024**
180.324 (a) revised 26480
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added **66024**
180.332 Amended; existing text designated as (a); (a) heading added **66024**
(a) table transferred in part from 186.250 ..... **66025**
180.345 Revised 34828
180.353 Existing text redesignated as (a); new (a) heading and (b) added **45747**
180.355 (b) table amended 25777
180.356 (b) table amended 9427
180.361 (b) table amended 10547
180.364 (b) amended **42927**
(b) revised 31633
180.368 (a) amended **66024**
180.377 Revised 26487
180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text and (i) through (iv) redesignated from 185.1300 (a) introductory text and (1) through (4); (b) redesignated as (c); (a) heading and new (c) heading added **63026**

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(a)(3) redesignated from 186.1300 existing text....63027
(a)(3) table amended....66024
180.380 Revised....38474
(a) revised....7308
180.381 (b) table amended....5739
180.383 Existing text redesignated as (a); new (a) heading and (b) added....39974
180.395 Heading revised; existing text designated as (a); (a) heading and (b) added....10543
180.407 Revised....44595
Regulation at 62 FR 44595 eff. date corrected to 2–10–98....6665
180.408 Revised....66024
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table....47568
180.412 (b) added....44565
180.414 Revised....45741
(a)(4) added; (b) table amended....54789
(b) table amended....65036
180.416 Existing text designated as (a); (a) heading and (b) added....66014
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added....46894
180.418 Revised....63235
(a)(2) added....63243
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table....49937
(b) table amended....61447
180.422 Revised....63001
(a)(3) added....66025
180.425 (b) table amended....13130
180.430 Revised....1377
(a) table amended....19837
180.431 (b) table amended....23394, 31642
180.433 Existing text designated as (a); (a) heading and (b) added....36684
(b) table amended....61645
180.434 (b) table amended....43291
(b) table amended....16439
(b) amended....19410
Regulation at 62 FR 24045 eff. date corrected to 5–1–98....24119
180.435 Revised....63001
180.436 (a) existing text designated as (a)(1); new (a)(1) table revised; (b) redesignated as (a)(2)....63018
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3)....63019
180.438 Revised....36671
(b) added....56102
(a) revised....63010
Regulation at 62 FR 63010 eff. date corrected to 1–28–98....64048
(a)(1) table amended....7299
180.440 Revised....62961
180.441 Revised....32759
180.442 (b) table amended....46900
(a) revised; (b) table amended....62969
(b) table amended....1379, 2163, 15765
Regulation at 61 FR 29678 eff. date corrected to 2–9–98....6495
180.443 (b) introductory text revised; (b) table amended....36678, 42690
(b) table amended....65369
(b) table amended....10545
Regulation at 62 FR 36678 eff. date corrected to 5–4–98....24450
(a) table amended....26097
180.445 Revised....9435
180.448 Existing text designated as (a); new (a) heading and (b) added....62992
(b) table amended....68216
(b) amended....17101
180.449 Revised....44095
(b) table amended....56088
180.452 Existing text designated as (a); heading and (b) added....66020
180.458 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (3); (a)(2) added....17108
180.460 Revised....7305
180.462 Existing text redesignated as (a); (a) heading and (b) added....44558

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180.466 Existing text designated as (a); (a) heading and (b) added **37521**
Revised **63034**
180.472 (b) added **36697**
(a) table amended **65367**
(a) table amended 14371, 14378, 26098
(b) table amended 15763
Regulation at 62 FR 36697 eff. date corrected to 5–4–98 24450
180.474 (b)(1) table amended **56095**
180.478 Revised 16696
180.480 (a) heading and (c) added; (a) introductory text and (b) redesignated as (a)(1) and (2); new (a)(2) amended 31640
180.482 (a) heading added; (b) introductory text revised; (b) table amended **35689**
(b) amended **62985**
(b) table amended 13128, 26992, 34317
(b) amended 23392, 32138
180.487 Revised **54783**
180.493 (b) introductory text revised; (b) table amended **39961**
Corrected **47561**
(b) table amended 8139, 32140
180.495 (a) heading and (b) heading added; (b) table amended **54778**
(a) and (b) revised 18338
180.498 Regulation at 62 FR 10708 eff. date corrected to 5–1–98 24118
180.499 (b) amended 32136
180.501 Added **61647**
180.503 (b) introductory text revised; (b) table amended **39956**
(a) and (b) table amended 24949
180.506 Regulation at 62 FR 34182 eff. date corrected to 5–4–98 24452
180.507 (a) added **35690**
Regulation at 62 FR 36690 eff. date corrected to 5–4–98 24451
(b) table amended 26089, 30636
180.509 Added **42684**
(b) table amended 24941
180.510 Added **39967**
(b) table amended 26472
180.511 Added **40741**
(b) table amended 33585
180.512 Added **41292**
Removed 13128
180.513 Added **44571**
180.514 Added **49163**
180.515 Added **51037**
180.516 Added **56082**
Heading and (a) revised 13128
(b) added 34310
180.517 Added **62979**
180.518 Added **63669**
180.519 Redesignated from 185.425; heading revised; introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (a) heading added 34319
180.520 Redesignated from 185.2900; heading revised; introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (a) heading added 34319
180.521 Redesignated from 185.3475; heading revised; introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (a) heading added 34319
180.522 Redesignated from 185.3480; heading revised; introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); new (a) heading added 34319
180.523 Redesignated from 185.4025; heading revised; introductory text, (a), (b), (c) introductory text, (1), (2) and (3) redesignated as (a) introductory text, (1), (2), (3) introductory text, (i), (ii) and (iii) ; new (a) heading added 34319
180.524 Redesignated from 185.4200; heading revised; existing text designated as (a); new (a) heading added 34319
180.525 Redesignated from 185.5300; heading revised; existing text designated as (a); new (a) heading added 34319
180.526 Redesignated from 185.5400; heading revised; existing text designated as (a); new (a) heading added 34319
180.527 Added 17699
Revised 26473
180.528 Added 34828
180.529 Added 34828

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180.530 Added 34828
180.531 Added 34828
180.532 Added 17706
180.533 Added 23401
180.1001 (b)(1) amended **41286**
(c) table, (d) table and (e) table amended 24938
(c) table amended 28258, 31645
180.1020 Existing text designated as (a); (b) added **63863**
180.1163 Regulation at 62 FR 58332, eff. date corrected to 2–17–98 7720
180.1164 (c) added **60661**
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1–6–98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1–6–98 417
180.1180 (a) heading, (c) and (d) removed; (b) revised 9430
180.1181 Added **41877**
180.1182 Added **43657**
180.1183 Added **43653**
180.1184 Added **44582**
180.1185 Added **44575**
180.1186 Added **44579**
180.1187 Added **46884**
Revised 682
180.1188 Added **46887**
Revised 679
180.1189 Added **61639**
180.1190 Added **52509**
180.1191 Added **56105**
180.1192 Added 17690
Revised 28261
180.1194 Added 18329
180.1195 Added 14363
180.1196 Added 24955
Amended 34304
180.1197 Added 24963
Corrected 34304
180.1199 Added 32134
185 Authority citation revised **66025**
185.100 Removed 2167
185.350 Removed 2167
185.410 Removed 34829
185.425 Redesignated as 180.519 34319
185.458 Transferred in part from 185.1075; redesignated as (a)(4) 17108
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed **47568**
185.1075 Transferred in part to 180.458; removed 17108
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
185.1300 (a) introductory text and (1) through (4) redesignated as 180.379(a)(2) introductory text and (i) through (iv); removed **63026**
185.1450 (a) introductory text, (1), (2), (3) introductory text, (i), (ii) and (iii) redesignated as 180.142 (a)(13) introductory text, (i), (ii), (iii) introductory text, (A), (B) and (C); removed 34829
185.1580 Removed **63001**
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed **38474**
185.1975 Removed 34829
185.1985 Removed 34829
185.2150 Removed 34829
185.2225 Removed 34829
185.2650 Existing text designated as 180.293(a)(2); removed **49931**
185.2750 Removed 2167
185.2900 Redesignated as 180.520 34319
185.3200 Table transferred in part to 180.421(a)(2) table; removed **49937**
185.3225 Removed **63035**
185.3450 Removed 34829
185.3475 Redesignated as 180.521 34319
185.3480 Redesignated as 180.522 34319
185.3625 Removed **61647**
185.3765 Removed **63010**
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 ..... **64048**
185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed **66025**
185.3900 Removed **64294**

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185.4025 Redesignated as 180.523 34319
185.4200 Redesignated as 180.524 34319
185.4700 Removed **45754**
185.5250 Removed 32760
185.5300 Redesignated as 180.525 34319
185.5400 Redesignated as 180.526 34319
185.5450 Removed **63002**
185.5475 Removed 34829
185.5550 Removed 2167
186 Authority citation revised **66025**
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table **66025**
Removed **66026**
186.350 Amended **66026**
Removed 2167
186.450 Amended **66026**
186.458 (a)(5) and (6) transferred from 186.1075 (a) and (b) 17108
186.600 Removed **66026**
186.800 Table transferred in part to 180.410(a) table; removed **47568**
186.1000 (a) table amended **66026**
186.1075 (a) table amended **66026**
(a) and (b) transferred to 186.458 (a)(5) and (6); removed 17108
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
186.1300 Existing text redesignated as 180.379(a)(3) and removed **63027**
186.1350 Table amended **66026**
186.1400 Removed **54790**
186.1450 Removed **46907**
186.1650 Revised **66026**
186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed **38474**
186.1875 Removed 34829
186.1950 Removed 2167
186.1975 Removed 34829
186.1985 Removed 34829
186.2000 Table amended **66026**
186.2150 Removed 34829
186.2225 Removed 34829
186.2400 Removed **66026**
186.2550 Removed 2167
186.2700 (a) table amended **66026**
186.2750 Removed 2167
186.2775 Removed 34829
186.2950 Table amended **66026**
186.3050 Removed **66026**
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed **49937**
186.3225 Removed **63035**
186.3250 Revised **66026**
186.3350 Removed **66026**
186.3375 Removed 2167
186.3450 Removed **66026**
186.3550 (a) table amended **66026**
186.3750 Table amended **66026**
186.3765 Removed **63010**
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 ..... **64048**
186.4000 Removed **66026**
186.4050 Removed 34829
186.4700 Removed **45754**
186.4750 Removed 2167
186.4800 Removed **66026**
186.4975 Revised **66026**
186.5000 Table amended **66026**
186.5250 Removed 32760
186.5350 Removed 2167
186.5450 Removed **66026**
186.5550 Removed 2167
186.5650 Removed **44595**
Regulation at 62 FR 44595 eff. date corrected to 2-10-98 6665
194 Authority citation revised 27404
194.2 Amended 27404
194.8 Added 27404
194 Appendix A added 27405
228.15 (d)(6) revised **46149**
Regulation at 61 FR 68970 eff. date corrected to 12-30-97 682
244 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
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245 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
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247.2 (d) added **60973**
247.3 Amended; eff. 11-13-98 ..... **60973**
247.12 (f) and (g) added; eff. 11-13-98 ..... **60974**

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247.13 Existing text designated as (a); (b) through (e) added; eff. 11–13–98 ..... **60974**
247.14 Existing text designated as (a); (b) added; eff. 11–13–98 ..... **60974**
247.15 (c) and (d) added; eff. 11–13–98 ..... **60974**
247.16 (f) and (g) added; eff. 11–13–98 ..... **60974**
247.17 Revised; eff. 11–13–98 ..... **60974**
258 Effective date confirmation **51606**
Authority citation revised 17729
258.21 (d) added **40713**
258.23 (e) added **40713**
258.60 (b)(3) added **40713**
258.74 (e), (g) and (k) revised 17729
260.31 (d) added **59290**
Regulation at 62 FR 59290 withdrawn **67736**
261.2 (c)(4) Table 1, (c)(3) and (e)(1)(iii) revised; eff. 8–24–98 28636
261.3 (a)(2)(i) and (iii) revised; eff. 8–24–98 28637
261.4 (a)(15) added 18635
(a)(9)(iii) and (16) added; (b)(7) revised; eff. 8–24–98 28637
(a)(16) added 33823
261.5 (j) amended 24968
261.6 (a)(3)(iv)(A) and (C) amended 24968
261.32 Table amended; eff. 11–4–98 24625
261.33 (f) table amended; eff. 11–4–98 24625
261.38 Added 33823
261 Appendix IX amended **55347, 63463**
Appendixes VII and VIII amended; eff. 11–4–98 24625
264.15 (b)(4) revised **64656**
264.73 (b)(6) revised **64656**
264.1030 (d) added **52641**
(b)(3) and (c) revised; (e) added **64656**
264.1031 Amended **64657**
264.1033 (a)(2) revised **64657**
264.1050 (g) added **52641**
(b)(3), (c) and (f) revised **64657**
264.1060 Revised **64657**
264.1062 (b)(2) and (3) revised **64658**
264.1064 (g)(6) and (m) revised **64658**
264.1080 (e) added **52642**
(b)(1) and (c) revised **64658**
(f) and (g) added 11131
(f) and (g) removed 19838
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised **64658**
264.1083 (a)(2) and (b)(1) revised **64658**
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(*4*) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added **64659**
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added **64659**
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised **64659**
264.1087 (c)(3)(ii) and (7) revised **64660**
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added **64660**
265.15 (b)(4) revised **64661**
265.73 (b)(6) revised **64661**
265.1030 (c) added **52642**
(b)(3) revised; (d) added **64661**
265.1033 (a)(2) and (f)(2)(vi)(B) revised **64661**
265.1050 (f) added **52642**
(b)(3) and (e) revised **64661**
265.1060 Revised **64662**
265.1062 (b)(2) and (3) revised **64662**
265.1064 (g)(6) and (m) revised **64662**
265.1080 (e) added **52642**
(b)(1) and (c) introductory text revised **64662**
(f) and (g) added 11139
(f) and (g) removed 19838
265.1081 Amended **64662**
265.1082 Revised **64662**
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised **64663**
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (*1*), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised **64664**
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(*4*) revised; (e)(4), (f)(4) and (j)(2)(iii) added **64666**
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added **64666**

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265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added....64667
265 Appendix VI revised....64668
268.2 (i) revised; (k) added; eff. 8-24-98....28639
268.3 (d) added; eff. 8-24-98....28639
268.4 (a)(2)(ii) and (iii) revised; eff. 8-24-98....28639
268.7 (a)(1), (3)(ii), (7), (b)(1), (2), (5) and (6) revised; (a)(2), (3) introductory text, (4), (5) introductory text, (6), (b)(3) introductory text, (ii) table and (4) introductory text amended; (a)(2)(i), (b)(4)(iv), (v) and (e) added; eff. 8-24-98....28639
268.33 Added; eff. 11-4-98....24625
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268.34 Revised; eff. 8-24-98....28641
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(h)(3) redesignated as (h)(5); new (h)(3) and (4) added; eff. 8-24-98....28738
268.45 (a) introductory text, (d)(3) and (4) revised; eff. 8-24-98....28738
268.48 (a) table amended....45572
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279.54 (g) revised; eff. 7-6-98....24969
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403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
430 Revised 18635
712.30 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
716.5 Revised 15773
716.20 (b)(5) added 15773
716.25 Revised 15773
716.30 (a)(1) amended 15773
716.35 (a) introductory text revised 15774
716.45 (c)(3) revised 15774
716.60 (a) revised 15774
716.65 Revised 15774
716.120 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
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721.325 Removed 51608
721.370 Removed 51608
721.390 Removed 51608
721.400 Removed 51608
721.405 Added 3419
721.415 Removed 51608
721.460 Removed 51608
721.470 Removed 51608
721.490 Removed 51608
721.524 Added 3419
721.526 Added 3419
721.528 Added 3419
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721.567 Added 3420
721.637 Added 3421
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721.641 Added 3421
721.643 Added 3421
721.655 Added 3421
721.658 Added 3421
721.700 Removed 9443
721.720 Added 3422
721.723 Added 3422
721.977 Added 3422
721.980 Added 3422
721.981 Added 3422
721.1105 Added 3422
721.1155 Added 3422
721.1175 Removed 51608
721.1575 Removed 51608
721.1660 Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
721.1705 Added 3423
721.1805 Added 3423
721.1907 Added 5742
721.1930 Added 3423
721.2050 Removed 51608
721.2082 Added 3423
721.2091 Added 3423
721.2094 Added 3424
721.2122 Added 3424
721.2145 Added 3425
721.2170 Removed 51608
721.2222 Added 3425
721.2225 Regulation at 61 FR 33374 eff. date corrected to 2–10–98 6668
721.2280 Added 3425
721.2345 Added 3425
721.2350 Added 3425
721.2535 Added 3425
721.2650 Removed 51608
721.2750 Removed 51608
721.2805 Added 3426
721.2815 Removed 35692
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721.2840 Removed 9443
721.2860 Removed 9443
721.2880 Removed 9443
721.2925 Added 3426
721.2930 Removed 51608
721.2940 Removed 9443
721.3020 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3028 Removed 51608
721.3040 Removed 35691
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721.3060 Correctly removed 40742
721.3085 Added 3426
721.3120 Removed 51608
721.3155 Added 3426
721.3200 Removed 9443
721.3240 Removed 11609
721.3254 Regulation at 61 FR 33375 eff. date corrected to 2–9–98 6496
721.3465 Added 3426
721.3485 Added 3427
721.3488 Added 3427
721.3550 Added 59583

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(a) corrected **63035**
721.3565 Added 3427
721.3640 Removed **51608**
721.3764 Revised **42692**
721.3870 Removed **51608**
721.4020 Removed **51608**
721.4085 Added 3427
721.4090 Added 3427
721.4095 Added 3428
721.4158 Added 3428
721.4220 Removed **51608**
721.4257 Added 3428
721.4259 Added 3428
721.4400 Removed **51608**
721.4462 Added 3428
721.4464 Added 3428
721.4465 Added 3428
721.4467 Added 3429
721.4468 Added 3429
721.4469 Added 3429
721.4476 Added 3429
721.4484 Regulation at 62 FR 27694 eff. date corrected to 5–1–98 24120
721.4589 Added 3429
721.4640 Removed 9443
721.4780 Removed **51608**
721.4790 Removed **51608**
721.4800 Removed **51608**
721.4885 Added 3430
721.5225 (a)(2)(v) revised **42692**
721.5255 Added 3430
721.5279 Added 3430
721.5280 Added 3430
721.5281 Added 3430
721.5547 Added 3431
721.5549 Added 3431
721.5645 Added 3431
721.5650 Added 3431
721.5705 Removed **51608**
721.5708 Added 3431
721.5725 Added 3432
721.5730 Added 3432
Correctly removed 9441
721.5867 Added 23679
721.5910 Removed **51608**
721.5913 Added 3432
721.5990 Removed 9443
721.5995 Added 3432
721.6045 Added 3432
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721.6078 Added 3433
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721.6170 Added 3433
721.6193 Added **64740**
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721.6475 Added 3433
721.6477 Added 3434
721.6485 Added 3434
721.6490 Added 3434
721.6495 Added 3434
721.6500 Removed **51608**
721.6505 Added 3434
721.6580 Removed **51608**
721.6640 Removed **51608**
721.6700 Removed **51608**
721.6720 Removed **51608**
721.6740 Removed **51608**
721.6760 Removed **51608**
721.6780 Removed **51608**
721.6840 Removed **51608**
721.6880 Removed **51608**
721.6940 Removed **51608**
721.6960 Removed **51608**
721.7040 Removed **51608**
721.7046 (a)(1) revised **42692**
721.7080 Removed **51608**
721.7100 Removed **51608**
721.7140 Removed **51608**
721.7180 Removed **51608**
721.7210 (a)(1) revised **42692**
721.7240 Removed **51608**
721.7300 Removed **51608**
721.7320 Removed **51608**
721.7340 Removed **51608**
721.7370 Removed **51608**
721.7375 Added 3434
721.7378 Added 3434
721.7400 Removed **51608**
721.7420 Removed **51608**
721.7460 Removed **51608**
721.7540 Removed **51608**
721.7560 Removed **51608**
721.7580 Removed **51608**
721.7660 Removed **51608**
721.7680 Removed **51608**
721.7740 Removed **51608**
721.7760 Removed **51608**
721.8075 Removed **51608**
721.8079 Added 3435
721.8095 Added 3435
721.8125 Removed 9443
721.8265 Removed **51608**
721.8275 Removed **51608**
721.8290 Removed **51608**
721.8300 Removed **51608**
721.8325 Removed **51608**
721.8335 Removed **51608**
721.8350 (a)(2)(iv) added **42692**
721.8375 Removed **51608**
721.8400 Removed **51608**
721.8425 Removed **51608**

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721.8475 Removed **51608**
721.8525 Removed **51608**
721.8550 Removed **51608**
721.8575 Removed **51608**
721.8600 Removed **51608**
721.8650 Removed **51608**
721.8780 Added 3435
721.9005 Added 3435
721.9010 Added 3436
721.9080 Added 3436
721.9240 Removed **51608**
721.9260 Removed 9443
721.9265 Added 3436
721.9270 Added 3436
721.9285 Added 3436
721.9320 Removed **51608**
721.9360 Removed **51608**
721.9420 Removed **51608**
721.9488 Added 3437
721.9492 Added 3437
721.9497 Added 3437
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721.9503 Added 3437
721.9510 Removed **51608**
721.9515 Added 3437
721.9518 Added 29648
721.9525 Removed **51608**
721.9545 Added 3437
721.9575 Added 3438
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721.9635 Added 3438
721.9657 Added 3438
721.9659 Added 3438
721.9662 Added 3439
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721.9664 Added 3439
721.9668 Added 9450
721.9717 Added 3439
721.9780 Removed 9443
721.9825 Added 3439
721.9830 Added 3440
721.9840 Added 3440
721.9870 Removed **51608**
721.9928 Added 3440
721.9940 Removed **51608**
721.9962 Removed 9443
721.9975 Removed **51608**
745 Authority citation revised 29919
745.80—745.88 (Subpart E) Added; eff. 6-1-99 29919
750.31 (c)(9) introductory text, (ii), (iii) and (vii) amended; eff. 8-28-98 35436
761 Nomenclature change; eff. 8-28-98 35439
761.1 (b) revised; eff. 8-28-98 35436
761.2 Added; eff. 8-28-98 35436
761.3 Amended; eff. 8-28-98 35437
761.19 (b) table amended; eff. 8-28-98 35439
761.20 Heading, (a)(4), (c)(2) and (5) revised; eff. 8-28-98 35439
761.30 (a)(1)(iii)(A), (B), (C) introductory text, (*1*), (*2*) introductory text, (*i*), (D), (b)(2)(ii), (g), (n) and (o) removed; (a)(1)(iii)(C)(*2*)(*ii*), (*iii*) and (b)(2)(iii) through (vii) redesignated as (a)(1)(iii)(A), (B) and (b)(2)(ii) through (vi); (a)(1)(vi), (xv)(D), (b)(1), (c), (d), (e), (h)(1)(ii), (i), (j), (k) and (p) revised; (a)(1)(vii)(C), (x) and (xv) amended; (a)(1)(xii)(I), (J), (h)(1)(iii) and (q) through (u) added; eff. 8-28-98 35440
761.35 Added; eff. 8-28-98 35443
761.40 (a)(5), (b), (e) and (h) revised; (k) and (l) added; eff. 8-28-98 35443
761.50—761.79 (Subpart D) Note removed; eff. 8-28-98 35444
761.50 Added; eff. 8-28-98 35444
761.60 (a)(4), (5), (6), (d) and (f)(2) removed; (b)(5) and (6) redesignated as (b)(6) and (7); (a)(1), (2), (3), (b)(1)(i)(B), (2)(iv) introductory text, (vi), (3), (4), new (6)(ii), (e) and (i)(2) revised; (b) introductory text, new (5), (6)(iii), (iv), (g)(1)(iii), (2)(iii) and (j) added; (c)(3) amended; eff. 8-28-98 35445
761.61 Added; eff. 8-28-98 35448
761.62 Added; eff. 8-28-98 35451
761.63 Added; eff. 8-28-98 35452
761.64 Added; eff. 8-28-98 35452
761.65 (a), (b) introductory text, (1)(ii), (iv), (c)(1)(iv), (5), (6), (7) introductory text and (8) revised; (c)(4) and (d)(2)(iii) amended; (c)(9), (g)(7) and (j) redesignated as (c)(10), (g)(8) and (k); (b)(2), new (c)(9), new (g)(7), (9) and new (j) added; eff. 8-28-98 35452
761.71 Added; eff. 8-28-98 35454
761.72 Added; eff. 8-28-98 35455

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761.75 (b)(7)(i), (ii) and (iii) amended; eff. 8–28–98 35456
761.77 Added; eff. 8–28–98 35456
761.79 Revised; eff. 8–28–98 35457
761.80 (e) and (i) added; eff. 8–28–98 35460
761.93 Revised; eff. 8–28–98 35460
761.97 (a)(1) and (2) revised; eff. 8–28–98 35460
761.99 Added; eff. 8–28–98 35461
761.125 (a)(1), (2) and (c)(4)(i) amended; eff. 8–28–98 35461
761.180 (a)(1)(iii), (2)(ix), (3), (4), (b)(1)(iii) and (5) added; (b)(3) introductory text revised; (e)(1), (2) and (3) amended; eff. 8–28–98 35461
761.205 (f) added; eff. 8–28–98 35461
761.207 (j) revised; eff. 8–28–98 35461
761.215 (b) introductory text, (c) introductory text and (d) introductory text revised; (f) added; eff. 8–28–98 35461
761.218 (b) revised; eff. 8–28–98 35462
761.240—761.257 (Subpart M) Added; eff. 8–28–98 35462
761.260—761.274 (Subpart N) Added; eff. 8–28–98 35464
761.280—761.298 (Subpart O) Added; eff. 8–28–98 35465
761.300—761.316 (Subpart P) Added; eff. 8–28–98 35467
761.320—761.326 (Subpart Q) Added; eff. 8–28–98 35468
761.340—761.359 (Subpart R) Added; eff. 8–28–98 35469
761.360—761.378 (Subpart S) Added; eff. 8–28–98 35472
761.380—761.398 (Subpart T) Added; eff. 8–28–98 35473
799.1 (d) added **43824**
799.9135—799.9780 (Subpart H) Added **43824**

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72 ..... 28032, 31197

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73 ..... 714, 5773
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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

51–2.4 (a)(4)(C) removed; (b) amended **66529**

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51–4.3 (b)(6) and (c)(1) revised **66529**
51–4.4 (c) revised **66529**
51–5.2 (e) added 16439
51–5.3 (b) amended 16439
51–6.12 (c) revised **66529**
51–6.14 Revised **66529**
Redesignated as 51–6.15; new 51–6.14 added 16439
51–6.15 Redesignated from 51–6.14 16439
51–8.4 Amended 16440
51–8.5 (a) amended 16440
51–9.401 (a) amended 16440
51–9.405 (a) amended 16440
51–10.170 (c) amended 16440

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

60–1 Authority citation revised **44188**
60–1.2 Amended **66971**
60–1.3 Amended **44188, 66971**
60–1.4 (d) amended **66971**
60–1.5 (b)(1), (2), (c) and (d) amended **66971**
60–1.7 (a)(1), (2), (3), (4), (b)(1) and (2) amended **66971**
60–1.8 Revised **44188**
60–1.9 (a) through (d) amended **66971**
60–1.10 Amended **66971**
60–1.12 Added **44188**
(a) and (d) amended **66971**
60–1.20 Heading, (a) and (d) revised; (e), (f) and (g) added **44189**
60–1.21 Amended **66971**
60–1.23 (b) amended **66971**
60–1.24 (c)(3), (4), (5), (d) heading, (1) and (2) amended **66971**
60–1.25 Amended **66971**
60–1.26 Revised **44190**
(a)(1)(vii), (c)(1) and (3) amended **66971**
60–1.27 Revised **44191**
60–1.28 Amended **66971**
60–1.29 (a) and (b) amended **66971**
60–1.30 Revised **44191**
60–1.31 Revised **44192**
60–1.32 Revised **44192**
60–1.34 (a)(4) added **44192**
60–1.40 (c) amended **66971**
60–1.41 (b) amended **66971**
60–1.42 (a) revised **44192**
(a) amended **66971**
60–1.43 Revised **44192**
60–1.46 Amended **66971**
60–60 Removed **44192**
60–999.2 Table revised (OMB numbers) **66971**

Chapter 101—Federal Property Management Regulations (Parts 101–1—101–99)

101–11 (Subchapter B) Regulation at 61 FR 41001 eff. date extended to 12–31–98 ..... **58922**
101–17—101–21 (Subchapter D Appendix) Temporary Reg. D–1 added; interim **42070**
101–35 (Subchapter F) Regulation at 61 FR 41003 eff. date extended to 8–8–99 ..... **27682**
101–37.100 Amended **43472**
101–37.600—101–37.610 (Subpart 101–37.6) Added **43472**
101–42—101–49 (Subchapter H Appendix) Temporary Reg. H–29 eff. date extended to 1–15–99 ..... **68217**
Temporary Reg. H–30 added; eff. to 2–21–2000 ..... **8352**
101–43.000 Regulation at 61 FR 41353 eff. date extended to 12–31–98 ..... **68217**
101–43.600—101–43.603 (Subpart 101–43.6) Regulation at 61 FR 41353 eff. date extended to 12–31–98 ..... **68217**
101–43.4801 Regulation at 61 FR 41354 eff. date extended to 12–31–98 ..... **68217**
101–46 Revised **5893**
101–46.201–2 Regulation at 61 FR 41355 eff. date extended to 12–31–98 ..... **68217**

Chapter 105—General Services Administration (Parts 105–1—105–999)

105–60 Revised **60016**
105–60.402 Revised **64741**
105–60.402–1 Revised **64741**
105–60.402–2 Revised **64741**
105–71.126 (a), (b) introductory text and (1) revised **45939, 45944**
105–72.306 (a), (b) and (c) revised **45939, 45944**

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Chapter 109—Department of Energy Property Management Regulations (Parts 109–1—109–99)

Chapter 109 Revised 19616

Chapter 300—General (Parts 300–1—300–70)

Chapter 300 Established 15950
300–2 Authority citation correctly added 35537
300–2.20 Corrected 35537
300–3.1 Corrected 35537

Chapter 301—Travel Allowances (Parts 301–1—301–99)

Chapter 301 Heading revised 15954
Corrected 35537
301–1—301–2 (Subchapter A) Heading added 15954
Corrected 35537
301–1 Revised 15954
301–2 Removed 15954
Added 15955
301–3—301–31 (Subchapter B) Heading added 15954
Corrected
301–3.1 Removed 15954
301–3.2 Removed 15954
301–3.3 Removed 15954
301–3.4 Removed 15954
301–3.5 Removed 15954
301–4 Removed 15954
301–5 Removed 15954
301–6 Removed 15954
301–7 Removed 15954
301–8 Removed 15954
301–8.3 (b)(1)(ii) revised; (c) removed; (d) redesignated as (c); (a)(1), (b)(1)(i) and new (c) amended **42928**
301–9 Removed 15954
301–10 Revised 15955
301–10.106 (b) correctly revised 35537
301–10.115 Corrected 35537
301–10.164 Corrected 35537
301–10.181 Corrected 35537
301–10.200 (a) corrected 35537
301–10.262 Corrected 35537
301–10.304 Heading corrected 35537
301–10.420 (a) introductory text and (d) introductory text corrected 35537
301–10.450 Corrected 35537
301–11 Revised 15961
301–11.7 Corrected 35537
301–11.18 Corrected 35537
301–11.306 Corrected 35537
301–12 Revised 15965
301–12.1 Table corrected 35538
301–13 Added 15966
301–14 Removed 15954
301–15 Removed 15954
301–16 Removed 15954
301–17 Removed 15954
301–30 Added 15966
301–31 Added 15966
301–31.8 Corrected 35538
301–31.12 Corrected 35538
301–50—301–53 (Subchapter C) Heading added 15967
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301–50 Added 15967
301–51 Added 15968
301–51.1 (a) and (d) corrected 35538
301–51.2 Corrected 35538
301–51.100 (Subpart B) Heading corrected 35538
301–51.100 Introductory text and table corrected 35538
301–51.101 (b) corrected 35538
301–51.102 Corrected 35538
301–51.103 Corrected 35538
301–51.200 Table corrected 35538
301–51.201 Table corrected 35538
301–52 Added 15969
301–52.5 Corrected 35568
301–52.16 Corrected 35538
301–53 Added 15970
301–70—301–75 (Subchapter D) Heading added 15971
Corrected
301–70 Added 15971
301–70.400 Corrected 35538
301–71 Added 15974
301–71.108 (a) corrected 35538
301–71.302 (d) corrected 35538
301–72 Added 15976
301–72.3 (a) corrected 35538
301–72.203 Corrected 35538
301–72.204 Corrected 35538
301–73 Added 15978
301–73.1 (b) and (c) corrected 35538
301–73.101 (b)(6) corrected 35538
301–73.201 Corrected 35538
301–73.300 (a) corrected 35538
301–74 Added 15979
301–74.6 Introductory text and (b) corrected 35538
301–74.8 Corrected 35538

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301–75 Added 15980
301–75.4 (b) corrected 35538
301–75.103 (a) corrected 35538
301–75.200 Corrected 35538
301–75.204 Heading corrected 35538
Chapter 301 Appendix A revised **63798**
Appendix A corrected **68217**
Appendix A corrected 8352, 8353
Appendix A amended 26488
Appendixes C and D added 15981
Appendix C corrected 35538
Appendixes C and D corrected 35539

Chapter 302—Relocation Allowances (Parts 302–1—302–99)

302–10 Authority citation revised 5742
302–10.200 Heading and (b) revised 5742
302–10.201 (d) and (e) revised 5743
302–10.202 Heading, (a), (b) and (c) revised 5743
302–11 Authority citation revised 14637
302–11 Appendixes A through D amended 14637

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51–2 ..... **50547**
51–4 ..... **50547**
51–5 3530
51–6 ..... **50547**, 3530
51–8 3530
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51–10 3530
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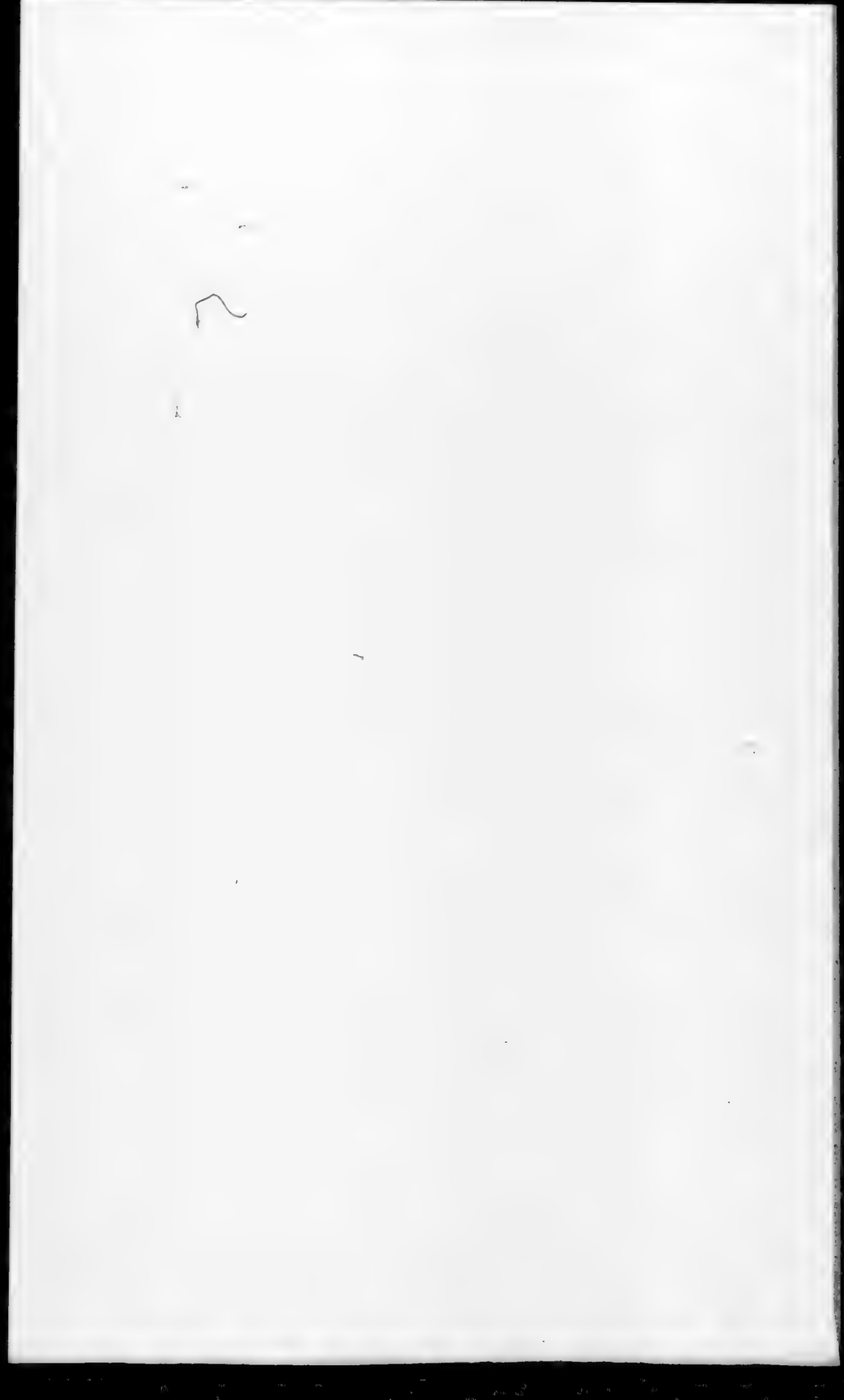

TITLE

Chapter
Depart
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51 Added...
51.8 OMB
51.10 OMB
51.23 OMB
51.25 OMB
57.1104 (c)(
57.1105 Rev
57.1106 Rev
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61.35 Revis
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400.202 An
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403.205 (d)
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405.535 (b)
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409.24 Rev
409.25 Rev
409.26 Rev
409.27 Rev

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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

51 Added **53564**
51.8 OMB number pending **53567**
51.10 OMB number pending **53567**
51.23 OMB number pending **53567**
51.25 OMB number pending **53568**
57.1104 (c)(1) amended **51374**
57.1105 Revised **51374**
57.1106 Revised **51374**
61.30—61.38 (Subpart B) Authority citation revised 9950
61.30 Revised; interim 9950
61.33 Revised; interim 9950
61.34 Revised; interim 9950
61.35 Revised; interim 9950
61.36 Revised; interim 9950
61.37a (b)(3) concluding text designated as (b)(4); (a), (b) introductory text and (4) revised; interim 9950
61.38 Revised; interim 9951
100 Authority citation revised 25778
100.3 (c) heading and (1) amended; (c)(2) revised; (c)(3) added 25778
121 Added 16332

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400 Technical correction 4595, 11417
400.200 Amended; interim 35065
400.202 Amended **59098**
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403.205 (d) introductory text revised; interim 35066
405 Technical correction 4595
405.502 (g) and (h) revised; interim 689
405.535 (b) amended **59098**
409 Technical correction 11417
409.20 (a) introductory text, (6), (7) and (b)(2) revised; (a)(8) removed; interim 26306
409.21 Added; interim 26306
409.24 Revised; interim 26306
409.25 Revised; interim 26307
409.26 Revised; interim 26307
409.27 Revised; interim 26307
409.30 Introductory text revised; interim 26307
409.33 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c); new (a)(1) and (2) revised; interim 26307
409.60 (c)(2)(i), (ii) and (iii) redesignated as (c)(2)(ii), (iii) and (iv); new (c)(2)(i) added; interim 26307
410 Technical correction 4595, 11417
Authority citation revised 20128
410.10 (v) and (w) added 20128
410.27 (a)(1)(i) revised; interim 26307
410.28 (a)(1) revised; interim 26307
410.30 Redesignated from 410.31 34327
410.31 Redesignated as 410.30; new 410.31 added; interim 34327
410.32 (e)(1) corrected **52034**
Revised **59098**
(e)(7) added; interim 26308
410.33 Added **59099**
410.34 (d) introductory text and (4) revised **59100**
410.37 Added **59100**
410.40 (b)(2) and (3)(ii) revised; (b)(4) added; interim 26308
410.56 Added **59101**
410.57 Revised; interim 35066
410.71 Added 20128
410.73 Added 20128
410.150 (b)(17) and (18) added 20129
(a)(2) revised; (b)(14) added; interim 26308
410.152 (a)(1)(iv) revised 20129
(k) amended 26357
(l) added; interim 35066
410.155 Revised 20129
410.160 (b)(5) and (6) added **59101**
411 Technical correction 4595, 11417
411.15 (a)(1) revised; (k)(6), (7) and (8) added **59101**
(m) heading amended; (p) added; interim 26308
(e)(2) and (3) amended; (e)(4) added; interim 35066
411.355 (c)(5) added; interim 35066
411.370 Added 1655
411.372 Added 1655
411.373 Added 1656
411.375 Added 1656
411.377 Added 1657
411.378 Added 1657
411.379 Added 1657
411.380 Added 1657

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411.382 Added 1657
411.384 Added 1657
411.386 Added 1657
411.387 Added 1657
411.388 Added 1657
411.389 Added 1657
412 Technical correction 11417
412.2 (c)(5) revised 6868
412.22 (f) revised 26357
412.105 (a)(1) and (f)(1)(v) amended; (f)(1)(vi) and (vii) added 26357
412.108 Corrected **52034**
412.230 (e)(3) amended 26357
412.256 (a)(2) amended 26357
412.322 (a)(1) amended 26357
413 Authority citation revised 310, 15737
Technical correction 11417
413.1 (g) revised; interim 26309
413.13 (c)(2)(iv) added 26357
413.30 (a)(1), (2) and (c) amended 15737
413.40 (c)(2) revised 6868
(c)(4)(iii) and (j) revised 26358
413.70 Revised 26358
413.86 (b) and (g)(5) amended; (g)(6)(i), (ii) and (7) revised 26358
413.92 Added 310
413.106 (f)(1) removed; (c)(5), (f)(2), (3) and (4) redesignated as (c)(6), (f)(1), (2) and (3); new (c)(5) added 5139
Regulation at 63 FR 5139 eff. date corrected to 4-10-98 15315
413.134 (b)(1), (ii)(A), (f)(1) and (2) heading revised; (g)(4) redesignated as (g)(5); (f)(2) introductory text and new (g)(4) added 1382
413.300—413.321 (Subpart I) Heading revised; interim 26309
413.330—413.348 (Subpart J) Added; interim 26309
414 Technical correction 4595
414.2 Amended; interim 34328
414.20 Revised **59101**
414.21 Added **59101**
414.22 (b)(4) added **59102**
414.32 (b) revised **59102**
414.48 (b) revised **59102**
414.50 (a) amended; interim 34328
414.62 Added **59102**
415.152 Amended 26359
417 Authority citation revised 20130
417.402 Revised; interim 35066
417.413 (d)(1) and (2) introductory text revised; (d)(2)(iii) and (8) added; interim 35066
417.416 (d)(2) revised; (d)(3) added 20130
417.426 (a)(4) added; interim 35066
417.428 Revised; interim 35067
417.470 (a) revised; interim **63673**
417.472 (h) added; interim **63673**
(h) revised; interim 35067
417.520 Redesignated as 422.550; new 417.520 added; interim 35067
417.522 Redesignated as 422.552; interim 35067
417.523 Redesignated as 422.553; interim 35067
417.584 (e) added; interim 35067
417.600 Revised; interim 35067
417.602 Removed; interim 35067
417.604 Removed; interim 35067
417.605 Removed; interim 35067
417.606 Removed; interim 35067
417.608 Removed; interim 35067
417.609 Removed; interim 35067
417.610 Removed; interim 35067
417.612 Removed; interim 35067
417.614 Removed; interim 35067
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417.618 Removed; interim 35067
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417.630 Removed; interim 35067
417.632 Removed; interim 35067
417.634 Removed; interim 35067
417.636 Removed; interim 35067
417.638 Removed; interim 35067
417.800 (a) amended; interim 35067
418 Technical correction **52034**
420.400—420.405 (Subpart E) Added 31128
422 Added 18134
422.1—422.10 (Subpart A) Added; interim 35068
422.50—422.80 (Subpart B) Added; interim 35071
422.100—422.132 (Subpart C) Added; interim 35077
422.152—422.158 (Subpart D) Added; interim 35082
422.200—422.220 (Subpart E) Added; interim 35085

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422.249—422.268 (Subpart F) Added; interim 35090
422.300—422.312 (Subpart G) Added; interim 35093
422.350—422.356 (Subpart H) Nomenclature change; interim 35098, 35099
422.350 (b) amended; interim 25376
(a)(1) and (b) amended; interim 35098
422.352 (a)(1) and (b)(2) amended; (c) revised; interim 35098
422.354 Introductory text, (a)(1), (2) and (c) amended; (b) revised; interim 35098
422.356 (a)(3)(ii) amended; interim 35098
422.370 Added; interim 25376
Introductory text amended; (1) and (2) redesignated as (a) and (b); interim 35098
422.372 Added; interim 25376
Revised; interim 35098
422.374 Added; interim 25377
(b) revised; interim 35098
422.376 Added; interim 25377
422.378 Added; interim 25377
422.380 Added; interim 25377
422.382 Added; interim 25377
422.384 Added; interim 25378
(b)(3) revised; interim 35098
422.386 Added; interim 25378
422.388 Added; interim 25379
422.390 Added; interim 25379
422.400—422.404 (Subpart I) Added; interim 35099
422.500—422.524 (Subpart K) Added; interim 35099
422.550—422.553 (Subpart L) Heading added; nomenclature change; interim 35067
422.550 Redesignated from 417.520; interim 35067
(b), (c)(2) and (e) amended; (d)(2) revised; interim 35106
422.552 Redesignated from 417.522; interim 35067
(a)(1) amended; interim 35106
422.553 Redesignated from 417.523; interim 35067
Amended; interim 35106
422.560—422.622 (Subpart M) Added; interim 35107
422.641—422.698 (Subpart N) Added; interim 35113
422.750—422.760 (Subpart O) Added; interim 35115
424 Decision **59818**
Technical correction 11417
424.3 Amended; interim 26311
424.20 Introductory text and (a) revised; interim 26311
424.32 (a)(2) revised 20130
(a)(2) revised; (a)(5) added; interim 26311
424.55 (b)(1) and (2) revised 20130
433.68 (e)(2)(iv) amended **53572**
440 Technical correction 11417
440.70 (d) revised 310
441.10 (h) through (k) redesignated as (i) through (l); new (h) added 310
441.15 (d) added 310
441.16 Redesignated as 441.17; new 441.16 added 310
(i)(1)(i) revised 10731
(h)(2), (3)(i), (i) heading, (1)(i), (ii) and (l) revised; (i)(2) through (5) redesignated as (i)(3) through (6); (g)(7), new (i)(2) and (m) added 29654
441.17 Redesignated from 441.16 310
482.12 (c)(1)(v) amended; (c)(1)(vi) added; (c)(4)(ii) revised 20130
(c)(5) removed 33874
482.45 Added 33875
483.20 (d) through (f) redesignated as (k) through (m); (b) and (c) revised; new (d) through (j) added **67211**
(b)(4) revised; interim 26311
483.75 (h)(1) revised; interim 26311
483.315 (Subpart F) Added **67212**
485 Technical correction 11417
485.603 (c) revised 26359
485.641 (b)(4) revised 26359
485.645 Revised 26359
488 Technical correction 11417
489 Technical correction 11417
489.1 (e) added 312
489.10 (e) and (f) added 312
489.20 (s) added; interim 26312
489.23 Added **56111**
489.28 Added 312
489.53 (a)(14) added **56111**
489.60—489.73 (Subpart F) Added 313
489.60 Amended 29655
489.62 Introductory text amended 29655

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489.65 (g) added 29655
489.66 (b) and (c)(1) revised; (e) added 29655
489.67 (a)(1) revised 10731
(a) revised; (b) through (e) redesignated as (c) through (f); new (b) added 29656
489.71 Revised 29656
489.73 Redesignated as 489.74; new 489.73 added 29656
489.74 Redesignated from 489.73 29656
493 Authority citation revised 26732
493.2 Amended 26732
493.501 Removed 26732
493.503 Removed 26732
493.504 Removed 26732
493.506 Removed 26732
493.507 Removed 26732
493.509 Removed 26732
493.511 Removed 26732
493.513 Removed 26732
493.515 Removed 26732
493.517 Removed 26732
493.519 Removed 26732
493.521 Removed 26732
493.551 Added 26732
493.553 Added 26732
493.555 Added 26733
493.557 Added 26733
493.559 Added 26734
493.561 Added 26734
493.563 Added 26734
493.565 Added 26735
493.567 Added 26735
493.569 Added 26735
493.571 Added 26735
493.573 Added 26735
493.575 Added 26736
493.803 (b) revised; (c) added 26737
493.1771 Added 26737
493.1773 Added 26737
(b) through (g) corrected 32699
493.1775 Revised 26737
493.1776 Removed 26738
493.1777 Revised 26738
493.1780 Revised 26738
498 Technical correction 11417

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50 9499
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401 14506
403 14506
405 ..... 14506, 25576, 26565, 30818
410 ..... 14506, 30818, 33882
411 ..... 1659, 11649, 14506
412 ..... 25576, 26565
413 ..... 14506, 25576, 26565, 27251, 30818
414 59267
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415 30818
416 66726
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435 ..... 1659, 11649
447 14506
455 ..... 1659, 11649
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1001 ..... 63689, 65049
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1005 14393
1006 14393

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

11.18 (a)(4) and (5) revised 60459
11.33 (a) amended 60459
11.40 (a) amended 60459
20 Revised 53720
Regulation at 62 FR 53720 confirmed; authority citation revised 34258
20.201 (a) revised 34259
36.2 (h) revised 52510

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

418 Revised 66467

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Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1862.0-3—1862.6 (Subpart 1860) Removed....59821
2090 Authority citation revised....51376, 52036
2091.8 Redesignated from 2111.4 and revised....52036
2093.0-3—2093.5-1 (Subpart 2093) Removed; eff. 10-31-97....51376
2110 Removed....52034
2111.4 Redesignated as 2091.8....52034
2130 Removed....52034
2201.1-2 (e) added....23681
2202.1 (Subpart 2202) Removed....23682
2760 Removed....62267
3715.0-5 Amended....59822
3715.7-1 (a)(2)(ii) revised....59822
3744.1—3744.2 (Subpart 3744) Removed....65378
3745.1 (Subpart 3745) Removed....65378
3811.2-7 Removed....65378
3824.1 (Subpart 3824) Removed....65378
3825.0-3—3825.1 (Subpart 3825) Heading revised; nomenclature change....65378
4750.3-3 (b) revised; (c) removed....18340
5040 Revised....13132
5511.1-2 Removed; eff. 10-31-97....51377
5511.1-4 Removed; eff. 10-31-97....51377
5511.2-1 (a) and (b) designation removed; eff. 10-31-97....51377
5511.2-5 Removed; eff. 10-31-97....51377
5511.4 (b)(2) removed; eff. 10-31-97....51377
8372 Notice....6075
8560 Notice....6075

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4....51822, 64544, 68244....11634
414....68492....8160, 9992, 12068
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2360....3531
2620....14874
3100....1936, 9171
3106....1936, 9171
3130....1936, 9171
3160....1936, 9171
3820....67602
4200....13608
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

11 Authority citation revised....1066
11.43 Revised; interim....1066
11.44 Removed; interim....1067
11.48 Revised; interim....1067
11.61 Revised; interim....1068
11.62 Revised; interim....1069
11.63 Revised; interim....1069
11.64 Revised; interim....1069
11.65 Revised; interim....1069
59 Authority citation revised....55715
59.1 Amended....55715
59.24 (a) revised....55715
60 Authority citation revised....55716
60.2 (a) revised....55716
60.3 (f) revised....55716
61 Appendixes A(1), A(2) and A(3) amended....66029
62 Appendix A amended....32761
64 Authority citation revised....55716
64.3 (a)(1) table amended; (b) revised....55716
64.6 Table amended....54387, 59291, 60663, 62268
Table amended....6870, 6872, 9951, 13544, 20323, 20324, 24749, 27497, 30643
65 Authority citation revised....55717
65.4 Tables amended....51786, 54388, 54391, 61248, 67738, 67741
Tables amended; interim....51789
Tables amended; interim....3040, 10145, 14824, 15096, 17732, 28262, 28266
Tables amended....3042, 10147, 11610, 14822, 17733, 28268, 28269
65.14 Revised....55717
65.16 Revised....27857
65 Appendix A removed....27857
67.11 Flood elevation determinations....51792, 54393, 61249, 67743
Flood elevation determinations....3044, 10150, 14827, 15099, 17735, 28274, 28280
70 Authority citation revised....55718
70.1 Revised....55718
70.3 (a) revised....55719
70.4 (a) and (b) revised....55719
70.5 (c) revised....55719
75 Authority citation revised....55719
75.1 Revised....55719
75.10 Revised....55719

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75.11 (a)(4), (5) and (7) revised **55719**
75.13 (c) Revised **55719**
206 Waiver **52952**
206.2 (a)(3) revised 17110
206.206 Revised 17110
(e)(2) correctly revised 24970
206.226 (b)(3) revised 5897
206.440 Revised 17111

Proposed Rules:

61 ..... **52304, 53589**
67 ..... **51822, 54410, 61259, 67819** 3063, 10168, 14874, 15133, 17793, 28322, **28331**
206 ..... **62540, 62542** 10816, 24143, 25010

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

Subtitle A Clarification **67688, 67689**
74.44 Corrected **51377**
144 Clarification **67688, 67689**
146 Authority citation revised **66961**
Clarification **67688, 67689**
146.136 (Subpart C) Added; interim **66961**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.40 Removed **64303**
205.41 Removed **64303**
205.42 Removed **64303**
205.43 Removed **64303**
232 Removed **64303**
233.120 Removed **64303**
235.111 Removed **64303**
235.112 Removed **64303**
235.113 Removed **64303**
250 Removed **64303**
251 Removed **64303**
255 Removed **64303**
256 Removed **64303**
257 Removed **64303**

Chapter VI—National Science Foundation (Parts 600—699)

672.24 Revised 32762

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1110.1 Revised **66826**
1110.2 Amended **66826**
1110.13 (a), (b) and (c) revised **66826**
1156 Added 6876
1180—1199 (Subchapter E) Heading revised **66530**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

Chapter XII Heading revised 4598
1201 Revised 4598
1215 Redesignated as Part 2507 26489

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301.31 OMB number 2313
1302.2 Amended 34329
1302.30—1302.32 (Subpart D) Added 34329
1304.20 (b) heading, (1), (c)(4) and (f)(1) amended; OMB number 2313
1304.21 (b)(1) amended 2313
1304.22 OMB number 2313
1304.23 OMB number 2313
1304.40 (a)(2) and (3) amended; OMB number 2313
1304.41 (b) amended; OMB number 2314
1304.50 (b)(3), (d)(1)(iii), (e)(3) and Appendix A amended; (d)(1)(ix) removed; (d)(1)(x), (xi) and (xii) redesignated as (d)(1)(ix), (x) and (xi); OMB number 2314
1304.51 (a)(1)(iii) amended; OMB number 2314
1304.52 (j)(1) amended; OMB number 2314
1304.60 OMB number 2314
1305.2 (k) through (r) redesignated as (l) through (s); (g),

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(i) and new (m) revised; new (k) added 12657
1305.3 (b) and (d) amended; OMB number 2314
(a) revised; (b) through (f) redesignated as (c) through (g); new (b) added 12657
1305.4 (a) amended; (b) revised 12657
1305.6 (b) revised; (c) amended 12658
1305.7 (c) revised 12658
1306.30 (c) amended 2314

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised 11376
1630 Revised **68224**
Authority citation corrected 1532
1630.2 (e) and (f) corrected 1532
1630.3 (c) introductory text corrected 1532
1630.12 (b) corrected 1532
1643 Added **67749**
Technical correction 9310
1644 Added 33254

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2507 Redesignated from Part 1215 and revised 26489
2510.20 Amended; interim 18137
2516.710 Revised; interim 18137
2517.710 Revised; interim 18137
2519.710 Revised; interim 18138
2521.30 (h) revised; interim 18138
2540.110 Revised; interim 18138

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60 14059
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271 ..... **62124**
272 ..... **62124**
273 ..... **62124**
274 ..... **62124**
275 ..... **62124**
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303 ..... **52306**
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307 ..... 10173, 14402
670 29963
672 30438
673 30438
1215 12068
1302 ..... **65778**
1303 35554
1602 11393
1606 30440
1623 30446
1625 30440
1644 8387
2507 12068

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(4) added **67532**
2 Authority citation revised **67514**
2.01–25 (a)(1)(ix) added; (a)(2) revised **67514**
4.05–10 Revised 19192
8 Revised **67532**
31 Authority citation revised **67514**
31.01–3 Revised **67536**
31.40–30 Added **67514**
31.40–40 (b) revised **67514**
56 Policy statement 10547
69.27 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added **67536**
71 Authority citation revised **67514**
Policy statement 10777
71.15–5 Revised **67536**
71.75–13 Added **67514**
71.75–20 (a) revised **67514**
91 Authority citation revised **67514**
91.15–5 Revised **67536**
91.60–30 Added **67514**
91.60–40 (b) revised **67515**
107 Authority citation revised **67515**
107.205 Revised **67536**
107.415 Added **67515**
114.400 (b) amended **64305**
115 Authority citation revised **67515**
115.925 Added **67515**
116.439 (e) amended **64305**
116.500 (h) amended **64305**
117.130 (b) amended **64305**
117.150 (a) amended **64305**
117.175 (f)(4) amended **64305**
117.200 (a)(1) through (4) amended **64305**
117.210 (c) amended **64305**
118.320 (c)(1) amended **64305**

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121.710 Amended 64306
122.604 (a) introductory text, (d) and (e) introductory text amended 64306
126 Authority citation revised 67515
126.480 Added 67515
153.12 Introductory text revised 67537
154.19 (a) introductory text revised 67537
175 Authority citation revised 67515
175.400 Amended 64306
Corrected 65739
175.540 (d) added 67515
176 Authority citation revised 67515
176.925 Added 67515
176.930 Revised 67515
177.500 (j)(1) amended; (o)(1) revised 64306
178.330 (a)(4)(v) amended 64306
180.130 (b) amended 64306
180.210 (d) amended 64306
185.604 (a) introductory text, (d) and (e) introductory text amended 64306
189 Authority citation revised 67515
189.60–30 Added 67515
189.60–40 (b) revised 67515

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

201 Authority citation revised 9157
201.2 Amended 9157
201.21 Removed 9157
201.85 Amended 9157
201.86 Added 9157
201.87 Amended 9157
201.186 (Subpart U) Removed 9158
221.1 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (b) amended 6880
221.3 (f), (k) and (t)(2) removed; (t)(1) redesignated as (t); (g) through (j) and (l) through (w) redesignated as (f) through (u) 6880
221.7 (b)(1)(ii) amended; (b)(1)(v) and (2)(iv) removed 6880
221.11 (a) introductory text and (1) amended 6880
221.13 (a)(1) amended 6880
(a)(1)(iii) removed; (a)(1)(iv) redesignated as (a)(1)(iii); (a)(3) amended 6881
221.15 (c)(4)(i) amended 6881
221.17 Amended 6881
221.19 Amended 6881
221.21—221.37 (Subpart C) Removed 6881
221.61 Note amended 6881
360 Removed 28912
382 Revised 3828
383 Removed 61648

Chapter III—Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)

401 Transferred from 33 CFR Part 404; authority citation revised 35139
401.100 Amended 35140
401.110 (a)(2) and (9) revised 35139
401.210 (a)(4), (7), (8) and (b) amended 35140
401.211 (a)(1), (b) and (e) amended 35140
401.220 (b) amended 35140
401.230 (b) amended 35139
(c), (d) and (e) amended 35140
401.240 (a), (b) and (d) amended 35140
401.250 (d) revised 35139
(c) amended 35140
401.320 (b), (d)(2), (3) and (4) amended 35140
401.330 (a) amended 35140
401.335 (a)(1) amended 35140
401.340 (a) and (c) amended 35140
401.400 (c) amended 35140
401.405 Introductory text amended 35140
401.410 Introductory text amended 35140
401.420 (a) amended 35140
401.425 Amended 35140
401.431 (e) amended 35139
(a), (f) and (g) amended 35140
401.438 Amended 35140
401.451 (a)(1) amended 35140
401.510 (b)(5) amended 35139
(b)(2) and (3) introductory text amended 35140
401.600 (a) and (b) amended 35140
401.615 (b) amended 35140
401.620 (a) and (b) amended 35140
401.645 Amended 35140
401.650 Amended 35140
401.700 (b) amended 35140
401.710 (d), (e) and (g) amended 35140

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401.720 (b) amended 35140
402 Transferred from 33 CFR Part 405; authority citation revised 35139
402.100 Amended 35140
402.210 (a) amended 35140
402.320 (a) introductory text amended 35140
403 Transferred from 33 CFR Part 406; authority citation revised 35139
403.100 Amended 35140
403.120 (b) amended 35140
403.400 (c) amended 35140
404 Transferred from 33 CFR Part 407 35139
Authority citation revised 35140
404.1 (a) and (b) amended 35140
404.10 (a) amended 35140
404 Appendixes A and C amended 35140

Chapter IV—Federal Maritime Commission (Parts 500—599)

514.7 (g)(1) revised **63463**
586 Petition denial **54396**
586.2 Suspended **61649**

Proposed Rules:

1—199 (Ch. I) 5767, 9916, 26756
1 26566
5 ..... 16731, 27700
10 ..... **55548, 60122, 61585**
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27 ..... **52057, 60939**
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32 ..... **52057**
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197 34840
298 7744

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order **56111**
0.231 (i) revised 24124
0.291 (d) revised 1035
0.311 (i) existing text redesignated as (i)(1); (i)(2) added 29658
0.314 (e)(1) and (j) revised 29658
0.401 (a)(1)(iii) added 24124
0.408 Revised (OMB numbers) **52257**
0.441 Revised **51797**
0.443 Revised **51797**
0.453 Introductory text revised **51797**
0.455 Introductory text revised **51797**
0.460 (a) revised **51797**
0.461 (a), (h) and (i) redesignated as (a)(1), (i) and (j); (a)(2) and new (h) added; (d)(1), (3), (g) introductory text, (3), concluding text, new (i)(1), (j), (k) introductory text and (3) revised **51797**
Corrected 25778
(i)(1) correctly designated 25779
0.467 (a)(1) table and (2) revised 8140
1 Deadline establishment 2170
Order 10153
Petitions 24126
1.4 (f) and (h) introductory text revised 24124
1.46 (b) and (c) revised 24124
1.47 (b) and (d) revised; (h) added 1035
(d) revised 24125
1.49 (a) revised; (f) added 24125
1.51 (e) revised 24125
1.52 Revised 24125
1.80 (b)(4) note amended 26992
1.401 (b) revised 24125
1.403 Revised 24125
1.419 (d) and (e) added 24125
1.429 (d) through (h) revised 24126
1.720 Introductory text and (h) revised; (j) added 1035
1.721 (a)(5) through (8) revised; (a)(9) through (14), (c) and (d) added 1035
1.722 Revised 1036
1.724 (a), (b) and (c) revised; (f) through (j) added 1037
1.725 Revised 1037
1.726 Revised 1037
1.727 (b) thorugh (e) revised; (g) and (h) added 1038
1.729 Revised 1038
1.730 Removed 1039
1.731 Heading and (a) revised 1039
1.732 (a) through (d) and (f) revised; (h) added 1039

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1.733 (a) introductory text, (2), (4), (5), (6) and (b) through (e) revised; (f), (g) and (h) added 1039
1.734 (c) revised; (d) added 1040
1.735 (b), (d), (e) and (f) revised 1040
1.736 Added 1041
1.767 Regulation at 60 FR 15726 eff. 6–13–96 ..... **51378**
1.1103 Amended 29658
1.1105 Table amended 1041
1.1157 (d) added **59825**
1.1159 (e) added **59825**
1.1162 (c)(1) and (2) added **59825**
1.1206 (b)(1) and (2) revised 24126
1.1307 (b)(4) introductory text correctly revised **61448**
1.1402 (c) revised; (i) through (m) added 12024
1.1403 Heading revised; (e) added (effective date pending) 12025
1.1404 (g)(12) and (h) through (k) redesignated as (g)(13) and (k) through (n); new (g)(12), (h), (i) and (j) added (effective date pending) 12025
1.1409 (e) revised; (f) added (effective date pending) 12025
1.1417 Added (effective date pending) 12026
1.1418 Added (effective date pending) 12026
1.2101 Revised 2340
1.2102 (a) and (b) revised; note added 2340
(a)(10) added; (b)(4) introductory text revised 6103
Correctly revised 10780
1.2103 (a) revised; (d) added 2341
1.2104 (d) and (g) revised 2341
1.2105 Revised 2341
(a)(2)(x) correctly added 29958
1.2107 (b) and (c) revised 2342
(c) corrected 12659
1.2108 (b) and (c) revised 2343
1.2109 (a), (b) and (c) revised 2343
1.2110 (e)(4)(i) revised **55356**
Revised 2343
(f)(2) corrected 12659
(f)(4)(ii), (iii) and (iv) revised 17122
1.2111 (c) and (d) revised; (e) added 2346
1.2112 Added 2347
1.2113 Added 2348
2.106 Table amended 6674
2.803 (e)(3) revised 31646
2.1204 (a)(3) and (4) revised 31646
5.70 Added **55529**
11.11 Revised 29662
11.13 Revised 29663
11.15 Revised 29663
11.17 Introductory text amended 29663
11.19 Revised 29663
11.21 Introductory text amended; (a) revised 29663
11.31 (b) and (c) amended 29663
11.35 Revised 29664
11.41 Revised 29664
11.46 Amended 29664
11.51 (e) through (l) redesignated as (f) through (m); new (e) added; (b) and (f) through (m) revised 29664
11.52 (a) amended; (b), (c), (d)(1), (2) and (e) introductory text revised 29665
11.53 (a)(2) revised 29666
11.54 (b)(8) through (14) redesignated as (b)(9) through (15); new (b)(8) added; (b) introductory text, new (10), new (11), new (14), (c) and (d) revised 29666
11.55 (a) amended; (c) introductory text, (4) and (7) revised 29666
11.61 (a)(1)(iii) redesignated as (a)(1)(v); new (a)(1)(iii), (iv), (2)(ii)(C), (D), (E) and (v) added; (a)(1)(ii), new (v), (2)(ii)(B), (6) and (b) revised 29666
15.120 Added 20133
15.205 (d)(5) added **58658**
15.209 (g) revised **58658**
15.242 Added **58658**
20.3 Amended 2637
20.18 Revised 2637
20.20 Added **63871**
21.113 Heading revised; (d) added **55530**
21.940 Added 29668
21.959 (a)(2) revised 2348
21.960 (b)(4) and (d)(1) revised 2348
22 Authority citation revised 20338
22.137 (a)(1) and (2) added; (b) amended 10344
22.369 Heading revised; (d) added **55530**

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22.903 Revised **63872**
Removed 20338
23.20 (f) added **55530**
24 Deadline establishment 2170
Order 10153
24.18 Added **55531**
24.304 (a)(2) revised 2348
24.309 (b) and (f) revised 2348
24.439 (a)(3) added 10344
24.704 (a)(2) revised 2349
24.709 (b)(9) added **55356**
(b)(9) revised 17122
24.711 (b) and (c) revised 2349
24.712 (b) added 2349
(c) correctly designated as (b) 12659
24.716 (c) and (d) revised 2349
24.717 (c) revised 2349
24.839 (a)(1) and (2) added 10344
25.113 (b) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2–9–98 6497
25.115 (c) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2–9–98 6497
25.130 (d) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2–9–98 6497
25.131 (b) and (j) revised (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2–9–98 6497
25.137 Added (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2–9–98 6497
25.142 (d) and (e) added **59295**
25.143 Corrected **51378**
25.145 Added (OMB number pending) **61456**
25.201 Amended **59296**
25.203 (i) added **55531**
25.204 (g) added **61457**
25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added **61457**
25.212 (c) correctly revised **51378**
25.259 Added **59296**
25.260 Added **59296**
26.105 Added **55531**
27.62 Added **55532**
27.203 (b) revised 2349
27.209 (d) revised 2349
27.324 (a)(3) added; (b)(3) revised 10344
36.125 (a)(5) revised 2124
36.601 (c) revised 2124
36.612 (a) introductory text revised 2124
36.613 (a) introductory text amended 2124
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22.1402 Revised; interim 34074
22.1403 (a) introductory text revised; (b)(1), (2) and (d) amended; interim 34074
22.1404 Revised; interim 34074
22.1405 Amended; interim 34074
22.1406 Amended; interim 34074
22.1407 Introductory text revised; interim 34074
22.1408 (a) introductory text and (1) revised; interim 34074
23.1004 (b) amended 9051
23.1000—23.1005 (Subpart 23.10) Regulation at 62 FR 12697 confirmed 9051
25.105 (e) revised 34076
25.202 (d) amended 34076
25.207 (d)(1) and (2) amended 34076
25.305 (c)(2) amended 34076
25.402 (b) revised 9060
(a)(1), (3)(i), (ii) and (g) amended 34076
25.408 (a)(3) and (4) amended 34076
25.701 (a)(4) and (5) amended; (a)(6) added 34077
25.1000 Revised **64930**
25.1002 (c)(2) revised **64930**
(a)(1), (2) and (3)(i) amended 34076
25.1003 (a) and (b)(1) amended 34076
27.405 (a)(1)(vii) and (viii) amended; (a)(1)(x) added 34077
29.401–6 (b) introductory text and (c)(1) amended **64930**
30.101 (c) revised 9060
31.002 Amended 34080
31.109 (f)(3) amended 9061
31.205–6 Regulation at 62 FR 270 confirmed; (p)(1) revised **64931**
(p) revised; interim 9067
31.205–10 (a)(5) revised 9067
31.205–18 (a) amended; (c) and (d) heading revised; (e)(3) added **64932**
31.205–46 (a)(3)(iv) revised **64933**
Regulation at 62 FR 64933 confirmed 34078
31.205–52 Revised 9068
32.502–12 (c) amended 9061
32.503–3 (b)(2) amended 9061
32.602 Regulation at 61 FR 41470 confirmed **64914**
32.603 Regulation at 61 FR 41470 confirmed **64914**
32.1103 (a)(1) and (b)(2) amended **64926**

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33.101 (b)(1) amended; (c) removed **64933**
33.102 Regulation at 61 FR 41470 confirmed **64914**
(a) amended; interim 35724
33.104 Regulation at 61 FR 41470 confirmed **64914**
(a)(3)(iii) redesignated as (a)(3)(iv); new (a)(3)(iii) added; new (a)(3)(iv)(C) removed; new (a)(3)(iv)(D) redesignated as (a)(3)(iv)(C); new (a)(3)(iv)(B) and (h) revised (a)(4)(ii)(A), (B), (6) and (e) amended **64933**
(h)(5) corrected 1532
33.105 Regulation at 61 FR 41470 confirmed **64914**
34.001 Regulation at 61 FR 41470 confirmed **64914**
35.009 Amended 34060
36.602–1 (a)(6) correctly removed; (a)(7) correctly redesignated as new (a)(6) **51379**
36.606 (e) revised 34060
37.103 Corrected **51379**
37.202 Regulation at 61 FR 41470 confirmed **64914**
38.000 Regulation at 61 FR 41470 confirmed **64914**
39 Regulation at 61 FR 41470 confirmed **64914**
39.002 Amended 9068
39.103 Added 9068
41.202 (c)(1) amended **64926**
42 Heading revised 9062
42.000 Revised 9062
42.001 Revised 9062
42.002 Revised 9062
42.003 Revised 9062
42.101—42.103 (Subpart 42.1) Revised 9062
42.201—42.203 (Subpart 42.2) Revised 9062
42.203 (a) amended **64940**
42.301 Revised 9063
42.302 (a) introductory text, (11) introductory text, (iv), (13), (20), (32), (61) and (63) revised 9063
42.602 (c)(2) and (d) revised 9064
42.603 (a) introductory text and (b)(1) introductory text amended 9064
42.701 Amended 9064
42.703–1 (a) amended; (c) revised 9064
42.703–2 (d) amended 9064
42.704 (a), (b) and (c) revised 9064
42.705–1 (b)(1) revised **64915**
(a) introductory text, (3), (4), (b)(1), (2) and (3) revised 9064
42.705–2 (b)(1) revised **64916**
(a)(2) introductory text, (iv) and (b) revised 9065
42.705–3 (a)(2) revised 9065
42.1001—42.1008 (Subpart 42.10) Removed **64932**
42.1203 (b) and (c) revised; (d), (e) and (f) redesignated as (f), (g) and (h); new (d) and new (e) added **64934**
(c) corrected 1533
42.1204 (b) through (e) redesignated as (c), (e), (h) and (i); heading, (a) introductory text, (1), (2) introductory text and new (e) revised; new (b), new (d), (f) and (g) added **64935**
(g) corrected 1533
43.301 (a)(2)(iii) amended **64926**
44.000 Revised 34060
44.102 Removed 34060
44.201 Heading revised 34060
44.201–1 Revised 34060
44.201–2 Revised 34060
44.201–3 Removed 34060
44.201–4 Removed 34060
44.202–1 (b) and (c) revised 34060
44.202–2 (a) introductory text amended 34060
44.204 (b) amended 9069
Revised 34060
45.607–2 (b) amended 34080
45.608–1 Regulation at 61 FR 41471 confirmed **64914**
45.608–5 Regulation at 61 FR 41471 confirmed **64914**
46.103 (d) revised 9065
46.104 (f) revised 9065
46.502 Amended 9065
46.801 Regulation at 61 FR 41471 confirmed **64914**
47.301–3 (c) introductory text amended 9065
47.303–17 (d)(1), (2) and (e) amended **64936**
48.104–3 Revised; interim 34079
49.002 (a) amended **64927**
49.501 Amended **64927**

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51.103 Regulation at 61 FR 41471 confirmed **64914**
52.101 (e)(2)(i) amended **64927**
52.102 Revised **64927**
52.102–1 Removed **64927**
52.102–2 Removed **64927**
52.204–5 Regulation at 61 FR 67413 confirmed 9050
52.204–6 Regulation at 61 FR 67413 confirmed; amended 9050
52.211–1 Revised 34063
52.211–2 Revised 34063
52.212–1 Amended 9050, 34063
52.212–3 Amended; interim 35724
52.212–4 Amended 9052
52.212–5 Regulation at 61 FR 41471 confirmed **64914**
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52.213–1 Revised **64927**
52.213–2 Introductory text amended **64928**
52.213–3 Introductory text amended **64928**
52.213–4 Added **64928**
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52.215–2 Amended 9054
52.216–7 Amended **64916**
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52.216–15 Amended **64916**
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52.219–1 Amended 9069
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52.219–2 Introductory text amended; interim 35725
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52.219–16 Regulation at 54 FR 30710 confirmed 34064
Amended 34068
52.219–22 Added; interim 35725
52.219–23 Added; interim 35725
52.222–35 Amended 9059
52.222–36 Revised; interim 34075
52.222–37 Amended 9059
52.222–46 Regulation at 61 FR 41471 confirmed **64914**
52.223–5 Regulation at 62 FR 12697 confirmed 9051
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52.225–11 Amended 34077
52.230–1 Amended 9061
52.230–2 Amended 9054
52.230–3 Amended 9054
52.230–5 Amended 9061
52.233–2 Regulation at 61 FR 41471 confirmed **64914**
52.233–3 Regulation at 61 FR 41472 confirmed **64914**
52.239–1 Regulation at 61 FR 41472 confirmed **64914**
52.244–1 Removed 34061
52.244–2 Revised 34061
52.244–3 Removed 34062
52.244–4 Amended; heading and introductory text revised 34062
52.244–5 Introductory text amended 34062
52.244–6 Amended 9059
52.247–64 (f) corrected **51379**
52.252–1 Revised **64928**
52.252–2 Revised **64929**
53 Technical correction 648
53.101 Amended 34080
53.204–2 (a) amended **64940**
53.209–1 (d) amended **64937**
53.213 (a) through (e), (f)(1) and (2) amended **64929**
Corrected 1532
53.214 (c) amended **64940**
53.215–1 (c) amended **64940**
53.219 Regulation at 61 FR 67413 confirmed 9050
(a) and (b) amended 34068
53.242–1 Amended **64935**
53.243 Amended **64929, 64936**
53.245 Regulation at 61 FR 41472 confirmed **64914**
53.249 (a)(2), (3) and (4) amended **64940**
53.301–33 Revised **64941**
53.301–279 Revised **64942**
53.301–294 Regulation at 61 FR 67413 confirmed 9050
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53.301–1406 Revised **64938**
53.301–1435 Revised **64943**
53.301–1436 Revised **64947**
53.301–1437 Revised **64951**

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201.107 Added 11528
201.201–1 (c) revised; (d) amended 11528
201.304 Amended 11528
202.101 Amended 11528
204.201 (c) added; (e)(i) introductory text and (D) revised 31935

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204.202 (1)(ii)(B) and (iv) revised 31935
204.805 Amended 11528
204.7300—204.7304 (Subpart 204.73) Added 15317
204.7303 (a)(2) and (4) corrected 20447
209 Technical correction 17124
209.104–1 (g)(iii) added; interim 11851
(g)(1)(A) introductory text and (*1*) revised; interim 14837
209.104–70 (c) added; interim 11851
(a) revised; interim 14837
209.403 Amended 11528
209.405–2 Added; interim 14837
209.409 Added; interim 14837
212 Technical correction 17124
212.301 Amended 11528
(f)(iv) added 15317
212.503 (a)(xii) added; interim 11851
213 Technical correction 17124
213.005 Added; interim 11851
213.7001—213.7003–2 (Subpart 213.70) Added; interim 33587
214.205–5 (d) amended 11528
215.608 (a)(1) amended 11528
215.805–5 (a)(1)(A)(*1*) and (*2*) amended 11528
216.203–4 (d)(xvi) amended 11529
216.301 Removed 11529
216.301–3 Removed 11529
216.403–70 Removed 11529
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219.703 (a) introductory text revised 11530
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222.1304 Added; interim 11851
222.7300—222.7302 (Subpart 222.73) Added; interim 31936
223.404 (b)(3) introductory text and (4) revised 11531
225.000–70 (c), (j) and (m) revised 11531
225.000–71 (a)(1)(i) and (c)(2) revised 11531
225.102 (a)(3)(A) revised; (a)(3)(B) and (C) redesignated as (a)(3)(C) and (D); new (a)(3)(B) added 11531
225.105 Amended 11531
225.109 (a) and (d) introductory text amended; (d)(i) added 11532
225.109–70 Revised 11532
225.302 (a)(iii) and (iv) revised; (a)(v) added; (b)(i) amended 11532
225.402 (a)(1) revised 11532
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225.602 (3) introductory text revised 11533
225.603 (1) redesignated as (a); new (a) revised; (b)(i)(D), (E) and (ii) amended 11533
225.605–70 Revised 11534
225.872–1 (d) removed; interim 5745
Regulation at 63 FR 5745 confirmed 28284
225.872–4 (c) introductory text and (2) amended 11534
225.7005 Revised; interim 5745
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225.7007–1 Revised; interim 5745
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225.7007–3 Revised; interim 5745
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225.7007–4 Revised; interim 5745

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833.103 (a)(1) revised; (a)(2)(ii) amended; (a)(3) and (4) removed; (a)(5) redesignated as (a)(3); new (a)(3)(vi) removed; new (a)(3)(vii), (viii) and (ix) redesignated as (a)(3)(vi), (vii) and (viii) 15318
833.103 (c) removed; (b) redesignated as new (c); new (b) and (f) added; (e) revised 15319
833.105 Removed 15319
833.106 Revised 15319
833.214 Added 15319
852.210–70 Redesignated as 852.211–70 17338
852.210–71 Redesignated as 852.211–71 17338
852.210–72 Redesignated as 852.211–72 17338
852.210–73 Redesignated as 852.211–73 17338
852.210–74 Redesignated as 852.211–74 17338
852.210–75 Redesignated as 852.211–75 17338
852.210–76 Redesignated as 852.211–76 17338
852.210–77 Redesignated as 852.211–77 17338
852.211–70 Redesignated from 852.210–70 17338
852.211–71 Redesignated from 852.210–71 17338
852.211–72 Redesignated from 852.210–72 17338
852.211–73 Redesignated from 852.210–73 17338
852.211–74 Redesignated from 852.210–74 17338
852.211–75 Redesignated from 852.210–75 17338
852.211–76 Redesignated from 852.210–76 17338
852.211–77 Redesignated from 852.210–77; introductory text amended 17338
852.211–78 Redesignated from 852.212–70; introductory text amended 17338
852.212–70 Redesignated as 852.211–78 17338
852.229–70 Introductory text amended 17339
852.229–71 Introductory text amended 17339
852.233–70 Revised 15320
852.233–71 Added 15320
852.236–73 Removed 15320
852.271–70 Amended 17339
870 Authority citation revised 17339
870.112 (a), Footnote 1, (b) and (c)(1) amended 17339

Chapter 9—Department of Energy (Parts 900—999)

901.601 Existing text designated as (a); (b) added **53756**
903.104–10 Redesignated from 903.104–11 ..... **53756**
903.104–11 Redesignated as 903.104–10 ..... **53756**

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TITLE 48 Chapter 9—Con.

904.804–1 Heading and (b) revised **53757**
912 Added **53757**
913.505–1 Revised **53757**
915.207–70 Added 10503
915.305 (Subpart 915.3) Added 10504
915.804–1 Redesignated from 915.804–3 ..... **53757**
915.804–3 Redesignated as 915.804–1 ..... **53757**
915.804–6 Revised **53757**
915.806–2 Added **53757**
915.1003 (Subpart 915.10) Removed **53757**
916.504 Added **53757**
916.505 Added **53757**
927.300 (b) amended 10505
927.303 (b) amended 10505
927.370 Removed 10505
927.401 Removed 10505
927.402–1 (b) revised; (c) through (g) removed; (h) redesignated as (c) 10505
927.402–3 Removed 10505
927.403 Revised 10505
927.404 Added 10505
927.408 Added 10506
927.409 Added 10506
927.7000—927.7005 (Subpart 927.70) Removed 10507
932.006–4 Added 5273
932.402—932.407 (Subpart 932.4) Heading revised **53758**
933.102 Added **53758**
939 Revised **53758**
944 Removed **53758**
952.204–70 Amended; heading revised **51803**
952.227–13 Amended 10507
952.227–14 Added 10507
952.227–73 Removed 10508
952.227–75 Removed 10508
952.227–76 Removed 10508
952.227–77 Removed 10508
952.227–78 Removed 10508
952.227–79 Removed 10508
952.227–83 Removed 10508
952.227–84 Revised 10508
970.0404–1 Amended **51803**
970.0404–2 (e) added **51803**
970.0404–4 (a)(1) revised; (a)(2) added **51803**
970.1508–1 Revised **53758**
970.2201 (b)(1)(ii) revised **51803**
970.2501 (Subpart 970.25) Added 5274
970.2602–2 Heading revised; existing text designated as (a); (b) added **63425**
970.2705 Revised 10508
970.2706 Revised 10508
970.2707 Added 10509
970.3101–3 (b), (c) and (d) added 5274
970.3101–7 Added 5274
970.3102 Exhisting text designated as (a); new (a) amended; (b) added 5274
970.3102–2 (i)(2) introductory text amended; (i)(2)(iv), (v), (vi) and (p) added 5275
(q) added 25780
970.3102–5 Revised 5275
970.3102–7 Revised 5275
970.3102–17 (b) heading revised; (b)(3) added 5275
970.3103 (b) revised 5276
970.3272 Added 5276
970.5204–1 Revised **51804**
970.5204–13 (d)(8)(iv), (e)(11) and (31) revised; (e)(37) and (38) added 5276
(d)(8)(viii) added 25780
970.5204–14 (d)(8)(iv), (e)(9) and (29) revised; (e)(35) and (36) added 5276
(d)(8)(viii) added 25780
970.5204–17 Amended; heading revised 5276
970.5204–22 Amended **53758**
970.5204–24 Removed **53758**
970.5204–44 Amended **53759**
970.5204–60 Amended **53759**
970.5204–81 Added **63425**
970.5204–82 Added 10509
970.5204–83 Added 10511
970.5204–84 Added 5276
970.5204–85 Added 5276

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.105–2 (b)(1)(i) amended **67750**
1201.105–3 Existing text designated as (a); (b) added **67750**
1201.106 (a) amended **67750**
1202.1 (b) through (j) redesignated as (c) through (k); (b) added; new (i), (j)(1) and (7) revised **67750**
1202.7000 (Subpart 1202.70) Added **67750**
1202 Appendix A added **67750**

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1203.104–11 Heading revised **67750**
1205.9000 (Subpart 1205.90) Added **67750**
1206.9000 (Subpart 1206.90) Added **67751**
1209.408–70 (Subpart 1209.4) Added **67751**
1214.303 Removed **67751**
1216.405 Redesignated as 1216.406 ..... **67751**
1216.406 Redesignated from 1216.405; (a), (b) and (c) redesignated as (e)(1)(i), (ii) and (iii) **67751**
1217.102—1217.102–1 (Subpart 1217.1) Removed **67751**
1222.608—1222.6080–4 (Subpart 1222.6) Removed **67751**
1224.202 Redesignated as 1224.203 ..... **67751**
1224.203 Redesignated from 1224.202 ..... **67751**
1225 Removed **67751**
1236.602–1 (a) and (c) removed **67751**
1237.104–90 Revised **67751**
1237.104–91 Added **67751**
1246.705 (a)(3) revised **67752**
1252.223–70 Revised **67752**
1252.225–90 Removed **67752**
1252.225–91 Removed **67752**
1252.228–70 Revised **67752**
1252.228–72 Revised **67752**
1253.303 (Subpart 1253.3) Appendix amended **67752**

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 Table amended (OMB numbers) **52266**
1425 Removed **52266**
1452.225–70 Removed **52266**

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1505.405 (Subpart 1505.4) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1511.011–70 Revised 10549
1514.201–6 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1515.612 (a)(1) introductory text revised 10549
1515.900—1515.970–2 (Subpart 1515.9) Revised **60665**
Regulation at 62 FR 60665 eff. date corrected to 2–10–98 6675
1535.007 Regulation at 62 FR 38477 eff. date corrected to 12–30–97 418
1537.200—1537.205 (Subpart 1537.2) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1548.102 (Subpart 1548.1) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.209–74 Regulation at 62 FR 5348 eff. date corrected to 12–30–97 691
Amended 692
1552.210–79 Regulation at 61 FR 33693 eff. date corrected to 2–10–98 6676
1552.211–70 Amended 10549
1552.214–70 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.217–73 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.217–74 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.235–72 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–74 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–77 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418
1552.235–78 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.106 (1) revised (OMB numbers); interim 9953
1802.101 Amended; interim 9953
1803.104–5 (a)(i) amended; interim 9966
1804.570—1804.570–2 (Subpart 1804.5) Added; interim 9954
1804.601 Amended 32763
1804.602 (d) amended 32763
1804.670–3 (b) amended 32763

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TITLE 48 Chapter 18—Con.

1804.671 Amended 32763
1804.7102 (g) amended 32763
1805.201 Removed; interim 9954
1805.207 (a) added; interim 9954
1806.302–470 (b) removed; (c) redesignated as (b) 12997
(a) amended 32763
1807.105 (b)(19) redesignated as (b)(20) **58687**
Introductory text amended 12997
1807.7000 Amended 32763
1807.7205 Revised **58687**
1809.404 (c) and (d)(1) amended 32763
1809.406 Amended 32763
1809.408 (a)(2)(A) and (B) Amended 32763
1809.470–1 Introductory text amended 32763
1809.470–3 Amended 32763
1814.201–670 (d) amended; interim 9966
1815 Revised; interim 9954
1816.104—1816.104–70 (Subpart 1816.1) Added 12997
1816.402–270 (a), (b) and (c) revised 28285
1816.402 Revised 12997
1816.402–2 Revised 12997
1816.402–70 (a) amended 12997
1816.402–270 (a) amended **58687**
(e)(1) revised; interim 9965
1816.404 Added **58687**
1816.405–270 (b)(2)(ii) amended; interim 9966
Revised 12998
1816.405–271 (a) revised 13133
1816.405–272 (a) amended 13133
1816.405–273 Revised 13133
1816.405–274 (e) revised 12998
1816.405–275 (b)(2) revised 13134
1816.405–276 Added 13134
1816.406–70 (a), (b) and (e) amended **58687**
(a) amended 13134
1817.503 Existing text designated as (2); (a) added **58687**
(a)(2) amended; interim 9967
1817.7001 (a)(1) redesignated as (a); (a)(2) removed **58687**
1817.7201 (Subpart 1817.72) Added **58687**
1819.602—1819.602–370 (Subpart 1819.6) Heading revised 12998
1822.400–70 Revised 32763
1822.404–3 Amended 32763
1822.406–8 (a) amended 32763
1822.1008–7 Revised 32763
1822.1303—1822.1306 (Subpart 1822.13) Heading amended 32763
1827.301 Amended **58688**
1827.303–70 (b)(6) amended **58688**
1832.409–170 (d) amended; interim 9967
1832.402 (e)(1) revised 14040
1832.412 (f) redesignated as (f)(1); (f)(2) added **58688**
Revised 14040
1832.412–70 Added 14040
1832.501–2 Revised 14040
1832.502–2 Revised 14040
1832.702–70 (e) revised 14040
1833.104 (a)(3)(iii) redesignated as (a)(3)(iv) 32763
1833.210 Added 14041
1834.7003–1 (c) amended; interim 9965
1835.016–70 (d)(1), (2), (3), (5) and (7) amended; interim 9967
1837.102 Removed 12998
1837.102–70 Removed 12998
1837.110–70 (c) removed **58688**
1842 Heading revised 15320
1842.101—1842.170 (Subpart 1842.1) Heading revised 15320
1842.101 (a)(i) and (ii) amended 3652
Heading revised 15320
1842.102 Heading revised 15320
1842.102–70 (b) introductory text revised 3652
1842.202—1842.271 (Subpart 1842.2) Heading revised 15320
1842.202–70 Redesignated from 1842.203; (a)(i) through (v) redesignated as (a)(1) through (5) 15320
1842.203 Redesignated as 1842.202–70 15320
1842.803 (b)(1)(D) added **58688**
1842.1203 Heading amended; (f) redesignated as (h) 32763
1842.1203–70 (a) revised 32764
1842.1501—1842.1503 (Subpart 1842.15) Added; interim 27859
1842.7001 (c) amended 32764
1842.7301 Revised 3652
1843.205–70 Heading revised; (a), (b) and (c) redesignated as (a)(1), (2) and (3); new (b) added 17339
1844.201–2 (c)(2) amended; interim 9967

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1845.7101–3 (b) amended **58688**
1852.215–73 Removed; interim 9965
1852.215–74 Removed; interim 9965
1852.215–75 Removed; interim 9965
1852.215–77 Amended; interim 9965
1852.215–78 Amended; interim 9965
Amended 32764
1852.215–79 Amended; interim 9966
1852.215–81 Amended; introductory text revised; interim 9966
1852.215–82 Removed; interim 9966
1852.216–76 Amended 13134
1852.216–87 Amended **58688**
Revised 15321
1852.232–70 Added 14040
1852.235–70 Amended 32764
1852.237–72 Removed **58688**
1852.242–72 Amended 32764
1852.243–70 Amended; interim 9966
Corrected 11480
Amended 17339
1852.243–72 Added 17339
1852.245–71 Amended 32764
1852.245–73 Introductory text amended 32764
1853.215–2 Redesignated as 1853.215–70; interim 9966
1853.215–70 Redesignated from 1853.215–2; (a) amended; interim 9966
1853.232 Redesignated as 1853.232–70; interim 9966
1853.232–70 Redesignated from 1853.232–2; interim 9966
1853.242–70 (g) amended; interim 9967
1853.242–72 Added; interim 27860
1853.245 Redesignated as 1853.245–70; interim 9966
1853.245–70 Redesignated from 1853.245; interim 9966
1853.249 Redesignated as 1853.249–70; interim 9966
1853.249–70 Redesignated from 1853.249; interim 9966
1871.103 (b) amended; interim 9966
1871.104 (a) removed; (b) through (e) redesignated as (a) through (d); new (c) amended; interim 9966
1871.105 (a) revised; interim 9966
(f) amended; interim 9967
1871.301—1871.302 (Subpart 1871.3) Removed; interim 9966
1871.401–3 (a)(3) added; interim 9966
(a)(2) and (b)(4) amended; interim 9967
1871.401–4 (a)(4) added; interim 9966
(a)(2) amended; interim 9967
1871.401–5 (b)(2) revised; interim 9966
1871.402 (d) amended; interim 9967
1871.403 Removed; interim 9966
1871.505 Introductory text amended; interim 9967
1871.604–2 (a) amended; (d) revised; interim 9966
1871.604–3 (a) amended; interim 9967
1872.33 (b) and (c) amended 32764
1872.302 (b)(1) revised; interim 9966
1872.403–2 (c)(2) amended; interim 9966
1872.505 Introductory text amended; interim 9967
1872.702 (b)(1) amended; interim 9967
1872.705–1 Amended; interim 9967

Chapter 28—Department of Justice (Parts 2800—2899)

Chapter 28 Revised 16118
2802.1 (Subpart 2802.1) Correctly designated 26738
2846.601 (Subpart 2846.6) Heading correctly added 26739

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

5231 Added **66827**
5243 Removed 24130
5252.243–9000 Removed 24130
5252.243–9001 Removed 24130

Proposed Rules:

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12 25382
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426 ..... **52081**
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1852 ..... **64545**
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TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.22 (a) revised **51804**
1.23 (q) added **51804**
1.26 (a)(8) revised **55357**
1.46 (mmm) and (nnn) added 10782
(ooo) added 33590
1.52 (d) and (e) removed 10782
1.58 (h) added 33589
1.72 Added **51804**
10.13 (a) and (b) revised **51804**
10 Appendix amended 2172, 4197
Regulation at 63 FR 4197 eff. date corrected to 2–15–98 7311

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107 Notification 29668
Interpretation 30411
107.105 (a) introductory text revised **51556**
107.117 (d)(5) amended **51556**
107.301—107.339 (Subpart D) Appendix A amended **51556**
171 Interpretation 30411
171.5 (a)(1)(i), (iii)(B) and (C)(3) revised **65194**
(a) introductory text, (1)(ii) and (c) amended **65195**
171.6 (b)(2) table revised **51557**
(a) and (b) introductory text amended **51558**
171.7 (a)(3) table and (b) table amended **51558**
171.8 Amended **51558**
171.12 (d)(1) amended **51558**
171.15 (a)(2) amended **51558**
172 Interpretation 30411
172.101 Table amended **51559**
Table and Appendix A amended **51560**
172.203 (k)(3) amended **51560**
172.204 (b)(1) introductory text amended **51560**
172.301 (a)(3) revised 16075
172.313 (c) revised 16075
172.504 (e) Table 1 amended 16076
172.606 Introductory text removed; (a) and (b) revised 16076

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172.801—172.807 (Subpart I) Reinstated **66899**
172.807 Revised **66902**
173 Interpretation 30411
173.5 (b) introductory text and (3) revised 8142
173.6 (c)(3) amended **51560**
(c)(2) revised 8142
173.8 (d)(1) amended; (d)(5) revised 8142
173.9 (e) amended **51560**
173.32 (e)(2)(i) amended **51560**
173.56 (b)(1) and (f) amended **51560**
173.62 (b) table amended **51560**
(c)(5) table corrected 1884
173.125 (a) amended **51560**
173.166 (b)(1) and (3)(i) amended **51560**
173.202 (b) amended **51560**
173.221 Amended **51560**
173.225 (e)(4) amended **51560**
173.242 (b)(1) amended **51560**
173.243 (b)(1) amended **51560**
173.247 (g)(1)(iii)(C) amended **51560**
173.320 (a)(3) revised **51561**
173.422 (b)(2) amended **51561**
174 Interpretation 30411
174.705 Reinstated **66900**
175 Interpretation 30411
175.700 (b) amended **51561**
175.706 Reinstated **66900**
176 Interpretation 30411
176.340 (c) amended **51561**
176.703 Reinstated **66900**
177 Interpretation 30411
177.810 Amended **51561**
177.827 Reinstated **66900**
177.840 (e) amended **51561**
178.36 (a)(2)(iii) amended **51561**
178.44 (b) Table 1 amended **51561**
178.50 (i) introductory text amended **51561**
178.68 (f)(1)(ii) revised **51561**
178.270–14 (b)(13) revised **51561**
178.338–19 (b) amended **51561**
178.503 (a)(1) amended **51561**
179.15 (b) heading and (f)(1) revised; (e) introductory text amended **51561**
179.100–19 (a) amended **51561**
179.100–23 (a) amended **51561**
179.100–24 Amended **51561**
179.221–1 Table amended **51561**
180 Authority citation revised **51561**
180.509 (j) redesignated as (j)(1); (j)(2) added **51561**
190.7 (a) revised 7722
190.203 (a) revised 7722
190.209 Inroductory text revised 7722
191 Effective date confirmation 12659
191.1 (b)(3) added **61695**
191.3 Amended **61695**
191.21 Amended 7723
192 Effective date confirmation 12659
192.1 (b)(5) added **61695**
192.3 Amended **61695**
192.10 Added **61695**
192.16 (b)(5) revised 7723
192.107 (b)(2) revised 7723
192.383 Added 5471
(b) corrected 20135
192.614 (c)(4) removed; (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) and (e) added **61699**
(c)(5) revised 7723
192 Appendix A amended 7723
193.2059 (d)(1)(i) revised 7723
193 Appendix A amended 7723
194 Effective date confirmation 10347
194.121 (a) revised **67293**
195 Effective date confirmation 3653
Response to petitions 6677
Effective date confirmation 12659
Clarification 15321
195.1 Regulation at 62 FR 31367 withdrawn **52511**
(b)(6), (7) and (8) redesignated as (b)(7), (8) and (9); new (b)(6) added **61695**
195.2 Amended **61695**
195.3 (c)(5)(i) and (ii) revised 7723
195.9 Added **61695**
195.56 (a) revised 7723
195.302 (c)(1) introductory text, (2)(i) introductory text and (ii) revised **54592**
195.442 (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) added **61699**
199 Notice **59297**
Authority citation revised **67294**
199.1 (d) revised **67294**
Regulation at 62 FR 67294 eff. date confirmed 14041

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TITLE 49 Chapter I—Con.

199.3 Amended 13000
199.11 (e) revised; (f) added 13000
199.15 (d)(2) revised; (e) and (f) added 13000
199.17 (a) revised 7723

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209 Authority citation revised 11619
209.103 Amended 11619
209.335 (b) amended 11619
209.409 Amended 11619
209 Appendix A amended 11619
213 Authority citation revised 11620
Revised 34029
213.15 Amended 11620
214 Authority citation revised 11620
214.5 Amended 11620
214 Appendix A amended 11620
215 Authority citation revised 11620
215.7 Amended 11620
215 Appendix B amended 11620
216 Authority citation revised 11620
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217 Authority citation revised 11620
217.5 Amended 11620
217 Appendix A amended 11620
218 Authority citation revised 11621
218.9 Amended 11621
218 Appendix A amended 11621
219 Determination 8142
Authority citation revised 11621
219.5 Amended **63466, 63676**
219.9 (a) amended 11621
219.19 Removed **63466**
219.101 (a)(5) added; (c) amended **63466**
219.104 (a)(3)(ii) amended **63466**
219.201 (b) amended **63466**
(a)(1) introductory text, (2) introductory text and (4) revised **63676**
219.203 (d)(2) amended **63467**
219.205 (c)(1) amended **63467**
219.207 (b) revised **63467**
219.209 (a)(1) amended **63467**
219.303 (c), (d) and (e) removed **63467**
219.601 (b)(2)(i) amended; (b)(2)(ii) and (iii) removed **63467**
219.603 Amended **63467**
219.703 (d) removed **63467**
219.709 Removed **63467**
219.803 (a) amended **63467**
219 Appendix B amended **63467**
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220 Authority citation revised 11621
220.7 Amended 11621
220 Appendix C amended 11621
221 Authority citation revised 11621
221.17 Amended 11621
221 Appendix A amended 11621
223 Authority citation revised 11621, 24674
223.5 Revised 24675
223.7 Amended 11621
223.9 (d) added 24675
223 Appendix B amended 11621
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225 Authority citation revised 11621
225.19 (c) amended; (e) revised **63676**
225.29 Amended 11622
225 Appendix B revised **63676**
228 Authority citation revised 11622
228.21 Amended 11622
228 Appendix A amended 11622
229 Authority citation revised 11622
229.7 (b) amended 11622
229 Appendix A amended 11622
230.0 Amended 11622, 11623
231 Authority citation revised 11623
231.0 (e) amended 11623
231 Appendix A amended 11623
232 Authority citation revised 11623, 24134
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232.0 (e) amended 11623
232.23 (e) introductory text, (8) and (9) revised; (e)(10), (11), (g)(2) and (h) added; (g) introductory text amended 24134
232 Appendix A amended 11623, 24135
233 Authority citation revised 11623
233.11 Revised 11623
233 Appendix A amended 11623
234 Authority citation revised 11623
234.6 (a) amended 11623
234 Appendix A amended 11623
235 Authority citation revised 11623
235.9 Revised 11623
235 Appendix A amended 11624
236 Authority citation revised 11624
236.0 (f) amended 11624
236 Appendix A amended 11624
239 Added 24676
240 Authority citation revised 11624
240.11 Amended 11624
240.119 (d)(3) amended; (d)(4) and (5) removed; (d)(6) redesignated as (d)(4) **63467**
240 Appendix A amended 11624

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Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

365.401—365.413 (Subpart D) Authority citation removed 28287
372.101—372.117 (Subpart A) Authority citation removed 28287
372.201—372.243 (Subpart B) Authority citation removed 28287
372.301—372.303 (Subpart C) Authority citation removed 28287
373.101—373.105 (Subpart A) Authority citation removed 28287
373.201 (Subpart B) Authority citation removed 28287
374.101—374.113 (Subpart A) Authority citation removed 28287
374.201 (Subpart B) Authority citation removed 28287
374.301—374.319 (Subpart C) Authority citation removed 28287
374.401—374.405 (Subpart D) Authority citation removed 28287
377.101—377.105 (Subpart A) Authority citation removed 11624, 28287
377.201—377.217 (Subpart B) Authority citation removed 11624, 28287
382 Controlled substances and alcohol testing rates 2172
385.3 Amended **60042**
385.9 Revised **60042**
385.11 Revised **60042**
385.13 Revised **60042**
385.15 Revised **60043**
385.17 Revised **60043**
385.19 Revised **60043**
385 Appendix B revised **60043**
386 Authority citation revised 12414
386 Appendix A amended; Appendix B added 12414
387.5 Amended 33275
387.27 (b)(2) and (3) amended; (b)(4) added 33275
387.29 Amended 33276
390 Authority citation revised 33276
390.3 (f)(2) revised 33276
390.5 Amended 33276
390.29 Added 33276
391.11 Heading and (b) revised 33276
391.13 Added 33277
391.15 (b) revised 33277
391.25 Revised 33277
391.33 (a)(1) revised 33277
391.51 Revised 33277
391.61 Revised 33278
391.63 Revised 33278
391.65 (b) and (c) revised 33278
391.67 Revised 33278
391.68 Revised 33278
391.69 Removed; new 391.69 redesignated from 391.73 and revised 33278
391.71 Removed 33278
391.73 Redesignated as 391.69 33278
392.9 (c) redesignated as 392.62 33278
392.62 Redesignated from 392.9 and revised 33278
392.9b Removed 33279
392.13 Removed 33279
392.15 Removed 33279
392.20 Removed 33279
392.22 (b)(1) revised 33279
392.25 Heading revised 33279
392.42 Removed 33279
392.51 Revised 33279
392.52 Removed 33279
392.68 Removed 33279
393.5 Amended 8339, 24465
393.55 Added 24465
393.60 Revised 1387
393.75 (f) revised; (g) and (h) added; authority citation removed 8339
395 Interpretation 16697
395.1 (g) removed; (h) through (o) redesignated as (g) through (n) 33279
395.2 Amended 33279
395.8 (k)(1) revised 33279
396.11 (b), (c) and (d) revised 33279
396.13 (b) revised 33280
397.19 (b) revised 33280

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

533.5 (a) Table IV revised 16701
538 Petition denied 15322
541 Appendixes A and A–I amended **52045**
553 Appendix A amended; Appendix B added 26514
571 Petition denial 19839, 34330
571.3 (b) amended 33216
571.101 Amended; eff. 5–27–99 ..... 28926, 28927
571.105 Amended; eff. 3–1–99 12664

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571.108 Amended 8145
571.109 Amended; eff. 5-27-2003 ..... 28914, 28916, 28919
571.111 Amended; eff. 5-27-99 ..... 28929, 28930, 28931
571.116 Amended; eff. 5-27-99 28932
571.117 Amended; eff. 5-27-2003 28920
571.119 Amended; eff. 5-27-2003 28921
571.120 Amended; eff. 5-27-2003 28921
571.121 Amended 7727
571.123 Amended; eff. 5-27-99 ..... 28933, 28934
571.131 Amended 29143
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571.202 Amended; eff. 5-27-99 28935
571.203 Amended; eff. 5-27-99 28935
571.204 Amended; eff. 5-27-99 28935
571.207 Amended; eff. 5-27-99 28935
571.208 Corrected **51379**
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Amended 3666
571.209 Amended; eff. 5-27-99 28936
571.210 Amended; eff. 5-27-99 ..... 28941, 28943
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571.214 Amended 16140
571.219 Amended; eff. 5-27-99 ..... 28946, 28947
571.220 Amended; eff. 5-27-99 28948
571.222 Amended; eff. 5-27-99 ..... 28948, 28951
571.223 Amended 3662
571.224 Amended 3662
571.301 Amended; eff. 5-27-99 28953
571.302 Amended; eff. 5-27-99 ..... 28954, 28956
571.500 Added 33216
572.31 (a)(3) revised 5747
572.35 (c)(1) and (2)(iv) revised 5748
572.40 (b) revised 16140
572.41 (a) introductory text, (4) and (c) revised 16140
572.43 (a) revised 16140
581 Authority citation revised 33217
581.3 Revised 33217
589 Petition denial 19839
593 Appendix A revised **52267**
595 Added **62442**
595.5 (b)(3) introductory text and (i) revised **67754**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

653 Notice 418
654 Notice 418

Chapter VII—National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

701 Revised 7311

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (a), (e)(1) and (f)(6) table revised 8146
1002.2 (f) revised 8146
(g) reinstated; CFR correction 19195
1039.11 (a) table amended 19665
1111 Authority citation revised 2639
1111.1 (a) amended; (a)(1) through (10) and (d) added 2639
1111.8 Amended 2639
1111.9 Redesignated as 1111.10; new 1111.9 added 2639
1111.10 Redesignated from 1111.9; (a) revised 2639
1152 Authority citation revised 28290
1152.27 (n) added 28290
1155 Removed 28291
1241 Authority citation revised **51380**
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1241.14 Removed **51380**

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37 ..... 14560, 29924
38 14571
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17 Critical habitat designation
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17.3 Amended 8870
17.11 (h) table amended **59622, 64320, 66303**
(h) table amended 694, 1763, 3843, 12686, 13150, 14379, 26530, 31674, 32997
17.12 (h) table amended **54807, 61925**
(h) table amended 19849
17.22 (b)(5) and (6) added 8871
17.32 (b)(5) and (6) added 8871
17.42 (f) added **59622**
17.44 (v) added 31674
17.84 (k) added 1763
17.95 (b) and (e) amended 14379
17.108 (a)(7) added **63037**
20.134 (b) revised; (c) removed **63611**
21.47 Added 10560
23.23 (f) table amended 26741
32.70 Amended 2182
38 Added 11626
100.24 Revised 35336
100.25 Added; eff. 7-1-98 through 6-30-99 35344
100.26 Added; eff. 1-1-99 through 12-31-99 35375
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216.111—216.118 (Subpart J) Revised; eff. 2-2-98 through 12-31-02 5283
217.12 Amended; interim 17955
222 Authority citation revised 8872
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222.3 Added 8872

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222.22 (g) and (h) added 8872
222.34 Added; eff. 11-27-97 through 7-31-98 63470
226 Critical habitat designation 9967
226.22 Introductory text amended 1393
226.23 Added 1393
226 Table 4 added 1394
Figure 9 added 1395
227 Authority citation revised 13371
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227.4 (m) and (n) added 13371
227.72 (e)(2)(iv)(B) and (4)(iv) amended; (e)(4)(iii) revised; interim 17956
229 Fishery list 5748
229.31 Added 51813
(b) and (c)(2) revised 27861
229 Figure 1 added 27861
230 Quotas 16701
260 Inspection fees 67585
285 Inseason adjustments 51608, 53247, 66828
Temporary regulations 52666
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285.2 Amended; interim 669
285.3 (a) revised; interim 669
285.9 Added; interim 669
285.22 (a)(3) revised 27865
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300 Technical correction 15324
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300.63 (b) revised 13009
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600 Specifications 419
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600.5 (a) and (b) amended 7075
600.10 Amended; interim 66551
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600.15 (b)(7) removed; (b)(8) through (13) redesignated as (b)(7) through (12) 7073
600.105 (a), (b) and (c) amended 7075
600.115 (a) and (b) amended 7075
600.205 (a) and (b) amended 7075
600.210 (a) amended 7073
600.215 (a)(4) amended 7073
(a)(3) amended 7075
600.225 (b)(2) amended 7075
600.230 Amended 7073
600.235 (c) amended 7073
(a) amended 7075
600.245 (a) amended 7075
600.305 (a)(2), (3), (c)(1) and (3) amended 7075
(a)(2) and (3) amended; (c)(1), (3), (11) and (12) revised; (c)(13) removed 24229
600.310 (b) and (f)(3) introductory text amended 7073
(c)(7)(i), (iii), (f)(1), (2) introductory text, (5) and (h) introductory text amended 7075
Revised 24229
600.315 (e)(3) and (4) redesignated as (e)(4) and (5); new (e)(3) added; (c)(2), (3), (e)(1) introductory text, (ii) and new (4) revised 24233
600.320 (c) amended 7075, 24234
600.325 (c)(3)(ii) amended 7075
(c)(3)(ii) revised 24234
600.330 (c)(2) amended 7073
(c) introductory text, (1) and (2) amended 7075
(a), (b)(1) and (c)(2) revised; (c) introductory text and (1) amended 24234
600.340 (b)(1) and (2)(iii) amended 7075
(b)(1) amended 24234
600.345 Added 24234
600.350 Added 24235
600.355 Added 24236
600.405 Amended 7075
600.415 (c)(2) amended 7075
600.501 (a)(1), (b), (e)(1)(i), (v) and (i) amended 7075

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600.502 (f)(1) amended; (g), Table 1 and Table 2 revised 7073
600.504 (a)(1) and (b)(5) amended 7075
600.505 (a)(1), (2), (4), (5), (6), (8), (28) and (b)(1) amended 7075
600.506 (a), (b)(1), (2), (c)(2), (g)(2) and (j)(1) introductory text revised; (f), (h)(1), (2)(iii), (3)(ii) and (j)(2)(i) amended 7074
(b) introductory text and (h)(3) introductory text amended 7075
600.507 (a)(4) and (i) amended 7075
600.511 (c)(1) amended 7075
600.512 (a) amended 7075
600.515 Amended 7075
600.516 (c) amended 7075
600.518 (b)(3) and (e)(1)(iv) amended 7075
600.520 (b)(2)(ii), (iii) and (3) amended 7075
600.610 (a)(1) amended 7075
600.615 (d)(2) revised 7075
600.725 (a), (b), (d), (f), (g), (h), (j), (k) and (p) amended 7075
(p) redesignated as (t); new (p) through (s) and (u) added; new (t) revised 27217
600.730 (a) amended 7075
600.735 Amended 7075
600.740 (a) introductory text text, (4), (b) and (c) amended 7075
600.745 (a), (b)(1), (2) introductory text, (viii), (3)(i) introductory text, (ii), (iii) introductory text, (iv), (v), (c)(2), (d)(1), (2) introductory text, (2)(x), (3)(i) and (ii) introductory text amended 7075
600.746 Added 27217
600.750 Amended 7075
600.805—600.815 (Subpart J) Added; interim **66551**
600.905—600.930 (Subpart K) Added; interim **66555**
622 Temporary regulations **52045, 61700, 63677, 66304, 67010**
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622.1 Table 1 amended 10565
622.2 Amended 10565, 18144
622.4 (d) and (p) revised **67721**
(a) introductory text, (2) heading, (ix), (g) and (i) through (l) revised **67722**
Regulation at 62 FR 67721 eff. date corrected to 12–30–97 290
(a)(2)(iv), (v), (vi) and (g) revised; (a)(2)(iii) and (q) added; (d) amended 10565
(a)(2)(ii), (o) heading, (1) and (2) amended 10569
622.5 (a)(1)(i) revised 10567
622.6 (b) revised; (c) and (d) removed 10567
622.7 (a), (b) and (c) revised **67722**
Regulation at 62 FR 67722 eff. date corrected to 12–30–97 290
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622.9 Added; interim; eff. 5–14–98 through 11–16–98 27488
622.31 (d) removed; (e) through (k) redesignated as (d) through (j) 10567
622.32 (c)(1) revised 10567
622.34 (c), (g) introductory text and (l) amended; (l) revised **67722**
Regulation at 62 FR 67723 eff. date corrected to 1–1–98 290
(l) suspended; (m) added; eff. 4–29–98 through 10–13–98; interim 18146
622.35 (e)(2)(i) revised 10567
622.36 Introductory text through (c) redesignated as (b) introductory text through (3); (a) added **67723**
622.37 Regulation at 62 FR 47766 eff. date extended **67715**
(d)(3) revised 444
(c)(1) revised 10567
622.38 (a) revised; (h) added 10567
622.39 (a)(2)(iv) added; (b)(1)(ii) and (v) revised **67723**
(c)(1)(ii) revised 8356
(b)(1)(iii) suspended; (b)(1)(iv) added; eff. 4–29–98 through 10–13–98; interim 18147
622.40 (b)(3)(i) introductory text amended 10568
622.41 (c), (d)(1) and (3) revised 10568
(h) added 18144
(h)(2) suspended; (h)(3) added; eff. 5–14–98 through 11–16–98 27500

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622.42 (a)(1)(i) revised **67723**
(c)(1)(i) and (2)(ii) revised 8356
(c) introductory text amended 10569
(a) suspended; (g) added; eff. in part 5–14–98 through 10–13–98 and 4–14–98 through 10–13–98; interim 18147
622.43 (a)(5) amended; (e) revised **67723**
(a)(3)(i) and (ii) revised; (c) added 10569
622.44 (a)(1) introductory text added; (a)(1)(iii) and (2)(i) revised; (b)(2) amended 8356
(a)(2)(ii)(B) introductory text revised 10569
(a)(2)(ii)(A)(*2*)(*i*), (b)(1)(i) and (ii) introductory text amended 10569
622.45 (d)(2) amended; (h) added 10569
622.48 (d)(1) amended; (c) revised 10569
(i) added 18144
622 Appendix A amended **67723**
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630 Temporary regulations ...12687, 23682
630.1 (b) revised **55361**
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630.4 (a) revised **55361**
630.7 (c) revised; (bb) and (cc) added **55361**
630.21 Revised **55361**
630.23 (a) and (b) amended **55362**
630.24 (a) redesignated as (a)(1); (a)(2) and (b)(5) added; (b)(1), (2), (3), (c), (d)(4) and (e) revised **55362**
630.25 Heading and (a)(1) revised; (b) amended **55362**
644.5 Suspended; eff. 3–27–98 through 9–23–98; interim 14033
644.10 Added; eff. 3–27–98 through 9–23–98; interim 14033
644.21 (a) and (d) suspended; (e) added; eff. 3–27–98 through 9–23–98 14034
648 Quotas **52277, 55362, 67754**
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648.2 Corrected **51381**
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648.4 (c)(2)(3)(B) corrected **51381**
(a)(3)(i)(B)(*2*) removed; (a)(3)(i)(C), (5)(i)(A)(*2*), (C), (ii)(A)(*2*), (C), (6)(i)(A)(*2*) and (C) revised **63875**
(a)(1) introductory text revised 11593
(a)(4)(i) added 27484
(a)(5)(i)(B)(*1*), (ii)(B)(*1*), (6)(i)(B)(*1*) and (7)(i)(B)(*1*) revised 32144
648.10 (f)(2) correctly revised **51381**
(c)(5) revised; (f)(3) added 11593
(d) and (f)(3)(i) revised 15329
648.13 (d) added **63875**
648.14 (a)(89) correctly revised **52274**
(j)(9) added **63875**
(u)(1) revised **66310**
(a)(13), (31)(iii), (33), (35), (36), (37), (47), (55), (b), (c) introductory text, (d) introductory text, (e), (g) introductory text, (t) and (x)(4) revised; (a)(31)(ii) amended; (a)(31)(iv), (104) and (c)(22) through (25) added 11594
(a)(110) and (111) added; interim 15326
(a)(101), (c)(7), (10), (24) and (25) revised; (a)(112) added 15330
(a)(112) correctly designated 19850
(a)(23), (24), (25) and (x)(1)(ii) revised; (a)(105) through (109) and (113) added; (x)(1)(iii) amended 27484
648.15 (b)(4) added 27485
648.17 Added 11595
648.23 (a) introductory text revised 1774
648.53 (d) revised 11595
648.57 Added; interim 15326
648.73 (d) added 27485
648.75 Introductory text added 27485
648.76 Added 27485
648.80 (d)(2) and (3) revised; (d)(5) added 7730
Introductory text revised 11595
(a)(5)(i) and (8) revised 15330
(a)(8)(i) corrected 25416
648.81 (a)(2)(ii), (b)(2) introductory text, (c)(2)(i) and (f)(2)(ii) revised; (a)(2)(iii) added 7730

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(a)(2)(i), (c)(2)(ii) and (f)(2)(ii) revised 11595
(d), (g), (h) and (j) revised; (n) added 15331
(g)(1)(i) corrected 25416
648.82 (a) revised 11595
648.83 (a)(1) introductory text revised 11595
648.86 Introductory text and (b)(3) added; (b)(1) heading, (i), (ii) and (2) revised 11595
(a)(1)(i), (ii), (b) introductory text, (1) introductory text, (i), (ii) and (3) revised; (a)(1)(iii) and (b)(4) added 15332
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648.87 Heading, (a) and (b) correctly revised **52274**
(a) introductory text, (1)(i) and (ii) revised; (a)(3) added 15333
(a)(1)(i) corrected 19580
648.100 (a) revised **66310**
648.103 (c) revised **63875**
(b) revised 27868
648.104 (a)(1) revised; (f) added **63876**
648.105 (a) revised 27868
648.142 Revised 27868
648.143 (a) amended **66310**
(a) revised; (b) redesignated as (c); new (b) added 27868
648.144 (a)(1)(i) amended **66310**
648.145 (c) amended 11160
660 Restrictions **51381, 51814**
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660.12 Amended 20540
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660.42 (a)(9) and (b)(5) revised 20540
660.45 (b) revised 20540
660.48 (a)(7) revised; (a)(8) redesignated as (a)(9); new (a)(8) added 20540
660.50 (b)(2) revised 20541
660.68 Revised 35163
660.302 Amended 34608
660.303 (c) added 34608
660.306 (h) revised; (x) added 34608
660.333 (c)(1), (2), and (d) introductory text revised; (c)(3), (4), (f)(2) and (3) redesignated as (c)(4), (5), (f)(3) and (4); new (c)(3) and (f)(2) added 34608
678 Temporary regulations 14837
Quotas 29355
679 Reallocation **51609, 53973, 55539**
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